CPR ARBITRATION

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In the Matter of the Arbitration between:
A.D. FOOTBALL, INC., A.D. FAMILY LIMITED PARTNERSHIP, A. & R. BOSCACCI INVESTMENT CO., E. & V. BOSCACCI REVOCABLE TRUST/MARITAL LLC, E. & V. BOSCACCI DECEDENT'S TRUST/DECEDENT LLC, JILL LOVINGFOSS, CODY LOVINGFOSS, JOSH LOVINGFOSS, CHALET ROBERTS, GOPPL PARTNERSHIP, L.P., PATRICIA WINKENBACH and GERALD WINKENBACH as the Trustees of the Winkenbach Family Trust, PATRICIA WINKENBACH, GERALD WINKENBACH, RLP HOLDINGS, LP, ADF INVESTMENTS LLC, ADF HOLDINGS, LLC, A.D. FAMILY LIMITED PARTNERSHIP, A.D. FAMILY LLC, MARK DAVIS, FIRST FOOTBALL, LLC, MD FOOTBALL LLC, ALLAN BOSCACCI and PATRICIA BOSCACCI as the Trustees of the Boscacci Family Trust, LISA BOSCACCI, ALLISON MEIN, ANNE CARPENTER, ALIDA BEILKE, CARA YURAS, KENNETH WEAKLEY and LYNNE WEAKLEY as the Trustees of the Weakley Family Trust, JEANNE DAVIES, ERIC WEAKLEY, ELYSE WEAKLEY, MARY JANE BOSCACCI as the Trustee of the Mary Jane Boscacci Living Trust, PAUL STEFANI and ANN STEFANI as the Trustees of the Stefani Family Trust, CATHERINE STEFANI, JON-PAUL STEFANI, NANCY MCAULIFFE, KELLY PEPPMEIER, ERIN MCAULIFFE, ALLAN BOSCACCI, COREY MCAULIFFE, ALLAN BOSCACCI as the Trustee of the A&R 2005 Irrevocable Trust, NANCY K. MCAULIFFE as the Trustee of the Nancy McAuliffe Family Trust,

(CAPTION CONTINUED)

DAVID ABRAMS, FRIEDMAN FOOTBALL LLC, JOSHUA FRIEDMAN, BETH FRIEDMAN, PEAK TRUST COMPANY as the Trustee of the Friedman Family 2015 GST I and the Friedman Family 2015 GST II, GARONZIK INVESTMENT PARTNERS LLC, FREDRIC GARONZIK, FREDRIC GARONZIK as the Trustee of the Fredric B. Garonzik Trust, DAVID GARONZIK and SAMUEL GARONZIK as the Trustees of the Fredric B. Garonzik Family Trust and the Anne G. Garonzik 2011 Trust, DAVID GARONZIK, SAMUEL GARONZIK, ANNE GARONZIK as the Trustee of the Anne G. Garonzik Trust, ANNE GARONZIK, PAUL LEFF, SILVERBLACK LLC, STEPHEN MALKIN, DAN GOLDRING, and MARK DAVIS as the Trustee of the Mark Davis 2010 Trust and the Davis Credit Shelter Trust,

Claimants,

-and-

ERNST & YOUNG LLP and EY US LLP,

Respondents.

Matter No. G-23-23-N

September 16, 2024
9:33 a.m.
Seven Times Square
New York, New York

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JOHN CHANDLER, Arbitrator
JOHN BICKERMAN, Arbitrator

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ALSO PRESENT:

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MARCO HEIM
JUSTIN CARLEY
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MEREDITH MOSS
MARK CARLSON
GARY B. GOOLSBY
(via videoconference)
NOAH LEWINE
(via videoconference)

* * *

THE CHAIRPERSON: We're ready to proceed. Why don't you go forward.

MR. REED: Members of the panel, it's a pleasure to be here in front of you today on behalf of the Raiders. We've all met before. I'm Kevin Reed by Quinn Emmanuel. Deborah Brown, Justin Carley, the general counsel of the Las Vegas Raiders, and the team that's worked hard to get us here, Sebastian Becker, Wesley Hartman, and Lauren Beck.

THE CHAIRPERSON: Good morning.

MR. REED: This case arises out of Ernst and Young's negligent failure to discover a significant repeating and compounding error in the Raiders' annual financial statements during a fourteen-year period that spanned from 2006 through 2019. The error related to the manner in which the Raiders booked and recognized revenue they received from NFL Ventures, a partnership among the NFL's thirty-two teams that generates revenue by marketing the NFL and its brand and then distributes that revenue equally among the thirty-two teams.

So let's talk about that error and how we get here.

So NFL Ventures operates on a calendar year and it runs from April through March of every year. The Raiders are in a fiscal calendar year from January through December of each year. Ventures distributes revenue several teams a year. One of those distributions occurs in January. And to understand the error that happened here, the first thing to note is that, starting with their 2006 financial statements, the Raiders began to accrue each year's January distribution into the prior year's revenue. So the January in this diagram 2014 revenue which is part of the 2013 season, the Raiders pull that '14 revenue back on their '13 financial statement on the theory that it's already been applied.

After the NFL season concludes in March, the NFL sends all the teams a remittance memo that covers all of the Ventures revenue that was earned during the prior year. And when that happens, the Raiders booked that remittance amount, the full year, to their revenue for 2014. Now, that remittance amount includes the January payment that we've already accrued. You begin to see here where the problem starts.

Come the following January, the Raiders again accrue the January payment from the year next year into the current year, and you can see what the issue is here. The

January revenue gets double-counted and you end up with thirteen months of Ventures revenue in a twelve-month calendar year.

Over time, that ends up resulting in $214 million of overstated revenue getting booked under the Raiders' financial statements. It happens every year except for one and it's never corrected.

Now, the other part of this error is on the accounts receivable side of the financial statement. Because what happens is, when the Raiders book that January accrual, they don't have the cash yet, so they book a month's worth of accounts receivable to Ventures. Then the cash comes in and they reverse that account accrual, so now we're net neutral. But then the remittance happens and they book twelve months of Ventures revenue to accounts receivable. As we're going to talk about later, that's a mistake, because this money's already been paid, virtually all of it. And then when they accrue the January payment, they again book another month of receivable. So you end up with thirteen months of account receivable in twelve-month year for Ventures. And the impact of that builds on itself over time. Because that fake thirteen-month is never going to be paid and it never comes off the financial statements, so year after year they stack on to each other until, by the end of this period, the Raiders have booked more than $200 million of nonexistent Ventures receivable on their financial statements. Neither the magnitude nor the nature of these errors is disputed. And nor is the fact that Ernst and Young never found it.

So let's talk about what

Ernst and Young was supposed to do.

Ernst and Young was our auditor, and according to their engagement letters, they were supposed to audit in accordance with the auditing standards generally accepted and promulgated by the AICPA. That require they obtain reasonable assurance that the financial statements are free of material misstatement. What is reasonable assurance? Reasonable assurance means a high but not absolute level of assurance that's based on sufficient and appropriate audit evidence. And equally important, if you don't get that level of assurance, you don't issue an opinion. You are supposed to disclaim an opinion. Now, E&Y also provided tax services to the Raiders. The Raiders are a pass-through entity, but as you'll hear, they of course have to file a tax filing year and K-1s. EY was retained to prepare those as well, and they had duties in that regard. Their tax engagement letter again promised that they would perform in accordance with the AICPA standards and those require that they make reasonable inquiries about the information that is presented to them and they respond appropriately to any inconsistencies or red flags that they find.

Now, what's important to recognize here is that the Raiders prepared their financial statements on an income tax basis. You most often hear financial statements being prepared in accordance with GAAP. The Raiders did it according to income tax basis, which means you prepare your financial statements using the same rules the IRS requires when you do your taxes, and that meant that EY's audit and tax teams were interrelated and work together.

Because in order to audit the financials, you had to add the taxes. In order to do the taxes, you had to have the financials. So they put together an audit team comprised of both audit professionals and tax professionals. You'll hear from most of these folks as witnesses in this arbitration, either live or via designation or video.

But what you'll hear from the evidence is those folks work hand in and. The tax folks knew what the audit folks were doing and the audit folks knew what the tax folks were doing.

So every year EY does its audit and every year they certify the financial statements and they represent to the Raiders, to their partners, to the banks, to the world that the financial statements present fairly in all material respects the consolidated financial position of the Raiders' partnership.

Now, the main issue today: Was Ernst and Young negligent in failing to identify the errors in the Raiders' financial statements for fourteen straight years. You're going to hear that they were. We're going to prove that to you through E&Y's work papers, we're going to prove that to you through the testimony of E&Y's witness and ultimately through the testimony of our expert, Andrew Mintzer. I don't know if any of you have ever litigated against accounting firms, but it is hard to find an expert who will testify against one of the big four. They don't want to do it. But Ms. Brown worked hard and found one, and he's a good one. Andrew Mintzer has a forty-year experience as a CPA, he spent seventeen years at Ernst and Young, he's a member of the AICPA board of directors and a certified fraud examiner. And he will tell you and he'll explain it to you in detail that what E&Y did here was they failed to plan and perform requisite audit procedures, they failed to recognize and respond to numerous red flags, and they improperly asserted compliance with the generally accepted the accounting standards, the AICPA standard, curing their audits.

Generally what was EY supposed to do? Talk about obtaining assurance and evidence. How do you do that? The first step is you assess risk. You look at the environment, you look at the business, you figure out where are the potential trouble spots. Then you design procedures with those risks in mind to try and find any mistakes. Then you implement those procedures with an appropriate amount of professional skepticism.

You don't just trust your client. Otherwise what's the purpose of applying it? And then if your procedures are disclosing any insistent or contradictory information, you address it, you dig in, you find out what it's about, and you move forward.

A key point in this regard is that all of those standards that we just went through have to be applied with extra care when you're talking about a significant account: Ventures line on the Raiders' financial statements, as you'll hear, was the dominant line, it was their most or next most source of revenue every year, it was their by far largest receivable and that means that, if you're EY, you give that extra attention and you're extra careful, and they admit to that. You'll hear from Mr. Gottlieb who said what does it mean when EY identifies something as a significant accounting and audit issue. It's significant to the audit so we would put more audit effort there. And their own planning memos for the audit recognize there were significant receivable balances in 2013 from the NFL and NFL Ventures. They were supposed to pay extra attention.

So let's look at what they did. We'll use 2014 as an example. Because of the double-counting error that year, the revenue was overstated by $18 million.

So this is one of E&Y's work papers. For each item on the financial statement that E&Y audits, it prepares a work paper to show the procedures it performed and then it attaches to that the evidence it obtains supports conclusions, so you have a record of what they did and what they based their conclusions on. So this work paper documents EY's review of the Ventures revenue reported on the Raiders financial statement for the year ending 2014 and that amount, as you see there in bold, was $83 million. This shows that the Ventures revenue that year was comprised of four amounts. You have the remittance, which we talked about a few minutes ago, you have a Ventures K-1 which actually ends up as a loss, then you have the January accrual which is comprised of these two lines, the last two, Ventures accrual and the Ventures wire Gatorade. The total accrual there you'll see totals $20 million.

So to the side of those numbers you see a series of letters and numbers and what those are are EY's codes and notes that show you how they performed their powers procedures and what they did. Let's look at what they wrote down here.

So the first thing they have to do is check the remittance earned, and how do they do that? The notes tell you they obtained an e-mail from Brad Firestone. And you'll see the e-mail from Brad which they have in their file, these little marks here, those are the EY marks. They got an e-mail from Brad confirming that the remittance is, in fact, 63.9 million. The next line with the K-1, they looked at the K-1. The next line for the receivable -- for the January accrual, they did a confirmation from the NFL that yes, in fact, there's a January payment owed of $20 million. They send a letter to Brad Firestone who you recall you saw testify and Mr. Firestone says yes they, in fact, owe us $20 million.

So the work papers tell us that EY checked all of the numbers that were booked in the account, but that's not enough. EY is not paid to be a calculator. They're not paid to verify the amounts, they're supposed to understand those amounts and verify that they have been properly booked on the financial statements. So in this specific case, that means it wasn't enough for Ernst and Young to verify that the Raiders had received the $69 million remittance. It wasn't enough for them to verify that the NFL owed them $20 million as of January. They were supposed to understand whether it was appropriate for the Raiders to book those items into their 2014 revenue, but they didn't do that. And so what did they miss? They miss that we're booking thirteen months of revenue in a twelve-month year.

And what's remarkable about that, and even more probative of

EY's negligence, is that EY had all the information it needed to catch this mistake in its work papers so with respect to the remittance of $63 million, you find in their audit work papers an audit paper relating to auditing the receivable that was booked when that remittance was given to the Raiders. Remember, as we talked about earlier, when the remittance comes in, the Raiders book it to revenue and they book a receivable in the same amount. So this shows you how EY audited that $63 million receivable for that remittance. And what they show in their work papers is that season's remittance was earned for the period April 1, 2013 to March 31, 2014. They also looked at the Ventures accrual. Remember we saw they got a note from Brad Firestone. But in a note to themselves, they note that that twenty million was a distribution related to the 2014 season. So in their own work papers, you see they have information that tells you that in this revenue, they're booking twelve months of revenue from 2013 and a month of revenue from 2014, thirteen months of revenue. It's there. They didn't pay attention and they didn't see it.

But they missed the error a second way, too. Remember, this gets on the account receivable side, too. As we talked about, there's thirteen months of receivable booked every year and it results in this spiking balance of nonexistent AR from Ventures. They missed that, too. So this is the NFL Ventures receivable for 2014. This is EY's summation of the ledger. You see it's a $59 million receivable for 2014. And EY's job as an auditor was to make sure that that balance of $59 million correctly stated the amount that Ventures owed the Raiders as of December 31, 2014.

Now, the standards here are very clear on what you're supposed to do when you have a receivable balance. The auditor should use external confirmation procedures for accounts receivable. If you've practiced law in New York for any significant amount of time, you know how annoying it is that you get these audit request letters from your clients that say please confirm that, as of December 31, ABC Company owed Quinn Emmanuel X million dollars. But that's how you confirm a receivable. You go to the party who is alleged to have owed it and you ask them do you, in fact, owe this. There are very limited circumstances in which you don't do that: If the account is immaterial. That clearly wasn't the case here. External confirmation procedures for accounts receivable would be ineffective. As we'll see, that wasn't the case here. And then third is if the assessed level of risk material to the misstatement was low. That wasn't the case here. This is one of the biggest items on the Raiders' balance sheet.

Well, we know Ernst and Young never obtained confirmation of the year-end balance from the year-end balance from the NFL, and we know that because they tell us. They write in their work papers, "due to the difference between the NFL and the club's year-end date, we confirmed NFL Ventures' payment due and to be received as of December 31, 2014 instead of an ending receivable balance". So again, they only asked the NFL do you owe the Raiders this January payment. They don't ask do you owe them $59 million, which is the question they need to answer. And you can see a confirmation, we looked at this before, a confirmation they send to Brad Firestone at the NFL asks him to confirmation of the future payment owed to us as of December 31, 2014. That's the $20,000 accrual.

Throughout the year 2006 to '14 period, that's all they do. They never ask the NFL to confirm the ending balance. Why? Well, this is the fun part of the case because when the Raiders' error blows up in 2021 and this all comes to light, Ernst and Young is in the process of auditing the 2020 financial statements and you look at their work papers and you see they in a post hoc way attach some very serious CYA and make up an excuse to put in their work papers.

First they say we prepared an account receivable confirmation for the balance due from the NFL related to NFL Ventures as of December 31, 2020. So now for the first time ever they prepare a confirmation that asks the NFL to confirm the year-end.

Subsequently, they say, we received verbal confirmation from Brad Firestone that, per NFL policy, the accounts receivable balances as of December 31, 2020 related to NFL Ventures and broadcast revenue could not be confirmed. This is also consistent with historical EY audit experience in auditing the company and NFL receivables. As you'll hear, they audit numerous NFL teams. In addition, we confirmed with the other NFL audit teams that the policy of the NFL to do not confirm this balance is consistent with their experience in auditing other member clubs.

I hope you don't think it

disrespectful to ask you to take on an assignment. Throughout the remainder of this arbitration look for any evidence that supports any of this. If they had gone to the NFL and the NFL told them we're not confirming that, that would be in the work paper. If they had sent the NFL a confirmation of the year-end balance and the NFL returned it cannot do, that would be in a work paper. If there were communications with other NFL auditing teams that said the NFL doesn't confirm the year-end balances, that would be in a work paper. You're not going to see it. It doesn't exist.

How do we know in addition to the fact that they're not going to be able to prove if that it's false? Brad Firestone told you it was false and he was asked: "Do you ever recall receiving an e-mail from EY request they asked you to confirm year-end Ventures account receivable balance and you told EY that the NFL was unwilling to confirm that amount.

"No.

"Can you think of any reason why you would ever be unwilling to confirm a year-end balance for the Ventures accounts receivable.

"No".

And not only that, not only did he tell you that he would have confirm a year-end balance if asked, that's what he thought he was doing. Because remember, when they sent this confirmation, they asked him to confirm the amount of the January payment. But what Mr. Firestone said was it also just so happened that at the end of the year the January payment was the only thing we owed them. That was the receivable balance. So when he answered this, he thought he was answering the question that EY should have asked. So not only would he have done it, he in his own mind did do it.

Now, let's go back here. Remember, in their note, in their 2020 audit note post hoc excuse they say we received verbal confirmation from Brad Firestone that NFL policy prohibits us from confirming year-end account receivable balances. If you are EY and you believe that happened, what would you ask Mr. Firestone on the witness stand? You might ask him, for example, Mr. Firestone, do you recall a conversation in which you told auditors from EY that the NFL will not confirm account receivable balances as of December 31. They never asked him because they knew what his answer would be.

Now, let's just pause here for a second, because the importance in this case of Ernst and Young's negligence in failing to seek the proper year-end confirmation from the NFL cannot be overstated. As you can see, it's probably already clear from looking at the documents, if EY at any point during this fourteen-year period done what it was supposed to do and called the NFL to get the proper confirmation, there would have been instantly revealed. If they had called the NFL in 2014 and asked, Mr. Firestone, do your records correctly show that NFL Ventures owes them $59 million as of year-end, Mr. Firestone would have told them no, it's only $18 million and the whole problem would have been instantly unmasked. EY has no excuse for this failure and this alone you'll see it sufficient to prove their negligence.

So let's talk about the other side of the way they could have discovered this error. They could have discovered it by testing the receivable at the end of the year -- I'm sorry, I got tied up in my notes.

So we just talked about what EY didn't do in testing the receivable. They didn't seek the confirmation they should have were the NFL. What procedure did they actually follow? Remember, their task is to ascertain whether that $59 million is the correct amount of the receivable, so let's look at what they did.

The way they approach it is they start with the receivable balance at the end of the prior year, so we're in 2014. They start with what's the balance at the end of 2013, $66 million. Then against that they net out the total number of payments that the NFL has made during the year because that brings down the receivable balance. And then they add on the January accrual which bumps the balance back up. When you net all those out, you get to the $59 million number.

What did they do to test if? They verified the accrual of $20 million and we see how they did that, they got the confirmation from Firestone. It was wrong but they got it. And then they go about testing that $27 million number. At the top right of the screen, you'll see that's the net reduction of the receivable, and they do that by starting with the remittance, which is the receivable booked when the remittance is booked, of $63 million and then they take the payments that were made during the subsequent year and subtract it and get to the net amount of $27 million. And then on these amounts, the payments, they go get the bank statements.

So again, they're a calculator. They just verify that they numbers exist and they check the math but they don't bother to understand what these numbers represent or whether they're properly booked. They fail to validate whether the remittance amount was properly booked as a receivable. Why is this even here? They failed to validate what the cash payments -- the cash received payments were or what they related to. Why are they appropriately netted against the remittance? They failed to design any audit procedures that asked the ultimate question: Is that $59 million the right number. And you'll see the overall problem is they have no idea how NFL Ventures works.

So let's look at where they went wrong.

The first thing to recognize is that Ernst and Young or at least the auditors on the Raiders team mistakingly believed that Ventures paid the team in arrears. They believed that when that remittance came in, this $63 million remittance came in in March, it was for revenues earned during the preceding season but the NFL, according to EY's understanding, didn't make these payments until a subsequent year. So payments earned for the period from April 1, 2013 to March 31, 2014 were actually made, according to EY's understanding, from April 1, 2014 to the following March, 2015. How do we know they believe that? Again, that's in their notes. Typically distributions for a given season are made in a subsequent season. Javier Garcia, who you'll hear from testified that that was his understanding.

"In auditing for conforming statements, is it true that you believe the cash distributions for a given season were paid by the NFL in the next season.

Answer: "That's how we understood it to work.

"And was that your belief for each of the audit years prior to 2020.

"That's how they understood it to work".

Now, where did they get that understanding? We asked Tyler Johns, a member of the audit team on the tax side, to testify about that.

"How did you confirm that the amounts received throughout the year were not related to the amount that's being stated as being earned in March of every year.

"So management represented to us throughout the entire time I was on the engagement that cash was collected in the year following the remittance".

And he may well be right. The Raiders may have, in fact, told him that, I think that was, in fact the Raiders' understand and that's why, when the remittance came in, they booked a receivable because they didn't realize they had been paid for it already and at some point they must have conveyed that understanding to EY. But EY was not entitled to take the Raiders' word for it. Again, when you audit, you don't trust the client because otherwise why even be there. You go and you get external verification and the standards tell you that. Although written representations provide necessary audit evidence, they complement other auditing procedures and do not provide sufficient appropriate audit evidence on their own.

EY's misunderstanding about Ventures being paid in arrears messed up their whole audit process. Their misunderstanding caused them to miss that the 2013 season remittance of sixty-three million should never have been booked as a receivable in 2014 because it had virtually all been paid the prior year. Likewise, EY should not have been debiting the cash payments that the Raiders received in 2014 against the 2013 receivable because those weren't paying down the 2013 remittance that had already been paid. Those were payments against the next year's remittance that hadn't even been issued yet.

What's remarkable as, just with the error they made on the revenue side, Ernst and Young had the information necessary to avoid this mistake in their own work papers, and for this we need to talk about the Raiders' NFL conforming statements.

Thus far we've been talking about the financial statements that the Raiders issued each year on a calendar year basis. The NFL also requires the Raiders and every team to submit what they call a conforming statement. I think that's because the NFL teams vary in how they approach their financial statements. Some do them on a calendar year, some do it on a year consistent with the NFL, March 31, but the NFL needs to be able to compare teams' finances to each other on an apples-to-apples basis for things like revenue sharing. So they require each year that the teams submit the conforming statement which means they report their financials on a March 31 calendar year according to GAAP.

Now, EY's audit engagement covered these as well. They audited both the financials and they audited the conforming statement. It was the same team that did both with the testimony you're going to hear. And not only that, it was done at roughly the same time, so you had in effect two simultaneous audits going on by the same people.

So again, this is the work paper we've been looking at that shows how Ernst and Young audited the Ventures receivable on the 2014 financial statement, the $59 million receivable. This is their work for that.

The conforming statement also includes a line for the Ventures receivable as of March 31, 2015. This is as of December 31. The conforming statement shows it as of March 31, 2015.

Now, as we discussed a few minutes ago, in the financial statement audit they mistaking three assume that the yearly remittance Ventures issues each March is paid in arrears and that subsequent payments work as debt.

But when you look at the conforming statement work paper, you see they get it right. Instead of showing the 2013 remittance, they show the 2014 remittance. And then below that, they show the payments made during the preceding year that comprise the remittance. And what do you notice? They're the same payments.

So with two simultaneous audits going on by the same people, they're applying the same payments to two different years, to two different remittances. That's like the left hand doesn't know what the right hand is doing but they're both attached to the same person somehow. If they had paid attention, they would have realized this is all wrong. It doesn't make any sense. They would have investigated, they would have found the problem, and we wouldn't be here today, but they didn't do any of that.

You'll hear about this auditing statement A24, which is specific to the mistake they made here. Before you met payments against a receivable, you have to verify what those payments are and that those payments are paying down that receivable. They didn't do that. They thought the payments were paying down two different things at once. And it's extra remarkable because E&Y has broad experience with NFL Ventures. As we mentioned a few minutes ago, they audit anywhere up to a dozen NFL teams. NFL Ventures works the same for every single one. The remittance that the NFL sent the Raiders is the same remittance it sent the Falcons, the Cowboys, the Giants, the Bears, they all get the same thing. So if you're auditing twelve NFL teams, somewhere in your institution you know how this works. But somehow it didn't get conveyed to the team that audited the Raiders. And you'll hear from Mr. Mintzer on this. As he will tell you, in his professional experience, even a basic level of effort would include obtaining the agreements or other third party support necessary to support an understanding of the key terms and conditions between the Raiders and Ventures, including but not limited to payment terms. And as he observes and you'll hear him tell you, what EY's audit papers show is that their understanding related to little more than an understanding that the NFL owed the Raiders money in some unconfirmed amount that will be paid at some unknown time related to various undefined time periods.

And Ernst and Young at some level knew that this is what they should have done. When you go back to the 2020 audit, they go and they do what they should have done. They go to the NFL and say hey, can you explain Ventures to us. This is from their memo and they say, "based on discussions with the NFL and their outside counsel, we understand that generally the contracts span a multiyear period and amounts are collected by NFL Ventures as earned over the contract period and distributed to the teams in the period immediately following when the amounts are earned". They're paid the next month. They don't wait a year. This is what they should have understood from day one and they should have made sure they understood, but they didn't.

So the evidence is not going to be close on whether Ernst and Young was negligent here. To the extent their witnesses get up and invoke Ernst and Young's sterling reputation, it's appropriate to take note of a recent Wall Street Journal article which reported that Ernst and Young has recently fired dozens of clients in order to improve the quality of its work. They were stretched too thin and as a result they had the deficiency rate among the big four in the U.S. and they decided the way they could do that is contract, to increase quality by focusing more carefully. It's too bad they didn't do that before they encountered the Raiders.

Now, let's talk about their defenses.

The main one that you've heard a lot about is in pari delicto. In pari delicto loosely translated means courts won't help the wrongdoer. In order to establish it, they have the burden to prove intentional fraud on the part of the Raiders. The case law is clear on this. Negligence on the Raiders' part isn't enough. That's what we hired them to help us with. Accident isn't enough. They have to prove that this error -- to sustain this defense, they have to prove that this error was the result of a deliberate fraud by people at the Raiders. They cannot make that showing. They have no compelling proof of fraud.

So in contrast to the Raiders' negligence case, their fraud case is entirely circumstance. There is no direct evidence of fraudulent intent on the part of anyone at the Raiders. The people alleged to be involved all strongly deny it. There are no documents evidencing awareness of Ventures revenue being double-counted or a receivable being overstated. You won't see it because they don't have it because it doesn't exist. And when you look at their circumstantial evidence, it withers under scrutiny.

I'll talk about the circumstantial evidence, but before I do, let's talk about the one piece of what they assert to be direct evidence.

In their prehearing brief, they referred to a document that they have named the fraud tracker, Mr. Villanueva's fraud trackers. I can assure you there is no file on Mr. Villanueva's desk that says fraud tracker. This their rhetoric that they've come up with and it's a document that they say tracks the misstatement year over year and that its purpose is clear on its face. We dug into that. And what you'll hear and what you'll see in the documents is that there was no fraud tracker. The document that they call a fraud tracker Mr. Villanueva prepared with EY to respond to a local tax audit. Ms. Brown, who understands this way better than I do being the only CPA among all the attorneys here, is going to explain how all that works. But the sum of it is this document was not created by Mr. Villanueva to memorialize fraud or it was a second set of books, this document was prepared with EY as auditor. So let's talk about the circumstantial evidence.

Before we parse it carefully, I think it's important to set the context.

Their position, remember, is this was a fraud from day one, that we began accruing in receivable in 2006 to make it covenant and to overstate revenue and to double-count. Here's how it started, to the best we can now. Nobody's memory is crystal clear because this happened nearly twenty years ago, but we have what everybody's been calling the plan B document from 2007 which reflects a series of ideas the Raiders were bandying about trying to figure what they can do to help increase revenue to help them meet a new debt covenant that they undertook in 2006. And one of the ideas they come up with, and it's ultimately implemented, is the January accrual.

Now, what is interesting is the documents show that the Raiders didn't put that in place in the dead of night, they didn't make a secret entry in a closed room, they vetted it. They vetted it with Bank of America, they vetted it with their lawyers, they vetted it with Bank of America's lawyers, they vetted it with the NFL. So as we looks at the circumstantial evidence -- and the bank ultimately agrees to let them do it. So as we look at the circumstantial evidence, it will be important to bear in mind that, when this started, the Raiders were clear as day with everybody what they were doing.

So let's look at some of the circumstantial evidence that they're going to present to you.

One of their primary assertions is that the Raiders must have known that their Ventures accounting was wrong because Ventures sent them periodic reports that demonstrated as such, and they'll show you what's titled the projected cash flow sheet. This was a periodic report that Ventures sent to the Raiders that was essentially an accounting of the payments that had been made during the year and those that were to come. If you look at this one, for example, which relates to the 2016 season, Mr. Farina will at some point stand up and point out that if you looked at this document, you will see that, as of December, 2016, the only payment owed on the Raiders totaled about $40 million, the twenty-four million in January and the fifteen million in March. And they will note that that $40 million is much less than the receivable shown on the Raiders' financial statement as of December, 2016, and they'll be right about that. But the evidence will also show that the Raiders' financial personnel never made that comparison. They should have perhaps. But you'll hear from Marc Badain and Ed Villanueva, who are the key finance personnel involved during the relevant period, and they will tell you they looked at that cash to see what cash was coming in because that's what they cared about: Did they have enough money to sign this player, did they have enough money to make this purchase for this stadium, it was the matter of what's the cash coming in, and they never looked at it in connection with the receivable or the financial statement.

You'll have a chance to see them testify -- I suspect both will be on the witness star to period of hours -- and we invite you to look at them carefully, assess their demeanor, assess their credibility. We are confident you will conclude that these are not brazen fraudsters.

The other interesting thing is, to the extent that Ernst and Young says this cash flow report should have tipped off the Raiders, it should have tipped them off as well because they had it, too. At least in certain iterations, you'll see that this is an example of a 2011 projected cash flow report that was in E&Y's work papers and those handwritten notes at the bottom are EY's handwritten notes. So they had it as well as we did.

Another point that Mr. Farina I expect will make is that the Raiders knew how to accurately account for Ventures. So they'll present these, which they showed in their prehearing brief.

These are ledger entries that Ernst and Young claims show that Ed knew the Raiders were double-counting the January Ventures payments by accruing it in December and then booking it again in March as part of the remittance. These entries show, that in reporting the Ventures revenue on the Raiders' March 31 conforming statement, because that's what these relate to, that Ed booked the correct amount of $108 million -- that's the remittance amount -- and he got there by doing a subtraction exercise. He took the remittance amount that was given to him by the NFL, he deducted from that the amount of the January accrual, the $26 million, to find the total that he needed to add back to his ledger to get to the one hundred eight. So the NFL tells him your revenue on the remittance is $108 million. Ed knows he's booked twenty-six already. In order to make an entry that gets him up to one hundred eight, he just does a simple subtraction exercise and figures out how much he needs to book to get to the one hundred eight million. He never occurred to him that there was double-counting going on.

And to the extent that EY says again this is evidence of fraud and shows what Ed knew and should have known, it bounces right back on them because Ernst and Young knew exactly what Ed was doing here. Their audit notes reflect it. Mr. Firestone confirmed a total remittance of one hundred eight. He identified that Mr. Villanueva deducted 26.3 from the total as the amount -- as that amount was already reported as revenue. The deduction of this amount already recorded brings the requisite adjustment balance to 82.3 million. As such, the remaining 82.3 million is recorded in the Ventures receivable. So again, to the extent they're claiming this shows Ed should have known, it shows E&Y should have known because they were right there. To the extent they show this is intent on the part of Ed, Ed is disclosing it to them.

Let's talk about their other circumstantial evidence.

First they talk about TeamCo StadCo. They say Badain and Villanueva perpetrated a second. Let's be clear. This is a 404(b) argument, essentially. There's no claim that this fraud relates to the Ventures receivable. The claim here is that if they did this, they must have done that.

Point two is Arnold and Porter got it wrong. Arnold and Porter, as you'll hear, concluded that Mr. Villanueva it and Mr. Badain knowingly and intentionally tried to allocate revenue and expenses incorrectly on TeamCo and StadCo to meet a covenant. That's not the story that you're going to hear from Mr. Badain and Villanueva. What you will hear is that they made a sincere effort to get it right. They understood it was going to be reviewed, they lacked the necessary experience to do it in the way it should have been, but again, you'll see evidence that they were transparent with their auditors, with their lawyers, and with all of the interested stakeholders to try and get this right. The investigation that Arnold and Porter did didn't cover that.

The next thing they harp on is Raiders personnel believed their overstatements were intentional and you're going to hear them Mr. Ventrelle, the former general counsel, from Ms. Stratton, the former head of HR, from Travis Scott who still works at the Raiders, all of whom at the time this broke and during the course of the investigation said we think Ed did this on purpose. Well, the most important thing to note about that is that's not evidence, that's those witnesses' opinion. None of those witnesses will testify to or has testified to any percipient knowledge of how this error happened, what Ed was thinking at the time, none of them claims to have any evidence that Ed did this on purpose. They're all making an inference, and they're wrong. And in most cases, with the exception of Mr. Scott, they're not accountants and, when asked, couldn't explain how the error happen. So it's an opinion that's uninformed and incorrect, and should have no weight, frankly.

And the last thing they're going to -- the other thing that we've seen them focus on is that Mr. Villanueva and Mr. Badain joked about their misconduct together. And you'll see the e-mails quoted many times in which at one point Mr. Villanueva writes to Ed about a little manipulation. Mr. Badain says I always made the covenant and Mr. Badain responses about how business is booming and Mr. Villanueva responds and a little manipulation. And then there's another e-mail in which Marc again is talking about how they historically made covenants and Ed writes lucky we have stress integrate back then.

You'll hear from witnesses them on these e-mails. They will explain that this was joking banter among colleagues who worked at a football team and had known each other for decades. We're confident that you will conclude this is not evidence of two fraudsters writing e-mails to each other to document their fraud.

So on the fraud point, on the in pari delicto, we are confident that the evidence will convince you that, for a variety of reasons, the fraud theory makes no sense.

I'll highlight just two that we've talked about today.

It makes no sense the Raiders would try to commit a fraud by booking thirteen months of revenue into a twelve-month year and discloses that to their auditors.

Because as we've seen, the work papers had the information that showed you why they were doing that.

Likewise, it makes no sense that the Raiders would commit a fraud by overstating their NFL Ventures receivable when all EY had to do was make a phone call to the NFL and they would be told the receivable's wrong. Travis Scott who's the controller aptly said in his testimony if you do a basic confirmation for the balance, they would have flagged it right away. That's like auditing accounting 101. And again, Mr. Firestone, as we've seen, has testified all they had to do was ask. Their excuse that the NFL told them they have a policy against confirming receivables doesn't hold up. That's in pari delicto.

They also assert as a defense that they don't owe a duty to the

Raiders' owners, that their own client is EY and all the -- their only client is the Raiders and the people who actually own the Raiders have no ability to recover against them for the damages they caused. The law doesn't support that. I've cited you numerous cases that say an auditor may be held liable when it audits a limited partnership to partners who it harms.

And we've showed you and I think this evidence will be undisputed that EY absolutely knew that the limited partners were relying on their work. They audited the income -- the financial statements on annual income basis, they knew that the financials would be used to prepare tax returns, they knew that the Raiders don't pay taxes, they knew that the people who pay the taxes are the limited partners. They prepared K-1s for those limited partners.

You've heard them say at various points, well, we didn't know who actually owed limited partners because it's sort of a chain of people and entities. Again, not true. Every year, per NFL policy and procedure, EY had to audit the ownership of the Raiders and every year they were provided with a schedule that showed who were the limited partners and then who ultimately were the people who beneficially owned the limited partners and you'll see those documents.

So for example, one limited partner was First Football, they owned a twenty-three percent stake as of December, 2014, the schedule provided to EY showed you who are the owners of First Football. So they knew that, when they certified the financial statements that would be used to prepare the tax returns which would be used for the K-1s which would ultimately be used by the auditors.

And then in addition, there will be evidence that they not only knew who those people were but they occasionally interacted with them and their tax preparers.

You'll hear about the statute of limitations. We briefed this. I'll just cover it briefly. We believe the continuous representation doctrine applies here for a couple of reasons.

First, this was a continuous and repeated error, the same error year after year related to the same source of income. And second, to the extent the clock might have expired, they restarted it when they worked with us in 2021 to try and figure out and solve this error. They did a memo on it and in that memo is a workbook where they went year by year to figure out the amount of the overstatement and what was necessary to correct it, and in doing that work and in taking on that engagement, the statute of limitations was expanded to cover the current period.

So finally, let's talk about damages, how are the claimants harmed.

As I've just discussed, the misstatements impacted the K-1s of the partners and ultimately the tax returns of the owners.

During this period of time, as you'll hear, the Raiders were in Oakland and they weren't making money. Every year they were reporting losses to the partners. And so the impact of this the losses were understated as they were reported to the partners and that resulted in two kinds of damages. First, for some of the owners who had positive income during those years, they could have used those losses. Because they didn't have them, they overpaid their taxes, and that amounts to $9.3 million.

In other cases, the owners didn't have active income -- didn't have positive income during that year so they couldn't have used the understated losses. But as you'll understand from our experts, those losses can be forward indefinitely. And so the fact that they are gone now, and they are gone because the statute of limitations in all but a couple of years with the IRS so those returns can't be amended, the fact that those losses are gone means that they won't have the ability to use them in the future. And we have an expert, Mr. McClain-Duer, who you'll hear from quantify those losses, discount them conservatively, I will add, to present value, and that comes out to almost $13 million.

And then the final category

of damages is that suffered by the Raiders itself, which include, as I mentioned already they're a passthrough so they don't pay taxes, but when this happened, they had to clean it up. They incurred expenses with Arnold and Porter for investigating the internal -- for investigating the error and figuring out how to mitigate it, they incurred expenses with Deloitte who replaced EY as the auditor and tax preparer and to the go back and make whatever corrections need to be made to the prior tax returns, and they incurred expenses to Ankura who assisted in both processes.

So we look forward to presenting our case to you in full. We are confident that, when the evidence is in, you will conclude that EY was negligent, that the Raiders did not commit fraud, and that none of Ernst and Young's legalistic attempts to evade liability should succeed and they should compensate the Raiders for the harm they have done.

Thank you.

THE CHAIRPERSON: Thank you, counsel.

Why don't we take a brief recess for a restroom break.

We're off the record.

(Whereupon a break was taken)

THE CHAIRPERSON: Counsel, you may proceed.

MR. FARINA: Thank you.

We understand you may have asked for a copies of the slides. We're going to give those out after the presentation.

THE CHAIRPERSON: That's fine.

MR. FARINA: This was an intentional act by Raiders management. Raiders management knowingly overstated the Ventures receivable and revenues throughout this period. That is what the evidence will show and that is what the evidence led the Raiders management to conclude when this revealed itself.

This is Araxie Grant. Araxie Grant was the controller at the Raiders at the time. You've heard Ms. Grant's testimony. She had contemporaneous conversations with Mr. Villanueva when this whole thing broke. She was the person that went to EY and blew the whistle; it wasn't Mr. Villanueva. She saw all the entries and her conclusion reluctantly was that this was intentional; this was not an accident.

This is Jamie Stratton. You also will hear from Jamie Stratton. She's going to be a witness in this case. She was the head of HR at the time. The HR department interviewed Mr. Scott and Ms. Grant and Mr. Villanueva and Mr. Badain and others within the accounting department and collected the evidence and monitored the investigation. Ms. Stratton and Mr. Ventrelle were in charge of the investigation for the Raiders and they were virtually the only senior people left at the Raiders with Mr. Badain being suspended and Mr. Villanueva also being suspended. So seeing all of the evidence that not just what her own department gathered in terms of these interviews, and we're going to be looking at the notes of those interviews, all of the other evidence that was gathered, she came to the conclusion that this was being done on purpose. And that is her opinion, but it is an informed opinion, and we think that you'll reach the same conclusion.

This is Mr. Ventrelle. Mr. Ventrelle was the general counsel at the Raiders. When Mr. Badain was asked to resign from the

Raiders, Mr. Ventrelle became the interim president of the Raiders, so the most senior executive at the Raiders. And he participated in a number of these interviews. He oversaw the investigation. And his opinion seeing all the evidence is that this was intentional. He agreed that the information, when viewed collectively, compelled the conclusion that this was intentional by Raiders management.

I'm going to walk through what we're going to be presenting both today and in these arbitration proceedings.

The Raiders' claims are barred by the doctrine of in pari delicto. In pari delicto is settled law in the State of New York. The Kirschner case is actually one of the leading cases in the country on in pari delicto, and we'll be talking about that.

EY complied with professional

standards. You're going to be hearing from a number of witnesses, members of the engagement team, they will explain what they were doing, why they were doing it, why they believed that the evidence they acquired during the course of the audit supported their opinion.

The claims arising out of the 2006 through 2018 audits are time barred. The panel is of course already familiar with that issue given the briefing on the early motion. We're going to be presenting more evidence, more legal argument. We believe that that evidence and controlling New York authority makes clear that the vast majority of the claims, those claims arising out of the 2006 through 2018 audits, are time barred under New York law.

EY owed no legal duty to additional claimants. Again, we'll be presenting factual evidence and legal authorities on that point.

EY is entitled to contribution from the Raiders. This is part of the CPLR. It's black letter law in New York. If you have two joint tortfeasors, even if one isn't named by the plaintiff, the other defendant can bring a contemporaneous contribution claim and fault needs to be allocated. We'll be presenting that the to the panel for its decision.

And lastly, EY is entitled to professional fees for the 2020 audit, and we'll be talking about that counterclaim that we have.

So starting with in pari delicto, I don't think there's any serious dispute that this is the law of New York that a corporation that engages in malfeasance cannot sue its outside accountant that it negligently failed to prevent or detect that malfeasance. There's a long line of authority following Kirschner that makes that abundantly clear, and I don't believe it's seriously contested here. The argument that you've heard counsel make and that I expect we'll be hearing throughout these proceedings is that the Raiders' conduct was not intentional; they did not fact in a knowing manner when they overstated their revenues and receivable.

I think you saw this in both the prehearing brief and Mr. Reed talked about this, there's no admission by anyone at the Raiders that this was done on purpose. We have some contemporaneous notes that I'm going to talk about today that recount a conversation that Araxie Grant had with Ed Villanueva where Ed Villanueva said that both he and Mr. Badain knew about the overstated receivable and knew about it before Mr. Scott and Ms.

Grant brought it to their attention, and we'll look at those notes. So I think that is direct evidence, maybe not an admission, at least not an admission to us, but it's an admission to Araxie Grant.

But the main point that they make is that the evidence is all circumstantial, and there is a tremendous amount of circumstantial evidence, but that circumstantial evidence is powerful and it compels the conclusion that this was done knowingly. And of course, the law doesn't credit one form of evidence over the other, it just goes to the weight of the evidence. You can have circumstantial evidence that is equally powerful or more powerful that is direct evidence and vice versa, and we think that all of the evidence that will be presented to the panel compels the conclusion that the Raiders knew that the receivable number and the revenue numbers couldn't be correct.

This is from the financial statements, this is for the 2016 year-end financial statements, and it shows that the receivable due from NFL is ninety-eight and a half million, and that is almost all Ventures number. It's a little bit more than ninety million is Ventures. So there's no question that that's the amount that the Raiders were representing was the amount that the NFL owed the Raiders as of year-end 2016 for Ventures.

Mr. Reed correctly predicted that we're going to be talking about this. The Raiders received every year multiple times during the year from the NFL this cash flow schedule. And what the cash flow schedule did is it told the Raiders and the other NFL teams what they were owed and when they would be paid the money that they would be owed. And it includes the Ventures money, it includes other TV money, and it says this is all the money that we think that we're going to be paying you for the 2016 NFL season. The 2016 NFL season starts in 2016 on April 1 and ends on March 31, 2017. And what does it show? It shows all of the revenue moneys that the NFL is telling the Raiders are going to be paid for the 2016 season. And what does it show for January? Now, if you look at the date of this one, this is as of January 13, 2017. So we're all the way through 2016, we're into 2017. And what the NFL is telling the Raiders is that we've already paid you all of this money for the 2016 season and the only money left to be paid for Ventures for the 2017 season -- I'm sorry, the 2016 season in 2017 is on this side of the schedule. And the Raiders, because of the way they did their accounting, and Mr. Villanueva is the person at the Raiders who did the Raiders' accounting so he knows this, he knows the only revenue that they recognize should have been a receivable as of 12/13/16 are the January payments. And the January payment total twenty-nine and a half million dollars. It's not $98 million. It's not even close. Mr. Villanueva, knowing that this is the only money that the Raiders have recognized as revenue as of 12/31/16 and knowing that it's nowhere close to the number that he's putting in the financial statements, he couldn't have known that both of those numbers were correct because they're not. This number is correct. The number that Mr. Villanueva put in the financial statements is not correct. And even if you didn't have the knowledge of accounting that Mr. Villanueva has, if you just look at all of the money, all of the money that the NFL is telling the Raiders that it's going to pay for the remainder of the 2016 season regardless of whether it's been recognized as revenue, that doesn't come close to the $98 million that's on the Raiders' financial statements as a receivable.

So if you have this information and you're tracking what the NFL is going to pay you and when they're going to pay it to you, you have to know that the receivable in the financial statements couldn't be correct, especially when you get to the later years. Because in the earlier years the amounts -- the margin was much narrower. But when you get to the later years, the spread between in number, twenty-nine and a half, and what's in the audited financial statements is $98 million. Mr. Villanueva, having this sheet, looking at it, knowing what it is and knowing that it's important to the Raiders to know when they're going to get paid and what they're going to get paid, he had to have known that the number he was putting in the financial statements is wrong.

So we have a number of these schedules from different years, from different points along the year, and there's this e-mail from Mr. Villanueva who's e-mailing to Mr. Badain one of these cash flow sheets and he says, "your favorite cash sheet is attached". So the Raiders used these cash flow schedules to manage their business. And this one is the 2019 NFL season and this one is as of April, 2019. So again, they received these throughout the year every year.

I asked Mr. Villanueva about the cash flow schedule and I asked him, as the controller and the CFO, was this important information to manage the cash flows of the Raiders, and he agreed. And Mr. Badain, who was the president at the time and who used to be in charge of the finance function, I asked him whether he needed this information to run the business and he said yes. So there's no dispute that both Mr. Villanueva and Mr. Badain not only had access to these cash flow schedules but used them to run the business. And if you look at them and you need to know how much you're getting and when you're getting it to run the business, you had to know what was in the audited financial statements wasn't right.

The Raiders understood how to properly account for the Ventures receivable and revenue. In fact, they did properly account for it. They also improperly accounted for it, and when they improperly accounted for it, they knew how to do it correctly. And a very compelling inference from that is, when they knew how to do it right and they chose to do it wrong, that was an intentional act.

So Mr. Reed talked a little bit about the conforming statements. The conforming statements went to the NFL. They were sent out in June. But they covered the NFL season which ended March 31. And the key point here is that the NFL knew what the Raiders were owed, they knew what the other NFL teams were owed. So the conforming schedules, those financial statements that went to the NFL, had to have the right numbers in them because if they have the wrong numbers, there was a risk that the NFL would look at those and say hey, wait a second, that receivable number isn't right, that revenue number isn't right. So somehow Ed Villanueva and the Raiders' management always managed to get those financial statements that went to the NFL, they always managed to get those correct.

This is a certification that Mr. Villanueva provided in connection with those financial statements. Notice the date. It's June 29, 2017. And he's certifying to the accuracy of these financial statements, these schedules that are being provided to the NFL.

This is the line item for the Ventures revenue earned. It's for the receivable. And the number here is thirteen million one hundred eighty-nine thousand. This is the number as of 3/31/2017. So there Villanueva is preparing financial statements, the conforming schedules, that are going to the NFL that say as of 3/31/2017, the NFL owes the Raiders $13,189,000.

The Raiders prepared both audited financial statements and unaudited financial statements. The covenants that the Raiders had with their lending institutions required the Raiders to prepare financial statements on a quarterly basis. They were unaudited. EY had nothing to do with the financial statements that were prepared on a quarterly basis. There's no dispute about that.

And here's Mr. Villanueva sending the financial statements as of 3/31/17 to the bank. And if you look at the date, the date is also in June. And he actually signs another certification in connection with the lending agreements that the information that he's providing is correct and the date on this one is June 8, 2017. So it's the month of June, 2017. Ed Villanueva is preparing financial statements that go to the NFL and financial statements that go to the banks. He's doing it literally at the same time. He's preparing them. That's what Mr. Villanueva put in the financial statements that went to the banks. He said that, as of 3/31/2017, the NFL owed the Raiders $83 million. This is not some trivial difference. It's five times the amount that he says the NFL owes the Raiders as of the exact same date. $13,189,000 compared to $83,680,000. That number is right, the thirteen million. That number is wrong.

So do I have an admission from Mr. Villanueva saying yeah, I knew that that number was right and that number was wrong? No. But he's preparing both of these at the same time. He's personally doing it. He knows that both of these numbers can't be correct.

(Whereupon a video was played)

So why is this number right, the $13,189,000? It's right because Mr. Villanueva and the Raiders management knew how to make it right. They knew how to get the right number.

So this is what they did, and Mr. Reed covered this briefly. This starts with an e-mail from Mr. Firestone to Mr. Villanueva. This is done in connection with preparing the financial statements that go to the NFL, so these are the conforming schedules that Mr. Villanueva is working on. And Mr. Firestone tells him that the remittance amount is $108 million. So that's the amount that the NFL is telling the Raiders they earned on Ventures.

So what does Mr. Villanueva do? Mr. Villanueva looks at the GL and he says okay, of the $108 million that is in the remittance amount, how much of that have I already recognized as revenue. And he looks at the GL and he sees that the revenue per the GL is twenty-six million two hundred seventy-eight thousand. So Mr. Villanueva knows that, of the one hundred eight million, the Raiders have already recognized as revenue $26,278,000. This is in Ed Villanueva's head, it's in his brain. He knows that this amount has already been recognized and he can't recognize it a sect time or else he's going to be double-counting the revenue. So what does he do? He takes the one hundred eight and he backs out or nets the amount that has already been recognized per the Raiders' own books and records and he comes up with a net amount of $82,248,000. He prepares a handwritten journal entry to book the revenue and it's eighty-two million three hundred forty-eight thousand, that's the AR, and it's the same amount for the revenue. So he knows not to double-count the January accrual. He knows it's in there. The argument that the Raiders have made is that EY should have recognized it was in there, and we'll talk about that. But Ed Villanueva knew it was in there and he knew that he had to back it out and he was the one who did it. He's the one preparing the journal entries. He had to know what he was doing when he was doing it because he took the step of backing out the $26 million. And this is another year, he does the same thing, he starts with the remittance amount of one hundred twenty-eight million, he looks at his general ledger and says okay, I've already recognized twenty-eight million of that, so I need to book 99.99 million. He prepares a journal entry for that amount, and this is what it looks like in the general ledger. So there's a debit to accounts receivable to increase accounts receivable by the net amount and there's a credit to revenue to recognize the revenue, but he's only recognizing the net amount. He's already backed out the amount that was already accrued.

He prepares a similar entry for the year-end financial statements to book the exact same remittance, only here he doesn't back out the accrual. He books the full amount, the $128 million. So he's booking the same remittance to prepare a different set of financial statements and he does it incorrectly, having already done it correctly.

So he knew how to do it right

and he's not doing it correct. And this is every single year, consistently. Mr. Villanueva and the Raiders' accounting department every single year managing to get the conforming schedules that went to the NFL correct and every year, during that same period, they did the accounting for the year-end financial statements different and they were wrong every single year.

Again, two different numbers. That's correct, that's not correct. But they should be the same. They purport to be the same thing.

(Whereupon a video was played)

This point -- this is not an original idea. I mentioned that there were interviews conducted at the time this was revealed conducted by the Raiders' HR accounting department, and Travis Scott, who's the current controller for the Raiders who was there at the time, he's one of the whistleblowers, this is what he told the Raiders' accounting department: We give the league the right number, but it's fudged on the 12/31 audited statements. These are interview notes of Araxie Grant's interview with the HR department. She makes the same point: "When we present to the league, it's correct and EY hasn't caught. Why were you reversing it to the league. That's not inadvertent".

So again, Mr. Scott and Ms. Grant have offered their opinions as to why this was intentional, but their opinions are grounded in facts and they're grounded in their understanding of the Raiders' accounting and what the Raiders did. And they observed at the time that this was revealed that Ed Villanueva and the finance department knew how to do it correctly and did it correctly for the NFL; didn't do it correctly for the banks.

THE CHAIRPERSON: Maybe we'll take a five-minute break to repair the tech.

(Whereupon a break was taken)

THE CHAIRPERSON: We're back on the record.

MR. FARINA: Again, these are handwritten notes of the interview of Araxie Grant, the controller at the Raiders when this was revealed, and her view that the fact that Mr. Villanueva was able to do this correctly and knew how to do it correctly and was able to do it correctly for the NFL, that this was evidence in her mind that this was not inadvertent.

Mr. Reed talked about some e-mails that were discovered during the course of the investigation between Mr. Villanueva and Mr. Badain and he says that they were joking. And I acknowledge that these are jokes, but what they're joking about is lacking integrity and it's in the context of talking about the lending agreements.

So the DCR there is a reference to the financial covenant that's in the lending agreements with the bank and they're joking that they met these covenants in the past because they lacked integrity. And then there's this additional exchange again in the context of discussing the debt service coverage ratio in the agreements and talking about or joking about a little manipulation as the means by which they were able to achieve their financial covenants. And you'll hear additional evidence. Ms. Grant talked about how Mr. Badain and Mr. Villanueva would joke about San Quentin accounting. And again, these are not jokes that you would expect people to be talking about, about misstating their financials or manipulating their financials to meet debt covenants. But if this were the only evidence, if there wasn't all the other evidence that suggested that they, in fact, knowingly were misstating their financial statements, maybe you could laugh this off as a joke. It's not a joking matter. It reflects a knowledge on the part of the Raiders' management that they played things fast and loose, and we're going to see multiple examples of that in the presentation we'll be making to the panel.

Jamie Stratton, when she saw not just these e-mails but the other evidence and oversaw the interviews and heard from Travis Scott and Araxie Grant, she said that this was very impactful to her; that this is not something she would have expected other president and CFO to be joking about. And her conclusion and that these guys knew what they were doing.

This is again, Travis Scott contemporaneous interview notes, he says: "I know this was intentful on Ed's part and intent to meet covenants. Everything has been about the covenant". It's not just those e-mails talking about the covenants. There's abundant e-mails talking about the covenants. But there's also testimony that you heard from Ms. Grant and you'll hear from Ms. Stratton that Ed and Marc constantly talked about the covenants and meeting the covenants. And Mr. Scott noted that, if this wasn't for the double-booking of the revenue, the Raiders would not have achieved compliance with their covenants in multiple years. And his conclusion was for sure intentional from Ed.

We've talked about the 2006 through 2019 time frame. There is one year where the Raiders did not double-count their revenue. That one year was 2008. And Mr. Reed put up a schedule that showed a bunch of numbers and showed a misstatement of revenue and there's one year in there where the number had brackets around it because they weren't overstating their revenue in that year.

And why weren't they overstating their revenue in that year? It was the one year they didn't have a financial covenant. The lending agreement that was operating at the time did not have a financial covenant. So they were double-counting but in one year they stopped double-counting and then in the very next year they picked it up again and were double-counting revenue.

There is another aspect of the fraud. The Raiders haven't alleged that this is part of their case. They don't blame EY for not discovering this. But it involved an effort at management by these same individuals, Mr. Badain and Mr. Villanueva, and it dealt with two different sets of financial covenants, TeamCo and StadCo. And by way of background, in 2018 the Raiders had a reorganization where they split the assets up between two entities, TeamCo and StadCo. And TeamCo reflected the operation and assets of the team and StadCo was set up for the stadium, the new stadium in Las Vegas. And they prepared separate sets of financial statements for both of those entities. And both of those entities issued financial statements that were the subject of financial covenants with lenders. So both TeamCo and StadCo had lending arrangements that required them to maintain certain ratios.

And this was during the COVID time period and it's abundantly clear that TeamCo is not going to meet its covenants. And what they wanted to do was they wanted StadCo to meet its covenants, so they devised a plan whereby they would shift expenses from StadCo to TeamCo to improve StadCo's financial results and they would shift revenues from TeamCo to StadCo to improve StadCo's results. And it may well be the case and was the case that there were employees, certain expenses that were shared between the two entities. But you just can't move expenses and revenues back and forth to meet a financial covenant. There has to be a principal basis for allocating expenses and revenues. And what the Raiders did in this particular year is they devised a plan -- and there's a ton of e-mails on this -- where they're moving expenses and revenue back and forth and there's no suggestion in any of these e-mails that it reflects a good faith effort to allocate the expenses and revenues on some factual basis. It's just so StadCo can meet its covenants. They're talking about it. "We want to have less expenses in StadCo to we can meet the covenant".

Again, Ms. Stratton saw these e-mails, she saw the manipulations, she understood from the accounting folks that you have to have a principled basis for make the allocations. She actually was involved in the prior year of making allocations on personnel. She was actually involved in making those judgments. And I asked her, I said, when this came out, when this was discovered that they were doing this as well, what did you think, and she said it's the same people with the same motive seeking the same outcome. And to her, when the evidence was abundantly clear there was no principled basis for what they were doing with StadCo and TeamCo, that this reinforced her view that the manipulations that were being done with respect to Ventures were also intentional.

This is from the claimants' prehearing brief, and they noted correctly that Mr. Villanueva did not react in an ideal manner when this was discovered. It's not simply that he reacted poorly. His reaction demonstrates, we submit, that he wanted to continue to hide this misstatement. He wanted to continue to deceive EY. And again, in his efforts to get Araxie Grant to go along with that, he told Araxie Grant that we know about this and we have a plan to deal with it. I'm going to show those notes of Ms. Grant recounting her conversation with Mr. Villanueva when this was disclosed.

So these are notes again from Araxie Grant's interview. This is the date that they went to human resources. Ed told Araxie he doesn't trust EY because they're going to disclose info that would raise red flags. So he's not saying I want to get a handle on this, obviously we're going to disclose it, but I want to understand it myself before we do that. He doesn't want to tell EY because he's afraid that they were going to disclose it. And he was right about that. When EY found out about it, they were going to disclose it or make the Raiders disclose it. So his reaction is don't tell EY because EY is going to tell people.

He told Araxie Grant give EY what we've given them every year.

So he knows that EY hadn't figured this out, and they hadn't figured it out. We acknowledge that. And he knows that what he had given them and his staff had given EY over the course of time had not clued EY in to the overstatement. And he did not want to give EY anything more because he did not want EY to know. So give them the same thing that we had given them every single year.

So Araxie Grant is very, very upset by this, and again you heard her testimony, and she noted to the HR folks that Mr. Villanueva directly asked me to conceal something from the auditors which she knew was wrong and she knew she couldn't do it. So she, not Mr. Villanueva, Araxie Grant went to EY and disclosed the overstatement.

This is the note that I've been referring to. Araxie Grant, when she goes to HR, recounts a conversation that she told HR that she had with Mr. Villanueva. And she said, "at the end of last year, told Badain, said it's one hundred fifty million" -- and this is the number that's on the balance sheet as of that end of year -- Badain said okay, Ed, said write it out in future year. Will write off when we get new media deals".

These are the notes, this is what Araxie Grant told the HR department that Ed Villanueva told her, that in an effort to convince her not to go to EY, he said I've told Mr. Badain about this, he knows about it, I told him last year, we've talked about it, there's a plan, and the plan is to write this off when we get a new media deal and we get a whole lot more money.

Now, why would he be doing that if he wanted this disclosed? Why would he be doing that if he wanted it to be the right answer? And why would he be talking to Mr. Badain about it a year and a half before this was disclosed by Mr. Scott and Ms. Grant? He knew the amounts were overstated. He talked to Mr. Badain about the amounts being overstated.

I don't know when Mr. Villanueva figured it out, although he was doing the accounting all the way back in time and every year he was able to do it correctly when he needed to and he did it wrong when it went to the banks. But at some point Mr. Villanueva knows that the numbers are wrong, and at least according to this note of what he told Araxie Grant, Mr. Badain knew it was wrong as well.

EY complied with its professional standards. This is an audit. An audit is designed to provide reasonable assurance. It is not absolute assurance. And there are inherent limitations on what an audit can reveal about the audit client's financial statements. That is especially true in the case of fraud. The auditing standards recognize, when there are intentional misstatements by the audit client, that that can make discovery of the truth much harder to find. That is recognized in the accounting standards. And Mr. Reed points to pieces here and there that EY had and how EY should have detected this, but the record you will hear is that the Raiders made an effort to control the information that went to EY. That cash flow schedule that Mr. Reed put up from 2011 went to Talesha Triplett who was literally the most junior person on the audit in 2011 and the Raiders got that every single year multiple times a year and they were not routinely providing it to EY. Mr. Villanueva was not explaining to EY why the receivable was what it was. So there was an attempt at obfuscation on the part of Mr. Villanueva.

Mr. Reed talked about how EY understood that the cash would come in after the NFL season and acknowledged that that's what EY was told; it's in EY's work papers. And said, well, Mr. Villanueva didn't know himself, but Mr. Villanueva did know because he received those cash flow schedules that made clear when the cash for each NFL season. So why is Mr. Villanueva telling EY something that's false? Why is he telling them that the money that's coming in is not for the current season, it's for a prior season? Why is Mr. Villanueva, when he knows the truth, telling that to EY? He's telling it to EY because it helps to obfuscate the receivable. Because EY saw a balance and saw cash coming in and they thought that the cash coming in was applied to that balance. So why is Mr. Villanueva telling EY something that isn't true?

Mr. Scott talked about this in one of his interviews with HR that the information that was provided to EY was limited. There are certain schedules that EY would get pieces of the schedules, not the entire schedule, there's other schedules that they wouldn't get, and we'll hear from EY's auditors on the information they received and what they didn't receive.

This is the receivable again as of 12/31/16. I'm going to talk briefly about the audit procedures that were performed and as a preview as to why that satisfied professional standards.

This is actually a roll forward that's prepared by the Raiders and provided to EY. The notations on it are from EY, including the notes.

So this was the beginning balance as of the beginning of 2016, so that's the ending balance for 2015, 12/31/15, and this is the audit of the 2016 ending balance. And what EY was they looked at all of the activity in the company. This was the receivable account for Ventures. And they started with the beginning balance and they looked at all of the activity throughout the year and how that activity rolled forward into an ending balance -- this is the activity -- an ending balance of ninety million. So they're trying to verify the ninety million balance. They start with the original balance and they look at all of the activity that gets to $72 million receivable to ninety million. And they test every single item, every single aspect of the activity that affected that balance was tested, and it was verified with third party support.

So first there was the accrual. EY confirmed the amount of the accrual with the NFL. So they knew that number was correct.

So Mr. Reed has raised the issue of why wasn't the full receivable confirmed with the NFL. What Mr. Reed did not tell you is that EY on multiple occasions tried to confirm the full receivable. Here's an example. This is from Talesha Triplett to Mr. Villanueva and she's sending confirmation for Mr. Villanueva to sign. So the way this works EY does not reach out to the third party directly, so EY provides confirmations to the audit client, the audit client signs the confirmation, and it's sent out, and the audit client is telling the third party tell the auditor this information. So the engagement team prepares confirmations, sends them to Mr. Villanueva to sign so they can be sent to the NFL, and this is for 12/31/13. It has the full receivable amount. That's the full amount of the receivable, sixty-six million. So does Mr. Villanueva sign the confirmation and have the confirmation go out? No, that's not what happened. What happened was that Mr. Villanueva somehow convinced EY to this couldn't be done. And what EY did is they changed the confirmation and they only confirmed the January payment.

So either Mr. Villanueva believed that the NFL would not confirm the full balance because they have a different year-end and they don't close their books as of the 12/31 and they only do it as of 3/31. So Mr. Villanueva either believed that and was told that by the NFL or he's lying to EY because he doesn't want EY to confirm the full balance. So it's either support for EY doing the procedure appropriately because the NFL wouldn't confirm it or it is compelling evidence that Mr. Villanueva is trying to frustrate the audit, is trying to get EY to not confirm the full balance with the NFL.

Now, this is an e-mail exchange between Mr. Villanueva and the controller at the Raiders before Araxie Grant, Matt Andrus. And it involves a different confirmation that's going to the NFL. And in that not confirmation, it included not just a January payment, but January, February, and March. And the NFL noted that it wasn't the same numbers they had. They actually went to the Raiders, not to EY. And here's the exchange between Mr. Villanueva and Mr. Andrus after this was detected.

Mr. Villanueva says to Mr. Andrus, "I want to make sure we dictate what they do. If they do something different, then they will need to justify it. I want to control these guys and what they do". And this is in regard to a confirmation that's going to the NFL.

So why is Mr. Villanueva so worried about the confirmation going to the NFL? Why is he trying to dictate what EY does? Why is he trying it make sure that they don't ever do anything different than what they had done before?

In terms of the audit of this receivable amount, in addition to confirming the January accrual, they have the remittance and they got the e-mail that Mr. Reed showed that verified that this was the correct remittance amount. And then what they did for this is they went and looked at all the bank statements and they verified that all of this cash came in. And the way the Raiders were looking their revenue and receivables is, when cash would come in, they would adjust both the receivable account and the cash account and again the idea is that, if you look at all the activity and the third party support for all the activity in the account and the beginning balance is correct, the ending balance has got to be correct. So they looked and they saw that all of this cash came in. And all of the cash that came in during the course of the year totaled $104 million. So EY thinks that the beginning balance of the receivable is seventy-two million and over the course of the year more than the amount of the receivable is collected by the Raiders in cash. So EY says okay, the receivable was seventy-two million. They have third party evidence that they've collected more than the amount of the receivable, so the receivable must have been collected so the receivable must be good. And they did that every single year and every single year the amount of cash that came in in that year was greater than the opening receivable balance. So from EY's perspective, the receivable was turning over, it was being collected, and it supported the receivable amount on the books.

As for the revenue, the revenue as of 12/31/16, for this year it's one hundred thirty million, it was basically the same process. EY had third party support for every element that he had up that revenue, they had the K-1, they had the remittance, they had the accrual, and this is another accrual that's made for broadcast revenue. So they had third party support for all of this activity that comprised the revenues for 2016. And this is a schedule that's prepared by the Raiders. The Raiders have presented the remittance and the accrual as two different things and EY doesn't appreciate that they're not two different things; that the remittance includes a January accrual. This is how it was presented to EY.

In addition, EY obtained representations from management. It is a standard, indeed it is a required audit procedure, and every year Raiders management, including Mr. Badain, Mr. Villanueva, represented that the receivables and the revenues were fairly stated.

In terms of the tax work, that's governed by an entirely separate set of standards. It's the statement on standards for tax services. And it is not disputed that, in preparing a return, a preparer may rely without verification on information provided by the taxpayer.

Now, Mr. Reed pointed out a different portion of this where if the information furnished appears to be incorrect, incomplete, or inconsistent, then the tax preparer should follow up on it. But that assumes that the tax preparer receives information that the tax preparer believes is incorrect or inconsistent, but in the normal course, the tax preparer is allowed to rely on the information provided by the client. It is not an audit. The tax preparers are not independent. They're preparing the returns on behalf of the client.

This is the Raiders' tax expert. I understand he may not actually be appearing at the arbitration. But he acknowledged in his deposition that EY was entitled to rely on the audited financial statements, the tax team, the tax preparers. He doesn't seem to like it but he acknowledges that that's what the standards provide.

Claims arising out of the earlier audits are all time barred. I understand the panel is very familiar with this issue, so I'll try to go this a little more quickly.

The basic legal framework is clear. The limitations period is three years under New York law. The statute begins to run when the work product is received and there's no discovery rule.

So let's walk through the 2011 audit to see how this plays out.

So there's a separate agreement between EY and the Raiders to audit the 2011 financial statements. It is a discrete agreement for a discrete audit of a discrete set of financial statements for a discrete period. The financial statements are for one year. It's a set of financial statements that only has the results for 2011. And the opinion that is provided by EY is an opinion on those financial statements. And this audit would have been completed. The report is given May 30, 2012. The statute begins to run on that date when the audit report is provided. Three years later that claim, any claim arising out of that audit is time barred. This is years before any of this became a disputed issue. The audit work was done, three years passed, whatever claim is arising out of that audit may have existed, no longer existed. And that's true all the way up through the 2018 audit. The report was provided in May of 2019. Three years after that, June 1, 2022 the claim was extinguished. That was before the parties signed the tolling agreement.

There's one year that isn't time barred. That would be the 2019 audit. But there are no damages arising out of 2019 because the tax years were still open for that year. And that's actually true of '18 and '17 as well.

Continuous representation is obviously a disputed issue here. The panel has said so.

What's clear under New York law -- and Williamson is a New York Court of Appeals case, the highest court in New York, the continuous representation doctrine, it's not about having a continuing relationship, it's about the specific matter on which the alleged malpractice has occurred, and that's made clear in Williamson. I'm going to spend a couple of minutes on Williamson because it's dispositive and the facts are almost identical.

So beginning around 1990, PriceWaterhouse starts doing audit work. It goes all the way up until 2002, so it's more than a decade, they're auditing the financial statements and the plaintiff is alleging that this work was continuous and performed in the same manner and for the same purpose during this entire time period. And they say that every year the errors escalated because they built on prior errors. So each year's financial statements start with the prior year's statements and the errors accumulate and build. And what does the New York Court of Appeals say? The New York Court of Appeals says that is not continuous representation. It may be a continuing relationship. It is not continuous representation, and they applied the statute. This is directly on point.

So Mr. Reed, I think it's slide eighty, he cites the Appellate Division case it's Ackerman which eventually went to the New York Court of Appeals, but Ackerman in the Appellate Division -- first of all is not the New York Court of Appeals -- this decision was nine years before Williamson and he cites it for the proposition that continuous representation applies where malpractice was repeated use of an improper audit method relating to the same source of income. That's what he cites it for. That can't be reconciled with Williamson. Williamson is the New York controlling authority on that issue. It's the New York Court of Appeals. It's seven years after the Appellate Division decision in Ackerman. And that argument that he made on slide eighty is not New

York law.

Another point. I mentioned that there was a change. There was a transaction where the partnership sort of allocated its assets and liabilities, created two entities, one TeamCo, one StadCo. This happened in 2018. So at some point during the relationship the audit client changed. After 2017, Ernst and Young no longer audited the Oakland Raiders' partnership. They audited two different entities that were separate entities that both issued financial statements. And you'll see that, in the case of TeamCo, they're not even auditing a full year, so they're not even considering what happened from January to April 1 because that's not this entity. So it's not even the same client -- it's not even the same entity, the same issue during the course of this period.

I think this is actually a

new point that wasn't in the original briefing on the motion, but to state the obvious, continuous representation is a tolling concept. It is not a revival. Anyone who has signed a tolling agreement knows that, if there are claims that have already expired, they're not somehow revived by the virtue that you've agreed to toll the statute. Continuous representation where it applies is a tolling, it is not a revival, and there are multiple New York cases that make clear that tolling, including in the context of continuous representation, does not revive already expired claims.

So going back to the 2011 audit, the 2011 audit happens, the report's issued in '12, there's no debate, there's no further work done on the 2011 audit for the remainder of 2012, for 2013, 2014, 2015. The claim dies.

So the Raiders have pointed to work that was done in 2021. We'll talk about that. It doesn't involve any reissuance of any prior period financials, any opinion on any revised prior period financials. But putting that aside, whatever happened in 2021, it does nothing to revive an expired claim. It cannot revive an expired claim as a matter of New York law. Those claims are gone.

EY owed no legal duty to the additional claimants.

So if you look at again the presentation, this was all in their briefly, they cite cases, all of which talk about the limited partners and how the limited partners in an audit client are entitled to rely if there's a duty that's owed to them. The problem with that argument here is twofold. The first problem is that these are the limited partners and none of the additional claimants are limited partners. The additional claimants are all at levels below the limited partners. These are the additional claimants. These are the limited partners. In this case, there's layers, multiple layers between the Raiders and these beneficial owners. So the question is, under New York law, what duty did EY owe to the additional claimants.

There's a second point. Under New York law, which is very strict, it has to be the functional equivalent of privity. The shorthand is near privity. And it's among the most rigorous, demanding standards in the country. Again, the New York Court of Appeals has said there has to be evidence of the accountant's understanding of a party's reliance. There has to be evidence that the accountants have accepted that a duty is owed to some third party that's not the client.

So what do we have here? This is from the general terms and conditions that governed the tax arrangements. And to be clear, the tax arrangements are the foothold, they're the linchpin of their duty argument. Their whole argument is, well, the K-1s are being prepared for the limited partners, they're actually being prepared for the Raiders, but the Raiders are obviously going to provide those to the limited partners. There's no suggestion that Ms. Winklefoss is reading the financial statements. The arguments that they're making is that the K-1s that went to the limited partners had an impact on the tax position of individual beneficial owners, the additional claimants, at some other level; that it's not actually the K-1s for the limited partners, it's some other K-1 or some other document that's prepared by some other entity based on the K-1s that are going to the limited partners. That's the nexus. That's how the duty supposedly is owed to the additional claimants, it's through the tax work. But this is the agreement, the general terms that govern the tax work, and what the Raiders agreed with Ernst and Young is that tax advice that's provided to the Raiders and tax advice is defined to include tax returns and the K-1s are a portion of the tax returns, that no third parties are allowed to rely on that without EY's prior written consent.

So there was a long list of things that Mr. Reed put up about how it is that EY owed a duty. There's nothing that suggests there was ever prior written consent, prior agreement, prior acknowledge in writing by EY that they intended to take on this responsibility. In fact, there's affirmative evidence that EY is disavowing this responsibility in its agreement with its client the Raiders. And they're saying you have to tell people if you disclose our tax advice that they're not allowed to rely on it. And that's what the agreement was between the Raiders and EY.

And the agreement goes even further. The agreement requires the Raiders to indemnify EY if someone claims to have relied upon tax advice that was provided that caused injury to them. So there is affirmative evidence that EY is disavowing any legal duty.

Now, Mr. Davis can say that that wasn't his understanding, he can say it's not fair. It's the agreement. It's the agreement pursuant to which EY performed its services. These are general terms that cover the tax agreements.

EY is entitled to contribution. Again, this is black letter law in New York. When two or more persons are subject to liability for an injury to property -- and that's the key term -- there may be contribution claims asserted among them. And the panel for this claim would decide what the equitable allocation is, and there's case law suggesting basically it's entirely up to you. It's your discretion.

Now, what they've said is somehow, well, this doesn't apply because they're bringing economic losses and all that. But what the case law in New York says about CPLR 1401 is that any tortious act other than personal injury resulting in damages is deemed to be an injury to property for purposes of the contribution provision, and that's what they're alleging here. They've alleged torts. These are the claims that the additional claimants are bringing and they've alleged an injury.

Now, to the extent they're relying on the body of case law that limits the available of damages for pure economic loss, we actually thought about making that argument because if that were true, then the additional claimants are barred from bringing a claim and recovering for their damages by virtue of the fact that they're economic losses. I thought I'd have to fight with them. And then I find out that they're arguing affirmatively that, because they're alleging economic losses, that we don't get contribution. But if that were right, then the additional claimants themselves don't have a separate claim against EY.

Finally, EY is entitled to unpaid professional fees for the 2020 audit. After the misstatements were identified, the Raiders engaged EY to perform audit and tax services. There's an agreement that was signed in July. It's months after the misstatements were identified. It's the same month that the investigation was completed. And Mr. Ventrelle, when asked, said, yeah, I expected that the Raiders would live up to their end of the agreement and they would pay the fees. There was no it discussion at the time that EY should do this work for free because of what had happened. If there had been that discussion, the parties could have engaged in that, but that's not what happened. The Raiders engaged EY, EY performed the work. When they were performing the work, the Raiders never told EY we're not going to pay you for the work. Months later the Raiders, after engaging in a back and forth where EY's providing support for the work, they simply said we're simply not going to pay. And when I asked Mr. Crome why wasn't this paid, the answer was advice of counsel. So obviously it's a litigation tactic. There's nothing we can do about it now. But there's been nothing advanced as to why they don't owe us the money. At one point Mr. Garcia tried to offer very substantial discounts on this to resolve it, but the Raiders just said we're just not going to pay you because we have our own claim against you and self-help is not available under New York law and at a minimum, EY is entitled to the fees that it earned performing the services that the Raiders asked EY to perform after the Raiders knew about the misstatements.

Thank you.

THE CHAIRPERSON: Thank you.

Well, it seems like we've finished early, so two questions: Do you want to take a break now? Do you want to advance the witness --

MR. FARINA: It's entirely up to Kevin.

MR. REED: Mr. Davis I think is planning to be here at 1:00, so if the panel is willing to take the lunch break now, that's probably good.

THE CHAIRPERSON: That sounds good.

Off the record.

(Lunch recess taken at 11:57 a.m.)

A F T E R N O O N   S E S S I O N

September 16, 2024

1:02 p.m.

THE CHAIRPERSON: Let's go back on the record.

Good afternoon, Mr. Davis. Congratulations on the Raiders' win. I hope we won't do anything to dampen your mood this afternoon.

THE WITNESS: I don't think you will.

THE CHAIRPERSON: I'm John DiBlasi. To my right is John Chandler. To my left is John Bickerman. And believe it or not, it's a tri panel of Johns.

THE WITNESS: Are we all spelled the same way with an H?

THE CHAIRPERSON: Yes, believe it or not.

Why don't we proceed.

MR. REED: The Raiders will call Mark Davis.

(CONTINUED ON NEXT PAGE)

M A R K D A V I S, having
been deemed duly sworn, upon
being examined, testified as follows:

DIRECT EXAMINATION BY
MR. REED:

Q. Mr. Davis, what is your position with the Las Vegas Raiders?
A. I am the general partner and president, I guess in the organization I'm the managing partner.
Q. Are you also the principal owner of the team?
A. Yes, I am.
Q. And since when have you been the principal owner?
A. Since 2012.
Q. You became the principal owner following the passing of your father; is that right?
A. Correct.
Q. And over what period had your father been the principal owner of the Raiders?
A. I believe since 1970 to his passing in 2011.

Q. Do you recall when you first acquired a stake in the Raiders?
A. It might have been around 2006, 2005, I believe.
Q. And do you recall what your initial stake was?
A. About six percent maybe of the thirty-seven percent. Twelve percent of thirty-seven percent, let me put it that way, so whatever that number works out to be.
Q. And the thirty-seven percent relates to what?
A. The A.D. Family Limited Partnership, I believe.
Q. And that's one of the entities through which you hold your interest in the Raiders?
A. Correct.
Q. Has your interest increased over time?
A. It has.
Q. And what does it stand at today?
A. Today it's fifty-five

percent.

Q. Do you hold that stake directly or through entities?

A. I have several entities.

Q. Do those entities, if you know, pay taxes or are they all passthroughs?

A. No, they pay taxes.

Q. Do the losses and profits that are sustained on your interest in the Raiders flow through to your personal tax return?

A. Correct. Yes, they do.

Q. So what ultimately pays the taxes on your interest in the Raiders?

A. I would say myself.

Q. Now, the Raiders are organized as a California limited partnership or they were during the period we're talking about here; is that correct?

A. Correct.

Q. And what entity serves as the general partner of the Raiders' limited partnership.

A. It's called A.D. Football, Inc. It's the one percent owner of the Raiders.

Q. Who owns A.D. Football, Inc.?

A. I do.

Q. And who's the president of A.D. Football, Inc.?

A. I am.

Q. And as president and owner of A.D. Football, Inc., do you have ultimate control over the management and affairs of the Raiders?

A. I do.

Q. How long has that been the case?

A. Since 2012.

Q. Press reports indicated that you're in the process of selling a stake in the Raiders to Tom Brady.

Is that accurate?

A. Well, we have an NDA, but yes, that's accurate.

Q. I'm only asking about things that I've heard in the press, so don't reveal anything confidential.

What valuation of the Raiders is being used to set the price for Mr. Brady's stake?

A. Originally or now?

Q. Well, let's do both.

A. Well, initially it was $150 million and the National Football League came back and said that they didn't feel that was a high enough price and they raised it up to $220 million, which was commensurate with the latest purchase that I had made of Raiders' equity in the last couple of years.

Q. So is $220 million a current valuation of the team?

A. It's the current valuation that Tom Brady was paying.

Q. When was that valuation agreed on?

A. It was about two years ago, two and a half years ago.

Q. So does that two hundred twenty million, to your understanding, reflect the value of the team today?

A. No.
Q. Do you know what the most current valuation of the Raiders is?
A. According to CNBC's latest thing, about $7.8 billion.
Q. Are you required to secure the approval of your fellow owners before you consummate a sale of equity in the Raiders?
A. Are you talking about other team owners?
Q. Yes.
A. Yes, I am.
Q. Do you know what vote you have to get in order to get permission to sell the stake in --
A. Three quarters, so we have to get twenty-four out of thirty-two.
Q. Has a vote on the Brady sale been scheduled?
A. No, it hasn't.
Q. Do you know, as you sit here now, if you have the votes to get that through?
A. No, I don't.

Q. How would you describe your responsibilities as the Raiders' principal owner and general partner?
A. Well, as I've said before, the buck stops with me. All decisions eventually come through me in a sense that my philosophy in management so far has been with the Raiders, the one thing I know is what I don't know and I hire people that know those things. We talk about vision, we talk about goals, and then I let them do their job and I let the results spook for themselves. So I'm a delegator, yet I do try to stay top of what's going on.
Q. Are you involved at all in managing the day-to-day business affairs of the Raiders?
A. No, I'm not.
Q. Who does that?
A. Today the president is Sandra Douglass Morgan. She's in charge of the day-to-day.
Q. For this arbitration, we're focusing in on the period between 2006

and 2019.
A. Okay.
Q. You aren't on the business side of the Raiders prior to 2012; is that right?
A. Correct.
Q. So from 2012 forward, who was in charge of the business operations of the team?
A. When my father passed, Amy Trask was the CEO of the organization and she was in charge of all business operations.
Q. And what about -- did there come a period of time when Ms. Trask left that position?
A. About I think it was in 2013, maybe, '12. I'm not exactly sure the year. But she resigned. Marc Badain was made the interim president and for about a year he served as the interim president, and after that I named him to be the president of the Raiders.
ARBITRATOR BICKERMAN: If you could speak a little bit louder.

Q. So Mr. Davis, what was your involvement in the Raiders organization prior to 2011?
A. Prior to 2011, I grew up in the Raiders. My dad was with football my whole life. When we were eight, we became part of the Oakland Raiders. And by the time I was twelve or so, I was a water boy doing all those things that kids do but didn't have a full-on role with the Raiders as far as a job.
I went to college, studied economics, and felt that I could make a difference maybe in football players' lives, so I actually became an agent and became an agent for one of the Raiders, Cliff Branch, wide receiver, and got a lot of experience through that.
Then I would look and see things in the Raiders organization that I thought might be able to make better, so to speak. Our merchandise was one of the things that we hadn't been doing -- the National Football League didn't

really have a big thing going with licensing at that point in time, so I started the Raider Image Stores back in the 80s. And started to work with the Internet as well with the team.

So it was things outside the box that I tried to help bring to the Raider organization, but I wasn't there on a 9:00 to 5:00 basis.

Q. And then you told us in 2011/2012 you stepped into the business side after your father passed away?

A. Correct. I would say that in 2011, after my father passed away, the first thing I did was try to get the football side going. We hadn't had a true general manager in the organization because my father played both roles. Obviously I didn't believe I could do that. So I hired the general manager and decided that I would take a year or so to evaluate the business side of the organization and understand that so that I could help make changes if we were going to or start being on the vision and goals for the future.

Q. So how would you describe the business culture that existed within the Raiders at the time you took over in 2011?

A. Well, it was interesting because we were in Oakland. We were -- in revenues of the National Football League, we were thirty-first in stature of the NFL teams. We had a stadium that we shared with the Oakland A's and we had a difficult time getting revenue out of it that other teams were getting out of their stadiums. We had moved several times to LA and back to Oakland.

We weren't on good footing, I would say, at the time that I took over.

Q. And what about internally, what was the culture like among the people who worked on the business side?

A. Well, the Raiders again, we probably -- eighty percent of the

people had been there for ten, fifteen, twenty years. It was a family-type atmosphere inside the beginning of my tenure there in 2011/2012.
Q. So when you took over the Raiders, did you inherit a management team?
A. Yes, I did.
Q. Do you recall who was at the top of that team?
A. Well, it was Amy Trask, the CEO. Marc Badain was CFO. And Dan Ventrelle I guess was the general counsel that was the top three.
Q. Did you make any significant changes to the business operations when you took over in 2011?
A. No, I didn't. I want to evaluate the business situation and see exactly where we were going to go and talk to people and things of that nature, so I wanted to learn a lot more about what they were doing business-wise and what the goals were.
Q. Did you have any concerns

about the integrity of your management team when you took over?

A. Not at all.

Q. What about their competence?

A. No.

Q. Was Ed Villanueva employed by the Raiders when you took over?

A. Yeah, I believe he was.

Q. Did you have any interaction with him at that point in time?

A. No.

Q. He was sort of below the pay grade where you would have been interacting?

A. Yeah, well, in a sense. I interacted with everybody in the organization. But as far as Ed, I wasn't on a day-to-day basis or week to week or anything of that nature.

Q. Do you recall what his role was at the time?

A. I believe an accountant in the organization.

Q. I can't recall if you mentioned this, but there came a point

when Amy Trask left; is that correct?
A. Correct.
Q. Do you know what prompted that?
A. Just -- you'd have to ask her.
Q. Do you know when that approximately took place?
A. I think it was like '13 maybe, '14.
Q. And who did you appoint to replace her as the president?
A. At that time nobody. Marc Badain became the interim president. She was the CEO. I made Marc Badain the interim president.
Q. Why did you make Mr. -- why did you choose Mr. Badain for the role of interim president?
A. Well, I thought the finances were one of the most important things of the organization, obviously. I trusted Marc. I thought he had done a great job up to that point. We communicated well. And I thought he

was the person that could actually lead us in the future and I wanted to see if that was true.

Q. You said there came a point when Mr. Badain lost the interim and became the president of the team?

A. Yes.

Q. Was that your decision?

A. Yes, it was.

Q. And why did you decide to make him the permanent president?

A. Because I observed him and trusted him and thought he was doing a good job and I thought he had a good culture going within the organization and felt he was the right man.

Q. How often during that period, 2013 to 2015, '16, did you interact with Mr. Badain?

A. How often?

Q. Was it a daily, weekly, monthly?

A. Oh, I would say weekly probably would be the best thing to say.

Q. What kinds of issues would
you typically interact with him about?
A. With him, it was just where
are we financially.
Q. When you say "where are we
financially", can you be more specific?
What was the concern or issue --
A. It wasn't a concern or issue.
As I said, we were thirty-first in
revenue in the National Football
League, we had a lease at a stadium
that wasn't giving us great revenue
sources, so we had to be cognizant of
where we were on a daily basis and
making sure that we could fulfill our
goals and obligations.
Q. Is that a way of saying you
were focused on cash flow?
A. Yeah, I think cash flow was
important. For me, it was again -- I
grew up on the football side of the
business, so it was playing, players,
and those things interested me, so if
we wanted to get a player, I would go
to Marc and say do we have the money to

do this, can we do this. Those were the kind of interactions that we had at that time.

Q. Now, the Raiders moved from Oakland to Las Vegas after the 2019 season; is that right?

A. Correct.

Q. And you moved into a new stadium that you helped build there; right?

A. Correct.

Q. When did the Raiders first start to think about building a new stadium?

A. 1963.

Q. Just to save us all time, I'm going to move the timeline forward to the 2000s.

A. Well, I will say this. We moved from Oakland to Los Angeles and again it was based on revenues and the lure of private suites. That was something that was brand-new at the time. And my father wanted to have that because what the NFL did was, as most revenue is shared amongst the thirty-two teams, private suites were not. So teams that had suites were getting a big revenue jump on the other teams. So my father tried to get suites built in Oakland. Weren't able to do that. He was promised suites in the LA Coliseum. We moved to LA. They ended up never building those suites, so he moved back to Oakland and finally got his suites in the stadium in Oakland.

But we were sharing it again with the A's, and so when you talk about all the other opportunities for revenues, they were shared or dominated by the A's. And so we were a tenant for ten games a year really in the Oakland Coliseum. That's really where our revenues were coming from. And we understood that, if you had your own stadium, you had many more revenue sources that were astronomical and were making a big difference between the valuations of teams as the Raiders were thirty-one and thirty-two in value as well. We needed a stadium.

So I have really been focusing on that even prior to my father's passing and trying to get something done. I had zeroed in on Hollywood Park, which my father had a deal done to build a stadium in Hollywood Park prior to us moving back to Oakland in 1994/'95, but he decided not to do that. I started looking at Hollywood Park again as a place that, if we couldn't get something done in Oakland, that we would go back to Hollywood Park, if possible. So I started working again outside the box while my father was alive and looking at stadium opportunities back in Los Angeles as well as Oakland.

So after my father passed, obviously that was the number one on my agenda for the business side of the organization for us to get in the twenty-first century was to get a stadium built for the Raiders. So I worked with the City of Oakland, I worked with the City of Inglewood in Los Angeles, and many other cities would come out and potentially offer us things to do.

Then we had a player on the Raiders, Napoleon McCallum, who was from the Navy, Naval Academy, played for the Raiders, he worked for a fellow in Las Vegas called Sheldon Adelson and he came to me at one of the Raiders reunions and said hey, my boss will build you a stadium. I said, I've heard that story before. And he told me who his boss was and I said, listen, I don't want to lead him down the garden path. If, in fact, we can't get something done in Oakland and Los Angeles, then we will come talk to Sheldon. And when Oakland and Los Angeles fell apart, we had a deal with the Chargers to move to Los Angeles and the Rams had a deal to move to Los Angeles. The National Football League voted for the Rams over the Raiders and

Chargers, so the -- and the league gave the Chargers the first opportunity to join the Rams in LA and kind of left the Raiders out in the wilderness, and so I told Napoleon I'll talk to Sheldon Adelson. And we met and he spearheaded it, spearheaded a deal and the Raiders organization with Marc Badain and Dan Ventrelle and myself put together a deal and we ended up building one of the magnificent stadiums in the world in Las Vegas.

Q. When did the discussions about moving to Las Vegas begin, approximately?

A. Like I said, I told Napoleon to hold off until we had the other -- so I can't really tell you what the year was, but it was around '15, '16, I think. I don't honestly know.

I will say this: Prior to that I did go down and meet with Carolyn Goodman, the mayor of Las Vegas, just to see if there was interest and she told me the Raiders can come but I've got to tell you, we're Charger fans so we're not going to give you any tax money. I didn't think that was going to be too promising until we got Sheldon involved. That was an aside.

Q. Who within the Raiders led the project to build the stadium and move the team to Las Vegas?

A. Well, I would say it was a triumvirate. But I think once it got down to making the sausage, it was Marc Badain and Dan Ventrelle.

Q. What was involved in making that sausage? What were the kinds of things they had to work on?

A. There was politics, there's all kinds of committees, there's finances, there's banks, there's just construction companies, there's design companies, there's architects. There's so many different things involved with moving a franchise and building a stadium and building a practice facility and those types of things, it's quite a task. They spearheaded it along with others in the organization.

Q. Do you believe that Mr. Badain and Mr. Ventrelle did a good job?

A. Yes, I do. Fantastic job.

Q. Did undertaking the project to move the Raiders to Las Vegas necessitate making any changes in the organization?

A. I believed it would and should. We were in Oakland. Again, we were a renter of a stadium but we were a business, mom and pop store as people would call us at that time, but I know moving to Las Vegas, which is the sports and entertainment capital of the worlds now, that we would have to upgrade our infrastructure and make it ready for the twenty-first century and really upgrade it eventually.

Q. And who charge of making those upgrades?

A. Well, I believe all of us were in a sense.

What happened was in 2020, as we were going to move to Las Vegas, we had all this momentum, the COVID struck. And so what that did was it bifurcated your organization. So we had half the organization working down in Las Vegas doing marketing and all those things, the other half of the organization working up in Oakland with the football team and getting ready to move down because we couldn't move into our facility. It was unfortunately the COVID thing did put a big crimp in our ability to have a momentum moving to Las Vegas.

Q. Do you consider the Raiders' move to Las Vegas to have been a success?

A. Absolutely.

Q. How so?

A. Well, we have our own stadium, like I said, it's the most magnificent stadiums in the world, we have one of the most magnificent practice facilities and offices in

Henderson. The revenue streams that we get out of the stadium is just second to none. I think we're in like third or fourth spot in the National Football League in revenues.

Q. Where were you before moving to Las Vegas?

A. Thirty-one or thirty-two.

Q. Do the Raiders engage auditors to review their financial statements?

A. Yes, they do.

Q. Do you know who the Raiders' auditors are currently?

A. Now?

Q. Yes.

A. I do but I'm slipping on the name.

Q. Prior to the current auditors, who was the auditor for the Raiders?

A. It was Ernst and Young.

Q. Do you know why the Raiders switched from Ernst and Young?

A. Yes.

Q. Why?
A. I guess a -- I don't know what word to use, but we have a problem with Ernst and Young. I believe there was negligence on their part in auditing our financial statements over maybe a fifteen-year period.
Q. What is your understanding of the purpose of EY's work for the Raiders over the years in performing audits?
A. Well, for me it was the fact that we have people in house that do our finances, do your economics, do our accounting and all of that, yet we have to submit documents annually to the National Football League and to the IRS and to everybody else, and I thought that the auditors were the backstop; that if something was going wrong in the information, if there was, in fact, some type of inconsistencies or something in the financial reporting that the auditor would find that. That would be my backstop. The auditor

would protect me, the owner and my partners, were any kind of malfeasance or anything else; that they were the person that I hired to oversee my books.

Q. So did you consider Ernst and Young's work important to the Raiders?

A. Absolutely.

Q. Did you consider it important to you as the ultimate beneficial owner of the Raiders?

A. Absolutely. I'm not an accountant and obviously I hire people to do the job and expect them to do it. But having a third party come in and be the backstop was very important to me.

Q. Did you rely on Ernst and Young to do its work correctly?

A. Absolutely.

Q. How did you rely on it?

A. I paid them.

Q. And what did you rely on them to do?

A. To oversee the books, audit the books, make sure that everything was right.

Q. And did you in any personal way rely on the books being correct?

A. Well, I paid taxes based on what they reported to be correct information.

Q. Now, at one point did you come to learn that there were errors in the Raiders' financial statements?

A. Yes, I did.

Q. How was that brought to your attention?

A. I believe Marc Badain told me.

Q. Do you recall specifically what he told you?

A. He said there's been some type of oversight or something with a line item that was a $250 million debt owed to the Raiders by the National Football League.

Q. Do you recall approximately when he brought that to your attention?

A. No, I don't. Date-wise, I don't.

Q. Is there anything else you can recall about what he said to you in connection with that conversation?
A. Well, I was concerned. And one of the things for me being a novice in accounting and all of that, I thought, well, okay, so we have a $250 million loss that I can report on our taxes. And I didn't realize that there was a statute of limitations on this for a number of years so a lot of that would be lost to us.
Q. Now, prior to learning about this error, did you -- were you aware of any errors in the Raiders' financial statements?
A. No.
Q. And prior to being told about this error, did you have any awareness of any problems in the Raiders' accounting?
A. No.
Q. Do you have any understanding of why the error wasn't caught earlier?
A. I have no idea.

Q. Do you believe that anyone at the Raiders intentionally implemented incorrect accounting?
A. Absolutely not.
Q. What's your basis for saying that?
A. They had an investigation, so to speak, for it. I just -- I believe in the people that were there working and I believe that it was a mistake that happens and again, that's why I was hoping Ernst and Young would be doing their job and revealing that.
Q. There came a point in 2021 where you asked Mr. Badain to resign.
Why did you do that?
A. Well, again, I grew up on the football side of the building and the next man up and I'm not going to say it was that lightly with Marc Badain. He had been there for twenty-five years, thirty years, and been loyal. He helped build the stadium and everything. It broke my heart to ask him to leave, but I thought it was

optics. I had three constituencies that I was looking at. I was looking at the National Football League who got those reports every year, it was very important to them, I had the banks who we were on the hook for a lot of money for that we borrowed to build the stadium, and then I had my limited partners as well. And it was just something that I felt I had to do to show that I was going to make changes in the organization and that it wasn't something that I was going to just overlook, oversee. Overlook.

Q. When Mr. Badain resigned, he received a $1 million severance payment.

Do you know how that number was determined?

A. I don't know how that was determined. I had a policy that -- again, I have the people that work for us ten, fifteen, twenty-five years, that however many years they worked for us, I would give them one month's salary for each year that they had worked. Mr. Badain was making $2 million a year at that time, so obviously his thirty years, that wouldn't be the severance that he would normally get should it be a clear dissolution. But I did tell him at the time that he left that I would consider a stadium complete bonus and obviously his thirty years in Raiders services, but I wanted to see how this played out. I wanted to see how this whole investigation, this arbitration and everything else came out to see what the costs were to the Raider organization, if any, and just so I wanted to wait on that.

But for the million dollars, I'm not quite sure. I don't know whether that was because he left midway through the season and it might have been the second half of his salary for the year. I'm not sure.

Q. Would you have been the one to approve that amount?

A. Yes, absolutely.
Q. Did there come a point when you disclosed the existence of this accounting error that we've been talking to about to your partners?
A. Correct.
Q. Do you recall when you did that?
A. Not date-wise or anything but very shortly after I believe the investigation.
Q. And what's your best recollection that you told your partners about it?
A. I told them there had been a double kind of accounting error that had been overlooked for thirteen, fourteen years, that their taxes were going to probably be adjusted, that we would have the accountants talk with their accountants and alert them to what was going on. But I wanted to make sure that right away I let them know that there was something going on. I didn't want to have them find out

somewhere else or not be transparent at all with them about this.

Q. Did there come a point when you had a conversation with your bank about the error?

A. Yes, sir. I flew immediately to Charlotte, North Carolina to meet with Bank of America to let them know about it as well. I went with Dan Ventrelle and Mr. Larry Delsen.

Q. What do you recall about that meeting?

A. We met with Elliot McCabe and several others from Bank of America and we just let them what it was. They understood. They knew Mr. Badain, they trusted Mr. Badain. They seemed concerned but not too concerned.

Q. You had -- in connection with your relationship with Bank of America, the Raiders had a debt covenant that they had to meet each year; is that correct?

A. Correct.

Q. What did that covenant, to

your understanding, require the Raiders to do or to achieve?

A. That we couldn't have -- we needed to keep money in reserves, we couldn't spend certain amounts, we had to do certain things. There were all kinds of requirements to fulfill that obligation to make sure that we had the credit ability to take care of our loans.

Q. Did you believe it was important for the Raiders to meet those covenants?

A. Absolutely, one hundred percent.

Q. Why is that?

A. That's the way I do business.

Q. Do you know if there were ever years after you became the principal owner of the Raiders that the Raiders missed their debt covenants?

A. Not that I know of.

Q. Did you have any understanding of what the consequences to the Raiders would be of missing a

debt covenant?
A. I heard that there could be interest rate hikes, there could be calls for loans to be paid, there could be all kinds of ramifications that we would be liable to the bank for.
Q. Did you ever discuss that issue with Marc Badain?
A. Not in depth or anything, but I understood -- I did with Amy Trask, Marc, and whoever else was in that position.
Q. Do you -- you said earlier you're not involved in the day-to-day management of the Raiders.
Does that include accounting decisions? Are you involved at all in the accounting decisions the Raiders make?
A. Not in accounting decisions. But obviously if they want to spend a great sum of money on something, I'm going to go consulted on that. But I don't -- on a day-to-day basis on the smaller issues, no.

Q. Do you ever review the Raiders' financial statements?
A. I've looked them over at times. Do I know what they mean? Maybe.
Q. And by maybe, do you mean not really?
A. No, I mean, I can figure it out.
Q. How often would you say that you review the Raiders' annual financial statements?
A. I might look them over once a year.
Q. When you're looking at them, is there anything in particular that you're looking for or trying --
A. There was one line that was always important to me and I believe it might have been the cash line, how we did for the year. In the past, it had been mostly losses, so I was looking at how it would affect my taxes. So now it's gains and it's how it could affect my taxes.

Q. When your father was the principal owner of the Raiders, do you know if he was involved in the day-to-day business operations of the team?

A. He and Amy Trask would work together potentially on the type of way that Marc Badain and I. It was a much smaller organization back then. If you look at the team pictures back in the 60s or 70s, there may be six or seven coaches, a head coach and several coaches. There's maybe thirty coaches in the team picture now. So the infrastructure of the organizations have just grown extraordinarily.

Q. To your knowledge, did your father involve himself in managing the finances of the Raiders?

A. Yeah, he did. I mean, he knew what the numbers were.

MR. REED: May I have just a moment?

THE CHAIRPERSON: Of course.

MR. REED: I have nothing

further for Mr. Davis at this point.

THE CHAIRPERSON: Okay.

CROSS-EXAMINATION BY
MR. FARINA:

Q. So before we get to any of the documents, you're the sole owner of the general partner of the partnership; correct?

A. Correct.

Q. So you're effectively the general partner?

A. Yes, sir.

Q. And you understood that, as the general partner, you owe fiduciary duties to the limited partners?

A. Absolutely.

Q. And the way that you fulfilled your fiduciary duties was to hire good people?

A. Correct.

Q. And that includes your management team; correct?

A. Absolutely.

Q. Mr. Badain?

A. Yes, sir.
Q. And Mr. Villanueva?
A. Yes.
Q. And you relied on Mr. Badain and Mr. Villanueva to oversee the financial affairs of the Raiders?
A. Yes. Well, I relied on Mr. Badain to over the affairs of the Raiders.
Q. Mr. Badain has an MBA; correct?
A. I believe so, but I'm not quite sure.
Q. And did you -- you relied on Mr. Badain to oversee the financial affairs when he was the president; is that correct?
A. Correct.
Q. And you relied on Mr. Badain to oversee the financial affairs when he was the CFO?
A. Correct, but -- yeah, okay.
Q. And Mr. Villanueva became the CFO when Mr. Badain became the president; correct?

A. I believe so.
Q. And were you relying on Mr. Villanueva to oversee the accounting function for the organization?
A. No, I was relying on Mr. Badain to hire the people that oversaw it.
Q. So your main point of contact was Mr. Badain?
A. Correct.
Q. And you understood that Mr. Badain was overseeing the other senior people in the organization?
A. Correct.
Q. Including Mr. Villanueva?
A. Correct.
Q. So I take it, if you're relying on Mr. Badain, you understood that Mr. Badain knew what was going on?
A. Correct.
Q. Including with respect to the finances of the Raiders?
A. Absolutely.
Q. And that's something that you expected him to do in his capacity as

the president?

A. Absolutely.

Q. Was there anything that suggested to you that Mr. Badain was unaware of the finances of the Raiders?

A. No.

Q. Did you rely on Mr. Badain to make sure that the Raiders complied with their financial covenants?

A. Yes, I did.

Q. And you relied on Mr. Badain to understand the cash flows of the Raiders?

A. Correct.

Q. And did you rely on Mr. Badain to understand what the NFL was going to be paying the Raiders?

A. Correct.

Q. And when they would be paying the Raiders?

A. Yes.

Q. Because you wanted to know if the cash was available to do things for the organization?

A. Correct.

Q. And did you understand at the time that the NFL would tell each NFL team what they were going to be paying the team for the season?
A. They had projections, I believe, yeah.
Q. And you understood the Raiders received those on a regular basis?
A. I believe so.
Q. It was your expectation that Mr. Badain would review those projections?
A. Absolutely.
Q. And did you rely on Mr. Badain and his subordinates to make sure that the Raiders prepared accurate financial statements?
A. Absolutely.
Q. In July of '21, you asked Mr. Badain to resign from the Raiders; correct?
A. Correct.
Q. And when you and I talked in April, you said something to the effect

that you thought that Mr. Ventrelle and Ms. Stratton had pushed Mr. Badain out of the building.

Do you remember that?

A. Yes.

Q. What did you mean by that?

A. Well, there was a very strong push by the two of them along with -- again, I don't know if I can talk about it, but Arnold and Porter, the representative that they had hired to do some things, that there was a push to get Marc out. I don't know if I said it, but when we came back from --

MR. REED: Mr. David, before you answer, I'm just going to caution you, don't reveal anything that your lawyers or that the Arnold and Porter lawyers said to you.

THE WITNESS: When we came back, we flew black from Carolina after meeting with Bank of America. I had said to Mr. Delsen and Mr. Ventrelle that I thought was Marc

was going to come out of this okay.
Q. And did you believe that Mr. Badain should have known about the size of the Ventures receivable?
A. Yes.
Q. Do you recall that Mr. Badain bears some responsibility for the misstatements in the Raiders' financial statements?
A. I believe we all do. May because I hired Mr. Badain. As I said, the buck stops with me, but yeah.
Q. So you talked about this a little bit briefly.
Mr. Badain has asked you for additional money to be paid to him; correct?
A. Not directly.
Q. Do you know whether he's asked Mr. Delsen?
A. I don't know if he's asked Mr. Delsen. I'm not sure on that. But I do know that he is -- he would like more money.
Q. And you're considering what

you referred to as a silver parachute for Mr. Badain?

A. Sure. Absolutely.

Q. And he's been gone from the organization for three years now; correct?

A. I don't know.

Has it been that long?

Q. July of '21 is when he left.

A. Time flies.

Q. So in that three years, you're still holding open what you're going to pay Mr. Badain or whether you'll pay Mr. Badain?

A. Correct.

Q. And you're waiting follow this arbitration is over?

A. Yes, sir.

Q. Why are you waiting for this arbitration to be over to decide whether to pay Mr. Badain for his service?

A. Well, we've gone through an investigation where he was found not to be, in my mind, found not to be intentionally doing something wrong, but I want to see what this is going to cost the organization, if anything, or if we're going to be made whole because of the fact that we hired Ernst and Young to do the backstop on this thing and whether Ernst and Young is liable as well. In my mind, I hired Ernst and Young to protect me, protect the organization from anything being overseen or whatever like that. And I'm just going to go on that with the $250 million whatever, two hundred fifteen million, $250 million line item that they didn't go to the National Football League and confirm that that was owed I think is malfeasance. I want to see how this all plays out and then talk with Mr. Badain.

Q. When Mr. Reed was asking you some questions, the name of the current auditors escaped you; is that fair?

A. Yeah.

Q. Do you know who they are? Do you remember?

A. No. If you told me the name,
I'd say yeah, that's them.
Q. Do you have meetings with
them on a regular basis?
A. No, I do not.
Q. And you didn't have meetings
with EY on a regular basis either?
A. No.
Q. Did you know that EY were the
auditors?
A. Yes, I did.
Q. Do you know, sitting here
today, who the audit partners were that
worked on the Raiders' engagement?
A. No, I don't.
Q. And you didn't have regular
discussions with the EY audit partners;
did you?
A. None.
Q. And in fact, when you and I
talked in April, I think you said that
that was the first time or you only
recently realized that EY did tax
compliance services for the Raiders.
Do you recall that?

A. Right. I didn't know what the full services were. I just knew that they were auditing and making sure that the books and records were right.
Q. Let me move on to something else.
With respect to the Raiders' ownership structure, it's a partnership; correct?
A. Correct.
Q. And there are limited partners in the partnership; correct?
A. Yeah.
Q. And all of these limited partners are entities; correct?
A. It appears that way.
Q. Now, the limited partners have nothing to do with the management of the Raiders; correct?
A. Right.
Q. And none of the owners of the limited partners are the owners of -- owners of the limited partners, they don't have anything to do with the management of the Raiders either; do

they?

A. Except for me.

Q. Who is Paul? Leff?

A. Paul Leff is a limited partner that is part of the group called First Football.

Q. Now, is Mr. Leff himself a limited partner?

A. Yes, he is.

Q. He is?

A. Well, I guess through First Football.

Q. Is First Football a limited partner?

A. Yes.

Q. And Mr. Leff has some ownership interest in First Football?

A. Yes.

Q. But Mr. Leff himself is not a limited partner in the Raiders' partnership; is he?

A. I don't know how to define that. I honestly don't.

Q. Mr. Leff has no role in the management of the Raiders?

A. Correct.
Q. And Mr. Leff has never had any role in the management of the Raiders?
A. Correct.
Q. Mr. Leff doesn't have an office in the building?
A. Correct.
Q. And he doesn't have a Raiders e-mail address?
A. Correct.
Q. And let me ask just briefly about your mother, Carol Davis.
Is she actively engaged in the management of the Raiders?
A. No.
Q. And she's never been activity engaged; has she?
A. Not actively, no. Behind the scenes? Yes.
Q. The folks that own various interest in the Raiders, that's changed over time; correct?
A. Sure.
Q. And in fact, when we met in

April, you had just completed an acquisition of two interests, additional interests, in the partners; correct?

A. Correct.

Q. That was Mr. Villanueva and Mr. Hartman?

A. Correct.

Q. And that's what brought you up to fifty-five percent?

A. Yes, it is.

Q. If the Brady acquisition goes through, is he buying a portion of your ownership interest?

A. Yeah, a portion of my interest through the RLP and the ADF entities.

Q. So to the extent that he acquires an interest in the Raiders, it will come from your interest in the Raiders?

A. Not just mine, some of it.

RLP is a partnership of people that once -- at one point in time one of the general partners sold out. The Raiders purchased that equity. Some of that went to First Football but some of it went to owners called RLP and that's -- the debt is owned by the team and the partners in it are limited partners that are in the Raiders.

Q. Is Mr. Brady acquiring an interest as part of a group or is it just him?

A. It's a partnership. He's in a partnership.

Q. So we'll just refer to it as the group.

What is the ownership percentage that the group is acquiring?

A. Ten percent.

Q. I was a little confused earlier about the valuation --

A. Attempting to acquire. They haven't voted yet.

Q. Is the two hundred twenty million the cost for the ten percent?

A. Yes.

Q. So it's not the valuation of

the whole team; correct?
A. No, you multiply that by ten, you've got 2.2 billion.
Q. How do you square that with the 7.8 billion?
A. That was a deal that I made two years ago with Mr. Brady and I also brief Mr. Brady brings added value to the organization and as somebody that is part of it, he brings a lot of things and expertise that would be an added value to the team.
Q. Let me ask you a little bit about your own taxes.
Mr. Delsen prepares your taxes?
A. Yes.
Q. And he's done that for quite some time; correct?
A. Yes.
Q. And you've never discussed your personal taxes with anyone at EY; have you?
A. No. I've never discussed anything with EY.

Q. Can you take a look at JX 300. It should be the first tab. This is your 2021 return.
Do you have that?
A. Yes.
Q. Mr. Davis, JX 300 is your personal return for 2021; correct?
A. I guess so, yeah.
Q. And if you look at the front cover, it says prepared by Delsen and Company.
Do you see that?
A. Yes.
Q. That Mr. Delsen's firm?
A. Yes, it is.
Q. Mr. Delsen is a CPA?
A. I believe so. He's also on the board of directors of the Raiders.
Q. Take a look, if you would -- this is an excerpt. Can I take a look at page two hundred eighty-nine. If you look in the center of the bottom of the page there's a number right in the middle?
A. Yes, sir.

Q. It has a heading Schedule E in the upper left-hand corner.
A. Okay.
Q. And if you look on the schedule, do you see right below your name in the upper left-hand corner is -- it says Las Vegas Basketball, LP partnership?
A. Yes.
Q. And that reflects your ownership interest in the Aces; correct?
A. Okay.
Q. Well, do you know?
A. Okay, okay. I guess so.
Q. And if you look further down the page towards the middle of the page, do you see there's a net income loss line? It's the number that has the $8,231,848.
A. Got you.
Q. And that's your share of the losses for the Aces in this year; correct?
A. Okay.

Q. Is that correct?
A. I believe so.
Q. So those are losses that go on your tax return as your share of the loss in Aces; correct?
A. Okay. Yes, sir.
Q. And --
A. I'm learning something.
Q. And take a look, if you would, at Exhibit 301, so it's the next one in the binder.
Do you see this is your return for 2022?
A. Okay. Yes, sir.
Q. And let's go to that same schedule, and this time it's on page one hundred twenty-one.
A. Yes, sir.
Q. And do you see to are this tax year your allocated share of the Aces losses --
A. I'm laughing because he did this in the deposition and I wasn't real happy about seeing $20 million of losses.

Q. So this year your share of the losses is $11,484,600; correct?
A. Correct.
Q. And those are two years when the Aces won the championship; right?
A. I don't know if -- no, I don't think we won it in '21. I think it's '22 and '23 is when we won it.
Q. But in 2022, the Aces lost money?
A. Yes.
Q. And your share of those losses is over $11 million?
A. Yes.
Q. Do you understand that, after the discovery of the misstatements, that the Raiders hired EY to audit the 2022 financial statements?
A. I'm not sure of that.
Q. Do you know one way or the other?
A. No, I don't.
Q. Have you learned since then that there's outstanding amounts that were billed to the Raiders for that

work?

A. Yes.

Q. And that hasn't been paid?

A. Yes.

Q. And you were not the one who made the decision to not pay EY; were you?

A. I don't believe I was, but I don't think I disagreed.

Q. And do you have any idea whether, when EY was asked to perform that work, whether the Raiders had agreed to pay EY?

A. No, I don't.

Q. You don't know one way or the other?

A. No, I don't.

Q. Do you know who made the decision not to pay EY?

A. No, I don't.

MR. FARINA: I don't have any further questions.

THE CHAIRPERSON: Any redirect?

MR. REED: No.

THE CHAIRPERSON: It sounds like we're done.

Mr. Davis, thank you very much.

Counsel, is your next witness here?

MR. REED: Our next witness is Mr. Gottlieb and I think I saw him in the hall.

THE CHAIRPERSON: Do you want a break? We'll take a quick break.

(Whereupon a break was taken)

THE CHAIRPERSON: Good afternoon, sir. I'm John DiBlasi. To my right is John Chandler, to my left is John Bickerman. Welcome.

And we can proceed with the direct examination.

MS. BROWN: Thank you.

M I C H A E L G O T T L I E B, having been deemed duly sworn, upon being examined, testified as follows:

DIRECT EXAMINATION BY
MS. BROWN:

Q. Good afternoon, Mr. Gottlieb.

A.   Good afternoon.
Q.   Nice to see you again. You and I met at your deposition last November, I think it was.
A.   Yes.
Q.   If I remember directly, you've moved on to more interesting things in your life now, so we appreciate you taking the time to come back and talk to us about all this again today.
You joined Arthur Young in January, 1987; right?
A.   Yes.
Q.   And that was straight out of college?
A.   Straight out of college.
Q.   In 1991, Arthur Young became Ernst and Young?
A.   That's correct.
Q.   So effectively, you worked at Ernst and Young from immediately after college until you retired in July of 2022; right?
A.   Correct.

Q. And so that means you've worked at Ernst and Young for more than thirty-five years?

A. Yes.

Q. And the entire time you worked there you were in the assurance group?

A. Yes.

Q. And the assurance group is the audit group?

A. The audit group, correct.

Q. From July 1, 1999 through your retirement you held the position of partner at Ernst and Young; right?

A. Right.

Q. And so it's fair to say that you're familiar with EY's customary audit practices?

A. Yes.

Q. And you retired on good terms?

A. Yes.

Q. You weren't terminated; right?

A. No. Hit the magic age.

Q. And during your thirty-five-year career at Ernst and Young, you made friends there; right?
A. Yes.
Q. And among those friends is Javier Garcia?
A. Yes.
Q. And he also worked on the Raiders audits with you?
A. Yes.
Q. Since I mentioned the Raiders audits, you personally worked on the Raiders audits for fifteen years, if I have it right? It's from 2005 to 2020.
A. That's correct.
Q. And you're aware that EY was providing audit services to the Raiders before 2005 when you started working on it?
A. Yes.
Q. Was one of the reasons that you were assigned to be an audit partner on the Raiders because you already had NFL experience?
A. Yes, at another NFL client.

Q. And was that client the Rams?
A. Yes.
Q. And do you know if that was something that was important to the Raiders at the time you were assigned?
A. I don't recall.
Q. Now, the entire time you worked on the Raiders audits, you were the coordinating partner; right?
A. Yes.
Q. What is a coordinating partner?
A. The coordinating partner is the partner in charge of the overall relationship and responsible for signing the audit opinion.
Q. And the coordinating partner, they oversee all of the services provided to the client; right?
A. Yes.
ARBITRATOR CHANDLER: I'm sorry, your voice drops a little bit and these guys are closer and we've got that monitor between us.
If you're not using that

monitor, if we could drop it down.
I'm sorry to interrupt.
MS. BROWN: My voice is not loud in general.
ARBITRATOR BICKERMAN: You're fine.
Q. So you were the coordinating partner for the Raiders for fifteen years?
A. Yes.
Q. And as the coordinating partner, that means that you oversaw the audits of both the financial statement audits and the conforming statement audits; right?
A. Yes.
Q. And you also, as the coordinating partner, you reviewed EY's work papers related to revenue and related to accounts receivable; right?
A. Yes.
Q. Now, I know you mentioned already that you were also a partner assigned to the Rams audit.
Were you the senior-most

partner who worked on the Rams audit?
A. Yes.
Q. And were you aware of how many other NFL teams EY audited other than the Raiders and Rams?
A. There were several NFL teams. I don't know the number in any given year.
Q. Do you know if it's in the range of about a dozen?
A. Probably less than a dozen.
Q. And do you recall that those teams included the New England Patriots, the Pittsburgh Steelers, Chicago Bears, New Orleans Saints, the Houston Texans, the New York Jets, and there could be others besides that, too?
A. Yes. At some point in time those were EY audit clients.
Q. And is it fair to say that to the extent if you're an auditor assigned to one of those teams, to the extent that you gain general knowledge from that audit, let's say for example

how the NFL conforming statements work, that you are then able to use that general knowledge if you're auditing another NFL team?

A. You have knowledge, yes, from one team to another team as far as general knowledge.

Q. And for something like the conforming statements, because that's something that's unique to the NFL, that used their own particular modified version of GAAP; right?

A. Right.

Q. It wasn't -- the conforming statements weren't prepared on a normal GAAP basis; were they?

A. No, they were more what we referred to as NFL GAAP.

Q. And the NFL GAAP means that, on the conforming statement, the NFL is specifically telling the teams how they want the statements to be presented?

A. Yes, that's why they're called conforming.

Q. Are you familiar with NFL

Ventures?
A. Yes.
Q. NFL Ventures, are you aware, is a partnership that each one of the thirty-two teams in the league is a member of?
A. Yes.
Q. And are you aware that the purpose of Ventures is to advertise, promote, and market the NFL and its member clubs?
A. Yes.
Q. And you're aware that every year each team in the league receives a K-1 from the partnership showing their team's allocated share of income, loss, income, and distributions; right?
A. Yes.
Q. And in addition to receiving that K-1 from Ventures, every team in the league also receives a remittance from Ventures that's reported out of the K-1; right?
A. Yes.
Q. And because all of the teams

are members of Ventures, they all receive information from Ventures; correct?

A. I believe so.

Q. And every team in the league, they receive information from Ventures about Ventures' cash flows, distributions, and things like that; is that right?

A. Yes.

Q. Now, you and other auditors at EY for various NFL teams have discussed NFL Ventures before; correct?

A. With the other auditors?

Q. Correct.

A. I am not aware of that. I don't recall those discussions.

Q. Could you please -- there's a binder in front of you of exhibits that I don't know if we'll get to all of them but we'll go through some of those today. Could you please turn to the one that's marked JX 720.

Do you see this is an e-mail that's attaching to call invite?

A. Yes.
Q. And do you see that you're one of the -- Mr. Gottlieb, do you see that you are among the people that are in the to section that received this e-mail?
A. Yes.
Q. And do you also see that Tyler Johns and Javier Garcia are also included in the to field?
A. Yes.
Q. And both of those gentlemen worked on the Raiders audits; right?
A. Yes.
Q. And do you see that this e-mail is also sent to Patrick Loftus?
A. Yes.
Q. He worked on the Rams audits; rights?
A. Yes.
Q. The subject line of this e-mail is NFL auditor's call agenda.
Do you see that?
A. I see that.
Q. This was a call amongst the

various EY personnel who worked on some of the NFL audit teams; right?
A. Yes.
Q. So let's turn the page and look at the agenda.
If you look, you see the first entry on the agenda lists the NFL teams that would be represented at the meeting and then their fiscal year-ends.
Do you see that?
A. Yes.
Q. Do you know why the Rams are not included there?
A. No.
Q. Now, the Patriots and the Raiders are both listed as using a 12/31 year-end.
Do you recall that the Patriots also had a calendar year-end?
A. I don't recall that.
Q. Let's go to the third Roman numeral. It's actually on the next page. We'll look at one of the particular items that was discussed at

this meeting.

You see it says, "NFL Ventures accounting"; right?

A. Yes.

Q. And then there's a question. "How did you see your respective club account for NFL Ventures, cost or equity method".

And that's a question that would have been discussed at this meeting in 2015 among the various NFL auditors; right?

A. Yes.

Q. And there's nothing wrong with the various EY teams that audit other NFL teams holding a call or having a meeting where they could all discuss together NFL Ventures' accounting issues? There's nothing wrong with that; right?

A. Right.

Q. Now, EY had a professional sports working group, too.

Do you remember that?

A. I don't quite remember that,

no.

Q. You weren't a member of that group?

A. I was not involved with that. I believe it may have been more a consulting-driven, not in the audit practice.

Q. So let's turn to the Raiders' audits.

You worked on you said fifteen years of audits but I want to focus on one year in particular, the 2020 financial statement audit.

Okay?

A. Okay.

Q. And you're aware that an accounting misstatement was discovered by the Raiders during that audit cycle; right?

A. Yes.

Q. And specifically the Raiders identified for EY that there was an error in the accounts receivable from Ventures; right?

A. Right.

Q. And by the time the Raiders identified this error, the accounts receivable balance was overstated by more than $214 million; right?
A. I would need to look at the schedule. I don't recall what the amount is.
Q. Do you recall that the reason that this error was taking place was because the Raiders were recognizing the January distribution from Ventures twice?
A. As of 2021, based on the whistleblower claims, it was identified that the accrual was recorded and not reversed.
Q. When you say the accrual was recorded and not reversed, do you mean it wasn't reversed -- let me unpack that a little bit.
We all know that the accrual was recorded in December of each year; correct?
A. Correct.
Q. When you say it was not

reversed, do you mean that it was not reversed in January?

A. It was not reversed when the remittance was recorded.

Q. So the accrual's booked in December of each year; right?

A. That's right.

Q. And that accrual that we're talking about, that's for the January payment; right?

A. That's right.

Q. And then in January, the next month, that accrual for the January payment's reversed; correct?

A. I don't believe it reversed. I thought that it was not reversed. That's where it was double-counting.

Q. You thought that the double-counting arose in January, not --

A. No, the double-counting arose in March when the remittance was received.

Q. Was it your understanding that -- when the Raiders received the cash distribution in January and they debited cash, what did they credit in January?

A. The receivable.

Q. And when they credited the receivable in January, it reverses the receivable that was booked in December?

A. I'm sorry, I was focused on the revenue. You stated receivable. Yes, so the receivable was collected in January.

Q. I apologize. My question was probably not clear. Let me just go back.

So the receivable that is booked in December for the receivable is reversed in January?

A. Yes, it's collected in January.

Q. But then in March, when the Raiders get the remittance, that receivable is booked again?

A. Yes.

Q. For the whole year but it also includes aging; right?

A. Yes.

Q. And because that January distribution is included in the remittance that's recorded at the end of every NFL season, that's where this double-booking error comes up; is that right?

A. Yes.

Q. And you're aware that when we talk about there being two Januarys booked every year and that's a double-booking, what we're actually talking about is there's two different Januarys being booked every year; correct?

A. Can you expand on that?

Q. Sure.

When I say every year, I'm focusing on the calendar year which is the Raiders' financial statement year.

A. Okay.

Q. So in March of every year, the Raiders book the season remittance, and that includes the January from the NFL season; right?

A. That includes the prior year's NFL season.
Q. Which would be the January -- this is where it does get tricky. That would include January of that calendar year?
A. So let's use actual years, just so we're clear.
If the Raiders are booking the remittance as of March 31, 2015, that relates to the 2014 season.
Q. And so if the Raiders -- let's take that year 2015, they book the remittance in March and that includes January, 2015?
A. That's right.
Q. Then in 2015, in December, they book another amount of revenue but that's from January, 2016 that we put into December, 2015; correct?
A. What we were led to believe by the Raiders -- now we're mingling what our understanding was prior to 2020 versus what happened in 2020.
So prior to 2020, one of our

core understandings was the accrual that was being recorded in December related to a different stream of revenue than what the remittance was that they received the following March.

Q. Right.

We're going to go into a lot of detail about a misstatement was discovered. But right now I'm just focusing on what this mistake was so we can kind of at least have that as our starting point. And the mistake, the error that the Raiders discovered and alerted EY to was that there were two January distributions being booked into every single year on the Raiders' financial statements and one was booked at the end of March because it's included in the remittance?

A. Yes.

Q. And one is booked in December because they accrue the January distribution from the following year into December?

A. Yes.

Q. And so they ended up essentially double-counting the Ventures revenue every year because they had two January distributions being reported in every year?

A. Yes.

Q. And that was discovered in April, 2021.

Do you remember that?

A. Yes.

Q. And so then as part of your 2020 audit, EY engaged in further audit procedures to understand that accounting misstatement and understand how it impacted the financial statements; fair?

A. Yes.

Q. Are you aware that Travis Scott, who worked in the Raiders finance group, that he's the person that discovered this accounting error?

A. Yes.

Q. And in addressing the accounting misstatement in 2021, did you come to learn that one of the reasons that Mr. Scott discovered this error is because he previously worked at the Buffalo Bills and he had only shortly joined the Raiders prior to this, and because Ventures is something that every team in the league does, Mr. Scott almost immediately zeroed in on the issue with Ventures and said within months this number doesn't look right.

Do you remember learning that throughout the investigation in 2021?

A. Yes, I'm aware that Travis came from the Buffalo Bills and that he had experience in dealing with another NFL team.

Q. And were you aware that it was specifically his experience with Ventures and knowing how Ventures accounting works and how the distributions work for Ventures which was consistent among the teams that that enabled him to identify the error on the Raiders' financial statements?

A. I can't comment on how he identified the error.

Q. Now, you were the senior-most partner on the Rams audits; right?
A. Yes.
Q. And the Rams were a member of Ventures; right?
A. Yes.
Q. And the Rams received a remittance every year from Ventures; right?
A. Yes.
Q. And as part of auditing the Rams' financial statements, you would have gained knowledge about how the Ventures accounting work and was reported on the Rams' financial statements; correct?
A. Yes.
Q. And you would have tested the Rams' accounts receivable balance as part of that audit; right?
A. Yes.
Q. And you would have tested the Rams' revenue reported from Ventures as part of that audit; right?
A. Yes.

Q. And it's true though that no one from EY for a period of fourteen years in auditing the Raiders' financial statements ever identified the double-booking of the Ventures revenue that was taking place at the Raiders; right?

A. Yes. Based on what management represented, we were following the process that they had represented to us over those years.

Q. As the coordinating partner for the Raiders so the senior-most partner working on the Raiders for fifteen years and also the senior-most partner working on the Rams, you were reviewing work papers from both of those teams; right?

A. Yes.

Q. And in reviewing those work papers, you were able to use whatever general knowledge you had that would be applicable to both of those teams to ensure that the accounting was done correctly; right?

A. Yes.

Q. But yet for fourteen years, you, in reviewing those work papers, never identified that the Raiders were overstating the accounts receivable and revenue from Ventures; right?

A. The Raiders were on an income tax basis of accounting and they -- their policy in accounting for the Ventures' remittance was different than what the Rams' policy was because they were on an income tax basis of accounting, so there's a much different basis of accounting. The Rams were on a GAAP basis, so there's not a comparison that can be made.

Q. I can or your counsel can ask you why, but first I want an answer to my question.

Over fourteen years you never identified that there was a misstatement on the Raiders' financial statements for booking the January distribution twice every year?

A. Yes.

Q. Yes, you never identified
that?
A. Yes, we never identified that
until 2020.
Q. Well, until 2021 when the
Raiders brought it to your attention?
A. The 2020 audit.
Q. Now, as the coordinating
partner for the Raiders, you're aware
that EY issued an unqualified audit
opinion for each year from 2006 to
2019; right?
A. Yes.
Q. And I wouldn't to pull up --
it's in your binder. It's
Exhibit 2278.
Just to orient us, that
document is the Oakland Raiders
financial statement for the year ending
December 31, 2006.
Do you see that?
A. Yes.
Q. And if you turn the page,
you'll see there's a report of
independent auditors; right?

A. Yes.
Q. And see here where the report of independent auditors, it's addressed to the partners of the Raiders; right?
A. Yes.
Q. And that's because EY understood that the partners of the Raiders were among the users of the Raiders' financial statements; right?
A. Yes, the limited partners.
Q. And EY also understood that the partners of the Raiders would be relying upon this audit report; right?
A. Right.
Q. And EY's opinion was that the Raiders' December 31, 2006 financial statements were fairly stated in all material respects; right?
A. Yes.
Q. And that was EY's opinion each year from 2006 through 2019; right?
A. Yes. Each year we issued an audit opinion over that year's financial statements, a single year

presentation, and we issued an unqualified opinion.

Q. And each year from 2006 to 2019 that that opinion was issued, that turned out to be incorrect; right?

A. Based on the whistleblower allegations and what we found out in 2020, the prior year financial statements were incorrect.

Q. And they weren't only incorrect, they were not fairly stated in all material respects as opined by EY during that fourteen-year period; right?

A. When we looked back at it, after what we saw in 2020, that is the case. As of the date we issued the financial statements, we did not know that was the case. We felt they were fairly stated in accordance with income tax basis accounting.

Q. And the reason why the financial statements were actually not fairly stated in all material respects is because Ventures' distributions were

being double-booked for January; right?
A. Yes.
Q. I think you mentioned this already, but during the fifteen years you worked on the Raiders' audits, the Raiders' financial statements were prepared on a federal income tax basis of accounting?
A. Yes.
Q. So therefore it's important to have EY's tax team involved in the audit; right?
A. Yes.
Q. And in fact, EY's tax group were just part of the audit team each year; right?
A. That's correct.
Q. And the tax personnel were fully integrated into the audit team; right?
A. They were integrated as the tax specialist within the audit team. They were not auditors and they were not performing audit functions.
Q. But from your perspective,

they were fully integrated into the audit team?

A. Yes, as a tax specialist.

Q. And revenue recognition was one of the things that the audit and tax teams would discuss throughout the audit; right?

A. Yes.

Q. And members of the tax team who worked on the audit were assisting the audit team to ensure that the Raiders' accounting was in accordance with the federal income tax basis of accounting; right?

A. Yes.

Q. Now, in order to do that, EY A's tax -- the tax people assigned to the team, they reviewed whatever was necessary to validate that the Raiders' financial statements were properly reported on a federal income tax basis of accounting; right?

A. I can't comment on what the tax team did, but that's what we as the audit team used them as specialists to be able to evaluate the tax implications of the audit.

Q. Well, do you believe that the tax team reviewed what they felt was necessary in order to validate that the financial statements were properly reported on an income tax basis?

A. I can't speak for them, but I'm sure that they did because they are professionals and you can ask them when they are meeting with you.

Q. Let me introduce another document. If you want to flip to ninety-five. I think it's in your binder.

What is this document?

A. This is the 2014 team planning event that is with EY professionals on the engagement.

Q. And a team planning event is when the entire team, both audit and tax, from partner to staff meet and discuss the engagement; right?

A. Yes.

Q. And you would have

participated in this meeting in 2015; right?

A. Yes.

Q. So let's turn to slide ten.

Do you see that slide is titled Significant Accounting and Auditing Issues?

A. Yes.

Q. And if you look right underneath the title, it says, "we have identified the following significant accounting and auditing issues as part of your planning", and the first bullet point is, "AR, the most significant receivable balances in 2013 were from the NFL, national television revenue and NFL Ventures, sponsors, amounts due from partners, player, and employee outstanding loans".

Now, when EY identifies something as a significant accounting and auditing issue, that means that it's significant to the audit and EY puts more audit effort there; right?

A. Yes.

Q. And this indicates that EY considered accounts receivable from the NFL to be significant to its audits; right?

A. Yes.

Q. And it also indicates that EY will spend additional audit effort looking at receivable balances from the NFL; right?

A. Yes.

Q. And for purposes of performing an audit, a significant account is one, from an auditor's point of view, that individually or collectively could have a material effect on the financial statements; right?

A. Yes.

Q. And accounts receivable from the NFL was a significant account by that standard for the Raiders office; right?

A. Yes.

Q. And revenue from the NFL was also designated as a significant

account for the Raiders' audits; right?
A. Yes.
Q. And for accounts that are designated by EY to be significant, EY considered it to be important to understand the accounting methodologies used for those particular accounts; right?
A. Yes, each year.
Q. Let's look at Exhibit 94. It should be the first one in your binder.
So this looks like an audit planning template.
What is an audit planning template?
A. It's a template that is used when we plan the audit and it goes through the various aspects of the audit, various accounts, and various risk assessments that we would make in connection with an audit.
Q. And this particular planning template is for the December 31, 2014 financial statement audit; right?
A. Yes.

Q. And this is something you would have -- that you would reviewed for purposes of that audit?

A. Yes.

Q. And a template -- was an audit planning template something that was prepared for each audit cycle?

A. Yes.

Q. So let's start at the page ending with the Bates number 263 and it's -- on the document there is a section 3.1 that states "nature of the entity and its environment".

Do you see that?

A. I do.

Q. And then there's a table and towards the middle of the page it says, "limited partnership" and it's underlined.

Do you see that?

A. Yes.

Q. And it states, "the partnership's corporate offices are located in Alameda, California, see PY ownership report".

Is PY prior year?
A. Yes.
Q. "See prior year ownership report for partnership ownership retained as the related parties listing at A08.09. There have been no ownership changes in the current year".
So working at the Raiders' audits, you were aware that the Raiders was a partnership?
A. Yes.
Q. And you are aware of who each of the partners in that partnership was; right?
A. I was aware of the limited partners' names, but I was not aware of the individuals below those partners, below those entities.
Q. Were you aware that EY performed agreed-upon procedures on the ownership report each year?
A. Yes, and that's where I became aware of the name of what each of the limited partnerships were or entities.

Q. And in fact, the document that's referenced here where it says, "see PY ownership report for partnership ownership" and it references A08.09, we can just look at that very quickly. It's in your binder at Exhibit 829.

So what's been marked as JX 829 I'll represent to you is what's being referred to in your template as A08.09. That's the ownership report.

When you look here, do you see on this report that you not only have on the left-hand column all of the partners in the Raiders, but it also identifies who owns an interest in each and every one of those partners?

A. Yes.

Q. And this was a schedule that EY performed agreed-upon procedures on for each year; right?

A. That's right.

Q. And the NFL required that work to be performed for its teams; correct?

A. Yes.
Q. They required the ownership reports to be prepared and submitted to the NFL and they required that those reports be reviewed by third parties; right?
A. That's right.
Q. And so when EY was performing that review and looking at the ownership, they were able to identify not who the partners in the Raiders were but who all the beneficial owners of the Raiders were; correct?
A. Yes.
Q. And one of the things that EY would look for each year was to see if there was any changes in ownership; right?
A. Yes.
Q. Let's go back to the template. It's again the first document in your binder, Exhibit 94. If you could turn to the page with the Bates number ending 264.
Do you see on the left-hand

side where it says, "financial reporting framework"?

A. Yes.

Q. So the Raiders' financial statements -- I think we've already said this -- they're prepared on a federal income tax basis of accounting; right?

A. Yes.

Q. Was that the case for the entire fifteen-year period that you worked on the Raiders' audits?

A. Yes.

Q. And I know we've mentioned this before as well, but the Raiders also prepared conforming statements each year?

A. Yes.

Q. And I know we touched on this, but those conforming statements, they're not GAAP, they're prepared on what we call an NFL GAAP or modified GAAP basis?

A. That's right.

Q. Was that the case for the

entire fifteen-year period that you worked on the Raiders' audits?

A. Yes, I believe so.

Q. And do you see in the text where it says "financial reporting framework", it talks about the conforming statements and it's about three lines up from the bottom.

Do you see where it says, "the NFL is the sole user of these conforming statements".

Do you see that?

A. Yes.

Q. And it goes on. It says, "the conforming statements are used by the NFL as the basis of the supplemental revenue sharing, and the key metrics focused on by the NFL are the reported revenues"; right?

A. Right.

Q. And when you were working on the conforming statement audits each year, you knew that the NFL was the sole user of those statements; right?

A. Yes.

Q. And you also knew that the Raiders didn't use the conforming statements for any part of their own business; correct?
A. Correct.
Q. So let's go to the page ending with the Bates number 273.
Here towards the bottom of the page, it's section 4.3, fraud risk factors.
Do you see that?
A. I do.
Q. And then at the very bottom, fraud risk factors involvement management and then it says incentives/pressures. It says, "the general partner's personal net worth is impacted by the entities financial performance due to significant personal financial interest in the entity".
Now, here the general partner is referring to Mark Davis; right?
A. Yes.
Q. And in auditing the Raiders' financial statements, you knew that Mr.

Davis' personal net worth was going to be personally impacted by those financial statements; right?

A. Yes.

Q. And if you turn the page and you can see that section goes on and there's a paragraph that says, "Mark Davis, October, 2011 through current, has served as the managing general partner", and it lists some of the various entities that he holds an ownership interest in; right?

A. Yes.

Q. And --

THE CHAIRPERSON: Folks, do you want to take five minutes while we work this out?

MS. BROWN: Sure.

(Whereupon a break was taken)

THE CHAIRPERSON: Let's go back on the record, and we can continue.

Q. Welcome back.

I'd like to pick up where we left off which is at Exhibit 94, the page ending with the Bates number 274. And I believe we were looking at the language where it says, "Mark Davis, October, 2011 through current has served as the managing general partner and has a significant financial interest in the partnership through the following entities", and it then identifies four different entities; right?

A. Right.

Q. And so when you were working on the audits of the Raiders' financial statements, you were aware that Mark Davis served as the general partner and that he held his interest in the Raiders through various different entities; correct?

A. Correct.

Q. And you not only knew that he had this interest in the entities, you knew precisely which entities those were and precisely the amount of ownership interest he had in each of those entities; right?

A. Yes.
Q. And then if you look right below those entities, it states, "however, the managing general partner does not have significant involvement in the day-to-day accounting and reporting, other than from a preview perspective".
Now, you and your audit team's understanding from working with the Raiders and working with the team was that Mark Davis was not significantly involved in the accounting issues; right?
A. Yes.
Q. Now, if you could turn to the page with the Bates number ending 276, please.
Do you see in the middle of the page, section 5.2, risks of material misstatement due to fraud?
A. Yes.
Q. And do you see towards the bottom of the page it says revenue recognition?

A. Yes.
Q. So under revenue recognition, it says, "for 2014, approximately eighty percent of revenue is generated from revenue sharing and sources from the NFL. As this amount is fixed as provided by the NFL, we note there is no opportunity to manipulate the revenue recognized".
Now, eighty percent is a significant amount of revenue; right?
A. Yes.
Q. And given the significance of the NFL-generated revenue to the Raiders' financial statements, it was important for EY to gain an understanding of that revenue; right?
A. Yes.
Q. And it was important for EY to understand the methodology for how the Raiders were recording the revenue that they received from the NFL; right?
A. Right.
Q. And EY took steps every year in its audit to document its

understanding of the Raiders' methodology for booking Ventures revenue; right?

A. Yes, each year.

Q. And that's something that under GAAS you would be required to do, to document your understanding; correct?

A. Yes.

Q. So I'd like you to look at I think this is towards the back of your binder. We have an exhibit that's called JX Comp 1. What this is is this is a compilation exhibit that I put together to help us frankly just look at multiple years at the same time. So I will represent to you --

MS. VAN WINKLE: Deb, we're going to object to the use of this. It wasn't disclosed as a compilation exhibit. I haven't had an opportunity to review it. It wasn't on the exhibit list.

MS. BROWN: Every single document in here is on the exhibit list. It's a compilation of the work papers --

MS. VAN WINKLE: You didn't disclose any compilation exhibits.

MS. BROWN: I'll let the panel rule on the objection.

MS. VAN WINKLE: We haven't had an opportunity to prepare witnesses and prep with them on a compilation exhibit.

THE CHAIRPERSON: How did you provide it, just so I know?

MS. BROWN: If you look at the exhibit, on every page it has the JX number where I've taken it from. If counsel is insisting, I can pull up every single JX number and do it that way. I was trying to save time and make it easier for all of us.

MS. VAN WINKLE: I think that would be clearer for the record, yes, that we use each one of them individually and have them individually in the record.

THE CHAIRPERSON: Counsel, what are you saying? What do you want to do with it? What's your objection?

MS. VAN WINKLE: I don't want the witness to be shown one complete document. I would like her to pull up each individual JX document, and I don't believe that these considered as one.

MS. BROWN: I just want to be clear, this is not a demonstrative. Of course we agreed to disclose demonstratives ahead of time so that we can look at them. These are all exhibits on the exhibit list identified by exact where they came from just to help us move this process along to not pull up five different audit files.

THE CHAIRPERSON: I'm going to overrule the objection but certainly we'll give you time to review the exhibit and plenty of time to prepare with respect to your examination of the witness.

MS. VAN WINKLE: We'd also ask that in the future any compilation exhibits be disclosed to us.

THE CHAIRPERSON: I would direct the claimant to do that.

MS. BROWN: I will note in this binder there is one, two, and three, so you have all of those compilation exhibits here. If we intend to use more, we will disclose.

Q. Let me explain to you, Mr. Gottlieb, what this is.

What we've done is we've gone through each of the work papers and this is the work paper that's related to Ventures' account receivable for each year so that you can see them readily in one spot. But let's start with 2014.

MS. VAN WINKLE: Deb, this is not the complete JX 00099, it's not the complete --

MS. BROWN: Correct, this is

just the work paper for Ventures' accounts receivable. This is not the entire document, this is just the work paper for Ventures' accounts receivable, that is correct. And this is the work paper for Ventures' accounts receivable each year from 2014 through 2020.

Q. So Mr. Gottlieb, let's start with the first year, 2014.

And I want to focus on note one because, from what I can tell in reviewing your work papers, this appears to be the note where EY is describing its understanding that it's required to document every year of how Ventures revenue works. I know it's a long note and I normally wouldn't read something this long, but given how important it is to this arbitration, I'm going to go ahead and read it into the record.

So note one states, "this account relates to receivable from the

NFL, as communicated by the NFL, related to amounts owed to the Raiders on different revenue streams related to international TV revenues. Amounts booked into this receivable account represent subscription revenue from these NFL Enterprises/Ventures. The Oakland Raiders, the Raiders, hold a 3.1171788 percent minority nonmarketable limited partner, LP, interest in NFL Ventures, LP. The limited partnership was organized on July 7, 1994, to advertise, promote, and market the National Football League, NFL, and its members clubs. Every year each team receives a Schedule K-1 from the partnership showing their team's allocated share of income, loss, distributions, and contribution. In addition, each team receives a remittance royalty that is reported outside of the Schedule K-1. That information is reported on a memo from the NFL. NFL Ventures reports remittance royalties paid to each team as an expense on their books. NFL Ventures, LP is in contract with each team to pay out the remittance royalty which are recorded as revenues by the clubs".

Now, other than this note which I've identified for you, are you aware of anywhere else in EY's work papers where you have described your understanding of Ventures revenue and how it works?

A. I would need to go back to the work papers. As you mentioned, this was a number of years and it was a number of years ago, so I can't comment if it's included elsewhere in the work papers.

Q. But sitting here without having all the work papers in front of you, can you remember any other place?

A. It's documented here with what you described. I can't comment whether it's documented elsewhere within the work papers.

Q. Based on your memory, you're

not able to tell me any other place that it is sitting here today?

A. I can't respond to the question.

Q. Now, the reason I wanted you to have all of these work papers, if you flip to 2015 and you look at note one -- and I realize this would be a difficult exercise for you to do on the spot. But if you look at note one, you see the same language. And then if you -- let me stop there in 2015. We have gone through and compared your note one every year for each of these years and there is something different in 2015. In 2015 there's one change, and that is the language is added that says -- you can see on the printout that you have, it starts on the second row down, the second sentence, "typically, distributions for a given season are made in the subsequent season".

So that language is new in 2015.

And then what we see, if you

look at 2016, you see note one with the same language. The only thing that changes are at the end you have different numbers that relate to that year. You can flip to the next page, 2017, note one, the same language describing EY's understanding of Ventures revenue.

You can flip to the next one, 2018, note one, the exact same language describing EY's understanding of Ventures revenue for that year.

Flip to 2019, again you see note one, it's the exact same language describing EY's understanding of NFL Ventures for that year.

And I'll stop there because we all know in 2020 EY obtains a different understandings of Ventures revenue.

Now, in 2015, when the language was added that says, "typically, distributions for a given season are made in a subsequent season" and then that language is copied in every work paper that we see after that, where did that understanding come from where it says, "typically, distributions for a given season are made in the subsequent season"?

A. Well, each year we would meet with management as we had discussed and we understand if there's any changes as it relates to a variety of accounting areas, including for accounting for Ventures. Although each of the years you assert are the same. We went through a process to validate that there weren't any changes. That's the process we go through. Quite honestly, I can't tell you what happened in 2015, where that was added, it's quite a long time ago, but that's the process that we go to assess the accounting process, assess our risk, and develop our procedures.

Q. Well, that particular understanding which is noted in your work papers from 2015 on, that typically distributions for a given

season are made in the subsequent
season, is that something that you were
relying upon in terms of determining
how you would prepare your audit
procedures?
     A.   This is provided to us by
management of the Raiders and it's
information they provide and then we
develop our audit procedures based on
how they develop their processes. So
yes, we develop our audit procedures
accordingly and our strategies
accordingly.
     Q.   Is this information that was
added in 2015 about the distribution
for a given season being made in a
subsequent season, was that something
that was relevant? Did it matter at
all to your audit procedures?
     A.   Certainly. It wouldn't be
here if it didn't matter.
     Q.   To the extent that EY relies
on information you received from
management and they rely on that to
perform their audit procedures or

design their audit procedures, you're aware that there is an audit documentation requirement under GAAS to document not just whatever information it is you're relying on but who told you that, when they told you, and to put that in the work papers along with the assertion you're relying upon; right?
A. Yeah, there's various requirements under GAAS and GAAS is something that is prescriptive to where it's a guideline as to what you follow, and we were certainly following GAAS and our audits were conducted in accordance with GAAS.
Q. Let's pull up Exhibit 3217. You see this is AU-C Section 230?
A. Yes.
Q. And the AU-C sections, these are part of GAAS, the GAAS being generally-accepted auditing standards; right?
A. Yes.
Q. And this is titled Audit

Documentation; right?

A. Yes.

Q. And this section of GAAS addresses the auditor's responsibility to prepare audit documentation for an audit of financial statements; right?

A. Yes.

Q. And if you could turn to page five and we could look at Section 230.11 at the top of the page, under general principles and responsibilities it says, "the auditor should document discussions of significant findings or issues with management, those charged with governance and others, including the nature of the significant finding or issues discussed, and when and with whom those discussions took place"; right?

A. Yes.

Q. Now, to the extent that EY was relying upon this understanding that distributions from Ventures for a given season are typically made in a subsequent season, did you note anywhere in your work papers when and with whom those discussions with Raiders management took place?

A. Based on looking at the work paper that we have here, we've discussed with management as to what their processes are and procedures and we documented that within our note here.

Q. Who within management did you have that discussion with?

A. I don't know. I did not have that discussion. It would have been somebody from the team that had that discussion, so I can't answer that question.

Q. And when did that discussion take place?

A. During the planning for each audit. We updated your understanding of any changes that had taken place within the company and with its accounts, and that's a process that we do each and every year.

Q. Well, we don't see that note

in the 2014 work papers. And when we see that note in the 2015 work papers, we don't see who you talked to or when that discussion took place; right?

A. I didn't talk to somebody. It was somebody on the team, so I can't comment on the discussion I may have had with management, but certainly there was a discussion with management to update the note.

Q. And given that that note is essentially copied and pasted each year into the work paper the following year and again and again and again, we have no way of knowing if there was a discussion held the next year, with whom and when, and if there was discussion held the next year, with whom and when, we have no way to know that; do we?

A. We know we have discussions with management and we go through that process each year and we document the results of those discussion here.

Q. The reason the documentation

requires you to say when and with whom the discussions take place is so that there's actually a record of the discussion. All we have is a note in your work papers that say typically distributions for a given season are made in the subsequent season without having any understanding where EY gets that understanding from; right?

A. Well, we have to talk with managed because we put it in the work papers and those are based on discussions with management.

Q. But who in Raiders' manage?

A. I can't comment on that because I didn't have that discussion.

Q. Now, there's one time I do want to point out to you -- if you look at JX 415, JX 415 is the revenue work papers for the December 31, 2017 financial statement audit. Here because in this work paper there are multiple tabs that relate to different revenue accounts. The one we're revenue account that we are interested in is the account for Ventures. And that one is at tab 001.4.

So this is the work paper -- it actually says on it NFL Properties income journal entry detail.

Are you with me?

A. Yes.

Q. There are page numbers on the bottom. It's page twelve of forty-one.

Do you see that? Sir, are you on --

A. Yes.

Q. I want just to make sure.

A. I said I was, yes.

MR. FARINA: Would you mind putting it up on the screen? Thank you.

Q. Now, this is the work paper that has the details on it for EY's audit of Ventures revenue; correct?

A. Yes.

Q. For the 2017 audit; right?

A. Yes.

Q. And here, if you look at tick mark A, do you see at the end, the last sentence where it says, "per inquiry of Matt Andrus, the total remittance is split up in multiple payments to be received throughout the following year".

Do you see that?

A. Yes.

Q. So on this work paper, we actually have a note of who EY spoke to to get its understanding that Ventures distributions were not being made in the current season but were being made in the following year; right?

A. Yes.

Q. And the person who apparently had that discussion with EY was not Ed Villanueva, it was Matt Andrus; right?

A. Yes.

Q. Now, the timing of Ventures distributions and what season those distributions related to were significant issues for your audit; right?

A. Yes.

Q. And you knew that, just based

on auditing standards based on GAAS, that to the extent that EY had an understanding of the timing of those distributions and what they related to, you knew that you could not rely one hundred percent on assertions from Raiders management for that understanding; right?

A. Yes.

Q. And so the extent management made representations to EY about the timing of Ventures distributions and their belief that the distributions were being made by Ventures the season after the remittance, EY was aware that, based on generally-accepted auditing standards, that it needed to obtain additional audit evidence to test those assertions; right?

A. Yes. Management made the assertion, thus it's included in the work papers as it relates to the way they account for the Ventures distributions, and then we test it, the Ventures distributions, to validate the assertion that management made.

Q. So I may have just -- maybe you can unpack that for me a little bit.

What were the audit procedures EY engaged in to validate the assertion made to you that Ventures payments were being made the season after the remittance?

A. Well, the information that management provided us provided distributions but it didn't state what remittance that that distribution related to, so we looked at the cash flow and we looked at the -- we vouched to cash receipts to third party validation to validate the collection of the remittance receivable.

Q. I understand you looked at cash flow, meaning you looked to see that Ventures was -- they were making payments, you looked to see the payments went in the Raiders' bank account.

But how does just looking to

see that payments are being made and going into a bank account, how does that tell you that those payments are being made because they're paying off the remittance, a prior remittance that's already been booked?

A. We would look at the receivable balance and we were validating the existence as well as the collectability of the receivable balance and the cash receipt that we tested were in excess of that receivable balance.

Q. So all I'm hearing is that you're looking to see that Ventures -- they're making cash payments to the Raiders and you're auditing the Raiders and you can see that Ventures are making cash payments, they're being deposited into the bank account. You can actually pull up the Bank of America bank statements and you can see that all the payments are being made; right?

A. Yes.

Q. But what procedure do you have that tells you that, as those payments are being made, they relate to a remittance the Raiders already booked?

A. We were not given information by the Raiders to be able to perform that procedure.

Q. But that was something that you needed to know to complete your audit. You needed to have an understanding of what the cash payments related to and how the cash payments for Ventures worked; right?

A. What we needed to know is for each year's audit, there's a receivable balance and we could see that that receivable balance was collected through cash receipts.

Q. Is it your assertion that, by looking to see that cash comes into a bank account, that that is a sufficient audit procedure for EY to undertake to confirm the assertion made by Raiders management that distributions from

Ventures, when we get those distributions, they relate to the prior season, not to the current season.

Is your assertion that, just by looking to see that cash is being paid, you have now validated management, Raiders management's belief, that those cash payments relate to the prior season?

A. The cash payments that were being received by the Raiders were in excess of the receivable balance. We are testing the receivable balance and that receivable balance was fully collected.

Q. So let's go back to the exhibit towards the back that was the JX Comp 1.

You can pick any year really because I'm just going to look at note one. They're primarily the same. You can look at 2014 or 2015. But in note one where there is a description of EY's understanding of Ventures revenue, we can see that there's a description of the K-1 revenue from Ventures and the remittance revenue from Ventures. I've already read the note so I won't go through it again. But you can see that both of those revenue streams are described in that note; right?

A. Yes.

Q. There's no description in note one for a revenue stream being provided from Ventures for January accrual or January distribution; right?

A. Well, it does state that, related to amounts load to the Raiders on different revenue streams related to a variety of revenues.

Q. Correct.

It says there are a variety of revenue streams, and then we have a description of the K-1. You say they get -- the description that EY has of the revenue from Ventures is that Raiders and the member clubs get a K-1 from the partnership showing the team's allocated share of income, loss, distributions, and contribution. So we

have the K-1 revenue.
A. Yes.
Q. And then we have a separate revenue stream. We have the remittance that's reported outside of the K-1. And then it goes on to explain that the remittance are royalties paid to each team, et cetera.
I only see here EY's understanding of two revenue streams and how these revenue streams work. I don't see in your note one any description of a separate revenue stream for the January accrual and why that would be on the face of EY's work paper a separate revenue stream coming in from Ventures to be recorded by the Raiders.
A. Yeah, I don't see anything specifically saying accrual in this note.
Q. Well, if EY had undertaken any steps to gain an understanding of a separate revenue stream for the January distribution, like having any basis to

understand why there would be separate revenue just recorded for the January distribution, that understanding of that revenue methodology would be documented in your work papers; right?
A. Yes.
Q. And do you know anywhere in your work papers where there is any documentation of why the Raiders would have a separate revenue stream just for the January distribution?
A. I can't comment throughout the whole work papers. It's not in this note. I can't comment without looking at the work papers if it's documented somewhere else in the work papers.
Q. Let's go to JX 103.
So this is EY's worksheet for revenue from the 2014 audit. And of course in worksheet had tabs relating to different revenue accounts. I would like to focus on the Ventures revenue account. And you see of that at U01.6. If you're looking at the numbers at the

bottom of the paper copy, it's page eleven of fifteen.

So U01.6 -- sorry, I think I gave you the wrong page. It's twelve of fifteen. U01.6. It says NFL Enterprise at the top. That's another way Ventures has been referred to.

So here we can see the audit procedures that EY applied to the revenue being recorded by the Raiders for Ventures; correct?

A. Yes.

Q. And this is for the 2014 audit cycle; right?

A. Yes.

Q. And you would have reviewed this work paper in connection with the 2014 audit cycle; right?

A. Yes.

Q. Now, you can see on this work paper that there are four amounts recorded to Ventures for revenue? We have the remittance, we have the K-1, and then we have two other rows that get added up to equal the January accrual; right?

A. Yes.

Q. The third and fourth are the January distribution amounts.

So each year that EY audited the Ventures revenue account it knew the Raiders were recording revenue from both the remittance and the January accrual; right?

A. Yes.

Q. That wasn't hidden from EY that the Raiders were doing that. The Raiders -- you knew the Raiders every year were booking revenue from the remittance and the K-1 and the January accrual; correct?

A. Yes.

Q. And in fact, not only were the Raiders booking the remittance and the January accrual, you can see that they're booking those amounts in the same account. They're not hiding the January accrual in some other revenue account that we see on some other tab in this worksheet, it's literally in the same Ventures account that we see for the remittance; right?

A. Yes.

Q. Now, when we looked at EY's description of its understanding of the revenue streams from Ventures, we only saw the description for why there would be the remittance and why there would be the K-1, but we didn't see any description for why the Raiders would have a separate revenue stream for the January payments; right?

A. In the note that we just looked at on the receivable worksheet, there was nothing discussed about the accrual.

Q. And EY knew that the remittance was recorded by the Raiders one time each year at the end of the NFL season; right?

A. Yes.

Q. And that particular method of recording that revenue one time per year in this case at least has been referred to as the lag method; right?

A. I'm not sure that you and I have the same understanding of the lag method, as we discussed before, so I'd prefer to talk about dates as opposed to whatever the lag method is, quote.

Q. We can put lag method aside. That's fine.

But EY knew the Raiders were recording it, the revenue, once a year at the end of the NFL season; right?

A. They were recording it in connection with the NFL's year-end, NFL Ventures' year-end, which is 3/31, and NFL Ventures would communicate such that they would report it in either April or May of that particular year, one time a year, yes.

Q. And actually, to be precise, they would get the communication from the NFL in the April time frame but they would book the entry as of March 31 each year; correct?

A. I don't know exactly the date that they booked it, but they booked it based on communication from the NFL.

Q. And that's the remittance we're talking about?

A. Yes.

Q. And the remittance that came from the NFL at the end of the NFL season covered the revenue reported by Ventures for that entire season; right?

A. The remittance covered the revenue for a particular NFL season and the NFL season goes from April 1 of a given year to March 31 of the following year.

Q. And you started working on the Raiders' audits in 2005; right?

A. That's right.

Q. And at any point in time prior to 2020 are you aware of the Raiders not using that method? I don't want to call it lag but the methodology being they would book the revenue from the remittance once a year at the end of the NFL season?

A. Yeah, my recollection is that they did not change, but that's a lot of years you're asking, so it's quite a long time ago.

Q. And if we look at the audit support that EY has to support the recording of that revenue by the Raiders, we can see that they get an e-mail from Brad Firestone at the NFL confirming that amount. I think there's a reference to it in your work papers and we can also pull it up if you want. It's a JX 104.

So JX 104, you see at the top there's a note and the note at the top, that's something that would have been added by EY; right?

A. That's right.

Q. And the indicator in the upper right-hand corner E01.3A, that would be added by EY as an audit notation; right?

A. Yes.

Q. And in the substance of the e-mail, you can see Ed Villanueva sends an e-mail to Brad Firestone, the subject line is remittance confirmation, and he says, "please

confirm that the remittance for the period ending March 31, 2014 was approximately 63.9 million"; right?
A. Yes.
Q. And Brad e-mails back and he says, "confirmed"; right?
A. Yes.
Q. And that's the audit support that EY has to confirm that the 63.9 million is appropriately booked as revenue on the Raiders' financial statements in 2014; right?
A. Yes, it's received from the NFL.
Q. Now, when you look at this e-mail from Mr. Firestone, there's knock on this e-mail though that would give you any confirmation one way or the other if the January accrual is included or excluded from that number; right?
A. There's no mention of an accrual anywhere on the e-mail that you presented.
Q. The e-mail presented to you

just indicates it's the remittance for the season and the period ending March 31; right?

A. Yes.

Q. Now going back to your revenue work paper which is JX 103, page twelve of fifteen, looking here and looking at the four amounts listed in the Ventures revenue account, when you were auditing the Raiders over the period of these years -- let's say 2006 to 2019 -- was it your belief that the January Ventures accrual numbers were not included in the remittance?

A. Yes. It was a core understanding that the Raiders had shared with us that the Ventures accrual was a separate stream of revenue and was recorded separately from the remittance, and in the case of this particular year, 2014, it says Venture wire accrued Gatorade and that's what the Raiders had put as a description on this schedule. The schedule was prepared by the Raiders.

Q. So your understanding throughout that entire fourteen-year period was that the January accrual amount was not included in the remittance amount?
A. That's correct. That was a core understanding, as I mentioned, established by the Raiders and communicated to us and we updated that understanding each year.
Q. And the only audit evidence you have of what's included in the remittance amount to give you validation or to test any assertions that you claim you may or may not have gotten is an e-mail from Brad Firestone that says this is the remittance amount for this season; correct?
A. That's their party validation from the NFL, yes.
Q. And you could have easily looked at the Rams' financial statements, looked at the remittance amount that the Ventures gave the Rams and you could have seen it was the

exact same amount; right?
A. We talked earlier, different basis of accounting and different manner in which they accounted for it, so that's not an apples-to-apples comparison.
Q. Ventures has the same accounting and Ventures is the one making the distribution.
When Ventures makes a distribution to the team, the teams may account for it in a different way but the amount of the remittance that Ventures is giving to the Rams and giving to the Raiders would be the same; right?
A. The accounting by the Rams and the Raiders is different, so that was not a consideration.
Q. Well, I'm talking about the accounting from Ventures.
A. I understand. I am not going back and forward between the Rams and Raiders and looking at what one team's doing versus the other, and there's a

fundamental difference that the Raiders are on the income tax basis of accounting which is very different than generally-accepted accounting principles.

Q. Well, you knew -- but if you had an assertion from management that supposedly said to you the January accrual's not in the remittance, management knew you were auditing the Rams. You were auditing the Rams. You had every capability to go look at the Rams and see this is the exact same remittance number I have on the Rams, you just didn't do that; right?

A. You're talking about a hypothetical and no, I did not go back and forth between the Rams and Raiders and compare different information. It's not relevant because there's a different basis of accounting.

Q. But you do understand that Ventures is going to make the same distribution to every single team regardless whether your team's on tax basis and your team's on GAAP and your team's on this, Ventures doesn't care, they're just going to make the same distribution to every team.

You know that; right?

A. Yes. The amount coming from Ventures may be the same but the way the Raiders handle it on an income tax basis of accounting and the time period when they record it is different than the Rams. So there's a distinct difference there to be able to make the comparison that you're talking about.

Q. Well, the comparison I'm talking about is just simply comparing the amount of remittance that's coming from the NFL. And the amount of the remittance that's coming from the NFL as confirmed in your audit support work papers for the Raiders is 63.9 million and that's from Brad Firestone. And that remittance number, regardless of how the Raiders account for it and how the Rams account for it, that remittance number would be the same on the Rams; right?

A. I did not do that comparison, so I can't comment on that.

Q. Now, one of the reasons that you claim that you have an understanding that the January accrual is a separate revenue stream from the remittance is because frankly if that wasn't the case, just looking at the face of your work papers, it's pretty clear you have thirteen months of revenue; right?

A. As I said previously, it was a core understanding shared by the Raiders' management that the revenue stream from the accrual was a different revenue stream than the remittance. So we didn't believe that it related to the remittance, as I understood it previously.

Q. Given how significant that representation that you claim was made to be this audit given that you have a remittance and you have an accrual and if that accrual isn't separate from the remittance on the face of your work paper just looking at it, you've got thirteen months of revenue, no question, just on the face of it.

So any representation Raiders management makes to you that that January accrual's not in the remittance would be highly significant and would need to be documented in your work papers; right?

A. It may be documented somewhere in the work papers. Where we're looking at these work papers, it's not. I can't comment where it is in the work papers. As I indicated, it was a core understanding as shared by the Raiders that it was a separate stream of revenue, we confirmed that balance with the NFL sending a confirmation, and then we looked at subsequent cash receipts that received in January. So we believed that it was both an appropriate revenue as well as an appropriate receivable that was collected.

Q. So it's a core understanding that's essential to your audit that's not documented anywhere in your work papers, including in note one where you see EY's document its understanding of how Ventures revenue works for on the accounts receivable side or on the revenue side? Without any documentation of when or who at the Raiders management supposedly told you that the Ventures accrual is not in the remittance, you're now sitting here today saying that this core understanding that underpinned your audit and made all of this okay is just an understanding that your team had that just never got documented into the work papers; is that what I'm understanding?

A. It's not documented in the areas that you have highlighted. I can't comment that it's not documented through all the work papers. We don't have all the work papers here.

Q. Now, one reason it's

important to document -- would you agree with me, if we're looking at your revenue work paper for Ventures where you can see the remittance, the K-1, and the January accrual, would you agree with me that if it's the case that the January accrual is not -- has not -- how do I say this? If it is part of the remittance, if you know that the remittance also includes the January distribution that's separately being reported on a separate line here, if you're aware that the January distributions in both of those numbers, then on the face of this work paper you can see thirteen months of revenue being booked instead of twelve?

A. Maybe you can rephrase that a little more concisely, because you lost me going through that.

Q. Looking at your revenue work paper, when you see that the remittance earned covers -- I think we covered this already -- but it covers an NFL season, it covers the period April 1, 2013 through March 31, 2014; right?

A. That's correct.

Q. That time period would be the Ventures revenue reported on that remittance line; right?

A. Yes.

Q. And that's twelve months; correct?

A. Yes.

Q. And then when we go to the last two numbers, those relate to Ventures revenue from January -- Ventures distributions made in January, 2015 that are recognize as revenue in January, 2014; right?

A. Yes.

Q. And so when we look at that, that's thirteen months of revenue. We have the twelve months from the NFL season, but then we also have the one month of the January accrual being made; right?

A. As I had discussed just previously, the January -- the Ventures accrual relates to a different stream of revenue. And as I had said, that's a core understanding shared by the Raiders and, in this particular example, it states Gatorade and it was not related to the remittance. So on the surface of this work paper -- nor would I comment on just the surface of the work paper to be able to answer that question, but we vouched the subsequent cash receipt when we confirmed that and it's a different stream of revenue. I can't agree with what you're saying that it's a thirteen-month.

Q. Do you remember ever once in your deposition last November telling me that you thought that the January accrual was a separate stream of revenue?

A. When I was in the deposition, I may have been looking at 2020 and then we became aware that it was the thirteenth month of revenue. And when I put myself back to the years that we are auditing here, our understanding was that it was a separate stream of revenue and that it does not relate to the remittance.

Q. I want to pull up your deposition testimony, if we have that available, page one hundred thirty-nine. The question I'm asking you is not about 2020. You can see just from the question itself that I'm asking you about an earlier year than 2020.

And I asked you: "Well, when you look at Exhibit 99, E01.3, when I look at this worksheet and I see on the face of this worksheet that there's a debit for an entire season reflecting twelve months and I also see a January, 2016 debit, is it fair to say, in reviewing that worksheet, you would understand that reflects thirteen months of revenue being looked at least in this one year of thirteen months of revenue being booked and running through the accounts receivable account".

Your answer: "It appears that based on this schedule".

Now are you telling me today that you're looking at the work papers and it's not clear at all that there's thirteen months of --

A. Yeah, I'm just saying that that was a core understanding that that was a separate revenue stream. I see what I said there. It's difficult because you have the 2020 audit where we became aware through the whistleblower what has transpired, and then to put ourselves back into the year that we were auditing back in this case 201, it becomes difficult to do that.

Q. And you know that in your deposition also, and we were there for hours, you never once mentioned to me that there was a core understanding that we had of a separate revenue stream, you didn't mention that to me back in November; did you?

A. I don't recall if I did.

Q. And there's nowhere in your work papers documented when and with whom and how EY obtained this core understanding that the January payments are a separate revenue stream; right?

A. Like I said, we're only looking at the work papers you presented so it's not within those work papers, but I can't comment on the other work papers.

Q. Now, one of the reasons it's important to understand revenue flow when you're auditing a client, especially for a significant amount, is to help detect when there are errors in booking revenue; right?

A. Yes.

Q. And during the fifteen years that you worked on the Raiders audits, you never asked the NFL if the January accrual for Ventures was a separate revenue stream for the Raiders, just for the Raiders, not for any of the other thirty-two teams or thirty-one teams in the league; right?

A. We confirmed the payment with the NFL and we looked at subsequent cash receipts. I don't recall if we ever talked specifically with the NFL or somebody from the team talked specifically with the NFL as it relates to that matter.

Q. Now, you understand that the way Ventures works is it enters into contracts on behalf of the league and on behalf of the teams for TV rights, distribution rights, and then the revenue that it earns on those contracts it distributed equally and evenly among the teams; right?

A. Yes.

Q. Do you ever go to the NFL and say why is it that just the Raiders and none of the other teams are getting this extra revenue source that's separate from the K-1 and separate from the remittance that we have on their financial statements when nobody else in Ventures seems to be getting that? Did you gain any understanding from the

NFL for --
A. Yeah, I can't comment on what the other NFL teams are doing.
Q. What about the Rams?
A. I don't recall that that was what they were doing or not.
Q. Did the Rams have an extra revenue stream from the January distribution amount that was reported on their financial statements in whatever method they reported on?
A. I don't recall. It was a long time ago that I worked for the Rams. And they're on a different basis of accounting. They weren't on an accrual basis.
Q. So going back to the revenue work paper, now I want to focus on the audit evidence you obtained to support the Raiders recording revenue from the January distribution.
So the audit evidence EY gets to support that revenue is a confirmation from Brad Firestone of the NFL; right?

A. Yes.
Q. And we can look at that, if you want. The confirmation for the 2014 audit, it's actually towards the back. It's JX Compilation Exhibit 2. It's towards the end of that.
So this confirmation was used as audit support to support the Raiders recognizing as revenue the January accrual amounts on the 2014 financial statements; right?
A. Yes.
Q. And this confirms that the future payment owed to the Raiders as of December 31, 2014 for Ventures was $20,077,333; right?
A. This confirms a payment for NFL Ventures January, 2014 of eighteen million four hundred thirty-four.
Q. I was on this page, sorry re.
If you could turn behind the blue sheet. I was on the 2014 and the compilation you were looking at was from the 2013 audit. My apologies.
MS. VAN WINKLE: Can you read

the Bates number?
MS. BROWN: The Bates number ends in 1039, and it's JX 101.
Q. So I was trying to just be asks content with that audit.
So looking at this confirmation from Mr. Firestone, this confirms that the future payment owed to the Raiders as of December 31, 2014 for Ventures was $20,077,333; right?
A. This confirms that the NFL Ventures' January, 2015 payment was $20,077,333, yes.
Q. Does it not -- was there something I said that was wrong? It doesn't confirm the future payment owed to the Raider as of December 31, 2014 is approximately twenty million?
A. If you look further down, there's a table and it tells you exactly what it is confirming and it's a payment for NFL Ventures January, 2015.
Q. Is there anywhere on this

document where it would tell EY or provide any confirmation to EY that this $20 million payment is not included in the remittance?
A. State that again, I'm sorry?
Q. Is there any confirmation on this document -- you got this document from the NFL. You used it as audit support to support reporting revenue on the Raiders' financial statement of $20 million, is there anything on this document that also confirms for you that this $20 million that's being recognized as revenue on the Raiders' financial statement is not included in the remittance? Do we see that on this audit evidence?
A. No, the purpose of this document is to confirm a payment which this is a confirmation sent to the NFL to confirm a payment, that's it, that's one purpose, NFL Ventures January, 2015 of $20 million, 077333. That is the purpose of this document.
Q. And to be clear, EY is not

using this document in any way to be able to say this $20 million that the NFL is going to pay to the Raiders in January is not part of the remittance, this does not support that assertion; correct?

A. This document is just confirming the amount that this payment has included, yes.

Q. Now, EY knew that the remittance document that was recorded by the Raiders each year reflected royalties that were paid to each team in the league; right?

A. Yes.

Q. And EY knew that Ventures was in contract with the team to pay out the remittance amounts; right?

A. When you say in contract, what do you mean by that?

Q. I think if we go back to note one and look at your understanding of Ventures revenue. That's again JX Comp 1. You can look at note one. These again are the work papers for the

Ventures accounts receivable for each year and note one, in describing EY's understanding of Ventures revenue, we see that it says, "NFL Ventures, LP is in contract with each team to pay out the remittance royalty which are recorded as revenue by the clubs".

A. Yes. I thought you said the team was in contract, but NFL Ventures is in contract, yes.

Q. If I did, I misspoke.

And EY knew that; right?

A. Yes.

Q. And so EY knew that the Ventures revenue that appears on the Raiders' financial statement would be driven by those various contracts that Ventures enters into; right?

A. Yeah.

Q. Now, prior to the 2020 audit, you never asked the NFL if there were particular contracts that would support this January separate stream of revenue being recorded on the Raiders' financial statements; right?

A. I can't comment if we never asked for. As I said, there could be something documented within the work papers other than what you're representing to us today.
Q. That's what I wanted to ask.
If you did go to the NFL and you asked for documentation from NFL Ventures as support for the January distribution being a separate and distinct revenue stream from the remittance, we would see that in your work papers, right, somewhere in the work papers?
A. Yeah, somewhere in the work papers, I would assume, but I can't comment. I don't have those work papers in front of me.
Q. But we could expect to see it maybe either in your work papers or in the permanent file, we would see maybe if you get a contract sometimes it's saved to the permanent file; correct?
A. Yes.
Q. And the reason to do that is

so you don't have to go back to in this case a third party or the client to get that contract every year, if it's in a permanent file it's accessible to the entire audit team every year; right?

A. Yes.

Q. And so if you had gone to the NFL and obtained any contracts prior to 2020, we would see somewhere in your work papers or in the permanent file or your records that EY had done that; right?

A. Yes. I can't comment on that because I don't have those work papers in front of me, so that's asking me to comment on something that I don't have access to today.

Q. Under GAAS standards, an auditor can use external confirmations to gather audit evidence for assertions other than just accounts receivable; right?

A. Yes.

Q. In fact, let me just pull it up. It's JX 2381.

So this exhibit is
AU-C Section 330.
And you're familiar with this
part of GAAS; right?
A. Yes.
Q. So if you look at page three
hundred sixty-five, I'm looking at the
numbers on the top right-hand corner or
page five if you're looking at the
bottom, do you see the section .19?
A. Okay.
Q. "The auditor should consider
whether external confirmation
procedures are to be formed as
substantive audit procedures"; right?
A. Yes.
Q. And then there's a reference
to A51 through A56.
So let's turn to A51. You'll
see that on page three hundred
seventy-six.
Under A51, do you see where
it says, "external confirmation
procedures frequently may be relevant
when addressing assertions associated

with account balances and their elements but need not be restricted to those items. For example, the auditor may request external confirmation of the terms of agreements, contracts, or transactions between an entity and other parties".

Now, when conducting the Raiders' audits, you were aware that you could request external confirmation directly from the NFL of the terms of the agreements, contracts, or transactions between Ventures and the Raiders; right?

A. Yes.

Q. And that was a procedure you could use to determine what the January distribution related to, what contract was driving it to supposedly be this separate stream of revenue; right?

A. It is a procedure we could have used, yes.

Q. It is a procedure you could have use to determine can whether or not the January distributions were included in the remittance; right?

A. We performed procedures that we believe were appropriate in accordance with GAAS, as we described, we confirmed the balance with the NFL, the payment, and we saw subsequent cash receipts. So we felt those payments were appropriate and those procedures were appropriate to validate the existence and the collectability of that receivable and the existence of that revenue.

Q. If you're trying to understand Ventures revenue and you're trying to make sure as the auditor you have a good grasp on the methodology and what's supporting it, one good source of audit support you could rely upon would be external confirmation from the NFL of the terms of the agreements, contracts, and transactions that are driving that source of revenue; right?

A. That is a procedure you could perform.

Q. And prior to the 2020 audit, there are no notations that we can see in your audit work papers indicating that EY asked for any external confirmation from the NFL about the terms of the Ventures agreements, the January distributions, and how those worked.

Do you agree?

A. As I previously stated, I'm not looking at all the work papers, so there could very well be something in the work papers, because I'm just looking at what you provided us. Management had asserted and we had no reason to disregard management's assertion as it related to this being a separate revenue stream, and as a result of the procedures we performed, we were able to get existence and collectability, as I said, through the confirmation and prove subsequent cash receipts. So we believed we performed sufficient procedures at the time in accordance with GAAS.

Q. If management made that assertion to you, because I don't see it documented. If it is, I'm sure your counsel will show you in your work papers where I moved through documentation of when and where Raiders management asserted that to you.

But if they did, you would need to engage in audit procedures to test that assertion that that's a separate revenue stream appropriately stated and reported on the Raiders' financial statements; right?

A. Again, I indicated we performed procedures if we feel comfortable at the time and we elected not to confirm terms of agreements with the NFL.

Q. Well, it sounds like the procedure you performed was performed was to confirm that there was a remittance, to confirm the amount of the January accrual, and then to look to see that cash payments are being made from the NFL during the year and you opted not to use an audit procedure where you could actually go to the NFL and have them confirm any of the terms -- prior to 2020, any of the terms of their agreements. That's not a procedure you thought was necessary?

A. No, because the procedures we performed were in accordance with GAAS and we were comfortable with the results of those procedures.

Q. Well, in 2020, after the -- the 2020 audit, after the accounting misstatement came to light, EY's team did contact the NFL to get external confirmation of the terms of the Ventures agreements and confirmation of how that would relate to the January distributions; right?

A. Yes, because as of 2020, the representations that management had provided us were not being relied upon and we needed to perform significantly different procedures because of the whistleblower allegations and the items that took place. So as a result, the scope of the audit significantly increased in 2020. We had no reason to believe that management wasn't being forthright with us during the time of the audits that you're referring to.

Q. Well, let's be clear though.

Nothing prevented you there in the earlier years from getting external confirmation from the NFL, you just thought it wasn't necessary; right?

A. We believed the procedures we performed were in accordance with GAAS and we were comfortable with those procedures at that time.

Q. Let's look at what you did in the 2020 audit. If you could look at JX 97 in your binder.

Do you see this is an internal memorandum that EY prepared in connection with the 2020 audit; right?

A. Yes.

Q. And you're listed as one of the reviewers along with Mr. Garcia?

A. Yes.

Q. And the purpose of this memo was to discuss EY's audit procedures related to the review of the Raiders' 2020 revenue recognition policy related to NFL revenues; right?

A. Yes.

Q. And in the second paragraph under discussion conclusion, it states, "our audit procedures 2020 revenue recognition policy at A02.2.3, various documents provided by the company and the NFL, as well as conversations with individuals at the company and at the NFL".

And then it lists six conversations after that in the bullets, five of which were with the NFL; right?

A. Yes.

Q. And if you look at the first sentence of the paragraph after the bullets, it says, "NFL Ventures enters into contracts on behalf of all the teams for which NFL Ventures then distributes the income collected to the teams on a payment schedule set by NFL Ventures and generally reflecting payment for income earned in the prior month/quarter"; right?

A. Yes.

Q. So this reflects that NFL Ventures payments are not made a season in arrears. They're not made in the season following the remittance; right?

A. That's right.

Q. Instead, NFL payments are generally made a month in arrears or maybe a quarter but not more than that?

A. Yes.

Q. And so also, in connection with the 2020 audit, were you able to confirm that the January distribution amount was included in the season remittance?

A. Yes.

Q. And when you asked the NFL to provide this information about the Ventures contracts and payments and how these terms worked, the NFL was willing to provide that information to EY;

right?

A. I don't believe the NFL provided the actual contracts.

Q. I think you're right. I think they provided -- was it your recollection that the NFL told EY the contracts themselves are highly confidential but we have summaries of the contracts we can make available to you, we have our lawyers we can make available to you, we can provide you the information you need for your audit, but we cannot give you the contracts?

A. That's right, they did not give us the contracts.

Q. And so in connection with the 2020 audit though, the NFL was willing to provide EY the information that it needed to understand the Ventures payments and distributions and how those worked; right?

A. Yes. A lot of the calls that are referenced here related to discussions on those matters.

Q. And prior to the 2020 audit, EY never asked the NFL for information about the Ventures contracts or its terms or its conditions and how those payments worked; right?

A. Prior to the 2020 audit, there was not a whistleblower and there was not a situation that required us to ask further questions of the NFL. We believe able to see that the remittance was provided, the accrual was made, and there was subsequent payments made on both, so we were comfortable with that, and we had no reason to believe that management was not telling us the information accurately and completely.

Q. So I'm sure your counsel will have lots of time to ask you questions. But just so that we have the answer to this question, which I think is important to know, prior to the 2020 audit, did the EY audit team reach out to the NFL to ask it for information about the Ventures contracts, their terms and conditions, and how the revenue worked?

A. I know that I did not reach out to the NFL, but somebody on our EY team could have. I wouldn't be privy to that. And again, it could be documented elsewhere in the audit work papers, so I don't know if we ever reached out to the NFL. I can't comment on that with what other people may have done on the team.

Q. Well, if you had reached out to the NFL and obtained this level of understanding about the terms and conditions of the Ventures contract, it's fair to say it would have understood that the January distribution is not a separate stream of revenue that's unique just to the Raiders that the Raiders received every January; right? You would have caught this?

A. I can't comment on that.

Q. That was revenue. Now let's turn to accounts receivable.

When auditing accounts

receivable, EY's purpose is to test the existence, completeness, and valuation of accounts receivable balances; right?

A. Yes.

Q. So let's look at JX 2381.

This is AU-C Section 330.

Are you familiar with this part of GAAS?

A. Yes.

Q. So let's look at page three hundred sixty-five in the upper right-hand corner.

You see .19?

A. Yes.

Q. I'll skip to .20.

You see where it says, "the auditor should use external confirmation procedures for accounts receivable, except when one or more of the following is applicable".

Do you understand in this part of GAAS where it says that the auditor should use external confirmation procedures, that should indicate that it's a mandatory procedure unless one of the exceptions applies?

A. It doesn't say mandatory, it says should.

Q. Well, do you think should means that it would be mandatory unless one of the exceptions applies?

A. I don't think it's mandatory, no.

Q. You think "should" should be interpreted to read this is an optional procedure you might use unless one of the exceptions applies?

A. I think it says the auditor should, so it should use external confirmation but it doesn't say must use external confirmation.

Q. So in your mind, "should" and "must" mean two different things?

A. Yes.

Q. Now let's look at the exceptions.

"A, the overall account balance is immaterial".

Now, throughout the relevant

time period here, Ventures' accounts receivable was material to the Raiders' financial statements; right?

A. Yes.

Q. Let's skip to C.

C states, "the auditor's assessed level of risk of material misstatement at the relevant assertion level is low, and the other planned substantive procedures addressed the assessed risk. In many situations, the use of external confirmation procedures for accounts receivable and the performance of other substantive procedures are necessary to reduce the assessed risk of material misstatement to an acceptably low level".

Now, that's a mouthful, but EY's assessed level of risks for the Ventures accounts receivable balance was not low, it was deemed to be moderate; right?

A. That's correct.

Q. So now let's turn to the third exception which is B.

B is the "external confirmation procedures for accounts receivable would be ineffective".

Now, for this one, external confirmation procedures can be ineffective when, based on a prior year's audit attorneys, a third party will not provide a response; right?

A. That's right.

Q. And at no point from 2006 to 2019 did EY ever send a confirmation request to the NFL asking it to confirm the December 31 balance that Ventures owed to the Raiders and EY sent that confirmation and just didn't get a response; right?

A. Right.

Q. Because if that had happened, we would see that in the work papers; correct?

A. Yes.

Q. And just as a basic -- maybe I should have done this at the beginning. But as a basic auditing point, it's EY's responsibility to design its auditing procedures; right?

A. Yes. We -- as I had mentioned earlier, we get an understanding from management of their systems of internal control as well as their processes and how they account for things and then EY does a risk assessment and then evaluates the procedures that we need to perform in connection with our risk assessment.

Q. And again, I'm probably just making a very basic point here, but EY is the one that designs its audit procedures, it's not Raiders management?

A. We design our audit procedures based on feedback that we get from the Raiders as I just described.

Q. In fact, if you were to disclose your audit procedures to your client, it could actually impact your independence as an auditor; right?

A. Yes, we need to stay independent and the audit procedures are our audit procedures.

Q. And the ide there being that if the client knows the audit procedures that you're running, they could maybe find a way to get around them, so auditors don't disclose what their audit procedures are as a matter of independence; right?

A. We discuss various things with the company to ensure that we're applying the appropriate audit procedures.

Q. So you're gaining information from the company while you plan your audit procedures, you do not disclose to the company what procedures then it is that you decided to run; is that fair?

A. Yes.

Q. Let's look at one more GAAS section just briefly. It's the next tab, JX 2383.

This is AU-C Section 505 and it's called external confirmations; right?

A. Yes.
Q. And it's part of GAAS; right?
A. Yes.
Q. When you look towards the bottom of the page at Section .03, it states, "other AU-C sections recognize the importance of external confirmations as audit evidence", and it says "for example"; right?
A. Yes.
Q. And turn the page. In the top paragraph right before the slash bullets it says, "the auditor is required to consider whether external confirmation procedures are to be performed as substantive audit procedures and is required to use external confirmation procedures for accounts receivable", and then we see the same three sections we saw in the other section of GAAS?
A. Yes.
Q. Now, here where this section of GAAS says that the auditor is required to use the external

confirmation procedures unless, do you again read that as saying that that's not something that you should do but it's more just something that you could do?

A. This audit standard says the auditor is required to consider, so you're required to consider, and then it's unless these three items below would cause you to adjust your strategy to do something different is how I read that.

Q. No, the auditor is required to consider whether audit procedures are to be performed -- sorry, "the auditor's required to consider whether external confirmation procedures are to be performed as substantive audit procedures and".

Remember before we talked about how external conformation procedures can be used in other than just accounts receivable?

A. Yes.

Q. So you're required to

consider whether external confirmation procedures should be used and is required to use external confirmation procedures for accounts receivable.

A. Yes.

Q. You're reading that to say you only have to consider it for accounts receivable, not that you're required to use it for accounts receivable?

A. The end of that section that you just read says, "and is required to use external confirmation procedures for accounts receivable unless one of the three items below is applicable", yes.

Q. So would you agree with me that the auditor is required to use external confirmation for accounts receivable unless you meet one of these three sections?

A. Yes.

THE CHAIRPERSON: Counsel, quick question. I know we've been going probably about two hours. I want to find out about scheduling, if we're going to proceed past the two years and what the parties have agreed to with respect to that.

MS. BROWN: I definitely am going to need more time. But I think we saved some time on the opening this morning.

THE CHAIRPERSON: I just want to make sure.

MS. VAN WINKLE: That's fine. We've been going two hours.

Should we take a bio break for everyone and then you come back and finish and I can do my exam tomorrow as we originally planned?

MS. BROWN: I'm happy to take a break any time anybody would like to take a break. I just don't know that I'm going to finish today is all I'm saying.

MR. REED: I think, Chairman, to answer your question, the time increments reflected on the schedule were not meant to be

binding. They're estimates.
Everybody has thirty hours and you can use them however you want.

THE CHAIRPERSON: For our purposes, how long do you anticipate we'd be going after we take the recess?

MS. BROWN: You mean just for today?

THE CHAIRPERSON: Just yes, just so we know. Just so we have some idea.

(Whereupon a break was taken)

THE CHAIRPERSON: Back on the record.

Q. Mr. Gottlieb, do you still have open in front of you exhibit JX 2383.

A. Yes.

Q. Before we go there, actually, I had a couple of questions I wanted to ask you based on what we were talking about before.

I believe you've already mentioned a couple of times today in your testimony that you had a core understanding of how Ventures revenue worked; right?

A. Yes.

Q. And first, just as a matter of audit terminology, what is a core understanding?

A. That's just something that the engagement team created as it relates to our understanding of what management had represented to us and that's what we called our understanding. It's a core understanding as it relates to Ventures revenue and a few other items as it relates to the overall audit.

Q. Is a core understanding a particular term of art in the audit world?

A. No.

Q. And when you say that the team had this core understanding about Ventures revenue, what was the source of that core understanding?

A. Management.

Q. Who at management?

A. It could be a variety of people at management that we talk to as we plan each and every audit, we talk to a number of different individuals within the Raider organization and to update your understanding as it relates to each and every year whether there's been changes in the way they do things, any changes in the rules and regulations that we need to put in place as it relates to the audit plan, so it could be a number of different people. I can't point out an individual single person. And it would be a number of people on our team talking to various people in the Raiders organization.

Q. When you say a core understanding as you describe it for a significant item such as Ventures revenue, you have a core understanding on your team that the January distribution is a separate stream of income, totally separate from the remittance, you can't tell me who said that other than a variety of people at Raiders management?

A. I would have to look back at the work papers and see if there's anything in the work papers. I don't know as I testified earlier, that, based on what you have provided, it's not included within these work papers but there's other work papers, certainly.

Q. So what audit procedures did you undertake to confirm this core understanding that the audit team had?

A. Which core understanding are you referring to? Are you referring to the remittance?

Q. I'm referring to your --

A. Or the accrual?

Q. Your core understanding that the January distribution that's recorded every year in December is not included in the remittance revenue that's recorded every month.

A. The procedures that we

perform were those of confirmation of the accrual as well as subsequent cash receipt in January to bank statement third party to validate that it was collected.

Q. That's your audit procedure to confirm your core understanding that the January -- that the December revenue's not included in the March remittance revenue?

A. Management represented that it was a separate stream of revenue and we have no reason to believe that management wasn't telling us anything but the truth.

Q. Let's go back to JX 2383 where we were before I think our break.

If you could look at page -- and this section of GAAS deals with external confirmations. And it you look at page six hundred seven and you look at subsection eight that's at the very bottom of page, it talks about management's refusal to allow the auditor to perform external confirmation procedures; right?

A. Yes.

Q. And it states, "if management refuses to allow the auditor to perform external confirmation procedures, the auditor should: A, inquire about management's reasons for the refusal and seek audit evidence about their validity and reasonableness"; right?

A. Yes.

Q. Did Raiders management ever tell EY that it couldn't confirm the entire ending year balance for Ventures accounts receivable?

A. Not that I'm aware of.

Q. And if that did happen, we'd see audit evidence documented in EY's work papers of the procedures they undertook to understand the reasons for the refusal; right?

A. Yes.

Q. Now, let's go to there's a JX Compilation Exhibit Number 2 in the back of the binder. And I'll represent to you what we've done here is we've compiled from each of the separate audit years, we've compiled the Ventures account receivable confirmation that EY received for the Ventures AR, Ventures accounts receivable.

And if you look at these documents, the first year we have here is for the December 31, 2013 audit, and then there's one more each year going through the December 31, 2019 audit.

And you can take whatever time you need to look over those, but the question I want to ask you is: For at least seven years prior to the 2020 audit, a confirmation request was sent to the NFL for Ventures accounts receivable; right?

A. Yes, a confirmation was sent to the NFL confirming a payment related to NFL Ventures.

Q. And we can see here that happened for at least seven years before the 2020 audit, a confirmation request is sent to the NFL related to

Ventures; right?
A. Yes.
Q. Do you have any recollection whether a similar confirmation request was sent to the NFL Ventures from 2006 through 2012?
A. I don't.
Q. Now, for these seven years that we do have, the NFL did in the refuse to provide a confirmation of the Ventures amount; correct?
A. Yes, it was one payment that was confirmed. Agreed.
Q. The NFL did not refuse to provide the confirmation requested; right?
A. No.
Q. The NFL didn't say we cannot confirm that Ventures amount to you because the Raiders are using a December 31 fiscal year-end and NFL Ventures is on a March 31 year-end; right?
A. They confirmed the one payment in each of these years, agreed.

Q. And they confirmed this amount to you in each of those seven years, and in providing you these confirmations, they never said we are unable to confirm this January payment which the Raiders is recognizing as revenue in December. They never said we're unable to confirm this January payment to you because the Raiders are in a December 31 year-end and Ventures is on a March 31 year-end? They never said that; right?
A. They signed the confirmation and so they're confirming the amount of payment we're asking them to confirm.
Q. Let's pick 2018 which, for the 2018 audit year, it's JX 1283.
Do you see that?
A. Yes.
Q. Now, here you've asked Mr. Firestone to provide direct confirmation of the amount -- I guess not you, this comes from Ed Villanueva. Ed Villanueva has asked Mr. Firestone to provide direct confirmation of the

amount owed to us as of December 31, 2018; right?

A. Yes.

Q. And you believed that this confirmation was meant to only confirm the January distribution that was owed as of December 31, 2018, not the total amount that the NFL owed to Raiders as of December 31, 2018; right?

A. This confirmation states below, "payments for NFL Ventures January, 2019, twenty-seven million three hundred thousand, national TV January, 2019, one million three hundred seventy-seven". So that is what is being confirmed here.

Q. Right.

So my point is, putting aside Mr. Firestone's testimony that he thought he was confirming the whole amount owed, you thought, when you were doing this confirmation and you were the senior-most person working on the audit each year and reviewing the work papers, you thought this confirmation was only confirming the January distribution amounts that would be paid in January owed to the Raiders and recognized as revenue in December; right?

A. That's what's on this confirmation. That's the way I read it.

Q. So you thought for at least seven years in a row, your understanding was that you were getting an external confirmation from the NFL for the December 31 account receivable balance that related just to the payments that would be made by Ventures in January?

A. That's what this confirmation states, yes.

Q. And you knew the NFL was willing to confirm for at least seven years in a row that part of the Ventures receivable balance, that part meaning the January payment; right?

A. Yes, they confirm these payments specifically.

Q. And you knew they were willing to do that because they had done it for seven years running, at least?

A. Yes.

Q. And the fact that the Raiders were on a December 31 year-end instead of a March 31 year-end did not in any way prevent the NFL from providing confirmation of the January payments; right?

A. They confirmed these January payments, yes.

Q. Now, the accounting misstatement here was identified in the 2020 audit cycle; right?

A. Yes.

Q. And in connection with working on the 2020 audit, EY came to learn that the only balance that should have been reflected in the Ventures accounts receivable as of December 31 was the January payment; right?

A. Yes.

Q. Let's look at JX 165.

Are you familiar with this document? JX 165 is EY's work papers from the 2020 audit related to the Ventures accounts receivable.

You've reviewed this before; right?

A. Yes.

Q. And you're familiar with this document; right?

A. Yes.

Q. And you can see that the account receivable balance at the end of the year in 2020 is just the January payments, nothing else; right?

A. Yes.

Q. So what I'm trying to understand is, for the 2020 audit, for the first time in more than seven years EY does not get a confirmation from the NFL for the Ventures accounts receivable balance for this amount which is just the January payments, nothing more, the January payments that are being recognized as revenue in December and reported as an accounts receivable at the end of the year? We saw that for more than seven years, EY requested that confirmation from the NFL, confirmed the January distributions were owed as of December 31, and put that confirmation in its audit files, and now in 2020, when EY knows there's a $214 million misstatement in accounts receivable, now for the first time EY doesn't get that confirmation from the NFL. And I'm wondering if you can tell me why.

A. Tick part B indicates that we've prepared an accounts receivable confirmation for the balance due from the NFL and that the NFL said that they would not confirm. It could not be confirmed.

Q. Right.

What I want to understand is, when the NFL was doing just that for seven years, for seven years at least the NFL was filling out a confirmation for just the January distribution amounts and telling you yes, we owe those amounts, why is it all of a sudden in the 2020 audit cycle we see a note your audit paper saying the NFL won't confirm this?

A. I can't comment as to why the NFL would not confirm. What I'm reading here is they would not confirm.

Q. Your belief is that all of a sudden the NFL just changed its policy and wouldn't do what it had done for the prior seven years?

A. I'm reading what's on the work papers.

Q. Let's look at Exhibit JX 119.

Do you see this is an e-mail chain from September, 2021 that you're copied on?

A. Yes.

Q. And September, 2021, that's the time frame you're working on the 2020 audit; right?

A. Yes.

Q. And Ryan Cupersmith, he was the concurring partner on the 2020 audit; right?

A. He was the engagement quality reviewer, yes.

Q. Now, if we look at the page ending in Bates number ending in 453, do you see the e-mail at 5:16 p.m.? There's an e-mail from Ryan Cupersmith at 5:16 p.m.

Do you see that?

A. Yes.

Q. Mr. Cupersmith writes, "don't we need to confirm all revenue-related receivables with the league and other third parties. I do not see confirmation procedures listed as one of the required audit procedures".

And then Tyler Johns -- by the way, he's a senior manager working on the Raiders audit; right?

A. Yes.

Q. He responds, if you look up the e-mail chain, and he says, "due to the tax basis reporting and the difference in year-end, NFL at 3/31 versus club at 12/31, the NFL cannot confirm the receivable balances at

12/31/19 or 12/31/20".

Now, you are aware that Mr. Johns was telling Mr. Cupersmith that the NFL would not provide a confirmation as of December 31, 2020 because of the difference in reporting methods in fiscal years; right?

A. Yes.

Q. But you knew by this time because you had been on the audit for more than a decade that the NFL had provided those confirmations confirming the January distribution amount every year for at least seven years despite the fact that the NFL was on a March 31 year-end and a different method of accounting; right?

A. Yes, they confirmed the January payments as we saw.

Q. But you didn't correct, at least in this e-mail, you don't correct Mr. Johns and inform Mr. Cupersmith that the NFL had provided confirmations in the seven prior audit cycles of the January distribution amounts being recorded in the account receivable balance at the end of the year?

A. No, I didn't send an e-mail in response to that, if that is your question.

Q. So Mr. Cupersmith responds to Mr. Johns' e-mail, and he says -- this is the e-mail dated 5:35 p.m., September 14 -- "this nonconfirmation approach should be discussed in the memo and the alternative procedures performed in light of not confirming, that addresses the assertions. We should note who specifically was talked to at the league that said they are unwilling or unable to confirm this receivable and document that this individual is an appropriate level of authority at the NFL to make this conclusion in light of the past issues. Hopefully, it wasn't the NFL AR manager who made this conclusion on behalf of the NFL".

Now, when he's referring there "in light of past issues", what

did you understand that to mean?
A. I can't comment on what he's referring to here. It's his e-mail.
Q. You didn't understand the past issues to mean in light of the fact that there's a $214 million overstatement of accounts receivable from the NFL?
A. You could make that determination. I'm not Ryan so I don't know what he was getting at specifically.
Q. So Mr. Garcia, who's another partner on the Raiders audit, right, he responds and that's the e-mail at 5:47 p.m. and he says, "yes, discussions were with director of tax and finance at the league".
Now, you understand that Mr. Garcia's referring to Brad Firestone, right, the director of tax and finance at the league?
A. If he was director of tax and finance at that time, yes.
Q. And you've spoken to Brad

Firestone before; right?
A. I've been on calls with Brad Firestone but I haven't spoken to him directly personally, no.
Q. You were on calls with him periodically; right?
A. Yes.
Q. And you were on calls with him prior to the 2020 audit; right?
A. Yes.
Q. And in fact, after the Raiders gave you or your team members authorization to contact Mr. Firestone about various issues, you were then comfortable reaching out to Mr. Firestone when you had questions you needed to discuss with him; right?
A. We would always have to talk to the Raiders before we reached out to Mr. Firestone. Oftentimes it was team members as opposed to myself that was reaching out to Mr. Firestone.
Q. And you don't recall anyone at the Raiders -- you don't recall asking anyone at the Raiders asking for

permission to speak to Brad Firestone and the Raiders declining that permission; right?

A. I never made the request so I was not the one who was making that request.

Q. Did you personally participate in any discussions where Mr. Firestone said the NFL would not confirm the Ventures amount on an accounts receivable confirmation because the Raiders had a December 31 year-end?

A. I did not participate in that call personally, no.

Q. Let's flip back to where we were before which is the 2020 audit work paper. It's JX 165.

So here we are 2020, Ventures accounts receivable, I think we covered this already, but there are only two amounts recorded at the end of 2020 and those are both for the expected January distributions, the expected future payments from January; right?

Broadcast and Ventures.

A. Yes.

Q. And you can see that both of these amounts, the way that EY audits these balances in 2020, is they trace both of these amounts to the Raiders' bank accounts and they can confirm that those amounts were deposited into the bank account in January of 2021; right?

A. Yes.

Q. And there's a note B next to the -- you can see that next to the total bank account number. And in that note, it states, "we prepared an accounts receivable confirmation for the balance due from the NFL related to NFL Ventures and broadcast receivables as of December 31, 2020 under the federal income tax basis of accounting dated July 7, 2021. We circulated the confirmation directly to Will Dorrance, NFL club finance senior director, on July 12, 2021. Subsequently, we received verbal confirmation from broad Firestone, vice president of tax and risk management and treasurer of the NFL, and Mr. Dorrance, that per NFL policy, the accounts receivable balances as of December 31, 2020 related to NFL Ventures and broadcast revenue could not be confirmed. This is also consistent with historical EY audit experience in auditing a company and NFL receivables".

So first, let's look at the account receivable confirmation that was sent to Will Dorrance on July 12, 2021, and that is JX 486.

Now, as we saw, this actually uses the same language you used in 2019 where you asked in 2019 Mr. Firestone to confirm the amount owed to us as of December 31, 2019. Now you're asking Mr. Dorrance for Mr. Confirmation of the amount owed to us -- it's coming from the Raiders, the Raiders are asking for confirmation of the amount owed to us as December 31, 2020 and December 31, 2019.

Let me clear one thing up.

The document is signed by the Raiders.
These confirmations are drafted by EY; right?
A. We provide the words to the Raiders and then the Raiders prepare them on their letterhead and they're signed by the Raiders.
Q. Right.
So EY --
A. Provides the format.
Q. -- drafts the confirmations, that goes to the Raiders for them to put on their letterhead and sign it, and then after the Raiders do not send the confirmations to the NFL, they send it back to EY and the purpose of that is so that you can make sure that they didn't change it before it goes to the NFL?
A. We have to be in control of the confirmation going out and coming back in directly to us.
Q. So you draft it, it goes to the Raiders, they sign it, it comes back to you, it goes to the NFL, and

then the confirmation comes back to you directly from the NFL; correct?

A. Yes.

Q. Now, here for the 2020 confirmation, when we look at NFL Ventures for December 31, 2020 and 2019, you can see the balance is zero; right?

A. Yes.

Q. But when we were looking at your audit work paper from 2020 -- and we can look at 2019 -- but from 2020, the balance is not zero. We just looked at that. It was the January distribution amounts; right? The accounts receivable balance for Ventures as of December 31, 2020 was not zero; was it?

A. Where was that again? What's the reference?

Q. JX 165.

So on JX 165, you can see the accounts receivable balance as of December 31, 2020 for Ventures is $31.2 million; right?

A. Dividing those two balances, thirty-one million two hundred fifty-nine, yes.

Q. We know this is the confirmation that was sent because EY put a note at the top saying "this is the original AR confirmation sent to the NFL on July 12, 2021 related to the request of an AR balance due from the NFL including AR related to NFL Ventures".

So this is the confirmation you sent to Dorrance and you list the amount for Ventures as zero; right?

A. Based on the note on B on Exhibit 165, it says that they would not confirm Ventures because of the difference in year-end. But we're confirming other amounts here that they would confirm.

Q. But let's look at the note on the top of this confirmation. It says, "this is the original AR confirmation sent to the NFL on July 12, 2021 related to the request of AR balances due from the NFL including AR related to NFL Ventures and TV and radio as of December 31, 2020. Subsequent to sending this request and additional discussions with management and NFL, and an updated confirmation was requested and received at EE01.01 related to the balances to be confirmed by the NFL as of December 31, 2020 and e-mail response of NFL Ventures unable to be confirmed".

The first question I have is, given that the accounts receivable balance for Ventures was clearly not zero at the end of the year, why did EY prepare a confirmation for Raiders management to sign and for EY to send out that Ventures had a zero balance?

A. I didn't prepare this confirmation. I don't know what the rationale was of a zero balance there.

Q. So let's -- now, this note at the top says that, subsequent to sending this confirmation, an updated confirmation was sent to the NFL;

right? It says that's at EE01.01. That's at JX 1478.

This is the updated confirmation that then gets sent to the NFL. And although the confirmation that EY drafted to send to the NFL on July 12 included a line number for NFL Ventures, this confirmation does not; does it?

A. No.

Q. It only includes relocation fee and the March memo; right?

A. Yes.

Q. And so you know, when you were sending this one out, that the NFL was willing to confirm those balances for the Raiders even though the Raiders were on a December 31 fiscal year-end; right?

A. Yes.

Q. But EY's position is that the NFL told us in a phone call that it was unwilling to confirm Ventures' balance at December 31, 2020 because the Raiders were on a December 31 year-end;

right?

A. Ventures is on a 3/31 year-end, yes.

Q. And that's the reason why the NFL wouldn't provide that confirmation for the 2020 year?

A. Yes.

Q. Now, when you -- you can look back if you want. It was JX 165, that note B where you talk about getting the confirmations. And you say, "consequently, we received verbal confirmation from Brad Firestone that, per NFL policy, the account receivable balance as of December 31, 2020 could not be confirmed".

Now, even though when you look at your work paper, the December 31, 2020 balance is nothing more than the January distribution amount, EY claims on its work paper -- and knowing that Mr. Firestone has confirmed that January distribution amount for EY for seven years running regardless of your year-end, EY's explanation in its work paper is we can't get an external confirmation from Brad Firestone for Ventures account receivable because the Raiders are on a December 31 year-end?

A. That's what the note says. That's why we get the confirmation. I'm only going by what the work papers are saying here.

Q. Were you a part of that conversation with Mr. Firestone?

A. No.

Q. Now, given the significance -- at this point EY is fully aware of the significance of confirming this account receivable balance with the NFL. It shows about the $214 million overstatement in revenue. Given that significance and EY knowing this was missing for fourteen years by this point, do you think that, to the extent that conversation with Mr. Firestone took place, it would have been important for EY to get that confirmed from Mr. Firestone in writing?

A. We documented the procedure that we performed and the discussion we had.

Q. EY could have said to Mr. Firestone, if that conversation actually took place, Mr. Firestone, it's really important, can you send us an e-mail confirming that you have a policy that says you will not confirm the January distribution amount for us as of December 31, 2020 and that way we can just put that e-mail in our audit file? Given the significance of what had happened and what had been discovered, do you think that getting that e-mail as support for this verbal discussion would have been important to include in your audit work documents?

A. What's in our audit work papers is factual and the discussion happened and that's why it's documented in the work papers. We didn't need to perform additional procedures.

Q. Or if Mr. Firestone didn't want to be bothered to write the e-mail, you could have e-mailed him and said we just had a conversation with you that is very significant to our audit where you made representations to us about the NFL policy, can you please confirm per our conversation today that is your policy so that Brad Firestone could just simply hit reply confirmed, but that's not a process that EY undertook in its 2020 audit; right?

A. We did what we have documented within our work papers.

THE CHAIRPERSON: We'll stop with that today.

Thank you very much, everybody. We'll see you at 9:00 tomorrow morning.

(TIME NOTED: 5:31 p.m.)

*   *   *

I N D E X

WITNESS	DIRECT	CROSS	RE-DIRECT
M. Davis	132	170	
M. Gottlieb	191		

*   *   *

CERTIFICATION BY REPORTER

I, Wayne Hock, a Notary Public of the State of New York, do hereby certify:

That said proceeding was held before me at the aforesaid time and place;

That said proceeding was taken stenographically by me, then transcribed under my supervision, and that the within transcript is a true record of the testimony of said proceeding.

I further certify that I am not related to any of the parties to this action by blood or marriage, that I am not interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of September, 20

Wayne Hock

CPR ARBITRATION

In the Matter of the Arbitration between:
A.D. FOOTBALL, INC., A.D. FAMILY LIMITED PARTNERSHIP, A. & R. BOSCACCI INVESTMENT CO., E. & V. BOSCACCI REVOCABLE TRUST/MARITAL LLC, E. & V. BOSCACCI DECEDENT'S TRUST/DECEDENT LLC, JILL LOVINGFOSS, CODY LOVINGFOSS, JOSH LOVINGFOSS, CHALET ROBERTS, GOPPL PARTNERSHIP, L.P., PATRICIA WINKENBACH and GERALD WINKENBACH as the Trustees of the Winkenbach Family Trust, PATRICIA WINKENBACH, GERALD WINKENBACH, RLP HOLDINGS, LP, ADF INVESTMENTS LLC, ADF HOLDINGS, LLC, A.D. FAMILY LIMITED PARTNERSHIP, A.D. FAMILY LLC, MARK DAVIS, FIRST FOOTBALL, LLC, MD FOOTBALL LLC, ALLAN BOSCACCI and PATRICIA BOSCACCI as the Trustees of the Boscacci Family Trust, LISA BOSCACCI, ALLISON MEIN, ANNE CARPENTER, ALIDA BEILKE, CARA YURAS, KENNETH WEAKLEY and LYNNE WEAKLEY as the Trustees of the Weakley Family Trust, JEANNE DAVIES, ERIC WEAKLEY, ELYSE WEAKLEY, MARY JANE BOSCACCI as the Trustee of the Mary Jane Boscacci Living Trust, PAUL STEFANI and ANN STEFANI as the Trustees of the Stefani Family Trust, CATHERINE STEFANI, JON-PAUL STEFANI, NANCY MCAULIFFE, KELLY PEPPMEIER, ERIN MCAULIFFE, ALLAN BOSCACCI, COREY MCAULIFFE, ALLAN BOSCACCI as the Trustee of the A&R 2005 Irrevocable Trust, NANCY K. MCAULIFFE as the Trustee of the Nancy McAuliffe Family Trust,

(CAPTION CONTINUED)

DAVID ABRAMS, FRIEDMAN FOOTBALL LLC, JOSHUA FRIEDMAN, BETH FRIEDMAN, PEAK TRUST COMPANY as the Trustee of the Friedman Family 2015 GST I and the Friedman Family 2015 GST II, GARONZIK INVESTMENT PARTNERS LLC, FREDRIC GARONZIK, FREDRIC GARONZIK as the Trustee of the Fredric B. Garonzik Trust, DAVID GARONZIK and SAMUEL GARONZIK as the Trustees of the Fredric B. Garonzik Family Trust and the Anne G. Garonzik 2011 Trust, DAVID GARONZIK, SAMUEL GARONZIK, ANNE GARONZIK as the Trustee of the Anne G. Garonzik Trust, ANNE GARONZIK, PAUL LEFF, SILVERBLACK LLC, STEPHEN MALKIN, DAN GOLDRING, and MARK DAVIS as the Trustee of the Mark Davis 2010 Trust and the Davis Credit Shelter Trust,

Claimants,

-and-

ERNST & YOUNG LLP and EY US LLP,

Respondents.

Matter No. G-23-23-N

September 17, 2024
9:06 a.m.
Seven Times Square
New York, New York

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JOHN CHANDLER, Arbitrator
JOHN BICKERMAN, Arbitrator

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ALSO PRESENT:

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MARCO HEIM
JUSTIN CARLEY
JUSTIN MCCARTY
MEREDITH MOSS
MARK CARLSON
GARY B. GOOLSBY
(via videoconference)
KERRY HINCH
(via videoconference)

* * *

THE CHAIRPERSON: Before we begin today, obviously the panel has listened to a tremendous amount of testimony. We had the opportunity to talk to each other overnight. And we don't want to interfere with the examinations in any way, shape, or form, but we do have some questions, if it's okay with counsel, that we'd like just to pose to the witness because we don't want to get all the way to the end of this and really start losing it, and I think it will clarify a few things for us.

We're just going to go in alphabetical order. I'll turn it over to Mr. Bickerman and then Mr. Chandler and then I have a few questions of the witness.

ARBITRATOR BICKERMAN: Good morning, Mr. Gottlieb.

I just have a few questions that occurred to me during your testimony.

The first one, real basic, did EY foresee the Raiders on a cash basis or an accrual basis for their accounting?

THE WITNESS: It was federal income tax basis, which is more of a modified cash basis of accounting.

ARBITRATOR BICKERMAN: So it's a modified cash basis?

THE WITNESS: Yes.

ARBITRATOR BICKERMAN: There was also a term that was used in one of the prehearing briefs which you may not have seen which discussed that -- mentioned that they used a lag accounting. I've never heard that term before.

What does that lag accounting mean? Have you heard that expression?

THE WITNESS: I've seen the word "lag". What that means is related to the remittance that is received from the NFL, the

Ventures, NFL Ventures, is on a 3/31 year-end, so their year goes from April 1 to March 31. The Raiders are on a calendar year, so the NFL Ventures does not provide the year information until 3/31 and the Raiders record that year, so they record that revenue in a one-year period later than what the NFL season is.

So for example, taking actual dates, for the 2016 NFL season, that ends on 3/31/2017, and the Raiders would record that in their 2017 financial statements. So there's a one-year lag from where they record. So it's -- a 2016 season from NFL Ventures gets recorded in the Raiders 2017 financial statements.

ARBITRATOR BICKERMAN: I'll come back to that in just a minute, but let me ask you about the remittances.

Did EY use those remittances

in their accounting analysis?

THE WITNESS: Yes. We -- the Raiders provided the remittance to EY and the Raiders recorded the remittance once a year and that's recorded as revenue.

ARBITRATOR BICKERMAN: And I think, based on your last answer, the remittances were not estimates, they were actual accurate payments; right?

THE WITNESS: Yes, they did not record any estimate during the year, they recorded the remittance once a year.

ARBITRATOR BICKERMAN: But those remittances were received -- the payments were received prior to the remittances being issued after the close of the season, the Ventures season; is that right?

THE WITNESS: It wasn't clear to us as to what the payments relate to which remittance because there was nothing on the payments that we were provided that could tie it to a specific remittance. Management of the Raiders represented that the payments that they received was after the remittance was recorded. So the payments came after.

ARBITRATOR BICKERMAN: Now you're getting to the point that I really wanted to get to.

EY perceived those remittances as prospective payments as opposed to retroactive payments? Is that right?

THE WITNESS: When you say "prospective", if a remittance is received in my example as of 3/31/2016, payments related to that remittance would be after that. So the payments that were received were after the remittance was recorded.

ARBITRATOR BICKERMAN: Was that accurate?

THE WITNESS: As we found out

in 2020, based on the whistleblower, no, that was not accurate. But at the time that we were looking at it, that was the information that the Raiders had provided us.

ARBITRATOR BICKERMAN: If you had known that they were retroactive, in other words the payments had already been made, would the remittances accurate have reflected the payments as received by the Raiders in that prior time period? In other words, if the remittance said in let's say November of 2016, the remittance comes out in 2017, but it says in November of 2016 that the Raiders received $10 million or $10,100,000, could you have traced the ten million one hundred thousand to that remittance that arrived some months later?

THE WITNESS: No, the documentation that the Raiders provided us did not tie it to a particular remittance. All that we were provided was the date that the distribution took place, and the Raiders communicated to us, management communicated to us that the payments were after the remittance.

ARBITRATOR BICKERMAN: And not to drill down too much farther, but I assume you had a ledger that recorded all payments that were received by the Raiders; correct?

THE WITNESS: We have a work paper that we have here in the evidence that shows the various payments that were received by the Raiders. But it's just the date of the payment, not the remittance that it relates to.

ARBITRATOR BICKERMAN: But the payment would have been a number and that number was or was not reflected in the remittance that came later.

Could you have tied them together if you looked at them?

THE WITNESS: We could not tie them together, no.

In 2020, we found out that there was information that was provided that would have allowed us to tie them together. But that information was not provided to us at the time.

ARBITRATOR BICKERMAN: Regardless of the income stream, because in your testimony you have delineated between two streams of income, as I recall.

Do you recall testifying to that?

THE WITNESS: Two streams being --

ARBITRATOR BICKERMAN: Two streams of income, both the accrual that was accrued in December for January income as well as the Ventures remittance income. And you suggested -- indicated that EY viewed them as two separate income streams.

THE WITNESS: That's correct.

ARBITRATOR BICKERMAN: Were those two separate income streams received in the same tax year that the Raiders recorded?

THE WITNESS: The remittance income stream, as you mentioned, is on a lag, so that would be a different tax year than the accrual.

ARBITRATOR BICKERMAN: And how about the Ventures fiscal year? Were those two streams? The same Ventures fiscal year?

THE WITNESS: Yes, they would be the same.

ARBITRATOR BICKERMAN: Are you sure?

THE WITNESS: The Ventures -- the accrual would be provided and recorded in December in our example of '16 and the remittance would come in March of '17 but Ventures' year-end is March year-end.

ARBITRATOR BICKERMAN: That's all I have.

ARBITRATOR CHANDLER: I have a couple of Dick and Jane-type questions.

You guys have lived with this so long and understand so much about it, and there's just some basics that are really new to me.

Would you turn to JX 0147 why your book there. It's the financial statements for year ended 2019. And turn to the consolidated statement of revenue and expenses, which is Bates 1298.

THE WITNESS: Okay.

ARBITRATOR CHANDLER: Are you there?

THE WITNESS: Yes.

ARBITRATOR CHANDLER: Basic question: These financial statements just have one year in them? There's no -- there are no comparison? There's not a 2019, a

2018?

THE WITNESS: No. Management elected to present a single year presentation.

ARBITRATOR CHANDLER: And you can do that?

THE WITNESS: You can do that.

ARBITRATOR CHANDLER: You can't do that in regular GAAS audit; can you?

THE WITNESS: You can do it in a GAAS audit. You can't do it in a public company.

ARBITRATOR CHANDLER: Because you can't see a comparative change?

THE WITNESS: That's right.

ARBITRATOR CHANDLER: It's just for the readers sitting there?

THE WITNESS: Yes. It was management's decision to present in this manner.

ARBITRATOR CHANDLER: And that's their decision? Whether you like it or not, it's their decision?

THE WITNESS: It's acceptable for a private company. GAAS and AICPA allows this presentation, yes. And our opinion is only a single year of course as well.

ARBITRATOR CHANDLER: Neither cash nor accrual would modify.

Looking at the statement of revenue and expenses here, pick out a couple and explain to me what's cash and what's accrual? As I look at this, I think it would be all cash or all accrual.

THE WITNESS: For the most part, the expenses are on an accrual basis, so you're accruing the expense as you would under an accrual basis of accounting. And for the most part, just from a general perspective, revenues are recorded more on a cash basis.

ARBITRATOR CHANDLER: So the revenue on cash and expenses are accrual?

THE WITNESS: I'm speaking more in generalities, so that's why it's referred to as a modified cash method of accounting.

ARBITRATOR CHANDLER: You guys have done a great job explaining this case, but I look at that and I thought what is this.

THE WITNESS: It's complicated.

ARBITRATOR CHANDLER: It's complicated.

THE CHAIRPERSON: So I just have a few questions.

So when EY's performing an audit -- let's say just pull the year 2015 out -- when that audit was being performed, was EY relying on financial statements, prior financial statements, prior audits, other information from previous years in performing let's say the audit in 2015?

THE WITNESS: Yes. Just like my audit, we've audited the prior year, so those are beginning balances and then we audit the end of the year which is the balance sheet for the end of the year and that period in between, the income statement, cash flow, and statement of shareholders' equity, in order to do that, we have to rely on the audit that we had performed in the prior year. If we weren't the auditors in the prior year, we would have to go look at the predecessor auditor's work papers to get comfortable with those beginning balances to be able to opine on that twelve-month period.

THE CHAIRPERSON: And this may be actually a similar question which relates to the audit planning templates.

Were they the same for each year or did they change each year? And if so, if they did change, was that based upon new information that you had or information from prior years? How did that work?

THE WITNESS: Each year we would meet with management and we would discuss any changes that took place in the business, any changes took place that as it related to any accounting and/or any tax changes that would impact, and we would include that within that year's planning template. We'd also look at from our perspective anything that changed in our environment that would impact, for example, in accounting or tax method change that would require there to be a change in the accounting, and that would be reflected within the planning template. So we had what we call a team planning event both with our team only and then we'd also have a team planning event including the client a couple of times to be able to update our understanding and then to update the template.

THE CHAIRPERSON: And one last question. I know we talked about the fact that EY does audits for another NFL teams and I think the Chargers were mentioned.

If you were doing an audit for any of the other NFL teams, would there ever be an occasion when you're performing the audit you would look at the audits that were conducted of the other NFL teams who were your clients?

THE WITNESS: Not necessarily. As it related to the Raiders, because the Raiders were unique being on the income tax basis of accounting, we wouldn't necessarily look at other NFL teams. But as we discussed yesterday, there were meetings over time usually when there was an unusual situation that happened. The example that we had here was the concussion lawsuit within the NFL, so there was some discussion that we had as it related to how that is to go to be accounted for between the teams. So it was usually related to an unusual type of a situation that came up, not on more of a recurring basis just to have the meetings to compare the accounts that were more recurring in nature.

THE CHAIRPERSON: Thank you very much, sir.

I turn it over to Claimant's counsel, and you can proceed.

M I C H A E L G O T T L I E B, having been previously deemed sworn, upon being examined, testified as follows:

DIRECT EXAMINATION CONTINUED BY MS. BROWN:

Q. Good morning.

A. Good morning.

Q. I have just a few more questions for you about EY's audit procedures for the Ventures receivable balance.

A. Okay.
Q. And just to kind of re-orient us to where we left off last night, EY did not have any external confirmations from the NFL that confirmed the entire receivable balance for Ventures; right?
A. That's correct.
Q. And so EY had to engage in alternative audit procedures for the Ventures receivable balance; right?
A. Yes.
Q. And as you testified yesterday, EY looked at the cash payments that the Raiders received during the year to confirm that the receivable was being paid down; right?
A. Yes.
Q. If you could turn in your binder, please, to JX 2383. I think we looked at this yesterday, but this is AU-C Section 505 external confirmations.
A. Yes.
Q. And today I want to direct your attention to the section A24,

which is on page six hundred fourteen. And here it states, "the nature and extent of alternative procedures are affected by the account and assertion in question. Examples of alternative audit procedures the auditor may perform include the following: For accounts receivable balances, examining specific subsequent cash receipts, including matching such receipts with the actual items being paid", and then it goes on, "shipping documents or other client documentation providing evidence for the existence assertion".

So if you are looking at specific cash receipts for the Ventures receivable balance to confirm that that receivable balance exists, then you should match those receipts to the actual items being paid; right?

A. Yes. That's what the statement says.

Q. And you would agree that would be the best practice?

A. Yes.

Q. So let's look at your work paper. We'll go back to 2014. It was the JX Compilation Exhibit 1.

And if you look at the second page -- the first page in yellow has EY's notes; correct?

A. Yes.

Q. And then the second page we see the work paper details.

And here we can see in your work paper details there's some identified cash receipts; correct?

A. Yes.

Q. And when the GAAS procedure talks about matching receipts to the actual items being paid, what does that mean? What would that entail doing?

A. As you said in the best case, it would indicate what the cash receipt related to so that you can match it to whatever the receipt was -- what the receivable was recorded as.

Q. You want to match it to the actual invoice or whatever outstanding bill is being paid down; correct?

A. Correct.

Q. And here, when we look at these cash receipts and EY's audit procedures, what procedure did you engage in to identify the exact receivable balance that was being paid down?

A. Well, first of all, this schedule is prepared by management, so they provided us this schedule which documented the cash receipts, and the detail provided shows the cash received by month. You can see, for example, the fourth line down cash received January through March, 2014. They did not provide us, as I had mentioned earlier with a question from the panel, information to allowed us to tie that cash receipt to a particular remittance. So as a result, we are looking at this cash receipts as being sufficient to collect the receivable balance in totality, not as an individual basis by each remittance because that information was not provided by the Raiders.

Q. So if I understand your answer when I asked what procedure you used to identify the specific receivable balance this relates to, your answer was that the Raiders gave us this schedule; correct?

A. Correct.

Q. Did you then go back to the Raiders and say we've received your schedule. We need additional audit documentation to determine what specific receivable balance is being paid down so that you can comply with the GAAS standard?

A. Personally I did not do that. I would imagine the team did that, but I don't -- I don't know so I can't comment on that question.

Q. But you would agree with me that if you're getting a schedule from the Raiders that doesn't identify on the face of the schedule what the cash payments relate to, that question should be asked by the auditor;

correct?

A. Based on what the GAAS statement said, we do the best we can to be able to tie it to an actual source document that relates to how the receivable was established.

Q. So when we look here at these cash receipts, when I'm looking at your work paper, what are they paying down? According to your audit procedures when you're looking at these cash receipts, what in particular are they paying down in the receipt?

A. They're paying down the receivable.

Q. Which part of the receivable?

A. They're paying down the beginning balance of the receivable.

Q. That's my question.

So I thought EY's understanding was that the cash -- that remittance, when it was booked in March, was paid down the following season; corrected?

A. The remittance is recorded in

the following season, yes.

Q. Let me back up because I don't know if we're on the same page.

The remittance account receivable is booked in March; correct?

A. Correct.

Q. And then your understanding is that, when the Raiders receive cash payments in the following season, so April 1 to the following March, it's paying down that remittance; correct?

A. Yes.

Q. So that means that, if we look at it on a calendar year, we see the account receivable created in March and your understanding is that the payment that was made in April, May, June, July, and August was paying off that remittance balance; correct?

A. We don't know which remittance balance it was paid off because we never got the information as to what it related to. That is the issue and, as a result of the 2020 whistleblower, we were able to identify that there was information that was not given to us at the time.

Q. Because if you look at EY's work paper, you can see cash receipts are coming in but you have an opening balance before you book the remittance, you have an owning balance of 66.7 million which means if you use the cash receipts received during the year to work off that opening balance, you don't have very much left to work off the remittance that's booked in March?

A. Right. It's a rolling process and this was a roll forward so you'll have cash receipts that are coming in the following year to offset the remaining receivable balance. But we don't have the detail to be able to see which remittance these cash receipts relate to.

Q. Just looking at the face of your work paper, we can't tell whether these cash receipts are paying off the beginning balance or they're paying off the remittance that was booked into the receivable during that current year?

A. That's right, this work paper that's provided by management does not provide that information.

Q. What procedure did you apply to confirm that the remittance that was booked in March as an account receivable was appropriately booked as a receivable in the 2013 financial statements?

A. We received third party evidence from the NFL of the amount of the remittance and it was recorded as a debit to receivable and a credit to revenue.

Q. And the third party evidence you're referring to is that -- we saw it yesterday, but it's the e-mail from Brad Firestone where Mr. Villanueva e-mails him and says our season remittance for this year is this amount and Firestone responds and says confirmed; correct?

A. Yes.

Q. And that's your sole audit

evidence to support the recording of the remittance as an account receivable on the financial statements?

A. Yes, it's information from a third party, the NFL, providing the amount of the remittance.

Q. So I want to change topics a little bit and talk about the conforming statement.

A. Okay.

Q. EY audited the Raiders NFL conforming schedules each year from at least 2006 to 2020; right?

A. Yes.

Q. And the conforming schedules -- we may have covered this a bit yesterday -- the conforming schedules are prepared using a March 31 year-end; right?

A. That's correct.

Q. And the conforming schedules are not on a tax basis like the financial statements, they're prepared using I think what you called an NFL modified GAAP basis; right?

A. Correct.

Q. And in general, when EY was performing the audits of the conforming statements, they were doing that at the same time that they were auditing the tax basis financial statements; right?

A. It was after the tax basis financial statements. Conforming statements were due as of June 30. The tax basis financial statements had a required of May 31. To generally the conforming would take place after the tax basis financials.

Q. Would it surprise you to learn that, when we look at your work papers -- I can pull some of them up -- that the work papers on both audits were being reviewed, we can see the date and timestamps, on the same day by the same people?

A. Okay.

Q. Was it your recollection that all of the work on the conforming statement audit took place in June?

A. Well, in a perfect world,

depending on the information that we got from the client and when we were able to audit it, we would like to audit the financial statements on a tax basis first and then conforming after, but sometimes, as you mentioned, I recall that there were times that the two of them ran into each other and they both -- they had deadlines and sometimes the deadline for the federal income tax basis financials were extended. So it's not -- it doesn't surprise me. My recollection, this is a long time ago, I'm sure what you're saying is accurate and you can show me that, so that could very well be the case.

Q. And as I looked through your work papers and saw that the review on many of the conforming versus financial statements were taking place in the same day, it actually made sense because it was often the same work paper. For example, if you're looking at revenue, you'd look at kind of both the same day and review the finals on the same day.

Do you have any recollection of reviewing statements of both audits at around the same time?

A. I don't recall that, no.

Q. But you do recall that those financial statements were generally issued a month apart and there's some instances where they're issued only two weeks apart?

A. And they're a different year-end, one is December 31, the other is 3/31.

Q. Do you recall that in some instances the work papers you prepared for the financial statement audit were actually used as support or certitude to support your work on conforming statement audits?

A. I don't recall.

Q. Now, the two audits were performed by the same people at EY; right?

A. That was our intent, yes.

Q. And you were working with the same personnel at the Raiders; right?
A. Yes.
Q. And the two audits, while they had different year-ends, as we mentioned, they overlapped by nine months. There was a nine-month period of time where they overlapped; right?
A. That's correct.
Q. Let's look at JX 489. Again, the first page, the yellow box, those are EY's notes; correct?
A. Yes.
Q. And then if you turn to the second page -- oh, wait, actually, this is -- let me just re-orient ourselves.
So these are the conforming statement work papers for accounts receivable for the March 31, 2017 audit; correct?
A. Yes.
Q. And was it EY's practice on the conforming statement work papers to use the CS notation?
A. Yes, as far as the work paper

reference. Yes.
Q. And then for financial statements, was it EY's practice to use the FS notation?
A. I don't recall.
Did we not have an FS in front of that? I just they were regular E01 without having an FS.
Q. So if we see CS, then that is --
A. A conforming statement.
Q. It refers to conforming statement work?
A. Yes.
Q. And here, these are all of the work papers related to the account receivable but, as we have been doing, I want to focus just on the Ventures one, which should be E01.3, CSE01.3, NFL Enterprises.
Do you see that?
A. Yes.
Q. And then if you turn the page, I'm looking at the page where on the bottom it says page six of seven?

A. Yes.
Q. So this work paper is for the March 31, 2017 conforming statement audit for the Ventures receivable; correct?
A. Yes.
Q. And we can see that the ending balance in that receivable is stated to be approximately $21 million; right?
A. Yes. It appears that there might be a typo there. It says 12/31/2016. I think that meant to be 3/31/2017.
Q. I was just going to ask you that. Thank you.
And the remittance amount listed on this work paper is approximately 82.3 million; right?
A. Yes.
Q. Now, I want to look at what it says in your tick mark B which starts on the first page. It's a little cut off on the print so I'll read it. You can look on the screen.

Note B states, "we obtained an e-mail communication, CSE01.1A, between Bradley Firestone, NFL finance, and Ed Villanueva, Raiders CFO, dated June 1, 2017 in which Mr. Firestone confirms the NFL Enterprise amount due to the Raiders for the 2016 season. Mr. Firestone confirmed a total remittance of 108.7 million. Per inspection of the e-mail, we identified that Mr. Villanueva deducted 26.3 million from the total, as this amount was reported as revenue already in GL account number 3394. We agreed the 26.3 million deduction to the total of JEs" -- I'll pause there for a second.

JEs are journal entries; right?

A. Yes.

Q. "1612GE31 for 24.5 million and 1612GE12 for 1.8 million, which we tested as part of our year-end audit in FS U01.4".

Is the FS there referring to your financial statement audit?

A. Yes, it is.
Q. "And this deduction of the amount already recorded brings the requisite adjustment balance to 82.3 million. As such, the remaining" -- "the 82.3 million is included in the NFL Enterprise receivable".
So is it fair to say that EY, in conducting its audits of the conforming statements, that Mr. Villanueva deducted $26.3 million from the remittance when preparing the conforming schedules?
A. What it states there is the 26.3 million was already recorded in the general ledger and, as such, recorded the net amount in order to get to the amount that Mr. Firestone confirmed.
Q. And it says Mr. Villanueva deducted the 26.3 million from the total, the total being what Mr. Firestone confirmed; right?
A. Yes. So after the 82.3 million was recorded, it would get to

the number that Mr. Firestone confirmed.

Q. And so EY knew in doing its audits that that was the process that Mr. Villanueva was doing. He was deducting the 26.3 million from the remittance amount provided by Mr. Firestone; right?

A. Yes, he was deducting what was reported and getting to the balance that Mr. Firestone confirmed.

Q. And EY knew when it was doing its conforming statement audits that the reason Mr. Villanueva was doing that is because that amount was already recorded in the general ledger account number 3394; right?

A. Yes.

Q. And you knew that general ledger account number 3394 was Ventures revenue; right?

A. Yes.

Q. So let's -- and then there's a reference. In addition to noting that that's what Mr. Villanueva's doing, EY goals further and states, in connection with that 26.3 million deduction, that you tested that as part of your financial statement audit at U01.4, so I want to look at that reference. It's JX 1757 in the binder.

And this exhibit is the revenue work papers for EY's audit of the December 31, 2016 financial statements; correct?

A. Yes.

Q. And these are all of the work papers for revenue, so if we could get to the one for Ventures, I believe it's page eleven of thirty-six.

Now, the note that we were just looking at on your conforming statement work paper said the journal entries 1612GE31 for 24.5 million and 1612GE12 for 1.8 million, it states that those were tested on this work paper. And when we look at this work paper, those two amounts are clearly indicated to be the January Ventures distributions being recorded as

revenue; correct?
A. They are the accrual for Ventures' payment and the January 2017 broadcast accrual, yes.
Q. So those are the January accrual amounts that EY's noting -- when it's auditing the conforming statements, it's taking note that the January accrual amounts are the specific amounts that are being deducted by Ed Villanueva from the remittance when preparing the conforming statements; right?
A. Yes.
Q. Yesterday you testified that EY had a core understanding that the January accrual amount was a separate revenue stream from the remittance amount; right?
A. That was our understanding, yes.
Q. And if that was true, then there would be no reason to subtract the January accrual amount from the remittance when you're recording

revenue on the conforming statements;
correct?
A. I don't recall. As it relates to the deduction for the conforming statements, the account that this was recorded to is Ventures, so it appears that they deducted the amount that -- the Raiders deducted the amount that was accrual.
Q. Well, the conforming statements, you're auditing the same accounts, Ventures revenue; correct?
A. Yes.
Q. And on the conforming statement, you can see that it's not the full remittance amount being booked that was confirmed by Mr. Firestone, it's something less than that because the January accrual amount has already been booked; right?
A. Yes.
Q. So in the conforming statement, EY is noting in its work papers that both of those -- that the January accrual amount has to be

subtracted from the remittance amount in order to not overstate revenue; right?

A. Yes.

Q. But on the financial statement work papers, you claim it was a core understanding of the team that those were two entirely separate and distinct revenue streams?

A. That's right. That's what we were led to believe by management.

Q. So how could they be two separate revenue streams on the financial statements and not two revenue streams on the conforming statements?

A. They can be booked to the same account but we were led to believe by management that they were a separate revenue stream.

Q. Looking at the conforming work paper where you specifically note that it is the January accrual that is being subtracted from the remittance, how did you address that inconsistency presented on the face of your work papers between the financial statement reporting of revenue and the conforming statement reporting revenue?

A. Again, they were booked to the same account but they could be different revenue streams.

Q. How can they be different when you're looking at the same revenue stream just being reported on two different financial statements?

A. There's two different basis as to how you're recording that, but it was deducted it was recorded in that account. And all I'm saying is that management represented that it was a separate revenue stream.

Q. So I will just ask it one more time.

If management told you it was a separate revenue stream, then it would have to be a separate revenue stream on the conforming statements as well; isn't that right?

A. Management told us it was a

separate revenue stream and it was recorded to the same account.

Q. Who else besides you on the EY audit team hold what you described as a core understanding that the January accrual was a separate revenue stream from the remittance?

A. The entire audit team and it was as represented by management and we would ask management each year as to any changes in our understanding and we were able to confirm with management our understanding each year.

Q. So you can state here with certainty that the entire audit team for a period of fourteen years from the most senior partner yourself down to the staff held this exact same understanding?

A. I can't speak for other people, but that was my understanding.

Q. In any event, now you understand that that core understanding is wrong?

A. Yes.

Q. And it was never correct throughout that entire fourteen-year period; right?

A. That we found out in 2020. But when we were doing the audit, during the course of those audits, we were not -- we were not aware of that at that time.

Q. And what procedures did you undertake to confirm management's representation to you that the January accrual was a separate revenue stream from the remittance?

A. The procedures that we performed were to validate the accrual which was to confirm that accrual with Brad Firestone and then we looked at -- I'm sorry, yeah, confirm it with Brad Firestone and then look at subsequent cash receipts to validate the existence of that revenue.

Q. So your procedure was to confirm it with Brad Firestone, but that's the same procedure you used on both audits, financial statement and

conforming; correct?
A. It was a separate confirmation as we saw yesterday that we sent to the NFL to confirm the accrual.
Q. Let me focus on remittance for a second.
You have the same procedure in both audits to confirm the remittance. You get an e-mail from Brad Firestone saying this is the balance of the remittance for both audits, financial statement and conforming; correct?
A. Yes.
Q. And on the financial statement audit, you take that confirmation and use it as audit evidence to say the entire remittance amount should be booked; correct?
A. Yes.
Q. And on the conforming statement audit, you look at that confirmation and you use it as audit evidence to say the January accrual

should be subtracted from that amount and the difference should be booked; correct?

A. Yes.

Q. I'm going to ask you one more time.

You said management made a representation to you that the accrual was separate from remittance, separate revenue stream.

What were your specific audit procedures to confirm that representation?

A. As I stated, we confirmed the receivable with the NFL and we looked at subsequent cash receipts.

Q. Is there anything else that you did?

A. That's what we did.

Q. There was a question and answer earlier from today where I asked Mr. Gottlieb: "If we look at it on a calendar year and we see the account receivable created in March and your understanding is that the payment was made in April, May, June, July, and August was paying off that remittance balance; correct".

And the answer was: "We don't know which remittance balance it paid off because we never got the information as to what it related to".

The question is: Under the applicable auditing standards, here GAAS, wasn't it EY's responsibility to know what the remittance -- what those cash payments were paying off, what remittance balance they related to?

A. GAAS, as we read, indicates that that would be a best-case scenario. However, GAAS is not -- it's more of a principal base, so if we don't get that information from the client, we're not able to apply that to the specific remittance, which is what the case was.

Q. But I think for you to say -- I think first you'd have to ask the client for that information; correct?

A. I'm sure -- well, I didn't

ask the client, as I had said previously, and I can't speak to my team as to whether they asked the client, but I would imagine that they did.

Q. Are you aware of any documentation in EY's work papers where they have noted that they have gone to the Raiders and asked them for information about what specifically the cash distributions from Ventures leads to?

A. I would need to look at the work papers. I don't recall.

Q. And EY does keep records of what it asks the client for each year; correct?

A. Sure. But there's professional judgment included as to we ask the client a variety of things throughout the year. Not everything gets documented in the work paper. There's professional judgment that goes into that as well. Every discussion that we have with the client doesn't necessarily always go in the work papers. However, I would have to look at the work papers to be able to see where we documented that, if we documented that in the work papers.

Q. Well, my question was slightly different.

I was saying that you would need to go to the client and ask them --

A. Yes.

Q. If you have information from the client that does not tell you what the payments relate to, what remittance it relate to, what receivable it relates to, you would have to go to the client and request additional information; right?

A. We would ask the client to provide us the detail that we're to tie the payments to the remittance.

Q. And my question was -- because I thought you said that you weren't specifically the person who did that but you thought somebody on your team did that. That's what I thought I in understood you to say.

So my question was: EY keeps records of its requests that it sends to the client, you keep a running list of this is what we've requested from the client, this is what we've sent back, and you keep records of that; correct?

A. Yes.

Q. And so this information was requested from the client. We could see from your records that you requested it and how they fulfilled that request; right?

A. Yes.

Q. And if we look at that document and we don't see that you've requested that information from the client, then I think we're left to understand that this information was not asked for from the Raiders?

A. I don't know that I agree with that. We could have discussed it with them, for example, and it wasn't on the list in the level of detail. You'd have to look at the work papers to be able to see what was documented in each and every year and in the note we're looking at does that the state that.

Q. And I think you said in one of your earlier answers that you can have lots of discussions with management, not everything gets into the work paper.

But if you have something that you consider as the auditor to be a core understanding, core meaning this is fundamental to how I design my audit procedures and do my audit, isn't that core understanding absolutely something that should be documented in your work papers, including who told you, when they told you, so you could that comply with the audit documentation standards in GAAS?

A. I believe that the documents we have and documentation we have in the work papers is in compliance with

GAAS.

Q. There's one other area I want to discuss with you briefly, changing topics.

I'm going to show you -- and this area is actually related to EY's professional fees that were charged to the Raiders over the years. I'm going to show you a few documents that were produced. The first is JX 798.

Are you familiar with this type of billing and collection report?

A. No, because I did not do the billing and collection for the Raiders. That was always handled by the manager or the senior manager, so I'm not familiar with this actual report.

Q. So on the Raiders, would that be Tyler Johns?

A. It could be Tyler, it could have been Javier. There was a number of other managers that were on the account, so it could be a number of different people. And at certain times we had administrative people at EY that would handle the preparation of invoices, so I know what the invoices were that were billed just because I know that it's a receivable from the Raiders to EY, I know what the engagement letter billing amount was, but I'm not familiar with this particular schedule.

Q. So based on your familiarity of knowing what invoices were billed to the Raiders, if you look at what's JX 798, do the amounts listed here appear to be consistent with your recollection of the amounts billed to the Raiders for the fiscal year 2019?

A. I don't recall. 2019, I don't know what the specific invoices are and if the amounts are appropriate. Like I said, I look really at the total of what was on the engagement letter, and if there's anything outstanding at a given point in time and it becomes older, then I become aware of it. But I really don't have visibility to this type of information.

Q. Did you review any of the bills before they were sent to the Raiders?
A. No.
Q. You were updated on any of the cash collections or outstanding receivables owed from the Raiders?
A. Yes, there was reports that I would get as a partner that would show all my clients and it would show that the outstanding invoice was thirty days old, sixty days old, ninety days old, and if it got older, then I would have the team contact the Raiders accounts payable and ask when we were going to get paid.
Q. Other than in connection with the 2020 audit, are you aware of there being any outstanding invoices owed from the Raiders for prior professional services EY performed?
A. I'm not aware of any, no.
MS. BROWN: I have no further questions at this time.
THE CHAIRPERSON: Need some

time?

MS. VAN WINKLE: I would appreciate just a short restroom break. I think I have probably about an hour.

THE CHAIRPERSON: It sounds good.

(Whereupon a break was taken)

THE CHAIRPERSON: Back on the record.

Whenever you're ready, counsel.

CROSS-EXAMINATION BY
MS. VAN WINKLE:

Q. Good morning, Mr. Gottlieb.

A. Good morning.

Q. I have a few additional questions about your background.

First, what is your undergraduate degree in?

A. Bachelor of science accounting.

Q. And where did you obtain that degree?

A. The University of Southern

California.

Q. Do you have any professional licenses?

A. I have a certificate of public accounting, CPA.

Q. When did you obtain that?

A. 1991.

Q. Is it still active?

A. Yes.

Q. What is the typical career progression of an auditor in the assurance practice at EY?

A. When we hire a new auditor out of college, we are as a staff one and they are as a staff one for one year, then they become a staff two or one year, and then they become a senior and a senior for three years.

Staff one and two basically are doing the detailed testing of the source documents into various third party evidence and the senior is overseeing the staff one and staff two from a supervising perspective, and the senior will be involved with more judgmental as a bit more complex areas.

After five years, the typical transition is to manager. The manager would have multiple audit engagements at one time and they supervise over the senior and you're a manager anywhere from three to four years, then you become a senior manager so that's nine or ten years at the firm. Senior manager also has several engagements and they're responsible to oversee the manager as well as the team. And then partner is generally somewhere between three to five years or after, so partner could be from twelve to sixteen years to be able to make partner. And the partner is in charge of the overall engagement, the overall client relationship.

Q. Did you hold all of those positions while you were at EY?

A. I did.

Q. And you mentioned detailed testing.

Are you familiar with the

phrase "detail review and general review"?
A. Yes, I am.
Q. What are those?
A. Detail review is reviewing the detail work papers on an individual work paper basis, looking at the procedures to ensure the procedures were performed appropriately. A general review is looking at it at a much higher level, so let's say looking at it at a five thousand foot level and ensure that GAAS and GAAP are being appropriately applied and in accordance with those standards.
Q. How many years were you a partner in the audit practice?
A. I made partner in 1999 and retired in '22, so I was twenty-three years as a partner in the audit practice.
Q. Can you tell me a little bit more about a partner's responsibilities in the audit practice with respect to performing audits?

A. A partner's responsibility, as I mentioned, is one that is in charge of the client relationship, in charge of the audit, ensuring that the audit is performed in accordance with GAAP or GAAS or, in this case, federal income tax basis of accounting. A partner's responsible for supervising the team and ensuring that the team has adequate skills and knowledge to be able to perform the audit on a particular audit engagement.

Q. And how about the audit strategy and execution, does the audit partner have any responsibilities in those areas?

A. Yeah, the audit partner's involved with the beginning all the way through the signoff and signing of the actual audit opinion. So the strategy, the planning, the risk assessment, the updating of understanding of the industry, the partner oftentimes leads those discussions and the team adds in additional color based on their feedback from a client.

Q. And in the context of the Raiders engagements, how did you go about fulfilling your responsibilities as an audit partner?

A. I was the audit partner, as we said, from 2006 to 2020. However, in 2017, Javier became partner, so I had the full responsibility as partner involved in planning all the way through the signing of the opinion. When Javier Garcia made partner, I delegated more to Javier as he was a partner and I did less from 2017 to 2020.

Q. Did you lead any practice groups at EY?

A. I did. I led the -- started and led the global restaurant practice for EY starting in 2002 through 2022, so over twenty years.

Q. Is that global, throughout the whole world?

A. Yes, it is.

Q. How many audit opinions have

you signed as a partner?
A. Probably somewhere in the excess of five hundred to six hundred audit opinions.
Q. Did you have any public company clients?
A. I did.
Q. What standards are public company clients, audits of public company clients governed under?
A. Public Company Accounting Oversight Board or PCAOB is the framework that we issue an opinion on as it relates to public companies.
Q. Is that different from the AICPA standards?
A. Yes, it is.
Q. How many public company opinions have you signed?
A. Probably somewhere in the neighborhood of seventy-five to a hundred.
Q. What is an engagement quality reviewer?
A. They are the quality control

of an audit, so it's a partner who is assigned to the engagement that isn't involved in all of the details the partner is involved in so they have more fresh perspective and they could look at the engagement from an even higher perspective and ensure that the engagement is conducted in connection with generally-accepted accounting principles and GAAS.

Q. Is that often abbreviated EQR?

A. Yes, it is.

Q. Is the EQR a quality function?

A. Yes.

Q. Have you ever served as an EQR?

A. Yes.

Q. How many engagements did you serve as an EQR for while you were at EY?

A. Probably fifty to sixty engagements.

Q. Was that on both public and

private company engagements?

A. Yes.

Q. Are you currently employed?

A. Yes.

Q. Where do you work?

A. CohnReznick.

Q. And what are you doing at CohnReznick?

A. Not signing audit opinions. I'm not in the audit practice.

Q. Is that by choice?

A. That is by choice, yes. As I have experience in the restaurant industry, CohnReznick is a firm that has what I'll call an emerging restaurant brands, a lot of celebrity chefs are clients of CohnReznick, so I am growing those restaurant companies -- helping grow those restaurant companies into larger companies and really educating and bringing my knowledge of the restaurant industry to CohnReznick, so I'm more of an advisory and consulting role with CohnReznick and business development and not

reviewing or issuing audit opinions.
Q. You mentioned that, as Mr. Garcia became more senior on the Raiders engagements, that you delegated more responsibility to him.
Is that delegation of responsibilities appropriate by GAAS?
A. Yes.
Q. Did you nevertheless stay involved in the audit strategy and execution of the audit?
A. Yes. Yes, I do.
When Javier made partner, the Raiders requested for him to stay on the engagement, and you don't have two coordinating partners on an engagement the size of the Raiders, so we agreed to have a division of responsibility and Javier, as I had mentioned, took on more responsibility. However, I was very involved with strategy on the front end, planning the audit, risk assessment, and reviewing certain work papers but much less than I did when I was the only partner on the engagement.

Q. Were you ultimately responsible as the coordinating partner for staffing the Raiders engagements?
A. Ultimately. However, because the Raiders were located in the Bay Area for the majority of the time, I was -- I'm based in Orange County in southern California, I relied on Javier and team because they knew the individuals in their office better than I did. But they would always run it by me as to the staffing that they would propose.
Q. So you coordinated with Mr. Garcia on staffing the engagements?
A. Yes.
Q. Was the Raiders audit engagement easy to staff?
A. Yes, it was.
Q. Why?
A. Because it's the Raiders, it's a high profile sports team that a lot of people want to be involved with and associated with and there's some prestige from that, so it was very easy

to staff. And as a result, we had, so to speak, the pick of the litter as far as the best people to get on the engagement because we could pick the individuals that we wanted to put on the engagement.

Q. By pick of the litter, do you mean high performers?

A. Yes.

Q. Would that be -- EY conducts performance evaluation; correct?

A. Yes.

Q. Did you take those performance evaluations into consideration when selecting members for the Raiders audit engagements?

A. Yes, we would always look at their performance reviews and we would also look at commentary as to their ability to work with clients.

Q. Was there anything else that you were looking for in a staff member for -- or other senior positions on the audit engagements for the Raiders?

A. Yeah, we just wanted to make

sure that the individuals had the same culture that the Raiders had, ensure that they would get along with management, and the Raiders would oftentimes just express to bring somebody that met their similar values and culture.

Q. Do you know someone named Allan Holzer?

A. No.

Q. Are you aware of an Allan Holzer ever working on the Raiders audit engagements?

A. I don't recognize that name, no.

Q. Are you aware of Allan Holzer ever working on the AUP services that you provided to the Raiders?

A. No, I don't know that name.

Q. Did you obtain a new engagement letter each year for the Raiders audit?

A. Yes.

Q. And is there an engagement letter for each of the 2006 to 2020

engagements?
A. Yes, there is.
Q. Would you have issued the audit report in any of those years without arriving at a new executed engagement letter?
A. No.
Q. I'd like to look --
MS. VAN WINKLE: We have some binders to pass out. I meant to do that before.
Q. Mr. Gottlieb, I'd like you to turn in the binder you were just handed to JX 0457. If you need any time to review the documents, just let me know.
A. Okay.
Q. What is this document?
A. This is an audit engagement letter as it relates to the 2016 audit of the Oakland Raiders, LP.
Q. What is the purpose of an you had engagement letter?
A. The audit engagement letter states the scope of the audit, the procedures -- the period that we are

auditing. In this case, we have agreed-upon procedures as well. It stipulates the audit responsibilities and limitations and it also includes management's responsibilities and representations, and it includes the fees and billing schedule as it relates to the audit.

Q. Why is it important to lay all of that out in the engagement letter?

A. Because each engagement letter in each year is a standalone engagement and we need to make sure that there's understanding between us and the client as to what the scope is of what we are auditing and/or performing agreed-upon procedures and the responsibilities of the auditor and the responsibilities of management.

Q. Who hired EY to perform the work -- the scope of work specified in this engagement letter?

A. Ed Villanueva.

Q. And who did he sign the

engagement letter on behalf of?
A. The Oakland Raiders limited partners.
Q. And is that on page ten of the document? Is that Mr. Villanueva's signature?
A. Yes, it is.
Q. Are you aware in this case that beneficial owners of the Raiders have sued Ernst and Young?
A. Yes.
Q. Did any of the beneficial owners of the Raiders ever hire EY to audit the Raiders financial statements?
A. No.
Q. Did you ever talk to or interact with Mark Davis?
A. No.
Q. Did you ever talk to or interact with any of the beneficial owners of the Raiders?
A. No.
Q. Did you ever talk to or interact with any of the limited partners of the Raiders?

A. No.
Q. I'd like to go to the first page sticking with JX 0457 and look at paragraph one.
The first sentence mentions the services, describes the services that EY has been engaged to provide.
And can you tell me which sets of financial statements was EY engaged to audit in this letter?
A. We are auditing the Oakland Raiders, LP financial statements.
Q. And for what period?
A. As of and for the year ended December 31, 2016.
Q. Is that the tax basis set of financial statements ended December 31, 2016?
A. Yes, it is.
Q. And how many months of Raiders financial activity did that cover?
A. Twelve months.
Q. How many years of financial activity for the tax basis financial

statements was EY engaged to audit in this engagement letter?

A. One year.

Q. And is that also true for the other engagement letters from 2006 to the 2020 audits, that it was an engagement to audit one year's set of financial statements?

A. Yes. Each engagement letter was one year.

Q. And so just to take this letter as an example, did you perform any services under this engagement agreement related to the Raiders December 31, 2015 financial statements the year before?

A. No.

Q. And under this engagement agreement for the 2016 audit, did you perform any services related to the next year's financial statements, December 31, 2017?

A. No.

Q. Are there distinct phases to an audit?

A. Yes.
Q. Can you describe those?
A. Yes.
The phases are the planning for the audit and the risk assessment as it relates to evaluating the risk and then discussing with management any changes that had taken place from one year, and then there is the execution of the audit and the performance of the audit procedures, and then there is the reporting phase and issuing financial statements.
Q. And once you issue the report -- and we'll take the Raiders specifically -- once you issue the report for a particular year, did you perform any more audit services for that year's set of financial statements?
A. No.
Q. Did EY perform each of those phases that you just described for each one year financial statement audit?
A. Yes.

Q. Did EY perform distinct procedures each year?
A. Yes.
Q. Did EY obtain distinct evidence each year?
A. Yes.
Q. Did EY issue a distinct audit report for each set of financial statements?
A. Yes.
Q. And you mentioned earlier this morning that, in performing an audit of a one-year set of financial statements, that you take into consideration the opening balances from the prior year.
Do you recall that?
A. Yes.
Q. Can you just explain a little bit more what the auditor is doing when it's performing -- well, do you actually go back to that year's set of work papers or do you rely on the numbers from the opening balance?
A. Once the audit opinion is

issued, we do not go back to the prior year work papers. We rely on the audit opinion that was issued for that year and then we go to the year under audit and we perform the same procedures that we would perform an audit as far as planning, our understanding of the client, understanding of the internal control structure, risk assessment, performance of the audit procedures to test in accordance with generally-accepted accounting principles and GAAS or income tax basis of accounting, and then reporting. We do that each and every year.

Q. And so for example, the 2016 financial statements, you didn't go back and reaudit any of the 2015 financial statements?

A. No. Once the audit is issued, it is issued and we don't go back.

Q. How about during the 2020 audit for the Raiders? Did EY -- did the company reissue or restate any previous period financial statements?

A. No, they did not.

Q. And how about during the 2020 audit, did EY reaudit any prior period financial statements?

A. No, we did not.

Q. During the 2020 audit, did EY reissue any prior period audit reports?

A. No, we did not.

Q. And can you describe for me briefly what EY did in connection with the 2020 audit with respect to the opening balances that you mentioned?

A. The opening balances were adjusted to correct for an error detected as a result of the whistleblower allegations, and the single year of 2020 was issued.

Q. Did you have an understanding each year whether EY would or would not be engaged to audit that year's set of financial statements?

A. Each year we did not have an understanding as to whether we would be engaged. We would have to discuss it with management and we would discuss fees and then management would -- and EY would agree on fees and then we would enter into an engagement letter similar to what we have here as JX 0457.

Q. Going back to paragraph one, please, the last sentence refers to an Exhibit A.

Do you see that?

A. I do.

Q. I'd like you to turn to that, please. I believe it's on page eleven of this document. And I'm going to use the numbers that are in the bottom center of the page.

A. Okay.

Q. Does this describe the services that EY provided under this 2016 audit engagement agreement?

A. Yes, it does.

Q. How many different reports did EY issue under this agreement?

A. Seven reports.

Q. There were two audit reports;

correct?

A. That's correct.

Q. And there were five agreed-upon procedure reports?

A. That's correct.

Q. What's an agreed-upon procedure?

A. It's procedures that were agreed upon with management prior to the engagement as to what those procedures are, and then we perform those procedures and then document within the results, the results of those procedures.

Q. Is an AUP procedure or report different from an audit opinion or report?

A. Yes, there's no opinion, it's simply performing the procedures as agreed upon and then reporting the results.

Q. So under the terms of this agreement, how much different reports did EY issue?

A. Seven.

Q. And in other years from 2006 to 2020, did EY also issue multiple reports in those years?
A. Yes, we did.
Q. For the 2016 audit engagement, did EY need to perform the services in bullets two through seven in order to issue its audit report on the tax basis financial statements that's described in the first bullet?
A. No.
Q. And what about in the other years, did EY need to perform the work and issue the reports for the conforming statements or for those AUPs in order to issue its report on the tax basis financial statements?
A. No. Each report stands on its own.
Q. Can you please go to paragraph twenty. It's on page five.
A. Okay.
Q. The first sentence of paragraph twenty is, "we estimate that our fees for the audit services and

agreed-upon procedure services will be two hundred seventy-two thousand".

A. Okay.

Q. Which services does that encompass, that two hundred seventy-two thousand?

A. All seven services, all seven reports.

Q. Does the engagement letter allocate the fees by service?

A. No.

Q. Did any of the engagement letters allocate fees by service?

A. No.

Q. And if EY had been engaged to perform only the audit of the tax basis financial statements here in 2016, would the fees have been less?

A. Yes.

Q. And what about in the other years from 2006 to 2020, if EY had been engaged to only audit the tax basis financial statements, would those fees have been less?

A. Yes.

Q. And why is that?
A. Because we would be performing less services and incurring less hours and the fees are determined based on the hours incurred for each of the different reports that we issue.
Q. Mr. Gottlieb, now I'd like to turn to a document actually in the cross binder that Ms. Brown provided you. I'd like to go to JX 3217. And I'd like you to turn to page seven, paragraph A9.
Let me know when you're there.
A. Which page, I'm sorry?
Q. Page seven at the bottom, paragraph A9.
A. A9. I'm there.
Q. This section, I believe it's AU-C 230, Ms. Brown showed you this yesterday; is that correct?
A. That's correct.
Q. And in paragraph A9, the second sentence states, "however, it is neither necessary more practicable for

the auditor to document every matter considered or professional judgment made in an audit".

Do you see that?

A. I do.

Q. Can you please explain that to me?

A. Yes.

It touches upon professional judgment. The auditing standards are principle-based and it allows the auditor to determine, based on their professional judgment, utilizing skepticism, utilizing different knowledge to be able to make the determination as to what level of documentation should be included within the work papers.

Q. Does that also apply to the level of detail?

A. Yes, it does.

Q. I'd like you to put that binder away, please, and pull out the smaller binder that I gave you and turn to JX 0454.

A. Okay.
Q. What is this document?
A. It's the audit planning template for the Oakland Raiders 2016 audit.
Q. What is the purpose of an audit planning template?
A. An audit planning template is a form that we use to capture the information that we discuss in the audit planning process.
Q. And what kinds of information are typically discussed in the audit planning process?
A. We would discuss things with management and update our understanding of the operations of the entity as well as document various things as it relates to the risk assessment and the approach that we would use as it relates to the audit.
Q. And I'd like you to turn to page four, please.
A. Okay.
Q. And do you see the American

flag?
A. Yes.
Q. Right below that there are some boxes, the date, participants, matters discussed?
A. Yes.
Q. What is this section of the audit planning template?
A. This is two different -- this is what we discussed with the engagement team, discusses with the Raiders are, an update as it relates to their operations and any changes that have transpired during the year.
Q. Does this document discussions that happened on a particular date?
A. Yes. We had two different discussions, one on November 17 and the second on March 21.
Q. And did you participate in those discussions?
A. I did.
Q. Who else from EY participated?

A. It's shown in the box to the right, Javier Garcia as the engagement partner, Mark Bookman as the tax partner, and Tyler Johns as the senior manager, Carly McPherson as the senior, Ed Villanueva as CFO, Matt Andrus as the controller, and Marc Badain as the CEO of the Raiders.

Q. And you mentioned earlier this morning that you typically had a planning meeting with management; correct?

A. That's correct.

Q. Does this document at least one of those planning meetings?

A. Yes, it does.

Q. Is this one place in the work papers where communications with management are documented?

A. Yes, it does.

Q. Does that mean it's the only place where communications with management are documented?

A. No.

Q. And does that mean that the

understanding that you obtain from management, every particular conversation is documented in the work papers?

A. It's not every single conversation. Some of the conversations are documented here and therefore it doesn't need to be documented in the detailed work papers.

Q. I'd also like you to turn to page eight. It's the understand the business section.

A. Yes.

Q. What is understand the business?

A. It's where we understand the nature of the operations of the business and understand the impact of the business in any given year as it relates to those operations.

Q. And who does it indicate EY interviewed in connection with that discussion this year?

A. During this year, it was Ed Villanueva, the CFO, and Matt Andrus, the controller.

Q. Is this representative of the types of communications the team had with management?

A. Yes, it is.

Q. Does it document every single conversation that the team had with management?

A. No.

Q. Let's go back to the big binder. And I'd like you to go to JX Comp 1, please.

A. Okay.

Q. This is the compilation exhibit that excerpted just one worksheet, the AR detail testing for NFL Ventures for multiple different years, '14 through '19.

Did you ever sit down as an auditor performing a single year audit and look at work papers across years like this?

A. No, each year stands on its own and we did not look at the years comparatively.

Q. I'd like to point you to the 2015. It's page three of the compilation exhibit.

A. Okay.

Q. Did Raiders management use the same process for recording the January accrual as it did the remittance?

A. No.

Q. Could you describe each of those?

A. Yeah.

The remittance was -- is recorded one time a year after it was received from NFL Ventures after their year-end, March 31, of any given year and the Raiders recorded an entry to record the full remittance. The accrual was recorded -- and I should say that the remittance was recorded in a season after the season played. So because the NFL Ventures' year-end is 3/31 and the Raiders is 12/31, for example using '15, the Raiders would record the remittance on 3/31/15 and

that related to the 2014 NFL season.
The accrual is recorded as of December of 2015 at year-end.
Q. Why did you have the understanding that the remittance was different from the January accrual?
A. Based on discussions with management.
Q. And is that reflected anywhere in this work paper?
A. Yes. When you look at page four, you see that the remittance below the first table is ninety-four million two hundred nine as a separate line item and then on the table above, the accrual is separately depicted is eighteen million eight hundred sixty-four, so they're separately disclosed here by management.
Q. Did EY obtain separate third party documentation for each of those amounts?
A. Yes, we did.
Q. I think that was my last question for the big binder, so you can

put that away, and go to JX 0463 in the small binder.

What is this document?

A. This is the consolidated financial statements for the Oakland Raiders, LP as of December 31, 2017 and for the year then ended.

Q. Does it also include an audit report?

A. Yes, it does.

Q. And could you please go to page three.

A. Page three.

Q. What is page three, specifically?

A. It's a report of independent auditors.

Q. And who is the report addressed to?

A. The partners, the Oakland Raiders limited partners.

Q. And is this the report addressed to any of the beneficial owners of the Raiders?

A. No.

Q. Could you take a look at page thirty-five of the exhibit.
A. Okay.
Q. And this should be the consolidated schedule of partners' capital.
A. Yes.
Q. What is that?
A. It is a compilation of the schedule of partners' capital shown by each of the limited and general partner.
Q. And does this list the general partner and the limited partners to whom the audit report is addressed?
A. Yes.
Q. Are any of those limited partners individuals?
A. No.
Q. Please go to JX 0467.
A. Okay.
Q. What is this document?
A. This is the consolidated financial statements for the period of

April 1, 2018 through December 31, 2018 of Raiders Football Club, LLC.

Q. And the previous set of financial statements we looked at was the Oakland Raiders, LP.

What's the difference between that and the Raiders Football Club, LLC?

A. When the Raiders moved to Las Vegas, they created a new entity for the football operations called Raiders Football Club, LLC.

Q. Who issued the financial statements that we're looking at in JX 0467?

A. Raiders Football Club, LLC.

Q. And what about in previous years, the financial statements that EY audited, which entity issued those financial statements?

A. Oakland Raiders Limited Partners.

Q. And are those two different entities?

A. Yes.

Q. After 2017, did EY ever audit the financial statements of the Oakland Raiders, LP?
A. No.
Q. And could you please describe for me -- this states that it's the financial statements from the period April 1, 2018 commencement of operations through December 31, 2018, can you please explain why that wasn't a twelve-month period?
A. Yes, because Raiders Football Club, LLC commenced its operations on April 1, so there was no operation from January 1 through March 31, so this report covers the nine-month period.
Q. Could you please take a look at page three of the exhibit.
A. Okay.
Q. Who is this audit report addressed to?
A. The member, Raiders Football Club, LLC.
Q. And who is the member of the Raiders Football Club, LLC?

A. It's the Oakland Raiders limited partnership.

Q. And for the 2019 and 2020 audits, do you recall who that audit report was addressed to?

A. The member, the Raiders Football Club, LLC.

Q. At any point in time for any of its audits of Raiders financial statements, did EY direct an audit report to any of the beneficial owners of the Raiders?

A. No.

Q. And did you have any understanding of whether -- of what the Raiders were doing with the financial statements once they were issued? I'm sorry, the audit report once it was issued?

A. No, we issued to the entity that we have engaged to which is in this case the Raiders Football Club, LLC and it was meant to be only for that entity.

Q. Can you please go back to the

engagement letter at JX 0457.
A. Okay.
Q. I'd like to start with paragraph two. It mentions the objective of an audit.
What is the objective of an audit?
A. The objective of an audit is to express an audit opinion on whether the financial statements are presented fairly in all material respects to conform, in this case, with the federal income tax basis of accounting.
Q. And is that an opinion?
A. It is an opinion, yes.
Q. And in paragraph three, the second sentence states that "those standards" -- it's referring to the AICPA standards -- "require that we obtain reasonable assurance".
What is reasonable assurance?
A. Reasonable assurance rather than absolute assurance is that an audit is done on a sample test basis and we're not testing a hundred percent

of any population, so it's on a reasonable basis rather than on an absolute basis.

Q. And are you familiar with the phrase "risk-based approach"?

A. Yes.

Q. What does that mean as it relates to reasonable assurance?

A. That means that we evaluate the company and their accounts and their processes and we determine what the risk is of those and our audit procedures will be reflective of a higher risk versus a lower risk account.

Q. Do the auditing standards requires that auditors apply professional judgment in determining whether they have obtained reasonable assurance?

A. Yes.

Q. Why?

A. Because professional judgment is necessary to be able to determine your risk assessment. We are, like I said, testing on a -- performing our on a test basis, so it requires professional judgment to be able to determine the level of testing that is required as is it relates to the audit.

Q. I'd like to go to the third sentence of this paragraph. It states, "as the partnership is aware, there are inherent limitations in the audit process".

Do you see that?

A. I do.

Q. What are inherent limitations in the audit process?

A. Because of our selective testing as it relates to the audit process, there's inherent limitations and there could be collusion, there could be fraud, there could be other things that are outside the control of the audit that results in limitations as it relates to the audit.

Q. And why did EY -- why did you, as the coordinating partner, include a reference to those inherent limitations in this engagement agreement?

A. Because it's communicated to management and to the Raiders making them aware that there are those limitations and that those limitations could result in a material misstatement.

Q. Let's go over to page two, please. And I'd like to start with the section that starts at paragraph nine, management's responsibilities and representations.

A. Okay.

Q. And that carries over to the next page.

Why did you include this section in the engagement letter?

A. As I had stated, the engagement letter not only shows and discloses what the audit responsibility is and limitation but it also provides what management's responsibilities are and representations. And management is responsible for the financial statements, and in order to prepare and present the financial statements, they're responsible for the design and implementation of internal controls and to ensure those internal controls are functioning properly.

Q. Is that reflected in paragraph nine?

A. Yes, it is. So that's why it is included there.

Q. And in paragraph ten, the first sentence is, "management is responsible for adjusting the financial statements to correct material misstatements".

Do you see that?

A. I do.

Q. What does that mean?

A. Management, as I had mentioned, is responsible for the financial statements and the financial statements are presented in this case in accordance with federal income tax basis of accounting, so management is responsible to ensure all adjustments that are required or misstatements that are identified should be recorded to the financial statements.

Q. Why is it management's responsibility -- well, why are the fair presentation of the financial statements management's responsibility? Why is it management's responsibility to correct material misstatements?

A. It's because the books and records are management's responsibility and the financial statements are derived from the books and records. Our responsibility is to issue an opinion on the financial statements.

Q. And does management know more about its books and records than the auditor?

A. Certainly they do. They are in their position throughout the year and they live and breathe the company that they work for and we perform an audit, so management is in a much better position to be able to better understand their operations and

business than we ever would be.
Q. I'd like to go to paragraph twelve next. That paragraph starts, "management is responsible for providing us access to all information of which management is aware that is relevant to the audit services".
Do you see that?
A. Yes, I do.
Q. What does that mean?
A. That means, in order for us to perform an audit, management needs to provide us all the information that is necessary and relevant for us to be able to issue an audit opinion, and that means we need to get various documents, various supporting information that allows us to perform the audit in accordance with federal income tax basis of accounting and in accordance with GAAS.
Q. Did you expect Raiders management to provide you all of the information of which management was aware that was relevant to the audit

services?

A. Absolutely, yes.

Q. And at the time before 2020, the 2019 and earlier engagements, how did you assess management's integrity?

A. I felt that management had high integrity and felt that we could rely on management to provide us the information and the information that they were providing us was complete and accurate.

Q. Let's go to paragraph thirteen, please.

A. Okay.

Q. First sentence, "as required by AICPA auditing standards, we will make specific inquiries of management about the representations contained in the financial statements".

And then the second sentence is, "AICPA auditing standards also require that, at the conclusion of the applicable audit services, we obtain a letter of representations from certain members of management about these matters and represent that management has fulfilled its responsibilities as set forth in this agreement".

Do you see that?

A. I do.

Q. What does that mean?

A. It means that, in the course of the audit, we have various inquiries that we have of management and we ask for a variety of things from management and at the conclusion of the audit we ask management to affirmatively in a letter be able to tell us that they represent that these things are complete, they're accurate, and it's in the form of a letter of representation, a letter of management's representation.

Q. Is obtaining that management representation letter a required audit procedure?

A. Yes, it is.

Q. What would happen if EY didn't obtain that management representation letter?

A. We would not issue the audit opinion.

Q. Does an auditor rely exclusively on management representations?

A. No, the management representation is just one aspect that we look at. We perform various substantive audit procedures to validate the balances within the financial statements and the representation letter simply provides the representation from management.

Q. And in the case of the Raiders audits for 2019 and earlier, did you rely exclusively on management's representations about NFL Ventures?

A. No.

Q. The last sentence in paragraph thirteen still, "the responses to those inquiries, the written representations, and the results of our audit procedures comprise evidence on which we will rely

in completing the audit services".
Do you see that?
A. I do.
Q. What does that mean?
A. Effectively what I had just said that the representation that we get from the letter of management representation, the results of our audit procedures that we perform as it relates to the various balances included within management's financial statements, we accumulate all of that evidence and that is evaluated and assessed in determining whether we can issue the audit opinion.
Q. Did you also apply professional judgment in determining which management representations to corroborate and the which in which to corroborate them?
A. Yes. Professional judgment is baked through the entire engagement process and it is included as it relates to the management representations that we ask for.

Q. I'd like to take a look at a management representation letter. Let's go to JX 0453.
A. Okay.
Q. What is this document?
A. This is the management representation letter in connection with the December 31, 2016 audit.
Q. And is this the representation letter that was referenced in paragraph thirteen of the engagement letter that we just looked at?
A. Yes, it is.
Q. And what's the purpose again of the management representation letter?
A. The purpose is to get in writing from management its representation on a variety of matters that we discussed with management through the audit that are critical to us completing the audit and issuing our audit opinion.
Q. Did you obtain a management

representation letter in every year for the Raiders audits?
A. Yes.
Q. Let's go to the middle of the page, management's responsibilities.
A. Okay.
Q. What is management certifying in that first paragraph under management's responsibilities?
A. Management is certifying that they have provided us effectively the same things that were in the engagement letter, that we had access to all the information in which we had requested and that they have provided that in a timely manner and the information is complete and accurate and unrestricted access to personnel within the company to be able to ask questions.
Q. Did you rely on that representation in the 2016 audit?
A. Yes, we do.
Q. And did you rely on a similar representation from management in the 2019 and earlier audits?

A. Yes, we did.

Q. If you turn to page two, please.

At the top of page two there's a section uncorrected misstatements.

A. Okay.

Q. And it states, "there are no uncorrected misstatements, including the effects of correcting or reversing prior year uncorrected misstatements, or uncorrected misstatements in disclosures relating to the current year consolidated financial statements".

What was management representing in that sentence?

A. That there are no uncorrected misstatements and that all the financial statements are complete and accurate and there's no other adjustments required to the financial statements.

Q. Did you rely on that representation in the 2016 engagement?

A. Yes.
Q. And did you rely on a similar representation in the 2019 and earlier audit engagements?
A. Yes.
Q. I'd like to go to the bottom of page two, the receivables and revenues section.
A. Okay.
Q. The first sentence starts -- I'm not going to read the whole thing, but the first sentence starts, "receivables represent valid claims against the debtors indicated".
Do you see that?
A. Yes.
Q. What does that mean?
A. That means that the receivables represent true claims against the counterparty or the debtor as it relates to whoever those various debtors are.
Q. And did that include the NFL Ventures receivable?
A. Yes, it did.

Q. And what is this representing about the NFL Ventures receivable?
A. It's representing that the receivables that were recorded by the Raiders were valid claims from NFL Ventures.
Q. Does that include the amount that it was accurate?
A. Yes.
Q. Did you rely on that representation in the 2016 audit?
A. Yes.
Q. And how about in 2019 and earlier engagements, did you obtain a similar representation that you relied on?
A. Yes.
Q. So far as you can recall. I know we're missing some of the earlier work papers.
I'd like to go to page three, please.
A. Okay.
Q. The first full paragraph on page three, "we have adequately

disclosed a description of our major revenue-generating products and services".

Did that include NFL Ventures?

A. Yes, it did.

Q. And then it goes on. "And a description of the revenue recognition policies applicable to these products and services".

Does that include the revenue recognition policy for NFL Ventures?

A. Yes, it does.

Q. And what is management representing in that paragraph with respect to the revenue recognition description and policy for NFL Ventures?

A. They're representing that they have provided us the revenue recognition policy and -- effectively that they provided us the revenue recognition policy importance with applicable standards.

Q. Did you rely on that

representation?

A. Yes.

Q. And going to the second paragraph right below that, not the first sentence but the second sentence, "we have made available to you all significant contracts, communications, either written or oral, and other relevant information pertaining to arrangements with our customers, including distributors and resellers".

Do you see that?

A. I do.

Q. Does that sentence also relate to NFL Ventures?

A. It includes NFL Ventures, yes.

Q. And does it include the contract that we saw referenced, the contract between NFL Ventures and the Raiders?

A. Yes.

Q. And would it also include the contract or I should say the relationship that NFL Ventures has with its licensing counterparties like Gatorade and Nike and the like?

A. Yes.

Q. And what did you understand from this representation with respect to NFL Ventures, what did you understand management was representing?

A. Management was representing that they made available all that information as it relates to those contracts.

Q. And did you rely on that representation?

A. Yes, I did.

Q. I think you already answered this, but did you rely exclusively on management's representations?

A. No. We performed other audit procedures to validate management's representation, but it is a critical component of the audit and, as I mentioned before, it is necessary for us to issue the audit opinion to receive it.

MS. VAN WINKLE: That's all I

have.

THE CHAIRPERSON: Thank you.

Anything further?

MS. BROWN: Could we have a few minutes to confer?

THE CHAIRPERSON: Sure. We'll take a quick recess.

(Whereupon a break was taken)

THE CHAIRPERSON: Just as a heads up, if you need sixty minutes for lunch, that's great. The panel doesn't. We can do it in thirty, but that's up to you. No pressure. Whatever your pleasure. We don't need the full sixty.

MS. VAN WINKLE: Thank you.

THE CHAIRPERSON: Counsel, go ahead.

MS. BROWN: Thank you.

REDIRECT EXAMINATION BY
MS. BROWN:

Q. Mr. Gottlieb, do you recall when I examined you I asked you numerous times where EY had gotten the understanding that the revenue associated with the remittance was separate from the revenue associated with the January accrual?

A. Yes.

Q. And you told me that understanding came from conversations with management; right?

A. Yes.

Q. And I asked you several times if you had documented those conversations; correct?

A. Yes.

Q. And you didn't point me to anything in particular in the work papers; did you?

A. No.

Q. And Ms. Van Winkle also asked you about your understanding that the remittance was a separate revenue stream from the January accrual; right?

A. Yes.

Q. I think that was page ninety-two, page thirteen of the transcript.

And she asked you whether

those discussions with management were reflected anywhere in the work papers.
Do you recall that?
A. Yes.
Q. And you pointed her to the compilation exhibit, JX 125, worksheet and the fact that the remittance and the accrual were identified to be on separate lines of that work paper; correct?
A. Yes.
Q. You didn't think to identify that when I asked you whether there was documentation in the work papers that management had told you that these were separate revenue streams; right?
A. I don't believe I did, no.
Q. You only thought of mentioning that after you met with Ms. Van Winkle this morning; correct?
A. No.
Q. Now, would the fact that the remittance and the January accrual are recorded on two separate rows on a work paper, if that's all you have, would

that fact be enough for you as the auditor to reach the conclusion that these represented two entirely separate revenue streams?

A. That's a hypothetical. I couldn't answer that. I don't know. There's other documentation within the work papers that haven't been presented.

Q. If you had just this work paper and you didn't have any discussions with management and all you had was the work paper with remittance with and a line of the January accrual, would that be enough audit evidence for you to conclude as an auditor that these are two different revenue streams?

A. I just stated I can't answer that question. I'd have to look at the preponderance of all the evidence and there may be other documentation in the work paper that I'm not looking at here.

Q. Are you saying you can't

answer that question because you weren't just relying on two separate line items on the work paper to reach that conclusion so therefore it's a hypothetical?
A. I didn't say that.
Q. Is it still your testimony that there were conversations with Raiders management that led you to believe that the remittance was completely separate revenue streams from the January accrual?
A. Yes.
Q. And you're not aware of any documentation in the work papers that memorializes those conversations, including who participated in them and when they took place; right?
A. Without looking at the work papers, I am not aware.
Q. That's not something that you endeavored to do preparing for your testimony, to look in the work papers and identify any documentation of discussions with Raiders management

that the remittance is a separate revenue stream from the January accrual?

A. No, I didn't.

Q. But yet you did identify in the work paper JX 125 that the remittances reported on a separate line on that worksheet than the January accrual?

A. It's there and management prepared that, yes.

Q. Well, if you didn't look at the work papers to try to find where it's documented that management told you that these are separate, how did you come up with JX 125 as being an example of where management made that representation to you?

A. It's on the work paper that management prepared and they reflected it in separate line items.

Q. Are you aware -- other than there being two separate line items on the work papers, one for the remittance, one for the January accrual, are you aware of any other documentation in the work papers where it's memorialized that management told you that these are two separate revenue streams?

A. I'd need to look at the work papers to tell you that.

Q. Let's pull up JX 3217.

MS. VAN WINKLE: Is that in our big binder?

MS. BROWN: It's in the big binder.

THE WITNESS: I'm sorry, what's the reference?

MR. REED: 3217.

Q. This is a -- I'll wait for you to get there.

A. Okay.

Q. This is a document that Ms. Van Winkle showed you earlier; correct?

A. Yes.

Q. And she pointed you to a provision that refers to using professional judgment in documenting your audit procedures; correct?

A. Yes.
Q. I'd like you to look at page one hundred forty-six, the provision .11 where it states, "the auditor should document discussions of significant findings or issues with management, those charged with governance and others, including the nature of the significant findings or issues discussed, and when and with whom the discussions took place".
Now, isn't it your position, sir, that the core understanding that you had that you claim to have gotten from Raiders management would be something of significance to your audit?
A. Yes.
Q. And that it would be a significant issue in your audit; correct?
A. Yes.
Q. And as such, according to the GAAS standards, that's something that should be documented in your audit work

papers; right?

A. Yes.

Q. You also said earlier in your testimony that -- changing topics -- that the Raiders engagement was desirable one for EY's auditors.

Do you remember that?

A. Yes.

Q. And you said people wanted to be on that assignment; right?

A. Yes.

Q. And that you wanted to appoint people to the engagement that had the same culture that the Raiders had.

Do you recall that?

A. Yes.

Q. And you wanted people who you said would get along with management?

A. Yes.

Q. Did EY consider whether using these criteria to appoint personnel to the engagement, so in other words people who wanted to be on the engagement and thought it was cool to

work with the Raiders, did you ever
consider whether that would compromise
the independence of the audit?
A. No.
MS. BROWN: I have no further questions.
THE CHAIRPERSON: Counsel?
MS. VAN WINKLE: No.
THE CHAIRPERSON: Does the panel have any questions? Mr. Bickerman?
ARBITRATOR BICKERMAN: I do.
So Mr. Gottlieb, can you tell me what the criteria are for a noncomplex entity? What would that be?
THE WITNESS: There's various criteria that would be not a significant complex information system, not -- I don't recall right off the top of my head, but there is a document and I believe it states what those criteria are as it relates to qualifying for a noncomplex entity, and then there

is a process within Ernst and Young that it has to be approved by our technical group, if you will, to validate that they indeed qualify for a noncomplex entity.

ARBITRATOR BICKERMAN: And the Oakland Raiders fit those criteria?

THE WITNESS: They did.

ARBITRATOR BICKERMAN: That was the only question I had.

THE CHAIRPERSON: Mr. Chandler?

ARBITRATOR CHANDLER: A question.

In your skinny notebook, JX 0454, is that the audit planning template?

THE WITNESS: Yes.

ARBITRATOR CHANDLER: Turn to page four, the American flag. "For evergreen engagement agreements, we retain a signed copy of the engagement agreement in the audit permanent file".

What's an evergreen

engagement?
THE WITNESS: I don't know, because for the Raiders, we got an engagement letter each and every year so there was no -- we don't have anything in a permanent file. We keep it in the work papers of the year-end audit.
ARBITRATOR CHANDLER: Is it for like nonpublic or small entities or something? Do you have any idea what it is?
THE WITNESS: I have no idea what it is. I always get engagement letters each and every year and they're a complete engagement letter and it supports that year's audit and they're never put into a permanent file. Because they are related to the current year's work papers.
ARBITRATOR CHANDLER: You referred to a permanent file.
What's a permanent file?
THE WITNESS: A permanent

file would be, for example, if we get an agreement that one year is going to be used for other years and it's a file that is permanent, so you don't have to get that agreement each year and put it into the audit work papers, it goes into a permanent file which then is basically a file of all agreements that we received.

ARBITRATOR CHANDLER: And then you have separate audit work papers for every year?

THE WITNESS: For the current year, yes, and every year.

ARBITRATOR CHANDLER: Thank you.

ARBITRATOR BICKERMAN: So did the Raiders have a permanent file?

THE WITNESS: I believe they do, yes.

ARBITRATOR BICKERMAN: And your recollection is there was no engagement letter, any engagement letter in that permanent file?

THE WITNESS: No, the engagement letter is in the audit file for that particular year's audit.

THE CHAIRPERSON: Mr. Gottlieb, thank you very much. Have a good day.

THE WITNESS: Thank you.

THE CHAIRPERSON: You're excused.

Just so we know where we're going, I know we have Mr. Garcia up next; is that correct?

MS. BROWN: Correct.

THE CHAIRPERSON: And what's the plan for the remainder of the day? I assume Mr. Garcia's for the remainder of the day and then I know we have a blank on the schedule for tomorrow morning, so if you could fill the panel in for how we'll be proceeding, that would be great.

MR. REED: Your Honor, the blank reflects that we don't have a witness for tomorrow morning, so everybody has the morning off to recoup from all of this scintillating testimony, and then we'll resume in the afternoon according to the schedule.

THE CHAIRPERSON: And in terms of lunch, what would you like to do with that; sixty or thirty or forty-five? You tell us.

MR. REED: My colleague's doing the examination, so I will defer to her.

MS. BROWN: I would say forty-five.

THE CHAIRPERSON: Are you ready to proceed with your next witness? Do you need a break?

MS. VAN WINKLE: Mr. Garcia is just coming up. He walked from the hotel. If he could have five or ten minutes to cool down, we really appreciate that.

THE CHAIRPERSON: That's not a problem.

So we'll take a recess.

One of my colleagues said do you want to do an early lunch. I don't know if lunch is here.

MS. VAN WINKLE: It's not here.

THE CHAIRPERSON: So we'll take a recess.

(Lunch recess taken at 11:35 a.m.)

A F T E R N O O N   S E S S I O N
September 17, 2024
12:30 p.m.

THE CHAIRPERSON: On the record.

Ready to go?

MS. BROWN: Yes. Thank you.

THE CHAIRPERSON: Let's do it.

J A V I E R   G A R C I A, having been deemed sworn, upon being examined, testified as follows:

DIRECT EXAMINATION BY
MS. BROWN:

Q. Good afternoon, Mr. Garcia.
A. Good afternoon.
Q. You're currently employed as a partner at Ernst and Young; correct?
A. Correct.
Q. And you started at Ernst and Young after getting your bachelor's degree in 2000?
A. Correct.
Q. And you've been there for about twenty-four years now?
A. That's correct.

Q. And EY is the only professional employment that you've had; is that right?
A. That's correct.
Q. And the entire that you've been at EY for these twenty-four years you've been in the assurance practice; right?
A. That is correct, in the assurance practice.
Q. And specifically focusing on the Raiders audits, you worked on those audits from 2006 through the 2020 audit cycle; right?
A. That is correct, 2005, 2006 through the 2020 cycle.
Q. And you reported to Mike Gottlieb on the Raiders audits?
A. Correct, Mike was the coordinating partner, I reported to Mike.
Q. And at the time you worked on the Raiders audits, are you aware that Mr. Gottlieb also audited the Rams?
A. I did become aware of that.

Q. And you were also aware that EY audited other NFL teams besides the Rams; right?

A. I was aware that we did work for other NFL teams.

Q. Given that the Raiders financial statements were prepared on a federal income tax basis of accounting, EY included tax personnel on the audit team; right?

A. We did include tax personnel.

Q. And that was the conveys each audit year from 2006 through the 2020 audit cycle; right?

A. Correct.

Q. And the audit and tax teams were integrated in performing the audits; right?

A. Yeah, we used our tax team to assist us in the audit for specific transactions and understanding of tax accounting.

Q. And EY's tax people who worked on the audit each year were also assigned to work on the Raiders tax compliance work for that year; is that right?

A. We had a separate tax compliance engagement in addition to the audit engagement, and I believe that the tax team that supported the audit would have also worked on the tax compliance. There may have been some overlap. There were some additional people supporting the tax compliance engagement.

Q. And the tax compliance work, when we talk about that, we mean preparing the Raiders tax returns?

A. Preparing the tax returns, that's right.

Q. When you were auditing the Raiders, you understood that it was a partnership; right?

A. A partnership, yes, a partnership entity.

Q. And in conducting the audits, EY identified the partners of the Raiders to be among the users of the financial statements?

A. Yes, we identified, as the users of the financial statements, included the limited partnership entities that were invested in the partnership or partners.

Q. And you understood that the Raiders itself did not pay any federal income taxes; right?

A. Right.

Q. And you knew that EY, in preparing the Raiders tax returns, also prepared the Schedule K-1s for the returns; right?

A. I was aware of the tax compliance engagement that accompanied the tax return preparation and the K-1 process.

Q. And you knew that the Schedule K-1s would be given to the Raiders partners so that they can satisfy their own tax compliance obligations; right?

A. Well, I was aware of the preparation in that engagement and the tax return process for purposes of compliance.

Q. And you knew that those K-1s would be given to the partners so that they could satisfy their own tax compliance obligations; right?

A. Yeah, I was aware that they were given to the limited partner entities for their tax returns.

Q. You understood that the entities who actually owned the Raiders would actual be paying the federal income taxes based on the income or loss generated by the Raiders each year; correct?

A. Well, they would -- when you say paying, I wasn't aware of their tax situations for each of these entities, and so to the extent that that information was necessary and useful for their tax returns, I was aware that they would consider using that.

Q. Could you please pull up the deposition transcript we have and turn to page eighty-one.

I just want to show you the

answer you gave to that previously.

Page eighty-one, line sixteen, I asked you: "Who did you believe would actually be paying federal income taxes based on the income or loss generated by the Raiders each year.

Answer: "Well, from my perspective, it was the entities that -- that own the Raiders".

Is that consistent with your testimony today?

A. Correct, because the Raiders is a partnership and a passthrough entity.

Q. In addition to knowing the identity --

MS. BROWN: Sorry, let me start over.

Q. You also knew the identity of each of the owners who would be using that tax information because you worked on the Raiders ownership report each year; right?

A. I worked on the ownership

report and I was aware that there were additional folks involved in the ownership of those entities, but I wasn't focused on individuals.

Q. Let's pull up JX -- you should have a binder in front of you with some exhibits we plan to use today. And if you could please look in that binder at JX 0157.

Are you familiar with this document?

A. I am familiar with this document.

Q. And do you see in the upper right-hand corner where it says Schedule C schedule of ownership?

A. I do.

Q. And you see next to that is a box with a note.

Did EY add that note in the box?

A. Yes, this would have been a note added by EY.

Q. And EY performed agreed-upon procedures on this ownership report;

isn't that right?

A. That's correct.

Q. And when we look at the ownership report, you can see that it lists the direct partners in the Raider partnership; right? The limited partners and the general partner.

A. Yes.

Q. You see that in the top section, top half of the page; correct?

A. Yes.

Q. And when you go beneath that, on the left-hand side you can see each of the individual partners is listed and then in the second column is identified the owners of each of those limited partners and then you can see going all the way over to the right their equity interest is represented on this schedule; right?

A. Yes, I see that.

Q. So just for example, just by looking at this schedule, you could see that First Football, looking at the top half of the page, has a twenty percent ownership interest in the Raiders; correct?

A. Correct, that's what it says here.

Q. And then if you go down to the First Football section, you can see that Paul Leff has a thirty-three percent interest in First Football; correct?

A. That's what it's reflected here.

Q. And one reason that EY reviewed the ownership reports each year was to confirm whether there were any related parties transactions; right?

A. Well, the ownership report is a specific report that is an agreed-upon procedures requested by the NFL and this report -- this schedule of ownership is prepared -- was prepared by management to reflect the ownership of the Raiders responsive to the ownership report request by the NFL, and so we would perform our agreed-upon procedures as determined by the NFL on this report, on this ownership report, and we would also use this as additional evidence for our audit as to any potential related parties that may need to be disclosed in the financial statements.

Q. So if I'm understanding you, you're saying, in addition to the agreed-upon procedures you the NFL asked you to perform, you also used the ownership report as additional evidence for your audit where you needed to understand related party transactions?

A. Yes, where we would inquire of management related parties transactions that should be disclosed in the financial statements.

Q. And in doing that work on your audit, it was informative for you to know not just who the partners of the Raiders were but who the ultimate owners of those LPs were; right?

A. I would say that it was informative.

Q. And in addition to having the ownership report from the Raiders, EY also had copies of the LLC or partnership agreements for each of the Raiders partners; rights?

A. I would say yes. We would have obtained those over the course of years of working.

Q. And those LLC or partnership agreements for the Raiders LPs, they also identify who the owners are of each of those entities; correct?

A. I can't say for certain without reviewing one of those documents in front of me, but you would at a minimum have the entities that are limited in a partnership.

Q. And the LP or partnership agreements for the Raiders partners, those are maintained in EY's permanent files; correct?

A. Yes, we would have included those in our permanent files.

Q. And when a document is included in EY's permanent files, does

that mean anyone on the audit team has
access to it?
A. If you are a part of the audit team, yes, you have access to the files supporting the audit, yes.
Q. I want to change topics just a little bit. I want to talk about the accounting error that was discovered by the Raiders.
Do you recall that there was a correction made on the 2020 financial statements for the double-booking of the January distributions from Ventures?
A. Yes.
Q. And in its audits, EY never discovered the double-booking of the January distributions; right?
A. We did not discover that.
Q. And you recall, when working through the misstatements, there were discussions with the Raiders about whether or not the prior year financial statements needed to be restated; right?

A. Correct.

Q. And there were discussions about whether each year needed to be restated from 2006 all the way through 2019 to address these accounting errors; right?

A. Yes.

Q. And in connection with those discussions, there was a reach out to the users of the financial statements to determine whether those restated financial statements would be beneficial to them; right?

A. Correct.

Q. And the users of the financial statements included Bank of America; right?

A. Yes.

Q. And it also included the limited partners and the general partner of the Raiders; right?

A. Yes.

Q. And as a result of those discussions, the decision was made to book the correction for the entire period from 2006 to 2019 in the 2020 financial statements instead of going back and restating all of the prior years; right?

A. That's correct.

Q. But EY stood ready to go back and do the restatements for each of the prior years if the users of the financial statements had said it was necessary; right?

A. That's right. We stood ready.

Q. And the work EY performed in connection with the 2020 auditorium what corrections were needed for the 2016 to the 2019 time period -- for the 2006 to 2019 time period, that work that took place in the 2020 audit cycle took many more hours than you would usually spend just on your typical audit year engagements; right?

A. It took significantly more hours, yes.

Q. And in it fact, it was approaching about double the amount of time that EY spent on its prior year engagements for the Raiders; is that right?

A. Yes.

Q. Now, in addition to working on the audits for the Raiders financial statements, you personally also worked on the audits for the conforming statements; right?

A. That's right.

Q. Is it true for each of the years -- is that true, you worked on the conforming statements for --

A. I worked on the conforming statements.

Q. For each year you were assigned to the Raiders, so from 2006 to 2020?

A. Yes, I would have been involved with those audits, yes.

Q. And the conforming statements were prepared on a modified NFL version of GAAP; right?

A. That's right, it's a conforming statement.

Q. And the conforming statements had a year-end of March 31; right?
A. Yes.
Q. And for the conforming statements, the NFL essentially told the teams how they wanted the accounts to be stated; right?
A. That is correct.
Q. And the NFL provided instructions to the teams telling them how the accounts should be presented on conforming statements?
A. That's right.
Q. And the NFL did this so they could have conformity amongst all the teams in the league; right?
A. That's how I understood it.
Q. And do you recall when you were working on the audits for the Raiders that a lot of the work on the tax and the conforming statements were being performed by EY at the same time, at or around the same time?
A. We did perform those audits. We would perform the audit of the 12/31

tax basis financial statements, then perform a separate engagement for the conforming statement audit.

Q. Do you recall there were days when you actually reviewed audit papers for the financial statements and for the conforming statement on the same day?

A. I don't recall that. Typically the 12/31 tax basis audits was done earlier in the process.

Q. And in doing the conforming statement audit, it was the same audit team that did the tax basis financial statement audit; right?

A. Generally, yes, although there are circumstances where there may have been turnover on the team and we would have had new staff members, new seniors, et cetera.

Q. But the audits concluded about two to four weeks apart from each other; is that right?

A. That sounds right.

Q. And so generally you're

saying the teams were the same except you're recalling an instance where somebody left in those two to four weeks?

A. Yeah, not just one instance, it's pretty typical in our firm that we experience staff turnover and, when that happens, we replace our team and bring on staff that want the experience and want to work on the audit engagement, and so that would happen over the years. It's typical.

Q. And one reason -- let me ask it this way.

When you were working on the conforming statement audit which you said followed the financial statement audit, did you use some of the information or procedures performed in the financial statement audit to support your conforming statement audit?

A. Well, the company would provide separate work papers, separate evidence, separate support for purposes of the conforming statement audit in connection with performing those audit services and then we would receive and obtain separate supporting work papers for the 12/31 tax basis audit, so there were two separate engagements.

Q. Do you recall instances where you were citing to the exact same audit support for purposes of both audits?

A. I mean, I don't recall. I mean, there could be, there likely could be, just given our overall understanding of the partnership and the structure, there could be.

Q. For example, you know that there's a remittance that's recorded on the financial statements and a remittance that's recorded on the conforming statements; right?

A. Correct.

Q. And you obtain third party support for the recording of the remittance on both financial statements; right?

A. Yes.

Q. And do you recall whether you had different third party support for your financial statement audit than you had for the conforming statement audit, for the remittance amount?
A. The support for the remittance amount? It would have come directly from the NFL, so it would have been support for those years and for those audits supporting those remittances.
Q. Do you recall that the Raiders prepared a memo each year that described the differences between its tax basis financial statements and the conforming statements?
A. I do recall that in the files for that, yes, provided by management.
Q. If you look in your binder, please, at JX 144.
Do you see that there's an e-mail from you to Tyler Johns dated July 16, 2020?
A. Yes.
Q. And the subject is CSA08.02

tax and conforming differences.docx; right?

A. Yes.

Q. And you wrote, "Tyler, this doesn't look updated, given we don't do a standalone 12/31 audit of the partnership", et cetera?

Let's look at what you were referring to, if you turn the page.

There's a memo here and it's from Ed Villanueva to the finance group dated June 27, '20 with the re line December 31 tax versus March 31 GAAP/conforming differences; right?

A. Yes.

Q. And focusing in on point four of the memo, it states, "accounting for the NFL Ventures receivable is different for the December 31, 2017 tax basis audit and for the March 31, 2018 GAAP/conforming basis audit. The NFL provides each team with the remittance amount as of March 31 that each team has to book as a receivable".

Now, let me stop there and

just ask you, for purposes of the conforming statement audit, is it true that the NFL told the Raiders what to book for the Ventures receivable?

A. That was my understanding.

Q. And the Raiders, in doing those statements, they were required to conform to that amount; right?

A. That was my understanding.

Q. And they had no discretion in terms of what number they could book as the Ventures receivable, it was required to be what the NFL told them?

A. Yeah, as conformed based on the NFL instructions is my understanding.

Q. And then if we go back to note four, it continues, "for the December 31, 2018 audit, we adjust the NFL Ventures amount by the March 31, 2018 remittance amount. For the March 31, 2019 period, we adjust the NFL Ventures balance by the March 31, 2019 remittance amount".

Now, this explanation was

provided to you by Mr. Villanueva;
correct?
A. That's correct.
Q. And do you recall him providing a similar explanation about why the financial statements and the conforming statements had a different amount for Ventures accounts receivable over multiple years?
A. Yes, I believe we received a version of this memo historically.
Q. And when you received this memo, you reviewed it; correct?
A. Yes, the audit team, we would have reviewed it in connection with the audit.
Q. And this explanation that was being provided to you by Mr. Villanueva as to why there is a different receivable on the financial statement versus the conforming statement, that made sense to you at the time?
A. At the time and in receiving and reviewing this memo, he was describing the differences in the basis

of accounting for the two different audits, and so one was for the 12/31 tax basis audit and the other one was for the conforming statement audit, and so he was describing the differences there. And so in doing two separate engagements, that made sense to me at the time.

Q. And it made sense to you in part because there were different bases of accounting and different fiscal year-ends that there would be different accounts receivable reported on those statements; fair?

A. That's correct.

Q. And also given the differences between how the financial statements are prepared versus the conforming statements, you frankly didn't expect the receivable balances to be comparable at all; is that fair?

A. I didn't expect that nor -- I didn't expect that. It was two different financial statements, two different year-ends, two different bases of accounting, and so we didn't do that comparison.

Q. Could you please turn to JX 146. These are the account receivable work papers for the conforming statement audit for the period ending March 31, 2019.

Do you see that?

A. Yes.

Q. And I want to specifically look at the work paper for the Ventures receivable which is at E01.2.

MS. VAN WINKLE: Could you give us the page number?

MS. BROWN: Sure. It looks like it's page three of twelve. No, sorry, that's not right. I think it's E01.3, page five of twelve.

THE WITNESS: Sorry, E01.3?

Q. AR NFL Enterprises.

A. Yeah, at the very top it says E01.2 but in the work paper reference it's E01.3, so page five at the bottom?

Q. Yes. That's exactly why I

had misidentified it myself. I think the header is incorrect.

If you look at the identification in the upper left in red where it says E01.3, my understanding is that's the correct reference.

Now, this is a work paper specifically related to auditing the accounts receivable for Ventures for the conforming statement audit; right?

A. Yes, this looks to be for the conforming statement audit.

Q. Now, in auditing the conforming statements, you believed that cash distributions received from Ventures for a given season were paid by the NFL in the next season; right?

A. Yes, that had been our historical understanding.

Q. And that was your belief for each of the fourteen years prior to 2020?

A. Yes, that's correct.

Q. But in connection with the 2020 audit, you came to understand that

that was wrong?
A. That's right.
Q. Now, I want to focus on the remittance.
Prior to 2020, you knew that the remittance amount was booked by the Raiders as revenue as of March 31 each year; right?
A. You're talking specifically for the conforming statements?
Q. For either statement, the Raiders booked remittance amount one time a year --
A. In March when communicated by the NFL, yes.
Q. And that's true for the conforming statements or the financial statements; right?
A. Right.
Q. And if you look at the worksheet here, you can see the remittance amount is 99.9 million; is that right? Approximately 99.9 million.
A. Yes, that's what's documented

here.

Q. And if we look at note B, you can see that remittance amount is identified as belonging to the 2018 NFL season; right?

A. For the 2018 season, that's what's documented here.

Q. And your understanding was the 2018 season covered April 1, 2018 through March 31, 2019?

A. That's correct.

Q. So given that the Raiders booked the remittance amount each year at the end of the season, so that was March 31 each year, that means that this 99.9 million would have been booked as of March, 2019; right?

A. Right, based on the company's accounting.

Q. And when the $99.9 million was booked as a receivable in March, 2019, at that time you thought it was going to be paid down at some point after March, 2019; right?

A. That is correct, that it

would be paid after the remittance was communicated to the partnership by the NFL.

Q. Now, with that understanding that this amount of the remittance is being booked on March 31, 2019 and paid later, the ending balance of the account receivable then would have to be at least $99.9 million, right, because none of it has been paid down as of March 31, 2019, based on your understanding at the time as to how Ventures revenue worked?

A. Right, that the remittance was recorded and then the cash was remitted to the team, distributed to the team following that remittance communication.

Q. Well, when we look at this work paper, the ending balance on March 31, 2019 is only 24.9 million; right?

A. Right. It's approximately twenty-five million.

Q. Which is significantly less

than the 99.9 million you understood was being booked as an account receivable as of March 31, 2019 and therefore should have been reflected in that ending balance; correct?

A. I mean, I see that now, yes. But at the time my understanding -- well, number one, my understanding was that yes, the remittance that was communicated from the NFL to the teams, to the club, was recorded as earned in March when it was communicated and then that that remittance in that cash would follow, would be received by the Raiders subsequent to that remittance. And so that was the understanding of the account.

Q. Right.

But for that understanding so make sense, based on what's on the face of your work paper, for the understanding that EY obtained that the remittance amount would be paid after it's booked on March 31, that means the March 31 balance should be at least the

size of that remittance amount just for
that understanding of cash payments to
make any sense; right?
A. I see where you're pointing
here now. I just didn't make that
connection at that time given that
these were two separate audits, two
separate audits of two different
financial statements with different
year-ends and different basis of
accounting, so I didn't make that
connection.
Q. Well, just to be clear, the
connection I'm making isn't even to the
other audit. Everything is on the face
of the conforming statement work paper
where it says the 99.9 million is a
remittance for the 2018 season which
you know ends on March 31, 2019, you
know that means the remittance of 99.9
million is booked on March 31, 2019, on
the face of the conforming statement it
says we expect payments to be received
in the subsequent season, that's in
note one.

Just on this one work paper, when you look at it, you can't reconcile all those pieces together with an ending balance of only 24.9 million as of March 31, 2019; isn't that fair?

A. I see that now that the remittances is greater. I go back to the understanding of how we thought the account worked and the way that they recorded the amounts were conforming.

Q. Well, this inconsistency that we see just on the basis of EY's own work paper for the receivable account for Ventures, there's no explanation for this inconsistency contained anywhere in the details in the work paper; is there?

A. Yeah, I don't know if I see an explanation for that.

Q. And I understand you're saying you didn't make this connection earlier, but looking at this now maybe with -- looking at this now, looking at this information, is it fair to say that this would have potentially or should have potentially raised red flags that maybe your understanding of how cash distributions worked for Ventures was wrong?

A. Well, looking at this now and today, possibly, given everything we then subsequently learned ever going through the investigation process in 2020 and all the work that took place in that audit year, and the new information that we learned that changed the understanding of how this all worked.

Q. Well, I don't think you need -- my point, sir, is that you didn't need the 2020 investigation into the misstatement to realize just on the face of your work paper in any given year there are red flags indicating that your understanding of how Ventures payments work is wrong?

A. What's the -- so your question is?

Q. Put aside whatever you

learned through the investigation in 2020 because my question to you is just in this particular audit cycle looking at this work paper this year, there are red flags that make it apparent on the face of the work paper that your understanding of how cash distributions work, that they're paid after the remittance comes in, that that understanding is wrong and there are at least red flags indicating that on this work paper; right?

A. Well, again I go back to what we understood at the time and how this account worked based on what was presented by management for us to audit.

Q. I'd like to come back to your deposition testimony. If you could pull up page fifty-eight, please.

At your deposition, page fifty-eight, line thirteen, I asked you: "So looking at this work paper, when I see that the remittance amount for the season being booked in March is

99.9 million but the ending balance is only 24.9 million, wouldn't that raise some red flags to you that maybe your understanding of how the cash distributions worked was wrong.

Answer: "Yeah, potentially. I just didn't -- I just didn't see it that way at the time".

Do you agree that it did potentially raise red flags?

A. Yeah, and I said possibly. Again, I just didn't see that or recognize that at the time.

Q. I'd like to return -- I've got to stay focused on your understanding that Ventures payments were made a season in arrears.

You claimed before that that understanding came from Raiders management; is that right?

A. That's correct.

Q. And you knew throughout the entire time you worked on the Raiders audits that Raiders management did not have access to copies of the NFL

Ventures agreements; right?
A. That's what I understood from management.
Q. And you knew that the Raiders were not privy to the specific terms, requirements, or parameters of the Ventures contracts; right?
A. That's what I understood.
Q. And you also understood that it was the NFL that was privy to that type of information; right?
A. Right.
Q. And prior to the 2020 audit, you don't recall anyone on the audit team ever reaching out to Mr. Firestone to ask him questions about revenue recognize for Ventures; right?
A. No, I don't recall directly reaching out to the NFL.
Q. Now, when auditing the Raiders, if there was information you needed from the NFL that was critical to reaching your audit opinion, you felt like you could work with management to get that information from

the NFL; right?
A. Yeah, if we felt like we needed to, I would work with management as my audit client to obtain the necessary information, audit evidence that I need, that we need to perform the audit of the accounts.
Q. And besides the Raiders, EY audited around a dozen other NFL teams?
A. I don't know the number, but it was my understanding we audited others.
Q. And all the NFL teams are members of Ventures; right?
A. From my understanding is that, yes, all the NFL teams are members in that Ventures partnership.
Q. And all the NFL teams reported accounts receivable and revenues from Ventures; fair?
A. Yeah, in theory, depending on their basis of accounting and how they recorded those transactions.
Q. And each of those NFL teams received cash distributions from

Ventures; right?

A. In theory. I don't know the circumstances of the accounting of the other teams.

Q. Prior to the 2020 audit, you never reached out to any of the other audit teams at EY to understand how cash distributions and revenue from Ventures worked; did you?

A. To other EY audit teams?

Q. Yes, to other EY audit teams.

A. No.

Q. Let's look at JX 0090.

Are you there?

A. I have it in front of me.

Q. Do you see that on March 7, 2014, Patrick Loftus e-mailed Tyler Johns and copied you? It's actually the bottom of the first page is the e-mail I pointed you to.

A. Okay. Yes.

Q. And you understood at that time that Mr. Loftus worked on the Rams audit; right?

A. I did understand at that

time.

Q. And Mr. Loftus is asking you about what he describes as a key NFL-related document; right?

A. Well, he's not asking me. I wasn't the primary recipient of this e-mail. He sent this e-mail to Tyler and I was copied on the e-mail along with another person.

Q. So Mr. Loftus is asking Mr. Johns -- and Mr. Johns worked on the Raiders audit with you; is that right?

A. He did.

Q. He's asking Mr. Johns about a key NFL-related document; right?

A. Yes, he's asking about a document.

Q. And he describes it as a key document; correct? A key NFL-related document; correct?

A. That's how he described it.

Q. And when we look at what's attached to the e-mail, it's a couple of pages back, you can see that if we just go to the very first page behind the e-mail, the first page of the attachment is NFL Ventures, LP schedule one capital account roll forward with a date March 31, 2014.

Do you see that?

A. I see that.

Q. And then on the next page you can see there's a schedule two that says distributions; right?

A. I see that.

Q. And if you turn the page again, you can see there's a schedule three. It says standard clubs, and there's additional information about cash distributions there as well; right?

A. Yes, I see that.

Q. And also on schedule three, you can see balances as of each March 31 in 2011, 2012, 2013, and 2014 that show the receivable balance for Ventures as of those dates; correct?

A. Yes, I see that.

Q. And in between the receivable balances on those dates, the cash

distributions are also listed?
A. Yeah, I see information there.
Q. When you received a copy of this e-mail, was it your understanding that the Rams audit team was reaching out to the Raiders audit team about this capital roll forward schedule?
A. Well, at the time -- I mean, I vaguely remember this e-mail. I can't say that I paid much attention to the e-mail. It was not addressed to me, it was addressed to Tyler. I get hundreds of e-mails a day. I can't say I paid a lot of attention to this.
Q. Well, did you think it was inappropriate to have a communicate like this going from the Rams audit team to the Raiders audit team?
A. Inappropriate? And I can't say that I gave it much thought one way or another.
Q. Looking at this e-mail now and seeing that the Rams audit team is asking the Raiders audit team about a

key NFL document which is the NFL Ventures capital roll forward, focusing on this now, do you think it's an inappropriate communication amongst the audit teams?

A. I wouldn't describe it as inappropriate. It looks like Patrick was reaching out to Tyler on a document and that's as much thought as I gave it.

Q. Well, now sitting here today, you're able to give it a little more thought; right?

A. I'm looking at this, yes.

Q. And just as a general matter today, thinking if I have two audit teams, one's the Rams, one's the Raiders, and they are exchanging information about Ventures, would that be considered an inappropriate communication among the audit teams?

A. Well, to the extent that it's specific information of a client, we don't share specific information of clients amongst our audit teams. We keep an independent purview of each audit engagement. The companies' facts and circumstances can and are different, so we try to keep those walls, those audit walls separate.

Q. So looking at this now sitting here today, now that you've had a chance to give it more thought, do you think that this is an inappropriate communication among the Rams and Raiders audit teams for them to be sharing a schedule from NFL Ventures?

A. I mean, I guess "inappropriate" is a strong word. Potentially. I mean, I wouldn't expect us to share client-specific information.

Q. So looking at this Ventures schedule, can you identify for me the client-specific information that's contained on here?

A. Well, this is a -- so these schedules you're saying were sent by Patrick in the attached e-mail. Like I said, I didn't pay attention to these, I didn't pay attention to that e-mail. It was addressed to Tyler.

Q. I understand. But today I'm asking you to pay attention to it. I understand at the time you're telling me you didn't pay attention to it. But sitting here today, I'm asking you to.

And if you look at the schedule, do you see any client-specific information on the schedule prepared by the NFL titled NFL Ventures with schedule one, schedule two, and schedule three such that it shouldn't be shared amongst the various EY audit teams?

A. I'd have to do a thorough read by read to see if there's any specific client information, but information like this I would expect to get from management, from my audit client.

Q. You can't identify any client-specific information on the Ventures schedule, can you, sir, because it's just a schedule about

Ventures that's provided to every single team in the league and they all get the exact same schedule which is precisely the question being asked by Mr. Loftus in the e-mail to Tyler Johns and to you?

A. I don't know -- I can't say if the NFL sent this out to every team. I wasn't privy -- I'm not privy to that information.

Q. You see in the e-mail from Mr. Loftus where he wrote, "this document is the NFL Ventures report from the NFL and provides us a significant chunk of your P&L for the year. This appears to be a standardized report that was distributed to all teams"; right?

A. That's what he says.

Q. Do you have any reason to dispute that it's a standardized report that's distributed to all teams?

A. Again, I don't know, because I don't audit the other teams, I wasn't involved with the Rams audit, that this was a standardized report that was distributed to all teams.

Q. Let's look at JX 109 in your binder, please. You can take whatever time you look this over, but this is an e-mail chain between you and Mr. Gottlieb from June, 2017.

A. (Reviewing).

Okay.

Q. I'd like to just start with the e-mail on the first page, the most recent in the e-mail chain. Mr. Gottlieb appears, if you look -- first of all, the e-mail's from Mr. Gottlieb to you; correct? On the top e-mail on the first page.

A. Yes.

Q. Dated June 12, 2017; right?

A. Yes.

Q. And you can see there's an attachment and it says, the Los Angeles Rams, LLC '16/'15 final secured PDF; right?

A. I can see that.

Q. And if we flip to the

attachment, it's behind the e-mail, it starts with the Bates number ending 717, it appears that Mr. Gottlieb is sending you a copy of the Rams 2016 financial statements; right?
A. These look to be -- yes.
Q. And when we look at this document is that he shared with you, is there any client-specific information that is contained on this document?
A. It's the financial statements of the Los Angeles Rams, LLC.
Q. Right.
But when we were looking at the previous document, you had mentioned that if there's client-specific information, that shouldn't be shared among the teams, if I understood you correctly.
A. Yeah, we generally don't do that.
Q. And so when I look at this document, is it fair to say that this financial statement does contain client-specific information about the

Rams?

A. It doesn't contain that. It's also Mike's client.

Q. Correct.

But the Rams was not your client; right?

A. The Rams was not my client, but Mike was the partner leading the engagement for the Rams, so he's -- that's his client, that's client-specific for him.

Q. And Mr. Gottlieb was sharing with you the approach that was taken on the Rams' financial statements for the relocation fee so that you could consider that in connection with what you were reviewing on the Raiders financial statements; right?

A. I believe that's the context.

Q. And on the first page of the e-mail, do you see -- on the bottom e-mail on that first page, do you see where Mr. Gottlieb says to you, "half the teams are accruing and the other half appear to be accounting on cash basis. My belief is to record on an accrual basis and then reverse to cash based per conforming instructions".

Do you see that?

A. I do.

Q. So Mr. Gottlieb was discussing with you what was recorded not just on the financial statements of the Rams but also on financial statements for other NFL teams in the league; right?

A. That looks to be.

Q. And you didn't think, when you received this, that there was anything improper with these communications; did you?

A. No, not with these communications, I didn't. If you look further back in the e-mail chain as well, Ed is also -- Mr. Villanueva, the former CFO, was providing perspective on how other clubs were treating the relocation fees as well. And if I remember at the time, there was a -- it was just well known that, in connection

with the relocation of these two teams,
each of those two teams had to pay a
relocation fee that would be shared
across the other teams that were not
relocating, so it was a common known
transaction.

Q. It was a known transaction
that teams in the league -- half the
teams were accruing and the other half
were accounting on a cash basis and you
were discussing with Mr. Gottlieb the
accounting treatment that could be
applied to the Raiders; correct?

A. Well, it was a known
transaction that there were a couple of
teams relocating and then, in
connection with that relocation, those
teams, as mandated by the NFL, would
have to pay the other teams. And so
for the conforming statements, we were
looking to determine that they were
appropriately reflecting those fees in
those financial statements.

Q. And when you have the teams
in the league that are all kind of

faced with similar transactions or similar revenue streams or payments for concussion, whatever the situation may be, if there's a similarity among the teams in the league, it makes sense that the EY audit teams can communicate with each other to discuss how the accounting is done for the various teams; right?

A. It just depends, it depends on the transaction. I mean, it depends how general. This was a well-publicized relocation. Relocations don't happen all the time in the NFL. It depends on the transaction.

Q. Let's look at JX 101.

A. JX 101?

Q. Correct.

As part of your -- I want to change topics a little now and talk about your audit procedures for the Ventures account receive on the financial statement audit.

As part of your audit

procedures for the Ventures receivable, a confirmation was sent to the NFL; right?

A. There was.

Q. And looking at this confirmation, you can see in the text at the top where it states, "our auditors are auditing our financial statements and wish to obtain direct confirmation of the future payment owed to us as of December 31, 2014".

Right?

Now, when EY received this confirmation back from Mr. Firestone, you believed he was confirming only the January payment and not the total amount owed to the Raiders as of December 31, 2014; is that right?

A. That's correct, only the January payment.

Q. Did you ever ask Mr. Firestone if he shared that understanding with you?

A. That if he shared that understanding with me?

Q. Did you ever ask Mr. Firestone if this was his understanding that he was only confirming the January payment and he was not confirming future payments owed to the Raiders as of December 31, 2014?
A. We asked him via this confirmation.
Q. Outside of this confirmation, did you ever have a discussion with Mr. Firestone where you asked him is it your understanding that you're confirming only the January amount or do you believe that you're telling us all the future payments you owed to the Raiders as of December 31, 2014?
A. I did not have a direct discussion with him, but we asked him to confirm the January, 2015 payment of twenty million seventy-seven thousand three hundred thirty-three on this confirmation.
Q. And you claim that you thought that the NFL would not confirm the total amount that it owed to the

Raiders as of December 31, but you thought that they would confirm the January payment; right?

A. Right.

Q. And that was your understanding the entire time that you worked on the Raiders audits; right?

A. Right, that was my historical understanding.

Q. Where did you get that understanding from?

A. Well, that was my historical understanding from just joining the account when I did that the NFL would not provide a confirmation of amounts owed as of a certain date, in this case for the Raiders as of December. Number one, I understood it to be policy. Two, different year-ends, different basis of accountings that clubs have, and so they would just not provide that. We hadn't received it.

Q. Remind us, when did you join the Raiders audit?

A. 2005/2006 year.

Q. And you obtained your understanding that the NFL would not confirm the year-end balance when you joined the audit team, the Raiders audit team in 2005/2006?

A. Yeah, it would have been early on in me joining the audit team.

Q. And so it's fair to say that, as of that time, EY was already sending confirmation requests to the NFL for the Raiders audits only confirming the January payment amount and nothing more?

A. I don't recall exactly when this confirmation began, but it was early on that we would at least get a confirmation of the January payment that was accrued as of December.

Q. And when you joined, your understanding was we're only going to send the confirmation for the January amount because the NFL wasn't going to confirm the December 31 total amount owed, that was your understanding at the time?

A. That was my understanding.
Q. So your understanding was the entire time you worked on the Raiders audits, these confirmations would be sent to the NFL with only a January amount listed and not the total ending account balance for the receivable; correct?
A. Well, there were attempts and I can recall at least one attempt that we tried to get the entire balance confirmed. I recall our team sending that out and not being able to get it, again reaffirming our understanding that we couldn't get a total balance confirmation. It would have been in 2013 or 2014. And so reaffirming that the NFL would not provide a total balance confirmation as of December 31, and so we would continue to get at least what we could provide, which was a confirmation of the January payment that was accrued as of December.
Q. So let's first stay focused on the 2006 to 2013 time period, and

we're going to go to that 2013 example you mentioned.

So for the 2006 to 2013 time period, it was your understanding that the NFL would not confirm the year-end balance, it would only confirm the January amount owed; right?

A. Correct.

Q. And so a confirmation would only be sent to the January amount owed during that time period?

A. Correct.

Q. And you got that understanding when you joined the Raiders engagement team; right?

A. Correct, it would have been early on.

Q. Who did you get that understanding from?

A. Well, it would have been a combination of discussions with management and the process and how they work with the NFL from our work papers at the time.

Q. So did you get that when you

very first joined the Raiders audit and you got that understanding that the NFL would not confirm the year-end balance, did you get that understanding from Raiders management or from somebody looking at EY, somebody already on the engagement team?

A. From my understanding, it was a combination of both management and what we would have documented in our files around not being able to get a confirmation as of a point in time.

Q. Who from management did you speak to at the time that told you that the NFL would not confirm the year-end balance?

A. It would have been Mr. Villanueva. I believe he was the controller at the time and then moved on to the CFO role.

Q. And you recall having a conversation with Mr. Villanueva almost twenty years ago now?

A. Well, I just recall the topic of a confirmation would come up periodically and it would resurface and, look, we're not able to get that, can we get it, is that something that's still not possible. So yeah, having those types of conversations.

Q. And when you joined the audit, who did you discuss -- on the EY side, who did you discuss that with on the EY side as to whether or not you could get a confirmation from the NFL for the entire year's Ventures balance?

A. I don't recall specifically on the EY side.

Q. So your only recollection, sitting here today at least, is that Mr. Villanueva told you that the NFL would not confirm the year-end balance?

A. Well, that and what would have been historically documented in our work papers.

Q. And to the extent you had a conversation like that where Raiders management made a representation to you where they said the NFL will not confirm the year-end balance so therefore we're only confirming January, that's the type of conversation or discussion that should be documented in your audit work papers; correct?

A. Yes.

Q. And the documentation of that discussion should include who you had that discussion with and when it took place; right?

A. Potentially, yeah, pow tensionally.

Q. And to the extent that you had those discussions multiple times over the years -- well, first let me ask you this.

You say you first had that discussion when you joined the Raiders engagement, but I think you also said periodically over the years you asked again; right?

A. Yeah, the subject would come up to sort of re-baseline our understanding as to whether we could get one or not.

Q. And so to the extent that over the years you have a discussion with Raiders management and an assertion is made to you that the NFL will not confirm a year-end balance, those discussions likewise should be documented in your audit work papers; right?

A. Yeah. And I do recall some earlier documentation in our files. I just don't know if over the years that -- and it often happens in an audit where you have a baseline understanding of how an account works or a transaction works and maybe over the year the documentation will be as robust and doesn't get as strictly carried forward, but it established the baseline understanding.

Q. And from the work papers that we have sitting here today, the ones that are left, are you aware of anywhere in those work papers where it states -- where there's a documentation of a discussion with Mr. Villanueva stating that Mr. Villanueva told you that the NFL will not confirm a year-end balance for Ventures?

A. I don't -- I mean, without pouring back through the work papers, I don't know if it's stated succinctly like that.

Q. But to the extent that you're relying as an auditor on an assertion made from management -- here you're saying Mr. Villanueva -- we could expect to see the discussion that's being relied upon documented in your work papers to the extent that you're relying on that for your audit procedures; right?

A. Yes, some version of that or documentation around your inability to obtain it.

Q. You mentioned this already so I want to go there, the 2013 time period. Let's look at JX 236.

MS. VAN WINKLE: I'm sorry, what number?

MS. BROWN: JX 236.

MS. VAN WINKLE: I don't think I have that.
Q. Mr. Garcia, do you have it?
A. I see JX 0236.
Q. So now that we all have JX 236, do you see this is an e-mail chain dated May 6, 2014?
A. Yes.
Q. And the bottom e-mail in the chain is from Talesha Triplett to Ed Villanueva and the subject is audit confirmation; right?
A. Audit confirmations, yes.
Q. And Ms. Triplett writes, "see all confirms attached for your review and signature".
And then if we go down to page four in the document, we can see that Ms. Triplett prepared an audit confirmation for NFL Ventures; right?
A. Page four, yes.
Q. It says NFL Enterprises but I think we've all understood that Enterprises and Ventures are the same.
And looking at this draft

confirmation -- first let me ask you, is it clear that it's a draft given that there are certain placeholders for things to still be plugged in?
A. Yes, this looks like a draft.
Q. And then the December 31, 2013 amount is 66.7 million; right?
A. Yes, sixty-six million seven hundred forty-seven thousand eight hundred fifty.
Q. And then if you turn next to Exhibit 237 -- actually, before we get to Exhibit 237, let me ask you, you had mentioned, if I understood your prior testimony correct, that you thought sometime in 2013 you reconfirmed your understanding that the NFL would not confirm the year-end balance, and maybe I misunderstood you but I thought you were saying because you tried to confirm it with the NFL and they said no.
Is that what you meant by that?
A. Yeah, we tried to send a

confirmation to the NFL of the full amount in that year, and I recall, number one, we didn't get anything back, we didn't get a confirmation for the total amount, and so we didn't get it.

Q. So your recollection is that the draft that appears in Exhibit 236 on page four, your recollection is that that draft was completed, the names were filled out, that it was signed by the Raiders, returned to you, provided to the NFL, and then the NFL never returned it; is that your recollection?

A. I believe that's right, we would have finalized and sent it.

Q. So look at the date and time on Exhibit 236 where Talesha Triplett is saying, "Ed, please see all confirms attached for your review and signature".

That's May 6, 2014 at 5:46 p.m.; correct?

A. May 6, 5:46 p.m., yes.

Q. And that's where we see the

draft of the confirm with the full year-end balance.

Now, if we look at Exhibit 237, we can see that -- we can see the prior e-mail, actually, the May 6 communication at 5:48 p.m. and then there's another e-mail on top, May 7, 2014 at 4:56 p.m., so almost twenty-four hours later; right? And the confirmations have been edited in this time; correct?

A. Yeah, it looks like that's the case.

Q. Is it your testimony that in those twenty-four hours, the confirmation was completed, filled out, signed by the Raiders, returned to you, sent to the NFL, the NFL said they wouldn't confirm it, and then a new confirmation was prepared and sent to the Raiders to sign again in those twenty-four hours?

A. Yeah, I recall we would have sent this: And then I recall -- because at that time we were all on site doing audits, not a combination of hybrid today, being out at their offices, at the Raider offices and having a conversation with Mr. Villanueva about the confirmation and either a screen shot or something he was showing me that said you're not going to get the confirmation for the full balance around this time.

Q. Sir, do you think it's plausible that you sent the Raiders a draft confirmation at 5:46 p.m. and by 4:56 p.m. the very next day that confirmation has already been completed, filled out, signed, returned to EY, then submitted to the NFL for signature, then the NFL gets back to you still in the same twenty-four hours, tells you they will not confirm that balance all before 4:56 p.m. so that new confirms can be prepared for just the January amount? Does that really sound plausible to you?

A. I mean, it does. We're not dealing with a large organization.

It's Mr. Villanueva as the CFO who would sign these and e-mailed out to the parties looking to get confirmation. But again, I do recall that then the confirmation, we couldn't get it so we updated the confirmation to what we could get.

Q. So your testimony is that, in the twenty-four hours since this was sent to Mr. Villanueva and it was completed and it was returned to you and it was given to the NFL, the reason why at Exhibit 237 we see a new confirmation being drafted by EY is because, in that time period, the NFL has already communicated to you that they will not confirm the other draft version that we see at Exhibit 236?

A. Yeah, and I just don't recall if it was a direct communication to me or if I was in Ed's, Mr. Villanueva's, office talking about this and him pointing out something on the screen that we're not going to get it.

Q. Let's turn to Exhibit JX 169.

Are you there?
Do you recognize this document?
A. I believe I did.
Q. This document is an internal memo at EY dated April 6 of 2020 and it is addressed to the Raiders audit file; right?
A. Correct.
Q. And you're cc'd on the memo; right?
A. I am.
Q. And it's titled Raiders Football Club, LLC Revenue Fraud Risk Considerations; right?
A. Right.
Q. Was this document prepared in connection with the 2019 audit?
A. Correct, it looks like it to be for the 2019 audit.
Q. Now, under GAAS, there is a presumption that fraud risk exists for revenue accounts; right?
A. Right.
Q. But for the Raiders, EY

reached the conclusion, in connection with the 2019 audit, that they could assume there was no fraud risk for the revenue accounts; right?

A. Right, but the conclusion was a risk. It didn't rise or elevate to that definition.

Q. And in connection with the 2019 audit, you believe that management would have an incentive to understate revenue but no incentive to overstate revenue at least in part because they were using a tax basis method to record their financial statements; right?

A. I'd have to re-read the entire memo here where we document our considerations in this memo.

Q. If we can just go to page two hundred three on your deposition transcript.

I'm looking at the question asked at row twelve.

"In connection with the 2019 financial statement audit, did you believe that management would have an incentive to understate revenue but no incentive to overstate revenue".

And your answer was: "I think -- well, at the time, and for tax basis financial statements, the -- you know, we believe this was -- this would be the case given tax basis accounting".

Is that a true answer?

A. Yeah, I think that's part of the consideration. I think that's part of the consideration.

Q. And because the Raiders were using a tax basis method of accounting, if they fraudulently overstated the revenue, it's fair to conclude that it would have resulted in additional tax liability to the owners of the Raiders; right?

A. Potentially, potentially, depending on the facts and circumstances of their tax structures, tax situation.

Q. And part of the reason why EY concluded that there was no fraud risk in the revenue accounts was because

Raiders management had no incentive to overstate revenue and doing so would just result in the owners having to potentially pay more taxes; right?

A. Yeah, I think it was part of the considerations. I think, if I reflect back, the other part is the revenue streams are known from the NFL. It's not like we were entering into new product lines, new services. It's NFL revenues controlled by the NFL disbursed to the team, primarily.

Q. Could you turn to Exhibit JX 798, please.

This is a billing and collection by invoice report for the fiscal year 2019.

Are you familiar with this type of document that's been prepared by EY?

A. No, not specifically this type of document.

Q. Does this document appear to reflect the amounts billed and collected for professional services provided to the Raiders by EY for the fiscal year 2019?

A. So I see fiscal year 2019 summary of engagements, billing amounts and collected amounts.

Q. Based on your job duties and responsibilities, would you be familiar with the amounts that would be billed and collected from the Raiders in connection with the audit work?

A. I would be under those separate engagement letters.

Q. And do the amounts stated here with respect to the audit work look like --

MS. BROWN: Sorry, let me start over.

Q. Do you have any reason to doubt that the amounts stated here for the audit work performed for the 2019 fiscal year were billed and collected by EY?

A. Do I have any reason to doubt; is that the question?

Q. Correct.

A. No.
Q. Do these numbers look generally consistent with your recollection?
A. I mean, without doing a full reconciliation to each of those engagement letters, they look directionally, correct.
Q. If you could turn to Exhibit JX 0799. This is a much longer report that covers the amounts invoiced and paid for -- if looks like if you exclude the very top row by is 2005, after that you get to January, 2006 all the way through 2018.
And with respect to the audit services provided on this schedule, could you look that over and tell me if that looks at least directionally accurate in terms of the amounts that would have been invoiced and paid by the Raiders for those audit services?
THE CHAIRPERSON: Is there any possibility of getting a stipulation on this?

MS. BROWN: We did try.

MR. FARINA: The problem is, as Mr. Gottlieb testified, there's seven different services that are all covered by the same estimated fee and the estimated fee is what was billed, so there's no -- there's literally no record that differentiates them. And the issue is that they're not challenging all seven services, as I understand it they're challenging one of the seven, and we don't have a record of what was paid for for that one service.

THE CHAIRPERSON: So we can't stipulate on it.

MS. VAN WINKLE: Right.

For example, under 2005 asset services, that would be everything under that engagement letter. Or the 12/31/2018 audit, that's effectively saying the attest services.

MS. BROWN: Just to respond to

that, the issue of course being that -- you probably recall, we actually had to file motion practice to obtain records of the amounts billed and collected and we specifically asked for records of the amount paid by the Raiders for the audit and tax compliance services for the purposes of this hearing and this is what we were given. And given that this is all we have, this is all we have.

THE CHAIRPERSON: You have to inquire. Understood.

Q. So Mr. Garcia, does this look at least directionally -- I think your words were it's directionally accurate in terms of the amounts invoiced and paid by the Raiders for the audit services provided from 2006 through 2018?

A. It's hard to tell. I mean, there's a lot of line items here and a lot of information. I see engagement names, I see what's stated on these documents -- on this document.

Q. As the engagement partner, are you aware of there being any open or unpaid invoices by the Raiders for -- prior to the 2020 audit cycle?

A. Prior to the 2020 audit cycle? I'm not aware but I haven't -- no, I'm not aware. I haven't done a reconciliation.

Q. Do you have any reason to doubt that the professional fees shown on this schedule reflect as being invoiced and paid by the Raiders, do you have any reason to doubt that these amounts were actually paid by the Raiders?

A. No, I don't have reason to doubt.

Q. One more. JX 800.

This is now just a two-page document so it should be slightly easier for you to review. It appears to be related to fiscal year 2020.

Are you -- looking this over, are there any fees on here that you

understand do not relate to amounts that were invoiced and billed to the Raiders for tax compliance and audit work?
A. Can you repeat that question?
Q. Sure.
Looking at this just two-page document, can you identify any fees on here that you understand do not relate to the Raiders tax compliance and audit work?
A. That do not relate to tax compliance or audit work for 2020?
Q. Correct.
A. Well, there's a variety of services here. I see compliance, I see advisory-type services that our tax team provided.
Q. Just to help -- because we don't know what you're looking at --
A. I'm sorry.
Q. If you are identifying specific items that are not related to tax compliance or audit work, can you maybe identify it by row number so we

can follow along?

A. Sure thing.

On this first page, as I look at the one, two,ing three, four, five columns over, I see an engagement and then I see the description of that engagement, I see tax compliance first line, second line tax compliance, third line tax compliance, and then the fourth line it says SALT ROCA which I'm not on the tax team but, as I understand, could be state and local tax and then routine on-call advisory services, typical advisory services. And then you see below that it says Oakland Raiders opportunity zone advisory, so those are advisory services, not compliance. And so that was the distinction I was trying to make in reviewing this document.

Q. And where we see an engagement description and it says "advisor" in the descriptor, should we understand that to mean that it's not related to audit services?

A. Yes, that's how I would read it, not related to audit services.

Q. And to the extent that you performed -- I think we talked about this before, but in addition to the audit, there was also some agreed-upon procedures that were performed by the audit team; right?

A. That's correct.

Q. And are we able to see based on the way the descriptions are laid out here what amounts were billed for the audit services versus the agreed-upon procedures? If you need to look at one of the other schedules to answer that question, please feel free.

A. I'm looking now at page two of this same document.

At the bottom, so if you go one, two, three, four, five, five lines over, that would be the same line or header that we were looking at. And way below you'll see 12/31/2019 audit and the services pertaining to our engagement letter for that year which comprises of the audit and, for example, the ownership report would be included in this engagement.

Q. And in terms of when we see a description on these reports and the descriptor is just, as you point out, the year-end audit, since you worked on the audit for each of these years as the engagement partner, can you tell us just approximately how much time was spent by the team on the audit procedures versus the agreed-upon procedures?

A. I don't know that. The audit was a bigger component, slightly bigger, but there was a lot of services that we did that are parcelled out.

Q. Let me ask you this.

If we got EY's time records for the years, would we be able to tell if people were working on audit procedures versus agreed-upon procedures?

A. Maybe, maybe. I'd have to look if in some years we used functionality and time reporting where we identified additional activities or reports, maybe in some years we did that.

Q. But there might be a way going through EY's records to identify what's being worked on for the audit versus what's being worked on for the agreed-upon procedures using EY's time records; right?

A. Maybe to the extent that we classified our timekeeping like that. I'm just not -- I'm not sure right now.

Q. And wouldn't it be fair to say that it's significantly more of the time that the audit team is spent auditing versus doing the agreed-upon procedures each year?

A. Well, I don't know. I'd have to take a look and figure out that out. We also did a report, an agreed-upon procedures report for total revenues and there was an agreed-upon procedures total revenues and expenses that was asked for by the NFL to the Raiders,

and that report is extensive as well.
If I recall, the work that we did for
those agreed-upon procedures, it took
quite a bit of time as well.

Q. And if I recall your testimony from earlier today though, I believe you said that for the ownership report, for example, certain agreed-upon procedures were performed on that report as requested by the NFL but you said you also used the report for the purposes of your audit and for reviewing related party transactions; correct?

A. Yes, it was informative.

Q. And so there's certain agreed-upon procedures where it actually might get a little blurry in terms of whether the work is being performed for the procedure for the audit; is that fair?

A. Potentially, if those agreed-upon procedures were procedures performed specifically at the direction of the NFL based on their requirements.

Q. And based on your experience, are you able to give us an estimate, your best estimate, of what percentage of time is spent by the EY audit team each year on the audit services versus the agreed-upon procedures?

A. My best estimate today, when I look back historically, maybe half, 60/40, 40/60.

Q. You think if we were able to obtain EY's time records, it would support that allocation?

A. Well, don't hold me to that because I haven't done any analysis. You asked me for it just as an educated guess.

THE CHAIRPERSON: This is what I'd like to avoid at this point in time, because much of this testimony involves speculation on the part of the witness and guesstimating on the part of the witness -- not your fault, sir -- and I think for the purposes of the record, we have to get past that.

If you have actual knowledge, that's fine, but don't guess. And any question that says is there a potential, there's a possibility of everything. So let's stick to actual knowledge and don't guess. If you give an estimate, that's fine, but we want to stick to what you actually know.

THE WITNESS: I understand.

MS. BROWN: Understood.

And I think we're done with our questions.

THE CHAIRPERSON: We'll take a break.

(Whereupon a break was taken)

THE CHAIRPERSON: Back on the record.

Counsel, you may proceed.

CROSS-EXAMINATION BY
MS. VAN WINKLE:

Q. Good afternoon, Mr. Garcia.
A. Good afternoon.
Q. Where did you obtain your undergraduate degree?

A. I obtained by undergraduate degree from the University of California Santa Barbara.
Q. And what's your degree in?
A. I got a bachelor's of arts in business economics with an emphasis in accounting.
Q. Do you have any professional licenses?
A. I have my active CPA license.
Q. Can you explain your career progression at EY briefly?
A. Sure.
I started in the fall of 2000 right out of university, I started as a staff one, then I became a staff two, and then I did two years as a senior associate, then I was early promoted to manager. At that time I did three years as a manager. Then I was promoted to senior manager at which point I did a two-year rotation within our technical accounting group out on the west coast, it's called the PPG group, professional practice group, and

that is a group that works with audit engagement teams to address technical accounting, complex accounting matters. And then I was promoted to partner on July 1, 2013.
Q. The PPG rotation, is that a national role?
A. That is a national rotation, yes.
Q. And how were you selected for that role?
A. Well, I was selected amongst my peers, my senior manager, peers in the Bay Area based on my performance, and particularly we look at -- the firm looks at annual review. The high performance get to be selected to be part of that group and they look at quality results and execution of audit procedures.
Q. At the end of your rotation -- did you continue to work at any time Raiders engagements during your time in the national rotation?
A. I did, I was a part of the

team.

Q. Were your audit responsibilities scaled back to work on the national rotation?

A. Yes, somewhat scaled back. I was still part of the audit team but I balanced my time with the professional practice group and my client servicing.

Q. At the end of your rotation as a senior manager, did you return to full-time audit practice?

A. I did.

Q. How long have you been an audit partner at EY?

A. Since '13, so eleven years or so, approximately.

Q. And what kinds of industries have you served over the years?

A. Over the years, so I'm a partner out of our San Francisco office and our Bay Area practice, so over the years I've served pretty much all of our industries: Technology, consumer products, retail, real estate, life sciences, you name it. I've sort of found my bread and butter in consumer products, in retail, and in real estate over the years.

Q. Have you had any leadership roles within the assurance practice?

A. Yes, I was one of the assurance audit leaders in the Bay Area out of the San Francisco practice for approximately two and a half, close to three years.

Q. And what does an audit leader do?

A. So I would oversee the operations of our Bay Area audit practice with point of views on new clients, and I also did the performance reviews for approximately seven, eight partners under my sort of purview and based on my leadership role.

Q. Can you describe for me the general responsibilities of an audit partner?

A. Yeah, the general responsibilities of an audit partner is -- well, it's multifaceted. But from an audit partner, professional service perspective is to oversee the execution of our audits, whether it's public companies or private companies, with quality and ensuring the right staffing levels and performing high quality audits.

Q. Can you describe for me the general phases of an audit?

A. Yes.

The phases of the audit would start with, number one, engaging with an audit client on a year-by-year basis to perform an audit and we would start with making sure we had the right staffing, understanding the entity, the background, establish a scope and strategy for the audit, execute interim and year-end audit procedures to then issue our audit report at the end of the audit over the financial statements.

Q. And did you go through that process, that entire process each year for the Raiders engagements?

A. Yes.
Q. And you mentioned that the -- that there was separate engagements year over year.
Did you ever operate under an assumption that the Raiders would engage EY to audit a particular year's financial statements?
A. No, I did not operate under that assumption. Each audit was its own audit, each year was separate and distinct. And in fact, I did not operate under the assumption. In fact, there were years where Mr. Villanueva would threaten to take the threaten services out to bid and he would say I'll call my buddies over at PwC or Deloitte.
Q. You already spoke with Ms. Brown about NFL Ventures.
Could you just please describe for me what your understanding is of NFL Ventures that you obtained in the 2019 and earlier audits?
A. So yes, we had obtained

background on NFL Ventures over the years through working with management and, as we understood it, it was a venture managed and administered by the NFL for which all of the thirty-two teams were invested in. And the goal of NFL Ventures was to exploit the NFL name and likeness around the world to generate revenues on behalf of the NFL and the teams.
Q. Do you recall the audit team doing testing of the NFL Ventures revenue and accounts receivable?
A. Yes.
Q. And when you were -- when the team did that testing, were there multiple different components of NFL Ventures revenue that the Raiders reflected on their books and records?
A. Yes, there was the -- yes, there were.
Q. And what do you remember about those?
A. The components generally were the remittance revenues that were

communicated by the NFL at the end of that season recorded as revenues by the partnership, and there was also the K-1 revenues and the separate January accrual made in December for the separate revenue that was recorded within AR Ventures.

Q. With respect to the remittance, in the 2019 and earlier audits, what was your understanding of the Raiders revenue recognize process for the tax basis financial statements?

A. So my understanding of the revenue recognition policy was that the NFL would communicate the remittance earned to the Raiders at the end of that season and then the cash was then disbursed to the Raiders following that season, so following the remittance communication.

Q. Can you give me an example of one season and a year with some dates?

A. Yes.

So purposes of the 12/31 tax basis financial statements, so say we were auditing the 2019 year, the Raiders would record the 2018 season which ended on March 31, 2018 in the 12/31/2019 year as remittance revenue when it was communicated by the NFL and earned in that March time frame with the expectation in the company that the cash receipts were to follow after that remittance.

ARBITRATOR CHANDLER: Would you pause for a minute, please?

MS. VAN WINKLE: Yes.

ARBITRATOR CHANDLER: Thank you.

Q. Did you mean in the example that you just gave that the Raiders would record the 2018 season which ended on March 31, 2018 or --

A. March 31, 2018 in 2019.

Q. The 2018 season ended on March 31 of 2019?

A. Of 2019, yes, March 31, 2018. So the 2018 season that runs from April 1 to March 31, that ended in '19, was recorded as remittance revenue in

the 2019/12/31 tax basis.
Q. How long was it your understanding that that's how the revenue recognition method for the remittance worked?
A. Since joining the account, that was my historical understanding.
Q. And what was your understanding about the revenue recognition for the January accrual?
A. The revenue recognition was that that January payment was accrued as of December 31 as earned and then collected in the January month time frame, so the following month.
Q. And how long did you have that understanding?
A. Early on from joining the account.
Q. Did anyone from the Raiders including Mr. Villanueva ever ask you if either one of those revenue recognition methods was appropriate?
A. No.
Q. Did you have conversations

with management over the years about the nature of NFL Ventures?

A. Yes. Over the years and planning and executing the audit, we would inquire about the nature of the account, had there about any changes in the accounting method, so yeah, we would have conversations about the account.

Q. I'd like you to turn in the small binder that you have to your left to JX 0454.

Could you tell us what this document is?

A. This is the audit planning template for 2016.

Q. What's the purpose of the audit planning template?

A. So the audit planning template summarizes key aspects of our planning for the audit for that year in question.

Q. And does it also document some of the conversations that you had with management?

A. Yes, as a part of the audit planning template. So for example, with we move forward to page four of the audit planning template, here is an example of documentation of a meeting and inquiries that we would make certainly on an annual basis and then through the course of the audit with respect to key changes at the company, significant transactions, things that we should be aware of as it relates to the audit year.

Q. And if you turn to -- well, let me ask you first before you turn, is this representative of how the audit process would work year over year where there would be a conversation with management at the beginning of the audit?

A. Yes. So each year was a new audit and in each year we would have conversations with management to establish changes to the business, again significant transactions, things that we should be aware of and plan for in executing our audit procedures.

Q. Did you typical participate in those conversations?

A. Yes, I would typically participate in these types of conversations.

Q. And who from management typically participated?

A. From management, it would have been the CFO and the controller, so Mr. Villanueva, Mr. Andrus for two or three years, but absolutely Ed would participate. I remember Mr. Marc Badain participating in several occasions early on in those years. But yeah, primarily Mr. Villanueva.

Q. And you mentioned that, in response to Ms. Brown's questions, that you were on the client site for the Raiders audits.

Was that true in most years?

A. Yes. Certainly prior to the pandemic, we were on site, we had boots on the ground, very much in a room like this where the CFO and the controller were in close proximity.

Q. Did the EY audit team have a dedicated space at the Raiders facility?

A. We had a -- I guess you could call it a dedicated space. It was a room like this but we had a table right in the middle and there were offices where the CFO at, the IT, president, AP, payroll, so we were sort of in the middle.

Q. How close were you to Mr. Villanueva's office?

A. From here to the wall, basically.

Q. Would he pop in the audit room sometimes or you guys pop into his office with questions?

A. Oh, absolutely. That's the way we worked. We would communicate frequently and often, whether it was scheduled dedicated meetings or ad hoc meetings as he was passing by the audit room.

Q. Did you document every single

one of those conversations?
A. No, no, I did not document every single one of those conversations.
Q. Would it have been practical or reasonable to document every single one of those conversations?
A. No.
Q. Did Mr. Villanueva also sometimes show you audit support while you were on site?
A. Yes.
Q. What are the kinds of things he would typically show you?
A. So he would show the audit team inclusive of myself depending on the transaction, whether it was an evidentiary matter like bank statements or invoices, agreement, a lease arrangement, et cetera.
Q. And what about Mr. Andrus? When he became the controller, were interactions with him similar?
A. Yes, they were similar, they were similar with our audit team.

Q. And where was Mr. Andrus' office?
A. Also in super close proximity to Mr. Villanueva, so within fifteen, twenty feet.
Q. And when Mr. Badain was the CFO, where was his office in relation to the room?
A. As I described it, Mr. Villanueva would be there, you had the IT, COO, and you had Mr. Badain, and then others, Mr. Andrus was here at some point (indicating).
Q. You describe for Ms. Brown some of the understandings that you had about NFL Ventures in the 2019 and earlier audits.
Where did you obtain those understandings?
A. So we obtained those understandings from management, from management of the Raiders.
Q. And did you rely exclusively on -- well, let me ask you first, who specifically from management?

A. It was from Mr. Villanueva who was the controller at that point when I began working with the company, then promoted to the CFO.
Q. Anybody else?
A. Yeah, Mr. Andrus, too, at some point when he became controller. But those are the primary folks.
Q. Did you rely exclusively on their representations for your understanding of how NFL Ventures worked?
A. No, no, not exclusively on their representations. We had -- certainly that was part of it and in every audit we seek to gain an understanding from our client on transactions and the way things are accounted for, but we also apply the procedures that we apply to validate that understanding, test that understanding, develop an audit process around that understanding to then test it.
Q. I'd like you to turn to

JX 0125.

For everyone else's benefit, we've excerpted one of the work papers here. The worksheets are labeled in the top left-hand corner and in the lower right-hand corner, it's not the full workbook but we have the full native available if you need it, Mr. Garcia.

Can you explain to me what we're looking at on the first page of -- the E01 work paper?

A. So the E01 work paper, which is the first page -- so that isn't the work paper on the screen here.

Q. Go ahead, Mr. Garcia.

A. Okay.

So if we can scroll down, this is the lead sheet provided by management, and what a lead sheet is it's a summary of the accounts directly from the company's trial balance and a lead sheet summarizes the current year trial balance accounts compared to the prior year trial balance account and then there's a change column and a percentage change illustrating those changes year over year.

Q. And is NFL Ventures on this lead sheet?

A. Yes. NFL Ventures is reflective of account 1250, it's cell B66, and it says AR NFL Enterprises but that's where they recorded the AR for Ventures. Enterprises and Ventures is synonymous.

Q. And what's the particular mark C in the row for NFL Enterprise/Ventures referring to?

A. Tick mark C in this work paper references and documents the change in the account year over year and, as we see documented at tick mark C, it summarizes the increase of $18 million or twenty-six percent from the increase year over year and the reasons for that increase as obtained through inquiry with management.

Q. And what were -- just so I'm clear, can you explain that process to me where you evaluate the flux in an account and it sounds like you go to management? Just explain the process.

A. So the process would be that we understand movements in the individual GL account balances year over year and obtain explanations for movements that are either significant or material or based on scope or oftentimes if we don't see a movement that we may expect to see, we're going to inquire about that. So what we do is we inquire of management as to the nature of that change, the reasons for that change, and document our understanding in our files as you see in tick mark C.

Q. Does that type of procedure have a name?

A. On overall analytical review.

Q. And for the Raiders, when you were making these inquiries related to flux analyses, who typically were you inquiring of the Raiders?

A. Typically it was with Mr.

Villanueva.

Q. And for this particular year, the change from 12/31/15 to 12/31/16 in the AR balance, what was the explanation that management provided for the increase in the accounts receivable?

A. So the explanation provided is as follows: "AR NFL Enterprises increase by $18.6 million or twenty-six percent from 12/31/15 to 12/31/16. In the league year ending 3/31, the NFL increased the digital rights CBS, Fox, NBC, and ESPN resulting in a larger amount of revenue sharing across the league. As such the increase in AR from the NFL appears reasonable".

Q. And did you agree that that appeared reasonable at the time?

A. Yes. At the time I would agree that that appeared reasonable based on my understanding and working with the company and the success of the NFL, the success of NFL Ventures, and the increasing revenues generated by

NFL Ventures year over year, it continued to be a successful venture.

Q. Could you please go to the E01.3 work paper and describe for us what that is.

A. The E01.3 work paper is a roll forward of the accounts receivable balance specifically for NFL Ventures that is -- had been provided by management in support of that account balance. And so the balance that you see at H70 of ninety million seven hundred seven thousand two hundred five will then agree to the E01 work paper that we were just reviewing as the ending balance for 12/31/2016. So this is a roll forward of the accounts receivable balance.

Q. What is a roll forward?

A. Yes.

So a roll forward of an account balance is a document, it's documentation that starts with the balance that existed as of the beginning of the year, in this case

13/31/2015, then the roll forward then summarizes all of the activity that transpired during the year, increases and decreases, to then get you to the ending account balance here, ninety-million seven hundred seven thousand two hundred five, for example. All the increases and all the decreases that happen during the year.

Q. Is a roll forward a commonly used document in an audit?

A. Yes, a roll forward is a commonly used document in an audit. In addition to accounts receivable, you would see it, for example, auditing fixed assets, property, plant, and equipment, reserves for your auditing and reviewing increases or decreases in those accounts to reconcile you from the beginning balance to the ending balance.

Q. Is it especially common to see a roll forward with a balance sheet account?

A. Yeah, it's common to see a

roll forward with a balance sheet account.

Q. And where does the AR for NFL Ventures appear on the Raiders financial statements?

A. On the balance sheet, that's correct.

Q. You said that management prepared the roll forward.

Can you just explain in a little bit more detail which portions of this work paper are management's preparation and which portions are EY's preparation?

A. So what's being reflected here on the screen and in this tab E01.3, this information that you see here is the roll forward and it's prepared and provided to the audit team from management -- management provides these details or this roll forward for us to perform our audit procedures. And flipping back to the prior page or if you scroll up, the text box in yellow is our documentation of our audit procedures, our understanding of the account that we've gained through discussions with management over the years, for example.

Q. I'd like to come back to this document, but I want to go to another document very briefly, 2467. Could we start at the cover e-mail, please.

Do you see that this is an e-mail from Mr. Villanueva to a Samee Vohra?

A. Yes.

Q. And who is Ms. Vohra?

A. This person would have been a member of the engagement team during that year.

Q. And is this work that's being done in connection with the 2015 tax basis audit?

A. Yes, it looks to be.

Q. And we have not included every -- there were a whole bunch of Excel files here. We didn't include every one of them. We did include behind this printouts of the Excel that's lead C account 1250 NFL Ventures 15.

MS. BROWN: Just so we understand, this is not a complete document?

MS. VAN WINKLE: It is the complete version of that particular attachment.

MS. BROWN: But all the other attachments have been excluded?

MS. VAN WINKLE: We did not include the other attachments in the printout we have here. We have them available if you'd like to pull them up for your exam.

Q. Mr. Garcia, in the attachment that we've excerpted -- and we have the native on the screen here -- can you tell us what we're looking at?

A. So this is the summary roll forward that is -- that was provided by management, which is on the other work paper that we looked at, and so this is -- here you'll see this is for the roll forward for the accounts receivable for

NFL Ventures and the roll forward again begins with the beginning balance, then you have the activity that transpired during the current year which consists of the remittance for the season in question. And then you also see the separate booking for the separate revenues for accrued Ventures for the January, 2016 distribution. Then you have the ending balance summarized here.

Q. And could you please go to the subscription payment tab and let us know what this is.

A. This tab -- so if you go back to the summary tab first, as I described, this is the roll forward of the accounts receivable account. On cell C11, which is the net remittance, you see a net reduction of five million nine hundred twenty-five thousand four hundred nine. If you go to the next tab, which is the subscription payment, this is the detail behind that amount. It consists of the 2014 season remittance earned and recorded as revenue by the Raiders in 2015. You see additional revenue streams here for film royalty, for example.

And then we see the summary of the cash that was received by the Raiders and applied as a reduction to the accounts receivable account for the cash that was received from NFL Ventures in that time period to then reconcile you to that net activity of 5.9 million which then rolls to the roll forward.

Q. Is this the typical format in which Mr. Villanueva or another member of management of the Raiders would provide their roll forward to EY?

A. Yes, this would be the typical format.

Q. And in this presentation, did management associate the cash received with a particular season remittance?

A. No, no, they did not. It was our understanding that -- and based on our inquiries and observations and discussions with management over the years that cash received could not be applied for traced to any particular season remittance, and that was because the NFL Enterprises, NFL Ventures administered those revenue streams and the Raiders didn't -- it was asserted to us that the Raiders didn't have any control over when those distributions were received.

Q. And to go back to the summary tab, did you understand -- did this presentation have any significance to you, as far as your understanding, of what the accrued Ventures distribution was?

A. Well, the significance would be that it was not part of the net remittance, it was a separate and distinct accrual for separate revenues that were earned and then subsequently collected in January.

Q. And that's -- is that what you understood management to be communicating to you through this?

A. That's correct.
Q. Let's go back to 2467, please. Sorry, wrong one. 0125, back to the E01.3 testing.
And the panel's already heard Mr. Gottlieb talk about a lot of the detail in this, so I first wanted to ask you can you summarize what the audit strategy was for testing the NFL Ventures AR balance?
A. Sure, sure.
So the audit strategy was applied on -- every year it was a new year, it was a new audit process, and what we would do is gain an understanding from management of the company as to whether there were any changes in the way that they were accounting for NFL Enterprises and Ventures, was there any changes that needed to be addressed or reflected in the current year. And then we'd understand from an overall analytical review perspective, the movements in the account balance, for example, as

illustrated in that prior work paper, E01, that demonstrated the movement and how that correlated with the increasing revenues, for example.

We would also obtain from management the roll forward that we just walked through. That roll forward the accounts receivable balance from the beginning of the period, document all of the activity for the period, the increases and the decreases to the account that then reconciled you to the ending balance, and then what we would do, if we wouldn't mind scrolling down to the details of the account, here is the roll forward.

And so the audit strategy also included agreeing out the beginning balance. This is the basis for the beginning of the balance which agreed to the prior year audited financial statements. And what we would do is we would look at all of the activity during the current year that included the remittance earned that was communicated by the NFL to the Raiders recorded as revenue. We would also look at all of the cash payments that were received in the current year and we would agree, audit, and tie those out to the cash receipts as per the bank statements to then reconcile you to the ending balance.

And so we would test all of that activity during the year that tied to third party evidence again coupled with our inquiries, of our observation of the account, the management representation letters that we were getting as to the communication of their understanding of this account balance that got us to the suite of procedures to test the account.

Q. Is what percentage of activity in the AR account for NFL Ventures did you test?

A. We would test one hundred percent of the activity based on the roll forward.

Q. And did you have third party

support for each line item of that activity?

A. Yes, we had third party support.

Q. And with respect to the accrued Ventures January, 2017 distribution, what was that third party support?

A. So the third party support largely consisted of vouching that cash receipt as evidence that it existed in January, so the twenty-two million, coupled with a direct confirmation that we would receive on an annual basis -- and you'll see a reference to EE02 which would be the confirmation that we could get from the NFL confirming directly that that was the amount of the January, 2017 distribution, for example, that then validated the recording of that separate revenue.

Q. And for the -- in this example, the 2016 season remittance earned, what third party support did you have?

A. Here what we would get is direct communication from the NFL as to the remittance that was earned for this particular season and as recorded here in the accounts receivable and related revenue.

Q. I want to focus on the tick mark C that you referenced.

Could you please go to that tick mark.

A. Yes.

Q. And this says, "due to the difference between the NFL and the club's year-end date, 3/31 versus 12/31, we confirmed the NFL Ventures payments due and to be received January, 2017 as of 12/31/16 instead of an ending receivable balance".

Do you see that?

A. I do.

Q. Could you please explain that to us?

A. Yes.

So what this is saying and again, based on our historical understanding that the NFL would not provide a confirmation as to the total amount that was recorded as a receivable as of 12/31, because we couldn't get that and for reasons given historically that dealt with the fact that the Raiders were on a 12/31 versus 3/31, for example, what we -- we got what we could get and we could get a confirmation from the NFL for at least that January payment that was accrued as of December 31, so we would get that confirmation on an annual basis.

Q. And I am going to look at that confirm with you.

But before we leave this work paper, could you please go up to note one. And in the third line, the sentence that starts, "typically". "Typically distributions for a given season are made in the subsequent season".

Can you explain that sentence to us?

A. Yes.

So what this sentence is saying is, as I've described earlier, that the remittance that is earned and communicated by the NFL and recorded by the Raiders is then received -- that cash is received in that subsequent season.

Q. And for the Raiders, if you look back at how management was presenting this on the second page of the roll forward, what was the volume of cash that was coming in each year?

A. It was millions and millions and millions of dollars were coming in to this account and being applied to this account as being received from NFL Ventures. And so for example here -- this is the 2016 period -- we see the millions of dollars that were coming in, over a hundred million dollars received in this year.

Q. And how did that compare to the prior year beginning balance?

A. Well, it exceeded -- the cash receipts exceeded the prior year

beginning balance significantly.
Q. What conclusion, if any, did you draw from that?
A. Well, in looking at this work paper and the conclusions drawn historically is that it followed the -- how management had historically described this account to work in that following the communication and the recording of revenue based on a remittance that then the cash would follow and the cash receipts as summarized here were being received and recorded to the account as they were received from the NFL.
Q. Did you -- does it support any of your conclusions with respect to the financial statement assertions as to the account receivable?
A. Yes, it did. It supported the assertions as to the validity of the accounts receivable as of 12/31.
Q. Let's go to -- before we leave, back to tick mark C, I want to talk about the confirm now but one

other thing about tick mark C related to the January distribution.

In this example, when did the Raiders actually receive the payment that was accrued in December of 2016?

A. Generally in January, in January of that following December.

Q. So just about a month later?

A. About a month later.

Q. Let's go to 0460.

What are we looking at now?

A. This is the confirmation that we received from the NFL. You see a reference of EE02. And if this is for the same year, it's the confirmation of the amount that is recorded as revenue as of 12/31 as per that roll forward, that separate booking of revenue, and this is the NFL confirming that specific January payment of the amount that we see here.

Q. And is the AR accrual the other side of the entry?

A. That's correct.

Q. What is the date of this

particular confirmation?
A. The date is May 5, 2017.
Q. And so is this -- were you confirming, was EY confirming the January, 2017 distribution to the Raiders before or after that distribution had been made?
A. It would have been after.
Q. Let's go to the -- well, who signed this confirm on behalf of the Raiders?
A. This one here looks like it's Bradley Firestone.
Q. On behalf of the NFL?
A. On behalf of the NFL.
Q. And who signed on behalf of Raiders?
A. That would be Mr. Ed Villanueva on behalf of the Raiders.
Q. And can you describe for us the process of issuing a request for confirmation, whether you go to management, at what point you send this information out to the client, just briefly describe the process, please.

A. Sure.

So over the course, in the standard course of the audit when we're sending the confirmation, we work directly with management on the confirmation process, getting the confirmation signed from the relevant member of management and then sending that over to the relevant party that we're looking to receive confirmation from. It could be in e-mail form or, back when I started, in an envelope, but generally e-mail.

Q. And is that the process that -- is that how it worked with the Raiders and Mr. Villanueva?

A. That is correct. That's how it worked. As mentioned earlier, we were in their offices at all times, so it was a pretty seamless process to get these things signed and out the door.

Q. Did you have verbal conversations with Mr. Villanueva about requests for confirmation on occasion?

A. Yes.

Q. Could you go to the first full paragraph under dear Mr. Firestone and the second sentence, "please compare the amounts shown below with your records and confirm that this information agrees with your records or note the details of exceptions".

Do you see that?

A. Yes, I see it.

Q. What is that instructing the recipient to do?

A. So this confirmation is instructing the recipient to compare the amount shown below, which is the box here that says payment for NFL Ventures January, 2017 in the amount of twenty-two million three hundred seventy-two thousand sixty-three, so compare that specific payment with their records and note any exceptions below in the space provided.

Q. And the box, payment for NFL Ventures, January, 2017, what was the reason for using that language?

A. We were looking to confirm

specifically the separate January accrual that was made in December, so specifically that January revenue that was then collected -- the January revenue that was accrued as of December that was collected in January.

Q. Did you set out in this confirm or the others that were actually signed by the NFL to confirm a full year-end balance for NFL Ventures?

A. No, we did not have that. Did not get that.

Q. And in the 2019 and earlier audits, when you received the signed confirmation back, what did you understand the NFL to have confirmed?

A. Well, we asked them to confirm, which was the January payment from NFL Ventures.

Q. If you had believed that the NFL would respond to a request to confirm a full year-end balance, would you have tried to get one?

A. Absolutely, absolutely. If they would have responded to me, to EY on that full AR balance confirmation, yes.

Q. And were there years when the audit team actually considered sending a confirmation of the full year-end balance?

A. Yes.

Q. And were you involved in those efforts?

A. Yes.

Q. I'd like to point you to JX 0087 and also JX 0088. I think these are different versions but the same two documents that Ms. Brown showed you.

Just take a look at JX 87 and JX 88 to make sure you looked at all of them.

A. (Reviewing).

Q. Is this one of the examples of the audit team considering sending an accounts receivable confirmation for the full balance?

A. Yes.

Q. And I know you spoke with Ms.

Brown a little bit about this, but I just want you to tell us what you remember about this particular incident.

A. Yes.

So we attempted to get a confirmation of the full balance, and I recall working with Ed as the CFO, Mr. Villanueva, the CFO, in an effort to try to obtain a confirmation directly from the NFL for the full AR balance. Again, looking back at that, I don't recall how it all transpired at the end of the day and whether -- we end of the day we didn't get -- we couldn't get the confirmation. We were attempting to get a confirmation. We couldn't get it, we didn't get it. And I do recall being at the offices of the Raiders and having a conversation with Ed about this and him pulling a screen or some communication that spoke to that that could not be provided.

Q. And the communication that he showed you, who was it with?

A. It was with the NFL. I just don't recall specifically who, but it was with the NFL.

Q. And what did you understand from the support that Mr. Villanueva showed you?

A. Well, I understood that we were not going to get it consistent with historical practice that that wasn't something they could do.

Q. And do you remember the exact sequence of events surrounding when the draft went to Mr. Villanueva, when you had a conversation with them, when he showed you this support of a communication with the NFL, do you remember the exact sequence?

A. No, I don't remember the exact sequence, but I do -- we were looking to get this confirmation in this year. While I don't remember the specific sequences of it, working with management, working with Ed to try to get this, to try to get this in the current year.

Q. And are you certain that you actually sent a confirm for the full AR balance to the NFL or just that there was some communication with the NFL?
A. I'm not a hundred percent certain if we sent it directly to the NFL, but I do recall the communications with Ed and him helping us facilitate that process to try to get it.
Q. In JX 088, this is the edited confirmation. And you actually received a signed confirmation that's -- this is page four of the exhibit. And I know this screen is a little bit faded. I should say the font on the edited version is a little bit faded.
Did you get a confirmation signed that was similar to this one on page four?
A. Yes, I believe we did.
Q. And what's the difference in the first sentence? There's a change from "amount owed" to "future payments".
Do you see that?

A. I see it.
Q. And what's the significance, if any, of that change?
A. Well, the significance of this change was articulating that it was not a confirmation of the total balance as of December 31, 2013 or rather going back to get a confirmation for at least that January payment, confirming that directly with the NFL for the amount that was accrued by the company.
Q. And in the second sentence, what about the change from "balance" to "amounts"? Was there a difference, in your view?
A. Yes, there was a difference because again, this confirmation was not confirming a total account balance but rather the amount specifically that is shown below in that table which is again the January payment with that respective amount.
Q. And what was the change to the language in the table?

A. Instead of receivables for, it's specifically calling out the payment, the payment related to for NFL Ventures, the January, 2014 payment in this case. And in the table to the right, it's stating the amount versus sort of on as of December date.

Q. Thank you.

In -- you can put that away and take that document down, please.

In the 2020 audit, did the audit team attempt to send a confirmation request for the Ventures account receivable balance as of December 31?

A. Yes. In connection with the 2020 audit process, we attempted to do that.

Q. And did the audit team receive a signed confirmation from the NFL for the 12/31/2020 AR balance?

A. We did not, we did not receive that.

Q. Can you please go to JX 0165. We do have the native as well.

A. Yes, JX 0165, yes.
Q. What are we looking at now?
A. So this -- let me take a look.
(Reviewing).
So this is a work paper from the 12/31/2020 audit. And this work paper symbolizes the accounts receivable from Enterprises as of 12/31/2020.
Q. And take a look the a tick mark D. It states, "we prepared an accounts receivable confirmation for the balance due from the NFL related to NFL Ventures and broadcast receivables as of December 31, 2020 under the federal income tax basis of accounting dated July 7, 2021. We circulated the confirmation directly to will Dorrance, NFL club finance senior director on July 12, 2021. Subsequently, we received verbal confirmation from Brad Firestone", and it lists his title, "and Mr. Dorrance that, we are NFL policy, the accounts receivable balance

as of December 31, 2020 related to the NFL Ventures and broadcast revenue could not be confirmed".

Do you see that?

A. I see that.

Q. What do you recall about those events?

A. So what I recall from these events -- and these events were taking place during the 2020 audit in the middle of the investigation process, the audit for 2020, and as the company was looking to I guess bottom out on their revenue policy, all that was in process, we were in the process of auditing all that. We were looking to get -- pick up this topic of confirmation back with the NFL, so we prepared and sent a confirmation of the balances. And ultimately we were not successful in getting that confirmation back in this year as well. We heard from the NFL that they could not provide that confirmation. From what I recall from those events, our tax team was having a lot of conversations throughout that time period with the NFL and hearing from our tax team that affirmed that that was the case, we were not getting that confirmation.

Q. What was the audit response in 2020 when you were unable to obtain a year-end accounts receivable confirmation?

A. Well, the audit response in 2020 was to perform alternative procedures which are procedures that we perform historically, alternative procedures to test that account balance and that included vouching to the bank statements the direct receipt of that cash to support the balance that was recorded.

Q. And what was your audit response in the 2019 and earlier audits when you understood that the NFL also would not confirm a full year-end balance?

A. My audit response consisted of also alternative procedures which consisted, as I described earlier, vouching that cash receipt during the year to third party bank statements in support of that balance and it included agreeing out that remittance as communicated by the NFL for example, in that roll forward, so that suite of alternative procedures.

Q. Do you recall personally participating in the conversations with the NFL during the 2020 audit about this process?

A. Specifically for the confirmation process?

Q. Yes.

A. What I recall is participating in a conversation with the NFL as it relates to overall Ventures accounting and then us looking to get the confirmation of the total balance as of 12/31.

Q. And do you recall conversations internally amongst the audit team with or without the tax specialists about this process and

whether you could get a confirmation or not?
A. Yes, internally with the audit team.
Q. And what do you recall from those?
A. Well, the recollection was that we were not going to get it, we couldn't get it, and that was also in conversation with our tax team that was communicating directly with the NFL on other revenue matters. At the end of the day, we didn't get it.
Q. Could you please go to JX 0486.
What are we looking at now, Mr. Garcia?
A. So this is the confirmation that we -- dated July 7, 2021 that we sent to the NFL seeking to confirm amounts owed due to the Raiders at December 31, 2020 and December 31, 2019.
Q. And why did this include a request for both 12/31/19 and 12/31/20

balances?

A. It was important for us to include the December 31, 2019 balance because of the process that was under way at the time for correcting the errors that were identified. And that correction was effectuated in the financial statements for an adjustment through opening retained earnings, so it was important for us to have an understanding of what those balances were at the beginning of the year to test that opening retained earning adjustments.

Q. And for NFL Ventures, what kind of response did you hope to receive from the NFL when you sent this confirmation?

A. Well, what I was seeking here is a response on what was the total amount due to the Raiders as of those year-end dates.

Q. Is this -- are you familiar with the phrase "positive confirmation"?

A. Yes.
Q. And is this a type of positive confirmation, meaning that the recipient fills in the blank?
A. Yeah, we send it with the expectation of getting it back.
Q. And what happened when you sent this confirmation?
A. Well, we sent the confirmation out and ultimately, as I described earlier, based on conversations with the NFL and primarily facilitated through our tax team, that we were not going to get it, and we ultimately did not receive a signed confirmation back from the NFL.
Q. I want to go briefly to JX 90 in Ms. Brown's binder.
This is the e-mail involving Mr. Loftus?
A. Okay, JX 0090?
Q. 0090.
Do you recall looking at the attachment to this e-mail at the time you received the e-mail?

A. No.
Q. And do you know, sitting here today, what the attachment to the e-mail is?
A. Yes, based on what we learned during the whole 2020 process, I got further insight on these schedules.
Q. But for your experience on the 2020 audit, would you know what the attachment to this e-mail is?
A. No.
Q. Thank you.
Let's go to 0450, back to the small binder. And this one is the full native file, but we can also pull up the native, if you would like it, if that's easier than having the printout.
Can you tell us what we're looking at now?
A. So this is a balance sheet overall analytical review. It's a fluctuation analysis of the balance sheet accounts comparing 2016 to 2015, the changes in those accounts, and the percentage change, so an overall

analytical review.

Q. And can you go to the line item due from NFL?

A. Yes.

Q. And it has a tick mark A; correct? And then go to the tick mark A explanation on the second page.

What is the explanation that management provided to you for the change in the account receivable balance due from NFL?

A. So tick mark A, "we identified an increase of 18.2 million or twenty-three percent in the AR NFL account. The club has no control of the receipts of cash or the receivable, as the NFL determines the amount and timing of these disbursements. Generally, the NFL continues to grow the revenue pool from the exploitation of the NFL brand via its NFL Ventures entity, licensing rights, as well as its focus on growing the popularity of NFL football in Europe and Latin American countries. The growth in AR is consistent with our observations in the revenue growth from NFL revenue sources year over year".

Q. And is this another year in which management's explanation for the increase in the AR balance pointed to the increasing NFL revenues?

A. That's correct.

Q. And was that a consistent explanation that management provided whenever the audit team made any of these inquiries?

A. Reflecting -- yes, that was a consistent pattern given the growth of the NFL Ventures revenue.

Q. And you deemed that reasonable at the time, the 2019 and earlier audits?

A. Yeah, I deemed it reasonable for our audit procedures for those years, yes.

Q. And the sentence, the club has no control of the receipts of cash or the receivable, as the NFL determines the amount and timing of these disbursements, what does that mean?

A. That was the explanation from management on the fact that they had no control over the timing of the receipts of cash from NFL and NFL Ventures.

Q. And what about this concept of matching the distributions to a particular remittance?

A. Right, it was described to us over the years that any particular cash receipt could not be applied to any particular remittance again because the club, the Raiders in this case, have no control over the timing and distributions of those amounts.

Q. Let's go to JX 0238.

Who typically provided those explanations?

A. Typically the CFO, Mr. Ed Villanueva.

Q. And once you're at 0238, let me know what that is. And I will represent for the record this Excel spreadsheet that was attached had many,

many worksheets, and so we've excerpted one of the worksheets in the binder. We can pull up the full workbook, if needed.

What are we looking at now, Mr. Garcia?

A. 0238?

Q. Uh-huh.

A. This is an e-mail from Mr. Villanueva on May 19 to members of our audit team in response to a request that we made.

Q. And what audit does this appear to be in connection with?

A. This appears to be in connection with the 12/31 tax basis audit.

Q. So this is a couple of years before the flux explanations that we just looked at; right?

A. I believe that's right.

Q. And if you go to the attachment, can you tell us what that is?

A. This attachment is a detail

of the account balances for these particular years, the changes and the percentage changes, and management's response to us on the reasons for those changes.

Q. This might be a little bit easier for everyone to read.

And if you scroll down to the bottom of this, the account 1250 AR NFL Enterprises, what is the explanation that Mr. Villanueva provided for the fluctuation in the AR balance this year?

A. I'm going to read it from the screen.

The explanation provided by Mr. Villanueva for account 1250 and the change of $15.9 million is "timing will always attribute to the difference and when money from the NFL comes in to reduce the receivable. We have no control of receipts or the receivable. The NFL determines when we receive money to reduce the receivable. With the new CBA extending out over ten

years and with new TV deals, this amount will always increase every year".
Q. Is that another instance in which Mr. Villanueva communicated to the audit team that he had no visibility into the timing or purpose of the distributions from NFL Ventures?
A. Yes.
THE CHAIRPERSON: I think it would be a good time to take a recess, about fifteen minutes.
(Whereupon a break was taken)
THE CHAIRPERSON: We'll go back on the record.
Counselor, you may proceed.
Q. Mr. Garcia, did you ever discuss Mr. Davis' personal taxes with him?
A. No.
Q. Did you ever discuss his personal finances with him?
A. No.
Q. For any of the ultimate beneficial owners, did you ever discuss

their personal finances or personal taxes with them?

A. No.

Q. I want to jump ahead to the 2020 audit now.

Can you take a look at JX 0037.

Can you tell us what we're looking at?

A. Yes.

These are our notes that I took contemporaneously as the events of the whistleblower were unfolding, as the day was unfolding, and the discussions that I had during the day.

Q. And was that Tuesday, April 27? Is that the date of these notes?

A. Yes.

Q. I want to -- who in the first call, the call with Araxie on Tuesday at 9:00 a.m.

Do you see that?

A. Yes.

Q. Who did you speak to in that

call?

A. So I spoke with Araxie Grant, who was the former controller at the time.

Q. And could you describe her demeanor on the call?

A. Her demeanor was she was concerned, distraught, urgent seeking support.

Q. And what did she -- what was she distraught about?

A. Well, on this call, she revealed to me that she believes that there were errors, significant errors with the accounting for NFL Ventures and that, in the course of her trying to understand NFL Ventures, the account, historical accounting, that there were significant errors that needed to be addressed.

Q. And did you take these notes contemporaneously during that call while you were on the phone with her?

A. Yeah, that's right. I was jotting quickly and fast.

Q. About how long do you think
that call lasted?
A. This call, about half an
hour.
Q. And I'd like to go to the
first hyphen. If I misinterpret your
handwriting, let me know. But the
first dash, "Ed admitted to her to
managing debt covenant compliance in
past with this".
What were you documenting
there and what did she tell you?
A. So in the conversation with
Ms. Grant that she started off that she
believed there was errors, significant
errors with NFL Ventures and that was
in her working with Travis who was her
senior accounting manager, new senior
accounting manager at the time that she
believes there were significant errors
in the account and that, in her trying
to investigate whether there were
errors or not, that in trying to get
more information from Mr. Villanueva as
the CFO that he admitted to her that he

was managing debt covenant compliance with the NFL Ventures in that accounting.

Q. So when she came to you, you understood that she had already had one, if not more, conversations with Mr. Villanueva about the potential overstatement of the Ventures revenue receivable?

A. Yeah, that's correct. By the time we spoke, and we spoke for the first time about this, it was apparent too me that she had done a lot of legwork to come to these conclusions and that legwork included talking to Mr. Villanueva to try to get more information that led her to the ultimate decision to come talk to her auditors about it.

Q. And going to the second hyphen, "Araxie believes it was intentional".

What did she communicate to you about the intentionality of the conduct?

A. Here, if I recall, she was describing to me that she believes that what Mr. Villanueva was doing, that what the company was doing was done for a reason, that it was intentional, that the accounting that they were doing was to manage debt covenant compliance.

Q. And did she give you any explanation or reasons why she thought it was intentional?

A. Well, she -- her reasons, from what I recall from the conversation, was she was trying to get to the bottom of the accounting for NFL Ventures and reasons for why, for example, their accounting could be different than the Buffalo Bills. The Buffalo Bills, obviously it's another NFL team, that's where Travis, this new accounting manager, that's where he worked. And so as they were trying to adjust differences in accounting or why it would be different from there versus here, from what I got from Araxie, in trying to discuss this with Ed, that she believed that he was doing it intentionally to manage the books.

Q. Let's go to the next hyphen, "worried about retaliation".

Can you explain that to us?

A. From the conversation, it was very apparent, and she said it, that she was worried about the company, the partnership, the Raiders retaliating against her for coming to me, for coming to me, for coming to Ernst and Young about these concerns.

Q. And how about the -- not the next one but the "questioning" hyphen, "questioning the integrity of management and Ed"?

A. She was articulating to me on this call -- and she -- I remember she would go back to the fact that she's a CPA, she was a proud CPA and she -- and being a CPA and knowing everything that comes to being a CPA, she always came back to integrity, integrity was top of mind, and she was questioning the integrity of management in her discussions and trying to get to the bottom of the accounting and trying to understand the differences in the accounting for Ventures. She specifically called out Ed as questioning the integrity of Ed because of the conversations she was having and trying to understand the errors, potential errors with the accounting.

Q. How about the next hyphen, "don't tell the auditors. Give them what we gave in past. Don't trust Javier or Tyler".

What do you recall about that one?

A. Yeah, I specifically recall her telling me that what's what Mr. Villanueva told Araxie as Araxie was investigating NFL Ventures, the accounting, if there are errors, that Ed told her specifically don't tell the auditors and give them what we gave them in the past. Because at this point we were still trying to prepare for the audit, they were trying to prepare for the audit. We hadn't done any work for the audit and this context was Ed telling her don't tell them about the issue and give Ernst and Young what they gave them the past.

And the "don't trust Javier or Tyler", she said that that's what he said, "I don't trust Javier or Tyler", that Mr. Villanueva said that. And as I reflected on that, I remember having this discussion with her and this was one of those don't trust Javier or Tyler, well, if I hear that something is wrong or there's a potential issue, I'm going to follow up on this, and that was my sense of why he said that. We followed up on it. Like that day, we took these claims, this whistleblower, seriously and we moved, we moved on this.

Q. Did you have multiple calls over the course of the day to start learning about the allegation?

A. Yes, yes. This wasn't something that I sat on for -- I didn't sit on it. It was like I'm hearing this from the controller. We need to act.

Q. A few more down there's more of an arrow and it starts, "feel bad".

A. Uh-huh.

Q. "Feel bad, Javier, because they will try to pin on you and EY".

What did she communicate there?

A. Yeah, she informed me, and those were her words, I feel bad for you, Javier, because they, as in management, will try to pin it on you, you, Javier, and Ernst and Young, like this is your issue. That's what she communicated to me, that management will try to put the blame on us.

Q. Let's go to the 11:00 a.m. call that's right underneath that.

Who is that call with?

A. This call was with Mr. Villanueva at 11:00 a.m., so that same day following the initial conversation with Ms. Grant. And on this call was

Mr. Villanueva and Mike Gottlieb.
Q. And the first bullet there is "lead with it's an error, didn't catch".
Can you explain that one to us?
A. Yeah, we set up a call with Ed as part of, okay, we need to go and investigate this, what is happening. We're all reacting to the whistleblower in the morning. And he responded back quickly to get on the call at 11:00 a.m. And I wrote "led with an error" because without really getting into it, he went into, hey, we have an error, I didn't catch it. That was his immediate perspective. Oh, there's an error for Ventures, we didn't catch it. That was pretty much right out of the gate.
Q. Was that the type of response that you expected or the type of opening you expected?
A. No.
Q. Why not?

A. No, no.

Historically in working with Mr. Villanueva and the organization, if there was an error or an issue or an adjustment or something, they would be upset, they would be upset. So the tone was -- it was surprised. It was very surprised. It was very surprising. It was very different than what I had experienced.

Q. One more question about this one.

The next line down, "inform/told Araxie okay to raise with auditors. No concerns with you talking to auditors".

What's that one mean?

A. So Mr. Villanueva informed us on this call that he told Araxie that it's okay to raise this issue with the auditors even though Ms. Grant had just told me that Ed's position was don't tell the auditors. And so this is what Ed communicated to us on the call that he told Araxie it's okay to raise it with the auditors and I remember him saying I have no concerns with her talking to the auditors. So it was in direct conflict with what I just heard, which is surprising.

ARBITRATOR BICKERMAN: Before you move on, could you just decipher your handwriting for the next three bullets?

THE WITNESS: He said he is transparent. Ed, Mr. Villanueva, then proceeded to communicate I'm transparent with you guys, I can't believe this is happening, that's what he communicated to us. And then the last one is "she went there fast". It was towards the end of the conversation and he paused and he said -- it was more of an oh, boy, well, she went there fast and that she went to go talk to you guys and tell you all this fast.

ARBITRATOR BICKERMAN: Okay.

Q. Next one, "call with Marc,

Ed, Dan".

Was that one also on April 27?

A. Yes.

Q. And who attended that one?

A. So this call, they reached out to me. If there's an e-mail here somewhere, it was either Marc or Ed, Mr. Badain or Mr. Villanueva, that reached out to me via e-mail wanting to talk. And so on that call it was Mr. Marc Badain, the former president, Ed Villanueva, the former CFO, and Dan Ventrelle, the former general counsel, former interim president of the company, wanting to talk to me.

And yeah, I got on a phone call with them. And from what I recall from the conversation, Marc, as the president, he kind of led the conversation and he was wanting to understand what happened and what happens next. And in hearing that to me, I'm on the call with the president, the CFO, and the general counsel, and it's me. So what I said, well, I told them I would get back to them and informed them -- I remember having conversations with, well, in situations like this, we have to go investigate, I'll get back to you on what that looks like. On this call, they also informed me that Araxie, that Ms. Grant, had already gone to their HR department and their legal department with these concerns.

Q. Did you eventually get back to the Raiders management about the implications of this allegation for the 2020 audit?

A. I did, I did. I made it a point to try and work the internal Ernst and Young machine to try to understand what should be next, like what is my protocol, like what I should be doing next. And I did that, I got in touch with our internal investigative group that gave me guidance on what to do next, what I needed to do as an auditor, what we would expect management to do in these situations, and I remember I summarized all that in an e-mail and I sent that out to this group, Mr. Badain, Mr. Villanueva, and Mr. Ventrelle, outlining what we believed should be the next step in investigating these allegations.

Q. Sticking or going back very briefly to the April 27 calls, there's another one over on the second page, "call with Travis Tuesday at 6:15".

A. Yes.

Q. Who was that one with?

A. So that call was later in the evening, later that day. I also remember this call because I was at the softball field watching my daughter's game and he reached out to me after the day had unfolded. So I peeled away from the softball game and he went to the parking lot and we talked on the phone. And Travis, who I don't know if he's still there or not, but at the time was the accounting manager working with Araxie under the controller group. And he reiterated a lot of the same conversation that I had with Araxie, Ms. Grant, that morning as it relates to that they believed there were significant errors in accounting or NFL Ventures. And Travis used the word I believe it was intentional, it was intentional to deceive. He used those words. And he also told me on that call that we just had not historically been provided the full information or in any way to show how the accounting should work, basically.

He then proceeded to tell me that he was concerned for Ms. Grant, he was concerned, number one, of retaliation from the organization, but he was also concerned, and he wanted to highlight that for me specifically, that he was concerned that, as part of the investigation that the Raiders should be doing, he was concerned that Mr. Badain would be included or be part of the team's sponsoring or doing the investigation, so he was concerned and -- he was asking me questions on how does that work, Javier, can you ensure that it's separate. And we had some good discussion around that. I remember walking away from that conversation thinking that they believed they were doing the right thing, flagging this, identifying this, that they identified it and that they needed to bring this to the auditors, and he believed that they were doing the right thing.

Q. Did he give you any indication about why he had concerns about Mr. Badain being involved?

A. Well, his concerns were founded in the fact that Mr. Badain had been at the organization for a very long time and at one point Mr. Badain was also the CFO of the company, and so the books and records and the accounting were also under his purview at some point in time during this time period. So that was part of his

concern.
Q. Let's go to JX 0038.
Did Mr. Scott start sending you some materials after April 27?
A. Yes, yes. He started sending us materials, materials that he had and was privy to, that he used to then uncover, uncover the errors. He sent to those to us.
Q. When you say he was privy to those materials, does that mean they were in the Raiders' possession and he just accessed them?
A. That was my understanding.
Q. Can you tell us what JX 0038 is.
Just so everyone knows, there is an Excel spreadsheet that was an attachment. I don't believe the Excel spreadsheet is included but the PDFs are. Again, we can pull up anything that's needed.
A. So JX 0038?
Q. Yes. Let's start with do you see that this is an e-mail to you from

Mr. Scott?

A. Yes, it's an e-mail to myself, to Tyler who was our senior manager, and Ms. Grant, former controller.

Q. And this was on April 28; correct?

A. Correct.

Q. And what are the documents that he sent you?

A. Here the attachments, it looks like it was a debt covenant ratio comparison calculation that they had pulled together over that time period that summarized whether they would have met covenants or not in a particular year depending on whether they made particular accruals for NFL Ventures. And he also provided what was new information, the 2019 season projected cash flow information and additional month-by-month cash flow information for 2020 or 2021.

Q. Are you referencing the attachments that are on page 234 of the exhibit?

A. Yes.

Q. It's 849, 850, and 851, Bates numbers.

A. Yes. And it looks like -- going back to the e-mail -- that the Ventures DCR compliance Excel schedule is not here but the other season projected cash flow is, which is the documents he referenced.

Q. Before April of 2021, had you seen any cash flow schedules like this?

A. No, I had not seen these.

Q. And before 2021, did you know management had cash flow schedules like this?

A. No.

Q. Is there anything in this cash flow schedule that you didn't know before April of 2021 about how Ventures operated?

A. Well, so this was new information that we received and that Travis sent over and -- yeah, fundamental new information that contradicted our historical understanding of this account. We can do the first one, Bates number 0012 -- so on the screen now, document 849, this is it. So this was an example of a season projected cash flow that was sent over by Travis in an e-mail. And what this highlighted was just again a fundamental change in how we understood this account to work. Here you can see, for example, the NFL Ventures 2019 season projected cash flows and you see that this cash is being disbursed in the year, in the year for the year, in the current season versus after, which is how we previously understood it. So this summarized the cash flows of the 2019 season being disbursed, for example, in May, June, July, October, right, in the 2019 season. So that was new information.

And the January, for example, separate accrual that we summarized -- that was in the roll forward provided by management earlier that we discussed, there's a January payment included in this amount.

So yeah, that -- there was new different information that I hadn't seen.

Q. Do you wish management would have provided you this document in the 2019 and earlier audits?

A. Yes, I wish they would have provided these documents, yes.

Q. Let's go to JX 0035. And this is another e-mail from the bottom. It starts with an e-mail from Mr. Scott to you and he says, "Javier, see schedules attached. Feel free to reach out and we can go through these together if you would like".

And then you flipped them to Mr. Johns and cc'd Mr. Gottlieb; correct?

A. Correct.

Q. And again, I think a couple of these were Excel spreadsheets which we did not attempt to print out here. We didn't printout the PDFs. So could you go to the document that starts at page four?

A. Yes.

Q. And what is that document?

A. Starting on page four which is schedule one, this looks to be a capital account roll forward of the partnership.

Q. And if you go to page five, what is that?

A. Page five which is schedule two distributions, so this is a document, again a new document that I hadn't seen before that outlines the remittance, the remittance for the year. In this case, you see the 2019 remittance and you clearly see the cash that is being distributed relative to that season and that time frame. And so -- and you also see in the header that the information for 2019 under schedule two distributions at the header there, it says "2019 season does not include any 2018 season cash", so this was a document that was new and I hadn't seen that outlined that cash attributed to the '19 season, you see it in the column, for example.

Q. Did you know that management had this schedule two in the 2019 and earlier audits?

A. No.

Q. And do you wish that management had provided you this schedule two?

A. Yes.

MS. VAN WINKLE: You can put that away.

Q. Ms. Brown asked you a couple of questions about the invoice records from EY's accounting system for the Raiders tax and audit engagements.

Do you remember that?

A. Yes.

Q. Did you have any responsibility for invoicing the tax engagements?

A. The tax engagements? No.

Q. And when you were testifying and giving your guess as to how much of the work for the at test engagements was audit versus AUPs and you gave those percentages, in the percentage for the audit side, did that include both financial statement and conforming statement audits?

A. Yes.

Q. Let's go to JX -- back to the small binder -- JX 2638, please.

It's a somewhat lengthy e-mail chain that starts on May 5 on page three. And the e-mail from Mr. Johns on May 5 is to Mr. Villanueva and he says, "Ed, attached is the 2020 engagement letter for your review and signature. Please sign and return at your earliest convenience or let us know of any questions".

Did you know about the whistleblower report at the time Mr. Johns sent this on May 5?

A. Yes.

Q. And there's a couple of exchanges here where he's trying to get a signed engagement letter; correct?

A. Correct.
Q. And if you go to the first page, you get a response from Mr. Ventrelle on June 9, 2021, correct, on the first page?
A. Yes.
Q. And is that when he provided a signed engagement letter?
A. Correct.
Q. What do you recall about your discussions with the Raiders relating to the performance of the 2020 audit before this was signed?
A. What do I recall? Can you be more specific?
Q. Sure.
About the work that was going to need to be done.
A. Well, the work that needed to be done was the audit of the financial statements and the other reports that they needed services from us, but also because of the whistleblower and because of the allegations, we would need to perform whatever work necessary

to understand, evaluate, audit management's investigation or I would have to engage my own investigation team to perform a review of the company's investigation. So there was a lot more work to be done in connection with the 2020 audit as a result of the whistleblower and the allegations and the errors that were identified.

Q. Was there an impact on audit scopes and risk assessment?

A. Yes, there was definitely an impact to audit scopes and risk assessments. It fundamentally changed our audit for 2020. The risk assessment for the company in the financial statements were now significantly riskier because of these allegations and at the time our potential inability to rely on the CFO and the president's representations in putting together financial statements for us to audit. So yes, it significantly changed our risk assessment, the scopes and what we needed to do to execute on the 2020 audit.

Q. Could you please turn to the attachment that was the engagement letter. I think it's page five, if that's helpful.

A. Yes, I see it.

Q. And could you please go to paragraph -- actually, first of all, let me start at paragraph one.

What financial statements was EY engaged to audit this year?

A. So we were engaged to audit and report on the consolidated financial statement and supplementary information of Raiders Football Club, LLC and the financial statements of Las Vegas Stadium Events Company, LLC as and for the year ended December 31, 2020 as well as related services for agreed-upon procedures, conforming statements, et cetera.

Q. And you mentioned earlier that you stood ready to audit --

reaudit earlier years' financial statements if the company reissued them.

Were you ever asked to do that work?

A. No, we were not asked to do that work. We were not engaged to do that.

Q. And if you look at the signature page on page fifteen, who signed that?

A. Mr. Dan Ventrelle, the former general counsel, former interim president.

Q. Let's go to JX 2431, please.

What's this document?

A. JX 2431, this document is an invoice sent to the Raiders for professional services rendered and scopes in connection with the Raiders Football Club and Stadium Events Company, LLC audits for 2020.

Q. Did you have any involvement in the preparation of this invoice?

A. Yes.

Q. And what is the total amount under this invoice?

A. The total amount is one million seven hundred thirty-four thousand one hundred ninety-eight.

Q. And does that reflect services associated with the 2020 audit under the engagement letter we just looked at?

A. Yes.

Q. And was all of the work that's reflected in this invoice necessary for EY to issue its audit opinion on the 2020 financial statements?

A. Yes.

Q. And at the time you entered the engagement letter with Mr. Ventrelle, did you expect the Raiders to pay this, to pay whatever was owed for the work?

A. Yes, fully expected to get paid for the work that we did.

Q. Let's go to JX 3214.

A. I'm sorry, what was that

reference again?

Q. 3214. I think it's the last document in your binder.

And I'm going to apologize for the formatting on this one as well, so I might just walk you through the columns so you can tell us what it is.

On the first page, do you see the billed client name?

A. Yes.

Q. And who is that?

A. Billed client name, Oakland Raiders, a California limited partnership.

Q. And if you go to the fifth page, I think it is, if I'm counting correctly, in the far right-hand column do you see the current invoice date? It's the last -- second to last sentence on the page.

A. So native 7008?

Q. Yes.

Is that the date of the invoice that we just looked at, August 14 of 2022?

A. Yes.
Q. And what is the outstanding amount of fees owed?
A. The outstanding amount of fees owed is one million seven hundred thirty-four thousand one hundred ninety-eight.
Q. And is it your understanding that the invoice, that August, 2022 invoice, remains unpaid?
A. Yes, it remains unpaid.
Q. Let's go to JX 2455.
Can you tell us what this document is, Mr. Garcia?
A. So this is a document. This is an e-mail originally sent from Mr. Ed Koijane who's a tax partner at Ernst and Young to myself notifying me of what he provided to Michael, Mr. Crome, at the Oakland Raiders for their tax invoices.
Q. And he attached some invoices to the e-mail?
A. Yes.
Q. And do you have an

understanding of whether those invoices have been paid?

A. They have not been paid.

MS. VAN WINKLE: That's all I have for now.

THE CHAIRPERSON: Counsel, do you have any questions? Do you seed some time?

MS. BROWN: We have questions. Can we have some time?

THE CHAIRPERSON: Let's take a ten-minute break.

(Whereupon a break was taken)

THE CHAIRPERSON: We're back on the record.

REDIRECT EXAMINATION BY MS. BROWN:

Q. Mr. Garcia, you testified that management of the Raiders made various assertions to you; correct?

A. Correct.

Q. Is it the case that the financial statements themselves that you're being hired to audit are assertions of management; right?

A. Yes, management prepares those financial statements. They are the statements of management, yes.

Q. And the account balances stated on the financial statements are assertions of management; right?

A. Correct.

Q. So for example, when the financial statement says the NFL owes us a hundred million dollars, that is an assertion with management; right?

A. Correct.

Q. And that's an assertion that you're testing as part of your audit procedures?

A. Correct.

Q. And you can't test those assertions from management by simply getting additional assertions by management; right?

A. That's correct.

Q. Because if that was the sum and substance of your audit, you would simply by saying that the amounts stated on the financial statement are correct because management is stating they're correct; right?

A. Right.

Q. I want to go back to one of the work papers we were looking at.

MS. VAN WINKLE: Which binder?

Q. What we've been calling the big binder, I guess, and look at JX 123.

MS. VAN WINKLE: I'm sorry, which one?

MS. BROWN: 123.

Q. These are your work papers for the accounts receivable accounts for the December 31, 2015 audit; correct?

A. Yes.

Q. Let's turn to the work paper for Ventures which I think is page seven of eight.

So here, when we look at the procedures that were applied to the 2015 audit, you can see that there's prior year balance. And next to that -- I guess what's identified as the beginning balance -- it actually says beginning balance 12/31/15.

Is that a typo?

A. It looks to be.

Q. So that should say January 1, 2015; correct?

A. Yes, or 12/31/14.

Q. Thank you.

And I think you're right, because then there's a notation here that says PY; right?

A. Yes.

Q. Was that a notation that was provided PY?

A. Correct, referencing to the prior year.

Q. That's not something that the Raiders put on the spreadsheet; right?

A. The PY?

Q. The PY, correct.

A. Correct.

Q. And the PY is there because that indicates that your audit procedure for that particular amount is to look at your last year's work paper and confirm that the beginning balance is the same number as last year's ending balance; right?

A. Well, I don't know if I'd say it's the last year work paper, but last year's audited trial balance, so the trial balance would have the beginning NFL Enterprise figures.

Q. And then when you look at the January accrual amount to confirm that amount which here is the 18.8 million; right?

A. Yes.

Q. So to confirm that balance, you get a confirmation from the NFL that states that it owes the Raiders the 18.8 million; right?

A. Yes.

Q. And in addition, you also look at the bank account to ensure that the two January payments were deposited into the Raiders' bank account; correct?

A. Correct.

Q. Now, you say you understood

that the January accrual was not part of the net remittance but was a distinct accrual for separate revenues that were earned and subsequently collected in January.

Do you recall that testimony?

A. Yes, I believe so.

Q. Now, when we look at your audit work papers, you don't have any third party support for that assertion; do you?

A. Well, I have what's summarized here in the notes. And I have the confirmation from the NFL of the January payment and the testing of the subsequent cash receipt for the accrual as of December.

Q. But you don't have any third party support for the assertion that the January accrual is a separate and distinct source of revenue than the remittance for that particular assertion that I believe you said came from Raiders management?

A. Right. So the accrual is

here, that's management is asserting that they have this receivable of eighteen million eight hundred sixty-four thousand four hundred six, that's the assertion that's in front of me. And then I've tested that assertion via direct confirmation with the NFL of this January, 2016 distribution as well as vouching that cash receipt directly to the bank statement.

Q. Those procedures are designed to determine if that number for January is correct, but I'm asking about the particular assertion that you claim to have relied upon that the January accrual is a separate and distinct source of revenue from the remittance and you don't have any third party support for that particular assertion; do you?

A. Well, I go back to the point that management is asserting that this is a separate cash receipt that was booked into AR to be received separate, as outlined in this summary here, in this roll forward, you have the separate remittance above and then you have a separate booking of management asserting that that's a collectible receivable and we tested it via the procedures I just described.

Q. I understand that your position is that the numbers on this spreadsheet are management's assertions.

I'm going to ask you one more time, you said that management made these assertions to you that the January accrual and the remittance are separate and distinct streams of revenue, assertions that you see stated here on this work paper.

Yes or no, do you have any third party confirmation of that assertion?

A. Well, again, I go back to management's assertion and our testing of the distinct January payment that was collected in January as tested via the direct confirmation with the NFL of that January distribution coupled with our direct vouching of that cash receipt directly to the third party bank statement.

Q. Do you have any third party confirmation of management's assertion that the January accrual's separate revenue stream from the remittance? Are you able to answer that question with a yes or no?

A. I believe I've answered it that the third party evidence is the confirmation.

Q. The third party evidence is that the January accrual is a separate stream of revenue from the remittance is the confirm mission you received from the NFL stating we owe this amount of money in January?

A. Yeah, that's part of the testing.

Q. But that's your third party support for the assertion that the January payments are separate from the

remittance; is that your testimony?
A. Well, coupled with the background information, management's assertion, as laid out here in this schedule, they are presenting it separately as well.
Q. I understand -- what I'm asking you, you claim this is management's assertion, and I'm looking for the third party confirmation of that assertion knowing that you can't just rely on management telling you something to do an audit.
So the third party confirmation that you get for the assertion that the January accrual was separate and distinct revenue from the remittance is the NFL's confirmation that they're going to pay $18.8 million to the Raiders in January?
A. Right, and then the fact that we've also vouched it and tested the receipt of that cash.
Q. But vouching and testing the receipt tells you nothing more than

that the cash has been paid and is deposited into a bank account. It does not tell you -- it does not provide you any confirmation that the January accrual is a separate stream of revenue from the remittance; does it?

A. I go back to the suite of procedures that we performed.

Q. Now, you also said that the cash could not be traced to any particular season remittance because NFL administered those revenue streams and Raiders didn't have control over when those distributions were received.

Do you recall that testimony?

A. I do. And I also read similar -- overall analytical review explanations that described that from management as well.

Q. Now, what is the third party support you got for the assertion from management that cash could not be traced to any particular season remittance?

A. Well, we -- they provided the

accounts receivable roll forward and they were telling us that they could not match it to any money remittance, that the cash receipts were at the control of the NFL subsequent to the remittance.

Q. I understand your testimony is that the Raiders management are telling us something. What I'm trying it understand is that, as an auditor, you can't audit the assertions in the financial statements just by getting more assertions from management.

So if Raiders management is telling you that they can't trace any of the cash distributions to remit taps, what audit evidence did you get to confirm that assertion that you received from Raiders management?

A. Well, I go back to the suite of procedures that we performed in that, in our understanding of how NFL Ventures worked and that understanding gained over the years in discussing with management on a year-by-year basis, the fact that NFL Ventures, the receivable were NFL Ventures is from, it's from one source, it's from NFL Ventures. It's not like it's from forty different types of customers. It's represented here in the cash received from Ventures as tested by you us to the third party statements and those cash receipts from Ventures in these months outlined here, for example, coming from Ventures, traced to the bank statements, and applied as a reduction to the accounts receivable from Ventures as represented by management here. So we tested all of that through a combination of yes, inquiry but also testing and inspecting the third party evidence of these cash receipts directly being applied to the accounts receivable in that corresponding production, specifically for NFL Ventures.

Q. The only third party evidence I've heard you identify is that you looked to see that cash receipts were being made and deposited into the bank account and everything else I heard in that answer was we had discussions with management, which says to me that you've confirmed cash was received. But to the extent that management has told you that the cash, when it's received and deposited in the bank account cannot be linked to any particular remittance, you don't have any third party confirmation for that assertion; do you?

A. Well, it's the third party cash receipts directly from NFL Ventures being applied as a reduction to the accounts receivable account and management informing us that you can't tie it to any one particular remittance because the NFL Ventures controls that. And again, it was cash receipts directly from NFL Ventures and it wasn't like it was cash coming from, you know, Pepsi or Coke or I don't know, it was from NFL Ventures applied as a direct reduction.

Q. But the only thing you're confirming with that third party evidence is that the Raiders are getting cash from Ventures. What you're not doing with that third party evidence is confirming that those cash payments cannot be tied to any season remittance; right?

A. Because that was what management has asserted to us that that was the case, and so we performed procedures that, in our judgment, was responsive to testing the account balance based on the activity, the totality of that activity year over year and as presented by management.

Q. If you could turn to JX 460. I think it's in the small binder. This is the confirmation that Ms. Van Winkle showed you earlier from Mr. Firestone. She walked you through it.

And Ms. Van Winkle, in questioning you, she noted that the date on the confirmation was May 5, 2017, and you confirmed that; right?

A. Yes, that's what it says.
Q. The date that Mr. Firestone signs this confirmation is May 15, correct, May 15, 2017?
A. That looks like the date.
Q. Ten days later; right?
A. Uh-huh.
Q. Now if you can turn to JX 87.
Do you recall this e-mail that I showed you earlier and then Ms. Van Winkle showed to you again where it had a draft confirmation for the full year-end balance for the Ventures account receivable?
A. Yes.
Q. And when I showed you this document earlier and I asked you about it, you testified that that confirmation with the full year-end balance was sent to the NFL; right?
A. Yeah. And again, this is a while back. I recall looking to get this confirmation from the NFL and engaging with management, Mr. Villanueva, on looking to get this

confirmation.

Now, I believe this was sent, but I remember working with Ed, with Mr. Villanueva, on this confirmation and trying to resolve him getting it, so yes.

Q. Now, when I showed you this document earlier and I asked you about it, you testified that this document with its full balance went to the NFL and within less than twenty-four hours the draft had been completed, it had come back to the auditors, the auditors sent it to the NFL, and the NFL had already responded.

And then we had a break and, during that break, did you speak to counsel?

A. Yes, I spoke to counsel.

Q. During that break, you spoke to your counsel, and when you came back from break you look at the same document and you said that you believed the document was changed from the full balance to just the January balance because you had a conversation with Mr. Villanueva; correct?

A. Yeah. As I recall, we were looking to get a confirmation of the full balance and ultimately we were not able to get that confirmation and I was working with Mr. Villanueva to try to achieve that.

Q. Isn't it the truth, Mr. Garcia, that you don't have a memory from eleven years ago of this confirmation and the reason why there was a full balance drafted and then shortly changed the next day to be just the January amount?

A. Well, I do have memory, I do have memory of trying to obtain a confirmation in this time period and working with Mr. Villanueva to try to achieve that outcome. And I do remember being at his offices and him showing me an e-mail or a communication clarifying that we were not going to get it, and so we didn't get it.

Q. And that screen that you saw

from Mr. Villanueva, that was within this twenty-three-hour period?

A. It would have been at his offices. We were at their offices executing the audit procedures live every day.

Q. And you remember that from eleven years ago?

A. Yeah, I recall being in his office trying to work out the confirmation and trying to get this.

Q. And what was on that screen that Mr. Villanueva showed you?

A. Well, I don't recall the specifics of that. I don't recall the specifics other than communication with him and the NFL that couldn't be provided.

Q. And who from the NFL?

A. I don't know exactly.

Q. And what did the NFL say?

A. It's something to the extent that it just could not be provided.

Q. And you relied on looking on that screen as audit support to justify not getting a confirmation from the NFL for the full year-end balance; is that your testimony?

A. Well, yeah, I worked with management, with Mr. Villanueva, to try to facilitate getting the confirmation. And learning that that was just not possible, we moved to alternative means to continue to test the balance.

Q. Did you ask Mr. Villanueva to print the screen out so you could use the communication, whatever it was he was showing you, as audit evidence?

A. I don't recall asking him to print the e-mail out.

Q. Was it your understanding that the NFL would not confirm the total year-end balance because the Raiders were on a December 31 year-end?

A. That was my historical understanding that that was part of the reason, that they were on a different year-end than the NFL, a different basis of accounting, and just that they wouldn't do it.

Q. And your understanding was that that was an NFL policy, that wasn't just a special rule for the Raiders, right, that was just NFL policy?

A. That, as a matter of policy, they wouldn't provide it.

Q. So if EY audited other NFL teams with a December 31 year-end, those other NFL teams would have faced the same situation; correct?

A. Yeah, in theory, if that policy was applied consistently.

Q. Now, on the 2020 audit, you say that the EY audit team tried to get a confirmation from the NFL of the full year-end Ventures balance for the 2020 audit; right?

A. For the 2020 audit, yes.

Q. And you said there was a conversation with Mr. Firestone where he said that the NFL would not confirm that year-end balance; right?

A. Right, facilitated through my tax team.

Q. Who on your tax team had that?
A. It would have been Luke Keel, Ed Koijane, and Allison Jones who was assisting us in 2020 for that year, so some combination of those three.
Q. All three of them had that conversation with Mr. Firestone where he said that the NFL has a policy that won't confirm the year-end balance of the Raiders Ventures receivable?
A. I'm not sure if all three, but there was multiple conversations that they were having in the context of the investigation and revised policy that the Raiders were putting forth.
Q. All three of the people that you identified are tax specialists; correct?
A. They are tax -- yes, on the tax team.
Q. Why would tax specialists be talking to Mr. Firestone about audit procedures, like getting audit confirmations?

A. Well, they were having a lot of conversation with the policy that the Raiders were refreshing in 2020 as it relates to all the issues that were uncovered and somewhere in those conversations -- I don't think the purpose of the call was to talk about the conversation but somewhere in those calls they learned that we wouldn't get it and we never got it.

Q. So your tax team is having various conversations with Mr. Firestone to understand Ventures revenue accounting and Mr. Firestone just mentions without being questioned that he doesn't confirm year-end balances as a matter of policy?

A. Well, that's what my tax team informed us, that we weren't going to get it.

Q. Who were your tax team informed you of that?

A. It of would have been the combination of Allison, Luke, and Mr. Koijane.

Q. And I'm trying to understand because, of those three, who told you that?
A. I don't recall specifically. There was a lot of conversations that we were having in the context of the errors, the investigation, the work stream that they were helping us out with, and ultimately that's reflected in our work papers.
Q. Just to confirm, Mr. Koijane and Ms. Jones, they're both still employees of Ernst and Young; right?
A. Yes.
Q. And would it surprise you to learn that this Mr. Firestone has testified in this arbitration that he never told EY that the NFL has a policy that it will not confirm year-end balances?
A. Well, yeah, because we ultimately -- we sent the confirmation and we never got anything back. We didn't get it back.
Q. And you're not aware of any

written documentation from the NFL, whether it's an e-mail, a letter, a memo, anything from the NFL where the NFL is telling you that they have a policy and they will not confirm year-end balances for Ventures; right?

A. I don't recall a written policy.

Q. And this call that we've been talking about where Mr. Firestone supposedly said this, you were not on that phone call; right?

A. No.

Q. Now, you testified that but for your experience on the 2020 audit, you wouldn't know that the capital roll forward schedule existed.

Do you remember that?

A. Yes.

Q. And just to refresh your memory, earlier today I showed you Exhibit 90, JX 90. JX 90 was the e-mail you were copied on in 2014 where Mr. Loftus from the Rams is sending Tyler Johns who works on the Raiders --

do you recall when I showed you this document earlier and Mr. Loftus was e-mailing to Tyler Johns who was a Raiders auditor and identifying what he called the key NFL document and I believe your testimony today has been, well, I just didn't look at it; right?

A. Right. This e-mail was of interest to me.

Q. Because if you didn't look at it, you wouldn't be able to sit here today and say I had no idea that the Ventures capital roll forward schedule ever existed; right?

A. Right. I didn't look at this.

Q. Now, you also said that, in your testimony, management told us the cash receipts cannot be tied to any particular season remittance; right?

A. Right.

Q. Now, if we can look at JX 125, this is the accounts receivable work paper for the December 31, 2016 audit year; right?

A. Yes.
Q. And if we can go to the work paper for Ventures receivable, I think it's page eight of twelve.
Now, do you see -- actually, I'm looking at page nine of twelve that has the numbers on it.
Do you see there's a row there 2015 season remittance earned April 1, 2014 through March, 31, 2015; right?
A. I see that.
Q. There's a balance there. It's approximately a hundred million?
A. Uh-huh. Yes, I see that.
Q. And among the support -- to be clear, when we look at the red text, those are notations added by EY; correct?
A. Correct.
Q. The Raiders didn't put those notes on this document; right?
A. Right, those are EY tape marks.
Q. So when we look at

remittance, there's a tick mark for U01.4, and that's indicating that that's support for that revenue; correct?

A. It looks to be.

Q. Now, if we could turn to JX 126, I want to show you what was marked as E01.4, the support obtained by EY for the remittance amount.

Now, you see this document was obtained by EY to support the remittance number contained on the receivable worksheet; correct?

A. It's an e-mail directly from the NFL, it looks like.

Q. Do you see on the -- the e-mail is behind the schedule three of the capital roll forward and, when we look at the capital roll forward schedule, do you see at the top it says, "EY note"?

A. It says that.

Q. And it says, "we retained this e-mail chain as evidence of our TMB and our accounts receivable work flow. Refer to E0.13 for our testing documentation"; right?

A. I see that.

Q. And that's a note that EY added to this schedule three of the capital roll forward; correct?

A. That looks to be, yes.

Q. And so the capital roll forward from Ventures was collected by EY and used as audit evidence to support the remittance being recorded on the Raiders' financial statements; correct?

A. It looks like it.

Q. In fact, we can see in the upper left-hand corner, there's a three hole punch that's punched out the Ventures part. But underneath that you can see schedule three, capital roll forward; right?

A. It looks like it.

Q. And when you testified earlier when Ms. Van Winkle showed you the capital roll forward document and you said but for my experience on the

2020 audit, I wouldn't know that the Ventures capital roll forward schedule existed, when you testified to that, is what you really meant I knew schedule three existed but I didn't know there was a schedule two and a schedule one?
A. Well, this is in our work papers, so this is a schedule three, so it exists, it existed, it's in our work papers.
Q. And you reviewed those work papers; right?
A. Yes, I would have reviewed work papers, but I can't tell you if I spent a lot of time on this as our primary evidence, because we typically receive direct communication from the NFL.
Q. Mr. Garcia, this is -- when we talk about Ventures, this is one of the most significant accounts on the Raiders financial statements and you knew that when you were the partner assigned to the audit; right?
A. It was a significant account,

yes.

Q. And you knew, when you were reviewing work papers for the Raiders financial statements, that any revenue received from the NFL was a significant account, something that should be worthy of extra attention to confirm that the financial statements would be free from material misstatement; right?

A. Correct.

Q. So when you're reviewing the work papers for Ventures, audit support up for the remittance, which is one of the largest numbers being presented by the Raiders, asserted by the Raiders as existing is this e-mail we have exchange, as you noted, and schedule three of the capital roll forward.

And my question is: When you tell the panel you had no idea before 2020 that the capital roll forward existed, do you mean by that I had no idea schedule two existed and schedule one existed but I know schedule three existed because it's in our work papers?

A. To clarify, definitely not those other schedules that were provided by Travis in the season disbursement cash flows, I hadn't seen those. Yes, this is in your work papers, and I would have looked at the evidence and the primary evidence being the e-mail and the communication from the NFL. But yeah, this exists and it's in our files for this year. I can't tell you if we received this every year.

Q. And just to be clear, when you look at this schedule, there are notes on it that reference schedule two at the bottom of exhibit, see schedule two, it's fair to say you knew schedule two existed; correct?

A. Well, I'm seeing this now. But we were just never -- I never saw that. I wasn't provided that from the Raiders.

Q. You weren't provided what from the Raiders?

A. You pointed out the schedule two, I was not provided that from the Raiders.

Q. Well, when the Raiders provided you schedule three, they didn't redact or white out the fact that there was a schedule two. It says right on the face there's a schedule three. It says see schedule two; correct?

A. That's what it says.

Q. Did anyone from EY ask Mr. Villanueva or anyone else at the Raiders to provide schedule two?

A. I don't know.

Q. Do you have any personal knowledge that Mr. Villanueva kept schedule two from EY in order to prevent EY from learning that the Ventures distributions were not being paid in arrears?

A. Personal knowledge? No personal knowledge.

Q. And to the extent that you have a schedule three on your capital roll forward and you want to know what's on schedule two or schedule one, even putting Mr. Villanueva to the side, you could obtain that information from the NFL; correct?

A. Possibly. I don't know because we worked with management and Mr. Villanueva on our audit requests and the information for the audit.

Q. You could have obtained that information from one of a dozen other EY audit teams that audit Ventures because they also have the Ventures schedules as we saw Mr. Loftus discussed in the prior e-mail; correct?

A. I don't know.

Q. You also testified today that you didn't see the season projected cash flow schedules from the NFL prior to April, 2021.

Do you recall that?

A. Yes.

Q. In fact you said, "I wished management provided this document to us".

Do you remember?
A. Yeah.
Q. So let's start with -- there are two documents I want to show you. We'll start with JX 427.
And this is being sent to Talesha Triplett.
She worked on the Raiders audit team; correct?
A. She did.
Q. And this is from June, 2012.
You were on the Raiders audit team in June, 2012; right?
A. Correct.
Q. And if we look at the attachment, it's the 2011 season projected cash flows being provided by the NFL; right?
A. It says 2011 season projected cash flows.
Q. And this is the document that you testified that, before April, 2021, you didn't know existed; correct?
A. I didn't.
Q. And that you wish management

had provided to EY; correct?
A. Correct, and to me.
Q. And when we look at this document, it's clear that it has EY's audit notes and signatures written on it; right?
A. It looks to be documentation from EY. I just don't know the context for where we got this and why, for what report or the context for why we got this.
Q. Do you see next to note two where it's written, "per discussion with Ed Villanueva, controller, the five hundred million recorded did not include the 547K of revenues received from the league or the Westwood One national radio deal"? Do you see that?
A. I see that.
Q. So it appears that EY obtained this season projected cash flow schedule from the Raiders, used it as audit evidence, and even communicated with Ed Villanueva about it; correct?

A. I don't know. I can't tell you if this was audit evidence. I'm reading this right now and it's making reference to schedule 5B, and that's a schedule -- schedule 5A and then it says 5B in that first note. Those look like references to a different report, not the audit.

Q. When you said before, "I wish management had provided these projected cash flow schedules to us", do you have any personal knowledge that Ed Villanueva purposefully kept the season projected cash flow schedules from EY?

A. I don't have personal knowledge.

Q. Let's do one more quickly, JX 267. You have it right in front of you.

This one is an e-mail to Carly McPherson from Araxie Grant dated in April, 2020.

You would have been working on the 2019 audit at that time; correct?

A. Yes, that sounds right.
Q. And Carly McPherson, she was on the Raiders audit team; correct?
A. Carly McPherson was on the Raiders audit team.
Q. And if we look at what was attached to this e-mail, it appears to be that -- Araxie Grant appears to be providing to the auditors the journal entries and related support for the Ventures accounting; right?
Let me ask it this way: Does it appear that those various journal entries and pages relate to Ventures?
A. It appears that it relates to Ventures. I'm looking at page two and it's their general ledger and it says accounts receivable NFL Enterprises.
Q. And if you go to the page with the Bates ending in 83369, do you see that that document is the NFL 2019 season projected cash flows; correct?
A. I do see that.
Q. And when pulling together all of the journal entries and Ventures

account information for the auditors, the Raiders, in connection with the 2019 audit, are providing the NFL cash flow schedule to its auditors; right?

A. It would appear so, those were the attachments sent by Ms. Grant to Carly.

Q. And that's the document that you said you wished management had provided to EY because it would have helped you to discover the misstatement; correct?

A. Correct, yeah, they would have walked us through it, that they would have noted to us the significance of the projected cash flows and what that meant, yeah, that they would have articulated what this was.

Q. So when the Raiders are providing their Ventures account journal entries and Ventures-related documents to EY, your position is now that the problem is that they didn't articulate it EY how they were supposed to use this information?

A. That's part of the thought process. I wasn't aware that this document existed. If they would have made me aware of that.
Q. One more question.
You were asked about JX 37 by Ms. Van Winkle. I think it's in your small binder.
You said these were your handwritten notes of a phone call that took place on Tuesday at 9:00 a.m.?
A. Yes.
Q. Do you recall --
A. It's a series of phone calls that day.
Q. Thank you, yes.
Do you recall in that phone call that you referenced, that one at the top, the Tuesday phone call, was that on April 27?
A. Tuesday, yes, April 27.
Q. And one more question.
If you could please turn to JX 2431 again in the small binder.
A. 2431.

Q. Do you recall when Ms. Van Winkle was asking you about this invoice that was sent to the Raiders in connection with audit services performed on the 2020 audit?

A. Yes.

Q. For this invoice, for these stated amounts, how much related to your regular audit work versus work undertaken by EY as a result of the accounting misstatements?

A. For this particular billing? Well, this was related for all of the work above and beyond the normal work that we would have done to execute on the audit procedures that we needed to perform for 2020 in executing those audits.

Q. Is your answer that this -- none of this is related to the normal standard ordinary course audit work, this is all above and beyond audit work related to the accounting misstatements?

A. For additional work that we

needed to do not only in connection with the accounting misstatements but all of the additional work that we needed to do in response to the whistleblower allegation, frankly to a revised risk assessment to auditing this company where we could no longer rely on the assertions from the prior CFO and the president, we had to do a lot more work at lower scopes for all areas of the audit to ultimately issue our report.

MS. BROWN: Thank you, sir.

I have no further questions.

THE CHAIRPERSON: Ms. Van Winkle, anything from you?

MS. VAN WINKLE: May I have just a minute to confer with my colleagues?

THE CHAIRPERSON: Of course.

MS. VAN WINKLE: I have no further questions.

Thank you, Mr. Garcia.

THE CHAIRPERSON: Don't go away, Mr. Garcia.

Mr. Bickerman?

ARBITRATOR BICKERMAN: I have a few questions.

One is just a nomenclature question. There's a little confusion I'm having with the way we're describing certain fiscal years, calendar years, and season.

If I were to say to you money that NFL Ventures paid out in let's say May of 2017, what Ventures fiscal year would that be if I paid it out in May of 2017? Would that be fiscal year 2017 or 2018?

THE WITNESS: So money paid out in 2017 would have related to the prior NFL season.

ARBITRATOR BICKERMAN: That wasn't what I was expecting, but okay.

You got remittances in -- the remittances were as of March 31.

When did the Raiders actually receive those remittances and you reviewed them?

THE WITNESS: So the Raiders would have received those remittances from the NFL around the March time frame.

ARBITRATOR BICKERMAN: So one of the documents we looked at was JX 107 -- and I'm not going to ask you to pull it up right now unless you want to -- and that was -- we spent a lot of time talking about how you tried to confirm the December payment, the December accrual of a January payment.

THE WITNESS: Right.

ARBITRATOR BICKERMAN: But if you had the remittance in March or April, shortly after it was drafted, wouldn't that amount have shown in that remittance -- let me rephrase the question. It's late; I'm tired, too.

You understood that the remittances were prospective when, in fact, they actually were retroactive; is that right?

THE WITNESS: Can you rephrase the question?

ARBITRATOR BICKERMAN: You understood -- as I understood the testimony, you were led to believe by management, according to you, according to EY witnesses, that the remittances were indicating the prospective payments that the NFL would make; is that right?

THE WITNESS: That's right.

ARBITRATOR BICKERMAN: In fact, that wasn't true; was it?

THE WITNESS: That ended up not being true based on the 2020 experience.

ARBITRATOR BICKERMAN: In fact, those remittances were actually retroactive; correct? They indicated how much this been paid in the prior period.

THE WITNESS: So what ended up transpiring, what we learned in 2020 was that those remittances in that year were for that season, for that year, in that year, for the season, that's right.

ARBITRATOR BICKERMAN: So the Raiders, as I understand the testimony, would have recorded a receivable as of receiving the remittance; right?

THE WITNESS: Correct, correct, that would have been the journal entry.

ARBITRATOR BICKERMAN: But isn't it the case that they actually had received those payments?

THE WITNESS: What we learned in 2020, that was the fundamental thing that we learned. One of the things that we learned was that they had been receiving payments during the year for that season, so they were already collecting and receiving that money in that season.

ARBITRATOR BICKERMAN: So as of March, the accounts receivable

for that year should have been
zero; right? They should have
received every payment that was in
the remittance by then?

THE WITNESS: Generally all
of it and that's what we learned in
2020 and that's why the receivable
in 2020 and as of December is
lower, is much lower.

ARBITRATOR BICKERMAN: Could
that remittance have been the third
party confirmation of the payments
that the Raiders received?

THE WITNESS: I don't know
because it was a communication from
the NFL of the total season
remittance earned and then what we
understood from management was that
then that was then collected
subsequent to that communication.

ARBITRATOR BICKERMAN: But, in
fact, it wasn't?

THE WITNESS: In fact, what
we learned in 2020 is that it
wasn't.

ARBITRATOR BICKERMAN: So if you had known it had been for the payments that had already been made, there should have been no account receivable booked?

THE WITNESS: Right, or significantly lower, yes, if I had known that.

ARBITRATOR BICKERMAN: Significantly lower or zero because --

THE WITNESS: Or zero, potentially, depending on what was still owed as of 12/31 given that the season ends sort of in the February time frame when the Super Bowl wraps up and the NFL has a March 31 year-end.

ARBITRATOR BICKERMAN: I have questions about 2020, but I'll reserve them for other witnesses later.

THE CHAIRPERSON: Mr. Garcia, you're excused with the thanks of the panel. Safe home.

THE WITNESS: I appreciate it.

THE CHAIRPERSON: We'll ask counsel to stay. We've got a couple of items we want to address with you.

You're excused, sir.

(TIME NOTED: 5:53 p.m.)

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CERTIFICATION BY REPORTER

I, Wayne Hock, a Notary Public of the State of New York, do hereby certify:

That said proceeding was held before me at the aforesaid time and place;

That said proceeding was taken stenographically by me, then transcribed under my supervision, and that the within transcript is a true record of the testimony of said proceeding.

I further certify that I am not related to any of the parties to this action by blood or marriage, that I am not interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of September , 2024.

Wayne Hock

PROCEEDINGS
CPR ARBITRATION
Matter No. G-23-23-N

In the Matter of the :
Arbitration between: :
:
A.D. FOOTBALL, INC., A.D. :
FAMILY LIMITED PARTNERSHIP, :
A. & R. BOSCACCI INVESTMENT :
CO., E. & V. BOSCACCI :
REVOCABLE TRUST/MARITAL LLC, :
E. & V. BOSCACCI DECEDENT'S :
TRUST/DECEDENT LLC, JILL :
LOVINGFOSS, CODY LOVINGFOSS, :
JOSH LOVINGFOSS, CHALET :
ROBERTS, GOPPL PARTNERSHIP, :
L.P., PATRICIA WINKENBACH and :
GERALD WINKENBACH as the :
Trustees of the Winkenbach :
Family Trust, PATRICIA :
WINKENBACH, GERALD WINKENBACH, :
RLP HOLDINGS, LP, ADF :
INVESTMENTS LLC, ADF HOLDINGS, :
LLC, A.D. FAMILY LIMITED :
PARTNERSHIP, A.D. FAMILY LLC, :
MARK DAVIS, FIRST FOOTBALL, :
LLC, MD FOOTBALL LLC, ALLAN :
BOSCACCI and PATRICIA BOSCACCI :
as the Trustees of the :
Boscacci Family Trust, LISA :
BOSCACCI, ALLISON MEIN, ANNE :
CARPENTER, ALIDA BEILKE, CARA :
YURAS, KENNETH WEAKLEY and :
LYNNE WEAKLEY as the Trustees :
of the Weakley Family Trust, :
JEANNE DAVIES, ERIC WEAKLEY, :
[TO BE CONTINUED] :

VOLUME III
NEW YORK, NEW YORK
WEDNESDAY, SEPTEMBER 18, 2024

REPORTED BY:
SILVIA P. WAGE, CCR, CRR, RPR
JOB NO. 6427162

PROCEEDINGS

[CONTINUED] :
ELYSE WEAKLEY, MARY JANE :
BOSCACCI as the Trustee of the:
Mary Jane Boscacci Living :
Trust, PAUL STEFANI and ANN :
STEFANI as the Trustees of :
the Stefani Family Trust, :
CATHERINE STEFANI, JON-PAUL :
STEFANI, NANCY MCAULIFFE, :
KELLY PEPPMEIER, ERIN :
MCAULIFFE, ALLAN BOSCACCI, :
COREY MCAULIFFE, ALLAN :
BOSCACCI as the Trustee :
Of the A&R 2005 Irrevocable :
DAVID ABRAMS, FRIEDMAN :
FOOTBALL LLC, JOSHUA FRIEDMAN,:
BETH FRIEDMAN, PEAK TRUST :
COMPANY as the Trustee of the :
Friedman Family 2015 GST I :
and the Friedman Family 2015 :
GST II, GARONZIK INVESTMENT :
PARTNERS LLC, FREDRIC :
GARONZIK, FREDRIC GARONZIK as :
The Trustee of the Fredric B. :
Garonzik Trust, DAVID GARONZIK:
And SAMUEL GARONZIK as the :
Trustees of the Fredric B. :
Garonzik Family Trust and the :
Anne G. Garonzik 2011 Trust, :
DAVID GARONZIK, SAMUEL :
GARONZIK, ANNE GARONZIK as :
the Trustee of the Anne G. :
Garonzik Trust, ANNE GARONZIK,:
PAUL LEFF, SILVERBLACK LLC, :
STEPHEN MALKIN, DAN GOLDRING, :
and MARK DAVIS as the Trustee :
of the Mark Davis 2010 Trust :
and the Davis Credit Shelter :
Trust, Trust, NANCY K. :
MCAULIFFE as the Trustee of :
the Nancy McAuliffe Family :
Trust, :
Claimants, :
-and- :
ERNST & YOUNG LLP and EY US :
LLP, :
Respondents. :
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September 18, 2024
10:10 a.m. Pacific

VOLUME III of the above-captioned arbitration, held at the offices of Veritext Legal Solutions, Seven Times Square, 16th Floor, New York New York, pursuant to agreement before SILVIA P. WAGE, a Certified Shorthand Reporter, Certified Realtime Reporter, Registered Professional Reporter, and Notary Public for the States of New Jersey, New York and Pennsylvania.

PROCEEDINGS

B E F O R E:

HON. JOHN DIBLASI, CHAIRPERSON

JOHN CHANDLER, ARBITRATOR

JOHN BICKERMAN, Arbitrator

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BY: LORYN HELFMANN, ESQ. (VIA ZOOM)

PROCEEDINGS

ALSO PRESENT FOR CLAIMANT:

JUSTIN CARLEY, ESQ.
RAIDERS
MARCO HEIM, TECH

ALSO PRESENT FOR RESPONDENT:

MARK CARLSON, CPA
ERNST & YOUNG

JUSTIN McCARTY, ESQ.
ERNST & YOUNG
GARY GOOLSBY, EXPERT (VIA ZOOM)
JASON BENCZE, TECH

ALSO PRESENT FOR VERITEXT:

COREY WAINAINA, TECH
NICK HEMPHILL, VIDEOGRAPHER (VIA ZOOM)

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PROCEEDINGS

THE VIDEOGRAPHER: Hello. We are going on the record at 10:10 a.m., on September 18, 2024.

This is the testimony of Tyler Johns in the matter of the Oakland Raiders versus Ernst & Young LLP.

This is a hybrid deposition with the witness appearing at One Capital Mall, Sacramento, California 95814.

My name is Nicholas Hemphill. I am the Videographer.

The Court Reporter is Silvia Wage.

Will Counsel please introduce yourself for the record.

MS. VAN WINKLE: The appearances are noted on the stenographic record.

THE VIDEOGRAPHER: Fantastic.

Will the Court Reporter please swear in the witness.

THE CHAIRPERSON: The

witnesses are deemed sworn.

TYLER JOHNS, CPA, DEEMED SWORN:

THE VIDEOGRAPHER: Counsel, you may proceed.

MS. BROWN: Thank you.

Did the panel have any introductory remarks or...

THE CHAIRPERSON: No.

MS. BROWN: Okay.

DIRECT EXAMINATION BY MS. BROWN:

Q. Good afternoon, Mr. Johns.

A. Good afternoon.

Q. You joined Ernst & Young in 2008; is that right?

A. That's correct.

Q. And that was your first professional job out of college?

A. Correct.

Q. And you stayed at Ernst & Young for 13 years leaving in May of 2022, right?

A. Correct.

Q. And you left EY about one year after the accounting misstatements

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at the Raiders were discovered, right?

A. That is correct.

Q. And at the time you left Ernst & Young, you were a Senior Manager at that time; is that right?

A. Correct.

MS. VAN WINKLE: I think there's a delay in the video and the audio.

A. I'm not sure you heard my response but...

Q. Was your response, "correct"?

A. Yes, that's correct.

Q. Okay. Sorry. We may be having some technical issues. So we'll try to work through it.

So I want to focus on the Raiders' audits for the time period you were at Ernst & Young.

You worked on the 2008 and 2009 and then the 2013 through 2020 audit engagements for the Raiders, right?

A. That's correct.

Q. So, in total, you worked on

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ten audit engagements for the Raiders, right?

A. That sounds right.

Q. And you reported to Javier Garcia and Mike Gottlieb for each of those ten years?

A. Yes.

Q. And for each of those years, you worked on both the financial statement audit and the conforming statement audit for the Raiders, right?

A. I believe so. I don't have a full recollection of all of that. I may have participated on -- in every year, especially back to those earlier years but, at least, as a -- but from 2013 and forward, that is correct.

Q. Okay. And because of the differences in the fiscal years and methods of accounting between those two sets of financial statements, you didn't consider them to be comparable; is that fair?

A. Yes.

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Q. Now, in auditing the conforming statements, you understood that the NFL told the Raiders what to book for the Ventures receivable amount, right?

A. Yes.

Q. And the Raiders had to book that amount as Venture's receivable in order to comply with the NFL's instructions, right?

A. Correct.

Q. And one thing that you knew was different on the financial statements versus the conforming statements was the Ventures receivable, correct?

A. Yes.

Q. And that difference was explained to you by the Raiders each year in a memo that they prepared, right?

A. In a memo and through discussions with management.

Q. Now, for the Raiders' financial statements, you knew that the January accrual was being recorded as a

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separate revenue stream from the remittance, right?

A. Yes.

Q. And that wasn't hidden from EY, was it?

A. Well, we understood that they were booking a full year remittance and then, also, an accrual for the amount to be earned or to be received in January, yes.

Q. And it's clear from just the face of the information given to you by the Raiders that they're booking both, the full year remittance and the January accrual as revenue from Ventures, right?

A. Yes.

Q. And fair to say you knew that for each of the audit years you worked on for the Raiders?

A. We understood the methodology for all those periods.

Q. Sorry. Could you repeat your answer? I think there was just a technical glitch.

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A. Yes. We understood the methodology that they were applying was consistent for all of those periods.

Q. Okay. Now, when reviewing the conforming statements, you knew the January accrual was not being booked as a separate revenue stream from Ventures, correct?

A. In reviewing -- I guess to answer the question as good as I can, we understood in the conforming statements that there was one remittance being recorded for that season for the conforming statements for that season.

Q. And in reviewing the conforming statements, you knew that there was no January accrual revenue being booked, right?

A. It had already been recorded in the period in December. And so it was -- yes, it was correctly backed out by the Raiders for purposes of their March 31 financial statements each year.

Q. "Backed out" of what?

A. Of the following year's remittance that they were reporting in March.

Q. So, if you're backing it out of the remittance on the conforming statements, the Raiders are not reporting two separate revenue streams for the remittance and the January accrual, right?

A. They're reporting one year of revenue in the remittance for March 31 of each year.

Q. Right.

So, on the conforming statements, the only revenue you see is just the remittance amount, not the January accrual, correct?

A. Correct.

Q. Okay. Now, if -- well, let me ask you this.

Did you have the understanding in auditing the financial statements that the January accrual was a distinct and separate revenue stream from the remittance amount?

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A. Yes, that was our understanding at the time.

Q. Now, if the NFL paid the January accrual to the Raiders as an entirely separate revenue stream from the remittance, then the January accrual should also be reported on the conforming statements, right?

A. Based on what we know now or I understand now, that is correct.

Q. But you didn't have that understanding at the time you were auditing the Raiders' financial statements and conforming statement?

A. Correct. Yeah, that was an understanding that I obtained based on the 2020 audit.

Q. When you're auditing the conforming statements, though, you believed that -- or I should say, you knew that the Raiders were receiving that January accrual revenue from Ventures; is that right?

A. Yes. Again, we knew -- so

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the remit that's recorded on the conforming statements and the remittance that was being recorded for the financial statements were in two different periods based upon the lag method that we understood the Raiders to be applying.

And so, while, yes, we understood that there was a full year remittance being recorded in the conforming statements, those amounts were not directly comparable in any given year for a 12/31 period and a subsequent 3/31 period given those were two different League seasons being recorded by the Raiders.

Q. Right. Okay. So my question is just maybe a little bit more basic.

You knew that the remittance, to the extent that they had remittance, that was coming from Ventures, that was revenue from Ventures, right?

A. Yes.

Q. And on the financial statement where we see the January accrual, you

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understood that that revenue was also coming from Ventures, correct?

A. Yes.

Q. So your belief when you were auditing the financial statements from the revenue was that the Ventures which -- well, let me ask you this first.

You understood from your auditing of the financial statement that Ventures was a partnership with all the teams in the League where they shared revenue equally based on contracts that Ventures entered into, right?

A. Yes.

Q. And was it your belief that in addition to the remittance, the Raiders received this extra separate and distinct revenue stream from Ventures?

Was it, also, your belief that all the other 31 teams in the League, also, shared that separate revenue stream from Ventures?

A. I did not have an understanding of what any of the other 31

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teams were receiving or recording.

Q. Now, to the extent that the NFL wants the conforming statements prepared so that they can compare all the teams in the League, you know, on an apples-to-apples basis, did you gain any understanding as to why the NFL wouldn't want to see the January distribution revenue reported on the conforming statements, what you understood to be a separate and distinct revenue stream from Ventures?

A. Not at the time. Again, given the kind of two separate audits and basics of accounting that was -- that understanding was not a focus of our audit procedures at the time.

Q. Do you recall anyone on the EY audit team reaching out to the NFL to try gain an understanding for why there would be two separate and distinct revenue streams from Ventures on the financial statements, but then when you're auditing the conforming statements

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where the League wants to see all the teams presented on an apples-to-apples basis, you're only going to see one of those revenue streams, was that question ever posed to anybody in the NFL?

A. Not that I recall. Again, you know, we would have completed our audit of the 12/31 financial statements based on management's assertions and our testing of that January accrual, which was confirmed by the NFL. And so, when we came to the 3/31 financial statements, again, I think, with an incorrect understanding at the time of the different bases of accounting that was being applied, that was not considered.

Q. Now, we've been using the term "remittance" and so I just want to back up for a second and make sure we're all on the same page there.

So, once a year, the NFL communicates to the Raiders the amount from Ventures that the Raiders would have earned for the season, right?

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A. Yes.

Q. And that's what we've been calling the "remittance," correct?

A. That's -- yes, that's what I've been referring to as the "remittance."

Q. Okay. The remittance, the Raiders would receive that around the end of the League season, so around the end of March or early April every year, right?

A. That's my understanding.

Q. And you were aware that the Raiders were recording that remittance as revenue one time a year, right?

A. Yes.

Q. And they recorded it as revenue as of March 31st every year, correct?

A. Correct.

Q. And you, also, knew when you looked at the audit support for the remittance amount, the Raiders were recording the full amount of the remittance, as reported by the NFL on

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their financial statements, they weren't recording some adjusted amount of the remittance, correct?

A. That's right.

Q. And that was the case for each of the audit years that you worked on the Raiders audits, right?

A. I believe so.

Q. Or I should say, actually, that was the case until the 2020 audit.

You did work on the 2020 audit for the Raiders, right?

A. Yes.

Q. Okay. In 2020, do you recall that the Raiders changed their accounting for Ventures revenue so that instead of recognizing revenue once a year when they got the remittance, they recognized revenue every month? Do you recall that?

A. Yes.

Q. Okay. And in connection with the 2020 audit, the Raiders and EY came to learn that the NFL was making their Ventures payments one month in arrears

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rather than a full season in arrears, right?

A. Yes, that's what EY learned during the 2020 audit.

Q. And knowing that the payments were made one month in arrears, the Raiders changed their methodology to recognize revenue each month and book a receivable each month and then the next month they would reverse the receivable when the payment is received for the following month and that started with the 2020 financial statements, right?

A. That's correct.

Q. And do you recall probably in connection with your work on the 2020 financial statements that the Raiders adopted the January accrual methodology in 2006?

A. That sounds right.

Q. And, in your experience, if a company adopts a new methodology for recognizing revenue that was material to the accounts, that's something that the

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auditor would focus on in that particular audit year, right?

A. Typically, yes, to the extent that the revenue was material.

Q. And if EY disagreed with the revenue accrual with the January accrual methodology and thought it was improper, that would have been noted in the 2006 work papers?

A. I can't speak to what's in the 2006 work papers. I wasn't on the engagement. But, generally, we asked -- to the extent it was material, as I mentioned, the audit team would have documented our understanding.

Q. And if it was documented and in the exact same methodology was used the next year that had been objected to by EY in the previous year, so now I'm 2007, you would see that same critical notation in the 2007 audit work papers, right?

A. That would be -- again, based on materiality, there would be a judgment

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as to whether or not that documentation was carried forward in every period.

Q. Now, when you worked on the 2008 audit, you would have looked at the 2007 work papers, correct?

A. In some capacity. I was a staff -- new staff on the 2008 audit. I can't recall what areas of the audit I worked on about 15 years ago.

Q. Well, in fact, you generally always looked at prior years' work papers in the process of preparing the current year's work papers, right?

A. Typically, yes, yes.

THE STENOGRAPHER: I'm sorry?

A. Yes, we would.

THE STENOGRAPHER: Thank you.

Q. And so that's the same process you would have used in 2008, you would have looked at the prior year's work papers in the process of preparing the current year's work papers, right?

A. Yes, to the extent that there were no changes in the methodology being

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applied by a client, that would be a common step to take.

Q. And you don't recall seeing any notations in the work papers where EY was stating that there was some issue with how the Raiders were recognizing revenue from Ventures for the January accrual's right?

A. I don't recall specifics of the 2008 work papers at all. As I mentioned, it was you, know very, long time ago and I was brand new, you know, to the audit profession. So I don't recall.

Q. Well, let's focus on any time period prior to the 2020 audit.

In any of those ten audit years, you don't recall EY ever raising an issue with the fact that the Raiders were recognizing revenue from the January accrual as a separate revenue stream from the remittance, right?

A. What I understood was that being on a tax basis of accounting, that

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that was a method that was adopted by the Raiders that they would have had to file a method change with the IRS to change the recognition method and understood they had not done that for any of those periods. So we understood the method to be the same.

Q. I'm sorry. Just one moment.

I'd like to pull up your deposition transcript, because I had asked you this question previously.

I should first note you and I have met before, right?

We met in December of last year?

A. Yes, we did.

Q. At your deposition in Sacramento.

MS. BROWN: If we could pull up Page 125/Line 11.

Q. I asked you, "At any point in time -- because I realized 2008 is a long time ago. But at any point in time prior to 2020, do you recall EY ever raising an issue either internally or in the work papers with the fact that the Raiders were taking just one month from NFL Ventures and treating it differently for revenue recognition purposes?

Answer: I don't recall any discussion on that method."

Is that a truthful answer to that question?

A. Yes, I think, it's consistent with how I just answered the question.

Q. Now, if EY -- did -- let me ask you this.

Isn't it true that EY did not have any specific audit procedures designed that would confirm the revenue from the January accrual -- that would confirm that that revenue received from the January accrual was not also included in the remittance?

A. So, as -- I'm trying to think how best to explain this.

So the remittance, again, was related to -- so, if we pick a year for illustrative purposes. So, in the 2016

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financial statements, say 12/31/2016, the remittance that would be recorded would be the 3/31/16 remittance that was related to the 2015 season. And then incremental to that, the Raiders represented that the January amount was earned -- or, sorry, the January -- December 2016 amount was earned and paid in January 2017.

So we have a -- we had audit procedures for testing of the remittance amount, as well as for testing the confirmation of the January accrual -- excuse me, December accrual that was recorded and paid for the January amount received.

Q. Okay. Let me ask you one more time.

My question is, did you have audit procedures designed that would confirm that the revenue from the January accrual was not included in the remittance amount?

A. So specific to any one -- again, the audit periods for the remittance and the January accrual were not the same years, league years that the Raiders were recording. That related to two separate years.

So our -- our -- we wouldn't -- a procedure wouldn't existed to compare the remittance amount and what was included with the -- we understood the January piece to be a separate revenue stream from the NFL, as you noted previously.

Q. Okay. So is your answer that there were no procedures -- there were no specific audit procedures designed to confirm that the revenue from the January accrual was not also included in the remittance?

A. I guess, my answer would be that there were distinct procedures to test the remittance and January accrual and that was determined to be sufficient for the audit.

Q. The procedures you've described test both of those things independently.

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But I'm asking if you have a procedure that would confirm whether the January accrual, which you know is from Ventures, would also be included in the remittance amount, which is also from Ventures.

And the way I understand your testimony is that there were no specific audit procedures designed to do that, right?

A. That's correct. There was no specific procedure for that, as we thought that the other procedures we had performed were sufficient.

Q. Now, knowing that the Raiders were recording two separate revenue streams from Ventures, the January accrual and the remittance, EY should have taken steps to confirm that the January accrual was not in the remittance that was provided by the NFL, right?

A. Based on what we know now, yes, about the relationship between the January accrual and the remittance. I

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would agree with that.

Q. Now, in terms of audit evidence, the support EY obtained to confirm that the season remittance amount was properly recorded as revenue on the Raiders' financial statements, you had an e-mail from the NFL, right?

A. Yes.

Q. Now, I believe you have a binder in front of you; is that the case?

A. I think it's in here. I'm not sure. But I can open this if you'd like me to.

Q. Yes. Can you please open the Fed Ex box. I didn't realize we hadn't done that yet.

THE VIDEOGRAPHER: This is the Videographer speaking.

You were given two boxes with two different binders in it. And so we might want some clarity on which binder you're looking for.

A. This one says, "EY Direct." So I think there's a separate box here

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that I will -- binder that I will pull.

MS. BROWN: I assume he can open both boxes.

MS. VAN WINKLE: Yes, yes.

A. Okay, I have my binder.

Q. Okay. Could you please turn -- there should be an exhibit in there marked JX-0104.

(Arbitration Exhibit JX-0104 was referenced.)

A. Okay.

Q. And this is an example of the support for the remittance that EY obtained for the 2014 audit.

My question for you is, does this e-mail provide any details for EY about what is included in the remittance?

A. Can you clarify that question?

Q. Sure.

By looking at this e-mail, are you able to determine whether or not the January distributions or any other particular distributions are included in this remittance amount that's being

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confirmed with the NFL?

A. So this e-mail was provided as support from management, who asserted this was the annual remittance, and then we tested it.

So, I guess, to understand your question better, this isn't the only piece of support we would have had for testing this balance. But, no, there's no -- anything specific here as to what portions related to what period, other than it's the annual remittance for March 31, 2014.

Q. And, just to be clear, your understanding was -- we keep using the phrase "January accrual."

But you understood that the January accrual simply was the January distributions being made by Ventures that was confirmed through your audit procedures, correct?

A. Yes.

Q. And your understanding before the 2020 audit was that the payments that

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were being made by Ventures were being made after the season remittance amount was recorded as revenue by the Raiders, right?

A. Yes, that's correct. That's what management told us was happening.

Q. And you believe that the remittance would, essentially, be paid down in the following NFL season, correct?

A. Yes.

Q. And, I think, as you just said, you got that understanding from Raiders management, right?

A. Correct.

Q. And that understanding is consistent with the fact that the Raiders booked a receivable at the same time that they booked a remittance revenue each year, right?

A. That's correct.

Q. Because just the fact that you're booking a receivable at that time would tell you that you're expecting payments will be made after that point in

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time, correct?

A. Yes.

Q. Now, you had no audit procedures in place to ensure that the payments made after the season remittance, actually, paid down the full balance of that season remittance, right?

A. That's not completely correct. So we tested the collection -- subsequent collection in that following period, as you noted. We would, also, calculate in the accounts receivable work paper, what we call the net remittance, which, basically, showed that the -- that, approximately, all or sometimes in excess of the prior year remittance amount was collected in the subsequent season.

Q. Well, my question -- I'm focused on the full remittance balance.

So I understand that you were looking at collections to see that they were paying down something and that something is in the Ventures receivable account.

The question I'm focused on is, to the extent you get a remittance from the NFL and it's recorded as an account receivable in March 31 each year, you didn't have any audit procedures in place that allowed you to tie the subsequent cash distributions that you thought were paying off that remittance to the remittance to confirm that it was paid off in full and had been cleared; isn't that right?

A. No, no. So the -- well, to back up, just to have a clear understanding, management represented to us that they had no visibility or control into the timing or amount of payments received from NFL Ventures.

So our testing was focused on -- again, if we pick, let's may, the March 31, 2014 remittance that you have here in this exhibit, we would see that collections for that following year from April 1, 2014 to March 31, 2015 were in

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excess of the 64 million here from this year's remittance. So we had comfort over the collectability of each year's remittance given that cash receipts in the following 12-month period were in excess of the remittance amount, which also from a classification perspective gave us comfort that it was a, you know, a current receivable.

Q. Well, if those -- if EY is taking those cash distributions and applying it to the remittance to confirm that that remittance had been paid down in full, what are you applying to the opening balance --

A. Again.

Q. -- to pay that down?

A. So the opening balance was often a -- like very close to the remittance amount. So we understood that the balance was consistently being cleared on an annual basis. Whether you're applying that to an opening balance or whether you're applying that

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to the remittance, there was cash collections that were, approximately, equal to the prior year ending balance of the NFL Ventures accounts receivable.

Q. I think you've just told us that the cash collections were equal to the remittance, so we thought the remittance was being paid down.

And now I think you said the cash collections were equal to the opening balance, so we thought the opening balance was being paid down.

But when the cash payments were coming in during the year, you, actually, had no way to know whether they were paying down the opening balance or the remittance booked in March or something else, because you weren't tying it to anything, correct?

A. Again, management represented to us that there was nothing to tie it to. They had no control over the timing of those payments or visibility as to what periods they related to up until

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2020.

And so, again, we were testing the collections of whether you want to call it the opening balance or the remittance. In either case, any given period, let's say, there was $80 million opening balance, there would be, approximately, $80 million collected in a given period such that the balance appeared to be rolling over in each period.

And the reason for that was that the revenues being received and the cash being received was growing every year given the success of NFL Ventures. And so it kind of masked the fact that this January accrual was not being collected or the double-counting of that accrual.

Q. Well, merely looking at the fact of payment being made during the year and being applied to the Ventures account, as an auditor, that gives you comfort that there may be -- this may be a collectable receivable, but that doesn't provide you any audit evidence to

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confirm the existence of the ending balance of the receivable and that it would be paid after December 31st of that year, correct?

A. Correct. Because we understood that the NFL would not confirm the receivable at the end of any given period. These were procedures designed to test the completeness and accuracy of the receivable on a rolling basis.

Q. Now, you didn't seek -- you didn't seek external confirmation from the NFL to confirm the assertion made by Raiders management that the remittance amount would be paid down in the following NFL season, right?

A. No, that was a management representation to us. I didn't -- I personally did not have direct discussions with the NFL on that topic.

Q. And prior to the 2020 audit, you didn't search any Ventures contracts to determine when the payments would be made or what they would relate to, right?

A. Again, management represented they wouldn't be available to us or any of the other Clubs and so, no, we did not.

Q. Well, you learned in 2020 the contracts are not available to you or to any of the other Clubs, but the NFL was willing to provide specific details and information about those contracts to enable EY to understand how Ventures accounting should work, correct?

A. Yeah, in 2020, with the, you know, allegations that came about, I think, that was determined to be necessary as an incremental step given the decrease in the audit scopes and all of the other incremental procedures that were determined to be required as a result of whistleblower matter.

(Stenographer clarification.)

A. The whistleblower matter.

THE STENOGRAPHER: Thank you.

Q. And before 2020, you knew the Raiders management did not have access to the Ventures contracts; is that fair?

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A. That's what management told us, yes.

Q. Okay. And you, also, knew that Raiders management told you they had no control over when the Ventures payments come in and no visibility into what those payments relate to, right?

A. That's what -- that's what we were told, yes.

Q. And knowing that the Raiders had no visibility into what the Ventures payments related to, you did not go to the NFL to try to get that information in connection with any audit prior to the 2020 audit?

A. That's correct. Based upon the judgment applied on the testing for the accounts receivable, we didn't determine that to be necessary for any of the audits prior to 2020.

Q. Now, prior 2020, you knew who Brad Firestone was, right?

A. Yes.

Q. You knew he worked for the

NFL, right?
A. Correct.
Q. You had participated on calls with Brad Firestone and Ed Villianueva together, right?
A. I may have. I don't recall specific calls between Ed and Brad that I participated on prior to 2020.
Q. You've interacted with Mr. Firestone through e-mail exchanges on various topics prior to the 2020 audit, right?
A. I believe so, yes.
Q. And you never asked Mr. Firestone to provide the information that EY would need to determine what remittance the Ventures payments related to, correct?
A. That's correct.
Q. Now, during the 2020 audit, once EY spoke to the NFL to get information about Ventures, you learned that EY's understanding about payments being made in the season after the

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remittance, that that was incorrect, right?

A. Yes.

Q. And had EY learned or discovered that earlier, it's fair to say that it would have realized that the receivable balance stated for Ventures made no sense; is that fair?

A. That's correct, had we known, yes.

Q. Okay. So let's talk just a little bit about the audit procedures for that receivable balance for Ventures.

Getting an external confirmation of a receivable balance is the preferred audit approach, right?

A. It is a preferred approach. It's very common that for various reasons a third party will not confirm a receivable, and in those cases, we perform alternate procedures.

Q. Now, you claimed that the NFL told you that they were unable to confirm the Ventures receivable balance as of

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December 31, right?

A. Yes.

Q. Did the NFL tell you that personally?

A. No, that was communicated through Raiders management.

Q. Well, Mr. Johns, do you recall in your deposition when I asked you these questions, you told me that the NFL told you that on several occasions, not that you had heard that through Raiders management?

A. I guess I'm not fully following the -- we heard it -- let me back up.

So there was Raiders management had told us that NFL would not confirm the balance. That was something that we asked Raiders management every year.

And then as an additional step on a periodic basis likely two or three times while I was on the engagement, we would have asked the NFL if they would confirm the balance.

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The answer was consistently, no, which was consistent with what we also found out in the 2020 audit, that they would continue not to confirm the balance.

Q. Okay. So is your answer that two to three times while you were on the engagement, EY did ask the NFL if it would confirm the yearend balance for Ventures?

A. That's my recollection.

Q. Okay. And did you personally have those discussions with the NFL?

A. I don't recall specific conversations with the NFL. It would have likely been a more senior person on the team in the earlier years on the engagement. And it would have been a likely manager on portions of the engagement.

So I don't recall a specific conversation that I had directly with Mr. Firestone or Mr. Lawrence (phonetic) or anyone else from the NFL on this topic, but my understanding is that we

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would have done that periodically every three or so years to make sure our understanding was correct.

Q. Well, the more senior people on the team than you were Mr. Garcia and Mr. Gottlieb, right?

A. Correct. They were --

Q. So is it your belief that Mr. Garcia was the person that had a discussion with Brad Firestone and learned that the NFL would not confirm the yearend balance?

A. Again, so my earlier years in the engagement as a staff. They would have also been other seniors and managers on the engagement. I can't speak to what Mr. Garcia -- any conversations that he had. I was not part of those.

Q. Are you aware of Mr. Gottlieb having any conversations with the NFL where the NFL told them they would not confirm the yearend balance?

A. No.

Q. And we went over this earlier.

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But in the years you worked on the Raiders audits, you were a Senior Manager, at least, for some of these years, correct?

A. Correct.

Q. Which years were that?

A. I became a Senior Manager in 2016. So it would have been the 2016 yearend and through the 2020 yearend.

Q. And during those years, were you the -- other than Mr. Garcia and Mr. Gottlieb, were you the senior most person on the team?

A. Yes.

Q. Now, to the extent that EY is relying on these conversations that took place with the NFL where they confirmed -- or, at least, they said that they wouldn't confirm a yearend balance, those are the communications that EY is relying upon for its position that getting a yearend confirmation from the NFL was an ineffective audit procedure, right?

A. I would say not necessarily

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on a standalone base says. Again, it's very common in my experience and 14 years as an auditor for organizations, especially large organizations like the NFL or other very large companies, to have a policy for legal or other reasons not to confirm accounts receivable balances.

So I would say the typical procedures that we would end up going to a subsequent cash receipts testing where possible. And in this case, again, based on the roll forward approach, we tested a hundred percent of cash receipts during the period, as well as testing the cash collection of the January accrual where they received a payment in January the following year.

Q. Mr. Johns, you are aware that GAAS requires the auditor to get an external confirmation for accounts receivable unless certain exceptions are met, right?

A. Again, I've just described my

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experience with how often those exceptions to being able to do that, as was the case here per our understanding, and the alternative procedures that we performed.

Q. Okay. But you understand that GAAS requires the auditor to get an external confirmation for accounts receivable, unless certain exceptions are met, right?

A. Yes, I understand the standards.

Q. Okay. And one of those exceptions are if getting the external confirmation would be ineffective, right?

A. That's right.

Q. And that, essentially -- "ineffective," essentially, means you're not able to get it for whatever reason, the third party won't respond, they won't complete it, they could have a policy, whatever the reason may be, right?

A. Correct.

Q. But to rely on that particular

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exception, you need to actually understand why you're unable to get the receivable? There needs to be some documentation in the work papers for why you're unable to acquire that yearend account receivable, correct?

A. That's correct. And I think our conversations are documented, at least, with management on that topic and the accounts receivable work papers.

Q. And so, to the extent that you are relying on discussions that you claim happened two to three times during the audit years you worked on the Raiders that happened directly with -- and let me be clear.

You're saying those conversations happened directly with the NFL, right?

A. That's my understanding.

Q. Those would be documented in the audit work papers, because that's the basis that EY is using to say that getting an accounts receivable confirmation for the full yearend balance

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would be ineffective?

A. I would m expect that to be documented in the work papers, yes.

Q. Okay. Let's turn in your binder to Exhibit 3217.

(Arbitration Exhibit JX-3217 was referenced.)

MS. BROWN: It's JX-3217.

Q. So, I think, Mr. Johns, we provided you with a binder and a folder of documents. So you might find -- I've been told that you might find JX-3217 in a folder.

A. I have it in front of me the binder, yes.

Q. Okay, great.

You may be able to see it on the screen as well. It's AU-C Section 230 Audit Documentation.

Are you familiar with this section of GAAS?

A. I haven't been an auditor for a couple of years but, generally, understand the concept of the audit

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documentation, yes.

Q. Okay. And if we can turn to the section, which is .11. It's on Page 5. It states, "The auditor should document discussions of significant findings or issues with management, those charged with governance and others including the nature of the significant findings or issues discussed and when and with whom the discussions took place."

Would you agree with me that a discussion with the NFL about its receivable confirmation policy is a significant issue that should be documented in the work papers?

A. I would agree that it should, generally, be documented in the work papers. I think it doesn't change the conclusions with regard to what we understood, but it would -- yes, it should have been documented in the work papers.

Q. And if we can look at the Section .08 on the prior page.

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Do you see where it states, "GAAS requires the auditor to prepare audit documentation that is sufficient to enable an experienced auditor having no previous connection with the audit to understand the nature, timing and extent of the audit procedures performed to comply with GAAS"?

Are you familiar with that standard?

A. Yes.

Q. And so, to the extent that EY was required to document significant discussions it had, it was required to memorialize those discussions in future audit years as well, so that an experienced auditor could understand what procedures were being performed and what was being relied upon in that particular audit year, right?

A. That's correct. And I would just clarify that I wouldn't expect every discussion to be necessarily documented. I think, generally, we see a lot of

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discussions documented throughout the work papers.

If you're referring to the specific NFL discussion, I think, we agree with the conclusion you reached previously.

Q. Okay. And, I mean, the point I'm making is just in effect each year's audit documents should be able to stand on its own.

We shouldn't necessarily need to go to another year to support the current year audit, correct?

A. That's correct.

Q. Could you please turn in your binder to an exhibit that's JX -- Compilation Exhibit 1. It's Comp 1.

(Arbitration Exhibit Comp 1 was referenced.)

Q. And I'll represent to you that this is a compilation exhibit that contains EY's Ventures receivables worksheets for each of the audit years 2014 through 2020.

For now I just want to focus on the

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years 2014 through 2019. And I want to look at the notation that EY has made about its procedures for getting a confirmation from the NFL.

We'll try to do this quickly. I know it might get a little repetitive, but I do think we need to kind of work through them all.

So let's start with 2014. And here you can look at Note C. Note C states, "Due to the difference between the NFL and Club's yearend date, 3/31 versus 12/31, we confirmed the NFL Ventures payments due and to be received," and it lists January and it goes on.

Now, in this description, there's no reference to or any documentation of any communication with the NFL concerning its policies, correct?

A. Correct.

Q. And there's no reference to any communication or any discussion with Raiders management, correct?

A. Not in this tick mark, no.

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Q. Right.

And the note I'm focused on and the point I'm focused on, if there's another part of the work paper that you think is relevant, is, specifically, the audit procedure being used to obtain a confirmation from the NFL.

There's nothing that you see reflected where it says, "Raiders management told EY that the NFL wouldn't confirm the entire yearend balance," correct?

A. Not in this 2014 work paper, no.

Q. Okay. Let's go to 2015. It's behind the blue sheet.

2015, you can look at Note C. It states, "Due to the difference between the NFL and the Club's yearend date, 3/31 versus 12/31, we confirmed the NFL Ventures payments due and to be received January 2016," and it goes on.

This is the identical note we saw in the prior year's work papers, but the

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dates have been changed.

A. Correct.

Q. And, again, there's no reference to or any documentation of any communication with the NFL about its policies, right?

A. No.

Q. And there's no reference to or any documentation of any communications or discussions with Raiders management about NFL policies, right?

A. That's correct.

Q. Okay. Let's go to 2016. It's behind the blue sheet.

Here, you can look at Note C.

Now, I just noticed on the screen we still have 2014 up.

But do you still have 2016 in front of you, Mr. Johns?

A. I do.

Q. Oh, there we go. There we go.

Okay. I think the screen is up to date.

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Okay. 2016 Note C states, "Due to the difference between the NFL and the Club's yearend date, 3/31 versus 12/31, we confirmed that the NFL Ventures payments due and to be received January 2017," and then it goes on, "as of the 12/31/16 instead of any receivable balance."

Now, here there's no reference to or documentation of any communication with the NFL about an NFL policy, correct?

A. Correct.

Q. And there's no reference to or any documentation or any discussions with Raiders management about an NFL policy, right?

A. No, there's no documentation.

Q. Okay. Let's go to 2017, please. 2017 -- now, we're looking at Note D. Note D states, "Due to the difference between the NFL and the Club's yearend date, 3/31 versus 12/31, we confirm the NFL Ventures payments due and to be received January 2018, as of

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12/31/2017 for amounts receivable balance."

There's no reference to or documentation of any communication with the NFL about the confirmation policies, correct?

A. Correct.

Q. There's no reference to or documentation of any discussions with Raiders management about the NFL's policies, right?

A. Not on the work papers, no. Again, we would have had this conversation with management, at least, annually and confirmed that our understanding had not changed, but it's not in this work paper.

Q. Okay. Let's go to 2018. And here if we look at Note B states, "Due to the difference between the NFL and the Club's yearend date, 3/31 versus 12/31, we confirmed the NFL's Ventures paid due and to be received January 2019 as of 12/31/18 for an amount accounts

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receivable balance."

There's no reference to or documentation of any discussions with the NFL about NFL's policies, right?

A. No.

Q. And there's no documentation of any discussions with Raiders management about NFL's policies, correct?

A. Correct.

Q. Okay. One more. Please go to 2019.

Now, here if you look at Note B, it states, "Due to the difference between the NFL and the Club's yearend date, 3/31 versus 12/31, we confirmed the NFL Ventures payment due and to be received January 2020 as of the 12/31/19 for the accounts receivable balance."

There is no reference to or documentation of any communications with the NFL about an NFL policy, right?

A. Correct.

Q. And there's no reference to any discussions with Raiders management about an NFL policy concerning accounts receivable confirmations, correct?

A. That's right.

Q. Now, if you could in your notebook turn back to JX-3217.

(Arbitration Exhibit JX-3217 was referenced.)

Q. We were here before. This time I want to focus on Section .03 on Page 3.

.03 states, "Audit documentation serves a number of additional purposes including the following."

And then if you look at the third bullet point down, "Enabling the engagement team to demonstrate that it is accountable for its work by documenting the procedures performed, the audit evidence examined and the conclusions reached."

And then the next bullet states, "Retaining a record of matters of continuing significance to future audits of the same entity."

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Now, Mr. Johns, the discussion with the NFL regarding EY's ability to get an external confirmation, one of the Raiders most significant accounts for the audit should be documented in EY's work papers, correct?

A. Again, yeah, I would have expected -- yes, I would have expected it to be documented in th work papers given that the testing approach to vouch a hundred percent of the cash rest shared removing any year over year. That was a judgmental decision to kind of move away from the confirmation process given what we understood with the NFL; however, that should have been documented.

Q. Okay. I'd like to turn now to JX-90.

(Arbitration Exhibit JX-90 was referenced.)

Q. Do you have it --

A. Yes.

Q. -- Mr. Johns?

A. I do.

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Q. Okay. Do you see the e-mail at the bottom of the first page is from Patrick Loftus to you dated May 7, 2014?

A. Yes.

Q. And the subject line is "the 2013 Season Ventures Capital Roll Forward Draft"?

A. Yes.

Q. You were aware that Mr. Loftus was a Senior Manager at Ernst & Young, right?

A. Yes.

Q. And prior to this e-mail, you had spoken to him before?

A. I can't recall if we've spoken directly. I knew he was a Senior Manager on the LA Rams engagement or St. Louis Rams engagement at the time.

Q. Okay. Let's see what he wrote. He wrote, "Gentlemen, I have another key NFL-related document that I wanted to bounce off the team. This document is the NFL Ventures report from the NFL and provides us a significant

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chunk of our P&L for the year. This appears to be a standardized report that was distributed to all teams."

Is it fair to say you don't have a memory of receiving this e-mail from ten years ago.

A. I can't -- I can't say I have a specific memory of receiving the e-mail, no.

Q. But it would not have been unusual or remarkable that an auditor assigned to the Rams would be contacting you with a request like this, correct?

A. It would be somewhat unusual, in the sense that any confirmation received from our team would not have been able to be used for affirmative confirmation or in their work papers for the Rams audit, so slightly unusual. I've seen requests like this in the past. It's generally an administrative courtesy to other teams within the firm.

Q. And at the time that Mr. Loftus sent this e-mail, you were a

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manager at Ernst & Young, right?

A. Yes.

Q. Okay. Sorry, I was just looking something up.

I want to go back to the -- I think the previous question I asked you was whether you thought it would be somewhat unusual.

And your answer was, it would be somewhat unusual and you went on from there.

If we can just pull up your deposition testimony, again, Page 158/Line 4. I asked you, "Did you think it was unusual that the auditor assigned to the Rams would be contacting you to bounce ideas off your team?

Answer: No, I didn't find it unusual. You know, different auditors may have different approaches as to reaching out to other teams. I, typically, did not reach out to other teams. But whether it be for Raiders or other engagements, you do occasionally hear from other auditors in similar industries or similar engagements with questions."

So, Mr. Johns, when I asked you in your deposition if it was unusual, I believe your testimony was you did not find it to be unusual.

Is your testimony today that now you do think that this e-mail exchange is unusual?

A. I don't find it significant or unusual. I think it was inconsequential to me. And I think my answer today and my answer at that time demonstrate that, I believe, it was inconsequential.

Q. Now, Mr. Loftus described this as "a key NFL-related document," right?

A. That's what he says, yes.

Q. And that signified to you that Mr. Loftus thought that this was integral to his audit, correct?

A. I can't speak to what he

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thought for his audit. The same reason I can't speak to why he would have reached out to us again. Knowing that this could not have been used as an audit procedure that would have been documented for his audit -- again, it's not something that I would have, typically, done and I can't say why he would have done this.

Q. If we can pull up that same Deposition Page 158, please.

Do you recall in your deposition last December I asked you, "Did that signify to you that, at least, Mr. Loftus thought this was an important document?"

And your answer was, "It appears that he believed it was integral to his audit."

And my question to you today was, did his description signify to you that Mr. Loftus thought this was integral to his audit? And I believe your answer today was, no.

A. Upon further reflection, my answer is I can't say whether or not he

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thought it was integral to his audit. I can't speak for Mr. Loftus.

Q. Okay. So let's look at the attachment. And the first page of the attachment we see is the "NFL Ventures Schedule 1 Capital Account Roll Forward."

And then if you turn the page, you can see there is a "Schedule 2." And Schedule 2 is "NFL Ventures Schedule 2 - Distributions."

And then we can turn the page and we can see there is a "Schedule 3." And the Schedule 3 is identified as the "Capital Roll Forward."

When Mr. Loftus forwarded this document to you and described it as a "key NFL document" that he thought related to all of the NFL teams, you didn't consider how that information could be relevant to your audit of Ventures for the Raiders, correct?

A. No, I did not. Again, Mr. Loftus was not a member on the engagement team for the Raiders. We had our own

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audit approach to testing NFL Ventures.

I at this time didn't know, specifically, what was in this document. And, again, I believe, passed it along to the senior Talesha on the team to see if it was something that we received more as a courtesy to Mr. Loftus but not in reflection of anything that we were doing with our audit testing at the time.

Q. And if we can go back to Schedule 2 for a moment.

When you look at Schedule 2, it's identified as the distribution schedule, correct?

A. Yes.

Q. And by looking at this Schedule 2, you were able to see which remittance the distributions, the cash distributions, actually, relate to, right?

A. Yes, that's what this shows.

Q. And that's something that prior to this time you believed was unascertainable, correct?

A. Correct.

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Q. And if you look at this document and you can see what season remittance the cash payments relate to, it would be clear to you that the Ventures payments are not being made a full season in arrears, right?

A. That's correct.

Q. I'd like to look at JX-126.

(Arbitration Exhibit JX-0126 was referenced.)

Q. I don't know if this is in your folder or your binder, Mr. Johns.

A. I have it in front of me, thanks.

Q. Okay, thank you.

So, in connection with the 2016 audit, EY obtained -- EY obtained part of the Ventures roll forward schedule. It obtained part of the schedule for it, correct?

A. Yes.

Q. And they used it as audit -- I'm sorry.

And they used it as audit evidence,

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correct?

A. Yes, we retained it as part of the support with the e-mail remittance in that year.

Q. Now, you don't recall, do you, all the sudden in 2016, specifically, asking the Raiders for a copy of the Ventures roll forward schedule, do you?

A. No.

Q. This was provided to you -- this particular page of this schedule was provided to you because you asked for the journal entries related to Ventures and this document was attached as backup support for those journal entries, right?

A. Yes, this particular schedule out of the broader set of schedules that we now know to exist.

Q. And let's go to JX-267.

(Arbitration Exhibit JX-267 was referenced.)

Q. This may be in your folder.

MS. VAN WINKLE: I'm sorry. What number?

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MS. BROWN: 2-6-7.

Q. Mr. Johns, just let me know when you are able to find it. If not --

A. Go ahead and proceed. I have it.

Q. Oh, okay, okay. We have it on the screen as well, if that's helpful.

2-6-7 is an e-mail by -- an e-mail to, sorry, Carly McPherson in April 2020, right?

A. Yes.

Q. And this was for purposes of the 2019 audit?

A. I believe so.

Q. And Ms. McPherson worked on the Raiders audit in 2019, right?

A. Yes.

Q. Did she report to you?

A. Yes.

Q. Do you see the text in the e-mail that states, "13-JE 60900 support.pdf"?

A. Yes.

Q. That indicates that -- first

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of all, the Nos. 13 and 12, are those references to specific requests made by EY for here the Raiders to provide information, do you recall?

A. I can't say what the 13 and 12 relate to.

Q. Okay. So let's just look at the attachment, the PDF.

If you look at the first page, you can see there is a printout from the general ledger and the journal entry that's reflected here relates to Ventures, right?

A. Yup.

Q. And can you see there is an amount being booked for Ventures remittance and it's, approximately, $128.8 million?

A. Yes, I see that.

Q. Okay. And if we go to the next few pages in the same document, you can see you have the backup support for that journal entry, right?

In fact, if you look at the page

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ending in 3-6-4, you can see there is an e-mail from Brad Firestone confirming the remittance amount for the year is 128.8 million and the films amount Brad confirms it's, approximately, $1 million.

Do you see that in the e-mail?

A. Yes, I do.

Q. And then do you see there is a handwritten summation in the e-mail for 129.9 million?

A. Yes.

Q. Okay. And then the next page you get supporting the journal entry is one page from that Venture schedule we saw before.

It's the Capital Roll Forward, right?

A. Yeah, it looks like a snip or a portion of the Schedule 3.

Q. And here we have, again, the 2018 season remittance amount of the 129.9 that we saw calculated on the prior document, correct?

A. Yes.

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Q. And your understanding was that these particular documents were being provided to EY as support for the journal entry recorded in the Raiders systems for the remittance amounts, right?

A. Yes, this was the Raiders support. Again, I think EY -- or, I mean, a piece of third-party support was the NFL e-mail, but I recognize that the amounts are the same.

Q. And you knew, at least, since working on the 2016 audit that the Raiders used this portion of the Capital Roll Forward Schedule in preparing their journal entries, right?

A. I mean, again, the focus of the audit support even back in 2016 was the e-mail from the NFL. I think that was the one of the first times we saw the Capital Roll Forward attached.

I can't say that we -- typically, if we were going to place emphasis on Capital Roll Forward Schedule, there would be clerical testing and things of

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that nature documented on the schedule, which it wasn't 2016.

So, again, the e-mail from the NFL was our primary source of support. But you can see that, at least, it would have been the first time that we really saw something like this existed or was provided to us by management and not anecdotally through another engagement team.

Q. Right.

But my point is that the reason you have this particular page of the roll forward schedule is not because you asked the Raiders to provide a Ventures roll forward schedule and they only gave you one page out of five, it's because you asked the Raiders to provide Ventures' journal entries and the Raiders provided the journal entries along with the support that they had kept in their own system as documentation for those journal entries, right?

A. Yeah, that's right. They

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kept the e-mail from Brad Firestone with their calculations and this portion of the Schedule 3 through the 2019 audit.

Q. And, in fact, as the auditor, you could, actually, confirm on site that what the Raiders were giving you as support for their journal entries was correct and it hadn't been manipulated or, you know, only certain pages pulled out and given to you, because you had access to go into QuickBooks and you could go to the journal entry printout and you could see the journal entry and the supporting schedules there are consistent with what the Raiders gave to you, right?

A. I can't -- I only, typically, received support that we would scan from their binder of journal entry support.

If I ever had direct access to their QuickBooks as a read only, I don't recall or I did not use it. I can't speak -- I don't recall the team using that either.

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I think most of the support was provided via e-mail as it was here from Ms. Grant to Ms. McPherson.

Q. Can we go back to JX-126.

(Arbitration Exhibit JX-126 was referenced.)

Q. This was the 2016 schedule.

A. Uh-huh.

Q. Was it your recollection that this was the first year that the Raiders provided this Capital Roll Forward Schedule to you in connection with the backup support they had for their Ventures journal entries?

A. It may have been. I don't -- I don't have a specific recollection of when they starting attaching that to the e-mail from the NFL or if it was done consistently or not.

Again, I think for us the third-party evidence directly from the NFL via e-mail was considered the primary source of support.

Q. Do you see on the schedule in

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the upper left-hand schedule, though, we see it says, "Schedule 3 Capital Roll Forward," right?

A. Correct.

Q. And the fact that it was titled, "Schedule 3," that would imply to you that there was a Schedule 1 and a Schedule 2, correct?

A. As we know now, yes, yes. And --

Q. Well, reading that at the time, seeing Schedule 3, it would be fair that that would imply to you that there was a Schedule 1 and a Schedule 2, correct?

A. That's true it would be extremely common for only a portion of the documentation received to be used by a client in recording their entries. If we could receive fully complete schedules for everything, it would be highly inefficient. And we were relying on them to point us to what the support was for the entry that management was taking

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responsibility for and recording.

Q. And then when you look towards the bottom of this sheet, do you see there are balances reflected for March 31, 2016 right at the bottom of the page? Do you see that?

A. Yes.

Q. And then there's a column for the "Receivable."

So you can see the receivable balance as of March 31, 2016 for Ventures, correct?

A. Yes.

Q. And right next to that receivable balance for Ventures it says, "see Schedule 2," right?

A. Yes.

Q. And that wasn't hidden from you when the Raiders provided this documentation to you in connection with your audit work, right?

A. No, the NFL's cross-reference to Schedule 2 was not hidden -- was included here. However, if Schedule 2

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was pertinent to the recording of these entries, I would have expected that management would have either used it or provided it to us.

As we come to find out later, Schedule 2 will clearly indicate what periods the distributions related to. So I would say management had access to information that we didn't for that. We didn't ask for it. But, again, that's the cross-reference from the NFL that I would have expected if it was pertinent to management's books and records, they would have provided it to us every year for the ten years or plus that this was recorded incorrectly.

Q. Do you have any knowledge that the Raiders used Schedule 2 to record journal entries in its GL for the remittance?

A. I only know that Schedule 2 would have indicated very clearly that management's representation around the timing of cash receipts relative through

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to the remittance was not correct.

Q. Do you have --

A. I can't say whether or not they used it.

Q. Do you have any knowledge that Raiders management used Schedule 2 to record anything in its financial statements?

A. No.

Q. Do you have any knowledge that Raiders management reviewed Schedule 2 and used the information in it to book anything in its books and records at all?

A. No, because, again, the support we would have been provided would have been to test what was recorded. If it wasn't provided to us, I cannot say what management would have done with it.

Q. Now, you don't recall in connection with the 2016 audit ever asking the Raiders for a copy of Schedule 2, right?

A. No.

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Q. I want to show you another document. It's JX-128.

(Arbitration Exhibit JX-128 was referred to.)

MS. BROWN: I believe these might have just been handed to you separately for those in the room.

Q. And, Mr. Johns, I -- you may have it in it a folder printed out.

Or, I'm sorry, Mr. Johns, I think, we might have to show you on the screen.

A. Okay.

Q. These were last minute additions?

MS. VAN WINKLE: I don't have 128. I two copies of 126.

MS. BROWN: You can have my copy.

Q. JX-128 --

MS. VAN WINKLE: Can you wait one second.

MS. BROWN: Oh, yes.

MS. VAN WINKLE: Thank you. Okay.

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Q. Okay. Mr. Johns, do you see JX-128?

A. Yes.

Q. And this is, again, that similar page from Schedule 3 of the Capital Roll Forward Schedule, correct?

A. Yes.

Q. And you received this in connection with your 2017 audit, right?

You can see as indicated in the years in the bottom right, "2017 YE"?

A. I believe so.

Again, I think, contextually, was this attached to the e-mail support that was included in the work papers --

Q. Yes.

A. -- for the NFL?

Okay. Then, yes.

Q. I will represent to you that is where we got it from. And if you had the entire exhibit, you would see there was e-mail on Page 2. It could show up -- or you could pull up --

MS. BROWN: I'm asking,

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Marco, pull up Page 2.

Q. You'll see that's Page 2 of the same document, the e-mail.

A. Okay. Understood, thank you.

Q. Do you recall in connection with the 2017 audit asking the Raiders to provide you a complete copy of the Ventures Capital Roll Forward Schedule, with Schedules 1 and 2?

A. No.

Q. Can you go to JX-130, please.

(Arbitration Exhibit JX-130 was referred to.)

MS. VAN WINKLE: I, also, don't have JX-130.

Thank you.

Q. Mr. Johns, do you have JX-130?

A. I do, thanks.

Q. Great.

You see this is another version of the same Schedule 3, Capital Roll Forward Schedule from Ventures?

A. Yes.

Q. And this was collected and

used by EY as audit evidence in connection with the 2018 audit, correct?

A. Yes. Again, it was agreed to the e-mail provided by the NFL consistent with prior years.

Q. And you don't recall in connection with the 2018 audit asking anyone from the Raiders to provide you with a complete copy of the schedule with Schedules 1 and 2, right?

A. No. Again, I didn't believe it was necessary at the time.

Q. Okay. We have one more. It's JX-2-0-9-8, 2098.

(Arbitration Exhibit JX-2098 was referenced.)

MS. VAN WINKLE: May I have a copy?

MS. BROWN: I apologize. You're the only person who doesn't have it.

MS. VAN WINKLE: Okay.

Q. Okay. Mr. Johns, do you have JX-2098?

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A. Yes.

Q. And if you go to the last page of that document, do you see there is, again, a similar schedule, Schedule 3 from the Capital Roll Forward from Ventures?

A. Yes.

Q. And EY received this and used it as part of its audit support for the March 31, 2020 conforming statement audit, correct?

A. Yes, based on the tick marks within, it appears to be correct.

Q. And you don't recall asking anyone from the Raiders in connection with that audit to provide you with complete copies of Schedule 1 and 2 of this Capital -- of this Ventures document, correct?

A. No. Again, didn't know that those schedules would be relevant to any of the audit procedures.

Q. Okay. Now, I want to change topics a little bit.

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When you were working on the Raiders audit, you were aware that EY provided audit services to other teams in the NFL besides the Raiders, right?

A. Yes.

Q. And you knew EY provided audit services to about ten other NFL Teams?

A. That sounds right.

Q. And EY has a -- or, at least, they had a Professional Sports Working Group, right?

A. Yes.

Q. And you were a member of that group?

A. Yes.

Q. And the Working Group was set up about EY's national office to address topics specific to NFL Teams and other professional sports teams, right?

A. Yes.

Q. And that group would meet periodically to discuss matters relevant to the accounting for professional sports,

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correct?

A. Yes.

Q. And from time to time, EY's professional sports group would discuss audit practices that were applied to the different NFL Teams, right?

A. Yes.

Q. Now, you don't recall ever discussing with any of the other EY audit teams the practices used for auditing the Ventures receivable and the Ventures revenue; is that right?

A. I do not. Typically, the Working Group was focused on perspective, emerging issues, things like the new revenue recognition policy under ASC 606, NFL concussion settlement, things of that nature that -- the longstanding methodology being used by the Raiders and, presumptively, any other teams. Whatever method they were on would not have been new given the timing and formation of Ventures and the lack of any changes over the extended period of time

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that existed.

Q. Thank you.

MS. BROWN: I have no further questions.

THE CHAIRPERSON: Okay. Thank you.

So take a recess for 15 minutes.

MS. VAN WINKLE: Yup.

THE CHAIRPERSON: And then we will continue.

Thank you.

THE VIDEOGRAPHER: Off the record 11:21 a.m.

(Recess taken 11:21 to a.m. Pacific time.)

THE VIDEOGRAPHER: Back on the record 11:51 a.m.

CROSS-EXAMINATION BY MS. VAN WINKLE:

Q. Welcome back, Mr. Johns.

Can you please tell us about your Bachelor's degree, what it's in, when you obtained it?

A. Yes. I attained a Bachelor's

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in business with concentrations in accounting and finance and an economics minor from Cal Poly St. Luis Obispo in 2008.

Q. Do you have any professional licenses?

A. Yes. I'm a CPA certified in California. It's an active license.

Q. And how long have you been certified as a CPA?

A. Fourteen years.

Q. I'm sorry. I think that broke up.

A. Fourteen years.

Q. Thank you.

What position did you start at when you joined EY in 2008?

A. Audit staff.

Q. And can you explain to me your general career progression while at EY?

A. Sure. I spent two years as a staff. I spent three years as an audit senior. I spent three years as an audit

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manager and then, approximately, five years as a Senior Manager.

Q. Did you hold any -- do any teaching while you were at EY?

A. Yes, I did. I taught several of the incoming staff trainings over the years.

Q. How many people did you train over the years?

A. I probably taught 4 or 5 classes of about 20 each, so 80 to a hundred people.

Q. And is it a competitive process at EY to be selected to be a teacher of new auditors?

A. Yes. I understand that folks are selected that are highly rated within the firm's ranking system.

Q. And did you perform any quality roles while you were at EY?

A. I did. I performed internal audit quality reviews ranging between probably two and five reviews a year for, approximately, four years as a Senior

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Manager.

Q. Can you please explain what an "audit quality review" internally at EY is?

A. Yes. It's a review where an audit engagement is looked at for quality in, typically, two or three specific areas of high risk denoted on the engagement, as well as general compliance with auditing standards through all the general audit procedures on any given audit.

Q. And how were you selected to participate in that quality function?

A. Again, my understanding is I was selected based on high performance reviews in the firm's performance evaluation program.

Q. How -- well, why did you leave EY?

A. I was approached by a company in industry for a fully remote role, highly competitive role a couple of years ago that I decided was the best fit for

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me and my family.

Q. You've mentioned several times that you had discussions with management in your testimony for Ms. Brown.

Could you please tell me about the audit process when you were performing the financial statement audit, you know, where the team was located, just generally how you interacted with management?

A. Yes. The team was, typically, on site five days a week for three to four weeks during late April through the audit issuance in late May every year.

We were on site at the client in Alameda, California sitting close to management. We were in a conference room in their file storage, which was, you know, approximately, 10 to 15 yards from the offices of Ed Villianueva, Marc Badain, Matt Anders (phonetic), Araxie Grant when they were there and the rest of the Raiders finance team.

Q. And how frequently did you

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interact with Mr. Villianueva during that annual audit period each year?

A. I was, typically, on site two to three days a week and would interact with him daily on the days that I was there, interacted with him through e-mail frequently as well throughout the year for audit planning purposes and other general matters.

Q. And you mentioned that you had conversations with management about the timing of the cash distributions in relation to the remittance.

Who at management did you have those conversations with?

A. Ed Villianueva in his capacity as controller and then CFO.

(Stenographer clarification.)

A. Mr. Villianueva in his capacity as controller and then CFO.

THE STENOGRAPHER: Thank you.

Q. And what did Mr. Villianueva tell you during those conversations about the timing of the cash distributions in

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relation to the remittance?

A. That the cash distributions would always follow the annual remittance.

Q. And is that an understanding that you reconfirmed with Mr. Villianueva over time?

A. Yes. We discussed it annually and then, also, in our overall analytical procedures, we would get explanations from the client as to the movement of the receivable and throughout that -- or based on his responses to those inquiries, he indicated in writing, as well as through our verbal discussions, that the remittances were received after the receivable was established in a given period.

Q. And how about the notion of whether you could associate particular cash distributions with a particular season remittance, did you discuss that with Mr. Villianueva?

A. Yes. And, again, his response both verbally to us through our

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discussions and in writing through those overall analytical review explanations was that the Raiders had no visibility or control of the timing of payments and that that was completely controlled by NFL Ventures.

Q. In response to those inquiries, did every provide you any documentary support?

A. No.

Q. And with respect to the confirmation, the ability of the NFL to -- the willingness or ability of the NFL to respond to a confirmation, did you discuss that with Mr. Villianueva over time?

A. Yes, we discussed that on an annual basis.

Q. And what did he tell you about that?

A. He said that based on the difference in yearend, as well as the difference on the basis of accounting, the NFL would not be able to confirm the

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full year balance as of 12/31 of any given year.

Q. I'd like you to turn -- you should have the "EY Direct" binder. And I'd like you to turn to JX-0-4-5-0.

(Arbitration Exhibit JX-0450 was referenced.)

A. Okay.

Q. And what is this document?

A. This is the Overall Analytical Review for the balance sheet that I just referenced.

Q. What is an "Overall Analytical Review"?

A. We'll look at the balances by financial statement line item on a year-over-year basis to evaluate the reasonableness of any changes or unexpected changes in balance sheet account balances.

Q. And did you perform any analytical procedures evaluating fluctuations in the NFL accounts receivable balance?

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A. Yes, we did.

Q. And is that reflected under assets -- "current assets due from NFL"?

A. Yes.

Q. And what is the tick mark eight in that line?

A. If we can scroll to the right.

It explains that, "The variance is due to revenue increase. In 2016, the Club has no control of the receipt of cash or the receivable, as the NFL determines the amount [and timing] of these disbursements."

We tested this and then we would cross-reference to our testing where we reference our substantive testing of the hundred percent of the cash movements and remittance activity during the year.

Q. And where did you obtain the explanation that, "the Club has no control of the receipts of cash or the receivable, as the NFL determines the amount and timing of these disbursements"?

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A. We would have received this directly in writing from Mr. Villianueva. Each year we would send him this list of any fluctuations over our scope and he provided responses back in an Excel file via e-mail.

Q. And the next sentence, "Generally, the NFL continues to grow the revenue pool from the exploitation of the NFL brand," and it carries on.

Where did you obtain that explanation?

A. From the same place, from Mr. Villianueva, through his responses.

Q. And going back to the first sentence we read, "the Club has no control of the receipts."

What did you understand that to mean?

A. That the Raiders could not determine the timing or -- the timing of receipts or associate any specific cash receipt with a given season.

Q. And was that consistent with

the verbal explanations Mr. Villianueva had given to you when you asked him those questions?

A. Yes.

Q. Let's go to JX-0238.

(Arbitration Exhibit JX-0238 was referenced.)

A. Okay.

Q. And what is this document that we're looking at here?

A. This looks like an e-mail of responses from a request from our team from Mr. Villianueva.

Q. And can you tell from the face of the e-mail which audit this work is being performed in connection with?

A. Based on the 5/17 14-day, it should be the 2013 financial statement audit.

Q. And did you work on that audit?

A. Yes.

Q. And we -- there were a lot of Excel -- there were a lot of worksheets

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in this workbook. We excerpted one of them. And it should be in the binder in front of you. And Jason can, also, pull it up on the screen.

But I would like you to tell us what the attachment is.

A. So Request 24 here was -- is the flux explanations or variance explanations that I referenced earlier whereby Mr. Villianueva would provide written responses and Column J for the items identified by EY as being over our scope for testing, in terms of fluctuation.

Q. And Jason already helpfully scrolled down to the bottom of the worksheet where there's a line for Account 1250.

Do you see that?

A. Yes.

Q. Which account is that?

A. That is the NFL Ventures or enterprises accounts receivable.

"Ventures" and "enterprises" are

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used interchangeably throughout the work papers.

Q. And what response did Mr. Villianueva provide in the 2013 audit whenever the audit team inquired about the fluctuation and the AR balance?

A. Yes, it reads, "Timing will always attribute to the difference, an when money from the NFL comes in to reduce the receivable. We have no control of the receipts of the receivable. The NFL determines when we receive money to reduce the receivable. With the new CBA" -- which is the Collective Bargaining Arrangement -- "extending out over ten years and with new TV deals, this amount will always increase every year."

Q. And what did you understand that first sentence to mean, "Timing will always attribute to the difference and when money from the NFL comes in to reduce the receivable"?

A. Well, primarily that the --

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again, the assertion that the control is not with the Club and that the remittance is recorded first and then the money comes in from the NFL to reduce the receivable after the remittance is received in March of each year.

Q. And how about the, "We have no control of receipts or receivable," what did you understand that to mean?

A. That the NFL controls the timing of the remittance distribution, as well as all of the cash distributions and the Club does not have visibility to those or control of when they will receive them.

Q. And was that consistent with your oral conversations with Mr. Villianueva?

A. Yes.

Q. I'd like you to turn now -- hold on, one second. I've lost my place.

Oh, here it is.

JX-2-4-8-7, please.

(Arbitration Exhibit JX-2487

was referenced.)

A. Okay.

Q. What is this document?

A. So this is a memo that was provided to the audit team annually from Mr. Villianueva documenting the material differences between the December 31 tax basis financial statements and the March 31 GAAP basis conforming statements.

Q. And did you obtain -- did the audit team in the years that you worked on the audit obtain a similar memo from Mr. Villianueva in the 2019 and earlier audits?

A. Yes, we requested this memo every year.

Q. If you go down to Paragraph 4, the second sentence is, "The NFL provides each team with the remittance amount as of March 31st that the team has to book as a receivable."

Do you see that?

A. Yes.

Q. And I want to focus on the

"remittance amount" language.

What exactly did you understand the NFL was providing the teams, including the Raiders, when they communicated the remittance amount?

A. I understood that that was an e-mail from the NFL to the Raiders.

Q. And did you understand that e-mail to have any detail about the timing of distributions or the components of the remittance?

A. The e-mail didn't have timing, in terms of the distributions.

Occasionally it would have a breakout -- an immaterial breakout between the components of revenue. I believe it was NFL Films. But, again, it was, typically, about a 1 percent of the total, not a material breakout.

Q. And would that be just to show an example JX-0-1-0-4?

(Arbitration Exhibit JX-0104 was referenced.)

Q. I think that was in the

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binder. And if it's not 104, you can do 105, I think.

It is 104 in Ms. Brown's binder.

A. Oh, okay.

If it's the same as on the screen -- yes. This is the e-mail that we've discussed today.

Q. And could you, also, take a look at JX-126, which would be in your binder, I believe.

Oh, no. She -- it's in Ms. Brown's binder and she handed out copies of JX-126.

(Arbitration Exhibit JX-126 was referenced.)

MS. VAN WINKLE: Can you scroll down to Page 2, please.

Q. You mentioned an "immaterial breakout."

Does -- is this document an example of one of those "immaterial breakouts"?

A. Yes, it's a -- they're breaking out the 903/940,000 of film royalty from $101.8 million of total

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Ventures remittance. Again, about a 1 percent generally not considered material.

(Stenographer clarification.)

A. Not material. But it was recorded as two separate line items of revenue in the financial statements.

Q. And you mentioned in response to one of Ms. Brown's questions that the e-mail supporting the remittance amount was the primary support.

What did you mean by that?

A. I meant that it was direct third-party evidence from the NFL. And so we would consider that the highest form of support available for the balance.

Q. And is this e-mail an example of that?

A. Yes.

Q. And you obtained -- and did you obtain, the audit team, in each year you worked on the engagement, an e-mail like this?

A. Yes.

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Q. Now, Ms. Brown, also, showed you another page of this document, the first page of JX-0-1-2-6.

Are there -- first of all, do you know whose handwriting that is on the lower right corner?

A. I believe it's Mr. Villianueva's.

Q. Are there any EY tick marks on this page of the document?

A. None other than the notation at the top of the page.

Q. Okay. And do you recall using this page of the document in the 2016 audit?

A. I don't recall. I know over the years, I believe, sometimes this was attached as part of the company support. Sometimes it was not. But, again, our reliance was placed on the e-mail from the NFL.

Q. And to the extent that you might have or that you did use this one page of the Schedule 3 during the audits,

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which portion of the Schedule 3 were you reviewing?

A. It would have been purely to agree the total season remittance in the 2015 season remittance as noted in kind of the middle of the page and then re-calculating Mr. Villianueva's breakout, again, of that NFL Films balance of the 903,000 to agree the total remittance or the net remittance to the work papers.

Q. Did you use any of the cash distribution information on this schedule for your audit procedures?

A. No.

Q. And was this one page of Schedule 3 -- was the cash distribution information on this provided as support for any of the account balances in the Raiders financial statements?

A. No. The Raiders prepared a separate roll forward of accounts receivable. We looked at their work paper several times today. That was what

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the company provided as their support for the cash activity for the year, which is what we vouched to third-party bank statements.

Q. And did you know a Schedule 2 existed during the course of the 2019 and earlier audits?

A. No.

Q. And knowing what you know today and having had the conversations that you had with Mr. Villianueva at the time, would you have expected Mr. Villianueva to provide you the Schedule 2?

A. Based on what we've learned in the 2020 audit and the clarity that Schedule 2 provides as to the timing of payments relative to a season remittance, yes, I would have expected that to be provided to the audit team.

Q. I'd, also, like to look at JX-130.

(Arbitration Exhibit JX-0130 was referenced.)

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Q. I just have to figure out which binder that's in.

Ms. Brown might have handed you that in hardcopy as well.

A. I have it in front of me.

Q. Do you have Exhibit 130?

A. I do.

Q. Okay. And which year's audit is this from?

A. It appears to be from the 2018 audit.

MS. VAN WINKLE: Okay. And could you scroll down one page, please, Jason.

Q. What is this page of JX-130?

A. This appears to be the confirmation e-mail from the NFL to the Raiders consistent with every year or consistent with the support we received every year.

Q. Okay. And the first page of the document, the one page of the capital -- Schedule 3.

A. Uh-huh.

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Q. Which portion of that document did EY use in performing its audit procedures?

A. Again, you can see the EY notations kind of in the middle column. We agreed the total 2017 season remittance to the Club's calculations and then it looks like another small portion for AR capitalization.

I don't recall, specifically, what that's referring to but, again, cross-referencing that to the accounts receivable work paper.

Q. With respect to the remittance and distributions, did you ever use one page of -- the one page of Schedule 3 that was occasionally provided by management for anything more than the amount of the season remittance?

A. No. It was purely for the season remittance and to calculate any of these insignificant breakouts of the overall amount to various revenue streams.

Q. Why didn't you bother to sit

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down and tie out every number on this one page every year to some other documentation?

A. Primarily based on the -- management's representation of the inability to associate cash distributions with the remittance and we tested a hundred percent of the cash activity as well as the remittance in the AR work papers every year, as I mentioned.

So further testing of this worksheet was not determined necessary, based on our audit strategy.

Q. And this particular worksheet, even if you had to sit down -- even if you tried to sit down and tie out cash distributions, does it even reflect a full 12 months?

A. No. And it was typical that these would be a printout in a binder, again, with our journal entry support where often you didn't have a full year's activity.

I believe management was including

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it to demonstrate that the total amount for the season remittance agreed to the NFL's e-mail.

Q. Could you please go back to JX-2-4-8-7.

(Arbitration Exhibit JX-2487 was referenced.)

Q. And back to Paragraph 4, please.

A. Yes.

Q. And I'd like to focus on the next sentence in the e-mail. "For the December 31, 2016 audit, we adjust the NFL Ventures amount by the March 31, 2016 remittance amount."

And then it continues, "For the March 31, 2017 period, we adjust the NFL Ventures balance by the March 31, 2017 remittance amount."

Do you see that?

A. Yes.

Q. And can you explain those two sentences to me, please?

A. Yeah. What I interpret this

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to mean is that it's clarification that for the December 31, 2016 financial statements, the March 31, 2016 remittance is included as revenue in those financial statements. Whereas for the March 31, 2017 financials, it's a separate remittance amount. It's the 2017 remittance amount. So it relates to two different seasons, even though they're only three months apart in terms of an ending -- or period end.

The way that the Raiders were recording it, there's two separate remittances here for two separate seasons for these financial statements.

Q. Okay. So, just to make sure I understand, at the time you were auditing the December 31, 2016 financial statements and you finished that audit in the spring of '17 and then you went on to perform -- or you went on to perform the conforming statement audit as of March 31, 2017, was it the same remittance in each set of financial statements or was it a different remittance amount?

A. No, it's a different remittance amount.

The 2016 financial statements would include the 2015 season remittance and the March 31, 2017 would include the 2016 season remittance.

Q. Is that one of the reasons that you didn't think you could compare conforming statement balances with financial statement balances?

A. Yes.

Q. And were there other reasons that you didn't think that you could compare the two?

A. The other main reasons specific to NFL Ventures was that the lag method that the periods were not comparable.

Q. Okay. Let's go to JX-0-1-2-5 in the "EY Direct" binder, please.

(Arbitration Exhibit JX-0125 was referenced.)

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Q. And the first pages, the EO1 lead sheet, and then the second page is the E0.3 AR detail testing that -- some of which you discussed with Ms. Brown.

I'd like to point you in Note 1 to three rows in, third sentence. "Typically, distributions for a given season are made in the subsequent season."

Where did you obtain that understanding?

A. From Mr. Villianueva, as we discussed earlier and documented by him in the flux explanations provided.

Q. And what does that sentence mean?

A. It means that the remittance would come in in March of each year per Mr. Villianueva and then the distributions following March of a given remittance recording would be to off set that remittance, that the payments followed the overall remittance for the year.

Q. And if you go down to Tick Mark C in this document, please.

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A. Okay.

Q. And Tick Mark C is the one that Ms. Brown walked you through in each year's AR testing work paper for NFL Ventures.

Where did you obtain the understanding that's documented in this work paper that the NFL would not respond to a confirmation for a full balance?

A. From Mr. Villianueva on an annual basis and through inquiries with the NFL on a periodic basis.

Q. And based on the work papers that you walked through with Ms. Brown, was that understanding documented every year that -- in the work papers that you just reviewed?

A. No.

Q. Except for which -- sorry.

A. Except for 2020.

Q. Let me ask it.

Is the conversation documented?

A. (No response.)

Q. I'll back up.

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I'm just asking whether this document is your understanding, based on your conversations with Mr. Villianueva.

A. Yes, this documents our, you know -- the results of our annual discussion that -- why we only confirmed the January remittance.

Q. Thank you.

Turning the page over to the testing, we've walked through the testing of management's roll forward with several witnesses. But I just want to direct you to the accrued Ventures January 2017 distribution line under "Ending Balancing," the net remittance and accrued January 2017 distribution.

And Ms. Brown asked you several questions about why you didn't try to match the January distribution, in particular, with the remittance.

Do you remember that?

A. Yes.

Q. And why did you not try to do that?

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A. Because that January '17 distribution would have been part of the different remittance than the remittance that we were testing here in the December 31, 2016 work paper.

Q. And did you have any understanding as to whether the company had information about whether that remittance -- that distribution could be tied to a remittance?

A. I understood that it could not yet be tied to a remittance and that's why we confirmed it separately and then vouched the cash receipts separately as our procedures.

Q. With respect to the confirmation process of the account receivable balance, would you have preferred to get a full balance confirmation from the NFL.

A. Yes.

Q. And would you have obtained that, if you thought you could?

A. Yes.

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Q. Why didn't you go to the NFL and ask them if Mr. Villianueva was telling the truth about -- you personally?

It sounds like other people on the team did.

But why didn't you go to Mr. -- the NFL personally and ask them if Mr. Villianueva was telling the truth about the NFL's position on a confirmation?

A. From a protocol perspective, those types of questions would have needed to be routed through management. It would have been kind of inappropriate for us to go directly outside of management and request additional information without management's consent.

And, further, at the time, I had no knowledge of, you know, the whistleblower matter and suspected allegations. I had no reason to believe that anything that management was telling me at the time was not fully accurate.

Q. And how about with respect to

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Mr. Villianueva's representation that the distributions followed the remittance, why didn't you go to the NFL and ask them that question?

A. Again, for the same reasons. You know, it would be outside of the scope of protocol, would have had to run through management, as opposed to asking outside of management, and had no reason to believe that those representations were untrue or inaccurate at the time.

Q. And with respect to Mr. Villianueva's representation that the distributions could not be tied to a remittance, why didn't you go ask the NFL about that one?

A. For the same reasons.

Q. I'd like to turn to April of 2021.

How did you learn that the Raiders may have potentially overstated their revenue and receivables?

A. I received a phone call from our tax team that they had been alerted

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to a potential issue with receivables from Ms. Araxie Grant and Mr. Travis Scott at the Raiders. So that was an initial discussion. And then within -- that was in the afternoon of that day.

Within an hour or two, I had direct discussions with Ms. Grant and Mr. Scott about their concerns.

Q. Who from the tax team contacted you?

A. Lou Kiel (phonetic).

Q. And do you remember where you were when you heard that?

A. I do. I was in line at a car wash and took the call and it was one of those moments now in my career that is not unforgettable.

Q. And when you had the later call with Ms. Grant and Mr. Scott that day, what did they tell you?

A. Mr. Scott had prepared some initial detail over the differences from the expected accounts receivable, based on his experience at other teams. I

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believe he worked for another NFL Club and was expecting the receivable balance to be only the January accrual amount. And so that's why we were involving tax, given the kind of tax method of accounting.

But Mr. Grant -- I'm sorry.

Mr. Scott and Mrs. Grant or Ms. Grant said, you know, they've been looking into it. They had some concerns that this may not have been accidental and, you know, wanted to immediately discuss it further with the partners on the engagement team and anyone else that was appropriate to include.

Q. Did you have subsequent conversations with Mr. Scott and Ms. Grant about their discovery?

A. Yes, throughout that evening and then throughout the next several days. I talked to them directly with Steve Shin, who was a manager on the engagement at the time, as well as directly with Javier Garcia, I believe,

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the next year after the initial conversations occurred.

Q. And throughout the course of those conversations, did you develop an understanding as to where they obtained the information that was the bases of their analysis?

A. Yes. It was through the Capital Roll Forward Schedules, the full set of Capital Roll Forward Schedules, namely, Schedule 2 and, also, there was some perspective cash flow data that was available from the NFL that informed their position as well.

Q. And did you have an understanding of where that information was when they found it?

A. My understanding is it was included in the company's share drive for a number of years, the full set of Capital Roll Forward Schedules.

Q. I'd like to show you JX-0-0-3-8 please. It's in the small binder.

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(Arbitration Exhibit JX-0038 was referenced.)

Q. And what is JX-0-0-3-8?

A. These were files that Mr. Scott provided to us after initial conversation with myself and Javier Garcia after they had walked both of us through their initial findings or a recap of their findings after our initial discussion the previous evening.

Q. And can you please turn to the second page that's titled, "2019 Season Projected Cash Flows."

A. Okay.

Q. Did Mr. Villianueva or anyone else on Raiders management ever provide you one of these NFL cash flow spreadsheets when you were inquiring about the timing and purpose of the Ventures distributions?

A. No.

Q. And what does -- what did you learn through this schedule in April of 2021?

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A. That the company had projected cash flows for NFL Ventures on a monthly basis prospectively, as well as information with regards to what season those cash flows related to.

Q. And if you go down to "NFL Ventures," does that -- what information is that telling you about the NFL Ventures distributions in the middle of the page?

A. It's showing that the distributions within 2019 relate to the 2019 -- primarily relate to the 2019 season.

Q. Did that change your understanding of how Ventures operated and what information the company had available?

A. Yes. The schedule combined with Schedule 2 makes it, I think, fairly clear that the revenue is received on a monthly basis in arrears from when it's earned within the season.

Q. And could you please go to

JX-0-0-3-5.

(Arbitration Exhibit JX-0035 was referenced.)

A. Okay.

Q. And these are a set of Capital Roll Forwards that Mr. Scott provided to Mr. Garcia and then he forwarded to you in April of 2021?

A. That's correct.

Q. And can you go to Page 5 of the exhibit, please.

A. Yes.

Q. You've mentioned Schedule 2 several times and suggested that it was significant to you when you found out about it in April of 2021.

Can you please explain to us why this document was significant to you in April of 2021?

A. Yes. So, at the header of Schedule 2, the third row, it says, "2019 season." It does not include any 2018 season cash. This is provided directly by the NFL.

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So that indicates that, one, the cash is not collected in arrears. Cash is collected monthly as earned.

And then, further, the 2019 season remittance in total as outlined here along with the monthly distribution -- distributions suggesting, again, that that monthly revenue is collected, essentially, one month in arrears and throughout the season in which the remittance related to, not in a subsequent season.

Q. Did Mr. Villianueva ever provide you Schedule 2 or even tell you that Schedule 2 existed whenever you were asking about the timing of the distributions and whether they could be associated to a remittance?

A. No.

Q. And does this schedule have different information on it from the one page of Schedule 3 that you were provided by Mr. Villianueva solely as support for the amount of the remittance?

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A. Yes, it draws direct conclusions as to the association of cash received with a given season, which was not clear on the Schedule 3.

Q. I have one more document. It's 427. It was in Mr. Garcia's cross binder. And I'm not -- since we printed yours -- it's, actually, in Ms. Brown's binder.

(Arbitration Exhibit JX-0427 was referenced.)

MS. BROWN: 427? 427?

MS. VAN WINKLE: Yes, 0-4-2-7.

MS. BROWN: Got it.

A. I'm not seeing it, but I'll follow on the screen.

Q. Oh, it's not in Ms. Brown's binder?

A. It may be in my folders here, but hold. I can follow along. Hold on.

MR. CHANDLER: It's hidden behind 421.

MR. BICKERMAN: It's in our binders.

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MS. VAN WINKLE: You have it, okay. Thank you.
MR. BICKERMAN: Yes.
Q. Do you see this is an e-mail from MFD@EY.com?
A. Yes.
Q. And it's to Ms. Triplett.
Do you see that?
A. Yes.
Q. And what is "MFD@EY.com," if you know?
A. That was the old scanning technology we had to scan from a Xerox copier to your e-mail.
Q. Could you tell from the face of this document who is sending Ms. Triplett what -- the scanned document?
A. No.
Q. And if you turn -- Ms. Triplett, do you know who she is?
A. Yes, she was a staff and senior on the engagement during this time period.
Q. Okay. And the 2011 audit, do

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you know whether she was -- it was her first year on the audit or just you don't recall?

A. I don't recall. This was a time period where I was not participating on the engagement.

Q. Okay. Can you please turn to the second page. And a few foundation questions before we get into this.

When you were working on the Raiders engagements, did you also sometimes perform work on the AUP engagements?

A. Yes.

Q. And did one of those AUP reports relate to the procedures around local NFL revenue?

A. Yes, as part of a total revenue AUP report that the NFL requested, there was procedures around local revenue.

Q. And did that particular report have anything to do with NFL Ventures revenue?

A. No.

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Q. And can you tell from the face of this document whether it relates to work done in connection with an AUP report?

A. I believe so, just based on the nomenclature in the note, the handwritten note at the bottom -- or in the middle of the page. It says, "Per Schedule 5A Procedure No. 15." And Schedule 5A is a required schedule within that total revenue report that I -- or Total Revenue Agreed Upon Procedures Report that I referenced. And Procedure 15 would reference a specific procedure number outlined in those agreed upon procedures.

Q. And are there any EY tick marks on this work paper?

A. Well, these handwritten notes would be EY references. There appear to be some incomplete UI signatures at the top of the page or the bottom right that we're looking at on the screen.

Q. Are there any tick marks in

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the rows related to NFL Ventures?
A. No.
Q. And what does that tell you?
A. That based on the note and the procedures there was nothing being performed on this related to NFL Ventures. The tie out was purely for purposes of the total local revenue on the AUP.
MS. VAN WINKLE: I don't have any further questions subject to what Ms. Brown does.
Q. Thank you, Mr. Johns.
THE CHAIRPERSON: Counsel?
MS. BROWN: Can we have five minutes, please?
THE CHAIRPERSON: Sure.
MS. BROWN: Thank you.
THE VIDEOGRAPHER: Off the record 12:37 p.m.
(Recess taken 12:37 to p.m. Pacific Time.)
THE CHAIRPERSON: Okay. Proceed.

TYLER JOHNS, CPA - REDIRECT
MS. BROWN: Thank you.
REDIRECT EXAMINATION BY MS. BROWN:
Q. Mr. Johns, can you hear me?
A. Yes, I can.
(There is a discussion off the record.)
THE VIDEOGRAPHER: Back on the record 12:48 p.m.
BY MS. BROWN:
Q. Okay. Welcome back, Mr. Johns.
I would like to ask you just a few follow-up questions about your understanding of the remittance revenue and how that was recorded at the Raiders.
A. Okay.
Q. And just so we can make it easier, hopefully, by putting dates on it to understand, I'm going to use 2016 as an example, okay?
A. Okay.
Q. Now, in 2016, you understood that the remittance was booked -- that was booked in March 31, 2016 represented the full amount of Ventures revenue for

the 2015 NFL season, right?
A. That's correct.
Q. And you understood that the remittance amount booked to revenue included the amount of the January 2016 distributions, right?
A. Yes.
Q. And you understood that in December of 2016, the Raiders would then book into revenue an amount that equalled the January 2017 distributions, right?
A. Yes.
Q. So you understood based on that entire understanding that in 2016 the Raiders were recognizing both the January 2016 -- January 2016 Ventures distribution as revenue, they're recognizing that in March, and they were recognizing the January 2017 distribution as revenue and they were doing that in December, right?
A. That's our -- yeah, we -- I understand that now, yes.
Q. Why did you believe it was

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appropriate for the Raiders to be recognizing 13 months of Ventures revenue in a 12-month period of time?

A. At the time it wasn't fully clear or appreciated. Those were, you know, overlapping periods that there was 13 months.

I recognize now that that was not accurate, based on the 2020 audit.

But I agree that it was not -- we know now that it was incorrect.

Q. You testified in response to Ms. Van Winkle questions --

MS. BROWN: And I would like to pull it up, if we can, Marco. It's at Page 118/Line 19.

Q. You testified earlier -- we'll have it pulled up on the screen.

MS. VAN WINKLE: Could you make it larger, please?

Q. Starting at 19. You testified that, "It would have been a breach of protocol for EY to ask the NFL if Mr. Villianueva was correct that the

TYLER JOHNS, CPA - REDIRECT

NFL would not confirm a 12/31 Ventures receivable balance," right?

A. Yes.

Q. But you've, also, testified today that, EY personnel had repeated conversations with the NFL in which they did confirm Mr. Villianueva's representation that the NFL would not confirm a 12/31 Ventures receivable balance, right?

A. That's correct.

Q. So your testimony is that EY would have received authorization from the Raiders to have those conversations with the NFL before they went to the NFL and asked those questions, correct?

A. Yes. For clarity, I believe Ms. Van Winkle's questions was if we would have independently asked the NFL.

And the answer is, we would have needed to include management in those discussions with the NFL, which is how we performed those inquiries on a periodic basis that we discussed previously.

TYLER JOHNS, CPA - REDIRECT

Q. But, just to be clear, when you testified that it's your belief that EY personnel repeatedly had conversations with the NFL to confirm whether they could give a confirmation on the receivable balance, based on EY's protocol, that means that they went to the Raiders and the Raiders authorized those discussions, correct?

A. That's right.

Q. Did you ever ask the Raiders for permission to contact the NFL to ask if Mr. Villianueva's understanding that payments couldn't be tied to a specific remittance was correct?

A. I don't recall personally making any of those inquiries.

Q. And did you ever ask the Raiders for permission to contact the NFL to ask if Mr. Villianueva's understanding that the Venture remittances were paid in arrears was correct?

A. Again, I don't recall personally requesting that.

TYLER JOHNS, CPA - REDIRECT

Q. I want to go back to one other -- do you know -- do you know if anyone else at EY -- sorry.

Do you know if anyone else at EY asked the Raiders for permission to contact the NFL to ask if Mr. Villianueva's understanding that Venture payments couldn't be tied to a specific remittance was correct?

A. I don't know.

Q. And do you know if anyone else at EY asked the Raiders for permission to contact the NFL to ask if Mr. Villianueva's understanding that Ventures remittance were paid in arrears was correct?

A. No, I don't know.

Q. Now, I want to turn to one other thing that you testified about earlier.

MS. BROWN: And if we could pull up the transcript. It was at Page 124/Line 3.

Q. Do you recall when you were

TYLER JOHNS, CPA - REDIRECT

being asked questions about the NFL cash flow schedules?

A. Yes.

Q. And I think the testimony is from here down where Ms. Van Winkle showed you the 2019 season NFL cash flow schedule.

Do you recall that?

A. Yes.

Q. And you testified in response to her questions that, neither Mr. Villianueva or anyone else at the Raiders had provided that to you, correct?

A. Provided it to me, that's correct.

Q. Okay. Can you turn to Exhibit JX-267 please.

(Arbitration Exhibit JX-267 was referenced.)

Q. We looked at this document earlier when I was asking you questions earlier this afternoon.

This was an e-mail that was sent to Carly McPherson from the Raiders in

connection with the 2019 audit, right?
A. Yup, yes.
Q. And Carly McPherson worked -- she reported to you on that audit; is that right?
A. That's correct.
Q. And if we look at what was attached, if you turn to the page with the Bates ending 83369.
This is the 2019 season projected cash flows from the NFL, right?
A. Yes, it is.
Q. And this is the exact same document that Ms. Van Winkle showed you and you testified earlier today that neither Ed Villianueva nor anyone else at the Raiders provided to you, right?
A. That's correct. And I had -- this is the first time I was -- today is the first time I've seen it. I wasn't included on that e-mail. And it was part of additional ancillary support that was ten-plus pages into journal entry support provided by the company. I hadn't seen

TYLER JOHNS, CPA - REDIRECT

it before.

Q. So in your -- sorry.

So, when you're telling the Panel that no one at the Raiders provided this to you, are you saying that -- is your answer -- it sounds like your testimony is now, well, I just haven't seen it because it was "ancillary support" that was attached to journal entries.

That's something different than it being provided to you, though, right?

A. So it's clear that -- to me that -- the e-mail was provided to someone on our team, to Ms. McPherson.

It was never determined to be significant enough to raise, escalate to myself. Today is the first time that I'm seeing that this support provided to Ms. McPherson.

And, again, I think it would -- it appears from my judgment to be additional detail that was included with the journal entry support intentionally or unintentionally for the first time here

TYLER JOHNS, CPA - REDIRECT

as part of this audit after not receiving it for many years.

Q. Well, isn't it true that the way the audit works is that the client, actually, provides you a lot of documents, but not every single document that the audit client gives you ends up in your work papers, right, just as a matter of general procedure?

A. Yes, there are certain work papers that are not retained.

Q. And -- or certain documents --

A. Documents.

Q. -- provided to you by the client that are not retained, correct?

A. That's right.

Q. And, in fact, for this particular document that was given to EY in connection with the 2019 audit, this document is not included in EY's work papers, right?

A. Correct.

Q. And that would tell us that EY didn't use this document as audit

TYLER JOHNS, CPA - REDIRECT

support in its 2019 audit, right?

A. That's right. Without any further context from the e-mail provided from Ms. Grant to Ms. McPherson, I don't know directly what the question was related to this support or whether it was included in our work papers.

Q. Let's go to JX-427, please.

(Arbitration Exhibit JX-427 was referenced.)

Q. Ms. Van Winkle asked you some questions about this document. It's dated June 28, 2012 to Talesha Triplett. And it has the NFL Season Projected Cash Flow Schedule attached.

And I believe you answered a series of questions offering testimony about what the document was used for -- and I'm paraphrasing -- but that it had nothing to do with Ventures, along those lines.

Isn't it true, sir, that at this time in June 2012 you weren't even working on the Raiders engagement, right?

A. That's correct.

TYLER JOHNS, CPA - REDIRECT

Q. So you have no firsthand knowledge of what this document was used for by the Raiders audit engagement team, correct?

A. I have knowledge of the agreed upon procedures that I performed for many years and I can tell based on that experience that it was used for those agreed upon procedures.

But, no, I did not review this work paper because I wasn't on the engagement.

MS. BROWN: I have no further questions.

THE CHAIRPERSON: Ms. Van Winkle, anything further?

MS. VAN WINKLE: I just have a few questions.

I'll stay here.

THE CHAIRPERSON: Okay.

MS. VAN WINKLE: But they are going to turn the camera around.

Could we please pull up JX-38, 0-0-3-8.

(Arbitration Exhibit JX-0038

TYLER JOHNS, CPA - RECROSS

was referenced.)

RECROSS-EXAMINATION BY MS. VAN WINKLE:

Q. Mr. Johns, is this the document that I showed you when I was asking you questions about the 2019 NFL season cash flows?

A. I believe so.

Q. And is that different from the document that Ms. Brown just showed you at JX-0-2-6-7?

A. I believe the projected cash flows piece is the same document.

Q. And if you could go to JX-0-2-6-7, please.

(Arbitration Exhibit JX-0267 was referenced.)

Q. At this point in time, which set of financial statements was EY auditing?

A. The 2019 financial statements.

Q. And which remittance was recorded in the 2019 financial statements?

A. The 3/31/2019 remittance for the 2018 season.

TYLER JOHNS, CPA - RECROSS

Q. Okay. And just to make sure I heard you.
You said, "the 2018 season"?
A. Yes.
Q. And could you turn to Page 9 of the document, the one that Ms. Brown just showed you.
What season does that document relate to?
A. The 2019 season.
Q. Was EY auditing any information related to the 2019 season, as the Raiders were recording it in -- before the 2020 audit?
A. No.
Q. Thank you.
MS. BROWN: We have nothing further.
THE CHAIRPERSON: Perfect.
Alright. So, I guess, we will recess for the day and reconvene tomorrow morning at 9:30; is that correct, everybody?
MS. VAN WINKLE: The time for

PROCEEDINGS

tomorrow morning, I think, we'd, actually, prefer to start at ten. We don't expect either witness exam to take a full day.

THE CHAIRPERSON: That's fine.

MS. VAN WINKLE: And the first witness is coming from the West Coast.

Is that okay with you?

MR. REED: That's fine.

THE CHAIRPERSON: Okay. Sounds good.

MS. VAN WINKLE: Thank you.

THE CHAIRPERSON: Ten o'clock tomorrow.

THE VIDEOGRAPHER: So that concludes today's testimony.

Off the record 1:04 p.m.

(Time noted: 1:04 p.m. Pacific Time.)

PROCEEDINGS

C E R T I F I C A T E

I, SILVIA P. WAGE, CSR, CRR, RPR, a Notary Public for the State of New York, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

____

Notary Public of the State of New York
My Commission expires November 29, 2026
Dated: September 19, 2024

CPR ARBITRATION

In the Matter of the Arbitration between:
A.D. FOOTBALL, INC., A.D. FAMILY LIMITED PARTNERSHIP, A. & R. BOSCACCI INVESTMENT CO., E. & V. BOSCACCI REVOCABLE TRUST/MARITAL LLC, E. & V. BOSCACCI DECEDENT'S TRUST/DECEDENT LLC, JILL LOVINGFOSS, CODY LOVINGFOSS, JOSH LOVINGFOSS, CHALET ROBERTS, GOPPL PARTNERSHIP, L.P., PATRICIA WINKENBACH and GERALD WINKENBACH as the Trustees of the Winkenbach Family Trust, PATRICIA WINKENBACH, GERALD WINKENBACH, RLP HOLDINGS, LP, ADF INVESTMENTS LLC, ADF HOLDINGS, LLC, A.D. FAMILY LIMITED PARTNERSHIP, A.D. FAMILY LLC, MARK DAVIS, FIRST FOOTBALL, LLC, MD FOOTBALL LLC, ALLAN BOSCACCI and PATRICIA BOSCACCI as the Trustees of the Boscacci Family Trust, LISA BOSCACCI, ALLISON MEIN, ANNE CARPENTER, ALIDA BEILKE, CARA YURAS, KENNETH WEAKLEY and LYNNE WEAKLEY as the Trustees of the Weakley Family Trust, JEANNE DAVIES, ERIC WEAKLEY, ELYSE WEAKLEY, MARY JANE BOSCACCI as the Trustee of the Mary Jane Boscacci Living Trust, PAUL STEFANI and ANN STEFANI as the Trustees of the Stefani Family Trust, CATHERINE STEFANI, JON-PAUL STEFANI, NANCY MCAULIFFE, KELLY PEPPMEIER, ERIN MCAULIFFE, ALLAN BOSCACCI, COREY MCAULIFFE, ALLAN BOSCACCI as the Trustee of the A&R 2005 Irrevocable Trust, NANCY K. MCAULIFFE as the Trustee of the Nancy McAuliffe Family Trust,

(CAPTION CONTINUED)

DAVID ABRAMS, FRIEDMAN FOOTBALL LLC, JOSHUA FRIEDMAN, BETH FRIEDMAN, PEAK TRUST COMPANY as the Trustee of the Friedman Family 2015 GST I and the Friedman Family 2015 GST II, GARONZIK INVESTMENT PARTNERS LLC, FREDRIC GARONZIK, FREDRIC GARONZIK as the Trustee of the Fredric B. Garonzik Trust, DAVID GARONZIK and SAMUEL GARONZIK as the Trustees of the Fredric B. Garonzik Family Trust and the Anne G. Garonzik 2011 Trust, DAVID GARONZIK, SAMUEL GARONZIK, ANNE GARONZIK as the Trustee of the Anne G. Garonzik Trust, ANNE GARONZIK, PAUL LEFF, SILVERBLACK LLC, STEPHEN MALKIN, DAN GOLDRING, and MARK DAVIS as the Trustee of the Mark Davis 2010 Trust and the Davis Credit Shelter Trust,

Claimants,

-and-

ERNST & YOUNG LLP and EY US LLP,

Respondents.

Matter No. G-23-23-N

September 19, 2024
10:08 a.m.
Seven Times Square
New York, New York

B E F O R E:

HON. JOHN DIBLASI, Chairperson
JOHN CHANDLER, Arbitrator
JOHN BICKERMAN, Arbitrator

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A P P E A R A N C E S: (Continued)

ALSO PRESENT:

COREY WAINAINA
JASON BENCZE
MARCO HEIM
JUSTIN CARLEY
JUSTIN MCCARTY
MEREDITH MOSS
MARK CARLSON
KERRY HINCH
(via videoconference)
DANA DOUGLAS
(via videoconference)

* * *

THE CHAIRPERSON: We can go on the record.

Mr. Keel, welcome. My name is John DiBlasi. To my left is John Bickerman, to my right is John Chandler. Good to see you this morning, and we're going to turn it over to counsel for direct examination.

L U K E   K E E L, having been first deemed sworn, upon being examined, testified as follows:

DIRECT EXAMINATION BY
MR. REED:

Q. Good morning, Mr. Keel.
You joined Ernst and Young full time in 2010; is that right?
A. That's right.
Q. And that was your first job out of college?
A. Yeah.
Q. And you joined EY's tax practice in San Francisco?
A. Yeah, in the tax practice in San Francisco?

Q. And you remained there until
you left Ernst and Young in October,
2021?
A. I had a stint where I was in
D.C. for about a year and a half with
Ernst and Young in a different tax
role, but then I came back I think it
was late 2016, returned to the San
Francisco office.
Q. What I have in my notes is
you were in D.C. from around July, 2015
through December of 2016?
A. Yeah, that's right.
Q. Can you take us through the
progression in your roles and titles
while you worked at EY?
A. Sure.
So when I started in 2010, I
would have been a staff or an
associate. I think they changed the
terminology over the years a couple of
years. Later I was promoted to senior
in the tax group, a couple of years
after that promoted to manager. From
manager I think it was probably another

three years before being -- it might have been two to three years, I don't recall at the moment, promotion to senior manager. And then ultimately made partner after four or five years as a senior manager.

Q. If you wouldn't mind just tell me, what does a staff person do? What's the general job description of a staff member?

A. Can you clarify, do you mean for like a tax staff?

Q. Yes.

A. Generally, the tax staff are tasked with preparing tax returns and other tasks, that's kind starting point of the work flow, and then it goes from there up the chain for reviews and whatnot.

Q. You entered as a staff in 2010; right?

A. That's right, yeah.

Q. And then when did you become a senior?

A. My recollection for all of

the kind of promotion periods at EY, you would be promoted in October, and I started in July. So I think I would have been promoted to senior in October of '22, if I have that right.

Q. You mean 2012?

A. Sorry, 2012.

Q. And what is the role of a senior in the tax practice?

A. Generally they're reviewing the staff's work, liaisoning with the manager or senior manager, folks that are more senior to them to give them updates on the status of projects. But I think their first -- the main thing that they're doing is reviewing the work that the seniors prepare. Sorry, that the staff prepare.

Q. When did you become a manager?

A. I would say then it probably would have been October of 2014.

Q. And what's the role of a manager in the tax practice?

A. They're again reviewing all

of the work that's done below them, whether that's prepared by the staff or the senior, they're liaisoning with clients, getting information to prepare the tax returns or to provide tax consulting services, they're updating the senior manager, the partner on the status of the projects, getting input from them where needed based on their experience. They probably also handle billing matters and administrative matters for clients.

Q. When did you become a senior manager?

A. I think that would have been 2016, October. It may have been a year after. I don't recall sitting here today.

Q. What's the role of a senior manager in the tax practice?

A. Well, I'd say it's similar to that of a manager except for they're one of the final reviews before a partner would sign the return or, you know, a senior manager can sign tax returns, a manager can sign tax returns even, so I don't want to cause a confusion there. But they are reviewing all of the work done by the tax team below them and probably liaisoning with the client in building client relationships more so than the staff manager and senior.

Q. And when did you become partner?

A. I think it was July of 2021.

Q. So roughly after five years as a senior manager?

A. Yeah, that sounds about right.

Q. And what are the roles of a partner in the tax practice?

A. So the partners are tasked with generating business, keeping current clients satisfied, overseeing the overall work product.

Anything specific that you want me to get into?

Q. Do they have ultimate responsibility to take sure tax returns are prepared and submitted correctly?

A. I think that's fair to say since they're the -- they're at the top of the food chain and they have the client relationship and the firm is trusting the partners, yeah.

Q. And what is a partner supposed to do to make sure that a client's tax returns has been prepared correctly and accurately?

A. They're reviewing it to see if, after the team has prepared and there's been multiple levels of review, that they're comfortable that all of the tax positions in the return are appropriately stated.

Q. I guess my question's how do they do that? How does a partner get comfortable that all of the tax positions in the return are appropriately stated?

A. That's an open-ended question.

Anything more specific or do you want an open-ended question like that?

Q. I guess it's sort of open-ended. I want your understanding of what an EY tax partner is supposed to do to make sure that tax positions in a client's return have been appropriately stated.

A. I can answer that.

So when a partner -- when the return makes its way, I guess the starting point, his or her team would have received information from the client and then they would have prepared a tax return. The partner's updated along the way by all of his or her team members. And if it's a continuing return, like a new taxpayer that's filing or if it's a historic one, you might have knowledge of historic positions that are already established. So there's a lot of I guess judgment along the way. But you're ultimately getting -- when you're reviewing at a partner level, you're getting a set of work papers that have been reviewed multiple times and you're getting a tax return that's been reviewed multiple times, and based on your experience you can step in and look at that and see if you have any issues. There's usually some back and forth with the manager and senior manager on questions that might pop out from reviewing the tax return and you work through those. Maybe you even have to go back to the client and ask a question. All those things factor in to the point of getting comfortable to sign the tax return.

Q. So is there an expectation that the partner will review the work papers to make sure they support the positions that are taken in the tax return?

A. An expectation I think you would receive the work papers. I was at different positions at EY throughout my time but at the end I was a partner. But my expectation, whether it was me sending it when I wasn't a partner to a partner or when I was a partner was that you would open the return, look at all the work papers, and see if you have any questions or issues before moving forward.

Q. When you become a partner at EY in the tax practice, are you given any sort of instructions or guidelines as to what you're supposed to do to make sure you're comfortable before a tax return gets signed off?

A. I don't recall anything different that was -- I don't recall anything different necessarily.

Q. Different than what?

A. Different than what you would have learned along your path to getting there, yeah.

Q. So you left EY in October of 2021; right?

A. Yeah, I think that sounds the right time frame.

Q. So you decided to be a partner for all of like five or six months?

A. I think it was possibly shorter.

Q. Why did you leave after getting the brass ring?

A. I just got a really good opportunity where I'm at right now, a family office that piqued my interest. I talked to the folks there. I was really excited about all the interesting work I could do at the new spot and ultimately decided it was what was best for myself and my family.

Q. Do you have any current agreements with Ernst and Young that are still operative or active?

A. Not that I'm aware of. I had to sign something when I left, like a -- I think there's a standard separation agreement or you have to get out of the partnership agreement once you're in, yeah, but nothing else that I'm aware of.

Q. You started working on Raiders tax compliance work after 2012; right?

A. I think that sounds about right, yeah.

Q. And you began working on the Raiders annual audits by 2015; right?

A. I don't recall the exact year that I began. So there's two different teams here. There's the audit engagement that's the standalone engagement each year and there's the tax compliance engagement, it's a standalone engagement each year, and there's other tax advisory projects that came up, but they were discrete.

As far as when I began as one of the tax team members providing support for the audit team, I don't recall the exact year, but 2015 or so, 2015/2016 sounds around -- it was a few years after I had started, I believe, on the tax compliance side.

Q. And at that time, at the time you were first assigned to support the Raiders audit team as part of the tax team, you were reporting to Mark Bookman; is that right?

A. I'm not sure at which point, because there was some changes over time on who I reported to. So I'm not sure who was -- that I was reporting to when I began -- I think you asked when I started working as part of the audit as a tax support team, who I was reporting to. I'm not sure if it was him. If it wasn't him at that time, it was him shortly after.

Q. My understanding from the deposition that you gave here was that at different times when you were working on the Raiders tax team in support of the audit team, you were reporting to Mark Bookman and Ed Koijane and you're saying there might have been a third person before Bookman?

A. Yeah, originally when I started, I could have been a staff, probably a staff if I'm working on the timing out right now. But a guy named Matt Manza was who he reported to and the partner -- he was a manager. The partner at that time was Howard Ro. Because I don't have an exact recollection of when I began as a tax member supporting the audit, I don't know who I would have been reporting to at that time.

Q. You told us that in 2016 you made senior manager; right?

A. Yeah.

Q. And that's the level below partner; right?

A. That's right, yeah.

Q. So for most of the time when you're working on the tax team supporting the audit team, you are the senior-most person on that team below the partner?

A. That would be true if I was a senior manager, but it could have been that I was a manager at some point while -- or senior. I don't recall when I started working on the audit exactly, but yeah.

Q. You said that you started working on the audit as best you can recall in the '15 to '16 time frame? That's what you said a couple of minutes ago.

Is that right?

A. I think I said something along those recalls. I said I didn't recall, but that sounded about right.

Q. If that is right, then you were a senior manager for most of the time that you were working on the Raiders audit?

A. Yeah, I guess since I was there 2016 as a senior manager until making partner in July of '21, most of the time would have been senior manager.

Q. So as a senior manager working in support of the audit team on behalf of the tax team, what were your responsibilities?

A. My overall responsibilities in that regard would be supporting the audit team and, you know, they would design the audit, the procedures, and let us know what they wanted us to focus on. And so the tax team that was supporting the audit would do what they asked of us, whether it was looking at whatever they wanted to focus in on.

Q. So in a law firm like mine, we have a case, it's often the case that a senior associate does a lot of the day-to-day work and kind of report to the partner who will oversee things with incredible diligence and oversight.

Is it working the same way in EY when you're supporting the audit team? Are you doing the day-to-day work and sort of reporting up to the partner on what's going on?

A. For what work exactly, sorry?

Q. Whatever work you're doing as part of supporting the audit team.

A. Yeah, what I recall is the tax team might be five core people that were working on the tax compliance. Not all of those people have necessarily worked in support of the audit engagement as well. My

recollection is that I was mostly manager and above for this tax team in support of the audit team.
But can you ask your question again now?
Q. I'm asking who was doing most of the day-to-day work on the tax team in supporting the audit team?
A. I mean, I think it's fair to say that the manager and senior manager would be doing more of the day-to-day than the partner. But I don't recall there being a significant amount of, so to speak, day-to-day work on this.
Q. Was the work that the tax team did supporting the audit team occurring primarily around the time of the audit?
A. I think in general, yes, there was -- I recall there being, out of the other meetings, not during the core audit procedures that occurred, like planning events and whatnot.
Q. So I think what I'm understanding from the last couple of

answers, Mr. Keel, is that the work that the tax team did supporting the audit team wasn't a year-round work stream, it was clustered around when the audit took place and, during that period, the day-to-day work was done by the manager and the senior management; is that a fair summary of it?

A. I'd say the majority of the work that the tax team did in support of the audit team was around -- I think it was in the May time frame, generally speaking, and then there would be one or two planning meetings that -- or more. I don't recall exactly.

But is your question on the day-to-day again?

Q. The question on the day-to-day is that, am I right, that when the work was going on, the day-to-day work was being done primarily by the manager and the senior manager?

A. Yeah. I don't know if day-to-day -- I don't know how many day-to-days there were. There was a few week period that we would be involved as the audit team designed what procedures they wanted us to perform and I think all managers through partner was involved as was the partner spending probably less hours, I'd imagine so.

Q. During your time on the Raiders engagement, the Raiders used an income tax method of accounting; right?

A. There were a few different financial statements issued, but one of them was on a federal income tax basis of accounting, is my recollection.

Q. The financial statements that they used to prepare their tax filings were done on an income tax basis of accounting; right?

A. I think that's right.

Q. And that means they reported income according to IRS reporting rules?

A. Yeah, IRS, the code, the regulations and every other piece of guidance out there.

Q. And that is part of the reason why it was important for the tax team to play a role in the audit; right?

A. Yeah. In this case, there's other financial statement audits that are not on an income tax basis. The tax team still plays a role. It's just more so around say an income tax provision or what have you.

Q. You were assigned to the Raiders audit team, you interacted with Javier Garcia; yes?

A. Javier and I worked together on the Raiders account. I was -- for some number of years, it sounds like in the five to six-year range, I was the core audit team engaged with us, the tax team, to support their financial statement audit.

Q. Did you interact with Tyler Johns in the course of doing that work?

A. Yes.

Q. What about Mike Gottlieb?

A. I'd say a little bit certainly, but not quite as much as Javier and Tyler.

Q. Why was that?

A. I don't exactly recall sitting here right now, but I think he was like the coordinating partner review. That's my recollection. I think Javier was the main audit partner on the account.

Q. You and the --

MR. REED: Strike that.

Q. The audit team worked closely with --

MR. REED: Strike that.

Q. The audit team worked closely with the tax team each year; right?

A. What do you mean by -- we worked together. What do you mean closely?

Q. Let's look at your deposition. If we could pull up page thirty-four, line twenty-two.

You see you were asked: "Well, did the audit teamwork closely with the tax team in connection with the audits each year" and your answer: "I'd say as a general matter, it's maybe fair to say that we worked closely together".

Do you remember hearing that question and giving that question?

A. Yeah, now that it's shown here, I think I recall that.

Q. Was that a true answer?

A. Yes.

Q. And the audit team and the tax team shared information among each other when they worked on the audit together?

A. We had information sharing as far as there was -- there was a system that retained all of the audit work papers, and so the information was in that portal, if you will, or system.

Q. And you had access to that?

A. I had access to that system, yeah.

Q. And was it generally the case that, when working on the Raiders audit, if the audit team had a question regarding income tax accounting, they would consult with the tax team about it?

A. I think that's generally fair to say that they would consult with us if they had a question.

Q. Now, in working on the Raiders audits, the tax teams and the audits teams would meet to discuss material items in the Raiders financial statement; right?

A. Yeah, we would -- as I was mentioning earlier, there was these planning meetings that would kind of set the scope and the plan for the audit and my recollection is that they would raise material items and explain what the focus area would be for that particular year.

Q. And why was it important for the tax team to know what were the material items and how they planned to address them?

A. I think it was important.

Most of the time I would say it would be bringing up new material revenue streams, new material expense items that we could look at those because we would need to refer to historic ones. There would have been an established method of accounting already, so they're bringing up material -- material changes in the company's business that they wanted us to look at.

Q. Do you recall that the revenue from NFL Ventures was identified as a significant account for the Raiders every year?

A. I definitely recall sitting here now after, you know, deposition and all, I think my recollection was that it was a significant revenue stream of the company.

Q. Let's look at JX 47, please. If you open your binder, you'll find it in there.

I don't want to spend too much time on this, but just to orient us, this was a meeting invitation that you sent out on the 14th of March, 2019; right?

A. Yeah, it looks like it was sent on March 14 for a meeting on March 19, 2019.

Q. And the subject, Raiders audit tax regroup.

Do you see that?

A. Yeah.

Q. What's an audit tax regroup?

A. I think it's just saying let's get together and talk about these things.

Q. And then if you flip over, there's an agenda. And primarily what I want to know here is if you prepared that? Would you have been the one to make that agenda and send it out as part of the meeting invite?

A. I don't recall exactly. But looking at it, it might have been a collaboration to come up with these items. There's audit team members on this list and several tax team members.

Q. Is this the sort of meeting that would happen through each audit cycle?
A. I'm not sure if this is the same meeting that would be called a team planning event because I think that would be denoted clearly as such.
Q. We're going to look at a team planning event slide in a minute. But I'm asking for now whether, aside from the team planning event, it was common to hold these kinds of regroup meetings to go over issues.
A. I don't recall exactly, but I know from -- I do recall that these happened in the -- my recollection is about over I guess the few years before I left and that I do think meetings like this occurred.
Q. So now go to JX 48.
Now, is JX 48 a slide deck that relates to one of the team planning events you were mentioning a minute ago?
A. Yeah, it looks like it.

Q. And this was an event that happened as part of every audit cycle; right?
A. Yeah, that's my recollection.
Q. If you flip the page over, you'll see you had an agenda and a composition of team.
And the composition of team shows both the audit members and the tax members; right?
A. Yeah, I see the team members listed out there.
Q. And there you are as the senior manager.
Do you see that down at the bottom?
A. Yes.
Q. So generally the purpose of this meeting was to plan the audit by identifying areas of risk to focus on, procedures to address those risks, and in general scope out the audit; right?
A. I wouldn't characterize it like that exactly.
Q. How would you characterize

it?

A. I believe the audit team would have been planning the audit engagement out separate and kind of prior to this meeting and then we would come in and discuss the plans for the audit for that current year. So not meant to -- like the meeting itself wasn't to plan the audit, it was to discuss the plans for the audit.

Q. So are you saying that this is where the audit team would brief the tax team for what the plan for the audit was?

A. Yeah.

Q. And did the tax team have any input into that plan? If you thought there was something that should be done or some other procedure that should be implemented, would you have been able to express that?

A. We would have been able to express that.

Q. Would the audit team have taken that input? Obviously they

exercised their judgment, but they listened to you; right?
A. I believe they would have, yeah.
Q. So let's go if we could to page eight of this exhibit. And this is a slide addressing the agenda item fraud and significant risks.
Do you see that?
A. Yes.
Q. And what does that refer to? When you're talking about fraud and significant risks in the scope of an audit, what are you discussing?
A. So I'm not an auditor but I can share my nonspecialist --
Q. Well, based on somebody who assisted the audit team for the Raiders for a period of six to eight years, sat in a bunch of these meetings, what do you understand --
A. I've also sat in other meetings like this for different clients.
Q. So you know what this is.

Tell us what you understand.

A. I think as part of any audit, the audit team is -- and the firm needs to be aware of any -- the risk of fraud and other risks, and so I think my recollection is each team planning event, whether it was for the Raiders or for a different client, would have a discussion where we would go around and ask everyone whether they're aware of any fraud.

Q. One of the things as an auditor you're supposed to do is plan procedures to discover fraud; right?

A. I'm not sure on that.

Q. Really? You don't know, as somebody who worked at EY and supported the audit team for eight years, whether one of the auditor's jobs is to implement procedures to try and detect whether any fraud exists?

A. I think -- yeah, I don't recall sitting here right now whether it's the job of the auditor to detect fraud or not. I'm sorry, I don't recall.

Q. The top line of this slide says, "none in the prior year, one higher risk area", paren, "revenue recognition", closed paren, "designated as high inherent risk only".

Do you see that?

A. Yes, I see that.

Q. Do I correctly understand that to say the audit team understood that revenue recognition was inherently a high risk area for purposes of an audit?

A. I can only go off what is on the slide here, but it seems like they're identifying it as a high risk area for fraud.

Q. But you're saying you don't know anything more than what's written on the page there?

A. Yeah, I don't.

Q. Do you have any recollection that the audit team and the tax team together understand that the Raiders revenue recognition was inherently a high risk area for purposes of audits?

A. I don't. I mean, this would have been 2019.

You're saying at that time frame or a different time frame?

Q. I'm saying throughout the audit period, did you have ever have that understanding? Throughout the years you were working on the engagement.

A. Prior to the whistleblower?

Q. Yes.

A. No, I didn't have any -- yeah, I don't recall.

Q. Further down on the slide you'll see the bullet point revenue recognition. And the second bullet point there says, "in prior year, approximately seventy-nine percent of revenue was NFL revenue share".

Do you see that?

A. I see that, yeah.

Q. Do you know what the significance of that fact is in the context of fraud and significant risks?

Do you know why that's there?
A. I don't know why it's there other than it being a significant revenue stream.
Q. Did you understand that that was signifying that was something that the audit team audit to be paying extra attention to?
A. I don't know. I don't recall exactly.
Q. That's fine.
On the -- in both the tax aspect of your work and the audit aspect of your work for the Raiders, your job was, among other things, to make sure the Raiders revenue recognition was correct; right?
A. I think we have -- sorry, can you restate it? Are you asking in both capacities that I was serving or --
Q. Yes.
A. And can you state the question one more time?
Q. In both capacities, part of your job was to make sure that the

Raiders revenue recognition was
correct?
A. I'll take it in two parts.
For part one, in support of the financial statement audit, the tax team was supporting the core audit team, my job was to look at anything that the audit team designed and wanted the tax team's involvement to review.
Then as far as the separate engagement where we did tax compliance, among other things, there are different statements of work, one of the aspects of my job was preparing or overseeing the preparation. I think I signed a return or two near the end of my time at EY. We tasked with trying to prepare a return as accurately as possible with all positions supportable under the applicable guidance. And one of the things a tax preparer -- if it gets information from the client and it doesn't have any reason to believe that it's incorrect, then you can rely on that information. So I think that was

a longwinded answer, but --
Q. It was a longwinded answer and I'm not sure it's an answer to my question, so let me pose it again. Maybe it was, maybe I misunderstood.
What I'm trying to understand is what is it part of your job, as a member of the Raiders tax team, the EY Raiders tax team and a supporting member of the EY audit team, to make sure that the Raiders revenue recognition was correct?
A. For the audit side?
Q. For both.
A. I think I answered the audit side. I did what was asked of me, so I think the audit team -- well, first of all, the financial statements are management's and the company's financial statements. EY is auditing them and I wasn't a member. I'm not an auditor, I'm not a member of the core audit team. We get brought in as specialists to look at things that they discuss to look at. So that was really

management's -- the company's financial statements and the EY audit, the core audit team.

As far as the tax return, I think we could rely on the information provided to us, trial balances, financial statements, what have you, that the company prepared. So I think in principle, yes, we're trying to get the tax positions correct, but we have to be able to rely on information provided by management of the Raiders.

Q. So let's break it down.

On the tax side, focusing only on that, pushing the audit to the side for a second, on the tax side, if I'm hearing you correctly, you're saying it's not your responsibility to make any assessment of whether the Raiders revenue recognition was correct, you were entitled to take their financial statements, prepare a firm based on them, and file?

A. There's more color based on that.

Q. What's the color?
A. The color, for example, I think the whole point of this discussion is the revenue recognition around remittance payments by NFL Ventures?
Q. Yes, we'll get there.
A. That was, as far as I knew the whole time I was there, an established method of accounting that goes back several years. So if you have an established method of accounting and you're not aware of anything changing with respect to the facts, you can -- you don't need to look at it, relitigate the tax position on the timing of the revenue recognition. If there's new items, relocation to Las Vegas or other clubs relocating to Los Angeles, there's things that you look at closely to make sure that you're getting properly reflected on the tax return.
Q. So the first -- let's assume a hypothetical in which you are

preparing a return for the Raiders the very first year they start to receive NFL Ventures income.

In that year, is it part of your responsibility as a tax preparer to assess whether the Raiders are correctly recognizing the revenue from NFL Ventures, that new revenue stream?

A. I think that would be fair to say, yeah.

Q. And then in subsequent years,ing you're saying if it was an established method, you don't have to go relook at it every year?

A. I think that's right, unless you see something on the balance sheet or income statement that would lead you to believe that your prior understanding of the method was incorrect.

Q. Now, on the audit side, you understand the auditor's job is simply not to take the financial statements and accept them but to audit them and see that they're correctly stated;

right?

A. I think that's generally what auditors do, yeah.

Q. And so was it your understanding that part of the audit team's job each year was to assess whether the Raiders had correctly recognized revenue with respect to NFL Ventures?

A. I think their job was to audit the financial statements and books and records that were prepared by management and my recollection is that auditors are trying to review it such that the financial statements are free of material misstatement.

Q. And --

A. And they give an opinion letter, right, that says whether it's qualified or unqualified, that kind of thing.

Q. One of the things the auditors need to understand in deciding whether to opine that the financial statement fairly presents the organization's financial results is whether revenue reflected on that statement has been correctly recognized; right?

A. Yeah. I think the financial statements are comprised of balance sheet, income statement, cash flow statement, footnotes, all those things, including revenue.

So could you -- sorry, I'll need to ask if you can ask the question one more time.

Q. It's a very specific question.

When the EY audit team is auditing the Raiders financial statements, one of the things they need to do is confirm that the revenue related to NFL Ventures reflected on those financial statements has been correctly recognized; isn't that right?

A. I think it's right, especially since it's a material item, that there should be -- they're auditing it. It doesn't mean that they can necessarily catch it if there's an issue, but they're doing procedures to ascertain if it's materially correct or not.

Q. Is that one of the things that the tax team would support them on in helping them understand whether the revenue for Ventures or any other particular line item had been correctly recognized?

A. My recollection is that they would involve us in new material revenue streams or new expenses that were material. So I don't have a recollection outside of that.

Q. But if there was a new revenue steam that appeared on the Raiders financial statements one year, the audit team would be likely to consult with the tax team as to whether the revenue on that new stream had been correctly recognized; right?

A. Yeah, for the tax basis financials, I think that's fair to say.

Q. And when you, as a tax

person, are looking at whether revenue has been correctly recognized, one of the things you need to know is when it was earned; right?

A. Yeah, I think that's fair to say.

Q. Is it also relevant to know when it was actually received, when the cash was received?

A. Yeah, that can impact the timing of when it's appropriate to recognize the revenue.

Q. And you also want to know obviously when it's been booked; right?

A. Booked is -- do you mean when it's recognized as revenue in the financial statements?

Q. That's exactly what I mean.

A. Yeah. I think the first two items in general are important.

Q. So in 2021, you recall there was a point in time when the Raiders -- when personnel from the Raiders informed Ernst and Young that there had been an accounting misstatement in

their financial statements; right?
A. Yeah.
Q. And you were one of the people at EY who worked on trying to understand the extent of the error; right?
A. I do recall I was one of the people at EY. There was also people outside of EY that the company had hired to --
Q. Right.
Ankura; right?
A. That's my recollection.
Q. And you had regular meetings in the wake of --
MR. REED: Strike that.
Q. As part of the effort to understand the scope and extent of the error on the Raiders financial statements, you had regular meetings with sort of a working group; right?
A. Can you describe who this working group is? There were meetings.
Q. Javier Garcia was part of this; right?

A. Yeah, once there was the allegation of fraud by the whistleblower and there was an understanding of overstated revenue, there were regular meetings and I believe Javier was -- at least on our internal EY meetings, Javier was in those meetings.

Q. Turn, if you would, to JX 693 in your book.

So you'll see that's an e-mail from you on the 10th of August, 2021, to Ed Koijane with a cc to Allison Jones?

A. Yeah.

Q. Ed Koijane we've talked about.

Who is Allison Jones?

A. Allison Jones, my recollection is she's in EY's national tax group.

Q. And the subject of this e-mail is AR NFL Enterprises reconciliation.

I'm getting ahead.

Was Ms. Jones somebody who was working with you to work on the effort to scope out the extent of the misstatement on the Raiders financial statements?

A. I think she was working with us to understand a couple of things and one was whether this could be viewed as a method that could be through maybe a method change and, yeah, the extent of the overaccrued revenue, if you will.

Q. So there's a series of attachments to this e-mail. The first group are what I think we in this room have been calling capital roll forwards.

Do you recognize those documents? I think it's several iterations of the same documents over a few years.

A. I recognize them because I've looked at them in the deposition and during '21, 2021 after the whistleblower.

Q. These roll forwards are some

of the documents you used to help
figure out and quantify the error;
right?
A. Yeah, I think they were part
of what we were looking at.
Q. And then if you print to the
legal size attachment as it's printed
out here, it's a spreadsheet.
Do you recognize that?
A. Is it available in the native
form, like the Excel?
Q. I think it is.
A. Yeah, I think I recognize
this file.
Q. Is this one you prepared?
A. I think some of the tabs are
not prepared by me but I may have been
involved in the first -- can you flip
to the second tab? I recall I think --
well, I'd have to look at all the tabs,
but I do recall working on the one
that's shown on the screen right now.
Q. That's what I want to ask you
about.
Let's scroll on the bottom so

we can get to the bottom of the spreadsheet.

You'll see it's tracking the Raiders financial year by year 2006 through 2019?

A. Yeah, it's going 2006 to 2020, it looks like.

Q. Let's go back to the beginning.

And you'll see the highlighted row or the shaded row sort of a third of the way down that's got the legend tax year?

A. Yeah, I see that row five.

Q. I could have used that number, too.

That's the Raiders' tax year you're looking at in this analysis; right?

A. Yeah, they were on a calendar here.

Q. And what you are doing here is you are you want to quantify it or backing out two separate issues; right? One is a deferral of income and the other is a January accrual that resulted in double-counting; right?

A. Yeah, I think that's fair to say there was two issues that were cutting I think the opposite direction but building over time.

Q. So the accrual issue -- I'm sorry, the first issue, the deferral of income, that results because -- let's just pick a year. Let's say the 2010 season. You're saying that there's a deferral of income of nearly $25 million, right, on row seven?

A. Yeah, I see that. It's always hard with the different year-ends. I do see the twenty-five million.

Q. Let me try and see if I can remind you and talk you through it.

Do you recall that the Raiders had the fiscal year on a calendar year, right, ending 12/31?

A. That's right.

Q. And the NFL season and NFL Ventures had a year ending 3/31; right?

A. Yeah.
Q. So you recall that what the Raiders was doing -- this is what you learned in 2021 -- that what the Raiders were doing in any given tax year, so let's say in 2010, in March they would recognize all of the revenue for the 2009 NFL season which ran from April, '09 to March 31 of 2010; right?
A. Yeah, I think you just switched years on me --
Q. Did I?
A. One column to the left. Because you were saying the 2010 tax year. It would have picked up the 2009 season.
Q. Let's start over.
So let's stick with the 2010 tax year.
We see that $25 million deferral of income; right? And that results from the fact that, what happens in March of 2010, the Raiders recognize the entirety of their NFL Ventures revenue for the 2009 season

which ran from April, 2009 through March of 2010; right?

A. So in the 2010 tax year, they would have picked up the 2009 season that ended in March of 2010.

Q. Right.

A. Yeah.

Q. So nine months of that revenue had been earned in the prior year, you're saying it was improperly deferred into 2010 and you're backing that out?

A. I think that's accurate, yeah.

Q. And you know from your investigation that the Raiders called that the lag method; right?

A. Yeah. I came to learn about the lag method in detail in 2021. We weren't aware or I was not aware that they were deferring income. The balance sheet shows a large receivable. That's not indicative of deferring income.

Q. Right.

So during the entirety of -- prior to 2021, you were never aware that the Raiders were using the lag method?
A. I think that's accurate.
Q. And as far as you're aware, nobody on the Raiders tax team was aware that the Raiders were using the lag method; right?
A. The Raiders tax team?
Q. I'm sorry.
As far as you're aware, nobody on the EY tax team knew that the Raiders were using the lag method?
A. As far as I'm aware, yeah.
Q. Do you know whether anybody on the EY audit team knew that the Raiders were using a lag method?
A. I don't believe they were aware of that.
Q. Why don't you think they were aware of that? Is it because they would have told you?
A. Because -- well, I think they're -- and this is -- I don't know

at what point in time I became aware of this, but I believe their work papers show that they didn't have a correct understanding as far as what the Raiders were doing with remittances. I think they thought remittance is March 31, that they were collecting the cash after that letter, not that letter was basically reporting all of the cash that was received for that season.

Q. But if the Raiders had earned the revenue -- let's again stick with our 2009 season. Sorry, 2009 tax year.

A. 2010 tax year is what we're --

ARBITRATOR BICKERMAN: You had been using 2010.

Q. Row five, 12/31/2010, column H, so let's stick with that year.

So if the Raiders recognized the 2009 season's tax --

MR. REED: Strike that.

Q. If the Raiders recognized in the 2010 tax year the entirety of the 2009 season's Ventures revenue, your understanding is that they would have been properly deferring nine months of it?

A. They would have been picking up nine months that should have been picked up in the prior year and then --

Q. That's my point.

Would that conclusion change if the cash came in subsequent to when the revenue was recognized in 2010?

A. Sorry, can you say that question again?

Q. So we have a circumstance in which the Raiders, in March, 2010, recognize the entirety of the just concluded season's Ventures income; right? And we've established that if they're doing that, they're picking up nine months of income in 2010 that should have been recognized in 2009; right?

A. Yep, following, I think.

Q. So if we assume all of those facts and we assume the additional fact that the income that they're recognizing for the 2009 season in March, 2010 is, in fact, actually paid during the remainder of 2010, so it's paid in arrears, does that change --

A. You're saying the -- does it change when -- yeah, sorry, ask it one more time.

Q. I'll start again.

So we're working in a circumstance where the Raiders recognize the entirety of their 2009 Ventures revenue in March, 2010. And we've agreed that that picks up, as you've described it, nine months of revenue that should be in 2009 and improperly moves it into 2010?

A. Yeah.

Q. My question is if we assume the additional fact that the cash is actually subsequently received during the remainder of 2010, does that change your view that it should have been nonetheless recognized in 2009, those nine months?

A. I think it would depend. And

I don't know that we -- it could be that it was earned during those nine months regardless of earlier earned or received, so it's possible that that would have been still properly reported in 2009.

Q. I think that's where I'm trying to get to.

If we assume -- the reason you're saying it should have been -- these nine months should have been recognized in 2009 is that's when it was earned; right?

A. I think it's both. It was earned and the cash was received in those months.

Q. And what if it would have been only earned?

A. I think you have to look at it. I don't know sitting here today what the answer would be.

Q. The other error was what you have in row six where you say January subsequent year cash accrued into prior year.

Do you see that?

A. Yeah.

Actually, going back I think in general you would -- I haven't looked at revenue recognition for a little bit, but I think in general if you've earned it as an accrual method taxpayer, I think there can be exceptions, but I think you would, even if the cash came later, pick it up.

Q. So in the hypothetical we're discussing, if the revenue is earned during 2009, recognized in March of 2010, and then paid throughout the remainder of 2010, it should still be recognized in 2009?

A. Yeah. I don't know for certain, but I think there's -- it's usually the general understanding that it's the earlier of earned or received and if you receive it before, then there's other sets of rules that you could defer in certain circumstances.

Q. But here we're talking about receiving after.

A. Right.

And so I don't know sitting here right now.

Q. Then the other error is reflected your row six here, January subsequent year cash accrued into prior year.

And that refers to the fact that the Raiders were accruing a January payment from Ventures into the prior year having previously already recognized the January payment in that year; right?

A. I think it was -- to start with, yeah, they were taking a January payment and accruing it into the income of the prior year, so for this column H, that would have been cash received in January, 2011 that they accrued into December, 2010. And then it gets picked up again in the next season. Not the next season, in the next tax year.

Q. And you're only allowed to count it once; right?

A. Yes.
Q. Let's go to JX 103, please. And I want to actually -- you can flip through any of this you want to. These are some of the work papers from the 2014 audit. I don't think you actually were -- you weren't necessarily on this one, but it's indicative so I'm going to show it to you.
Go to page twelve of fifteen, please.
The yellow I understand with EY's work paper notes. The spreadsheet on the left I gather reflects journal entries related to the NFL Ventures account.
Did you ever work at those as part of your work on the tax team?
A. I definitely recall, not necessarily 2014 we're looking at, but in 2021 -- well, I think it was the 2020 audit, but in the 2021 year I remember looking at after the whistleblower came out, definitely looked at it, yes.

Q. Did you ever look at this prior to the whistleblower coming out as part of your work supporting the audit team?
A. I don't -- I don't recall.
Q. If you look at this, you can see the top line is remittance earned.
Do you see that?
A. I see that, yeah.
Q. And you understand that's the March remittance amount that the Raiders would book from Ventures?
A. I'm not sure. It's called remittance earned and it's in March.
Does that agree back to the other schedule we were just looking at?
Q. I'm not worried about the amount. I'm just asking if you recognize is that an entry that reflects the remittance earned that year. Putting aside whether the amount is correct, is that what it's supposed to book?
A. I'm not sure, actually. It looks like --

Q. You looked at these as part of the 2020 audit?
A. I'm not sure if the work papers looked the same or if I recall right now.
Q. Let's back up --
MS. VAN WINKLE: I'm going to object to this line of questions. The witness has no foundation.
MR. REED: That's what I'm trying to establish.
THE CHAIRPERSON: I'll let counsel proceed.
Q. I thought what I heard you say a minute or two ago that, as part of the 2020 audit, you did look at journal entries in this form.
Did I misunderstand?
A. Well, I don't think these are journal entries necessarily. It's a schedule. I think what I said was that we did look at the NFL Ventures revenue in 2021.
Q. Let's try and cut through it.
Did you ever see a schedule

in the form that's laid out on the screen right now, the left side of JX 103, twelve of fifteen?

A. Did I ever see one? I don't know.

Q. So you don't know if you saw this in connection with your work on the 2020 audit?

A. I'm imagining there's maybe a similar schedule that has figures from remittance Ventures. I somewhat recall this Gatorade thing. I'm sure there were some things similar.

Q. You can set that aside.

As part of your work on the 2020 audit --

A. I don't want to speculate. I imagine there may have been something similar.

Q. As part of your work in responding to the whistleblower report, you came to understand that the Raiders had been reporting thirteen months of revenue in every twelve-month fiscal year for the impacted period; right?

A. That's right.
Q. Did you ever come to an understanding as to how EY missed that, failed to identify it?
A. I don't know if I came to a complete understanding of how that was -- how management booked thirteen months of revenue, other than it was included in two different years.
Q. My question was slightly different, which is did you come to understand how Ernst and Young failed to identify the fact that the Raiders were booking thirteen months of revenue into each twelve-month fiscal year?
A. I don't recall if I recall that I did.
MR. REED: We've been going a little more than an hour. I'm about to switch topics.
Should I continue or should we break? I'm fine either way.
MS. VAN WINKLE: I would like a short restroom break.
THE CHAIRPERSON: Let's take a

break.

(Whereupon a break was taken)

THE CHAIRPERSON: Let's go back on the record.

Mr. Reed, you can continue.

Q. Mr. Keel, you testified earlier this morning that you didn't recall, as a member of the tax team supporting the audit team, ever looking into the issue of how the Raiders recognized NFL Ventures revenue; right?

A. Can you pull up the transcript? Is that exactly what I said?

Q. You're remembering it differently, tell me.

A. I don't remember it.

Q. I think what you said was you would tend to advise on recognition of new revenue streams but not existing revenue streams.

Does that sound familiar?

A. That sounds familiar. We would advise on what the audit team asked us to based on how they designed their procedures for whatever year that was in question and, yeah, if there were material changes, I suppose, it's feasible that they would have asked about existing things that weren't new.

Q. Am I correct that you don't recall ever being asked, as a member of the tax team supporting the audit team, to advise the audit team on whether the NFL Ventures revenue had been properly recognized?

A. I don't recall that, yeah.

Q. Let me pull up page eighty-seven of Mr. Keel's deposition.

Do you recall, Mr. Keel, being asked this question: "Well, how can the audit team get comfortable that the revenue from one of the largest revenue streams for the company is being reported consistent -- being reported properly on an income tax basis without consulting with the tax team about that".

Your answer: "The method for recognizing this revenue was established long ago and my recollection is there was nothing that came about to call into question that it was an improper method until the whistleblower came".

Do you recall that?

A. I can read that here, yes.

Q. Was that correct?

A. I think it's also referencing -- my answer is referencing a prior answer, too, because I'm saying "as I mentioned".

Q. Let's put up the prior answer just so we're clear.

A. I see what's on the screen, but I don't know if that's what I'm mentioning as I say in the next answer, "as I mention". I think I'm referring to this NFL Ventures revenue stream has been going on for a long time and there's an established method of accounting was the understanding. I think there must be another question and answer where I refer to that.

Q. We'll look for it on a break.

Go, if you would, to -- you should still have JX 693 in front of you? That's the spreadsheet we were looking at.

A. Is it on the screen?

Q. So JX 693, as we established before, is an e-mail from August 10, 2021 that you sent to Mr. Koijane and Ms. Jones. The first group of attachments were a series of NFL Ventures capital roll forwards.

Do you see that?

A. I'm through a couple of pages and I see Ventures capital roll forward.

Q. I can tell you -- and if you want to flip through and verify -- these are several years of the same document, the capital roll forward.

I think you testified before that these were among the documents you used in figuring out the nature and size of the error on the Raiders financial statements; is that right?

A. I think this was some of what

was used for that, yeah.
Q. Do you recall how these particular documents helped you?
A. Sorry, let me take a look again.
I think my recollection is that these schedules would show the entire remittance for whatever season it was and also when those distributions were made.
Q. And do you recall how you obtained these?
A. I have become aware that I think it was in the -- my deposition that Mr. Villanueva had sent these over the years as part of a tax projection work. We didn't request these but as far as for 2021, this work, I don't know where they came from, if they came from Ankura or what have you. I think the audit team shared them with the tax team.
Q. Do you know --
A. I became aware later I think in a couple of years that Ed had

forwarded those to some of the tax team members, including myself.

Q. Do you know who Travis Scott is? Not the rapper, the Raiders employee.

A. I know who Travis Scott is, yes.

Q. Do you know whether he sent these to you or to somebody at EY in and around 2021?

A. It could be that he pulled them all and sent them. I don't recall exactly.

Q. And you mentioned that you subsequently learned that Ed Villanueva had been sending these to you in prior years; right?

A. Yeah, I had learned that through the deposition.

Q. So look at JX 391, if you would.

Do you see that's an e-mail chain the top one of which is from Mr. Villanueva to you and Mr. Bookman on the 20th of December, 2016?

A. Yeah, I see an e-mail from
Mr. Villanueva to Mark and me.
Q. If you go to the page ten of
the exhibit.
A. I see it.
Q. And you'll see there that's
the March 31, 2016 Ventures capital
roll forward?
A. Yeah, I see that.
Q. Do you see page eleven is
schedule two?
A. Yes.
Q. And page fifteen is -- I'm
sorry, page twelve starts schedule
three?
A. I see that.
Q. Go to JX 178, please.
MS. VAN WINKLE: JX 178?
MR. REED: JX 178.
Q. You'll see that's an e-mail
the same day, December 20, 2016 from
you to Jeff De Gregorio, copying
William Webster center.
Who was Mr. De Gregorio?
A. I believe in 2016 -- so he

was on the tax team, but I don't recall if he was -- probably a tax senior at that point in time.

Q. And that would have been senior to you in 2016 or junior to you?

A. Junior.

Q. Because you were a partner that year?

A. No, I'm --

Q. Sorry, you're a senior.

A. I think he was a senior manager, yeah.

Q. And you forward on to him the materials that Mr. Villanueva had sent to you, right, and they include the capital roll forward if you look at page ten of the exhibit?

A. Yeah, I see that. It looks like Ed asked Brad for the K-1s and Brad sent more than the K-1s.

Q. You tell Mr. De Gregorio, "save these to your desktop and eventually into OneSpace".

What is OneSpace?

A. It is our tax compliance and

I guess tax practice repository for engagements and projects. You'd save files there and ultimately like the tax work papers, tax returns, everything gets saved in that file for tax compliance engagements and other tax advisory projects.

Q. Now go, if you would, to JX 392. And you'll see that's an e-mail chain. The second e-mail from the top is from Mr. Villanueva to you on December 11, 2017.

Do you see that?

A. Yeah, I see that's from me to --

Q. I'm looking at the second e-mail now.

A. From Ed to myself and Jeff.

Q. And then the top e-mail is from you to Jeff, do you see that, on the same day?

A. I see that, yes.

Q. And you can see, if you flip the page, that Ed has sent you, among other things, the capital roll forward

for 2017?
A. Yeah, it looks like the capital roll forward and the K-1 packages from NFL Ventures and 32 Equity.
Q. And if you go to JX 617, do you see this is an e-mail from you on the 12th of December, 2017 to Brian Nguyen.
Who's Mr. Nguyen?
A. I believe he was a tax staff, but I don't recall exactly.
Q. You ask Mr. Nguyen to please save the attached documents into 2017 EYOS.
Do you see that?
A. I see that.
Q. What's the EYOS?
A. That's the acronym for EY OneSpace.
Q. And you already told us what that is.
If you go to JX 180.
A. I'm there.
Q. This is the capital roll

forward from March of 2018.
Do you see that?
A. Yeah.
Q. And I don't have the cover e-mail, but if you look on the bottom right of the page, you'll see that's marked TY 2018 tax compliance.
Do you know what that means?
A. I think that's a descriptor or name associated with a folder of the 2018 tax compliance within --
Q. Within OneSpace?
A. Actually, I don't know. But that's usually kind of the coding. It looks like how a tax engagement would be entered into the system, so I'm not sure if that's -- I'm not sure.
MS. VAN WINKLE: That's part of the Bates number applied during the production process.
THE WITNESS: So it may have been in OneSpace, I guess.
Q. If you look at JX 181, you'll see an e-mail from you dated December 5, 2018 to Mr. De Gregorio and

other people named Bridget Carlin, Jarred Morales-Mckinzie.

Who are Ms. Carlin and Mr. Morales-Mckinzie? Are they part of the tax team?

A. They were part of the tax team.

Q. And you'll see, if you flip to page seventy-eight of that exhibit, you'll find I think the March 31, 2018 roll forward.

A. The schedule three, I don't know if it's the same year.

Q. Now, when you received the roll forwards from either the audit team or Mr. Scott in connection with the 2020 audit, you didn't recall that you had previously been sent them; is that right?

A. That's right, yeah. This was around the time that, as part of the tax team, each year we'd enter into a new tax statement of work to do tax compliance or tax returns, estimates, and this projection that we would do each December of taxable income and Mr. Villanueva would provide this information to do that projection and one of the items of information that we needed was the K-1s from Ventures and 32 Equity, so all of these e-mails or most of them at least I think you'd see Ed asking for the K-1 from Brad Firestone and Brad it looks like included more than the K-1s.

Q. So is it --

A. I don't recall using those or for any reason related to the projection.

Q. Do you think you would have looked at them and known they existed at the time they came into you or did you find the K-1 and that was what you needed and you didn't review at the rest of what Ed had sent you?

A. I don't recall exactly. But I do recall what we were looking forward to do the projection was the K-1s.

Q. Look to JX 110, if you would.

A. It looks like the 2017 financial statements.
Q. Correct.
Go to page five, if you would. And you'll see there that the financial statement shows a balance due from the NFL as of December 31, 2017 of 119.6 million.
Do you see that?
A. Yeah, I see that.
Q. And is that a number that you would have vetted in connection with preparing the Raiders tax papers that year?
A. We would have seen that on the balance sheet in the work papers. In the tax return, we would have tied out -- the balance sheet and the tax return would have had that figure included in it.
Q. Now go to JX 181, please, at page seventy-nine. We looked at this a minute ago. This is one of the capital roll forwards.
Are you with me?

A. Yeah.

Q. So I'm having you look at schedule two of the roll forward for the 2017 season.

Do you see that?

A. Yeah, I see that.

Q. You see the Ventures receivable as of March 31, 2018, if you go halfway down the page, it's listed as a little over $16 million?

A. Yeah, I see that.

Q. And that's significantly lower than the receivable of one hundred nineteen million we just looked at for December 31, 2017 three months earlier; right?

A. That is lower by a good amount.

Q. And then if you look just above that receivable, you'll see there had been a total of four payments made to the Raiders since January -- since December 31, 2017; right? There's the January, '18 broadcast, the January, '18 Ventures, February, '18 broadcast,

and March, '18 broadcast; right?
A. I see those.
Q. And those total roughly $30.5 million; yes?
A. It looks about right.
Q. So you have an AR balance stated on the financial statements of $119 million. The roll forward tells you that, as March 31, there's $16 million. But there have been only $30 million of payments in the interim three months; right?
A. I think that's right.
Q. That doesn't make any sense; does it?
A. Well, it doesn't.
Q. Now, go to schedule three, if you would. So this is page eighty of the exhibit.
And if you look at the very bottom of that page, the very last line, you'll see the balance as of March 31, 2016; right?
A. Yeah, I see that.
Q. I'm sorry, I directed you to

the wrong page. Please go to page eighty-two. This is for the right year.

You'll see two-thirds down that page there's line that says balance March 31, 2018?

A. I see that.

Q. And you'll see that shows the same receivable balance as of March 31, 2018 of 16091 that was shown on schedule two?

A. Yeah, it's the same number, pretty close.

Q. And on the top of that page you see those four payments from January and February of '18 that total about thirty and a half million dollars?

A. January, January, February, March, four payments, it looks about thirty million.

Q. That tells you again it doesn't make sense; right?

A. Yeah, sitting here right now, yeah.

Q. But this wasn't anything you looked at or analyzed during your years assisting the audit team as a member of the tax team?

A. I don't believe so, because if I would have -- yeah, I don't believe I did.

Q. You can set that aside.

Now, throughout the time that you worked on the Raiders engagement, you communicated with people at the NFL; right?

A. I'd say there was times that we communicated with the NFL. While Ed, Mr. Villanueva, was still with the Raiders prior to his departure, we would generally reach out to him and ask if it was okay, whether that was e-mail or calls, if we could reach out to the NFL and ask a question or have a discussion.

Q. So periodically, if you needed information from the NFL as part of your work on the Raiders account, you would ask Mr. Villanueva if it was

okay to reach out to them?
A. I think that's accurate.
Q. Did he ever tell you you couldn't?
A. I don't recall him ever saying not to, but it was implied that we would -- and we did, to my recollection, check with him before if it was okay to go and reach out to the NFL.
Q. But you don't recall any instances where you said we need NFL from the information, are you okay with us calling him and he said no, don't do that?
A. I don't recall that.
Q. Go to JX 678, if you would.
You see there's an e-mail from Mr. Brad Firestone at the NFL to you and Mr. Koijane on the 9th of June, 2021. His e-mail to you says, "please send invite. However, the broadcast contracts are extremely confidential so we cannot provide you copies. That said, we may have executive summaries

of key terms that I can share".

Do you see that?

A. I see that.

Q. Do you recall that around this time you were speaking with Mr. Firestone and others at the NFL trying to understand the nature of NFL Ventures and the revenue stream that it generated for the Raiders and other NFL teams?

A. Can I take a look?

Q. You can look at whatever you need to.

A. (Reviewing).

Can you ask the question one more time?

Q. Do you recall that around this time, June, 2021, that you were speaking with Mr. Firestone and others at the NFL to try and gain an understanding of how NFL Ventures worked and how it spun off revenue to the NFL teams?

A. I think that's accurate that we did have some conversations on this topic and we had reached out to Brad.

Q. And that was part of the work that you and others at Ernst and Young were doing to try and understand the error in the Raiders financial statements?

A. I think --

Q. Or was this part of the 2020 audit?

A. Well, this was post the whistleblower, I think that was in the April time frame of 2021, and we were trying to -- I don't know exactly at which point, but we were trying to -- and it might still be the case that, as of this e-mail, that we're trying to see if there was a way to remedy to issue through a method change versus saying it's an error. If it's an error, you can't necessarily fix through a method change.

Q. You understand that, as part of that process, you needed to understand -- you being the EY tax team -- you needed to understand how NFL

Ventures generated its revenue and how
it paid it out to the Raiders?
A. Yeah, I think there was some meetings and calls that preceded these e-mails with Allison Jones and our national tax group, and a lot of what was initially requested was she wanted to get her hands on to be able to see if there's a way to call this a method versus an error because, on its face, it looks like an error just to start with, but she thought there might be, with further digging, possibly a way to treat it as a method versus an error.
Q. Is it fair to say the reason you're asking the NFL for this information about the structure of Ventures and how it pays out the NFL teams is because you didn't have it already?
A. I don't believe we had this information. Otherwise, we wouldn't have been e-mailing and asking for a call.
Q. You don't recall ever

speaking to the NFL prior to this point in time about the mechanics and payment structure of NFL Ventures?
A. I don't recall that.
Q. Look at Exhibit 97, JX 97.
A. Okay.
Q. That's a memo dated December 31, 2020. It indicates it was prepared by Allison Jones, Ed Koijane, and you.
Do you recall working on this memo?
A. I have a vague recollection of it. I think Allison may have drafted it and I reviewed it and I'm sure Ed did, too, based on my recollection.
Q. What was the purpose of the memo?
A. I think it was to cover the 2020 revenue recognition of -- from NFL Ventures.
Q. And why was that something you were looking at?
A. We were -- I mean, this came

-- based on the date of the memo, came subsequent to the whistleblower allegation of fraud, and so I think from that point forward there was a lot of work that went into determining the revenue recognition for NFL Ventures.

Q. If you look at the bottom of the first page, there's a start of a series of bullet points that the memo indicates were key calls that you or your team made and participated in as part of the revenue recognition effort here.

You see the first of those is a June 25, 2021 call with members of the NFL including Brad Firestone, William Dorrance, and others.

Do you know if you participated in that call?

A. I don't know for certain, but I have recollection of having calls during this general time frame.

Q. Prior to this time frame --

MR. REED: Strike that.

Q. A few minutes ago we talked

about how you would periodically seek information from the NFL after obtaining clearance from Ed Villanueva.

When you did that, was it generally Brad Firestone that you spoke with?

A. Generally Brad Firestone, yes.

Q. Do you recall anyone else that you spoke with from the NFL in terms of seeking information for the Raiders?

A. Not -- I don't recall prior to 2021 anybody at the NFL that I corresponded with other than Brad Firestone. It's possible there were others.

Q. On this call on June 25, 2021, it notes somebody named William Dorrance was present.

Do you recall ever speaking with Mr. Dorrance?

A. I do recall a call where there was more than Brad and I think he had other team members from the NFL finance group.

Q. But you don't specifically recall somebody named William Dorrance?

A. It somewhat rings a bell, but I don't know him as well as -- I didn't correspond with him as much, so it's kind of like a vague -- the name kind of rings a bell.

Q. Are you able to say for certain one way or another whether you ever communicated with Mr. Dorrance?

A. I think it's likely I have, more likely than not that I have been on a call with him. And if we wrote it in this memo here, yeah. I can't say like a hundred percent certainty, but I think so.

Q. Do you think it's more likely than not that you participated on this June 25 call where Mr. Dorrance was present?

A. I think it's more likely than not, yeah.

Q. Do you have any recollection with interacting with Mr. Dorrance or any other occasion other than this June 25 call?

A. I don't know. I would say I don't have a recollection of anything prior to 2021 other than Brad Firestone.

Q. I've handed you an exhibit we marked as JX 3215.

Do you see that?

A. Yes.

Q. And you're aware that the Raiders paid Ernst and Young annually for tax compliance and preparation services; right?

A. Yes, they did, and certain or tax projects.

Q. Do you recognize what is shown on Exhibit 3215?

A. Is there one spreadsheet? I don't know why there's so many pages.

Q. This is how --

A. This looks like the left to right columns, I would have all this information. But these engagement names, I can say look familiar to me in the sense that they look like tax engagements that EY or the Raiders management engaged EY to work on.

Q. And when you're listed as engagement partner, what does that mean?

A. It's like a revenue distinction of who's getting the engagement partner revenue for that particular engagement. But generally -- I'd say as a general matter, it is somebody who is a partner, but it could be senior managers and even managers at times, based on my recollection. I don't know if things have changed since then.

Q. So if we look at the first row, for example, on the first page where you're the engagement partner, the engagement here is tax year 2019 tax compliance.

Do you see that?

A. Yes.

Q. And then if we go two pages into the exhibit, it looks to me that it shows $6,500 billed on that engagement as October 30, 2020?

A. I can't tell which invoice that relates -- which engagement that invoice relates to.

Q. Because of the format of the exhibit or was there some other thing?

A. Is it page three that we're looking at? Just shows invoice numbers, dates, amounts. It doesn't show which engagement it relates to. I'm not trying to be difficult.

MR. REED: Do we have this in native or is this how it was produced?

MS. BROWN: That's how it was produced.

MS. VAN WINKLE: So it was a native, if that helps. It was a native Excel and the first row on each page is like going across on the Excel spreadsheet.

Q. So if we unstaple the exhibit and you lay it end to end, assuming this was not tampered with by your own counsel which I highly doubt, can we read this to say that the October 30, 2020 invoice for the 2019 tax compliance engagement was $6,561?

A. I think what was happened is is this is an out-of-scope billing that happened the 2019 compliance was done which would have been 9/15/2020 and this is, what is that, forty-five days later. Maybe there was some out-of-scope work that we had to possibly -- that's me speculating. But the reason I say that is the amount. My recollection is that the compliance engagement fees are a lot higher than $6,500.

Q. Look in the next row down that has your name as engagement partner.

Do you see it's four rows up from the bottom, it looks like the same engagement.

Do you see that?

A. Four rows up from the bottom. Yeah, I see, one hundred seven thousand?

Q. Right.

And then you'll see two rows below that there's another invoice on that same engagement for $107,017?

A. Yeah, it makes a little bit more sense now.

Q. So am I correctly reading this to show that the fees for the 2019 tax compliance engagement were $214,000, maybe two hundred twenty or so if you consider what you're calling as out-of-scope work?

A. That sounds in the ballpark of what I recall.

Q. And then if you would go to JX 185.

You'll see that's an e-mail from you dated August 18, 2021 to Larry Delsen and somebody named Allan Boscacci among others.

Do you see that?

A. I see that, yeah.

Q. Do you know who Larry Delsen is?

A. I do.
Q. Who is he?
A. My recollection is he was Mark Davis' personal CPA.
Q. And what about Allan Boscacci, do you know who he is?
A. I recall one of the partner names had a Boscacci in it.
Q. Do you know the name John Callagy?
A. It brings -- it would ring a bell.
Q. Would he --
A. It looks like he's the --
Q. Do you recall he's the tax preparer --
A. It looks like he's the tax preparer for it looks like A&R Boscacci Investment Co.
MR. REED: I have nothing further. I'll see you after Adrienne tries to undo what I did.
THE CHAIRPERSON: Why don't we break for lunch.
How long do you need; thirty,

forty-five? You tell us.

MS. VAN WINKLE: Forty-five is fine with us. We can do thirty.

MR. REED: Thirty is good because we went a little long with Mr. Keel.

(Lunch recess taken at 12:17 p.m.)

A F T E R N O O N S E S S I O N
September 19, 2024
1:01 p.m.

THE CHAIRPERSON: Ms. Van Winkle, your witness.

L U K E K E E L, having been previously deemed sworn, upon being examined, testified as follows:

CROSS-EXAMINATION BY MS. VAN WINKLE:

Q. Welcome back, Mr. Keel.
What's your undergraduate degree in?
A. My undergraduate is in business administration with a focus in accounting.
Q. And do you have any graduate degree?
A. I do. I have a master's in business taxation.
Q. And did you study revenue recognition methods in connection with your graduate degree?
A. I did have an accounting

methods class that I think revenue recognition would have been part of that.

Q. Do you have any professional licenses?

A. Yeah, I have a CPA license in the State of California.

Q. And is that active?

A. Yes.

Q. Has it ever lapsed?

A. No.

Q. You mentioned that you were in Washington, D.C. for a period during your time at EY.

What were you doing there?

A. I was on a rotation, so there's local offices around the country, around the world that are serving clients. There's also for U.S. tax and I'm sure for other countries there's kind of a national office that works on some of the most complex and challenging tax issues, so I was there for about a year and a half and then I moved back to San Francisco. I still continued on that rotation and kind of transitioned back into the local office over like the next six months, I think.

Q. How did you get selected for that rotation? Was there a process?

A. Yeah, I had a contact that worked in U.S. national tax group that he had assisted and suggested that I apply for it, and so I applied and was lucky enough to get selected to do the rotation.

Q. Did you sit for interviews?

A. Yeah, there was -- I think there was a written application. There was interviews and the phone and in D.C. my recollection.

Q. And were your performance evaluations a factor in your selection as well?

A. Yeah, I think it was part of the application, you had to attach all of your prior year performance reviews.

Q. Can you just generally describe what your performance evaluations rated you?

A. Yeah, I think I got the got performance rating except for maybe the very first staff year, which is not uncommon to not be able to get the top.

Q. And then how about as you progressed?

A. The top rating every year thereafter.

Q. What kind of work does the national tax office do or did they do during your rotation?

A. I was in a subgroup of the national tax office because there was a lot of different subgroups focusing on different tax areas, but I was focusing on partnership taxation, flowthrough entities, so partnerships. I did a lot in the real estate investment trust space but would be, you know, memos, modeling analysis of issues that the global office wanted help with, those types of things.

Q. How would you describe the complexity of the technical tax issues that national tax handles?

A. Generally I'd say they're on the high complexity side and the local office or they wouldn't be working on it unless there was of a high degree of complexity.

Q. Did you do any teaching while you were at EY?

A. I did. I taught some of the junior employees outside of Chicago for a few years. There's like trainings that happen there. I also -- I was still employed at EY and got approval from EY to kind of work on the side as a professor, an adjunct professor at Golden Gate University in San Francisco.

Q. What did you teach at Golden Gate University?

A. I think the course was federal income taxation of partners and partnerships.

Q. How many tax returns have you prepared or been involved in preparing over the course of your career?

A. A lot.

Do you mean -- like what type of tax returns do you mean? Corporate, partnerships, other individual?

Q. Let's start with the overall number and then give me the partnership tax return number.

A. I'd say overall call it -- is this focused on my time at EY?

Q. If you'd like to limit it to that, that's fine.

A. I'm still working in this space but just not at EY.

Sorry, one more clarifier, do you mean like which ones did I work on regardless of -- I was just a part of the team that prepared --

Q. I was going to ask the signing question next.

A. It had to be in the hundreds. I don't know exactly.

Q. That you signed?

A. No. Well, yeah --

Q. Sorry, I'll let you answer.

A. I think each year I had a lot of different clients and certain clients may have very few tax returns to file, like one major partnership or corporation. Other clients would have -- I worked a lot in private equity, so each real estate and what have you, each client would have numerous tax filings or different entities that had tax returns to files, so just a lot of returns every single year is I guess the most accurate way to say it. I don't have an exact number.

Q. How many tax returns for a partnership did you sign as the preparer while you were at EY, if you can estimate?

A. I'd say it's over hundreds. I think I started signing as a senior manager here and there. Depending on the account, the partner may sign. It would have to be in the hundreds. I had around fifteen to twenty clients towards the end of my career there.

Q. You mentioned in response to one of Mr. Reed's questions something called a statement of work.

What is that?

A. A statement of work just lays out what work EY was going to do for whatever client the statement of work was for, and so it would lay out scope and fees and -- yeah, that's the basic substance of it, the statement of work.

Q. And did EY and the Raiders enter statements of work for the tax compliance services?

A. Yeah, that's accurate. I think we entered into a separate standalone tax compliance statement of work each year that on the -- working for the Raiders as their tax advisor.

Q. And those tax compliance statements of work, was one of the services under those the preparation of the Raiders income tax returns?

A. Yes. Generally, as part of the scope, you would list out all of the filings that were going to be made and the income tax return, my recollection, would be that there would be -- those would be listed along with

-- you know, federal and state jurisdictions, state and local.
Q. Can you please turn to JX 0495 in your small binder.
A. I see it.
Q. What is that document?
A. This is a statement of work for the tax year 2018's tax compliance for the Oakland Raiders.
Q. And do you recall also entering into statements of work in the 2017 and 2019 tax years for the Raiders while you were working on the engagement?
A. Yes, I do recall there's a different one for each year. They stand alone.
Q. And what is the scope of work laid out in this statement of work?
A. I think it's -- under the header scope of services is where the scope is laid out.
You want me to read it or summarize what I think?
Q. Well, let me ask it this way.

Is this the place where it describes the scope of services that EY's providing for one tax year?

A. Yeah, yeah, I think that's accurate.

Q. And with respect to the returns that EY was engaged to prepare that year, did that include returns for more entities than just the Oakland Raiders? Were there multiple entities for which they prepared returns that year?

A. Yeah, my recollection is -- I'll look at appendix A, but I think there was a few partnerships, one of which was the Oakland Raiders limited partnership and there may have been some other ones.

Q. Are those different entities listed in Exhibit A?

A. Yeah, they are, RLP Holdings and ADF Holdings. The other ones, my recollection is those are disregarded single member LLCs, so there's no federal tax return filings but there

are some state and local filings.
Q. And if you go back to the first page, the specific services listed there, there's several bullets, seven or eight bullets.
Do you see that?
A. Yes, I do.
Q. Are those additional services that EY provided under the terms of this engagement agreement in addition to the preparation of the tax return?
A. Yeah, those are mentioned here because they're in addition to preparing the 1065s and so on.
Q. And if you go to the fees section on page five, does the fees section break down any of the fees that EY provided under the statement of work by the service it was performing?
A. It doesn't.
Q. And to your recollection, did any of the statements of work breakdown the fees by the service EY was providing?
A. I don't recall, but I don't

-- my sense is that it would have been similar to this one where it's one overall fee.

Q. And can you describe briefly the process for preparing the Raiders tax returns, the Oakland Raiders, LP tax returns?

A. Yeah, sure.

So we'd send a request list to Mr. Ed Villanueva which the primary item we were getting was the company's trial balance that included all of the accounts for that particular tax year. There was also some supplemental requests in that request list. That would help us break out the character of income, whether there's differences between capital gain, interest income, et cetera. So we would get all that information from Ed, we would take that, create work papers to ultimately kind of mimic the tax return and you get the numbers reported and the forms reported in the tax software, and the tax return spits out, it's reviewed.

One thing we did do is make sure that the balance sheet that we're presenting on the tax return ties back to the financials and that the total profit or loss for the year agreed back to the financials as far as the tax basis financials go.

Q. And are you familiar with the tax standard that says a preparer may rely in good faith on information from a client without verifying it?

A. I'm aware on that concept and that idea that you can rely on information provided by clients.

Q. And did you rely on the Raiders financial statements consistent with that tax standard?

A. Yeah. I mean, we were -- Mr. Villanueva was providing us all of what we requested, and we did rely on I'll say the trial balance figures as being accurate without further verification.

Q. And did you ever identify some -- with respect to NFL Ventures, did you ever identify any inconsistency that you thought you needed to investigate further?

A. Not that I recall. It seems -- yeah, I just don't recall any inconsistencies that would warrant investigation or questions. I do recall there being a large receivable on the trial balance as well as the financial statements which are really just a summary of the audited trial balances.

Q. Can you please turn to JX 2549.

A. Okay.

Q. What is this document? Well, first of all, do you see that the cover page is an e-mail from Mr. -- from LVR Scans to Mr. Villanueva?

A. Yes.

Q. And if you turn the page, the second page states that this is a statement of work for tax accounting advisory services?

A. Yes.

Q. What is this statement of

work?

A. It looks like it's a two-part advisory engagement. One is having to do with -- I'll start with the second one. It has to do with whether -- I guess making an accounting method change for certain types of property to be depreciated differently than they were currently being depreciated. And the first one, part A, is for revenue recognition guidance for a few different revenue streams that my recollection is that there had been some requests from the Raiders in general. I don't recall if it was Araxie or Ed or Travis. I think they collectively wanted to get some advice on the revenue recognition for these streams. I think this kind of coincided with a couple of things. One, the Raiders moved from Oakland to Las Vegas. They entered into a lot of new contracts and had materially more revenue associated with those contracts. And I vaguely recall there being some work that -- on the more not tax side but GAAP side, there was a new accounting standard that had come out regarding revenue recognition, so I think it was top of mind for them as they had -- my recollection is they were working with Deloitte on that from like the GAAP accounting side, so they were saying let's work on it on the tax side as well.

Q. Who signed the statement of work on behalf of the Raiders?

A. Ed, Mr. Ed Villanueva.

Q. And the three revenue streams that are identified in part A on page two, does that include NFL Ventures?

A. I don't think NFL Ventures would be included in any of those buckets.

Q. Do you recall -- before April of 2021, do you recall the Raiders ever asking you for advice on the revenue recognition method for NFL Ventures?

A. I don't recall them asking before April of 2021.

Q. Did you ever prepare any tax returns for any of the ultimate beneficial owners of the Raiders?
A. I don't believe so.
Q. Were you ever engaged by one of the ultimate beneficial owners for any tax compliance services?
A. I don't believe so.
Q. Do you know someone named Allan Holzer?
A. That name does ring a bell. He worked at EY or may still work at EY.
Q. Did he ever work on any of the tax compliance engagements for preparing the Raiders tax returns?
A. My only recollection is that he was like a state and local tax person that was like city taxes and kind of like obscure taxes. I recall him working or helping with a Nevada business tax matter.
Q. I'll ask it this way: For the Raiders partnership income tax returns, do you recall Mr. Holzer ever working

on those tax returns?
A. I don't recall him ever working on those.
Q. How did you learn about the potential overstatement in the Raiders revenue and receivables?
A. My most or best recollection --
Q. Actually, I'll give you JX 0195 in your binder. Let's actually start with that. That might help you.
A. Yeah, this was pretty much what I was going to say. I recall Araxie reaching out and saying she needed to speak.
Q. And what date did she reach out and say she needed to speak to you?
A. I don't recall exactly other than I did have this text, so I think it was around April 26, 2021.
Q. And what did she tell you?
A. Well, she was -- what I recall, she was pretty flustered and kind of speaking very quickly and animated that this was a big deal,

they've overstated their revenue and she thinks it's fraud. That's what --

Q. And anything else -- whatever you recall, I'd like you to describe it.

A. She wanted to know -- she said that -- I believe she said Ed doesn't want to tell the audit team but I think we need to. Yeah. It was probably a few minutes call. I don't recall much more than that. That she was animated. Her allegation was that there had been fraud for the NFL Ventures revenue recognition and that Ed was telling her we can't go to the audit team, like we need to find a way to fix this. And I didn't know at the time that there was this double-counting thing, so I think -- I don't recall exactly. But if I didn't know about that, I would have thought in general, if it's just a timing issue, you can usually fix it through a method change. I don't know if we spoke about that. She was -- I was

just trying to calm her down. She was very animated, yeah.
Q. Did she say anything about the management representation letter that she signed in the audit the year before?
A. Yeah, she was -- she was freaking out, for the lack of a better term, but how, Luke, I signed this rep letter last year and it was not right. So she was concerned that she had signed the rep letter the prior year.
Q. And was it your understanding that she had recently developed that concern, not at the time she signed it she didn't think it was right?
A. That's what it seemed like, but I don't want to speculate on what she knew and when.
Q. Did you give her any advice other than to tell the audit team?
A. I think I did say at some point you've got to tell them, yeah. I was feeling pressure at some point like if she doesn't tell them, I'll have to

let them know.

Q. And if you turn over to page three, on April 26, 2021 at 8:47 p.m. you texted her, "thanks for telling Tyler".

Do you see that?

A. Yeah, I see that.

Q. Who's Tyler?

A. Tyler was I believe the senior manager on the EY audit team.

Q. And what were you thanking her for telling Tyler?

A. Well, I knew -- I've got to tell them at some point. I think it should come from management or the Raiders, the issue. But I'm saying thank you for telling him what you told me, the same thing.

Q. Did you also have a call with Mr. Villanueva around this time period?

A. I believe I did have a couple of calls with him, and I think there was probably more than one call with Araxie, if I recall correctly.

Q. Do you have any recollection

of Mr. Villanueva expressing -- well, you tell me what you remember from those calls.

A. I think Ed had wanted it to be something that could be fixed through -- that it's not an error, that it's a timing thing that can just be remedied through a method change. But after Araxie had told me he was -- he was upset that she wanted to tell the audit team. He didn't understand like why can't we just fix this, and he was -- yeah, I do recall him saying something about, well, EY introduced me to her and you guys suggested them to hire her. Not that that was me or anything, but I think it was somebody in EY audit practice that had introduced Araxie to the Raiders organization.

Q. What did you understand that to mean?

A. I think he viewed it as she's causing problems now and you guys told her to hire her.

Q. Anything else you recall about what he mentioned?
A. I think he was still holding out -- thought it to be fixed without it being an error.
Q. What was his demeanor on the call?
A. I think there was a couple of calls.
Q. The call where he was expressing frustration with Ms. Grant going to the auditors, on that call, what was his demeanor?
A. He never gets that animated, in my experience, and I don't think it was like totally -- like he wasn't screaming or anything like that. It was just I don't understand, like why did she have to do this. I don't remember -- there was no yelling or anything like that.
Q. You mentioned earlier today that you had some calls with the NFL during the course of the 2020 audit; correct?

A. Yeah, I recall having or being a part of some calls with people at the NFL.

Q. Did you participate in any calls where the Raiders' receivable balance for NFL Ventures was discussed?

A. I believe that was part of the NFL Ventures revenue recognition was a topic of some of the calls or possibly all of them.

Q. And do you recall having any discussions with the NFL about a confirmation of a receivable, of a particular receivable balance?

A. Yeah. There was a time, one of the calls, where I think it came up -- because we were trying to understand all of the component parts and I think Allison may have been on the call, too -- where we wanted to know, well, can NFL tell us what the receivable balance is from Ventures as of a point in time, and the point in time that we care about is 12/31/2020 at that point. And they said they couldn't give a

verification of the receivable amount.
Q. Who from the NFL said that?
A. I believe it was Brad Firestone, but there was a few folks -- I recall there being a few folks from the NFL on that call.
Q. Do you remember anything else about that topic being discussed?
A. They said there was -- they do it on a 3/31 year-end and there's numerous, numerous amounts of underlying contracts that they would need a different cutoff period to determine it. I do recall that aspect of it.
Q. Can you turn to JX 0165 in your binder.
Before you turn, did you communicate that information to the audit team, the core audit team?
A. I believe -- my recollection is I did. I also -- my recollection is that it wasn't a surprise. I think I went into the call with an understanding that they couldn't do it,

but I don't know why I had that. It might have come from the audit team that -- it wasn't a surprise because I walked into the call.

At that time we were corresponding -- having meetings after the whistleblower quite frequently as an audit and tax team together.

Q. Just so I understand, after the whistleblower report in April, 2021, you had some conversations with the audit team about the receivable as of a particular date for NFL Ventures, and so you had some understanding of the NFL's historical -- the ability of the audit engagement team historically to get a confirmation from the NFL?

A. Yeah, I think I'd say I was not aware prior to April of 2021 that there wasn't a confirmation of the receivable balance. I came to learn that they were confirming a January payment, yeah.

Q. And can you now turn to 0165.

A. Okay.

Q. And take a look at tick mark B, please.
The second sentence, "we circulated the confirmation directly it Will Dorrance" -- it has his title -- "on July 12, 2021. Subsequently we received verbal confirmation from Brad Firestone" -- it has his title -- "and Mr. Dorrance that, per NFL policy, the accounts receivable balances as of December 31, 2020 related to NFL Ventures and broadcast revenue could not be confirmed".
Is that consistent with the call that you had with at least Mr. Firestone?
A. Yes, I think that's consistent.
Q. Can you please turn to the big binder, JX 0693.
A. Okay.
Q. And you looked at this document with Mr. Reed; correct?
A. Yeah, we looked at a few of these pages. I don't know if we looked

at all of them.

Q. And in particular, he had you look at the long pages on the legal size paper; correct?

A. Yes.

Q. And you should have and I believe the panel and counsel has a one-page sheet, it's to your left. I'll represent that this is the metadata. The page is titled JX 02693 Metadata, and it's the metadata for this Excel file that's thirty-two pages in the printout.

According to the metadata sheet, Mr. Keel, who is the author of this Excel file?

A. Travis Scott.

Q. And how did you obtain this document, if you recall?

A. I don't recall if Travis sent it to me or if it went to Ankura and Ankura onwards sent it or it went to the audit team and then somehow it came into our possession.

Q. And which pages of this Excel

file did you work on?

A. I think it's one, two, and three, but I have to look at -- I think the other tabs were -- would have come from Travis.

Q. Take a look at it.

A. Can we show that on the screen?

So the first two tabs is what I was talking about.

Q. Just for the record, that's the fixed tracking and summary prepared by EY tax tabs?

A. Yeah, so the fixed tracking tab far left, then the next tab to the right, summary prepared by EY tax, those I believe I worked on, and this would have been others, also. I recall Ed Koijane reviewing this with me.

Can you go to the summary tab?

I think this -- keep going one tab at a time to the right. Keep going. Keep going.

These all to the right are --

I believe were provided -- I think the file was provided and included all tabs other than the far left two tabs that we worked on.

Q. And it was provided by the Raiders, someone acting on or behalf of the Raiders?

A. I believe so, yes.

MS. VAN WINKLE: That's all I have.

ARBITRATOR BICKERMAN: Counsel, can we get this in native form, the last tab? In the book it's not in native form; right?

MS. VAN WINKLE: Yes.

ARBITRATOR BICKERMAN: Thank you.

THE CHAIRPERSON: Counsel, any further questions?

MR. REED: Yes, just a few.

Can we take literally two minutes and I'll grab one exhibit?

THE CHAIRPERSON: Sure.

(CONTINUED ON NEXT PAGE)

REDIRECT EXAMINATION BY
MR. REED:
Q. Mr. Keel, apparently I was confused about who prepared that spreadsheet.
Would I be right in assuming that knowing that it was a spreadsheet prepared by Mr. Scott doesn't change any of your answers that we were talking about with respect to what the errors were and whether the revenue should have been deferred in any particular year? You weren't relying on who prepared the spreadsheet for that?
A. I'll clarify. The spreadsheet had numerous tabs --
Q. Remember we were talking about the 2009 and 2010 tax years and I kept getting confused?
A. Yeah, that tab I believe was prepared by my team off of the data on the other tabs that came from the Raiders.
Q. Perfect.

You said, in response to Ms. Van Winkle's questions, that you're, under the applicable standards, entitled to rely on information that you receive from the client without verifying.

Is that your understanding of the standard?

A. I think that's the general rule,ing yeah, you can rely on the information provided by the client unless there's a reason to believe it's inaccurate or otherwise wrong.

Q. But if you do have information that's inconsistent or that contradicts the information the client gave you, you're supposed to investigate; right?

A. If you're aware of information.

Q. And your testimony to the panel is you just weren't aware of any in the course of your work for the Raiders?

A. Yeah, I was not aware of any

information that would warrant further verification of the information provided by the Raiders.

Q. You testified about a call in which you believe Mr. Firestone said something to you to the effect that the NFL can't confirm a 12/31/20 balance for the Ventures receivable?

A. Yes, I recall that.

Q. Was that a call that took place in connection with your revenue recognition investigation in 2020?

A. Yeah, I believe it occurred at some point after the whistleblower allegation came in April and at some point after that around that time.

Q. So if you would look at JX 97 in the big binder.

A. Okay.

Q. And we looked at that when I questioned you earlier and that was a memo that you said you reviewed you thought that Ms. Jones may have prepared that memorialized your efforts to understand and investigate the

Raiders 2022 recognition policy related to NFL Ventures; right?

A. Yeah, I think that's right.

Q. And at the bottom we see the bullet points that list the calls you had in connection with that?

A. I see that there's a listing of calls and it says they include the following key calls. There could have been other calls, but those are the ones listed.

Q. And do you believe it was on one of these calls that Mr. Firestone said to you something to the effect that the NFL couldn't confirm a 12/31/20 balance on the Raiders account?

A. I'm not sure if it was on one of these calls or another call that happened, if there were other calls. I just don't recall how many calls there were and which days the calls occurred. But I think around this general time frame would have been when that call occurred or you mentioned the receivable balance.

Q. So the call would have been in this general time frame?

A. I think that's right.

Q. And you said earlier that you only recall the one occasion on which you spoke with Mr. Dorrance which is listed here for the 25th of June, 2021?

A. Yeah, I recall one where there was more than Brad on the call from the NFL. Sitting here now, I don't recall whether there was others or not, but I do recall there was at least one.

Q. But you're unable to say one way or another whether you spoke with Mr. Dorrance subsequent to June 25, 2021?

A. Yeah, I don't think I can say one way or another.

Q. And to the best of your recollection, it was Mr. Firestone who communicated to you that the NFL wouldn't be able to confirm a 2020 year-end balance for Ventures?

A. That's the best of my recollection. I think there was other members of the NFL team on that call as well.
Q. But Mr. Firestone was there?
A. That's what I recall, yes.
Q. So would it surprise you to understand that Mr. Firestone has testified in this arbitration that he was never asked and never told anybody that the NFL couldn't confirm a year-end balance for Ventures?
A. I don't know if it was surprising. It was a long time ago.
Q. Can you think of any reason why Mr. Firestone would have been confused on that point?
A. I'm not sure.
Q. And I wasn't clear, did you say that at the time of this call that you're remembering that already understood that the NFL wouldn't confirm a year-end balance for Ventures?
A. Yeah, I have this

recollection of whistleblower coming down in April, late April-ish of '21 and then kind of going all hands on deck as the firm tried to figure out what happened and then coming to learn that the end of the year receivable balance had not been confirmed historically. And I have in recollection of going into the call where this was discussed with the NFL that there must have been a reason why they hadn't confirmed it before as far as like it wasn't confirmable or something like that. But I don't know who on the audit team would have told me that per se.

Q. So prior to the whistleblower coming forward, you had never understood that the NFL wouldn't confirm a year-end Ventures balance?

A. That's accurate.

Q. As a member of the tax team, you just weren't involved in the confirmation process; right?

A. That's right. The tax team

wouldn't have been performing kind of the core audit procedures like confirmations and things like that.

Q. And then subsequent to the whistleblower coming forward, when EY goes all hands on deck to figure out how this happened, somebody on the audit team says to you we couldn't get a confirmation from the NFL because they wouldn't do it?

A. I think that's my recollection, yeah.

MR. REED: Nothing further. Thank you.

THE CHAIRPERSON: Nothing further, counsel?

MS. VAN WINKLE: No.

THE CHAIRPERSON: Mr. Bickerman?

ARBITRATOR BICKERMAN: Just a couple.

The NFL you say was not able to confirm year-end receivables.

Do you believe they could have confirmed March 31 receivables based on what you indicated?

THE WITNESS: I think they put that in their remittance letter that would go out, so I think they could have, yeah.

ARBITRATOR BICKERMAN: And would --

THE WITNESS: Sorry, I have a vague recollection that the audit team would have used a 3/31 -- so there was other financial statements that I'm sure you guys are aware ad nauseam about that were at a 3/31 year-end and I think they would have used a 3/31 confirmation for that. But I don't know and kind of defer to them, the audit team, on that.

ARBITRATOR BICKERMAN: I know looking back is hard, but if they had studied that March 31 receivable, knowing that there was three months of maybe income they had to account for, would that have been helpful in uncovering the delay of reporting income?

THE WITNESS: As far as the deferral of income at nine months and double-counting? I think that would have been helpful, yes.

ARBITRATOR BICKERMAN: It would have been helpful?

THE WITNESS: Yeah, I think the number was lower.

ARBITRATOR BICKERMAN: I've heard lag accounting.

Do you understand what lag accounting is?

THE WITNESS: I hadn't heard the term until 2021 when this kind of all came to a head. But yeah. I mean, in its simplistic terms, I think you're lagging -- like you're picking it up -- there's a different fiscal year and you aren't picking it up until the next tax year.

ARBITRATOR BICKERMAN: I'm not an accountant like you, but I understand the concept of recognizing income. And I think I understand that, when you accrue income or an expense, that's a prospective concept that you are recognizing the income before you actually receive it; right?

THE WITNESS: Yes.

ARBITRATOR BICKERMAN: So you can't accrue income that you received in the past; can you?

THE WITNESS: You're not -- no. That's why the balance sheet has a huge receivable which indicates that you are recognizing revenue in advance of the receipt of the cash.

ARBITRATOR BICKERMAN: And I think we've all gone through this so much that I don't think we need to go back over it again. But I just wanted to make sure I understood clearly what you've been saying.

Thank you.

THE CHAIRPERSON: Mr.

Chandler?

ARBITRATOR CHANDLER: In 2021, I presume you did work on your 2019 tax returns or you did tax work on 2019 which would have been misstated because of all of these efforts; is that correct?

THE WITNESS: I don't know, because the 2019 tax year ending December 31, 2019, those tax returns would have been filed during 2020 and I think 9/15 is the extended due date toes those partnerships, so I find it unlikely we would have done work in 2021 for the 2019.

ARBITRATOR CHANDLER: Let me ask a different question then.

In 2021, I presume that you did work to clean up any misstatement in prior tax years?

THE WITNESS: We did look -- once we kind of understood the prior year ramifications, we did look to amend returns and we determined that we could go back as far as I think the 2017 tax year. And while I was still at EY, there was a 2017 call it an amended return. But I wasn't still there, so I'm not sure -- I've come to learn, I think, that the Raiders amended 2018 and 2019 as well, but that wasn't -- I don't think that occurred while I was still at EY.

ARBITRATOR CHANDLER: My question was going to be how would we know how much it cost, how much was charged to the Raiders for those amended returns? You say that was after your time; is that right?

THE WITNESS: The 2017 amended return, I remember working on that and that being charged to the Raiders. The other two amended return years I believe -- I think I've learned, as part of this the last few days, that they were amended, but I don't know that it was done by EY or it was done by another firm.

ARBITRATOR CHANDLER: Counsel took you through 2019 tax revenue of $281,000.

Do you remember that?

THE WITNESS: Oh, you're talking about the fees that EY charged to the Raiders? Yeah.

ARBITRATOR CHANDLER: For 2019 various tax --

THE WITNESS: Various projects, tax projects, yeah.

ARBITRATOR CHANDLER: But that has nothing to do with what you and I were just talking about which is restatements of earlier tax returns; is that right?

THE WITNESS: Yeah, that doesn't have anything to do, yeah.

ARBITRATOR CHANDLER: That was my confusion. Thank you.

THE CHAIRPERSON: I just have a few questions for you. In part they relate to the text messages with Araxie Grant, the telephone conversation, and the document that's been marked as JX 0097, if we could bring that up.

So as part of our job, we're piecing together different parts of testimony, and I just want to see if I can get this in sync.

Are you aware that Ms. Grant has testified during the course of this proceeding?

THE WITNESS: Yes, I've become aware of that.

THE CHAIRPERSON: Did you review her testimony before you came here today?

THE WITNESS: I saw it very briefly I think last night. I didn't necessarily review it in great detail.

THE CHAIRPERSON: Did you review any of the parts that relate to her conversations with you on April 26, 2019?

THE WITNESS: I believe I saw

a part of that briefly.

THE CHAIRPERSON: The question that I had is, during the course of the telephone conversation that you had with her, did she ever tell you that Ed Villanueva essentially told her to conceal massive material overstatements of revenue from the auditors? Did she tell you that? In those words. Those are her words.

THE WITNESS: I don't recall those exact words. It was something along those lines though that Ed is asking her not to tell the auditors and this is a material overstatement of revenue.

THE CHAIRPERSON: That was 4/26/19; is that correct?

THE WITNESS: Not '19, 2021.

THE CHAIRPERSON: Excuse me.

So she also said that you told her that she speak to Ed Koijane as he was the partner on the engagement.

Did you do that?

THE WITNESS: I may have. I don't recall exactly.

THE CHAIRPERSON: She also testified that you told her that the auditors needed to be told.

THE WITNESS: I do recall telling her that this has to go to the audit team.

THE CHAIRPERSON: And JX 0097, obviously that references a whistleblower which would be Ms. Grant; correct? I believe that's in the second paragraph.

THE WITNESS: Yeah, that's my recollection of who's the whistleblower here.

THE CHAIRPERSON: And it discusses -- it essentially relates to audit procedures as to the Raiders; is that correct? That is the topic of it, generally speaking.

THE WITNESS: Yeah, I think they were with 2020 after the whistleblower came out, there was a change in how the revenue was being recognized from 2019 to 2020.

THE CHAIRPERSON: And in the discussions and conclusions, it references material error I believe one time, and we can read this as we go along, the word "error" is referenced twice, material weakness I believe is referenced twice, and proper method of accounting a referenced once; is that correct? Essentially this document deals with accounting procedures, mistakes, errors, failure to use a proper method of accounting; is that correct?

THE WITNESS: I think it's -- yeah, I'd have to scan through to see how many times it lists error.

THE CHAIRPERSON: Take your time.

THE WITNESS: You said the error --

THE CHAIRPERSON: Error,

material error, material weakness, proper method of accounting. I may be off on my numbers.

THE WITNESS: The errors is listed a lot.

THE CHAIRPERSON: Here's my question: There's no reference to intentional misconduct on the part of the Raiders, there's no reference of fraud being committed by the Raiders, there's no reference of withholding of information by the Raiders, and my question is: Having known at that point -- EY having known what the statement was of the whistleblower with respect to the intentional withholding of information, why are none of those things referenced in this memorandum which was prepared quite a bit later after that conversation that you had with Ms. Grant?

THE WITNESS: I don't recall that it being -- identifying it as fraud or what have you as necessarily relevant to saying what is the topic of this memo. But I don't recall why we did or didn't reference that.

THE CHAIRPERSON: My question simply is because the memo -- this is not to suggest that anything was wrong on your part, so please know that. It's because, when I read this memo, I know the information that EY had at this time and the gist of this memo is that everything related to the Raiders, at least on this memo, relates to accounting errors, not fraud, intentional conduct, or otherwise.

Is that a fair statement?

THE WITNESS: Yeah. I guess if you read this on a standalone basis, I believe there are other memos that a separate EY team put together based on an investigation where they made certain conclusions. Yeah, I'd say it's on a standalone basis.

And I also don't know -- there's a lot of references in here to other work papers.

THE CHAIRPERSON: As I said, we're not drawing any conclusions, but we're trying to reconcile all the information we've been given and we're also aware of the other memos that you're referring to.

Thank so you very much for your answers, and unless there's anything else, we can excuse the witness.

MS. VAN WINKLE: I have just a few clarifying questions.

CROSS-EXAMINATION CONTINUED BY
MS. VAN WINKLE:

Q. There's a document you referenced last night with respect to Ms. Grant's testimony.

Do you recall whether that was her December, 2023 trial transcript in this case or something else? And I'm happy to pull up the trial

transcript to see if it looks familiar.
A. I'm pretty certain it was not a trial transcript. I believe it was something that she provided so -- something she provided to the Raiders as she was being kind of ousted or separated from the organization.
Q. Is it possible for errors to be intentional, errors in the financial statements?
A. I don't see why not, yeah.
Q. And JX 0097, the memo that's here, I think it's the one in front of you, did the Raiders change their revenue recognition policy in 2020?
A. Yeah, that's my recollection.
Q. And does this reflect an evaluation, at least in part,ing of the new revenue recognition policy?
A. Yeah, I think that's right.
MS. VAN WINKLE: Thank you.
THE CHAIRPERSON: Thank you.
Anything else?
(CONTINUED ON NEXT PAGE)

REDIRECT EXAMINATION CONTINUED BY
MR. REED:
Q. So in preparing for your testimony today, you reviewed Araxie Grant's memo that she put together summarizing her recollection of events that led to her ouster from the team?
A. I saw it, I think it was something that was scanned briefly, yes, last night.
Q. And among other things, you said one of the parts you scanned was the part that recounted her recollection of her phone call with you, her April 26, 2021 phone call with you?
A. I don't know which day it was. She had some sort of recollection.
Q. Well, Mr. DiBlasi said to you: "Did you review any of the parts that relate to her conversations with you on April 26, 2019".
Answer: "I believe I saw part of that briefly".

Is that true?

A. Yeah, I just don't know if it was the April 26, I guess I would say, or if there was another call that we had.

Q. Was it the call that you testified about in response to Ms. Van Winkle's questions?

A. I'd have to see it to know because, like I said, I saw it very briefly.

Q. Any other parts of the memo that you can recall scanning?

A. No, it was -- I remember it being fairly long, but we went over it very quickly.

MR. REED: Nothing further.

THE CHAIRPERSON: Thank you.

Mr. Keel, thank you very much. On behalf of the panel, have a good day.

How long, counsel, do you need before the next witness?

MR. REED: As long as it takes to get him in here.

THE CHAIRPERSON: Let's take a ten-minute break.

(Whereupon a break was taken)

THE CHAIRPERSON: We can go back on the record.

The panel is just curious about timing for the rest of the day.

Mr. Badain, good afternoon, I apologize. I'm John DiBlasi. To my left is John Bickerman, to my right is John Chandler. It's good to see you here today.

The panel has just asked me to ask the parties about timing this afternoon. We're not going anywhere.

How long do you anticipate with this witness?

MR. REED: I think Mr. Badain will take the rest of the afternoon, I expect in the neighborhood of an hour.

MR. FARINA: Probably less than an hour.

THE CHAIRPERSON: You may
proceed.
M A R C   B A D A I N, having
been first deemed sworn,
upon being examined, testified
as follows:
DIRECT EXAMINATION BY
MR. REED:
Q. Can you introduce yourself to the panel, please.
A. My name is Marc Badain.
Q. Can you give us your educational background?
A. I got an undergraduate degree at Emory University, graduated in 1992 with a bachelor's in economics, and then I got an MBA from UC Berkeley Haas School in the evening program, graduated in 2001.
Q. Were you a CPA?
A. I am not.
Q. How are you employed?
A. I'm sorry?
Q. How are you employed?
A. Right now I'm a consultant

for a company called Oak View Group.

Q. What does the Oak View Group do?

A. Oak View Group is a live venue and entertainment developer and operator, so they build facilities and then operate and program them, book them, and sell them. Some mostly in the arena space, some in the stadium space, some in smaller venues.

Q. And what are you doing for the Oak View Group?

A. Right now we are trying to work on a new arena in Las Vegas to recruit a potential expansion team in the NBA.

Q. Does the Oak View Group have any relationship to the Las Vegas Raiders?

A. None that I'm aware of.

Q. Prior to your role at the Oak View Group, did you work at the Raiders?

A. I did.

Q. During what years did you

work at the Raiders?

A. I started as an intern in training camp in 1991 and ultimately left in July of '21, I was the president at the time.

Q. So that's a thirty-year span.

Can you take us through your progression there in terms of the roles that you had and your responsibilities in those roles?

A. Sure.

The training camp internship was when I was still in college. It was when the team would go away to Oxnard for training camp, so I was just one of the camp kids.

I came back after graduating from college, I started working in the football building. So back then there was an administration side and a football side. So I answered the phones and worked for the coaching staff as an administrative assistant -- there were two of us at the time -- so anything the coaches needed to prepare for the season, to prepare for games, and then I manned the front desk.

In 1993, the NFL instituted a salary cap, and so I was asked to do -- we didn't call it analytics then, but I was asked to do essentially an analytics project. So we created a depth chart using every team's salaries to track how teams paid players, how teams structured their roster. Obviously this was the first years of the salary cap, so everything was pretty new. So that got me some exposure to the front office side of things.

A position opened up in January of 1995 in the finance department doing accounts payable. We were a pretty small operation back then; we didn't have a very big staff, so people did a lot of things. So they asked me to join to do accounts payable and then I continued to do that, that salary cap work for the general manager and for the owner at the time.

I did that for -- I worked in the finance department for officially eighteen years.

In May of 2013, the chief executive at the time resigned, Mark appointed me interim president for a period of about sixteen months ultimately giving me the full-time position -- more like eighteen months -- in January of 2015, and I held that position until I left.

Q. So where was the team located when you started there?

A. We were in Los Angeles and we moved to Oakland -- we announced the move in '95. We spent a year traveling from LA to Oakland. We ultimately got full time in Oakland in 1996.

Q. So you were with the team when they moved to Oakland and you were with the team when they moved to Las Vegas in 2020?

A. Yes.

Q. So I want to focus on the point when you moved into the Raiders

finance department in 1995.
When you began there, did you have a title?
A. My title was finance.
Q. And you said initially your responsibilities related to salary cap and related analytics?
A. And accounts payable.
Q. Who did you report to?
A. Amy Trask.
Q. And you said she was the CEO?
A. She was chief executive at the time.
Q. When you were in the finance department working and reporting to Amy Trask, how many employees from in the finance department at that time?
A. When I first got there?
Q. Yes.
A. There were three.
Q. Do you recall who they were?
A. Yeah, the CPA at the time was a gentleman named Klaus Leitenbauer. He left maybe a month after I moved over. And then there was another

gentleman named Tom Blanda.

Q. As time went by and you were in finance, did you pick up additional responsibilities beyond accounts payable?

A. I did. I handled mostly cash management treasury type functions and then a number of the business units in the organization eventually reported to me, the merchandise department, the sponsorship department, those departments spent a lot of time going over budgeting with me and things of that nature. We built the merchandising department starting in 1999. It was pretty much a defunct part of the business when we moved from LA to Oakland, and so we spent some time on that.

Q. Did there come a point when you rose to be the most senior person in the finance department?

A. We never really delineated it that way, but I had the most responsibility and worked most closely with Amy on things related to the organization.

Q. So if you came into the finance department in 1995, by what point in time were you the person who had most responsibility and worked most closely with Amy?

A. I would say 2003 or '04 is the most accurate time.

Q. By that point in time how big was the finance department?

A. I think we had one person in '98, '99, a gentleman named Derek Person joined the finance department.

Q. So what were your responsibility as the most senior person in the finance department?

A. I don't think they really changed much from what I've already described. The organization again was pretty leanly staffed. I did -- well, prior to 2004, I used to help the general manager, Bruce Allen, with player contract negotiations, so I spent quite a lot of time on that preparing materials for him. And starting in 2004 Bruce left and the new general manager didn't really like doing player negotiations, so I did a lot of those 2004 and 2005. I was pretty much the chief negotiator, certainly for the rookie contracts and for some of the free agent contracts as we signed players.

Q. When you were in finance, did you have responsibility with respect to managing the organization's cash flow?

A. I did.

Q. And describe what your responsibilities in that regard were and how you carried them out.

A. Just monitoring when cash would come into the organization. And then obviously with my experience working payables and player costs, where we were spending the money and when, so just matching up the inflows and outflows.

Q. You and I have been getting ready for today have talked about

something called the four pillars.
Do you remember what those are?
A. Yes.
Do you want me to explain it?
Q. Yes, please.
A. So essentially the business was pretty simple prior to the Allegiant Stadium project. If you were to look at how the business operated, you had two revenue streams, two income streams. You had national revenue which would be television, licensing revenue, anything that the league generated collectively and then distributed thirty-two ways to the teams. And then you had local revenues, so what the teams generated out of their local market: Ticket sales, sponsorship sales, merchandise sales, food and beverage. So you had those two revenue streams.
On the expense side you had player costs, which was essentially made up of two elements. Element one,

everybody refers to it as the salary cap but the salary cap is really just an accounting term for how the league monitors parity and how much teams are allowed to spend on players, but it's really more about how much spend you spend on players in a particular year.

Just to put some numbers to it, if the salary cap's a hundred million dollars, you might spend a hundred million dollars. Some teams spent to the cap. You might in one year have to sign a quarterback, and so you might spend one hundred twenty in one year and then spend ninety the next two, so your cap stays a hundred to sort of even out.

Over the course of time, teams usually spent anywhere between a hundred and one hundred four percent of the cap. They stayed in sort of that band. There were some wild fluctuations that teams would have depending on roster makeup and free agency. But you sort of knew within a range what you were going to spend on players in cash.

And then you had something called player benefits which probably make up, I don't know, thirty percent of the cap. So if the cap was a hundred million, there would be another thirty million in 401(k), annuity, other things that the collective bargaining agreement qualified as part of the salary cap. So that was your player cost number.

And then the last category would be just your local expenses, so everything else we would spend money on: Coaches, players, facilities, team travel, insurance, everything else. So you had those four mechanisms for how the business operated and how the business performed.

Q. So just to summarize, the four pillars are local revenue, national revenue, player costs, local expenses?

A. Fair, yes.

Q. And did any of those pillars tend to fluctuate year to year more than any of the others?
A. Yeah. Obviously the player cost number was the one that had the biggest fluctuations. You would have a number in terms of the national revenues -- when we were in Oakland, there weren't wild fluctuations in local revenue. Some might be dictated by ticket sales, team performance. We weren't sold out all the time so, the largest variation would be if the team was performing well, we'd sell a lot of individual game tickets. That could move the needle. The local expenses never really varied that much. They might go up a couple of margin points every year, but we were pretty good about maintaining that. And then depending on what we were going to spend on players, that would be the fluctuations.
Q. And we're going to talk today and the panel's heard a lot about

something called NFL Ventures.
Which of the pillars does that fall into?
A. That would be part of the national revenues.
Q. What amount of the national revenues would that comprise?
A. What time period are we talking about?
Q. Let's say from 2000 to 2019.
A. What percentage of national revenues would Ventures be?
Q. I don't mean an exact percentage.
Is it a big part, a little part?
A. It started to grow substantially over that time period. It was a smaller number on the front end of that time period, it was a bigger number on the back end of that time period. Ventures was a collection of NFL revenue streams and, as they added new television packages and distributed the television revenues

across more platforms, some of those revenues that used to be considered just call it TV for a general term flowed through Ventures, so that number started to grow.

Prior to that, it was mostly the royalties that they would generate from merchandise and sponsorship deals and some other things that the league put in Ventures.

Q. So was managing cash flow an important aspect of your job?

A. I felt it was an important aspect of my job, yes.

Q. How did you go about doing it?

A. I remember looking at our cash consist on a daily basis and monitoring what was coming in and then what checks might have cleared. It wasn't overly complex. We'd get information from Bank of America and I'd take a look at that and make sure that we had cash in the bank and, if we didn't, we had to borrow on our line of credit and that's how we managed it.

Q. Did anything happen in 2006 that changed the way that you had to manage your cash?

A. Can you be more specific.

Q. You mentioned Bank of America.

Was there a point where you entered into a credit facility?

A. We did. Well, we had a credit facility prior to 2006. We entered into a larger credit facility at that point in time.

Q. And did the team take on any additional obligations or responsibilities in connection with that larger credit facility?

A. Yes, we had more stringent reporting requirements with the bank starting in that particular year.

Q. And did you undertake to satisfy any covenants in connection with that larger facility?

A. We did.

Q. And what sort of covenants

did you have at that point?
A. We had an EBITDA covenant based on our debt coverage ratio, basically. I don't remember the ratios, but they were all in the one and a quarter range, if I recall.
Q. And just generally speaking, what did that covenant require the Raiders to do?
A. From a reporting standpoint or from a measurement standpoint?
Q. Let's start with a measurement standpoint.
A. From a measurement standpoint, we had to make sure that our EBITDA to debt service met that ratio. So if we spent $5 million a year on debt service, we had to have an EBITDA of six and a quarter if it was one and a quarter. We had quarterly reports that we had to measure and send into the bank, so we had a quarterly compliance requirement and then obviously an annual one.
Q. I want to come back to that,

but let me ask you did you, when you were in the Raiders' finance department, ever have responsibility for preparing the Raiders annual financial statement?

A. I did not.

Q. Whose responsibility was that?

A. In what particular year?

Q. What position was responsible for preparing the Raiders financials?

A. In every year that I was there, there was a CPA in the finance department. I believe I worked with five or six different ones over those years and it was that person's responsibility.

Q. Were there occasions where you were required to certify that the financial statements were accurate?

A. Yes.

Q. On what sorts of occasions did you have to do that?

A. I just remember having to sign various rep letters when they were completed.

Q. And on those occasions where you had to certify to the accuracy of the financial statements, what process did you undertake to ensure that they were, in fact, accurate?

A. Well, I was a member of the finance department, so I obviously knew some of the numbers that were in the general ledger. I don't recall if I had to prepare any of the statements. I don't think I did. I did work on the deferred compensation audit because it was really a player cost-generated audit, so I do remember doing the work on that.

I don't know if I signed any of them until Amy left. I don't think I was required to until Amy left the organization. But it's certainly possible. I just don't recall.

Q. At that point in time when you were required to sign them, what did you do to satisfy yourself that they were accurate?

A. Well, I would rely on the information that my controller was providing. That would be primarily what I would look to.

Q. We're going to speak later about the error in the financial statements that was uncovered in 2021 that brings us all here today.

Prior to that time, had you ever been aware of a significant error in the Raiders financial statements?

A. No.

Q. Had you ever had what you believe to be a cause for concern that your controller was not preparing them properly and accurately?

A. No.

Q. So who were the individuals responsible for the day-to-day accounting decisions when you were the head of the finance department?

A. Well, it would be Ed Villanueva during most of the time period you discussed and then Amy Trask again up until 2013.

Q. When did Mr. Villanueva begin working for the Raiders?
A. I think his first year was 2002. I think his first year was the year we went to the Super Bowl in San Diego.
Q. And he came in as controller?
A. He did.
Q. And what were his responsibilities as controller?
A. Primarily he was responsible for all of the audits.
Q. What about with respect to the financial statements?
A. He prepared the financial statements.
Q. Did he report to you?
A. No.
Q. Who did he report to?
A. He reported to Amy Trask. Pretty much everyone reported to Amy Trask.
Q. What was your relationship with Mr. Villanueva during the time that you were head of finance? How

often would you interact and about what sorts of things?

A. We worked in the same offices. I think he was one or two doors down from me, so we worked pretty closely together and spent a lot of time together. We worked together almost twenty years. I would say it was a good relationship.

Q. During the time you were head of finance, were there particular tasks or issues you would work with Mr. Villanueva on?

A. I'm sure we worked on a lot of issues together.

Q. Were there anything that you can recall year in, year out you would have to work on together?

A. I know we worked on cash flow modeling together. Again, from an audit standpoint, the one I would work with him on would be the deferred comp audit. And then for these quarterly compliance certificates, I would have get information from him in order to submit it to the bank.

Q. When you say the quarterly compliance certificates, those are the ones were you would certify to the bank that you were in compliance with your covenants?

A. Correct.

Q. Did you ever have concerns about Mr. Villanueva's competence?

A. No.

Q. Did you ever have concerns about his ability to do his job?

A. No.

Q. During the time that you were the head of finance at the Raiders, did you ever interact with Ernst and Young?

A. A little bit. Again, they would have somebody on the previously mentioned the deferred comp audit. Any time there was an audit going on they were in a conference room that was basically adjacent to the finance, so I would see them, but I didn't have a lot of interaction with him.

Q. Did you have any

responsibility in relation to the audits they were working on?

A. The only thing I can recall is again, when I was doing a lot of the player costs, there would be some questions sometimes maybe about player contracts or how something is structures or things of that nature, but I didn't have a lot of interaction with them, no.

Q. Who was EY's primary contact with the Raiders?

A. Ed. Ed Villanueva during that time period that you're talking about.

Q. Did anyone from Ernst and Young, while you were in finance, ever raise any concern to you about the competence of the Raiders finance or accounting personnel?

A. No.

Q. Did anyone from EY ever raise concern to you about the culture at the Raiders?

A. No.

Q. Did anyone from EY ever raise any concern to you of any kind about the Raiders business processes or environment?
A. No.
Q. Let's talk about the time when you were made interim president.
Would your answers with respect to my immediately preceding questions about what EY did or didn't raise to you be the same?
While you were president of the Raiders, did anyone from EY ever raise any concern to you about the competence of the Raiders finance or accounting personnel?
A. No.
Q. What about with respect to the culture at the Raiders?
A. No.
Q. What about respect to the Raiders processes or environment?
A. No.
Q. How did you come to be interim president?

A. Amy resigned in May. I believe Mark and I had a conversation that day. He asked me if we were going to be okay, which I assured him we were. He said what do I need to do. I said you should probably come in on Monday and just reassure the staff that everything is going to be okay, this is to come as a shock to people, which he did, and he said I'm going to let you be in charge for now, I want to see what you and your team of people can do. I may interview some people. I'll be very transparent in the process, I'll talk to you about them and I'll explain to them that you're very important in this organization and if I decide to hire someone, that your role will continue. But he was very honest about where he was in the process and what he wanted to do.

And then maybe seven, eight months later -- he interviewed a few people. I sat in on maybe one or two of them. And then I think in September of 2014 we were playing a game, I think it was -- we were playing a game in New England and we were in Rhode Island and we were going to London the next day after the game against the Patriots and he said I'm done interviewing people, I want to name you the president. I said okay, great. He said, when do you want to do it. I said, when do you want to do it. He said, I don't know, maybe after the season. I said okay. And that's sort of how it happened.

And then the interim title was taken off in January, 2015.

Q. Just for the record, the Mark that you're talking about here is Mark Davis?

A. Sorry, I am, Mark Davis.

Q. How, at all, did your responsibilities change when you went from interim president -- well, let me ask it differently.

How did your responsibilities change when you were elevated from finance to interim president?

A. Obviously I took on a lot more responsibility, a lot more of the departments that had been reporting to Amy now reported to me. We had a lot of work to do. We weren't in I would say great shape from an operations standpoint. We had really good people. But she was a tough manager. She wasn't a very good leader and the organization wasn't performing where it should have been.

So we did a review of what we needed -- what we thought we needed to fix internally with a lot of the people that were there. We didn't add too many people. I think at one point we may have added one person at a high level in a marketing role. But we basically took the people that had been there for a long time and expanded some of their roles and went about trying to make improvements within the organization. The most important thing was eventually solving the stadium issue. We were playing in a dilapidated building in Oakland, our lease was coming to an end, and to your point earlier about the four pillars, we needed a new stadium deal. We were thirty-second in revenues at the time and we needed to improve that.

Q. We'll talk more about that as well in a little bit.

When you became interim president, did Ed Villanueva stay on as controller?

A. He did. I believe we promoted him to chief -- at some point we did I'll just call it a reorg even though it wasn't a reorg. We basically reassigned different people within the organization and elevated some titles and at that point I believe he was promoted to chief financial officer at some point after I got the permanent job in 2015.

Q. And when Ed became the CFO around 2015, did his responsibilities shift at all?

A. He definitely inherited some

additional responsibilities, absolutely.

Q. Do you recall what those were?

A. Well, I was doing a lot of what I was doing in the finance department, so from a cash flow standpoint, he took over the majority of those responsibilities. I think he took on the compliance certificate aspects with the bank, but the relationship with the bank was one that was very important, so I was still heavily involved with them. And then they also became heavily involved in the stadium development that we'll get into as well.

Q. Did you remain chiefly responsible for the Raiders cash flow when you were president, managing the Raiders cash flow?

A. Not as much as I was prior to that. I would say that prior to that, it was something that I felt like I should look at daily. I couldn't tell you the frequency once I became president. It was something that I would still talk to Ed about, but I wasn't handling on a daily basis going forward.

Q. Did it fall to Ed?

A. It fell to Ed.

Q. So as president of the Raiders, did you say before that you were reporting to Mark Davis?

A. That's correct.

Q. How often did you interact with Mr. Davis when you were president of the Raiders?

A. I would say daily. There were times when it was multiple times a day. There were may be some days when we didn't communicate. Pretty much every day.

Q. What types of issues did you speak to Mr. Davis about?

A. It could be anything going on in the organization. He left us alone for the most part on a lot of things. He always looked at stuff that what he termed outwardly focused, so call it marketing aspects. He created the Raider merchandise department back in the day, so that was always something very close to him. Anything that related to touching the fans, ticket sales, ticket promotions or how we marketed the tickets.

Q. What about the team's finances, did Mr. Davis involve himself in the day-to-day financial operations?

A. No, I wouldn't say he involved himself in the day-to-day operations.

Q. So the Raiders moved from Oakland to Las Vegas in 2020; right?

A. Correct.

Q. When did internal discussions about moving the team to Vegas begin?

A. For Vegas, it would be January of 2016. Late January/early February of 2016 was the first meeting we had in Vegas.

Q. And prior to that, were there discussions about moving the team somewhere else out of Oakland?

A. All of 2015, we spent that entire year working on a project and partnership with the Chargers on a stadium project in Carson, California. If you recall, the league was trying to solve the lack of teams in Los Angeles, so they had a project that was a Raiders and Chargers and then they had the Rams project in Inglewood, which ultimately became SoFi.

Q. So what was your involvement in first the Chargers partnership and then the Vegas project?

A. I think I can go back, if I can, for a second.

We were trying for a while to get a stadium deal done in Oakland going back to 2008 or '09. We spent about five years; we were unsuccessful.

When Amy left in May of '13, we spent the next fourteen months trying to put together a deal in Oakland. We had a term sheet, an outline of a deal that ultimately fell apart primarily due to the Oakland A's getting involved from a lease standpoint. When that fell apart in July of '14, we spent the next four or five months looking at what opportunities might be out in, including southern California. The Chargers, Dean Spanos, the owner of the Chargers, approached Mark in January of '15 talking about a project in Carson and that's when that project started. So we started meeting with the Chargers in late January of 2015, and over the course of that year, put together that plan. That involved both teams, it involved working the league, they had a special committee on Los Angeles.

Ultimately in January of '16 they voted for the Rams project in SoFi, and we went back to Oakland and were told to try and work something out there, even though there really wasn't any option.

A couple of weeks later a former player, Napoleon McCallum, who at the time was working for the Sands Corp., reached out to Mark and said they're trying to build a stadium in Vegas for UNLV; would the Raiders be interested in doing that.

One of the byproducts of the Los Angeles failure, the loss, was the league said they had a term called failed market and it meant that you had proven that the market that you were in was not sustainable for an NFL football team --

Q. Marc, I don't want to interrupt you. I'm mindful of the time and this is getting a little far afield from what we're focused on today.

A. My apologies.

Q. Not at all.

So from the time that the Vegas project starts in 2016, how much of your time are you spending on it?

A. A lot. Ninety percent, eighty-five, ninety percent. We were in Vegas -- starting in 2016, we were in Vegas pretty much Tuesday, Wednesday, Thursday of every week and then it escalated from there. We got approval to move in -- we got the approval for the public financing in October of '16; we got approval from the league to move in March of '17. So by then we were basically operating two businesses in two markets.

Q. Did planning the move to Vegas necessitate making any changes in the Raiders business organization?

A. Oh, absolutely, yeah. We had to hire a lot of people to help with the move. We had to move a number of people to Las Vegas in advance of the move. We had a very large contingency already in Vegas by early 2017 and then we started hiring folks to help us with the sales and marketing.

I'm being cognizant of time, so I don't know how much detail you want.

Q. Were there any changes necessitated in the finance department? Did you hire any additional people?

A. I believe Ed hired another controller. We may have had additional people in payroll. I don't know exact numbers. We definitely added bodies in the finance department from 2015 and going forward.
Q. Did you know somebody named Araxie Grant?
A. I did.
Q. When did she join the Raiders?
A. I want to say 2020. Maybe 2019 but 2020.
Q. Did you participate in her hire?
A. I remember when she was interviewed and Ed wanted me to meet her and she wanted to talk to me. I let Ed make the hire.
Q. What about Travis Scott, do you know him?
A. I do know him.
Q. Do you recall when he joined the Raiders?
A. I want to say in early 2021,

the first quarter of 2021 maybe.
Q. Did you participate in his hiring?
A. I don't recall being part of that one, no.
Q. Did you make any calls in connection with that process? Did you check any references?
A. I think he came from the Bills so I may have called a gentleman named Russ Brandon who used to work there. I don't think he was at the Bills in 2021.
Q. Was the move to Vegas a positive thing for the Raiders?
A. Absolutely.
Q. How so?
A. Well, in Oakland, the Raiders were the lowest valued team in the league, they were team number thirty-two, and in Las Vegas the revenues obviously went up substantially. I believe the team ranks number three out of thirty-two. So from a franchise valuation, from a

success standpoint, it was probably the single best stadium move or stadium decision of any team. Nobody's ever gone from thirty-two to three. The league ranks teams in quartiles. I can't recall any team going from fourth quartile to first quartile. It was a very good move for the team, certainly financially.

Q. You said earlier that, when the team took on a larger credit facility from Bank of America, that it came from a debt covenant; right?

Did you consider it important for the Raiders to meet its debt covenant?

A. Yes, I felt it was important for Raiders to meet the debt covenant.

Q. Why was that important?

A. Well, if you didn't meet your debt covenant, you would pay a penalty, and you wanted to be in compliance. The relationship with the bank was an important one.

Q. Was that something, meeting

the covenant, something that you focused on when you were the head of finance of the Raiders?

A. Yes.

Q. And what about when you were president of the Raiders?

A. Still do, yes, important.

Q. To your understanding, what were the potential consequences if the Raiders did not meet their debt covenant in any given year?

A. Well, they had those quarterly reports, so if you ever missed a covenant, depending on where you were on that EBITDA ratio, they could add a certain amount of basis points to your interest borrowing costs until you were back in compliance. The most important one to the bank was usually year-end. But we would work with them throughout the year because we would have these quarterly reports. So we would work with at the time a woman named Angel Sutoyo, we worked very closely with her. So we would update her periodically on where we were. If we thought we were out of compliance for whatever reason, we would give her an alert and give her a heads up.

And then I think in 2006 there were three members of the banking group. At some point it expanded to four. They would then have to share that information with the other banks.

So essentially it was twelve and a half or twenty-five basis points if you were out of compliance for potentially a three-month period, potentially six, nine, twelve until you came back into compliance.

Q. How significant penalty was that to the Raiders on a scale from not at all important to ruinous?

A. If you were borrowing a hundred million dollars, what's that, a quarter of million dollars a year, so twenty thousand a month, something around that.

Q. Did the Raiders ever fail to

meet their debt covenants at Bank of America when you were there?

A. Yes.

Q. Do you recall how often that happened?

A. On an annual basis, my recollection is happened three separate years: 2006, 2009, and 2011. On a quarterly basis, I couldn't give you -- I don't remember how many times it may have happened on a quarterly basis, but it wasn't that many times. And usually the bank would just give you a waiver. The annual was '06, '09, and '11.

Q. So in each of those years, to your recollection, what was the consequence of the Raiders missing their debt covenant?

A. Again, it was just a higher interest rate for the next period until we were back in compliance.

I think in 2011 we got a waiver. I'm pretty sure we paid the penalty in '09. We got a waiver in '11 because the reason for the breach was essentially the league entered into a new collective bargaining agreement and, as part of that collective bargaining agreement, they removed revenue sharing. So there used to be a large revenue sharing allocation and as the thirty-second team, the Raiders got the largest share. When they did the new deal in August of 2011, they eliminated that.

To your question earlier about the four pillars, we had already sort of budgeted the player cost number for that year. Mr. Davis had already set the roster and said here's what spending on players and we made the assumption at the time that the revenue sharing would come in. So the player cost budget was established with an expectation of the revenue sharing number that we would get an estimate of.

So when that was removed as part of the CBA negotiations, A, we were working with the bank on trying to resolve that. We were at a league meeting in Houston at the time and we were trying to resolve that with the bank and with the league and ultimately the bank just said we'll give you a waiver and just do a below the line number of what the revenue sharing number would have been but was taken away. So I don't think we paid the penalty after that one. That's where that breach came from.

Q. When you were head of finance at the Raiders, how frequently did you interact with representatives at Bank of America?

A. I would say in some cases daily. Obviously when we had any reporting requirements, we were on the phone with them. We spent a lot of time with them.

Q. What kinds of things would you talk them about?

A. Again, with Angel, you would talk about the compliance certificates. With other representatives, you might be on the phone with them managing the cash or borrowing money, paying money off on these lines of credit.

Ultimately they became our banker for the stadium project, so they were intricately involved in everything we were trying to do in Oakland, everything we were trying to do in Los Angeles, and everything in Vegas.

Q. You said earlier that you had to provide them quarterly financials and updates.

Did you provide them updates outside of the quarterly reports?

A. Oh, yeah, we talked to them all the time. Any time something happened from the league, you would have a conversation with anything from a macro level from the finance standpoint, you'd have conversations.

Elliot McCabe, who's at B of A, is pretty much the lead banking representative for -- not for the league but for something called the league-wide credit facility, so it's a large sum that the league arranges and teams can borrow from. But Elliot was very close to people within the NFL offices and probably, I don't know, twenty-six or twenty-seven of the thirty-two teams had a relationship with Bank of America in terms of the finances. So Elliot was pretty dialed in with what was going on in the league. So we spent a lot of time with him.

Q. How would you characterize the Raiders' relationship with Bank of America while you were there?

A. I would say they were an intimate part of our organization. In any large decision we made, they were involved in, anything that involved -- anything related to a stadium, anything related to the move, they were a part of that team. But we were closely tied with them. They were providing our letter of credit, so we had to spend a lot of time explaining where the business was. We used to do periodic five-year forecasts for them. They were always the lead arranger bank for any of our syndicates. When you mentioned the one we did in 2006, that was a first time we did a syndicate. Prior to that, it was just solely with Bank of America.

Q. Did you consider the relationship with Bank of America to be an amicable one?

A. Yeah, I would consider it to be amicable. He's still a good friend of mine today.

Q. Were people at the Raiders afraid of Bank of America?

A. No.

Q. Let me ask you to look at in your binder there a tab that says JX 2288.

That's an e-mail chain you'll see from September of 2007 and it's among you, Gordon Wiens, somebody named Evea Becerra, and others.

You see the bottom e-mail there, it's from Angel Ng to you.

Who's Angel Ng?

A. Well, when she got married, her name changed to Angel Sutoyo. That was her maiden name. She was our day-to-day banking rep and then she reported to the gentleman Gordon Wiens who was the primary on the Bank of America account for the Raiders for probably twenty plus years.

Q. So the e-mail at the beginning of the chain is from Angel to you on the 18th of September, 2007 and she writes, "hi, Marc, hope this e-mail finds you well. I've been meaning to e-mail regarding the compliance certificates for the Raiders but haven't had a moment to do so until now".

I'll let you read the rest of the e-mail but she's essentially asking you there to you the compliance certificate and ask you to forward it on?

A. Okay.

Q. This is when the facility was

relatively new; right?

A. This is September of '07, so I guess the second year we had it in place.

Q. And then you respond to her above that saying, "all of the amounts highlighted are correct" and you tell her you'll get her the interest and expenses and existing limited recourse debt as an annual calculation done at year-end so no amounts will be listed on a quarterly basis.

In essence you forward an e-mail to her saying here's the information, please let me know if this is satisfactory.

And then she responds, the first e-mail on the next page, "hi, Marc, thank you for verifying the highlighted numbers. Are the nonhighlighted numbers in the spreadsheet correct as well. If they are correct, we may be looking at some covenant violations". And then you answer her above and she responds to

you and she says, "thanks, Marc, let us know what you find so we can work through whatever issues may exist".
Was that a typical interaction that you might have with Bank of America in relation to covenants?
A. Yeah, I'd say it's typical. We would probably have some conversations as well. This is a quarterly one, right? Q1 '07, Q2 '07, lower trailing twelve months. You see where it says driven by significantly higher player bonuses? So that's probably referring to some signing bonus me may have paid in the 2007 offseason as we were building the roster. Yeah, this is indicative of the conversations we would have with them other than going over the quarterly certificates.
Q. And I'm sorry, I misspoke a minute ago when I read to you that last e-mail. I suggested it was from Angel Ng but it's actually from someone named

Gordon Wiens.
Who's Gordon Wiens?
A. Gordon was our main contact at Bank of America, so Gordon was Angel's boss. I don't remember his title at the time but he was essentially the western region rep that handled the Raider account.
Q. And then above that e-mail there's text that says, "I appreciate it, Marc, Gordon brought to my attention that the amortization of player bonuses may be back end loaded and therefore the ratios may simply contain a mismatch in cash inflow and cash outflow. Please let me know of you spot any errors on my calculation. As Gordon mentioned, we would work through any issues that may exist".
Do you see that?
A. I do.
Q. So was that generally Bank or American's posture with respect to covenant issues?
A. Yeah, I'd say that's a fair

representation of that. I'm just reading the note above it. She'll get with Gordon over the issues and -- okay.

Q. So we mentioned a little bit ago NFL Ventures.

Was the NFL Ventures revenue included in the revenue reported on the Raiders financial statements?

A. Yes, it would be.

Q. And did Ventures distribute its revenues to the NFL teams annually?

A. They did it more than just annually. It could be quarterly, it could be monthly, yeah.

Q. But was it on an annual fiscal year?

A. Correct.

Q. What was the Ventures' annual fiscal year, if you recall?

A. 4/1 to 3/30.

Q. And what was the Raiders' fiscal year?

A. Calendar year.

Q. Did the NFL provide the

Raiders with periodic reports throughout the year of Ventures cash it had distributed and was expected to distribute through the year?

A. The cash? Yes.

Q. Was that a document that you reviewed?

A. There's a cash flow document that I reviewed, yes.

Q. For what purpose would you review that?

A. To your earlier questions about cash management, just in terms of how much cash was coming in, when it was coming in, and then matching that up with any of the outflows to minimize how much money we had to borrow.

Q. If you look in your binder, there's JX 213. If you would flip to the third page of that exhibit, what do you recognize that to be?

A. That's the sheet you just referenced which is the cash flow we would get periodically from the NFL.

Q. How often did the NFL

distribute this report; do you recall?

A. I would say a half a dozen times. You'd get one at the beginning of the year and then any changes to any of those cash inflows or outflows they would send a new one if there was an update. You see at the top left. There's always be ones with different dates.

Q. Would it be your practice to review it when it came in?

A. Yes, this is a sheet I used.

Q. And you'll see about halfway down the page there's a line that says NFL Ventures?

A. Correct.

Q. And a little below that there's a line that says NFL Ventures 2016 season?

A. Correct.

Q. What does that line represent?

A. That represents cash flows that are coming in from the NFL starting in April of '16 through April of 2017.

Q. Is that for the NFL 2016 season?

A. I believe so.

MR. REED: Mr. Bickerman, did you want to ask?

ARBITRATOR BICKERMAN: I think I misheard something.

Was it April of '16 through when?

THE WITNESS: Through April of '17.

ARBITRATOR BICKERMAN: Thank you.

Q. Was there a stub piece of the 2016 revenue that got paid in April of 2017?

A. I don't recall.

Q. What's the next line, NFL Ventures concussion, represent?

A. There was a settlement at some point where ex-players, they put some money aside to cover concussion-related litigation, I believe, so that was probably -- I remember that was netted out of the cash flows that they were going to send to us.

Q. Do you recall how the Raiders accounted for Ventures payments from the NFL?

A. It would have been online three of the income statement.

Q. Were you responsible for making journal entries to book that revenue?

A. No.

Q. Who was that?

A. Ed Villanueva.

Q. We've heard a lot in this case about something referred to as the January accrual.

Do you know what that is?

A. The January accrual is I believe a number that, when you referenced the different fiscal years between the team and the league, it's money that was paid in the following January that was accrued into the previous year.

Q. So for example, a Ventures payment received in January, '17 would be accrued into 2016 revenue?
A. Correct.
Q. Do you know when the Raiders started accruing the January Ventures payment into the prior year?
A. No.
Q. Do you recall why the Raiders started accruing the January Ventures payment into the prior year?
A. No.
Q. Let's look at Exhibit JX 210, please.
Mr. Badain, have you seen this document before?
A. I believe I saw it in preparation for my deposition in April.
Q. Do you have any recollection of seeing it before then?
A. No. I believe it might have been shown to me by Dan Ventrelle in 2021.
Q. Do you know what this document is?

First let me ask this, do you recognize from the format or anything else whether you prepared the document?
A. I think part of it I prepared and I think part of it I cut and pasted from some other folks.
Q. Which part do you believe you prepared and which part do you believe you cut and pasted?
A. I believe one I cut and pasted. Two, four, five, and six seem like something that I would have been involved in. I don't know about three.
Q. If you look at number four, it says, "plan B, take January, 2007 into income and create AR. After all, it is 2006 TV income", and then "Stuart".
A. Right.
Q. The first question is do you recall writing that or cutting and pasting that?
A. I don't recall.
Q. As you're looking at it now, do you have any sense of what that

refers to?
A. I think it refers to exactly what it says there, take the January payment and accrue it into 2006 as income.
Q. Does that seem likely to you to be the onset of the January accrual?
A. I suppose it does.
Q. But as we're sitting here --
A. I don't recall if it was ever done earlier than that.
Q. There's a reference here to Stuart.
Is there anybody named Stuart that you were interacting with in this 2006 time period in connection with your work for the Raiders?
A. Stuart is Stuart Lipton. He was the tax attorney at Howard and Rice. He used to work pretty closing with Amy on all this.
Q. Do you have any recollection of discussing the January accrual with Stuart or any other attorneys?
A. No.

Q. Do you have any recollection of discussing it with anybody at Bank of America?
A. I don't think so, no.
Q. Do you know one way or another whether the Raiders finance steam consulted with anyone outside the Raiders before implementing the January accrual?
A. Do I know?
Q. Yes.
A. No.
Q. So there came a point when the Raiders discovered that, for an extended period of time, they had overstated the revenue they had received from NFL Ventures on their financial statements.
When did you first learn about that?
A. Can you ask the question again?
Q. Sure.
When did you first learn that the Raiders had significantly

overstated their NFL Ventures revenue on their financial statements?

A. It would probably be sometime between April of '21 and July of '21.

THE CHAIRPERSON: Gentlemen, let's take this testimony very slowly for our court reporter.

Q. When did you first learn that there was a major issue in relation to the financial statements?

A. Late April of 2021.

Q. How did you first learn about that?

A. I came back from a vacation. There had been a couple of e-mails the last few days I was out of town, but I came back from vacation and the general counsel, Dan Ventrelle, and the head of HR, Jamie Stratton, came into my office and said we have a big problem and then went on to explain --

Q. Don't tell me what Mr. Ventrelle said to you. I think that's a privileged conversation.

Do you recall the date in

April when you returned to the office?
A. It was the last week, I don't know if it was the twenty-sixth, twenty-seventh, somewhere around there.
Q. What happened after your conversation with Mr. Ventrelle and Ms. Stratton?
A. They explained to me that --
Q. Don't tell us what they told you.
After they alerted you to the situation, what happened next?
A. They opened an investigation and Dan told -- I was instructed that I was not able to really be involved in anything because my name was on some rep letters and that he would alert me when they would want my involvement. Essentially that I was under an investigation.
Q. At or around this time do you recall having any discussion with Travis Scott and Araxie Grant about what had taken place?
A. I do believe I had one

meeting, I don't remember if they were together or if I did one with each of them, but I do remember talking to each of them sometime during that week.

Q. Was anybody else present during those discussions that you can recall?

A. Yeah, I'm sure Dan and Jamie were probably in each of them.

Q. What can you recall about those conversations?

A. I just remember them talking about an accounting issue and their concerns about it. We talked about that they did the right thing, that they brought it to our attention, that we were going to address it, that we communicated I believe at that point with some attorneys, with the accounting firm, with the bank. I don't know if we had talked to the league yet. I think Dan may have talked to the league but I had not, just in terms of how we were going to address it as an organization, how we were going to look at the issue and eventually handle it properly.

Q. Do you recall Travis or Araxie expressing to you that Ed had overstated the Raiders Ventures revenue on purpose?

A. No.

Q. Did you have a conversation with anyone from Ernst and Young about the issue?

A. I believe I talked to Javier Garcia.

Q. Let's look at JX 287, please.

You'll see, Mr. Badain, this is an e-mail chain dated April 28, 2011 between -- and it ends on -- sorry, this is an e-mail chain dated April 28, 2021 between you and Mr. Garcia and the final e-mail in the chain is April 29, 2021.

You'll see the bottom e-mail from Mr. Garcia to you begins, "Marc, following up on our conversation from yesterday, here is how we would expect the next steps and processes to take shape", and the bullets below you'll see relate to how an investigation should be opened and conducted.

Do you see that?

A. I do.

Q. Do you have any recollection of the conversation the prior day that Mr. Garcia refers to?

A. I don't recall the conversation, no, or the details of the conversation.

Q. Did you play any role in the selection of Arnold and Porter to conduct the investigation?

A. I did not.

Q. And did you play any role in the investigation?

A. I was questioned twice, but no, I did not play any role in the investigation.

Q. You know from being deposed in this case that Ernst and Young's position here is that the Raiders' overstatement of the Ventures revenue was not in error; right?

A. Can you repeat that?
Q. You know, from being deposed in case, that Ernst and Young's position in this case is that the overstatement by the Raiders of their Ventures revenue was not a mistake; right?
A. Yes.
Q. You know that EY's position here is that the Raiders deliberately overstated Ventures to enable them to satisfy their debt covenant to Bank of America; right?
A. Yes.
Q. What is your response to that?
A. I think it's unequivocally wrong. We didn't do anything without the bank's knowledge, we didn't do anything to commit fraud, we didn't do anything to deceive anybody. We never did.
Q. Prior to April, 2021, were you ever aware that the Raiders financial statements overstated the

revenue they had received from NFL Ventures?

A. No.

Q. Prior to April, 2021, were you ever aware of any uncorrected material error in the Raiders financial statements?

A. No.

Q. Do you believe that Ed Villanueva intentionally double-booked January revenue in the Raiders financial statements?

A. No.

Q. Why not?

A. I just don't believe Ed would do anything like that on purpose. I don't think he would do anything like that, period. I don't understand why we're even sitting here, to be quite honest. No, I don't believe Ed would do that.

Q. Do you have any explanation for how it was that the Raiders failed to detect the overstate of Ventures revenue for all those years?

A. Can you ask the question again?
Q. Do you have any explanation for how it was that the Raiders failed to detect --
A. No.
Q. You've got to let me finish the question.
Do you have any explanation for how it was that the Raiders failed to detect the overstatement of Ventures revenue for their financial statements for all these years?
A. No.
Q. Go back to Exhibit 213, if you would, JX 213, and go to page three, if you would. This is the document we looked at before.
A. Yes.
Q. And the cash report for the 2016 season.
If you look at -- so this is as of January 13, 2017; right?
A. Okay.
Q. And if you look at the line

that says NFL Ventures totals in the middle, that's projecting that the NFL, as of January 13, 2017, is projecting that each club is going to receive $107 million from NFL Ventures; right?
A. For the 2016 season total?
Q. He why.
A. We would receive one hundred seven million in cash.
Q. And if you look at the line above that, let's look at the NFL Ventures 2016 line.
Do you see that?
A. I do.
Q. You'll see that there are only two substantial payments expected to occur after January 13, 2017, one for twenty-four and a half million dollars and one for $15 million; right?
A. You're excluding the concussion line and the broadcast line below?
Q. Yes.
A. Yes, I understand.
Q. So essentially all -- this

document shows you that all but forty million or so of the one hundred seven that you're supposed to get have been paid; right?

A. Well, again, it doesn't include the broadcast line item or the net of the concussions. But if you're talking about just -- because you said one hundred seven, which is all four of these line items added together and then you're only asking about the one specific line of 2016.

Q. Did you ever look at this document in consultation with the Raiders financial statements?

A. No, I don't think I would look at this in conjunction with the financial statements.

Q. Did you ever look at this document and compare the amount expected for the rest of the year with the receivable on the Raiders financial statements?

A. No.

Q. Is there any particular

reason why you didn't do that?

A. Well, one, it wasn't really something that I focused on. We weren't focused on our balance sheet. We didn't really utilize our balance sheet very often. The only times I remember looking at the balance sheet were we did a couple of ownership transactions in '05 and '07 and I think again in '14 and those would be the only times we might be sitting in a diligence meeting with a potential buyer and they'd have some questions on a balance sheet. It wasn't a balance sheet company, it was an income statement-driven company. I didn't look at the receivable on the balance sheet.

Q. Are you familiar with something called the NFL conforming statements?

A. I do know what they are.

Q. What are they?

A. They were an accounting audit to essentially true up the differences between some team's fiscal years versus calendars. Not every team was a calendar year, not every team matched the league's fiscal year, so in order to do the salary cap, they had a different audit process called conforming statements, and then that would true up all the revenues from the prior season except the salary cap for the upcoming season.

Q. Did you play any role in preparing the NFL conforming statements?

A. I did not.

Q. Did you ever, as part of your responsibilities, have to review the NFL conforming statements?

A. Not that I recall.

Q. Was there anything in it that was important to you in the performance of your job?

A. I did not need it for my job.

Q. Did you and Mr. Villanueva ever e-mail each other to discuss improperly manipulating the Raiders

financial statements?
A. No.
Q. Let's look at JX 17.
Do you recall Mr. Farina showing you this e-mail at your deposition?
A. I do.
Q. And you'll see it's a chain of e-mails between you and Mr. Villanueva for the most part from May of 2020?
A. I do.
Q. And the middle of the e-mail -- you can read anything you need for context -- but the middle e-mail from Ed to you May 29, Mr. Villanueva writes, "FYI, our debt service coverage ratio ended up being 3.44. At the beginning of the year we thought we would break our covenant".
Do you see that?
A. I do.
Q. What's he saying to you there?
A. I think what he's saying

there is at some point during the year when we were looking at where we were going to be on our compliance certificate, we were out of compliance and then ultimately we ended up at a 3.44 debt service coverage ratio.

Q. And the covenant he's referring to there is the debt coverage you owed to Bank of America?

A. Correct.

Q. Let's go up to the next e-mail.

You respond, "business is boomin'", and then there's a picture of somebody's feet.

Can you explain that?

A. That's Antonio Brown's feet that he burned in a cryochamber.

Q. What's the reason you're sending that picture?

A. He was on our team that prior season and he was a fairly large item of player cost and he was either -- I think he was traded, I think we traded him to the Patriots.

Because we traded him, the way his signing bonus got amortized had a positive effect because we didn't have to pay a certain amount of money. It was basically a reference to the effect that his departure was the reason we had such a big jump in our coverage ratio.

Q. And where does "business is boomin'" come from?

A. Well, that was something that he used to tweet all the time. I think it's on his shirt right there. It was just a joke.

Q. And the next e-mail in the chain Mr. Villanueva responds to you, "and a little manipulation".

Do you know what he meant by that.

A. I don't. You have to ask him.

Q. At that point in time were you manipulating the Raiders financial statements to achieve covenant compliance?

A. No, we were not.
Q. Did you ever do that?
A. No, we never did that.
Q. Let's go to JX 16.
That is an e-mail chain between you and Mr. Villanueva in November of 2018.
Do you see that?
A. I do.
Q. If you look like four e-mails up from the bottom, Mr. Villanueva writes to you on November 5, "current DCR at 1.18. However, we do have a lot of cushions in our numbers. I rather see that number at three".
Do you see that?
A. Yes.
Q. And DCR refers to?
A. Debt coverage ratio.
Q. And 1.18, where is that in relation to where it's supposed to be; do you know?
A. I don't know in that particular year, but certainly from the e-mail above it, it looks like our

coverage ratio was 1.0 in that particular year.

Q. And Mr. Villanueva writes, "we do have a lot of cushions in our numbers".

Do you know what he meant when he referred to cushions?

A. Yeah, we would build in some cushions to book the revenue and expense line items just to make sure that if we ever thought we were going to be out of compliance, we had basically some room, and then we would go over those numbers with the bank so they knew sort of where we were and we would have check-ins on it. This is late November of 2018, so we had pretty much the large line item which is the player costs. You know where that's going to be.

But there were times we would have a cushion because if you had a lot of room in your covenant for that particular year, you might go to a free agent for the next year. You're in week ten or week eleven and let's say you had two or three million worth of cushion in your number, you could go to that player and say we'll sign you now and do a restructure of your contract and then that player cost amount would be, in this particular case, in 2018 and fit into the player cost number for this year and we would take a free agent off the books that we were worried about potentially losing in the next year. So really the cushions for the most part were meant to provide you some room for the player cost number, which was the largest variable.

ARBITRATOR CHANDLER: These are salary cap cushions, not debt ratio cushions; is that right?

THE WITNESS: It's a good question. Yes, they're cushions in a couple of numbers. You might understate what you think you're going to get in ticket revenue at this particular point in time and you might have a larger number in for some of the expenses and you hope they're going to come in lower.

From a salary cap standpoint, I guess what I meant to explain is you would have additional cash under the threshold that you needed to meet your bank covenant and then you would go to a particular player and sign them. Yes, you would have room in the cap in order to sign that particular player, but I'm referring more to the cash than the cap.

Does that answer your question?

ARBITRATOR CHANDLER: Yes. Thank you.

Q. So you respond to Mr. Villanueva, "anything greater than one works"; right?

A. Correct.

Q. And he says, "yes. What if we were still at one and a quarter. You pay me to worry"; right?

A. Right.
Q. And then you respond, "it never happened under my watch. Maybe once, maybe twice".
Can you explain what you mean there?
A. I assume I mean I'm talking about breaching the covenant. We talked earlier that it happened in '06, '09 and '11.
Q. So in what spirit are you making this remark?
A. The spirit I'm making is we're joking around.
Q. So you're saying it never happened under my watch, well, maybe once, maybe twice?
A. Yes.
Q. And then the next e-mail up in the chain, that says, "lucky we didn't stress integrity back then". And you respond to him, "4Cs".
So how would you explain that exchange.
A. Those are jokes at Amy

Trask's expense.

Q. Can you explain them to the panel?

A. I think at that point in time we had done -- we had hired a professor from Berkeley to look at our organization and we were moving a Vegas and we wanted everybody to sort of say what did we want to be going forward and we had a lot of issues with our prior boss. She wasn't very well-respected, she wasn't very well liked. And one of the pillars that came back from this study from this professor that there were nine factors that she would rank things on and it came back that all of the people who lived under Amy's watch had a very different way of looking at how the organization operated when she was there versus when they left. One of the things they talked about is it felt like we got our integrity back when she left. So that was one of those.

4Cs is she used to always say

communication, collaboration, cooperation, communication. It sort of became a running joke in the organization because A, she didn't really practice those and B, she really just used to say it.

There were a lot of jokes at her expense.

Q. So Ed is making an Amy Trask joke and you're responding with an Amy Trask joke?

A. Correct.

Q. So it's been suggested that these e-mails are evidence that you and/or Ed committed accounting errors intentionally and were in the habit of manipulating financial results.

Is that true?

A. No.

Q. What do you take these e-mails to be?

A. I take these e-mails to be two guys that have worked together for a long time together making some jokes that, while inappropriate, are not

indicative of manipulating anything.
Q. Now, around the same time that the accounting errors were discovered, were there also conversations about allocations you and Mr. Villanueva made between entities called TeamCo and StadCo?
A. What time period are we talking about?
Q. This April to July time period, 2021.
A. Yes, we were working with the bank at that time period. It was the first year -- can I go back a second?
Q. Sure.
First tell everybody what TeamCo and StadCo are.
A. TeamCo is essentially what the previous banking covenants, the previous banking relationship was for the team revenue. StadCo was a new entity that was created for the Allegiant Stadium project and the financing around the Allegiant Stadium project. So there was two separate

loans, there was the TeamCo loan and then there was an $850 million loan for the stadium project.

Q. And did TeamCo and StadCo have debt covenants?

A. They both had debt covenants.

Q. Who were those covenants to?

A. Well, Bank of America was the lead bank. The TeamCo deal at that time I think had three or four banks in it. And the StadCo deal may have had twenty-five banks and institutions. It was obviously a much larger syndicate.

Q. And when did those covenants come into place?

A. For TeamCo or StadCo?

Q. For both.

A. TeamCo I think was every year that we're talking about.

StadCo, I believe the first year was 2020. It was the first year that the stadium was supposed to be open and in operation.

Q. And what else happened in 2020?

A. In 2020, we had a pandemic, no revenues for a lot of revenue streams that were part of these two loans.

Q. And what did that mean for the debt covenants?

A. It meant that we were definitely breaching TeamCo. But pretty much every team in every sport was breaching their covenants.

So what was going on from a time period standpoint, obviously the pandemic happens in March, we don't know if we're playing, eventually we started playing with no fans, we started doing something called sponsor make goods so that there was some revenue that all the teams -- so all the teams were sharing information.

I think some teams allowed fans in but we didn't, so we didn't have any revenue coming from Allegiant Stadium. So we were working with Elliot --

Q. Who's Elliot?

A. Elliot McCabe at B of A, sorry, and a number of people at the league, and there were probably calls once or twice a week with people from the NFL just sort of managing through what was going on, both from a financial standpoint, a health standpoint. It was a pretty unprecedented time.

We get to I guess the first or second quarter of 2021 and we're doing fur financials for the prior year and we were in breach of TeamCo and we were trying to work with the bank to not breach on StadCo, so we were working pretty closely with them on how to do that.

Even if there was no pandemic, if COVID had never happened, it was still going to be our first year in the stadium, we still didn't really know exactly how this was going to work, so Elliot, who had been involved in the entire transaction and Elliot who had been involved in the structuring of the loans, was intimately involved with us as we were trying to determine how we were going to allocate certain revenue and certain expenses.

Q. Was there any particular guidelines or documents that governed how the allocations of expenses and revenues had to be made between TeamCo and StadCo?

A. I don't know if it's called the development agreement. There's a bunch of documents related to the Allegiant Stadium project. I don't know exactly what each one's called, which one has the guidelines of where the revenue stream should be allocated.

Q. Who within the Raiders was working on this allocation?

A. Mostly the accounting department, so Ed and his team and they were working with the accountants and other folks, and then we were working with Elliot. I don't remember which lawyer was helping us, but it would have been somebody at Howard Rice. Probably Terry Jones.

Q. Was there a decision taken at some point to focus on meeting the StadCo covenant?

A. There was a position taken to try and make the StadCo covenant, yes.

Q. We've seen documents in this case that refer to a game plan to meet StadCo.

Was there a game plan to meet StadCo?

A. I don't know. I don't really know what that term relates to. There was daily conversations with -- primarily with Elliot and other members of the banking team, some folks from U.S. Bank who were involved, I know they were on a handful of calls. There was a lot of conversations with Kevin Flaherty at the league, he was sort of the league's point person for trying to assist teams through this time period.

That's all I can recall right now in terms of who was working on it.

Q. Did you and -- did you or the Raiders ever produce a final allocation with respect to TeamCo and StadCo for the 2020 year?

A. I was gone by the time the final allocation was out there.

Q. Before you left, how far had you gotten in terms of producing an allocation?

A. Once the investigation was open, I was pretty much walled off from anything related to those allocations. There were conversations with -- we hired an outside firm Ankura I think they were called, so there were some meetings with Ankura. Any time I was in one of those meetings Dan was in a meeting and we had a number of calls with Elliot and Ankura at the same time, but there were a lot of decisions being made that I was not privy to or part of those conversations.

Q. Prior to the time when you were excluded from the process, had you and Ed discussed different solutions as to how you might enable StadCo to meet its covenant?

A. Yes, we did, absolutely.

Q. What kinds of things do you recall talking about?

A. What we're talking about here in terms of where the revenue streams could be allocated, sponsorship revenue, sponsorship expenses. Again, it was pretty fluid. There was information coming from the league in terms of how treatment was going to be established, how they were going to establish the cap based on some of these. There was all those issues that were going to affect the players' salaries for the next year. There was a lot of fluidity to it thought late 2020 and early 2021. So we were having conversations I would say if not every day, close to every day.

Q. If we take, for example, an item such as salaries, that was something you had to allocate between TeamCo and StadCo; right?

A. Salaries of players or employees?
Q. Employees.
A. Right.
Q. And did you understand that you were free to allocate that in whatever percentage you wanted based on desires to meet covenants?
A. No.
Q. What did you understand about what you were bound by and what you were restricted to?
A. We were working with the bank to try and say what would be allowed, what would they be okay with, what would be the guidelines in terms of if you were a sponsorship salesperson, are you a TeamCo employee or are you a StadCo employee, where is more of your time being spent, is it spent doing things for the stadium, is it doing things that are meant for the team. So it was really an allocation of all the different people that worked at the team and where their primary

responsibilities laid and where you were going to put that expense.

Q. Did you understand whether EY would have any role in that process?

A. I think they were involved in that process.

Q. Do you have an understanding of what their involvement was going to be?

A. I don't.

Q. When did you leave the Raiders?

A. July of '21, nineteenth.

Q. What were the circumstances of your departure?

A. I was asked by Mark Davis to resign from the organization.

Q. What did Mark tell you about why he was asking you to resign?

A. He told me that he had been told by the lawyers that we had a problem with our financials and that, in order to resolve those, I needed to resign.

Q. Did anyone at the Raiders

ever tell you that they had concluded that you had intentionally overstated the Ventures revenue?
A. No.
Q. Did anyone at the Raiders tell you that they had concluded that you had deliberately misallocated revenue and expenses between TeamCo and StadCo?
A. No.
Q. Do you believe you're owed anything by the Raiders?
A. Yes.
Q. What do you think you're owed?
A. I'm owed a bonus for the completion of Allegiant Stadium.
Q. How much is that?
A. It's to be determined.
Q. How many figures are in that?
A. I'm assume they're going to be a lot.
Q. Why do you think the Raiders owe you that?
A. Because Mark told me that

prior to and after my departure. We started talking about that in 2017.

I never had a contract, I never asked for a contract. I worked for the family for thirty years, thirty-one years. Mark's a man of his word. I trust him. He asked me to resign and give up my career because he had a problem and I did it. When he decides to make good on what he told me, he will decide to make good on what he told me.

Q. Have you been promised anything by the Raiders in connection with your testimony here today?

A. I have not.

Q. Do you believe your testimony here today will result in the Raiders conferring any benefit on you?

A. Say it again?

Q. Do you think that your testimony here today will result in the Raiders conferring any benefit on you?

A. I don't know.

Q. Is that why you're here

testifying today?
A. No.
Q. Why are you here?
A. I'm here because I gave thirty years of my life to a place and it was my family and I know I have to be careful in how I answer this. A certain person who I was pretty close to who I thought was my friend utilized an opportunity to betray me and I took accountability for it and I lost my career and I lost my reputation and I really hope that -- I hope that you believe me. I don't know what else you've heard. I can't -- I can't answer for that. I can just tell you I told you the truth. I can tell you that a lot of lives were destroyed in the last three and a half years, a lot of families were destroyed in the last three and a half years because of this decision. There was no malice, there was no fraud, there was no misrepresentation. Was there a mistake made? Yeah, there was a mistake made,

and we didn't catch it and Ernst and Young didn't catch it, but there wasn't any fraud.

So I'm here to clear my name. I'm here to feel good about the fact that I told the truth and I can walk out of here and I know that I know that I told the truth. And I miss the Raiders and I miss the family and it's still a big part of who I am in my life. It's sad that it got to this point.

That's about as honest as I can be. It's about as heartfelt as I can be.

MR. REED: I have nothing further.

THE CHAIRPERSON: Let's take a ten-minute recess.

(Whereupon a break was taken)

THE CHAIRPERSON: Let's go back on the record.

CROSS-EXAMINATION BY
MR. FARINA:

Q. Good afternoon, Mr. Badain.

A. Good afternoon.
Q. Is it your testimony that you first learned about the whistleblower complaint from Mr. Ventrelle and Ms. Stratton?
A. Yes.
Q. And you hadn't been told about the overstatement of revenue and receivables by Mr. Villanueva?
A. No.
Q. Mr. Villanueva though reported to you in your capacity as the president; correct?
A. He did.
Q. Ultimately Mr. Ventrelle and Ms. Stratton were put in charge of investigating the complaint; correct?
A. I believe that is correct.
Q. And when you referred in your testimony to having been betrayed, were you referring to Mr. Ventrelle?
A. I am.
Q. Do you feel that you were betrayed by Ms. Stratton?
A. I wouldn't -- I didn't have a

relationship with her where it was that important to me, no.

Q. Let me ask you a little bit about your responsibilities as the Raiders president.

You became the interim president in 2013; correct?

A. Correct.

Q. And you became the president with the interim title removed in January of '15; correct?

A. Correct.

Q. And in your capacity as interim president and president, Mr. Villanueva reported to you; correct?

A. Correct.

Q. And while you were president, you continued to oversee the cash flows for the Raiders; correct?

A. Yes. I mean, I relied on Ed a lot more going forward after 2013, but it was still an important responsibility, so I tried to stay involved in that, yes.

Q. Mr. Villanueva would report

to you on the cash flows of the Raiders; correct?
A. Probably, yes.
Q. And he maintained something called a cash flow sheet.
Do you recall that?
A. I do.
Q. And that's distinct from the cash flow schedules that were provided by the NFL; right?
A. Yes.
Q. The additional compensation that you're expecting to receive from the Raiders, how much do you believe that they owe you?
A. That's privileged.
Q. Why is it privileged?
A. Because I've had conversations with a personal attorney about it.
Q. I'm not asking you anything about the conversations you had with any lawyer.
Have you told Mr. Davis what you think you're owed?

A. No.
Q. Have you told Mr. Delsen what you believe you're owed?
A. No.
Q. Have you told anyone from the Raiders what you believe you're owed?
A. A dollar amount?
Q. Or a range.
A. No.
Q. But it's your expectation that the Raiders will pay you some amount of money at some point?
A. It is.
Q. And you're expecting that that money will be paid to you after this arbitration?
A. I have no idea.
Q. Can you take a look at Exhibit 3286. It's in -- they are in order.
If you look at the back of 3286, it's the next to last page, do you see your signature?
A. I do.
Q. And you're signing as the

president of the Raiders; correct?

A. Correct.

Q. And do you understand this to be a representation letter of Ernst and Young?

A. I'll take your word for it rather than reading an eight-page document, yes.

Q. Do you recall that you were asked to sign a representation letter for Ernst and Young every year?

A. No.

What years are you referring to.

Q. Were you asked to sign a representation letter every year that you were the president?

A. I believe so.

Q. So from at least 2013 onward to the point where you left the Raiders, you signed a representation letter for Ernst and Young?

A. I believe that would be accurate, yes.

Q. And you understand the

representation letter was being requested by Ernst and Young in connection with their financial statement audit; correct?

A. Correct.

Q. If you just flip through the items that are addressed in the representation letter, you understand that this letter relates to the financial statements that were being audited; correct?

A. Can you ask the question again?

Q. You understood, when you signed letters such as this one, that the letters related to financial statements that were being audited by Ernst and Young; correct?

A. Correct.

Q. Did you take this letter seriously?

A. Yes, I would take this letter seriously.

Q. So before signing this letter, did you read it?

A. I'm sure I read parts of it, yes.

Q. So how did you make yourself comfortable before you signed this letter that you could represent what you're representing here?

A. I would rely on Ed Villanueva for that.

Q. Would you read the annual financial statements?

A. What I read them?

Q. Yes.

A. Not necessarily. I would use parts of them but I wouldn't necessarily read them cover to cover.

Q. So as president of the Raiders with overall responsibility for management of the business, would you read the annual financial statements?

A. I would read parts of the annual financial statements.

Q. What about when you were in charge of the finance function? So prior to 2013, I think it's 2003 or '04 to 2013, would you read the financial

statements then?
A. I would say the same answer, I would read parts of the financial statements.
Q. So you were counting on Mr. Villanueva and his group to prepare the Raiders financial statements?
A. Correct.
Q. Did Mr. Villanueva ever discuss the financial statements with you?
A. Today sitting here I don't recall.
Q. So you don't recall during the seven years that you were president of the Raiders whether you discussed the financial statements with Mr. Villanueva?
A. I don't recall discussing the financial statements. I'm sure we discussed parts of the financial statements, yes.
Q. Can you take a look at JX 0257.
You see this is an e-mail

from Mr. Villanueva to you?
A. I do.
Q. And this e-mail is dated April 16, 2019; correct?
A. Correct.
Q. And he writes to you, "your favorite cash sheet is attached".
Do you see that?
A. I do.
Q. And if you flip the page to the back page, do you see that the attachment is the 2019 season projected cash flows?
A. I do.
Q. And was this, in fact, your favorite cash sheet?
A. I don't really know why he called it that.
Q. You testified earlier though that this is something that the Raiders received at multiple points during the year; correct?
A. Correct.
Q. And you reviewed it at multiple points during the year;

correct?

A. I did.

Q. And you were reviewing it to see when the NFL would be paying the Raiders so you could manage the business; correct?

A. So I could manage the cash flow, yes.

Q. And the payment of cash by the NFL and the timing of those payments was important for you to manage the Raiders cash flows?

A. Can you repeat the question?

Q. Sure.

When the NFL would be paying the Raiders and what the NFL would be paying the Raiders was important for you to manage the business?

A. Yes.

Q. If you take a look at this one, this one, if you look in the upper left-hand corner, it says as of 4/15/19; correct?

A. Correct.

Q. And that would be at the very

beginning of the 2019 season; correct?
A. The league fiscal year?
Q. Correct.
A. Correct.
Q. And this is projecting out payments that would be made in May of '19, June, July, all the way through April of 2020; correct?
A. Correct.
Q. Take a look now, if you would, at Exhibit 3367. This is a collection of several different cash flow schedules over the course of the period 2006 through 2022.
Do you see that?
A. I do.
Q. So the Raiders were receiving this schedule going all the way back at least to 2006; correct?
A. Correct.
Q. And to your knowledge, they received -- the Raiders received this schedule multiple times each year for every year up until the point you left the Raiders; correct?

A. Correct.
Q. And you received this cash flow schedule multiple times every year during that period; correct?
A. Correct.
Q. Take a look, if you would, at it's page -- well, if you look at the numbers in the lower right-hand corner -- flip through until you get to 2016 season projected cash flows. They are in order.
A. So as of 1/13/17?
Q. Yes, sir.
A. Got it.
Q. And I believe this might have been the one that Mr. Reed showed you.
This particular cash flow schedule relates to the 2016 NFL season; correct?
A. Correct.
Q. And it's dated as of 1/13/17; correct?
A. Correct.
Q. So this was received by the Raiders after the end of the Raiders'

2016 fiscal year; correct?
A. Correct.
Q. So if you look at this schedule, you would see on it all of the money that the NFL had paid the Raiders from April, 2016 all the way through December of 2016; correct?
A. April of '16 through December of '16; is that what you said?
Q. Correct.
A. Correct.
Q. So those are not projections, those have actually been paid?
A. That cash should have been received, yes.
Q. And then it shows what is expected to be paid in January, February, March, and April of '17; correct?
A. Correct.
Q. And that would be the remaining money owed to the Raiders by the NFL for the 2016 season; correct?
A. That would be the remaining cash that the NFL is going to send to

the Raiders.

Q. And if you were to look at the net distribution row at the bottom.

Do you see that?

A. I do.

Q. What this shows is the remaining cash that would be paid to the Raiders for the 2016 NFL season is the sum of those four numbers; correct? Under the January, '17 column, the February, '17 column, the March, '17 column, and the April, '17 column; correct?

A. That's how much cash we'd be getting over those four months, correct.

Q. And that's not just the cash for Ventures, that's all the cash that the Raiders were going to receive from the NFL for the 2016 season; correct?

A. Barring any changes, correct.

Q. And if you add up those four net distribution totals, it's about $40.8 million; correct?

A. Correct.

Q. So as of the end of 2016, as of 12/31/2016, according to this schedule, all of the money that the NFL was going to pay the Raiders for the remainder of the 2016 season totaled $40.8 million; correct?
A. All the cash that we were bringing in that four months is that $40.8 million, correct.
Q. The receivable that's on the books for the Raiders, that receivable is paid by the NFL in cash; correct?
A. I don't know how that works. I wasn't responsible for the receivable.
Q. Are you aware of any other way that the NFL paid the Raiders other than in cash?
A. No.
Q. You think that if there was substantial amounts that were paid to the Raiders not in cash, you would know about it?
A. Yes.
Q. If you look at this schedule,

do you -- sitting here today, do you know what amounts that were going to be paid to the Raiders for the remainder of the 2016 season had already been recognized as revenue by the Raiders?

A. No.

Q. Is that something that you would expect Mr. Villanueva would know?

A. Yes.

Q. Because Mr. Villanueva is in charge of the accounting function and in charge of recognizing the revenue; correct?

A. Correct.

Q. Did you understand that Mr. Villanueva was familiar with this schedule?

A. I don't know how much Ed Villanueva used this schedule.

Q. I asked you a few minutes ago about a cash sheet that Mr. Villanueva prepared.

Do you recall that?

A. No, you asked me about a cash flow sheet and a cash sheet; is that correct? I don't remember the exact testimony.

Q. So what did you -- a cash flow sheet is how it was referred by you in your deposition.

You're familiar with a cash flow sheet maintained by the Raiders?

A. Yes.

Q. And at some point when you were head of finance, you actually maintained that; correct?

A. Correct.

Q. And then after you were elevated to the president position, Mr. Villanueva maintained it; correct?

A. Correct.

Q. And is it your understanding that Mr. Villanueva used these schedules, these cash flow schedules in the NFL to maintain the cash flow sheet?

A. He would have to use that to input on to the Raider cash flow sheet.

Q. And the Raider cash flow sheet was also sent to you; correct?

A. At what point time?
Q. When you were president.
A. Correct.
Q. Can you take a look at Exhibit 3293.
The schedule we were just looking at, the 2016 season cash flow schedule, can you keep that out as well.
A. What was the number we were just going to?
Q. 3293.
These are the year-end financial statements for the period ending December 31, 2016; correct?
A. Correct.
Q. So if you go to the balance sheet and it's the fifth page of the exhibit.
Are you there?
A. I am.
Q. And do you see that there's a line item in the balance sheet due from NFL?
A. I do.

Q. And what is the amount that the Raiders financial statements say is owed to the Raiders by the NFL?
A. Ninety-eight million five hundred fifteen thousand.
Q. And if you look back at the cash flow schedule we were just looking at, the cash flow schedule for the 2016 season as of 1/13/17 does not reflect that the Raiders are going to be paid 98.5 million from the NFL; are they?
A. I don't know how to answer that.
Q. So we looked at all the remaining payments for the 2016 NFL season and all of those payments added together add up to $40.8 million; correct?
A. That's the cash on the cash flow sheet, yes.
Q. And that's $58 million less than what the financial statements say the Raiders are going to be paid from the NFL; correct?
A. Correct.

Q. And do you have any explanation for, sitting here today, how those two numbers could be so different?

A. No.

Q. When you were president of the Raiders, did you ever notice that the amounts that the NFL said that they were going to be paying the Raiders that were communicated in these cash flow schedules could not be reconciled with the financial statements?

A. No.

Q. So you never asked Mr. Villanueva about that?

A. No.

Q. Do you think Mr. Villanueva would have noticed that the financial statements that he prepared had such different numbers than what the NFL was telling him?

A. I don't know.

Q. Do you think he should have noticed?

A. I don't know.

Q. But sitting here today, you're not aware of any explanation for why the Raiders financial statements say that the NFL owes the Raiders ninety-eight and a half million dollars and the NFL is providing a cash flow schedule that has a markedly different number?
A. I am not.
Q. You mentioned that the banks required quarterly financial statements; correct?
A. Correct.
Q. And they required quarterly financial statements from 2006 onward; correct?
A. That's my recollection, yes.
Q. Except there was one year where the Raiders actually didn't have any financial covenants; correct?
A. I was not aware of that.
Q. The financial statements that were submitted to the banks on a quarterly basis were unaudited; correct?

A. I believe that is the case.
Q. The Raiders prepared those financial statements and EY did not perform any review over those; correct?
A. I am not aware of that.
Q. Do you know one way or the other?
A. I do not.
Q. But you know they were not audited by Ernst and Young?
A. I don't believe so.
Q. They were prepared by the Raiders' accounting firm though?
A. Yes.
Q. Let's take a look at Exhibit 3342.
A. When you say quarterly, you're excluding the annual?
Q. There were financial statements prepared as of 3/31, 6/30, and 9/30.
A. When you said quarterly, you mean just those three?
Q. Those three and then the year-end.

A. Correct.
Q. Do you have 3342?
A. I do.
Q. The date of this e-mail is June 3, 2014.
Do you see that?
A. I do.
Q. And I'm going with the e-mail that's up on the top of the page.
This is an e-mail from you to the Bank of America; correct?
A. Correct.
Q. And you're the president at this point; correct?
A. I'm the interim president at this time.
Q. And if you look at the next page of the exhibit, the attachment, do you see that these are financial statements for the quantity ended March 31, 2014?
A. I do.
Q. And if you look at the balance sheet, so go --
A. I've got it.

Q. Do you see the due from NFL number?
A. 39766?
Q. Yes.
So in the unaudited financial statements that went to the bank as of 3/31/2014, the Raiders are telling the banks that the NFL owes them $39.7 million; correct?
A. Correct.
Q. Before you sent these to the Bank of America, did you review it?
A. Did I review the balance sheet?
Q. Did you review the financial statements?
A. I'm sure I looked at the income statement and probably the statement of net cash flows.
Q. Do you recall whether you were required under the lending agreement to provide a certification when you provided the unaudited financial statements?
A. I believe we had to every

time we submitted a quarterly report, yes.

Q. And you would sign that certification; correct?

A. Certainly up until 2015. I don't know beyond that.

Q. So now what I'd like you to take a look at is Exhibit 3384.

A. Can I ask a question on this one first?

Q. Sure.

A. Do you know if this is the three-month financial or the trailing twelve-month?

Q. If you look at the exhibit, the first page is the e-mail --

A. Where it says quarter ended and year ended; right?

Q. Yes.

A. I've got it.

Q. If you keep going, you'll see that there's also --

A. A year ending one? I've got it.

Q. Good.

A. Okay.
Q. And do you see towards the end of the exhibit there is a compliance certificate? It's on page --
A. It's after the year-end?
Q. -- 3476.
A. Exhibit C. Yes.
Q. And do you see that you signed it?
A. I do.
Q. So even the year ended financial statement -- and that's starts on 3462.
Are you there?
A. What do you want me to look at?
Q. Look at the cover.
A. Got it.
Q. So although it's for a period of twelve months, do you see it's for the year ended March 31, 2014?
A. I do.
Q. And again, this was not audited by Ernst and Young. This is

not the financial statements that are subject to the audit; correct?
A. I believe that's the case.
Q. And this was provided to the banks every quarter during the period when you had financial covenants; correct?
A. Correct.
Q. So now let's go to 3384.
As the president of the Raiders, you understood that the NFL required that financial statements be submitted to the NFL as of 3/31 of each year; correct?
A. You're referring to the conforming statements?
Q. The conforming statements.
A. Correct.
Q. And it's your testimony that you did not participate in the preparation of those conforming statements?
A. I never worked on them.
Q. Did you ever review them?
A. No, I don't recall reviewing

them.

Q. So take a look at 3384 and I'm going to ask you to go to the statement of assets and liabilities and net worth which is page six of the conforming statements.

A. Schedule three?

Q. Yes, sir.

A. I've got it.

Q. Is it your testimony that you did not review schedule three while you were the president?

A. Yes, that was my testimony.

Q. If you look at the beginning of schedule three which starts on page five, do you see there's a subheading under assets notes and accounts receivable?

A. Yes.

Q. And do you see there's a line item for Ventures revenue earned.

Do you see that?

A. I do.

Q. And if you go all the way to the right-hand column, do you see that

there's the figure $13,871,000?
A. I do.
Q. And according to the conforming schedules, the NFL owes the Raiders $13,871,000 as of 3/31/14; correct?
A. I don't know.
Q. You don't know what that means?
A. I can't answer that for certain that that's what that means.
Q. If you go back to the financial statements that went to the bank, 3342, those financial statements have the same as of date as the conforming statements; correct? 3/31/14.
A. Correct.
Q. And the due from NFL number in the financial statements that were provided to the lenders is very different than the number that's in the conforming statements; correct?
A. I didn't pull it up. You have thirty-nine up here and then

you're referring to the thirteen that's in here?

Q. Correct.

A. Yes, those are different.

Q. And during the entire time that you were the president, did you ever notice that every single year the receivable number that's reported to the banks as of 3/31 was always different than the receivable number reported in the conforming statements?

A. No.

Q. Is that something that you would have expected Mr. Villanueva to notice?

A. That's something that I would expect Mr. Villanueva to be responsible for.

Q. Mr. Villanueva was responsible for preparing both sets of statements; correct?

A. Correct.

Q. So he was the one who prepared the statements that went to the bank that said that the receivable's thirty-nine million; correct?

A. Correct.

Q. And he's the one that prepared the statements that went to the NFL that said the receivable's thirteen million; correct?

A. Correct.

Q. Did you ever notice that the revenue line items that were included in the financial statements that went to the banks and the financial statements that went to the NFL were different?

A. Can you repeat the question?

Q. Sure.

You said a couple of times that you weren't really that interested in the balance sheet; is that fair?

A. Correct.

Q. You were interested in the income statement though?

A. Correct.

Q. And you reviewed the income statement?

A. I did.
Q. Did you ever notice that the Ventures revenue line item in the financial statements that went to the banks was different than the line item in the financial statements that went to the NFL?
A. No.
Q. What is San Quentin accounting?
A. I don't know.
Q. Have you ever joked with Mr. Villanueva about San Quentin accounting?
A. Well, you showed that to me at my deposition, but I don't recall ever joking with him about that.
Q. So you have no idea what that's about?
A. No.
Q. Can you go to -- let's go to the exhibit that Mr. Reed showed you with the two e-mails. So let's start with JX 17.
This is an e-mail exchange

between you and Mr. Villanueva; right?
A. Correct.
Q. If you look at the e-mail in the middle of the page, the May 29, 2020 e-mail from Mr. Villanueva, that e-mail is about the covenant; correct?
A. Which e-mail are you referring to?
Q. Mr. Villanueva is sending an e-mail to you at 5:02 p.m. on May 29?
A. Correct.
Q. And he says, "FYI, our debt service coverage ratio ended up being 3.44. At the beginning of the year we thought we would break our covenant".
Do you see that?
A. I do.
Q. So that's clearly about the covenant in the agreement with the bank; right?
A. It is.
Q. And you write back, "business is booming"; right?
A. Correct.
Q. And then he writes back, "and

a little manipulation".

Now, you testified that you really have no idea why he responded the way he did; do you?

A. I don't.

Q. Do you agree that someone could read that to suggest that the Raiders complied with their covenants by manipulating financial information?

A. I don't agree with that statement.

Q. You don't agree the e-mail could be read that way?

A. No, I think the e-mail could be read that way.

Q. That's not how you took it though?

A. That's not how I took it.

Q. But someone could look at that e-mail and think that Mr. Villanueva's suggesting or joking that the Raiders met their covenants by manipulating financial information?

A. And I'm telling you it didn't happen.

Q. But you agree that it could be read that way?
A. You can insinuate whatever you want. I'm telling you it didn't happen.
Q. I understand you're saying it didn't happen.
But do you believe that an objective observer could look at that e-mail and think it means what I suggest?
A. I'm not going to put myself in the head of an objective observer.
Q. Do you recall I asked you about this in your deposition?
A. I do.
Q. Do you recall what you told me in the deposition?
A. Not verbatim.
Q. Can you pull up the transcript page one hundred fifty-four at line sixteen through nineteen.
So I asked you: "You can see how someone might read that as suggesting that the Raiders met their

debt covenant through manipulation".
And you answered: "Yeah, I can see that".
Is that what you thought at the time?
A. I suppose so.
Q. Can you take a look at Exhibit 3359. That's in the larger binder.
A. Are we done with this one?
Q. Yes, sir.
A. Which one, 3359?
Q. 3359.
This is an e-mail exchange between you and Mr. Villanueva in September of 2020; correct?
A. Yes.
Q. It starts with an e-mail from Kevin Flaherty at the NFL to you and Mr. Villanueva and then after that you and Mr. Villanueva go back and forth talking about the debt covenant; correct?
A. I'd like to read it first, if that's okay.

Q. Sure.
A. (Reviewing).
Okay.
Q. If you see about a third of the way down the page there's an e-mail from Mr. Villanueva to you at 1:01 p.m. on September 1; correct?
A. I do.
Q. And Mr. Villanueva's telling you, "for TeamCo, we need approximately thirty-six million in revenue for us to meet our covenant of 1.0".
Do you see that?
A. I do.
Q. And then he writes, "for StadCo, I don't know the number right now, but we will breach that covenant, too".
Do you see that?
A. I do.
Q. And was that your understanding as of September 1 that both TeamCo and StadCo were going to be breaching their covenants?
A. Look, four years later

reading that, yeah, that's probably where we were. I don't -- I don't know -- ask the question again, I'm sorry.
Q. Sure.
As of September 1, 2020, was it your understanding, from what Mr. Villanueva told you, that the Raiders were likely to breach both their TeamCo and their StadCo covenants?
A. Probably as of September 1, yes, we were probably under the belief that we were going to breach those covenants.
Q. And just by way of background, at some point in 2018 the Raiders' partnership split out TeamCo and StadCo and created two new entities; correct?
A. I don't know.
Q. Well, do you understand that TeamCo and StadCo were two different entities?
A. I do. The 2018, I didn't know that we did it in 2018.
Q. As of 2020 though, there were

two different entities, TeamCo and StadCo; correct?
A. Correct.
Q. And both TeamCo and StadCo issues financial statements; correct?
A. We had a requirement to issue financial statements, but I don't know if I was there when those were issued.
Q. Do you know whether TeamCo and StadCo issued financial statements before 2020?
A. I know TeamCo must have. I don't recall if StadCo did.
Q. This wasn't actually the first year that the Raiders were allocating revenue and expenses between team TeamCo and StadCo; was it?
A. I don't know.
Q. Both TeamCo and StadCo had separate covenants in their loan agreements with the banks; correct?
A. I believe that's the case.
Q. So take a look now at Exhibit 3323.
This is another e-mail

exchange that you're included on also on September 1; correct?

A. Correct.

Q. And the last e-mail in the chain, the first e-mail in the exhibit, is an e-mail from Mr. Villanueva to you; correct?

A. Correct.

Q. And he writes, "we can always shift expenses back to TeamCo or revenue to StadCo since there is no hope for TeamCo".

Do you see that?

A. I do.

Q. And the idea there is by shifting expenses from StadCo to TeamCo, that would improve StadCo's financial results; correct?

A. If we shifted revenues from -- he said TeamCo to StadCo?

Q. If you shifted expenses from StadCo to TeamCo, that will improve StadCo's financials; correct?

A. Correct.

Q. And if you shift revenue from

TeamCo to StadCo, that would also improve StadCo's financial performance?

A. Correct.

Q. And did you understand that there was an agreement between TeamCo and StadCo about how revenues were to be allocated?

A. No.

Ask the question again.

Q. Sure.

Do you know the team use agreement?

A. Correct, I know there's a team use agreement.

Q. You signed it?

A. Yes.

Q. And the team use agreement actually says how revenues are to be allocated between TeamCo and StadCo; doesn't it?

A. I believe it has guidelines, yes.

Q. And you were required to follow those guidelines; correct?

A. We were.

Q. And you understood at the time that it would be improper for the Raiders to shift expenses and revenues back and forth between TeamCo and StadCo for the sole purpose of StadCo meeting its covenant?

A. Correct.

Q. There had to be a principled basis for the allocation of revenue and expenses; correct?

A. That's the term you're saying is in the agreement, but I'm not familiar with that particular term.

Q. What about under the accounting rules? Did you understand that there had to be a principled basis for the allocation of expenses and revenues?

A. I don't know how to answer that.

Q. Did you believe in December of 2020 that, in allocating revenues between TeamCo and StadCo or allocating expenses, that the Raiders had to followed some principled basis?

A. I would say if I'm dealing in reality, the conversations were between the people at the Raiders and the people from Bank of America and, in this particular e-mail, the people from U.S. Bank who were both part of TeamCo and StadCo. Again, this is September of 2020. Put yourself in the time frame of September of 2020. There were conversations going on and I think you showed me an e-mail with Kevin Flaherty that they were having a call with the league. There were numerous conversations going on with the banking group, the league, and the teams for everybody's situation.

I understand what you're saying related to what might be in the team use agreement and the language you're using. What I'm dealing in is what was practically happening at that point in time.

Q. Let's look at the e-mail first that's at the bottom of the page that's the first e-mail in the chain,

and that's going to two individuals at U.S. Bank.
Do you see that?
A. I do.
Q. And you say, "sponsorship would be considered revenue less stadium expenses, should put us north of StadCo covenant".
Do you see that?
A. I do.
Q. So you're telling U.S. Bank that you're expecting StadCo will meet its covenant; correct?
A. I'm saying should put us north, that there's a chance that we meet the covenant, yes.
Q. Well, you're telling U.S. Bank that the revenues should put StadCo in a position where they're going to meet their covenant; correct?
A. Correct.
Q. And the U.S. Bank individual, Mr. Taylor, responds, "thanks, Marc, that is very helpful".
Now, the next e-mail is an

e-mail that doesn't include anyone at U.S. Bank; does it?

A. Correct.

Q. It's just between you and Mr. Villanueva?

A. It is.

Q. And Mr. Villanueva in that e-mail that U.S. Bank is not copied on, he says, "we can always shift expenses back to TeamCo or revenue to StadCo, since there is no hope for TeamCo"; correct?

A. Correct.

Q. So U.S. Bank wasn't copied on that?

A. That's correct.

Q. Bank of America wasn't copied on it?

A. Not that I know of.

Q. Well, you can see it they're not copied on it; correct?

A. Correct.

Q. Let's go to 3324.

So this is another e-mail chain between you and Mr. Villanueva.

This one's from October.

Do you see that?

A. I do.

Q. And you send an e-mail to Mr. Villanueva which is the first e-mail in the chain where you reference Elliot.

Do you see that?

A. I do.

Q. And Elliot is the gentleman you referred to at Bank of America?

A. Elliot McCabe.

Q. If you go further up the chain, you see the last e-mail is an e-mail from Mr. Villanueva to you.

Do you see that?

A. I do.

Q. And if you look at the third sentence in his e-mail to you, he says, "you already saw our projection but I need to show LV Stadium numbers as though we are going to meet the covenant".

Do you see that?

A. I do.

Q. So at this point you had seen

projections from Mr. Villanueva; correct?

A. Well, that's what that's saying, yes.

Q. Do you have any reason to believe that's not true?

A. I don't know.

Q. And he's saying you've seen those projections but I need to show LV Stadium numbers as though we are going to meet the covenant.

And did you interpret that e-mail as Mr. Villanueva telling you that, when he shows something to the bank, he needs it to look like StadCo's going to meet the covenant?

A. For all I know the bank told him to do it.

Q. Do you think the bank told Mr. Villanueva to present numbers to him that are not supported that show that they're going to meet the covenant?

A. I wouldn't use the word "not supported". I would tell you that we had conversations with Elliot multiple times to provide iterations of what the numbers could look like with different revenue streams and different expense streams directed to help StadCo make the covenant. It wasn't done with any manipulation, it wasn't done with any fraud. It was done with complete transparency and in many times at the direction of Elliot. And Elliot was the one that was having conversations with the league on every team's behalf that he was responsible for.

Q. Can you go to 3326. That's the next one. This is another e-mail chain between you and Mr. Villanueva.

Do you see that?

A. I'm looking at Dana Deary and Christian.

Q. If you look at the last two e-mails --

A. There's a lot of information on these three pages, so I'll know you point me to something. I want to understand it before you ask me the

question.
Is that okay?
Q. Yes, sure.
Just tell me when you're ready.
A. I will.
(Reviewing).
Okay.
Q. So the e-mails in this chain, these all involve individuals at the Raiders; correct?
A. Yes.
Q. And the next to last e-mail on the chain is from Mr. Villanueva to you. It's Tuesday, December 29.
At 4:58 p.m.
Do you see that?
A. I do.
Q. And he says, "we are still working through the revenue portion of what we can allocate to LV Stadium Events Company. Everyone knows the game plan, so we can meet the LV Stadium Events Company bank covenant. We already know we won't meet the

Raiders Football Club, LLC".
Do you receive that?
A. I do.
Q. So did you understand that the game plan was to allocate the revenue and expenses in a way that showed StadCo meeting its covenant?
A. No, I believe the everyone he's referring to is probably inclusive of the bank. This is still in December of 2020, so there's still five months to go before these are actually official, so this is part of the iterative process and what we were doing with the bank and the league.
Q. Well, there's no one from the bank on this e-mail chain; is there?
A. No.
Q. Let's go to 3328.
So now we're in April of 2021; correct?
A. Correct.
Q. And this is an e-mail from Mr. Villanueva to you dated April 20, 2021?

A. Uh-huh.
Q. And he writes to you, and he's referencing the financial statements for TeamCo.
Do you see that?
A. For TeamCo; is that what you said?
Q. Yes, sir.
A. Okay.
Q. So he writes -- and it's the third sentence in the e-mail -- "G&A is at fifty million and we went over our projection. On October 9 we were at 36.3 million. The reason for the increase, we are moving salaries back to TeamCo from StadCo for covenant reasons. We want to have less expenses in StadCo so we can meet the covenant".
Do you see that?
A. I do.
Q. So it looks like roughly $14 million in payroll expenses have been moved from StadCo to TeamCo so StadCo can meet its covenant; correct?
A. Well, there's more than just

payroll in G&A, but I guess you're referring to salaries?

Q. Well, he's explaining the reason why the TeamCo G&A has gone up by fourteen million. He says, "the reason for the increase, we are moving salaries back to TeamCo from StadCo".

Do you see that?

A. I do.

Q. Did you have a discussion about Mr. Villanueva about that?

A. I don't recall having a discussion with Mr. Villanueva about that.

Q. Did you understand that there was a principled basis to move those salaries from StadCo to TeamCo?

A. I don't know.

Q. But you would have expected there would be one; right?

A. I would have expected there to be one.

Q. So you said a number of times that the bank -- this was all done with full transparency with the banks.

Have you seen a single document that shows that the banks were told that the Raiders were moving expenses and revenues back and forth so it could meet its covenant?
A. Have you shown me one?
Q. Have you seen one? Does one exist?
A. I'm sure they do. I know I had conversations with Elliot and Mulvihill, Peter Dorfman. I don't recall all the other bankers, but I know I had conversations with all them about it.
Do I know where those e-mails are? I wasn't responsible for pulling the e-mails that you're showing me today.
Q. Do you know that this TeamCo/StadCo issue was part of the investigation into the whistleblower complaint?
A. I did not know that.
At the time you're talking about or are you saying today?

Q. I'm saying today.
A. I know today because of this case. I didn't know at the time, no.
Q. You've talked about the transparency with the bank.
Do you know that it was the bank that raised the discrepancies between information that Mr. Villanueva had sent the banks in May and information that Ankura and Mr. Scott sent the banks in July?
A. No.
Q. So would it surprise you that the banks were the ones who raised the discrepancy in the information that they were provided when in July they received materially different information from Ankura than what Mr. Villanueva had sent them?
A. Yes, that would surprise me.
Q. Can you go to 3385.
Do you know who Jennifer Levine is?
A. I believe she worked in HR.
Q. And she worked for Jamie

Stratton?

A. She worked for Jamie Stratton.

Q. And you see her name on the top of the document?

A. I do.

Q. And below the exhibit sticker, do you see the name Araxie Grant?

A. I do.

Q. And Araxie Grant was the controller of the Raiders at the time; correct?

A. I believe that's correct.

Q. And you understand that she's one of the two whistleblowers that raised the accounting irregularities; correct?

A. Yes.

Q. Do you know that both Ms. Grant and Mr. Scott gave multiple interviews to HR?

A. No.

Q. Have you ever seen any of the interview notes of those interviews?

A. Not that I recall.
Q. Take a look at page four of the interview notes.
A. Am I allowed to read the rest of it?
Q. You can read whatever you want to read. I'm going to ask you about the second paragraph on page four.
A. (Reviewing).
Okay.
Q. If you look at the second paragraph on page four of the notes, do you see it starts with "Ed"?
A. Yes.
Q. And this is Ms. Grant recounting a conversation, at least according to the notes, that she had with Mr. Villanueva. And the notes say, "end of last year told Badain, said it's one hundred fifty", paren, "number on balance sheet for NFL", closed paren.
Do you see that?
A. I do.

Q. So according to Ms. Grant, Ed told her on or about 4/26 that he had discussed the overstatement of the receivable with you in the prior year.

MR. REED: Objection. That's not what this says.

Q. Well, let me just ask you.

Prior to 2021, did Ed Villanueva discuss with you the overstatement of the Ventures receivable?

A. No.

Q. Do you know what the balance of the Ventures receivable was as of 12/31/19?

A. No.

Q. Do you know whether it was close to one hundred fifty million?

A. I have no idea.

Q. And again, the notes say, "Badain said okay, Ed, said write it out in future year. Will write off when we get new media deals and get more money".

Do you see that?

A. I do.
Q. Did you tell Mr. Villanueva that the Raiders could write off the receivable at some point when the Raiders or the NFL achieved a new media deal?
A. No.
Q. Did you have any conversation like that with Mr. Villanueva?
A. No. I don't even know what it means.
Q. So it's your testimony that Mr. Villanueva never discussed with you that the Ventures receivable was overstated?
A. That is my testimony.
Q. And that you never suggested to him that the Raiders could write off the misstated receivable at some future point when the NFL obtained a new media deal?
A. That is my testimony.
Q. You mentioned the law firm Howard Rice a couple of times in your testimony.

Howard Rice were regular counsel for the Raiders; correct?

A. They were.

Q. In fact, they were the main law firm that the Raiders used; correct?

A. Correct.

Q. And then Howard Rice became part of Arnold and Porter; correct?

A. I don't know how that -- yes. I don't know. I assume they bought them.

Q. You knew, as of 2021, that the Raiders' main outside law firm was Arnold and Porter?

A. Correct. If I misspoke prior, I was mistaken. Howard Rice and Arnold and Porter are the same firm, yes.

Q. Let me go back to that e-mail that Mr. Reed showed you that was from Mr. Garcia. It's JX --

A. Can I ask you a question? How much longer are we going? I just want to know if I'm going to be able to use the bathroom.

Q. I'm virtually done. It's the last one.

MR. REED: Which exhibit, Steve?

MR. FARINA: It's 0287.

Q. Mr. Garcia wrote this e-mail to you, the first e-mail in the chain, at 1:49 p.m. on April 28.

Do you see that?

A. I do.

Q. And if you look at the second bullet point, do you see that Mr. Garcia informed you that the external law firm selected to lead the investigation should be independent and objective in fact and appearance; no prior relationship with the organization.

Do you see that?

A. I do.

Q. And Arnold and Porter had a prior relationship with the Raiders; correct?

A. Correct.

Q. In fact, they were their main outside counsel; correct?
A. Correct.
MR. FARINA: Why don't we take a break. I think I'm done, but let me confer with my colleagues.
(Whereupon a break was taken)
THE CHAIRPERSON: Back on the record.
Q. Mr. Badain, in 2021, the NFL, in fact, signed new media deals worth more than a hundred billion dollars; correct?
A. I don't know.
Q. You don't --
A. I don't remember.
Q. The NFL signed new media deals in March of 2021 worth more than a hundred billion dollars.
You were still the president of the Raiders at the time?
A. Okay. I just didn't recall. I don't remember when they sign them.
Q. Do you recall now?
A. I do now.

MR. FARINA: I have no further questions.
THE CHAIRPERSON: Mr. Reed?
REDIRECT EXAMINATION BY
MR. REED:
Q. Mr. Badain, if you would look at 3328.
A. In small binder or big binder?
Q. The big binder.
Do you recall Mr. Farina went over this e-mail with you and focused on the sentence about we're moving salaries back to TeamCo from StadCo for covenant reasons?
A. I do.
Q. If you read the first two sentence of that that e-mail, "attached is a draft of our 2020 P&L. Keep in mind we still are still reconciling our number before we submit for audit".
Do you see that?
A. I do.
Q. Was it your understanding that the 2020 P&L would be submitted

for audit?

A. Yes.

Q. By whom?

A. By Ed.

Q. And who would be doing the audit?

A. Ernst and Young.

Q. Now, you testified to having a number of conversations with the bank in regards to the TeamCo and StadCo issue and allocation of expenses and revenues between the two companies; right?

A. Correct.

Q. And that you were transparent with the bank?

A. Correct.

Q. Now, and the bank understood in the pandemic teams were struggling to meet covenants?

A. Yes. The bank was painfully aware and was talking to teams in every sport.

Q. Is it your testimony that people at Bank of America told you to do whatever you needed to do to meet the StadCo covenant?

A. No, that's not my testimony.

Q. Is it your testimony that the people at Bank of America said allocate in whatever manner you need to just to make sure you meet StadCo?

A. No.

Q. Is that what you believed you were doing?

A. No.

Q. Was the NFL receivable number that was in the financial statements an important number to you in doing your job?

A. No.

Q. Is it something you paid attention to?

A. No.

Q. Do you know, did that factor into the DCR calculation?

A. No.

Q. And by DCR, I mean debt covenant.

A. Correct.

MR. REED: I have nothing else.

THE CHAIRPERSON: Mr. Farina, anything further?

MR. FARINA: No.

MR. REED: Wait, one second. My colleague is pointing something out.

Q. To your understanding, did the NFL receivable on the financial statement factor into the debt covenant calculation?

A. No, it didn't

Q. You said, "no, it didn't".

A. I think it's my -- the question is ambiguous. Say it again.

Q. Was your answer no, it didn't?

A. I want to hear the question now.

Q. To your understanding, did the NFL receivable number on the Raiders financial statements factor into the debt covenant calculation?

A. No.

MR. REED: Nothing further.

ARBITRATOR CHANDLER: Mr. Badain, I'm John Chandler. Let me ask you a question, too, just to help me out here.

One of the years that NFL Ventures paid the team $110 million -- let's assume it's a hundred million dollars; okay? And there's thirty-two teams and that means that the NFL's got 3.2 billion; right?

THE WITNESS: Correct.

ARBITRATOR CHANDLER: Is it your understanding that, for instance, in March of 2019 NFL had 3.2 billion in the bank from collecting for the 2015 season or that the money that's paid out after April of 2016 -- I may be messing up the years but I hope you can follow -- is money that comes in and it comes into the NFL, they do whatever they do, and then they pay it out?

THE WITNESS: My understanding of how you asked the question would probably be that the NFL was basically like a passthrough, so different revenues from different sources would come in at different times of the year. I think there was actually a cash flow sheet in here from going back to '06. It used to be that predominantly the majority of revenues would come in during the season. Go back prior to '06. You would get most of your TV money in September, October, November, and December. Back then ABC, CBS, they would pay when they got their commercial money.

Obviously things changed over time and then there a lot more revenue streams and the league, I think in response to some teams and the way player contracts changed over that time because you started paying players over the course of twelve months or big signing bonuses and things like that as opposed to just paying during the season, they tried to smooth out the cash flows. So they might negotiation you're NBC, you're CBS, you're Fox, I might negotiate with you and you might have certain issues that you wanted to address in your cash flows so you would pay quarterly and you would say I'll pay over twelve months and you'd say I'll pay during the season, and the league would take all those different revenue streams and they'd have some payments that they'd have to make like they pointed out the concussion number and then they would send out those cash flows.

We weren't really privy to how they made it there. We just were told here's what you're getting.

ARBITRATOR CHANDLER: I'm just

trying to figure out the --

THE WITNESS: Yeah, I don't think the NFL would sit on a bunch of cash and then distribute it. I think as it would come in, they would -- I'm sure they had some reserve, but again, we weren't really privy to how they ran it.

ARBITRATOR CHANDLER: But essentially after April of 2016, money being paid out was money coming in in 2016 and in the next March of 2017; right?

THE WITNESS: I can't answer with certainty. I mean, as you're explaining it, it makes sense, but I'm not necessarily sure how they did it.

ARBITRATOR CHANDLER: I can't believe that it would be possible for the NFL to collect 3.2 billion from the 2015 season and not start paying it out until April of the next season.

THE WITNESS: I think there

would probably be some owners that would object to that.

ARBITRATOR CHANDLER: I would think there's some billionaires who would complain about that.

THE WITNESS: They want their money.

ARBITRATOR CHANDLER: Did you and Ed Villanueva ever talk about how those payments worked?

THE WITNESS: How the NFL's payments worked?

ARBITRATOR CHANDLER: The NFL Ventures was getting in money, it was doing what it had to do, and it was getting it out the door to you guys?

THE WITNESS: Not that I can recall. They probably explained it at finance director's meetings would be the only time they would explain something like, but I don't recall having a conversation.

THE CHAIRPERSON: Mr. Badain, thank you very much for your testimony here today, and safe home, sir.

THE WITNESS: Thank you, sir.

THE CHAIRPERSON: 9:00 tomorrow morning.

(TIME NOTED: 5:12 p.m.)

*   *   *

INDEX

WITNESS	DIRECT	CROSS	RE-DIRECT
L. Keel	868	963, 1013	993 1015
M. Badain	1018	1113	1175

*   *   *

CERTIFICATION BY REPORTER

I, Wayne Hock, a Notary Public of the State of New York, do hereby certify:

That said proceeding was held before me at the aforesaid time and place;

That said proceeding was taken stenographically by me, then transcribed under my supervision, and that the within transcript is a true record of the testimony of said proceeding.

I further certify that I am not related to any of the parties to this action by blood or marriage, that I am not interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of September, 2024.

Wayne Hock

PROCEEDINGS
CPR ARBITRATION
Matter No. G-23-23-N

In the Matter of the :
Arbitration between: :
:
A.D. FOOTBALL, INC., A.D. :
FAMILY LIMITED PARTNERSHIP, :
A. & R. BOSCACCI INVESTMENT :
CO., E. & V. BOSCACCI :
REVOCABLE TRUST/MARITAL LLC, :
E. & V. BOSCACCI DECEDENT'S :
TRUST/DECEDENT LLC, JILL :
LOVINGFOSS, CODY LOVINGFOSS, :
JOSH LOVINGFOSS, CHALET :
ROBERTS, GOPPL PARTNERSHIP, :
L.P., PATRICIA WINKENBACH and :
GERALD WINKENBACH as the :
Trustees of the Winkenbach :
Family Trust, PATRICIA :
WINKENBACH, GERALD WINKENBACH, :
RLP HOLDINGS, LP, ADF :
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LLC, A.D. FAMILY LIMITED :
PARTNERSHIP, A.D. FAMILY LLC, :
MARK DAVIS, FIRST FOOTBALL, :
LLC, MD FOOTBALL LLC, ALLAN :
BOSCACCI and PATRICIA BOSCACCI :
as the Trustees of the :
Boscacci Family Trust, LISA :
BOSCACCI, ALLISON MEIN, ANNE :
CARPENTER, ALIDA BEILKE, CARA :
YURAS, KENNETH WEAKLEY and :
LYNNE WEAKLEY as the Trustees :
of the Weakley Family Trust, :
JEANNE DAVIES, ERIC WEAKLEY, :
[TO BE CONTINUED] :

VOLUME V
NEW YORK, NEW YORK
FRIDAY, SEPTEMBER 20, 2024

REPORTED BY:
SILVIA P. WAGE, CCR, CRR, RPR
JOB NO. 6427175

PROCEEDINGS
CPR ARBITRATION
Matter No. G-23-23-N

In the Matter of the :
Arbitration between: :
:
A.D. FOOTBALL, INC., A.D. :
FAMILY LIMITED PARTNERSHIP, :
A. & R. BOSCACCI INVESTMENT :
CO., E. & V. BOSCACCI :
REVOCABLE TRUST/MARITAL LLC, :
E. & V. BOSCACCI DECEDENT'S :
TRUST/DECEDENT LLC, JILL :
LOVINGFOSS, CODY LOVINGFOSS, :
JOSH LOVINGFOSS, CHALET :
ROBERTS, GOPPL PARTNERSHIP, :
L.P., PATRICIA WINKENBACH and :
GERALD WINKENBACH as the :
Trustees of the Winkenbach :
Family Trust, PATRICIA :
WINKENBACH, GERALD WINKENBACH, :
RLP HOLDINGS, LP, ADF :
INVESTMENTS LLC, ADF HOLDINGS, :
LLC, A.D. FAMILY LIMITED :
PARTNERSHIP, A.D. FAMILY LLC, :
MARK DAVIS, FIRST FOOTBALL, :
LLC, MD FOOTBALL LLC, ALLAN :
BOSCACCI and PATRICIA BOSCACCI :
as the Trustees of the :
Boscacci Family Trust, LISA :
BOSCACCI, ALLISON MEIN, ANNE :
CARPENTER, ALIDA BEILKE, CARA :
YURAS, KENNETH WEAKLEY and :
LYNNE WEAKLEY as the Trustees :
of the Weakley Family Trust, :
JEANNE DAVIES, ERIC WEAKLEY, :
[TO BE CONTINUED] :

VOLUME V
NEW YORK, NEW YORK
FRIDAY, SEPTEMBER 20, 2024

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JOB NO. 6427175

PROCEEDINGS

[CONTINUED] :
ELYSE WEAKLEY, MARY JANE :
BOSCACCI as the Trustee of the :
Mary Jane Boscacci Living :
Trust, PAUL STEFANI and ANN :
STEFANI as the Trustees of :
the Stefani Family Trust, :
CATHERINE STEFANI, JON-PAUL :
STEFANI, NANCY MCAULIFFE, :
KELLY PEPPMEIER, ERIN :
MCAULIFFE, ALLAN BOSCACCI, :
COREY MCAULIFFE, ALLAN :
BOSCACCI as the Trustee :
Of the A&R 2005 Irrevocable :
DAVID ABRAMS, FRIEDMAN :
FOOTBALL LLC, JOSHUA FRIEDMAN, :
BETH FRIEDMAN, PEAK TRUST :
COMPANY as the Trustee of the :
Friedman Family 2015 GST I :
and the Friedman Family 2015 :
GST II, GARONZIK INVESTMENT :
PARTNERS LLC, FREDRIC :
GARONZIK, FREDRIC GARONZIK as :
The Trustee of the Fredric B. :
Garonzik Trust, DAVID GARONZIK :
And SAMUEL GARONZIK as the :
Trustees of the Fredric B. :
Garonzik Family Trust and the :
Anne G. Garonzik 2011 Trust, :
DAVID GARONZIK, SAMUEL :
GARONZIK, ANNE GARONZIK as :
the Trustee of the Anne G. :
Garonzik Trust, ANNE GARONZIK, :
PAUL LEFF, SILVERBLACK LLC, :
STEPHEN MALKIN, DAN GOLDRING, :
and MARK DAVIS as the Trustee :
of the Mark Davis 2010 Trust :
and the Davis Credit Shelter :
Trust, Trust, NANCY K. :
MCAULIFFE as the Trustee of :
the Nancy McAuliffe Family :
Trust, :
Claimants, :
-and- :
ERNST & YOUNG LLP and EY US :
LLP, :
Respondents. :
------------------------------ :

PROCEEDINGS

September 20, 2024
8:33 a.m.

VOLUME V of the above-captioned arbitration, held at the offices of Veritext Legal Solutions, Seven Times Square, 16th Floor, New York New York, pursuant to agreement before SILVIA P. WAGE, REMOTELY, a Certified Shorthand Reporter, Certified Realtime Reporter, Registered Professional Reporter, and Notary Public for the States of New Jersey, New York and Pennsylvania.

PROCEEDINGS

B E F O R E:

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BY: LAURA SUNDIN, ESQ.
BY: LORYN HELFMANN, ESQ.
BY: MADELINE PREBIL, ESQ.

PROCEEDINGS

ALSO PRESENT FOR CLAIMANT:

JUSTIN CARLEY, ESQ.
RAIDERS
MARCO HEIM, TECH

ALSO PRESENT FOR RESPONDENT:

GARY GOOLSBY, EXPERT (VIA ZOOM)
JASON BENCZE, TECH

ALSO PRESENT FOR VERITEXT:

COREY WAINAINA, TECH

PROCEEDINGS

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VILLANUEVA - DIRECT

THE CHAIRPERSON: Okay. 08:33:39
We're can go on the record. 08:33:39

Mr. Villianueva, welcome. 08:33:41
My name John DiBlasi. 08:33:42

THE WITNESS: Hey, John. 08:33:42

THE CHAIRPERSON: To my left 08:33:43
is John Bickerman. 08:33:44

To my right to John Chandler. 08:33:45

As you know, we comprise 08:33:47
the Panel in this arbitration. 08:33:48
And we're just going to move 08:33:50
swiftly. 08:33:50

I'll turn it over to Counsel 08:33:50
and let's proceed. 08:33:52

MS. BROWN: Thank you. 08:33:53

EDWARD VILLANUEVA, CPA, DEEMED SWORN: 08:33:53

DIRECT EXAMINATION BY MS. BROWN: 08:33:54

Q. Good morning, Mr. Villanueva. 08:33:54
A. Good morning. 08:33:56
Q. Could you tell us a bit about 08:33:56
yourself and your educational background? 08:33:58
A. Graduated from San Francisco 08:34:01
State in the late '80s. I got my 08:34:03
certificate in the '90s. 08:34:12

VILLANUEVA - DIRECT

Q. What "certificate" are you referring to? 08:34:15 08:34:16

A. CPA certificate. 08:34:17

Q. And what positions did you hold after you graduated from San Francisco State? 08:34:19 08:34:20 08:34:22

A. First job with a local firm performing audits, nonprofit governmental type of agencies for two years. 08:34:23 08:34:26 08:34:29

From there I went to another local firm, boutique firm, dealing with high net worth individuals. Basically, did more tax returns and some audits, more of a generalist. 08:34:32 08:34:36 08:34:38 08:34:41 08:34:44

Then for a lot of the months, I went to McKesson, a Fortune 500 Company. I didn't like it. So I went back to the firm. 08:34:48 08:34:50 08:34:54 08:34:55

And then after that I went to the Raiders -- or Ernst & Young for a year in the tax department as a tax manager in the Hedge Fund Group. 08:34:56 08:34:58 08:35:02 08:35:05

Q. Okay. So what year did you join the Raiders? 08:35:07 08:35:08

VILLANUEVA - DIRECT

A. September 2002. 08:35:11
Q. And why did you join the Raiders at that time? 08:35:14 08:35:16
A. I wanted to get out of public accounting just because of all the hours that I was working and traveling and I wanted to go somewhere private industry. 08:35:18 08:35:20 08:35:22 08:35:26
Q. And how long did you work at the Raiders? 08:35:30 08:35:31
A. I worked for the Raiders for 18 years. 08:35:32 08:35:33
Q. And what was your position and your responsibilities when you first joined the Raiders? 08:35:35 08:35:39 08:35:40
A. When I first started, I was hired as the Controller and basic responsibility was overseeing the accounting department and tax. 08:35:40 08:35:42 08:35:47 08:35:48
Q. At that time were you responsible for preparing the Raiders financial statements? 08:35:51 08:35:52 08:35:54
A. I was. 08:35:55
Q. And were you involved in the day-to-day accounting decisions at the 08:35:56 08:35:58

VILLANUEVA - DIRECT

Raiders? 08:36:00
A. I was. 08:36:00
Q. Who did you report to? 08:36:01
A. I reported to Marc Badain and Amy Trask. 08:36:02 08:36:06
Q. And what was Mr. Badain's role at that time? 08:36:07 08:36:09
A. We didn't really have -- well, his role was finance and he helped run other parts of the organization. 08:36:11 08:36:14 08:36:19
Q. And what was the Amy Trask's role? 08:36:21 08:36:23
A. She was the President of the organization. 08:36:23 08:36:25
Q. And how long were you the Controller at the Raiders? 08:36:26 08:36:27
A. Probably 13 years total. 08:36:30
Q. And did your role ever change? 08:36:33
A. I was promoted to CFO probably 2015. 08:36:37 08:36:42
Q. How long did you hold the CFO position? 08:36:44 08:36:46
A. Five years, I believe, five years. 08:36:47 08:36:49

VILLANUEVA - DIRECT

Q. And describe for us your responsibilities as the CFO of the Raiders. 08:36:49 08:36:51 08:36:52

A. If I had to come up with a description, it was to manage the checkbook, overseeing the accounting, tax. 08:36:54 08:36:55 08:36:59

Q. Now, after you were promoted CFO at the Raiders -- and, again, I think you said that was 2015? 08:37:05 08:37:07 08:37:10

A. I believe it was 2015. 08:37:11

Q. Who then became the Controller? 08:37:12 08:37:14

A. I was allowed to hire a Controller and that was Matt Andrus and... 08:37:16 08:37:19

Q. How long did he hold that position? 08:37:24 08:37:25

A. He held it for a couple of years and then he left, because he didn't want to move to Vegas because, apparently, his wife was sick. 08:37:25 08:37:27 08:37:28 08:37:34

Q. And who became the Controller after Mr. Andrus? 08:37:36 08:37:37

A. After Andrus, I was able to hire Araxie Grant and she came through a 08:37:38 08:37:41

VILLANUEVA - DIRECT

recommendation from Mike Gottlieb. 08:37:48

Q. And during your time at the Raiders going back to 2002, what was the size of the finance team? 08:37:50 08:37:52 08:37:57

A. Probably four individuals. I was kind of the accounting person. 08:38:00 08:38:03

Marc was more of the finance and brand organization and one person doing payables and receivables. And then we had another person that did payroll and handled the player cost for the salary cap. 08:38:08 08:38:09 08:38:12 08:38:14 08:38:17 08:38:20

Q. Did the size of your team ever change over time? 08:38:21 08:38:22

A. It didn't change until I was able to hire Matt. 08:38:23 08:38:26

Q. Is "Matt" Matt Andrus? 08:38:33

A. Matt Andrus, correct. 08:38:35

Q. And what led to the hiring of Matt Andrus? 08:38:36 08:38:38

A. Marc got promoted to President. I got promoted to CFO. So we needed a Controller. And with all the stadiums stuff, you know, in our future, 08:38:39 08:38:41 08:38:44 08:38:48

VILLANUEVA - DIRECT

we needed somebody. 08:38:50

Q. Was EY aware of the size of your finance team? 08:38:53 08:38:56

A. Yes. 08:38:56

Q. And did EY ever raise any issues with staffing in the finance group? 08:38:56 08:38:58

A. Never. Maybe once and that was when we were already going to Vegas. They thought I should hire someone with GAAP experience. 08:39:00 08:39:03 08:39:06 08:39:08

Q. Well, what happened after that, what did you do? 08:39:09 08:39:10

A. That's when we hired Matt and we hired Araxie. 08:39:13 08:39:14

Q. And did they have GAAP experience? 08:39:16 08:39:18

A. Yeah, I thought -- yeah. Araxie did because she was recommended by Ernst & Young. 08:39:18 08:39:21 08:39:23

Q. And at that time was your experience in GAAP basis accounting or another different basis of accounting? 08:39:24 08:39:26 08:39:29

A. My basis of accounting was pretty much tax basis. 08:39:31 08:39:34

VILLANUEVA - DIRECT

Q. Now, you mentioned Araxie Grant. 08:39:36 08:39:36
Were you involved in the decision to hire her? 08:39:38 08:39:39
A. I was. 08:39:42
Q. And why was Araxie Grant hired? 08:39:43 08:39:45
A. Because her background. She had -- she was a CFO for, I believe, the USFL and she was recommended by Mike Gottlieb. 08:39:45 08:39:47 08:39:53 08:39:55
I mean, once he recommended her, I don't think I interviewed anybody else except for her. 08:39:56 08:39:58 08:40:01
Q. And who is Travis Scott? 08:40:02
A. Travis Scott was an accounting manager that we hired for Araxie. The stadium, we needed more people. I believe we interviewed two people, three people and he's the one we hired because he came from the Buffalo Bills organization was just like ours kind of. Our owners were, I guess, good friends and he had NFL experience. 08:40:04 08:40:06 08:40:09 08:40:11 08:40:17 08:40:21 08:40:23 08:40:25 08:40:32

VILLANUEVA - DIRECT

Another person we were thinking about had no NFL experience and I decided it would be a better fit for her, especially working on all the audits and with the stadium coming up. They both could concentrate on different things. 08:40:35 08:40:36 08:40:40 08:40:42 08:40:45 08:40:48

Q. And to be, clear, were you involved in hiring of Travis Scott? 08:40:50 08:40:51

A. I recommended him. I mean, we sat down as a team and figured out who we wanted and that was the one that I liked the most. 08:40:54 08:40:57 08:40:59 08:41:02

Q. Now, when you joined the Raiders as Controller, were you a CPA at that time? 08:41:04 08:41:06 08:41:08

A. I was. But I believe I was inactive when I -- I might have been certified when I got there. But after a year or two, I became inactive. 08:41:08 08:41:11 08:41:14 08:41:17

Q. And has your license been inactive ever since? 08:41:19 08:41:22

A. It's been inactive ever since. 08:41:22

Q. I want to turn now to talk about NFL Ventures. 08:41:25 08:41:27

VILLANUEVA - DIRECT

A. Okay. 08:41:28
Q. What is "NFL Ventures"? 08:41:30
A. It's a partnership that each team is a partner in. And I believe that the that partnership handles -- it's like TV, broadcasting. There might be a couple of other few things, but I don't recall. 08:41:35 08:41:39 08:41:44 08:41:49 08:41:53 08:41:55
Q. Alright. When you joined the Raiders in 2002, was the Ventures partnership already in place? 08:41:58 08:41:59 08:42:02
A. Yes. 08:42:03
Q. So, when you joined the Raiders, how did you come to learn how to do the accounting for Ventures? 08:42:03 08:42:05 08:42:08
A. Just research. Going over, you know, the internal records, going through all the journal entries, just because, you know, all the support was attached to each journal entry and if we needed it, you know, we talked to our people at Ernst & Young. 08:42:10 08:42:12 08:42:16 08:42:18 08:42:20 08:42:26 08:42:28
Q. Well, why did you go to Ernst & Young? Why didn't you just go to the 08:42:29 08:42:30

VILLANUEVA - DIRECT

prior Controller and talk to that person? 08:42:32
A. He got fired, so there is no 08:42:34
way I could have contacted him. 08:42:38
Q. And Ernst & Young was already 08:42:39
the auditor when you joined in 2002? 08:42:41
A. Yeah, I believe their audit 08:42:43
-- yeah, I believe -- well, before I 08:42:45
started, they were the auditors. 08:42:46
Q. Now, when you joined and you 08:42:50
undertook those efforts to understand the 08:42:52
Ventures accounting methodology, what was 08:42:54
that accounting methodology in 2002? 08:42:57
A. Well, if you're talking about 08:43:01
how we reported it, we would -- to give 08:43:03
you an example, we would debit the 08:43:08
receivable and debit [sic] the revenue to 08:43:12
get on our books. 08:43:16
Q. I think you said "debit" 08:43:17
twice. 08:43:19
A. Oh, I'm sorry. 08:43:19
Debit the receivable and credit the 08:43:23
revenue. And that was the entry that 08:43:25
we've done for years. 08:43:28
Q. And that was the methodology 08:43:30

VILLANUEVA - DIRECT

used to recognize revenue for Ventures when you joined? 08:43:31 08:43:33

A. Correct. 08:43:34

Q. And how many times a year did that happen that you would debit the receivable and credit the revenue for Ventures? 08:43:35 08:43:37 08:43:40 08:43:42

A. I think just once a year. 08:43:42

Q. And that was the case at the time you joined in 2002? 08:43:44 08:43:45

A. Correct. 08:43:47

Q. And have you heard the revenue from Ventures being referred to as the "remittance"? 08:43:48 08:43:51 08:43:53

A. Yes. 08:43:54

Q. Let me ask. 08:43:57

Did you ever learn why that methodology was used for revenue recognition for Ventures? 08:43:58 08:44:02 08:44:04

A. No. You know, it was done before I started. It was audited. So I wasn't going to change anything. 08:44:06 08:44:10 08:44:14

Q. Now, when you learned the revenue and the receivable were being 08:44:16 08:44:18

VILLANUEVA - DIRECT
booked for Ventures at the same time -- 08:44:18
A. Uh-huh. 08:44:18
Q. -- each year, what did that 08:44:21
tell you about the cash payments? 08:44:23
A. Cash payment was paid to pay 08:44:26
down that receivable. 08:44:28
Q. Did that tell you anything 08:44:32
about the timing of when the cash would 08:44:34
come in? 08:44:35
A. No. I mean, we -- no, we -- 08:44:36
cash just came in. We knew what cash was 08:44:40
coming in every year; so, no. 08:44:43
Q. Did you have any reason to 08:44:45
suspect that the revenue recognition 08:44:47
methodology that you were following where 08:44:51
you would book the revenue and the 08:44:53
receivable at the same time every year, 08:44:55
did you have any reason to suspect that 08:44:58
that might be wrong? 08:45:00
A. No. 08:45:01
Q. And, to be clear, though, you 08:45:03
were the one responsible for making the 08:45:05
journal entry each year to record the 08:45:07
revenue and receivable at the same time, 08:45:10

VILLANUEVA - DIRECT

right? 08:45:12

A. Correct. 08:45:12

Q. Or, at least, when you were the Controller, you were, actually, making that journal entry, right? 08:45:13 08:45:14 08:45:15

A. I was. 08:45:17

Q. And the journal entry you were making was that consistent with how you saw the journal entries for Ventures made prior to the time you started? 08:45:18 08:45:19 08:45:21 08:45:24

A. Yes. 08:45:25

Q. And when you recorded that receivable each year for Ventures, did you have any understanding of when it would be paid off? 08:45:30 08:45:32 08:45:37 08:45:39

A. No. 08:45:40

Q. Well, was that something that you thought you should undertake an effort to try to learn? 08:45:43 08:45:45 08:45:49

A. Not really. It's a receivable. You know, money comes in -- money came in, receivable's paid down or decreased. 08:45:50 08:45:52 08:45:54 08:45:57

Q. Was it ever your understanding 08:45:58

VILLANUEVA - DIRECT

for the 18 years you worked at the Raiders 08:46:01
that when you booked the remittance as 08:46:04
revenue, the cash payments for that 08:46:07
remittance had already been received? 08:46:09
A. I'm sorry. Could you repeat 08:46:13
that? 08:46:14
Q. Sure. 08:46:14
Was it ever your understanding that 08:46:15
when you booked the remittance -- 08:46:16
A. Okay. 08:46:18
Q. -- once a year as revenue -- 08:46:18
A. Okay. 08:46:20
Q. -- that the Raiders had 08:46:21
already received the cash payments for 08:46:22
that remittance? 08:46:24
A. It wouldn't be a receivable 08:46:24
if we -- I mean, if that was the case, if 08:46:25
that's what you're asking. 08:46:30
Q. Now, throughout the year when 08:46:31
you did receive cash payments from 08:46:33
Ventures, did you have any way to match 08:46:35
them up to any particular remittance? 08:46:37
A. No. 08:46:38
Q. Did you ever ask the NFL to 08:46:39

VILLANUEVA - DIRECT

give you information so that you could try to do that? 08:46:40 08:46:42

A. No. 08:46:43

Q. Why not? 08:46:43

A. We needed money. I mean, the team paid down. I mean, it never crossed my mind. 08:46:45 08:46:48 08:46:51

Q. And is that non-matching approach where you don't match the cash payments to any particular season remittance, is that consistent with how the accounting for Ventures was done when you joined the Raiders? 08:46:52 08:46:54 08:46:56 08:46:59 08:47:00 08:47:02

A. Yeah, it was consistent. 08:47:03

Q. And the time that you worked at the Raiders, so for those 18 years, did your understanding of how the Ventures revenue and cash payments, did that ever change? 08:47:06 08:47:08 08:47:11 08:47:12 08:47:15

A. No. 08:47:16

Q. Have you ever seen any of the contracts the NFL Ventures enters into with third parties? 08:47:20 08:47:22 08:47:25

A. No. 08:47:26

VILLANUEVA - DIRECT

Q. Were you ever privy to any of the specific terms or details of the Ventures contracts? 08:47:28 08:47:29 08:47:31

A. No. 08:47:32

Q. Okay. Let's change topics and now talk about the January accrual, okay? 08:47:33 08:47:36 08:47:40

A. Okay. 08:47:40

Q. If you could please, there is a binder in front of you. If you could please turn to JX-0211. 08:47:41 08:47:44 08:47:46

(Arbitration Exhibit JX-0211 was referenced.) 08:47:53 08:47:59

Q. Actually, I want to go to the last -- I want to start with the last page of that exhibit, please. And here we see an e-mail. And if we start at the bottom e-mail, that would be the earliest in the chain. 08:47:59 08:48:00 08:48:03 08:48:12 08:48:15 08:48:16

This is an e-mail between you and Mike Feeley -- Michael Feeley. 08:48:17 08:48:19

Who is Michael Feeley? 08:48:21

A. Mike Feeley works for the NFL and he worked right under the CFO and 08:48:22 08:48:26

VILLANUEVA - DIRECT

he's the main contact for each team. 08:48:29

THE STENOGRAPHER: I'm sorry, can you just talk into the microphone. 08:48:35 08:48:36 08:48:37

A. I'm sorry. 08:48:38

Who was that? 08:48:41

Q. The Court Reporter. 08:48:41

MS. BROWN: Do you need him to repeat the answer. 08:48:48 08:48:49

THE WITNESS: No, no. 08:48:50

Q. Okay. So let's look at what you wrote to Mr. Feeley. You wrote, "Do you know when the teams will be receiving their January NFL Ventures distribution? Is it safe to say that the January Ventures distributions is for services performed before December 31, 2006?" 08:48:50 08:48:51 08:48:54 08:48:56 08:49:00 08:49:02 08:49:04

Why did you ask him that? 08:49:07

A. Because I wanted to see if we were able to accrue the January 2007 distribution into 2006 and if it pertains to activity for that year, then we can bring it in. If it didn't, then it's -- you don't want to accrue it. 08:49:08 08:49:13 08:49:19 08:49:25 08:49:29 08:49:32

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Q. Okay. So moving up the e-mail chain, you sent another e-mail to Mike Feeley at 2:25 p.m. on the 29th and you wrote, "Please confirm that the January 2007 payment is for pre-12/31/2016 activity when there is someone for you to confirm it with." 08:49:35 08:49:36 08:49:40 08:49:44 08:49:51 08:49:54 08:49:57

And then it looks like Mr. Feeley responded to you a few days later and he wrote, "Ed, I confirmed with people here at the League that the January '07 Ventures payment will be for money earned prior to 12/31/06?" 08:49:58 08:50:01 08:50:03 08:50:05 08:50:08 08:50:10

Now, Mr. Villanueva is there anything on this e-mail that indicates that the January distribution was a separate and distinct revenue stream from the remittance? 08:50:14 08:50:15 08:50:17 08:50:20 08:50:23

A. No. 08:50:24

Q. How did you use this confirmation? 08:50:26 08:50:28

A. It has my support. 08:50:29

Q. Your "support" for what? 08:50:31

A. "Support" for preparing that 08:50:33

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journal entry and booking that journal entry. 08:50:36 08:50:38

Q. Now, at this point in time, you had already been using a methodology of booking Ventures revenue only one time a year and you've been doing that for four years by this point, right? 08:50:38 08:50:41 08:50:43 08:50:46 08:50:48

A. Correct. 08:50:49

Q. So what prompted you to make this change in December 2006? 08:50:50 08:50:52

A. Well, there's discussions between our President, our banks or bank B of A. 08:50:55 08:50:56 08:51:06

Who else was there? 08:51:07

Bank and I think even Ernst & Young to see if we can accrue it into the previous year. 08:51:11 08:51:14 08:51:17

Q. Well, why did the Raiders have any interest in -- 08:51:19 08:51:21

A. I think that's the year that we weren't going to meet a covenant. 08:51:22 08:51:23

Q. And -- 08:51:26

A. Oh, I'm sorry. And our outside tax attorney was also involved. 08:51:28 08:51:29

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Q. So, when you actually made this journal entry to the January accrual starting in 2006, did you understand it was permissible to do that journal entry? 08:51:36 08:51:37 08:51:41 08:51:43

A. Absolutely. There's so many people involved and -- yes. 08:51:45 08:51:47

Q. And you understood it would help with meeting the debt covenants; is that right? 08:51:49 08:51:50 08:51:54

A. Yes. 08:51:54

Q. So let's now go to the first page of the exhibit. 08:51:55 08:51:58

Can you describe for us what we see here on the first page? 08:52:00 08:52:03

A. On the first page is the journal entry. It's the entry that gets recorded onto our books. 08:52:04 08:52:05 08:52:09

Q. And this is the journal entry to record the January distribution -- the January 2007 distribution as revenue into December 2006? 08:52:12 08:52:14 08:52:19 08:52:22

A. That is correct. 08:52:23

Q. And when we look behind the journal entry, we see several pages 08:52:24 08:52:26

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behind it. 08:52:28

And what are those pages in this exhibit? 08:52:29 08:52:31

A. Those are additional support for the journal entry. Normally, when we do a journal entry, we always attach a bunch of support. 08:52:32 08:52:33 08:52:36 08:52:39

I guess, this is the memo from the League telling us how much money is going to be coming in. 08:52:40 08:52:41 08:52:44

2006 season projected cash flow, it shows the money in January 2007 that was coming in. It's just support for an entry that we were booking. 08:52:48 08:52:53 08:52:57 08:53:00

Q. And, in fact, the e-mail exchange that we looked at earlier on the last page, was that attached as support for the journal entry? 08:53:04 08:53:05 08:53:07 08:53:09

A. Yes. 08:53:11

Q. And then you mentioned -- if you look at the page ending in 6738, you mentioned the 2006 season projected cash flows. 08:53:12 08:53:14 08:53:17 08:53:21

That was also attached to your 08:53:21

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journal entry as support for that entry? 08:53:23

A. Yes. 08:53:24

Q. Now, when we looked at the e-mail with Mr. Feeley, did anywhere on that e-mail indicate the amount of the January 2007 distributions? 08:53:26 08:53:28 08:53:31 08:53:36

A. No, at that point, no. 08:53:37

Q. And why is it that you're attaching the season projected cash flow as support for your journal entry? 08:53:39 08:53:41 08:53:43

A. Because it has the dollar amount that we were going to accrue. 08:53:44 08:53:46

Q. And did you provide this journal entry for the January accrual made as of December 31, 2006? Did you provide that to EY in connection with the 2006 financial statement audit? 08:53:48 08:53:50 08:53:55 08:53:58 08:54:02

A. I'd say, yes, plus they -- all the journal entries they review anyways. So it's part of their -- I guess, they always ask for it. 08:54:03 08:54:07 08:54:08 08:54:11

Q. And after receiving this journal entry including the 2006 season projected cash flow, did EY ever come 08:54:13 08:54:16 08:54:19

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back to you in subsequent audit years and 08:54:22
ask for additional projected cash flow 08:54:25
sheets? 08:54:27

A. Yeah. I think they got it 08:54:28
every year. 08:54:30

Q. Now, can you just describe 08:54:32
for us in very layman's terms how does a 08:54:34
January accrual work? Just take like a 08:54:37
thousand dollars as an example. 08:54:40

A. Okay. So, if we're receiving 08:54:42
a thousand -- we'll go with the same 08:54:44
yearend. If we receive a thousand 08:54:45
dollars in January 2007 and we get 08:54:48
approval or support that it belongs in 08:54:53
2006, for 2006 I would book the 08:54:58
receivable and credit the revenue. 08:55:04

And then when the cash comes in in 08:55:07
January, I would debit the cash and 08:55:08
credit the receivable so that the 08:55:12
receivable kind of washes out. 08:55:15

Q. So does that mean that by the 08:55:18
end of January each year there is no 08:55:19
receivable balance related to the January 08:55:23
accrual? 08:55:25

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A. That's correct. 08:55:25

Q. And is that your understanding of how it worked every single year that you used the January accrual? 08:55:27 08:55:28 08:55:30

A. Yes. 08:55:32

Q. And how long did the Raiders use the January accrual? 08:55:33 08:55:35

A. From the time we started to the time I left. 08:55:38 08:55:40

Q. Now, I want to change topics a little bit. 08:55:45 08:55:46

As Controller and CFO of the Raiders, did you work with the auditors? 08:55:48 08:55:50

A. I did. 08:55:53

Q. Who did you work with? 08:55:54

A. Pretty much my main contact was Javier Garcia. 08:55:55 08:55:57

Q. And did you work with anyone else on the EY audit team? 08:56:01 08:56:03

A. I did. I mean, we had Tyler Johns, who started off as a staff person all the way up until he became a Senior Manager. He was always on the engagement. 08:56:04 08:56:11 08:56:13 08:56:16

We had Javier who started off when 08:56:18

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he was a manager. He had early promoted to manager. So he came onto our account. 08:56:21 08:56:25

We had Mike Gottlieb whose the main partner that I also dealt with. 08:56:27 08:56:32

Q. Do you know when the Raiders started using EY as their auditors? 08:56:36 08:56:38

A. Before my time. 08:56:40

Q. Now, what's your understanding of the purpose of EY's audit work? 08:56:42 08:56:43

A. To provide audited financial statements that we used to provide to our banks and to the NFL every year. 08:56:47 08:56:51 08:56:54

Q. And when you were at the Raiders, did you believe EY was adequately performing its audit services? 08:56:58 08:57:00 08:57:03

A. Oh, at the time, yes, absolutely. 08:57:04 08:57:06

Q. Why did you believe that? 08:57:06

A. Because I had a strong team. They're a strong team. I brag all the time that we had the best -- at the time -- the best audit team. Tyler Johns who started off as a staff became a Senior Manager. So he worked from the -- saw 08:57:07 08:57:08 08:57:11 08:57:13 08:57:17 08:57:20

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the basics to the nonbasic stuff. 08:57:23
And Javier, who was our early 08:57:27
promote to manager and early promote to 08:57:31
partner. So I had I felt the best 08:57:34
technical person on the team. 08:57:37
But the key for me was Mike 08:57:39
Gottlieb, because he was a partner for 08:57:42
the Los Angeles Rams for so many years. 08:57:45
So I knew that he knew what we did. 08:57:50
Q. Well, while you were at the 08:57:53
Raiders, did you know if EY audited -- 08:57:55
you knew EY audited other NFL teams? 08:57:58
A. Yeah, I believe everyone knew 08:58:00
that, because -- I think there was like 08:58:02
at the time 12 EY offices that audited 08:58:06
different teams. 08:58:10
Q. But how did you know that 08:58:12
they audited other NFL Teams? 08:58:13
A. There's sheets, like, on the 08:58:15
NFL website that will show each team, who 08:58:19
their auditors were, the yearend of the 08:58:24
team and some other various things about 08:58:28
the team. 08:58:30
Q. Is that a sheet that you 08:58:31

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reviewed at the time when you were working 08:58:32
at the Raiders? 08:58:34
A. Of course. Everyone wants to 08:58:35
know what each team is involved in. 08:58:37
Q. And do you know if any of the 08:58:39
auditors working on the Raiders audits 08:58:40
also worked on an audit for another NFL 08:58:43
Team? 08:58:46
A. Yes, that's Mike Gottlieb. 08:58:46
He was partner in charge of the Rams. 08:58:48
Q. And you mentioned Mike 08:58:51
Gottlieb before and that he was on the 08:58:53
Rams. 08:58:54
What did you think of the fact that 08:58:55
he was auditing both the Rams and the 08:58:56
Raiders at the same time? 08:58:58
A. I had some mixed emotions. 08:59:02
One emotion is, okay, you're dealing with 08:59:04
both of us. Okay, I guess that's okay. 08:59:10
But safety or comfort cause I had 08:59:14
somebody that knew the organization that 08:59:17
was -- knew the NFL and was working for 08:59:19
the NFL well before my time. So it was a 08:59:23
comfort to know that I had somebody with 08:59:27

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that experience. 08:59:29

Q. Did you have any NFL experience before you joined the Raiders in 2002? 08:59:30 08:59:32 08:59:33

A. I did not. 08:59:34

Q. Did you ever tell EY's auditors that they could not talk to any other audit team working for the NFL? 08:59:37 08:59:39 08:59:41

A. No. 08:59:43

Q. Now, in addition to audit services, what other types of services did EY provide to the Raiders? 08:59:47 08:59:49 08:59:52

A. Besides audit service, they audit our owner's report and the tax returns. The tax return was huge. You know, you have a partnership return and you have over 50 states. I mean, there's legalities that they had to prepare returns for. 08:59:55 08:59:58 09:00:04 09:00:06 09:00:07 09:00:13 09:00:14

Q. Is Raiders a taxable entity? 09:00:15

A. It's a partnership. So the Raiders was not a taxable entity because everything flows through to each individual partner. 09:00:17 09:00:22 09:00:25 09:00:27

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Q. Well, did EY know who the limited partners and who the beneficial owners of the Raiders were? 09:00:29 09:00:32 09:00:33

A. Absolutely. Just because in the financial statements, I believe, there's a schedule owners -- something owners, something that lists all the individual partners and, I guess, their partnership percentage. 09:00:35 09:00:37 09:00:39 09:00:45 09:00:47 09:00:51

They, also -- I guess, Luke is in charge of our "Stup Up and Basis" worksheet that he manages that shows all the allocations to each individual partner. So, yes, they knew who the partners were. 09:00:52 09:00:55 09:00:57 09:01:01 09:01:03 09:01:05

Q. And focusing on just the audits right now, what was your role in connection with EY's audits? 09:01:06 09:01:09 09:01:11

A. I was pretty much the main contact, provided them all the support that they needed, answered any of their questions. 09:01:12 09:01:15 09:01:18 09:01:21

Q. And just, generally speaking, what type of information did you provide 09:01:21 09:01:22

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to EY for their audits? 09:01:24
A. Whatever they wanted, support for each of our number, pretty much whatever they asked for. 09:01:26 09:01:29 09:01:35
Q. Do you recall EY ever asking you for information and you refusing to provide it? 09:01:37 09:01:38 09:01:41
A. Never. 09:01:41
Q. Did EY ever discuss with you the specific audit procedures they were using? 09:01:45 09:01:47 09:01:49
A. No. I don't think that's allowed. 09:01:50 09:01:53
Q. Did EY ever ask you for input on what audit procedures they should be using? 09:01:55 09:01:57 09:01:59
A. No. 09:02:00
Q. But you were aware that EY was using receivable confirmations as part of their audits, right? 09:02:02 09:02:04 09:02:07
A. Yes. 09:02:08
Q. Can you explain for us how that process works? 09:02:08 09:02:10
A. Well, they tell me what they 09:02:11

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want to confirm. So they give me a confirmation. I sign it. I give it to them. They take it, review it. They mail it. And when the person they're confirming with verifies or confirms the amount, they send it back directly to Ernst & Young. 09:02:14 09:02:18 09:02:21 09:02:25 09:02:28 09:02:32 09:02:35

Q. Do you recall ever editing a confirmation that EY sent to you for signature? 09:02:36 09:02:39 09:02:41

A. No, I think that would be impossible. 09:02:41 09:02:42

Q. Do you recall ever editing a confirmation that EY sent to you to change it from confirming a yearend balance for Ventures to only confirming the January amount for Ventures? 09:02:43 09:02:45 09:02:48 09:02:50 09:02:52

A. No, again, that would be impossible. Not "impossible" but they review it so... 09:02:55 09:02:56 09:03:00

Q. Do you recall ever telling EY that the NFL had a policy that it would not confirm the entire yearend balance for Ventures? 09:03:01 09:03:05 09:03:08 09:03:11

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A. No. They have 12 years auditing other teams. You have Mike Gottlieb, who is still on the Rams auditing them. I'm sure they could tell me. I mean, to me they know more than I do. 09:03:12 09:03:17 09:03:19 09:03:21 09:03:23 09:03:27

Q. Okay. Let's look at another document please, JX-0235. 09:03:28 09:03:29

(Arbitration Exhibit JX-0235 was referenced.) 09:03:33 09:03:50

Q. And this is document is an e-mail exchange. I would like to start with the bottom e-mail, which would be the earliest in time. 09:03:50 09:03:52 09:03:53 09:03:54

You see the bottom e-mail is from an auditor at EY to Michael Feeley at the NFL? Do you see that? 09:03:56 09:03:59 09:04:02

A. I do. 09:04:03

Q. And it states, "For purposes of auditing financial statements of the Raiders Football Club, please find attached an official confirmation request." 09:04:04 09:04:06 09:04:09 09:04:10 09:04:12

And then before responding to EY, 09:04:14

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if you look up in the e-mail chain, Mr. Feeley sends you an e-mail to give you "a heads up that he is materially off on this confirm," on the confirmation that he received, correct? 09:04:17 09:04:19 09:04:21 09:04:24 09:04:25
A. Correct. 09:04:27
Q. Now, who would have drafted that confirmation that Mr. Feeley received? 09:04:27 09:04:29 09:04:31
A. Probably the EY auditors. 09:04:32
Q. And who would have signed the confirmation that Mr. Feeley received? 09:04:34 09:04:36
A. Myself. I would have signed. 09:04:37
Q. Did you make any edits to that confirmation before you signed it and sent it back to EY so it could go to the NFL? 09:04:39 09:04:41 09:04:43 09:04:45
A. No. If I would have done it, it would have been correct. 09:04:46 09:04:49
Q. You didn't prevent that confirmation from going back to EY and then going to the NFL, right? 09:04:50 09:04:51 09:04:54
A. No. 09:04:54
Q. And this confirmation in this 09:04:55

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e-mail, what did it relate to? 09:04:57
A. It was confirming cash that 09:04:58
was received in 2018 from January to 09:05:02
March. 09:05:09
Q. And is it cash received from 09:05:11
the NFL? 09:05:13
A. Yes. 09:05:14
Q. From which revenue stream of 09:05:15
the NFL did this relate to? 09:05:17
A. TV revenue. 09:05:19
Q. And is the TV revenue money 09:05:23
is that related to Ventures money from 09:05:25
the NFL? 09:05:27
A. It's not. 09:05:27
Q. So the TV money in Ventures 09:05:29
are two separate and distinct revenue 09:05:34
streams that you get from the NFL? 09:05:36
A. Yes. 09:05:37
Q. Okay. Now, for confirmation 09:05:38
requests that go to Ventures, who were 09:05:40
those sent to at the NFL? 09:05:42
A. I believe Ventures was sent 09:05:44
to my -- Brad Firestone and any TV we 09:05:47
sent to Mike Feeley. 09:05:52

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Q. And did EY, typically, send confirmation requests to both Mr. Firestone and Mr. Feeley each year? 09:05:54 09:05:57 09:05:58

A. Yes. 09:06:00

Q. Okay. Now, this e-mail at this time related to your 2017 financial statement audit, right? 09:06:02 09:06:06 09:06:09

A. Correct. 09:06:10

Q. Okay. So, just generally speaking, what balance would have been reflected as a receivable for national TV money on your 2017 financial statement? 09:06:11 09:06:13 09:06:16 09:06:19

A. It should have been the January 18th, the $7.4 million. 09:06:23 09:06:25

Q. And the January distribution would be the entire balance of the receivable on your financial statements? 09:06:27 09:06:30 09:06:32

A. Yes. Correct. 09:06:33

Q. Were the February and March 2018 distributions for TV money recorded as a receivable as of December 31, 2017? 09:06:35 09:06:37 09:06:40 09:06:44

A. No, that would have been in 2018. 09:06:45 09:06:47

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Q. Okay. So you then forward this e-mail to Matt Andrus and at that point -- earlier you said he was a Controller that worked for you. 09:06:47 09:06:49 09:06:51 09:06:53

At that point how long had he been a Controller at the Raiders? 09:06:54 09:06:56

A. Oof. Probably six months, if I had to gauge it. 09:06:57 09:07:03

Q. Okay. And then you wrote to Mr. Andrus, "See Feeley's e-mail below. I just realized that they put January through March. They should only confirm the January 2018 payment that we accrued 2017. Please have them redo the confirms so we can resend. Make sure that they send the same confirm as we sent last year." 09:07:06 09:07:08 09:07:12 09:07:14 09:07:16 09:07:20 09:07:22 09:07:25 09:07:27

Why are you telling Mr. Andrus to have EY send a new confirmation? 09:07:29 09:07:31

A. To get it correct. 09:07:33

Q. Okay. And then if we go up the e-mail chain, you send Mr. Andrus another e-mail. And you write, "I want to make sure we dictate what they do, if 09:07:36 09:07:39 09:07:41 09:07:45

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they do something different, then they 09:07:48
will need to justify it. I want to 09:07:50
control these guys and what they do." 09:07:52

What did you mean by that? 09:07:54

A. What I meant by that is, you 09:07:56
know, we have a reputation that I didn't 09:07:57
want to taint it. And I was kind of 09:08:00
upset just because, you know, we said 09:08:04
something to the NFL that was incorrect 09:08:07
when we knew that the January was the 09:08:09
amount that we had to accrue. 09:08:11

So I was kind of them telling say, 09:08:14
hey, you know, if they make any changes, 09:08:17
have them justify it. And then if they 09:08:20
could justify it, I'm okay with it. 09:08:26

Q. You can set that one aside. 09:08:28

Let's now talk about the accounting 09:08:31
misstatement. 09:08:36

So sitting here today with what you 09:08:38
know today, how would you describe the 09:08:40
misstatement that related to the Ventures 09:08:44
receivable? 09:08:46

A. So, as of today, I believe, 09:08:48
the mistake that -- the amount that we 09:08:52

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accrued from January was double-counted 09:08:56
into the big receivable that we book every 09:09:01
year. 09:09:06

Q. And "the big receivable" 09:09:07
you're referring to, is that the -- 09:09:08

A. Remittance. 09:09:10

Q. Sorry. 09:09:11

(Continuing.) Is that the receivable 09:09:12
you book at the same time that you book 09:09:12
the remittance revenue? 09:09:14

A. Are you talking about -- when 09:09:16
we accrue the January -- can you reword 09:09:19
that, please? 09:09:24

Q. Sure, sure. 09:09:25

When you mentioned "the big 09:09:26
receivable," is that the receivable you 09:09:27
book in March of every year -- 09:09:29

A. Yes, correct. 09:09:31

Q. Okay. Now, how is it 09:09:31
possible that you didn't know that the 09:09:34
January distributions that were being 09:09:38
recognized in revenue under the January 09:09:41
accrual, how is it possible that you 09:09:44
didn't know that they were also being 09:09:45

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recognized as revenue in the remittance? 09:09:48

A. Well, at the time when we did 09:09:50
the journal entry, the receivable off set 09:09:51
each other. So it off set each other. 09:09:56
So I thought we were already done. And 09:09:59
we didn't have to reverse anything. So I 09:10:04
didn't think it was part of the same. 09:10:06

And, you know, the numbers were 09:10:09
audited. So I didn't -- I mean, I didn't 09:10:10
even think about it at the time. 09:10:14

Q. So, when you book the 09:10:17
remittance each year as of March 31 and 09:10:19
you booked the full amount of the 09:10:21
remittance as revenue and a receivable, 09:10:23
how is it possible that you didn't know 09:10:25
that you already had recognized part of 09:10:27
that revenue the prior December? 09:10:29

A. Well, we've been doing the 09:10:31
same thing for so many years. Everything 09:10:32
was kind of like on auto pilot, you know, 09:10:37
it was done. Didn't really think about 09:10:40
it, just bam bam bam. 09:10:43

Q. Did you think the January 09:10:47
accrual was a separate and distinct 09:10:50

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revenue stream from the remittance? 09:10:52

A. No. 09:10:53

Q. I'd like to show you another document. It's JX-2467. 09:10:56 09:10:58

(Arbitration Exhibit JX-2467 was referenced.) 09:11:00 09:11:07

Q. And this is exactly the same version that was used with a prior witness. So some of the attachments aren't here, but it's the same document that was used earlier in this arbitration with only one of the attachments being printed out. 09:11:07 09:11:10 09:11:11 09:11:14 09:11:15 09:11:18 09:11:20

So JX-2467, if you look at this document, this is an e-mail from you dated May 3rd, 2016, right? 09:11:20 09:11:27 09:11:29

A. Correct. 09:11:33

Q. Now, what is this? What's this document? 09:11:34 09:11:36

A. It's a document to the auditors sending them all of our support. 09:11:45 09:11:47

Q. And are you providing this support to EY in connection with the 2015 financial statement audit? 09:11:51 09:11:52 09:11:55

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A. Yes. 09:11:56

Q. And, like I said before, it looks like there are about ten attachments here, but only one is printed out. 09:11:58 09:11:59 09:12:01 09:12:03

So let's turn to the attachment please. It's behind the blue sheet. 09:12:03 09:12:05

A. (The witness complies.) 09:12:10

Q. Looking at that -- I'll just wait for it to load on the screen. There we go. 09:12:13 09:12:19 09:12:20

Looking at that document, is that something that you prepared? 09:12:21 09:12:23

A. It is. 09:12:26

Q. And on this document you have an amount listed for "net remittance," right? 09:12:27 09:12:29 09:12:31

A. I do. 09:12:33

Q. And you have a separate amount listed for "accrued Ventures January 2016 distribution," right? 09:12:34 09:12:35 09:12:38

A. Yes. 09:12:40

Q. Now, when you listed the remittance on a separate line from the 09:12:41 09:12:43

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January accrual amount, why were you doing that? 09:12:45 09:12:47

A. Just to break it out. 09:12:49

Q. By doing that, were you stating that those were two separate and distinct streams of revenue? 09:12:51 09:12:53 09:12:55

A. No, no. 09:12:59

Q. Now, did EY know that the Raiders were booking the January accrual as revenue each year? 09:13:00 09:13:02 09:13:04

A. Yes. 09:13:06

Q. How would they know that? 09:13:06

A. They get the support. 09:13:08

Q. Did EY -- sorry, go ahead. 09:13:09

A. They get the support. They get the e-mails. They get everything. 09:13:11 09:13:12

Q. Did EY know that the Raiders were booking the season remittance, the full season remittance that you got from the NFL as revenue in March of each year? 09:13:14 09:13:16 09:13:18 09:13:20

A. Yes. 09:13:23

Q. And how did they know that? 09:13:23

A. Because they audited that number. You have to remember -- if I can 09:13:24 09:13:26

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add? 09:13:28

The NFL is like our biggest activity. So, when they audit, they audit a hundred percent of the activity of the organization. 09:13:29 09:13:32 09:13:33 09:13:36

Q. Did you take any steps to hide from EY that you were booking both the January accrual and the full remittance amount as revenue each year? 09:13:39 09:13:41 09:13:43 09:13:46

A. No. 09:13:49

Q. Did EY ever raise any concerns with you over the fact that you were booking the January accrual and the full remittance amount as revenue each year? 09:13:50 09:13:52 09:13:55 09:13:58 09:14:00

A. No. 09:14:00

Q. Okay. We can set that aside. 09:14:04

Now, how is it that you came to learn that there was an accounting error? 09:14:12 09:14:17

A. Araxie came to me, told me that we have a potential error. 09:14:21 09:14:24

Q. And what was your reaction? 09:14:28

A. Kind of shocked in a way, because we had so many things going on 09:14:31 09:14:33

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with the stadium and the deadlines of the audit and shock that, you know, these numbers were audited each year. It was like -- I didn't believe it at first. 09:14:35 09:14:38 09:14:41 09:14:42

Q. And what were your primary concerns when the issue was first brought to your attention? 09:14:46 09:14:48 09:14:49

A. Oh, concern about if we're going to meet our deadline. I was concerned about who we would have to approach just to give them a heads up that there was a potential error. 09:14:50 09:14:54 09:14:56 09:14:59 09:15:01

I was thinking about if there was an error, how do we correct it. It's just a thousand things go through your mind and how, you know, you were going to deal with it. 09:15:03 09:15:05 09:15:09 09:15:11 09:15:15

Q. Did you tell Araxie to call the NFL? 09:15:16 09:15:18

A. I believe I did. If you're talking about -- if it was Brad Firestone, I absolutely told her, go ahead talk to Brad, get a better understanding just to make sure that, you know, our 09:15:22 09:15:23 09:15:25 09:15:28 09:15:29

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understanding is correct or not. 09:15:31

Q. And why Brad Firestone, in particular? 09:15:33 09:15:34

A. Because he handled the Ventures. 09:15:35 09:15:36

Q. And did you tell Araxie not to tell Mr. Firestone the amount of the receivable? 09:15:38 09:15:40 09:15:42

A. I don't know if I did at the time. 09:15:44 09:15:46

Q. Did you tell Araxie not to call EY? 09:15:49 09:15:53

A. I don't remember. I think what I -- I wanted to gather all the information and sit down and go over things before we made the call. But she did talk to -- we did talk to Luke Keel who was the -- I don't know what his position was at the time. Maybe he was a partner or close to being partner to go over the situation just because he's the tax person and this is -- we were tax basis. 09:15:59 09:16:01 09:16:03 09:16:04 09:16:07 09:16:11 09:16:15 09:16:17 09:16:20 09:16:23 09:16:26

Q. And what happened after that? 09:16:27

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A. After that, I don't recall. 09:16:28
I think we were supposed to meet with 09:16:34
Badain. But then, I think, I saw him, 09:16:38
cause I think he might have been on a 09:16:42
trip or something. So I ran into him and 09:16:44
just gave him a heads up and I said, hey, 09:16:47
we might have an issue, just to give you 09:16:49
a heads up, because he's the one who 09:16:51
dealt with the banks. He's the one that 09:16:53
would have to talk to -- 09:16:56

THE STENOGRAPHER: I can't 09:16:58
hear you sir, I'm sorry. I can't 09:16:58
hear you if you objected. Sorry. 09:17:06

A. Can we just finish this 09:17:12
question and then maybe use the bathroom 09:17:14
maybe? 09:17:14

Q. I think I had asked you what 09:17:16
happened after that. 09:17:19

A. Okay. 09:17:19

Q. And it looks like you were 09:17:20
saying that Badain might have been on a 09:17:22
trip and you want to pick up from there? 09:17:25

A. Yeah, I think Badain, but I 09:17:28
ran into him in the hallway. So I just 09:17:29

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gave him a heads up. 09:17:32

I think, I told Araxie I spoke with Badain, but, most likely, you're going to meet with him. 09:17:33 09:17:35 09:17:38

And I guess the next was a phone call from EY like a couple of days later or a day later say, hey, Araxie called and said, hey, you know, we -- there's an error and I think we were doing it for banks covenant reasons. 09:17:39 09:17:41 09:17:45 09:17:48 09:17:52 09:17:57

It was Javier and Mike that called me. They said, Ed, you know, we never -- we never had to deal with this before, but we have our protocol. Most likely, this is going to be third-party person that is going to investigate this thing. 09:17:58 09:18:00 09:18:06 09:18:08 09:18:13 09:18:16

Q. And, sorry, was there a "third-party person" that came in to investigate this? 09:18:18 09:18:20 09:18:24

A. Yeah, we -- Arnold &Porter, they came in and did their investigation. 09:18:24 09:18:28

Q. And were you interviewed as part of that investigation? 09:18:31 09:18:32

A. I was interviewed. 09:18:33

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Q. Now, how many times were you interviewed? 09:18:35 09:18:40

A. We had an initial interview and we sat down again and went over like eight hours of misery and then before I left, we did another eight hours. 09:18:40 09:18:42 09:18:48 09:18:52

Q. Now, before the error was discovered, before you learned of it, did you have any thoughts about writing off the Ventures receivable balance? 09:18:57 09:18:59 09:19:03 09:19:05

A. No. It was just -- as far as I was concerned, it was correct. It was audited. I just felt that it was correct. 09:19:07 09:19:10 09:19:13 09:19:16

Q. Now, after the error was discovered, what were your thoughts at that point about writing off the receivable balance? 09:19:17 09:19:18 09:19:21 09:19:23

A. After it was done? It crossed my mind of -- you know, everything goes in your head and what do you do. Yeah, that was -- what's your next option. 09:19:24 09:19:26 09:19:28 09:19:31 09:19:35

Q. I'd like to show you another 09:19:36

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document. 09:19:38

Could you turn to JX-0017. 09:19:38

(Arbitration Exhibit JX-0017 09:19:42
was referenced.) 09:19:54

A. 1-7. 09:19:54

Q. 1-7. It should be towards 09:19:55
the beginning. 09:19:57

I'd like to pick up this e-mail 09:20:05
chain in the e-mail right below the 09:20:08
picture of the feet. 09:20:10

A. Okay. 09:20:11

Q. If you look at that e-mail, 09:20:12
it's from you and it's dated May 29, 2020 09:20:13
at 5:02 p.m. 09:20:18

A. Okay. 09:20:19

Q. And you wrote, "FYI our debt 09:20:20
service coverage ratio ended up being 09:20:23
3.44. At the beginning of the year, we 09:20:25
thought we would break our covenant." 09:20:28
First, let me stop there. 09:20:32

What are you referring to there by 09:20:33
the "covenant"? 09:20:37

A. We do project the covenants 09:20:38
for the bank and we at the beginning of 09:20:40

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the year estimated that maybe we might not hit our covenant. 09:20:43 09:20:45

Q. And why at the beginning of the year did you think you might "break" the covenant? 09:20:47 09:20:49 09:20:51

A. Well, based on our projections that we were doing and, you know, determining what money was coming in, what expenses, we kind of figured maybe. 09:20:51 09:20:53 09:20:57 09:20:59

Q. Okay. And then let's look at the e-mail Mr. Badain sent you in response. Now, this e-mail is at 5:06 p.m. So it's about four minutes later. 09:21:05 09:21:06 09:21:08 09:21:11 09:21:12

He responds to you with an e-mail that says, "Business is booming," with this picture that you see here of the feet. 09:21:13 09:21:15 09:21:18 09:21:21

What did you understand this response to mean? 09:21:21 09:21:23

A. I understand this response is him joking around, just because -- I don't know if you guys know Antonio Brown. We signed him and, of course, the 09:21:24 09:21:26 09:21:29 09:21:32

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business side was saying why because, you know, he was kind of like a head case. And he pretty much was. I don't think he wanted to be with the team. 09:21:37 09:21:40 09:21:43 09:21:46

So he -- for training camp, he went into this "cryo" thing without any shoes. So, I guess, his skin was coming off his feet. The shirt "booming" which is one of these things, you know, business is booming. 09:21:48 09:21:52 09:21:56 09:21:58 09:22:02 09:22:05

So he sent me this text, "business is booming." 09:22:05 09:22:10

And I sent him a text or e-mail saying, "and then the little manipulation." The reason I said, "little manipulation," because he manipulated the Raiders. 09:22:11 09:22:13 09:22:16 09:22:18 09:22:20

Q. When you say, "he manipulated the Raiders," who are you referring to? 09:22:22 09:22:24

A. Antonio Brown manipulated the Raiders. And there are a ton of articles out there that would show he manipulated us. He manipulated us. 09:22:25 09:22:29 09:22:31 09:22:33

So we wanted him gone. And sure 09:22:36

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enough, he left. 09:22:38

And what that did for us is we were accounting in our projection probably 23, $25 million of his salary. And when you get rid of him, you know, that frees it up and, most likely, we're going to hire somebody else, but no one of his caliber at the time and reputation, I guess. 09:22:40 09:22:45 09:22:48 09:22:53 09:22:56 09:22:59 09:23:01

Q. And that helped with your debt covenant ratio? 09:23:04 09:23:08

A. Yeah, you take 20 something off your books. 09:23:09 09:23:11

Q. Could you turn to JX-3263. 09:23:15

(Arbitration Exhibit JX-3263 was referenced.) 09:23:18 09:23:26

Q. You mentioned earlier around this time there was some press around Antonio Brown and the Raiders. 09:23:26 09:23:27 09:23:31

Do you recognize this article that's titled, "Brown Manipulated Move From Oakland According to Report"? 09:23:33 09:23:35 09:23:37

A. Yeah. Everyone knows this article in the organization, yes. 09:23:39 09:23:41

Q. And have you seen this before? 09:23:44

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A. I have. 09:23:45

Q. Now, did people at the Raiders believe that Antonio Brown had manipulated them? 09:23:47 09:23:49 09:23:52

A. Of course. I think you might even see an article -- I think Jerry Rice had an article and his biggest thing was he manipulated the Raiders. 09:23:52 09:23:55 09:23:58 09:24:01

Q. Let me show you another document, JX-0016. It's, I believe, the first in your binder. 09:24:03 09:24:05 09:24:09

(Arbitration Exhibit JX-0016 was referenced.) 09:24:10 09:24:29

Q. Now, when we look at this e-mail, we can see you and Mr. Badain are exchanging e-mails and there's some discussion, "current DCR at 1.18." "Greater than 1.0 works." "If we're still at 1.25," et cetera. 09:24:29 09:24:30 09:24:32 09:24:34 09:24:38 09:24:41

What are you talking about in this e-mail exchange? 09:24:42 09:24:45

A. We're just talking about the debt covenant. 09:24:46 09:24:48

Q. Now, on November 5, 2018 09:24:52

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e-mail, the one at 1:54 p.m., you wrote, "Yes. What if we were still at 1.25? You pay me to worry."

What did you mean by that?

A. Well, you know, all of us, when you work for an organization -- he handled the -- he ran the organization. I ran finance. I worry about the finance. If you talk to the marketing person, he's going to say, don't worry about it, that's my worry. That's our job to worry. I'm sure, you know, you worry about what you're doing. So that was that reference.

Q. Now, Mr. Badain responded to your e-mail one minute later with, "Never happened under my watch. Maybe once, maybe twice."

What did you understand Mr. Badain to mean by that?

A. Trying to joke around, like, he, you know, he was on his high horse. So, actually, I'm going to come back at him. So, I guess, if you look at the

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e-mail above what I say -- like, we 09:25:50
didn't stress integrity back then. That 09:25:53
was a poke just to get him off his high 09:25:57
horse. 09:26:01
Q. And Mr. Badain responded to 09:26:02
you in less than one minute after your 09:26:03
e-mail to him about "integrity." And 09:26:06
then he says, "four Cs." 09:26:08
What did you understand to mean by 09:26:10
that? 09:26:12
A. "Four Cs" was something that 09:26:12
our ex-president at the time maybe always 09:26:14
preached "four, Cs." 09:26:17
I don't remember it. Maybe one is 09:26:20
collaboration. I don't know what the 09:26:23
other three are. But it was kind of 09:26:25
mocking her in some ways and bringing it 09:26:27
back. 09:26:29
Q. Now, these kind of jokes 09:26:30
between you and Mr. Badain were those 09:26:32
common? 09:26:33
A. Oh, yeah. You work with 09:26:34
somebody for a certain amount of years 09:26:35
working 60, 65 hours a week in the same 09:26:38

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area, it's football, you're going to -- 09:26:43
you know things, that come out of your 09:26:48
mouth or e-mails, you joke around. I 09:26:50
mean, it's a stressful job. So naturally 09:26:52
you're going to. 09:26:54

Q. Now, has anyone ever 09:26:55
suggested to you that what I've shown to 09:26:57
you today on these two e-mails at JX 16 09:26:59
and JX 17, that those two e-mails are 09:27:02
evidence that you committed the 09:27:06
accounting errors with the Ventures 09:27:09
intentionally? 09:27:12

A. Of course, yes. 09:27:13

Q. When you say, "of course," 09:27:14
who suggested that to you? 09:27:17

A. I think in my deposition. 09:27:20

Q. Do you agree with that? 09:27:22

A. No. I mean, I'm sure you're 09:27:23
going to see other e-mails joking around. 09:27:26
I mean, that's what we do. It's a 09:27:28
football team. It's... 09:27:30

Q. Mr. Villanueva, did you 09:27:33
intentionally double book the January 09:27:35
distributions as revenue in the Raiders 09:27:38

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financial statements? 09:27:40

A. No. 09:27:40

Q. Let me change topics a little bit and talk about TeamCo and StadCo. 09:27:47 09:27:49

THE CHAIRPERSON: I'm sorry. 09:27:52

Did you say you needed to use the restroom? 09:27:53 09:27:54

THE WITNESS: Yeah, if we can. It would be quick. 09:27:55 09:27:56

THE CHAIRPERSON: Okay. We'll take a recess. 09:27:57 09:27:58

(Recess taken 9:27 to 9:43 a.m.) 09:28:03 09:43:44

THE CHAIRPERSON: We're back on the record. Counsel, you can continue. 09:43:44 09:43:45 09:43:46

MS. BROWN: Thank you. 09:43:47

BY MS. BROWN: 09:43:48

Q. Welcome back, Mr. Villanueva. 09:43:48

Now I want to turn to TeamCo and StadCo, okay? 09:43:50 09:43:55

A. Okay. 09:43:55

Q. What is "StadCo"? 09:43:55

A. "StadCo" was the new entity 09:43:57

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that was -- that set up for the stadium. 09:43:59

Q. And what method of accounting did StadCo used? 09:44:03 09:44:06

A. I mean, that wasn't -- GAAP, Generally Accepted Accounting Principles. 09:44:07 09:44:09

Q. And what is "TeamCo"? 09:44:11

A. "TeamCo" is the entity -- the football entity. 09:44:13 09:44:16

Q. And what method of accounting to TeamCo used? 09:44:17 09:44:20

A. They were the tax basis of accounting. 09:44:21 09:44:23

Q. Did TeamCo and StadCo have any debt covenants? 09:44:23 09:44:26

A. Yes. 09:44:27

Q. And when did StadCo's debt covenant first go into effect? 09:44:30 09:44:32

A. I think it started when the stadium opened up, say, late 2020. I think it covered the period September 2020 to December 2020. 09:44:33 09:44:35 09:44:42 09:44:45

Q. And do you recall when the stadium was completed? 09:44:48 09:44:51

A. I believe in 2020 -- yeah, 09:44:58

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probably September or sometime in late 2020. 09:45:00 09:45:02

Q. And when the stadium was completed, how did that affect the staffing at TeamCo and StadCo? 09:45:04 09:45:05 09:45:08

A. Okay. When the stadium was completed, we hired a stadium management company and they hired their entire team just to manage that property. 09:45:11 09:45:13 09:45:16 09:45:19

Q. Prior to the completion of the stadium, who was performing the work related to StadCo? 09:45:24 09:45:26 09:45:28

A. Are you talking about who was doing the work for the entity from -- 09:45:31 09:45:32

Q. For the stadium. 09:45:35

A. Oh, for the stadium. 09:45:36

Basically, most of the Raiders people. I mean, we had people working 50 percent of their time for the team, 50 percent of the time for StadCo. We had people -- some working a hundred percent of their time for StadCo. So it kind of varies. 09:45:38 09:45:43 09:45:45 09:45:48 09:45:53 09:45:55 09:46:00

Q. And, I believe, you said 09:46:01

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earlier that when the stadium was 09:46:03
completed, then you hired a stadium 09:46:04
management company and they had their 09:46:06
entire team to manage the property -- 09:46:09
A. Correct. 09:46:12
Q. Okay. So, once the stadium 09:46:12
was completed and you had that management 09:46:14
company in place, how did that affect the 09:46:18
payroll allocations for accounting 09:46:21
purposes on the StadCo and TeamCo? 09:46:23
A. Well, the payroll allocation 09:46:24
-- we had to shift more the payroll 09:46:26
expenses back to TeamCo just because 09:46:31
everyone came back to the team and 09:46:33
strictly worked football. I mean, we 09:46:35
kept a few people at the stadium. So 09:46:37
their payroll stayed with StadCo. 09:46:42
Q. And when you had a management 09:46:46
company that was running the stadium, the 09:46:48
people that had previously been working 09:46:50
on the stadium that came back to the 09:46:52
team, what did you then need to do from 09:46:55
an accounting standpoint for their 09:46:57
salaries? 09:46:59

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A. We had to account for their salary on TeamCo's books. 09:46:59 09:47:01

Q. Now, when the stadium was completed, was that a trigger date for the debt covenant for StadCo? 09:47:10 09:47:12 09:47:14

A. I believe so, yeah, for StadCo. 09:47:18 09:47:20

Q. Did you have any conversations with Bank of America about that new StadCo debt covenant? 09:47:20 09:47:21 09:47:23

A. Yeah, we had many conversations. 09:47:24 09:47:26

Q. Did you discuss with Bank of America the allocations that you had been working on between TeamCo and StadCo? 09:47:27 09:47:29 09:47:31

A. As far as the salaries, no. As far as revenue, especially sponsorship, yes. 09:47:33 09:47:39 09:47:42

Q. Did you have any discussions with EY about the allocations you were working on for StadCo and TeamCo? 09:47:43 09:47:45 09:47:47

A. I don't think we had any discussions at that time. 09:47:49 09:47:50

Q. At any point in time, did you 09:47:54

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have that discussion with EY? 09:47:57

A. I think at some point we probably had the discussion, but I'm not a hundred percent sure. 09:47:58 09:48:01 09:48:02

Q. Putting aside EY and putting aside Bank of America, did you have discussions with anyone else about the allocations you were working on between TeamCo and StadCo? 09:48:02 09:48:03 09:48:06 09:48:07 09:48:10

A. Yeah, I had discussions with our in-house Counsel. I had discussions with our outside Counsel. I had discussions with the bank just to go over that use agreement that, I believe, tells how to allocate certain revenues that belong to TeamCo and what belongs to StadCo. 09:48:11 09:48:14 09:48:18 09:48:21 09:48:25 09:48:27 09:48:32 09:48:35

Q. Okay. Let's look at JX-0247. 09:48:35

(Arbitration Exhibit JX-0247 was referenced.) 09:48:38 09:48:56

Q. Do you see the e-mail fairly close to the top of the chain on December 29, 2020, 4:45 p.m.? 09:48:56 09:48:58 09:49:01

Mr. Badain writes, "Are you feeling 09:49:06

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better about sponsor revenue and 09:49:08
collections?" 09:49:10

Do you see that? 09:49:13

A. Yes. 09:49:13

Q. And then you respond to that 09:49:14
e-mail and you wrote, "From a cash 09:49:15
standpoint, I'm feeling good. We are 09:49:18
still working through the revenue portion 09:49:19
on what we can allocate to LV Stadium 09:49:20
Events Company. Everyone knows the game 09:49:24
plan, so we can meet the LV Stadium 09:49:26
Events Company bank covenant." 09:49:29

What did you mean by that? 09:49:32

A. Well, we were going through 09:49:33
the work to analyze how we can split the 09:49:35
sponsorship revenue between StadCo and 09:49:39
TeamCo. So we had various people 09:49:41
involved. 09:49:45

One group that we got involved -- 09:49:46
that got involved was a sponsorship 09:49:47
group. They had to tell us what belonged 09:49:50
-- because if you have a sponsorship -- a 09:49:54
sponsorship deal could be for a million 09:49:57
dollars. But in that sponsorship deal 09:49:59

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there's a lot of different items that the 09:50:01 sponsor paid for. It paid for TV rights, 09:50:06 a show, football tickets, Raider Red 09:50:10 appearance, player appearance. 09:50:17

So we needed them to go in and show 09:50:18 us how they split it, based on those -- 09:50:21 whatever was in that agreement. 09:50:24

And from there then we had to talk 09:50:26 to each individual sponsor as, to how did 09:50:29 you allocate this. Because I don't think 09:50:32 there's a rate -- there might have been a 09:50:34 rate sheet that gives you what each thing 09:50:36 costs. 09:50:36

Sometimes, when you're doing a 09:50:40 deal, you'll throw something in there. I 09:50:41 say, I'll tell you what, let's close the 09:50:43 deal, throw in some tickets. 09:50:46

So they had -- they were doing 09:50:47 their work, as far as showing us how to 09:50:49 do the split. 09:50:52

Q. But, Mr. Villanueva, how does 09:50:53 doing all the work that you just 09:50:55 described, how does that relate to 09:50:56 meeting the stadium's bank covenant? 09:50:58

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A. At the time I don't think we were going to meet the TeamCo, but we had a chance to meet StadCo. But I wanted to make sure that it was done properly. So we had to justify doing what we needed to do, as far as do all the leg work, as far as figuring out what the split was. 09:51:04 09:51:06 09:51:10 09:51:12 09:51:15 09:51:18 09:51:21

Q. And in working on that "split" in the allocation between the two TeamCo and StadCo companies, could that potentially impact meeting the debt covenant? 09:51:24 09:51:26 09:51:29 09:51:31 09:51:33

A. It can, if you can justify it. 09:51:33

Q. Let's look at JX-0188. 09:51:37

(Arbitration Exhibit JX-0188 was referenced.) 09:51:41 09:51:55

Q. Do you see on the bottom of this e-mail Ms. Grant forwards you a chart and it looks like Mr. Scott prepared it showing revenue allocations in between TeamCo and StadCo? 09:51:55 09:51:56 09:51:58 09:52:02 09:52:04

A. Uh-huh. 09:52:05

Q. As of this date, which is April 8, 2021, were the StadCo and TeamCo 09:52:08 09:52:10

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allocations finalized? 09:52:13
A. No. 09:52:14
Q. So you respond and you wrote, 09:52:16
"I don't understand that allocation. 09:52:19
From the beginning we, wanted to get it 09:52:22
closer to 90 percent StadCo and 09:52:24
10 percent TeamCo. We spoke to Deloitte, 09:52:26
Greg Gilbert and did a lot of work with 09:52:30
sponsorship. We need to determine how we 09:52:33
can shift more to StadCo." 09:52:35
Do you see that? 09:52:37
A. Yes. 09:52:38
Q. Now, first, what did you mean 09:52:38
when you said, "we spoke to Deloitte"? 09:52:40
A. I think Deloitte -- that 09:52:42
situation was we had a "Daz." We 09:52:44
received money for something called 09:52:47
"Daz." And "Daz" is the big antenna, 09:52:49
which gives you WiFi. So the company 09:52:52
paid us to have that "Daz" on to the 09:52:55
property. 09:53:00
And we received some money. So we 09:53:00
were trying to determine if we could take 09:53:03
that dollar amount into the 2020 year. 09:53:06

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So we talked to Deloitte to see if, you know, if there's -- if we can try to get outside advice. 09:53:11 09:53:15 09:53:19

Q. And when you mentioned Greg Gilbert -- what did you mean when you said, we spoke to Greg Gilbert? 09:53:21 09:53:25 09:53:26

A. Greg Gilbert is an outside attorney in Las Vegas and we used him to go through something called a use agreement. And the use agreement, I believe, is a document that's -- tells you what income goes to the different type of entities or to the entities. 09:53:28 09:53:30 09:53:36 09:53:40 09:53:42 09:53:45 09:53:48

Q. And when you said you did "a lot of work with sponsorship," what is that referring to? 09:53:53 09:53:54 09:53:56

A. For them to go in and analyze the, you know, the deals or the sponsor -- or the deals to figure out what is properly allocated to one entity to the next. 09:53:57 09:53:59 09:54:05 09:54:08 09:54:10

Q. And was this process that you're describing here where you're going through all these things, were you 09:54:10 09:54:11 09:54:13

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undertaking this so you could shift more to StadCo? 09:54:14 09:54:17

A. You know, we were just trying to -- first, we're trying to get it right because it's the very first year. 09:54:18 09:54:20 09:54:22

When you look at all the projections or any -- all the projections, everything was going to StadCo, you know, projections that were done with the bank or discussions earlier on. 09:54:27 09:54:30 09:54:35 09:54:39 09:54:40

And the way it was being allocated just didn't seem right at the time, from a higher level. So that's why I wanted them to, you know, go in and start digging, see how this can be. Because you can come from Oakland, we were only making like $8 million in sponsorship revenue in that market. You move to Vegas, you have like $80 million in sponsorship revenue. 09:54:42 09:54:44 09:54:46 09:54:48 09:54:50 09:54:54 09:54:57 09:55:00 09:55:02 09:55:08

So, to me, from a higher level, I'm thinking, well, we got a new stadium. That's where all the money -- that's who is earning the money. So, if you see the 09:55:09 09:55:12 09:55:15 09:55:18

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split 50/50 or whatever the split was, it just didn't make sense at the time. So I just wanted people to go in and dig in and let's see, you know, let's try to get it right and see what the right answer is. 09:55:20 09:55:23 09:55:25 09:55:27 09:55:30

Q. Now, when you were working with Deloitte and Greg Gilbert your outside Counsel and the sponsorship group and you're trying to shift more to StadCo -- 09:55:32 09:55:34 09:55:37 09:55:40 09:55:43

A. Uh-huh. 09:55:43

Q. -- did you understand that that would help you with the debt covenant? 09:55:43 09:55:44 09:55:46

A. Yes. 09:55:46

Q. And was that one of the reasons you were working on the allocations? 09:55:48 09:55:49 09:55:50

A. No. I mean, it's the first year. It's the first year for GAAP statement -- GAAP financial statements. Those statements are going to get audited like hell. It's your first year, right. 09:55:51 09:55:54 09:55:57 09:56:03 09:56:05

We've been doing tax basis 09:56:07

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financial statements for 18 years. So we 09:56:09
knew it was going to be looked at. So we 09:56:11
wanted to make sure we get it right and 09:56:13
signed off on. 09:56:15

Q. Let's look at JX 333 -- 09:56:18

(Arbitration Exhibit JX-0330 09:56:22
was referenced.) 09:56:36

Q. I believe you mentioned 09:56:36
before when you were talking about the 09:56:37
allocations, you mentioned a team "use 09:56:40
agreement." 09:56:42

Handed you a document that's -- or 09:56:44
you're looking at the document that's the 09:56:46
Team Use Agreement between LV Stadium 09:56:49
Events Company and the Raiders Football 09:56:52
Club LLC. 09:56:55

What is this document? 09:56:56

A. I believe this is the 09:56:56
document that shows what revenue should 09:56:58
go to each entity. 09:57:00

Q. And what steps did you take 09:57:03
to understand the guidelines contained in 09:57:05
this document for how the allocations 09:57:07
worked between the entities? 09:57:10

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A. I think -- is this the whole document or just -- it's a big document, right? 09:57:11 09:57:13 09:57:16

I am not a lawyer. So I reached out to our in-house attorney Dan Lyzet (phonetic) and we also reached out to Greg Gilbert to analyze it and provide us with guidance. 09:57:17 09:57:21 09:57:24 09:57:26 09:57:30

Q. And did you personally know how the allocation guidelines in this document worked? 09:57:34 09:57:35 09:57:37

A. Based on the discussions with our attorneys, they made me understand it. 09:57:40 09:57:41

Q. Why did you want to get closer -- going back to -- actually, I'm going back to the e-mail at JX 188. I had a few more questions about that. 09:57:48 09:57:49 09:57:52 09:57:55

(Arbitration Exhibit JX-0188 was referenced.) 09:57:58 09:58:08

Q. You wrote in the second e-mail down, "I don't understand that allocation and from the beginning we wanted to get it closer to 90 percent StadCo and 10 percent TeamCo." 09:58:08 09:58:10 09:58:12 09:58:15 09:58:17

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Why did you want it to be "closer" to those amounts? 09:58:20 09:58:23

A. Because it seemed like the right numbers based on everything that was done previously, slides that probably the bank had. It just -- it just makes sense. Do I want to get to 90/10, no. 09:58:24 09:58:26 09:58:27 09:58:33 09:58:38

It just appeared that based on the stadium and the team, based on what was done in Oakland and what was done here, it was -- it just seemed fair, reasonable. 09:58:42 09:58:45 09:58:49 09:58:51

Q. Were you in any way trying to conceal the work that you were doing on the StadCo and TeamCo allocations? 09:58:57 09:58:59 09:59:00

A. No. I had so many people involved in this thing, in-house attorney, outside attorneys, sponsorship team. I think even the bank knew that we were talking about the use agreement, I believe. 09:59:02 09:59:05 09:59:11 09:59:14 09:59:19 09:59:23

Q. Now, these allocations that you were still working on in April, as of April 2021, did these allocations ever appear on the Raiders financial 09:59:23 09:59:25 09:59:29 09:59:33

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statements? 09:59:37

A. No, because I was gone so. I don't know if they were or not. 09:59:37 09:59:39

Q. And by the time you were gone these, allocations were still a work in progress? 09:59:40 09:59:42 09:59:44

A. I believe so. 09:59:44

Q. Were the financial numbers that included some of the draft allocations you were working on, were those ever sent to anybody outside of the Raiders? 09:59:48 09:59:49 09:59:52 09:59:54 09:59:57

A. I don't think financial statements. But I believe like a rough projection of our numbers were given to the bank. 09:59:58 09:59:59 10:00:02 10:00:04

Q. Can you please turn to JX-0250. 10:00:06 10:00:08

(Arbitration Exhibit JX-0250 was referenced.) 10:00:09 10:00:17

Q. Do you see here we have an e-mail from you to Christopher Arnold at Bank of America on May 17, 2021? 10:00:17 10:00:19 10:00:22

And then there is an attachment to 10:00:27

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that e-mail. So, if you can please turn to the next page. 10:00:29 10:00:31

What is that t? 10:00:32

A. It looks like a projection for the 2021 year. 10:00:33 10:00:36

Q. And why are you sending this to Bank of America? 10:00:39 10:00:40

A. I believe they asked me. 10:00:42

Q. Now, your e-mail is dated May 17, 2021. But when we look at the projection amounts, the first two columns cover date ranges prior to that. 10:00:44 10:00:47 10:00:53 10:00:55

Why are those columns still labeled as "projections"? 10:00:57 10:00:59

A. Because they weren't audited. They weren't final. We don't close our -- we don't have a hard close for our books. 10:01:01 10:01:02 10:01:05 10:01:08

So, if you're going to -- all you can do is projections, cause there are estimates that you are going to use and what no. 10:01:09 10:01:11 10:01:16 10:01:17

Q. And so, even though you're in May 2021, let's say, the first column 10:01:18 10:01:20

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covering September 2020 to December 2020, that column was not finalized yet? 10:01:23 10:01:25

A. No. 10:01:27

Q. And so these didn't represent any actual numbers of the Raiders at that time; is that right? 10:01:29 10:01:31 10:01:34

A. Yeah, they don't represent any final numbers for the Raiders. 10:01:35 10:01:37

Q. "Final numbers," thank you. 10:01:38

And did you sent d compliance certificate to Bank of America when you sent them this projection sheet in May of 2021? 10:01:40 10:01:42 10:01:43 10:01:47

A. No. 10:01:48

Q. Why not? 10:01:48

A. It wasn't required. 10:01:50

Q. Now, looking back at the e-mail exchange between you and Bank of America, the e-mail at the bottom where Chris Arnold writes to you, "Hi, Ed. Had a conversation with Elliot. Apologies if you have already mentioned it. But what, specifically, would you like to change about the Team Use Agreement?" 10:01:52 10:01:54 10:01:56 10:02:00 10:02:03 10:02:06 10:02:08 10:02:09

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What is he talking about there? 10:02:11

A. I think we had conversations 10:02:13 -- I probably had a conversation about -- 10:02:16 if we had to make changes to the use 10:02:21 agreement, what are the steps. 10:02:24

Q. And why would you need to 10:02:27 make changes to the Team Use Agreement? 10:02:28

A. Just the way revenue was 10:02:30 being allocated, it just didn't seem 10:02:32 right. So I wanted to get -- after doing 10:02:33 all the work and it still doesn't come up 10:02:35 to the number that you want and I would 10:02:39 discuss it with the bank, the use 10:02:41 agreement, because in their head, based 10:02:44 on all, you know, the analysis that they 10:02:47 have done, everything should be stadium 10:02:49 money. 10:02:54

Q. And then you responded to 10:02:54 Chris at Bank of America and you wrote, 10:02:57 "As far as the Team Use Agreement, not 10:02:59 sure if we need to do anything now. But 10:03:01 we'll get back to you on this." 10:03:04

Why were you unsure at this time? 10:03:06

A. Because we were still doing a 10:03:08

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lot of work to figure out the split and sponsorship revenue. 10:03:10 10:03:13

Q. And did the bank know that you were still working on the split and the allocations between TeamCo and StadCo at this time in May 2021? 10:03:14 10:03:15 10:03:18 10:03:21

A. Yeah, I believe so. 10:03:23

Q. Before you left the Raiders, did anyone ever ask you about the allocations you were working on between TeamCo and StadCo in May of 2021? 10:03:33 10:03:35 10:03:38 10:03:41

A. When I left? 10:03:46

Q. Before you left, did anybody ever ask you why you were doing those allocations or how those allocations worked? 10:03:47 10:03:49 10:03:52 10:03:54

A. No. 10:03:54

Q. And by "anyone," I should be more clear. 10:03:56 10:03:57

A. Yeah, because there's everyone in-house and our outside attorneys. 10:03:58 10:04:01 10:04:02

Q. I realize you said you talked to many people about it. 10:04:02 10:04:03

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What I meant by that was, there was an internal investigation going on at the Raiders around this time in April and May of 2021, right? 10:04:05 10:04:08 10:04:10 10:04:12

A. Uh-huh. 10:04:13

Q. In connection with that internal investigation, did anybody ever ask you about your allocations between TeamCo and StadCo and how you did those allocations or why you were working on that at the time? 10:04:14 10:04:15 10:04:19 10:04:22 10:04:24 10:04:27

A. No. 10:04:28

Q. And you were interviewed multiple times as part of that internal investigation from Arnold & Porter? 10:04:30 10:04:32 10:04:35

A. Yes. And from what I know now -- I'm sorry. 10:04:36 10:04:38

Q. No. Let me move onto another topic. 10:04:39 10:04:49

Now, prior to the discovery of the error in April of 2021, did you know that the January distribution from Ventures was being double-booked? 10:04:54 10:04:55 10:04:59 10:05:02

A. You said prior? 10:05:03

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Q. Prior to April of 2021 -- 10:05:04
A. No. 10:05:06
Q. -- did you know it was being double-booked? 10:05:06 10:05:08
A. No. 10:05:09
Q. So I want to cover with you some of the things that have come up in this arbitration as potential indicators that there would be an issue with respect to the Ventures amounts, okay? 10:05:09 10:05:11 10:05:13 10:05:16 10:05:19
So, first, I want to start with the accounts receivable balance itself. 10:05:21 10:05:25
In looking at the accounts receivable balance in retrospect knowing what you know now, the misstatement was causing it to grow, correct? 10:05:27 10:05:29 10:05:32 10:05:35
A. Correct. 10:05:37
Q. Did you question the receivable balance and it growing at the time you were at the Raiders? 10:05:38 10:05:39 10:05:42
A. No. 10:05:43
Q. Why not? 10:05:43
A. The number was audited. We submit our financial statements to the 10:05:46 10:05:50

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bank and to the League and nobody ever questioned it. I never really questioned it. So I never thought it wasn't a bad number. 10:05:51 10:05:59 10:06:00 10:06:04

Q. And what was happening in terms of the remittance amounts you were receiving from the League each year? 10:06:05 10:06:07 10:06:09

A. It paid down that receivable every year. 10:06:11 10:06:14

Q. Now, let's talk about the conforming statements. 10:06:16 10:06:20

A. Okay. 10:06:20

Q. Okay. Just quickly, what are the "conforming statements"? 10:06:21 10:06:24

A. The "conforming statement" are statements that are required by the League from each team and each team has to conform to whatever the numbers that the League provides. 10:06:25 10:06:27 10:06:28 10:06:33 10:06:39

And the reason why they do that, they want to make sure they compare each team apples to apples just because people have different -- teams have different year ends, different accounting methods. 10:06:41 10:06:42 10:06:46 10:06:48 10:06:51

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Q. And what was the accounting method used on the conforming statements? 10:06:54 10:06:55

A. I believe that was GAAP. 10:06:57

Q. And how did the accounting for the conforming statements differ from the accounting on your financial statements? 10:07:01 10:07:02 10:07:04 10:07:08

A. The way we accounted for the conforming statement accounting -- what we did -- for example, I'll give you 2006 year. We went into the Raiders books or GL. So we copied the information from April 2006 to March 2007, add it to the beginning balance in the different GL company, which is the Fiscal Year 3/31. 10:07:08 10:07:11 10:07:14 10:07:17 10:07:21 10:07:29 10:07:36 10:07:40

From there we take whatever the conformed amounts are, adjust to it and we're done. 10:07:49 10:07:52 10:07:55

Q. So you mentioned the "conformed amounts." 10:07:56 10:07:58

Let me show you one more exhibit. If you can look at JX-0567. 10:07:59 10:08:01

(Arbitration Exhibit JX-0567 was referenced.) 10:08:04 10:08:17

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Q. What is this document? 10:08:17
Are you familiar with this document? 10:08:19 10:08:20
A. I am. 10:08:20
Q. Okay. What is this document? 10:08:21
A. This is a document that each team gets telling us what we have to conform our amounts to. 10:08:22 10:08:24 10:08:27
Q. So, if we just take one row, for example, do you see the row "National Revenue" and then "NFL Ventures Non-Broadcast Partners"? Do you see that amount? 10:08:30 10:08:33 10:08:35 10:08:38 10:08:41
A. I do. 10:08:41
Q. Okay. So, if we just focus on that amount and we take the process you described earlier and how you put together your conforming statements, what would that amount look like in that process? And how would you get to that amount? 10:08:42 10:08:44 10:08:46 10:08:48 10:08:50 10:08:52 10:08:55
A. How we would get to that amount, we'd see what's on that -- what the balance was as of 3/31. Then if 10:08:55 10:08:57 10:09:01

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there was a balance on there, then we would adjust to the $75 million. 10:09:08 10:09:10

Q. Okay. Let's look at JX-3298. 10:09:14

(Arbitration Exhibit JX-3298 was referenced.) 10:09:18 10:09:35

A. 32? 10:09:35

Q. 3298. 10:09:36

A. Okay. 10:09:42

Q. Can you describe to us what this document is? 10:09:43 10:09:44

A. This is Brad Firestone providing us with numbers. 10:09:45 10:09:47

Q. And is this handwriting on this document yours? 10:09:52 10:09:54

A. It is. 10:09:55

Q. Well, first, let me ask you this. 10:09:55 10:09:57

Is this being used in connection with the conforming statement audit? 10:09:57 10:09:59

A. Yes. 10:10:00

Q. So describe for us what you're doing on the handwriting here? 10:10:00 10:10:02

A. What I was trying to do is adjust our number to the conforming 10:10:05 10:10:07

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statement number. 10:10:10

Q. And where did the "per GL" number come from? 10:10:12 10:10:14

A. It came from that entity that we set up that has 12 months of activity and, I think, 3/31/2016 or '17. 10:10:15 10:10:16 10:10:23

Q. And when you copied the GL accounts into that entity each year so you can make a conforming statement, I think you said this, but that would run from April 1st of each year -- 10:10:27 10:10:29 10:10:31 10:10:33 10:10:35

A. Correct, to -- 10:10:37

Q. -- to December? 10:10:39

A. Right. 10:10:42

Q. And then you would copy January 1st of each year through March? 10:10:42 10:10:44

A. Right. Take that information put it into the new entity add it to the beginning balance from that year. 10:10:46 10:10:49 10:10:53

Q. Okay. And when you do that and you copy those accounts to make your conforming statement, because that period you're copying includes December, there are is a revenue amount recorded in the 10:10:56 10:10:57 10:10:59 10:11:01 10:11:05

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Ventures revenue account, correct? 10:11:07

A. Correct. 10:11:09

Q. But when you're doing this process, is it before you book the remittance amount at the end of March every year? 10:11:09 10:11:10 10:11:13 10:11:15

A. I don't think so. 10:11:16

Q. When we look at the journal entry you're doing here -- 10:11:18 10:11:20

A. Oh, okay. 10:11:21

Q. -- did it occur to you when you were making this adjustment to conform to the number given to you by the NFL and you're subtracting the amount you see in your account -- 10:11:22 10:11:24 10:11:27 10:11:29 10:11:31

A. Uh-huh. 10:11:32

Q. -- did it occur to you that you were simply subtracting the January accrual amount from the remittance amount? 10:11:33 10:11:35 10:11:38

A. No, I was just trying to adjust to their number. 10:11:40 10:11:41

Q. Did you ever think that it was odd that the numbers being reported on the conforming statements were 10:11:45 10:11:46 10:11:49

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different than the revenue numbers you saw reported on the financial statements for Ventures? 10:11:51 10:11:53 10:11:55

A. No, never really thought about it. I don't -- we don't rely on the conforming statement. It's just something we prepare and get it done and submit it to the League or get it ready for EY to take a look at it. 10:11:56 10:11:57 10:12:01 10:12:03 10:12:08 10:12:10

But I believe EY spends more time on it than we do. 10:12:12 10:12:15

Q. Well, how much time would you spend on the conforming statements each year? 10:12:16 10:12:18 10:12:19

A. If I had to gauge it, maybe two days, maybe couple of days. 10:12:19 10:12:23

Q. And in conducting the Raiders business did, you use the conforming statements for anything? 10:12:25 10:12:27 10:12:29

A. No. 10:12:29

Q. Did EY audit the conforming statements? 10:12:32 10:12:36

A. Yes. 10:12:36

Q. And was EY aware of the 10:12:38

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process that you used to create the conforming statements including adjusting entries we see here in this exhibit? 10:12:40 10:12:43 10:12:45

A. Yes. 10:12:47

Q. Did you provide EY with the adjusting entries that you used to make the conforming statements? 10:12:49 10:12:51 10:12:53

A. Yes. They get everything. 10:12:54

Q. And in putting together the conforming statements, did it ever occur to you that you were recording revenue from the January distributions two times each year? 10:12:59 10:13:01 10:13:03 10:13:06 10:13:10

A. No. 10:13:10

Q. Okay. Let's turn now to the projected cash flow schedules. 10:13:14 10:13:16

How often did you receive projected cash flow schedules from the NFL? 10:13:18 10:13:20

A. Probably, if I had to gauge it, on average, three maybe more just because we get a projected cash flow and it can always change. Anytime it does change, they always gave us an updated one. 10:13:30 10:13:34 10:13:36 10:13:39 10:13:42 10:13:44

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Q. Have you ever provided the NFL cash flow -- have you ever provided the NFL cash flow schedules to EY? 10:13:46 10:13:48 10:13:53

A. Yes. 10:13:55

Q. Let's look at Exhibit JX-0427. 10:13:59

(Arbitration Exhibit JX-0427 was referenced.) 10:14:03 10:14:17

Q. Now, the e-mail on the first page is from an EY address to an EY address. So you're not on that. So let's just flip to the attachment and look at that, please. 10:14:17 10:14:20 10:14:22 10:14:24 10:14:26

Looking at this attachment, what is this? 10:14:28 10:14:33

A. That's the projected cash flows that we receive from the League. 10:14:33 10:14:35

Q. And the e-mail itself is dated June 28, 2012. 10:14:37 10:14:41

Who would have provided this to EY at that time? 10:14:43 10:14:46

A. Probably myself or -- yeah, probably from me. 10:14:47 10:14:55

Q. Was that because you were the primary person at the Raiders providing 10:14:56 10:14:57

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information to EY? 10:15:01

A. Yeah, I think at that time I was like the only one; so, yeah, the primary. 10:15:02 10:15:03 10:15:05

Q. Okay. Let's look at JX-0213. 10:15:07

(Arbitration Exhibit JX-0213 was referenced.) 10:15:10 10:15:21

Q. Now, is this a journal entry that you booked for the January accrual in December 2016? 10:15:21 10:15:23 10:15:28

A. Yes. 10:15:33

Q. Okay. So flipping to the third page and the way this works, when we see the journal entry and we see the pages that follow, are the following pages the support that you maintain for the journal entry? 10:15:34 10:15:36 10:15:39 10:15:41 10:15:43 10:15:45

A. Yeah, just by looking at it, just because we keep it in a binder and I can see the -- whoever made copies has the three holes copied. 10:15:48 10:15:50 10:15:54 10:15:58

Q. Three-hole punch? 10:15:59

A. Yeah, yeah. 10:16:02

Q. So, if you flip to the third 10:16:02

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page that's attached, do you see here 10:16:04
that this is the 2016 season projected 10:16:05
cash flows? 10:16:08
A. Yes. 10:16:08
Q. And was this journal entry 10:16:11
and its supporting documentation provided 10:16:12
to EY in connection with the 2016 audit? 10:16:14
A. Yes. 10:16:16
Q. Okay. Let's go to JX-0652. 10:16:18
(Arbitration Exhibit JX-0652 10:16:21
was referenced.) 10:16:31
Q. And, again, the first e-mail 10:16:31
is among the EY employees. So I'll focus 10:16:33
you on the attachments. 10:16:35
If you flip through the attachments, 10:16:37
do the attached documents look familiar 10:16:41
to you? 10:16:43
A. Yes. 10:16:47
Q. So let's go to the page 10:16:47
ending in 4543. 10:16:48
Is this a journal entry related to 10:16:52
Ventures? 10:16:58
A. Yes. 10:17:05
Q. And if we look at the 10:17:07

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following pages, is that the support 10:17:08
that's attached for that journal entry? 10:17:10

A. Yes. 10:17:13

Q. Turning to the Page 4547. 10:17:15

You see the 2018 season projected 10:17:19
cash flows from the NFL, right? 10:17:22

A. Yes. 10:17:23

Q. Did you provide this journal 10:17:26
entry and the supporting documentation to 10:17:28
EY in connection with its audit of the 10:17:31
2018 financial statements? 10:17:35

A. Yes. 10:17:36

Q. Now, do you recall ever 10:17:39
comparing the amounts shown on the season 10:17:43
projected cash flow schedule with your 10:17:47
Ventures receivable balance? 10:17:50

A. No. 10:17:52

Q. And why didn't you do that? 10:17:52

A. Because -- to give you 10:17:55
information, there's nothing on here that 10:17:58
would tell me what the balance is. 10:18:02

Q. That would tell you what the 10:18:04
receivable balance is? 10:18:06

A. Correct. 10:18:07

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Q. But you can see from this schedule that you're getting cash payments, right? 10:18:08 10:18:09 10:18:11

A. Correct. 10:18:12

Q. Did you ever try to reconcile this document in some way to your receivable balance? 10:18:16 10:18:18 10:18:21

A. No. 10:18:22

Q. Did you ever take any steps to hide the NFL cash flow schedule from EY? 10:18:23 10:18:24 10:18:28

A. No, absolutely not. 10:18:28

Q. Let's now turn to the Capital Roll Forward Schedule. 10:18:35 10:18:40

Okay. You're familiar with the Ventures's Capital Roll Forward Schedule? 10:18:40 10:18:42

A. Yes. 10:18:45

Q. What is the "roll forward schedule"? 10:18:45 10:18:47

A. That's a schedule that was prepared, I believe, from Brad that just shows certain activities like money coming in. 10:18:47 10:18:55 10:18:56 10:18:58

Q. And by "Brad" do you mean 10:18:59

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Brad Firestone? 10:19:01
A. Brad Firestone, I'm sorry. 10:19:02
Q. Brad Firestone at the NFL? 10:19:03
A. From the NFL. 10:19:04
Q. Okay. What did you use the Roll Forward Schedule for in connection with your business at the Raiders? 10:19:05 10:19:09 10:19:11
A. I really didn't use it for the business. I mean, the main thing I used was probably this projected -- see money coming in. But as far as the roll forward, I never used it to run our business. 10:19:14 10:19:15 10:19:18 10:19:20 10:19:22 10:19:24
Q. Did you ever use a part of the roll forward as support for any of your journal entries? 10:19:26 10:19:28 10:19:30
A. Yes. 10:19:31
Q. Which part? 10:19:31
A. The remittance. 10:19:32
Q. "Remittance." 10:19:34
Can you think of which part of the document the remittance would be on? 10:19:38 10:19:40
A. Like a lot of documents in that roll forward. 10:19:48 10:19:49

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Q. Let me ask you this. 10:19:50
How much time did you spend with the Capital Roll Forward Schedule each year? 10:19:51 10:19:53 10:19:54
A. Ten minutes. 10:19:57
Q. You're not very familiar with that document? 10:19:58 10:19:59
A. I know it, but I'm not -- don't use it. I'm familiar somewhat. 10:20:00 10:20:03
Q. Did you realize that that Roll Forward Schedule reflected a beginning balance and an ending balance of accounts receivable for Ventures? 10:20:07 10:20:08 10:20:10 10:20:12
A. For conforming statement, yes. 10:20:14
Q. Did it reflect a beginning balance and ending balance of accounts receivable for Ventures for your financial statements? 10:20:18 10:20:19 10:20:21 10:20:23
A. No. 10:20:24
Q. Did you ever realize by looking at that Capital Roll Forward Schedule that it reflected what season the Ventures distributions related to? What season remittance the Ventures 10:20:28 10:20:30 10:20:32 10:20:35 10:20:38

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distribution related to? 10:20:40
A. No. 10:20:40
Q. Why not? 10:20:41
A. Just I didn't think about it. 10:20:42
Cash coming in. I didn't think about it. 10:20:45
Q. Did you ever send those 10:20:48
capital roll forward schedules to EY? 10:20:50
A. I believe they did get it 10:20:52
several times, many times. 10:20:56
Q. Let's look at JX-0267. 10:20:59
(Arbitration Exhibit JX-0267 10:21:02
was referenced.) 10:21:18
Q. Now, if you turn to the 10:21:18
second page -- on the first page, we have 10:21:20
an e-mail going to EY. 10:21:22
On the second page, do you 10:21:25
recognize what this is? 10:21:27
A. Yes, it's the journal entry. 10:21:30
Q. "Journal entry" for? 10:21:33
A. It looks like the journal 10:21:34
entry to book the remittance. 10:21:37
Q. For Ventures? 10:21:38
A. For Ventures. 10:21:38
Q. Okay. And then let's turn to 10:21:39

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the page -- and consistent with the other documents we've seen, are the following pages the support that was attached to the journal entry? 10:21:41 10:21:44 10:21:45 10:21:47

A. Yes, that would be the support. 10:21:48

Q. Okay. So let's look at the page ending in 83365. 10:21:50 10:21:51

Do you see this is Schedule 3 of the Capital Roll Forward Schedule? 10:22:00 10:22:01

A. Yes. 10:22:06

Q. Why was this included among the backup support for the Ventures journal entry? 10:22:06 10:22:08 10:22:10

A. Just because at the time it supported the remittance. 10:22:10 10:22:12

Q. And how does it support the remittance in particular? 10:22:17 10:22:19

A. There's a dollar amount on there. So that's what we use to tie in our journal entry or use to generate our journal entry. 10:22:20 10:22:21 10:22:24 10:22:26

Q. Okay. And when you attached this page from the Capital Roll Forward Schedule to the journal entry as support 10:22:27 10:22:28 10:22:31

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for the entry, why didn't you just include the entire Capital Roll Forward Schedule instead of just this one page? 10:22:33 10:22:36 10:22:39

A. Just because that's the sheet that had the number that support the journal entry. 10:22:41 10:22:42 10:22:45

Q. Alright. Let's look at JX-0162. 10:22:49 10:22:50

(Arbitration Exhibit JX-0162 was referenced.) 10:22:52 10:23:02

Q. 0-1-6-2. 10:23:02

A. Okay. 10:23:11

Q. Let me ask you this one more question. 10:23:12 10:23:14

Did you ever use Schedule 2 from the Ventures Roll Forward Schedule as support for your journal entries? 10:23:14 10:23:16 10:23:20

A. The one that had the remittance number on there? 10:23:21 10:23:22

Q. That was Schedule 3. 10:23:24

Do you recall ever using -- 10:23:25

A. No -- 10:23:25

Q. -- Schedule 2? 10:23:26

A. No, looking at it didn't. I 10:23:28

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don't think I included anything that had supported our number. 10:23:32 10:23:33

Q. Okay. Let's look at JX-0162. You have that, alright. 10:23:34 10:23:38

Now, there is an e-mail here. If we look at the bottom e-mail, it's from Bradley Firestone with the NFL. And it says, "Attached is your final 2009 Ventures schedule K-1s, summary schedule and Capital Roll Forwards." 10:23:39 10:23:43 10:23:46 10:23:49 10:23:51 10:23:53

Do you see that? 10:23:54

A. Yes. 10:23:55

Q. And who did you forward this e-mail to? 10:23:56 10:23:59

A. I forwarded it to looks like Tyler Baron from Ernst & Young. 10:24:01 10:24:04

Q. And before forwarding it to him, did you do anything to change or alter any of the cash minutes -- 10:24:07 10:24:10 10:24:11

A. No, not -- 10:24:11

Q. -- or remove any pages? 10:24:11

A. No, I just took the e-mail and just pulled it. 10:24:13 10:24:14

Q. And flipping through the 10:24:15

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first five pages or so of the attachments, can you see there that there is a Schedule 1, Schedule 2 and Schedule 3 -- 10:24:16 10:24:20 10:24:21

A. Yes. 10:24:25

Q. -- of the Ventures Roll Forward? 10:24:27 10:24:29

A. Yes. 10:24:29

Q. And do you recall sending the Ventures Roll Forward Schedule to EY in other Fiscal Years? 10:24:29 10:24:34 10:24:37

A. Yes. 10:24:38

Q. How often do you think you did it, sent it to EY? 10:24:40 10:24:43

A. Again, I think, probably I would say since they got it one year, probably every year. 10:24:45 10:24:48 10:24:51

Q. Did EY ever follow up with you with any questions about the amounts reflected on those Roll Forward Schedules? 10:24:53 10:24:55 10:24:56 10:24:58

A. No. 10:24:58

Q. Let's turn back to the e-mail. 10:25:01

So you forward these documents to EY and you wrote, "Feel free to e-mail 10:25:05 10:25:06

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Brad to request anything else." 10:25:12

"Brad" there is that Brad Firestone at the NFL? 10:25:17 10:25:18

A. Yes. 10:25:19

Q. What did you mean by that when you were telling EY "Feel free to e-mail Brad to request anything else"? 10:25:19 10:25:21 10:25:23

A. If you have any questions, communicate with him, e-mail him. 10:25:26 10:25:29

Q. Were you giving EY permission to contact Brad Firestone directly with questions so they didn't have to go through you? 10:25:32 10:25:35 10:25:38 10:25:40

A. Yes. 10:25:40

Q. Would that include questions about the Capital Roll Forward Schedule that you had just sent to them? 10:25:41 10:25:43 10:25:45

A. Whatever they wanted asked, they were able to ask. 10:25:47 10:25:49

Q. Let's go to JX 178. 10:25:53

(Arbitration Exhibit JX-0178 was referenced.) 10:25:56 10:26:08

Q. The second e-mail down from the top, do you see where you're 10:26:08 10:26:09

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e-mailing on December 19, 2016 Mark Bookman at Ernst & Young with a CC to Luke Keel? 10:26:11 10:26:16 10:26:17

A. Yes. 10:26:18

Q. And you wrote, "To use for your projections." 10:26:18 10:26:23

A. EY and -- I don't know if you know Mark Bookman, but he was Luke's boss maybe at the time. 10:26:24 10:26:26 10:26:29

Q. Okay. So let's turn to the attachments that you sent and focussing on the page ending in 6754. 10:26:30 10:26:32 10:26:34

And you can flip through about the next five pages. But you see here you're sending them Schedule 1, Schedule 2 and Schedule 3 of the Ventures Capital Roll Forward, right? 10:26:43 10:26:45 10:26:48 10:26:51 10:26:54

A. Yes. 10:26:55

Q. And when you were sending this document to Ernst & Young including Luke Keel, did you know that Luke Keel was on the audit team? 10:26:57 10:27:00 10:27:03 10:27:07

A. Yeah, absolutely. 10:27:08

Q. Okay. I want to show you -- 10:27:15

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changing topics a little bit. I want to show you another document. This is a document that was shown at your deposition. 10:27:18 10:27:21 10:27:22 10:27:23

A. Okay. 10:27:24

Q. JX-0228. 10:27:24

(Arbitration Exhibit JX-0228 was referenced.) 10:27:27 10:27:34

A. 02? 10:27:34

Q. 0228. 10:27:35

A. Okay. 10:27:36

Q. It was in native format, but we have a printout of the native spreadsheet here. 10:27:37 10:27:39 10:27:41

A. Okay. 10:27:42

Q. And do you recall you were asked questions about this spreadsheet at your deposition? 10:27:42 10:27:44 10:27:46

A. I was asked. 10:27:48

Q. And at the time that you were shown this spreadsheet at the deposition, were you shown any other documents to remind you what it was used for, who it was sent to or even how this spreadsheet 10:27:49 10:27:52 10:27:54 10:27:57 10:27:59

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came to be? 10:28:01

A. No. This was the only document that was shown to me. 10:28:01 10:28:05

Q. Okay. Let's look at JX-3251. 10:28:06

(Arbitration Exhibit JX-3251 was referenced.) 10:28:11 10:28:23

A. Okay. 10:28:23

Q. Now, you can flip through this. 10:28:24 10:28:26

But do you see that this is -- even just focusing on the top e-mail, it's an e-mail from you to Allan Holzer with the subject line "Raiders City of Oakland audit," right? 10:28:27 10:28:30 10:28:32 10:28:35 10:28:37

A. Yes. 10:28:38

Q. Who is Allan Holzer? 10:28:39

A. Allan Holzer was a Senior Manager at Ernst & Young that helped us on the audit -- City of Oakland audit. 10:28:41 10:28:42 10:28:45

Q. And who is -- if you look at the e-mail chain, there is another individual on this e-mail chain when we go further down and his name is Kenneth Houseman? 10:28:53 10:28:56 10:28:58 10:28:59 10:29:03

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Who was Kenneth Hausman? 10:29:04

A. Kenneth Hausman is one off our attorneys at Arnold & Porter, who we worked for with a long time. He's like one of your senior partners at the firm. 10:29:06 10:29:07 10:29:12 10:29:15

Q. So, in this e-mail chain where you're e-mailing both outside Counsel and EY, what's the subject? What's the topic that you're discussing? 10:29:16 10:29:18 10:29:21 10:29:24

A. I believe the topic we're discussing, as far as -- because everyone was dealing -- working on that audit, as far as gathering information that the City of Oakland auditor requested. 10:29:26 10:29:29 10:29:33 10:29:36 10:29:39

Q. Okay. Let's look at the e-mail chain, if we could. Look at the page ending 7113. 10:29:43 10:29:44 10:29:46

Do you see there is an e-mail from Allan Holzer? 10:29:50 10:30:00

Again, he's the person at Ernst & Young you were working with, right? 10:30:01 10:30:03

A. Yes. 10:30:04

Q. And he wrote, "I wanted to share an update with the group. There 10:30:05 10:30:07

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are some additional requests, which I 10:30:09
will set forth below. No. 1 broadcasting 10:30:11
Mr. Pryor (City of Oakland) acknowledged 10:30:15
that if these payments are from a 10:30:20
partnership or the JV, he will exempt the 10:30:22
receipts. He did request proof that the 10:30:24
payments line up. I noted that he would 10:30:27
not necessarily see the payments on the 10:30:30
K-1, but also pointed out that these are, 10:30:32
in fact, transactions between the 10:30:35
partnership and the Raiders." 10:30:37
Do you recall working with Ernst & 10:30:40
Young on this information request from 10:30:44
the City of Oakland auditor? 10:30:47
A. Yes. 10:30:50
Q. Okay. Let's look at JX-3250. 10:30:52
We'll come back to this, but let's go to 10:30:57
3250. 10:30:59
(Arbitration Exhibit JX-3250 10:31:02
was referenced.) 10:31:05
Q. If we can look at the e-mail 10:31:05
on the bottom of the first page from 10:31:06
Mr. Holzer, again, from Ernst & Young. 10:31:10
He wrote, "Ed and I discussed and have a 10:31:12

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roadmap on how to pursue proving out the Ventures League office payments. Ed and I would first like to request an e-mail from Ventures summarizing the remittances from the Ventures League office. We have also obtained attached capital account roll forward detail, which ties back to the trial balance. But given that there are other amounts on these sheets that may give rise to inquiries, we would prefer to see if we can get the League to send us an e-mail summarizing the remittance." Now, first, let me ask you. 10:31:15 10:31:18 10:31:21 10:31:24 10:31:26 10:31:28 10:31:31 10:31:34 10:31:37 10:31:39 10:31:41 10:31:43 10:31:45

Does the "capital account roll forward detail" Mr. Holzer is referring to here, are those the same thing as the Ventures "Capital Roll Forwards" that we've been talking about today? 10:31:50 10:31:53 10:31:55 10:31:57 10:31:59

A. Yes. 10:32:00

Q. So did you provide Mr. Holzer from Ernst & Young, also, copies of the Ventures Capital Roll Forward sheets? 10:32:01 10:32:03 10:32:05

A. Yes. 10:32:07

Q. Why did you give him those? 10:32:08

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A. So he can do his job and figure out -- to help analyze the revenue that was coming in so he could present it to City of Oakland auditor. 10:32:12 10:32:14 10:32:16 10:32:19

Q. And when you were giving those documents to Mr. Holzer, did you give him only certain pages from that document or -- 10:32:23 10:32:24 10:32:26 10:32:28

A. I gave him having. 10:32:30

Q. Okay. Let's go back to the e-mail. 10:32:31 10:32:33

And now on the top of the second page it goes on. And it says, "Here is our proposed e-mail that Ed will forward to the League to send back to him." 10:32:35 10:32:39 10:32:42 10:32:44

And then there is a draft you can see with years and the line in them. 10:32:46 10:32:48

Did you, in fact, send an e-mail to the League to have a document from the League with the stated years -- 10:32:52 10:32:54 10:32:56

A. Yes, I believe so. 10:32:58

Q. -- and amounts? 10:33:00

A. I'm pretty sure I did. 10:33:01

Q. Okay. Let's look at JX-3224. 10:33:02

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(Arbitration Exhibit JX-3224 10:33:05
was referenced.) 10:33:22
Q. Okay. Now, do you see the 10:33:22
date on this e-mail is, actually, the 10:33:23
same date as the last e-mail we were just 10:33:24
looking at with you and Mr. Holzer right, 10:33:26
January 11, 2017? 10:33:29
A. Okay. 10:33:31
Q. Now, the bottom e-mail is an 10:33:32
e-mail from you to Mr. Firestone dated 10:33:33
Ventures and you wrote, "Brad, can you 10:33:39
send me a separate e-mail with the below 10:33:41
information?" 10:33:42
Why did you want it in a "separate 10:33:43
e-mail"? 10:33:46
A. Because that was probably the 10:33:47
e-mail that we would probably submit to 10:33:48
the City of auditor, if we needed to. 10:33:50
Q. And this e-mail that you're 10:33:53
sending to Mr. Firestone, was it based 10:33:54
off the template e-mail that Mr. Holzer 10:33:56
had sent to you? 10:33:58
A. Yes. 10:33:59
Q. Okay. So now let's go back 10:34:01

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to JX-3251. We'll just move up that e-mail chain. 10:34:04 10:34:07

(Arbitration Exhibit JX-3251 was referenced.) 10:34:11 10:34:12

Q. It's, actually, now looking at the very top e-mail. Again, we're on January -- still January 11, 2017. And you're sending an e-mail to Allan Holzer and you say, "See attached NFL Ventures LP support." 10:34:12 10:34:14 10:34:16 10:34:21 10:34:24 10:34:27

Okay. So, if we go behind the blue sheet in this document, you'll see what was attached. Behind the blue sheet of Exhibit 3251, you can see the document that you attached. 10:34:28 10:34:31 10:34:33 10:34:37 10:34:39

Do you recall creating this schedule? 10:34:43 10:34:44

A. Yes. 10:34:45

Q. What was the purpose of this document? 10:34:46 10:34:47

A. To provide information based on what was requested from Holzer and, I guess, something going to provide the auditor. 10:34:48 10:34:51 10:34:55 10:34:59

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Q. And whose idea was it to 10:34:59
present the data to the City of Oakland 10:35:01
auditor in this way? 10:35:03
A. Holzer. 10:35:04
Q. And what does this schedule 10:35:05
reflect when you look at it? 10:35:07
A. Just looks like it reflects 10:35:10
all the revenue coming from the NFL, if 10:35:11
that's what the auditor was trying to 10:35:13
make us pay tax on. 10:35:17
Q. Now, when you see the "total" 10:35:18
line here, you can see above it that you 10:35:20
have a separate line for the remittance 10:35:22
or in a separate line for the January 10:35:24
accrual, right? 10:35:27
A. Yes. 10:35:28
Q. Now, looking at this document, 10:35:29
did it occur to you that by presenting 10:35:32
those on two separate lines that you were 10:35:37
double-counting the January distributions? 10:35:39
A. No. 10:35:41
Q. Why not? 10:35:42
A. Just a worksheet that we 10:35:44
prepared -- I'm sorry, prepared for the 10:35:46

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League -- I mean, for the audit. It didn't cross my mind. 10:35:48 10:35:51

Q. Now, was this schedule sent to Ernst & Young and your outside Counsel at Arnold & Porter before it was submitted to the Oakland auditor? 10:35:52 10:35:55 10:35:57 10:36:00

A. I would say, yes, because they would have review the numbers. 10:36:04 10:36:05

Q. Okay. Let's look at JX-3249. 10:36:06

(Arbitration Exhibit JX-3249 was referenced.) 10:36:16 10:36:21

Q. This document is a little bit harder to read, but we can make our way through it. Because if you look at the bottom e-mail on the first page, it's from Emily Wood. 10:36:21 10:36:22 10:36:24 10:36:26 10:36:27

Who is Emily Wood? 10:36:29

A. I think she was probably the attorney at -- was she on there? 10:36:30 10:36:32

Yeah, I think, she worked for Ken Hausman at Arnold & Porter. 10:36:38 10:36:42

Q. And so, on the bottom e-mail here, we see that it says from Emily Wood. She's at Arnold & Porter going to 10:36:53 10:36:56 10:37:01

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Allan Holzer and he's at Ernst & Young, 10:37:03
right, and you're copied? 10:37:05
A. Okay. 10:37:07
Q. And then there's some 10:37:07
questions and comments for consideration 10:37:09
regarding the materials you sent, right? 10:37:10
A. (No response.) 10:37:13
Q. So I want to go down to the 10:37:14
question that's raised at No. 3. And the 10:37:15
way that this document worked, it looks 10:37:17
like the questions were posed by Ms. Wood 10:37:23
and then if you look at the e-mail above 10:37:28
it, it looks like answers were provided 10:37:30
by Mr. Holzer. He says, "Please see 10:37:33
responses below in red." 10:37:35
A. Okay. 10:37:37
Q. Unfortunately, we only have a 10:37:37
black and white copy so. We can see just 10:37:39
from the difference in the fonts where 10:37:42
the red text is and the original text is 10:37:44
but... 10:37:48
So I want to look at the question 10:37:49
posed at No. 3 and the response given. 10:37:51
So, in No. 3, it looks like Arnold 10:37:54

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& Porter is asking questions about the differences in the Ventures amounts that we see in the e-mail from Mr. Firestone, which would be the remittance amounts and then the amounts that you have listed as the total amounts on the financial statements, right? 10:37:57 10:37:59 10:38:01 10:38:03 10:38:06 10:38:08 10:38:10

A. Uh-huh. 10:38:11

Q. And do you see Mr. Holzer's response? It begins with, "It is a bit confusing. So, if Ed is available, happy to jump on a call." 10:38:11 10:38:14 10:38:17 10:38:20

Do you recall having a call with Mr. Holzer and Ms. Woods about this issue -- Ms. Wood about this issue? 10:38:22 10:38:24 10:38:28

A. I do. 10:38:31

Q. Mr. Holzer goes on to say, "The book accrual that Ed makes explains the difference between what the League has reflected as total TV distributions versus the company's books. It is simply a matter of accrual accounting and how the Raiders record this revenue [sic] stream for book purposes due to 10:38:32 10:38:35 10:38:38 10:38:41 10:38:44 10:38:47 10:38:49 10:38:51

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differences in FYs." "Income stream," I'm sorry, let reread it. 10:38:54 10:38:59

"It is simply a matter of accrual accounting and how the Raiders record this income stream for book purposes due to differences in fiscal years." 10:39:01 10:39:02 10:39:04 10:39:07

Did you provide that explanation to Mr. Holzer? 10:39:10 10:39:13

A. I did. 10:39:14

Q. And what were you explaining to him? 10:39:15 10:39:16

A. Just the difference between what they were talking about about the differences in the revenue. 10:39:17 10:39:19 10:39:22

Q. And what was driving the difference between the revenue as reported on the remittance from Mr. Firestone versus the revenue that you saw recorded on your books and records? 10:39:23 10:39:25 10:39:28 10:39:30 10:39:32

A. It would probably be the different tax years and difference in the type of accounting. 10:39:35 10:39:38 10:39:41

Q. By "type of accounting," you mean the basis? 10:39:45 10:39:47

VILLANUEVA - DIRECT

A. Yeah, difference between GAAP, difference between tax. 10:39:47 10:39:49

Q. And was that your understanding for what was driving the difference between the NFL numbers versus your numbers? 10:39:50 10:39:51 10:39:53 10:39:56

A. Yes. 10:39:56

Q. And you communicated that understanding to Mr. Holzer at Ernst & Young? 10:39:56 10:39:57 10:40:01

A. Yes. 10:40:01

Q. And your outside Counsel as well? 10:40:02 10:40:03

A. Correct. 10:40:04

Q. In this arbitration, EY has labeled -- if we turn back to 3251. 10:40:07 10:40:09

(Arbitration Exhibit JX-3251 was referenced.) 10:40:14 10:40:14

Q. And look at the attachment, the spreadsheet that you were shown at your deposition. 10:40:14 10:40:17 10:40:19

EY has labeled this document as the "fraud tracker." 10:40:20 10:40:24

Now, what do you think of that? 10:40:26

VILLANUEVA - DIRECT

A. So wrong in many ways, a little bit upset but whatever. 10:40:30 10:40:32
Q. Now, do you believe you were open and honest with Ernst & Young? 10:40:40 10:40:43
A. Yes. 10:40:46
Q. At anytime did you believe that Ernst & Young didn't understand how the Ventures accounting worked? 10:40:46 10:40:48 10:40:51
A. No. 10:40:53
Q. And at anytime did you believe Mr. Gottlieb or Mr. Garcia didn't understand how the Ventures accounting worked? 10:40:55 10:40:58 10:41:00 10:41:02
A. No. 10:41:02
Q. Did you ever intentionally overstate the Ventures revenue? 10:41:03 10:41:07
A. No. 10:41:09
Q. Did you ever intentionally overstate the Ventures receivables? 10:41:10 10:41:12
A. No. 10:41:13
Q. Do you believe that EY should have found the Ventures errors before the Raiders did? 10:41:15 10:41:17 10:41:20
A. Based on the work that they 10:41:23

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performed, I would say, yes. 10:41:26

MS. BROWN: I have no further questions. 10:41:30 10:41:31

Q. Thank you. 10:41:32

THE CHAIRPERSON: Alright. Let's take a 15-minute recess. 10:41:32 10:41:33

(Recess taken 10:41 to 11:01 a.m.) 10:41:33 11:01:27

THE CHAIRPERSON: Let's go back on the record. 11:01:27 11:01:28

CROSS-EXAMINATION BY MR. FARINA: 11:01:32

Q. Mr. Villanueva, you testified this morning that you believed that the sequence worked that the remittance would in and the cash would be received from the NFL after the remittance, correct? 11:01:32 11:01:33 11:01:38 11:01:43 11:01:44

A. Yes. 11:01:46

Q. And you testified that that was your understanding at the time that you were at the Raiders, correct? 11:01:46 11:01:48 11:01:49

A. Correct. 11:01:52

Q. And that was your understanding for the entire 18 years that you were at Raiders, correct? 11:01:52 11:01:53 11:01:55

VILLANUEVA - CROSS
A. Correct. 11:01:56
Q. And, in fact, because that was your understanding, you told EY that the cash would come in after the remittance, correct? 11:01:56 11:01:59 11:02:02 11:02:04
A. I never talked to you when -- about when cash was coming in. 11:02:05 11:02:08
Q. Okay. So you never told EY what was your understanding that the cash would come in after the remittance? 11:02:09 11:02:11 11:02:13
A. They never asked. 11:02:15
Q. Okay. But it was your understanding that the cash would come in after the remittance? 11:02:17 11:02:18 11:02:20
A. Correct. 11:02:21
MR. FARINA: Can we put up Mr. Villanueva's testimony from this morning, Page 18/Line 8 through Page 19/Line 2. 11:02:23 11:02:25 11:02:26 11:02:30
Q. And you recall this testimony, correct? 11:02:36 11:02:38
MS. BROWN: Nothing is up yet. 11:02:38
MR. FARINA: Sorry. 11:02:40
A. So you're saying testimony 11:02:41

VILLANUEVA - CROSS

from just now? 11:02:42

Q. Just earlier there morning. 11:02:44

A. Okay. 11:02:45

Q. Alright. Ms. Brown asked you "Was it ever your understanding for the 18 years you worked at the Raiders that when you booked the remittance as revenue, the cash payment's received? 11:02:46 11:02:48 11:02:51 11:02:53 11:02:55

And then you were asked to repeat it. 11:02:57 11:02:58

"Was it ever your understanding that when you booked the remittance once a year as revenue that the Raiders had already received cash payments for that remittance?" 11:02:59 11:03:01 11:03:02 11:03:05 11:03:08

And you respond, "It wouldn't be a receivable if we -- I mean if, that was the case." 11:03:09 11:03:11 11:03:14

Do you recall that testimony? 11:03:15

A. Yes. 11:03:16

Q. Okay. So it's abundantly clear, your sworn testimony this morning is that you always thought for 18 years that the cash came in after the 11:03:16 11:03:20 11:03:22 11:03:24

VILLANUEVA - CROSS

remittance, correct? 11:03:26

A. Yes. 11:03:27

THE STENOGRAPHER: I'm sorry. 11:03:40
Can you talk into the microphone. 11:03:40
I'm so sorry. 11:03:42

THE CHAIRPERSON: The Panel 11:03:43
is being handed what's been 11:03:45
marked as JX-0327, as it's being 11:03:45
presented to the witness. 11:03:50

MR. FARINA: Jason, can you 11:03:51
put that up on the screen, please. 11:03:52

(Arbitration Exhibit JX-0327 11:03:54
was referenced.) 11:04:00

Q. Do you have the exhibit in 11:04:00
front of you, Mr. Villanueva? 11:04:01

A. I do. 11:04:04

Q. Do you see this is an e-mail 11:04:05
exchange between you and Brad Firestone? 11:04:06

A. Okay. 11:04:08

Q. Brad Firestone at the NFL, 11:04:08
correct? 11:04:10

A. Yes. 11:04:11

Q. Look at the bottom of the 11:04:11
first page do. 11:04:13

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You see there is an e-mail from you to Mr. Firestone at 6:30 p.m. on Friday, March 16, 2018? 11:04:14 11:04:16 11:04:23

A. Okay. 11:04:24

Q. And you write, to Mr. Firestone, "My memory on remittance. The March 31, 2017 remittance is for the income that covers 4/1/2016 - 3/31/2017." 11:04:25 11:04:28 11:04:32 11:04:36

Okay. So that's the March 31, '17 remittance. 11:04:46 11:04:46

It covers income for the period 4/1/16 through 3/1/17, correct? 11:04:50 11:04:53

A. Okay. 11:04:56

Q. That's what you wrote to Mr. Firestone? 11:04:56 11:04:57

A. Okay. 11:04:58

Q. Okay. And then you wrote, "The Ventures distributions received from 4/1/2106" -- you think that's 4/1/2016? 11:04:58 11:05:01 11:05:05

A. I'm sorry, can you -- 11:05:13

Where are you pointing? 11:05:16

MR. FARINA: Yeah, I want to make sure that Mr. Villanueva is following. 11:05:21 11:05:21 11:05:22

VILLANUEVA - CROSS

Q. Look at the bottom of the page of the exhibit. 11:05:23 11:05:24

A. Okay. 11:05:25

Q. Do you see there is an e-mail from you to Mr. Firestone? 11:05:25 11:05:26

A. Yes. 11:05:27

Q. Okay. And we have that up on the screen, if it's helpful. You can look at it on the screen. 11:05:28 11:05:30 11:05:32

So you write to Mr. Firestone, "The Ventures distributions received from 4/1/2016 through 3/31/17 pertains to the revenue that is for the period ending 3/31/2017." 11:05:34 11:05:37 11:05:42 11:05:48 11:05:52

Do you see that? 11:05:54

A. Yes. 11:05:55

Q. Okay. So you're writing Mr. Firestone and you're telling Mr. Firestone that you believe that the distributions that are received from April 1st, 2016 through March 31, 2017 relate to revenue that is for the period ending 3/31/17, correct? 11:05:56 11:05:58 11:06:01 11:06:03 11:06:06 11:06:11 11:06:14

A. Okay. 11:06:20

VILLANUEVA - CROSS

Q. Well, that's what you wrote to Mr. Firestone, correct? 11:06:21 11:06:22

A. Correct. 11:06:25

Q. And you're writing to Mr. Firestone telling him that that's your understanding, correct? 11:06:25 11:06:27 11:06:29

A. Correct. 11:06:31

Q. Okay. And that is the exact opposite of the testimony you provided this morning, correct? 11:06:32 11:06:34 11:06:36

A. (The witness reads aloud to himself.) 11:06:40 11:06:41

Okay. 11:06:42

Q. Well, is it different than what you testified this morning? 11:07:10 11:07:11

A. If you give me a minute to -- it goes back to 2018 and I'm kind of... 11:07:15 11:07:20

The March remittance that's for... 11:07:25

(The witness reads aloud to himself.) 11:07:29 11:07:30

Okay, that sounds right, as far as booking the entry. 11:07:30 11:07:33

Okay. See I'm a little confused, because if you do have a receivable, you 11:08:07 11:08:09

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haven't received any cash yet. So, when the cash comes in, you pay down on the receivable. 11:08:13 11:08:16 11:08:19

Q. Well, unless the receivable is wrong. 11:08:28 11:08:29

If the receivable is overstated and you've already collected the cash, then the receivable is wrong? 11:08:30 11:08:32 11:08:35

A. But if it's an entity that exists and they're going to continue paying money to pay down -- I don't think you could allocate, like, specific distribution and saying it's for this time period. I mean, any cash we received throughout the year, we just paid down the receivable. 11:08:36 11:08:38 11:08:41 11:08:43 11:08:48 11:08:51 11:08:53 11:08:56

Q. But what you told Mr. Firestone back in 2018 is that the distributions that the Raiders received from April 2016 through March of 2017, that those distributions from the NFL pertained to revenue that is for the period ending March 31, 2017. 11:08:58 11:08:59 11:09:04 11:09:06 11:09:11 11:09:13 11:09:15

That's what you told Mr. Firestone, 11:09:19

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correct? 11:09:21

A. Correct. 11:09:22

Q. So, for the remittance that covered the period ending 3/31/2017, the cash was not going to be collected after the remittance, correct? 11:09:25 11:09:28 11:09:32 11:09:35

A. There's still cash coming in. It might not be -- yeah, I don't know. 11:09:40 11:09:42

Q. And Mr. Firestone responds to you in the next e-mail and he says, "You have it right except that the end of April 2017 Ventures distribution" -- and there is a parenthetical -- "relates back to March." 11:09:46 11:09:49 11:09:53 11:09:56 11:10:00 11:10:01

So he's telling you that your understanding that the cash comes in before the remittance is correct except for one payment that comes in in April that relates back to the prior season, that's what he's telling you, correct? 11:10:03 11:10:05 11:10:06 11:10:10 11:10:12 11:10:15

A. Correct. 11:10:17

THE CHAIRPERSON: I apologize. 11:10:19

There was just a delay between the time -- 11:10:22 11:10:25

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THE STENOGRAPHER: I'm sorry. 11:10:25
I can't hear you, sir. 11:10:26

THE CHAIRPERSON: I was just 11:10:27
explaining to Counsel that there 11:10:28
was a time delay from the time it 11:10:29
was testified to and the time that 11:10:33
it came up on the monitors before 11:10:34
the Panel. 11:10:36

And I wanted to read the 11:10:38
words. Thank you. 11:10:39

Q. Mr. Villanueva, did you ever 11:10:45
tell Ernst & Young that, in fact, the 11:10:46
cash that was being received before the 11:10:48
remittance, actually, related to the 11:10:52
remittance and that the cash that was 11:10:54
coming in after the remittance was for a 11:10:56
different season? 11:10:59

A. I don't think I ever had a 11:10:59
discussion with Ernst & Young regarding 11:11:02
that. 11:11:03

Q. So you've said it a couple of 11:11:11
times now, that if we've already received 11:11:13
the cash, then it shouldn't be a 11:11:15
receivable, correct? 11:11:17

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A. Repeat that again. 11:11:22

Q. Sure. 11:11:23

You said in response to questions from the Raiders Counsel and then to me, you said, if we've already received the cash -- 11:11:23 11:11:26 11:11:29 11:11:32

A. Okay. 11:11:34

Q. -- it shouldn't be a receivable; is that what you said? 11:11:34 11:11:36

A. I said, if we received cash, that we would pay down the receivable. 11:11:37 11:11:39

Q. Alright. Let's go back to your testimony from this morning. Let's go ahead and put it back up. 11:11:43 11:11:45 11:11:47

MR. FARINA: It's Page 18/Line 8 through Page 19/Line 2. 11:11:49 11:11:54

Q. And you can take your time. I'm focusing on your answer that starts on Line 25 of Page 18 where you said, "It wouldn't be a receivable if we -- I mean, if that was the case." 11:11:57 11:11:58 11:12:00 11:12:05 11:12:09

A. Correct. 11:12:13

Q. Okay. So, if the Raiders have already collected the cash related 11:12:13 11:12:15

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to that particular NFL season, then it 11:12:18
shouldn't be in the receivable? 11:12:20

A. It should pay down the 11:12:22
receivable. 11:12:24

Q. It shouldn't be in the 11:12:26
receivable after the cash has already 11:12:29
been received, correct? 11:12:30

A. If the cash was received, it 11:12:31
would reduce the receivable. 11:12:33

Q. Understood. 11:12:36

But once the cash is received and 11:12:38
that number is booked, if the cash has 11:12:40
already been received and the cash 11:12:43
receipts have been booked, then those 11:12:45
amounts should no longer continue to be 11:12:49
in the receivable? 11:12:50

A. No, it would reduce that 11:12:52
receivable. 11:12:53

Q. Okay. Alright. 11:12:55

So let's talk a little bit about 11:12:55
your work experience and your 11:12:59
responsibilities at the Raiders. 11:13:03

A. Okay. 11:13:04

Q. So you spent 18 years at the 11:13:04

Raiders, 5 years as the CFO and then 13 11:13:07
as the Controller, correct? 11:13:10

A. Correct. 11:13:11

Q. And prior to coming to the 11:13:12
Raiders, you had more than a decade in 11:13:15
public accounting, correct? 11:13:18

A. Correct. 11:13:19

Q. And you would work at a 11:13:20
public company, correct? 11:13:22

A. When you say, "public," 11:13:24
you're talking like -- 11:13:26

Q. McKesson. 11:13:28

A. Yes. 11:13:29

Q. And you had worked for a year 11:13:30
at Ernst & Young? 11:13:32

A. Yes. 11:13:33

Q. And you had worked for nine 11:13:34
or ten years at Crone Croak & Gorman? 11:13:36

A. Correct. 11:13:40

Q. And that was a local 11:13:40
accounting firm correct? 11:13:41

A. Yes. 11:13:42

Q. And while you were at Crone 11:13:44
Croak & Gorman, you performed both audits 11:13:48

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and tax compliance work, correct? 11:13:49
A. Correct. 11:13:52
Q. And you were a CPA, correct? 11:13:52
A. Correct. 11:13:55
Q. And you had been a CPA for more than a decade? 11:13:55 11:13:57
A. I would say, yes. 11:14:03
Q. Okay. 11:14:04
Alright. So you were an experienced accountant at the time you went to the Raiders; is that fair? 11:14:06 11:14:09 11:14:10
A. Fair. 11:14:14
Q. Now, your responsibilities as the Raiders CFO, let's talk about that. 11:14:15 11:14:16
You held that position starting around 2015; is that correct? 11:14:19 11:14:24
A. That sounds correct. 11:14:26
Q. And prior to holding that position, you were the Controller, correct? 11:14:28 11:14:30 11:14:32
A. Correct. 11:14:32
Q. Your responsibilities as the CFO included oversight of the Raiders books and records, correct? 11:14:33 11:14:35 11:14:40

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A. Correct. 11:14:42

Q. And you also had oversight of the Raiders internal controls, correct? 11:14:43 11:14:45

A. Correct, which -- correct. 11:14:48

Q. You, also, had oversight of the accounting function, correct? 11:14:51 11:14:53

A. Correct. 11:14:55

Q. You, also, had oversight for tax compliance, correct? 11:14:57 11:14:59

A. Correct. 11:15:00

Q. You had oversight for cash flows and financial planning, correct? 11:15:01 11:15:04

A. Correct. 11:15:06

Q. You had oversight of budgeting and forecasting, correct? 11:15:06 11:15:08

A. Correct. 11:15:11

Q. You resigned from the Raiders in July of 2021, correct? 11:15:14 11:15:16

A. Correct. 11:15:19

Q. And you were asked to resign by the Raiders? 11:15:20 11:15:22

A. Correct. 11:15:23

Q. Could you take a look at Exhibit 3285. 11:15:27 11:15:33

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(Arbitration Exhibit JX-3285 was referenced.) 11:15:34 11:15:34
Q. It's in the bigger binder that you have. 11:15:34 11:15:36
You see this is an engagement letter between the Raiders and Ernst & Young? 11:16:03 11:16:04 11:16:11
A. Okay. Yes. 11:16:11
Q. It's an engagement letter for the 2019 audit, correct? 11:16:13 11:16:15
A. Correct. 11:16:21
Q. If you look at the last page of the engagement agreement -- it's not the last page of the exhibit, because there are attachments. 11:16:24 11:16:27 11:16:30 11:16:33
But the last page of the engagement agreement shows your signature, correct? 11:16:34 11:16:37
A. Correct. 11:16:39
Q. And you signed this agreement on behalf of the Raiders, correct? 11:16:40 11:16:41
A. Correct. 11:16:44
Q. Take a look, if you would at Page 2 of the engagement agreement. Paragraph 9 is immediately below the 11:16:48 11:16:50 11:16:56

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subheading, "Management's Responsibilities and Representations." 11:16:58 11:17:00

Do you see that? 11:17:02

A. Okay. 11:17:03

Q. Are you there? 11:17:03

A. I am. 11:17:05

Q. And the first thing it says is, "The financial statements including disclosures are the responsibility of management." 11:17:06 11:17:08 11:17:11 11:17:14

Do you see that? 11:17:15

A. Yes. 11:17:15

Q. And you understood that the Raiders financial statements were the responsibility of Raiders management, correct? 11:17:16 11:17:20 11:17:22 11:17:24

A. Yes. 11:17:24

Q. You understood that, because you were a CPA, you had been an auditor and at this point you're the CFO of the Raiders, correct? 11:17:25 11:17:26 11:17:29 11:17:31

A. Correct. 11:17:32

Q. And by "management," it's referencing an including you, correct? 11:17:33 11:17:36

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A. Correct. 11:17:38

Q. The next sentence says, "Management also is responsible for the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free of material misstatement." It goes on from there. 11:17:41 11:17:43 11:17:46 11:17:51 11:17:52 11:17:56 11:17:58 11:18:02

But you understood, as part of Raiders management, it was your responsibility to ensure that the Raiders had adequate internal controls, correct? 11:18:03 11:18:05 11:18:07 11:18:09

A. Correct. 11:18:13

Q. And internal controls are a set of processes that allow a financial statement issuer to prepare and issue accurate financial statements, correct? 11:18:13 11:18:14 11:18:19 11:18:22

A. Correct. 11:18:23

Part of my internal controls is also to hire a big four accounting firm. 11:18:28 11:18:29

Q. So, internal controls, the first word is "internal," correct? 11:18:33 11:18:35

A. Correct. 11:18:38

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Q. So the external auditor is a separate function, it's not part of your internal controls, is it? 11:18:38 11:18:40 11:18:42
A. No. 11:18:43
Q. Can you turn to 3286 in your binder. 11:18:56 11:18:58
(Arbitration Exhibit JX-3286 was referenced.) 11:18:59 11:19:12
Q. This is a management representation letter provided by the Raiders to Ernst & Young. 11:19:12 11:19:13 11:19:14
A. Okay. 11:19:19
Q. Well, is that correct? 11:19:19
A. Yes. 11:19:23
Q. Take a look at the next to last page of the exhibit. 11:19:24 11:19:26
A. (The witness complies.) 11:19:28
Q. Do you see that you signed the letter? 11:19:32 11:19:33
A. I did. 11:19:39
Q. You signed the letter in your capacity as the Chief Financial Officer for the Raiders, correct? 11:19:41 11:19:42 11:19:45
A. Correct. 11:19:46

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Q. You understood that as an auditor that obtaining management representations were, actually, a required procedure for an audit, correct? 11:19:48 11:19:50 11:19:52 11:19:55
A. Yes. 11:19:57
Q. And when you signed this letter, did you take it seriously? 11:19:59 11:20:00
A. I did. 11:20:02
Q. Did you read it before you signed it? 11:20:02 11:20:03
A. Yes. 11:20:04
Q. Were you comfortable when you signed the letter that the representations that you were making were accurate? 11:20:05 11:20:06 11:20:08
A. Yes. 11:20:10
Q. If you go to Page 3 of the management representation letter. 11:20:15 11:20:20
A. (The witness complies.) 11:20:21
Q. Do you see there is a subheading, "Receivables and Revenues"? 11:20:27 11:20:30
A. Yes. 11:20:35
Q. And when you signed this letter, you understood that there was a specific representation about the 11:20:36 11:20:37 11:20:38

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validity of the Raiders receivables and revenues, correct? 11:20:42 11:20:44

A. Correct. 11:20:45

Q. And your testimony is that you signed this letter without representation because you understood at the time that the receivables and the revenues were fairly stated, correct? 11:20:46 11:20:48 11:20:50 11:20:53 11:20:54

A. Correct. 11:20:57

Q. Take a look at the next page. 11:20:57

Do you see about two-thirds of the way down the page there is a subheading, "Events of Default Under Debt Agreements"? 11:21:07 11:21:08 11:21:10

A. Yes. 11:21:18

Q. And the representation there is that "no events of default have occurred with respect to any of the company's debt agreements." 11:21:19 11:21:20 11:21:23 11:21:25

Do you see that? 11:21:27

A. Yes. 11:21:28

Q. And if, in fact, the Raiders were out of compliance with financial covenants with the bank, that would be an event of default under the credit 11:21:28 11:21:33 11:21:38 11:21:40

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agreements, correct? 11:21:42
A. Correct. 11:21:45
Q. Go to 3287 in your binder. 11:21:51
(Arbitration Exhibit JX-3287 11:21:54
was referenced.) 11:22:02
Q. This is another agreement 11:22:02
between the Raiders and Ernst & Young. 11:22:03
This one is with respect to tax 11:22:05
compliance services for the tax year 11:22:07
2019; is that correct? 11:22:10
A. That's correct. 11:22:16
Q. And if you look at the back 11:22:17
of the agreement, do you see that you 11:22:22
signed the agreement on behalf of the 11:22:24
Raiders? 11:22:26
A. Yes. 11:22:38
Q. If you go back to the first 11:22:42
page of the agreement, do you see that 11:22:44
the agreement is between Ernst & Young 11:22:46
and the Oakland Raiders, a California 11:22:53
Limited Partnership, and there is also a 11:22:56
reference to various entities listed in 11:23:00
Appendix A? Do you see that? 11:23:02
A. Yes. 11:23:20

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Q. Pursuant to this agreement, 11:23:21
Ernst & Young was going to be preparing 11:23:23
tax returns on behalf of the Raiders, 11:23:26
correct? 11:23:29

A. Correct. 11:23:31

Q. And Ernst & Young was not 11:23:31
engaged to prepare any tax returns for 11:23:35
the ultimate beneficial owners of the 11:23:40
Raiders, correct? 11:23:42

A. Correct. 11:23:46

Q. Now, I asked you in your 11:23:47
deposition whether you had any dealings 11:23:50
with the individual owners of the Raiders. 11:23:53
Do you remember that? 11:23:55

A. Yes. 11:23:56

Q. And you didn't have any 11:23:57
dealings with the owners of the Raiders, 11:23:59
did you? 11:24:00

A. No. 11:24:01

Q. And did you have any knowledge 11:24:01
of who was preparing their tax returns? 11:24:04

A. No. 11:24:06

Q. And you understood that 11:24:10
pursuant to this agreement, EY was 11:24:11

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engaged to provide tax services for the Raiders, correct? 11:24:15 11:24:17

A. And the various entities on Appendix A. 11:24:22 11:24:24

Q. Correct. 11:24:25

If you go to Exhibit 3288. 11:24:26

(Arbitration Exhibit JX-3288 was referenced.) 11:24:28 11:24:35

A. Okay. 11:24:35

Q. This is another agreement between Ernst & Young and the Raiders that you signed? 11:24:36 11:24:38 11:24:40

A. Yes. 11:24:43

Q. And if you look at the second paragraph of the exhibit, do you see that these are general terms and conditions that will be applicable to the various separate statements of work? 11:24:44 11:24:46 11:24:50 11:24:54 11:24:56

A. Yes. 11:25:07

Q. And you understood when you were signing this agreement, you were signing this agreement on behalf of the Raiders, correct? 11:25:10 11:25:11 11:25:13 11:25:15

A. Correct. 11:25:17

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Q. Take a look at Page 2 of the exhibit. There is the heading, "General Terms and Conditions." 11:25:19 11:25:22 11:25:25

A. Okay. 11:25:30

Q. If you go down to the subheading, "Your Responsibilities." 11:25:33 11:25:35

Do you see that? It's in between Paragraph 5 and Paragraph 6. 11:25:38 11:25:40

A. Okay, I do. 11:25:44

Q. Alright. And if you look at Paragraph 8, it saying, "To the best of your knowledge, all information provided by you or on your behalf ('Client Information') will be accurate and complete in all material respects." 11:25:45 11:25:48 11:25:51 11:25:54 11:25:58 11:26:00

Do you see that? 11:26:02

A. Yes. 11:26:05

Q. And that's what the Raiders are agreeing to, correct? 11:26:06 11:26:07

A. Correct. 11:26:08

Q. And then it says in Paragraph 9, "We will rely on Client Information made available to us, and unless we expressly agree otherwise, 11:26:10 11:26:12 11:26:17 11:26:20

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we'll have no responsibility to evaluate or verify it." 11:26:23 11:26:26

Do you see that? 11:26:28

A. I do. 11:26:35

Q. And you understood given your own experience as a tax accountant that tax preparers rely on client information, correct? 11:26:35 11:26:38 11:26:41 11:26:44

A. Correct. 11:26:45

Q. And that tax preparers are not required to independently verify information that's provided by the client, correct? 11:26:45 11:26:47 11:26:50 11:26:52

A. Correct. 11:26:53

Q. Take a look at the subheading, "Our Reports." 11:26:57 11:26:59

Do you see that? 11:27:00

A. I do. 11:27:02

Q. So take a look at Paragraph 13 under that subheading. 11:27:06 11:27:12

A. Okay. 11:27:18

Q. It says, "You may disclose to anyone a report (or a portion thereof) solely to the extent that it relates to 11:27:21 11:27:23 11:27:28

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tax matters, including tax advice, tax 11:27:30
opinions, tax returns, or the tax 11:27:34
treatment or tax structure of any 11:27:39
transaction to which the services 11:27:42
relate." And that's defined as "tax 11:27:44
advice." 11:27:48

Do you see that? 11:27:48

A. I do. 11:27:49

Q. And then it goes on to say, 11:27:50
"With the exception of tax authorities, 11:27:53
you shall inform those to whom you 11:27:58
disclose tax advice that they may not 11:28:01
rely on it for any purpose without our 11:28:04
prior written consent." 11:28:08

Do you see that? 11:28:10

A. I do. 11:28:10

Q. And you understood that as a 11:28:11
signatory of this agreement, the Raiders 11:28:16
were agreeing that third parties would 11:28:19
not be entitled to rely on any tax advice 11:28:22
provided by EY unless EY had given its 11:28:27
prior written consent, correct? 11:28:30

A. Correct. 11:28:32

Q. Can you go to the next page. 11:28:44

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There is a subheading, "Indemnity." 11:28:45
A. (The witness complies.) 11:28:45
Q. I'll give you a chance to 11:28:54
read that paragraph -- 11:28:56
A. Okay. 11:28:56
Q. -- Paragraph 20. 11:28:57
A. Okay. 11:29:04
Q. So, as a signatory of this 11:29:23
agreement on behalf of the Raiders, you 11:29:25
understood that the Raiders were agreeing 11:29:27
to indemnify Ernst & Young to the extent 11:29:30
that some third party claimed that they 11:29:32
had relied on Ernst & Young's tax advice? 11:29:35
A. Yes. 11:29:39
Q. Let's go to Exhibit 0257. 11:29:49
(Arbitration Exhibit JX-0257 11:29:51
was referenced.) 11:30:04
A. Okay. 11:30:04
Q. This is an e-mail from you to 11:30:05
Marc Badain, correct? 11:30:10
A. Yes. 11:30:12
Q. The date of the e-mail is 11:30:12
4/16/2019, correct? 11:30:14
A. Correct. 11:30:16

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Q. And you wrote to Mr. Badain, 11:30:16
"Your favorite cash sheet is attached." 11:30:19
Do you see that? 11:30:21
A. I do. 11:30:22
Q. And if you flip the page, do 11:30:23
you see that you're sending him the 2019 11:30:25
season projected cash flows, correct? 11:30:28
A. Correct. 11:30:31
Q. And this was something that 11:30:31
the Raiders received on a regular basis 11:30:34
from the NFL, correct? 11:30:37
A. Correct. 11:30:39
Q. And the Raiders received this 11:30:40
from the NFL for every year that you were 11:30:41
at the Raiders? 11:30:45
A. Correct. 11:30:46
Q. And you used this cash flow 11:30:47
schedule to execute your responsibilities 11:30:51
to manage the cash for the Raiders, 11:30:56
correct? 11:30:58
A. Correct. 11:30:58
Q. And did you have an 11:30:59
understanding that Mr. Badain also used 11:31:01
this schedule to execute his 11:31:04

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responsibilities? 11:31:06

A. Yes. 11:31:07

Q. And would you regularly provide this to Mr. Badain? 11:31:10 11:31:11

A. Every year I get it, he'll get it, unless he gets it on his own. 11:31:16 11:31:18

Q. Alright. So this one, if you look at the cash flow schedule, in the upper left-hand corner, it's as of 4/15/19, correct? 11:31:20 11:31:24 11:31:27 11:31:31

A. Correct. 11:31:32

Q. So this is, actually, at the beginning of the 2019 NFL season, correct? 11:31:33 11:31:35

A. Correct. 11:31:42

Q. So this is the NFL telling the Raiders that cash the NFL is going to be paying out to the Raiders for the 2019 NFL season, correct? 11:31:42 11:31:45 11:31:49 11:31:52

A. Yes. 11:31:54

Q. Okay. Take a look now at Exhibit 3367. 11:31:57 11:32:09

(Arbitration Exhibit JX-3367 was referenced.) 11:32:11 11:32:25

A. Okay. 11:32:25

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Q. Do you see that this is a collection of various cash flow schedules provided by the NFL to the Raiders? 11:32:27 11:32:29 11:32:33
A. Okay. 11:32:37
Q. And if you look at the first one, the first one is as of 10/27/2006, correct? 11:32:38 11:32:40 11:32:47
A. Correct. 11:32:49
Q. So let's go to the 2016 season projected cash flows. So they're in chronological order. So keep flipping until you get to 2016. 11:32:57 11:33:02 11:33:06 11:33:09
A. Okay. 11:33:13
Q. Alright. Are you there? 11:33:16
A. I am. 11:33:17
Q. If you look at this one, this one is as of 1/13/2017, correct? 11:33:17 11:33:20
A. Yes. 11:33:26
Q. So all of the numbers for 2016, those payments have already been made by the NFL, correct? 11:33:27 11:33:32 11:33:34
A. Yes. 11:33:50
Q. And we know that because the schedule is as of 1/13/17. So all of the 11:33:54 11:33:57

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payments that are reflected in the "April," "May," "June," "July," "August," "September," "October," "November" and "December 2016" columns, that's already happened, correct? 11:34:01 11:34:04 11:34:06 11:34:10 11:34:12

A. Correct. 11:34:13

Q. Alright. So I'm not sure that we know whether the January payment has actually happened, because the schedule is as of January 13th. 11:34:14 11:34:17 11:34:19 11:34:22

But with respect to February, March and April, those payments haven't happened yet, correct? 11:34:24 11:34:27 11:34:29

A. Correct. 11:34:31

Q. Now, if you were to look at this schedule as of 12/31/2016 -- so, just think about an imaginary line between the "2016" column and the "2017" column and I want you to focus on the "January 2017" column forward, okay? 11:34:32 11:34:35 11:34:42 11:34:44 11:34:46 11:34:50

A. Okay. 11:34:52

Q. And then go to the bottom row that says, "Net Distribution." 11:34:53 11:34:56

Do you see that? 11:34:58

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A. Yes. 11:35:01

Q. So this says that the Raiders are going to receive payments in January, February, March and April from the NFL, correct? 11:35:02 11:35:06 11:35:10 11:35:12

A. Correct. 11:35:13

Q. And that those payments relate to the 2016 NFL season, correct? 11:35:14 11:35:15

A. Correct. 11:35:20

Q. The 2016 NFL season ends on March 31, 2017, correct? 11:35:21 11:35:27

A. Correct. 11:35:29

Q. Alright. Now, if you go to the middle of the schedule, there is a subheading for "NFL." 11:35:30 11:35:34 11:35:36

Do you see that? 11:35:39

A. I do. 11:35:40

Q. And we're going to focus on NFL Ventures. 11:35:41 11:35:43

But, to be clear, this includes other amounts that the NFL is paying to the Raiders, correct? 11:35:45 11:35:47 11:35:49

A. Yes. 11:35:53

Q. So, if you look above the NFL 11:35:53

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row -- I'm sorry, the "NFL Ventures" rows, there's additional distributions that are being made for the national TV money, correct? 11:35:56 11:35:59 11:36:01 11:36:04
A. Correct. 11:36:06
Q. Alright. So now if you go all the way down to that "Net Distribution" row that I asked you to focus on a moment ago, that includes all of the payments that the NFL is going to make to the Raiders for the remainder of the 2016 NFL season, correct? 11:36:06 11:36:09 11:36:11 11:36:13 11:36:17 11:36:20 11:36:24
A. Correct. 11:36:27
Q. It includes not just Ventures but everything? It's all in, it's every dollar that the NFL is going to pay the Raiders, correct? 11:36:29 11:36:31 11:36:33 11:36:35
A. Correct. 11:36:35
Q. And if you look at those numbers, 29, 559, 2643 and then there is actually a negative number for the concussion settlement and then again a positive 13,635 -- do you see those numbers? 11:36:35 11:36:38 11:36:43 11:36:45 11:36:47 11:36:52

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A. I do. 11:36:55
Q. So those numbers altogether add up to $40,846,000, correct? 11:36:57 11:36:59
A. Correct. 11:37:02
Q. So you knew when you received this sheet on or about January 13, 2017 that the entire amount that the NFL was going to be paying the Raiders for the remainder of the 2016 NFL season was about $40.8 million, correct? 11:37:03 11:37:07 11:37:12 11:37:14 11:37:16 11:37:20
A. Correct. 11:37:27
Q. Alright. Now, if you focus on the Ventures money, which is in the middle of the schedule, do you see that there are a number of different rows relating to NFL Ventures? 11:37:27 11:37:31 11:37:34 11:37:37 11:37:39
A. Correct. 11:37:42
Q. And if you look at the row that's NFL Ventures 2016 season -- I'll give you a moment to get there. 11:37:46 11:37:47 11:37:52
A. Okay. 11:37:54
Q. Do you see that there are two numbers in that row? There's a January payment of 24,528,000, correct? 11:37:54 11:37:57 11:38:00

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A. Correct. 11:38:04

Q. And then there's an April payment of 15,197,000, correct? 11:38:04 11:38:06

A. Correct. 11:38:11

Q. And that is the total amount that the NFL is telling the Raiders that they're going to get for the NFL Ventures 2016 season, correct? 11:38:11 11:38:16 11:38:18 11:38:22

A. Correct. 11:38:23

Q. Now, if you look down there is a row "Broadcast," that's within that "NFL Ventures" subheading and that does include two smaller payments, one in February 2017 and one in March of 2017, correct? 11:38:25 11:38:27 11:38:30 11:38:33 11:38:36 11:38:39

A. Correct. 11:38:40

Q. Now, the way the Raiders were booking their revenue, that $24,528,000 payment was accrued as revenue as of December 31, 2016, correct? 11:38:41 11:38:43 11:38:51 11:38:59

A. Correct. 11:39:00

Q. But the Raiders were not accruing as revenue in 2016 the April 2017 payment, correct? 11:39:02 11:39:04 11:39:08

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A. Correct. 11:39:12
Q. Okay. So the only revenue for the 2016 season that would have been part of the receivable as of December 31, 2016 that relates to Ventures is that $24,528,000 number, correct? 11:39:12 11:39:15 11:39:19 11:39:24 11:39:28
A. Correct. 11:39:31
Q. Alright. And the total amount of revenue that would be part of the receivable on the books of the Raiders as of 12/31/16 is that $29,559,000 number in the "net distribution" column or row. 11:39:31 11:39:36 11:39:40 11:39:44 11:39:53
Do you see that? 11:39:56
A. Repeat that one more time. 11:39:57
Q. Yes. 11:39:59
A. Please. 11:40:00
Q. Let me take one step back. 11:40:00
A. Okay. 11:40:02
Q. The way that the Raiders recognized revenue, the Raiders would accrue the January payment into December, correct? 11:40:02 11:40:03 11:40:05 11:40:07
A. Correct. 11:40:08
Q. And the Raiders would also do 11:40:08

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that for the national TV money, correct? 11:40:10

A. Correct. 11:40:13

Q. So, when the Raiders are preparing their financial statements for yearend 2016, there's an accrual of both the Ventures money, which is the 24.528, correct? 11:40:14 11:40:17 11:40:20 11:40:24 11:40:29

A. Correct. 11:40:32

Q. And, also, the broadcast money, which is a smaller number. It's a little over 7 million, correct? 11:40:32 11:40:34 11:40:36

A. Correct. 11:40:40

Q. Alright. So, because the Raiders were accruing the January payments from the NFL into 2016, that $29,559,000 figure in the "net distribution" row in the "January 2017" column, that is contained within the receivable for the Raiders, correct? 11:40:41 11:40:45 11:40:50 11:40:55 11:40:59 11:41:02 11:41:06

A. Correct. 11:41:08

Q. And it should be in the receivable for the Raiders, correct? 11:41:08 11:41:10

A. Correct. 11:41:14

Q. Okay. But none of the 11:41:15

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payments after that, the February payment, the March payments, if there were March payments, the April payments, those payments do not belong in the receivable as of December 31, 2016, do they? 11:41:18 11:41:23 11:41:25 11:41:28 11:41:30 11:41:34

A. No. 11:41:34

Q. Okay. So the only amounts that the NFL owed the Raiders as of December 31, 2016 that properly belonged in the receivable, that amount is 29,559,000, correct? 11:41:36 11:41:39 11:41:44 11:41:47 11:41:50

A. They would be included into the receivable, correct. 11:41:56 11:41:57

Q. Okay. That's the only amount that properly should be included in the receivable? 11:41:58 11:42:00 11:42:01

A. Unless there was an original balance as of December 2016, it would add to that receivable. 11:42:02 11:42:04 11:42:06

Q. Okay. So let's talk about that. 11:42:07 11:42:09

All of the remaining money for the 2016 NFL season had already been paid out 11:42:10 11:42:14

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in 2016. 11:42:20

So you see in this schedule, you see for "NFL Ventures 2016 season," there's a payment in April of 2016? Do you see that? 11:42:24 11:42:26 11:42:30 11:42:35

A. Yes. 11:42:35

Q. And there's a payment in July of 2016. 11:42:35 11:42:37

Do you see that? 11:42:38

A. Yes. 11:42:40

Q. And there's a payment in October 2016. 11:42:41 11:42:42

Do you see that? 11:42:43

A. Yup. 11:42:44

Q. Okay. So all of the amounts for the 2016 season that NFL Ventures owed to the Raiders, all of the amounts up to the point of January -- well, of December 31, 2016 had already been paid except for the payments that were going to be made in 2017 that are listed on this schedule, correct? 11:42:45 11:42:49 11:42:54 11:42:58 11:43:02 11:43:06 11:43:08 11:43:10

A. Correct. 11:43:11

Q. So there shouldn't be any 11:43:15

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amounts remaining in the receivable for the 2016 season, other than the amounts that were accrued, the January payment into 2016, correct? 11:43:18 11:43:21 11:43:25 11:43:29

A. Unless we had a balance as of December. It would be added to that balance. 11:43:35 11:43:37 11:43:39

Q. Okay. 11:43:40

A. If things weren't paid down, it would add to that balance. 11:43:41 11:43:44

Q. Alright. Sitting here today, what could possibly be in that balance if the NFL has already paid everything that was owed for the 2016 season? 11:43:44 11:43:47 11:43:51 11:43:54

A. Other accruals from the past maybe. 11:43:57 11:43:58

Q. Okay. 11:43:59

MR. CHANDLER: Before you move on, the 2018 cash flow statement, if you have that, if you all have it handy, it's -- 11:44:07 11:44:08 11:44:16 11:44:17

THE STENOGRAPHER: I'm sorry. I can't hear you, sir. Sorry. 11:44:20 11:44:21

MR. CHANDLER: I'm sorry. 11:44:26

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I'm sorry. 11:44:27

I was asking Counsel about this exhibit we're on, which is JX-3367. 11:44:27 11:44:30 11:44:33

It does not include the 2018 projected cash flow statement and I'm asking if they have it, cause all the rest of them are here. 11:44:37 11:44:38 11:44:42 11:44:44

THE WITNESS: So, Arbitrator Chandler, we do not have it. We have pieced together what we received in discovery. 11:44:47 11:44:49 11:44:50 11:44:51

We understand that the Raiders got this throughout the year for every year. So, at some point, there were dozens of these. We just produced what was provided in discovery. So we don't have that one. 11:44:53 11:44:54 11:44:56 11:44:59 11:45:01 11:45:02 11:45:03

MR. CHANDLER: Thank you. 11:45:05

BY MR. FARINA: 11:45:13

Q. So leave the 2016 projected cash flows, leave that out. You can take it out of the binder, if that helps. 11:45:13 11:45:17 11:45:19

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And then I'm going to ask you to turn to Exhibit 3293. 11:45:21 11:45:23

(Arbitration Exhibit JX-3293 was referenced.) 11:45:25 11:45:52

Q. These are the Raiders financial statements for the Fiscal Year ended December 31, 2016, correct? 11:45:52 11:45:53 11:45:55

A. Correct. 11:45:58

Q. Can you flip to the balance sheet? It's Page 3. 11:45:59 11:46:03

A. Okay. 11:46:10

MR. FARINA: Can you also put it on the screen. 11:46:15 11:46:16

Q. Alright. Do you see that there's a row "due from NFL"? 11:46:17 11:46:19

A. Yes. 11:46:27

Q. And the amount listed as the receivable from the NFL as of 12/31/16 is $98,515,022, correct? 11:46:30 11:46:31 11:46:37

A. Correct. 11:46:41

Q. And the Raiders prepared this balance sheet, correct? 11:46:42 11:46:45

A. Yes. 11:46:47

Q. And you were responsible for 11:46:47

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the preparation of these financial statements as the CFO, correct? 11:46:49 11:46:52

A. Correct. 11:46:55

Q. And you were involved in the preparation of these financial statements, correct? 11:46:55 11:46:56 11:46:57

A. Correct. 11:46:59

Q. And you yourself were actually handwriting journal entries to close the books and records for the Raiders, correct? 11:47:00 11:47:01 11:47:05 11:47:07

A. Correct. 11:47:08

Q. Alright. So if you look at that receivable balance of 98 and a half million dollars and then go back to the cash flow schedule, you can see from the cash flow schedule that the NFL doesn't owe the Raiders 98 and a half million dollars, correct? 11:47:09 11:47:12 11:47:15 11:47:17 11:47:21 11:47:26 11:47:28

A. No, I believe, at that time I felt like they did owe us 98 million 505. 11:47:35 11:47:37

Q. Okay. But when you received this cash flow schedule and you were using it to help manage the cash flows of 11:47:42 11:47:43 11:47:46

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the Raiders, you were being told on an updated basis exactly what the NFL was going to be paying the Raiders, correct? 11:47:50 11:47:53 11:47:56

A. Correct. 11:47:58

Q. And if you're looking at this cash flow schedule in January of 2017, you can see that the Raiders are not going to get paid $98 million from the NFL for the remainder of the 2016 season, correct? 11:47:59 11:48:00 11:48:05 11:48:06 11:48:11 11:48:14

A. Correct. 11:48:16

Q. If you add up all the money that the Raiders are going to get from the NFL in January of '17, in February of '17, in March of '17 and in April of '17, all that remaining money for the 2016 season only adds up to 40,846,000, correct? 11:48:17 11:48:19 11:48:21 11:48:25 11:48:29 11:48:32 11:48:36

A. Correct. 11:48:37

Q. And of that 40,846,000, only 29,559,000 should be included in the receivable, correct? 11:48:38 11:48:48 11:48:51

A. Correct. 11:48:54

Q. So the two numbers that you 11:48:55

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would compare are the 29,559,000 that you just said is what properly should be in the receivable, that number is nowhere close to the NFL receivable that the Raiders put in their financial statements, correct? 11:48:57 11:49:03 11:49:05 11:49:08 11:49:11 11:49:12

A. Correct. But they could be an outstanding balance that's on the -- in the receivable amount that we would get paid in future years. There could be other balances in there. 11:49:13 11:49:15 11:49:18 11:49:20 11:49:23

Q. Okay. But sitting here today you don't know what those other balances are? 11:49:25 11:49:29 11:49:31

A. No. 11:49:31

Q. Well, actually, sitting here today, we know what those other balances are. 11:49:31 11:49:34 11:49:36

They're Ventures receivables that don't belong there; isn't that right? 11:49:37 11:49:39

A. As of today, yes. 11:49:41

Q. Okay. When you're the CFO of the Raiders, you have this cash flow schedule that tells you what the Raiders 11:49:43 11:49:49 11:49:50

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have already been paid for the 2016 NFL season, correct? 11:49:53 11:49:56

A. Correct. 11:49:57

Q. And you also have this to tell you what the Raiders will be paid for the remainder of the NFL season, correct? 11:49:57 11:50:00 11:50:02 11:50:04

A. Correct. 11:50:05

Q. And then as the CFO of the Raiders, you're aware of the cash flows that are actually coming in from the NFL, correct? 11:50:05 11:50:07 11:50:10 11:50:13

A. Correct. 11:50:13

Q. So it's not just that you have a schedule from the NFL telling you about payments, as the person overseeing the cash flows from the Raiders, you're actually seeing the cash come in, correct? 11:50:14 11:50:15 11:50:17 11:50:20 11:50:22 11:50:24

A. Correct. 11:50:25

Q. And it's your testimony that when preparing the 2016 yearend financial statements, you believed that the Raiders were owed 98 and a half million dollars 11:50:27 11:50:30 11:50:36 11:50:38

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from the NFL? 11:50:40
A. Correct. 11:50:41
I can put this back? 11:51:01
Q. Yes, sir. 11:51:02
The lending agreements that the Raiders had with the banks required the Raiders -- actually, why don't you leave 2016 out. I am going to use that again. 11:51:07 11:51:09 11:51:13 11:51:16
I'm sorry. Let me start over. 11:51:18
The lending agreements that the Raiders had with the banks required the Raiders to provide quarterly financial statements, correct? 11:51:21 11:51:24 11:51:29 11:51:32
A. Correct. 11:51:33
Q. And those quarterly financial statements were not audited by EY, correct? 11:51:33 11:51:35 11:51:37
A. Correct. 11:51:38
Q. Can you turn to JX-3303. 11:51:39
(Arbitration Exhibit JX-3303 was referenced.) 11:51:45 11:51:55
A. Okay. 11:51:55
Q. Do you see that this is an e-mail from you to the Bank of America? 11:51:55 11:51:57

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A. Yes. 11:52:03

Q. Angel Sutoyo, he's an individual at the Bank of America? 11:52:04 11:52:08

A. She was an individual. 11:52:10

Q. She, excuse me, Angel. 11:52:11

Alright. This e-mail has the date June 8, 2017, correct? 11:52:14 11:52:18

A. Yes. 11:52:22

Q. And you are sending the Bank of America financial statements as of March 31, 2017, correct? 11:52:24 11:52:29 11:52:34

A. Correct. 11:52:35

Q. And you're, also, sending a Compliance Certificate that you executed, correct? 11:52:35 11:52:38 11:52:40

I can show it to you. But if you look at the e-mail -- 11:52:44 11:52:46

A. Correct. 11:52:47

Q. Okay. So let's take a look at the second page of the exhibit. 11:52:47 11:52:50

Do you see it has the heading, "Form of Compliance Certificate"? 11:52:54 11:52:56

A. Yes. 11:52:58

Q. And if you look at the next 11:52:59

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page, do you see that you signed the Compliance Certificate on behalf of the Raiders? 11:53:00 11:53:03 11:53:05

A. Yes. 11:53:09

Q. And if you look at the date, you signed this Compliance Certificate -- it's dated as of June 8, 2017, correct? 11:53:09 11:53:11 11:53:14

A. Correct. 11:53:18

Q. And that was the date of the e-mail, also, correct? 11:53:20 11:53:24

A. Correct. 11:53:30

Q. So, in June of 2017, you are preparing unaudited financial statements to send to the Bank of America for the period ending March 31, 2017, correct? 11:53:31 11:53:37 11:53:40 11:53:43

A. Correct. 11:53:52

Q. So take a look a few pages into the exhibit. 11:53:55 11:53:57

Do you see that there are unaudited financial statements for the year ended March 31, 2017? 11:53:58 11:54:00 11:54:05

A. Yes. 11:54:08

Q. Now, take a look at the balance sheet in those financial 11:54:09 11:54:12

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statements that you provided to the bank. 11:54:14

A. Okay. 11:54:18

Q. Alright. I just want to make sure everyone is there. 11:54:19 11:54:21

Do you see that the balance sheet is as of March 31, 2017, correct? 11:54:22 11:54:25

A. Correct. 11:54:29

Q. If you look under the subheading of "Assets," do you see a line item "due from NFL"? 11:54:31 11:54:34 11:54:37

A. I do. 11:54:40

Q. And the number that appears there is $83,680,127, correct? 11:54:40 11:54:42

A. Correct. 11:54:47

Q. Alright. So, according to these financial statements that the Raiders prepared and provided to the banks, the Raiders were owed $83,680,127 from the NFL as of March 31, 2017, correct? 11:54:48 11:54:50 11:54:52 11:54:55 11:55:04 11:55:09

A. Correct. 11:55:10

Q. Do you believe that number was correct when you prepared these financial statements and provided them to 11:55:12 11:55:13 11:55:15

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the banks? 11:55:16

A. Yes. 11:55:17

Q. Okay. I'm going to come back to this. But I want you to take a look at another exhibit, Exhibit 3304. 11:55:25 11:55:27 11:55:29

(Arbitration Exhibit JX-3304 was referenced.) 11:55:31 11:55:40

Q. Exhibit 3304 are the conforming schedules that went into the NFL from the Raiders from 2016 season, correct? 11:55:40 11:55:45 11:55:48 11:55:52

A. Correct. 11:55:52

Q. So these are a separate set of financial statements that are provided annually to the Raiders by the NFL, correct? 11:55:53 11:55:55 11:55:57 11:56:01

A. Correct. 11:56:01

Q. Take a look, if you would, at Schedule 3 to the conforming statements. 11:56:08 11:56:11

The conforming statements were prepared by the Raiders correct? 11:56:17 11:56:18

A. Correct. 11:56:20

Q. And you oversaw that process, correct? 11:56:23 11:56:25

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A. With some capacity, correct. 11:56:28
Q. Well, you were -- 11:56:30
A. Well, back in -- what year? 11:56:31
Q. 2016. 11:56:32
A. Yeah, I was in charge. 11:56:33
Q. So you're, actually, the one 11:56:34 who is making journal entries that will 11:56:36 ultimately be reflected in the balances 11:56:41 in the conforming statements, correct? 11:56:43
A. 2016 that is -- that's 11:56:45 correct. 11:56:49
Q. Okay. So, if you look at 11:56:49 Schedule 3, it's the "Statement of Assets 11:56:52 Liabilities and Net Worth," which is, I 11:56:57 guess, the functional equivalence of the 11:57:01 balance sheet. 11:57:04
A. Yes. 11:57:05
Q. Alright. And do you see that 11:57:07 there is a subheading, "Notes and 11:57:09 Accounts Receivable," on the left-hand 11:57:15 side? 11:57:17
A. Yes. 11:57:25
Q. And if you go one column 11:57:26 over, do you see that there is a row 11:57:29

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"Ventures revenue earned"? 11:57:32

A. I do. 11:57:36

Q. And there's an as reported 11:57:37
number of $21,081,000, correct? 11:57:40

A. Yes. 11:57:46

Q. And then if you go to the 11:57:47
"League conforming number," it says that 11:57:48
the Ventures receivable is 13,189,000, 11:57:51
correct? 11:57:58

A. Correct. 11:57:58

Q. And that is the Ventures 11:57:59
receivable as of 3/31/2017, correct? 11:58:01

A. Correct. 11:58:09

Q. So, in the conforming 11:58:12
schedules that are being prepared by the 11:58:15
Raiders and sent to the NFL for the 11:58:17
period ending 3/31/2017, it says that the 11:58:22
NFL receivable, the Venture receivable, 11:58:27
is 13,189,000, correct? 11:58:29

A. Correct. 11:58:34

Q. And if you go back to the 11:58:36
financial statements that were being 11:58:38
provided to the banks, also, as of 11:58:40
March 31, 2017, those financial 11:58:45

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statements say that the NFL receivable is $83,680,127, correct? 11:58:48 11:58:51

A. Correct. 11:58:55

Q. So those numbers are wildly different, correct? 11:58:56 11:58:58

A. Correct. 11:58:59

Q. Conforming schedules are being prepared in June of 2017, correct? 11:59:20 11:59:27

A. Correct. 11:59:39

Q. So you're actually preparing the unaudited financial statements as of 3/31/17 that are provided to the banks in the same month that you're preparing the 2016 NFL conforming schedules that are also as of 3/31/2017, correct? 11:59:40 11:59:43 11:59:46 11:59:49 11:59:54 11:59:57

A. Correct. 12:00:01

Q. Alright. So they're the exact same as of date, correct? 12:00:01 12:00:03

A. Correct. 12:00:07

Q. They're both prepared by the Raiders management, correct? 12:00:07 12:00:10

A. Correct. 12:00:11

Q. You're overseeing the preparation of both, correct? 12:00:11 12:00:13

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A. Correct. 12:00:15

Q. You're actually making journal entries to prepare both, correct? 12:00:16 12:00:17

A. Correct. 12:00:20

Q. And you're doing all of that in the same month, correct? 12:00:20 12:00:22

A. Correct. 12:00:25

Q. And you're certifying both of them, correct? 12:00:25 12:00:28

A. Correct. 12:00:29

Q. And one of them says that the NFL owes the Raiders $83 million and the other ones says that the NFL owes the Raiders $13 million? 12:00:29 12:00:31 12:00:34 12:00:37

A. Okay. 12:00:39

Q. Well, is that true? 12:00:40

A. Correct. 12:00:41

MR. FARINA: I'm at convenient point, if you want to break for lunch or I can keep going. 12:00:55 12:00:57 12:00:58

THE CHAIRPERSON: Lunch. 12:01:02

MR. FARINA: Why don't we do a half an hour for lunch. 12:01:03 12:01:04

MS. BROWN: Before we go 12:01:07

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off the record, in response to Arbitrator Chandler's question about the 2018 season projected cash flows, I just want to let you know it is included in JX-0652. It's among the journal entries in other documents provided to EY. You'll see the 2018 schedule in that exhibit. It's in the binder -- the direct binder for Mr. Villanueva. 12:01:08 12:01:11 12:01:11 12:01:15 12:01:17 12:01:18 12:01:23 12:01:24 12:01:26 12:01:30 12:01:33

MR. CHANDLER: From this morning? 12:01:34 12:01:35

MS. BROWN: This morning, yes. 12:01:35

MR. CHANDLER: Thank you. 12:01:36

THE CHAIRPERSON: Thank you for that. 12:01:37 12:01:39

Wait, wait. How much more time do you anticipate to need with this witness? 12:01:39 12:01:40 12:01:42

MR. FARINA: I think I should be able to do this in a couple of more hours. 12:01:43 12:01:44 12:01:45

THE CHAIRPERSON: Okay. 12:01:46

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After cross-examination is completed you anticipate? 12:01:49 12:01:50

MS. BROWN: We will see. 12:01:51

MR. FARINA: Other than recross. 12:01:53 12:01:56

MS. BROWN: Yes, other than recross. 12:01:56 12:01:57

THE CHAIRPERSON: And redirect. 12:01:58

MS. BROWN: Redirect. 12:01:58

THE CHAIRPERSON: Off the record. It's a break. 12:01:59 12:02:00

(Lunch recess taken 12:01 to 12:41 p.m.) 12:02:00 12:41:02

THE CHAIRPERSON: You can go back on the record. 12:41:02 12:41:03

MR. FARINA: Alright. Among the parties we managed to get copies of the documents that were requested. I'm going to pick up with those. Let me just do a little bit of explaining. 12:41:32 12:41:36 12:41:38 12:41:40 12:41:43 12:41:45

The 2019 cash flows, projected cash flows, we have that in front of you as a separate page. 12:41:46 12:41:53 12:41:55

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No, cash flows, cash flow schedules. 12:41:59 12:42:01

And that is included in JX-3367, which was the exhibit that we used with Mr. Villanueva. 12:42:01 12:42:03 12:42:09

The 2018 season projected cash flows are also included in Exhibit JX-0652, which Deb used Mr. Villanueva earlier. 12:42:13 12:42:15 12:42:21 12:42:29

So those two are already part of other exhibits. But I thought it would be helpful to have a single page of each. 12:42:30 12:42:32 12:42:34 12:42:36

THE CHAIRPERSON: Thank you. 12:42:38

MR. FARINA: And then we've, also, provided the 2018 yearend financial statements, that is JX-2277, and the 2019 yearend financial statements and that is JX-2267. 12:42:39 12:42:40 12:42:44 12:42:46 12:42:53 12:42:55

THE CHAIRPERSON: Thank you. 12:42:58

MR. CHANDLER: Thank you very much. 12:43:01 12:43:01

BY MR. FARINA: 12:43:01

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Q. And, Mr. Villanueva, you have all of those documents in front of you as well, correct? 12:43:01 12:43:03 12:43:05

A. Yes. 12:43:06

Q. Let's start then with the 2019 financial statements. Can you get those in front of you? 12:43:08 12:43:10 12:43:15

I believe the copy that you have has the Exhibit No. JX-0147. But the Panel has a different exhibit number. It's the same document. 12:43:17 12:43:19 12:43:25 12:43:28

(Arbitration Exhibit JX-0147 was referenced.) 12:43:31 12:43:31

Q. Can you see these are the yearend financial statements as of 12/31/19? 12:43:31 12:43:33 12:43:38

A. Yes. 12:43:38

Q. Alright. And if you go to the balance sheet, do you see the line item for "due from NFL"? 12:43:39 12:43:41 12:43:49

A. Yes. 12:43:51

Q. And it says the receivable from the NFL as of 12/31/19 is $164,215,692 correct? 12:43:52 12:43:55 12:43:59

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A. Correct. 12:44:04

Q. Now, if you would go to exhibit -- or as part of Exhibit 3367 -- but we've given you a standalone page. (Indicating.) 12:44:07 12:44:09 12:44:13 12:44:16

So do you have in front of you the 2019 season projected cash flows? 12:44:17 12:44:19

A. I do. 12:44:23

Q. Okay. Why don't you put it in front of you so we can walk through it. 12:44:24 12:44:26

A. Okay. 12:44:29

Q. Okay. You'll see that this particular schedule is as of 4/15/19, correct? 12:44:31 12:44:34 12:44:39

A. Yes. 12:44:41

Q. So that's at the beginning of the 2019 NFL season, correct? 12:44:41 12:44:44

A. Correct. 12:44:46

Q. And as the season progressed, the NFL would be sending additional projected cash flow schedules that are updated, correct? 12:44:47 12:44:51 12:44:55 12:44:59

A. Yes. 12:45:00

Q. And I will tell you that, at 12:45:01

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least, we don't have any later schedules 12:45:03
for the 2019 season. So this is what 12:45:07
we're going to work with. 12:45:10

Can you look at the column 12:45:13
"January 2020"? 12:45:18

A. Okay. 12:45:22

Q. And do you see that the net 12:45:22
distribution amount totalling all of the 12:45:25
NFL payments in January of 2020 is 12:45:28
$35,885,000, correct? 12:45:34

A. Correct. 12:45:38

Q. And with the accrual, that 12:45:38
35,885,000 in projected payments, that 12:45:42
would be accrued into December of 2019, 12:45:47
correct? 12:45:55

A. Yes. 12:45:57

Q. Alright. And at the time 12:45:58
that it's accrued, it's no longer a 12:46:00
projection, the payment has actually been 12:46:02
made, correct? 12:46:04

A. Yes. 12:46:06

Q. Alright. Now, if you were to 12:46:07
look at the January, February, March and 12:46:10
April columns for all the distributions 12:46:13

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that were going to be made by the NFL in 2020 for the '19 season, do you see that that includes the January number, which is 35.885, correct? 12:46:16 12:46:21 12:46:26 12:46:29

A. Correct. 12:46:34

Q. The February number which, is 2693, correct? 12:46:35 12:46:38

A. Correct. 12:46:40

Q. The March number, which is 769, correct? 12:46:42 12:46:44

A. Correct. 12:46:45

Q. And the April number which is 16.358, correct? 12:46:46 12:46:49

A. Correct. 12:46:51

Q. So the sum total of all the money that the NFL was saying that it would be paying the Raiders for the 2019 season after December 31, '19, that summary total is 55,705,000, correct? 12:46:51 12:46:53 12:46:56 12:47:03 12:47:06

A. Correct. 12:47:12

Q. And of that amount, the only portion that should be included in the receivable because it's the only portion that's been accrued by the Raiders is the 12:47:12 12:47:15 12:47:18 12:47:21

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$35,885,000 number, correct? 12:47:23

A. Correct. 12:47:29

Q. Alright. So, if you compare the number in the financial statements, it says that the due from NFL number as of 12/31/19 is $164,215,692, correct? 12:47:29 12:47:34 12:47:39 12:47:41

A. Correct. 12:47:51

Q. And we know now that the correct number is only the amount that was accrued into 2019 from January of 2020 and that amount is 35,885,000, correct? 12:47:52 12:47:54 12:47:56 12:48:03 12:48:08

A. If there was no ending balance -- if there was no balance in there already, yes, that would be the number. 12:48:10 12:48:14 12:48:16 12:48:18

Q. Okay. 12:48:18

A. And due from the NFL do we know that's all Ventures? Cause I know when they were reviewing the financial statement, I think, there was like grouping of what makes up that due from NFL. 12:48:24 12:48:27 12:48:31 12:48:33 12:48:34 12:48:36

Q. Yup. 12:48:37

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A. So not a hundred percent sure that that's all NFL Ventures. 12:48:37 12:48:39
Q. So it's not all NFL Ventures. 12:48:41
So go back to the projected cash flows. 12:48:43 12:48:45
A. Okay. 12:48:45
Q. So, if you look at that, under the NFL Ventures total for 2019, for projected cash flows, do you see that that total is 27,541,000? 12:48:46 12:48:50 12:48:54 12:48:56
A. Correct. 12:49:01
Q. Alright. Now, if you go up, we looked at this earlier, there's a separate amount that's being paid for the broadcast, correct? 12:49:02 12:49:04 12:49:06 12:49:11
A. Correct. 12:49:12
Q. So that amount is 8,343,000, correct? 12:49:12 12:49:18
A. Correct. 12:49:18
Q. And it's those two numbers together that make up the 35,885 -- I'm sorry, $35,885,000, correct? 12:49:20 12:49:22 12:49:26
A. Correct. 12:49:30
Q. Alright. So, if you go to 12:49:30

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the financial statements, the due from NFL includes both Ventures and broadcast, correct? 12:49:32 12:49:35 12:49:39

A. Correct. 12:49:39

Q. But if you look at the cash flow schedule, that $35,885,000 also includes both Ventures and broadcast, correct? 12:49:39 12:49:42 12:49:47 12:49:51

A. Correct. 12:49:51

Q. So it's apples to apples? 12:49:52

A. I'm not a hundred percent that's correct, just because that due from NFL could be the TV revenue. It could also be NFL Ventures. I'm not a hundred percent sure if those are the only two amounts that are represented. I don't know if there's another receivable or -- cause I know that the way EY wanted us to do is group a bunch of accounts to show as due from NFL -- due from NFL. 12:49:55 12:49:58 12:50:02 12:50:05 12:50:07 12:50:10 12:50:11 12:50:13 12:50:18 12:50:20

Q. The cash flow schedules that are provided by the NFL include all of the amounts that the NFL is going to be paying the Raiders, correct? 12:50:25 12:50:26 12:50:28 12:50:31

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A. Correct. 12:50:32

Q. Okay. So it includes -- you can see there is multiple line items here and they're all included in that net distribution number of 35,885,000? 12:50:33 12:50:35 12:50:37 12:50:39

A. I understand what you're saying. But if you look at due from NFL, there could be a bunch of things that make up that number. 12:50:43 12:50:44 12:50:48 12:50:50

Granted, yeah, Ventures TV is in that number. But unless I can see what is actually in there, you know, if there is another piece that's not part of those two -- 12:50:53 12:50:56 12:50:58 12:51:00 12:51:04

Q. Okay. 12:51:05

A. -- I don't know. 12:51:05

Q. But if there is another piece, if there's more money that's owed to the Raiders from the NFL, it's not included anywhere on this cash flow statement? 12:51:06 12:51:09 12:51:11 12:51:16 12:51:17

A. There could be -- just to name some things, there could be examples. A relocation fee, okay, and if 12:51:18 12:51:21 12:51:26

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there's a receivable on the books, reallocation fee, it would put it into -- that would all be grouped and due from the NFL. 12:51:32 12:51:34 12:51:37 12:51:40

I understand that Ventures and TV is in there. But I want to make sure if there's anything else in there besides just those two things. 12:51:40 12:51:42 12:51:45 12:51:47

If we got money from like a merger or other money outside of this, it wouldn't be in here. It would be in a memo saying, you're going to be receiving this dollar amount. 12:51:48 12:51:53 12:51:56 12:51:58 12:52:00

Q. So we can look at the trial balance. The trial balance would tell us -- 12:52:00 12:52:02 12:52:04

A. What makes -- 12:52:04

Q. -- what accounts comprise that -- 12:52:05 12:52:07

A. Yeah, there's probably a sheet that groups -- shows the breakout of what makes that up. 12:52:07 12:52:10 12:52:12

Q. Alright. Mr. Villanueva, sitting here today you know that the 12:52:13 12:52:14

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$129 million difference between what's on the cash flow schedule and what's in your financial statements, that $129 million difference is the overstated receivable? 12:52:18 12:52:22 12:52:25 12:52:28

A. Sitting here today, yes, but, again, I don't know what makes up that 164. 12:52:31 12:52:38 12:52:41

Q. Okay. So you think that back in 2020 when you're preparing the 2019 financial statements, you thought there was another $129 million that the NFL owed the Raiders that's not included in the cash flow schedules that the NFL provides the Raiders? 12:52:42 12:52:47 12:52:53 12:52:54 12:52:56 12:52:58 12:53:01

A. I'm saying as of today, because I don't know what's in that number. I don't know. But as of this day, yes, I believe that was the dollar amount that was owed to us. 12:53:01 12:53:04 12:53:06 12:53:11 12:53:14

Q. As the CFO of the Raiders, the person who is overseeing the preparation of the 12/31/2019 financial statements, you would have known what was in that $164 million receivable, correct? 12:53:17 12:53:18 12:53:20 12:53:25 12:53:28

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A. Oh, yeah. 12:53:30

Q. Okay. And we know that if you compared that receivable number to the cash flow schedule where the NFL is telling the Raiders what the NFL owes the Raiders, those numbers are not anywhere close to one another, correct? 12:53:31 12:53:34 12:53:36 12:53:39 12:53:42 12:53:44

A. Correct. But then, again, during that year I'm not sure if there was a merger or -- I know there was a merger, but other things that happened where we were going to get money from the NFL that's not on this sheet. Because there could be other stuff, money that came in from the NFL that won't be on this sheet. 12:53:45 12:53:47 12:53:50 12:53:52 12:53:55 12:53:57 12:53:59 12:54:01 12:54:04

Q. $129 million is a lot of money. You agree? 12:54:05 12:54:07

A. Oh, I agree. 12:54:08

Q. It's lot of money for the Raiders, correct? 12:54:09 12:54:11

A. Correct. 12:54:12

Q. You think that if there was another $129 million for some other 12:54:12 12:54:14

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revenue source provided by the NFL that as the CFO of the Raiders you would have known about that? 12:54:17 12:54:20 12:54:22

A. Correct. 12:54:24

Q. Okay. So now let's go to 2018. Let's start with the financial statements. 12:54:25 12:54:32 12:54:34

That's JX-2277. 12:54:34

(Arbitration Exhibit JX-2277 was referenced.) 12:54:37 12:54:39

Q. Are you there? 12:54:39

A. I am. 12:54:40

Q. This one, if you look at the cover sheet, it says that these financial statements are for the period beginning April 1, 2018 and it says, "commencement of operations through December 31, 2018." 12:54:44 12:54:46 12:54:48 12:54:50 12:54:54

Do you see that? 12:54:58

A. I do. 12:54:59

Q. Alright. So these are not even a full year of financial statements, correct? 12:55:00 12:55:01 12:55:03

A. Correct. 12:55:04

Q. And that's because there was 12:55:04

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a transaction in 2018 where the Raiders partnership split up its assets and contributed those assets to two new entities, correct? 12:55:07 12:55:13 12:55:16 12:55:20

A. I believe that is correct. 12:55:21

Q. And that's the origin of TeamCo and StadCo, which the panel has heard about, correct? 12:55:22 12:55:25 12:55:27

A. Correct. 12:55:28

Q. And both TeamCo and StadCo became issuers of financial statements, correct? 12:55:29 12:55:33 12:55:36

A. Correct. 12:55:39

Q. And to the extent that the partnership continued to issue financial statements after 2018, those partnership financial statements were not audited by Ernst & Young, correct? 12:55:39 12:55:42 12:55:46 12:55:49 12:55:51

A. I'm sorry, repeat that one more time. 12:55:55 12:55:56

Q. Sure. 12:55:57

Up until 2018, Ernst & Young audited the partnership financial statements, correct? 12:55:58 12:56:01 12:56:03

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A. Correct. 12:56:04

Q. Okay. And I can go back. I think we looked at 2016. We can look at that. 12:56:05 12:56:06 12:56:09

But you recall that the issuer of the financial statements that was the subject of EY's audit up through 2018 or 2017, was the Oakland Raiders partnership, correct? 12:56:09 12:56:13 12:56:14 12:56:18 12:56:22

A. Correct. 12:56:23

Q. Okay. After the transaction, after the assets were split out and two new entities were created, both TeamCo and StadCo issued their own standalone financial statements, correct? 12:56:23 12:56:26 12:56:29 12:56:32 12:56:37

A. I believe that's correct. I'm not a hundred percent sure like when we issued StadCo but it sounds right. 12:56:39 12:56:41 12:56:44

Q. Alright. And we can look back at the date. 12:56:47 12:56:50

But the allocations that are happening in that 2020/2021 time period are allocations back and forth between those two entities, StadCo and TeamCo, 12:56:51 12:56:53 12:56:57 12:57:00

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correct? 12:57:03

A. Correct. 12:57:04

Q. Each of which is going to issue its own standalone financial statements, correct? 12:57:05 12:57:07 12:57:09

A. Correct. 12:57:10

Q. Okay. So, after StadCo and TeamCo are created, after that point, Ernst & Young is no longer auditing financial statements issued by the Oakland Raiders partnership, correct? 12:57:10 12:57:16 12:57:20 12:57:23 12:57:25

A. I would say that's correct, but I think -- hold on a second. 12:57:31 12:57:35

No, I was just thinking those LPs and Raiders partnership are still part of this Raiders football Club LLC. 12:58:09 12:58:13 12:58:15

Q. Well, the owner of the Raiders Football Club LLC is the partnership, correct? 12:58:18 12:58:22 12:58:24

A. Correct. So it is the partnership, right. 12:58:27 12:58:28

Q. But if the partnership is issuing its own financial statements after 2018, those financial statements 12:58:29 12:58:31 12:58:35

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are not being audited by Ernst & Young, correct? 12:58:37 12:58:39

A. No. 12:58:40

Q. Alright. We can do this a little more quickly. 12:58:44 12:58:46

But if you look at the balance sheet for 2018. 12:58:47 12:58:50

A. Okay. 12:58:52

Q. So, even though this is an incomplete year, the balance sheet is still the amount owed as of 12/31/18, correct? 12:58:54 12:58:56 12:58:58 12:59:01

A. Correct. 12:59:02

Q. There's no difference in the balance sheet by virtue of the fact that it's only nine months, correct? 12:59:02 12:59:04 12:59:06

A. Correct. 12:59:08

Q. There may be differences in the income statement because the income statement will not reflect the full activity for the year, but the balance sheet are all line items as of a specific date, correct? 12:59:08 12:59:10 12:59:13 12:59:15 12:59:19 12:59:22

A. Correct. 12:59:23

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Q. Alright. And the due from NFL balance reported in the Raiders financial statements as of 12/31/2018 is $139,219,529, correct? 12:59:24 12:59:27 12:59:30 12:59:34
A. Correct. 12:59:40
Q. Alright. So now let's go to the 2018 cash flow statement for the -- I'm sorry. 12:59:43 12:59:45 12:59:50
Let me be more precise, the 2018 season projected cash flows schedule. 12:59:51 12:59:54
Do you have that? 12:59:57
A. I do. 12:59:58
Q. Alright. And if you look at that, do you see that the total net distribution amount for January of 2019 is $35,176,000? 13:00:01 13:00:04 13:00:07 13:00:13
A. Yes. 13:00:21
Q. Okay. And that amount would have been accrued by the Raiders and would have been included in the receivable, correct? 13:00:22 13:00:25 13:00:27 13:00:29
A. Correct. 13:00:30
Q. And if you were to add up not just that January number but all of the 13:00:31 13:00:33

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numbers in the "net distribution" row for 2019 on this schedule -- so January, February, March and April of 2019 -- those numbers total $52,247,000, correct? 13:00:37 13:00:43 13:00:46 13:00:50
A. Correct. 13:00:58
Q. So, at least, according to this schedule that was provided by the NFL to the Raiders, all of the payments that the NFL is telling the Raiders that they were going to make in 2019 for the 2018 season, the sum total of those payments were 52,247,000, correct? 13:00:59 13:01:01 13:01:03 13:01:07 13:01:10 13:01:15 13:01:18
A. Correct. 13:01:22
Q. And the only portion of those payments that would have been included in the Raiders receivable are the January payments that total $35,176,000? 13:01:23 13:01:25 13:01:28 13:01:32
A. Correct. 13:01:37
Q. And that's compared to what's listed in the balance sheet of $139,219,529, correct? 13:01:38 13:01:41 13:01:44
A. Correct. That would be added to the balance that was on the books. 13:01:50 13:01:51
Q. Okay. But if you compare 13:01:55

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what's in the cash flow schedule and what is on the balance sheet, the balance sheet says $139 million, the cash flow schedule says $35 million, correct? 13:01:57 13:01:59 13:02:01 13:02:05

A. Correct. 13:02:07

Again, we don't know what the breakout is. 13:02:11 13:02:14

Q. Well, we know what the breakout is according to the schedule prepared by the NFL? 13:02:16 13:02:18 13:02:20

A. Which only includes TV and Ventures. It doesn't include any other cash that might come in. 13:02:21 13:02:23 13:02:25

Q. Okay. But sitting here today you know that's not the reason why those numbers are wildly different? 13:02:27 13:02:28 13:02:31

A. Sitting today, probably not. But there could be something else in that number that's not on the sheet, just as to their -- 13:02:32 13:02:36 13:02:39 13:02:44

Q. But if -- if there is something else, it's not going to be the explanation for that huge difference, correct? 13:02:44 13:02:45 13:02:49 13:02:51

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A. Don't know. 13:02:56

Q. Well, you do know. 13:02:57

You do know that the explanation for the huge difference is that a significant portion of the receivable didn't belong on the books, correct? 13:02:58 13:02:59 13:03:03 13:03:05

A. As of now, correct. 13:03:09

Q. Okay. And putting yourself back where you were as the CFO of the Raiders preparing the 2018 and 2019 financial statements, you would have known what made up that receivable, correct? 13:03:10 13:03:12 13:03:15 13:03:18 13:03:19 13:03:20

A. Correct. 13:03:21

Q. Okay. So let's move onto another topic. 13:03:22 13:03:32

If you can go to Exhibit 3304. 13:03:33

(Arbitration Exhibit JX-3304 was referenced.) 13:03:37 13:03:48

Q. We looked at this this morning. And we compared the balance as of 3/31/17 to the balance in the unaudited financial statements that went to the bank with the same as of date. 13:03:48 13:03:50 13:03:54 13:03:57 13:03:59

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Do you recall that? 13:04:01

A. I do. 13:04:02

Q. Alright. So what I want to go through now is how you prepared the 2016 conforming schedules that included that receivable amount. 13:04:03 13:04:05 13:04:08 13:04:13

And, just to remind everyone, if you go to Schedule 3, "Statement of Assets, Liabilities and Net Worth," the Ventures revenue earned amount, which is the Ventures receivable, that amount is 13,189,000. 13:04:14 13:04:16 13:04:19 13:04:22 13:04:26 13:04:32

Do you see that? 13:04:33

A. I do. 13:04:33

Q. And the number in the unaudited financial statements that went to the bank was, I believe, around 83 million, correct? 13:04:37 13:04:38 13:04:40 13:04:42

A. Correct. 13:04:43

Q. Okay. So take a look, if you would, at Exhibit 2582. 13:04:43 13:04:48

(Arbitration Exhibit JX-2582 was referenced.) 13:04:52 13:05:07

Q. So flip to the second page of 13:05:07

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the exhibit. 13:05:09

A. Okay. 13:05:10

Q. Do you see there is an e-mail from Brad Firestone to you dated June 1, 2017, correct? 13:05:12 13:05:16 13:05:22

A. Correct. 13:05:23

Q. And in that e-mail, he's providing you with the remittance amount and the remittance amount that he provides you is $108,626,731, correct? 13:05:24 13:05:27 13:05:31 13:05:32

A. Correct. 13:05:39

Q. Alright. You're reaching out to Mr. Firestone to get this information so that you can prepare the conforming schedules that are going to the NFL, correct? 13:05:41 13:05:44 13:05:47 13:05:50 13:05:52

A. Correct. 13:05:53

Q. And, as we saw earlier, this is being done in June of 2017, correct? 13:05:54 13:05:56

A. Correct. 13:05:58

Q. Alright. So do you see there's handwriting on this page? 13:05:59 13:06:02

A. Yes. 13:06:04

Q. That is your handwriting, 13:06:04

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correct? 13:06:08

A. Correct. 13:06:08

Q. And what you've done is you've taken that remittance number that Mr. Firestone gave you, the $108,626,731, and you're about to do some math. 13:06:08 13:06:10 13:06:13 13:06:21

Do you see that? 13:06:23

A. I do. 13:06:24

Q. And if you look immediately below that amount in your handwriting, it says, "revenue per GM." 13:06:25 13:06:27 13:06:30

Do you see that? 13:06:32

A. Yes. 13:06:33

Q. And it shows an amount there of $26,278,312.50, correct? 13:06:34 13:06:36

A. Correct. 13:06:43

Q. So you've queried the Raiders general ledger and you've learned that the revenue that's already been booked on the GL is $26,278,312.50, correct? 13:06:43 13:06:47 13:06:51 13:06:53

A. Correct. 13:07:01

Q. Okay. And you know that that revenue relates to the remittance amount of $108,626,731, correct? 13:07:01 13:07:04 13:07:08

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A. Correct. 13:07:14

Q. The 26 million is included in the 108, correct? 13:07:14 13:07:16

A. Correct. So I tried to adjust to the conformed amounts. 13:07:18 13:07:20

Q. Well, let's talk about that. 13:07:23

A. Okay. 13:07:25

Q. What you've, actually, done here is you've taken the full remittance amount -- 13:07:25 13:07:27 13:07:30

A. Uh-huh. 13:07:31

Q. -- and you've subtracted the amount of the revenue that the Raiders have already recognized that is already included in that $108 million number, correct? 13:07:31 13:07:34 13:07:36 13:07:38 13:07:41

A. Correct. 13:07:41

Q. And what you get is you get a net number and the net number is $82,348,418.50, correct? 13:07:42 13:07:44 13:07:47

A. Correct. 13:07:54

Q. So you've taken the full remittance amount that covers the full year period, correct? 13:07:54 13:07:57 13:07:59

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A. Correct. 13:08:01

Q. So that's 12 months of revenue from the NFL to the Raiders for NFL Ventures, correct? 13:08:01 13:08:03 13:08:08

A. Correct. 13:08:11

Q. Alright. And what you've done is you've said to yourself, well, gees, we've already accrued one of those payments as revenue. That revenue is already on our books. So we have to back that out from the remittance number, correct? 13:08:12 13:08:13 13:08:18 13:08:21 13:08:24 13:08:27 13:08:28

A. Correct. But we saw -- I saw a number on the GL. So I was trying to get Brad Firestone's number. 13:08:32 13:08:34 13:08:36

Q. Well, it's not exactly what you're doing here. What you've done is you've taken Brad Firestone's number, which 108 million and you've looked at your own GL and you understood that of the 108 million, you've already recognized 26 million as revenue? 13:08:38 13:08:41 13:08:43 13:08:45 13:08:47 13:08:51 13:08:54

A. Correct. 13:08:56

Q. Okay. So you know that if 13:08:56

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you recognized that $26,278,312.50 a second time, you're going to be double-counting revenue? 13:08:59 13:09:06 13:09:08

A. I don't know if we thought about it at that time. We were just trying to get to their number. 13:09:11 13:09:13 13:09:15

Q. Well -- 13:09:15

A. To get to a number. 13:09:16

Q. -- you know you've recognized that amount as revenue, correct? 13:09:17 13:09:19

A. Correct. 13:09:21

Q. And you know that amount of revenue is, also, included in the remittance number of 108 million, correct? 13:09:22 13:09:23 13:09:25

A. Correct. 13:09:26

Q. So you know if you don't back it out, you're going to count it twice, correct? 13:09:27 13:09:28 13:09:31

A. Correct. 13:09:31

Q. Okay. So, in order not to count it twice, you back it out and book a net number, correct? 13:09:31 13:09:34 13:09:38

A. Correct. 13:09:39

Q. Okay. And the net number -- 13:09:41

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backing out the amount you've already recognized so you don't recognize it twice is $82,348,418.50, correct? 13:09:43 13:09:45 13:09:47

A. Correct. 13:09:53

Q. So you then prepare a journal entry. It's listed right below there, entry one. 13:09:54 13:09:56 13:09:58

Do you see that? 13:09:59

A. Yes. 13:10:00

Q. And that is a debit -- 13:10:00

A. Receivable. 13:10:05

Q. -- to AR and a credit to revenue, right? 13:10:06 13:10:08

A. Correct. 13:10:10

Q. So the 1250 account is the receivable account for Ventures, correct? 13:10:11 13:10:15

A. Correct. 13:10:17

Q. And when you debit that account by $82 million, you're increasing that amount by 82 million, correct? 13:10:18 13:10:19 13:10:23

A. Correct. 13:10:26

Q. And because of your double entry bookkeeping, you need to book a corresponding entry to that debit, 13:10:27 13:10:28 13:10:32

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correct? 13:10:35

A. What do you mean a "corresponding" debit. 13:10:40 13:10:41

Q. Well -- 13:10:43

A. If you're debiting the receivable, the 82, then you're saying that I'm going to do a corresponding debit? 13:10:43 13:10:45 13:10:48 13:10:51

Q. No, no, a "corresponding credit?" 13:10:51 13:10:54

A. Oh, okay. Sorry. 13:10:54

Q. So you just don't book the 82 million to the receivable account. The other half of the entry is a credit to the NFL Ventures revenue account, correct? 13:10:55 13:10:57 13:10:59 13:11:02 13:11:04

A. Correct. 13:11:07

Q. And that's the way the double entry book keeping works, you can't make a one-sided entry, correct? 13:11:07 13:11:09 13:11:12

A. Correct. 13:11:13

Q. Okay. So you booked a debit to the receivable account and you booked a credit to the NFL Ventures revenue 13:11:14 13:11:18 13:11:20

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account, correct? 13:11:24

A. Correct. 13:11:26

Q. And when you book a credit to a revenue account, you are increasing revenue by that amount, correct? 13:11:26 13:11:29 13:11:32

A. Correct. 13:11:34

Q. Alright. So, just to maybe boil it down. 13:11:34 13:11:38

You've increased the receivable by 82 million and you've increased or recognized revenue of 82 million, correct? 13:11:40 13:11:41 13:11:44

A. Correct. 13:11:46

Q. Okay. What you haven't done is you haven't recognized as the increase to the receivable the full amount of the remittance, which is 108 million, correct? 13:11:47 13:11:51 13:11:54 13:11:57

A. Say that one more time. 13:12:03

Q. Sure. 13:12:04

You didn't book a journal entry for a $108,626,731, you only booked the net amount, netting out the amount that had already been recognized? 13:12:05 13:12:09 13:12:15 13:12:18

A. Correct. 13:12:20

Q. Okay. And you did that to 13:12:20

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both the debit that went to the receivable account and the credit that went to the revenue account, correct? 13:12:23 13:12:27 13:12:29

A. Correct. 13:12:32

Q. Alright. So you're only increasing the receivable by the net amount, correct? 13:12:32 13:12:35 13:12:38

A. Correct. 13:12:42

Q. And you're only recognizing as revenue the net amount, correct? 13:12:42 13:12:44

A. Correct. 13:12:49

Q. And by doing it that way, by only booking the net amount, you are not overstating the receivable, correct? 13:12:50 13:12:52 13:12:55

A. Correct. 13:13:01

Q. And you're not overstating the revenue, correct? 13:13:02 13:13:03

A. Correct. 13:13:05

Q. But if you had booked the entire 108 million, you would be overstating the receivable, correct? 13:13:06 13:13:07 13:13:11

A. Correct. 13:13:15

Q. And you would be overstating the revenue, correct? 13:13:16 13:13:18

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A. Correct. 13:13:19

Q. And that's why you backed out the amount that had already been recognized by the Raiders so you wouldn't double-book the receivable and the revenue, correct? 13:13:20 13:13:23 13:13:25 13:13:28 13:13:31

A. We backed it out to try to get to the conformed amount, but that's correct. 13:13:33 13:13:35 13:13:37

Q. Well, there's nothing on this schedule, there's nothing in your math exercise that reflects the conformed amount, is there? 13:13:37 13:13:39 13:13:41 13:13:44

A. It depends what that number was on the conformed sheet. 13:13:50 13:13:51

Q. It was 13 million. 13:13:54

A. I was talking about the revenue part. Is it 108? 13:14:01 13:14:02

Q. Hold on. Let's go ahead and look at it; 3304. 13:14:06 13:14:08

(Arbitration Exhibit JX-3304 was referenced.) 13:14:10 13:14:19

Q. So you want to look at the revenue number? 13:14:19 13:14:20

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A. No, what I wanted to look at 13:14:23
was the sheet that the League provided. 13:14:25

Q. The revenue number was on the 13:15:00
conforming schedule, if you want to look 13:15:02
at that. 13:15:04

A. Yes. 13:15:04

Q. So it's Exhibit 3304 and it's 13:15:06
the first page. It's Schedule 1. 13:15:10

Are you there? 13:15:23

A. I am. 13:15:24

Q. So you see that the NFL 13:15:24
Ventures revenue number according to the 13:15:27
NFL, is 111,477,000? Do you see that? 13:15:29

A. Yes. 13:15:38

Q. Okay. So now go back to your 13:15:39
journal entry. 13:15:41

A. Okay. 13:15:43

Q. When you set about to create 13:15:44
an entry to book the remittance for 13:15:47
purposes of the conforming statements, 13:15:50
you took two things. You took the 13:15:52
remittance number that Brad Firestone 13:15:55
gave you of 108 million and the revenue 13:15:57
that was already recorded in the Raiders 13:15:59

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GL and you subtracted the one from the other to get a net number, correct? 13:16:02 13:16:05

A. Correct. 13:16:08

Q. And that's what you booked? 13:16:08

A. That's what I booked to get to Brad's number. 13:16:10 13:16:11

Q. Alright. So, when you're doing your math to create a journal entry, that $111 million number that's in the conforming statements, that number doesn't appear anywhere on this sheet, does it? 13:16:13 13:16:14 13:16:17 13:16:20 13:16:22 13:16:24

A. The 111? 13:16:26

Q. Yes. 13:16:28

A. If you add the 1-0 -- you would probably have to add some of these numbers. What's 108622 and the 9991, the films? I don't know what -- to me that was grouped. 13:16:28 13:16:31 13:16:33 13:16:37 13:16:41

Q. Let me ask you this this way, Mr. Villanueva. 13:16:42 13:16:44

When you, actually, did math to make the journal entry, the two line items that you, like, wrote out in your 13:16:45 13:16:47 13:16:49

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own handwriting are the remittance number 13:16:52
and the revenue number and you took a net 13:16:53
number, correct? That's the only math 13:16:55
you're doing -- 13:16:59

A. Correct, correct. 13:16:59

Q. Okay. And you knew by 13:17:00
netting the amount out that had already 13:17:03
been recognized by the Raiders as 13:17:06
revenue, that that would make it so that 13:17:08
you would not be double-counting revenue, 13:17:11
correct? 13:17:14

A. Correct. 13:17:17

Q. Okay. So now let's go to 13:17:17
Exhibit 3298. 13:17:26

(Arbitration Exhibit JX-3298 13:17:27
was referenced.) 13:17:45

Q. So this is the same exercise 13:17:45
for a different year, correct? 13:17:47

A. Correct. 13:17:49

Q. And is this also your 13:17:49
handwriting? 13:17:50

A. That's my handwriting. 13:17:51

Q. Alright. So, once again, you 13:17:52
receive an e-mail from Brad Firestone, 13:17:54

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correct? 13:17:57
A. Yes. 13:17:58
Q. And, I'm sorry, I should have 13:17:59 asked. 13:18:01
This is in connection with preparing 13:18:01 the conforming statements for the 2016 13:18:04 NFL season, correct -- for 2015 NFL 13:18:09 season, excuse me? 13:18:17
A. That would be correct. 13:18:18
Q. Yeah, okay. 13:18:19
But it's for the conforming 13:18:20 statements, correct? 13:18:22
A. Yes. 13:18:22
Q. Alright. So you've, again, 13:18:22 received an e-mail from Mr. Firestone. 13:18:25
He tells you the remittance number 13:18:27 is $100,840,205, correct? 13:18:30
A. Correct. 13:18:35
Q. And if you just look over to 13:18:35 the right-hand side of the document, 13:18:38 you've taken that number and you've 13:18:40 queried your general ledger and you 13:18:42 realize that of that $100,840,205, the 13:18:45 Raiders have already recognized as 13:18:51

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revenue $18,864,406, correct? 13:18:53
A. Okay. Correct. 13:19:00
Q. And what you do is you 13:19:01
subtract the amount that's already been 13:19:02
recognized as revenue from the amount of 13:19:05
the remittance and you get a net number, 13:19:07
correct? 13:19:09
A. Correct. 13:19:10
Q. And you do that so you're not 13:19:10
double-counting the $18,864,406, correct? 13:19:12
A. Correct. 13:19:19
Q. And you know that if you 13:19:20
don't net it, you will be double-counting 13:19:22
that revenue, correct? 13:19:24
A. I don't know if that was -- 13:19:33
THE STENOGRAPHER: I'm sorry. 13:19:33
I can't hear you, sir. 13:19:34
A. I don't know if that was the 13:19:37
thought process, but we were trying to 13:19:39
get to his number -- 13:19:40
Q. Well -- 13:19:42
A. -- of the 100. 13:19:44
Q. Well, you're not "trying to 13:19:45
get" to the number, because the number is 13:19:46

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up there. 13:19:48

The $100,840,205 is the number that you're subtracting from, right? 13:19:49 13:19:54

A. Correct. 13:19:56

Q. Okay. So you're talking the number that he gave you and you're not simply booking that number as a receivable or as revenue, correct? 13:19:57 13:19:59 13:20:02 13:20:04

A. Correct. 13:20:06

Q. You're, actually, going to your own general ledger figuring out out of that number how much have we already booked, correct? 13:20:07 13:20:08 13:20:11 13:20:13

A. Correct. 13:20:16

Q. And you, Ed Villanueva, decided that in order to book this entry, you needed to back out the amount of revenue that had already been recognized by the Raiders, correct? 13:20:16 13:20:20 13:20:23 13:20:26 13:20:28

A. Correct. 13:20:31

Q. And then you booked the net number $81,975,799, correct? 13:20:31 13:20:34

A. Correct. 13:20:39

Q. And you hand wrote out a 13:20:40

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journal entry that debits the receivable 13:20:43
by that amount and credits revenue by 13:20:47
that amount, correct? 13:20:49
A. Correct. 13:20:51
Q. And by doing it that way, you 13:20:51
ensured that the financial statements 13:20:54
that went to the NFL did not double count 13:20:56
revenue, correct? 13:20:59
A. Correct. 13:21:01
Q. And every single year that 13:21:02
you prepared the conforming statements, 13:21:06
you made sure that the revenue from NFL 13:21:09
Ventures was not double-counted, correct? 13:21:14
A. I made sure that the number 13:21:16
for conforming agreed to the conformed 13:21:18
amounts or whatever Brad told me to the 13:21:21
agreed amounts to. 13:21:24
Q. And the way you did that 13:21:24
every single year was by going back to 13:21:26
your GL looking at how much you had 13:21:30
already recognized and backing that out 13:21:32
of the remittance to get to the correct 13:21:34
journal entry, correct? 13:21:39
A. Correct. Going back to see 13:21:40

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what the number was and to adjust to it 13:21:41
to get to Brad's number. You're correct. 13:21:44

Q. Well, again, you're math 13:21:50
doesn't suggest that that's what you're 13:21:52
doing. 13:21:54

But if that is what you're doing, 13:21:54
you're doing it because the NFL has told 13:21:58
you that is what the receivable is, 13:22:00
correct? 13:22:02

A. What the remittance was, 13:22:03
correct. 13:22:04

Q. Well, it's what the 13:22:05
receivable was as of 3/31, in this case, 13:22:06
2015. 13:22:11

A. For that period, correct. 13:22:11

Q. Okay. So the NFL has told 13:22:12
you what the number is, what the correct 13:22:14
number is. 13:22:15

And you're creating a journal entry 13:22:17
that gets your receivable to the correct 13:22:20
number that is going to go to the NFL, 13:22:23
right? 13:22:26

A. I was more thinking about the 13:22:28
revenue at the time but, correct. 13:22:29

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Q. Well -- 13:22:31
A. Well, it's an offsetting -- because the conforming statement is more revenue for us or what we're reporting. 13:22:32 13:22:35 13:22:37
But if you say it's the receivable, okay, we're booking the receivable. 13:22:39 13:22:42
Q. Well, the revenue and the receivable are different sizes in the same journal entry, correct? 13:22:44 13:22:46 13:22:48
A. Correct. 13:22:49
Q. And every year that you did this, you realized that the way to get to the NFL's number was to back out the amount that the Raiders have already accrued, correct? 13:22:52 13:22:54 13:22:58 13:23:02 13:23:05
A. Correct. 13:23:06
Q. So let's go to JX-3301. 13:23:13
(Arbitration Exhibit JX-3301 was referenced.) 13:23:16 13:23:26
Q. This is the entry that's being prepared for the 2018 conforming schedules? 13:23:26 13:23:28 13:23:34
A. Yes. 13:23:34
Q. And the handwriting on this 13:23:36

sheet is not yours, correct? 13:23:37
A. Correct. 13:23:41
Q. It's Matt Andrus's? 13:23:41
A. It could be. 13:23:44
Q. Okay. He was the controller 13:23:46
at the time, correct? 13:23:47
A. Correct. 13:23:50
Q. And you can see he's done the 13:23:50
same thing that you did in the prior two 13:23:51
years we looked at. He takes the full 13:23:55
remittance amount. He looks to see what 13:23:57
had already been booked on the GL and he 13:24:00
backs that amount to get to a net number, 13:24:02
correct? 13:24:05
A. Correct. 13:24:05
Q. And then he prepares a 13:24:06
journal entry that debits the receivable 13:24:07
with that net number and credits revenue 13:24:11
with the net number, correct? 13:24:14
A. Correct. 13:24:16
Q. And you were the person who 13:24:16
instructed Matt Andrus how to make these 13:24:18
entries, correct? 13:24:20
A. Well, he probably followed 13:24:29

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the year before. But I probably just 13:24:30
told him do what -- maybe. 13:24:33

Q. Well, he either learned it 13:24:36
from you or he learned it from how you 13:24:38
had done it previously, correct? 13:24:40

A. Correct. 13:24:42

Q. So now flip to the next page. 13:24:42

A. (The witness complies.) 13:24:45

Q. Do you see that there's a 13:24:48
general ledger query for the Ventures 13:24:57
revenue that totals $28,677,343.75? Do 13:25:05
you see that? 13:25:12

A. Okay. 13:25:12

Q. Well, do you see it? 13:25:13

A. I do. 13:25:14

Q. Okay. And if you look back 13:25:15
at the first page of the exhibit, that's 13:25:18
the amount that he's backing out, correct? 13:25:20

A. Correct. 13:25:25

Q. Alright. So, as we 13:25:26
discussed, the way this worked is either 13:25:29
you or he, in this case, have looked at 13:25:31
what's already on the books of the 13:25:33
Raiders as a credit to revenue and in 13:25:37

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this instance he's backing that out of the remittance number, correct? 13:25:41 13:25:43

A. Correct. 13:25:50

Q. Okay. So you see on the first page of the exhibit, there's a handwritten journal entry to book the receivable and the revenue, correct? 13:25:51 13:25:54 13:25:56 13:25:59

A. Correct. 13:26:01

Q. And if you look at the third page of the exhibit, do you see the actual journal entry? 13:26:01 13:26:02 13:26:04

A. Yes. 13:26:11

Q. So it's a debit to the receivable and a credit to revenue. 13:26:12 13:26:16

Do you see that? 13:26:21

A. Yes. 13:26:23

Q. And it's the net amount, correct? 13:26:24 13:26:26

A. Correct. 13:26:31

Q. Okay. So now let's go to Exhibit 3302. 13:26:34 13:26:37

(Arbitration Exhibit JX-3302 was referenced.) 13:26:40 13:26:49

Q. You see this is another 13:26:49

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journal entry? 13:26:51

A. Yes. 13:26:52

Q. This is a journal entry that was done for purposes of the yearend financial statements, correct? 13:26:53 13:26:57 13:27:01

A. It has action date 8/31. 13:27:12

Sorry. This was a new accounting software. So I need to -- 13:27:15 13:27:17

Q. Sure. 13:27:18

This is from the Great Plains System? 13:27:19 13:27:21

A. I didn't know how to work it. So I need to look at it. 13:27:21 13:27:23

Yes, to book the remittance. 13:27:32

Q. Alright. Now, here when the Raiders are preparing their yearend financial statements and they're booking the remittance, they are booking or you are booking the full amount of the remittance? 13:27:34 13:27:38 13:27:40 13:27:43 13:27:45 13:27:48

A. It wasn't me. 13:27:51

Q. Okay. 13:27:52

A. I mean, someone on my team. Because I didn't know how to use this 13:27:52 13:27:55

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software so... 13:27:56

Q. Matt Andrus is booking the full amount of the remittance, correct? 13:27:58 13:28:00

A. Correct. 13:28:03

Q. So he's booking the exact same remittance that he booked for purposes of the conforming statements only when he's done it for the yearend financial and he hasn't backed out the amount that's already on the GL, correct? 13:28:03 13:28:08 13:28:10 13:28:14 13:28:18 13:28:21

A. Correct. 13:28:35

Q. So, if you compare the last page of Exhibit 3301, there the Raiders have booked -- Mr. Andrus has booked the net amount and not the full remittance amount. 13:28:35 13:28:37 13:28:41 13:28:44 13:28:47

And then if you look at 3302, he's booking the same remittance only here he's booking it for the yearend financial statements and he's booked the full amount of the remittance and not the net amount, correct? 13:28:47 13:28:51 13:28:53 13:28:57 13:28:57 13:28:59

A. Correct. 13:29:00

Q. And every year including when 13:29:01

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you were making these entries, when you booked the remittance for purposes of the yearend financials, you booked the full remittance amount, correct? 13:29:03 13:29:05 13:29:08 13:29:10

A. Correct. 13:29:13

Q. And every year when you booked the remittance, the same remittance for purposes of conforming schedules, you did not book the full remittance amount, you booked a net amount, correct? 13:29:14 13:29:16 13:29:18 13:29:21 13:29:23 13:29:25

A. Correct. 13:29:29

Q. So you did it -- 13:29:30

A. Yeah, I need to think about it real quick. 13:29:32 13:29:34

Can you hold off a minute? 13:29:35

Q. Yeah, sure. 13:29:36

MR. BICKERMAN: Counsel, while he's pulling it up. 13:29:40 13:29:40

These numbers are just slightly different? 13:29:41 13:29:41

MR. FARINA: They're actually booking it a year later and they get the remittance twice. They 13:29:42 13:29:44 13:29:46

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get a preliminary number and a final number. So sometimes there's slight variances between the two. 13:29:48 13:29:50 13:29:52

MR. BICKERMAN: That's what I thought. 13:29:55 13:29:56

A. Okay, I just need to think about it. So go ahead. 13:29:58 13:29:59

Q. Okay. So every year when the Raiders book the remittance for purposes of the yearend financial statements, the Raiders book the full amount of the remittance, correct? 13:30:00 13:30:06 13:30:10 13:30:12 13:30:14

A. Correct. 13:30:15

Q. And every year when the Raiders booked the remittance for purposes of the conforming schedules that would go to the NFL, the Raiders did not book the full remittance amount, correct? 13:30:16 13:30:18 13:30:20 13:30:22 13:30:25

A. Correct. 13:30:27

Q. The Raiders backed out the amount of revenue that had already been recognized by the Raiders so they would not double-book the revenue, correct? 13:30:28 13:30:31 13:30:33 13:30:35

A. Correct. 13:30:37

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Q. And that is why the conforming statements were always right and the yearend financial statements were always wrong, correct? 13:30:38 13:30:40 13:30:43 13:30:45

A. Correct. 13:30:51

Q. Let's go back to the origin of the accrual. 13:30:56 13:30:59

So Ms. Brown showed you Exhibit 0211. I'm going ask you to go back to that. 13:31:02 13:31:08 13:31:13

(Arbitration Exhibit JX-0211 was referenced.) 13:31:14 13:31:19

Q. So I can find it myself. 13:31:19

THE CHAIRPERSON: It's in this morning's book? 13:31:28 13:31:30

MR. FARINA: It is. 13:31:30

Q. Do you have it Mr. Villanueva? 13:31:36

A. I do. 13:31:38

Q. Can you flip to the e-mail exchange that you had with Michael Feeley? 13:31:39 13:31:42

A. Okay. 13:31:44

Q. Page 5 of the exhibit. 13:31:45

So you're reaching out to Mr. Feeley at the NFL because you're 13:31:56 13:31:59

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trying to figure out if you can accrue the January payment into income as of December 31 of the prior year, correct? 13:32:01 13:32:05 13:32:10

A. Correct. 13:32:12

Q. And you testified this morning the reason why you were looking to do the accrual is that Raiders were otherwise not going to meet the covenant, correct? 13:32:14 13:32:15 13:32:17 13:32:20 13:32:22

A. Correct. 13:32:22

Q. Alright. So you've raised it with Mr. Feeley and you've asked him, is it safe to say that the January Ventures distribution is for services provided before December 31, 2006, correct? 13:32:22 13:32:24 13:32:27 13:32:29 13:32:32

A. Correct. 13:32:35

Q. And you're thinking there is if it's actually already been earned, then maybe we can recognize it as revenue, correct? 13:32:36 13:32:38 13:32:42 13:32:43

A. Correct. 13:32:46

THE STENOGRAPHER: I'm sorry. You said 2006, is that what you meant? 13:32:49 13:32:50 13:32:51

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MR. FARINA: I did. 13:32:54

THE STENOGRAPHER: Okay, sorry. Thank you. 13:32:54 13:32:56

Q. And Mr. Feeley responds to you and then you write back to Mr. Feeley and you write, "I agree that the January 2007 distribution is for pre-12/31/2006 activity," correct? 13:32:56 13:32:58 13:33:02 13:33:06 13:33:11

A. Correct. 13:33:13

Q. Alright. So, if the money is already been earned, you can recognize it as revenue, right? 13:33:13 13:33:15 13:33:19

A. Correct. 13:33:21

Q. And, in fact, if the money has already been earned, you need to recognize it as revenue, correct? 13:33:21 13:33:23 13:33:26

A. Correct. 13:33:28

Q. Alright. So Mr. Feeley gives you the green light and you go ahead and make the accrual, correct? 13:33:29 13:33:32 13:33:34

A. Correct. 13:33:36

Q. So now let's go to Exhibit 3306, which is in the other book, the book that we gave you. 13:33:37 13:33:39 13:33:42

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(Arbitration Exhibit JX-3306 was referenced.) 13:33:44 13:34:00
Q. So the e-mail that you had with Mr. Feeley was in December -- I'm sorry. 13:34:00 13:34:02 13:34:07
The exchange that you had with Mr. Feeley was at the end of '06 and the beginning of '07, correct? 13:34:07 13:34:09 13:34:11
A. Correct. 13:34:15
Q. And what you're doing is you're trying to decide whether you can book revenue into 2006 for purposes of the 2006 financial statements, correct? 13:34:16 13:34:18 13:34:23 13:34:26
A. Correct. 13:34:29
Q. So now this next exchange reflected in Exhibit 3306, that's another e-mail exchange you had with the NFL, this time with Brad Firestone and it's a little more than two years later, correct? 13:34:29 13:34:32 13:34:37 13:34:39 13:34:42
A. Correct. 13:34:45
Q. Alright. So, in March of 2009, you're working on the 2008 financial statements, correct? 13:34:45 13:34:50 13:34:53
A. Correct. 13:34:55

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Q. Now, in 2008, the Raiders did not have any financial covenants that required them to maintain a debt coverage ratio, correct? 13:34:57 13:35:06 13:35:08 13:35:12

A. I'm not a hundred percent sure. 13:35:13 13:35:14

Q. Okay. Do you recall that there was a year between 2006 through 2020 where for one year the Raiders did not have a debt coverage ratio covenant? 13:35:14 13:35:17 13:35:21 13:35:27

A. I do remember there was like one year within that period. 13:35:29 13:35:31

Q. Well, and the one year was 2008, wasn't it? 13:35:33 13:35:35

A. If you say so. 13:35:38

Q. Okay. So, when you're preparing your financial statements for 2008, you, again, reach out to the NFL to talk to them about the January accrual, right? 13:35:39 13:35:41 13:35:44 13:35:47 13:35:50

A. Correct. 13:35:50

Q. So you write to Mr. Firestone. You didn't write to Mr. Feeley. 13:35:51 13:35:54

Is there a reason why you didn't go 13:35:56

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back to Mr. Feeley? 13:35:57

A. I think Firestone probably took over. 13:35:59 13:36:00

Q. Isn't Feeley still at the NFL? 13:36:00

A. I don't think Feeley is at the NFL. But, I mean -- 13:36:02 13:36:03

Q. In 2009? 13:36:05

A. Oh, he was there. 13:36:06

I'm talking about Brad Firestone. I think he took over Ventures, all the tax stuff. 13:36:07 13:36:10 13:36:14

Q. Okay. But when you're preparing the 2006 financial statements, you talked to Mr. Feeley, correct? 13:36:15 13:36:18 13:36:20

A. Correct. 13:36:22

Q. Or corresponded with him? 13:36:23

A. Yes. 13:36:25

Q. And then two years later, you're corresponding with Mr. Firestone instead of Mr. Feeley? 13:36:25 13:36:27 13:36:29

A. Correct. 13:36:30

Q. And with Mr. Firestone you wrote -- and I'm referring to the e-mail from 2:27 on Monday, March 16, 2009. 13:36:30 13:36:34 13:36:36

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Are you there? 13:36:41

A. I am. 13:36:45

Q. It's at the bottom of the page. 13:36:45 13:36:47

A. Okay, yes. 13:36:47

Q. You write, "Would I have a good argument if I said the" -- I'm sorry. Let me start over. 13:36:48 13:36:51 13:36:54

"Would I have a good argument if I said the 10.7 million Venture distribution that we got in January is not for activity not earned in 2008 calendar year. I don't want to include it in income for the 2008 calendar year." 13:36:55 13:36:59 13:37:03 13:37:06 13:37:13 13:37:14

Do you see that? 13:37:19

A. I do. 13:37:20

Q. Alright. So two years after you had the e-mail exchange with Mr. Feeley, arguing to Mr. Feeley why it should be income as of December 31, you have another e-mail exchange with a different person at the NFL where you were taking the opposite position that you took previously, correct? 13:37:20 13:37:23 13:37:25 13:37:28 13:37:32 13:37:35 13:37:37 13:37:38

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A. Correct. 13:37:41

Q. Okay. And he actually says, "Well, probably not." So he's saying that probably isn't the right answer. 13:37:42 13:37:45 13:37:48

And then you push back on Mr. Firestone and you write in an e-mail at 4:46 p.m. on March 16th, "Yes, but it would be difficult to try to determine how much pertains to one year to the next." 13:37:50 13:37:53 13:37:56 13:38:01 13:38:04 13:38:07

Do you see that? 13:38:08

A. Okay. 13:38:09

Q. Alright. And then you point out at the very end you say, "We could not go to the NFL and ask for that money on December 31, 2008," right? 13:38:10 13:38:11 13:38:15 13:38:18

A. Yes. 13:38:20

Q. So you're saying if I can't make the NFL give me the money in December, then maybe I don't have to recognize it as income? 13:38:21 13:38:22 13:38:24 13:38:27

A. Correct. I mean, you got to do whatever you can to try to figure out if you can do something. You got to try 13:38:28 13:38:31 13:38:33

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to justify what you're doing. So this is 13:38:35
what I was doing with Brad just 13:38:38
brainstorming with him, can we do this. 13:38:41
Q. But you understood at the 13:38:44
time that when you're brainstorming 13:38:45
you're taking the exact opposite position 13:38:48
that you took with the NFL and in your 13:38:51
financial statements just two years 13:38:56
earlier? 13:38:58
A. If it was earned in that 13:39:01
year, of course, you would take it into 13:39:03
that year, correct. 13:39:05
So I was asking the question, was 13:39:07
it earned that year, trying to figure out 13:39:09
if it was or if it wasn't. 13:39:12
Q. Alright. The reason why 13:39:17
you're taking the opposite position in 13:39:21
connection with the 2008 financial 13:39:24
statements is that you actually don't 13:39:27
want to recognize the revenue in 2008, 13:39:28
correct? 13:39:30
A. Probably. 13:39:31
Q. Well, you said it. 13:39:32
A. Okay. 13:39:33

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Q. You said, I don't want to include it in income. 13:39:34 13:39:35

A. Correct. 13:39:36

Q. And the reason why you didn't want to include it in income is you didn't need it to meet a covenant because you didn't have a covenant, correct? 13:39:36 13:39:38 13:39:40 13:39:42

A. Correct. 13:39:43

Q. You wanted to save it for the next year when you might have a covenant again? 13:39:44 13:39:45 13:39:48

A. If we could justify it. 13:39:48

Q. Okay. Mr. Villanueva, at this point, you're the Controller for the Raiders, you're responsible for the Raiders accounting, correct? 13:39:50 13:39:53 13:39:55 13:39:57

A. Correct. 13:39:59

Q. And you understanding the accounting rules need to be applied on a principle basis, correct? 13:39:59 13:40:01 13:40:03

A. Correct. 13:40:04

Q. And you understand that the accounting rules need to be applied on a consistent basis, correct? 13:40:04 13:40:06 13:40:08

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A. For tax -- oh, correct. 13:40:10

Q. So, even if there's some judgment involved, just assume that there is some judgment involved as to whether or not you take an amount into income in December, if it's going to be paid in January, once you've taken that position, you're required to apply that position consistently, aren't you? 13:40:12 13:40:13 13:40:15 13:40:18 13:40:21 13:40:22 13:40:25 13:40:29

A. I probably would disagree with that, because if the things change, if it wasn't earned -- if he came up to see me and said, Mr. Villanueva -- Ed, it doesn't belong in that year, it wasn't earned in that year, then I'm not going to put it in that year. 13:40:32 13:40:34 13:40:36 13:40:39 13:40:42 13:40:44 13:40:46

Q. Mr. Villanueva, the only thing that's changed is that in 2008 you don't want to take it into income and in 2006 you did. 13:40:48 13:40:49 13:40:53 13:40:56

A. Well, that's why I had to inquire about it to see if there was a change. If I didn't say it -- I wouldn't be doing my job if I didn't inquire to 13:40:57 13:40:59 13:41:01 13:41:04

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make sure we can do something or not. 13:41:06

Q. Well, the other thing you changed is you went to a different person than you did two years ago? 13:41:08 13:41:09 13:41:11

A. You're saying I went to a different person but maybe that person took control of that -- of Ventures. 13:41:13 13:41:15 13:41:16

You got to look at when Brad Firestone started and how they split the positions. I could easily have went -- Brad -- 13:41:20 13:41:21 13:41:24 13:41:27

Q. Did you tell Mr. Firestone that you had asked the exact same question to Mr. Feeley just two years earlier and had made the opposite argument to Mr. Feeley and had done the opposite accounting? 13:41:27 13:41:28 13:41:30 13:41:33 13:41:35 13:41:38

A. No, I didn't -- I don't remember. 13:41:39 13:41:42

Q. Well, it's not reflected in your e-mail exchange. 13:41:42 13:41:43

A. Okay. 13:41:44

Q. Alright. So -- 13:41:45

A. But please figure out when he 13:41:47

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started. And I'm pretty sure that he took over. And it's not like I jumped to, oh, Feeley is not going to let me do it, now I got jump over to Brad. And that wasn't the case. 13:41:48 13:41:50 13:41:55 13:41:58 13:42:01

Q. Okay. So he writes, "Just remembered, I think your best argument is that since Ventures distributions, typically, approximate earnings in the prior quarter and are relatively close in time when they are earned, you can pick up the income when cash is received." 13:42:02 13:42:04 13:42:08 13:42:10 13:42:12 13:42:14 13:42:16

So he then goes on to say, "This is your best story." 13:42:20 13:42:23

Do you see that? 13:42:24

A. Okay. 13:42:25

Q. That's the last thing he writes in his e-mail. 13:42:26 13:42:27

A. Okay. 13:42:29

Q. Alright. So, based on that, you decided that in 2008 you would not recognize the January accrual, correct? 13:42:29 13:42:32 13:42:36

A. I didn't, yes. 13:42:42

Q. Okay. And, in fact, the 13:42:45

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Raiders had already booked the accrual at 13:42:46 the time you had this e-mail exchange and 13:42:48 the Raiders went in and reversed the 13:42:50 accrual; isn't that right? 13:42:53

A. I don't remember. 13:42:55

Q. Okay. So no covenant. If 13:42:56 you go to the NFL, you decide that your 13:43:00 best story is that you don't need to 13:43:02 record as revenue. But for every year 13:43:05 after that, from 2009 all the way through 13:43:08 to 2019, you flipped back and reverted to 13:43:13 the position that the appropriate 13:43:17 accounting treatment was to recognize -- 13:43:19

A. It was only that one year in 13:43:21 how many years, 18 -- 13:43:23

Q. 14 years. 13:43:25

A. 14 years and we did it just 13:43:25 that one year. 13:43:27

Q. Just once. 13:43:28

A. And we're trying to -- and we 13:43:29 did try to justify it with the people at 13:43:30 the League to try to get an understanding 13:43:33 if we could or couldn't. 13:43:34

Q. So, Mr. Villanueva, is it 13:43:36

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your position as the Controller of the 13:43:38
Raiders that if someone else tells you 13:43:42
that something is okay or that you have a 13:43:44
good argument and you know that it's 13:43:47
wrong, you know that it's wrong, but 13:43:50
someone else has said it's okay, do you 13:43:51
think it's okay for the Raiders to issue 13:43:54
financial statements that reflect an 13:43:56
accounting position that you don't 13:43:58
believe is correct? 13:43:59

A. If I knew it was wrong, then 13:44:00
it wouldn't be posted. 13:44:02

Q. Okay. Did the Raiders record 13:44:04
accruals of payments, other than the 13:44:19
January payment? 13:44:21

A. For Ventures or for any -- 13:44:24

Q. For Ventures. 13:44:27

A. I think that was only accrual 13:44:27
except for when we received the actual 13:44:29
remittance. 13:44:31

Q. Okay. So let's take a look 13:44:31
at Exhibit 3305. 13:44:35

(Arbitration Exhibit JX-3305 13:44:37
was referenced.) 13:44:49

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A. "Structured by," correct? 13:44:49
Q. Yes, sir. 13:44:51
A. Okay. 13:44:58
Q. This is an e-mail exchange that you had with Mr. Badain, correct? 13:44:59 13:45:00
A. Yes. 13:45:06
Q. I'd like you to focus on the e-mail in the middle of the page. 13:45:07 13:45:10
A. Okay. 13:45:12
Q. And it says, "On June 7, 2017 at 6:54 a.m. Ed Villanueva wrote." 13:45:12 13:45:17
And you see that that is an e-mail that's going to Mr. Badain? 13:45:21 13:45:24
A. Okay. 13:45:25
Q. So look at the second numbered paragraph. 13:45:26 13:45:27
A. Okay. 13:45:28
Q. If you look at the second sentence in that paragraph, you're telling Mr. Badain, "I still have to submit the first order financial statements that was due on Monday." 13:45:34 13:45:35 13:45:38 13:45:41 13:45:44
Do you see that? 13:45:46
A. Yes. 13:45:49

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Q. And the next sentence you 13:45:51
wrote, "I told Angel she will get it 13:45:55
today, which she is okay with." 13:45:58
Do you see that? 13:46:00
A. Yes. 13:46:01
Q. And Angel is at the Bank of 13:46:01
America, correct? 13:46:04
A. Correct. 13:46:04
Q. And then you wrote, "It 13:46:05
looked like we were going to have a big 13:46:07
loss where we would not meet our numbers. 13:46:10
So I made an executive decision to accrue 13:46:14
April's 2017 TV and Ventures money," 13:46:19
correct? 13:46:22
A. Correct. 13:46:23
Q. And you're telling Mr. Badain 13:46:23
that you made that decision, correct? 13:46:25
A. Correct. Because it was 13:46:26
consistent with the way we did the 13:46:28
yearend and the way we did every other 13:46:30
quarter. 13:46:33
Q. And the reason that you made 13:46:34
that particular accrual is because 13:46:35
without the accrual, you were not going 13:46:37

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to be able to meet your debt covenant, correct? 13:46:39 13:46:41

A. Correct. 13:46:46

Q. In fact, you said that by making that accrual that will get us over where we need to be." 13:46:47 13:46:49 13:46:52

Do you see that? 13:46:55

A. Yes. But it was consistent with what we were doing at the yearend and for every quarter by accruing that payment. 13:46:56 13:46:59 13:47:02 13:47:05

Q. So it was consistent? 13:47:06

A. It was consistent. 13:47:08

Q. Okay. 13:47:09

A. You can look at the yearend, we consistently accrued the January into December. For March, we accrued the April into March. I'm sure every quarter you could take a look and I bet we see the same accrual. 13:47:10 13:47:12 13:47:15 13:47:17 13:47:21 13:47:24

Q. So maybe you should read the last sentence in your e-mail to Mr. Badain. 13:47:25 13:47:27 13:47:28

A. Okay. 13:47:29

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Q. Why don't you read it out loud. 13:47:30 13:47:32
A. "I adjusted the 2016 column" -- 13:47:32 13:47:35
Q. No. 13:47:35
A. -- "to actual"? 13:47:36
Q. No. 13:47:36
So it's the second numbered paragraph that begins, "I will find the updated and e-mail it to you." 13:47:37 13:47:38 13:47:40
Do you see that? 13:47:43
A. I do. 13:47:44
Q. And look at the very last sentence in that that paragraph. 13:47:45 13:47:47
A. "We did not have to accrue last year." 13:47:48 13:47:50
Q. Okay. So you accrued the April payment in 2017, because it looked like you were going to have a big loss. So you made an executive decision. It doesn't say, I did what we always do. 13:47:51 13:47:55 13:48:00 13:48:02 13:48:04
It says, "it looked like we were going to have a big loss and we would not meet our numbers. So Ed Villanueva 13:48:06 13:48:09 13:48:11

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decided to accrue the April TV and Ventures money." 13:48:13 13:48:15

And then you're telling Mr. Badain that, "That will get us over where we need to be." 13:48:16 13:48:18 13:48:20

And then the last thing you say to Mr. Badain is, "We did not have to accrue last year." 13:48:21 13:48:23 13:48:25

So you're not taking a consistent accounting position, you're taking the position that it is determined by your need to recognize revenue to meet the covenant; isn't that true? 13:48:27 13:48:29 13:48:31 13:48:33 13:48:36

A. If you justify doing it, we did it. 13:48:40 13:48:43

Q. As long as someone doesn't tell you something is wrong, if it served the ends that you needed, namely, being in the covenant, you did it? 13:48:43 13:48:45 13:48:48 13:48:52

A. We did it if we could justify it. 13:48:58 13:49:00

Q. Well, the only justification that is reflected in your e-mail to Mr. Badain is that you need it this year 13:49:01 13:49:03 13:49:06

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and you didn't need it last year, correct? 13:49:09 13:49:10

A. I think if you look at every quarter and every year after, we did do the accrual. Maybe it was just that one year where we didn't do it. 13:49:11 13:49:13 13:49:15 13:49:17

MR. FARINA: I'm going to move on to another topic, if this is a good breaking point or I can keep going. 13:49:37 13:49:38 13:49:40 13:49:42

THE CHAIRPERSON: Sure. We can take a 10-minute recess. 13:49:42 13:49:43

And how long do you think you have now? 13:49:45 13:49:47

MR. FARINA: I am plugging along. I have a seven-page outline and I am starting Page 5. 13:49:47 13:49:49 13:49:51

(Recess taken 1:51 to p.m.) 13:50:02

THE CHAIRPERSON: Alright. We can go back on the record wherever you are. 14:08:15 14:08:16 14:08:18

THE STENOGRAPHER: I'm here. 14:08:19

BY MR. FARINA: 14:08:35

Q. Mr. Villanueva, each year the 14:08:35

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Raiders provided conforming statements to the NFL, correct? 14:08:38 14:08:42

A. Correct. 14:08:44

Q. And when the Raiders provided the conforming statements, they also provided the yearend financial statements, correct? 14:08:44 14:08:46 14:08:48 14:08:50

A. Correct. 14:08:51

Q. And in virtually every year from 2010 through 2019, the NFL would come back with questions, correct? 14:08:51 14:08:55 14:09:00

A. Correct. 14:09:02

Q. Alright. And, in fact, in one year, the NFL's auditor Deloitte came back with questions, correct? 14:09:03 14:09:04 14:09:08

A. Correct. 14:09:11

Q. Alright. And one thing that they asked about in virtually every single year was the discrepancy in the revenue line item between the yearend financial statements and the conforming schedules, correct? 14:09:11 14:09:14 14:09:17 14:09:20 14:09:24 14:09:27

A. Correct. 14:09:28

Q. Alright. And in every year 14:09:28

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that the NFL or the NFL's auditor raised those questions, you were the person who responded, correct? 14:09:31 14:09:35 14:09:37
A. I believe so. 14:09:39
Q. Alright. And Ernst & Young was not included in any of those communications with the NFL, correct? 14:09:42 14:09:44 14:09:45
A. Okay, correct. 14:10:02
Q. Okay. 14:10:03
A. It might have been one year. 14:10:03
Q. So let's start at Exhibit 3309. 14:10:05 14:10:07
(Arbitration Exhibit JX-3309 was referenced.) 14:10:08 14:10:19
Q. Exhibit 3309 is an e-mail exchange that you had with Mike Feeley, correct? 14:10:19 14:10:22 14:10:25
A. Correct. 14:10:26
Q. This is in October of 2011, correct? 14:10:28 14:10:31
A. Correct. 14:10:34
Q. So Mike Feeley is still with the NFL in 2011, correct? 14:10:34 14:10:36
A. Correct. 14:10:39

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Q. Alright. If you start at the bottom, Mr. Feeley has sent an e-mail to you and Mr. Badain about the 2010 conforming schedules, correct? 14:10:42 14:10:45 14:10:48 14:10:53

A. Correct. 14:10:56

Q. And the 2010 conforming schedules for the year ended 3/31/2011, correct? 14:10:56 14:11:00 14:11:11

A. Correct. 14:11:16

Q. Alright. And what the NFL is doing is that they're comparing your financial statements as of 12/31/10 with the conforming statements for the year ended 3/31/11, correct? 14:11:16 14:11:19 14:11:23 14:11:30 14:11:35

A. Correct. 14:11:39

Q. Okay. So you're welcome to read whatever you want to read. 14:11:40 14:11:47

But if you look at Mr. Feeley's e-mail from you to -- I'm sorry, from him, to you and Mr. Badain, which is the first e-mail in the chain, in the second sentence he writes, "Very high level. Can you give me a reason for the 226,536 of operating revenue on the audited 14:11:48 14:11:51 14:11:54 14:11:57 14:12:03 14:12:07 14:12:14

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financial statements versus the as reported revenue of 188,475 in the audited conforming statements variance of 38062." 14:12:17 14:12:20 14:12:25 14:12:31

Do you see that? 14:12:32
A. I do. 14:12:33
Q. Now, just for clarity, he's dropped three zeros in the e-mail. 14:12:34 14:12:39
The numbers are 226 million and 188 million, correct? 14:12:41 14:12:44
A. Correct. 14:12:50
Q. So the variance that he's identifying is a variance of $38,062,000, correct? 14:12:51 14:12:53 14:13:00
A. Correct. 14:13:05
Q. And it's the financial statements as of 12/31/10 that the higher revenue number as compared with the financial statements with the year ended 3/31/11, correct? 14:13:05 14:13:08 14:13:16 14:13:18 14:13:22
A. Let me just read through the paragraph, please. 14:13:30 14:13:31
Q. Yeah, go ahead. 14:13:32
A. Okay. 14:14:05

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Q. Is that correct? 14:14:06
A. That is correct. 14:14:08
Q. And we're going to look at e-mails from different years. 14:14:08 14:14:09
But is it your recollection that each year the variance that was questioned by the NFL related to why your financial statements for the prior period yearend showed greater revenues than the conforming schedules, correct? 14:14:11 14:14:15 14:14:18 14:14:22 14:14:25 14:14:29
A. You mean the other years or just -- for this year, correct. 14:14:33 14:14:35
Q. Okay. We'll go through the other years? 14:14:37 14:14:38
A. Yeah. I don't know what happened year end and year out. 14:14:39 14:14:41
Q. Alright. So he says that he understands that "some portion of 22,451,000 is revenue sharing, but that still leaves $15,611,000 variance, which just seemed high." 14:14:42 14:14:43 14:14:46 14:14:51 14:14:57
Do you see that? 14:14:59
A. I do. 14:15:00
Q. Okay. So, again, I just want 14:15:02

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to make sure that we're sort of on the same page, as what we're talking about. 14:15:06 14:15:09

This is the 12/31/2010 financial statements compared to the 3/31/2011 financial statements, correct? 14:15:11 14:15:16 14:15:20

A. Correct. 14:15:24

Q. And for some reason that Mr. Feeley isn't asking about, the 2010 financial statements are reflecting more revenue than the 3/31/11 financial statements, correct? 14:15:24 14:15:28 14:15:31 14:15:36 14:15:39

A. Correct. 14:15:47

Q. And Mr. Feeley is pointing that out, specifically, to you and Mr. Badain, correct? 14:15:48 14:15:50 14:15:52

A. Correct. 14:15:53

Q. You write back to Mr. Feeley and you copy Mr. Badain and I'm going to focus you on the third sentence. You write, "For the audit ending December 31, 2010, we can accrue certain items. For example, we accrued the January 2011 national TV receipt, as well as the January 2011 Ventures distribution into 14:15:56 14:15:59 14:16:03 14:16:05 14:16:11 14:16:15 14:16:19 14:16:24

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the 2010 year." 14:16:27

Do you see that? 14:16:29

A. Yes. 14:16:31

Q. And that was factually accurate that for the 2010 yearend financial statements, you accrued those two January 2011 payments, correct? 14:16:34 14:16:36 14:16:39 14:16:41

A. Correct. 14:16:44

Q. So those were payments that were made by the NFL in January of 2011, right? 14:16:46 14:16:47 14:16:52

A. Yes. 14:16:52

Q. Okay. And then you say, "We don't need to do this for the conforming because those numbers are already recognized in the year ending March 31, 2011 numbers," correct? 14:16:53 14:16:56 14:16:59 14:17:01 14:17:06

A. Correct. 14:17:08

Q. So what you're saying to him is, we do an accrual for the yearend financial statements we, don't do the accrual for the conforming statements because the January payment is already included, right? 14:17:08 14:17:10 14:17:14 14:17:16 14:17:19 14:17:21

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A. Correct. 14:17:26

Q. Because January 2011 is included in the NFL year ended 3/31/11, right? 14:17:27 14:17:30 14:17:36

A. Correct. 14:17:39

Q. Okay. So he reads your e-mail and he writes back, "Ed, I think I need a little bit more, as I am aware of the different year ends as well. But when you mention the accruals, wouldn't those still end up being the same in both methods of reporting? So, if you accrued 12.468 for the Jan 2011 Ventures distribution and recorded that amount as revenue on your 12/31/2010 audited financials, you also would have recorded the same 12.468 amount on the 2010 conforming statements as revenue." 14:17:40 14:17:45 14:17:48 14:17:51 14:17:53 14:17:56 14:17:58 14:18:03 14:18:08 14:18:10 14:18:15 14:18:18 14:18:22

Do you see that? 14:18:23

A. I do. 14:18:26

Q. And the 12.468, that's $12,468,000, correct? 14:18:27 14:18:32

A. Correct. 14:18:39

Q. And he's pointing out the 14:18:40

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amount of the accrual, the January accrual that you referenced to him, although you didn't reference the amount, right? 14:18:42 14:18:44 14:18:47 14:18:49

A. Right. 14:18:50

Q. And he's saying, how could the explanation for the difference be the January payment if the January payment is included in both; isn't that right? 14:18:51 14:18:54 14:18:56 14:18:59

A. Where does he say that again? 14:19:02

Q. Well, isn't that what he's asking? He says, "Wouldn't those still end up being in the same in both methods of reporting?" 14:19:04 14:19:09 14:19:11 14:19:14

So he says, "So, if you accrued 12,468 for the January 2011 Ventures distribution and recorded that amount as revenue on your 12/31/10 audited financials, you also would have recorded the same 12468 amount on the 2010 conforming statements as revenue." 14:19:16 14:19:17 14:19:21 14:19:24 14:19:28 14:19:29 14:19:34

Do you see that? 14:19:37

A. I do. 14:19:38

Q. So he's pointing out that the 14:19:38

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accrual of the January payment shouldn't 14:19:40
be the difference because that amount is 14:19:44
included in both financial statements, 14:19:46
correct? That's, at least, what he 14:19:48
thinks? 14:19:50
A. Okay. 14:19:53
Q. Well, is that right? Isn't 14:19:54
that what he's saying? 14:19:55
A. He says so. 14:19:56
Q. Okay. So he looks like he 14:19:58
drops it. He says at the end, "So don't 14:20:01
think too much more on 2010 but. If 14:20:04
anything sticks out, let me know. But 14:20:07
more want to get it on the radar for 14:20:11
2011." 14:20:14
Do you see that? 14:20:14
A. Yes. 14:20:15
Q. Alright. So, when he pointed 14:20:15
out to you that he didn't quite understand 14:20:16
why you're reporting greater revenues on 14:20:21
your 2010 financial statements than the 14:20:23
conforming, you didn't realize, I take 14:20:27
it, that the reason why the yearend 14:20:32
financials or reporting higher revenue is 14:20:37

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because they're double-counting revenue; is that your testimony? 14:20:39 14:20:42

A. Yes. 14:20:43

Q. Okay. But sitting here today you understand that the reason why you're consistently reporting more revenue in your yearend financial statements is because you're double-counting revenue in your yearend financial statements and you're not double-counting revenue in your conforming financial statements? 14:20:44 14:20:47 14:20:49 14:20:52 14:20:54 14:20:56 14:20:58 14:21:01

A. While I'm sitting here today, yes. 14:21:02 14:21:04

Q. But it's your sworn testimony that in all the years you were doing the accounting for the Raiders you never realized that? 14:21:04 14:21:06 14:21:08 14:21:10

A. Correct. 14:21:10

Q. Alright. So take a look at Exhibit 3310. 14:21:13 14:21:18

(Arbitration Exhibit JX-3310 was referenced.) 14:21:21 14:21:28

Q. This is in a slightly different format. 14:21:28 14:21:29

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But you see there are some questions that are being asked by the NFL about the 2011 conforming statements and there's some responses that the Raiders provide and they're in a different color. Although you can't really tell that from here.

But you see that you're responding to Questions 1 and 2 on the second half of the first page of Exhibit 3310?

A. Okay, yes.

Q. So the second numbered paragraph -- and these are the questions that the NFL is asking you, right?

A. Correct.

Q. So, again, this is the very next year.

The NFL is, once again, asking why there's this discrepancy between the revenue numbers on the two sets of financial statements, correct?

A. Correct.

Q. And you respond below and it has the subheading, "REVENUE," correct?

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A. Correct. 14:22:45

Q. And you give the same answer this year. You say, for the 2000 -- I'm sorry. "For the 12/31/2011 year, the January 2012 Venture payment was accrued into the 12/31/2011 calendar year. For the 3/31/2012 Fiscal Year, there were no accruals coming in into the 3/31/2012 Fiscal Year." 14:22:45 14:22:49 14:22:52 14:22:56 14:22:58 14:23:03 14:23:08 14:23:14

Do you see that? 14:23:15

A. I do. 14:23:15

Q. So you're, once again, in the next year asked the same question about why there's this discrepancy and you give the same answer, that the answer is it's the accrual, right? 14:23:16 14:23:19 14:23:21 14:23:24 14:23:26

A. Yes. 14:23:28

Q. Even though in the prior year, Mr. Feeley had pointed out that it didn't make any sense that it would be the accrual since that January payment is included in both years, correct? 14:23:28 14:23:30 14:23:32 14:23:34 14:23:36

A. Correct. 14:23:39

Q. Let's go to 3311. 14:23:42

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(Arbitration Exhibit JX-3311 was referenced.) 14:23:45 14:23:52

Q. This is another e-mail chain. This is -- now we're in 2013. And, again, you're welcome to look at as much as you would like. 14:23:52 14:23:54 14:23:58 14:24:01

But if you would look at the first e-mail in the chain, which starts pretty near the top of the first page. It's from Margerline Brewers (phonetic) from Deloitte. 14:24:02 14:24:05 14:24:12 14:24:14 14:24:20

Do you see that? 14:24:21

A. I do. 14:24:26

Q. And she has questions now about the 2010 season conforming statement, correct? 14:24:27 14:24:28 14:24:31

A. Correct. 14:24:32

Q. And she has directed those questions to you and Mr. Badain, correct? 14:24:33 14:24:35

A. Correct. 14:24:37

Q. And you write, "I am an auditor" -- I'm sorry. 14:24:38 14:24:40

She writes, "I am an auditor with Deloitte and Touche. " 14:24:41 14:24:43

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Do you see that? 14:24:46

A. I do. 14:24:46

Q. And she says that, "As noticed in the 2012 season conforming statement instructions, we have been engaged to perform procedures to assist the League office in assessing compliance with the conforming instructions." 14:24:47 14:24:53 14:24:56 14:24:58 14:25:01 14:25:03

And she also asks you about the disparity in the reported revenue number between the conforming statements and the yearend financial statements, correct? 14:25:06 14:25:11 14:25:13 14:25:16

A. Correct. 14:25:18

Q. And she points out the variance. It's 31,750,000. 14:25:19 14:25:20

Do you see that? 14:25:23

A. I do. 14:25:24

Q. And then you write back and this is numbered Item 4 below that's interlineated with your question. You write back, "The financial statements will accrue in January 2013 receipt into the NFL Ventures revenue total while no accruals in the conforming statement 14:25:25 14:25:26 14:25:31 14:25:33 14:25:34 14:25:39 14:25:42

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balance." 14:25:46

Do you see that? 14:25:47

A. Yes. 14:25:47

Q. So you, again, had given the same answer -- first time you gave it to Mr. Feeley. 14:25:48 14:25:50 14:25:52

The second time it's listed we don't know who that went to. 14:25:53 14:25:56

And third time you're telling Deloitte, the NFL's auditor, the same explanation, correct? 14:25:57 14:25:59 14:26:01

A. Right. 14:26:03

Mr. Feeley was on this e-mail too, wasn't he, just out of curiosity? 14:26:05 14:26:07

Q. Oh, he is. He is on the e-mail. 14:26:08 14:26:09

A. He is copied on the e-mail. 14:26:10

Q. And you provide these responses to Deloitte and Mr. Badain writes back to you. He says, "Nice job on this," right? 14:26:12 14:26:14 14:26:17 14:26:19

A. Yes. 14:26:21

Q. So there's no one from Ernst & Young copied on this e-mail chain, 14:26:21 14:26:23

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correct? 14:26:25

A. No. 14:26:25

Q. So now let's go to 3312. 14:26:27

(Arbitration Exhibit JX-3312 14:26:33
was referenced.) 14:26:42

Q. So this is a continuation of 14:26:42 the e-mail chain, although it doesn't 14:26:44 include your exchange with Mr. Badain 14:26:46 where he compliments you on how you 14:26:48 handled this. 14:26:51

But you see that Deloitte responds 14:26:52 back to your e-mail and it's at the 14:26:54 bottom of the first page of Exhibit 3312. 14:26:57

Do you see that? 14:27:00

A. Yes. 14:27:06

Q. And she thanks you for the 14:27:07 response and she says, "We appreciate 14:27:10 your explanations on the difference 14:27:12 between the audited financial statements 14:27:14 and the as reported amount on the 14:27:16 conforming statements. However, we would 14:27:19 be looking for a more detailed 14:27:21 explanation. Can you please provide a 14:27:24 reconciliation in Excel on a line by line 14:27:26

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basis such as the template we provided to 14:27:29
you. We are happy to clarify at a call 14:27:33
for your convenience." 14:27:38
Do you see that? 14:27:39
A. Yes. 14:27:40
Q. So she's heard your 14:27:40
explanation and part of the explanation 14:27:42
is it's the January accrual, right? 14:27:44
A. Yes. 14:27:46
Q. And she says, well, thanks 14:27:47
for that, but can you do a reconciliation 14:27:48
between the two numbers to show me 14:27:51
exactly what the differences are; is that 14:27:53
right? 14:27:58
A. Yes. 14:27:58
Q. Alright. And you push back 14:27:59
on that, don't you? 14:28:02
A. I don't know. Did I? 14:28:04
Q. Well, let's take a look. 14:28:05
You write back you say, 14:28:08
"Margerline, please resend the template 14:28:12
that you are referring to below. If you 14:28:14
can please help me understand why this 14:28:17
reconciliation has to be done when we go 14:28:19

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through two different audits." 14:28:21

A. Okay. 14:28:25

Q. And you go on at the end to say, "If you are available tomorrow morning, please call me at (510) 864-5000." 14:28:26 14:28:28 14:28:29 14:28:29

So you're not simply agreeing to do the reconciliation, right? 14:28:34 14:28:36

A. I didn't want to do it based on this. 14:28:41 14:28:43

Q. And she writes back and she says, "I'm happy to clarify why we would require this reconciliation." 14:28:44 14:28:47 14:28:50

So we don't have anything more on this. We don't see that you ever did a reconciliation, at least, none that was provided. 14:28:52 14:28:54 14:28:58 14:29:01

Sitting here today do you know whether you, ultimately, provided a reconciliation of the two different revenue numbers? 14:29:01 14:29:02 14:29:04 14:29:06

A. I don't know. 14:29:07

Q. If you had provided a reconciliation of the two different 14:29:08 14:29:09

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revenue numbers, do you think that might have caught that your revenues were overstated on your financials? 14:29:11 14:29:13 14:29:15

A. I don't know. 14:29:20

Q. Alright. But I think at your deposition we showed you some additional years. 14:29:24 14:29:26 14:29:27

But you would agree that the NFL in multiple years came back to the Raiders and asked you why there was this discrepancy between the yearend financials and the conforming statements, correct? 14:29:27 14:29:32 14:29:39 14:29:42 14:29:44 14:29:46

A. Correct. 14:29:47

Q. And you had pointed to Ernst & Young on multiple occasions that one reason why the revenues and the receivable keep going up is that the NFL keeps making more and more money, right? 14:29:48 14:29:50 14:29:53 14:29:55 14:29:58

A. Did I e-mail them that or... 14:30:03

Q. Well, you were -- 14:30:05

A. Or is that... 14:30:06

Q. We looked at this in your deposition. 14:30:08 14:30:09

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There were -- EY would come to you and ask for explanations of variances between prior numbers and current year numbers. 14:30:10 14:30:12 14:30:16 14:30:19

Do you recollect that -- I'm sorry. Do you remember that? 14:30:20 14:30:22

A. Not offhand. Are you talking -- part of their audit staff or -- 14:30:24 14:30:26

Q. Yeah, the flux variances. 14:30:27

A. Okay. 14:30:29

Q. Okay. Regardless, you understood that over the course of the years, the revenues from the NFL to the Raiders kept going up, right? 14:30:30 14:30:32 14:30:37 14:30:40

A. Correct. 14:30:43

Q. Okay. And that was one thing that you told Ernst & Young to explain why the receivable kept going up, correct? 14:30:44 14:30:46 14:30:49

A. If that was in their document, yes. 14:30:54 14:30:55

Q. Okay. So, if the revenues for the NFL keep going up every year and the conforming statements have a later end date then the yearend financial 14:30:56 14:31:00 14:31:03 14:31:06

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statements, it doesn't make any sense 14:31:09
that the conforming statements would have 14:31:11
a higher -- sorry, a lower revenue number 14:31:13
than the yearend financial statements, 14:31:15
correct? 14:31:17
A. Correct. But I really don't 14:31:20
use the conforming statement to run the 14:31:24
business so... 14:31:27
Q. But you were asked by the NFL 14:31:29
year after year why the conforming 14:31:31
statements were showing higher revenue 14:31:35
and every year you were offering 14:31:37
explanations as to why that might be, 14:31:39
correct? 14:31:41
A. That's correct. 14:31:42
Q. So the NFL, specifically, 14:31:43
focused you on this and you were the one 14:31:44
who tried to justify and did justify why 14:31:47
the revenue amounts were what they were, 14:31:50
correct? 14:31:55
A. Correct. 14:31:55
Q. Okay. But sitting here today 14:31:55
and thinking about it, it doesn't make 14:31:57
any sense that the yearend financials 14:31:59

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which reflect an earlier period would have more revenue than the conforming statements which reflect a later period if the NFL revenues kept going up, correct? 14:32:03 14:32:05 14:32:08 14:32:10 14:32:12

A. Sitting here today, correct. 14:32:14

Q. Okay. And, in fact, it's even more pronounced than that because your yearend financial statements you're not booking the current year remittance, you're booking the prior year remittance. So it's not just a three-month difference. It's some of the revenue. It's more like a year difference, correct? Because of the lag method? 14:32:15 14:32:17 14:32:20 14:32:22 14:32:24 14:32:26 14:32:28 14:32:29 14:32:34

A. Okay. 14:32:42

Q. Alright. So take a look at Exhibit 3313. 14:32:42 14:32:55

(Arbitration Exhibit JX-3313 was referenced.) 14:32:56 14:33:03

Q. This is an e-mail exchange that you had with Brad Firestone in March of 2018, correct? 14:33:03 14:33:05 14:33:11

A. Uh-huh. 14:33:13

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Q. And in March of 2018, Mr. Andrus has just come on as your Controller, correct? 14:33:13 14:33:17 14:33:19

A. Yes. 14:33:20

Q. And it's about this time that you're converting over to the Great Plains system, correct? 14:33:20 14:33:22 14:33:25

A. Yeah, I'm converting to the Great Plains and there's getting ready for potential stadium. 14:33:26 14:33:28 14:33:32

Q. Right. 14:33:33

And Matt Andrus is asking you a bunch of questions about the Ventures accounting at this time, right? 14:33:34 14:33:36 14:33:38

A. Okay. 14:33:46

Q. Okay. So, as of March 2018, the Raiders have been doing the January accrual for more than 11 years, correct? 14:33:47 14:33:56 14:33:59

A. Correct. 14:34:03

Q. And you, Ed Villanueva, have been overseeing the recording of the accrual and the Ventures remittance for, at least, 11 years, correct? 14:34:04 14:34:07 14:34:10 14:34:13

A. Correct. 14:34:16

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Q. And you've had multiple exchanges on a yearly basis with the NFL where you are explaining the Raiders' accounting to the NFL, correct? 14:34:17 14:34:19 14:34:22 14:34:26

A. Correct. 14:34:28

Q. Alright. So, in 2018, you write to Brad Firestone and you say, "Brad, it was great talking to you today and getting re-educated. I just want to confirm what we talked about today. You never know if I get hit by a bus and someone will need to pick up the pieces. The following was discussed and I will use December 31, 2017 as an example," right? 14:34:29 14:34:35 14:34:39 14:34:41 14:34:44 14:34:47 14:34:50 14:34:53 14:34:55 14:35:00

A. Okay. 14:35:00

Q. So it's 11 years after you started doing this accrual accounting and except for the one year you decided not to do it, because you didn't want to record the revenue, you've been doing the same thing for 11 years, right? 14:35:00 14:35:02 14:35:06 14:35:08 14:35:10 14:35:12

A. Yes. 14:35:13

Q. Alright. So you write to 14:35:14

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Mr. Firestone, "As a tax basis entity with a December 31, 2017 yearend, we have the opportunity to accrue the January 2018 revenues Ventures distribution into the previous year. This would create a larger revenue and receivable amount than the remittance amount provided as of March 31, 2017. However, over a two-year period, everything should even out due to timing." 14:35:16 14:35:19 14:35:23 14:35:28 14:35:31 14:35:34 14:35:37 14:35:40 14:35:44 14:35:47

Do you see that? 14:35:48

A. I do. 14:35:48

Q. Okay. So you're saying in this e-mail that by accruing the January amount you're going to have larger revenues than you would have absent the accrual, correct? 14:35:49 14:35:51 14:35:54 14:35:57 14:35:59

A. Okay. 14:36:03

Q. Well, is that right? 14:36:04

A. Let me read it one more time. 14:36:06

Q. Yeah, sure. 14:36:08

A. Okay. 14:36:33

Q. So, in this e-mail, you're recognizing that the Raiders are going to 14:36:35 14:36:37

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be recording a larger receivable and more revenue than what's reflected in the remittance, right? 14:36:40 14:36:43 14:36:45

A. Correct. 14:36:54

Q. And you say, however -- 14:36:56

A. In March -- so this is as of December 2017 and we're picking up the remittance as of March 31, 2017 and we do the accrual at December 20th. 14:36:59 14:37:03 14:37:09 14:37:13

Q. 2017 December you're accruing the January payment. 14:37:17 14:37:19

A. Okay. 14:37:20

Q. Okay. But you're saying -- you recognize that by doing the accrual you're actually coming up with a larger revenue number and a larger receivable number than the remittance amount for your yearend financial statements? That's what you're saying, correct? 14:37:21 14:37:25 14:37:28 14:37:30 14:37:34 14:37:36 14:37:38

A. Correct. 14:37:40

Q. And you're saying that's okay because we have the opportunity to do the accrual and have a bigger number, correct? 14:37:41 14:37:42 14:37:44

A. Correct. 14:37:55

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Q. But then you say, "However, over a two-year period, everything should even out due to timing." 14:37:57 14:38:00 14:38:02

Do you see that? 14:38:04

A. Yes. 14:38:05

Q. If you're doing the same thing every year and every year you're creating a larger revenue and receivable amount that's in the remittance, how is it ever going to even out? 14:38:06 14:38:07 14:38:10 14:38:12 14:38:14

A. I don't know. That was the discussion we had, but I forgot what the discussion was about. I forgot the conversation, what was talked about a hundred percent. I mean, it picked up bits and pieces of it probably. 14:38:25 14:38:27 14:38:29 14:38:33 14:38:37 14:38:42

Q. So I'm actually not asking about the conversation. 14:38:43 14:38:44

I'm asking what you as the CFO of the Raiders is saying to Mr. Firestone. 14:38:45 14:38:49

You're pointing out that you're going to have a larger revenue and receivable number than what the NFL is telling you the numbers should be and 14:38:51 14:38:53 14:38:54 14:38:57

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you've recognized that the reason why it's higher is because of the accrual. 14:39:00 14:39:02

Isn't everything I just said true? 14:39:05

A. Yes. 14:39:07

Q. Okay. And then you go on and you tell Mr. Firestone, "However, over a two-year period, everything should even out due to timing." 14:39:07 14:39:09 14:39:14 14:39:16

How does that make any sense? 14:39:19

A. I don't know. I think when we had the discussion, I was just e-mailing back what we discussed. I'm not sure he was the one who told me. 14:39:20 14:39:22 14:39:28 14:39:30

"However, over a two-year period, everything should even [out] due to timing." I don't know if that came from my mouth or his mouth. 14:39:32 14:39:34 14:39:36 14:39:39

Q. Well, you're the CFO of the Raiders, not him, right? 14:39:41 14:39:44

A. Yes, but he understands Ventures more than I did. 14:39:45 14:39:47

Q. Go to the book that Counsel for the Raiders provided you this morning and turn to Exhibit 3251. 14:39:50 14:39:54 14:39:56

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(Arbitration Exhibit JX-3251 was referenced.) 14:39:58 14:40:08
A. Okay. 14:40:08
Q. And go to the attachment at the back of the exhibit. 14:40:08 14:40:10
A. Fraud Tracker. 14:40:20
Q. Okay. So take a look at it. 14:40:21
This was a document that you created, correct? 14:40:22 14:40:24
A. Correct. 14:40:25
Q. And it shows the Ventures income for '13, '14 and '15, correct? 14:40:25 14:40:29
A. Yes. 14:40:33
Q. And if you look at the first three rows, those are numbers that end up being reflected in your yearend financial statements, correct? 14:40:33 14:40:39 14:40:43 14:40:45
A. Correct. 14:40:47
Q. And this document on its face shows the remittance earned income and added on top of the remittance earned income is a January accrual, right? 14:40:47 14:40:50 14:40:54 14:40:56
A. Correct. 14:41:00
Q. And those two things are 14:41:00

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presented separately, correct? 14:41:01

A. Correct. 14:41:04

Q. And then that's true for 2014 also? 14:41:05 14:41:07

A. Correct. 14:41:08

Q. And it's true for 2013 also? 14:41:09

A. Correct. 14:41:12

Q. So, for 2013, 2014 and 2015, the Raiders are reporting more revenue than what's reflected in the remittance, which were the numbers below, correct? 14:41:14 14:41:19 14:41:22 14:41:24

A. Correct. 14:41:28

Q. So you know it doesn't even out over a two-year period. Every year it's the same. 14:41:28 14:41:30 14:41:33

Every year the revenue in the financial statements is greater than the remittance, correct? 14:41:34 14:41:36 14:41:37

A. Correct. 14:41:42

Q. Now, by the way, this e-mail exchange you have with Mr. Holzer, Mr. Holzer was not part of the Ernst & Young audit team, correct? 14:41:43 14:41:45 14:41:48 14:41:50

A. He wasn't. But I'm sure he 14:41:51

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had communications with the people that was on the audit team, probably Luke. 14:41:53 14:41:54

Q. Okay. 14:41:58

A. I'm pretty sure he had communications. 14:41:59 14:42:01

Q. You haven't seen any e-mails that reflect those communications, have you? 14:42:01 14:42:03 14:42:05

A. I haven't seen -- no, I haven't seen any e-mails in these books. 14:42:05 14:42:08

Q. But the e-mails between you and Mr. Holzer -- Mr. Holzer is not part of the audit engagement team, correct? 14:42:10 14:42:11 14:42:14

A. Correct. 14:42:18

Q. He was brought in, specifically, to address the City of Oakland audit, correct? 14:42:19 14:42:20 14:42:23

A. Correct. 14:42:24

Q. And he's, actually, a tax specialist, correct? 14:42:24 14:42:26

A. Correct. 14:42:27

Q. Now, go down to numbered Paragraph 5. You write to Mr. Firestone, "There really is no risk on reporting the 14:42:36 14:42:38 14:42:41

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higher Ventures amount as of December 31, 2017. The IRS will more likely be concerned if we did the opposite and recorded less revenue." 14:42:44 14:42:49 14:42:52 14:42:54

Do you see that? 14:42:56

A. Yes. 14:42:57

Q. So you've acknowledged that the revenue that you're reporting on your yearend financial statements is greater than what the NFL is telling you the revenue is. But you're telling Mr. Firestone that the IRS isn't going to get mad at us if we overreport our income? 14:42:57 14:42:59 14:43:01 14:43:03 14:43:06 14:43:08 14:43:10 14:43:13

A. Yeah, I think we're just talking about overall tax issues, if any. 14:43:13 14:43:15

Q. Right. 14:43:17

But what you're telling Mr. Firestone -- maybe you're telling yourself -- is that if we overstate the revenue, the IRS isn't going to care because we're just -- they only care if we understate and pay less taxes, correct? 14:43:17 14:43:20 14:43:22 14:43:24 14:43:27 14:43:32

A. That's correct. 14:43:35

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Q. And Mr. Firestone doesn't tell you that anything that you said is wrong or problematic, right? 14:43:38 14:43:43 14:43:45

A. No. 14:43:47

Q. And you took some comfort in that and continued to do what you were doing and you have been doing for the prior 11 years, right? 14:43:48 14:43:53 14:43:55 14:43:59

A. I took comfort in it because he was the Venture guy. So I kind of relied on what he said, just because he was in charge of Ventures. 14:44:00 14:44:02 14:44:05 14:44:08

Q. So he's "the Ventures guy." 14:44:10

But you're the Raiders financial statement guy and it's your obligation to get the financial statements correct, not Mr. Firestone's, correct? 14:44:12 14:44:15 14:44:18 14:44:19

A. Correct. 14:44:22

Can we take a break to use the restroom? 14:44:40 14:44:40

Q. Yeah, sure, we can take a break. 14:44:40 14:44:40

A. Like five minutes or something? 14:44:40

Q. Take your time. I have, 14:44:44

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basically, one thing left. 14:44:45
A. Okay. 14:44:46
THE CHAIRPERSON: Okay. 14:44:47
(Recess taken 2:44 to 2:50 14:44:48
p.m.) 14:53:05
Q. Alright. Mr. Villanueva -- 14:53:05
I'm sorry. 14:53:08
THE CHAIRPERSON: Back on 14:53:09
the record, please. 14:53:09
THE STENOGRAPHER: I'm here. 14:53:12
Q. Mr. Villanueva, can you go to 14:53:13
the book that we handed out to you and go 14:53:15
to JX-0010. 14:53:17
(Arbitration Exhibit JX-0010 14:53:20
was referenced.) 14:53:27
Q. It's the other one. 14:53:27
A. We don't need this anymore, 14:53:30
do we? 14:53:32
Q. I don't think so. 14:53:32
Let me just show you one document. 14:53:38
(There is a discussion off 14:53:41
the record.) 14:54:08
Q. Mr. Villanueva, you understand 14:54:08
that in April of 2021 Araxie Grant and 14:54:10

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Travis Scott went to the Raiders' HR 14:54:16
department and made a whistleblower 14:54:20
complaint, correct? 14:54:22
A. Correct. 14:54:24
Q. And the whistleblower 14:54:26
complaint related to the overstatement of 14:54:27
revenues and receivables for the Ventures 14:54:29
account, correct? 14:54:34
A. Correct. 14:54:38
Q. And you understand that the 14:54:39
concern was that the overstatement may 14:54:42
have been intentional, correct? 14:54:46
A. Correct. 14:54:48
Q. Okay. If you look at Page 37 14:54:52
-- I don't know if you've ever seen these 14:54:55
before. But these are notes from a 14:54:57
conversation that Araxie Grant had with 14:54:59
the Raiders accounting department on 14:55:01
April 26th -- I'm sorry, the Raiders 14:55:06
Human Resources department on April 26, 14:55:08
2021. 14:55:13
You see in the upper right 14:55:13
hand-corner Araxie Grant's name and then 14:55:15
the date 4/26/21? 14:55:18

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A. I do. 14:55:20

Q. Alright. As of 4/26/21, it had been six days since Ms. Grant and Mr. Scott alerted you to the overstatement, correct? 14:55:21 14:55:26 14:55:32 14:55:34

A. I don't know; okay. 14:55:36

MR. FARINA: I'm going to hand out JX-0190. 14:55:43 14:55:43

(Arbitration Exhibit JX-0190 was referenced.) 14:55:52 14:56:09

Q. Do you see that Exhibit 0190 is an e-mail from Ms. Grant to you? 14:56:09 14:56:12

A. Okay. 14:56:19

Q. And the date of that e-mail is April 20th, 2021, correct? 14:56:20 14:56:22

A. Okay. 14:56:31

Q. And the subject is "Ventures for discussions." 14:56:31 14:56:33

Do you see that? 14:56:34

A. "I'll stop by in just a minute"? 14:56:44 14:56:44

Q. Yes. 14:56:49

A. Okay. 14:56:49

Q. And there's an attachment and 14:56:49

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I actually would like to pull up the Excel, if we can. So this is only an excerpt from the attachment. The attachment is very difficult to print. But I'd like you to see it and I would like the Panel to see it. 14:56:51 14:56:53 14:56:56 14:56:58 14:57:00 14:57:03
Alright. This is an Excel workbook that has various tabs and this relates to the overstatement of the revenue and the receivable. 14:57:10 14:57:12 14:57:17 14:57:21
Do you remember that? 14:57:22
A. Yeah, I don't even remember opening it but, okay. 14:57:26 14:57:28
Q. Well -- 14:57:30
A. Or analyzing it. 14:57:31
Q. Okay. 14:57:33
A. I don't remember, to be honest with you. So... 14:57:34 14:57:35
Q. Let's flip through the tabs. 14:57:37
A. Okay. 14:57:39
Q. There's a "revenue comparison." 14:57:39 14:57:40
MR. FARINA: And if you scroll across -- Jason, if you 14:57:42 14:57:42

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could scroll all the way across. 14:57:43

No, no, go back to "revenue comparison" and scroll across that tab. 14:57:46 14:57:47 14:57:49

Q. So it goes all the way out to 2018, the 2018 season. 14:57:50 14:57:54

Do you see that? 14:57:56

A. Uh-huh. 14:57:57

MR. FARINA: And then go to the summary tab, Jason. 14:57:58 14:57:58

Q. And this, also, has all the entries, the remittance and the receivable for all these different years from 2006 -- I guess, he started in 2009 all the way, again, through to 2019. 14:58:01 14:58:05 14:58:07 14:58:09 14:58:13

Do you see that? 14:58:19

A. Uh-huh. 14:58:20

Q. And then he's got separate tabs for each year. 14:58:20 14:58:22

Do you see that? 14:58:24

A. Yes. 14:58:24

MR. FARINA: Pick a year, Jason, any year. There you go. 14:58:25 14:58:26

Q. Okay. So do you recall that 14:58:31

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Ms. Grant presented to you this Excel 14:58:33
workbook that Mr. Scott had prepared that 14:58:36
demonstrated the amount of the 14:58:40
overstatement in each of the years? 14:58:43

A. Well, she sent it to me. So, 14:58:46
yes, she e-mailed it to me. 14:58:49

Q. Alright. And she's e-mailing 14:58:50
it to you to show you that the Raiders 14:58:54
have been systematically overstating 14:58:57
their revenue in their receivable for 14:58:59
more than a decade, correct? 14:59:02

A. Correct. 14:59:04

Q. And is it your testimony that 14:59:05
you didn't look at this at the time? 14:59:07

A. Probably glanced at it. I 14:59:11
mean, I don't remember. 14:59:14

Q. Well, once you found out why 14:59:18
she was sending it to you, did you look 14:59:20
at it then? 14:59:23

A. I had to digest everything 14:59:24
first. I can't a hundred percent say I, 14:59:26
actually, dove into this thing just 14:59:33
because I was still in shock that we had 14:59:36
an error. 14:59:39

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Q. But on April 28, 2021, your Controller is presenting you with information in an elaborate Excel workbook -- 14:59:41 14:59:46 14:59:48 14:59:53

A. Uh-huh. 14:59:53

Q. -- to show how the Raiders have been overstating the revenues and receivables for over a decade, correct? 14:59:54 14:59:56 14:59:58

A. Correct. 15:00:01

Q. Okay. So getting back to the notes, it's six days later when Ms. Grant goes to Human Resources, correct? 15:00:03 15:00:05 15:00:11

A. Okay. 15:00:13

Q. And do you understand that Mr. Scott also went to Human Resources? 15:00:15 15:00:18

A. I believe so. 15:00:21

Q. And in the six days between when Ms. Grant sends you this workbook showing how the Raiders revenue and receivable were overstated, you haven't gone to Ernst & Young to tell them about the problem, have you? 15:00:23 15:00:27 15:00:31 15:00:33 15:00:37 15:00:39

A. No. I don't think I would until I, you know, try to figure out if 15:00:40 15:00:41

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it was actually a problem. I would have to think about it first to see if it was a true problem and how we can get out of the problem, how we can -- I mean, everything goes through your head before going to EY. Once we have a plan or figured out if it was a true problem, then we could present it to them. 15:00:45 15:00:49 15:00:52 15:00:54 15:00:56 15:00:58 15:01:02 15:01:04

Q. Alright. The information that was presented to you on April 20th by Mr. Scott wasn't just some inkling or hunch he had. 15:01:07 15:01:08 15:01:11 15:01:14

A. Okay. 15:01:14

Q. He sent you a workbook that for each year details the overstatement and it shows how the overstatement occurred, correct? 15:01:15 15:01:17 15:01:21 15:01:24

A. Correct. 15:01:26

Q. Alright. And in that six-day period, Ms. Grant is telling you that she wants you to go to Ernst & Young to tell them about this, right? 15:01:27 15:01:32 15:01:35 15:01:38

A. In her notes. 15:01:45

Q. Well, she's -- the notes are 15:01:47

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her recounting conversations she had with 15:01:49
you. 15:01:52
I'm asking what you remember about 15:01:53
the conversations you had with Ms. Grant. 15:01:54
A. I think a conversation would 15:01:56
have happened where she would have 15:01:59
presented this and say we had an error 15:02:00
and so okay. 15:02:04
I'm trying to figure out if it was 15:02:04
truly an error, because these numbers 15:02:06
were audited. Then once we figured it 15:02:08
out, then we would go to -- we'd probably 15:02:11
go to Badain and go to our people first 15:02:14
before we would have gone to Ernst & 15:02:17
Young. That would have been the process. 15:02:20
Q. Alright. It was Ms. Grant 15:02:21
who, ultimately, went to Ernst & Young. 15:02:24
I think it was on the 20 -- well, it was 15:02:27
later this week that she went to Ernst & 15:02:31
Young, correct? 15:02:35
A. Correct. 15:02:38
Q. Okay. You weren't the one 15:02:39
who went to Ernst & Young to raise this, 15:02:40
it was Ms. Grant? 15:02:42

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A. Correct. 15:02:44

Q. So take a look at the notes. Go to Page 37. It's the page you should have in front of you and go to the second paragraph. 15:02:50 15:02:55 15:02:59 15:03:01

A. Okay. 15:03:01

Q. And, again, this these are the notes that were taken of HR's interview of Araxie Grant. And she's recounting conversations that she purports to have had that involve you. And she writes -- or Ms. Levine writes, "Ed A and T," so Ed Araxie and Travis, "in meeting." And there's "A. These numbers don't make sense. Don't get it. Ed said in beginning '07 we did this to meet debt covenant." 15:03:02 15:03:05 15:03:07 15:03:10 15:03:12 15:03:16 15:03:20 15:03:25 15:03:27 15:03:29 15:03:34

Do you see that? 15:03:36

A. Which is true. 15:03:37

Q. Okay. And then Ms. Grant has said, "Misleading bank. It's fraud." 15:03:40 15:03:42

You didn't tell that to Ms. Grant, did you, that it was her interpretation? 15:03:46 15:03:49

A. Telling what? 15:03:51

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Q. That you know it's fraud. 15:03:52
A. Oh, I wouldn't say that. 15:03:53
Q. Okay. And then you [sic] wrote, "Ed said Badain knows about it." 15:03:56 15:03:57
A. Ed said Badain knows... 15:03:57
MR. CHANDLER: Ms. Grant. 15:03:57
MR. FARINA: I'm sorry. I apologize. 15:03:57 15:03:57
Q. Ms. Levine recounting what Ms. Grant said to her wrote, "Ed said Badain knows about it." 15:04:06 15:04:09 15:04:12
Do you see that? 15:04:13
A. I don't remember that. 15:04:14
Q. Okay. If you go to Page 39. 15:04:16
A. Okay. 15:04:27
Q. If you look at the bottom of Page 39. 15:04:31 15:04:33
A. Okay. 15:04:35
Q. Again, these are the notes of Ms. Grant's interview. According to the notes, she told the HR department, "3/31 is the League's. When we report conforming payments, fictitious revenue and we present to League it's correct and 15:04:36 15:04:37 15:04:40 15:04:45 15:04:49 15:04:51

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EY hasn't caught. Why were you reversing it to the League? "That's not inadvertent." 15:04:54 15:04:59 15:05:01

Do you see that? 15:05:02

A. Yeah. 15:05:03

Q. In your discussions with Ms. Grant, did Ms. Grant point out that somehow the Raiders managed to get the financial statements correct when they went to the League but not when they went to the (INAUDIBLE)? 15:05:03 15:05:05 15:05:07 15:05:10 15:05:11 15:05:13

A. I remember that conversation. 15:05:16

Q. Alright. Go to the next page, Page 40. 15:05:18 15:05:21

I'm just going to read from the notes. "Ed end of last year told Badain. Said it's 150 (number on balance sheet for NFL). Badain said, okay, Ed. Said write it out in future year. Will write off when we get new media deals and get more money." 15:05:24 15:05:28 15:05:32 15:05:35 15:05:41 15:05:44 15:05:48

Do you see that? 15:05:49

A. I do. 15:05:50

Q. Okay. So, in a conversation 15:05:50

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with Ms. Grant when Ms. Grant is saying that she wants to go to the auditors, did you tell Ms. Grant that you and Mr. Badain have a plan for how you're going to clean this up? 15:05:54 15:05:57 15:06:00 15:06:04 15:06:06

A. No. 15:06:07

Q. Okay. So did you tell -- 15:06:08

A. When did she -- what's the timing of this thing? 15:06:10 15:06:14

Q. So she says, "end of last year." 15:06:18 15:06:20

A. Yeah, I don't think that's correct. 15:06:22 15:06:23

Q. So this is 4/26/21. So that would be the end of 2020. 15:06:23 15:06:28

A. I would say false. 15:06:33

Q. Okay. "End of last year, when you're this, you told Badain" -- "you told Badain it's a $150 million, the number on the balance sheet." 15:06:34 15:06:43 15:06:44 15:06:47

And then Badain said, "Okay Ed. Said write it out in future year. We'll write off when we get now media deals and get more money." 15:06:48 15:06:52 15:06:55 15:06:58

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Do you see that? 15:06:59

A. I don't remember saying that. 15:07:00

Q. To Ms. Grant? 15:07:03

A. To Ms. Grant. 15:07:04

Q. And do you remember -- 15:07:05

A. Or to Badain. 15:07:06

Q. Do you remember having a 15:07:07 conversation with Mr. Badain where you 15:07:08 two discussed the idea that you would 15:07:10 write off the 150 million in the bad 15:07:11 receivable that's on the balance sheet 15:07:14 when the NFL gets a new TV deal? 15:07:16

A. I don't think that's true 15:07:20 just because at the time we thought the 15:07:22 receivable was good. 15:07:24

Q. Do you have any explanation 15:07:27 sitting here today why Araxie Grant would 15:07:29 have told the HR department this? 15:07:31

A. I don't know. 15:07:33

Q. You can't think of anything 15:07:35 that you said to her that would lead her 15:07:37 to believe that that's what you told her? 15:07:38

A. No. 15:07:42

Q. Do you know what the Ventures 15:07:43

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balance was as of 12/31/19? 15:07:45

A. I don't offhand. 15:07:50

Q. It was about 150 million, wasn't it? 15:07:51 15:07:53

A. I don't know. She has -- she was overseeing the audit at that point. So I'm sure she knew the numbers. I don't know. 15:07:55 15:07:59 15:08:01 15:08:04

Q. And, in fact, there was shortly after this a new media deal with the NFL, correct? 15:08:05 15:08:06 15:08:09

A. I don't know. Was there? 15:08:12

Q. You really don't know? 15:08:15

A. I really don't know. 15:08:16

Q. Okay. 15:08:18

A. I know there was a media deal, but I don't know if it was finalized or any of that stuff. 15:08:21 15:08:23 15:08:26

Q. Let's see if this refreshes your recollection. 15:08:27 15:08:29

A. Okay. 15:08:29

Q. Does that refresh your recollection in 2021 the NFL entered into new media deals worth over a hundred 15:08:54 15:08:56 15:08:59

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billion dollars? 15:09:04
A. Okay. 15:09:04
Q. So sitting here today do you recall what the Ventures balance was as of 12/31/19? 15:09:12 15:09:14 15:09:18
A. Not offhand. 15:09:21
Q. So let's start with the financial statements. 15:09:25 15:09:27
You have the 2019 financial statements in front of you? 15:09:28 15:09:29
A. I do. 15:09:30
Q. If you look at the balance sheet as of 12/31/19 -- well, there's two different numbers. This one I have in front of me is JX-0147. 15:09:33 15:09:35 15:09:42 15:09:44
(Arbitration Exhibit JX-0147 was referenced.) 15:09:47 15:09:48
Q. The Panel might have a different exhibit number, but it's the same exhibit. 15:09:48 15:09:49 15:09:51
Do you have it, Mr. Villanueva? 15:09:52
A. I do. 15:09:54
Q. Alright. The due from NFL number is 164 million, correct? 15:09:54 15:09:57

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A. Okay. 15:10:01

Q. Now, I want to show one another document. Take a look in your book -- is it in the book -- 0477. 15:10:01 15:10:03 15:10:04

(Arbitration Exhibit JX-0477 was referenced.) 15:10:09 15:10:14

Q. Yeah, it's in your book. 15:10:14

Go to exhibit JX00477. 15:10:17

A. Okay. 15:10:29

Q. Flip to page to the schedule. 15:10:30

A. Okay. 15:10:34

Q. Do you see this is the League sheet reflecting the different receivable balances from the Raiders books? 15:10:35 15:10:39 15:10:41

A. Okay. 15:10:43

Q. You see that the amount of the NFL enterprise receivable as of 12/31/19 is $155,720,000? 15:10:45 15:10:46 15:10:51

A. Okay. 15:10:59

Q. So sitting here today you have no explanation for why Ms. Grant told the HR department that you had had a conversation with Mr. Badain about writing off the receivable balance once 15:11:01 15:11:02 15:11:07 15:11:10 15:11:14

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the NFL entered into new media deals? 15:11:16

A. No. 15:11:21

Q. Go to Page 41 of the exhibit, 15:11:23
the notes. 15:11:26

(Arbitration Exhibit JX-0190 15:11:36
was referenced.) 15:11:37

A. Okay. 15:11:37

Q. In the very middle of the 15:11:38
page, the notes say, "Received direct 15:11:41
order from Badain and Ed. Don't go to 15:11:45
auditors until meeting with Ed." 15:11:48

Do you see that? 15:11:50

A. Okay. 15:11:51

Q. And that was true, you told 15:11:51
her not to go to the auditors until you 15:11:53
had met with her and Mr. Badain, correct? 15:11:55

A. Yeah, that's probably true. 15:11:57

Q. Okay. 15:11:59

A. You want to try to handle 15:12:00
everything in-house before you go outside 15:12:02
so you have all the information at your 15:12:04
fingertips. 15:12:07

MR. FARINA: I don't -- oh, 15:12:22
I actually have one other question. 15:12:23

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THE CHAIRPERSON: You're teasing us. 15:12:26 15:12:27

MR. FARINA: Sorry. 15:12:28

(There is a discussion off the record.) 15:12:28 15:12:28

Q. Mr. Villanueva, what is "San Quentin accounting"? 15:12:30 15:12:35

A. So Badain was asking me -- from what I remember -- was asking me a hypothetical accounting question. I don't know if it was for personal or for work. So I just came back and said, "it sounds like San Quentin accounting to me." 15:12:35 15:12:37 15:12:40 15:12:42 15:12:46 15:12:49 15:12:52

Q. Is that something that you and Mr. Badain joked about? 15:12:53 15:12:54

A. We joked about that one incident. 15:12:56 15:12:59

Q. So there's only one instance where you joked with Mr. Badain about "San Quentin accounting"? 15:12:59 15:13:01 15:13:05

A. Yes. 15:13:06

Q. Alright. Did you do that in front of Ms. Grant? 15:13:07 15:13:08

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A. No. I think this happened like earlier on in my career. 15:13:09 15:13:11

Q. Did you tell Ms. Grant that you and Mr. Badain would joke about "San Quentin accounting"? 15:13:14 15:13:16 15:13:20

A. I probably mentioned it, if we were out for a drink or something, I mean. But it was a joke. 15:13:20 15:13:21 15:13:23

Q. I don't have anymore questions. 15:13:32 15:13:34

Thank you. 15:13:35

THE CHAIRPERSON: Counsel? 15:13:35

MS. BROWN: Yes. Thank you. 15:13:36

Just a few more. 15:13:37

REDIRECT EXAMINATION BY MS. BROWN: 15:13:40

Q. Mr. Villanueva, we will try to be brief. 15:13:40 15:13:41

A. Okay. 15:13:42

Q. Could you please pull up JX-33313. 15:13:43 15:13:44

(Arbitration Exhibit JX-3313 was referenced.) 15:13:47 15:13:47

Q. It will be in the binder that -- 15:13:47 15:13:47

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A. His binder or -- 15:13:47

Q. Correct, that EY's Counsel gave you. 15:13:51 15:13:52

A. JX? 15:13:53

Q. 3313. 15:13:54

A. Okay. 15:14:15

Q. Do you recall Mr. Farina asking you some questions about this document earlier? 15:14:16 15:14:17 15:14:19

A. I do. 15:14:20

Q. And I recall your testimony was that you don't really remember this phone call with Mr. Firestone, but then you were asked about, No. 1, the first point where it talks about how everything should even out due to timing and then you were asked about the fifth point about the IRS? 15:14:20 15:14:22 15:14:25 15:14:27 15:14:31 15:14:33 15:14:36 15:14:37

I wanted to ask you about the second point where it says, "We always have an extra payment made from the previous season into the current season. This should add to our revenue." 15:14:39 15:14:40 15:14:42 15:14:44 15:14:46

Do you know what that's referring 15:14:48

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to? 15:14:50

A. That's probably the accrual that we were making. 15:14:50 15:14:51

Q. And what does it mean when this said, "This should add to our revenue"? 15:14:52 15:14:55 15:14:57

A. Well, like the example, if you have a -- if you have a receivable and you credit the revenue. 15:14:58 15:15:02 15:15:05

Q. You can set that aside. 15:15:08

MS. BROWN: If we could pull up the transcript, Marco, from earlier Page 191/Line 16 through 21. And if you're able to pull two quotes up side by side. 15:15:11 15:15:12 15:15:14 15:15:19 15:15:22

There is another one -- I'll let you do that one first; 16 to 21 on Page 191. 15:15:25 15:15:27 15:15:29

Do I have the wrong page number? Can you pull up 201? It's 6 to 12. 15:15:52 15:15:54 15:16:00

Oh, this is not -- I had 191. 15:16:03

So I have the wrong quote. 15:16:19

Q. I won't pull up the 15:16:20

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testimony. We'll test your memory. 15:16:22

A. Okay. 15:16:24

Q. Yeah. You were asked some questions about whether you knew what was in the -- I think there was, specifically, 164 million receivable balance. 15:16:25 15:16:27 15:16:32 15:16:33 15:16:36

A. Okay. 15:16:37

Q. And then you were shown another receivable balance and you were asked some questions about whether you knew what was in that receivable balance? 15:16:38 15:16:39 15:16:43 15:16:44

A. Correct. 15:16:46

Q. If we were able to find the testimony, we'll pull it up. I have the wrong page numbers. 15:16:47 15:16:48 15:16:51

Now, when you were being asked those questions about whether you knew what was in the receivable balance, you were being shown the due from the NFL amount on the financial statements. 15:16:52 15:16:54 15:16:55 15:16:58 15:17:03

A. Correct. 15:17:05

Q. Now, when you were answering those questions about knowing what was in 15:17:05 15:17:07

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the receivable balance -- oh, to be 15:17:10
clear, the amount on the financial 15:17:12
statement, that's not the Ventures 15:17:13
receivable. Ventures is in there but -- 15:17:15

A. That's correct. 15:17:15

Q. -- it's Ventures plus other 15:17:16
things. 15:17:18

In answering those questions, when 15:17:20
you said you knew what was in the 15:17:24
receivable balance due from NFL -- due 15:17:28
from the NFL on the financial statements 15:17:31
-- 15:17:33

A. Correct. 15:17:33

Q. -- were you referring to 15:17:34
knowing if you go to the trial balance 15:17:35
what accounts make up that number, for 15:17:39
example, it's Ventures, it's TD films, 15:17:42
it's -- or are you saying that you, 15:17:43
specifically, knew the remittance 15:17:44
balances that still were outstanding in 15:17:45
that accounts receivable as stated on the 15:17:47
financial statements? 15:17:51

A. Say that again. 15:17:52

Q. What did you mean when you 15:17:53

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said you knew what was in the receivable balance? What did you mean by that? 15:17:55 15:17:57

A. I don't understand. Just the other items -- 15:18:01 15:18:07

THE STENOGRAPHER: Can you speak into the microphone. I'm sorry. 15:18:07 15:18:07 15:18:09

A. There could be other receivables that could be in that balance and Ventures was in that balance. 15:18:10 15:18:12 15:18:15

Q. And how would you know what was in that balance due from the NFL? 15:18:17 15:18:19

A. I know there's a grouping sheet that shows the breakout of what's in that that makes up that account. When you generate the financial statements, there's always something that ties into that number. 15:18:21 15:18:24 15:18:26 15:18:29 15:18:30 15:18:33

Q. And if you go to that sheet, you could see whether due from the NFL was Ventures, you could see if it was national TV, you could see whether it was film or something else; is that right? 15:18:34 15:18:35 15:18:37 15:18:40 15:18:43

A. Absolutely, yes. 15:18:44

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Q. When you were saying you knew what was in the receivable balance that was being shown to you, did you mean to say that you knew that the receivable balance was overstated? 15:18:45 15:18:46 15:18:50 15:18:52 15:18:54

A. No. 15:18:56

Q. Okay. And do you recall when Mr. Farina was showing you the 2018 and 2019 financial statements and he was focusing you on the due from NFL numbers, those numbers were in those years about 150 million, approximately? 15:18:59 15:19:04 15:19:06 15:19:09 15:19:12 15:19:14

A. Okay. 15:19:15

Q. We can look at one. 15:19:18

A. Okay. 15:19:19

Q. Do you remember that was about the range? 15:19:20 15:19:21

A. Which one you want to look at? 15:19:22 15:19:24

Q. It doesn't matter; 2018, 2019. 15:19:24 15:19:27

A. I have -- 15:19:28

Q. How about 2018? 15:19:30

A. 2018. 15:19:31

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Q. I realize this 2018 is not a full year, but you can see the due from NFL number December 31, 2018 is 139.2 million, right? 15:19:38 15:19:40 15:19:42 15:19:46
A. Yes. 15:19:47
Q. Okay. And then he asked you some questions about those receivable balances and then was, also, asking you about the projected cash flow statements. 15:19:48 15:19:50 15:19:53 15:19:56
Do you have those two projected cash flow statements you were handed? You were handed one from the 2018 season and one from the 2019 season. 15:19:58 15:20:00 15:20:02 15:20:04
A. I do. 15:20:06
Q. And I believe when you were shown the accounts due from NFL accounts in the financial statements, you testified that you thought that those were true balances at the time, right? 15:20:10 15:20:12 15:20:14 15:20:16 15:20:18
A. Yes. 15:20:19
Q. You thought those were amounts that the NFL was going to pay off? 15:20:20 15:20:21 15:20:23
A. Yes. 15:20:23

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Q. Okay. So, when we look at the 2018 season projected cash flows, do you see there's a column towards the end that says "per Club 2018 season total" and the total, if you go to the bottom, that you're getting from the NFL is $226.7 million; is that right? 15:20:23 15:20:25 15:20:29 15:20:33 15:20:36 15:20:40 15:20:42

A. That's correct. 15:20:45

Q. And if you look at 2019, just to see where this similar order of magnitude, 2019, if you're looking at the column, "per Club 2019 season total," your total in that year is $243 million, right? 15:20:47 15:20:50 15:20:55 15:20:58 15:21:00 15:21:02

A. That's correct. 15:21:03

Q. Are those the cash payments that you believed were paying off the due from NFL accounts receivable that we would see in the financial statements? 15:21:04 15:21:07 15:21:10 15:21:13

A. Yes. 15:21:15

Q. Okay. I'm afraid my page and line number cites are probably wrong. So I thought I had them Page 200 and -- yeah. I had 207/Line 8 to 11. 15:21:22 15:21:27 15:21:29 15:21:33

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But do you recall earlier when you testified that you knew -- this was in connection with the conforming statement questions. 15:21:36 15:21:39 15:21:42 15:21:43

A. Okay. 15:21:43

Q. And you said that you knew that the amount booked on the GL was included in the remittance. I think that was your testimony. We can find it. 15:21:44 15:21:46 15:21:49 15:21:51

A. Yes. 15:21:55

Q. And could you pull up JX-2582. 15:21:57

(Arbitration Exhibit JX-2582 was referenced.) 15:22:01 15:22:06

A. Which binder is that in? 15:22:06

Q. It's in your binder. 15:22:08

A. 28? 15:22:09

Q. 2582. 15:22:11

I believe this is the document you were being shown and asked about when you said that you knew that the amount booked in the GL was also included in the remittance. So I just want to have it in front of you again. 15:22:15 15:22:17 15:22:19 15:22:21 15:22:23 15:22:25

A. Okay. 15:22:28

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Q. And you see the page that has your journal entries with the handwritten notes on them related to the conforming statements? 15:22:30 15:22:32 15:22:35 15:22:37

A. Yes. 15:22:37

Q. Now, when you were answering Mr. Farina's question and you said you knew that the amount booked on the GL was in the remittance, were you saying that you knew that the January accrual was included in the remittance amount that you booked on the financial statements? 15:22:38 15:22:40 15:22:42 15:22:46 15:22:48 15:22:51 15:22:54

A. Did I know? I'm sorry. 15:22:58

Q. Let me rephrase. 15:23:00

When you were booking the remittance amount on the financial statements once a year -- 15:23:01 15:23:03 15:23:05

A. For performing statements or regular? 15:23:06 15:23:08

Q. Regular. I know I'm just -- 15:23:08

A. Yeah, yeah, yeah. 15:23:10

Q. Now, I'm switching the financial statements. 15:23:11 15:23:13

When you booked the remittance 15:23:13

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amount on the financial statements once a year -- 15:23:15 15:23:17
A. Yes. 15:23:17
Q. -- did you know that that amount included the January accrual amount? 15:23:18 15:23:21 15:23:24
A. Yes. 15:23:24
You mean for the -- you're talking for the yearend audit financial statement? 15:23:27 15:23:31
Q. Yes. 15:23:35
A. And what we accrue January into? 15:23:36 15:23:39
Q. Into December. 15:23:39
A. Yes. 15:23:40
Q. Okay. Now, when you were making all of these conforming statement adjustments, looking at this Exhibit 2582, were these adjustments where you could see in the remittance and the amount in the GL and the net amounts including how they're booked in all the journal entries, were those provided to Ernst & Young? 15:23:41 15:23:42 15:23:46 15:23:53 15:23:54 15:23:57 15:23:57 15:23:59 15:24:01
A. Yes. 15:24:01

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Q. Were they provided those adjustments in connection with their conforming statements audits? 15:24:03 15:24:04 15:24:07

A. Yes. 15:24:08

Q. Was Ernst & Young aware that you were taking the remittance out and backing out the amount that you would see on the general ledger to calculate your adjustments? 15:24:08 15:24:10 15:24:12 15:24:14 15:24:16

A. Yes. 15:24:16

Q. I want to -- just because I think before with my questioning we were -- it it's getting a little confusing with the financial statements and conforming statement. So let me just walk through one time year to, hopefully, try to clear up any confusion. So let's just take 2016 for an example, okay? 15:24:22 15:24:26 15:24:28 15:24:30 15:24:32 15:24:34 15:24:36 15:24:39

A. (No response.) 15:24:42

Q. On the 2016 financial statements, what NFL season remittance would be booked? 15:24:43 15:24:47 15:24:50

A. 2015. 15:24:53

Q. 2015 season, correct? 15:24:54

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A. Yes. 15:24:55

Q. And when would that be booked? 15:24:56 15:24:58

A. Probably earlier on in the year, March of 2017. Are we talking -- 2017. 15:25:01 15:25:06 15:25:11

Q. 2016 financial statements you would book the remittance -- 15:25:12 15:25:13

A. Oh, yeah -- we'll book the -- we'll book it in March of 2000 -- the year you just said. 15:25:14 15:25:17 15:25:22

Q. 2016? 15:25:22

A. 2016, I'm sorry. 15:25:23

Q. And when you booked the remittance, I think as you were saying, it actually included -- it was the full remittance? 15:25:24 15:25:25 15:25:27 15:25:29

A. It was the full remittance, correct. 15:25:30 15:25:31

Q. So it included everything including the January distribution amount? 15:25:31 15:25:32 15:25:34

A. Yes. 15:25:34

MR. FARINA: You're talking 15:25:35

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about the yearend financial statements now? 15:25:35 15:25:37

MS. BROWN: Yes. Did I say the wrong thing? 15:25:38 15:25:39

MR. FARINA: So, for the yearend financial statements for 2016, you asked him when he booked the remittance. 15:25:39 15:25:41 15:25:42 15:25:44

When he books the 3/31/15 remittance, that's what you asked him. 15:25:45 15:25:48 15:25:49

MS. BROWN: Did I say 3/31/15? Then I misspoke. 15:25:50 15:25:51

MR. FARINA: Just so -- 15:25:53

MS. BROWN: I meant to say in March -- correct, okay. So thank you. 15:25:54 15:25:55 15:25:56

Q. So, in the 2016 financial statements -- 15:25:57 15:25:58

A. Right. 15:25:58

Q. -- you booked the remittance in March 2016? 15:25:59 15:26:00

A. Correct. 15:26:02

Q. Okay. 15:26:03

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MR. FARINA: Well, that's not right. 15:26:03 15:26:05

A. It is right. 15:26:05

MR. CHANDLER: That's not what it says -- 15:26:05 15:26:05

MR. FARINA: Yeah. 15:26:08

MS. BROWN: No, he booked the remittance in March 2016 for the 2015 season. I'm just talking about the timing. 15:26:08 15:26:09 15:26:10 15:26:14

MR. CHANDLER: Just go ahead, go ahead. I'll stay out of it. 15:26:15 15:26:15 15:26:17

THE CHAIRPERSON: -- state an objection -- 15:26:18 15:26:19

MR. FARINA: I'm sorry you're right. 15:26:19 15:26:20

THE CHAIRPERSON: If you ask further questions, leave it to Counsel to ask the witness. 15:26:20 15:26:21 15:26:21

MR. FARINA: You're right. 15:26:23

MS. BROWN: Thank you. 15:26:23

BY MS. BROWN: 15:26:24

Q. So you book the remittance on 15:26:24

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your 2016 financial statements at the end of March, 2016, right? 15:26:27 15:26:29

A. Correct. 15:26:32

Q. And what you're booking in March of 2016 is the season remittance for the 2015 NFL season, right? 15:26:34 15:26:35 15:26:38

A. That's correct. 15:26:41

Q. Okay. And that remittance that you're booking includes the January distribution, it's full season remittance, right? 15:26:41 15:26:43 15:26:47 15:26:48

A. Correct. 15:26:49

Q. And, in fact, I think, as we went over in your direct, that's how this accounting error occurs, because you already booked a January distribution amount as revenue in the prior year's financial statements, right? 15:26:50 15:26:52 15:26:54 15:26:55 15:26:58 15:27:01

A. Correct. 15:27:02

Q. Okay. Now, when you're booking your -- so that's 2016, December 2016 financial statements. 15:27:04 15:27:06 15:27:09

Now, I want to talk about your March 31, 2017 conforming statements. 15:27:10 15:27:14

VILLANUEVA - REDIRECT

So those are just three months later, right? 15:27:17 15:27:18

A. Okay. 15:27:19

Q. In your March 31, 2017 conforming statements, what NFL season remittance is being booked on those statements? 15:27:20 15:27:23 15:27:27 15:27:29

A. 2016. 15:27:31

Q. 2016? 15:27:35

A. Right. 15:27:37

Q. NFL season, right. 15:27:37

So, if we look at those two sets of statements that are three months apart in time, your financial statement that ends December 31, 2016, your conforming statement that ends March, three months later, you actually are looking at two different season remittances, correct, one from the 2016 season and one from the 2016 season? 15:27:39 15:27:42 15:27:45 15:27:46 15:27:47 15:27:50 15:27:52 15:27:53 15:27:56

A. That's correct. 15:27:56

Q. And is that -- let me ask you this way. 15:27:57 15:28:01

Did you think when you were looking 15:28:01

VILLANUEVA - REDIRECT

at those two financial statements, even though they were three months apart in time, did you think that they were comparable? 15:28:04 15:28:05 15:28:08 15:28:10

A. No. 15:28:10

Q. Now, the NFL got your -- I think you were asked some questions about this. 15:28:11 15:28:15 15:28:16

The NFL got your financial statements and your conforming statements each year, correct? 15:28:16 15:28:18 15:28:19

A. Right. 15:28:21

Q. And you were shown some examples by Mr. Farina for the NFL and its auditors at Deloitte? 15:28:21 15:28:22 15:28:25

A. Yeah. 15:28:26

Q. Would ask you questions about why Ventures revenue was different on those two sets of statements, right? 15:28:27 15:28:28 15:28:31

A. Correct. 15:28:32

Q. Now, EY audited both of your financial statements and your conforming statements, right? 15:28:33 15:28:37 15:28:40

A. Correct. 15:28:40

VILLANUEVA - REDIRECT

Q. Did EY in connection with their auditors ever ask you some similar questions about comparing the two statements and why they were different? 15:28:40 15:28:42 15:28:44 15:28:47

A. Never. 15:28:48

MS. BROWN: I have no more questions. 15:28:49 15:28:50

MR. FARINA: I don't have anything else. 15:28:50 15:28:51

Thank you. 15:28:53

THE WITNESS: Thank you. 15:28:53

THE CHAIRPERSON: Sir, thank you very. 15:28:56 15:28:57

THE WITNESS: Thank you. 15:28:58

THE CHAIRPERSON: Safe home, okay. 15:28:58 15:28:58

THE WITNESS: Thank you. 15:29:00

(Witness is excused.) 15:29:00

MR. CHANDLER: Alright. Counsel, could you send us the native spreadsheet? 15:29:00 15:29:02 15:29:04

MR. FARINA: Yes, yes. 15:29:05

MR. CHANDLER: Thank you. 15:29:06

You know the one I'm talking 15:29:07

PROCEEDINGS

about, right? 15:29:08

MR. FARINA: I do. 15:29:08

THE CHAIRPERSON: Before we break, we asked about a witness schedule. 15:29:09 15:29:10 15:29:13

MS. BROWN: For next week. 15:29:13

MR. FARINA: Yeah, we actually have it. We can tell you. 15:29:14 15:29:15

THE CHAIRPERSON: Okay. 15:29:18

MR. FARINA: So, on Monday, to test my memory but they're all my witnesses. So it's McClain-Duer, Stratton and Crome, right? 15:29:19 15:29:21 15:29:26 15:29:26 15:29:28

Yeah, I'm sorry, we can excuse Mr. Villanueva. 15:29:33 15:29:34

THE CHAIRPERSON: Yeah, Mr. Villanueva, you're free to go. 15:29:37 15:29:37

THE WITNESS: Oh. 15:29:38

THE CHAIRPERSON: You can just give us the rest of it. 15:29:44 15:29:44

MR. FARINA: We can send you an e-mail. 15:29:46 15:29:47

THE CHAIRPERSON: Yeah, 15:29:47

PROCEEDINGS

just shoot us an e-mail over the weekend just so we have it. 15:29:48 15:29:49

What time are we starting on Monday, 9:30, usual time or... 15:29:51 15:29:52

MR. FARINA: Yeah. 15:29:56

(There is a discussion off the record.) 15:29:58 15:30:03

MS. BROWN: 9:30 is fine. 15:30:03

MR. FARINA: So there's one witness Jaime Stratton who is a former HR head. 15:30:07 15:30:08 15:30:10

THE CHAIRPERSON: Gotcha. 15:30:11

MR. FARINA: She has like a firm time slot at 1 o'clock. We promised her that so that she could get here and get out of here. 15:30:12 15:30:13 15:30:15 15:30:17

THE CHAIRPERSON: Okay. 15:30:19

MR. FARINA: So we're hoping that that corresponds to a natural break. But it's possible we may have to stop to take somebody else. 15:30:19 15:30:21 15:30:23 15:30:24

THE CHAIRPERSON: Take somebody out of order? 15:30:25 15:30:26

MR. FARINA: Yes. 15:30:26

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THE CHAIRPERSON: Okay. 15:30:27
MR. FARINA: And we're 15:30:27
actually calling her. So we are 15:30:28
taking -- and Kevin has agreed to 15:30:30
this. We appreciate it -- that 15:30:32
we can take Ms. Stratton while 15:30:33
they're still putting on their 15:30:33
case, accommodating Ms. Stratton. 15:30:38
So my understanding is it's 15:30:40
Mr. Crome who is first and then 15:30:41
Ms. Stratton. 15:30:44
THE CHAIRPERSON: Okay. 15:30:44
MR. FARINA: And then 15:30:45
McClain-Duer who is one of the 15:30:46
Raiders expert. 15:30:48
Is that still -- 15:30:48
THE CHAIRPERSON: Okay. 15:30:51
MR. FARINA: Okay. But 15:30:51
we'll send you an e-mail with the 15:30:52
whole week. 15:30:53
Monday we've got three 15:30:54
witnesses. So it's lot of 15:30:56
witnesses. I think we expect 15:30:57
them to all be relatively short. 15:30:59

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THE CHAIRPERSON: Okay. 15:31:01

MR. FARINA: But we'll give you an e-mail that has a plan for the week. 15:31:02 15:31:03 15:31:06

THE CHAIRPERSON: Thanks very much. 15:31:06 15:31:07

Very good work. 15:31:07

Have a good weekend. Safe home, if you're going home. 15:31:08 15:31:10

(Time noted: 3:31 p.m.) 15:31:11

PROCEEDINGS

C E R T I F I C A T E

I, SILVIA P. WAGE, CSR, CRR, RPR, a Notary Public for the State of New York, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Notary Public of the State of New York
My Commission expires November 29, 2026
Dated: September 20, 2024

PROCEEDINGS
CPR ARBITRATION
Matter No. G-23-23-N

In the Matter of the :
Arbitration between: :
:
A.D. FOOTBALL, INC., A.D. :
FAMILY LIMITED PARTNERSHIP, :
A. & R. BOSCACCI INVESTMENT :
CO., E. & V. BOSCACCI :
REVOCABLE TRUST/MARITAL LLC, :
E. & V. BOSCACCI DECEDENT'S :
TRUST/DECEDENT LLC, JILL :
LOVINGFOSS, CODY LOVINGFOSS, :
JOSH LOVINGFOSS, CHALET :
ROBERTS, GOPPL PARTNERSHIP, :
L.P., PATRICIA WINKENBACH and :
GERALD WINKENBACH as the :
Trustees of the Winkenbach :
Family Trust, PATRICIA :
WINKENBACH, GERALD WINKENBACH, :
RLP HOLDINGS, LP, ADF :
INVESTMENTS LLC, ADF HOLDINGS, :
LLC, A.D. FAMILY LIMITED :
PARTNERSHIP, A.D. FAMILY LLC, :
MARK DAVIS, FIRST FOOTBALL, :
LLC, MD FOOTBALL LLC, ALLAN :
BOSCACCI and PATRICIA BOSCACCI :
as the Trustees of the :
Boscacci Family Trust, LISA :
BOSCACCI, ALLISON MEIN, ANNE :
CARPENTER, ALIDA BEILKE, CARA :
YURAS, KENNETH WEAKLEY and :
LYNNE WEAKLEY as the Trustees :
of the Weakley Family Trust, :
JEANNE DAVIES, ERIC WEAKLEY, :
[TO BE CONTINUED] :

VOLUME VI
NEW YORK, NEW YORK
MONDAY, SEPTEMBER 23, 2024

REPORTED BY:
SILVIA P. WAGE, CCR, CRR, RPR
JOB NO. 6427182

PROCEEDINGS

[CONTINUED] :
ELYSE WEAKLEY, MARY JANE :
BOSCACCI as the Trustee of the:
Mary Jane Boscacci Living :
Trust, PAUL STEFANI and ANN :
STEFANI as the Trustees of :
the Stefani Family Trust, :
CATHERINE STEFANI, JON-PAUL :
STEFANI, NANCY MCAULIFFE, :
KELLY PEPPMEIER, ERIN :
MCAULIFFE, ALLAN BOSCACCI, :
COREY MCAULIFFE, ALLAN :
BOSCACCI as the Trustee :
Of the A&R 2005 Irrevocable :
DAVID ABRAMS, FRIEDMAN :
FOOTBALL LLC, JOSHUA FRIEDMAN,:
BETH FRIEDMAN, PEAK TRUST :
COMPANY as the Trustee of the :
Friedman Family 2015 GST I :
and the Friedman Family 2015 :
GST II, GARONZIK INVESTMENT :
PARTNERS LLC, FREDRIC :
GARONZIK, FREDRIC GARONZIK as :
The Trustee of the Fredric B. :
Garonzik Trust, DAVID GARONZIK:
And SAMUEL GARONZIK as the :
Trustees of the Fredric B. :
Garonzik Family Trust and the :
Anne G. Garonzik 2011 Trust, :
DAVID GARONZIK, SAMUEL :
GARONZIK, ANNE GARONZIK as :
the Trustee of the Anne G. :
Garonzik Trust, ANNE GARONZIK,:
PAUL LEFF, SILVERBLACK LLC, :
STEPHEN MALKIN, DAN GOLDRING, :
and MARK DAVIS as the Trustee :
of the Mark Davis 2010 Trust :
and the Davis Credit Shelter :
Trust, Trust, NANCY K. :
MCAULIFFE as the Trustee of :
the Nancy McAuliffe Family :
Trust, :
Claimants, :
-and- :
ERNST & YOUNG LLP and EY US :
LLP, :
Respondents. :
----------------------------- :

PROCEEDINGS

September 23, 2024
9:37 a.m.

VOLUME VI of the above-captioned arbitration, held at the offices of Veritext Legal Solutions, Seven Times Square, 16th Floor, New York New York, pursuant to agreement before SILVIA P. WAGE, a Certified Shorthand Reporter, Certified Realtime Reporter, Registered Professional Reporter, and Notary Public for the States of New Jersey, New York and Pennsylvania.

PROCEEDINGS

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PROCEEDINGS

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Attorneys for Jaime Stratton
Las Vegas, Nevada
BY: KATHLEEN ENGLAND, ESQ.
(Appearing only while Ms. Stratton testifies.)

ALSO PRESENT FOR CLAIMANT:

JUSTIN CARLEY, ESQ.
RAIDERS

MARCO HEIM, TECH

ALSO PRESENT FOR RESPONDENT:

MARK CARLSON, CPA
ERNST & YOUNG
JUSTIN McCARTY, ESQ.
ERNST & YOUNG

MEREDITH MOSS (VIA ZOOM)
ERNST & YOUNG
DANA DOUGLAS, (VIA ZOOM)
ERNST & YOUNG

SALLY BAI (VIA ZOOM)
SUPPORTING STAFF
JASON BENCZE, TECH

ALSO PRESENT FOR VERITEXT:

COREY WAINAINA, TECH

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THE CHAIRPERSON: We're good to go on.

MR. REED: Okay. We're on the record?

THE CHAIRPERSON: Yup, on the record.

MICHAEL CROME, DEEMED SWORN:

DIRECT EXAMINATION BY MR. REED:

Q. Alright. Mr. Crome, can you please introduce yourself to the Panel?

A. Good morning. Michael Crome Senior Vice President and Chief Financial Officer for the Las Vegas Raiders.

Q. When did you start working for the Raiders?

A. Started working with the Raiders Labor Day 2021.

Q. And what position were you hired to take with the Raiders?

A. I came in and my current position is Senior Vice President and Chief Financial Officer.

Q. How did you get the job?

A. I interviewed for the

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position. I think I started interviewing for the position sometime in the summer of 2021 and, you know, met with, you know, at the time, you know, Marc and interim President Dan Ventrelle and a host of others about the position.

Q. What are your responsibilities as the CFO of the Las Vegas Raiders?

A. So, in my current role, I oversee all the financial affairs of the Raiders, which includes both our team entity, which is Raiders Football Club, as well as the stadium entity, which is Las Vegas Stadium Events Company. We call them TeamCo and StadCo.

In addition, I also oversee IT operations. I oversee our revenue planning analytics, as well as our Raider Image, which is our retail operations.

Q. And so who do you report to at the Raiders?

A. Report to our President, Sandra Douglas Morgan.

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Q. And did you proceed Ms. Morgan, or were you hired after?

A. Yeah, I was there prior to Ms. Morgan joining the organization.

Q. Okay. And prior to Ms. Morgan joining, who did you report to?

A. I reported to Dan Ventrelle, who was our Interim President.

Q. Okay. Do you have people at the Raiders who report to you?

A. Yes. I have, yes, eight or so direct reports.

Q. And what areas of responsibility do those eight reports cover?

A. Yeah, so I have our controller reporting directly, our Vice President Controller reporting to me, our Vice President Planning and Analysis, Vice President of Revenue Planning and Analytics, Vice President of IT, our Senior Director of Retail Operations, our Accounts Payable Manager and I missed somebody. I think that's it. I missed

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someone, though. Yeah, but, yeah.

Q. Okay. You referred to the "Vice President of Planning and Analytics."

What is that functional area within the organization do?

A. Yeah, VP of Planning and Analytics -- Planning and Analysis is effectively our forecasting and budgeting arm of the finance department. So whereas I think in the controller position it's kind of looking backwards at the financial statements. I rely on my Planning and Analysis Department, P&A, to really look forward and forecast, you know, where, you know, we're going with an organization using, obviously, the information in the past. So works really closely with the accounting department.

Q. Let's talk a bit about your background before you joined the Raiders.

What degrees do you have?

A. Yeah, undergraduate degree of Bachelor of Science Degree in accounting

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and then I have an MBA focusing on more of the finance side, Master of Business Administration with a focus on the finance side.

Q. After business school, did you serve in any finance roles?

A. Yeah, after business school, served -- only roles I've really served outside of business school?

So, yeah, I served as -- started off as an associate, which is an entry level at Caesars Entertainment for those coming out of business school. And then within two Director of Planning and Analysis and then eventually moved into VP of finance role, finance budgeting and planning role with Caesars.

I left Caesars and went and worked in a Vice President of Finance role with Pinnacle Entertainment and did several different transactions including setting up -- looking to set up a real estate investment trust but then eventually selling our real estate to another entity

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called GLPI. And then also worked on spinning the company out and, ultimately, selling the company to Pinn Entertainment.

And then after that I owned my own private equity firm founded with a couple of partners and then I was in that job and before I started the work with the Raiders.

Q. So how long were you at Caesars?

A. So Caesars for about eight years.

Q. That was from when to when, roughly?

A. That was 2006 to 2015ish, somewhere in that range.

Q. Okay. And then you said you worked at Pinnacle Entertainment.

What is Pinnacle Entertainment?

A. Pinnacle Entertainment is a smaller regional casino company, about 15 casino properties in the midwest and the south, but similar to, you know, Caesars

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Entertainment. It's just a much larger company.

Q. And how long were you at Pinnacle?

A. I was at Pinnacle for about two and a half maybe three years at Pinnacle.

Q. And then you said you worked at your own -- you help found a private equity firm?

A. Yeah, I help found a private equity form called Sorrell Capital with again a couple of partners, actually, I worked with at Pinnacle Entertainment. And we were, you know, doing various investments, mostly in the hospitality industry, you know, hotels, you know, food and beverage concepts, that kind of thing to set up portfolio of companies.

Q. Okay. And then from Sorrell you went to the Raiders?

A. And then, yeah, I left Sorrell and went directly to the Raiders after that.

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Q. Okay. And, again, just set the timeline, when did you join the Raiders?

A. Joined the Raiders beginning of September 2021.

Q. Are you involved in any professional activities?

A. Yeah. Professionally I'm involved on several non-for profit boards in Las Vegas, communities and school, served as the capital campaign chair for Junior Achievement Southern Nevada.

I also served on the Governor's Economic Panel -- Economic Forum, which effectively is setting the state -- the revenue budget for the State that the legislators are using to, you know, allocate the funds that they're going to spend in the state money on in their annual legislation sessions.

And there are several other organizations, but I'm also on the Board of Good Works, which is a startup -- a startup labor fund -- labor firm in Las

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Vegas really placing temporary labor in a lot of casino spots that just need supplemental labor for, you know, hourly help.

Q. So you mentioned the Nevada Economic Forum, I think you said, that was the body that helped set the budget for the State?

A. Yeah, we forecast the revenue for the State. So we're looking at, you know, all different factors both on a macroeconomic side, as well as just projections that come in. Basically, are saying, you know, what do we think the forecast for the revenues are going to be for the state. And, again, that's what state legislators then use to determine how they're going to allocate those funds for various state initiatives that they do.

Q. How many members are there of this Nevada Economic Forum?

A. There's five of us on the Economic Forum.

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Q. How do you get your seat on that organization?

A. Yeah, appointed by the Governor of the State and we have to renew our term I want to say it's every two years, but it could be every three years. I'm not sure. But we have to renew our term. So appointed by one governor and then reappointed by a second governor.

Q. So, when did you first start serving on that forum?

A. It's 2024 now. I think I started serving on that 2022, if I remember correctly.

Q. Okay. And you've been reappointed once?

A. Yeah, I've been reappointed.

Q. You said it was by a different governor than the one who appointed you?

A. Yeah, different governors, different parties, yup.

Q. So let's turn to the subject

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matter of our case here.

Are you familiar with the Raiders overstatement of revenue in fiscal years 2016 through 2019?

A. Yes.

Q. And, briefly, what do you understand to have occurred?

A. Yeah, that our revenues were overstated in that period of time. There was a double-counting of revenue that was due from the NFL. We call it NFL Ventures. There's a line on our balance sheet that talks about receivable balance and that amount was double-counted.

Q. My colleagues are pointing out that I characterized that overstatement as having occurred during 2006 to 2016.

It was, actually, 2006 to 2019, right?

A. 2006 -- yes, 2006 to 2019.

Q. So we've heard during the arbitration that there was an investigation into how that overstatement

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occurred.

Was that still going on when you joined the Raiders in September of 2021?

A. The investigation piece had effectively wrapped up at the time that I had joined in September of 2021, so some cleanup. But, yeah, the bulk of the investigation had been completed when I arrived.

Q. Okay. So did you play any part in that investigation?

A. No, I didn't.

Q. When you joined, were you aware that their overstatement had occurred?

A. Yeah. When I joined, yeah, I was aware. When I was interviewing for the position, those were some of the main questions I had, you know, why was the position available, why was the position vacant. And so I wanted to understand, obviously, what I was stepping into.

So, prior to accepting the offer, I needed to understand what was happening

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internally.

Q. Okay. And did you understand remediating and fixing that error was going to be part of your responsibilities?

A. Yeah. I even understood during the interview process that there was more work that needed to be done and cleanup that needed to occur -- that needed to occur and that I would be, you know, responsible for leading that effort along with the rest of the team that was on the ground that was with the Raiders already along with some other help that was there from a forensic accounting standpoint as well.

Q. Okay. So how did the Raiders correct the overstatement of revenue that had occurred on the 2006 through 2019 financial statements?

A. So, I guess, in two parts. There were certain periods that were closed that couldn't be addressed. And so the periods that were available to be addressed, which was 2017 through 2019,

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those were amended because those periods were still open.

And so we had to file, you know, amended returns, you know, falling within the periods that were still open, the timelines that those periods were still open for those individual periods.

But what we did is we corrected the error in our 2020 financial statements. We added a footnote to our 2020 financial statements that corrected the error and, you know, effectively addressed it all in 2025 financial statements.

Q. Okay. So you referred to the open tax years of 2017 through 2019 and that those that had been amended.

Okay. What was the purpose of doing that?

A. You know, for the periods that we could -- the periods that were identified that we could correct, you know, we wanted to, you know, be as proactive as possible and try to correct the things that we could.

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Q. Okay. And then you said that you made a correction to your 2020 financial statements.

Was that process different or the same as correcting the tax returns?

A. Two different processes. The correcting the financial statements was doing just that correcting the financial statements.

(Stenographer clarification.)

Q. Correcting the financial statements was doing just that.

A. Yeah, correcting the financial statements was doing just that. Correcting the financials that are relied upon by, you know, management but also bankers and other ratings agency and outside constituents. Whereas tax returns was really addressing what needed to be changed with the IRS and then, ultimately, what had to be communicated to the partners within the partnership.

Q. Okay. So, in that giant binder that's in front of you, can you

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flip to the tab that says JX-2339?

(Arbitration Exhibit JX-2339 was referenced.)

A. Okay.

MR. BICKERMAN: Go ahead. Don't wait on me. I'll get there.

MR. REED: You kind of matter. So I want to make sure you're on the same page.

MR. BICKERMAN: Okay. I'm on the same page.

Q. Alright. So what do you recognize the document that we've designated JX-2329 to be?

A. So this is Raiders Football Club our consolidated financial statements for the year ended 12/31/2020. So this is for TeamCo, as I referred to earlier.

Q. Okay. And is this what you -- when you reference the 2020 financials that incorporated the correction of the overstatement, is that what you were referring to?

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A. Yes, this is the financial statements that were issued that corrected, yeah, the financial statements, yeah.

Q. Alright. And these are audited, right?

A. These are audited, correct.

Q. And who audited these?

A. These were audited by EY.

Q. Okay. Did you participate in that audit?

A. Yeah. I participated in this audit. This is at the time of my arrival. This was the audit that was in process that we were working on. So, yeah, I participated in this one.

Q. Okay. If you would flip to Page 17. At the bottom of the exhibit we've added numbers in bold in the middle of the page. So flip to 17.

A. Yes, I'm there.

Q. Okay. And you'll see in, roughly, the middle of that page, at the top of that page it's headed, "notes to

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consolidated financial statements."

Do you see that?

A. Yes.

Q. What are "notes" to the financial statements?

A. These are footnotes. These are -- basically, the way I think about it, these are a way to explain things within the financial statements for the reader, whoever the reader may be of what's happening within the financial statements, you know. It's a scripting of the numbers that are in the financials.

Q. Okay. And if you look at the middle of Page 17, there's a Note 2 that's Headed, "Correction of Prior Period Errors."

Do you see that?

A. Yup.

Q. What's described in that note?

A. What's described in this note is that we are correcting errors that

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were made in prior periods in our financial statements and this is explaining kind of by piece what those different errors were.

Q. Okay. So, if you flip the page, you'll see within Note 2 there is a subheading, "Revenue Accruals."

A. Yes, I see it.

Q. What does that paragraph discuss?

A. So this talks about the accrual of revenue related to NFL Ventures and how effectively the revenue was being accrued for and how that needed to be corrected for the prior periods.

Q. Okay. And, broadly speaking, how did that error get corrected in the 2020 financials?

A. So, broadly speaking, there was -- well, there's two things. One on the balance sheet, one on the P&L side. So the on revenue side that was hitting the P&L, there was revenue that was being accrued in December of -- December of the

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-- well, let me step back.

We were on a calendar year basis for our reporting. So, as revenue is being accrued in December prior to the yearend, but then we didn't receive the remittance for that revenue until January of that year.

And so, effectively, the accrual that was being booked in January was, also, being booked at the receipt, you know, in the following calendar year, which is a new Fiscal Year as well for the organization. So that's on the P&L side.

On the balance sheet the accounts receivable balance -- well, yeah, the accounts receivable balance continued to increase because the accrual that was being booked wasn't being cleared out of the accounts receivable balance on the balance sheet.

Q. Okay. And the error impacted financial statements from 2016 [sic] to 2019?

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A. 2006.

Q. 2006 to 2019, thank you.

But it was addressed only on the 2020 financial statements?

A. Yeah. So we addressed -- yeah, we addressed it all in the 2020 -- 2020 financial statements. I didn't go back and correct prior financial statements.

Q. And do you recall how they addressed it on the 2020 financials, what did they do on those financials to fix it?

A. Yeah. So, effectively, the accrual that was sitting in our accounts receivable balance was backed out and so we corrected that large balance that was in the accounts receivable account. And then the double-counting that occurred on the income statement in that year was, also, corrected and removed.

Q. Okay. Was any consideration given to restating the financials issued in 2006 through 2019?

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A. I'm sure. I mean, possibly. That was prior to my arrival. At the time of my arrival it was -- this was the method that -- this was the method that we were going to do and so...

Q. And so who drafted this Note 2?

A. Yeah, so the drafting of this note was really a combination of efforts. It included EY, it included myself. It included Ankura, who were the forensic accountants that were working with me on this as well and also working with A&P, who are Arnold & Porter as well. So it was a group effort.

Q. What kind of involvement did Ernst & Young have in preparing this footnote?

A. Yeah, I mean, there was -- there are several drafts of the note. I'm not sure who authored the original draft of the note. But they were -- they -- I would say EY wanted, specifically, you know, certain language to be included

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in the note.

And I remember there was an attempt to kind of soften the language. One of the things I wanted to make sure that was clear, you know, kind of coming into the role that everything was described and that we were extremely transparent as to what was going on. And I just didn't want to leave anything, you know, any stone unturned. I wanted to make sure that, you know, everything was here, so that it was in writing and we can just kind of move on from here and wanted to make it as clear as possible.

Q. And over what period of time did this note get drafted? How long did it take?

A. This had to have taken, I mean, weeks to put together this note. I don't recall exactly when we started drafting this, but it was not days. It was weeks of time to draft this note.

Q. Alright. So turn in your binder to 598, JX-598.

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(Arbitration Exhibit JX-598 was referenced.)

A. Beginning or the end?

Q. Sorry?

A. Beginning -- yeah, I'm sorry I'm there.

Q. So this is an e-mail chain among you -- the bottom e-mail is among you, Javier Garcia and Michael Gottlieb. And it's dated September 26, 2021.

What's occurring in that bottom e-mail chain -- I mean, in that bottom e-mail of the chain?

A. This is Javier responding to the footnotes, basically, and EY had put some edits, things that they wanted to change in the footnote, yeah. This was a response from them.

Q. Alright. And then the top e-mail the next day from you -- next day September 27, 2021 from you to Gene Deetz and Linda McDonald and Teresa Johnson.

Who is Mr. Deetz?

A. So Gene was the -- was with

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Ankura. He was a partner with the firm. He was my main contact from the Ankura side. So they did a lot of the forensic accounting, but also helped with some other CFO duties as well.

Q. Okay.

A. And Linda -- do you want me to get to the next person?

Q. Yeah.

A. And then Linda was also from Ankura, worked on more of the forensic side as well.

And Teresa Johnson was -- is an attorney with Arnold & Porter that helped us work on more business-related matters.

Q. Okay. And without having you read the e-mail out loud, what is the substance you are conveying to Mr. Deetz and the others in this e-mail?

A. Yeah, what I recall from this one is that there were, again, several iterations of this footnote. And despite working with all these folks that are on the e-mail -- Gene, Linda, Terry -- to

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put the footnote in as much as transparency as possible, we would get, you know, revisions to the note and it would change the language and it would soften it. It didn't feel like it was describing the actual -- the full extent of the matter.

And what had happened -- and, you know, no matter how many times we went back and said, oh, we're comfortable -- like, these are our financial statements, this is how we want to write this note, we would get responses from EY that we don't want that, we want it to be a little bit softer.

Speaking for me it didn't feel as transparent as we wanted the note to be.

Q. Okay. When was this disclosure language eventually finalized?

A. It was -- I mean, this was like down to the last minute. Our filing was at the end of the month. I mean, it was finalized on, I think, the last day of the month, the day that we needed to

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file.

Q. Okay. And that would have been September 30th of 2021?

A. Yeah, at 9:30.

Q. Look, if you would, at Tab 766, JX-766.

A. Okay.

(Arbitration Exhibit JX-766 was referenced.)

Q. And you'll see there the bottom e-mail on the chain is from you dated September 28, 2021 to Michael Gottlieb and Javier Garcia at EY, right?

A. Yeah, that's right.

Q. And what are you doing there?

A. So this one we had sent -- if you go back, one memo back, we had sent what we believed to be our notes of how we wanted the footnote to look.

If I recall, I didn't hear back from them. So this is me like nudging, hey, we still haven't heard back from you on this. We need to get this thing filed at the end of the month. And so this was

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-- yeah, this was me nudging them saying there's nothing else. There was nothing else outstanding outside of this footnote and we needed to get moving on this footnote so we could file our financial statements.

Q. Okay. If you look at the last paragraph of your e-mail you write, "Additionally, we are prepared to talk to anyone in your national office as needed that may have questions in their review."

Had you been dealing with EY's national office with this note?

A. Where are you, sorry?

Q. The last paragraph of your e-mail that begins the chain.

A. Yes.

I'm sorry. What was the question then?

Q. The first sentence of that paragraph says, "Additionally, we are prepared to talk to anyone in your national office as needed that may have questions in their review."

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Had you been interacting with EY's national office in connection with this footnote?

A. I had not interacted I don't believe directly. But I do recall both Michael and Javier saying that they were working with their national office on this specific footnote. So, yeah, they were working with them.

Q. Okay. Do you recall if they explained why the national office was involved in that footnote?

A. I don't recall why they said they were working with them. They just -- yeah, they said they needed to pull in their national office to work on this.

Q. Okay. The next sentence is, "We have the expectation that we will hit the agreed upon 9/30/2021 date as we expected we would as late as yesterday evening."

Do you see that?

A. Yeah, I see that.

Q. Why was hitting the 9/30/21

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date important?

A. Well, that was the date that our financials were due. We had -- we had gone through and gotten waivers with different accommodations from our creditors that, you know, okay we're, going to, you know, allow you to make these changes, but we need to have the financial statements, you know, finalized by 9/30. And it's still a date that we have today.

And so, in conversations with them, they were aware of the date and I was just saying, hey, like you're aware of the date we had talked about this and our expectations. So my expectation here is that we would still meet this deadline of 9/30/2021.

Q. Alright. So this e-mail is sent Tuesday, September 28th at 3:36. The next e-mail in the chain is sent by you on September 29th the following day at 10:12 a.m.

A. Yeah.

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Q. It's from you to Mr. Gottlieb and Mr. Garcia.

Had you received any response from EY between sending your initial e-mail and sending this e-mail?

A. Yeah. Reading my notes here, no, I don't think I received a response from them and we were, I mean, clearly moving really fast. As you said, I sent it September 28th and the next day I would expect I would have heard something back given this tight deadline we were on and hadn't heard anything back.

So I wanted to check in with them again to make sure -- the key was I needed to make sure that they aware that there was nothing else that needed to be done and we were fully prepared to move forward with finalizing our financial statements.

Q. Alright. So reading up in the chain, Mr. Gottlieb responds to you it looks like about 20 minutes later or so.

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A. Yeah.

Q. And he writes, "Michael, we're scheduling a meeting at 10:45 to discuss Footnote 2 for the reasons we discussed yesterday. Given that this item remains open as well as our remaining steps and related procedures to complete the audits, we will not be in a position to issue on Thursday. We remain committed to seeing this through to completion consistent with our standards and processes."

Do you see that?

A. Yeah, I see it.

Q. So this refers to discussion that would have been had the day before.

Do you have recollection of that discussion or what EY was saying as to open items?

A. (The witness reads to himself.)

Open items? Well, he said that this item remains open as well as remaining steps with the audits.

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Sorry, what's your question.

Q. I think the question is, do you have any recollection of the discussion that he's referring to here what he might have said to you on the 29th as to why they couldn't issue the note.

A. The best of my recollection that I can remember is they were still going through some of the process with their national office and they needed to get additional signoffs from their national office, if I recollect. But there was nothing that they were waiting on from us.

Q. We've heard throughout the arbitration that during the period when the revenue was being overstated on the Raiders' financials that the Raiders were subject to a debt covenant and a credit agreement with Bank of America.

Do the Raiders still have a credit agreement with Bank of America?

A. Yes, we still have a credit

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agreement in place.

Q. Did there come a point after the revenue overstatement was discovered that that credit agreement was amended?

A. After the -- yeah, after this was discovered, yes, our credit agreement had to be, yeah, amended.

Q. Okay. Look if you would at JX-2159.

(Arbitration Exhibit JX-2159 was referenced.)

Q. Now, I'll ask you to look at the portion of the document that comprises 1 through 120 -- sorry, go through 1 through 129.

A. Okay.

Q. And I'll ask you to look at the back several pages. So look at 125.

Whose signature is that?

A. Oh, Dan Ventrelle.

Q. Okay. And then following are signatures from Bank of America?

A. Yeah, from Bank of America and some other banks as well, U.S. Bank.

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It was U.S. Bank.

Q. Okay. And what is this document?

A. This is the -- this specific document is the credit agreement, but this is the amended credit agreement with all the changes that needed to be made.

Q. Okay. So I'll represent to you that on the front page, you'll see a box there.

A. Uh-huh.

Q. And those are some notes that Ernst & Young has helpfully placed on there for us.

I'm going to ask you to read the first of those notes, which says -- well, the note says, "waiver and amendment summary."

Do you see it?

A. Yeah, I see it.

Q. And the first note says, "Waiver reliance on financial reporting prior to 12/3120 due to accounting errors related to the recognition of revenue

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from the NFL and related receivable."

Do you see that?

A. Yes.

Q. And is that something that happened in the amended credit agreement?

A. Yes, that happened in here.

Q. Okay. So the banks waived reliance on the financial reporting prior to 12/31/20?

A. Yes, the banks agreed to waive any reliance on prior financial reporting.

Q. Okay. Why was that something that the Raiders wanted?

A. Because of the error that had been discovered. We needed to -- you know, we wanted to -- like, I talked about earlier. We corrected it in 2020 and so we needed them to be aware that financial statements they received in the past could not be relied upon.

Q. Okay. And the last section of that note says, "There is no default interest as stated in Section 10.27(b)."

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Do you see that?

A. Uh-huh, uh-huh.

Q. And is that true as well?

A. That's true as well.

Q. So did the Raiders have to pay any penalties to the banks on account of the overstatement of revenues that had occurred in their 2006 through 2019 financial statements?

A. No. It was part of the agreement that we did not need to pay any penalties.

Q. If you look at the second note, it says, "Waive all delayed reporting through the current period, through 12/31/20, 3/31/21 and 6/30/21."

Do you see that?

A. I see it.

Q. So is that accurate?

A. Yeah, yup. Yes.

Q. The banks waived any delay in reporting through 2020 Fiscal Year, as well as the first and second quarters of 2021?

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A. Yes.

Q. And is that something -- well, why did you need those waivers?

A. They were -- reporting hadn't been completed and we needed them to be aware and to recognize that we needed to waive the delay in that reporting.

Q. And why were those reports "delayed"?

A. Because of the investigation and because the reason we're here today. They needed to be worked through and we needed to make sure everything was ticked and tied and finalized before we could give them reports that we felt comfortable and accurate.

Q. Okay. If you go to Page 123 of the document -- our page numbers, not the agreement's page numbers.

And you'll see on that page is Section 10.27(b), which is referred to in Ernst & Young's notes.

A. Yes.

Q. And it's headed, "Waiver."

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Do you see that?

A. Yes.

Q. It begins, "The administrative agent and lenders agree that any default, event of default or potential default or event of default that has arisen or may arise under sections 8.1(c)" and 8 point -- I'm sorry. Let me start again.

What do you understand the purpose of this paragraph to be?

A. This is the waiver section that we talked about earlier. They're waiving any default that may have occurred as a result, yeah, what was discovered.

Q. And if you look to the middle of the paragraph, you'll see there is a line that begins, "service coverage ratio."

A. Debt service -- the DSCR, yeah, the debt service coverage ratio.

Q. Okay. That's actually not what I'm looking at.

A. Okay.

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Q. If you go further into that line, you see the language, "Any default or event of default under the existing agreement that may have arisen out of the accounting error related to receivables from NFL Ventures partnership included in the financial statements delivered by the borrower to the existing lenders and relied upon by the existing lenders prior to the closing date."

A. Yes.

Q. Do you see that?

A. I see that.

Q. So what does that waiver encompass?

A. It's basically waiving -- yeah, as a result of this accounting error that we discovered, this is saying that, you know, they're waiving any defaults that we had or anything that was in the existing agreement that would have, you know, would have been a default as a result of this error and financial statement delivery by us, the borrower,

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to any of our lenders and anything that they had relied upon prior to the closing date. So, yeah, this is, basically, the meat of it.

Q. Alright. So you testified a couple of minutes ago that the banks waived reliance on the prior year's financials on the 2016 through 2019 financials.

A. Yes.

Q. If the banks had refused to waive reliance on those financials, what would have been necessary in connection with those?

A. I mean, I don't know if I can lay out exactly. We would have been in default. And they would have set off a series of events with these notes that we held including -- we would have to seek financial remedies from the bank, talk about the interest expense as well. But, yeah, it would have been -- yeah.

Q. Would you have been able to avoid restating those years financials,

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if the banks had not waived reliance on them?

A. Would we have been able to?

Q. Avoid restating them.

In other words, you made the decision -- the Raiders made a decision you testified not to restate all the prior years, but to simply fix it by correcting the 2020 financials, right?

A. Uh-huh.

Q. My question is, do you know if the banks had not waived reliance on those prior years, would the Raiders have had to restate them?

A. There's, certainly, a chance we would have to go back and restate. I mean, yeah, part of the reason we needed to get this waiver, we needed the banks to, basically, go along with us in this process.

Q. Alright. So you mentioned earlier that -- let me ask you differently.

What steps did the Raiders take to

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mitigate the impact of the overstatement error? I'm not talking about how you fixed it, but what did you try and mitigate the harm that came from it?

A. Well, as we talked about earlier for the periods that were open, we attempted to file amended returns and for the periods that were not open we tried to seek remedies on how we would fix those errors including this, what we're here for.

Q. Okay. So what years were you able to amend the tax returns for?

A. It would amend 2017 through 2019.

Q. Okay. Turn if you would to JX-775 in your binder.

(Arbitration Exhibit JX-775 was referenced.)

A. 775.

Q. What is this document?

A. This is the amendment for -- this is the amendment for 2017, the amended statement for adjustment request,

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amendment for the 2017 period.

Q. Alright. And who prepared this?

A. EY.

Q. You see what the date of this filing is?

A. The date of the filing? Well...

It looks like we signed it on 9/30/2021 -- I'm sorry, 9/3/2021.

Q. And who signed it?

A. Mark Davis.

Q. And there's a preparer's name beneath that, John Luke Keel.

A. Yeah, he's with EY.

Q. Okay. Did EY prepare amended returns for the other years, '18 and '19?

A. No, for '18 and '19 this was the only year that they did.

Q. Okay. Why didn't they do '18 and '19?

A. This -- if I recall correctly, this period was -- the deadline to file for this period was a tight deadline. So

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we needed EY to help us with filing this one. Because we had more time to file for the other years and my role when I stepped in I wanted to first understand what was going on and, you know, kind of get my bearings with me.

And then I wanted to work with another firm to file the other returns. Like I said, we collectively as an organization went to work with another firm to file the other amended return because we had more time.

Q. Why did you want to work with another firm from EY?

A. Yeah, I mean, going back all the way to, you know, my interviewing period and hearing what had happened, I just didn't have a lot of confidence in EY. I knew there was an error that had occurred and after spending some time internally and really digging into what happened, you know, and talking to individuals, I lost confidence, I guess, I should say in EY and I didn't want them

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servicing our account.

They had been on our account for an extended period of time as well and I just didn't want them servicing our account and wanted to make a clean break and start with a new firm with fresh set of eyes.

THE CHAIRPERSON: Sir, can you keep your voice up a little.

THE WITNESS: Sorry.

THE CHAIRPERSON: Yeah, I'm a little hard of hearing so...

Q. Would you look at your binder at JX-511.

(Arbitration Exhibit JX-511 was referenced.)

A. Okay, I'm here.

Q. And can you tell us what that document is?

A. This is...

This is the amendment to the amendment of the 2017 AAR amendment.

Q. Okay. And who prepared this?

A. This was prepared by

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Deloitte.

Q. So this is the amendment to the 2017 Raiders tax return that amends the correction that EY had prepared earlier?

A. Correct. This is an amendment by Deloitte of the amendment that was filed by EY.

Q. And why did you all have to amend EY's amendment?

A. Because it still wasn't the amendment that -- the original amendment that EY filed was not correct and we needed to inform the IRS that we needed to correct for the correction, yeah.

Q. In what way was the original 2017 amendment incorrect?

A. So the original amendment did not fully account for the double-counted income. So there was income -- the original report that we filed had double-counted income, showed that we double counted income by $22 million when in actuality the income had been doubled

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by $28 million. So about an $5.8 million difference that was discovered. And, effectively, it was the double-counting that occurred in that January was not accounted for, which increased it from 22 to 28.

So we had to go sand say, hey, there was also some revenue from January as well that should have been accounted for that wasn't accounted for. So we needed to make an additional 5.8 million correction.

THE CHAIRPERSON: And, sir, can we just clarify the year that you're speaking of?

THE WITNESS: So, yeah. This was the 2017 amendment. There was revenue that was accounted for in January 2018 that should have been accounted for in this amendment, which would have taken it from 22 million to the $28 million.

THE CHAIRPERSON: Thank you,

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sir.

THE WITNESS: Yeah.

Q. Alright. Now, if you would flip in your binder to JX-508.

(Arbitration Exhibit JX-508 was referenced.)

A. 508.

Q. If you could just identify --

MR. BICKERMAN: Before you move on, can I just go back for a minute?

THE WITNESS: Sure.

MR. BICKERMAN: So the additional $5 million you said was money that was put into 2018 that should have been accounted in 2017? Did I hear you correctly?

THE WITNESS: The additional -- yeah, the additional -- we still underreported income by $5.8 million because there was a January payment that -- January 2018 payment that occurred that should have been accounted for when we

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did our 2017 AAR.

MR. BICKERMAN: So that was the money that was accrued in December and received in January?

THE WITNESS: Correct.

MR. BICKERMAN: Okay. That's what I thought.

BY MR. REED:

Q. Alright. So, if you could look at 508 and just all I want you to do there is tell us what that document is.

A. 508.

This is the 2018 AAR amended return.

Q. Who prepared that?

A. This was prepared by Deloitte.

Q. Okay. And then if you would look at 509, tell me what that is and who prepared it.

(Arbitration Exhibit JX-509 was referenced.)

A. This is the 2019 amended return filed by -- pretty sure -- yeah, filed by Deloitte or prepared by

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Deloitte.

Q. Okay. And did the IRS ultimately accept these amendments for 2017, '18 and '19 --

A. Yes.

Q. -- as prepared by Deloitte?

A. Yeah.

Q. Alright. Now, turn, if you would, to 342 in your binder.

(Arbitration Exhibit JX-342 is referenced.)

Q. And this is an e-mail from KirkAnderson@EY.com to you on November 10, 2021. He writes, "Michael and team, just following up from our conversation this morning. Please see attached a first draft of a partner communication for review, comment, mark up. Please let us know your thoughts."

Flip the page, you'll see a document that begins, "Draft Communication to Raiders LP Partners."

Do you see that?

A. Yes, yes.

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Q. Alright. And is that what you understand to be the draft partner communication that Mr. Anderson is referencing in his e-mail?

A. Yeah, this is the draft communication to our limited partners within the Raiders that they were suggesting that we send out to, yeah, our partners.

Q. Okay. And why was EY drafting a communication to the Raiders LP Partners?

A. As it states, they were still working with us closely to, you know, communicate this to our partners. At some point we, obviously, needed to communicate to our partners the amount of the error and what the impact would be to them individually, as not being a taxpayer.

And so this was the beginning of a draft to communicate to the partners what the impact was going to be of all these changes from 2006 forward to 2019.

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Q. Prior to being terminated, was EY working with the Raiders to quantify the amount of the error?

A. Yeah, yeah. Prior to their termination they were, yeah, they were working with us to quantify. Obviously, we would have needed that quantification to do this communication.

Q. Did they do any work to quantify the error on an annual basis; in other words, impact each year from 2006 to 2019?

A. We worked with them on that piece as well.

Q. Now. The second paragraph begins the, "The company is working with its external advisors to amend its tax returns and applicable K-1s for any open tax years, particularly, tax years 2017 through 2019."

Is that the process that resulted in the amended returns that we just looked at?

A. Yes.

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Q. And then the next paragraph begins, "For tax years 2006 through 2016 the statute of limitations is closed, meaning, the company may not amend such year's tax returns."

Did you understand that to be true?

A. That's correct.

Q. As a result, the document continues, "the company is presently working with its advisors to determine alternatives to recoup additional deductions in future years with respect to the over accrual of income in tax years 2006 through 2016."

Did Ernst & Young propose any strategies or measures to recoup deductions in those tax years?

A. Yes, yeah, they presented a presentation or a deck that they had put together internally that they wanted to present that they thought might be a way forward.

Q. And do you, generally speaking, recall what it was that EY was

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proposing?

A. Yeah. It was -- generally speaking, it was a change of our kind of structure of the organization from a legal structure standpoint is effectively what they were proposing that we do. And, yeah, there was a presentation that they presented to me to change every -- to change a lot with the organization.

Q. Okay. Did you ever develop an understanding of how changing the structure of the organization might assist in helping to recoup the deductions that were lost for years 2006 through 2019?

A. Yeah. I gained a general understanding of what could -- what we could do from their presentation, but it was a very complex structure and, you know, it was not my area of expertise. It's not something that you do on daily basis. So I enlisted our advisors that we had on board to help me, at least, review what it was that they were

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proposing.

Q. And which advisors, in particular, did you enlist to help you evaluate EY's proposal?

A. Yeah, so worked with Ankura, who were, again, the forensic accountants but, also, just helping out with financials overall that were on board.

Also, worked with Arnold & Porter. They had some tax attorneys that I asked to work on reviewing this as well.

Q. Okay. Did you show the proposal to any other accounting firms?

A. Yeah. I'm pretty certain I shared it with other accounting firms. The thing that was occurring is I received this proposal and, again, my antennas were up from a trust standpoint and I wanted as much input on, you know, this proposal as possible and I wanted to understand, you know, from lots of different advisors that I had on my side to help me understand what this thing was and if this is something that was even

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viable.

So, yeah, I mean, when I started looking for other firms to come in and assist me going forward, yeah, I'm sure I shared the document with them asking them, hey, does this thing, you know, does this thing have any possibility.

Q. I'm sorry. Do you still have 342 open?

A. Yeah I do.

Q. Okay. Flip the page, if you would, to what's Page 4 of the exhibit.

A. Page 4 or 5?

Q. Page 4. It says, "Oakland Raiders LP Proposed Transaction Steps."

Do you see that?

A. Yes, yes.

Q. And if you look at that and the next several pages of the exhibit, it appears to be some kind of presentation deck.

A. Yeah, this is a presentation deck.

Q. And what does this deck

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describe and who prepared it?

A. It was prepared by EY and the deck describes, I think, what are the initial -- their initial thoughts on how this new structure could be set up within the organization. But, again, it was a proposal.

Q. Does this relate to the mitigation strategy that you were just describing that EY had devised?

A. Yeah. This is related to the mitigation strategy.

Q. Alright. So, if you look at -- well, let me ask you this.

Did you understand there to be potential roadblocks or pitfalls associated with this strategy?

A. I didn't know. But I remember in having the conversations with my external advisors one of the main points that came up was in addition to, you know, all the changes from a tax organizational standpoint, in order to do this, you'd have to have a business

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person not just a financial restructuring purpose in order to do this and I remember that being one of the big challenges with this in talking to my other advisors was that, you know, okay, this is great, but, I mean, this is something, but what's the base purpose behind, you know, behind doing this change.

Q. Was recouping lost tax deductions a sufficient business purpose?

A. No, that wasn't going to be enough of a business purpose.

Q. Okay. If you look at Page 7 of the document, you'll see a diagram and then to the side of that there is a list of bullet points underneath the heading, "Tax Considerations."

A. Yup, I see it.

Q. And you see third from the bottom, what does that one say?

A. "The business purpose of creating a new LLC needs to be considered."

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Q. Okay. And so, when you discussed this with folks from EY, did they address the need to identify a nontax related business purpose for this strategy?

A. Did they address the need or...

Q. Did they address that as an issue?

A. Yeah they, addressed that as an issue.

Q. Did they ever identify a business purpose that you understood to be sufficient to justify it?

A. No.

Q. Did anybody?

A. No, in even working with my other advisors, no.

Q. Alright. And go back to Page 5 of the presentation. And you'll see there is a page headed, "Legal Disclaimer." You'll see the first bullet point says, "This presentation is only intended to provide a general outline of

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the subjects covered and to form the basis for future discussions. It should not be viewed as an opinion. Nor should it be used in place of professional advice."

Do you see that?

A. Yes.

Q. What do you understand "opinion" to mean there? What is an "opinion," in this context?

A. It's a group's belief as to a potential path, but it's just that opinion.

Q. Okay. And if you go down four bullet points -- sorry, the second bullet point says, "Further detailed analysis and advice must be undertaken prior to implementing any transaction described herein."

Do you see that?

A. Yes.

Q. Did you understand that to be true with respect to their proposal?

A. Yes.

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Q. If you go down two bullet points from there it says, "Due to the preliminary nature of this document, it does not constitute a tax opinion and cannot be relied upon for any purpose, including penalty protection."

Do you see that?

A. Yes.

Q. And then the last bullet point says, "Legal and business ramifications must still be evaluated with respect to the transaction."

Do you see that?

A. Yes.

Q. Is that what you were doing with your external advisors?

A. Yes.

Q. Okay. Did EY ever present this to you along with a representation that they were prepared to guarantee would work?

A. There was never a guarantee, yeah, with this, yeah.

Q. Okay. And did you ever hear

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from EY that they were prepared to endorse and recommend this proposal without any reservations?

A. No.

Q. So what did you ultimately conclude about Ernst & Young's proposed might mitigation strategy?

A. We did not move forward with this proposed strategy.

Q. Why not?

A. Again, I reviewed this with other advisors from Ankura to Arnold & Porter, as well and the communication was one of the main reasons -- again, going back, the business purpose piece was not there and it didn't -- it didn't feel like -- it didn't feel right to me, especially after consulting with my external advisors as to a path that we should take. So we, ultimately, concluded we wouldn't move forward with this proposal.

Q. Did you ask Ernst & Young to devise this mitigation proposal?

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A. No, I did not. They -- I remember distinctly Ed Koijane reaching out and saying that they were working on a proposal and they wanted to come in and present the proposal to me but, no. Excuse me, it wasn't something I requested.

Q. Did they bill you for it?

A. I don't recall, honestly, if they did or not.

Q. Okay. Look at Tab 45 in your binder, if you would.

(Arbitration Exhibit JX-45 is referenced.)

A. Okay, I'm there.

Q. You see there is an e-mail from Mr. Koijane to you dated 13 of November, 2021? And you write, "Michael, et al., attached are the slides for MD."

Do you see that?

A. Yes.

Q. And what do those slides that follow relate to?

A. This was --

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THE CHAIRPERSON: Counsel, are these supposed to be up on our --

A. Yeah, I don't see it.

MR. REED: It could be, JX-45.

Thank you for letting me know.

THE CHAIRPERSON: No problem.

A. So what's the question, Kevin? Sorry. What was the question?

Q. What do these slides relate to?

A. These are an explanation of the misstatement, as well as them estimating the years of when the misstatement occurred and quantifying the amount and the years that it occurred.

Q. Okay. Flip to 14 --

A. And then, yeah, sorry.

Q. Go ahead.

A. And then going back further, this is the proposal of the partnership restructuring piece that we had talked about, that we just talked about here.

Q. Okay.

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A. And then -- yeah.

Q. Alright. And if you go to page Page 10 of the exhibit. You'll see there is a chart there. Look at the numbers at the bottom of the page.

A. Oh, here we go, yup. I see it.

Q. And that page is headed, "Over Accrual of Revenue From 2006 to 2019."

What does that chart depict?

A. Yeah, the total amount was the $214 million of the over accrual. So this is, basically, breaking it down by year what the over accrual amount was.

Q. Where did EY get those numbers, to your understanding?

A. I mean, this is working with us. I mean they, put these numbers together working along with us, yeah.

Q. Okay. Alright. You can set that aside.

So, as CFO of the Raiders, do you keep track of expenses in the ordinary

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course?

A. Yeah, keep track of the expenses for sure.

Q. How do you normally do that?

A. Well, we have, you know, obviously, our accounting system. We have staff that works on it. But, you know, there's a series of controls that are in place to keep track of expenses, make sure that they're accurately stated. It's month end close process that we do. There's invoice approval process that we have within the organization with various signature authorities. There are -- yeah, there's -- yeah. I mean, those are the main -- well, we also do a budgeting process. So the budgeting process helps us to understand what can we expect from an expense standpoint and, you know, we do variance analysis both to prior year on expenses and revenue compared to both prior year and compared to our budget budgeting and forecasting to understand what the expense structure is going to

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look like.

Q. Okay. Have Raiders made an effort to track the expenses that they have incurred on account of the NFL Ventures revenue from 2006 to 2019?

A. Yes. So -- yeah, we -- yeah, we have a specific project code that we use called Project Roses that we use to track the expenses related to this specific project.

Q. So, broadly speaking, what were the expenses that the Raiders incurred as a result of the overstatement of revenue?

A. So there were the fees for the investigation. There were fees for remediation and then all the other cleanup fees that were related.

So we had fees come in from Ankura that we talked about quite a bit.

We had fees come in from Arnold & Porter as part of the investigation.

And we've had, you know fees come in from Deloitte as well to assist with

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some of the amended returns that we talked about as well.

So fees from different places and then we also track, you know, our legal fees related to this as well for Project Roses.

Q. Okay. And when you say, "related to this you," mean this arbitration?

A. Yes, this arbitration, yes.

Q. Okay. So you said you track fees associated with remediation, with budgeting the error, with mitigation, correcting the damages and the litigation?

A. Remediation and -- yes, yes.

Q. And the vendors you mentioned within Project Roses were Arnold & Porter, Ankura and Deloitte?

A. And Deloitte, yes. Those are three.

Q. And what about my firm's fees, are those tracked within Project Roses?

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A. Yeah, we track those expenses in Project Roses as well.

Q. Okay. And to the extent there are expert witnesses and other fees charging fees in connection with this arbitration, are those tracked in Project Roses?

A. Yes, we track, yes.

Q. I want to focus on Arnold & Porter, Ankura and Deloitte.

A. Okay.

Q. Did Ankura do any work that was not within the scope of Project Roses?

A. Yes. So Ankura kind of had two roles. They were, specifically, related to work on Project Roses, all the things we talked about, both the forensic side, as well as a lot of cleanup side, so correcting the errors.

But then also Ankura helped me out in my role. So, when I came into the position the, I'm sure you're all aware, obviously, the President of the

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organization, the CFO as well as the controller had all been removed from the organization.

And so I used Ankura. Because when I stepped into the role, the most senior person I had was a manager on the accounting side. And so I used Ankura as an extension of you want to call it the office of the CFO to help me kind of set up the office, and I knew that there were things that needed to be just basic blocking and tackling and process that need to be set up. And so I used Ankura in that role to help me establish this office upon my arrival.

Q. What about Arnold & Porter, did the Arnold & Porter do any work during this cleanup and correction period that wasn't within the scope of Project Roses?

A. Yes. Arnold & Porter did work outside of Project Roses as well. They, you know, they advised us on various corporate matters within the

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organization. A lot of work around the partnership and structuring and et cetera. So there was work outside of Project Roses that Arnold & Porter did as well.

Q. And what about Deloitte, did they do work outside of Project Roses during this period?

A. Yes. So Deloitte -- again, we hired Deloitte on to help us. They are now our auditors and tax preparers of record. So Deloitte was on board, talked about the AAR stuff that they did. But they were also on board with helping us to prepare our financial statements, as well as our other tax matters unrelated to Project Roses.

Q. Did the Raiders ask vendors to bill time on Project Roses work separately from other work they were doing for the organization?

A. Yes, I asked vendors to code work and even prior to my arrival, we asked vendors to code work that was

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related to Project Roses to Project Roses and then other work that they had they would bill separately using -- under different matters that didn't, specifically, mention Project Roses.

Q. Okay. Did you take any other steps to ensure invoices for work by Arnold & Porter, Ankura and Deloitte that were outside the scope of Project Roses didn't get included within that Project Roses tracking?

A. Yes. So part of the normal course I'm reviewing invoices and, specifically, invoices over a certain amount, I have to approve just because of the size of the invoice.

But, yeah, I would review the invoices that came in that were coded to Project Roses and even outside of Project Roses and where I had questions I would reach out to the vendor and ask, you know, hey, this looks like, you know, this is or isn't related to Project Roses just to confirm that we were pure in what

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we were coding to the Project Roses account. And just in general that we were doing our accounting processes correctly and things were being appropriately accounted for.

Q. Let's look at Exhibit 2359, please.

(Arbitration Exhibit JX-2359 was referenced.)

A. Okay.

Q. Do you recognize that document?

A. Yes, I recognize this document.

Q. What is it?

A. This is a summary of Project Roses expenses for Ankura, Deloitte and Arnold & Porter.

Q. Okay. And who created it?

A. I created it. But the data comes from our systems. All the tracking that we talked about earlier is where the data comes from, but I created the spreadsheet.

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Q. So the first page of this spreadsheet is a summary of the data that follows; is that right?

A. The very first page with the three numbers or the four numbers on it, yeah, that's a summary of the data that follows.

Q. Okay. And then the first page following the blue sheet, what is that?

A. First page following the blue sheet are the Project Roses expenses identified that were incurred by Ankura, incurred and paid for by us for Ankura's work for Roses.

Q. Okay. And what about the second page?

A. Second page is Deloitt4e related fees.

Q. Okay. And what about the next page?

A. And the last page is Arnold & Porter related fees for the project.

Q. Alright. So, if you go back

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to the first page, what is the total amount that you show for Project Roses fees?

A. I'm sorry, wait the page -- the final page --

Q. Sorry.

A. -- is a portion. It's only $5,000 of Arnold & Porter related cost.

Page 4 this is double-sided of the document are the full layout of Arnold & Porter cost.

Q. Okay.

A. Yeah.

Q. Alright. So the first page is a summary of the data that follows?

A. Yes.

Q. And what does that show in terms of the total Project Roses expenses paid by the Raiders to Ankura, Deloitte and Arnold & Porter?

A. 8.97 million in fees and expenses.

Q. Now, in the course of preparing to testify today, did you

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review this Project Roses spreadsheet?

A. Yes.

Q. And in the course of that review, did you discover any invoices that should not have been included in the spreadsheet?

A. Of this spreadsheet, this final one that we have here?

Q. Yes.

A. Yeah, there were some invoices that we found or reviewed that, you know, after looking at them further, you know, we thought maybe we should remove those invoices from the sheet.

Q. Okay. And, generally speaking, why did you conclude those invoices should be removed?

A. There was one that was related to like an employment -- employment matters that I didn't think should be coded to the sheet. And I'm trying to remember what the other one was. I don't have the other sheet.

Q. Alright. Well, let's look at

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Page 2 of the exhibit, the Ankura fees. And I'll ask you to look at the one -- if you can highlight the very last one listed on that page.

Is that one of the ones that should be removed?

A. The 47?

Q. Yeah.

A. $4,700.01. Yeah, I think that was one of the ones that should be removed.

Q. What was the reason to remove that one?

A. I'm trying to remember.

I don't remember. I would have to look at that one, specifically, to remember that one.

Q. Okay. What was the dates of it?

A. The date of it was January 2023.

Q. Okay.

MR. REED: Do we have that invoice, Sebastian? Can you call

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that up.

(There is a discussion off the record.)

Q. Had the litigation commenced by that point in time?

A. Let's see. What's the date? This is January -- yeah, this is January 2023. So, yeah, I think -- yeah, okay. This -- okay, yeah. This -- now I'm looking at it.

So this was billed to Quinn Emanuel, specifically, Deb sitting here in the room.

So this I remember now is an invoice that I believed was related to the litigation piece. And so we were putting together the spreadsheet. We removed everything that was related to litigation. But this one looks like it was related to the litigation piece, so that's why we removed this invoice. There was another one that we removed as well for that reason.

Q. So, if we look at four up,

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there is an invoice dated September 30th for the amount of $17,000, roughly.

A. Yeah. And I believe that was the same thing. It was something that was billed, specifically, for the litigation and we didn't want to include litigation fees at all in this.

Q. Alright. Total amount of those two invoices is, approximately, $21,000?

A. Yeah, 21.

Q. Okay. Now, if you go not to the next page but the page after.

A. Page 4 at the bottom, Page 4 of 5 it says, that one?

Q. Let's see. The one that has the total at the bottom of 2,529,000.

A. Yes.

Q. You'll see it looks like -- 1, 2, 3, 4, 5, 6 -- six from the top there's an invoice in the amount of $23,000.

A. Oh, wait, I'm sorry. Oh, from the top. Yes. Yeah, yeah, that one

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-- yeah, that one was removed. We thought that was related -- it says, "legal employment," from a coding standpoint. And, generally speaking, yeah, I didn't think that one should be included. So we removed that one also. Yeah, so we removed that one as well.

Q. Okay. And if you go down to the bottom --

A. Yeah.

Q. -- you'll see there's -- not the bottom invoice but six rows up from that.

Are those invoices among the ones that you concluded should be removed?

A. Yeah. Because I believe these were litigation-related invoices looking at the date on these invoices. So we removed those as well.

Q. Okay. So what was the total amount, approximately, of the invoices that on review you determined should be removed from the 8.97 million?

A. I believe in total it was

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about hundred thousand dollars or so of invoices.

Q. Okay. Alright. So switching topics as my colleague likes to say.

When you joined the Raiders as CFO did you have specific goals with respect to the Raiders financials?

A. Yeah, I wanted to -- yeah I wanted the financials to be reflected as accurately as possible for all the recipients of the financials not just our -- not just internally but for bankers our rating agencies and for our partners, the limited partners that we have in the entity as well so yeah sorry.

Q. What about with respect to the Raiders profitability?

A. Yeah, I mean, I wanted the team to be as profitable as possible from a P&L standpoint. I wanted to, you know, work on debt covenants, working with their colleagues on the senior team to make the entity as profitable as possible.

Q. How has the profitability of

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the Raiders changed since you joined the organization in September of 2021?

A. The profitability of the organization has changed substantially for a host of reasons.

The main one being that the team is now located in Las Vegas and not located in Oakland and that changed. It changed the trajectory of the team in a significant way across lots of different angles. Again, like I said, the main one being that the team is now in Vegas.

From a Raiders Football Club standpoint, you know, we issued personal seat licenses and so the team is now, you know, effectively sold out on season tickets for the team, which is a huge financial upside for the team.

But the biggest impact is the stadium. So, when the team was located in Oakland, we were tenants. We were subtenants, actually, sub tenants to the A's in the stadium in Oakland. And so we paid -- we effectively paid rent to play

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our games in the stadium in Oakland.

And now with the team being located in Las Vegas, the tables have completely turned and now we have a 30-year rent-free lease on the stadium. And so we -- a hundred percent of the economics that run through the stadium, whether it be for our game days, whether it be through sponsorships or whether it be through concerts that we have at the stadium, your big name concert, Swifty's in the house or even smaller, you know, private events that we have in the stadium, all of that revenue is now Raiders revenue and it rolls up to Oakland Raiders LP.

Where in the past, say in Oakland there was a concert in the stadium, none of that revenue would have gone to the Raiders because, again, we were just tenants in the stadium in Oakland; so significant change.

Q. Do you know how Allegiant Stadium does in terms of revenue compared

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to other large arenas in the United States?

A. Larger venues like stadium venues in the United States?

Q. Yeah, I didn't say "larger."

I just meant large, like, comparable stadiums.

How does -- le me just put a cleaner question.

How does Allegiant Stadium do in terms of revenue compared to comparable arenas in the United Stadiums?

A. Yeah, Allegiant Stadium is seen as a premiere venue. I guess we were -- the best anecdotal evidence of how big and how large Allegiant Stadium is, in 2022, we were named by Billboard as the No. 1 stadium -- No. 1 revenue generating stadium in the world surpassing, you know, large stadiums in you, know New, York, LA, other big cities around the world, not just in the United States. We were named as the No. 1 stadium in the world and then from an NFL

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standpoint we're -- when we were in Oakland, the team, you know, from a revenue standpoint, you know, we get lots of reports from the NFL from a revenue standpoint. We were always in the bottom three from a revenue standpoint. So 32 teams, we were usually 30, 31 or 32.

And since the move to Oakland [sic], we've vaulted up top three team now in the League. So we generally are, you know, top 1, 2 or -- not No. 1. We're usually in second or third place from a revenue standpoint overall as a team. So literally almost first to last.

Q. Out of curiosity who is No. 1?

A. We don't talk about that. We don't say those names out loud for purposes of the report.

The Dallas Cowboys would be the No. 1 revenue generating team in the League. We're coming for them, though.

Q. Did the Raiders generate positive net income in 2022, your first

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full year?

A. 2022, yes.

Q. Into '23?

A. In 2023, no, we generated negative.

Q. And if everything is so profitable, why did you generate negative income in 2023?

A. A series of things happened in 2023 and I'll call it a series of one-time events that occurred in 2023.

By far the largest, I guess, thing that happened from an expense standpoint and profitability was a decision made by the owner to terminate our head coach and GM on Halloween night October 31st, 2023. I remember it vividly and that was a huge financial impact.

Both our head coach and GM and also the offensive coordinator were under contracts and they were all guaranteed contracts. So, at the time of the termination, it accelerated the expense for those three individuals all the way

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up and it was in the $60 million range.

In addition to that, there was -- we hosted this small event called the Super Bowl in our stadium in February of 2024 -- yeah, 2024, but was within our fiscal year.

And the Superbowl, which is a great event for Las Vegas and, you know, part of the reason why we have the stadium is to have events like the Super Bowl. But we the Raiders don't make money on the Superbowl because the NFL gets the stadium rent-free.

And two things that happened with the Super Bowl that detract from our profitability. No. 1 is that the -- there's just a lot of hospitality cost. There is different expenses that are incurred from different parties and just different things we have to do to be a host of the Super Bowl. Those costs are significant.

But one of the other more significant things is revenue. So, when

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the NFL comes in for the Super Bowl, we have to take the stadium offline for two months. Two months being all of January and all of February. So I talked about one of the -- the biggest generator of revenues are these private events, non-Raiders events that happen in the stadium.

Well, if we had to take the stadium off for two months, I can't book any concerts. I can't book any private events. We also have a retail store. I can't, you know, make money in our retail store either. We don't see any of that revenue we would normally see in the normal course of the business in January and February because the stadium was offline. And, again, they didn't pay rent for the stadium being offline for that period of time.

Again, the City made very -- a lot of money. It was a billion dollar economic impact, but we did not make money on the Super Bowl.

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Q. Do you create projections of the Raiders financial results in the ordinary course?

A. Yes, we do a detail budget on an annual basis and then we do five-year forecast, yeah, a rolling kind of forecast. We do an annual forecast of where we think the team will go from a team and stadium side.

Q. You said, "rolling kind of forecast."

What does that mean?

A. It means that we're constantly updating it with new information that we have. I mean, lots of different examples. You know, we had our first home game yesterday. We lost, unfortunately. But as I'm getting information -- so now I need to see how this first home game performed and how did we perform with concessions, things like parking, things merchandise. So, when we update our forecast, so that I know what I can expect during the season.

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I'm forecasting what I thought I was going to make, but now I've got concrete information of how this season is going to look so I can constantly update our forecast with new information. And that's just an example of lots of different inputs that we have on the forecast.

Q. Do these forecast get shared with any third parties?

A. Yeah, so the forecast are shared with several third parties. The NFL gets a version of our forecast -- not a version. The NFL gets our forecast. Our ratings agency gets a forecast, a presentation I do on an annual basis and, also, our bankers get our forecast as well and then, obviously, internally we share our forecast with our owner and our President as well.

Q. Okay. Is it important for them to be as accurate as you can make them?

A. Yeah, absolutely, it's

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important. Lots of different reasons why, but one I think of note is our rating agencies. They're looking at our forecast and they've got their own model and looking at a model that I'm submitting to them and making sure that my debt rating stays, you know, the same on the debt that I have.

And if for some reason I'm forecasting that we're going to make a lot less or even a lot more, that could have, you know, a direct impact on the rating that I pay and, obviously, the interest rate that I pay on our debt as a team.

Q. So explain for the Panel, if you would, what your forecasting process is. How do you prepare these?

A. Yeah, so the budgeting process is very detailed. So, on an annual basis, we take a lot of the assumptions that I talked about. So we get inputs from the NFL in terms of national revenue, so just TV revenue

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we're getting for broadcast, which is a significant piece of our revenue.

We also get information from NFL Ventures, which we talked about.

We also have information from, you know, season ticket members, you know, renewal rates for season ticket members.

We have forecasts that come from our sponsorship teams and partnerships and sponsorships. They're going to sell on an annual basis.

So we use that kind of as a baseline. But then the next iteration of the process is meeting with each individual department and going in depth using those assumptions as to what they think the year looks like from a spending standpoint.

And to the extent that they impact revenue, what they expect to happen from a revenue standpoint. So we meet with each individual, you know, who you know who you are hiring this year, what kind of performance raises are you going to

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give this year, what our cost of living increase, if any, we're going to do, what bonus structure look like for this year.

We have, you know, half time acts that come in, how much you going to spend on half time act.

From a concert standpoint, what is our forecast for the number of concerts coming to the stadium. I mean, it's very detailed and it's just not kind of being in the finance department, sitting in a bubble. It's meeting each individual department, each individual leader to understand. They.

Understand the business better than I do. So understanding from them what the landscape is going to look like for the next year. And then from that process, we extrapolate that. That's for the year, for the Fiscal Year that's coming up and then we extrapolate that into what the future, you know, to complete the five-year forecast, what are the future years look like.

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And so that's not going as detailed with each individual operator. We're asking them to tell us what's going to happen for the year, but then taking other inputs -- for example, I know what the TV contract is going to look like for the next five years because those contracts are signed and in place.

So it's a pretty steady revenue stream between now and 2018 and 2029 for some of the television deals that we have.

I know based on our personal seat license that we have for the stadium what our assumptions are going to be on season ticket sales.

And then for factors that, you know, I think are just going to grow at a normalized growth rate, I'll apply a, you know, 2 or 3 percent growth rate on both the expenses but also on the revenue side. But anything that I know that is going to happen in future years, I will forecast that.

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Another big one that kind of swings -- two big things swing things are generally for an NFL team, we play -- one season we play eight home regular season games. The other season we'll play nine regular season home games. And, obviously, having one less home game impacts our financials. So I'll forecast for that. One year we'll play international game. So I'll forecast for that.

And then, obviously, the player cost is our biggest expense by far. And it kind of follows the increase that we see in national revenue. But I'll have to protect what I think our player cost will be and how much we'll spend on players as well. Probably more than you wanted to know but...

Q. Are there certain assumptions you make in your forecast with respect to non-Raider events?

A. Yeah, there's certainly a forecast that we have to do. So

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non-Raiders non-ULV events in our stadium ticketed events is a big factor in our financial performance. And so in the past -- you know, 2022 was a record year for us. And so now we have to settle in how many events do we think we're going to have.

At the time I'm settling our budget, I don't know how -- I don't know who is going to go to tour, for example. I don't know what soccer matches are going to happen, what rugby event is going to happen or any type of event that happens. The stadium --

(Stenographer clarification.)

A. Yeah, so I will forecast what I think a probable number of events will be in the stadium for the upcoming Fiscal Year. And what we settled in now, our assumption is that we'll have 15 non-Raiders, non-ULV ticketed events in the stadium on an annual basis.

And now that we've been in the stadium for, you know, three full seasons

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with the ability to have people in the stadium, the COVID year we were open but no fans in the stands. We kind of have an idea how much those concerts are going to make. So that helps to inform that projection and feel pretty certain again now with the history that we'll get close to that projection.

Q. Have you refined your forecasting process during the time that you've been at the Raiders?

A. Yeah, we've refined it pretty significantly prior to joining the Raiders. There wasn't a budgeting process in place prior to me joining. So, you know, when I came in on day one, the first thing we do is create -- I talked about our financial planning and analysis and analytics department. I had to create that department. That department didn't exist. So we created that department.

Q. Just go a little slower for the Court Reporter.

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A. Are you good?

And so now we are constantly every year refining our process, meeting with each of the individual department heads to make sure that they understand their budget and they take accountability for what the budget or the department that they -- we call them owners. The departments that they own and the department that they're responsible for. And we want to make sure that they're all aware.

It's just not us just sitting in the finance or accounting department, but they're aware of the expenses that are going out and there's some accountability in place for them in their individual departments. And it's constantly evolving.

And we've gotten -- pat myself on the back, I think, we've gotten pretty good with the process now.

Q. Okay, look in your binder now at JX-2363.

CROME - DIRECT

(Arbitration Exhibit JX-2363 was referenced.)

Q. You want to go now or can you wait ten minutes? I don't want you distracted, so you tell me.

A. Alright. Let's see if we can power through. And then I'll take a restroom break. But let's see if we can power through.

Q. Because I'm almost done.

THE CHAIRPERSON: Okay.

Q. So what is 2363?

A. 2363 is our -- is a summary of our forecast that we just described, that I just described.

Q. Okay. Are you able to say when this forecast is as of?

A. I believe this is -- I think -- was this April? When we did -- I don't have a date on this. But I think this was April we finalized this one.

Q. Okay. Now there is "2023" column there.

What does that refer to?

CROME - DIRECT

A. The "2023" column is the forecast for this year. So I believe -- let me check one thing.

Yeah. So it's labeled forecast, not actual, because there were still some final closing of the 2023 Fiscal Year for this forecast. So it's listed forecast and then once we finalize our financial statements, just like the previous two years, it turns into actual. That's why it says, "forecast."

Q. So, as of April 2024, 2023 hadn't concluded yet so and it remains a forecast?

A. Right, the year end closeout, so it was still listed as a forecast. But we had -- I believe we had 11, if not all 12 months and then there were just some adjusting entries that needed to happen to finalize 2023.

Q. Okay. And we've heard a lot throughout the arbitration of the Raiders being on a calendar year, Fiscal Year.

Did that change at some point?

CROME - DIRECT

A. Yeah. So one of the other things we changed coming in or I changed coming in was the change from a calendar year Fiscal Year to we call it League Fiscal Year year. So as you can imagine the majority of our revenue especially from a Raiders side comes in in the fall and, you know, going into January and February.

So by cutting off, you know, our Fiscal Year in December, there's lots more accruals and estimates that have to be done in order to account for that. So by switching to the Fiscal Year, which I believe -- don't quote me -- that every other team is using this same Fiscal Year. I think we were the last -- definitely one of the last if not last team to switch over to a Fiscal Year that begins April 1st and ends March 31st, which encompasses the entire NFL year.

Q. Okay. So, as of April 2024, this shows what your forecasting for the years through 2028; is that right?

CROME - DIRECT

A. Correct.

Q. Have you revised these forecasting since April?

A. Yeah, as I talked about earlier, we revised the forecast constantly, you know, based on new information that we have. So, yeah it's been revised, but, I mean, what the information that we had at the time -- I was confident on the forecast that we had.

Q. Okay. How have the revised forecasting for those subsequent years compare to these?

A. Yeah, I mean, it's very close. I mean, I'd say plus or minus 5 percent. We're very close to the forecast that we have. But, yeah, we don't wait until the end of the year to update our forecast. We're constantly looking for factors and things we need to change.

MR. CHANDLER: Quick question. Are we in Fiscal Year '24 or '25?

CROME - DIRECT

THE WITNESS: We are in -- currently in September -- September -- September 2024 we are in -- we are in League year 2024. We are in Fiscal Year 2025 but calendar year 2024. We have to say all three.

MR. CHANDLER: Thank you.

Q. If you look at the column at the top that says "Budget Team and StadCo 2024."

What does that column represent?

A. This is the budget that I talked about, the detail for 2024. So this would be the year beginning -- let me get this right -- the year beginning April 1, 2024 ending March 31, 2025.

Q. Okay.

A. Yes, yeah.

MR. REED: Alright. I think I'm done.

Given Mr. Crome's request for a bathroom break, I suggest we take a break and we'll see if

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I have any last questions.

THE CHAIRPERSON: Alright. Why don't we take ten minutes.

(Recess taken 11:15 to a.m.)

THE CHAIRPERSON: Okay. Let's go back on the record.

And, Mr. Reed, you may continue.

MR. REED: I have no further questions for the witness.

Thank you.

THE CHAIRPERSON: Okay.

Mr. Farina, go right ahead.

MR. FARINA: Thank you.

CROSS-EXAMINATION BY MR. FARINA:

Q. Good morning, Mr. Crome.

A. Good morning.

Q. So you started with the Raiders, I think, you said the day after Labor Day in 2021, correct?

A. Labor Day. I worked on Labor Day, just to be clear.

Q. Not that you remember.

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A. I was like what kind of job is this. They got me working on Labor Day.

But, yes, I started on Labor Day.

Q. You testified that was after the investigation had wrapped up, correct?

A. Yes.

Q. And that happened in July, correct, that the investigation was completed?

A. That sounds about right, July.

Q. Okay. And it was in July that Mr. Badain and Mr. Villanueva were separated from the Raiders, correct?

A. I don't know the exact date. But, yeah, it sounds about right.

Q. Okay. In terms of the 2020 financial statements, those were finalized at or about the end of September or the beginning of October of 2021, correct?

A. 2021, correct.

Q. Alright. And, as you said,

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the 2020 financial statements reflected the correct amounts?

A. The 2020 financial statements were correcting the error that occurred.

Q. Okay. So the receivables and the revenues that were stated in the 2020 financial statements were all correct?

A. They were corrected in that year, yes.

Q. Okay. And I think you also mentioned that there was an amended and restated credit agreement that the Raiders entered into, correct?

A. Are you talking about for the bank?

Q. Yes.

A. The amended -- oh, yes, there was a credit agreement, an amended agreement put in place with the banks, yes.

Q. And that was in the place at the end of September of 2021, correct?

A. You'd have to refresh my mind on the exact date it was signed. But,

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yeah, it was in place I believe in September. I don't know the exact date though.

Q. That's fine. But as of the end of September, the new credit agreement was in place, correct?

A. The new credit agreement was in place, I believe, at the end of September, yeah.

Q. And the financial statements were issued at or about the end of September, the beginning of October, correct?

A. The financial statements were issued 9/30/2021, in end of September, yeah.

Q. And the investigation had been wrapped up a couple of months earlier, correct?

A. Yeah. I believe the investigation had been wrapped up earlier.

Q. Okay. So let's take a look at Exhibit 2359 that Mr. Reed showed you and I left out in front of you.

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A. Yeah.

(Arbitration Exhibit JX-2359 was referenced.)

Q. So this is the schedule of expenses that you tracked as being related to Project Roses, correct?

A. These are -- yes, as I spoke earlier, these are some of the expenses related to Project Roses.

Q. So go to the first page. I want the summary page.

So the summary page you have the expenses for Ankura as $6,280,229.24, correct?

A. Yes.

Q. And I think you testified that you went back and you actually reviewed those expenses before you testified today, correct?

A. We reviewed those expenses.

Q. And as a result of that review, you took about out about 21,000 from the $6.28 million total, correct?

A. Yeah, that's -- yeah, that

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sounds about right the preparation.

Q. Alright. And you're comfortable having gone through that process that -- the revised number without those two invoices is a correct number?

A. Yeah, I feel confident.

Q. Okay. And the A&P number, the $2,529,578, you made a slight revision to that as well, correct?

A. Yeah, to the Arnold & Porter. Yeah, I made changes to that one as well.

Q. So you took out a $23,000 invoice related to employment matters and about $20,000 in invoices related to this litigation, correct?

A. Yes, I took out. Yeah, I took out. I don't have the exact numbers in front of me. But, yes, I took out some expenses associated with those items yes.

Q. And so I'm happy to show it to you. It's about what $44,000? Does that sound right?

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A. Yeah, without it in front of me but, sure, we can...

Q. So can you go to Page 4 of 5.

A. Page 4 of 5, yeah.

Q. Correct.

So, if you look at Page 4 of 5, Mr. Reed directed you to a line item. It's I think six items down from the top. It says, "legal employment."

Do you see that?

A. Yes.

Q. And that's $23,000, correct and change?

A. 23,446, yeah.

Q. So you've backed that out of the total, correct?

A. That should be backed out of the total.

Q. And then if you look down towards the bottom, there are three invoices. One for $5,550.40, one for $10,892.85 and one for $4,856.

And all of those you can see from the description relate to Ernst & Young,

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correct?

A. Yes, from the description, uh-huh.

Q. Those are expenses -- fees paid to Arnold & Porter that relate in some way to this litigation, correct?

A. I'm not sure if it's related, specifically, to this litigation. I would have to look at each individual invoice to state for certain.

Q. But those are the four invoices that you backed out, the employment invoice and the three EY invoices, correct?

A. Yeah, yeah, those are the ones that we identified, yes.

Q. Okay. So having gone through this again another time to prepare for your testimony, you've gone through this and you've removed a total of two Ankura invoices and four Arnold & Porter invoices, correct?

A. Yeah, I remember the totals was around hundred thousand dollars.

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Q. Alright. But you said you're confident that the remaining $8,875,000 of invoices belong there, correct?

A. Yeah, after going through it, yes.

Q. Okay. So why don't we go through a little bit of that as well.

Can you open the other binder, the smaller binder, and go to Exhibit JX-2347.

(Arbitration Exhibit JX-2347 was referenced.)

A. Okay, I've got it.

Q. You see this is a collection of Ankura invoices?

A. Yeah, it looks like a collection of invoices from Ankura, yeah.

Q. Alright. And I'll represent to you that this was produced to us in this litigation by your Counsel and that these invoices tie to the Ankura total of $6,280,229.24 that's reflected on the first page of Exhibit 2359.

A. Yes.

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Q. Have you reviewed these invoices?

A. Reviewed the invoices in -- the invoices -- certainly, the invoices that came in after I started with the Raiders, which, again, was in September.

But I've gone back and reviewed the invoices that were for work done prior to my arrival as well and I remember having conversations with management this time, Dan and then Gene who was our main partner on this confirming this work was, indeed, Roses related.

Q. Okay. And that's important you understand for purposes of this litigation that all of the invoices in here, actually, be related to the investigation and the remediation, correct?

A. Yes.

Q. Alright. So I'd like to go through some of these invoices, but first I want to put up a demonstrative that has the totals.

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MR. FARINA: So can you put up DX-1, please.

(Arbitration Exhibit DX-1 was referenced.)

Q. Alright. So these are the Ankura fees. And what we've done is we've looked at all these fees by month and we've grouped them together by month and we've totalled them. And this shows that Ankura can billed $1,525,028.78 in the period June through July of '21.

Do you see that?

A. Yes.

Q. And does that sound about right to you?

A. Yeah, I mean it sounds -- yes, it sounds right.

Q. Okay. And at as of the end of July, the investigation was substantially wrapped up, correct?

A. The investigation was effectively wrapped up at the end of July.

Q. Okay. So then the next slide we show the totals for Ankura all the way

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through the end of September.
Do you see that?
A. I do.
Q. And as of the end of September, the 2020 financial statements were wrapped up and the audit opinion was about to be issued correct?
A. That's correct.
Q. And the totals for Ankura from June of 2021 all the way through to the end of September of 2021 total $3,368,727.05.
Do you see that?
A. Yes.
Q. Does that sound about right to you?
A. Yeah, it sounds right.
Q. And do you see that there is another $291,102,502.19 for work billed by Ankura after October 1, 2021 through December of 2022?
A. Yes.
Q. Okay. And does that number sound about right to you?

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A. Yeah, yeah. I'm going to trust the math. But, yeah, it sounds about right.

Q. And with the exception of those two invoices that were addressed to Quinn Emanuel, you understand that the rest of that $2.9 million amount is included in the amount that the Raiders are seeking to recover from Ernst & Young?

A. In the 6.2 number the number you have at the top?

Q. Yes.

A. Yes.

Q. So this breaks it out by month. And these are the fees that were incurred for work done in that month. So the invoice would have followed after that month. But these are professional fees that were generated in the month that's identified there.

A. Yes.

Q. And you see that there's that June through September period and that

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totals to the 3.368 million.

Do you see that?

A. Yes, yes.

Q. And then as you go and you look, there's a significant decrease in activity. But there's still 200,000 in professional fees in October, 263,000 in November.

And then do you see that in 2022 -- so the spring of 2022, there's a substantial increase in fees that are being incurred by Ankura?

A. Yes.

Q. Okay. And at this point the Raiders had switched to a 3/31 Fiscal Year, correct?

A. At which point?

Q. 3/31/2022.

A. In 3/31/2022 had we switched our Fiscal Year?

Q. Correct.

A. Yeah, we -- yes, we were -- wait a minute. Hold on.

We switched our Fiscal Year from a

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tax standpoint -- I got to get these years right.

So we have our stub period in March -- January through March of 2023. And we started our new Fiscal Year in 20 -- in April 2023 is when we started our new Fiscal Year.

Q. Okay. And --

A. From a tax standpoint.

Q. And you don't think you were on a 3/31 Fiscal Year as of 2022?

A. No. There's two different Fiscal Years we're talking about. There's tax and then there's the financial statements, yeah, so that's...

Q. That's fair.

So, for purposes of the financial statements --

A. Yeah.

Q. -- you were a 3/31 Fiscal Year as of 3/31/2022, correct?

A. As of -- for 3/31/2022, yes, I believe that's correct. That appears right.

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Q. Okay. So let's take a look, if we could, at some of the invoices during that spring 2022 period that are included in your amount.

And if you can go to Page 34 and 35 of Exhibit 2347.

(Arbitration Exhibit JX-2347 was referenced.)

Q. So, again, as Mr. Reed pointed out, there are numbers at the bottom of the page, the middle of the page.

A. Yeah.

Q. So let's go to --

A. I'm there.

Q. -- to 34 and 35.

Alright. So you see on Page 34 it says that the bill relates to professional services through 3/3122, correct?

A. Yes.

Q. And the total for fees and expenses for that month March 2022 is $500,540.73, correct?

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A. Yes.

Q. And then if you look over on Page 35, there's some detail and there's a 11 timekeepers charging time from Ankura for that month.

Do you see that?

A. I do.

Q. And then if you look at the Gene Deetz, he's the second timekeeper.

Do you see that he bills 132.4 hours in March of 2022?

A. Yes, I do.

Q. And then he's billing out at a rate of $805?

A. Yeah.

Q. Okay. And then there's two other individuals, Mike Pesce --

A. Uh-huh.

Q. -- and Sam Grossman?

A. Uh-huh.

Q. And they're both billing out and their hours are 148 and 136.3, respectively, correct?

A. Yes.

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Q. So Mr. Deetz and Mr. Pesce and Mr. Grossman are almost effectively full time performing work for the Raiders in the month of March of 2022, correct?

A. In March of 2022, yeah, according to these invoices, yes.

Q. And there's a total of 11 timekeepers who are performing services for the Raiders in the month of March of 2022.

A. That's correct.

Q. And they bill a total of 731.8 hours, correct?

A. That's correct.

Q. And just so everyone has the timeline straight, the financial statements for 2020 had been issued nine months earlier, correct?

A. That's correct.

Q. So the Raiders --

A. Wait the financial statements for what period? Say it again.

Q. For 2020.

A. For 2020 yes.

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Q. So right now the Raiders are working on closing their books as of 3/31/2022, correct?

A. Amongst other things, yeah, we're working on that.

Q. Okay. And you're using Ankura as an extension of your accounting department, correct?

A. As I mentioned earlier, yeah, we were using Ankura as an extension of our accounting department but also on Project Roses as well. There were two tracks of work that Ankura was working on.

Q. Well, in terms of the remediation, the financial statements for 2020 had been issued nine months earlier, correct?

A. The financial statements had been issued. That's correct.

Q. So you're working on the 2022 yearend financial statements.

There's no error or misstatement or fraud in those financial statements; is

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there?

A. Yeah. But, as I said, that's not the only thing we were working on in that period of time. There were other things. We weren't singularly focused on that one thing.

Q. But what you're including in your Project Roses total that the Raiders are seeking from EY is all of the work that's reflected in this invoice, correct?

A. This invoice reflects all the work that was worked on by Ankura for Project Roses in that specific month.

Q. Okay. Take a look, if you would, on Page 33.

A. Yeah.

Q. You see in the upper right-hand corner there is a box with the subheading "Project Information"?

A. Yes.

Q. Do you see the project name listed there?

A. Yeah.

Q. What is it?

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A. It says, "Raiders Consulting."

Q. It doesn't say Project Roses, does it?

A. It does not.

Q. Okay. Take a look, if you would, at Page 55 and 56 of the exhibit.

A. Okay, 55. I'm there.

Q. So 55 is for work done in the month of April of 2022, correct?

A. Fifty-five is for professional services through 4/30/2022.

Q. Okay. And if you look at Page 54 under the "Project Information" subheading, do you see the project name is again "Raiders consulting"?

A. Yes, I see that.

Q. Not Project Roses, correct?

A. Yeah Page 54, yeah.

Q. Okay. The total amount, the invoice total fees and expenses for the month of April 2022 totals $629,036.50, correct?

A. That's correct.

Q. And your understanding is

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that all of that money is being sought from Ernst & Young?

A. This is for -- related to Project Roses.

Q. Okay. So flip the page to 56.

A. Okay, I'm there.

Q. You see there is a total of 14 timekeepers who billed time in that month?

A. Yes, yes.

Q. And they totalled 993.9 hours which generated fees of $596,375, correct?

A. 596,375, yes.

Q. So take a look now at Page 39 and 40.

A. I'm there.

Q. So let's start on 39.

A. I'm on 39.

Q. This is professional services for the month of May 2022, correct?

A. May 2022, yes.

Q. Alright. And if you look at Page 38, do you see the project name is

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once again "Raiders Consulting"?
A. "Raiders Consulting," yes.
Q. Okay. And the total fees and expenses for the month of May 2022 is $427,599.95, correct?
A. Yes.
Q. And then if you flip the page to Page 40, do you see that there is time for 11 timekeepers who were providing services to the Raiders in the month of May 2022?
A. Yes.
Q. And it's a total of 689.2 hours generating fees of $411,274.50, correct?
A. Yes.
Q. And it's your understanding that all of that amount is being sought by the Raiders against EY?
A. This is all related to Project Roses.
Q. Okay. So, if you go back to -- can we go back to the demonstrative please and go to the third slide.

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So it's your understanding that all of the fees that are reflected in the slide which is based on the invoices for February, March, April, May and June of 2022 are all being sought by the Raiders, correct?

A. For Project Roses, correct.

Q. In fact, everything on this chart, if this ties to the 628022924, apart from those two invoices you pulled out all, of this is being sought by the Raiders, right?

A. That's correct.

Q. Alright. And in the month of February, March and April, May and June, when the Raiders were preparing their Fiscal Year end 2022 financial statements, which were being audited by Deloitte and KPMG, Ankura billed the Raiders for more than $2 million, correct?

A. No, I'll come back to say there was more going on in that period of time than just financial statements in that period of time that we're just not

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singularly focused on one thing. It's not one thing at a time.

Q. So it's your belief that in addition to the more than $2.1 million that Ankura billed the Raiders in the months of February, March, April, May and June of 2022, there are additional fees being charged by Ankura to the Raiders?

A. There was additional work that was being performed by the Raiders and Ankura in that period of time.

Q. Okay. But it's your sworn testimony sitting here today that all of the fees apart from the two small invoices that you pulled out relate to the remediation of the Raiders financial statements?

A. Here is what I can say. As a part of my review of the invoices, the process that I talked about earlier, is that when I was reviewing invoices in this period of time, without seeing the individual detail and work that they did in these months and the hours and what

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they were applied to, I can't say, specifically, what they were working on.

What I can say is my process was that I would review the invoices myself and my team would review the invoices and verify the work whether it be -- if I have a question, I would sit down with -- Gene was the main point of contact or main partner on the engagement. And I would talk to him about the work that was being performed, making sure we were coding things appropriately to Project Roses. And after I got that assurance, then I would code an invoice to Project Roses. That was my process. And that part I feel confident in.

Q. Okay. But there's nothing going on related to the correction of the prior period balances in the spring of 2022, correct?

A. Again, without looking at the invoices, I'd have to go in and see, specifically, what they were working on these things.

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You said earlier that we were just working on the financial statements for that Fiscal Year and that's not the case. So there was other work that was going on.

But without looking at the individual invoices and the individual charged time, I can't say for certain what, specifically. This was a long time ago.

Q. So that's fine. Why don't we just pick up and go to Page 40.

A. Okay. Looking at Page 40.

Q. These are the invoices?

A. These are the invoices.

Q. So Page 40 you've got 11 timekeepers. It's May of 2022. They billed almost 700 hours. They're charging the Raiders more than $400,000 all of which is being sought against EY.

Tell me why those expenses are properly claimed damages in the case?

A. Again, I had to take you back to my process. The process I went

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through to review the invoices at the time. This was -- I cannot tell you in March of 2022 -- I'm sorry, in May of 2022 we're looking at Page 40 exactly what they were working on.

What I can tell you is at the time -- because these came in on a monthly basis. I was much more aware of the work that was going on and very conscious of coding invoices to a specific project at the time. But I cannot tell what they were doing on, you know, May 2nd of 2022 to charge hours.

Q. And the invoices that you would have reviewed at the time are the invoices that you have in front of you today, correct?

A. Yes. But, again, along with the invoices in front of me there was also conversations and much more awareness of the work that was going on, which is why it's important to code it at the time to the specific project.

Q. Well, the project that you

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coded these invoices to is the Raiders consulting project, correct?

A. It's the project code that Ankura used for their invoices. I coded it the Project Roses.

Q. Okay. Go to page -- why don't you go to Page 1 of Exhibit 2347.

A. Okay, I'm on Page 1.

Q. Yeah, but it's Exhibit 2347. So same exhibit just a collection of invoices.

A. Hold on. Okay. So the 489601?

Q. Yes.

A. Okay.

Q. You see that in this invoice Ankura has actually designated Project Roses.

Do you see that?

A. I do.

Q. Alright. Can you go to Exhibit 0289.

(Arbitration Exhibit JX-0289 was referenced.)

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A. Okay, I'm there. Okay.

Q. So this is an e-mail exchange from March of 2022, correct?

A. March 2022, yes.

Q. Alright. And you're sending an e-mail to Andy Kwan at KPMG, correct?

A. Yes.

Q. And KPMG are the external auditors for StadCo, correct?

A. KPMG are the -- yeah, these are external auditors that audit the StadCo entity, yes.

Q. And Deloitte was auditing TeamCo, correct?

A. Deloitte audits TeamCo, correct.

Q. So, if you look at the subject matter line of the e-mail, the e-mails being exchanged.

It's: Stadium audit," correct?

A. "Stadium audit," correct.

Q. Alright. So now go to the third page of the exhibit and we have this up on the slide, but you're able to

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look at the whole exhibit. The bottom of Page 3, there is an e-mail from you to another individual at KPMG.

Do you see that? And I would not get his name right. Do you know his name, Todd?

A. Todd Refnes. I don't see it in my --

Q. So Page 3.

A. Yeah.

Q. The very bottom of the page, there is an e-mail from you?

A. Oh.

Q. To --

A. It continues on the next page. I'm with you.

Q. Got it?

A. Yeah.

Q. So flip to the next page and you write to Mr. Refnes. And if you look at the fourth sentence you write, "You can think of the Ankura team as an extension of my accounting department and they are fully aware of the functions and

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processes within StadCo and are fully equipment to address your questions."

Do you see that?

A. I do.

Q. And I think you actually testified earlier that you were treating Ankura as an extension of your accounting department, correct?

A. I did.

Q. Now, you agree that the Raiders have an obligation to have their own accounting department, correct?

A. I'm sorry, what?

Q. The Raiders have an obligation to maintain their own books and records, correct?

A. Yes.

Q. And the Raiders have an obligation to prepare an issue accurate financial statements, correct?

A. Yes.

Q. And most organizations have internal employees who are responsible for those functions correct?

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A. Absolutely.

Q. And it's perfectly fine if the Raiders want to bring in outside resources to augment their internal personnel and that's what you've chosen to do here, correct?

A. Yeah, again, I'll go back to Ankura's function was dual in purpose. They were assisting with Project Roses but, also, assisting with the office of the CFO let's call it.

Q. Okay. And you would agree that the work that they were performing to help the office of the CFO, that work shouldn't be claimed damages in this case?

A. That work should be separate from Project Roses related work.

Q. Okay. Alright. Let's talk about Arnold & Porter now.

A. Okay. So.

Q. For Arnold & Porter the total on the first page of Exhibit JX-2359 is $2,529,578, correct?

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A. I don't -- hold on. Oh, 2359.

Q. Well, you have the copy up there, also.

A. Got it.

Q. We both have the same exhibit.

A. Okay.

Q. This is more legible than mine, so use his.

A. I'm with you.

Q. Okay. And we discussed that you backed out $45,000 worth of invoices after going back and reviewing this carefully correct?

A. That's right.

Q. Alright. So I want to ask you about the remainder of the invoices.

Can you go to JX-2348?

(Arbitration Exhibit JX-0348 was referenced.)

A. Okay, I'm there.

Q. These are the invoices for Arnold & Porter, correct?

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A. These are invoices for Arnold & Porter, yes.

Q. Alright. And I can represent to you that we've tied out these invoice to the total that appears on 2359. There's one invoice for around $500,000 that is not included in this exhibit. But if you add that, it ties to the number on 2359.

But I'd like to go through some of these with you.

First let me put up DX2, please.

(Arbitration Exhibit DX-2 was referenced.)

Q. So Arnold & Porter is assisting the Raiders with their internal investigation and they're doing that during the period May to July of 2021, correct?

A. Yes.

Q. Alright. And the total for the Arnold & Porter invoices for that period is $1,728,949.20.

Do you see that?

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A. That's correct.

Q. Alright. And do you see that after July 2021 going all the way through to September of 2023, there's an additional $800,628.80 that was billed by Arnold & Porter to the Raiders that are being sought as damages in the case?

A. I do, yes.

Q. Okay. And if you -- actually, let me go to this first.

Do you know who David Reis is?

A. Reese (phonetic).

Q. Reese (phonetic).

A. Yeah, I'm familiar with him.

Q. Who is he?

A. He's an attorney at Arnold & Porter.

Q. Okay. And do you know what he was doing for Arnold & Porter -- do you know what he was doing for the Raiders?

A. In what period of time I guess?

Q. During the period of time

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from May of 2021 through September of 2023.

A. Specifically, I can't tell you what was going on in detail from May to August. I wasn't there. I didn't start until September.

Q. Okay. So, after you started, what work was about Mr. Reis doing for the Raiders?

A. Mr. Reis, as I understand it was, if I can recall, was working on Project Roses related work. Again, I would have to go back and look at, specifically, you know at what -- what Mr. Reis charged, you know, after my arrival and how many hours and I would have to look at the detail of his invoices to see what he was working on.

Q. So he's an employment lawyer, correct?

A. He's a labor and employment lawyer that's. Right.

Q. Let's go to Page 38 and 39 of the exhibit, please.

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A. Okay.

Q. So this is an invoice and it's for professional services rendered in the month of July of 2021.

Do you see that?

A. I do.

Q. And if you look up in the upper left hand-corner, do you see it says, "employment consulting," the first page?

A. Page 38, yeah.

Q. And this is the invoice you removed after your review, correct?

A. Yes, it's -- yes, I believe so.

Q. And if you see on this invoice for this one month -- is it Reese (phonetic) or Rice (phonetic)?

A. It's Reese (phonetic). I call him like Reese's.

Q. Mr. Reis is billing a fair amount of time in that month, correct?

A. Yes.

Q. Okay. Did you go back and

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take a look whether there were other fees that were charged by Arnold & Porter relating to Mr. Reis's work other than this one invoice?

A. Did I go back? I'm sorry, did I go back and -- state the question again, sorry.

Q. Sure.

When you removed this one invoice because it relates to employment counseling, did you go back and look to see whether there were additional amounts that were being charged by Arnold & Porter also for employment matters?

A. Overall if there were other invoices throughout the Raiders that were in charge for employment matters from Arnold & Porter?

Q. That you are including as part of Project Roses.

A. Like I said, we went through back the sheet and we removed the invoices that we thought were not related -- I wouldn't say not related to Project

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Roses that some of them related to the litigation related to Project Roses.

Remember Project Roses from my point of view is the entire project including the litigation as well.

Q. Okay. And did that include responding to whistleblower claims by Araxie Grant, a threat to sue the Raiders for firing her for being a whistleblower?

A. What was the question?

Q. Sure.

At some point Araxie Grant was asked to resign by the Raiders, correct?

A. I was not there when Araxie -- I never actually met Araxie.

That's not true. I met her at some social event a couple of months ago, but I never spent anytime working with Araxie.

Q. Well, do you know whether or not Ms. Grant after being terminated by the Raiders threatened a whistleblower claim?

A. I wasn't around. I don't know the details of Araxie's case.

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Q. Do you know whether the Raiders engaged Arnold & Porter to represent the Raiders in connection with the litigation claim that was threatened by Ms. Grant?

A. Again, I'm not really that involved in Araxie's case and what she's got going on.

Q. Did you consider those legal fees to be Project Roses legal fees?

A. Again, I will not speak, specifically, about that. I'll go back and, again, my process which was to review -- especially after my arrival -- to review the invoices that were received and to question invoices whether they were indeed Project Roses related and whether they were litigation related for Project Roses and that was the kind of process that I used to identify if the invoice was to be coded to Project Roses or not. I can't speak to, specifically, that detail.

MR. FARINA: Jason, can you

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go back to the first slide of DX-2.

MR. BICKERMAN: Counsel, before you move on.

The exhibit you were just referring to, could you give me that number again?

MR. FARINA: Yeah. So the Arnold & Porter invoice exhibit is 2348.

MR. BICKERMAN: Thank you.

MR. FARINA: And the Ankura is 2347.

MR. BICKERMAN: Got it.

Q. Alright. So, after the completion of the investigation, Arnold & Porter charged the Raiders an additional $800,000 that you've included in the amounts that are being sought in this litigation, correct?

A. As damages, yes.

Q. Okay. And it's your sworn testimony that all of that relates to Project Roses, correct?

A. It's my testimony that these

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-- yes, these items were coded to Project Roses and they were Project Roses related.

Q. And those fees go all the way out into 2022 and then into the first nine months of 2023, correct?

A. Yeah, I don't know the exact dates.

Q. And it's your testimony that Arnold & Porter was charging the Raiders amounts in 2023 that related to Project Roses?

A. Yeah, those invoices are included in this -- was it 2359 document, yes.

Q. Okay.

Alright. Let's talk a little bit about the 2020 financial statements. And if you go to Exhibit 0335.

(Arbitration Exhibit JX-0335 was referenced.)

Q. Yeah, it's in that book.

A. Yeah, got it.

Q. I think Kevin showed you

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another version of this.

A. 335, I am there.

Q. Yes. And you'll see that EY is delivering the audit opinion associated with the 2020 financial statements on October 5th, 2021, correct?

A. Sure.

Q. It's the first page of the exhibit.

A. Yes, yes, October 25th. Yeah, I see it on Page 5.

Q. Okay. Alright.

So, if you go to Page 2 of the exhibit, which is the first page of the financial statements.

A. Page 2, yes.

Q. These are the financial statements that were issued by the Raiders Football Club LLC, correct?

A. This is Football Club which is TeamCo, correct.

Q. Alright. And these financial statements are prepared on a tax basis of accounting, correct?

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A. These are on a tax basis, correct.

Q. And they're as of the Fiscal Year end, which is also the calendar year end 12/31/20, correct?

A. 12/31/2020.

Q. Okay. So go, if you would, to Page 8 of the exhibit.

A. Yes.

Q. Page 5 of the financial statements.

A. Yes.

Q. This is the, basically, the income statement?

A. On a tax basis, yes.

Q. Alright. And it indicates that for the year ended 12/31/2020, the excess of expenses over revenues is $122,776,574, correct?

A. Yes.

Q. So those are the losses by TeamCo for Fiscal Year 2020, correct?

A. Yes.

Q. Alright. So, if you could go

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to Page 22 of the exhibit.

A. Okay, Page 22.

Q. There is a Note 4, "relocation transactions."

Do you see that?

A. Yes.

Q. And there's a subheading that discusses the reallocation of the Raiders to Las Vegas, correct?

A. The Oakland Raiders to Las Vegas, yup.

Q. Okay. And in connection with the move, the Raiders had to pay the NFL $325 million, correct?

A. Yeah, for franchise relocation of $325 million, yes.

Q. The way that was created for accounting purposes, if you look further down in the note, is that it was characterized as an intangible asset and the present value of that was put on the balance sheet, correct?

A. Yes, yeah.

Q. And then it was amortized or

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it was going to be amortized over a 15-year period, correct?

A. Yes.

Q. So that would generate an expense on a tax basis of $20,132,544 each year, correct?

A. Yeah, on a tax basis, correct.

Q. On a tax basis.

Do you know whether the accounting treatment is the same on a GAAP basis?

A. Offhand, no.

Q. Okay. But each year for 15 years, the Raiders were amortizing that $325 million payment and that was an expense that reduced the net income by $20,132,544 each year, correct?

A. It was an amortization expense.

Q. Okay. But that, actually, affects the bottom line, right?

A. It effects the net income and amortization expense would affect the bottom line.

Q. And if you flip back to the

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income statement?

A. Okay.

Q. So that's Page 8.

A. Yes.

Q. Do you see there is a line item amortization and expense $23,551,630?

A. I do.

Q. Okay. And your understanding is that that includes the 20.1 million annual amortization expense for this particular year?

A. Without going into detail, yeah, I think it's in there.

Q. Okay. Can you go to JX-0405.

(Arbitration Exhibit JX-0405 was referenced.)

A. Okay, I'm there.

Q. These are the financial statements for the Oakland Raiders partnership for the periods ending March 31, 2024 and March 31, 2023, correct?

A. Yeah. So these are the

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financial statements -- this is a different entity. This is the Oakland Raiders Limited Partnership. This is on a GAAP basis now. So it's not only the same entity that -- it's not the installment entity we talked about, but it's also different basis. The other one is on a federal basis. This is on a GAAP basis.

Q. So the Oakland Raiders LP, which are the issuer of these finances, is a different entity than the issuer of the financial statements that we just looked at?

A. Yeah, the Raiders Football Club.

(Stenographer clarification.)

A. The other entity that we looked at just a second ago is the Raiders Football Club we call TeamCo. Oakland Raiders that we have listed here, it -- TeamCo Raiders Football Club is a subsidiary of this entity. There are other entities including StadCo, as well

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as another entity called Las Vegas Real Estate LVR that we call it that all roll up to create the Oakland Raiders.

So there are three major entities that fall under the Oakland Raiders, which is the one we're looking at now. Previously we were looking at one of those entities that roll up to the Oakland Raiders and this is GAAP basis, not a tax basis.

Q. So, for the 2020 tax basis financial statements that were audited by Ernst & Young --

A. Yes.

Q. -- those financial statements were issued by the Raiders Football Club, correct?

A. Those were issued by the Raiders Football Club, correct.

Q. And do you have any idea whether the Raiders partnership issued financial statements for the year ended 2020?

A. The Raiders -- I'm sorry.

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The Oakland Raiders, the parent, we'll call it, did not issue audited financial statements for the period ended December 30th -- December 31, 2020 on a GAAP or a tax basis.

Q. Okay. At some point after the 2020 financial statements were issued, the Raiders decided that the partnership would issue its own financial statements as well as TeamCo and StadCo issuing their own financial statements, correct?

A. That's correct.

Q. And Deloitte was going to audit and did audit the partnership financial statements and TeamCo's financial statements?

A. That's correct.

Q. And KPMG audited StadCo's financial statements?

A. Correct.

Q. Okay. So, if you look back at Exhibit 0405.

A. Yeah.

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Q. If you go to Page 7 of the exhibit.
A. Yes.
Q. So this is the income statement for the partnership?
A. I'm sorry, Page 7 of your --
Q. Yeah.
A. Hold on. Yeah, I'm there.
Q. So this is the income statement for the entire partnership, correct?
A. That is correct.
Q. So it includes TeamCo, correct?
A. TeamCo StadCo and LVR.
Q. Okay. And --
A. And activity that happens at the partnership level as well.
Q. Okay. So this is different than TeamCo?
A. This is -- TeamCo is included in this. But there's other things in this other than TeamCo.
Q. Is that's right.

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Alright. So, when you're doing projections now -- and I'm going to ask you, specifically, about the projections that Mr. Reed showed you.

You're doing projections for the entire organization, correct?

A. Projections that we were looking at specifically. Are for TeamCo and StadCo. I think there's actually a footnote on the projections that we were looking at. It says, TeamCo plus StadCo. And there's some exhibits behind it that broke out just TeamCo and break out just StadCo. But it doesn't include those projections -- those forecast that we were looking at earlier of those two entities in it TeamCo and StadCo.

Q. Okay. And if you look at the partnership level for Fiscal Year end 3/31/24 --

A. Yes.

Q. -- the partnership lost or reported net income of negative $10,319,000, correct?

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A. For the year ended 3/31/2024 yes.

Q. And that is the most recent Fiscal Year for the partnership, it just ended, correct?

A. That is -- yeah, that's the most recent Fiscal Year that's ended for the partnership.

Q. So, in the most recent Fiscal Year for the partnership that just ended, the partnership lost $10,319,000?

A. Net income loss $10,319,000.

Q. Okay. So do me a favor go to -- take me a second, go to Page 15.

A. Of this exhibit?

Q. This exhibit, correct.

A. Okay. Okay.

Q. Do you see the subheading, "Intangible Assets"?

A. I do.

Q. And you can take as long as you want with the paragraph.

But do you see that this paragraph also relates to the reallocation fee and

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the accounting treatment by the Raiders?

A. I do.

Q. And do you see that under GAAP, the Raiders have changed their accounting treatment for the relocation fee?

A. When you say, "changed" it, you're comparing it to the financial statement that were on tax that we discussed earlier.

Q. Correct.

A. Yes, this is GAAP. Those were on task and, as I talked about earlier, I can't talk about the specifics between the tax treatment versus the GAAP treatment on the intangible assets. But, I mean, I can read through this note, if you would like me to.

Q. Sure. Why don't you take a look.

A. Okay.

Q. Okay. So you see that the Raiders once they converted to GAAP are no longer amortizing the relocation

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expense or asset capitalized asset over the course of 15 years?

A. I need to go back and review it. But, yeah, based on this note, again, it's a different basis.

Q. So that $20.1 million expense that hits the books for tax basis purposes, does not hit the books for GAAP purposes, correct?

A. Again, I haven't reviewed this in specifics. But looking at the intangible asset -- this will take me a minute.

Yeah, it's not -- it's not hitting the roll up to the Oakland Raiders, which is again one -- which is the parent entity of all the others.

Q. But on a tax basis, the $20.1 million is still an expense, correct?

A. It's still an expense? I need to look at our 2024 financial statements for TeamCo, specifically, and I need to look at them on a tax basis to

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say with certainty.

Q. Right. But if you look at it from a GAAP basis looking at this note, it's not being amortized by the Raiders, correct?

A. Based on this note and based on what I'm looking at for March 31st, 2024, it is not.

Q. Okay. So let's take a look at the projections, Exhibit 2363.

(Arbitration Exhibit JX-2363 was referenced.)

Q. I think this is what you went over with Mr. Reed.

A. Yes.

Q. So, again, you can look at whatever you want to look at.

If you look at the second page of the exhibit?

A. Okay.

Q. These projections that you're preparing are done on a GAAP basis, correct?

A. These are on a GAAP basis yes.

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Q. And if you look at Page 2, the bottom row or the next to the bottom row, there is a net income line item.
Do you see that?
A. Yes.
Q. And if you look at the "2023" column, it's a minus $49.6 million.
Do you see that?
A. Yes.
Q. And then after losing $49.6 million, you're projecting net income of 58 million, 80.5 million, 70.1 million, 97.8 million and then 103 million, correct?
A. You said 70.1; 77.1 million in 2026 but yes.
Q. I'm sorry. 77.1, you're right.
And these are on a GAAP basis, correct?
A. These are GAAP basis, the forecast.
Q. If you look up a few rows, do you see there is a line item for

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"amortization"?

A. Yes.

Q. And you see that it's 20?

A. Yes.

Q. Okay. So, if you were looking at this on a tax basis, all of those net income numbers would be lower by $20.1 million, correct?

A. If you were looking at it on?

Q. On a tax basis.

A. On a tax basis.

Based on the conversation we're having on a tax basis, I believe so. Remember this is -- again, we're looking at another version of the entity.

First, we looked at TeamCo on a tax basis. And then we looked at the Oakland Raiders, which is the parent on a GAAP basis. Now, we're looking at just TeamCo and StadCo on a GAAP basis. They're three different presentations that we've looked at now.

Q. I agree with that.

But if TeamCo was on a GAAP basis

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-- TeamCo is still reporting on a GAAP basis in 2024, correct?

A. TeamCo is reporting on a GAAP basis, yes.

Q. Alright. If TeamCo is incurring a $20.1 million amortization expense, that would also be reflected on the partnership's financial statements, correct?

A. If on a GAAP basis that amortization was there, TeamCo would have it on the partnership, which is Oakland Raiders or on this TeamCo/StadCo --

Q. Partnership?

A. At the parent level.

Q. Yes.

A. If TeamCo is recording on a GAAP basis, that would show up on the partnership side as well.

Q. Okay. But we know that on a GAAP basis you don't take the amortization expense, you only do that on a tax basis, correct?

A. Based on what we were looking

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at -- again, we were looking at 2020. Now we're looking at 2024. It was on a tax basis.

But now looking -- in order to answer your question fully, I would need to look at TeamCo financials on a tax basis for the year ended March 31, 2024 and we do not have that.

Q. Okay. And that's because TeamCo no longer issues tax basis financial statements, correct?

A. We do not issue tax basis financial statements, correct, in the Fiscal Year.

Q. And when you're making projections, you're no longer making projections on a tax basis, you're making them on a GAAP basis?

A. Projections are made on a GAAP basis, correct.

Q. Alright. Let's go to Exhibit 2456.

(Arbitration Exhibit JX-2456 was referenced.)

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A. Okay.

Q. This is an e-mail exchange between you and Mr. Garcia and Mr. Gottlieb at EY, correct?

A. Yes.

Q. If you go to the first e-mail in the exchange which appears on Page 25 of the exhibit, do you see that you're sending Mr. Garcia and Mr. Gottlieb an e-mail and you've included Mr. Koijane from EY, Mr. Ventrelle from the Raiders and Kevin Manara also from the Raiders?

A. Yes.

Q. And this is your e-mail with an attached letter terminating EY, correct?

A. Yes. This was a termination letter, yes.

Q. And that happened on December 10, 2021 correct?

A. That's correct.

Q. Alright. Javier, Mr. Garcia e-mails back and asks you, if you have time to discuss the final billing amounts

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for services rendered by EY.

Do you see that?

A. Yes.

Q. And you responded that day and you asked him to send over some additional information so you could review it.

Do you see that?

A. Yeah, I said please send me everything that he shows outstanding the detail including the task and I will review it and let him know yeah.

Q. So you said -- and this was your concluding sentence -- once you send it over, "I will review and I can let you know if there are any questions," correct?

A. That's what I wrote, yes.

Q. And you didn't suggest in your December 15th e-mail that the Raiders were going to not pay EY for the work that the Raiders had engaged EY to perform, did you?

A. I didn't suggest payment or

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nonpayment, I just said I need to review the details.

Q. Okay. And then Mr. Garcia responds on December 20th telling you that he'll send over the information.

Do you see that?

A. Yes.

Q. And then if you look to the prior page of the exhibit, Page 3, Mr. Garcia then sends you additional details related to the work that EY had performed at the Raiders request, correct?

A. Yeah. I'm just reviewing it. Yeah, it looks like he sent me a proposal for audit billing additional scope, yeah. Yes it looks like he sent me that yes.

Q. Okay. So, when you started at the Raiders on Labor Day of 2021, the Raiders were performing their audit work on the 2020 audit, correct?

A. That's in addition to other things. Yeah, they were performing that.

Q. So the Raiders were receiving

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services from EY during the month of September, correct?

A. September 2021, correct.

Q. And that continued into October?

A. It continued into -- yeah, I think there was some trail off that happened in October as well.

Q. Okay. In the month of September when EY was completing the 2020 audit, did you ever tell anyone from EY that the Raiders were not going to pay for that work?

A. I don't recall conversations, specifically, about this in September with EY.

Q. Okay. So you understood that the work that was being performed by EY in connection with the 2020 audit was work that the Raiders had engaged EY to perform, correct?

A. We had engaged EY to complete the financial statements for Fiscal Year 2020.

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Q. And?

A. The audits.

Q. And there was a separate engagement letter that covered the 2020 audit engagement, correct?

A. I believe so yeah.

Q. Okay. And during the entire month of September when you were at the Raiders overseeing that process, you never told anyone from EY that the Raiders weren't going to pay for that work, correct?

A. I don't believe those conversations in regard to that came up.

Q. And in the month of October you never told anyone from EY that you weren't going to pay for any of the work being performed, correct?

A. I don't believe those conversations came up either.

Q. And in the month of November, you never told anyone from EY that you wouldn't be paying for the work that they were performing?

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A. Now, you're getting into a period -- I don't know exactly when we informed EY. I'm sure you have it somewhere of the work that we wouldn't be paying for the work. I'm not sure when that final -- when that communication was relayed to EY.

Q. Sure. So take a look at the next e-mail in the chain. This is from December 22nd.

A. Where what page are we on.

Q. Page 2 bottom of Page 2.

A. Okay.

Q. So this is an e-mail responding to Mr. Garcia. It's dated Wednesday, December 22, 2021.

Do you see that?

A. Yes.

Q. And you say, "Thanks for sending this over."

And you ask for some additional detail. And then you write, "I have some concerns on what fees, if any, are appropriate considering all the prior

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issues."

Do you see that?

A. Yes.

Q. Is this the first time you ever suggested to anyone at EY that you had concerns about them billing for the work that the Raiders had requested for them to perform?

A. I can't say with certainty if this is the first time. What I'm noticing on this e-mail, though, is that -- I sent this e-mail on December 22nd but Javier responded on December 21st, the day before with the information that I asked back in -- let me see -- back on December 10th.

Q. Okay. So take a look now at Exhibit 3405.

(Arbitration Exhibit JX-3405 was referenced.)

A. Okay.

Q. Can you look at the bottom of the first page of the exhibit?

Do you see there is an e-mail from

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Kevin Manara to you?

A. Yes.

Q. And it's copying Teresa Johnson at Arnold & Porter, correct?

A. That's right.

Q. And if you go further into the e-mail exchange that you were having with Mr. Garcia and Mr. Gottlieb, correct?

A. Yeah request this looks like the -- yeah Javier responded with the details on oh, yeah December 21st and then looks I forwarded to Kevin Terry and Dan and Teresa and Dan.

Q. Who is Kevin?

A. Kevin was our General Counsel at the time for the Raiders.

Q. Alright. So Mr. Garcia provided the detail requested on December 21st and that e-mail from Mr. Garcia is forwarded to Arnold & Porter correct?

A. And Kevin Manara or General Counsel.

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Q. Okay. So now go to 3406 which is the next tab in your binder.

(Arbitration Exhibit JX-3406 was referenced.)

A. I don't have that -- oh, yeah I'm sorry I'm there.

Q. You see this is another e-mail and this is an e-mail from you to Jennifer Barrett, Deborah brown and Kevin Reed copying Kevin Manara on December 23, 2021.

Do you see that?

A. This is from Jennifer to me, yes.

Q. So the first e-mail in the chain -- I'm sorry. Let me correct that.

The first e-mail in the exhibit, so the top of the first page of Exhibit --

A. Where I said, "thank you"?

That was an e-mail from me to Jennifer saying, "thank you.

Q. "Okay. And then if you look at the e-mail below that, it's an e-mail from Jennifer to you.

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That's what you're referring to?

A. Yeah, yeah.

Q. And Ms. Barrett, Ms. Brown and Mr. Reed are all lawyers at Quinn Emanuel, correct?

A. Yes.

Q. And if you look deeper into the e-mail chain, this is, again, forwarding Mr. Garcia's e-mail, correct?

A. This is correct. That is correct. This is me forwarding his e-mail.

Q. Alright. So the first time you raised with Mr. Garcia that the Raiders might have a problem with the invoices was after you forwarded Mr. Garcia's e-mail to lawyers at Arnold & Porter and Quinn Emanuel, correct?

A. No that's not what I said earlier. What I said earlier was that this -- I said I wasn't sure. I said this looks like in the writing that is when I addressed it there. But I wasn't sure there were other conversations that

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I had with Mr. Garcia prior to that.

Q. Okay. At least, what's reflected in this e-mail exchange with Mr. Garcia where you're talking about the fees, the first time you raised that question, was after you had forwarded his e-mail to Arnold & Porter?

A. This specific e-mail, the sequencing of timing is correct on the specific e-mail. But, again, there may have been other conversations. I don't recall exactly when I relayed to anyone at EY that the fees wouldn't be paid.

Q. Okay. And when I asked you in your deposition in April, if you could identify any basis for not paying EY for the services that the Raiders had requested EY to perform, do you remember that you could not respond to a request that did not involve the advice of Counsel?

A. Yes.

Q. Is that still your testimony?

A. Still my answer.

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Q. Alright.

MR. FARINA: I think I'm done, but let's take a short break.

A. Okay.

THE CHAIRPERSON: Okay. Sounds good.

(Recess taken 12:35 to p.m.)

MR. BICKERMAN: Is it possible we can get the native version of, you know, this exhibit?

MR. FARINA: So I don't know that we have a native. Do you have a version?

MR. REED: I'm sure we can get it to.

MR. BICKERMAN: Not a big deal if we can't get it.

MR. REED: It's a hundred percent possible we'll do it. I'll say it without giving it to my witness. I'm pretty sure.

MR. FARINA: I have no further questions.

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Q. Thank you, Mr. Crome.

A. Thank you.

THE CHAIRPERSON: Okay.

Mr. Reed.

REDIRECT EXAMINATION BY MR. REED:

Q. Mr. Crome, do you recall speaking with Steve about how you treated the amortization of the relocation fee different on your GAAP financials versus your tax basis financials?

A. Like in our deposition? What do you mean?

Q. Just now.

A. Yeah, the conversation we just had, yeah.

Q. Are there other differences between GAAP financials and tax basis financials that result from the change in methods?

A. Yeah. I mean, there's -- yeah, there's reason why they're two different methods. GAAP method is very different from the tax basis method, yeah, which is one reason why we switched

CROME - REDIRECT

over to GAAP method.

Q. Okay. Do you recall during your initial questioning by me this morning, we looked at the amended tax returns that were filed for the Raiders for '17, '18 and '19?

A. We looked -- yes, the amendments, yes, for '17.

Q. Do you recall when those amendments were completed?

A. 17 was completed. I don't remember the exact month but in 2021. And the other ones were completed after. I don't know the exact dates. We can go look.

Q. Alright. So, if we look at --

A. The big binder.

Q. Right. Let's look at 511. Exhibit 511.

(Arbitration Exhibit JX-51 was referenced.)

A. Okay.

Q. What date was that completed

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and I'll direct you to Page 8 of the exhibit.

A. This is the 2017 -- this is 2017 amendment was filed in August of 2020 -- is this right? Year ended December 31st, 2017 was filed in August 2022.

Q. Okay. And what you're looking at is the amended amendment of 2017?

A. Yeah, that's what I was checking making sure. This is the amendment to the amendment, yes.

Q. Okay. And if you look at Exhibit 509 --

A. Okay.

Q. -- that's --

A. 2019 amendment.

Q. 2019 amendment.

And when was that one filed?

A. December 2022.

Q. Okay. And then if you look at -- sorry I've got the wrong binder.

(There is a discussion off

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the record.)

Q. 508.

(Arbitration Exhibit JX-508 was referenced.)

Q. When was that one -- first of all what is that is that's the 2018 amendment?

A. 508 is the 2018 amendment yeah, this was done in August of 2022.

Q. Okay. Now, you testified earlier Deloitte filed those on behalf of the Raiders. Did Ankura work on those?

A. Yeah Ankura would have assisted on these as well as Arnold & Porter as well.

Q. Okay.

MR. REED: Okay. I don't have anything further.

THE CHAIRPERSON: Okay. Mr. Farina, anything further?

MR. FARINA: No.

MR. CHANDLER: Could I ask a couple of questions?

THE WITNESS: Absolutely.

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I don't think I can say no.

QUESTIONS BY THE ARBITRATORS

MR. CHANDLER: John Chandler.

If you look in your big book there at JX-2329 and I'm actually just using this as an example.

(Arbitration Exhibit JX-2329 was referenced.)

A. 29.

MR. CHANDLER: And if you look on --

THE WITNESS: 2329, yes.

MR. CHANDLER: Yes.

If you look on Page 3 of the report of the independent auditors.

THE WITNESS: Yes, EY.

MR. CHANDLER: EY.

And I think it's the same for virtually all of them. But I just want to ask you about some of the language here.

THE WITNESS: Yes.

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MR. CHANDLER: In management's responsibility for the financial statements in that short paragraph it says that management's job is to "implement and maintain internal controls to prepare financial statements that are free of material misstatement whether due to fraud or error."

THE WITNESS: Yes.

MR. CHANDLER: Here's my question for you.

THE WITNESS: Okay.

MR. CHANDLER: You are the CFO of the Raiders.

What kind of internal controls do you have that would prevent something like the overstatement of revenue that took place from 2006 to 2019?

THE WITNESS: Yeah, I can talk about our current controls environment and some of the things we had in place as a team.

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So I'll start with different things. Well, what we -- we have an accounting system that has, you know, various controls in place from, you know -- who can approve, you know, who can post and prove transactions, which is a key internal control.

In addition for our invoicing, there are controls in place with signature authority. So, if an invoice is above a certain amount regardless of who is approving it initially, it pushes up the chain until someone with the appropriate approval authority amount approves the invoice and it doesn't get paid until then. That's an example of a control. We also have an Audit Committee in place at the Raiders and the Audit Committee is -- prior to filing on a quarterly basis, we meet.

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And prior to filing any of our financials, we meet with the Audit Committee and they review their financial statement and ask questions about the financial statements as well.

And then I'd say another control is, you know, meetings that we have with our banks, the rating agency talk about our financial.

And I talked a little bit earlier. Our forecasting process is actually a really helpful control as well. Because we are doing forecasts so when I'm doing variance analysis on monthly or quarterly or even annual basis I'm looking at both comparison to prior year but also come par ton some my forecast. And if I see large variances, I'm requiring my team to explain what those variances are for our financials before, you

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know, before I approve. That's sampling some of things we have in place.

MR. CHANDLER: Thank you. That's very helpful.

It sounds like to me like posting and approving to the general ledger, I guess, it takes two different people depending on the size of it.

THE WITNESS: Yes, yeah currently what we have in place is yeah posting to the general ledger requires one person to post and an approver.

MR. CHANDLER: Okay. And one person whose not the CFO couldn't post January revenue into December all by him or herself, right?

THE WITNESS: Yeah, I can talk about currently, yeah.

MR. CHANDLER: Currently.

THE WITNESS: Yeah, currently,

CROME - RECROSS

correct.

MR. CHANDLER: Okay. And that is an internal control, you got to have two people to --

THE WITNESS: That's correct.

MR. CHANDLER: Thank you very much.

MR. FARINA: Can I ask two follow-up questions.

THE CHAIRPERSON: Sure.

RECROSS-EXAMINATION BY MR. FARINA:

Q. Mr. Crome when, you arrived at the Raiders, did they have an Audit Committee?

A. There was no Audit Committee in place.

Q. Who is the Chair of the Audit Committee?

A. The Audit Committee Chair is Linda McDonald.

Q. Is Linda McDonald with Ankura?

A. She in our Audit Committee role is not with Ankura.

Q. But she is a professional at

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Ankura?

A. She is a professional at Ankura, yes.

MR. FARINA: Thank you.

THE CHAIRPERSON: Any questions.

MR. BICKERMAN: No.

QUESTIONS BY THE ARBITRATORS

THE CHAIRPERSON: Mr. Crome, I just have one question -- or a couple of questions with respect to JX-0598.

(Arbitration Exhibit JX-0598 was referenced.)

THE CHAIRPERSON: And, specifically with, regard to Footnote 2.

THE WITNESS: I'm sorry. What was it again?

THE CHAIRPERSON: Big book, 0598. There it is, I think.

THE WITNESS: Okay.

THE CHAIRPERSON: With respect to Footnote 2, do you

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have that?

THE WITNESS: Okay.

THE CHAIRPERSON: Okay.

THE WITNESS: I'm there.

THE CHAIRPERSON: So you were talking about the fact that EY wanted to soften the line item in Footnote 2.

Can you explain to us exactly what it is they wanted to do?

THE WITNESS: Yeah, if I remember it was -- it really looked like they were -- it was -- we wanted -- like I said earlier, we wanted to make sure everything was transparent. Everything was out. And this was the direction, you know, all the way from Mark Davis, the owner's standpoint, about what had happened and when EY was working on this -- this is one of the reasons why I was skeptical. It looked like they

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were trying to take out anything that looked like they were at fault and trying to soften the language to look like it was more on the Raiders fault and it, frankly, looked a little shady what was happening, so...

I continued to go back over and over again and saying, no, we're not softening the language. I want this thing to be as factual as possible. And some of this verbal. I want it to be as factual as possible and I want to make sure everything is laid out on the table. We're not coming back to this issue ever again. We're moving forward. And that was after multiple iterations. It wasn't saying everything that happened. It didn't talk about the things that they were responsible for or the things that I felt like they should have

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caught and they should have found when we were doing this. And so why I kept hammering on this thing over and over again because I wasn't come bank.

THE CHAIRPERSON: Okay. Mr. Crome, thank you very much.

Anything else from the Panel?

Anything else from Counsel?

Alright, sir. Thanks from the Panel. Have a good day.

THE WITNESS: Thank you all. Appreciate it.

(Witness excused.)

THE CHAIRPERSON: As a matter of scheduling, I know Ms. Stratton is here from what I've been told. I know she's scheduled for 2:15.

Do you want to move her up? I mean, it's up to you.

MR. FARINA: I think she was scheduled for one.

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THE CHAIRPERSON: Oh, one. Okay.

MR. FARINA: But we can have -- I mean, I think we're pretty --

THE CHAIRPERSON: Oh, scheduled for one. You're right.

MR. FARINA: We can take lunch. We can a half for lunch. We just need to finish her today. But I don't think that will be problem.

THE CHAIRPERSON: Okay. So 30 minutes is that good?

MR. FARINA: That's fine.

MR. REED: Fine with us.

THE CHAIRPERSON: Whatever you guys want.

MR. REED: Sure.

THE CHAIRPERSON: Okay, great.

(Lunch recess taken to 1:37 p.m.)

THE CHAIRPERSON: Good afternoon. We can go back on the

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record.

My name is John DiBlasi.

Seated to my left is John Bickerman.

To my right is John Chandler.

And if you would introduce yourselves.

MS. ENGLAND: Good afternoon. My name is Kathleen England. I'm part of law firm of Gilbert & England --

THE CHAIRPERSON: Okay.

MS. ENGLAND: -- in Las Vegas, Nevada and I'm personal Counsel for the personal for the witness Jaime Stratton.

THE CHAIRPERSON: Welcome, welcome.

MS. ENGLAND: Thank you and thank you.

I've thanked all the lawyers in the room. But thank you for accommodating our schedules and we really do appreciate it.

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THE CHAIRPERSON: Glad we were able to do that.

Ms. Stratton, welcome.

THE WITNESS: Thank you so much.

THE CHAIRPERSON: Why don't we proceed with direct examination.

MS. HELFMANN: Thank you, your Honor.

JAIME STRATTON, DEEMED sworn:

DIRECT EXAMINATION BY MS. HELFMANN:

Q. Good afternoon, Ms. Stratton.

A. Good afternoon.

Q. Other than at your deposition, have you or any lawyer from EY ever discussed the substance of this arbitration?

A. No.

Q. And I should say on behalf of all the lawyers in the room, I should have said this earlier. Thank you very much for making the trek out here to New York, I know it's a long trip for you.

A. My pleasure.

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Q. What do you do for a living?

A. I've been an HR professional for almost 23 years.

Q. And as an HR professional, what do you view as the role of your job in an organization?

A. The role of my job is really to take care of the people and to take care of the organization and to ensure that we are hiring the right people into the business and that we are training them and developing them and compensating them and giving them feedback and taking care of any workplace issues that might come up during the course of the employee's experience inside of the business.

Q. I think there is a binder in front of you that's labeled J. Stratton. Can I have you flip to the -- it should be the very last tab in the binder -- No. 3424.

(Arbitration Exhibit JX-3424 was referenced.)

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A. Yes.

Q. Do you recognize this document as a copy of your LinkedIn profile?

A. I do.

Q. And, just from a quick look, does it appear to be reasonably up to date?

A. It is.

Q. So, just to situate ourselves in time, from when to when did you work at the Raiders?

A. I started at the Raiders in March of 2020 and my employment ended in April of 2022.

Q. And where did you work before joining the Raiders in March of 2020?

A. I worked for VICI Properties here in New York.

Q. And what about before that?

A. With Caesars Entertainment for almost 18 years.

Q. And what was your role at Caesars installment?

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A. I had a variety of roles at Caesars. I started in an entry level HR role and progressed my career there. I think my last position was a Vice President role, a corporate Vice President role overseeing 60,000 employees.

Q. And what were your responsibilities in that corporate Vice President role?

A. In -- just to clarify, in my last role with Caesars?

Q. Yes.

A. It was doing talent strategy and corporate HR oversight.

Q. Okay. And for how long did you have that last role at Caesars?

A. Probably two years.

Q. Where are you currently employed?

A. I have my own consulting business right now and my primary client is the Miami Dolphins.

Q. And what sort of work do you do for the Dolphins?

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A. I'm the strategic advisor to the CEO.

Q. What are your responsibilities as strategic advisor to the CEO?

A. I'm assessing all of their HR practices, all of their culture practices and identifying areas of opportunity and strengths for the CEO.

Q. And before working for the Dolphins, did you work for Hard Rock?

A. I did.

Q. What were you doing for Hard Rock?

A. I worked for Hard Rock and we managed through the merger of the Mirage from MGM to Hard Rock International. And then on July 17th we closed down the Mirage.

Q. So I want to focus on your time at the Raiders from 2020 to 2022.

What was your role at the Raiders?

A. I was brought in to the Raiders to help them make the move from Alameda to Las Vegas. And, specifically,

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I was asked to modernize the HR practices and to develop modern day philosophies and programs and practices to help them be accepted in the community and to be a great employer in the City of Las Vegas.

Q. What was your title during are two years at Raiders?

A. It was Vice President and head of Human Resources.

Q. Why did you leave the Raiders in April of 2022?

A. I was fired.

Q. Were you given a reason as to why you were fired in April of 2022?

A. I was not. I was told it was just time for me to leave.

Q. Do you have a view sitting here today about why the Raiders terminated your employment in April of 2022?

A. I do.

Q. And what is that view?

A. My view is that there was a -- there was backlash for the type of

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recommendations and suggestions and things I was willing to tolerate within the organization and that became very uncomfortable, specifically, for the owner.

Q. Okay. Do you believe your termination in April of 2022 was related in any way to your role in the internal investigation concerning the Raiders overstatement of revenue?

A. I do think it's connected, yes.

Q. In what way?

A. I believe I was blamed for Marc Badain's firing and, I believe, that there was a perception inside of the organization that the people who were leaving in conjunction with the activities that were happening in or around that time were because of me.

Q. Were there individuals at the Raiders other than Mr. Badain who were leaving either by choice or because they were terminated around the time that the

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internal investigation concluded?

A. Yes.

Q. Roughly, how many individuals?

A. At a senior executive level, there were probably seven or eight just quickly running through the number in my head. But there were also many other front line employees or more professional employees who were leaving, which it was also post-COVID and so we know what was happening during that time, which was the great resignation and somehow I was also blamed for that.

Q. When did you first learn that the Raiders had overstated their revenue on their financial statements sent to the lenders?

A. That came up in -- started to come up in April of 2022.

Q. And how did you first learn about the overstatement of the revenue?

A. I learned about it from Jennifer Levine who was the executive

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director of employee relations and compliance and Travis Scott who was our accounting manager went to her and reported his hypothesis and Jennifer shared that with me.

Q. Was Jennifer someone who reported to you in your role as head of Human Resources?

A. She was.

Q. Around when you learned from Ms. Levine that Mr. Scott had reported that there was an overstatement of revenue as the head of Human Resources did you take any steps to investigate what had happened?

A. We did. We started to have some very disciplined and very deliberate conversations with a few people in the organization and when it became very clear that we had a big problem on our hands we engaged with outside Counsel.

Q. And were you involved in the investigation that was led by outside Counsel in addition to the interviews

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that I know HR conducted prior to their engagement?

A. I was privy to those conversations, yes.

Q. Go ahead.

A. I'm not sure if you're asking did I do the investigation?

I didn't do the investigation. But I was present for the report out is and for the debriefs.

Q. Thank you. That's a helpful clarification.

So I should ask, what was your role in the internal investigation that was run by outside Counsel?

A. I don't -- the role didn't have a name. We didn't have a direct name for it. But I was one of two or three people who were privy to the daily happenings and would get daily debriefs from Arnold & Porter.

Q. And were those two or three people, two or three people who were employed by the Raiders at the time who

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were involved in the internal investigation?

A. That is correct.

Q. And who were those other one or two people?

A. Dan Ventrelle who was the President at the time and -- Dan Ventrelle and I were the two primary people. Mark Davis and Larry Delsen were generally starting to come into the fold on what was happening.

Q. Who is Larry Delsen?

A. He's Mark Davis's friend.

Q. In your role in the internal investigation being privilege journal entry to the daily debriefs, did you have the opportunity to review the evidence that was gathered during the course of the investigation?

A. I did.

Q. Did that include e-mails and documents and witness interviews?

A. Yes.

Q. We're going to talk in more

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detail about what that evidence actually is in a little bit. But I'd like to start by asking you whether after reviewing the totality of the evidence that you had access to throughout the course of the internal investigation, did you form a conclusion about whether the Raiders overstatement of revenue was intentional on the part of Mr. Villanueva and Mr. Badain?

A. I did form my own conclusion about that, yes.

Q. What was your conclusion?

A. That they were intentionally overstating the revenue and moving money around to ensure that they didn't break debt covenant.

(Stenographer clarification.)

Q. Can I have you turn in your binder I believe it's going to be towards the front to JX-0010.

(Arbitration Exhibit JX-0010 was referenced.)

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Q. And I will represent to you that there are a compilation of interview notes in that document that are unfortunately not in chronological order so we might be moving around just a little bit.

Have you seen this document before?

A. I have.

Q. When did you first see this document?

A. These are notes that Jen took during her conversations with Travis and Araxie and Marc. So I saw these notes immediately after the conversations with were happening and I also saw them during my deposition.

Q. And when you say you saw them immediately after the interviews were happening, would that have been in April of 2021?

A. Correct.

Q. I know you mentioned earlier that Ms. Levine was someone who reported to you.

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How long had you worked with Ms. Levine?

A. Jennifer and I worked together probably for ten years prior to our time together at the Raiders at Caesars.

Q. And having worked with Ms. Levine for ten years, did you form an opinion about her honesty and her competence as a HR professional?

A. I did. There's no one I trust more than Jennifer.

Q. Did you participate in training Ms. Levine about how to conduct employee interviews when there is a workplace complaint?

A. Absolutely.

Q. And do you trust that she would follow the guidance that you gave her about how to conduct those versions?

A. Implicitly.

Q. And as part of the guidance that you gave her about how to conduct workplace interviews, was part of your

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guidance about how to document those interviews?

A. It absolutely was.

Q. What --

A. She is excellent at documentation and listening and writing down word for word what people are telling her and we have formed a relationship over the years and an understanding that she listens, she asks questions, she documents and then we follow up and talk about what the next steps are.

She is a much better note taker than I am, which is why we make a great team.

Q. Is it fair to say that you were present for some but not all of the interviews that Ms. Levine conducted between April 26th and April 28th of 2021?

A. That is true, yes.

Q. Did you speak to Ms. Levine about the interviews she conducted that

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you didn't attend in person?
A. Yes. Every single one of them.
Q. And how soon after Ms. Levine conducted those interviews would you spoke to her about what happened during those interviews?
A. Within an hour or two.
Q. Was that true for every interview she conducted?
A. That is correct.
Q. Looking back, did your discussions with Ms. Levine about these interviews and your review of the notes that she took of the conversation she had influence in any way your conclusion about whether Mr. Badain and Mr. Villanueva acted intentionally in overstating the Ventures revenue?
A. Can you repeat the question please?
Q. Yes.
Did these notes in any way influence your conclusion about whether

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the Ventures overstatement of revenue was intentional?

A. I did not realize that the overstatement of the Ventures was intentional until the investigation was happening with Arnold & Porter.

I think there were questions about the possibility of it being intentional based on the notes because of what Travis and Araxie were reporting.

But I've been doing HR long enough to know that you have to dig deeper than just what employees are telling you most of the time. And so I think there was a belief by Araxie and Marc that it was intentional.

But that did not become crystal clear until there was more evidence in terms of the e-mails and actually looking at the financials to say that, yes, this was intentional.

So the answer -- I would say, no, I did not take Marc and Araxie's word that it was intentional, as being the truth,

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until more evidence showed up.

Q. When you were referring to Marc and Araxie, did you mean to say Travis and Araxie?

A. I did, I'm so sorry.

Q. That's quite alright. I just wanted to clarify for the record.

A. Thank you. Thank you.

Q. Who is Travis?

A. Travis Scott is the accounting -- was the accounting manager at the time.

Q. And is he one of the individuals that Ms. Levine interviewed in April of 2021?

A. Yes, he's the first person who came forward with this claim.

Q. And who is Araxie?

A. She was the controller.

Q. And was Araxie Grant another of the individuals that Ms. Levine interviewed in April of 2021?

A. Yes. Araxie came forward shortly after Travis did with the same

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information.

Q. Did both of those individuals report to Mr. Villanueva?

A. Travis reported into Araxie and Araxie reported in to Ed Villanueva.

Q. You will see there are a number of set of page numbers at the bottom, but at the very bottom number there is a set of printed page numbers, to the page labeled 18.

A. In handwritten or type?

Q. Handwritten. Handwritten 18 at the bottom. Sorry, typed page number, No. 18. My apologies.

A. It's okay.

Q. And just let me know when you're there.

A. I'm here.

Q. Do you recognize this set of notes as handwritten notes that Ms. Levine took from an interview with Travis Scott on April 27th of 2021?

A. I do.

Q. And can I have you flip the

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page to Page 20?

A. Yes.

Q. Do you see at the very top of the page there is a J: and then a T:?

A. I do.

Q. Do you understand that J: to refer to Jennifer Levine?

A. I do.

Q. And do you understand the T: To refer to Travis Scott?

A. I do.

Q. So here Ms. Levine writes that she asked Mr. Scott how do you feel.

And that Mr. Scott responded, "I know this was intentional on Ed's part and intent to meet covenant. Everything has been about the covenant."

A. That is correct.

Q. What did you understand that comment to mean?

A. That I understand Travis's comment to mean that his belief was that Ed was intentionally over reporting the revenue or stating incorrect revenue,

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counting 13 months instead of 12 on the financial statements so that the debt covenant that I referenced earlier wasn't broken. That was something that Ed and Marc Badain spoke about a lot and were very proud to tell people that they had not broken the debt covenant, based on their financial abilities inside of the organization to do what they were doing.

Q. In your role as head of Human Resources, had you ever personally heard Mr. Villanueva and Mr. Badain speaking about the debt covenant?

A. I did.

Q. What did you personally hear?

A. I would hear them on several occasions joking and making sarcastic comments about like the debt covenant has only been broken once on my watch and it's not going to happen again. And there were a lot of questions -- a lot of comments around when money would come up or we would talk about, you know, spending money on employee compensation

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or doing other things to say, you know, what would that do to the debt covenant, we can't break the debt covenant.

Q. Is it fair to say that as the head of Human Resources that you didn't have a direct role in the accounting function of the Raiders organization?

A. That is fair. I did not have a direct role in the accounting function.

Q. Was it surprising to you that you were hearing or privy to these conversations between Mr. Villanueva and Mr. Badain about the debt covenant?

A. It was not surprising to me, because of the type of relationship that I had with Marc Badain and the way in which I was brought into business matters that were bigger than the scope of HR.

Q. How would you describe prior to April 2021 your relationship with Marc Badain?

A. Marc and I had a very trusting partnership and a good relationship. He hired me. He trusted

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me to come into the organization and give him feedback and to be honest with him and I thought I understood him to be up to that point being honest with me. That's something that's critically important to me in my role.

And we had an open relationship. He talked to me about a lot of business things that were outside of HR, which I know can be uncomfortable for some people. But my interest and my experience is bigger than Human Resources and benefits administration.

Q. Can I have you flip to the page ending or the page with the page number printed of 37.

A. (The witness complies.)

Q. Just let me know when you get there.

A. I'm here.

Q. Do you recognize this set of handwritten notes as notes that Ms. Levine took of an interview with Araxie Grant on April 26th, the day before she

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interviewed Mr. Scott in the notes we just saw?

A. Yes. I do.

Q. And looking at the bottom of the first paragraph, do you see where Ms. Levine writes, "This does not look like an inadvertent error"?

What did you understand this comment about Ms. Grant's interview with Ms. Levine to mean?

A. The week prior to this, there was a lot of pressure and there was a lot of discussion about getting EY some information that they needed to complete their audit. There was as we understood it at this time and going forward a lot of hold up and a lot of sort of kicking the can on getting EY what they needed. Araxie is saying on Friday, she was very concerned about that. So, when she went to Ed, Ed was saying we need to talk to Badain. And talk to him about what you're saying, which is I think we're overstating the revenue, as it relates to

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the NFL Ventures numbers.

In this particular comment, Araxie is communicating to Jen that she believes that this is not an error. This is something that's done intentionally and just as Jen writes it, she's saying that Araxie would have said verbatim. This does not look like an inadvertent error.

Q. How do you know that this is something -- that this is something Ms. Grant would have said to Ms. Levine verbatim?

A. Because that's how Jen takes her notes. And that is -- after the discussion, this was what we know that both Travis and Araxie were saying.

Q. And was that something that you discussed, specifically, with Ms. Levine after she conducted these interviews?

A. It is, yes.

Q. Looking at the second paragraph of Ms. Levine's notes of April '26, do you see where she writes, "In the

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beginning '07 we did this to meet debt covenant. Misleading think it's fraud."

What did you understand that comment to mean?

A. Can I have a moment just to read what's before that?

Q. Of course.

A. So I recall having a discussion with Jen about this and she -- Araxie is communicating to Jen Levine that Ed Trask and Travis were in a meeting the week before 426 and Araxie said to Ed, these numbers don't make sense. I don't get it. And Ed said, in the beginning in 2007, we did this to meet the debt covenant. Araxie is then telling Jen that's misleading the bank and that's fraud.

Then Ed said to Araxie, Badain knows about it. Ed said that there was a meeting -- oh, this is something different.

Araxie was telling Jen that Ed said that Badain knows about it. So the misleading the bank and it's fraud is Araxie's commentary. It is not what Ed would have said to Araxie.

Q. Understood.

THE CHAIRPERSON: Counsel, I'm going to stop you for a moment because I've conferred with the other members of the Panel.

We have a problem with interpretation of documents that speak for themselves.

[RULING] The witness is now going way beyond the comments in the documents giving her own opinion as to what those things mean.

If she has direct knowledge, that's fine. But in terms of the line of inquiry, she cannot interpret these documents.

MS. HELFMANN: Absolutely. We'll move on.

BY MS. HELFMANN:

Q. In your role as the head of

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Human Resources --

MS. HELFMANN: And we can, Jason, put this document down.

Q. Did you have occasion to observe the dynamic between Mr. Badain and Mr. Villanueva closely?

A. I did.

Q. And were they individuals who you understood to work closely with each other?

A. Very closely together, yes.

Q. How would you based on your personal observations describe the dynamic between Mr. Badain and Mr. Villanueva?

A. Mr. Villanueva had worked for Mr. Badain for a very long time. He learned from him. Ed learned from Marc Badain how to do the job and there were very few times that Ed would make a big decision without Marc being involved. Marc had very direct oversight over Ed Villanueva as the CFO. And the dynamic was such that Ed was acting in the role

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of CFO but Marc Badain was really doing the big job of the CFO.

Q. At what point did you become involved in the internal investigation that was led by outside Counsel do you recall?

A. Day one, the very first day.

Q. And do you recall how long after these interview notes that investigation began?

A. I don't recall the exact number of days. But there were three or four days where we were having internal conversations and quickly pivoted to this is bigger than something that should be done internally and there needs to be somebody from the outside who comes in and looks at what's going on here.

It was a quick turnaround. But I don't remember the exact number of days. If you told me it was more than a week, I would be surprised.

Q. Okay. And do you recall the law firm that was engaged to run that

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internal investigation?

A. Arnold & Porter.

Q. Do you recall whether when Arnold & Porter was engaged you provided them with Ms. Levine's handwritten and typed interview notes?

A. I did. I e-mailed them to them.

Q. Do you know whether those notes were ever provided to EY?

A. I do not know.

Q. Do you believe that those notes should have been provided to EY?

A. I do.

Q. Why?

A. Because there was a joint understanding as we were engaging in this process that EY would be part of the investigation, because they had a vested interest in understanding also what was happening.

Q. During the investigation, did Arnold & Porter ever raise an issue or ask witnesses about a discrepancy between the financial statements that the Raiders sent to their lenders as of 12/31 and the financial statements that the Raiders sent to the NFL as of 3/31, if you recall?

A. I do. That was a big topic of conversation, yes.

Q. What do you recall about that topic?

A. There was a lot of discussion about why that was happening and why the numbers were different and the answer was always a version of, because of regular accounting and GAAP accounting and a Fiscal Year that the NFL was on was different than the year that we were on. I am not a financial accounting expert. But those are the highlights of what the explanation was.

Q. So did you understand that one of the explanations that the Raiders provided for the inconsistency between the 12/31 financial statements and 3/31 financial statements is that they cover

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different time periods?

A. Correct.

Q. At any point during the internal investigation, did Arnold & Porter or any witness address quarterly financial statements that were sent to Bank of America as of 3/31 the same date as the financial statements that were sent to the NFL?

A. I do not remember that.

Q. Okay. Can I have you flip to Joint Exhibit 3303.

(Arbitration Exhibit JX-3303 was referenced.)

A. Yes, I'm here.

Q. Do you see this is an e-mail from Mr. Villanueva to Angel Sutoyo at Bank of America?

A. I do.

Q. Is this a document that you recall being gathered, reviewed or used in witness interviews during the internal investigation?

A. I do not recall.

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Q. Okay. Can I have you flip to the page ending in 044.

And do you see Mr. Villanueva's signature certifying to the accuracy of the information provided to Bank of America?

A. I do.

Q. And can I have you flip to the page ending in 050.

A. (The witness complies.)

Q. Do you see at the top there's a date, March 31st, 2017?

A. I do see that.

Q. And are you aware that the NFL football season runs from April 1st to March 31st?

A. I am.

Q. And so the -- are you aware that the financial information that the Raiders provided to the NFL each year in the season conforming schedules were as of 3/31?

A. I do.

Q. So is it your understanding

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that these financial statements sent to the bank covered the same time period as the financial statements the Raiders sent to the NFL?

A. That is correct.

Q. Do you see that there is a line under "Assets" that says, "due from NFL," and lists an amount of little over $83 million?

A. I do.

Q. I want you to flip now to 3304.

(Arbitration Exhibit JX-3304 was referenced.)

Q. Do you recognize this as a copy of the 2016 season conforming schedule?

A. Yes.

Q. And were these type of schedule information that Arnold & Porter considered in the internal investigation as compared to the yearend or 12/31 statements that the Raiders sent to Bank of America?

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A. That is correct.

Q. But it's your recollection that these conforming schedules were never compared with the 3/31 financial information sent to Bank of America based on your recollection of the internal investigation?

THE CHAIRPERSON: Can I ask a question is that based on the witness's actual knowledge? Does the witness have actual knowledge on that that's what I let forego.

Q. Do you recall one way or the other, Ms. Stratton?

A. I am aware that Arnold & Porter went through the all financials and compared all the financials. I don't remember having direct conversations about these two documents. I am generally aware of the discrepancies between the documents and that's how this information came out, yes.

MS. HELFMANN: And, Jason, you can go ahead and take this

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one down.

Q. Do you recall during the internal investigation or any witness interviews that you have personal knowledge of any witness, Mr. Villanueva or Mr. Badain being asked how or why the Raiders reported different numbers for the Ventures receivable to Bank of America and to the NFL as of the same date each year?

A. Yes, they were asked that repeatedly.

Q. And how did they respond?

A. They said they were on different cycles and they were different accounting measures is my recollection.

Q. Can I have you flip to tab JX-3321.

(Arbitration Exhibit JX-3321 was referenced.)

Q. Is this an e-mail that you personally recall having reviewed during the internal investigation?

A. It is.

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Q. So, if we can take a look at Mr. Villanueva's e-mail in the middle of the page at 5:02 p.m. to Mr. Badain where he says, "Our debt service coverage ratio ended up being 3.44 at the beginning of the year. We thought we would break our covenant."

Mr. Badain responds, "Business is booming," with a picture of Antonio Brown's feet.

And Mr. Villanueva responds, "And a little manipulation."

A. Correct.

Q. Having worked closely with Mr. Badain and Mr. Villanueva for two years, how did you interpret this e-mail when you saw it?

THE CHAIRPERSON: [RULING] Counsel, the document speaks for itself. An interpretation by the witness is not admissible. Let's move on.

MS. HELFMANN: Yes.

(There is a discussion off

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the record.)

Q. When do you recall the first time you became aware of an issue with the allocation of revenue and expenses as between StadCo and TeamCo?

A. That came up at the end of June of 2022. I'm sorry, 2021.

Q. And do you recall how that came up?

A. I don't recall the exact document that was used to discover that. But it was a conversation that Arnold & Porter had had with us saying that there's a secondary issue, that the numbers on the expense side and the revenue side were being manipulated and we needed to understand that a little bit better. It was discovered by Arnold & Porter.

Q. In your role as the head of Human Resources, did you personally have any involvement in the allocation of payroll expenses as between StadCo and TeamCo?

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A. I did not. Payroll reported into finance.

Q. Did you ever have conversations with anyone in finance about how that payroll should be allocated one way or the other?

A. Not before this discovery, but after the discovery was heavily involved in rightsizing the situation.

Q. And when you were involved in "rightsizing the situation," how did you go about determining what revenue and what payroll expenses should be allocated to TeamCo versus StadCo?

A. Very methodically and that was an exercise I did with Ankura who was the forensic accounting firm who was hired post-discovery of the situation and there were some things that were very easy to identify on what belonged in TeamCo and what belonged in StadCo and then the things that were less clear or less obvious we applied a methodology to be consistent across those disciplines

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and that specifically related to -- was related to payroll and executive's time and what that looked like.

So there are very detailed notes and very detailed documentation about what that formula was that we used because I spent a lot of time on that.

Q. And as part of right sizing or correcting the allocation as between TeamCo and StadCo, did you review the allocation that Mr. Villanueva had submitted to the bank that was needed to be rightsized or corrected?

A. In the form of an Excel spreadsheet I did. I don't know if that's exactly what he submitted to the bank. But I saw the output.

Q. And were the rightsizes or the corrections that you and Ankura had to implement, were they significant or minor?

A. They were significant.

Q. Why did you understand that the allocation that Mr. Villanueva

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submitted to the bank had to be rightsized or corrected?

A. Please state the question again.

Q. I'll rephrase.

What did you understand to be the problem with the revenue and expense allocation that Mr. Villanueva had submitted to the bank that you were involved in rightsizing?

A. Because it wasn't an accurate representation of what was happening and there was some adjustments happening for loan coverage and to make the numbers look way that they needed to look to achieve an outcome that was beneficial to the Raiders.

Q. And Arnold & Porter come to a conclusion about -- during the investigation and the debriefs that you were involved in about whether Mr. Villanueva and Mr. Badain had acted intentionally in misallocating or shifting expenses as between StadCo and

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TeamCo to meet the debt covenant?

A. In a formal report out or in a...

Q. Did Arnold & Porter at any point discuss with you their findings about the revenue and expense allocation between TeamCo and StadCo?

A. Yes.

MR. REED: Wait. Hold on. On this one I'm going to object to privilege grounds.

There were certain instances where Arnold & Porter conclusions were shared with Ernst & Young, which are not privileged.

But to the extent that there are conversations between Ms. Stratton and the lawyers that were not shared with Ernst & Young, we would assert the privileges.

MS. HELFMANN: I'm happy to limit my question to conversations where EY was present.

Q. Do you recall being in

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debrief meetings --

THE CHAIRPERSON: Could I just ask a question?

Can we identify who these conversations were with?

Because it's generically Arnold & porter. We don't know who the witness is speaking.

MS. HELFMANN: Certainly.

MR. BICKERMAN: And who was present?

THE CHAIRPERSON: And who was present?

MS. HELFMANN: Certainly.

Q. Do you recall attending debrief meetings with members of the Arnold & Porter team and members of the EY testimony?

A. Yes, at the M Casino in Las Vegas, yes.

Q. Who from Arnold & Porter was from at that meetings?

A. Veronica Callahan.

Q. Anyone else from Arnold &

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Porter?

A. There were two more junior lawyers. I believe they were on Zoom. They were not there in person.

Q. And do you recall who from EY who was present at those meetings?

A. There were a handful of people. The names are escaping me, but it would have been Luke, Michael Shin. I don't remember the names. There were four or five people from EY in the room.

Q. Was anyone else present at those debrief meetings?

A. Dan Ventrelle was present. I was present. And on occasion Mark Davis and Larry Delsen were present.

Q. Did you have an understanding of what the purpose of those debrief meetings was?

A. I did. They were to -- for Arnold & Porter to disclose to both the Raiders and to EY the findings of what was happening with the finances inside of the organization.

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Q. And did Arnold & Porter disclose to you that they had come to any findings about whether the allocation of revenue and expenses as between StadCo and TeamCo by Mr. Villanueva and Mr. Badain was intentionally and designed to meet debt covenant?

A. In that meeting?

Q. In any of the debrief meetings in which EY was present.

A. I don't believe so.

Q. Okay. Could I have you flip to the Tab 2464.

(Arbitration Exhibit JX-2464 was referenced.)

A. I'm here.

Q. And do you recognize -- well, you may not recognize these.

But I will represent to you that they're notes that Ernst & Young took from a debrief meeting on July 20, 2021.

Do you see a list of attendees at the top?

A. I do.

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Q. And do you recognize Stephanna and Veronica and Teresa from Arnold & Porter?

A. I do.

Q. Are those individuals who were involved in the internal investigation?

A. Stephanna was one of the junior -- more junior lawyers that I was speaking about earlier.

Teresa was a more senior person who wasn't directly involved in the investigation, but she would weigh in from time to time on some historical knowledge.

Q. Do you recognize a few individuals from Ankura who were also in attendance?

A. Yes.

Q. What was Ankura's role in the internal investigation?

A. They were the forensic accountants who were hired to get into the numbers and unpack what was happening.

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Q. Was any, to the best of your recollection, other than EY and the individuals listed as outside attendees present at this debrief meeting?

A. No.

Q. Okay. Can I have you turn to the page ending in four?

You see at the bottom there is a section that starts -- the last bullet point on the page that, "A&P stated that as it relates to StadCo and the debt covenant reporting in May 2021, the evidence seems to fall in the bucket of individuals acting with intent and knowledge to achieve a result and meet covenant and that was an approach agreed to between Ed Villanueva and Marc Badain."

Do you recall that discussion with Arnold & Porter having now reviewed these notes?

A. I know that that's what Arnold & Porter believed. I did not remember that that came up in the meeting

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-- in a meeting with EY.

Q. I understand.

And is the basis for your understanding something that -- a conversation that occurred with Counsel but not with EY?

A. Correct.

Q. Then I won't ask you about the substance of that conversation.

Based on the evidence that you reviewed and your involvement in rightsizing the allocation revenue as between TeamCo and StadCo, did you personally form an opinion about whether the allocation of revenue and expenses by Mr. Badain and Mr. Villanueva was intentionally to meet debt covenants?

A. Yes.

Q. What was your conclusion?

A. That it was intentional and that, yes, absolutely.

Q. What led you to that belief? To the extent that it was not the contents of a privileged conversation,

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just between you and Counsel.

A. Correct. The way that the money was being moved and the way that the allocations were happening, there was -- no reasonable person would have done it that way because they thought that that's how it should been done. There was some other motive behind what was happening.

And my experience in understanding the dynamic between Ed and Marc and knowing the full extent of the investigation. This was clearly just another example of trying to force an outcome that needed to be had.

Q. Did your conclusion about whether this allocation of revenue and expenses with StadCo was intentional have any influence on your conclusion that the overstatement of Ventures revenue was also intentional?

A. I believe the overstatement of revenue Ventures, that conclusion came first and then we became aware of this.

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And so they seemed to go hand in hand.

Q. Did reason that they go hand in hand" was because it was the same individuals acting with the same motive and for the purpose?

A. Yes.

MR. REED: Objection.

Q. You mentioned a number of times that Mr. Ventrelle was another individual who worked for the Raiders and who was involved in the internal investigation.

What was his role at the Raiders?

A. At the time, he was the -- I think he was called Executive Vice President and General Counsel.

Q. And do you know how long Mr. Ventrelle had worked for the Raiders?

A. Around 20 years, I believe.

Q. Did you work closely with Mr. Ventrelle?

A. I did.

Q. Was that before the investigation or only during the

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investigation?

A. It was before the investigation.

Q. Are you aware whether Mr. Ventrelle works for the Raiders today?

A. I am aware that he does not work for the Raiders today.

Q. Are you aware whether Mr. Ventrelle was terminated from the Raiders?

A. I am. He was fired.

Q. And do you have personal knowledge of the reason that Mr. Ventrelle was fired?

A. I do.

Q. What is that knowledge?

A. My knowledge of that situation is that Mark Davis fired Mr. Ventrelle for bringing forth my concern to the NFL and for trying to get Marc to see that the organization was being run in a way that was detrimental to the people working there and, quite

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frankly, there were some things that were happening that would have gotten him in big trouble.

THE CHAIRPERSON: Let me ask a question.

Based upon actual knowledge or is this just based upon this witness's conclusion as to all the facts that were presented to her?

THE WITNESS: It's actual knowledge.

THE CHAIRPERSON: You have actual knowledge?

THE WITNESS: I do.

THE CHAIRPERSON: Okay.

MR. REED: Can we get the source?

MS. HELFMANN: Counsel, I'd ask that on cross-examination you're certainly welcome to inquire.

THE CHAIRPERSON: That's a good point, Counsel.

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Q. Are you aware whether Araxie Grant currently works for the Raiders?

A. She does not work for the Raiders.

Q. Are you aware that she was terminated from the Raiders in 2021?

A. I am.

Q. And was that while you were still employed at the Raiders?

A. Correct.

Q. Do you have personal knowledge about the circumstances of her termination?

A. I do.

Q. And at the time when Ms. Grant was terminated, did you as the head of Human Resources have a view about whether that termination was proper or correct?

A. I do.

Q. And what was your view?

A. That it was proper.

Q. Did your view that it was proper to terminate Ms. Grant have

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anything to do with her reports to Human Resources or to Arnold & Porter about the accounting improprieties that had occurred with the Ventures overstatement of revenues?

A. Absolutely not.

Q. Based on your understanding of the evidence and the view of witness testimony, did you come to agree with what Ms. Grant had reported to Human Resources in April of 2021?

A. Yes.

THE CHAIRPERSON: Counsel, I'm going to stop you at this point in going over this.

These are ultimate issues of fact to be decided by the Panel and I have very serious questions about a lot of this testimony because a lot of it is speculation, opinion. I'm not sure if it's based upon on actual knowledge.

I'm going to ask you to move

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onto another line of questioning.

MS. HELFMANN: Certainly.

Q. You mentioned when we first started speaking today that Mr. Badain was the one who brought you into the organization.

What did you mean by that?

A. Mr. Badain and Mr. Ventrelle hired me into the organization, gave me my job offer.

Q. And prior to April of 2021, did you have any concerns with Mr. Badain's integrity or job performance?

A. No.

Q. Had you ever advocated that Mr. Badain be terminated or sanctioned prior to April of 2021 in your role in Human Resources?

A. No.

MS. HELFMANN: If I could have just a brief recess to confer with Counsel.

THE CHAIRPERSON: Sure.

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Take five minutes.

(Recess taken 2:28 to p.m.)

THE CHAIRPERSON: Okay. Back on the record. Counsel why don't we proceed.

MS. HELFMANN: I have no further questions.

Q. And thank you very much for your time, Ms. Stratton.

THE WITNESS: Thank you.

MR. REED: Alright. Ready?

THE CHAIRPERSON: Ready.

CROSS-EXAMINATION BY MR. REED:

Q. Ms. Stratton, how are you?

A. I'm good. Thank you. How are you?

Q. I'm fine. Thank you for making the trip.

DID you consider coming to testify remotely in this arbitration?

A. I did not.

Q. Okay. Did ask you about that possibility?

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A. I didn't. Kathy called me and said we were requested to be here and happy to do as I'm told.

Q. Okay. You and I met when you were deposed, right?

A. Correct.

Q. And we haven't spoken to each other since then?

A. We have not.

Q. Can you turn to page -- sorry Tab 1 in your binder.

(Arbitration Exhibit JX-1 was referenced.)

A. Yes.

Q. That's a copy of your -- or, at least, a prior iteration of your LinkedIn page, right?

A. It is.

Q. I think if you look at the last tab in the binder that our friends gave you, is that the current iteration?

A. Yes, that's correct.

Q. Okay. So I guess just working off mine. Under your name you

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list yourself as "a talent and culture architect, a conscientious advisor, a storm navigator, energy officer and mom to three teenagers," correct?

A. Correct.

Q. So I know what a "mom to three teenagers" is.

What is a "conscientious advisor"?

A. I view my role in HR as somebody who can sit with people in the organization and say, you know, are we doing the right thing, is this the right move, is this, you know, something that we're doing with integrity and what's the why behind what we're doing and that's what conscientious is to me.

Q. I Googled that term and I didn't come up with anything.

Is that a term that you made up or is that like a corporate term that people use?

A. It's a corporate term for sure.

Q. Okay. So some corporations

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have the title "conscientious advisor"?
A. Not title. They're adjectives to describe what people do.
Q. Okay. "Storm navigator" is that sort of like crisis manager?
A. Yeah.
Q. And what's an "energy officer"?
A. Somebody who can bring smiles to people's face and, you know, when you walk around the building and, you know, make sure everybody is enjoying what they're doing and...
Q. So kind of like a vibe maintaining kind of thing?
A. Sure, yeah.
Q. Okay. Under the summary portion you say, "Integrity and inclusion are at the forefront and not negotiable in every decision," right?
A. Yes.
Q. And so integrity in business is very important to you?
A. It is.

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Q. Something that you pride yourself on?

A. It is.

Q. And you have a high degree of confidence in your own integrity I assume?

A. I do.

Q. And you will feel confident in your ability to judge the integrity of others?

A. I do.

Q. Okay. I overlooked talent and culture architect.

What's the "culture" that you're referencing there?

A. What is "culture"; is that what your question?

Q. I mean, when you use "talent and culture architect," how are you using "culture" in that term?

A. It as the way people feel about working inside of an organization.

Q. Does it also refer to, you know, sort of an organizations's attitude

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toward things like integrity and honesty in business?

A. Sure.

Q. Okay. And is that something that when you were working at the Raiders you were sort of watching out for and trying to build?

A. Yes.

Q. Okay. Is it part of a good culture not to be overly focused on meeting debt covenants and things like that?

A. Can you repeat the question, Kevin? I'm sorry.

Q. Is it part of a good culture not to be overly focused in meeting debt covenants and things like that?

A. Yes.

Q. Okay. Travis Scott discovered this error in the financial statements that we've been discussing today, right?

A. Uh-huh, uh-huh.

Q. Yes?

A. Yes, correct, yes.

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Q. Okay. And then Araxie Grant was somebody who along with Mr. Scott brought it to management and then to the auditors, right?
A. Correct.
Q. Travis Scott was never fired by the Raiders, right?
A. He was not, to my knowledge.
Q. Okay. And Araxie Grant was fired, but your testimony is that had nothing to do with any whistleblowing on her part?
A. It did not. And I personally know that because I was.
Q. You fired her?
A. I was in the room when I fired Araxie.
Q. You were fired and Dan Ventrelle were fired, right?
A. Correct, among many others.
Q. Okay. Look if you would at Exhibit 201.
(Arbitration Exhibit JX-201 was referenced.)

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Q. Those are notes you took, right?

A. That is my handwriting, yes, those are notes that I took and they appear to be from a notebook that would have been in my office. I can see the spirals down the left-hand side.

Q. Okay. I want you to look at Page 4 of the notes.

A. Okay.

Q. And I'm going to ask you about this portion that that's on the bottom of the page. But to the extent you need to look to get context or anything like that, please go ahead and do that.

A. Okay.

Q. At the bottom of the page it says, "Auditors reached out 11:00 a.m. Mike and Javier."

Are "Mike and Javier" a reference to Gottlieb and Garcia?

A. I believe so, yes, at EY.

Q. Okay. And there are bullet

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points. "What is the issue? Reach out today. Call today."

What do those reference?

A. I believe there was a call that was going to be between Ed Villanueva and Marc Badain at 11 o'clock with the auditors and it was being reported to me that the topics that they were going to talk about was what is actually happening. We need to talk about that state. We're going to have a call today at 11 o'clock that's what it seems to be.

Q. Okay. Beneath that, there's two starred sections. The top one says "reverse," I think; am I right?

A. It does.

Q. And the other one says, "I relied on you guys. Business partner to you."

Do you see that?

A. Yes.

Q. And does that memorialize that Ed told you that he had said to

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Javier Garcia in connection with discussing this error, I relied on you guys to catch things like this, I was a business partner to you?

A. I don't -- I don't recall Kevin, to be quite fair.

Can I take a look back and see, like, what's right before that?

Q. Yeah, do whatever you need to. Yeah.

A. Let me just -- okay 4/28.

(The witness reviews the exhibit.)

Oh, this is a lookback. This is from a meeting that I had with Marc and Ed on 4/28 and they were recounting some facts to me and some order of events and they told me that there had been a call at 11:00 a.m.

And, yes, this would have been Ed saying that he said to Mike and to Javier what are we going to do reverse -- what is the reverse going to look at. And he would have said that he told Mike and Javier, I relied on you guys. I've been

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a business partner to you.

And he said, we feel bad -- Ed said that, we feel bad that we didn't catch it either. Now, that's what Ed was recounting.

I wasn't in the conversation. So I don't know if that was actually said. But this is what Ed told me.

So I was writing that down. I was not in the conversation to hear that myself. So I don't know if it's true or not.

Q. Okay. And it's true of all of the conversations that Jaime -- I'm sorry, that Jennifer Levine related to you you weren't in those conversations?

You're just taking her report on what happened?

A. Yes, as an HR professional, I'm taking her word that what she's writing down is the truth.

In my experience as an HR professional, I know that sometimes when people are backed into a corner or up

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against a wall that sometimes the facts get distorted. I don't feel that way about Jen, but I would feel very comfortable that I don't think that Ed was always telling the exact truth.

Q. Okay. And I think this was clear but maybe just to make sure.

The last line on that page, "We feel bad we didn't catch it either." That is Ed reporting to you what --

A. He said --

Q. -- Mike or Javier said to him during his call with EY?

A. That's correct, yeah.

Q. Alright. So now it's your belief that -- actually, let me back up.

Do you recall when you were being examined by our friends on the other side, you were shown notes in which Jennifer Levine reported that Travis Scott expressed his view that this error was intentional?

A. Uh-huh.

Q. And then you were shown

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different floats that Jen reported that Araxie Grant reported -- or said to her that she believed this was intentionally right?

A. Uh-huh yes.

Q. And I think you said you didn't accept either of those views, you need to investigate this?

A. Correct. Yeah. I believed that they believed that that was intentional. But until we did a proper investigation, there would be no way to know that.

Q. Right, you weren't going to just take their word for it?

A. Of course.

Q. Now after the investigation you said you've concluded that Ed Villanueva intentionally overstated the NFL Ventures revenue on the Raiders's financial statements right?

A. Uh-huh yes.

Q. And it's belief that Badain was potentially party to that was well?

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A. Yes.

Q. And Mr. Villanueva never told you that he intentionally overstated revenue delivered, right?

A. He did not.

Q. And Mr. Badain never told you that he knew that any revenue was being deliberately overstated, right?

A. He never told me that directly, correct.

Q. So your opinion on those two is based on your assessment gathered after the issue came to light?

A. Correct. Based on the e-mails and the evidence and looking at the financial numbers and understanding more over several week period, correct.

Q. And you said a couple of times you're not a finance person, right?

A. I am not an accountant.

Q. So you're just reviewing the evidence and making a judgment as to what it shows?

A. Correct.

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Q. Just like we've asked the Panel to do?

A. That's correct.

Q. Alright. Now, let's look at JX-16 please.

(Arbitration Exhibit JX-16 was referenced.)

Q. Now, this is one of the documents that led you to conclude that Mr. Badain and Mr. Villanueva had deliberately overstated the Ventures revenue, right?

Take a look at it. I don't mean to rush you.

A. Yeah, thank you.

This is one of the e-mails, Kevin, that I've seen, yes.

Q. Okay. And your focused particularly on that second e-mail from the top, "Lucky we didn't stress integrity back then," right?

A. That is -- yes, yes.

Q. And you don't believe that anyone within integrity would ever send

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an e-mail joking about not having integrity, right?

A. I believe some people would.

Q. But it sounds like you can't sort of conceive that somebody who actually had integrity would send an e-mail saying that they didn't; is that --

A. That's correct. That's correct. Do I believe people do it, yes, right.

Q. But no one with integrity would do that?

A. Correct.

Q. Now, let's look at -- sorry, the top e-mail in there. It refers to the "four Cs"?

A. Yes.

Q. And that's an Amy Trask joke, right?

A. It is. I don't recall exactly what it is. This came up in my deposition. I don't recall what the "four Cs" are, but there were a lot of

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Amy Trask terms that were laughed about inside of the organization.

Q. Right, but before this issue with the overstatement ever arose, you heard that "4 Cs" joke being bandied about as an inside Amy Trask joke?

A. Yes, I had.

Q. Let's look at JX-17 please.

(Arbitration Exhibit JX-17 was referenced.)

Q. JX-17, please?

A. Okay.

Q. Now, I said -- I think you said in this deposition this was the document that convinced you it was intentional, correct?

A. I think I called it the "holy shit" e-mail.

Q. That's exactly what you called it.

A. Yes.

Q. And that's where you thought "holy shit" it's intentional?

A. Yes.

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Q. Now, you never spoke to Mr. Badain or Mr. Villanueva about either of these e-mails right?

A. No, because there was an investigation going on and that would have been completely inappropriate. So correct I never spoke to them about this e-mail.

Q. Are you a football fan is?

A. I am.

Q. Did you follow the Raiders in kind of what was happening to their football team while they were there?

A. I know some of it based on the stories told inside the organization.

Q. After Antonio Brown left the team, do you recall seeing any press about how he had manipulated the Raiders?

A. I do not. I know very little about Antonio Brown and his situation other than there was some need to create some cap space and move him off the team and there was some financial implications and something about a helmet but that's

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all I know.

Q. Okay. I think you said -- in your deposition you said another thing that influenced your view that this was intentional was the differences between the financial statements and the conforming statements.

A. Yes.

Q. Do you recall that?

You're not aware of how the conforming statements are prepared, that's not something you were involved in, was it?

A. No, it's not.

Q. Okay.

A. But as it was explained to me during the debrief --

Q. I'm not actually looking for what was explained to you.

I'm just trying to understand what you knew or understand.

A. Okay, good, fair.

Q. It was your opinion that the whole conforming statement process was

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confusing and that Ed might not have understood it right?

A. Correct.

Q. You didn't think he was capable of understanding how that process worked on his own?

A. Somebody would have had to have taught him that, yes.

Q. Alright.

A. And that's my opinion.

Q. Okay. TeamCo and StadCo was briefly mentioned during your direct examination. I think you said that was another factor that led you to conclude the Ventures overstatement was intentional, right?

A. I believe the Ventures overstatement -- my opinion about that was formed before I was made aware of this StadCo and TeamCo issue. But I believe the StadCo and TeamCo issue was also intentional because of the Ventures issue. So I think that's reversed.

Q. Okay. TeamCo and StadCo

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issue was intentional because of what you knew about the Ventures issue; is that what you said?

A. Yes.

Q. Okay. I think you said you didn't have any involvement in allocating between TeamCo and StadCo until you were asked to do it after Badain and Villanueva had exited, right?

A. That is correct.

Q. You didn't participate in any of the work that Marc Badain and Ed Villanueva did in allocating expenses and revenues between TeamCo and StadCo?

A. That is correct. I would hear conversations about what belongs in TeamCo and StadCo, but I was not asked to do any of that work. I was peripherally involved in hearing those conversations.

Q. Okay. You never spoke to Ed Villanueva or Marc Badain about their work in allocating between TeamCo and StadCo?

A. Marc Badain and I would have

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had a few conversations about some things like the "Daz" and some other probably big financials and do they belong in StadCo or TeamCo and what was his thinking about that. But those were just everyday normal business conversations. They weren't conversations directly related to I was believing something was being done wrong.

Q. Okay. Once the issue came to the investigator's attention, the StadCo issue and they were suspicions that Marc and Ed had done something wrong in connection with those allocations, you never discussed that with them, right?

A. Absolutely not.

Q. And is it your recollection that Arnold & Porter never discussed that with them either?

A. Correct. I believe they were asking Ed -- I wasn't in the room. But what was told to me afterwards by Veronica was that she asked Ed and Marc if there was -- if that was happening.

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And they wouldn't engage in that conversation or give her information about how that was being done, which was what caused the delay in the report out on June 25th and 29th that we had previously spoken about. Because she was trying to get them to -- trying to get Ed and Marc Badain to disclose what they knew about that and they weren't engaging in that conversation with her.

Q. Wasn't it the case that what you heard from the read out was that Arnold & Porter didn't see a need to ask Ed and Marc about TeamCo StadCo because during their interviews with them about the overstatement of Ventures they had asked the general question is there anything else that we should know?

A. That is correct. I do recall that, yes.

Q. Okay. So Arnold & Porter never actually asked them about TeamCo and StadCo?

A. I don't know if she asked

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that direct question or not.

Q. Okay. As far as you know, Arnold & Porter never questioned them about that?

A. I do not know that she asked them that direct question, correct.

Q. Okay. And, as far as you know, neither Ed nor Marc ever refused to answer questions posed by Arnold & Porter about that?

A. Posed by Arnold & Porter, correct. I know that Dan Ventrelle had a conversation with Marc Badain that was outside of that to ask him if he would come forward with that information and he said, no.

Q. Okay. You said earlier that you recall hearing Marc speak about the importance of meeting the debt covenant?

A. Uh-huh.

Q. Right?

A. I did.

Q. Given your earlier testimony that you think it would be improper for

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culture purposes for somebody to place undue emphasis on meeting a debt covenant, I assume at the time you heard that, you didn't see any issue with it?

A. I don't think that's a fair conclusion. I didn't understand the magnitude of like breaking a debt covenant or what that meant. I'm not a finance person. So I would hear that language, but I didn't understand how big of a deal that would have been at the time.

And so I just thought as a finance person and a CFO that would be like saying, you know, as an HR person we've won, you know, like some type of great place to work award or something like that. It didn't ring a bell for me like that that would be a strange thing to talk about.

Q. It didn't strike you as anything nefarious or problematic when you heard it?

A. It did not.

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Q. You don't think you're qualified to make a judgment as to whether Ernst & Young should have found the accounting error that we're talking about here, right?

A. No.

Q. Alright. Nothing else. Thank you.

THE CHAIRPERSON: Counsel?

MS. HELFMANN: Nothing further.

QUESTIONS BY THE ARBITRATORS

MR. BICKERMAN: Ms. Stratton, first, thank you for appearing in person, it's certainly easier to talk to a live person than a television screen.

THE WITNESS: My pleasure.

MR. BICKERMAN: The first question I want to ask you is about the timing of when you came to your conclusions. I think I understood you to say that before the investigation occurred, you

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hadn't concluded that Mr. Villanueva or Mr. Badain had acted intentionally.

Did I hear that correctly?

THE WITNESS: That is correct.

MR. BICKERMAN: Okay. And then sometime after the investigation, you did come to that conclusion?

THE WITNESS: During the course of the investigation is probably more accurate.

MR. BICKERMAN: During the course of it, okay.

And then I want you now to separate, if you can --

THE WITNESS: Okay.

MR. BICKERMAN: -- the investigation and the information from the investigation to what personal knowledge you had of statements or events related to Mr. Badain and Mr. Villanueva that affected your conclusion

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independent of the investigation.

THE WITNESS: Can you describe that a little bit differently?

MR. BICKERMAN: What I'm asking you to tell me is --

THE WITNESS: Sure.

MR. BICKERMAN: -- based on your personal knowledge and not the investigation --

THE WITNESS: Uh-huh.

MR. BICKERMAN: -- what happened after the investigation began until the time you came to your conclusion that is based on your personal knowledge?

THE WITNESS: So my personal knowledge is understanding the facts as they were being disclosed during the investigation. As an HR professional, I've been doing workplace investigations for a really long time. And it is important to me before jumping to conclusions or making judgments

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about things to make sure that the facts are laid out and the proper people are spoken to and listened to and have an opportunity to disclose information.

So, at the time that the investigation was happening, I didn't have direct conversations with Ed and Marc about this, because that would have been interfering with the investigation.

And so I don't have anything to tell you that describes like Marc Badain did this or Ed Villanueva did this during the course of the investigation and then I was like, oh, aha.

It was the investigation running its course and the facts being disclosed and all of the puzzle pieces being put together that led me to understand that there is no reasonable way that the President and the CFO of this

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company -- which by the way I believe based on the information that was presented to me, that this began with Amy Trask back in the day who was never spoken to during the course of the investigation that I'm aware of.

But it became very clear to me that Amy is the one who started this practice and set this precedent in order to not break the debt covenants, not to disappoint Al Davis and that was taught and carried on and understood by both Marc Badain and Ed that that was a practice that the Raiders were going to employ, not to break the debt covenants.

And that became clear in the e-mail history, in the Plan B document, in -- you know, two of the things that Kevin and I just spoke about, which were two of these e-mails, which are very small

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pieces of a very long investigation where information comes to light.

That is my opinion that a well educated highly functioning finance person couldn't have done this understanding that they were doing it to manipulate or to go around and produce an outcome that wasn't otherwise necessary -- wasn't otherwise going to be resulted in.

MR. BICKERMAN: Okay. There's a lot to unpack in what you just said. To make sure I got it all, but I'll do my best.

THE WITNESS: Okay.

MR. BICKERMAN: One of the very things we just heard that we hadn't heard before in this arbitration that Ms. Trask was the person who instituted the calculations.

Now, what did she do if you know, if you know?

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THE WITNESS: Ms. Trask is the one who was in charge of finance when this all began in 2006. And there are documents -- I am very surprised that you haven't heard about that. You are not, okay.

THE CHAIRPERSON: We were not aware of that.

THE WITNESS: Okay. Well she's an important part of this.

MR. BICKERMAN: Okay. So the fact that Ms. Trask instituted this -- so when Mr. Villanueva came on the scene --

THE WITNESS: It would have been Mr. Badain after Ms. Trask. So Ms. Trask was the one who started the practice of not meeting the debt covenant. Marc Badain studied under her.

When Amy Trask moved up, Marc then continued the practice. Marc Badain continued the practice

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and then Ed Villanueva continued the practice.

But there are documents that very clearly outline that they understand. I'm sorry.

MR. BICKERMAN: Let's go through this a little slowly.

THE WITNESS: Okay.

MR. BICKERMAN: What year are we talking about that Ms. Trask instituted this practice, if you know?

THE WITNESS: I do not know the exact year that she instituted the process. It first shows up in the books in 2006.

MR. BICKERMAN: Okay. We also have learned that when we talk about the process, there are a few different things that are going on.

One is the acceleration of income and accruing January income in December.

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A second thing that is going on is determining that the remittances are going to -- are representing forward income, not retroactive income. And related to both of those it appears to us that there are 13 months of income being reported and related to that is the accumulation of receivables.

I've laid out I think four things.

The process that you're talking about references which of those?

THE WITNESS: I don't know which one.

MR. BICKERMAN: Okay.

THE WITNESS: To be totally transparent because I think the way in which the NFL was paying teams for media deals or TV deals changed drastically over that period of time that we're talking

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about.

But the philosophy of overstating or manipulating financials not to break a debt covenant very clearly during the course of the investigation was traced back to starting that mindset and that philosophy started with Amy Trask.

MR. BICKERMAN: Okay. And so you said Mr. Badain was there at the time that this change occurred.

THE WITNESS: Correct.

MR. BICKERMAN: So what was his role then?

THE WITNESS: I do not know what his role was. There were not titles inside of the organization. I believe he was called a finance person.

MR. BICKERMAN: Alright. So let's come back to a second thing that you said and the first

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response to my first question.
You said that you hadn't formed an opinion, but in the course of the investigation you were exposed to facts that helped you come to your conclusion.
If you can, tell me what facts, specifically, you're referencing that you didn't know before.
THE WITNESS: I'm referencing a very specific document that was found on the drive. It's called the Plan B document. And that Plan B document lists out certain triggers that can be pulled if the debt covenant is not -- is looking that the debt covenant is not going to be made. That was one document.
MR. BICKERMAN: Oh, I'm sorry, go ahead.
THE WITNESS: There were facts laid out to us by Arnold &

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Porter about how the financials and how the auditing got done that helped educate me to form that opinion.

MR. BICKERMAN: Can you be more specific about that?

THE WITNESS: It's been four years so it's -- it's been a while.

So I don't have any specific examples that come to mind other than when they would lay out and say look at the money that's in this column and then look at the money that's in this column and this is how it works, that was an education process to me. I'm not going to do an eloquent job of explaining that because I'm not a finance person. But it was very clear that -- again, I'm an HR person. But I know if somebody gives you $20, you can't go and tell everybody

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that you got 40.

MR. BICKERMAN: Were these opinions -- were these things that you are describing, these events, were these the basis of opinions of the accountants and the lawyers that you were drawing upon, in terms of the presentation of the information?

THE WITNESS: I don't -- they were not opinions. They were this is how this gets done and this is how this gets done. And look at the discrepancies here. So I don't view that as an opinion.

MR. BICKERMAN: Counsel for E&Y asked you many times, Mr. Badain and Mr. Villanueva did this, did that. And you responded many times affirmatively. I'd like to see if you can separate the two and tell me, specifically, what led you to

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believe Mr. Villanueva intentionally acted, if you can, and then we'll take Mr. Badain. Let's start with Mr. Villanueva.

THE WITNESS: So I personally heard Mr. Villanueva say many times that there were -- there was a lot of pride and there was a lot of -- pride is probably the right word to use to say that he was not breaking debt covenants on his watch and we would do what we needed to do to do that, to make sure that we did not do that. So that's a statement.

MR. BICKERMAN: Right.

THE WITNESS: There were also other circumstances that were happening inside of the organization with -- that came to light during the course of the investigation which we haven't talked about here, which is when the organization was moving from

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California to Nevada and they were doing online retail sales they weren't properly reporting the tax that they were getting from the California sales while they were in Nevada because there's -- the taxation is different and Ed would say things like, you know, we don't have to worry about that. That's not something important.

There were so many instances in my working with Ed that it was very clear to me that he was not qualified to be the CFO. And I do believe -- Kevin and I had this conversation in my deposition that I was laughing with Marc Badain one day and I said, I can't believe that you have Ed Villanueva as the CFO of this company.

And he said, he's just the face of the finance. I am

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actually the CFO. Don't worry.

MR. BICKERMAN: Who said that?

THE WITNESS: Marc Badain.

MR. BICKERMAN: And were you there personally --

THE WITNESS: It was a conversation I had directly with him, yes.

MR. BICKERMAN: Okay. Do you find it surprising that a financial officer as part of the purview of his responsibilities would seek not to breach a debt covenant?

THE WITNESS: Yes.

MR. BICKERMAN: You've mentioned --

THE WITNESS: Yes, but not at the expense of doing things that were improper.

Yes, I don't know any CFO would say, I'm very happy that we're going to break the debt

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covenant. They should not break the debt covenant. But to do things that are improper and in some --

MR. BICKERMAN: You cited that as a fact that led you to believe he acted intentionally. That independent of other actions is not really dispositive of anything, is it?

THE WITNESS: Well, the evidence that I saw during the course of the investigation led me to believe that there was no way that Ed Villanueva and Marc Badain weren't doing things to improperly represent numbers on the books not to break the debt covenant. Did.

They ever tell me that?

They did not. And this is not a surprise to me that they wouldn't.

MR. BICKERMAN: Let's move

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to Marc Badain.

THE WITNESS: Okay.

MR. BICKERMAN: You've said, essentially, your testimony is that Ed Villanueva was not a competent -- was not competent at his job.

THE WITNESS: He was not, in my opinion.

MR. BICKERMAN: Okay. Now help me understand how you came to believe based on facts that you observed that Marc Badain acted intentionally.

THE WITNESS: There are two things that stand out most to me. First the Plan B document where Marc clearly outlines if we don't -- if we're not on track to meet the debt covenant, here are four triggers we are going to pull so that we can meet the debt covenant. It's called the Plan B document.

MR. BICKERMAN: Maybe I'm

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misunderstanding. But what are those triggers?

THE WITNESS: I would need to be refreshed with a document to see them.

MS. REED: It's on your screen.

THE WITNESS: Oh, great.

MR. CHANDLER: It's also JX-0210, the last document in your skinny book there.

MS. ENGLAND: It's very easy to see here. Thank you.

MR. BICKERMAN: So these are the triggers you're talking about?

THE WITNESS: Yes, yes.

MR. BICKERMAN: Okay. I just have two more questions, maybe just one.

MR. CHANDLER: Do you mind asking her did Badain write this?

MR. BICKERMAN: Oh.

Are you aware that Mr. Badain authored this?

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THE WITNESS: It was on his -- it was on his share drive or file, in his files. So I believe he authored that. I did not ask him, specifically, but it was found in his documents.

MR. BICKERMAN: How do things get on his share drive file?

THE WITNESS: By him typing them.

MR. BICKERMAN: Can anybody else put -- save something to his drive.

THE WITNESS: Not that I'm aware of. Not that I'm aware of. That would be an IT question. But I'm not aware that anybody else can save things to his drive.

MR. BICKERMAN: So that's just a personal drive that only he got. If somebody else wrote him something, could he then save it to his drive?

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THE WITNESS: Yes.
MR. BICKERMAN: So you don't know that he authored this?
THE WITNESS: I did not ask him if he authored that. It would be shocking to me if somebody else authored that.
MR. BICKERMAN: I'm not asking whether you're shocked. I'm not asking whether you asked him.
I guess what I'm asking you --
THE WITNESS: Is it reasonable to believe?
MR. BICKERMAN: Do you know whether he authored this?
THE WITNESS: I do not know. But I believe that Veronica asked him about this and --
MR. BICKERMAN: But you don't have personal knowledge?
THE WITNESS: I did not

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talk to Marc about this document.

MR. BICKERMAN: Okay. Alright, I have one last question. I'm sorry and then I'm done.

MS. ENGLAND: Mr. Arbitrator, I'm reluctant. But at the beginning of my client's response to you, she said there were two important points.

MR. BICKERMAN: I'm sorry. Thank you.

MS. ENGLAND: There were two important points.

MR. BICKERMAN: Thank you for helping me.

MS. ENGLAND: I know I'm supposed to be a potted plant.

THE CHAIRPERSON: You don't have to be.

MS. ENGLAND: It's very difficult being a litigator.

MR. BICKERMAN: There is another part of Williams Connolly

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who claim to be potted plant.

MS. ENGLAND: Yes.

MR. BICKERMAN: Go ahead. What's the second piece of information? Thank you.

THE WITNESS: I mean, it's these e-mails that Kevin and I were talking about earlier. I think I called it the "holy shit" e-mail and for me that is the e-mail where I thought he -- Marc Badain and Ed Villanueva are joking.

MR. BICKERMAN: With the feet?

THE WITNESS: With the feet, right, and how we're manipulating financials. And that coupled with my experience of watching them together and understanding what was happening inside of the organization, not only with the financials but with the HR practices and the culture

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and the other toxic behavior. It became my professional opinion that I was -- I was not questioning whether or not there was intent here to as the Raiders say just win baby.

MR. BICKERMAN: Do you think there's any possibility that Mr. Villanueva didn't act intentionally particularly since you said he was pretty incompetent?

THE WITNESS: No, he was -- no, I am not confused about that, in my opinion. That is not...

MR. BICKERMAN: Is there any possibility that Mr. Badain didn't act intentionally?

THE WITNESS: I don't believe so.

MR. BICKERMAN: Okay. One last question.

Do you presently have any claims being asserted against a party with respect to your

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dismissal?

THE WITNESS: I do not.

MR. BICKERMAN: Okay. Thank you.

MR. CHANDLER: Just a couple. If you would put 210 back up on the screen please.

Look at it. If you can go in your book if you want to.

(Arbitration Exhibit JX-210 was referenced.)

MR. CHANDLER: I had the impression from earlier in your testimony that this was going to be something that Amy Trask wrote. And let me add to that.

Plan B -- what a name. Yeah, the second line talks about money we will receive in September '06. And only looking at that to try to date the document. It was obviously written before September of '06.

THE WITNESS: Uh-huh.

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MR. CHANDLER: You've told me why you think it was Edward Badain [sic].

Didn't you say that this plan or maybe it was just the making the covenants plan was started by Amy Trask.

THE WITNESS: Yes.

MR. CHANDLER: And did you see a document that ties Amy Trask to that?

THE WITNESS: I very clearly remember a conversation with Arnold & Porter. So I want to be careful about that.

MR. CHANDLER: Yeah, hold on.

That's the source of your belief about it?

Okay. I don't want you to talk about what Arnold & Porter told you unless EY was there.

THE WITNESS: They were not.

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MR. CHANDLER: Okay well stop there.

So you believe that Plan B came from Ed Badain because it was on his computer and you think that the original plan to manipulate financials to not break covenants came from Amy Trask because of a conversation you had with A and P?

THE WITNESS: Correct.

And I am remembering looking at the dates. I don't remember when Ed joined the organization and I don't remember if this was a living working document or if this was a moment in time document. I'm sure there are time stamps and things that could figure all of that at.

MR. CHANDLER: You said Ed. So you're talking about Villanueva?

THE WITNESS: I am.

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Because it says, "per Ed," below.
MR. BICKERMAN: Mr. Chandler, you said Badain. Did you mean Marc Badain or Ed Villanueva? Sorry.
THE CHAIRPERSON: It's a lot.
MR. BICKERMAN: There's a lot of Marks.
MR. CHANDLER: The word Mark is Villanueva and Badain is Ventrelle.
I meant you think that Plan B Exhibit 210 came from Marc Badain because it was on his computer?
THE WITNESS: And I believe -- I believe the situation that he was preparing this for Amy Trask.
MR. CHANDLER: I see, okay.
And I won't go further with that piece of it.
I'm sure we would like to know if there are any documents

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like that, but I'm going to let that set.

MR. REED: I'm sorry, I didn't hear you what you said, Mr. Chandler.

MR. CHANDLER: I would sure like to know whether there's any document from A&P or you guys that ties the how to make the covenant process to Amy Trask. But I'm just going to let that sit.

MR. REED: We have testimony. I'm sure we'll cover that in argument.

THE CHAIRPERSON: Yeah. Ventrelle I think I got that one right.

You said something about people were upset when Ventrelle told the NFL about what was going on. Did I hear that correctly?

THE WITNESS: You did. So after I was terminated, I wrote a

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letter to Mark Davis describing to him my experience at the Raiders and my experience with him and asking him for a conversation to connect to sort some things out that I thought were extremely problematic.

Dan Ventrelle went to Mark Davis along with the rest of the executive team, so the General Counsel, the CFO, the current CFO today who is Michael Crome, who I hired and is a dear friend of mine and also Geremia (phonetic) Guerro, who was the Chief Operations Officer. They somehow got a hold of the letter, not through me and somehow inside the organization and set up some time to talk to Mark Davis about the letter.

My understanding is that Marc was ignoring them in saying I'm not going to have any of

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this. I'm not listening to this. I'm going to do things my way. There was a meeting where they brought in some external people to try and have a conversation.

MR. CHANDLER: You're not at this meeting, right?

THE WITNESS: I am not.

MR. CHANDLER: Are you being told this by Mark Davis?

THE WITNESS: No. I'm being told by Dan and by Kevin and by Jeremy and by Michael all calling me telling me what's happening.

MR. CHANDLER: Okay. Go ahead then.

THE WITNESS: And they said that the meeting did not go well and so that they were going to go to the NFL and report what I had reported in my letter to, which point we also sent a copy of the letter to the NFL. And Mark

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Davis was very unhappy with that move and fired Dan Ventrelle.
MR. CHANDLER: Okay. Thank you. Now I understand what you were talking about.
Do you know whether Toa (phonetic) is going to be able to play?
THE WITNESS: I can't disclose that information in here, sir.
MR. CHANDLER: Thank you very much.
THE WITNESS: Your welcome.
THE CHAIRPERSON: Ms. Stratton, I won't keep you long. I just have a couple of questions.
THE WITNESS: Sure.
THE CHAIRPERSON: If we can just refer to JX-0010 and that's Page 27.
MR. FARINA: I think it's the other binder.
THE CHAIRPERSON: The other

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binder.

MS. ENGLAND: The investigation --

THE CHAIRPERSON: Yeah, it's Page 27. This should be fairly quick and easy.

THE WITNESS: I'm on Page 27, sir.

THE CHAIRPERSON: Okay. So at the top it says, "Jennifer Levine."

She's your trusted subordinate; is that correct?

THE WITNESS: That's correct.

THE CHAIRPERSON: And who is -- cause I think this may be new to the Panel.

Who is faith.

THE WITNESS: Eder.

THE CHAIRPERSON: Who is she?

THE WITNESS: She's the director of the payroll at the Raiders. I believe she's still employed.

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THE CHAIRPERSON: And you knew her while you were working there.

THE WITNESS: I did. I had a close working relationship with Faith.

THE CHAIRPERSON: And what was your impression of her to her truth and veracity?

THE WITNESS: I have no reason not to trust or believe what Faith is saying.

THE CHAIRPERSON: So, during the course of your investigation and, specifically, on April 27, 2021, where were you in the course of your investigation when Ms. Levine interviewed Ms. Eder?

THE WITNESS: We were maybe 24 hours in.

THE CHAIRPERSON: And during the course of your investigation how much reliance did you place upon the statements of Araxie

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Grant in terms of coming to your conclusions that Ed Villanueva intentionally committed a fraud?

THE WITNESS: How much weight did I place on that?

THE CHAIRPERSON: Sure. She's a whistleblower.

THE WITNESS: Yeah. Look, I think, we had to hear what she had to say and we had to look into the situation. So I think there's some weight, but I certainly didn't take it as that was the end all be all in a very serious situation.

THE CHAIRPERSON: And did she come into your office on her own or did you call her in after Travis Scott had come into your office?

THE WITNESS: We spoke with Araxie together after she initially went to Jen. So she went to Jen on her own.

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THE CHAIRPERSON: Right.

THE WITNESS: After Travis went to Jen.

THE CHAIRPERSON: Right.

THE WITNESS: And then we followed up with other people. I never talked to Araxie by myself. We had a difficult relationship.

THE CHAIRPERSON: Okay. You had?

THE WITNESS: A difficult relationship.

THE CHAIRPERSON: In what way.

THE WITNESS: She had a lot of opinions about me and wasn't shy about sharing those with people inside of the organization. So I thought it was best to not ever meet with her by myself.

THE CHAIRPERSON: Okay. And the reason I ask, she's testified in this proceeding extensively. She is the person

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who is identified to the Panel as being a whistleblower and the reason I ask these questions, you're telling me that Faith Eder is a reliable person, someone whose word you would not question.

THE WITNESS: I would say she's reliable. I also think Araxie is reliable. I would question both of them.

THE CHAIRPERSON: Well, would you question Ms. Eder when she states on this page that I'm referring to you that, "Araxie does not like Ed Villanueva. She wants his job and she wants him to retire and she can't wait for him to leave, would you say Ms. Eder's statements are credible or not credible or truthful or not truthful.

THE WITNESS: I believe Faith believed that and that was

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part of the workplace investigation that we turned over to Arnold & Porter to dig into -- to dig into exactly.

Just to be clear, I believe that what Araxie has said she believes is the truth and I also believe what Faith is saying she believes is the truth. I believe they also had a very rocky relationship according to Faith. I don't know that Araxie saw it that way.

THE CHAIRPERSON: As a former judge, I always say all witnesses believe what they say is the truth.

THE WITNESS: That's right.

MR. REED: Not all of them.

THE CHAIRPERSON: I'm going to stop.

You've been incredibly helpful today and it's just -- you've given a lot of information

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to the Panel, which, actually, we're discussing on the break for us to unpack.

You've been incredibly helpful. We want to thank you for coming in and appearing before us in person. That was very gracious of you and as well as your Counsel we wish you both a good trip.

THE WITNESS: Thank you so much.

(Witness excused.)

THE CHAIRPERSON: We'll take a 10, 15-minute recess Counsel.

MR. REED: Thank you.

MR. FARINA: Thank you.

(Recess taken 3:32 to p.m.)

THE CHAIRPERSON: Alright. So let's go on the record.

Sir, welcome. Good to have you here today.

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I'm John DiBlasi.

To my left is John Bickerman.

To my right is John Chandler.

And we're going to go forward and make this as painless as possible and get through it as quickly as possible.

Counsel, direct examination.

TREVOR McCLAIN-DUER, DEEMED SWORN:

DIRECT EXAMINATION BY MR. BECKER:

Q. Mr. McClain-Duer can you please introduce yourself to the Panel?

A. Yes, I'm Trevor McClain-Duer and I'm one of the experts retained by the Claimants.

Q. And what is your educational experience?

A. So I have Bachelor in business administration with a focus on accounting from the University of Notre Dame and a Master's in accounting from Ohio State University.

Q. Do you have any professional certifications?

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A. I do. I'm also a Chartered Financial Analyst and a CPA with accreditation in business valuation.

Q. And can you give the Panel a brief summary of your professional experience?

A. Yes. I have almost 20 years of valuation experience. I actually started at Ernst & Young in the audit group where I audited valuations of private equity and venture capital companies.

Then I was the senior valuation specialist at a family office in Chicago where I prepared valuations for a number of reasons.

And then I went to a company called Cendrowski Corporate Advisors where I continued to prepare business valuations. And that's, also, where I started working on litigation-related engagements. And now I'm at a company called Trellis formally known as Caliber Advisors where I continue to do business valuations and

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litigation related projects.

Q. And you mentioned litigation related engagements. Have you authored expert reports or provided testimony in any other litigations or arbitrations?

A. Yes. I have been named to testify as an expert on several cases where I prepared the report. I didn't always testify, but I was named the testifying expert and prepared the report. And I've also assisted other experts in their preparation of reports and preparing to testify.

Q. In those cases where you were the testifying expert, what types of opinions have you offered?

A. Those were generally damages calculations, opinions on damages calculations. And usually they related to either lost profits or lost value.

Q. And when you mentioned lost profit or lost value, does that entail looking at any kind of future income streams or projected cash flows?

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A. Yes. In almost every scenario if not every scenario we evaluated projected income statements whether or not they could be relied upon and, yes, so incorporating projected income statements were part of, if not in almost all of those engagements.

Q. And did those opinions also relate in any way to discounted cash flow analysis?

A. Yes, again, in all of those cases or if not all of them then most of them involved discounted cash flow analyses.

Q. And what did the opinions you're offering today relate to?

A. My opinions relate to one of the source of damages for the Claimants.

Q. What's your understanding of the nature of the allegations in this arbitration?

A. My understanding is that the Claimant allege that Ernst & Young failed to alert them to an error that was double

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counting revenue and resulted in the beneficial owners having a higher tax liability than they should have and pay more in taxes then they should have.

Q. And mentioned excess tax liability there.

What's your understanding of how -- of the excess tax liability in this case?

A. My understanding is that there are two what I call buckets. The first bucket is the historical bucket and so from the years, I believe, starting in 2006 to 2020, the beneficial owners overpaid their taxes due to double counting of revenue and then the second bucket relates to the remaining unrecorded tax loss carry forwards that should have been recorded but for the double counting of revenue.

Q. And which bucket does your opinion relate to?

A. My opinion relates to the second bucket. So the value of the remaining unrecorded tax loss forward

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forward.

Q. And, just at a high level, what was your methodology for assessing damages relating to those remaining unreported tax loss carry forwards?

A. So, because the benefit of the remaining unrecorded tax loss carry forwards would occur in the future, I performed a discounted cash flow analysis. And within that analysis there were two major steps. The first step was to determine the projected net income and each beneficial owner's share of that of the Raiders projected net income.

And the second step was to discount taxes owed on that income back to the valuation date. And we had to do both to account for the uncertainty in the future cash flows and also the passage of time between the evaluation date and when the taxes would be owed.

Q. And just turn to the first slide here.

Do you recognize what the left

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table here represents and can you explain that to the Panel?

A. Yes. I do recognize the left table. That represents the remaining unrecorded tax loss carry forwards for each of the beneficial owners owns that I calculated damages for.

Q. And then the right table, what does that represent?

A. The right table represents the value of the remaining unreported tax loss carry forwards and is the damages that I calculated for each one of the Claimants listed in this slide.

Q. So you mentioned your methodology had multiple steps. Let's start with what you talked about was projected net income.

What did you rely on for the projected net income of the Raiders?

A. I relied on a projected income statement that the Raiders provided.

Q. If you could open your

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manilla folder and look at JX-2363.

(Arbitration Exhibit JX-2363 was referenced.)

Q. Do you recognize this document?

A. Yes.

Q. And what is this document?

A. This is the projected net income statement that I relied on in my report.

Q. And why did you rely on this specific projection statement from the Raiders as opposed to other projections for the Raiders?

A. Again, there were a few reasons for that. The first reason is I wanted to get a projection that was prepared close to my valuation date and my understanding is that those projections were prepared in April of 2024. My valuation date is March 31st, 2024. So these were prepared very close to the valuation date. It is also my understanding that the yearend planning

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process is a bit more robust when they're preparing projected income statements. So I wanted to make sure that the projected income statements that I relied on were part of those robust yearend planning process. And the third reason was I also wanted to rely on the same projected income statement that the Raiders provide to other third parties. And so whether that be banks they work with the NFL, credit agencies.

I wanted to make sure that the projected income statements that I was relying on were the same that other third parties were relying upon.

Q.   And what did you do to make yourself comfortable that you could rely on Raiders projections in general?

A.   Yes, again, so there were a number of factors for that as well. On my discussion with Mr. Crome to discuss his processes and procedures in preparing the projected income statements. Again, as I already mentioned, you know, making

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sure that they were the projections that were prepared as part of the yearend planning process and the ones provided to third parties.

I also analyzed the historical financial results of the Raiders in order to get an understanding of how they actually performed historically and how that compared to the projections they provided. And then also analyzed the projections themselves and so to try to understand the assumptions that were made and whether I thought those were reasonable and reliable.

Q. And so you mentioned Mr. Crome's procedures.

Can you talk a little bit about what those procedures are?

A. Yes. I had a discussion with Mr. Crome where we went through his processes and procedures in preparing the projected income statements. And this is something I've done countless times in my career. So I'm very comfortable with

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these kinds of conversations and have a good understanding of what I want to ask and what I would like to hear from the management team, from the CFO.

And so the point of these conversations is to not only understand the processes and procedures but also to get comfortable with them and comfortable that what the Raiders are doing, what the CFO is doing is a robust process, a thoughtful process, a detailed process, one that is continuing to improve, that he's having conversations with people outside of the accounting group, the finance group people that might be more familiar with the different revenue streams different expenses. And so getting comfortable with his processes and procedures.

And the discussion I had with him made me feel very comfortable that I could rely on the projections he was providing and that, again, his processes were very thoughtful and detailed and

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thorough.

Q. And did you listen to Mr. Crome's testimony today?

A. Yes.

Q. And was that testimony consistent with your understanding of the procedures?

A. Yes, very consistent.

Q. Okay. And so you also mentioned looking at the projected statement itself.

What did you examine with respect to this projected statement?

A. Yes. So, when I reviewed the projected income statement, I'm looking at what kind of assumptions the Raiders are making. And I usually do start with the top line, revenue. And what I noticed immediately with revenue is that the year over year growth rates that they were projecting were actually, you know, quite conservative. And so, if you calculated the year over year growth rate, say they ranged about 1 percent to

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about five percent. And what struck me is that that's actually significantly lower than inflation has been recently.

Inflation has come down more recently but in the last couple of years inflation has far exceeded 5 percent. So I think they were actually projecting growth that was below recent inflation. And even with a reasonable range of the federal reserve's target inflation. The Federal Reserve, typically, targets inflation of 2 to 3 percent. That's well within the 1 to 5 percent range in revenue growth that the Raiders were projecting. So that was something that I looked at in detail.

I also noticed that in the first year their projections, they were projecting 58 million of net income. And while they had a loss in the year before the first year of the projections, they had positive net income in the two years before that. And in one of those years, I believe, it was over 51 million.

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So, again, projecting net income of 58 million in the first year of the projections seems reasonable when compared to what they have been able to achieve in the past, you know, like I said, in one year even achieving over 51 million in net income.

Q. And you mentioned that the prior NFL season had a net loss. I think on these projections the projection net loss is 49.6 million.

Do you have any understanding how this 49.6 million compares to the actual financial results from the 2023 NFL season?

A. Yes. I believe the actual results were closer to $10 million loss.

Q. But that's still a net loss.

So did the fact that there was a net loss in the most recent season give you any pause about the fact that this projected income statement projects positive net income going forward?

A. No, it wasn't something I

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considered. Obviously, looking at the Raiders both going from a significant positive net income to a net loss and then back to projecting positive net income.

But I was able to determine in my discussions with Mr. Crome and also my own analysis that there were some very specific reasons for that. One of which was the coaching change that occurred around that time or during that year and so that was a significant expense for the Raiders.

Another one was they changed their GM as well. I think they also changed their offensive coordinator. But all those changes resulted in significant expenses that don't necessarily occur every year. They also hosted the Super Bowl that year, which was a significant increase in expenses because the hosted -- there were a lot of, you know, expenses they had to incur. But no related revenue because the revenue from

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the Super Bowl goes to the NFL instead of the Raiders.

And then also they had to shut down the stadium, no other non-Raiders event for a couple of months before the Super Bowl. So, again, no revenue from those non-Raiders events as well. So those are a number of the expenses that they incurred during that year that they don't normally incur without any or much of any related revenue to offset that.

So that was my understanding of why there was a loss during that year even though in recent years and in projections they were projecting positive net income.

Q. Okay. Thank you.

Mr. McClain-Duer, if you could slow down a little bit for the Court Reporter, we'd appreciate it.

You mentioned here that there was a firing of the coach and GM.

Can you point -- we've got the projections up on the screen here.

Can you point to where on the

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projections that shows up?

A. Yes. So the replacing of the coach and offensive coordinator is contained in the coaching line item. And so, for the column marked "2023" up top, they forecast a little over 79 million for that line item but for the year above it's only 26 and the year after 30. So that's significantly higher than the year prior and the first year of the projections.

And then my understanding is that the replacement of the general manager is in the scouting line item. And that one you'll see in the column marked "2023" was a little over 28 million but in the prior year it was 12.7 and the first year of the projections the 2024 column it was 13.6. So, again, significantly higher than both the prior year and the following year. So that's my understanding of where a lot of the expenses came from that made that year a net loss.

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Q. And what's your understanding of the method of accounting of use of calculating net income on these projected statements?

A. I believe they use a US GAAP basis of accounting.

Q. And, ultimately, for your damages assessment, you're looking at projected taxable income; is that right?

A. Correct. I'm looking to get to projected taxable income, yes.

Q. And did you examine at all the difference between net income on a GAAP basis versus taxable net income?

A. I did.

Q. And can you explain your examination of that difference?

A. Yes. So there are a number of differences between US GAAP basis of account and tax basis. And some that move in different directions, meaning, some that will, you know, increase US GAAP compared to tax basis. Some will decrease income for US GAAP compared to

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tax basis.

Some that come top to mind that are very common is meals and entertainment. So meals and entertainment as a line item you deduct all of that for US GAAP basis, but only deduct 50 percent and some of those expenses are excluded entirely. But at most 50 percent of meals and expenses for tax reasons. Depreciation is calculated differently for US GAAP basis and tax basis.

There's another one that's most recent that has been significant for the Raiders in the past, which is actually gain on player trades. And so before recently, I think, it was changed in 2018 or 2019. But until recently player trades were considered 1031 like kind exchanges. Meaning, that you did not have to recognize gains or losses on player trades.

But with the change in tax law again 2018 or 2019, they were no longer considered like kind exchanges, only real

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property is. And so in the event that the Raiders have a trade where it appears that one team gets significantly more value than the other, whether it be because of differences in salary or value to the team, one team has to record a gain on that trade and the other team has to record a corresponding loss.

And so there have been instances for the Raiders where they had to record a significant gain for player trades and that, obviously, would not be recorded on their US GAAP basis financial. So there's just a few of the line items that can make tax basis and US GAAP difference. And, again, it can go in different directions.

Q. And you've mentioned that you relied on the Raiders projected statements for projecting net income.

Does that mean that you're assuming that these projections are going to be a hundred percent accurate?

A. No. I've never assumed that

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projections are going to be a hundred percent accurate. We're trying to project into future. So, you know, that will be very difficult to do.

I've also not seen projections that are hundred percent accurate. That's not what we're trying to determine when we are deciding whether or not to rely on projected income statements. What we're trying to do like I said get comfortable with the process understand the process and, you know, make sure that the projections we're relying upon are reliable and that they're the best indication of what we can expect to happen in the future. And so that's what we did and that's what we relied upon in these projected income statement.

Q. And does any part of your methodology account for the uncertainly of future net income?

A. Yes. And so that's why we do use a discount rate is because we realize that these projections are not going to

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be a hundred percent accurate. So the discount rate helps incorporate the riskiness of the future cash flows. And so cash flows that we consider riskier are going to have a higher discount rate and so that's one of the reasons why we use discount rate is to incorporate that riskiness.

Q. Okay. We've got the projected net income.

What's the next step in your methodology?

A. Yes. So, once we determined the Raiders's projected net income, we then allocated this to each beneficial owner based on their ownership interests to get their share of the Raiders projected net income.

Once we had their share of the projected Raiders net income, we then provided each beneficial owner's tax rate to determine the amount of taxes owed in each year.

And so, in this scenario on the

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screen, this is a scenario where there are no remaining unrecorded tax loss carry forwards. And so the beneficial owner is not able to offset any of the Raiders's projected net income with tax loss or with Raiders tax loss carry forwards. So this is a taxes owed on each beneficial owner, in this case, Mr. Davis and this was taxes owed on his share of the Raiders projected net income.

Q. Okay. And so do you also -- what do you do in the scenario where they do have these unreported tax loss carry forwards?

A. So the next scenario represents the scenario where the beneficial owners do have remaining unrecorded tax loss carry forwards. And so they can use these carry forwards to offset their share of projected Raiders net income.

And so in Mark Davis's case, he had about 36.3 million of remaining

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unreported tax loss carry forwards. And so in the first year of my analysis he was able to offset all of the Raiders -- all of his shares of the Raiders projected net income.

And in the second year ended 3/31/26 he was able to offset 8.6 million of his share of the Raiders projected net income. And so in this scenario, his projected taxes owed is much lower.

Q. And you've talked about the Raiders projected income. But did you do -- does your model account for other income from other assets that the beneficial owners may have?

A. It doesn't. And I realize that this was a bit of a conservative approach considering that I know that the beneficial owners have other sources of income that could have been used or that the tax loss carry forwards could have been used to offset. And so while I know that there's other sources of income, since what we're trying to do is value

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the remaining unrecorded tax loss carry forwards from the Raiders, I thought the best and most reliable way to do this was to isolate the use of those remaining unrecorded tax loss carry forwards to the Raiders projected net income.

Again, I know the beneficial owners included Mr. Davis have other sources of income. I thought to isolate it just to Raiders net income was the best and most reliable way to value these tax loss carry forwards.

Q. By the same token, does your model account for prior carry forwards that the beneficial owners may have?

A. It doesn't. And for the same reason. So, again, because I know that the beneficial owners have other sources of income, those other sources of income could be used -- are the other tax loss carry forwards that the beneficial owners have that aren't these unrecorded tax loss carry forwards. Those could be used to offset these other sources of income.

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I also don't know that in the scenario where the beneficial owners have these -- have the unrecorded tax loss carry forwards, had they been recorded, if they would have the same amount of carry forwards from other sources.

It is my experience from working at the family office that the existence of an amount of tax loss carry forwards is a huge consideration when deciding what kind of investments to make. And so, if an investor has tax loss carry forwards in any amount, they're going to -- that's going to be a dig consideration whether or not to invest in certain types of investments. It can really increase returns from investments because there's less tax on any return from those investments. But it's a big factor in how investors decide to make investments and how they run their businesses.

So had these unrecorded tax loss carry forwards been recorded, I'm not sure that the beneficial owners would

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have had the same amount of tax loss carry forwards from other sources that they do have.

Q. Can you explain that a little bit, why having tax loss carry forwards may actually change investment decisions?

A. Yes. So having tax loss carry forwards means that you can offer set future income. And so different kinds of investments have different kind of income. So are more capital gains heavy, so a return on the value of the investment. Others are more income heavy, so dividends distribution.

And so depending on your -- the beneficial owner's personal tax situation having more tax loss carry forward or less tax loss carry forward will influence what investments they make and again how they run their businesses. You know, if you don't have any tax loss carry forwards, you might not mind operating at a business at a loss for a little while or, at least, a tax loss for

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a little while in order to use those losses to offset other income.

But if you have a ton of tax loss carry forwards already, that might be not as appealing to you. So those are some of the reasons that the existence and amount of tax loss carry forwards influence investments and the way investors run their businesses.

Q. And in your model does -- let's take Mark Davis as an example.

Does Mark Davis have any ability to control the timing or use of this 36 million unreported tax loss carry forwards?

A. It doesn't. And so, again, I think that's a conservative approach I took because I believe if Mr. Davis knew about these unrecorded tax loss carry forwards he would could have had the opportunity to increase and come from other streams or reduce losses from other businesses he owns and try to take advantage of these unrecorded tax loss

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carry forwards sooner. But because I isolated to just Raiders projected net income he has much less control over when these unrecorded tax loss carry forwards could be used because again he can't look into finding other income streams or reducing losses from other investments in order to use them faster in my model.

Q. Okay. So you've got your projected tax owed in the two scenarios.

Could I just subtract the top line here from the bottom one to get damages?

A. No. Because these taxes owed would be owed in the future, we need to discount them back from when we -- when they'll be realized to the valuation date.

Q. Okay. And so moving on to the Row 13 and 14 here. Can you explain what this period row stands for?

A. Yes. So the period is the number of years in the future that the taxes will be owed and the cash flows related to those taxes will be realized.

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So the reason why it's two in the 3/31/35 column is because the net income from the Raiders will be included on the beneficial owners' 2025 tax returns. And so I assume that those 2025 tax returns would either be filed or extended on April 15th of 2026. And when they're extended, you have to make an estimate of what your taxes owed will be.

And so that's the date we're using as when either they'll file or they'll extend and estimate. But they'll know what their taxes owed or have a good idea of what their taxes owed will be.

So April 15, 2016 is little over two years from our valuation date of 3/31/24.

Q. And the present value factor what is that?

A. Yeah. So the present value factor is made up of both the period and the discount rate. And so it's a function of those two inputs.

Q. And so you've mentioned the

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discount rate a couple of times now.

How do you go about estimating the discount rate?

A. Yes. So for the discount rate, I used a Weighted Average Cost of Capital or a WACC. The Weighted Average Cost of Capital is often referred to as the overall cost of capital. And so it's really -- it's the cost of capital you use when you're evaluating the whole business.

And since the starting point of my analysis was that net income of the Raiders, I decided or I believe that the WACC is the best discount rate to be used and so that's the one that I calculated.

Q. And sorry. And so what are the main components of a Weighted Average Cost of Capital?

A. Yes. So, to determine the Weighted Average Cost of Capital, I used a capital asset pricing model and so the inputs to the capital asset pricing model or CapM are the -- well, I'll get to that

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later. But for the WACC it's cost of equity and cost of debt.

Q. Okay. And why not just use the cost of equity when trying to value -- when trying to calculate your discount rate?

A. So the cost of equity is most appropriate when you're talking about cash flows flowing directly from the company to the equity holders. And that is not the situation we have here.

So the cash flows that we are talking about or evaluating are the cash flows that the beneficial owners would receive by saving money on their future taxes by being able to use the remaining unrecorded tax loss carry forwards to decrease their tax liability. So that's the cash flow we're talking about.

And the start of determining that cash flow is the net income of the Raiders. And so we are not in a situation where cash flow is coming directly from the Raiders to the equity

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holders. It's the cash flow from saving money on future taxes and so the cost of equity is not appropriate in this scenario. But the Weighted Average Cost of Capital is the best discount rate to use.

Q. And are cost of equity and cost of debt are they weighted equally in a Weighted Average Cost of Capital model?

A. Not necessarily. They can be. But the weights to the cost of equity and cost of debt are based on the target company's -- are the company's target capital structure. And in this case because of the Raiders's target capital structure we weighted 70 percent cost of equity and 30 percent to the cost of debt. So it's heavily weighted to the cost of equity.

Q. And how does that greater allocation to equity impact your discount rate?

A. So the greater weight to the cost of equity increases the discount

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rate -- excuse me. And the result is a decrease in my damages calculation.

Q. Okay. So those are your two components. Can you break down the main components of estimating your cost of equity?

A. Yes. So that's what I started to do earlier when I was talking about the capital asset pricing model.

So that's what I used to determine the cost of equity. And the main inputs that go into are the risk free rate the equity risk premium, beta and alpha.

Q. Okay. And so that's the equation that's on the screen here.

Did you come up with this equation?

A. No, no. This again is like I said part of the capital asset pricing model. It's a part of finance theory in a well regarded and accepted way to calculate cost of equity.

Q. And so you mentioned you start with a risk-free rate.

How do you go about estimating your

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risk-free rate?

A. Yes. So, first, I wanted to mention that most of these inputs come from a company called Kroll and their Cost of Capital Navigator. And in the Kroll Cost of Capital Navigator is an authoritative source and cost of capital inputs. It's widely used, widely recognized as best in class. And so that's where a lot of these inputs came from.

And I, also, wanted to mention in determining my cost of equity, I actually used three different approaches. And so I used three widely accepted approaches to calculate cost of equity and then put those cost of equity and averaged them together to come up with the cost of equity that I used.

So, for the risk-free rate for two of the approaches, it's 20-year US Treasury bond rate as issued by the Federal Reserve and for the third approach it's a Kroll normalized rate

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that's provided by Kroll.

Q. And when you say, three approaches to calculate the risk free rate, what does that mean for your model?

A. Yes, for like I said three wildly accepted ways to calculate cost of capital. I thought calculating cost of equity in all three ways and then averaging it allowed me to incorporate more information and made sure that I was included all the relevant information that I could.

Q. Okay. And you mentioned equity risk premium. Can you first plain what an equity risk premium is in calculating a cost of equity?

A. Yes. So the equity risk premium represents the additional return that investors require in order to invest in equities or stocks instead of the risk free asset.

Q. And how do you go about estimating that additional return required?

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A. Yes. So it's typically -- or it is calculated based on historical -- the historical market performance over our returns. And so for two of the approaches it was based on that historical market information. And the third approach was a Kroll normalized rate that came from Kroll.

Q. And then you mentioned this beta what.

Exactly is that?

A. So beta is the volatility of a particular stock when compared to the general market. So the general market has a beta of one. And a stock that is more volatile will have a beta over one. And the stock that's less volatile will have a beta below one and, typically, higher volatility equals higher risk. So the beta I used in my model is from the industry that I determined the Raiders operate in. And so that that industry was the media and entertainment industry and it was determined by Kroll as well.

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The industry comparable is not the Raiders are in there. And so the beta that I used was the median from that industry.

Q. And so, when picking your industry benchmark, what were you considering when deciding whether you had the right industry benchmark?

A. So, yes, what you're trying to do there is you're trying to determine publically traded companies that operate similarly to the target companies, so to the Raiders. You're looking for companies that might have similar customer bases, similar clients, be impacted by economic factors similarly. And trade similarly, if the Raiders were a publically traded company, you're trying to find other publically traded companies that would trade similarly. But, basically, companies that are going to operate similarly and be impacted in the same way as the Raiders.

And so when I was looking for

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similar companies there's not a lot of publically traded professional sports teams. So there aren't -- you know so it is difficult to find comparable publically traded company. One that I found that I at least believe is very comparable is the WWE so the professional wrestling company and while on the surface that submit not seem very similar I believe it has similar customer base so people that are into professional wrestling are maybe more likely to be interested in the NFL. Similar revenue streams so both life events and TV deals. I thought WWE was a very similar publically traded company.

Another one was Madison Square Garden group. So Madison Square Garden Group has a professional sports team the New York Nicks. It also has an events menu, Madison Square Garden. And while I realize that the Madison Square Garden Group wasn't part of the industry beta that I used it was contained in the

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industry from which I pulled that beta from. And so again while it wasn't included in the beta it showed that the industry that I pulled the beta from was in my opinion the correct industry because it included companies that were very similar to the Raiders.

Q. Okay. And then this alpha, what's the overall purpose of that?

A. So the alpha is made up of the small stock premium. And the specific company adjustment. And so the small stock premium represents that investors view smaller companies differently than they view larger companies. And so that small stock premium incorporates that idea, that investors may view smaller companies as riskier and demand a higher return because of that. And so that's what that premium represents.

The specific company adjustment represents that investors also view publically traded companies and privately

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held companies differently. And so since, most of the other inputs the beta the equity return premium and the small stock premium are all from publically traded companies, if you don't add a specific company adjustment then you can consider that and an as if publically traded cost of equity. And so by adding the specific company adjustment you are incorporating the fact that all of the other inputs are from publically traded companies, that the subject company is a private company and so it might have other risks that the public companies do not have and so require a higher return and so that adjustment incorporates the higher required return based on the possible higher risk.

Q. And is it required in estimating a cost of equity to include a specific company adjustment?

A. No, it's not required. It is something that I think all valuation professionals should consider because

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again without it did the subject company is a private company then all the other inputs are based on publically traded companies and so you're not incorporating that net number difference in the way that investors view privately held and publically traded companies.

But it is not a requirement and so it's just something that should be considered and if considered appropriate then it should be included.

Q. And to be clear what is the inclusion of this particular company adjustment do to your overall discount rate?

A. It actually increases my discount rate. And in turn again decreases my damages calculation.

Q. Okay. So that's cost of equity.

How did you estimate your cost of debt?

A. So the cost of debt we start with the corporate or the BAA corporate

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bond rate, as reported by the Federal Reserve. And then we do something called tax affecting it. So since companies can deduct their interest from their taxable income, the effective rate of debt is actually lower than the nominal rate of debt. So we take the BAA corporate bond rate and tax affect it to get to the effective rate of debt or cost of debt.

Q. So, after you estimate the cost of equity and cost of debt, you've got your Weighted Average Cost of Capital. Is that what you've been referring to as your discount rate?

A. Yes. So once we determine the cost of equity and the cost of debt, we then weight them based on the capital structure. So heavily weighted to cost of equity at 70 percent and debt at 30 percent and that gets us to our Weighted Average Cost of Capital.

Q. And did you add in an additional discount for the lack of marketability of tax loss carry forwards?

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A. No I did not.

Q. And why didn't you do that?

A. I think it's entirely inappropriate to do in this situation. First of all, a discount for lack of marketability is normally included.

MR. FARINA: So I am going to object to this. This is not included in his report. His report does not touch -- in his deposition he offered no testimony about marketability.

MR. BECKER: He did in the deposition. There is, at least, ten minutes on it. You asked him about it.

MR. FARINA: Asked him about it?

MR. BECKER: You asked him about lack of marketability, absolutely.

MR. FARINA: It is not in his report, he has offered no report on the lack of marketability.

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He had Mr. Johnson report. He offered no opinion on it. It's not in his report.

MR. BECKER: It was definitely a part of -- I remember it very clearly. It was towards the end of the deposition. But I'm happy to move on. You can cross him on it if you want.

MR. FARINA: I well, don't want to cross him on something where he doesn't have an opinion. What I object to him offering up an opinion that's not disclosed in any of his reports including his supplemental report that he did I don't know a few weeks ago. If he has an opinion on it. It should have been in his report the it wasn't.

THE CHAIRPERSON: Let me just -- is it in his report?

MR. BECKER: It's not. It's a response, a critique that

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they made in their rebuttal reports and that he was crossed about on deposition, he included why he didn't include a lack of marketability discount.

THE CHAIRPERSON: Is that accurate? Is it mentioned in the rebuttal reports?

MR. FARINA: It's not in rebuttal reports.

MR. BECKER: Not it's in Mr. Johnson's report?

MR. FARINA: No, it's not. He did a rebuttal report after Mr. Johnson's report. You are all very familiar with that. It is not in there.

MR. BECKER: It was an issue that was discussed in his deposition. I can represent that to you. I remember it. I defended his deposition and he explained why he did not include it. His supplemental report as

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you know from the motion in limine was just to update the valuation date. He was not addressing other issues that were mentioned in the rebuttal report. For getting about the deposition anything in his report that references this opinion.

MR. BECKER: No, because he didn't include the --

THE CHAIRPERSON: Objection sustained. Let's move on. [RULING].

MR. BECKER: Okay.

BY MR. BECKER:

Q. So you've got your discount rate. How does that ultimately work into your projected tax statement?

A. Yes. So like I said we determined the amount of taxes owed in the future and then we discount those back from when we believe they'll be realized to the valuation date. And so once we have the discount rate we're able

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to determine the present value factor and so that like I mentioned is a function of the discount rate and the period. And so we apply that present value factor to the future taxes owed in order to present value them back to the valuation date.

Q.   And so what are these numbers then represent here for Mr. Davis?

A.   Yes. So the top number the 17.8 million that is the value of the future the present value of the future taxes owed in the scenario where there are no remaining recorded tax loss carry forwards for the beneficial owners in this case Mr. Davis.

Q.   And then the bottom number?

A.   So then the middle number represents the value of the future taxes owed, the present value of the future taxes owed in the scenario where there are remaining unrecorded tax loss carry forwards and the bottom number, the 10.2 million, is the difference between those two numbers.

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Q. And so is this your ultimate damages number for Mr. Davis?

A. Yes.

Q. Okay. So you've talked about your process getting from the remaining unreported losses to present value damages.

But just to bring you back to your starting point here, did you, actually, calculate the remaining unreported tax loss carry forwards that each of the beneficial owners had?

A. No. My understanding is that was calculated by another expert retained by the Claimants.

Q. And do you have an understanding about whether there is any dispute involving those numbers your starting point?

A. Yes, I do understand that there is a dispute. I understand that most of these are generally stipulated to but that for some beneficial owners the Respondents have argued that the

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treatment of the remaining unrecorded tax loss carry forwards should be switched from nonpassive treatment to passive treatment.

Q. And do you account at all for that dispute in your opinion?

A. I do. So I calculate for those beneficial owners where it is being argued that the unrecorded tax loss carry forwards should be switched from nonpassive to passive. I calculate a counterfactual where they are changed from nonpassive to passive and I also calculate the factual where they remain nonpassive.

Q. And when you do the counterfactual, what impact does that have on the damages at those specific beneficial owners?

A. It increases the damages calculation.

Q. And why is that?

A. It's because the remaining unrecorded tax loss carry forwards number

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is higher for those beneficial owners if you switch the treatment from nonpassive to passive.

Q. Does that dispute have any other effect on -- or does that dispute have any effect on your methodology for calculating damages?

A. No other than that they're calculated -- the damages are calculated exactly the same.

MR. BECKER: Okay. No further questions.

Q. Thanks you, Mr. McClain-Duer.

THE CHAIRPERSON: Mr. Farina, you need some time? Are you ready to go?

MR. FARINA: No, I'm ready to go.

THE CHAIRPERSON: Terrific.

CROSS-EXAMINATION BY MR. FARINA:

Q. I just want to take a step back and understand the methodology that you used big picture level for modeling damages.

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Let me wait until these are handed out.

MR. FARINA: So, Jason, can you put up from the deposition it's Page 41 and it's Line 17 through Line 25. It actually goes on to Line 1 of Page 42.

Q. Why don't you take a moment and review that testimony that you gave.

A. Yes I review I had it.

Q. So. Again big picture level, you have a bucket of what you referred to in your deposition as actual damages, correct?

A. Yes.

Q. And then you haven't tried to calculate actual damages to any of the additional Claimants, correct?

A. Correct.

Q. The actual damages are in that first bucket that relate to a historical over payments of taxes, correct?

A. I didn't calculate those but

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that is my understanding.

Q. Okay. So your entire opinion is focused on something other than the actual damages they're what you call future damages?

A. I don't remember if I called them but they would be the value of the remaining tax loss carry forwards.

MR. FARINA: Jason can you put it back up.

Q. You say what I would call actual damages were calculated by another expert and then it goes on and you say so the damages that I was calculating are the future damages."

Do you see that?

A. I do see that.

Q. So the other expert is calculating actual damages and you're calculating future damages correct?

A. Correct.

Q. And the way with your' trying to calculate future damages is you're making projections about what each of the

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additional Claimants may pay in income taxes at some point in the future, correct?

A. I would just be more specific than that and say that I'm projecting what they may pay in taxes but only related to their share of the Raiders net income.

Q. And I am going to get to that. That's an important distinction.

But your entire model is predicated on trying to estimate future tax payments that may be made by the additional Claimants, correct?

A. I believe that's correct.

Q. Alright. And the way you do that -- we're going to get into it is you look at it in two different potential scenarios. One scenario is what each additional Claimant may pay in taxes without the unrecorded NOLs, correct?

A. The first scenario represents a scenario where the beneficial owners do not have any remaining unrecorded tax

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loss carry forwards.

Q. Okay. And then you try to project future tax payments for each of the additional payments on the assumption that they had -- they have incremental NOLs, correct?

A. Yes, the second scenario is that -- is a scenario where the beneficial owners have remaining unrecorded tax loss carry forward that they can use to offset future income related to the Raiders.

Q. Alright. But your model, your whole damages model, rests on trying to predict what future tax payments each of the individual Claimants may make at some point down the road, correct?

A. As it relates to the Raiders -- their share of the Raiders net income.

Q. Now, you are not a tax expert, correct?

A. Correct.

Q. And you actually didn't speak to any of the additional Claimants,

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correct?

A. Correct.

Q. Alright. And you did not speak with any of the taxpayers -- I am sorry, tax preparers for any of the additional Claimants, correct?

A. Correct.

Q. And you know that there have been dozens if not hundreds of tax returns provided in discovery in this case, correct?

A. I don't know how many have been provided. I reviewed a lot of tax returns for the beneficial owners. So I do know that there were a lot of tax returns out there.

Q. According to your report, you reviewed one tax return for Mark Davis. That's what's listed in your documents considered.

Is it your testimony that you reviewed other tax returns?

A. Yes, I definitely reviewed other tax returns.

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Q. That are not listed as documents that you reviewed in your report?

A. I thought I listed -- everything I used in my report, I believe I, listed so...

Q. Okay. You actually don't know what each individual additional Claimants's tax position is, do you?

A. Can you be more clear about what you mean by tax position"?

Q. Well, you don't know what taxes each of the additional Claimants is actually going to pay in the future, correct?

A. I don't know what their future taxes owed will be.

Q. Okay. And you don't know what other sources of losses each of the additional Claimants might have, correct?

A. From reviewing their tax returns I have some idea but I don't know for sure what they'll have in the future.

Q. Okay. And you don't know

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what other sources of income each of the additional Claimants might have correct?

A. I know that they have other sources of income but I don't know exactly which ones they'll have in the future.

Q. Okay. And what other sources of income they might have and other sources of losses they might have those would impact the taxes that they would pay in the future, correct?

A. Again, I'm not a tax expert but I assume so, yes.

Q. Okay. And, in fact, in your report, you stated that it would be impossible to project each additional Claimants' future tax situation.

Do you recall that?

A. I do recall that.

Q. Okay. And do you still believe that it would be impossible to project each additional Claimant's future tax situation?

A. I still don't think it's

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impossible. I don't think it would be reliable way to calculate damages. I think because of all the speculation that would go into it, because people's tax situation, you know, changes all the time. I don't think -- and if there are other sources of income and losses all the time, I don't think it would be a reliable way to calculate damages to try to calculate not only future sources of income and losses but also how the scenario where these tax loss carry forwards were actually recorded, how that would impact their historical income and losses and what's on their tax return. So I believe that, you know, the different scenarios which are one that you one that you -- whatever award you decide to analyze would impact both the future and historical tax situations of the beneficial owners.

Q. Okay. So in your report you said that it would impossible to project each individual's Claimant's tax

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situation.

You acknowledge to you said that in your report, correct?

A. Yes I already acknowledged that.

Q. And now you're saying, it would be unreliable to try to project each additional Claimant's future tax situation?

A. I think that would be too speculative for it to be reliable.

Q. Okay. But isn't that exactly the basis for your damages model, you're trying to project future tax payments for each additional Claimant?

A. Well, the point of my financial model is actually to value the remaining unrecorded tax loss carry forwards. And so that's the point of it. And so my job was not to predict the total future taxes owed and what that would be for each beneficial owners.

My job was to calculate the damages and the way I'm doing that is by valuing

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the remaining unrecorded tax loss carry forwards. And so my opinion the most reliable and best way to do that is to isolate the use of the remaining unrecorded tax loss carry forwards to be used only against Raiders future net income.

Q. Okay. But the way that you're trying to value the NOLs is by trying to predict the future tax payments of each of the additional Claimants under two different scenarios, correct?

A. Could you repeat that question.

Q. Sure. The way that you are attempting to value the NOLs is to predict the future tax payments by each of the additional Claimants under two different scenarios?

A. I would just change that to say the way I'm doing is to -- under two different scenarios project what taxes they would owe on their share of the Raiders net income.

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Q. And you acknowledge that their share of the Raiders net income is only a piece of each additional Claimants's overall tax position?

A. I would...

While I think it's -- while I acknowledge it's only a piece of their total tax situation, again, I was not trying to predict the taxes owed for their total tax situation. And my calculation I isolate the use of unrecorded tax loss carry forwards related to the Raiders to be used against Raiders net income. So I was not trying to project their total tax situation.

Q. So you actually don't know and you don't have an opinion about what Gerald Wenckebach is going to pay in taxes in 2026 correct?

A. I don't have an opinion about what his total taxes owed will be.

Q. Okay. Alright. Let's go to the Mark Davis example and let's walk through it.

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MR. FARINA: Can you pull up DX-3 please.

(Arbitration Exhibit DX-3 was referenced.)

Q. Alright. This is taken from your supplemental report, correct?

A. Yes.

Q. Alright. Let's walk through it slowly together and then I'm going to ask you some questions.

The first thing that you do is you take the projected net income for the Raiders for each of those two years, correct?

A. Correct.

Q. And we'll talk a little bit about where you got those from but those are projections that hasn't happened yet correct?

A. Correct.

Q. Okay. And then in the case of Mr. Davis you take Mr. Davis' ownership interest to determine the share of this projected net income that would

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be allocated to him, correct?

A. Correct.

Q. Okay. And then what you do is you look to apply any loss carry forwards that would offset that projected net income, correct or his share of that projected net income?

A. Correct.

Q. And here -- this is the scenario that you are saying is the actual world, correct?

A. I just call it the scenario where there are no remaining unrecorded tax loss carry forwards.

Q. Okay. And in this scenario you are not using any NOLs to offset Mr. Davis' share of the Raiders projected net income, correct?

A. Correct.

Q. Alright. So then his taxable income in this scenario is exactly what his share of projected net income was, correct?

A. Correct.

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Q. And that's because you haven't applied any NOLs to reduce his taxable income, correct?

A. Correct.

Q. Then you multiple that by the tax rate, correct?

A. Correct.

Q. And then you come up with the taxes owed and then again you're doing this for each of the years 25 and 26 correct?

A. Correct.

Q. And then you're applying a discount rate to discount those future projected tax payments to a present value, correct?

A. Yes, I'm applying a present value factor to the taxes owed for each year.

Q. Alright. And so you identified what you say is your projection of the present value of the taxes that will be owed by Mr. Davis in 2025 and 2026, correct?

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A. So Line 15 represents the present value of the taxes owed, the projected taxes owed in each of those years.

Q. Alright. You add those two numbers together and you say that's the present value of the taxes that you are projecting Mr. Davis will pay in the next two years?

A. So Line 16 is the value of the tax loss carry forwards in the scenario where there are no remaining unrecorded tax loss carry forwards. So that is the value of the projected taxes owed in each of the year.

Q. Well I mean you call it what you call it.

But what it is is you've added the present value of the projected cash payments for Mr. Davis in two years. It's the sum of those two numbers, correct?

A. It's the sum of the two numbers in Line 15.

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Q. Okay. So now let's look at the other scenario that you model. In this scenario you have the same projected net income for the Raiders, the same ownership interest, the same share of projected net income. Only here you say that well in this scenario but for Ernst & Young's negligence Mr. Davis would have 36,276,086 in NOLs, correct?

A. That was the number given to me but yes that's the number I include in my report.

Q. And you apply those NOLs that you're saying would have existed in this but for world and you're using that to reduce his taxable income, correct?

A. I just want to make it clear. I'm not saying they would have existed. Again that was number was given to me. But yes I'm applying that 36.6 million to offset future Raiders net income.

Q. Okay. So, then you say, well, if you apply those NOLs that you're assuming would have existed because

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someone told you they would, he has no taxable income in 2025, correct?

A. No, that is not correct.

Q. Well he has -- you're right you don't know what his other taxable income is. What you're saying is the taxable income that comes from the Raiders would be offset by the NOLs and it would be the result would be 0, correct?

A. So what this is showing is that because he has 36.3 million in unrecorded tax loss carry forwards that that would entirely offset his share of the projected Raiders's net income in this year. And so his taxable income from the Raiders would be 0.

Q. Alright. And then you apply the same tax rate and 0 times 37 percent is still 0. He has some tax liability in 2026. You use a discount rate to present value his future projected tax payments. Your get to a number. And the total projected tax payments under this model

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that you've created for Mr. Davis for those two years is $7,631,042 correct?

A. The present value of the projected tax owed is 7,631,742.

Q. And what you do is you compare the present value of the projected future tax payments for Mr. Davis under both of these scenarios and you subtract one from the other and that's your damages, correct?

A. The difference in those two numbers is the damages.

Q. Alright. But when you're doing this, you're not looking at any other income any other losses, you're not suggesting that this reflects his actual tax scenario? You're just trying to isolate his share of the Raiders net income, correct?

A. What I am trying to do is to calculate the value of the remaining unrecorded tax loss carry forwards and I believe the best most reliable way to do that is to isolate the use of those

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remaining unrecorded tax loss carry forwards to the beneficial owner's share of the Raiders net income. So I am isolating the use of the remaining unrecorded tax loss carry forwards to only the beneficial owners share of president Raiders net income.

Q. And, just to be clear, the first time that you went through this exercise to generate your first number, the 17845250, you have identified no NOLs for Mr. Davis that you have used or that could ever been used do offset his Raiders income, correct?

A. In this scenario where there are no remaining unrecorded tax loss carry forwards I have not included any tax loss carry forwards.

Q. Okay. So the scenario that's on the screen right now for the Panel to look at, assumes that there are no NOLs that Mr. Davis has to offset his share of Raiders net income, correct?

A. No it does not assume that.

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Q. Well they're not on there, are there. There are no NOLs that you're using to offset his share of projected income?

A. Correct. In the first scenario there are no remaining unrecorded tax loss carry forwards.

Q. And they would be right here and they're all blanks, correct?

A. To represent that there are no remaining unrecorded tax loss carry forwards.

Q. Okay. And when you created this model and generated this exhibit, you knew that this was factually incorrect; isn't that right?

A. No, I would not say that.

Q. Okay.

MR. FARINA: So, Jason, can you pull up JX-0301.

(Arbitration Exhibit JX-0301 was referenced.)

Q. Are you familiar with this document?

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A. Yes.

Q. This is Mr. Davis' tax return for the year 2022, correct?

A. Correct.

Q. When you formulated your opinions -- let me make sure we're clear on this.

Did you review this document?

A. Yes.

Q. Did you review it in its entirety?

A. I don't know that I reviewed each page carefully. But I certainly -- I reviewed it pretty carefully.

Q. Alright. So it's Mr. Davis's Mr. Mark Davis 1040 return for tax year 2022, correct?

A. Correct.

MR. FARINA: And can you go to the next page, Jason.

Q. Alright. And it was prepared by Mr. Larry Delsen who was Mr. Davis's tax preparer, correct?

A. That is what it appears yes.

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Q. So go to the next page.

I'm sorry Jason go to the next page that we had isolated with the NOLs. This is not, the next page of the return. This is actually much deeper into the return.

But you know there is a worksheet for NOL carry overstatement as part of the return?

A. Yes, I am familiar with their work sheet.

Q. And you know this worksheet existed at the time you formulated your opinions, correct?

A. Correct.

Q. And if you look at this, it says on Line 9C, that going in do the 2023 tax year, Mr. Mark Davis actually had $60,539,031 of NOLs, correct?

A. Correct.

Q. And you knew when you came up with your model that Mr. Davis had $60.5 million in NOLs correct?

A. Correct.

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Q. And your model does not take that into account, does it?

A. As I explained earlier that was not what was my model was representing.

Q. Sir, does your model take that into account, the fact that Mr. Davis has $60.5 million in NOLs, does your model take that into account yes or no? Is?

A. I think it does take it into account.

Q. Okay. How does your model when you're doing your calculations and the first calculation you do there are no NOLs that can be used to offset Mr. Davis's allocated share of Raiders's income. When you knew that he had $60.5 million in NOLs how are you taking that into account?

A. Well, when I was trying to determine how best to value the remaining unrecorded tax loss carry forwards, I did consider that some of the beneficial

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owners had other NOL carry overs from other sources also that the beneficial owners had other income from other sources that they had losses from other sources. Also I considered that if these beneficial owners had known at least in Mr. Davis's case that they had over $36 million of additional carry forwards that maybe they would have made different investments maybe they would have operated their business differences maybe they would have different other sources of income main they would have mitigated losses from other business. So this situation of an NOL carry forward of 60.5 million may not have existed if the unrecorded tax loss carry forwards were recorded. So in considering all of this and the best way to value the remaining unrecorded tax loss carry forwards, I thought the best way and reliable way to do that was to isolate the use of the unrecorded tax loss carry forwards the Raiders net income if I would have

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included the NOL carry forwards from this tax return then in my opinion I would have to include the other sources of income I would have to include the other sources of losses and I would also have to make assumptions based on what the carry overs would ever been if there were 36 million of additional carry forwards that Mr. Davis was aware of.

Q. Can you go back to DX-3 please.

(Arbitration Exhibit DX-3 was referenced.)

Q. Alright. This is the calculation that you did. And you took the allocated share of net income from the Raiders and you applied no NOLs to reduce the taxable income for purposes of calculating Mr. Davis's projected future taxes, correct?

A. I applied no remaining unrecorded tax loss carry forwards because this is a scenario where there aren't any remaining unrecorded tax loss

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carry forwards.

Q. Well, that is a scenario where that is the case but that is not the reality.

In reality Mr. Mark Davis has 620.5 million in NOLs that you did not include in your calculations that appear on Exhibit 2 D, correct?

A. Correct.

Q. Okay. The so let's take a look at what happens if you had included them. Let me just skip to that please.

Okay. So this is your same worksheet. And in the actual world, you knew at the time you prepared Exhibit 2D that Mr. Davis has $620,539,031 worth of NOLs that exist in the real world, correct?

A. Correct.

Q. But you did not include them in your calculations here, correct?

A. Correct.

Q. Okay. Now, your entire model is based on things that might happen in

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the future. You've got projected net income for the Raiders. You've got projected taxes by the individuals.

But the one thing that you knew when you're putting together your analysis in the actual world is that Mr. Davis had $60.25 million worth of NOLs, correct?

A. Incorrect.

Q. You didn't know that?

A. That's not the one thing I knew. I knew a lot of things. I knew Mr. Davis had other sources of income that I did not include in my analysis. You know there are sources of losses.

I feel very strongly that he would have made other investment and business decisions had he known about those 36 million of unrecorded tax loss carry forwards. So there was a lot of things that I did not include that I knew Mr. Davis had that I did not include in my analysis. And as I've explained very good reason for that.

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If I were to include these tax loss carry forwards, I would also have to include the income I know about. I'd also have to include the losses I know about and I --

(Stenographer clarification.)

A. If I included these tax loss carry forwards in my analysis, I would also have to include the other sources of income I know about the other sources of losses I know about and also project any changes I would believe would happen to Mr. Davis historical tax position if he had known about these 36 million of unrecorded tax loss carry forwards.

Q. So it's just not the 06.5 million in NOLs that you knew about there was all sorts of other things you knew about and didn't include them in your modeling to determine future damages, correct?

A. I viewed them as too speculative. So I did not include them in your analysis.

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Q. What you said in your report. It would be impossible to actually try to project everyone's future tax liabilities, so you just didn't do it.

A. I believe it would be so speculative to be impossible or nearly impossible.

Q. Okay. So you just ignored that information?

A. As I've said several times already I did not ignore that information. I considered it and I also considered that if I included tax loss carry forwards I have to include other sources of income I have to include changes in behavior, if Mr. Davis would have known about 36 million of additional carry forwards. So I consider all of that I did not ignore any of it. I did not include it in my analysis because again as I've said before I thought the best and most reliable way to calculate damages and to value the unrecorded tax loss carry forwards was to isolate them

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to Raiders net income.

Q. Let's see what the impact would have been on your calculations if you would have included it.

So if you include the 60 million -- 60.5 million in NOLs that he actually has in the actual world, he's able to use 80 percent of those, correct?

A. Correct.

Q. Is okay. And he would still have $38,418,826 in NOLs remaining after tax year 2025 correct?

A. I haven't done the math but that looks right.

Q. Okay. And it would reduce his taxable income from $27,650,256 it would reduce it to $25,530,051 correct?

A. Again I didn't do the math but that looks correct.

Q. Okay. And you apply the same 37 percent tax rate and the tax owed is now $2,046,119, correct?

A. Again, I haven't done the math. But I assume that's correct.

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Q. So, when you modeled it without considering -- without using that information, you have the tax owed for 2025 as $10,230,595 correct?

A. Correct.

Q. But if you had included the NOLs it would have been $2,046,119 correct?

A. Again. I didn't do the math on that one but I assume it's correct.

Q. Is alright. So we'll use your present value factor and that present value of that future tax payment projected future tax payment is $1,600,158 correct?

A. I haven't done the math but I'll assume that's correct.

Q. Okay. So you do the same thing for 26 with the remaining NOLs and that reduces again the taxable income. This time it reduces the taxable income from $38,376,649 to $7,675,330 correct?

A. Correct.

Q. You apply the same tax rate

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you get a taxes owed. You present value that. You get $1,968,891. You add the two together and the projected tax payments for Mr. Davis for 2025 and 2026 comes out to $3,569,050 correct?

A. Again I haven't done the math so I assume it's correct but I don't know.

Q. But when you modeled this sort of prediction of his future tax payments without considering the NOLs you came up with 17,000,845 through $250 correct?

A. I don't think that's correct because I didn't just ignore the NOLs. I also did not include other sources of income which would allow Mr. Davis to use the carry forwards faster.

Q. Okay. You also didn't consider his other sources of losses did you?

A. As I've already said, that's correct.

Q. And you know Mr. Davis has

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other sources of losses?

A. Correct.

Q. You know he has $11 million in losses for 2022 from the Las Vegas Aces, correct?

A. I forget what the number is but I do know he had losses from the Aces.

Q. Prior year he had another $8 million in losses correct?

A. Again I don't know the number. And I don't -- I don't remember that year well enough to whether to know there was a loss or gain.

Q. You didn't consider that?

A. Again I did consider it. As I did the other sources of income that I know Mr. Davis has. But I did not include it in my analysis for the reasons I've mentioned previously.

Q. Well, have you looked to see what income taxes Mr. Davis actually has paid over the last 14 years?

A. I didn't go that far back. I

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forget which years I looked at, but I don't think I looked at all 14.

Q. Okay. He only had I think two years where he actually paid taxes, correct?

A. I just told you that I didn't look at all 14 so I don't know if that's correct.

Q. Okay. And if you had included in your calculations the NOLs that you knew existed the amount of taxes using all of your other projections holding those constant would be $3,569,050 correct?

A. Are you asking me to evaluate a hypothetical world where the only change I made is to include the tax loss carry forwards and to ignore the other sources of income that I know Mr. Davis has.

Q. Yes the hypothetical world where you use the information that you actually know exists?

A. Well I also know that he has

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income from other sources so you're asking me to ignore which actually exists.

Q. Okay. So in defense of your model, you're saying that you not only ignored information that would reduce his damages, but you ignored other information that might also affect the validity of your outcomes?

A. Well, as, again, I mentioned earlier, the goal of my model was not to predict the total tax situation of the beneficial owners. The goal was to determine damages to the beneficial owners and those damages were the value of the unrecorded tax loss carry forwards. And so I don't think I ignored any information that is relevant to calculate a value of the unrecorded tax loss carry forwards.

MR. FARINA: Jason, can you put up Mr. Lewis's report at Page 1 and go to 56 and 57.

Q. You read Mr. Lewis's report

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correct?

A. I didn't read all of it but I did read the portions that -- I did read most of it and the portions that were relevant to my analysis.

Q. Is alright. So is this how you found out that Mr. Davis had 60.5 million in NOLs?

A. No as I mentioned earlier and is included in my report I did review his 2022 tax return.

Q. Okay. And did you also know that the Davis credit shelter trust had 6.4 million in NOLs?

A. I don't remember the number and which beneficial owners it is. But I am aware that other beneficial owners also had NOLs on their 2022 tax returns.

Q. Including Mr. Gold ring who had 7.5 million in NOLs?

A. Again I don't remember which beneficial owners and what the amounts were but I do know that other beneficial owners had NOLs in their 2022 tax

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returns.

Q. And all of the calculations that you did for all of the additional Claimants did not use the NOLs that you knew they had, correct?

A. I did not include the NOLs from other sources in my analysis of the tax loss carry forwards that were from the Raiders and unrecorded.

Q. Okay. So let's -- I know it's getting late. So I want to try to cut through this.

Let's go through the projections you used. Those were projections that were provided to you by Raiders management, correct?

A. Correct.

Q. And, again, it's a prediction or a projection of what might happen in the future, correct?

A. It is their best projection of what their financial results would look like in the future.

Q. And you adopted management's

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projections without making any changes to them correct?

A. I did not make any adjustments to the projected income statements.

Q. And you had a single phone conversation with Mr. Crome to discuss the process that he uses to make his projections correct?

A. Correct.

Q. And you had that conversation about a week before you submitted your report after you had substantially completed your analysis, correct?

A. I forget the date. And how long it was before I finished my report. And, also, I can't speak to how far along my report was when I talked to him.

Q. Okay. So you submitted your report on May ten, correct?

A. I forget the exact date, but that sounds right.

Q. And your conversation with Mr. Crome was on May 3rd, correct?

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A. Again I forget the exact date but I believe that's correct.

Q. And at the time -- in your deposition you testified that the time you had that conversation you had substantially completed your analysis. Do you recall that?

A. I don't recall that but if that's what I said in the deposition then I'll stand by that.

Q. Okay. And let me ask you this. Do you have any notes of that conversation with Mr. Crome?

A. As I answered in my deposition I do not have any notes from that conversation.

Q. Did you take any notes?

A. I did not take any notes.

Q. The projections that you're using for the Raiders future net income you're projecting that they're going to make we can look at it but 50, 60, 70, 80, $09 million correct?

A. I wouldn't say that I'm

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projecting that. But I would say that the projections I used in my analysis -- I don't remember off the top of my head, but I remember the first year they were projecting I believe. 98 million projected net income.

Q. And the Fiscal Year immediately proceeding the year that they're projecting to make $58 million the Raiders lost $10.2 million, correct?

A. I forget the exact number but that sounds right.

Q. So after the move to Vegas and after the Taylor Swift concerts and after all the increased revenue, the Raiders last year still lost $10.2 million, correct?

A. I believe that's correct.

Q. And the projections that you're relying upon are projections that don't reflect any losses off in the next five years, correct?

A. I know that in future years they project decreases in net income so

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it's just not a straight line up. It goes up some years and down some other years for net income. But I believe they're all positive net income numbers.

Q. Why don't we pull up your supplemental report Exhibit 2A.

MR. FARINA: Jason, can you do that.

(Arbitration Exhibit 2A was referenced.)

MR. FARINA: And can you highlight the net income and maybe below that up.

Q. Okay. So these are the projections that you're relying upon. The projection the year after they lose $10.2 million, they are going to make $58 million. Correct?

A. Yes.

Q. And then they're going to make 80.5 million, correct?

A. Correct.

Q. And then they're going to maybe 76.9 million, correct?

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A. Correct.
Q. And then they're going to maybe 97.8 million, correct?
A. Correct.
Q. And then they're going to make 103 million, correct?
A. Correct.
Q. And the Raiders in their history as a franchise including the time that they have been in Las Vegas, the Raiders have never made $60 million have they?
A. They've gotten close to that. I think they made over 51 in one year but I don't -- not that I'm aware of have they made 60 million not since they moved to Vegas that I'm aware of.
Q. And do you understand that these projected net income numbers are on a GAAP basis?
A. Yes I believe they're on a US GAAP basis.
Q. And what's relevant to the ultimate beneficial owners is they're

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allocated share of income on a tax basis correct?

A. Correct.

Q. Because that's what's going to have an impact on their taxes, correct?

A. So the tax -- their share of the taxable income from the Raiders is what's going to impact their taxable income, correct.

Q. And you listened to Mr. Crome's testimony from this morning, did you not?

A. Yes.

Q. And I went over with Mr. Crome how there's a $20.1 million expense that's recognized for tax purposes but not for GAAP purposes. Do you recall that?

A. I do recall that.

Q. So, if, in fact, that is an expense that's recognized for tax purposes but not for GAAP purposes, then the taxable income for the Raiders even

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if these projections were accurate would be lower than $20.1 million in each year, correct?

A. Not necessarily.

Q. Well how about this. What if we accrued other potential differences between GAAP and tax and just focus on the amortization expense just focusing on the amortization expense the taxable income on a tax basis would be 20.1 million lower than what you have reflected in Line 33?

A. Are you asking me to answer about a hypothetical world where the only difference between US GAAP basis and tax basis is the treatment of amortization and not the treatment of depreciation or meals or entertainment or any other line items?

Q. So I've identified a $20.1 million difference between the two.

Would you agree, at least, that that difference all else being equal would lower the net income in each of

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those years by 20.1 million?

A. Again are you asking me to ignore any other differences between US GAAP and tax basis.

Q. Is for the moment I am?

A. Okay. If I ignore all other differences and live in a hypothetical world where the only difference between US GAAP and tax base is the treatment of amortization then yes that would decrease the projected net income.

Q. Okay. Alright. You changed your damages calculations between your initial report and your supplemental report correct?

A. The number I calculated for damages changed but the methodology stayed the same. So that might be nuanced but I wouldn't say necessarily it changed my damages calculation. The methodology was the same but the result was the different.

Q. Is let's look at knee nuances. Can you put up DX-4 please.

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(Arbitration Exhibit DX-4 was referenced.)

Q. So that's the numbers you provided in your initial report, correct?

A. What does that date represent at the top?

Q. That's the date you submitted your report?

A. Okay, okay. So, yes, these were the numbers I include on my initial report.

MR. FARINA: So, Jason, can you put up what's in his supplemental report.

Q. This is literally the schedules we just copied it.

Does that look right to you that you increased the damages by 3 percent 6 million?

A. It looks like my damages calculation went from 9.3 million to 12.8 million.

Q. Okay. So on May 10, 2024 you submitted a report that had your best

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estimate of these damages, correct?
A. On May 10, 2024 this was my best estimate of the damages as of using a valuation date of December 31st, to 22.
Q. And you were the one who picked the valuation date correct?
A. Well I didn't pick it. You know I determined it based on the information that I was provided. It's not something that I just pick out of thin area so I determined the beginning of the valuation date based on the facts of the case.
Q. Alright. And three months later you changed the valuation date and that increased damages by $3.6 million?
A. I would just disagree with the premise that I changed the valuation date. My supplemental report was in response to other experts using information that was only available after my initial valuation date. And so in order to respond to the inclusion of that additional information after my valuation

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date, I moved my valuation date forward in order to include that information.

Q. Well you, literally changed your valuation date and it resulted in another 3.6 million in damages.

You can say that you did it for a reason, but you were the one who changed it, correct?

A. Correct.

Q. Okay. And the reason that you gave is that Mr. Johnson and Mr. Lewis made reference to a jury verdict in the Sunday Ticket NFL litigation, correct?

A. There might have been other reasons, but that was definitely one of the reasons that I prepared a supplemental report.

Q. And the jury verdict that they were making reference to occurred after any of you had submitted a report, correct?

A. I don't remember the exact dates. I believe that's correct.

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Q. I believe it was July 27th. That was the date of the Sunday Ticket. Someone can check me. But that was -- it was after you, Mr. Lewis and Mr. Johnson had submitted your reports, a jury in San Francisco came back with a multiple billion dollar verdict against the NFL, correct?

A. I don't remember the dates of Johnson and Lewis's report, but I believe it was after their reports.

Q. And then Mr. Johnson and Mr. Lewis supplemented their report to note that this verdict had happened, correct?

A. I don't know if that was the only reason. I believe that that was one of the reasons. But I'm not in their head so I don't know the exact reason I know that was one of the difference between their original report and supplemental report.

Q. And because they had taken into account something that happened in

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July you took that as an opportunity to change your valuation date and increase damages by $3.6 million correct?

A. That was one of the reasons. I also noticed that while they included information from July of 2024 they did not include any other additional information that was now known and knowable including the actual results of the Raiders. And so my supplemental report was in response to their supplemental reports and the information that they chose to include or exclude.

Q. So I'm sorry. I'm told that the verdict date was June 27th. Alright. But that was after all of you had submitted your reports correct?

A. Again I don't remember Lewis and Johnson's date but I believe that's correct.

Q. Alright. Now the change that you played had nothing to do with the Sunday Ticket litigation correct?

A. No I certainly considered it

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differently than I did in my original report. My original.

Q. Can I just ask you?

MR. BECKER: Can you not please interrupt second time you've done.

THE CHAIRPERSON: If there's an objection make an objection.

MR. BECKER: Can the Counsel please be instruct not to interrupt the witness in the answer.

Q. I would like him to answer my question.

So my question is the, change from 9.282 to 12.84, did that change, the change in those numbers, have anything to do with the Sunday Ticket verdict?

A. As I was trying to answer to you, yes, it was a consideration in the change in values. So I did not end up changing the company specific risk from my originally supplemental --

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(Stenographer clarification.)

A. I did not change the company specific risk from my original report to my supplemental report, but I did consider a change because the date of my first report my original report was December 31, 2022. A year and a half before the verdict came out. And so changing my valuation date to 3/31/24 is now closer to the verdict date. You might have -- I assume we have more information about how the case is going, what verdict might come out, when it might come out. And so I considered whether I should change my company specific risk to reflect the changes in the way that the case was going.

Q. But you didn't, you didn't change your company specific risk.

A. And so, like I said, I considered changing it, but I did not change it because I did not think that as of 3/31/24 it warranted a change because again the verdict hadn't come out. We

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had no idea what the verdict would be, if there was a verdict. When any -- when damages, if any, would be paid out, whether it would be during my damages period, whether it would be after my damages period. All of that was still extremely speculative, as my damages date, so I did not change my company specific risk.

Q. That's not what I'm asking you, though.

You changed your numbers. You increased the damages by 30 some odd percent and that change is not driven by anything that happened in the Sunday Ticket litigation.

You can tell me what you considered and you didn't do anything. But the thing that you actually did that increased the damages by 30 some odd percent the thing that you actually did had nothing to do with the Sunday Ticket litigation correct?

A. The Sunday Ticket litigation

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did not change any of my assumptions. So I don't think it had an impact on the increase from 9.3 million to 12.8.

Q. Thank you.

Alright I'm just going to ask you very briefly about your use of the WACC as your discount rate.

Now, you don't have a finance degree correct?

A. I am Chartered Financial Analyst, which is also considered MBA in finance but my degree focused on accounting.

Q. But you don't actually have an MBA in finance, do you?

A. No, I'm Chartered Financial Analyst.

Q. Okay.

MR. FARINA: Can you pull up the supplemental report at four?

Q. So here's where you discuss your Weighted Average Cost of Capital, correct?

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A. Correct, in Point 2.

Q. Okay. There you go. Let's highlight that. I want to make a couple of points and then we'll move on.

The 12.8 percent is the rate that you used for purposes of present valuing the future cash flows, correct?

A. That is the discount rate that I used.

Q. Okay. And that is the Weighted Average Cost of Capital, correct?

A. Correct.

Q. It's what you calculated as the Weighted Average Cost of Capital.

The cost of equity that you yourself calculate is 16.5 percent, correct?

A. Correct.

Q. If you would used the 16.5 percent instead of the 12.8 percent as your discount factor, you would have lower damages, correct?

A. Correct.

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Q. Okay. But you chose not to use the cost of equity. You chose instead to use the WACC, correct?

A. I determined that the WACC was, the appropriate discount rate to use.

Q. Okay.

MR. FARINA: Can you go to the supplemental report, Exhibit 2A.

Q. Alright. The projections that you're using for purposes of trying to predict future tax payments by each of the additional Claimants are the projections for the Raiders net income which is Line 33, correct?

A. Correct.

Q. Alright. And the Raiders net income that is available to be allocated to the additional Claimants is after the Raiders make their interest payments, correct?

A. Correct.

Q. Okay. In fact, you see it right there. It's the line immediately

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above it. There is a very significant income expense line item that is taken out before you get to -- or to get you to the net income number, correct?

A. Correct.

Q. So any cash flows that would be going to the additional Claimants or to some entity that would pass on the payments to the additional Claimants is after all the debt holders are paid, correct?

A. Incorrect.

Q. Well, it's after the interest expense is paid, correct?

A. Right. But that holder also received principal payments and those are not included in the projected net income.

Q. But the interest expense is included, correct?

A. Correct.

Q. Alright. And the reason why the cost of debt is lower than the cost of equity is equity is more risky than debt, correct?

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A. Correct.

Q. Alright. Are you familiar with Aswath Damodaran?

(There is a discussion off the record.)

A. Yes, yeah.

Q. Alright. He is a finance and valuation professor at the Stern School of Business, correct?

A. Correct.

Q. And he's published many textbooks on valuation, correct?

A. I don't know how many. But, yes, he's published a lot of information about valuation.

Q. And you know who he is, correct?

A. Correct.

Q. Have you used his treatises or textbooks?

A. Possibly. He's not necessarily a source I go to for every project, but it's possible that I used some of his theories or studies.

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MR. FARINA: Can you pull up Exhibit 2744.

(Arbitration Exhibit JX-2744 was referenced.)

Q. Did you look at this textbook after reading Mr. Johnson's report?

A. I think I looked at it before too. But, yes, I've looked at since he issued his report.

MR. FARINA: Can you go to Page 35, Jason. And blow up a "simple test of cash flows."

Q. So let's take this like a piece at a time and take your time to read it.

So above the highlighting it says, "There is a simple test that can be employed to determine whether the cash flows being used in valuation are cash flows to equity or cash flows to the firm."

Do you see that?

A. Yes.

Q. Alright. And then the next

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sentence is the highlighted portion. It reads, "If the cash flows that are being discounted are after interest expenses (and principal payments), they are cash flows to equity and the discount rate used should be the cost of equity."

Do you see that?

A. I disagree with it, but I do see it.

Q. So you disagree with that?

A. Yes.

Q. Okay. It's interesting.

MR. FARINA: Can you pull up supplemental report Exhibit 2A.

Q. So you agree that the cash flows, the net income are after interest expenses?

A. The cash flows or the net income? Because they are two different things.

Q. Well, the net income are the cash flows that would be available to the equity holders?

A. Incorrect.

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Q. Alright. I'll ask it your way then.

The net income numbers that you were allocating out to each of the individual Claimants, those are after interest expense, correct?

A. The net income is after interest expense correct.

Q. Okay. Alright.

MR. FARINA: I don't think I have any further questions, but let me just consult with my team.

THE CHAIRPERSON: Sure.

(Recess taken 5:31 to p.m.)

THE CHAIRPERSON: Any further questions.

MR. FARINA: No, thank you.

THE CHAIRPERSON: Any redirect?

MR. BECKER: Just very briefly.

This is JX-2364. We'll put it on the screen. It's a little

McCLAIN-DUER - REDIRECT

bit small.

(There is a discussion off the record.)

(Arbitration Exhibit JX-2364 was referenced.)

REDIRECT EXAMINATION BY MR. BECKER:

Q. Mr. McClain-Duer, have you seen this document before?

A. Yes.

Q. Can you explain just very high level what it is?

A. Yes. It is a reconciliation between book net income and tax net income.

Q. And when you say, "book net income," what method of accounting are you referring to?

A. I believe that's US GAAP in this case.

Q. Okay. So let's go to the PY amount column.

Can you tell me where the book or GAAP net income is displayed?

A. Yes. The US GAAP book net

McCLAIN-DUER - REDIRECT

income is displayed on the first line. I think it's 68, yeah, 68.5 million.

Q. And can you also point to where once book income is converted to taxable income, what that number is here?

A. Yes. So you start with the US GAAP book income at the top. Below that is a list of all the differences between US GAAP and tax basis and at the very bottom is the taxable net income.

Q. And what is that number?

A. It looks like 128.8 million.

Q. So in this situation -- you used GAAP net income in your report, correct?

A. Correct.

Q. Projected net income?

A. Correct.

Q. And for this conversion by the Raiders, GAAP net income understated taxable income by $60 million, right?

A. Correct. In this case after the reconciliation from US GAAP net income to taxable net income, the taxable

McCLAIN-DUER - REDIRECT

net income was about 60 million higher than the US GAAP net income.

Q. And can you also point to what year this "PY" stands for?

A. Yes. So this is for the year 2022 and the year ended 3/31/2023. So the prior year amount would be for the 2022 year.

Q. So, when Mr. Farina said that you ignored the 20.3 million reduction due to the amortization expense from GAAP to tax, fair to say there are other considerations here that actually led to a net increase of 60 rather than a decrease of $20 million from GAAP to (INAUDIBLE), correct?

A. Correct. And I would just add that I did not ignore it. It was part of my analysis on whether we could use the US GAAP basis projected income statements as a proxy for the tax basis net income. And it is my understanding -- I'm not a tax expert, but I know enough to realize that there are a number

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of line items that could either increase or decrease taxable net income when compared to US GAAP and so I considered all of those differences.

Q. Okay. Thank you.

MR. BECKER: No. Further questions.

RECROSS-EXAMINATION BY MR. FARINA:

Q. So, if you look at the current year amount, it's $63 million loss, correct?

A. Correct.

Q. And if you look at the provision amount it's 31,713,000, correct?

A. Yeah, 31.7 million.

Q. Alright. So these numbers are very different and they go both ways, correct?

A. So some differences will result in an increase taxable income and a some decrease. I would just say generally because of exclusions that the IRS has, you're generally allowed to

McCLAIN-DUER - RECROSS
deduct more for US GAAP purposes than you are for tax basis purposes. So generally taxable income at least --
(Stenographer clarification.)
A. So, generally, the, IRS will try to make your taxable increase higher than your US GAAP basis income.
Q. But what you actually used for your modeling are projections of GAAP income when you know that what matters for the taxpayers are the taxable income, correct?
A. So, I believe, the best way to project the taxable income is to use the projections provided by the Raiders and those were prepared on US GAAP basis.
Q. And you're just ignoring the differences between GAAP and taxable income?
A. That is not correct.
Q. Well, you've chosen to use the GAAP projections instead of trying to use the tax basis income, correct?
A. I'm not aware that there are

McCLAIN-DUER - RECROSS

any projected tax basis income statements. So I didn't choose to use one over the other. The only basis under which I believe the Raiders or understand the Raiders projected income is under GAAP basis. So that was the only one available.

Q. And because it was the only thing available, you chose to use it?

A. Well, like I said, that was only after considering and understanding that there were going to be differences between US GAAP and tax basis and that that might increase taxable income some circumstances and decrease it in others. But because it can go either way, I still thought that the projections provided by the Raiders were the most reliable.

Q. So this is just another factor that could affect the actual tax payments that each of these people may make in future years that you considered using and didn't use?

A. Can you repeat the question?

McCLAIN-DUER - REDIRECT

Q. Sure.

I mean, we've talked about a number of different things that could impact each individual Claimant's future tax payments. And you've talked about how you considered all of those things and you just chose not to use them in your calculations, correct?

A. Well, I would disagree with it on this one because, again, there weren't tax basis projected income statements that I could consider and not use. So I disagree with your statement as it relates to a tax basis projected income statement.

MR. FARINA: I have no further questions.

THE CHAIRPERSON: Anything further?

MR. BECKER: One more.

REDIRECT EXAMINATION BY MR. BECKER:

Q. Mr. McClain-Duer, do you believe your use of GAAP based projections was aggressive or

McCLAIN-DUER - REDIRECT

conservative?

A. Without having done the analysis -- like I said, generally, the IRS doesn't allow you to deduct as many expenses as you're able to under US GAAP. So, generally, I would say usually using GAAP basis projected income statements would be conservative because the net income would be lower than the tax basis.

MR. FARINA: Well, without having it available, you just don't know one way or the other, correct?

The witness: I don't know for sure. But, like I said, generally, you're able to deduct more under US GAAP. So that would be my assumption.

THE CHAIRPERSON: Anything further, follow up, Counsel?

MR. BECKER: No.

THE CHAIRPERSON: Okay, folks --

McCLAIN-DUER - ARBITRATOR QUESTIONS

QUESTIONS BY THE ARBITRATORS

MR. CHANDLER: I've got a question for you.

Mr. Davis had 60 million in net operating losses.

How did he change his investment strategy to use those?

THE WITNESS: Well, I didn't say that he did. I said that he could have or may have, if he had been aware of the 36 million plus of unrecorded additional tax loss carry forwards. And so, if you know that you already have 36 million of additional tax loss carry forwards, you might make different investment decisions or operate your businesses differently. And so, if you don't have as many as tax loss carry forwards, then maybe you potential losses to your business as an okay thing for a few years, because you can

McCLAIN-DUER - ARBITRATOR QUESTIONS

use those losses to offset other sources of income.

But if you know you already have over 36 million of tax losses probably not as existed to have an additional 60 million.

And so I do think that he would have made different investment decisions and also what type of investments to make. So, typically -- not always but, typically, investments in real estate have negative net income but positive cash flows because of depression.

And so, if you have a bunch of tax loss carry forwards, then you're not as worried about future income, so you're not going to evaluate real estate investments the same way you would if you don't have them. If you don't have tax loss carry forwards, then real estate is great return. Like I said ---

McCLAIN-DUER - ARBITRATOR QUESTIONS

THE STENOGRAPHER: I'm sorry. You just to go a little bit slower. It's getting really late.

THE WITNESS: If you don't have carry forwards, then real estate is a great investment because you have negative income but positive cash flow. But if you do have a bunch of carry forwards, then you're not as worried about recognizing net income.

MR. CHANDLER: So, as far as you know he didn't make any different decisions with respect to investments with the 60 million NOL?

THE WITNESS: Correct. Because he didn't know about the unrecorded one.

MR. BICKERMAN: Just one quick followup.

Do you think that those

McCLAIN-DUER - ARBITRATOR QUESTIONS

investments decisions that you just described could be affected by overall wealth that someone with $10 billion might behave differently with someone with $10 million?

THE WITNESS: I do believe so. Because, obviously, $60 million matters more to somebody with $10 million, as opposed to a billion dollars. So, in the billion dollar scenario, I imagine the 60 million will offset a lower percentage of their income than someone with less money.

THE CHAIRPERSON: Okay. Sir, thank you much. Safe home.

MR. McCLAIN-DUER: Thank you.

(Witness excused.)

THE CHAIRPERSON: We'll see you at 9:30 tomorrow morning, correct?

MR. FARINA: Yes.

THE CHAIRPERSON: Okay.

(Time noted: 5:45 p.m.)

PROCEEDINGS

C E R T I F I C A T E

I, SILVIA P. WAGE, CSR, CRR, RPR, a Notary Public for the State of New York, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Notary Public of the State of New York
My Commission expires November 29, 2026
Dated: September 24, 2024

PROCEEDINGS
CPR ARBITRATION
Matter No. G-23-23-N

In the Matter of the :
Arbitration between: :
:
A.D. FOOTBALL, INC., A.D. :
FAMILY LIMITED PARTNERSHIP, :
A. & R. BOSCACCI INVESTMENT :
CO., E. & V. BOSCACCI :
REVOCABLE TRUST/MARITAL LLC, :
E. & V. BOSCACCI DECEDENT'S :
TRUST/DECEDENT LLC, JILL :
LOVINGFOSS, CODY LOVINGFOSS, :
JOSH LOVINGFOSS, CHALET :
ROBERTS, GOPPL PARTNERSHIP, :
L.P., PATRICIA WINKENBACH and :
GERALD WINKENBACH as the :
Trustees of the Winkenbach :
Family Trust, PATRICIA :
WINKENBACH, GERALD WINKENBACH, :
RLP HOLDINGS, LP, ADF :
INVESTMENTS LLC, ADF HOLDINGS, :
LLC, A.D. FAMILY LIMITED :
PARTNERSHIP, A.D. FAMILY LLC, :
MARK DAVIS, FIRST FOOTBALL, :
LLC, MD FOOTBALL LLC, ALLAN :
BOSCACCI and PATRICIA BOSCACCI :
as the Trustees of the :
Boscacci Family Trust, LISA :
BOSCACCI, ALLISON MEIN, ANNE :
CARPENTER, ALIDA BEILKE, CARA :
YURAS, KENNETH WEAKLEY and :
LYNNE WEAKLEY as the Trustees :
of the Weakley Family Trust, :
JEANNE DAVIES, ERIC WEAKLEY, :
[TO BE CONTINUED] :

VOLUME VII
NEW YORK, NEW YORK
WEDNESDAY, SEPTEMBER 24, 2024

REPORTED BY:
SILVIA P. WAGE, CCR, CRR, RPR
JOB NO. 6427189

PROCEEDINGS

[CONTINUED] :
ELYSE WEAKLEY, MARY JANE :
BOSCACCI as the Trustee of the:
Mary Jane Boscacci Living :
Trust, PAUL STEFANI and ANN :
STEFANI as the Trustees of :
the Stefani Family Trust, :
CATHERINE STEFANI, JON-PAUL :
STEFANI, NANCY MCAULIFFE, :
KELLY PEPPMEIER, ERIN :
MCAULIFFE, ALLAN BOSCACCI, :
COREY MCAULIFFE, ALLAN :
BOSCACCI as the Trustee :
Of the A&R 2005 Irrevocable :
DAVID ABRAMS, FRIEDMAN :
FOOTBALL LLC, JOSHUA FRIEDMAN,:
BETH FRIEDMAN, PEAK TRUST :
COMPANY as the Trustee of the :
Friedman Family 2015 GST I :
and the Friedman Family 2015 :
GST II, GARONZIK INVESTMENT :
PARTNERS LLC, FREDRIC :
GARONZIK, FREDRIC GARONZIK as :
The Trustee of the Fredric B. :
Garonzik Trust, DAVID GARONZIK:
And SAMUEL GARONZIK as the :
Trustees of the Fredric B. :
Garonzik Family Trust and the :
Anne G. Garonzik 2011 Trust, :
DAVID GARONZIK, SAMUEL :
GARONZIK, ANNE GARONZIK as :
the Trustee of the Anne G. :
Garonzik Trust, ANNE GARONZIK,:
PAUL LEFF, SILVERBLACK LLC, :
STEPHEN MALKIN, DAN GOLDRING, :
and MARK DAVIS as the Trustee :
of the Mark Davis 2010 Trust :
and the Davis Credit Shelter :
Trust, Trust, NANCY K. :
MCAULIFFE as the Trustee of :
the Nancy McAuliffe Family :
Trust, :
Claimants, :
-and- :
ERNST & YOUNG LLP and EY US :
LLP, :
Respondents. :
------------------------------ :

PROCEEDINGS

September 24, 2024
9:36 a.m.

VOLUME VII of the above-captioned arbitration, held at the offices of Veritext Legal Solutions, Seven Times Square, 16th Floor, New York New York, pursuant to agreement before SILVIA P. WAGE, a Certified Shorthand Reporter, Certified Realtime Reporter, Registered Professional Reporter, and Notary Public for the States of New Jersey, New York and Pennsylvania.

PROCEEDINGS

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PROCEEDINGS

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RAIDERS
MARCO HEIM, TECH

ALSO PRESENT FOR RESPONDENT:

MARK CARLSON, CPA
ERNST & YOUNG

JUSTIN McCARTY, ESQ.
ERNST & YOUNG
GARY GOOLSBY, EXPERT
JASON BENCZE, TECH

ALSO PRESENT VIA ZOOM:

DANA DOUGLAS

KERRIE HINCH

SALLY BAI

ALSO PRESENT FOR VERITEXT:

COREY WAINAINA, TECH

PROCEEDINGS

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MINTZER, CPA - DIRECT

THE CHAIRPERSON: Mr. Mintzer, welcome.

THE WITNESS: Thank you.

THE CHAIRPERSON: My name is John DiBlasi.

To my left is John Bickerman.

To my right is John Chandler.

As you know, obviously, we comprise the Panel that's presiding over the arbitration.

And I will turn it over to Counsel with respect to your direct examination.

THE WITNESS: Okay.

MS. BROWN: Thank you.

ANDREW MINTZER, CPA/CFF, CFE,
DEEMED SWORN:
DIRECT EXAMINATION BY MS. BROWN:

Q. Mr. Mintzer, I realize we just had introductions, but could you briefly introduce yourself to the Panel?

A. Sure. I'm Andrew -- Andy Mintzer. I'm a CPA. I live in California and New York.

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Q. Now, I know you've prepared a slide show to assist in your presentation today; is that right?

A. That's correct.

Q. And is that what you have in front of you?

A. Yes.

Q. Okay. And I believe we've provided a copy to the Panel members and to EY's Counsel as well.

Now, I'm going to control the clicker for your slide show. So, if you need me to move forward or backwards at anytime, just let me know.

A. Okay.

Q. What is your educational background?

A. Sure. Well, at university -- I went to the University of South Florida in Tampa. I have a Bachelor of Arts degree with a major in accounting. And also from South Florida I have a Master's of accountancy degree. I got those degrees in 1977 and 1978, respectively.

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Q. And what professional certifications do you hold?

A. Well, I'm a CPA licensed in -- well, several states and countries. I'm also amongst other certifications a CFE, a Certified Fraud Examiner.

Q. Do you currently sit on the boards of any professional organizations?

A. Yes. I'm on the Board of Directors of the New York Society of CPAs.

Q. Do you sit on any other boards currently?

A. Well, yeah, I sit on the International Ethics Standards Board for Accountants, which is the -- IESBA, which is on the slide, which is the international standard setting body that sets changes to the international code of conduct for professional accountants worldwide to use.

Q. And have you sat on the boards of any professional organizations on the past?

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A. Yeah. I just wrapped up a term, three-year term, on the AICPA. That's the American Institute of CPAs. It also stands for the Association of International Certified Professional Accountants; so same acronym, AICPA. One is for the American CPA professional and the association is an international umbrella organization that's over the American Institute and the Charted Institute of Management Accountants.

Additionally, in the past, I was on the Board of Directors of the California society Of CPAs and I did serve as its Chair in 2016/2017.

Q. Have you performed any work in connection with the Auditing Standards Board of the AICPA?

A. Yes. In addition, I've had several professional standards setting involvement in the US. I've served on three standard setting bodies in the United States. First was the Accounting Standards Executive Committee, which was

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the senior technical committee of the AICPA. At the time it was part of the GAAP universe of standard setters.

I, also, served on the Auditing Standards Board from 2008 to 2010. That was during the Clarity and Convergence Project.

And then I've also served on the AICPA, another professional ethics executive committee; so a standard setting in accounting, auditing and ethics in the US.

Q. Now, with respect to your work on the Auditing Standards Board, I think, you said that was 2008 to 2010.

Did you do any work on that Board that's relevant to the opinions you'll be offering today?

A. Yeah. I found it fortunate that I was on the ASBA when the American GAAS went through what's called a Clarity and Convergence Project where each section of US GAAS was individually considered and we attempted to conform to

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the ISIS, the International Standards of Auditing.

So over my three-year period, we issued I would say about 40 or 45 exposure drafts going through each of the sections and many of those sections are the sections that you'll see later in my report where we concerted word by word all of the standards. And we either conformed to the international standards or if we felt appropriate, we had additional standards that we required for US GAAS followers.

Q. And, approximately, how many hours did you spend reading, editing, discussing GAAS as part of that Clarity and Convergence Project?

A. Yeah, of all the standard setting, that was my own intensive involvement. It was about 3500 hours over those 3 years growing up to maybe 12, 1300 hours in the last year. It was a little under a thousand hours in the first year.

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I note the number because it was really the only time that I've been on a standard setting body where I was paid for it because it was just an intensive involvement of time. I did get a fee from the AICPA for serving on that.

So altogether it was well over 3,000 hours for those 3 years in total.

Q. Were you a practicing auditor at one point in your career?

A. Yes. I started with what's known as Ernst & Young. It was Arthur Young at the time in 1978 in Tampa.

I was with the firm in several offices over about a 17-year career starting in Tampa and then I went to Houston, Texas.

Then I did a stint in the firm's National Education Office involved in developing audit education in Virginia.

And then I moved out to California and worked in the Beverly Hills and Los Angeles practices, as an auditor exclusively in the early part of my

MINTZER, CPA - DIRECT

career and as an auditor and forensic accountant during the latter part of my career.

Q. When you left Ernst & Young, were you a partner?

A. Yes. I was a partner for about three, three and a half years, as I recall when I left the firm.

Q. Have you ever worked as a concurring partner on an audit?

A. Yes, I worked as a concurring partner on many audits and, also, as an engagement partner on several audits as well.

Q. Do you have any experience as an educator or instructor?

A. Yes. I like instructing. So, over my career, I've had various opportunities starting when I still was in Tampa. I served as an adjunct instructor at the University for the Introduction to Accounting Course.

But then more recently I've -- I teach Continuing Professional Education, which is for CPAs. That I teach through the various state societies or sometimes the national organizations at their conferences or individual programs.

For a while, I was a developer and an instructor for the Becker CPA Review Course. So I was teaching auditing and accounting from the perspective of trying to pass the CPA exam to students who were taking that course.

After my stint on the Auditing Standard Board I, developed a full eight-hour course on auditing standards focusing really on the differences that we've done. And I delivered that course for a couple of years, if I remember, for the California society.

Additionally, I periodically teach a course called "Financial Statements in the Courtroom," which is delivered through the National Judicial College.

Q. Have you ever previously been qualified as an expert to opine on issues related to auditing standards?

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A. Yes.

Q. In what forums?

A. Well, in -- well, courtroom settings. I've been qualified from that respect and other litigation.

Q. For the opinions you are offering today, what are those opinions based on?

A. Well, those opinions are based upon my experience as a CPA, as an auditor, as a standards setter, as a forensic accountant.

And they're also based upon my review and analysis of the evidence available in this case; the audit documentation files, the work papers, professional standards, the other evidence such as deposition or testimony, transcripts from this proceeding and the various exhibits to those proceedings.

Q. So you have listened to or reviewed transcripts from the hearing as well to form your opinions?

A. Yes, yes.

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Q. Okay. Let's start out by discussing some of EY's responsibilities under GAAS.

What is "GAAS"?

A. Well, GAAS refers to Generally Accepted Auditing Standards. And so that's, essentially, the rule book of requirements that auditors in the US who are auditing nonregistered companies with the SEC are required to follow to perform an audit.

Q. Fair to say that based on the background you've just described for us that you are familiar with the GAAS standards?

A. Oh, yes, I'm very familiar as a practicing auditor but, also, as I mentioned, as a standards setter, as well as a forensic accountant.

Q. And you're familiar with what an auditor must do to comply with those standards?

A. Yes, I'm familiar with the requirements, certainly, because while I

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was in the Auditing Standards Board, we issued all of those standards.

Q. So, in general terms, what is the role of an auditor in an audit engagement?

A. Okay. Well, the big picture is the auditor is attempting to get reasonable level of assurance about whether the financial statements are free of material misstatement whether caused by error or fraud and then to communicate those findings in the form of an audit report. So that's the big picture overview.

Q. And, in general terms, what's the role of management in an audit engagement?

A. Well, management is responsible for the preparation of the financial statements and an auditor is based on the premise that management accepts that responsibility.

Q. Now, in performing audit services, how does the auditor determine

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whether the financial statements are free from material error?

A. Well, they perform the audit in accordance with auditing standards.

But, in general, an audit is a process of obtaining evidence about the assertions in the company's financial statements and assertions or representations from management to the company. And sometimes in the form of numbers. Sometimes in the form of disclosures and so in order to deconstruct the financial statements into the various assertions, which are generally, completeness, existence, ownership, presentation and disclosure and valuation, whether the amounts are understated, overstated, properly valued, properly disclosed and so forth.

Then an auditor performs a risk assessment to determine the risk of whether there will be -- whether there could be a misstatement and focuses their attention on the items that are

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significant and then they attempt to get persuasive, sufficient and appropriate audit evidence to form a basis for their opinion.

Q. Is an auditor required to obtain 100 percent certainty that there are no material misstatements whether due to fraud or error?

A. No. I mean, that's referred to in the auditing standards as absolute assurance and an auditor does not attempt to obtain absolute assurance. They obtain what we referred to in the standard as a high level of assurance.

Q. And so what steps do auditors take so that they can provide the users of the financial statements with this high level of assurance that there are no material misstatements?

A. Well, they -- it's a risk based approach. So, first, they identify and respond to risk of material misstatements. So they consider -- they obtain an understanding of the company,

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the industry in which it operates, its financial condition and they identify and evaluate the risks, the risks inherent in the controls or the risk in the controls or risk inherent with the various representations that the company is making. And then they respond to those risks by getting audit evidence.

Q. Is identifying those risks a required part of the audit? Is it necessary to identify auto risk?

A. Yeah, that's the overall goal is to drive the risk of -- the audit risk to an acceptably low level to obtain the high level of assurance. So it's very important that the auditor is considering risk and then considering whether or not they had persuasive evidence to reduce the risk of -- the audit risk to an acceptably low level.

Q. Well, in gathering evidence for the audit, what kind of evidence is considered to be "persuasive," as you use the term?

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A. Right. So the auditor's goal is to get persuasive evidence and the standards they use of whether it's sufficient and relevant.

So "sufficient" refers to the quantity and "relevance" refers to the nature and whether it, in fact, reflects on the assertions that are being tested.

And so the auditor attempts with its risk assessment and understanding of the business to obtain information that either corroborates or contradicts the assertions that are embodied in the financial statements.

Q. Does GAAS have a hierarchy of audit evidence?

A. Yeah. There's an evaluation of audit evidence in a subjectivity scale and in a reliability scale. So whether evidence is relevant deals with whether it's reliable. And that depends on the nature.

For example, auditors are allowed to rely on representations from

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management, but those are internal versus being able to look at something from the outside or re-perform a test on your own or get corroboration from a third party.

So it's a scale of objectivity with the closer to the company being less objective. Further from the company, the audit client being more objective. And so the auditor attempts to get some of each to get this persuasive evidence.

Q. And in that hierarchy of evidence, where do you place obtaining evidence from third parties?

A. Well, third parties is generally considered reliable, if it's really a third party at an arm's length. That's because they're not part of management, so the evidence is considered to be more independent from the company itself.

Q. Are there any instances in GAAS where the auditor is explicitly required to use evidence from a third party?

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A. Well, GAAS has a requirement that the auditors use confirmations, external confirmations. That's a written request to a third party in the event of an accounts receivable. I mean -- and it's required unless there are certain conditions present.

For example, accounts receivable is immaterial. The audit risk is low or the -- this procedure would be considered to be ineffective based on the auditor's experience and judgment. And so that's a special circumstance that -- it's not in the international standards. But when we conform -- adopted and compared the international standard to the US standard, we maintained a difference, which is what I've described, the requirement for the auditors to send -- to use external confirmations unless one of those exceptions exist.

Q. And, just to be clear, is it unusual, generally speaking, for GAAS to explicitly require the auditor to perform

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a certain procedure?

A. It is. If you look at GAAS, it's mostly a risk-based assessment. So it's up for the auditor to use their judgment based upon the risks. Cause there are so many different situations for audits that it would be difficult to come up with certain required procedures. I mean, it's required to get a management representation letter. That's required. And that's in all cases.

But to call out -- in the section of the auditing standards where we call out the external confirmations that does, stand out as more unusual than other circumstances.

Q. And one of the exceptions you mentioned to that requirement was if getting the confirmation would be "ineffective," right?

What does it mean in GAAS terms for it to be "ineffective"?

A. Well, I mean, typically, an external confirmation would be considered

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to be effective. But there may be circumstances such as it's known that the company can't -- the third party won't respond or there's concerns that the third party doesn't have reliable controls so the information that you get from them is not going to be worthwhile. That could perhaps be based upon the experience the auditor has had with prior years from getting confirmations from that party.

So, since GAAS is designed to get sufficient or appropriate audit evidence, it's designed that if something is not going to be effective, don't do it, do something else.

Q. Okay. Looking at this slide, under GAAS, what does it mean to apply "professional skepticism" throughout the audit?

A. Yes. So this is a very important concept for the audit. In the mantle of professional standards for CPAs, professional skepticism -- you hear

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about it a lot but really it's only required for the attestation for the auditing service and that's because professional skepticism is an attitude that includes a questioning mind and being alert to conditions that might indicate possible misstatement due to fraud or error and a critical assessment of audit evidence.

So that alertness is that audit evidence might contradict other audit evidence or even if it's not audit evidence, if there's information that brings into question the reliability of documents and responses to inquiries that's used as audit evidence, then the auditor needs to be alerted to make those connections for that purpose.

Q. So contradictory information is something an auditor should, specifically, be looking out for in a GAAS compliant audit?

A. Correct.

Our standard has the guidance that

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if information brings into question the reliability of documents or responses to inquiries that the auditor's otherwise using for audit evidence, then professional skepticism is this questioning mind to ask the question, to try to make a connection and being alert for these conditions.

Q. Okay. Now, in exercising professional skepticism, what other responsibilities does an auditor have in order that the auditor can comply with GAAS?

A. Sure. Well, professional skepticism is kind of like an umbrella that applies to everything the auditor is doing while they're performing audit procedures.

But I mentioned some of this earlier, that the auditor is gathering audit evidence and so, of course, when I'm using evidence in that, I'm not talking about our litigation proceeding. There's audit evidence. And it must be

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sufficient and persuasive. I think I've talked about that.

But amongst the many considerations in auditing standards includes the notion that management's representations while they can be part of evidence and should be obtained in all cases do not provide sufficient appropriate evidence on their own about any of the matters in which they deal.

Inconsistencies in audit evidence or inconsistencies in information of -- as I mentioned earlier, on things that could be used as evidence is something to be alert for.

Auditors should resolve those inconsistencies to reduce audit risk. And the auditor is precluded from issuing an unmodified opinion until audit risk is at an appropriately low level.

And all of this -- in addition to having professional skepticism throughout the process, auditors exercise professional judgment, which should be

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informed, reasonable and appropriate in the circumstances.

Q. So there could be situations where an auditor after being hired to do the audit and after collecting all of the information from the client actually refuses to issue an audit opinion?

A. Yeah, there's no requirement for the auditor to issue an audit opinion if there's been -- if -- I mean, the goal is to issue an unmodified opinion. I think everyone wants that.

But if an auditor has a scope limitation either caused by circumstances or an imposition from the client, that is that they don't have the sufficient or appropriate audit evidence, then they're required in that case to disclaim an opinion and not issue an opinion.

So the standards recognize that as a possible logical outcome if the auditor is unavailable for circumstances to get the sufficient appropriate audit evidence.

Q. Okay. In looking at these

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slides, these are screen shots from the Raiders 2014 audited financial statements and, specifically, you have pulled out here the audit report that was included in those financial statements.

Can you first walk us through what's listed here as "management's responsibility"?

A. Sure. So this is the first page -- the report, I think, is two pages. But, as described, "management is responsible for the preparation and fair presentation of these financial statements in conformity with the basis of accounting used," which in this case for this engagement was a tax basis of accounting.

Q. And now could you walk us through EY's responsibility, as explained here?

A. Well, altogether it's a two paragraph statement. But the audit -- this is pretty standard language and from the standard. "Our responsibility is to

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express an opinion on these financial statements based on our audit."

Then they also describe, "We conducted our audit in accordance with auditing standards generally accepted in the United States. These standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement."

It goes on to have additional words, which you can read. But I'm highlighting that an audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant estimates made by management, as well as evaluating the overall presentation of the financial statements.

Q. Now, here EY audited two sets of financial statements, right?

A. Well, here in this matter, not in this --

Q. Sorry, that's what I meant,

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in this matter in this case.

A. Right, in this case, they did audit -- have two audits. They had the income tax based audit, which was December 31st year and then the conforming statement, which was a Generally Accepted Accounting Principles basis, which was March 31st. This is just a tax basis opinion here.

Q. And the Raiders tax basis financial statements, do you know the purposes that those were prepared for?

A. Yes. The Raiders was from a tax standpoint a passthrough entity. So it didn't pay taxes. Instead its owners report the various amounts on their tax returns. And so the tax basis is to -- in this case, is to facilitate that process so that the people who are responsible for taxes -- the partners of the Raiders have a basis to fill out their tax return and that the amounts used are reliable for that purpose.

Q. So, in this case, because the

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Raiders is a partnership, the endusers of the financial statements can use the amounts reported on the tax basis financial statements to compute their own tax liability?

A. Well, that's -- the objective of this report is to provide assurance that what they use in those tax returns is reasonable and based upon an audit free of material misstatement.

Q. And the second set of financial statements you mentioned were the conforming statements.

Do you know what those are used for?

A. As I understand, the conforming statements is -- that's used for reporting to the NFL, based upon NFL requirements.

Q. And when we look at this audit report that you have on the slide, it's addressed to the partners.

Do you know why that would be the case?

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A. Well, audit reports are, typically, addressed to the beneficiary or the group that hires the auditor such as a Board of Directors or so forth. But, in this case, they addressed -- this is pretty typical to address it to the beneficiaries of the audit service.

Q. Now, what is the opinion that EY, ultimately, provided for the 2014 Raiders tax basis financial statements?

A. Well, the opinion about the financial statements is listed in the paragraph, which we cleverly labeled "opinion." "In our opinion, the financial statements referred to above present fairly in all material respects the consolidated financial position of the partnership, in this case at 12/31/204 and the consolidated operations and cash flows for the year then ended on the basis of accounting described in Note 1. "

And so because it's a special basis of accounting, Note 1 stipulates what

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that basis is and that's the tax basis of accounting in this case.

Q. And, in addition, to providing that opinion, did EY make any representations to the Raiders and its partners in this audit report?

A. Yeah, I read it previously. But in the audit responsibilities, EY represents that -- you see the second line under the heading, "Audit Responsibility." "We conducted our audit in accordance with auditing standards generally accepted in the United States."

Q. And that would be GAAS?

A. That is GAAS. That's GAAS. The report says, "auditing standards generally accepted," but we refer to it as Generally Accepted Auditing Standards.

Q. Do you have an understanding as to whether EY made similar representations and issued similar opinions as to the Raiders tax basis financial statements for 2006 to 2019?

A. Yes.

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Q. And were those opinions that EY provided accurate?

A. No, because there have been errors identified in those financial statements, as reflected in the 2020 financial statements, and the misstatements that were in all of those financial statements.

Q. So the financial statements in those years were not free from material misstatement; is that correct?

A. Yes, I believe that's what the record reflects. That's correct.

Q. And you mentioned the conforming statements. I want to go back to that for a moment.

How were the conforming statement audits relevant to your opinions in this case?

A. Well, as I've been learning the facts of this case, the conforming statement audits were performed at about the same time, maybe a little bit later, but many times very close to the tax

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basis financial statements. And they included, I think, as you've seen different information in terms of how the revenue from NFL Ventures and accounts receivable were stated.

So it's striking to me that the conforming statement has audit documentation prepared by many -- prepared or reviewed by many of the same people that are doing the tax basis financial statements and yet they're not comparable. So I found that striking.

Q. And I know you said those audits were performed around the same time.

Do you know if they were performed by the same auditors at EY?

A. They were performed by many of the same people. And I'll have an exhibit of that later on.

But there's -- in EY's work paper documentation, they have indications of who signed off on a work paper on a particular date and so they can establish

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who looked at them. We can then look to see who did them and what dates they signed off on those work papers.

And so it's not a hundred percent overlap, but there is much overlap with those two engagement teams.

Q. And when the conforming statement audit presents information that's inconsistent with EY's tax basis audit, was EY required to address that inconsistency in its tax basis audit?

A. No. I think I described the professional skepticism as being alert for information that calls into question what you're using as audit evidence for an audit.

So I would say, yes, it is striking that that information is different and professional skepticism, in my opinion, requires that to be considered.

Q. Well, is it your opinion that EY applied the appropriate level of professional skepticism that's required by GAAS in conducting its audits?

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A. No. With regard to the audits of 2014 to 2019, my opinion is they did not.

Q. Now, can you describe for us -- I know we all have it generally in mind. But can you describe for us generally the accounting error that's at issue here?

A. Sure. And I've heard some of the testimony. So the accounting error is the recording in the tax basis financial statements of two Januarys, if you will, the prior season's remittances for 12 months and then the current season's January that was accrued into December. I've heard that referred to as the "January accrual" or the "December accrual," but that's what it is.

So a full 12 months of remittance and then a portion for the prior season and then the accrual of the January for the current season. So that's duplicate revenue and that built up over time.

Q. And just at a very basic

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level, are accounts receivable statements as to how much money the company is owed by another party?

A. Yes, accounts receivable is an asset that represents the amounts due from another party that -- well, should be valid and should exist.

Q. And the Raiders had an accounts receivable due from the NFL on their financial statements, right?

A. Yes, from -- in this case, yes, NFL Ventures, as we've seen in the record, yes.

Q. And what's your understanding of how the accounting error in this case impacted that particular account, the NFL -- due from NFL account stated as a receivable on the balance sheet?

A. Well, by accruing for the January amount and by recording the full season as well, then it started to build up because that January amount could only be paid once. And so, since it was only paid once, over the years that accounts

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receivable kept growing bigger than it would ever be collected because of that.

Q. Now, as part of its audits, was EY required to gain a high level of assurance that the Ventures receivable account, as it was stated on the financial statements at the end of each year, that it was properly valued and it actually existed?

A. Yes, yes, right. As I've mentioned, the goal of an audit is to get a high level of assurance. And so, with regard to significant accounts and important accounts for the audit client, then you are required to get high level of assurance for that.

Q. And, as part of its audits, was EY required to gain a high level of assurance that the Ventures revenue account was properly reported on the Raiders income statement?

A. Yes, yes, same answer.

Q. Okay. Can you explain to me what we see on this slide?

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A. Yeah, well this is some testimony from Mr. Gottlieb, the EY partner.

And I just want to, I guess, remind everybody that EY did identify the Ventures revenue and receivables as significant accounting issues subject to moderate risks of material misstatement, which I don't take issue with. But I just want to remind everyone that it's not just not Mintzer saying these are significant with moderate risk. This is EY saying it.

Q. Well, in the audit context, what does it mean when a contact is designated as significant?

A. It means as Mr. Gottlieb testifies that it's important to understand the accounting methodology used for those particular accounts and that it represents an important part of the financial statements that persuasive evidence should be obtained.

Q. And in the audit context,

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what is a "moderate risk"?

A. Well, remember, I mentioned an audit is an assessment of risk and it could go from nominal to low to moderate to high.

So moderate is kind of defined as something in between. It's more than low. Because low risk -- if an item is low risk, you can get some exceptions to not -- perform certain procedures like accounts receivable confirmation. But moderate is the assessment. That's not unusual for most -- for many accounts and representations. So it represents that there is a more than low level of risk in the various financial statement components.

Q. And the Ventures receivable account was designated by EY to have a moderate level of risk, right?

A. I believe so I. Think for each of the audits in question, yes.

Q. Okay. What is your opinion concerning the audit procedures EY used

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to test the Ventures revenue and receivables accounts?

A. Well, as I'll describe in more detail, I believe, they were inappropriate and didn't meet the standard of care required under GAAS.

As I say on this chart, EY's testing of revenue and accounts receivable was "fundamentally flawed." They failed to resolve inconsistencies that were evident in the audit evidence they were using and other red flags, as I'll describe, which led to them failing to gather persuasive audit evidence to support its opinion. And as a result then they were precluded from issuing the unqualified opinions that they issued.

Q. Okay. I'm on Slide 12. And here you have listed five different red flags.

Do each of the red flags you've listed relate to EY's testing of the revenue and receivables that count for Ventures?

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A. Yeah, these all deal with the issue at hand here. They're the Ventures revenue and receivables.

Q. And is it a combination of these red flags that caused you to reach your opinion that EY fell below the GAAS standards?

A. Yeah. An audit is a cumulative process. And as I reviewed the audit documentation and compared it to the auditing standards and my assessment of a GAAS audit, these are what I consider to be red flags that were evident in the documentation I looked at.

Q. Okay. So, first, let's focus on the Ventures revenue account.

What red flag was EY presented with in its revenue work papers?

A. So building it up, the audited financial statements did include more than 12 months of NFL Ventures related revenue. They included both a prior season's remittance, as I testified, so prior season plus the

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current season portion for January.

Q. So, in fact, when you look at this slide you presented, when does the double booking of revenue occur?

A. Well, each of these financial statement periods has two Januarys in it. But, for example, on the slide that we have on the screen now, the $20,077,333 is the current season January amount and that will then be included in the prior season's remittance of the 94,209,997 the next year when the next year season's remittance is earned.

So every financial statement has 12 months of prior season and then one month of current season. That current season then becomes the prior season next year and so on and so forth. And that's what's meant to be shown on the slide.

Q. And at the time when the Raiders record what we've been calling the "January accrual," has there been a double booking of that January revenue yet?

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A. Of that January revenue, no. That January is not double-booked until the next year when it becomes part of a big number. That's in this case the 94 million from 2015. It's part of that big number. So that's when it's booked. That's when that particular dollars are booked the second time.

Q. And when you say, that "big number," you're referring to the season remittance number, correct?

A. Correct.

Q. And do you know when the Raiders began booking the season remittance as revenue all at once as of March 31st each year?

A. I don't think I know. I recall Mr. Villanueva testifying that he joined the company in 2002 and it was a procedure they were using at that time. So, based upon that, it sounds like it was sometime before then.

Q. Do you know when the Raiders started booking the January accrual as

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revenue in each December?

A. Yes. That was -- 2006 is when they first booked the first January 2007 accrual into 2006.

Q. And, as an auditor, given that Ventures was a significant revenue account, was that new methodology in 2006 something that EY should have paid attention to?

A. Yes. An auditor is concerned about whether the accounting principles used in the financial statements are appropriate. And so, if there have been changes to those accounting principles, then that is something to consider. So if this introduction of a new methodology, then that would be something that I would have expected someone to have looked at that.

Q. And, as an auditor, if the January accrual methodology was adopted in 2006, abandoned in 2008, picked up again in 2009, would EY have focused on those changes in those audit years as

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well?

A. Well, as I mentioned, the consistency of accounting principles is important. So, if there's a change, whether you turn it on or turn it off, then that is something I would expect to have been looked at at the time.

Q. Now, with respect to the double counting of revenue, when you look at one calendar year, are the same January distributions counted twice in that one year?

A. The calendar year financial statements, no, not the same. It's the -- each of those calendar years have two January amounts, but not the same January amount. They have the prior January and the current season's January but not the same one.

Q. Okay. So turning to your slide, can you just walk us through what's being shown here with respect to the 2014 audit year?

A. Sure. We're honing in on the

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NFL Ventures-related revenue. And in the year ended December 31, 2014, the Raiders record the prior season remittance effective March 31st of $63.9 million.

Then in December, they accrued the January accrual in the December business. So that was part of the year ended 12/31/14.

So nine months after they recorded -- nine months after they recorded the full season, the January accrual was made.

Q. Then can you walk us through the 2015 year?

A. Sure. Well, then in 2015 when March 31, 2015 comes around, their policy was to record the prior season's revenue, which was $94.2 million. And so that's what was recorded on March 31st, which included the $20.1 million from -- that was recorded in the prior year. And then fast forward to December, there's the accrual that was made effective in the December business for the -- what was

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then the current January.

Q. And so, just to be clear, as of December 31, 2015, has the $18.8 million in revenue been double-booked?

A. No. That's what I'm attempting to show with the arrows. The $18.8 million, while it's a second January recorded in each of the years, it doesn't -- those specific dollars don't get double-booked until the next period where it's included again in the revenue and so on throughout this period.

Q. Now, what was the result of this accounting error?

A. Well, altogether from 2006 to 2019, the record reflects that the total error was $214 million with regard to this January accrual issue. And this shows the effect on each of the financial statements with regard to the January accrual error.

Q. So let's walk through some of EY's work papers to see how this was

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missed.

Can you explain for pus -- it looks like here we have EY's 2014 revenue work paper for Ventures, right?

A. Yes. This is part of the audit documentation sometimes referred to as work papers that was in the EY file that I reviewed.

Excuse me.

Q. And what's the purpose of this revenue work paper?

A. Well, this is a revenue work paper, which we could tell because it has a U-index. That's the indexing that EY uses for revenue work papers. And it shows the composition of what's listed here on the title of the work paper, the NFL Enterprises.

Q. And does this revenue work paper indicate that the Raiders were booking 12 months of revenue from the 2013 NFL season?

A. Yeah, I want to point out the yellow highlighting on what you see in

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front of you. I added that just so we can focus in on those numbers. All those other things on this schedule, I believe, the red and the blue, those were organic and native in the EY.

Q. Thank you.

A. So, then to answer your question, is that work papers are cross-referenced back and forth because an audit is a cumulative process where you get information from -- you can't put everything all on the same work paper.

So when we look at the EO1.3 which is another work paper, that's -- and the reason why that index is placed there is that shows where that number comes from. And as you see on that other work paper, I've got that called out above. It's described as 2013 season remittance earned.

So, again, this is 2014. So the current season is 2014. So the previous season is 2013. And so, as described, the 2013 season remittance is recorded in

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2014. And, as you see, it's -- in this case, it's correctly identified as April 1st, 2013 to March 31st if 2014, 12 months for the season remittance.

Q. And after the "remittance earned line," we see some additional entries for revenue.

Can you describe to us what those are for?

A. Well, sure. The one underneath it is the Ventures K-1 business loss. And I know there's been testimony that the financial statements indicated with regard to NFL Ventures, there's two streams of income, the K-1 income and the royalty income. So this shows the business -- the K-1 portion.

And then underneath it, we see the accrual of the January accrual.

And those are two specific amounts, which EY has summed up as $20,077,333. They have a Tick Mark C. And now I've called out now so we can see it.

Tick Mark C indicates that EY

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confirmed the January 2015 Ventures distribution. And we note for the confirmation that a $20 million distribution related to the 2014 season.

So, on the face of this, we see the prior season 2013 indicated in its totality and then the January for the current season indicated just for January on this work paper, so two seasons here.

Q. So, on the face of EY's revenue work paper for Ventures, you see 13 months of Ventures revenue?

A. Correct. And I added the red flag. It's more than 12 months and it's more than one season, as can be seen on the combination of these work papers and the particular marks.

Q. Why does presenting more than 12 months of Ventures revenue on this worksheet present a red flag that should be investigated and understood?

A. Well, since it's 12 months in the year, there ought to be 12 months of revenue that's accounted for.

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So the information that presents 12 months of the prior season and one month of the current season is somewhat anomalous to me, because how could there 12 months and 1 month, because that's 13 months. Each year has just 12 months in it.

So, on the face, it's information that seems to be inconsistent with the assertion that this is a 12-month financial statement.

Q. Well, if the January accrual was a separate revenue stream from the remittance, then wouldn't it make sense that you would have more than 12 months of Venture revenue?

A. If the January accrual was not related to the remittance and was a separate revenue stream, then, yeah, it could be something additionally added to that. So now the question is on what basis is it a separate remittance.

If it's not separate and apart, then it doesn't make sense. So the

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auditors need to consider that information and be alert for conditions which call into question that assertion.

Q. Well, when EY is being presented with different revenue numbers on this worksheet that clearly on its face relate to different NFL seasons using different revenue recognition methodologies, would you expect the auditor to obtain sufficient and appropriate audit evidence to make sure that revenue was properly stated?

A. Yes.

Q. And should the auditor document that audit evidence in its work papers?

A. Yes, audit documentation is meant to be sufficient to allow a reviewer to understand what happened and the significant conclusions reached. So, I think, that's a significant conclusion. So, if it was documented like that, if it was considered, that it ought to be documented.

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Q. And if management had told the auditor that the January accrual was a separate and distinct revenue stream from the remittance, would you expect that to be documented in the work papers?

A. I would.

Q. And if management had said that, would that be sufficient and appropriate audit evidence in the face of what's on this work paper for the auditor to conclude that revenue from Ventures was stated correctly?

A. Well, as I described before, management's representations are a part of audit evidence, but they're not to be exclusively relied upon without other evidence. So it's something to be considered but not exclusively based upon just a representation from management.

Q. Now, throughout the six-year period, so from 2014 to 2019, did EY ever take any steps to investigate this red flag that you've identified?

A. No. This was repeated over

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and over again.

Q. Okay. Now, our next slide you show the same work paper we just looked at but from the next audit year, right?

A. Correct. This is the U-work paper. So it's a revenue work paper for 12/31/15.

Q. What do we see here?

A. Similarly -- so here's the reference to E1O3 where the 94 million comes and you see it has the prior season, which is 2014.

However, I note in this case the auditors carry forward. It looks like the reference, but it did so incorrectly.

The 2014 season is really April 1st, 2014 through March 31, 2015. But it looks like that part of -- which is carry forward without careful attention to the -- in fact, the dates were wrong. But I do know the $94 million did refer to the year ended March 31, 2015.

And then similarly with regard to

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the $18 million they have, we confirmed the Ventures distribution and that the distribution related to the 2015 season. So, as I put in the red box above, the $94 million includes the $20 million January distribution recognized in the prior period.

Q. And if EY's auditors were applying professional skepticism here, should they have asked additional questions about these revenue items?

A. Right, professional skepticism requires the auditors to be alert and have a questioning mind to see if there are -- information comes to their attention which causes them to question what they're using as audit evidence.

Q. And in a properly conducted GAAS audit, how would an auditor exercise professional skepticism in the face of this information?

A. Well, they would obtain evidence to determine whether or not or

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consider the evidence they have as to whether or not the January distribution was unrelated to the remittance. And so that's what should have been done.

Q. Now, did you find this same what we'll call greater than 12-month inconsistencies, did you find that on each of the Ventures revenue work papers that EY produced from 2014 through 2019?

A. Yes.

Q. Now, looking at this slide, you show a Venture revenue work paper that's from 2013; is that right?

A. Yes.

Q. And what do we see here?

A. Yeah. Well, this is a work paper or a draft work paper. The entire audit file is not available, but it has been produced. It looks like the same revenue work paper summary for the prior year, for the year ended 2013.

And in a similar fashion, you see there the remittance and the reference to the other document, which shows that it's

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the prior season, and then the Tick Mark C, which corresponds to it, that is coming from the current season.

Q. You see the same red flag that you've discussed in the years 2014 through 2019 on the face of the 2015 work paper?

A. Yes.

Q. And other the numbers being different here to reflect the December 31, 2013 numbers, are the audit procedures EY is using and the methodology it's using for Ventures revenue the same as what we saw in 2014 to 2019?

A. Yes.

Q. Now, during this hearing, you've heard EY's witnesses claim that they did not realize that it was improper for the Raiders to recognize more than 12 months of revenue each year because they thought the January accrual and the remittance were separate revenue streams.

Do you recall that?

A. I do recall hearing that

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testimony, yes.

Q. Is that consistent with what you've seen in EY's Ventures related work papers?

A. No, it's not.

Q. What have you seen in the work papers?

A. Okay. So this is a note, Note 1. This is from the EY work papers. So this is a note they have referring to the Ventures account. It says, "This account relates to receivables from the NFL related to the amounts owed to the Raiders on different revenue streams related to international TV revenues."

And now we've just filled out the entire note.

And so it describes every -- in the middle it's every year the team receives a schedule K-1 from the partnership showing the team's allocated income loss and distributions and then it says "in addition each team receives a remittance or royalty that's reported outside the

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schedule K-1."

So...

Q. How many revenue streams does EY describe in its work papers as being derived from the Ventures relationship?

A. Well, I see two. There's the K-1 and then the remittance royalty extreme as described above that it looks like it comes from many contracts, the NFL enters in on behalf of the various clubs.

Q. And in EY's work papers, have you ever seen it describe a third revenue stream as being derived from the January accrual?

A. Other than what we just saw before on that work paper with the January accrual, no, I don't see it as another distinct stream.

This note which is repeated refers to the K-1 and the remittance.

Q. Now, in this slide, what have you included here?

A. Well, this is from the

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financial statements that EY audited that the Raiders issued. And so I looked to see what the financial statements asserted was the source of the revenue.

And the two highlighted portions show that they get -- the operating results of the investment are recorded as earnings. That's just -- that's the K-1 income.

And the partnership also earns a remittance royalty from the license of NFL rights negotiated primarily by the NFL, which is recorded as revenue in the period earned, according to the footnote. So these are the footnotes to the financial statements or the notes to the financial statements, rather, and they describe two evident streams of royalty to income.

Q. Sorry. In the notes to the financial statements, did you see a description for a third revenue stream from Ventures that would be related to the January accrual?

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A. No.

Q. Okay. So now on this slide this is a Ventures receivable work paper from the 2016 audit. What does this tell you about EY's understanding about how the January distributions were being used?

A. Okay. And, again, this work paper is just as EY did it. I've highlighted the yellow mark. I don't want anyone to misunderstand it. The yellow is highlighting that I did.

So what this work paper shows is that it shows the prior year balance in the accounts receivable, the theoretically unpaid portion of receivables. And then it shows activity for what they purport to be activity for the year, which they describe as two things; the net remittance and the accrued Ventures January 2017 distribution.

But then underneath it there is additional detail for the net remittance.

And so this is also -- I just want

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to also be careful that no one assistance I've got do the do the dots there because I've left out some of the details. It goes on for some of the months in the work paper in reality. I did it to fit on this slide.

But the 2015 season remittance, which now for the year ended 2016 would be the prior season is there being shown as recorded as a hundred million 906,000.

Then it shows payments that were made to come up with a what the work paper describes as a net remittance of 3.7.

But it's actually a negative number. It's a negative 3.7 which means mathematically that the cash receipts exceeded the amount that was recorded in that season.

So what I also am calling out for you is that the EY auditors did look at the prior year work papers when they prepared this, as indicated by the PY for the beginning balance of 72060 in the box

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to the right. This is the PY work papers. So I've got two years of work papers here. The current year is the big box and the prior year is the small box.

And as you can see the 72,060,759 is the ending balance which the auditors are indicating is the beginning balance from the next year. But right in there, right underneath it in that same box is the 18,864,000 of Ventures distribution and that was applied to the January distribution but then it's being applied now to the remittance for the next year.

So there's the 18864 in two years.

Q. So when we look at the 2016 receivable work paper, we see that there are cash payments there being listed from January, right, for the 18.8? You have highlighted that in yellow.

A. Yes.

Q. And is what you're saying that on this work paper those cash payments are being netted against the remittance amount?

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A. Well, that's what it's called. It's called net remittance by EY, net, means a subtraction is taking place. So they add the 100,906,000 2015 season remittance. Again, that's the prior year's season and then they're showing January, February, March, April -- it goes on, May, June, July, August, September, December. And when that math is done, the net remittance, which actually is a net overpayment, is $3.7 million.

Q. So does that mean that those January payments are being used to, essentially, pay down the remittance amount?

A. That's what's being reflected here that the 18 million 864 is being shown as a reduction of the 100 million 906 when in the prior year EY said they vouched the cash receipts. It was shown as a reduction of the 18,000,864 January distribution. So, since the payment could only come in once and be applied to

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only one revenue item and we see the revenue being recognized for January in the one year and then the next year, well, mathematically the receivable is just going to keep building up because there were only payments coming in one time.

Q. So, in the prior year, as you noted those are the exact same payments that they show that are going to be used to pay off the January accrual is that right?

A. Correct. This is just an excerpt from the prior year. But as it's indicated 18 million 864 is considered valid because it came in a subsequent cash receipt was vowed as I read.

But here's it's now being shown -- and that's being shown against the revenue stream of the January accrual but it looks here that the 18 million 864 is being shown as an offset to the revenue stream of the full season remittance.

Q. So, in the prior year, EY

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vouches the cash receipts that they see come in the door to confirm the January accrual. But when we look at the 2016 work paper, there's no way it's separated out. January is not separated out or distinguished in any way to indicate that the January payments are being applied to reduce the January accrual balance -- sorry, I can reword that if that was complicated.

A. Well, I think, as I described, the accounts receivable built up over time. It built up over time because the January amount was recorded twice in different seasons. But it was paid once. And, as it was not otherwise reversed, since it only could be paid once, it's going to keep building up.

And so this shows that upon inspection, the prior year's work paper -- while you can see the 72 million and I know that they used it for the purpose of prior year balance, I would suggest that an auditor being alert for information

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that contradicts or brings into question with a questioning mindset there is the 18 million 864 right there. And that 18 million 864 is similarly situated in the work paper.

Again, I've organized some of the columns differently. But these are two separate work paper -- I mean, I've truncated things to put them all on the slide.

Q. Okay. Let's talk about your second red flag. Earlier you said that GAAS has a requirement for external confirmations.

Can you just briefly remind us what the requirement is?

A. Right. Well, the auditor should use third-party confirmations for accounts receivable, unless the risk is low or the confirmations would be deemed to be ineffective.

Q. And was the receivable balance in this case material?

A. Well, the receivable was

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deemed to be a significant account. Their combined risk assessment was moderate, not low. They didn't document that sending confirmations was not being ineffective. And, in fact, they did send and receive confirmations directly from the NFL.

Q. So, in this case, is it your opinion that EY was required to send an accounts receivable confirmation in order to comply with GAAS?

A. Yes, the circumstances described in the auditing standards were present or, at least, the exceptions were not present. So EY was required to and well they did send confirmations out each year.

Q. And, generally speaking, is an external confirmation an important tool in detecting a potential overstatement in a receivable?

A. Yes, it's an important tool because if you get a third-party to provide you written -- it doesn't say

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that they're going to be able to pay it. But it's, at least, providing the auditor with evidence that the third party says, yup, we owe your audit client this money. Not necessarily you could pay it, but that that receivable does exist, according to looking at their records. So it's a regular procedure to use.

Q. Okay. So looking at this slide, is this an example of one of the confirmations that EY did send to the NFL on behalf of the Raiders?

A. Yeah. And I think we -- I believe these have been seen elsewhere in this proceeding. But this is an example of one of the confirmations that was used.

Q. And so can you explain the process for us?

These are transmitted by EY to the NFL; is that right?

A. Right. I mean -- well, the process is the auditor asks the client for -- to send out the confirmations. So

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they need to have the client management sign the authorization. The client management, as you see, Ed Villanueva did so in this case. It then returned to the auditors and the auditors are required to control the distribution and the receipt of the confirmations.

Q. And can you explain to us what's being shown here on this confirmation?

A. Well, this is the confirmation that we used each period. And it -- as you see, it says, "Please compare the balance shown below with your records and confirm the information agrees with your records or no details of exceptions, if any, in this space is provided below."

And this is the top part, which is just the request for the confirmation authorized by the CFO of the Raiders.

Q. Now, looking at the language it's asking the NFL to compare a balance shown below with the records. It doesn't say to confirm an accounts receivable.

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Does that matter?

A. Well, remember the Raiders -- the NFL doesn't consider it an accounts receivable. They would consider it an accounts payable. So you don't use the term accounts receivable in the confirmation for that reason, typically, but -- cause one person's receivable is the other person's payable.

So, in this case, they're asking what your records show you owe us at December 31st.

Q. And when the NFL is being asked to please compare the balance shown below, what does that mean?

A. I think it means exactly what it is. It's here is the balance shown below, does it agree with your records or not.

Q. Now, assuming this document was returned without exception, how would you interpret that as an auditor?

A. Well, I mean, in looking at this document as an accountant, I would

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believe that to mean this is the amount the NFL is admitting or agreeing that they owe the Raiders on this date.

Q. And could this document reasonably be interpreted to mean that the NFL is being asked only to confirm the January payment and not the full amount that it owes as of December 31st?

A. Well, I mean, I see the January payment is listed, but it also says, "balance owed." The signoff on the bottom says, this is our balance.

So, as an accountant, I mean, it looks like the balance.

Here it is on the next page. Thank you. The account balance shown above is correct.

So, as an accountant, I look at this and I conclude that this is the account balance at the time.

Q. And, also, on a confirmation is there a difference between asking for future payments owed or a balance owed? Do those mean different things?

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A. I don't think so. I mean, all accounts receivable are future payments, cause they haven't been made as of this date.

I mean, I think at the time these confirmations were sent out, these payments had already been taken place. But it's speaking from December 31st as to what the future payments will be.

So, I mean, I see Mr. Firestone's testimony and to what he believed it to be, but, as an accountant, it does look like the account balance.

Q. And, on the slide, we see three are three blank lines above Mr. Firestone's name.

Is that the space to note an exception, as we just discussed a few moments ago?

A. Correct. It's appropriate for the confirmation to have a place for the person to fill in, if they have any information which they believe is inaccurate or to explain the confirmation

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in any way.

Q. And would you have expected Mr. Firestone to note an exception in this space if the NFL owed the Raiders more money as of December 31st than the amount that was stated on the confirm?

A. Yeah, I would have expected it. I mean, it says the account balance above is shown as correct."

So I would have expected him to indicate an exception. That's my expectation.

Q. Now, EY has argued that this confirmation -- I'll back up so you can see it again -- that this was designed only to confirm the January balance.

What do you think about that?

A. No, I mean, I see that testimony. I've read that testimony and I understand that.

I mean, I find it enigmatic because at the end of each period there is a -- there's the representation in the Raiders financial statements that they're owed

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money from the NFL. And so now the question is let's send them a letter to see what amount is reflected on their records.

I mean and that's all that's being asked for is what do your records reflect.

And so it seems enigmatic about -- I mean I know a lot else about the January payments of course but that seems odd to me because it's an unusual circumstance in my experience for a company to send out just one months -- if there was a limited amount other than the full balance I mean you could send out confirmations for an element or for a portion or for an invoice. But based upon the words used it just doesn't strike me to mean that. But I do understand that's what they've testified to.

Q. Okay. So looking at this slide, what's the difference between the amount that EY confirmed and the amount

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that was actually stated on the receivable balance on the financial statements?

A. Yeah, so this really here demonstrates the importance of the unconfirmed difference. So the balance on the books and records of the Raiders is in the first left column, 59 million.

The amount confirmed is 20,077,000, which leaves this difference, which leaves $39 million that the records say is owed to by the company. So there is no evidence now being received in the confirmation in the event this $39 million is due to future payment sources.

Q. So given that EY has a confirmation for the amount you've seen and we can see the difference, what audit procedures did EY use to test the unconfirmed amount that's in the yearend accounts receivable balance?

A. With regard to the yearend balance that exceeded the accounts

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receivable confirmation, I don't see any other evidence being performed. The subsequent cash receipts that I described earlier is only on the January accrual. But it's not on the difference in this remittance.

Q. Now, we've mentioned this audit procedure a couple of times, the vouching of subsequent cash receipts.

Could you just briefly describe for the Panel what that audit procedure entails?

A. That's a standard procedure. So, if an entity such as the Raiders is representing they're owed money from another party, one way to confirm its existence and, certainly, determine whether it's collectible is to look at the records after the balance sheet is over and see what subsequently came in.

So those are subsequent cash receipts. And EY performed that procedure with regard to the January accrual.

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Q. So, if I understand correctly, for the January balance, EY confirmed it with the NFL?

A. Yes.

Q. And they performed a procedure of vouching the subsequent cash receipts to see -- to confirm that the balance existed. So there we have two audit procedures.

What's the audit procedure EY uses to confirm the remaining balance of the receivable?

A. Yeah, I don't see any specific substitutive procedures that EY performed on that. The cash receipts in the work paper I had seen earlier showed you earlier was for the cash receipt prior to the end of the year, not after the end of the year.

Q. And when you're using the audit procedure of vouching cash receipts, is it important that those cash receipts are subsequent to the financial statement date that you receive those

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cash payments subsequent to the financial statement date?

A. Those are the only ones that can be subsequent cash receipts and they reflect the existence of the receivable, if they come in subsequent. So, if they come in before, then it's already been conducted from the accounts receivable balance so it can't provide evidence to that ending balance.

So, yes, they must be subsequent in order for it to provide evidence for the existence or for collectability.

Q. Well, if EY is vouching cash payments that are received during the year wouldn't that audit procedure provide it some that the end of year balance exists?

A. No. That shows or it establishes that the amounts that were claimed to be collected to arrive at that ending balance were collected but not the resulting amount was collected at least as of that audit period.

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Q. And when you engage in that procedure called the subsequent vouching of cash receipts, under GAAS, do you need to match those cash receipts with a specific remittance or invoice?

Do you need to know what those cash receipts are paying down?

A. Oh, sure the auditor should attempt to determine that the cash receipts apply to the amount being collected as opposed to it being due to say a new sale or new service that came up.

So it's important for the auditor not to just merely apply all receipts after the yearend as evidence, but that it really related to something that was recognized in revenue before yearend.

Q. Now, you're aware that in EY's work papers it states that the Ventures payments were paid a full seasons in arrears, right, that they were paid a subsequent season?

A. Yes.

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Q. If EY understood that the Ventures payments were being made at full seasons in arrears, would it have been possible for them to match the payments coming in with the previous remittance amount to see if they reconcile?

A. Well, if they were being paid in arrears, then they should be paid then after the amounts were recognized. So, yes, you could look at the prior season's remittance and then see the next 12 months to see if, in fact, they were paid in arrears.

Q. And could EY have performed that procedure prior to issuing the audit report in May or June of each year?

A. Right. So audit procedures can take place up until the time you sign and date your report, which in this case was May or June. So the subsequent period could go all the way to May or June. So they had that long to look at the subsequent cash receipts.

If the assertion is that the

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revenue recognized on March 31st was paid over the next 12 months, if that's the assertion, you can look at the next 12 months and compare the totals.

Q. Because all of those receipts would have been received by the Raiders by March 31st following the financial statement date; is that right?

A. Correct. Well, that would have been based upon the representation that is embodied -- that I heard Mr. Villanueva testify to that's embodied in the assertions -- well, in the financial statements and in the work papers, yes.

Q. And if EY had engaged in the procedure of the subsequent vouching of cash receipts, what would it have found?

A. Well, we see little pieces of it in that the cash receipt exceeded the amount. It would have exceeded the amount, because they weren't paid in arrears. They were paid for the most part during the season.

So, since the next season's for the

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most part were higher, those subsequent cash receipts would have looked higher than what would have been at that March 31st period. So they would have seen the mismatch at that point.

Q. And then it would have exceeded that amount because the remittances were going up each year?

A. Because the cash payments did not, in fact, represent payments in arrears. They represented payments made one month in arrears as opposed to 12 months in arrears.

Q. Now, EY's witnesses claim they understood that the ending balance to exist, because they saw cash payments exceeding the ending balance being made in the following year.

Is that an audit procedure that EY used prior to issuing its audit reports in this case?

A. Well, I have seen evidence to that effect myself too, yes.

Q. And if EY was engaged in the

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audit procedure of evaluating the cash payments in the subsequent year to make sure that they paid down the ending balance as stated in the financial statements, would we see evidence of that in their current year work papers?

A. Yeah, if they did. I mean, the cash receipts, as I've testified before, perhaps showed the existence perhaps of the beginning balance. But right now they're issuing an opinion on the ending balance. So the question is at ending balance does it exist, who is going to pay it and when.

Q. Okay. So I want to turn back just for a moment to EY's assertion that it's unable to get a confirmation of the full ending balance from the NFL because the NFL had a policy against confirming the full ending balance.

Do you think EY's belief that a yearend balance confirmation would be ineffective was reasonable under GAAS?

A. No, I don't.

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Q. Why not?

A. Well, as I describe here, the confirmations were received during each NFL audit. Mr. Villanueva did authorize those confirmations and Mr. Firestone, the one who was signing those confirmations, said he would have signed or he did sign the -- in fact, he believed those confirmations were the ending accounts receivable balance and, actually, they were the ending accounts receivable balance.

Q. Now, what do we see on this slide?

A. This is a notation in each -- this is in each of the work papers, but this is just for -- okay, you're going through it.

It's a tick mark or a note that EY made with various labels and it says, "Due to the difference between the NFL and the Club's yearend, 3/31 versus 12/31, we confirm the NFL Ventures payments due and to be received January 2019, as of

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December 31st for the accounts receivable balance."

That's just listed as a statement of fact that due to these different seasons between their audit client, the Club, and the confirming party, the NFL.

Q. Does EY ever state in its work papers that it spoke to the NFL and was informed by the NFL that it had this policy?

A. I don't recall seeing that.

Q. And does EY ever state in its work papers that it spoke with Raiders management and was informed that the NFL had this policy?

A. In the work papers, I don't -- I'm not recalling a notation to that effect. I recall this notation in each year, which is really listed as a statement of fact, at least, in the work papers. I mean...

Q. Does it even make sense to you that the NFL could not confirm the end of year balance because of a

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difference in fiscal years?

A. Well, it's different than my experience as an auditor that companies have different fiscal years. It's very common.

And the question being asked is not what does our yearend balance show. It's what do the month end balance show. In fact, it's not an unusual procedure for auditors to send out interim confirmations, that is balances owed in the middle of the year or 3 months before or 11 months into the year.

And so it is my expectation that the difference in fiscal years -- well, at least, in my experience, I haven't seen it as a significant difference in why a customer -- why a paying party would not be able to confirm a balance to it.

Q. Okay. This brings us to your -- or, I guess, I skipped one of your slides. We can go over this quickly.

What does this slide show?

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A. Well, I think, that's fine. I think the Panel has seen Mr. Firestone's testimony where he said he was not aware of policy of not confirming accounts receivable. And so, you know, it sounds like had he been reached out to, that this could have been cleared up.

Q. Okay. So let's turn to the next red flag you identified. And that's that EY -- can you describe to us your third red flag?

A. Sure. Well, the red flag is the assertion that NFL Ventures revenues paid a full season in arrears. And I think we clearly see in the documentation that EY notes, typically, distributions for a given season are made in the subsequent season. In fact, I think, we looked earlier that's what's in the financial statements too.

Q. We see that same note in the financial statements year after year?

A. Well, this is -- right. In EY's work papers they document each year

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that, typically, distributions for a given season are made in the subsequent season.

Q. What does it mean when you say something is paid a season in arrears just in layman's terms?

A. Well, as I understand as an accountant, the season I understand from the NFL now ends on March 31st. So that would mean the NFL would be collecting monies from all of the people they're contracting with for an entire season putting it in their bank account and then start to be paid over the subsequent season, you know, 12 months later.

That's what that says to me as an accountant. Someone collects the entire season and then solely pays it out over the following season.

Q. Well, is there anything unusually or inherently questionable about payments being made in arrears?

A. Well, nothing unusual about payments being made in arrears. I think

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most payments are made in arrears, but it's, typically, 30 days, maybe 60 days or 90 days. But I have not experienced a one year in arrears in my career.

Q. Now, could EY have learned from its understanding, as documented here, that the payments were being made in a subsequent season, could it have learned if that was correct by talking to other EY audit teams that also audited NFL related entities?

A. Well, it's my understanding that the NFL paid all of its teams in the same fashion as they paid the Raiders. So EY was auditor of other NFL teams and so, certainly, that information was known to EY, generally, and to people on this engagement team that served multiple NFL clubs.

Q. But just as a matter of professional standards or professional ethics, whatever it may be, could EY have referred out to those other EY audit teams and learned how distributions and

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payments worked for Ventures?

A. Sure, no. Part of -- well, part of being an auditor is to understand the client and end stream in which it operates.

And so, if you're with a big firm, you have the fortune of having industry experience around the network of your firm. And if you have that information that's available to you, you could, certainly, ask that information within your network.

I mean, it's, typically, what's touted by the firms as to why they should be your auditor, because they have the industry experience.

Q. Now, I believe you heard Mr. Villanueva testify at this hearing that he had the same understanding as EY that payments were being made a season in arrears, right?

A. Yes, I've heard him testify that was his understanding.

Q. And is it sufficient for EY

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to rely on management's understanding in terms of when payments are made, when they're conducting their audit of the Ventures revenue and receivable accounts?

A. Well, I think, as I mentioned, representations from management, claims from management are basis of audit evidence, but they can't be relied on exclusively to all else. And professional skepticism, however, requires the auditors to consider information, which impugns what they're using as audit evidence. So it sounds like a valid starting point, but it's not the ending point.

Q. And this statement we see in the work paper year after year, that, typically, distributions for a given season are made in the subsequent season, was that correct?

A. No.

Q. Okay. What is this slide showing?

A. Well, this shows some

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testimony the Panel has heard from Mr. Garcia, the EY partner. And according to this testimony, the answer is, yes, to the question that Mr. Villanueva communicated to the audit team that he had no visibility into the timing and purpose of the distributions, yet the work papers indicate that the distributions for season were, typically, made in the subsequent season.

So it strikes me as inconsistent information that to have either no visibility or subsequently made in the -- from the prior season. So those -- I can't match those up.

Q. And turning to your next slide, can you walk us through what you're showing us here?

A. Sure. This is a work paper, a known documentation from 2016. It is an actual Schedule 3. It's part of a capital roll forward schedule that the NFL provided to various teams.

And now, to be clear, this is from

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the work papers, but I did a lot of augmenting to this. All the colors and the labels, I've added that.

So what this Schedule 3 shows is it shows the column that purports to be the receivable, according to what the NFL is sending to the clubs, and then it shows payments being made from April through March. So a full year's -- full season's payments April through March.

And now here it shows not the prior season royalty. It shows the current season shown. It's 109 million.

And then it ends up with the balance at March 31, 2017 of only $13 million.

So it has the season remittance included in its entirety and a receivable balance of only $13 million. So what I put in the little red flag is that, according to this information provided by the NFL, the accounts receivable could not have been 90.7 as of 12/31/16, if given this amount in the schedule of

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$1.2 million.

You could just see little basic amount that $13.2 million included some distributions in January, February and March and that's not going to get you up to $90 million.

Q. So you are, essentially, just taking the 13 million balance in March and seeing if you subtract the payments received if you get to the December balance, correct?

A. Right.

Q. To see if it makes sense?

A. Right. And that's a typical thing an auditor would do with questioning mind would be going in both directions, so going from March 31st back to December 31st.

Q. Now, you mentioned that this came from EY's work papers, correct?

A. Correct.

Q. This document?

As an auditor, would it be appropriate to just look at one number on

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a document like this? So, for example, the remittance number which, we know EY's auditors used to confirm the remittance payment and to ignore all the other numbers presented on the document.

A. Well, I mean, I think, especially not in this case, because we've seen testimony that there was supposedly no visibility into what the payments were. And information was unavailable from the NFL.

Well, here is information from the NFL that seems to really answer all of our questions. It shows the remittance. It shows the payments.

So it seems right here. While I understand that it may have been used for another purpose, I'm still -- I'm supposed to be alert -- that's professional skepticism audit. I'm alert for conditions that have information that causes me to question my other audit evidence. So I think being vaguely alert would say, well, here's information from

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the NFL that seems to answer the inquiry as to the payment situation.

Q. And because EY knew this document came directly from the NFL, where would it fall in that hierarchy of audit evidence that you described earlier?

A. Right. Information from a third-party source is considered more reliable than the people making the representations.

Q. And so would EY have been exercising its professional skepticism as required by GAAS if it simply looked at the remittance number indicated on the spreadsheet and did not look at this document from the NFL to see that it listed cash distributions, listed them by month and listed the receivable balances for Ventures?

A. Well, that's certainly not being alert for information, which would cause me to critically assess what the period I'm auditing. So that's why professional skepticism tells the

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auditors our standard says be alert because the auditor is constantly interacting with other documents and they need to be alert for circumstances like this.

Q. Now, the red flag you've identified here is, actually, that there was this misunderstanding that the Ventures revenue was paid a full season in arrears.

Why does that matter? Why does it matter that EY understood that the full payment was being made in arrears? What does that understanding matter in terms of the receivable balance?

A. Yeah, sure. Well, as I told you, I think, normally payments are one month in arrears. But if you had a circumstance where you had 12 months in arrears, that would imply a larger account receivable balance.

So consistent with that understanding would be a larger accounts receivable balance. So that's what part of the problem is.

Q. And if EY had endeavored to obtain the correct understanding as to when payments were made for Ventures, could that have been reconciled with the receivable balance noticed on the financial statements?

A. Well, it would have not reconciled with the balance on the receivable. So, yes, it could be reconciled, but it would have shown a difference. So I want to make sure I'm answering your question.

It couldn't be reconciled to the unadjusted balance.

Q. Okay. Let's look at your next slide. Here we see this is the Ventures receivable work paper for the conforming statement audit for the period ending March 31, 2015.

Can you explain to us what you included this slide for?

A. Yeah. And I think the Panel has seen this too in other cases.

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So this shows the conforming audit as of March 31st and it shows that the end balancing is just $21 million. So, again, it shows the remittance and the payments to result in only a $21 million number.

So the 2014 -- as I say -- oh, I've got one -- I think -- there you go.

The 2014 season AR at 3/31/15, 21 million, could not have only been 21 million, if it was 74 remittance was paid after March 31st.

So that's the -- that's why this arrears issue is so important.

Q. And that's another red flag that in your professional opinion EY should have identified?

A. Should have made the connection be alert for this information. That would have caused an auditor to question the representations embodied in the financial statement and made by management, yes.

Q. Now, in your opinion, given

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the inconsistencies that you see on the face of EY's work papers both when you look at the financial statement work papers and this conforming statement work paper with, do you think EY should have reached out to the NFL to resolve those inconsistencies?

A. Sure that was an option available to them, yes.

Q. And was EY prevented in any way from reaching out to the NFL to get information to resolve these inconsistencies?

A. Not according to the record I've seen in terms of the authorization that was given by Ed Villanueva to reach out to the NFL and there's other testimony that it indicated that they were authorized to speak to the NFL or...

Q. Okay. Let's go to your Red Flag No. 4.

And here we have a screen shot of EY's Ventures receivable work paper from the 2014 audit, right?

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A. Correct.

Q. And can you describe for us what you're showing here?

A. Sure. I mean, we've seen a similar work paper here. But the reason I discuss this a little bit here about the earlier testimony about is the season really paid in arrears.

So, according to this work paper, the net remittance -- and you see this in the box Tick Note A. It says 27 million net remittance balance pertains to net cash received. Again, it's not a balance. It's actually an overpayment. This is a negative number. It means more was coming in than what was being recorded.

So the documentation, I think, as we saw it earlier was a smaller amount. It was maybe 3.7 million. But, in this case, it's a remarkable $27 million was overpaid based upon -- there's the prior season remittance and here's subsequent receipts only through December 2014. So

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only going through December, 2014 still three more months left, they've overpaid. So this is information that should have been alert to that indicates the representation should be questioned.

Q. And this overpayment is a red flag that the Ventures payments were actually not made a season in arrears?

A. Yes. As an accountant, I have a question -- I mean, I see the auditor noted, it's a net remittance balance. And I think that's kind of a failure there too. It's not a net remittance balance. It's really an overpayment.

So I think that the connection was not being made that while they vouched those cash receipts, it resulted in this -- in this unusual number that a questioning mind should have been alert for.

Q. Okay. So that brings us to your 5th red flag.

Can you please explain to us what

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we see on this slide?

A. Yeah. When I looked at the documentation that was available to me, for example, with regard to the tax work papers and the audit of the conforming statements is -- we see remarkably the same cash receipts, in this case January through December 2014. So you see cash receipts in 2014 and here's some of the same ones. So the left side is the tax work paper and the right side the conforming work paper.

And in one case on the tax side, the cash receipts are being shown as a collection of the 2013 season remittance. And on the other side they're being shown as a collection to the 2014 season remittance.

Q. And does it make any sense at all that EY would be applying the exact same Ventures payments to two different season remittance amounts?

A. Well, it doesn't make sense that the same dollar amount would be

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applied to different -- paying off a different debt. One's the debt from the prior season. One's a debt from the current season. And these work papers were considered by many of the same people at EY.

Q. And is it your opinion that this is an inconsistency that that EY's auditors should have identified and followed up on in order to perform a GAAS compliant audit?

A. Yeah, in fact, if you could turn one more, I noticed some additional information for the Panel.

Q. Fine.

A. What I put in this last red box here is information I've extracted from what's being produced. These are the audit sign off information, the people sign off information that I got from the EY records.

So the top line is the conforming statement signoffs. And the bottom line is the tax basis signoffs.

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And there is, as I testified, there are some differences. But you could see that these work papers were looked at about a month apart by I think as Mr. Gottlieb and Mr. Garcia and then Mr. Johns looked at both of those. Some other people are involved with them as well. But at least with regard to those we know we had the same set of eyes looking at this information approximately one month apart and again sceptical audit is to be alert for conditions that cause them to question information.

Q. Now, in this slide you included some sections of GAAS.

Why did you include these?

A. Well, okay, as I note on the bottom, this is many different sections. So I don't want to mislead anyone. I put them in boxes. But this is just some of the sections that I've highlighted for the Panel on some of the particular GAAS sections. They're written kind of tiny on the bottom AU-C 200, 230 and so forth.

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I mean, I've testified at length about these are some of the requirements and applications guidance in the auditing standards that lead to -- that I'm relying on for my conclusions that EY failed to follow Generally Accepted Auditing Standards.

So this is a summary mashed together of five different auditing standards and various sections that are relevant.

Q. And what was your conclusion as to whether EY complied with GAAS in connection with the 2014 to 2019 financial statement audits?

A. Well, as I describe here, they failed to properly understand the Ventures account. They failed to resolve the numerous inconsistencies in the information. They failed to gather sufficient appropriate information on what was represented in the financial statements. And I think they clearly dropped the ball on requisite

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professional skepticism and due care to be alert for information that causes them to reconsider information they're using as audit evidence. So, in short, they failed to comply with GAAS in those audits.

Q. And what was your conclusion as to whether EY complied with GAAS in connection with 2006 to 2013 financial statement audits?

A. Well, I didn't have the work papers for 2006 to 2013, because they haven't been produced. They've been discarded by EY. So I don't believe I have a sufficient basis to form that conclusion.

However, I've noted that the -- well, the financial statements are misstated those years period. The circumstances are similar in terms of the Ventures January accrual. And we have little pieces of paper -- little bits of documentation from some of the periods that are consistent with it.

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So, I mean, I think, it's indicative and it increases the likelihood. But I feel I have a sufficient basis to opine with regard to 2014 to '19. But I'm just informing the Panel on what was available to me to be produced for 2006 to 2013.

Q. Thank you, Mr. Mintzer.

MS. BROWN: I have no further questions.

THE CHAIRPERSON: Okay. Why don't we take a recess.

Fifteen minutes, ten minutes, Ms. Van Winkle?

MS. VAN WINKLE: I think 15 please.

THE CHAIRPERSON: Fifteen, you got it.

(Recess taken 11:16 to a.m.)

THE CHAIRPERSON: Okay. We're back on the record.

Counsel, you may proceed.

CROSS-EXAMINATION BY MS. VAN WINKLE:

Q. Mr. Mintzer, nice to see you

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again. Thank you for coming in today.

A. Yes.

Q. I should probably sit closer to the microphone.

In the three and a half years that you were a partner at EY, you only spent one-third of your time on audit services, correct?

A. Approximately. It varied over those three and a half years, but cumulatively I would say that's right.

Q. And over your entire career, the only time you have signed audit opinions as a partner is during those three and a half years at EY, correct?

A. Correct.

Q. And during those three and a half years, you signed no more than 15 to 20 audit opinions, correct?

A. That's about right, yes.

Q. In the last four and a half years since January of 2020, more than 90 percent of the opinions that you've offered in litigation have been on behalf

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of Plaintiffs, correct?

A. Yes, in terms of testimony or reports I've written, that's correct.

Q. You mentioned earlier the Clarity and Convergence Project that was happening while you were on the audit standards boards, correct?

A. Yes.

Q. And, in fact, you said at, approximately, 9:45 this morning, "We issued all those standards."

Do you recall that?

A. I don't recall the specific words I used but, yes, I recall when I was on the audit standards board we issued a big standard that combined many of the exposure drafts that we issued one at a time.

Q. The purpose of the redrafting for the Clarity and Convergence Project was not to create additional audit requirements, correct?

A. (No response.)

Q. And if it helps you, I am

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quoting from the Guide to Clarified and Converged Standards that you pointed me to at your deposition.

A. Sure. Well, the purpose of the Clarity and Convergence Project, I think, was to -- well, I think, as I testified to, it was to converge the US auditing standards with the international standards of auditing and to the extent that we could adopt the ISIS, we did. But, in many cases, we added additional procedures into the ISIS.

Q. The guide that you pointed me to at your deposition says that, "The purpose of redrafting is for clarity and convergence and not to create additional requirements," correct?

A. Yeah. I mean, that is the -- we created --

Q. Yes or no or I don't know?

A. I think I would say that is the purpose in general, yes.

Q. Thank you.

I believe you said on your direct

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exam that you have no opinion as to whether EY complied with GAAS for the 2006 to 2013 audits, correct?

A. Right. I don't have a sufficient basis to have an opinion, as I testified to the Panel.

Q. You have no opinion; is that correct, as to whether they complied with GAAS?

A. No. I believe I testified that the information I have seen for the 2006 to 2013 period is consistent with the information from 2014, but my opinion is that the -- is that it's -- I mean, it's suggestive of or increases the probability, but I don't have an actual opinion that they violated GAAS in those periods.

Q. You don't know what inquiries the audit team performed, correct?

You don't have the work papers? You don't know what inquiries they performed, right?

A. I think some of the testimony

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did go into some of the inquiries, but as I've testified, I don't have the full set of work papers to know the inquiries they performed in total.

Q. You don't know what the evidence was in the work papers for those years, correct?

A. Not in total, because we just have a little bit of the work papers left in the record.

Q. You don't know what procedures were performed in those years, correct, as documented in the work papers?

A. Well, we don't have many work papers. So that's correct. I've heard testimony from some of the auditors that referred to procedures performed during these periods.

Q. And you don't know what judgments the audit team made in the 2006 to 2013 audits, correct?

A. Not individually but I'm aware they issued -- Ernst & Young issued unqualified opinions during this period.

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Q. And, as a result, we don't have the work papers, you agree it would be just speculation to opine that EY did or did not comply with GAAS, correct? I'm happy to pull up your deposition testimony?

A. Yeah, could I see that?

Q. Yes, yes.

MS. VAN WINKLE: Jason, can you please pull up Day 1 at Page 416.

Q. I asked you at Line 15, "You don't have an opinion that EY did or did not comply with GAAS, correct?"

And you answered, "I don't express that. That's correct."

Do you see that?

A. Yes, I do.

Q. And we were speaking about the 2006 to 2013 audits in this portion of the deposition, correct?

A. That's correct.

Q. Okay. And then I asked you 416 starting at Line 20, "It would just

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be speculation that EY did or didn't comply with GAAS given that we don't have the work papers?"

You answered, "I believe -- I believe that's correct and that's why I don't issue that finding."

I asked you that question and you gave that answer, correct?

A. Yes, that's correct.

Q. Mr. Mintzer, you were offered as an expert in the Poirier versus Silver Wheaton Corp litigation, correct?

A. Correct. That's a Canadian litigation and I provided an expert report at a certain part of their proceedings. That's right.

Q. And you were offered as an expert on international accounting standards, correct?

A. That's my recollection.

Q. And the court found all of your opinions inadmissible, correct?

A. Well, I don't know what the Court found. I know that the Court --

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this was in a proceeding in Canada where the Plaintiffs are seeking permission to file a class action lawsuit. And as I understand it the court did not grant that permission.

So I don't believe I've seen anything more specific on that.

Q. Do you remember I asked you at your deposition about the Poirer case and you told me you were unaware of being excluded as an expert?

A. That's right.

Q. Did you go try to find out whether you had been excluded after that, after the deposition?

A. Yes, I did. I asked my team what their knowledge was of that.

Q. What did they tell you?

A. I think, as I just testified, that the Court did not find for the Plaintiffs to continue on with the litigation. But that's all we knew.

Q. And let me get to my copy. One second.

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A. Sure.

Q. Oh, sorry. You need a copy. I am so sorry.

A. Got it, thank you.

Q. So the page numbers on this document are in the upper right-hand corner.

And on the first page, do you see that this is -- this relates to the Poirer versus Silver Wheaton case, correct?

A. Yes.

Q. And if you turn to the second page, you can see that it's the beginning of an opinion, correct?

A. Correct.

Q. And if you go to Paragraph 110.

A. I see it.

Q. The Court declined to admit your offered expert evidence, correct?

A. I see that, yes.

Q. And the reason the Court did that is you are not qualified in international auditing standards --

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sorry.

I think this was IFRS; is that correct?

A. That's what I can see, yes.

Q. Okay. "You're not qualified in International Financial Reporting Standards. You have not behaved impartially and your evidence is neither relevant nor necessary because it has no factual foundation in the admissible, credible and reliable evidence."

That's why the Court excluded your evidence, your opinions in Poirer, correct?

A. I see that here, yes.

Q. Before you put it away, go to Page 109. I just want to point out one example of why the Court found you impartial and not credible.

A. Paragraph 109?

Q. 109D. Paragraph 109D on Page 18 starts, "Mr. Mintzer's impartiality has also been called into question."

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And then on the ninth line, the Court wrote, "In quoting IFRIC in this manner, Mr. Mintzer omits the key preamble. The effect of which is that the obligation" -- and then it goes on to describe what the particular accounting issue is.

But then the Court continues. "Mr. Mintzer endeavoured to explain away the missing key language by calling it a drafting shortcut, but I have difficulty with that explanation. It is not a shortcut. It is key omission consistent with improper advocacy and not impartial expert evidence."

That is an example that the Court cited of your impartiality, correct?

A. Yes, that is what I recall. I'm being asked about this in my deposition. I did cite the full amount in my first report but not in my reply report.

Q. And when I asked you about this in your deposition, you said you

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were unaware of it, correct?

A. At the time, that's correct.

Q. Okay. You, also, offered an opinion in O'Brien versus Maxar Technologies, correct?

A. Yes.

Q. And you were again offered as an expert on International Financial Reporting Standards, correct?

A. I believe that's correct.

Q. And the Court again found all of your opinions inadmissible, correct?

A. I believe that is true.

Q. And I asked you about this opinion at your deposition and you were unaware -- sorry, this exclusion at your deposition and you were unaware of it right?

A. I was unaware -- I was aware of how the Court ruled in favor of the defense, but I wasn't aware that my opinions were excluded.

Q. Okay. And did you go look up that decision after your deposition?

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A. Yes.

Q. And what did you learn?

A. I found that it in fact the Court did not use my opinions.

Q. Right.

And the Court didn't do that because you are not a properly qualified expert because of your willingness to step into the roll of advocate, correct?

A. That is what this Court said.

Q. And the Court in Maxar, also, said that you "made obvious errors in your report, which lead the Court to conclude that your evidence is not helpful and because it is unhelpful, it is unnecessary," correct?

A. That is what that said.

Q. And the Court also said that the errors in your analysis reflect either your lack of understanding of International Financial Reporting Standards or your willingness to advocate for Plaintiffs both of which are problematic, correct?

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A. I do understand that's what the court said, yes.

Q. And then the Court gave some examples of your problematic behavior. For example, you opined in your report that IFRS has certain -- a certain requirement. But on cross-examination you agreed that IFRS has no such requirement, correct?

A. I do recall that in the ruling. I don't -- quite frankly, I don't recall that from my deposition, but I do recall that from the ruling.

Q. But you've reviewed that decision since we've had the deposition, correct?

A. Yes.

Q. Okay. The Court also criticized you for applying the applicable accounting standard in such a way as to ignore a key component of it because your report omitted words from the standard, correct?

A. I do recall language to that

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effect.

Q. The Court also found other aspects of your analysis troubling, for example you repeated used the phrase "reasonable possibility" to describe the likelihood that the defendant had failed to comply with accounting standards even though reasonable possibility has no particular meaning under the accounting standards, correct?

A. Well that was -- that I do recall reading that. That was the instruction I received from Counsel that that was the relevant term to use for this Canadian case. And they described reasonable possibility to me as a 10 to 20 percent possibility.

Q. You actually testified in that case that you used reasonable possibility, because it had -- in a way in which it was used in the dictionary, you didn't, at least, as explained in the opinion, offer the explanation that Counsel instructed you to use that,

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correct?

A. In my opinion and in my deposition, I believe, I said that. But that is how it happened is that it was, as I understand it the level of probability in these motions for leave to file the class action lawsuit and I was instructed that that's what the term reasonable possibility meant, which is I found it a key term to use in my report.

Q. Right. You didn't, at least, as described in the opinion it doesn't say that Counsel instructed you to use that language, correct?

A. Not that I -- well, excuse me, the opinion of the Court or my opinion --

Q. The opinion of the Court.

A. Oh, okay. Yes, I think that's correct.

Q. In fact, what the Court did say was, "It is simply not credible that Mr. Mintzer would just happen to use the phrase 'reasonable possibility' more than

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30 times in his report without meaning to invoke the legal standard."

That's what the Court said, correct?

A. I do understand that. But as I explained to you, the lawyers that retained me said that was the standard that I should apply and that I should use the common meaning of the term, which they believed was 10 to 20 percent.

Q. The Court also criticized you for ignoring publically reported facts, correct?

A. I think that may be there correct.

Q. The court also criticized you for refusing to make reasonable concessions on cross-examination, correct?

A. I recall that.

Q. The Court also criticized you for taking things out of context, correct?

A. Well, I recall that too.

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Q. And the Court criticized you for making factual errors correct?

A. I do recall that.

Q. You wrote an 82-page report setting aside your appendices you wrote an 82-page report in this case, correct?

A. Oh, boy, I don't remember.

Q. Does that sound about right?

A. Excuse me which is this case.

Q. I'm sorry, this case here.

A. Oh.

Q. And I'm actually speaking about -- because you wrote two reports, the preliminary report --

A. Okay, sorry. I thought we were still talking about that case.

That sounds about right.

Q. And then you had another 50 pages of appendices, correct?

A. More or less that sounds about right.

Q. And one of those appendices was specifically devoted to GAAS standards, correct?

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A. Correct. It was a high level summary of some of the key GAAS standards.

Q. How many times did you use the words "professional skepticism in that report?

A. I don't recall.

Q. Does 22 sound about right?

A. I don't recall.

Q. How many times did you use the word professional judgment in your May report?

A. I don't recall.

Q. Does zero sound right?

A. I don't recall.

Q. How many times today did you use -- that you personally not Ms. Brown in her questions use the phrase "professional skepticism"?

A. I don't know.

Q. Is does nine sound about right?

A. Well I would refer to the record. But I mine I know I said it

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multiple times. I can't say whether nine is about right or not.

Q. And you also used the phrase "not being alert," which means the same thing as lacking professional skepticism, correct?

A. It's certainly a component of the professional skepticism standard, yes.

Q. And you used that repeatedly this morning as well, correct?

A. I recall that, yes.

Q. And you only uttered the words professional judgment once in your testimony, correct?

A. Today?

Q. Today.

A. Gees, I, quite frankly, don't remember. I thought I did it more than once but I don't recall.

Q. I was counting it was once. I am happy to have someone check me, but I have the tally marks right here.

A. Okay. Well, I just answer

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the questions, as they come up. So I don't do the workout.

Q. You acknowledge or you said this morning that professional skepticism is an "umbrella" in GAAS, correct?

A. Correct. It's an overarching concept in the auditing standards.

MS. BROWN: I have to object to the interruptions to the witness. I think the witness should be allowed to answer and not be interrupted. This is the second time.

MS. VAN WINKLE: They are leading questions that require a yes no or I don't know.

MS. BROWN: No.

THE CHAIRPERSON: No, there's no rule that a question requires a yes, no or I don't know.

[RULING] But what you can do is if you believe that the answer is not responsive to the question, you can move to strike

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it and I'll strike it from the record.

MS. VAN WINKLE: Okay. Thank you.

THE CHAIRPERSON: And, also, don't interrupt the witness, okay?

MS. VAN WINKLE: Yes, your Honor.

BY MS. VAN WINKLE:

Q. "Professional judgment" is also an umbrella concept in GAAS, correct?

A. Agreed.

Q. GAAS requires the auditor to exercise judgment throughout the entire planning and performance of the audit, correct?

A. Agreed professional judgment, yes.

Q. And that includes planning the audit, correct?

A. Correct.

Q. It includes things like

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obtaining an understanding of the entity that requires professional judgment, correct?

A. Yes.

Q. It includes identifying and assessing risk of material misstatements meaning that requires professional judgment, correct?

A. Agreed.

Q. Professional judgment is also required in the performance and execution of the audit when you're executing the procedures, correct?

A. Yes.

Q. It applies to designing procedures, correct?

A. Yes.

Q. It, also, applies to the evaluation of whether the auditor has obtained sufficient appropriate audit evidence that requires judgment, right?

A. Professional judgment, yes.

Q. Okay. The judgment -- well, actually let me ask you this.

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You pointed out in your direct testimony that it's rare for GAAS to require a particular procedure, correct?

A. I recall that answer, yes.

Q. And that's because professional judgment is so important to the application of the guidelines that are set out in GAAS, correct?

A. Among other reasons. I testified that facts and circumstances are different between audits. So it's hard for the standard to stipulate required procedures.

Q. Okay. One of the reasons that it's rare for GAAS to require a particular procedure is because professional judgment is so important to application of the guidelines set out in GAAS, correct?

A. Agreed.

Q. And, in fact, auditors can perform all different kinds of procedures during the course of an audit, what they, in fact, end up doing is a matter of

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judgment, generally, with these rare exceptions, correct?

A. Yes, it should be.

Q. Okay. And it's possible for two or more different judgments to simultaneously be reasonable judgments, correct?

A. It is possible, yes.

Q. And just because one person disagrees with another person's judgment that doesn't mean that the judgment that an auditor made is necessarily unreasonable, correct?

A. Agree.

Q. Auditors also make the judgments that they make based on the facts and circumstances at the time they are performing an audit, correct?

A. Correct.

Q. And, in fact, professional judgment isn't just important, it's essential to the proper conduct of an audit, correct?

A. Agree.

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Q. I think you already said this. But professional judgment applies to determining whether the auditor has obtained a sufficient understanding of the entity, correct?

A. I agree.

Q. And that would be things like understanding the entity's operations, correct?

A. That's an element, yes.

Q. Understanding its investments, correct?

A. Yes.

Q. Understanding its accounting policies, correct?

A. Yes.

Q. And an auditor doesn't have to document every management inquiry or judgment that it makes about obtaining its understanding of the business, correct?

A. I agree.

Q. That too, the documentation of its obtaining an understanding is a

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matter of professional judgment, correct?
A. Agree.
Q. And in fact, it's not necessarily for the auditor to document the entirety of the auditor's understanding of the entity in matters related to it, correct?
A. Not the entirety, I agree.
Q. And, in fact, it is neither necessary nor practicable for the auditor to document every matter considered or professional judgment made in the audit, correct?
A. Of course.
Q. And despite the significance of professional judgment to the performance of an audit, you cited professional judgment zero times in your report and only once today during your testimony, correct?
A. Well, I'm going to say as I answered previously, I don't recall how many times I cited it in both those documents, in both those circumstances.

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Q. Audits have inherent limitations, correct?

A. Yes.

Q. And, in fact, the concept of reasonable assurance is one of those inherent limitations, correct? Well let, me ask it differently.

Reasonable assurance is not absolute assurance because there are inherent limitations in an audit, correct?

A. Yes, I agree with that, sure.

Q. And, as part of that, what an auditor does is determine whether evidence is persuasive rather than conclusive, correct?

A. Agree.

Q. And, again, determining whether an auditor has obtained reasonable assurance, sufficient appropriate audit evidence, that too requires the application of judgment, professional judgment, correct?

A. Agree.

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Q. The principal inherent limitations are actually the nature of auditing itself, correct?

A. It's part of the nature of the auditing itself, yes.

Q. Meaning, the nature of financial reporting is itself an inherent limitation that an audit faces, correct?

A. Agree.

Q. The nature of audit procedures themselves are a principal inherent limitation in whether an auditor -- well in an audit?

A. Agreed. It's all back to the same premise I testified about not obtaining absolute assurance yes.

Q. And the need for an audit to be conducted within a reasonable period of time and so as too achieve a balance between benefit and cost is also an inherent limitation in an audit, correct?

A. Yes, it's one of the considerations yes.

Q. And that's one of the reasons

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that an auditor doesn't run every single issue all the way to ground and look for conclusive as opposed to persuasive evidence?

A. I agree.

Q. Raiders can't and don't look at every piece of a company's information, correct?

A. Of course not. I agree.

Q. And the auditing standards recognize there is a balance to be struck between the reliability of information and its cost, correct?

A. I agree.

Q. And, also, an auditor -- actually, you said this morning that your opinions are based in part on your experience as a forensic accountant.

Do you recall that?

A. Correct.

Q. You agree that an audit is not a forensic investigation, correct?

A. Correct.

Q. They have different standards.

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An audit is performed under GAAS or whatever the applicable auditing standard is in the AICPA, for example, has different sets of standards for different forensic services, correct?

A. I agree.

Q. The scope of procedures performed in an audit, in a forensic investigation is different, correct?

A. Likely, that's the case, yes.

Q. "Likely" or it is?

A. Well, it depends what the nature of the forensic engagement but they are typically different scopes.

Q. Typically an audit involves things like sampling and testing, correct?

A. Yes, that is correct.

Q. And a forensic investigator digs deeper and looks for conclusive evidence as opposed to just persuasive evidence, correct?

A. Yes that's possible.

Q. Is that typically how it

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works?

A. Well it depends on the scope of the forensic engagement.

Q. In an audit an auditor may assess that management has integrity and rely on management's representations, correct?

A. That's correct. As I testified they may rely on them but need to be alert for information that contradicts them.

Q. Okay. And in a forensic investigation, the investigator, typically, does not rely on management's representations, in fact, most of the time they're advising management, correct?

A. Well, it depends on the scope of the forensic investigation. So sometimes that's correct. Sometimes that's not.

Q. Okay. A forensic investigator may also use hindsight in its investigation, correct?

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They're looking for all the information that's available, correct?

A. It's possible. Again, it depends upon the scope of the forensic investigation that's being done.

Q. But in the context of an audit, the auditor doesn't use hindsight and, in fact, its opinions are confined to the facts and circumstances known to the auditor at the time, correct?

A. Well, correct. The auditor bases their opinion on the facts and circumstances known at the time. I mean, there is an auditing standard that describes hindsight to the effect that if facts come to the auditor's attention that impugn a prior opinion they've issued, they must take that into account.

Q. If that happens, correct?

A. Of course.

Q. Another inherent limitation of an audit is that management may fail to provide complete relevant information, correct?

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A. I agree.

Q. And the auditor cannot be certain of the completeness of information, even though the auditor has performed audit procedures to obtain assurance that all relevant information has been obtained, correct?

A. I agree the auditor cannot be certain.

Q. Another inherent limitation in an audit is the potential effect of fraud, correct?

A. Correct.

Q. And the potential effects of management fraud are particularly significant, correct?

A. They could be, yes.

Q. Okay. GAAS states the potential effects of the inherent limitations on the auditor's ability to detect material misstatements are particularly significant.

You agree with GAAS, correct?

A. Yes, of course.

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Q. Okay. And, in fact, then GAAS actually points to fraud, particularly, fraud involving senior management or collusion, that is a particularly significant inherent limitation in an audit, correct?

A. I agree that's what it says.

Q. And given all of those inherit limitations in an audit, the subsequent discovery of a misstatement does not itself indicate that the auditor failed to comply with GAAS, correct?

A. That's fair.

Q. And, in fact, there's an unavoidable risk that some material misstatements go undetected, correct?

A. I agree. That's part of not being able to obtain absolute assurance. That's correct. That's audit risk.

Q. You're familiar with AU-C 240, correct?

A. Yes.

Q. The title of that is, "Consideration of Fraud in a Financial

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Statement Audit"?

A. Yes, yes.

Q. AU-C 240 provides that the risk of not detecting a material misstatement resulting from fraud is higher than the risk of not detecting one resulting from error, correct?

A. I agree.

Q. And in fact, it points to things like forgery, deliberate failure to record transactions or intentionally misrepresentations being made to the auditor as examples of fraud that create inherent limitations on an audit, correct?

A. I agree those are cited, yes.

Q. And it, also, points to collusion as something that may cause the auditor to believe that audit evidence is persuasive when it is in fact false, correct?

A. That is a provision in that standard. That's correct.

Q. And, in fact, GAAS also

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points out that management is in a unique position to perpetrate fraud, correct?

A. Agreed.

Q. And they are in a better position to do that than just an employee, correct?

A. I agree, typically that would be the case, yes.

Q. And that's because they're in a position to directly or indirectly manipulate accounting records, present fraudulent financial information or override control procedures, correct?

A. Correct, the standard describe those circumstances, that's right.

Q. Okay. You were aware at the time that you issued your May 10th report, that's the report with your GAAS opinions, correct?

A. Yes.

Q. Okay. You were aware at the time that you issued your May 10th report that whistleblowers had reported concerns

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about Mr. Villanueva and Mr. Badain engaging in intentional financial misconduct correct?

A. Yes, I'm aware of the testimony evidence to that effect.

Q. You were aware of it at the time you issued your May 10th report correct?

A. Yes, yes.

Q. You were also aware at that time that the Raiders had conducted an internal version into purported financial misconduct by management correct?

A. I was aware of that.

Q. Is you were also an aware that the internal investigation had concluded that Mr. Badain and Mr. Villanueva acted intentionally with respect to the StadCo/TeamCo misallocation of revenue and expenses, correct?

A. I am -- I was aware of that finding at the time yes.

Q. You were aware that

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Mr. Villanueva and Mr. Badain had been fired correct?

A. Yes.

Q. And you were also aware that EY's forensic investigation theme was shadowing the investigation had concluded that there was a lot of evidence to suggest that Mr. Villanueva and Mr. Badain engaged in misconduct intentional misconduct with respect to reporting Ventures's revenues and receivables, correct?

A. I'm aware of text to that effect in their findings, yes.

Q. You're aware of that at the time you issued your May 10th report, correct?

A. Yes.

Q. And you were also aware at the time you issued your May 10th report that EY's work papers documented that EY believed that there was sufficient evidence with regards to Ventures to establish intent on the part of

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management, correct? It's in one of the work papers you reviewed.

A. I don't recall the context of that.

Q. Okay.

A. So I looked at a lot of work papers. I just want to be careful that I don't remember everything.

Q. Sure. You listed on your materials considered EY's memo that's titled, "Noncompliance With Laws and Regulations."

Do you recall that?

A. Generally, yes, not specifically.

Q. Okay. And that memo states that "EY believes that sufficient evidence exists with regard to the Ventures issue to establish intent of management," correct? Any reason to disagree with that?

A. Well, what I don't recall. It's wise for me to say I don't remember.

Q. You also reviewed

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Mr. Malmlund's deposition before you issued your report in this case?

A. Yes.

Q. May 10 report?

A. Yes.

Q. But you didn't review Mr. Badain or Mr. Villanueva's deposition before you issued your report in this case, did you?

A. That's correct.

Q. And you also didn't even mention AU-C 240 considerations of fraud in a financial statement audit" in your May 10th report, correct?

A. Well, I don't -- I don't recall.

Q. You don't recall mentioning it correct?

A. I don't recall so I'm uncertain if I mentioned it or not in the report.

Q. Okay. Management's responsibilities are a core premise of GAAS, correct?

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A. Yes. As I testified management's responsibility are distinct from the auditor's responsibility.

Q. Management's responsibilities are a core premise of GAAS, correct?

A. As I said, yes.

Q. As you testified earlier, management and not the auditor is responsible for the fair presentation of the financial statements, correct?

A. For the preparation -- preparation of -- yes, that's correct.

Q. Okay.

A. That's correct.

Q. Management is also responsible for the design and implementation of internal controls to prevent and detect misstatements, correct?

A. I agree.

Q. Management is also responsible for providing the auditor all relevant information?

A. I agree that they're

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responsible for providing all relevant information and respond to auditor's inquiries, yes.

Q. Management also has primary responsibility for preventing and detecting fraud, correct?

A. Agree.

Q. And it's important that management place a strong emphasis on fraud prevention, correct?

A. It's general proposition. I completely agree with that, why.

Q. That's what GAAS says, right?

A. Okay, well I -- it sounds like a good idea so I can't say I recall every quote but I agree.

Q. And GAAS also states that that involves a commitment to creating a culture of honesty and ethical behavior which can be reinforced by active oversight by those charged with governance, correct?

A. Agree.

Q. Because of those significant

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responsibilities that management has, the auditor must obtain management's written acknowledgment of its responsibilities as a precondition of the audit engagement, correct?

A. Yes.

Q. Management representations also provide necessary audit evidence, correct?

A. Yes.

Q. And, in fact, GAAS requires that the auditor obtain a written management representation letter before it can conclude the audit, correct?

A. Absolutely. That's correct.

Q. And if management -- or if the auditor cannot obtain the requisite written representations from management, it can't issue its opinion, correct?

A. I agree.

Q. One of the representations that the auditor is required to obtain from management is that the auditor has been provided with all information

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relevant to the audit, correct?

A. I agree.

Q. The reason management's responsibilities are a core premise of GAAS because management runs the business, correct?

A. I agree.

Q. The auditor's don't run the business, correct?

A. They couldn't run the business and be independent auditors, yes.

Q. And the depths of the overall understanding of the entity that is required by the auditor is less than that possessed by management in managing the business, correct?

A. Yeah, of course.

Q. The company has superior knowledge of its books and records compared to the auditor, correct?

A. Yes, that's correct.

Q. And the company's management can access their internal records in the

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format they desire, correct?

A. To the extent permitted by their recordkeeping, yes, they get to access the information.

Q. You wrote in your report in the SBB research case that, "a company's management can access internal records and obtain information in the format they desire."

You wrote that right?

A. Yes they certainly can do that. Sometimes it's too expensive for them to get it all a the way they want to but that is the objective of management I agree.

Q. And you acknowledge that an auditor's knowledge is limited to what the auditor acquires during or in connection with the audit, correct?

A. That's correct. I think that's generally what the auditing standards reflect.

Q. And you also knowledge that management's failure to fulfill its

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responsibilities as described in GAAS can adversely impact a properly planned and executed audit, correct?

A. Yes, it can.

Q. Okay. Are you familiar with the concept of two way communication under GAAS?

A. Generally, yes.

Q. Alright. It's in AU-C 260 right?

A. Again I don't have it all memorized but it's definitely AA concept in GAAS.

Q. And in fact two way communication that means the auditor talks to management but management also talks to the auditor right?

A. That's how it should be, yes.

Q. GAAS recognizes that the -- recognizes the importance of effective two way communication in an audit of the financial statements, correct?

A. Yes.

Q. And effective two way

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communication is important in assisting the auditor in obtaining relevant -- sorry let me say that again?

A. Yeah.

Q. Effective two way communication is important in assisting the auditor in obtaining information relevant to the audit, correct?

A. I agree.

Q. And, specifically, effective two way communication is important for obtaining an auditor's understanding of the entity, correct?

A. It is important, yes.

Q. And effective two way communication is also important to management's and those charged with governance effectively discharging their responsibilities under GAAS, correct?

A. Maybe I misunderstood the question. Did you say management discharging their responsibilities under GAAS? It was a long question I may have lost it.

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Q. Sure I'm happy to ask it again.

Effective two way communication is important in assisting those charged with governance in fulfilling their responsibility to oversee the financial reporting process, correct?

A. I agree.

Q. Mr. Villanueva and Mr. Badain were members of management, as it's described under GAAS, correct?

A. Yes.

Q. And they were also members of the Raiders charged with governance, correct?

A. Yes.

Q. Going back to your report, you mention management's responsibilities only once in your May 10th report, correct?

A. I don't -- I recall mentioning it. I don't recall how many times.

(There is a discussion off

the record.)

Q. Yeah I'm happy to hand it out. But let's just see if we can do it on the screen.

MS. VAN WINKLE: Jason can you please pull up Tab 2. And could you go to Paragraph 54.

Q. That introductory clause, while the Raiders management was responsible for the preparation and fair presentation of its financial statements," that's the only portion of your report where you mention management's responsibilities, correct?

A. That's quite possible, yes. My report was about EY's performance, but I do recall this passage here.

Q. Okay. That's actually where I was going next.

You don't have any opinions here on management's conduct correct?

A. That's correct.

Q. You don't have any opinions here on whether management complied with

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its financial reporting responsibilities?
A. That's correct. I've told the Panel about EY's responsibility.
Q. And you don't have any opinion about whether management complied with its responsibilities as described in GAAS, correct?
A. I think I agree with that. I don't have opinions about management's performance.
Q. Okay. You reviewed Mr. Goolsby and Mr. Richmond's reports from this case that were served in, roughly, June, correct?
A. Correct.
Q. And even after receiving those reports, when I deposed you, you still said you have no opinions whatsoever on management's conduct in this case, correct?
A. Correct. The scope of what I'm telling the Panel is about EY's conduct.
Q. And that's despite the fact

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that AU-C 240 recognizes the impact of fraud on the effective performance of a properly planned audit and despite the fact that there are serious allegations of fraud in this case at the time you served your May 10th report?

A. Correct, I evaluated EY's performance, not management.

Q. But you do know how to opine on management conduct, correct?

A. Yes, that is possible.

Q. Okay. You're certified in -- I think you said this this morning.

You're certified in financial forensics, correct?

A. Correct.

Q. And you are a certified fraud examiner correct?

A. Correct.

Q. And you actually spent more time on engagements involving management conduct than you do on matters involving audit issues, correct?

A. Well, involving management

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conduct in the preparation of financial statements and financial statements management preparers, yes.

Q. You testified in May that the engagements I spend on management conduct such as that financial statements where the audit is not at question or internal controls or other reporting issues exceeds the amount of time that I spend on those matters with auditing issues involved."

You gave that testimony, correct?

A. Yeah, I think I just said that same thing. Financial statements where the audit is not involved, yes.

Q. And engagements where the audit standards are at issue are less than half of your engagements, correct?

A. Correct.

Q. And more than half of your engagements relate to management conduct, correct?

A. In the preparation of financial statements or in internal

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controls over financial reporting yes.

Q. Okay. For example, you issued a report just last year in the SEC versus SBB research group case, correct?

A. Yes, I did.

Q. And it was your opinion in that case that SBB's management utilized two different sets of valuation values and performance measures, one set to current investors and one set to prospective investors that called into question management's integrity, correct?

A. Correct. That was part of the evidence that was produced in that matter as based upon the evidence and the testimony of witnesses, that's correct.

Q. And you also opined in the SBB case that it was your opinion that the company should have disclosed certain information to the auditor during the audits given its relevance to material financial statement assertions, correct?

A. Yes, there was specific reasons for that but yes that's correct.

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Q. You also issued a report in Valeant Pharmaceuticals in 2022, correct?

A. That sounds about right, why he.

Q. And there you offered the opinion on management's conduct that evidence indicates the company's management's intention to overstate operating results, correct?

A. Correct. That was part of the scope of my investigation.

Q. Okay. But you were never asked to and didn't issue any report on management conduct in this case?

A. Correct.

Q. Okay. This is a good natural breaking point for me if we would like to break for lunch?

THE CHAIRPERSON: We'll break. Five minutes? How much would you like.

MS. VAN WINKLE: I think 30 is fine.

THE CHAIRPERSON: 30 is

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fine.

MS. VAN WINKLE: Yes.

THE CHAIRPERSON: Okay, cool.

Alright. Everybody take a break, relax take a breath. We'll be back in 30.

(Lunch recess taken to 1:04 p.m.)

THE CHAIRPERSON: Okay. Let's go back on the record.

Q. Okay. Welcome back Mr. Mintzer.

A. Thanks.

Q. You spoke this morning about the procedure that the confirmation procedure, correct?

A. Correct.

Q. You agree that for the 2014 to 2019 audits with respect to the Ventures AR balance, EY's audit procedure was designed to confirm only the amount of the January payment, correct designed?

A. I understand that's what the

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design was.

Q. And you disagree with EY's judgment to send a confirmation request for only the amount of the January payment, correct?

I'm happy to point you to your deposition testimony.

A. Yeah, yeah. No I...

I mean, I think I agree. I mean I testified that I believe that they should accepted out a confirmation for the balance. But I think the balance was the January payment. So I'm having a hard time answering the question in the way asked.

Q. Okay. You testified in your deposition that, "it's just an unsound judgment to send a confirmation request for only the amount of the January payment, correct?

A. Yes. In context for a portion of the outstanding receivable yes.

Q. And you also testified that

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it was accounting 101 that EY needed to send out an stream confirmation request for the entirety Ventures account balance, correct?

A. Correct. That's basic accounting -- auditing procedure to send a confirmation for the entire balance.

Q. Okay. And by the full balance you mean the full 12/31 balance correct as opposed to a January payment?

A. The balance as purported to be the outstanding balance on 12/31, yes.

Q. And you also testified during your deposition up like what you testified today, that you've never even heard of a circumstance where a company would only confirm a portion of the balance, correct?

A. What was I testified?

Q. You testified in your deposition that you've never even heard of a circle where a company would only confirm a portion of the balance, correct?

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A. A portion of an accounts receivable balance as I believe in my deposition that you could certainly confirm elements of an other items.

Q. Sorry, one second.

A. Sure.

Q. Oh, I'm sorry. I'm looking at the wrong page number. Give me one second.

Okay. If you turn to Page 358 of your deposition.

A. Okay, hang on. I'm on 358.

Q. Okay, Line 6.

A. Yes.

Q. I asked you, "If you're sitting there as an auditor and you know that other companies like Walmart and many others as a policy matter don't do accounts receivable confirmation, why is it so crazy in your view to think the NFL wouldn't do a 12/31 confirmation?"

Do you see that question?

A. Yes.

Q. And you first gave an answer

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about WalMart.

But then on Line 19 you said, "I've never heard of the circumstance where a company would only confirm a portion of the balance."

You gave that testimony, correct?

A. Yes.

Q. And, in fact, GAAS doesn't require an auditor to send a confirmation for the full balance of an accounts receivable, correct?

A. Well, it just refers to accounts receivable. It doesn't refer to the balance in particular.

Q. GAAS says that the auditor should use external confirmations for accounts receivable, correct?

A. Correct.

Q. And it doesn't say that it has to use -- that the auditor has to use an external confirmation process for every account, correct?

A. Agreed.

Q. Meaning, every accounts

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receivable account, correct?

A. Agreed.

Q. And it also doesn't say that the auditor should send a confirmation request for the full balance of an accounts receivable account?

A. I agree. It just says accounts receivable. It doesn't say the full balance.

Q. You also agree that one of the factors to consider when designing a confirmation request is the ability of the intended confirming party to confirm or provide the requested information, for example, individual invoice amount versus total balance?

A. Yes, correct.

Q. So GAAS expressly contemplates the situation in which an auditor might send something -- might send a confirmation request for something less than the total balance of accounts receivable, correct?

A. Yeah, there might be those

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circumstances, yes.

Q. I believe you mentioned this in response to Ms. Brown's testimony, that GAAS also provides that the auditor doesn't need to send an accounts receivable confirmation request when the procedure will be ineffective, correct?

A. Yes.

Q. And GAAS recognizes that the willingness or ability of a party to respond is a factor in determining whether sending a request for confirmation would be ineffective, correct?

A. Agree.

Q. And GAAS, also, recognizes that a counterparty may not respond for a variety of reasons, for example, it could be too costly, correct?

A. Possibly.

Q. That's what GAAS says, correct?

A. Okay, yes.

Q. GAAS, also, says they might not respond because it's too time

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consuming, correct?

A. Indeed.

Q. A counterparty might not respond because they account for transactions in a different currency, correct?

A. That could be a possibility.

Q. Or the recipient might just operate in an environment in which responding to confirmation requests is not a significant aspect of day-to-day operations, correct?

A. Yes.

Q. And, in fact, you pointed in your testimony in the deposition to companies like WalMart that do have policies of not responding to accounts receivable confirmations, correct?

A. Correct. That was based upon some experience I had, yes.

Q. GAAS also recognizes the concept of alternative procedures, correct?

A. Yes.

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Q. For example, in the case of a nonresponse to a confirmation request, the auditor should perform alternative procedures to obtain relevant and reliable audit evidence, correct?

A. Agreed.

Q. And you agree that in this case, the way in which the audits were designed was to perform alternative procedures on the Ventures AR account, correct?

A. On a portion of it, yes, that's correct.

Q. Okay. You cited Mr. Firestone's testimony in your direct exam that he understood that he was confirming a full receivable balance, correct?

A. I recall that, yes.

Q. GAAS acknowledges that it's possible that a counterparty responds incorrectly or misunderstands the confirm, correct?

A. Indeed.

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Q. And that's another inherent limitation in an audit, is that the recipient of the confirm might just misunderstand or not respond accurately, correct?

A. Indeed, that's possible.

Q. You also cite Mr. Firestone's testimony or cited, I should say, Mr. Firestone's testimony that the NFL would have confirmed a full yearend Ventures AR balance, correct?

A. Correct.

Q. When was the last time Mr. Firestone signed an audit confirmation for one of the Raiders audits?

A. Oh, I...

I don't remember, sorry.

Q. It's true that the last one Mr. Firestone signed was in the 2018 audit, correct?

A. I tell you my memory is not clear on that part. So I'm going to say I don't recall, specifically.

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Q. Sitting here today you're not aware of Mr. Firestone ever signing another request for confirmation of really any NFL confirmation after the 2018 audit, are you?

A. I think that's fair.

Q. Do you know who signed the confirmation request after Mr. Firestone?

A. Yeah, I do. But I don't recall. I just don't recall.

Q. You don't know a name?

You mean, you know, it was someone different, but you don't know who it is?

A. Yes, I believe that's correct. No, that is my recollection, yes.

Q. EY's work papers point to the difference in the yearend between the Raiders and the NFL as the reason that the EY audit team sent a request to confirm only the January payment, correct?

A. Correct. I went over that in my direct as a statement of fact listed

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in their work papers.

Q. And by the difference in yearend, we mean the fact that the Raiders were operating on a 12/31 basis and that the NFL was operating on a 3/31 basis, correct?

A. Yes.

Q. And your opinion as you testified in your deposition is that explanation is not just unreasonable, it's entirely preposterous, correct?

A. Yeah, I don't -- I don't recall every word I said, but I agree with that proposition.

Q. And you agree with -- well...

You also said that EY's work papers don't document any discussion with the NFL about the accounts receivable process, correct? It was about this morning.

A. Ask the question again, please.

Q. You testified at, approximately, 10:55 this morning that

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EY's work papers don't document any discussion with the NFL about the accounts receivable confirmation process?

A. Well, I don't remember the context, but I do remember that testimony, yes.

Q. And that's not true, is it?

A. Well, again, I'm not sure of the context, because certainly they -- the confirmations are documentation from the NFL.

Q. It's true that the 2020 audit work papers document a conversation with the NFL about the accounts receivable process, correct?

A. Okay. And the scope of my testimony today was on the 2014 to 2019 audits.

MS. VAN WINKLE: Could we please pull up JX-1282.

Q. And it should be in the binder in front of you.

(Arbitration Exhibit JX-1282 was referenced.)

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A. Did you say 182?

Q. 1282.

A. Oh, okay.

I'm here.

Q. Okay. Do you see that this is a request for confirmation dated April 29, 2019?

A. Yes.

Q. And this is in connection with the 2018 yearend audit, correct?

A. Yes.

Q. And the confirmation request is directed to Mr. Dorrance, correct?

A. Directed to who?

Q. Mr. Dorrance at the top, Will Dorrance, National Football League.

Are you on the right document?

A. Oh, no.

Q. 1282.

A. Sorry.

Q. That's okay.

A. I'm sorry, it's after that.

Oh, yes, I was looking at 1283.

I do see the one to 1282.

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Q. Okay. And that's not Mr. Firestone, correct?

A. Yes, that's correct.

Q. You're not aware of any evidence that Mr. Firestone received this confirmation or you just don't know sitting here today?

A. Yeah, I don't know.

Q. And if you look in the box where EY's tick mark is, EO1, and then the box that's drawn in the middle of the page.

Do you see that?

A. Yes.

Q. This is a request for confirmation for the national TV payments for January 2019, correct?

A. Correct.

Q. And I want to pause just a minute so we're all on the same page.

You're aware that EY, typically, sent a request for confirmation related to NFL Ventures for 12/31 or it's 12/31 audit, I mean, and then would also send

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for the 12/31 audit a request for confirmation for the national TV account, correct?

A. I'm aware they sent other confirmations for other purposes.

Q. And those are actually two different line items on the income statement, correct?

A. My recollection is that they are grouped differently on the income statement, but that's just my best recollection right now.

Q. On the income statement, there's a line item for national TV and there is a line item for NFL Ventures Films and Properties and those amounts are generally the same on the income statement, correct? That's, roughly, 40 percent each year?

A. The same as each other?

Q. Yes.

A. I don't recall.

Q. But, in any event, this is an NFL account, but it's not Ventures,

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correct?

A. That's what it looks like to me.

Q. Okay. And EY requested that Mr. Dorrance respond to this confirmation request and he did.

He signed it down at the bottom, correct?

A. Yes.

Q. And he, actually, put a note in the exception lines, correct?

A. Yes.

Q. And he said that, "The above amount represents gross amount of national TV payment, national TV payment, from agency in January 2019."

Do you see that?

A. It carries on, but I do see that, yes.

Q. And he, specifically, described what he was confirming as a "national TV payment," correct?

A. It looks like he is providing some detail here, yes.

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Q. Yes. And he, specifically, described it as the "national TV payment for January 2019," correct?

A. That looks like part of the explanation, yes.

Q. And that's the same description that's in the box that's highlighted by EY's tick mark, correct?

A. It -- well, the box says, "national TV payments for January."

His text says, "the gross amount of the national TV payment from agency in January."

And then before it says, "player severance payment was netted."

So, I mean, I see that overlap.

Q. Okay. The "overlap" in national TV payments for January 2019, correct?

A. I believe both of those are in the box, as well as his handwritten text.

Q. Okay. Can you please turn to JX-1371.

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(Arbitration Exhibit JX-1371 was referenced.)

A. I think I have the right one now. That's it, yes.

Q. Okay. And there's a couple of pages here.

This is from EY's work papers, correct?

A. Yes, it looks like it.

Q. And I don't want to start with the e-mail. I want to start with the confirmation request that's on Page 2 of the document.

A. I see it.

Q. This is a confirmation request that's, again, directed to Mr. Dorrance in connection with the 2019 audit, correct?

A. That's what it is. I see it.

Q. And EY asked for confirmation of the national TV payments for January 2020, that's in the middle of Page 2, correct?

A. That is listed in the middle

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of Page 2 and they're asking someone to sign the confirmation that's indicated on the next page.

Q. And Mr. Dorrance didn't sign this confirmation, did he?

A. Not according to this exhibit.

Q. Okay. Can you turn back to Page 1 please.

A. Yup.

Q. Let's start with the e-mail.

Do you see there's the e-mail from Brian Birt to Mr. Dorrance?

A. Yes.

Q. And Mr. Firestone isn't even copied on this, correct?

A. Is copied on it?

Q. "Isn't even"?

A. Oh, oh, okay.

Yes, because I didn't see him copied on it.

Q. He's not copied, right?

A. I don't see it, no.

Q. Okay. Go up to Mr. Dorrance's response at the top of Page 1.

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A. I see it, yes.

Q. He writes back on April 28th of 2020, correct?

A. Yes.

Q. And instead of signing the confirmation, he provides a written description, correct?

A. Well, he does provide a written description in this e-mail, yes.

Q. And he says, "It is true that 8.4 million and change was wired to the Raiders from the agency account on January 7, 2020."

Do you see that?

A. Correct.

Q. And he doesn't say anything about a balance, correct?

A. No, he does not.

Q. And, in fact, he specifies then the components of that particular wire, which break down into the three bullets, correct?

A. That's what it looks like.

Q. And as you testified in your

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direct testimony, Mr. Dorrance at the time he was responding to this confirm already knew the amounts that had been wired three months earlier in January, correct?

A. Yes, correct.

Q. Okay. Let's go to 1372.

(Arbitration Exhibit JX-1372 was referenced.)

Q. Okay. This is another document from EY's 2019 work papers, correct?

A. Correct.

Q. And if you go to Page 2, it's an April 24, 2020 confirmation, correct -- or request for confirmation?

A. It does look like that, yes.

Q. And it's, actually, directed -- this one is for NFL Ventures, correct?

A. Yes.

Q. And this one is actually directed to Mr. Firestone, correct?

A. Yes.

Q. And if you flip back to the

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first page, you can see in the e-mail at 2:15 on April 28th that the confirmation request was e-mailed to Mr. Firestone by EY, correct, at the bottom of Page 1?

A. Oh, yes.

Q. And then internally inside the NFL, Mr. Firestone forwarded the request for confirmation to Mr. Dorrance and said, "I think you are better equipped to handle this confirmation request. "

Do you see that?

A. I do.

Q. Okay. Do you have any idea why Mr. Firestone thought Mr. Dorrance was better equipped to handle a request for a Ventures confirmation?

A. Not that I can recall the circumstances.

Q. Okay. Can you go back to the actual confirmation request at Pages 2 and 3, please.

A. Yes.

Q. Neither Mr. Firestone for Mr. Dorrance signed this confirmation

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request, correct?
A. Yes, according to this, that's correct.
Q. No, they did not sign it?
A. No, they did not sign it.
Q. Okay. Go back to Page 1.
Mr. Dorrance responded just like he did with the national TV confirmation, with a written response, as opposed to a signature, correct?
A. Correct.
Q. And he pointed out in the first bullet, "I confirmed that Ventures distributed 1.7 million and change to the Raiders on January 7th of 2020."
Do you see that?
A. Yes.
Q. He said, "distributed," correct?
A. That's what it says.
Q. And if you look at the second bullet, "I confirm that the January 2020 Ventures non-broadcast distribution on January 30, 2020 was in the amount of" 20

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million and change, correct?

A. Yes.

Q. And, again, he described this as a "distribution," correct?

A. That's what it says.

Q. And nowhere does he use the word "balance," correct?

A. I agree.

Q. Okay. Can we please go to JX-0486.

(Arbitration Exhibit JX-0486 was referenced.)

A. I am there.

Q. You're aware that in the 2020 audit, EY did send the NFL a request for confirmation of the full balance of the NFL Ventures account as of December 31, 2019 and as of December 31, 2020, correct?

A. Well, I am aware of what was sent. But as I've said, I didn't -- my opinion does not extend to 2020.

Q. Okay. If you turn to Page 2 of the document that you're looking at.

A. I've done it.

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Q. You'll see this is an e-mail on July 12th from Steve Shin at EY to Mr. Dorrance, correct?

A. Yes, I agree.

Q. And he's attaching the confirmation request, correct?

A. That's what it says.

Q. And, again, Mr. Firestone is not copied on that communication, correct?

A. That's correct.

Q. If you turn back to Page 1.

A. Yes.

Q. Let's focus first on the box in the middle, which has the "due to from Raiders Football Club LLC."

Do you see that?

A. Yes.

Q. That's not language that was used in any other confirm that you looked at from the 2014 to 2019 audits in a box like that, was it?

A. No.

Q. And do you see that there is a line item, a row for "national TV and

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radio distribution" and then it has some amounts?

A. Amongst other things, yes.

Q. And you understand that to be the national TV income that we were just talking about, as opposed to the Ventures income, correct?

A. Well, I think, that's what these words say to me, yes.

Q. Okay. And then there's a separate Line item for "NFL Ventures," correct?

A. Yes.

Q. And then there's two more, "relocations fee" and "March memo," correct?

A. Well, just to be clear, when you say, there are, there are words there. The "NFL Ventures" has dashes by it. But, yes, those are the four line items in that box.

Q. Right. Correct, the dashes.

And the NFL could have responded to this confirmation and wrote down in the

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exception spot the exact amount of what they thought they owed the NFL [sic] on those two particular dates, correct?

I'm sorry. What they owed the Raiders on those two particular dates?

A. Possibly, yes.

Q. But that's not what they did, is it?

A. I don't -- I don't see them doing that, no.

Q. Right.

And if you look up at the note at the top that has the box drawn around it, it says, "This is the original AR confirmation sent to the NFL on July 12th related to the request of AR balances due from the NFL including AR related to NFL Ventures and TV and radio as of December 31, 2020."

Do you see that?

A. Yes.

Q. And then it goes on. "Subsequent to sending this request and additional discussions with management at

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NFL, an updated confirmation was requested and received at" Work Paper Reference Number "related to the balances to be confirmed by the NFL as of December 31, 2020."

Do you see that?

A. Yes, and it continues. Yes, yes, I see that.

Q. Okay. And that note is talking about multiple balances to be confirmed by the NFL, correct?

A. It refers to multiple balances, yes.

Q. Okay. Now, let's go to the other confirmation request that EY sent, which is at JX-1478.

(Arbitration Exhibit JX-1478 was referenced.)

Q. And go ahead.

A. Yes.

Q. I'll let you get there.

A. I'm there.

Q. This request is dated August 31, 2021, correct?

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A. Yes, it is.

Q. Do you see that this is still with the 2020 audit, correct?

A. It is with the 2020 audit, yes.

Q. And the 2020 audit was ongoing as of August 31, 2021 correct?

A. My understanding.

Q. And, again, it's directed to Mr. Dorrance, correct?

A. Indeed.

Q. It's not directed to Mr. Firestone, correct?

A. Correct.

Q. And this time EY has removed the line items for national TV and Ventures, correct?

It's 486, if you want to compare.

A. Thank you.

National TV and radio distribution and NFL Ventures are removed, yes, from the box in the middle of the text.

Q. And you don't have any knowledge as to why that change, do you?

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You said you didn't look at the 2020 work papers.

A. Well, I mean I've read lots of depositions and seen a lot of testimony. But the scope of my report was for 2019.

I just -- I don't recall -- I recall this matter being covered, but I can't recall the specifics, as I sit here now, because it was not within one of the years I was opining on.

Q. Other than Mr. Firestone's testimony, you have no reason to doubt the note that's described in JX-0486 that EY received verbal confirmation that the NFL wasn't going to respond to a 12/31 AR request for national TV and Ventures, correct?

A. You're directing me back to 486?

Q. NFL Ventures, yup, the box on 486 that describes discussions with management and the NFL.

You have no reason to doubt that

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other than Mr. Firestone's testimony, correct?

A. Yeah, I don't think I can offer the Panel any information about this record.

Q. Okay. Could we now go to JX-2219, please.

(Arbitration Exhibit JX-2219 was referenced.)

A. I am there.

Q. Now, this is another request for confirmation, correct?

A. Yes.

Q. And this one is dated October 11th of 2021, correct?

A. Yes.

Q. And if you look down in the lower right-hand corner where the Bates Number is. It says, CS 2021.

Do you see that?

A. Yes.

Q. And you understand that this is a request for confirmation that EY sent in connection with its audit of the

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3/31/2021 conforming statements, correct?

A. I think I understand that's what it purports to be, yes.

Q. And this one is, again, directed to Mr. Dorrance, correct?

A. Correct.

Q. And this is a request for confirmation related to the NFL Ventures AR balance, correct?

A. That's what I'm reading this document to be.

Q. And it says that it's requesting confirmation of the amount due to the Oakland Raiders California Limited Partnership and subsidiaries as of -- I'm sorry, "at March 31, 2021."

That's what's in the middle of the page, right?

A. I confirm that's what's in this document.

Q. And Mr. Dorrance signed this confirmation, didn't he?

A. He did.

Q. But, just to be clear, he

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didn't sign the confirmation for a 12/31 request for confirmation of an AR balance for Ventures national TV, correct?

A. You did show me one where he did not sign it. I agree.

Q. But in this example in the conforming statements when EY asked to confirm a balance as of 3/31, he signed it, didn't he?

A. I see that on this document, yes.

Q. Okay. And then if you look at the bottom of the page, when Mr. Dorrance signed this on October 15, 2021, he wrote, "Balance at 3/31/21 should be," and he listed the amount.

Do you see that?

A. Yes.

Q. He used the word "balance," correct?

A. Yes.

Q. And that's different from what he had used before when he wrote that was he confirming a payment for a

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distribution?

A. I agree they are different words.

Q. Okay. You mentioned this morning that the auditor is required to control the confirmation process, correct?

A. Yes, they should. And by "control the confirmation process," I mean, the chain of custody of the letter going from the auditor and then coming back to the auditor should be uninterrupted, so that the auditor is sure that it's a third-party communication.

Q. Okay. And if the third party has questions about the confirmation, you would expect that the third party would reach out to the auditor, correct?

A. I think that's reasonable. I think most confirmations I can think of have how to do that in the confirmation.

Q. Alright. Because if there are discussions going on behind the auditor's back about the confirmation,

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that could impact the reliability of the confirmation process, correct?

I'm happy to show you some examples.

A. Well...

I think your question was -- is, could the recipient contact the auditors.

The answer is, yes. And I think the information is in the confirmation to provide that information to the recipient.

Q. Right. My question, though, was somewhat different.

If there are conversations say with management happening behind the auditor's back and the auditor doesn't know about those conversations, that could impact the reliability of the confirmation, correct?

A. I guess potentially. I don't know if there's a specific example in mind, but I agree that's possible.

Q. It's a possibility, right?

A. I agree it's possible.

Q. Could you please turn to

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JX-2707.

(Arbitration Exhibit JX-2707 was referenced.)

Q. And if it helps, I'd actually like you to pull back out 486 and you can just put them side by side.

(Arbitration Exhibit JX-486 was referenced.)

A. Taking it out of the binder.

Q. Yeah, I have 486 out and I have 2707 still in the binder.

A. Okay. Just a warning, I've taken it out for future purposes.

Q. Oh, it's on the screen too as well.

A. And 2707?

Q. Correct.

A. Okay.

Q. If you go to the second page of 2707, do you see that that's the July 12, 2021 e-mail from Steve Shin to Mr. Dorrance that we already looked at in JX-0486?

A. I mean, it looks like it.

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It's organized slightly differently in these two exhibits. But it looks to me like -- other than the time zone being different, they look -- they look like just different printing formats of the same thing.

Q. Now staying in 2707.

A. Okay.

Q. After Mr. Dorrance receives the confirmation from Mr. Shin on July 12th, he then forwards it the next day to the Raiders, correct?

A. Can you help me with that? Where is that?

Q. Sure. It's at the bottom of Page 1.

A. Okay.

Q. And he doesn't copy anyone from EY on that e-mail, correct?

A. Hang on. I'm just catching up with you.

Oh.

Q. I'm at the bottom of Page 1 where Mr. Dorrance forwards on July 13th

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the confirmation request that he received from Steve Shin to the Raiders and doesn't copy EY.

A. I'm sorry. I was looking in the wrong spot.

I do see that now.

Q. And then if you go to the next e-mail up, Mr. Scott responds to Mr. Dorrance, correct?

A. That's what it looks like, yes.

Q. And he actually writes, "The amounts I believe they're trying to confirm are from the January distribution," correct?

A. "He" being Travis Scott?

Q. Mr. Scott writes that to Mr. Dorrance, correct?

A. The amount they're trying to confirm -- yes, I see that.

Q. And no one from EY's copied on that, correct?

A. No.

Q. And then if you go back up to

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the top, the first e-mail in the chain. I believe you were there earlier.

Mr. Dorrance responds to Mr. Scott, correct?

A. Yes.

Q. And then he shares a whole bunch of information about whether -- well, about his inability to sign the confirmation request, correct?

A. I'm going to have to read it.

Q. Take your time.

A. Well, I do see there are eight bullet points here and information he's sharing.

Q. Sure.

And he's describing reasons he's not comfortable signing the confirmation request that EY sent on July 12th, correct?

A. The writing is kind of small.

Can you tell me where he says that?

Q. All eight bullets. I'm just paraphrasing his reasons why he wants to discuss the confirmation rather than sign

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it.

A. Okay. I'm just reading it.

It says why he wants to discuss it. I don't see anything about signing it.

I just -- you asked me to read a document. I just want to make sure that I'm not overstating anything.

I see he is saying, I think we should discuss and here's what I want to share and he has eight specific detailed points.

Q. And we know from JX-0486 that Mr. Dorrance did not sign this confirmation request, correct?

A. From this document, I see he did not sign it.

Q. Okay. And I want to point you to just a couple of the bullets. If you go down to the fourth bullet --

A. Yeah.

Q. -- the second sentence. He writes, "I'm not sure that the January TV distributions are owed as of 12/31."

Do you see that?

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A. I see that.

Q. And then he ends that bullet by writing, "I wouldn't view the January broadcast distributions as being owed as of 12/31 anymore than the February or March broadcast distributions."

Do you see that?

A. I see that.

Q. And, in that particular context, you recognize that he's talking about national TV, not Ventures but that other account, correct?

A. It looks like what the document is referring to.

Q. Right. And if you go down to the sixth bullet.

A. Yes.

Q. That one is about Ventures, correct?

A. That's what it says.

Q. And there he writes, "The January Ventures non-broadcast distribution is not included in the confirmation."

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I want to focus on the next sentence. "Some of that amount was clearly derived from Ventures revenue generated since the prior Ventures non-broadcast distribution in October."

Let's pause on that one for a second.

A. Yes.

Q. You're aware that for the non-broadcast portion of Ventures revenue that the NFL would distribute that on a quarterly basis, so October, January, so forth?

A. I'm aware that some distributions are made monthly, some are quarterly and throughout the year. It varies.

Q. Right.

The Ventures broadcast distributions were made on a monthly basis, correct?

A. I think that's what I've generally seen.

Q. Okay. So go back to his sentence, some of that amount was clearly

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derived from Ventures revenue."

A. Yup.

Q. What he's saying there is that for the amount owed as of December 31st -- I can't tell you what it is because some of it -- it's been earned since October and I can't tell you the amount that's owed as of December 31st, correct?

A. I don't see those words. I don't see those words.

Q. Okay. He says, "Some of that amount was clearly derived from Ventures revenue generated since the prior non-broadcast distribution in October."

Do you see that?

A. Agree.

Q. And he's saying, I can't confirm that amount that's owed as of December 31st, correct?

And then he goes on to point out "but the distribution is not declared until January."

A. Correct. I think we've seen

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that, that the distributions always occur in January.

Q. Right.

And historically the NFL had been confirming a January payment.

EY understood it was confirming a January payment, correct?

A. Correct. That's right.

Q. And what Mr. Dorrance is saying here is that distribution isn't declared until January, so I can't tell you what was owed as of December 31st, correct?

A. Well, I see he says, "But the distribution is not declared until January."

I don't see the other words you're saying so...

Q. Let's go to -- well, actually, let me ask you a question.

This isn't the only time that the Raiders discussed the confirmation process without EY participating in the conversation, is it?

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A. I'm not sure.

Q. Okay. Can we go to JX-3423.

(Arbitration Exhibit JX-3423 was referenced.)

A. I have it.

Q. Okay. Do you see that -- this is the bottom e-mail in the chain.

It's an April 30, 2018 e-mail from Rigo Carvajal at EY, correct?

A. Yes.

Q. And the attachment to the e-mail is on Page 2. And this is another request for confirmation related to the national TV payments account, correct?

A. I do see that.

Q. And after Mr. Carvajal sends the request to Mr. Feeley at the NFL, Mr. Feeley forwards it to Mr. Villanueva, correct? The middle of Page 1.

A. Oh, I see it, yes. From Feeley to Villanueva, yes.

Q. And EY's not copied on that, correct?

A. Correct.

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Q. And then Mr. -- well, I'm actually the next one gets internal to the Raiders. What I want to focus on is the one from Feeley.

A. Okay.

Q. He, actually, sends it to Mr. Villanueva and he asks Mr. Villanueva questions about how he should respond to the confirmation, correct?

(Interruption by the Court Stenographer for technical difficulties.)

(Recess taken 2:51 to p.m.)

THE CHAIRPERSON: Let's go back on the record and let's continue.

Q. Welcome back, Mr. Mintzer.

I just want to level set on JX-3423.

A. Okay, I'm there.

Q. Just to refresh, this is a 2018 e-mail sent in connection with the 2017 audit by EY to the NFL requesting confirmation of the national TV account,

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correct?

A. Correct.

Q. Okay. And when Mr. Feeley receives this, he forwards it to Mr. Villanueva on May 1st, correct?

A. Yes.

Q. And he actually wrote to Mr. Villanueva, "Just wanted to give you have a heads up before I respond that I am materially off on this confirm."

Do you see that?

A. Yes.

Q. And no one from EY is on this e-mail, correct?

A. Yes.

Q. And then at the end, the last thing he writes in the e-mail is, "Let me know how you want me to proceed."

Do you see that?

A. Yes.

Q. So Mr. Feeley is asking Mr. Villanueva how he should respond to the confirmation that EY sent, correct?

A. Correct. I mean, as part of

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a larger sentence, but I do see that part, yes.

Q. And that's not how the confirmation process is supposed to work, is it?

A. Well, wait a second. The confirmation process I talked about was that the confirmation sent to the third party needs to come directly from the third party. This isn't the return of the confirmation. This is internal correspondence between the two parties.

So what I described was that the auditors should control the confirmation and make sure they receive the confirmation directly from the third party.

Q. And conversations between management and the recipient of the confirmation without the auditor's knowledge about what they're actually confirming can impact the reliability of the confirmation process, correct?

A. Well, I mean, perhaps it can.

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But customers and vendors talk to each other all the time.

Q. I just want to sum up where we were about what the NFL would and wouldn't confirm.

You agree that during the 2020 audit the NFL knew about all of the allegations? You're aware of that, right, all of the allegations that have -- it knew about the misstatements.

They had some knowledge that there was going to -- that the prior year financial statements were misstated, correct?

A. Right. I have approximate understanding of that. It's not within the scope of what I have, but I'm aware of that general topic.

Q. And during the 2020 audit, with that knowledge, they did not respond to a confirmation request seeking a confirmation of the full balance of either national TV or NFL Ventures, correct?

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A. Are you referring to the 12/31 confirmations they did not respond to?

Q. Correct.

They did not confirm a full 12/31 balance for national TV or NFL Ventures, even though they were aware of what was going on?

A. Okay, I see they didn't sign the 12/31 balance -- confirmation. I mean, I haven't looked into it, if it's the full balance or not. That was not part of my investigation. So I just don't want to adopt anything inadvertently.

Q. They didn't sign that confirm that we looked at, correct?

A. I agree. I saw that.

Q. Okay. But they did respond to the confirmation for the 3/31 balance for NFL Ventures, correct?

A. I do recall seeing a 3/31 confirmation for the conforming statement audit.

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Q. And historically the NFL had responded to confirmations for a payment, for example, when Mr. Dorrance wrote back that he was confirming a payment, correct?

A. Again, I do recall you reading what Mr. Dorrance wrote in the explanation. I do recall that.

Q. Do you recall at your deposition that we had a lengthy discussion about what constituted audit evidence?

You probably can't forget it.

A. Well, I do recall that topic came up.

Q. And you agree that something is audit evidence, if the auditor uses it for the audit, correct?

A. That's the definition of "audit evidence," yes.

Q. And "uses it" means applies procedures to the information, correct?

A. Or considers it in the course of their audit for audit evidence. It's used in some way, yes.

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Q. Yeah, I, actually, think what you told me at your deposition was used by the auditor is the same thing as applying audit procedures, correct?

A. Yeah, I think contextually that is correct, applying audit procedures could take a variety of fashions just from noting it there versus doing a calculation with it or so forth. But, yes, I agree.

Q. Right. In order for information to constitute audit evidence, the auditor needs to apply some level of procedures to the information, correct?

A. Correct. That's audit evidence. As I testified, if information impugns that audit evidence, that's something the auditor needs to consider.

Q. Right. That would be something that's called "contradictory audit evidence," correct?

A. No, it's part of professional skepticism where -- as I described in one of my slides, that if information -- I

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don't recall it exactly. But if it questions reliability of what was used as audit evidence, then that could call into question the reliability of audit evidence.

Q. Okay. But I'm talking about -- what you're talking about is not audit evidence.

You're just talking about information that may come to the auditor's attention, correct?

A. Correct. Professional skepticism directs the auditor to be alert for that information, because it might affect what they're using as audit evidence.

Q. Right. But I'm talking about what is audit evidence.

And in order for something to be audit evidence, the auditor must apply procedures to that information, correct?

A. The auditor must apply procedures or use it as audit evidence in the course of their audit.

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Q. Okay.

A. That's correct.

Q. And when the auditor is forming a conclusion as to whether it has obtained sufficient appropriate audit evidence, what GAAS says the auditor should consider is all relevant audit evidence, correct?

A. As an element of GAAS, yes.

Q. Alright. And what GAAS says is that the relevant audit evidence consists of things that corroborate or contradict the assertions in the financial statements, correct?

A. That's correct. That is the definition.

Q. And, as we agreed in your deposition, in order for something to be contradictory audit evidence, it first has to be audit evidence, meaning, the auditor has to apply procedures to the information, correct?

A. Right. If information comes to the attention of the auditor, which

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causes the question of the reliability, then the auditor should reconsider whether the audit evidence has been --

Q. Well, I -- I think that is a little bit different than the question I asked.

A. Okay.

Q. My question was, in order for something to be contradictory audit evidence, it first has to be audit evidence, and in order for it to be audit evidence, the auditor has to apply procedures to the information, correct?

A. I think existentially that is correct.

Q. That's what GAAS says, right?

A. That's a part of what GAAS says, as I described to the Panel.

Q. Okay. Not all information that comes to the auditor's attention is audit evidence, correct?

A. I agree it could become audit evidence. It could present itself as something that calls into question the

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reliability of what the auditor is using for audit evidence, as I described.

Q. Let's go to slide -- this is in your deck, Slide 37.

A. Yes.

Q. You pointed to this document in your testimony earlier today, correct, the capital roll forward?

A. Correct.

Q. We agreed during your deposition that the cash distribution information highlighted in green was not audit evidence, correct?

A. As I understand the record, this was not used as audit evidence by EY.

Q. Okay. And that would also be true for the account balance information that you've highlighted in pink, correct?

A. Yes, as I understand the record this was not incorporated into the audit evidence by EY despite the information that it's relaying.

Q. Right. And you agree that

MINTZER, CPA - REDIRECT

these comparisons that you're making on the right-hand portion of the slide, those aren't procedures that EY in its judgment performed at the time of the audit, correct?

A. Well, I don't know if they performed them. I know they haven't been documented.

MS. VAN WINKLE: I think I might be finished.

THE CHAIRPERSON: Okay.
Yes, yes, anyone?

MS. BROWN: Yes.

THE CHAIRPERSON: Okay.

REDIRECT EXAMINATION BY MS. BROWN:

Q. Just a few questions, Mr. Mintzer.
The auditing standards cite fraud as a risk in the audit process, right?

A. Correct. It's one of the areas that brings risk to the audit process.

Q. And auditors do not have a primary responsibility to detect fraud,

MINTZER, CPA - REDIRECT

right?

A. That's correct. The auditor's goal is to detect material misstatement whether caused by error or fraud.

Q. Okay. So my question is, does the risk of fraud that presents itself in an audit excuse an auditor from performing appropriate procedures to assess whether there are material misstatements in the financial statements that are being audited?

A. No, of course not.

Q. And does the risk of potential negligence excuse an auditor from performing appropriate procedures to determine whether there are material misstatements in the financial statements that are being audited?

A. Now, I don't understand. "Negligence" by who?

Q. By management?

A. Oh, okay.

Q. Sorry.

MINTZER, CPA - REDIRECT

A. No, it does not.

Q. There was a lot of discussion about professional judgment in your questions with Ms. Van Winkle.

Do you recall that?

A. I do recall questions where that came up.

Q. And you agree that two different auditors can exercise professional judgment and reach two different but appropriate conclusions about how to conduct an audit, right?

A. I agree that's possible, yes.

Q. And when an auditor is applying professional judgment, are there any limits or guardrails to define how that judgment should be exercised?

A. Well, yes, the totality of Generally Accepted Auditing Standards informed by relevant circumstances, accounting rules and other applicable standards.

Q. And, in your opinion, did EY exercise appropriate professional

MINTZER, CPA - REDIRECT

judgment in devising and applying the procedures that it used in auditing the Raiders financial statements?

A. No, not to the areas that I addressed in my direct.

Q. And, just very briefly, I don't want you to go over the main points.

But can you just pinpoint one or two areas that you did go over in your direct where it's your opinion that EY failed to exercise appropriate professional judgment?

A. Sure. I described the process of understanding the Ventures revenue, the payments in arrears and the setting up of audit evidence to validate the existence of that accounts receivable. In general, that's it.

So, without -- does that cover the scope of your question?

Q. Yes.

Now, you, also, testified that an auditor can rely on management representations, right?

MINTZER, CPA - REDIRECT

A. Yes, I did.

Q. Is an auditor able to rely exclusively on management's representations when performing an audit on financial statements?

A. No.

Q. Why not?

A. Well, then there wouldn't be an audit because the audit is an independent process for an auditor to provide professional assurance, reasonable assurance. And if they rely exclusively on management, then it's kind of circular. Nothing has happened. So that's why I believe the procedures say the auditing standards say you can't rely exclusively on management to the limiting of not performing appropriate procedures.

Q. And do you recall being shown -- you can look, if you like, but you probably recall.

There were some exhibits. There was Exhibit 2707 where there were some e-mail exchanges and back and forth with

MINTZER, CPA - REDIRECT

Mr. Dorrance from the NFL.
You were shown multiple documents along those lines, right?
A. I remember that generally, yes.
Q. And those documents were all in connection with the 2020 audit?
A. That's my memory, as they went passed me, yes.
Q. And did the scope of your opinion extend to the audit work conducted in 2020?
A. No.
Q. Do you recall, though, from reviewing the record in evidence in this case whether Mr. Dorrance was ever deposed in this case?
A. I don't have a recollection of that.
Q. No. You haven't seen any testimony from Mr. Dorrance?
A. Not that I recall.
Q. Also -- so, to the extent that Ms. Van Winkle was showing you

MINTZER, CPA - REDIRECT

e-mails from Mr. Dorrance and applying her own interpretation of what Mr. Dorrance meant or what Mr. Dorrance said, you haven't seen any testimony from Mr. Dorrance where he's telling you what he meant by those e-mails or what those exchanges related to; is that right?

A. Well, I'm going to say I don't remember testimony from Mr. Dorrance.

Q. Okay. Also, you were shown JX-3423.

(Arbitration Exhibit JX-3423 was referenced.)

Q. And you were shown some communications. This is, again, just one example. But you were shown some communications between the NFL and people at the Raiders and they were prior to the NFL sending a confirmation directly back to the auditors just as a general concept.

Is there anything inappropriate with communications like that taking

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place before a confirm is sent directly back to the auditor?

A. In and of itself, I don't think so. As I testified, customers and vendors or members of a contract do regularly talk to each other. So I wouldn't say that in and of itself is anything inappropriate.

Q. And I just want to focus you on the time period before the accounting error in this case was discovered.

Do you know when that was discovered?

A. Approximately, in 2021.

Q. April 2021.

A. Yeah.

Q. So, before that time, do you recall in your review of EY's work papers, do you recall seeing any notation in their work papers before April 2021 where EY documents a refusal by the NFL to sign a confirmation for a full yearend balance for Ventures?

A. Not that I can recall, no.

MINTZER, CPA - ARBITRATOR QUESTIONS
No I don't recall seeing that.
Q. Just one second.
THE CHAIRPERSON: Go ahead.
(There is a discussion off the record.)
MS. BROWN: Okay. I have no further questions.
Q. Thank you.
MS. VAN WINKLE: I have nothing further.
THE CHAIRPERSON: Okay.
QUESTIONS BY THE ARBITRATORS
MR. BICKERMAN: Okay. So my understanding is we're going to see you again on Friday; is that right?
THE WITNESS: I understand that too, yes.
MR. BICKERMAN: Well, with that understanding, I want to keep my questions very brief.
But I'm looking at Page 40 of your exhibit. And this has always been a central concern of mine since this arbitration began.

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The ability to misstate is driven to a large degree by assuming that the remittances that are provided in March are for payments in arrears.

Would you agree with that?

THE WITNESS: Yes, the concept of the remittance is paid in arrears is a large part of what the issue is.

MR. BICKERMAN: Okay. So, if they're paid in arrears, they're not going to match up with the payments that are made in the prior year that are then going to be audited, are they?

THE WITNESS: If they actually are paid in arrears?

MR. BICKERMAN: If they are assumed to be paid in arrears, you're going to have a series of numbers that reflect payments to be made that are not going to be identical to the payments that

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are actually received.

In other words, if you take a look at your document and the fact that you look on the left side, those are the payments that the -- well, let me ask you.

Are these the payments that were received by the Raiders in 2014?

THE WITNESS: That's my understanding.

MR. BICKERMAN: Okay. And they don't match up with the remittance statement, do they?

THE WITNESS: Well, there are two different -- on the left and right side, they're being matched up with two different remittances.

On the left side, they're being matched up with the 2013 remittance and on the right side they're being matched up with the 2014 remittance.

MINTZER, CPA - ARBITRATOR QUESTIONS
MR. BICKERMAN: The NFL uses an interesting convention for defining their Fiscal Year, which confused the heck out of me.
But they call this, you know, dated 12/31/14 as their 2014 Fiscal Year, correct?
THE WITNESS: The Raiders refer to 12/31/14 --
MR. BICKERMAN: The NFL refers to 2014, 2015 -- April 1, 2014 to March 31, 2015, the NFL refers to that as their 2014 Fiscal Year.
THE WITNESS: That's correct. The 3/31 year is, actually, the Fiscal Year beginning.
MR. BICKERMAN: That's not what I'm used to.
THE WITNESS: Me either.
MR. BICKERMAN: Okay. The remittance on 3/31/2015, since we're looking at this --
THE WITNESS: Sure.
MR. BICKERMAN: -- is the

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payments in arrears that the Raiders expect to get and for which they are going to set up accounts receivable for, correct?

THE WITNESS: The remit -- in reality, the remittance that came in on 3/31 of '15 was the earnings for that year ended '15 and it was not actually paid in arrears. It was paid in full other than the very final payment.

MR. BICKERMAN: That's kind of my point.

Let me try saying it my way and see if you can agree or disagree.

THE WITNESS: I'll try.

MR. BICKERMAN: They get a statement from the NFL. They call it a remittance. And that's the remittance for the NFL Fiscal Year 2014.

In April, May, whenever that remittance comes in effective

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3/31/2015 is a remittance that restates what's already been paid.

THE WITNESS: Correct. It's mostly been paid, forgive me, other than the payment that's coming in in April for that year ended March.

MR. BICKERMAN: Let's say May or June. It's the payments that have already been received by the Raiders for the NFL Fiscal Year 2014.

THE WITNESS: Correct. And on the NFL statements, that's how it's reflected.

MR. BICKERMAN: Okay. And the Raiders book the payment in arrears from that remittance for the following year; in other words, for NFL year 2015?

THE WITNESS: I think so. But I want to make sure. Let me see if I can restate.

There's two amounts at

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question here. There's a big dollar amount remittance. That's a year's worth of revenue. That is actually paid month, month, month, month at a time.
MR. BICKERMAN: Understood.
THE WITNESS: Okay. So, when March 31st comes along, a statement is issued by the NFL that says here's the remittance for this period.
MR. BICKERMAN: And it itemizes the payments over the course of that year.
THE WITNESS: That's just ended, the 12 months that just ended.
MR. BICKERMAN: I'm sorry I'm talking over you. Apologies.
THE WITNESS: No, and then there will be a statement, as I showed on one of my exhibits of the balance due, which is only balance due for one month.

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MR. BICKERMAN: Okay. So now we agree that that March -- that remittance as of 3/31/2015 has a payment stream that began in April of 2014 and continued until March of 2015 plus or minus whatever was collected in April or May that comes in later.

THE WITNESS: That's correct. The NFL did not in reality keep the money for a year.

MR. BICKERMAN: And those are monthly payments you can look at, right?

THE WITNESS: Correct.

MR. BICKERMAN: Now, if the Raiders are now setting up accounts receivable for what's coming in arrears, because they misunderstand, your exhibit shows pretty conclusively that those numbers aren't going to match and that's why you have a $27.7 million variance, right?

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THE WITNESS: Yes, you've got it. Yes, that's correct.

MR. BICKERMAN: I'm not an accountant, okay. And I'm just an Arbitrator who picked this up and are learning this.

This seems like a pretty obvious thing that somebody should have seen, wouldn't you agree?

THE WITNESS: Yes.

MR. BICKERMAN: And wouldn't you agree that everybody should have seen it?

THE WITNESS: Well...

MR. BICKERMAN: Including the client who hired you?

THE WITNESS: I'm trying to be helpful. But you know that I've been retained for a particular purpose.

MR. BICKERMAN: You're an expert and you're supposed to be objective. So tell me.

THE WITNESS: The financial

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statements are the responsibility of the Raiders and the Raiders are responsible for getting the financial statements correct.

MR. BICKERMAN: I'm not even talking about the financial statements yet.

I'm just saying if you are an accountant with a CPA or had a CPA and you let it lapse or for whatever reason and you see this, how do you ignore that?

THE WITNESS: I don't understand how a CPA could ignore that if they, see it. I can't explain it.

MR. BICKERMAN: Okay. Alright. That's all I wanted to ask you.

THE CHAIRPERSON: Mr. Chandler.

MR. CHANDLER: I've got two questions, I think.

One is, did you ever see any evidence as to why or how the

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Raiders got the idea that the remittance was prospective rather than retrospective?

THE WITNESS: The evidence I've seen is -- well, I heard Mr. Villanueva said when he came on board in 2002 that's how they did it. I don't know its origin story from beyond that.

MR. CHANDLER: On confirmations, obviously, the Raiders and the NFL talk from time to time. And you noted that vendors and suppliers and here payors and payees uses from time to time.

But for the audit process to work, the NFL really should not be asking the Raiders, what do you want me to put down here, in response to this confirmation, should they?

THE WITNESS: Well, they shouldn't put down information

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that's not truthful. So, if a confirmation is prepared and sent out to a party and it gets changed, that does require the auditor to ask the company, its client, why it got changed.

So, if, apparently, a confirmation was changed, that would be something that I'd expect to be documented.

But I don't think that there's a correspondence between those two parties in itself is organically untoward, unless there is a request to misstate something.

MR. CHANDLER: But when the NFL says, I don't know, this isn't right, shouldn't they tell that to the auditor?

THE WITNESS: Well, the NFL should return truthful information to the auditor. And so I don't believe the record reflects that they returned anything other than

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truthful information in the confirmations that it returned.

MR. CHANDLER: Well, I'm remembering they didn't return anything. They just said, I don't know.

THE WITNESS: No, I --

MR. CHANDLER: Maybe I missed it.

THE WITNESS: No, no, no.

I think the confirmations, as we put into the record, were for the January payment each time.

Now, this particular confirmation, I think, was maybe for January through March. So I think that caused confusion and so there was some discussion back and forth.

But if a confirmation was sent out by the auditor for January through March and it came back changed, even if it didn't come back something's wrong with it by

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the NFL, that should have caused an inquiry by the auditors.

MR. CHANDLER: And the people who were receiving these requests for confirmation were accountants or accountant types at the NFL, weren't they?

THE WITNESS: Well, they were the ones responsible for the accounts, as -- as I understand it, sir. They weren't the ones responsible for making the payments to the Raiders or, at least, executively so that they could say, these are the payments we owe you. That's my understanding.

MR. CHANDLER: Thank you.

THE CHAIRPERSON: Okay. Sir, I'm not an accountant. I'm a retired judge.

And, actually, after listening to all this, I have to recall that, actually, there were living, breathing human beings behind all

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this, right? And I tend to focus on that. Maybe that's because of my background and sort of take a macro view.

But from what I'm hearing from you, in terms of your opinion, if we were to put it in the simplest language possible, it's all their fault? It's all EY's fault?

THE WITNESS: I'm not offering that opinion.

THE CHAIRPERSON: What is your opinion then?

THE WITNESS: My opinion is that EY did not perform an audit in accordance with standards.

I think it's not my job to assess causation or fault from that perspective.

I've been asked was the audit conducted in accordance with standards.

THE CHAIRPERSON: Well, that's

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the definition of malpractice; isn't it?

THE WITNESS: It is.

THE CHAIRPERSON: So you're saying they committed malpractice, just so I'm clear?

THE WITNESS: I am.

THE CHAIRPERSON: What about the Raiders? I know my colleague Mr. Bickerman asked you about that.

Now, you're an accountant. Let me ask you a few questions.

Do you know who Travis Scott is?

THE WITNESS: Yes.

THE CHAIRPERSON: Was all the information that was in the possession of Travis Scott provided to Ernst & Young?

THE WITNESS: My understanding, in general, it was.

THE CHAIRPERSON: Okay. And, obviously, Oakland had a duty to provide that to them,

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correct?

They had a duty?

Oakland had a duty to provide all the information to them, correct?

THE WITNESS: Yes.

THE CHAIRPERSON: Including accurate information; isn't that true?

THE WITNESS: Yes.

THE CHAIRPERSON: Alright. Now, you've maintained your CPA license, correct?

THE WITNESS: Yes.

THE CHAIRPERSON: And what's the importance of that?

THE WITNESS: Well, that indicates that I've taken continuing professional education throughout my career, so I've maintained a current knowledge of the changing standards that affect my profession.

THE CHAIRPERSON: Okay. And Mr. Villanueva, do you know his

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CPA license lapsed?

THE WITNESS: I have seen evidence of that effect.

THE CHAIRPERSON: So he's a controller for a 7.5 billion corporation that lets his CPA license lapse, right?

THE WITNESS: I understand that, yes.

THE CHAIRPERSON: You understand that.

And how about Araxie Grant, what do you know about her and her competence?

THE WITNESS: I don't know.

THE CHAIRPERSON: Did you read her deposition testimony?

Let me just recount it for you, the few things she testified to under oath.

She didn't understand the NFL.

She didn't understand NFL Ventures.

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She didn't understand accounts receivable.

She concealed from the controller that she didn't have this competence.

She didn't want it to affect her performance evaluation.

And she hired Travis Scott because she didn't know what she was doing.

Are you aware of that?

THE WITNESS: Only in the generalist of terms.

THE CHAIRPERSON: You think it's important to know that because she certified the financial disclosure statements in 2019?

That's part of this case. And that's part of what EY is being sued for.

THE WITNESS: I do understand that.

THE CHAIRPERSON: Okay. And then Travis Scott comes in and we

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take this entire period of time (SNAPS FINGERS) like that. He figures it all out.
THE WITNESS: That's how it seems to me.
THE CHAIRPERSON: So we have the first competent Raiders person who comes in who actually understands NFL Ventures and the NFL. He figures out in five minutes, basically.
THE WITNESS: Okay. Well, I understand he figures it out pretty quickly relative to when --
THE CHAIRPERSON: "Pretty quickly" --
THE WITNESS: Yeah.
THE CHAIRPERSON: -- when we look at the period of time that we're talking about.
Now, have you ever met with Mr. Davis?
THE WITNESS: No.
THE CHAIRPERSON: Have you

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ever spoken with him?

THE WITNESS: No.

THE CHAIRPERSON: He testified here.

And I will say, unless it's proven to me to the contrary, he was a credible witness. He was straightforward and he was very candid.

Have they told you anything about his testimony here before this Panel?

THE WITNESS: No.

THE CHAIRPERSON: Okay. Obviously, you would consider him to be a sophisticated individual?

THE WITNESS: In general, yes.

THE CHAIRPERSON: "In general."

Well, he's the controlling owner of a $7.5 billion NFL franchise. I would say he's probably sophisticated.

THE WITNESS: Fair enough.

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THE CHAIRPERSON: Do you know what his testimony was with respect to the responsibilities of the people at the Raiders with respect to the material misstatements?

THE WITNESS: I do not know.

THE CHAIRPERSON: Alright. Let's go to Mr. Davis' testimony Page 174 at Line 15, if we can bring that up.

(There is a discussion off the record.)

THE CHAIRPERSON: You know who Mr. Badain is?

THE WITNESS: Yes.

THE CHAIRPERSON: Alright Line 15, "Question: And did you rely on Mr. Badain and his subordinates to make sure that the Raiders prepared accurate financial statements?

Absolutely."

Moving to Page 176/Line 6.

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"Do you recall that Mr. Badain bared some responsibility for the misstatements in the Raiders financial statements?

Answer: I believe we all do. Me because I hired Mr. Badain" -- that's misspelled -- "As I said, the buck stops with me, yeah."

So his testimony is that the Raiders were responsible for the misstatements; is that correct?

That's what he's saying. They bare some responsibility for it.

THE WITNESS: Okay. Well, I can just read his testimony.

THE CHAIRPERSON: You're an accountant. I mean, you're a CPA. You're testifying here with respect to a malpractice action.

What does that tell you?

I mean, the whole issue here is material misstatements,

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alright?

The Raiders want to blame EY for everything, okay.

EY says it was fraud in pari delicto. We can't be blamed for everything.

But there's a middle ground here, right.

The "middle ground" is both parties could be held responsible.

Based on Mr. Davis' testimony, isn't that what he's saying?

THE WITNESS: I think that -- you're asking me to look at what he's saying?

THE CHAIRPERSON: Is that what he's saying, that both parties should bare some responsibility; isn't that what's being said?

THE WITNESS: That's how I understand what he says.

THE CHAIRPERSON: Thank you very much.

No further questions.

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(Witness is excused.)

THE CHAIRPERSON: Alright. Why don't we take a 15-minute recess or you need less.

(Recess taken 2:33 to p.m.)

THE CHAIRPERSON: Okay. Welcome, sir.

THE WITNESS: Thank you.

THE CHAIRPERSON: My name is John DiBlasi.

To my left is John Bickerman.

To my left is John Chandler.

We're better known as the "three Johns" here and we welcome you.

And we will turn it over to Mr. Farina for direct examination.

MR. FARINA: Thank you.

BJORN MALMLUND, CPA, DEEMED SWORN:

DIRECT EXAMINATION BY MR. FARINA:

Q. Good afternoon, Mr. Malmlund.

A. Good afternoon.

Q. Why don't we introduce you to

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the Panel.

Are you partner at Ernst & Young?

A. I am.

Q. And how long have you been at Ernst & Young?

A. Since October of 2013.

Q. Are you in some particular group within Ernst & Young?

A. Yes, I'm a partner in our Forensic and Integrity Services Practice, also, know as the "Forensics Practice."

Q. Okay. Is that sometimes referred to as "FIZ"?

A. Yes.

Q. EY likes its acronyms.

A. Yes, very much so.

Q. And if you could just at a high level walk through your professional career at a high level?

A. Okay. I started with Arthur Young, which is a predecessor firm to Ernst & Young, in May of 1987.

I was in the audit practice for about two and a half years. And then I

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transferred into the forensic practice. It had a different name at the time but the forensic practice of Arthur Young.

Around that same time Arthur Young became Ernst & Young. I remained with the firm for about six months and then I moved to KPMG.

And I was at KPMG for about nine or ten years. I left KPMG and started the LA office of the San Francisco based litigation consulting firm called Hemming Morse.

I did that for two years and then I returned to KPMG in 2000. I remained with the firm for about three years and then the practice that I was a part of at KPMG was sold to FTI Consulting.

So I spent ten years with FTI Consulting until 2013 when I left and I joined EY.

Q. Alright. Has your personal practice been in forensics for the last decade or more?

A. Oh, for the last like 30 plus

years. Since 1989 it has been focused on forensic accounting.

Q. Are you a CPA?

A. I am.

Q. Do you have any other certifications?

A. Yes. I'm a Certified Fraud Examiner. I have also an accreditation in business valuation and certified in financial forensics by the AICPA.

Q. And what is a "Certified Fraud Examiner"?

A. It's something that's bestowed upon people with the Association of Certified Fraud Examiners. And so you have certain experience requirements, educational requirements and then you have to sit for an exam. And if you pass the exam, then you become a Certified Fraud Examiner.

Q. Have you led or assisted with forensic examinations in the context of allegations of fraud?

A. Yes.

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Q. And, roughly, how many times have you done that?

A. I've conducted independent investigations, internal investigations, in excess of a hundred over my career.

And then I have also assisted Ernst & Young with what we call "shadow investigations" where it involves similar issues but an EY audit client.

So we can't do the investigation, but we shadow the investigation. And over the past 8 or 9 years, I've been involved in over 250 of those matters.

Q. Okay. And what is a "shadow investigation"?

A. That's a situation, again, where it involves many times with whistleblower allegations that arise at an audit client.

The audit client will retain outside Counsel and other experts, advisors, forensic accountancy discovery providers to conduct an investigation into the matters. And I will assist the audit

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team, the audit engagement team, as an internal specialist to ensure that they follow a sound process when doing their investigation work, that they interview the right people, that they collect the same -- or the right custodians, run search terms, things of that nature and perform the right types of procedures to gather relevant information that then can be used to evaluate the impact on the audit.

Q. Did you serve in that capacity "shadowing" the investigation performed by the Raiders?

A. I did.

Q. Alright. So let's talk about that.

Do you recall how long after EY was made aware of the allegations that you personally became involved?

A. I was contacted at the end of April and I think that the allegations first surfaced around April 26, 27, thereabouts. So fairly quickly or

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shortly after EY learned of the allegations.

Q. And what were you brought in to do?

A. I was brought in to assist the audit engagement team in a shadow investigation role as described.

Q. And what did you understand your role in "shadowing" the investigation to be in the context of the Raiders allegations?

A. It was to help evaluate the work being performed by or that would be performed by the Raiders organization with respect to their investigation, you know, when we learned who had been retained to evaluate their qualifications, competence, understand how the investigation was structured, who was going to be the sponsor of the investigation at the Raiders organization, understand scope, procedures and then continue to be involved throughout the performance of the investigation.

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Q. Okay. And were you assisted by anyone at Ernst & Young in "shadowing" the investigation?

A. Yes, primarily one of my Senior Managers that I work with on a lot of shadow investigations. His name is Alex Milkovich.

And then I believe at some point we, also, brought in one of our technology subject matter experts that could help us evaluate the e-discovery process used by the investigation team.

Q. Over what period of time were you involved in "shadowing" the investigation?

A. We started right away, you know, when we initially were contacted at the end of April of 2021. And we didn't issue our what we call "sufficiency memo" or "Appendix A" until the end of September. But our work was substantially complete towards the end of July.

But we would not complete our memo until the audit was about to be issued, which was at the end of September.

Q. Alright. In your book, can you turn to JX-0176.

(Arbitration Exhibit JX-0176 was referenced.)

Q. Is this a memorandum that you played a role in authoring?

A. Yes. This is the Appendix A that we prepared in support of the work that we performed.

Q. Okay. And we're going to walk through this.

But what's the purpose of this memorandum?

A. It's to document that the investigation that was performed by the investigation team was sufficient and this will be an attachment to the consulting memorandum that would be prepared by the audit engagement team where they would, you know, rely on our evaluation of the sufficiency of the investigation and where they would also document how they addressed the findings

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and conclusions of the investigation from an audit perspective.

Q. Alright. So let's turn to the memo. And I'm not going to spend much time on the first page, but there is a background section that provides some information about the Raiders.

Do you see that?

A. I do.

Q. And where did you acquire that information?

A. It would be a combination of sources. I think we obtained some information from the audit engagement team and we, also, obtained information from Arnold & Porter. And, I don't know, we may have obtained information from somewhere else as well. But those were the primary two sources.

Q. Alright. So, if you go to Page 2 of the memo, the second and third full paragraphs detail how the allegations came to the attention of Ernst & Young, correct?

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A. Correct.

Q. Alright. And you believe that you personally became involved shortly after those allegations came to the attention of Ernst & Young?

A. Yes.

Q. So, if you look at the very next page -- I'm sorry, the very next paragraph it says, "Given the seriousness of the allegations made to both the EY audit engagement team and the Club's Human Resources department, Dan Ventrelle, the Club's Executive Vice President and General Counsel, on April 29, 2021 engaged Arnold & Porter," and it goes on from there.

Do you see that?

A. Yes.

Q. And did you understand towards the end of April that the Raiders had engaged Arnold & Porter?

A. I did.

Q. Alright. If you look at the bottom of that page, it identifies who

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from the Raiders would be overseeing the investigation, correct?

A. Yes.

Q. And who was overseeing the investigation from the Raiders?

A. It was Dan Ventrelle, General Counsel of the Raiders, at the time and Jaime Stratton. I believe her title was head of HR.

Q. And did you have any views as to whether they were the appropriate persons to oversee the investigation?

A. They were not implicated in the allegations, as I understood them in late April, and that was the primary factor, that you couldn't have any people overseeing or sponsoring the investigation that were implicated by the allegations.

And it is common that a General Counsel may serve in that role in these types of situations.

Q. Mr. Badain was the President of the Raiders at the time, correct?

A. Yes.

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Q. And did he play any role in overseeing the investigation?

A. Not as far as I know.

We had made it clear that no one implicate -- potentially implicated by the allegations could be involved in overseeing or involved in the investigation. So my understanding was that he was not involved.

Q. Okay. And if you would turn to the next page, Page 3 of the memo.

A. (The witness complies.)

Q. The last paragraph on Page 3 talks about the overstatement of the Ventures revenue and what would have happened with respect to the debt coverage ratios had the overstatement not occurred.

Do you see that?

A. Yes.

Q. Was that information that was provided to Ernst & Young from management?

A. Yes.

Q. Okay. Can you go to Page 29

of the memo? And I'm using the page numbers at the middle -- the full page numbers in the middle at the bottom of the page.

Do you see there is a schedule with the heading, "Debt Coverage Ratio"?

A. Yes.

Q. And where did you and your team acquire this information?

A. We obtained it from Arnold & Porter and we understood it to be prepared by Ankura Consulting that had been retained to assist with the investigation.

Q. All right. And does this schedule provide information regarding whether or not the Raiders would have met certain financial covenants absent the double counting of revenue?

A. Yes, it presents two views. The third column referenced as "Re-Calculated Without Accruals," that provides a perspective if you don't -- if they would not have accrued the January

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payment each year.

And in the fourth column there, "Compliance?", that indicates whether or not the Raiders would have been in compliance with the debt coverage ratio.

And in the far right column, it also factors in if the company would not have used the lag method, which goes the other way. So it actually reduces the overstatement of income.

And it, also, reflects if you consider that as well whether the Raiders would have been in compliance with the debt coverage ratio for each year.

Q. Okay. So go back to Page 3. In that same paragraph, it's about five lines down, the middle of the fifth line. It reads, "As TeamCo was in the process of discussing with Bank of America the procedures performed and conclusions reached related to the investigation, Bank of America requested the following financial information for StadCo as of July 2021." And it goes on from there.

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Do you see that?
A. Yes.
Q. And it notes in the last sentence on that page, "IN comparing the information prepared in July to the information prepared in May 2021, material differences are identified in both revenue and expenses reported."
And then it says, "The differences affected the calculation of net profit (loss close) and ultimately the team DCR."
What is being referenced there?
A. It is a second matter that was brought to our attention in July of 2021. So a couple of months after the initiation of the investigation and it related to a second matter that was added to Arnold & Porter's scope at that point in time.
Q. Okay. And did Arnold & Porter investigate that second matter as well?
A. They did.

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Q. Alright. And we'll walk through their conclusions in just a moment.

Can you flip to the next page.

A. (The witness complies.)

Q. Do you see the first full paragraph on Page 4 relates to what we were just discussing, the StadCo matter?

A. Yes.

Q. And what were the conclusions by Arnold & Porter that were conveyed to Ernst & Young about the StadCo issue?

A. That Ed Villanueva and Marc Badain had been involved in an intentional misallocation of revenue and expenses between TeamCo and StadCo for the purpose of meeting a debt covenant requirement for StadCo.

Q. And when did Arnold & Porter communicate those conclusions to Ernst & Young?

A. In July, I would say mid July.

Q. Okay. Alright. So let's go

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to the Executive Summary on Page 5.

The bullet points that are identified under that "Executive Summary" subheading on the first half of the page, do they relate primarily to the process that was followed by Arnold & Porter?

A. In the second under, "We concluded the scope procedures"?

Q. Yes.

A. Yes. That's a high level summary of their process.

Q. Okay. And, as of the time that you authored this memo, did you have views as to the process that Arnold & Porter had followed?

A. Yes, I thought they were following a sound process and that the result or output of their investigation would gather the relevant facts on which people can then make determinations as to intent, as well as ultimate impact on the audit. And when I say, "the audit," the 2020 audit that EY was retained to perform at the time.

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Q. Okay. And that process included collecting electronic communications?

A. Yes.

Q. And it included a review of those documents?

A. Yes.

Q. And it included certain interviews that A&P conducted?

A. That's correct.

Q. Okay. Alright.

Turn to the next page, Page 6?

A. (The witness complies.)

Q. So I think the way this memo is set up, it talks about the StadCo issue, which we'll get into in a little more detail in a moment, but we just discussed and then the overstatement of the Ventures receivable and revenue, correct?

A. That's correct.

Q. Okay. And Arnold & Porter initially was investigating just the overstatement of the Ventures revenue and

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receivable, correct?

A. Yes.

Q. And did they report out on that matter before the StadCo matter was ever raised with Ernst & Young?

A. Yes, they did.

Q. When did they report out on the first issue?

A. I want to say June 30th, I believe.

Q. Okay. And then the StadCo issue was raised with Ernst & Young in July; is that correct?

A. That's correct.

Q. Alright. And then did Arnold & Porter eventually report out on the StadCo issue after they had advised it?

A. Yes.

Q. Okay. So, if you look on Page 6, the second bullet point on the page but the first circle. It says, "As it relates to the first error, AP stated that it did not find irrefutable evidence to conclude that individuals decided to

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record the January Venture payment twice with intent to overstate revenue."

Do you see that?

A. Yes.

Q. Is that what Arnold & Porter communicated to you?

A. Yes, they did.

Q. And the standard that they were applying, as you have written here, is a search for "irrefutable evidence"; is that correct?

A. That's what was communicated to us, yes.

Q. And as someone who has conducted or "shadowed" hundreds of investigations, is that the standard that is, typically, used?

A. No.

Q. And why is that not the standard that is, typically, used?

A. Because it's, frankly, very rare that people admit to doing something wrong, whether it's in an interview or they explicitly state that in an e-mail.

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So, generally, you're not going to find that.

So the standard that I'm more accustomed to seeing is that you gather all the relevant evidence through interviews, through e-mail review, reviewing transactional documents, journal entries, who reviewed them approved, them, et cetera.

And based on the totality of that, people then make a decision whether they think there is sufficient basis to conclude that there was intent or there was not enough of a basis to conclude intent but not an irrefutable evidence standard where somebody either has to admit in an e-mail or in an interview that they knew what they were doing was wrong.

MR. REED: I'm sorry. I would like to object to this testimony.

THE CHAIRPERSON: Go ahead. On what basis?

MR. REED: So yesterday we

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heard from Jaime Stratton, who, as you pretty quickly saw, had no personal knowledge of anything. I think we have a similar situation here.

Mr. Malmlund wasn't involved in any of the underlying events. He did as he's testified a "shadow investigation," which was overseeing the AP investigation. So he has no personal knowledge to bring us who did what at the Raiders, who did what at EY in terms of the audit. He was reviewing everything after the fact.

THE CHAIRPERSON: Okay.

MR. REED: He's testifying about the procedures Arnold & Porter followed in its investigation.

We have told Mr. Farina and told the Panel we are not relying on the Arnold & Porter investigation or their conclusion.

We've said we're going to put

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on the evidence in front of the Panel and you'll decide.

You're not bound by Arnold & Porter's conclusions and we haven't urged that as a basis for why you should find fraud didn't occur.

So critiques of the Arnold & Porter investigation are even more far afield of what's relevant here.

So maybe there's a proffer that I'm missing that there's going to be some relevance to this testimony.

And, obviously, if the Panel wants to hear it, you certainly can.

But for somebody who didn't participate in any of the underlying events and is just going to opine on, you know, what sort of investigation occurred when we're not relying on the

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investigation, it just seems there is no relevance and we're wasting time.

THE CHAIRPERSON: Mr. Farina.

MR. FARINA: That's not what he's going to be testifying to.

Mr. Malmlund was involved at the time reviewing the evidence that was uncovered in the investigation, having regular communications with Arnold & Porter.

He received readouts of interviews with the key witnesses.

He looked at documents that are, actually, excerpted in the memo and the significance of those.

He can provide testimony about events that happened, based on the evidence that was presented by the people who conducted the investigation.

And I would note that Mr. Reed in his opening had a slide that

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said, "Arnold & Porter got it wrong."

So, as to the conclusions that Arnold & Porter came to, I think, that's relevant to your determination about what happened here.

You're not bound by it, of course. But this lays out all of evidence that he was personally made aware of at the time as it was discovered.

And it goes through all the discussions that you all have heard about, the Plan B document that you had questions about yesterday. There is information about that.

It was on Mr. Badain's computer. Mr. Badain was interviewed about it by Arnold & Porter.

What Arnold & Porter told Mr. Malmlund about this document is in here. The.

Document is excerpted in the memo and it's discussed in the memo.

So he has very relevant information. Albeit he wasn't at the Raiders, but neither was Mr. Reed. Neither was I.

This is the information that was gathered in the course of the investigation. And we think it's relevant for the Panel to consider it.

MR. REED: I think Mr. Farina makes my point for me.

I mean, with all respect to Mr. Malmlund, I am sure he is very good at his job. His interpretation of the evidence is irrelevant here.

All of that evidence that Mr. Farina just cited in the memo is their proof and their case as to why a fraud occurred.

And your job is to look at

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all of that evidence and decide does it show fraud or not.

Mr. Malmlund might have a view on that, but his view on that is no more relevant than any other third party's.

THE CHAIRPERSON: Alright. This is something I want to take up with my fellow Panel members.

Okay. We're going to step out.

(Recess taken 3:15 to p.m.)

THE CHAIRPERSON: Alright. We can go back on the record.

So the Panel had the opportunity to discuss it.

[RULING] We'll hear the testimony. It's hard to parse this out, as we were talking about it.

But the one thing that we will say is that we're not going to give any weight to any opinions as to the ultimate

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issues of fact that are expressed by this witness.

So we'll hear it. But it's the conclusion of the Panel that we're not going to give it any weight.

Okay.

MR. FARINA: Okay. That's fine. Thank you, your Honor.

BY MR. FARINA:

Q. If you look at the bottom of Page 6, the bullet point immediately above as it relates to StadCo. It says, "AP stated that while there were clearly e-mails that judgmentally could illustrate evidence of intent on the part of management, there was no clear admission of knowledge, awareness and/or intent when it came to the accrual being recorded twice and the resultant overstatement of revenue."

Do you see that?

A. I do.

Q. Is that what Arnold & Porter

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communicated to EY?

A. Yes.

Q. Well, alright.

Under the heading as it relates to StadCo, what did Arnold & Porter communicate to EY about that issue?

A. That they did find sufficient evidence that there was intent.

Q. Alright. We'll walk through some of that evidence in a moment.

So let me ask sort of a broader question.

Why exactly is it that EY is "shadowing" the Raiders internal investigation of the whistleblower allegations?

What's the reason for it?

A. There are three primary reasons all related to, ultimately, being able to determine whether EY in this case could issue the 2020 audit.

So the first thing is if there's potential material misstatement of financials, they need to assess that.

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Two, they, also, need to evaluate whether there are any potential integrity issues with management and, in particular, the ones that provide representations, client representations to EY, which would be Mr. Badain and Mr. Villanueva.

And, lastly, if there are any matters that arise that triggers a loss contingency, then EY would need to evaluate whether something needs to be accrued or just disclosed in financials. So that's ASC 450.

But those are the primary reasons why we would need to evaluate an investigation to see what the relevant information is so that the audit team can evaluate each of those three.

Q. Alright. In the context of all the evidence that you had heard and your discussions with the EY engagement team, do you know whether a decision was made as to whether or not EY would be able to accept representations from

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Mr. Villanueva?

A. There was a decision that had been made. But as all -- as Mr. Villanueva resigned, the point became moot. He wasn't around to provide reps anyway.

Q. What was the decision that was made?

A. That we were not going to accept reps.

Q. And how about as to Mr. Badain, was a decision made as to whether or not EY would be able to accept representations from Mr. Badain?

A. Yes, it was the same decision. We would not take reps.

Q. And why was that issue eventually "moot"?

A. Because they both resigned from the Raiders organization. So they were not going to be available to provide reps, even if we were willing to take them.

Q. Can you go to Page 8, please?

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You understood that the investigation was going to be conducted by Arnold & Porter, correct?
A. Yes. It was the company's investigation and they had retained Arnold & Porter to lead that investigation.
Q. When did you learn that the company had retained Arnold & Porter?
A. Either late April or early May.
Q. Okay. When you first became involved with this issue, did you speak with Mr. Garcia?
A. Yes.
Q. And did you provide Mr. Garcia with any advice as to how the investigation that the Raiders would be conducting should proceed?
A. Yes. I told him that it should be an independent investigation, meaning, the company should retain or the organization should retain independent Counsel that wasn't the regular outside

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Counsel or had previously provided legal services to the organization and, also, anybody implicated by the allegations should not be involved.

Q. Okay. And do you know whether Mr. Garcia communicated that to the Raiders?

A. Yes. I was copied in on an e-mail in late April where I saw that he had communicated that to Mr. Badain.

Q. Okay. At some point did you come to learn that Arnold & Porter had a prior or preexisting relationship with the Raiders?

A. Yes, it was about three months [sic] or so into the investigation. So maybe like May 19th, May 20th, around there.

Q. So you said three months?

A. Sorry. I meant three weeks, three weeks.

Q. Okay.

A. Yeah.

Q. And how did you learn that?

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A. I believe we were on a call with Arnold & Porter and that topic came up and I learned that they had previously provided services to the company.

I, also, had a discussion with the audit engagement team and they indicated that they had provided, I think, $1.7 million of services to the organization in, I think, it was 2019.

Q. Okay. Can you turn to Page 10 of your memo?

There's a heading, "Independence and Objectivity."

Do you see that?

A. Yes.

Q. You note at the bottom of the page that, in "2019 the Raiders had incurred, approximately, 1.7 million in legal fees from A&P," correct?

A. Yes.

Q. And those were legal fees that were generated in a variety of different matters?

A. Correct.

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Q. Alright. Did you come to learn that the Raiders paid Arnold & Porter more than they paid any other law firm in 2019?

A. Yes.

Q. For reasons having nothing to do with the investigation, correct?

A. Yes.

Q. And was that fact troubling to you?

A. Yes.

Q. Why?

A. Because we had provided guidance to the company that they should retain independent Counsel and they didn't.

Q. Okay. If you look at Page 11, the second to last paragraph, you note that the previous work performed by AP "impairs its independence."

Do you see that?

A. I do.

Q. And you go on to say, "However, we believe they performed the

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procedures one would perform in an objective investigation"; is that correct?

A. Yes.

Q. Can you explain your thinking on that? What did you mean?

A. Yes. If this would have been at the outset of the investigation, we may have provided a different answer to the client. But at this point they were three weeks into the investigation. They had conducted a large number of interviews. They had started the e-discovery process.

And we thought it would be too disruptive to insist on them terminating Arnold & Porter to do the investigation in this case and instead retaining a new firm, that that would set the investigation back too far and as long as we thought that Arnold & Porter could perform an objective investigation and gather the relevant information, that we could still proceed on that basis.

Q. At some point did you learn

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that Arnold & Porter was providing legal services in connection with a whistleblower retaliation claim threatened by Araxie Grant?

A. Yes.

Q. When did you learn that?

A. I learned that shortly before my deposition in this matter.

Q. Okay. Did you know that at the time that you authored this memo?

A. I did not.

Q. Would that have affected your view as to independence?

A. Well, they -- I mean, I viewed them as not being independent already.

But, clearly, in the representation of the Raiders organization in the litigation with Araxie Grant, they're acting as an advocate and not, you know, independent or objective. So I found that to be troubling.

Q. Okay. And I'll do this very briefly.

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But did you come to learn at some point during the investigation that there were Arnold & Porter attorneys that had actually been identified as custodians?
A. Yes, we received a list of custodians and, I think, there were nine custodians in total and, I think, two of them were Arnold & Porter lawyers.
Q. And those "Arnold & Porter lawyers" had provided services to the Raiders in connection with matters that were being advised, correct?
A. That's correct.
Q. Which is why they were custodians?
A. Correct.
Q. Okay. So you understood that Arnold & Porter interviewed a number of witnesses in connection with the investigation, correct?
A. Yes.
Q. And did you have a view as to whether they had -- the folks that they were interviewing were the appropriate

subjects of the interviews?

A. I thought they were a sufficient number of interviewees and the right types of interviewees to gather the relevant information.

Q. Okay. Can you turn to Page 19?

A. (The witness complies.)

Q. Is this a list of the interviews that were, to your knowledge, conducted by Arnold & Porter?

A. Yes.

Q. Did Ernst & Young receive a readout of the interviews?

A. Yes, we did on three dates in July of 2021.

Q. Okay. Was Ernst & Young provided with any notes taken during the interviews?

A. No.

Q. So how did the readout work?

A. They would do it over the phone, which is pretty customary. Lawyers deem the actual interview notes

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as being privileged, so they're not going to provide those to us and instead they will give us a verbal readout, which is what happened in this case.

Q. Okay. At the time you authored this memo, were you aware that in addition to the Arnold & Porter interviews, the Raiders Human Resources department had interviewed a number of these witnesses?

A. I was not aware.

Q. Okay. And have you since been made aware that there are interview notes?

A. Yes, I received those shortly before my deposition in this matter.

Q. Okay. I'm not going to ask you to go into any detail about those.

But did you believe that those interview notes was something that should have been provided during the course of the investigation?

A. Yes.

Q. Did you believe that the

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information included in those notes was relevant to the investigation?

A. Yes.

Q. Were you ever given any explanation as to why EY wasn't made aware of those interviews?

A. No. We actually asked for them at one point and we were told that there wasn't any written recordation of those interviews and we later found out that there were.

Q. Alright. So let's go to Page 20 of the memo.

A. (The witness complies.)

MR. CHANDLER: Who said that? Who told you that?

THE WITNESS: Actually, Arnold & Porter. It's actually indicated, I think, in our memo here.

Q. Alright. Let's go to Page 20. The heading is, "Findings and Observations."

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Okay. Cognizant from instructions from the Panel, I'm not going to ask you your personal opinions, but I would like to review some of the evidence and information that was provided to you by Arnold & Porter during the course of the investigation.

So why don't we go to Page 23.

Do you see at the bottom of Page 23, there's a bullet that begins, "In May 2006, there was a Plan B document that was created, which AP believes was created by Marc Badain, then CFO and current President"? Do you see that?

A. Yes.

Q. Is that what you were told by Arnold & Porter?

A. Yes, it was.

Q. And were you provided with a copy of the Plan B document?

A. Yes, it was a Word document and we were provided a copy.

Q. Okay. And what were you told about the significance of this piece of

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evidence in the context of the investigation?

A. That it related to the inception of when the organization started to record this accrual of the January payment for Ventures and that this was a document in which they were contemplating various options for obtaining additional revenue.

Q. Okay. And "additional revenue" for what purpose?

A. For the purpose of being able to meet the debt covenant.

Q. And if we look at the Plan B document, which appears on Page 24, this is the document excerpted into your memo, correct?

A. Yes.

Q. You had this back in June or July of 2021, correct?

A. We did. And I think this was, also, included in one or more of Arnold & Porter's presentation materials and readouts to us.

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Q. Okay. The Plan B idea that ultimately became the accrual of revenue that was paid in January into December, is that identified? Is that included in this document?

A. Yes, it's No. 4.

Q. Okay. Let me ask you about -- first of all, did you discuss this Plan B document with Arnold & Porter?

A. Yes, we did.

Q. Alright. I'm going to ask you about the first item and it's a somewhat lengthy paragraph. I'm going to ask you just take a moment and review that to yourself.

A. Yes, I've read it.

Q. Okay. Was it your understanding from what was communicated to you that the "Ed" that's referenced in that first numbered paragraph is Ed Villanueva?

A. Yes.

Q. Again, you were told by Arnold & Porter that this was Marc

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Badain's document, correct?

A. Correct.

Q. And in connection with its relevance to the investigation, what was your understanding of what was being communicated in this first paragraph as a Plan B idea?

A. It was another relevant data point for consideration, as you evaluate intent.

Q. And why is that?

A. Because the document states here, the second sentence, "The following plan deals with the TB deferral of 7,182,000. We will receive in September '06 the national TD money," et cetera, et cetera.

And then it goes on to say the 7 million 182 will not be revenue to us because we reported revenue on this money in the past.

So they've already recognized a revenue related to this.

But if you continue to read, it,

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basically, discusses that if they can just get the NFL to provide a letter describing it as something else, then they can take it into revenue in 2016, which would be highly improper, if they ended up doing that.

Q. And why would that be "improper"?

A. Because they've already recognized revenue, as is stated in the sentence that I just read.

MR. REED: Again, now he's testifying. Objection, he's now testifying --

THE CHAIRPERSON: Sustained. [RULING]

MR. CHANDLER: Would you highlight the sentence he was just reading? I was reading and listening and couldn't find it.

THE WITNESS: It's the third line where it says, The 7 million 182 will not be revenue to us because we reported on this

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revenue, on this money, in the past.

And then if you read the rest, it talks about if, we can get it to be characterized as something else in a letter from the NFL, then we can record the revenue in 2006.

MR. CHANDLER: Thank you.

BY MR. FARINA:

Q. So let's go to Page 29 of the memo, which, again, discusses Arnold & Porter's communications to EY about the Plan B document.

If you look at -- it's about four-fifths of the way down the page. There is a bullet, "In discussing the Plan B document above with Marc Badain."

Do you see that?

A. Yes.

Q. And this is Arnold & Porter recounting to you what they asked Mr. Badain about this Plan B document, correct?

A. And what he said in response,

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yes.

Q. He indicated the document reflects "different ideas to help the Raiders recognize revenue for purposes of EBITDA that would help them meet their newly imposed debt covenants."

Do you see that?

A. Yes.

Q. And then it goes on to say that, AP noted that there was a lot of concern at the Raiders about what would happen if they were unable to meet debt covenants.

Do you see that?

A. Yes.

Q. Was that communicated to you by Arnold & Porter?

A. That's what we were told.

Q. Alright. It goes on. There is a next bullet point where Arnold & Porter communicated to EY that "Marc Badain maintained an EBITDA calculation document, which included the revenues and expense of the Club, as well as

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calculations of the DCR."

Do you see that?

A. Yes.

Q. Was it your understanding that Arnold & Porter asked Mr. Badain about that EBITDA document?

A. Yes.

Q. And if you flip to the next page on Page 30, if you look at the third bullet point, do you see it says, "In the notes in EBITDA calculation file."

Do you see that?

A. Where are you now?

Q. So I'm about a third of the way down the page on Page 30.

A. Yes, I see that now.

Q. Okay. So this is Arnold & Porter describing the actual file to you, correct?

A. Yes.

Q. Okay. And they're, obviously, adding some of their own commentary on it. But it says, "In the notes in EBITDA calculation file, it is apparent that

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both Marc Badain and Ed Villanueva are aware of what numbers, i.e., the four remittance payments and the January remittance accrual are included in the Ventures line item."

Do you see that?

A. Yes.

Q. Is that what Arnold & Porter told Ernst & Young?

A. Yes, that's what we're told.

MR. REED: I'm going to object again. We're just reading a memo.

THE CHAIRPERSON: Alright. I think the point is that's what was told to EY by Arnold & Porter.

MR. FARINA: That is the point.

THE CHAIRPERSON: We're only going to accept it for that purpose.

And, in fact, we would note that with respect to any opinions, for example, expressed by Arnold

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& Porter.

The ultimate issues of fact will be decided by this Panel, not based on what anybody else said, okay?

MR. FARINA: Understood.

MR. REED: If you want to read the memo, we can read the memo.

MR. FARINA: Well, I think, it's also relevant since there's information recounting what Mr. Badain and Mr. Villanueva told Arnold & Porter. That's evidence that the Panel can consider.

THE CHAIRPERSON: Well, what weight we'll give that given it's at this point double-hearsay is something else entirely.

BY MR. FARINA:

Q. Alright. Let me ask -- if you go to the second bullet point where it says, "Villanueva stated that he was under the belief that the accrual was being automatically reversed."

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Do you see that?

A. Yes.

Q. Did Arnold & Porter ever present to Ernst & Young anything that would suggest that the accrual was being automatically reversed?

A. No, only what he stated to Arnold & Porter when asked.

Q. Okay.

Okay. So go to Page 25.

A. (The witness complies.)

Q. Again, this is back to the Plan B document.

Is it your understanding that when the Raiders decided to execute on this particular Plan B item of accruing the January payment into December, that there were discussions with third parties about doing so?

A. Yes.

Q. Alright. Now, I just want to focus you on what, at least, according to this memo what Mr. Badain said in his interview.

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Do you see it's the third bullet point on Page 25 that begins, "While there were consultations."

It says, "While there were consultations, A&P and Marc Badain per his interview believed that those consulted may not have been provided with all relevant information."

Do you see that?

A. Yes.

Q. "Including awareness that the Raiders financial statements were related to a prior NFL football season and not the prior calendar year."

Is that what you were told?

A. That's what we were told.

Q. Go to Page 26.

A. (The witness complies.)

Q. The bottom of 26 is a reference to the Raiders entering into a new credit agreement as of December 27, 2007, correct?

A. Yes.

Q. And that's something that you

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were made aware of at the time of the investigation?

A. Yes, that was discussed with Arnold & Porter.

Q. And there were no debt covenants with the DCR calculation in that agreement, correct?

A. For the year 2008, that's correct.

Q. So what appears next in the e-mail is an e-mail chain between Mr. Villanueva and the NFL.

Do you see that?

A. Yes.

Q. Is this something that was brought to your attention by Arnold & Porter in the course of the investigation?

A. Yes, that was shared as part of their reporting out to us.

Q. Okay. And in the course of this e-mail exchange that Mr. Villanueva had with Mr. Firestone, Mr. Villanueva is making a case to Mr. Firestone as to why he should not be recognizing the

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January 2009 payment into December of 2008, correct?

A. Yes, that's the argument he's making.

Q. And that was brought to your attention in the investigation, correct?

A. Yes.

Q. Based on what was communicated to you in the investigation from the period of 2006 through 2019, did the Raiders double count revenue in every single year but one?

A. That's correct. They didn't double-count in 2008, when there was no covenant applicable for that year.

Q. Okay. So go to Page 32.

A. (The witness complies.)

Q. There's an e-mail that the Panel is familiar with where Mr. Villanueva makes a statement and "a little manipulation" and there is a picture of Antonio Brown.

Are you familiar with that e-mail?

A. Yes.

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Q. Okay. And is it your understanding that Mr. Villanueva was asked about that e-mail in one of his interviews from Arnold & Porter?

A. Yes, he was.

Q. And did Arnold & Porter communicate to you what Mr. Villanueva had said about that e-mail at the time?

A. Yes.

Q. Okay. And if up look at the top of Page 32, the second bullet point, do you see there's some discussion about Ed Villanueva stating that he assisted in getting Antonio Brown traded and ostensibly helped market Antonio Brown as "a better player than he was"? Do you see that?

A. Yes.

Q. And is that what Arnold & Porter told you that Mr. Villanueva had told them about the meaning of that e-mail?

A. That's correct.

Q. And then it notes that Dan

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Ventrelle, who was the Interim President at the time, correct?

A. I don't know if he was the Interim President at the time. He was -- he may have still been the General Counsel.

Q. Okay, fair enough.

That Mr. Ventrelle provided information that Antonio Brown was actually not traded, he was released, correct?

A. Correct.

Q. Okay.

THE CHAIRPERSON: Can I ask a question?

All this testimony is geared to what EY was told by Arnold & Porter?

MR. FARINA: Correct.

THE CHAIRPERSON: Okay. Because it's double-hearsay and we're not going to accept it for its truth.

MR. FARINA: Well, I think,

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-- first of all --

THE CHAIRPERSON: You've got someone telling Arnold & Porter and then Arnold & Porter is telling EY, that's double-hearsay.

We can't accept it for the truth. This witness doesn't know if it's true.

MR. FARINA: Well, I'm not actually offering it for the truth.

THE CHAIRPERSON: That's okay.

MR. FARINA: I mean, I'm offering it to show this is what Mr. Villanueva told the investigators. He's told the Panel something very different. And I'm not.

Offering this prior explanation that Mr. Villanueva offered to Arnold & Porter. I'm not offering that for the truth, because I don't think it's true.

But I think it's relevant

that during the course of the investigation Mr. Villanueva told the investigators, tried to explain away that e-mail, which was a significant predicate for the conclusions that were reached, and he came here and told the Panel something different.

THE CHAIRPERSON: But this is all double-hearsay.

MR. BICKERMAN: So it's for impeachment?

THE CHAIRPERSON: Is that it?

MR. FARINA: Well, it is for impeachment.

THE CHAIRPERSON: If it's for impeachment, that's okay.

MR. FARINA: Yes, thank you.

BY MR. FARINA:

Q. Alright. So go to Page 35.

A. (The witness complies.)

Q. And I skipped the prior pages. But, Mr. Malmlund, you're welcome to look at that.

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I'm trying to listen to the Panel's instructions here.

There is a discussion of Amy Trask on Page 35.

Do you see that?

A. Yes.

Q. Who was Amy Trask?

A. At the time in 2006/2007 when the first January accrual occurred, she was the President of the organization and Mr. Badain was the Chief Financial Officer.

Q. Okay. And was it your understanding that Amy Trask was believed to be relevant to the issues that were being advised?

A. Yes.

Q. Okay. Do you know whether or not Amy Trask was ever interviewed?

A. No. We discussed this with Arnold & Porter. She wasn't interviewed.

But I would say it's fairly common that when you have individuals who are no longer with an organization, then a lot

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of times organizations don't want to reach out and interview them as part of an investigation.

So I wasn't surprised by that, Arnold & Porter decided not to interview Amy Trask.

Q. Okay. But it's your understanding that Amy Trask was never interviewed in the course of the investigation?

A. Yes, that's my understanding.

Q. Okay. So go to Page 36.

A. (The witness complies.)

Q. And here this is a discussion of the StadCo events. I'd really like to focus on factually how the StadCo issue presented itself, what your understanding was of the facts, as they were occurring, while you had been engaged by the engagement team to "shadow" the investigation.

So what is your understanding at the time as to how the StadCo issue revealed itself?

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A. Bank of America when learning of the TeamCo issue, the accrual and the lag method issue, wanted more information related to StadCo, as it related to financial information and, also, projected information.

So they asked the company to provide that.

At the time Travis Scott, the accounting manager, together with Ankura put some information together, based on the company's books and records, and sent that to Bank of America in response to their request.

Bank of America then came back and said, we've previously been provided in May of 2021 financial information that's inconsistent with what you just gave us for the same periods and we need you to explain this.

Q. Okay. And was it your understanding that in July of 2021 Ankura then tried to investigate the differences between the information that had been

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provided in May and the information that had been provided in July?

A. Yes.

Q. Alright. And does the memo at the bottom of Page 36 recount what Ankura then reported out as to what those differences were?

A. Yes. It's summarized there.

Q. Okay. And were you told that Ankura was looking for support for the original accounting treatment that had been the basis for the May information?

A. Yes, Ankura and Travis Scott had gone into the general ledger of the company to pull the numbers. So they didn't understand where the numbers that had previously been provided in May, where they came from.

Q. And were you told whether or not Ankura and Mr. Scott were able to obtain any support for the numbers that had been provided to the bank?

A. No.

Q. Based on the identification

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of this discrepancy, did Arnold & Porter expand the investigation to try to figure out how this had happened?

A. Yes, they expanded their e-mail review to, also, look for e-mails that would be relevant to trying to address the issue with StadCo.

Q. Okay. And if you look at Page 38 and Page 39 and 40, do you see the examples of some of the e-mails that Arnold & Porter identified during the course of their investigation?

A. Yes.

Q. And at a high level, what did Arnold & Porter tell Ernst & Young as to the e-mails that they had identified when they dug into this issue?

A. That those e-mails indicated that there were numbers that were submitted to Bank of America in order to meet the debt covenant for StadCo.

Q. How did the work that you performed in connection with the shadow investigation, how did you communicate

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that information to the engagement team?

A. We had various phone calls throughout the investigation during which we would discuss the progress and what we were hearing and what we were seeing and then later when we documented our work and what we had been told and learned in this Appendix A that we just went through that was shared with the audit engagement team as well.

Q. Okay. And, to your knowledge -- and I only want what you know -- how did the information that was presented to Ernst & Young during the course of the investigation, how did that impact the conduct of the 2020 audit?

A. They had to find other signatories to provide the representations that had previously been provided by Mr. Badain and Mr. Villanueva and that was going to be Dan Ventrelle, the President, and Travis Scott and then they, also, hired a new CFO. So those were going to be the people providing the client

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representations and then they also expanded their audit procedures and lowered the scope for transaction testing, et cetera.

So they had a list of additional procedures that they performed as a result.

Q. Okay.

MR. FARINA: Alright. Let me just take a short break and I think I might be done.

THE CHAIRPERSON: Sure, do that.

Off the record.

(Recess taken 3:56 to p.m.)

THE CHAIRPERSON: Okay. Let's go back on the record.

(There is a discussion off the record.)

THE CHAIRPERSON: Mr. Farina, any further questions?

MR. FARINA: No.

THE CHAIRPERSON: Mr. Reed?

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MR. REED: I just have one question.

CROSS-EXAMINATION BY MR. REED:

Q. And I'm going to remind you, you know, even though you haven't really been sworn, you're under oath here.

Were you at Andy Mintzer's wedding?

A. Yes, I was.

MR. BICKERMAN: I'm sorry?

THE CHAIRPERSON: I didn't hear the question.

Q. Were you at Andy Mintzer's wedding?

A. The answer is, yes.

MR. REED: Okay. That's all.

MR. FARINA: And you were a colleagues of Hemming Morse, correct?

THE WITNESS: Well, actually, at Arthur Young, when I transferred into the forensic accounting group over there, he was in that group at the time. So we worked about six months together there

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and then I don't think we were at Hemming Morse at the same time. He was at a different firm then.

MR. REED: I don't have any other questions.

THE WITNESS: Okay. That was the easiest cross ever.

(There is a discussion off the record.)

QUESTIONS BY THE ARBITRATORS

THE CHAIRPERSON: I think this is, actually, a question the Panel has, but I'll verbalize it.

Did you think the conclusions that were reached by Arnold & Porter were fair, objective, competent?

THE WITNESS: I thought that the -- clearly, the conclusion as it relates to StadCo where they had found intent.

They didn't find a principal accounting basis and, you know, I think we were all on the same

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page on that one.

I thought there was a lot of evidence, data points to find also intent on the first issue and especially when you had found intent on the second issue, the same individuals --

THE CHAIRPERSON: Did they find that?

THE WITNESS: Pardon?

THE CHAIRPERSON: Did they find that? In other words, what were their conclusions in --

THE WITNESS: Their conclusion on the first issue was inconclusive.

THE CHAIRPERSON: Okay. In other words --

THE WITNESS: Not one way or the other.

MR. BICKERMAN: If I can interrupt.

THE CHAIRPERSON: Go ahead, John.

MR. BICKERMAN: We're not

looking for you to evaluate each
of the findings. That's for us.
THE WITNESS: Yes.
MR. BICKERMAN: We're just
asking you, based on your
"shadowing" of their activities,
did you think it was a fair and
accurate report?
THE WITNESS: I think -- I
think they performed the right
types of procedures to gather the
relevant information. But their
report out was, we don't find
intent on the first issue. We do
find intent on the second issue.
MR. BICKERMAN: I'm going
to interrupt you again because
that's an ultimate issue for us
to decide.
THE WITNESS: Right. But
that was part of the report.
If you put that aside, I
think, they did a good job in terms
of gathering the relevant facts

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on which a decision could be based, yes.

THE CHAIRPERSON: Okay. I think we can just drop it.

MR. CHANDLER: Let me ask a question about Plan B, JX-176/Page 24.

(Arbitration Exhibit JX-176 was referenced.)

MR. CHANDLER: The first sentence or two is talking about recognizing the January revenue in December; is that right?

MR. REED: I'm sorry, the first sentence of what? I just want to make sure we are all on the same pain.

MR. CHANDLER: I'm sorry, the big paragraph.

MR. REED: Okay.

MR. CHANDLER: I'm having trouble understanding what the big paragraph is saying.

Under Plan B ID, there is

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one swap deferral with January payment.

I don't want you to interpret it.

Did A&P tell you what this was talking about, what they thought this was talking about?

THE WITNESS: No.

MR. CHANDLER: Okay. What about Paragraph 4 underneath that, "take January 2007 into income and create AR after all it's 2006 TV income"?

That's just the accrual, right?

THE WITNESS: Right. That's what they were saying was the origin of starting to accrue the January payment.

MR. CHANDLER: Okay. Alright. Never mind. Thank you.

THE CHAIRPERSON: Okay. Anything else for today?

Are we done?

PROCEEDINGS

MR. FARINA: I think so.

THE CHAIRPERSON: Alright. Just a quick question for you because the Panel has been discussing this. We're sort of forward looking.

Ultimately, when we complete the hearing, we get your final submissions and we get to closing arguments, are you going to want to do the closing arguments in person?

MR. FARINA: I would prefer to.

MR. REED: I would too.

MR. BICKERMAN: So this is December?

MR. FARINA: I mean, we can do it --

MR. BICKERMAN: No, no, I understand. We just think it's scheduled for December 16th.

MR. CHANDLER: So you all are coming to Atlanta?

PROCEEDINGS

(There is a discussion off the record.)

MR. FARINA: I mean, we're happy -- you asked what's on the schedule.

MR. BICKERMAN: That's fine.

THE CHAIRPERSON: That's fine.

MR. FARINA: We're happy to do it wherever or whenever you all want to do it. That's fine.

THE CHAIRPERSON: We just want to know -- in person is fine with us. It works for the Panel.

Okay. Thank you everybody. Have a great night.

9:00 a.m. tomorrow.

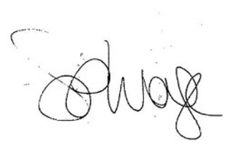
(Time noted: 4:07 p.m.)

PROCEEDINGS

C E R T I F I C A T E

I, SILVIA P. WAGE, CSR, CRR, RPR, a Notary Public for the State of New York, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



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Notary Public of the State of New York

My Commission expires November 29, 2026

Dated: September 25, 2024

CPR ARBITRATION

In the Matter of the Arbitration between:
A.D. FOOTBALL, INC., A.D. FAMILY LIMITED PARTNERSHIP, A. & R. BOSCACCI INVESTMENT CO., E. & V. BOSCACCI REVOCABLE TRUST/MARITAL LLC, E. & V. BOSCACCI DECEDENT'S TRUST/DECEDENT LLC, JILL LOVINGFOSS, CODY LOVINGFOSS, JOSH LOVINGFOSS, CHALET ROBERTS, GOPPL PARTNERSHIP, L.P., PATRICIA WINKENBACH and GERALD WINKENBACH as the Trustees of the Winkenbach Family Trust, PATRICIA WINKENBACH, GERALD WINKENBACH, RLP HOLDINGS, LP, ADF INVESTMENTS LLC, ADF HOLDINGS, LLC, A.D. FAMILY LIMITED PARTNERSHIP, A.D. FAMILY LLC,
MARK DAVIS, FIRST FOOTBALL, LLC, MD FOOTBALL LLC, ALLAN BOSCACCI and PATRICIA BOSCACCI as the Trustees of the Boscacci Family Trust, LISA BOSCACCI, ALLISON MEIN, ANNE CARPENTER, ALIDA BEILKE, CARA YURAS, KENNETH WEAKLEY and LYNNE WEAKLEY as the Trustees of the Weakley Family Trust, JEANNE DAVIES, ERIC WEAKLEY, ELYSE WEAKLEY, MARY JANE BOSCACCI as the Trustee of the Mary Jane Boscacci Living Trust, PAUL STEFANI and ANN STEFANI as the Trustees of the Stefani Family Trust, CATHERINE STEFANI, JON-PAUL STEFANI, NANCY MCAULIFFE, KELLY PEPPMEIER, ERIN MCAULIFFE, ALLAN BOSCACCI, COREY MCAULIFFE, ALLAN BOSCACCI as the Trustee of the A&R 2005 Irrevocable Trust, NANCY K. MCAULIFFE as the Trustee of the Nancy McAuliffe Family Trust,

(CAPTION CONTINUED)

DAVID ABRAMS, FRIEDMAN FOOTBALL LLC, JOSHUA FRIEDMAN, BETH FRIEDMAN, PEAK TRUST COMPANY as the Trustee of the Friedman Family 2015 GST I and the Friedman Family 2015 GST II, GARONZIK INVESTMENT PARTNERS LLC, FREDRIC GARONZIK, FREDRIC GARONZIK as the Trustee of the Fredric B. Garonzik Trust, DAVID GARONZIK and SAMUEL GARONZIK as the Trustees of the Fredric B. Garonzik Family Trust and the Anne G. Garonzik 2011 Trust, DAVID GARONZIK, SAMUEL GARONZIK, ANNE GARONZIK as the Trustee of the Anne G. Garonzik Trust, ANNE GARONZIK, PAUL LEFF, SILVERBLACK LLC, STEPHEN MALKIN, DAN GOLDRING, and MARK DAVIS as the Trustee of the Mark Davis 2010 Trust and the Davis Credit Shelter Trust,

Claimants,

-and-

ERNST & YOUNG LLP and EY US LLP,

Respondents.

Matter No. G-23-23-N

September 25, 2024
9:02 a.m.
Seven Times Square
New York, New York

B E F O R E:

HON. JOHN DIBLASI, Chairperson
JOHN CHANDLER, Arbitrator
JOHN BICKERMAN, Arbitrator

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ALSO PRESENT:

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JASON BENCZE
MARCO HEIM
JUSTIN CARLEY
JUSTIN MCCARTY
MEREDITH MOSS
(via videoconference)
MARK CARLSON
ANDREW MINTZER
(via videoconference)
RACHEL LOGAN
(via videoconference)
KERRY HINCH
(via videoconference)
KELLY BOSSARD
(via videoconference)

* * *

THE CHAIRPERSON: Good morning, sir. Welcome. My name's John DiBlasi. To my left is john Bickerman. To my right is John Chandler. We comprise the panel here today. 09:02:09 09:02:09 09:02:09 09:02:09 09:02:15 09:02:16

We will turn it over to counsel for direct examination. 09:02:17 09:02:19

One of the things that the panel had discussed and we really don't need the witness to be qualified, unless there's an objection to the qualification of the witness, so we can skip the curriculum vitae. 09:02:20 09:02:22 09:02:24 09:02:25 09:02:26 09:02:29 09:02:31

MR. REED: There's no objection to qualifying the witness. 09:02:33 09:02:34 09:02:36

I do want to raise a matter though that has come to our attention. 09:02:36 09:02:36 09:02:37

So Mr. Farina told me this morning that he's cut down his presentation from the twenty-two slides that he produced to us to 09:02:37 09:02:42 09:02:44 09:02:46

two. But unfortunately, the two 09:02:48
that he provided us I don't believe 09:02:50
were disclosed to us in connection 09:02:52
with discovery or in the witness' 09:02:54
report. The first one, as I 09:02:57
understand it, intends to quantify 09:03:00
the difference between the Ventures 09:03:02
revenues reported on the conforming 09:03:04
schedules and the fiscal period 09:03:06
financial statements. That 09:03:08
calculation I don't believe was 09:03:10
performed in the report nor was it 09:03:12
testified to in the deposition, nor 09:03:15
was it the subject of any opinion 09:03:16
that was disclosed in the report. 09:03:18
The report disclosed several 09:03:19
opinions. One, that management had 09:03:23
not complied with its reporting 09:03:24
responsibilities and with its 09:03:26
control responsibilities. And then 09:03:29
the third opinion primarily is that 09:03:31
there had been indicia of fraud, 09:03:34
which I understand he's not going 09:03:37
to do. 09:03:39

In connection with that, he 09:03:39

discussed how the Raiders revenue reporting on their conforming schedules didn't match the reporting on their financial statements, which I think we've all seen. He made no attempt to quantify it or measure any overall impact in his report. So that's the first issue.

The second issue is the second slide purports to quantify an overall impact of the revenue overstatement on the debt covenant. Again, I don't believe that was ever presented in the report, nor was it the subject of any of his opinions. He testified, of course, that the Raiders overstatement of revenue impacted their ability to meet the debt covenant, which again I think we all stipulate to, but there was never an attempt or a disclosure of a calculation of an overall impact on the debt covenant over a fourteen-year period. So in

the same way that we've previously 09:04:42
had an expert precluded from 09:04:43
testifying about something that 09:04:44
wasn't disclosed in the report as 09:04:46
an opinion, we'd ask for the same 09:04:46
remedy here. 09:04:49

THE CHAIRPERSON: Mr. Farina? 09:04:50

MR. FARINA: Sure. 09:04:52

If you look at the first 09:04:52
slide, it's walking through the 09:04:54
booking or two season remittances 09:04:57
and how those journal entries were 09:04:58
made by Raiders management. His 09:05:03
report goes on for pages and pages 09:05:04
and pages walking through this 09:05:07
exact exercise. So his report on 09:05:09
page thirty has a heading the 09:05:11
record indicates that the Raiders 09:05:14
could and did prepare accurate 09:05:15
financial statements for certain 09:05:17
purposes but prepared false 09:05:19
financial statements for other 09:05:21
purposes, and then it goes on for 09:05:22
one, two, three, four, five, six, 09:05:25
seven, eight, nine, ten, eleven, 09:05:28

twelve, thirteen, fourteen pages 09:05:31
where it walks through the booking 09:05:33
-- walks through this exact 09:05:36
exercise, the booking of the NFL 09:05:38
season remittance and it goes 09:05:40
through three years in the reports 09:05:42
and includes charts that show the 09:05:44
impact on revenue and how the 09:05:47
revenue number is different when 09:05:49
they booked the conforming and when 09:05:52
they booked the year-end 09:05:53
financials. So we literally go 09:05:55
through this exercise for twelve 09:05:57
pages. 09:05:59

The point being is that they 09:05:59
did it two different ways, they 09:06:01
knew how to do it correctly, and 09:06:04
then did it incorrectly. And so we 09:06:07
can walk through that exercise for 09:06:09
three seasons. Here we walked 09:06:09
through it for two. So that is 09:06:11
clearly in the report. 09:06:12

MR. REED: Let me just stop 09:06:14
you there. 09:06:16

This first slide I had 09:06:16

understood you to say is a 09:06:17
cumulative slide over all the 09:06:19
years? 09:06:22
MR. FARINA: No, it's just two 09:06:22
years. 09:06:24
MR. REED: Then I withdraw on 09:06:24
that. 09:06:27
ARBITRATOR CHANDLER: By the 09:06:29
way, is this Andrew Richmond? 09:06:29
MR. FARINA: It is. 09:06:31
ARBITRATOR CHANDLER: I just 09:06:32
wanted to make sure where we were. 09:06:33
THE CHAIRPERSON: Mr. Reed, 09:06:35
you said there was another one? 09:06:37
MR. FARINA: So the second 09:06:37
slide -- 09:06:37
THE CHAIRPERSON: I think Mr. 09:06:37
Reed's withdrawing the objection. 09:06:39
MR. REED: To the first one. 09:06:39
The second slide attempts -- 09:06:42
and if I misunderstood you, Steve, 09:06:44
by all means correct me, I thought 09:06:47
you had said this is a cumulative 09:06:49
over the entire period description 09:06:49
of the impact on the -- of the 09:06:51

overstatement on the debt covenant; is that right?

MR. FARINA: No, that's not what this is. So all this is, if you look at the second slide, there's a report to B of A. So this is simply the compliance certificate calculation that the Raiders performed that Mr. Villanueva prepared that I used with Mr. Villanueva where he tells the bank that they're in compliance with their covenant as of 3/31/17 and it just walks through literally the exhibit that we used with Mr. Villanueva, and all we've done is we've taken the improper revenue that Mr. Richmond quantified and just plugged that in, so instead of using the improper revenue that was used in the compliance certificate, you plug in the actual revenue, the not overstated revenue, and it shows that they don't come close to meeting their covenant.

So I will agree that this calculation is not Raider out in the report but the conceptually everything that goes into this is in the report. 09:07:44 09:07:46 09:07:47 09:07:51 09:07:53

MR. REED: If it's just for the one year, I withdraw. I apologize for the slander. I withdraw. 09:07:54 09:07:55 09:07:59 09:08:02

MR. FARINA: And we have cut back Mr. Richmond's testimony significantly. Everything that Mr. Richmond is going to be testifying to is the product of his own forensic investigation. 09:08:03 09:08:05 09:08:08 09:08:10 09:08:10 09:08:14

THE CHAIRPERSON: Okay. 09:08:14

ARBITRATOR CHANDLER: Maybe he can be dismissed now? 09:08:17 09:08:17

MR. FARINA: No, he's got to lot to say still. 09:08:19 09:08:22

A N D R E W R I C H M O N D, having been first duly deemed sworn, upon being examined, testified as follows: 09:08:24 09:08:24 09:08:24 09:08:24

(CONTINUED ON NEXT PAGE) 09:08:24

DIRECT EXAMINATION BY 09:08:24
MR. FARINA: 09:08:25
Q. Mr. Richmond, we're going to 09:08:25
skip the qualifications. 09:08:27
I just wanted to, if I could, 09:08:28
just ask about you are a certified 09:08:30
fraud examiner? 09:08:32
A. Yes. 09:08:33
Q. And just very briefly, what 09:08:33
does that mean? 09:08:35
A. It's a credential issued by 09:08:36
the Association of Certified Fraud 09:08:36
Examiners. It's the world's largest 09:08:40
anti-fraud organization. It provides 09:08:42
training, guidance, and continuing 09:08:45
education on fraud investigation, fraud 09:08:47
detection, how frauds are designed, 09:08:51
executed, and concealed. It also 09:08:54
includes how -- guidance on how to 09:08:57
explain the impact of fraud on 09:09:00
financial statements and then how to 09:09:02
cure the impact of fraud on financial 09:09:05
statements and at entities, how you 09:09:07
then cure the control environment to 09:09:10
try to move an entity away from the 09:09:12

impact of fraud. So it's credential held by thousands of fraud investigators around the world. 09:09:15 09:09:18 09:09:19
Q. Did you perform a forensic investigation in connection with the matters at issue in this case? 09:09:21 09:09:23 09:09:24
A. Yes. 09:09:25
Q. And is the product of your forensic investigation reflected in your report? 09:09:26 09:09:30 09:09:32
A. Yes. 09:09:32
Q. And could you go to Richmond report Exhibit 1. It should be the second tab. 09:09:32 09:09:36 09:09:39
A. I'm there. 09:09:43
Q. Can you explain for the panel what this is and what you did to create it? 09:09:44 09:09:47 09:09:50
A. Sure. 09:09:50
So the header, summary of impact of the Raiders double-counting of Ventures revenue in its fiscal period financial statements, was an overall description of what I'm attempting to do. 09:09:51 09:09:54 09:09:57 09:09:59 09:10:00 09:10:02

So how this works is I went 09:10:03
through each and every journal entry. 09:10:06
So I investigated through the Raiders 09:10:08
books and records every single journal 09:10:09
entry that the Raiders posted into 09:10:13
their generally ledger associated with 09:10:15
Ventures. So I started with a balance 09:10:18
as of January 1 of 2006 -- that's the 09:10:20
first row at the top -- and that had a 09:10:24
receivable balance of approximately 1.1 09:10:26
million and from there I investigated, 09:10:29
identified, and quantified every single 09:10:33
subsequent journal entry. We described 09:10:38
the nature of what was being recorded 09:10:40
under the description in the 09:10:42
remittance, we described the effective 09:10:44
period. What that means is in 09:10:47
accounting you don't have to 09:10:50
necessarily record a journal entry 09:10:51
immediately. You can make a journal 09:10:53
entry in January but backdate it 09:10:56
effective to December. So you may have 09:10:58
a posting date of January 5 but you can 09:11:00
make it effective as of December 31. 09:11:04
And so the effective date is what month 09:11:07

it impacted their general ledger 09:11:09
balances. 09:11:11

Amount obviously is the 09:11:12
amount of the impact of that 09:11:13
distribution or remittance. 09:11:16

I then do a counting where we 09:11:18
describe the impact on revenue and its 09:11:21
balances. And what you'll note is that 09:11:23
a revenue balance always starts the 09:11:26
beginning of the year at zero. Revenue 09:11:28
accounts and expense accounts start at 09:11:30
zero on January 1, then accumulate 09:11:33
through the end of the year, and then 09:11:36
get reset back to zero the next year. 09:11:39
Revenue and expense accounts are a 09:11:39
one-year window or a shorter window if 09:11:42
you're doing a quarterly report. 09:11:43

However, AR, which is short 09:11:46
for accounts receivable, is an asset 09:11:48
account that accumulates over time. So 09:11:51
as entries go into AR, when you record 09:11:53
revenue, you typically increase AR if 09:11:57
you haven't collected the cash, and 09:11:59
when you collect the cash, you decrease 09:12:00
accounts receivable when the cash comes 09:12:02

in. So I am analyzing the accounts 09:12:04
receivable balances associated with 09:12:07
Ventures from the period January 1, 09:12:09
2006. 09:12:12
And if you go to the last 09:12:13
page -- it's a four-page document -- 09:12:15
trace it all the way to the final 09:12:23
accounts receivable balance. At the 09:12:25
end of 2019, before correcting all of 09:12:26
the errors on the Raiders books and 09:12:29
records, and you'll see that the AR 09:12:30
balance accumulated to one hundred 09:12:32
eighty-two million associated with 09:12:35
Ventures. 09:12:35
The last two columns are 09:12:35
probably the most important columns. 09:12:38
Because after I identified every single 09:12:41
journal entry in the Raiders books 09:12:43
associated with Ventures, I then 09:12:46
identified what were the errors on both 09:12:48
the income statement each year as well 09:12:52
as the balance sheet. So those final 09:12:54
two columns I call P&L effect. That's 09:12:56
the impact of the misstatements on 09:12:59
their income statement each year. And 09:13:03

when I talk about the impact, it's only on their fiscal period financial statements that were prepared for the purposes of submitting to the banks for loan covenant compliance. Because I didn't see the same types of errors in their NFL conforming statements that are sent to the NFL associated with each season. 09:13:05 09:13:06 09:13:08 09:13:09 09:13:11 09:13:14 09:13:16 09:13:18 09:13:20

I also quantify the balance sheet effect that accumulates over time. And by the time they got to the end of 2019, the balance sheet impact was $214 million. So this is the result of my investigation of all of those journal entries. 09:13:20 09:13:24 09:13:26 09:13:28 09:13:32 09:13:36 09:13:37

ARBITRATOR CHANDLER: You're looking at the calendar year financial statements; is that right? 09:13:39 09:13:39 09:13:43 09:13:44

THE WITNESS: What I do is for each of the fiscal years, which is the calendar year, so a fiscal year starting January 1 through December 31, what are those impacts 09:13:44 09:13:45 09:13:47 09:13:51 09:13:52

because that's fiscal year 09:13:55
financial statements is what was 09:13:57
sent to the banks, so this analysis 09:13:58
goes by each of those calendar or 09:14:00
fiscal years. 09:14:00
Q. Did you also examine journal 09:14:02
entries that were made by Raiders 09:14:04
management to prepare the conforming 09:14:06
statements? 09:14:09
A. Yes, I did. 09:14:10
ARBITRATOR BICKERMAN: Going 09:14:12
back, could you better define the 09:14:13
balance sheet effect? I understand 09:14:14
what the AR is; I understand what 09:14:16
the profit and loss is. 09:14:18
What's the balance sheet? 09:14:20
THE WITNESS: If you take a 09:14:23
look at the top row, as of 09:14:25
January 1 of 2006, the balance 09:14:27
sheet effect is zero. They had not 09:14:29
yet introduced error into their 09:14:32
financial statements and posted 09:14:35
improper journal entries into the 09:14:36
general ledger. 09:14:36
So the first entry under 2006 09:14:40

also did not introduce error. It's zero. The first entry that inserts error into the financial statements for the Raiders is their recording of the 2005 season remittance in March of '06. And what happened is they double-counted 4.813 million of revenue that had been recorded in the prior period, and so that's the error that shows up in the 2006 income statement. 09:14:42 09:14:44 09:14:47 09:14:49 09:14:52 09:14:57 09:14:58 09:15:01 09:15:03 09:15:06 09:15:09

ARBITRATOR BICKERMAN: So just cumulative after that? 09:15:11 09:15:13

THE WITNESS: And sits on the balance sheet. So fraud lives and breathes on the balance sheet. 09:15:13 09:15:14 09:15:16

ARBITRATOR CHANDLER: One more question. 09:15:18 09:15:20

The zero starting in 2006 balance, is that an assumption or is that fact? 09:15:20 09:15:28 09:15:30

THE WITNESS: Meaning on the balance sheet effect? 09:15:31 09:15:32

ARBITRATOR CHANDLER: Did you look at what is 2005, 2004? 09:15:34 09:15:35

THE WITNESS: So I reviewed 09:15:45
the Raiders' restatement. The 09:15:47
Raiders issued 2020 financial 09:15:51
statements. And so what the 09:15:52
Raiders did, instead of going back 09:15:55
and actually correcting all of 09:15:57
their prior year's misstatements, 09:15:58
what they have is a note disclosure 09:16:01
in their 2020 financial statements 09:16:03
that describes when fraud began or 09:16:04
-- sorry, when the error -- error 09:16:08
is a term that's used for a mistake 09:16:11
in financial statements whether 09:16:14
it's caused by accident or fraud. 09:16:16
So an error doesn't mean it's 09:16:17
accidental, an error could be an 09:16:20
intentional mistake or an error 09:16:20
could be an accidental mistake. So 09:16:25
that's a term that accountants use 09:16:26
to describe mistakes in financial 09:16:28
statements. 09:16:32
ARBITRATOR CHANDLER: So 09:16:33
you're accepting their 2020 09:16:33
financial statements statement that 09:16:35
it began in 2006? 09:16:37

THE WITNESS: I then tested that assertion where I went back and I did not identify any other entries prior to 2006 that, at least based upon my review of the record, was introducing error in the financial statements. 09:16:38 09:16:40 09:16:43 09:16:46 09:16:50 09:16:52 09:16:54

ARBITRATOR CHANDLER: You had access to the journal entries before 2006? 09:16:55 09:16:56 09:16:59

THE WITNESS: Limited. So the Raiders -- I think Mr. Villanueva testified to this -- changed their accounting systems in approximately 2018. When you change your accounting systems, you typically import all your journal entries from the prior two years so you have some history. They didn't import all the entry entries dating all the way back to 2005 and 2006. However, I believe during the discovery process in this dispute, there were excerpts from their general ledger including individual 09:17:00 09:17:03 09:17:05 09:17:06 09:17:08 09:17:09 09:17:09 09:17:11 09:17:13 09:17:16 09:17:18 09:17:22 09:17:23 09:17:28 09:17:28

journal entries for those prior 09:17:29
periods, and so it was more of a 09:17:31
piecemeal exercise for the earlier 09:17:34
years than it was for the latter 09:17:37
years. The latter years -- I had 09:17:39
detailed Excel spreadsheets that 09:17:40
extracted each and every journal 09:17:42
entry. For the earlier years, it 09:17:43
was much more of an iterative 09:17:45
forensic accounting exercise. 09:17:47
ARBITRATOR BICKERMAN: And the 09:17:50
balance sheet effect, this would be 09:17:50
an accumulation that would be 09:17:53
reflected as an asset on the 09:17:53
balance sheet but it's a -- I don't 09:17:55
want to say a hypothetical but it's 09:17:59
an artifact of what you've done 09:18:02
here; is that right? 09:18:04
THE WITNESS: The balance 09:18:05
sheet effect is my quantification 09:18:05
of how much their assets were 09:18:06
overstated starting in 2006 all the 09:18:07
way through 2019. As part of their 09:18:11
2020 work, they corrected that 09:18:13
balance sheet effect so that 09:18:19

instead of having a $214 million overstatement on January 1 of 2020, they book entries to remove that overstatement so that 2020 would not repeat the mistakes. 09:18:21 09:18:24 09:18:26 09:18:28 09:18:31

Q. So Mr. Richmond, just to be clear, the far right-hand column balance sheet effect, that's not the balance of the receivable, that is a quantification of the misstatement? 09:18:34 09:18:35 09:18:38 09:18:40 09:18:43

A. Correct. That's why I call it the double-count error in the top header. So this is me isolating what portion of their accounts receivable is overstated and at what point in time and how it accumulates over time. 09:18:45 09:18:47 09:18:49 09:18:52 09:18:54 09:18:56

ARBITRATOR BICKERMAN: One more question, and I promise to leave you alone. 09:18:59 09:18:59 09:19:02

The balance sheet effect is different than the accounts receivable effect, the accumulation of the accounts receivable. 09:19:02 09:19:05 09:19:06 09:19:10

At some point will you explain why they wouldn't match? 09:19:12 09:19:15

THE WITNESS: The Raiders have valid accounting entries. The Raiders do have valid receivables. They also have false receivables. So the AR balance is me accumulating all of the entries, both the good and the bad, so that column titled AR Balance includes the proper entries and the improper entries. What I'm doing on the far right columns is isolating the impact of the improper entries. So it's a subset. 09:19:18 09:19:19 09:19:22 09:19:24 09:19:26 09:19:29 09:19:31 09:19:34 09:19:37 09:19:39 09:19:41 09:19:44 09:19:45

Q. So maybe we should go through one of these entries and then we're going to take some examples from two particular years. 09:19:47 09:19:50 09:19:52 09:19:56

While we're still on Exhibit 1, why don't we take fiscal year 2007. 09:19:56 09:19:58 09:20:01

A. Sure. 09:20:03

Q. So for fiscal year 2007, the last entry in that collection of entries is the January, 2008 accrual. 09:20:04 09:20:08 09:20:10

Do you see that? 09:20:13

A. I do. 09:20:14
Q. If you look up, there are other entries reflecting cash distributions and the booking of the remittance. 09:20:14 09:20:16 09:20:19 09:20:24
Do you see that? 09:20:24
A. I do. 09:20:24
Q. Why don't you just take 2007 and at a high level walk through what those entries are and how that results in an overstatement of both the revenue and the receivable. 09:20:25 09:20:26 09:20:27 09:20:30 09:20:33
A. Sure. 09:20:35
So the first entry that impacts the Raiders fiscal year 2007 financials is in January of '07 the NFL did send 7.369 million of cash to the Raiders. So what that doesn't do is it doesn't have any impact on revenue. You'll see there's no debt or credit. All it does is you increase cash seven million and you decrease receivables by 7.369 million. So all other things being equal, whatever receivable balance you had prior to getting that 09:20:36 09:20:38 09:20:43 09:20:46 09:20:49 09:20:53 09:20:55 09:20:58 09:21:02 09:21:06 09:21:06 09:21:08

cash goes down by $7 million. 09:21:09
You'll see that the impact of 09:21:12
that particular entry is the first 09:21:14
entry under DRCR, it's shorthand for 09:21:16
debit or credit, and then you'll see it 09:21:21
reduces the balance because at year-end 09:21:24
2006, the balance was 6.5 million and, 09:21:26
when you record an entry to reduce your 09:21:29
receivables by 7.369, you get to that 09:21:32
negative 786. 09:21:36
The next thing that happens 09:21:39
is effective in March of '07, the 09:21:40
Raiders recorded an entry to record the 09:21:44
entirety of the 2006 season remittance. 09:21:47
So the season begins April 1 of '06 and 09:21:50
runs through March of '07. And so here 09:21:54
they record $23.2 million of revenue, 09:21:59
so that's why you see it on the revenue 09:22:02
side. That also increases their 09:22:04
receivables and has the effect. 09:22:07
The next three entries are, 09:22:08
during the season, the NFL would send 09:22:10
the Raiders cash, like interim payments 09:22:13
towards the next season. They received 09:22:17
a cash distribution in April, another 09:22:20

one in July, another one in October. 09:22:22
The accounting for those are increase 09:22:24
cash, decrease receivables, don't 09:22:26
record any revenue. 09:22:29
The last entry is what the 09:22:30
panel's heard about, and this is the 09:22:31
accrual of an expected cash receipt in 09:22:34
January backwards one month into 09:22:38
December. So the January, 2008 accrual 09:22:41
was recorded effective December of '07 09:22:43
for $8.6 million. There is a revenue 09:22:47
impact of that and it does impact 09:22:50
receivables. So ultimately in 2007 the 09:22:53
entry that caused the problem was the 09:22:53
entry effective March of '07 for the 09:23:00
2006 season remittance. 09:23:02
Q. Let me just stop you on that. 09:23:06
If you take a look at the 09:23:08
entry to book the 2006 season 09:23:09
remittance, that's a credit of 09:23:11
twenty-three million two hundred 09:23:13
fifty-four thousand to revenue; 09:23:16
correct? 09:23:17
A. Yes. 09:23:18
Q. And you'll see that the P&L 09:23:19

effect, the double-count error that you've quantified in the right-hand column, is $7,369,000; correct? 09:23:21 09:23:23 09:23:25

A. True. 09:23:31

Q. And if you look back to the prior year, you see that is the exact amount of the January accrual that was recognized as revenue in 2006; correct? 09:23:32 09:23:33 09:23:35 09:23:37

A. True. 09:23:40

Q. So why does the booking of the remittance in the full amount lead to a $7.369 million overstatement of revenue in 2007? 09:23:40 09:23:43 09:23:47 09:23:53

A. Simply put, they double-counted the revenue associated with January of 2007. They first booked it at year-end '06 to increase revenues at year-end '06. They then booked the same amount, because that 7.369 million is embedded in or double-counted within the $23 million entry. So by recording that $23 million entry at gross of full season when you've already recorded one of the key payments from that season, you 09:23:54 09:23:56 09:23:58 09:24:01 09:24:06 09:24:09 09:24:15 09:24:17 09:24:18 09:24:21 09:24:24 09:24:26

introduce 7.369 million of error in that March, '07 entry. 09:24:27 09:24:29

Q. And there's another accrual that's booked, it's the January, 2008 accrual that is also counted as revenue, and that's $8,607,000; correct? 09:24:33 09:24:34 09:24:37 09:24:40 09:24:41

A. Correct. 09:24:41

Q. Now, that in and of itself isn't what introduces the error; correct? That's not the double-count? 09:24:42 09:24:46 09:24:48

A. True. And the first time you record the January accrual does not introduce error. It's the second time you record that same amount that you introduce the double-count. 09:24:50 09:24:52 09:24:52 09:24:53 09:24:56

Q. So let's go to 2008. It looks like there's something different going on in 2008. 09:24:57 09:25:02 09:25:04

A. Yes. It was interesting. 09:25:07

Q. Can you explain that? 09:25:08

A. 2008 in the beginning of the year follows the same typical pattern. They record the cash receipt from the January cash distribution, they book 09:25:09 09:25:12 09:25:15 09:25:17

the gross season remittance which 09:25:18
introduces $8.6 million of error. But 09:25:22
then at the end of the year something 09:25:25
unique happened that happened only once 09:25:27
during the periods that I investigated. 09:25:31
So you'll see the second to 09:25:32
last entry under fiscal 2008 I call the 09:25:34
initial January, 2009 accrual. I 09:25:38
footnote three which is at the bottom 09:25:39
of this exhibit. 09:25:41
What I saw is Mr. Villanueva, 09:25:44
in December of 2008, recorded the, for 09:25:45
lack of a better term, normal January 09:25:51
accrual entry. Based upon the e-mail 09:25:53
from the NFL, he recorded a $10.753 09:25:56
million entry to increase revenue, 09:26:00
similar to what he did in 2006 and 09:26:04
similar to what he did in 2007. 09:26:06
However, three months later he recorded 09:26:08
a different entry to reverse that 09:26:10
effect. So ultimately the revenue 09:26:13
associated with Ventures that the 09:26:16
Raiders recorded and reported was 09:26:17
comprised of three entries: The $28 09:26:20
million entry, December entry to 09:26:24

increase revenue by 10.7 million, and then a third entry to reverse that effect so that in total they only reported twenty-eight million of Ventures revenue for calendar year 2008. But in all subsequent periods, they went back to the pattern of recording both a January entry and a full remittance. 09:26:26 09:26:30 09:26:32 09:26:34 09:26:37 09:26:40 09:26:41 09:26:43 09:26:46

Q. Did you identify any contemporaneous documents that shed some light on why Mr. Villanueva reversed the January accrual after initially taking it? 09:26:47 09:26:48 09:26:50 09:26:53 09:26:56

A. I did. 09:26:57

Q. Let's go to Exhibit JX 3306. 09:27:00

A. I'm there. 09:27:10

Q. Is this a document -- that's not the right document. 09:27:11 09:27:16

Is this a document you reviewed during the course of your investigation? 09:27:24 09:27:25 09:27:27

A. Yes. 09:27:27

Q. And what is it? 09:27:27

A. So it's an e-mail chain 09:27:28

between Mr. Villanueva and Mr. Firestone at the NFL. So if we start at the beginning of the e-mail chain, you'll see it's dated March 16 of 2009. And Mr. Villanueva is asking about the updated set of numbers and then, as part of this chain, if you go to the first page, so starting at the e-mail at 2:27 p.m. Mr. Villanueva indicates "I don't want to include the $10.7 million Ventures distribution that we got in January", because he's now writing this in March. "I don't want to include it in income for the 2008 calendar year". 09:27:30 09:27:33 09:27:37 09:27:38 09:27:43 09:27:47 09:27:50 09:27:52 09:27:58 09:28:02 09:28:06 09:28:07 09:28:13 09:28:15 09:28:18

So even though Mr. Villanueva had already recorded is as revenue in December, three months earlier, three months later he's telling the NFL I don't want to include it in income. And then there's the continuing discussion between Mr. Villanueva and the NFL. 09:28:18 09:28:22 09:28:23 09:28:24 09:28:27 09:28:28 09:28:30 09:28:31

Q. So in the course of your work as a forensic accountant, is the 09:28:32 09:28:36

consistent or inconsistent application 09:28:39
of accounting principles something that 09:28:42
you look at? 09:28:44
A. Yes, very much so. 09:28:45
Q. And here did the Raiders 09:28:46
consistently apply accounting 09:28:48
principles? 09:28:51
A. No, they did not. This is a 09:28:51
classic example of taking one position 09:28:56
and using one methodology in one year, 09:28:58
altering the next year, and then what 09:29:01
we see then in 2009 is a revert back to 09:29:03
the way it was done in 2007. So 09:29:07
changing consistency or changing your 09:29:10
application does not allow your 09:29:13
financial statements to be comparable. 09:29:15
If you do change your methodology or 09:29:17
you do change your consistency, you 09:29:21
have to disclose it and you have to 09:29:23
quantify the impact as if you had 09:29:25
always used that methodology in all 09:29:28
prior years. It's a requirement so 09:29:30
that a reader of the financial 09:29:32
statement can tell if you've made a 09:29:34
change that will alter the outcome. So 09:29:36

what I saw within the Raiders financial statements, they didn't disclose this change. It's just embedded within the numbers if you take a look at the journal entries.

ARBITRATOR CHANDLER: One more question, please.

On your Exhibit 1, in 2008 when the January accrual was made and then reversed out, there's still a balance sheet effect of 6.6 million from the prior January accrual.

Why is that a --

THE WITNESS: Great question.

If you take a look at that second entry under fiscal 2008. When Mr. Villanueva recorded $28.3 million of revenue in March of 2008, he was double-counting revenue that had already been recorded in the prior year, the 8.6 million. So it's in March he introduces error into the financial statements. What he then doesn't do is do a January accrual. And I mentioned earlier the first time you book the January accrual is not the problem. That doesn't introduce error. It's the second time you book the January accrual that introduces error. 09:30:44 09:30:46 09:30:48 09:30:51 09:30:53 09:30:55 09:30:57

So to answer your question, you have to look at 2009, and when you look at 2009 in that March, '09 entry for 28.067, you'll notice there is no double-count error in 2009 because there is no double-count of the 10.753 million because Mr. Villanueva reversed the 10.753 million at the end of 2008. 09:30:59 09:31:01 09:31:03 09:31:06 09:31:10 09:31:12 09:31:16 09:31:17 09:31:19

ARBITRATOR CHANDLER: Thank you. 09:31:25 09:31:25

Q. So I think where I'd like to go next is to slide DX 5, slide one. 09:31:26 09:31:30

And can you explain how the demonstrative ties to the work that's reflected in Exhibit 1? What have you done on demonstrative DX 5? 09:31:39 09:31:41 09:31:43 09:31:46

A. So in Exhibit 1, I went 09:31:49

through each of the fiscal years 09:31:51
starting in 2006 all the way through 09:31:53
2019. As part of my work, I also 09:31:55
investigated whether the Raiders 09:31:59
introduced error into their NFL 09:32:01
conforming financial statements that 09:32:04
were sent to the NFL and how or why did 09:32:05
they get differing results for their 09:32:11
conforming statements compared to their 09:32:14
fiscal statements that were sent to the 09:32:16
banks and the lenders. 09:32:18
So what this is is an excerpt 09:32:20
of a two-year period of time covering 09:32:22
the same exact seasons and the same 09:32:25
exact remittance received from the NFL. 09:32:28
So on the left side I walk through each 09:32:30
of the entry associated with the NFL 09:32:32
conforming schedules that the Raiders 09:32:34
recorded into their books and records 09:32:36
and on the right covering the same 09:32:37
remittances in a same two-year window, 09:32:39
I cover their accounting and the impact 09:32:44
for recording their fiscal period 09:32:46
fiscal statements that were sent to 09:32:51
banks. I'm hoping this will highlight 09:32:54

for you where the error gets 09:32:54
introduced, what were the exact journal 09:32:55
entries that introduced that error, 09:32:57
because obviously you get different 09:32:58
results over a two-year period. 09:33:00
I think it's also important 09:33:02
to note that the error in any given 09:33:04
year does not smooth out or get 09:33:08
corrected the next year. It's not they 09:33:10
overstate one year and you understate 09:33:13
the next. What happens is each year it 09:33:15
repeats and therefore accumulates on 09:33:18
the balance sheet, so there's no 09:33:22
reversing effect over a two-year 09:33:24
window. 09:33:26
Q. So for the example that 09:33:26
you're going to walk through, you used 09:33:28
the NFL remittances for the 2015 and 09:33:30
2016 NFL seasons; correct? 09:33:33
A. True. 09:33:36
Q. And those remittances are 09:33:38
used by the Raiders to prepare the 09:33:40
conforming schedules? 09:33:41
A. True. 09:33:42
Q. And those remittances are 09:33:43

used by the Raiders to prepare the year-end financial statements? 09:33:46 09:33:48

A. True. Same document, same season, same remittance, but two different results. 09:33:49 09:33:51 09:33:54

Q. Where should we start? What's the first thing that happens? 09:33:55 09:33:58

A. We'll start with the conforming schedules, and the free entry -- 09:33:59 09:34:02 09:34:04

Q. Why are we starting with the conforming? 09:34:04 09:34:06

A. Because in the conforming schedules, first in the chronology of booking entries, the first entry that gets recorded is the January payment. And so I also start with the NFL conforming schedules because chronologically the Raiders did it right for the conforming schedules chronologically before they did it wrong for the fiscal period financial statements. So if we go chronologically through individual journal entries, they do it correct and 09:34:06 09:34:08 09:34:11 09:34:14 09:34:16 09:34:19 09:34:21 09:34:24 09:34:26 09:34:30 09:34:32 09:34:32 09:34:34

then, after doing it correct, they do 09:34:36
it wrong. So chronologically we would 09:34:38
start with the conforming schedules. 09:34:42

Q. So let's go to JX 3425. 09:34:43
So Mr. Richmond, what is 09:34:52
JX 3425? 09:35:02

A. So JX 3425 is a two-page 09:35:02
document. It starts with an e-mail 09:35:06
from Mr. Feeley at the NFL stated 09:35:10
January of 2016, it's sent to Mr. 09:35:13
Badain, sent to Mr. Villanueva. And 09:35:19
what the subject is is the 2016 09:35:21
Ventures distribution. 09:35:24
So what I saw is typically 09:35:24
every year the NFL would communicate 09:35:26
via e-mail any expected distributions 09:35:31
that would come to the teams, so this 09:35:34
is Mr. Feeley informing Mr. Badain and 09:35:36
Mr. Villanueva that the Raiders were 09:35:38
going to be getting $17.7 million at 09:35:40
the end of January. 09:35:43
Then you'll see the 09:35:45
handwritten piece down at the bottom. 09:35:46
That's a reference to two different 09:35:48
general ledger accounts. So 1250 is 09:35:51

the account at the Raiders for the 09:35:53
Ventures receivables and account 3394 09:35:55
is their account for Ventures revenue. 09:35:58
So it's a note of if we record an 09:36:01
entry, those are the two accounts it's 09:36:03
going to go to. 09:36:05

Q. Go to the first page of the 09:36:07
exhibit. 09:36:09

What's this? 09:36:09

A. So this is a printout of the 09:36:09
actual impact of this journal entry on 09:36:12
the Raiders general ledger. So if you 09:36:16
bear with me, I'll try to orient the 09:36:19
panel. 09:36:21

The upper left-hand corner is 09:36:21
a date February 10 of 2016. That's 09:36:25
when a member of the Raiders management 09:36:26
team records this entry. It's 09:36:27
effective December of '15. You can see 09:36:32
that at the header it says the Oakland 09:36:35
Raiders-2015, so these are the journal 09:36:37
entries impacting that fiscal or 09:36:40
calendar year. You'll then see posting 09:36:42
month is month twelve, so it's booked 09:36:45
effective December of '15. 09:36:46

What you then see is there's 09:36:49 three accounts that are impacted. 09:36:52 Well, there's three portions of this 09:36:54 entry impacting two accounts. So the 09:36:56 first two entries are to account 1250, 09:36:59 that's the account receivable 09:37:02 associated with Ventures, and you'll 09:37:04 see the 17.5 million that was described 09:37:05 in the e-mail as well as $141,000 09:37:09 associated with Gatorade. The sum of 09:37:13 those two equal the increase to 09:37:15 revenue, account 3394. So this 09:37:16 increases the Raiders revenue from 09:37:19 Ventures by 17.728 million. And you'll 09:37:23 see again at the bottom in the 09:37:27 typewritten text it says this batch has 09:37:27 been posted, the posting month twelve. 09:37:31 It's again a clarification that this is 09:37:33 recorded effective December of '15. 09:37:35

Q. Go ahead. 09:37:40

A. So what you also see in 09:37:41 handwriting, so after printing out this 09:37:44 entry, so this an extract from their 09:37:46 general ledger, it appears Mr. 09:37:48 Villanueva -- that's his initials -- 09:37:51

initializes this journal entry on February 10 of 2016, the same day it was posted into the general ledger. The other initials are MB, if I'm reading it right, but I can't say for certain who exactly also initialed that journal entry. 09:37:55 09:37:57 09:37:59 09:38:02 09:38:09 09:38:14 09:38:16

Q. So if you go to slide one, the amount you have for the Ventures accrual is 18.9 but the amount that's identified in the journal entry is 17.728. 09:38:20 09:38:20 09:38:22 09:38:25 09:38:28

A. True. 09:38:30

Q. So where's the rest of it? 09:38:30

A. So in January, the NFL would send the Raiders typically two primary distributions. There would be the Ventures distribution that sometimes includes the Gatorade piece. There would also be a distribution associated with either broadcast rights. So there was another entry that would increase Ventures revenue. 09:38:32 09:38:36 09:38:39 09:38:42 09:38:44 09:38:47 09:38:49 09:38:54 09:38:56

Q. Is that still identified as Ventures revenue? 09:38:57 09:39:00

A. Yes, it is. 09:39:01
Q. So let's go to JX 2657. 09:39:02
A. Sure. 09:39:10
Q. What is this, Mr. Richmond? 09:39:10 First of all, explain is what the 09:39:15 document is and then you can identify 09:39:18 the relevant portion. 09:39:20
A. So this is an Excel 09:39:21 spreadsheet. It's got multiple tabs. 09:39:23 You can't see the tabs on the printed 09:39:25 version that's in your binders, but 09:39:28 this is how it was produced in the 09:39:30 litigation. 09:39:33
You'll see we are in a tab 09:39:33 called tax basis MBA. That's the 09:39:35 Raiders old general ledger system. So 09:39:40 you'll see that these intros accumulate 09:39:43 through 2015. Then you see a tab 09:39:46 called Great Plains and you'll see tax 09:39:51 basis GP. That's starting in 2016 they 09:39:54 ported over all of their journal 09:39:58 entries into what's called Great 09:40:01 Plains. That's what GP stands for. So 09:40:03 if you click over to the GP tab, you'll 09:40:06 see journal entries starting in '16 all 09:40:09

the way through to 2019. 09:40:13
Q. Just to be clear, what we're 09:40:15
looking at now, this is this is an 09:40:16
extract the Raiders books and records? 09:40:21
A. Yes, the Raiders extracted 09:40:22
their journal entries out of their 09:40:22
accounting system, put them into this 09:40:23
Excel spreadsheet, and this was then 09:40:26
produced in the litigation so that I 09:40:28
could see each and every journal entry 09:40:31
that impacted the Ventures revenue 09:40:33
accounts receivable. 09:40:35
Q. And did you use extracts from 09:40:35
the Raiders general ledger in your 09:40:37
analysis? 09:40:41
A. Yes, I did. 09:40:42
Q. All of the entries that are 09:40:43
reflected in the extracts of the 09:40:44
Raiders general ledger were made by 09:40:47
Raiders management; correct? 09:40:51
A. Yes, they would be made by 09:40:52
Mr. Villanueva or other members of the 09:40:54
Raiders financial reporting team. 09:40:55
Q. So let's just quickly tie out 09:40:57
how you get from the seventeen to the 09:41:01

eighteen. 09:41:04

A. Sure. 09:41:04

So I've asked to have highlighted the entries -- so what you see on the far left column is the effective date of the entry. You'll see these are all effective December 31 of 2015. 09:41:11 09:41:15 09:41:18 09:41:19 09:41:22 09:41:24

So we talked about the 17.5 eighty-seven million, that's down in row four hundred forty-five. You'll see that's an increase to receivables, account 1250. You'll see the Gatorade piece in the next row, four hundred forty-six, increase to receivables associated with Gatorade. And then you'll see the increase in revenue for 17.728 million, so that's the impact of that entry, those three pieces. But also effective the same date, December 31 of 2015, the Raiders recorded what they called the broadcast accrual and that was to increase revenue by 1.136 million and increase receivables again by 1.136 million. 09:41:25 09:41:29 09:41:32 09:41:35 09:41:38 09:41:42 09:41:44 09:41:48 09:41:50 09:41:50 09:41:53 09:41:56 09:41:58 09:42:01 09:42:03 09:42:05 09:42:09

Q. Just to be clear, that's still in the 1250 account; correct? 09:42:12 09:42:14
A. It is. The 1250 account is their Ventures receivable account and the 3394 is their Ventures revenue account. 09:42:16 09:42:19 09:42:20 09:42:23
Q. And immediately above that 1250 entry there's other entries relating to national TV accruals and revenue and those are in different accounts? 09:42:23 09:42:25 09:42:27 09:42:31 09:42:34
A. Yes. 09:42:34
Q. So that was sort of a long way of explaining, but the 18.9, is that what we've all been referring to as the January accrual? 09:42:34 09:42:36 09:42:40 09:42:43
A. I think sometimes were referring only to the 17.7 million as the January accrual, but in reality, there's two entries that in total, from my perspective, comprise the totality of the January accrual. And so the sum of those two is a approximately 18.8 or 18.9 million and you'll see a reference to that I think in the next exhibit. 09:42:44 09:42:46 09:42:48 09:42:51 09:42:53 09:43:00 09:43:03 09:43:07 09:43:09

Q. So let's go back to the slide.

So that's the 18.9. Let's walk through the next entry which is the entry to book the eighty-two.

Why are some of these numbers in red and most of them in black?

A. Sure.

The red ones are where we have a divergence or a difference that introduces error into the Raiders financials.

Q. So the row in the slide says 2015 season remittance and then there's an eighty-two million and a 100.9 million.

What is reflected in that row?

A. So for preparing their financial statements, the conforming schedules to be sent to the NFL, the Raiders recorded an entry for only $82 million. So that, because they had already recorded the January payment of 18.9, they added eighty-two to get to

the total amount for the season. 09:44:12
However, when preparing their fiscal 09:44:12
period financial statements, they 09:44:16
didn't follow that methodology, 09:44:16
recorded the gross amount which 09:44:19
includes the double-count and that's 09:44:21
what introduces error on the right side 09:44:22
of the chart. 09:44:25
Q. Is the $82 million entry 09:44:26
correct? 09:44:28
A. It is. 09:44:28
Q. Is the 100.9 entry correct? 09:44:28
A. No. 09:44:31
Q. So let's walk through it. 09:44:31
Let's go to the journal entries for the 09:44:34
eighty-two million and I believe it's 09:44:36
at JX 3298. 09:44:39
A. I see it on the screen. It's 09:45:16
not in my binder. 09:45:18
So Exhibit 3298 is an e-mail 09:45:23
chain from May 31 of 2016 between Mr. 09:45:31
Firestone at the NFL and Mr. Villanueva 09:45:37
at the Raiders. So at the top of this 09:45:39
e-mail chain Mr. Firestone is 09:45:41
communicating to the Raiders what the 09:45:44

NFL's current numbers are, meaning the NFL had not yet closed its books but the NFL was saying for the season that ended March 31 of '16, so approximately two months earlier, the NFL thought their final numbers would be what's typed on the left. So it shows that the total remittance for the season that ended two months earlier would be 100.8 million, the Raiders would also receive $900,000 for Films, another 1.8 million for their investment in Ventures, as well as other items. So this is the NFL communicating to the Raiders what the total amount of revenue the Raiders earned for the 2015 season that ended March 31 of 2016. 09:45:47 09:45:50 09:45:54 09:45:56 09:45:59 09:46:02 09:46:05 09:46:06 09:46:08 09:46:16 09:46:17 09:46:18 09:46:20 09:46:23 09:46:25 09:46:30 09:46:33

Q. So Mr. Richmond, based on your investigation, that hundred million dollar remittance, had most of that already been received by the Raiders? 09:46:37 09:46:39 09:46:43 09:46:46 09:46:47

A. I believe all of it had already been received by the Raiders by May 31 because there are interim 09:46:47 09:46:50 09:46:52

payments during the season. The last large payment typically comes in in March or April. So by May of 2016, I would have expected the vast majority if not all of that cash to have already been wired to the Raiders and in their bank account. 09:46:56 09:46:59 09:47:02 09:47:05 09:47:08 09:47:10 09:47:12

Q. Just to close this off, to the extent that there are any discrepancies when the NFL closes their books, how is that accounted for in what the NFL communicates to the NFL teams? 09:47:12 09:47:15 09:47:16 09:47:19 09:47:22 09:47:28

A. Sure. 09:47:28

The NFL estimates what each team is going to receive. As they close their books and they do updates, they may send incremental cash distributions or that third line item Ventures book, that is undistributed cash that the Raiders earned based on their investment in Ventures so that number may go up if you don't actually send a check. It's like equity still held at Ventures. The NFL finishes its 09:47:29 09:47:32 09:47:35 09:47:37 09:47:41 09:47:44 09:47:46 09:47:49 09:47:51 09:47:53 09:47:57

books. 09:48:00

Q. So the amounts are trued up through an entry to equity? 09:48:00 09:48:04

A. Yes. 09:48:05

Q. Let's go back to the handwriting on the exhibit. 09:48:06 09:48:08

What's the handwriting? 09:48:09

A. You'll see there's a one with a circle around it next to remittance and you see a similar one with a circle around it in the first handwritten entry. So this is saying that the NFL has agreed that the Raiders were going to receive $100.8 million. Then you'll see per G/L and a negative 18.864 million. So this is Mr. Villanueva what's researching already in the Raiders general ledger. So you can do that by running a query at your computer to ask the system have I already recorded revenue associated with this season and, if so, how much. So you can literally look up had you recorded any journal entries previously that increased revenue associated with 09:48:11 09:48:11 09:48:14 09:48:15 09:48:15 09:48:20 09:48:21 09:48:25 09:48:33 09:48:33 09:48:35 09:48:37 09:48:40 09:48:43 09:48:44 09:48:48 09:48:52 09:48:52

that season. And what Mr. Villanueva determined was that he had, in fact, already recorded 18.864 million, which was a subset of the $100 million. 09:48:55 09:48:58 09:49:00 09:49:03

So he then does math and he calculates 81.975 which would be the amount left over that had not yet already been recorded as revenue that would need to be recorded as revenue so that the sum of the January entries of 18.864 plus a new entry for 81.9 million, the sum of those would add up to the total amount for the season. You see them then map out those individual journal entries by account. So he's going to increase Ventures accounts receivable, AR, by 81.9 and increase Ventures revenue by the same amount, and he also lists out the accounting entries to account for their investment for 1.8 million as well as the film royalty as well. 09:49:06 09:49:11 09:49:11 09:49:15 09:49:16 09:49:19 09:49:22 09:49:26 09:49:29 09:49:31 09:49:34 09:49:36 09:49:39 09:49:42 09:49:44 09:49:45 09:49:50 09:49:52

Q. By backing out the revenue that had already been recognized, does this $81.9 million entry double-count 09:49:53 09:49:55 09:49:58

revenue? 09:50:02
A. No, this is actually the 09:50:03
proper methodology to account for a 09:50:05
season's worth of revenue. 09:50:07
Q. In order to not double-count 09:50:08
revenue, did the Raiders have to back 09:50:11
out the 18.864 million that they did, 09:50:13
in fact, back out? 09:50:17
A. If you don't want to have 09:50:19
overstated revenues and overstated 09:50:19
receivables, you would need to do that 09:50:21
process. 09:50:22
Q. Flip to the next page of the 09:50:22
exhibit. So it's still 3298, just the 09:50:27
second page. 09:50:34
A. I'm there. 09:50:35
Q. What is this? 09:50:36
A. Sure. 09:50:39
So this is a general ledger 09:50:40
report from the Raiders books and 09:50:42
records. It's dated June 24 of 2016, 09:50:44
so three weeks after Mr. Firestone had 09:50:52
communicated the total amount. This I 09:50:55
found interesting in that it shows in 09:50:57
the revenue account only what's the 09:51:01

impact of the activity. 09:51:03

So you'll see that it starts 09:51:05
with a beginning balance or a balance 09:51:07
forward of 18.864 million. So we 09:51:10
already know the Raiders had already 09:51:15
recorded journal entries to increase 09:51:17
revenues by 18.864 million. Then you 09:51:19
see the impact of a journal entry 09:51:22
posted on June 14 of 2016 to record the 09:51:25
remittance, and what you'll see there 09:51:28
is, for the purposes of preparing their 09:51:30
conforming schedules, they recorded the 09:51:33
81.9 and the 1.8 on the prior page. 09:51:35

What you'll then see is that 09:51:40
there's an ending balance of 102699. 09:51:41
So how a general ledger works is you 09:51:41
record individual entries but the 09:51:41
general ledger system will always tell 09:51:41
you what's your beginning balance, 09:51:49
what's the impact of these entries, and 09:51:51
then what's the ending balance. The 09:51:53
computer does the math for you. So it 09:51:56
shows the Raiders that, by recording 09:51:59
both the January entries and the 09:52:02
beginning balance, the balance roll 09:52:04

forward, plus these new entries, you would have total revenue of 102.7 million. 09:52:05 09:52:06 09:52:10

Q. Let's go back to the slides. 09:52:11

ARBITRATOR CHANDLER: Exhibit 3298, Ed Villanueva, did you see any indication that anybody else approved that journal entry or was it just him? 09:52:15 09:52:15 09:52:20 09:52:22 09:52:25

THE WITNESS: So for that particular journal entry, 3298, I don't see anybody else's handwriting on that particular journal entry. There are other journal entries that would contain -- when we saw the MB initial, there's another gentleman who was the controller for a period of time prior to Ms. Araxie Grant. His name is -- it may not be Mark. I know his first initial M -- Andrus. I do see Mr. Andrus' initials on multiple journal entries like this but I don't see a second set of initials on this particular one. 09:52:26 09:52:31 09:52:36 09:52:36 09:52:39 09:52:39 09:52:39 09:52:41 09:52:42 09:52:44 09:52:48 09:52:52 09:52:54 09:52:59 09:53:00 09:53:00

ARBITRATOR CHANDLER: And do you see Mr. Badain's approval on any of these journal entries that result in your chart here? 09:53:05 09:53:05 09:53:07 09:53:09

THE WITNESS: No. 09:53:12

Q. So going back to the slide. 09:53:17

We've just walked through how the Raiders booked the 2015 remittance for the purposes of the conforming schedules; correct? 09:53:20 09:53:23 09:53:26 09:53:27

A. Yes. 09:53:27

Q. And the way they did it was correct? 09:53:28 09:53:32

A. True. 09:53:32

Q. So now let's go to how the Raiders booked the very same NFL remittance for purposes of their year-end financials that went to the banks. 09:53:32 09:53:35 09:53:37 09:53:40 09:53:43

A. So when I looked through the record, I didn't see any e-mails or any other support associated with the entry. All I saw is the actual entry within their general ledger. So I don't have an e-mail, I don't have a 09:53:43 09:53:45 09:53:50 09:53:53 09:53:56 09:53:59

set of notes, I don't have any calculations. But when I looked into their general ledger, you can see the entries that were actually recorded. 09:54:00 09:54:02 09:54:06 09:54:08
If we go to the detail of the journal entries -- 09:54:09 09:54:12
Q. Exhibit JX 2657. 09:54:12
A. Correct. 09:54:18
And so this entry is going to be -- 09:54:20 09:54:22
Q. You want to be in the tax basis GP rows thirty-eight and forty. 09:54:22 09:54:25
A. It's going to be an entry in March of '16. 09:54:30 09:54:32
You'll see Excel rows thirty-eight and forty on your screens, someone, I can't tell who, recorded an entry within the general ledger at the Raiders that increased accounts receivable NFL Enterprises by 100.9 million and increased revenues or income -- it says income but that's a revenue account -- by the same amount. 09:54:33 09:54:37 09:54:40 09:54:43 09:54:46 09:54:48 09:54:53 09:54:53 09:54:56
So after doing it right for the conforming schedules, somebody 09:54:59 09:55:01

posted this entry to -- into the fiscal period financials and this is what was in their general ledger. 09:55:02 09:55:09 09:55:11

ARBITRATOR CHANDLER: Is there a date when it was posted? 09:55:11 09:55:12

THE WITNESS: So you can't tell here from the way the journal entries were extracted from their Great Plains system what date it was posted, so that often happens when you're importing in your old entries into your new system, you don't necessarily bring in all of the details. But what is clear is that they increased revenue effective March 31 of 2016 for the full remittance amount and didn't subtract the previously recorded January column. 09:55:14 09:55:15 09:55:18 09:55:21 09:55:23 09:55:25 09:55:28 09:55:29 09:55:31 09:55:38 09:55:38 09:55:41 09:55:43 09:55:44

Q. In contrast to how the Raiders prepared their conforming schedules where they backed out the revenue that had already been booked, when the Raiders booked the very same remittance, did they back out the 09:55:50 09:55:50 09:55:52 09:55:53 09:55:56 09:55:58

revenue that was already in the general ledger? 09:56:00 09:56:02

A. No, they didn't. So that entries entry that you see highlighted in yellow introduces approximately eighteen million of more error into the Raiders general ledger and financial statements. 09:56:02 09:56:04 09:56:07 09:56:09 09:56:12 09:56:14

Q. Let's go back to the slide. 09:56:14

So now we're going to do the January, 2017 Ventures payment, so that's the accrual; correct? 09:56:20 09:56:21 09:56:26

A. Yes. 09:56:27

Q. And what's the amount there? 09:56:28

A. 26.3 million, which is comprised of the standard January, '17 Ventures payment plus the other second payment. We can walk through that. 09:56:29 09:56:32 09:56:38 09:56:41

Q. Let's do that. I think it's JX 0213. 09:56:44 09:56:49

A. If we go to the second page, this is a two-page exhibit, so January 13 of 2017, an e-mail from Mr. Feeley at the NFL, Mr. Badain and Mr. Villanueva were recipients of this 09:56:52 09:56:54 09:56:58 09:57:02 09:57:05

e-mail. The subject is called concussion settlement funding in January, 2017 Ventures distribution. And so within the text here -- it's about two-thirds of the way down, right in the center of that paragraph, they talk about how on Monday, January 30 Ventures will distribute a net 20.6 million for club which represents a gross distribution of 24.528 million less 3.9 that was withheld due to a settlement that the NFL entered into with its players due to the concussion problem.

09:57:08 09:57:10 09:57:12 09:57:14 09:57:17 09:57:19 09:57:22 09:57:26 09:57:27 09:57:30 09:57:34 09:57:38 09:57:40 09:57:49

Again, similar to what had happened in the prior year, this is the NFL communicating what the January amount would be. And if we go back to the first page of this exhibit, so this is a printout of the journal entry that the Raiders recorded into their general ledger. You'll see on February 2 of '17 -- upper left-hand corner -- they posted an entry impacting their 2016 financial statements. So it's -- I

09:58:17 09:58:19 09:58:20 09:58:23 09:58:25 09:58:29 09:58:32 09:58:34 09:58:38 09:58:41 09:58:43

don't mean this pejoratively -- it's a 09:58:47
backdated entry. It's recorded in 09:58:50
February but back to effective to 09:58:50
December, so posting month twelve. And 09:58:54
you'll see the Raiders increased their 09:58:56
receivables from Ventures by 20.6 09:58:59
million. They did not increase their 09:59:01
receivables for the portions associated 09:59:04
with the concussion because the NFL 09:59:06
didn't distribute that cash. But 09:59:09
increased their revenues by 24.5238 09:59:10
million you'll see Mr. Villanueva 09:59:15
signing that on February 2. 09:59:18

Then five days later, MGA -- 09:59:19
I believe that's Mr. Andrus -- also 09:59:23
signs this journal entry. 09:59:26

Q. So this is the entry that 09:59:27
Raiders management booked to record the 09:59:30
revenue for the January accrual; 09:59:33
correct? 09:59:36

A. True. 09:59:36

Q. Let's go back to slide one. 09:59:37

And that accrual is made and 09:59:42
affects both the conforming statements 09:59:48
and the fiscal year-end statements; 09:59:51

correct? 09:59:53

A. True. 09:59:54

Q. So we can skip that. 09:59:54

Now let's go to the booking of the 2016 NFL season remittance. 09:59:56 09:59:58

And was that first done by the Raiders with respect to the conforming statements? 10:00:05 10:00:09 10:00:11

A. Yes. 10:00:12

Q. And what is the entry that the Raiders booked to the conforming statements to reflect the 2016 season remittance? 10:00:12 10:00:13 10:00:17 10:00:20

A. They recorded a net or additional $82.3 million. 10:00:21 10:00:24

Q. Is that number correct? 10:00:26

A. It is. 10:00:28

Q. After doing it correctly, did the Raiders then, for purposes of their year-end financial statements, book the very same 2016 season remittance? 10:00:28 10:00:31 10:00:36 10:00:37

A. Yes. 10:00:41

Q. Did they do that correctly? 10:00:41

A. No, sir. 10:00:43

Q. And what was the amount of 10:00:44

the entry that they booked for the purposes of the year-end financial statements? 10:00:47 10:00:48 10:00:50

A. The full 108.6 million which includes a portion of that amount is the double-count error. 10:00:50 10:00:54 10:00:56

Q. So let's go to JX 2582. 10:00:58

A. I'm there. 10:00:58

Q. I see. 10:00:58

A. So if you go to the second page is the way to start and then we work our way backwards. 10:01:16 10:01:19 10:01:21

MR. FARINA: I apologize. This is my fault and Mr. Richmond's fault. It's not Manny's fault.

The exhibits for every other witness have been in exhibit number order. We did these in the record that we're walking through them. All you have to do is just flip to the next exhibit. 10:01:35 10:01:36 10:01:40 10:01:41

Q. Let's go to Exhibit 2582, and we'll have it up on the screen. 10:01:48 10:01:54

What is this? 10:01:55

A. This is a printout of an 10:01:56

e-mail from Mr. Firestone to Mr. 10:02:03
Villanueva from June 1 of 2017. And so 10:02:05
here, even though the season had ended 10:02:10
back in March, this is Mr. Firestone 10:02:13
giving an update for that season that 10:02:15
had ended a few months earlier. And 10:02:16
Mr. Firestone is communicating that, 10:02:18
for Ventures, the total remittance for 10:02:21
that season would be $108.6 million. 10:02:23
You'll see the other items for booked 10:02:29
income, Films, et cetera. 10:02:32

Then to the right of this you 10:02:33
see Mr. Villanueva taking the 10:02:36
remittance total of 108.6, he then 10:02:38
queries the general ledger to determine 10:02:46
what amount, if any, had already been 10:02:48
recorded. The general ledger shows 10:02:49
that there's 26.278 million of revenue 10:02:52
that had already been recorded for that 10:02:54
season. So the net or the incremental 10:02:56
amount that's left to be recorded is 10:03:00
the 82.348. You then see to the bottom 10:03:01
of that entry number one, and that 10:03:06
would be the new entry that would need 10:03:09
to be recorded to properly account for 10:03:11

Ventures revenue associated with that season. And you'll see that in the parenthetical it says to record March 31 activity. So this is the new activity that needs to be recorded in March 31 to properly account for the total season. 10:03:13 10:03:14 10:03:22 10:03:23 10:03:25 10:03:29 10:03:31

Q. Let's move on to how Raiders management booked that same remittance versus the year-end financials. 10:03:33 10:03:37 10:03:40

Before we go, let me just ask, did you identify an actual journal entry that corresponded to Mr. Villanueva's handwritten entries? 10:03:41 10:03:43 10:03:47 10:03:49

A. Yes. And so I was able to tie out by comparing the twenty-six million that was done in January and the eighty-two million that was then done with this entry to the conforming schedules that were actually sent to the NFL. So you can add up the amounts, do the total, and then trace the total of the 108.6 into the conforming financials that were sent to the NFL. 10:03:50 10:03:54 10:03:57 10:03:59 10:04:02 10:04:04 10:04:05 10:04:10 10:04:12 10:04:17 10:04:18

Q. So let's now go to JX 2657. That's the GL extract. 10:04:19 10:04:24

Did you identify the journal entries made by Raiders management to record the 2016 season remittance for purposes of the year-end financial statements? 10:04:25 10:04:28 10:04:31 10:04:35 10:04:36

A. Sure. 10:04:36

So we actually have to go to the next year, because then there's going to be an entry for March of '17. 10:04:37 10:04:38 10:04:41

Sorry for the accountant talk. What's highlighted in rows one hundred sixty-seven and one hundred sixty-nine on your screen is the impact of a journal entry recorded by the Raiders into their general ledger effective March 31 of 2017. It increases -- you'll see it's what appears to be a new account, 12015. When they updated their accounting system to Great Plains, they renumbered their accounts, and so the account 12015 is the same account receivable account from their old system, it just 10:04:54 10:04:57 10:04:59 10:05:00 10:05:02 10:05:04 10:05:07 10:05:10 10:05:13 10:05:17 10:05:20 10:05:21 10:05:24 10:05:26

now has a new five digit number instead 10:05:30
of a four digit number. 10:05:33

You'll also see that they 10:05:34
increased revenues which is now account 10:05:34
44015 for NFL Enterprises, and you'll 10:05:35
see that the amount that was recorded 10:05:40
was the full season remittance amount 10:05:42
of 108.6, not the net amount that was 10:05:44
recorded for the conforming schedules. 10:05:48

Q. So had they done the 10:05:54
accounting for the conforming schedules 10:05:56
the same way they did the accounting 10:05:56
for the year-end financials? 10:05:58

A. No. 10:05:58

Q. And is one correct and one 10:05:59
incorrect? 10:06:02

A. True. And they did the 10:06:02
correct one first chronologically. 10:06:04
They did the erroneous one after. 10:06:08

ARBITRATOR CHANDLER: How do 10:06:11
you know that? Because you don't 10:06:12
have a date here. 10:06:13

THE WITNESS: So the 10:06:14
conforming schedules are prepared 10:06:15
first chronologically, and I can 10:06:17

see that because the actual 10:06:20
conforming schedules are finalized 10:06:22
and sent to the NFL before you get 10:06:24
to the next year's fiscal period. 10:06:25
So you have a conforming schedule 10:06:29
that ends March 31. The fiscal 10:06:30
periods then end December 31. And 10:06:34
so you can trace both the totality 10:06:36
of the entries and then the timing 10:06:39
of the release of the financial 10:06:41
statements. And so the fiscal 10:06:42
periods always follow the 10:06:45
conforming. You have to do the 10:06:48
conforming first, then the fiscal 10:06:49
periods second. 10:06:52

Q. Is that because they were 10:06:53
following the lag method? 10:06:55

A. True. They would record the 10:06:56
season's remittance into the fiscal 10:06:59
period at March of that calendar year. 10:07:03
So the 2015 season remittance ends 10:07:05
March of '16, so that remittance was 10:07:09
being recorded in their fiscal periods 10:07:11
in March of '16, but you don't report 10:07:14
that impact until you get all the way 10:07:17

to December of '16 and then close your books and issue your financial statement sometime later in '17. 10:07:21 10:07:21 10:07:23

ARBITRATOR BICKERMAN: If I can interrupt you, one thing that's bothering me about this is when Mr. Villanueva's making these corrections and he's recording the remittance and he's getting e-mails from Bradley Firestone, can you tell whether he understands that the remittance is looking backwards at the income that already has been received? 10:07:27 10:07:27 10:07:29 10:07:32 10:07:34 10:07:36 10:07:38 10:07:43 10:07:45 10:07:50 10:07:52

THE WITNESS: Yes. 10:07:54

I can explain why, if you would like. 10:08:00 10:08:03

ARBITRATOR BICKERMAN: I don't know if I'm stealing your thunder, but go ahead, explain why. 10:08:04 10:08:04 10:08:07

THE WITNESS: Sure. 10:08:09

If we go back, we can go right back to JX 2582. 10:08:09 10:08:11

So you'll see here the NFL is communicating that the remittance 10:08:15 10:08:18

is for the season that had ended March 31 of '17. So each year what the NFL would do is communicate dear teams, here's what we think we're going to distribute, and that gets reported in cash flow statements to the teams, it's what we expect to distribute. Those cash flow statements are then updated through the year. Then at the end of every year the NFL communicates looking backwards here's what you've been paid, here's the total amount you've earned, here's what you're left to be paid, and so this remittance amount of 108.6 is for revenues that would have been earned from April 1 of 2016 through March 31 of '17. This is a backwards-looking number.

ARBITRATOR BICKERMAN: We've heard testimony in this arbitration that Mr. Villanueva believed that the remittances were in arrears, but that's not possible if he is recognizing these e-mails for what they say; is it? 10:09:22 10:09:24 10:09:26

THE WITNESS: I couldn't reconcile Mr. Villanueva's testimony, sir. 10:09:28 10:09:29 10:09:31

Q. So I think we can probably skip the accrual of the January, 2018 Ventures payment. 10:09:35 10:09:45 10:09:46

Can I just ask, did you examine that as well? 10:09:46 10:09:48

A. Yes, I did. 10:09:49

Q. And did you identify journal entries that were made by Raiders management to make that accrual? 10:09:50 10:09:52 10:09:52

A. Yes, I did. 10:09:53

Q. And were they done the same way as the accrual for 2016 and 2017? 10:09:55 10:09:58

A. Yes, they were. 10:10:04

Q. There are a couple of other items that you've included, one row for Films and one row for other. 10:10:05 10:10:05 10:10:06

What are those? 10:10:07

A. Sure. 10:10:09

Within any given season, 10:10:12

we've seen in the e-mails and we've 10:10:14
seen in the handwritten journal entries 10:10:15
the Raiders do receive small amounts 10:10:18
associated with Ventures, so I've 10:10:19
identified the amounts associated with 10:10:22
Films, small distribution. The other 10:10:23
is their equity ownership in Ventures. 10:10:25
So I've done here is I've 10:10:29
taken two full seasons for the same two 10:10:31
remittances. So on the left side we 10:10:35
have the 2015 season and the 2016 10:10:37
season and you'll see that the Raiders 10:10:39
recorded a grand total of $215 million 10:10:43
across those two seasons. But on the 10:10:49
right-hand side, when it comes to 10:10:49
preparing their fiscal period financial 10:10:49
statements that go to their banks for 10:10:53
the same exact two seasons, they 10:10:54
reported 266.6 million. And in red 10:10:58
it's those two entries that are in red, 10:11:01
and you can see the differences, that's 10:11:04
what introduces the error. And so the 10:11:06
difference on the bottom of the page 10:11:08
are two seasons' worth of mistake and 10:11:09
error in the Raiders financial 10:11:13

statements that overstates their 10:11:15
revenues, it overstates their earnings 10:11:16
for the financial statements that are 10:11:19
being reported to the bank. 10:11:21
Q. With the exception of what we 10:11:21
discussed earlier about the 2008, did 10:11:23
-- based on your investigation, did the 10:11:28
Raiders accounting follow the same 10:11:30
pattern throughout the period? 10:11:31
A. Yes, except for that anomaly 10:11:33
in 2008. 10:11:37
Q. And in every year that you 10:11:38
looked at, were the Raiders able to 10:11:40
properly book the remittance for 10:11:41
purposes of the conforming schedule? 10:11:42
A. Correct. Every year the 10:11:44
conforming schedules were done 10:11:46
appropriately by not double-counting 10:11:48
revenue. 10:11:50
Q. And what about the year-end 10:11:50
financial statements that went to the 10:11:52
banks? 10:11:53
A. So we talked earlier about 10:11:54
this. The anomaly ends up impacting 10:11:56
the 2009 financial statements, we 10:11:59

talked about at the beginning, but every other year they overstated revenue by recording the gross amounts. In these two years' examples, it would be the one hundred nine and the 108.6, and that's why you have an over $200 million problem by the time you get to 2019. 10:12:01 10:12:02 10:12:05 10:12:10 10:12:14 10:12:14 10:12:18 10:12:20

Q. So let's go now to Exhibit 3303. 10:12:21 10:12:25

Is this something that you looked at in the course of your forensic examination? 10:12:31 10:12:32 10:12:34

A. Yes. 10:12:35

Q. What is Exhibit 3303? 10:12:36

A. Is if we start here at the first page, it's an e-mail to Angel -- I'm not going to attempt to pronounce his or her last name -- at Bank of America. I understood that Mr. Villanueva described that this was the primary representative at Bank of America. And what this is transmitting are three attachments. So it was sent in June of 2017. The subject is first 10:12:38 10:12:40 10:12:48 10:12:50 10:12:52 10:12:54 10:12:55 10:12:57 10:12:59 10:13:02

quarter of 2017. And the three attachments are a compliance certificate template, so that's something the Raiders would have to prepare once a quarter to send to their banks. It's like how the banks want the Raiders to report are you in compliance, yes/no. 10:13:06 10:13:08 10:13:12 10:13:12 10:13:14 10:13:14 10:13:16 10:13:19

There's also a Raiders set of financial statements called the trailing fourth quarter EBITDA, and that's the Raiders printing out here's how they're done both revenues, expenses, and earnings. 10:13:20 10:13:22 10:13:25 10:13:27 10:13:30 10:13:33

Q. Do you have an understanding as to whether those financial statements are audited or unaudited? 10:13:34 10:13:34 10:13:35

A. They would be unaudited. So these are as of 3/31 of 2017. So there were only audits of their fiscal period financial statements for the period ending December 31 of each calendar year. These interim quarterly reports would be unaudited. 10:13:39 10:13:39 10:13:44 10:13:47 10:13:48 10:13:51 10:13:54

And the last attachment is 10:13:55

what they call year ended financial statements. It's really a twelve months ended 3/31 for unaudited financial statement. So these those are the three attachments. 10:13:57 10:14:00 10:14:02 10:14:05 10:14:07

Q. Let's go in about five pages into the exhibit where the financial statements for the year ended March 31, 2017 are included. 10:14:09 10:14:12 10:14:14 10:14:16

Do you see that? 10:14:17

A. I do. 10:14:18

Q. Can you go to the portion of the financial statements that identify the NFL Ventures revenue that the Raiders are representing for that twelve-month period? 10:14:19 10:14:27 10:14:29 10:14:32 10:14:34

A. Sure. 10:14:35

Every financial statement has the same sort of look and feel. So if you go to the next page, that would be your balance sheet assets. One more page, liabilities and equity or partners' capital. And then the next page will be what's called a P&L and income statement consolidated statement 10:14:35 10:14:37 10:14:40 10:14:44 10:14:46 10:14:50 10:14:52 10:14:56

of revenue and expenses. So this shows what the Raiders were reporting to the bank are all of their revenues, all of their operating expenses, all of their other income and expenses. And then at the bottom you'll see a line item called excess of expenses over revenue. That's a fancy word for profit or loss. 10:14:57 10:14:59 10:15:01 10:15:03 10:15:05 10:15:08 10:15:11 10:15:14

The key piece here is in the third row, NFL Properties, Films, and Ventures, the Raiders reported that they had earned one hundred thirty-two million during this twelve-month period of time associated with Properties, Films, and Ventures. And they had reported that they suffered a loss for that twelve-month period of $14.7 million. 10:15:17 10:15:19 10:15:22 10:15:24 10:15:27 10:15:31 10:15:32 10:15:35 10:15:37 10:15:41

Q. So these are twelve-month financial statements; correct? 10:15:41 10:15:43

A. Yes. 10:15:44

Q. And they are as of what date? 10:15:44

A. So it covers the period April 1 of 2016 through March 31 of 2017, a twelve-month period, sometimes 10:15:50 10:15:50 10:15:53

called a rolling twelve-month financial statement. 10:15:56 10:15:58

Q. We just looked at how the Raiders prepared their conforming statements that went to the NFL for the 2016 season; correct? 10:15:59 10:16:02 10:16:03 10:16:10

A. Yes. 10:16:12

Q. What do those cover, what period of time? 10:16:12 10:16:15

A. They cover the same exact twelve-month period and have a balance sheet as of the same exact date. 10:16:15 10:16:18 10:16:20

Q. Can you flip to the next Exhibit 3304. 10:16:20 10:16:24

These are the conforming statements. We looked at how those were prepared earlier in your testimony; correct? 10:16:29 10:16:31 10:16:33 10:16:37

A. Yes. 10:16:37

Q. Can you identify the Ventures revenue line item in these statements? 10:16:37 10:16:39

A. Sure. 10:16:41

So if you go to it's called page three in the bottom left-hand corner. If you page forward, it turns 10:16:42 10:16:46 10:16:49

into a landscape page. 10:16:52
In the upper left-hand 10:16:54
corner, it says 2016 season, so that is 10:16:59
a season that would end March 31 of 10:17:02
'17. You'll see under the header on 10:17:05
the left national revenues, there's a 10:17:07
line item second from the bottom called 10:17:10
NFL Ventures. And you'll see that here 10:17:13
the Raiders are reporting to the NFL 10:17:15
that, during that same twelve-month 10:17:17
period of time, they had earned only 10:17:20
$111.4 million as compared to what they 10:17:22
had reported to the banks as part of 10:17:28
the fiscal period financials. 10:17:31
Q. So flip back to the income 10:17:32
statement on Exhibit 3303. 10:17:35
What's the number that should 10:17:39
correspond to that one hundred eleven 10:17:41
million? 10:17:43
A. So instead of 111.5, the 10:17:43
Raiders reported 132.5. 10:17:53
Q. Is the 132.5 number correct? 10:17:56
A. No. 10:18:00
Q. Let's look briefly at the 10:18:01
balance sheet. 10:18:03

Can you flip to the prior page.

Again, we're still in the unaudited financial statements that went to the bank --

A. Correct.

Q. -- as of March 31, 2017.

A. If you go back one page to page two, so sent to the bank is a full set of financial statements. So for balance sheet accounts, it's literally a snapshot of what is the balance in that account at midnight on March 31, 2017, because balance sheet accounts change over time. So as of March 31, 2017, the Raiders reported to the bank that they had an asset called due from NFL of $83.7 million.

Q. Let's go back to Exhibit 3304.

Can you find the balance sheet line item in the conforming schedules also prepared by Raiders management?

A. Yes.

So if you go to what's called schedule three, so again what we are in now is we are in the NFL conforming schedules that were prepared and sent to the NFL, Exhibit 3304. So there is a similar-looking balance sheet. So on the left-hand side you'll see a header called notes and accounts receivable. The third row is Ventures revenue. And if you trace it all the way over to league conformed they're reporting to the NFL that the receivable representing revenue that they had earned but not net received in cash was only 13.2 million. 10:19:13 10:19:16 10:19:23 10:19:27 10:19:29 10:19:33 10:19:37 10:19:40 10:19:41 10:19:44 10:19:48 10:19:50 10:19:52 10:19:54 10:19:56

Q. So what is the reason based on your forensic examination for the disparity between the thirteen million and the eighty-three million? 10:19:59 10:20:03 10:20:05 10:20:08

A. All of the error that had been accumulated over time through all of the improper journal entries from 2006 up to this point in time in 2016. 10:20:10 10:20:12 10:20:15 10:20:18

Q. Both of these separate financial statements were prepared by 10:20:22 10:20:25

Raiders management? 10:20:27
A. Yes. 10:20:27
Q. Were they prepared by Raiders management at the same time? 10:20:28 10:20:29
A. At or about the same time. These were both prepared and sent for the period ending March 31 of 2017. 10:20:30 10:20:32 10:20:34
Q. Based on your investigation, is the one that went to the NFL correct? 10:20:37 10:20:38 10:20:40
A. It is. 10:20:40
Q. Is the one that went to the bank incorrect? 10:20:41 10:20:43
A. Absolutely. 10:20:44
Q. So go back to the Exhibit 3303, and there's a compliance certificate, but the page right before the financial statements, do you see there's a schedule that includes in the right-hand column trailing twelve months? 10:20:47 10:20:49 10:20:54 10:20:56 10:20:57 10:21:01 10:21:03
A. So back in Exhibit 3303, we talked earlier that there were three attachments that Mr. Villanueva attached and sent to Bank of America. 10:21:03 10:21:07 10:21:08 10:21:10

What I'm looking at now is a printout 10:21:12
of the second attachment which is their 10:21:15
trailing fourth quarter EBITDA 10:21:19
calculation. 10:21:22
So here, to orient the panel, 10:21:22
the rows are the top rows are all of 10:21:26
their revenue accounts. Then you have 10:21:30
what's called operating expenses. Then 10:21:32
you have a category called other 10:21:35
income. And then you'll see that line 10:21:38
item we talked about, excess of 10:21:40
expenses over revenues. 10:21:42
And so could you highlight 10:21:43
for me on the far right side, so for 10:21:46
the trailing twelve months Q1 of '17 10:21:48
excess of expenses over revenues is at 10:21:53
negative 14.784 million that we saw. 10:21:54
What's below that is the 10:21:58
Raiders -- 10:22:01
Q. To get to that 14.7 negative 10:22:01
number, that's an accumulation of the 10:22:07
numbers that appear above it in the 10:22:10
schedule; correct? 10:22:12
A. True. You add up all of your 10:22:13
revenues and you'll see a subtotal of 10:22:16

revenues of three hundred forty-three million. They add up all of their expenses, you'll see a subtotal of three hundred twenty-four million. The operating gain or loss is simply the math or the difference between those two highlighted numbers of nineteen. 10:22:18 10:22:19 10:22:21 10:22:21 10:22:24 10:22:27 10:22:28

Q. Look at the -- under operating revenues, look at the third row. 10:22:31 10:22:33 10:22:36

A. I see that. 10:22:36

Q. What is that? 10:22:36

A. So that's their reported revenues from NFL Ventures. And then I say reported, reported to the banks revenues from NFL Ventures, and they reported $132.5 million. 10:22:37 10:22:39 10:22:42 10:22:44 10:22:47

Q. And that's the same number that we saw in the financial statements that went to the banks; right? 10:22:49 10:22:52 10:22:53

A. True. 10:22:55

Q. So for purposes of calculating compliance with their covenant, what revenue number are they using? 10:22:55 10:22:58 10:22:59 10:23:01

A. The inflated number. 10:23:01
Q. So go ahead. 10:23:03
A. So the bottom of this is the 10:23:04
calculations that the bank, Bank of 10:23:07
America, requires the Raiders to do to 10:23:09
calculate what's called a DCR or debt 10:23:11
covenant ratio. So you make several 10:23:14
adjustments to get to a term called 10:23:17
EBITDA, which is earnings before 10:23:21
interest, taxes, depreciation, and 10:23:23
amortization. They then make an 10:23:26
adjustment for cash paid for player 10:23:29
bonuses. Then there's the team DCR 10:23:31
calculations at the bottom. And what's 10:23:34
important is the Raiders were reporting 10:23:36
in that bottom right-hand corner that 10:23:37
their debt covenant ratio for DCR was 10:23:39
4.96. 10:23:44
Q. So let's flip to the prior 10:23:45
page -- prior two pages, actually -- 10:23:48
which is schedule one to the 10:23:53
certificate of compliance. 10:23:55
And do you see the same 10:23:56
calculations that are on the page we 10:23:57
just looked at, they appear on those 10:23:59

two pages? 10:24:02

A. Yes, so this is the form that Bank of America required the Raiders to prepare and submit each quarter. So you see here this is for the year ended 3/31 of '17, the statement date. You'll see that the first number is that 14.784 million, meaning they don't show all the revenues and all the operating expenses and the other expenses, they cut to that first number. You then see all of the adjustments to get to your DCR. And if you turn to the next page, at the top of that page is the result. And the Raiders are reporting that their consolidated debt service coverage ratio was 4.96. 10:24:02 10:24:04 10:24:06 10:24:08 10:24:11 10:24:15 10:24:17 10:24:20 10:24:21 10:24:23 10:24:25 10:24:27 10:24:30 10:24:33 10:24:36 10:24:39 10:24:41

Q. And was that compliant with the financial covenant? 10:24:42 10:24:44

A. Well, it was consistent with the attachment that was attached, and that's in excess of minimum that Bank of America required. So you see there, under their loan agreements, Bank of 10:24:45 10:24:47 10:24:49 10:24:52 10:24:54

America required the Raiders to have a debt service coverage ratio greater than 1.25 or one. So this would appear to be in compliance. 10:24:56 10:24:59 10:25:02 10:25:06

Q. So let's go back to the slides. Let's go to slide two. 10:25:06 10:25:08

What is this demonstrative? 10:25:12

A. So what I've done here on the left-hand side using the revenues and all of the other information that was reported to Bank of America, I've just simply recreated on this slide how the Raiders reported they're 4.96 million DCR, so that comes right out of that prior slide. 10:25:15 10:25:18 10:25:20 10:25:22 10:25:24 10:25:27 10:25:30 10:25:34

Q. The column to the right, instead of the one hundred thirty-two million five hundred forty-four thousand eight hundred forty-seven, you have a different number there. 10:25:34 10:25:34 10:25:34 10:25:40 10:25:40

What's that number? 10:25:41

A. So on the right I inserted in the proper amount of Ventures revenues, so removing the double-count, doing it consistent with how they reported 10:25:42 10:25:45 10:25:49 10:25:52

revenues to the NFL, I insert in and start with a 111.5. I then use all of the other same expenses and just update the math, update the subtotals. And what it shows is how they reported the proper amount of revenues for Ventures on this loan covenant compliance certificate, they would have reported a team DCR of a negative .063, which would have been in violation of their loan covenants. 10:25:53 10:25:55 10:26:00 10:26:01 10:26:04 10:26:07 10:26:07 10:26:10 10:26:12 10:26:15 10:26:17

MR. FARINA: I have no further questions. 10:26:20 10:26:21

THE CHAIRPERSON: So why don't we take a fifteen-minute recess then. 10:26:21 10:26:22 10:26:24

(Whereupon a break was taken) 10:26:25

THE CHAIRPERSON: So let's go back on the record. 10:46:08 10:46:14

Counsel? 10:46:16

CROSS-EXAMINATION BY 10:46:17
MR. REED: 10:46:18

Q. Good morning, Mr. Richmond. Nice to see you again. 10:46:18 10:46:23

I deposed you, what, a few 10:46:25

months ago over Zoom?
A. Correct.
Q. So you're not here to testify about whether Ernst and Young fulfilled its professional responsibilities, that's not your thing; right?
A. True. That was not included in my scope of work.
Q. You're not here to testify about whether Ernst and Young should have caught this fraud in the Raiders financial statements as you've described it?
A. Correct.
Q. You're not here to testify whether Ernst and Young could have caught the error in the Raiders financial statements; correct?
A. Correct, I was not asked to try to evaluate Ernst and Young's conduct.
Q. And you're not testifying that anyone at the Raiders committed fraud; right?
A. It would be improper for me

to do so. 10:47:04
Q. Because fraud requires a 10:47:04
state of mind to mislead; right? 10:47:07
A. True. 10:47:09
Q. You don't testify about 10:47:10
states of mind? 10:47:12
A. Correct. As a certified 10:47:13
fraud examiner and as a CPA, it would 10:47:14
be improper for me to try to speculate 10:47:18
as to another person's or party's state 10:47:18
of mind, and so, as to as a certified 10:47:20
fraud examiner, all you can could is 10:47:22
examine whether something is indicative 10:47:26
of fraud but you're not able to reach 10:47:28
that final conclusion as to whether 10:47:30
something is fraudulent because that 10:47:32
would be left for a trier of fact. 10:47:33
Q. And you're aware that Mr. 10:47:36
Villanueva has testified in this case 10:47:37
both in deposition and at the hearing 10:47:39
and denied any intent to commit fraud; 10:47:41
right? 10:47:43
A. I am aware he has denied that 10:47:43
it was intentional. 10:47:46
Q. And you're not here to assess 10:47:48

the credibility of that testimony? 10:47:49

A. Correct, that's for the panel. 10:47:49 10:47:52

Q. You read his deposition; right? 10:47:52 10:47:54

A. I did. 10:47:54

Q. Did you listen to his hearing testimony? 10:47:55 10:47:57

A. I did. 10:47:57

Q. Did you read it or were you listening to it as it happened? 10:47:58 10:48:00

A. I was on the Zoom. And I also then went back and re-read the transcript after watching it live on Zoom. 10:48:01 10:48:03 10:48:06 10:48:09

Q. Now, you spent a lot of time this morning testifying about the manner in which Mr. Villanueva prepared the Raiders conforming statements and in particular the manner in which he calculated the revenue that was -- the Ventures revenue that was reported on the conforming statements; right? 10:48:15 10:48:20 10:48:21 10:48:23 10:48:25 10:48:28 10:48:30 10:48:31

A. True. 10:48:33

Q. Let's put up JX 2582. 10:48:34

You spent a lot of time dissecting and explaining this document. 10:49:09 10:49:14 10:49:16

Do you remember? 10:49:16

A. I did try to explain it to the panel, correct. 10:49:17 10:49:20

Q. And what happens in this document is Mr. Villanueva takes the remittance amount that he's given by the NFL, he subtracts an amount that's already on the Raiders books as revenue, and then he books the difference to the revenue account on the conforming statement so that he ultimately arrives at the full remittance number; right? 10:49:21 10:49:22 10:49:23 10:49:25 10:49:29 10:49:32 10:49:35 10:49:38 10:49:39 10:49:41

A. Correct. So by taking revenue that had already been recorded plus the new revenue that he records associated with this schedule, ultimately the sum of those two numbers would get you to the proper revenue for the full season. 10:49:43 10:49:44 10:49:46 10:49:48 10:49:51 10:49:54 10:49:57

Q. Did you read or listen to Mr. Villanueva's testimony about how he 10:49:58 10:50:00

performed this process? 10:50:01
A. Yes. 10:50:02
Q. So you heard him say that he 10:50:02
would get the remittance number from 10:50:04
the NFL; right? 10:50:06
A. True. 10:50:06
Q. And you heard him say that 10:50:07
his understanding was that that 10:50:08
remittance number was the number that 10:50:10
had to be reported as Ventures revenue 10:50:12
on the conforming statement; right? 10:50:14
A. If I recall his testimony, it 10:50:16
was he knew that he shouldn't be 10:50:18
reporting more revenue than the NFL had 10:50:20
already communicated would be the total 10:50:24
revenue for the season. 10:50:29
Q. But you don't recall him 10:50:30
testifying that the number that was 10:50:32
given to him by the NFL for Ventures 10:50:33
revenue was the number he understood 10:50:35
had to be reported on the conforming 10:50:37
statement? 10:50:38
A. Well, if you reported 10:50:39
something different than what the NFL 10:50:39
had already communicated to you, that 10:50:40

would be obviously an error, so I believe what he said is he knew what the total revenue would be for the season and he knew what revenue had already been recorded, so he took steps to ensure that he only recorded amounts not yet recorded to get to the proper total. That's what I recall. 10:50:42 10:50:44 10:50:46 10:50:48 10:50:50 10:50:52 10:50:56 10:50:58

Q. I think we're in the same place. 10:50:59 10:51:01

My recollection of his testimony -- and tell me if you have different -- is that what Mr. Villanueva said was that he took the remittance number, he then went to his general ledger? 10:51:02 10:51:04 10:51:06 10:51:08 10:51:09 10:51:13

MR. REED: Let's back up. 10:51:14

Q. On the conforming statements, he's reporting to the NFL financial statements covering the period for April 1 through March 31; right? 10:51:15 10:51:18 10:51:20 10:51:22

A. True. 10:51:25

Q. That's what it is every year? 10:51:26

A. It's the same twelve-month period that corresponds to the NFL 10:51:31 10:51:33

season for the conforming statements. 10:51:35
Q. So you recall, don't you, 10:51:35
that Mr. Villanueva said that, when he 10:51:38
prepared the revenue line on the 10:51:41
conforming statements, that the first 10:51:42
thing he would do is get the remittance 10:51:43
number? 10:51:45
A. True. 10:51:46
Q. And then the second thing he 10:51:46
would do is he would have a report run 10:51:48
off of his general ledger to show him 10:51:51
what revenue for Ventures had already 10:51:56
been reported for the period March 31 10:51:58
-- April 1 through March 31? 10:52:02
A. I think that's fair. I don't 10:52:04
know if he did any other interim steps, 10:52:06
but he definitely researched his own 10:52:08
general ledger to see what had already 10:52:11
been recorded. 10:52:15
Q. When he did that, when he ran 10:52:16
the report in connection with preparing 10:52:18
the conforming statement and ran a 10:52:20
report to show what revenue has been 10:52:20
reported on Ventures from April 1 10:52:22
through March 31, the only thing that 10:52:24

showed up was the January accrual that had previously been booked; right? 10:52:27 10:52:30

A. So for that twelve-month period, it is correct that the only revenue, for example, for this one year example that was already on the Raiders books was the 26.2 million for this particular year. 10:52:32 10:52:35 10:52:38 10:52:41 10:52:43 10:52:45

Q. Because the March -- the rest of the revenue for that year, the March remittance, wouldn't be booked until after the conforming statement? 10:52:46 10:52:47 10:52:49 10:52:52

A. So how the Raiders did it is the first entry for the conforming statements was the 26.2 million. The next entry was the eighty-two. And so for that season, they did the twenty-six first and then the eighty-two second. 10:52:53 10:52:57 10:52:59 10:53:02 10:53:05 10:53:09 10:53:10

Q. I think we're in the same place. 10:53:11 10:53:14

Essentially the process is Mr. Villanueva, to prepare his conforming statement, gets the number he needs to put on the revenue line, he 10:53:14 10:53:16 10:53:18 10:53:20

runs a report to show what revenue is 10:53:23
already on the Ventures books for the 10:53:26
period being reported on, and then he 10:53:28
adds the difference? 10:53:30
    A.   He identifies the difference 10:53:32
and records a new journal entry for the 10:53:34
net amount, correct. 10:53:36
    Q.   And did you hear Mr. 10:53:37
Villanueva testify that, when he ran 10:53:39
the report to identify all the revenue 10:53:41
that he had booked to the Ventures 10:53:41
revenue for the period April 1 through 10:53:46
March 31, he didn't tie the amount that 10:53:51
came back to the January accrual? Do 10:53:54
you recall hearing that testimony? 10:53:57
    A.   I don't. I don't recall him 10:54:00
saying that because the only entry that 10:54:06
would be in the GL would be the January 10:54:06
accrual. I don't know what else that 10:54:07
26.278 million could be. 10:54:10
    Q.   We'll stipulate that that 10:54:13
entry was the January accrual. 10:54:14
          The question is did you hear 10:54:15
Mr. Villanueva testify that, when he 10:54:17
ran the report to show what the full 10:54:19

year's revenue from April 1 through 10:54:21
March 31 was and got back a number, 10:54:24
that, in his mind, he didn't tie that 10:54:27
back to the January accrual? Do you 10:54:30
recall that testimony; yes or no? 10:54:32

A. I don't, sir. 10:54:33

Q. And you wouldn't be in a 10:54:35
position to assess the truth or falsity 10:54:37
of that testimony in any event? 10:54:40

A. No, it would be improper for 10:54:41
me to try to opine whether someone is 10:54:42
testifying truthfully. 10:54:42

Q. Are you aware that Mr. 10:54:43
Villanueva disclosed the methodology he 10:54:52
used to calculate the Ventures revenue 10:54:53
on the conforming statements to Ernst 10:54:57
and Young? 10:54:59

A. I don't know. 10:54:59

Q. So let's look at JX 105. 10:54:59

MR. REED: Can we take two 10:56:19
minutes and go off the record so I 10:56:20
can find the right document? 10:56:23

THE CHAIRPERSON: Of course. 10:56:25
Take your time. 10:56:26

(Whereupon a break was taken) 10:56:27

Q. So let's go I believe it is JX 105 and we want to go to page one. 10:57:48 10:57:52

So you're aware, Mr. Richmond, that Ernst and Young audited the Raiders conforming statements; right? 10:58:05 10:58:13 10:58:15 10:58:15

A. Yes, I'm aware that Ernst and Young did audit procedures both on conforming the twelve-month ended March 31 of any given year conforming statements. It also did audit procedures -- sorry, conforming were 3/31 period end. They also did audit procedures on 12/31 fiscal period financial statements. I'm aware of that. 10:58:16 10:58:18 10:58:20 10:58:22 10:58:27 10:58:28 10:58:32 10:58:33 10:58:34 10:58:36

Q. Are you aware that those audits were conducted by the same people? 10:58:36 10:58:38 10:58:39

A. I don't know that for certain one way or the other. 10:58:39 10:58:41

Q. Are you aware that those audits were conducted within weeks of each other at the most? 10:58:42 10:58:43 10:58:45

A. I don't. 10:58:47

Q. So looking at one, do you recognize that generally in its form as an audit work paper? 10:58:47 10:58:51 10:58:56
A. I've never seen this document before. Give me a minute. 10:58:58 10:58:59
(Reviewing). 10:59:02
If your question is does this look like a typical audit work paper, the answer is yes, it does. 10:59:03 10:59:19 10:59:22
Q. I'll represent to you that this is the audit work paper from Ernst and Young in connection with auditing the NFL Ventures balance on the 2015 conforming statements. 10:59:24 10:59:25 10:59:27 10:59:28 10:59:33
Do you see that at the top right corner 3/31/2015 accounts receivable league? 10:59:34 10:59:37 10:59:38
A. I do see that. 10:59:38
Q. Now, if you go to page three of the document, you you'll see tick mark three in red there? 10:59:40 10:59:49 10:59:51
A. I'm there. 10:59:53
Q. And you'll see that says, "we obtained an e-mail confirmation between Mike Feeley, NFL finance, and Ed 10:59:54 10:59:55 10:59:55

Villanueva, Raiders controller, dated June 12, 2015 in which Mr. Feeley confirms the NFL Enterprise amount due to the Raiders for the 2014 season. Mr. Feeley confirmed the total remittance of $94,000,210 and the NFL Film amount of $866,000. Per e-mail, we identified that Mr. Villanueva deducts 20.7 million from the total as this amount was reported as revenue already in GL account 3394. This brings the balance to 74.133 million. As such, the remaining 74.133 million is included in the NFL Enterprise receivable along with the film revenue of eight hundred sixty-six thousand as indicated by this schedule". 10:59:58 11:00:01 11:00:05 11:00:05 11:00:09 11:00:12 11:00:16 11:00:18 11:00:20 11:00:23 11:00:25 11:00:29 11:00:33 11:00:36 11:00:38 11:00:40 11:00:41

That describes precisely the process that you and I have just been discussing by which Mr. Villanueva calculates the amount to book to NFL Ventures revenue on the conforming statements; doesn't it? 11:00:43 11:00:46 11:00:48 11:00:49 11:00:52 11:00:53

A. It does. It describes a process consistent with what we saw 11:00:54 11:00:54

within his handwritten notes in 11:00:58
inquiring to the Raiders GL to figure 11:01:00
out what had already been recorded and 11:01:04
then only recording the net amount for 11:01:04
the purposes of preparing the 11:01:06
conforming schedules to be sent to the 11:01:08
NFL. That's what I understand is 11:01:09
communicated here. 11:01:12

Q. You weren't aware of this 11:01:13
before I showed it to you? 11:01:15

A. I didn't review any Ernst and 11:01:16
Young work papers, so I wouldn't have 11:01:20
any knowledge as to what was in their 11:01:21
work papers. 11:01:22

Q. You don't know what Ernst and 11:01:22
Young was or was not told by Mr. 11:01:24
Villanueva about any of the matters you 11:01:26
testified about? 11:01:28

A. Correct. I was not obviously 11:01:28
there during the interactions nor have 11:01:30
I reviewed the testimony of any of the 11:01:33
Ernst and Young witnesses or reviewed 11:01:36
any of the work papers. That's beyond 11:01:38
what I was asked to do. 11:01:40

Q. If we go back to 11:01:43

Exhibit 2582, again, this is the one that we were looking at before and then the one that you talked about with Mr. Farina; right? 11:02:12 11:02:17 11:02:19 11:02:21

A. True. 11:02:23

Q. Now let's look at JX 1732, please. 11:02:24 11:02:27

That's the same document, right, except it's got a box at the top? 11:02:32 11:02:37 11:02:40

ARBITRATOR CHANDLER: Which book is that in? 11:02:45 11:02:47

MR. REED: I don't have it in a book. I just pulled it up on the break. 11:02:49 11:02:50 11:02:52

Q. So that's the same document; right? 11:02:53 11:02:54

A. It does appear to be. 11:02:54

Q. And it has a box at the top that says, "we obtained this remittance confirmation directly from Bradley Firestone to utilize in our accounts receivable testing. We confirmed the domain name is consistent with our expectations". 11:02:55 11:02:59 11:03:01 11:03:03 11:03:05 11:03:09 11:03:11

You recognize that from your experiences in notations that Ernst and Young put on there; right? 11:03:11 11:03:13 11:03:14

A. That would be my presumption based upon my knowledge that earnings Ernst and Young was the independent auditor at this time, but that would be my presumption. 11:03:16 11:03:19 11:03:21 11:03:23 11:03:25

Q. So it would appear to you then that the Raiders provided this very document to Ernst and Young? 11:03:26 11:03:29 11:03:30

A. If this was produced by Ernst and Young and it was in their work papers, then that would be true. 11:03:32 11:03:35 11:03:36

Q. You recall Mr. Farina discussing with you that the Raiders, after initiating the January accrual in connection with 2006 -- I'm trying to remember my dates -- Mr. Farina took you through the circumstances in which the Raiders first began the January accrual; right? 11:03:37 11:03:51 11:03:55 11:03:58 11:04:02 11:04:09 11:04:11 11:04:13

A. I investigated what started the what I will call the January accruals. I don't recall Mr. Farina 11:04:14 11:04:18 11:04:21

asking me any questions about that first entry. But I did try to identify for the panel what was the first entry for the January accrual. 11:04:23 11:04:26 11:04:29 11:04:31

Q. So they first did it in connection with the January, 2006 financial statements; is that right? 11:04:31 11:04:33 11:04:34

A. Correct, they took a cash receipt that was expected to come in in January of '07 and they accelerated it one month earlier into December of '06. 11:04:35 11:04:38 11:04:40 11:04:42

Q. And then you recall testifying that you observed that they did not do the January accrual in 2008? 11:04:45 11:04:46 11:04:48

A. Correct. At year-end '08, Mr. Villanueva initially did record it and then reversed it so that it would have a net impact of zero after reversing it. 11:04:51 11:04:55 11:04:56 11:05:01 11:05:03

Q. Did you find evidence as to why Mr. Villanueva reversed the January accrual that year and didn't take it? 11:05:04 11:05:05 11:05:08

A. Yes. 11:05:09

Q. What was your evidence? Did he need it to meet the debt covenant? 11:05:10 11:05:11

A. No, what I saw is Mr. Villanueva communicating to the NFL that he did not want to take it because he wanted to save it for 2009. I recall Mr. Villanueva testifying that the -- there was a unique circumstance in 2008 that the Raiders were not subject to a loan covenant. Mr. Villanueva was asked about that exact issue at his deposition and during the hearing. 11:05:11 11:05:12 11:05:12 11:05:19 11:05:22 11:05:24 11:05:30 11:05:32 11:05:35 11:05:37 11:05:40

Q. Do you recall there were other years when the Raiders didn't need the January accrual in order to make their debt covenant but proceeded with it anyway? 11:05:42 11:05:43 11:05:46 11:05:47 11:05:48

A. That is also true. There were some years where the Raiders had more earnings than typically where they did exceed the debt covenant than they would have with or without the January accrual, true. 11:05:50 11:05:51 11:05:53 11:05:56 11:06:01 11:06:02

Q. So let's pull up JX 176, please, and go to page twenty-nine. 11:06:03 11:06:06

A. I'm there. 11:06:40

Q. Go to page twenty-nine of the document and you'll see a table there. 11:06:40 11:06:44
Have you seen that table before? 11:06:47 11:06:51
A. I have seen this document. I believe this was a memo that was prepared by the shadow team at Ernst and Young led by Mr. Bjorn Malmlund where he was evaluating the sufficiency of the Raiders investigation to determine whether or not Ernst and Young would be willing to proceed forward as part of its attempted audit of the 2020 financial statements. 11:06:51 11:06:54 11:06:58 11:07:04 11:07:07 11:07:09 11:07:13 11:07:15 11:07:17 11:07:19
Q. Have you seen the table I'm pointing you to on the page twenty-nine of the documents? 11:07:20 11:07:22 11:07:24
A. I have. I reviewed this document in its entirety as part of my work. 11:07:25 11:07:26 11:07:28
Q. Did you check the math? 11:07:28
A. I didn't recalculate each and every year, but I did do testing. I don't know that I did every year because there's actually two different 11:07:29 11:07:34 11:07:37 11:07:38

calculations as you'll see on in a table. 11:07:41 11:07:43

Q. I want to focus you on the first calculation. 11:07:44 11:07:46

You'll see in 2010 that the Raiders would have made their debt covenant without doing the January accrual; right? 11:07:47 11:07:53 11:07:54 11:07:57

A. You're asking me about 2010? 11:07:58

Q. I'm asking you about 2010. 11:08:03

A. So as I understand it -- I'm trying to give you a complete answer. 11:08:05 11:08:08

As part of the correction of the errors in the Raiders financial statements, the Raiders made two separate changes. 11:08:09 11:08:13 11:08:15 11:08:17

Q. Right. That's going to get into complications that I don't think I need. Mr. Farina can take you to them if he wants to. 11:08:19 11:08:21 11:08:23 11:08:27

My question is the first recalculation here in this chart is just showing what the debt covenant calculation would be if you took the January accrual out of the financials; 11:08:28 11:08:31 11:08:31 11:08:33 11:08:35

right? 11:08:36

A. Correct. So the Raiders reported to their banks a 4.56 number. Had they not double-counted revenue that fiscal period, they would have reported 1.92, but at 1.92, that would have still been above the minimum threshold. It would have been obviously lower but above the minimum threshold. 11:08:37 11:08:39 11:08:45 11:08:46 11:08:48 11:08:53 11:08:54 11:08:54 11:08:57

Q. So for 2010, had they not done the January accrual, they still would have made their debt covenant? 11:08:57 11:08:57 11:09:00

A. That is my understanding, yes. 11:09:00 11:09:05

Q. And the same is true for 2011? 11:09:05 11:09:06

A. Correct, it would have been lower but still would have been above the minimum threshold. 11:09:07 11:09:09 11:09:11

Q. And for 2013; right? 11:09:13

A. Yes, lower but above the threshold. 11:09:14 11:09:17

Q. And '14? 11:09:18

A. True. 11:09:18

Q. And '15? 11:09:19
A. True. 11:09:19
Q. So that's five years out of this fourteen-year period the Raiders would have made their debt covenant without the January accrual? 11:09:20 11:09:23 11:09:26 11:09:26
A. True, they would have reported lower revenues and lower earnings, but the resulting correct DCR, if you just isolate the double-count of Ventures revenues, would have still been above the minimum threshold. 11:09:28 11:09:30 11:09:30 11:09:32 11:09:35 11:09:37 11:09:40
Q. Now, you also testified about the inconsistencies between the Raiders conforming statements and the quarterly financial statements of the same date that the Raiders sent to their banks. 11:09:41 11:09:45 11:09:48 11:09:49 11:09:51
Do you recall that? 11:09:54
A. I did. 11:09:54
Q. Did you hear Mr. Badain and Mr. Villanueva testify about that inconsistency? 11:09:55 11:09:57 11:10:00
A. They were asked questions about it, yes. 11:10:00 11:10:02

Q. Do you recall Mr. Badain testified that he essentially never looked at or used the conforming statements? 11:10:02 11:10:04 11:10:07 11:10:08

A. I think that's a paraphrase, but he was asked whether or not he had noticed or identified the difference and I believe his testimony was that he did not. 11:10:09 11:10:11 11:10:15 11:10:17 11:10:20

Q. Did you hear Mr. Villanueva testify that he never used the conforming statements for any business purpose? 11:10:20 11:10:21 11:10:24 11:10:26

A. I don't think that's true. The business purpose was to report to the NFL their conforming statements. I don't recall exactly what Mr. Villanueva said, but clearly the business purpose was to report conforming financial statements to the NFL, so there was a business purpose for those reports. 11:10:27 11:10:28 11:10:31 11:10:36 11:10:38 11:10:39 11:10:42 11:10:43 11:10:45

Q. Do you recall he testified that he didn't use it for any purpose beyond that? 11:10:45 11:10:46 11:10:49

A. I believe that may be a fair characterization but ultimately his testimony will speak for itself. 11:10:49 11:10:53 11:10:55

Q. Well, let's put up his testimony. 11:10:57 11:10:59

Can we pull up transcript one thousand two hundred eighty, line twenty-three. 11:11:00 11:11:05 11:11:05

So Mr. Villanueva is asked: "Did you ever think that it was odd that the numbers being reported on the conforming statements were different than the revenue numbers you saw reported on the financial statements for Ventures. 11:11:11 11:11:14 11:11:16 11:11:18 11:11:19 11:11:21 11:11:22

Answer: "No, never really thought about it. I don't -- we don't rely on the conforming statement. It's just something we prepare and get it done and submit it to the league or get it ready for EY to take a look at it. But I believe EY spends more time on it than we do. 11:11:23 11:11:25 11:11:27 11:11:30 11:11:32 11:11:34 11:11:38 11:11:41

Question: "Well, how much time would you spend on the conforming 11:11:41 11:11:41

statements each year. 11:11:41
Answer: "If I had to gauge it, maybe two days, maybe a couple of days. 11:11:41 11:11:43 11:11:45
Question: "And in conducting the Raiders business, did you use the conforming statements for anything. 11:11:47 11:11:49 11:11:49
Answer: "No". 11:11:50
Did you listen to that testimony? 11:11:52 11:11:56
A. I did. 11:11:56
Q. And you have no basis to assess whether it's true or not? 11:11:56 11:11:59
A. I accept it as his testimony. All I was trying to clarify is that every year the Raiders prepared conforming statement and went through the processes to prepare those and submitted those to the NFL. 11:12:00 11:12:04 11:12:06 11:12:06 11:12:06 11:12:09
Q. Did you hear the testimony of EY witnesses in this case? 11:12:10 11:12:14
A. No. Except for Mr. Malmlund because he was the one who did the shadow investigation. That was relevant and pertinent to my testimony. 11:12:16 11:12:18 11:12:20 11:12:24

Q. Are you aware that EY witnesses have testified in this arbitration that they did not view the conforming statements as comparable to the financial statements? 11:12:26 11:12:27 11:12:27 11:12:30 11:12:31
A. No, sir. I'm not aware of what their testimony is because I haven't listened to that or watched that portion of the hearing. 11:12:32 11:12:34 11:12:37 11:12:38
Q. So if we look at Mr. -- well, let me ask this: Are you aware that the conforming statements were prepared using a different method of accounting than the financial statements? 11:12:39 11:12:42 11:12:44 11:12:46 11:12:48
A. Yes. 11:12:49
Q. The conforming statements were prepared on NFL GAAP and the financial statements were prepared on a tax basis; right? 11:12:49 11:12:53 11:12:56 11:12:56
A. True. 11:12:57
Q. Are you aware that that's a reason why the Ernst and Young witnesses did not believe them to be comparable? 11:12:58 11:13:01 11:13:03 11:13:05
A. I couldn't testify as to what 11:13:05

the Ernst and Young witnesses believed or didn't believe or what they testified to, I'm just not aware of that. 11:13:09 11:13:12 11:13:14 11:13:18

Q. Now, the Raiders, when they began the January accrual, they disclosed that to their bank? You know that. 11:13:23 11:13:28 11:13:31 11:13:33

A. I did see correspondence that there was both correspondence with the NFL and I believe Bank of America with regards to the initial decision to accelerate one month's worth of revenue at the end of 2006. I do recall hearing testimony about that or exhibits on that topic. 11:13:34 11:13:36 11:13:38 11:13:42 11:13:46 11:13:48 11:13:51 11:13:53

Q. And do you also know that, when they initiated the January accrual, they vetted it with counsel? Have you seen that evidence? 11:13:54 11:13:56 11:14:00 11:14:02

A. I believe there was an individual represented as being tax counsel who was either part of an e-mail chain or consulted with. 11:14:04 11:14:05 11:14:08 11:14:10

Q. Now, you looked at a lot of 11:14:12

general ledger entries in the course of your analysis and you went through some of those with the panel. 11:14:17 11:14:19 11:14:21

Did you find any instance in which anything was classified on the general ledger to something that it was not? 11:14:22 11:14:24 11:14:28 11:14:32

A. Yes. 11:14:32

Q. Give me an example. 11:14:33

A. Sure. 11:14:35

So all of the erroneous revenue entries aren't really revenue and they're not valid receivables. I did identify all of the entries or the portion of the entries that do contain errors in unsupported amounts. 11:14:35 11:14:38 11:14:41 11:14:44 11:14:47 11:14:50

Q. Well, those entries are incorrect? 11:14:52 11:14:55

A. True. 11:14:55

Q. But they're not booked to the wrong account; are they? In other words, if an entry is booked as a receivable for Ventures, that's what it purported to be; right? 11:14:56 11:14:59 11:15:00 11:15:02 11:15:04

A. Sure. I didn't understand 11:15:05

your question then. 11:15:07

What I did see is that the erroneous entries were recorded to Ventures receivable accounts and Ventures revenue accounts. 11:15:08 11:15:11 11:15:13 11:15:16

Q. But you didn't see any attempt in connection with how things were booked to conceal what was being done; did you? 11:15:18 11:15:21 11:15:23 11:15:25

A. I couldn't answer that because I don't know all the facts and circumstances about how it was being booked and/or what was being shared with parties. They were booked to the Ventures revenue accounts and the Ventures receivable accounts. 11:15:26 11:15:28 11:15:29 11:15:31 11:15:32 11:15:36 11:15:38

Q. Based on what you reviewed, you didn't see anything that indicated to you something had been booked incorrectly and attempted to conceal it? 11:15:39 11:15:41 11:15:43 11:15:46 11:15:48

A. I'm not sure how to answer that question. I did find in my investigation that the Raiders knew how to do it right and proved how to do it 11:15:49 11:15:52 11:15:54 11:15:55

right by booking it correctly in the conforming schedules but then posted journal entries that are clearly erroneous and double-count revenue later in time. 11:15:58 11:16:00 11:16:02 11:16:04 11:16:06

Q. Again, so they did it incorrectly, but you didn't see any evidence that they had done it in a manner designed to hide it or conceal it? 11:16:07 11:16:11 11:16:13 11:16:13 11:16:15

A. They did book them into their general ledger. You have to book entries into your general ledger. So they are within the Raiders general ledger. 11:16:16 11:16:18 11:16:20 11:16:20 11:16:22

Q. So your -- if, in fact, this had been a fraud, whoever committed it would have had to be counting on the fact that EY, when they reviewed and audited the financial statements and the supporting general ledger, wouldn't find it; right? 11:16:23 11:16:27 11:16:30 11:16:32 11:16:34 11:16:36 11:16:38

A. Are you asking me about my typical experience on how frauds get executed? 11:16:39 11:16:42 11:16:45

Q. No, I'm talking about this case. 11:16:46 11:16:48
A. So if you are committing fraud, you have to record that fraud in your general ledger and I would assume that a fraudster or a participant in a fraud scheme would not want to get caught. But you have attention, for plaque of a better word, because you have to record that entry in your general ledger but you obviously would not want to be caught. 11:16:48 11:16:49 11:16:51 11:16:52 11:16:56 11:16:58 11:17:01 11:17:03 11:17:05 11:17:07
Q. No fraudster wants to be caught? 11:17:09 11:17:13
A. There are some fraudsters who decide to be caught because they think it would be beneficial for them to come forward and admit their misconduct. Others deny all the way to the end. 11:17:13 11:17:15 11:17:17 11:17:20 11:17:23
Q. That's not this case? 11:17:25
A. I don't know about this case. That's up to the panel to decide. 11:17:28 11:17:31
Q. To come back to my original point, am I correct in assuming that if whomever was -- 11:17:32 11:17:35 11:17:39

MR. REED: Strike that. 11:17:40
Q. Am I correct that if this was 11:17:41
somebody at the Raiders committing an 11:17:44
intentional fraud, they would have had 11:17:46
to have been relying on the fact that 11:17:49
the auditors would not find it? 11:17:52
A. I think that's a fair 11:17:53
inference that, if you are committing 11:17:54
fraudulent or improper acts, you would 11:17:56
not want to be caught by your 11:17:59
independent auditor. 11:18:03
Q. And you're not here to 11:18:04
testify that this was booked into the 11:18:04
Raiders ledger in a manner that was 11:18:05
designed to keep the auditors from 11:18:06
finding it? 11:18:08
A. I couldn't give you that 11:18:09
answer one way or another. I don't 11:18:12
know all the facts and circumstances 11:18:15
about what was communicated or not 11:18:15
communicated to Ernst and Young. That 11:18:17
was beyond the scope of my work, so I 11:18:19
cannot tell you what Mr. Villanueva was 11:18:24
thinking when he booked those erroneous 11:18:25
entries. All I see is the result of 11:18:25

his conduct. 11:18:27

Q. So you were not asked to look at whether or not this was concealed from Ernst and Young? 11:18:29 11:18:31 11:18:32

A. I was asked and I did describe in my report as to whether or not this conduct was indicative of an earnings management scheme and, in my opinion, it is. 11:18:33 11:18:37 11:18:42 11:18:42 11:18:43

Q. That's not the question I asked you. 11:18:44 11:18:45

The question I asked you is were you asked to look at whether this was concealed from Ernst and Young. 11:18:45 11:18:45 11:18:47

A. No, that was beyond my scope as to what steps or lack thereof the Raiders took to conceal or not conceal this from Ernst and Young. 11:18:50 11:18:53 11:18:55 11:19:00

Q. Did you find any evidence that this was concealed from Ernst and Young? 11:19:02 11:19:03 11:19:05

A. I did see in the record -- this is from Mr. Villanueva's deposition, this is from Mr. Badain's deposition -- that there did appear to 11:19:05 11:19:07 11:19:09 11:19:11

be record evidence that the Raiders 11:19:14
tried to limit the information that was 11:19:17
shared with Ernst and Young, 11:19:19
controlling the information that was 11:19:21
shared with Ernst and Young, they were 11:19:22
asked about that, but ultimately I 11:19:24
can't speak to Mr. Villanueva's mindset 11:19:27
or why he did certain things. 11:19:29

Q. The only piece of evidence 11:19:31
that you identify in your report at 11:19:33
least is being denied to Ernst and 11:19:35
Young was the capital roll forward; 11:19:37
right? 11:19:39

A. I saw also references to 11:19:39
trying to limit or control what Ernst 11:19:44
and Young would be able to confirm with 11:19:46
the NFL. I recall that. There were 11:19:48
references to not providing the entire 11:19:53
capital roll forward. I saw references 11:19:56
to let's give them exactly what we gave 11:19:58
them last year. I saw a reference to 11:20:02
not providing Ernst and Young the trial 11:20:04
balance for year-end 2020 because it 11:20:06
may reveal or cause red flags about the 11:20:10
problem. I saw multiple references in 11:20:14

the record to not being forthcoming or 11:20:16
sharing robust information with Ernst 11:20:20
and Young. 11:20:23
Q. But you didn't evaluate of 11:20:23
that from the perspective of whether it 11:20:25
hindered Ernst and Young in their audit 11:20:28
efforts? 11:20:30
A. True, I did not try to 11:20:30
evaluate the impact on Ernst and Young. 11:20:32
What I was investigating was the 11:20:34
Raiders' conduct. 11:20:37
Q. And you don't have -- let me 11:20:38
talk for a second about the capital 11:20:41
roll forwards. 11:20:43
Do you have any understanding 11:20:44
of under what circumstances the Raiders 11:20:45
provided a portion of the capital roll 11:20:48
forwards to Ernst and Young? 11:20:50
A. I don't know unless it was 11:20:52
discussed in a deposition. I wouldn't 11:20:57
know why the Raiders either shared or 11:20:59
did not share a portion of the capital 11:21:00
roll forwards. 11:21:03
Q. So you're not in a position 11:21:03
to opine here today on whether the 11:21:05

Raiders' provision of a portion of the 11:21:08
capital roll forwards to Ernst and 11:21:09
Young as opposed to the entirety of the 11:21:12
document was an effort to hinder Ernst 11:21:14
and Young? 11:21:19
A. I can't speculate as to what 11:21:19
the Raiders' or any individual's intent 11:21:21
was. I can't read their minds. What I 11:21:22
did see in the record was 11:21:26
contemporaneous communications about 11:21:29
limiting or restricting the amount of 11:21:31
information that was being shared with 11:21:32
Ernst and Young. 11:21:34
Q. And we've had testimony about 11:21:34
those. 11:21:37
But obviously you can only 11:21:37
interpret what the testimony and the 11:21:39
evidence was; right? 11:21:40
A. Correct. I'm just trying to 11:21:41
be objective. But I did see evidence 11:21:43
of it, but what Mr. Villanueva or what 11:21:46
others at the Raiders were thinking I 11:21:49
can't testify to. 11:21:51
MR. REED: I think I might be 11:22:18
done. 11:22:19

Can we take two minutes and 11:22:20
I'll figure out if I have anything 11:22:21
else? 11:22:24
THE CHAIRPERSON: Sure. We 11:22:24
can take five minutes. 11:22:25
MR. REED: Five minutes is 11:22:26
great. 11:22:27
(Whereupon a break was taken) 11:22:28
Q. Can we put up 1732. 11:28:46
Just one or two last 11:28:54
questions, Mr. Richmond. 11:28:56
Did you mean to testify 11:28:57
during your direct -- I think it was in 11:29:01
response to a question from Mr. 11:29:03
Bickerman -- that it was evident from 11:29:05
the face of this document that the 11:29:07
remittance was paid not in arrears but 11:29:09
prior to being issued? 11:29:13
A. No, I don't think that was my 11:29:14
testimony. I asked whether or not I 11:29:19
saw evidence in the record that the one 11:29:20
hundred eight million covered the 11:29:22
preceding season that would have ended 11:29:25
March 31 of 2017. The answer is yes, 11:29:27
there's lots of evidence in the record 11:29:31

that the remittance total amount is 11:29:33
done at the end of the season. It's 11:29:35
not a guess at the beginning of the 11:29:37
season. There's an estimate but the 11:29:39
final remittance is always done after 11:29:41
the season ends, so it's a 11:29:44
backwards-looking amount. So some of 11:29:46
that cash associated with that 108.6 11:29:49
million would have already been paid to 11:29:52
the Raiders and put in the Raiders' 11:29:54
checking account. 11:29:56
MR. REED: Thanks. You've 11:29:56
been very helpful. 11:29:59
I have no further questions. 11:30:01
REDIRECT EXAMINATION BY 11:30:04
MR. FARINA: 11:30:04
Q. So Exhibit 1732 relates to 11:30:04
the remittance provided that runs up 11:30:08
until 3/31/17; is that correct? 11:30:13
A. True. 11:30:16
Q. Mr. Richmond, you listened to 11:30:19
and then read Mr. Villanueva's 11:30:40
testimony; correct? 11:30:43
A. Correct. 11:30:44
Q. Do you remember at the 11:30:44

beginning of my cross-examination I 11:30:45
shared this document with him? 11:30:47
A. I do. 11:30:48
Q. And do you see at the very 11:30:49
bottom of the first page there's an 11:30:52
e-mail from Mr. Villanueva to Mr. 11:30:53
Firestone? 11:30:54
A. Yes. 11:30:55
Q. Do you see that the e-mail is 11:30:55
discussing the remittance that pertains 11:30:57
to the period ending 3/31/17? 11:30:59
A. Yeah, the same exact one that 11:31:02
was on the prior exhibit. 11:31:06
Q. The same exact one; correct? 11:31:07
A. True. 11:31:07
Q. And what did Mr. Villanueva 11:31:08
tell Mr. Firestone about when the cash 11:31:10
was actually collected that related to 11:31:13
that remittance? 11:31:15
A. So the sentence has a typo in 11:31:16
it, but he writes, "the Ventures 11:31:19
distribution received from 4/1" and it 11:31:22
says "2106" but I believe Mr. 11:31:24
Villanueva acknowledged that that's a 11:31:26
typo, it should be 2016, "so 4/1/2016 11:31:26

through March 31 of 2017 pertains to revenue that is for the period ending 3/31/2017". 11:31:31 11:31:35 11:31:37

MR. FARINA: Thank you. I have no more questions. 11:31:40 11:31:41

THE CHAIRPERSON: Anything further? 11:31:43 11:31:44

MR. REED: No, nothing further. 11:31:45 11:31:46

THE CHAIRPERSON: Sir, I have a few questions. 11:31:47 11:31:48

I know you cannot opine as to whether fraud was committed from the perspective that you can't speculate as to the intent was of an individual. 11:31:49 11:31:52 11:31:54 11:31:54 11:31:56

But as a certified fraud examiner, looking at the records that you reviewed, would the entries or materials that you reviewed be indicative of fraud? 11:31:58 11:32:00 11:32:02 11:32:05 11:32:07

THE WITNESS: In my opinion, it's both the entries and the lack of entries are indicative of an earnings management scheme. 11:32:09 11:32:11 11:32:13 11:32:17

THE CHAIRPERSON: Assume you're talking to three lay people. 11:32:20 11:32:21

What I'm trying to get at, I know what you were retained to testify as to. But overall, what exactly is the opinion that you're testifying to with a reasonable degree of accounting certainty or certified fraud examiner certainty? And in very simple language, what is the foundation for that opinion? What is the opinion and what is the foundation for the opinion? 11:32:24 11:32:26 11:32:27 11:32:29 11:32:31 11:32:33 11:32:37 11:32:39 11:32:43 11:32:43 11:32:44

THE WITNESS: I was asked to evaluate the Raiders' conduct. I've been trained on fraud examination and forensic accounting and proper accounting. I'm also a CPA; I know how to do it right. I've also spent thirty years investigating how people do it wrong. I wanted to find out when it was done wrong and what were the facts and circumstances I could see for my investigation as to perhaps 11:32:46 11:32:47 11:32:49 11:32:51 11:32:52 11:32:54 11:32:56 11:32:57 11:32:59 11:33:03 11:33:05 11:33:06

why it was done wrong and was there consistency or lack thereof, was there conflicting information or supporting information because ultimately, as a certified fraud examiner and a forensic accountant, I'm often asked to opine on whether or not something is indicative of or consistent with fraud. But as a certified fraud examiner, I can't say that something ultimately is. That's left for a trier of fact. But I often have to present either to boards of directors, the Department of Justice, the SEC, whether or not, as a result of my investigation, I'm seeing indicia of fraud. 11:33:09 11:33:13 11:33:15 11:33:16 11:33:18 11:33:21 11:33:23 11:33:24 11:33:25 11:33:28 11:33:30 11:33:32 11:33:33 11:33:36 11:33:37 11:33:40 11:33:42 11:33:45

THE CHAIRPERSON: And your opinion is? 11:33:46 11:33:47

THE WITNESS: This is very much consistent with an earnings management scheme. 11:33:47 11:33:49 11:33:51

THE CHAIRPERSON: And in a thumbnail sketch, why? 11:33:52 11:33:53

THE WITNESS: So it appeared to be the impetus for recording the January accrual was a desire to attempt to meet a loan covenant. I then see a change in that behavior in 2008 when the loan covenant compliance was not relevant. I see a return to that position in 2009. I see inconsistent accounting for one set of financials presented to one audience with a different set of financials presented to a different audience as of the same exact date. 11:33:54 11:33:59 11:34:02 11:34:02 11:34:05 11:34:07 11:34:09 11:34:11 11:34:15 11:34:19 11:34:20 11:34:22 11:34:24 11:34:26

I also saw -- and this was in the record I believe in Mr. Villanueva's testimony -- that when he was confronted by the whistleblowers, he didn't immediately call Ernst and Young, he didn't immediately call the banks, and I believe there was a reference to even delaying correcting the problem until future years. That to me is very much 11:34:26 11:34:30 11:34:31 11:34:35 11:34:38 11:34:40 11:34:41 11:34:43 11:34:45 11:34:47 11:34:48

indicate of an earnings management 11:34:54
scheme. 11:34:57
THE CHAIRPERSON: Separate 11:34:57
question. 11:34:58
I know you were not retained 11:34:58
to evaluate what Ernst and Young 11:34:59
did or didn't do. 11:35:02
Forgetting about that, given 11:35:03
all your professional experience 11:35:05
and given the careful review that 11:35:06
you have done of these records, 11:35:08
should an audit have picked this 11:35:10
up? 11:35:12
THE WITNESS: The answer is 11:35:12
maybe. I can't give you a 11:35:14
definitive one way or another. 11:35:17
Audits are designed to test 11:35:20
management's accounting and 11:35:22
management's books and records to 11:35:23
provide an opinion. Whether or not 11:35:27
GAAS-compliant should have caught 11:35:27
this, I can't tell you one way or 11:35:29
another because it would really 11:35:31
depend on what was shared or not 11:35:34
shared with Ernst and Young, what 11:35:35

explanations were provided by the 11:35:40
Raiders. The answer is maybe yes, 11:35:42
maybe no. I would need to evaluate 11:35:43
that interrelationship between the 11:35:45
Raiders and Ernst and Young to be 11:35:48
able to give you a definitive 11:35:50
answer. 11:35:52
THE CHAIRPERSON: I have no 11:35:52
further questions. 11:35:52
Counsel or panel? 11:35:53
ARBITRATOR BICKERMAN: You're 11:35:54
very careful with your words, which 11:35:57
I appreciate. But instead of using 11:35:59
the word "fraud", you used the word 11:35:59
"earnings management scheme". 11:36:01
Is there a difference? 11:36:02
THE WITNESS: Thank you. 11:36:04
So there are -- from the 11:36:06
ACFE, there are three categories of 11:36:12
what are called occupational 11:36:14
frauds, frauds that occur within 11:36:14
your business. There's asset 11:36:16
misappropriation schemes; stealing 11:36:19
stuff. The number one asset that's 11:36:19
stolen? Cash. So the second one 11:36:20

are corruption schemes, bribing people, giving something of value to get something of value in return. And then there's fraudulent financial reporting. Fraudulent financial reporting is the inflation of typically revenues and profits or even the deflation of revenues and profits to create things like cushions or cookie jars so that you can bleed those back into income at later points in time. So in good times, some people commit fraud by understating their performance so that they can inflate or alter their performance or perceived performance in later years. 11:36:24 11:36:27 11:36:30 11:36:31 11:36:33 11:36:36 11:36:38 11:36:40 11:36:43 11:36:47 11:36:50 11:36:52 11:36:52 11:36:54 11:36:56 11:36:58 11:37:00 11:37:03

So what I call earnings management schemes are efforts taken by the team to inflate numbers and present a picture that is not true for various reasons or motives. It's not stealing money from the organization, it's 11:37:03 11:37:05 11:37:08 11:37:10 11:37:16 11:37:17 11:37:19

inflating the financial statements 11:37:20
and manipulating earnings from one 11:37:22
period to the next for some motive. 11:37:24
That's what I would call an 11:37:27
earnings management scheme. 11:37:29

ARBITRATOR BICKERMAN: Okay. 11:37:31

THE CHAIRPERSON: Counsel, any 11:37:32
questions? 11:37:34

MR. REED: Just one. 11:37:35

EXAMINATION BY 11:37:36
MR. REED: 11:37:36

Q. Mr. Richmond, you referred in 11:37:36
response to Judge DiBlasi's question to 11:37:39
evidence that you had seen that Mr. 11:37:43
Villanueva, when advised of the error, 11:37:45
did not want to report it to Ernst and 11:37:47
Young. 11:37:49

A. I did. 11:37:49

Q. Did you see evidence that 11:37:50
what Mr. Villanueva, in fact, told the 11:37:52
people who brought this error to his 11:37:53
attention was that he did not want to 11:37:54
report the error to Ernst and Young 11:37:55
until he had a chance to discuss the 11:37:58
matter with Mr. Badain? 11:38:00

A. I did see that. And I think 11:38:02
six days later Ms. Grant would not 11:38:04
continue to wait for Mr. Villanueva and 11:38:08
reported it herself. 11:38:09

MR. REED: Nothing further. 11:38:11
Thank you. 11:38:13

THE CHAIRPERSON: If there's 11:38:14
nothing further, we're off the 11:38:15
record. 11:38:16

(Whereupon a break was taken) 11:38:54

THE CHAIRPERSON: Mr. Goolsby, 11:41:05
John DiBlasi, to my left is john 11:46:29
Bickerman, to my left is John 11:46:31
Chandler. We're the panel that's 11:46:31
presiding over this proceeding, and 11:46:32
we'll turn to over to counsel for 11:46:34
direct examination. 11:46:36

Again, we can waive the 11:46:38
credentials. We can stipulate to 11:46:41
that if there is an issue. 11:46:43

MS. VAN WINKLE: May I ask 11:46:46
just two questions? 11:46:48

THE CHAIRPERSON: Very 11:46:50
briefly. 11:46:52

(CONTINUED ON NEXT PAGE) 11:46:54

G A R Y   G O O L S B Y, having
been first duly deemed sworn,
upon being examined, testified
as follows:

DIRECT EXAMINATION BY
MS. VAN WINKLE:

Q. Mr. Goolsby, how many years were you an audit partner?
A. I was an audit partner for eighteen of my twenty-eight years at Arthur Andersen.
Q. How many audit opinions have you signed in your career?
A. In excess of a hundred.
ARBITRATOR CHANDLER: Did you go somewhere after Arthur Andersen?
THE WITNESS: Not in public accounting, no, I went into the consulting business.
Q. Mr. Goolsby, have you previously served as an expert witness in other matters involving big four audit firms?
A. Yes, I have.
Q. And have you served as an

expert witness both for and against audit firms? 11:47:28 11:47:31

A. Yes, I have. 11:47:31

Q. Have you served as an expert witness against a big four accounting firm? 11:47:32 11:47:34 11:47:37

A. Yes. 11:47:37

Q. And to your knowledge, has your testimony as an expert witness ever been excluded from a proceeding? 11:47:37 11:47:38 11:47:41

A. No. 11:47:43

Q. What were you asked to do on this engagement? 11:47:43 11:47:48

A. I was asked to look at the audits of the Raiders by Ernst and Young from 2014 through 2019 to determine if they complied with GAAS, which are generally-accepted auditing standards, specifically focusing on the receivable and revenue related to NFL Ventures, and to evaluate any expert reports of their witnesses. 11:47:49 11:47:54 11:47:56 11:48:00 11:48:03 11:48:05 11:48:07 11:48:12 11:48:16

Q. You're aware that EY audited two different sets of financial statements for the Raiders, the 11:48:17 11:48:20 11:48:22

conforming statements and the year-end financial statements? 11:48:23 11:48:25

A. Yes. 11:48:25

Q. And which set of financial statements does your opinion apply to? 11:48:25 11:48:28

A. My opinion applied to the year-end financial statements. 11:48:30 11:48:33

Q. And do you have any opinion on the 2013 and earlier audit engagements? 11:48:34 11:48:35 11:48:38

A. No, I do not. 11:48:39

Q. Why not? 11:48:41

A. Well, the work papers, pursuant to professional guidelines, were not retained 2013 and earlier, only the 2014 through '19 five-year period. 11:48:41 11:48:43 11:48:46 11:48:49 11:48:52

Q. And why did that leave you unable to form an opinion? 11:48:53 11:48:54

A. Well, without the work papers, you can't evaluate the audit work that was performed and the documentation and evidence obtained, so without the work papers, you can't make an informed decision with respect to 11:48:57 11:48:58 11:49:00 11:49:03 11:49:06 11:49:09

the auditing process. 11:49:11

Q. Now going back to the year-end financial statements, the audits of the year-end financial statements for the 2014 to 2019 audits, did you form an opinion as to whether those audits complied with GAAS? 11:49:12 11:49:13 11:49:20 11:49:23 11:49:23 11:49:25

A. I did. 11:49:27

Q. And what was your opinion? 11:49:27

A. My opinion is those audits did conform with GAAS. 11:49:28 11:49:30

Q. What was that opinion based on? 11:49:32 11:49:34

A. That opinion was based upon my review of the documents received in discovery which included the work papers, other professional literature that I reviewed, and other information that I considered as listed in the appendix to my report. 11:49:35 11:49:35 11:49:38 11:49:38 11:49:41 11:49:44 11:49:46

Q. Did you consider Mr. Richmond's report? 11:49:47 11:49:49

A. I did. 11:49:51

Q. Before you considered Mr. Richmond's report, what was your 11:49:51 11:49:54

opinion with respect to whether EY complied with GAAS? 11:49:59 11:50:02

A. Before looking at Mr. Richmond's report, my conclusion was the audits did comply with GAAS. 11:50:02 11:50:04 11:50:06

Q. And what was your conclusion after reading Mr. Richmond's report? 11:50:08 11:50:09

A. Still the same, that the audits comply with GAAS. 11:50:09 11:50:11

Q. Mr. Goolsby, did you hear Mr. Mintzer's testimony yesterday? 11:50:14 11:50:18

A. Yes, I did. 11:50:20

Q. Do you agree that it is necessary to consider both professional judgment and professional scepticism when evaluating whether an audit complies with GAAS? 11:50:22 11:50:22 11:50:22 11:50:23 11:50:25

A. I concur. 11:50:27

Q. Do you agree that auditors apply professional judgment in all aspects of planning and performing an audit? 11:50:28 11:50:30 11:50:31 11:50:33

A. Yes, I concur. I agree completely. 11:50:33 11:50:36

Q. Do you agree that the 11:50:37

application of professional judgment should be evaluated based on the facts and circumstances at the time of the audit? 11:50:39 11:50:39 11:50:41 11:50:43

A. Absolutely, yes. 11:50:43

Q. And do you agree that under GAAS, an audit is premised on management's responsibilities? 11:50:44 11:50:46 11:50:48

A. That's correct. 11:50:49

Q. I'd like to turn to JX 0454. And I think everyone has a binder. Let me know if you don't and need one. 11:50:50 11:51:02 11:51:04

Mr. Goolsby, let me know when you're there. 11:51:07 11:51:15

A. I'm there. 11:51:16

Q. The panel has already heard some testimony about the audit planning template that's in front of us in JX 0454, so I just want to point to a few instances in this work paper. 11:51:16 11:51:18 11:51:21 11:51:24 11:51:27

Could you please go to page four. And at the bottom of page four it says -- there are two dates, November 17, 2016 and March 21, 2017, and there are participants from both EY 11:51:31 11:51:34 11:51:41 11:51:44 11:51:49

and the Raiders and a discussion; 11:51:52
correct? 11:51:54
A. Correct. 11:51:54
Q. In your experience, what 11:51:54
typically happens at these types of 11:51:59
planning meetings with the client? 11:52:02
A. Well, these type of planning 11:52:03
meetings, which is what this document 11:52:06
reflects which is some forty pages 11:52:09
long, these meetings with management by 11:52:11
the audit team, including the partners, 11:52:14
to understand the nature of the 11:52:16
business, how it operates, changes for 11:52:18
that year, and other issues that would 11:52:21
be relevant to understanding and 11:52:24
planning the work. 11:52:25
Q. And you just mentioned 11:52:26
understanding the business. 11:52:29
Can you turn to page eight, 11:52:29
please. 11:52:31
A. Okay. 11:52:38
Q. Do you see the section three, 11:52:39
understand the business, and then 11:52:43
section 3.1, nature of the entity and 11:52:44
its environment? 11:52:46

A. Yes. 11:52:47

Q. And then it lists the sources of information and the individuals interviewed as Mr. Villanueva and Mr. Andrus. 11:52:47 11:52:49 11:52:51 11:52:54

Do you see that? 11:52:55

A. Yes. 11:52:55

Q. Could you tell us a little bit more about the types of inquiries that happen in connection with understanding the business? 11:52:56 11:52:58 11:53:00 11:53:01

A. Well, in this type of situation, understanding the business with management present at those meetings which is critical at getting an informed decision and information, just understanding the nature of the entity, how the entity operates, what the entity does, any changes in the entity for the audit period that's under review which would be for the subject year that's being reviewed for which a separate engagement letter would be retained. 11:53:02 11:53:04 11:53:06 11:53:08 11:53:12 11:53:14 11:53:15 11:53:19 11:53:23 11:53:25 11:53:27 11:53:30 11:53:32

Q. Can you go to page nineteen, 11:53:33

please.

Actually, the section starts on page eighteen. It's inquiries regarding the risks of material misstatement and fraud and then there's a documentation of the inquiry over on page nineteen.

Do you see that?

A. Yes.

Q. The box on page nineteen?

A. Yes.

Q. And who does this reflect an inquiry with for this particular audit?

A. This discussions was with Ed Villanueva, who's the CFO, on April 26. That discussion was with Mr. Villanueva.

Q. And April 26, 2017, is that -- does that document a separate conversation than what we saw from the two conversations on page four?

A. It's a separate discussion and a separate discussion with Mr. Villanueva.

Q. And what typically happens --

11:53:36 11:53:36 11:53:44 11:53:46 11:53:48 11:53:51 11:53:54 11:53:55 11:53:55 11:53:56 11:53:57 11:53:57 11:54:00 11:54:03 11:54:08 11:54:13 11:54:16 11:54:16 11:54:20 11:54:22 11:54:23 11:54:28 11:54:32 11:54:34 11:54:34

what kinds of inquiries are typically made in connection with a inquiry regarding the risks of material misstatement, like the ones we see on pages eighteen to nineteen? 11:54:38 11:54:41 11:54:43 11:54:44 11:54:46

A. Well, the discussions with asking all the key questions, any evidence of any fraud, any actual or alleged or suspected fraud, any misstatements, any accounting issues, anything that's problematic that would affect the nature and planning and scope of the audit work. 11:54:48 11:54:51 11:54:52 11:54:57 11:54:59 11:55:02 11:55:05 11:55:06

Q. Now let's go to page thirty-one. 11:55:08 11:55:10

And in the middle of the page on page thirty-two, there's an American flag and it says, "discussion of audit strategy at the TPE". 11:55:11 11:55:14 11:55:17 11:55:18

Do you see that? 11:55:19

A. Yes. 11:55:21

Q. There's already been testimony in this case that the TPE is the team planning event, so I won't cover that, but I would like to direct 11:55:21 11:55:23 11:55:26 11:55:29

you to page thirty-three. 11:55:31
Under the column other 11:55:35
matters discussed, the third box says, 11:55:37
"the importance of maintaining 11:55:40
professional skepticism throughout the 11:55:42
audit, including the need for audit 11:55:46
team members to be alert throughout the 11:55:48
audit, for information or other 11:55:51
conditions that could indicate a 11:55:53
material misstatement due to fraud or 11:55:54
error". 11:55:57
And then under conclusions 11:55:57
reached, it says, "discussed in TPE 11:55:58
slides". 11:56:02
What do you take from that 11:56:03
note in the audit planning template? 11:56:05
A. Well, this is an important 11:56:08
part of the audit planning process. 11:56:09
Obviously to maintain professional 11:56:10
skepticism that you mentioned a minutes 11:56:16
ago was a key element of auditing, to 11:56:16
be alert to other information that 11:56:18
could indicate a material misstatement 11:56:20
to the fraud or error. It's all about 11:56:22
throughout the engagement being sure 11:56:25

that you're alert to these kinds of 11:56:25
issues; obviously using judgment, which 11:56:28
is paramount, and skepticism, which is 11:56:31
paramount. But it's through the entire 11:56:32
audit process. 11:56:33
Q. Did you review the audit 11:56:35
planning templates for each of the 11:56:38
audits from 2014 to 2019? 11:56:41
A. Yes, I did. 11:56:41
Q. And what conclusions, if any, 11:56:42
did you draw about EY's professional 11:56:45
scepticism from your review of the 11:56:48
audit planning templates like the one 11:56:50
that is in front of you? 11:56:50
A. It was evident in every audit 11:56:52
2014 to 2019, it was reflected and 11:56:55
discussed as such as indicated, and 11:57:00
clearly part of the planning process 11:57:01
for the entire audit. 11:57:04
Q. Can you please go to JX 0449. 11:57:07
And this document is titled 11:57:18
Summary Review Memorandum. I don't 11:57:20
believe the panel's heard any testimony 11:57:25
about what a summary review memorandum 11:57:25
is, so can you please give a brief 11:57:27

description? 11:57:27
A. Yes. 11:57:27
This document is another key 11:57:28
document in the audit process wherein 11:57:31
it documents the important results of 11:57:31
the audit, highlighting significant 11:57:36
accounting and auditing issues, and 11:57:38
reflecting that which was done and 11:57:40
accomplished in the audit process 11:57:43
through documenting that execution of 11:57:45
that process. 11:57:46
Q. And could you please turn to 11:57:47
page four of this document. I'm 11:57:50
focused on the box at the bottom of 11:57:56
page four. 11:58:00
The first sentence says, "as 11:58:01
part of our planning process, including 11:58:04
our team planning event", and it has a 11:58:06
parenthetical, "and further evaluated 11:58:09
throughout the audit fieldwork, we 11:58:12
determined that there were not any 11:58:15
fraud or significant risks applicable 11:58:16
to our audit based on the 11:58:18
considerations documented in our audit 11:58:20
planning template". 11:58:21

What does "further evaluated throughout the audit fieldwork" mean in the context of these Raiders audits? 11:58:23 11:58:26 11:58:28

A. Well, an audit is a seamless process from engagement letter execution to the final general representation letter. So the execution of the audit is throughout this entire process, as well as being alert to any type of issues like this in the entire audit. So you're always sensitive, applying judgment, skepticism to look and be aware and sensitive to those types of issues. 11:58:30 11:58:33 11:58:35 11:58:36 11:58:36 11:58:38 11:58:41 11:58:43 11:58:46 11:58:48 11:58:50

Q. And what do you take from the note on the bottom of page four as to whether EY did or did not do that in this case? 11:58:52 11:58:54 11:58:57 11:59:00

A. This document here that was done, noting the findings, and the very last paragraph, "we reconsidered our determination of whether or not there was fraud or significant risk and we concluded that no factors were present that would lead us to believe a fraud 11:59:01 11:59:04 11:59:10 11:59:13 11:59:13 11:59:16 11:59:18

or significant risk exists". So their conclusions remained appropriate as in the planning document, which is meaning again like the bookends of the audit, the beginning and the ending, and they didn't note anything. 11:59:18 11:59:23 11:59:26 11:59:29 11:59:31 11:59:34

Q. Could you please turn to page ten. 11:59:34 11:59:37

And there's a revenue section; do you see that? 11:59:46 11:59:52

A. Yes. 11:59:53

Q. There's multiple paragraphs one, two, three? 11:59:53 11:59:55

A. Yes. 11:59:56

Q. I'd like to focus on the second one for NFL Properties, Films, and Ventures, and NFL revenue sharing. 11:59:58 11:59:59 12:00:02

Do you see that? 12:00:04

A. Yes. 12:00:05

Q. Is the description in paragraph two consistent with what you would expect after having obtained an understanding of the entity during the audit? 12:00:06 12:00:07 12:00:10 12:00:16 12:00:17

A. It does reflect that, yes. 12:00:17

Q. In what way? 12:00:18
A. Because it reflects, as I 12:00:19
read through this, it discusses the 12:00:22
nature of that revenue stream, what the 12:00:25
majority of the balance relates to, the 12:00:27
components of that revenue stream, the 12:00:29
amounts involved, and then generally 12:00:34
noted what they did with respect to 12:00:36
this in the general terms. 12:00:38
Q. Can you please turn to page 12:00:39
fifteen now. 12:00:46
A. Okay. 12:00:52
Q. I'm sorry, page fourteen 12:00:52
first. Stay right there. 12:00:56
The bottom of page fourteen, 12:00:58
the bottom box says -- the first 12:01:00
sentence notes that "the federal income 12:01:06
tax basis of accounting and the second 12:01:09
one says, there have been no changes in 12:01:11
accounting policies from previous 12:01:13
periods that would have a material 12:01:14
impact on the financial statements". 12:01:16
What conclusions did you draw 12:01:17
about EY's work from that particular 12:01:20
statement? 12:01:23

A. What that calls your attention to is that, first of all, they do follow the federal income tax method of reporting. That's the accounting method that's used. And also the fact there's been no changes from a previous period, meaning there's consistency in application that would lead to any need to change the scope of the work because of such changes in the accounting. There was no such changes. 12:01:23 12:01:26 12:01:28 12:01:31 12:01:32 12:01:34 12:01:36 12:01:39 12:01:41 12:01:43 12:01:45

Q. And is it your expectation that the team would have made an inquiry about changes in accounting? 12:01:47 12:01:49 12:01:51

A. Yes, they would have. They would have made such inquiry. 12:01:53 12:01:55

Q. Now let's go to page fifteen, and there's a section on consultations at the bottom. 12:01:59 12:02:02 12:02:04

A. Yes. 12:02:07

Q. Just generally, what is a consultation when one is performing an audit? 12:02:08 12:02:09 12:02:11

A. Well, a consultation within a firm is sometimes it's called the 12:02:11 12:02:14

national office, sometimes it's called 12:02:16
a regional representation of the 12:02:18
national office, but it's a higher 12:02:20
level authority, if you will, for the 12:02:22
firms where the audit partner has 12:02:25
required to consult with such parties 12:02:27
to get concurrence and agreement based 12:02:29
on the facts and circumstances of the 12:02:31
subject audit being consulted on. 12:02:34

Q. And what does this work paper 12:02:35
indicate that the EY Raiders team 12:02:38
reached out for a consultation on? 12:02:42

A. Well, what this document says 12:02:44
that they did obtain approval from the 12:02:45
representative group regarding the 12:02:45
conclusion there was no fraud risk 12:02:48
related to revenue in the 2016 audit, 12:02:50
and they make reference to a fraud risk 12:02:54
memo. So yes, this reflects that they 12:02:56
did consult at a higher level in the 12:02:58
firm dealing with the potential for 12:03:01
revenue recognition fraud. 12:03:02

Q. Does that inform you in any 12:03:05
way about the level of professional 12:03:07
skepticism that EY was applying during 12:03:09

this audit? 12:03:12

A. Well, it does, because this 12:03:12
is one of the areas that's requiring 12:03:13
focus for fraud risk and audits and 12:03:13
skepticism leads the audit team to do 12:03:16
this type of inquiry in consideration 12:03:18
of the audit which my review indicated 12:03:22
they did. 12:03:23

Q. Did you review the summary 12:03:25
review memorandum for each of the 12:03:27
year-end audits from 2014 to 2015? 12:03:30

A. I did. 12:03:32

Q. And in your opinion, do those 12:03:33
summary review memorandums evidence the 12:03:36
application of appropriate professional 12:03:38
skepticism? 12:03:40

A. Yes, that's what I noted in 12:03:41
my review. 12:03:42

Q. And how so? 12:03:42

A. Well, because when you go 12:03:45
through the various aspects of the work 12:03:46
in many different categories such as 12:03:51
accounts receivable and other areas, 12:03:57
there's demonstrated work many times 12:03:58
that was a hundred percent executed in 12:04:02

order to validate or audit a particular amount or area. So I noted in many places scepticism was noted. 12:04:05 12:04:06 12:04:09

Q. Let's turn to JX 1032, please. And this one is titled Subsequent Events Form. 12:04:11 12:04:15 12:04:25

I don't believe the panel has heard any testimony about what a subsequent event is, so briefly could you describe what subsequent events are and subsequent events testing. 12:04:26 12:04:28 12:04:29 12:04:33 12:04:33

A. So in an audit at the year-end, which in this case is 12/31, you're required to do what's called subsequent events work up until the time of the report of your -- your audit report date. The audit report date is the date you finish your fieldwork, so you do subsequent review work up until that date in order to make sure nothing's occurred that would impact the year-end audit that you issued for 12/31. 12:04:35 12:04:39 12:04:39 12:04:41 12:04:44 12:04:46 12:04:49 12:04:51 12:04:54 12:04:54 12:04:56 12:04:58

Q. And if you turn to pages four and five, please, middle of page four 12:05:01 12:05:03

there's a number two, "inquire of management and, when appropriate, discharge with governance as to whether any subsequent events have occurred that may affect the financial statements". 12:05:11 12:05:15 12:05:15 12:05:17 12:05:19 12:05:22

Do you see that? 12:05:22

A. Yes. 12:05:23

Q. And who does this work paper indicate EY made those management inquiries of? 12:05:23 12:05:25 12:05:28

A. They were inquired of Mr. Villanueva and Mr. Andrus, both the CFO and the controller, which is standard as you would see in audits. 12:05:28 12:05:32 12:05:36 12:05:38

Q. And what date did EY make those inquiries? 12:05:39 12:05:42

A. May 30, 2017. 12:05:43

Q. And is that yet another date separate from what we saw in the audit planning template where EY's documenting specific conversations with management? 12:05:46 12:05:49 12:05:51 12:05:54 12:05:56

A. That's correct. 12:05:56

Q. When reviewing the 2014 to 12:05:57

2019 work papers, did you worm an opinion whether EY appropriately talked to, inquired of management throughout each audit from planning to performance through to conclusion? 12:06:05 12:06:08 12:06:10 12:06:13 12:06:15

A. Yes, I did. I noted that in each one of those audits. 12:06:15 12:06:18

Q. And how could you tell that EY was continuously talking to management throughout the course of an audit? 12:06:19 12:06:22 12:06:26 12:06:29

A. Well, through the documents that we just looked at and considered, there's the dates and names in and positions indicated on those documents with respect to those discussions and memorializing in the work papers if those discussions occurred throughout the audit process. 12:06:29 12:06:29 12:06:29 12:06:32 12:06:36 12:06:38 12:06:38 12:06:40

Q. And is it necessary for an auditor to document every specific conversation it has with management, including the name of the individual and the date that that conversation took place? 12:06:42 12:06:44 12:06:47 12:06:49 12:06:50 12:06:52

A. No, it's not required for literally every discussion and every date. That was not required. 12:06:53 12:06:56 12:06:57

Q. Let's turn to JX 0125. I think it's the first document in the binder. 12:06:58 12:07:14 12:07:18

The panel has already heard a lot of testimony about this work paper. This is an example of the E01.3 work paper that reflects the Ventures AR testing. 12:07:18 12:07:20 12:07:21 12:07:26 12:07:28

And my question for you is: In the procedures that are documented in this work paper, do you see evidence of the EY audit team applying appropriate professional skepticism? 12:07:30 12:07:33 12:07:36 12:07:38 12:07:40

A. Yes, I did. 12:07:42

Q. And where? How so? 12:07:43

A. Well, when you look at the work paper, you can see the beginning balance of accounts receivable which I discerned in a fungible accounts receivable because they don't know the amounts in that balance for being each particular season. It's all as a 12:07:45 12:07:47 12:07:50 12:07:52 12:07:56 12:07:59 12:08:01

fungible balance, as I call it. 12:08:04

But what they did with respect to this work paper, they agreed the beginning balance to start the work papers. They also looked at external evidence about amounts recorded in this work paper, including information from the NFL as well as looking at bank statements for payments received. And also there were confirmations received on this as well. 12:08:06 12:08:07 12:08:09 12:08:11 12:08:15 12:08:18 12:08:19 12:08:23 12:08:27 12:08:30

So when you look at the activity, including a variation analysis or flux analysis as it's called with respect to the variance in the balance between years. So when you look at this work paper, in my opinion, you see scepticism and judgment about how to audit that beginning balance to show that it's reflected as it should in the financial statements. 12:08:32 12:08:34 12:08:37 12:08:40 12:08:42 12:08:44 12:08:45 12:08:48 12:08:51 12:08:58

Q. What percentage of the transactions or activities reflected in this AR account did EY test? 12:08:58 12:09:00 12:09:03

A. Well, it's a hundred percent, 12:09:06

they covered a hundred percent, which is very unusual you have a hundred percent. But gain, that reflects skepticism and judgment with respect to how to audit this particular balance. 12:09:06 12:09:06 12:09:10 12:09:12 12:09:14

Q. Did EY obtain third party support for all of those transactions? 12:09:16 12:09:20

A. Yes. 12:09:22

Q. And what conclusions do you draw about professional skepticism given the acquisition of third party support? 12:09:22 12:09:24 12:09:27 12:09:29

A. Well, third party support, as you've heard, is the best evidence to receive. And this is what was done through the NFL or the bank statements, and that's the highest level of support you can get which is what was done a hundred percent in this case. 12:09:29 12:09:31 12:09:33 12:09:35 12:09:37 12:09:41 12:09:43

Q. In your opinion, is the work that was done on the detail testing on the AR account specifically persuasive audit evidence? 12:09:44 12:09:46 12:09:50 12:09:53

A. Yes. 12:09:54

Q. You mentioned the flux 12:09:55

analyses. 12:09:56
I believe you were mentioning the inquiries -- the analytical procedures that EY performed to evaluate the December at 12/31/15 to 12/31/16 for an increase or decrease in an account balance like accounts receivable; correct? 12:09:57 12:10:00 12:10:04 12:10:07 12:10:12 12:10:13 12:10:15
A. That's correct. That's classic analytical type procedures. 12:10:17 12:10:18
Q. Do you have an opinion whether the analytical procedures that EY performed on the Ventures AR evidenced professional scepticism? 12:10:20 12:10:22 12:10:24 12:10:28
A. Yes, that is a procedure that evidences that scepticism and again the good judgment in doing the audit. 12:10:29 12:10:32 12:10:36
Q. And in your opinion, are the flux analyses persuasive audit evidence? 12:10:38 12:10:41 12:10:41
A. Yes. 12:10:41
Q. Let's turn -- let me just ask you why is this AR testing and those flux analyses persuasive evidence, in your view? 12:10:43 12:10:46 12:10:49 12:10:52

A. Well, in my opinion, they're persuasive because of the evidence that they have. It was a hundred percent auditing, it was taking it to external information, external parties, looking at a hundred percent of the activity. Based on their understanding of the situation and facts and circumstances at the time, this is persuasive evidence and skepticism at work.

Q. Please turn to JX 0462. And the first -- we've excerpted here one of the revenue test work papers. The first page is U01, the revenue lead, and the second page is the U01.4 which is the detail testing on NFL Ventures income.

Do you see that?

A. Yes.

Q. The panel has also heard testimony about this revenue testing, so I don't want to go over all of it in detail, but my question is: Do you see evidence in this testing of the application of professional skepticism?

A. Yes. 12:12:11
Q. How so? 12:12:11
A. Again, when you look at the 12:12:13 work papers for this testing, you see a 12:12:15 hundred percent testing to external 12:12:17 third-party information supporting 12:12:19 these amounts as well as confirmation 12:12:22 that's reflected here and also the fact 12:12:25 that it delineates the amounts that the 12:12:28 work was done on all these amounts in 12:12:31 order to validate pursuant to GAAS 12:12:34 standards. But yes, it was skepticism 12:12:38 and application of good judgment in 12:12:42 doing so. 12:12:45
Q. How about with respect to 12:12:45 whether this is persuasive audit 12:12:47 evidence, what did you conclude? 12:12:50
A. Again, it's consistent with 12:12:51 my other testimony that it's persuasive 12:12:51 with respect to this, the revenue side, 12:12:53 which is the follow-on to the 12:12:55 receivable side. 12:12:57
Q. I want to switch topics 12:12:59 slightly. Something that relates to 12:13:02 both the AR testing and the revenue 12:13:05

testing. 12:13:07

Have you heard testimony in 12:13:08 this case from EY's auditors that they 12:13:09 understood that the January accrual was 12:13:11 distinct from or separate from the 12:13:14 remittance? 12:13:16

A. Yes, I have. 12:13:17

Q. And in your opinion, did the 12:13:17 2014 to 2019 work papers reflect 12:13:21 appropriate skepticism about the 12:13:24 January accrual being distinct from the 12:13:28 remittance? 12:13:29

A. Yes. And this was -- in 12:13:30 doing so, this was one of the areas 12:13:33 that we focused on intently. In order 12:13:35 to be sure that we're looking at it 12:13:39 appropriately, we spent a lot of time 12:13:41 considering this issue to be sure that 12:13:44 we fully understood what was in the 12:13:46 work papers and being done. But it was 12:13:46 a little more involved in looking at 12:13:49 this and thoroughly understanding what 12:13:51 was in the work papers. 12:13:53

Q. And what did you conclude? 12:13:54

A. Well, my conclusion was, in 12:13:55

looking at this, based on the facts and circumstances at the time, that it was an appropriate accrual separate and distinct as reflected in the work papers and as represented by management in those amounts that it was a separate accrual properly reflected and audited by the engagement team. 12:13:59 12:14:01 12:14:02 12:14:05 12:14:07 12:14:09 12:14:12 12:14:16

Q. And we all know sitting here today that there was double-booking of the January payment that resulted in inflated revenue and inflated receivable. 12:14:17 12:14:19 12:14:22 12:14:26 12:14:28

Is it possible or would it have been possible for the EY engagement teams to have asked more questions or applied more professional scepticism to this notion that the January accrual was distinct from the remittance? 12:14:28 12:14:30 12:14:32 12:14:36 12:14:37 12:14:38 12:14:41

A. You're right, we now know the answer, what transpired. I also know looking at the work papers that, based on facts and circumstances at the time, the team, audit team, did a GAAS audit 12:14:41 12:14:45 12:14:47 12:14:49 12:14:51

and GAAS audit procedures based on what they knew and what was existing at the time. 12:14:54 12:14:56 12:14:59

However, there's always they could have asked other questions, true. They could have asked other questions. Judgment allows that. Different time frames. But at the time based on the facts, they did what they did pursuant to GAAS. But yes, they could have asked other questions. They could have applied judgment in a different way and they could have asked additional questions. 12:14:59 12:15:04 12:15:07 12:15:08 12:15:11 12:15:14 12:15:16 12:15:18 12:15:20 12:15:23 12:15:25

Q. You said judgment allows that. 12:15:25 12:15:27

Do you have any analogies for how you like to think about the range of judgment? 12:15:27 12:15:30 12:15:31

A. Well, I think the key when you look at judgment is you apply judgment based on the circumstances in which you're auditing, and they're all different. I've been involved with hundreds and hundreds of audits over my 12:15:33 12:15:36 12:15:38 12:15:39 12:15:41 12:15:43

career and judgment in every one of them is different. It's always going to be different no matter what industry or company. So you do is you apply that judgment based upon what you know and understand at the time and the facts and circumstances at the time. That's critical. So judgment can vary based on the thought process you go through, what you know, what you learn, inquiry, that leads you to what you do. 12:15:45 12:15:47 12:15:49 12:15:51 12:15:54 12:15:56 12:15:58 12:16:00 12:16:03 12:16:06 12:16:08

Q. If the audit team had asked more or different questions, do you know what conclusions that would have led them to? 12:16:11 12:16:13 12:16:14 12:16:17

A. I don't know what that would have led to, obviously. I don't know what the information they would have found out, I don't know that. I do know what they did at the time in my opinion met the standard. But additional questions could have raised other information, but I don't know what the result would have been of it. 12:16:17 12:16:20 12:16:24 12:16:27 12:16:29 12:16:33 12:16:35 12:16:36 12:16:38

Q. And do you know what 12:16:39

management's responses to those 12:16:40
questions would have been? 12:16:42
A. I don't know what those 12:16:43
responses would have been. One doesn't 12:16:45
know. Again, that's another exercise 12:16:49
of judgment in the circumstances. 12:16:50
Q. Let's go to JX 0427. 12:16:54
This is the -- are you on the 12:17:19
June 28, 2012 e-mail? 12:17:27
A. Yes. 12:17:29
Q. And did you testify at your 12:17:30
deposition that you didn't know what 12:17:34
this document was? 12:17:35
A. I did testify to that, yes. 12:17:36
Q. And have you now heard the 12:17:38
testimony in this trial of EY's 12:17:41
auditors, in particular Mr. Garcia and 12:17:44
Mr. Johns? 12:17:47
A. Yes. 12:17:47
Q. And having heard that 12:17:48
testimony, do you now know what this 12:17:50
document is? 12:17:53
A. Yes. 12:17:53
Q. What is it? 12:17:53
A. This is a document that was 12:17:54

received with respect to the performance of what's called agreed-upon procedures. It's not audit work. Its separate from the audit. It's specific defined procedures pursuant to requirements of a particular agreement, I think a collective bargaining agreement, but it's specifically related to those specific procedures. 12:17:56 12:17:57 12:18:02 12:18:05 12:18:05 12:18:05 12:18:08 12:18:10 12:18:12 12:18:14

Q. Would you expect an auditor exercising appropriate professional skepticism to tie out an AUP document like this to the work papers for the financial statements? 12:18:15 12:18:17 12:18:19 12:18:19 12:18:24

A. I would not. 12:18:24

Q. Why not? 12:18:25

A. Well, because the focus of this work is not related to the audit, it's related to agreed-upon procedures which is a totally separate piece of work that's being done by the auditor separate and apart from the audit with a separate and special position on it with an entirely different focus and 12:18:26 12:18:28 12:18:31 12:18:31 12:18:35 12:18:37 12:18:37 12:18:41

mindset with respect to what's being done. 12:18:43 12:18:45
Q. Could you please go to JX 0652. 12:18:47 12:18:50
A. Okay. 12:18:58
Q. Do you see that this one is an e-mail from Madison Schaefer to -- an EY employee? 12:18:58 12:19:01 12:19:06
A. Yes, I see it. 12:19:19
Q. And do you see that the subject is AP support? 12:19:21 12:19:24
A. Yes. 12:19:25
Q. In your experience, what would AP support be? 12:19:26 12:19:28
A. That would be accounts payable support, voucher support, that sort of thing. 12:19:34 12:19:36 12:19:39
Q. Do you have any understanding whether this is being done in connection with an audit or something like an AUP? Do you know one way or the other? 12:19:40 12:19:42 12:19:44 12:19:47 12:19:48
A. I don't know for sure. 12:19:49
Q. Can you go to page eleven, please. 12:19:51 12:19:54

Do you see that page eleven 12:20:01
is the 2018 season projected cash 12:20:03
flows? 12:20:05
A. Yes. 12:20:05
Q. Have you seen any evidence 12:20:06
that EY used this document for its 12:20:10
audit work? 12:20:13
A. There's no evidence. 12:20:13
Q. Is it in the work papers? 12:20:14
A. It is -- no, I don't believe 12:20:16
this is in the work papers. No. 12:20:21
Q. Did professional scepticism 12:20:22
require EY to nevertheless tie out the 12:20:25
information on this schedule to other 12:20:30
information in its audit work papers? 12:20:32
A. No, it would not be, not for 12:20:33
this schedule in the context in which 12:20:36
it's being used, no. 12:20:37
Q. Why not? 12:20:39
A. Well, because this relates to 12:20:39
accounts payable testing. And with 12:20:41
respect to that discrete procedure done 12:20:44
for a specific reason in that context, 12:20:47
it would not lead one to broaden that 12:20:49
work to do a thorough check of this 12:20:52

information.

Q. And can you now go to 0267, please.

Do you see that this is an e-mail from Ms. Grant to Carly McPherson at EY?

A. Yes.

Q. And do you have an understanding why Ms. Grant was sending these documents at this particular time?

A. I do not.

Q. Can you go to page nine of the document. And this one is the 2019 season projected cash flows.

Have you seen any evidence that EY used this document in its audits?

A. No.

Q. And is it in EY's work papers?

A. No, it's not.

Q. Did professional skepticism require EY to nevertheless tie out the information in this particular schedule

to other information in its audit work 12:22:07
papers? 12:22:09
A. No, it would not require such 12:22:09
tie out. 12:22:13
Q. Does EY's occasional receipts 12:22:13
as we've seen in the e-mails of the NFL 12:22:14
projected cash flow schedules change 12:22:17
your opinion that EY performed a 12:22:19
GAAS-compliant audit? 12:22:23
A. No, I still concluded they 12:22:25
performed a GAAS-compliant audit. 12:22:27
Q. Last document. 12:22:27
Can you go to JX 0130. 12:22:28
Do you recognize this 12:22:44
document as the e-mail and the one page 12:22:47
of schedule three that EY obtained as 12:22:50
third party support in connection with 12:22:52
its accounts receivable and revenue 12:22:55
testing for Ventures? 12:22:57
A. Yes. I don't have the 12:23:00
e-mail, but -- 12:23:02
Q. I think it's on the second 12:23:03
page on the back. 12:23:05
A. I'm sorry. 12:23:06
Yes. 12:23:07

Q. And you've seen a similar type of documentation with an e-mail on one page of schedule three in other audit -- in some other audit years; right? 12:23:10 12:23:15 12:23:17 12:23:20 12:23:23

A. That's correct. 12:23:23

Q. Did the audit team -- in any of the examples that you've seen, did the audit team use or perform procedures on the information about the cash distributions in this one page of schedule three? 12:23:23 12:23:30 12:23:32 12:23:34 12:23:36 12:23:39

A. No. 12:23:39

Q. And in any of the examples you've seen, did the audit team use or perform procedures on the March 31 AR balance in these schedules? 12:23:40 12:23:42 12:23:44 12:23:48

A. No. 12:23:49

Q. In your opinion, did professional skepticism require EY to tie out any of the cash distribution or AR information in this one page of schedule three to other information it obtained during its audits? 12:23:57 12:23:59 12:24:02 12:24:05 12:24:08 12:24:10

A. No, it did not. 12:24:11

Q. Mr. Goolsby, do you have an opinion as to whether EY appropriately applied professional skepticism in the course of its 2014 to 2019 audits? 12:24:13 12:24:16 12:24:19 12:24:22

A. Absolutely. In many examples I've given already, but in my review of the work papers, yes, I concluded that it applied appropriate scepticism based on my many years of experience as an audit partner, as a practice director over probably a thousand engagements, that was my conclusion. 12:24:24 12:24:26 12:24:29 12:24:30 12:24:30 12:24:32 12:24:35 12:24:37

MS. VAN WINKLE: That's all I have for right now. 12:24:39 12:24:41

THE CHAIRPERSON: I think it would be a good time to break for lunch. 12:24:42 12:24:43 12:24:46

Why don't we resume at 1:00. 12:24:46

(Lunch recess taken at 12:24 p.m.) 12:24:50 12:24:55

A F T E R N O O N S E S S I O N 12:24:55
September 25, 2024 12:24:55
1:02 p.m. 01:02:45

THE CHAIRPERSON: So let's continue. We're back on the record with cross-examination. 01:02:45 01:02:47 01:02:49

G A R Y G O O L S B Y, having been previously deemed sworn, upon being examined, testified as follows:

CROSS-EXAMINATION BY
MS. BROWN: 01:02:52

Q. Good afternoon, Mr. Goolsby. 01:02:52
A. Good afternoon, Ms. Brown. 01:02:54
Q. You said in your direct that you were involved in hundreds and hundreds of audits; right? 01:02:55 01:02:56 01:02:58
A. That's correct. 01:02:59
Q. And the last time you signed an audit opinion was twenty-seven years ago; right? 01:03:00 01:03:02 01:03:04
A. 1997, I believe it was. That's the math. 01:03:05 01:03:11
Q. And the last time you had any responsibilities related to the audit 01:03:12 01:03:13

process and audit methodologies was twenty-three years ago; right? 01:03:16 01:03:19
A. It would have been 2001. 01:03:20
Q. And so for the last twenty-three years your experience related to audits has been entirely in the disputes and litigation field; right? 01:03:22 01:03:24 01:03:25 01:03:27 01:03:30
A. Well, forensic investigations as well as the dispute arena as well, yes, and some consulting. 01:03:30 01:03:32 01:03:35
Q. And you consider yourself to be an expert testifier; right? 01:03:36 01:03:38
A. I'm an expert in accounting and auditing and some of that leads to testimony, yes. 01:03:42 01:03:44 01:03:47
Q. And you consider yourself to be an expert testifier; right? 01:03:47 01:03:49
A. Yes. Based on the situation, yes. 01:03:51 01:03:53
Q. And you currently co-lead FTI's accountants liability practice; right? 01:03:53 01:03:54 01:03:58
A. That's correct. 01:03:58
Q. I just want to go back and 01:03:58

touch on your work history for a moment. 01:04:01 01:04:03

As you discussed earlier, you used to work at Arthur Andersen; right? 01:04:04 01:04:05

A. Correct. 01:04:05

Q. You were there for twenty-eight years; right? 01:04:06 01:04:07

A. That's correct. 01:04:07

Q. And you were there until August 31, 2002 when your employment was terminated after Andersen's destruction of documents related to the Enron audit came to light; right? 01:04:08 01:04:09 01:04:12 01:04:14 01:04:16

A. No, that's not correct. 01:04:18

Q. When was your employment was terminated? 01:04:19 01:04:21

A. My employment was never terminated. 01:04:21 01:04:23

Q. Were you asked to resign? 01:04:23

A. No. 01:04:26

Q. What were your responsibilities at Arthur Andersen related to -- let me ask it this way. 01:04:26 01:04:31 01:04:35

At the time of the Enron scandal, your role at Andersen was 01:04:39 01:04:41

managing partner of global risk management; right? 01:04:43 01:04:44
A. That's correct. 01:04:44
Q. And after the destruction of Enron documents came to light in January, 2002, you were relieved of your management responsibilities on January 15, 2002; right? 01:04:45 01:04:48 01:04:51 01:04:54 01:04:54
A. I was and remained a partner. 01:04:56
Q. And did you remain a partner until Arthur Andersen lost its ability to practice public accounting due to the Enron scandal? 01:04:59 01:05:05 01:05:06 01:05:08
A. I remained a partner until August 31, 2002 when I retired from the firm as a partner. 01:05:11 01:05:12 01:05:13
Q. Did you retire from the firm because it lost its license to practice public accounting because of the Enron scandal? 01:05:15 01:05:17 01:05:20 01:05:22
A. The firm ceased to perform professional services related to that activity. Actually, the firm still exists. 01:05:23 01:05:24 01:05:25 01:05:28
Q. And since that time, when you 01:05:29

left Arthur Andersen, since then you've 01:05:31
not engaged in any public accounting or 01:05:35
any auditing; right? 01:05:37
A. That's correct. 01:05:38
Q. Now turning to this case, the 01:05:38
Raiders, it was EY's job in auditing 01:05:43
the Raiders financial statements to 01:05:47
reach an opinion as to whether the 01:05:48
financial statements were presented 01:05:50
fairly in all material represents; 01:05:51
right? 01:05:53
A. That's correct, on a tax 01:05:53
basis of accounting. 01:05:57
Q. And it was EY's job in 01:05:58
auditing the Raiders financial 01:06:00
statements to obtain reasonable 01:06:02
assurance that that the financial 01:06:03
statements were free from material 01:06:04
misstatement, whether to defraud or due 01:06:05
to fraud or error; right? 01:06:08
A. That's correct, within the 01:06:10
realm of the GAAS standards, that's 01:06:12
correct. 01:06:13
Q. And reasonable assurance is a 01:06:13
high level of assurance; right? 01:06:14

A. That's correct? 01:06:17
Q. And it's also EY's job to understand that raiders business, including how its business operates; right? 01:06:18 01:06:20 01:06:20 01:06:22
A. That's correct. 01:06:22
Q. And EY was responsible for planning the audit, including the audit procedures that it would perform; correct? 01:06:23 01:06:25 01:06:27 01:06:29
A. Yes. 01:06:29
Q. And EY was responsible for making the final decision as to which audits procedures were performed regardless of what the client may suggest even if there were any suggestions; is that right? 01:06:30 01:06:32 01:06:35 01:06:37 01:06:42 01:06:44
A. Yes, it's the auditor's audit plan to be executed, that's correct. 01:06:44 01:06:47
Q. And you issued a report in this case on June 21, 2004 [sic]; right? 01:06:49 01:06:52 01:06:55
A. That's correct. 2024. 01:06:56
Q. Thank you. 2024. 01:06:58
And in that report, the first 01:07:00

opinion you had listed that you disclosed was that the Raiders management failed to fulfill their responsibilities and that that interfered with EY's properly planned and executed audit procedures; right? 01:07:03 01:07:08 01:07:09 01:07:12 01:07:13 01:07:15

A. That's correct. 01:07:16

Q. Is that no longer your opinion? 01:07:17 01:07:19

A. That's my opinion and the report stands as is. 01:07:20 01:07:25

Q. So that's still your opinion? 01:07:26

A. Yes. 01:07:27

Q. And you claim that the Raiders interfered with EY's properly planned audit procedures in three different ways; right? 01:07:27 01:07:30 01:07:32 01:07:34

A. I had different reasons in the report, yes. 01:07:35 01:07:39

Q. And it's your opinion that Raiders management interfered with EY's audit procedures by not fairly presenting revenue and accounts receivable, one; two, not providing all relevant information; and three, not 01:07:40 01:07:43 01:07:45 01:07:48 01:07:51 01:07:54

designing, implementing, and 01:07:57
maintaining internal controls; right? 01:07:59
A. That's discussed in my 01:08:00
report, among other things, yes. 01:08:03
Q. And that's still your 01:08:04
opinion; right? 01:08:06
A. Yes, and in the context of 01:08:06
the entirety of my report, that's 01:08:10
correct. 01:08:11
Q. And it's your opinion that 01:08:11
each of those alleged failures by the 01:08:15
Raiders management is relevant to 01:08:18
whether EY complied with GAAS; correct? 01:08:22
A. Well, EY, in executing its 01:08:25
work, there's some factors that were 01:08:27
considered in executing the work in 01:08:29
order for them to do a GAAS audit and 01:08:32
carrying out the procedures. 01:08:35
Q. Well, you said those three 01:08:36
things interfered with the audit. 01:08:38
So those three things you 01:08:40
identify are relevant, in your mind, as 01:08:42
to whether EY complied with GAAS; is 01:08:44
that right? 01:08:47
A. Well, in my opinion, EY, in 01:08:47

light of what they did and the facts 01:08:51
and circumstances, did do a GAAS audit. 01:08:53
But if they're interfered with and 01:08:56
can't audit that which you don't have, 01:08:59
then you can still do a GAAS audit, 01:09:01
that's correct. 01:09:05
Q. I want to just take you to 01:09:05
those in turn. We'll take the first 01:09:09
one. 01:09:12
It's your opinion that, 01:09:12
because management did not fairly 01:09:14
present its revenue and accounts 01:09:16
receivable from NFL Ventures in its 01:09:18
financial statements, that interfered 01:09:20
with EY's properly planned and executed 01:09:22
audit procedures; is that correct? 01:09:25
A. Well, the information wasn't 01:09:26
presented to EY in a complete manner in 01:09:29
order for them to audit the information 01:09:34
properly. 01:09:35
Q. Can we please pull up the 01:09:35
expert report, paragraph one hundred 01:09:41
seventeen. Because I think you're 01:09:42
jumping to one of the other things you 01:09:44
mentioned and I'm focusing on just the 01:09:47

first thing you mentioned. We'll get to the other. 01:09:47 01:09:48

Remember you said that EY wasn't provided all this information. I'm focused on just the first item you mentioned which is the first bullet point in paragraph one hundred seventeen that management did not fairly present its revenue and accounts receivable from NFL Ventures in their financial statements. And then in paragraph one hundred eighteen is where you conclude that these are the things that interfered with EY's properly planned and executed audit procedures. 01:09:51 01:09:52 01:09:52 01:09:52 01:09:57 01:09:58 01:09:59 01:10:01 01:10:04 01:10:07 01:10:09 01:10:12 01:10:14

So what I want to understand is that, with respect to the misstatement that's contained on the Raiders financial statements, are you offering any opinion about whether the misstatement existed or the amount of the misstatement or anything along those lines? 01:10:15 01:10:19 01:10:21 01:10:25 01:10:27 01:10:30 01:10:32 01:10:34

A. Well, we know now that the amounts that were reflected in the 01:10:35 01:10:38

books and records as represent to EY by Raiders management was incorrect. 01:10:42 01:10:44

Q. Right. 01:10:45

And those are just undisputed facts in this case; right? 01:10:45 01:10:48

A. That's upon what we know, that's correct. That information was not correct at the time it was presented to the audit team. 01:10:49 01:10:53 01:10:54 01:10:55

Q. Those are just undisputed facts in this case. We don't need an expert opinion to tell us that the Raiders did not fairly present its revenue and accounts receivable in the financial statements; right? 01:10:56 01:10:59 01:11:04 01:11:06 01:11:08 01:11:10

A. Well, what I'm addressing in my report is did EY do an audit consistent with generally-accepted auditing standards based on the facts and circumstances at the time and that's what I'm articulating here relating to -- that relates to my conclusions. 01:11:11 01:11:14 01:11:17 01:11:21 01:11:23 01:11:24 01:11:27 01:11:29

Q. What I'm trying to understand is that we have an undisputed fact that 01:11:29 01:11:32

the financial statements did not 01:11:35
present revenue and accounts 01:11:37
receivables fairly. Your opinion seems 01:11:39
to be that that led EY to not be able 01:11:43
to complete -- that that somehow, in 01:11:47
your words, interfered with EY's 01:11:50
execution and completion of its audit 01:11:53
procedures. 01:11:56

So my question to you is: 01:11:56
Just taking that fact alone, the fact 01:12:00
of the misstatement, that doesn't, by 01:12:02
itself, interfere with anybody's GAAS 01:12:05
procedures; does it? 01:12:09

A. Well, you've got to read it 01:12:10
in the context of all my opinions. The 01:12:11
second one says they did not provide EY 01:12:15
with all information relevant and the 01:12:20
third one about internal controls, all 01:12:21
these go hand and hand, and the 01:12:24
information that the revenue and the 01:12:26
accounts receivable wasn't fairly 01:12:29
presented is a function of the 01:12:31
information provided in the internal 01:12:32
control structure, so they all go hand 01:12:34
and hand as part of the opinion. 01:12:36

Q. So we're going to get to point two and point three, but if we just focus on point one, is the mere fact that there was a material misstatement alone, does that bear on whether or not EY complied with GAAS standards? 01:12:40 01:12:40 01:12:41 01:12:44 01:12:46 01:12:48 01:12:50

A. If the manner in which the information was presented incorrectly are not -- that were wrong, yes, it impacts EY's GAAS audit for the manner in which those amounts were misstated and that can impact how you audit that information based on what you may not have to audit. 01:12:51 01:12:53 01:12:55 01:12:59 01:13:02 01:13:05 01:13:08 01:13:10

Q. Can we please pull up the deposition transcript at page three hundred sixty-seven, line four. 01:13:10 01:13:13 01:13:26

Do you recall when I asked you at your deposition: "But just the mere fact that there is a material misstatement, that fact just standing alone doesn't automatically mean that the misstatement must be intentional and done on purpose because it's 01:13:27 01:13:28 01:13:31 01:13:32 01:13:34 01:13:38 01:13:40

material" and you said: "It's not -- 01:13:43
it's not -- it's not an automatic or 01:13:47
given". 01:13:49
Is that consistent with your 01:13:49
testimony today when I'm asking you 01:13:49
whether just the fact that there's a 01:13:51
misstatement alone, does just the fact 01:13:52
of a misstatement alone mean that that 01:13:54
would interfere with the GAAS 01:13:56
standards? 01:13:58
A. Well, right, you've got to 01:13:58
read the entire answer that I gave. 01:14:00
It's not an automatic or given. There 01:14:02
can be given reasons for misstatements 01:14:05
that occur. But the fact of the matter 01:14:07
is that you'd have to look at each 01:14:09
facts and circumstances of each 01:14:12
situation to understand what transpired 01:14:14
and what happened, and that's what I'm 01:14:16
discussing in my testimony right now. 01:14:19
Q. And are the facts and 01:14:20
circumstances that are relevant whether 01:14:21
or not the misstatement was 01:14:21
intentional? 01:14:23
A. I think my opinions run to is 01:14:23

related to information provided or not 01:14:28
provided to the audit team or the 01:14:31
internal controls that were surrounding 01:14:39
the accounting for these items relates 01:14:41
to what's provided or not provided to 01:14:41
the engagement team. 01:14:43

Q. So let's turn to the other 01:14:45
item that you said interfered with the 01:14:47
GAAS audit, and that's the Raiders' 01:14:49
internal controls. 01:14:52

Your opinion was that, 01:14:52
because management did not design, 01:14:55
implement, and maintain sufficient 01:14:57
internal controls relevant to the 01:14:58
preparation and fair presentation of 01:14:58
those financial statements, that that 01:15:00
also interfered with EY's properly 01:15:02
planned and executed audit procedures; 01:15:04
right? 01:15:07

A. That impacted the audit 01:15:07
because the fact of the internal 01:15:12
controls were not operating effectively 01:15:14
resulted in information again that was 01:15:19
not provided and an understanding was 01:15:20
not provided to the audit team to 01:15:25

perform the work which resulted in 01:15:26
misstated information. 01:15:29
Q. Your opinion is that the 01:15:29
Raiders' internal controls impacted the 01:15:32
audit; right? 01:15:34
A. Well, the internal controls 01:15:35
or lack thereof did not provide for the 01:15:40
proper accounting in the books and 01:15:44
records of the information that was 01:15:49
audited which does impact the audit and 01:15:50
what's being provided to the audit 01:15:51
team. 01:15:53
Q. Let's turn to JX 0447 in your 01:15:53
binder, please. 01:15:59
I believe you talked about 01:16:03
some of these audit planning templates 01:16:04
this morning; correct? 01:16:06
A. I'm sorry, 047? 01:16:07
Q. 0447. 01:16:10
You talked about audit 01:16:19
planning templates this morning; 01:16:22
correct? 01:16:23
A. Correct. 01:16:23
Q. This is the one from 2015; 01:16:23
right? 01:16:25

A. Correct. 01:16:26
Q. So if we could go to page one thousand eight hundred seventy-seven, please. 01:16:26 01:16:30 01:16:30
You see section 7.1 where, in planning the audit, you can see that EY explicitly chose not to rely on the Raiders' internal controls for conducting its audit procedures; right? 01:16:34 01:16:46 01:16:48 01:16:52 01:16:54
A. That's correct. 01:16:57
Q. And that includes the Raiders' internal controls for the NFL Ventures accounts. 01:16:57 01:16:58 01:17:01
They did not rely on any internal controls to audit the Ventures accounts for the Raiders; correct? 01:17:02 01:17:04 01:17:07
A. Correct, they did full complete substantive work, correct. 01:17:08 01:17:15
Q. We can look at JX 0939. 01:17:21
This is another document used by EY in planning the audit for the Raiders; right? 01:17:32 01:17:37 01:17:39
A. That's correct. 01:17:40
Q. And this is from the 2015 financial statement audit; right? 01:17:43 01:17:46

A. Yes. 01:17:47
Q. And if you flip the page, 01:17:50
please, do you see that, when they look 01:17:53
at the significant accounts identified 01:18:04
and we have under E, accounts and notes 01:18:07
receivable under control risk indicated 01:18:12
again they're not relying on any of the 01:18:15
Raiders' internal controls in 01:18:17
performing the audit; right? 01:18:19
A. I'm sorry, where are you 01:18:21
looking? 01:18:24
Q. Page four. We went down to 01:18:24
the section -- the significant accounts 01:18:34
and then on the left we have accounts 01:18:38
and those receivables. 01:18:41
EY's indicating they're not 01:18:43
relying on any of the internal controls 01:18:47
of the Raiders in auditing those 01:18:48
accounts; right? 01:18:50
A. That's correct. 01:18:50
Q. So let's go to the other item 01:18:51
you listed as supposedly interfering 01:18:57
with EY's audits, and that was you said 01:19:00
because management did not provide EY 01:19:05
with all information relevant to the 01:19:07

preparation and fair presentation of the financial statements, and that you said interfered with EY's properly planned and executed audit procedures; right? 01:19:10 01:19:13 01:19:15 01:19:18 01:19:21

A. That's correct. 01:19:21

Q. You haven't seen any evidence where EY asked the Raiders for certain information, whether it's a document, journal entry, whatever it may be, and the Raiders said no, we're not providing that? 01:19:21 01:19:23 01:19:28 01:19:30 01:19:32 01:19:33

A. I did not see anything of that nature, that's correct. 01:19:34 01:19:36

Q. And is it true that your opinion that the Raiders failed to provide information to EY is largely based on information that you learned or you gathered through the internal investigation that took place in 2021? 01:19:37 01:19:43 01:19:47 01:19:52 01:19:55 01:19:56

A. Right, the investigation revealed what transpired during the audit period that EY was involved and went through the various issues related to that investigation of information 01:19:58 01:20:02 01:20:06 01:20:09 01:20:12

that was not provided and other amounts 01:20:15
that were incorrect as we all know. 01:20:18
Q. But it's through your study 01:20:21
of the documents related to the 01:20:23
internal investigation that you 01:20:25
concluded that the Raiders failed to 01:20:26
provide necessary information to EY; 01:20:30
right? 01:20:32
A. Well, I didn't look at all 01:20:32
the investigation information that was 01:20:38
done by another expert, I did not do 01:20:40
that. I looked at testimony of the 01:20:42
audit team members who testified that 01:20:44
certain information they did not 01:20:47
receive, such as cash flow statements 01:20:49
and -- or received in the context of 01:20:51
planning the work and understanding the 01:20:55
business, that there was some testimony 01:20:58
and the results of some of the 01:21:00
investigation, but I didn't look at the 01:21:02
details of the investigation. 01:21:04
Q. But GAAS does not impose any 01:21:05
responsibilities on Raiders management; 01:21:08
right? We can agree on that? 01:21:10
A. Well, Raiders management of a 01:21:12

company is part of an audit. You can't do an audit without management, obviously. So the auditor, as requirements on the auditor with effective two-way communication pursuant to the engagement letter to have correspondence and interaction with management. You can't do an audit without management. 01:21:17 01:21:20 01:21:23 01:21:28 01:21:29 01:21:31 01:21:34 01:21:36 01:21:37

Q. Can we please pull up JX 0421. This is an auditing standard that I'm sure you're familiar with, AU-C 200. We'll go to section 200.05. 01:21:38 01:21:43 01:21:46 01:21:46

Do you see the second sentence in that section that says, "GAAS do not impose responsibilities on management or those charged with governance and do not override laws and regulations that govern their responsibilities"? 01:21:58 01:22:00 01:22:00 01:22:03 01:22:06 01:22:08 01:22:09

A. Right. 01:22:10

Q. So do you agree with me that GAAS does not impose any responsibilities on Raiders management? 01:22:10 01:22:12 01:22:14

A. This is being taken out of 01:22:16

context with respect to what a GAAS audit is required. But what you're not covering is the fact that under COSO, there's internal control requirements imposed upon a company to have an adequate internal controls, so when it talks about it, the body of knowledge of adequate internal controls. In the engagement letter with letter, it talks about management will have proper internal controls in order for the books and records to be fairly reflected. GAAS then imposes upon the auditor do working with management. But management is not an auditor, management is not excluding GAAS, but they're very much a component of a GAAS package, if you will, that auditors have to do that can't do it without management.

Q. So your answer, when I asked you twice now, if GAAS does not impose responsibilities on management is that it does or that I've taken this particular GAAS provision out of

context where it says, "financial 01:23:20
statements subject to audit are those 01:23:25
of the entity, prepared and presented 01:23:27
by management of the entity with 01:23:28
oversight from those charged with 01:23:30
governance. GAAS do not impose 01:23:33
responsibilities on management or those 01:23:36
charged with governance and do not 01:23:37
override laws and regulations that 01:23:39
govern their responsibilities"? Your 01:23:42
testimony, sir, is that I've taken that 01:23:44
out of context? 01:23:46
A. No, I'm saying that GAAS -- 01:23:47
as soon as this was written, 01:23:49
absolutely. It's true, a GAAS does not 01:23:49
impose responsibilities on management. 01:23:52
It doesn't override laws and 01:23:52
regulations. Management is governance 01:23:55
of a company. GAAS, they're not 01:23:58
subject to GAAS, I agree with that. 01:24:01
My point is that the GAAS 01:24:02
standards fully engage management as a 01:24:05
part of an auditor doing an audit and 01:24:07
an auditor can't do it without 01:24:10
management involvement, true. 01:24:12

Management's not subject to GAAS except 01:24:14
they're linked to it by signing an 01:24:18
engagement letter and a management 01:24:18
representation letter to the auditors, 01:24:23
so they're pulled into the audit 01:24:23
process, but they're not subject to 01:24:24
GAAS. But governance standards 01:24:25
requires them to fulfill their 01:24:27
responsibilities as management pursuant 01:24:29
to everything they have to do, 01:24:31
including dealing with auditors. 01:24:32

Q. Mr. Goolsby, just to be 01:24:33
clear, EY's counsel will have the 01:24:35
chance for you to express all of the 01:24:41
opinions you want. I just want to know 01:24:44
whether you agreed that GAAS not does 01:24:45
not impose responsibilities on 01:24:47
management. That's all I wanted to 01:24:49
know. I think you said no twice. The 01:24:49
third time now you agree with me, GAAS 01:24:52
does not impose responsibilities on 01:24:53
management. 01:24:56

A. That's correct. 01:24:56

Q. Now, your opinions relate to 01:24:56
whether EY complied with GAAS; right? 01:25:01

A. Correct. 01:25:03

Q. And your opinion is that EY's compliance with GAAS can only be viewed through the context of the information provided to them by Raiders management; right? 01:25:04 01:25:07 01:25:09 01:25:10 01:25:12

A. Well, the GAAS standards call upon the management to provide information to the auditors to audit from the books and records of the company, yes, and that's part of the two-way communication between auditor and management. Yes, the information comes from management of the company that the auditor audits. 01:25:12 01:25:19 01:25:23 01:25:25 01:25:26 01:25:29 01:25:32 01:25:34 01:25:36

Q. And your opinion that EY complied with GAAS in all of the audit years 2014 to 2019, I believe you said this earlier, that's -- maybe you hadn't. 01:25:37 01:25:43 01:25:46 01:25:49 01:25:52

Is that dependent on whether or not the panel find that the Raiders acted intentionally in hiding information from the auditors? 01:25:52 01:25:55 01:25:57 01:25:59

A. It's not my job to determine 01:26:00

the panel's responsibility on this 01:26:04
point. The panel will do what it does 01:26:06
with respect to intentionality. What 01:26:10
my opinion related to GAAS with respect 01:26:13
to what's documented in the work papers 01:26:14
with respect to what EY had at the time 01:26:17
to audit and look at and evaluate in 01:26:19
their audit and document it 01:26:21
accordingly, based on information that 01:26:24
was provided or not provided to the 01:26:26
audit team. But I'm not determining 01:26:28
intentionality. That's up to the 01:26:32
panel. I'm dealing only with that that 01:26:34
the auditors had to work with at the 01:26:36
time. 01:26:38

Q. But your opinion is that 01:26:38
Raiders management failed to provide 01:26:39
the auditors with information that they 01:26:41
needed; right? 01:26:43

A. Well, the information we've 01:26:48
heard in testimony is that certain 01:26:49
information that was disclosed to the 01:26:51
audit team wasn't reflective of what 01:26:53
later turned out to be the facts and 01:26:55
also certain information was not 01:26:58

provided at the proper timing in the 01:27:00
audit to help the audit team understand 01:27:02
the business better. 01:27:04
Q. Is it your opinion that 01:27:05
Raiders management failed to provide 01:27:07
the auditors with information that they 01:27:09
needed for their audits? 01:27:10
A. In looking at what I've seen 01:27:12
through the process of the information 01:27:14
I've looked at, in my view and one of 01:27:16
the conclusions in my report is that 01:27:21
there was information not provided that 01:27:22
should have been provided. 01:27:25
Q. And is it your opinion that 01:27:26
that information was not provided to 01:27:27
the auditors intentionally? 01:27:28
A. I can't give an opinion on 01:27:30
intentionality. That's up to the panel 01:27:33
to make that determination. I'm just 01:27:34
looking at what was in the work papers 01:27:36
that was provided or not provided to 01:27:39
the engagement team. I have no opinion 01:27:40
on intent or anything along those 01:27:42
lines. That's not my job. 01:27:45
Q. So your opinion sitting here 01:27:46

today is just that Raiders management 01:27:47
didn't provide the auditors with 01:27:49
information that they needed but you 01:27:51
have no opinion on whether that was 01:27:54
done intentionally, not intentionally, 01:27:56
or how that came about; right? 01:27:59

A. Right, I'm only looking at 01:28:01
that which was provided that the 01:28:04
auditor needed to do a proper GAAS 01:28:06
audit and their GAAS audit was using 01:28:09
that which was received. The intent 01:28:15
and issues like that gets into the 01:28:16
issues beyond my expertise and 01:28:18
certainly not my call. That's the 01:28:21
panel's call. 01:28:23

Q. Do you recall at your 01:28:24
deposition when you testified that 01:28:25
Raiders management consciously and 01:28:27
knowingly withheld information from EY? 01:28:29

A. I've also clarified that 01:28:31
testimony, I was referencing certain 01:28:38
things in testimony and it got a little 01:28:39
muddled up. I clarified that testimony 01:28:41
in that, as stated in my opinion in my 01:28:43
report, that they did not provide 01:28:46

information. That was the clarification in my testimony at deposition. 01:28:48 01:28:49 01:28:51

Q. You think your testimony at your deposition got muddled up on that point? 01:28:51 01:28:53 01:28:57

A. No, the wording got confusing in the way I articulated it and I clarified that in my deposition that they didn't provide information. 01:28:57 01:29:00 01:29:03 01:29:05

Q. Do you recall in your deposition you said EY was misled, they didn't know, there's no way for them to know, and therefore that led to management's incorrectness in the financial statements which led to the need to change the financial statements because of that information that they consciously withheld? 01:29:06 01:29:11 01:29:15 01:29:17 01:29:19 01:29:21 01:29:23 01:29:24 01:29:27

A. Again, that testimony was clarified when I told you in my deposition that my conclusion in my report, which is what I stand by, is information was not provided to the audit team. 01:29:28 01:29:31 01:29:35 01:29:37 01:29:40 01:29:43

Q. Well, do you recall in your deposition that I attempted to clarify it before you went on the break and changed the testimony to what you're saying today, that I attempted to clarify it and I asked you "and so the testimony you intend to offer to the tribunal is that the Raiders intentionally consciously did not give information to the auditors, right, is that your opinion". And your answer was: "They consciously didn't give it to them. It wasn't a mistake. It wasn't like we forgot. It's -- it's -- when you look at the evidence, they consciously didn't give it to them. I didn't say intent or fraud, I didn't say that in my report, I'm just saying they didn't provide the information to EY and they knowingly didn't provide it to them". 01:29:44 01:29:45 01:29:48 01:29:51 01:29:53 01:29:55 01:29:58 01:30:00 01:30:03 01:30:05 01:30:07 01:30:10 01:30:12 01:30:14 01:30:17 01:30:19 01:30:22 01:30:22 01:30:24 01:30:25 01:30:27

Do you recall that answer? 01:30:28

A. I remember that. But I also clarified, as is stated in my report, that I'm not ruling on fraud, that's 01:30:30 01:30:32 01:30:35

not my job, it's that they didn't provide information. It's in my report and that's my testimony. 01:30:37 01:30:40 01:30:42

Q. And you clarified it, sir, at your deposition after you had a break with counsel and a discussion with counsel and also after you testified no less than at least eight times that EY was misled, you said EY was misled by the information they weren't given which later led to the determination of mistakes, you said there was a manipulation of information, at least eight times. This was not a passing comment that accidentally got muddled up and was confused. You said "my opinion, my statement is they knew they were withholding information. The Raiders knew they weren't giving EY what they needed. They were keeping it in order to reflect it on their books and the records so they could meet loan covenants". 01:30:43 01:30:44 01:30:47 01:30:48 01:30:52 01:30:57 01:31:03 01:31:04 01:31:05 01:31:08 01:31:11 01:31:13 01:31:15 01:31:18 01:31:20 01:31:22 01:31:25 01:31:27 01:31:27 01:31:29

Do you remember saying that before you had the break with counsel? 01:31:29 01:31:31

A. I remember generally that testimony which I again clarified. Consistent with my report, it's not my job to make that determination. That's the panel's job, not mine. 01:31:34 01:31:35 01:31:38 01:31:40 01:31:42

Q. You recall saying that at least eight times, right, before the break? 01:31:44 01:31:46 01:31:48

A. I don't recall how many times I said it. I just know that I clarified it to make sure the record was clear and consistent with what my report says. 01:31:48 01:31:49 01:31:52 01:31:54 01:31:57

Q. And when you were making those statements in your deposition, you were making those statements because you thought it was relevant to whether or not EY complied with its GAAS standards; right? 01:31:57 01:31:59 01:32:01 01:32:02 01:32:05 01:32:09

MS. VAN WINKLE: I'm going to object to whatever this line of questions is. Mr. Goolsby has testified as to what happened at the deposition. 01:32:10 01:32:11 01:32:13 01:32:14 01:32:16

THE CHAIRPERSON: I'm going to 01:32:19

allow it. Let's continue. 01:32:20
Q. You were making those 01:32:22
statements because at the time you 01:32:24
thought that was relevant to assessing 01:32:25
whether EY complied with its GAAS 01:32:29
standards; right? 01:32:31
A. The comments I made at my 01:32:31
deposition needed clarification looking 01:32:35
back at my report to be consistent with 01:32:38
my report, to not overstate my report, 01:32:40
and some of the clarification I made 01:32:42
was to be consistent with my report 01:32:45
because that's not my decision, it's 01:32:47
only that the information was not 01:32:49
provided. What the panel decides with 01:32:51
respect to intent, that's up to the 01:32:54
panel, not me. 01:32:55
Q. Well, do you recall at your 01:32:56
deposition I asked you: "What's the 01:32:58
specific information that you believe 01:33:00
the Raiders knowingly and intentionally 01:33:01
and consciously withheld from EY" and 01:33:03
the answer you gave me was: "Schedule 01:33:07
one, schedule two, and a complete 01:33:09
schedule of the capital roll forwards", 01:33:12

and you also mentioned the cash flow schedules in the from the NFL, among things, but those were among the things you identified that you thought were intentionally withheld; right? 01:33:12 01:33:14 01:33:17 01:33:19 01:33:22

A. I don't recall specifically the words. 01:33:24 01:33:25

THE CHAIRPERSON: Can we have a stipulation that that was the testimony? 01:33:31 01:33:32 01:33:34

MS. VAN WINKLE: Yes. I'm happy to stipulate to whatever was in his deposition. 01:33:34 01:33:35 01:33:40

Q. Do you recall I asked you, in connection with this line of questioning, I asked you to assume -- just to assume -- that the Raiders didn't know at the time that the Ventures accounting was wrong and I asked you with that assumption, what further information did Raiders management need to provide to EY and you flatly refused to accept my premise and answer the question. 01:33:42 01:33:44 01:33:48 01:33:51 01:33:53 01:33:55 01:33:57 01:34:00 01:34:01 01:34:07 01:34:11

Do you remember that? 01:34:12

A. Actually, I don't remember that. 01:34:13 01:34:14

Q. In fact, we can go to the transcript. It's at page one hundred sixty-nine, if you don't remember. 01:34:14 01:34:17 01:34:19

But rather than accept that, even as a hypothetical, when I asked you if the Raiders didn't know that they were misstating the books, what more information did they need to give to the auditor and the answer you gave me -- we can pull it up if you want to, it's at page one hundred sixty-nine, lines two and three -- your answer was: "Okay, so my answer is the Raiders did know there was a mistake". That was your answer. 01:34:21 01:34:24 01:34:25 01:34:28 01:34:31 01:34:31 01:34:31 01:34:35 01:34:36 01:34:39 01:34:43 01:34:45

Do you recall that? 01:34:46

A. I don't recall it. 01:34:47

Q. And then I went on and I asked you again, I said: "Will you accept my premise that Raiders management didn't know there was a mistake". This is at page one hundred seventy-three, seven to fourteen. I 01:34:50 01:34:53 01:34:57 01:34:59 01:35:00 01:35:02

was asking you -- 01:35:14

THE CHAIRPERSON: Let's read the question and then we'll get the answer. 01:35:32 01:35:33 01:35:34

Do we have the correct question and answer? 01:36:16 01:36:17

Q. The question, it looks like it's one hundred seventy-three -- let's just go to one hundred seventy-three, line sixteen. 01:36:18 01:36:20 01:36:58 01:37:00

"And you refused to accept my premise, you flatly refused to accept my premise even if it was a hypothetical as to what information the Raiders would need to provide to their auditors if the Raiders, in fact, did not know the financial statements were misstated. You flatly refused to accept that as a premise to answering these questions. 01:37:04 01:37:10 01:37:11 01:37:12 01:37:14 01:37:16 01:37:18 01:37:20 01:37:23 01:37:27

Answer: "No, my answer was -- is that the Raiders knew that the information was not being provided and the financials were wrong, that's what I'm saying in my opinion here. 01:37:27 01:37:29 01:37:30 01:37:32 01:37:34

Question: "Right. And I asked you, I said I know you disagree with it, but I asked you if you assume that the Raiders did not know that the financial statements were misstated, they have no idea, then in that context I want to talk to you about what type of information needed to be provided" and your answer to me is: "I will not accept that".

THE CHAIRPERSON: Let's piece this together. I have a portion of an answer.

Where are we starting, page one hundred seventy-three, one hundred seventy-three? Just tell me and I'll try and get us through this. One hundred seventy-three line or one hundred seventy-three line?

MS. BROWN: So it actually starts at one hundred sixty-eight, eleven.

THE CHAIRPERSON: Let's go to one hundred sixty-eight.

What line are we starting on? 01:39:03
MS. BROWN: Line eleven. 01:39:06
THE CHAIRPERSON: Why don't 01:39:09
you downsize that. Because I'm 01:39:09
going to make a ruling on it. I 01:39:12
can see it. It makes it a little 01:39:15
bit easier. Because then we don't 01:39:17
have to shift back and forth, we 01:39:19
can just go to the next box. 01:39:21
So we're starting at line 01:39:23
eleven or -- 01:39:25
MS. BROWN: Line eleven. 01:39:26
MS. VAN WINKLE: I'm going to 01:39:28
ask, are you trying to impeach Mr. 01:39:30
Goolsby? I'm pretty sure I state 01:39:33
an objection to this question 01:39:36
that's two paragraphs long. 01:39:37
THE CHAIRPERSON: I'd have to 01:39:46
see the next page. 01:39:47
I don't have a problem, 01:40:42
counsel. The question is whether 01:40:43
the witness was asked this question 01:40:43
and did he give this answer. 01:40:45
Can I just ask, was the 01:40:45
witness provided with a copy of the 01:40:48

deposition that he executed, 01:40:51
anybody? Normally witnesses in New 01:40:54
York execute their deposition 01:40:56
transcripts. 01:40:58

MS. VAN WINKLE: Yes. 01:40:59

THE CHAIRPERSON: There's no 01:41:00
errata sheet? 01:41:03

MS. VAN WINKLE: There is an 01:41:03
errata sheet. I don't -- 01:41:04

THE CHAIRPERSON: But as to 01:41:04
these answers? 01:41:05

MS. VAN WINKLE: I am not 01:41:05
aware of an errata to these 01:41:06
answers. 01:41:08

MS. BROWN: And my point is 01:41:09
simple. I'll just note for the 01:41:09
record that we were looking at 01:41:09
pages one hundred sixty-eight and 01:41:12
one hundred sixty-nine of -- 01:41:12

THE CHAIRPERSON: I think the 01:41:16
panel's read it. 01:41:17

MS. BROWN: -- Mr. Goolsby's 01:41:19
deposition. 01:41:21

Q. And my point was simply this: 01:41:21
That when I asked you in your 01:41:23

deposition just to assume that the Raiders didn't intentionally misstate their financials statements so I could understand how that interacted with your opinions -- my point was simply that you claim that you're giving an independent and unbiased opinion on GAAS standards today; correct, sir? 01:41:25 01:41:26 01:41:31 01:41:34 01:41:35 01:41:47 01:41:51 01:41:53

A. Correct. 01:41:56

Q. And my point is simply when I asked you, as an unbiased expert to answer questions from me previously under the assumption that the Raiders did not intentionally misstate their financial statements, you couldn't answer those questions and you could not accept that premise; correct? 01:41:57 01:41:59 01:42:03 01:42:05 01:42:06 01:42:10 01:42:12 01:42:14

MS. VAN WINKLE: Objection. Misstates the record. The deposition speaks for itself. 01:42:16 01:42:17 01:42:20

THE WITNESS: Well, in my deposition -- I'm sorry. 01:42:21 01:42:22

THE CHAIRPERSON: If you can answer it, sir, I'll allow you to answer it. 01:42:23 01:42:24 01:42:27

THE WITNESS: My point in my deposition is in an I came back and basically said those things I said I was basically inconsistent with my report where I said information was not provided to the audit team, and that's the conclusion that I reached in my report and my report, I didn't cover anything about fraud or intention. I clarified it by saying the information was not provided with respect to all these prior statements. It was literally clarifying all that to say information was not provided to EY. And that's in the GAAS rules about information provided. That's cleaning it up, if you will, clarifying is what I was doing. 01:42:27 01:42:28 01:42:31 01:42:33 01:42:36 01:42:37 01:42:41 01:42:44 01:42:46 01:42:50 01:42:52 01:42:54 01:42:55 01:42:58 01:43:00 01:43:02 01:43:05 01:43:06 01:43:07

THE CHAIRPERSON: And counsel, your question is, having heard that, do you have another question? 01:43:10 01:43:11 01:43:13

Q. I just want to make clear that clarification that you said you provided in your deposition happened 01:43:15 01:43:17 01:43:20

after you conferred with counsel on a 01:43:20
break and you came back, and based on 01:43:22
that discussion with counsel, you came 01:43:25
back with that clarification; right? 01:43:28
MS. VAN WINKLE: I'm going to 01:43:30
object to the disclosure of any -- 01:43:32
the substance of any discussions. 01:43:34
If you want to ask about the 01:43:35
timing, that's totally fine. 01:43:37
THE CHAIRPERSON: I don't know 01:43:38
if the deposition reflects that 01:43:39
there was a break; does it? 01:43:40
MS. BROWN: It does. 01:43:42
THE CHAIRPERSON: So we'll 01:43:43
note the fact that a break took 01:43:44
place. 01:43:46
Q. So let's turn to the two 01:43:46
categories of documents that you claim 01:43:47
the Raiders management didn't provide 01:43:50
to its auditors in your deposition, the 01:43:52
first being the capital roll forward 01:43:57
schedules. 01:44:01
Now, you're aware that EY's 01:44:02
core audit team -- I think what's been 01:44:03
referred to in this case as the core 01:44:04

audit team never asked the Raiders for 01:44:06
a complete copy of the capital roll 01:44:08
forward schedule; right? 01:44:11
A. They did not ask nor were 01:44:12
they aware that it existed at the time 01:44:15
they were doing their audit work. 01:44:18
Q. Your testimony to this panel 01:44:19
is that EY's audit team didn't know the 01:44:21
capital roll forward schedules existed? 01:44:25
A. When they were doing their 01:44:27
audit work, they were not aware, in the 01:44:29
context of doing their work and 01:44:31
planning the work, that the capital 01:44:33
roll forwards schedule one, two, and 01:44:34
three, they weren't aware that they 01:44:36
existed when they were executing their 01:44:38
audit procedures. 01:44:41
Q. And you are aware that -- 01:44:42
A. With respect, just to 01:44:46
clarify, what I'm getting at is with 01:44:48
respect to planning the work and 01:44:50
setting the scopes for the work, that 01:44:52
was not part of the discussions of the 01:44:55
audit planning template that I referred 01:44:57
to earlier. 01:44:59

Q. But you are aware that EY's audit team didn't ask the Raiders for a complete copy of that schedule; right? 01:45:01 01:45:03 01:45:06
A. That's right. 01:45:08
Q. And you're aware that, in connection with its audits, the Raiders provided EY with copies of its journal entries that were related to Ventures; right? 01:45:09 01:45:11 01:45:13 01:45:16 01:45:17
A. There were journal entries that were provided that I've seen certain of those, yes. 01:45:17 01:45:20 01:45:22
Q. And you're aware that the journal entries related to Ventures were provided to EY in connection with each of the audit years; right? 01:45:23 01:45:25 01:45:26 01:45:28
A. I'd have to look back and see if every year, but I believe that's correct on the years that I've looked at, the journal substantive reflecting the entries that was part of the substantive work that the audit team was doing. 01:45:30 01:45:33 01:45:36 01:45:37 01:45:37 01:45:40 01:45:41
Q. If we could pull up JX 221. 01:45:42
You're welcome to look at the 01:46:05

screen, sir, and there's also a copy in your binder. Whatever is easier for you. But it is on the screen. And it's Exhibit 221. 01:46:08 01:46:11 01:46:13 01:46:15

A. Okay. 01:46:33

Q. And do you see that there's an e-mail at the bottom that's from Daniel Huie at the Raiders on June 29, 2017 and he's sending documents to Phil Iacono who works at EY's audit group; right? 01:46:34 01:46:35 01:46:38 01:46:42 01:46:47 01:46:50

A. Yeah, he's sending to -- yeah, Daniel Huie works and it's a staff accountant for the Raiders. 01:46:57 01:47:00 01:47:03

Q. And he's sending it to the auditor at EY; right? 01:47:05 01:47:06

A. Yes. 01:47:08

Q. So let's look at the attachment. 01:47:10 01:47:12

We can -- you can see the first page, it's a journal entry, right, related to NFL Ventures? 01:47:14 01:47:16 01:47:20

A. Yes. 01:47:23

Q. And then if we look at what follows that, we see that's the backup 01:47:23 01:47:26

for the journal entry; right? 01:47:28
A. Yes. 01:47:29
Q. And one of the pages, if we go to page ending in 385, you see there's schedule three of the NFL Ventures capital roll forward schedule; right? 01:47:31 01:47:34 01:47:38 01:47:41 01:47:44
A. Yes. 01:47:44
Q. And then so the Raiders gave this page from the Ventures capital roll forward schedule to its auditor in June, 2017 along with the journal entry and along with the other backup support for that journal entry; right? 01:47:44 01:47:47 01:47:51 01:47:53 01:47:56 01:47:58
A. That's what's reflected in this e-mail attachment, yes. 01:48:01 01:48:03
Q. Now, are you aware from reviewing the materials in this case that the Raiders only started using this one page as a backup support for its Ventures journal entries, they started doing that in 2016? 01:48:05 01:48:07 01:48:08 01:48:10 01:48:13 01:48:16
A. I don't recall specifically the year. 01:48:17 01:48:22
Q. Do you recall seeing this one 01:48:23

page in EY's audit work papers starting 01:48:24
in 2016? 01:48:28
A. I believe it was 2016. I did 01:48:30
see one page of a schedule three. 01:48:34
Q. And that started in -- do you 01:48:36
recall -- maybe you don't recall, but 01:48:39
do you recall that started in 01:48:41
connection with the 2016 audit year? 01:48:42
A. I don't know if it started 01:48:44
that year but it was there in that 01:48:45
year, as I recall. 01:48:47
Q. But you did review the work 01:48:48
papers from 2014 and 2015 as well; 01:48:50
right? 01:48:52
A. 2014 through 2019, correct. 01:48:53
Q. And you don't recall seeing 01:48:55
this one page from the capital roll 01:48:56
forward schedule in the 2014 or 2015 01:49:00
audit work papers; do you? 01:49:02
A. 2014 and 2015 I'd have to go 01:49:05
back and check. It was in different 01:49:08
years. I just can't recall -- it 01:49:11
wasn't in every year, so I'd have to go 01:49:13
back and check as to which year. 01:49:15
Q. And 2016, that's ten years 01:49:17

after the Raiders started booking the 01:49:25
January accrual; right? 01:49:27
A. Approximately, yes. 01:49:28
Q. And you're aware that before 01:49:29
or at least in 2014 or 2015, even if 01:49:32
you don't remember the date, but at 01:49:35
some point in time when the Raiders 01:49:39
were booking the remittance from 01:49:40
Ventures, their backup was just an 01:49:42
e-mail from Brad Firestone saying this 01:49:44
is the amount of the Ventures and that 01:49:47
was the backup for the journal entry; 01:49:48
right? 01:49:50
A. And the audit team in 01:49:50
auditing it looked at that 01:49:53
communication from the NFL documenting 01:49:55
the amount of remittance, that's what I 01:49:58
saw in the work papers. 01:50:00
Q. But starting in 2016, they 01:50:01
continued to get an e-mail from Brad 01:50:03
Firestone to support the remittance and 01:50:05
they add in this one page from the 01:50:07
capital roll forward schedule in 01:50:10
addition to the e-mail; right? 01:50:12
A. I think it may have been 01:50:13

attached. There's no audit work 01:50:16
performed on this schedule. The key 01:50:19
document was the communication from the 01:50:21
NFL that documented the remittance. 01:50:23

Q. And because the key document 01:50:27
is the NFL e-mail, the Raiders didn't 01:50:31
even need to include this one page from 01:50:33
the capital roll forward schedule; 01:50:35
right? The key document was already 01:50:38
attached to their journal entry and 01:50:39
this was not even necessary for the 01:50:39
Raiders to provide it as backup? 01:50:40

A. Based on the facts and 01:50:43
circumstances at the time, that was 01:50:46
what was necessary was communication 01:50:47
from the NFL documenting the 01:50:49
remittance. At the time that was their 01:50:51
understanding, the audit team's 01:50:53
understanding, and that's why that 01:50:54
communication was sufficient for their 01:50:56
audit evidence to audit the payment 01:50:59
that was reflected in the accounts 01:51:01
receivable roll forward. 01:51:03

Q. So even though the Raiders 01:51:04
had the e-mail from the NFL which was 01:51:05

sufficient to book the journal entry 01:51:08
and had been used for many years to 01:51:10
book the journal entry, starting in 01:51:13
2016 they used this one page from the 01:51:15
capital roll forward as additional 01:51:17
support and provided it to their 01:51:18
auditor every year in connection with 01:51:20
the Ventures journal entries after 01:51:23
that; right? 01:51:27

A. There were -- the information 01:51:27
provided to the auditors documenting 01:51:33
the amount of the remittance from 01:51:35
documentation from the NFL, that was 01:51:38
the key document which is the external 01:51:39
information that they tied it to. This 01:51:42
schedule, there was no audit work 01:51:46
performed on this schedule three, it 01:51:54
was related back to the e-mail 01:51:56
communication but no work provided on 01:51:58
it so the operative document again, as 01:52:00
I said, was a communication from the 01:52:02
NFL. 01:52:03

Q. And because the operative 01:52:04
document was the communication of the 01:52:06
e-mail from the NFL, not only did the 01:52:07

Raiders not need to attach this 01:52:13
document starting in 2016, they -- when 01:52:17
they did attach it to their journal 01:52:22
entry in 2016, they didn't take any 01:52:25
steps to hide it from the auditor; 01:52:28
right? Even though you say the e-mail 01:52:30
is operative, they still provide this 01:52:30
to their auditor in 2016 and in later 01:52:32
years; right? 01:52:35
A.   The information is included. 01:52:37
This schedule three, one page, is 01:52:39
included in certain of the work papers, 01:52:41
that's correct. 01:52:44
Q.   And you're not aware of 01:52:44
Raiders management taking any steps to 01:52:45
hide this page from schedule three of 01:52:47
the Ventures roll forward schedule from 01:52:50
their auditors; right? 01:52:52
A.   The information in my report 01:52:53
that I've discussed is that the 01:53:00
complete schedule one, two, and three 01:53:02
was not provided to the audit team. 01:53:04
That would have been key to their 01:53:06
understanding of how the NFL Ventures 01:53:08
remittance worked and how the payments 01:53:12

were being received against that 01:53:16
remittance. That's what I'm saying was 01:53:17
not provided. 01:53:22
Q.   You're not aware of Raiders 01:53:23
management taking any steps to hide 01:53:25
this page from schedule three of the 01:53:26
Ventures roll forward schedule from 01:53:29
their auditors; right? 01:53:32
A.   Well, the information is in 01:53:33
the work papers. Audit work's not 01:53:34
performed on these schedules. This one 01:53:39
page is in the work papers but it's not 01:53:42
the complete set of schedules, it's not 01:53:44
the complete set of information, but 01:53:46
it's in the work papers. 01:53:50
Q.   Are you aware of Raiders 01:53:51
management taking any steps to hide 01:53:53
this schedule three from its auditors, 01:53:55
this page from schedule three? 01:53:57
A.   Again, this information was 01:53:59
included in the work papers. But the 01:54:04
key here in that not providing the 01:54:07
information in the complete capital 01:54:09
roll forward schedules, the key to this 01:54:09
is when that information is provided 01:54:12

and discussed with the auditors about how the business worked and how it operated within NFL Ventures. 01:54:13 01:54:15 01:54:17

Q. I believe you said this already, but you're aware that this one page was attached as support for a journal entry; right? 01:54:19 01:54:20 01:54:22 01:54:27

A. In certain years, this was attached to the NFL Ventures communication from the NFL documenting the commitment. Whether it was part of a journal voucher or not, I can't recall, but it was attached to the NFL communication in the work papers. 01:54:28 01:54:30 01:54:33 01:54:35 01:54:39 01:54:42 01:54:44

Q. And that's because it was used by the Raiders as backup for their journal entires to record the remittance; right? Both this e-mail and this one page of backup. 01:54:45 01:54:46 01:54:48 01:54:50 01:54:54

A. I'm not sure about the one-page backup to schedule three but the e-mail was key for the communication from the NFL about how much the remittance was. That was a key document. 01:54:54 01:54:56 01:54:57 01:54:58 01:55:00 01:55:04

Q. And it's common, in 01:55:04
performing an audit, that an auditor 01:55:08
will collect from clients journal 01:55:10
entries -- relevant journal entries and 01:55:11
backup for those journal entries; 01:55:13
right? 01:55:16
A. Well, based on the judgment 01:55:17
of the auditor, various documentation 01:55:18
of journal entries is obtained. It's 01:55:19
not a hundred percent of all journal 01:55:22
entries. Some are obtained, some are 01:55:24
not. It depends on the fax and 01:55:27
circumstances. 01:55:29
Q. And when they're collecting 01:55:29
the journal entries and the backup 01:55:32
support for the journal entries, the 01:55:34
auditor understands that many clients 01:55:37
don't attach entire documents as 01:55:39
backup, it's an efficient way to 01:55:42
proceed to merely attach a portion of 01:55:46
the document that you're relying upon 01:55:48
as backup, the auditor would have that 01:55:49
understanding; right? 01:55:50
A. Well, different clients do it 01:55:55
different ways, so it's based on the 01:55:57

facts and circumstances of a particular 01:55:58
audit and the company that was attached 01:56:01
to a journal entry. It varies. 01:56:03
Q. Right. 01:56:04
But the auditor would have an 01:56:06
understanding that, because it varies 01:56:09
and different clients do it different 01:56:11
ways, that some clients won't attach an 01:56:14
entire document to support the journal 01:56:16
entry but just might attach as support 01:56:17
the page of a document that supports 01:56:21
the journal entry? That's not 01:56:22
uncommon; right? 01:56:25
A. It's not uncommon to have 01:56:26
different pieces of information 01:56:28
attached. But what's key here is that 01:56:29
again, as I say, the complete package 01:56:33
of the roll forward was not provided in 01:56:36
the planning phase of the audit when 01:56:37
the team could have a better 01:56:39
understanding of how the business 01:56:42
worked within the NFL. 01:56:43
Q. And when you look at this 01:56:44
document that was attached as the 01:56:46
backup for the journal entry, if the 01:56:48

auditor were to look at it, it's clear 01:56:50
from its face that that's what the 01:56:52
Raiders were doing, they just have one 01:56:54
page from a document because, when we 01:56:57
look at this, we can see that it's 01:56:58
referring to a schedule two, that it's 01:57:00
a schedule three, that there are 01:57:02
balances that are rolling balances that 01:57:04
don't always continue, so it was clear 01:57:06
to the auditor or anyone else who would 01:57:09
look at it that this was one page from 01:57:11
a larger document being used as backup 01:57:14
support for the journal entry; right? 01:57:17
A. Well, when you say backup to 01:57:19
the journal voucher, I don't know in 01:57:22
looking at this package that was sent 01:57:26
how much of this is all included as 01:57:29
part of a journal voucher or different 01:57:32
documents provided. I don't know which 01:57:35
pages here actually support for the 01:57:37
journal voucher in addition to the 01:57:40
communication that came from Bradley 01:57:43
Firestone in the e-mail. 01:57:46
Q. So if we look at what's on 01:57:46
the screen -- it's blurry, I admit; the 01:57:47

photo quality is not excellent. But 01:57:49
you can see on the face of the one 01:57:52
document that was provided there's a 01:57:54
balance for the account receivable at 01:57:56
the bottom for March 31, 2017 and next 01:57:58
to the receivable balance as of that 01:58:01
date there's a reference that says, 01:58:04
"see schedule two"; right? 01:58:07
A. Yes. 01:58:08
Q. And when the Raiders were 01:58:09
including this in their records as 01:58:12
backup for the journal entry, they 01:58:15
didn't attempt to white out or redact 01:58:16
the reference to schedule two; did 01:58:19
they? 01:58:21
A. No, not on this page. No. 01:58:22
Q. And so when the auditor 01:58:25
receives this document as a backup to a 01:58:31
journal entry, it would be clear from 01:58:32
the auditor from the face of the 01:58:34
document that this is one of those 01:58:34
instances that happens where a client 01:58:35
doesn't include the whole document as 01:58:38
backup to the journal entry. This is 01:58:40
one of those instances where the client 01:58:41

only includes the relevant page; right? 01:58:44

A. Well, this is a page, from what I recall in the work papers, where I saw the document, the schedule three that I saw in the work papers, there was no audit work done on those schedules. The key document again that was used in the work papers was the communication from the NFL that documented the commitment. The schedule three one page that was in the work papers that I looked at that EY used didn't have any audit work performed on those schedules, and so there was not a focal point of analysis with respect to this schedule. There's no need to. So the audit team didn't do any work on this schedule. And this is covered in my report. 01:58:46 01:58:51 01:58:53 01:58:56 01:58:59 01:59:01 01:59:04 01:59:05 01:59:07 01:59:10 01:59:12 01:59:14 01:59:16 01:59:18 01:59:21 01:59:23 01:59:26 01:59:28

MS. BROWN: I'm going to move to strike that answer as not responsive. 01:59:30 01:59:31 01:59:32

THE CHAIRPERSON: The question is so long and the answer is so long, I don't know how I would do 01:59:33 01:59:34 01:59:36

that, so I'll leave it on the record. 01:59:38 01:59:40

Q. I'll ask the question again. 01:59:40

When the auditor received this document, it would be clear to the auditor from the face of the document that it was one page from a larger document; correct? This document meaning this one page from schedule three of the capital roll forward. 01:59:42 01:59:44 01:59:45 01:59:45 01:59:48 01:59:49 01:59:52

A. No, I don't agree with that. 01:59:54

Q. Now, your opinion is that it's schedule two from the capital roll forward that contained the relevant information relating to the timing, amount, and purpose of distributions from NFL Ventures; right? 01:59:58 02:00:01 02:00:01 02:00:04 02:00:05 02:00:07

A. Schedule two was a critical document to provide that document, that's correct. 02:00:09 02:00:11 02:00:12

Q. And it's your opinion that none of that relevant critical information is also contained on schedule three? 02:00:13 02:00:14 02:00:18 02:00:20

A. Some of the information is 02:00:21

included on three but not in the 02:00:25
context of what's on schedule two. 02:00:29
Q. So some of the critical 02:00:34
relevant information is on schedule 02:00:38
three. 02:00:39
Can you identify for us what 02:00:39
that would be? 02:00:41
A. I said some of the 02:00:42
information is included between two and 02:00:43
three. The schedule two was key 02:00:45
because it provided the information on 02:00:50
seasons and payment of cash by season. 02:00:52
That was what was on schedule two that 02:00:55
was not provided to EY. 02:00:59
Q. And my question to you was 02:01:00
any of the -- what you described as 02:01:05
relevant information relating to 02:01:08
timing, amount, and purpose of the 02:01:10
distributions from Ventures, is any of 02:01:12
that relevant information also included 02:01:15
on this schedule three? 02:01:17
A. I'm sorry, can you repeat 02:01:19
that? 02:01:20
Q. Is any of the relevant 02:01:21
information that you say exists on 02:01:23

schedule two also contained on schedule three? 02:01:26 02:01:33

A. As I recall, some of the information on two is included in schedule three. But for the audit team to fully understand all of this as they were planning and getting information about their work, they needed all three of these schedules to fully understand how Ventures worked with respect to the Raiders and the remittance of payments. Without schedule two, this document under which no audit work was done in the work papers, doesn't tell the complete story and information about how it worked. 02:01:35 02:01:38 02:01:40 02:01:42 02:01:45 02:01:46 02:01:50 02:01:53 02:01:56 02:01:59 02:02:01 02:02:02 02:02:03 02:02:05

Q. When you say some of the relevant information is also on schedule three, can you identify for us, looking at the exhibit here, what is that relevant information that's also on Exhibit 3? Sorry, schedule three. 02:02:12 02:02:13 02:02:15 02:02:17 02:02:19 02:02:21 02:02:27

A. Well, again, my review of the work papers that E&Y prepared didn't do 02:02:27 02:02:29

any audit work on this schedule. To 02:02:30
understand the relevant information on 02:02:33
three, we need to have schedule two 02:02:35
that you can use these in conjunction 02:02:37
with each other, because usually it was 02:02:39
a package of information from the NFL, 02:02:42
so to have a clear picture of 02:02:46
everything, you need all three 02:02:47
schedules and all the pages of schedule 02:02:47
three. 02:02:49

Q. So your opinion to the 02:02:50
tribunal is that if we just look at 02:02:52
this one page of schedule three, the 02:02:55
auditor is not presented with any 02:02:57
relevant information that the auditor 02:03:00
could use to discern timing, amount, or 02:03:04
purpose of cash distributions being 02:03:08
made by Ventures? 02:03:10

A. What I'm saying to the -- 02:03:11
testifying to the tribunal is that this 02:03:14
information was not used by EY with 02:03:17
respect to audit work being performed 02:03:22
on this. And in the absence of 02:03:25
schedule two, this schedule does not 02:03:27
provide all the information that's 02:03:30

needed to fully understand how NFL Ventures worked with respect to the remittance of payments. 02:03:31 02:03:35 02:03:36

Q. I know this schedule wasn't used by EY. I think that's part of the problem here. And I know you say there's additional information on schedule two, which there is. 02:03:38 02:03:40 02:03:43 02:03:45 02:03:46

My question that I keep asking is whether or not, when we look at just this page, are you telling the tribunal that there's no information on this page about timing of cash distributions or other information that would be relevant to the auditor because, if I'm hearing your testimony correctly, it's any information presented here is meaningless without schedule two? 02:03:48 02:03:49 02:03:51 02:03:55 02:03:57 02:04:00 02:04:03 02:04:04 02:04:06 02:04:08 02:04:11

MS. VAN WINKLE: Objection. Asked and answered repeatedly. Also misstates testimony. 02:04:12 02:04:13 02:04:15

THE CHAIRPERSON: I'm going to allow the question. Let's see if the witness can answer it. 02:04:17 02:04:18 02:04:19

THE WITNESS: Well, there's 02:04:21
information in here about payments, 02:04:23
but it's out of context with 02:04:24
respect to schedule two. What's 02:04:26
needed in schedule two to fully 02:04:27
understand the complete picture 02:04:31
about how this worked, which 02:04:34
schedule two was a critical 02:04:35
schedule. So looking at this in a 02:04:37
vacuum in isolation doesn't tell 02:04:39
the full story about cash payments 02:04:42
and what season it applies to. 02:04:45

MS. BROWN: I have more 02:04:47
questions, but would it be okay if 02:04:49
we take a ten-minute break? 02:04:50

THE CHAIRPERSON: Sure. 02:04:53
How much longer do you think 02:04:54
you have? 02:04:55

MS. BROWN: Probably at least 02:04:56
forty minutes. 02:04:58

THE CHAIRPERSON: Just so we 02:04:59
know. 02:05:00

(Whereupon a break was taken) 02:05:01

THE CHAIRPERSON: Everybody 02:18:31
ready to go? Everyone in position? 02:18:43

Let's do it. 02:18:45

Q. Mr. Goolsby, I believe you said before the break that schedule two of the capital roll forward has information on it related to the timing of the distributions and what season they related to; right? 02:18:46 02:18:53 02:18:54 02:18:57 02:18:59 02:19:04

A. Correct. 02:19:05

Q. And you said the Raiders didn't provide those documents to EY in the planning of its audit? 02:19:06 02:19:07 02:19:11

A. Yeah, I'm looking at the planning phase -- 02:19:13 02:19:15

THE CHAIRPERSON: That's just a yes or no. 02:19:15 02:19:16

THE WITNESS: No, they did not. 02:19:17 02:19:18

Q. And the Raiders had no obligation to provide that document to EY in the planning phase of the audit; did they? 02:19:18 02:19:20 02:19:22 02:19:24

A. In my opinion, they have an obligation to, yes. 02:19:25 02:19:26

Q. Didn't actually the auditor need to ask the Raiders for documents 02:19:27 02:19:31

they wanted to collect for purposes of 02:19:33
the audit? The client doesn't have an 02:19:35
obligation to determine what they need 02:19:37
to provide to the auditor; do they? 02:19:41
A. First, EY didn't know it 02:19:44
existed to even ask for it. Number 02:19:47
two, pursuant to the engagement letter, 02:19:49
the client has an obligation to provide 02:19:50
that which the auditor needs in order 02:19:53
to properly audit the books consistent 02:19:54
with GAAS. 02:19:55
Q. Well, EY can ask for a 02:19:56
document or categories of documents it 02:19:59
needs to plan the audit. The 02:20:01
Raiders -- 02:20:03
THE CHAIRPERSON: How do you 02:20:03
know that EY didn't know it 02:20:05
existed? 02:20:06
THE WITNESS: Well, because 02:20:07
later testimony from Mr. Johns and 02:20:10
others, they testified they didn't 02:20:13
know it existed. 02:20:15
THE CHAIRPERSON: So it's 02:20:16
based on their testimony? 02:20:16
THE WITNESS: Testimony and, 02:20:17

when I reviewed the audit record, work papers, I didn't see any reference to it. And this is a critical document in understanding the business of the Raiders with the NFL.

THE CHAIRPERSON: And the question now is should they have asked for it; is that the question?

Q. Well, my first question was there's no evidence that EY asked the Raiders for a copy of this NFL capital roll forward schedule for purposes of planning their audit?

A. That's correct, because they didn't know it existed.

Q. And EY did have an obligation though to understand the business, the Raiders business, including Ventures and the timing of payments and the revenue streams; right?

A. Correct, based on the information from management.

Q. And EY's not entitled to rely solely on representations of management

for purposes of its audit; correct? 02:21:05
A. Well, it depends on which topic you're talking about. 02:21:07 02:21:10
Q. So your opinion is that on some topics they can rely on solely assertions of management and on others they cannot? 02:21:12 02:21:14 02:21:18 02:21:21
A. Well, for example, in the general representation letter, when management represents -- in the general representation letter at the end of the audit, management represents -- I'm paraphrasing -- management represents they provided to the auditor everything that's needed with respect to the books and records of the entity and information they would need to do the audit with an effective -- and this is in the literature -- an effective communication back and forth. That representation in the general representation letter is something that's a representation from management that we did that. 02:21:22 02:21:23 02:21:26 02:21:27 02:21:28 02:21:31 02:21:33 02:21:35 02:21:36 02:21:39 02:21:41 02:21:43 02:21:46 02:21:48 02:21:52 02:21:54 02:21:55
Q. When EY's auditing a 02:21:57

significant account or planning an audit for a significant source of revenue that it's identified in its audit planning documents as a significant account and a significant source of revenue to the Raiders, EY had an obligation to understand that significant account and source of revenue; right?

A. Yes, of course.

Q. And it's not entitled to rely solely on representations from management in understanding that significant account and source of revenue; right?

A. No, in a situation like that, management is the source of information that the auditor then takes that information because the client is assumed to be trustworthy and credible. They then audit that information, as I've described in my earlier testimony, in a hundred percent manner to validate what they were told by management as being the way it operated.

Q. So you're agreeing with me that EY not only has an obligation to understand the significant account and the source of revenue but, in doing so, they can accept representations from management but not rely solely on those representations because they need to perform our audit procedures to confirm those representations; right? 02:22:54 02:22:56 02:22:59 02:23:01 02:23:04 02:23:05 02:23:10 02:23:12 02:23:14
A. Well, that's why they did do other audit procedures to cooperate what they were told by doing a hundred percent validation of the balance, of the activity. 02:23:18 02:23:18 02:23:19 02:23:20 02:23:23
Q. You said earlier that the client is supposed to provide the auditor everything it needs to do the audit; right? 02:23:23 02:23:26 02:23:27 02:23:30
A. Well, yes. The client has the obligation to provide that which the auditor needs to audit the books and records because only management knows the books and records obviously better than the auditor. 02:23:30 02:23:33 02:23:35 02:23:37 02:23:40 02:23:42
Q. Well, who knows the audit 02:23:43

procedures that are being run, the auditor or the client? 02:23:46 02:23:47

A. Well, the auditor performs audit procedures and plans the audit consistent with the information that they have as provided by the company, that's the auditee, if you will. 02:23:49 02:23:53 02:23:53 02:23:56 02:23:56

Q. So the client is supposed to provide the auditor everything it needs to do the audit; right? 02:23:59 02:24:00 02:24:02

A. All information that's maintained in the books and records of the client so that's the only way to get that information is from management. 02:24:03 02:24:05 02:24:06 02:24:08 02:24:10

Q. I'll take that as a yes. 02:24:10

And how is the client supposed to know everything that the auditor needs to conduct its audit? 02:24:12 02:24:13 02:24:14

A. The client is obligated -- well, the client is obligated to provide all information to support the books and records and the amounts in the financial statements that the auditor is going to audit, and that is 02:24:17 02:24:23 02:24:26 02:24:27 02:24:30 02:24:31

provided through effective 02:24:34
communication between the auditor and 02:24:36
the client. Granted, EY does have a 02:24:37
PBC, prepared by client, schedule that 02:24:42
they get from the client in filling out 02:24:42
certain information, but the engagement 02:24:46
letter and the general representation 02:24:49
letter commits the client to provide 02:24:52
that which the auditor needs in order 02:24:54
to do the audit. 02:24:56

Q. The way I understand the 02:24:57
process is the client signs a rep 02:24:58
letter we will give you whatever you 02:25:01
need to do your audit, we'll provide it 02:25:02
to you. The auditor then asks the 02:25:05
client for information through various 02:25:07
information requests that the client 02:25:10
then needs to fulfill. And once -- so 02:25:12
my question to you: Is once the client 02:25:17
has fulfilled those information 02:25:20
requests, how is the client supposed to 02:25:22
know if the auditor needs more 02:25:22
information to conduct the audit and 02:25:25
satisfy its professional standards? 02:25:25

A. Well, the auditor many times 02:25:31

will ask for more information in order 02:25:33
to audit a particular area if, in fact, 02:25:34
more information is needed. If it's 02:25:36
not needed, it won't be requested. 02:25:38
It's effective communication back and 02:25:40
forth between the client in order to 02:25:43
achieve the evidence that's needed for 02:25:44
the auditor to do their work. 02:25:47

Q. Is the client supposed to 02:25:49
know when the auditor has obtained 02:25:50
sufficient and appropriate audit 02:25:54
evidence to reach that high level of 02:25:55
assurance that it needs to issue its 02:25:58
opinion? Is the client privy to that? 02:26:00

A. Well, the way the audit 02:26:04
process works with communication 02:26:05
between the auditor and the client is 02:26:08
the auditor will request additional 02:26:10
information if they need it and through 02:26:13
that process ultimately reach the 02:26:15
conclusion of the audit work and sign 02:26:18
the audit opinion. But it's a back and 02:26:20
forth, yes, but there's an obligation 02:26:23
on the part of the client to provide 02:26:27
that which supports the financial 02:26:28

statements and information. 02:26:30

Q. Well, you'll agree with me that the client isn't supposed to just jump all of its books and records in their entirety on the auditor and tell the auditor to just figure it out; right? 02:26:31 02:26:34 02:26:36 02:26:38 02:26:42 02:26:44

A. Well, clients provide a lot of -- access to a lot of information to auditors, such as the general ledger at times, trial balances, they provide a lot of information to the auditor for the auditor to do their work, to scope their work. But there's obviously pieces of that information that can be more informative that they may need that they may not get. 02:26:44 02:26:47 02:26:49 02:26:51 02:26:54 02:26:55 02:26:59 02:27:01 02:27:04 02:27:07

Q. Sir, that wasn't my question. 02:27:10

My question was would you agree with me that the client's not supposed to just dump all of its books and records on the auditor and ask the auditor to figure out what it needs to do its audit? 02:27:12 02:27:13 02:27:13 02:27:16 02:27:18 02:27:21

A. It's not dumping everything, 02:27:22

it's providing that which is 02:27:24
informative for the books and records 02:27:26
of the financial statements of the 02:27:28
company for the auditor to audit. 02:27:29

Q. So can we agree that then the 02:27:30
auditor makes information requests and 02:27:32
the client responds to them and answers 02:27:38
those and provides books and records? 02:27:40

A. There are requests that come 02:27:42
from the auditor to the client, yes. 02:27:44
But the client also has a 02:27:47
responsibility to provide information 02:27:49
pursuant to their obligations under the 02:27:50
engagement letter to provide that to 02:27:52
the auditor which the client deems 02:27:55
appropriate to support the financial 02:27:58
statements. It's a back and forth. 02:28:00

Q. And do you know if EY ever 02:28:02
made an information request to the 02:28:05
Raiders in connection with its audits 02:28:07
requesting the complete copy of the 02:28:11
Ventures capital roll forward? 02:28:13

A. No, that request was not made 02:28:15
because they didn't know it existed. 02:28:20

Q. Can we turn to JX 90. 02:28:23

And I know I asked you if the auditors specifically asked for the Ventures capital roll forward and you said they didn't know it existed; right? 02:28:52 02:28:55 02:28:57 02:29:00 02:29:02

Did the auditors have a request made to the Raiders in connection with those information requests that you've seen in reviewing your audits of this case that would have covered and asked for that document in connection with the 2014 to 2019 audit years? 02:29:02 02:29:05 02:29:08 02:29:09 02:29:11 02:29:13 02:29:15 02:29:18

A. I'm sorry, what's your question? 02:29:22 02:29:24

Q. So in the information requests that were made by the auditor to the Raiders, did they have an information request that would have covered producing -- was there an information request asking for information that you believe in your opinion would have required the Raiders to then go collect and produce the Ventures capital roll forward schedule? 02:29:24 02:29:26 02:29:28 02:29:30 02:29:32 02:29:36 02:29:38 02:29:39 02:29:41 02:29:43

A. They requested information that they deemed was responsive to what they were told by management as to how it worked. They didn't know that the schedule one, two, and three worked, so they didn't know to ask for that. 02:29:45 02:29:49 02:29:53 02:29:55 02:29:57 02:29:59

Q. I'm putting aside asking for the specific schedule because I understand your testimony to be that you think EY didn't know it existed. 02:30:01 02:30:03 02:30:06 02:30:07

So putting aside the schedule asking for it by name, when you looked at the information requests that went to the Raiders, is there an information request on there that you can point to that you would say that's the request where the auditor was asking for this schedule, not by name, but the schedule? 02:30:09 02:30:11 02:30:13 02:30:16 02:30:17 02:30:19 02:30:22 02:30:24 02:30:27

A. Well, the schedule and the name of the schedule go hand and hand, obviously. But there were -- the information provided by the Raiders management, for example, the capital roll forward -- the accounts receivable 02:30:29 02:30:35 02:30:37 02:30:41 02:30:43 02:30:45

roll forward, rather, that was 02:30:47
reflecting what EY was told how the 02:30:49
remittances were received by the 02:30:55
Raiders and how the payments were made 02:30:56
against those receivables and that 02:30:59
information was communicated, and so 02:31:02
the information in the books and 02:31:04
records that were provided which the 02:31:06
Raiders was the accounts receivable 02:31:09
roll forward, for example, that 02:31:11
memorialized that information. 02:31:12
Q. Mr. Goolsby, I'm focused on 02:31:13
just when EY made document and 02:31:16
information requests to the Raiders in 02:31:23
connection with its audits and you've 02:31:25
reviewed those, can you point us to an 02:31:26
information request where EY was asking 02:31:30
the Raiders to turn over, not by name, 02:31:33
but some category of documents that 02:31:37
would cover the NFL Ventures capital 02:31:38
roll forward and the Raiders didn't do 02:31:41
it? 02:31:43
A. Well, in the planning 02:31:44
template that we looked at earlier, 02:31:49
they had discussion about how the 02:31:51

business worked with top management. 02:31:52
The work papers that they then got 02:31:54
through a PBC request, for example, 02:31:57
that information was provided through, 02:32:01
for example, the accounts receivable 02:32:02
roll forward. That includes an 02:32:04
activity with respect to Ventures that 02:32:05
management should have been more robust 02:32:08
in providing the schedule one, two, and 02:32:11
three to meet that request related to 02:32:14
the receivable roll forward, for 02:32:17
example. 02:32:19

Q. Sir, I'm not asking about the 02:32:19
discussions that took place in the 02:32:25
planning meeting. I'm literally asking 02:32:26
about the document requests that go 02:32:27
from the auditor to the Raiders where 02:32:29
they ask them for documents and I'm 02:32:31
asking if you can point us to anything 02:32:33
on those requests where you're going to 02:32:35
be able to tell the tribunal this is 02:32:38
where EY asked the Raiders in this 02:32:41
request to turn over the capital roll 02:32:44
forward schedule not by name but asked 02:32:46
for it and it wasn't provided. 02:32:49

Can you identify that document for us? 02:32:50 02:32:52

THE CHAIRPERSON: I need to stop. The question at this point in time as I see it -- 02:32:53 02:32:54 02:32:55

MS. BROWN: Too long? 02:32:57

THE CHAIRPERSON: Yeah. 02:32:58

Did EY ever ask the Raiders to turn over the capital roll forward schedule, period? 02:33:07 02:33:09 02:33:12

THE WITNESS: No. And I've testified to that already. 02:33:13 02:33:15

THE CHAIRPERSON: Let's continue. 02:33:16 02:33:17

Q. Let's go to JX 90. 02:33:17

You've seen this document before, right, Mr. Goolsby? 02:33:24 02:33:25

A. Yes. 02:33:27

Q. And on this document, Mr. Loftus, who works on the Rams audit, described the capital roll forward as a key NFL document; right? 02:33:27 02:33:32 02:33:34 02:33:36

A. Well, he says, "I have another key NFL-related document I want to bounce off your team". 02:33:38 02:33:43 02:33:45

Q. So he described it as a key NFL document -- 02:33:48 02:33:50

THE CHAIRPERSON: I think the document speaks for itself, and he did. 02:33:51 02:33:52 02:33:54

Q. And the Raiders audit team, upon receiving this, you're aware that they didn't even consider how the information on this document related to the Raiders audit; right? 02:33:54 02:33:57 02:33:58 02:34:00 02:34:01

A. It was my understanding that was no need for them to do that. 02:34:03 02:34:08

Q. And I believe you said -- let me just ask you -- when it comes to the Raiders, it's reasonable to assume that somebody has a schedule -- when somebody has a schedule with information on it, if that schedule's in the possession of the corporation, then they, by default, know all of the information on the schedule; right? 02:34:10 02:34:13 02:34:14 02:34:17 02:34:19 02:34:20 02:34:22 02:34:23 02:34:27

A. I'm sorry, I don't understand your question. 02:34:29 02:34:31

Q. Do you recall providing testimony before where, in the context 02:34:32 02:34:35

of the Raiders having documents, your 02:34:38
testimony was that it was reasonable to 02:34:40
assume that just because they had 02:34:42
possession of the schedule, they knew 02:34:44
all of the information on the schedule? 02:34:46

THE CHAIRPERSON: Did you ever 02:34:51
give -- 02:34:52

MS. VAN WINKLE: I object to 02:34:53
vagueness. 02:34:54

Who is the "they"? 02:34:55

THE CHAIRPERSON: Did you ever 02:34:56
give testimony to that effect? 02:34:57

THE WITNESS: I'm not sure I 02:34:59
understand what she's asking. 02:35:01

THE CHAIRPERSON: So let's 02:35:02
take the prior testimony out of it 02:35:03
and just ask the simple question. 02:35:04
Not whether he testified to it 02:35:07
before, just whatever the question 02:35:08
is, ask it. Then if you want to 02:35:11
impeach the witness' credibility 02:35:14
with a prior inconsistent statement 02:35:15
in the deposition, we can do that. 02:35:18

Q.   Mr. Goolsby, if the Raiders 02:35:22
had the Ventures capital roll forward, 02:35:23

the entire schedule, in their procession, do you believe it's reasonable to assume by default that they knew all of the information contained on that schedule? 02:35:23 02:35:24 02:35:26 02:35:28 02:35:30

A. Well, yes, if the Raiders had that schedule, and by the way they managed the business based on Mr. Villanueva's testimony, they would know what's on those schedules, the Raiders would, in my opinion. 02:35:31 02:35:34 02:35:38 02:35:41 02:35:43 02:35:44

Q. And do you think it's reasonable to assume that if EY had a copy of the NFL capital roll forward schedule in 2014, that it would be reasonable to assume that they knew all of the information contained on that schedule? 02:35:45 02:35:47 02:35:48 02:35:51 02:35:53 02:35:56 02:35:58

A. Well, I can't speak -- first of all, they didn't have it in the work papers that they performed procedures on or had access to it in the work papers that I saw. If they had that information, would they do work on it? I would have to assume they would if 02:35:59 02:36:03 02:36:05 02:36:08 02:36:09 02:36:12 02:36:15

they had it, but they didn't have it. 02:36:17
Q. When you said they didn't 02:36:19
have that document, you're excluding 02:36:23
what we see at JX 90; correct? 02:36:25
A. They didn't -- as the 02:36:28
testimony is shown, they didn't open 02:36:31
this document and review the contents 02:36:33
of it. It wasn't necessary for them 02:36:34
to, based on the testimony. And I have 02:36:36
no issue with that as an expert 02:36:39
reviewing what they did -- 02:36:41
THE CHAIRPERSON: The only 02:36:43
question is did they have that 02:36:44
document. 02:36:45
Did they have that document; 02:36:45
yes or no? 02:36:49
THE WITNESS: Yes. 02:36:49
THE CHAIRPERSON: Thank you. 02:36:49
Let's continue. 02:36:50
Q. Now, you know the Raiders 02:36:50
provided a complete capital roll 02:36:53
forward schedule to EY in multiple 02:36:54
years; right? 02:36:55
THE CHAIRPERSON: That's a yes 02:36:56
or no. Let's continue. Unless 02:36:58

you're asked for an opinion, sir, don't give it and don't explain it, just answer yes or no. If you can't answer yes or no, say that and then the shortest possible answer that directly responds to the question is the answer I want you to give. 02:37:00 02:37:02 02:37:04 02:37:04 02:37:04 02:37:06 02:37:07 02:37:10

THE WITNESS: Yes. 02:37:12

Q. And you know that those schedules were provided at least five times to members of EY's tax team who also worked on the audit team; right? 02:37:12 02:37:13 02:37:17 02:37:21

A. I don't know how many times, but it was provided. 02:37:22 02:37:23

Q. And is it your complaint then that the Raiders provided the schedule to tax specialists who were on the audit team but not to other members of the audit team? 02:37:25 02:37:27 02:37:29 02:37:32 02:37:34

A. That's correct. 02:37:35

Q. And you believe that the Raiders had an obligation to know who on the audit team to provide that document to? 02:37:37 02:37:40 02:37:44 02:37:46

A. Yes, they did have an obligation to provide it to the right member of the audit team. 02:37:46 02:37:51 02:37:53

Q. Now, I believe you said in your testimony earlier today that EY, in exercising professional skepticism, didn't need to use the information contained on schedule three in its audit procedures; right? 02:37:55 02:38:01 02:38:03 02:38:06 02:38:08 02:38:11

A. That's correct. 02:38:12

Q. And you said that they didn't -- the auditors didn't need to tie the information on schedule three out to the receivables balance, right, for Ventures? 02:38:14 02:38:16 02:38:19 02:38:20 02:38:23

A. They didn't need to, that's correct, because they had other alternative procedures. 02:38:23 02:38:26 02:38:28

Q. Do you believe that the Raiders should have been tying out the Ventures schedule three to its receivables accounts? 02:38:29 02:38:29 02:38:31 02:38:34

A. Yes, because they had access to it, and they had schedule two and schedule one as well. 02:38:35 02:38:38 02:38:43

Q. Is your criticism that the Raiders provided the capital roll forward schedule to the audit team, to the tax specialists on the audit team, but didn't tell them how important it was? 02:38:51 02:38:54 02:38:57 02:38:58 02:39:00 02:39:04

A. The Raiders sent an e-mail to the tax team at EY and had information therefore your projections, your information, wording along those lines. That's really the only information that it had in it. For tax purposes. 02:39:04 02:39:07 02:39:14 02:39:17 02:39:19 02:39:21

Q. Is it your opinion that the Raiders had an obligation to identify for the auditors who received this document -- for the people on the audit team who received this document, that it had important information in it? 02:39:23 02:39:24 02:39:29 02:39:32 02:39:35 02:39:39

A. Yes, the Raiders should have told the members of the audit team performing audit procedures send it to them and tell them that it's important, but it didn't go to those members, it went to the tax people. 02:39:41 02:39:48 02:39:50 02:39:52 02:39:54 02:39:58

Q. And is it your opinion that, 02:39:59

when EY received this document, they 02:39:59
had no obligation to review it for 02:39:59
themselves to determine whether it had 02:40:01
important information on it? 02:40:03

A. Not the recipients in the tax 02:40:04
department, they didn't have that 02:40:07
obligation. 02:40:09

Q. And you know that those 02:40:09
recipients are on the audit team; 02:40:13
right? 02:40:15

A. They are specialty experts in 02:40:15
the audit team, not in the exclusion of 02:40:17
audit procedures. 02:40:20

Q. And when EY received schedule 02:40:22
three from the capital roll forward 02:40:25
schedule, you don't believe that those 02:40:27
auditors had any obligation to identify 02:40:29
whether it had important information on 02:40:30
it? 02:40:31

A. They did not have an 02:40:32
obligation because they didn't perform 02:40:33
audit procedures on that and the 02:40:36
information they got was through the 02:40:37
communication from the NFL. 02:40:41

Q. Is it your opinion then this 02:40:42

they could just look at the remittance 02:40:44
number on that document and ignore all 02:40:46
the other information contained on 02:40:48
schedule three? 02:40:50
A. There is no reason for them 02:40:50
to look at the information on schedule 02:40:54
three. It wasn't the focal point of 02:40:55
the document they were testing. 02:40:57
Q. And is it your opinion that 02:40:58
EY's auditors were exercising 02:41:00
professional judgment and skepticism by 02:41:02
looking at only the remittance number 02:41:04
on that document and ignoring all the 02:41:06
other information on that page? 02:41:08
A. Yes, I think that was GAAS in 02:41:09
context of what they understood from 02:41:11
management about how the remittance of 02:41:13
payments worked. 02:41:15
Q. And so you believe that a 02:41:16
GAAS-compliant audit allows an auditor 02:41:18
to look at one number on a page and 02:41:20
ignore all the other numbers on the 02:41:21
page to determine whether that 02:41:24
information presents any 02:41:25
inconsistencies? 02:41:26

A. I believe the auditor should look at the relevant information on the schedules to help -- persuasive evidence to support a balance in the financial statements, which is what they did. 02:41:27 02:41:32 02:41:34 02:41:38 02:41:40 02:41:41

Q. I asked you if, in conducting a GAAS-compliant audit, you could look at one number on a document provided to you and ignore all the other information to see if it presented inconsistencies and I think your answer said they look at other relevant information, so I want to come back to my question. 02:41:42 02:41:52 02:41:55 02:41:58 02:41:59 02:42:02 02:42:05 02:42:07 02:42:09

In conducting a GAAS-compliant audit -- 02:42:09 02:42:12

THE CHAIRPERSON: Counsel, there's a problem with that. You're basically referring to testimony that's given and we're not confirming whether, in fact, the witness agrees with your summary of the testimony. Just ask the question. Let's get an answer 02:42:13 02:42:14 02:42:17 02:42:18 02:42:20 02:42:21 02:42:23 02:42:23

to the first piece just to make 02:42:26
sure we're in agreement there and 02:42:27
then you can go on to your next 02:42:28
question. 02:42:30

Q. In conducting a 02:42:31
GAAS-compliant audit, is the auditor 02:42:33
allowed to look at one number on the 02:42:36
page and ignore all of the other 02:42:38
information on the document that might 02:42:40
present inconsistencies with other 02:42:42
information? 02:42:46

A. It depends on the facts and 02:42:48
circumstances of the situation. In 02:42:49
this case -- 02:42:50

THE CHAIRPERSON: That's it, 02:42:52
stop. It depends on the facts and 02:42:53
circumstances of the situation. 02:42:55
Let's let counsel ask another 02:42:56
question. 02:42:58

Q. Now, when we look at schedule 02:42:59
three -- and we can pull it up on the 02:43:00
attachment to this exhibit -- when you 02:43:02
look at schedule three, is it your 02:43:05
opinion that an auditor, in exercising 02:43:16
sound professional judgment, knowing 02:43:19

that this relates to Ventures, could look at just the season remittance royalty number on this schedule and ignore all of the other information on this page? 02:43:22 02:43:25 02:43:28 02:43:29 02:43:31

A. Yes. In this set of circumstances, that's correct. 02:43:33 02:43:35

Q. And it's your opinion that an auditor, using sound professional judgment, wouldn't need to look at other information on this page to determine whether it presented any inconsistencies with other audit evidence? 02:43:36 02:43:39 02:43:42 02:43:44 02:43:46 02:43:48 02:43:51

A. In this circumstance, yes, they don't need to look at the other. 02:43:51 02:43:52

Q. Let's go to JX 126, 0126. 02:43:56

Actually, we've done that already. We can skip that. 02:44:05 02:44:08

Let's do JX 3217. 02:44:10

Looking back at AU-C Section 230, audit documentation, I'd like to direct you to page five, paragraph .12 where it says, "if the auditor identified information that is 02:44:41 02:44:44 02:44:47 02:44:50 02:44:56

inconsistent with the auditor's final 02:44:57
conclusion regarding a significant 02:45:00
finding or issue, the auditor should 02:45:02
document how the auditor addressed the 02:45:04
inconsistency". 02:45:07
This refers to just 02:45:08
information that's available to the 02:45:11
auditor; correct? 02:45:13
A. Yes. 02:45:14
Q. And is it your opinion that, 02:45:18
when we looked at schedule three -- we 02:45:22
can pull it back up -- but outside of 02:45:24
just the amount reported for the 02:45:27
remittance, is that information that 02:45:28
the auditor should be looking at to see 02:45:30
if it presents inconsistent information 02:45:34
with the auditor's final conclusions? 02:45:36
A. Not under these facts and 02:45:37
circumstances that I assessed. 02:45:40
Q. Let's look at JX 2380. 02:45:41
Now on page seven, section 02:45:54
.32, revision of risk assessment, do 02:46:05
you see where it says, "the auditor's 02:46:09
assessment of the risks of material 02:46:11
misstatement at the assertion level may 02:46:15

change during the course of the audit 02:46:18
as additional audit evidence is 02:46:19
obtained. In circumstances in which 02:46:21
the auditor obtains audit evidence from 02:46:24
performing further audit procedures or 02:46:27
if new information is obtained, either 02:46:28
of which is inconsistent with the audit 02:46:31
evidence on which the auditor 02:46:34
originally based the assessment, the 02:46:36
auditor should revise the assessment 02:46:37
and modify the further planned audit 02:46:40
procedures accordingly". 02:46:43
In the context of this GAAS 02:46:45
standard, is it your opinion that, when 02:46:47
EY is further assessing its audit 02:46:50
procedures and risk assessments, it 02:46:52
wouldn't need to look at the new 02:46:53
information that's obtained on schedule 02:46:54
three of the capital roll forward 02:46:57
schedule? 02:46:59
A. Under these facts and 02:46:59
circumstances, there's no need for them 02:47:01
to do anything on that schedule. 02:47:03
Q. We can go to JX 0421, page 02:47:06
fourteen. 02:47:30

Do you see the paragraph A22?
A. Yes.
Q. This section of GAAS states, "professional skepticism includes being alert to the following, for example: Audit evidence that contradicts other audit evidence obtained", and the second bullet, "information that bring into question the reliability of documents and responses to inquiries being used as audit evidence".
Is it your opinion that the information contained on schedule three outside of the remittance, is it your opinion that EY didn't have to review that information to see where it brought into question the reliability of other audit evidence?
A. Again, under these facts and circumstances, they did not.
Q. And so despite being presented with information from NFL Ventures on the capital roll forward schedule, your opinion is that the auditors didn't need to consider that

information because they're only using 02:48:39
the document for the remittance? 02:48:43
A. It's in the context of the 02:48:45
entire audit plan and what they 02:48:46
understood about Ventures. They didn't 02:48:49
need to look at the other information 02:48:50
because the remittance was the key 02:48:53
element based on their understanding of 02:48:53
the facts and circumstances that they 02:48:56
were auditing as they were informed by 02:48:57
management. 02:48:58
Q. Let's change topics briefly 02:48:59
to the cash flow projections, because I 02:49:05
believe you also said those documents 02:49:08
weren't provided to the auditors. 02:49:09
It's your belief that the 02:49:12
Raiders never provided EY with the NFL 02:49:14
cash -- projected cash flow schedule? 02:49:18
A. They were received, they were 02:49:21
sent, but not in the context of the 02:49:24
planning of the engagement. 02:49:29
Q. I'm sorry, what was your 02:49:30
answer? 02:49:32
A. Yes, they were -- they did 02:49:33
receive them but not in the context of 02:49:35

the planning of the engagement to 02:49:37
understand the business. 02:49:38
Q. Sir, is the audit -- is an 02:49:39
audit an iterative process? 02:49:42
A. Yes. 02:49:44
Q. And so when an auditor 02:49:44
obtains documents after it's planned 02:49:49
its audit, should it go back and 02:49:52
reconsider its procedures? 02:49:54
A. Well, it depends on what 02:49:55
documents, it depends on what context 02:49:57
they received, it depends on how they 02:49:59
received, it depends. 02:50:01
Q. But the audit procedures 02:50:02
aren't just planned in the planning 02:50:04
phase and they're forever set in stone; 02:50:06
that's true, right? 02:50:09
A. That's true, they're not, 02:50:10
they're an iterative continuous 02:50:12
process, that's right. 02:50:14
Q. And the auditor should be 02:50:14
reassessing its procedures throughout 02:50:16
the audit based on information it 02:50:18
obtains; is that correct? 02:50:20
A. That's correct. 02:50:21

Q. And so if the auditor didn't receive the cash flow schedules in connection with the planning phase, that doesn't relieve the auditor of an obligation to look at the document later to determine whether it should impact its procedures; right? 02:50:22 02:50:24 02:50:26 02:50:28 02:50:31 02:50:33 02:50:35

A. Well, again, it depends on the context in which those documents may be received. We'd have to look at each situation. 02:50:36 02:50:38 02:50:40 02:50:43

Q. But receiving the document in the planning phase isn't the determinative point, the point is if the auditor receives information, there is an iterative process where they're constantly reassessing risk in the procedures and how they're performing the audit; right? 02:50:44 02:50:45 02:50:48 02:50:50 02:50:52 02:50:55 02:50:58 02:51:00

A. You've got to look at the context in which this document's received, any document. 02:51:00 02:51:02 02:51:04

Q. And the cash flow schedules received from the NFL, those relate to future cash flows; right? 02:51:15 02:51:18 02:51:18

A. Yes, it was a planning tool 02:51:20
that Mr. Villanueva, as he testified 02:51:23
to, was using and the cash flow for the 02:51:25
business, yes. 02:51:28
Q. And the financial statements 02:51:28
being audited, those contain assertions 02:51:30
about many things: Cash and accounts 02:51:32
receivable but not future cash flows; 02:51:37
right? 02:51:43
A. Well, the cash flow schedules 02:51:43
showed seasons and remittances of cash 02:51:44
flow by season for a couple of seasons, 02:51:47
I believe. 02:51:49
Q. I understand. 02:51:50
But did the financial 02:51:50
statements contain assertions in them 02:51:51
about future cash flows? 02:51:54
A. No, not directly. 02:51:56
Q. And what's being audited are 02:52:00
the assertions in the financial 02:52:01
statement; correct? 02:52:03
A. That's correct: But obviously 02:52:04
information -- 02:52:09
THE CHAIRPERSON: Stop at 02:52:09
"that's correct". Please. 02:52:10

THE WITNESS: Sorry. 02:52:12
Q. So let's look at JX 0211. 02:52:12
Do you recognize this is the journal entry that was used to record the first January accrual in December, 2006? 02:52:27 02:53:04 02:53:05 02:53:07
A. Yes, I believe that's what this is. 02:53:08 02:53:16
Q. And do you recall Mr. Villanueva testified that the auditors would have reviewed this in connection with the 2006 audit? 02:53:16 02:53:19 02:53:20 02:53:21
A. I think I remember him testifying that. 02:53:22 02:53:27
Q. If you can go to page ending with the Bates number 6738. 02:53:28 02:53:31
Do you recall that one of the items attached as backup support for the first January accrual journal entry was the 2006 season projected cash flows? 02:53:35 02:53:39 02:53:41 02:53:45 02:53:49
A. I don't recall. We don't have the work papers for this year. They got destroyed and this is out of the Raiders records, not EY's records. 02:53:49 02:53:51 02:53:53 02:53:57

Q. I just asked if the projected cash flows was attached as support to the journal entry. 02:53:59 02:54:02 02:54:04

A. I'd have to study it more. But it was a journal voucher and he's got it attached to it. 02:54:05 02:54:09 02:54:13

Q. I know that you don't have the work papers, but do you agree that, in connection with the 2006 audit, the auditor should have reviewing this journal entry? 02:54:14 02:54:16 02:54:18 02:54:20 02:54:23

A. I can't address what the auditors there did do or should do without the work papers to see what they did and the context in which they did it. 02:54:23 02:54:25 02:54:27 02:54:27 02:54:29

Q. But your opinion today is that the NFL projected cash flow schedule has critical information that would have been helpful in connection with EY's audit work; right? 02:54:30 02:54:32 02:54:34 02:54:37 02:54:38

A. Yes. 02:54:41

Q. So you believe this is something that EY would have wanted to collect and review in connection with 02:54:41 02:54:44 02:54:45

its audits; right? 02:54:47
A. Yes. 02:54:48
Q. Are you aware of any evidence that EY specifically asked the Raiders to provide a copy of this schedule on those information requests it sends to the Raiders each year? 02:54:48 02:54:52 02:54:54 02:54:56 02:54:59
A. No. 02:55:00
Q. Do you know after 2006 how many times the Raiders provided EY with a copy of the NFL season projected cash flows? 02:55:00 02:55:06 02:55:09 02:55:12
A. I don't know how many times. 02:55:12
Q. Would it surprise you to learn that they provided it at least five times in five different years? 02:55:24 02:55:25 02:55:27
A. I don't know the number. 02:55:29
MS. BROWN: We can take that down. 02:55:40 02:55:42
Q. Now, I believe you said earlier that your opinion is that EY gained a sufficient understanding of NFL Ventures revenue recognition in accordance with GAAS; is that right? 02:55:42 02:55:45 02:55:49 02:55:50 02:55:54
A. Yes. 02:55:55

Q. So I want to focus on the 02:55:55
timing of cash payments for Ventures 02:55:58
and what they related to. 02:56:01
And putting aside the January 02:56:03
accrual, the entire basis of EY's 02:56:04
understanding for the remaining cash 02:56:08
payments and what they related to came 02:56:10
from Raiders management; right? 02:56:12
A. That's correct. 02:56:14
Q. And you're aware that GAAS 02:56:15
provides that management's 02:56:19
representations are not sufficient 02:56:20
appropriate audit evidence standing on 02:56:23
their own; right? 02:56:25
A. Depending upon the 02:56:26
representation, that's correct. 02:56:28
Q. And in conducting its audits, 02:56:32
EY cannot rely solely on management's 02:56:36
representation submissions right? 02:56:40
A. Sorry, ask that again? 02:56:40
Q. Sure. 02:56:43
In conducting its audits, EY 02:56:43
cannot rely solely on any management 02:56:45
representations; right? 02:56:49
A. As I testified to earlier, 02:56:50

yes, there's some they can rely on solely upon those representations. 02:56:51 02:56:55

Q. Can we pull up the deposition transcript at page one hundred eighty-five, lines eleven through thirteen. 02:57:07 02:57:11 02:57:13 02:57:15

Do you recall, Mr. Goolsby, in your deposition I asked you: "Do you agree that an auditor cannot rely solely on management representations" and your answer was: "I agree with that"? 02:57:16 02:57:18 02:57:20 02:57:22 02:57:24 02:57:26

A. Yes. And in the context -- 02:57:26

THE CHAIRPERSON: That's it. 02:57:29

Were you asked that question and did you give that answer and that's the proper way you ask it of a witness. We have a yes. Let's continue. 02:57:31 02:57:33 02:57:34 02:57:37 02:57:39

Q. Now, aside from the January accruals, EY knew that the Raiders had no visibility as to what the Ventures payments related to; right? 02:57:40 02:57:41 02:57:43 02:57:45

A. Right, the engagement -- right, yes. 02:57:49 02:57:54

Q. Could we turn your binder, we have a compilation exhibit prepared, it's JX Compilation 4. I'll describe what this is, but before I get there, was it your belief that EY's auditors were relying on an assertion from Mr. Villanueva that the NFL controlled everything and management had no visibility and didn't know what season the payments related to? 02:58:00 02:58:03 02:58:05 02:58:29 02:58:32 02:58:36 02:58:39 02:58:44 02:58:46 02:58:48
A. Yes. 02:58:51
Q. So JX Compilation 4 I'll represent to you is a compilation exhibit we put together that has the Ventures receivable work paper for each year from March 31, 2015 through March 31, 2019. We compiled them all in one spot just to make it quicker to flip through. 02:58:52 02:58:56 02:58:58 02:59:02 02:59:05 02:59:08 02:59:17 02:59:22
Now, you understand that the same EY auditors who worked on the financial statement audits also worked on the conforming statement audits; right? 02:59:22 02:59:23 02:59:27 02:59:28 02:59:31
A. Yes. 02:59:31

Q. And you understood they were performing both audits around the same time; right? 02:59:32 02:59:33 02:59:36
A. Yes. 02:59:37
Q. And you recall that EY's audit team understood that cash was received from Ventures after the remittance was booked; right? 02:59:37 02:59:38 02:59:41 02:59:42
A. Yes. 02:59:44
Q. And the remittance was booked as of March 31 each year; right? 02:59:45 02:59:47
A. Yes. 02:59:49
Q. And what that means is that, as of March 31 each year, we should see a receivable balance that's at least the size of the remittance; correct? 02:59:49 02:59:51 02:59:54 02:59:59
A. Well, you'd have to go look at the books and records of that date because of other activity. 03:00:02 03:00:06 03:00:07
Q. If on March 31 you were booking as of that date a remittance as a receivable that's ninety million, that on March 31 you would expect the receivable balance to be at least ninety million; right? 03:00:09 03:00:12 03:00:15 03:00:17 03:00:21 03:00:23

A. Maybe. You could have credits in there that offset this to a different number. 03:00:24 03:00:26 03:00:26
Q. What's the reason that you'd have credits in a receivable account? 03:00:27 03:00:29
A. Well, you're looking at -- this is a conforming statement balance on March 31 which is not the focus of my work. And that receivable balance would have had activity in it from a financial statement audit that was rolling with activity. So to say that answer yes, I'd have to look at the activity to confirm, yes, that would be the answer. 03:00:31 03:00:33 03:00:35 03:00:38 03:00:41 03:00:43 03:00:46 03:00:50 03:00:52 03:00:54
Q. So you'd agree with me that accounts receivable are generally a debit account; right? 03:00:55 03:00:58 03:01:00
A. Typically, yes. 03:01:01
Q. And they're usually reflected on a balance sheet as being a debit as an amount being stated as being owed to the company; correct? 03:01:01 03:01:05 03:01:06 03:01:06
A. Correct. 03:01:09
Q. So let's start with March 31, 03:01:10

2015. If you go flip to the second page, the first page contains the notes. The second page has the work papers. 03:01:13 03:01:18 03:01:20 03:01:22

You can see on this work paper that the remittance amount being booked as of March 31, 2015 is 74.1 million; right? 03:01:25 03:01:27 03:01:29 03:01:35

A. Yes. 03:01:36

Q. And the ending receivable balance on the same day is 21.1 million; right? 03:01:39 03:01:42 03:01:45

A. Yes. 03:01:46

Q. Would you agree with me that that would make no logical sense if the remittance is being booked on the same day as the ending balance of the account receivable? 03:01:46 03:01:48 03:01:53 03:01:55 03:01:57

A. Again, I can't answer your question. I didn't do work on the conforming statements in an analytical manner like this. It's a hypothetical that I didn't deal with. 03:01:59 03:02:03 03:02:05 03:02:08 03:02:11

Q. When EY's auditors are faced with an inconsistency on the work 03:02:14 03:02:19

papers in terms of what payments and what seasons they may relate to, would they have an obligation under GAAS to resolve that inconsistency? 03:02:22 03:02:24 03:02:28 03:02:30
A. If an inconsistency were revealed based on facts and circumstances, they should look at inconsistencies. But I submit they did what they needed to do under GAAS. 03:02:32 03:02:39 03:02:42 03:02:44 03:02:46
THE CHAIRPERSON: That we don't need. 03:02:49 03:02:50
"But I submit" is stricken. 03:02:52
Continue. 03:02:54
Q. And so to the extent that the EY's auditors understood that Mr. Villanueva had no visibility into cash distributions and had no control over cash distributions, would the EY auditors -- should the EY auditors have gone to the NFL to resolve any inconsistency regarding the cash distributions from Ventures? 03:02:55 03:02:58 03:03:00 03:03:04 03:03:06 03:03:10 03:03:14 03:03:16 03:03:21
A. In my opinion, no. 03:03:22
Q. Were you aware that NFL controlled the cash distributions? 03:03:23 03:03:24

A. In review of the work papers, yes, through work papers my understanding is the audit team, yes. 03:03:25 03:03:29 03:03:30
Q. And the auditors knew that the Raiders did not control those cash distributions; right? 03:03:32 03:03:34 03:03:36
A. Correct. 03:03:36
Q. And the auditors understood that Raiders management had no visibility into the cash distributions; right? 03:03:37 03:03:40 03:03:40 03:03:41
A. That was their understanding, yes. 03:03:41 03:03:42
Q. And you're aware that, in connection with the 2020 audit, when EY auditors wanted to gain an understanding of Ventures cash distributions, they went to the NFL; right? 03:03:43 03:03:45 03:03:48 03:03:49 03:03:51 03:03:53
A. I believe that's correct. 03:03:53
Q. Now, prior to the 2020 audit, EY never went to the NFL to ask for copies of Ventures contracts or agreement; right? 03:03:58 03:04:01 03:04:04 03:04:05
A. That's correct. 03:04:06

Q. And prior to the 2020 audit, EY had never asked the NFL for additional information about payment terms or revenues from Ventures; right? 03:04:06 03:04:09 03:04:11 03:04:14
A. Correct. 03:04:15
Q. Now, I want to turn now to talk a little bit about some of the audit procedures that you mentioned this morning that EY did perform on the receivable account. 03:04:17 03:04:28 03:04:30 03:04:31 03:04:35
Is it your testimony that the EY auditors, knowing that Raiders management did not have an understanding or visibility into the Ventures payments that, they did not have an obligation to go to the NFL and try to get that understanding? 03:04:49 03:04:52 03:04:54 03:04:55 03:04:58 03:04:59 03:05:02
A. No obligation. 03:05:03
Q. So turning to the audit procedures that EY actually used, when -- I'm talking about the financial statement audit now, just to be clear. 03:05:04 03:05:12 03:05:21 03:05:23
For the financial statement audit, when looking at the receivable account for Ventures, EY's procedure 03:05:25 03:05:28 03:05:30

was to look at cash payments made 03:05:33
during the year to see that they were 03:05:35
being applied to that account; right? 03:05:37
A. Correct. 03:05:39
Q. And cash payments received 03:05:39
during an audit year cannot provide 03:05:43
audit evidence that the end-of-year 03:05:46
receivable balance exists; right? 03:05:47
A. Through a process of 03:05:49
understanding, it can, yes, and an 03:05:52
indication that it's an effective 03:05:56
process of testing it, yes. 03:05:58
Q. I'd like to pull up your 03:06:01
deposition transcript at page two 03:06:03
hundred seventy-six, line twenty-five. 03:06:07
Do you see where I asked -- 03:06:14
it looks like it's two hundred 03:06:26
seventy-seven, line five. 03:06:28
Do you see where I asked the 03:06:31
question: "And the cash collections you 03:06:33
receive during an audit year cannot 03:06:35
provide evidence that an end-of-year 03:06:37
account receivable balance exists, 03:06:39
correct, because they've been paid off. 03:06:43
Answer: "That's -- that's 03:06:46

correct". 03:06:48

MS. VAN WINKLE: I'd like the whole answer read in the transcript. 03:06:51 03:06:53 03:06:53

Q. And then you went on to provide -- 03:06:53 03:06:55

THE CHAIRPERSON: You can do that on your own time. 03:06:55 03:06:56

THE WITNESS: There's more to the story. You're omitting the later testimony. 03:06:58 03:06:59 03:07:02

THE CHAIRPERSON: Well, let me look at it. Give me one second. Let's read the entire document. The panel can read the entire thing. 03:07:03 03:07:04 03:07:13 03:07:13 03:07:15

We've read the entire thing. 03:07:27

Q. And EY's audit procedure involved examining the increases and decreases to the receivable account during the year; right? 03:07:31 03:07:34 03:07:36 03:07:38

A. Yes. 03:07:39

Q. And EY did not perform any audit procedures that confirmed one hundred percent of the receivable 03:07:39 03:07:42 03:07:44

balance as it was stated at the end of 03:07:46
the year; right? 03:07:48
A. To confirm, I'm sorry? 03:07:49
Q. Yes. 03:07:52
A. No. 03:07:53
Q. Now, if we look at EY's audit 03:07:54
work papers, should those work papers 03:07:58
document all of the procedures that 03:08:07
were performed to verify the accounts 03:08:08
receivable? 03:08:11
A. Well, it depends. Generally, 03:08:12
yes. 03:08:14
Q. And when you look at EY's 03:08:15
audit work papers, you will not find 03:08:20
any procedure listed by EY to say that 03:08:21
it looks at payments received after 03:08:27
December 31 to see if those are 03:08:29
sufficient to pay down the end-of-year 03:08:34
balance; right? 03:08:36
A. That's correct. 03:08:38
Q. And we can agree that EY 03:08:38
needs to complete its audit procedures 03:08:40
before it signs its audit opinion; 03:08:43
right? 03:08:46
A. Correct. 03:08:47

Q. And if one of the audit procedures EY is relying on to confirm the end-of-year balance exists is to look at payments made after December 31, you would agree with me then that EY couldn't issue its audit opinion until enough cash came in the door to pay off the end-of-year balance; right? 03:08:47 03:08:48 03:08:48 03:08:51 03:08:56 03:08:58 03:09:01 03:09:04 03:09:06

A. I disagree. 03:09:07

Q. I think you still have the compilation exhibit still in front of you. We can look at 2014. 03:09:09 03:09:11 03:09:14

I'm sorry, that's conforming. I wanted to do financial statement. 03:09:17 03:09:20

Do you have JX Comp 1 in your binder? 03:09:22 03:09:35

A. Yes. 03:09:37

Q. You do. 03:09:38

Going past the notes, if we can look at the page with the work paper on it, do you see, Mr. Goolsby, that the beginning balance listed for the receivable is 66.7 million? 03:09:39 03:09:53 03:09:55 03:10:00 03:10:02

A. Yes. 03:10:04

Q. And that beginning balance 03:10:04
would have been the ending balance on 03:10:07
the prior year financial statements; 03:10:09
correct? 03:10:11
A. Yes. 03:10:11
Q. And so if EY wanted to 03:10:11
confirm that that balance existed and 03:10:14
was validly stated when conducting its 03:10:17
prior year audit, if it was relying on 03:10:21
cash received, it would need to 03:10:25
determine that at least 66.7 million in 03:10:26
cash had been received before issuing 03:10:29
its audit opinion; right? 03:10:32
A. You mean for the prior year's 03:10:33
audit opinion? 03:10:47
Q. Correct. 03:10:48
A. Based on the process they're 03:10:48
following, no. 03:10:51
Q. Let me ask you this: Is it 03:10:51
your opinion that one of the procedures 03:10:53
EY was using to confirm the Ventures 03:10:56
receivable account was to look at 03:10:59
payments made after the end of the year 03:11:02
to see if they were sufficient to pay 03:11:04
the balance down? 03:11:07

A. That was one of the validation approaches, yes, a hundred percent. 03:11:09 03:11:11 03:11:13

Q. That's a hundred percent one of their procedures. 03:11:13 03:11:15

Then if they're validating -- to be clear, I'm not talking about the January accrual. 03:11:16 03:11:20 03:11:22

Let me re-ask the question to make this clear. 03:11:23 03:11:25

MS. BROWN: Let me start over. 03:11:27

Q. We know that, with respect to the January accrual, EY uses a procedure called the vouching of subsequent cash receipts; right? 03:11:30 03:11:31 03:11:33 03:11:37

A. Right. 03:11:38

Q. And so for the January accrual, EY looks to see that cash payments are made in January as a way to confirm the receivable balance at the end of the year; right? 03:11:39 03:11:40 03:11:43 03:11:45 03:11:47

A. Yes. 03:11:48

Q. So putting aside the January accrual, looking at the remainder of the receivable balance at the end of 03:11:48 03:11:52 03:11:55

the year, is it your opinion that EY, one of their audit procedures, was to look at cash payments received after the financial statement date to confirm that that balance existed? 03:11:57 03:12:01 03:12:03 03:12:06 03:12:08

A. Not in its totality, no. The. 03:12:09 03:12:12

Q. And is it your opinion that EY used a procedure of looking at cash payments received after the year to confirm part of the end-of-year balance? 03:12:14 03:12:20 03:12:24 03:12:26 03:12:29

A. Through subsequent review, they look at cash receipts that come in. 03:12:29 03:12:32 03:12:34

Q. Is that subsequent review happening before the audit opinion is issued? 03:12:34 03:12:37 03:12:38

A. Yes. 03:12:38

Q. And so what part of the balance are they confirming through that vouching of subsequent cash receipts? 03:12:39 03:12:41 03:12:43 03:12:45

A. It shows the cash is still being received but the process of 03:12:46 03:12:50

understanding the collectability of it 03:12:52
is based on a historical perspective in 03:12:55
collecting more than the beginning 03:12:59
balance. That was the comfort that 03:13:00
they received from doing that 03:13:02
procedure. 03:13:04

Q. Mr. Goolsby, even looking at 03:13:04
this schedule, you can see that the 03:13:06
beginning balance isn't paid off until 03:13:07
we get into October. I'll represent to 03:13:11
you that, if you look at the schedule, 03:13:14
by September, only 66.4 million has 03:13:14
been paid. 03:13:18

THE CHAIRPERSON: Is that the 03:13:24
way you understand this document or 03:13:25
do you have a different 03:13:27
understanding? 03:13:27

THE WITNESS: No, she's 03:13:28
mischaracterizing it. 03:13:29

THE CHAIRPERSON: The answer 03:13:31
is no, he doesn't look at it that 03:13:31
way. Let's give him another 03:13:37
question. 03:13:39

Q. And you are aware that the 03:13:50
audit report and the financial 03:13:52

statements for this were finalized 03:13:54
before October; correct? 03:13:56
    A.   Yes, of the following year. 03:13:57
Correct. 03:14:03
    Q.   And that the audit report for 03:14:03
the December 31, 2014 financial 03:14:06
statements was issued before sufficient 03:14:09
cash payments were received to pay down 03:14:12
the ending balance; correct? 03:14:15
    A.   Correct. 03:14:19
    Q.   So when you engage in an 03:14:33
audit procedure that looks at cash 03:14:35
payments received during the year, in 03:14:38
fact, what you're doing is you're 03:14:40
testing for collectability during the 03:14:42
year, you're not testing the 03:14:44
end-of-year balance; right? 03:14:45
    A.   Right, you're testing the 03:14:47
collectability of the beginning 03:14:49
balance, activity to show that it's 03:14:51
paid down. 03:14:53
    Q.   And you have a compilation 03:14:54
exhibit in front of you that has the 03:14:56
receivable work papers. You can look 03:14:58
at any part of those you want. 03:15:00

My question is to the extent 03:15:02
that EY is looking at cash payments 03:15:03
received for this audit, December 31, 03:15:06
2014, if EY's looking at cash payments 03:15:07
confirm the end-of-year balance of the 03:15:15
59.1 million, where do we see those 03:15:19
procedures in this work paper? 03:15:21

A. Well, you'll see the 03:15:24
historical perspective of payments and 03:15:26
the scheme of payments they were 03:15:29
getting exceeding the beginning balance 03:15:30
which gave a history of collections 03:15:32
greater than the balance and therefore 03:15:34
they knew, because the NFL was 03:15:37
involved, that these payments would 03:15:39
continue, they would make the ending 03:15:42
balance ultimately collectible. 03:15:44

Q. Is it your opinion that a 03:15:45
historical collection of payments means 03:15:47
that receivable balance on financial 03:15:49
statement's appropriately stated and 03:15:52
appropriately audited under a GAAS 03:15:54
audit? 03:15:55

A. Based on the way they did 03:15:56
their audit work, that's correct. 03:15:58

Q. So if you just look and you see that there's been historical payments, the auditor has satisfied its GAAS standards to say that the ending balance is this and it's properly stated? 03:16:00 03:16:00 03:16:01 03:16:01 03:16:05 03:16:06

A. No, it's assessing the activity in the receivable balance that you're assessing to indicate whether a future balance is validly stated and collectible. 03:16:06 03:16:08 03:16:10 03:16:11 03:16:14

Q. But when we look at the 2014 work papers, we don't see any procedures performed by EY where they're looking at cash received after the end of the year to confirm that that end-of-year balance exists and it's properly valued and stated other than for the January accrual; right? 03:16:14 03:16:17 03:16:19 03:16:21 03:16:23 03:16:25 03:16:28 03:16:28

A. That's correct. And what they saw coming in through subsequent review work before financials were issued, correct. 03:16:30 03:16:31 03:16:34 03:16:37

Q. And in fact, when EY's auditing the financial statements, what 03:16:38 03:16:42

they're auditing is the assertion on the financial statements that the ending balance exists and is properly stated because that's the assertion that's contained on the financial statements, the ending balance; right? 03:16:43 03:16:46 03:16:47 03:16:50 03:16:52 03:16:54

A. Correct. 03:16:56

Q. And here, when we look at the procedure being applied, it's only testing collectability during the year, it's not testing that the ending balance exists; right? 03:16:56 03:17:00 03:17:02 03:17:04 03:17:07

A. You're testing and seeing the history of a track record that you're doing with only one entity, the NFL, payments have greatly exceeding the beginning balance each year which gives an indication of the business that it's going to be a validly collected amount because there's only one entity, the NFL. 03:17:08 03:17:12 03:17:13 03:17:16 03:17:19 03:17:19 03:17:23 03:17:26 03:17:29

Q. I understand that you're testing to see if there's a history of payments. 03:17:30 03:17:31 03:17:34

My question is by testing 03:17:36

that collectability, that's not testing 03:17:38
that the ending balance exists; right? 03:17:40
A. In my opinion, it was 03:17:42
appropriately done and I concur with 03:17:47
what was done. 03:17:50
MS. BROWN: Could we have an 03:17:53
instruction to answer that 03:17:54
question? I know his opinion is 03:17:56
the audits were appropriately done, 03:17:57
but -- 03:17:58
THE CHAIRPERSON: Give me a 03:17:59
chance. I'm fast but I'm not that 03:18:00
fast. 03:18:03
No, I'm going to let the 03:18:21
answer stand. It's responsive. 03:18:23
Q. Isn't it a fact that the only 03:18:25
thing that is being tested here on this 03:18:27
worksheet is the collectability of the 03:18:29
balances we see throughout the year? 03:18:35
A. No, it's more than 03:18:39
collectability. 03:18:43
Q. This procedure that EY's 03:18:45
using of looking at cash payments 03:18:48
received during the year is not doing 03:18:50
anything to test the amount that's on 03:18:52

the financial statement and asserted to 03:18:54
be owed to the Raiders of $59.1 03:18:56
million; right? 03:18:59
A. That shows a 2013 received 03:19:01
from Ventures of sixty-three million 03:19:02
that's being recorded in the receivable 03:19:07
balance as well as the payments. 03:19:08
Q. Mr. Goolsby, looking to see 03:19:12
that they're in the remittance books 03:19:14
and looking to see that payments are 03:19:16
booked during the year does nothing to 03:19:17
test that the ending balance of $59.1 03:19:19
million exists and is properly stated; 03:19:23
right? 03:19:24
A. I disagree. 03:19:25
Q. But I will just -- I want to 03:19:28
be clear. 03:19:59
We do agree at least that the 03:19:59
assertion that EY is testing and 03:20:01
offering an audit opinion on to state 03:20:04
that they have a high -- that they have 03:20:06
a reasonable assurance that is not 03:20:11
materially misstated is the ending 03:20:14
balance. 03:20:16
We can agree that's the 03:20:17

assertion that EY is testing and offering an opinion on is the $59.1 million receivable; correct? 03:20:18 03:20:20 03:20:24

A. Yes. 03:20:25

Q. What procedure did EY run to test the assertion in the financial statements that the $59.1 million is correct and is not materially misstated whether due to fraud or error? 03:20:32 03:20:35 03:20:38 03:20:43 03:20:45

A. Well, they -- as we looked at earlier, they tested the activity and the roll forward. Roll forward auditing is acceptable in many accounts and in many industries. So they tested the roll forward of that balance. They tested the cash collections, they tested the increase in activity of the remittance, they tested the accrual and that's appropriate testing to test the measurement of the amount that's on the financial statements. 03:20:47 03:20:51 03:20:53 03:20:55 03:20:57 03:21:00 03:21:02 03:21:04 03:21:04 03:21:10 03:21:12 03:21:13

Q. And how does what you just described give the auditor a high degree of assurance that the $59.1 million exists and will be paid in the 03:21:14 03:21:17 03:21:19 03:21:22

future and is properly valued? 03:21:24
A. Well, they're only doing 03:21:27
business with one parties and that's 03:21:29
the NFL and the NFL has remittances and 03:21:30
they've got payments from the NFL. 03:21:34
It's not like they've got fifty or a 03:21:34
hundred customers. They're dealing 03:21:35
with one party, the NFL, and that was 03:21:37
the understanding in which they did all 03:21:39
this work to validate the amount. 03:21:41
Q. How does what you just 03:21:46
described for us confirm for the 03:21:49
auditor that that 59.1 million is the 03:21:51
right amount that the NFL owes and that 03:21:54
the NFL was going to pay? 03:21:57
A. Because they did -- again, 03:21:58
based on the information they 03:22:01
understood of how it worked at the NFL, 03:22:02
from Raiders management, that 03:22:06
understanding and then reflecting the 03:22:08
activity through that roll forward is 03:22:11
an appropriate audit methodology to 03:22:13
validate a balance at the end of the 03:22:17
year. 03:22:19
Q. Now, you stated -- 03:22:19

MS. BROWN: Strike that. 03:22:22
THE CHAIRPERSON: One of the panel members has a question. 03:22:24 03:22:27
ARBITRATOR BICKERMAN: I want to make sure I understand what Mr. Goolsby is saying. 03:22:29 03:22:30 03:22:32
I think what he's testifying to -- and please correct me if I'm wrong -- is the way the auditors tested is because you were dealing with one entity that was paying year after year and you saw that they have more revenue coming in than that ending balance, that that was the test that was being performed; is that right? 03:22:32 03:22:35 03:22:38 03:22:40 03:22:41 03:22:44 03:22:46 03:22:49 03:22:51 03:22:52
THE WITNESS: Just a bit of explanation, if I may. 03:22:53 03:22:55
So the Raiders had told the EY audit team that they had no visibility into the seasons' remittances, they didn't have any visibility into what payments were being applied to what seasons, so the receivable balance became what 03:22:57 03:22:59 03:23:01 03:23:04 03:23:08 03:23:10 03:23:10

I would call a fungible receivable; 03:23:12
you don't know what's in it. So 03:23:15
what the audit team did is say 03:23:17
okay, because of our judgment and 03:23:18
scepticism, we're going to audit 03:23:23
the entire activity in that account 03:23:24
to the ending balance for the year, 03:23:24
and that's what they did. And by 03:23:26
virtue of doing that and then 03:23:28
seeing that the cash collected was 03:23:30
greatly in excess of the beginning 03:23:33
balance and knowing they're only 03:23:34
dealing with the NFL, one party, 03:23:35
their judgment was that that's an 03:23:36
appropriate manner of auditing for 03:23:40
the ending balance, and I agree 03:23:41
with that. 03:23:43
ARBITRATOR BICKERMAN: Just so 03:23:43
the parties know, I'm not trying to 03:23:45
communicate any view that I have, 03:23:47
I'm just trying to clarify what I 03:23:49
think Mr. Goolsby is testifying so 03:23:51
that we can move on. 03:23:53
THE WITNESS: You're exactly 03:23:55
right. 03:23:58

Q. So Mr. Goolsby, if I understand you correctly, what you're saying is there was no way for EY as the auditor to understand whether or not the 59.1 million was the correctly stated amount as of that date? 03:24:01 03:24:03 03:24:04 03:24:07 03:24:10 03:24:15

A. Well, their audit procedures were appropriate circumstances to validate that balance. They couldn't confirm the year-end balance. The NFL, according to management, wouldn't confirm it. 03:24:16 03:24:19 03:24:21 03:24:24 03:24:27 03:24:28

Q. And am I right that EY never went to the NFL to confirm that the January accrual was a separate stream of revenue from the remittance? 03:24:34 03:24:37 03:24:39 03:24:42

A. They did not. 03:24:45

Q. And if EY did believe that the January accrual was a separate revenue stream from the remittance, then it should have also been a separate revenue stream on the conforming statements, too; right? 03:24:46 03:24:48 03:24:51 03:24:53 03:24:54 03:24:54

A. I didn't focus on the conforming statements. The focus of my 03:24:56 03:24:59

work was the financials. 03:25:03

Q. I know you've looked at both sets to a certain degree, knowing what you know about the conforming statements, it would make no sense that you would have a separate revenue stream from the NFL on the financial statements and not report it on the conforming statements; right? 03:25:06 03:25:08 03:25:11 03:25:12 03:25:12 03:25:15 03:25:15 03:25:17

A. I can't addressing the conforming statements. It's not a focus of my opinion. 03:25:19 03:25:20 03:25:20

MS. BROWN: I have no more questions. 03:25:39 03:25:40

MS. VAN WINKLE: May I have five minutes to confer? 03:25:41 03:25:42

THE CHAIRPERSON: Yes. 03:25:46

(Whereupon a break was taken) 03:25:47

THE CHAIRPERSON: Ms. Van Winkle, any questions? 03:35:49 03:35:51

MS. VAN WINKLE: No questions. 03:35:52

THE CHAIRPERSON: Ms. Brown? 03:35:53

MS. BROWN: Nothing further. 03:35:55

THE CHAIRPERSON: We're done. 03:35:57

Sir, thank you very much. 03:35:59

Safe home. I know you're extremely disappointed that your examination will not continue, but have a great day. Be well. 03:35:59 03:35:59 03:36:02 03:36:03

So anything else for today? Anyone, anyone, anyone? Any issues that you'd like to raise? 03:36:05 03:36:07 03:36:09

MR. FARINA: Do we think we'll be able to finish testimony? 03:36:13 03:36:15

MR. REED: Yes. We had intended to call Andy Mintzer on Friday, but as the case has proceeded, we don't see a need to do it. So we should be able to finish tomorrow with two damages witnesses. 03:36:17 03:36:19 03:36:22 03:36:22 03:36:22 03:36:24 03:36:24

THE CHAIRPERSON: You're not going to bring him at all or you're going to bring him in tomorrow? 03:36:24 03:36:25 03:36:26

MR. REED: We're not going to bring him in at all. 03:36:27 03:36:29

THE CHAIRPERSON: He's not coming back? 03:36:29 03:36:30

MR. REED: He's not coming back. 03:36:31 03:36:32

MR. FARINA: And our two remaining witnesses will be fairly short, so I think we can start at 9:30 and we'll be done. We'll definitely get done. 03:36:32 03:36:34 03:36:39 03:36:40 03:36:44

ARBITRATOR CHANDLER: Tomorrow? 03:36:45 03:36:46

MR. REED: We can all come Friday and hang out. 03:36:47 03:36:49

THE CHAIRPERSON: We're just going to come for lunch on Friday. 03:36:50 03:36:51

(TIME NOTED: 3:37 p.m.) 03:37:05

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INDEX

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CERTIFICATION BY REPORTER

I, Wayne Hock, a Notary Public of the State of New York, do hereby certify:

That said proceeding was held before me at the aforesaid time and place;

That said proceeding was taken stenographically by me, then transcribed under my supervision, and that the within transcript is a true record of the testimony of said proceeding.

I further certify that I am not related to any of the parties to this action by blood or marriage, that I am not interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of September , 2024.

Wayne Hock

PROCEEDINGS
CPR ARBITRATION
Matter No. G-23-23-N

In the Matter of the :
Arbitration between: :
:
A.D. FOOTBALL, INC., A.D. :
FAMILY LIMITED PARTNERSHIP, :
A. & R. BOSCACCI INVESTMENT :
CO., E. & V. BOSCACCI :
REVOCABLE TRUST/MARITAL LLC, :
E. & V. BOSCACCI DECEDENT'S :
TRUST/DECEDENT LLC, JILL :
LOVINGFOSS, CODY LOVINGFOSS, :
JOSH LOVINGFOSS, CHALET :
ROBERTS, GOPPL PARTNERSHIP, :
L.P., PATRICIA WINKENBACH and :
GERALD WINKENBACH as the :
Trustees of the Winkenbach :
Family Trust, PATRICIA :
WINKENBACH, GERALD WINKENBACH, :
RLP HOLDINGS, LP, ADF :
INVESTMENTS LLC, ADF HOLDINGS, :
LLC, A.D. FAMILY LIMITED :
PARTNERSHIP, A.D. FAMILY LLC, :
MARK DAVIS, FIRST FOOTBALL, :
LLC, MD FOOTBALL LLC, ALLAN :
BOSCACCI and PATRICIA BOSCACCI :
as the Trustees of the :
Boscacci Family Trust, LISA :
BOSCACCI, ALLISON MEIN, ANNE :
CARPENTER, ALIDA BEILKE, CARA :
YURAS, KENNETH WEAKLEY and :
LYNNE WEAKLEY as the Trustees :
of the Weakley Family Trust, :
JEANNE DAVIES, ERIC WEAKLEY, :
[TO BE CONTINUED] :

VOLUME IX
NEW YORK, NEW YORK
THURSDAY, SEPTEMBER 26, 2024

REPORTED BY:
SILVIA P. WAGE, CCR, CRR, RPR
JOB NO. 6427205

PROCEEDINGS

[CONTINUED] :
ELYSE WEAKLEY, MARY JANE :
BOSCACCI as the Trustee of the:
Mary Jane Boscacci Living :
Trust, PAUL STEFANI and ANN :
STEFANI as the Trustees of :
the Stefani Family Trust, :
CATHERINE STEFANI, JON-PAUL :
STEFANI, NANCY MCAULIFFE, :
KELLY PEPPMEIER, ERIN :
MCAULIFFE, ALLAN BOSCACCI, :
COREY MCAULIFFE, ALLAN :
BOSCACCI as the Trustee :
Of the A&R 2005 Irrevocable :
DAVID ABRAMS, FRIEDMAN :
FOOTBALL LLC, JOSHUA FRIEDMAN,:
BETH FRIEDMAN, PEAK TRUST :
COMPANY as the Trustee of the :
Friedman Family 2015 GST I :
and the Friedman Family 2015 :
GST II, GARONZIK INVESTMENT :
PARTNERS LLC, FREDRIC :
GARONZIK, FREDRIC GARONZIK as :
The Trustee of the Fredric B. :
Garonzik Trust, DAVID GARONZIK:
And SAMUEL GARONZIK as the :
Trustees of the Fredric B. :
Garonzik Family Trust and the :
Anne G. Garonzik 2011 Trust, :
DAVID GARONZIK, SAMUEL :
GARONZIK, ANNE GARONZIK as :
the Trustee of the Anne G. :
Garonzik Trust, ANNE GARONZIK,:
PAUL LEFF, SILVERBLACK LLC, :
STEPHEN MALKIN, DAN GOLDRING, :
and MARK DAVIS as the Trustee :
of the Mark Davis 2010 Trust :
and the Davis Credit Shelter :
Trust, Trust, NANCY K. :
MCAULIFFE as the Trustee of :
the Nancy McAuliffe Family :
Trust, :
Claimants, :
-and- :
ERNST & YOUNG LLP and EY US :
LLP, :
Respondents. :
------------------------------ :

PROCEEDINGS

September 16, 2024
9:33 a.m.

VOLUME IX of the above-captioned arbitration, held at the offices of Veritext Legal Solutions, Seven Times Square, 16th Floor, New York New York, pursuant to agreement before SILVIA P. WAGE, a Certified Shorthand Reporter, Certified Realtime Reporter, Registered Professional Reporter, and Notary Public for the States of New Jersey, New York and Pennsylvania.

PROCEEDINGS

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PROCEEDINGS

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RAIDERS
MARCO HEIM, TECH

ALSO PRESENT FOR RESPONDENT:

MARK CARLSON, CPA
ERNST & YOUNG

JUSTIN McCARTY, ESQ.
ERNST & YOUNG

JASON BENCZE, TECH

ALSO PRESENT FOR VERITEXT:

COREY WAINAINA, TECH

PROCEEDINGS

I N D E X

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PROCEEDINGS

THE CHAIRPERSON: Okay. 09:33:21
From the schedule I have, this is 09:33:23
Ernst & Young's witness; is that 09:33:25
correct? 09:33:27

MS. HELFMANN: It is. 09:33:27

THE CHAIRPERSON: 09:33:27
Excellent. 09:33:27

Okay. So, Mr. Johnson, 09:33:28
welcome. I'm John DiBlasi. 09:33:28

John Bickerman to my left, 09:33:30
John Chandler to my right. We're 09:33:32
the Panel. 09:33:33

We'll hear your testimony 09:33:34
this morning. 09:33:35

And if you just give 09:33:35
Mr. Chandler a second, then we'll 09:33:38
get going. 09:33:40

I also want to get my iPad 09:33:41
and my Surface Pro out. 09:33:43

(There is a discussion off 09:33:46
the record.) 09:34:03

THE CHAIRPERSON: Okay. 09:34:03
Counsel, we can go on the record 09:34:04
whenever you are ready. 09:34:06

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SHANE JOHNSON, Ph.D., DEEMED SWORN: 09:34:06

DIRECT EXAMINATION BY MS. HELFMANN: 09:34:11

Q. Good morning, Dr. Johnson. 09:34:11
Can you please introduce yourself to the 09:34:15
Panel. 09:34:16

A. So I'm Shane Johnson. I'm 09:34:17
currently a valid Chair in finance at 09:34:20
Mays Business School at Texas A&M 09:34:24
University. I've been a professor for 09:34:26
33 years. The last 20 years or so I've 09:34:28
taught the concepts that are relevant 09:34:33
here in this testimony today, MBA 09:34:35
students, and then actually created a 09:34:38
course in valuation that was new. And 09:34:40
I've been teaching that the last 12 years 09:34:42
at the undergraduate and graduate level 09:34:44
and I published in valuation as well. 09:34:46

THE CHAIRPERSON: Good. 09:34:49

Q. For the non-finance experts 09:34:50
among us, how would you define 09:34:52
"valuation"? 09:34:55

A. So anytime we have an asset 09:34:55
of some sort, which could be perfectly 09:34:57
generic like a company or intangible 09:34:59

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asset, that's represent a stream of future cash flows. We can think of that heading of value. And there's, you know, well-established methods to get that value and ask what is that worth compared -- or how do we convert that string of cash flows, essentially, to a value today. 09:35:01 09:35:04 09:35:06 09:35:08 09:35:10 09:35:12 09:35:16 09:35:17

Q. And, Dr. Johnson, what was your assignment in this case? 09:35:18 09:35:19

A. So my assignment in this matter was to assess the reliability of certain inputs that went into Mr. McClain-Duer's discounted cash flow valuation that he uses to estimate damages. 09:35:23 09:35:25 09:35:27 09:35:29 09:35:32 09:35:35

Q. In your opinion, were the inputs that Mr. McClain-Duer used in his model to assess valuation reasonable? 09:35:40 09:35:41 09:35:44

A. No. 09:35:47

Q. Why not? 09:35:48

A. There are multiple errors. The three major ones would be that he accepted management forecast sections to 09:35:53 09:35:54 09:35:57

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enter into his model at face value 09:36:01
without conducting any sort of robust 09:36:03
assessment of their accuracy. 09:36:06

The second is that he applied a 09:36:08
discount rate that's incorrect because it 09:36:11
does not match the cash flow stream that 09:36:13
he's discounting. 09:36:16

And then, thirdly, he failed to 09:36:16
incorporate a discount for lack of 09:36:18
marketability, which is important given 09:36:20
that the inputs in -- that he used in his 09:36:21
analysis came from marketable assets. 09:36:25

Q. What was the net effect of 09:36:28
those three errors? 09:36:29

A. So each of these individually 09:36:32
would serve to bias upward a present 09:36:35
value and, therefore, damages estimate. 09:36:37
So taken together, since they all work in 09:36:40
the same direction, they would serve to 09:36:43
bias the present value and damages 09:36:45
estimate upward. 09:36:48

Q. So, before we talk in more 09:36:49
detail with those three errors, I want to 09:36:51
take a step back. 09:36:53

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What is a "DCF model"? 09:36:54

A. A "DCF" stands for Discounted Cash Flow. And it's a standard way to value something that generates a stream of future cash flows in the future. 09:36:57 09:37:00 09:37:02 09:37:05

That's necessary because a cash flow in the future we generally regard as less valuable than the same cash flow today, because if we had it today, we could invest it and begin earning a return on it. 09:37:07 09:37:10 09:37:12 09:37:14 09:37:17 09:37:18

If I receive a cash flow two or three years or fie years later, it takes longer to begin earning a return. So it's viewed as less valuable. 09:37:19 09:37:21 09:37:23 09:37:26

And so we could think of DCF, essentially, like a way to convert future cash flows back to the present. And then a key consideration of that is that those cash flows may synthesizing when there's aggregate shocks and that aggregate risk then needs to also factor into the discount rate. 09:37:28 09:37:30 09:37:32 09:37:35 09:37:37 09:37:40 09:37:44 09:37:47

Q. In your career, have you had 09:37:48

any experience either constructing or 09:37:50
assessing DCF models? 09:37:52

A. Yes. I mean, I've probably 09:37:54
constructed hundreds, several in 09:37:57
litigation and in consulting outside of 09:37:59
litigation as well as (INAUDIBLE). 09:38:03

Q. What are the basic steps that 09:38:07
you take when you're going with 09:38:09
constructing a DCF model? 09:38:10

A. So valuation and, in 09:38:13
particular, I guess, a DCF. It always 09:38:15
had three main components. There's the 09:38:20
expected cash flow stream in the future. 09:38:22
There's the risk of that cash flow stream 09:38:23
and there is the discount rate that 09:38:26
corresponds with that risk. And so it's 09:38:28
necessary then for each of those 09:38:32
components, obviously, to be reliable, to 09:38:34
produce a good DCF estimate and, you 09:38:36
know, in particular, sort of piecing 09:38:42
through those. 09:38:44

The term "expected cash flows" is 09:38:44
-- the word "expected" there is not like 09:38:49
a trivial word. It needs to be -- in a 09:38:50

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probability sense, someone standing at a 09:38:53
point in time would reasonably expect 09:38:55
those cash flows to occur. Obviously, if 09:38:57
that's not true, then the DCF analysis 09:39:00
falls apart. 09:39:02

And then, also, thinking properly 09:39:03
about the risk that has to be properly 09:39:05
considered and measured and then feed 09:39:07
that into the discount rate. 09:39:09

Q. What is the difference 09:39:11
between what you've termed as an expected 09:39:12
cash flow and a projected cash flow? 09:39:14

A. So projected cash flow is 09:39:19
simply a single cash flow or stream of 09:39:20
cash flow someone has forecasted. It can 09:39:25
be a right or wrong. It can be too high 09:39:28
or too low. 09:39:31

For it to be an expected cash flow, 09:39:32
again, we need to reasonably expect in a 09:39:36
probability sense -- like, if we were to 09:39:38
think about probability of high or low 09:39:40
values of occurring, this is something 09:39:42
that would realistically occur. 09:39:44

Q. And after you apply the 09:39:47

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present value discount rate that you 09:39:48
determine is appropriate to the expected 09:39:50
cash flows, how do you interpret the 09:39:52
number that results? 09:39:54

A. So that present value is -- 09:39:56
should be -- assuming everything is done 09:40:00
properly, that present value should be 09:40:01
equivalent in wealth terms or value terms 09:40:04
to a party as the future cash flow 09:40:07
stream. So, in other words, if I have a 09:40:10
future cash flow or I have the present 09:40:12
value, my wealth is the same with either 09:40:14
one of those. And so I would be 09:40:16
indifferent between those. 09:40:18

Q. You mentioned when we first 09:40:19
started speaking this morning that there 09:40:24
were three material errors in Mr. 09:40:26
McClain-Duer's inputs and that the first 09:40:27
related to his net income forecast. 09:40:29

What as the input that Mr. 09:40:31
McClain-Duer used to approximate expected 09:40:35
future cash flows in his DCF model? 09:40:36

A. So working backwards from his 09:40:42
damages assessment, he has some taxes 09:40:44

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that are forecasted from the Claimants and those depend upon the forecasted net income for the StadCo and TeamCo combined. And so he's forecasting -- at least, you know, from my assignment, he's forecasting the taxable income or net income for StadCo and TeamCo combined out through 2029. 09:40:46 09:40:47 09:40:53 09:40:55 09:40:58 09:41:02 09:41:05 09:41:09

Q. And has he made any adjustments to that projected income when he used it as an input to approximate expected future cash flows in his model? 09:41:09 09:41:12 09:41:14 09:41:16

A. No. 09:41:20

Q. Did you assess Mr. McClain-Duer's expert report and his testimony concerning the process that he used to assess whether the projected future cash flows are a reliable approximation of expected cash flows? 09:41:20 09:41:22 09:41:24 09:41:26 09:41:29 09:41:31

A. I did. 09:41:35

Q. And do you believe that the Raiders projected future net income is a reliable approximate of their expected future cash flows? 09:41:35 09:41:37 09:41:40 09:41:44

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A. Not without adjustment. And, in particular, Mr. McClain-Duer testified at his deposition that he made no attempt to assess the accuracy of the past Raiders forecast to see if those would then be a reasonable basis to base a future forecast on. I believe that's reliable to serve as an expected cash flow stream. 09:41:45 09:41:47 09:41:51 09:41:53 09:41:57 09:42:00 09:42:02 09:42:05 09:42:08

Q. Why is it important to assess the Raiders historical performance relative to their projection recognition in order to determine if the projection is reliable? 09:42:08 09:42:09 09:42:12 09:42:14 09:42:16

A. Who has -- who makes a forecast -- they have a process and, I think, generally they believe the process is good. And Mr. McClain-Duer focused on the process. 09:42:21 09:42:22 09:42:24 09:42:25 09:42:28

You know, my understanding is he had substantively completed his report and then had a short meeting with Mr. Crome to talk about the process and then concluded that all was good. 09:42:29 09:42:32 09:42:34 09:42:36 09:42:40

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Now, there's, actually, a big literature in finance and I published in that area where managers can exhibit an overoptimism bias where they forecast things that are too high versus what actually occurs. 09:42:44 09:42:46 09:42:48 09:42:54 09:42:55 09:42:57

And it's, therefore, important that even if someone believes they have a good process, to look back and say, you know, what did they actually do in the past, did they produce forecasts that seemed reasonable and were close to the actual that occurred. 09:42:59 09:43:02 09:43:04 09:43:06 09:43:08 09:43:12 09:43:13

Q. As part of your work in this case, did you, in fact, go back and look at how the Raiders performed relative to how they projected they would perform? 09:43:14 09:43:16 09:43:18 09:43:21

A. I did. 09:43:23

Q. How did you go about conducting that assessment? 09:43:23 09:43:27

A. As we can see on the screen, it, essentially, involves three steps. I collected actual net income forecast for the Raiders from the record and then for 09:43:28 09:43:29 09:43:32 09:43:34

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each annual net income forecast, I compared the actual versus the forecasted and then computed a percent deviation. 09:43:38 09:43:41 09:43:45

And so, you know, for example, a deviation would be positive, if they outperform the forecast. It would be negative if they underperform the forecast. 09:43:48 09:43:50 09:43:53 09:43:55 09:43:57

And then, finally, to think whether an adjustment is necessary, I averaged those percent deviations, okay. So that if a forecast -- management forecast have a historical record of being accurate, we would expect that average to be relatively close to 20 and we would expect deviations around there to sort of randomly be positive and negative as they make mistakes. 09:43:57 09:44:00 09:44:01 09:44:04 09:44:09 09:44:12 09:44:14 09:44:16 09:44:19 09:44:22

No one is expecting management to generate a forecast that's a hundred percent accurate, but the deviation should be small and randomly distributed above and below zero. 09:44:23 09:44:24 09:44:26 09:44:27 09:44:30

Q. When you assessed the Raiders 09:44:32

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historical performance relative to their 09:44:34
projections, did you look at every 09:44:37
projection that was available in the 09:44:38
record? 09:44:40

A. No. 09:44:41

Q. How did you select the 09:44:42
projections that you used in conducting 09:44:44
your analysis? 09:44:46

A. So there were a set of 128 09:44:47
files with forecast. Now, each of those 09:44:51
may contain multiple years, but those are 09:44:55
the individual files. 09:44:58

Again, sort of going back to the 09:44:59
damages estimate, it relies on a net 09:45:01
income forecast for StadCo and TeamCo 09:45:05
combined and, therefore, in 09:45:07
comparison'ing that I wanted to focus on 09:45:12
that particular one. 09:45:13

So, if we discard from the 128 09:45:15
those that do not have a combined 09:45:17
forecast, that leaves 25 files. And then 09:45:19
we need to focus on the net income stream, 09:45:24
because that's what the damages are based 09:45:26
upon. And so that removes another nine 09:45:28

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resulting in 16 files. 09:45:30

And then I wanted to understand the 09:45:32
context, did it appear to be a complete 09:45:35
forecast, was it dated in some way so 09:45:38
that I could ensure that it is, in fact, 09:45:40
occurring before the forecast period. 09:45:42
And that it doesn't duplicate. 09:45:45

So, for example, there were, you 09:45:47
know, some that occurred over a 09:45:50
relatively short timeframe that just 09:45:51
appeared to be a process of finalizing 09:45:53
the forecast and for the benefit of the 09:45:56
doubt I used the final one. 09:45:58

And then it's not on the screen but 09:46:00
there were also a couple that I 09:46:02
eliminated because there was a low, 09:46:05
medium, high set of forecast. And, 09:46:07
again, to be conservative, I just used 09:46:09
the low as a benchmark to see if they 09:46:12
would outperform or underperform the low 09:46:14
forecast. 09:46:16

Q. Were the forecasts in the 09:46:17
eight files that you used forecasts that 09:46:19
were generated before or after Mr. Crome 09:46:21

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became the CFO at the Raiders? 09:46:25

A. It's a mix. It includes the Raiders organization before Mr. Crome showed up, as well as after. And the importance of that is that overoptimism is not just a feature necessarily of an individual. It could be a feature or part of the culture of an organization. 09:46:27 09:46:30 09:46:33 09:46:35 09:46:40 09:46:45 09:46:46

And it is the case that most organizations the set of forecast are not generated by a single person. 09:46:47 09:46:49 09:46:52

And, I think, Mr. Crome, you know, takes inputs from a team combined with his own knowledge to provide the forecast and it sounds like the prior CFO and President did that as well. 09:46:55 09:46:58 09:47:01 09:47:03 09:47:07

Q. And when you compared the Raiders projections in those eight files about what their net income would be in the future to what that net income actually ended up being in the reported financial statements, what did you determine about the accuracy of those projections? 09:47:09 09:47:10 09:47:13 09:47:15 09:47:17 09:47:19 09:47:22 09:47:23

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A. Well, so there's two ways to look at this. You can see on the screen one is to simply ask, were the deviations or errors, were they randomly distributed about zero. 09:47:24 09:47:26 09:47:28 09:47:30 09:47:33

And we can see, you know, about 5.6 percent, they outperformed the forecast and in 94.4 percent of the cases, they underperformed. And so that's clearly not randomly distributed about zero. 09:47:34 09:47:39 09:47:41 09:47:44 09:47:46 09:47:49

And, interestingly, it's consistent with managerial overoptimism bias where they systematically forecast high and then underperform the forecast. 09:47:50 09:47:52 09:47:57 09:48:02

Q. In addition to assessing the frequency with which the Raiders over and underperformed their forecast, did you also assess the degree to which the actual performance deviated from what they had projected? 09:48:03 09:48:04 09:48:07 09:48:09 09:48:11 09:48:13

A. I did. And that's an important step, because if, you know, for example, if the 94.4 underperformance, if 09:48:14 09:48:16 09:48:19

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those were 1 or 2 percent, then it's not 09:48:22
really a huge cause for concern. 09:48:24
And so, you know, thinking back to 09:48:26
that formula that I had a couple of 09:48:30
slides ago, we count the percentage 09:48:32
deviation to be calculated and the 09:48:35
average deviation is 64 percent below. 09:48:37
And so, to just put things in perspective, 09:48:41
the forecast is the larger number and 09:48:41
then the actual net income on average is 09:48:45
64 percent smaller. So that, of course, 09:48:47
is a huge deviation. It indicates that 09:48:49
the forecasted number is taken at face 09:48:55
value would be much too high. 09:48:57
Q. So I would like to walk 09:48:59
through an example, Dr. Johnson. 09:49:01
MS. HELFMANN: Jason, if 09:49:03
you could pull up Exhibit 0400. 09:49:04
Q. And that should also be a tab 09:49:07
in the binder in front of you. 09:49:10
(Arbitration Exhibit JX-0400 09:49:11
was referenced.) 09:49:15
Q. Do you recognize this e-mail 09:49:15
as an e-mail attaching one of the 09:49:16

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forecasts that you used in conducting your assessment about the Raiders accuracy in projecting their future financial performance? 09:49:19 09:49:20 09:49:22 09:49:25

A. Yes, it is. And so this is an e-mail from Michael Crome to Mark Davis and you can see the subject line reads, "forecast valuation info." 09:49:26 09:49:29 09:49:32 09:49:34

My understanding is that it was a forecast produced to provide to Forbes so they could estimate the value of the Raiders organization. And it was sent in July of 2022. 09:49:36 09:49:39 09:49:41 09:49:43 09:49:46

MS. HELFMANN: And if we could flip to the forecast, please, Jason. Thank you. 09:49:49 09:49:51 09:49:52

Q. In July of 2022, what did Mr. Crome project the combined future net income of TeamCo and StadCo for the year ending in 2023 would be? 09:49:53 09:49:58 09:50:01 09:50:04

A. So, if we look down on the net income line toward the bottom and then we have the projection for 2022, you see that the forecasted combined net 09:50:07 09:50:10 09:50:13 09:50:16

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income was 102.7 million. 09:50:19

Q. And just so we're all on the same page in terms of the time period that this is covering, because I know the year ends can be a little bit confusing. 09:50:21 09:50:23 09:50:25 09:50:27

A. Definitely. 09:50:29

Q. You understand the column labeled, "2022 TeamCo and StadCo," to be referring to the 2022 football season beginning April 1st, 2022 and ending March 31, 2023? 09:50:30 09:50:31 09:50:34 09:50:37 09:50:41

A. Yes. And that would correspond to the Fiscal Year 2023 ending March 31st of '23. 09:50:42 09:50:45 09:50:49

Q. Does that mean if you were comparing this number to the number in the Raiders 2023 audited financial statements, those two numbers would cover the exact same period of time? 09:50:50 09:50:52 09:50:54 09:50:57 09:50:58

A. Yes, that's my understanding. 09:51:00

MR. CHANDLER: Wouldn't you expect a forecast prepared for -- to Forbes to be way high? 09:51:03 09:51:03 09:51:06

THE WITNESS: I mean, if we 09:51:11

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-- I can see an argument where 09:51:13
someone wants to inflate their 09:51:15
wealth to look wealthy. If the 09:51:18
deviation that we're about to 09:51:20
look at stood out as being very 09:51:21
weird compared to the prior ones, 09:51:25
I would probably put more credence 09:51:26
on that. Like, you know, if 09:51:28
there were standout ones. But it 09:51:29
turns out that's not well within 09:51:31
the distribution. 09:51:33

MR. CHANDLER: Thank you. 09:51:34
Excuse me. 09:51:35

MS. HELFMANN: Jason, if we 09:51:36
can flip to the joint Exhibit 09:51:37
No. 506. 09:51:40

Q. And that should also be in 09:51:40
the binder in front of you. 09:51:41

(Arbitration Exhibit JX-0506 09:51:43
was referenced.) 09:51:45

Q. Do you recognize this 09:51:45
document as the Raiders 2023 financial 09:51:46
statements for StadCo? 09:51:49

A. Yes. 09:51:50

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Q. And is this the document that you used to compare the Raiders projections to their actual performance in 2023? 09:51:52 09:51:53 09:51:55 09:51:57

A. Yes. 09:51:58

Q. If you could look at Page 6. 09:51:59

How did the Raiders perform in their 2023 financial statements with respect to StadCo's net income? 09:52:08 09:52:11 09:52:14

A. So, again, these income statements are broken out separately for StadCo and TeamCo. And so as you can see, if you look down on the income line -- I think, I even blow that up -- the actual net income for 2023 was 70.1 million for StadCo. 09:52:16 09:52:18 09:52:20 09:52:24 09:52:29 09:52:32 09:52:34

Q. And in order to assess the Raiders or Mr. Crome's July 2022 combined prediction, did you also have to look at what TeamCo reported for its financial information for 2023? 09:52:38 09:52:41 09:52:44 09:52:46 09:52:48

A. Yes. 09:52:50

Q. If you could flip to Joint Exhibit 0353. 09:52:51 09:52:54

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(Arbitration Exhibit JX-0353 was referenced.) 09:52:55 09:53:01

Q. Is this document a document that you recognize as the Raiders 2023 financial statement for TeamCo? 09:53:01 09:53:03 09:53:06

A. Yes. 09:53:08

Q. And is this a document that you used to compare the Raiders projections in July of 2022 about how they would perform with their actual performance? 09:53:08 09:53:10 09:53:12 09:53:14 09:53:16

A. Yes. 09:53:17

Q. And if you could flip to Page 7, what did the Raiders report at the end of 2023 was their net income that year for TeamCo? 09:53:18 09:53:20 09:53:24 09:53:27

A. Again, so, if we look at the bottom row and blow that up, you can see that the TeamCo had a net loss of $46.7 million. 09:53:28 09:53:31 09:53:34 09:53:38

MS. HELFMANN: Okay. And if we can go back to the slide deck, Jason. 09:53:39 09:53:41 09:53:43

Q. If you add up the TeamCo and 09:53:45

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the StadCo reported net income for 2023, what was the team's combined net income that year? 09:53:48 09:53:51 09:53:53

A. Right. So this would be like the plus 70 million for StadCo and the negative 46 for the TeamCo gives the 23.4 million on the slide. So that would be the actual net income for the Fiscal Year 2023. And then it was forecasted to be 102.7 million. So this is just illustrating that formula. The deviation then is $79 million. So indicating that the forecast was $79 million higher than that actually earned expressing that as a percentage, that's -- the actual is 77 percent lower than the forecasted number. So this feeds into that negative 64 percent deviation that we saw earlier. 09:53:54 09:53:56 09:53:58 09:54:02 09:54:05 09:54:09 09:54:11 09:54:15 09:54:17 09:54:20 09:54:23 09:54:25 09:54:29 09:54:31 09:54:37

Q. Now, there's been some discussion that this forecast was sent to Forbes. 09:54:40 09:54:42 09:54:45

Were a number of the forecast you looked at forecast that the Raiders sent to NFL and to Bank of America? 09:54:46 09:54:47 09:54:49

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A. Yes. This was the only one that was sent to Forbes. And I said it was well within the distribution of the other ones. 09:54:50 09:54:52 09:54:55 09:54:56

Q. Does the 64.4 percent deviation rate take into account not just this projection that was sent to Forbes, but also the other seven projections that were sent to among others the NFL and the Bank of America? 09:54:57 09:54:59 09:55:02 09:55:04 09:55:05 09:55:08

A. Yes. And, just to be clear, like, you're saying seven projections. There's 18 different annual forecast in that. 09:55:09 09:55:11 09:55:13 09:55:16

Q. And that's because while you used eight files, each of those files had multiple or some of those files had multiple projections. 09:55:16 09:55:18 09:55:20 09:55:22

A. That's correct. 09:55:23

Q. How does the Raiders actual rate of deviation in their performance from their projection effect Mr. McClain-Duer's calculation of damages? 09:55:26 09:55:29 09:55:32 09:55:35

A. Well, to the extent -- an 09:55:38

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important step in doing valuation is to 09:55:40 look at the historical financials. And 09:55:42 one of the reasons we want to do that is 09:55:45 to know whether it makes sense to project 09:55:47 them forward. And one of the reasons we 09:55:50 want to do that is to assess the accuracy 09:55:51 of the forecast so that we know how much 09:55:53 weight we can put on that forecast. 09:55:55

So, you know, looking at this as a 09:55:57 valuation expert, I would look at this 09:56:02 and conclude that taking a management 09:56:04 forecast made by the Raiders organization 09:56:07 at face value and leaving it unadjusted 09:56:09 is extremely likely to result in a set of 09:56:12 numbers that are much too high versus 09:56:15 what we reasonable expect to occur. 09:56:21

Q. What is the adjustment you 09:56:22 would believe to be appropriate to sort 09:56:23 of make that input more of a reasonable 09:56:25 approximation of the Raiders expected 09:56:27 future cash flows? 09:56:29

A. Well, it's the nice thing 09:56:30 about this deviation number is that if we 09:56:31 use that to bring a set of projected 09:56:34

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forecast or net income down by that 09:56:36
percentage, then we should arrive at what 09:56:38
would be an expected value in a 09:56:41
probability sense. That actually gets to 09:56:45
the most likely expected number or set of 09:56:47
numbers. 09:56:49

Q. We talked earlier about -- if 09:56:53
you recall the slide with the sort of -- 09:56:55
that looked like a funnel, the process 09:56:57
that you used to select the projection 09:56:59
files that you actually used in your 09:57:01
analysis? 09:57:03

MR. BECKER: Sorry. We're 09:57:03
going to object to this slide. 09:57:04

And to provide the Panel 09:57:06
some context, Mr. Johnson provided 09:57:07
updated analyses the evening 09:57:08
before the trial started. We are 09:57:11
not seeking to preclude those 09:57:13
analyses. 09:57:14

However, I took Mr. Johnson's 09:57:15
second deposition last week on his 09:57:17
updated analysis. But the day 09:57:19
before that deposition, after two 09:57:21

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days of this trial, Mr. Johnson sent us updated sensitivity analyses, some of which are included here. 09:57:24 09:57:25 09:57:27 09:57:29

And when I asked Mr. Johnson at his second deposition when he performed those new sensitivity analyses, he couldn't give me a date. He couldn't tell me whether it was before the trial started or after the trial started. 09:57:29 09:57:30 09:57:32 09:57:33 09:57:35 09:57:36 09:57:38

So we think it's improper for him to opine on that now. 09:57:39 09:57:42

MS. HELFMANN: If I may? 09:57:43

THE CHAIRPERSON: One second. 09:57:44

So can you answer Counsel's question? 09:57:45 09:57:46

THE WITNESS: There were -- so, as I think you know, so there is an original damages report with a damages date of 12/31/22 and then Mr. McClain-Duer changed that date later to move it forward. 09:57:48 09:57:49 09:57:52 09:57:53 09:57:56 09:57:59

THE CHAIRPERSON: But my 09:58:02

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question is, there was a question that, "When I asked Mr. Johnson at his second" I assume his "deposition, when he performed those new sensitivity analyses, he couldn't give me a date. He couldn't tell me whether it was before the trial started or after the trial started." That's the question. 09:58:02 09:58:04 09:58:05 09:58:07 09:58:09 09:58:11 09:58:13 09:58:14 09:58:16 09:58:16

THE WITNESS: Yeah. And I was going to walk you through. 09:58:19 09:58:20

There were two sets of sensitivity analyses. 09:58:21 09:58:22

THE CHAIRPERSON: Okay. I just wanted to make sure I'm getting the answer to that question. 09:58:23 09:58:23 09:58:24

THE WITNESS: Yeah. 09:58:25

And so there were two sets simply because by moving the damages date forward in time, there was an additional year that one could compare actual to forecast. So the additional -- I mean, the 09:58:26 09:58:29 09:58:31 09:58:33 09:58:35 09:58:37

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original sensitivity analysis were performed well before the hearing started. I mentioned those in my first deposition. 09:58:38 09:58:40 09:58:42 09:58:43

The second set was performed probably, you know, a couple of days, I think, before you got them or a day before you got them, something like that. 09:58:45 09:58:47 09:58:51 09:58:53 09:58:55

THE CHAIRPERSON: Okay, Counsel. 09:58:55 09:58:56

MS. HELFMANN: Of these three sensitivity analyses, two of them are explicitly disclosed in Dr. Johnson's supplemental report. 09:58:58 09:58:59 09:59:01 09:59:04

The third analyses was disclosed after his original deposition accounting for the valuation date in Mr. McClain-Duer's original report. 09:59:05 09:59:08 09:59:10 09:59:12 09:59:14

The supplemental sensitivity analysis that we're all talking about that was sent fairly recently was simply taking that original 09:59:14 09:59:16 09:59:18 09:59:20

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sensitivity analysis and updating 09:59:22
it for the new date. 09:59:23
It is literally an average 09:59:25
of four numbers that are included 09:59:26
in an appendix of Dr. Johnson's 09:59:27
report that was served well before 09:59:30
trial. 09:59:32
THE CHAIRPERSON: Counsel? 09:59:33
MR. BECKER: Yeah, we 09:59:34
understand that he's updating 09:59:34
analyses. But he performed those 09:59:36
updates for the first time after 09:59:37
trial started. 09:59:39
And we think it's improper 09:59:41
for him to opine on sensitivity 09:59:42
analyses that he didn't disclose 09:59:44
before trial. 09:59:47
THE CHAIRPERSON: [RULING] 09:59:47
The objection is sustained. 09:59:48
And, Counsel, proceed to 09:59:50
another line of questioning. 09:59:50
MS. HELFMANN: May I ask a 09:59:50
clarifying question? 09:59:52
THE CHAIRPERSON: You may, 09:59:53

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as long as you don't violate my 09:59:53
ruling. 09:59:55

MS. HELFMANN: Certainly. 09:59:56
The question is in the interest 09:59:56
of not violating the ruling. 09:59:57

THE CHAIRPERSON: Okay. 09:59:59

MS. HELFMANN: As to the 09:59:59
sensitivity analyses that were 10:00:00
certainly -- I don't think there's 10:00:01
any dispute that were produced 10:00:02
before trial, are we allowed to 10:00:05
inquire as to those? 10:00:07

THE CHAIRPERSON: I don't 10:00:07
know. 10:00:07

Before trial I don't think -- 10:00:07

MR. BECKER: There were 10:00:08
some the night before trial. If 10:00:09
she takes the slide down, we would 10:00:11
be okay with her talking about the 10:00:13
sensitivity analyses that were 10:00:14
disclosed before trial. 10:00:15

MS. HELFMANN: I think 10:00:16
there's, actually, an error in 10:00:17
sort of the factual record at this 10:00:18

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point. 10:00:20

Two of the three sensitivity analyses were included in Dr. Johnson's supplemental report that was served, at least, a week before trial. 10:00:20 10:00:22 10:00:23 10:00:25 10:00:28

THE CHAIRPERSON: Okay. That comes in. 10:00:28 10:00:29

MS. HELFMANN: Okay. Jason -- 10:00:30

MR. BECKER: For the record, it was served the night before trial. But that's fine. 10:00:30 10:00:30 10:00:32

And if you could please take the slide down, which -- 10:00:33 10:00:35

MS. HELFMANN: Just give me a moment to confer with my hot seat. I'm happy to do that. 10:00:35 10:00:35 10:00:38

Jason, can you please put up Exhibit 3426. 10:00:40 10:00:42

(Arbitration Exhibit JX-3426 was referenced.) 10:00:42 10:00:48

Q. Dr. Johnson, do you recognize this document as an appendix to your supplemental expert report? 10:00:48 10:00:50 10:00:52

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MR. BECKER: This is the same sensitivity analysis that were disclosed before trial. It's literally dated -- I mean, after trial. It's literally dated September 17th. The objection was just sustained as to this specific spreadsheet. 10:00:54 10:00:55 10:00:56 10:00:57 10:00:59 10:01:01 10:01:01 10:01:03

MS. HELFMANN: I'm happy to use an earlier copy. But, Sebastian, I was only going to ask about the portions of this document that were disclosed on September 9th. There was one edit made to the spreadsheet when it was produced to you on September 17th. 10:01:04 10:01:05 10:01:07 10:01:08 10:01:09 10:01:11 10:01:13 10:01:14 10:01:16

MR. BECKER: Okay, sure. 10:01:17

THE CHAIRPERSON: That's fine. 10:01:18

BY MS. HELFMANN: 10:01:20

Q. If you could go to the tab labeled Exhibit 1. 10:01:20 10:01:23

As part of your process, Dr. Johnson, for testing the robustness of 10:01:26 10:01:29

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the selection criteria that you applied in selecting the forecast that you used, did you look at what would happen if you added in forecast for the 2020 year which you excluded in your analysis? 10:01:31 10:01:33 10:01:35 10:01:37 10:01:41

A. Yes. So, just to -- so everyone is on the same page, the 2020 year was the pandemic year and, of course, you know, very difficult for businesses to have foreseen that or forecasted that. 10:01:42 10:01:45 10:01:49 10:01:51 10:01:53 10:01:55

So the numbers that we talked about earlier exclude 2020. And I just did a robustness analysis, what we throw those in what happens. And not surprisingly the deviation gets much larger. 10:01:55 10:01:57 10:02:02 10:02:05 10:02:07

I mean, it was, obviously, very hard to forecast that. So the average, you know, deviation goes to 123 -- negative 123 percent. 10:02:09 10:02:10 10:02:12 10:02:15

Q. Did you also, as part of the sensitivity analyses you conducted to test the robustness of your selection criteria, look at what happened if you 10:02:18 10:02:20 10:02:23 10:02:27

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excluded the forecast in your analysis 10:02:28
that were created before Mr. Crome became 10:02:30
the CFO? 10:02:32

A. I did. And, you know, I 10:02:33
understand that that would be something 10:02:35
that's, obviously, important given that 10:02:36
we have a new CFO. 10:02:38

THE CHAIRPERSON: Right. 10:02:40

A. And so I did consider just 10:02:41
the set of forecast that were made while 10:02:44
Mr. Crome was CFO and, essentially, 10:02:46
there's not a material difference in the 10:02:49
forecasting accuracy. If we exclude the 10:02:52
2024 one that, I think, was -- his 10:02:56
objection, I think, was about, then 10:03:00
there's three forecast that are usable 10:03:02
and there are three very large negative 10:03:05
numbers. And, again, which means that 10:03:07
the actual was well below the forecasted 10:03:10
number. 10:03:12

MR. BICKERMAN: If I may. 10:03:14

When you did your sensitivity 10:03:15
analysis, did you do as a panel, 10:03:18
everything pre-Mr. Crome and then 10:03:21

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post Mr. Crome, or did you do it from the beginning through the end of Mr. Crome? 10:03:23 10:03:25 10:03:26

THE WITNESS: So the negative 64 percent that I have is from beginning to end. The earliest one is in 2015 and then the latest one is in July of '22. So I don't have -- so that overall average is -- the deviation is negative 64 percent. 10:03:27 10:03:29 10:03:32 10:03:34 10:03:36 10:03:40 10:03:44 10:03:46

In just the era when Crome was CFO, the average deviation is negative 80 percent. So, then you can infer just by averages and math, right, that the ones for the pre-Crome era are actually smaller than the negative 64 and absolute value. 10:03:48 10:03:51 10:03:54 10:03:55 10:03:57 10:03:59 10:04:01 10:04:03

MR. BICKERMAN: I guess, that's right. 10:04:05 10:04:06

But you didn't do one just with the pre-Crome? 10:04:06 10:04:08

But you're inferring that 10:04:09

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had you done that -- 10:04:10
THE WITNESS: Yeah, if you 10:04:11
have negative 64 -- 10:04:12
MR. BICKERMAN: I got it. 10:04:12
THE WITNESS -- and negative 10:04:14
-- is there a negative 80, the 10:04:15
others one have to lie above that 10:04:16
mathematically. 10:04:19
THE CHAIRPERSON: And just 10:04:19
to put a time around it -- it's 10:04:20
very hard for me to go back. 10:04:21
You said there were three 10:04:22
forecasts. 10:04:23
In reference time, when are 10:04:23
those three forecasts? 10:04:25
THE WITNESS: One was 10:04:26
January of '22 and one was July 10:04:27
of '22. 10:04:31
THE CHAIRPERSON: Okay. 10:04:32
Alright. 10:04:33
MS. HELFMANN: Jason, if we 10:04:35
could flip back to the slide deck. 10:04:36
THE WITNESS: Yeah. And 10:04:37
those -- okay, never mind. Those 10:04:38

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were in that Appendix C that we first looked at. 10:04:40 10:04:41

THE CHAIRPERSON: Okay, fair enough. 10:04:42 10:04:43

MR. BICKERMAN: Let me ask one other question. 10:04:44 10:04:45

You did combined StadCo and TeamCo? 10:04:46 10:04:48

THE WITNESS: Correct. 10:04:49

MR. BICKERMAN: I understand why you would have done that. 10:04:49 10:04:50

But did you also look at it separately? 10:04:51 10:04:53

Is one estimate more difficult than the other? 10:04:54 10:04:55

"Difficult" is a bad word. 10:04:57

THE WITNESS: Not -- I mean, not -- 10:04:58 10:04:59

MR. BICKERMAN: Go ahead. 10:04:59

THE WITNESS: Not like in the sense of computing the numbers. But I, actually, did look through that. 10:05:00 10:05:00 10:05:02 10:05:04

And it's interesting to 10:05:04

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sort of think about this. Imagine that you're standing back in 2015. 10:05:05 10:05:07

MR. BICKERMAN: Right. 10:05:09

THE WITNESS: And you don't yet know you'll have StadCo coming on line. 10:05:09 10:05:10 10:05:12

MR. BICKERMAN: Exactly. 10:05:13

THE WITNESS: Then your forecast compared to the actual -- the actual then includes StadCo. StadCo, at least, as a general statement, it seems easier to forecast and that's where they make a lot of the money, right. 10:05:13 10:05:14 10:05:16 10:05:19 10:05:21 10:05:23 10:05:25

The numbers we just looked at for Fiscal Year 2023, they had plus 70 million from StadCo and minus 46 million for the team, okay. 10:05:26 10:05:28 10:05:30 10:05:32 10:05:34

And I think that, you know -- I mean, to be frank, I think that it would be very hard to do accurate forecast for this organization and it's in part 10:05:35 10:05:36 10:05:38 10:05:40 10:05:42

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because you had these expenses like, you know, I fired a coach and have to pay out the contract or I fired a quarterback and I have to pay out the contract. 10:05:44 10:05:46 10:05:48 10:05:50 10:05:51

Those -- we have expenses kind of going along and then all the sudden they blow up, right, and then going along and they blow up. 10:05:53 10:05:54 10:05:56 10:05:58

And, you know, the income stream that Mr. McClain-Duer was relying on largely has expenses that are relatively stable and that's just not what the record looks like. 10:06:00 10:06:01 10:06:04 10:06:06 10:06:08 10:06:09

So I know that was a long kind of answer. 10:06:10 10:06:11

MR. BICKERMAN: No, no, that's fine. 10:06:11 10:06:11

THE WITNESS: But the point being is that, I think, it's really hard to forecast for the team in part because these expenses come out of nowhere. 10:06:12 10:06:13 10:06:15 10:06:17 10:06:18

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MR. BICKERMAN: And wouldn't also StadCo be harder to estimate because it's such a short period of experience when you're making those estimates whereas TeamCo you have a long runway? 10:06:20 10:06:21 10:06:23 10:06:25 10:06:26 10:06:28

THE WITNESS: It is. I think that part of what mitigates that perhaps -- I didn't do a deep dive into this. But I think part of what mitigates that is you have the non-Raiders events that are renting out the stadium and that's why -- 10:06:30 10:06:31 10:06:34 10:06:36 10:06:38 10:06:40 10:06:42

MR. BICKERMAN: Exactly. 10:06:42

THE WITNESS: -- a buffer against these, these expense surprises in aggregate. 10:06:44 10:06:45 10:06:46

MR. BICKERMAN: Okay. 10:06:48

BY MS. HELFMANN: 10:06:50

Q. So, Dr. Johnson, I believe, when we first started speaking this morning you mentioned three material errors that you identified and the second one related to the discount rate that Mr. 10:06:50 10:06:52 10:06:53 10:06:56 10:06:58

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McClain-Duer applied to assess the present value of the expected future cash flows. 10:07:01 10:07:03 10:07:05

What was the discount rate that Mr. McClain-Duer applied? 10:07:05 10:07:08

A. So Mr. McClain-Duer used what's called the Weighted Average Cost of Capital or WACC, W.A.C.C., and that is a weighted average of the debt cost for an organization and the equity cost. 10:07:09 10:07:12 10:07:14 10:07:18 10:07:21

Q. And do you believe the Weighted Average Cost of Capital or the WACC is the appropriate discount rate to apply to determine the present value of the unrecorded tax loss carryforwards at issue? 10:07:24 10:07:26 10:07:27 10:07:30 10:07:33 10:07:35

A. No, that's unambiguously wrong. 10:07:35 10:07:38

Q. Why? 10:07:39

A. Well so this is a simple example. I, actually, used this in my valuation course that I teach to illustrate the point. 10:07:40 10:07:43 10:07:46 10:07:47

And so, just to kind to set things 10:07:48

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up, this is not the Raiders income 10:07:51
statement. It's a simple income 10:07:53
statement that illustrates the point. 10:07:55
And it's -- you know, we have very 10:07:56
simple categories, sales expenses, EBIT, 10:08:00
interest expense and taxable income. And 10:08:03
then from their initial starting point 10:08:05
where the taxable income is $10 and the 10:08:06
interest expense -- 10:08:06
THE STENOGRAPHER: Can you 10:08:06
just go a little slower. I'm sorry. 10:08:13
A. So the first column of 10:08:13
numbers is our initial starting point. 10:08:15
The interest expense is $10 and the 10:08:17
taxable income is $10. And then what I 10:08:20
do is there are two columns where we have 10:08:23
sales fall or rise by $10, okay. 10:08:26
And to understand the importance of 10:08:31
that is that a discount rate should 10:08:33
reflect what's called a systematic risk. 10:08:35
Think of a recession causes sales to fall 10:08:38
and then make an economic boom causes 10:08:41
them to rise. 10:08:43
And then what we really want to 10:08:44

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zero in on here is the interest expense line and the taxable income line. And so you can see since the firm here still has sufficient money to pay the interest expense, there's zero deviation in the interest expense. And so, with the positive and negative shocks that are occurring to the economy, the interest expense is a safe stream received by the debt holders. That, of course, consists of -- maybe you have bonds in your investment portfolio for retirement because they provide some safety and that's reflected in a lower cost of debt. 10:08:48 10:08:50 10:08:54 10:08:59 10:09:01 10:09:04 10:09:07 10:09:09 10:09:12 10:09:14 10:09:17 10:09:18 10:09:20 10:09:22

By contrast the taxable income line we can see falls from 10 to 8, which is a negative 20 percent reduction or alternatively rises from 10 to 20, which is a plus 20 percent -- and just like as simple matter, if you compared these two lines, the interest expense has 0 percent deviation and taxable income is deviating by plus or minus 20 percent when things change. 10:09:25 10:09:27 10:09:29 10:09:32 10:09:35 10:09:36 10:09:39 10:09:41 10:09:44 10:09:46

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This clearly illustrates that taxable income, which is what is flowing to the equity holders, is a riskier cash flow stream. And so, of course, when we look at the cost of debt of an organization and the cost of equity, we see that parallel there and that the cost of debt is lower than the cost of equity. The cost of equity is higher because it reflects this greater risk. 10:09:46 10:09:48 10:09:50 10:09:52 10:09:55 10:09:56 10:09:58 10:10:02 10:10:04 10:10:06

Q. At the risk of overstating things or oversimplifying things, is it fair to say that the reason that the cash flows are riskier to equity holders then they are to debt holders is because debt holders get paid first? 10:10:08 10:10:10 10:10:12 10:10:14 10:10:18 10:10:20

A. Yes. In fact, if you were to just go back and reconstruct this example and you had no interest expense and then look at the percent change in taxable income, then it would be smaller here. It would be like minus ten and plus ten instead of minus 20 and plus 20. 10:10:22 10:10:23 10:10:24 10:10:27 10:10:29 10:10:32 10:10:34

And so the term "leverage," 10:10:38

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incidentally, referring to this as debt, 10:10:38
it comes from the notion of physics where 10:10:41
we apply a small amount of worsening and 10:10:42
you get a much larger outcome. So that 10:10:44
the deviations then for the firm of more 10:10:47
debt are much larger. And it's very fact 10:10:51
that that fixed debt payment is coming 10:10:53
out that amplifies the fluctuations that 10:10:56
the equity holders feel of the risk. 10:10:59

Q. Are you aware that the 10:11:01
individuals seeking future tax damages at 10:11:03
issue are ultimate beneficial owners in 10:11:05
the Raiders limited partnership? 10:11:09

A. Yes. So my understanding is 10:11:11
that they -- the taxable income falls 10:11:13
down to them and then it's another layer 10:11:16
that's outside of my assignment. 10:11:19

But then Mr. McClain-Duer bases 10:11:21
some estimated taxes on that stream, that 10:11:24
taxable income stream that flows down to 10:11:27
them and then that feeds into his damages 10:11:29
model. 10:11:32

Q. Are the ultimate beneficial 10:11:32
owners in the Raiders limited partnership 10:11:34

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equity holders or are they debit holders? 10:11:37

A. They're equity holders. They have no claim to the interest expense payments. So, like in this example, they would have no claim to this safe stream and that's why it makes no sense to include the cost of debt in a discount rate being used to discount the cash flows in this analysis. 10:11:39 10:11:41 10:11:44 10:11:46 10:11:49 10:11:51 10:11:54 10:11:56

Q. I think the third material error that you identified in Mr. McClain-Duer's DCF model was his failure to account for the lack of marketability of the tax loss carryforwards. 10:12:01 10:12:03 10:12:05 10:12:08 10:12:10

But, just to take a step back, what does it mean for an asset to be "marketable"? 10:12:12 10:12:15 10:12:16

A. So an asset is marketable -- like, we think about putting something on the market, like you put your house on the market for sale. "Marketability" refers to, you know, something can be sold and then the degree of marketability is how difficult it is to sell or not. 10:12:17 10:12:19 10:12:21 10:12:24 10:12:25 10:12:27 10:12:29

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So some things like publically traded stock, for example, I can log into a brokerage account and sell that within a minute or two. 10:12:32 10:12:34 10:12:37 10:12:38

You know, at the other sort of going down the continuum, a privately held company is more difficult to sell. It takes longer. So we considered it less marketable. 10:12:39 10:12:41 10:12:43 10:12:46 10:12:48

Q. And how does the marketability of an asset affect its value? 10:12:48 10:12:50

A. So, obviously, when someone has a valuable asset, there may arise a need for them to sell it because they need cash or because their needs have changed. And so the ability to sell something and have it be readily marketable and convert that into cash is valued. 10:12:52 10:12:55 10:12:58 10:13:00 10:13:04 10:13:07 10:13:10 10:13:12

And so, if we look in the market, there's a very large number of studies ranging decades that more marketable assets all else equal have a higher value than less marketable assets. 10:13:13 10:13:15 10:13:17 10:13:22 10:13:24

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Q. Do you have an understanding about whether tax loss carryforwards are marketable? 10:13:27 10:13:28 10:13:31

A. So my understanding -- I'm not a tax expert. But my understanding is that the tax loss carryforwards are completely nonmarketable in the sense that they cannot be transferred to any other party. 10:13:32 10:13:33 10:13:35 10:13:40 10:13:43 10:13:44

My understanding, again, is -- with the caveat I'm not a tax expert -- is that they don't even survive death. For example, they can't even pass to my estate, if I have some -- I die. They just simply vanish with me. 10:13:45 10:13:47 10:13:49 10:13:52 10:13:53 10:13:55

And so that's at the extreme continuum. At the end of the continuum on lack of marketability, they're completely nonmarketable. 10:13:58 10:14:00 10:14:02 10:14:04

Q. Did Mr. McClain-Duer's DCF model make any adjustments to account for the lack of marketability of the tax loss carryforwards? 10:14:05 10:14:07 10:14:10 10:14:12

A. No. 10:14:12

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Q. Do you believe such an adjustment is necessary? 10:14:13 10:14:15

A. Yes. It's definitely necessary in this context. 10:14:16 10:14:18

Q. Why? 10:14:19

A. Well so, if you focus on the screen, the -- I think, this is intuitive is that if we take inputs for a DCF analysis from a marketable asset -- and so Mr. McClain-Duer has a beta from guideline companies that are publically traded and, therefore, marketable. He's using a risk free rate from treasury bonds that are probably the most marketable assets in the world. 10:14:21 10:14:25 10:14:29 10:14:32 10:14:36 10:14:39 10:14:41 10:14:44 10:14:47 10:14:49

And equity risk premium that would be like the difference between a broad market index and treasuries, again, which are the most marketable assets in the world. 10:14:51 10:14:53 10:14:54 10:14:57 10:15:00

So you take those inputs and then if you apply them to value another marketable asset, it's fine. Because it's apples to apples. So, if I'm going 10:15:00 10:15:01 10:15:03 10:15:06

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to take those inputs in value in a publically traded company, I don't need to make an adjustment because they're both marketable. It's apples to apples, okay? So no discount for lack of marketability would be necessary there. 10:15:08 10:15:09 10:15:11 10:15:13 10:15:15 10:15:18

Now, if we jump down to nonmarketable -- and this says, "nonmarketable," but you can think of it as less marketable, right. 10:15:20 10:15:21 10:15:23 10:15:25

So, if I take an input from a non or less marketable asset -- so, for example, if I have privately held company and I say that companies like that sell for five times cash flow, but those were privately held companies, that's a valuation input from a less marketable asset. 10:15:26 10:15:29 10:15:31 10:15:33 10:15:35 10:15:37 10:15:40 10:15:44

If I'm then going to apply that to say another nonmarketable asset like another privately held company, I don't need to make an adjustment. 10:15:45 10:15:47 10:15:50 10:15:52

So, you know, we think about the top row being apples to apples. The 10:15:53 10:15:55

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bottom row is like oranges to oranges. I still have a batch between what I'm doing okay. 10:15:57 10:15:59 10:16:01

Now, what Mr. McClain-Duer has done is he's crossed these apples to oranges. He's taken inputs from marketable assets and then applied them to something that's completely nonmarketable. And, therefore, it's, obviously, necessary to make an adjustment for that and that's where the problem of not including a discount for lack of marketability comes into his analysis. 10:16:02 10:16:04 10:16:07 10:16:10 10:16:11 10:16:13 10:16:17 10:16:19 10:16:23 10:16:25

Q. How would you calculate the appropriate adjustment to make to the DCF model to account for the lack of marketability of the tax loss carryforwards? 10:16:25 10:16:27 10:16:30 10:16:32 10:16:34

A. So there's several different ways to do that. I think one of the ones that I find most compelling based on the published research is to compare the prices of privately held companies that were sold to publically traded companies 10:16:34 10:16:36 10:16:38 10:16:41 10:16:43 10:16:48

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that were sold. So, in other words, we're taking a ratio of prices of nonmarketable or less marketable assets to readily marketable assets and then asking what discount we observe for the ones that are less marketable. 10:16:51 10:16:52 10:16:55 10:16:57 10:17:02 10:17:04

Q. What are the particular inputs from marketable assets that Mr. McClain-Duer used in calculating the equity rate in his model? 10:17:09 10:17:11 10:17:14 10:17:16

A. So those are the ones that I mentioned earlier. The equity beta from the guideline companies that feeds into his cost of equity, the risk free rate and the market risk premium. All of those come from marketable assets. And, again, the treasury bonds and the market index are among the most highly marketable in the world. 10:17:18 10:17:19 10:17:22 10:17:24 10:17:28 10:17:31 10:17:34 10:17:37 10:17:42

Q. Do you believe a DCF model is an appropriate way to calculate the future cost of damages of unrecorded tax loss carryforwards? 10:17:42 10:17:44 10:17:47 10:17:53

A. Well so, if we start, again, 10:17:53

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at the base level and word backwards, my understanding of his model is he doesn't hit the projected stream of tax savings and those stem from the projected net income that would flow to the beneficial owners. There's a set of assumptions there about taxes and whether they can use those tax loss carryforwards and when they can use them. That's not part of my assignment. 10:17:57 10:17:59 10:18:02 10:18:03 10:18:07 10:18:09 10:18:12 10:18:14 10:18:16 10:18:19

So assume for the moment those are not speculative. Then working backwards, we've got the net income stream. Assume that the net income stream was one that could reasonably be expected and not far too high. If that were true and then if one used the proper discount rate and ultimately adjusted for a discount for lack of marketability at the end, then that would be a reasonable way to estimate the losses. 10:18:20 10:18:22 10:18:25 10:18:28 10:18:30 10:18:33 10:18:35 10:18:39 10:18:41 10:18:43 10:18:46

But there's each of those pieces, in terms of, you know, if we need the discount for lack of marketability, the 10:18:48 10:18:49 10:18:51

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correct discount rate, we need a correct income stream and then although not part of my assignment, we need to be sure that the tax savings, which is that next step, are not speculative. And then all the inputs, in other words, would be -- if they're all reasonable and correct, then a DCF would be a fine way to do that. 10:18:53 10:18:55 10:18:56 10:18:58 10:19:00 10:19:03 10:19:05 10:19:07

Q. If you had to summarize the adjustments that you believe are necessary in order to make Mr. McClain-Duer's DCF model reasonable, what would they be? 10:19:11 10:19:13 10:19:14 10:19:17

A. So -- well, consistent with the historical overoptimism bias, we observe in the record, not only before the Crome era but during the Crome era. I think it's necessary to bring the annual forecast net income down by 64 percent to have a good starting point. 10:19:20 10:19:22 10:19:27 10:19:30 10:19:33 10:19:35 10:19:37

The unadjusted number I would, essentially, have no faith in given their historical record of being much -- very far overly optimistic with the forecast. 10:19:41 10:19:43 10:19:46 10:19:50

Secondly, the WACC, like, again, 10:19:53

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unambiguously wrong. I computed the cost of equity number of 15.4 percent. That's actually lower than Mr. McClain-Duer's number, which serves to actually increase the damages, if we use my cost equity versus his. 10:19:57 10:19:59 10:20:03 10:20:05 10:20:07 10:20:10

And then, finally, once the present value is computed, apply a lack of marketability discount of 38 percent, 38.3. 10:20:11 10:20:14 10:20:17 10:20:20

MS. HELFMANN: May I have just a moment to confer with Counsel? 10:20:22 10:20:23

THE CHAIRPERSON: Absolutely. 10:20:25

MR. CHANDLER: Do you have a handout for all those slides? 10:20:27 10:20:27

MS. HELFMANN: I do. I'm happy to pass that out. 10:20:29 10:20:30

MR. BECKER: I would just ask that the slide that was precluded be removed from the slide deck. 10:20:31 10:20:32 10:20:32

MS. HELFMANN: I'm not sure I can do that on the spot. But I'm happy to do that over a break. 10:20:35 10:20:36 10:20:37

MS. PREBIL: I'll tear that 10:20:39

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slide out for you on a break. 10:20:40

THE CHAIRPERSON: Do you need five minutes, Counsel? 10:20:44 10:20:45

MS. HELFMANN: We don't. 10:20:45

I have no further questions at this time. 10:20:46 10:20:46

Q. Thank you, Dr. Johnson. 10:20:47

THE CHAIRPERSON: Counsel, do you need five minutes? Or you tell us. 10:20:47 10:20:48 10:20:50

MR. BECKER: I need like two to get the papers out. But besides that, I'm ready to go. 10:20:50 10:20:51 10:20:54

THE CHAIRPERSON: Okay. 10:20:58

THE WITNESS: Can we take a bathroom break while we're doing that? 10:21:01 10:21:02 10:21:03

THE CHAIRPERSON: Sure. 10:21:03

Take five minutes to make it easier. 10:21:04 10:21:05

(Recess taken 10:24 to 10:31 a.m.) 10:21:05 10:31:31

THE CHAIRPERSON: Counsel, whenever you're ready. 10:31:31 10:31:32

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CROSS-EXAMINATION BY MR. BECKER: 10:31:34

Q. Mr. Johnson, good to see you again. 10:31:34 10:31:36

A. You too. 10:31:36

Q. I've been referring to you as "Mr. Johnson" in the depositions. 10:31:37 10:31:39

Is it Dr. Johnson? 10:31:39

A. It is Dr. Johnson. 10:31:40

Q. I called you Mr. Johnson. 10:31:43

So, Dr. Johnson, your opinions have been excluded before, right? 10:31:45 10:31:47

A. Yes. 10:31:49

Q. A court has previously found your valuation methodology to be a fundamental error, right? 10:31:51 10:31:53 10:31:55

A. Yes, I guess that was the wording. 10:31:58 10:32:01

Q. During your deposition, you referred to this as the Myers-Woodward case; is that right? 10:32:01 10:32:02 10:32:05

A. That's correct. 10:32:06

Q. When I asked you about this opinion at your deposition, you claimed the Court grossly misunderstood your 10:32:08 10:32:09 10:32:11

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analysis, right? 10:32:14

A. That's correct. 10:32:15

Q. You questioned whether the judge even reviewed your analysis, correct? 10:32:16 10:32:17 10:32:19

A. That's correct. 10:32:20

Q. You blamed your exclusion on false claims by opposing Counsel, correct? 10:32:21 10:32:23

A. That's correct. 10:32:27

Q. And like here in the Myers-Woodward case, you performed a fair market value analysis, correct? 10:32:29 10:32:32 10:32:34

A. Correct. 10:32:37

Q. If we could turn to JX-399. 10:32:39

(Arbitration Exhibit JX-399 was referenced.) 10:32:43 10:32:44

Q. And so this is from an Appellate brief. But if you could turn to Page 89, you will see findings of fact and conclusions of law. 10:32:56 10:32:59 10:33:01 10:33:07

A. Wait, I'm sorry. Which exhibit are we on? 10:33:09 10:33:10

Q. Sorry JX-399 at Page 89. 10:33:11

MR. BICKERMAN: Counsel, as 10:33:25

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clarification, is this a ruling by the Court or is this just what the party proposed as findings of fact? 10:33:26 10:33:28 10:33:31 10:33:33

MR. BECKER: So this is the District Court opinion. It's state court. I couldn't get the actual docket for the state court, but it was appended to a brief. 10:33:34 10:33:37 10:33:38 10:33:40 10:33:41

MR. BICKERMAN: So this is the Court's opinion? 10:33:43 10:33:44

MR. BECKER: Correct. 10:33:45

MR. BICKERMAN: Okay. 10:33:45

BY MR. BECKER: 10:33:47

Q. Well, Mr. Johnson, do you recognize this as the Court's opinion that we reviewed at your deposition? 10:33:47 10:33:49 10:33:50

A. I believe that's correct. 10:33:53

Q. And these are the findings of fact and conclusions of law the Court made after a bench trial in Texas, correct? 10:33:54 10:33:56 10:33:58 10:34:03

A. That's correct. 10:34:04

Q. And if you turn to Page 90, 10:34:04

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which is the next page, you will see Paragraph 14 at the bottom. It says, "After a pretrial hearing, the Court struck Myers-Woodward expert Shane Johnson, finding his testimony unreliable." 10:34:07 10:34:11 10:34:13 10:34:16 10:34:20 10:34:21

Do you see that? 10:34:22

A. I do. 10:34:23

Q. And then on Page 93 -- and I'm referring to the page numbers at the very bottom at the center. 10:34:30 10:34:35 10:34:36

Paragraph 27 the Court wrote, "Johnson's opinion as to fair market value is based upon a flawed methodology"; is that right? 10:34:40 10:34:46 10:34:48 10:34:52

A. That's what it says, yes. 10:34:53

Q. And the Court found your methodology to be "flawed," because according to the Court, you ignored comparable sales information that was available, correct? 10:34:54 10:34:56 10:34:58 10:35:00 10:35:02

A. Right. And that's the part that's unambiguously false. 10:35:04 10:35:05

Q. And you made that argument at 10:35:09

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the time that the sales that you ignored 10:35:12
were not comparable, correct? 10:35:14
A. Did I make argument that the 10:35:18
sales were not comparable? 10:35:20
The sales of the salt that I used 10:35:21
was the salt in an adjacent track to the 10:35:24
salt of the deal. 10:35:27
The opposing expert used salt 10:35:28
leases that were sometimes decades old. 10:35:32
Somehow the Court ruled that those 10:35:37
were comparable sales, but the salt in 10:35:39
the adjacent track was not comparable. 10:35:41
That's unambiguously false, from my 10:35:44
perspective. I don't think there's any 10:35:46
room for debate on that. 10:35:48
Q. Mr. Johnson, my question is 10:35:49
just whether you defended your decision 10:35:50
to ignore the sales used by the opposing 10:35:52
expert. 10:35:55
A. No. I don't recall that 10:35:55
coming up. And I don't recall anything 10:35:58
in the pretrial hearing that I was using 10:36:01
a netback, which, again, is demonstrably 10:36:05
false because netback method relies on 10:36:08

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subtracting various costs from some final 10:36:11
price somewhere else. There's nothing in 10:36:13
my report or testimony that involves a 10:36:15
subtraction like that. 10:36:19

Q. If you would just turn to the 10:36:20
next page, Page 94/Paragraph 31, 10:36:23
according to the Court, recounts your 10:36:29
testimony that you did not consider 10:36:31
certain sales comparable because some of 10:36:32
them were involved in older contracts, 10:36:35
which used some kind of deflator; is that 10:36:37
right? 10:36:41

A. That's what I just referred 10:36:41
to, yeah. Some of these were decades 10:36:42
old. That cannot be considered a fair 10:36:45
market value. 10:36:47

Q. And on the next paragraph, 10:36:47
Paragraph 32, the Court wrote that your 10:36:50
reasoning was "flawed," correct? 10:36:53

A. Again, they wrote that. 10:36:55

Q. And part of the reason, 10:36:58
according to the Court, that your 10:37:01
reasoning was "flawed" is because you 10:37:03
yourself used a contract that was 10:37:04

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30 years old and used the same implicit price deflator, correct? 10:37:07 10:37:10

A. The prices -- so, no. I think you're misunderstanding what it is here. There's a contract in place, long-term contract. The prices under that contract are established every month, based on marginal cost plus profits. 10:37:14 10:37:18 10:37:20 10:37:23 10:37:25 10:37:28 10:37:32

By contrast, in that top panel that are the salt leases that are decades old. Those prices were established at the origin of the contract date, right, and those prices were only adjusted by the implicit price deflator. The Formosa contract that's being referred to, the price is set every month, newly based on the marginal cost plus profit, which is exactly what textbook economics suggest it should be. 10:37:33 10:37:36 10:37:41 10:37:44 10:37:48 10:37:50 10:37:55 10:37:56 10:37:58 10:38:01 10:38:05

Q. Mr. Johnson, I appreciate that. But I'm not looking to relitigate the merits of this case. I can assure you I don't know anything about salt 10:38:06 10:38:07 10:38:10 10:38:13

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mines or oil mines. 10:38:15

But I'm just looking to note here for the record that the Court found your reasoning to be "flawed," correct? 10:38:16 10:38:18 10:38:21

A. The Court concluded that, yes. 10:38:22

Q. And the Court also concluded that on Paragraph 40, which is on the next page, that it was a "fundamental error for Johnson to ignore these comparable sales," correct? 10:38:25 10:38:28 10:38:29 10:38:31 10:38:34

A. That's what it wrote. 10:38:36

Q. And on Paragraph 41 on the same page, the Court wrote that your calculations are unreliable because they, quote, "result in values that vastly exceed all the comparable royalty sales," right? 10:38:45 10:38:46 10:38:50 10:38:53 10:38:55 10:38:59

A. That's correct again. But notice that these royalty sales are these lease contracts that are quite old. 10:39:00 10:39:02 10:39:04

I'll just note for the record here that my calculations were very close to the US geological survey prices. And I just think that, you know, made much more 10:39:07 10:39:09 10:39:12 10:39:17

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economic sense. 10:39:20

Q. And on the next page, Paragraph 45, the Court wrote that you did not attempt to reconcile this significant difference between the method that you used and the data from the comparable sales, correct? 10:39:21 10:39:23 10:39:30 10:39:32 10:39:34 10:39:36

A. They wrote that. But I mean, A, I didn't use a netback method. That's demonstrably false. And I didn't try to reconcile that with prices that were decades old. 10:39:40 10:39:42 10:39:45 10:39:48 10:39:50

Q. And little further down on the page, the Court talks about geological survey data that you mentioned and Paragraph 48 says that that data is "not reliable or suitable to use for determining the value at the well head," correct? 10:39:52 10:39:54 10:39:57 10:39:59 10:40:01 10:40:04 10:40:07

A. I'm aware that that's what they said, yes. 10:40:07 10:40:10

Q. And there was also a third method that you had used based on spot contract that the Court, also, found to 10:40:12 10:40:14 10:40:17

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be unreliable, right? 10:40:19

A. Right. And that was never 10:40:20
meant to be the actual value. 10:40:22

Q. And on Page 98/Paragraph 55 10:40:24
the Court says, "Accordingly, given that 10:40:32
none of the methods of valuation" -- and 10:40:35
for the record, that was a fair market 10:40:38
valuation, correct? 10:40:40

A. Say that again. 10:40:42

Q. You were using a fair market 10:40:43
valuation when they're referring to 10:40:45
"valuation" here? 10:40:46

A. That's correct. 10:40:47

Q. The Court wrote that, "None 10:40:47
of the methods of valuation utilized by 10:40:49
Johnson were reliable. The Court found 10:40:52
that Johnson's opinions regarding fair 10:40:54
market value are not admissible," correct? 10:40:56

A. That's what it wrote, yes. 10:40:59

Q. And this opinion was affirmed 10:41:00
on appeal, correct? 10:41:02

A. That's correct. 10:41:03

And my understanding is that it's 10:41:04
-- where are we? I think, in October, 10:41:07

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the Texas Supreme Court will hear arguments appealing that. And that -- at least, this whole matter. And the current litigation is surrounding do they even need a fair market value, which the original state court, I think, the claim will be erred in saying that that was the correct value. 10:41:09 10:41:13 10:41:18 10:41:20 10:41:22 10:41:27 10:41:30 10:41:33

Q. Okay. So let's talk about your fair market value methodology in this case. 10:41:35 10:41:36 10:41:38

During your direct testimony, you mentioned several times that Mr. McClain-Duer takes the Raiders projected net income forecasts at "face value," correct? 10:41:39 10:41:42 10:41:45 10:41:47 10:41:49

A. That's correct. 10:41:50

Q. And when you say, "face value," you do realize that he does discount them by a discount rate, correct? 10:41:51 10:41:53 10:41:56 10:41:58

A. That's not the purpose of a discount rate. 10:42:01 10:42:02

Q. Well, part of the purpose of 10:42:03

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a discount rate is to match future cash flows according to the riskiness of cash flow streams, right? 10:42:04 10:42:08 10:42:10

A. Right. And I think that's something that perhaps he misunderstands is that -- based on his other testimony -- is that there's two types of risk when we think about a cash flow stream. Like, suppose that I have a company and the CEO dies in a plane crash and that makes cash flows much lower than predicted. That is a risk that is specific to the company. It has nothing to do with an aggregate economic shock. 10:42:11 10:42:12 10:42:14 10:42:17 10:42:19 10:42:21 10:42:25 10:42:28 10:42:31 10:42:34 10:42:37

There's another type of risk that is called "systematic risk" that would refer to like a bottom time or a recession. 10:42:38 10:42:40 10:42:42 10:42:45

The only risk that goes into a discount rate is a systematic risk. That discount rate does nothing at all to account for the fact that management may overestimate cash flows. It's completely unrelated to that. 10:42:46 10:42:49 10:42:53 10:42:55 10:42:58 10:43:01

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Q. Mr. Johnson, I'm just trying to get some baselines established here. 10:43:03 10:43:04

When you say that Mr. McClain-Duer takes the Raiders' projected net income at "face value," he is not taking those projected cash flow streams as a hundred percent certain, correct? 10:43:07 10:43:09 10:43:12 10:43:15 10:43:17

A. Again, the discount rate has nothing to do with the certainty of cash flows. As we talked about, if you have treasury bond coupon payments that are virtually certain, you still use a discount rate for that. The discount rate is not -- does not have anything to do with whether those cash flow's overstated or not. That's a gross misunderstanding. 10:43:22 10:43:23 10:43:29 10:43:31 10:43:33 10:43:35 10:43:37 10:43:40 10:43:42 10:43:43

Q. Mr. Johnson, it's a basic point here. 10:43:44 10:43:47

It is not your claim that Mr. McClain-Duer thinks there is no risk associated with the projected net income cash flow streams of the Raiders, correct? 10:43:48 10:43:50 10:43:52 10:43:54 10:43:56

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A. I think that he believes erroneously that a discount rate accounts for the fact that the cash flows are not a hundred percent certain. He said that in testimony. That's not what a discount rate does. 10:44:01 10:44:05 10:44:07 10:44:09 10:44:11 10:44:13

When I say -- I'll just clarify. When I say, he takes them at "face value," I mean, he himself says that he did not assess whether the Raiders historically had made forecasts that were accurate. And so that's what I mean by "face value." 10:44:14 10:44:16 10:44:19 10:44:21 10:44:23 10:44:26 10:44:29

The discounting part, I mean, we can go back and forth on that. But, again, it's unambiguously wrong to say that a discount rate is designed to account for the fact that the cash flows may be overstated. That is in no way, shape or form what a discount rate does. 10:44:30 10:44:32 10:44:34 10:44:37 10:44:39 10:44:41 10:44:44

Q. Mr. Johnson, this is a basic question. And at no point in my question did you hear me say that the discount rate is designed to account for the fact 10:44:46 10:44:47 10:44:50 10:44:52

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that cash flows may be overstated. 10:44:53

My question is very simple and I would appreciate if you could try to answer it. 10:44:55 10:44:56 10:44:59

Is it your claim that Mr. McClain-Duer has accounted -- is it your claim that Mr. McClain-Duer's model views the projected cash flow stream to the Raiders to have zero risk? 10:44:59 10:45:02 10:45:05 10:45:09 10:45:11

A. No. 10:45:14

Q. Okay. Thank you. 10:45:15

And you take Mr. McClain-Duer -- or you take the Raiders projected income streams and discount them by -- or revise them downward by 64 percent, correct? 10:45:17 10:45:23 10:45:25 10:45:28

A. I don't. I don't compute damages. I suggest that they need to be reduced by 64 percent to bring them in line to a proper expected cash flow stream. 10:45:31 10:45:32 10:45:36 10:45:38 10:45:40

Q. And your theoretical basis for doing that is that the Raiders management has displayed an overoptimism bias, correct? 10:45:42 10:45:44 10:45:46 10:45:50

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A. That's correct, based on historical record of Raiders management including during the Crome period. 10:45:51 10:45:52 10:45:56

MR. BECKER: If the witness could be instructed just to answer the question directly. I'm just asking pretty simple questions here trying to establish a baseline. And so we're getting kind of long verbose responses. 10:46:01 10:46:01 10:46:03 10:46:05 10:46:06 10:46:08 10:46:18

THE CHAIRPERSON: Continue. 10:46:18

MR. BECKER: Sorry? 10:46:21

THE CHAIRPERSON: Continue. 10:46:21

Q. So go to Slide 1, please. 10:46:23

And because of this overoptimism bias, you revise the highlighted projected net income and you revise them downward by 64 percent, right? 10:46:26 10:46:31 10:46:36 10:46:39

A. I'll repeat. I don't "revise them downward" because I don't perform the calculation. Those numbers are given to another expert who revises them. I don't revise them downward. 10:46:42 10:46:45 10:46:46 10:46:49 10:46:54

Q. Okay. The basis for revising 10:46:55

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the Raiders' projected net income 10:47:00
downward by 64 percent is based on your 10:47:02
forecast study, correct? 10:47:06

A. It's based on my -- when you 10:47:09
say forecast study, you mean assessing 10:47:11
the historical accuracy of the Raiders 10:47:14
management forecast? 10:47:16

If that's what you mean, the answer 10:47:17
is, yes. 10:47:19

Q. Nowhere in your report do you 10:47:24
examine the current business outlook of 10:47:27
the Raiders, correct? 10:47:29

A. That's correct. 10:47:31

Q. You didn't look at any 10:47:32
third-party valuations of the Raiders, 10:47:33
correct? 10:47:35

A. That's correct. 10:47:36

Q. You didn't look at whether -- 10:47:39
please go back to Slide 1. Yeah, go back 10:47:41
to the end of it. 10:47:43

You didn't look at these revised 10:47:44
projected net income streams to see 10:47:48
whether they match up to a company that 10:47:50
is valued at up to $7 billion, correct? 10:47:53

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A. That's correct. 10:47:57

Q. You didn't look at all to see whether these figures make any sense given the current valuation of the Raiders, correct? 10:47:57 10:47:59 10:48:02 10:48:03

A. I didn't compare those to check valuation, but I don't know who did this valuation that you're talking about. 10:48:09 10:48:10 10:48:13

Q. You didn't examine any line items in the Raiders projected income statements, correct? 10:48:16 10:48:19 10:48:22

A. Not in a systematic fashion, but I did -- I mean, I looked through them to get a sense of why the forecast were so inaccurate, why was it so hard to make accurate forecast. 10:48:24 10:48:25 10:48:28 10:48:31 10:48:34

Q. Your report does not mention a single line item in the Raiders projected income statement other than net income, correct? 10:48:36 10:48:39 10:48:41 10:48:43

A. That's correct. 10:48:44

Q. Okay. Now, you have served as a plaintiff side damages expert before, correct? 10:48:44 10:48:46 10:48:48

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A. That's correct. 10:48:49

Q. And one of those was the DHI Group case? 10:48:50 10:48:53

A. That's correct. 10:48:53

Q. You performed a discounted cash flow analysis there, correct? 10:48:54 10:48:57

A. Correct. 10:48:58

Q. And for the projected net income of your model in that case, you relied on projections created by somebody else, right? 10:48:59 10:49:00 10:49:03 10:49:05

A. Right. It was an investor in the entity. 10:49:06 10:49:07

Q. For the projected net income in your model, you relied on projections created by somebody else, correct? 10:49:10 10:49:13 10:49:15

A. I just said, yes. 10:49:17

Q. Okay. And in that model when you were retained by Plaintiffs, you did not revise those projections downward due to a potential overoptimism bias, correct? 10:49:18 10:49:24 10:49:25 10:49:29 10:49:29

A. As we discussed at my deposition, that was a new company with 10:49:29 10:49:31

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no historical record to analyze. 10:49:33

So the answer is, yes, I had no basis to make an adjustment. And, again, I just emphasized that was not a management forecast. 10:49:37 10:49:39 10:49:42 10:49:45

Q. You did not perform any analysis to see whether those projections were created by somebody who suffered from an overoptimism bias, correct? 10:49:45 10:49:47 10:49:50 10:49:52

A. That's correct. 10:49:56

Q. Okay. And when you mentioned that that was an analysis created by an investor rather than management, you didn't look at any investor valuations in this case, correct? 10:49:57 10:49:58 10:50:02 10:50:04 10:50:09

A. This case. 10:50:14

Q. The Raiders. 10:50:15

A. This? 10:50:16

Q. Yes. 10:50:16

A. That's correct. 10:50:17

Q. You didn't ask -- you never asked the Raiders to produce any valuations created by potential acquirers of a Raiders interest, correct? 10:50:18 10:50:22 10:50:25 10:50:27

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A. That's correct. 10:50:30

Q. And we already established that you didn't compare these -- the projected -- the revised projected net income we're seeing on this screen to what -- how the market is valuing the Raiders, correct? 10:50:33 10:50:34 10:50:38 10:50:41 10:50:42 10:50:45

A. I'm not sure what you mean by "market." It's not publically traded. 10:50:46 10:50:47

Q. To how third parties have valued the Raiders. 10:50:49 10:50:51

A. That's correct. 10:50:52

Q. At your deposition, you could not name a single empirical study that discounted an individual or company's projections in the way that you did to account for overoptimism bias, correct? 10:50:54 10:50:55 10:50:58 10:51:00 10:51:02

A. Say that again. 10:51:06

Q. At your deposition you could not identify a single empirical study that discounted an individual or a company's projections in the way that you did to account for overoptimism bias, correct? 10:51:06 10:51:08 10:51:11 10:51:14 10:51:16 10:51:19

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A. Right. That's not what empirical research in finance is about. 10:51:20 10:51:23

Q. Okay. So let's turn to the forecast study. 10:51:27 10:51:29

You say there are 18 forecast in your study, but there are eight projections, correct? 10:51:30 10:51:32 10:51:34

A. There are eight documents. I mean, it depends on how you want to use the word "projection." So there are 18 years worth of forecast among the eight sets of projections. 10:51:35 10:51:36 10:51:38 10:51:41 10:51:44

Q. Okay. And, just to keep the record clear, I understand that the way you have defined "forecast" in your study is that each year that you test a document is a forecast, right? 10:51:45 10:51:47 10:51:48 10:51:51 10:51:54

So, if I've got one projection here that's got a projection for three years, then you've tested them against the result of those three years. 10:51:55 10:51:57 10:51:59 10:52:00

That's three forecasts, correct? 10:52:01

A. Correct. 10:52:03

Q. Okay. So, to keep the record 10:52:03

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clean, I'm going to refer to "forecast" your way. 10:52:06 10:52:07

But when I'm referring to "projections," I mean, the specific documents. 10:52:08 10:52:09 10:52:10

A. Okay. 10:52:10

Q. Is that fair? 10:52:11

Okay. So your forecast study is based on eight projections, correct? 10:52:13 10:52:14

A. That's correct. 10:52:16

Q. Six of those eight are what you described as sent before 2021, correct? 10:52:21 10:52:25 10:52:27

A. Correct. 10:52:28

Q. Two of those eight are sent after 2021, correct? 10:52:28 10:52:30

A. That's correct. 10:52:32

Q. And when we talk about sent before 2021, we mean before Mr. Crome's arrival, correct? 10:52:32 10:52:34 10:52:37

A. Correct. 10:52:38

Q. So you've got six pre-Crome projections and only two Crome projections, correct? 10:52:39 10:52:43 10:52:45

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A. That's correct. 10:52:46

Q. And that's true in your original analyses and your updated analyses that you served last week, correct? 10:52:46 10:52:47 10:52:50 10:52:53

A. That's correct. 10:52:54

Q. And the vast majority of -- so the vast majority of the projection in your forecast study rely on projections that were created by either Mr. Marc Badain or Mr. Ed Villanueva, correct? 10:52:58 10:53:00 10:53:04 10:53:05 10:53:08

A. That's correct. 10:53:09

Q. Those are the same two people that your client has accused of fraud in this case, correct? 10:53:10 10:53:13 10:53:15

A. That's my understanding, yes. 10:53:17

Q. At your deposition you only had a vague recollection of those allegations, right? 10:53:18 10:53:20 10:53:21

A. That's correct. 10:53:22

Q. And you didn't consider anything about those allegations before deciding to use those forecast, correct? 10:53:23 10:53:24 10:53:27

A. That's correct. 10:53:29

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Q. And leaving aside those allegations, your opinion is that Raiders management suffers from an overoptimism bias, correct? 10:53:38 10:53:40 10:53:42 10:53:44

A. I don't know -- so, when you're saying that, I just want to be very clear. 10:53:47 10:53:51 10:53:52

A person can have a psychological bias and that can be overoptimism bias. I don't know what's in the mind of these people when they do that. I simply saying the proof is in the pudding. 10:53:53 10:53:56 10:53:59 10:54:02 10:54:04

Let's look at the forecast and as an empirical fact, the forecast were systematically well above what was actually achieved, okay. 10:54:05 10:54:09 10:54:13 10:54:15

Now, that is evidence of -- an overoptimism bias is consistent with that, but I'm not claiming any psychological biases that I know what psychological biases they suffer from. 10:54:16 10:54:20 10:54:21 10:54:24 10:54:27

Q. I understand. 10:54:28

I'm not trying to accuse you of playing an armchair psychologist. 10:54:29 10:54:31

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I am more trying to establish your opinion applies to the current Raiders management, right? 10:54:33 10:54:35 10:54:37

A. Well, as I talked about earlier, there was not -- if you just look at the set of projections before Mr. Crome arrived and the set after and look at their historical accuracy, there's not a big change. 10:54:39 10:54:41 10:54:43 10:54:46 10:54:49 10:54:53

Q. Your opinion is overoptimism bias applies to the current Raiders management, correct? 10:54:55 10:54:58 10:54:59

A. I am saying that a set of forecast produced by this organization whether the current CFO was in place or not, that I think is rational to have a large amount of scepticism about the level given that the historical forecast were so far above what was actually achieved. 10:55:04 10:55:06 10:55:09 10:55:11 10:55:16 10:55:18 10:55:21 10:55:23

And so, to the extent, you know, we're looking at the current one -- and I don't know which employees stayed and which ones didn't. We know Mr. Crome is 10:55:24 10:55:28 10:55:31 10:55:33

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new. I'm saying that organization has a 10:55:36
record of historically way over 10:55:38
forecasting actual performance and then 10:55:41
looking at the future, I think, it's 10:55:44
rational to apply scepticism to the 10:55:46
future forecast or the forecast made by 10:55:49
the current management. 10:55:52

Q. The projection that's up on 10:55:56
the screen, the projection that you 10:55:57
revised downward or that you recommend 10:55:58
should be revised downward by 64 percent 10:56:01
is one created by current Raiders 10:56:03
management, correct? 10:56:05

A. That's correct. 10:56:06

Q. And the vast majority of the 10:56:06
forecast in your model are from the prior 10:56:08
Raiders management, correct? 10:56:10

A. That's correct. 10:56:11

Q. And you said two reasons why 10:56:12
that's not a problem. 10:56:17

One because the projections in your 10:56:18
study that are from current Raiders 10:56:21
management also displayed are consistent 10:56:23
with overoptimism, correct? 10:56:25

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A. That's correct. 10:56:27
Q. And, for the record, that's two projections that you used in your study, right? 10:56:27 10:56:29 10:56:32
A. Yeah, but four annual forecast. 10:56:32 10:56:35
Q. And at your deposition, you also said that, in your experience, a CFO has to work with other people in putting together a forecast and some of those people may have been before and after Crome, correct? 10:56:35 10:56:37 10:56:42 10:56:44 10:56:46 10:56:48
A. That's correct. 10:56:49
Q. And you've also said that there could be a culture of overoptimism that extended, you know, extended as a result of the people -- those personnel, correct? 10:56:49 10:56:52 10:56:55 10:56:57 10:57:00
A. That's correct. 10:57:00
Q. You don't know anyone who actually is on current Raiders management that was there before Mr. Crome's arrival, right? 10:57:01 10:57:02 10:57:06 10:57:08
A. That's correct, I don't know. 10:57:09

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Q. As far as you know, that number is zero, right? 10:57:10 10:57:12

A. I don't know one way or another. 10:57:13 10:57:13

Q. Did you -- 10:57:13

A. And let me just back up, though. 10:57:17 10:57:19

When I talk about a "culture," I don't mean just the management and I don't mean just members of the management. It's the culture of an organization. 10:57:19 10:57:20 10:57:23 10:57:24

And so I just want to be clear that it doesn't have to be like a C-suite all being there. I meant culture in my deposition more broadly. 10:57:26 10:57:28 10:57:31 10:57:34

Q. I understand. 10:57:35

It could apply outside the finance department, correct? 10:57:36 10:57:38

A. Correct. 10:57:38

Q. Did you listen to Mr. Crome's testimony about how he creates the projections now? 10:57:38 10:57:41 10:57:42

A. I did read that testimony. 10:57:44

Q. His trial testimony? 10:57:46

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A. Yes. 10:57:47

Q. And did you review his testimony about who created projections before his arrival? 10:57:49 10:57:51 10:57:53

A. Sitting here I don't recall that. 10:57:56 10:57:58

Q. Would it surprise you that he said before his arrival nobody from outside the finance department had input into those projections? 10:57:59 10:58:01 10:58:03 10:58:06

A. I don't know one way or the other. 10:58:07 10:58:09

Q. Whereas now it's a multi-department process, correct? 10:58:09 10:58:10

A. That's my understanding. 10:58:12

Q. Okay. And, again, you're not aware of anyone who actually contributed to the projections before Mr. Crome's arrival that still is at the Raiders, correct? 10:58:12 10:58:16 10:58:21 10:58:22 10:58:27

A. That's correct. 10:58:27

Q. Okay. And, again, the majority of these pre-2021 projections at the time of your deposition, you also 10:58:29 10:58:33 10:58:37

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didn't know that before 2021 the Raiders used a tax basis method of accounting, correct? 10:58:39 10:58:41 10:58:44

A. I don't recall that. I thought we were talking about the -- when you said, a change in accounting method, and I asked you was it about the Fiscal Year change. 10:58:47 10:58:48 10:58:51 10:58:53 10:58:55

Q. Well, you recall the Fiscal Year, but did you know at the time of your deposition that the Raiders used a tax basis method of accounting before 2021? 10:58:57 10:58:58 10:59:00 10:59:02 10:59:04

A. Probably not. I don't recall saying that, but I think that's correct. 10:59:10 10:59:12

Q. And you tested those projections that were done on a tax basis method of accounting against GAAP results, correct? 10:59:14 10:59:17 10:59:18 10:59:21

A. If those were tax basis forecast, then, yes, that's what I did. 10:59:24 10:59:26

Q. And you also tested those pre-Crome projections that were based on a calendar year against the NFL Fiscal 10:59:27 10:59:29 10:59:32

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Year results, correct? 10:59:35

A. That's correct. And so 10:59:36
things just have to be sort of -- only 10:59:37
way to line -- well, it wasn't possible 10:59:39
to line them up perfectly given the 10:59:41
shift. 10:59:44

Q. And so, just to see how the 10:59:46
mechanics of this forecast study goes -- 10:59:47
go to the next slide. 10:59:51

This is the three projections that 10:59:53
you used and tested against the results 10:59:55
of the Fiscal Year that just wrapped, 10:59:58
correct? 11:00:01

A. Correct. 11:00:01

MR. CHANDLER: What does 11:00:03
"date sent" mean? 11:00:04

Q. Mr. Johnson? 11:00:06

THE WITNESS: That's the date 11:00:07
that we show that a forecast was 11:00:08
sent. Most of these were attached 11:00:11
to e-mails. And that's how we 11:00:12
got the context of them. 11:00:14

MR. CHANDLER: Thank you. 11:00:17

Q. So, to measure the average 11:00:17

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deviation of the Raiders forecast against Fiscal Year '24, you relied on a projection that was sent in December -- on December 15th [sic], right? 11:00:19 11:00:22 11:00:23 11:00:26

A. Did you -- do you mean December of 2015? 11:00:30 11:00:32

Q. Yes, sorry. 11:00:33

A. Yes. 11:00:34

Q. Another projection that was sent on March 2017, right? 11:00:35 11:00:36

A. Correct. 11:00:38

Q. And then one from January 2022, right? 11:00:38 11:00:41

A. That's correct. 11:00:41

Q. And that's one of the two Crome projections that you had, right? 11:00:42 11:00:43

A. That's correct. 11:00:45

MR. BICKERMAN: You're referring to just the last one? 11:00:49 11:00:49

MR. BECKER: The top one is the Crome projection. 11:00:51 11:00:52

Q. So, for the December 2015 one, you're measuring how accurate that forecast was to the results of the last 11:00:54 11:00:55 11:00:57

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Fiscal Year, correct? 11:01:00
A. That's correct. And, as I discussed earlier that 2015 one, I would assume it did not include a forecast for StadCo or did not include income from StadCo. 11:01:01 11:01:04 11:01:08 11:01:11 11:01:14
Q. So we'll talk about that in a second. 11:01:16 11:01:17
If you could go to JX-3429. 11:01:18
(Arbitration Exhibit JX-3429 was referenced.) 11:01:25 11:01:27
Q. So this is one of the three projections that you used to map against the 2024 results. It's an e-mail sent by Marc Badain, correct, or the parent to the -- the e-mail attaching the projection is one sent by Marc Badain, correct? 11:01:27 11:01:28 11:01:30 11:01:36 11:01:39 11:01:40 11:01:42
A. That's correct. 11:01:42
Q. In 2015, there is no StadCo, right? 11:01:43 11:01:46
A. Correct. 11:01:47
Q. And you had this mantra in your -- in the slide that's shown that 11:01:48 11:01:52

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the projections needed to be dated, 11:01:54
complete and non-duplicative, correct? 11:01:57

A. Correct. 11:01:59

Q. So you made an exception for 11:01:59
this one? 11:02:01

A. I'm not sure what you mean. 11:02:03

Q. Well, "complete" meant 11:02:04
combined TeamCo and StadCo, right? 11:02:07

A. I guess that -- that's 11:02:15
correct, yeah. So, for this one, there 11:02:18
was no combined... 11:02:20

Q. So you made an exception to 11:02:20
your three cardinal rules for this one, 11:02:23
which was overoptimistic, right? 11:02:26

A. Well, this was for the whole 11:02:27
organization. But, yes, I understand now 11:02:29
thinking about it, as you pointed out, 11:02:30
StadCo was not part of that, yeah. 11:02:31

Q. And, actually, all of those 11:02:33
pre-'21 projections were before StadCo 11:02:36
was created, right? 11:02:38

A. "Created" but it was known. 11:02:41
I'm -- so sitting here, I'm blanking on 11:02:45
the date. But it was known that they 11:02:46

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were going to have a stadium relatively early in that process. I mean, relatively early in that set of dates. 11:02:48 11:02:51 11:02:53

Q. Right. 11:02:55

You're using those projections -- so this is a projection from 2015 and Marc Badain is projecting what Las Vegas is going to look like for the Raiders in 2023 and saying that that should hold the same water as, you know, a Crome projection that was just created, correct? 11:02:55 11:02:58 11:03:00 11:03:03 11:03:05 11:03:08 11:03:11

A. Well, I mean, in computing an average, these are all just equal data points in the average. 11:03:15 11:03:16 11:03:19

Q. Correct. 11:03:19

A. But, again, as I think we discussed in one of the depositions is that the -- even if we just take the Crome era ones, there is really no difference between these. 11:03:20 11:03:22 11:03:25 11:03:27 11:03:30

Q. Well, we'll talk about the two Crome ones that you relied on in a second. 11:03:30 11:03:31 11:03:34

I'm just now establishing the vast 11:03:34

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majority of the projections in your study are like this 2015 one before the Raiders ever moved to Vegas, before StadCo existed and those make up the majority of the data points in your study, correct? 11:03:36 11:03:37 11:03:39 11:03:41 11:03:44

A. My understanding is that when the move to Vegas was planned that they knew there would be StadCo. 11:03:46 11:03:48 11:03:52

And so, if we're comparing then the actual results after they moved to Vegas, which is what we're doing, then that -- there's not an inconsistency there. 11:03:54 11:03:56 11:03:59 11:04:03

Q. The majority of the data points in your forecast study are based on projections that were created before the Raiders moved to Vegas and before StadCo was created, correct? 11:04:05 11:04:07 11:04:09 11:04:12 11:04:14

A. I don't know when StadCo was created. But I think the forecast were created after it was known they were moving to Vegas and would have income from the stadium. 11:04:19 11:04:20 11:04:25 11:04:28 11:04:30

Q. I understand. 11:04:31

A. Sort of like in a substantive 11:04:32

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point whether StadCo had already been 11:04:34
created or not I don't think is relevant. 11:04:36
Q. We can discuss the relevance. 11:04:38
My point is the majority of the data 11:04:41
points in your forecast study were based 11:04:42
on projections that were created before 11:04:44
the Raiders moved to Vegas and before 11:04:46
StadCo was created, correct? 11:04:50
A. That's correct. 11:04:55
Q. And before they knew what the 11:04:55
revenues were going to look like in 11:04:57
Vegas, which Mr. Crome is currently aware 11:04:59
of, correct? 11:05:01
A. It's before the move, so 11:05:02
before they had observed actual revenues. 11:05:04
Q. Right. 11:05:06
Whereas now Mr. Crome has three 11:05:07
years of data to see what net income 11:05:08
looks like in Vegas, right? 11:05:11
A. Yes. 11:05:12
Q. And are you aware of any 11:05:15
testimony in the record that the Raiders 11:05:16
did not begin to consider moving to Las 11:05:18
Vegas until 2016? 11:05:20

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A. Any testimony in the record? 11:05:28
Just to be clear and for this one that 11:05:30
we're looking at, I don't think -- I 11:05:32
didn't see anything in the record that 11:05:35
indicated they already knew they were 11:05:36
moving to Vegas. 11:05:38

Q. Yeah. Well, this one -- 11:05:39

A. I think that's what you asked. 11:05:39
I just wanted to clarify. 11:05:40

Q. This one is mapping out all 11:05:41
the way to 2034. 11:05:43
You've never seen Mr. Crome do that 11:05:45
either, right? 11:05:47

A. I've never seen -- 11:05:47

Q. Projections for 15 years or 11:05:49
actually a 20-year projection by Mr. 11:05:51
Crome? 11:05:53

A. Right. And as part of the 11:05:53
issue is that where -- we have a long-term 11:05:55
forecast being used in McClain-Duer model 11:05:58
and we don't have a way to assess Mr. 11:06:02
Crome's ability to forecast in the 11:06:04
long-term. 11:06:06

Q. Okay. So if, we can just go 11:06:08

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back to your -- we're taking Fiscal Year '24. You've got the three projections. One is the 2015 one. One is the March 2017 one. 11:06:09 11:06:14 11:06:14 11:06:16

And we looked at your deposition how you may have used a Goldman forecast for that one, right? 11:06:18 11:06:20 11:06:22

A. I think there were two attached to that e-mail. 11:06:24 11:06:26

Q. There were two attached and -- but the one that was sent to the League incorporated the financing assumptions of the Goldman model, correct? 11:06:26 11:06:29 11:06:31 11:06:33

A. That's my understanding yes. 11:06:35

Q. Okay. So those are the two projections. Those are two of the three projections. 11:06:36 11:06:37 11:06:40

Then you've got Mr. Crome projection from January 2022, right? 11:06:40 11:06:42

A. Correct. 11:06:44

Q. So let's move to the Crome projections. 11:06:45 11:06:47

At your deposition you stated that -- give me one second here -- that if you 11:06:49 11:06:53

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were to see some evidence that Mr. Crome's forecast materially changed, in whether they were displaying overoptimism bias, you would need to update your study, correct? 11:07:02 11:07:05 11:07:08 11:07:11 11:07:13

A. Correct. 11:07:13

Q. If his more recent projections were, in fact, over pessimistic rather than overoptimistic, you would have no issue updating your opinions, correct? 11:07:13 11:07:15 11:07:18 11:07:21

A. Well, just to be clear, the -- if we add in another forecast that I think you probably want to add in, then we have four big negative misses and one big positive deviant -- deviation. 11:07:24 11:07:28 11:07:33 11:07:35 11:07:39

So I think that the overall pattern doesn't change. I've got four out of five that are really big negative misses and one positive. Then I still would say, okay, you know, four out of five big negative misses. That would still lead me to worry about overoptimism. Now -- 11:07:43 11:07:46 11:07:48 11:07:50 11:07:55 11:07:57 11:07:59

Q. Mr. Johnson, your answers are getting a little far afield from my 11:08:03 11:08:05

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question. 11:08:07

A. I'm trying to answer it because I want to come to your point. 11:08:07 11:08:08

If you do that, that negative 64 percent falls in magnitude, absolute magnitude, to about minus 57, okay? 11:08:09 11:08:13 11:08:16

So -- 11:08:20

Q. So now I'm going to interrupt, Mr. Johnson. 11:08:20 11:08:22

You did not conduct any of those studies in your report. So I'm going to ask you not to talk about opinions you did not consider. 11:08:22 11:08:24 11:08:26 11:08:27

MS. HELFMANN: Objection. 11:08:28

MR. BICKERMAN: If I may, I think he's talking about the theory, not necessarily the report. 11:08:29 11:08:31 11:08:32

THE CHAIRPERSON: Correct. 11:08:35

MR. BICKERMAN: And it would be interesting to understand the theory that supports his analysis without going into the specific findings. 11:08:35 11:08:36 11:08:38 11:08:39 11:08:42

MR. BECKER: Okay. 11:08:43

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THE CHAIRPERSON: Panel is going to hear it. 11:08:43 11:08:46

MR. BICKERMAN: Yeah. That's why I think it's useful to hear what he has to say. 11:08:46 11:08:47 11:08:48

A. So, just to continue, I mean, so the average -- I mean, if there's a positive, you add it to a negative number. It's just like to pull it up. But I don't think -- and so that's what I meant by "updating." 11:08:49 11:08:51 11:08:53 11:08:55 11:08:57 11:08:59

Q. That's fine. 11:09:01

You agreed you would update your opinions if more recent projections from Crome were, in fact, pessimistic, right? 11:09:04 11:09:06 11:09:08

A. Or if they're better. I mean, if they're closer to accurate. 11:09:15 11:09:17

Q. Right. You would update your opinions if that were the case, right? 11:09:19 11:09:21

A. I would update the number, yes. 11:09:22 11:09:24

Q. Let's go to the next slide, please. 11:09:24 11:09:27

And in your updated analysis, you 11:09:27

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literally cited to the evidence that showed Mr. Crome's projections were improving, correct? 11:09:29 11:09:32 11:09:35

A. Again, as we discussed at my second deposition, these were erroneously included and what happened is -- you know, just to be clear, I don't type these source documents. So, when Mr. McClain-Duer moved the valuation date and then we had another year because now actual results for Fiscal Year 4 were in, then we revisited documents and then somehow erroneously these three Bates numbers were typed in. 11:09:37 11:09:39 11:09:42 11:09:46 11:09:48 11:09:52 11:09:54 11:09:56 11:10:00 11:10:03 11:10:06

Q. So I understand it's an error and, actually, that was going to be my next question. 11:10:08 11:10:09 11:10:10

But the fact of the matter is you cited to two projections here that show Mr. Crome being over pessimistic rather than being overoptimistic, right? 11:10:11 11:10:13 11:10:16 11:10:20

A. I don't have these memorized. I mean, we can look at those, but if -- you can just tell me. 11:10:22 11:10:24 11:10:28

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Is one of the ones that is the basis for Mr. McClain-Duer's second supplemental report? 11:10:29 11:10:31 11:10:33

Q. We're going to look at them in a second. 11:10:34 11:10:35

I'm saying you did not include these in your study, right? 11:10:36 11:10:38

A. That is correct. 11:10:39

Q. And I understand errors happen. That's not -- the typos -- it's not what I'm trying to get you at. 11:10:40 11:10:41 11:10:43

But you cited to these here but did not incorporate them in your study, correct? 11:10:45 11:10:47 11:10:49

A. That's correct. 11:10:50

Q. Go to the next slide. So we'll look at JX-359. So JX-359 we looked at at your deposition before projected and net income of negative 56 million for this previous Fiscal Year, right? 11:10:50 11:10:52 11:10:56 11:10:58 11:11:00 11:11:02

A. Right. 11:11:03

Q. And the actual result for the previous Fiscal Year were negative 10 11:11:04 11:11:08

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million, right? 11:11:09
A. That's my recollection. 11:11:10
Q. And so it was 80.5 percent 11:11:11
using your calculations; over 11:11:15
pessimistic, right -- or pessimistic, 11:11:17
right? 11:11:19
A. Correct. 11:11:19
Q. And did you not incorporate 11:11:20
this projection in your study, correct? 11:11:22
A. That's correct. 11:11:24
Q. Now, if you could turn to the 11:11:25
actual exhibit. 11:11:27
This projection was complete, 11:11:29
right, it combined TeamCo and StadCo? 11:11:33
A. Correct. 11:11:35
Q. It was non-duplicative 11:11:36
correct? 11:11:39
A. Correct. 11:11:40
Q. And then you've got you said, 11:11:40
this new excuse today. That you wanted 11:11:45
to make sure that it was dated to ensure 11:11:46
that it was performed before the end of 11:11:49
the forecast period, right? 11:11:51
A. Well, before the forecast 11:11:53

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period was entirely over. 11:11:54

Q. Right. Before the forecast 11:11:56
period was entirely over? 11:11:59

MR. BECKER: If you can go 11:12:00
to 359. And if you could 11:12:01
highlight the date on the top 11:12:15
right corner. 11:12:16

(Arbitration Exhibit JX-359 11:12:16
was referenced.) 11:12:16

Q. Now, you said at your 11:12:18
deposition that you didn't include this 11:12:20
because you weren't sure whether this was 11:12:22
a print date or a save date, correct? 11:12:23

A. Right. So all of the other 11:12:26
forecast have -- the ones generally 11:12:28
attached to an e-mail, we have the date 11:12:30
sent. That's what one of the Panel asked 11:12:32
about earlier. Or there's a date in the 11:12:34
file name. 11:12:37

And here there was just a 11:12:38
spreadsheet, no date, except the print 11:12:40
date. 11:12:43

Q. The date was important 11:12:44
because you wanted to ensure it was 11:12:44

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created before the end of the forecast period, correct? 11:12:46 11:12:48

A. Right. 11:12:48

Q. And you don't know whether this is a print date or a safe date, right? 11:12:49 11:12:50 11:12:52

A. Correct. 11:12:53

Q. Regardless of whether it's print date or a safe date, this forecast was created before the end of the forecast period, right? 11:12:53 11:12:55 11:12:57 11:12:59

A. Right. There was one month remaining in the forecast period. 11:13:00 11:13:03

Q. Well, you used projections that were two months before the end of the forecast period, right? 11:13:04 11:13:05 11:13:07

A. That's correct. 11:13:08

Q. So that wasn't your basis for excluding the forecast, right? 11:13:08 11:13:10

A. Right. 11:13:11

Q. You excluded this forecast because you were unsure when it was created, but you know it was created before the end of the forecast period? 11:13:11 11:13:12 11:13:14 11:13:16

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A. That's correct. 11:13:17

Q. That was the justification that you gave for why things had to be dated today? 11:13:17 11:13:19 11:13:22

A. No. The -- I used forecast -- there's forecast in there that go into the forecast performed. I'm saying entirely after the forecast period. 11:13:24 11:13:27 11:13:28 11:13:32

Q. I understand that. 11:13:34

This was not entirely after the forecast period? 11:13:34 11:13:36

A. That's correct. 11:13:36

Q. It happened to be 80 percent pessimistic? 11:13:37 11:13:39

A. It was an under forecast, correct. 11:13:42 11:13:44

Q. It means all the other criteria you disclosed? 11:13:47 11:13:49

A. That's correct. 11:13:53

Q. But you excluded it, right? 11:13:54

A. Again, I'm saying if you want to include it, I have no problem with that. If you want to include it, you're going to wind up with four big negative 11:13:56 11:13:58 11:13:59 11:14:01

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misses. This, you know, plus 80 percent, which is still not accurate by any stretch. 11:14:05 11:14:07 11:14:10

And then you asked me with that data would I then conclude that I should take the future net income projections at face value with no adjustment. I don't think that makes any sense. 11:14:10 11:14:13 11:14:16 11:14:19 11:14:22

Q. Okay. 11:14:25

MR. BECKER: Go back to the slides. 11:14:26 11:14:27

Q. You also excluded this forecast correct? 11:14:36 11:14:38

A. Which one is this? 11:14:41

Q. This is JX-2363. This is the one that Mr. McClain-Duer relies upon -- this is the one actually that we take the projected net income from? 11:14:42 11:14:45 11:14:46 11:14:51

A. So this is the one in the second supplemental report? 11:14:52 11:14:54

Q. Correct. 11:14:55

A. And that was finalized in April of 2024? 11:14:56 11:14:57

Q. That's right. 11:14:59

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A. So that was entirely after the forecast period. It's like asking me to forecast the weather yesterday. 11:15:00 11:15:01 11:15:03

Q. It was created before the Raiders books were closed, right? 11:15:05 11:15:07

A. Okay. But it was after all 12 months, the forecast period. 11:15:08 11:15:11

Q. If I'm Mr. Crome and I am displaying extreme overoptimism, even more than the prior Raiders management and I have some uncertainty as to what the financials are going to look like, would I project them to be 77 percent below what they actually will be? 11:15:13 11:15:17 11:15:21 11:15:22 11:15:24 11:15:27 11:15:30

A. I don't know what's in Mr. Crome's mind. I just don't know why if you're standing after the 12 months have passed why you still are making 78 percent error. 11:15:34 11:15:36 11:15:38 11:15:42 11:15:45

Q. Overoptimism applies to uncertainty, right? 11:15:46 11:15:48

A. Overoptimism means you have a bias. 11:15:50 11:15:53

Q. Right. And your bias is to 11:15:53

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-- it's a bias that applies to uncertain information, correct? 11:15:56 11:15:59

A. I think I'm not understanding your question. 11:16:05 11:16:07

But if you're saying I'm overoptimistic in the forecast, then that's, obviously, uncertain. You can be overoptimistic how something has happened already, but it's a different type of overoptimism. I'm just trying to draw that distinction. 11:16:10 11:16:11 11:16:14 11:16:17 11:16:20 11:16:22 11:16:24

Q. In this projection, the 2023 Fiscal Year is described as a forecast, correct? 11:16:25 11:16:27 11:16:29

A. Right. And that, again, creates some ambiguity where things are labeled as a forecast even though they are entirely after the period. 11:16:31 11:16:33 11:16:35 11:16:36

Q. Well, did you listen to Mr. Crome's trial testimony on this? 11:16:38 11:16:40

A. I read that. And I -- the books were not closed yet. But, again, if you're -- you're -- I still -- I don't think it's reasonable to forecast 11:16:41 11:16:44 11:16:47 11:16:50

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yesterday's weather. I don't think it's reasonable to say I'm fully after 12 months have occurred and I'm going to call that a forecast. Forecast definitionally is looking forward. 11:16:54 11:16:56 11:16:59 11:17:01 11:17:04

Q. So, if you can go to the next slide, please. 11:17:08 11:17:11

If you were to just look at Mr. Crome's forecasts, the two that you excluded and the one that you included, you would have only one miss, according to how you define miss, and the average deviation would be positive 17 percent; is that fair? 11:17:13 11:17:15 11:17:17 11:17:20 11:17:22 11:17:24 11:17:30

A. I don't know. I mean, you're -- you're going to -- you're cherry picking one year out and saying, if I reconstruct the number. I take it you can represent that these numbers are correct, but I don't understand the value of just taking a single Fiscal Year and doing the analysis only over that period. 11:17:33 11:17:35 11:17:37 11:17:39 11:17:41 11:17:43 11:17:45 11:17:48

Q. Why because the sample is too small? 11:17:50 11:17:53

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A. I think that's one of the issues. 11:17:54 11:17:55

Q. Well, your sensitivity analysis, your original one of Crome only forecasts, was also three forecasts, right? 11:17:55 11:17:58 11:18:03 11:18:05

A. That's correct. And that's why I don't average those two together or anything like that. But you can just look at them qualitatively. 11:18:09 11:18:10 11:18:13 11:18:14

Q. But you make opinions based on the results of three forecasts, right? 11:18:16 11:18:17

A. There's a small -- it's a small sample size if you're trying to average something right. Because you have these values all over the place and the average gets skewed. But if you -- if I look at four numbers and they're all big negative numbers, then I still may not want to take an average, but I think I can infer something from that. 11:18:20 11:18:22 11:18:24 11:18:26 11:18:27 11:18:31 11:18:34 11:18:37 11:18:39

Q. And you mentioned "cherry picking." 11:18:43 11:18:44

We can talk about which is more 11:18:45

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cherry picking just looking at the most recent year or excluding a forecast that meets all your criteria. 11:18:48 11:18:49 11:18:51

But again if you looked at these -- if you included the three Crome projections that we have for the Fiscal Year 24, these are the numbers that would show up, right? 11:18:53 11:18:55 11:18:57 11:19:00 11:19:02

A. I don't know. I haven't calculated that. Again, I'm saying I didn't even do any tests of the forecast that occurred entirely after the 12 months was over, because I don't view that as a forecast. 11:19:03 11:19:04 11:19:06 11:19:10 11:19:12 11:19:14

Q. You also didn't look at the forecast that was created before the 12 months had finished and met all your criteria, right? 11:19:14 11:19:16 11:19:18 11:19:19

A. That's correct. There was an ambiguous set date on that. 11:19:20 11:19:23

Q. Right. But it was created before the end of the forecast period? 11:19:24 11:19:26

A. That's correct. 11:19:27

Q. And it just happened to be 11:19:28

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the most pessimistic forecast out of all the ones that we've looked at, right? 11:19:29 11:19:32

A. Like I said, I have no problem if you want to think about putting that in. It doesn't change the fact that you have four big negatives and one positive and it doesn't change my inference. As a person whose like researched overoptimism, it doesn't change my inference that this future forecast I would be very skeptical if it doesn't suffer from overoptimism bias. 11:19:33 11:19:33 11:19:35 11:19:37 11:19:39 11:19:42 11:19:46 11:19:47 11:19:50 11:19:53

Q. Right. Well, we can talk about inferences that you can make or didn't make based on forecasts you didn't consider. 11:19:55 11:19:56 11:19:57 11:19:59

But if you take all the pre-Crome forecasts, you just look at the Crome forecasts and even if you extend it out to include '23 and '22, the ultimate average deviation you would get is a lot lower than what is in your study, correct? 11:20:00 11:20:04 11:20:07 11:20:08 11:20:11 11:20:13

A. Certainly, if you throw in positive numbers, it brings that negative 11:20:15 11:20:17

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67 up. I acknowledged that earlier, yeah. 11:20:19 11:20:21

Q. And you didn't do that even though there were forecasts that were available to you that met all your criteria right? 11:20:22 11:20:23 11:20:24 11:20:26

A. There was only the one. Again, I know I'm repeating myself, but I continued to believe that it's not reasonable to test forecast accuracy with a document that was finalized entirely after the period was over. 11:20:28 11:20:31 11:20:34 11:20:35 11:20:38 11:20:41

Q. I'm talking about the one that was before the period was over. 11:20:42 11:20:43

A. Right. But I'm saying that's one not multiple forecast. 11:20:45 11:20:47

Q. Okay. So let's move to your discount for lack of marketability. You can take the down the slides Marco. 11:20:50 11:20:53 11:20:56

And we talked about when you served as a plaintiff side damages expert before. 11:21:01 11:21:03 11:21:06

And just like you didn't apply an overoptimism revision, you also did not 11:21:06 11:21:09

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apply a discount for lack of marketability in that case right? 11:21:12 11:21:14

A. I don't recall talking about that. 11:21:15 11:21:17

Q. You couldn't recall whether you applied a discount for a lack of marketability in your discounted cash flow in that case, right? 11:21:18 11:21:19 11:21:22 11:21:23

A. Are you talking about Arrow Grow. 11:21:24 11:21:27

Q. I'm talking about DHI Group. 11:21:27

A. I think I did. 11:21:30

Q. Okay. So let's turn to your deposition testimony then. 11:21:30 11:21:33

MR. BECKER: I believe we were on Page 26. 11:21:37 11:21:38

A. I'm not saying I'm certain. I'm saying I think I did. 11:21:39 11:21:41

Q. Well, in your deposition, you said you couldn't recall, right? 11:21:43 11:21:44

A. That's correct. I couldn't recall. 11:21:45 11:21:47

Q. Okay. Let's move on. 11:21:47

Now, you purport to -- your purport 11:21:49

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to opine on the fair market value of these unreported carryforwards, correct? 11:21:53 11:21:55

A. That's correct. 11:21:59

Q. You define "fair market value" as "the price at which an asset would change hands between a willing buyer and seller in an arm's length transaction," right? 11:21:59 11:22:01 11:22:04 11:22:08 11:22:10

A. That's correct. 11:22:11

Q. And you're applying that definition to assets that, as you said today, are completely unmarketable, right? 11:22:11 11:22:13 11:22:15 11:22:17

A. That's correct. 11:22:18

Q. There's never going to be a willing buyer and seller here, right? 11:22:19 11:22:21

A. That's correct. 11:22:22

Q. And you use fair market value because, in your view, it's meant to represent buyers and sellers in a market with the same information about these tax loss carryforwards, right? 11:22:28 11:22:30 11:22:32 11:22:33 11:22:36

A. Yes, I mean, like, as we discussed in deposition, I think, is that 11:22:38 11:22:40

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what we need in a matter like this is we 11:22:42
need an objective verifiable value. And 11:22:45
so I can't just as an individual, you 11:22:48
know, what is this worth to you 11:22:50
individually and know that that number is 11:22:52
going to be reliable. 11:22:54

And so the objective is to say if 11:22:55
we had multiple people with the same 11:22:58
information and imagine them being buyers 11:23:01
and sellers, they would arrive at this 11:23:04
price and then transact at that price. 11:23:06

So it's certainly the case, you 11:23:08
know, that the -- my understanding is the 11:23:10
tax loss carryforwards cannot be sold. 11:23:13
So the fair market value is never meant 11:23:14
to literally represent a buyer or sale. 11:23:17

Q. Right. And you distinguished 11:23:20
that from methodology like fair value, 11:23:22
which values an asset based on reasons 11:23:25
that are unique to the holder of that 11:23:28
asset, right? 11:23:30

A. I don't think that that's 11:23:33
what fair value is necessarily, no. 11:23:34

MR. BECKER: Okay. Can you 11:23:36

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go to Page 162 of his first 11:23:37
deposition, please. 11:23:41

Q. When you were justifying why 11:23:44
fair market value was better than fair 11:23:46
value in your deposition -- 11:23:48

MR. BECKER: 162, sorry. 11:23:55

Q. You distinguished fair market 11:24:07
value from a situation where if you were 11:24:09
to just ask one individual, you know, 11:24:11
what is your business worth to you for 11:24:13
reasons unique to them, you would come up 11:24:15
with radically different value than other 11:24:17
parties come up with. 11:24:19

That was your basis for 11:24:21
distinguishing between fair market value 11:24:22
and another type of value, right? 11:24:24

A. I'm sorry. Where are you? 11:24:25

Q. 162/Line 21. 11:24:27

MR. BECKER: Sorry. It 11:24:32
continues on to the next page, 11:24:32
Marco. I apologize. 11:24:34

Q. This is your distinction 11:24:35
between fair market value. You're 11:24:36
justification for fair market value is 11:24:39

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objective and verifiable and you distinguish it from looking at an asset based on reasons that are unique to the holder of that asset, right? 11:24:41 11:24:43 11:24:45 11:24:49

A. Yeah, but if you're trying to say that's how I was characterizing fair market value, that's certainly not the case. 11:24:51 11:24:53 11:24:55 11:24:57

Q. No, no, I know that fair -- sorry. Fair market -- 11:24:57 11:24:59

A. Fair value, that's certainly not the case. I mean, as we discussed -- so fair value -- fair market value has a readily accepted definition. You ask almost anyone, you get the same answer. 11:25:00 11:25:01 11:25:03 11:25:07 11:25:09

Fair value my understanding is defined based on the particular jurisdiction or, you know, some sort of statutory way. So this was not -- if you interpret that to mean my definition of fair value, that's definitely not it. 11:25:12 11:25:14 11:25:15 11:25:18 11:25:21 11:25:23

Q. I introduced some complication with "fair value." 11:25:25 11:25:25

You distinguish fair market value 11:25:27

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from valuing an asset based on the unique situation of the holder of that asset, right? 11:25:29 11:25:33 11:25:35

A. I'm still not understanding. 11:25:38

Q. Okay. Fair market value looks at -- according to you, is objective and verifiable, you look at hypothetical buyer and seller, right? 11:25:39 11:25:41 11:25:43 11:25:44

A. As is fair value. 11:25:46

Q. You don't look at the unique circumstances of the individuals who holds the asset, right? 11:25:47 11:25:49 11:25:50

A. That's correct. 11:25:51

Q. Okay. That's all I was trying to establish there. I apologize for the fair value complication. 11:25:51 11:25:53 11:25:55

But you realize here that Mr. McClain-Duer -- first of all, Mr. McClain-Duer never mentioned the word fair market value in his report right? 11:25:57 11:26:02 11:26:03 11:26:04

A. That's correct. 11:26:06

Q. Alright. And you realize that Mr. McClain-Duer is looking at the unique situation of each holder of these 11:26:07 11:26:08 11:26:11

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unreported tax loss carryforwards, right? 11:26:13
A. That's correct. He's doing 11:26:16
that to place the tax savings at time. 11:26:17
Q. Right. And so the reason he 11:26:20
does that is because those carryforwards 11:26:22
are not nonmarketable and can only be 11:26:25
held by that individual, right? 11:26:28
A. I think that he's doing that 11:26:31
because he needs to place the tax savings 11:26:33
in time at a particular year because they 11:26:36
don't all occur right now. 11:26:39
Q. Right. And his assumption 11:26:40
for doing that was it had to be tied to 11:26:42
the Raiders net income that would go to 11:26:46
that holder of the carryforward, right? 11:26:49
A. That's correct. 11:26:52
Q. And if it was marketable, he 11:26:52
wouldn't have to do that, right? 11:26:54
A. If tax loss carryforwards 11:26:58
were marketable, then he wouldn't have to 11:27:00
do that. 11:27:04
Q. Correct. 11:27:05
A. But if we're trying to -- if 11:27:05
we start with a cash flow stream and then 11:27:07

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we want to know the correct way to value that to get a reliable number, then we still have to fix that and say how would someone else value that in an objective and verifiable way. 11:27:11 11:27:14 11:27:18 11:27:21 11:27:23

Q. He's trying to create a timing for when these cash flow streams are going to be realized, right? 11:27:24 11:27:26 11:27:28

A. That's correct. 11:27:30

Q. And he's doing that based on the individual situation of each holder of the carryforward, right? 11:27:30 11:27:32 11:27:34

A. That's correct. 11:27:36

Q. And he does that because the tax loss carryforwards are nonmarketable, right? 11:27:37 11:27:39 11:27:41

A. That's correct. 11:27:42

Q. If they were marketable, Mr. Davis could sell them even if they were ill-liquid or difficult to market. He could sell them to someone who had a hundred million in income coming next year and use them all up, right? 11:27:44 11:27:47 11:27:49 11:27:52 11:27:54 11:27:56

A. That's correct. 11:27:56

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Q. Okay. 11:27:57

A. Well, I'm not a tax expert 11:27:57
but that's my understanding. 11:27:59

Q. So when you say that Mr. 11:28:00
McClain-Duer starting place was looking 11:28:02
at marketable assets the entire way that 11:28:03
he puts these cash flow streams in time 11:28:08
is assuming they're nonmarketable right? 11:28:12

A. It's assuming they're 11:28:18
nonmarket but again I'm just going to 11:28:20
restate so everyone is clear that once 11:28:22
they're positioned in time we still need 11:28:25
a reliable way to say what their value 11:28:27
is. And so if you had that same cash 11:28:30
flow stream just think about it as cash 11:28:33
flow stream. You had the same cash flow 11:28:35
stream I have the same cash flow stream 11:28:36
we want to get to a value that both of us 11:28:39
would have. That's the point of the fair 11:28:41
market value view of this. 11:28:45

Q. Mr. McClain-Duer's damages 11:28:48
assessment is materially lower because in 11:28:50
constructing the timing of the cash flow 11:28:52
streams he -- the construction assumes 11:28:55

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the tax loss carryforwards are completely nonmarketable, correct? 11:29:00 11:29:02

A. Again, I'm not a tax expert. I don't know that. My understanding is conceivably this could move around in time and then definitionally the present value would change. But I think that the tax part is really outside my expertise. 11:29:08 11:29:10 11:29:14 11:29:16 11:29:18 11:29:21

Q. Right. And so, if Mr. McClain-Duer was -- his starting point was that if these tax loss carryforwards were marketable, he wouldn't have to tie them to the Raiders net income that Mr. Davis would receive, right? 11:29:24 11:29:27 11:29:30 11:29:32 11:29:35 11:29:38

A. I -- I don't know from a valuation perspective -- like, for example, if you're valuing a private company, you don't say, well, let me imagine this being marketable and then change the cash flow associated with that. 11:29:44 11:29:46 11:29:48 11:29:50 11:29:52 11:29:54 11:29:56

So I get your point. But I don't -- I don't think that that's like the way you would want to think about valuing 11:29:56 11:30:03 11:30:05

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something. 11:30:06

Q. Okay. We'll move on to your 11:30:06
cost of equity analysis. It seems that 11:30:08
you get my point. 11:30:11

This is the third major critique 11:30:12
you talked about today that Mr. 11:30:16
McClain-Duer incorrectly used the WACC 11:30:18
rather than a cost of equity, right? 11:30:20

A. Right. 11:30:21

Q. And just to provide some 11:30:22
context, this critique has a materially 11:30:23
lower effect on the damages number than 11:30:27
the first two that we talked about, 11:30:29
right? 11:30:31

A. That's correct. 11:30:31

Q. I mean, we're talking about 11:30:32
being 1, 2 percentage points, right? 11:30:34

A. Again, I didn't perform the 11:30:37
present value analysis. But going from 11:30:38
12.9 to 15 point something would likely 11:30:44
have a smaller effect than the other two. 11:30:49

Q. Right. And it's 12.9 and 11:30:51
15.3, but then the discount gets applied 11:30:55
in future years. So it's actually 11:30:57

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smaller than that two point something 11:30:58
percent when you're ultimately calculating 11:31:01
the damages? 11:31:03

A. Well, if it's inside a term 11:31:04
-- an exponentiated term, like say at 11:31:07
four years out, it's to the fourth power. 11:31:07
So it, actually, goes to the reverse of 11:31:09
what you said. But I still think that 11:31:11
the base statement that you made is that 11:31:14
it has a smaller effect is likely true. 11:31:16
But I didn't do that calculation. 11:31:19

Q. Materially smaller effect, 11:31:20
correct? 11:31:22

A. I didn't do the calculation. 11:31:22

Q. It doesn't -- is it your view 11:31:24
that changing the discount rate from Mr. 11:31:27
McClain-Duer's WACC to your cost of 11:31:31
equity is going to have anywhere close to 11:31:34
the same level of impact on damages as 11:31:36
your 38 percent haircut based on lack of 11:31:38
marketability? 11:31:43

A. I didn't do the calculation, 11:31:43
but just having done a zillion time value 11:31:45
of money calculation, I would be 11:31:47

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surprised if it has that large of an effect. 11:31:48 11:31:50

Q. Okay. Thank you. 11:31:50

And you talked a bit in your direct about how cost of debt is used for relatively safer cash flows that go to debt holders, right? 11:31:52 11:31:55 11:32:00 11:32:03

A. That's correct. 11:32:03

Q. And cost of equity is used for riskier cash flows that go to equity holders, right? 11:32:05 11:32:09 11:32:13

A. That's correct. 11:32:13

Q. And the cash flows that go to debit holders are interest and principal payments, right? 11:32:14 11:32:16 11:32:18

A. That's correct. 11:32:19

Q. Whereas cash flows that go to equity holders come after interest and principal payments, right? 11:32:20 11:32:22 11:32:25

A. That's correct. 11:32:27

Q. Alright. And you recognize that Mr. McClain-Duer did not use the cost of debt, right? 11:32:27 11:32:29 11:32:31

A. He used a Weighted Average 11:32:33

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Cost of Capital that has as a component the cost of debt with 30 percent weight. 11:32:36 11:32:38

Q. Right. 11:32:40

He combined cost of debt and cost of equity, right? 11:32:41 11:32:43

A. Right. 11:32:44

Q. And unlike cash flows to equity holders, net income -- you don't calculate net income after accounting for both interest and principal payments, right? 11:32:46 11:32:49 11:32:54 11:32:56 11:32:58

A. Yeah. Mr. McClain-Duer seems to fixate on principal payments and I don't know why. I mean, the short version is it makes no sense. 11:32:59 11:33:01 11:33:07 11:33:09

If you have a company that continually rolls over its debt so it never makes principal payments and even a company that doesn't have capital expenditures or any other cash flows, it's still exactly correct to use cost of equity. 11:33:10 11:33:12 11:33:15 11:33:17 11:33:19 11:33:21 11:33:24

And, in fact, if you go back to the original models talking about cost of 11:33:24 11:33:26

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equity and debt, they assume that the debt is rolled over perpetually. So the principal value gets pushed off into infinity and there's 0 present value. 11:33:28 11:33:31 11:33:35 11:33:37

So the principal plays no role in whether the cost of equity is correct or not. 11:33:40 11:33:42 11:33:44

Q. The cost of equity is correct you said if the company rolls over -- rolls its debt over and never makes principal payments, right? 11:33:44 11:33:45 11:33:49 11:33:51

A. Yeah, I'm just saying if you have interest expense and you have no principal payments, it is still entirely correct to use a cost of equity. 11:33:52 11:33:53 11:33:56 11:33:58

Q. Understood. 11:34:00

Let's see if that is true for the Raiders. 11:34:01 11:34:02

MR. BECKER: Could you go to JX-405. 11:34:03 11:34:05

THE CHAIRPERSON: Counsel, can I ask you how much longer you have? 11:34:05 11:34:05 11:34:08

MR. BECKER: I'm wrapping 11:34:08

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up right here. 11:34:08

Q. JX-405 at 26. 11:34:08

(Arbitration Exhibit JX-405 11:34:08
was referenced.) 11:34:08

Q. Do you see here in the 11:34:14
financial statements, next year the 11:34:16
Raiders are going to be making 31 million 11:34:19
in principal payments, 2026 32 million, 11:34:21
and 2027 $384 million in principal 11:34:24
payments? Do you see that? 11:34:28

A. I think that maybe you're 11:34:30
understanding this backwards. 11:34:32

So, if you do include principal 11:34:34
payments like in that simple example we 11:34:37
had, the illustrative example, that minus 11:34:40
and plus 20 percent, those actually get 11:34:44
much larger, okay. 11:34:45

I'm saying, even if you never have 11:34:46
principal payments for a firm, if they 11:34:49
continually roll over the debt, then you 11:34:50
would still use the cost of equity. You 11:34:53
would not use the WACC in that situation. 11:34:56

Q. Can you answer my question, 11:34:58
sir? I'm just asking about this 11:34:59

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document. 11:35:02

A. These are the future principal payments. 11:35:02 11:35:03

I'm saying that if you want to include those, it actually magnifies the point because the equity cash flows get even riskier. 11:35:05 11:35:06 11:35:08 11:35:10

Q. Right. We don't want to include those because net income is not net of principal payments, right? 11:35:11 11:35:13 11:35:14

A. We're talking about what is the correct thing to do from a valuation standpoint when do we use cost of equity. And what I'm saying is whether you include principal payments or not, you still use cost of equity. 11:35:17 11:35:18 11:35:21 11:35:24 11:35:26 11:35:28

Q. Okay. I think you testified enough to why that cost of equity is only correct if you weren't including principal payments, but that's fine. We'll move on. 11:35:31 11:35:35 11:35:38 11:35:40 11:35:42

A. That misstates what I said. 11:35:43

Q. So you reviewed some of -- you reviewed some of Mr. Lewis's first 11:35:44 11:35:47

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report. 11:35:49

Before it was served, because your 11:35:50
inputs were being used, so you wanted to 11:35:51
review, at least, that part of his 11:35:53
report, right? 11:35:55

A. Right. I just glanced at 11:35:55
that to see how this was working, yeah. 11:35:57

MR. BECKER: Do you have 11:35:59
Mr. Lewis's report? Could you go 11:36:00
to Page 50/Paragraph 155 of Mr. 11:36:02
Lewis's report. 11:36:06

Q. And just to provide some 11:36:12
context while this is pulling up. 11:36:12

The Raiders projection that Mr. 11:36:13
McClain-Duer relies on and that forms the 11:36:15
baseline of your numbers that you revised 11:36:17
downwards -- or that you recommend to be 11:36:19
revised downward -- sorry, Paragraph 135. 11:36:21

MS. VAN WIN KEL: Sebastian, 11:36:27
can you tell us is this the July 11:36:28
report? 11:36:30

MR. BECKER: The numbers -- 11:36:30
it shouldn't affect the paragraph 11:36:31
numbers, but I believe this is the 11:36:33

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supplemental. 11:36:35

MR. CHANDLER: Whose report is it? 11:36:35 11:36:36

MR. BECKER: Mr. Lewis. 11:36:36

Mr. Lewis is the expert that uses Mr. Johnson's inputs to present the overall damages number. 11:36:37 11:36:42 11:36:43

Q. Is that fair, your revised damages numbers, Mr. Johnson? 11:36:45 11:36:45

A. Say again. 11:36:47

Q. Mr. Lewis uses your inputs to present the overall revised damages number that defendants put forth, right? 11:36:48 11:36:50 11:36:52

A. That was my understanding. It was going to be used, yes. 11:36:54 11:36:56

Q. Okay. And, for context, the Raiders projections only go up to the Fiscal Year ending 2028, right, the ones that Mr. McClain-Duer relies on? 11:36:57 11:37:01 11:37:04 11:37:07

A. I -- sitting here from memory, I don't remember where that stops. I know, you know, he claims the damages -- Mr. McClain-Duer claimed the damages period went through 2029. I 11:37:12 11:37:14 11:37:15 11:37:17 11:37:20

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think that's Fiscal Year 2029. 11:37:22

Q. Well, Mr. Lewis's damages go much further than 2029, right? They go all the way to 2033. 11:37:24 11:37:26 11:37:29

Did you know that? 11:37:31

A. I didn't pay attention to that. 11:37:32 11:37:33

Q. Well, he says here, "I have been instructed by Counsel to assume projected net income after March 31, 2029," right? 11:37:33 11:37:35 11:37:37 11:37:41

A. That's what it says. 11:37:41

Q. He accepts Counsel's instruction as to what the projected net income should be any year after March 31, 2029, right? 11:37:42 11:37:43 11:37:45 11:37:50

A. Again this is not my work. That's what it says. 11:37:52 11:37:54

Q. Okay. You've offered opinions related to projected net income before, right? 11:37:55 11:37:57 11:37:58

A. I am not understanding the question. 11:38:04 11:38:06

Q. You offered opinions that in 11:38:06

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some way related to projected net income before, right? 11:38:08 11:38:10

A. Yes. 11:38:10

Q. Okay. You've never accepted opposing -- you've never accepted your Counsel's instruction as to what net income should be in a given year, right? 11:38:11 11:38:14 11:38:16 11:38:18

A. I've never been asked to do so. So I haven't. 11:38:21 11:38:23

Q. You, also, can't recall opposing expert ever just accepting Counsel's instructions as to what projected net income should be right? 11:38:24 11:38:26 11:38:29 11:38:31

A. That's correct. 11:38:33

Q. And to your knowledge Mr. Lewis is not an expert in valuation or economics right? 11:38:36 11:38:38 11:38:40

A. I don't know one way or the other. 11:38:40 11:38:42

Q. And, to be clear, Counsel's instruction here has an impact on the damages number, right? 11:38:42 11:38:43 11:38:45

A. I don't know that either. 11:38:47

Q. Okay. 11:38:48

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MR. BECKER: No further questions. 11:38:49 11:38:51

THE CHAIRPERSON: Counsel, do you anticipate that you'll have anything? 11:38:51 11:38:52 11:38:52

Do you need a break? 11:38:53

MS. HELFMANN: I do not. 11:38:54

I do not have any further questions. 11:38:54 11:38:56

THE CHAIRPERSON: Okay. 11:38:56

MR. BICKERMAN: Let's take a break. 11:38:56 11:38:57

THE CHAIRPERSON: Let's take a break. 11:38:57 11:38:59

Do we want the witness to remain? 11:38:59 11:39:00

MR. BICKERMAN: Yes, please. 11:39:01

THE CHAIRPERSON: Let's take a ten-minute break. 11:39:02 11:39:04

(Recess taken 11:39 to 11:55 a.m.) 11:39:04 11:55:32

THE CHAIRPERSON: Okay. Alright. We can go back on the record. 11:55:32 11:55:38 11:55:39

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John. 11:55:41

QUESTIONS BY THE ARBITRATORS 11:55:42

MR. BICKERMAN: Thanks for your patience today. We appreciate your participation. 11:55:42 11:55:44 11:55:44

I've got a few questions. 11:55:45

So, as I understand what you did, there's really two pieces to it. One is trying to find a direction in terms of bias and you used, I think, help me how many projections? 11:55:48 11:55:51 11:55:54 11:55:56 11:56:00 11:56:03

THE WITNESS: There were 18 annual forecast. 11:56:06 11:56:07

MR. BICKERMAN: 18 forecast. 11:56:09

And so the direction seems pretty unambiguous, right? 11:56:10 11:56:12

(Stenographer clarification.) 11:56:12

THE WITNESS: Yes. 11:56:16

MR. BICKERMAN: But with respect to the point estimate you're making, you have a relatively small sample to make that estimate. 11:56:17 11:56:20 11:56:22 11:56:24

Let me ask you, do you 11:56:28

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think your sample is sufficiently 11:56:29
robust for you to make the estimate 11:56:31
that you're making? 11:56:33
THE WITNESS: Maybe a bit 11:56:36
more detailed than you wanted but 11:56:37
let me say this. 11:56:39
MR. BICKERMAN: No, go ahead. 11:56:39
THE WITNESS: Ultimately, we 11:56:41
want -- I mean, if there's something 11:56:42
that we're uncertain about, we 11:56:43
still want, like, the right 11:56:47
expected value, just like we want 11:56:48
that with cash flows. 11:56:50
And so there is a couple of 11:56:52
different ways to get that. If 11:56:53
you take those 18 observations 11:56:54
and you computed mean, it's minus 11:56:56
64 percent. An alternative would 11:56:58
be with a small sample that you 11:57:00
don't want to be skewed by large 11:57:02
values would be the median. The 11:57:04
median is actually a larger 11:57:06
negative number. 11:57:07
So the -- I mean, you know, 11:57:08

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the data are what they are. We lost a bunch because they weren't combined. Or a lot of the StadCo forecast just had EBITDA and so it was 18, right. And so I did look at the median given that 18 might be a smallish sample because, you know, you could take a median of even smaller sample. It won't be skewed by the large values. 11:57:13 11:57:14 11:57:16 11:57:18 11:57:22 11:57:24 11:57:26 11:57:28 11:57:30 11:57:33

MR. BICKERMAN: And that mean expected value, wouldn't you expect based on the sample size you're working with to have a large variance? 11:57:35 11:57:35 11:57:37 11:57:39 11:57:40

THE WITNESS: Right. Certainly, with -- you know, you're going to get a more precise estimate with more data. 11:57:41 11:57:42 11:57:44 11:57:46

MR. BICKERMAN: And I bet -- did you -- you didn't estimate the variance, did you? 11:57:47 11:57:49 11:57:50

THE WITNESS: I did not. 11:57:51

MR. BICKERMAN: You could, 11:57:53

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though? 11:57:54
THE WITNESS: Like a standard 11:57:55
deviation sense and go up or down? 11:57:57
MR. BICKERMAN: Yeah. 11:57:59
THE WITNESS: That's certainly 11:58:00
possible. 11:58:01
MR. BICKERMAN: And that might 11:58:02
be interesting. 11:58:03
Any idea what it might be? 11:58:03
THE WITNESS: I don't know. 11:58:05
I know there are values that are 11:58:05
over a hundred percent in absolute 11:58:07
value. The smallest value I 11:58:09
think is, you know, the one that 11:58:12
was a plus was, like, a plus 11:58:14
4 percent. So there's a lot of 11:58:17
skewness in that distribution. 11:58:19
I think even if you took a 11:58:21
variance, you'd still be in the 11:58:23
negative space. 11:58:25
MR. BICKERMAN: Yeah, again -- 11:58:26
THE WITNESS: But I don't 11:58:28
know -- yeah, I mean... 11:58:29
MR. BICKERMAN: I certainly 11:58:29

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have no quarrel with the direction 11:58:30
and not that I'm quarreling with 11:58:32
you at all. 11:58:33

But, you know, I think that's 11:58:34
pretty conclusive and to me not 11:58:36
surprising. 11:58:38

But I want to explore a 11:58:39
little more the precision with 11:58:41
which you calculate how off the 11:58:43
other side was in their estimate. 11:58:46

Now, also the data from 11:58:47
2014, 2015, yes, there is a stadium 11:58:51
that's planned. Yes, there's an 11:58:55
estimate for StadCo. 11:58:56

But it's probably less 11:58:57
precise, more of a -- you can't 11:59:00
capture that -- more of a guess? 11:59:05

THE WITNESS: I mean, 11:59:08
certainly if you -- your 11:59:08
forecasting an entity, that doesn't 11:59:11
exist yet. 11:59:12

MR. BICKERMAN: Right. 11:59:13

THE WITNESS: I think that 11:59:14
the fact that it's a new entity 11:59:15

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introduce the uncertainty. 11:59:17

I'm not an expert in stadium 11:59:19
space. But I would think that 11:59:21
because you have a whole lot of 11:59:23
other stadiums that you have a 11:59:25
tremendous amount of data to feed 11:59:27
into that. So, you know, if I 11:59:28
were doing a valuation like if 11:59:32
someone said, value the Raiders 11:59:33
football team, right, and I were 11:59:36
back in 2017, what I would look 11:59:37
to do is go gather data from other 11:59:40
stadiums and then put that in 11:59:42
there. That would be a standard 11:59:45
-- 11:59:47

MR. BICKERMAN: I wasn't 11:59:47
going to ask you because I assume 11:59:47
that data is unavailable, right. 11:59:49
Projections by other -- 11:59:52

THE WITNESS: Not projections. 11:59:54
I'm talking about actual results 11:59:55
like when -- if you actually have 11:59:57
a stadium, what are there. And 11:59:57
I'm thinking -- 11:59:59

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MR. BICKERMAN: Or a stadium, okay. 11:59:59 12:00:00
THE WITNESS: Because those are frequently -- 12:00:00 12:00:01
MR. BICKERMAN: Right. 12:00:01
THE WITNESS: You know, there is some tax incentive and stuff that should be publically available data. 12:00:01 12:00:01 12:00:03 12:00:05
MR. BICKERMAN: Now, you did just a straight line average. 12:00:07 12:00:07
I take it you're pretty sophisticated with statistics, right? 12:00:09 12:00:10 12:00:12
And there are some statistical techniques you could have used, right? 12:00:12 12:00:14 12:00:16
THE WITNESS: I mean -- 12:00:18
MR. BICKERMAN: I guess that's an unfair question. 12:00:20 12:00:21
THE WITNESS: Yeah. 12:00:21
MR. BICKERMAN: Did you think of maybe applying a decay co-efficient to the earlier years? 12:00:22 12:00:23 12:00:26

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THE WITNESS: Like down weight those? 12:00:28 12:00:29

MR. BICKERMAN: Uh-huh. 12:00:30

THE WITNESS: No. You know, again, there's sort of this tension where we have the new CFO, who doesn't have an available record of long-term forecast. 12:00:31 12:00:33 12:00:34 12:00:37 12:00:39

MR. BICKERMAN: Right. 12:00:42

THE WITNESS: And yet the damages model is based on relatively longer term forecast. 12:00:42 12:00:44 12:00:45

MR. BICKERMAN: Right. 12:00:48

THE WITNESS: So, I mean, you know, A, I was trying to get more data points and, B, trying to get some longer term forecast in there. 12:00:48 12:00:49 12:00:51 12:00:52 12:00:54

So down weighting those would have been down weighting the longer term forecast, right. 12:00:55 12:00:57 12:00:59

MR. BICKERMAN: Right, yeah. 12:01:04 12:01:05

Now, in terms of projecting 12:01:05

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future revenue, the revenue of this entity is comprised of different flows. One of them is maybe pretty stable, which would be the revenue from the NFL, right? 12:01:07 12:01:10 12:01:14 12:01:17 12:01:18

THE WITNESS: Uh-huh. 12:01:21

MR. BICKERMAN: I mean, that's pretty consistent. 12:01:22 12:01:22

THE WITNESS: Well -- 12:01:25

MR. BICKERMAN: I mean, they got contracts. Thy can pretty much project with some degree of accuracy and that's the largest of the TeamCo revenue. 12:01:25 12:01:25 12:01:27 12:01:28 12:01:30

THE WITNESS: Right. 12:01:32

MR. BICKERMAN: And I'm just wondering if you looked at TeamCo separate from StadCo cause I bet TeamCo's projections might have been pretty stable or maybe they weren't. I have no idea. 12:01:34 12:01:34 12:01:36 12:01:38 12:01:41 12:01:43

THE WITNESS: That may well be at the revenue level based on what you said. 12:01:44 12:01:46 12:01:47

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But it seems to be if you look over -- and I didn't do a systematic analysis of this to incorporate. 12:01:48 12:01:49 12:01:52 12:01:53

But the Raiders generally don't go very many years without firing a coach. It's like in other years they've had since, you know -- I mean, it's like every few years they're firing a coach. 12:01:55 12:01:57 12:01:58 12:02:00 12:02:02 12:02:04 12:02:06

MR BICKERMAN: Okay. 12:02:06

THE WITNESS: And when I referred to these expenses that come out of nowhere -- 12:02:06 12:02:07 12:02:09

MR. BICKERMAN: Okay. 12:02:10

THE WITNESS: Again, if I were valuing the Raiders myself as a team, I would try to say, well, okay, every few years you're going to have a big coaching expense, as you fire the coach and maybe some other major players. And that's where, I think, the 12:02:10 12:02:12 12:02:14 12:02:17 12:02:19 12:02:21 12:02:23 12:02:25

JOHNSON, Ph.D. - ARBITRATOR QUESTIONS

difficulty for the team comes in. 12:02:26

To be frank, if I were valuing 12:02:28
the Raiders, I think, it would be 12:02:29
exceptionally hard to do this 12:02:31
forecast for the team. And the 12:02:33
thing is that if you assume no -- 12:02:36
you assume a steady expense stream, 12:02:40
you are implicitly assuming that 12:02:43
there is not going to be these 12:02:44
firings and, you know, player 12:02:47
cost and coaching cost that you 12:02:50
actually see in the data. 12:02:51

And I think that's where a 12:02:53
lot of the misses come from is 12:02:54
those are viewed as surprises, 12:02:56
even though seem to happen with 12:02:58
some regularity. 12:03:00

MR. BICKERMAN: Now sitting 12:03:02
here today -- and this goes to 12:03:03
the objection we had at the very 12:03:04
beginning. 12:03:06

And I don't want you to go 12:03:06
into anything that we've decided 12:03:07
we can't hear today. 12:03:09

JOHNSON, Ph.D. - ARBITRATOR QUESTIONS

But do you have more data that could be put into your model now than you had before -- than you had in the report that's been used today? 12:03:10 12:03:12 12:03:14 12:03:18 12:03:20

THE WITNESS: The only "additional forecast" that, you know -- I'll put that in quotes -- that we have is the one that occurred that Mr. Crome testified about that occurred in April of 2024. That was entirely after the 12-month period but still viewed as a forecast. And the one you know with the print date. 12:03:21 12:03:23 12:03:26 12:03:28 12:03:30 12:03:32 12:03:34 12:03:35 12:03:37 12:03:40

MR. BICKERMAN: Again, you would say any forecast that occurs after the fact is not really a forecast. 12:03:42 12:03:43 12:03:45 12:03:47

THE WITNESS: Right. I think if we look at the entomology of the word "forecast" -- 12:03:48 12:03:49 12:03:51

MR. BICKERMAN: It's a recapitulation. Okay, okay. 12:03:52 12:03:53

JOHNSON, Ph.D. - ARBITRATOR QUESTIONS

And am I correct that your assignment was just to critique Mr. McClain-Duer's analysis and not to offer your own; is that right? 12:04:03 12:04:06 12:04:08 12:04:11 12:04:14

THE WITNESS: Well, critique and -- I mean -- I always interpret that word to be negative, right. So my assignment -- 12:04:14 12:04:16 12:04:19 12:04:21

MR. BICKERMAN: Analyze. 12:04:22

THE WITNESS: -- are these inputs reliable and then if they're not, what should the inputs be. 12:04:23 12:04:24 12:04:26

MR. BICKERMAN: Okay. You'd put a high degree of reliability in the direction of the over -- your word, the "bias." 12:04:29 12:04:31 12:04:33 12:04:40

THE WITNESS: Right. 12:04:41

MR. BICKERMAN: How much reliability do you believe the percentages reductions that you've included based on your analysis, how reliable are those? 12:04:42 12:04:43 12:04:48 12:04:50 12:04:50

THE WITNESS: Well so, in a 12:04:52

JOHNSON, Ph.D. - ARBITRATOR QUESTIONS

-- whenever we're making any forecast -- and, you know, just like if we're forecasting cash flow, there is actually a range of cash flows that can occur, right. And when we're forecasting what this adjustment should be, there is a range that can occur, right. 12:04:56 12:04:57 12:05:00 12:05:02 12:05:03 12:05:06 12:05:08 12:05:09

And so we can have a tight range or a narrow range. And -- but what's most important is that the adjustment or the forecast be unbiassed, right. 12:05:11 12:05:12 12:05:15 12:05:18 12:05:21

And so we might be wrong but that's our best estimate of the bias. 12:05:22 12:05:23 12:05:25

So, if I have a tight distribution and a wide distribution, the mean or the median is still the unbiassed estimator of what that should be. 12:05:27 12:05:28 12:05:29 12:05:31 12:05:34

MR. BICKERMAN: Understood. It's the best -- 12:05:37 12:05:38

THE WITNESS: And so -- 12:05:38

JOHNSON, Ph.D. - ARBITRATOR QUESTIONS

MR. BICKERMAN: Go ahead. 12:05:38

THE WITNESS: So you can just say, you know, that if I put -- this sounds like, you know, some statistics probably. 12:05:40 12:05:40 12:05:43 12:05:45

If I put a 95 percent confidence interval around that, it's going to be wider. But still if you say what's my unbiased best guess of what the number is, it's the central tendency of that. 12:05:46 12:05:48 12:05:49 12:05:51 12:05:53 12:05:55

MR. BICKERMAN: Fair point. That's what they say in the textbooks. 12:05:57 12:05:58 12:06:00

But in terms of -- 12:06:00

THE WITNESS: But that's -- and I mean, in practice, you have nothing else because otherwise you're just picking some point on the distribution that you actually expect to be less probable to be the correct value. 12:06:01 12:06:02 12:06:02 12:06:03 12:06:06 12:06:07 12:06:10

Like when I say, you know, the central tendency and best 12:06:10 12:06:12

JOHNSON, Ph.D. - ARBITRATOR QUESTIONS
guess, that is the most probable adjustment. So, if we were to repeat this many times, negative 64 percent should come up most often. 12:06:14 12:06:15 12:06:17 12:06:20 12:06:23
MR. BICKERMAN: True. 12:06:24
But if we wanted to put a confidence interval around your estimate, it would be pretty wide, wouldn't it? 12:06:26 12:06:28 12:06:29 12:06:33
THE WITNESS: It would be. 12:06:34
MR. BICKERMAN: And so the number could be -- and I don't have your numbers right in front of me. But I think one of them was 62 percent. Have I got that right? 12:06:35 12:06:36 12:06:38 12:06:39 12:06:40 12:06:42
THE WITNESS: 64. 12:06:43
MR. BICKERMAN: In the 60s. So it might be 40 or it might be 80. 12:06:44 12:06:45 12:06:47
THE WITNESS: Correct. 12:06:48
MR. BICKERMAN: Okay. 12:06:48
THE WITNESS: And that's 12:06:50

JOHNSON, Ph.D. - ARBITRATOR QUESTIONS

just -- I mean, I think you have it. But it might be higher. It might be lower. But the best guess is going to be the mean. 12:06:51 12:06:53 12:06:55 12:06:56

MR. BICKERMAN: I mean, not to draw on, you know, analogies that I hate to refer to. 12:06:58 12:06:59 12:07:01

But like the polling we're hearing every day, you get a number and then it says, but it's within the confidence interval, meaning, it's the best estimate. 12:07:03 12:07:04 12:07:05 12:07:07 12:07:09

THE WITNESS: Right. 12:07:11

MR. BICKERMAN: But it's not necessarily the truth? 12:07:12 12:07:12

THE WITNESS: Right. 12:07:14

MR. BICKERMAN: Okay. Alright. 12:07:16 12:07:16

Do we have Mr. Johnson's report? 12:07:20 12:07:22

MS. HELFMANN: Yes. 12:07:24

MR. BICKERMAN: We do. 12:07:25

Okay. No, that's alright. 12:07:26

Oh, that is the report? 12:07:28

JOHNSON, Ph.D. - ARBITRATOR QUESTIONS

MS. HELFMANN: Yeah. 12:07:29
Would you like a copy? 12:07:29
MR. BICKERMAN: Yeah, sure. 12:07:31
Now, that I've asked for it? 12:07:32
Yeah, sure. 12:07:34
MR. REED: Wait, I'm sorry. 12:07:37
Are you talking about the slides 12:07:37
or his actual report? 12:07:38
MR. BICKERMAN: No, the 12:07:38
report, the actual report. 12:07:38
MR. REED: None of the 12:07:38
expert reports have been put into 12:07:39
evidence and I don't think they 12:07:41
ought to be. 12:07:43
MR. BICKERMAN: Okay, we 12:07:43
can discuss that. 12:07:44
MR. REED: Sure. 12:07:44
MR. BICKERMAN: Yeah, that 12:07:47
was my question. 12:07:47
MR. REED: Okay. That's 12:07:48
something to take up I suppose. 12:07:48
But I don't think it would be 12:07:50
reasonable to put in one expert's 12:07:51
report. 12:07:53

JOHNSON, Ph.D. - ARBITRATOR QUESTIONS
MR. CHANDLER: I have a 12:07:54
very unsophisticated question to 12:07:54
ask you following up on my 12:07:56
colleague here. 12:08:00
I asked you earlier about 12:08:00
Forbes forecast. Maybe I'm just 12:08:02
cynical, but it seems to me that 12:08:07
there are people who try to boost 12:08:09
their net worth to get into 12:08:13
Forbes. 12:08:16
You're not going to make a 12:08:16
conservative forecast for Forbes 12:08:18
if you're trying to get listed in 12:08:22
there somehow or if the business 12:08:24
is trying to get evaluated. 12:08:26
Did you run your numbers 12:08:27
excluding the Forbes forecast 12:08:32
that was a pretty big miss? 12:08:34
THE WITNESS: I did not. I 12:08:37
mean, you could -- with a 12:08:38
calculator, you could do 18 times 12:08:42
minus 64 minus. You add 77 to 12:08:44
that and then divide by 17 to get 12:08:47
the answer. 12:08:49

JOHNSON, Ph.D. - ARBITRATOR QUESTIONS

MR. CHANDLER: What's the answer? 12:08:50 12:08:51

THE WITNESS: It's on the -- it's larger in magnitude than the minus 64. So I think -- 12:08:52 12:08:55 12:08:56

MR. CHANDLER: I got you. 12:08:59

THE WITNESS: -- you come up to 50ish, minus 50ish or something, 55, somewhere in that ballpark. 12:09:00 12:09:01 12:09:04 12:09:05

MR. CHANDLER: Thank you. 12:09:06

THE WITNESS: And I take that. I mean, you would expect that. But in -- as I said, it wasn't a stand out. Like it wasn't the largest miss for example. 12:09:07 12:09:07 12:09:09 12:09:11 12:09:13

MR. CHANDLER: And you did say that in the forecasts that you looked at, that the forecasts by Mr. Villanueva and Badain missed less than the forecasts by Mr. Crome? 12:09:16 12:09:18 12:09:23 12:09:31 12:09:36 12:09:40

THE WITNESS: Correct. 12:09:40

MR. CHANDLER: Okay. Thank 12:09:42

JOHNSON, Ph.D. - ARBITRATOR QUESTIONS

you. 12:09:43

MR. BICKERMAN: I just have one more question. Just as a point of clarification, going back to that data point that was the subject of dispute this morning. 12:09:44 12:09:45 12:09:46 12:09:49 12:09:50

Just for my own understanding, was that data point used in Mr. McClain-Duer's analysis? I'm just confused about that whole issue. 12:09:54 12:09:55 12:10:00 12:10:03 12:10:04

THE WITNESS: Well, he -- so he did not and he testified as such. He did not do any assessment of the historical accuracy of the forecast. 12:10:05 12:10:07 12:10:09 12:10:10 12:10:12

MR. BICKERMAN: Understood. 12:10:13

THE WITNESS: It wasn't there. 12:10:14 12:10:14

MR. BICKERMAN: Okay. 12:10:15

THE WITNESS: Sitting here today, I can't recall if that formed the basis for his first report. 12:10:19 12:10:19 12:10:21 12:10:24

MR. BICKERMAN: Okay. Thank you. 12:10:24 12:10:25

THE CHAIRPERSON: Okay. Mr. Johnson, I have no questions. 12:10:25 12:10:26

You have the thanks of the Panel. You're excused and safe home, okay. 12:10:28 12:10:29 12:10:30

THE WITNESS: Okay. Thank you. 12:10:30 12:10:32

MR. BICKERMAN: Thank you. 12:10:33

(Witness excused.) 12:10:34

THE CHAIRPERSON: Okay. Quick question. Who is up next? 12:10:34 12:10:34

MS. VAN WINKLE: Mr. Lewis -- Professor Lewis. 12:10:37 12:10:39

THE CHAIRPERSON: Professor Lewis is up next. 12:10:40 12:10:40

So we're going to break for lunch. I noticed lunch is out there. 12:10:42 12:10:42 12:10:42

So, after we finish Professor Lewis, the Panel is going to want -- it's okay, sir, you can go. You don't have to listen to this 12:10:43 12:10:46 12:10:47 12:10:49

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boring stuff. I wouldn't if I were you, if you just want to go. 12:10:51 12:10:54

THE WITNESS: Thank you. 12:10:55

THE CHAIRPERSON: We would like to address before we leave today, you know, confirming the final schedule, talk a bit about final submissions, talk a bit about exhibits related to the final submissions, time for oral argument and, of course, any other additional issues that you would like to address. 12:10:56 12:10:56 12:10:58 12:10:59 12:11:02 12:11:04 12:11:05 12:11:08 12:11:10 12:11:11

So, when we finish the next witness, we'll talk about that. This way we're all on the same page going forward. 12:11:12 12:11:13 12:11:15 12:11:16

We do know you want to be here back on the 6th for oral argument. So we will be delighted to be here with you and we'll go from there okay. 12:11:17 12:11:18 12:11:19 12:11:21 12:11:23

Thirty minutes. The stop watch starts now. 12:11:25 12:11:27

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(Lunch recess 12:11 to 12:50 p.m.) 12:11:27 12:50:51

THE CHAIRPERSON: Okay. Is it Professor Lewis? 12:50:51 12:50:52

THE WITNESS: It is. 12:50:53

THE CHAIRPERSON: Wonderful. Welcome today. 12:50:53 12:50:55

And to my left is John Bickerman. 12:50:57 12:50:57

To my right John Chandler. 12:50:59

I'm John DiBlasi. 12:51:01

We comprise the Panel in this arbitration. 12:51:02 12:51:03

And we will turn it over to Counsel for direct examination. 12:51:04 12:51:05

MS. VAN WINKLE: Thank you. 12:51:07

PROFESSOR LEWIS, CPA, DEEMED SWORN: 12:51:07

DIRECT EXAMINATION BY MS. VAN WINKLE: 12:51:08

Q. Good afternoon, Professor Lewis. 12:51:08 12:51:09

I know that you prepared -- well, let me ask you this first. 12:51:10 12:51:14

Did you prepare a slide deck for today's testimony? 12:51:15 12:51:17

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A. I did. 12:51:18

Q. And I don't want to go over all of your credentials, but I'd just like you to introduce yourself to the Panel briefly. 12:51:18 12:51:21 12:51:22 12:51:24

A. Okay. My name is Professor Troy Lewis. I'm a CPA. I currently teach at BYU in Provo, Utah in the tax and accounting program. I teach mainly graduate classes. I'm, also, the Associate Director. 12:51:24 12:51:27 12:51:30 12:51:33 12:51:35 12:51:37

I, also, teach continuing education for lots of folks, CalCPA, Moss Adams, RSM, KPMG are some of the ones that are listed here. 12:51:39 12:51:41 12:51:45 12:51:47

I have a small CPA firm, Lewis & Associate CPA, that prepares tax returns, as well as a continuing education business. 12:51:47 12:51:51 12:51:55 12:51:58

And then I've, also, worked in the profession for various other things that you can see on the screen. 12:51:58 12:52:03 12:52:04

Q. Thank you. 12:52:05

Could you please summarize for us 12:52:06

LEWIS, CPA - DIRECT

the expert analysis that you are going to 12:52:09
testify about today? 12:52:13

A. Sure. I'm going to talk 12:52:14
about Mr. Andersen's evaluation of the 12:52:16
requisite due care standards by tax 12:52:19
preparers. I'm also going to visit 12:52:21
Mr. Andersen's calculation of purported 12:52:24
historical damages and then finally talk 12:52:27
about certain elements of Mr. 12:52:30
McClain-Duer's calculation of the present 12:52:32
value future tax damages. 12:52:34

Q. Okay. I would like to turn 12:52:37
to that first topic. 12:52:38

What is the Tax Executive Committee 12:52:41
of the AICPA? 12:52:44

A. Okay. So the AICPA has 12:52:45
certain executive committees, a handful. 12:52:48
Those are important because those 12:52:51
committees are allowed to speak on behalf 12:52:52
of the entire AICPA. And there's a 12:52:54
procedure to accelerate comments and to 12:52:57
represent the AICPA as a group by these 12:53:00
divisions. The tax division is the 12:53:03
senior committee over the tax area for 12:53:07

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the AICPA. 12:53:10

Q. Have you served on the Tax 12:53:11
Executive Committee? 12:53:14

A. I have. I was on the 12:53:14
committee for seven years, two of which I 12:53:17
was the Chair, two of which I was the 12:53:19
second in charge, either Chair Elect or 12:53:22
Immediate Past. 12:53:25

Q. And did you have any role in 12:53:26
promulgating revisions to the SSTS when 12:53:28
you sat on the Tax Executive Committee? 12:53:32

A. Yeah, I did. 12:53:33

Q. Do you also have experience 12:53:35
as a tax preparer in applying the 12:53:38
statements on standards for tax services? 12:53:41

A. Yes, I do. 12:53:43

Q. And how often do you apply 12:53:44
them? 12:53:46

A. Daily. 12:53:48

Q. What is statement No. 3.2 12:53:52
that we have on the slide? 12:53:55

A. It's one of the statements in 12:53:57
-- this is the 2010 codification, just to 12:54:00
be clear. This is one of the statements 12:54:02

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dealing with preparer's obligations, responsibilities with respect to information provided by a client. 12:54:04 12:54:08 12:54:11

Q. And the first sentence of statement 3.2 refers to "good faith" and relying without verification on information furnished by the tax payer to the tax preparer. 12:54:14 12:54:16 12:54:20 12:54:22 12:54:25

Can you please explain what that means to us? 12:54:28 12:54:29

A. Yeah. The default rule is -- unlike a test or audit responsibilities that you may have heard about, tax preparers are not charged with being independent. They are charged with advocacy role. So, as a result, the basic rule is when a client hands you material and you can in good faith rely on that without having to audit or do test work or verification. 12:54:30 12:54:33 12:54:34 12:54:40 12:54:42 12:54:43 12:54:46 12:54:48 12:54:49 12:54:51

Q. And how about the second sentence here that refers to how a member should not ignore the implications of certain information? 12:54:54 12:54:57 12:55:01 12:55:03

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A. Okay. So the second part 12:55:04
says, okay, that the general rule 12:55:08
applies. However, if a member is aware, 12:55:11
they know about something, it should not 12:55:14
ignore it, some inconsistency. When I 12:55:17
say, "it," I mean, incorrect incomplete 12:55:22
inconsistency. 12:55:25

So the key is one has to know and 12:55:26
then if you know, then you're charged 12:55:27
with not ignoring. 12:55:30

Q. Did you review Mr. Keel's 12:55:33
trial testimony in this case? 12:55:35

A. I did. 12:55:37

Q. Do you recall that Mr. Reed 12:55:38
showed him a series of e-mails that the 12:55:41
Raiders sent to the EY tax compliance 12:55:44
team, generally, around December of each 12:55:47
year that contained multiple attachments? 12:55:50

A. I do remember that. 12:55:51

Q. And do you recall what those 12:55:52
attachments were? 12:55:53

A. It was a K-1 from NFL 12:55:56
Ventures. It was this NFL Ventures roll 12:55:59
forward, Capital Roll Forward statement. 12:56:03

LEWIS, CPA - DIRECT

Q. Have you seen any evidence in the record that the EY tax team reviewed or used the Ventures Capital Roll Forward in connection with its tax compliance work? 12:56:06 12:56:08 12:56:11 12:56:14 12:56:16

A. No. 12:56:17

Q. And, according to Mr. Keel, what did the tax team use in preparing the Raiders income tax returns, if not the Capital Roll Forward? 12:56:18 12:56:21 12:56:24 12:56:26

A. They used what you should have used, which is the audited financial statements and the adjusted trial balance. That's what we use. 12:56:28 12:56:31 12:56:34 12:56:35

Q. In your opinion, did the EY tax team's work comply with the SSTS given that they didn't apparently use the Ventures Capital Roll Forward? 12:56:36 12:56:39 12:56:44 12:56:48

A. Yes. 12:56:49

Q. And why is that? 12:56:50

A. Because there's no evidence in the record that they knew of the Capital Roll Forward statement. There's nothing evidenced. And so they can 12:56:55 12:56:56 12:56:58 12:57:00

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operate under good faith. The client hands them an audited financial statement and adjusted trial balance and they're allowed to use it. 12:57:02 12:57:04 12:57:06 12:57:08

Q. Thank you. 12:57:11

MS. VAN WINKLE: Jason, can you pull us JX-3288. 12:57:13 12:57:14

(Arbitration Exhibit JX-3288 was referenced.) 12:57:16 12:57:20

Q. Professor Lewis, are you familiar with -- and I believe everyone should have a copy of that. 12:57:20 12:57:22 12:57:24

Are you familiar with this document? 12:57:25

A. Yes. 12:57:28

Q. And what is it? 12:57:29

A. It's the terms and conditions, general terms and conditions sent to the Raiders by EY in April of 2015 regarding the tax work. 12:57:30 12:57:32 12:57:34 12:57:39

Q. Okay. 12:57:41

MS. VAN WINKLE: Jason, can you please go to the next page. 12:57:43 12:57:44

And could you please call up Paragraph 9. 12:57:46 12:57:48

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Q. Professor Lewis, Paragraph 9 refers to the fact that "we," the tax preparer, "will rely on client information made available to us and unless we expressly agree otherwise will have no responsibility to evaluate or verify it." 12:57:50 12:57:53 12:58:01 12:58:03 12:58:06 12:58:09

Is that a standard term for a tax compliance engagement? 12:58:11 12:58:14

A. Yeah, very standard. 12:58:14

Q. And does that provision, in your opinion, is it consistent with the SSTS? 12:58:15 12:58:18 12:58:20

A. Yeah, it's expressing the "good faith" sentiment we just looked at over in the SSTS. 12:58:20 12:58:22 12:58:24

Q. Okay. 12:58:26

MS. VAN WINKLE: Jason, can you please go to Paragraph 20. 12:58:28 12:58:28

Q. And this is an indemnification provision that speaks about indemnifying EY for a third party's use of or reliance on any report including tax advice. 12:58:34 12:58:36 12:58:39 12:58:41

Do you see that? 12:58:44

A. I do. 12:58:45

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Q. Is this a standard term for a tax compliance engagement? 12:58:45 12:58:48

A. Yes, very standard. 12:58:49

Q. And, in your experience, what's the purpose of that paragraph? 12:58:50 12:58:52

MS. BROWN: I think we have to object. I don't recall that opinion being disclosed in his report. 12:58:56 12:58:57 12:58:58 12:58:59

MS. VAN WINKLE: Yes, it's in Paragraph 255. 12:59:00 12:59:01

MS. BROWN: Okay. Just give me one moment to look. 12:59:04 12:59:05

I do recall the indemnity provision being included as standard, but I didn't recall the additional opinion. 12:59:06 12:59:07 12:59:09 12:59:10

MS. VAN WINKLE: I can ask it differently. I can say why is it a standard provision. 12:59:14 12:59:15 12:59:16

MS. BROWN: Okay. I don't think we would have an objection to that question. 12:59:18 12:59:20 12:59:21

Q. Why is that a standard 12:59:22

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provision? 12:59:23

A. Because it's consistent with 12:59:26
what we just discussed about the "good 12:59:27
faith" obligation. It's sort -- the tax 12:59:28
preparer is saying, hey, look, I'm going 12:59:30
to rely on you, what the client is giving 12:59:32
me. And because of that trust and that 12:59:35
reliance, you need to take on the 12:59:37
responsibility of indemnification in the 12:59:39
event that something's -- again, it's 12:59:42
using tax advice here or a third-party's 12:59:45
advice relies on that. 12:59:48

Q. Thank you. 12:59:50

MS. VAN WINKLE: Jason, can 12:59:52
you please go to Paragraph 13 12:59:53
that has the definition of "tax 12:59:54
advice." 12:59:58

Q. And, Professor Lewis, this 12:59:58
definition of "tax advice" includes tax 13:00:00
returns. 13:00:03

Is that a standard definition of 13:00:03
"tax advice," in your experience? 13:00:05

A. Yes. 13:00:07

Q. And then if you look at the 13:00:09

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next sentence it says, "With the 13:00:10
exception of tax authorities, you shall 13:00:13
inform those to whom you disclose tax 13:00:15
advice that they may not rely on it for 13:00:18
any purpose without our prior written 13:00:19
consent." 13:00:21

In your experience, is that also a 13:00:22
standard provision for a tax engagement? 13:00:24

MS. BROWN: I think we have to 13:00:25
object to this line of questioning. 13:00:26
He's not a lawyer. He's being 13:00:28
asked to interpret a legal 13:00:30
document. 13:00:31

There's one paragraph at 13:00:32
255, which the Tribunal can read 13:00:33
that simply says, "an indemnity 13:00:36
provision is a standard provision 13:00:38
in a contract." 13:00:39

And now Mr. Lewis is being 13:00:40
offered to, essentially, interpret 13:00:43
what it means and to interpret 13:00:43
what "tax advice" means in this 13:00:45
provision. 13:00:46

THE CHAIRPERSON: You know, 13:00:47

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I think, the Panel understands that and we'll take that objection into consideration. [RULING] But we're going to allow the testimony. 13:00:48 13:00:50 13:00:52 13:00:54

MS. VAN WINKLE: Thank you, your Honor. 13:00:55 13:00:56

Q. Professor -- 13:00:57

A. I don't have the question in mind. It was too long of a break. Sorry. 13:00:59 13:01:01 13:01:02

THE CHAIRPERSON: That's okay. We'll give you the question. 13:01:02 13:01:02

Q. My question is, the sentence that we have highlighted on the screen here that, you shall inform those to whom you disclose tax advice that they may not rely on it for any purpose without our prior written consent," is that a standard provision, in your experience, in a tax compliance engagement? 13:01:04 13:01:04 13:01:06 13:01:09 13:01:11 13:01:14 13:01:15 13:01:17

A. Yes, in my experience, it's standard. 13:01:19 13:01:21

Q. And is that consistent with the SSTS? 13:01:21 13:01:23

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A. Yes. 13:01:26
Q. How so? 13:01:26
A. Because, again, it goes to the whole "good faith." The firm is not going to take the -- the accounting firm is not going to take any responsibility to verify the data that's being provided. So they're turning back to the client saying, look, because of that, then you need to take on responsibility for the veracity of the information you're giving. And if you go beyond that with what we gave you, then you need to tell us that you're going to use that for other purposes. 13:01:27 13:01:29 13:01:31 13:01:33 13:01:36 13:01:37 13:01:39 13:01:42 13:01:44 13:01:46 13:01:50 13:01:52 13:01:54
Q. Does the SSTS require that a tax preparer review every document that the client sends them? 13:01:54 13:01:59 13:02:02
A. No. 13:02:03
Q. Does the SSTS require that the tax preparer review every page of every document that the client sends them? 13:02:03 13:02:07 13:02:08
A. No. 13:02:10
Q. Thank you. 13:02:12

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Let's switch to your evaluation of 13:02:19
Mr. Andersen's historical damages model. 13:02:24
How many remaining disagreements do 13:02:27
you have with Mr. Andersen in this case? 13:02:33
A. Just basically one. There 13:02:38
was one he corrected. So it's just down 13:02:40
to one issue. 13:02:42
Q. And what is that one issue? 13:02:42
A. It has to do with the 13:02:46
material participation or passive status 13:02:48
of two of the additional Claimants, the 13:02:50
Davis trust and Mr. Leff. 13:02:53
Q. Okay. And can you please 13:02:57
explain to us what you've put on the 13:03:00
slide that you've titled, "Claim for 13:03:03
Overpaid Taxes"? 13:03:05
A. Yeah, I just wanted to lay 13:03:07
this out so the Panel had it very clear 13:03:11
and this gets to Stipulation One. 13:03:13
But, basically, I've shown -- 13:03:15
everything without a line through it, I'm 13:03:18
in agreement with Mr. Andersen. 13:03:20
And the two lines just show the 13:03:22
corrections that I would make because of 13:03:24

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this issue that I just mentioned, the passive activity loss, and then it totals down to a new total. 13:03:26 13:03:28 13:03:31

Q. And which tax years does this cover, the historical damages evaluation? 13:03:34 13:03:36

A. It's 2006 through 2022. 13:03:40

Q. Thank you. 13:03:43

And did you perform any historical damages evaluation of 2023 tax returns? 13:03:44 13:03:48

A. No. 13:03:52

Q. Why not? 13:03:52

A. They haven't been produced. I don't have that information. 13:03:53 13:03:55

Q. So, just taking a couple of examples here, looking at Mr. Davis, how much did both you and Mr. Andersen calculate that Mr. Davis overpaid in taxes for that 16-year period? 13:03:57 13:03:59 13:04:04 13:04:07 13:04:09

A. 493,577. 13:04:13

Q. And do you recall how many years that covered? 13:04:17 13:04:18

A. That he, actually, paid taxes? 13:04:20

Q. Yeah, the number of years. 13:04:21

A. Like two out of that whole 13:04:23

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time. He didn't pay tax in almost two of 13:04:24
them and he paid in two and that's the 13:04:27
number. 13:04:29

Q. And taking Mr. Goldring, for 13:04:30
example, why do you and Mr. Andersen 13:04:32
apparently agree that he has no historical 13:04:34
tax damages? 13:04:37

A. Because he didn't have any 13:04:38
taxable income during that time period. 13:04:40
So he didn't write checks to taxing 13:04:42
authorities. 13:04:44

Q. Okay. And how about Eric 13:04:45
Weakley? I think, the calculation there 13:04:48
is 4,000 and change in historical 13:04:50
overpaid taxes. 13:04:53

A. That's because it wasn't 13:04:55
until the very end -- I would have to 13:04:58
look at the detail. But I think it was 13:04:59
in 2022 where there was just barely some 13:05:01
of the unreported losses that had they 13:05:04
been available to Mr. Weakley, he would 13:05:07
have been able to deduct those on his tax 13:05:10
returns. 13:05:13

So this is just, essentially, 13:05:13

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estimating what the extra tax he had to 13:05:16
write to taxing authorities related to 13:05:18
the unreported losses. 13:05:20

Q. Okay. I would like to now 13:05:21
move to why you adjusted the damages 13:05:24
figures for the Shelter Trust and Paul 13:05:26
Leff. 13:05:30

So can you briefly explain what 13:05:32
you've put on this slide? 13:05:34

A. Yes. I'd love to explain it 13:05:36
in lots of detail, if you'd imagine, 13:05:38
Professor Wise. But knowing that I'm at 13:05:42
the end of it, let's just go to, 13:05:44
basically, what matters. 13:05:46

Here's the thing, the government 13:05:47
was tired of people entering into what 13:05:49
they called tax shelters. This was 13:05:51
appropriated a lot in the 1960s. It was 13:05:54
really roared in the '70s and then in '76 13:05:56
and '78 the government passed at risk 13:05:59
basis rules. 13:06:03

And it, basically, said that if you 13:06:04
have money in an adventure and that money 13:06:06
is not at risk, meaning, it's not your 13:06:09

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capital and for the most part you've borrowed it on a nonrecourse basis, I don't want you taking losses that that business generates and offsetting it on your 1040 against your day job income. 13:06:11 13:06:14 13:06:16 13:06:19 13:06:21

So, for instance, if you're a lawyer, if you're an accountant -- I'll pick on all of us -- you would write a check and you'd make a hundred thousand dollar investment in this building here and the promoter might promise you 80, $90,000 in tax deductions for several years, because it would be fueled off of debt. 13:06:24 13:06:26 13:06:28 13:06:30 13:06:32 13:06:34 13:06:39 13:06:41 13:06:43

And so the government figured out in 1986 that wasn't enough. They needed to do something more. They created these passive activity loss rules. The way this funnel works is you throw the loss potential at the top and you have to meet each rung as you go through. And if somewhere along that rung you don't meet that limit, the losses are suspended and they carry forward. 13:06:43 13:06:46 13:06:49 13:06:51 13:06:54 13:06:56 13:06:57 13:06:59 13:07:01 13:07:03

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So the passive loss bucket was an attempt to say, look, even if you have money at risk, if you're not really running the place at a significant level, you should be allowed to take those losses being generated from that business activity and offset against, again, your day job income. 13:07:05 13:07:07 13:07:10 13:07:11 13:07:14 13:07:16 13:07:18 13:07:21

Now, for completeness sake, in 2017 effective 2018, the excess business loss rules were put into place. But if you read in my report, it doesn't impact any of the unreported loss years. It could potentially impact some of the Claimants, the additional Claimants in the future. But I've just kind of assumed it away. It would be a narrow exception. 13:07:23 13:07:26 13:07:29 13:07:31 13:07:34 13:07:37 13:07:40 13:07:42 13:07:44

So bottom line for someone to take a loss today from an adventure that they put money into, they have to go through all four of those limits. 13:07:47 13:07:48 13:07:52 13:07:53

THE CHAIRPERSON: For the record, we don't have this witness's report -- none of the reports. 13:07:55 13:07:55 13:07:57

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THE WITNESS: Yeah, yeah. 13:07:58

THE CHAIRPERSON: It was referred -- you referred to your report. We don't have your report. 13:08:01 13:08:02 13:08:04

Q. I think the Court Reporter is trying to keep up so -- he loves talking about taxes. 13:08:07 13:08:08 13:08:13

MR. REED: Don't we all. 13:08:15

THE WITNESS: It's a fun time of year. 13:08:16 13:08:18

Q. Professor Lewis, how many individuals do you estimate you have instructed on the proper application of the passive activity lost limitation? 13:08:18 13:08:21 13:08:23 13:08:25

A. I mean, I have -- I have a series at CalCPA. I taught like almost 8 to 9, 10,000 people at an IRS seminar in Vegas. I mean, just -- I'd say just more than 10,000 for sure. 13:08:32 13:08:36 13:08:41 13:08:44 13:08:46

Q. You've mentioned material participation versus passive activity. 13:08:50 13:08:53

What's the slide you have here? 13:08:55

A. So the question could be raised then what do we mean by running 13:08:57 13:09:00

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the place or what we're going to call 13:09:02
mature participation? 13:09:05
The government came out with a 13:09:05
regulation 1.469-5T that, basically, said 13:09:07
we'll set some criteria as to the level 13:09:13
of activity we expect for you to be able 13:09:15
to pass this limit. 13:09:17
The limit that we, typically, use 13:09:19
the limits applicable here is A1, which 13:09:21
says that you're going to perform more 13:09:24
than 500 hours of service during the year 13:09:27
in that activity. 13:09:29

Q. Is there a presumption in the 13:09:32
IRS regulations as to the status of a 13:09:37
limited partner? 13:09:42

A. Yes. It's in E, Subsection 13:09:43
E. The default is limited partners are 13:09:45
passive per se. That's just the rule. 13:09:47
And the reason has to do with, I think, 13:09:50
legal and some other things. But either 13:09:52
way it's just -- you can read it. It 13:09:55
says, "Except as otherwise provided in 13:09:57
this paragraph, an individual shall not 13:09:59
be treated as meeting the material 13:10:01

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participation in an activity of a limited 13:10:03
partnership for purposes of applying 13:10:06
these tests." 13:10:08

Q. And is the 500 hour exception 13:10:09
one of the ways to overcome that default 13:10:12
rule? 13:10:14

A. Yes, E2 provides the 13:10:15
exception. A1 is the 500 hours. 13:10:17

So it says, if you're greater than 13:10:20
500 hours of qualified participation, 13:10:23
even as a limited partner, you could 13:10:24
potentially meet the test. 13:10:27

Q. Are you aware that the 13:10:28
additional Claimants in this case are not 13:10:30
direct limited partners of the Raiders 13:10:33
but the ultimate beneficial owners of the 13:10:35
Raiders? 13:10:37

A. I am. 13:10:37

Q. And does this Provision E, 13:10:38
"Treatment of Limited Partners," apply to 13:10:40
those ultimate beneficial owners? 13:10:42

A. It does. 13:10:43

Q. What kind of activity counts 13:10:46
for those 500 hours? 13:10:49

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A. It's a great question. The regulars make it clear that they want you -- you should be running -- you should be managing the business. 13:10:51 13:10:55 13:10:58 13:10:59

There's an example in the regs that says that, you know -- in fact, it's an NFL owner, ironically. If he hires his wife to be a secretary, that's what it was, those hours are not customly hours spent by an owner. So they're not going to count when you look at the couple's activities. 13:11:00 13:11:03 13:11:06 13:11:08 13:11:10 13:11:13 13:11:15 13:11:18

Another one that comes up is, well, what if I'm, you know, looking at the financial statements of a company, what if I'm reading them and I'm thinking about the ratio? That's an investor. That's not the same thing. 13:11:18 13:11:20 13:11:22 13:11:24 13:11:27 13:11:29

The only exception to that is if you're doing that valuation, because you are actually management and you're using that to make decisions, then you could potentially count those hours. 13:11:31 13:11:33 13:11:34 13:11:36 13:11:38

Q. Do you have experience in the 13:11:42

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IRS audit context with the passive activity loss limitation? 13:11:46 13:11:50

A. Yes. 13:11:51

Q. And can you please without revealing any confidential information describe that experience for us? 13:11:52 13:11:54 13:11:56

A. Okay. So I had a client several years ago notified of an IRS audit. The auditor came into our office and was around the conference table and basically right from the gate said, I don't want you to give me your W2s. I don't want your client's charitable contribution receipts, none of that. 13:11:57 13:11:59 13:12:03 13:12:06 13:12:09 13:12:12 13:12:14 13:12:16

The reason why I'm here is because your client is somewhat famous. We know who they are in the City. We know that they serve on all these boards. We know they have this day job and we can't quite wrap our hands around -- our heads around the fact that they are a material participant and they're claiming a 2 to 3 million dollar loss from the limited partnership interest. 13:12:17 13:12:18 13:12:21 13:12:22 13:12:25 13:12:28 13:12:31 13:12:33 13:12:35 13:12:39

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So that's why we're here. We want to audit that one issue, and if we can get satisfied, we're gone. 13:12:39 13:12:40 13:12:43

Q. And what kids of documentation was the IRS looking for? 13:12:45 13:12:46

A. Well, the documents that would be consistent with the tax court cases. The regulations talk about needing reasonable means to support it. But then it goes to, basically, scream what the tax court says, which is I want to see contemporaneous. I want to see it done at the time, logs, calendars, schedules. 13:12:47 13:12:48 13:12:50 13:12:53 13:12:56 13:12:58 13:13:00 13:13:03 13:13:08

Like, in that particular case, they wanted to see minutes of board meetings that he attended, you know. They wanted to say, like, what were you doing, how long did it last. 13:13:08 13:13:10 13:13:12 13:13:14 13:13:17

And, again, the general consensus is from the court cases, I want it to be contemporaneous. I don't want it to be ball park guesstimate after the fact when you're notified you're being audited and 13:13:17 13:13:20 13:13:24 13:13:26 13:13:29

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then you put it together. The Court gives that a lot less weight. 13:13:32 13:13:32

Q. And what kind of deference in your experience does the IRS give to a claim of material participation on a tax return? 13:13:34 13:13:38 13:13:42 13:13:46

A. Could you explain that a little bit better for me. 13:13:46 13:13:47

Q. Sure. 13:13:49

Does the IRS put any weight in your experience on simply a claim for material participation in the tax return? 13:13:49 13:13:53 13:13:57

A. So, in other words, do they roll in and say, oh, I see that you've claimed it, we're done here, no further work? 13:13:58 13:14:00 13:14:01 13:14:03

No. It's just a position you've taken on a return. 13:14:04 13:14:06

They come in and say, okay, we're here to audit. The burden of proof is, clearly, on the taxpayer. They have to be able to substantiate what they have on their tax return. 13:14:07 13:14:08 13:14:11 13:14:13 13:14:16

Q. What kinds of clients do you, 13:14:17

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generally, advise in your tax practice? 13:14:19

A. High wealth individuals, a lot like we're dealing with the additional Claimants. Partnerships for sure, complicated complex partnerships, S Corporations, small business-type setups. 13:14:22 13:14:25 13:14:26 13:14:29 13:14:32 13:14:35

Q. And what advice do you give your clients about how to support a claim for material participation? 13:14:35 13:14:36 13:14:38

A. I just had this conversation last week. Told them the same thing. They're looking at doing an adventure next year. They have another job. 13:14:41 13:14:42 13:14:45 13:14:47

And I explained what the rules were, explained what was required and advised them, if you are going to try to maintain or claim passive -- or active status to show participation status, that you should immediately start to keep a log, do it contemporaneously and make sure that it's in one place and not scattered, because you should just assume with the startup losses that you're going 13:14:49 13:14:50 13:14:51 13:14:53 13:14:57 13:14:58 13:15:00 13:15:02 13:15:04 13:15:07

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to have that if we claim that loss, 13:15:09
you're likely to be asked about it. 13:15:11

Q. Are you aware that the Davis 13:15:13
Credit Shelter Trust, Mr. Leff, 13:15:15
Mr. Goldring and the Winkenbachs have 13:15:17
claimed to be material participants in 13:15:20
the Raiders on their tax returns? 13:15:22

A. I'm aware of that, yes. 13:15:25

Q. Did you evaluate whether that 13:15:26
claim was supportable? 13:15:29

A. I did. 13:15:30

Q. And why did you do that? 13:15:31

A. Partially -- well, mostly 13:15:32
because of Procedural Order No. 7 that 13:15:34
said, all claims for damage, the burden 13:15:37
of proof will be on the additional 13:15:40
Claimants and that each and every element 13:15:44
of that claim needs to be supported. 13:15:46

And so I, basically, looked at the 13:15:52
record, what had been produced at the 13:15:55
time and made requests and said, look, I 13:15:57
really need to see basis schedule and I 13:16:00
need to see passive activity loss 13:16:02
information. I asked for it, in fact, 13:16:04

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embarrassingly, more than once. And what I got instead was Procedural Order No. 7. 13:16:06 13:16:08

Q. So what have you depicted on this slide here? 13:16:14 13:16:19

A. Okay. So the first part of the slide is just showing you a tax return. 13:16:22 13:16:24 13:16:29

I'd have to get ten years younger. [Referring to the font.] 13:16:29 13:16:29

I think it's Leff. I think it's Leff. But I'm just depicting that the only thing that I see relative to this issue in the record is that Mr. Leff claimed material participation status on his tax return. 13:16:35 13:16:37 13:16:40 13:16:41 13:16:43 13:16:46

Q. And did you see evidence going the other way? 13:16:47 13:16:49

A. Yes. 13:16:50

Q. Okay. You identified Mr. Davis's testimony on your slide. 13:16:51 13:16:57

What about Mr. Davis's testimony supports your opinion? 13:16:58 13:17:01

A. Well, both in the deposition and trial that you heard, the testimony I 13:17:02 13:17:04

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read from last week. He stated that the limited partners had nothing to do with running the business. That's a pretty loud statement. 13:17:06 13:17:09 13:17:11 13:17:13

Q. And how about the NFL Constitution, how does it support your opinion? 13:17:15 13:17:18 13:17:20

A. The NFL Constitution and Bylaws are -- is a document that all the Clubs have to abide by and there is a provision in there that indicates that the general partner can take an active role in managing, but the limited partners are, basically, to not be active in managing. 13:17:20 13:17:22 13:17:25 13:17:27 13:17:30 13:17:33 13:17:34 13:17:36

Q. And how about the Limited Partnership Agreement for the Raiders? 13:17:37 13:17:40

A. The Limited Partnership Agreement, again, has a provision in there that also indicates that it will follow the Constitution and Bylaws of the NFL thereby, essentially, incorporating what's there. 13:17:41 13:17:43 13:17:45 13:17:47 13:17:49 13:17:51

Q. And how about the First 13:17:54

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Football LLC agreement? You might want to remind us who owns First Football. 13:17:56 13:17:58

A. Yeah. Mr. Leff and Mr. Goldring are members of First Football LLC. 13:18:01 13:18:03 13:18:06

So this is their operating agreement and their operating agreement, again, references the NFL Constitution and Bylaws as being something that they're going to abide by. 13:18:07 13:18:09 13:18:12 13:18:16 13:18:18

Q. After reviewing the record, what did you conclude about whether the Davis Credit Shelter Trust, Mr. Leff, Mr. Goldring or the Winkenbachs could support a claim for material participation based on the record that you've seen? 13:18:19 13:18:21 13:18:25 13:18:28 13:18:31 13:18:32

A. There's just no evidence in the record that would support that contention. 13:18:35 13:18:36 13:18:39

Q. Anything at all? 13:18:40

A. There's nothing. 13:18:41

Q. Thank you. 13:18:42

And, just so we're clear, at the time period at issue here, 2006 to 2022, 13:18:44 13:18:50

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who was the trustee of the Davis Credit Shelter Trust? 13:18:57 13:19:00

A. Carol Davis was the Trustee. 13:19:00

Q. And have you seen any testimony from Mr. Davis about her role in running the Raiders? 13:19:03 13:19:05 13:19:07

A. Yeah. That was in the deposition. I don't recall it being explicit in the trial. But in the deposition that he provided, he was asked, specifically, and he said she had nothing to do with running the team. 13:19:08 13:19:10 13:19:16 13:19:17 13:19:19 13:19:21

Q. Okay. And how does your conclusion about the Davis Credit Shelter Trust and the Winkenbachs and Mr. Paul Leff and Mr. Goldring compare to your conclusion about Mr. Davis? Do you have an opinion one way or the other about him? 13:19:22 13:19:28 13:19:29 13:19:32 13:19:35 13:19:36

A. About Mr. Davis? 13:19:38

Q. Yeah. 13:19:39

A. I have no reason to doubt his statement. I think it's credible and so, I believe, he probably is a material participant. 13:19:40 13:19:43 13:19:46 13:19:49

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Q. Is there anybody else who you 13:19:50
think is properly classified as a material 13:19:52
participant, other than Mr. Davis? 13:19:54

A. Based on the evidence in the 13:19:56
record, there's none. 13:19:57

Q. Okay. Thank you. 13:19:59

A. No one else. 13:19:59

Q. So here you called out 13:20:02
Stipulation No. 1, which you're familiar 13:20:05
with, correct? 13:20:07

A. Correct. 13:20:08

Q. And can you please explain to 13:20:08
us the column for "Overpaid Taxes"? 13:20:10

A. This is the column that ties 13:20:15
out to the first statement we just saw 13:20:18
with similar numbers that list the 13:20:22
additional Claimants that are still in 13:20:24
the lawsuit, I guess. This was a joint 13:20:27
effort between both parties to create 13:20:32
this. But the overpaid taxes just ties 13:20:34
out to my numbers. The only difference 13:20:37
between this which is kind of the Version 13:20:39
2 of the document and the Version 1 is 13:20:41
that I have eliminated damages for the 13:20:44

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Shelter Trust and Paul Leff. Like we discussed, everything else is identical to what Mr. Andersen had produced and what you saw a moment ago. 13:20:48 13:20:50 13:20:52 13:20:54

Q. Assuming the Panel awards historical tax damages, does that column for "Overpaid Taxes" under EY's adjusted calculations accurately reflect your adjustments to Mr. Andersen's model? 13:20:55 13:20:57 13:21:01 13:21:05 13:21:07

A. Yes. 13:21:09

Q. And, just so we're all on the same page, did you change anything about what these taxpayers, actually, owed or, actually, paid on the tax returns that they did file? 13:21:10 13:21:13 13:21:16 13:21:19 13:21:21

A. No. So, for instance, Mr. Leff claimed he was a material participant. He deducted 53, $54 million of losses against his other income during that time period, which saved him probably, I think, 10 to maybe $20 million based on the marginal rate during that time period. I just left that alone. 13:21:22 13:21:24 13:21:26 13:21:31 13:21:33 13:21:36 13:21:40 13:21:43 13:21:44

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My assignment was to look at the unreported losses and evaluate those but not to go back into what he, actually, did or didn't do. 13:21:45 13:21:47 13:21:50 13:21:52

Q. Okay. You mentioned Mr. Leff. 13:21:55 13:21:57

Do you have any opinion as to whether Mr. Leff historically overpaid or underpaid his taxes based on what you've seen? 13:21:57 13:21:59 13:22:02 13:22:05

A. Based on the records, he underpaid his taxes. 13:22:05 13:22:07

Q. And did you attempt to quantify by how much? 13:22:08 13:22:10

A. Like I said, at one point -- like I know it's, at least, $10 million. It could be upwards to 25, depends on the marginal rate. 13:22:12 13:22:15 13:22:17 13:22:20

Some years he has a lot of capital gain. He has a lot of ordinary income certain years. So it just depends on the year, but somewhere in that neighborhood. 13:22:21 13:22:23 13:22:25 13:22:27

Q. And how did that happen? I mean, how was it he ended up underpaying 13:22:28 13:22:31

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his taxes, in your opinion? 13:22:35
A. Because he was using Raiders 13:22:36
losses to offset his day job income. 13:22:38
Q. What's his "day job," to the 13:22:41
best of your knowledge? 13:22:43
A. I guess I'd quantify it as a 13:22:44
hedge fund manager. That may be overly 13:22:46
simplifying it. But that's based on the 13:22:48
information that I'm seeing coming out. 13:22:50
Q. And just to take a couple of 13:22:54
these examples, the McAuliffes at the 13:22:57
end, Corey McAuliffe, Erin McAuliffe, 13:23:01
Kelly Peppmeier, why do they have zero 13:23:04
damages and overpaid taxes? 13:23:07
A. So there's kind of a couple 13:23:08
of categories. I think this is an 13:23:10
important part to mention. And 13:23:13
Mr. Andersen and I agree on this. 13:23:16
I want to make sure the Panel 13:23:20
understands that these unreported losses, 13:23:22
it's -- when you're looking at somebody's 13:23:26
total tax picture, if an additional 13:23:28
Claimant sells their partnership 13:23:31
interest, their partnership interest 13:23:33

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basis so what they've kind of got into 13:23:35
the deal, it's not reduced by these 13:23:37
unreported losses. 13:23:39
So what that means is that when you 13:23:41
sell -- when an additional Claimant sells 13:23:43
their partnership interest in the 13:23:45
Raiders, their gain is going to be less 13:23:47
than it would have been had the 13:23:50
unreported losses, actually, come through 13:23:52
and the unreported losses would then be 13:23:55
available to deduct something. 13:23:57
So what Mr. Andersen did -- and I 13:23:59
agree with it -- he said, look, these 13:24:01
folks sold their interest. So there's no 13:24:03
damages. There's no unreported losses 13:24:07
that they did benefit from because they 13:24:09
got their benefit not deducting it on the 13:24:11
return each year as operations, but they 13:24:14
got that benefit when they sold their 13:24:17
partnership interest in another year 13:24:19
request. And that's the same thing that 13:24:20
would happen today with any other 13:24:22
additional Claimant. If somebody sells 13:24:23
their partnership interest tomorrow, the 13:24:26

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same consequence would occur. 13:24:29

MR. BICKERMAN: That they would recover their unreported losses? 13:24:31 13:24:32 13:24:33

THE WITNESS: They would recover their unreported losses cause it's in their bases. So that -- 13:24:34 13:24:35 13:24:37 13:24:39

Q. That's a very helpful explanation. 13:24:39 13:24:40

And so, actually, that's a great segue to the "Unreported Carryforward Losses" in the right two columns. 13:24:40 13:24:42 13:24:46

Do you see that? 13:24:47

A. Yes. 13:24:49

Q. Okay. Are those the losses that you are saying the additional Claimants -- the use of those unreported losses they may in the future recover if they sell, for example? 13:24:49 13:24:51 13:24:54 13:24:58 13:25:01

A. Yes. These are the unreported losses that but for the Davis Shelter Trust and Paul Leff Mr. Andersen and myself both agree. 13:25:03 13:25:07 13:25:12 13:25:17

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The middle column is just segregating Mark Davis because that's an NOL kind of thing, Net Operating Loss, whereas all those on the outside column should be properly categorized as passive activity losses or what we call "PALS." 13:25:18 13:25:19 13:25:21 13:25:25 13:25:26 13:25:28

MR. BICKERMAN: Can I just ask a quick question? 13:25:32 13:25:33

MS. VAN WINKLE: Yes, of course. 13:25:34 13:25:34

MR. BICKERMAN: But wouldn't losses in the future be worth less than losses that you could use now? 13:25:38 13:25:38 13:25:38 13:25:38

THE WITNESS: Yeah, clearly time value of money is an issue. 13:25:39 13:25:40

But putting that aside, it would be a wash. But, yes, you're absolutely right, time value of money -- 13:25:42 13:25:43 13:25:45 13:25:46

MR. BICKERMAN: The nominal amount would be the same but the present value -- 13:25:46 13:25:48 13:25:49

THE WITNESS: Could be 13:25:50

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different, correct; fair point. 13:25:51

BY MS. VAN WINKLE: 13:25:57

Q. Did you also perform some evaluation of historical tax damages assuming only the 2017 to 2019 tax years are at issue? 13:25:57 13:26:01 13:26:03 13:26:07

A. Yes. 13:26:08

Q. And what did you -- I shouldn't say, "tax years." I should say -- yeah, tax years. I think I said it right. 13:26:09 13:26:12 13:26:17 13:26:19

What do we see here? 13:26:20

A. This shows if only the tax years that were open were '17 to '19 or just '19, it shows what the damages would be. The damages would be limited to Mr. Boxcacci based on an AMT issue in 2022. 13:26:22 13:26:25 13:26:27 13:26:31 13:26:34 13:26:37

Q. And why is everyone else zero? 13:26:39

A. Because all the other unreported losses were -- if they were time barred, if it was '17 to '19, they've already amended those returns. 13:26:42 13:26:43 13:26:49 13:26:51

MS. BROWN: I'm sorry to 13:26:53

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interrupt, but Slide 13 on the deck that you provided to me looks like this and I can't find this. 13:26:54 13:26:56 13:26:57 13:26:59

MS. VAN WINKLE: We took it out. 13:27:00 13:27:01

MS. BROWN: No, no, I'm just looking for this slide -- 13:27:02 13:27:03

MS. PREBIL: I think it's the last slide now. It used to be the last slide. 13:27:07 13:27:07 13:27:07

MS. VAN WINKLE: Oh, I'm sorry. I see what you're saying. 13:27:07 13:27:10

MS. BROWN: I just can't find where you are. 13:27:10 13:27:11

Okay. Slide 32, got it. 13:27:13

MR. BICKERMAN: Counsel, we don't have these. 13:27:16 13:27:17

MS. VAN WINKLE: I think we've been handing -- 13:27:19 13:27:20

MR. BICKERMAN: You can hand them out at the end. That's fine. 13:27:21 13:27:22 13:27:22

THE CHAIRPERSON: Yeah, we 13:27:23

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don't need to get them right now. 13:27:23
MR. BICKERMAN: I just want you to know we didn't have them. 13:27:25 13:27:25
MS. PREBIL: Okay, thank you. 13:27:29
BY MS. VAN WINKLE: 13:27:29
Q. So, Professor Lewis, for Mark Davis, the Davis Credit Shelter Trust, Paul Leff, the Goldrings, the Winkenbachs, the Boscacci, the Beilkes -- 13:27:29 13:27:32 13:27:35 13:27:41
MR. FARINA: So the Panel asked last week whether the experts would address what happens if 17, '18 and '19 are not time barred. 13:27:52 13:27:53 13:27:54 13:27:56 13:27:59
HE CHAIRPERSON: Right. 13:27:59
MR. FARINA: And that's what we're trying to answer. 13:28:00 13:28:01
MS. VAN WINKLE: We'd just like to offer this slide into evidence as Mr. Lewis's calculation. 13:28:03 13:28:03 13:28:05
THE CHAIRPERSON: Okay. That's fine. 13:28:08 13:28:08
MS. VAN WINKLE: Okay, thank you. 13:28:09 13:28:10

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THE CHAIRPERSON: We've seen it already. So it might as well be in evidence. 13:28:10 13:28:11 13:28:13

(Arbitration Exhibit (UNKNOWN) slide reflecting Mr. Lewis's calculation was moved into evidence.) 13:28:14 13:28:06 13:28:07 13:28:14

Q. Okay. Let's talk about future tax damages. And I think I forgot to ask you this in the beginning. 13:28:14 13:28:16 13:28:21

In performing your analysis, how many tax returns did you review in connection with your assignment? 13:28:22 13:28:24 13:28:25

A. This assignment on this engagement? 13:28:27 13:28:29

Q. Yes. 13:28:29

A. More than 400; a lot. I reviewed every return that was provided; the Raiders returns, all the additional Claimants for all the years, some of the intermediary companies; so, at least, 400. 13:28:34 13:28:37 13:28:40 13:28:42 13:28:46 13:28:48

Q. And did you list all of those tax returns in your expert report? 13:28:48 13:28:50

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A. Yeah, I believe I did. 13:28:52

Q. Okay. Stepping back focusing on future tax damages, could you just please explain to the Panel when if ever the additional Claimants will suffer future tax damages? 13:28:53 13:28:57 13:28:59 13:29:01 13:29:03

And I think it gets to Arbitrator Bickerman's question. 13:29:04 13:29:06

A. Okay. So tax damages in this case only occur in the event, in the future -- talking about future damages -- when an additional Claimant has to write a check physically to the federal government or to a state authority that they otherwise would not have had to write but for the fact that there's these unreported losses that are missing. 13:29:07 13:29:13 13:29:18 13:29:20 13:29:23 13:29:26 13:29:28 13:29:30 13:29:33

So, in terms of thinking about the realization of the tax damages, it really gets down to understanding each individual additional Claimant's individual tax situation and saying, okay, when are they going to start writing checks they otherwise wouldn't 13:29:35 13:29:40 13:29:43 13:29:47 13:29:49 13:29:51 13:29:53

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have to write. 13:29:54
Q. And did you read Mr. McClain-Duer's trial testimony in this case? 13:29:57 13:29:59 13:30:00
A. I did. 13:30:00
Q. Can you please refresh us on what he did to come up with a figure for purported future tax damages? 13:30:01 13:30:03 13:30:05
A. He took an interesting approach. What he did is he siloed off each additional Claimant. And what I mean by that, he said he assumed a world where the only thing happening for them was Raiders. The unreported losses were present and the only thing he put into the model, as far as an offset potentially, was Raiders income on a go forward basis. 13:30:07 13:30:13 13:30:16 13:30:17 13:30:20 13:30:22 13:30:25 13:30:28 13:30:30 13:30:32
He said he ignored anything else that might be there. He didn't pull in any existing known loss carryforwards. He didn't make an attempt to go forward and figure out what each additional Claimant might have on in their own 13:30:34 13:30:36 13:30:39 13:30:42 13:30:44 13:30:47

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individual circumstances. 13:30:50
He also then came up with a tax 13:30:50
rate, which he just basically maxed out 13:30:53
not thinking about the fact that not 13:30:57
everyone is in the max tax bracket. So 13:30:59
he just kind of pushed the tax rate up. 13:31:02
He siloed off the Raiders and acted like 13:31:05
nothing else was going to happen. That's 13:31:08
kind of a high level. 13:31:10
Q. Did you make adjustments to 13:31:11
Mr. McClain-Duer's model? 13:31:13
A. I did. 13:31:14
Q. What are the first adjustments 13:31:17
you made? 13:31:18
A. I made three adjustments 13:31:18
pursuant to the Johnson report. I changed 13:31:20
the net income that he had. I changed 13:31:23
the discount rate that he used and then I 13:31:27
applied a lack of marketability discount. 13:31:31
Q. And in doing that, did you 13:31:33
take Mr. McClain-Duer's model and simply 13:31:36
change the inputs that you were getting 13:31:39
from Mr. Johnson? 13:31:41
A. Yes. 13:31:45

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Q. So you didn't come up with your own damages model in this case, correct? 13:31:45 13:31:47 13:31:49

A. No, this is Mr. McClain-Duer's model. 13:31:49 13:31:53

Q. What was the next thing you did? 13:31:53 13:31:55

A. Going back to what I mentioned about the combined blended rates, I had the blended rates be dynamic to recognize that if you had a lot of income, you might be at the upper end of the marginal rates and if you had lower income, you would be at the lower. So I just made the tax amounts to be representative of the information that was present. 13:31:55 13:31:57 13:31:58 13:32:01 13:32:03 13:32:06 13:32:08 13:32:10 13:32:12 13:32:13

Q. And what was the third thing that you did? 13:32:14 13:32:16

A. The third thing, again, goes back to what I said about what really matters here. And that is when an additional Claimant is going to write a check that they otherwise wouldn't have 13:32:17 13:32:19 13:32:21 13:32:23 13:32:25

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to write. And three of the additional 13:32:27
Claimants have real life losses, 13:32:29
significant losses. Mr. McClain-Duer 13:32:32
ignored those. But, for instance, 13:32:36
Mr. Davis would have to write a check to 13:32:39
the IRS -- actually, the US Treasury. 13:32:41
You don't write it to the IRS. 13:32:44

Before he writes a check to the US 13:32:45
Treasury, he's got to burn through his 13:32:48
net operating losses first and then he 13:32:49
would then potentially suffer future tax 13:32:52
damages. 13:32:55

So I pulled in the three known tax 13:32:55
loss carryforwards for Goldring, the 13:32:59
Davis Credit Shelter Trust and Mark Davis. 13:33:02

Q. Are these losses that are, 13:33:05
actually, reflected on the tax returns 13:33:06
that have been filed? 13:33:09

A. Yes. 13:33:11

Q. So take Mr. Davis, for 13:33:11
example. Do you recall which return 13:33:14
reflects he, actually, today has 13:33:17
$60.5 million in carryforward losses that 13:33:19
Mr. McClain-Duer does not account for? 13:33:23

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A. It's the 2022. That's the most recent return that I have. 2023 could have more. But I just don't have -- I don't have that data. 13:33:24 13:33:27 13:33:32 13:33:34

Q. Okay. And so, for Mr. Davis, for example, he has $60.5 million in actual carryforward losses here. 13:33:35 13:33:37 13:33:42

And do you then need to add the 36 million and change of unreported losses to Mr. McClain-Duer's model in order to determine when in the future he might actually overpay taxes? 13:33:45 13:33:47 13:33:51 13:33:54 13:33:56

A. Yes, essentially, you would take the unreported losses and you would add them to this and then play it forward in his model. 13:33:58 13:34:00 13:34:02 13:34:04

Q. Okay. And I'm going to go back to that slide just so we're all clear on -- too far. 13:34:05 13:34:07 13:34:09

So you're talking about the 36.3 million in the "Unreported Carryforward Losses Nonpassive" column, correct? 13:34:11 13:34:13 13:34:16 13:34:18

A. Correct. 13:34:18

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Q. And is that true for the unreported carryforward losses that are passive that those taxpayers, actually, need to use those existing -- well, unreported losses before they overpay taxes to the government? 13:34:19 13:34:21 13:34:24 13:34:26 13:34:30 13:34:33

A. Yes, for the two that I included besides Mr. Davis, that's correct. 13:34:34 13:34:36 13:34:40

MR. BICKERMAN: But for the others, they couldn't use those losses, right? 13:34:40 13:34:40 13:34:43

THE WITNESS: Fair question. 13:34:43

All the others don't have carryforward losses. So all I'm saying is that for the three that have 2022 actual losses, I included those in the model and then I include -- other than an adjustment for Paul Leff and the Shelter Trust. 13:34:45 13:34:47 13:34:50 13:34:51 13:34:54 13:34:57 13:35:01

I just do what Mr. Andersen had Mr. McClain-Duer do and just add these unreported losses to his model and then play them forward. 13:35:03 13:35:06 13:35:07 13:35:09

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All I've done is I've added these real life losses to three of them and combined them, essentially, to get to when the 36 million in this case would start to become an issue for Mark Davis. 13:35:11 13:35:12 13:35:14 13:35:16 13:35:19 13:35:20 13:35:22

MR. BICKERMAN: You included the 36 with the 60 for Mr. Davis, correct? 13:35:22 13:35:24 13:35:27

THE WITNESS: Correct. 13:35:27

BY MS. VAN WINKLE: 13:35:28

Q. Is that how Mr. McClain-Duer constructed his model on a principal basis with respect to carryforward losses? 13:35:28 13:35:30 13:35:32 13:35:33

A. He ignored carryforwards loss. He didn't consider them. I think he got asked about that. I don't know what day of the week it was, Monday, but he -- yeah, he didn't consider them. 13:35:34 13:35:38 13:35:40 13:35:43 13:35:45

Q. Was that the correct analysis, in your opinion? 13:35:48 13:35:51

A. No, because it's actual 13:35:51

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factual information that exists that will have a significant impact on the calculation. 13:35:53 13:35:56 13:36:00

Q. And is that true for the known tax loss carryforwards reflected on Slide 16? 13:36:00 13:36:03 13:36:07

A. Yes, same for the others. 13:36:08

Q. Okay. What do we have on this slide here, the adjustments to future tax damages claimed in May? 13:36:10 13:36:15 13:36:17

A. Okay. This schedule is Mr. McClain-Duer's numbers based on his original report in May of 2024. And then what I've done is I have implemented the changes I just discussed to his model, the modifications and then I'm putting off to the side my corrected numbers that total 3.9 million. 13:36:19 13:36:24 13:36:27 13:36:30 13:36:35 13:36:38 13:36:40 13:36:44

Q. Okay. And are those corrections based on the backup calculations that are the exhibits to your July 15th report? 13:36:46 13:36:49 13:36:51 13:36:54

A. Yes. 13:36:56

Q. Okay. 13:36:57

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MS. VAN WINKLE: We'd like to offer into evidence both the slide reflecting the adjustments and the exhibits, not Professor Lewis's entire report, but the exhibits to his July 15 report. 13:36:58 13:36:59 13:37:01 13:37:03 13:37:05 13:37:06

THE CHAIRPERSON: Any objection? 13:37:11 13:37:11

MS. BROWN: No objection. 13:37:12

THE CHAIRPERSON: No objection. It's in. 13:37:13 13:37:14

(Arbitration Exhibit (UNKNOWN) exhibits to his July 15 report was moved into evidence.) 13:37:15 13:37:15 13:37:15

(Arbitration Exhibit (UNKNOWN) slide reflecting the adjustments was moved into evidence.) 13:37:15 13:37:02 13:37:17

MS. VAN WINKLE: Thank you. 13:37:17

Q. Go ahead. 13:37:18

A. I was going to say and the other thing I was going to point out on this -- I think it's important -- you might notice the red and blue. 13:37:18 13:37:18 13:37:20 13:37:21

Q. Oh, yes. Thank you. 13:37:23

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A. Just so the Panel is clear, the 1 million is an increase to Mr. McClain-Duer's model and the reason why is for consistency sake. When I in my model don't allow the losses in the Andersen model to be used, to be consistent, I then placed them here in the future. So he has an increase -- rather, everyone else are decreased amounts with the model. 13:37:24 13:37:26 13:37:31 13:37:32 13:37:37 13:37:40 13:37:44 13:37:47 13:37:51 13:37:54

MR. CHANDLER: [REQUEST] Will you put in an exhibit number on this document and the earlier one please so we'll know how to refer to them? 13:37:56 13:37:57 13:38:00 13:38:03 13:38:06

MR. BECKER: We'll do that and then produce them with an exhibit stamp and there is going to be one more. 13:38:06 13:38:07 13:38:09 13:38:10

MR. CHANDLER: Okay. 13:38:11

Q. Okay. What do we have on this slide, Professor Lewis? 13:38:16 13:38:18

A. Mr. McClain-Duer updated his model and with a supplemental report in 13:38:19 13:38:21

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August of 2024. 13:38:23

So what I did here is I went through and I made the changes that we just discussed. But I used his updated date for his discounting. 13:38:27 13:38:28 13:38:31 13:38:37

So I, basically, took his new report and did the same work that I did before and I included just a new date. 13:38:39 13:38:42 13:38:46

MS. VAN WINKLE: Okay. And, Jason, can you please put up the Excel file. 13:38:49 13:38:50 13:38:52

Q. Does this reflect the backup data, the exhibits that are your adjustments to Mr. McClain-Duer's August model? 13:38:56 13:38:58 13:39:01 13:39:05

A. Yes. 13:39:06

MS. VAN WINKLE: Okay. We'd like to offer both the slide and the supporting data into evidence. 13:39:07 13:39:08 13:39:09

THE CHAIRPERSON: Any objection? 13:39:11 13:39:12

MS. BROWN: No objection. 13:39:12

We will at some point be offering our expert's exhibits in 13:39:14 13:39:16

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as well. 13:39:18

THE CHAIRPERSON: Fair enough. 13:39:18
Okay. It's in. 13:39:20
(Arbitration Exhibit (UNKNOWN) 13:39:21
slide and the supporting data was 13:28:06
moved into evidence.) 13:39:23

Q. Okay. After making those 13:39:23
adjustments, in your opinion, can you 13:39:29
endorse the reliability of either 13:39:32
McClain-Duer's May or August models? 13:39:35

A. No. 13:39:38

Q. Why not? 13:39:38

A. Like the whole issue, again, 13:39:42
is when are additional Claimants going to 13:39:44
write checks that they otherwise wouldn't 13:39:47
have to write. 13:39:50

And I'm going to agree with. 13:39:51
McClain-Duer. He said that this is a 13:39:54
really speculative exercise. Like, I 13:39:55
agree with that. 13:39:57

There are contingencies. I mean, 13:39:58
any good model has facts, you know, 13:40:00
undisputed facts, estimates and 13:40:03
assumptions built into them. And the 13:40:05

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more you get into the latter category, 13:40:07
the less reliable the model is going to 13:40:08
be. 13:40:10
There's so much here that's 13:40:11
variable, in terms of trying to predict 13:40:14
what someone is going to do for a tax 13:40:17
position over the next several years with 13:40:19
limited data that I would not feel 13:40:20
comfortable saying this is, like, what 13:40:23
you should predict. 13:40:26
I mean, what I've done is made his 13:40:27
model better. But if you're holding me 13:40:30
to a standard of is it reliable, I think 13:40:32
is the word you used, no, I wouldn't say 13:40:34
that. 13:40:36
Q. Okay. What's the first 13:40:36
contingency that you identified? 13:40:40
A. One of the first problems 13:40:44
that you have to think about is unlike 13:40:46
the McClain-Duer model that just silos 13:40:49
off the Raiders, that's not real life. 13:40:52
These additional Claimants have other 13:40:54
things going on. 13:40:56
I just highlighted Mr. Davis, for 13:40:57

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instance, because that was part of the testimony. I figured you would be familiar with it. 13:40:59 13:41:00 13:41:02

But, you know, he lost like 8 some odd million one year, 11.5 another year. And these are during the years when they're winning the championship. 13:41:03 13:41:05 13:41:08 13:41:10

I have no way to project or think about what that income stream looks like or loss stream, I guess, you would call it. 13:41:13 13:41:15 13:41:17 13:41:19

Like, again, this would be an item that would have to be burned through, used with other activity before you get to the unreported losses. So, just understanding what everyone else has going on is a huge contingency. 13:41:20 13:41:21 13:41:24 13:41:25 13:41:29 13:41:30

Q. Which non-Raiders losses were you just referring to that he would also need to "burn through"? 13:41:32 13:41:34 13:41:36

A. The Aces, Las Vegas Basketball LP. But it's the Aces, WNBA team that he owns, I think, a majority interest -- he owns an interest in. 13:41:37 13:41:40 13:41:45 13:41:46

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Q. Okay. And what do we have depicted on Slide 22? 13:41:46 13:41:50

A. You have a cut out of his 2022 tax return and I've just highlighted here for all of us that are aging a bit bigger numbers that we can see. 13:41:51 13:41:53 13:41:56 13:41:59

But it's just showing the reported loss for 2022 from the Aces, $11.5 million. 13:42:01 13:42:03 13:42:07

Q. Okay. And you're speaking mostly about losses. 13:42:08 13:42:11

Is there any way for you to know what non-Raiders income for any of these taxpayers would be? 13:42:12 13:42:14 13:42:17

A. No. And, in fact, it's really de-focal to know even in the historical data I got. Those returns were so redacted, which I'm not criticizing. I'm just stating a fact. 13:42:19 13:42:21 13:42:24 13:42:26 13:42:28

I have no way to really interpret to what they've done historically, let alone future predict how much money someone is going to make or lose in the future. 13:42:29 13:42:32 13:42:35 13:42:37 13:42:38

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MS. BROWN: We, actually, have an objection to this slide before we move on. 13:42:42 13:42:43 13:42:44

THE CHAIRPERSON: Sure. 13:42:45

MS. BROWN: Mr. Lewis has not disclosed any opinion in his expert report. 13:42:47 13:42:48 13:42:50

THE CHAIRPERSON: We don't have his report. That's a problem. You've decided not to give us his reports. 13:42:51 13:42:52 13:42:54 13:42:57

How do I make a ruling on something that I don't have in front of me? 13:42:57 13:42:58 13:42:59

MR. REED: The same way you've been doing throughout the arbitration. 13:43:00 13:43:01 13:43:03

MS. BROWN: If Ms. Van Winkle wants to talk -- 13:43:04 13:43:04

MR. REED: I know that's -- 13:43:06

MS. VAN WINKLE: What do you assert hasn't been disclosed? Because I've got all the paragraphs tabbed. 13:43:06 13:43:07 13:43:08 13:43:10

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MS. BROWN: Exactly. Let me -- and if she wants to point out something, I'll review it and I can withdraw the objection, if necessary. 13:43:11 13:43:12 13:43:13 13:43:14 13:43:16

But I have read his report and I don't see any disclosed opinion about how a potential sale of a partnership interest would impact nonpassive losses in damages. 13:43:16 13:43:18 13:43:19 13:43:21 13:43:23 13:43:27

And I think there's no dispute here that Mark Davis is nonpassive. That he's active. 13:43:27 13:43:28 13:43:30

And the way I read this second point with Brady Group is that it intends to talk about Marc Davis having a potential sale. 13:43:32 13:43:33 13:43:35 13:43:36

But in his disclosure, there's no opinions about how a potential sale for an active investor would impact damages in this case or anything in this case. 13:43:38 13:43:41 13:43:44 13:43:46 13:43:49

So, if I'm wrong, Ms. 13:43:52

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Van Winkle can point me to it. I haven't seen it. I haven't seen any disclosure about passive Claimants selling interest and how that would impact their damages. 13:43:54 13:43:55 13:43:57 13:43:59 13:44:00

MS. VAN WINKLE: Sure, Paragraph 55. 13:44:02 13:44:03

MS. BROWN: I meant to say non-passive. 13:44:04 13:44:06

"Paragraph" what? 13:44:07

MS. VAN WINKLE: There's literally a section in his report called "Sales of Interest." 13:44:09 13:44:10 13:44:12

MS. BROWN: For nonpassive -- 13:44:13

MS. VAN WINKLE: Hold on. Let me finish. 13:44:15 13:44:16

There is discussion of the significance of nonpassive versus passive classifications, meaning, what's the difference in the impact of being a material participant versus a passive participant. 13:44:17 13:44:18 13:44:20 13:44:22 13:44:25 13:44:27

He has a section that's, specifically, about the sale or 13:44:28 13:44:31

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disposition of partnership interest. 13:44:32 13:44:34

He has a section that is expressly about the timing of damages, which is really the issue that we're speaking about, the timing of damages putting aside the classification of passive versus nonpassive. 13:44:35 13:44:38 13:44:41 13:44:42 13:44:44 13:44:45 13:44:47

That's somewhat beside the point, I think, for this particular discussion. Although the expert can correct me. 13:44:49 13:44:51 13:44:53 13:44:54

And he goes on at length about the tax damages occur only if and when a taxpayer is required to remit additional tax. This is a contingency in which they wouldn't need to do that. 13:44:55 13:44:59 13:45:02 13:45:04 13:45:07 13:45:08

He, also, talks about how McClain-Duer failed to consider future income, future losses, future tax events. 13:45:10 13:45:16 13:45:18 13:45:20

He also expressly calls Mr. 13:45:22

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McClain-Duer's damages calculation unreliable. 13:45:27 13:45:29

And he also notes that it doesn't account for other sorts of income, but we already discussed that. 13:45:31 13:45:34 13:45:37 13:45:38

So all of this was disclosed. 13:45:39

What Mr. Lewis is doing is illustrating the opinions in his report and Ms. Brown took almost a seven-hour deposition and didn't ask about any of this. 13:45:41 13:45:44 13:45:45 13:45:49 13:45:51

MS. BROWN: None of it. None of it. 13:45:52 13:45:53

No, my point is simply, I think, as you've heard, most of what was just described to you has been testified to and I've not objected. 13:45:54 13:45:57 13:45:58 13:46:00 13:46:02

The difference between passive and active and reliability, there's been no objection to any of that testimony. 13:46:02 13:46:03 13:46:05 13:46:07

I'm zeroing in on one very 13:46:08

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specific thing that is not disclosed in the report, which is the potential sale of an ownership interest for an active investor. 13:46:11 13:46:13 13:46:16 13:46:18

And the only paragraph and the only thing that Ms. Van Winkle even mentions that talks about sale or disposition of interest is Paragraph 60 in the report and it is, specifically, talking about sale or disposition of interest for passive investors. 13:46:19 13:46:22 13:46:24 13:46:25 13:46:27 13:46:29 13:46:31 13:46:33

There's no disclosure that we could review that would tell us what Professor Lewis's opinion would be. 13:46:35 13:46:38 13:46:40 13:46:41

THE CHAIRPERSON: [RULING] I'm going to sustain the objection. 13:46:42 13:46:42

Let's proceed. 13:46:44

MS. VAN WINKLE: You're okay if I ask it from a passive context? 13:46:46 13:46:50

MS. BROWN: If we're talking about how the sale or disposition of a passive interest -- 13:46:52 13:46:53 13:46:55

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MS. VAN WINKLE: Sure. 13:46:57

MS. BROWN: And, in fact, he has already on your prior slide talked about that and we didn't object. 13:46:58 13:46:58 13:47:00 13:47:01

The only objection is to the extent that he's going to offer any opinions about how an active investor's damages would be impacted by a sale. 13:47:01 13:47:03 13:47:04 13:47:06 13:47:08

MS. VAN WINKLE: Okay. One second. 13:47:09 13:47:13

BY MS. VAN WINKLE: 13:47:19

Q. Professor Lewis, do you recall writing in your report that the underreporting of a loss, which would have simply increased a taxpayer's suspended losses under one of those loss limitation rules will not have caused damage until the underreported losses would have been utilized against income in a subsequent year? Do you recall that? 13:47:19 13:47:25 13:47:28 13:47:29 13:47:32 13:47:35 13:47:38 13:47:40 13:47:42 13:47:44

A. I do. 13:47:44

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Q. And you weren't writing, specifically, about passive versus nonpassive, correct? 13:47:44 13:47:45 13:47:47

A. Correct. 13:47:48

Q. And does that -- 13:47:49

MS. BROWN: Can you tell me what paragraph we were just looking at? 13:47:54 13:47:55 13:47:55

MS. VAN WINKLE: Sure, 68. 13:47:55

Jason, can you put it up. 13:47:59

It's the second sentence. 13:48:04

Q. Does anything in Paragraph 68 where you're discussing the timing of damages refer to passive versus nonpassive? 13:48:07 13:48:09 13:48:12 13:48:14

A. No. 13:48:16

Q. Okay. And in the example that you were going to -- that I think we can still give to the Panel, is there any difference between being a nonpassive investor or a material participant? 13:48:17 13:48:18 13:48:21 13:48:25 13:48:28

A. No. 13:48:30

Q. Okay. Thank you. 13:48:31

Okay. So can you please describe 13:48:34

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for me why you think a potential sale of a passive ownership interest is a contingency? 13:48:37 13:48:39 13:48:41

A. Because the loss -- the unreported losses that you have like I mentioned a minute ago if -- put it this way. The reason why it's a contingency is because if a passive investor sold their interest tomorrow, this basis problem I talked about would resolve the unreported losses. 13:48:44 13:48:49 13:48:52 13:48:56 13:48:58 13:49:02 13:49:04 13:49:06

So, if somebody came in here today and, you know, the Panel, you know, awarded a settlement, a damage award to an additional Claimant that was passive and they put that money in their pocket and then they sold tomorrow, they, essentially, would be getting a benefit twice. 13:49:08 13:49:10 13:49:13 13:49:17 13:49:19 13:49:23 13:49:24 13:49:26

They would get -- they would lower their fed tax on the sell because there's no mechanism that requires them to do that and they would, also, be putting in money from a settlement in a lawsuit 13:49:28 13:49:30 13:49:33 13:49:35 13:49:37

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purporting to be the same amount. 13:49:39
Q. Okay. And if that sale 13:49:43
dilutes ownership interest as opposed to 13:49:49
is a complete sale that swaps out one for 13:49:51
one ownership interest, is there any 13:49:54
impact on future taxable income or losses? 13:49:56
A. Right. So, if any investor 13:50:00
sells their -- you know, if an existing 13:50:07
investor, potential Claimant, sales some 13:50:11
of their raised interest, they're going 13:50:13
to be entitled to less Raiders income in 13:50:15
the future. 13:50:17
If I own 30 percent today and I own 13:50:17
20 percent tomorrow, I'm going to get 13:50:21
less income allocated so that would also 13:50:23
frustrate the McClain-Duer model, because 13:50:26
he just assumes that the ownership 13:50:29
percentages are stagnant the whole time. 13:50:32
So, if I'm the 30 percent, I'm 13:50:34
always going to be a 30 percent owner and 13:50:36
it's just dilutive in terms of the income 13:50:39
allocation. 13:50:40
Q. And are you aware -- 13:50:40
MS. BROWN: This is, again, a 13:50:42

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slide that's, specifically, talking about sale -- 13:50:43 13:50:45

MS. VAN WINKLE: Yeah, we'll just skip over it. We can skip over this one, yeah. 13:50:46 13:50:47 13:50:48

THE CHAIRPERSON: Skip over it. 13:50:49 13:50:50

MS. BROWN: And this slide as well. 13:50:51 13:50:52

Q. Let's pretend all of that says Mr. Leff. 13:50:53 13:50:53

THE CHAIRPERSON: Is there an objection to the slide? 13:50:55 13:50:55

MS. BROWN: Yes, there's an objection to this slide, absolutely. 13:50:56 13:50:57

Q. What about death of a taxpayer, is that also a contingency? 13:51:00 13:51:02

A. Yes. Because if a taxpayer dies, they -- the losses don't go with them. 13:51:04 13:51:07 13:51:11

So part of the McClain-Duer model is assuming that everybody stays in until they would have recovered, the unreported losses. 13:51:13 13:51:16 13:51:20 13:51:23

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And none of them are -- I don't 13:51:24
know how to say it nicely. They don't 13:51:27
die in between. 13:51:30

THE CHAIRPERSON: They're not 13:51:32
dead. 13:51:33

MR. REED: If nobody they 13:51:33
gets hit by a bus. 13:51:33

A. Yeah, I was going to say I 13:51:34
don't know what the New York saying is, 13:51:34
but it's probably not pleasant so... 13:51:36

(There is a discussion off 13:51:36
the record.) 13:51:46

A. So the contingencies, I mean, 13:51:46
that's -- I'm just saying that they're -- 13:51:48
in addition to not knowing their income 13:51:51
and all these other things mean that what 13:51:53
it says, like, if I'm an additional 13:51:56
Claimant and tomorrow I sell my interest, 13:51:58
my damages drop to zero. So that's what 13:52:01
I mean by "the contingencies." 13:52:04

Q. And, in your opinion, with 13:52:05
the information that we have available 13:52:08
today in the record, is there any way to 13:52:10
account for the things that you've 13:52:12

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described as "contingencies"? 13:52:15
A. I think based on the record, 13:52:18
no, I don't have health records. I'm not 13:52:20
an actuary. I can't predict the future 13:52:24
with these kinds of things; so, no. 13:52:28
MS. VAN WINKLE: I have no 13:52:30
further questions. 13:52:31
THE CHAIRPERSON: Okay. Let's 13:52:33
take ten. 13:52:34
(Recess taken 1:52 to 2:08 13:52:36
p.m.) 14:09:44
THE CHAIRPERSON: Okay. We're 14:09:44
going back on the record. 14:09:45
MS. BROWN: We're just 14:09:47
passing out some binders and then 14:09:48
we'll be ready to go. 14:09:50
THE CHAIRPERSON: Okay. No 14:09:51
rush. We're not going anywhere. 14:09:53
(There is a discussion off 14:09:56
the record.) 14:09:56
CROSS-EXAMINATION BY MS. BROWN: 14:10:22
Q. Welcome back, Professor Lewis. 14:10:22
A. Thank you. 14:10:24
Q. I'd like to start on Slide 9 14:10:25

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of your presentation. 14:10:27

A. Okay. 14:10:35

Q. And I realize I'm using the slide numbers as it was produced to us, so that may not be consistent. 14:10:36 14:10:42 14:10:44

A. Can you tell me what -- 14:10:47

MS. VAN WINKLE: What's the title? 14:10:48 14:10:48

A. The indemnity? 14:10:48

Q. Correct. 14:10:49

A. Okay. 14:10:50

Q. Do you recall being asked about this provision of this contract in your direct? 14:10:51 14:10:52 14:10:56

A. I do. 14:10:56

Q. And I just want to make clear you're not a lawyer, are you, Professor Lewis? 14:10:57 14:10:58 14:11:00

A. I'm not. 14:11:00

Q. And you're not qualified to offer a legal opinion on interpreting documents, right? 14:11:00 14:11:03 14:11:04

A. Correct. 14:11:04

Q. Okay. So let's turn to 14:11:05

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Slide 11. Now, I want to talk about the -- just focusing on the historical tax calculations. 14:11:06 14:11:13 14:11:15

Now, you are aware -- I think, you've cited it here or displayed it on your slide -- that there is a stipulation among the parties, right? 14:11:17 14:11:18 14:11:21 14:11:22

A. Stipulation 1? 14:11:23

Q. Stipulation 1. 14:11:25

A. Yes. 14:11:26

Q. Okay. And that stipulation relates to historical tax calculations, right? 14:11:26 14:11:28 14:11:30

A. Correct. 14:11:30

Q. And there are two versions of the tax calculations presented in the stipulation? 14:11:31 14:11:32 14:11:34

A. That's correct. 14:11:35

Q. And the difference is whether the Claimants' unreported losses -- certain of the Claimants' unreported losses are characterized as passive or nonpassive, right? 14:11:36 14:11:37 14:11:39 14:11:41 14:11:44

A. Correct. 14:11:44

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Q. And if I sometimes refer to "nonpassive" as active, will you understand me to mean nonpassive? 14:11:45 14:11:47 14:11:50
A. I'm good with it. 14:11:52
Q. Okay, great. 14:11:53
Now, you've seen no evidence that the IRS has challenged Mr. Leff's or the Davis Trust characterization of the Raiders income as active, have you? 14:11:54 14:11:56 14:11:58 14:12:01
A. No, I've seen no evidence. 14:12:03
Q. And the characterization of a tax loss as passive or active is made in the year that the loss is reported on the tax return, right? 14:12:05 14:12:07 14:12:09 14:12:10
A. Each respective year that the loss is reported, correct. It's a year by year test. 14:12:12 14:12:15 14:12:18
Q. And that characterization is not made in the year that the loss is used, right? 14:12:19 14:12:20 14:12:23
A. Correct. 14:12:23
Q. And once your loss is characterized in a certain tax year as either passive or active, that doesn't 14:12:24 14:12:25 14:12:28

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change, does it? 14:12:30

A. That particular loss characterization, no, it does not change. 14:12:32 14:12:35

Q. And that's, again, regardless of when the loss is used, that characterization of the loss remains the same, correct? 14:12:36 14:12:38 14:12:40 14:12:42

A. Correct. 14:12:42

Q. And each of the Claimants had losses from the Raiders reported on their tax returns, right? 14:12:42 14:12:44 14:12:45

A. Yes, that's correct. 14:12:49

Q. And each of the Claimants characterized their losses from the Raiders as either passive or active on their historical tax returns, right? 14:12:50 14:12:52 14:12:53 14:12:55

A. Yes. 14:12:57

Q. And that's a fact that just exists in the real world, right? 14:12:58 14:13:00

A. Yes. 14:13:02

Q. And when the Raiders losses were historically characterized as either passive or active, there was a binary choice in each year, it was one or the 14:13:03 14:13:05 14:13:07 14:13:11

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other? 14:13:13

A. Correct. 14:13:13

Q. And what I mean by that, it couldn't be a combination of two in the same tax year, right? 14:13:13 14:13:15 14:13:17

You couldn't say, my Raiders losses are both passive and active in the same tax year, right? 14:13:18 14:13:20 14:13:22

A. That's what I understood you to mean, yes. 14:13:23 14:13:24

Q. And if any of the Claimants wanted to go back now to any year from 2006 through 2016 and change the characterization of their Raiders losses from nonpassive to active or active to passive, they couldn't do that now, could they? 14:13:26 14:13:27 14:13:31 14:13:34 14:13:37 14:13:40 14:13:43

A. No, I don't -- I think the statute would preclude it, yeah. 14:13:49 14:13:51

Q. In your opinion -- I think, you covered this in your direct -- Paul Leff, Dan Goldring, the Davis Credit Shelter Trust, Gerald Winkenbach and Patricia Winkenbach each characterized 14:13:54 14:13:55 14:13:58 14:14:01 14:14:03

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their losses from the Raiders incorrectly on their historical tax returns, right? 14:14:06 14:14:08

A. Not all years but most years. 14:14:11

And Paul Leff claimed passive status for two or three years right when he started owning it. '07 I think is when they bought, '08 but, yes. 14:14:14 14:14:17 14:14:20 14:14:22

Q. Did you see a tax return where he declared passive status, or was it that Mr. Andersen assumed passive status without the tax return? 14:14:25 14:14:28 14:14:30 14:14:32

A. No, I saw where he declared passive in the initial years. 14:14:34 14:14:36

Q. Now, each of the Raiders -- on the -- let me go back because I want to have those Claimants in mind again. 14:14:37 14:14:40 14:14:44

Paul Leff, Dan Goldring, Davis Credit Shelter Trust, Gerald Winkenbach and Patricia Winkenbach, your opinion is that each of them, at least, for certain of the tax years at issue incorrectly characterized their Raiders losses on their historical tax returns, right? 14:14:47 14:14:51 14:14:53 14:14:56 14:14:59 14:15:01 14:15:05

A. Yes. Based on Procedural 14:15:07

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Order No. 7 and the evidence that's been submitted through this process, that is correct. 14:15:08 14:15:10 14:15:13

Q. And it's your opinion that each of those Claimants should have reported their Raiders losses as passive on their historical tax returns for each of the years at issue here, correct? 14:15:13 14:15:14 14:15:16 14:15:19 14:15:22

A. Based on the evidence provided, yes. 14:15:24 14:15:25

Q. And that includes the Davis Credit Shelter Trust, whose Trustee is Mark Davis's mom, Carol Davis, correct? 14:15:27 14:15:32 14:15:35

A. Correct. 14:15:38

Q. And you think historically Ms. Davis falsely reported her Raiders losses as being an active activity, right? 14:15:38 14:15:40 14:15:42

A. Again, the word would be interesting to use "falsely." 14:15:47 14:15:48

They were incorrectly reported is how I would say it. 14:15:51 14:15:53

Q. Okay. Now, we know that Mr. Leff and Ms. Davis -- Ms. Davis on the Credit Shelter Trust -- we know those 14:15:58 14:16:02 14:16:07

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individuals historically characterized 14:16:09
their Raiders losses as being active in 14:16:11
the years where we have the unrecorded 14:16:14
losses, correct? 14:16:16

A. Again, like I just mentioned, 14:16:18
that's not completely correct. It's 14:16:20
mostly correct. 14:16:22

Mr. Leff declared passive status 14:16:22
for the first few years and then he 14:16:25
flipped like in 2010, maybe it was '9, 14:16:27
but there was a few years where he was 14:16:29
passive. So, with that caveat, I'll say, 14:16:31
yes. 14:16:34

Q. Okay, sure. 14:16:34

So Mr. Leff starting in whatever 14:16:35
year it was, 2008 on, and Ms. Davis -- I 14:16:38
think my point is a slightly simpler 14:16:42
point. 14:16:44

It's just a historical fact. We 14:16:44
can go back and look at the tax returns 14:16:46
and we could see Mr. Leff or Ms. Davis 14:16:48
either recording the Raiders income as 14:16:52
active or passive for each year. 14:16:54

That's something that we can look 14:16:56

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at and determine, right? 14:16:58

A. If we had all the returns, yes, sure. 14:16:59 14:17:01

Q. And EY's actions didn't cause the Claimants to characterize their Raiders losses as either active or passive, right? 14:17:02 14:17:04 14:17:05 14:17:08

A. Correct. 14:17:09

Q. And the Ventures misstatements that are at issue here didn't cause the Claimants to characterize their Raiders losses as either active or passive, right? 14:17:10 14:17:12 14:17:15 14:17:16

A. Correct. 14:17:18

Q. And EY's audit work didn't cause the Claimants to characterize their Raiders losses as either active or passive, right? 14:17:19 14:17:21 14:17:23 14:17:25

A. Correct. 14:17:26

Q. Now, in this case, you're being offered as a damages expert, correct? 14:17:27 14:17:29 14:17:31

A. Correct. 14:17:31

Q. And you're offering an opinion regarding how much harm the 14:17:32 14:17:33

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Claimants have suffered as a result of alleged wrongful conduct in this case, right? 14:17:35 14:17:37 14:17:39

A. How much they have suffered and how much they will suffer. 14:17:39 14:17:40

Q. And you understand the Claimants damages model is analogous to calculating lost profits, right? 14:17:43 14:17:44 14:17:46

A. Correct. 14:17:48

Q. And you've not published any articles on economic damages, right? 14:17:49 14:17:51

A. No. 14:17:53

Q. You've not taught any classes on how to calculate economic damages, right? 14:17:54 14:17:55 14:17:57

A. In the broad sense, no. 14:17:59

Q. And you've not taught any continuing education courses on economic damages, right? 14:18:00 14:18:02 14:18:04

A. Correct. 14:18:05

Q. And you do not consider yourself to be an expert in economics, correct? 14:18:06 14:18:08 14:18:10

A. Correct. 14:18:10

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Q. And you have not offered any expert testimony about economics, right? 14:18:11 14:18:12

A. Correct. 14:18:15

Q. And you do not consider yourself to be an expert in econometrics, correct? 14:18:16 14:18:17 14:18:20

A. Correct. 14:18:21

Q. But you do agree with me that causation is an important element in any economic damages model, right? 14:18:21 14:18:23 14:18:26

A. Yes. Am. 14:18:28

Q. And when selecting an appropriate damages model, you need to look at the effect on the plaintiff of the defendant's injurious actions, right? 14:18:29 14:18:31 14:18:32 14:18:34

A. You do. 14:18:37

Q. And by looking at the effect on the plaintiff of the defendant's injurious actions, that is what isolates causation, right? 14:18:38 14:18:40 14:18:42 14:18:44

A. Yes. 14:18:46

Q. And you're aware of the term "but for world" when it comes to calculating damages? 14:18:48 14:18:50 14:18:52

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A. Yes. 14:18:53

Q. In determining the right but for world is an important part of any lost profit damages analysis, right? 14:18:54 14:18:57 14:19:00

A. Correct. 14:19:02

Q. And if you don't have the right but for world, then a model could produce unreliable damages, right? 14:19:03 14:19:06 14:19:08

A. If -- there's several ways a model could produce unreliable damage amounts, yes. 14:19:10 14:19:13 14:19:17

Q. But if you don't have the right but for world, your model could produce unreliable damages; is that right? 14:19:20 14:19:24 14:19:27

A. That would be a reason that would cause a difference, yeah. 14:19:31 14:19:33

Q. Okay. And the alleged misconduct that's at issue in this case is EY's professional malpractice, right? 14:19:34 14:19:37 14:19:39

A. Yes. 14:19:41

Q. And in choosing the elements you change in the but for world the, only things you can change from the real world and justify it in an economic way are 14:19:42 14:19:44 14:19:46 14:19:49

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things that are caused by the alleged misconduct in the case, you agree? 14:19:52 14:19:54

A. This is the conversation we had in San Francisco and my response then was, you need to base your real world case based on reality or what we call data validation; in other words, if you're using data that you know to be wrong as your base, you're going to get unreliable answers. 14:19:56 14:19:57 14:20:00 14:20:04 14:20:06 14:20:09 14:20:13 14:20:16

MS. BROWN: Could we please pull up the deposition transcript Page 103/Line 16. 14:20:20 14:20:22 14:20:24

A. Do I have a copy? 14:20:27

Q. It will come up right here in the screen in front of you. 14:20:28 14:20:30

A. Okay, thanks. 14:20:31

Q. Page 103/Line 16 through 25. Starting at 16 it states, "But in choosing the elements you change in the but for world in an economic model, the only things you can change from the real world and justify in an economic way are the things that are caused by the alleged 14:20:31 14:20:35 14:20:39 14:20:40 14:20:43 14:20:45 14:20:47

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harm in the case. That's the point I'm trying to see if you agree with me or if you disagree with me." 14:20:49 14:20:51 14:20:53

And then there's an objection. 14:20:55

And the answer, "I think, generally speaking, yes, I think, we agree." 14:20:56 14:20:59

MS. VAN WINKLE: Hold on. Objection. I would like the whole question read into the record. 14:21:01 14:21:02 14:21:03

THE CHAIRPERSON: I'll allow that. 14:21:04 14:21:04

Let's read the whole question into the record. 14:21:05 14:21:06

Or, actually, you don't have to read it. The Panel can read it. 14:21:08 14:21:09 14:21:10

MR. BICKERMAN: We can read it. Just give us a second. 14:21:12 14:21:13

Okay. 14:21:14

THE CHAIRPERSON: Okay. Let's continue. 14:21:33 14:21:34

BY MS. BROWN: 14:21:34

Q. Okay. Now, your opinion is that -- well, let me back up. 14:21:34 14:21:37

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You analyzed Mr. Andersen's historical tax damages model, right? 14:21:39 14:21:42

A. Right. 14:21:44

Q. Okay. And your opinion is that his model should be altered to address certain errors, right? 14:21:45 14:21:46 14:21:49

A. I think where we are -- originally, I said there were two errors. He acknowledged the one error he made and he corrected it. So I think, I'd say singular error. 14:21:51 14:21:54 14:21:56 14:21:58 14:22:00

Q. Okay. So the "singular error" is what we've been talking about, as to whether Mr. Leff and Ms. Davis's unreported losses should be treated nonpassive or passive? 14:22:01 14:22:02 14:22:05 14:22:07 14:22:11

A. Correct. 14:22:12

Q. And then by changing their historical unreported losses from active to passive, you are changing something from the real world, right? 14:22:13 14:22:15 14:22:17 14:22:19

A. I'm changing something from what they originally filed that's not based in fact, correct. 14:22:22 14:22:24 14:22:27

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Q. You would agree with me that by changing their historical unreported losses from nonpassive to passive, you are changing something from the real world; is that right? 14:22:30 14:22:31 14:22:34 14:22:36 14:22:38
A. Well, it depends on how you define the "real world." Are you... 14:22:39 14:22:41
Q. You can finish your answer. 14:22:48
A. No, sorry. I don't want to interrupt Counsel. 14:22:50 14:22:52
MR. REED: You can ignore me. 14:22:53
THE WITNESS: Okay. 14:22:55
MR. CHANDLER: Everybody else does. 14:22:57 14:22:58
MR. REED: I object. 14:22:59
Q. Finish your answer and then we'll -- I want to make sure you have a chance to -- 14:23:00 14:23:01 14:23:04
THE CHAIRPERSON: Because if you can define the "real world," I think that would -- let's do a rewind on that. I think that's what the witness was asking. 14:23:04 14:23:04 14:23:05 14:23:06 14:23:08
MS. BROWN: Sure. 14:23:09

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Q. The "real world" is the world as it historically existed in fact. 14:23:10 14:23:11

A. Even if -- even if what they did was not supported in fact? 14:23:14 14:23:17

Q. Right, the real world, that's what I'm saying. 14:23:20 14:23:22

A. Okay. 14:23:23

Q. Whether you agree or disagree, just the real world, what happened in fact. 14:23:24 14:23:26 14:23:28

A. Okay. We agree to that term. 14:23:28

Q. Okay. So, with that understanding of the "real world," do I take it you agree with me that by changing the unreported losses, you're changing something from the real world? 14:23:31 14:23:31 14:23:34 14:23:36 14:23:38

A. By changing the character of the unreported losses, I'm changing something from what they originally filed. 14:23:41 14:23:44 14:23:46 14:23:48

Q. Okay. And you made that change because you thought it was wrong in the real world, meaning, the historical actual world? 14:23:48 14:23:49 14:23:52 14:23:54

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A. I made it based on two criteria. One was Procedural Order No. 7 that said the additional Claimants would have to have the burden of proof on each and every element of a claim for damage. And this is a claim for damage and this is a material item. 14:23:56 14:23:58 14:24:01 14:24:02 14:24:04 14:24:08 14:24:11

So I used the burden of proof that was given and I looked for evidence that would support their contention that they were material participants finding. 14:24:13 14:24:15 14:24:18 14:24:21

Finding none, then, essentially, what it came down to was the number's the same, but it's the character that we were having, I think, the discrepancy about. 14:24:24 14:24:25 14:24:29 14:24:32

Q. And my point is simply that you are changing these Claimants' characterization of Raiders losses from active to passive because you thought it was wrong in the real world, not because you thought it was caused by the harmful conduct alleged in this case, right? 14:24:33 14:24:36 14:24:38 14:24:40 14:24:41 14:24:44 14:24:47

A. Correct. 14:24:48

Q. Now, you make that change 14:24:49

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because you disagree, you simply disagree with how the Claimants historically reported their taxes, right? 14:24:52 14:24:55 14:24:57

A. Based on the evidence entered into this case and Procedural Order No. 7, yes. 14:24:58 14:25:00 14:25:02

Q. And you're not aware of any economic theory that would allow you to change something in the damages model that was not caused by the alleged harmful conduct, correct? 14:25:02 14:25:04 14:25:07 14:25:08 14:25:10

A. No, not correct. I just mentioned the data validation in my testimony in San Francisco. I referred to it as reality that said that you have to adjust for reality. And. 14:25:11 14:25:13 14:25:17 14:25:19 14:25:22

What I was trying to say is if the underlying data isn't consistent, if it's not factually supported, you're going to get a weird answer. You're going to get an inconsistent answer. 14:25:23 14:25:25 14:25:29 14:25:31 14:25:34

So, you know, if you look at modeling theory, data validation is a reason why you would re-evaluate. If 14:25:36 14:25:38 14:25:42

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you're starting with incorrect information, you're going to get an incorrect answer. 14:25:44 14:25:46 14:25:47

Q. Okay. So I would like to direct you to your deposition at Page 108/Row 1 through 9. Although I will back up and read the preamble to the question, just so the complete question is there. I realize that's probably the preference. 14:25:48 14:25:49 14:25:54 14:25:58 14:26:01 14:26:02 14:26:04

So, actually, we'll start on Page 107. The question to you was, "Okay. The parts that I was focused on where it said 'the losses' are the difference between the value the Plaintiff would have received, if the harmful event had not occurred, and the value the plaintiff has or will receive given the harmful event. 14:26:05 14:26:07 14:26:11 14:26:14 14:26:17 14:26:18 14:26:19 14:26:21 14:26:23

I was just wondering if you are aware of any economic theory that would allow you to change something in the damages model that was not caused by the harmful event." 14:26:25 14:26:27 14:26:29 14:26:30 14:26:32

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There was an objection. 14:26:34

And then the question was, "Are you aware of any economic theory that would support that type of analysis? 14:26:35 14:26:37 14:26:39

Answer: No." 14:26:40

MS. BROWN: Alright. Let's go to Slide 6. 14:26:43 14:26:46

A. Are you referring to my Slide 6? 14:26:50 14:26:52

Q. I only have my slide deck. 14:26:52

A. Okay. 14:26:54

Q. But it will come on the screen in front of you and it might be. 14:26:54 14:26:56

A. Looking at STS Statement 3.2? 14:26:58

Q. Correct. 14:27:01

A. Okay. 14:27:02

Q. Now, you agree that this tax provision -- by "this" I'm referring to SSTS Statement 3.2 -- applied to EY's provision of tax services to the Raiders, right? 14:27:09 14:27:11 14:27:13 14:27:17 14:27:20

A. Correct. 14:27:20

Q. And that standard applied from 2006 through 2019? 14:27:21 14:27:22

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A. Yes. 14:27:25

Q. And so you agree that a tax preparer should not ignore the implications of information furnished and should make reasonable inquiries if the information furnished appears to be incorrect, incomplete or inconsistent either on its face or on the basis of other facts known to the member, right? 14:27:27 14:27:31 14:27:32 14:27:35 14:27:37 14:27:40 14:27:42 14:27:45

A. Right. 14:27:46

Q. Now, you're aware that Luke Keel and Mark Bookman were members of EY's audit team in addition to being members of their tax team, right? 14:27:48 14:27:50 14:27:53 14:27:56

A. Yes. 14:27:57

Q. And in reaching your opinions about EY's compliance with this tax standard, you did not consider the fact that EY's tax team was an integral part of the audit team, right? 14:27:58 14:28:00 14:28:03 14:28:05 14:28:09

A. I considered, based on the preparers, the tax professionals that worked on this engagement, their involvement in the tax engagement. And I 14:28:11 14:28:15 14:28:18 14:28:20

made no attempt to analyze the attest 14:28:22
function GAAS standards. 14:28:25

Q. And that means that in 14:28:25
reaching your opinions you didn't 14:28:26
consider any of the information or what 14:28:29
would have been available to those team 14:28:32
members as part of being an integral part 14:28:35
of the audit team, right? 14:28:37

A. I don't think I would agree 14:28:39
with that. I mean, the material that I 14:28:41
saw, I don't think there was a 14:28:46
distinction -- like, when Mr. Keel was 14:28:48
here testifying, he didn't say, I wore 14:28:50
this hat or that hat. 14:28:52

I tried to look at all the evidence 14:28:53
from the members of the tax team. 14:28:56

Q. Well, the attest function was 14:29:00
beyond the scope of your engagement and 14:29:04
you didn't look at the attest function, 14:29:05
correct? 14:29:09

A. Correct. 14:29:09

Q. And you didn't look at the 14:29:09
attest function or what was done in 14:29:11
connection with the attest function in 14:29:13

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reaching your opinion that EY's tax team 14:29:15
had complied with this tax standard? 14:29:19
A. So, again, let me restate. I 14:29:22
saw Mr. Keel's testimony and as that 14:29:27
related to his involvement with both, I 14:29:29
then make a distinction. 14:29:32
But, yes, I was in the -- it's 14:29:33
beyond the scope of my opinion to deal 14:29:35
with the attest standards, correct. 14:29:37
Q. And I want to be clear that 14:29:38
when I say, "the attest," I'm referring 14:29:41
to the audit side of the engagement. 14:29:43
A. Right. We're having the same 14:29:44
conversation -- 14:29:46
Q. Okay. 14:29:47
A. -- on that issue. 14:29:47
Q. Great. 14:29:48
A. I agree. 14:29:48
Q. Now, I want to turn to your 14:29:54
critiques of Mr. McClain-Duer. So this 14:29:59
now brings us into the forward looking. 14:30:04
I think what you have identified as the 14:30:08
forward looking -- 14:30:09
MS. PREBIL: Let me just 14:30:11

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give you the slide deck in case you want to use anymore. 14:30:12 14:30:14

Q. I believe you have a binder in front of you you're. Welcome to look at it, if you want. I think it has a copy of Stipulation 1 in it. 14:30:22 14:30:23 14:30:25 14:30:28

But my first -- 14:30:30

A. Under which tab? 14:30:30

Q. Good question. 14:30:30

A. Oh, it says "Stip 1" and I assume that's it. Okay, fair. 14:30:32 14:30:34

Q. I think you can assume that's it. 14:30:35 14:30:36

A. Alright. 14:30:37

Q. Now, if that assists you in answering my question. 14:30:37 14:30:40

My question is simply Mark, Davis had unreported losses as of December 2022 of $36,276,287; is that right? 14:30:41 14:30:43 14:30:49

A. Correct. 14:30:56

Q. And if those losses had been properly reported on his prior year tax returns, he could then use them in future years to offset income, right, taxable 14:30:57 14:31:01 14:31:04 14:31:07

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income? 14:31:10

A. Yes, correct. 14:31:10

Q. And those wouldn't expire, the losses they don't expire, right? 14:31:11 14:31:13

A. Not correct. If he had them -- it depends what year we're talking about. 14:31:15 14:31:19 14:31:22

Losses from 2017 earlier had a two-year carryback and 20-year carryforward. So, with a lot of those losses, no, that's not correct. 14:31:23 14:31:25 14:31:28 14:31:29

Q. Okay. 14:31:31

A. He could have -- he could have expired out. Losses that are incurred 2018 on regular NOLs, you're correct, there's no expiration. 14:31:31 14:31:33 14:31:34 14:31:40

But '17 beyond all the way back to like the early 2000s, it was two back and 20 forward. 14:31:41 14:31:44 14:31:47

Q. Okay. So any losses that Mark Davis generated from 2006 -- was it 2017 -- through 2017, he would be able to -- 14:31:48 14:31:49 14:31:52 14:31:55

A. 2016, I believe. 14:31:55

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Q. 2016. 14:31:56

(Continuing.) He would be able to carry those losses forward for 20 years, correct? 14:31:57 14:31:58 14:32:02

A. Correct. 14:32:02

Q. And to the extent he carries those forward and they're used to offset income, the way it works under the tax rules, you use the oldest losses first in offsetting your taxable income, right? 14:32:02 14:32:04 14:32:06 14:32:08 14:32:11

A. Correct. 14:32:13

Q. So, to the extent that Mark Davis, let's say, used an NOL in 2022, if he had these unreported losses, those would have been used before any loss generated in a later year? 14:32:14 14:32:16 14:32:21 14:32:23 14:32:27

They would have used a loss in 2006 before he used 2007, 2008, 2009, for example? 14:32:29 14:32:32 14:32:35

A. Okay. So you used a pronoun. Let me make sure we're saying the same thing. 14:32:35 14:32:38 14:32:40

Could you restate? 14:32:40

Q. Sure. 14:32:41

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A. These losses are something. I don't. But you have the benefit that I don't. 14:32:42 14:32:43 14:32:44

Q. Yeah. No, I want to be clear, so we're on the same page. 14:32:44 14:32:46

Let me first ask you this. 14:32:47

Are you aware that in 2022 Mark Davis used net operating losses to offset his taxable income? 14:32:51 14:32:54 14:32:57

A. Yes, that's my recollection. 14:32:58

Q. And if the unreported losses were available to him -- we know they're not. 14:32:59 14:33:02 14:33:05

But if they had been available to him, he could have used those on his 2022 tax return potentially? 14:33:05 14:33:07 14:33:13

A. "Potentially." I'd have to look at it. But, yeah, "potentially" I'll agree. 14:33:14 14:33:15 14:33:17

Q. And the "potentially" is because the way he would use the losses is it would be, essentially, the earliest in time loss would be used first, right? 14:33:18 14:33:20 14:33:22 14:33:24

A. He would use his current year 14:33:30

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losses first. 14:33:33
Q. Fair point. 14:33:34
A. And then if he was going to soak up the NOLs, then it would go and it would age, yes. 14:33:35 14:33:36 14:33:38
Q. Fair point, right. 14:33:39
So any current year losses are used first before you even get to the NOL? 14:33:41 14:33:43
A. Correct. 14:33:45
Q. Okay. So, when we look at the unreported losses for Mark Davis that we know if they had been properly reported on his tax return would have been available, what we're doing in our damages analysis, we're really looking at the question of when he could use those losses, not if the loss exists, right? 14:33:46 14:33:52 14:33:56 14:33:59 14:34:01 14:34:04 14:34:06 14:34:09
A. Yeah, we're talking as a constant that he doesn't sell and he doesn't die and before those losses would be soaked up and then we're evaluating could he use those losses to reduce his tax liability. 14:34:13 14:34:14 14:34:16 14:34:21 14:34:24 14:34:28
Q. And those unused losses would 14:34:29

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have a value to Mark Davis, right? 14:34:31

A. When you say, "value," do you 14:34:33
mean -- explain what you mean. 14:34:35

Q. I mean, as a general concept, 14:34:37
if you have a NOL, that's something 14:34:40
that's of value to a taxpayer, just as a 14:34:41
general principle. 14:34:45

A. It's only valuable if you, 14:34:45
actually, have income to offset it. 14:34:47

There are a lot of companies around 14:34:49
the world that have lots of NOLs and they 14:34:50
can't do anything with it. 14:34:53

Q. And it was your decision to 14:34:54
include Mark Davis's NOL's in Mr. 14:34:56
McClain-Duer's model, right? 14:34:59

A. Yes. 14:35:01

Q. And you thought that was an 14:35:02
economically sound decision to make, 14:35:03
right? 14:35:05

A. Right. Because he's -- when 14:35:06
you say, his NOLs, you mean the NOLs that 14:35:10
existed at the end of 2022? 14:35:13

Q. Correct. 14:35:15

A. Yes. 14:35:16

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Q. We're on the same page. 14:35:16
A. Yeah. 14:35:18
Q. And you realize that NOLs 14:35:18 that are on Mark Davis's tax return at 14:35:22 the end of 2022 are not all from the 14:35:24 Raiders, right? 14:35:27
A. Correct. 14:35:28
Q. They're not all generated by 14:35:28 losses from the Raiders is what I meant 14:35:31 to say, correct? 14:35:33
A. Correct. 14:35:33
Q. And you take no steps to add 14:35:33 -- even though you're adding non-Raider 14:35:37 losses into Mr. McClain-Duer's model, you 14:35:38 take no steps to add non-Raiders income 14:35:41 into Mr. McClain-Duer's model, right? 14:35:44
A. A lot of that was redacted. 14:35:46
Q. And you add the NOLs because 14:35:49 you're thinking if you prepare a tax 14:35:52 return for Mr. Davis, those NOLs would 14:35:54 potentially be available, right? 14:35:56
A. Correct. Well, when you say, 14:35:58 "potentially," I would drop the 14:36:01 "potential" word. 14:36:02

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They would be available. 14:36:02

Q. Okay. 14:36:04

A. Okay. 14:36:04

Q. And you know that Mr. 14:36:05
McClain-Duer's model is not designed to 14:36:07
model out future tax returns, right? 14:36:09

A. Right. That's one of my 14:36:13
criticisms we just went through, correct. 14:36:14

Q. And your revisions to Mr. 14:36:16
McClain-Duer's model extends his model 14:36:18
out to 2033, right? 14:36:20

A. It depends on which version 14:36:24
we're talking about. If we're talking 14:36:25
about my supplemental report in the 14:36:27
summer or we're talking about the one 14:36:30
from a couple of weeks ago with his -- 14:36:32
responding to his supplemental reports. 14:36:34
But it goes out for some period of time. 14:36:36
I'll just say that. 14:36:38

Q. Okay. And I do want to be 14:36:39
clear. I am talking about the one you 14:36:40
served just a couple of weeks ago. 14:36:42

A. Okay. 14:36:44

Q. Do you recall that your 14:36:45

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adjustments to Mr. McClain-Duer's model 14:36:48
extend his model out to 2033? 14:36:50

A. It sounds right. But I would 14:36:52
just have to say I would have see it. 14:36:55

Now, we're getting into the weeds 14:36:58
of the detail. I would want to see 14:36:59
something in front of me. 14:37:01

Q. Now, you realize that Mr. 14:37:02
McClain-Duer's methodology was not to try 14:37:05
to prepare tax returns for each of the 14:37:05
Claimants going out ten years into the 14:37:07
future, right? 14:37:09

A. When you say, "prepare" their 14:37:11
tax returns, what do you mean? 14:37:12

Q. I mean, on a pro forma basis. 14:37:13

A. So, to construct their tax 14:37:16
situation on a pro forma basis? 14:37:19

Q. Right. 14:37:20

That wasn't Mr. McClain-Duer's 14:37:21
model to try to create what would be on a 14:37:23
pro forma basis all of the Claimants' tax 14:37:26
returns going out for ten years, right? 14:37:29

A. Correct. 14:37:31

Q. And if you were to undertake 14:37:33

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that process and tried to prepare pro 14:37:37
forma tax returns for the next ten years 14:37:40
for each Claimant, you would have to 14:37:42
estimate many many different things, 14:37:44
right? 14:37:47

A. That's correct. That's why I 14:37:47
said the model's not reliable. It's 14:37:48
contingent and it's speculative just like 14:37:51
Mr. McClain-Duer said. Going out that 14:37:54
far -- the word he used was "speculative" 14:37:56
many times and I'm going to agree with 14:37:58
him. 14:37:58

Q. Right. 14:37:58

But my point is his model is not to 14:38:01
do this, his model is not to take on a 14:38:04
pro forma basis, every single Claimant 14:38:07
and create a tax return for them for the 14:38:09
next ten years, that's not his model. 14:38:11

And if you were to do that, that 14:38:13
would introduce many many many variables, 14:38:15
right? 14:38:18

A. You would have to consider 14:38:21
lots of different inputs. 14:38:22

Q. And one of the things you 14:38:24

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would have to consider is all of the investments that might be made by each of those Claimants in each one of those ten years, right? 14:38:25 14:38:27 14:38:29 14:38:31

A. Yes, that would be one of the inputs, yup. 14:38:31 14:38:33

Q. You would have to consider all of those investments were passive or active, right? 14:38:33 14:38:34 14:38:36

A. Or if they were portfolio, right, just interest dividends, lots of other things. 14:38:38 14:38:40 14:38:43

Q. And you have to consider where the taxpayer would have generated income or loss and project that out for each and every investment for the next ten years, right? 14:38:43 14:38:45 14:38:47 14:38:49 14:38:52

A. If you wanted the model to be accurate, yes, at some level, if that were possible. 14:38:52 14:38:54 14:38:57

But, as I said in my testimony before, that's not particularly -- that's a tall order. 14:38:58 14:38:59 14:39:02

Q. You would have to consider 14:39:03

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whether there would be a recession or other market conditions or anything else that might go on in the next ten years in putting together those pro forma tax returns, right? 14:39:04 14:39:07 14:39:08 14:39:11 14:39:13

A. Yes. 14:39:13

Q. And in addition to all of those things, to do that process, you would also need all the other information that would be necessary to put together -- let's say Mark Davis -- Mark Davis's tax return for the next ten years, correct? 14:39:14 14:39:15 14:39:17 14:39:19 14:39:23 14:39:26 14:39:29

A. I need -- you said -- can you read it back? You said all of that information? 14:39:30 14:39:32 14:39:34

Q. In addition to what we already went over, we identified a few variables. 14:39:34 14:39:36

To the extent any other information is used to prepare Mark Davis' tax return, you would have to also look at that and consider how that should be projected out or estimated over the next ten years, right? 14:39:38 14:39:40 14:39:43 14:39:45 14:39:47 14:39:49

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A. Yes. 14:39:51

Q. And you're aware -- I don't know that we need to go through it. But you're aware that Mr. Davis's tax return from 2022 is hundreds of pages, correct, just his federal return? (GESTURING.) 14:39:53 14:39:57 14:39:59 14:40:04 14:40:10

A. It looks about 200 pages. 14:40:11

I have several clients that are that thick. 14:40:13 14:40:14

Q. You've reviewed his 2022 tax return? (GESTURING.) 14:40:15 14:40:17

A. Yes, I have. 14:40:17

Q. And would you agree with me that undertaking that exercise to value damages would be nearly impossible? 14:40:19 14:40:20 14:40:23

A. Yes. 14:40:26

Q. And certainly nearly impossible to do with any degree of professional certainty, right? 14:40:28 14:40:29 14:40:32

A. Correct. 14:40:34

Q. Okay. Let's look at Slide 21 in your presentation. 14:40:35 14:40:38

Okay. I think you covered this earlier. 14:40:53 14:40:55

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But you take Mr. McClain-Duer's model and you change it to incorporate the NOLs reported as of December 31, 2022, right? 14:40:55 14:40:57 14:40:59 14:41:03
A. That's correct. 14:41:05
Q. Okay. And Mark Davis had $60.5 million in NOLs as of December 31, 2022, right? 14:41:06 14:41:08 14:41:13
A. Rounded, yes. 14:41:13
Q. And you're aware that on his 2022 tax return, Mr. Davis actually used $47 million in NOLs in just that one year, right? 14:41:14 14:41:16 14:41:19 14:41:22
A. That's correct. 14:41:22
Q. And the 60.5 million that we see here is just the amount that's left over after he already used just the 47 million in just 2022, right? 14:41:23 14:41:26 14:41:28 14:41:31
A. That's correct. The Raiders -- I can't remember. I mean, they sold some assets and some different things. It was a big year. 14:41:32 14:41:34 14:41:36 14:41:38
Q. And you don't know how much because the tax returns, frankly, haven't 14:41:39 14:41:40

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been completed yet and filed and are not produced in this case? 14:41:43 14:41:46

You have no idea how much of the 60.5 million of the NOL is already being used on his 2023 tax return, right? 14:41:47 14:41:49 14:41:51

A. Correct. 14:41:54

Q. And the same for the Shelter Trust and Mr. Goldring, you don't know how much of the remaining NOLs are being used on their 2023 tax returns, right? 14:41:55 14:41:59 14:42:00 14:42:03

A. It's -- well -- I don't. The Shelter Trust return could be due as late as this weekend. 14:42:05 14:42:08 14:42:10

But, yes, none of the 2023 has been produced. So I don't -- I'm working with 2022, because that's the last year I have. 14:42:14 14:42:16 14:42:20

Q. Okay. And by adding these NOLs into Mr. McClain-Duer's model, you realize that that changes the damages calculation so that Mark Davis now doesn't use up the losses until 2032? 14:42:21 14:42:24 14:42:28 14:42:34 14:42:37

A. That sounds right. But, again, I would want to look before I say yes. I would want to see the documents 14:42:42 14:42:44 14:42:46

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in front of me. 14:42:47

Q. And that's your opinion, even though in just 2022 alone he used $47 million in losses? 14:42:48 14:42:50 14:42:53

A. Yeah. I mean, you know, I think in this case you've seen that in 2023 the Raiders lost money. I can't remember if he said the Aces. I don't think he said what the Aces were going to do in 2023. 14:42:55 14:42:57 14:43:00 14:43:03 14:43:06 14:43:08

But, yeah, there's -- so he had income in 2022, but 2023 could be up, it could be down. 14:43:10 14:43:12 14:43:17

But based on what was discussed, I think, by Mr. Crome, they were going to be at a loss position. 14:43:18 14:43:20 14:43:24

Q. Okay. You mentioned the "Aces." Let's go to Slide 27. 14:43:25 14:43:26

Now, here you point to future non-Raiders losses and, in particular, Mr. Davis's losses from the Aces that were reported on his 2022 tax return, right? 14:43:32 14:43:34 14:43:38 14:43:40 14:43:42

A. Yeah, I use this as an 14:43:42

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example of why there's a contingency. I just don't know these answers. 14:43:44 14:43:47

Q. Right. 14:43:49

And I think you just said in your prior answer, cause it's true, was that Mr. Davis had taxable income in 2022. 14:43:49 14:43:51 14:43:53

You're aware of that, right? 14:43:56

A. Do you have the front page of his return. 14:44:00 14:44:01

Q. I think it might be in your binder and you're welcome to look at it. 14:44:02 14:44:03

A. Okay. 14:44:07

He probably did because of a limitation. I'm missing the second page. If you wanted to give me that, I could give you answer. 14:44:10 14:44:11 14:44:21 14:44:24

Q. Take his entire report. 14:44:25

A. You're happy to be done with it. 14:44:26 14:44:28

Q. Yeah. 14:44:28

MS. BROWN: That is JX No. -- Jx-0301. 14:44:29 14:44:32

(Arbitration Exhibit JX-0301 was referenced.) 14:44:33 14:44:34

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Q. If you just tell us what page you're on, we'll display it on the screen so everybody can follow along. 14:44:34 14:44:36 14:44:37

A. Well, the problem is I'm o pages that say "REDACTED." So that make it's a little difficult. 14:44:39 14:44:40 14:44:43

I'm on page Bates No. 497208. That's the best I can do. He owed tax. A big chunk of that tax, though, was self-employment income tax, which is not the income tax you're referring to. You can't use NOL to offset that. 14:44:44 14:44:51 14:44:56 14:44:58 14:45:02 14:45:05

My guess -- I'm just trying to see if he has other taxes floating around. 14:45:08 14:45:14

That's usually -- he owed 493,000 of income tax. So, yeah. So that's the 493577 that was in that report. 14:45:16 14:45:19 14:45:23

Q. Okay. So let's go back. We can pull back up Slide 27, because my point is simply this. 14:45:25 14:45:27 14:45:29

You made the point earlier that losses generated in the year are used before NOLs, right? 14:45:31 14:45:32 14:45:35

A. If he was allocated losses 14:45:37

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from businesses in the current year, they 14:45:39
would be soaked up before you would go 14:45:42
back to the NOLs, correct. 14:45:44

Q. So, to the extent that we're 14:45:45
looking at his 2022 tax return and you're 14:45:47
pointing out, hey, Mr. Davis lost 14:45:50
$11 million, $11.4 million on the Aces, 14:45:52
those losses have already been used in 14:45:56
his 2022 tax return, as you say, to "soak 14:45:58
up" income, he already used those, 14:46:01
correct? 14:46:04

A. Probably. Let me look one 14:46:06
second. Let's see if I've got some 14:46:08
detail here. 14:46:11

You want me to tell you what pages 14:46:34
I'm looking at? 14:46:36

Q. If you have one you want to 14:46:37
point us to. 14:46:39

A. Okay. Give me a second. 14:46:40

Yes, I'm going to say the Las Vegas 14:47:04
Basketball LP was used during 2022. The 14:47:08
loss from the Las Vegas Aces was used. 14:47:11

Q. Right. So, in 2022, Mr. 14:47:14
Davis used $11.4 million of losses from 14:47:16

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the Aces to offset his taxable income and 14:47:20
he used $47 million in NOLs to offset his 14:47:24
taxable income, still had taxable income 14:47:28
of $2 million in change. 14:47:32

But your position in this case is 14:47:33
that with respect to the unreported 14:47:35
losses, he's not going to be able to 14:47:36
generate any damages from those until 14:47:39
2033, right? 14:47:41

A. No. My testimony is that 14:47:43
this isn't a contingent item that I am 14:47:47
illustrating to say, I cannot predict. 14:47:50

I mean, I agree with you, like, you 14:47:53
cannot predict in the model what's going 14:47:53
to happen with the Aces. 14:47:56

This was intended under the heading 14:47:57
of "Contingency" just to say that this is 14:48:00
one of the weaknesses with the model. 14:48:02

Q. Okay. 14:48:04

MS. BROWN: I have no further 14:48:05
questions. 14:48:07

THE CHAIRPERSON: Anything, 14:48:07
Counsel? 14:48:08

MS. VAN WINKLE: No. 14:48:08

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THE CHAIRPERSON: Okay. 14:48:09
Sir, thank you very much. 14:48:09

THE WITNESS: Thank you. 14:48:11

THE CHAIRPERSON: Thanks 14:48:11
from the Panel. Safe home. 14:48:12
You're done. 14:48:13

THE WITNESS: You're done? 14:48:13
No Panel questions? 14:48:14

MS. VAN WINKLE: He wants 14:48:14
-- 14:48:14

THE WITNESS: Please go 14:48:18
back to that slide and let me 14:48:19
teach you about loss limitations. 14:48:21

THE CHAIRPERSON: That's 14:48:22
okay. 14:48:23

(There is a discussion off 14:48:23
the record.) 14:48:29

(Witness excused.) 14:48:32

(There is a discussion off 14:48:32
the record.) 14:48:40

THE CHAIRPERSON: Alright. 14:48:40
So what the Panel wanted to do -- 14:48:47
we conferred on the last break -- 14:48:49
is just to confirm the final 14:48:50

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schedule. 14:48:52

On our calendar, we have 14:48:53
post-hearing briefs are due on 14:48:55
November the 1st, rebuttal on 14:48:58
November the 22nd and then 14:49:01
closing arguments here on 14:49:03
December 6th commencing at 9:30. 14:49:05

When I say, "here," I assume 14:49:07
here at Veritext; is that correct? 14:49:09

MR. FARINA: Those dates are 14:49:11
correct and we'll confirm the 14:49:13
location. 14:49:15

THE CHAIRPERSON: Okay. 14:49:15
The Panel would like post-hearing 14:49:16
briefs limited to 50 pages 14:49:18
double-spaced. 14:49:19

Rebuttal limited to 25 14:49:21
pages double-spaced. 14:49:23

Closing arguments maximum 14:49:24
length 2.5 hours with the Panel 14:49:27
reserving the right to ask questions 14:49:29
both during the oral argument and 14:49:32
after. 14:49:34

We're requesting hardcopies -- 14:49:35

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MR. CHANDLER: 2.5 each. 14:49:38

THE CHAIRPERSON: 2.5 each. 14:49:40

(Continuing.) Hardcopies of 14:49:42
the briefs themselves with final 14:49:43
submissions. 14:49:46

We're asking that the 14:49:47
exhibits that are going to be used 14:49:48
in support of the briefs and the 14:49:50
closing arguments be joint exhibits, 14:49:52
that there be one set of exhibits 14:49:54
to be used by both sides and 14:49:56
referred to. 14:49:58

That can be transmitted to 14:49:59
us electronically. We don't need 14:50:01
a hardcopy of that. 14:50:02

With respect to the 14:50:04
designations, we've gone over them. 14:50:05

What we'd request is a 14:50:08
thumb drive for those. I mean, 14:50:11
we've been receiving them or we 14:50:12
have received them. 14:50:14

And then also any testimony 14:50:16
that was given, specifically, 14:50:18
during the hearing that you would 14:50:19

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like to isolate for us, if you 14:50:21 could put that in some type of 14:50:23 electronic form. Whether it's a 14:50:25 thumb drive or otherwise, that 14:50:27 would be great, rather than have 14:50:29 us having to search through the 14:50:31 designations and trying to figure 14:50:33 out where it is. 14:50:34

We would like the parties to 14:50:35 give us a statement of the damages, 14:50:36 essentially, sought, what each 14:50:41 side is seeking, so we have that 14:50:44 concisely stated. 14:50:46

We do see -- at least, I've 14:50:48 reviewed the original papers that 14:50:49 were filed in the proceeding. I 14:50:52 know that there was a request for 14:50:54 attorneys fees and costs. 14:50:56

We would just ask you to, 14:50:59 specifically, just state in your 14:51:01 brief that you are seeking 14:51:02 attorneys fees and cost, which we 14:51:04 assume you are, but please put it 14:51:06 in there. 14:51:08

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Obviously, with respect to 14:51:09
that attorneys fees, that really 14:51:10
would be put off pending the 14:51:12
decision of the Panel. That may 14:51:14
or may not be an issue at some 14:51:16
point in the future. 14:51:18
If it is an issue and 14:51:18
attorneys fees becomes an issue, 14:51:20
obviously, we may very well have 14:51:22
to have a hearing on that. 14:51:23
With respect to the expert 14:51:24
reports, you know, we had noticed 14:51:29
that during the course of the 14:51:30
process, I'm making rulings on 14:51:31
reports that I don't have in front 14:51:33
of me. 14:51:35
My only concern would be and 14:51:36
the Panel's concern is that we 14:51:37
don't want to run into a situation 14:51:39
where the parties are, you know, 14:51:41
essentially, disagreeing about the 14:51:43
content of the briefs, based upon 14:51:46
what is a post-hearing objection 14:51:48
as to materials and opinions that 14:51:51

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are not contained in the reports. 14:51:52
So how you want to deal 14:51:54
with that, we leave it up to you. 14:51:56
If you want to give us the 14:51:58
reports, that's okay. 14:51:59
We, also, understand that 14:52:00
for other reasons, evidentiary 14:52:01
reasons, the fact that there may 14:52:03
be things in the reports that the 14:52:04
parties may have agreed are 14:52:08
inadmissible and you don't want 14:52:08
us to see, we get that. We totally 14:52:11
get that. 14:52:12
If you want to give us 14:52:12
redacted reports, we get that. 14:52:13
We're not telling you you 14:52:15
have to do anything. But I'm 14:52:16
just trying to, you know, think 14:52:17
ahead and just make sure we don't 14:52:19
run into any problems that's 14:52:22
going to, you know, create an 14:52:23
issue for you and for the Panel. 14:52:25
MR. FARINA: Can I offer my 14:52:27
view on that? 14:52:29

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I think the reports would be very helpful with the understanding that neither party in the post-hearing briefing should cite to any opinions that are expressed in the reports that were not given by the experts at the hearing. 14:52:30 14:52:31 14:52:33 14:52:35 14:52:36 14:52:38 14:52:40 14:52:43

Cite what the experts said at the hearing. And I think that would address the issue. 14:52:44 14:52:45 14:52:49

And the same with the argument that we'd be providing. We'd be providing argument based on the opinions that were expressed at the hearing by the experts. 14:52:50 14:52:51 14:52:53 14:52:55 14:52:56

THE CHAIRPERSON: But not the reports. 14:52:58 14:52:59

MR. FARINA: Not the reports themselves. But I think -- I mean, I'm pretty sure that -- it would be helpful and you can make the distinction between what's in there that wasn't 14:53:00 14:53:00 14:53:01 14:53:03 14:53:04 14:53:06

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advanced and what was. 14:53:08

THE CHAIRPERSON: That was the feeling of the Panel. If Counsel has an objection, you know, we are going to go with -- 14:53:09 14:53:10 14:53:11 14:53:12

MR. REED: Yeah, I'm a little confused as to what the issue is we're trying to solve for. I apologize for that. 14:53:14 14:53:16 14:53:17 14:53:19

THE CHAIRPERSON: The only thing we're concerned about is -- it's really not a concern per se for the Panel. 14:53:19 14:53:20 14:53:22 14:53:25

We've had objections, you know, with respect to opinions that have been given during the course of the hearing based upon the fact that an opinion was not contained in the report or it was served late right. 14:53:25 14:53:27 14:53:28 14:53:30 14:53:31 14:53:33 14:53:34

We don't need the reports. That's okay. If you want to give them to us, that's fine. 14:53:35 14:53:36 14:53:38

What we're trying to prevent 14:53:40

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is we don't want you to get into a battle once your briefs are initially served on the 1st of November about content that you may object to based upon the fact that there is an opinion in there that's being argued that was not necessarily expressed from the report. 14:53:41 14:53:42 14:53:44 14:53:46 14:53:48 14:53:50 14:53:52 14:53:54 14:53:55

I've been very careful. I get why you're not giving them to us up to now. And I've relied on your representations in making my rulings. 14:53:56 14:53:58 14:53:59 14:54:00 14:54:02

But we have discussed this fact. You're aware of it. So whatever you want to do. If you can agree -- 14:54:02 14:54:04 14:54:04 14:54:07

MR. REED: My view on this is, you know, the record on experts should be the testimony they gave. 14:54:07 14:54:08 14:54:10

We don't, typically, put reports in. We didn't organize our presentation on the assumption 14:54:12 14:54:13 14:54:15

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reports would come in. 14:54:17

THE CHAIRPERSON: Okay. 14:54:17

MR. REED: And so I suggest 14:54:18
this is a bridge that we cross, if 14:54:19
they come to it. I suspect we're 14:54:21
not going to have a problem with 14:54:22
Mr. Farina putting in an opinion 14:54:24
that wasn't disclosed. 14:54:25

If he does and we want to 14:54:26
put that out, then we'll have to 14:54:28
deal with whether or not the report 14:54:29
should be disclosed. 14:54:30

THE CHAIRPERSON: So we're 14:54:31
not going to take reports, 14:54:31
obviously, unless the parties come 14:54:32
to some agreement. 14:54:35

MR. FARINA: So we did, 14:54:35
though, however for the damages 14:54:36
experts with the schedules, with 14:54:38
the calculations. We did offer 14:54:40
those. 14:54:43

MR. REED: Yeah, no 14:54:44
objection. No objection to that. 14:54:45
And we'll offer our calculations 14:54:46

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as well. 14:54:48

THE CHAIRPERSON: And we would like that just put forth in summary form separately. It can be annexed to your briefs. That's fine. 14:54:48 14:54:48 14:54:50 14:54:53 14:54:55

And then we just wanted to mention on the exhibits, we look behind us in fear. 14:54:56 14:54:59 14:55:00

So we would ask you to attach -- and we get it, you know. You've done a phenomenal job and I say that on behalf of the Panel. 14:55:02 14:55:05 14:55:06 14:55:10 14:55:12

The thing that's really crappy about litigation is that, you know, someone's got to win, someone's go to lose. Sometimes both people lose or both people win, whatever. 14:55:13 14:55:14 14:55:15 14:55:18 14:55:20 14:55:20

But you've done a phenomenal job and I just want to tell you that, on behalf of the Panel, that we have been incredibly impressed 14:55:23 14:55:23 14:55:25 14:55:27

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with your diligence. 14:55:30

We are stunned by the fact 14:55:31
that you were able to get through 14:55:33
all of this as quickly as you 14:55:34
did. 14:55:36

But we just don't want to be, 14:55:37
you know, hammered by, you know, 14:55:39
500 exhibits. We would like you 14:55:41
to keep it as tight as possible. 14:55:42
We're not giving you limit on it. 14:55:45

But try to give us those 14:55:46
exhibits that you really feel 14:55:47
it's necessary for the Panel to 14:55:49
see and in the joint set. 14:55:50

And then if there are other 14:55:53
things you want to refer to -- you 14:55:55
can always refer to the electronic 14:55:56
exhibits that have been transmitted 14:55:58
in support thereof. 14:55:59

So I really can't give you 14:56:00
sort of like a redline on this, 14:56:02
but it's just sort of the feeling 14:56:04
of the Panel that we talked about. 14:56:06

MR. FARINA: So what we 14:56:07

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would suggest is when we put in 14:56:09
our briefs, we'll have citations 14:56:10
to the exhibits. If it's for a 14:56:12
proposition that we think is 14:56:14
undisputed, we're not going to 14:56:15
give you that exhibit. 14:56:17

We'll have it available, if 14:56:18
there's some issue that comes up 14:56:20
or some issue comes up in the 14:56:22
briefing. But I think we can 14:56:24
try, at least, to limit the 14:56:26
physical exhibits that we give 14:56:27
you -- 14:56:28

THE CHAIRPERSON: Exactly. 14:56:29

MR. FARINA: -- to what is 14:56:30
most pertinent and -- 14:56:31

THE CHAIRPERSON: That be 14:56:32
would great. 14:56:32

Mr. Reed, okay with you? 14:56:32

MR. REED: Yeah. 14:56:34

THE CHAIRPERSON: Okay. 14:56:34

MR. REED: I have two other 14:56:35
matters. 14:56:36

THE CHAIRPERSON: Sure. 14:56:36

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MR. REED: I think the first is -- and I make this knowing, you know, it's always annoying to ask for page limit extensions. 14:56:37 14:56:37 14:56:40 14:56:41 14:56:41

But there are a lot of legal issues that we have to brief here and I'm a little concerned that 50 pages may not be sufficient for us to do it. 14:56:44 14:56:45 14:56:47 14:56:48 14:56:50

THE CHAIRPERSON: Okay. What would you suggest? 14:56:51 14:56:52

MR. REED: What I would like to propose is that we have 75 on the opening briefs and then maybe -- 14:56:53 14:56:54 14:56:56

THE CHAIRPERSON: 50? 14:57:00

MR. REED: -- 50 on the replies. 14:57:01 14:57:02

THE CHAIRPERSON: That's fine. 14:57:03

MR. REED: And we will bear in mind nobody wants to read anymore than they have to. 14:57:04 14:57:04 14:57:06

THE CHAIRPERSON: That's certainly a reasonable request. 14:57:07 14:57:07

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MR. FARINA: That's fine 14:57:07
with me. 14:57:09

THE CHAIRPERSON: That's 14:57:09
certainly a reasonable request. 14:57:10
We're okay with that. 14:57:11

We, actually, decided we were 14:57:12
going to negotiate with you. So 14:57:14
that's why -- 14:57:15

MR. BICKERMAN: We anticipated 14:57:15
75 pages. 14:57:16

THE CHAIRPERSON: We 14:57:17
anticipated 75. We figured if we 14:57:17
said 75, you would go to a hundred. 14:57:20

MR. REED: You know what, 14:57:22
you're a hundred percent, right. 14:57:22

MR. FARINA: You want to 14:57:25
know what our negotiating 14:57:25
position was? 14:57:25

MR. REED: And the other 14:57:29
matter -- and I began to discuss 14:57:30
this briefly with Steve before. 14:57:31

In respect of the exhibits 14:57:34
that are available for the 14:57:35
parties to reference, we had 14:57:37

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discussed before the hearing between the parties that exhibits used with the witness would be deemed admissible and then any other exhibits that a party wanted to designate during the hearing by the use of the witness or not would be admissible. It's acceptable to be using in the brief. 14:57:39 14:57:42 14:57:44 14:57:46 14:57:48 14:57:49 14:57:51 14:57:52 14:57:54 14:57:56

THE CHAIRPERSON: Sure. 14:57:57

MR. REED: I don't have a list, as I sit here today, of the additional exhibits. But, you know, Steve can, obviously, object to whatever he wants. But I just want to be clear we may reference exhibits that are in the record and disclosed among the parties in our briefs regardless whether we used them with a witness or not. 14:57:57 14:57:58 14:57:59 14:58:00 14:58:02 14:58:03 14:58:05 14:58:06 14:58:09 14:58:11

THE CHAIRPERSON: That would be the right on both sides. 14:58:12 14:58:12

MR. REED: Yes, of course. 14:58:14

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MR. FARINA: What we had 14:58:14
discussed in the hallway, at 14:58:15
least, was talking about this and 14:58:17
coming up with exhibits that we 14:58:19
would, actually, proffer, either 14:58:21
one of us, and then we would have 14:58:23
knowledge of that and we would be 14:58:25
able to make any objections. 14:58:27
I do think there was some 14:58:29
contemplation that the exhibits 14:58:30
would be offered during the 14:58:33
hearing and we would have an 14:58:35
opportunity to examine the 14:58:37
witnesses on those exhibits. 14:58:38
I don't know if there's 14:58:41
anything that I will object to. 14:58:42
But I think I would rather know 14:58:44
what's in the record before we 14:58:46
write our briefs. 14:58:49
My suggestion is Kevin and 14:58:51
I get together in the next week 14:58:52
or two and iron that out. If 14:58:54
there's a dispute -- 14:58:56
THE CHAIRPERSON: Let me 14:58:57

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know. 14:58:57
MR. FARINA: -- we'll let 14:58:58
you know. 14:58:59
MR. REED: That's fine. 14:59:00
MR. FARINA: I would like 14:59:02
to know before we write our brief 14:59:02
what the record is. 14:59:03
THE CHAIRPERSON: Which 14:59:04
indicates to me meet us as 14:59:05
quickly as possible. 14:59:05
MR. FARINA: Yeah, yeah, we 14:59:06
will. 14:59:07
MR. CHANDLER: The joint 14:59:09
exhibit is in evidence, right? 14:59:10
MR. FARINA: The agreement 14:59:11
of the parties was if a joint 14:59:12
exhibit was used with a witness, 14:59:15
it's in evidence. 14:59:16
MR. REED: The agreement 14:59:20
was -- 14:59:21
MR. FARINA: The exhibit 14:59:21
list is about 3,000 exhibits. 14:59:21
MR. REED: The agreement 14:59:21
was if it was used with a witness 14:59:21

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or proffered at the hearing. 14:59:22

And I'm trying to avoid the 14:59:24
necessity of having to now 14:59:25
proffer a bunch of exhibits. 14:59:27

But we'll confer and I'm 14:59:28
hoping there won't be any disputes. 14:59:30
There's no authenticity objections 14:59:32
here. 14:59:33

THE CHAIRPERSON: Anything 14:59:33
else that anybody would like to 14:59:34
address? 14:59:36

MR. CHANDLER: I have one 14:59:37
thing. I'm not sure of whether 14:59:37
you said this or not. 14:59:39

I'd really like to have a 14:59:40
thumb drive of all of the testimony 14:59:43
from the trial on it. We've got 14:59:45
it every day, but it would be 14:59:48
handy to have it all in one place. 14:59:51

MR. FARINA: I mean, there's 14:59:53
also roughs and finals. I don't 14:59:54
know if you're getting the roughs 14:59:56
and the finals. 14:59:57

If it's helpful, we'll get 14:59:59

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you all the finals electronically 15:00:01
on one thumb drive. And we can 15:00:02
get you, if you want, we can get 15:00:04
you a paper copy of just in a 15:00:05
binder of all the testimony you 15:00:07
all can put on a shelf or do 15:00:09
whatever you want with it. 15:00:11

THE CHAIRPERSON: None for 15:00:12
me. 15:00:13

MR. CHANDLER: None for me. 15:00:13

MR. BICKERMAN: Not for me; 15:00:14
thumb drive. 15:00:15

MR. CHANDLER: Thumb drive. 15:00:16

THE CHAIRPERSON: Thumb drive 15:00:17
works. 15:00:18

MR. CHANDLER: [REQUEST] And 15:00:19
the exhibits whether you all think 15:00:19
you need them or not, I would like 15:00:21
to have the tax basis financial 15:00:24
statements that have been used. 15:00:31
I guess we have 2006 through -- 15:00:35
but include those whether they 15:00:39
are in your contemplation or not, 15:00:41
please. 15:00:43

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MR. FARINA: We will. 15:00:44

MR. BICKERMAN: And I have 15:00:46
two additional requests. 15:00:47

[REQUEST] One especially is 15:00:48
getting some clarity on the 15:00:50
calculations you're using for 15:00:52
damages. So, you know, maybe 15:00:53
more than just a sheet explaining 15:00:56
how your experts got to those 15:00:57
numbers. 15:00:59

We've heard a lot of 15:00:59
testimony. But synthesizing that 15:01:00
would be very helpful. 15:01:03

And, second, the Panel may 15:01:05
get together and we may have 15:01:06
specific questions that we may 15:01:07
share with you to guide some of 15:01:10
the things that you put into your 15:01:12
post-hearing brief. We've done 15:01:13
that in the past and that might 15:01:15
be something that we consider. 15:01:17

And I'd like to echo the 15:01:18
Chair's comments. You guys did a 15:01:20
terrific job of advocacy. I mean, 15:01:22

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I really think that the clarity with which you asked your questions and the information we got made our job easier. 15:01:24 15:01:26 15:01:27 15:01:30

And, frankly, those breaks we took, we weren't just sipping coffee. We were going over what you told us and there was a lot to go over. So you did a really good job. 15:01:31 15:01:32 15:01:35 15:01:36 15:01:38 15:01:40

MR. REED: Thank you. 15:01:41

MR. CHANDLER: Ditto. 15:01:42

MR. REED: It's been a pleasure. 15:01:44 15:01:45

THE CHAIRPERSON: We'll see you December 6th. Make your hotel reservations now. 15:01:45 15:01:45 15:01:45

Off the record. 15:01:49

(Time noted: 3:01 p.m.) 15:01:49

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C E R T I F I C A T E

I, SILVIA P. WAGE, CSR, CRR, RPR, a Notary Public for the State of New York, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

____

Notary Public of the State of New York
My Commission expires November 29, 2026
Dated: September 27, 2024