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TRANSCRIPT OF A MEETING
OF THE
STATE OF NEVADA
PRIVATE INVESTIGATORS LICENSING BOARD

Thursday, September 17, 2009
9:00 a.m.

Location:
Office of the Attorney General
100 North Carson Street
Mock Court Room
Carson City, Nevada

Videoconference Location:
Grant Sawyer State Office Building
555 East Washington Avenue
Attorney General Conference Room, Suite 4500
Las Vegas, Nevada

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A P P E A R A N C E S

For the Private Investigators Licensing Board, present
in Carson City:

David Spencer, Chairman and Board Member
Richard Putnam, Board Member
Dan Crate, Board Member

Mechele Ray
Executive Director

Keith D. Marcher
Senior Deputy Attorney General

Jeffrey D. Menicucci
Deputy Attorney General

Tammy Whatley
Investigator

Other Participants present in Carson City:

John Arrascada, Esq.
E. Dwayne Tatalovich
Ken Braunstein

For the Private Investigators Licensing Board, present
in Las Vegas:

Lois Grasso, Board Member

Colin Murphy
Compliance Investigator

Other Participants present in Las Vegas:

Frank Maurizio
Mace Yampolsky, Esq.
Charles Everhardt
Ray Adray
Joe Montana
Charles McChesney
William Beaver
Todd Owens
Steven Jaffe

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1 CARSON CITY, NEVADA, SEPTEMBER 17, 2009, 9:00 A.M.

2 -oOo-

3 BOARD CHAIRMAN SPENCER: We'll get started
4 here. This is the second day of our quarterly meeting
5 of the Private Investigators Licensing Board. Today's
6 meeting deals primarily with disciplinary hearings and
7 appeal hearings.

8 Could I have a roll call for Board members.

9 MS. RAY: Board Member Grasso?

10 BOARD MEMBER GRASSO: Present.

11 MS. RAY: Board Member Crate?

12 BOARD MEMBER CRATE: Here.

13 MS. RAY: Board Member Putnam?

14 BOARD MEMBER PUTNAM: Here.

15 MS. RAY: Chairman Spencer?

16 BOARD CHAIRMAN SPENCER: Here.

17 BOARD CHAIRMAN SPENCER: And Board Member
18 Ulthoven is absent today.

19 BOARD CHAIRMAN SPENCER: Secondly, we'll
20 have -- anyone who is giving testimony today, provide
21 testimony, or who thinks they might want to make
22 anything, please stand and be sworn.

23 MR. MARCHER: Do all of you swear to tell the
24 truth, the whole truth and nothing but the truth?

25 (The potential witnesses were sworn.)

1 MR. MARCHER: All right.

2 BOARD CHAIRMAN SPENCER: All right. The first
3 issue is a disciplinary hearing, Mr. James Thomas, dba
4 Jim Thomas & Associates, License 845 and 845a.

5 MR. MENICUCCI: Mr. Chairman, first of all,
6 we're handling this today with some scanned evidence
7 that has been supplied to the court by way of flash
8 drives. So we won't be using a lot of paper.
9 Hopefully, this will work well.

10 BOARD MEMBER GRASSO: Excuse me in Carson City.
11 Would it be possible to get closer to the mic?

12 MR. MENICUCCI: Okay.

13 BOARD CHAIRMAN SPENCER: Why don't we --

14 MS. RAY: Move the table.

15 (There was a moment off the record.)

16 MR. MENICUCCI: I just started to explain
17 that --

18 MS. RAY: Ask if they can hear you.

19 MR. MENICUCCI: Can you hear me all right now?

20 BOARD MEMBER GRASSO: Yes, we can. Thank you.

21 MR. MENICUCCI: Very good. We're going to
22 be -- we've distributed the proposed evidence in these
23 cases by way of flash drives, scanned documents. There
24 are a limited number of paper copies here in Carson
25 City.

1 If there's any question, or if there's any
2 problem at any time, certainly one of the Board can
3 alert us, and we'll deal with it as it comes up. But,
4 hopefully, this will work well.

5 The other thing I wanted to say is that, on the
6 agenda items today, I have resolutions to propose to the
7 Board with regard to actually three items, two separate
8 matters. And I'd like to -- I guess, I can start with
9 Mr. Thomas. He's one of the cases.

10 Is Mr. Yampolsky in Las Vegas?

11 BOARD MEMBER GRASSO: Mr. Yampolsky? He's not
12 here yet.

13 MR. MENICUCCI: Mr. Thomas's counsel. I'd like
14 to defer that until Mr. Yampolsky is present.

15

16 AGENDA ITEMS 8 AND 9

17 J.R. ROBLES OF APEX INVESTIGATIVE SERVICES, INC., AND

18 J.R. ROBLES OF PACIFIC LEGAL INVESTIGATIONS

19

20 MR. MENICUCCI: The other proposed resolution
21 that I have involves items eight and nine on the agenda.
22 And those involve PLI or Pacific Legal Investigations,
23 and Apex Investigative Services, Inc.

24 I've discussed the matter with Mr. Robles, the
25 principal of those two corporations. And I would

1 propose to the Board the following resolution.

2 In substance, PLI and Apex will withdraw the
3 appeal on the PLI citation. The Board would dismiss the
4 citation regarding Apex.

5 J.R. Robles, Pacific Legal Investigations and
6 Apex Investigative Services, Inc. agree that at they
7 will not contest, and they will withdraw the appeal on
8 C-004-09 and pay the fine of \$2,500.

9 This is a no contest type of agreement, and it
10 shall not be deemed an admission of wrongdoing on the
11 part of J.R. Robles or Pacific Legal Investigations,
12 except that the existence of this unopposed citation
13 will mean that any subsequent citation that is upheld
14 would result in a fine based on a second violation,
15 under NRS 648.165, sub 4.

16 The Board will dismiss citation C-040-09.
17 That's the Apex citation.

18 The appellants will testify that Apex
19 Investigative Services purchased the assets of Pacific
20 Legal Investigations, Inc. PLI Inc. was owned by
21 Mainstay Business Solutions. Mainstay, through PLI
22 Inc., operated a website on which license information of
23 Keith Smothers, a PLI Inc. employee and qualified agent,
24 was advertised. Apex did not acquire the website or
25 control of the website.

1 And after purchase of the PLI assets,
2 Mr. Smothers was not retained as an employee Apex.
3 However, Mainstay continued to list Mr. Smothers'
4 license information on the PLI website for a period of
5 time. That website has now been changed and
6 Mr. Smothers' license information is deleted. So
7 there's no continuing misrepresentation with regards to
8 licensure there.

9 PLI advertised a nationwide response on its
10 advertising materials, including specific mention of the
11 locations of Reno, Las Vegas and Lake Tahoe within the
12 state of Nevada. PLI's changing its advertising and
13 will delete specific reference to the State of Nevada.

14 It will state, under the areas that it covers,
15 "With a coast to coast network of expert investigators
16 supported by state-of-the-art communications
17 technology, PLI is ready to be a meet client
18 investigation needs nationwide. Our coverage spans 27
19 states and two countries. Whether you're on the east or
20 west coast, north of the border, or anywhere in between,
21 we're poised to deliver the services you're looking for.
22 PLI will utilize licensed investigators within the state
23 of Nevada or refer clients to licensed investigators if
24 investigative services within this state are required."

25 They will no longer specifically mention Nevada

1 in their advertising.

2 If the Board approves that resolution, then we
3 can --

4 BOARD CHAIRMAN SPENCER: Any Board comment?

5 BOARD MEMBER CRATE: We don't have a copy of
6 that proposal.

7 MR. MENICUCCI: I have it written up, but I can
8 make copies of this. I just read it.

9 BOARD MEMBER CRATE: Apex, you say, purchased
10 the PLI?

11 MR. MENICUCCI: The assets of PLI.

12 BOARD MEMBER CRATE: The assets. You are
13 willing to dismiss the citation against Apex?

14 MR. MENICUCCI: Correct, and uphold the
15 citation against PLI.

16 BOARD MEMBER CRATE: And, essentially, were the
17 citations for same activity?

18 MR. MENICUCCI: Yes.

19 BOARD MEMBER CRATE: So Apex kind of inherited
20 an existing problem?

21 MR. MENICUCCI: Yes. They also, they had their
22 own separate type of advertising that was similar. Apex
23 did not mention anything about Mr. Smothers, as I
24 recall.

25 BOARD MEMBER CRATE: Investigator Whatley, you

1 wrote both citations?

2 MS. WHATLEY: Yes, I did.

3 BOARD MEMBER CRATE: Does that seem reasonable
4 to you, the proposal?

5 MS. WHATLEY: Yes.

6 BOARD CHAIRMAN SPENCER: Lois, are you hearing
7 that all right?

8 BOARD MEMBER GRASSO: Yes, I am. Thank you.

9 BOARD CHAIRMAN SPENCER: Okay. Commissioner,
10 any comments?

11 BOARD MEMBER PUTNAM: No, sir.

12 BOARD CHAIRMAN SPENCER: I'll take a motion,
13 then.

14 BOARD MEMBER PUTNAM: Mr. Chairman, I move that
15 the recommendations of counsel with regard to these
16 complaints be accepted by this Board.

17 BOARD CHAIRMAN SPENCER: Motion.

18 BOARD MEMBER CRATE: Second.

19 BOARD CHAIRMAN SPENCER: All in favor, signify
20 by saying "aye."

21 (The Board Members said "aye.")

22 BOARD CHAIRMAN SPENCER: Opposed?

23 It is.

24 MR. MENICUCCI: Mr. Smothers can be dismissed.

25 BOARD CHAIRMAN SPENCER: Is there an attorney

1 here yet for James Thomas?

2 MR. MENICUCCI: I don't know. Ms. Grasso?

3 BOARD MEMBER GRASSO: No, he is still not
4 present.

5 MR. MENICUCCI: If you would let us know when
6 he shows up, then we can take Mr. Thomas's item.

7 BOARD MEMBER GRASSO: Yes, I will let you know.

8 BOARD CHAIRMAN SPENCER: All right. Are any
9 besides number six represented by counsel?

10 MR. MENICUCCI: Not to my knowledge, but they
11 may be. I've not been contacted by counsel.

12 BOARD CHAIRMAN SPENCER: John you're six,
13 correct, for Tatalovich?

14 MR. ARRASCADA: Tatalovich, yes.

15 BOARD CHAIRMAN SPENCER: Are any other counsel
16 present?

17 Do you have a preference, counsel, as far as --

18 MR. MENICUCCI: In order. I think, we can just
19 go in order until counsel shows up for Mr. Thomas.

20 BOARD CHAIRMAN SPENCER: All right. We have
21 counsel here on item number six, too, so.

22 MR. MENICUCCI: Did you want to wait, John?

23 MR. ARRASCADA: It doesn't -- at your
24 discretion. I don't mind waiting, if you want to.

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AGENDA ITEM 3

FRANK MAURIZIO OF DESERT SPRINGS INVESTIGATIONS

BOARD CHAIRMAN SPENCER: All right. Number three, Frank Maurizio, Desert Springs Investigations.

Is Mr. Maurizio in Las Vegas?

BOARD MEMBER GRASSO: Yes, he's present. He's coming up to the table.

BOARD CHAIRMAN SPENCER: Thank you.

BOARD CHAIRMAN SPENCER: Good morning, Mr. Maurizio. How are you?

MR. MAURIZIO: I'm fine. Thank you.

BOARD CHAIRMAN SPENCER: It's our understanding that you wish to appeal the citation, number C-064-09.

MR. MAURIZIO: Yes, I do.

BOARD CHAIRMAN SPENCER: All right, sir. Counsel.

MR. MENICUCCI: Okay. Could I ask; Investigator Murphy, would we be able to supply a copy of the evidence to Mr. Maurizio so he has it to look at?

MR. MURPHY: Sure thing.

There you are, sir.

MR. MAURIZIO: Thank you.

BOARD CHAIRMAN SPENCER: Do you want to take a minute to go through that? Yes.

1 MR. MAURIZIO: Yes, please.

2 BOARD CHAIRMAN SPENCER: Take it away.

3 Okay.

4 MR. MENICUCCI: All right. I'd like to call
5 Investigator Whatley, please.

6 BOARD MEMBER GRASSO: Excuse me just one
7 moment. I wanted to let you know that the attorney for
8 Mr. Thomas has now arrived.

9 BOARD CHAIRMAN SPENCER: Thank you.

10 MR. MENICUCCI: I'd like to proceed with this
11 matter and then move directly to Mr. Thomas's as soon as
12 we're done with it.

13 BOARD CHAIRMAN SPENCER: All right.

14

15 T A M M Y W H A T L E Y,

16 having been previously sworn by Board Counsel,

17 was examined and testified as follows:

18

19 DIRECT EXAMINATION

20 BY MR. MENICUCCI:

21 Q. Investigator Whatley, did you issue citation
22 C-064-09?

23 A. Yes, I did.

24 Q. And could you please tell the Board briefly
25 what caused you to issue that citation.

1 A. Basically, we received a written complaint in
2 our office. The complaint provided us with a link to a
3 website. I went on that website and did see that
4 Mr. Maurizio was advertising investigative services in
5 Nevada on that website.

6 Q. I've presented to the Board and asked the Board
7 to consider and introduce into evidence documents
8 numbers one through 10 in this matter. Let me first
9 have you identify your citation.

10 A. Yes, that is my citation.

11 Q. And documents one through three, correct?

12 A. Correct.

13 Q. Document number four is the receipt for
14 mailing; is that correct?

15 A. That is correct.

16 Q. Documents number five, six and seven and eight
17 appear to be print -- printouts of a website. Is that
18 the website that you visited?

19 A. That is correct.

20 Q. Did you prints those yourself?

21 A. Yes, I did.

22 Q. You found Desert Springs Investigations with
23 information stating that it does investigations; is that
24 correct?

25 A. That is correct.

1 Q. And Frank Maurizio is the person identified in
2 the website as the person in charge of Desert Springs
3 Investigations, correct?

4 A. Correct.

5 BOARD CHAIRMAN SPENCER: Excuse me. Can you
6 hear all right, Mr. Maurizio?

7 MR. MAURIZIO: Yes, sir.

8 BY MR. MENICUCCI:

9 Q. On page eight of our documents, is that also
10 part of the website?

11 A. Yes.

12 Q. And it appears to say "Frank J. Maurizio,
13 Investigator"; is that correct?

14 A. That is correct.

15 Q And that appeared on the website as of what
16 date?

17 A. June 22nd, 2009.

18 Q. Did you do any investigation with regard to
19 Mr. Maurizio regarding business licenses for his
20 investigations company?

21 A. I did. I went on the Secretary of State
22 website. And there is no -- he's not incorporated or he
23 does not have an LLC. He is not listed there. I also
24 called the Township of Pahrump Business Licensing, and
25 he is not licensed.

1 Q. Did you receive any communications with regard
2 to that?

3 A. Yes, I did.

4 Q. I ask you to look at documents number nine and
5 10. What's document number nine? Describe it for the
6 Board.

7 A. Okay. Document number nine is a letter from
8 the Town of Pahrump from Al Balokey (spelled
9 phonetically) stating that Frank Maurizio does not now
10 or never has had a business license in Pahrump according
11 to their records.

12 Q. And document 10?

13 A. Document 10 is a -- a letter on -- by Al
14 Balokey again. And it is stating that they have
15 attempted to make contact with Frank Maurizio regarding
16 lack of licensure and...

17 Q. And you did check to see whether Mr. Maurizio
18 or Desert Springs had any sort of license from this
19 Board?

20 A. Yes.

21 Q. Does he have any license at all?

22 A. No.

23 Q. Has he applied for a license?

24 A. No.

25 MR. MENICUCCI: I have no further questions for

1 the investigator.

2 MR. MARCHER: Do you want these formally
3 admitted?

4 MR. MENICUCCI: Yes, I'd like to, so the Board
5 can read those.

6 MR. MARCHER: Mr. Maurizio, do you have any
7 objection to the admission of the exhibits?

8 MR. MAURIZIO: Yes, sir.

9 MR. MARCHER: What's that?

10 MR. MAURIZIO: September 2007, I had the
11 website designed by a woman in Las Vegas.

12 MR. MARCHER: Well, I'm all asking you is, with
13 regard to the exhibits that you have in front of you,
14 one through 10, do you have any objection specifically
15 to any of those being admitted to this proceeding?

16 MR. MAURIZIO: Yeah. Page 10.

17 MR. MARCHER: Okay. What?

18 MR. MAURIZIO: I never received a letter from
19 them, because I haven't had a post office boxed in two
20 years, sir. I sit on the town board. The town knows my
21 home address. They could have sent it there. But they
22 didn't.

23 MR. MARCHER: Okay.

24 MR. MAURIZIO: I never had a business license,
25 plus I never did anything with the website or conducted

1 any business with it or whatever.

2 MR. MARCHER: So what exactly --

3 MR. MAURIZIO: As far as -- as far as -- as far
4 as what it says, a Nevada licensed private investigator,
5 when I read the website before it was put up, I didn't
6 see that, sir. That's my fault. But I am a licensed
7 bail enforcement agent, and that's what should have been
8 in there. And it's my fault I didn't read it. But I
9 have not conducted business under this website. The
10 website's been dropped as soon as I talked to the
11 investigator.

12 MR. MARCHER: Okay.

13 MR. MAURIZIO: That's why I never had a
14 business license through the town, because I never did
15 any, conducted any business.

16 MR. MARCHER: Okay. So, specifically, what's
17 your objection to the admission of number 10?

18 MR. MAURIZIO: I'm objecting to the whole
19 thing, sir.

20 MR. MARCHER: Okay. Just as being irrelevant
21 or -- or what?

22 That's okay. All right. He's raised --

23 MR. MAURIZIO: I'm a little confused, sir. I
24 don't know.

25 MR. MARCHER: That's okay.

1 I mean what we have here is, you know, we have
2 the documents, one through 10. They've asked to be
3 admitted. He's objecting to their admission. There's
4 not really any basis for that objection. I think,
5 they're relevant, and they should probably be admitted.
6 That's my advice. So.

7 BOARD CHAIRMAN SPENCER: Mr. Maurizio, would
8 you like to question the -- the officer here, as far as
9 any of her statements?

10 MR. MAURIZIO: No, sir. I just want to say I
11 never conducted business, and it's my fault that the
12 "private investigator" was worded in there. I should
13 have caught it when I first previewed the design. But
14 like I said, no business was ever conducted.

15 MR. MARCHER: Okay. So are you -- you need to
16 either admit the documents or hold them as objections.
17 That's up to you, as the Chair.

18 BOARD CHAIRMAN SPENCER: The documents are
19 admitted.

20 MR. MARCHER: Okay. So, now, do you have any
21 questions for Mr. Maurizio?

22 MR. MENICUCCI: I do.

23 MR. MARCHER: Okay.

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F R A N K M A U R I Z I O,

having been previously sworn by Board Counsel,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MENICUCCI:

Q. Hi, Mr. Maurizio. Do you have page six in front of you?

A. Yes. Yes, sir.

Q. Do you see, in the middle of the page, where the heading that says "Why use us?"

A. Yes.

Q. The very first thing you list is "We are licensed Nevada private investigators."

A. Yes. That should be "bail enforcement agent." But it never was put in.

Q. But that was your website, correct?

A. Yes, sir.

Q. Okay. And it --

A. We also -- I'm sorry.

Q. And it did read that way for a period of time, correct?

A. Uh, yes, sir.

Q. Okay. When did you change it?

A. Uh, as soon as I got the letter from your

1 investigator. She -- I closed it down. Technically, I
2 don't even know why it was up there after 2007. Because
3 2008, 2009, I never paid. But it was still there.

4 MR. MENICUCCI: I have no further questions for
5 Mr. Maurizio. If he has any case to present, if the
6 Board has no further questions, he could do that now.

7 BOARD CHAIRMAN SPENCER: Mr. Maurizio, now is
8 the time that you can pretty -- pretty much restate what
9 you were stating in part as we were talking. Just tell
10 us the story on why it's there, how it happened,
11 et cetera.

12 MR. MAURIZIO: Could you repeat that, sir. I'm
13 a little hard of hearing.

14 BOARD CHAIRMAN SPENCER: You and me both. Now
15 is the time when you can tell us why the website is
16 there, why the representations that you are a licensed
17 investigator are on that website, pretty much the story
18 of how it happened.

19 MR. MAURIZIO: Well, in September of 2007, like
20 I said, I had the website designed. And with the
21 economy the way it was, you know, I was hoping for a
22 temporary job. I didn't read it right. I just skipped
23 through it instead of reading it. But, like I said, why
24 it was up in 2008 and the rest of this year, I have no
25 clue. Now, most of the fees were never paid. It

1 shouldn't have been up there.

2 BOARD CHAIRMAN SPENCER: Who prepared, who
3 prepared the website?

4 MR. MAURIZIO: Who designed is it, sir?

5 BOARD CHAIRMAN SPENCER: Yes.

6 MR. MAURIZIO: A and B Website Design in
7 Las Vegas.

8 BOARD CHAIRMAN SPENCER: Did you contact them
9 afterwards to see if -- if they could explain why it
10 appeared on the website that you were a licensed private
11 investigator?

12 MR. MAURIZIO: Yes, sir, I did, but she didn't
13 give me an answer. So I have to take responsibility for
14 that.

15 BOARD CHAIRMAN SPENCER: Okay. Once you saw
16 the website with that listed, did you call her and tell
17 her it was wrong then or when you received the citation?

18 MR. MAURIZIO: When I received the citation,
19 because I never brought the website up after -- after we
20 designed it.

21 BOARD CHAIRMAN SPENCER: All right. It was
22 just there, and you knew it was there?

23 MR. MAURIZIO: Yes, sir.

24 BOARD MEMBER CRATE: Mr. Maurizio, do you have
25 a company, or did you have a company named Desert

1 Springs Investigations?

2 MR. MAURIZIO: I can't understand.

3 BOARD MEMBER GRASSO: He's asking you if you
4 had a company called Desert Springs Investigations.

5 BOARD MEMBER CRATE: No, sir. I tried to
6 incorporate in -- in either June or July of 2007, I sent
7 this, the form, in to the state with the \$75 money
8 order. Somehow, it got lost. I have a number that they
9 assigned for the case, but I never, I never followed up
10 on it.

11 BOARD MEMBER CRATE: So you have --

12 MR. MAURIZIO: I didn't bring that with me.

13 BOARD MEMBER CRATE: You have never done
14 business as Desert Springs Investigations?

15 MR. MAURIZIO: No, sir.

16 BOARD MEMBER CRATE: You have never done any
17 business as an accident reconstruction expert?

18 MR. MAURIZIO: Not in this state, no, sir. The
19 only accident reconstruction I did was on the job for 13
20 years when I was a police officer in New Jersey.

21 BOARD MEMBER CRATE: But, so all of this
22 information and advertising for these services was
23 completely made up by the people that designed the
24 website?

25 MR. MAURIZIO: Yes, sir.

1 BOARD MEMBER GRASSO: Mr. Maurizio, why did you
2 go to the effort of having this website designed and put
3 up and then not proceed with the business?

4 MR. MAURIZIO: Well, after I -- after I went to
5 the Secretary of State with the application to
6 incorporate, I just -- I tried to communicate. They
7 gave me a number that they assigned to the file, but
8 they could never find it. I just let it go, because
9 I've been busy working for the school district since
10 that time.

11 BOARD MEMBER GRASSO: So you just abandoned
12 this --

13 MR. MAURIZIO: I just abandoned the whole
14 project.

15 BOARD CHAIRMAN SPENCER: Are you working now,
16 Mr. Maurizio?

17 MR. MAURIZIO: I am a substitute teacher for
18 the Nye County School District, but I haven't been
19 working.

20 BOARD CHAIRMAN SPENCER: Okay.

21 MR. MAURIZIO: I'm on a day-to-day --

22 BOARD CHAIRMAN SPENCER: Substitute?

23 MR. MAURIZIO: -- check. Yeah. We do assist
24 in like Clark County as well. So you get up at 5:00
25 o'clock in the morning, you type it in the computer. If

1 there's a position, you put in for it.

2 BOARD CHAIRMAN SPENCER: Okay. Are there any
3 further questions from the Board?

4 BOARD MEMBER PUTNAM: Yes, Mr. Chairman.

5 Mr. Maurizio, the complaint alleges that you
6 engaged in advertising as a public investigator. And
7 you say you are, in fact, responsible for the website
8 even though you didn't read it; is that correct?

9 MR. MAURIZIO: Yes, sir.

10 BOARD MEMBER PUTNAM: No further questions.

11 MR. MAURIZIO: When we had it designed, I
12 didn't read it fully. So I have to take the hit for
13 that.

14 BOARD MEMBER PUTNAM: Okay.

15 MR. MAURIZIO: But, like I say, no business was
16 ever conducted. It was just abandoned. Because I
17 started working for the school district in October of
18 2007.

19 BOARD MEMBER PUTNAM: Well, sir, the complaint,
20 though, doesn't have anything to do with whether or not
21 you are in business. It has to do with the fact that
22 you advertised. That's what the complaint concerns,
23 it's my understanding.

24 MR. MENICUCCI: (Nodded head.)

25 BOARD CHAIRMAN SPENCER: Mr. Maurizio, do you

1 understand that in the state of Nevada that just, you
2 know, advertising that you are an investigator --

3 MR. MAURIZIO: I understand that.

4 BOARD CHAIRMAN SPENCER: Okay.

5 MR. MAURIZIO: Yes, sir, I do.

6 BOARD CHAIRMAN SPENCER: I just want to make
7 sure that you understood what the citation was for.

8 MR. MAURIZIO: Yes, sir.

9 BOARD CHAIRMAN SPENCER: Any anything further,
10 Board, comments?

11 Do you have anything further?

12 MR. MENICUCCI: Just to say that the Board well
13 understands that our statute makes not only doing
14 business but advertising your status as an investigator
15 without a license to be in violation. The Board really
16 has no discretion, as I see it, when one violation
17 occurs.

18 If you find a violation, and the fine for the
19 first offense is a \$2,500 fine. However, the Board does
20 have discretion with regards to paying terms.

21 BOARD CHAIRMAN SPENCER: And you have nothing
22 further to say, Mr. Maurizio?

23 MR. MAURIZIO: Excuse me, sir?

24 BOARD CHAIRMAN SPENCER: Do you have anything
25 further to say?

1 MR. MAURIZIO: No, sir.

2 BOARD CHAIRMAN SPENCER: All right, sir.

3 BOARD MEMBER PUTNAM: Mr. Chairman?

4 BOARD CHAIRMAN SPENCER: Yes.

5 BOARD MEMBER PUTNAM: I have a motion.

6 BOARD CHAIRMAN SPENCER: Please.

7 BOARD MEMBER PUTNAM: I move that the complaint
8 against Frank Maurizio of Desert Springs Investigations
9 be upheld.

10 BOARD CHAIRMAN SPENCER: Motion. And a second?

11 BOARD MEMBER CRATE: Second.

12 BOARD CHAIRMAN SPENCER: I have a motion and a
13 second. All in favor, signify by saying "aye."

14 (The Board Members said "aye.")

15 BOARD CHAIRMAN SPENCER: Opposed?

16 Hearing none, the citation is upheld.

17 Mr. Maurizio, we have the discretion, as far as
18 the fine is concerned, to work with you for your
19 convenience in paying it. I understand, right now, this
20 country is a little bit difficult if you don't have a
21 full-time job.

22 MR. MAURIZIO: No, sir. I'm also in
23 bankruptcy.

24 BOARD CHAIRMAN SPENCER: Okay. You need to
25 contact Ms. Ray here for making arrangements. Do you

1 have a pen there? Or do you have the number of the
2 office?

3 MR. MAURIZIO: Yes, sir, I do.

4 BOARD CHAIRMAN SPENCER: Okay. Then please
5 call her, and she'll make those arrangements with you.

6 Any other questions?

7 MR. MAURIZIO: No, sir.

8 BOARD CHAIRMAN SPENCER: All right. Thank you
9 very much for coming.

10 MR. MAURIZIO: I just have one. What was her
11 name again? The woman I have to contact?

12 BOARD CHAIRMAN SPENCER: Ms. Ray.

13 MR. MAURIZIO: Ray?

14 BOARD CHAIRMAN SPENCER: Ray.

15 MR. MAURIZIO: Thank you.

16 MR. MENICUCCI: I think, we'd like to go back
17 to Mr. Thomas.

18

19 AGENDA ITEM 2

20 JAMES THOMAS, DBA JIM THOMAS & ASSOCIATES

21

22 BOARD CHAIRMAN SPENCER: Let's go back to the
23 item number two, the disciplinary hearing, James Thomas,
24 dba James -- or, excuse me -- Jim Thomas & Associates.

25 Good morning.

1 MR. YAMPOLSKY: Good morning. I'm Mace
2 Yampolsky here on behalf of Mr. Thomas. I'd like to
3 apologize for the Board. I was in district court. They
4 didn't run as quickly as I had hoped.

5 BOARD CHAIRMAN SPENCER: That's quite all
6 right. We have another go-around, plenty of time.

7 MR. YAMPOLSKY: I have been speaking with
8 Mr. Menicucci, and, I believe, we've come to a tentative
9 resolution pending the Board's approval. And I would
10 appreciate if he would state the terms we discussed.

11 BOARD CHAIRMAN SPENCER: All right.

12 MR. MENICUCCI: I sure will.

13 This -- just a little background. This is a
14 complaint that was received by the Board regarding
15 Mr. Thomas, well, two matters. One was his use or
16 employment of an independent contractor who did not have
17 the appropriate license to do investigations.
18 Mr. Thomas answered and admitted that.

19 The other had to do with Mr. Thomas's
20 acquisition of criminal histories in an unauthorized
21 manner. Mr. Thomas did not admit that. But he is --
22 but the resolution that we proposed is that there be a
23 \$2,000 fine for Mr. Thomas, and he's have a year to pay
24 that; that he will be placed on probation for a period
25 of six months, or if he has not paid the fine within

1 that time, up to one year; that he would have to, during
2 the period of probation, submit monthly reports to the
3 Board regarding his business activities; and, of course,
4 be subject to audit from Board investigators not only
5 with regards to employees, but also investigations
6 concerning criminal backgrounds, if necessary; and then
7 he would appear again before the Board in six months for
8 the Board to talk with him, and he can report to the
9 Board regarding the status of his business.

10 It is my understanding that his business is not
11 doing real well. That's why he's asking for the period
12 of time to pay the fine. This is in -- with regards to
13 the acquisition of information regarding criminal
14 histories, this is in the nature of what the criminal
15 attorneys, I think, call the Alford plea. He's not
16 admitting guilt at this time but understands that the
17 Board could make an order against him for a fine and
18 period of probation.

19 MR. YAMPOLSKY: That's accurate.

20 BOARD CHAIRMAN SPENCER: That's accurate?

21 MR. YAMPOLSKY: That is accurate. Yes. I
22 don't know if you heard me. Yes, that is our
23 understanding.

24 MR. MENICUCCI: Okay. Mr. Thomas is here.
25 He's here in Carson City. I don't know if the

1 complaining witness is here or not. But that is the
2 resolution that Mr. Yampolsky and I discussed. I could
3 recommend it to the Board from my standpoint being a
4 reasonable resolution in this matter.

5 BOARD CHAIRMAN SPENCER: Thank you.

6 Are there any questions or comments from the
7 Board?

8 BOARD MEMBER CRATE: It is my understanding
9 that the complaint, and I'm just not reading it --

10 BOARD MEMBER GRASSO: There's somebody in
11 Las Vegas who wishes to speak on this issue.

12 BOARD MEMBER CRATE: It's my --

13 BOARD CHAIRMAN SPENCER: He'll have his time.

14 BOARD MEMBER CRATE: It's my understanding that
15 this complaint alleges over 200 unauthorized scope
16 reports or access.

17 MR. MENICUCCI: There were a number of them. I
18 don't know the exact.

19 BOARD MEMBER CRATE: Violations of both federal
20 and state law are alleged.

21 MR. YAMPOLSKY: I don't think that's
22 appropriate for this Board to consider. Because it's my
23 understanding that Mr. Thomas is a defendant in a
24 federal lawsuit. And that is why we worked out this
25 resolution to involve what is, essentially, an Alford

1 plea, where Mr. Thomas is not admitting specific
2 allegations. Because that would adversely affect the
3 federal court litigation. And if that were the case, we
4 would move to continue this until that litigation was
5 concluded, which could take several years. So we wanted
6 to address this now at this time.

7 BOARD MEMBER CRATE: Counsel, counsel, my only
8 question was to confirm the nature of the complaint, not
9 his admission of guilt.

10 MR. YAMPOLSKY: I believe, Mr. Manicotti is in
11 a better position -- Menicucci -- excuse me --

12 MR. MENICUCCI: Thank you.

13 MR. YAMPOLSKY: -- than myself.

14 BOARD MEMBER CRATE: To do what?

15 MR. MENICUCCI: The Board has the notice that
16 we sent to Mr. Yampolsky -- excuse me -- his client,
17 Mr. Thomas. And then his counsel, Mr. Yampolsky,
18 contacted us. And the hearing was requested in the
19 electronic data in the answer that was supplied by
20 Mr. Yampolsky for his client.

21 If the Board would proceed, in my opinion, the
22 charge against Mr. Thomas would be one of unprofessional
23 conduct in acquiring the scope reports from people who
24 should not have given it to him.

25 BOARD CHAIRMAN SPENCER: An unprofessional

1 conduct citation, is it limited by the same fee
2 structure?

3 MR. MENICUCCI: No.

4 BOARD CHAIRMAN SPENCER: I didn't think so.

5 All right. Are there any further comments from
6 the Board? Lois, do you have anything?

7 BOARD MEMBER GRASSO: No.

8 BOARD MEMBER PUTNAM: Mr. Chairman, I have a
9 comment.

10 BOARD CHAIRMAN SPENCER: Please.

11 BOARD MEMBER PUTNAM: In reading through this,
12 I see that Mr. Thomas refuses to identify his sources.

13 MR. MENICUCCI: I believe, that's correct. He
14 doesn't want to burn the people that he talked to.

15 BOARD MEMBER PUTNAM: Well, pardon me, sir, but
16 is that -- is that not obstructing? I mean what's --

17 MR. MARCHER: I think, that's probably going to
18 be part of what they're talking about in federal court.

19 MR. MENICUCCI: I think, he's in litigation
20 that's dealing with that issue at the moment.

21 MR. YAMPOLSKY: That's correct.

22 BOARD CHAIRMAN SPENCER: Okay. I'll ask this
23 as a general question of the Board. Is anyone against
24 this settlement agreement?

25 BOARD MEMBER CRATE: I would be.

1 BOARD CHAIRMAN SPENCER: Okay. Can you state
2 your reason, please?

3 BOARD MEMBER CRATE: It just seems that the
4 nature of the offense or the complaint, if it were
5 pursued and found to be upheld, would be cause to revoke
6 the license --

7 BOARD CHAIRMAN SPENCER: Yeah.

8 BOARD MEMBER CRATE: -- ultimately, which, I
9 think, is in the general public -- based on preliminary
10 information we have, is in the general public's best
11 interest. It seems to be one of the more egregious
12 concerns that we deal with as far as the potential to
13 access privileged information.

14 And so I would be more comfortable deferring
15 this, on the second citation, a hearing on that, until
16 his other legal issues are resolved, and then take it
17 up.

18 And I understand the first charge of -- that we
19 take an action today to the first complaint of employing
20 a nonlicensed person.

21 MR. MARCHER: Well, Dan, I don't think that's
22 the way this is structured. The way this is structured
23 is you either take the settlement agreement for the
24 whole complaint, or you continue this until some later
25 time. I don't think you're bifurcating the charges

1 today.

2 BOARD MEMBER CRATE: We don't have the option
3 to deal with each individually?

4 MR. MARCHER: You do if they agree to it, but I
5 don't think that's what the agreement is.

6 MR. YAMPOLSKY: No, our agreement was a global
7 settlement. As a matter of fact, Mr. Menicucci and I
8 discussed each complaint in -- in -- as a separate
9 offense. And based on, you know, the amount of fine
10 recommended and the actual punishment or sanctions, it
11 was contemplated that this would cover each and every
12 allegation that's in front of the Board.

13 And, generally, that's the way it's done, is a
14 global settlement. And this way, it's resolved for
15 everybody. The Board -- for a year, Mr. Thomas will
16 make monthly reports. And if the Board feels that
17 something is inappropriate, obviously, it can be put
18 pack on calendar to be specifically addressed.

19 BOARD CHAIRMAN SPENCER: So. I'm not going to
20 bother to argue with you. I, too, am not against the --

21 MR. MARCHER: Well, yeah, your options are to
22 accept it or reject it. So I mean the easy motion is
23 just somebody just makes a motion, and it's either
24 accepted or rejected. And then, after that, it is just
25 voted on, and we can proceed.

1 BOARD CHAIRMAN SPENCER: All right. I'll
2 entertain a motion.

3 BOARD MEMBER CRATE: Mr. Chairman, I would move
4 to reject the offer of a settlement at this time.

5 BOARD CHAIRMAN SPENCER: Is that a motion?

6 BOARD MEMBER CRATE: That's a motion.

7 BOARD CHAIRMAN SPENCER: Do we have a second?

8 BOARD MEMBER PUTNAM: Second.

9 BOARD CHAIRMAN SPENCER: The motion is
10 seconded. All in favor, signify by saying "aye."

11 (The Board Members said, "aye.")

12 BOARD CHAIRMAN SPENCER: Opposed?

13 Hearing none, the motion to rejected.

14 MR. MARCHER: Okay. Now, what you do is you
15 rejected the settlement agreement, so you have a
16 complaint in front of you. You have to decide whether
17 or not you're going to go forward with that complaint or
18 you're going to continue the matter to a later date.

19 BOARD CHAIRMAN SPENCER: And we'll continue the
20 matter to a later date.

21 MR. MARCHER: You should get a motion for that.

22 BOARD MEMBER CRATE: Yeah, at this point, do we
23 have the option of hearing each complaint separately,
24 adding on each individual complaint?

25 BOARD CHAIRMAN SPENCER: Yeah, two separate

1 complaints.

2 MR. MENICUCCI: There's one complaint with two
3 charges. Mr. Thomas has admitted the employment charge
4 in his answer.

5 BOARD CHAIRMAN SPENCER: So there are not two
6 separate citations?

7 MR. MENICUCCI: No. And it's contested the
8 allegations regarding the criminal background.

9 BOARD CHAIRMAN SPENCER: Could I have a motion?

10 BOARD MEMBER CRATE: Is counsel prepared to
11 present the case today, or what's counsel's
12 recommendation?

13 MR. MENICUCCI: If the Board decides to go
14 forward, I'm prepared to present a case. But I know
15 Mr. Yampolsky has reasons that he thinks that it ought
16 to be continued because of the pending litigation
17 involving the certain act.

18 MR. YAMPOLSKY: In addition, the pending
19 litigation, which, since it's federal court, I believe,
20 takes precedence over even state court or any state
21 agency. And due to the fact that Mr. Menicucci and I
22 had, I believe, resolved the matter, had a tentative
23 resolution at this age stage of the game, I am not
24 prepared to go forward.

25 So I would request that we continue this. And

1 if, in fact, we do continue this, I would request that
2 this be continued until the federal litigation has been
3 concluded.

4 MR. MARCHER: Well, let me say, it doesn't, the
5 federal litigation doesn't necessarily, quote, unquote,
6 take precedence over this proceedings. The Board's free
7 to proceed with its administrative complaint against the
8 individual at any time.

9 But if you're not ready to go forward today,
10 you know, it is, it is typical to grant a one-time
11 continuance to the requester and then have counsel work
12 out with the other attorney when they're going to bring
13 the case forward.

14 MR. YAMPOLSKY: I would request a continuance
15 based on those parameters.

16 BOARD CHAIRMAN SPENCER: My recommendation
17 would be we continue this matter till the next quarterly
18 Board meeting. And if it's able to be presented at that
19 time, we'll hear it on the second day. That is a
20 motion.

21 BOARD MEMBER CRATE: Second.

22 BOARD MEMBER PUTNAM: Second.

23 BOARD CHAIRMAN SPENCER: Motion and second.

24 All in favor, signify by saying "aye."

25 (The Board Members said "aye.")

1 BOARD CHAIRMAN SPENCER: Opposed?

2 It is so.

3 MR. YAMPOLSKY: So Mr. Menicucci and I will get
4 together?

5 MR. MENICUCCI: Yes, I think, that's the
6 Board's motion, that we'll get-together --

7 BOARD CHAIRMAN SPENCER: Right.

8 MR. MENICUCCI: -- and arrange another date.

9 MS. RAY: Mr. Chairman, our regularly scheduled
10 meeting for December is the 9th and 10th, if that helps.

11 MR. MENICUCCI: I'm not sure that's a
12 sufficient continuance for --

13 MR. YAMPOLSKY: No, it's not.

14 BOARD CHAIRMAN SPENCER: No.

15 MR. MARCHER: How about you just -- I mean just
16 work it out and bring it back when you can. I mean it's
17 going to be you bringing a complaint forward at some
18 point. So.

19 BOARD MEMBER PUTNAM: Well, the motion will
20 need to be changed.

21 MR. MARCHER: Well, it doesn't need to be
22 changed.

23 BOARD MEMBER PUTNAM: Okay.

24 BOARD MEMBER GRASSO: Because, I think, what
25 you could do at the next meeting is either bring it back

1 at the next meeting, or you can come back and let the
2 Board know what's going on with regard to this case.

3 BOARD MEMBER PUTNAM: Okay.

4 BOARD CHAIRMAN SPENCER: That's what the motion
5 is.

6 MR. MARCHER: Okay. All right.

7 BOARD CHAIRMAN SPENCER: Okay. Next is item
8 number four.

9

10 AGENDA ITEM 4

11 DAVID NIENBERT OF SHADOWSHOPPER.COM LLC

12

13 MS. RAY: Mr. Chairman, Mr. Nienbert requested
14 a continuance to the next meeting and would request, if
15 possible, that they be allowed to participate via
16 telephone conference. I don't know how the Board feels
17 like that. But that was his request.

18 BOARD CHAIRMAN SPENCER: I don't object to
19 that. I move that it be continued to the next meeting,
20 and if no objection, a telephone conference involved.

21 MS. RAY: You want a telephone conference?

22 BOARD CHAIRMAN SPENCER: I said if no one
23 objects.

24 BOARD MEMBER CRATE: I don't.

25 BOARD CHAIRMAN SPENCER: Do you have a second?

1 BOARD MEMBER CRATE: Second.

2 BOARD CHAIRMAN SPENCER: All in favor, signify
3 by saying "aye."

4 (The Board Members said "aye.")

5 BOARD CHAIRMAN SPENCER: Opposed?

6 It is.

7

8 AGENDA ITEM 5

9 CHARLES EVERHARDT OF ARMOR RECOVERY & INVESTIGATIONS

10

11 BOARD CHAIRMAN SPENCER: Item number five,
12 Charles Everhardt, Armor Recovery & Investigations.

13 Good morning, sir.

14 MR. EVERHARDT: Good morning.

15 BOARD CHAIRMAN SPENCER: How are you today?

16 MR. EVERHARDT: I'm well, thank you. How are
17 you?

18 BOARD CHAIRMAN SPENCER: Good, thanks.

19 Counsel?

20 MR. MENICUCCI: Okay. before we start, do we
21 have documents for Mr. Everhardt?

22 MR. MURPHY: Yes, we do.

23 MR. EVERHARDT: Thank you.

24 MR. MARCHER: At some point, are you going to
25 move for the admission of that packet?

1 MR. MENICUCCI: Yes.

2 MR. MARCHER: Okay. So, Mr. Everhardt, why
3 don't you take a look at that right now. We know
4 counsel's going to move for the admission into evidence
5 of all that information. So after you look at it, let
6 me know if you have any objection to any of those
7 documents.

8 (There was a pause in the proceeding.)

9 MR. EVERHARDT: No objection.

10 MR. MARCHER: Okay. So by stipulation, then,
11 we could deem those admitted.

12 MR. MENICUCCI: For the record, those are
13 documents one through 52.

14 Investigator Whatley.

15

16 T A M M Y W H A T L E Y,
17 having been previously sworn by Board Counsel,
18 was examined and testified as follows:

19

20 DIRECT EXAMINATION

21 BY MR. MENICUCCI:

22 Q. Investigator Whatley, did you issue the
23 citation which is the documents one, two, through three?

24 A. Yes, I did.

25 Q. And tell me what caused you to issue that

1 unlicensed business citation, the citation.

2 A. Our office received a written complaint.

3 Q. And what did you do in response to that
4 claimant?

5 A. In response to that complaint, I initially
6 checked our data base to see if Armor Recovery on
7 Charles Everhardt or any of the other people involved
8 all of them totally or some of them totally were
9 licensed with the P.I. Board, and they are not. I then
10 continued my investigation.

11 Q. What were they allegedly doing?

12 A. Repossessing vehicles.

13 Q. Did you obtain some insurance information,
14 insurance documentation regarding the Armor Recovery &
15 Investigations?

16 A. Yes, I did.

17 Q. Can you see if you can identify that in the
18 packet, the? I give you page nine.

19 A. Yes.

20 Q. Okay. How did you get the information?

21 A. I actually had been given information stating
22 that they had obtained insurance, that Armor Recovery
23 and Charles Everhardt had obtained insurance, given a
24 check, and then cancelled the check after receiving the
25 documentation. They were use that is documentation,

1 then, to show that they did have current insurance.

2 Q. Page 11, is that a copy of the check you were
3 supplied?

4 A. Yes.

5 Q. On page 14, it's entitled Binder for Armor
6 Recovery & Investigations, Description of Risks, and it
7 says "Auto repossession and recovery"; is that correct?

8 A. That is correct.

9 Q. There is a truck application and a tow truck
10 supplement on 15 and 16, correct?

11 A. Correct.

12 Q. And then there's an application that's signed
13 on page 19?

14 A. Yes, correct.

15 Q. And on page 20?

16 A. Correct.

17 Q. The document on page 24 is from the insurance
18 company; is that correct?

19 A. That's Correct.

20 Q. Entitled "Recovery" in the upper right-hand?

21 A. Correct.

22 Q. In the middle of the page, it's a detailed
23 description of business activities, towing and car pick
24 up?

25 A. Correct.

1 Q. Does it list the managers of the business?

2 A. Yes, it does.

3 Q. And who does it list?

4 A. Aldo Datoli and Charles Everhardt.

5 Q. And does the application on page 31 appear to
6 be signed by Charles Everhardt?

7 A. Yes, it does.

8 Q. And just to refresh my recollection, you got
9 this from whom?

10 A. This was from Farmers Insurance.

11 Q. Is page 34 another application for
12 Mr. Everhardt?

13 A. Yes.

14 Q. And 35?

15 A. Yes.

16 Q. And, also, 36?

17 A. Yes.

18 Q. Did any contact with an individual named Joe
19 Montana?

20 A. Yes, I did.

21 Q. What did you find out from Mr. Montana?

22 A. Basically, Mr. Montana reported that he was
23 approached by Mr. Everhardt, wanting to purchase his
24 towing company, Towinator, and use the trucks for
25 repossessions.

1 Q. Did Mr. Montana supply any documentation to
2 you?

3 A. Yes, he did.

4 Q. I ask you to look at pages 45, 46 and 47 and
5 all the way to page 49. Is that information that you
6 got from Mr. Montana?

7 A. That is correct.

8 Q. Does it appear to be a letter or correspondence
9 from Mr. Everhardt to Mr. Montana?

10 A. Yes, it does.

11 Q. Okay. On page 45, in the third paragraph, do
12 you see where it states "As you know, my primary goal is
13 to build a large auto repossession business here in
14 Las Vegas"?

15 A. Yes, it does say that.

16 Q. Is that what Mr. Montana also told you the goal
17 of his business was?

18 A. Yes, that is correct.

19 Q. Did Mr. Montana end up doing business with
20 Mr. Everhardt?

21 A. No.

22 Q. I ask you to look at documents numbered 50, 51
23 and 52. Can you tell me who HSBC is?

24 A. It is a lienholder, a financial institution
25 that had contracted with Armor Recovery for vehicle

1 repossessions.

2 Q. Okay. Did they supply you with the
3 information?

4 A. Yes, they did.

5 Q. Is the information they supplied part of the
6 documents 50 through 52?

7 A. Yes, it is.

8 Q. I ask you to look at document number 52,
9 please.

10 A. Okay.

11 Q. It appears to be on the logo of Armor Recovery
12 Solutions, Inc., and Justice, Inc. Do you see that?

13 A. I do see that.

14 Q. And could you please read to the Board what it
15 says.

16 A. To whom it may concern, please be advised that
17 the Nevada Private Investigators Licensing Board has
18 issued you a license, number 745, under Chapter 648. We
19 anticipated receiving the physical -- we anticipated
20 receiving the physical license in the mail within the
21 next four to six weeks. Thanks for your time. And it
22 is signed Aldo Datoli, Vice President, Armor Recovery.

23 Q. And where did you get that?

24 A. From -- from S -- HSBC.

25 Q. So this was something that was supplied to you

1 from HSBC. How did they get it; did they tell you?

2 A. They said it was provided to them from Armor
3 Recovery.

4 Q. Did you check to see whether license number 745
5 was ever issued to anyone associated with Armor
6 Recovery?

7 A. It is not issued to anyone associated with
8 Armor Recovery. It is Charles McChesney's, which is
9 Justice, Inc. And I did talk to him, and I was provided
10 with a written response from him, that he was not in
11 business with them and he did not authorize such
12 letterhead.

13 MR. MENICUCCI: I have no further questions for
14 Investigator Whatley. I believe, there may be other
15 witnesses present.

16 BOARD CHAIRMAN SPENCER: Sir, you have the
17 opportunity to cross Ms. Whatley, if you'd like to, now,
18 to ask her any questions you think are appropriate.

19 MR. EVERHARDT: Sure. Well, you covered a lot
20 of territory. Let me see if I can remember every
21 allegation.

22 To start, Armor Recovery and Solutions of Deer
23 Park, Illinois, is a company that is -- that has the
24 relationships with the banks, and it enjoys the ability,
25 through the proper licensing in Illinois, to do

1 automobile recovery in the state of Illinois. It was
2 through that relationship that I built a motto, business
3 motto, that, basically, set up for the ability of them
4 to send out orders, order -- repossession orders to us
5 with the company that I formed that I incorporated
6 herein in Nevada. Therefore, I --

7 MR. MARCHER: Mr. Everhardt, let me interrupt
8 you just for a second. This, this is a time for you
9 go -- you'll be able to present your case a little bit
10 later. This is a time for you specifically to ask any
11 questions of the Board's investigator, if you have any.

12 MR. EVERHARDT: I am. I'm going to that.

13 MR. MARCHER: Okay.

14 MR. EVERHARDT: Just kind of prefacing the
15 foundation, because I think it's all relevant to the
16 questions on cross-examination.

17 MR. MARCHER: Okay.

18 MR. EVERHARDT: So. So when the investigator
19 refers to HSBC as giving orders directly to my company
20 down here, it never did give any orders to my company
21 down here. There was orders that were given to Armor up
22 in Illinois. And my primary focus was to refer those
23 out. I'm in a referral company.

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CROSS-EXAMINATION

BY MR. EVERHARDT:

Q. So based on that, I guess, is the first point. My question is, when you talked to HSBC, did you ask that, did any of the orders go to my company here in Nevada?

A. That may not have been a specific question, but conversations that we had, they provided documentation where they asked you to provide them proof of licensure in Nevada, and you provided them with a false document.

Q. Okay. That's not true. I met with Mr. McChesney. Did he mention that to you?

A. Excuse me?

Q. I met with Mr. McChesney. Mr. McChesney is the licenseholder of number 745.

A. I have --

Q. Did he mentioned that I met with him?

A. I have spoken to him.

Q. And did he mention that I met with him on a number of occasions?

A. Yes. One -- Excuse me. Let me backtrack.

May I refer to my notes, please?

BOARD CHAIRMAN SPENCER: Sure.

MR. EVERHARDT: Yeah.

MS. WHATLEY: Yes. The correspondence does

1 state that he met with you in person two or three times,
2 because you wanted to hire him for possible
3 skip-tracing. However, he reviewed the contract and
4 discussed the potential of -- one moment.

5 It says, in short, "In short story, is that I
6 was unwilling to work for the possibility of getting
7 paid." Therefore, there was not -- he did not work for
8 you.

9 BY MR. EVERHARDT:

10 Q. That is correct. So the relationship -- And
11 I'm going to ask you another question on this. The
12 relationship between myself and Mr. McChesney was that I
13 approached him to do two things. It wasn't just
14 skip-tracing. It was skip-tracing and door-knocking. I
15 asked Mr. McChesney if he would provide a letter or an
16 e-mail, and I have that e-mail, that, basically, says
17 that, you know, for the purposes of doing door-knocking
18 and skip-tracing, I will be willing to work with you,
19 providing the documentation and an acceptable contract.

20 I, in turn, sent that out to a number of --
21 there are different lenders, including HSBC, but a
22 number of other lenders, including Wachovia and Chase.

23 And I asked Mr. McChesney if I could represent
24 that he was the one in his license to do the
25 door-knocking and skip-tracing, and he said yes. If you

1 were to go back and ask him, I'm sure he would recall
2 his memory.

3 So when I went off this letter, or when
4 Mr. Datoli sent this letter off, we specifically
5 identified the purpose of Mr. McChesney's license,
6 number 745, for the purpose of only skip-tracing and
7 door-knocking. Because all these companies have
8 separate requests to be able to follow through.

9 So for Mr. McChesney and the license
10 standpoint, it wasn't something that was falsely
11 submitted. It was with his -- it was with his
12 authorization, and it's for that purpose.

13 In turn, Wachovia sent us a purchase agreement,
14 a purchase -- an agreement to do services. And I showed
15 that to Mr. McChesney. And, in turn, he said he wanted
16 guaranteed fund versus, you know, on the cuff.

17 So that's my, you know, response on that. And
18 I take it that you did not ask him or he did not
19 volunteer the depth of that conversation?

20 A. I have a written response here.

21 Q. But it didn't outline the fact that he
22 authorized me to use his company's name and license to
23 do --

24 A. He told me --

25 Q. -- door-knocking?

1 A. He told me he did not authorize you to use his
2 information.

3 Q. Well, I have to -- you know, I'll produce for
4 this committee an e-mail that will show that he did.

5 BOARD CHAIRMAN SPENCER: Do you have that with
6 you, and could give it to --

7 MR. EVERHARDT: I don't, but I will do it
8 today.

9 MS. WHATLEY: Is Mr. McChesney present?

10 MR. EVERHARDT: I'm sorry?

11 BOARD MEMBER GRASSO: Yes, he is present.

12 MR. EVERHARDT: The second item refers to the
13 insurance, the insurance application with Farmers. And
14 I did apply for insurance. However, the insurance, the
15 trucks that we were applying were not owned by me or my
16 company. They were owned by Mr. Adray, who, I believe,
17 was the one that filed the initial complaint. And there
18 was some issues between him and our company. So I think
19 he did this out of malicious intent.

20 But he told us that he was -- he owned two
21 trucks, and the only way that he would be able to go out
22 and repossess cars was based on us providing him with
23 the insurance. But, again, we were referral. He did
24 not work for us. He's not an employee. It wasn't a
25 relationship that I had where he was, um, taking any

1 orders. It was just simply a referral. And he was his
2 own person, his own company, doing his own, you know,
3 business as an outside -- as an outside contractor. I
4 was specifically a referral.

5 So anything that has to do with this insurance,
6 yes, I placed it, yes, I wrote the check, and, yes, I
7 made sure that it was covering his trucks. But it was
8 not in the purpose of owning it on behalf of my company.
9 Okay.

10 BY MR. EVERHARDT:

11 Q. So, I guess, the question is, can I ask who was
12 the original complainant?

13 MR. MENICUCCI: Yes.

14 MS. WHATLEY: Joe Montana was the original
15 complainant.

16 BY MR. EVERHARDT:

17 Q. Okay. And did Mr. Adray have any additional --
18 did he file a complaint as well?

19 A. Yes.

20 Q. He filed a complaint. Okay. And when you
21 originally sent me the original citation, you mentioned
22 that you tried to go to the property and take pictures,
23 and you couldn't do it. And then, thereafter, either
24 you authorized or you received pictures. But nobody had
25 permission to go to that property.

1 So I'm very curious of, you know, why is it
2 that people are taking the ability to break and enter
3 into a property in order to get you evidence? Is that a
4 fair question to ask?

5 A. Actually, you have your facts incorrect.
6 Investigator Murphy and I did drive by 170 East
7 Windmill. We did not attempt to stop and take pictures.
8 When we drove down the street and determined -- looking
9 at traffic and the way that the structure was, we did
10 not attempt to stop. And we did not even have a camera
11 in our possession to take pictures.

12 And it was upon my return back to Reno from
13 that trip that I had pictures e-mailed to me of that
14 property. And I recognized it to be that property from
15 my drive-by.

16 Q. That's exactly what I said. I said you didn't
17 go on there, but you were encouraging people to go on my
18 property, to go on it -- it wasn't my property, but go
19 on the property, and in an illegal fashion, to take
20 pictures.

21 A. I had never met or spoken to the person that
22 provided the pictures prior to the pictures arriving on
23 my computer.

24 Q. You never, you never spoke to the people that
25 provided the pictures?

1 A. Not until after I received the pictures, and
2 then I called them to discuss the pictures.

3 Q. Were the pictures different than the person who
4 made the complaint?

5 A. Yes. The original complaint.

6 Q. Well, all right. So there were more than one
7 complaint?

8 A. That's correct.

9 Q. So Mr. Adray and Mr. Montana both made
10 complaints. Were the pictures from one of those two?

11 A. Yes, they were.

12 Q. Okay. So they were, they were trying to gather
13 evidence to give you, so you could get a citation out to
14 me, and through their ability of entering and
15 trespassing on the property, they did that?

16 A. I cannot speculate. I don't know if they
17 trespassed. I don't know if they had a legal right to
18 be there. I received the pictures.

19 Q. They did not. At that point in time, they did
20 not. Okay.

21 All right. So that, the application is the
22 second point that you addressed, and I asked you on
23 that.

24 As far as the e-mail from Joe Montana, you
25 know, my initial goal, and it probably still is a goal

1 of mine, is to form an actual automobile repossession
2 company here in Nevada, by way of application for a
3 license. But I tried to -- my relationship with
4 Mr. Montana was not to -- not -- to purchase a portion
5 of his own company, but it was never to buy the whole
6 company. It was to buy a 50 percent ownership in his
7 company. And by doing so, it was a different business.
8 It was a business that he had licensed to do, towing,
9 and that was something that was completely different.

10 My e-mail says that I do have a desire to open
11 a large investigate -- a repossession company. However,
12 you know, what I actually did was only do a referral
13 business.

14 So to clarify, so let me ask you the question,
15 that you've included this e-mail as evidence, think that
16 kind of interpreting that my intention to open a large
17 repossession business is evidence to -- to issue a
18 citation?

19 A. That was a part of the investigation.

20 Q. So you've interpreted my ruling and desire to
21 open a repossession business as an illegal act?

22 A. The -- the e-mail that I included was a part of
23 the initial complaint. Therefore, I included it in my
24 report.

25 Q. So it was your interpretation that my desire to

1 do so gave you enough foundation to continue the
2 investigation?

3 A. Because we received a written complaint in our
4 office, it is my obligation to fully investigate it, and
5 it was the full investigation that was -- resulted in a
6 citation.

7 Q. Okay. Did I miss? I think, there was another
8 category that you referred to. And I have a lot of
9 pages here. So can you just help me for a moment and
10 just tell me, was there, was there something I'm missing
11 here, as far as this goes?

12 A. I have no idea what you're asking of me.

13 Q. Oh, I'm sorry. Who was the gentleman that was
14 originally speaking to me?

15 MR. MENICUCCI: Are you asking for counsel?

16 MR. EVERHARDT: Yes. What's your name, sir?

17 MR. MENICUCCI: You're speaking to Jeff
18 Menicucci, Deputy Attorney General.

19 MR. EVERHARDT: Jeff. Okay. Menicucci?

20 MR. MENICUCCI: Yes.

21 MR. EVERHARDT: Okay. Well, when we initially
22 started, and we talked about evidence and having these
23 as exhibits, we talked about the HSBC, we talked about
24 the insurance application, we talked about the e-mail
25 from Joe Montana, and we talked about the LOC. Was

1 there any other things that I'm missing? Only because
2 there's a lot of documents here, and I'm asking you for
3 a little help.

4 MR. MENICUCCI: You'll have the opportunity
5 later to present anything that you would like in your
6 case, sir.

7 MR. EVERHARDT: No, I'm trying to, I'm trying
8 to focus on asking Ms. Whatley on this questioning.

9 MR. MENICUCCI: Well, she's not going -- yeah,
10 she's not going away. So if something else comes up
11 that you need to ask her, I'll agree that she can come
12 back to answer further questions.

13 MR. EVERHARDT: Okay. And, I think, I've
14 covered it, my questioning of her.

15 MR. MENICUCCI: Is there anything from the
16 Board?

17 BOARD CHAIRMAN SPENCER: I'm sorry?

18 MR. MENICUCCI: Does the Board have any
19 questions of Ms. Whatley?

20 BOARD CHAIRMAN SPENCER: I have none.

21 BOARD MEMBER CRATE: No.

22 BOARD MEMBER PUTNAM: No.

23 MR. MARCHER: Lois, any questions?

24 MS. GRASSO: Thank you, Ms. Whatley.

25 MR. MARCHER: No, thank you.

1 MR. MENICUCCI: Do we have other witnesses
2 prepared to testify in this matter? Is Mr. Adray there?

3 MR. EVERHARDT: Yeah.

4 BOARD MEMBER GRASSO: Yes, he is.

5 MR. MENICUCCI: Could you have him come
6 forward, please.

7 BOARD CHAIRMAN SPENCER: Mr. Everhardt?

8 MR. EVERHARDT: Yes?

9 BOARD CHAIRMAN SPENCER: Could you take a seat
10 there, behind you there, so that this gentleman can
11 testify, please.

12 MR. EVERHARDT: Sure.

13 BOARD CHAIRMAN SPENCER: Thank you.

14 Good morning.

15 MR. ADRAY: Good morning.

16

17 R A Y A D R A Y,

18 having been previously sworn by Board Counsel,

19 was examined and testified as follows:

20

21 DIRECT EXAMINATION

22 BY MR. MENICUCCI:

23 Q. All right. Mr. Adray, my question to you is do
24 you have information that you could give to the Board
25 regarding whether Mr. Everhardt or Armor Recovery &

1 Investigations performed any repossession business?

2 A. I had done that prior. I don't have any
3 documents with me.

4 Q. Okay. Do you have any personal knowledge?

5 A. Personal knowledge, yes.

6 Q. Did they do any repossession business, in your
7 knowledge?

8 A. Yes.

9 Q. Tell the Board, if you would, what was done.

10 A. Basically, I met with Mr. Everhardt. He wanted
11 to contract my trucks to do repossessions. And that's
12 exactly what they did.

13 Q. Okay. So they did contract with you to use
14 your trucks for repossessions, right?

15 A. Right.

16 Q. Okay. How do you know that?

17 A. Because they were using them and taking them to
18 the lot at 170 Windmill. Which, by the way, my locks
19 and my keys were on the doors of that place.

20 Q. You had access to it?

21 A. I had full access to it.

22 Q. Were you ever an employee of Armor Recovery &
23 Investigations?

24 A. Hm, no, I wouldn't say an employee.

25 Q. Were you an investigator of any kind?

1 A. Basically, just contracted my trucks to them.

2 Q. Did you drive the trucks?

3 A. No.

4 Q. Someone else used your trucks, correct?

5 A. Correct.

6 Q. Were you involved in any way in getting
7 insurance on those vehicles?

8 A. Um, inadvertently, I was checking in to see
9 when the insurance was put on the trucks. That was
10 about it. Everything else was handled by Armor or
11 Charles.

12 Q. So it was your arrangement with Mr. Everhardt
13 that, if he was going to be using your trucks, he had to
14 provide insurance?

15 A. At least put the insurance on the trucks, yes,
16 in their name.

17 Q. Did you ever learn that that insurance was
18 cancelled?

19 A. Um, I learned that the insurance wasn't exactly
20 what was required and, then, also, that the insurance
21 was switched to another carrier, or was being attempted
22 to be switched to another carrier.

23 Q. What's the current status of those trucks?

24 A. Um, they're parked.

25 Q. Where?

1 A. Um, they're parked at my house.

2 Q. Okay. So you took possession back?

3 A. Correct.

4 Q. When did you do that?

5 A. The day I took those pictures.

6 Q. Can you give us a time frame?

7 A. Uh, it had to be in February, but I can't
8 remember the exact date.

9 Q. How long did Mr. Everhardt have possession of
10 your trucks?

11 A. The company was using my trucks for, I don't
12 know, probably two to three months from approximately,
13 probably January to February, maybe even a month or two.
14 I think, we started all that in December actually, so it
15 kind of -- it was only about a two-month thing.

16 MR. MENICUCCI: Okay. I have no further
17 questions. Does Mr. Everhardt have questions of the
18 witness?

19 MR. EVERHARDT: I do.

20

21 CROSS-EXAMINATION

22 BY MR. EVERHARDT:

23 Q. Did we have an agreement together that I
24 contracted the trucks?

25 A. Verbal.

1 Q. Verbal agreement?

2 A. Verbal.

3 Q. And you say that I had them in my possession?

4 A. No, I never said you had them in your
5 possession. They asked if you had them in your
6 possession.

7 Q. Well, let's be clear. I heard, I heard you say
8 that the company had your trucks in the company's
9 possession.

10 A. No, I said that the company contracted the
11 trucks. I never said that they had them in their
12 possession. So I took the trucks. I closed the trucks
13 down and towed the trucks. The trucks with on 170
14 Windmill when I took them back.

15 Q. So whose --

16 A. I --

17 Q. I contend I never had possession of your
18 trucks.

19 A. Okay.

20 Q. And then I also contend that, you know, the
21 relationship was that if I have orders, and I gave you
22 orders, they were your drivers, and they were your
23 trucks.

24 A. I found them on the computer through Armor.

25 Q. No, you didn't.

1 A. Yeah, I did.

2 Q. They were your friends, and they were your
3 drivers. And I have, I have -- you know, I could get an
4 affidavit from Mr. Datoli that there were continuing
5 conversations saying, "They're my trucks and my drivers.
6 You pay me, and I'll pay them, the drivers."

7 A. He sent the checks to the drivers.

8 Q. He sent checks to you.

9 A. No, the drivers, to the drivers. Regardless of
10 what address they send the checks to, the checks are not
11 made out to me.

12 MR. EVERHARDT: Well, I'd like to be able to
13 substantiate some of these things by our correspondence,
14 probably -- I don't know if there's a procedure to allow
15 for a subsequent, you know, finding of facts.

16 MR. MARCHER: So you don't, you don't have any
17 of the documents with you today that you want to present
18 to the Board?

19 MR. EVERHARDT: You're asking me?

20 MR. MARCHER: Yes.

21 MR. EVERHARDT: Uh, not on these points that
22 we're discussing right now, which are the points of, you
23 know, who had the drivers, who paid the drivers, and the
24 possession of the trucks, I don't have them with me.

25 MR. MENICUCCI: Could I ask a question of

1 Mr. Adray?

2 MR. ADRAY: Yes.

3 MR. MENICUCCI: Was the 170 Windmill address
4 yours?

5 MR. ADRAY: No.

6 MR. MENICUCCI: Who owned that property or
7 controlled it?

8 MR. ADRAY: I don't know who.

9 MR. MENICUCCI: Who used it?

10 MR. ADRAY: I don't know who owns that
11 property.

12 MR. MENICUCCI: Who used the property, do you
13 know?

14 MR. ADRAY: Charles said that that's where the
15 cars were to be dropped after they were picked up.

16 MR. MENICUCCI: Charles?

17 MR. ADRAY: Everhardt.

18 MR. MENICUCCI: Everhardt?

19 MR. EVERHARDT: Yeah, it was in combination by
20 a business relationship with my dad. The banks asked if
21 I could accommodate them, so they could pick up and
22 transport the cars. So I made an accommodation for
23 them. And their transport went there to pick up the
24 cars. And I told Mr. Adray that, to drop the cars off
25 over there.

1 BOARD CHAIRMAN SPENCER: I have some questions.

2 MR. ADRAY: Okay.

3 BOARD CHAIRMAN SPENCER: Mr. Adray, are you a
4 licensed repossess -- reposessor?

5 MR. ADRAY: I was as of probably the 14th, not
6 state license but a sheriff's card.

7 MR. EVERHARDT: The 14th of what month?

8 MR. ADRAY: The 14th of this month.

9 BOARD CHAIRMAN SPENCER: The 14th. As of the
10 14th of this months, you're a licensed reposessor?

11 MR. ADRAY: Yes, in the sheriff's department,
12 not through the state. You know, not a business
13 license, but a reposessor's license.

14 BOARD CHAIRMAN SPENCER: Had you been a
15 truckdriver or I mean a truck owner before that?

16 MR. ADRAY: No.

17 BOARD CHAIRMAN SPENCER: Okay. So you just
18 purchased the trucks that he leased, just had them
19 around until you got the license?

20 MR. ADRAY: No. I -- I bought them
21 specifically for repossession. And I was told by a
22 gentleman up in Utah that if I purchased this truck,
23 then he would make everything happen to -- to get
24 contracts here legally, so I could be a part of a
25 repossession company. And these were also friends with

1 Armor Recovery.

2 As soon as I bought the truck, the gentleman
3 out in Utah stopped talking to me altogether. Then, all
4 of a sudden, I was introduced to Charles, and they said,
5 "Don't worry, we have everything taken care of. And
6 you're ready to go."

7 That's why I purchased the truck.

8 BOARD CHAIRMAN SPENCER: All right. The
9 location of Windmill --

10 MR. EVERHARDT: But you never leased the
11 trucks. There's no lease agreement. There's no -- You
12 use the word "lease." We do not have a legal
13 relationship.

14 BOARD CHAIRMAN SPENCER: The location on
15 Windmill, you said you had the locks at that location?

16 MR. ADRAY: I put a lock on it, yes.

17 BOARD CHAIRMAN SPENCER: And why was that?

18 MR. ADRAY: To keep the lock -- to keep the
19 yard secure.

20 BOARD CHAIRMAN SPENCER: Okay.

21 MR. ADRAY: Because there was no lock on it.

22 BOARD CHAIRMAN SPENCER: But it was someone
23 else's yard?

24 MR. ADRAY: Somebody else's yard, correct.

25 MR. EVERHARDT: And then, for the record, the

1 date that Ms. Whatley identified the pictures was much
2 after Mr. Adray was not -- was no longer having a
3 business relationship with us.

4 MR. ADRAY: That's not correct.

5 BOARD CHAIRMAN SPENCER: Did you ever see
6 anybody use those trucks to repo a car?

7 MR. ADRAY: Are you talking to me?

8 BOARD CHAIRMAN SPENCER: Yeah, you're the one
9 I'm talking to.

10 MR. ADRAY: Yes.

11 BOARD CHAIRMAN SPENCER: And who was driving
12 it?

13 MR. ADRAY: A gentleman named Frank.

14 BOARD CHAIRMAN SPENCER: And who is Frank?

15 MR. ADRAY: Uh, he was a gentleman that I met
16 that introduced me to the guy in Utah and, also, a
17 gentleman that introduced me to Charles. And we're --
18 we're really not on speaking terms anymore.

19 BOARD CHAIRMAN SPENCER: Who does Frank work
20 for? Who did Frank work for at the time he did the
21 repo?

22 MR. ADRAY: He was supposed to work for me, and
23 he ended up working for Armor.

24 BOARD CHAIRMAN SPENCER: Okay. I'll ask it
25 again. Who was he working at the time that the repo was

1 done?

2 MR. ADRAY: He was working for Armor.

3 BOARD CHAIRMAN SPENCER: I'm sorry?

4 MR. ADRAY: Because he was getting paid by
5 Armor.

6 BOARD CHAIRMAN SPENCER: Okay.

7 MR. ADRAY: He was getting paid by Armor.

8 BOARD CHAIRMAN SPENCER: Okay. Do you know
9 what Frank's last name is?

10 MR. ADRAY: Not offhand.

11 BOARD CHAIRMAN SPENCER: How many other repos
12 did you observe?

13 MR. ADRAY: Just a couple. I just seen the
14 cars showing up on the lot. That's all I knew.

15 BOARD CHAIRMAN SPENCER: So you don't even know
16 who did the repo, then?

17 MR. ADRAY: Yeah, there was really only one guy
18 that was doing them.

19 BOARD CHAIRMAN SPENCER: Who was that?

20 MR. ADRAY: That was Frank.

21 BOARD CHAIRMAN SPENCER: So you got two or
22 three times, right?

23 MR. ADRAY: Yeah, that I seen.

24 MR. EVERHARDT: May I ask a question?

25 BOARD MEMBER SPENCER: Certainly.

1 MR. EVERHARDT: How did Mr. Adray know that
2 they were repos?

3 BOARD CHAIRMAN SPENCER: You just asked him,
4 asked him that question.

5 Mr. Adair, or Adray?

6 MR. ADRAY: Mr. Adray. I knew that they were
7 repos because there were repo contracts coming in
8 through computer software -- I think it was Repros --
9 that fed information into a laptop, which specifically
10 gave orders to repossess cars.

11 BY MR. EVERHARDT:

12 Q. And who received those orders?

13 A. Frank.

14 Q. Not you?

15 A. No. I didn't receive them.

16 Q. Did you have the password to go check on
17 everything?

18 A. I did. I could check on them, just to see what
19 the numbers were.

20 Q. Why would you do that if you were only, as you
21 say --

22 A. Make sure the contract -- because I was getting
23 contracted to be paid per car.

24 Q. So you were getting a contract per car? Per
25 car?

1 A. So it was not in my best interest to keep track
2 of how many cars were being repossessed, which is also
3 common knowledge.

4 BOARD CHAIRMAN SPENCER: Why is it, then, why
5 is it that Frank got these teletypes or whatever they
6 were? I mean did they come to his house? Did you give
7 them to him?

8 MR. ADRAY: No. Right from a computer. It's a
9 web-based program.

10 BOARD CHAIRMAN SPENCER: Okay. It's on the
11 web.

12 MR. ADRAY: You log in. You log in with your
13 user name and password. And the orders are, basically,
14 distributed that way. You know, it says that you have
15 this many orders. You have to follow, you know, the
16 orders and, basically, pick up the cars that are on the
17 orders. Once the orders are completed and the car's
18 picked up, then you check off that you got the car. If
19 you didn't, if you could not find the car, then you put,
20 basically put in there that you could not find the car
21 and you left notes on the computer. So it's all live.
22 And it was all web-based.

23 BOARD CHAIRMAN SPENCER: Okay. What's the name
24 of the web address?

25 MR. ADRAY: It's Repros, R-E-P-R-O-S, I

1 believe, out of Arizona.

2 BOARD CHAIRMAN SPENCER: And do you have a
3 password to that account, or does Frank have a password,
4 who had the password?

5 MR. ADRAY: I did, and Frank did as well. When
6 I was -- when we had our disagreement, and we decided
7 not to do business with each other, it was shut down.

8 BOARD CHAIRMAN SPENCER: Do you remember what
9 the account name was for you?

10 MR. ADRAY: It's basically just a log-in and
11 password. And I can't remember what it was, but it was
12 probably something like my name, Adray or R. Adray.

13 BOARD CHAIRMAN SPENCER: Okay. How many
14 documents do you have that would refer to those repos?

15 MR. ADRAY: Again, I don't have that in front
16 of me. So I do not know. But I do have documents.

17 MR. MENICUCCI: We may have those in the file.
18 They're not included in the documents that we've already
19 submitted.

20 BOARD CHAIRMAN SPENCER: Okay. Could I see
21 them?

22 MR. MARCHER: Well --

23 MR. MENICUCCI: Probably what we should do is
24 just have copies made and sit down.

25 MR. MARCHER: Yes, if there's no objection from

1 the other side. What specific, what specific -- hang on
2 a minute. What specifically are you referring to in
3 your file?

4 MS. WHATLEY: It's the orders release forms and
5 order for -- it says "Release form. The receiving party
6 listed below acknowledges delivery of the following
7 assets." And it's the vehicles that were being
8 repossessed.

9 MR. MARCHER: Okay.

10 Mr. Everhardt, would you have any objection to
11 the Board seeing that information?

12 MR. EVERHARDT: I have no objection, but before
13 it's admitted, I would like to take a look at it, make
14 sure.

15 MR. MENICUCCI: Sure.

16 MR. MARCHER: Okay. Why don't we, if I could,
17 take 10 minutes and go make some copies and get them
18 faxed down there.

19 MR. MENICUCCI: Sure.

20 BOARD CHAIRMAN SPENCER: Let's take a break.

21 * * * * *

22 (A break was taken, 10:34 to 11:05 a.m.)

23 * * * * *

24 BOARD CHAIRMAN SPENCER: All right. Let's pick
25 it up, then, referring to Charles Everhardt of Armor

1 Recovery & Investigations.

2 MR. MENICUCCI: We have two of these documents.
3 We have provided some additional documentation, a
4 package of which has been sent down to Las Vegas. And
5 Mr. Everhardt, I assume, has had a chance to look
6 through it. And Mr. Everhardt has provided what looks
7 to be an e-mail with a document entitled Memorandum of
8 Understanding. And we have a copy of that here as well.

9 So, I guess, my first question is,
10 Mr. Everhardt, have you had a chance to look at the
11 addition documentation we sent down?

12 MR. EVERHARDT: I have.

13 MR. MENICUCCI: Do you have any objections to
14 admitting that information as evidence?

15 MR. EVERHARDT: No, it's absolutely fine and
16 helps my position. And so it's absolutely fine.

17 MR. MENICUCCI: I'm going to ask Mr. Adray
18 questions about it when we resume.

19 And I have no objection to the documents
20 supplied by Mr. Everhardt. Although I certainly have
21 questions about it in trying to determine what the
22 status of that document is.

23 MR. EVERHARDT: May I -- this -- these
24 documents that you've just provided to me, I called
25 Armor Recovery in Illinois to get a little better

1 understanding of how these documents -- you know, the
2 purpose of them, who they're addressed to and who
3 they're directed to. If it would be helpful, I would be
4 glad to explain to you what they told me, so that maybe
5 when you ask Mr. Adray questions, you'll have a little
6 better knowledge of what these documents, the focus of
7 them, are.

8 MR. MENICUCCI: I think, for a good order, I'd
9 like to continue with the witness and then let
10 Mr. Everhardt either ask questions of the witness or
11 later on present his own explanation of the various
12 documents.

13 BOARD CHAIRMAN SPENCER: Yeah. Did you hear
14 that, Mr. Everhardt?

15 MR. EVERHARDT: Yes. That's fine.

16 BOARD CHAIRMAN SPENCER: Okay.

17 MR. MENICUCCI: I want to hear what Mr. Adray
18 has to say first.

19 BOARD CHAIRMAN SPENCER: Okay.

20 MR. MENICUCCI: So, now, here's copies.

21 MS. WHATLEY: I'm sorry. I thought I had given
22 this to them.

23 MS. WHATLEY: So this is Exhibit 53?

24 MR. MENICUCCI: Yes. A large Exhibit 53.

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REDIRECT EXAMINATION

BY MR. MENICUCCI:

Q. Mr. Adray, do you see the documents, the initially documents that were supplied; they begin with the title Armor Recovery, P.O. Box 7238?

A. Yes.

Q. All right. And down at the bottom of that first page, I see a name that appears to be your signature and printed name of Ray Adray. Is that correct?

A. Right, yes.

Q. Are you familiar with this document, the first page of which is called a Release Form?

A. Yes, I am.

Q. What's the purpose of it, and what does it do?

A. Uh, this is the transport company picking up the cars to take to the auction or wherever they take the cars after they're repossessed.

BOARD CHAIRMAN SPENCER: Is that your signature at the bottom?

MR. ADRAY: Yes.

BOARD CHAIRMAN SPENCER: Okay.

BY MR. MENICUCCI:

Q. Were you signing on behalf of Armor Recovery?

A. Yes.

1 Q. And so was the car being picked up from Armor
2 Recovery?

3 A. From 170 Windmill?

4 Q. Uh-huh (affirmative).

5 A. It was picked up from 170 Windmill.

6 Q. Okay. In this case, a 2003 Ford Mustang?

7 A. Correct.

8 Q. Do you know how Armor Recovery acquired the
9 car?

10 A. Um, repossessed the vehicle.

11 Q. Okay. Is that indicated by debtor name Sylvia
12 Sala, up there in the upper right?

13 A. Correct. That's who had the car.

14 Q. Okay. The next page appears to be a similar
15 form; is that right?

16 A. Correct.

17 Q. 2003 Hyundai Sonatta, debtor name Sharon
18 Randall?

19 A. Right.

20 Q. And that's also your signature?

21 A. Correct.

22 Q. So you had access to the 170 Windmill location
23 at that time, correct?

24 A. Yes.

25 Q. The next page is a check made out to you from

1 Armor Recovery Solutions, Inc. Do you know what that
2 was for?

3 A. For the amount of cars that were picked up.

4 Q. What, what were you being paid for?

5 A. For the lease of the trucks, basically, the use
6 of the trucks. I know there was no formal lease
7 agreement, but I had a verbal agreement. And each car
8 that was picked up, I would get so much per car.

9 Q. Let me ask you to look at the next page, which
10 is a long list, beginning with Order to Repossess
11 regarding a Casipong, C-A-S-I-P-O-N-G.

12 A. M-hm (affirmative).

13 Q. Can you tell me what that is?

14 A. These are orders to repossess. This is a list
15 from that website.

16 Q. Oh, the website you referred to before?

17 A. I think, the website's on the top right,
18 covering -- it's kind of blocked off, covering
19 database.net

20 Q. Okay. Someone interested in doing repossession
21 work could access the website; is that right?

22 A. As long as -- you can access the website as
23 long as you have a user name and password.

24 Q. Did you have access to the website?

25 A. This, uh, particular website, I did not.

1 Q. Is this a document that you provided to
2 Miss Whatley?

3 A. I did, that I got inadvertently from Frank. He
4 actually wrote, was writing stuff on the back of it, and
5 he did not know that he was giving me this document.

6 Q. Let me ask you to turn to the next page. It
7 says "Armor Recovery Pay Car Report." Can you tell me
8 what that is?

9 A. That is a list of all the cars that were picked
10 up, and then all the numbers on the left-hand side, car
11 numbers, coincide to order numbers from the -- from
12 Armor. I don't know why they're numbered that way, but
13 I believe it was like an account number or something per
14 vehicle.

15 Q. Where it says "Branch and user selected," it
16 says "Las Vegas, Ray Adray." Do you see that?

17 A. Correct.

18 Q. Why is your name up there?

19 A. So I can keep account of the cars, of the cars,
20 so I knew how many were going in and out.

21 Q. Okay. And so is it -- was it your arrangement
22 with Mr. Everhardt that you'd get paid a fee paid per --
23 based on each car for the use of your truck?

24 A. Correct, and -- and all of the same
25 conversation based on that.

1 Q. Okay. And the next couple of pages are another
2 pay car report, correct?

3 A. Right.

4 Q. And are all the rest of the documents similar
5 pay car reports?

6 A. Looks to be so.

7 Q. On the -- looks like the third from the last
8 page, there's some handwriting?

9 A. Right.

10 Q. Do you know who wrote that information there?

11 A. That's my writing.

12 Q. What's it refer to?

13 A. Our hand. Verbally, I was told that this is
14 how many cars were picked up. Since I didn't have
15 access to that website, I couldn't, I couldn't tell.
16 They, basically, shut me out at that point. They moved
17 all the orders over to a new website, which I did not
18 have access to. And they were, basically, they were
19 just shutting me out at that point.

20 Q. Okay.

21 A. So I was trying to see how many cars were
22 picked up. I'm trying to do the best I could.

23 MR. MENICUCCI: All right. I don't think I
24 have any further questions for the witness.

25 In that case, Mr. Adray, do you have questions

1 for this witness? Or excuse me. Mr. Everhardt?

2 MR. EVERHARDT: Yes. Let me see that, please.

3 BOARD CHAIRMAN SPENCER: Gentlemen, during this
4 questioning, you need to remember that we have a lady
5 here who is taking down what you're saying. So you
6 can't be talking to each other, talking over each other.
7 All right?

8 MR. ADRAY: Sure.

9 BOARD CHAIRMAN SPENCER: Good.

10 MR. EVERHARDT: Eight pages from the back.

11 BOARD CHAIRMAN SPENCER: Mr. Everhardt, did you
12 hear what I just told Mr. Adray?

13 MR. EVERHARDT: Not to speak to each other?

14 BOARD CHAIRMAN SPENCER: No, you can speak to
15 each other, but just be mindful of the fact that we have
16 a lady here taking down what we're saying. So try not
17 no talk to each other at the same time.

18 MR. EVERHARDT: Okay.

19 BOARD CHAIRMAN SPENCER: Thank you.

20 Are you ready?

21 MS. GRASSO: Mr. Everhardt is making reference
22 to a page eight pages from the back of that handout.

23 BOARD CHAIRMAN SPENCER: Okay.

24 Do you have questions on that one,

25 Mr. Everhardt?

1 MR. EVERHARDT: I do. On the third line down,
2 it says "Frank" and "user selected." Then it says
3 "Las Vegas." Then it says, it appears like it says
4 "R-U-S-S-E-L," and then it says "H-O-D-A-K," to the best
5 of my reading.

6 BOARD CHAIRMAN SPENCER: Russel Hodak?

7 MR. EVERHARDT: Yeah. So I'm going to ask if
8 Mr. Adray knows who Mr. Russel Hodak is.

9 MR. ADRAY: Yeah.

10

11 RE-CROSS-EXAMINATION

12 BY MR. EVERHARDT:

13 Q. And who is he?

14 A. He was another driver for Armor.

15 Q. Did he have a relationship with you before I
16 met you?

17 A. Sure.

18 Q. How long?

19 A. I've known Russel Hodak for 12 years.

20 Q. Known him for 12 years. Did he ever live with
21 you? You say you've known him for 12 years?

22 A. Right.

23 Q. So this is a driver that I never met before I
24 met you, correct?

25 BOARD CHAIRMAN SPENCER: You're going to have

1 to speak up a little bit, please.

2 MR. ADRAY: He was driving one of my trucks.

3 BY MR. EVERHARDT:

4 Q. And I've never met Mr. Hodak?

5 A. Correct.

6 (The videoconferencing connection to Las Vegas
7 was lost, then reconnected.)

8 MR. EVERHARDT: Can you hear me?

9 BOARD CHAIRMAN SPENCER: We can now. Repeat
10 what you just said, because we were off the air for a
11 minute.

12 MR. EVERHARDT: Okay. So Mr. Hodak, who I had
13 no relationship, who I never met, that Mr. Adray knows
14 for 12 years, was driving Mr. Adray's trucks for these
15 orders.

16 BY MR. EVERHARDT:

17 q. Is that correct?

18 A. Yeah.

19 Q. Okay. So when you look at the paid cars, and
20 you pick any page, it doesn't really matter, it says
21 that you're getting paid \$75 for the truck, and you're
22 getting paid a different price for a different service,
23 \$50 or \$35?

24 A. Yeah.

25 Q. Okay. So the relationship between your trucks

1 and, you're saying, with our company, Armor was based
2 on -- was based on you provide a driver, but the driver
3 didn't work for you, he worked for us, which we have no
4 record of, and there were different prices for a truck
5 or for a truck, and then the driver would kind of pick
6 up? I'm a little confused.

7 A. It was just I was getting paid per car. The
8 drivers were also getting paid, which was taken, taken
9 out of the amount per car. Also, the insurance was
10 taken out per car. Also, the gas that I used was also
11 an expense as well.

12 So Mr. Russel Hodak worked for Armor Recovery,
13 and he drove one of my trucks. And I do have
14 documentation to the fact of that as well. I do not
15 have it with me. The checks made out to Russel Hodak
16 from Armor Recovery. There's no checks made from Ray
17 Adray or any company other than Armor Recovery to Russel
18 Hodak, stating that he works for Armor Recovery.

19 Q. You're saying that Mr. Hodak worked for Armor
20 Recovery?

21 A. Right.

22 Q. As an employee?

23 A. Yeah, and getting a paycheck.

24 Q. As an employee?

25 A. He was getting a paycheck.

1 MR. EVERHARDT: I don't have.

2 BOARD CHAIRMAN SPENCER: Was he an employee?

3 MR. ADRAY: I would assume so. He was getting
4 a paycheck.

5 MR. EVERHARDT: He was not an employee. And I
6 never hired him.

7 MR. ADRAY: You're --

8 MR. EVERHARDT: That's all the question I have
9 for Mr. Adray.

10 MR. MENICUCCI: I have a question, follow-up,
11 for Mr. Adray, please.

12 MR. ADRAY: Okay.

13

14 FURTHER REDIRECT EXAMINATION

15 BY MR. MENICUCCI:

16 Q. In the other documents that we have that were
17 numbered, do you have those in front of you?

18 A. I may. Are these --

19 Q. There are numbers down at the bottom right.
20 The numbers may not be real --

21 Q. Okay. But if you turn to page -- I believe,
22 it's page 15.

23 A. Okay.

24 Q. If you're on the right page, there appears to
25 be a truck application with Farmers for Armor Recovery

1 Nevada?

2 A. Correct.

3 Q. Do you see at the bottom a list of drivers?

4 A. Yeah.

5 Q. One is Raymond Adray?

6 A. Correct.

7 Q. The other is Russel Hodak?

8 A. Correct.

9 Q. And the other is Frank, and I can't pronounce
10 the last name?

11 A. Right.

12 Q. First of all, is that your handwriting?

13 A. No.

14 Q. Did you submit this truck application to
15 Farmers?

16 A. No.

17 Q. Did Frank work for you at any time?

18 A. He worked for Armor.

19 Q. Did you know Frank beforehand?

20 A. Uh, very shortly, yes.

21 MR. MENICUCCI: Any further questions from
22 Mr. Everhardt?

23 MR. EVERHARDT: No.

24 MR. MENICUCCI: Any from the Board?

25 BOARD CHAIRMAN SPENCER: Yes.

1 Mr. Adray, on the first two pages of the
2 information that you were just given, your signature
3 appears at the bottom for Armor Recovery?

4 MR. ADRAY: Correct.

5 BOARD CHAIRMAN SPENCER: And that is why?

6 MR. ADRAY: Excuse me?

7 BOARD CHAIRMAN SPENCER: Why is that?

8 MR. ADRAY: Why is that? I was the only one
9 around. Kind of like signing for a package that shows
10 up at your door.

11 BOARD CHAIRMAN SPENCER: Okay.

12 MR. EVERHARDT: Could I ask a question on that?

13 BOARD CHAIRMAN SPENCER: Certainly.

14 MR. EVERHARDT: This release form is a form
15 that relates to the transport company. And it states
16 that the transport company received possession of the
17 car from the signature below. So Mr. Adray was in
18 possession of that car. And he actually gave the car
19 from his possession to the transport company.

20 And his relationship is not that of a
21 contractor with a truck. It was that of he was
22 receiving orders to get possession of the cars and
23 releasing the car, as his signature identifies.

24 BOARD CHAIRMAN SPENCER: Okay. Was he an
25 employee of yours?

1 MR. EVERHARDT: He was not an employee of mine.
2 Neither with Mr. Frank, and neither with Mr. Russel that
3 I never met.

4 BOARD CHAIRMAN SPENCER: All right. Mr. Adray,
5 were you aware at this time that there had to be a
6 license for doing what was being done?

7 MR. ADRAY: I was told that there was a license
8 for the company, but not as an individual. And I later
9 learned that from another local repossession company
10 here that opened my eyes to every single thing.

11 BOARD CHAIRMAN SPENCER: So.

12 MR. ADRAY: That's when I went down and got a
13 license to be a reposessor.

14 BOARD CHAIRMAN SPENCER: Okay. So you're
15 registered to be a reposessor, not licensed?

16 MR. ADRAY: Right. I don't know the
17 distinction.

18 BOARD CHAIRMAN SPENCER: Well, one is you have
19 a license, one is you're registered.

20 MR. ADRAY: Okay.

21 BOARD CHAIRMAN SPENCER: So you're saying that
22 you were unaware that there was a requirement for
23 licensure?

24 MR. ADRAY: Yeah, as an individual leasing
25 trucks out, yeah.

1 BOARD CHAIRMAN SPENCER: On the Armor Recovery
2 pay card report, your name appears frequently on here.

3 MR. ADRAY: Right.

4 BOARD CHAIRMAN SPENCER: And that would be why?

5 MR. ADRAY: So I could keep track of the amount
6 of cars that were being picked up. That's the only way
7 that I could keep an eye on that. Because there was
8 always discrepancy on how many cars were picked up and
9 the things of that nature. And it's one of the reasons
10 why I cut ties with them, because they were being
11 dishonest.

12 BOARD CHAIRMAN SPENCER: So if we went to these
13 three drivers this afternoon, and we asked them who they
14 were working for, what are they going to tell us?

15 MR. ADRAY: Armor.

16 BOARD CHAIRMAN SPENCER: Okay. I have no
17 further questions.

18 BOARD MEMBER CRATE: Mr. Adray, just for
19 clarification purposes, was it your understanding that
20 you are a contract employee, or you were not an employee
21 at all, of Armor Recovery.

22 A. Not an employee, just, basically, they needed
23 trucks, and I had the trucks.

24 BOARD MEMBER CRATE: So the beginning and end
25 of your relationship simply was you were compensated on

1 a per recovered vehicle based on you provided the
2 vehicle, the tow truck?

3 MR. ADRAY: Correct.

4 BOARD MEMBER CRATE: And how did it happen that
5 you had those tow trucks?

6 MR. ADRAY: I bought the tow trucks, with a
7 promise that I would get contracts through -- through a
8 gentleman in Utah.

9 BOARD MEMBER CRATE: Was that gentleman, was
10 that gentleman in any way related to Frank, also from
11 Utah?

12 MR. ADRAY: Correct.

13 BOARD CHAIRMAN SPENCER: Yes or --

14 MR. ADRAY: He -- he introduced me.

15 BOARD MEMBER CRATE: Frank introduced you?

16 MR. ADRAY: Correct.

17 BOARD MEMBER CRATE: And so you have a
18 relationship with Frank, who, in turn, introduced you to
19 someone in Utah who indicated that they could get you
20 contracts for repossessions?

21 MR. ADRAY: He said that, yeah, that Frank can
22 drive the truck, and that he would take care of
23 everything, he would supply the licensing, he would
24 supply the contracts, he would supply everything, and
25 all I would have to do is supply the trucks.

1 BOARD MEMBER CRATE: Have you ever been
2 associated with repossessions previously?

3 MR. ADRAY: No.

4 BOARD MEMBER CRATE: Does the sheriff's card or
5 registration that you indicated that you had, how did
6 you come to possess that?

7 MR. ADRAY: I went to work for a company called
8 Cars Vegas, and the day what I talked to them, they
9 filled out some paperwork and told me to go to the
10 sheriff's department or to the licensing or fingerprint
11 bureau to get fingerprinted and to get my sheriff's
12 card.

13 BOARD MEMBER CRATE: And that was after you had
14 already had this relationship established with Armor
15 Recovery?

16 MR. ADRAY: Correct, directly after.

17 BOARD MEMBER CRATE: Did you personally ever
18 repossess a vehicle on behalf --

19 MR. ADRAY: No.

20 BOARD MEMBER CRATE: --on behalf of Armor or
21 anyone else?

22 MR. ADRAY: No, not prior to working for the
23 Cars.

24 BOARD MEMBER CRATE: Was each driver who made a
25 recovery or repossession separately compensated, or did

1 they receive part of your compensation?

2 MR. ADRAY: They were, they were, they were
3 separately, you know, compensated, but it was off the
4 contracted amount. So, basically, it was \$150 a car,
5 and the drivers got \$75 a car.

6 BOARD MEMBER CRATE: The drivers got 75, and
7 you got 75?

8 MR. ADRAY: Correct.

9 BOARD MEMBER CRATE: So each vehicle recovered
10 had a value of \$150, you got 75 for the vehicle, they
11 got 75 for performing the repossession?

12 MR. ADRAY: Correct.

13 BOARD MEMBER CRATE: What did you understand
14 your relationship to be with Armor Recovery?

15 MR. ADRAY: That they were going to pay me for
16 using my trucks.

17 BOARD MEMBER CRATE: But you were authorized to
18 sign on their behalf?

19 MR. ADRAY: Yeah, that day.

20 BOARD MEMBER CRATE: You had access and control
21 to the yard at 170 Windmill?

22 MR. ADRAY: I had the key to it, yes.

23 BOARD MEMBER CRATE: And you allowed people to
24 recover vehicles, Rapid Transit or whomever, and --

25 MR. ADRAY: You were cutting out there.

1 BOARD MEMBER CRATE: I'm saying, then, you
2 would allow people or sign on Armor's behalf for
3 recovery, such as Rapid Transit to remove vehicles from
4 that property?

5 MR. ADRAY: You know, on a -- I think, there
6 was a couple of occasions where nobody could make it
7 down to the yard, so I was doing them a favor,
8 basically, by going down there and making sure that the
9 guy could go into the back and drive the cars onto the
10 street and load them onto the truck.

11 BOARD MEMBER CRATE: Okay. And what -- so,
12 certainly, that was a reason why you would have keys and
13 you provided the locks to the property?

14 MR. ADRAY: I provided the locks because nobody
15 was paying attention to it, and I was just, basically,
16 wanting to help these guys out to do a good job and make
17 sure that everything was secure and that people couldn't
18 go in the back and damage the cars.

19 BOARD MEMBER CRATE: And who else had keys to
20 that, to those locks?

21 MR. ADRAY: The drivers.

22 BOARD MEMBER CRATE: I don't have any other
23 questions.

24 BOARD CHAIRMAN SPENCER: Just one little
25 further definition. You've had 75 to a \$150 figures.

1 Did you get the 150 and then pay the driver?

2 MR. ADRAY: No. That's the reason for the
3 website is it broke it all down. It broke down what I
4 got, \$75, to the total, \$75. And the other, whatever,
5 however they were compensating the other ones, they were
6 done on their own pay sheets and their own paychecks.

7 BOARD CHAIRMAN SPENCER: Okay. How many more
8 cases do you have?

9 MR. MENICUCCI: A couple.

10 BOARD CHAIRMAN SPENCER: Nothing further from
11 the Board. Go ahead.

12 MR. MENICUCCI: If there are no further Board
13 questions, Mr. Adray can be excused at this time.

14 MR. EVERHARDT: Could I ask a further question?

15 MR. MENICUCCI: Mr. Everhardt, do you have a
16 question, further question for Mr. Adray before he goes?

17 MR. EVERHARDT: I do.

18

19 FURTHER RECROSS-EXAMINATION

20 BY MR. EVERHARDT:

21 Q. You stated that you didn't, you personally
22 didn't repossess any cars until you worked for this
23 company, for Cars?

24 A. Right.

25 Q. What date did you start, did you start to work

1 for them?

2 A. I can't remember the exact date.

3 Q. Approximately.

4 A. I don't know.

5 Q. July?

6 A. No.

7 Q. August?

8 A. No.

9 Q. Before?

10 A. Yeah.

11 Q. Before June?

12 A. It was more like probably March.

13 Q. March. And you were, then, you were
14 repossessing cars with them?

15 A. Yes.

16 Q. And when did you acquire your registration or
17 your sheriff's badge?

18 A. I can't remember. That's all documented,
19 though.

20 Q. After you started --

21 A. I can produce the documents, but I don't have
22 them on me.

23 BOARD CHAIRMAN SPENCER: You don't have a card
24 with you?

25 MR. ADRAY: I don't have my card with me, no.

1 MR. EVERHARDT: You understand --

2 MR. ADRAY: And even if I did, it doesn't state
3 when it was issued. I believe, it only states when it
4 expires. Maybe you could tell the issuant date after
5 that.

6 BY MR. EVERHARDT:

7 Q. And does Mr. Russel's work with you over there?

8 A. No.

9 Q. Has he ever been part of that?

10 A. No.

11 Q. He's never worked for Cars at all?

12 A. No, not employed at Cars at all.

13 Q. Does he have a license application in?

14 A. He tried to, but he can't.

15 Q. He can't. It was denied?

16 A. Right.

17 Q. Must have been in trouble?

18 A. Correct.

19 MR. EVERHARDT: Okay. That's the only
20 questions I have.

21 MR. MENICUCCI: Okay. Anyone?

22 BOARD MEMBER CRATE: May I ask --

23 MR. MENICUCCI: Sure.

24 BOARD MEMBER CRATE: -- a question? Just for
25 clarification purposes, is it all right to look up his

1 registration card, the sheriff's card, Mr. Adray's?

2 MR. MENICUCCI: Um, I don't know the relevance
3 of Mr. Adray's card at this time.

4 BOARD MEMBER CRATE: Okay. I have no
5 questions.

6 MR. MENICUCCI: Okay. Is Mr. Montana available
7 as a witness?

8 BOARD MEMBER GRASSO: Yes, he is.

9 MR. MENICUCCI: Could you have him come up,
10 please.

11 BOARD CHAIRMAN SPENCER: Good afternoon. How
12 are you?

13 MR. MONTANA: Fine, thank you.

14 BOARD CHAIRMAN SPENCER: Good.

15

16 J O E M O N T A N A,
17 having been previously sworn by Board Counsel,
18 was examined and testified as follows:

19

20 DIRECT EXAMINATION

21 BY MR. MENICUCCI:

22 Q. Mr. Montana, did you have any dealings with
23 Armor Recovery or Charles Everhardt?

24 A. Yes, I did.

25 Q. Before I have you explain that, I'd like you

1 to, first of all, take a look at the package of
2 documents that are numbered in front of you. And
3 beginning at page 45, it appears there's some
4 correspondence between Mr. Everhardt and you.

5 A. I can't see. (Glasses were provided.) Okay.

6 Q. Have you found what I'm referring to as appears
7 to be an e-mail from Mr. Everhardt to you, "Hello, Joe"?

8 A. Yes.

9 Q. Okay. Now, did you receive that correspondence
10 from Mr. Everhardt?

11 A. Yes, I did.

12 Q. And did he tell you, as states in the middle of
13 that first page, that his primary goal was to build a
14 large auto repossession business in Las Vegas?

15 A. Yes.

16 Q. Okay. Did he tell you that he was getting
17 orders at that time, the repo orders were coming in at
18 time of the correspondence?

19 A. Yes.

20 Q. And that would have been in January of 2009,
21 correct?

22 A. Yeah.

23 Q. Do you have any other information regarding
24 repossession orders or repossession business done by
25 Armor Recovery?

1 A. When we first met, I was running an ad to sell
2 my business for health reasons, and that's how I met
3 Charles. And I met Frank after that fellow, and he was
4 telling me that they were running repos and stuff.

5 Q. Okay. Did --

6 A. Him and John.

7 Q. Did Mr. Everhardt or anyone on behalf of Armor
8 Recovery name my particular clients to you that they
9 were going to be doing repossession business for?

10 A. Uh, yes. Some banks and stuff, Wachovia bank
11 and a couple other.

12 Q. Okay. And was it Mr. Everhardt that gave you
13 that you information?

14 A. Yes.

15 Q. All right. You had some discussions about
16 selling your business, correct?

17 A. Yes.

18 Q. And that was called the Towinator?

19 A. Yes.

20 Q. Was Mr. Everhardt also expecting you to buy
21 into a part of the Armor Recovery business?

22 A. The first I heard of it is when I got this
23 e-mail.

24 Q. Okay. But when you got that e-mail, you
25 understood that he expected you to buy into Armor

1 Recovery, correct?

2 A. Right. Right.

3 Q. Did you eventually do any business with
4 Mr. Everhardt?

5 A. No.

6 Q. Why did you not conclude an agreement with
7 Mr. Everhardt?

8 A. Uh, I felt that he wasn't honorable to do
9 business with. I checked around town, on town, in town
10 on him. And we had a dinner with -- a big dinner up
11 on -- in Rushmont, in Henderson. And that's when I met
12 the rest of the -- that's when I when I met Aldo and all
13 those guys, and they said everything was up to snuff.
14 Which it wasn't at that time.

15 Q. But, ultimately, you did not sell your business
16 or any part of it, correct?

17 A. No.

18 Q. All right. So you met Mr. Aldo Datoli; is
19 that correct?

20 A. Yes.

21 Q. And he was associated with Armor Recovery?

22 A. Yeah.

23 Q. And, also, Sonny Datoli; is that right?

24 A. Yes.

25 Q. Okay. So. And the two of them and

1 Mr. Everhardt were people who owned Armor Recovery; is
2 that right?

3 A. Yes. Yes.

4 Q. Okay.

5 A. To my knowledge, they were.

6 Q. In that correspondence that I referred you to,
7 there was some mention by Mr. Everhardt of investors.
8 Did you meet any other investors in Armor Recovery?

9 A. Yes, I did. I met -- at that table, there was
10 a gentleman; I guess, he owns K.B. Homes. And I saw him
11 give Mr. Everhardt a big check. Or a check, I should
12 say. And that I was told it was for a portion of my
13 business.

14 Q. Anyone else?

15 A. I met Frank.

16 Q. Frank who?

17 A. He came to my lot with a nice truck. I
18 believe, it was -- I don't know whose truck it was
19 really, but Frank was driving it while he was doing
20 repos, him and Charles.

21 Q. Okay. Did you meet anyone else associated with
22 Armor Recovery besides the people you've mentioned?

23 A. No, I don't think so.

24 Q. Did you ever meet a driver named Russel?

25 A. I may have. I know I met -- There was a guy

1 with Frank that day. That may have been him.

2 MR. MENICUCCI: No further questions from me.

3 Mr. Everhardt, do you have questions of the
4 witness?

5 MR. EVERHARDT: Just one.

6

7

CROSS-EXAMINATION

8 BY MR. EVERHARDT:

9 Q. Joe, did I ever explain to you the details of
10 my company, Armor, as it was operating? And what I mean
11 by that is did I ever go into an explanation as to tell
12 you whether it was a company that was referring business
13 to people, automobile repossession business, referring
14 business to people or actually being in the engaging of
15 actually going out there myself as a company, did I ever
16 go into detail with you about my company?

17 A. Yes.

18 Q. I did. And what did I say?

19 A. You guys, you and Aldo and those guys, that's
20 when we had that meeting, so I can -- I can meet them.
21 You said you guys were repoing cars, with the banks and
22 everything, you had some big contracts. Which I never
23 seen, but.

24 Q. Well, you're not answering my question. The
25 difference between a referral and actually doing

1 business, did I ever explain that to you?

2 A. You never used the word "referral."

3 Q. Okay. So I never explained that to you. So
4 you're assuming that we were in the normal repossession
5 business like everybody else was in the normal
6 repossession business?

7 A. No, I didn't assume, but you told me that.

8 Q. I told you what?

9 A. That you guys had it all set up, and you were
10 going to repo cars, yeah, that you were reposing cars.

11 MR. EVERHARDT: The only point I'd have is for
12 the committee, is whether or not I was in the business
13 of actually repossessing cars as a company or if I was
14 referring cars to -- by way of banks in New York. And
15 if that is something that is illegal that I've been --
16 because I do the business of picking up the cars myself.

17 So I'm asking Mr. Montana if he specifically,
18 I'm asking Mr. Montana if he specifically recalls any
19 conversation about the distinct business scope of what
20 my company was doing. That's what I was trying to
21 understand and remember.

22 MR. MONTANA: Yeah, you told me it was a
23 repossession company. And you guys had the banks all
24 set up to do your -- to repo the cars. Meaning Armor
25 Recovery, me and you. That's what you told me.

1 MR. EVERHARDT: I have no other questions.

2 MR. MENICUCCI: Does the Board have any
3 questions of this witness?

4 BOARD CHAIRMAN SPENCER: I have none.

5 BOARD MEMBER CRATE: I do.

6 Mr. Montana, Towinator is a company based in
7 Las Vegas?

8 MR. MONTANA: Yes, it is.

9 BOARD MEMBER CRATE: Okay. On the e-mail, page
10 40, which is marked as page 47, I think it's page --
11 it's page 3 of the e-mail, if you could turn to that.

12 MR. MONTANA: Which, which, what number page do
13 you want me to look at?

14 BOARD MEMBER CRATE: On the bottom right it's
15 marked 00 --

16 MR. MONTANA: No, what's the number of the
17 page?

18 BOARD MEMBER CRATE: 47.

19 MR. MONTANA: 47. No, I don't have 47. Here
20 it is. Okay.

21 BOARD MEMBER CRATE: Under item number four,
22 accounting, do you see that?

23 MR. MONTANA: Okay.

24 BOARD MEMBER CRATE: It says "The money I
25 currently owe you." Could you explain what that refers

1 to, or walks me through what that's for?

2 MR. MONTANA: When I got this e-mail, that was
3 the first I saw of it. And "The money I apparently owe
4 you" must mean the amount for the purchase price.

5 BOARD MEMBER CRATE: So you just --

6 MR. MONTANA: Oh, wait a minute.

7 BOARD MEMBER CRATE: I just think it's for a
8 car, for a car that you had already picked up, he used a
9 dollar amount.

10 MR. MONTANA: Wait a minute. The yard for five
11 days, \$10. Oh, okay. I know what that is.

12 BOARD MEMBER CRATE: Mr. Montana --

13 MR. MONTANA: He rented a yard in the back of
14 my yard, through my landlord. And, I guess, he wrote
15 them a bad check. And the landlord came to me, and
16 that's when I called Charles and told them, you know,
17 "You got to make this check out to this guy."

18 And that's when I had worries, you know, my
19 worries about him not really buying my business or what
20 he was planning to do.

21 BOARD MEMBER CRATE: Okay. What was the car
22 that he's referring to that you picked up and that he's
23 compensating for, for the use --

24 MR. MONTANA: All right. I don't know what he
25 means by that.

1 BOARD MEMBER CRATE: "I owe you \$140 for the
2 pick-up of the car, \$40 you paid the fine. I owe you
3 450 for the replacement check," explain that. That's
4 for the purchase.

5 MR. MONTANA: He had Frank, his driver, come
6 over there. Frank was crying he didn't have no money.
7 So Charlie says, "Would you loan him 40, and I'll pay
8 you back?" Which I never got back. And, "I owe you
9 40."

10 BOARD MEMBER CRATE: I guess, what I'm zeroing
11 in on is had you done any sort of a repossession of a
12 vehicle?

13 MR. MONTANA: No. No.

14 BOARD MEMBER CRATE: The hundred -- he said
15 \$140 for the pick-up of the car. What car is that?

16 MR. MONTANA: I don't remember having a car in
17 there, in that facility. I don't know what that is. I
18 don't know what he was referring to on that.

19 Do you, Charles?

20 "...for a car you picked up." I can look at
21 the date and see if he had me tow a car for him
22 personally. That's all I could figure.

23 But we -- I don't do any repossessions. You
24 can't when you have a -- you know --

25 BOARD MEMBER CRATE: Okay.

1 MR. MONTANA: -- you can't do that when you're
2 a licensed --

3 BOARD MEMBER CRATE: So to the best of your
4 knowledge, that most likely represents a tow as opposed
5 to a repossession?

6 MR. MONTANA: Exactly, yes, if there was ever
7 one. I'll have to look. Every time I get a car, it's
8 in our log book.

9 BOARD MEMBER CRATE: Okay. The page prior to
10 that, I believe it's 46, the last paragraph.

11 MR. MONTANA: Okay.

12 BOARD MEMBER CRATE: It says "Armor Recovery
13 Nevada LLC pays its repossessionors \$150 per pick-up."
14 That's the amount they allocated to Towinator. As they
15 presented this deal to you, was it your understanding
16 that --

17 MR. MONTANA: No, I was -- okay. Go ahead.

18 BOARD MEMBER CRATE: Was it your understanding
19 that you were more of a subcontract, they were proposing
20 that you be a subcontractor?

21 MR. MONTANA: No, they were -- he -- I was
22 selling my company to him, the license, everything, one,
23 if he could qualify for it. But I told him up front
24 that, "You cannot do any repossessing with my license."

25 BOARD MEMBER CRATE: Okay. Thank you. I have

1 no other questions.

2 MR. MENICUCCI: Nothing further.

3 If there's no further questions, then, I
4 believe, Mr. McChesney is available as a witness.

5 BOARD MEMBER GRASSO: Yes, he is available.

6 BOARD CHAIRMAN SPENCER: Good afternoon, sir.

7 MR. McCHESNEY: Good afternoon.

8

9 C H A R L E S M c C H E S N E Y,
10 having been previously sworn by Board Counsel,
11 was examined and testified as follows:

12

13 DIRECT EXAMINATION

14 BY MR. MENICUCCI:

15 Q. Mr. McChesney, I thank you for coming down to
16 testify. It shouldn't take too much longer now. And my
17 question to you, first of all, is can you identify
18 yourself and whether you're a licensee of the Private
19 Investigators Licensing Board?

20 A. Yes. My name's Charles McChesney. I'm the
21 licensee for Justice, Inc., license number 745.

22 Q. How long have you had that license, sir?

23 A. I was licensed back originally in '95.
24 Justice, Inc. license them came into being in 2000,
25 2002, something like that.

1 Q. Okay. Did you have any discussions with
2 Mr. Everhardt or anyone else on behalf of Armor Recovery
3 concerning a possible business deal?

4 A. Yes, I did.

5 Q. Did you ever enter into a deal with Armor
6 Recovery or Mr. Everhardt?

7 A. No, I did not.

8 Q. Okay. I believe, Mr. Everhardt has provided a
9 document consisting of an e-mail and an attached draft
10 or document called a Memorandum of Understanding. I
11 don't know if that's sitting in front of you or not.

12 A. Let me see if I have that. Okay. All right.

13 Q. Did you ever enter into such a Memorandum of
14 Understanding with Armor or Mr. Everhardt?

15 A. No, I did not.

16 Q. Could you tell me what the discussions were
17 that you had with Mr. Everhardt concerning a possible
18 business deal?

19 A. Well, if memory serves, back in February or
20 March, he contacted me through -- he was referred to me
21 by another guy that I know through the security
22 industry. At that time, what he was looking for was he
23 needed a licensed investigator to do skip-tracing, make
24 contact with people, presumably for the purpose of
25 collecting of debts or repossessing of cars. As I

1 recall, he bought this company from a company, I was
2 thinking, out of Nevada. They're out of Arizona and
3 came up here in Nevada. We discussed the licensing
4 categories and went through everything that's required
5 as far as, you know, in order to use me as a P.I., you
6 know, he would be a client, that type of thing, some
7 discussions had about he had contracts coming in with
8 HSBC, as well as Wachovia. For the purpose of landing
9 those contracts, he needed a licensed P.I. to
10 substantiate the licensing requirements for doing
11 investigations.

12 We did have a conversation one time that I was
13 going to go with him to meet with Wachovia and identify
14 myself. During the course of that -- I have a packet of
15 information I give to all my clients. It has my
16 licensing, my general liability rider, all that kind of
17 stuff in it; and I gave that to him. But then we never
18 did meet with Wachovia.

19 He sent me this Memorandum of Understanding.
20 And it's been a long time since I looked it over. But
21 after looking it over, we had a conversation. And,
22 basically, you know, I got to be paid to work. I don't
23 go out or anything, or if you recover a car, or if you
24 recover, you know, assets or something, they don't get
25 paid.

1 So that's kind of a how the conversation broke
2 down. That was the end of the deal.

3 Q. Did you ever authorize Mr. Everhardt or any
4 company called Armor Recovery to use your license?

5 A. No.

6 Q. Will you take a look at the -- page 52 is a
7 package of documents, that'll probably be the last page
8 of that.

9 The document I'm referring to has a kind of a
10 letterhead that says "Armor Recovery Solutions, Inc. and
11 Justice, Inc."

12 A. Okay. Yeah, I'm looking at it now. It says
13 "To whom it may concern: Please be advised that the
14 Nevada Private Investigators Board has issued us a
15 licensed, 745, under Chapter 648. We anticipate receipt
16 of the physical license within the next four to six
17 weeks."

18 Q. And 745 is your license, correct?

19 A. Yes, it is.

20 Q. Okay. Did you ever authorize Armor Recovery to
21 use that license number?

22 A. No, definitely not.

23 Q. Did you ever authorize Armor Recovery to use
24 Justice, Inc., the name of your company?

25 A. No.

1 Q. Did Mr. Everhardt ever ask you to use your
2 license?

3 A. Oh, I'm sure he did. But that's what the
4 conversation about the licenses requirements are.
5 Having employees, you can't have subcontractors. We
6 discussed the -- you know, I can only -- well, as
7 everybody knows, you can only subcontract work to other
8 licensees; otherwise, they have to be modified
9 employees.

10 At some point in there, we discussed the
11 possibility of opening up an office to handle the
12 business that we were talking about, but it never got
13 that far.

14 I'm sorry. Did I answer your question?

15 MR. MENICUCCI: I think so.

16 MR. McCHESNEY: Okay.

17 MR. MENICUCCI: I have no further questions for
18 Mr. McChesney.

19 Mr. Everhardt, do you have questions?

20 MR. EVERHARDT: I do.

21 I think, first, I -- for the most part, I think
22 that fact that I never what he's saying, so I don't have
23 much to ask. I just have one clarification question.

24 ///

25 ///

CROSS-EXAMINATION

1
2 BY MR. EVERHARDT:

3 Q. And that is, when I came to your office, and we
4 specifically had a meeting set up for Wachovia, and you
5 gave me a package, and the package included a license
6 number and other things, and I said, "Well, they want to
7 check your package, your insurance and all those
8 different things," and I asked you, "Can I give them
9 this package for their review?" And you said, "Yes."

10 And I want to be clear to the committee that it
11 was my interpretation under that question that he gave
12 me the package, and I, in turn, gave it to my lender.
13 Because that was an authorization to show that I had
14 received that information from him. And I utilized that
15 information to set up the meetings.

16 A. Okay. Yeah, that would be accurate, yes, for
17 proof of license, insurance and all that kind of stuff.

18 He said he needed to show to Wachovia. Of
19 course, I provided it. I don't have a problem with
20 that. The comment to that was being that we were going
21 to go meet with Wachovia. And we talked about a
22 contract he was going have attorneys draw up and e-mail
23 after this, over the weekend. And then, when I did not
24 speak to -- he actually went to Wachovia on his own that
25 Monday or something like that. And I wasn't -- I had no

1 part of that meeting.

2 And then we discussed the contract. And, of
3 course, it wasn't feasible.

4

5 REDIRECT EXAMINATION

6 BY MR. MENICUCCI:

7 Q. Did you ever meet Mr. Aldo Datoli or speak with
8 him?

9 A. No, I did not. I don't know any of these
10 people that were to be here today. Other than Charles,
11 I never met any of these people.

12 MR. MENICUCCI: Are there any questions from
13 the Board?

14 BOARD CHAIRMAN SPENCER: Any Board questions?

15 BOARD MEMBER CRATE: Of course. I do have one,
16 one or two.

17 Good morning, Chuck.

18 MR. McCHESNEY: How are you doing, Dan?

19 BOARD MEMBER CRATE: As you entered into this
20 agreement, did you understand what Armor Recovery's
21 primary business was?

22 MR. McCHESNEY: Yeah. From what was explained
23 to me, they're a recovery and a repossession company out
24 of Arizona looking at opening up a venue here.

25 BOARD MEMBER CRATE: Okay. And what did you

1 understand their need of associating with Justice, Inc.
2 was?

3 MR. McCHESNEY: That they needed a licensed
4 investigator to do the skip-tracing and locating for
5 their clients.

6 BOARD MEMBER CRATE: Okay. And did they ever
7 indicate that they were going to hold you out as a
8 representative of being authorized in Nevada to do any
9 repossessions?

10 MR. McCHESNEY: And told me that? No. I'm
11 not -- like I said, I'm not a licensed reposessor, I
12 will tell you that.

13 BOARD MEMBER CRATE: And you pointed that out
14 to them, I would suspect, that you weren't a
15 reposessor?

16 MR. McCHESNEY: No, there was no question about
17 my licensing status related to that.

18 BOARD MEMBER CRATE: That's all I have.

19 BOARD CHAIRMAN SPENCER: Any further questions
20 from the Board?

21 Lois, do you have any questions?

22 BOARD MEMBER GRASSO: No, sir, I do not.

23 BOARD CHAIRMAN SPENCER: Thank you.

24 MR. MENICUCCI: I'd like to make sure the Board
25 has -- we've submitted and the Board has admitted the

1 additional documents that we've called Exhibit 53, and
2 the additional documents from Mr. Everhardt, which, I
3 guess, we should call Exhibit 54.

4 I think, at this point, my presentation is
5 concluded. So if Mr. Everhardt has additional
6 information and testimony he'd like to offer, this would
7 be the appropriate time.

8 MR. EVERHARDT: I think, I would just like to
9 make a closing statement. And that is, if -- I think, I
10 think, just two issues that my thought process is on, is
11 focusing on. One of them is I -- if it is a required
12 license to become a referral of an automobile
13 repossession company, then I take full responsibility,
14 and I will pay the fine and whatever else goes with it.

15 However, when -- you know, I think, I have a
16 fundamental problem. If that's not a requirement, then,
17 you know, I think, the Board needs to look at
18 Mr. Adray's position and what he was doing. You know,
19 he was acting -- he was the person that, by all intents
20 and purposes, was a reposessor. The orders came from
21 Armor in Illinois to him with his account numbers. He
22 took possession of the cars. He hired, and he brought
23 people to the company that worked for him. And I can
24 get supporting affidavits from -- from all of the
25 different parties showing that.

1 So I just want to say, in closing, that, you
2 know, the fine line between whether or not I'm a
3 referral that required a license or not, it seems to be
4 my issue at hand. And, but if we're actually taking a
5 ruling on how my participation is, you know, from a
6 licensing standpoint, I'm in the automobile repossession
7 business, without having a license, I think that the
8 Board really need to consider the action. You know, if
9 it looks like a duck and acts like a duck, you know, it
10 seems to be a duck, from Mr. Adray's standpoint.

11 So, I think, that's really what I have to say.

12 MR. MENICUCCI: Mr. Everhardt, when you -- you
13 applied for insurance, on your applications, it said
14 that Armor Recovery was an auto repossession business,
15 correct?

16 MR. EVERHARDT: It, the application, asked what
17 kind of business was the insurance for? And I said it
18 was for automobile repossession business.

19 MR. MENICUCCI: Okay. And you incorporated,
20 or, rather, there's a company called Armor Recovery
21 Investigation of Nevada LLC, correct?

22 MR. EVERHARDT: Correct.

23 MR. MENICUCCI: What's the current status of
24 that company?

25 MR. EVERHARDT: It could be -- it's probably in

1 good standing. I don't know. I haven't checked
2 recently. If it's not, you know, it needs only fees to
3 be paid.

4 MR. EVERHARDT: So it's organized in the state
5 of Nevada, correct?

6 MR. EVERHARDT: Correct.

7 MR. MENICUCCI: So you are associated, or,
8 rather, the Armor Recovery Investigations of Nevada is
9 associated with Armor Recovery in Illinois, correct?

10 MR. EVERHARDT: That's correct. That's how I
11 get paid my fees. I do not talk to the lenders. I will
12 call up Wachovia. They do the primary ordering. All
13 the orders go through their computer system. And I
14 match, and in the early case, Mr. Adray. They set up
15 the pay card, they set up the relationship, and I get
16 paid per car, which is about 70 to 80 dollars a car for
17 the referral.

18 MR. MENICUCCI: So you would get business
19 through the Illinois company, correct?

20 MR. EVERHARDT: Correct.

21 MR. MENICUCCI: And your Nevada LLC would then
22 make arrangements to do a repossession in Nevada,
23 correct?

24 MR. EVERHARDT: Correct.

25 MR. MENICUCCI: And the Nevada LLC would

1 receive a fee, correct?

2 MR. EVERHARDT: For the referral, correct.

3 MR. MENICUCCI: And the fee or the amount of
4 money you retained for that would be how much?

5 MR. EVERHARDT: Seventy, \$80, \$90, depending
6 on -- you see in the pay cards, there's prices for
7 different services. So when they call is a voluntary,
8 it's a process that the borrower, you know, the borrower
9 from the lender agrees to pick up. And, I think, that's
10 a lot less. So that's a \$70 fee. When it is not a --
11 when it's not a -- when it's not a -- a voluntary, it's
12 a higher fee, it's more 80 or 90 dollars.

13 MR. MENICUCCI: And the company that actually
14 picked up or the person that picked up the car would
15 have to be compensated, correct?

16 MR. EVERHARDT: Correct.

17 MR. MENICUCCI: And did you pay that person
18 from the Nevada LLC?

19 MR. EVERHARDT: I did not.

20 MR. MENICUCCI: How did what person get the
21 money?

22 MR. EVERHARDT: They got paid, well, the front
23 person, the person who was the primary pay card got paid
24 from the Illinois company. And, um, I can't tell you, I
25 cannot tell you whether or not on all occasions that the

1 Illinois company paid the drivers directly or some of
2 the times. I think, it was kind of a, you know,
3 sometimes did and sometimes didn't. But all that money
4 came from the Illinois company.

5 MR. MENICUCCI: Okay. Sometimes it went
6 through the Nevada LLC to the driver?

7 MR. EVERHARDT: No. No. Sometimes it would go
8 to Mr. Adray, and Mr. Adray would pay the drivers. And
9 sometimes the drivers were paid directly by the Illinois
10 company, just depending on, you know, how important
11 their immediate needs were.

12 MR. MENICUCCI: The Nevada LLC got a fee per
13 car, correct?

14 MR. EVERHARDT: That's correct.

15 BOARD CHAIRMAN SPENCER: Counsel, did you wish
16 to sum, a summary?

17 MR. MENICUCCI: Yeah. Are there any questions
18 from the Board before I start?

19 BOARD CHAIRMAN SPENCER: Board questions?

20 BOARD MEMBER CRATE: I have one or two, of
21 course.

22 Mr. Everhardt?

23 MR. EVERHARDT: Yes.

24 BOARD MEMBER CRATE: You heard Mr. McChesney
25 indicate that it was his understanding you weren't

1 asking him. In fact, he made clear that he wasn't
2 licensed to do repossessions. Is that correct?

3 MR. EVERHARDT: That's correct.

4 BOARD MEMBER CRATE: And your primary core of
5 business was repossessions; is that correct?

6 MR. EVERHARDT: My primary core of business was
7 referring repossessions.

8 BOARD MEMBER CRATE: How did you anticipate --

9 MR. EVERHARDT: The same way, if I may, the
10 same way my relationship with Mr. McChesney is going to
11 develop.

12 BOARD MEMBER CRATE: I understand.

13 MR. EVERHARDT: He was -- I was willing to
14 refer lenders to him, and he was going to get paid a fee
15 from the lender.

16 BOARD MEMBER CRATE: But you knew --

17 MR. EVERHARDT: And I, in turn, would get paid
18 a referral.

19 BOARD MEMBER CRATE: But you knew that at some
20 point a license was required for repossessions, which
21 Mr. McChesney is not in a position to provide?

22 MR. EVERHARDT: Mr. Crate, I never asked him
23 for that.

24 BOARD MEMBER CRATE: But you were aware that
25 one was required?

1 MR. EVERHARDT: I was, I was aware that a
2 licensed is required to go out and do repossessions,
3 correct.

4 BOARD MEMBER CRATE: How did you anticipate
5 complying with that?

6 MR. EVERHARDT: I felt that the business of
7 referring did not fall underneath the business of
8 actually picking up the cars.

9 BOARD MEMBER CRATE: Well, it was your intent
10 to contract or subcontract with Mr. Adray and with
11 Towinator to do repossessions that you would feed to
12 them, correct?

13 MR. EVERHARDT: No, I was not doing a
14 subcontract. I never received the orders. I was
15 referring in Mr. Adray's and not Mr. Montana's, because
16 there was no repossessions there, but Mr. Adray's
17 situation between the Illinois company directly. I
18 referred them to them. And they got the orders
19 directly, you know, once they got them. Didn't run
20 through my company. There were no orders. There's no
21 paperwork. There's no pay, payments. There's no money
22 that was exchanged.

23 And with Mr. McChesney, it was that he was
24 going to work directly with Wachovia and HSBC, and they
25 were going to -- and there was going to be an agreement.

1 And then the agreement, my participation agreement was
2 referring the business to him, if they were going to pay
3 on a regular basis. If didn't work out like
4 Mr. McChesney said, because they weren't guaranteeing
5 payment. It was all contingent.

6 BOARD MEMBER CRATE: Okay. I'm focusing on the
7 repossession side of this.

8 MR. EVERHARDT: Yes.

9 BOARD MEMBER CRATE: You were acting as an
10 agent on behalf of Armor Recovery Solutions out of
11 Illinois to identify including a relationship with
12 repossessioners.

13 MR. EVERHARDT: Well, I don't know that I am in
14 agreement with your word "agent." I mean you're saying
15 "the agent of."

16 BOARD MEMBER CRATE: Well, you were acting --

17 MR. EVERHARDT: I'm an independent contractor.

18 BOARD MEMBER CRATE: You were acting on their
19 behalf and in their interest to locate those.

20 MR. EVERHARDT: I'm sorry. I didn't hear you.

21 BOARD MEMBER CRATE: Were you acting on their
22 behalf and in their interests to locate repossessioners in
23 Nevada?

24 MR. EVERHARDT: Yes.

25 BOARD MEMBER CRATE: And, in fact, you made

1 several efforts to identify and provide those
2 reposseors?

3 MR. EVERHARDT: Yes.

4 BOARD MEMBER CRATE: And repossessions were
5 conducted as a result of that?

6 MR. EVERHARDT: Yes.

7 BOARD MEMBER CRATE: By unlicensed persons?

8 MR. EVERHARDT: Um, I'm not sure. You know,
9 I -- it was in the my responsibility, I felt, to check
10 out their licensure. It was the responsibility of Armor
11 in Illinois to check out their licensure.

12 BOARD MEMBER CRATE: Okay. Thank you. I don't
13 have any other questions.

14 BOARD CHAIRMAN SPENCER: Any further Board
15 questions in Las Vegas?

16 BOARD MEMBER GRASSO: No questions here, sir.

17 BOARD CHAIRMAN SPENCER: All right.

18 MR. MENICUCCI: I believe, this is a case of
19 evading the licensing laws. Mr. Everhardt and his
20 Nevada limited liability company represented to
21 everybody, the insurance company, Mr. Montana, that they
22 were in the repossession business, and they were
23 involved in the repossession business. They were giving
24 money to go and repossess cars and get a fee for it.

25 It's evading of the licensing laws to simply

1 take that and claim you're nothing but an intermediary
2 and then go and use people who are licensed or not,
3 whoever you can find to do repossession.

4 It also appears that they were utilizing
5 Mr. McChesney's information for their own behalf to go
6 and tell people that they had a Nevada license, when
7 they clearly did not. They did not have an association
8 with Justice, Inc., or Mr. McChesney never authorized
9 them to use or distribute that information on their
10 letterhead. And they'd never applied for, received or
11 obtained any Nevada licenses for any activities in the
12 jurisdiction of this Board.

13 Armor Recovery was operating, I think it's
14 clear, they were operating a repossession business, they
15 had yards, they had access to it. They gave access to
16 Mr. Adray. They did repossessions. And they didn't
17 have a license.

18 BOARD CHAIRMAN SPENCER: So you --

19 MR. MENICUCCI: So I would urge the Board to
20 uphold the citation. The fine is set in statute, which
21 is \$2,500. The Board can consider whether to accept a
22 payment plan, at the Board's discretion.

23 BOARD CHAIRMAN SPENCER: Entertain a motion.

24 BOARD MEMBER CRATE: Mr. Chairman, I'd move to
25 upheld the citation as presented and delivered.

1 BOARD MEMBER PUTNAM: Second.

2 BOARD CHAIRMAN SPENCER: A motion and a second.
3 All in favor, signify by saying "aye."

4 (The Board Members said "aye.")

5 BOARD CHAIRMAN SPENCER: Opposed?

6 The citation is upheld.

7 Mr. Everhardt, you can contact Ms. Ray, whose
8 number I'm sure you have, as far as your fines.

9 MR. EVERHARDT: Okay.

10 MR. MENICUCCI: At this time, I don't know if
11 Intelius is here or not.

12 BOARD MEMBER GRASSO: Yes, they are here.

13 MR. MENICUCCI: John, you want to just go to
14 the end?

15 MR. ARRASCADA: That's fine.

16 MR. MENICUCCI: This shouldn't take long.

17 BOARD CHAIRMAN SPENCER: William Beaver.

18 MR. BEAVER: Yes.

19

20 AGENDA ITEM 7

21 WILLIAM BEAVER OF INTELIOUS SCREENING SOLUTIONS, LLC

22

23 BOARD CHAIRMAN SPENCER: Good afternoon,
24 Mr. Beaver.

25 MR. BEAVER: Good afternoon. I noted the

1 citation was, the citation was issued as to me. And I
2 am simply the Vice President and General Counsel of
3 Intelius Screening Solutions. It was not issued as to
4 me, but I simply submitted the appeal on behalf of those
5 two entities.

6 BOARD CHAIRMAN SPENCER: Understood.

7 MR. BEAVER: And with me, I have the head of
8 Intelius Screening Solutions, Todd Owens.

9 BOARD CHAIRMAN SPENCER: Very good.

10 MR. MENICUCCI: All right. First of all, I'd
11 like to make sure we have our documents. There's not
12 much in this case, I think, they're numbered number one
13 through number eight, eight pages.

14 (There was a long pause in the proceeding.)

15 BOARD CHAIRMAN SPENCER: Mr. Beaver, could you
16 repeat the name of the gentleman to your right.

17 MR. BEAVER: Todd Owens, O-W-E-N-S.

18 BOARD CHAIRMAN SPENCER: Thank you.

19 MR. MENICUCCI: Are there any objections to
20 admitting documents one through eight?

21 MR. BEAVER: No.

22 MR. MENICUCCI: The Board members have
23 electronic copies of those documents, should be
24 available on the flash drives.

25 I call first Investigator Whatley, please.

1 T A M M Y W H A T L E Y,
2 having been previously sworn by Board Counsel,
3 was examined and testified as follows:

4
5 D I R E C T E X A M I N A T I O N

6 BY MR. MENICUCCI:

7 Q. Investigator Whatley, you issued citation
8 C-126-08, correct?

9 A. Yes, I did.

10 Q. To Intelius Screening Solutions, LLC; is that
11 right?

12 A. That is correct.

13 Q. Can you tell me the circumstances which caused
14 you to issue that citation?

15 A. Yes. Our office received a written complaint.

16 Q. And what did you do?

17 A. I actually conducted a search of our data base
18 and found that Intelius is not licensed. I did find
19 there had been a previous complaint, and a previous
20 cease and desist letter had been sent. Therefore, this
21 went to citation.

22 Q. What were they -- what was the complaint, what
23 were they allegedly doing?

24 A. Conducting background, criminal background
25 checks in Nevada. I did view the website, and the

1 website revealed that as well.

2 Q. Okay. I believe, there's a printout of the
3 website later on in these documents. Look at page seven
4 and page eight, if you would, please.

5 A. Yes.

6 Q. And that is the website for Intelius?

7 A. Correct.

8 Q. Did you print that out yourself?

9 A. Yes, I did.

10 Q. And would that have been on the 22nd of May,
11 2009?

12 A. Yes.

13 Q. Okay. Do you see under the services provided
14 category, criminal records check, Nevada is listed?

15 A. Yes.

16 Q. And, also, on the backgrounds check, Nevada is
17 specifically listed, correct?

18 A. Yes.

19 Q. And did you find that to be a violation of the
20 Nevada licensing laws for investigations?

21 A. Yes.

22 MR. MENICUCCI: Okay. I have no further
23 questions for Investigator Whatley.

24 Does Intelius have questions?

25 MR. BEAVER: Yes, I have, do.

CROSS-EXAMINATION

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BY MR. BEAVER:

Q. Ms. Whatley, are you a licensed private investigator in the state of Nevada?

A. I'm sorry. Could you repeat that question.

Q. Are you a licensed private investigator in the state of Nevada?

A. I am not. I am a sworn law enforcement officer, and that would be in violation.

Q. Okay. The exhibits that were introduced, and in particular, I believe, it's page seven, which is a site map printout, do you have that in front of you?

A. I do.

Q. There's nothing on this document that says "investigations"; isn't that correct?

A. It says "Criminal record check," and when you go down, it does show "Nevada criminal records check." To me, that implies that you provide that service.

Q. So are you suggesting that somebody in the state of Washington should not be able to check whether or not the public records that are nationally deposited and exist in a national data base include someone who may have a record from a court in Nevada?

A. I refer back to the definition of what a private investigator entails and base my decisions on

1 that.

2 Q. Ms. Whatley, do you know where the server that
3 this printout came from is located?

4 A. Computer forensics and analysis is not my
5 expertise. And I went to Intelius's website, and this
6 is what I found.

7 Q. The records check, do you know what those
8 records -- where they exist, where they're located?

9 A. I do not.

10 Q. Do you know what they are?

11 A. As far as the criminal background and the
12 criminal checks that the website indicates that you
13 provide?

14 Q. The records that are referenced on this
15 printout as an exhibit.

16 A. No, I do not.

17 Q. Ms. Whatley, you're familiar with national data
18 repositories reflecting public records of criminal
19 convictions; is that correct?

20 A. Correct.

21 Q. And you probably use those yourself in your
22 jobs; is that correct?

23 A. On occasion.

24 Q. Have all those national repositories that
25 you've used have P.I. licenses from the State of Nevada?

1 A. And, again, I refer back to the definition of
2 "private investigator" in the state of Nevada and what
3 is conducted in the state of Nevada for Nevada companies
4 or -- or employees or citizens.

5 Q. But, I guess, I don't think you answered my
6 question. Do you know whether these repositories that
7 you have accessed have P.I. licenses in this state?

8 MR. MENICUCCI: I'm going to object to that.
9 We're getting quite far afield. We're not charging
10 anybody who does a -- anyone else who does a collection
11 of records beside Intelius here. They're the ones that
12 have the citation. If there's somebody else that's in
13 violation, that's something we can deal with later.

14 MR. BEAVER: Well, I guess, I'm assuming, if I
15 could find out. She indicated that she believed we
16 violated the statutes. So I'm trying to, more or less,
17 explore her own experiences.

18 BY MR. BEAVER:

19 Q. Ms. Whatley --

20 Was there a question, I heard a question?

21 BOARD CHAIRMAN SPENCER: No, I was going to
22 address your question of before, briefly, and that is,
23 to the best of our knowledge, those people who do those
24 sorts of checks in this state are, in fact, licensed.

25 ///
///

1 BY MR. BEAVER:

2 Q. Ms. Whatley, have you ever used Google?

3 A. Yes, I have.

4 Q. And have you tried to search through Google to
5 see what their data base shows of various individuals?

6 A. Yes, I have.

7 Q. And you've probably used other search engines
8 to do the same things; is that correct?

9 A. Yes, I have.

10 Q. Now, with regard to Intelius, do you, do you
11 know if we're any different than these other search
12 engines that have data bases?

13 A. Actually, this is in particular to Intelius,
14 and my investigation was regarding Intelius. And based
15 upon the information given on Intelius's website, I do
16 feel that Intelius is in violation.

17 Q. Ms. Whatley, with regard to, let's say,
18 criminal convictions in the state of Nevada, that's --
19 for example, a court in Nevada has a public record file
20 that indicates that someone who's been convicted of a
21 crime. You're aware that anyone, any public individual
22 can go to that courthouse and access the public record;
23 isn't that correct?

24 A. Does that individual do it for a fee?

25 Q. I -- that's just an initial question that I'm

1 asking.

2 A. Well, it goes back to the definition of
3 "private investigator."

4 Q. Ms. Whatley, this is preliminary question to
5 what I'm going to ask you.

6 BOARD CHAIRMAN SPENCER: Mr. Beaver, would you
7 like to ask the question again, please.

8 BY MR. BEAVER:

9 Q. Ms. Whatley, you're aware that any individual
10 can go to the courthouse and pull public records from
11 the courthouse; isn't that correct?

12 A. Yes.

13 Q. So, for example, if I, Bill Beaver, wants to
14 see if there's a record about myself in the courthouse,
15 in your mind, would it be a violation if I hired a
16 courthouse messenger to simply go to the courthouse to
17 pull the records of me after I give that individual my
18 name and my date of birth?

19 A. If someone is doing it for a fee, yes.

20 Q. So I could not ask the courthouse messenger to
21 simply, as a clerical function, check the courthouse
22 files?

23 A. According to the definition of a private
24 investigator, if they're pulling that information for a
25 fees, they need to be licensed.

1 Q. Now, you mentioned the definition several
2 times. And the definition includes within it the word
3 "investigation"; is that correct?

4 A. Well --

5 MR. MENICUCCI: Private investigator?

6 MR. BEAVER: Yes.

7 MR. MENICUCCI: Look at it.

8 MR. BEAVER: It's the --

9 MS. WHATLEY: Yes, it does. Yes.

10 BY MR. BEAVER:

11 Q. And, to your knowledge, is the word
12 "investigation" further defined anywhere in the statute?

13 MR. MENICUCCI: I object to the questions that
14 there's an entire definition for "private investigator"
15 which includes the word "investigation."

16 MR. BEAVER: That's right. My question is
17 simply that she's mentioned the definition several
18 times, and I'm simply asking her if she's aware if
19 there's a definition in the statute of the word
20 "investigation." Because it seems to me that's the key.

21 BOARD CHAIRMAN SPENCER: Yeah, there is a --
22 Why don't you just read it?

23 MS. WHATLEY: Well, he's asked for
24 "investigation"

25 BOARD CHAIRMAN SPENCER: There's not a specific

1 definition of the word "investigation," merely what
2 constitutes an investigation, what they're doing.

3 BY MR. BEAVER:

4 Q. Well, the definition of -- Ms. Whatley, the
5 definition of "private investigator" indicates that it's
6 someone who makes an investigation for consideration to
7 do any of these various things; is that correct?

8 A. That's correct, and then it goes on and
9 somewhat defines that as far as the identity, habit,
10 conduct, et cetera.

11 Q. Right, but they're performing an investigation
12 to determine those various things; is that correct?

13 A. You'd have to look at the definition as a
14 whole. I don't know specifically.

15 Q. No, I -- I understand that. And, as I
16 understand what you said, you believe that simply me
17 asking someone, for a nominal fee, to go to the
18 courthouse to pull the records on myself, in fact, is an
19 investigation?

20 A. If they are conducting that business for a fee,
21 they should be licensed.

22 Q. Ms. Whatley, are you aware that every single
23 records pulled that Intelius has done in the state of
24 Nevada is done by a licensed investigator?

25 A. I am not aware of that.

1 Q. Are you aware that Intelius actually contacted
2 the licensing board some time ago to determine what, if
3 anything, it had to do to comply with the statute?

4 A. I have a letter of appeal.

5 Q. Okay. Does it, does it matter to you if, in
6 fact, the only individuals who pull records on behalf of
7 Intelius or at Intelius's request in the state of Nevada
8 are licensed private investigators?

9 A. That is actually a situation for the Board to
10 answer.

11 BOARD CHAIRMAN SPENCER: I --

12 MS. WHATLEY: I'm sorry?

13 MR. BEAVER: Okay.

14 MS. WHATLEY: That's correct, this. And.

15 BY MR. BEAVER:

16 Q. Ms. Whatley, the complaint that you mentioned,
17 can you indicate who filed the complaint?

18 A. Actually, that is in a confidential manner.
19 And this citation was written as far as advertising and
20 not performing the actual actions of the investigation.

21 Q. Now, you're referring to the first one you
22 mentioned?

23 A. I'm sorry. I don't understand your question.

24 Q. Well, the citation, I think, your testimony
25 referenced two different complaints, one in 2006 and

1 then one in 2008.

2 A. In 2006, there was a cease and desist letter
3 sent. I was not involved in that investigation. The
4 citation was issued under C -- the citation number
5 C-126-08, which was for advertising, not conducting the
6 business of.

7 Q. With regard to the cease and desist letter, are
8 you aware that Intelius worked with actually the A.G.'s
9 Office, and it was determined that it was a hard copy
10 billboard that was the subject of the complaint, and it
11 was removed?

12 A. I did not have -- I was not privy to that
13 information.

14 Q. And so, as I understand it, the complaint,
15 then, that we're, I think, here to address, the 2008
16 one, is one for advertising?

17 A. That is correct.

18 Q. And it's the way that the criminal record check
19 that you've testified to is referenced on the site map?

20 A. That's correct, that it specifically states
21 that you will provide those services in Nevada.

22 Q. Well, it doesn't actually say we're providing
23 it in Nevada, it says that they refer to Nevada records;
24 isn't that correct?

25 BOARD CHAIRMAN SPENCER: Yes.

1 BY MR. BEAVER:

2 Q. Ms. Whatley?

3 A. One moment, please. I am not seeing where it
4 says is it's referred.

5 Q. Well, this is simply referring to records that
6 were generated, public records what were generated in
7 the state of Nevada; isn't that correct?

8 A. Right, correct. It does not say where they're
9 generated. It says "Nevada criminal records checks."

10 Q. In other words, someone in the state of
11 Washington could check to see whether or not there were
12 any public records generated by the State of Nevada
13 courts, referring to a particular individual who may
14 have lived in the state of Washington, correct?

15 A. They -- if they are doing Nevada records check
16 for a fee, they need to be licensed.

17 Q. Is it your belief that someone in the state of
18 Washington could not ask Intelius to print out from its
19 data base what, if any, records in Nevada exist with
20 regard to someone who lives in the state of Washington?

21 A. Well --

22 Q. Without having a Nevada P.I. license?

23 BOARD CHAIRMAN SPENCER: Sir, the question is
24 not whether someone from Washington is doing this, it's
25 whether or not Intelius is doing this.

1 MR. BEAVER: Well, what I just indicated is
2 exactly what Intelius does. Someone in the state of
3 Washington accesses our data base, and with regard to
4 someone who may live in Washington or another state, to
5 do see if they have any records that were generated from
6 a court in Nevada.

7 BOARD CHAIRMAN SPENCER: Exactly. And they do
8 so for a fee.

9 MR. BEAVER: And my question is, is whether
10 Ms. Whatley believes that that activity, all of which
11 took place in the state of Washington, requires a Nevada
12 P.I. license.

13 MS. WHATLEY: Yes.

14 MR. MENICUCCI: Let me object. It's not
15 relevant to what our investigator believes. The Board's
16 the one that's going to have to make the decision in
17 this matter.

18 BOARD CHAIRMAN SPENCER: Right.

19 MR. BEAVER: I believe that --

20 MR. MENICUCCI: So the question is irrelevant
21 and asks for a conclusion of law. The Board's going to
22 be the one that has to make the decision as to whether a
23 violation occurred or not.

24 MR. BEAVER: And my whole point here is
25 Ms. Whatley indicated that this reference about the fact

1 that our national data base has Nevada records violates
2 the statute. And my point is that this has nothing to
3 do with somebody residing in the state of Nevada trying
4 to do a records check --

5 BOARD MEMBER CRATE: As a matter --

6 MR. BEAVER: -- in Nevada.

7 BOARD MEMBER CRATE: And, as a matter of
8 defining a little more tightly, I don't believe
9 Ms. Whatley did indicate that there is a problem with
10 Intelius having the information that originated in
11 Nevada. Ms. Whatley's citation is for Intelius's
12 representation that it will provide, for a fee,
13 information generated or on file in Nevada

14 MR. BEAVER: And, again, I just, I want it
15 clear. There's nothing about this, what Intelius does,
16 that somehow it's related to Nevada. In other words,
17 these are records that exist in the national data base
18 that somebody anywhere in the country could access.

19 BOARD MEMBER CRATE: All this is because
20 Intelius has procured and caused them to be in their
21 data base.

22 MR. MENICUCCI: I have two objections to
23 record. One, the witness is trying to introduce an
24 argument about evidence. Second, the questions are not
25 relevant to this investigator as to what Intelius may or

1 may not have in its data base.

2 MR. BEAVER: Well, she did testify under direct
3 that she believed we violated the statute. And I'm
4 simply trying to explore that.

5 MR. MENICUCCI: In order to do the citation.
6 The Board's the one that has to decide if a violation
7 occurred.

8 MR. BEAVER: I understand. But, I believe, my
9 question's, then, related to the reason that she issued
10 the citation. And, and I'm trying to explore that.

11 BY MR. BEAVER:

12 Q. Ms. Whatley, are you aware that -- that with
13 regard to any employment screens that are done, the
14 individual actually being screened, in other words, the
15 one whose records are being checked, has to authorize
16 the check?

17 A. That is irrelevant to the definition of a
18 private investigator and why we're sitting here.

19 Q. Okay. So that's not a fact that matters?

20 A. Excuse me?

21 Q. In other words, that's not a fact that matters?

22 A. We have an attorney general opinion that states
23 that preemployment screeners and background screeners do
24 need to be licensed in the state of Nevada if they are
25 providing Nevada records.

1 Q. Okay.

2 A. And that was provided along with the citation.

3 Q. Actually, it wasn't.

4 A. I'm sorry. I -- let me, let me restate that.

5 That is a court opinion, not an attorney general

6 opinion.

7 Q. Well, I'll tell you that, since I was the one

8 who received it, there was nothing provided except the

9 information on, solely, how to do the appeal.

10 MR. MENICUCCI: Is it on there?

11 MS. WHATLEY: It should be.

12 MR. BEAVER: And that could actually be

13 helpful, because we actually did a search, and we've

14 been trying to figure this out for some time.

15 MR. MENICUCCI: We accept that the court

16 opinion was not provided with the citation.

17 MR. BEAVER: Okay.

18 MS. WHATLEY: I don't know. It should be.

19 MR. BEAVER: And I have no other questions.

20 Thank you.

21 MR. MENICUCCI: Anything from the Board?

22 I'd like to call Mr. Owen, please.

23 MR. OWENS: Yes, I'm right here.

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T O D D O W E N S ,

having been previously sworn by Board Counsel,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MENICUCCI:

Q. What is your position with Intelius?

A. I am the general manager for the records
screening division that supports reemployment purposes.

Q. Are you an officer of Intelius Screening
Solutions, LLC, the Nevada domestic limited liability
company? Are you a member of that?

A. You know, I am not sure if I am on the record
as an officer.

Q. Okay. You're aware, though, that the citation
was issued to Intelius Screening Solutions, LLC,
correct?

A. Yes, I am aware.

Q. You're aware that it's a Nevada limited
liability company, correct?

A. Yes, I am aware.

Q. It's doing business in Nevada, right?

MR. BEAVER: Yes.

MR. OWENS: Yes.

///

1 BY MR. MENICUCCI:

2 Q. Okay. Now, the website is, for Intelius -- and
3 I'll ask you to go to page seven. It's correct, is it
4 not, that all you say you're doing is criminal records
5 checks, Nevada, criminal records check, on the one hand,
6 and you're also offering, on the second column,
7 background checks, correct?

8 A. Correct.

9 Q. And you're offering background checks that say
10 "Nevada background checks," correct?

11 A. Correct.

12 Q. That's all a person knows if he goes to that
13 website, correct?

14 A. On this particular page, yes, correct.

15 Q. He's not going to know ahead of time what
16 information Intelius may have in its files, is he?

17 A. Well -- and I'm sorry to interrupt. He -- the
18 next step -- this is a site map. Each of these are
19 hyperlinks, and it would take them to the next page
20 where it explains exactly what the product is and what's
21 in it, with a sample report.

22 Q. You're not telling the Board that the only
23 information you provide is what's already in the files,
24 are you?

25 A. Already in the files. So these searches, these

1 are all instant searches that are delivered Intelius
2 servers and Intelius-housed information. Yes.

3 Q. So you're saying the only way I know, if I want
4 a background check on somebody in Nevada, if you happen
5 to have it already in your files, you'll give it to me,
6 but if you don't, you turned up a negative report?

7 A. That's true, absolutely. You know, back --
8 records-searching does not always reveal information.

9 Q. Where did you say -- You're only searching your
10 own files; is that your testimony?

11 A. We have a wide variety of searches that range
12 in quality and scope that is client-dependent. And none
13 of them have -- carry a silver bullet.

14 Q. I'm just saying, you have to search for the
15 information, right?

16 A. Our -- our software algorithms search for the
17 information, and where we rely upon the use of a court
18 runner, we will send out a -- an order to a court
19 running partner. So if you consider that searching.
20 You know, we are a technology platform that links things
21 together and displays the information that's returned to
22 us.

23 Q. So if you want information from Nevada, and the
24 court doesn't have electronic access, how would you get
25 it?

1 A. We send out a court runner to the courthouse.
2 They will go to a public access terminal or deal with a
3 court clerk. Sometimes, depending on the state, we
4 could access the information on line, which is not the
5 case in the state of Nevada.

6 Q. So you would actually had to put shoe leather
7 on the ground in Nevada to get that information,
8 correct?

9 A. Correct. However, Intelius uses partners,
10 subcontractor partners, to do all court research for us.
11 There would be too many for any background screening
12 company to have them all as individual employees.

13 Q. But the client does business with Intelius,
14 right?

15 A. The client does business with Intelius,
16 correct, sir.

17 Q. Intelius receives a fee, correct; that's how
18 you make your money?

19 A. Correct.

20 Q. And they know that they can get this
21 information from Intelius, because you advertise it on
22 the website. That's one way they can find out.
23 Correct?

24 A. Yes.

25 MR. MENICUCCI: Okay. I have no further

1 questions for Mr. Owen.

2

3

CROSS-EXAMINATION

4 BY MR. BEAVER:

5

Q. I have a couple follow-ups, questions.

6

Mr. Owens, the testimony that you just gave with regard

7

to courthouse runners, are you referring to the

8

preemployment Intelius Screening Solutions services?

9

A. Yes.

10

Q. And those are not the services that refer to

11

the Nevada criminal records check and the Nevada

12

background check that are referenced on page seven, are

13

those?

14

A. Correct.

15

Q. With regard to any records checks that Intelius

16

Screening Solutions does in the state of Nevada, do you

17

use licensed P.I.s to do those or not?

18

A. Yes.

19

Q. And can you explain what you do?

20

A. In terms of the process of ordering these?

21

Q. Yes, and how it is that you -- and why does it

22

only use licensed P.I.s, and how do you know that

23

they're licensed P.I.s?

24

A. Right. So, first of all, we are a member of

25

NAPBS, National Association of Professional Background

1 Screeners, which is how we stay abreast of regulations
2 to the best of our ability. It's complicated, state for
3 sure. And we get referrals as to companies that are
4 experts within their own particular market.

5 In the case of -- frankly, there's over 3,000
6 counties across the country that we're searching. And
7 in the case of Nevada, we use two -- I believe, we have
8 those reported somewhere. There are two court
9 researchers. And we ask them, when we first discover
10 that there may be a question about whether or not we
11 need to have a private investigator's license -- as you
12 said, it's been something we've been grappling with. We
13 did ask them if they had private investigator's license.
14 And they confirmed that they did, and they confirmed
15 that that is what is required. And we also received
16 that confirmation from the P.I. licensing board via
17 verbal confirmation last fall.

18 Q. Okay. And when you say "the licensing board,"
19 are you talking about this, this Board?

20 A. Right.

21 Q. Do you actually have -- did you receive letters
22 from these two subcontractors confirming that they only
23 used licensed private investigators to do these searches
24 for us?

25 Q. Yes, we did.

1 MR. BEAVER: I actually -- and I apologize for
2 not being that familiar with this process, although I
3 read all of the rules that I could find about. But I've
4 got copies of these that we wanted to offer. And,
5 again, you know, I'm not offering them for any other
6 reason except to try to show our good faith. We've been
7 trying very hard to determine what the requirements
8 were. And we contacted actually this Board, and we
9 thought we were doing exactly what they told us to do.

10 But, anyway, I just wanted to offer the two
11 that you said we use, and confirm that only licensed
12 P.I.s do any courthouse records pulls. So I've got
13 copies of those.

14 MR. MENICUCCI: Well, without seeing them, I
15 can't comment.

16 MR. BEAVER: They are very short. Could I --
17 is there -- I noticed in one of the other hearings,
18 there was some faxing of documents.

19 MR. MENICUCCI: Fax them, I guess.

20 BOARD MEMBER CRATE: Could you fax them up,
21 please.

22 MS. RAY: 684-1108.

23 MR. MURPHY: Thank you.

24 MR. MENICUCCI: Could I ask Mr. Owens, is there
25 anything that you have in writing from this Board

1 regarding your inquiries about what you needed to do
2 with regard to licensing?

3 MR. OWENS: Unfortunately, it was a verbal
4 telephone conference that we had. It was conducted by
5 the director of operations, Mr. Steve McGavern. We have
6 communication internally that dates back to last fall,
7 but it's just e-mail communication between Intelius
8 employees, that confirms that the conversation happened,
9 that this is the information we had, that we followed up
10 with our researchers and obtained the appropriate
11 documentation for our files. So.

12 BY MR. BEAVER:

13 Q. And just to confirm, Mr. Owens, the only time
14 that Intelius does a search of some -- like a
15 courthouse, is with regard to this, the preemployment
16 service?

17 A. Correct.

18 Q. And all of those preemployment screens, where
19 you go to the courthouse, were authorized by the actual
20 individual record are being screened?

21 A. Yes.

22 Q. And is that individual, whose records are being
23 looked for at the courthouse, the individual who gives
24 the name and the date of birth, to look for it?

25 A. Yes.

1 MR. BEAVER: And, I think, that's at the
2 follow-up questions that I had to the ones that counsel
3 asked.

4 BOARD MEMBER CRATE: I have a question for
5 Mr. Owens.

6 You seem to imply a distinction between when
7 runners are unsure that they are licensed P.I.s and when
8 they aren't. Is that correct? Are there occasions when
9 you would have records pulled, copied or transferred,
10 that are not obtained or through a licensed
11 investigator?

12 MR. BEAVER: Just to we're clear, we're talking
13 about in the state of Nevada, correct?

14 BOARD MEMBER CRATE: In Nevada.

15 MR. BEAVER: Okay.

16 MR. OWENS: No, absolutely not. We are aware,
17 as our partners are aware, that there is a licensing
18 requirement, and we believe that this will fulfill the
19 requirement.

20 BOARD MEMBER CRATE: So you can assure all of
21 your clients that any information in Intelius's data
22 banks, or whatever they produce in response to an
23 inquiry, was obtained by a licensed investigator?

24 MR. BEAVER: And, again, we're talking about
25 information pulled from some location in the state of

1 Nevada, like the courthouse, correct?

2 BOARD MEMBER CRATE: Anything referencing any
3 activity on a subject generated or referencing Nevada.

4 MR. OWENS: It depends on the scope of the
5 products.

6 BOARD MEMBER CRATE: Can you give me an example
7 of a client request that you would provide that had to
8 do with any, any information generated from Nevada that
9 wouldn't, that, in your in your opinion, would not
10 require a licensed P.I.?

11 MR. OWENS: So I'm going to speak to the
12 preemployment screening product. We verify all data
13 base information at the courthouse before reporting it
14 to the client. Because, that way, it's the most, most
15 accurate information that we can find.

16 And we, so what we do is we send out a private
17 investigator, licensed court runner, in the state of
18 Nevada, always. So there will never be any information
19 other than credit card information, driving records,
20 employment verifications, education verifications, drug
21 screening, and the other broader solution set that don't
22 involve the licensed P.I.

23 BOARD MEMBER CRATE: So when you do attendance
24 screening, all the information you provide has been
25 directly or indirectly handled by a licensed private

1 investigator?

2 MR. OWENS: So. And I apologize. There are a
3 lot of different products here. And so, you know,
4 what -- I need to make a clarification on that. We do
5 have an on-line product set that is listed and does
6 provide information that could contain Nevada records
7 that were produced and delivered by the State of Nevada,
8 that do appear in the report.

9 The vast majority of the preemployment
10 screening background checks are -- are only delivered
11 with information that comes directly from the court.

12 MR. BEAVER: And then --

13 MR. OWENS: From a licensed P.I.

14 BOARD MEMBER CRATE: So there aren't
15 circumstances where you are collecting information from
16 the court system by a runner who is not a private
17 investigator?

18 MR. OWENS: That is correct.

19 BOARD MEMBER CRATE: Okay. Thank you.

20 MR. BEAVER: And, again, we understood from
21 information that we got just before, that that's what we
22 were supposed stood. And that's -- and, again, I
23 understand that that may not be accurate. There may be
24 something else that we're supposed to do. I know you're
25 going to tell us.

1 But, you know, I point this out because I just
2 want the Commission to understand, or the Board to
3 understand that, you know, we've been very serious about
4 trying to comply with this and understand what our
5 requirements were. And we come here in good faith, and
6 we're trying to do what we're supposed to do.

7 BOARD CHAIRMAN SPENCER: And we appreciate
8 that.

9 MR. MENICUCCI: I've been supplied copies of
10 those two letters. I'm not going to object to placing
11 those in evidence, but I did have a couple of questions
12 about them.

13 MR. BEAVER: Okay.

14 MR. OWENS: Okay.

15 MR. MENICUCCI: I probably ought to get the
16 names again, but these appear to be letters. One of
17 them is from Expedite Wholesale Criminal Research. And
18 the other is from Omni Data Retrieval.

19 My question for Mr. Owens is, did you get any
20 verification that either of these companies is licensed
21 to do investigations in the state of Nevada?

22 MR. OWENS: So the only verification we have
23 from these companies is right here on paper.

24 MR. MENICUCCI: Okay.

25 MR. OWENS: So as it reads is amount of

1 information we all have. And that is that they are --
2 that all of the court record searches, where it's
3 happening at the courthouse, are happening from a
4 licensed Nevada P.I. And that's the only information I
5 have on that.

6 MR. MENICUCCI: Can I ask the Executive
7 Director, Ms. Ray, are you aware of any private
8 investigator's license issued to either of the companies
9 that accepted those letters to Intelius?

10 MS. RAY: Neither of these two companies are
11 licensed. And they don't identify anybody else. So.

12 MR. MENICUCCI: I have no further questions,
13 then.

14 Are there any questions from the Board?

15 BOARD MEMBER CRATE: I have no questions.

16 MR. MENICUCCI: Mrs. Grasso, did you see the
17 two letters?

18 BOARD MEMBER GRASSO: Yes. I have a copy.
19 Thank you.

20 MR. MENICUCCI: If there is nothing further, I
21 think, we're concluded.

22 BOARD CHAIRMAN SPENCER: All right. Any
23 further questions from the Board members?

24 MR. BEAVER: Um --

25 BOARD MEMBER PUTNAM: No.

1 MR. BEAVER: I actually thought it was still
2 counsel's -- you were presenting your case.

3 MR. MENICUCCI: Oh, okay.

4 MR. BEAVER: I did want to ask Mr. Owens just a
5 couple of very brief background questions. It'll only
6 take less than a minute.

7 MR. MENICUCCI: Sure.

8 MR. BEAVER: With regard to his background, if
9 that's okay.

10 MR. MENICUCCI: Sure.

11

12 CROSS-EXAMINATION RESUMED

13 BY MR. BEAVER:

14 Q. Mr. Owens, can you just briefly tell us what
15 your appointed background is, I mean your educational
16 background?

17 A. Sure. So I've got a undergraduate degree from
18 the Naval Academy, a business degree from Harvard, spent
19 five years as a naval officer serving on a submarine.
20 And then the last 10 years or so, I've been in software
21 and technology.

22 Q. And is it part of your responsibilities, as the
23 General Manager of Intelius Screening Solutions, to
24 ensure that its activities comply with federal and local
25 state law?

1 A. Absolutely. It's a huge responsibility.

2 Q. And on the federal side, is there any legal
3 requirements that you have to comply with?

4 A. Absolutely. Fair Credit Reporting Act and EEOC
5 are probably among the top 10.

6 MR. BEAVER: Okay. I have an outline of the
7 all kinds of questions I was going to ask him. I think,
8 we've actually covered most all of this and in the
9 various questioning of Mr. Owens already. So.

10 MR. MENICUCCI: Well, I have no further
11 questions of Mr. Owens.

12 Does the Board have any?

13 BOARD CHAIRMAN SPENCER: No questions. I have
14 a comment, though. I think that maybe a breakdown in
15 your understanding of what the process is comes from the
16 fact that, with each exchange of that information, and
17 you offering it to the public here, or the public
18 anywhere, requires licensure.

19 Do you follow me on that?

20 MR. OWENS: I do. And there are, as you can
21 tell, there are a number of exchanges that happen in the
22 entire chain. We happen to be on the tail end of that,
23 the retailer. So it's a -- it is a burden, and I don't
24 understand value that we get from that. If there's no
25 change to the data whatsoever, it doesn't even -- it's

1 not even touched. It's all streamed without any human
2 touch.

3 But I understand your point very clearly.

4 BOARD CHAIRMAN SPENCER: Okay. Great.

5 And as Ms. Ray pointed out, for your benefit,
6 that neither of the companies that you're using to
7 obtain your information are licensed in this state.

8 MR. OWENS: I -- yes, I don't disagree.

9 BOARD CHAIRMAN SPENCER: And if you want to
10 pursue that, you should contact, or you can go on line
11 and get the names of licensed people who could fulfill
12 what it is that you need to have done. It doesn't
13 relieve you of the responsibility. But then, when you
14 put to on your Internet, or an Internet site, still
15 you're using licensed. Which, all the work that you've
16 done, Mr. Owens, you might even be able to qualify for a
17 license.

18 MR. OWENS: M-hm (affirmative). Great. Well,
19 thank you. I appreciate the clarification.

20 MR. MENICUCCI: Just to sum, sum the evidence
21 up for the Board, the citation's really for advertising
22 and offering services in background checks and criminal
23 records checks in the state of Nevada. And the Board
24 has traditionally considered those to be investigation
25 activities. And then the statute makes it unlawful not

1 only to actually do those things, but to advertise that
2 you will be doing those things.

3 And appears that the evidence is that this
4 company advertised those services, offered them to the
5 public, received a fee for those services, then referred
6 the work out to others. In this case, the two letters
7 that they authored were from people saying, "Yeah, it'll
8 all be done by licensed people," but even they weren't
9 licensed.

10 The citation is for advertising.
11 Unfortunately, even one instance of violation of the
12 statute is sufficient to uphold the citation. I'm not
13 telling the Board that this is a company that intended
14 to engage in activity that was violating the law, but it
15 appears to me that that's what happened.

16 BOARD CHAIRMAN SPENCER: So, lacking any
17 further comments from the Board, I will --

18 Do you have any closing statement?

19 MR. MARCHER: That was his.

20 BOARD CHAIRMAN SPENCER: Do you have any
21 closing statement?

22 MR. BEAVER: Mr. Chairman, I would just point
23 out that the word "investigation" within the statute,
24 after spending quite some time trying to find some
25 interpretation of it, I couldn't. And the word

1 "investigation," when you go to Webster's Dictionary or
2 any other dictionary, requires, at least in my mind,
3 something more than simply reporting what is in a
4 national data base.

5 There is nothing at all that Intelius does,
6 other than a data retrieval, such as what Google does or
7 any other of the search engines that are out there.

8 And, again, I will point out that I don't
9 believe the state of Nevada can, in fact, or has
10 jurisdiction to govern what someone in the state of
11 Washington could buy from -- from an entity such as
12 this, even if that information that that state of
13 Washington resident was buying included a records check
14 of what might be in the records of the state of Nevada.
15 I just don't believe that it can.

16 It certainly can govern the activities that
17 relate to what takes place here.

18 MR. MENICUCCI: In response, we've got a Nevada
19 limited liability company doing things in Nevada that
20 require shoe leather on the ground in the state of
21 Nevada and things that the Board has traditionally and
22 consistently held to constitute the work of private
23 investigators.

24 BOARD CHAIRMAN SPENCER: Mr. Beaver.

25 MR. BEAVER: But my whole point is the exhibit

1 is an Intelius, Inc -- it's a Delaware corporation --
2 printout. This is not the Intelius Screening Solutions,
3 LLC website. And that the two products that we were
4 talking about, that are on this particular page, have
5 actually nothing to do with Intelius Screening
6 Solutions, and they only take place in Washington.

7 That was my point. I wasn't referring to the
8 Intelius Screening Solutions preemployment screens that
9 are done in the state of Nevada using -- they're still
10 licensed P.I.s, apparently contracted with these two
11 entities, who themselves do not have licenses.

12 MR. MENICUCCI: According to our records, the
13 managing member of the Nevada limited liability company
14 is the officer the managing member is Intelius, Inc.
15 And that's the one --

16 MR. BEAVER: That's correct. I'm simply
17 pointing out the websites that we were referring to has
18 nothing at all to do with Intelius Screening Solutions
19 and the two products, that that's not what Mr. Owens was
20 talking about. He was talking about the Intelius
21 Screening Solutions preemployment screening product.

22 So that was my point.

23 BOARD CHAIRMAN SPENCER: Okay. Do you have any
24 further comments?

25 MR. MENICUCCI: Nothing further.

1 BOARD CHAIRMAN SPENCER: Anything from --
2 further from, sir?

3 MR. BEAVER: No. No.

4 BOARD CHAIRMAN SPENCER: I'll entertain a
5 motion.

6 BOARD MEMBER CRATE: Mr. Chairman --

7 BOARD MEMBER PUTNAM: Mr. Chairman, I move that
8 the citation be upheld.

9 BOARD CHAIRMAN SPENCER: Motion. Is there a
10 second?

11 BOARD MEMBER CRATE: Second.

12 BOARD CHAIRMAN SPENCER: I have a motion and a
13 second. All in favor, signify by saying "aye."

14 (The Board Members said, "aye.")

15 BOARD CHAIRMAN SPENCER: Opposed?

16 None.

17 All right, sir.

18 I think, if Mr. Owens were to contact Ms. Ray,
19 and she can very definitely explain to you what needs to
20 be done for you to be in compliance with the State of
21 Nevada, as many, many of your competitors are.

22 MR. OWENS: Okay. Will do. Thank you.

23 BOARD CHAIRMAN SPENCER: Thank you.

24 Let's take a 10-minute break, and then we'll
25 hit it.

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(A break was taken 1:06 to 1:25 p.m.)

* * * * *

BOARD CHAIRMAN SPENCER: All right. We're now addressing item number six, Tatalovich/Tatalovich & Associates, Inc. regarding unlicensed activity citation number C-142-06.

AGENDA ITEM 6

E. DWAYNE TATALOVICH/TATALOVICH & ASSOCIATES, INC.

BOARD CHAIRMAN SPENCER: Counsel.

MR. MENICUCCI: Thank you, Mr. Chairman.

Let me first verify that the Board members have received electronic copies --

BOARD CHAIRMAN SPENCER: Excuse me just a minute.

Was everybody sworn? Were you sworn? Or you don't need to be sworn.

But were you sworn?

MR. TATALOVICH: No, sir.

BOARD CHAIRMAN SPENCER: Okay. Would you stand and be sworn, please.

BOARD MEMBER GRASSO: Were you sworn, Mr. Jaffe?

1 MR. JAFFE: No, I was not.

2 BOARD MEMBER GRASSO: Mr. Jaffe in Las Vegas
3 was not sworn, either.

4 BOARD CHAIRMAN SPENCER: All right. Anyone who
5 was not sworn, who's going to give testimony in this
6 matter, please stand and be visible.

7 MR. MARCHER: Go ahead and raise your right
8 hand.

9 BOARD MEMBER GRASSO: You're fine where you are
10 right there.

11 MR. JAFFE: Sure.

12 MR. MARCHER: Go ahead and raise your right
13 hand.

14 Do you swear to tell the truth, the whole
15 truth, and nothing but the truth?

16 MR. TATALOVICH: I do.

17 MR. JAFFE: Yes.

18 BOARD CHAIRMAN SPENCER: Thank you.

19 All right. Excuse me for interrupting.

20 MR. MENICUCCI: This is a matter involving a
21 citation for unlicensed activity consisting of
22 investigations. The allegations are that
23 Mr. Tatalovich, in the course of his function as an
24 expert witness, stepped over the line into investigation
25 activities. He is not licensed within the state of

1 Nevada.

2 We've got a number of documents in this case,
3 not that many witnesses. And the legal issue in this is
4 an interesting one. And that is, when does expert
5 witness testimony become the activity of a private
6 investigator and required license from the Board?

7 And counsel, Mr. Arrascada, and I have
8 discussed how to present the case. And we agree that it
9 would be appropriate to present the evidence and
10 testimony before the Board today, and then to have
11 postevidence, posthearing briefs submitted, so that each
12 side can argue the legal issues and tie that in with the
13 facts of this case.

14 Those would be provided to the Board members.
15 They'd have them accessible between now and the next
16 Board meeting. And then, at the next Board meeting, it
17 would be appropriate for the Board to convene and make a
18 decision on the case and resolve it at that time.

19 BOARD CHAIRMAN SPENCER: All right.

20 MR. ARRASCADA: And if I could add to that, I
21 believe that Mr. Menicucci's correct, the issue that's
22 coming before this Board is really a big -- a policy
23 issue. And it's does a retained expert, retained for
24 purposes of litigation, in the process of gathering
25 information in order to prepare and properly submit an

1 expert witness report, do those activities, if they do,
2 if they include things, as in this case, taking
3 measurements, photographs of a scene, does that, then,
4 require that retained expert to have a private
5 investigator's license?

6 I don't believe I'm speaking out of turn on
7 behalf of myself or Mr. Menicucci to tell you that we
8 both have grappled with this issue and done extensive
9 research. There are some states, through attorney
10 general's opinions, that have -- Michigan in specific,
11 that have said that when you take, and they specifically
12 say measurements for -- measurements or photographs for
13 purposes of forming an expert witness opinion, when
14 retained solely as an expert witness, that doesn't fall
15 under the rubric of the NRS 684. And they, of course,
16 are in Michigan.

17 So at the conclusion of this, we're going to
18 ask -- we're going to submit our memorandum in support,
19 et cetera. But we're going to ask this Board, through
20 its own regulatory functions, self-regulating function,
21 that expert witness activities, in order to form their
22 expert witness opinions, should be an exception under
23 NRS, the applicable statute, 648.081 -- .018.

24 So I just want to -- the only reason I added
25 that, I'm not trying to preadvocate, but what I was

1 doing was trying to crystallize exactly what the issue
2 is for this Board, the significant issue.

3 BOARD CHAIRMAN SPENCER: Okay.

4 MR. MENICUCCI: I'd like to verify, first, that
5 the Board received electronic copies on the flash drives
6 of the documents that counsel and I have exchanged and
7 agree could be admitted here today.

8 Those documents initially consist of -- on your
9 electronic files, there's three separate files. One
10 starts with the unlicensed business activity citation
11 and continues with some correspondence and gets down to
12 a expert opinion in the case of Santiago Quiroga vs. the
13 Del Prado Corporation.

14 The second and third files relate to a case
15 called Torino vs. Sportsman's Royal Manor. And that
16 consists of the First Amended Complaint, a -- an expert
17 report from Mr. Tatalovich, and a deposition that
18 Mr. Tatalovich gave in that case.

19 And, I believe, counsel and I have stipulated
20 that those documents can be admitted.

21 MR. ARRASCADA: That's correct.

22 MR. MENICUCCI: In addition to that, counsel
23 has provided me a current C.V. from Mr. Tatalovich,
24 which, I believe, can be admitted before the Board in
25 this matter. And I'd like to distribute that at this

1 time.

2 BOARD CHAIRMAN SPENCER: Pass them to me, and
3 I'll hand them out.

4 MR. MENICUCCI: Sure.

5 Then, finally, when I copied the documents for
6 the Board, I copied the citation that was signed by
7 former investigator Rene Botello. And the citation
8 we're actually working off is identical, but it's signed
9 by Investigator Tammy Whatley and dated December 2nd,
10 2008. So I had obtained an additional copy of that to
11 be distributed, also, to the Board.

12 And there's no objection to that?

13 MR. ARRASCADA: There's no objection.

14 MR. MENICUCCI: They're all in one package.

15 MS. RAY: I'll separate them.

16 MR. MENICUCCI: Do we have any further -- if
17 there's no further business, I'd like to call as the
18 first witness Investigator Whatley.

19 Did we have to put it on the record?

20 BOARD CHAIRMAN SPENCER: What?

21 MR. MENICUCCI: Do we need to put anything on
22 the record concerning disclosures before we move on?

23 BOARD CHAIRMAN SPENCER: It probably wouldn't
24 hurt.

25 MR. MENICUCCI: Okay. I discussed with

1 Mr. Arrascada and Chairman Spencer that Mr. Spencer has
2 been engaged by Mr. Arrascada on previous occasions to
3 perform investigative work. And I thought perhaps it
4 would be appropriate to put that on the record first and
5 state that I have no objection to that.

6 BOARD CHAIRMAN SPENCER: Thank you.

7 MR. MENICUCCI: And see no reason Mr. Spencer
8 cannot continue to be Board Chairman.

9 BOARD CHAIRMAN SPENCER: Okay.

10 MR. ARRASCADA: Also, by way of disclosure, I
11 think this is significant. My office, and me in
12 particular, are plaintiff's counsel in a litigation that
13 was filed against the Private Investigators Licensing
14 Board in a government takings action that is still
15 active. And I know that Mr. Crate and Mr. Spencer were
16 both members of the Board at the time that litigation
17 was filed. They were dismissed from the case. Former
18 Executive Director Carol Hannah is still a named
19 plaintiff, as is former investigator for the Board
20 Daniel Kryter.

21 And I've advised my client on that situation.
22 And I would also assume, with that disclosure, that
23 there won't be any negative impact from this Board
24 regarding Mr. Tatalovich and the merits of this case.

25 MR. MARCHER: And, counsel, with regard to that

1 litigation, I was the original attorney assigned to
2 represent the Board at the preliminary part of that
3 investigation. So I was involved in that for several
4 months.

5 Do you have any objection to me serving as
6 Board Counsel in this case?

7 MR. ARRASCADA: I do not.

8 MR. MARCHER: Okay.

9 MR. ARRASCADA: As long as you don't object to
10 me being the lawyer that filed the case.

11 BOARD CHAIRMAN SPENCER: You'll never know.
12 (Laughter.)

13 MR. MENICUCCI: I'd like to call as the first
14 witness Investigator Whatley.

15

16 T A M M Y W H A T L E Y,
17 having been previously sworn by Board Counsel,
18 was examined and testified as follows:

19

20 DIRECT EXAMINATION

21 BY MR. MENICUCCI:

22 Q. Investigator Whatley, this case was initiated
23 off of an unlawful business activity citation, number
24 C-142-006. And the document I provided to the Board is
25 a supplement that is signed by you; is that correct?

1 A. That's correct.

2 Q. The actual initial investigation was done by
3 former Investigator Botello, correct?

4 A. Correct.

5 Q. What, if anything, did you do when you became
6 the investigator with the P.I. Board with regards to
7 this citation?

8 A. I took Investigator Botello's citation,
9 verified what was written with what was contained
10 against the evidence that we had in our office, and then
11 rewrote it with my signature.

12 Q. Did you change it substantively?

13 A. No, I do not.

14 MR. MENICUCCI: I have no further questions for
15 the investigator, because we already have documents
16 admitted before the Board, and I will have two witnesses
17 who made complaints with regard to this matter who can
18 testify.

19 MR. ARRASCADA: I do have a few questions.

20

21 CROSS-EXAMINATION

22 BY MR. ARRASCADA:

23 Q. I'm sorry. Do I address you as Investigator
24 Whatley?

25 A. Investigator Whatley, Ms. Whatley, any Whatley.

1 Q. Ms. Whatley, Investigator Whatley.

2 Ms. Whatley, you reviewed all the documents in this
3 matter to then sign the same citation but with your
4 signature, correct?

5 A. I did.

6 Q. And with everything that you reviewed, what you
7 saw was that Mr. Tatalovich, the activities regarding
8 your citation were all under his employment as a
9 retained expert witness, correct?

10 A. That's correct.

11 Q. And you also reviewed his -- the expert witness
12 report that he wrote in the case of Torino vs.
13 Sportsman's Royal; is that correct?

14 A. Correct.

15 Q. On page 17 of that report, paragraph 38, if we
16 could.

17 A. Okay.

18 Q. And that paragraphs states, and this is
19 Mr. Tatalovich's expert witness report, "During my visit
20 to the crime scene, I obtained photographs and
21 measurements solely for the purpose of my own recall.
22 As such, the measurements and photographs referenced
23 were obtained for the specific and limited purpose of my
24 personal use in preparing my report as required under
25 the Nevada Rules of Civil Procedure. These photographs

1 and measurements were not obtained for evidentiary
2 purposes, nor will they be used for advising anyone on
3 proper methods and equipment for security of persons or
4 property in this manner or any other."

5 Is that what he wrote?

6 A. Yes.

7 Q. And through your investigation and your review,
8 you haven't developed where you're going to tell the
9 Board that he didn't anything to the contrary of this
10 statement regarding this manner?

11 A. No.

12 Q. Okay. He did not provide any security
13 consulting based on his activities as an expert witness,
14 did he?

15 MR. MENICUCCI: I have to object. It calls for
16 a legal conclusion.

17 MR. ARRASCADA: Okay.

18 MR. MENICUCCI: On the issues that may be
19 present in this case is what constitutes consulting and
20 what constitutes the function of an expert witness.

21 BY MR. ARRASCADA:

22 Q. And did you find any information that
23 Mr. Tatalovich, as an expert witness, provided advice on
24 proper methods and equipment for providing security to
25 anyone?

1 A. Basically -- and, please, you have to
2 understand that the true investigation was conducted by
3 another investigator. I took the facts and
4 circumstances that investigator had, verified them, and
5 put my name on that citation.

6 Basically, what I read was that there were
7 physical investigations being conducted. And according
8 to our NRS 648, the definition of the private
9 investigator, it did appear that he was conducting
10 investigations.

11 MR. MENICUCCI: I --

12 BY MR. ARRASCADA:

13 Q. And you already admitted, and we talked
14 earlier, that was all done as his -- for his retained
15 purpose in litigation as an expert witness?

16 A. That is correct.

17 Q. And based on your review of all of the
18 information and evidence that was gathered by your
19 predecessor, you did not see, in your review, where, in
20 the Torino matter, that Mr. Tatalovich provided advice
21 on proper methods and equipment for providing security
22 and protection for persons or property, did he? If you
23 don't recall, you can say that.

24 A. Um, you have to realize, the amount of evidence
25 in this case is voluminous. And I actually -- it is my

1 recollection that is related to him being an expert
2 witness; but as being an expert witness, you do give
3 your opinion of security.

4 Q. The causation issue in a civil case, right?
5 Are you aware of that? If you don't know, that's okay.

6 A. I'm -- I'm not sure what you're asking me.

7 Q. That's okay. I'll move on.

8 In your review of the file in the case,
9 Mr. Tatalovich was not hired for investigation prior to
10 the litigation being filed, was he?

11 A. Not that I know of.

12 Q. Based on your review of the file,
13 Mr. Tatalovich did not provide to anyone, quote,
14 unquote, investigative reports, did he?

15 A. I'm not sure.

16 Q. But what you do know is he provided an expert
17 witness report for court purposes?

18 A. That's correct.

19 MR. ARRASCADA: I have nothing further.

20 MR. MENICUCCI: Nothing from me.

21 MR. ARRASCADA: Thank you, ma'am.

22 MR. MENICUCCI: I believe, Mr. Jaffe is present
23 in Las Vegas.

24 BOARD MEMBER GRASSO: Yes, he is.

25 MR. JAFFE: Yes, sir.

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S T E V E N J A F F E ,

having been previously sworn by Board Counsel,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MENICUCCI:

Q. Mr. Jaffe, please identify yourself for the Board.

A. Certainly. My name is Steven Jaffe. I'm an attorney licensed in the state of Nevada, with the law firm of Hall, Jaffe & Clayton.

Q. Okay. Mr. Jaffe, did you contact the Private Investigators Licensing Board with a complaint that Mr. Tatalovich was engaging in activity that should require a license?

A. Yes.

Q. And that had to do with the case of Torino vs. Sportsman's Royal Manor, correct?

A. Yes, sir.

Q. All right. And we probably don't have all those documents there in front of you, but it's my understanding that you provided the Board with a copy of the complaint in that case. Correct?

A. Um, I -- to be very candid with you, I don't remember precisely what I provided, but I do know I sent

1 a large volume of documents.

2 Q. Yeah.

3 A. I've been handed about a four-inch thick stack
4 of paper. I can look if you'd like.

5 BOARD CHAIRMAN SPENCER: Look at it.

6 MR. MENICUCCI: Sure.

7 MR. ARRASCADA: We'll stipulate it is what
8 Mr. Menicucci represents.

9 BOARD CHAIRMAN SPENCER: All right.

10 MR. MENICUCCI: Okay.

11 MR. JAFFE: Okay.

12 MR. MENICUCCI: I think, we could probably move
13 on and ask Mr. Jaffe.

14 BY MR. MENICUCCI:

15 Q. What caused you to make a complaint to the
16 Board regarding Mr. Tatalovich?

17 A. Sure. Well, really there's several things.
18 First, it became obvious to me, from testimony that he
19 gave, that he violated the law in Nevada. I believe,
20 that as an officer of the court in Nevada, I had an
21 obligation to report that conduct. And so I did so.

22 I think, that really, first and foremost, is
23 the -- is the main issue.

24 Q. Okay.

25 A. The reason why I filed my action with the

1 Board.

2 Q. And in your view, what specifically did
3 Mr. Tatalovich do in that case which constituted a
4 violation of the law?

5 A. Well, it -- I believe, his -- first, his going
6 to my client's property without either authority or --

7 MR. ARRASCADA: I'm going to object. That's
8 not part of the allegations in the citation.

9 BOARD CHAIRMAN SPENCER: Okay.

10 MR. ARRASCADA: I'd ask the question be
11 re-asked that focuses on the allegations in the said
12 issue.

13 MR. JAFFE: I don't -- it's actually just sort
14 of the background to -- to it. But, if you'd like,
15 I'll --

16 BOARD CHAIRMAN SPENCER: Please do. If you
17 can.

18 MR. JAFFE: I'm sorry?

19 BOARD CHAIRMAN SPENCER: If you can reword
20 that.

21 MR. JAFFE: Sure. Basically, Mr. Tatalovich
22 went to my client's property and took measurements, took
23 photographs, did an investigation for the purposes of
24 litigation without my client's consent or knowledge. My
25 client was not happy about that.

1 MR. ARRASCADA: Again, I --

2 MR. JAFFE: The -- sure.

3 MR. ARRASCADA: Again, the question is now
4 narrative. It's beyond the scope of the question
5 regarding "without my client's consent or knowledge."
6 It has nothing to do with the reasons we're here today.

7 MR. JAFFE: Fine. I'll withdraw that, then.
8 He went to my client's property, conducted an
9 investigation, as set forth in his deposition, without
10 consent, approval or knowledge.

11 BOARD CHAIRMAN SPENCER: Okay.

12 BY MR. MENICUCCI:

13 Q. Mr. Jaffe, when Mr. Tatalovich went out to your
14 client's property, were you aware that he'd been
15 retained as an expert at that time?

16 A. I was not aware that Mr. Tatalovich had gone to
17 my client's property and --

18 MR. ARRASCADA: Objection. Nonresponsive.

19 BOARD CHAIRMAN SPENCER: Please answer the
20 question.

21 MR. JAFFE: Well, I can't answer the question
22 as phrased. I didn't know Mr. Tatalovich went to my
23 client's property until long after the fact.

24 BY MR. MENICUCCI:

25 Q. Okay. You were, you were in litigation in a

1 matter in which Mr. Tatalovich was retained as an expert
2 witness by the other side, correct?

3 A. Yes, sir.

4 Q. Okay. Were arrangements of any sort made to
5 provide access to the expert witness to the property?

6 MR. ARRASCADA: Again, objection. It's
7 irrelevant to the citation at hand.

8 BOARD CHAIRMAN SPENCER: Could he --

9 MR. ARRASCADA: And it's not alleged in the
10 citation. So we don't have notice to defend this issue.

11 MR. MENICUCCI: I'm merely trying to probe the
12 depths of his knowledge. We have the documents that he
13 supplied to us.

14 BY MR. MENICUCCI:

15 Q. Could I ask you, Mr. Jaffe, did -- in the
16 course of that case, were you present at any times when
17 Mr. Tatalovich was making measurements or taking
18 photographs?

19 A. No.

20 Q. Okay.

21 MR. ARRASCADA: Objection. Irrelevance of the
22 question.

23 BY MR. MENICUCCI:

24 Q. Did you obtain your knowledge of what
25 Mr. Tatalovich did through deposition?

1 A. Yes, sir.

2 Q. Okay. And you supplied to the Board a copy of
3 that deposition, correct?

4 A. Yes, sir.

5 Q. All right. And you also supplied to the Board
6 a copy of Mr. Tatalovich's opinion, correct?

7 A. I believe so.

8 Q. Yeah. You got that opinion through the normal
9 court litigation and discovery process, correct?

10 A. Yes.

11 MR. MENICUCCI: I have no further questions for
12 Mr. Jaffe. I think, we've identified what he supplied
13 to the Board and why and how he obtained his knowledge
14 of Mr. Tatalovich's activities.

15 MR. ARRASCADA: May I proceed with questioning?

16 BOARD CHAIRMAN SPENCER: Please.

17

18 CROSS-EXAMINATION

19 BY MR. ARRASCADA:

20 Q. Mr. Jaffe, at the beginning of your testimony,
21 you stated that you believe that Mr. Tatalovich violated
22 the law regarding private investigator licensing and
23 that it was your duty as an officer of the court to
24 bring that forward, correct?

25 A Yes. May I ask who's questioning me right now?

1 Q. My name's John Arrascada. I represent
2 Mr. Tatalovich and Tatalovich & Associates.

3 A. Okay. Thank you.

4 Q. Okay. So, Mr. Jaffe, I had a chance to look at
5 your website for your firm, and I see you do quite a bit
6 of tort litigation defense. Is that accurate?

7 A. Yes, sir.

8 Q. Okay. And in those tort litigation defenses,
9 you had dealt with car accident cases; isn't that right?

10 A. Among other things, yes.

11 Q. And, as a matter of fact, on your website some
12 of your normal cases are car accident cases, correct?

13 A. You know, car accident is a bit of a -- it's a
14 painting with a bit of a broad brush. But some involve
15 like truck cases. But motor vehicle accidents, I think,
16 is a significant aspect of our litigation, as are other
17 parts.

18 Q. All right. And in those motor vehicle accident
19 cases, have you had an opportunity or a chance or needed
20 to hire an accident reconstructionist?

21 A. Have I?

22 Q. Yes.

23 A. Yes.

24 Q. Okay. So you hired an accident
25 reconstructionist as an expert witness, right?

1 A. Certainly.

2 Q. For purposes of the litigation?

3 A. Yes.

4 A. And the accident reconstructionist that you
5 hired, when you hire an expert witness as a litigator,
6 you want to get the most qualified expert, the best
7 expert that you can find, right, or you do your best?

8 A. Certainly, I look to get an expert who is going
9 to be highly qualified and assist me in representing my
10 client.

11 Q. And, at times -- and I'm -- this is somewhat
12 open-ended. And the accident reconstructionist that you
13 hired, have you ever hired anyone from out of state to
14 come in as your accident reconstructionist here in
15 Nevada?

16 A. In Nevada?

17 Q. Yeah.

18 A. Yes, I have.

19 Q. Okay.

20 A. Yes, I have.

21 Q. Okay. And that accident reconstructionist
22 will, oftentimes, go and look at the motor vehicles that
23 were in the accident, correct?

24 A. Under Nevada law, they're obligated to, if the
25 vehicles are available.

1 Q. As an expert witness, right?

2 A. Under a case called Carrolle vs. Laveen,
3 accident reconstruction experts are obligated to inspect
4 the vehicles and the scene, if available, according to
5 the Nevada Supreme Court.

6 Q. Okay. And, and that's a case that deals with
7 expert witnesses and accident reconstructionists, right?

8 A. Specifically with accident reconstructionists,
9 yes.

10 Q. And to perform a function as a viable expert
11 witness in a case?

12 A. Um, effectively, that case, which is a 1964
13 case, it mandates that before an accident
14 reconstructionist can be accepted by the court as an
15 expert to testify, they must have engaged in certain
16 activities, which include reviewing the scene and
17 looking at the vehicles.

18 Q. Now --

19 A. And that's what the Nevada Supreme Court has
20 told us as attorneys --

21 Q. Right.

22 A. -- they have to do in order for them to
23 testify.

24 Q. And what you're having them do in order to
25 testify, also, is they go look at the scene, they go

1 look at the vehicles, they're going to take some
2 pictures?

3 A. I don't tell my accident reconstructionists
4 what to do. I hire them. I let them do their craft.

5 Q. Okay. When they're doing their craft, and they
6 provide their finished product to you, they've taken
7 some pictures at times, right?

8 A. Yes.

9 Q. They've gone to -- say, to where the accident
10 occurred and measured skid marks?

11 A. That has happened, yes.

12 Q. Okay. They've also taken photographs of those
13 skid marks, if they still exist?

14 A. I -- it has happened, yes.

15 Q. Okay. And they'll go look, say, look at a
16 guardrail where maybe there was some impact, and they'll
17 take a photograph of that dented up guardrail?

18 A. I -- off the top of my head, I can't remember
19 any case in Nevada where that specific circumstance has
20 occurred in a case that I've defended, but I certainly
21 wouldn't preclude the possibility.

22 Q. Okay. And we're talking about, remember, the
23 premise question was this is someone from out of state
24 that you've hired to bring in as your expert witness,
25 right?

1 A. And, again, I'm trying to, in that context,
2 rely on cases or draw, draw on cases, I should say, in
3 which I have hired accident reconstructionists who were
4 not in Nevada.

5 Q. Okay.

6 A. Or from out of state, as you say.

7 Q. All right. And that from-out-of-state accident
8 reconstructionist, that takes measurements, looks at
9 vehicles, takes photographs, was not licensed as a
10 private investigator here in Nevada, were they?

11 A. I was -- I cannot state that I'm aware whether
12 they did or did not hold credentials as a private
13 investigator in the state of Nevada in any of those
14 circumstances.

15 Q. But if they did, it's your duty as an officer
16 of the court to turn them over to the Private
17 Investigators Licensing Board after they completed their
18 examination for you, right?

19 A. Not necessarily, because I don't necessarily
20 know that an accident reconstructionist would fall
21 within the purview of the statute, which would suggest
22 that, number one and number two, the Nevada Supreme
23 Court having spoken and not having given attorneys as
24 the mandate that they must use accident
25 reconstructionists only from the state of Nevada, I

1 don't know that I would necessarily be able to make that
2 judgment and go to that conclusion.

3 Q. Okay. And the Nevada Supreme Court has never
4 told us, as lawyers, that forensic security experts have
5 to be licensed as private investigators in the state of
6 Nevada, have they?

7 A. I haven't researched that. Well, no, I should
8 say, I'm not aware of any case law that says one way or
9 another.

10 Q. Let's move on. And you practice in --

11 A. Sure.

12 Q. Do you handle arson cases, from the civil
13 standpoint?

14 A. Arson? I -- I mean arson is a criminal term.
15 I have handled fire loss cases.

16 Q. Fire loss cases, which can be, part of that can
17 be determining whether -- perhaps the causation of the
18 fire, right?

19 A. Sure. Cause and origin experts are important
20 to us.

21 Q. Okay. So the cause and origin experts, have
22 you hired them from in the state and out of the state?

23 A. The two fire loss cases that come to mind that
24 I've handled in Nevada, both of those circumstances,
25 I've hired experts from inside the state of Nevada.

1 Q. Okay. And those experts, those cause and
2 origin experts, they go to the -- where the fire took
3 place, as part of their duties?

4 A. You know, again, I have to -- in all candor,
5 there's the one that I'm thinking of, that was a very
6 recent case, it was a -- definitely a local expert, and,
7 yes, he did go to the scene.

8 Q. Did he take measurements?

9 A. To be equally candid with you, I wasn't present
10 with him at the time. I had court that morning, and I
11 asked another attorney from my office to -- to go to the
12 scene with him.

13 Q. Okay. Have you received the expert witness
14 report that he's preparing for you which he was retained
15 for?

16 A. The case is not yet in litigation. So there's
17 been no obligation yet to produce a report.

18 Q. Okay. But you know he did go to the scene?

19 A. Yes.

20 Q. You weren't there, I know that. And he's going
21 to do -- based on your general knowledge, a cause and
22 origin expert regarding fire would want to take
23 photographs?

24 A. Presumably so. Again --

25 Q. Take measurements?

1 A. -- I don't tell my experts how to do their
2 jobs. I don't tell them how to do their jobs. If they
3 feel it's necessary, to write a thorough report and to
4 prepare a complete and accurate analysis, then I let
5 them do what they need to do.

6 Q. I'm asking for your general knowledge based on
7 other cases you've handled. Okay?

8 A. Sure.

9 Q. Regarding cause and origin. You'll get your
10 expert report, it'll have photographs in it?

11 A. In a theoretical sense, certainly.

12 Q. Measurements of, say, burn marks or smoke,
13 things of that nature?

14 A. Yes. All of those are certainly possibilities.

15 Q. Okay. And your cause and origin expert that
16 you hired here, that's from Nevada, to go to a scene,
17 take measurements, take photographs, presumably, was he
18 licensed as a private investigator here in the state of
19 Nevada?

20 A. I don't know.

21 Q. Again, if he's not, will you be turning him in
22 to this Board for conducting the unlicensed actions of a
23 private investigator, as an officer of the court?

24 A. Well, candidly, like I said, I have not looked
25 at that as an issue one way or another. I did not

1 consider that to be a function of acting in the capacity
2 of a private investigator as Mr. Tatalovich did in this
3 case.

4 Q. Okay. Let's talk about that. Mr. Tatalovich,
5 in the Torino case, was disclosed to you as an expert
6 witness by the plaintiffs?

7 A. Correct.

8 Q. And they also, then, provided you his -- during
9 the course and scope of the litigation, his expert
10 witness report?

11 A. That is correct, also.

12 Q. They also provided you his curriculum vitae,
13 which demonstrated his qualifications as an expert
14 witness, correct?

15 A. They provided me with his curriculum vitae. I
16 don't know that I would necessarily jump to the
17 conclusion about establishing his qualifications, but
18 his curriculum vitae was provided.

19 Q. You never filed a motion in court to have
20 Mr. Tatalovich stricken as an expert due to lack of
21 qualifications and credentials, did you?

22 A. Okay. There were motions filed in court in
23 limine. I do believe that I did file a motion regarding
24 Mr. Tatalovich and his ability to testify. To be very
25 honest with you, I don't remember specifically. I know

1 we contemplated filing one. I think, we did file one.
2 The case resolved before it went to a trial. And, I
3 believe, there were several motions and hearings left
4 unheard when the case resolved.

5 Q. And your motion regarding Mr. Tatalovich is, in
6 essence, the bases of your complaint here that he was
7 acting as a private investigator, in violation of
8 statute, right?

9 A. I -- and, again, I don't remember if we filed
10 the motion or not. If not, it was really a strategic
11 decision whether we were going to use it as a, you know,
12 motion in limine or use it to cross-examine him at trial
13 and try and have him stricken as an expert in front of
14 the jury, in which the circumstance would then have,
15 obviously, a much greater impact to the benefit of my
16 client.

17 Q. Now, let's go back to what I was asking you.
18 You learned of Mr. Tatalovich's involvement in this case
19 when he was disclosed as an expert witness, correct?

20 A. He was disclosed as an expert, absolutely.

21 Q. And he prepared an expert witness report, which
22 was then provided to you?

23 A. Yes.

24 Q. And, as he stated in his expert witness report,
25 in order to form his expert opinion, he went to the

1 scene that was the issue of the litigation?

2 A. He may have said that in his report. I
3 honestly don't remember.

4 Q. Well, you also testified you asked him about it
5 in his deposition about it, too, right?

6 A. That I do remember, yes.

7 Q. Okay. And he took measurements?

8 A. He testified to that effect, yes.

9 Q. And he took photographs?

10 A. He testified to that effect.

11 Q. As an expert witness? In order to --

12 A. Well --

13 Q. In order to prepare his report?

14 A. Let's -- well, I need to just qualify one
15 thing. He did this before he was identified as an
16 expert witness. In Nevada, we do not disclose -- you
17 have consulting experts, and you have trial experts.
18 Trial experts have to be disclosed by a certain date and
19 time established by the court. Consulting experts never
20 have to be disclosed. But nobody's considered an expert
21 until you reach that threshold.

22 Q. Okay.

23 A. Or for the purposes of the litigation, as the
24 adverse party. Yes, if I -- if his attorney hired him
25 as an expert, or the Torino's attorney hired

1 Mr. Tatalovich as an expert, presumably, he was hired at
2 least as a consulting expert before he had to be
3 disclosed as a trial expert.

4 So I just needed to, I think, explain that.

5 Q. And we talked about the accident
6 reconstructionist. We talked about the cause, the
7 arsonist-type expert witness. And, I guess, we could go
8 on and on, but we won't. You don't fault those experts,
9 accident reconstructionists or arson, cause and -- I'm
10 sorry. What did you call it, cause and --

11 A. Cause of origin.

12 Q. Cause of origin expert. You don't fault them
13 for going to a scene and taking measurements and taking
14 photographs, and what I mean by "fault" is they're
15 acting like a private investigator, do you?

16 A. Well, I guess, the way you phrased that
17 question, it's a bit compound. Because, number one, I
18 don't necessarily know that they are acting as a private
19 investigator. And, as I said earlier, accident
20 reconstructionists, I think, need to be parsed out
21 simply because the Nevada Supreme Court has given us
22 dictates that mandates on exactly how they may -- must
23 be utilized in litigation if they're going to serve as
24 an expert.

25 Do I hold them accountable for doing what they

1 do? No. I hire an expert. I expect them to do what
2 they need to do, to do their job thoroughly, to assist
3 me in representing my client.

4 Q. Including taking measurements and taking
5 photographs, if the case calls for it?

6 A. If that's what they need to do, then, yes.

7 Q. Now, you're not telling this Board that you
8 have any evidence that Mr. Tatalovich's activities --
9 let me see. Let me rephrase that.

10 You don't have any evidence that
11 Mr. Tatalovich's activities in the Torino case were
12 outside or not part of his retention as an expert
13 witness, do you?

14 A. Well, I guess, I would have to agree with that,
15 because the only way it would be outside his involvement
16 as an expert in litigation would have been if he was
17 hired on behalf of my client to provide some sort of
18 additional analysis, so, or some other form of analysis,
19 or somebody else would have an accident on the property.
20 So, yeah, I guess, I'd have to agree with your
21 statement.

22 MR. ARRASCADA: May I have one moment?

23 BOARD CHAIRMAN SPENCER: Certainly.

24 MR. ARRASCADA: Thank you, sir. Nothing
25 further.

1 MR. JAFFE: No problem.

2 MR. MENICUCCI: I have nothing further. Does
3 the Board have any questions?

4 BOARD CHAIRMAN SPENCER: Yes, I do.

5 Mr. Jaffe, in your original complaint, you
6 alleged that Mr. Tatalovich had interviewed people. Is
7 that correct?

8 MR. JAFFE: I believe so.

9 BOARD CHAIRMAN SPENCER: Okay.

10 MR. JAFFE: You know, I have the letter in
11 front of me. And I have been meaning to look at it.

12 BOARD CHAIRMAN SPENCER: Lois, can you give him
13 a copy of that letter?

14 BOARD MEMBER GRASSO: Probably, the documents
15 aren't labeled in any way. I gave him all of the
16 material, but I don't know if they are in sequence.

17 MR. JAFFE: Well, if you'll just give me a
18 moment, I'll look.

19 BOARD CHAIRMAN SPENCER: Sure.

20 BOARD MEMBER GRASSO: Does anybody know where
21 it is?

22 MR. MENICUCCI: His letter should be the first
23 document in file 2-A.

24 MR. JAFFE: Bear with me for a minute.

25 BOARD CHAIRMAN SPENCER: Sure.

1 BOARD MEMBER GRASSO: I have it.

2 MR. JAFFE: Oh, okay.

3 BOARD MEMBER GRASSO: So you can just use that.

4 MR. JAFFE: Sure. Okay. I've got the letter
5 in front of me. And, but I apologize, I forgot what the
6 question you asked me was.

7 BOARD CHAIRMAN SPENCER: You alleged three
8 things. Number one is interviewing individuals.

9 MR. JAFFE: Yes.

10 BOARD CHAIRMAN SPENCER: Okay. What
11 specifically were you talking about?

12 MR. JAFFE: It would have been information that
13 would have been contained within the deposition.

14 And with all due respect, sir, if you'll allow
15 me. I did mean to look everything over this morning
16 before coming here. I did not have a chance to do so,
17 because I had a medical appointment that ran very late.
18 I needed to get here or indicated I would be here by
19 11:00.

20 So I don't remember the specifics other than
21 the fact that it would have been contained within the
22 deposition and the report.

23 BOARD CHAIRMAN SPENCER: I don't have any
24 further questions.

25 MR. ARRASCADA: Is it an appropriate time --

1 no, strike that.

2 MR. MENICUCCI: If nothing more, then,
3 Mr. Jaffe, thank you. You could be dismissed.

4 MR. JAFFE: Thank you. I'm excused to leave?

5 MR. MENICUCCI: Yes, you're excused.

6 MR. JAFFE: Thank you. I appreciate it.

7 MR. MENICUCCI: Mr. Gardner, is he here?

8 MR. GARDNER: Yes.

9

10 R O B E R T G A R D N E R,
11 having been previously sworn by Board counsel,
12 was examined and testified as follows:

13

14 DIRECT EXAMINATION

15 BY MR. MENICUCCI:

16 Q. Could you please identify yourself for the
17 Board.

18 A. My name is Robert Gardner, and I am a Nevada
19 licensed private investigator.

20 Q. Did you file a complaint or provide information
21 to the Board regarding the activities of Mr. Tatalovich?

22 A. I did, yes.

23 Q. Okay. And that had to do with the case of
24 Quiroga, I believe; is that correct?

25 A. That's correct, yes.

1 Q. And among the -- and the information you
2 provided included an expert report from Mr. Tatalovich,
3 correct?

4 A. Yes.

5 Q. Okay. What caused you to complain to the Board
6 about Mr. Tatalovich's activities in that case?

7 A. The Quiroga case, I was hired as the
8 plaintiff's expert in the matter. Mr. Tatalovich was
9 the defense expert. During the course of working that
10 case, I was provided with this report. And based on my
11 reading of the report, it appeared to me that -- that
12 the activities that were documented in the report, at
13 least some of the activities, constituted what my
14 understanding would be of a violation of the Private
15 Investigators Act.

16 Q. Okay. Did you make that complaint to the Board
17 while the litigation was going on or afterwards?

18 A. I did it after the litigation had resolved.

19 Q. How did that particular litigation resolve; was
20 it a judgment, or a settlement, or what?

21 A. I actually don't know. After I reviewed the
22 case, my opinions were, I believe, not what the attorney
23 I was working for thought supported his case. And, at
24 that point, he did not use me any further.

25 Q. Okay. So do you know if the case was resolved,

1 or was it just that your involvement in it had ceased by
2 the time you --

3 A. My involvement had ceased. I don't know what
4 the outcome of the case was.

5 Q. Have you been retained as an expert witness in
6 other litigation on matters of security?

7 A. Yes.

8 Q. Have you testified as an expert in court on
9 security matters?

10 A. Yes, I have.

11 Q. Your license with the Board is a private
12 investigation license, correct?

13 A. I have a private investigator's license, and I
14 have a private patrolman license.

15 Q. In your engagement as an expert in matters of
16 security, has your license as private investigator and
17 private patrolman been a matter of relevance in
18 determining your qualifications, if you know? In other
19 words, did -- when you testified as an expert, did the
20 court ask you if you were licensed?

21 A. That question has come up on occasion, although
22 I don't know that I was hired because I was a private
23 investigator. But during the course of the questioning
24 in the cases, I was asked that question, yes.

25 Q. Can you tell the Board what you learned in the

1 Quiroga case about Mr. Tatalovich that caused you to
2 think he was in violation of the private investigator's
3 law?

4 A. Well, the law, in the definition of a private
5 investigator --

6 MR. ARRASCADA: I'm going to object to that
7 he's giving legal opinions. He's been asked a factual
8 question.

9 BOARD CHAIRMAN SPENCER: Okay.

10 MR. MENICUCCI: I'm not asking for a
11 conclusion, but what caused him to think that he should
12 make a complaint to the Board.

13 BOARD CHAIRMAN SPENCER: Then I have to ask
14 both of you, that considering I'm not a sitting judge,
15 that you're going to have to help me out here. And by
16 that, I --

17 MR. MENICUCCI: I can.

18 MR. ARRASCADA: If I can see you're really
19 fighting over something, then we can help you.

20 BOARD CHAIRMAN SPENCER: Right. Can you
21 rephrase the question, please?

22 MR. MENICUCCI: Sure.

23 BY MR. MENICUCCI:

24 Q. Mr. Gardner, what in the Quiroga case
25 specifically caused you to make a complaint to the Board

1 about Mr. Tatalovich; what did he do?

2 A. He indicated in his report that -- and I don't
3 recall everything that he said. The thing that I was
4 keyed on mostly was the fact that he had done a
5 background investigation on -- I don't remember the
6 man's name now, but the suspect in the case. The
7 Quiroga case was a homicide. And Mr. Tatalovich
8 conducted a background investigation on that gentleman
9 and presented that in his report.

10 Which -- well, see, now, maybe he'll object,
11 maybe not. But my understanding of the reading of a
12 private investigator, the definition of a private
13 investigator, is someone that, among other things, looks
14 into the background, character -- I don't remember all
15 the terms, but of an individual and, also, a different
16 section, secures any evidence to be used by any court or
17 board or some other bodies.

18 By doing the background investigation, he,
19 number one, did an investigation of the character of
20 that person. And, number two, by putting it in the
21 report, he was providing evidence to be used by the
22 courts. Both of which, per the letter of the law at
23 least, require a private investigator's license and are
24 not normally considered a responsibility of the expert.
25 Experts generally look at evidence that's provided and

1 form their opinions. They don't go out and create the
2 evidence.

3 Q. In your practice as a private investigator, is
4 a background check something that a private investigator
5 in Nevada does?

6 A. Yes.

7 Q. That's a good part of your business, correct?

8 A. Well, I don't do background investigations. I
9 actually do very little private investigation work at
10 all. But I am licensed, and I do know that in order to
11 do a background investigation, you are required to have
12 a license.

13 Q. You'd be qualified to do one by reason of your
14 license, correct?

15 A. Yes, sir.

16 Q. Is there anything else you can recall from
17 Quiroga that caused you to think that Mr. Tatalovich was
18 in violation?

19 A. No, that was essentially it. I -- my only
20 dealings with it was to read that report. And I came to
21 the conclusion in my mind that there were violations
22 documented in there. And I passed it on, to, at the
23 time, Ms. Botello, with my --

24 Q. Okay.

25 A. Well, actually, it was more of a question. It

1 was -- and I don't remember exactly how I worded the
2 cover letter; but, basically, it was "I think these are
3 violations. You guys should take a look at it."

4 Q. Did you find that Mr. Tatalovich had conducted
5 a crime scene investigation or examination?

6 A. I'd have to go back and read through it. I
7 believe that he did. Like I said, I keyed more on the
8 background investigation part of it. But, you know, in
9 thinking back, I believe that he did do some of the
10 other, the measurements and those types of things.

11 Q. Is it correct to say that your information from
12 Mr. Tatalovich came through reading his report?

13 A. Everything I know about the case came from that
14 report, yes, sir.

15 MR. MENICUCCI: I have no further questions for
16 Mr. Gardner.

17

18 CROSS-EXAMINATION

19 BY MR. ARRASCADA:

20 Q. Mr. Gardner, my name's John Arrascada.

21 A. Yes, sir.

22 Q. I represent Mr. Tatalovich. I'm going to ask
23 you a few question, if that's all right?

24 A. Yes, sir.

25 Q. I just want to make sure I'm clear. Everything

1 that is the body of your complaint came from your
2 reading of Mr. Tatalovich's expert conclusions and
3 opinions report dated November 28, 2006, right?

4 A. Yes, sir.

5 Q. And did you -- so, based on that, it's your
6 belief and understanding that all of Mr. Tatalovich's
7 activities were done as a retained expert witness for
8 purposes of litigation?

9 A. To the best of my knowledge, yes.

10 Q. I want to talk to you a few minutes about the
11 background check. Okay?

12 A. Yes.

13 Q. You're aware, in looking at Mr. Tatalovich's
14 report, that he's also a -- he has a private
15 investigator's license in Arizona, right?

16 A. That's correct.

17 Q. And if the background report was done from his
18 offices in Arizona, using all properly licensed websites
19 or data bases, that's not a violation, is it?

20 A. That's not a question for me to answer.

21 Q. Okay. Well, let me ask --

22 A. That's somebody else's area.

23 Q. Let me ask you this. Have you ever done
24 background research, in your course and scope of work as
25 an investigator here in Nevada, using nationally --

1 national data bases, for someone in another state?

2 A. I have not, no, because I don't do those kinds
3 of investigations.

4 Q. Now, you, you also have -- I had a chance to
5 look at your website. You represent and hold yourself
6 out, also, as a forensics security expert, correct?

7 A. Yes, sir.

8 Q. And in the scope of doing that type of work,
9 oftentimes you will go to, say, an apartment complex or
10 a casino or wherever there's issues of security, where
11 an event happened, to look over the premises, right?

12 A. Yes.

13 Q. Okay. And that's in your scope as the retained
14 expert, as a forensics security expert?

15 A. Yes.

16 Q. Okay. And you'll take photographs, at times?

17 A. I -- yes, I may, at times, yes.

18 Q. You'll possibly take some measurements?

19 A. Rarely, but, yes.

20 Q. Okay. And all of that is so that you can
21 provide a valid expert opinion for the court?

22 A. Well, that's actually not technically true. It
23 is, it is true, yes, but if -- when I go to a site, it's
24 to validate what I see in the documents that I've read,
25 the depositions, the other court filings, police

1 reports, whatever. It's so that I can understand what
2 somebody else is presenting as evidence.

3 Q. That's exactly my question. Because if you
4 don't validate it, and you're testifying or giving a
5 deposition, you're going to get attacked for not
6 validating those measurements, those photographs, the
7 site lines, all that different stuff, right, because you
8 didn't do it personally?

9 A. That's true.

10 Q. Yeah.

11 A. That's true, but I'm validating somebody else's
12 evidence. I'm not creating original evidence.

13 Q. And if you go to that scene to validate someone
14 else's information, and your opinion is different than
15 theirs, you want to make sure you tell whoever hired you
16 or tell the court, as an expert witness, they're wrong?

17 A. I -- yeah, I would agree with that.

18 Q. Okay. So in your process of validating, you
19 may, in looking at the scene, reach different
20 conclusions than at depositions, and the photographs and
21 the police reports that you've read and seen, right?

22 A. That's possible.

23 MR. ARRASCADA: I have nothing further.

24 MR. GARDNER: Could I add one thing?

25 MR. MARCHER: It's up to you.

1 MR. MENICUCCI: I'll let him, if the Board
2 doesn't mind. I won't object.

3 BOARD CHAIRMAN SPENCER: Certainly. Go ahead.

4 MR. GARDNER: The difference in the discussion
5 we just had is I am licensed to do that.

6 MR. MENICUCCI: Well, we were --

7 MR. GARDNER: So thank you.

8 BOARD CHAIRMAN SPENCER: Scratch that.

9 MR. MENICUCCI: Okay. So I have no further
10 questions.

11 Does the Board have any questions of
12 Mr. Gardner?

13 BOARD CHAIRMAN SPENCER: Any Board questions?

14 BOARD MEMBER PUTNAM: No, sir.

15 MR. ARRASCADA: I'm sorry. Mr. Chairman, are
16 we scratching that unsolicited response?

17 BOARD CHAIRMAN SPENCER: Yes.

18 MR. ARRASCADA: May the record reflect the last
19 response of Mr. Gardner was stricken by the Commission.

20 MR. MENICUCCI: I liked it.

21 BOARD CHAIRMAN SPENCER: We didn't hear it.

22 MR. MENICUCCI: All right. I have no further
23 witnesses to present. I think, the documentation and
24 the information provided has been stipulated to. And so
25 my case would be rested at this point. And

1 Mr. Arrascada has --

2 BOARD CHAIRMAN SPENCER: I'm sure you don't
3 have anything further; do you, John?

4 MR. ARRASCADA: What time is it? We have one
5 witness. Is that okay?

6 BOARD CHAIRMAN SPENCER: It's however many you
7 want.

8 MR. ARRASCADA: I call Mr. Tatalovich, Dwayne
9 Tatalovich. Do you want him up here in kind of the hot
10 seat position?

11 BOARD CHAIRMAN SPENCER: That's fine. Wherever
12 he feels comfortable.

13 MR. TATALOVICH: Thank you.

14

15 E L I D W A Y N E T A T A L O V I C H,
16 having been previously sworn by Board counsel,
17 was examined and testified as follows:

18

19 DIRECT EXAMINATION

20 BY MR. ARRASCADA:

21 Q. Sir, can you just please state your name for
22 the record, if you would.

23 A. Eli Dwayne Tatalovich.

24 Q. And without going into your qualifications and
25 credentials, we've provided to the Commission your most

1 current curriculum vitae. And I want you to review the
2 document provided, that that's an accurate
3 representation of who you are and what you do for a
4 living.

5 A. Yes, it is.

6 Q. Sir, you're aware of the two citations that we
7 are addressing today for the unlicensed activities of
8 being a private investigator here in Nevada, right?

9 A. Yes.

10 Q. In the two matters, one has been referred to as
11 the Torino case and the other as the Quiroga case. What
12 was -- when you became involved in those cases, for what
13 purpose were you retained?

14 A. I'm a standard of care expert, and the sole
15 purpose was to testify to the fact-finder, to the judge
16 or jury with respect to my conclusions of adequate or
17 inadequate security.

18 Q. And all of your activities and actions in both
19 of those cases, was that in order to form a -- form your
20 expert opinion?

21 A. Yes, it is. In the state of Nevada, the civil
22 rules follow the federal rules, which require an expert
23 to provide basis to provide a report for each case and
24 be named as an expert witness at a specified time.

25 Q. Sir, you're also -- in your curriculum vitae,

1 you're a licensed private investigator in the state of
2 Arizona; is that accurate?

3 A. Yes, I am.

4 Q. And you're aware of the duties and
5 responsibilities of a private investigator, right?

6 A. Yes, I am.

7 Q. And in the Torino case or the Quiroga case,
8 were you retained or did you perform the functions of a
9 private investigator?

10 A. I did not.

11 Q. Okay. What's the difference between what you
12 did in Torino and Quiroga as an expert witness versus
13 what you would have done as a private investigator?

14 A. Well, first of all, the private investigator is
15 normally trying to solve a crime or investigate. Could
16 be a civil action. Could be a criminal action. He's
17 collecting facts.

18 As an expert witness, I'm a standard of care.
19 I'm looking to establish liability to determine if
20 somebody met the industry standards of care or fell
21 below the industry standards of care. And that's my
22 sole function, to express those opinions to a judge,
23 fact-finder or jury.

24 I rely almost exclusively on what other persons
25 have done, with the exception of going to the crime

1 scene to examine where the crime occurred.

2 Q. And when you go to the crime scene to examine
3 where the crime occurred, do you, in essence,
4 reconstruct it so you can present that in your expert
5 witness report?

6 A. That's true. When I go to a crime scene,
7 normally, I've been provided with a official police
8 department report, interviews. It could have a
9 schematic; it may not. Typically, the police department
10 is trying to identify who committed the crime.

11 As a standard of care expert, I've got to look
12 to see if it was notice, if they had notice, if it was
13 foreseeable, if it was preventable. So the sequence of
14 events and to reconstruct that crime scene is very
15 important, because you have to show that crime is
16 foreseeable and preventable. And, typically, the police
17 department is not looking at that specific aspect. So
18 I'm using their official investigation as the basis for
19 my subsequent review.

20 Q. And then your review creates your expert
21 opinion, which is then potentially tested in the court?

22 A. That's correct.

23 Q. Sir, in the Torino or the Quiroga case -- well,
24 let me strike that. Are you aware of what a security
25 consultant would do?

1 A. Yes.

2 Q. And in the Torino and the Quiroga case, did you
3 perform any duties that would be considered security
4 consulting activity?

5 A. I did not. But, typically, a security
6 consultant advises a property owner or the public with
7 respect to certain recommendations, whether they think
8 you need additional security, or whether security is
9 adequate. I did not make any recommendations or
10 suggestion or talk to anybody with respect to anything
11 other than a judge, a fact-finder and a jury regarding
12 standard of care. I did not advise the public, nor did
13 I ever hold myself out to be a consultant to the public
14 in either of those two actions.

15 Q. Sir, as an expert witness, if you don't go to
16 the scene and view this reconstruction and view the
17 scene and make sure that the measurements are correct,
18 do you serve a purpose -- does that affect your ability
19 to perform as an expert witness for purposes of
20 litigation?

21 A. It would have a adverse effect and would
22 probably result in my being disqualified, because I
23 would not have a sufficient basis to express an opinion
24 regarding standard of care, the sequence of the crime,
25 the distances they may have traveled, whether there was

1 sufficient period to intervene, whether security was
2 adequate or inadequate. If you do not make a crime
3 scene examination and reconstruction, the likelihood of
4 your surviving a challenge as an expert witness, you're
5 probably are going to be seeing the door.

6 Q. Sir, I have a couple of specific questions.
7 The first one is regarding the Quiroga case. Okay?

8 A. Yes.

9 Q. You heard Mr. Gardner say the primary basis for
10 his claim to this Board is that, reading your expert
11 witness report, he saw that you did a background check
12 or background check or background history. Is that
13 right?

14 A. That's really not true. If you look in the
15 scope of services, I made a determination with respect
16 to the offender's prior criminal history. And I did
17 that for a specific purpose.

18 Q. In reaching conclusions of standards of care
19 for your expert witness report?

20 A. For reaching an opinion on standard of care,
21 because one of the plaintiff's allegations was that if a
22 background investigation had, in fact, been conducted,
23 limited to a criminal background inquiry, then they may
24 not have hired the individual who was the individual who
25 committed a double homicide. So from the allegations of

1 the failure to perform a criminal history check, it was
2 essential for standard of care that I determine what, if
3 anything, would have been discovered.

4 Q. And, physically, where was that check
5 performed?

6 A. That check was performed electronically through
7 our Arizona private investigator's license, through a
8 national data base in my office located at 722 East
9 Osborn Road, Phoenix, Arizona. I did not conduct that
10 investigation, approach the courthouse or speak to
11 anybody with respect to that.

12 Q. And this national data base that you relied
13 on -- we saw earlier today a national data base that had
14 problems. Was this a national data base that's
15 reputable and known to do every -- go through all the
16 processing, correct, with private investigators and in
17 the states that they provide information?

18 A. There are a lot of data bases available. I've
19 been at this for 40 years. I'm trying to pick data
20 bases that are reliable. The data base that I used
21 requires that we produce our private investigation
22 license. It demands. They do a background litigation
23 check to see if we have a good or bad reputation. They
24 make a representation to us. They follow the laws in
25 all the states where they gather civil or criminal

1 information. And we rely upon those checks.

2 I might add, that's a common practice in the
3 industry these days.

4 Q. Okay. Sir, another area I wanted to address
5 specifically regarding the Torino case, you heard
6 Chairman Spencer ask Mr. Jaffe about an accusation,
7 allegation that you conducted an interview. Could
8 you -- in the Torino case, isn't it correct that when
9 you came to Las Vegas, Mr. Torino's father picked you up
10 at the airport?

11 A. That's correct.

12 Q. And did you conduct an interview with him?

13 A. I did not.

14 Q. What was the nature of your discussion with
15 Mr. Torino?

16 A. My instructions from the attorney who engaged
17 me was to meet Mr. Torino, who was actually my client on
18 behalf of his son, go to the crime scene. And the only
19 thing Mr. Torino was to do was to point out to me the
20 location where it occurred.

21 And Mr. Torino's deposition is crystal clear
22 that I did not interview him, that I did not ask him any
23 questions beyond, "Show me the crime scene," which he
24 was instructed to do by his lawyer.

25 Q. We've provided a few stipulations to the Board

1 here, your deposition in the Torino case, your expert
2 witness report in the Torino case, and also the expert
3 witness report in the Quiroga case. And you reviewed
4 all of those; is that right?

5 A. I have.

6 Q. And did you, and you're under oath, did you
7 perform any activities in those cases that were not in
8 the course and scope of your retention as an expert
9 witness for purposes of your expert witness opinion?

10 A. I did not.

11 MR. ARRASCADA: I have nothing further.

12 MR. MENICUCCI: Just a second. Okay.

13

14

CROSS-EXAMINATION

15 BY MR. MENICUCCI:

16 Q. Mr. Tatalovich, I think, you were talking about
17 this background check you did in -- I guess, it was the
18 Quiroga case?

19 A. Yes, criminal history check.

20 Q. Yes, criminal history. And you said, if I
21 understand, you would not have had access to that if you
22 didn't have a P.I. license?

23 A. That's correct.

24 Q. So if some client in Nevada wanted to just do
25 that background check, they would have to hire a private

1 investigator that had a license to show these people, so
2 they could get access to that data base?

3 A. Let me clarify that response. Clark County,
4 Nevada, is on-line. Anybody in the public, you simply
5 go to what website, look at the criminal histories. We
6 didn't do that. We went through a national data base.

7 Q. So. But what you did required you to show them
8 a P.I. license?

9 A. A P.I. license is required, at least on the
10 data bases that I contract with, before they invite you
11 in. You have to show that you're licensed.

12 Q. And in your report on the Quiroga case, I've
13 got page four here. You can look at it if you'd like.

14 Paragraph 152, scope of inquiries, when you say
15 the criminal history search included United States,
16 Las Vegas, Clark County, State of Nevada, and
17 Los Angeles County, California. Then you get more
18 specific, the individual criminal search is performed,
19 nationwide criminal history search.

20 A. Data base.

21 Q. Yeah. U.S. District Court, Nevada and
22 California criminal search?

23 A. Those are all data bases.

24 Q. That's from that same source, correct?

25 A. I don't know if we used the same source or we

1 had different sources. We have 12 major national data
2 bases. So I believe that there was a specific data base
3 we use for national criminal history, and there may be
4 other data bases that give us specific states, counties
5 and cities.

6 Q. Okay. Clark County District Court, Las Vegas,
7 do you recall how you got that information?

8 A. They're all electronic data bases.

9 Q. Las Vegas City Court, misdemeanor search?

10 A. Electronic data base.

11 Q. Las Vegas Justice Court, misdemeanor search?

12 A. Electronic data base.

13 Q. You don't recall which one particularly you
14 used?

15 A. I don't.

16 Q. And then two, two from Los Angeles. And then,
17 after that, the next paragraph reports the result of
18 your criminal background history check?

19 A. That's correct.

20 Q. And, basically, said that this fellow did not
21 have a reported criminal history?

22 A. That's correct.

23 Q. Let me ask you about the security consulting
24 work. First of all, you're licensed as a private
25 investigator in Arizona?

1 A. That's correct.

2 Q. Did you do security consulting work as a
3 private investigator?

4 A. No, not as a private investigator. In the
5 state of Arizona, we have two licenses, one for
6 security, for the security guard business, and we have
7 one for investigations.

8 Q. Do you have that other license security
9 consultant-type license?

10 A. It's not a security consulting. It's a
11 security guard license.

12 Q. Let me not get bogged down. We will call it a
13 license. But in Arizona, under your private
14 investigator's license, would you be able to advise the
15 client regarding his security practices?

16 A. We would be authorized to, to look at that. We
17 don't have a specific license, as you do in Nevada, for
18 a consultant. We're simply an investigator or security
19 guard business.

20 Q. So you've got a P.I. license in Arizona. Do
21 you have any other related investigation licenses, type
22 licenses there?

23 A. Not currently.

24 Q. And, I believe, you said, in the course of your
25 expert witness function, you're looking at standard of

1 care and whether security in a particular case was
2 adequate or not adequate. Is that correct?

3 A. In part, that's true. You're looking to see if
4 the security was adequate or inadequate. And then you
5 have to go beyond that to see if there was notice,
6 foreseeability, duty, breach and the standard of care.
7 Those are the elements, essentially. It's standard of
8 care.

9 Q. In terms of what you're actually doing, what
10 would be the difference between being retained by, say,
11 an apartment complex, that is, you come and look at
12 their security and tell them whether you thought it was
13 adequate or inadequate, and being retained after
14 something bad has happened, and they've got to sue,
15 you're being retained as an expert to tell them whether
16 or not it was adequate or not adequate?

17 A. Fair question. First, I follow the same
18 methodology whether I'm a forensic security expert. To
19 really address your question, you are offering advice
20 preincident, generally to a property owner or a property
21 management company, with respect to adequate or
22 inadequate security or addressing things that you think
23 they should do to better defend against litigation in
24 the future. In other words, you are providing advice to
25 the public.

1 When you're engaged as a standard of care
2 expert as a forensics security expert, I'm not going to
3 be offering any advice to anyone. I'm going to be
4 looking at an incident after it's already occurred. I'm
5 going to be relying upon the official investigation, by
6 whatever police department had jurisdiction, of all the
7 depositions, of all the legal pleadings, all the
8 policies and procedures, all of the information that's
9 available to me.

10 Then, in addition to the crime scene
11 examination reconstruction, I'm allowed to render
12 opinions, but those opinions are only presented to a
13 judge, fact-finder or a jury for the purposes of civil
14 litigation.

15 It has nothing to do with holding yourself out
16 to the public that you're a practitioner.

17 Q. I'd like to ask you to look at what is in the
18 first file, the smaller file.

19 I'm asking you to look at a letter, a
20 memorandum actually, from the Office of the Attorney
21 General to Carol Hannah, Private Investigators Licensing
22 Board. It's from Gina Session, subject: expert witness
23 and licensing. And I'm asking because this memorandum
24 references you specifically.

25 A. Yes, it does.

1 Q. And, apparently, you've come to the attention
2 of the Board regarding expert witness activities in the
3 past?

4 A. Yes.

5 Q. Had you been provided a copy of this 2001
6 memorandum?

7 A. I'm sure at some point, I was.

8 Q. Okay.

9 A. I don't know if I've seen this exact
10 memorandum, but I very well may have.

11 Q. And in the discussion there, if you turn to the
12 second page -- And I should probably note the second
13 page has a different date than the first page, but it
14 appears to be the same memo.

15 At that time, Ms. Session, the deputy attorney
16 general, gave an opinion that "Mr. Tatalovich's
17 activities do not appear to fall under this definition.
18 He indicates that he does not furnish or obtain the
19 information in question. He writes that he is simply
20 expected to review documents and information produced in
21 the course of discovery or information resulting from
22 the investigations of others. As long as Mr. Tatalovich
23 simply reviews documents and information gathered by
24 others and does not cross the line by furnishing or
25 obtaining information himself, he is not required to be

1 licensed as a private investigator in Nevada."

2 Do you recall reading that paragraph before?

3 A. Yes, I do.

4 Q. Okay. Do you believe that your activities in
5 the crime scene examination and the background check
6 that you ran fall within that guideline of using only
7 information from others?

8 A. I do. The purpose, here again, is that the
9 crime has already occurred. There is an official police
10 department report. I'm relying upon that report, but in
11 order to form a sufficient basis for my opinions, I've
12 got to go examine the crime scene based on the official
13 investigation. I've got to reconstruct it to understand
14 the time line. And I'm using documents that are all
15 post event. I'm not creating anything new. I need to
16 take a photograph or a measurement, because the sequence
17 here is very important.

18 And a lot of times, police departments may give
19 you a sequence of events. They may give you a crime
20 seen chart. In other instances, they do not do that.
21 They'll tell you where the points of origin where, where
22 the blood trail was, where bodies were found, where
23 there's shell cases. And because they weren't there
24 looking at it from a perspective, you've got to use that
25 official report to reconstruct that to reach the

1 standard of care.

2 Remember, again, that the only reason I ran a
3 criminal history check in the World Merchants case was
4 because the plaintiff alleged that if they had done
5 that, that they would have discovered that he had a
6 criminal history, they wouldn't have employed the guy.
7 If he wasn't employed, he couldn't have committed a
8 double homicide. So it was, essentially, important to
9 me for the standard of care to say if, if, in fact, this
10 had been done, would it have made any difference?

11 And that was the standard of care issue.
12 Because preemployment allegations were made by the
13 plaintiff in the case, which I was responsible to say,
14 "Yes, he's correct. And to do that, I had to determine,
15 was there or was there not criminal history?"

16 Q. Mr. Arrascada asked, I think, Mr. Gardner about
17 going to the scene and examining, taking some
18 measurements and the possibility that you might find
19 that some of the information that's provided to you was
20 incorrect. Have you ever encountered that situation?

21 A. If you're looking at the official police
22 department report, they generally have an investigation
23 what they find at the time they go to the crime scene.
24 Have I seen material differences? Not very often.
25 Because, basically, I'm involved in homicides and very,

1 very just horrible man crimes. They generally do a very
2 good job. Occasionally, our measurements may differ a
3 few feet, depending on the point of reference and the
4 accuracy of the completer.

5 When it comes to deposition testimony, where
6 witnesses are testifying as to their perspective of what
7 happened, my conclusions could be significantly
8 different. Because what they think they saw may not be
9 exactly what happened. Because if you've got five
10 witnesses, nobody sees it exactly the same. They may
11 not describe the exact locations they made their
12 observations from.

13 And in those respects, sometimes the witness
14 testimony can be very reliable, and other times it may
15 not be. Again, I'm relying on what has already been
16 done. I'm not creating anything new. I'm just trying
17 to make a determination, is did that property owner meet
18 the standard of care or not, and was the crime
19 foreseeable and preventable?

20 Q. But if you've got, just for example, a police
21 report, and there was an error that you discovered upon
22 examining the crime scene, that you thought significant
23 in terms of measurements, okay, you'd go on the basis of
24 your own examination, correct?

25 A. Pardon me?

1 Q. If you found that the police accident report
2 contained a measurement that your examination would
3 believe to be significantly in error, you'd go on the
4 basis of your examination, correct?

5 A. Typically, if there's some crime scene
6 measurements, I want to reverify those measurements.
7 Because on cross-examination, you bet, the attorney's
8 going to say, "Did you double-check that?" I want to
9 say, "Yes, I did." Typically, those are not going to be
10 material differences. Because of the magnitude of the
11 cases, the police departments generally do a very expert
12 job. Is it possible one could be off? Yes. Very
13 seldom, no.

14 Q. And in forming your opinion, you'd go on what
15 you saw yourself if it differed from the information
16 that's provided by them, correct?

17 A. I'm going to look at the official police
18 department report. I'm going to determine what their
19 point of references are. I'm going to verify those.
20 Even if the measurements are off, it may not be material
21 to the standard of care case. Because it may not have
22 changed the sequence. It may not have changed the time.

23 In other words, if you're a plaintiff on these
24 cases, you want it to take -- you want a long period of
25 time if you could have prevented the crime. And if

1 you're the defense, you want it to happen very quickly
2 so that there's no opportunity to intervene.

3 So the measurements may or may not be material.
4 You have to look at this in the totality of the
5 investigation and what happened at the crime scene to
6 make your standard of care assessment.

7 Q. I understand that. But I'm still trying to get
8 you to say, if you're confronted with a situation where
9 the information you provided and the information you
10 observed differ significantly, and may be material,
11 you'd go with your own observations, right?

12 A. If you confine your question, say the police
13 department said it's 50 feet, and I say it's 60 feet,
14 they were there when it actually happened. Maybe they
15 saw something that I didn't. So I'm not -- I don't like
16 to go and say the official agency made an error. We may
17 have a slightly different reference point. Unless it's
18 really material, that's not going to change the course
19 of my examination or my opinion. It's got to be
20 something that's materially different. And you
21 generally do not find that on major crimes.

22 BOARD CHAIRMAN SPENCER: I need you to answer
23 his question.

24 MR. TATALOVICH: Pardon me?

25 BOARD CHAIRMAN SPENCER: You can answered his

1 question.

2 MR. TATALOVICH: I hope I did.

3 MR. MENICUCCI: I don't --

4 BOARD CHAIRMAN SPENCER: I don't think so.

5 MR. ARRASCADA: Let's try it one more time.

6 BY MR. MENICUCCI:

7 Q. If you find a difference that's both material
8 and significant between the information you're provided
9 and the information you see at the scene, information
10 that would not have changed, between the two, you'd go
11 with your own observation?

12 A. Are we limiting this just to the police
13 department report, or are we saying all the deposition
14 testimony or witness observation; what are we limiting
15 this to? If it's the witnesses, I'm going to go with
16 my -- with my view of it. If it's simply the police
17 department report, and it's not material, I'm not going
18 to. It would have to be a real material issue.

19 Q. And the materiality is something that you, as
20 an expert, will determine, right?

21 A. An expert is simply going to form an opinion
22 based on the standard of care, and it's going to be up
23 to the trier of fact to make the determination whether
24 or not I'm right or I'm wrong. They're going to listen
25 to the other expert, who's going to have, generally, an

1 opposing conclusion.

2 Q. But you have to make a determination as to
3 whether there's a materiality difference in the
4 measurement, in your observation, in order to make a
5 conclusion?

6 A. I'm not trying to be evasive. What I'm trying
7 to say is, generally, you don't have material
8 differences in the measurements. You can have really
9 material differences in what one witness statement says
10 from a different perspective of another witness.

11 You have to look at this in the totality, you
12 have to look at the investigation that's been conducted,
13 and you have to give weight to all of these issues to
14 arrive at a conclusion, and you can't simply say that
15 because this is not what I want to hear. It's a
16 balancing act, because you're offering an independent
17 conclusion.

18 Q. Let me try one more time. You mentioned the
19 difference between 50 and 60 feet. The police report
20 says the front door was 60 feet from the crime scene,
21 and you go measure and believe it was 50 feet.

22 A. How many feet? They say 60?

23 Q. They say 60, you says, "Ah, it looks like 50
24 feet to me." Your function as an expert witness, one of
25 those functions is determining whether that's a

1 significant difference, isn't it?

2 A. Using your hypothetical, I would say, in my
3 opinion, it was between 50 and 60. My measurement was
4 50, the police department's is 60. I would consider
5 both. I wouldn't throw one out. Because they were
6 there when it occurred, and I wasn't.

7 Q. But your measurement enters into the analysis?

8 A. Certainly. Certainly. It's a consideration.
9 And in the reconstruction of the crime scene, based on
10 the official investigation, yes.

11 Q. Have you advised any client in the state of
12 Nevada regarding their security procedures, before an
13 incident has occurred, telling them whether theirs is
14 good or bad or?

15 A. I've only got one client who did have a
16 time-share operation in Nevada.

17 MR. ARRASCADA: I'm going to object to the
18 relevance of it. We're here on two citations regarding
19 unlicensed activity. This is beyond the scope of any
20 examination I did, and it's not relevant to the issues
21 at hand regarding the Torino case and the Quiroga case.

22 MR. MENICUCCI: I'm trying to develop a
23 difference between what he would do before the incident
24 and what he might do after the incident.

25 BOARD CHAIRMAN SPENCER: Well, again, not being

1 a judge, I tend to agree with the question simply
2 because it has -- it goes right to the heart of the
3 issue of what you do in the state of Nevada, period.

4 MR. ARRASCADA: Well, not knowing the answer,
5 I'm going to advise him not to answer that question,
6 because he could be incriminating himself for something
7 that's uncharged, unknown. I mean if he's not -- it's
8 irrelevant to this proceeding.

9 BOARD CHAIRMAN SPENCER: I kind of wish I was a
10 judge.

11 BOARD MEMBER CRATE: I would think that any
12 unlicensed activity that might be disclosed in the
13 course of pursuing either of these specific allegations
14 is relevant and of interest to this Board. A formal
15 judge and jury or administrative board and regulation, I
16 don't know that all the rules necessarily apply.

17 MR. MARCHER: Well, they don't. But as
18 indicated, generally what happens is you just simply
19 would note the objection for the record, direct the
20 witness to answer the question if you think it's
21 related. If he doesn't, on advice of counsel, answer
22 the question, then we will just move on. How about
23 that?

24 MR. ARRASCADA: What inference could be drawn
25 on him not answering on advise of counsel?

1 MR. MARCHER: I'd advise them not no draw any
2 inference.

3 MR. ARRASCADA: You'd advice the Board not to
4 draw any inference?

5 MR. MARCHER: Right.

6 BOARD CHAIRMAN SPENCER: What he said.

7 MR. MARCHER: I'm not repeating it, either.

8 BOARD CHAIRMAN SPENCER: No. I mean, yeah, I
9 would, I would agree with that, with that direction.

10 MR. MARCHER: Do me a favor, repeat the
11 question, one more time.

12 MR. MENICUCCI: I'll ask the Reporter.

13 (The last question was read by the Reporter.)

14 MR. MARCHER: Okay. So the objection is based
15 on relevance. And you can note the objection for the
16 record and make a decision as to whether or not you're
17 going to overrule the objection and ask him to answer
18 it, or sustain the objection.

19 BOARD CHAIRMAN SPENCER: I'm going to overrule
20 the objection.

21 MR. ARRASCADA: Can I ask --

22 BOARD CHAIRMAN SPENCER: And ask for the
23 answer. Sir?

24 MR. ARRASCADA: Can I ask --

25 BOARD CHAIRMAN SPENCER: Sure.

1 MR. ARRASCADA: So the purpose of my question
2 was to find out how he would advise his clients if he
3 was a consultant. And so he doesn't need to ask it
4 generally, he doesn't need to ask it specifically re:
5 state of Nevada. He can ask, "How do you advise people
6 differently as a consultant?" Because that's what the
7 purpose of the question was.

8 BOARD CHAIRMAN SPENCER: I think, the purpose
9 of the question was to find out if he's doing it in
10 Nevada.

11 MR. ARRASCADA: Well, that's not what he said
12 the purpose was.

13 MR. MENICUCCI: Well, I think, the purpose is
14 better if we're -- everything's the same as the Nevada
15 client with a security situation, who gets advice from
16 Mr. Tatalovich before the incident, and what he would do
17 if called in as an expert witnesses after some
18 unfortunate event has occurred.

19 BOARD CHAIRMAN SPENCER: Well, two distinct
20 issues.

21 MR. MARCHER: You don't think his answer's
22 going to be, "I'm not going to give any to them, because
23 they're not licensed"?

24 BOARD CHAIRMAN SPENCER: After this, I doubt
25 it. No offense.

1 MR. TATALOVICH: No.

2 MR. MARCHER: Well, you -- okay. Well, just so
3 we can move on, you deem the question to be relevant.

4 And he's directing you to answer the question.
5 But on advice of counsel, you know, you're not required
6 to do that. I'd advise the Board not to take any
7 negative inference if you don't answer the question.

8 MR. ARRASCADA: There you have it.

9 MR. MENICUCCI: All right.

10 MR. TATALOVICH: The answer is no. I have one
11 client, a company in Phoenix, Arizona, with a bunch of
12 other investors that run a time-share business and
13 operation in Nevada. Corporate headquarters is Phoenix
14 Arizona, where my office is located. They consulted me
15 to draft some robbery prevention procedures, because in
16 any office they had, they had cash. And I drafted those
17 procedures, and I'm sure that those procedures may have
18 been used at the sales office in Nevada for the purpose
19 of preventing or limiting exposure to employees with
20 cash and transport of funds.

21 BOARD CHAIRMAN SPENCER: Thank you.

22 BY MR. MENICUCCI:

23 Q. I'll try it. If someone else had done that,
24 and you came in later, after a crime had occurred on
25 that location, and you were retained as an expert

1 witness, would your analysis of the adequate or
2 inadequate nature of the security differ, because now
3 you're an expert and you're not advising the client?

4 A. Well, usually what I did was I just did some
5 robbery prevention procedures, similar to what a bank
6 may have if they have a robbery occurring during
7 transport of funds. You're trying to meet the standard
8 of care of the industry, with the best authorities that
9 are out there to tell you how to do that. That's
10 typically bank policies and procedures. Those would be
11 the model that I would use. Because I was on a bank
12 board for 15 years and was with regulation and learned
13 how to do that.

14 Let's say there's a robbery, and in the course
15 of the robbery, someone dies. And then I'm engaged as a
16 forensic security expert to render an opinion whether
17 those policies were adequate, giving proper guidance as
18 to what you should do. I would then look at the
19 policies, see if the policies were drafted correctly,
20 see if the policies were executed, and to see what
21 happened that caused whatever resulted. It's a policy
22 issue at that point.

23 Q. Wouldn't your advice, your opinion, rather, be
24 the same both before and after?

25 A. Well, you've got too many variables. Let's say

1 that you had an adequately drafted policy and procedure
2 that said "After the offender leaves, lock the door,
3 call the police, don't pursue." But let's say that a
4 teller was young and, for whatever reason, decided to
5 pursue the offender outside the bank and was then shot
6 and killed. You wouldn't have a policy violation. You
7 would then go back and determine, did that teller
8 receive adequate training, was the teller aware of the
9 policy, did the teller sign off, or did the teller
10 simply make a bad judgment?

11 So there's too many variables to say yes or no.
12 Again, it's the standard of care as to what happened, on
13 the totality of circumstances, to determine if you -- if
14 it was appropriate or inappropriate, if it was adequate
15 or inadequate.

16 Q. Isn't the main difference that after an event
17 has occurred, you'd want all the facts?

18 A. Well, you don't know what was going to happen,
19 but you know what has happened. If it's before, you're
20 really looking to gather the facts yourself. And, I
21 think, that's where the private investigation license
22 comes in, consulting license comes in, to say you're out
23 there actually gathering things up. You look to see
24 what should be done. You're going to make a
25 recommendation to the client. As opposed to a forensic

1 liability or forensic security license, where you're
2 postevent. You're going to be looking for what
3 everybody else has done. And then you're going to weigh
4 that, whether you're a plaintiff's expert or defense
5 expert, to say if you met it or you fell below.

6 You rely primarily on others postincident. And
7 if it's before the incident, you have to tell them all
8 these facts yourself in order to render competent advice
9 to a property owner. That's not what I do as a forensic
10 security expert.

11 Q. You have quite a lengthy C.V.

12 A. Well, I'm 61 years old.

13 Q. I'm not going to go through it.

14 Congratulations for that.

15 MR. ARRASCADA: Congratulation to him for not
16 going through it.

17 MR. MENICUCCI: No one wants to march through
18 it, although I find it fascinating.

19 BY MR. MENICUCCI:

20 Q. But you are licensed only in Nevada -- excuse
21 me, only in Arizona at the present time?

22 A. I have previously been licensed in California,
23 Arizona, New Mexico, Colorado, all over the United
24 States, when, in fact, we had offices in those states
25 and when, in fact, we were practitioners in

1 investigation and/or security services. I went through
2 3,000 people. And that's not what we do anymore.

3 Q. So I was going to ask the reason why you no
4 longer have a license, and I think you just explained
5 it.

6 A. I merged with a company in Munich, West
7 Germany, in 1984. I was their CEO for a year, stayed on
8 for three years as a consultant, downsized. And I'm the
9 only one in the firm that really does forensics-type
10 consulting. Which after you're in the active market,
11 you specialize in consulting expert or a trial expert.

12 Q. So you no longer had a physical presence in
13 those locations where you have the licenses?

14 A. Actually, we were no longer practicing because
15 we were not licensed to practice. They are
16 prelitigation activities limited to the state of
17 Arizona, with the exception of the national data base,
18 you can check a person's criminal history anywhere in
19 the United States at the touch of a button.

20 MR. MENICUCCI: I have no further questions.

21 MR. ARRASCADA: I do.

22 BOARD CHAIRMAN SPENCER: I will, too.

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REDIRECT EXAMINATION

BY MR. ARRASCADA:

Q. Mr. Tatalovich, you were asked multiple times about you go out and you see it's 50 feet, they said it's 60 feet, and who are you going to rely on. Regardless of what you rely on, is that all that activity done in the course and scope of your retention to perform your duties as an expert witness?

A. Yes, standard of care.

Q. You being qualified in court as an expert witness is one of the issues that a judge will rely upon in order to see if you can present your conclusions and your opinions to the court, whether you base your opinion on particularized facts rather than assumption, conjecture or generalization?

A. Yes.

Q. Okay. And, therefore, does that require you, in order to be a viable expert witness, to do what you did in the Torino case and the -- the other matter?

A. The answer is yes, and I --

Q. Quiroga case?

A. There's nothing I did in either case that wasn't absolutely necessary in order to reach a standard of care assessment. Period.

MR. ARRASCADA: I have nothing further.

1 BOARD CHAIRMAN SPENCER: I have a question.
2 I'm a little confused. Someone might say that's normal.
3 But, earlier, you were asked the question about
4 whether or not you had conducted an interview. You
5 mentioned you had gone to the airport to pick up -- I
6 understood you to say the father who had, who had hired
7 you for the defendant. Am I correct?

8 MR. TATALOVICH: I was the plaintiff's expert
9 on that case. And I'm, ultimately, paid by the person
10 filing the lawsuit, even though the attorney advances
11 the issue of funds. So Mr. Torino was, in fact, my
12 client, although it was his son who was -- his son was
13 incapacitated due to the serious nature of the injuries
14 he received. So he was actually the person who
15 ultimately paid my fees.

16 BOARD CHAIRMAN SPENCER: No conflict there?

17 MR. TATALOVICH: No. Because he was the only
18 person who was -- he was actually at the crime scene
19 within a minute of when his son was horribly injured.
20 And he was there when the security people arrived. He
21 was there when the ambulance arrived. And he was the
22 only person, because of his outlines and diagram, that
23 knew exactly where the crime happened. So Mr. Snyder,
24 the attorney who engaged me, gave him instructions to
25 simply show me where the crime scene occurred.

1 BOARD CHAIRMAN SPENCER: So it would be unusual
2 for you to work a criminal case?

3 MR. TATALOVICH: Pardon me?

4 BOARD CHAIRMAN SPENCER: It would be unusual
5 for you to work a criminal case?

6 MR. TATALOVICH: As a -- it would be very
7 unusual for me to work a criminal case today, except
8 post incident. Again, I'm not trying to identify who
9 did it. I'm trying to identify, did the property owner
10 meet or fall below the reasonable standard of care?

11 BOARD CHAIRMAN SPENCER: Okay.

12 MR. MENICUCCI: Can I ask one more question?

13 BOARD CHAIRMAN SPENCER: All right.

14 MR. TATALOVICH: Just when I thought I was
15 done.

16

17 RE-CROSS-EXAMINATION

18 BY MR. MENICUCCI:

19 Q. I'm sorry to ask this. You're saying that the
20 discussion or interview you had with Mr. Torino, he just
21 showed you where the crime happened; is that right?

22 A. You know, it's been cast as an interview. But,
23 obviously, Mr. Jaffe wants to disqualify me from the
24 case and from this investigation, so on.

25 The only thing he told me was that this is

1 where it happened. And they asked him all those
2 questions. It's all in the deposition. And I didn't
3 ask him any questions.

4 Q. And as an expert witness, would you consider it
5 within the scope of your expert witness function to
6 actually interview someone who was a percipient witness?

7 A. No, I do not interview witnesses, whether it's
8 the state of Arizona, the state of Nevada, or any other
9 location. I think, the purview of the expert is to look
10 at sworn testimony, look at police department
11 interviews, and not interview witnesses. Because I
12 think it's inappropriate. The attorneys could come back
13 and say, "Well, you led the witness. You're looking for
14 a certain result."

15 I want to get in front of a jury, look them in
16 the eye, and say I'm independent. I'm going to weigh
17 this out. I going took look for what's been done. And,
18 typically, I like the police department investigation,
19 and I like depositions, because you have
20 cross-examination, you have balance.

21 MR. MENICUCCI: Okay.

22 MR. ARRASCADA: I would like to present another
23 exhibit I think may be part of the record. And because
24 it's now become an issue. It's the deposition of
25 Raymond, the relevant parts of the deposition of Raymond

1 Gay Torino, Junior. And he is questioned by Mr. Jaffe
2 in detail about his conversation and/or discussions and
3 what he did with Mr. Tatalovich. I can see
4 Mr. Spencer's -- it's an issue for him, and I would like
5 to provide that.

6 BOARD CHAIRMAN SPENCER: I was just confused by
7 the situation. That deposition's not already part of
8 the record?

9 MR. ARRASCADA: No.

10 MR. MENICUCCI: No.

11 MR. ARRASCADA: This deposition's not. This is
12 excerpts. It would be pages 34 and 35, or 94 and 95.

13 MR. MARCHER: It's probably appropriate since
14 it's become an issue. So.

15 If you don't have an objection.

16 BOARD CHAIRMAN SPENCER: No.

17 MR. MENICUCCI: I don't object.

18 MR. ARRASCADA: Do I supply this to Mr. Ray
19 or --

20 MR. MARCHER: Does anybody have any other
21 questions? Did you -- I just had a question about
22 the -- apparently, you you've agreed to a briefing
23 schedule?

24 MR. MENICUCCI: Yes.

25 MR. MARCHER: Have you agreed to a schedule?

1 MR. MENICUCCI: We haven't agreed to a schedule
2 yet, but we've agreed that this is something that we
3 would benefit from briefings to be submitted, made
4 available to the Board members before the next Board
5 meeting.

6 MR. MARCHER: Okay. So I assume before -- The
7 next meeting's in December?

8 MR. MENICUCCI: Yes.

9 BOARD CHAIRMAN SPENCER: Yeah.

10 MR. ARRASCADA: Counsel, I'll talk to
11 Mr. Menicucci probably tomorrow, and we will provide
12 whoever with a reasonable briefing schedule, and it will
13 be done in October. We'll do that in October. I
14 believe, what we wanted to do is just both blind-file
15 simultaneously our positions.

16 MR. MARCHER: Okay.

17 MR. ARRASCADA: So there's no rebuttals or
18 anything of that nature, just a date to file.

19 MR. MARCHER: That's a good idea.

20 MR. ARRASCADA: I want some direction on should
21 it be in the form of an actual legal brief on legal
22 paper, or would a memorandum be fine? What's the
23 Board's pleasure?

24 MR. MARCHER: I think, we could do it either
25 way. You know, if the Board may want to limit the

1 numbers of pages. That depends on -- you know, we don't
2 want any 85-page --

3 BOARD CHAIRMAN SPENCER: We believe in the
4 simplest philosophy.

5 MR. MARCHER: Just try and make it as succinct
6 as possible. But the format, I don't think, is as
7 necessarily important as the content.

8 MR. MENICUCCI: The end of October. Between
9 Mr. Arrascada and I, we can determine the date.

10 MR. MARCHER: I mean just to give yourselves a
11 little time, I think -- When's the meeting in December?

12 MS. RAY: December 9th and 10th.

13 MR. MARCHER: A couple weeks beforehand, you
14 know, is all you'd probably need to read it over.

15 And if any of the Board has any questions about
16 anything in the briefs, they can call me. Not
17 collectively, obviously, but individually.

18 MR. MENICUCCI: Does the Board want to put a
19 page limit on us?

20 BOARD CHAIRMAN SPENCER: No, whatever handles
21 the issue.

22 MR. MARCHER: You've been warned.

23 BOARD CHAIRMAN SPENCER: Do what we need to
24 understand. Okay.

25 MR. MENICUCCI: Yeah.

1 MR. ARRASCADA: All right.

2 BOARD CHAIRMAN SPENCER: If it's 11 pages,
3 don't do it.

4 MR. ARRASCADA: Don't tear off the last one.

5 BOARD MEMBER CRATE: Mr. Chairman, I'd still
6 like to ask a question or two.

7 BOARD CHAIRMAN SPENCER: Certainly.

8 BOARD MEMBER CRATE: Mr. Tatalovich, you
9 mentioned, in Quiroga, that you conducted a background
10 check to determine criminal history. And you did that
11 why?

12 MR. TATALOVICH: Firstly, I didn't consider
13 that a background check. It's simply a criminal history
14 check. But the reason I did that is that the plaintiff
15 in the case alleged that if the owner of the business
16 had conducted adequate preemployment processing,
17 including a criminal history check, that they would have
18 discovered sufficient information that they would not
19 have contracted with the individual who later then
20 committed a double homicide at the jewelry store.

21 BOARD MEMBER CRATE: So as the expert, you
22 simply wanted to establish a standard of care, wouldn't
23 you stop at the point of saying that is reasonable or
24 unreasonable rather than trying to prove or disprove if
25 the standard was adequately followed or not?

1 MR. TATALOVICH: Well, there was going to be
2 two issues. Number one, that a family-owned jewelry
3 store had a legal duty, or under the standard of care,
4 should they have conducted a criminal history check.
5 That's number one.

6 BOARD MEMBER CRATE: And you have an opinion on
7 that?

8 MR. TATALOVICH: Yes.

9 BOARD MEMBER CRATE: Regardless of who it was?

10 MR. TATALOVICH: Yes, because that goes to the
11 standard of care. For instance, if it's WalMart, they
12 have a standard of care that requires them to do that.

13 BOARD MEMBER CRATE: Number two is what?

14 MR. TATALOVICH: Pardon me?

15 BOARD MEMBER CRATE: Point two is what?

16 MR. TATALOVICH: Point two is that -- let's
17 assume that I needed to know, in order to render a
18 standard of care opinion, I would want to ask, did he
19 have a criminal history? And if they had done that
20 criminal history, would they have discovered that that
21 was something that would have disqualified him for
22 employment? And, therefore, he would not have been
23 present.

24 BOARD MEMBER CRATE: So as the standard of
25 care, aren't you just in the position to advise whether

1 that, that's reasonable for -- for any employer to run
2 some degree of background check, not whether in this
3 case, whether it would make a difference or not, you're
4 just establishing the standard of care?

5 MR. TATALOVICH: It's a standard of care, but
6 it's a causation issue. In other words, the
7 plaintiff --

8 BOARD MEMBER CRATE: What if it turned out
9 different, though; the result that you came back with,
10 it could have been that he had a significant criminal
11 history, or he had no criminal history?

12 MR. TATALOVICH: That's correct, it could have
13 been either way.

14 BOARD MEMBER CRATE: But the standard of care
15 either way should have been --

16 MR. TATALOVICH: The standard of care --

17 BOARD MEMBER CRATE: -- to conduct the
18 background check?

19 MR. TATALOVICH: The standard of care would
20 have been argued from a legal perspective as to what the
21 duty was. Which, typically, an expert does not get into
22 the legal aspects.

23 BOARD MEMBER CRATE: That's what I'm getting
24 to, is why -- if because the legal obligation is clear
25 as to what happened as a result of doing or not doing

1 that. And your obligation and your function is more to
2 confirm that that's a reasonable standard of care or is
3 not, not to then go and pursue it and try to show why it
4 was circumstantially or why it was not circumstantially.

5 MR. TATALOVICH: I wasn't trying to do that.

6 BOARD MEMBER CRATE: But, in effect, that's
7 what you accomplished.

8 MR. TATALOVICH: No, what I'm saying is we
9 first have to look at the standard of care and check
10 those. Number two goes to the causation issue. You
11 have to have causation. So, but for the fact that he
12 had no criminal history, even if the jewelry store had
13 run the check, and it had come back negative, the
14 sequence of events would not have been changed or been
15 altered, and he still would have been there.

16 So there's no causation by the fact that they
17 did or did not want to. In other words, all the cases
18 ultimately hinge on causation. And you could say,
19 "Well, it was a good idea that they did," and I would
20 say, "Yes, you should have," but it wouldn't have
21 changed the outcome either way.

22 So on your standard of care, is it foreseeable
23 or preventable, the fact that you did or did not would
24 have no change in the course of events that ultimately
25 occurred. That's what they come to me to establish.

1 BOARD MEMBER CRATE: I haven't read the
2 transcript. I don't even know if it's part of that.
3 Were you asked that question specifically?

4 MR. TATALOVICH: Well, that was part of the
5 allegation that -- In other words, if you're --

6 BOARD MEMBER CRATE: While testifying or as
7 part of your testimony, in your deposition?

8 MR. ARRASCADA: Mr. Tatalovich did not testify
9 in that matter. That was a case that was dismissed by,
10 I believe, the plaintiff. That was a matter that was
11 dismissed by the plaintiff before it went very far in
12 litigation. And Mr. Tatalovich's deposition was not
13 taken. The report speaks for itself.

14 BOARD MEMBER CRATE: That report was submitted
15 to the court?

16 MR. TATALOVICH: What happens is you have -- in
17 Nevada, there's a scheduling order that would tell me
18 the day that I have to produce my opinions. And I send
19 them to whoever the counsel is who engaged me, who then
20 exchanges those. And, I would premium, then you file it
21 with the court.

22 BOARD MEMBER CRATE: In the Torino case, right,
23 that Jeremy asked about previously, was there any
24 particular reason that Mr. Torino needed to take you to
25 the location, as opposed to anyone else? I know you

1 indicated that he was the first one on the scene.

2 MR. TATALOVICH: That wasn't my decision. The
3 attorney who engaged me told me to go to Las Vegas, do
4 the investigation. The day of the investigation, he
5 told me that Mr. Torino would drive me to the crime
6 scene, identify the crime scene, and then drop us off.
7 So I had nothing to do with that whatsoever.

8 And, typically, I'm instructed not to have any
9 conversations with anyone, because that's the purview of
10 the attorneys, because experts do not have privileges.
11 So I intentionally do not converse with anyone at a
12 crime scene.

13 MS. RAY: Woop. Just a moment.

14 (There was a brief period off the record while
15 the videoconferencing with Las Vegas was reestablished.)

16 BOARD MEMBER CRATE: My last question would be
17 just clarifying that we referenced a couple of times to
18 whether you were engaged by the plaintiff or defendant.
19 Does what impact how you apply or --

20 MR. TATALOVICH: No. In fact, when you look at
21 my report -- Because a lot of states follow Albert.
22 Albert has a much greater gatekeeping function. Nevada
23 does not follow Albert. But I meet Albert requirements
24 in all cases, and I do not use a different methodology
25 if I'm the plaintiff or the defendant.

1 Today, we have the NFPA. The American National
2 Standards Institute, as of August of 2005 has
3 established national liability standards.

4 BOARD MEMBER CRATE: I may have misunderstood
5 what you were saying was whether it's the plaintiff or
6 defendant.

7 MR. TATALOVICH: Either way. Some experts do.
8 I do not. I like to follow the same methodologies. And
9 I follow the methodology that was in effect at the time
10 that a crime occurs. So if a crime occurred before the
11 NFPA 2006 premises security ASI standards, I would use
12 an ASI as general security risk assessment. And there's
13 another assessment you could use that's developed by a
14 forensic security organization.

15 BOARD MEMBER CRATE: Okay. No other questions.

16 BOARD CHAIRMAN SPENCER: How often do you not
17 advise someone to do a criminal background on an
18 employee?

19 MR. TATALOVICH: I typically would not do a
20 criminal background unless it was a compelling reason to
21 do so. In other words, it has to be part of the
22 negligence allegation, part of what we're trying to
23 prove against. I typically do not do that.

24 BOARD MEMBER CRATE: I'm not sure I'm clear.
25 Let me rephrase the context of the question I asked, if

1 I may.

2 BOARD CHAIRMAN SPENCER: Okay.

3 BOARD MEMBER CRATE: If you had been
4 representing the defendant in Quiroga.

5 MR. TATALOVICH: I was.

6 BOARD MEMBER CRATE: Had you been representing
7 the plaintiff, might you have done that criminal
8 background check?

9 MR. TATALOVICH: I would advise the criminal
10 background check as well. Because it could affect
11 the --

12 BOARD MEMBER CRATE: That would have been part
13 of your --

14 MR. TATALOVICH: Standard of care. Because we
15 have a set of guidelines which have been created by
16 ASIS. It's also part of the Fair Credit Reporting Act.
17 It's part of the EEOC, which says what you can and
18 cannot do, is available to the employers, and then to
19 determine if those had been followed, with the outcome.
20 So you want to ask that question.

21 BOARD MEMBER CRATE: That's what I was.

22 BOARD CHAIRMAN SPENCER: Your answer kind of
23 puzzles me. Because I would have to say that all the
24 clients that I've dealt with in this state, in similar
25 type, you know, I have done a criminal check on

1 employees. It's not always an adequate criminal check.
2 Because some of the checks, as you're well aware of, are
3 cheap and don't tell you anything. But it surprises me
4 that --

5 MR. TATALOVICH: I think, I misunderstood your
6 question.

7 MR. MARCHER: That's what I was going to say.

8 MR. TATALOVICH: If someone were asking me, as
9 a practitioner, should you do this, I would say,
10 "Absolutely."

11 BOARD CHAIRMAN SPENCER: Okay.

12 MR. TATALOVICH: However, if it's post
13 litigation, and there was nothing there about inadequate
14 or adequate preemployment policies, then as a standard
15 of care expert, I probably would not do that. But,
16 preevent, I'm a major proponent and a proponent of
17 preemployment background investigations following the
18 industry standards of care.

19 I apologize if I was not clear on that.

20 MR. ARRASCADA: Could I just ask one question?
21 And that is, preevent, you would only get the persons
22 that were licensed to do so; is that accurate?

23 MR. TATALOVICH: Absolutely.

24 MR. MARCHER: Do you want to move to retract
25 that, just to be fair?

1 BOARD CHAIRMAN SPENCER: Touche'.

2 All right, then, so I assume that -- Are you
3 through?

4 MR. MENICUCCI: I have nothing further to
5 present.

6 BOARD CHAIRMAN SPENCER: Are there any Board
7 members -- Lois, do you have anything?

8 BOARD MEMBER GRASSO: No, thank you. No
9 questions.

10 BOARD MEMBER PUTNAM: No comments or questions.

11 MR. ARRASCADA: We've presented our case, too.

12 BOARD CHAIRMAN SPENCER: Okay. Then, how are
13 we proceeding with this? One more time.

14 MR. MENICUCCI: Well, if the Board please, we
15 will have posthearing briefs, which will be distributed
16 to the members of the Board. And we'll get that done by
17 the end of October on the schedule that Mr. Arrascada
18 and I agree to. And the Board can then consider those
19 matters. And at the next meeting, this will be on the
20 agenda again for a decision.

21 MR. MARCHER: Yeah, let me caution you, the
22 Board members, don't communicate, don't get with each
23 other and communicate with anything with regard to the
24 contents of the briefs.

25 MR. MENICUCCI: Before the next meeting.

1 MR. MARCHER: Just read them by yourself. If
2 you do have any questions about anything in them, you
3 can individually call me, but not collectively.

4 BOARD CHAIRMAN SPENCER: Okay.

5 MR. ARRASCADA: That also is don't talk with
6 your family and colleague about this matter.

7 MR. MARCHER: Yeah, we could put that in there.
8 This is kind of an odd procedure for the Board. But.

9 MR. MENICUCCI: Unusual.

10 MR. ARRASCADA: And Mr. Menicucci and I both
11 understand that, both, and maybe both know it's a
12 potentially big policy issue, I think.

13 BOARD CHAIRMAN SPENCER: Yeah.

14 MR. MARCHER: I think, it could come down that
15 way, sure.

16 MR. ARRASCADA: So I think, that's it.

17 MR. MARCHER: That's it, I think.

18 BOARD CHAIRMAN SPENCER: Thank you, gentlemen.

19 MR. ARRASCADA: Thank you.

20 BOARD MEMBER PUTNAM: Thank you.

21 MR. TATALOVICH: I want to thank the Board for
22 allowing me to present my side of the case. Thank you.

23 MS. RAY: Thank you.

24 MR. BRAUNSTEIN: My name is Ken Braunstein,
25 license number 388, P.I., subcategory of a security

1 consultant. And I have public comment.

2 I have, on approximately half a dozen
3 occasions, been the opposing expert to Mr. Tatalovich.
4 I can't comment about anything in his current complaint.
5 There was an inquiry made in 1999 and a letter sent from
6 Frankie Sue Del Papa to him at that time that was not
7 brought up. I think that you should look back to the
8 1999 records.

9 And other than that, I have no comments.

10 MS. RAY: Thank you.

11 BOARD CHAIRMAN SPENCER: Thank you, sir.

12 BOARD MEMBER PUTNAM: Thank you.

13 BOARD MEMBER CRATE: Ken, if there's something
14 that you think counsel should be aware of, you might
15 forward it to him, and he, in turn, could, if it's
16 appropriate --

17 MR. BRAUNSTEIN: I'll call Michele and talk to
18 Michele, and whatever she wants me to do.

19 MS. RAY: Do you have a copy of that letter?

20 MR. BRAUNSTEIN: It's redacted, I guess.

21 MS. RAY: Can you fax it or e-mail it or give
22 it to me?

23 MR. BRAUNSTEIN: I'll give it to you.

24 MS. RAY: Okay. Thank you.

25 MR. BRAUNSTEIN: Yep. The 2001, you already

1 have. So I don't need that.

2 MS. RAY: Okay.

3 BOARD CHAIRMAN SPENCER: Second.

4 BOARD MEMBER PUTNAM: Second.

5 BOARD CHAIRMAN SPENCER: All in favor?

6 (The Board Members said "aye.")

7 BOARD CHAIRMAN SPENCER: Bye.

8 * * * * *

9 (The meeting adjourned at 3:40 p.m.)

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REPORTER'S CERTIFICATE

I, SHANNON L. TAYLOR, a Nevada Certified Court Reporter, Nevada CCR #322, do hereby certify:

That I was present at the Office of the Attorney General, 100 North Carson Street, Mock Court Room, Carson City, Nevada, at 9:00 on Thursday, September 17th, 2009, and took stenotype notes of a meeting of the State of Nevada Private Investigators Licensing Board;

That I thereafter transcribed the aforementioned stenotype notes into typewriting as herein appears, and that the foregoing transcript, consisting of pages 1 through 262, is a full, true, and correct transcription of said stenotype notes of said meeting;

I further certify that I am not an attorney or counsel for any of the parties, not a relative or employee of any attorney or counsel connected with the actions, nor financially interested in the actions.

DATED: At Carson City, Nevada, this 23rd day of October, 2009.

SHANNON L. TAYLOR
Nevada CCR #322, RMR