

Buck, Cody Michael

February 15, 2017

1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF)	
AMERICA,)	Deposition of:
)	
Plaintiff,)	CODY MICHAEL BUCK
)	
vs.)	Time on record: 1 Hour,
)	29 Minutes
RAPOWER3, LLC,)	
INTERNATIONAL)	Case No. 2:15-cv-00828 DN
AUTOMATED SYSTEMS,)	
)	
INC., LTB1, LLC, R.)	Judge David Nuffer
GREGORY SHEPARD,)	
)	
NELDON JOHNSON and)	
)	
ROGER FREEBORN,)	
)	
)	
Defendants.)	

February 15, 2017 * 1:05 p.m.

Location: United States Attorney's Office
111 South Main Street, Suite 1800
Salt Lake City, Utah

Reporter: Dawn M. Perry, CSR

Notary Public in and for the State of Utah

**Plaintiff
Exhibit**

384

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Buck, Cody Michael

February 15, 2017

2 (Pages 2 to 5)

<p style="text-align: right;">2</p> <p>1 APPEARANCES</p> <p>2 FOR THE PLAINTIFF:</p> <p>3 Christopher R. Moran</p> <p>4 Erin Healy Gallagher</p> <p>5 Erin R. Hines (Telephonically)</p> <p>6 United States Department of Justice</p> <p>7 Trial Attorneys, Tax Division</p> <p>8 P.O. Box 7328</p> <p>9 Washington, D.C. 20044</p> <p>10 (202) 307-0834</p> <p>11 (202) 353-2452</p> <p>12 (202) 514-6770 (fax)</p> <p>13 christopher.r.moran@usdoj.gov</p> <p>14 erin.healygallagher@usdoj.gov</p> <p>15</p> <p>16 FOR THE DEFENDANTS, RAPOWER3, LLC, INTERNATIONAL</p> <p>17 AUTOMATED SYSTEMS, INC., LTB1, LLC, AND NELDON</p> <p>18 JOHNSON:</p> <p>19 Christian D. Austin</p> <p>20 Attorney at Law</p> <p>21 Heideman & Associates</p> <p>22 2696 No. University Avenue</p> <p>23 Suite 180</p> <p>24 Provo, Utah 84604</p> <p>25 (801) 472-7742</p> <p>(801) 374-1724 (fax)</p> <p>caustin@heidlaw.com</p> <p>FOR THE WITNESS:</p> <p>Eric G. Benson</p> <p>Attorney at Law</p> <p>Ray, Quinney & Nebeker</p> <p>36 South State Street</p> <p>Suite 1400</p> <p>Salt Lake City, Utah 84111</p> <p>(801) 532-1500</p> <p>(801) 532-7543 (fax)</p> <p>ebenson@rqn.com</p>	<p style="text-align: right;">4</p> <p>1 PROCEEDINGS</p> <p>2 CODY MICHAEL BUCK,</p> <p>3 called as a witness, being first sworn,</p> <p>4 was examined and testified as follows:</p> <p>5 EXAMINATION</p> <p>6 BY MR. MORAN:</p> <p>7 Q. Good morning, Mr. Buck. We met</p> <p>8 previously, but I'll introduce myself again. My name</p> <p>9 is Chris Moran. I'm here on behalf of the United</p> <p>10 States Department of Justice, Tax Division, appearing</p> <p>11 on behalf of the United States.</p> <p>12 Have you had your deposition taken before?</p> <p>13 A. No.</p> <p>14 Q. Then I'm going to walk you through some of</p> <p>15 the ground rules, just to familiarize yourself.</p> <p>16 Mr. Benson has probably gone over it with you, but</p> <p>17 we'll do it again here.</p> <p>18 MS. HEALY GALLAGHER: Do appearances.</p> <p>19 MR. MORAN: Before we go any further, can</p> <p>20 all the other attorneys in the room please state</p> <p>21 their appearances on the record?</p> <p>22 MR. BENSON: Yeah. Eric Benson appearing</p> <p>23 on behalf of Cody Buck.</p> <p>24 MR. AUSTIN: And Christian Austin on</p> <p>25 behalf of RaPower3.</p>
<p style="text-align: right;">3</p> <p>1 INDEX</p> <p>2 CODY MICHAEL BUCK PAGE</p> <p>3 Examination by Mr. Moran 4</p> <p>4 Examination by Mr. Austin 52</p> <p>5 * * *</p> <p>6 EXHIBITS</p> <p>7 NO. DESCRIPTION PAGE</p> <p>8</p> <p>9 Exhibit 371 Form 10-K 30</p> <p>10</p> <p>11 * * *</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">5</p> <p>1 MS. HEALY GALLAGHER: And Erin Healy</p> <p>2 Gallagher also for the U.S. Department of Justice,</p> <p>3 Tax Division. Erin Hines, also for the DOJ, is on</p> <p>4 the phone.</p> <p>5 MR. MORAN: And counsel for Roger Freeborn</p> <p>6 and R. Gregory Shepard is Donald Reay, and he is not</p> <p>7 in attendance today.</p> <p>8 This deposition will be governed by the</p> <p>9 Federal Rules of Civil Procedure and the local rules</p> <p>10 of the District of Utah.</p> <p>11 Any exhibits that we mark today will be</p> <p>12 kept by me and I will give them to the court reporter</p> <p>13 at the end of the week.</p> <p>14 Q. Mr. Buck, can you please state your name</p> <p>15 and address for the record?</p> <p>16 A. Cody Michael Buck.</p> <p>17 Q. Okay.</p> <p>18 A. 1333 -- home address, right?</p> <p>19 Q. Business address is fine.</p> <p>20 A. Business, 178 South Rio Grande Street,</p> <p>21 Suite 200, Salt Lake City, Utah 84101.</p> <p>22 Q. And who is your employer?</p> <p>23 A. My current employer is BDO USA. Well, I'm</p> <p>24 a partner of BDO USA.</p> <p>25 Q. Was BDO USA previously known as -- were</p>

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Buck, Cody Michael

February 15, 2017

3 (Pages 6 to 9)

<p style="text-align: right;">6</p> <p>1 you previously employed by a different employer?</p> <p>2 A. Yes.</p> <p>3 Q. What was that?</p> <p>4 A. Mantyla McReynolds.</p> <p>5 Q. Okay. And what happened to Mantyla</p> <p>6 McReynolds?</p> <p>7 A. The partners determined to join BDO USA.</p> <p>8 It was effective July 1st of 2016.</p> <p>9 Q. Okay. So until July 1st, 2016, you were</p> <p>10 employed by Mantyla McReynolds?</p> <p>11 A. Correct.</p> <p>12 Q. Were you a partner there?</p> <p>13 A. I was from 2015 to 2016.</p> <p>14 Q. Okay. We'll talk a little bit more about</p> <p>15 your employment later on.</p> <p>16 A. Okay.</p> <p>17 Q. You already said you had never been</p> <p>18 deposed before. One of the most important things</p> <p>19 today is that the court reporter who is sitting to my</p> <p>20 left is able to record everything, all my questions</p> <p>21 and your answers. Therefore, I need you to speak</p> <p>22 loudly enough so that she can hear you, as well as</p> <p>23 everyone else in the room, and answer my questions</p> <p>24 verbally. That means head nods and uh-huhs won't do</p> <p>25 the job. I will need a yes, a no, and if you want to</p>	<p style="text-align: right;">8</p> <p>1 Q. Throughout today there may be objections</p> <p>2 by either -- by any of the attorneys in the room.</p> <p>3 Unless your attorney directs you not to answer, I</p> <p>4 would just ask you to let that attorney place his</p> <p>5 objection on the record and then provide an answer to</p> <p>6 the question. Do you understand?</p> <p>7 A. Understood.</p> <p>8 Q. It may happen today that you will give an</p> <p>9 answer as completely as you can but then later on in</p> <p>10 the deposition you realize that you would like to</p> <p>11 expand on that answer or correct some portion of it.</p> <p>12 And that's perfectly fine; just tell me that you'd</p> <p>13 like to do so, that you would like to clear up an</p> <p>14 answer that you gave previously, and I'll be happy to</p> <p>15 give you the time to make that correction for the</p> <p>16 record.</p> <p>17 A. Understood.</p> <p>18 Q. I also have some opportunities to take</p> <p>19 breaks through the deposition, probably every 90</p> <p>20 minutes or so. We're here in the afternoon, so there</p> <p>21 shouldn't be a need for a lunch break.</p> <p>22 If you, at any point, want to talk to your</p> <p>23 attorney, Mr. Benson, that's fine. The only thing</p> <p>24 I'd ask is that you not do that while a question is</p> <p>25 pending. So if you would like to consult with Mr.</p>
<p style="text-align: right;">7</p> <p>1 further explain your answer, go ahead, but no uh-huhs</p> <p>2 or head nodding or things of that nature.</p> <p>3 A. Understood.</p> <p>4 Q. If you could just speak up a little bit.</p> <p>5 A. Understood.</p> <p>6 Q. We also have a tendency in casual</p> <p>7 conversation to speak over one another. In this</p> <p>8 deposition I'll ask you to wait until I'm done asking</p> <p>9 a question before you provide your response. The</p> <p>10 court reporter can't take down what we're saying if</p> <p>11 you and I are speaking over each other. So I'll do</p> <p>12 my best to police myself on that, and I just ask you</p> <p>13 to do the same. Sound good?</p> <p>14 A. Understood.</p> <p>15 Q. When I do finish each question, your</p> <p>16 obligation is to give full and complete answers. Do</p> <p>17 you understand that obligation?</p> <p>18 A. Yes, I do.</p> <p>19 Q. It's also my obligation to ask</p> <p>20 understandable questions of you. So if I ask you a</p> <p>21 question that you don't fully understand, please feel</p> <p>22 free to ask me to rephrase or say that you don't</p> <p>23 understand, and I'll do my best to clear up any</p> <p>24 ambiguities.</p> <p>25 A. Understood.</p>	<p style="text-align: right;">9</p> <p>1 Benson, answer whatever question is pending as fully</p> <p>2 as you can and I'll be happy to give you some time</p> <p>3 and some privacy to talk to Mr. Benson.</p> <p>4 A. Understood.</p> <p>5 Q. Like I said earlier, we're here today to</p> <p>6 get as accurate a record as we can as it relates to</p> <p>7 the facts of this case, so I have to ask, is there</p> <p>8 anything that would prevent you from understanding</p> <p>9 and answering questions today?</p> <p>10 A. No.</p> <p>11 Q. Okay. Have you had any alcoholic drinks</p> <p>12 in the last eight hours?</p> <p>13 A. Eight hours? No.</p> <p>14 Q. Okay. Are you feeling sick or unwell</p> <p>15 today?</p> <p>16 A. No. I am a Type 1 diabetic, so that could</p> <p>17 change.</p> <p>18 Q. Okay. If you need to step out for a --</p> <p>19 MR. BENSON: If that happens --</p> <p>20 Q. (BY MR. MORAN) -- drink of water or</p> <p>21 anything, or sugar -- we don't want you passing out</p> <p>22 on us. If you need to take more frequent breaks than</p> <p>23 90 minutes, you just let me know.</p> <p>24 A. Okay.</p> <p>25 Q. I'm going to ask you some questions about</p>

Buck, Cody Michael

February 15, 2017

4 (Pages 10 to 13)

<p style="text-align: right;">10</p> <p>1 your background, just so we can more fully understand</p> <p>2 how you came to have some familiarity with the facts</p> <p>3 of this case.</p> <p>4 How long have you worked at Mantyla</p> <p>5 McReynolds?</p> <p>6 A. Since 2003. January, about.</p> <p>7 Q. Do you have any family?</p> <p>8 A. Parents.</p> <p>9 Q. Okay. Are you married?</p> <p>10 A. Siblings. No, I'm not.</p> <p>11 Q. So no children?</p> <p>12 A. No children.</p> <p>13 Q. Can you walk me through your education,</p> <p>14 starting with the end of high school?</p> <p>15 A. I've got an associate's degree from Salt</p> <p>16 Lake City Community College and then a bachelor's</p> <p>17 degree from the University of Utah, as well as a</p> <p>18 master's in professional accountancy from the</p> <p>19 University of Utah.</p> <p>20 Q. Okay. What was your bachelor's in?</p> <p>21 A. Accounting.</p> <p>22 Q. Okay. When did you graduate from -- when</p> <p>23 did you get your bachelor's and master's?</p> <p>24 A. My master's I believe was around 2002, and</p> <p>25 so my bachelor would have been around 2001.</p>	<p style="text-align: right;">12</p> <p>1 functions are?</p> <p>2 A. So the tax services is, you know,</p> <p>3 preparation of tax returns.</p> <p>4 The audit services is establishing</p> <p>5 opinions on financial statements.</p> <p>6 Q. Okay. We'll start out with the audit part</p> <p>7 of it. What's a financial statement?</p> <p>8 A. It's a description of a business's</p> <p>9 financial position and the results of their</p> <p>10 operations.</p> <p>11 Q. Why does a business maintain financial</p> <p>12 statements?</p> <p>13 A. To report to investors and interested</p> <p>14 parties, such as banks.</p> <p>15 Q. Anyone else?</p> <p>16 A. If it's a public company, the general</p> <p>17 public users, in order to make investment decisions.</p> <p>18 Q. You just said a public company. What do</p> <p>19 you mean by public company?</p> <p>20 A. A company that's publicly traded or</p> <p>21 registers with the SEC.</p> <p>22 Q. Are any of the reports that you just</p> <p>23 talked about filed with the SEC?</p> <p>24 A. Yes.</p> <p>25 Q. And you stated you started out as an</p>
<p style="text-align: right;">11</p> <p>1 Q. And you said you started at Mantyla</p> <p>2 McReynolds in January of 2003?</p> <p>3 A. Correct.</p> <p>4 Q. Was that your first job after</p> <p>5 completing --</p> <p>6 A. College, yes.</p> <p>7 Q. Let me finish the question.</p> <p>8 A. I'm sorry.</p> <p>9 Q. When you started at Mantyla McReynolds,</p> <p>10 was that your first job after completing your</p> <p>11 accounting education?</p> <p>12 A. Correct.</p> <p>13 Q. What was your first position at Mantyla</p> <p>14 McReynolds?</p> <p>15 A. An associate.</p> <p>16 Q. In what department?</p> <p>17 A. The -- well, at the time we didn't have</p> <p>18 interdepartmentals, when I started, so everyone did a</p> <p>19 little tax, a little audit.</p> <p>20 Q. Okay. You just --</p> <p>21 MR. BENSON: Speak up a little bit.</p> <p>22 THE WITNESS: Sorry.</p> <p>23 MR. MORAN: Thank you.</p> <p>24 Q. You just said tax and audit. Can you</p> <p>25 explain to me what the difference in those two</p>	<p style="text-align: right;">13</p> <p>1 associate?</p> <p>2 A. Correct.</p> <p>3 Q. And you said at the time your time was</p> <p>4 split between audit and tax?</p> <p>5 A. Correct.</p> <p>6 Q. So did you do both?</p> <p>7 A. I did.</p> <p>8 Q. Can you give me an idea of the breakdown</p> <p>9 of your percentage of your time?</p> <p>10 A. I -- I don't recall. My assumption would</p> <p>11 be that it was predominantly tax when I first</p> <p>12 started. But as -- since I started, our business on</p> <p>13 the assurance side grew significantly, and so I would</p> <p>14 say by 2004 I was full-time audit.</p> <p>15 Q. Okay. You just said business on the</p> <p>16 assurance side?</p> <p>17 A. I'm sorry, 2005.</p> <p>18 Q. So by 2005 you were --</p> <p>19 A. Full-time assurance.</p> <p>20 Q. What does "assurance" mean?</p> <p>21 A. Audit.</p> <p>22 Q. Okay.</p> <p>23 A. That's another form of audit.</p> <p>24 Q. So assurance and audit are synonymous?</p> <p>25 A. Assurance is -- typically, the broad</p>

Buck, Cody Michael

February 15, 2017

5 (Pages 14 to 17)

<p style="text-align: right;">14</p> <p>1 description over financial reporting is assurance, 2 and underneath that you would have audit services, as 3 well as review services and the like. 4 Q. Okay. You said by 2005 you were doing 5 mostly assurance auditing? 6 A. Correct. 7 Q. Okay. Do you have experience in the tax 8 side of accounting? 9 A. Minimal. A first-year associate is, you 10 know, primarily just inputting tax returns. 11 Q. And that's what you did? 12 A. Correct. 13 Q. And subsequently you focused your practice 14 on assurance? 15 A. Correct. 16 Q. One other question about your education. 17 Do you have any other formal education? 18 A. Beyond grade school and what I've 19 previously given? No. 20 Q. Okay. All right. After 2005, you said 21 that's when you focused primarily on assurance and 22 auditing practice? 23 A. Correct. 24 Q. What changed in 2005? 25 A. Our business, the assurance or audit side,</p>	<p style="text-align: right;">16</p> <p>1 A. Do I recall? 2 Q. Yes. 3 A. I -- I believe it was 2011 or 2012. 4 Q. Fair enough. I'm just looking for a 5 ballpark. I'm trying to understand your trajectory 6 as your responsibilities increased at Mantyla 7 McReynolds. 8 So you became senior manager in 2012, 9 2013. Were there any promotions subsequent to that? 10 A. And then I was made income partner at 11 Mantyla McReynolds in 2015. 12 Q. And throughout your promotions from 13 associate to manager to senior manager to partner, 14 were you always focused on assurance and auditing? 15 A. Correct. 16 Q. Okay. And not tax? 17 A. No tax. 18 Q. Okay. Are you familiar with a company 19 known as International Automated Systems? 20 A. Yes. 21 Q. How? 22 A. We were the auditing firm for them. 23 Q. When did you first hear of International 24 Automated Systems? 25 A. When the partner brought them on as a</p>
<p style="text-align: right;">15</p> <p>1 had grown. That's what the focus of my education was 2 in college. 3 Q. Okay. 4 A. In college you typically -- at least with 5 the University of Utah -- you have two primary 6 tracks. When I went there it was audit information 7 track and a tax track. My track was the audit 8 information systems track. 9 Q. And in 2005 were you still an associate? 10 A. I don't recall. 11 Q. Okay. At some point were you promoted 12 from associate? 13 A. Yes. 14 Q. To what? 15 A. A manager. 16 Q. Do you recall about when that was? 17 A. It -- it would have been -- I would 18 guess -- I would assume 2006, 2007, is about when. 19 Q. Were you ever promoted from manager? 20 A. Say that again. 21 Q. Were you ever promoted from manager to 22 something else? 23 A. From manager? Yes, I was promoted to 24 senior manager. 25 Q. Do you recall when that was?</p>	<p style="text-align: right;">17</p> <p>1 client, which I believe was -- I believe it was in 2 2006 or 2007. I'm pretty sure it was 2006. 3 Q. Who was that partner? 4 A. Jon Lelegren. 5 Q. Can you spell that, please? 6 A. J-o-n, L-e-g-r-e-n -- sorry. Can I write it 7 down first? 8 MR. BENSON: It's not a test. 9 THE WITNESS: I can't remember if there is 10 an E in there. 11 Q. (BY MR. MORAN) To the best of your 12 recollection. 13 A. I think it's L-e-l-e-g-r-e-n, Lelegren. 14 Q. Is he still employed at Mantyla 15 McReynolds, which became BDO Seidman? 16 A. No. 17 Q. Do you remember when he ceased being 18 employed there? 19 A. It would have been -- it would have been 20 2010. Well, it was probably 2011. 21 Q. Okay. So he was the partner that brought 22 in International Automated Systems? 23 A. Correct. 24 Q. Do you know how he learned of 25 International Automated Systems?</p>

Buck, Cody Michael

February 15, 2017

6 (Pages 18 to 21)

<p style="text-align: right;">18</p> <p>1 A. I do not recall.</p> <p>2 Q. And if that was in 2006, would you have</p> <p>3 still have been an associate?</p> <p>4 A. Yes, I was probably an associate in 2006.</p> <p>5 I was probably a senior associate at that time.</p> <p>6 Q. And I think you were, based on your</p> <p>7 previous testimony, promoted to manager shortly --</p> <p>8 A. Around there, yeah. Around that same</p> <p>9 time, yes.</p> <p>10 Q. What was Mantyla McReynolds retained to --</p> <p>11 what services was Mantyla McReynolds retained to</p> <p>12 provide for International Automated Services?</p> <p>13 A. Purely auditing services.</p> <p>14 Q. You talked about this earlier, but could</p> <p>15 you describe for me exactly what Mantyla McReynolds</p> <p>16 did under the auspices of audit services for</p> <p>17 International Automated Systems?</p> <p>18 MR. AUSTIN: I would object to the extent</p> <p>19 that it's privileged. Tax advice.</p> <p>20 THE WITNESS: We would provide opinions on</p> <p>21 their financial statements that were prepared by</p> <p>22 management, which would include a balance sheet, a</p> <p>23 statement of operations, cash flow statements, equity</p> <p>24 statements and related footnotes.</p> <p>25 Q. (BY MR. MORAN) So did Mantyla -- when I</p>	<p style="text-align: right;">20</p> <p>1 client's.</p> <p>2 MR. MORAN: Mr. Austin, I don't understand</p> <p>3 what you are saying. I'm not familiar with an</p> <p>4 accounting privilege. What are you referring to?</p> <p>5 MR. AUSTIN: The accountant, tax</p> <p>6 preparation professional who renders advice related</p> <p>7 to the preparation of a tax return. Any</p> <p>8 communications that the professional has with the</p> <p>9 taxpayer related to taxes is privileged to the same</p> <p>10 extent that the communication would be privileged if</p> <p>11 it were between an attorney and the taxpayer.</p> <p>12 MR. MORAN: Do you have a case or a</p> <p>13 statutory citation for that?</p> <p>14 MR. AUSTIN: I don't -- I don't -- if you</p> <p>15 want to take a break, I can point you to authority,</p> <p>16 but I would assume that since you represent the</p> <p>17 government in this case you would be familiar with</p> <p>18 that.</p> <p>19 MR. BENSON: So I'll just -- for the</p> <p>20 record, I have no objection so far to this line of</p> <p>21 questioning, to the extent that a question is asked</p> <p>22 that elicits any information that touches on</p> <p>23 attorney-client communications, which we have</p> <p>24 extensively reviewed based on the audit, and there</p> <p>25 were some communications that have been pulled</p>
<p style="text-align: right;">19</p> <p>1 say Mantyla, I'm referring to the firm Mantyla</p> <p>2 McReynolds.</p> <p>3 A. Yes.</p> <p>4 Q. Did Mantyla provide -- draft those</p> <p>5 financial statements?</p> <p>6 A. No.</p> <p>7 Q. Who drafted them?</p> <p>8 MR. AUSTIN: Objection. Privilege.</p> <p>9 THE WITNESS: I believe -- I can't think</p> <p>10 of the company's name at this time. It was a CPA out</p> <p>11 of -- I want to say South Jordan area. I think his</p> <p>12 name was Swensen, Bryan Swensen.</p> <p>13 Q. (BY MR. MORAN) Sorenson?</p> <p>14 A. Sorenson.</p> <p>15 MS. HEALY GALLAGHER: Hang on.</p> <p>16 MR. AUSTIN: I'm just going to make a</p> <p>17 statement on the record at this point. Information</p> <p>18 relating to accountant's advice given related to</p> <p>19 preparation of tax returns or any other tax advice</p> <p>20 and communications related thereto are protected by</p> <p>21 the evidentiary privilege in this case. And my</p> <p>22 client's do -- expressly do not waive the privilege</p> <p>23 of confidentiality and, accordingly, will object to</p> <p>24 any questions that seek to breach that privilege,</p> <p>25 which is not the witness's to waive, but it's the</p>	<p style="text-align: right;">21</p> <p>1 because, in an abundance of caution, we determined</p> <p>2 there were privileged communications.</p> <p>3 Regarding the more narrow tax preparer</p> <p>4 privilege, that's, I think, a very, very narrow</p> <p>5 exception, but I will advise my client to not answer</p> <p>6 any questions if one of those recognized privileges</p> <p>7 is implicated. We'll just take on your questioning,</p> <p>8 Counsel, as far as my advice to my client.</p> <p>9 MR. AUSTIN: If you want me to quote you</p> <p>10 from the IRS Restructuring Reform Act of 1988, it</p> <p>11 states that "With respect to tax advice, the same</p> <p>12 common law protections of confidentiality which apply</p> <p>13 to a communication between a taxpayer and an attorney</p> <p>14 shall also apply to a communication between a</p> <p>15 taxpayer and any federally-authorized tax</p> <p>16 practitioner, to the extent the communication would</p> <p>17 be considered a privileged communication if it were</p> <p>18 between a taxpayer and an attorney."</p> <p>19 MR. MORAN: Mr. Austin, you are referring</p> <p>20 to 26 USC 7525, which several courts have concluded</p> <p>21 does not cover preparation of tax returns.</p> <p>22 I'd cite you to Valero Energy Corporation</p> <p>23 v. United States 569 F.3d 626.</p> <p>24 MR. AUSTIN: The authority you're</p> <p>25 citing -- and this is why it's a good idea not to try</p>

Buck, Cody Michael

February 15, 2017

7 (Pages 22 to 25)

<p style="text-align: right;">22</p> <p>1 to debate issues of law in the context of a 2 deposition on the record. The authority you're 3 citing refers to ministerial acts, not to tax advice. 4 Preparation of a tax return, in and of itself, may, 5 in many circumstances, not render -- or not -- may 6 not fall within the protections of provisions cited, 7 but tax advice does. And were it not -- were there 8 not something covered by that, Counsel, then it would 9 be surplusage to even include it in the statute. 10 So if you want to have a debate with me 11 about this, that's fine. I'll just put on the record 12 that my clients do not waive the confidentiality of 13 any communications made with the witness in this case 14 as it relates to tax advice and/or opinions regarding 15 the applicability of deductions and/or credits. 16 That, in my view, falls within the protections of the 17 statute and is not merely a ministerial act. And to 18 the extent that that privilege is breached by the 19 witness, then, of course, my clients have remedies 20 available for that. 21 MR. MORAN: And I would also cite you 22 to -- my colleague, Miss Healy Gallagher, is handing 23 you a copy of United States v. -- or Valero Energy 24 Corporation v. United States, a previously cited 25 case. I see you've been delivered a copy.</p>	<p style="text-align: right;">24</p> <p>1 tax treatment, that is the same advice that an 2 attorney would give if -- if such advice was sought 3 by a client, and attorneys routinely do give. And 4 the purpose of the language in the statute is to make 5 it clear that when it is another professional that 6 is -- that is providing that type of advice, then 7 that communication is also protected. 8 So I'm not going to sit here and have a 9 further debate with you on the record. This is why I 10 don't bother to argue with you generally about the 11 cases you try to throw in my face in the middle of a 12 deposition, because they are typically inapposite 13 and -- and it's pointless and almost certainly going 14 to be fruitless for us to sit here and have a debate 15 about it. 16 MR. MORAN: I agree that it will be 17 fruitless. The appropriate remedy would have been to 18 file a motion to quash this deposition, which your 19 client didn't do. 20 MR. AUSTIN: Again, as I stated to you 21 yesterday, it's not my job to go out and try to 22 figure out in advance whether you're going to act 23 inappropriately and prevent you from doing it. It's 24 not my job -- it's not my job to anticipate that you 25 might misconstrue case law that I think probably is</p>
<p style="text-align: right;">23</p> <p>1 I would also cite you to United States v. 2 BDO Seidman, 337 F.3d 82. Miss Healy Gallagher is -- 3 MR. AUSTIN: Let me read the case into the 4 record since you want to cite it. 5 MR. MORAN: I'm not citing the case. 6 MR. AUSTIN: Yeah, you did. 7 MR. MORAN: I'm not the one asserting a 8 privilege here. 9 MR. AUSTIN: On the record you just handed 10 me a case, and so the -- this case -- accounting 11 advice. Let me read to you from the head notes. 12 "Preparation of tax returns is an accounting, not a 13 legal service, therefore, information, so that it 14 might be used on a tax return, is not privileged 15 under tax practitioner client's privilege." 16 Now, this is maybe too fine a distinction 17 for you to grasp, because you're looking really smug, 18 but I can -- if you want to give me 30 minutes, I'll 19 give you cases that explain that just because you 20 transmit information to a tax preparer for the 21 purposes of permitting the tax preparer to create a 22 return, does not render the transmitted information 23 confidential. However, Counsel, to the extent that 24 there is advice given with regard to the 25 applicability of the tax code and the propriety of</p>	<p style="text-align: right;">25</p> <p>1 easily identified as inapposite to the particular 2 privilege that I'm raising and seek a -- a -- a 3 advisory opinion from the court compelling you to not 4 seek to breach the privilege. 5 I think -- I think if you -- I think that 6 if you, just as with the other witnesses that we've 7 had this week, were intent on attempting to just 8 breach the privilege and debate the case and debate 9 the law with another attorney on the record in a 10 deposition, that perhaps was not a good plan. But 11 it's not my responsibility to teach you how to 12 practice. 13 MR. MORAN: And it's not the government's 14 responsibility to assert privilege on behalf of your 15 client. We're going to continue with this 16 deposition. And if the witness's attorney directs 17 him not to answer, he can consult with his attorney. 18 But I'm going to continue asking my questions. 19 MR. AUSTIN: You can ask whatever 20 questions you want, but -- but you're the one who 21 decided to try to argue case law with me in the 22 middle of a deposition. 23 MR. BENSON: Is there any way we could go 24 off the record for a couple of minutes, maybe, just 25 to deal with this issue?</p>

Buck, Cody Michael

February 15, 2017

8 (Pages 26 to 29)

<p style="text-align: right;">26</p> <p>1 MR. MORAN: Sure.</p> <p>2 MR. BENSON: I don't know if we want to do</p> <p>3 it on the record, but maybe to just practically speak</p> <p>4 about this.</p> <p>5 MR. MORAN: Go off the record.</p> <p>6 (A break was taken from 1:53 p.m. to</p> <p>7 1:54 p.m.)</p> <p>8 MR. MORAN: I'm going back on the record.</p> <p>9 Do you have something you wanted to say?</p> <p>10 MR. BENSON: Yeah. Do you want to ask a</p> <p>11 question or do you want -- maybe -- are we on the</p> <p>12 record?</p> <p>13 THE REPORTER: Yes.</p> <p>14 MR. BENSON: So we've had some discussions</p> <p>15 about some potential privilege issues that may or may</p> <p>16 not exist, and it sounds like there could be</p> <p>17 potential litigation over these issues. So I would</p> <p>18 like to make a record that I will be instructing my</p> <p>19 client not to answer any questions that pertain to</p> <p>20 the representation and/or tax advice that was given</p> <p>21 to a former client, which is IAS, subject to the</p> <p>22 determination of these privilege issues at a later</p> <p>23 date by a federal judge.</p> <p>24 MR. MORAN: Okay. Could you read back the</p> <p>25 last question that was asked?</p>	<p style="text-align: right;">28</p> <p>1 THE WITNESS: I will not -- pithy? I am</p> <p>2 not going to answer, based on the advice of counsel.</p> <p>3 Q. (BY MR. MORAN) Mr. Buck, is International</p> <p>4 Automated Systems a public company?</p> <p>5 MR. BENSON: Same objection. I would</p> <p>6 instruct the witness not to answer.</p> <p>7 THE WITNESS: I will not answer, based on</p> <p>8 the advice of counsel.</p> <p>9 Q. (BY MR. MORAN) Mr. Buck, what are</p> <p>10 International Automated Systems -- withdrawn.</p> <p>11 Mr. Buck, you testified earlier that you</p> <p>12 were assigned to audit International Automated</p> <p>13 Systems for assurance purposes. Do you recall that</p> <p>14 testimony?</p> <p>15 MR. BENSON: Same objection. I would</p> <p>16 allow the witness to answer anything about the -- his</p> <p>17 initial work at Mantyla McReynolds in the assurance</p> <p>18 department. However, anything touching on the</p> <p>19 representation, the scope of the representation with</p> <p>20 IAS, I would instruct him not to answer.</p> <p>21 MR. MORAN: Would it be helpful if the</p> <p>22 court reporter read the question back to you?</p> <p>23 THE WITNESS: Yes, please.</p> <p>24 (Record was read as follows: "Mr. Buck,</p> <p>25 you testified earlier that you were assigned to</p>
<p style="text-align: right;">27</p> <p>1 (Record was read as follows: "Who drafted</p> <p>2 them?</p> <p>3 "MR. AUSTIN: Objection. Privilege.</p> <p>4 "THE WITNESS: I believe -- I can't think</p> <p>5 of the company's name at this time. It was a</p> <p>6 CPA out of -- I want to say South Jordan area.</p> <p>7 I think his name was Swensen, Bryan Swensen.")</p> <p>8 Q. (BY MR. MORAN) Mr. Buck, before our break</p> <p>9 you mentioned a gentleman by the name of Bryan</p> <p>10 Sorenson?</p> <p>11 MR. BENSON: Same objection that I just</p> <p>12 stated on the record.</p> <p>13 MR. MORAN: Are you instructing the</p> <p>14 witness not to answer?</p> <p>15 MR. BENSON: Yes.</p> <p>16 Q. (BY MR. MORAN) Mr. Buck, your attorney</p> <p>17 has instructed you not to answer the question. Are</p> <p>18 you going to follow that advice?</p> <p>19 A. Yes, I'll follow the advice of my counsel.</p> <p>20 Q. Mr. Buck, is Bryan Sorenson associated</p> <p>21 with an entity known as Cloward and Sorenson, LLC?</p> <p>22 MR. BENSON: Same objection. I would</p> <p>23 instruct the witness not to answer. And just say,</p> <p>24 "I'm not going to answer, based on advice of</p> <p>25 counsel," or something pithy.</p>	<p style="text-align: right;">29</p> <p>1 audit International Automated Systems for</p> <p>2 assurance purposes. Do you recall that</p> <p>3 testimony?")</p> <p>4 MR. BENSON: Do you recall that you</p> <p>5 testified about that?</p> <p>6 THE WITNESS: Yes.</p> <p>7 Q. (BY MR. MORAN) Was anyone else at Mantyla</p> <p>8 McReynolds assigned to audit International Automated</p> <p>9 Systems?</p> <p>10 MR. BENSON: Same objection. I would</p> <p>11 advise the client not to answer anything relating to</p> <p>12 IAS.</p> <p>13 THE WITNESS: I will not answer that,</p> <p>14 based on the advice of counsel.</p> <p>15 Q. (BY MR. MORAN) Mr. Buck, are you familiar</p> <p>16 with a person by the name of Stacey Hansen?</p> <p>17 A. Yes.</p> <p>18 Q. How are you familiar with Stacey Hansen?</p> <p>19 A. She was an associate at our -- at Mantyla</p> <p>20 McReynolds.</p> <p>21 MR. BENSON: Sorry. I'm going to ask you</p> <p>22 to speak up again. I know we had a break, but --</p> <p>23 THE WITNESS: Sorry. She was an associate</p> <p>24 with Mantyla McReynolds.</p> <p>25 Q. (BY MR. MORAN) When was she an associate</p>

Buck, Cody Michael

February 15, 2017

9 (Pages 30 to 33)

<p style="text-align: right;">30</p> <p>1 at Mantyla McReynolds?</p> <p>2 A. I'm not sure the exact dates. I would</p> <p>3 assume '06. I think she went part-time around '12,</p> <p>4 '13, but I'm not exactly sure.</p> <p>5 Q. Was Stacey Hansen assigned to the team</p> <p>6 that audited International Automated Systems?</p> <p>7 MR. BENSON: Same objection. I would</p> <p>8 instruct the witness not to answer.</p> <p>9 THE WITNESS: Based on the advice of</p> <p>10 counsel, I will not answer.</p> <p>11 (EXHIBIT 371 WAS MARKED.)</p> <p>12 Q. Mr. Buck, you've been handed a copy of</p> <p>13 Plaintiff's Exhibit 371. Do you have that document</p> <p>14 in front of you?</p> <p>15 A. Yes.</p> <p>16 Q. Do you recollect -- I ask you to take a</p> <p>17 look at Plaintiff's Exhibit 371 and see if you are</p> <p>18 familiar with it.</p> <p>19 A. Yes, I'm familiar with it.</p> <p>20 Q. What is Plaintiff's Exhibit 371?</p> <p>21 MR. BENSON: Same objection. I would</p> <p>22 instruct the witness not to answer anything</p> <p>23 pertaining to the document as it relates to the</p> <p>24 client, International Automated Systems, Inc.</p> <p>25 THE WITNESS: Based on the advice of</p>	<p style="text-align: right;">32</p> <p>1 Can I clarify that?</p> <p>2 Q. Absolutely. Please do.</p> <p>3 A. There are certain filings that we're</p> <p>4 required to include letters on. These would</p> <p>5 obviously be -- include the audit opinion related to</p> <p>6 financial statements, as well as certain required</p> <p>7 correspondence with 8-K filings. There may be others</p> <p>8 that I'm not thinking of.</p> <p>9 Q. Does Mantyla typically do any work for an</p> <p>10 audit client that is used in SEC Form 10-K?</p> <p>11 A. Yes, we will audit the financial</p> <p>12 statements that are incorporated within. And we will</p> <p>13 provide an opinion that's necessary under the</p> <p>14 circumstances for inclusion within that filing.</p> <p>15 Q. So Mantyla's opinion would be included on</p> <p>16 the 10-K that someone else files?</p> <p>17 A. It would be included within the 10-K that</p> <p>18 someone else files.</p> <p>19 Q. Okay. And that audit opinion that you</p> <p>20 just referenced, is that part of your typical</p> <p>21 responsibilities when you're auditing a client?</p> <p>22 A. It's the formation and description of --</p> <p>23 of the conclusions that we reach based on our audit</p> <p>24 of the financial statements.</p> <p>25 Q. Mr. Buck, you previously testified about a</p>
<p style="text-align: right;">31</p> <p>1 counsel, I will not answer.</p> <p>2 Q. (BY MR. MORAN) Mr. Buck, are you familiar</p> <p>3 with an SEC website known as EDGAR?</p> <p>4 A. Yes, I'm familiar with that website.</p> <p>5 Q. What is EDGAR?</p> <p>6 A. It's a reporting and storage location for</p> <p>7 public filings.</p> <p>8 Q. What types of public filings?</p> <p>9 A. Typically, financial statements and annual</p> <p>10 reports, quarterly reports, public information</p> <p>11 statements of public companies.</p> <p>12 Q. Do you draft statements that are filed on</p> <p>13 EDGAR?</p> <p>14 A. No.</p> <p>15 Q. Does Mantyla McReynolds draft statements</p> <p>16 that are filed on EDGAR?</p> <p>17 A. No.</p> <p>18 Q. Who drafts documents that are filed on</p> <p>19 EDGAR?</p> <p>20 A. Typically, the public companies that are</p> <p>21 reporting.</p> <p>22 Q. Does Mantyla McReynolds ever -- is Mantyla</p> <p>23 McReynolds ever retained to draft documents that are</p> <p>24 filed on EDGAR?</p> <p>25 A. No.</p>	<p style="text-align: right;">33</p> <p>1 public company known as International Automated</p> <p>2 Systems and that you were involved in that audit.</p> <p>3 Did you ever have occasion to discuss -- or to have</p> <p>4 conversations with anyone at International Automated</p> <p>5 Systems?</p> <p>6 MR. BENSON: Same objection. Instruct the</p> <p>7 witness not to answer.</p> <p>8 THE WITNESS: I will not answer, based on</p> <p>9 advice of counsel.</p> <p>10 Q. (BY MR. MORAN) When you're auditing a</p> <p>11 client, is it necessary to obtain information from</p> <p>12 the client?</p> <p>13 A. Yes.</p> <p>14 Q. What types of information would you</p> <p>15 typically ask for from that client?</p> <p>16 A. Typically, legal documents, such as</p> <p>17 articles of incorporation, the formation documents.</p> <p>18 And then we would obtain information related to -- to</p> <p>19 management. And then the lead item would be any</p> <p>20 trial balances. And then based on those trial</p> <p>21 balances, we'll obviously make selections of</p> <p>22 additional informations, contracts, invoices, bank</p> <p>23 statements.</p> <p>24 Q. What's a trial balance?</p> <p>25 A. It's a -- it's a summary of the general</p>

Buck, Cody Michael

February 15, 2017

10 (Pages 34 to 37)

<p style="text-align: right;">34</p> <p>1 ledger of their -- their accounting.</p> <p>2 Q. What's the general ledger accounting?</p> <p>3 A. It's the de -- the general ledger is the</p> <p>4 detail of the transactions that make up a trial</p> <p>5 balance. It's the detail -- line-by-line detail of</p> <p>6 the transaction. So if you buy something, it would</p> <p>7 have the entry showing cash. And then the opposite</p> <p>8 side of that would be to the expense that that</p> <p>9 disbursement is associated with.</p> <p>10 Q. You described information related to</p> <p>11 management?</p> <p>12 A. Yes.</p> <p>13 Q. What types of information would you be</p> <p>14 asking for about management?</p> <p>15 A. It would -- typically, inquiries. We're</p> <p>16 required to inquire fraud. Inquiries of plans in</p> <p>17 business. Inquiries of transactions with related</p> <p>18 parties. An understanding of their internal control</p> <p>19 processes for recording and summarizing accounting</p> <p>20 transactions. Information similar to that.</p> <p>21 Q. Why do you need the information that</p> <p>22 you've been describing?</p> <p>23 A. In order to form a conclusion, to express</p> <p>24 our opinion as to whether the financial statements</p> <p>25 are -- are free of -- from material misstatement.</p>	<p style="text-align: right;">36</p> <p>1 witness.</p> <p>2 THE WITNESS: I'm not familiar.</p> <p>3 Q. (BY MR. MORAN) You've never heard the</p> <p>4 name before?</p> <p>5 A. I do not recall.</p> <p>6 Q. Okay. Are you familiar with a person by</p> <p>7 the name of Jason Clements?</p> <p>8 A. I'm not familiar with that name.</p> <p>9 Q. Are you familiar with a person by the name</p> <p>10 of R. Gregory Shepard?</p> <p>11 MR. BENSON: Same objection. Same</p> <p>12 instruction, to the extent that it relates. If you</p> <p>13 have a personal relationship or something else</p> <p>14 outside of your representation, I would instruct the</p> <p>15 witness to answer.</p> <p>16 THE WITNESS: On the -- based on the</p> <p>17 advice of counsel, I choose not to answer.</p> <p>18 Q. (BY MR. MORAN) Are you familiar with a</p> <p>19 person by the name of LaGrand Johnson?</p> <p>20 MR. BENSON: Same objection. Same</p> <p>21 instruction.</p> <p>22 THE WITNESS: I will not answer, based on</p> <p>23 the advice of counsel.</p> <p>24 Q. (BY MR. MORAN) Are you familiar with a</p> <p>25 person by the name of Randale Johnson?</p>
<p style="text-align: right;">35</p> <p>1 Q. And is the financial statements that --</p> <p>2 withdrawn.</p> <p>3 Are you familiar with a person by the name</p> <p>4 of Neldon Johnson?</p> <p>5 MR. BENSON: Same objection as it relates</p> <p>6 to the representation of IAS. If it doesn't relate</p> <p>7 to IAS, general familiarity as a person, I will</p> <p>8 allow -- or I will instruct him to answer the</p> <p>9 question.</p> <p>10 THE WITNESS: Yes, I am.</p> <p>11 Q. (BY MR. MORAN) Who is Neldon Johnson?</p> <p>12 MR. BENSON: Same objection as it relates</p> <p>13 to IAS.</p> <p>14 THE WITNESS: I will not answer, based on</p> <p>15 advice of counsel.</p> <p>16 Q. (BY MR. MORAN) How are you familiar with</p> <p>17 Neldon Johnson?</p> <p>18 MR. BENSON: Same objection, with the same</p> <p>19 reasons.</p> <p>20 THE WITNESS: I will not answer, based on</p> <p>21 advice of counsel.</p> <p>22 Q. (BY MR. MORAN) Are you familiar with a</p> <p>23 person by the name of Glenda Johnson?</p> <p>24 MR. BENSON: Same objection. If it</p> <p>25 relates to IAS, then the same instruction to the</p>	<p style="text-align: right;">37</p> <p>1 MR. BENSON: Same objection if it relates</p> <p>2 to IAS.</p> <p>3 THE WITNESS: Based on the advice of</p> <p>4 counsel, I will not answer.</p> <p>5 Q. (BY MR. MORAN) Mr. Buck, are you familiar</p> <p>6 with International Automated Systems' businesses?</p> <p>7 MR. BENSON: Same objection. Same</p> <p>8 instruction.</p> <p>9 THE WITNESS: Based on advice of counsel,</p> <p>10 I will not answer.</p> <p>11 Q. (BY MR. MORAN) Are you aware if</p> <p>12 International Automated Systems' business involves</p> <p>13 solar lenses or solar energy?</p> <p>14 MR. BENSON: Same objection. Same</p> <p>15 instruction.</p> <p>16 THE WITNESS: I will not answer, based on</p> <p>17 advice of counsel.</p> <p>18 MR. MORAN: Take a five-minute break?</p> <p>19 MR. BENSON: Okay.</p> <p>20 MS. HEALY GALLAGHER: We're just going to</p> <p>21 step out.</p> <p>22 (A break was taken from 2:15 p.m. to</p> <p>23 2:22 p.m.)</p> <p>24 MR. MORAN: Back on the record.</p> <p>25 Q. Mr. Buck, there has been testimony in this</p>

Buck, Cody Michael

February 15, 2017

11 (Pages 38 to 41)

<p style="text-align: right;">38</p> <p>1 case that International Automated Systems is involved</p> <p>2 in the production of -- construction and operation of</p> <p>3 alleged alternative energy systems that involve solar</p> <p>4 lenses. Do you have any knowledge about that?</p> <p>5 MR. BENSON: Same objection. Same</p> <p>6 instruction.</p> <p>7 THE WITNESS: I will not answer, based on</p> <p>8 advice of counsel.</p> <p>9 Q. (BY MR. MORAN) Mr. Buck, in your duties</p> <p>10 to audit International Automated Systems, would you</p> <p>11 have had occasion to become familiar with</p> <p>12 International Automated Systems' solar lenses and</p> <p>13 alternative energy systems?</p> <p>14 MR. BENSON: Same objection. Same</p> <p>15 instruction.</p> <p>16 THE WITNESS: I will not answer, based on</p> <p>17 advice of counsel.</p> <p>18 Q. (BY MR. MORAN) Mr. Buck, if it turned out</p> <p>19 to be true that International Automated Systems was</p> <p>20 involved in solar lenses and alternative energy</p> <p>21 systems as part of their business, what implications</p> <p>22 would that have had to your audit?</p> <p>23 MR. BENSON: I'd object that that calls</p> <p>24 for speculation and is subject to this earlier</p> <p>25 long-winded objection that I had, and the same</p>	<p style="text-align: right;">40</p> <p>1 MR. BENSON: Same objection. Same</p> <p>2 instruction.</p> <p>3 THE WITNESS: I will not answer, based on</p> <p>4 the advice of counsel.</p> <p>5 Q. (BY MR. MORAN) Mr. Buck, do you have any</p> <p>6 knowledge as to whether or not alternative energy</p> <p>7 systems or solar or any application involving solar</p> <p>8 lenses were ever placed in service at a Delta, Utah,</p> <p>9 site owned or operated by International Automated</p> <p>10 Systems?</p> <p>11 MR. BENSON: Same objection. Same</p> <p>12 instruction.</p> <p>13 THE WITNESS: I will not answer, based on</p> <p>14 advice of counsel.</p> <p>15 Q. (BY MR. MORAN) Mr. Buck, do you have any</p> <p>16 knowledge or information about whether or not</p> <p>17 International Automated Systems ever earned income</p> <p>18 from the sale or operation of alternative energy</p> <p>19 systems or solar lenses at a Delta, Utah, site?</p> <p>20 MR. BENSON: Same objection. Same</p> <p>21 instruction.</p> <p>22 THE WITNESS: I will not answer, based on</p> <p>23 advice from counsel.</p> <p>24 Q. (BY MR. MORAN) Mr. Buck, do you have any</p> <p>25 knowledge or information about power purchase</p>
<p style="text-align: right;">39</p> <p>1 instruction not to answer.</p> <p>2 THE WITNESS: I will not answer, based on</p> <p>3 the advice of counsel.</p> <p>4 Q. (BY MR. MORAN) Mr. Buck, have you ever</p> <p>5 had occasion to visit an installation owned or</p> <p>6 operated by International Automated Systems in or</p> <p>7 around Delta, Utah?</p> <p>8 MR. BENSON: Same objection. Same</p> <p>9 instruction.</p> <p>10 THE WITNESS: I will not answer, based on</p> <p>11 the advice of counsel.</p> <p>12 Q. (BY MR. MORAN) Mr. Buck, would anyone on</p> <p>13 Mantyla McReynolds' audit team have had occasion to</p> <p>14 visit an installation of International Automated</p> <p>15 Systems in Delta, Utah?</p> <p>16 MR. BENSON: Same objection. Same</p> <p>17 instruction.</p> <p>18 THE WITNESS: I will not answer based on</p> <p>19 the advice of counsel.</p> <p>20 Q. (BY MR. MORAN) Mr. Buck, during the audit</p> <p>21 of International Automated Systems, would you or</p> <p>22 anyone on the audit team have had occasion to ask for</p> <p>23 information about alternative energy systems or solar</p> <p>24 lenses located at International Automated Systems'</p> <p>25 Delta, Utah, site?</p>	<p style="text-align: right;">41</p> <p>1 agreements that International Automated Systems may</p> <p>2 have related to their alternative energy systems or</p> <p>3 solar lenses at a site in Delta, Utah?</p> <p>4 MR. BENSON: Same objection. Same</p> <p>5 instruction.</p> <p>6 THE WITNESS: I will not answer, based on</p> <p>7 advice of counsel.</p> <p>8 Q. (BY MR. MORAN) Mr. Buck, have you ever</p> <p>9 had conversations with someone else at Mantyla</p> <p>10 McReynolds, outside of the auditing, about</p> <p>11 International Automated Systems?</p> <p>12 MR. BENSON: Same objection. Same</p> <p>13 instruction.</p> <p>14 THE WITNESS: I will not answer, based on</p> <p>15 advice from counsel.</p> <p>16 Q. (BY MR. MORAN) Mr. Buck, have you ever</p> <p>17 had occasion to discuss International Automated</p> <p>18 Systems with Ken Oveson?</p> <p>19 MR. BENSON: Same objection. Same</p> <p>20 instruction.</p> <p>21 THE WITNESS: I will not answer, based on</p> <p>22 advice from counsel.</p> <p>23 Q. (BY MR. MORAN) Let me back up a little</p> <p>24 bit.</p> <p>25 Are you familiar with a gentleman by the</p>

Buck, Cody Michael

February 15, 2017

12 (Pages 42 to 45)

<p style="text-align: right;">42</p> <p>1 name of Ken Oveson?</p> <p>2 A. Yes, I am familiar with Ken Oveson.</p> <p>3 Q. Who was Ken Oveson?</p> <p>4 A. He was a retired partner of Mantyla -- he</p> <p>5 is a retired partner of Mantyla McReynolds.</p> <p>6 Q. What was Mr. Oveson's role at Mantyla</p> <p>7 McReynolds?</p> <p>8 A. He was the head of our tax department.</p> <p>9 Q. Do you know if Mr. Oveson was ever</p> <p>10 involved with International Automated Systems as a</p> <p>11 client?</p> <p>12 MR. BENSON: Same objection. Same</p> <p>13 instruction.</p> <p>14 THE WITNESS: I will not answer, based on</p> <p>15 advice from counsel.</p> <p>16 Q. (BY MR. MORAN) Mr. Buck, do you know if</p> <p>17 Mr. Oveson -- do you know if Mr. Oveson was involved</p> <p>18 in -- withdrawn.</p> <p>19 Do you know if Mr. Oveson had a client by</p> <p>20 the name of R. Gregory Shepard?</p> <p>21 MR. BENSON: Same objection. Same</p> <p>22 instruction.</p> <p>23 THE WITNESS: I will not answer, based on</p> <p>24 advice from counsel.</p> <p>25 Q. (BY MR. MORAN) Do you know whether or not</p>	<p style="text-align: right;">44</p> <p>1 MR. BENSON: Page 65 of 66 or --</p> <p>2 MR. MORAN: Page 66.</p> <p>3 MR. BENSON: 66 of 66. You got it?</p> <p>4 THE WITNESS: Yes.</p> <p>5 Q. (BY MR. MORAN) There is a Note 13,</p> <p>6 Reclassification. And I'm going to read that out</p> <p>7 loud. If you can read along silently with me.</p> <p>8 "Certain prior year amounts have been reclassified to</p> <p>9 conform to the current year presentation. Alternate</p> <p>10 solar energy system was moved from current assets to</p> <p>11 noncurrent assets."</p> <p>12 And, again, for the record, I'm reading on</p> <p>13 page 66 of 66 of Plaintiff's Exhibit 371.</p> <p>14 Did I read Note 13 correctly?</p> <p>15 A. Yes.</p> <p>16 MR. BENSON: The document speaks for</p> <p>17 itself. To the extent that it calls for anything</p> <p>18 pertaining to the representation of IAS, we would</p> <p>19 object, but as to the document, it speaks for itself.</p> <p>20 Q. (BY MR. MORAN) Mr. Buck, does Note 13</p> <p>21 mean anything to you?</p> <p>22 MR. BENSON: Same objection. Same</p> <p>23 instruction as it pertains to representation of a</p> <p>24 current or former client. If this note means</p> <p>25 something to you otherwise, then I would instruct you</p>
<p style="text-align: right;">43</p> <p>1 Mr. Oveson had a client by the name of Bigger Faster</p> <p>2 Stronger?</p> <p>3 MR. BENSON: Same objection. Same</p> <p>4 instruction.</p> <p>5 THE WITNESS: I will not answer, based on</p> <p>6 advice from counsel.</p> <p>7 Q. (BY MR. MORAN) Are you familiar with</p> <p>8 whether or not Mr. Oveson had a client by the name of</p> <p>9 Robert Rowbotham?</p> <p>10 MR. BENSON: Same objection. Same</p> <p>11 instruction.</p> <p>12 THE WITNESS: I will not answer, based on</p> <p>13 advice from counsel.</p> <p>14 Q. (BY MR. MORAN) Do you know if</p> <p>15 Mr. Oveson's -- if any of Mr. Oveson's clients ever</p> <p>16 claimed tax benefits related to a solar lens or</p> <p>17 alternative energy system that was -- that was</p> <p>18 connected to International Automated Systems?</p> <p>19 MR. BENSON: Same objection. Same</p> <p>20 instruction.</p> <p>21 THE WITNESS: I will not answer, based on</p> <p>22 advice from counsel.</p> <p>23 Q. (BY MR. MORAN) Mr. Buck, can I direct</p> <p>24 your attention to the last page of Plaintiff's</p> <p>25 Exhibit 371? Yes, you're looking at the right page.</p>	<p style="text-align: right;">45</p> <p>1 to answer.</p> <p>2 THE WITNESS: Based on advice of counsel,</p> <p>3 I will not answer.</p> <p>4 Q. (BY MR. MORAN) Mr. Buck, was there -- did</p> <p>5 there come a time when International Automated</p> <p>6 Systems ceased being a client of Mantyla McReynolds</p> <p>7 or BDO Seidman?</p> <p>8 MR. BENSON: Same objection. Same</p> <p>9 instruction.</p> <p>10 THE WITNESS: I will not answer, based on</p> <p>11 advice from counsel.</p> <p>12 Q. (BY MR. MORAN) Mr. Buck, is International</p> <p>13 Automated Systems currently a client of BDO Seidman?</p> <p>14 MR. BENSON: Same objection. Same</p> <p>15 instruction.</p> <p>16 THE WITNESS: I will not answer, based on</p> <p>17 advice from counsel.</p> <p>18 Q. (BY MR. MORAN) Mr. Buck, during the 2009</p> <p>19 time frame, what was your role on the International</p> <p>20 Automated Systems' audit?</p> <p>21 MR. BENSON: Same objection. Same</p> <p>22 instruction.</p> <p>23 THE WITNESS: I will not answer, based on</p> <p>24 advice from counsel.</p> <p>25 MR. MORAN: Just to be clear, my question</p>

Buck, Cody Michael

February 15, 2017

13 (Pages 46 to 49)

<p style="text-align: right;">46</p> <p>1 pertains to whether or not Mr. Buck was in charge of</p> <p>2 the audit or if he was -- if there was someone else</p> <p>3 that was in charge of the audit.</p> <p>4 MR. BENSON: Of IAS?</p> <p>5 MR. MORAN: The audit of International</p> <p>6 Automated Systems.</p> <p>7 MR. BENSON: Oh, okay. Same objection.</p> <p>8 Same instruction.</p> <p>9 THE WITNESS: I will not answer, based on</p> <p>10 advice from counsel.</p> <p>11 Q. (BY MR. MORAN) Mr. Buck, in the context</p> <p>12 of an audit of International Automated Systems, what</p> <p>13 would the term "purchase commitment" mean?</p> <p>14 MR. BENSON: Same objection. Same</p> <p>15 objection.</p> <p>16 THE WITNESS: I will not answer, based on</p> <p>17 advice from counsel.</p> <p>18 Q. (BY MR. MORAN) Mr. Buck, I'm not</p> <p>19 asking -- this question doesn't pertain to</p> <p>20 International Automated Systems, but more your</p> <p>21 practice. When you're retained to audit a client, as</p> <p>22 you've described it, is that something that's</p> <p>23 performed every year?</p> <p>24 A. At the client's choosing, yes. Typically,</p> <p>25 every -- once a year.</p>	<p style="text-align: right;">48</p> <p>1 for a client?</p> <p>2 A. Yes.</p> <p>3 Q. Are the quarterly reviews filed with the</p> <p>4 SEC?</p> <p>5 A. Yes.</p> <p>6 Q. What's the form that --</p> <p>7 A. Form 10-Q.</p> <p>8 Q. What's the yearly form that's filed?</p> <p>9 A. I'm sorry, repeat that.</p> <p>10 Q. What's the yearly form that's filed?</p> <p>11 A. The annual report is within the 10-K, Form</p> <p>12 10-K.</p> <p>13 Q. Okay. Is Exhibit 371 a Form 10-K?</p> <p>14 MR. BENSON: You can answer generally.</p> <p>15 THE WITNESS: Yes.</p> <p>16 Q. (BY MR. MORAN) Mr. Buck, you've answered</p> <p>17 some questions today. Before we close for today, is</p> <p>18 there any answer you've given that you would like to</p> <p>19 clarify or expound upon?</p> <p>20 A. Not -- what I've answered, not at this</p> <p>21 time, no.</p> <p>22 Q. All right. Is there any information that</p> <p>23 I asked -- that I asked previously that you remember</p> <p>24 now that you didn't recall as an answer to the</p> <p>25 question when I asked it?</p>
<p style="text-align: right;">47</p> <p>1 Q. What about for a public company?</p> <p>2 A. Public companies, as long as you're the</p> <p>3 auditor of record, then it's -- it's once a year.</p> <p>4 And you can resign whenever you so choose as an</p> <p>5 auditor. Or you can be fired at any time.</p> <p>6 Q. Sure, but if you are retained to provide</p> <p>7 auditing services for a company, let's say from 2006</p> <p>8 to 2010, and the company is a public company, would</p> <p>9 you expect to be doing an audit every year?</p> <p>10 A. Yes.</p> <p>11 Q. And why is that?</p> <p>12 A. It's anticipated that engagements will be</p> <p>13 renewed on an annual basis.</p> <p>14 Q. Do public -- withdrawn.</p> <p>15 Do public companies have a requirement to</p> <p>16 be audited on any type of regular basis?</p> <p>17 A. Yes, public companies are required to be</p> <p>18 audited annually.</p> <p>19 Q. How about quarterly?</p> <p>20 A. Quarterly review services are performed.</p> <p>21 Q. And why is that?</p> <p>22 A. It's mandated by SEC rules.</p> <p>23 Q. And those type of -- the audits that</p> <p>24 you're discussing, those are the audits that Mantyla</p> <p>25 McReynolds and BDO Seidman would typically provide</p>	<p style="text-align: right;">49</p> <p>1 A. There has been no change.</p> <p>2 Q. Have you ever been arrested?</p> <p>3 A. No.</p> <p>4 Q. Have you ever had any type of professional</p> <p>5 disciplinary record?</p> <p>6 A. Yes.</p> <p>7 Q. And what were the circumstances?</p> <p>8 A. I was disciplined for -- I can't recall</p> <p>9 what it's called.</p> <p>10 Q. To the best of your recollection is fine.</p> <p>11 MR. BENSON: Do you want to talk? There</p> <p>12 is a question pending, but can we talk for -- or do</p> <p>13 you want to pursue this line of questioning?</p> <p>14 Q. (BY MR. MORAN) I'm going to ask you to</p> <p>15 answer the question as best you can recall.</p> <p>16 A. Okay.</p> <p>17 Q. If you would like to take a break to</p> <p>18 consult with your attorney, that's fine.</p> <p>19 A. For -- I was disciplined for -- I guess</p> <p>20 the easiest answer would be for failure to abide by</p> <p>21 the AICPA code of conduct.</p> <p>22 Q. Do you recall what part of the AICPA code</p> <p>23 of conduct that pertained to?</p> <p>24 A. I don't recall at this time.</p> <p>25 Q. Would you like to take a moment to consult</p>

Buck, Cody Michael

February 15, 2017

14 (Pages 50 to 53)

<p style="text-align: right;">50</p> <p>1 with your attorney?</p> <p>2 A. Yes.</p> <p>3 MR. MORAN: Did you want to step outside?</p> <p>4 MR. BENSON: That's fine.</p> <p>5 MR. MORAN: If not, I can walk you back to</p> <p>6 that room you were in.</p> <p>7 MR. BENSON: This is probably fine.</p> <p>8 (A break was taken from 2:40 p.m. to</p> <p>9 2:53 p.m.)</p> <p>10 MR. MORAN: We'll go back on the record.</p> <p>11 Counsel for the United States has had an</p> <p>12 off-the-record discussion with counsel for the</p> <p>13 witness, Mr. Benson. The United States is agreeing</p> <p>14 to withdraw the last -- the last question to</p> <p>15 Mr. Buck.</p> <p>16 Is that your understanding as well,</p> <p>17 Mr. Benson?</p> <p>18 MR. BENSON: That's my understanding.</p> <p>19 MR. MORAN: Okay.</p> <p>20 Q. Before we conclude, Mr. Buck, I have just</p> <p>21 a few summary questions.</p> <p>22 You're not a lawyer, right?</p> <p>23 A. No.</p> <p>24 Q. Have you ever been a lawyer?</p> <p>25 A. No.</p>	<p style="text-align: right;">52</p> <p>1 Q. Have you ever given legal advice?</p> <p>2 A. No.</p> <p>3 Q. Do you consider yourself authorized to</p> <p>4 give legal advice?</p> <p>5 A. No.</p> <p>6 MR. MORAN: We will be holding this</p> <p>7 deposition open for resolution of the issues that</p> <p>8 have arisen, but for today I have no further</p> <p>9 questions. Mr. Austin may have some questions for</p> <p>10 you.</p> <p>11 MR. AUSTIN: I don't have any questions.</p> <p>12 Thanks.</p> <p>13 MR. BENSON: Great. Thank you, everyone.</p> <p>14 MR. AUSTIN: Oh, hold on. I do have one</p> <p>15 question.</p> <p>16 EXAMINATION</p> <p>17 BY MR. AUSTIN:</p> <p>18 Q. Are you a CPA?</p> <p>19 A. Yes.</p> <p>20 MR. AUSTIN: Okay. Thank you.</p> <p>21 MR. MORAN: Mr. Buck, we are going to ask</p> <p>22 that you read and sign your deposition. The court</p> <p>23 reporter will provide you with a copy, as well as</p> <p>24 Mr. Benson, if he wants one.</p> <p>25 MR. BENSON: Yeah, I'll take it.</p>
<p style="text-align: right;">51</p> <p>1 Q. Did you go to law school?</p> <p>2 A. No.</p> <p>3 Q. Okay. Are you authorized to practice</p> <p>4 before the Internal Revenue Service?</p> <p>5 A. No.</p> <p>6 Q. Are you an enrolled agent?</p> <p>7 A. No.</p> <p>8 Q. Do you know what Circular 230 is?</p> <p>9 A. No.</p> <p>10 Q. Have you ever represented a client before</p> <p>11 the IRS?</p> <p>12 A. No.</p> <p>13 Q. You've testified at length today about</p> <p>14 your role as an auditor at Mantyla McReynolds and now</p> <p>15 BDO Seidman. Do you recall that testimony?</p> <p>16 A. Yes.</p> <p>17 Q. In your role, what are you doing?</p> <p>18 A. Audit and assurance work. Primarily,</p> <p>19 audits and financial schedules.</p> <p>20 Q. And in the context of public companies,</p> <p>21 you are auditing financial statements for filings for</p> <p>22 the SEC?</p> <p>23 A. Yes.</p> <p>24 Q. Are you giving legal advice?</p> <p>25 A. No.</p>	<p style="text-align: right;">53</p> <p>1 MR. MORAN: We just want on the record</p> <p>2 that we're asking you to read and sign.</p> <p>3 MR. BENSON: Yeah, we will do that, of</p> <p>4 course.</p> <p>5 MR. MORAN: We're off the record.</p> <p>6 (Deposition suspended at 2:56 p.m.)</p> <p>7 * * *</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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Buck, Cody Michael

February 15, 2017

15 (Pages 54 to 55)

54

1 REPORTER'S CERTIFICATE
 2 STATE OF UTAH)
) ss.
 3 COUNTY OF SALT LAKE)
 4

5 I, Dawn M. Perry, Certified Shorthand
 Reporter and Notary Public in and for the State of
 Utah, do hereby certify:
 6

7 That prior to being examined, the witness,
 CODY MICHAEL BUCK, was by me duly sworn to tell the
 truth, the whole truth, and nothing but the truth;
 8

9 That said deposition was taken down by me
 in stenotype on February 15, 2017, at the place
 therein named, and was thereafter transcribed and
 that a true and correct transcription of said
 testimony is set forth in the preceding pages.
 10
 11

12 I further certify that, in accordance with
 Rule 30(e), a request having been made to review the
 transcript, a reading copy was sent to the witness,
 for the witness to read and sign under penalty of
 perjury and then return to me for filing with
 Christopher R. Moran, Attorney at Law.
 13
 14

15 I further certify that I am not kin or
 otherwise associated with any of the parties to said
 cause of action and that I am not interested in the
 outcome thereof.
 16
 17

18 WITNESS MY HAND this 21st day of February,
 2017.
 19
 20
 21

22 Dawn M. Perry, CSR
 23
 24
 25

55

1 Case: UNITED STATES OF AMERICA vs. RAPOWER3, LLC,
 2 INTERNATIONAL AUTOMATED SYSTEMS, INC., LTB1, LLC, R.
 3 GREGORY SHEPARD, NELDON JOHNSON and ROGER FREEBORN
 4 Case No.: 2:15-cv-00828 DN
 5 Reporter: Dawn M. Perry, CSR
 6 Date taken: February 15, 2017
 7

8 ACKNOWLEDGMENT OF DEPONENT
 9

10 I, _____, do hereby
 11 acknowledge that I have read and examined the
 12 foregoing testimony, and the same is a true, correct
 13 and complete transcription of the testimony given by
 14 me, and any corrections appear on the attached Errata
 15 Sheet signed by me.
 16
 17
 18

19 _____
 (DATE)

20 _____
 CODY MICHAEL BUCK
 21
 22
 23
 24
 25