

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

UNITED STATES OF)	
AMERICA,)	Deposition of:
)	
Plaintiff,)	TODD F. ANDERSON
)	
vs.)	
)	Time on record:
RAPOWER-3, LLC,)	4 Hours 14 Minutes
INTERNATIONAL)	
AUTOMATED SYSTEMS,)	
INC., LTBI, LLC,)	Case No. 2:15-cv-00828 DN
R. GREGORY SHEPARD,)	
NELDON JOHNSON, and)	
ROGER FREEBORN,)	
)	Judge David Nuffer
Defendants.)	

August 4, 2017 * 8:02 a.m. to 1:36 p.m.

Location: Internal Revenue Service
173 East 100 North
Provo, Utah

Reporter: Denise M. Thomas, CRR/RPR

**Plaintiff
Exhibit**

580

Anderson, Todd F.

A P P E A R A N C E S

FOR THE PLAINTIFF:

Christopher R. Moran
Erin Healy-Gallagher
Erin R. Hines (Telephonically)
UNITED STATES DEPARTMENT OF JUSTICE
Trial Attorneys, Tax Division
P. O. Box 7328
Washington, D. C. 20044
Telephone: 202.307.0834 (Moran)
202.353.2452 (Healy-Gallagher)
Fax: 202.514.6770
E-mail: Christopher.r.moran@usdoj.gov
erin.healygallagher@usdoj.gov

FOR THE WITNESS TODD F. ANDERSON:

Byron G. Martin
STRONG & HANNI
Attorneys at Law
102 South 200 East -- Suite 800
Salt Lake City, Utah 84111
Telephone: 801.532.7080
Fax: 801.596.1508
E-mail: bmartin@strongandhanni.com

Joshua Nielsen
ANDERSON LAW CENTER
1394 Sageberry Drive
Santaquin, UT 84655
Telephone: 801.633.0209

FOR THE DEFENDANTS RAPOWER-3, LLC, INTERNATIONAL
AUTOMATED SYSTEMS, INC., LTB1, LLC, AND NELDON
JOHNSON:

Steven R. Paul
NELSON SNUFFER DAHLE & POULSEN, P.C.
Attorneys at Law
10885 South State Street
Sandy, Utah 84070
Telephone: 801.576.1400
Fax: 801.576.1960
E-mail: spaul@nsdplaw.com

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P R O C E E D I N G S

TODD F. ANDERSON,

having been first duly sworn to tell the

truth, was examined and testified as follows:

EXAMINATION

BY MR. MORAN:

Q. Good morning, Mr. Anderson. We're on the record in the case of United States versus RaPower-3, et al.

We were introduced earlier, but I'll introduce myself again for the record. My name is Chris Moran. I'm with the United States Department of Justice Tax Division appearing on behalf of the United States.

Will the other counsel in the room please make their appearances, starting with Ms. Healy-Gallagher.

MS. ERIN HEALY-GALLAGHER: Erin Healy-Gallagher, United States Department of Justice Tax Division, for the United States.

MR. PAUL: Steven Paul representing RaPower-3 and its entities along with Neldon Johnson.

MR. NIELSON: Joshua Nielsen representing

1 Todd Anderson.

2 MR. MARTIN: Byron Martin representing
3 Todd Anderson.

4 MR. MORAN: On the phone with us is Erin
5 Hines, counsel for the United States, and counsel for
6 R. Gregory Shepard and Roger Freeborn, Mr. Donald
7 Reay, is not present.

8 This deposition will be governed by the
9 Federal Rules of Civil Procedure and the local rules
10 of the District of Utah. At the end of the day,
11 we'll be leaving all the exhibits we mark with the
12 court reporter.

13 Q. (By Mr. Moran) Mr. Anderson, could you
14 please state your name and address for the record?
15 Your business address is fine.

16 A. Todd F. Anderson, 259 North Highway 6,
17 Delta, Utah.

18 Q. Mr. Anderson, have you ever been deposed
19 before?

20 A. No.

21 Q. Okay. Have you taken a deposition?

22 A. Yes.

23 Q. Okay. So you're probably familiar with
24 some of the ground rules, but I'm going to go over
25 them again. I apologize if you already know all

1 Q. (By Mr. Moran) You testified earlier that
2 I think in October 2010, after you'd given Neldon
3 Johnson assistance responding to the CPA, then he
4 approached you with another matter?

5 A. Yes.

6 Q. What was that matter?

7 A. To provide summaries regarding tax
8 principles.

9 Q. What did those tax principles involve?

10 A. The specifics?

11 Q. Yes.

12 A. Can I review my notes?

13 Q. Absolutely. Whatever notes you're
14 reviewing, I'm going to ask to see them.

15 A. Okay. Material participation, passive and
16 active income activity, 179 considerations.

17 MR. MARTIN: Why don't you just go ahead
18 and identify for him --

19 THE WITNESS: It's Bates No. 212.

20 (EXHIBIT 570 WAS MARKED.)

21 Q. (By Mr. Moran) Mr. Anderson, you've been
22 given a copy of what's marked for identification as
23 Plaintiff's Exhibit 570.

24 Do you recognize this document?

25 A. Yes.

1 Q. Is this the same -- is this document the
2 same as the document you just looked at to refresh
3 your recollection?

4 A. Yes.

5 Q. Okay.

6 MR. MARTIN: Chris, if I could just for
7 the record, this is a document that you're
8 introducing as Exhibit --

9 MR. MORAN: 570.

10 MR. MARTIN: -- 570. It is a document
11 that bears the signature block of Jessica Anderson.

12 For clarity of record, Mr. Paul, this
13 document does not bear the signature block of
14 Mr. Anderson. However, my understanding of the
15 court's orders and the stipulation that has been made
16 is that the attorney-client privilege as it relates
17 to the subject matter of what's been previously
18 referred to as the Anderson matter has been waived
19 and that Mr. Anderson is to provide testimony
20 consistent with that waiver, so I think it's
21 appropriate that the United States ask him questions
22 about this document, but I want to understand from
23 your standpoint whether the document that's been
24 marked as Exhibit 570 is something that in your
25 client's view is within the scope of the waiver in

1 Q. (By Mr. Moran) Who did you give them to?

2 A. My attorney.

3 Q. Okay. Do you know what your attorney did
4 with those documents?

5 A. No.

6 Q. Okay. Do you recognize Exhibit 570 as a
7 document that you gave to your attorney that was
8 responsive to the United States Subpoena?

9 MR. MARTIN: You can answer.

10 THE WITNESS: Yes.

11 Q. (By Mr. Moran) So is it fair to say that
12 Exhibit 570 is from your files?

13 A. Yes.

14 Q. Okay. How were those files maintained?

15 MR. PAUL: Objection. Foundation.

16 Q. (By Mr. Moran) You can answer.

17 A. I guess I need more clarification.

18 Q. All right. Were they paper files that
19 were kept in folders or were they electronically
20 stored?

21 MR. PAUL: I'm going to object on
22 foundation.

23 Which documents are you talking about?
24 Are you talking about his original file or what was
25 produced to --

1 MR. MORAN: Fair. Let's ask a more
2 broader question.

3 Q. (By Mr. Moran) You said you searched your
4 files for documents in response to the Subpoena?

5 A. Yes.

6 Q. Where did you look?

7 A. I looked in my digital files. I also
8 looked in my physical files.

9 Q. Okay. So is that your standard practice
10 to keep those files digitally and in folders?

11 A. Standard practice is constantly in flux in
12 my little firm.

13 Q. Where did you find Exhibit 570; do you
14 recall?

15 A. My digital file.

16 Q. Are those on a hard drive or on a server?

17 A. I'm a small enough firm that all of my
18 documents are basically on my personal computer.

19 Q. So is that the same computer that you had
20 in 2010?

21 A. No.

22 Q. Okay. When did you get a new computer?

23 A. I don't know. There's been at least two
24 replacements since then.

25 Q. Okay. When you get a new computer, do you

1 back up the hard drive with previous files?

2 A. I transfer everything to the new computer.

3 Q. So you got the documents Subpoena in 2016.

4 You said you looked back through your
5 digital files?

6 A. On my computer, yes.

7 Q. Okay. And where did you find Exhibit 570?

8 A. On my computer.

9 Q. What formula was this in?

10 A. I don't recall. I'd have to look at the
11 Subpoena response. I believe, judging by the date, I
12 can almost -- I can say with some certainty that this
13 was a Word file, this particular version that we're
14 looking at.

15 (EXHIBIT 571 WAS MARKED.)

16 Q. (By Mr. Moran) Mr. Anderson, you've been
17 given a document of what's been marked for
18 identification as Plaintiff's Exhibit 571.

19 Do you recognize it?

20 A. Yes.

21 Q. What is it?

22 A. My Subpoena response.

23 Q. Okay. I'm going to ask you to review
24 Exhibit 571 and see if that refreshes your
25 recollection about the date issue you just testified

1 about.

2 MR. PAUL: Page 7 of this, was it produced
3 that way?

4 MR. MORAN: Yes. What we have is how it
5 was produced.

6 THE WITNESS: What's your question?

7 Q. (By Mr. Moran) Could you just explain
8 whether or not the date, which is reflected as
9 February 9, 2017, is that the date that this letter
10 was sent or not?

11 A. No.

12 Q. Okay. What is your understanding of when
13 Exhibit 570 -- what's the correct date for
14 Exhibit 570?

15 A. October of 2010.

16 Q. Okay. About October 10, 2010?

17 A. I can't say with certainty what date. I
18 can limit it to October.

19 Q. Of 2010?

20 A. Yes.

21 Q. Okay. Mr. Anderson, can you explain why
22 the date February 9, 2017, appears on Exhibit 570?

23 A. This would be a Word -- Microsoft Word
24 format. It was in my files as a Microsoft Word
25 format. The date field was set to automatically

1 update, so any time and every time that the document
2 was to be pulled up, that field is going to have
3 changed to the current date that it was pulled up.

4 Q. So I assume you're saying that February 9,
5 2017, is the date that you accessed this file?

6 A. Pursuant to the Subpoena.

7 Q. And that's why February 9, 2017, appears
8 in Exhibit 570?

9 A. That is my understanding, yes.

10 Q. Okay. Were you going to say something
11 else?

12 A. No.

13 Q. But it's your testimony that this document
14 was created and sent sometime in October 2010?

15 A. Sent to who?

16 Q. It's addressed to RaPower-3, Neldon
17 Johnson at 4035 South 4000 West.

18 A. Yes. I believe it was sent to the
19 addressee of the letter.

20 Q. I want to ask you some questions about
21 that. I'm not sure you've identified Exhibit 570.

22 Can you identify it for me?

23 A. This appears to be a letter prepared by my
24 firm in or about October of 2010.

25 Q. And earlier you testified that -- we

1 started this out with the line of questioning was you
2 testified that Neldon Johnson had approached you in
3 October 2010 to help him out with some legal issues
4 related to his solar lenses.

5 A. You're adding solar lenses. I am not.

6 Q. Okay. Well, what did Neldon Johnson
7 approach you about?

8 A. He asked me specific questions about tax
9 principles.

10 Q. All right.

11 A. Not in relation to any specific uses or
12 applied circumstances.

13 Q. Thanks for that clarification.

14 So in Exhibit 570, next to I, II and III,
15 I see questions.

16 A. Can you direct me to one? One of those
17 one more time, please.

18 Q. I is on the first page of Exhibit 570,
19 which has been Bates stamped Anderson 000212.

20 A. Correct.

21 Q. There's a question:

22 "Will the Taxpayer's participation be
23 deemed 'Material Participation' as defined in
24 the Internal Revenue Code?"

25 Do you see that?

1 A. Yes.

2 Q. Who asked that question?

3 A. Neldon Johnson.

4 Q. Okay. Then in II, on the page that's been

5 Bates stamped Anderson 000217, there's:

6 "What are the requirements for
7 depreciation and I.R.C. section 179 deductions
8 for the energy equipment?"

9 Did I read that correctly?

10 A. Yes.

11 Q. Who asked that question?

12 A. Neldon Johnson.

13 Q. Okay. And III, appearing on the page
14 that's been Bates stamped Anderson 000219, it says,

15 "How can I get a letter from the IRS
16 stating its position on material participation
17 and section 179 deductions?"

18 Did I read that correct?

19 A. Yes.

20 Q. Who asked that question?

21 A. Neldon Johnson.

22 Q. So am I to understand that Exhibit 570 is
23 a letter that you sent to Neldon Johnson attempting
24 to answer Mr. Johnson's questions?

25 MR. MARTIN: Object. Misstates the

1 letter.

2 MR. MORAN: All right.

3 Q. (By Mr. Moran) Mr. Anderson, what's the
4 purpose of your letter in Exhibit 570?

5 MR. PAUL: I think the objection goes to
6 whether it's his letter or Jessica's letter.

7 MR. MORAN: Okay.

8 Q. (By Mr. Moran) Did you have any role in
9 creating Exhibit 570?

10 A. It was substantively prepared by Jessica.

11 Q. Okay. Did you have any involvement?

12 A. I'm sure that I reviewed it.

13 Q. Okay. You had reviewed it before it went
14 out?

15 A. Yes.

16 Q. And who was approached by Mr. Johnson to
17 write this letter?

18 A. I can't -- it was -- it probably was
19 initially me, and then I probably added Jessica into
20 it, and ultimately we were both kind of asked, but
21 the legal work was done primarily by Jessica.

22 Not the legal work. The legal research
23 was done primarily by Jessica.

24 Q. Okay. So do you have knowledge of what
25 questions Mr. Johnson asked of your firm?

1 A. Given the time frame, I cannot answer
2 specifically other than the record or the letter.

3 Q. You already testified that Neldon Johnson
4 asked the questions that appear on I, II and III,
5 right?

6 A. Yes. Whether those were made in writing,
7 whether those were made orally, I don't know
8 specifically.

9 Q. Okay. Would it surprise you to know that
10 Neldon Johnson testified that you offered your wife's
11 services to him and that he didn't ask you for
12 anything?

13 MR. PAUL: Objection to the form of the
14 question.

15 Q. (By Mr. Moran) You can answer.

16 A. Ask it one more time.

17 Q. Would it surprise you to know that Neldon
18 Johnson testified that you offered your wife's
19 services to write a letter about his solar lenses?

20 A. Yes, that would surprise me.

21 Q. Okay. Is it your recollection that he
22 approached your firm?

23 A. Yes.

24 Q. Mr. Johnson used the term "tax opinion
25 letter."

1 Does that term mean anything to you?

2 A. Not to me, no. Well, your question is
3 broad. Can you ask it more specifically?

4 Q. Do you understand the difference between a
5 tax opinion letter and a memorandum?

6 A. No.

7 Q. No? All right. I understand that your
8 wife did the legal research that appears in
9 Exhibit 570, but you said that -- you testified that
10 you would have reviewed it?

11 A. Yes.

12 Q. Okay. Is that the extent of the
13 collaboration between you and Mrs. Anderson?

14 A. At the time or generally?

15 Q. I'm talking about with regards
16 specifically to Exhibit 570.

17 A. I don't recall specifically.

18 Q. Okay. Do you recall -- when was the first
19 time you were approached about this project? How did
20 it happen? Did Mr. Johnson come in and --

21 MR. PAUL: Objection to the extent it's
22 been asked and answered.

23 MR. MORAN: I'll finish the question.

24 Q. (By Mr. Moran) Did Mr. Johnson -- how
25 were you approached about this project of answering

1 Mr. Johnson's questions? Did he call? Did he come
2 into your office?

3 A. He routinely just walked in.

4 Q. Okay. How many times would he drop in?

5 A. Often.

6 Q. Several times a week?

7 A. A couple times a week.

8 Q. A couple times a week?

9 Do you recall how many meetings you had
10 with him?

11 A. No.

12 MR. PAUL: Objection to the form of the
13 question.

14 Q. (By Mr. Moran) Do you think it was more
15 than five?

16 A. Yes.

17 Q. Okay. Was it more than ten?

18 MR. MARTIN: As to any case or --

19 MR. MORAN: No. I'm talking specifically
20 about the advice you gave relating to Mr. Johnson's
21 solar lenses.

22 MR. PAUL: And I'll object to the form of
23 the question.

24 MR. MARTIN: And I'll object to the extent
25 it assumes facts not in evidence, but go ahead. You

1 can answer.

2 THE WITNESS: I ask you to ask the
3 question again.

4 MR. MORAN: Would you read back the
5 question?

6 THE COURT REPORTER: "Question: Okay.
7 Was it more than ten?"

8 THE WITNESS: To that question, the answer
9 specifically to the question of whether he came in
10 more than ten times to ask about tax issues,
11 possibly.

12 Q. (By Mr. Moran) Do you think it was more
13 than 15?

14 A. It's hard to say.

15 Q. Okay.

16 A. I guess I want to clarify the question I
17 didn't answer and make sure it's clear I didn't
18 answer.

19 You stated solar lenses. Solar lenses was
20 a term really not discussed with me. It was energy
21 equipment or something along those lines. It was not
22 solar lenses.

23 Q. Okay. And was it tax implications related
24 to the energy equipment?

25 A. It was tax implications, not necessarily

1 tax implications related to solar equipment with me.

2 In the conversations with me, it was basic and
3 general tax questions.

4 MR. MORAN: Okay. We've been going for an
5 hour and a half. Why don't we take a break.

6 MR. MARTIN: Sure.

7 (Recess from 9:29 a.m. to 9:38 a.m.)

8 (EXHIBIT 572 WAS MARKED.)

9 MR. MORAN: We're back on the record.

10 Q. (By Mr. Moran) Mr. Anderson, you've been
11 given a copy of what's been marked as Plaintiff's
12 Exhibit 572.

13 Do you recognize this document?

14 A. No.

15 Q. Okay. I'll represent to you that this is
16 a document that was produced to the United States by
17 the Defendant's former attorney entitled Defendants'
18 Supplemental Privilege Log.

19 I'll also represent to you that this
20 document was prepared following several disputes in
21 litigation over whether or not -- or various
22 privilege issues relating to the documents, but my
23 understanding is that the documents that you already
24 testified about having searched for within your files
25 have been Bates stamped 1 through 241 with the prefix

1 Anderson Todd and Jessica Anderson.

2 So documents that have been -- the
3 documents that you produced, where did you find them?

4 A. The documents --

5 MR. PAUL: Object to the form of the
6 question.

7 MR. MORAN: Let me back up.

8 Q. (By Mr. Moran) All right, Mr. Anderson,
9 we've already established that Exhibit 570 was
10 prepared by your firm in October 2010; is that
11 correct?

12 A. Yes.

13 Q. I see it says sent via e-mail to
14 neldon@iaus.com, original will follow, and I'm
15 referencing the Bates stamped Anderson 000212.

16 Did I read that correctly?

17 A. What was the question?

18 Q. It says it was sent via e-mail to
19 neldon@iaus.com?

20 A. It does say that, yes.

21 Q. All right. What does that phrase mean to
22 you?

23 A. To the best of my knowledge, at the time
24 that this document was produced by my firm, that it
25 was signed and sent to that e-mail address and placed

1 in the original mail.

2 Q. Is it your firm's normal practice to send
3 documents via e-mail and through U.S. mail?

4 A. Occasionally.

5 Q. Is there any reason to believe that
6 Exhibit 570 wasn't e-mailed and sent via U.S. mail to
7 Mr. Johnson?

8 A. No.

9 Q. So it's your testimony that this document,
10 Exhibit 570, was sent to Mr. Johnson?

11 A. To the best of my knowledge.

12 Q. Was Exhibit 570 transmitted by someone who
13 prepared it?

14 In other words, did they have knowledge of
15 this document that was prepared by your firm?

16 MR. PAUL: Objection. Foundation.

17 THE WITNESS: I don't understand the
18 question.

19 Q. (By Mr. Moran) All right. Exhibit 570
20 you said was a letter that Jessica Anderson prepared,
21 correct?

22 A. She did the substantial drafting, yes.

23 Q. Okay. Would she have transmitted it?

24 A. I don't know.

25 Q. Who else would have transmitted it?

1 A. Me.

2 Q. Okay. Was there anyone else working at
3 your firm at that time?

4 A. No.

5 Q. Okay. And you've already -- withdrawn.

6 Was Exhibit 570 prepared in the regularly
7 conducted -- prepared in the course of your regularly
8 conducted activity at your business?

9 A. Yes.

10 Q. Okay. Was it a regular practice of your
11 firm to prepare letters such as Exhibit 570?

12 A. Yes. I'd like to make a distinction.
13 It's my belief, while I don't -- my records do not
14 contain a signed copy, it is my belief that this one
15 was signed and sent.

16 Q. So is it your firm's normal practice to
17 retain a copy of what was sent, and you testified
18 this was a Word document --

19 A. Right.

20 Q. -- but not the signed document?

21 A. At the time we were in flux as far as
22 building procedures as a firm, and I can't say for
23 sure what our procedure was at the time.

24 Q. Do you have any reason to believe that the
25 document that was sent to Neldon Johnson wasn't sent?

1 A. No.

2 Q. When you looked through your records to
3 respond to the United States Subpoena, did you look
4 for the e-mail where this document was sent?

5 A. Yes.

6 Q. You did?

7 A. (Witness nodding head affirmatively.)

8 Q. Did you find it?

9 A. No.

10 Q. Okay. Since 2010, have you lost any
11 e-mails along the way?

12 A. Yes.

13 Q. All right. Starting on the first
14 paragraph of Exhibit 570, it says,

15 "Last week you had several questions
16 regarding tax liability for members of
17 RaPower3's multilevel marketing organization
18 (Member) and you wanted information on how to
19 get a private letter ruling from the IRS on the
20 same. This letter is to provide facts on each
21 issue as stated below."

22 Did I read that correctly?

23 A. Yes.

24 Q. You say, This information is relevant
25 only to individuals acting as sole proprietors

1 in the multi level marketing organization of
2 RaPower3.

3 Did I read that correctly?

4 A. Yes.

5 MR. PAUL: I think you added marketing.

6 MR. MORAN: Thanks for that clarification.

7 MR. PAUL: Sure.

8 THE WITNESS: I'm sorry I didn't pay
9 closer attention. Thank you for catching that.

10 Q. (By Mr. Moran) I'm going to start with
11 the sentence beginning with "This information."

12 "This information is relevant only
13 to individuals acting as sole proprietors in the
14 multi level organization of RaPower3."

15 Did I read that correct?

16 A. Yes.

17 Q. What's your understanding of RaPower-3's
18 multilevel marketing organization?

19 A. I don't know.

20 Q. Did you know in October 2010?

21 A. No.

22 Q. Okay. Did Jessica Anderson know?

23 A. Maybe.

24 Q. Do you think you would have had -- in
25 2010, do you think you would have known information

1 about RaPower-3's multilevel marketing organization?

2 MR. PAUL: Objection to the form of the
3 question.

4 Q. (By Mr. Moran) You can still answer.

5 A. Could you ask one more time?

6 MR. MORAN: Can you read the question?

7 THE COURT REPORTER: "Question: Do you
8 think you would have had -- in 2010, do you
9 think you would have known information about
10 RaPower-3's multilevel marketing organization?"

11 THE WITNESS: Not really.

12 Q. (By Mr. Moran) All right. You testified
13 that Mr. Johnson came into your office several times
14 in 2010?

15 A. Yes.

16 Q. And that was in preparation of writing the
17 letter that's Exhibit 570?

18 A. I wouldn't say that.

19 Q. Okay. Did you have meetings with
20 Mr. Johnson prior to your firm drafting Exhibit 570?

21 A. Yes.

22 Q. Okay. What was discussed then?

23 A. I don't know.

24 Q. You don't recall?

25 A. I don't recall.

1 Q. Did you know at the time?

2 A. To the extent that I was in those
3 meetings, yes.

4 Q. Okay. Who were those meetings with?

5 A. They were either with myself or with
6 Jessica.

7 Q. Okay. Did Mr. Johnson ever have meetings
8 with just Jessica?

9 A. Yes.

10 Q. Okay. About how many?

11 A. I don't know.

12 Q. Do you have an idea?

13 A. No.

14 Q. Okay. Prior to sending out Exhibit 570,
15 did you discuss energy equipment with Mr. Johnson?

16 A. I don't recall exactly when those
17 conversations occurred in relation to Exhibit 570, or
18 the preparation of Exhibit 570.

19 Q. All right. How about in September to
20 November of 2010, did you discuss energy equipment
21 with Mr. Johnson?

22 A. As I said, I can't say specifically when
23 those conversations occurred.

24 Q. I'm not asking specifically. I put a
25 broad range on it.

1 A. I would say the earliest would have been
2 October that we would have discussed any energy
3 equipment.

4 Q. Why do you think that?

5 A. Why do I think that today is there are --
6 I mean, there are -- you're dealing with decreased
7 memory because it was so long ago --

8 Q. Sure.

9 A. -- combined with -- so piecing parts
10 together combined with I believe there are some
11 references to equipment in Exhibit 570.

12 So to what extent we were told the
13 information at the time of preparing Exhibit 570 and
14 what information was pieced together after preparing
15 570, I cannot answer that. I don't know.

16 Q. All right. Let me restate the question.

17 The information that appears in
18 Exhibit 570, who gave you that information?

19 A. Neldon Johnson.

20 Q. Okay. Did you ask any questions of
21 Mr. Johnson?

22 A. I don't recall specific questions.

23 Q. Let me narrow it. In preparing
24 Exhibit 570, did you ask Mr. Johnson any questions?

25 A. Because of the time, I can't recall if I

1 asked questions or not.

2 Q. All right. Do you recall if your wife
3 asked any questions?

4 A. I cannot recall.

5 MR. MARTIN: Chris, for the record, again,
6 I think there's a stipulation that the
7 attorney-client privilege has been waived with
8 respect to the subject matter of the tax benefits and
9 the solar energy equipment program.

10 I also understand that the Court has
11 ordered Mr. Anderson to give deposition testimony
12 regarding the alleged advice that was given.

13 It's my view that any attorney-client
14 communications between Jessica Anderson and Neldon
15 Johnson as representative of RaPower would
16 necessarily be included within the scope of that
17 waiver and the Court's order, and so I believe that
18 Mr. Anderson is entitled to and is required to answer
19 questions with respect to those communications, and
20 so that is my position in reading of the stipulation
21 and the order, but I do want to raise it.

22 If we're getting into questions with
23 respect to what communications may have happened
24 between Jessica Anderson and Mr. Johnson, I state
25 that as our position and our intent in this

1 MR. PAUL: Thank you.

2 Q. (By Mr. Moran) Did Mr. Johnson tell you
3 what he was planning to do with the advice that you
4 and -- that your firm gave him?

5 A. Not with any level of specificity.

6 Q. Okay. Did you ask?

7 A. I don't recall.

8 Q. What generally was your understanding of
9 what Mr. Johnson intended to do with the advice you
10 were giving?

11 A. I don't know.

12 Q. You don't know now or you didn't know
13 then?

14 MR. PAUL: Objection. Compound.

15 THE WITNESS: I really don't know.

16 Q. (By Mr. Moran) Okay. At the time, did
17 you know what Mr. -- do you think you knew what
18 Mr. Johnson was planning to do with the advice?

19 A. It appeared to me to be a hypothetical
20 investigative stage of something, but I don't -- I
21 didn't feel like there was any specifics of whether
22 he was moving forward or in which direction he was
23 going to move forward with the information.

24 Q. Do you know what that something was?

25 A. No.

1 Q. He didn't tell you?

2 A. Not specifically, no.

3 Q. So all he did was ask the three questions
4 that appear in Exhibit 570?

5 MR. PAUL: Objection. Misstates his prior
6 testimony. You can answer.

7 Q. (By Mr. Moran) I'm trying to understand
8 what you were engaged by Mr. Johnson to do when you
9 and your firm wrote Exhibit 570?

10 A. To answer the questions posed.

11 Q. Okay. And what information did
12 Mr. Johnson give you to answer these questions, or
13 did he just have these questions?

14 A. I don't recall.

15 Q. Did he give you any information on
16 RaPower-3's multilevel marketing organization?

17 MR. PAUL: Objection to the extent it's
18 been asked and answered.

19 THE WITNESS: No, he did not.

20 Q. (By Mr. Moran) Do you recall specifically
21 what that little to none information was?

22 A. No.

23 Q. Did you feel you had enough information
24 for your firm to author Exhibit 570?

25 MR. PAUL: Objection. Foundation.

1 MR. MARTIN: I'll object as vague.

2 THE WITNESS: To the extent the general
3 principles of tax law or questions are addressed in
4 Exhibit 570, I felt like we had enough information to
5 answer those general workings of these particular tax
6 principles.

7 Q. (By Mr. Moran) So you just characterized
8 Exhibit 570 as a -- I'm going to use your words,
9 general workings of tax principles?

10 A. Yes.

11 Q. Was it specific to any facts?

12 A. No.

13 Q. Could it have been specific to any facts?

14 MR. MARTIN: Objection. Speculation,
15 lacks foundation.

16 THE WITNESS: And I agree. I guess I
17 would need a more specific question.

18 Q. (By Mr. Moran) Based on the information
19 that Mr. Johnson gave you, could you have given a
20 specific opinion on tax?

21 MR. PAUL: Objection. Foundation and
22 speculation.

23 THE WITNESS: I agree. I don't understand
24 your question.

25 Q. (By Mr. Moran) Well, you already

1 testified that you had little to no information,
2 right?

3 A. As to specifics.

4 Q. Okay. So having had little to no
5 information, could you give a -- or did you have
6 enough facts to give any type of specific legal
7 analysis?

8 A. I provided a general analysis of tax
9 principles based on information that I had. It was
10 not applied to any specific circumstances.

11 Q. Okay. Thank you.

12 A. And when I say "I," I refer to Anderson
13 Law Center as a firm and the attorneys of that firm
14 that Anderson Law Center did those things.

15 Q. You said that Mr. Johnson gave you little
16 to no information.

17 How was that information, what information
18 you did get, conveyed to you?

19 A. Orally.

20 Q. And all that information was conveyed by
21 Neldon Johnson?

22 A. Correct.

23 Q. None of it was from Glenda Johnson?

24 A. She was there at some of the meetings as a
25 companion, but she did not convey information --

1 Q. Okay.

2 A. -- is my recollection.

3 Q. Have you ever been to any of Neldon
4 Johnson's facilities?

5 A. No.

6 Q. And when I talk about facilities, I'm
7 referencing where he tests and builds his energy
8 equipment?

9 A. No.

10 Q. Have you ever been to his house?

11 A. I've been to his driveway.

12 Q. Why were you in his driveway?

13 A. I dropped off a Christmas present that
14 first or second year of my practice. I delivered a
15 Christmas gift. It was Lindon chocolates, the balls,
16 to all of my clients, including Neldon Johnson.

17 Q. All right. So was that something you did
18 to show appreciation to your customers?

19 A. Correct. It was not specific to
20 Mr. Johnson. It was done to -- we loaded up the car,
21 and I drove to every client in the area and delivered
22 chocolates, including Mr. Johnson.

23 Q. Okay. When you dropped off the
24 chocolates, was it Mr. Johnson you gave them to?

25 A. My wife -- I was driving. She dropped it

1 off, so I don't know.

2 Q. Is that the only time you've been to
3 Mr. Johnson's residence?

4 A. Yes.

5 Q. Is that residence in Delta?

6 A. No.

7 Q. Where is it?

8 A. Deseret.

9 Q. About how far away from Delta is that?

10 A. Ten minutes.

11 Q. Would it surprise you -- withdrawn.

12 Do you know if your wife has ever been to
13 Neldon Johnson's facilities?

14 A. I cannot say for sure, but I would say
15 with a great amount of certainty that she has not.

16 Q. Okay. Would it surprise you to know that
17 Neldon Johnson testified that Jessica Anderson has
18 seen his energy equipment?

19 A. Very much so.

20 Q. All right. Going back to Exhibit 570,
21 your firm references tax liability for members of
22 RaPower-3's multilevel marketing organization.

23 Who is a member of RaPower-3's multilevel
24 marketing organization?

25 A. I don't know.

1 Q. Did you know in 2010?

2 A. No, I did not.

3 Q. Do you know if your wife knew?

4 A. I don't know.

5 Q. Do you recall Mr. Johnson giving you any
6 documents?

7 A. Yes.

8 Q. And you produced those documents to the
9 United States?

10 Have you produced those documents to the
11 United States?

12 A. I did not. I did not produce any
13 documents to the United States.

14 Q. Okay.

15 A. Sorry. I did not -- I produced --
16 pursuant to the Subpoena, I produced those documents
17 which were indicated as being produced and included a
18 Privilege Log for those documents that were not
19 produced, and all of the documents which Neldon
20 Johnson provided to me were not produced by me to the
21 United States.

22 Q. Okay. Do you know if they were produced
23 by someone else?

24 A. I do not have firsthand knowledge of that.

25 Q. Has anyone told you?

1 MR. MARTIN: Objection. To the extent it
2 calls for an attorney-client communication, don't
3 answer that.

4 Q. (By Mr. Moran) We're going to look at
5 some documents later, and if these are documents that
6 Neldon Johnson gave you, if I don't ask you, would
7 you identify them as such?

8 A. I'll reserve answering that question till
9 later.

10 Q. That's fine. You already testified you
11 don't know anything about who was a member of
12 RaPower-3?

13 A. I do not know.

14 Q. Do you know what someone would need to do
15 to become a member of RaPower-3?

16 A. I do not.

17 Q. Do you know if a RaPower-3 member has any
18 type of managerial authority at RaPower-3?

19 A. I do not know.

20 Q. Did you know in 2010?

21 A. I did not.

22 Q. Do you know if your wife knew?

23 A. I don't.

24 Q. In the first paragraph of Exhibit 570, you
25 reference sole proprietor.

1 Do you see that?

2 A. Yes.

3 Q. What caused you to use the term "sole
4 proprietor"?

5 MR. MARTIN: Objection. Assumes facts not
6 in evidence.

7 MR. PAUL: Objection. Foundation.

8 Q. (By Mr. Moran) Do you know why the letter
9 in Exhibit 570 says sole proprietor?

10 A. I do not.

11 Q. Did you write sole proprietor?

12 A. I don't know.

13 Q. Okay. If it wasn't you, would it have
14 been your wife?

15 A. Yes.

16 Q. Have you ever heard Neldon Johnson use the
17 term "sole proprietor"?

18 A. I don't recall.

19 Q. If your letter, Exhibit 570, is giving
20 information relevant only to individuals acting as
21 sole proprietors, do you know why that is?

22 A. I don't.

23 Q. If Neldon Johnson had asked you for
24 information related to sole proprietors, could that
25 be why?

1 A. It could --

2 MR. MARTIN: Objection. Speculation.
3 Don't volunteer.

4 THE WITNESS: Could be.

5 Q. (By Mr. Moran) If Neldon Johnson had
6 asked you for information, tax information that's
7 relevant to sole proprietors, is that what you would
8 have given him?

9 MR. PAUL: Objection. Speculation.

10 THE WITNESS: I don't know. The question
11 lacks a lot of facts.

12 Q. (By Mr. Moran) Well, I'm reading from
13 your letter, so I want to know why you reference sole
14 proprietors?

15 A. I don't know.

16 Q. Would your wife know?

17 A. I don't know.

18 Q. The next sentence says, "Different rules
19 apply to corporations and other entities."

20 Did I read that correctly?

21 A. You did.

22 Q. Okay. Why did you write that sentence?

23 A. I don't know.

24 MR. PAUL: Objection. Foundation.

25 Q. (By Mr. Moran) Did you write that

1 sentence?

2 A. I don't know.

3 Q. If you didn't write that sentence, did
4 your wife answer it?

5 A. Yes.

6 Q. Let me rephrase that.

7 If you didn't write that sentence, did
8 your wife write that sentence?

9 A. Yes.

10 Q. Roman numeral I references material
11 participation.

12 A. Yes.

13 Q. Do you know what that term means as
14 defined in the Internal Revenue Code?

15 A. My current knowledge of material
16 participation is essentially what is set forth in
17 Exhibit 570.

18 Q. Who asked for legal advice on material
19 participation?

20 A. The only person who asked for advice
21 regarding RaPower-3, or asked -- let me rephrase
22 that.

23 The only person who asked any questions
24 regarding RaPower-3 was Neldon Johnson.

25 Q. I direct your attention to the third page

1 of Exhibit 570, which has been Bates stamped

2 Anderson 000214. The last paragraph beginning with:

3 "In order for the lease of equipment from
4 the taxpayer to IAS for marketing purposes to be
5 considered active loss or income, the
6 transaction would have to fit into one of the
7 exceptions listed above."

8 Did I read that correctly?

9 A. I believe so.

10 Q. Okay. What does that phrase "lease of
11 equipment from the taxpayer to IAS" mean to you?

12 A. I don't know.

13 Q. Okay. Where would that phrase have come
14 from?

15 A. Neldon.

16 Q. Okay. In 2010, did you or your wife have
17 any familiarity with RaPower-3's businesses?

18 A. No.

19 Q. Do you know if RaPower-3 members have any
20 managerial capacity at RaPower-3?

21 A. I don't know.

22 Q. Okay. Did you ask?

23 A. I don't know.

24 Q. Did Neldon Johnson tell you?

25 A. I don't know.

1 Q. Do you think you would have known in 2010?

2 A. I don't know.

3 Q. Did Neldon Johnson tell you anything about
4 RaPower-3 members?

5 A. Not that I recall.

6 Q. Okay. Do you know if he told your wife
7 anything about RaPower-3 members?

8 A. I don't know.

9 Q. If Neldon Johnson had given you
10 information about RaPower-3 members, do you think it
11 would have been reflected in Exhibit 570?

12 MR. MARTIN: Speculation.

13 THE WITNESS: Would have depended on a lot
14 of factors, and so I don't -- I can't -- I don't
15 know.

16 Q. (By Mr. Moran) All right. When you write
17 down legal advice in a letter or a memorandum, would
18 it be your habit to state the facts that you're
19 relying on?

20 MR. PAUL: Objection. Speculation.

21 THE WITNESS: Ask the question one more
22 time, please.

23 Q. (By Mr. Moran) When you give legal advice
24 in either a memorandum or in a letter to a client, is
25 it your habit to state the facts that you're relying

1 on that you've been told in the letter?

2 MR. PAUL: Also lacks foundation.

3 THE WITNESS: Your question -- it depends
4 on the circumstances as to what I'm going to reply
5 within a memorandum. If a client was to ask me about
6 the workings of a particular statute without any
7 facts, I would apply -- I would provide an
8 explanation as best I'm able of the statute, but if
9 there's no facts to apply it to, I would not apply it
10 to any facts.

11 Q. (By Mr. Moran) If a client did give you
12 facts and you were applying that statute to those
13 facts, would you state the facts in a letter or the
14 memorandum?

15 A. It would depend on the question.

16 Q. Okay. If those facts were relevant to the
17 question, would you include the facts?

18 MR. MARTIN: I'll object to the incomplete
19 hypothetical. Go ahead.

20 MR. PAUL: Also lacks foundation, calls
21 for speculation.

22 THE WITNESS: I'm trying to remember your
23 last question again. Sorry.

24 Q. (By Mr. Moran) Do you ever give written
25 legal advice to clients?

1 A. Yes.

2 Q. When you give written legal advice to
3 clients and you're asked to apply a statute to
4 specific facts, do you include those facts --

5 A. Yes.

6 Q. -- in your written analysis?

7 A. Yes.

8 Q. Okay. So in Exhibit 570, if Mr. Johnson
9 had given you specific facts to apply these various
10 statutes to, would you have stated those facts in
11 Exhibit 570?

12 MR. PAUL: Objection. Calls for
13 speculation and lacks foundation.

14 MR. MARTIN: I'll join.

15 THE WITNESS: I don't recall the specific
16 questions, so therefore I don't know what I would
17 have answered -- how I would have -- I can't answer
18 your question.

19 Q. (By Mr. Moran) Well, you said you can't
20 recall the specific questions. There's three
21 questions here in Exhibit 570, and you said that's
22 what you're responding to in Exhibit 570.

23 A. And we answered those three, and I believe
24 that the memorandum adequately answers those three
25 questions by providing a summary of applicable law to

1 those questions.

2 Q. Okay.

3 A. There is no facts. As to why there are no
4 facts, I don't know.

5 Q. Okay. Is it fair to say that the
6 questions asked in Exhibit 570 don't contain any
7 specific facts?

8 A. The memorandum as a whole does not contain
9 facts.

10 Q. Thank you. When you say "the memorandum,"
11 you were referring to Exhibit 570, which is the
12 letter?

13 A. That is correct.

14 Q. Are you aware of what RaPower-3 members do
15 to become members of RaPower-3?

16 A. No.

17 Q. Okay. Do you know if as part of the
18 RaPower -- do you know if, as a RaPower-3 member,
19 they own anything?

20 A. I do not know.

21 Q. Okay. Did you know in 2010?

22 A. I did not.

23 Q. Okay. Directing your attention to the
24 page that's Bates stamped Anderson 000219 and the
25 paragraph ending D, Property Placed In Service,

1 "You place property in service when it is
2 ready and available for a specific use."

3 Did I read that correctly?

4 A. Yes.

5 Q. Did you know what property RaPower-3
6 members would be using?

7 A. No.

8 Q. Did you know any purpose that their
9 property would be used for?

10 A. No.

11 Q. Did you know in 2010?

12 A. I recall there was discussion about using
13 equipment for advertising purposes.

14 Q. Where did you get that information from?

15 A. Neldon. But the other uses, the energy
16 uses, I was not sure, did not know.

17 Q. Did you ask?

18 A. I don't know. I do not recall.

19 Q. You already testified you didn't know what
20 property the members owned, right?

21 A. Right.

22 Q. Okay. But this unidentified property it
23 was your understanding would be used for advertising
24 purposes?

25 A. I can't say specifically. I know there

1 was talk of energy production and advertising were
2 the two kind of uses regarding this product that
3 people would be buying, but that was the extent of
4 the knowledge.

5 Q. Okay. And you got that knowledge from
6 Neldon Johnson?

7 A. Yes.

8 Q. Were you aware of whether that
9 unidentified property ever was used in an advertising
10 purpose?

11 A. I am not aware.

12 Q. How about in energy production?

13 A. I am not aware.

14 Q. Okay. Did you ask?

15 A. I don't recall.

16 Q. Do you know if your wife asked?

17 A. I don't recall. Sorry. I don't know.

18 Q. Okay.

19 A. Not that I don't recall. I don't know.

20 Q. Okay. When your firm was drafting
21 Exhibit 570, do you ever recall Neldon Johnson asking
22 about your tax background?

23 A. No.

24 Q. Do you ever recall him asking about your
25 wife's tax background?

1 A. Let me -- what was your first question? I
2 might have -- what was the question again?

3 Q. The most recent question I think was --

4 A. I think I misunderstood it.

5 Q. Can you read back the last question?

6 A. Well, actually, the last two questions.

7 THE COURT REPORTER: "Question: When
8 your firm was drafting Exhibit 570, do you ever
9 recall Neldon Johnson asking about your tax
10 background?"

11 THE WITNESS: Could you rephrase that
12 question? I guess I don't understand.

13 MR. MORAN: Sure.

14 Q. (By Mr. Moran) In the context of
15 Exhibit 570 when that was being drafted, and you
16 testified that Neldon Johnson came into your office
17 and posed three questions to you, which you answered
18 in Exhibit 570 --

19 A. Uh-huh (yes).

20 Q. -- is that correct?

21 A. Uh-huh (yes).

22 MR. MARTIN: Is that a yes?

23 THE WITNESS: Yes. Sorry. Yes.

24 Q. (By Mr. Moran) When you were drafting
25 Exhibit 570, did Neldon Johnson ever ask you if you

1 had a tax background?

2 A. When I was asking -- when I was drafting
3 Exhibit 570, no.

4 Q. How about before then?

5 A. It was something along the lines of do you
6 do any tax work.

7 Q. What did you tell him?

8 A. I don't recall.

9 Q. At that point had you done any tax work?

10 A. No.

11 Q. If at that time you hadn't done any tax
12 work, would you have told him yes?

13 MR. PAUL: Objection. Calls for
14 speculation, lacks foundation.

15 MR. MARTIN: I'll join.

16 THE WITNESS: I don't know.

17 Q. (By Mr. Moran) Would you lie to
18 Mr. Johnson?

19 A. No.

20 Q. Mr. Johnson was a client, right?

21 A. Yes.

22 Q. Would you lie to a client?

23 A. No.

24 Q. Okay. But you do recall Mr. Johnson
25 asking you if you had a tax background?

1 MR. PAUL: Objection. Misstates his prior
2 testimony.

3 Q. (By Mr. Moran) What was your prior
4 testimony?

5 A. He asked if I did any tax work.

6 Q. Okay. Do you know if the question was had
7 you done any tax work at that point or would you be
8 willing to do tax work?

9 A. I don't recall the specific question.

10 Q. Did he ask about your background in tax?

11 A. No.

12 Q. All right. It's your testimony that he
13 asked if you did tax work?

14 MR. PAUL: Objection to the extent it's
15 been asked and answered. You can still answer it
16 again, if you want.

17 THE WITNESS: No. I'll just refer back to
18 my previous answer.

19 Q. (By Mr. Moran) I'd ask you to repeat it.

20 A. It was along the lines of do you do any
21 tax work.

22 Q. Okay.

23 A. The specifics of the question I do not
24 recall.

25 Q. And at that point you hadn't done any tax

1 work?

2 A. No.

3 Q. This was the first time you were engaged
4 to do any tax work?

5 A. Yes. Do you recall -- sorry. You ask the
6 questions.

7 Q. Were you going to elaborate on an answer?

8 A. No, I wasn't.

9 Q. Did Mr. Johnson ask about your wife's tax
10 background?

11 A. I don't recall.

12 Q. Do you recall if you told him that she had
13 taken tax classes in law school?

14 A. I probably did.

15 Q. Okay. After you sent Exhibit 570 to
16 Neldon Johnson, was there anything else that occurred
17 with relation to Exhibit 570?

18 MR. PAUL: Objection. Foundation. You
19 can answer.

20 THE WITNESS: I don't have firsthand
21 knowledge, but I do recall that he came in to speak
22 with Jessica about it.

23 Q. (By Mr. Moran) About Exhibit 570?

24 A. Yes.

25 Q. Okay. Do you recall about how long it was

1 after you sent Exhibit 570?

2 A. No.

3 Q. Was it days? Weeks? Years?

4 A. Days.

5 Q. And were you part of that conversation?

6 A. No.

7 Q. Did your wife tell you what he came in to
8 talk about?

9 A. Yes.

10 Q. What did she tell you?

11 A. He was frustrated with it.

12 Q. Why was he frustrated with it?

13 A. I don't know the specifics.

14 Q. Was it that it was too general?

15 MR. PAUL: Objection. Asked and answered.

16 THE WITNESS: She used the words to me
17 that I recall of him saying "What am I supposed to do
18 with this?"

19 Q. (By Mr. Moran) That's the general tenor
20 of his, is it fair to say, complaint to your wife?

21 A. Yes.

22 Q. Do you remember anything more
23 specifically?

24 A. No.

25 Q. Do you know why he couldn't use it?

1 A. No.

2 MR. PAUL: Objection. Misstates
3 testimony.

4 Q. (By Mr. Moran) Do you know what he wanted
5 to do with it?

6 A. I don't.

7 Q. Did your wife tell you anything else about
8 what he said to her?

9 A. Not that I recall.

10 Q. All right. He came in a couple days later
11 and talked to your wife, and he expressed some
12 dissatisfaction with Exhibit 570?

13 A. Yes.

14 Q. Did anything else happen with respect to
15 Exhibit 570?

16 A. She -- I recall her telling me he slammed
17 it down and said, "What am I supposed to do with
18 this?" That's the extent of what I remember.

19 Q. Okay. What was your wife's reaction to
20 that?

21 A. I don't recall, and I don't recall if I
22 was -- I think I was not there when he came in. I'm
23 relaying what she relayed to me.

24 Q. Okay. So it sounds like she was in the
25 office alone?

1 A. I don't know.

2 Q. But you weren't there?

3 A. I was not -- I was not within eyesight.

4 Q. Did she relate to you after the fact that
5 Mr. Johnson wasn't satisfied with Exhibit 570?

6 A. Yes.

7 Q. Okay. Do you recall about how many hours
8 were spent in your firm preparing Exhibit 570?

9 A. I don't.

10 Q. Do you think it was more than ten?

11 A. I would be speculating.

12 Q. Do you think it was more than five?

13 A. I would be speculating.

14 Q. Was it more than two?

15 A. I would be speculating.

16 Q. Do you know if your firm sent Mr. Johnson
17 a bill for these services in preparing Exhibit 570?

18 A. He was sent a bill. Whether it was for
19 preparing 570, I don't know.

20 Q. Okay. Did Mr. Johnson pay bills that you
21 sent him?

22 A. Yes.

23 Q. In your reaction to Mr. Johnson's
24 dissatisfaction to Exhibit 570, did your firm do
25 anything else?

1 A. I don't recall. I don't recall what
2 happened next. It wasn't the end of our
3 representation, but I don't recall what happened
4 next.

5 Q. Okay. Did you prepare any additional
6 documents for Mr. Johnson?

7 A. Yes. Well, let me take that back. We
8 prepared additional documents. I would not say that
9 they were for Mr. Johnson. They were in furtherance
10 of our representation of RaPower.

11 Q. So Exhibit 570 was not the last document
12 that you prepared as part of your representation of
13 Mr. Johnson?

14 MR. MARTIN: Objection --

15 MR. PAUL: Objection. Misstates prior
16 testimony.

17 MR. MARTIN: Yes.

18 Q. (By Mr. Moran) All right. Exhibit 570
19 was not the last document your firm prepared in its
20 representation of RaPower-3 and Mr. Johnson?

21 MR. MARTIN: Objection. Assumes facts not
22 in evidence. You can go ahead.

23 THE WITNESS: Yeah, that was not my
24 answer.

25 Q. (By Mr. Moran) What was your answer?

1 A. It was not the last document that we
2 prepared in our representation of RaPower.

3 Q. Okay. So there were additional documents?

4 A. Yes.

5 Q. About how many?

6 A. I believe one.

7 Q. Okay.

8 A. That I can recall.

9 Q. Mr. Anderson, you've been given a copy of
10 what's been marked as Plaintiff's Exhibit 23. This
11 document was marked before this deposition and has
12 been used in prior depositions.

13 Do you recognize Plaintiff's Exhibit 23?

14 A. I do.

15 Q. What is it?

16 A. It is a draft letter.

17 Q. Just a minute ago you testified that there
18 was one additional document that your firm prepared
19 for its representation of RaPower-3; is that correct?

20 A. Yes.

21 Q. Is this that document?

22 A. To the best of my knowledge, I believe so.

23 Q. You reviewed Exhibit 23 and compared it?

24 A. Yes. I believe this in timeline followed
25 after Exhibit 570.

1 Q. Okay. I'll ask you to turn to the last
2 page of Exhibit 23, which has been Bates stamped
3 US001658.

4 Do you recognize that -- it purports to be
5 an e-mail from you to neldon@iaus.com and
6 glendaejohnson@hotmail.com?

7 A. Yes.

8 Q. Is it your testimony that this is a copy
9 of an e-mail --

10 A. Yes.

11 Q. -- that you sent to Mr. Johnson?

12 A. Yes.

13 Q. And Glenda Johnson?

14 A. Yes.

15 Q. Were the preceding pages of Exhibit 23
16 attached to that e-mail?

17 A. Yes.

18 Q. You sent that e-mail on --

19 A. Well, I want to back up. Substantially
20 similar to the document that was sent. It was a Word
21 file, and you will note that it references the
22 attachments on Bates 1658. It references
23 Operation -- no. Taxpayer Info.docx, which is an
24 extension for a Microsoft Word file.

25 Similarly, that file would have been

1 modified every time that it was opened and could have
2 potentially been modified after, so I believe that
3 Exhibit 23 is substantially similar to the document
4 that was attached, but I cannot say that it is exact
5 because it would have been modified every time it was
6 opened.

7 Q. Okay. And you already testified about
8 using an auto fill date feature.

9 A. Correct.

10 Q. Do you recall that testimony?

11 A. Yes.

12 Q. So when you say it was substantially
13 similar but may have been modified, is that what
14 you're referring to, the date?

15 A. At a minimum, the date would have been
16 modified.

17 Q. Okay. I will also represent that the
18 United States Bates stamped this document with US
19 Bates numbers and an exhibit number.

20 Obviously, those weren't --

21 A. Those were not there, yes.

22 Q. Okay. Do you want to take a minute and
23 look at Exhibit 23 and see if anything jumps out at
24 you right now?

25 We're going to go through it in more

1 detail, but anything jump out at you as not being
2 what you prepared?

3 A. No.

4 MR. MARTIN: Go ahead and take a look at
5 the exhibit.

6 THE WITNESS: Well, yes, the one thing
7 that I kind of noticed that did jump out at me is the
8 fact that the signature line, it would have been
9 contrary to my practice to move that.

10 So the Anderson Law Center, PC, that would
11 have been very contrary to my practice to have the
12 typed version be a signature of any form. It always
13 would have had adequate space, and every document
14 that I produce would have had additional space there
15 for me to apply a signature at a later time.

16 I also think that -- I can't recall, but I
17 think there's a possibility that the copy that was
18 e-mailed might have had a name on it, and it wasn't
19 on this copy.

20 MR. PAUL: You mean an addressee?

21 MR. MORAN: Hold on.

22 THE WITNESS: No. I mean -- oh. Oh,
23 yeah.

24 MR. MORAN: It's my chance to ask
25 questions.

1 MR. PAUL: Sorry. Couldn't help myself.

2 THE WITNESS: So there's a possibility
3 that it might have been modified, that it might have
4 had a name, either mine or Jessica's, in the
5 signature block. There certainly probably would have
6 been more space there, and there might have been an
7 addressee, but I don't recall on the addressee
8 specifically, and I don't recall specifically on the
9 name.

10 Q. (By Mr. Moran) Okay. All right. You
11 testified about the signature block, and that would
12 have been on the page that's Bates stamped US001657?

13 A. Yes.

14 Q. I just want to make sure I understand
15 that.

16 It would not have been your practice to
17 sign a document Anderson Law Center, PC?

18 A. No, but let's also clarify my testimony.

19 Q. Please do.

20 A. It would have also not been my practice to
21 not leave more space than is depicted on this
22 document for room for a signature.

23 Q. Okay. So a document that left your office
24 would be set up for a signature block with an
25 attorney's name?

1 A. Yes.

2 Q. And that would be either you or your wife?

3 A. Yes.

4 Q. And then space for your signatures on the
5 document?

6 A. Yes, physically sign, or at that time
7 you'll notice -- anyways, at that time we were
8 starting the practice of electronically signing with
9 Adobe and applying -- but it still contains a
10 depiction of a physical signature.

11 Q. I understand. What was the purpose of the
12 document that you testified to drafting in
13 Exhibit 23?

14 A. I don't recall. Well, I'll clarify a
15 little bit. I think -- I think the purpose of that
16 document, or what he was kind of looking for was he
17 was --

18 Q. When you say "he," can you be specific?

19 A. Neldon Johnson was looking for something
20 that could -- he was looking for more summarized,
21 easier to understand summaries of tax principles that
22 he could discuss with potential customers or clients,
23 and my interpretation when we prepared this is that
24 we were kind of, yes, it's in letter format, but I
25 really didn't know what the end result was ever going

1 to look like.

2 Q. So is Exhibit 23 the end result?

3 A. No.

4 Q. Is it fair to call Exhibit 23 a draft?

5 A. At best it's a draft.

6 Q. Exhibit 570 was sent sometime in October

7 2010?

8 A. Yes.

9 Q. And Exhibit 23 was e-mailed November 15,

10 2010?

11 A. Yes.

12 Q. So that's somewhere between two weeks and

13 six weeks?

14 A. Yes.

15 Q. Do you recall what happened in that

16 intervening six weeks?

17 A. I need a more specific question.

18 Q. Okay. What happened -- I'm asking you in

19 relation to Mr. Johnson and your representation --

20 not your representation, but the legal services you

21 were providing Mr. Johnson related to RaPower-3 and

22 energy equipment?

23 MR. MARTIN: Objection. Assumes facts not

24 in evidence. You can go ahead.

25 THE WITNESS: And I really apologize that

1 I focus so hard on the objection that I forget the
2 question.

3 MR. MORAN: Okay. Read back the question.

4 THE WITNESS: I lose the question.

5 THE COURT REPORTER: "Question: Okay.

6 What happened -- I'm asking you in
7 relation to Mr. Johnson and your
8 representation -- not your representation, but
9 the legal services you were providing
10 Mr. Johnson related to RaPower-3 and energy
11 equipment?"

12 THE WITNESS: I believe the extent of the
13 representation between those two letters would be
14 meetings discussing these tax questions on the first
15 letter that are in Exhibit 570.

16 Q. (By Mr. Moran) Okay. You testified
17 earlier about a meeting between -- you know from your
18 wife about a meeting between your wife and
19 Mr. Johnson where he slammed down Exhibit 570 and
20 said, "What am I supposed to do with this?"

21 A. There were more than that meeting.

22 Q. Okay. Can you describe for me that
23 process?

24 A. He would come in regularly, fairly
25 regularly, never call to make an appointment. It was

1 informal walk-ins.

2 Q. Okay. About how many times?

3 A. My testimony would be the same as it was
4 last time. Between the two, I really don't know.

5 Q. You testified it was more than five,
6 though?

7 A. I would say that the bulk -- in relation
8 to my representation of RaPower-3, it definitely fell
9 between those two front time frames, and then there
10 was some following the November 15, 2010.

11 Q. Okay. And you said those two time frames.
12 Can you be specific about that?

13 A. The time frame that we provided
14 Exhibit 570, which we don't have an exact date on,
15 and November 15, 2010.

16 Q. Okay. During that time frame, what
17 information did Mr. Johnson convey to you?

18 A. I don't recall.

19 Q. Okay. Were you part of any of those
20 conversations?

21 A. Minimally.

22 Q. Okay. Who was part of those
23 conversations?

24 A. Jessica.

25 Q. Okay. Did Jessica tell you anything about

1 those conversations?

2 A. I'm sure she did, but I don't recall.

3 Q. Okay. Do you --

4 A. I don't recall any specifics. She
5 certainly told me about those conversations, but the
6 specifics of the conversations I do not recall.

7 Q. Okay. Those were all in-person meetings?

8 A. Yes.

9 Q. Okay.

10 A. There may have been some telephone calls,
11 but they were the exception, not the rule.

12 Q. Do you know if Neldon Johnson gave Jessica
13 any additional facts about transactions during that
14 time frame?

15 A. Define transactions.

16 Q. Transactions that RaPower-3 members would
17 be engaged in?

18 A. I can say that Jessica was definitely
19 given more details about the contemplated business
20 structure than I was given. To what extent, I don't
21 know.

22 Q. Okay. Mr. Anderson, you testified that
23 Exhibit 23 was a Word document that was sent around
24 November -- it was sent on November 15, 2010?

25 A. Yes.

1 Q. And while it's dated August 8, 2012, you
2 already testified that date is incorrect?

3 A. It is incorrect.

4 Q. Okay. And that was because the Word
5 document would have had an auto fill feature?

6 A. Correct, and it was a draft. There was
7 never a date it was finalized.

8 MR. MORAN: Take a little break?

9 MR. MARTIN: Sure.

10 (Recess from 10:46 a.m. to 10:55 a.m.)

11 MR. MORAN: Back on.

12 Q. (By Mr. Moran) Mr. Anderson, before the
13 break, we were talking about Plaintiff's Exhibit 23.

14 Before we go to any questions, during the
15 break, did you talk to anyone about the substance of
16 this case?

17 A. No.

18 Q. Getting back to Exhibit 23, you said that
19 the letter appearing in Exhibit 23 is substantially
20 similar to a document you prepared; is that correct?

21 A. Yes. Actually, I want to clarify one
22 thing. The Bates stamp, US001658, I -- I did not --
23 this was not part of my file. I don't know where it
24 originated from. I don't know where it came from.

25 I can say that that's my e-mail address, I

1 can say that I recall sending an e-mail on or about
2 that date, and I can say that I recall attaching
3 those documents, but the actual document, I don't
4 know that this is mine or where it came from.

5 Q. Okay.

6 A. And I certainly don't recognize the
7 Post-it Note in any way.

8 Q. Understood. And you looked back to see if
9 you could find the e-mail you sent in November 2010,
10 right?

11 A. I did.

12 Q. And did you find it?

13 A. No.

14 Q. Okay. And since 2010, have you destroyed
15 some e-mails?

16 A. I have not destroyed.

17 Q. Is it your business practice to retain all
18 e-mails, or do you have a retention period?

19 A. We had some change in servers and
20 computers, and through that process some e-mails were
21 lost.

22 Q. Okay. Do you believe that the e-mail you
23 sent -- you believe the e-mail that you sent in
24 November 15, 2010, is an e-mail that was lost?

25 A. Correct.

1 Q. Okay. And the e-mail on page US001658,
2 does that appear to be your signature block?

3 A. So at the time -- it is my e-mail
4 signature block. It's basically a -- about that same
5 time I had designed some cards, and I basically took
6 a JPEG image of those cards and used that as my
7 signature block for e-mails, and that would have been
8 my practice at that time.

9 Q. Is there any reason to believe that the
10 e-mail that appears on US001658 is not a copy of the
11 e-mail you sent?

12 A. Not at all.

13 Q. Okay. The letter -- the document that you
14 prepared that's reflected in all but the last page of
15 Exhibit 23 --

16 A. Yes.

17 Q. -- what was the purpose of that document?

18 MR. PAUL: Objection. It's been asked and
19 answered.

20 Q. (By Mr. Moran) I'm going to ask you to
21 answer again.

22 A. I don't remember the specifics. The best
23 that I recall is that Neldon was -- on behalf of
24 RaPower was seeking summarized, easier to access and
25 provide information regarding particular tax

1 principles that could be -- may be usable in the
2 business venture that he was either doing or
3 contemplating or putting together, and I believe that
4 was the purpose of that letter was to start basically
5 the dialogue between myself and a client regarding
6 getting to that final product.

7 Q. All right. Was the document reflected in
8 Exhibit 23 a final product?

9 A. No.

10 Q. What was it?

11 A. A draft.

12 Q. Why did you send Exhibit 23 to
13 Mr. Johnson?

14 A. To provide him a draft and get some
15 feedback and continue the dialogue of what the
16 product was that he was looking for.

17 Q. What happened after you sent Exhibit 23?

18 A. There was additional meetings between him
19 and Jessica.

20 Q. Were there any additional documents
21 prepared?

22 A. Not that I recall.

23 Q. Okay. Do you recall what information was
24 exchanged in those subsequent meetings?

25 A. I was definitely less involved at that

1 point, so no.

2 Q. Okay. Did your wife ever tell you what
3 information was exchanged during those subsequent
4 meetings?

5 A. I'm sure she did. I don't recall what
6 they were.

7 Q. Okay. You testified that earlier, based
8 on Exhibit 570, Mr. Johnson was not satisfied with
9 the product.

10 A. Correct.

11 Q. Were those subsequent meetings intended to
12 ease Mr. Johnson's concerns?

13 A. I would --

14 MR. MARTIN: I'll object. It lacks
15 foundation, but you can go ahead.

16 THE WITNESS: Can you read the question
17 one more time?

18 THE COURT REPORTER: "Question: Were
19 those subsequent meetings intended to
20 ease Mr. Johnson's concerns?"

21 THE WITNESS: No, that's not how I would
22 define them.

23 Q. (By Mr. Moran) Okay. What was the
24 purpose of the subsequent meetings?

25 A. Mr. Johnson was wanting more -- he wanted

1 different information than was set out in this
2 letter.

3 Q. What was the different information he
4 wanted?

5 A. I don't know specifically, more specific.
6 I mean, he -- I don't know specifically, other than
7 he wanted more specifics regarding particular
8 circumstances and facts he wanted those laws applied
9 to.

10 Q. Okay. So do you know generally what he
11 was asking for?

12 A. I think I just said that.

13 Q. More specific --

14 A. He wanted -- he wanted more specifics that
15 these tax principles could be applied to
16 specifically, what a specific set of circumstances
17 that he was trying to implement, I think.

18 Q. Okay. So did he provide those more
19 specific circumstances?

20 A. I believe so.

21 Q. Okay. Who did he provide them to?

22 A. Jessica.

23 Q. Okay. Were you part of any of those
24 conversations?

25 A. In passing at best. Generally, no.

1 Q. Did Jessica ever tell you what he had told
2 her?

3 A. I'm sure, but I don't recall the
4 specifics.

5 Q. Those more specific circumstances that he
6 relayed to her, do you know if those appear in
7 Exhibit 23? Take a look.

8 A. I don't know. I find this to be very
9 general, and I don't think it applies to specifics.
10 Just as we discussed in 570, I don't think it applies
11 these tax principles to any specifics --

12 Q. Okay.

13 A. -- would be my general reading of it.

14 Q. And why is that?

15 A. Because that's what the document says.

16 Q. Okay. Because it doesn't have any
17 specific facts that you can apply a statute to?

18 A. Right. It's a general summary of tax
19 principles, but it doesn't apply those tax principles
20 to any specific set of facts.

21 Q. Okay. Thank you. You testified to a
22 couple of different timelines.

23 There were a series of meetings I
24 understand between when Exhibit 570 was sent and when
25 Exhibit 23 was sent?

1 A. Correct.

2 Q. And then you also testified that,
3 subsequent to Exhibit 23 being sent, there were more
4 meetings?

5 A. Correct.

6 Q. Okay. And then you testified that
7 Mr. Johnson conveyed more specific -- some more
8 specific circumstances?

9 A. I believe so.

10 Q. When was that? Was that between
11 Exhibit 570 and 23 or after Exhibit 23?

12 A. I don't know.

13 Q. Okay. The specific circumstances you're
14 talking about that were conveyed to Mr. Johnson -- or
15 by Mr. Johnson to, I think, your wife --

16 A. Uh-huh (yes).

17 Q. -- is there any document that reflects
18 those specific circumstances and information?

19 A. Him conveying those specific circumstances
20 as to what he wanted to us?

21 Q. Yes.

22 A. No.

23 Q. Was it all done verbally?

24 A. Yes.

25 Q. And you testified that in Exhibit 23 there

1 really are no specific facts or circumstances for a
2 written analysis to be given on; right?

3 MR. PAUL: Objection. Foundation.

4 THE WITNESS: I believe that this is a
5 general summary of general tax principles, and it
6 does not apply those general tax principles to any
7 specific set of circumstances.

8 Q. (By Mr. Moran) And so any specific
9 circumstances that were conveyed from Mr. Johnson to
10 your firm, those aren't written down anywhere?

11 A. Correct.

12 Q. Okay.

13 A. And there's no documentation applying
14 those circumstances to specific tax principles.

15 Q. Okay. Why not?

16 A. Because ultimately -- the specifics of the
17 conversation are Jessica's, but ultimately Jessica
18 could not find a way to provide him the affirmative
19 opinion that those facts applied to the tax
20 principles were in conformance with law.

21 Q. And did that discussion occur before or
22 after Exhibit 23?

23 A. After.

24 Q. Okay. So was Mr. Johnson satisfied with
25 Exhibit 23?

1 A. I don't know.

2 Q. You just testified that your wife could
3 not give him an analysis applying the law to the
4 specific facts he was giving her.

5 Is that fair?

6 A. He could -- I need you to clarify your
7 question. It's not that she wasn't competent to
8 provide an opinion. It's that she couldn't find the
9 specific circumstances and the tax principles that he
10 wanted to mesh and work, and so -- and that's
11 essentially when the representation started to end.

12 Q. And do you know if your wife conveyed that
13 to Mr. Johnson?

14 A. She did.

15 Q. Okay. And do you know what Mr. Johnson's
16 response was?

17 A. I don't. I know of at least one meeting
18 that I was there that -- I wasn't in the room, but
19 both voices were raised, and Mr. Johnson was becoming
20 upset, and I don't know that I necessarily heard
21 Jessica, but she can hold her own, which is why I
22 didn't intervene because she held her own, I'm quite
23 confident of it, but Mr. Johnson became upset because
24 essentially he could not convince Jessica of his view
25 of these tax principles as applied to circumstances.

1 Q. Is that because Mrs. Anderson, your wife,
2 didn't agree with the legal analysis he wanted her
3 to --

4 A. Correct.

5 MR. PAUL: Objection. Calls for
6 speculation.

7 Q. (By Mr. Moran) Sorry. You can answer.

8 A. Notwithstanding the objection, that would
9 be my understanding.

10 Q. Did you ever have discussions with
11 Ms. Anderson about it?

12 A. Yes.

13 Q. And what did she tell you?

14 A. Essentially that, that she couldn't make
15 what he was asking for work.

16 Q. Because what he was asking for was not in
17 accordance with the law?

18 MR. PAUL: Objection. Calls for
19 speculation --

20 THE WITNESS: To the best --

21 MR. PAUL: -- foundation.

22 THE WITNESS: Sorry. Did you get them all
23 on? To the best of my knowledge.

24 Q. (By Mr. Moran) Do you know specifically
25 why it didn't work?

1 In other words, why specifically did
2 Mrs. -- did Jessica Anderson -- Jessica Anderson's
3 legal interpretation not accord with what Mr. Johnson
4 wanted her to say?

5 A. Can I consult my attorney?

6 MR. MORAN: Yes.

7 THE WITNESS: I understand you've asked
8 the question, but I need to consult with my attorney,
9 if that's okay.

10 Q. (By Mr. Moran) Give me the answer.

11 MR. MARTIN: Can you repeat back the
12 question?

13 THE COURT REPORTER: "Question: Do
14 you know specifically why it didn't work?

15 In other words, why specifically did
16 Mrs. -- did Jessica Anderson -- Jessica
17 Anderson's legal interpretation not accord with
18 what Mr. Johnson wanted her to say?"

19 MR. MARTIN: You can answer that.

20 THE WITNESS: I would like to refer to
21 something.

22 MR. MORAN: You can refer to anything you
23 want. I'd like to see whatever you refer to.

24 THE WITNESS: I understand. That's why
25 I'm consulting with my attorney.

1 MR. MARTIN: If answering the question
2 would require you to divulge a privilege, or if it
3 would require you to disclose attorney-client
4 communications that have not been waived, then you
5 should not answer the question, but otherwise --

6 THE WITNESS: And my interpretation is
7 it's been waived, I think.

8 MS. HEALY-GALLAGHER: There is no
9 objection by the privilege holder to the question.

10 MR. PAUL: Well, to the extent that it
11 calls for an attorney-client privilege that has not
12 been waived, I instruct you not to answer because you
13 have your own counsel.

14 THE WITNESS: Right, and I understand
15 that, but my concern is that I just would want to be
16 absolutely sure that it fits within the parameters of
17 that waiver. I think it does. That's why --

18 MR. PAUL: If there's a question, I would
19 ask that you not answer the question.

20 THE WITNESS: Okay. Then the question
21 generally dealt -- or the answer generally dealt with
22 the active versus passive income and making it
23 passive -- that the income here was passive income,
24 and he wanted to be able to offset that on active
25 income, so he basically wanted to make the active

1 income -- or sorry. The passive income of the
2 process of the investment into the solar energy,
3 or -- not solar. I'm using solar, but that's not
4 correct. The energy equipment as an active income so
5 that it could offset an individual's other active
6 income, and she could not find a way to structure it
7 that that would be plausible.

8 The other problem was that she could not
9 find a way to find investors or purchasers of the
10 energy equipment as -- what's the word? There's a
11 word. They were not involved enough. They did not
12 have enough to satisfy the material participation.
13 She could not find a way to structure a situation
14 where people would be purchasing this equipment such
15 that those two issues would be overcome.

16 MR. MORAN: Okay.

17 MR. MARTIN: Let's break before you ask
18 your next question. Let me confer with Mr. Anderson.

19 (Counsel conferring with witness outside
20 conference room from 11:13 a.m. to 11:18 a.m.)

21 MR. MORAN: Go back on.

22 Mr. Anderson, just a couple of follow-up
23 questions on the last answer you gave.

24 Q. (By Mr. Moran) Before I ask that, during
25 the break, did you talk with anyone about the

1 substance of your testimony today?

2 A. Discussed confidentiality issues.

3 Q. With who?

4 A. I forget your name.

5 MR. PAUL: Steven Paul.

6 THE WITNESS: Steven Paul and my attorney.

7 That's all.

8 MR. PAUL: We have no further objection to
9 the questions that were asked. That was the subject
10 of the discussion, whether our waiver extended to the
11 conversation that you've already had on the record.
12 I expressed to him that I felt that it was waived.

13 MR. MORAN: Okay.

14 MR. PAUL: That's the extent of it.

15 MR. MORAN: Mr. Paul, I'm going to ask you
16 to withdraw the objection that you made -- I believe
17 you did make an objection, then he answered.

18 MR. PAUL: To the extent I need to, I'll
19 withdraw it. He's already testified to it, so it's
20 already waived on the record.

21 MR. MORAN: Okay.

22 MR. MARTIN: And I think Mr. Anderson gave
23 testimony with respect to what he felt was
24 appropriate, and I don't know that any objection was
25 disregarded, so I think the testimony stands and is

1 appropriately part of the record.

2 MR. MORAN: Thank you. I just have a
3 couple of follow-up questions on the last answer you
4 gave.

5 THE WITNESS: Okay.

6 Q. (By Mr. Moran) Am I correct that your
7 testimony is that Mr. Johnson wanted RaPower-3
8 members' losses to offset active income?

9 A. That is my understanding from
10 conversations with Jessica.

11 Q. Okay. And Jessica disagreed with that,
12 correct?

13 A. Yes.

14 Q. And then I think the second part of your
15 answer was that Mr. Johnson wanted RaPower-3 members
16 to have material participation; is that correct?

17 A. Yes.

18 Q. And is it your testimony that Jessica
19 Anderson disagreed with that interpretation?

20 A. Given the set of circumstances that
21 Mr. Johnson discussed with Jessica on possibility of
22 structuring the transactions, she could not find a
23 way to say that they would be material participants.

24 Q. Okay. And to your knowledge, Jessica
25 conveyed that disagreement to Mr. Johnson?

1 A. She did.

2 Q. Do you know when that was?

3 A. Exactly, no.

4 Q. Was it in the October/November 2010 time
5 frame?

6 A. It could have been slightly later. Well,
7 it could have been into 2011.

8 Q. Okay. Was it at least some time before
9 March 2011?

10 A. No. Well, I mean, it could have been
11 before, but it would have been after.

12 Q. What's the latest date it could have been?

13 A. Could have been -- the latest would have
14 been June of 2011.

15 Q. Okay. Why do you think that the latest it
16 could have been was June 2011?

17 A. It's my understanding that Jessica sent
18 Mr. Johnson an e-mail detailing her issues with those
19 two things that she could not provide, or she
20 couldn't make it work, and suggested that Mr. Johnson
21 consult with alternate counsel who maybe could help
22 him.

23 Q. Did you look for a copy of that e-mail?

24 A. I did.

25 Q. Did you find it?

1 A. I did.

2 Q. You found that e-mail?

3 A. (Witness nodding head affirmatively.)

4 Q. What did you do with that e-mail after you
5 found it?

6 A. I safeguarded it pursuant to the Subpoena
7 and listed that e-mail on the privilege record.

8 Q. I direct your attention to Exhibit 572.

9 A. I do not have a 57 -- yes, I do.

10 Q. See if you can identify where that e-mail
11 appears.

12 (Witness examining document.)

13 THE WITNESS: I can't identify it.

14 MR. MARTIN: Are you having him look at
15 both documents, 572 --

16 MR. MORAN: I'd invite Mr. Anderson to
17 look at both Privilege Logs, see if he can identify
18 when it was produced. I represent that I reviewed it
19 through production. I don't see an e-mail. I do
20 have knowledge of a letter that sounds a little bit
21 like that.

22 THE WITNESS: It would be Exhibit B of
23 those that were not turned over. Sorry.

24 MR. MARTIN: On Exhibit 571?

25 THE WITNESS: Huh?

1 MR. MARTIN: On Exhibit 571?

2 THE WITNESS: Yes. I apologize. So if we
3 look at Exhibit 571, on the one, two, three, fourth
4 page, it would be Exhibit B referenced there. Yeah,
5 571's the Amended Privilege Log.

6 MR. MARTIN: Correct.

7 THE WITNESS: It may be there. I just
8 can't see it.

9 MR. MORAN: Let's just go off the record
10 for a minute.

11 (Discussion held off the record.)

12 (Recess from 11:27 a.m. to 11:35 a.m.)

13 MR. MORAN: Go back on.

14 Q. (By Mr. Moran) Mr. Anderson, you
15 previously testified about an e-mail that your wife
16 sent to Neldon Johnson.

17 You indicated that you believed it was
18 produced to the United States pursuant to the
19 Subpoena?

20 A. No, I did not testify to that.

21 Q. Okay. Can you correct your testimony?

22 A. I testified that it was listed on a
23 Privilege Log that was produced to the United States.

24 Q. Okay. And you've identified that document
25 within Exhibit 572, which is Defendants' Supplemental

1 Privilege Log on line 19, Bates Nos. Anderson 79 to
2 80, Description: Privilege Log ALC Reference B --
3 Scan of e-mail sent from Jessica Anderson to Todd F.
4 Anderson dated June 11, 2011.

5 It's a communication from Jessica
6 Anderson, Anderson Law Center, PC, to Neldon Johnson
7 in his capacity as an officer of RaPower-3. It's
8 described as investment property/income defined. It
9 was not provided. A privilege claim was asserted,
10 and the reason for the privilege claim was that the
11 document contains legal advice.

12 Based on the content of your testimony, I
13 believe that document, one, is responsive to the
14 United States Subpoena --

15 A. Well, first, I've got to back way up to
16 the start of this question. I did not say what you
17 are saying I said.

18 Q. Okay. Please correct me.

19 A. I said I did not prepare this. I did not
20 identify it on Exhibit 572.

21 Q. Okay.

22 A. I identified a document as Exhibit B on
23 the fourth page of Exhibit 571.

24 MR. MORAN: Okay. I'm going to ask that
25 that document be produced to the United States. I've

1 reviewed our records. It does not appear it was
2 produced. I'm not sure who has a copy. Mr. Anderson
3 acknowledged that he didn't do it.

4 Mr. Paul?

5 MR. PAUL: Yes, this is Mr. Paul. I will
6 certainly review our records, and I did note and we
7 had a discussion off the record that it was not part
8 of the order, and that may have just been an
9 oversight, so when I return to my office, I will look
10 at it, confirm whether it is outside the scope of the
11 waiver that we've provided, and if it falls within
12 the scope of the waiver, we will send you a copy.

13 MR. MARTIN: And for the record also, I
14 believe the agreement that was made with the Court
15 and the Court's instruction was that documents to be
16 produced would, in fact, come from counsel for
17 Mr. Johnson, and so to the extent the document gets
18 provided, I think it would come from Mr. Paul.

19 MR. MORAN: That's fine, and, Mr. Paul,
20 I'll just ask that if you decide that it should
21 remain privileged, then you will expound upon the
22 explanation, because the explanation -- the
23 description of those documents was inadequate in our
24 view. So to the extent that you deem it privileged,
25 we'd ask that you explain why.

1 MR. PAUL: I will get back to you.

2 MR. MORAN: Fine.

3 Q. (By Mr. Moran) Mr. Anderson, have you
4 seen that e-mail?

5 A. Yes.

6 Q. Okay. What does it say?

7 MR. PAUL: Objection to the extent it's
8 been asked and answered. That's how we got to this
9 part of the conversation.

10 MR. MORAN: Right.

11 THE WITNESS: The specifics of the e-mail
12 I don't recall. The generality, I've answered the
13 question.

14 Q. (By Mr. Moran) Would you repeat your
15 answer?

16 MR. PAUL: I'll object to the question.
17 It's been asked and answered on the record. I'd
18 rather not him speculate further than that he's
19 already testified to, but I don't have the right to
20 tell you not to answer.

21 THE WITNESS: That's true. Essentially
22 that Jessica's concern was is that, and had been
23 throughout the process, that she could not resolve
24 the issues of material participation and the concerns
25 of active and passive income in relation to the

1 business structure that RaPower was attempting or
2 wanting to put together regarding energy equipment
3 and marketing with that energy equipment, and she
4 said that she couldn't overcome that concern and
5 referred Mr. Johnson, as the agent of RaPower, to
6 somebody else. She didn't give any specific names,
7 but suggested that he consult with other attorneys
8 who might be able to solve the problem.

9 Q. (By Mr. Moran) Okay.

10 A. And there was also a reference to the fact
11 that she -- I don't know if it was she or we -- err
12 on the side of conservative, were conservative in our
13 counsel.

14 Q. Okay. Did Mr. Johnson respond to that
15 e-mail in any way?

16 A. Not that I'm aware of.

17 Q. He didn't call?

18 A. To the best of my knowledge, that was the
19 end of our association with Mr. Johnson or RaPower.

20 Q. I'm not asking for specifics here, but did
21 you ever have any occasion after June of 2011 to
22 perform legal services for Mr. Johnson?

23 A. No.

24 Q. Have you spoken to Mr. Johnson since June
25 of 2011?

1 MR. MORAN: Go back on.

2 Q. (By Mr. Moran) Mr. Anderson, before the
3 lunch break, we were talking, I think, about
4 Exhibit 23, and you testified that this was a draft
5 Word document that you sent to Mr. Neldon Johnson and
6 Glenda Johnson; is that correct?

7 A. Yes.

8 Q. I have a few questions about Exhibit 23.
9 Starting at the top, it says, "Dear
10 Potential RaPower-3 Customer."

11 A. Yes.

12 Q. Was that in the Word document that you
13 sent?

14 A. I don't know.

15 Q. What does the term "potential RaPower-3
16 customer" mean to you?

17 A. I don't know.

18 Q. I think earlier you testified that the
19 purpose of Exhibit 23 was intended to be a draft to
20 solicit more information from Neldon Johnson?

21 A. Well, it was more -- it was moving towards
22 a product that I think he wanted for marketing or
23 education regarding his business or product, and I
24 had to start somewhere, and so I guess when I say
25 intent, would be my intent of providing it to

1 Mr. Johnson would be to further the dialogue as to
2 what that end product would look like.

3 Q. Okay. So in your mind, do you know if
4 that end product might begin with "Dear Potential
5 RaPower-3 Customer"?

6 A. It could.

7 Q. It was a draft, so that was a --

8 A. Yeah. I don't know -- you know, with that
9 kind of a -- I mean, I remember thinking then and I
10 still would think it now, I believe, that I don't
11 know exactly what I'm doing. You know, is it a
12 letter? Is it a brochure? You know, what is the end
13 thing going to look like? I was familiar with
14 letters, so I started with a letter.

15 Q. Okay. And your understanding is that this
16 end product would be used to -- you said marketing
17 purposes, right?

18 A. I'm speculating, but I think that was when
19 we started out the drafting of this particular
20 document, that was kind of where the end result was
21 going to be.

22 Q. Okay. What was Mr. Johnson marketing?

23 A. I don't know exactly.

24 Q. Okay. Exhibit 23 in this second paragraph
25 says, "With the purchase of RaPower-3 Energy

1 Equipment."

2 A. What is energy equipment? I mean, to some
3 extent -- I mean, I understand what it says, and
4 you've correctly recited what it says, but I can't
5 tell you exactly what that was at the time or today.

6 Q. So at the time you didn't know what
7 RaPower-3 energy equipment was?

8 A. I did not.

9 Q. Okay. And you still don't today?

10 A. I don't.

11 Q. Okay. Who came up with the term
12 "RaPower-3 energy equipment"?

13 A. I believe it was Neldon, but I don't know.

14 Q. Could it have been anyone other than
15 Neldon?

16 A. I don't think so.

17 Q. Is there anything other than RaPower-3
18 energy equipment that would have been being marketed?

19 A. I don't know.

20 Q. Can you think of anything?

21 A. Again, it was a draft. It was to -- in my
22 view, I actually do remember this quite a bit, is
23 that I don't -- you know, in speaking with Jessica
24 and stuff, it was we need more information. We're
25 not really sure what we're doing, but let's summarize

1 the tax principles and go from there, and we'll fill
2 in some holes later. We never reached that point.

3 Q. Okay. And when you say "that point," what
4 are you referring to?

5 A. After we have more information.

6 Q. Because you never got any information?

7 A. I never got more information.

8 Q. Who did you ask for that additional
9 information from?

10 A. The only individuals that we spoke with
11 regarding RaPower -- I think I've said this before.
12 I'll say it again.

13 The only individuals we spoke with
14 regarding RaPower-3 were Neldon Johnson, and Glenda
15 was there but really did not participate in the
16 conversations.

17 Q. All right. Just so I'm clear, the term
18 "RaPower-3 energy equipment" means nothing to you?

19 A. It really doesn't.

20 Q. Did it ever?

21 A. Not to me.

22 Q. All right. Turning on Roman numeral I in
23 Exhibit 23, there's a reference to energy credit and
24 Internal Revenue Code Sections 45 and 48.

25 Do you see that?

1 A. I do.

2 Q. Okay. And within that paragraph you
3 reference a Qualified Progress Expenditure Property
4 (QPEP).

5 Do you see that?

6 A. I do.

7 Q. Okay. Why did you include -- or what was
8 that QPEP meant to refer to here?

9 A. I don't know.

10 Q. Did you intend for the term "QPEP" to
11 apply any analysis to RaPower 3's energy equipment?

12 MR. PAUL: Objection. Foundation.

13 THE WITNESS: I don't know. If I haven't
14 made it clear regarding this document, the
15 substantive drafting was done by Jessica, so I'm not
16 trying to be -- I'm not trying to hide any balls. I
17 don't know because I know essentially --
18 conceptually, when we first talked about starting the
19 drafting process and let's start with a letter --

20 Q. (By Mr. Moran) Okay.

21 A. -- but the actual drafting and research
22 was done by Jessica.

23 Q. All right. Mr. Anderson, I'll direct your
24 attention to the page that's been Bates stamped
25 US001656.

1 Down at the bottom of that page, it says,
2 "Stated simply, if you do most of the work in
3 the business using the RaPower-3 energy
4 equipment, any losses associated with your
5 business will be nonpassive and can be deducted
6 without limitation."

7 Do you see that?

8 A. I do.

9 Q. I appreciate that you didn't draft this,
10 but if you know, who does the "you" refer to?

11 A. I mean, assuming that we had to start as
12 being a RaPower-3 customer, I believe you would be a
13 general person that may be a customer, but I believe
14 the statement kind of applies to -- you know, I
15 mean --

16 MR. MARTIN: Go ahead and wait for his
17 question.

18 THE WITNESS: Okay.

19 Q. (By Mr. Moran) All right. So you refer
20 to a RaPower-3 customer?

21 A. I don't know.

22 Q. You don't know?

23 A. I don't.

24 Q. Later on in that sentence you refer to a
25 business.

1 Do you see that?

2 A. I do.

3 Q. Whose business is that referring to?

4 A. I don't know.

5 Q. Okay. You've testified that Exhibit 23

6 was a draft you sent to Neldon Johnson and Glenda

7 Johnson?

8 A. Correct.

9 Q. Okay. How did you communicate to Mr. and

10 Mrs. Johnson that Exhibit 23 was a draft?

11 A. It was a -- I mean, there was discussions,

12 and actually, you know, it was sent without cover.

13 Really, the e-mail didn't contain anything. I do

14 recall -- I can't remember who I had the phone call,

15 but it was a phone call of, hey, there's a draft.

16 Take a look at that and let's go from there, you

17 know.

18 I don't know that we used the words

19 "draft," but it was a, you know, here's a start,

20 because the meetings prior to that had been we're

21 working -- you know, we're working on this thing.

22 Q. Okay. Who had these conversations?

23 A. I don't know.

24 Q. I mean, you used the word "start" and

25 "draft."

1 You think either one of those words that
2 was communicated to Mr. Johnson?

3 A. Those specific words, I don't know.

4 Q. Okay.

5 A. I believe -- I mean, I can say that I
6 believe it was conveyed. I cannot say specifically
7 how, but it was by no means a final product, and it
8 was a work in progress.

9 Q. Conveyed to who?

10 A. To Neldon Johnson.

11 Q. Okay. Did Mr. Johnson acknowledge what
12 you told him?

13 A. I don't know. I can't answer that. I
14 don't know.

15 Q. Was it you or your wife, Jessica Anderson,
16 that conveyed that information to Neldon Johnson?

17 A. I don't know.

18 Q. But you know it was one of the two of you?

19 A. Yeah. It would have -- there were only
20 two of us in the firm, and, again, we worked closely
21 and collaborated closely, and it might have been,
22 hey, call Neldon and do this or I did it. I don't
23 remember.

24 Q. Okay. And Exhibit 23 was sent in
25 November.

1 Then you testified that there was a series
2 of meetings until June 2011?

3 A. I cannot say how long those meetings
4 persisted or when those meetings occurred. From the
5 date that Exhibit 23 was sent to the time that
6 representation was officially terminated via e-mail,
7 I don't know when those meetings occurred. I can
8 tell that you they occurred between those times.

9 Q. Okay. And during those meetings, is that
10 when it would have been conveyed that Exhibit 23 was
11 a draft?

12 A. Could have been.

13 Q. Would it have been any other time?

14 A. It could have been a telephone call when
15 it was initially sent. Like I said, my best guess is
16 that it was sent without cover, meaning I would have
17 picked up the phone and said here it is and what it
18 is, letting him know that it was in his e-mail.

19 Q. Okay. When you say "what it is," are you
20 referring to it was a draft?

21 A. I don't know that I conveyed specifically
22 the words "draft." I don't know.

23 Q. Would you have conveyed to him it wasn't
24 final or that effect?

25 A. Take a look at it, see what you think or

1 something along those lines. I don't know if I would
2 have been very specific in that it is a draft.

3 Q. Okay.

4 A. I believe that it was clearly conveyed to
5 him in one way or another that it was not a final
6 product.

7 Q. Okay. Did you authorize Mr. Johnson to
8 release Exhibit 23 to anyone else?

9 A. No.

10 Q. Okay. How did you communicate that?

11 A. I did not -- your question is did I
12 authorize it. The answer is no.

13 Q. Okay. Did you ever tell him that he
14 couldn't release it to anyone else?

15 A. I don't recall that.

16 Q. Okay. Did he ever ask permission to
17 release it to any third parties?

18 A. No.

19 Q. Mr. Anderson, I'm handing you what's
20 marked for identification as Plaintiff's Exhibit 548.

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MR. MORAN: Mark this.

(EXHIBIT 574 WAS MARKED.)

Q. (By Mr. Moran) Mr. Anderson, you've been given a copy of what's been marked for identification as Plaintiff's Exhibit 574.

Do you recognize this document?

A. I do.

Q. What is it?

A. It appears to be an e-mail from Greg Shepard to -- it's the same address that I am familiar with as Neldon Johnson's and also Glenda Johnson.

Q. Okay. Is this a true and accurate copy of a document that came from your files?

A. I believe so.

Q. Do you have any idea how you came to be in possession of this document?

A. Specifically, no. The documents that are in my file largely were produced or given to me by Neldon Johnson.

Q. Okay.

A. And I would assume that would be the case

1 with this e-mail as well.

2 Q. All right. Can you think of anyone else
3 you would have gotten Exhibit 574 from?

4 A. No.

5 Q. So as far as you know, it must have come
6 from Neldon Johnson?

7 A. To the best of my knowledge. Again, all
8 the documents in the file, including this one, came
9 from Neldon Johnson.

10 Q. Unless it was a document that you
11 prepared?

12 A. Unless it was a document that we prepared,
13 yes.

14 Q. And those kinds of documents would be in
15 your letter --

16 A. Yes.

17 Q. -- or e-mail?

18 A. Yes.

19 MR. MORAN: Mark that.

20 (EXHIBIT 575 WAS MARKED.)

21 Q. (By Mr. Moran) Mr. Anderson, we've handed
22 you a copy of what's been marked as Plaintiff's
23 Exhibit 575.

24 Do you recognize it?

25 A. To some extent.

1 Q. What is it?

2 A. It's a document that was in the file that
3 I assembled, or the documents that I investigated and
4 assembled pursuant to the Subpoena issued in this
5 case to me.

6 Q. Okay. Do you recall where this document
7 came from?

8 A. To the best of my knowledge, it was given
9 to me or given to our office by Neldon Johnson.

10 Q. Okay. Is there anyone else it could have
11 come from?

12 A. Not that I'm aware of.

13 Q. Did you talk to Neldon Johnson at all
14 about Exhibit 575?

15 A. No.

16 Q. Do you know why he gave it to you?

17 A. No.

18 Q. Do you know where he got it from?

19 A. No.

20 Q. Did Jessica Anderson talk to Mr. Anderson
21 about Exhibit 575?

22 A. I don't --

23 MR. PAUL: Object on foundation.

24 THE WITNESS: I don't know.

25 Q. (By Mr. Moran) I again direct your

1 attention back to Exhibit 574.

2 Have you ever spoken to Greg Shepherd?

3 A. No.

4 Q. Do you know if Jessica Anderson has ever
5 spoken to Greg Shepard?

6 A. I don't believe she did, but I don't know
7 for sure.

8 Q. Okay. I think you testified that you
9 never talked to Neldon Johnson about Exhibit 574?

10 A. Not specifically.

11 Q. Did your wife talk to Neldon Johnson about
12 Exhibit 574?

13 A. I don't know.

14 MR. PAUL: Objection. Foundation.

15 THE WITNESS: I don't know.

16 (EXHIBIT 576 WAS MARKED.)

17 Q. (By Mr. Moran) Mr. Anderson, you've been
18 given a copy of what's been marked for identification
19 as Plaintiff's Exhibit 576.

20 Do you recognize this document?

21 A. To the extent there was documents that was
22 discovered in my research of documents in my
23 possession pursuant to the Subpoena issued to me in
24 this case.

25 Q. Is Exhibit 576 a true and accurate copy of

1 the document that you found in your files?

2 A. To the best of my knowledge.

3 Q. Do you know where you got Exhibit 576?

4 A. To the best of my knowledge, it was given
5 to my office by Neldon Johnson.

6 Q. And directing your attention back to
7 Exhibit 575, is that a true and accurate copy of the
8 document that came from your files?

9 A. To the best of my knowledge.

10 Q. That's a yes? Yes, to the best of your
11 knowledge?

12 A. Yes, to the best of my knowledge.

13 Q. Did you ever discuss Exhibit 576 with
14 Neldon Johnson?

15 A. Not specifically.

16 Q. Do you know if your wife discussed
17 Exhibit 576 with Neldon Johnson?

18 A. I don't know.

19 (EXHIBIT 577 WAS MARKED.)

20 Q. (By Mr. Moran) Mr. Anderson, you've been
21 given a copy of what's been marked for identification
22 as Plaintiff's Exhibit 577.

23 Do you recognize this document?

24 A. I do.

25 Q. What is it?

1 Do you recall that testimony?

2 A. I do.

3 Q. Do you recall what was modified?

4 A. I didn't go through it with a word for
5 word comparison, but in Exhibit 548 that you have
6 provided today, which is, I'm quite positive, a
7 different date than what the IRS had e-mailed, or
8 faxed to me, all reference to Anderson has been
9 removed from the document. So the signature block
10 has been modified to remove Anderson, the disclaimer
11 language has been modified to remove Anderson, and
12 those were the biggest indicators to me -- those are
13 what jumped out to me as the biggest modifications.
14 I did not go through it word for word to see if there
15 was other modifications.

16 Q. Mr. Anderson, today we've talked a lot
17 about energy equipment, and that's what Exhibit 23
18 references, right?

19 A. I believe that's the extent of the
20 definition that's put in 23.

21 Q. Did Neldon Johnson ever discuss solar
22 lenses with you?

23 A. I remember the time that he told me about
24 his energy -- or his solar technology. I remember
25 that conversation and then generally how it worked,

1 but as far as when it got into the specifics of
2 applying it to tax application, there was never any
3 specificity with me regarding solar lenses.

4 Q. And you said you recall that he told you
5 generally how it worked, right?

6 A. Yes.

7 Q. What did he tell you generally how it
8 worked?

9 A. We covered this, but basically it acted
10 more like a magnifying glass than a panel that
11 collects the solar energy as a traditional solar
12 panel harnesses heat, creates steam to create energy.
13 That's my very rudimentary understanding of what he
14 explained.

15 Q. And originally I asked you if he mentioned
16 solar lenses. Sounds like he did.

17 A. In a very limited fashion.

18 Q. Did he ever tell you who owns the lenses?

19 A. No.

20 Q. Did he tell you how much the lenses cost?

21 A. No.

22 Q. Did he tell you anything about the
23 transactions involving the lenses?

24 A. No.

25 Q. Okay. Did he ever tell you that the

1 lenses were part of a system -- I guess you've
2 answered that.

3 You've described, I think you said, a
4 rudimentary system, right?

5 A. I did not say "system."

6 Q. You didn't?

7 A. (Witness shaking head negatively.)

8 Q. Okay. Did Mr. Johnson ever communicate to
9 you that the lenses were part of a system?

10 A. No.

11 Q. He just communicated that the lenses
12 concentrated sunlight and that produced steam and
13 ultimately power?

14 MR. PAUL: Objection to the extent it
15 misstates his prior testimony.

16 THE WITNESS: I'm not even sure that I
17 would say it's power. It creates steam, and I
18 probably drew the conclusion of what happens next.
19 He was very unspecific in the explanation of how the
20 technology worked.

21 Q. (By Mr. Moran) It sounds like you don't
22 have any understanding of what the ultimate product
23 was?

24 A. I don't.

25 Q. Did Mr. Johnson ever communicate to you

1 that the lenses or anything else were producing
2 income?

3 A. No.

4 Q. Did he say how he expected to generate
5 income?

6 A. No.

7 Q. Was the potential for income ever
8 discussed?

9 A. No, not that I can recall.

10 Q. Okay.

11 A. I mean, it was -- no.

12 Q. What were you told about RaPower-3
13 customers?

14 MR. PAUL: Objection, vague, and object to
15 the extent it's been asked and answered.

16 THE WITNESS: And I don't know.

17 Q. (By Mr. Moran) Okay. You referenced
18 Exhibit 23 and I believe Exhibit 570 in reference to
19 RaPower-3 members.

20 A. And I don't --

21 MR. MARTIN: Was that a question?

22 Q. (By Mr. Moran) What do you know about a
23 RaPower-3 member?

24 A. I don't.

25 Q. Okay. Neldon Johnson was deposed a few

EXAMINATION

BY MR. PAUL:

Q. Do you know what research was done to produce the letters that have been referenced today, Exhibit 23 and Exhibit 570?

A. Specifically?

Q. To the best of your recollection.

A. I do not. Jessica did the substantive research and drafting of those documents.

Q. Do you believe that she undertook sufficient legal research to make a reasoned legal analysis as set forth in those two exhibits?

MR. MORAN: Objection. Assumes facts not in evidence.

THE WITNESS: I don't know.

Q. (By Mr. Paul) Do you believe that Jessica Anderson had sufficient time to undertake the legal research that was required to provide the analysis and opinions that are in the two exhibits that we've mentioned?

A. Yes.

Q. Do you recall conducting any independent legal research in support of the two exhibits that we've referenced today?

A. I do not.