

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

09:20:36

UNITED STATES OF AMERICA,)

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)

6

Plaintiff,)

09:20:36

vs.)

Case No. 2:15-CV-828 DN

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RA POWER-3, LLC, INTERNATIONAL)

9

AUTOMATED SYSTEMS, INC., LTBl,)

09:20:36

LLC, R. GREGORY SHIPARD, and)

10

NELDON JOHNSON,)

Defendants.)

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BEFORE THE HONORABLE DAVID NUFFER

16

DATE: APRIL 26, 2019

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reporter: REBECCA JANKE, CSR, RMR
(801) 521-7238

1 APRIL 26, 2019 SALT LAKE CITY, UTAH

2 P R O C E E D I N G S

3 * * *

09:35:21

4 THE COURT: Good morning. We're convened here in
5 United States vs. RaPower. Could I begin by asking
6 counsel to make their appearances, please.

7 MS. HEALY GALLAGHER: Good morning, Your Honor.
8 Erin Healy Gallagher for the United States.

9 THE COURT: Thank you.

09:35:31

10 MR. LEHR: Michael Lehr on behalf of the
11 Court-appointed receiver Wayne Klein.

12 THE COURT: Could you spell your last name for
13 me, please.

14 MR. LEHR: L-e-h-r.

09:35:44

15 MR. KLEIN: Wayne Klein, Your Honor.

16 THE COURT: Thank you.

17 MR. PAUL: Good morning, Your Honor. Steve Paul
18 on behalf of Randale Johnson, LaGrand Johnson and Glenda
19 Johnson.

09:35:57

20 MR. SHEPARD: Greg Shepard, pro se.

21 THE COURT: Thank you.

22 MR. N. JOHNSON: Neldon Johnson.

23 THE COURT: Thank you.

09:36:11

24 Is anyone here representing Pacific Stock
25 Transfer? Have you had any communications with them,

1 Mr. Lehr?

2 MR. LEHR: We have not, Your Honor.

3 THE COURT: Okay. You have had letter
4 communications with them but no communications about this
09:36:22 5 hearing?

6 MR. LEHR: No. No, Your Honor.

7 THE COURT: Okay. Can you refresh my memory,
8 Mr. Lehr, on how they were served with notice of this
9 hearing.

09:36:31 10 MR. LEHR: Sure. Yes. Pursuant to your order,
11 we served them via process server for that. We have an
12 affidavit of service that we filed on the docket. I think
13 it's Exhibit 6 on our exhibit list.

14 THE COURT: All right. And did you provide
09:36:45 15 copies of your exhibits today?

16 MR. LEHR: I do have copies, yes.

17 THE COURT: Okay. In electronic form, or do you
18 have them --

19 MR. LEHR: I have them on my computer. I also
09:36:56 20 have physical copies as well.

21 THE COURT: Okay. Let me take a look at Exhibit
22 6 while we're talking about it.

23 MR. LEHR: Okay.

24 THE COURT: And if you've got a thumb drive or
09:37:06 25 something, we'll put them on our network so we have them.

1 But if you've got it in paper, that's fine. I just need
2 to see Exhibit 6 now.

3 MR. LEHR: Your Honor, I don't have it on a thumb
4 drive.

09:37:27

5 THE COURT: Okay. If you'll eventually provide
6 those to us electronically, that would be great. They
7 were served with the order taking the show cause motions
8 under advisement, the receiver's motion to show cause, and
9 they were delivered on March 8, 2019, at around noon. Do
10 I read that correctly, Mr. Lehr?

09:37:56

11 MR. LEHR: I'm going to pull it up just to be
12 sure, Your Honor, but I'm sure it's correct if that's what
13 it states in the affidavit. That's correct, Your Honor.

09:38:12

14 THE COURT: Okay. Your other exhibits appear to
15 be the same as were attached to your motion; is that
16 right?

17 MR. LEHR: That's correct, Your Honor.

18 THE COURT: In the same sequence?

19 MR. LEHR: Yes.

09:38:21

20 THE COURT: Okay. So, I reviewed those exhibits.
21 I reviewed your motion, and it appears they haven't
22 complied. The relief that you ask for is to impose a
23 coercive fine of \$2,000 a day until compliance and an
24 award of attorney's fees and costs incurred in bringing
25 this motion. What else do you want to tell me in support

09:38:44

1 of your motion?

2 MR. LEHR: Your Honor, we're prepared to offer
3 testimony today about the reason why these documents are
4 important for the receivership estate. We're prepared to
09:39:01 5 offer any legal argument that we would have. Most of it
6 was offered in the briefing. And we're also prepared to
7 walk through the documents and offer testimony about the
8 documents and what went into them.

9 THE COURT: Why don't you make a proffer of their
09:39:17 10 importance to the Receiver's estate, and you can do that
11 either by having Mr. Klein recite it, or you can make a
12 proffer. Either way.

13 MR. LEHR: I will have Mr. Klein recite it if --

14 THE COURT: Okay. Mr. Klein, what's the role of
09:39:37 15 these documents in the Receivership estate? Mr. Klein, if
16 you will approach the podium, it will make it easier for
17 the reporter.

18 MR. KLEIN: Good morning, Your Honor. The
19 reasons I need these documents are because they contain
09:39:57 20 information that I have not been able to obtain from any
21 other manner. Some of this information I would expect to
22 be in documents by -- owned by -- they are under the
23 control of IAS. International Automated Systems. I have
24 not received a stock ledger from the company or any
09:40:18 25 documents from them, so this was, in part, a substitute

1 for records that I have not received from the company.

2 And there are five primary reasons why I need
3 this information.

4 THE COURT: Let's just step back a little bit.

09:40:33

5 You mentioned the stock ledger. That's item 5 in the
6 letter of November 12, in your Exhibit 1?

7 MR. KLEIN: Well, the stock ledger -- by stock
8 ledger I mean the stock ledger kept by the company.

9 THE COURT: Oh, okay.

09:40:50

10 MR. KLEIN: Showing it's a --

11 THE COURT: Presumably the transfer
12 agent would have a similar record, right?

13 MR. KLEIN: Correct.

09:41:02

14 THE COURT: Well, go on and tell me what else you
15 have asked for and why it's important.

16 MR. KLEIN: The information that I have asked for
17 but not received includes all stock transfers by members
18 of the family since November of 2015, when the United
19 States filed its lawsuit. That was one of the items in
20 the order that I was to report on. Also, a record of all
21 transfers of stock to family members, other transfers of
22 stock by the company to others that may not have been
23 family members, and transfers of stock by family
24 members.

09:41:55

25 THE COURT: Uh-huh.

1 MR. KLEIN: So the reasons I need this
2 information are, first, because I am still -- without this
3 information I am unable to comply with the Court's
4 directive to provide a report on stock transfers by
09:42:11 5 Mr. Johnson and family members subsequent to November,
6 2015.

7 Second. I need this information to find out what
8 stock has been transferred to other people; for example, I
9 discovered only recently that 9 million shares of stock
09:42:32 10 were issued to the law firm Nelson, Snuffer, Dahle &
11 Poulsen, that that firm has been selling over time, to use
12 the proceeds to help pay for its legal fees. So, I --
13 that is at least one instance where stock has been issued
14 and used as currency for Nelson, Snuffer, and I don't know
09:42:58 15 if there are other stocks that may have been issued to
16 them. So, similarly, I would want to know whether or not
17 stocks have been issued to other family members or to
18 other law firms and has been used as currency so that, in
19 lieu of paying cash, the company has used stock to -- as
09:43:20 20 currency to purchase items or to compensate employees or
21 family members.

22 Fourth. Information from the transfer agent
23 would tell me whether or not -- what assets are out there
24 that need to be recovered. For example, one of the
09:43:39 25 limited pieces of information that the Pacific Stock

1 Transfer did provide me is that RaPower is the owner of 19
2 million shares. I don't have those 19 million shares, and
3 so there is -- that's an asset that should be delivered to
4 the receiver. If stock has been issued to other persons
09:43:59 5 or entities, I need to know that information to determine
6 whether or not stock was transferred for reasonably
7 equivalent value, and if it was not transferred for
8 reasonably equivalent value then that is an asset that
9 should come back into the Receivership estate.

09:44:16 10 And, fifth. Obtaining records from Pacific Stock
11 Transfer would allow me to compare those records to
12 records that I hope to get from the company to determine
13 whether or not -- the extent to which the company records
14 are accurate because -- and to the extent that I know that
09:44:39 15 the company records are accurate, that will facilitate my
16 efforts to find out where the assets are, who owns stock
17 and what's been done with the stock.

18 In particular, on that point, it's going to tell
19 me who the owner is of stock, and there has been -- I
09:44:57 20 received conflicting information because the annual report
21 filed by IAS with the Securities and Exchange Commission
22 indicates that Mr. Johnson is the owner of many millions
23 of shares, but then his counsel subsequently told me that
24 he owns no shares and that those shares were transferred
09:45:19 25 to his family limited partnership and from there to two

1 Nevis based companies. So I need the information from the
2 Pacific Stock Exchange to find out whether or not the
3 transfers that show up on corporation records have also
4 been reflected on the stock transfer records or whether or
09:45:38 5 not the corporate transfer documents may not -- may have
6 been for appearance sake but not actually reflect a
7 transfer of ownership.

8 THE COURT: You also asked for the transfer
9 agency agreement and PST's knowledge of prior transfer
09:45:59 10 agents. Tell me how that matters.

11 MR. KLEIN: And PST has provided the stock
12 transfer agreement.

13 THE COURT: Okay. So we have that.

14 MR. KLEIN: And they have identified that they
09:46:10 15 are not aware of prior transfer agents, and they are not
16 aware of market makers.

17 THE COURT: Tell me, so I'm clear, is there only
18 one transfer agent for the company stock?

19 MR. KLEIN: Yes.

09:46:22 20 THE COURT: Okay. And then --

21 MR. KLEIN: Generally, and in this case, yes.

22 THE COURT: And did you get information from PST
23 about market makers?

24 MR. KLEIN: Yes.

09:46:33 25 THE COURT: But you didn't get -- did you get

1 information on the number of shareholders and shares
2 outstanding?

3 MR. KLEIN: Yes.

09:46:41

4 THE COURT: Did you get stock ownership for the
5 listed people in that November 12 letter?

6 MR. KLEIN: I received stock ownership
7 information for three of the identified persons, for
8 RaPower, for Neldon Johnson and for Gregg Shepard.

9 THE COURT: Who was the first person?

09:47:00

10 MR. KLEIN: RaPower.

11 THE COURT: Oh, RaPower. Okay. Okay. So, at
12 one time RaPower had IAS stock?

13 MR. KLEIN: They still own 70 -- 19 million
14 shares.

09:47:11

15 THE COURT: Okay. Did they give you any
16 information on transfers of stock since 2015 or since last
17 year?

18 MR. KLEIN: For those three shareholders,
19 RaPower, Mr. Neldon Johnson and Gregg Shepard, they did
09:47:31 20 provide that information, but only for those three
21 persons.

22 THE COURT: Did they tell you why they weren't
23 giving any information with regard to the other people
24 listed in your letter?

09:47:40

25 MR. KLEIN: They did.

1 THE COURT: What did they say?

09:47:54

2 MR. KLEIN: They said that because those were not
3 named defendants, that the provisions of the Receivership
4 order were not sufficient for them to provide that
5 information.

6 THE COURT: Okay. Okay. Then the next category
7 was 144 sales. Tell me what that means.

09:48:18

8 MR. KLEIN: When stock -- stock, in order to be
9 sold, has to be either registered or exempt, and so there
10 was a registration of the company's stock back when it was
11 first formed, but Rule 144 is an SEC rule that allows
12 stock that is issued to insiders to be eventually sold to
13 the public after a certain holding period, and so I had
14 requested information about what kind of stock was being
15 held pursuant to Rule 144. And generally that requires an
16 opinion of counsel that the requirements of the holding
17 period have been satisfied and therefore the stock is
18 allowed to be transferred -- sold and ownership
19 transferred to a new owner.

09:49:01

20 THE COURT: Okay. All right. Thank you.

09:49:19

21 Now, Mr. Lehr, I didn't mean to intercept you,
22 but I just thought it would help to put this up in the way
23 of a proffer because we have no one representing PST here.
24 Is there other information you think should come to my
25 attention? I know that PST is aware of the -- the order

1 because they responded to you and reflected that they were
2 aware of it. And I know that the order exists because I
3 issued it, and it appears that they have disobeyed it.
4 What else do I need to know?

09:49:47

5 MR. LEHR: Your Honor, I think that's everything
6 in terms of the order applying directly to PST. The order
7 specifically, in paragraph 24, lists transfer agents are
8 ordered to provide records that are related to the
9 Receivership defendants or the Receivership estate,

09:50:03

10 Receivership property. Your Honor, we have a record of
11 their response and their awareness like you mentioned --
12 as you mentioned, and I think that the briefing lays out
13 our legal case for why they should be held in civil
14 contempt.

09:50:15

15 THE COURT: Is there anything in the
16 correspondence that's included in these Exhibits 1 through
17 6 -- or I'm sorry -- 1 through 5, or in other court
18 communications you've had with PST or their attorneys that
19 indicates why they are not obeying the order?

09:50:32

20 MR. LEHR: No, Your Honor. And the receiver and
21 I are not aware of any reason why they would not obey the
22 order, other than what they said in their letter.

23 THE COURT: Have you had telephone
24 communications, email communications with them?

09:50:47

25 MR. LEHR: The only telephone communications we

1 had was regarding their initial production. It got lost
2 in the mail. They sent a FedEx package. We didn't
3 receive it, so they ended up sending it through a disk
4 drive to us. But, other than that, we have not had
09:51:05 5 subsequent communications since the Exhibit Number --
6 Exhibit Number 5, the Receiver's letter.

7 THE COURT: Okay. And you're speaking both for
8 you and Mr. Klein as far as other communications?

9 MR. LEHR: Yes, Your Honor.

09:51:20 10 MR. KLEIN: Yes, Your Honor.

11 THE COURT: Okay. All right. Well, it appears
12 to me that they are in contempt of the order and that they
13 have not obeyed the order, and I will ask you to submit
14 the form of an order imposing the coercive fine and also a
09:51:36 15 motion for attorney's fees. I'd ask you to submit those
16 at the same time and serve them on PST and see if that
17 wakes them up to the possibility of it getting to the
18 point of a financial impact instead of just letters that
19 come from people. Do you know if they are a bona fide
09:51:56 20 transfer agent, or are we dealing with some fly-by-night
21 company that is a shell that can disregard this at will
22 because they have no other risk?

23 MR. LEHR: The Receiver can speak to that better
24 than I can.

09:52:09 25 MR. KLEIN: Your Honor, I am mystified. This is

1 a regulated entity whose license is -- whose registration
2 is subject to SEC revocation, so I'm mystified that they
3 would not respond, given the consequences of the
4 registration, their stock transfer registration that is at
09:52:36 5 risk.

6 THE COURT: Okay. I'm going to ask Mr. Lehr
7 that, in the form of your order, that you provide that the
8 \$2,000 fine doesn't commence until ten days after the
9 entry of the order and that you also, in the motion that
09:52:52 10 you make for attorney's fees, provide a special notice
11 that the PST response to that motion for attorney's fees
12 is due within 14 days under our local rules. I want them
13 to have a window for compliance, which may encourage it,
14 by including that ten-day waiting period in the order. I
09:53:16 15 also want them to be aware, without question, that a
16 response is required to the motion so that they recognize
17 that this is not just random letters, but it's orders of
18 the Court that they are disregarding.

19 Does any other party want to weigh in on this
09:53:40 20 decision that I intend to make about Pacific Stock
21 Transfer?

22 Mr. Paul?

23 MR. PAUL: I don't believe so. If I understand
24 correctly, the communication and correspondence are all
09:53:54 25 part of the exhibits.

1 THE COURT: And they are received on this
2 motion.

09:54:05

3 MR. PAUL: So I understand that they have
4 responded, but they haven't complied with the Court's
5 order. I don't see anything that I could add.

6 THE COURT: Okay. Exhibits 1 through 6 will be
7 received and placed in the record. And if you will get
8 those to use electronically, that will help us.

9 (Plaintiffs' Exhibits 1 through 6 received in evidence.)

09:54:15

10 MR. LEHR: Yes, Your Honor. Understood.

11 THE COURT: All right. Then moving on to what I
12 imagine will take more of our time today, the motion for
13 order to show cause against many more parties. The motion
14 specifically was directed to Neldon Johnson, who is pro se
15 here today; Gregory Shepard, who is pro se here today;
16 Glenda Johnson, Randale Johnson and LaGrand Johnson, who
17 are represented by you; is that correct, Mr. Paul?

09:54:38

18 MR. PAUL: That is correct.

09:54:57

19 THE COURT: Okay. The motion referred back to
20 Receivership reports, and I appreciate that it looked like
21 most of the record of noncompliance was made very
22 specifically in the report, docket number 557, filed in
23 December of 2018. Did I read your motion right, Ms. Healy
24 Gallagher?

09:55:22

25 MS. HEALY GALLAGHER: I just want to double-check

1 that that's -- so we also cited and quoted extensively ECF
2 number 552, which was the Receiver's accounting and
3 recommendation on the status of IAS, but, yes, 557.

4 THE COURT: And 552?

09:55:43

5 MS. HEALY GALLAGHER: Right. I would note, Your
6 Honor, there have been events since our motion was filed
7 and since those initial reports that we would offer
8 today.

09:55:54

9 THE COURT: Okay. Well, I would like to be
10 brought up to date on those. How do you intend to present
11 that information?

12 MS. HEALY GALLAGHER: Through the testimony of
13 Mr. Klein.

09:56:03

14 THE COURT: Okay. Let's just talk a little bit
15 about how we are going to proceed here. You provided us
16 with a number of exhibits. They were listed in your
17 exhibit list, so we have copies of those and those are on
18 our network here.

09:56:16

19 Mr. Paul, I think your parties provided exhibit
20 lists as well, right?

21 MR. PAUL: Yes. No exhibits.

22 THE COURT: No exhibits?

23 MR. PAUL: Correct.

09:56:25

24 THE COURT: Okay. Mr. Shepard, let me get to my
25 folder here. Did you provide exhibits?

1 MR. SHEPARD: Yes.

2 THE COURT: You provided an exhibit list. No.
3 You provided a list of -- oh, yeah, witnesses and then a
4 list of ten exhibits. Do you have those with you, and
09:56:40 5 have they been marked?

6 MR. SHEPARD: I have them with me. They have not
7 been marked.

8 THE COURT: Okay. Could you provide those to the
9 clerk, and do you have copies for counsel?

09:56:49 10 MR. SHEPARD: I do.

11 THE COURT: Okay. Could you bring those up to
12 the clerk, and she will get them marked.

13 MR. SHEPARD: Yes.

14 THE COURT: And then, if they haven't been
09:56:59 15 delivered to counsel, if you would do that so they can
16 have them.

17 And then, Mr. Neldon Johnson, the same question.
18 You provided a list of witnesses and exhibits. Let me
19 bring that up. You listed a number of witnesses and five
09:57:24 20 exhibits, and the exhibits were attached to that filing;
21 is that correct?

22 MR. N. JOHNSON: Yes.

23 THE COURT: Did you bring copies of those to be
24 used in court today?

09:57:35 25 MR. N. JOHNSON: I didn't.

1 THE COURT: Counsel has copies of those, since
2 they were provided to everyone through the filings.

3 Ms. Bowers, I'm going to ask you to print those
4 off, or what would you do, just extract them?

09:57:50 5 THE CLERK: From Mr. Johnson's filing?

6 THE COURT: From Mr. Johnson's filing.

7 THE CLERK: I've got them extracted.

8 THE COURT: Oh, already?

9 THE CLERK: So if they are any different than
09:57:59 10 what he has filed, then I will need them, but if they are
11 the same as what he filed with his exhibit list.

12 THE COURT: So you pulled them off the April 24
13 filing?

14 THE CLERK: I did, yeah, 616.

09:58:11 15 THE COURT: Okay. All right. So we've got
16 those. Now, Mr. -- well, let's go ahead and start. I
17 would propose that we go ahead and start with the
18 testimony that Ms. Healy Gallagher intends to offer in
19 opening up on this motion regarding noncompliance.

09:58:31 20 Do you object to that, Mr. Paul?

21 MR. PAUL: I'll proceed any way the Court
22 wants.

23 THE COURT: Okay. Mr. Shepard, do you object to
24 that?

09:58:40 25 MR. SHEPARD: No.

1 THE COURT: Mr. Johnson?

2 MR. N. JOHNSON: No.

3 THE COURT: Okay.

4 Ms. Healy Gallagher, go ahead then.

09:58:46

5 MS. HEALY GALLAGHER: Thank you, Your Honor. And
6 just to be clear, do I understand, from our conversation
7 earlier, you don't require evidence on any of the
8 noncompliance that happened before we filed our motion?

09:58:59

9 THE COURT: I think that's right. We're going to
10 find out where the issues are, but just so, I turn to the
11 respondents and defendants here. What we have is a very
12 clear enumerated list of noncompliance in the 552 and 557
13 documents. There was no response filed. Normally the
14 response would frame the issues for this hearing. I would
15 take the fact that an ordered response was not provided as
16 being an indication that you do not contest those.

09:59:25

17 Is that correct, Mr. Paul?

09:59:50

18 MR. PAUL: We have a response. The response that
19 I understand will be offered by the parties that are here
20 today is that they complied, and if there isn't -- if
21 there are outstanding issues, it's because they don't have
22 documents or the ability to respond to that.

10:00:09

23 THE COURT: Well, you say they are going to make
24 a response today, but they didn't make a response as
25 required by the order; is that right?

1 MR. PAUL: Yes.

2 THE COURT: Why is that not an admission?

10:00:35

3 MR. PAUL: Well, because what we were looking at
4 is the motion, and the motion states what the contempt
5 claims are and so we're basing our response today on
6 what's included in the motion.

10:00:53

7 THE COURT: Well, my reading of the motion is
8 that it itemizes all the noncompliance in those 552 and
9 557 documents. It doesn't re-list it. It refers back to
10 it.

10:01:09

11 MR. PAUL: And so the people that will testify
12 today will indicate that there is no additional
13 information or documents that could be submitted to the
14 Court or submitted to the Receiver, that they have fully
15 complied.

16 THE COURT: Well, why was no response made, then,
17 if that's their position? I don't like sandbagging me or
18 a movant, with an untimely disclosure. That's my
19 concern.

10:01:26

20 MR. PAUL: I understand that. One of the issues
21 is obviously a determination of our representation of the
22 parties, and so they are appearing pro se. They are
23 moving forward pro se.

10:01:42

24 THE COURT: Well, wait. You represent Glenda
25 Johnson, Randale Johnson and LaGrand Johnson.

1 MR. PAUL: Yes.

2 THE COURT: Did you say you've terminated your
3 representation of them?

4 MR. PAUL: No.

10:01:51 5 THE COURT: Oh. Okay.

6 MR. PAUL: Of Gregg Shepard and Neldon Johnson.

7 THE COURT: Oh, right. Right. Okay.

8 MR. PAUL: And their entities.

9 THE COURT: But no response was filed by the
10:01:58 10 parties you represent, right?

11 MR. PAUL: That's correct.

12 THE COURT: And, Mr. Shepard, you didn't file a
13 response, correct?

14 MR. SHEPARD: I thought I was in complete
10:02:11 15 compliance.

16 THE COURT: That's not my question. My question
17 is, did you file a response?

18 MR. SHEPARD: I don't believe so.

19 THE COURT: Okay. Mr. Neldon Johnson, did you
10:02:23 20 file a response?

21 MR. N. JOHNSON: Yes, I did.

22 THE COURT: When?

23 MR. N. JOHNSON: Before it was due. I put it in.
24 I brought it up and had it stamped, I believe.

10:02:36 25 THE COURT: Do you have a copy with you today?

1 MR. N. JOHNSON: I didn't bring anything with me.
2 I assumed that you would have that.

3 THE COURT: What day did you file it?

10:02:47

4 MR. N. JOHNSON: I'm not positive, but it was
5 before the due date.

6 THE COURT: Did you file it here in the court in
7 person or did you mail it?

10:03:03

8 MR. N. JOHNSON: I did. I brought it up in
9 person, I believe. Anything that I was supposed to
10 respond to as far as I. Know, I responded to the pleading
11 with everything.

12 THE COURT: Mr. Milne, what day was the response
13 due? I can't find it here in the outline.

14 MS. HEALY GALLAGHER: I have it, Your Honor.

10:03:19

15 THE COURT: What day is it?

16 MS. HEALY GALLAGHER: The response was due
17 Friday, March 15, 2019.

18 THE COURT: Okay.

10:03:28

19 MS. HEALY GALLAGHER: A point of clarification.
20 Mr. Johnson may be talking about the exhibit and witness
21 list that he filed, because there was no response to the
22 order to show cause.

23 THE COURT: So, let's see. And that was filed in
24 April. Yeah. So check the docket around March 10 through
25 the 15th.

10:03:55

1 MR. N. JOHNSON: I filed -- I filed before that
2 was due, and I had in there something about I should have
3 a right to an attorney and all of that along with that, so
4 I'm sure I put that in there.

10:04:11

5 MR. MILNE: Mr. Johnson filed a memorandum in
6 opposition on March 18, docket number 597 to the
7 memorandum -- to the motion to include affiliates.

8 THE COURT: Okay.

10:04:23

9 MR. MILNE: But there was -- there's no response
10 showing --

11 THE COURT: Our docket has nothing in response to
12 the order to show cause, just so you know that.

10:04:41

13 MR. N. JOHNSON: Well, I thought that I brought
14 it up, because I filed all those things in there with all
15 the information stating that I didn't have any records
16 that I was in control of, that I had been fired from all
17 the positions, that I no longer had access to any more
18 documents. And I know that I filed that in there before
19 the deadline date.

10:05:03

20 THE COURT: So, how can you get a copy of that?

21 MR. N. JOHNSON: Well, I don't have one here, but
22 I'm sure that I've got to have one.

23 THE COURT: Is there someone that can retrieve it
24 for you?

10:05:16

25 MR. N. JOHNSON: Well, it's a hundred miles away,

1 so I don't know.

2 THE COURT: Well, is there someone who can
3 retrieve it for you or scan it or fax it?

10:05:28

4 MR. N. JOHNSON: Not that I know of. I don't
5 have anything.

6 THE COURT: All right.

7 All right, Ms. Healy Gallagher, go ahead.

8 MS. HEALY GALLAGHER: And, Your Honor, just to be
9 clear --

10:05:34

10 THE COURT: Mr. Shepard?

11 MR. SHEPARD: Yeah. I wanted to respond a little
12 more clearly on my effort to be in compliance, which I've
13 done everything I can to be in compliance. I've given
14 Mr. Klein bank statements. Even when he was having
15 trouble, for example, with Cyprus, I --

10:05:49

16 THE COURT: I think you're missing my point. You
17 were ordered to file a response to the motion for order to
18 show cause on March 15. You didn't, I think. I can't see
19 one.

10:06:04

20 MR. SHEPARD: Okay. That was my fault, but I
21 gave him everything I had. I thought that was my
22 response.

23 THE COURT: Ms. Healy Gallagher, go ahead.

10:06:18

24 MS. HEALY GALLAGHER: Your Honor, there has been
25 no response filed. I will note, I did misspeak. March 15

1 was the deadline to make sure all respondents were served.

2 THE COURT: Oh, yeah.

3 MS. HEALY GALLAGHER: March 29 was the response
4 date. My apologies for that. But, in fact, no responses
10:06:33 5 were filed.

6 THE COURT: I haven't seen any response by a
7 respondent or a defendant to the motion for order to show
8 cause. Go ahead and call your witness.

9 MS. HEALY GALLAGHER: Thank you, Your Honor. If
10:06:44 10 I may, at first --

11 THE COURT: Yes.

12 MS. HEALY GALLAGHER: Simply because the
13 Receivership order is so comprehensive, I'd just like to
14 highlight the specific provisions that bring us here
10:06:55 15 today.

16 THE COURT: So, do me a favor. I can't see your
17 microphone. Where is it?

18 MS. HEALY GALLAGHER: Here.

19 THE COURT: Oh, okay. Now I see it. That's what
10:07:03 20 a gray suit does. Go ahead.

21 MS. HEALY GALLAGHER: Okay. All right. First
22 off, we're talking about ECF Number 491, the corrected
23 Receivership order. In the corrected Receivership order,
24 there are a number of affirmative disclosures that are
10:07:19 25 required both by the Receivership defendants and other

1 persons who received a notice of the corrected
2 Receivership order.

3 THE COURT: What section is that in?

4 MS. HEALY GALLAGHER: So, we'll start off with
10:07:32 5 paragraphs 14 through 17 and paragraph 24, the obligation
6 to turn over books and records related to the financial
7 affairs of the Receivership defendants and entities. In
8 paragraph 24 there is also an affirmative obligation, if a
9 person identified as a person responsible for turning over
10:07:59 10 those books and records, if that person no longer has
11 documents that would be responsive to the Receivership
12 order or no longer has control over those documents, that
13 person has an obligation to provide a sworn statement
14 about what documents they may have had, don't currently
10:08:18 15 have and what happened to those documents.

16 THE COURT: And that's in paragraph what?

17 MS. HEALY GALLAGHER: That's in paragraph 24 --

18 THE COURT: Okay.

19 MS. HEALY GALLAGHER: -- of the Receivership
10:08:28 20 order.

21 THE COURT: Okay.

22 MR. N. JOHNSON: Your Honor, could I have filed
23 that under a wrong -- a wrong case number, because I did
24 that one time, and I had to correct it. Can you look
10:08:41 25 under some other number?

1 THE COURT: Let's hold on to that question --
2 hold on to your questions, Mr. Johnson, and let's let her
3 finish here.

4 MR. N. JOHNSON: I'm sorry.

10:08:48

5 MS. HEALY GALLAGHER: The second affirmative
6 obligation that we're here about today is the obligation
7 of Receivership defendants and also anyone with notice of
8 the corrected Receivership order to turn over assets that
9 are property of the Receivership estate; so assets of the
10 Receivership defendants and other assets, those were meant
11 to be turned over to the Receiver without the Receiver
12 having to ask, and that is in ECF Number 491, paragraphs
13 16 and 17.

10:09:06

14 THE COURT: By the way, on paragraph 24, I don't
15 see that it requires that statement to be under oath.

10:09:23

16 MS. HEALY GALLAGHER: Oh, my apologies.

17 THE COURT: Okay. So 16 and 17 you were just
18 talking about?

10:09:39

19 MS. HEALY GALLAGHER: Right. 16 and 17 contain
20 the obligations to turn over assets to the Receiver.

21 THE COURT: Right.

10:09:57

22 MS. HEALY GALLAGHER: There is also, for
23 Receivership defendants, an obligation to state, in any
24 Court filed document, that the legal fees that paid for
25 the filing of that document are not coming from

1 Receivership assets. That's in paragraph 10 of ECF 491.
2 Further, Mr. Johnson, Mr. Neldon Johnson, and Mr. Shepard
3 both have an affirmative obligation to file a sworn
4 financial disclosure that was due on December 31, 2018.
10:10:24 5 This is in ECF Number 491, paragraph 26 in particular.

6 Paragraph 26 lists out a number of disclosures to
7 be made. The specific items that are important for today
8 are their obligation to list out all assets they have
9 received from any person or entity, all funds they
10:11:02 10 received from the solar energy scheme, all expenditures
11 that they made for themselves or on behalf of another of
12 more than a thousand dollars and all asset transfers that
13 they have made. And that's from the period of January 1,
14 2005, to the present.

10:11:23 15 In addition to these affirmative obligations that
16 the corrected Receivership order imposes, it also imposes
17 a duty of cooperation. On -- and the duty of cooperation
18 applies to not only to the Receivership defendants but
19 members of their family and their respective families and
10:11:45 20 any other person with notice of the Receivership order.
21 We find those obligations in paragraph 23 of ECF Number
22 491. There is the duty to cooperate with and assist the
23 Receiver in the performance of his duties and obligations.

24 And then, in paragraph 28, those same folks have
10:12:06 25 the duty to produce all documents and answer all questions

1 as required by the Receiver to execute his duties.

2 So those are the specific provisions that we're
3 here about today.

4 THE COURT: Okay. Thank you.

10:12:22

5 MS. HEALY GALLAGHER: And now, Your Honor, we
6 would like to call Wayne Klein, the Receiver in this
7 matter.

8 THE COURT: All right. Mr. Klein, go ahead and
9 take the oath and then sit down. I have a proposal.

10:12:48

10 WAYNE KLEIN,
11 the witness hereinbefore named, being first duly cautioned
12 and sworn or affirmed to tell the truth, the whole truth,
13 and nothing but the truth, was examined and testified as
14 follows:

10:12:48

15
16 THE COURT: Mr. Klein, once you're seated, if you
17 would state your full name and spell it. And then I'm
18 going to take a minute.

19 THE WITNESS: Roy Wayne Klein. K-l-e-i-n.

10:13:00

20 THE COURT: Thanks. Mr Paul, and Mr. Shepard and
21 Mr. Johnson, I'm going to propose that we take the
22 Receiver's report as his direct testimony on that time
23 frame and that then we move on from there with what
24 Ms. Healy Gallagher specified earlier as either
10:13:27 25 noncompliance or compliance following the report to

1 correct that record.

2 Does that -- does that proposal work for you,
3 first of all, Ms. Healy Gallagher? There is an enormous
4 amount of detail in the Receiver's filings, 552 and 557
10:13:44 5 that I don't want to repeat.

6 MS. HEALY GALLAGHER: Understood. And that works
7 for us.

8 THE COURT: Does it work for you, Mr. Paul?

10:13:44

10:13:52

9 MR. PAUL: I believe, if I understand what the
10 Court is saying, I agree, and I will just let the Court
11 know that my expectation of testimony from the Johnsons
12 and from Mr. Shepard will be that they have satisfied the
13 production requirement of everything that is in their
14 possession and control. So, if we could focus on what the
10:14:14 15 Receiver thinks they may have that they haven't turned
16 over, that would be the most helpful.

17 THE COURT: Well, I think that's where we're
18 going. And so if we can just -- yeah. And I'm not saying
19 it's conclusive testimony. I'm saying it's direct. And
10:14:30 20 you can cross examine on it or raise evidence from your
21 witnesses about what was done in compliance.

22 MR. PAUL: Yes. Thank you.

23 THE COURT: Mr. Shepard, does that method work
24 for you?

10:14:41

25 MR. SHEPARD: Yes, sir.

1 THE COURT: Mr. Johnson?

2 MR. N. JOHNSON: Yes. I'm a little kind of
3 confused on that requirement, and maybe that's why the
4 documents haven't been filed properly, but what I
10:14:57 5 understood was any money that belonged to RaPower from
6 2005. Is that the correct assessment of that, or am I
7 wrong?

8 THE COURT: That's a very small piece of the
9 puzzle.

10:15:12 10 MR. N. JOHNSON: Okay. That's -- because that's
11 what I understood is the -- is the -- if -- in other
12 words, the money that I -- that came from the sale or
13 anything of the lenses or of the solar energy system, this
14 is what -- this is what I understand is at issue here, or
10:15:37 15 am I wrong?

16 THE COURT: As I said, that's a very small piece
17 of it, and in trying to get to that, there's a lot more
18 that's required. All of that is in the order appointing
19 the Receiver, and it's outlined in great detail in those
10:15:52 20 filings, docket number 552 and 557 that were made at the
21 end of last year. And those were referenced in the motion
22 that we're here on today. But you're correct. You
23 understand a small part of it, apparently.

24 MR. N. JOHNSON: Okay. So that's what I'd like
10:16:12 25 to know is if I'm missing something, I would like to know

1 what it is I'm missing, what the law is that I'm looking
2 at, so I can look at the law as well.

3 THE COURT: Docket Number 491 is the Receivership
4 order. You have a copy of that. Docket Number 552 is the
10:16:31 5 Receiver's -- what was it called? Accounting, right? Was
6 that the accounting? There's one that's a year-end
7 accounting.

8 MS. HEALY GALLAGHER: The 552 was the Receiver's
9 accounting and recommendation on the publicly traded
10:16:46 10 status of IAS.

11 THE COURT: Right. And the 557 was the larger
12 list of noncompliance?

13 MS. HEALY GALLAGHER: The initial quarterly
14 report.

10:16:55 15 THE COURT: The initial quarterly report. You
16 should have all of those.

17 MR. N. JOHNSON: On IAS?

18 THE COURT: In this case.

19 MR. N. JOHNSON: I mean the quarterly report from
10:17:07 20 International Automated Systems?

21 THE COURT: No. Those last two items are reports
22 from the Receiver that were filed in this case and served
23 on all parties.

24 MR. N. JOHNSON: Okay. All right. Okay.

10:17:18 25 THE COURT: And you should have those. That's

1 what we're here about.

2 MR. N. JOHNSON: Right. And so I'm not clear on
3 exactly what that order is we're talking about. If we're
4 talking about -- and that's why -- I guess why I'm here, I
10:17:34 5 guess, is I'm a little bit confused on a couple of issues,
6 then. So we're talking about recovering the assets that
7 came in to RaPower from sales, right?

8 THE COURT: That's a part of it. Yes.

9 MR. N. JOHNSON: Okay. So that's one part,
10:17:57 10 right?

11 THE COURT: Yes.

12 MR. N. JOHNSON: Okay. So there's no question
13 about the assets that came in. The bank accounts are
14 there. There is no cash that has been deposited outside
10:18:06 15 of that issue because all of the checks from the sale of
16 that would have been into a bank account, and they have
17 that record, as far as I know, of all of the assets of the
18 bank accounts. They have all been had. I don't
19 understand what --

10:18:20 20 THE COURT: Now you're giving me facts --

21 MR. N. JOHNSON: I don't understand, then, what
22 you're asking for beyond that.

23 THE COURT: You're giving facts and you're
24 arguing the case. If you listen to Ms. Healy Gallagher's
10:18:32 25 statement about the Receivership order, I think you

1 wouldn't be asking this question, and if you listen to
2 this testimony then I think you won't be so confused. But
3 I will hear you on your response and your defenses, but
4 now is not the time to do that. I need to let Ms. Healy
10:18:51 5 Gallagher present her case.

6 MR. N. JOHNSON: Well, I know, but I was just --
7 I just wanted to get -- make sure that I wasn't missing
8 something in bypassing the information that you were
9 making a motion on what you're going to allow in right
10:19:04 10 now, and I don't want to be left in the dark any place on
11 any issues that I might want to respond to.

12 THE COURT: No. I'm not barring your ability to
13 respond. I am saying that the government doesn't need to
14 go through all the detail in the documents, the 552
10:19:21 15 accounting and the 557 first quarterly report.

16 MR. N. JOHNSON: So this is the report made by
17 Mr. Klein?

18 THE COURT: Right.

19 MR. N. JOHNSON: It's not something that I --
10:19:32 20 that I needed to make or anything like that?

21 THE COURT: That is not your report. That was
22 his report.

23 MR. N. JOHNSON: Okay. All right. I'm fine with
24 that. I'm sorry.

10:19:41 25 THE COURT: Okay, thanks. That's fine.

1 Ms. Healy Gallagher, go ahead.

2 MS. HEALY GALLAGHER: Thank you, Your Honor.

3 Because we are taking those reports as evidence, I'd also
4 like to move to admit Plaintiff's Exhibit 937 and 938,
10:19:55 5 which were also attached to our motion.

6 THE COURT: Okay. Let me get there. I've got so
7 many windows open. It's going to take me a minute to get
8 there. Which exhibits?

9 MS. HEALY GALLAGHER: 937 and 938.

10:20:13 10 THE COURT: Okay.

11 Mr. Milne, have I got those attachments? I don't
12 have them in the -- or do I?

13 MR. MILNE: I believe they are saved in the
14 folder.

10:20:27 15 THE COURT: Okay. And they are attached. I see
16 them. There is -- 937 is -- no. Well, describe them for
17 me and I'll see if I've got them.

18 MS. HEALY GALLAGHER: Sure. 937 is an email from
19 Mr. Klein to Neldon and Glenda Johnson CC'ing Steven Paul
10:20:48 20 and other counsel.

21 THE COURT: Dated January 28, 2019?

22 MS. HEALY GALLAGHER: Correct.

23 THE COURT: And then Exhibit 938 is a letter from
24 Nelson, Snuffer law firm dated January 24?

10:21:03 25 MS. HEALY GALLAGHER: Correct.

1 THE COURT: Okay. I've got them. Thanks. And
2 you wanted those received?

3 MS. HEALY GALLAGHER: Yes, please.

10:21:12

4 THE COURT: They are received. Any objection to
5 those, counsel?

6 MR. PAUL: No, Your Honor.

7 THE COURT: Okay. They are received.

8 (Plaintiffs' Exhibits 937 and 938 received in evidence.)

9 Okay.

10:21:29

10 DIRECT EXAMINATION

11 BY MS. HEALY GALLAGHER:

12 Q. Mr. Klein, good morning.

13 A. Good morning.

10:21:41

14 Q. To give us some perspective, can you tell us
15 about the process of the Receivership so far?

10:22:07

16 A. We're finishing up the first stage of the
17 Receivership, which is -- involves finding information
18 about the operation of the entities and commencing the
19 forensic analysis, reconstruction of the financial records
20 to determine what monies came in, what monies went out and
21 what purposes they were used for. And we're also in the
22 process of identifying assets that belong in the
23 Receivership estate, taking control of those assets and
24 beginning the process of liquidating, selling those
10:22:29 25 assets.

1 Q. And you mentioned the first stage of the
2 Receivership. Could you just let us know what those
3 stages are?

4 A. The second stage -- which there aren't clear
10:22:43 5 delineations between them -- the second stage involves
6 investigating what transfers may have been made out of the
7 Receivership, either assets or funds, and determining
8 whether or not those payments were made for reasonably
9 equivalent value or whether or not those were assets that
10:23:04 10 should be turned over or obtained by the Receivership.

11 And the third stage, really, is litigation to try
12 and recover those assets, suing people who received funds
13 or assets that belonged to the Receivership estate.

14 And then, fourth, is converting all of the assets
10:23:27 15 to cash.

16 And then fifth will be distribution of the assets
17 of the Receivership estate to the intended beneficiaries.

18 Q. And in terms of the affirmative obligations and
19 the duty of disclosure -- or, I'm sorry, the duties to
10:23:43 20 cooperate that I previewed a few moments ago, why -- why
21 are those provisions of the Receivership order important?

22 A. They are important for several reasons. First is
23 that some of the records only reside with the Receivership
24 defendants. They are the only ones who have the corporate
10:24:08 25 records, the stock transfer records, the records of -- of

1 purchases and sales, of monies that came in. They are the
2 ones that have the QuickBooks records, the financial
3 records showing the purposes of transfers. They've got
4 the invoices, so that when the financial records show that
10:24:32 5 payments were made to certain persons, it will show the
6 purposes of those payments, and the invoices will show
7 what was purchased and why.

8 So that that will greatly facilitate the
9 decisions I have to make, in which assets were transferred
10:24:49 10 improperly and which need to be recovered. So, we can,
11 through the reconstruction of the bank records, identify
12 what monies came in, what monies came out and, in most
13 cases, identify the payees of those amounts, but it
14 doesn't answer the question why. It doesn't tell me why
10:25:10 15 all these payments were made to insiders and to other
16 persons and, in fact, who they are and what the purposes
17 were for the payments.

18 Q. Can you tell us briefly, why is it important to
19 your tasks to know why an asset was transferred?

10:25:31 20 A. I have to first decide whether or not an asset is
21 an asset of the Receivership estate and, if an asset,
22 either money or a tangible asset was, at some point, a --
23 belonged to one of the Receivership defendants, then if it
24 has been transferred, I need to determine whether or not
10:25:55 25 the company received reasonably equivalent value for the

1 transfer.

2 So if the company made a gift of money to someone
3 and the company got no benefit out of that gift, then an
4 asset of the Receivership estate was transferred out and
10:26:12 5 needs to be recovered. If the company used company funds
6 to purchase an asset that was put into somebody else's
7 name and the company did not get any equal
8 consideration for that, then that's an asset that belongs
9 to the Receivership estate. So the why is helping me
10:26:30 10 understand whether or not there was reasonably equivalent
11 value transferred.

12 Q. Are there any other hallmarks of a potentially
13 improper transfer that -- that would help you make your
14 decision?

10:26:44 15 A. Well, certainly. The primary one is, of course,
16 the value, but we're always looking at transfers to
17 insiders because those are particularly suspicious and so
18 we'll focus on those. We'll also look at timing of
19 transfers, whether transfers happened, occurred at a
10:27:10 20 certain time frame that merit additional inquiry.

21 Q. So, interests are in value, to whom the transfer
22 was made, the reason for the transfer and timing are among
23 the hallmarks. Are there any others that you can think of
24 at this moment?

10:27:31 25 A. Those are the primary ones.

1 Q. Before we transition into the information about
2 the specific defendants, I'd like to draw your attention
3 to Plaintiff's Exhibit 939, which should appear on the
4 screen in a moment. I'll page through it. You can just
10:28:13 5 take a look with me. Do you recognize Plaintiff's Exhibit
6 939?

7 A. I do.

8 Q. What does it include?

9 A. It's a collection of acknowledgements by certain
10:28:35 10 interested parties as to their receipt of a copy of the
11 Receivership order.

12 Q. And whose acknowledgements are included in
13 Plaintiff's Exhibit 939?

14 A. Neldon Johnson, Glenda Johnson, LeGrand Johnson
10:28:52 15 Randale Johnson and Gregg Shepard, I believe.

16 Q. How did you -- how did you get these
17 acknowledgements of the receipt of the Receivership order?

18 A. I contacted Steven Paul, counsel for the
19 defendants, asking -- indicating to him that the
10:29:10 20 Receivership order required that I ensure that all the
21 persons identified in the order had -- were served a copy
22 of the order, and I inquired of him whether he wanted to
23 obtain acknowledgements of service for me or whether I
24 should endeavor to get each of the orders served on the
10:29:33 25 individuals personally.

1 Q. So you received these from Mr. Paul?

2 A. Yes. And so Mr. Paul responded that he would
3 obtain the acknowledgements, which he did, and sent these
4 acknowledgements to me.

10:29:48

5 MS. HEALY GALLAGHER: Your Honor, I move for the
6 admission of Plaintiff's Exhibit 939.

7 THE COURT: Any objection?

8 MR. PAUL: No objection.

9 THE COURT: It's received.

10:30:15

10 (Plaintiffs' Exhibit 939 received in evidence.)

11 Q. BY MS. HEALY GALLAGHER: All right. Let's turn
12 to the individual respondents about whom we're here today.
13 And I'd like to talk first about Neldon Johnson. So --
14 and we'll just walk through the obligations, and I'll ask
15 you questions about compliance or not compliance. Since
16 the time the United States' motion for order to show cause
17 was filed, what can you tell us about Neldon Johnson's
18 compliance or lack thereof with the affirmative duty to
19 turn over books and records to the Receiver?

10:30:36

20 A. I have received no books and from him since that
21 date.

22 Q. Have you received any bank account statements
23 from Mr. Johnson?

24 A. No.

10:31:02

25 Q. Have you received any accounting records from

1 International Automated Systems?

2 A. I have not.

3 Q. Have you received any accounting records from
4 RaPower-3?

10:31:12

5 A. No.

6 Q. Have you received any other books or financial
7 records for International Automated Systems?

8 A. Not since the date of the motion.

9 Q. Have you received any other books or financial
10 records from RaPower-3?

10:31:24

11 A. No.

12 Q. Have you received any information from
13 Mr. Johnson about the foreign entities he has created or
14 has been involved in?

10:31:36

15 A. No. I have received some pieces of information
16 from the law firm Nelson, Snuffer that would involve --
17 and I believe the law firm indicated these were documents
18 that they had found in their files that were responsive to
19 some requests I had made previously.

10:31:58

20 Q. To your observation, were these a complete
21 production of all documents you might need for those
22 entities?

23 A. No.

24 Q. How come?

10:32:07

25 A. Because there was information about one of the

1 corporate entities, DCLBLT -- maybe it's DCL16BLT that the
2 law firm Nelson, Snuffer indicated they had had the
3 corporate book in their possession, and they provided
4 that. And they also indicated they had located some
10:32:28 5 corporate records for, I believe, Solstice, Inc., and they
6 provided those.

7 THE COURT: And by they do you mean the law firm?

8 THE WITNESS: I mean Nelson, Snuffer.

9 THE COURT: Okay.

10:32:46 10 Q. BY MS. HEALY GALLAGHER: What, if any, assets has
11 Mr. Johnson turned over to you since the date of the
12 motion?

13 A. He has turned over no assets other than he did
14 provide the logbooks for one of the aircraft.

10:33:09 15 Q. And to your observation, Mr. Klein, have you seen
16 any of Mr. Johnson's legal filings contain that assertion
17 that no money related to the Receivership estate has been
18 used to support this filing?

19 A. I don't recall any of the filings indicating --
10:33:32 20 providing that statement, that none of the Receivership
21 funds were used for the legal invoices.

22 Q. And, Mr. Klein, what about the sworn financial
23 disclosure that was due on December 31, 2018? Has
24 Mr. Johnson provided that since the date of the United
10:33:56 25 States' motion?

1 A. No.

2 Q. Has Mr. Johnson provided any information on, for
3 example, payments from him to his family members?

4 A. He has not.

10:34:13

5 Q. Or any other transfers of assets or funds that he
6 has made?

7 A. He has not.

8 Q. So then, Mr. Klein, I'd like to turn to your
9 efforts to get documents and information from Mr. Johnson.

10:34:43

10 When Mr. Johnson failed to meet his affirmative obligation
11 to disclose records to you, talking about just books and
12 records for the moment, what did you do?

13 A. We made requests to Nelson, Snuffer for --
14 identifying certain records that we needed. I have also
15 filed two reports with the Court indicating what records
16 we have -- that were expected but have not been received.
17 In addition, we -- for Mr. Neldon Johnson, we issued a
18 subpoena requesting documents and his testimony.

10:35:09

19 Q. What happened -- and -- and that document
20 subpoena is one of the attachments to Plaintiff's Exhibit
21 937, correct?

10:35:38

22 A. I believe so. Yes.

23 Q. At page 22, correct?

24 A. Correct.

10:36:06

25 Q. What happened, Mr. Klein, after you served the

1 document subpoena on Mr. Johnson?

2 A. The day before he was scheduled to appear for his
3 deposition, he filed a motion for protective order.

4 Q. And this was with respect to the documents?

10:36:37

5 A. The protective order, I believe, related to his
6 obligation to appear for his deposition. So, in terms of
7 the documents, I have not received any documents.

8 Q. I'm going to direct your attention to the
9 document on the screen, ECF Number 591. Do you recognize
10 this document?

10:37:06

11 A. I do.

12 Q. It's the decision and order denying both
13 Johnson's Rule 26(c) motions, correct?

14 A. Yes.

10:37:18

15 Q. And in it we see that in the last sentence on the
16 introductory paragraph, it notes that Neldon Johnson did
17 file a motion for a protective order against the
18 production of documents in the response to the subpoena.
19 Do you see that?

10:37:34

20 A. I do.

21 Q. So, having given away the end a little bit, do
22 you recall what happened with respect to Mr. Johnson's
23 motion for protective order, with respect to the
24 documents?

10:37:46

25 A. The motion was denied by the Court.

1 Q. And do you recall by what date Mr. Johnson was
2 required to produce documents?

3 A. I believe he was required to produce documents by
4 March 24 -- March 22.

10:38:08

5 Q. So the last page of the order states that
6 Mr. Johnson is required to comply with the subpoena by
7 Friday, March 22, 2019, correct?

8 A. That's correct.

9 Q. Has Mr. Johnson complied with this Court order?

10:38:24

10 A. He has not.

11 Q. So you mentioned Mr. Johnson's deposition and
12 some proceedings around his deposition. Can you describe
13 a little bit how that conversation started?

10:38:50

14 A. Initially we indicated to Steven Paul my desire
15 to take the deposition of Mr. and Mrs. Johnson, and I
16 indicated a desire to have those depositions taken before
17 the end of 2018. In the end, Mr. Paul indicated that he
18 believed he would be able to accommodate their voluntary
19 appearance for a deposition but was unable to get that
20 arranged before the end of the year. So we had initially
21 set dates in mid-January for their deposition. And then
22 the day -- I believe it was the day before the scheduled
23 depositions, Mr. Paul notified me that they were -- would
24 not be appearing at deposition and that he would endeavor
25 to find another date that would work.

10:39:33

1 I was unsatisfied with leaving control with him
2 to pick another date, and so we issued subpoenas for their
3 depositions.

4 Q. Those deposition subpoenas are also in
10:39:53 5 Plaintiff's Exhibit 937, correct?

6 A. Yes.

7 Q. Did Mr. Johnson appear for his deposition on the
8 subpoenaed date?

9 A. He did not.

10:40:12 10 Q. What happened instead?

11 A. Instead he filed a motion claiming a privilege as
12 to why he should not be required to give testimony.

13 Q. And when did he file that?

14 A. That was filed I believe the day before his
10:40:39 15 scheduled deposition.

16 Q. Did he appear at that deposition?

17 A. He did not.

18 Q. Let's turn to Ms. Glenda Johnson and her
19 activities since the United States' motion for order to
10:41:14 20 show cause was filed. Has Glenda Johnson complied with
21 the obligation to turn over books and records to the
22 Receiver?

23 A. No.

24 Q. Has she provided a statement about documents that
10:41:36 25 she may have had in the past but doesn't currently have?

1 A. No.

2 Q. And let me just circle back. Has Mr. Johnson
3 provided you a statement detailing documents that he may
4 have once had or had control over that he no longer has?

10:41:54 5 A. He has not.

6 Q. With respect to Glenda Johnson, has she turned
7 over assets to you since the date of the United States'
8 motion?

9 A. No.

10:42:14 10 Q. Mr. Klein, why would you anticipate that Glenda
11 Johnson would have possession, custody or control of
12 documents required to be produced to you?

13 A. I had understood, from reading deposition
14 transcripts taken by the United States, that she was very
10:42:33 15 involved in bookkeeping for most of the entities. In
16 addition, the preliminary financial analysis being
17 performed by Loan Peak Valuation has indicated that she
18 was the signer on many of the checks that were issued out
19 of bank accounts of the Receivership entities and the
10:43:01 20 affiliated entities also.

21 Q. Once Mrs. Johnson did not voluntarily produce
22 books and records to you, what happened next?

23 A. I made requests to the law firm Nelson, Snuffer
24 asking whether or not they were -- should be the conduit
10:43:26 25 requesting information from her or whether I should

1 contact a different attorney or her directly, and the
2 response from Nelson, Snuffer was they should be the
3 conduit. And following up on that, we had -- I had
4 requested a deposition of Mrs. Johnson, which the same
10:43:45 5 situation as Mr. Johnson, we had initially set up their
6 voluntary appearance in mid-January. She did not appear.
7 So, I had a subpoena issued to her requesting documents
8 and deposition testimony.

9 Q. With respect to the documents, what did she do in
10:44:09 10 response to the subpoena?

11 A. She made a motion for a protective order.

12 Q. What happened with that motion?

13 A. The Court denied that motion.

14 Q. That was in the same order that we saw a moment
10:44:22 15 ago, ECF Number 591, correct?

16 A. Correct.

17 Q. And Ms. Johnson also had the compliance date of
18 March 22, 2019, correct?

19 A. Correct.

10:44:35 20 Q. And did Mrs. Johnson comply with that Court
21 order?

22 A. She did not.

23 Q. And you mentioned for Mrs. Johnson, as well, an
24 instance about her deposition. Could you walk us through
10:45:00 25 the process that you've undertaken to try to secure her

1 deposition?

2 A. When I was notified by Mr. Paul that they would
3 not be voluntarily appearing in mid-January, I caused a
4 subpoena to be issued to her requesting documents and her
10:45:19 5 appearance at deposition, and that was initially set for
6 mid-February, and on the day before her scheduled
7 deposition -- it may have been business day. It may have
8 been a Friday and her deposition was scheduled for a
9 Monday -- received a copy of a motion claiming spousal
10:45:43 10 privilege and indicating she would not be appearing.

11 Q. Did in fact Mrs. Johnson appear in mid-February
12 for her deposition?

13 A. She did not.

14 Q. What happened with Mrs. Johnson's motion for a
10:46:00 15 protective order to not testify at a deposition?

16 A. We filed a response explaining the -- arguing
17 that the law does not allow her -- does not excuse her
18 from attending the deposition based on spousal privilege,
19 but it was up to her to identify any questions that --
10:46:25 20 where the response might implicate the spousal privilege.
21 The Court issued an order indicating that, because the
22 Receiver had expressed an intent to not question her about
23 items that might -- that would be subject to spousal
24 privilege, that she was ordered to appear at a deposition
10:46:45 25 at a date set by the Receiver but before March 22.

1 Q. And is that Court's orders reflected in ECF
2 number 593?

3 A. It is.

10:47:06

4 Q. And just to be clear, that order required
5 Mrs. Johnson to appear for her deposition by no later than
6 March 22, 2019, correct?

7 A. Yes.

8 Q. What, if anything, did you do after this order
9 issued?

10:47:18

10 A. We notified Steven Paul that we intended to take
11 her deposition on March 20.

12 Q. What, if any, response did Mr. Paul have?

13 A. I had communications from him indicating that he
14 had communicated that to her and he had advised her to
15 appear.

10:47:42

16 Q. What happened on March 20?

17 A. On March 20, we were ready to take her
18 deposition. In fact, Mr. Paul was also there, but he
19 notified us that Mrs. Johnson was not going to be
20 appearing.

10:48:04

21 Q. Did Mrs. Johnson appear on March 20?

22 A. She did not.

23 Q. Since March 20, have you secured Mrs. Johnson's
24 deposition?

10:48:15

25 A. I have not.

1 Q. Now I'd like to turn to LeGrand and Randale
2 Johnson. To your understanding, what roll specific to
3 these obligations in the Receivership order did LeGrand
4 and Randale Johnson have?

10:48:56

5 A. Well, the order specifically identifies them as
6 being required to deliver to the Receiver any documents
7 they may have relating to the Receivership defendants.

10:49:14

8 Q. And why do you think that they might have
9 documents and information related to the Receivership
10 defendants?

11 A. Both of those were identified as officers and
12 directors of International Automated Systems.

10:49:32

13 Q. So, since the date the United States filed the
14 motion for order to show cause, has LeGrand Johnson
15 provided books and records to you?

16 A. I have received nothing from him.

17 Q. Has LeGrand Johnson provided any statement to you
18 about what documents he does not have, why he does not
19 have them and what happened to them?

10:49:47

20 A. No.

21 Q. What about Randale Johnson? Has he turned over
22 books and records to you?

23 A. He has not.

10:50:06

24 Q. Has he provided any sworn -- excuse me -- any
25 statement about what documents he may have had, why he may

1 not have them and what happened to them?

2 A. No.

3 Q. I would like to show you, Mr. Klein, Plaintiff's
4 Exhibit 941, if you would take a look at that on your
10:50:50 5 screen.

6 A. I see that.

7 Q. Do you recognize Plaintiff's Exhibit 941?

8 A. Yes.

9 Q. What is it?

10:50:58 10 A. It's a communication I received from Steven Paul
11 on April 15, an email with some attached documents, copies
12 of checks.

13 Q. And those documents are from LeGrand Johnson,
14 correct?

10:51:14 15 A. That is correct. So my prior answer was
16 incorrect, that I did receive from Steven Paul copies of
17 checks from LeGrand Johnson.

18 Q. To your understanding, is that a comprehensive
19 production of all of the documents that LeGrand Johnson
10:51:32 20 may be required to provide to the Receiver?

21 A. That does not reflect all the documents that I
22 would expect LeGrand Johnson to have.

23 Q. How come?

24 A. As an officer and a director of a publicly held
10:51:49 25 company, he is under obligations to verify information

1 that -- financial records and annual reports filed by the
2 company. The company is required to have board meetings
3 at which the members of the board of directors are
4 required to review and approve certain actions. And I had
10:52:13 5 received copies of documents early after my appointment
6 from Nelson, Snuffer discussing some of the transfers of
7 assets from IAS or RaPower to the Neldon P. Johnson, N. P.
8 Johnson Family Limited Partnership and from there to Nevis
9 based entities. And some of those documents have
10:52:43 10 signatures of LeGrand Johnson and Randale Johnson, so I
11 would expect them to have copies of documents that --
12 relating to these foreign -- these transfers and foreign
13 entities because they appeared to be authorized signers on
14 behalf of other entities. And they -- in addition, one or
10:53:06 15 both of them are authorized signers on bank accounts. And
16 so I found, from -- received the information from Loan
17 Peak Valuation, copies of checks showing they had signed
18 checks on behalf of the companies.

19 MS. HEALY GALLAGHER: Your Honor, at this time I
10:53:23 20 would move to admit Plaintiff's Exhibit 941.

21 THE COURT: Any objection from anyone?

22 MR. N. JOHNSON: No.

23 MR. SHEPARD: No.

24 MR. PAUL: No objection.

10:53:35 25 MR. N. JOHNSON: There is one correction I

1 would --

2 THE COURT: That's what cross examination is for.
3 941 is received.

4 (Plaintiffs' Exhibit 941 received in evidence.)

10:53:43 5 MR. N. JOHNSON: Okay. Sorry.

6 Q. BY MS. HEALY GALLAGHER: Mr. Klein, you mentioned
7 banking signatures?

8 A. Yes.

9 Q. I would like to show you what's been marked
10:54:04 10 Plaintiff's Exhibit 834, which is a collection of bank
11 signature cards. Do you see that?

12 A. I do.

13 Q. Would you take a look, please, at page 11, for
14 example, of Plaintiff's Exhibit 834. This appears to be
10:54:44 15 some information about LeGrand Johnson as part of a bank
16 signature card, correct?

17 A. Yes.

18 Q. And on the following page we see LeGrand
19 Johnson's signature, correct?

10:55:03 20 A. It's a signature underneath the line that says
21 LeGrand Johnson, yes.

22 Q. Sure. This, for example, is for Solco I, LLC,
23 correct?

24 A. Yes.

10:55:23 25 MS. HEALY GALLAGHER: At this time I move to

1 admit Plaintiff's Exhibit 834.

2 THE COURT: 834, any objection?

3 MR. PAUL: Yes, I do have objection. I guess

4 foundation. It's a 70-page document, and she's

10:55:39

5 referenced, I believe, two pages. We don't know what else

6 is in here and what its relevance or purpose would be. So

7 I don't have an objection to the couple of pages we have

8 talked about, but for 70 pages to come in without a

9 foundation I think is overbroad.

10:55:53

10 THE COURT: Which pages did you use Ms. Healy

11 Gallagher?

12 MS. HEALY GALLAGHER: I used 11 and 12, but, Your

13 Honor, these documents are -- this Exhibit was actually

14 marked for trial but never used. We do have business

10:56:06

15 records, declarations that provide all necessary

16 evidentiary foundation for these. I don't happen to have

17 them with me, but I can submit them.

18 THE COURT: Declarations by the bank of American

19 Fork?

10:56:18

20 MS. HEALY GALLAGHER: By all of the entities for

21 all of the bank signatures cards in this exhibit.

22 THE COURT: Are you going to use more signature

23 cards than 11 and 12?

24 MS. HEALY GALLAGHER: Well, there are other

10:56:30

25 signature cards for Receivership defendants throughout

1 this exhibit, and I can -- if you'd like, I can identify
2 at least a few of those.

3 THE COURT: And do they show LeGrand and Randale
4 Johnson?

10:56:39

5 MS. HEALY GALLAGHER: They show at least LeGrand
6 Johnson. I can -- like, for example, this first page,
7 page 1, is for a bank account for IAS, which shows both
8 Neldon Johnson and LeGrand Johnson's signatures.

10:56:55

9 THE COURT: Well, to the extent you want to use
10 the other pages, that's great. To the extent that we have
11 used 11 and 12, I think they will be received unless
12 anyone else has an objection to them that I should
13 consider? Then I will receive pages 11 and 12 only of
14 834. Since this is a bench case, you don't need to
15 physically segregate them, and if you want to use others,
16 that's great.

10:57:14

17 MS. HEALY GALLAGHER: I would submit this page 1
18 through 3.

10:57:45

19 THE COURT: And that's a Bank of American Fork
20 record?

21 MS. HEALY GALLAGHER: Yes.

22 THE COURT: Okay.

23 MS. HEALY GALLAGHER: As one example.

10:57:53

24 Q. BY MS. HEALY GALLAGHER: Now, Mr. Klein, do I
25 understand your testimony a moment ago to be correct that

1 you understand that there are other accounts on which
2 LeGrand Johnson has signature authority?

3 A. Yes.

4 Q. That's from the documents that you have reviewed
10:58:05 5 from the banks?

6 A. Yes, that have been provided to me by the
7 forensic accountants.

8 Q. I'm also pulling up Plaintiff's Exhibit 507.
9 Plaintiff's Exhibit 507 was admitted at trial. It's the
10:58:45 10 2016 10-K for International Automated Systems. Have you
11 seen this document before, Mr. Klein?

12 A. I have. You passed it. Are you looking for the
13 officers?

14 Q. Sure. Direct me where.

10:59:15 15 A. Go up one more page. One more. Keep going.
16 There we go.

17 Q. There we go. Okay. Looking at page 26 of
18 Plaintiff's Exhibit 507, do you see the names of the
19 officers and directors of International Automated Systems
10:59:31 20 on this page?

21 A. This page indicates that Randale Johnson is
22 secretary and vice-president and LeGrand Johnson is chief
23 financial officer. And it appears from this that I was
24 mistaken. They are officers but not directors.

11:00:12 25 MS. HEALY GALLAGHER: I'd ask that 507 be

1 admitted for purposes of this hearing as well.

2 THE COURT: Any objection?

3 MR. PAUL: No objection.

4 MR. N. JOHNSON: No objection.

11:00:20 5 MR. SHEPARD: No objection.

6 THE COURT: It's received. Thank you.

7 (Plaintiff's Exhibit 507 received in evidence.)

8 Q. BY MS. HEALY GALLAGHER: I'm showing you,
9 Mr. Klein, what's been marked Plaintiff's Exhibit 946. Do
11:00:38 10 you recognize Plaintiff's Exhibit 946?

11 A. I do.

12 Q. What is it?

13 A. It's the operating agreement for the entity Solco
14 I, LLC, dated August 18, 2017.

11:00:53 15 Q. Is Solco I, LLC, a Receivership defendant?

16 A. It is not a Receivership defendant. It is one of
17 the affiliates and subsidiaries identified in the
18 Receivership order, but it is not currently a Receivership
19 defendant.

11:01:09 20 Q. And, therefore, it's subject to the asset freeze,
21 correct?

22 A. It is subject to the asset freeze.

23 Q. If we take a look at page 4 of Plaintiff's
24 Exhibit 946, can you tell us who the members of Solco I
11:01:32 25 are?

1 A. There are three members, Randale Johnson, LeGrand
2 Johnson and Glenda Johnson, each owning one-third
3 interest.

11:02:16

4 Q. Would you take a look, please, at page 21,
5 specifically paragraph 13.2. Can you see that?

6 A. I do.

7 Q. We'll get there. 13.2 addresses the books and
8 records of Solco I. Do you see that?

9 A. I do.

11:02:36

10 Q. And the last sentence of paragraph 13.2 states
11 that those books and records shall be open to inspection
12 by all members, correct?

13 A. Yes. And earlier in that paragraph also requires
14 the creation and maintenance of books.

11:03:17

15 Q. Now I'm on page 28 of Plaintiff's Exhibit 946.
16 Could you let us know what date this operating agreement
17 was signed?

18 A. August 18, 2017.

11:03:40

19 Q. And under the member heading, I understand you
20 may not recognize signatures, but what are the names?

21 A. Randale P. Johnson, LeGrand T. Johnson and Glenda
22 E. Johnson.

23 Q. Who is identified as the manager for Solco I?

24 A. Neldon P. Johnson.

11:04:06

25 MS. HEALY GALLAGHER: I move for the admission of

1 Plaintiff's Exhibit 946.

2 MR. PAUL: No objection.

3 MR. SHEPARD: No objection.

4 THE COURT: It's received.

11:04:23

5 (Plaintiff's Exhibit 946 received in evidence.)

6 Q. BY MS. HEALY GALLAGHER: Mr. Klein, directing
7 your attention to Plaintiff's Exhibit 947 up on the
8 screen, do you recognize Plaintiff's Exhibit 947?

9 A. I do.

11:04:34

10 Q. It's the limited liability operating agreement
11 for XSun Energy, LLC, correct?

12 A. Yes.

13 Q. Is XSun Energy a Receivership defendant so far?

14 A. It is not a Receivership defendant, but it is an
15 affiliate identified in the Receivership order.

11:04:45

16 Q. And it is subject to the asset freeze, correct?

17 A. Yes.

18 Q. Do you see when this operating agreement was
19 entered into?

11:04:57

20 A. It's dated April 18, 2011.

21 Q. Between what parties?

22 A. Between -- Solstice Enterprises, Inc. was
23 identified as the sole member and Neldon P. Johnson.

24 Q. Solstice Enterprises, where is that incorporated?

11:05:21

25 A. In Nevis, an Island in the Caribbean.

1 Q. Would you take a look, please, at page 3,
2 paragraph 4.9, Records. And could you summarize what that
3 provision requires.

4 A. This requires -- it says the manager, who is
11:06:01 5 identified earlier as Neldon Johnson, shall cause the
6 company to keep a list of each member, corporate documents
7 relating to the formation of an operating agreement,
8 copies of tax returns and financial statements for the
9 company.

11:06:26 10 Q. What about Article 6? What's that about?

11 A. Article 6 identifies the bookkeeping requirements
12 for the company. And it says in 6.1 that managers shall
13 maintain complete and accurate books of the company's
14 affairs and identifies the accounting method to use.

11:06:50 15 Q. When we get to the signature block, who has --
16 well, whose name is there for Solstice Enterprises, Inc.?

17 A. It's signed on behalf of Solstice Enterprises by
18 LeGrand T. Johnson, who is identified as a director of
19 Solstice.

11:07:07 20 Q. And as the manager of XSun?

21 A. That's Neldon Johnson.

22 MS. HEALY GALLAGHER: Move to admit Plaintiff's
23 Exhibit 947.

24 MR. PAUL: No objection.

11:07:25 25 MR. N. JOHNSON: No objection.

1 MR. SHEPARD: No objection.

2 THE COURT: 947 is received.

3 (Plaintiff's Exhibit 947 received in evidence.)

11:07:33

4 Q. BY MS. HEALY GALLAGHER: Mr. Klein, I'm showing
5 you what's been marked Plaintiff's Exhibit 948. Do you
6 recognize Plaintiff's Exhibit 948?

7 A. I do.

8 Q. It is the shareholder agreement for Solstice
9 Enterprises, correct?

11:07:44

10 A. Yes.

11 Q. When was it entered into?

12 A. February 1 of 2014.

13 Q. By whom?

11:08:26

14 A. It's between Randale Johnson, LeGrand Johnson and
15 Neldon Johnson.

16 Q. When we get down to the signature block, what
17 names appear under the shareholders?

18 A. Randale Johnson, LeGrand Johnson and Neldon
19 Johnson.

11:08:46

20 Q. And who signed on behalf of Solstice Enterprises?

21 A. That's signed by LeGrand Johnson, who is
22 identified as the president and sole director.

23 Q. And also?

11:09:05

24 A. And also by Neldon Johnson, who is the --
25 identified as the president elect and the sole director

1 elect.

2 MS. HEALY GALLAGHER: Move to admit Plaintiff's
3 Exhibit 948.

4 THE COURT: Any objection?

11:09:18 5 MR. PAUL: No objection.

6 MR. N. JOHNSON: No objection.

7 MR. SHEPARD: No objection.

8 THE COURT: 948 is received.

9 (Plaintiff's Exhibit 948 received in evidence.)

11:09:32 10 Q. BY MS. HEALY GALLAGHER: Showing you, Mr. Klein,
11 what's been marked as Plaintiff's Exhibit 949, do you
12 recognize this document?

13 A. I do.

14 Q. What is it?

11:09:41 15 A. It's a voting trust agreement relating to
16 Solstice Enterprises dated February 1 of 2014.

17 Q. Among which parties?

18 A. Between Randale Johnson, LeGrand Johnson and
19 Neldon Johnson.

11:09:55 20 Q. And do you have an understanding of what this
21 voting trust agreement was for?

22 A. Yes.

23 Q. What was it for?

24 A. Solstice Enterprises had, I believe, three --
11:10:08 25 three different owners, and this agreement identified that

1 all three owners were delegating to Neldon Johnson their
2 rights to vote the shares, the membership interest and
3 that Neldon Johnson was to have exclusive authority to
4 make all decisions on behalf of the company.

11:10:47 5 Q. Could we scroll down do where the shareholders
6 have all signed. Whose names do we see?

7 A. Randale Johnson, LeGrand Johnson and Neldon
8 Johnson.

9 Q. And Mr. Johnson signed as the trustee, correct?

11:11:01 10 A. Yes.

11 Q. Meaning that he would be the one holding the
12 votes?

13 A. He was the trustee under the voting trust.

14 MS. HEALY GALLAGHER: Move to admit Plaintiff's
11:11:11 15 Exhibit 949.

16 THE COURT: Any objection?

17 MR. N. JOHNSON: No objection.

18 MR. SHEPARD: No objection.

19 MR. PAUL: No objection.

11:11:19 20 THE COURT: 949 is received.

21 (Plaintiffs' Exhibit 949 received in evidence.)

22 Q. BY MS. HEALY GALLAGHER: Showing you, Mr. Klein,
23 what's been marked as Plaintiff's Exhibit 950, do you
24 recognize Plaintiff's Exhibit 950?

11:11:31 25 A. I do.

1 Q. Just to show you the full page so you can get a
2 look at it, what is Plaintiff's Exhibit 950?

3 A. It is a notice by Neldon Johnson that he has
4 resigned as trustee of the voting trust and the voting
11:11:48 5 trust has been terminated, and also he resigned as an
6 officer of Solstice Enterprises -- I believe officer and
7 director.

8 Q. And what's the date of this notice of
9 resignation?

11:12:04 10 A. July 16 of 2018.

11 Q. Do you know if that was before or after trial in
12 this case?

13 A. It was after trial.

14 Q. Was it before or after Judge Nuffer entered
11:12:15 15 preliminary findings of fact and his intention to issue an
16 injunction and disgorgement?

17 A. My understanding is that the bench ruling was on
18 June 22 of 2018. So this would have been after.

19 Q. And if we scroll down to the bottom of the page,
11:12:41 20 what is this text telling us?

21 A. That Mr. Johnson was also resigning as sole
22 director, president and treasurer -- secretary and
23 treasurer of Solstice Enterprises, and the shareholder
24 agreement was terminated.

11:12:58 25 Q. And this is also dated July 16, 2018, correct?

1 A. Yes.

2 MS. HEALY GALLAGHER: Move to admit Plaintiff's
3 Exhibit 950.

4 THE COURT: Any objection?

11:13:09 5 MR. PAUL: No objection.

6 MR. N. JOHNSON: No objection.

7 MR. SHEPARD: No objection.

8 THE COURT: 950 is received.

9 (Plaintiff's Exhibit 950 received in evidence.)

11:13:24 10 Q. BY MS. HEALY GALLAGHER: Just to make sure I've
11 covered the field, has -- no. We did talk about that.
12 Withdrawn.

13 Let's turn to Mr. Shepard. To your
14 understanding, Mr. Klein, has Mr. Shepard turned over all
11:14:11 15 of the books and accounting records he is required to
16 produce to you under the Receivership order?

17 A. He has not.

18 Q. Has he provided a statement to you that, you
19 know, he once had documents but now they are not in his
11:14:36 20 possession, custody or control?

21 A. He has not.

22 Q. Since the date of the United States' motion for
23 order to show cause, has he turned over any assets to you?

24 A. No.

11:14:56 25 Q. Since the date of the United States' motion, has

1 Mr. Shepard provided the detailed financial accounting
2 regarding his assets, transfers of money or assets or
3 payments to, from or on behalf of his family members or
4 other insiders?

11:15:16

5 A. Not in connection with -- not in the manner
6 required by the order. In connection with his separate
7 contempt proceedings against him, I did obtain some
8 information regarding his mortgage and transfer of his
9 interest in his residence.

11:15:37

10 Q. That's right. Mr. Shepard has already been held
11 in contempt once, right?

12 A. Yes.

11:16:17

13 Q. Mr. Klein, we've talked about the various
14 failures of the respondents to comply with the affirmative
15 disclosure requirements and the same failures that violate
16 the duty to cooperate. Now I'd like to talk a little bit
17 about why these failures matter. Let's say, for example,
18 you did receive all of the bank records in this matter.
19 Would that give you all of the information that you need
20 to complete your work?

11:16:39

21 A. No.

22 Q. Why not?

11:16:52

23 A. Because the bank records constitute the first
24 step in the financial analysis, understanding what monies
25 came in, what monies went out, but in order to identify

1 whether or not there were transfers that need to be
2 recovered on behalf of the Receivership estate, I need to
3 understand the reasons for the payments. Why were funds
4 sent out to various people, and what did the company
11:17:12 5 receive in return? Were there invoices reflecting --
6 showing what the expenses were for? Were payments to
7 certain people because they were employees? Which ones
8 were contractors? Which ones may be related? And so it's
9 that information that I'm lacking in order to analyze
11:17:33 10 which assets need to be recovered.

11 Q. And why is it important to have information from
12 the defendants -- or excuse me -- the respondents in this
13 matter to be able to compare it with the bank records?

14 A. Well, two reasons. One is that if I can get
11:17:58 15 the -- by analyzing the bank records, reconstructing the
16 bank records, I have an independent source of records that
17 I know to be accurate because they are maintained by the
18 bank. And so, if I can get their QuickBooks records and
19 their internal books and their ledgers and journal
11:18:18 20 entries, I can see not only what happened, but I will be
21 able to measure the accuracy of the internal records.

22 And to the extent that I can determine that their
23 internal records match what the bank records are, that
24 gives me a higher confidence in the internal records, and
11:18:36 25 I can then use those to move forward with the

1 investigation rather than having to reconstruct everything
2 on my own, which would substantially accelerate my work as
3 the Receiver.

4 Q. I believe you mentioned you had been able to
11:18:55 5 complete some work with respect to reconstructing the
6 financial transactions at issue here. Can you give us an
7 example of how some of that work shows you that you really
8 need this information from the defendants?

9 A. Well, for example, we've -- I was investigating
11:19:22 10 the -- let me back up. I have understood from Court
11 filings that funds were paid to Snell & Wilmer for a
12 bankruptcy that it filed on behalf of RaPower. And I
13 understood from Court filings that Snell & Wilmer received
14 those funds from RaPower -- I'm sorry -- from Nelson,
11:19:47 15 Snuffer. And I had also understood, from those filings,
16 that Nelson, Snuffer indicated those funds had derived
17 from Glenda Johnson. So I had asked Loan Peak Valuation
18 if they could identify some payments -- the sources of
19 funds to -- that Glenda Johnson had used to make payments
11:20:11 20 to Nelson, Snuffer. And they identified -- so then they
21 were able to identify for me some of the transactions,
22 some of the payments from Receivership entities and
23 affiliated entities to Glenda Johnson that told me that
24 she had received substantial amounts of money from the
11:20:30 25 Receivership entities and affiliates that then I could try

1 and narrow the question as to whether or not it was -- she
2 was using company funds to send those payments to Nelson,
3 Snuffer.

4 Q. Did you take a look in particular at transfers,
11:20:50 5 for example, between RaPower-3 and Cobblestone center?

6 A. We did. As a result of some of the things we
7 found, I instructed Loan Peak to keep looking and to
8 identify transfers that went from RaPower to Cobblestone,
9 RaPower to Glenda Johnson, and transfers from Cobblestone
11:21:11 10 to Glenda Johnson.

11 Q. Have you prepared a summary chart that would help
12 walk through some of the things that you have learned?

13 A. I have.

14 MS. HEALY GALLAGHER: If I may have a moment,
11:21:49 15 Your Honor.

16 THE COURT: Yes.

17 MS. HEALY GALLAGHER: Your Honor, I can deliver
18 these electronically after the hearing, but I have paper
19 for right now.

11:23:13 20 THE COURT: Sure. Thanks. Thank you.

21 MS. HEALY GALLAGHER: There is two exhibits I
22 handed up, Your Honor, Plaintiff's Exhibit 943 --

23 THE COURT: Does Plaintiff's Exhibit 943 have one
24 or two pages?

11:23:41 25 MS. HEALY GALLAGHER: It has one page, so I gave

1 you two copies.

2 THE COURT: Okay. Actually, I think I got three,
3 so did somebody else get shorted?

4 MS. HEALY GALLAGHER: Oh. I don't think so, but
11:23:48 5 I can take it back.

6 THE COURT: Okay. Thanks. And thanks for both
7 the copies.

8 Q. BY MS. HEALY GALLAGHER: All right, Mr. Klein,
9 I'm showing you what's been marked Plaintiff's Exhibit
11:24:12 10 943. Is Plaintiff's Exhibit 943 the summary you prepared?

11 A. Yes.

12 Q. And I've also handed around Plaintiff's Exhibit
13 945. We'll just take a look at that real quick. Can you
14 tell us quickly, Mr. Klein, what Plaintiff's Exhibit 945
11:24:39 15 is?

16 A. 945 consists of copies of bank records showing
17 particular transactions relating to RaPower, Cobblestone,
18 Glenda Johnson and others, and so these are the copies of
19 either deposit slips, bank statements or withdrawal slips,
11:25:06 20 showing transfers of funds.

21 Q. So, if we go back to Plaintiff's Exhibit 943, can
22 you just walk us through this summary chart and let us
23 know what it is we see here?

24 A. This exhibit focuses -- summarizes some transfers
11:25:28 25 that we found from RaPower to Cobblestone Center, which

1 was an affiliated entity. So the first enter column shows
2 the date of the transfer, the second column the amount,
3 and the third column reflects where on Exhibit 945 details
4 regarding those transfers can be found. And there's a
11:25:52 5 footnote at the bottom relating to one of the transfers.

6 Q. So let's just walk through. There are about
7 seven transactions on Plaintiff's Exhibit 943. I don't
8 think we need to talk about all of them, but what are some
9 of the key transactions that caught your eye on this
11:26:21 10 chart?

11 A. There are three of them that stood out to me.
12 The first is the August 7, 2014 transfer for of \$315,000.
13 The second one is the February 5, 2018 transfer of a
14 million dollars, primarily because of the size, and then
11:26:39 15 the June 22, 2018 transfer of \$140,000 because of the
16 date.

17 Q. Okay. Let's just walk through those so we can
18 illustrate both how to use this chart and the reasons for
19 your curiosity. So let's start off with the transaction
11:27:00 20 on August 7, 2014 for \$315,000. Why were you interested
21 in that transaction?

22 A. Because that transaction was at the same time as
23 the -- as one of the real estate properties that were
24 purchased by Glenda Johnson and put into her name.

11:27:26 25 Q. So if we were going to try to trace that

1 transaction through the documents in Plaintiff's Exhibit
2 945, what would we do?

3 A. Well, we would go to the individual pages, the
4 reference there, but it might be helpful to explain, I
11:27:50 5 guess, the process that I used sort of going -- working
6 backwards. We first identified a transaction that
7 appeared to have occurred at the same time as a transfer
8 of funds. And then we looked to see what was the source
9 of funds used to purchase that real estate, and then we
11:28:09 10 found that it was Cobblestone.

11 So we looked to see whether or not those funds
12 had originated with Cobblestone or had been transferred
13 into Cobblestone from a different entity.

14 Q. What did you find when you looked?

11:28:22 15 A. What we found is that RaPower transferred 350 --
16 \$315,000 from the RaPower bank account to the Cobblestone
17 Center bank account. And then, from there, \$313,000 of
18 that amount was wired to First American Title for the
19 purchase of one of the properties in Glenda Johnson's
11:29:14 20 name.

21 Q. Let's take a look at page 16 of Plaintiff's
22 Exhibit 945.

23 A. Yes.

24 Q. What are we looking at, at this page?

11:29:22 25 A. This is the Wells Fargo bank statement for

1 Cobblestone Center, account number 2450, dated August 7,
2 2014.

3 Q. And if we go to page 18, this is the same account
4 statement, correct?

11:29:56

5 A. Yes.

6 Q. I'm showing you a portion of page 18. What of
7 interest do you see in this portion?

11:30:15

8 A. Well, on the August 7, there is a wire transfer
9 from Cobblestone to first American Title Company in the
10 amount of \$312,893.32. But then we also see that, earlier
11 that same day, there is a wire into this Cobblestone
12 account from RaPower in the amount of \$315,000.

13 THE COURT: I'm sorry, but what year is this?

14 THE WITNESS: 2014.

11:30:46

15 THE COURT: 2014. Thank you.

16 THE WITNESS: And part of the reason -- if we
17 look at the beginning of the bank statement for that
18 month, we'll also see the extent to which Cobblestone had
19 sufficient funds in its account to make that payment
20 without this infusion of funds, and we see that the
21 beginning of this period, this account had, I believe,
22 \$8,000.

11:31:00

23 Q. BY MS. HEALY GALLAGHER: Give me one second, and
24 we'll get there. So we're back on page 16 of Plaintiff's
25 Exhibit 945, and at the bottom of the page, is this

11:31:25

1 activity summary what you're referring to?

2 A. It is and shows the beginning balance and the
3 beginning of the reporting period for the account
4 statement was \$12,555.78.

11:31:42

5 Q. So at the beginning of this month, it would not
6 have been possible for Cobblestone Center to pay out
7 \$313,000.00, correct?

8 A. Correct.

11:32:04

9 Q. We're taking a look now at page 21 of Plaintiff's
10 Exhibit 945. What are we looking at here, Mr. Klein?

11 A. A check made out on the account of Cobblestone
12 Center to First American Title Company in the amount of
13 \$1,000.00 signed by Glenda Johnson, and the memo line
14 indicates it is for the -- it is earnest money for the
15 purchase of property on Sherwood Drive.

11:32:24

16 Q. And on page 22 of Plaintiff's Exhibit 945, what
17 do we see here?

11:32:53

18 A. That is a printout from the records of Millard
19 County Recorder's Office showing a -- the recording of a
20 warranty deed from Brett Peterson to Glenda Johnson for
21 this property. It was recorded on August 8 of 2014.

22 Q. What, if anything else, would you like to share
23 about this transaction?

11:33:27

24 A. Well, just the net effect is that RaPower paid --
25 provided the funds used to purchase property that was in

1 Glenda Johnson's name and did it through Cobblestone
2 Center rather than directly from RaPower.

3 Q. What does this transaction suggest to you?

4 A. Well, it suggests to me two things. One is that
11:33:52 5 it was funds from RaPower that was used to purchase an
6 asset that is being held in the name of Glenda Johnson;
7 and, number 2, that it was -- the funds were transferred
8 through Cobblestone Center rather than being paid
9 directly, which makes me wonder why the transfer was done,
11:34:15 10 and so it makes me want to know why, as to whether or not
11 there was a desire to have the transaction through an
12 entity other than RaPower.

13 Q. Do you anticipate being able to learn that
14 information from any source other than the respondents in
11:34:36 15 this matter?

16 A. I don't. I don't know where I could get that
17 information other than from the respondents.

18 Q. So that August 7, 2014 transaction was one that
19 interested you on Plaintiff's Exhibit 943. What was the
11:35:03 20 next one that interested you?

21 A. The February 5 of 2018, in the million dollar
22 amount.

23 Q. Where do we find that on Plaintiff's Exhibit 945?
24 Is that on page 36?

11:35:32 25 A. I believe so, yes. On page 36 it shows that

1 there was a transfer from the RaPower-3 bank account at
2 Bank of American Fork to the Cobblestone savings account,
3 also at Bank of American Fork, in the amount of \$1
4 million. I will note that the account statement says
11:35:58 5 People's International Bank. That's the heading on the
6 account statement. And Bank of American Fork is, I
7 understand, a division of People's Intermountain Bank.

8 Q. So, Mr. Klein, you obtained this page 36 from
9 Bank of American Fork?

11:36:14 10 A. Correct.

11 Q. And I'm going to zoom in to make sure we can see
12 here. And as you said, this is a part of an account
13 statement for RaPower-3?

14 A. Yes.

11:36:23 15 Q. From February, 2018?

16 A. Yes.

17 Q. And we're about two-thirds of the way down the
18 page under the heading, Other Decreases to Checking.

19 Correct?

11:36:38 20 A. Yes.

21 Q. That's where it says transfer to Cobblestone
22 savings in the amount of \$1 million, correct?

23 A. Correct.

24 Q. Do you have any information about what that money
11:36:55 25 was for?

1 A. I do not. And it's important because if
2 Cobblestone Center is not made part of the Receivership
3 estate, then I have a million-dollar transfer to an entity
4 that's not in the Receivership estate, and I need to
11:37:18 5 determine whether or not RaPower received reasonably
6 equivalent value for this transfer of a million dollars.

7 Q. Is there any way to do that without information
8 from the respondents in this matter?

9 A. No.

11:37:33 10 Q. All right. Let's take a look at the last
11 transaction on Plaintiff's Exhibit 943 that caught your
12 eye. Which one was that?

13 A. That's June 22, 2018.

14 Q. Why did this transaction interest you?

11:37:46 15 A. Because this occurred the same day as the bench
16 ruling on the last day of trial in the enforcement
17 action.

18 Q. And where can we find this transaction in
19 Plaintiff's Exhibit 945?

11:38:01 20 A. Pages 41 and 46.

21 Q. On page 41, Mr. Klein, what are we looking at?

22 A. This is the bank statement for RaPower-3, dated
23 June 29, 2018, from Bank of American Fork.

24 THE COURT: I'm sorry. What page are we on?

11:38:35 25 MS. HEALY GALLAGHER: Page 41. It might be hard

1 to find.

2 THE COURT: It sure is. It's 2906 is the BAF
3 Bates number? Okay, yeah.

4 MS. HEALY GALLAGHER: That's right.

11:38:50 5 THE COURT: Thanks.

6 Q. BY MS. HEALY GALLAGHER: And if we take a look at
7 the heading marked Other Decreases to Checking, is that
8 where we find this transaction, Mr. Klein?

9 A. Yes. And it shows June -- 6/22, transfer to
11:39:05 10 Cobblestone savings account in the amount of
11 \$140,000.00.

12 THE COURT: Can I just ask a question about that
13 page also. On June 27, it shows a transfer from Glenda
14 Savings for R&D expenses. Do you see that?

11:39:27 15 THE WITNESS: I do.

16 THE COURT: Did you find a corollary account
17 called Glenda Savings?

18 THE WITNESS: I do not have any of the bank
19 accounts for Glenda Johnson.

11:39:41 20 THE COURT: Why?

21 THE WITNESS: Because the -- we have -- we were
22 hoping to get those accounts from the defendants, and
23 until we found these in the last few weeks, I didn't have
24 a basis to subpoena her bank accounts.

11:40:05 25 THE COURT: And this is an account for RaPower,

1 correct, this statement right here?

2 THE WITNESS: Yes.

3 THE COURT: And this notation on that transfer
4 from Glenda Savings, R&D expenses, do you have records
11:40:20 5 from RaPower itemizing these \$20,000 in R&D expenses?

6 THE WITNESS: I do not.

7 THE COURT: Okay. Thanks. I'm sorry to
8 interrupt you.

9 MS. HEALY GALLAGHER: Not at all.

11:40:45 10 Q. BY MS. HEALY GALLAGHER: And, Mr. Klein, if I
11 could turn your attention to page 43 of Plaintiff's
12 Exhibit 945, what are we looking at here?

13 A. This is the bank account for Cobblestone Center
14 at Bank of American Fork on June 29 of 2018.

11:41:06 15 Q. And that, for the record, is the Bank of American
16 Fork Bates number 2943.

17 THE COURT: Thanks.

18 Q. BY MS. HEALY GALLAGHER: Now I'm on Bates number
19 2946, which is page 46 of Plaintiff's Exhibit 945. That's
11:41:28 20 the same account statement, correct?

21 A. Yes.

22 Q. And under transactions, at 622, the first
23 instance there, what do we see?

24 A. It's a transfer to Cobblestone Center in a
11:41:49 25 hundred-thousand dollars.

1 Q. And the second line item?

2 A. Is a transfer from RaPower-3 to this Cobblestone
3 account in the name of -- in the amount of \$140,000.

4 Q. Mr. Klein, you said that this particular
11:42:12 5 transaction caught your eye because of its timing, it was
6 the same date as the bench ruling at trial in this matter.
7 Were there any other transactions that caught your eye
8 because of a similar date?

9 A. Yes. And so I asked Loan Peak Valuation to see
11:42:32 10 what other transactions may have occurred in the time
11 frame around the Court's order, and we found, on this
12 account statement, that the same date that RaPower
13 transferred -- that on the same date that Glenda
14 Johnson transferred \$140,000 from RaPower to Cobblestone,
11:42:50 15 she also transferred \$1,945,000 and \$500 from the
16 Cobblestone bank account to her personal savings
17 account.

18 Q. And we see that in Plaintiff's Exhibit 945, page
19 46, correct?

11:43:10 20 A. Correct.

21 Q. That line item is directly below the \$140,000
22 transfer we just talked about?

23 A. Yes.

24 Q. Mr. Klein, did you prepare a summary of other
11:43:25 25 transactions particularly around June 20, '18?

1 A. I did. Because of this, I prepared another
2 summary showing what other transactions occurred around
3 this time frame that would show other transactions during
4 this time.

11:43:41

5 MS. HEALY GALLAGHER: May I have a moment, Your
6 Honor?

7 THE COURT: Sure.

8 Mr. Johnson?

9 MR. N. JOHNSON: Yes. That's fine. Thank you.

11:44:02

10 THE COURT: You appear to be sleeping through
11 most of this hearing. Is there a reason?

12 MR. N. JOHNSON: No. I am paying really close
13 attention. Thank you. I do better that way when I focus
14 right on what's being said.

11:44:18

15 THE COURT: Go ahead, Ms. Healy Gallagher.

16 Q. BY MS. HEALY GALLAGHER: Mr. Klein, on the screen
17 is a chart called transfers for Johnson family use. Do
18 you see that?

19 A. I do.

11:44:34

20 Q. It's been marked Plaintiff's Exhibit 942,
21 correct?

22 A. Yes.

23 Q. Is this that -- oh. First, Your Honor, I move to
24 admit Plaintiff's Exhibit 943, the prior summary chart we
11:44:51 25 just looked at.

1 THE COURT: Any objection?

2 MR. PAUL: Yes, Your Honor. First, I think the
3 document is both false and misleading. The footnote
4 indicates that between August 4 of '18 and August 17 of
11:45:10 5 '18, Cobblestone paid \$313,000 to first American Title,
6 and I think the year is clearly incorrect, and I think the
7 dollar amount -- I do understand now where the dollar
8 amount is, but the year is incorrect so that the document
9 itself is incorrect.

11:45:32 10 THE COURT: The year should be 2014?

11 MS. HEALY GALLAGHER: Correct.

12 THE COURT: Okay.

13 MS. HEALY GALLAGHER: I apologize.

14 THE COURT: All right. Any other objections

11:45:43 15 Mr. Shepard or Mr. Johnson?

16 MR. N. JOHNSON: I don't have any, no.

17 MR. SHEPARD: No.

18 THE COURT: Okay. 943 will be received when a
19 corrected copy is provided -- or I should say, it's

11:45:55 20 received, subject to a corrected copy being provided.

21 Until then, the 943 we have will stand as the summary.

22 Did you admit or just use 945?

23 (Plaintiffs' Exhibit 943 received in evidence.)

24 MS. HEALY GALLAGHER: So far, we've just used

11:46:09 25 it.

1 THE COURT: Okay.

2 MS. HEALY GALLAGHER: I will be using it with the
3 Plaintiff's Exhibit 943 as well.

4 THE COURT: Okay.

11:46:15

5 MS. HEALY GALLAGHER: So then, to the extent
6 there's a question about the comprehensiveness, we can at
7 least get all the pages that we use in.

11:46:32

8 THE COURT: Okay. I just have a couple of other
9 questions about 943 before I forget them. And they relate
10 to what we have been going through. On page -- and I'm
11 sorry. I can't tell the page, but it's the one -- is Bank
12 of American Fork, 2885? And I'm sorry, I just --

13 MS. HEALY GALLAGHER: Do you have the date of
14 the --

11:46:44

15 THE COURT: It's a statement for IAS dated June
16 29, 2018. It's the one we were looking at with the huge
17 \$1.9 million transfer on June 22, I think. Is it? No
18 it's not. I'm sorry. It's a June 29 statement from
19 People's Intermountain on an IAS account, and it's Bank of
20 American Fork. 2885 is the Bates number.

11:47:14

21 MS. HEALY GALLAGHER: It just might take me a
22 second.

11:47:49

23 THE COURT: So this document appears to show, if
24 you can scroll down to that, a transfer to Glenda Savings
25 for consulting for \$120,000. Did you find any

1 documentation of a consulting agreement with Glenda
2 Johnson?

3 THE WITNESS: I did not.

4 THE COURT: Did you find any other record
11:48:00 5 indicating what this was for?

6 THE WITNESS: I do not have any records showing
7 that.

8 THE COURT: What's the confirmation number
9 referred to? Is that a bank number?

11:48:09 10 THE WITNESS: That's a number assigned by the
11 bank for each particular transaction.

12 THE COURT: Okay. And I was just leafing through
13 this. Page 48 of this document, 945. Is -- there's a
14 check signed by Glenda Johnson on the Solco account
11:48:38 15 written to NSDP Trust Account for \$168,000 for a retainer.

16 Do you have any other information on that check?

17 THE WITNESS: I do not.

18 THE COURT: The endorsement appears to show
19 Nelson, Snuffer, Dahle and Poulsen?

11:48:54 20 THE WITNESS: Yes.

21 THE COURT: Okay. Thanks. Sorry to interrupt
22 you.

23 MS. HEALY GALLAGHER: Not at all. We'll be
24 addressing that with Plaintiff's Exhibit 942.

11:49:12 25 Q. BY MS. HEALY GALLAGHER: Plaintiff's Exhibit 942,

1 Mr. Klein, would you tell us briefly what this is?

2 A. This is a summary of particular transactions we
3 identified that went to family members or to Nelson,
4 Snuffer for their legal representation, most of it
11:49:36 5 centered -- focused on the time frame around the trial
6 date, but it also includes some earlier transactions that
7 we had -- happened to find because we have not yet
8 finished the systematic review.

9 Q. So let's just walk through the columns that
11:49:55 10 you've got in Plaintiff's Exhibit 942.

11 A. The first column is the date of the transfer.
12 The second column shows the amount. The third column
13 shows the entity from which the money was transferred, and
14 jumping over to the 7th column, it shows the recipient of
11:50:20 15 the money. And then the other columns, fourth, fifth and
16 sixth columns give detail about the account from which the
17 monies were taken and then the column under Bank, which is
18 the next to the last -- or second from the right shows
19 what bank account the funds were deposited into, to the
11:50:45 20 extent we could determine it, and then the memo line
21 indicates whether or not the check indicated the purpose
22 of -- for whatever is written on the memo line for the
23 check.

24 Q. And in the last collum, just like with
11:51:01 25 Plaintiff's Exhibit 943, correct, we have the specific

1 page citation to Plaintiff's Exhibit 945?

2 A. Yes.

3 Q. Let's take a walk through a few of the
4 transactions here starting with the 6/6, 2018 transfer,
11:51:41 5 the first one.

6 A. Yes.

7 MS. HEALY GALLAGHER: Your Honor, a number of
8 these transactions will be all on the same pages of 945 so
9 we'll just go through the transactions here first, and
11:51:51 10 then I'll illustrate where they can be found.

11 Q. BY MS. HEALY GALLAGHER: What was that first
12 transfer, Mr. Klein?

13 A. On June 6, 2018, there was a \$120,000 payment
14 from IAS to Glenda Johnson that was an electronic transfer
11:52:10 15 from IAS's account at Bank of American Fork, to Glenda
16 Johnson's account at Bank of American Fork. Should I
17 discuss the others, same day?

18 Q. Sure.

19 A. The same day, there was a \$60,000 check from the
11:52:28 20 IAS bank account to LeGrand Johnson in the amount of
21 \$60,000. There was a \$60,000 check to Randale Johnson in
22 the amount of \$60,000.

23 Q. That was from IAS?

24 A. From IAS.

11:52:46 25 Q. Okay. And with respect to LeGrand Johnson, have

1 you seen any evidence of a consulting agreement with
2 IAS?

3 A. I have not seen a consulting agreement between
4 him and IAS.

11:52:57

5 Q. Any indication to you of a consulting agreement
6 between IAS and Randale Johnson?

7 A. No.

11:53:14

8 Q. Do you have any indication of any sort of
9 consulting that any of Glenda, LeGrand, or Randale Johnson
10 might have done for IAS for that period?

11 A. I do not.

12 Q. Let's take a look at the June 15, 2018
13 transaction. Tell us about that.

11:53:28

14 A. This is a \$50,000 check written on the IAS
15 account payable to Robert Johnson for consulting fees.

16 Q. Do you know who Robert Johnson is?

17 A. I do not.

18 Q. Do you have any indication about where he lives,
19 where he can be found, anything about him?

11:53:42

20 A. Unfortunately, the name is so common we have been
21 unable to find any information about who he is.

22 Q. Have you seen any evidence of a consulting
23 agreement between him and International Automated Systems?

24 A. I have not.

11:53:54

25 Q. Any indication for any sort of work he might have

1 done for IAS?

2 A. I don't know, other than what the memo line said
3 on the check.

4 Q. Let's take a look at the June 20, 2018
11:54:07 5 transaction. Tell us about that.

6 A. This was a check drawn on the IAS bank account on
7 June 20, payable to Robert Johnson, in the amount of
8 \$2,250,000.

9 Q. Any indication of what that was for?

11:54:23 10 A. I do not know.

11 Q. Is there any way you could find out what that
12 transaction is for, other than from the respondents in
13 this matter?

14 A. If I can identify who Robert Johnson is, I can
11:54:35 15 ask him.

16 Q. Do you have any idea of how to find him, other
17 than from information from the respondents?

18 A. I do not.

19 Q. Do you know what happened on the next day in
11:54:54 20 June, June 21, 2018?

21 A. It's my understanding that's the day the trial
22 resumed after its hiatus from the first stage of trial.

23 Q. And that was the date set for the defendants to
24 begin their case-in-chief in trial, wasn't it?

11:55:11 25 A. That's my understanding.

1 Q. What did they do instead?

2 A. It's my understanding that they rested without
3 calling witnesses.

11:55:36

4 Q. So let's find those transactions in Plaintiff's
5 Exhibit 945. I draw your attention to page 39 of
6 Plaintiff's Exhibit 945. What are we looking at?

7 A. This is the account statement for IAS from Bank
8 of American Fork, statement dated June 29, 2018.

11:56:11

9 Q. If we scroll down on this page, what are some of
10 the indicators we see here about these transactions?

11 A. We see on June 6 a transfer to Glenda Savings
12 account in the amount of \$120,000. Then it shows four
13 checks, check numbers 120 through 123, in the amount of
14 \$60,000 each, which were to Randale and LeGrand Johnson,
15 check number 122 in the amount of \$50,000 to Robert
16 Johnson, and check 123 in the amount of \$2,250,000 to
17 Robert Johnson.

11:56:38

18 THE COURT: And I'm sorry. That was page?

19 MS. HEALY GALLAGHER: 39.

11:56:55

20 THE COURT: And it's a bank statement of which
21 entity?

22 THE WITNESS: This is the bank statement for
23 IAS.

11:57:09

24 MS. HEALY GALLAGHER: And for your reference, the
25 Bates number for Bank of American Fork is 2885.

1 THE COURT: Okay.

2 Q. BY MS. HEALY GALLAGHER: If we look at page 40 of
3 Plaintiff's Exhibit 945, with the Bates number Bank of
4 American Fork, 3089, what do we see here?

11:57:31

5 A. We see copies of the checks to Randy Johnson,
6 check number 121, where it was negotiated; check to
7 LeGrand Johnson, where it was negotiated, and then two
8 checks to Robert Johnson and where they were negotiated.

11:58:00

9 THE COURT: And with the information on the back
10 of these checks, you have not been able to locate
11 Mr. Robert Johnson?

11:58:17

12 THE WITNESS: I know that he had an account at
13 Golden West Credit Union and at Zions Bank, but it is
14 information that we found only about a week ago and not
15 yet issued subpoenas.

16 THE COURT: Okay. Thanks.

11:58:52

17 So, we are going to take a break, but let me
18 explain something first. How much longer do you think
19 you're going to be on direct with Mr. Klein? And I'm not
20 trying to push you one way or the other. I just want to
21 know.

22 MS. HEALY GALLAGHER: I actually don't have that
23 much more. Fine to take a break if now is a good time,
24 but I don't have that much more.

11:59:04

25 THE COURT: Okay. Well, "that much more" to some

1 attorneys means two hours.

2 MS. HEALY GALLAGHER: I think 20 minutes.

3 THE COURT: Okay. I'd really like to wrap that
4 up. Now, I want to come back, and before we wrap that up,
11:59:17 5 I want to talk about where I think we're at. Depositions
6 were requested and not taken of Mr. Neldon Johnson and
7 Ms. Glenda Johnson. Not Mr. Shepard?

8 MS. HEALY GALLAGHER: Correct.

9 THE COURT: Okay. All right. We're going to
11:59:36 10 take a recess for as long as the court reporter wants,
11 which should be about ten minutes?

12 We will take a recess for ten minutes, but you
13 can have the use of any facilities in the back of the
14 court. Ten minutes. We're in recess.

12:11:36 15 (Short recess.)

16 THE COURT: Go ahead, Ms. Healy Gallagher.

17 And I apologize to everyone for the brevity of
18 that break.

19 MS. HEALY GALLAGHER: Thank you, Your Honor.

12:11:44 20 Q. By MS. HEALY GALLAGHER: All right, Mr. Klein,
21 continuing to walk through Plaintiff's Exhibit 942, I'd
22 like to turn your attention to the transaction on June 22,
23 2018. Do you see that?

24 A. I do.

12:12:04 25 Q. Tell us about that transaction.

1 A. On that date, \$1,945,500 was transferred from the
2 bank account of Cobblestone Center at Wells Fargo to the
3 bank account of Glenda Johnson at Bank of American Fork.

4 Q. We already touched on this briefly in response to
12:12:28 5 some of Judge Nuffer's questions, but let's take a look at
6 Plaintiff's Exhibit 945. I'll start us off at page 43
7 with the Bates number Bank of American Fork 2943. What is
8 it we're looking at here?

9 A. This is a bank statement for Bank of American
12:12:48 10 Fork, dated June 29, 2018, for Cobblestone Center.

11 MR. PAUL: What number are we on? I'm sorry.

12 THE COURT: 945, and it's page 41; is that right?

13 MS. HEALY GALLAGHER: That's correct. Do you
14 need the Bates number, Mr. Paul? The Bates number ends in
12:13:24 15 2906.

16 MR. PAUL: Got it. Thank you.

17 Q. BY MS. HEALY GALLAGHER: Now, on page 46 of
18 Plaintiff's Exhibit 945, is this the same bank account
19 statement, Mr. Klein?

12:13:41 20 A. Yes.

21 Q. And if we go not quite a quarter way down the
22 page, where do we see this transaction?

23 A. On the next to the bottom entry on the screen,
24 where it says June 22 transfer to Glenda Savings
12:14:04 25 1,945,500. So, the prior chart may be inaccurate in that

1 this was a transfer from Cobblestone Center's account at
2 Bank of American Fork to Glenda Johnson's account at Bank
3 of American Fork. So I need to correct the source bank.

12:14:38

4 Q. Understood. Then let's take a look at the June
5 25, 2018, the first transaction there?

6 A. Yes.

7 Q. Can you tell us about that?

12:14:58

8 A. This is on June 25, which was a Monday, following
9 the conclusion of trial on Friday, and in this situation,
10 XSun Energy wrote a check in the amount of \$1 million to
11 the law firm Nelson, Snuffer.

12 Q. And we see that check on page 47 of Plaintiff's
13 Exhibit 945, correct?

14 A. Correct.

12:15:21

15 Q. Nelson, Snuffer negotiated that check, right?

16 A. It did.

12:15:44

17 Q. And for the record, page 47 of Plaintiff's
18 Exhibit 945 is Bates marked Bank of American Fork 3453.
19 If we go back to Plaintiff's Exhibit 942, there is a
20 second transaction on June 25, 2018, correct?

21 A. Yes. On that date, Solco I transferred
22 168,000 -- I'm sorry -- wrote a check in the amount of
23 \$168,000 from the account at Bank of American Fork to
24 Nelson, Snuffer with a memo line, legal retainer.

12:16:07

25 Q. We see that on page 48 of Plaintiff's Exhibit

1 945, correct?

2 A. Correct.

3 Q. And we already talked about that with Judge
4 Nuffer, right?

12:16:20

5 A. Yes.

6 Q. There are subsequent transactions, correct, on
7 Plaintiff's Exhibit 942?

8 A. Yes.

12:16:31

9 Q. I'm not going to march through each of those, but
10 I'd like to talk about the last three transactions if you
11 would take a look at those. What are the dates on those?

12 A. September 20, 2018, October 3, 2018, and October
13 25, 2018.

12:16:50

14 Q. There is some information missing from the chart
15 with respect to these transactions. And there's also no
16 page number for Plaintiff's Exhibit 945 for these. What's
17 your source of information about these transactions?

12:17:12

18 A. This is information that came from my review of
19 legal invoices that Nelson, Snuffer has provided to me,
20 which is still ongoing.

21 Q. So, for example, you saw a -- well tell us, for
22 example, what you saw for September 20, 2018.

12:17:39

23 A. The legal invoices indicate that Nelson, Snuffer
24 received, on September 20, a payment of \$37,872 as payment
25 on its invoices, and I do not know the source of that

1 payment. And the same is true for the \$58,283.50 payment
2 on October 3 and the \$34,000 payment on October 25 of
3 2018.

4 Q. And do you know for which client or where did
12:18:06 5 this money get credited to?

6 A. I believe these were reflected on invoices that
7 were addressed to IAS.

8 MS. HEALY GALLAGHER: At this time, I move to
9 admit Plaintiff's Exhibit 942, subject to the correction
12:18:23 10 that Mr. Klein stated earlier.

11 THE COURT: That correction on this Exhibit was
12 what?

13 MS. HEALY GALLAGHER: It was --

14 THE WITNESS: On June 22, the source bank was --
12:18:34 15 I believe was Bank of American Fork, not Wells Fargo.

16 THE COURT: For the \$1.9 million payment?

17 THE WITNESS: Correct.

18 THE COURT: Okay. Any objection to the corrected
19 exhibit?

12:18:47 20 MR. PAUL: No objection.

21 MR. SHEPARD: No.

22 THE COURT: It is received, subject to that
23 correction.

24 (Plaintiffs' Exhibit 942 received in evidence.)

12:18:52 25 MS. HEALY GALLAGHER: And at this time I would

1 also move to admit Plaintiff's Exhibit 945.

2 THE COURT: Any objection?

3 MR. N. JOHNSON: No.

4 MR. SHEPARD: No.

12:19:05 5 MR. PAUL: No objection.

6 THE COURT: It's received.

7 (Plaintiffs' Exhibit 945 received in evidence.)

8 Q. BY MS. HEALY GALLAGHER: Mr. Klein, what, if any,
9 impact has the delay in receiving information about these
10 transfers had on the Receivership estate?

11 A. It's slowing my ability to move forward with what
12 I need to accomplish and to move to the different stages.
13 The statute provides that I have a one-year window to
14 bring actions to recover funds that have been transferred
15 improperly without being subject to a Statute of
16 Limitations defense. And so I have now six months left in
17 which I have to identify who were the recipients of all of
18 these transfers, and I still don't have all the
19 information I need to know that. Then I have to decide
20 what were the reasons for the transfers, whether or not
21 there was reasonably equivalent value received and
22 returned and then file suit against them, against the
23 recipients.

24 And so, if I don't get the information from the
12:20:14 25 respondents, I'm going to have to try and identify who

1 each of these recipients are, contact them and ask their
2 explanation or, if necessary, issue subpoenas to them
3 telling -- requiring them to provide information showing
4 the purposes of the transfer and what value they may have
12:20:31 5 given to the Receivership entities.

6 And I'm simply -- it's a very narrow window to do
7 it without information from the respondents.

8 Q. What, if any, effect does the delay have on the
9 respondents' ability to continue to transfer funds?

12:20:53 10 A. Well, given that these funds, many of the funds
11 were transferred to Cobblestone Center, which is not a
12 Receivership entity, I'm concerned those funds could be
13 transferred out. And funds have been transferred to
14 Glenda Johnson, Robert Johnson, LeGrand Johnson, Randale
12:21:13 15 Johnson, Robert Johnson, and those funds, I don't know if
16 they are still there. These are funds that have been
17 transferred fairly recently, and I'm worried about those
18 funds disappearing.

19 MS. HEALY GALLAGHER: Nothing further at this
12:21:30 20 time.

21 THE COURT: Thank you. Before we go on to cross
22 examination, let me just ask a few questions of counsel.
23 And you can take a seat, Ms. Healy Gallagher.

24 Mr. Paul, tell me your version of what happened
12:21:45 25 with the depositions last time, as far as you know it.

1 MR. PAUL: The very last scheduled set of
2 depositions?

3 THE COURT: Yeah.

12:21:58

4 MR. PAUL: We had conversations with the Johnsons
5 as to the importance of their attending the depositions.
6 In the days leading up to the scheduled depositions, we
7 had meetings with the Johnsons to prepare them for their
8 depositions. I was assigned to defend the depositions.
9 We understood that the Johnsons would appear for their
10 depositions and answer the questions from the Receiver.

12:22:22

11 It was either late the day before or the morning of that
12 we were informed that they had some ongoing concerns
13 despite our advice to appear, that they did not feel that
14 they were comfortable answering questions at the time.

12:22:52

15 THE COURT: Yeah. You're in an awkward position
16 here, because currently you represent Glenda Johnson.

17 MR. PAUL: I do.

18 THE COURT: But not Neldon Johnson.

19 MR. PAUL: That's correct.

12:23:01

20 THE COURT: Okay. But at that time you were sort
21 of handling the arrangements for both?

22 MR. PAUL: Yes.

23 THE COURT: Okay. I ordered the depositions to
24 be taken by March 22. Was that the date?

12:23:17

25 MR. PAUL: I believe it was a day or two

1 before.

2 THE COURT: Okay. A day or two before. And they
3 were last set for what day?

4 MR. PAUL: Before that?

12:23:26 5 THE COURT: No.

6 MR. PAUL: That last set? I believe it was the
7 19th or the 20th.

8 THE COURT: Of March.

9 MS. HEALY GALLAGHER: I believe it was March 20,
12:23:34 10 and it was only Glenda Johnson, so --

11 MR. LEHR: The Court's order specified that
12 Glenda Johnson had to appear by March 22 but not Neldon
13 Johnson, so that's what the arrangement was.

14 THE COURT: Okay. So it was only Glenda
12:23:49 15 Johnson's deposition?

16 MS. HEALY GALLAGHER: Well, Neldon Johnson did
17 not appear for one deposition. Glenda Johnson did not
18 appear twice.

19 THE COURT: Right. Okay. All right. Counsel I
12:24:02 20 want you to look at your calendars and see what you're
21 doing May 3. I think that's a week from today.

22 MR. PAUL: I have a show cause oral argument in
23 American Fork at 1:30 -- excuse me. I'm sorry -- oral
24 argument for a client whose last name is Shou, not show.

12:24:36 25 THE COURT: Okay.

1 MR. LEHR: Your Honor, I'm out, but my firm could
2 have someone be at the deposition.

3 THE COURT: Okay.

4 MS. HEALY GALLAGHER: I'm available.

12:24:44 5 THE COURT: Okay. You have an oral argument on a
6 civil motion?

7 MR. PAUL: Yes. It's an American Fork State
8 Court case.

9 THE COURT: Do you know the nature?

12:24:53 10 MR. PAUL: Also, we have other attorneys in my
11 office. I mean, I'm not the only one. I do have their
12 calendars. Let me double-check.

13 THE COURT: Here's what I'm going to propose, and
14 I'm saying this before I check with Mr. Shepard and
12:25:08 15 Mr. Nelson Johnson. I'm going to propose that the
16 depositions of Neldon and Glenda Johnson must be taken
17 before May 3 and that we appear here for a full day on May
18 3 to finish the cross examination of Mr. Klein and
19 whatever other testimony we need.

12:25:23 20 It's pretty obvious that we're really not doing
21 anything productive without those depositions. Now, I
22 know that probably ruins everybody's lives, but it's not
23 doing any great favors to mine either. We have got to get
24 this over with.

12:25:38 25 So, Mr. Shepard, would you be attending the

1 deposition of Mr. Neldon Johnson or Ms. Glenda Johnson?

2 MR. SHEPARD: No.

3 THE COURT: Mr. Neldon Johnson, what are you
4 doing May 3?

12:25:53

5 MR. N. JOHNSON: Well, my problem is, I still --
6 I still need a qualified attorney to advise me while I'm
7 sitting, taking a deposition that might be somewhat -- be
8 critical on the questions that they give. I can -- if
9 they would have given me this information, I've got

12:26:21

10 documents to show what this is all for, and if I can do
11 that, is there anything else that you need besides these?
12 I've got the documents here that shows what they are
13 allocated for.

14 THE COURT: That's what a deposition is for.

12:26:42

15 MR. N. JOHNSON: Well, if you want to limit the
16 depositions to this --

17 THE COURT: No, I don't. And I'm not going to.
18 Here's the story.

19 MR. N. JOHNSON: Okay.

12:26:49

20 THE COURT: We're going to have this hearing May
21 3. We're going to convene at 8:30 in the morning. The
22 depositions of Neldon and Glenda Johnson will be taken
23 before May 3. Can you do that, Ms. Healy Gallagher? I
24 know you don't live here in Utah.

12:27:05

25 MS. HEALY GALLAGHER: I wonder also about

1 Mr. Klein's schedule, though.

2 THE COURT: Oh, I'm sorry, Mr. Klein. I didn't
3 ask you.

4 MR. KLEIN: We can make it work.

12:27:12 5 THE COURT: Okay. Ms. Glenda Johnson?

6 MS. GLENDA JOHNSON: Okay. Are you saying, next
7 week?

8 THE COURT: Next week. Today --

9 MS. GLENDA JOHNSON: What's the date right now?

12:27:25 10 THE COURT: Today is April 26. It's Friday. A
11 week from today is May 3, Friday. That will be a hearing.
12 Between now and then, your deposition and Mr. Neldon
13 Johnson's deposition will be taken. So that's another day
14 or two out of the week.

12:27:42 15 MS. GLENDA JOHNSON: Okay. That's before. So
16 next week, sometime next week is what you're telling me,
17 that before Friday, I've got to come in for depositions.
18 And what am I supposed to be doing? Am I supposed to be
19 bringing stuff in? Because my understanding is they have
12:28:05 20 everything --

21 THE COURT: I don't want to hear that. I'm
22 sorry.

23 MS. GLENDA JOHNSON: You're telling me that you
24 need to know stuff that you're seeing on that last thing
12:28:14 25 that was up here; is that what you're telling me?

1 THE COURT: No. This is a much bigger problem
2 than that. This is the tip of the iceberg. Because your
3 deposition and Mr. Johnson's depositions haven't been
4 taken, we are spinning our wheels in court today. And
12:28:30 5 this has been going on for months. We need to put an end
6 to it, so we're going to put an end to it. Your
7 deposition will be taken on all of the subjects listed in
8 the notice of deposition. Same with Mr. Johnson. And
9 there were documents to be produced, correct?

12:28:48 10 MR. LEHR: Yes, Your Honor. We subpoenaed
11 documents. And the protective order they moved for was
12 denied by you, so that would be the subpoena that we would
13 ask for, so if possible --

14 THE COURT: Right.

12:29:00 15 MS. GLENDA JOHNSON: So are you going to have
16 something that this gentleman just got through saying that
17 we are going to be talking about?

18 THE COURT: Absolutely. It's been in that notice
19 that you have had for a long, long time. Apparently
12:29:12 20 you're not reading my materials, any of you.

21 MS. GLENDA JOHNSON: I thought I had given
22 everything, sir.

23 THE COURT: I'm going to go back and remind you
24 of paragraphs 14 through 18 of the corrected order
12:29:26 25 appointing the Receiver. And also, let me ask another

1 question. Ms. Healy Gallagher, have you seen a sworn
2 statement from anyone under paragraph 25 or paragraph 26?

3 MS. HEALY GALLAGHER: I don't believe so, Your
4 Honor, but I would defer to Mr. Klein.

12:29:41 5 THE COURT: Have you, Mr. Klein?

6 MR. KLEIN: I have not.

7 THE COURT: Well, that's got to be complied
8 with.

9 MR. PAUL: I will discuss that matter with
12:29:49 10 everybody that's here in court, and to the extent that we
11 can facilitate that by Monday or Tuesday, at the very
12 latest, I will do my best.

13 THE COURT: That would be a tremendous advantage
14 to have those by Monday or Tuesday at the latest. That
12:30:05 15 only leaves Wednesday and Thursday to take depositions, so
16 I'm thinking it might have to be Monday. I don't want to
17 get in the business of scheduling your depositions, but I
18 think -- how long do you think you're going to need for
19 these depositions, Mr. Lehr?

12:30:22 20 MR. LEHR: Mr. Klein had indicated previously
21 that he would need at least a half day for each one, but
22 now, with the subject matter which he's found in the last
23 few weeks, it may be a full day for each.

24 THE WITNESS: I would expect a full day for each,
12:30:37 25 Your Honor.

1 THE COURT: I would think so. So, if depositions
2 are Wednesday and Thursday, which is a real rush for a
3 hearing on Friday, I think you have got to have those
4 materials by Monday.

12:30:50

5 MR. PAUL: I will do my very best. Today I
6 represent Mrs. Johnson.

7 THE COURT: Right.

8 MR. PAUL: And the sons.

9 THE COURT: That's all.

12:30:59

10 MR. PAUL: So I can talk to the party defendants
11 and explain to them the significance of having it done,
12 and we'll do our best to get them submitted.

13 THE COURT: I'm going to step off the bench for
14 ten minutes and let you try to schedule the depositions.

12:31:14

15 Is that okay?

16 What do you want to say? What did you want to
17 tell me, Ms. Healy Gallagher?

12:31:23

18 MS. HEALY GALLAGHER: Well, I -- your Honor knows
19 this, simply pointing out for the record that all
20 respondents in this matter have had this order since
21 November, 2018. This motion has been pending since
22 January of this year. To say that, you know, Monday is an
23 unreasonable time to produce things that should have been
24 produced long ago is a bit breath taking, but that's where
25 we are.

12:31:40

1 MR. PAUL: Well, Your Honor, I guess I would only
2 add, if it's simply signing a statement, that can be done
3 quickly. It's the due diligence behind the statement. I
4 agree with Ms. Healy Gallagher, it should have been
12:31:53 5 done.

6 THE COURT: And this is late April.

7 MS. HEALY GALLAGHER: Long overdue.

8 MR. LEHR: I would also like to point out, Your
9 Honor. Sorry. Excuse me. Mr. Johnson just indicated he
12:32:01 10 has documents relating to these transactions on the
11 record, and that has been, you know, contrary to
12 everything else he has said in this matter.

13 THE COURT: Let me make clear what happens in a
14 contempt proceeding because apparently none of you care
12:32:15 15 enough to do the work. If I have to coerce you to comply
16 with my orders, I will put you in jail to do that. I've
17 held people in jail for months, so don't make me do that.
18 I'm seeing repeated noncompliance and apparent lack of
19 attention to what the order clearly says and what orders
12:32:47 20 clearly require. So I encourage you to take this
21 seriously and elevate it on your list of concerns.

22 I'll be back at quarter 'til or when you tell me
23 you're ready. I want to know the date of each deposition.
24 We're in recess for as much time as you need but not past
12:33:11 25 quarter 'til.

1 (Short recess.)

2 We're convened again in United States vs.
3 RaPower, and I recessed so that we could have time to try
4 to make an arrangement regarding depositions. Was there
12:39:28 5 any success with that Mr. Lehr?

6 MR. LEHR: Yes, Your Honor. We have agreed to
7 take depositions next week, on Wednesday for Glenda
8 Johnson, and Thursday for Neldon Johnson. Not that it's
9 necessarily the concern of the Court, but we're going to
12:39:43 10 work around Wayne's -- the Receiver's schedule on Thursday
11 a little bit and schedule lunch a little bit late, but we
12 have it figured out.

13 THE COURT: Is that right, Mr. Paul?

14 MR. PAUL: That's correct. That's our
12:39:52 15 agreement.

16 THE COURT: Excuse me. What else do I need to
17 know?

18 MR. PAUL: The statements that we've discussed
19 under those -- I think paragraphs 25 and 26 of the
12:40:01 20 Receivership order, I have my office working on them now.
21 We are going to go review them and work on them today and
22 my goal is to get them Monday, even if it's late, even if
23 it's 7 or 8:00 o'clock at night. I've promised to get it
24 done Monday; at the very latest, Tuesday at 10:00 o'clock
12:40:21 25 in the morning.

1 THE COURT: Okay. I know that that puts -- you
2 know, that may just ruin your weekend, and if that's what
3 it takes, that's what I intend.

12:40:37

4 MR. PAUL: Well, if you're sending us out of here
5 at 1:00 o'clock today, that gives me four more hours than
6 I thought I had today.

12:40:50

7 THE COURT: Right. And I apologize for having a
8 short schedule today. I'm attending a memorial service
9 for a relative in Portland, and it's the only time I could
10 leave today. What else do I need to know?

12:41:01

11 MR. LEHR: Your Honor, I just would like to
12 clarify, it would also be under paragraph 24 as well,
13 which I think Mr. Paul didn't mention, that requires the
14 defendants and respondents to explain where the documents
15 are if they are no longer in their possession, so ...

16 THE COURT: That's the last sentence of paragraph
17 24.

18 MR. LEHR: We would expect that a statement would
19 include that information as well.

12:41:13

20 THE COURT: So the last sentence of 24. If those
21 documents and records are no longer within their control,
22 they must provide information identifying the records, the
23 persons in control and efforts undertaken to recover the
24 records. And this is in addition to and not excusing the
12:41:31 25 other provisions of the order. But these are measurable.

1 They are definable. They are visible, and they are either
2 done or they are not. And it's easy to determine.

3 I would encourage you, to, Mr. Paul, if you get
4 hung up on one thing, don't let that stop you from
12:41:51 5 providing the rest of the things. If you want to roll out
6 some of it Sunday night and roll out the rest Monday
7 night, consider that, amending it up. It will help get
8 ready for the depositions and make those more productive.

9 If Mr. Johnson has all these documents that he
12:42:09 10 says explains everything, then providing those will speed
11 up time for everybody on the depositions. It will be very
12 helpful. What else?

13 MR. PAUL: It occurs to me -- and I apologize,
14 but your statement made me think of something. I think
12:42:29 15 the Receivership order, if I recall, requires an
16 explanation going back to 2005, and that's a heavy burden.
17 Can that be limited to something more reasonable, more
18 recent, something that the Receiver --

19 THE COURT: You know, we dealt with that on the
12:42:45 20 drafting of the Receivership order. If it's harder to go
21 back, then work first forward and then go back. Try, to
22 the extent possible, to leave as little unknown as you
23 can. But that order -- when was that order signed, the
24 corrected order?

12:43:04 25 MR. LEHR: November 1, Your Honor.

1 THE COURT: Six months ago. So, it just needs to
2 be done.

3 MR. PAUL: Okay. Thank you for the
4 clarification. We'll do our best.

12:43:18

5 THE COURT: Okay. But that issue was
6 specifically raised in the objections to the order. All
7 right, Mr. Klein, thank you. And I'm sorry to have
8 appeared to have scheduled you for the whole day, for all
9 of you, and then created another scheduling problem. But
10 this is the best we could do. Okay. We're in recess.

12:43:31

11 MR. LEHR: Your Honor --

12 MS. HEALY GALLAGHER: Your Honor, if we could,
13 one more.

14 THE COURT: One more thing?

12:43:40

15 MR. LEHR: Your Honor, we would just ask that you
16 make clear for the defendants and respondents that no
17 transfers of any kind are to take place in the recess from
18 this hearing until next Friday.

19 THE COURT: Well, there's a standing order,
12:43:56 20 right, for no transfers?

21 MR. LEHR: That's correct, Your Honor.

22 THE COURT: I mean, I don't want to -- I don't
23 want to say, oh, for this week there are no transfers. If
24 I find evidence of transfers after my order was entered,
12:44:10 25 that's a whole different ball game. That's nuclear. And

1 that includes this week.

2 MR. LEHR: Thank you, Your Honor.

3 THE COURT: We're in recess.

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(Whereupon the proceedings were concluded.)

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REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, REBECCA JANKE, do hereby certify that I am a
Certified Court Reporter for the State of Utah;

That as such Reporter I attended the hearing of
the foregoing matter on April 26, 2019, and thereat
reported in Stenotype all of the testimony and proceedings
had, and caused said notes to be transcribed into
typewriting, and the foregoing pages numbered 1 through
113 constitute a full, true and correct record of the
proceedings transcribed.

That I am not of kin to any of the parties and
have no interest in the outcome of the matter;

And hereby set my hand and seal this 2nd day of
May, 2019.

REBECCA JANKE, CSR, RPR, RMR