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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
RAPOWER-3, LLC, et al.	)	Case No: 2:15CV00828
	)	
Defendants.	)	
_____	)	
	)	
	)	

BEFORE THE HONORABLE DAVID NUFFER

February 25, 2020

MOTION FOR SANCTIONS

Reported by:  
KELLY BROWN HICKEN, RPR, RMR  
801-521-7238

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1 SALT LAKE CITY, UTAH, TUESDAY, FEBRUARY 25, 2020

2 \* \* \* \* \*

09:01:50

3 THE COURT: Good morning. We're convened in  
4 United States vs. RaPower. Could we first have counsel make  
5 their appearances for our record?

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

8 THE COURT: Thank you.

9 MR. KLEIN: Wayne Klein, the receiver.

09:02:01

10 THE COURT: Thank you.

11 MR. LEHR: Michael Lehr on behalf of Wayne Klein,  
12 the receiver.

13 THE COURT: Thank you.

09:02:10

14 MR. WALL: Edwin Wall on behalf of Mr. Neldon  
15 Johnson, who is present and sitting in the gallery.

16 THE COURT: Thank you.

17 MR. PAUL: Steven Paul on behalf of Glenda Johnson,  
18 Randale Johnson and LaGrand Johnson, who are present in court  
19 today.

09:02:23

20 THE COURT: Thank you. I appreciate the work that  
21 has been done over the weekend probably to create the  
22 statements of issues and to some extent responses to those  
23 statements of issues to help us refine the ultimate issues for  
24 this hearing today.

09:02:38

25 I want you to know that I reviewed the transcript

1 of the January 23rd proceedings, the statements under oath. I  
2 also went back and reviewed documents previously in our record  
3 including motions regarding contempt. And I went way back to  
4 the history of this case which ended trial June in 2018. An  
09:03:13 5 asset freeze order was entered August 22nd, 2018, as Docket  
6 Number 444. Findings of fact and conclusions of law were  
7 entered October 4th, 2018, as Dockets 467 and 468. And the  
8 receivership order and corrected receivership order were  
9 entered November 1st, 2018. The corrected receivership order  
09:03:39 10 is 491. And we're now at the end of February 2020.

11 So I'd like to hear from each of you as to what we  
12 need to do today. I understand, Miss Healy-Gallagher, you  
13 want to present more witnesses today?

14 MS. HEALY-GALLAGHER: Your Honor, yes. There is  
09:04:01 15 one instance of contempt that occurred after the United  
16 States' most recent motion, the motion for additional  
17 sanctions was filed. We can take that in the order that you  
18 prefer. My understanding is the proceedings for today will  
19 cover the issues for decision identified in the party's  
09:04:21 20 filing. We do have that presentation of evidence. Those can  
21 go in either order. And then my understanding is argument on  
22 what, if any, sanctions are appropriate.

23 THE COURT: Okay. So clarify for me a little. You  
24 have testimony on an instance of contempt that occurred after  
09:04:38 25 the 754 motion was filed?

1 MS. HEALY-GALLAGHER: Yes.

2 THE COURT: The second contempt motion?

3 MS. HEALY-GALLAGHER: Correct.

4 THE COURT: Motion for additional --

09:04:45 5 MS. HEALY-GALLAGHER: Additional sanctions.

6 THE COURT: Yeah. And one witness on that?

7 MS. HEALY-GALLAGHER: It could be up to three  
8 witnesses.

9 THE COURT: Okay.

09:04:53 10 MS. HEALY-GALLAGHER: We identified Millard County  
11 Deputy Sheriff Brandon Loe as one, Neldon Johnson as another  
12 and potentially the receiver as a third.

13 THE COURT: Okay. And then you said a presentation  
14 of evidence regarding the issues outlined in the statements  
09:05:10 15 that were filed?

16 MS. HEALY-GALLAGHER: Oh, I'm sorry. It was  
17 presentation of evidence on that particular instance of  
18 contempt. And then, you know, what's been laid out for the  
19 Court in terms of the issues for decision.

09:05:22 20 THE COURT: Okay.

21 MS. HEALY-GALLAGHER: There are actually -- one  
22 thing that we did want to clarify in terms of the production  
23 of documents from Glenda Johnson that's a little bit different  
24 from what was in our filing.

09:05:36 25 THE COURT: Let's clarify that right now.

1 MS. HEALY-GALLAGHER: Sure.

2 So we mentioned in the summary that Mrs. Johnson on  
3 December 5th produced to the receiver responsive documents  
4 that had not been produced before. We gave examples -- well,  
09:06:08 5 these included documents showing contracts with lens sales by  
6 XSun and Solco I. Now there was a colloquy in the  
7 January 23rd proceedings where there was some confusion. As  
8 it turned out, some of the documents that Mrs. Johnson  
9 produced on December 5th had, in fact, been produced to the  
09:06:31 10 receiver before.

11 But there were still other documents, for example,  
12 the, you know, specific contracts -- I'm sorry -- the  
13 contracts with lens sales, by XSun and Solco, those documents  
14 have not previously been produced to the receiver. And, of  
09:06:52 15 course, Mr. Klein will correct me if I misstate anything.

16 THE COURT: So some of the documents produced on  
17 December 5th had been produced before, but contracts with lens  
18 sales, by XSun and Solco had not been produced before.

19 MS. HEALY-GALLAGHER: That's correct.

09:07:08 20 THE COURT: Okay. Thank you.

21 Any questions about that correction, Mr. Paul?

22 MR. PAUL: I would -- are they part of what were  
23 given to us during the last hearing? Because I think all of  
24 that that was given to us during the last hearing had Bates  
09:07:26 25 numbers from previous production.

1 MR. KLEIN: Perhaps this will help. The exhibits  
2 2155 and 2156 were both documents that had been produced  
3 previously. Exhibits 2157 and 2158 had not been produced to  
4 the receiver previously, but those were documents that had  
09:07:45 5 been produced in the underlying tax matter.

6 THE COURT: Oh, way back.

7 MR. KLEIN: Yes. Had not been given to -- the  
8 receiver did not have them previously.

9 THE COURT: Okay. So everything did have a Bates  
09:07:58 10 number on it, is what you were getting at.

11 MR. PAUL: Yes, Your Honor.

12 THE COURT: Okay. Now, there were exhibits used in  
13 the proceedings before Judge Kohler that have not been  
14 received; correct?

09:08:11 15 MS. HEALY-GALLAGHER: Correct. We were also going  
16 to move for admission of those exhibits today, some of them.

17 THE COURT: Okay. What exhibits do you want to  
18 have received for purposes of my decisionmaking? And let's go  
19 really slowly because I want to make sure that your exhibit  
09:08:30 20 numbers match up with what's in front of the clerk right now.

21 MS. HEALY-GALLAGHER: Sure. We've got Receiver's  
22 Exhibit 2141.

23 THE COURT: Hold on right there. Let's make sure  
24 we're in the right place.

09:08:52 25 THE CLERK: Okay.



1 THE COURT: You do show that?

2 THE CLERK: Yeah.

3 THE COURT: On your list, Miss Mumford?

4 THE CLERK: I do, yeah.

09:09:00 5 THE COURT: All right. And do you have that  
6 exhibit list, Mr. Paul and Mr. Wall, so that we can just go  
7 through these as expeditiously as possible? Do I need to  
8 print a copy of that?

9 MR. WALL: Your Honor, it would be helpful if you  
09:09:17 10 would print a copy of that exhibit list.

11 THE COURT: Could you print four copies of that?

12 MR. KLEIN: I have extra copies.

13 MR. WALL: I have one right here, Your Honor.

14 THE COURT: Okay. Now you've got it. We can  
09:09:29 15 dispense with that.

16 All right. So what was the number?

17 MS. HEALY-GALLAGHER: 2141.

18 THE COURT: Okay. Any objection to 2141?

19 MR. WALL: No.

09:09:47 20 MR. PAUL: What is the description of it?

21 THE COURT: It has to do with the --

22 MS. HEALY-GALLAGHER: It's the October 31st, 2019,  
23 easement acknowledgment.

24 MR. PAUL: No objection to the Court receiving it.

09:10:03 25 No objection.

1 THE COURT: It's received.

2 (Whereupon, Receiver's Exhibit 2141 was received.)

3 MS. HEALY-GALLAGHER: Next is 2142, a cashier's  
4 check.

09:10:18 5 THE COURT: In the amount of?

6 MS. HEALY-GALLAGHER: \$30,000.

7 THE COURT: Any objection, Mr. Wall?

8 MR. WALL: No objection.

9 THE COURT: Any objection, Mr. Paul?

09:10:26 10 MR. PAUL: No objection.

11 THE COURT: It's received, 2142.

12 (Whereupon, Receiver's Exhibit 2142 was received.)

13 MS. HEALY-GALLAGHER: 2143, the laptop screen shot  
14 of Solar Tree Testing.

09:10:39 15 MR. WALL: No objection.

16 THE COURT: Mr. Wall?

17 MR. WALL: Yes. No objection, Your Honor.

18 THE COURT: 2143 is received.

19 MR. WALL: Your Honor, I was the one that initially  
09:10:50 20 said no objection, and you didn't take it from the other  
21 party.

22 THE COURT: Mr. Paul?

23 MR. PAUL: I have no received.

24 THE COURT: 2143 is received.

09:10:58 25 (Whereupon, Receiver's Exhibit 2143 was received.)

1 THE COURT: Let me just tell you, they introduced a  
2 new piece of technology here. It's a speaker right over here  
3 like the court reporter has, but it's to help us older judges  
4 that don't hear so well. And it's not directional, so I don't  
09:11:11 5 hear who it's come from. And it's louder than anything you  
6 say out there. So I'm learning how to work with this, so keep  
7 correcting me if I make mistakes like that. Thanks.

8 Go ahead.

9 MS. HEALY-GALLAGHER: Next is 2144, checks from  
09:11:26 10 Randale Johnson to Neldon Johnson and IAS.

11 MR. WALL: No objection from Mr. Neldon Johnson.

12 THE COURT: Mr. Paul?

13 MR. PAUL: No objection.

14 MS. HEALY-GALLAGHER: Next is 2145, which is a  
09:11:44 15 spreadsheet summary of Randale Johnson checks.

16 MR. WALL: No objection from Neldon Johnson.

17 MR. PAUL: I understand that there was a mistake on  
18 the previous version, and Mr. Klein has a corrected version.  
19 We have no objection to the corrected version.

09:12:06 20 MS. HEALY-GALLAGHER: Agreed. We'd offer the  
21 corrected version.

22 THE COURT: There's no objection. It's received.

23 (Whereupon, Receiver's Exhibit 2145 was received.)

24 THE COURT: That's 2145?

09:12:21 25 MR. WALL: Yes, Your Honor.

1 THE COURT: Okay.

2 MS. HEALY-GALLAGHER: 21 -- Receiver's Exhibit  
3 2146, Sierra Engineering e-mails and letter.

4 MR. WALL: No objection from Neldon Johnson.

09:12:38 5 MR. PAUL: No objection.

6 THE COURT: 2146 is received.

7 (Whereupon, Receiver's Exhibit 2146 was received.)

8 MS. HEALY-GALLAGHER: Next is 2147, the  
9 acknowledgment of receivership order by Randale Johnson.

09:12:54 10 MR. WALL: No objection from Neldon Johnson.

11 MR. PAUL: No objection.

12 THE COURT: 2147; is that correct?

13 MS. HEALY-GALLAGHER: Yes.

14 THE COURT: It's received.

09:13:01 15 (Whereupon, Receiver's Exhibit 2147 was received.)

16 MS. HEALY-GALLAGHER: Receiver's Exhibit 2148,  
17 checks from LaGrand Johnson to Troy Koening.

18 MR. WALL: No objection from Neldon Johnson.

19 THE COURT: Mr. Paul?

09:13:23 20 MR. PAUL: My only concern is they don't carry a  
21 Bates number regarding source.

22 THE COURT: Were they used in the last hearing?  
23 Was 2148 used?

24 MR. KLEIN: Yes. It was used at the depositions.

09:13:40 25 And these are documents that came from a production by

1 LaGrand Johnson.

2 THE COURT: My recollection it was used and  
3 authenticated in the last proceeding, so I'm going to receive  
4 it. This was 2148.

09:13:58 5 (Whereupon, Receiver's Exhibit 2148 was received.)

6 MS. HEALY-GALLAGHER: Next is 2149, the Division of  
7 Corporations list of registered principals.

8 THE COURT: For which entity?

9 MS. HEALY-GALLAGHER: International Automated  
09:14:16 10 Systems.

11 MR. WALL: No objection from Neldon Johnson.

12 MR. PAUL: I'm trying to locate it.

13 No objection.

14 THE COURT: 2149 is received.

09:14:35 15 (Whereupon, Receiver's Exhibit 2149 was received.)

16 MS. HEALY-GALLAGHER: Next is Receiver's  
17 Exhibit 2150, the Division of Corporations, the company status  
18 for IAS.

19 MR. WALL: No objection from Neldon Johnson.

09:14:49 20 MR. PAUL: No objection.

21 THE COURT: 2150 is received.

22 (Whereupon, Receiver's Exhibit 2150 was received.)

23 MS. HEALY-GALLAGHER: Next is Receiver's  
24 Exhibit 2151 from the Division of Corporations, a  
09:14:59 25 certification for -- Certificate of Status for IAS.

1 MR. WALL: No objection from Neldon Johnson.

2 MR. PAUL: No objection.

3 THE COURT: 2151 is received.

4 (Whereupon, Receiver's Exhibit 2151 was received.)

09:15:13 5 MS. HEALY-GALLAGHER: Receiver's Exhibit 2152,  
6 checks from LaGrand Johnson to IAS.

7 MR. WALL: No objection from Neldon Johnson.

8 MR. PAUL: Just a question. Was this also part of  
9 the production from LaGrand Johnson on December 5th?

09:15:34 10 MR. KLEIN: Yes.

11 MR. PAUL: No objection.

12 THE COURT: 2152 is received.

13 (Whereupon, Receiver's Exhibit 2152 was received.)

14 MS. HEALY-GALLAGHER: Receiver's Exhibit 2153,  
09:15:43 15 acknowledgement of receivership order by LaGrand Johnson.

16 MR. WALL: No objection from Neldon Johnson.

17 MR. PAUL: No objection.

18 THE COURT: 215 -- is it 52 or 53?

19 MS. HEALY-GALLAGHER: 2153.

09:15:56 20 THE COURT: It's received.

21 (Whereupon, Receiver's Exhibit 2153 was received.)

22 MS. HEALY-GALLAGHER: Receiver's Exhibit 2154,  
23 Glenda Johnson's declaration on Soltice, which is also marked  
24 on the docket at ECF Number 784-1.

09:16:16 25 MR. WALL: No objection from Neldon Johnson.

1 MR. PAUL: Objection. No objection. Sorry.

2 THE COURT: 2154 is received.

3 (Whereupon, Receiver's Exhibit 2154 was received.)

09:16:36

4 MS. HEALY-GALLAGHER: Next is Receiver's  
5 Exhibit 2155, a check to Solco for the purchase of solar -- at  
6 least one solar lens.

7 MR. WALL: No objection from Neldon Johnson.

8 MR. PAUL: No objection.

9 THE COURT: 2155 is received.

09:16:52

10 (Whereupon, Receiver's Exhibit 2155 was received.)

11 MS. HEALY-GALLAGHER: Receiver's Exhibit 2156, a  
12 list of power plant purchases from XSun Energy.

13 MR. WALL: No objection from Neldon Johnson.

14 MR. PAUL: No objection.

09:17:06

15 THE COURT: 2156 is received.

16 (Whereupon, Receiver's Exhibit 2156 was received.)

17 MS. HEALY-GALLAGHER: Receiver's Exhibit 2157,  
18 escrow agreement.

19 MR. WALL: No objection from Neldon Johnson.

09:17:19

20 MR. PAUL: No objection.

21 THE COURT: 2157 is received.

22 (Whereupon, Receiver's Exhibit 2157 was received.)

23 MS. HEALY-GALLAGHER: Receiver's Exhibit 2158,  
24 checks and deposit slips for XSun Energy lens sales.

09:17:33

25 MR. WALL: No objection from Neldon Johnson.

1 MR. PAUL: No objection.

2 THE COURT: That Exhibit Number 2158 is received.

3 (Whereupon, Receiver's Exhibit 2158 was received.)

09:17:50

4 MS. HEALY-GALLAGHER: Receiver's Exhibit 2159, a  
5 letter from NuStar Permian Transportation.

6 MR. WALL: No objection from Neldon Johnson.

7 MR. PAUL: No objection.

8 THE COURT: Give me just a minute.

9 Thank you. 2159 is received.

09:18:07

10 (Whereupon, Receiver's Exhibit 2159 was received.)

11 MS. HEALY-GALLAGHER: Receiver's Exhibit 2160, 6-0,  
12 notice of lien.

13 MR. WALL: No objection from Neldon Johnson.

14 MR. PAUL: No objection.

09:18:24

15 THE COURT: 2160 is received.

16 (Whereupon, Receiver's Exhibit 2160 was received.)

17 MS. HEALY-GALLAGHER: All right. Receiver's  
18 Exhibit 2161, a Division of Corporation certificate for  
19 Anstrom Energy.

09:18:55

20 MR. WALL: No objection from Neldon Johnson.

21 MR. PAUL: No objection.

22 THE COURT: 2161 is received.

23 (Whereupon, Receiver's Exhibit 2161 was received.)

09:19:06

24 MS. HEALY-GALLAGHER: Receiver's Exhibit 2162, the  
25 vehicle reconciliation spreadsheet.



1 MR. WALL: No objection from Neldon Johnson.

2 MR. PAUL: No objection with the understanding this  
3 is a document prepared by the receiver.

09:19:23

4 THE COURT: And then used as kind of a worksheet  
5 for the reconciliation of vehicles; right, Mr. Paul?

6 MR. PAUL: That is my understanding.

7 THE COURT: 2162 is received.

8 (Whereupon, Receiver's Exhibit 2162 was received.)

09:19:34

9 MS. HEALY-GALLAGHER: Receiver's Exhibit 2163,  
10 Acknowledgment of Receivership Order by Glenda Johnson.

11 MR. WALL: No objection from Neldon Johnson.

12 MR. PAUL: No objection.

13 THE COURT: 2163 is received.

14 (Whereupon, Receiver's Exhibit 2163 was received.)

09:19:44

15 MS. HEALY-GALLAGHER: Receiver's Exhibit 2120,  
16 Declaration of Neldon Johnson, which is also on the docket at  
17 ECF Number 738.

18 MR. WALL: No objection from Neldon Johnson.

09:20:10

19 MR. PAUL: No objection with the clarification it  
20 is the declaration only, but not the exhibits that are  
21 attached that were filed with it.

22 MS. HEALY-GALLAGHER: That's correct.

23 THE COURT: And this is 2120?

24 MS. HEALY-GALLAGHER: 2120.

09:20:21

25 THE COURT: It's received.

1 (Whereupon, Receiver's Exhibit 2120 was received.)

2 MS. HEALY-GALLAGHER: Receiver's Exhibit 2164,  
3 which is Exhibits 27 and 28 to the Neldon Johnson declaration  
4 at ECF Number 738.

09:20:40 5 MR. WALL: No objection from Neldon Johnson.

6 MR. PAUL: No objection.

7 THE COURT: I'm trying to see if I have a copy of  
8 this one. You just gave me a thumb drive with a lot of  
9 exhibits; right?

09:20:51 10 MS. HEALY-GALLAGHER: Yes.

11 THE COURT: I was trying to verify 2164. Okay.  
12 Yeah, I have it. Okay. 2164 is received.

13 (Whereupon, Receiver's Exhibit 2164 was received.)

14 MS. HEALY-GALLAGHER: Receiver's Exhibit 2165 -- we  
09:21:08 15 can skip that one.

16 Receiver's Exhibit 2166 --

17 (Discussion held off the record.)

18 MR. PAUL: That's the extent of the exhibits that I  
19 have during the last hearing. Are these now on the thumb  
09:21:40 20 drive?

21 MS. HEALY-GALLAGHER: So we're not going to move to  
22 admit 2165 or 2166.

23 MR. KLEIN: Or 67.

24 MS. HEALY-GALLAGHER: May I have a moment, Your  
09:22:02 25 Honor?

1 (Discussion held off the record.)

2 MS. HEALY-GALLAGHER: All right. That's all we  
3 have from the previous day of testimony.

4 THE COURT: All right.

09:22:46

5 MR. WALL: Your Honor, it's understood that the  
6 Court's thumb drive may contain 2165, -66, -67, -68 and -69.  
7 With the understanding that the Court since that has not been  
8 admitted will not consider that, we do not have an objection  
9 to the fact that those documents may have been provided to the  
10 Court.

09:23:06

11 THE COURT: Yeah. They're marked. Like all  
12 exhibits they're submitted in advance of hearing. But the  
13 clerk does not show them as received so they're not part of  
14 any decision basis right now.

09:23:15

15 MR. WALL: Thank you, Your Honor.

16 THE COURT: So Miss Healy-Gallagher wants to call  
17 three witnesses today. What other evidence do you have to  
18 present today, Mr. Wall?

19 MR. WALL: Your Honor, we're not anticipating  
20 presenting any evidence.

09:23:26

21 THE COURT: Mr. Paul, what witnesses or other  
22 evidence do you think you'll be presenting today?

23 MR. PAUL: We don't anticipate calling witnesses or  
24 presenting any additional evidence, either.

09:23:37

25 THE COURT: Okay. Let's go ahead and call your

1 witnesses then, Miss Healy-Gallagher.

2 MS. HEALY-GALLAGHER: The United States calls  
3 Neldon Johnson.

09:23:48

4 THE COURT: Mr. Johnson, if you'll come forward.  
5 You do need to be sworn again in connection with this  
6 proceeding since it's separate from the one before. So just  
7 pause in front of the podium.

8 THE CLERK: Will you, please, raise your right  
9 hand.

09:24:06

10 NELDON PAUL JOHNSON,  
11 called as a witness at the request of Plaintiff,  
12 having been first duly sworn, was examined  
13 and testified as follows:

14 THE CLERK: If so please say I do.

09:24:14

15 THE WITNESS: I do.

16 THE CLERK: Take a seat.

17 THE COURT: Have a seat over here.

18 And then once you're seated state your full name  
19 and spell your first and last name for the record.

09:24:32

20 THE WITNESS: It's Neldon Paul Johnson.

21 N-E-L-D-O-N, J-O-H-N-S-O-N.

22 THE COURT: Thank you.

23 Go ahead, Ms. Healy-Gallagher.

24 MS. HEALY-GALLAGHER: Thank you, Your Honor.

09:24:46

25 //

DIRECT EXAMINATION

BY MS. HEALY-GALLAGHER:

Q. Good morning, Mr. Johnson.

A. Good morning.

Q. Did you cause International Automated Systems to deliver 31 boxes of documents to the receiver in May 2019?

MR. WALL: Your Honor, I'm going to object to leading during direct examination, unless they establish that this witness is a hostile witness.

THE COURT: Objection overruled. And, Mr. Wall, I think we've established in at least 10 days of testimony that Mr. Johnson is adverse. I don't like the word hostile because that implies something else. But I unfortunately cannot start with a clean slate on that one.

THE WITNESS: Yes, I did, I believe. I don't know the date exactly. But, yes, I did deliver 32 boxes, I guess. I didn't count them. But there were a lot of boxes there.

Q. BY MS. HEALY-GALLAGHER: And, Mr. Johnson, were those all of the documents that you had in your possession related to International Automated Systems?

A. As far as I know. The searches I've done and the places we looked and with the help of the assistance with everybody that I could, that's as far as I know, that's the only documents I had.

Q. And did those boxes that you delivered in May 2019

1 include all of your records of your own personal financial  
2 history?

3 A. As far as I know it did.

09:26:48

4 Q. Do you remember signing a declaration in this case  
5 that was submitted on August 2, 2019?

6 A. I signed a document. I don't remember exactly what  
7 it was, but, yes. I think it was -- is that the one that was  
8 prepared by Mr. Wall?

9 Q. Is that your recollection?

09:27:05

10 A. I'm not positive. I know I signed a document  
11 prepared by Mr. Wall, I believe.

12 MS. HEALY-GALLAGHER: May I approach, Your Honor?

13 THE COURT: Yes.

09:27:28

14 Q. BY MS. HEALY-GALLAGHER: Mr. Johnson, I've just  
15 handed you what's been marked Receiver's Exhibit 2120. That's  
16 your declaration dated August 2, 2019; correct?

17 A. Okay. Where's the date?

18 Q. You can take a look at the top banner of the page.

19 A. Okay. 8-02-19, right.

09:27:49

20 Q. Would you take a look, please, at Page 10?

21 A. Okay.

22 Q. It's Paragraph C on that page.

23 A. Paragraph C? Okay. Okay.

24 Q. Give me one second.

09:28:10

25 In Paragraph C, Mr. Johnson, you're attesting that

1 the documents and materials provided to the receiver and those  
2 materials at Neldon Snuffer which are available to the  
3 receiver and have been inventoried as Exhibit K are all the  
4 documents I have to which I have access and to which I have  
09:28:38 5 knowledge exist.

6 Did I read that correctly?

7 A. Right. But it probably should have been at this  
8 particular time. I don't know how to answer that. But it is  
9 all of the stuff that I knew at the time that existed.

09:28:54 10 Q. Have you learned since that date that you had more  
11 documents responsive to the corrected receivership order or  
12 the affiliates order in your possession?

13 A. I don't think so, but I'm not sure. I'd have to  
14 talk to Mr. Wall.

09:29:12 15 Q. So how much confidence should the Court have in  
16 your declaration here in Exhibit -- in Paragraph C?

17 A. Just what I just said.

18 Q. Did you ever discover any other documents?

19 A. No.

09:29:37 20 Q. Did you retain control over any documents relating  
21 to any of the receivership entities, any of the affiliated  
22 entities or your personal finances that you did not turn over  
23 to the receiver by this date, August 2, 2019?

24 A. Not that I can recall.

09:29:57 25 Q. Specifically, Mr. Johnson, did you retain in your

1 possession after May 2010 any documents related to records of  
2 IAS stock transfers?

3 A. Not that I can recall.

09:30:16

4 Q. Did you retain any records of stock brokerage  
5 accounts in your name?

6 A. Not that I can recall.

7 Q. Any resolutions of the IAS board of directors?

09:30:39

8 A. I may have had copies of some of those things. But  
9 just the items that I have copies of, I may have copies of  
10 some of the minutes. I think I do have copies of the minutes,  
11 actually.

12 Q. Have those copies been produced to the receiver?

13 A. Yes, they have. Everything has been produced. I  
14 may have retained copies of some items.

09:30:56

15 Q. But to your knowledge you've disclosed every unique  
16 document that's been within your possession, custody or  
17 control?

18 A. That's correct.

09:31:13

19 Q. After May 2019, did you retain in your possession  
20 any deposit books showing deposits made into International  
21 Automated Systems bank accounts?

22 A. I wouldn't know of any specific documents that I  
23 would have had in my possession. I never went through the  
24 boxes myself individually, so I wouldn't know exactly what  
09:31:34 25 those boxes contained.



1 Q. Mr. Johnson, if you happen to have found a document  
2 that was responsive to the receivership order what would you  
3 have done with it?

4 A. I would have turned it over to Mr. Wall.

09:32:19 5 MS. HEALY-GALLAGHER: May I, Your Honor?

6 THE COURT: Yes.

7 Q. BY MS. HEALY-GALLAGHER: Mr. Johnson, I'm showing  
8 you what's been marked as Receiver's Exhibit 2123 and an  
9 original version of Receiver's Exhibit 2123.

09:32:50 10 What is this document?

11 A. It's the Board of Directors Resolution Adopting  
12 Amendments to Orders Articles of Incorporation For  
13 International Automated Systems.

14 Q. And does the original of the document have an  
09:33:08 15 embossed company seal affixed over the signatures of the  
16 corporate secretary?

17 A. Yes, it does.

18 Q. Is the copy, which has the exhibit sticker on it  
19 and the Bates number Oasis 2019 underscore 0024 an accurate  
09:33:30 20 copy of the original minus the exhibit stamp and the Bates  
21 number?

22 A. I'd have to look at word for word to get that.

23 Q. Please take your time, if you need to do that.

24 A. It appears to be the same document. But I don't  
09:33:47 25 know. Do you want me to take time and read both of them?

1 Q. If you need that to ensure it's an accurate copy,  
2 please do.

3 (Time lapse.)

09:34:07

4 MS. HEALY-GALLAGHER: While Mr. Johnson does that  
5 I'll note that the receiver has handed a copy of the  
6 Exhibit 2123 to all counsel.

7 (Time lapse.)

8 THE WITNESS: Okay. As far as I can tell they're  
9 the same.

09:35:50

10 Q. BY MS. HEALY-GALLAGHER: So what's been marked  
11 Receiver Exhibit 2123 is a true and accurate copy of the  
12 original of the board resolution with the embossed seal;  
13 correct?

14 A. I believe so, yes.

09:36:07

15 Q. Is Receiver's Exhibit 2123 a document that would  
16 have been an original corporate record of IAS?

17 A. It could have been. I don't know what you're  
18 referring to or why.

09:36:32

19 Q. Well, would IAS have kept and retained originals of  
20 its board resolutions?

21 A. As far as I know they did. But I'm not positive.

22 Q. Where did IAS keep copies of such documents -- or  
23 I'm sorry. Let me start that again. Where did IAS keep  
24 originals such as the one reflected in Receiver's  
09:36:56 25 Exhibit 2123?

1           A.    Well, the company's offices have been moved several  
2 times since 1990. In 1990, they were in a -- they were in a  
3 grocery store building.

09:37:13

4           Q.    So, Mr. Johnson, are you testifying that documents  
5 such as this one would have been kept in the corporate offices  
6 wherever it is they were at any given moment?

09:37:40

7           A.    We try -- we had several books made up of all the  
8 corporate resolutions every year, and we tried to keep those  
9 documents in a booklet form. Myself assigned those duties out  
10 to the individuals that were responsible for keeping those  
11 kind of records, such as the secretaries. So personally I  
12 wouldn't have been involved in the location and designated  
13 locations. But I do know that the corporate offices have been  
14 moved several times since this period of time.

09:38:02

15           Q.    Okay. Mr. Johnson, when was Receiver's  
16 Exhibit 2123 last in your possession?

09:38:23

17           A.    I'm not sure. I wouldn't keep track of things like  
18 that. That's not something that my responsibilities would  
19 include. I would have assigned that out to someone else to  
20 maintain the records and where they were to be kept.

21           MS. HEALY-GALLAGHER: At this time, Your Honor, we  
22 move to admit Receiver's Exhibit 2123.

09:38:43

23           MR. WALL: Your Honor, I don't think sufficient  
24 foundation has been laid to establish this is a record kept in  
25 the ordinary course of business by IAS or this witness nor

1 that this witness is aware of it being a document that would  
2 have been kept in the ordinary course of business.

3 THE COURT: Mr. Paul, any objection?

09:38:53

4 MR. PAUL: I join in the objection from Mr. Wall  
5 and add relevance. This is a 30-year-old document.

6 THE COURT: 2123 is received. Thank you.

7 (Whereupon, Receiver's Exhibit 2123 was received.)

09:39:32

8 Q. BY MS. HEALY-GALLAGHER: Mr. Johnson, I'm handing  
9 you what's been marked Receiver's Exhibit 2124 along with an  
10 original booklet. Will you, please, take a look at that?

11 And I'll note for the record that the receiver has  
12 handed copies of Receiver's Exhibit 2124 to counsel.

13 A. What did you want me to do?

09:40:11

14 Q. So would you take a look, please, at the booklet  
15 and the plastic folder in front of you? Do you recognize this  
16 booklet?

17 A. Not particularly. It's just a bank account  
18 booklet.

19 Q. For whose bank account?

09:40:27

20 A. It looks like International Automated Systems.

21 Q. And if you will take a look and compare the  
22 original that you're flipping through right now with the copy  
23 that's marked Receiver's Exhibit 2124.

09:40:57

24 A. Okay. What is it? What you do you want me to look  
25 at?

1 Q. Does the copy marked Receiver's Exhibit 2124 --

2 A. Okay.

3 Q. -- look like a fair and accurate copy of the  
4 original booklet you have in front of you?

09:41:09 5 A. As far as I can tell. But I haven't looked at  
6 every page.

7 Q. Do you have any reason to think that Receiver's  
8 Exhibit 2124 is not an accurate copy of that deposit book in  
9 front of you?

09:41:21 10 A. No, I do not.

11 Q. What -- If you would take a look, please, at the  
12 fifth page of the document, which is Bates marked Oasis 2019  
13 underscore 0855.

14 A. Okay.

09:42:02 15 Q. Do you see that that has a date of 12-28-93?

16 A. That's correct.

17 Q. And I skipped a page. The fourth page of the  
18 document with Bates Number ending 0854. Do you see that has a  
19 date of entry December 6th, 1993?

09:42:40 20 A. That's correct.

21 Q. The IAS original deposit book, is that something  
22 that International Automated Systems would have kept in the  
23 ordinary course of business?

24 A. Well, it could have been kept a lot of times, but  
09:43:01 25 it would have been required to keep for seven years. I mean,

1 we don't normally -- I don't normally keep track of things. I  
2 don't know where they're at. I did not write these items in,  
3 and I didn't keep track --

4 Q. That's not what I'm asking you, Mr. Johnson.

09:43:22 5 A. I wouldn't know about that. I wouldn't know how to  
6 keep track of that.

7 Q. Mr. Johnson, when was Exhibit 2124 last in your  
8 possession?

9 A. I would have no idea.

09:43:35 10 MS. HEALY-GALLAGHER: Your Honor, we move to admit  
11 to Receiver's Exhibit 2124.

12 MR. WALL: Your Honor, we object on two grounds.  
13 Under Rule 602 there has to have been established that my  
14 client has personal knowledge with regard to this particular  
09:43:48 15 piece of evidence. He's never seen it before, didn't  
16 recognize it or know what it is, nor does he even recognize  
17 the handwriting in it. And under 803 Subsection 7 they have  
18 not laid sufficient evidence to establish that this is a  
19 record that would be kept in the ordinary business, that my  
09:44:05 20 client wasn't personally aware of everything kept in the  
21 ordinary course of business or that this record was made at or  
22 near the time with somebody with knowledge.

23 THE COURT: Mr. Paul?

24 MR. PAUL: I join the objection. Also raise  
09:44:16 25 relevance as an objection.

1 THE COURT: Overruled. 2124 is received.

2 (Whereupon, Receiver's Exhibit 2124 was received.)

3 Q. BY MS. HEALY-GALLAGHER: Mr. Johnson, I'm handing  
4 you what's been marked Receiver's Exhibit 2125 and a blue  
09:44:54 5 binder. Do you recognize this blue binder?

6 A. Well, I know -- I recognize the company.

7 Q. What is the company?

8 A. The name of the company is U-Check.

9 Q. And what are you flipping through right now in the  
09:45:18 10 binder?

11 A. Just looking at, you know, past checks that were  
12 made out.

13 Q. So this is a check register for U-Check?

14 A. Yes.

09:45:29 15 Q. Would you, please, take a look and compare the  
16 binder in front of you with Receiver's Exhibit 2125.

17 A. Okay. Okay.

18 Q. Does Receiver's Exhibit 2125 look like a fair and  
19 accurate copy of the blue binder that's sitting in front of  
09:45:55 20 you?

21 A. As far as I can tell, just by glancing at it.

22 Q. Any reason to think it's not a fair and accurate  
23 copy?

24 A. I wouldn't have any way of knowing.

09:46:07 25 Q. Did U-Check tend to keep a copy of the stubs of

1 checks that it wrote?

2 A. There again, I don't know exactly what the -- how  
3 the bookkeeping people did their work. And I didn't keep  
4 track of that, either. I'm not involved. I assigned those  
09:46:30 5 out or I hire people to do those things.

6 Q. When was the binder copied and Receiver's  
7 Exhibit 2125 last in your possession, Mr. Johnson?

8 A. As far as I know I would have no idea. As far as I  
9 know, it's not active possession. It may have been in the  
09:46:48 10 items there, but I would not have known -- I would not have  
11 looked through and determined those things.

12 Q. Mr. Johnson, did you visit the Oasis landfill  
13 dumpsite on September 2nd, 2019?

14 A. I don't know. I probably did.

09:47:09 15 Q. While you were there did you take documents from  
16 your vehicle and put them in black trash bags?

17 A. I did.

18 Q. And then did you throw those black trash bags into  
19 a dumpster at the Oasis landfill dumpsite?

09:47:29 20 A. I did.

21 Q. Was the U-Check checkbook copied at Receiver's  
22 Exhibit 2125 among the documents you threw out that day?

23 A. I would have no way of knowing.

24 Q. Was the IAS deposit book reflected in Receiver's  
09:48:09 25 Exhibit 2124 among the documents you threw out that day?



1 A. I have no way of knowing.

2 Q. Was the IAS board resolution reflected in  
3 Receiver's Exhibit 2123 among the documents you threw out that  
4 day?

09:48:26 5 A. I wouldn't have any way of knowing.

6 Q. If a Millard County sheriff were to testify that he  
7 saw you taking documents from your car, putting them in black  
8 trash bags and throwing them into the dumpster and then noting  
9 that he retrieved those documents and through a series of  
09:49:08 10 steps turned them over to the receiver, would you be able to  
11 explain any other story as to how these documents might have  
12 come into the receiver's possession?

13 MR. WALL: Objection, Your Honor. Under Rule 602  
14 this question calls for speculation. And under Rules 401 and  
09:49:29 15 402 there's no relevance. It doesn't make any fact more or  
16 less likely as to whether or not he would have an explanation  
17 with regard to what someone else was seeing or observing at  
18 the time and what they may say.

19 THE COURT: Mr. Paul?

09:49:44 20 MR. PAUL: Join the objection, but nothing further.

21 THE COURT: The objection is overruled.

22 THE WITNESS: What was the question? I'm not  
23 positive on the question.

24 Q. BY MS. HEALY-GALLAGHER: Mr. Johnson, if these  
09:50:05 25 documents that we've just been talking about were not

1 recovered from these trash bins, the trash bin that you threw  
2 them into, do you have any other explanation for how the  
3 receiver might have come into the possession of these  
4 documents?

09:50:19 5 A. No, I don't. I don't dispute the fact that they  
6 were in the bags. I just do not know that they were. These  
7 documents were all documents that had been given to the  
8 United States Government in the raid taken place in 2011 or  
9 2012, I don't remember. But they had all been -- they had all  
09:51:01 10 been copied. And every document that was there was copied by  
11 the United States Government. And I was told not to -- not to  
12 give documents that were just garbage to Mr. Klein by this  
13 court. And they were just sitting there, and so we just threw  
14 them away.

09:51:34 15 But the documents themselves have been all copied  
16 by the -- these are all documents that came from the raid back  
17 to us through our attorneys. So our attorneys that were  
18 involved kept track of every document, and so did the  
19 government keep track of all those. And I gave more documents  
09:51:57 20 to the government, and they said they didn't want -- as far as  
21 I understood, they didn't want garbage, any more garbage  
22 given, and they already had them, so -- and I didn't want to  
23 keep track of them, and so we threw some things away.

24 But as far as I know, these are all documents that  
09:52:23 25 came from the raid. And I'm sure they're all, that you have

1       them, as far as I know. Now that's -- I didn't go through  
2       every document, but I went back through and found every  
3       document that I could. And like I said, I was told that all  
4       these 32 documents, 32 boxes, they didn't want.

09:52:45 5               Now if you wanted them, I would have taken them to  
6       you. Most of it was just sales material. And what documents  
7       there were, I wasn't aware of what was inside any of those  
8       boxes. They came back from the attorneys, and I just -- they  
9       were sitting there. We went through them for the documents  
09:53:06 10       there. And they said, and I don't know the dates that you  
11       wanted, but these go back way past those dates that you were  
12       ever wanting.

13               So as far as I know I haven't thrown anything away  
14       that anybody doesn't have, at least two copies of.

09:53:23 15              Q.    Mr. Johnson, would you, please, let me know when  
16       you delivered the originals for Receiver's Exhibit 2123, 2124  
17       and 2125 to the receiver?

18              A.    I wouldn't have any knowledge of those things, but  
19       I do know that those documents are available from -- they  
09:53:51 20       either got them from my last attorneys or the previous  
21       attorneys or the government that did the raids. So there's  
22       copies made available.

23              Q.    And just to be clear, Mr. Johnson. You said  
24       "we" --

09:54:04 25              A.    Myself, yeah. Just myself.

1 Q. Please let me finish the question.

2 A. All right.

3 Q. You said "we" when you were talking about putting  
4 documents in black trash bags at the Oasis transfer station,  
09:54:18 5 and that's because your wife Glenda Johnson was with you;  
6 correct?

7 A. That's correct.

8 Q. She also took documents out of your vehicle and  
9 placed them in black trash bags; correct?

09:54:29 10 A. Correct. She wouldn't know what they were, though.  
11 She would have no way of knowing.

12 Q. Mr. Johnson, for Receiver's Exhibit 2123, 2124 and  
13 2125, are these documents on the index of documents that the  
14 receiver created and gave to your attorney identifying the  
09:54:54 15 documents he had in his possession?

16 A. I'm not sure I understood the question.

17 Q. Do you recall ever seeing an index of documents  
18 that the receiver gave to your attorney?

19 A. There's an index that somebody gave me, but I  
09:55:17 20 didn't go through them to look at them. I mean, I wouldn't do  
21 that.

22 Q. So do you know if these documents, Receiver's  
23 Exhibits 2123, 2124 and 2125, are on that exhibit -- on that  
24 index? Excuse me.

09:55:34 25 A. Not that I know of. But I'm sure that they're

1 available on some kind of flash drive where they were held  
2 from the government. I would assume they would have had  
3 copies made of them. There's no reason why I wouldn't believe  
4 that.

09:56:01 5 MR. WALL: Your Honor, before she goes on, I know  
6 the Court is very thorough in its bookkeeping with regard to  
7 exhibits that have been offered and admitted before they allow  
8 a party to close. They have not offered into evidence 2125,  
9 and I anticipate the Court will at some point address that  
09:56:19 10 issue. We maintain our objections with regard to 602 and with  
11 regard to 803.7 for their admissions, and we would ask that we  
12 be given a standing objection with regard to these records  
13 because they're not laying the adequate foundation for their  
14 admissions.

09:56:36 15 THE COURT: I don't do that. Just state your  
16 objections briefly, lack of foundation and any other rules you  
17 want to site, but that will work. I don't do standing  
18 objections.

19 MR. WALL: Thank you. We object to 2125.

09:56:53 20 THE COURT: Before they --

21 MR. WALL: Well, I know you're going to go through  
22 and ask them if they intend to offer it at some point.

23 THE COURT: I'm not. I let people fall on their  
24 own sword.

09:56:59 25 MS. HEALY-GALLAGHER: Thank you, Mr. Wall. I will

1 offer --

2 THE COURT: Look what you just opened up.

3 MS. HEALY-GALLAGHER: -- Exhibit 2125.

4 THE COURT: 2125 has been objected to by Mr. Wall.

09:57:10 5 Mr. Paul, anything else to add?

6 MR. PAUL: Similar objection, Your Honor. Lack of  
7 foundation, lack of firsthand knowledge.

8 THE COURT: Okay. It's overruled. 2125 is  
9 received.

09:57:42 10 (Whereupon, Receiver's Exhibit 2126 was received.)

11 Q. BY MS. HEALY-GALLAGHER: Mr. Johnson, I just  
12 brought up to you what's been marked as Receiver's  
13 Exhibit 2126 along with four original checks. Do you see  
14 that?

09:57:53 15 A. I do.

16 Q. Are these four original checks that I handed you  
17 accurately reflected in the copy that has been marked as  
18 Receiver's Exhibit 2126?

19 A. As far as I can tell.

09:58:13 20 Q. Do you have any reason to think they're not an  
21 accurate copy?

22 A. No. No, I don't. Huh-uh (negative).

23 Q. On whose bank account are these checks drawn?

24 A. My wife's and myself.

09:58:31 25 Q. And from which bank?

1 A. Bank of American Fork.

2 Q. It looks like -- not Deseret Bank?

3 A. Deseret Bank, sorry. Okay. I wasn't looking.

4 Q. During what time period were these checks written?

09:58:52 5 A. 1989.

6 Q. And who signed checks on this bank account?

7 A. My wife and myself.

8 Q. Are these checks copied in Receiver's Exhibit 2126  
9 original records from your own personal bank account?

09:59:07 10 A. As far as I know.

11 Q. Where did you keep these documents?

12 A. They were -- these documents again came from the  
13 documents in the raid. I think that's where these would have  
14 came from.

09:59:22 15 Q. Mr. Johnson, that wasn't my question. Where did  
16 you keep these documents?

17 A. They were just in boxes in the garage, as far as I  
18 know.

19 Q. And when were these checks last in your possession?

09:59:36 20 A. Probably until I threw them away.

21 Q. And, Mr. Johnson, I'm holding up right now a stack  
22 of more than 500 personal checks.

23 A. Okay.

24 Q. Would you like to take a look?

09:59:51 25 A. Sure.

1 MR. WALL: Your Honor, can we see them, the  
2 evidence?

10:00:26

3 MS. HEALY-GALLAGHER: Sure. What was handed around  
4 was Exhibit 2126 were exemplars of this stack that Mr. Wall is  
5 flipping through.

6 MR. WALL: Your Honor, there appears to be personal  
7 checks from my review from Numbers 436 -- excuse me -- from  
8 3718 and through 4358.

10:01:09

9 THE COURT: And there's a big stack, what would you  
10 say, four inches? Five?

11 MR. WALL: Approximately.

12 THE COURT: Okay.

13 Q. BY MS. HEALY-GALLAGHER: I'm handing the same stack  
14 to you, Mr. Johnson, on the witness stand.

10:01:25

15 A. Okay.

16 Okay.

17 Q. Mr. Johnson, I should say are the checks in  
18 Receiver's Exhibit 2126 exemplary of this stack of four or  
19 five inches of personal checks?

10:01:55

20 A. Yes.

21 MS. HEALY-GALLAGHER: At this time I offer  
22 Exhibit 2126.

23 MR. WALL: Your Honor, may I voir dire the witness?

24 THE COURT: Sure.

10:02:02

25 //



VOIR DIRE EXAMINATION

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BY MR. WALL:

Q. Will you take a look at the check on the top of that stack?

A. Okay.

Q. What is the date on that check?

A. 1989.

Q. And then will you flip through and look to see whether or not the dates on the check are sequential?

A. They appear to be.

Q. And what is the date on the last check?

A. January 31st, 1990.

Q. Are all of these checks from the same account?

A. As far as I can tell.

Q. And what kind of account is that?

A. Personal account.

Q. When you say personal account, who were the individuals who were authorized as signators on the account?

A. My wife, my ex-wife, and myself. It looks like she writes out most of them.

Q. What was the purpose of that account?

A. Just personal.

Q. Personal. Does that mean -- by personal you mean household expenses?

A. Household expenses.

1 Q. Combination of household and business expenses or  
2 what?

3 A. No. These would be household expenses, as far as I  
4 can tell.

10:03:06 5 MR. WALL: Thank you, Your Honor. Your Honor, I  
6 object with regard to this evidence not having any relevance  
7 to this case. These are checks from 1989 to 1990 which are  
8 not relevant to the issues before this court. These are  
9 checks from a personal account. There is no information that  
10:03:23 10 the checks issued from this personal account have any  
11 relationship or relevance with regard to any issues to this  
12 court. So under Rules 401 and 402 I object.

13 THE COURT: Are you going to connect these up with  
14 the disposal at the dump?

10:03:38 15 MS. HEALY-GALLAGHER: Yes. I thought Mr. Johnson  
16 had, but I can ask some clarifying questions.

17 THE COURT: Mr. Paul?

18 MR. PAUL: I join the objection.

19 THE COURT: I don't remember the testimony, so ask  
10:03:48 20 those questions again.

21 MS. HEALY-GALLAGHER: Sure.

22 DIRECT EXAMINATION (CONTINUED)

23 BY MS. HEALY-GALLAGHER:

24 Q. Mr. Johnson, were the checks reflected in  
10:03:52 25 Receiver's Exhibit 2126 among the documents that you threw out

1 on September 2nd, 2019?

2 A. I would have no way of knowing that. I just had a  
3 box there and just dumped them into the sack and threw them  
4 out. They were just documents that came from the raid, and I  
10:04:11 5 was told that they didn't want a bunch of garbage. That I was  
6 to go through the documents. I had all these documents from  
7 the raid from past 2011 as far as I know. Most of the items  
8 were just -- it was mostly patent, I think, or something like  
9 that. I'm not even sure what the documents were. But I just  
10:04:36 10 didn't even open boxes up because I knew that we already had  
11 made copies of those. I didn't. My previously attorneys that  
12 were doing the lawsuit or the criminal trials, and I knew the  
13 government had already made copies of those. And so I didn't  
14 bother looking through those.

10:04:59 15 But we did have people look through them, I think  
16 the -- Mr. Wall's, what's his name, looked through those boxes  
17 and he didn't think they were relevant. So I didn't think --  
18 I already told him what they were, and he said, well, I don't  
19 think they're relevant. They had been copied, so I don't  
10:05:26 20 think we need to worry about them.

21 Q. Mr. Johnson, can you identify when you produced  
22 that stack of checks, some of which are shown in Receiver's  
23 Exhibit 2126, to the receiver?

24 A. I wouldn't -- I don't know exactly when the  
10:05:41 25 documents were copied. I don't know when exactly the people

1 that copied them would have given that information to the  
2 receivers. But as far as I know, the documents have been  
3 copied. They had been categorized by the government. And  
4 also I think it's Christensen and something, they had copies  
10:06:08 5 of those. And I didn't think they were -- I was told not to  
6 bring anymore garbage up to the receiver to go through. I  
7 thought, well, if he's already got them documented, there's no  
8 point taking them.

9 MS. HEALY-GALLAGHER: Your Honor, to the extent  
10:06:26 10 that Mr. Johnson hasn't connected this up, we're perfectly  
11 content to call Deputy Loe.

12 THE COURT: Go ahead then. I think you may need to  
13 do that, and it may save you a whole lot of time.

14 Q. BY MS. HEALY-GALLAGHER: Mr. Johnson, I have handed  
10:07:12 15 you what's been marked as Receiver's Exhibit 2128 --

16 A. Okay.

17 Q. -- along with what appears to be the original of  
18 the document.

19 A. Okay.

10:07:20 20 Q. Would you take a look, please, at those two  
21 documents?

22 A. I am.

23 Q. Receiver's Exhibit 2128, does it appear to be a  
24 true and accurate copy of the original document that you're  
10:07:30 25 holding in your hand?

1 A. Yes, it is. Uh-huh (affirmative).

2 Q. And so what is reflected in Receiver's  
3 Exhibit 2128?

10:07:44

4 A. It looks like corporation income tax returns for  
5 International Automated Systems.

6 Q. For both federal and state; correct?

7 A. What's that?

8 Q. For both federal and state, yes?

9 A. Oh, I didn't look at that.

10:07:57

10 It appears to be.

11 Q. For tax year 1989; correct?

12 A. 1989, that's correct.

13 Q. Mr. Johnson, when was the document reflected in  
14 Receiver's Exhibit 2128 last in your possession?

10:08:16

15 A. I wouldn't have any way of knowing.

16 Q. So you don't recall whether this exhibit was a  
17 document that you threw out on September 9th, 2019?

18 A. I wouldn't know. I would have no way of knowing  
19 that.

10:08:30

20 Q. Mr. Johnson, will you, please, take a look at the  
21 bottom of the first page of Receiver's Exhibit 2128 next to  
22 the box that says, please sign here? Who's signature is on  
23 this tax return?

10:09:03

24 A. It looks like mine, and I can't make out the name  
25 of the other, of the preparer.

1 MS. HEALY-GALLAGHER: May I have a moment, Your  
2 Honor?

3 THE COURT: Yes.

4 (Time lapse.)

10:09:15 5 THE WITNESS: Wait a minute. It's Richards T.  
6 Heinrich, CPA, Sandy, Utah.

7 MS. HEALY-GALLAGHER: At this time I move to admit  
8 Exhibit 2128.

9 MR. WALL: No objection.

10:09:46 10 MR. PAUL: Object as to relevance to these  
11 proceedings.

12 THE COURT: 2128 is received.

13 (Whereupon, Receiver's Exhibit 2128 was received.)

14 MS. HEALY-GALLAGHER: Your Honor, we have a number  
10:10:40 15 more of these exhibits, and to the extent that Mr. Johnson is  
16 testifying that he doesn't remember what he put in those black  
17 trash bags it would probably move things along to simply call  
18 Deputy Loe.

19 THE COURT: I totally agree.

10:10:54 20 MS. HEALY-GALLAGHER: So at this time we have  
21 nothing further for Mr. Johnson.

22 THE COURT: Okay.

23 Any cross, Mr. Wall, of your own client?

24 MR. WALL: Just briefly, Your Honor.

10:11:05 25 //

CROSS-EXAMINATION

BY MR. WALL:

1  
2  
3 Q. You've indicated a number of times that you  
4 perceived that the government had all of these documents based  
10:11:20 5 on a raid. Could you explain to the Judge what you're talking  
6 about?

7 A. Yes. I think it was sometime in 2011 or 2012, I'm  
8 not positive, there was a criminal investigation into  
9 International Automated Systems, myself and RaPower. They  
10:11:40 10 came to all of our -- all of the facilities that were operated  
11 by those people. They gathered up every document that there  
12 was in possession of the company, myself, of all the  
13 companies. They took those documents, and they held them for  
14 two or three years or more. I can't remember.

10:12:11 15 Anyway, they were then in Christensen's possession.  
16 They asked me to come pick them up because they no longer  
17 needed them, they dropped the charges, and said that these are  
18 these are documents. And so we put them in, stored them in  
19 someplace, I don't remember exactly where, but they were -- I  
10:12:42 20 think they were down in Oasis building there for a time. And  
21 they could have been in the storage containers, I'm not sure.

22 But they looked through, we looked through them  
23 with the people there. And I said they had already been,  
24 they've already been photographed by the government. They  
10:13:09 25 would have been. And they told me they were. And so

1 Christensen told me that they had all the documents there  
2 recorded. And what did I want to do with them? And I said, I  
3 don't know. Probably just throw them away. And they said, we  
4 can't do that. Why don't you come get them? And I said,  
10:13:30 5 okay, I'll come get them.

6 But I paid no attention to what was inside the  
7 boxes or what they were and how many there was. I couldn't  
8 tell you.

9 Q. Let me ask followup. You said they came and got  
10:13:43 10 them. Who are you referring to FBI agents?

11 A. FBI, yes. I believe IRS or FBI, I'm not sure.

12 Q. But they were all federal agents?

13 A. There were about 100 of them. They went through  
14 every little document. Every little document that I ever had  
10:14:00 15 would have been right there.

16 Q. When you say they had them for two or three years.  
17 Are you referring to the federal government?

18 A. Federal government, yes.

19 Q. Do you know who in the federal government had them?

10:14:10 20 A. I don't have any idea.

21 Q. And what is it that led you to believe that the  
22 federal government had, you say photographed or in some way  
23 copied all of these documents?

24 A. I asked my attorneys if they had kept documents of  
10:14:22 25 those, and he said, yes, they would have done.



1 Q. And when you say your attorneys, are you referring  
2 to your attorneys --

3 A. To the attorneys --

4 THE COURT: Counsel?

10:14:30 5 MR. WALL: We can't talk on each other.

6 THE COURT: Mr. Johnson and Mr. Wall, stop for a  
7 minute. Only one of you can speak at a time. If you can't  
8 abide by that rule I'll discontinue the examination because it  
9 can't be managed.

10:14:47 10 THE WITNESS: Okay.

11 THE COURT: Let him state a question, and let him  
12 state his answer. And it's okay to pause every once in  
13 awhile.

14 Mr. Wall, your next question.

10:14:58 15 MR. WALL: Sure.

16 Q. BY MR. WALL: So when you say "they," are you  
17 referring to the attorneys of the firm Snow, Christensen &  
18 Martineau?

19 A. That's correct.

10:15:07 20 Q. And do you recall the names of the attorneys that  
21 you were dealing with?

22 A. It was -- he was a previous federal court judge.

23 Q. Are you referring to Judge Sam Alba?

24 A. Yes. Uh-huh (affirmative). Yes, I am.

10:15:23 25 Q. Okay. And when the documents were returned to you

1 was that at the direction as far as you know of Mr. Alba?

2 A. Yes.

3 Q. You indicated that you had suggested to the  
4 attorneys at Snow, Christensen & Martineau that they dispose  
10:15:42 5 of the documents.

6 A. That's correct.

7 Q. And they indicated that they would not do that?

8 A. Yes. They said that I should come get them.

9 Q. Okay. Did you receive any directions from them  
10:15:54 10 with regard to what you should do with the documents?

11 A. No. They didn't say anything.

12 Q. So at the time that you disposed of the documents  
13 why did you do that?

14 A. Well, it was because I had been told that there  
10:16:13 15 were -- half of the documents that they got up there they  
16 couldn't use. They didn't want them. And they -- and so --  
17 and I had these other boxes. I could have -- I mean, I could  
18 have brought them up. I don't know why I didn't. But I  
19 didn't want to be in trouble again for bringing what they  
10:16:36 20 would call garbage up to where they just had to go through  
21 them. And if they already had them on electronic files  
22 they're much easier to go through than they are with these  
23 kind of things. They're old documents. And I would have  
24 assumed they had all the documents past that age from either  
10:17:01 25 Christensen's and Snow, or I guess it was the DOJ at the time

1 that had the documents.

2 So I would assume then that looking at the age and  
3 what they were, and like I said, I didn't go through them.  
4 Other than -- I mean, I wish I would have just took them up.  
10:17:28 5 I just didn't want to get in trouble. That's all. I could  
6 have taken them all up. It didn't bother me. There's nothing  
7 there that I -- that they didn't already have. So what  
8 difference does it make to me? I couldn't figure out why I  
9 would need them.

10:17:46 10 Q. So my next question is, did you have an  
11 understanding as to whether the receiver had access to those  
12 copies that had been made by the United States Government?

13 A. If they doesn't have, I'm sure the government would  
14 have them. I mean --

10:18:06 15 THE COURT: That answer is stricken.

16 State the question again, Mr. Wall. I'm not going  
17 to do this all morning, Mr. Johnson.

18 THE WITNESS: Sorry.

19 THE COURT: You have to listen to the question. I  
10:18:16 20 don't want you to give narratives about what you're thinking  
21 or what your imagination on a different topic is. I need you  
22 to listen to the question. For some reason this is always  
23 worse with his own attorney on examination than with the  
24 government's attorney. I don't understand that.

10:18:30 25 But, Mr. Wall, try to get him to focus on your

1 question. Ask that question again. It was a great question.

2 Q. BY MR. WALL: And I'll ask it a little more  
3 leading. Yes or no, did you have an understanding as to  
4 whether or not the receiver had access to the documents that  
10:18:48 5 had been copied by the United States Government?

6 A. As far as I know, he did, yes.

7 Q. How did you have that understanding?

8 A. Just from the information that I got from everybody  
9 that I talked to indicated that he had those documents.

10:19:08 10 Q. What made you think that the receiver could get the  
11 documents that had been copied when they were from the raid  
12 that occurred either by the IRS or the FBI?

13 A. I was told that those documents were copied and in  
14 those people's possession.

10:19:28 15 Q. And was it the attorneys with Snow, Christensen &  
16 Martineau that informed you that they had been copied, those  
17 documents?

18 A. That's correct.

19 MR. WALL: I have no further questions, Your Honor.

10:19:40 20 THE COURT: Mr. Paul?

21 MR. PAUL: No questions, Your Honor.

22 THE COURT: Any redirect?

23 MS. HEALY-GALLAGHER: Briefly, Your Honor.

24 //

10:19:46 25 //

REDIRECT EXAMINATION

BY MS. HEALY-GALLAGHER:

10:20:09 5 Q. Mr. Johnson, you testified on January 23rd that you  
6 did not know of any documents relevant to any receivership  
7 entities that were destroyed or discarded since October 31st,  
8 2018 --

9 A. That's correct.

10 Q. -- is that right?

11 A. Yes.

10:20:17 12 Q. And you testified to the same thing on January 23rd  
13 with respect to the affiliated entities; correct?

14 A. That's correct.

15 MS. HEALY-GALLAGHER: Nothing further.

16 THE COURT: Any cross?

10:20:30 17 MS. HEALY-GALLAGHER: Excuse me. Subject to recall  
18 as needed after later testimony.

19 THE COURT: Okay.

20 Mr. Wall, any recross?

21 MR. WALL: Briefly.

10:20:37 22 RECROSS-EXAMINATION

23 By MR. WALL:

24 Q. On January 23rd, why did you testify that you did  
25 not know of any documents that had been destroyed?

10:20:54 26 A. I felt like they had copies of all the documents  
27 that I had in my possession.

1 Q. And who do you refer to when you say you felt they  
2 had copies of all the documents?

10:21:13

3 A. I knew they had copies of the documents from what  
4 Sam Alba had told me, that the government would have copied  
5 them. They had copies of them as far as -- they would have  
6 copies from the government on file on their computers for the  
7 trials. I mean, they wouldn't go through -- well, anyway.

10:21:37

8 Q. Let me see if I can be clearer. When you say that  
9 you thought they had copies of all the documents, is the  
10 "they" that you're referring to the receiver?

11 A. I thought the receiver had all the documents that  
12 were given to the government were given to the receivers on  
13 electronic files.

14 Q. Thank you.

10:21:59

THE COURT: Mr. Paul, any recross?

16 MR. PAUL: No, Your Honor.

17 THE COURT: All right. You can step down,  
18 Mr. Johnson at this time.

19 Call your next witness.

10:22:10

20 MS. HEALY-GALLAGHER: The United States calls  
21 Millard County Sheriff Deputy Brandon Loe.

22 THE COURT: Mr. Loe, if you'll come forward and  
23 stop in front of the clerk she'll administer an oath.

24 BRANDON LOE,

10:22:48

25 called as a witness at the request of Plaintiff,

1                   having been first duly sworn, was examined

2                                   and testified as follows:

3                   THE CLERK: If so, please, say I do.

4                   THE WITNESS: I do.

10:22:51 5                   THE CLERK: Please take a seat.

6                   THE COURT: Would you state your full name and  
7 spell it for the record, please?

8                   THE WITNESS: Brandon Loe. B-R-A-N-D-O-N, L-O-E.

9                   THE COURT: Thank you.

10:23:09 10                                   DIRECT EXAMINATION

11 BY MS. HEALY-GALLAGHER:

12                   Q. Good morning, Deputy Loe.

13                   A. Good morning.

14                   Q. Where do you work?

10:23:15 15                   A. I work for the Millard County Sheriff's Office.

16                   Q. And where is your particular station within Millard  
17 County?

18                   A. It's throughout the county. Our main office  
19 building is in Fillmore, Utah.

10:23:29 20                   Q. Where is your desk?

21                   A. My desk is in our substation in Delta, Utah.

22                   Q. Deputy Loe, are you familiar with Neldon Johnson  
23 and Glenda Johnson?

24                   A. Yes.

10:23:44 25                   Q. How are you familiar with them?

1           A.    It's a relatively small community.  I know them  
2 just from being in that small community.

3           Q.    And I should have asked.  Do you also live in  
4 Millard County?

10:23:55 5           A.    Yes, ma'am.

6           Q.    In the Delta area?

7           A.    Yes, ma'am.

8           Q.    You mentioned that it's a small community.  So you  
9 know Neldon and Glenda Johnson through your interactions in  
10 the community?

11          A.    Yes, ma'am.

12          Q.    So, Deputy Loe, I'd like to flash your memory back  
13 to November 2nd, 2019.  Do you recall what you were doing that  
14 day?

10:24:33 15          A.    I do.  I was off duty.  I was actually dove  
16 hunting.  It was the opening day of the dove hunt.

17          Q.    After dove hunting what did you do?

18          A.    I went to the local dumpsite for the area I reside  
19 in, it's the Oasis dumpsite approximately like 4600 South,  
10:24:55 20 Oasis.

21          Q.    What did you see when you were at the dumpsite?

22          A.    While I was there I observed a vehicle pull into  
23 the area.  I kind of noted it as a little bit different  
24 because it didn't pull up straight up to the dumpsite.  It  
10:25:20 25 came up, and as it got closer I observed Mr. and Mrs. Johnson



1 in the vehicle. They proceeded to get out of the vehicle and  
2 gather documents from the vehicle and then put them into the  
3 trash bin.

4 Q. And when you say Mr. and Mrs. Johnson, Deputy Loe,  
10:25:40 5 you mean Neldon and Glenda Johnson?

6 A. Yes, ma'am.

7 Q. We have a number of different Johnsons at issue  
8 here today.

9 A. Yes.

10:25:49 10 Q. So just clarifying.

11 Okay. So you mentioned that they got out of the  
12 car and started to do what?

13 A. They started to gather what appeared to be  
14 documentation, and they put it into black trash bags.

10:26:13 15 Q. Do you recall anything else visually about those  
16 black trash bags?

17 A. Yeah. I remember that they were just a typical  
18 black trash bag but had a blue drawstring to them that made  
19 them kind of unique.

10:26:27 20 Q. And about how many black trash bags with blue  
21 drawstrings did they fill with documents?

22 A. Three or four.

23 Q. What did they do with the trash bags once they  
24 filled them with documents?

10:26:47 25 A. They put them in the dumpster bin.

1 Q. Deputy Loe, where were you that you could see this?

2 A. I had actually pulled away and was about 150 to  
3 200 yards away. At that time I called our county attorney and  
4 kind of explained the circumstances that I had witnessed and  
10:27:05 5 felt a need that it was my duty to at least talk with him  
6 about that. And he instructed me to gather the bags and take  
7 possession of them.

8 Q. What is it that prompted you to think, I might --  
9 maybe I should call the county attorney about this?

10:27:29 10 A. Just it was odd to see so many documents being put  
11 into a trash bag. It was also -- because I know Mr. and  
12 Mrs. Johnson I kind of had known that there was some recent  
13 allegations of some things going on. So that's where I felt  
14 like I needed to see if I had to do something about it or  
10:27:59 15 needed to do something about it.

16 Q. So just to make sure it's on the record, what did  
17 the county attorney tell you to do?

18 A. He instructed me to take the items.

19 Q. So what did you do?

10:28:10 20 A. I then went back to the dumpsite and took  
21 possession of the items.

22 Q. How did you do that?

23 A. Crawled into the dumpster.

24 Q. When you got into the dumpster, how were you able  
10:28:23 25 to identify the particular trash bags that the Johnsons had

1 thrown out?

2 A. That dump bin was relatively empty, and so it was  
3 not difficult at all to note which bags were theirs. They  
4 were the only ones in the dumpster that matched that  
10:28:44 5 description.

6 Q. They were the only ones that were the black trash  
7 bags with the blue drawstrings?

8 A. Yes, ma'am.

9 Q. What did you do with those black trash bags once  
10:28:54 10 you got them out of the dumpster?

11 A. I took them, and once I got back to my residence I  
12 put them in my patrol vehicle. And on my next scheduled  
13 workday I took them to the substation in Delta.

14 Q. And where did you keep them?

10:29:16 15 A. I kept them on my desk.

16 Q. When did the trash bags leave your possession?

17 A. I can't remember the specific date, but it was  
18 sometime in or around the week of October 4th, I believe.

19 Q. So a few weeks later?

10:29:34 20 A. Yeah.

21 Q. At least.

22 A. Yeah.

23 Q. Between the time you placed the trash bags on your  
24 desk and the time they left your possession, did anything  
10:29:45 25 about their appearance change?

1 A. No.

2 Q. Did it look like they had been tampered with at  
3 all?

10:29:55

4 A. No. There were some holes in the bags just from  
5 the weight of things, but it did not appear that they had been  
6 tampered with.

7 Q. Were the holes big enough to take documents out or  
8 put documents in?

10:30:11

9 A. Probably take them out, but I don't know that you  
10 could have put them back in without tampering and stretching.

11 Q. So what happened to the bags?

12 A. They were -- they were gathered from us to  
13 Mr. Klein. Mr. Klein met with our county attorney also on  
14 that day and took possession of the items.

10:30:37

15 MS. HEALY-GALLAGHER: May I have a moment, Your  
16 Honor?

17 THE COURT: Yes.

18 (Time lapse.)

19 MS. HEALY-GALLAGHER: Nothing further at this time.

10:30:56

20 THE COURT: Cross, Mr. Wall?

21 MR. WALL: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. WALL:

24 Q. You're a law enforcement officer?

10:31:05

25 A. Yes, sir.

1 Q. And you spoke with the county attorney about what  
2 you were observing.

3 A. Yes, sir.

10:31:17

4 Q. You did that because you thought that you may be  
5 witnessing something that was a potential crime.

6 A. Yes, sir.

7 Q. And the county attorney told you to gather the  
8 bags.

9 A. Yes, sir.

10:31:25

10 Q. So at that time it was your understanding you were  
11 gathering evidence of a potential crime.

12 A. Correct.

13 Q. And based on your training and experience you know  
14 if something is in a garbage can it's abandoned property.

10:31:39

15 A. That's correct.

16 Q. So you don't need to do anything further than to  
17 crawl in trash bin and pull out what may be potentially  
18 evidence.

19 A. Yes, sir.

10:31:47

20 Q. You don't have to ask for a warrant or anything of  
21 that nature.

22 A. No, sir.

23 Q. So you had seen some bags with blue ties being  
24 taken out of Mr. Johnson's vehicle.

10:32:02

25 A. Yes, sir.

1 Q. Did you actually see documents being put into those  
2 bags?

3 A. Yes, sir.

10:32:14

4 Q. When you got into the dumpster, you saw bags with  
5 blue ties; correct?

6 A. Yes, sir.

10:32:27

7 Q. Now, with regard to the bags with blue ties, you  
8 don't know whether there were other bags with blue ties in the  
9 dumpster before the bags with blue ties were put in the  
10 dumpster by the Johnsons.

11 A. No.

12 Q. So when you were looking in the dumpster, you were  
13 just looking for bags with blue ties.

14 A. Correct.

10:32:37

15 Q. You had no idea whether all of the bags that you  
16 gathered came from the Johnsons or some of them may have been  
17 there before; correct?

18 A. Yeah, I don't know.

10:32:54

19 Q. On direct you didn't testify that you took  
20 photographs of the bags in the dumpster. Did you take  
21 photographs of the bags in the dumpster?

22 A. I did not.

10:33:07

23 Q. It's standard law enforcement procedure when you  
24 find evidence to take photographs of the location where you  
25 find the evidence, isn't it?

1 A. Generally speaking, correct.

2 Q. But you didn't do that in this case.

3 A. No.

4 Q. So having not taken photographs you removed these  
10:33:21 5 items from the dumpster; correct?

6 A. Yes, sir.

7 Q. And you put the items in your personal vehicle,  
8 didn't you?

9 A. Yes, sir.

10:33:30 10 Q. You didn't call for other law enforcement officers  
11 to come to the scene.

12 A. No, sir.

13 Q. You didn't call for a crime scene investigator to  
14 come and document any of the locations of the evidence.

10:33:42 15 MS. HEALY-GALLAGHER: Objection; relevance.

16 THE COURT: Sustained. He doesn't have to follow  
17 criminal or constitutional law requirements, does he,  
18 Mr. Wall?

19 MR. WALL: Your Honor, he does need to I think to  
10:33:55 20 follow the procedures and protocols law enforcement officers  
21 engage in when they're gathering evidence, and he's testified  
22 he was gathering evidence at the scene of a crime. So while  
23 it may not go to the admissibility, it does go to the weight.  
24 And I think that in further questioning I'll establish then  
10:34:12 25 there is an issue with regard to the contents.

1 THE COURT: Well, get to the contents. I don't  
2 think the process is at issue.

10:34:30

3 Q. BY MR. WALL: Typical procedure when you have  
4 evidence and you have that evidence at the police station is  
5 you log that evidence in; correct?

6 MS. HEALY-GALLAGHER: Objection; relevance.

7 THE COURT: Is this where you're going on the  
8 contents, that it wasn't kept in a secure facility and it  
9 wasn't logged in?

10:34:41

10 MR. WALL: And what was in the bags was not  
11 identified.

12 THE COURT: Okay. This question can be answered.

13 Did you log it in?

10:34:52

14 THE WITNESS: Can you repeat the question? I'm  
15 sorry.

16 Q. BY MR. WALL: When you got to the police station  
17 you didn't log the bags into evidence, did you?

18 A. I did not.

10:35:05

19 Q. Now, typically when you have evidence in bags you  
20 go through it in order to identify what those items are.

21 MS. HEALY-GALLAGHER: Objection; relevance.

22 THE COURT: Overruled.

23 THE WITNESS: Can you repeat the question, sir?

10:35:17

24 Q. BY MR. WALL: Typically when you have evidence that  
25 are in bags, you can't see through the bags, you look in the



1 bags to identify what it is that you found; correct?

2 A. Typically, yes, sir.

3 Q. And you have an evidence log sheet in which you can  
4 write down each and every item of evidence that you found;  
10:35:34 5 correct?

6 A. Correct.

7 Q. And that evidence log sheet enables you as an  
8 officer to know if what you have found in the bag ultimately  
9 ends up what you're shown in court.

10:35:45 10 MS. HEALY-GALLAGHER: Objection; relevance.

11 THE COURT: I think, Mr. Wall, you've made your  
12 point here. How is further inquiry here important?

13 MR. WALL: Your Honor, I think that the  
14 United States intends to try to suggest to this Court the  
10:36:00 15 various pieces of evidence that they examined Mr. Neldon  
16 Johnson on were in the bags that this officer retrieved from  
17 the dumpsite. But if this officer didn't record what he  
18 received in the dumpsite and kept them in an unsecured  
19 location there is no nexus between what was found in the  
10:36:21 20 dumpsite and what they're claim was in the bags.

21 THE COURT: I think you established that, and, in  
22 fact, I think Miss Healy-Gallagher established that there were  
23 bags on his desk for a week. They just sat there.

24 MR. WALL: I understand.

10:36:35 25 THE COURT: So I get it.

1 MR. WALL: Okay.

2 No further questions.

3 THE COURT: Mr. Paul?

4 MR. PAUL: No questions.

10:36:42 5 THE COURT: Okay. Any redirect?

6 MS. HEALY-GALLAGHER: No, Your Honor.

7 THE COURT: Okay. You can step down. Thank you  
8 for being here today.

9 Any other witnesses?

10:36:52 10 MS. HEALY-GALLAGHER: The United States calls Wayne  
11 Klein, Receiver.

12 THE COURT: Mr. Klein.

13 ROY WAYNE KLEIN,

14 called as a witness at the request of Plaintiff,

10:36:56 15 having been first duly sworn, was examined

16 and testified as follows:

17 THE CLERK: If yes, please say I do.

18 THE WITNESS: I do.

19 DIRECT EXAMINATION

10:37:24 20 BY MS. HEALY-GALLAGHER:

21 Q. Hello, Mr. Klein.

22 THE COURT: Would you state your full name and  
23 spell it for the record, please.

24 THE WITNESS: Roy Wayne Klein. R-O-Y, W-A-Y-N-E  
10:37:36 25 K-L-E-I-N.

1 THE COURT: Thank you.

2 Go ahead, Ms. Healy-Gallagher.

3 Q. BY MS. HEALY-GALLAGHER: Mr. Klein, you heard  
4 Mr. Johnson's testimony and Deputy Loe's testimony; correct?

10:37:46 5 A. Yes.

6 Q. What do you recall about going down to pick up the  
7 documents and the trash bags from Delta?

8 A. On I believe it was October 8th I got a call from  
9 my counsel Mike Lehr telling me he received a call from  
10:38:04 10 Pat Finlinson, a Millard County attorney, indicating that they  
11 had some documents that they retrieved from a dumpster and  
12 wanted to know if we were interested in those documents. And  
13 Mr. Lehr indicated that the county attorney had apparently  
14 thought -- he tried to contact me earlier and had left a  
10:38:27 15 message and I had not returned it, and that's why the contact  
16 had been made to my attorney.

17 So I called Mr. Finlinson, told him that, yes, we  
18 were interested in the documents. And on October 14th I drove  
19 to Delta, and there I met the county attorney. And we went  
10:38:51 20 into the sheriff's office substation in Delta and found I  
21 believe it was four plastic garbage bags on a desk. A couple  
22 of the bags were torn, and so they gave me some other plastic  
23 garbage bags that we -- that I could then take the documents  
24 that were at risk of falling out of the black plastic garbage  
10:39:22 25 bags and put them into another bag.

1           So then while he were organizing that, I was doing  
2 a quick review of the documents that were in the bag to see  
3 what was, what type of documents were included. And during  
4 that process Deputy Loe arrived at the substation. He  
10:39:43 5 confirmed that those were the bags he picked up at the garbage  
6 dumpster. And then I took possession of those, all of those  
7 documents.

8           Q. On your quick review, what were some documents that  
9 caught your eye?

10:40:03 10           A. There were hundreds of personal checks, checks from  
11 Reams Video. There were deposit books from bank accounts  
12 including International Automated Systems. There were tax  
13 records. There were original financial statements. There  
14 were brokerage account statements for Mr. Johnson, Neldon  
10:40:31 15 Johnson's personal stock brokerage accounts. There were I  
16 think 4,000 documents that had Bates numbers on the bottom  
17 just without a prefix. It was just 00001 through  
18 4300-and-something.

19           Q. Why did those documents catch your eye?

10:40:57 20           A. The last group or all of them?

21           Q. In general.

22           A. Well, in general because these documents were all  
23 documents that I recognize as relating to International  
24 Automated Systems and Neldon Johnson.

10:41:12 25           Q. Did you have any opinion on whether they might be

1 responsive to elements of the corrected receivership order?

2 A. Yes. And particularly the original documents, that  
3 we had original checks from Mr. Johnson. We had original  
4 financial statements and tax returns with his signatures on.

10:41:41 5 So these were original documents of the company, and therefore  
6 they were responsive to the corrected receivership order which  
7 means they were documents that should have been turned over to  
8 me.

9 Q. And what about Mr. Johnson's personal financial  
10:41:59 10 records? How if at all were they responsive to the corrective  
11 receivership order?

12 A. Well, those are responsive because Mr. Neldon  
13 Johnson is a receivership defendant, and as we receiver I have  
14 responsibility over all of his assets. And so to the extent  
10:42:15 15 that these are personal records of his they're records that  
16 should have been turned over to me. Moreover, they're  
17 important to me because they would help me try and identify  
18 possible accounts that he had and whether or not that might  
19 lead to the discovery of assets.

10:42:33 20 Q. Up in front of you still on the witness stand from  
21 Neldon Johnson's testimony is Receiver's Exhibit 2123.

22 A. I have it.

23 Q. Was Receiver's Exhibit 2123 among the documents  
24 that you retrieved from Delta?

10:43:02 25 A. Yes.

1 Q. What about Receiver's Exhibit 2124?

2 A. Yes.

3 Q. Receiver's Exhibit 2125, the U-Check checkbook and  
4 register.

10:43:21 5 A. Yes.

6 Q. Was that among the documents you retrieved from  
7 Delta?

8 A. Yes. One of the garbage bags had four or five  
9 binders in, five binders. So this was one of those five  
10 binders.

10:43:40 11 Q. And what about Receiver's Exhibit 2126? Those were  
12 the -- the exhibit itself is a sample of a few checks. But  
13 you're holding in your hand that stack of four to five inches  
14 of personal checks.

10:43:59 15 A. These checks were found in those bags.

16 MS. HEALY-GALLAGHER: Your Honor, I move again to  
17 admit Receiver's Exhibit 2126.

18 THE COURT: 2126 is what again? The sample?

19 MS. HEALY-GALLAGHER: The sample of checks,  
10:44:19 20 personal checks.

21 MR. WALL: Objection. Objection as to relevance  
22 under 401 and 402.

23 THE COURT: Thank you.

24 Mr. Paul, any objections?

10:44:26 25 MR. PAUL: Join in the relevance objection.

1 THE COURT: Received.

2 (Whereupon, Receiver's Exhibit 2126 was received.)

3 Q. BY MS. HEALY-GALLAGHER: And, Mr. Klein, I'll turn  
4 your attention to Receiver's Exhibit 2128, the 1989 IAS  
10:44:41 5 Federal and State Tax Returns. Is the original of Receiver's  
6 Exhibit 2128 something you retrieved from Delta?

7 A. It is.

8 Q. Mr. Klein, I just handed to you and counsel a copy  
9 of what's been marked Receiver's Exhibit 2129 along with a  
10:46:04 10 booklet with a blue cover. Do you recognize Receiver's  
11 Exhibit 2129?

12 A. I do.

13 Q. What is it?

14 A. This is a -- the original is a bound set of  
10:46:17 15 financial statements for International Automated Systems for  
16 the years ended June 30th, 1992, and June 30th, 1991.

17 Q. How did you obtain the original of Receiver's  
18 Exhibit 2129?

19 A. This was in one of the black garbage bags I picked  
10:46:37 20 up from the sheriff substation in Delta.

21 Q. And is the copy marked as the receiver's exhibit a  
22 true and accurate copy of the original?

23 A. Yes. And perhaps it could help if I explained.  
24 When I received the documents I wanted to have scans made so I  
10:47:03 25 could have copies available for counsel and also to have them

1 Bates stamped. But rather than let the originals out of my  
2 possession, I photocopied all of each of the documents and  
3 then sent the photocopies out for scanning and affixing Bates  
4 numbers. So the originals never left my possession, but  
10:47:28 5 copies, I'm the one that made the copies.

6 Q. Thank you.

7 Would you take, please, at the last page of  
8 Receiver's Exhibit 2129?

9 Do you see a signature on that page?

10:47:48 10 A. I do.

11 Q. Whose signature is it?

12 A. It appears to be the signature of Neldon Johnson,  
13 and printed below the signature is the printed name Neldon  
14 Johnson.

10:47:56 15 Q. And what is the attestation above his name?

16 A. It says, the undersigned affirms that he's read the  
17 foregoing, and the information is accurate and complete.

18 MS. HEALY-GALLAGHER: I move to admit Receiver's  
19 Exhibit 2129.

10:48:15 20 MR. WALL: Your Honor, object as to relevance under  
21 401 and 402.

22 THE COURT: Mr. Paul?

23 MR. PAUL: I join the objection.

24 THE COURT: 2129 is received.

10:48:24 25 (Whereupon, Receiver's Exhibit 2129 was received.)



1 Q. BY MS. HEALY-GALLAGHER: Mr. Klein, I've just  
2 handed you a document that's been marked Receiver's  
3 Exhibit 2132 along with what appears to be an original  
4 envelope with a document inside it. Do you recognize these  
10:49:38 5 documents?

6 A. I do.

7 Q. What are they?

8 A. The envelope is from -- has a return address of  
9 OTC Stock Transfer, Inc., from Salt Lake City. And it's a  
10:49:52 10 large envelope approximately 9-by-11-1/2. And it's addressed  
11 to International Automated Systems, Inc., attention Neldon  
12 Johnson, at an address in American Fork.

13 Q. Is the copy that's marked as Receiver's  
14 Exhibit 2122 the same as you pulled out of the envelope?

10:50:19 15 A. Yes.

16 Q. A true and accurate copy, I should say.

17 A. It is.

18 Q. So first off, did you recognize the name OTC Stock  
19 Transfer?

10:50:32 20 A. I do.

21 Q. How do you recognize it?

22 A. Well, it is a name of a stock -- a transfer company  
23 that I'm aware of because I've seen the name in other  
24 documents that we found in connection with this case, and my  
10:50:44 25 and my previous work I've recognized the name of it being a

1 transfer company.

2 Q. And can you summarize the content of Receiver's  
3 Exhibit 2132?

4 A. It's a computer printout on computer paper that is  
10:51:05 5 connected from page to page. And the first page says Transfer  
6 Statement, and it indicates that it is from March 1st, 1998,  
7 to March 31st, 1998. And it appears to be a record of all  
8 stock certificates from IAS that were canceled and issued  
9 during the month.

10:51:34 10 Q. How did you get the original of Receiver's  
11 Exhibit 2132?

12 A. It was among the documents that I recovered from  
13 the sheriff's office.

14 Q. And why is this document of interest to you?

10:51:44 15 A. Because, number one, this is an original company  
16 document for International Automated Systems; number two, it's  
17 relevant because it shows that not all documents were  
18 delivered to me; and number three, it's a resource I can use  
19 to see what stock certificates were issued by IAS and what  
10:52:07 20 shares were canceled and reissued.

21 Q. And how if at all is Receiver's Exhibit 2132  
22 responsive to the corrected receivership order?

23 A. This is a business record of International  
24 Automated Systems. And as such, it is something that should  
10:52:25 25 have been delivered to me.

1 Q. Do you happen to recall which paragraph that might  
2 be responsive to?

3 A. I do not.

4 Q. It also shows the stock transfers.

10:52:37 5 A. Yes.

6 Q. Correct?

7 A. Yes.

8 Q. And that's specifically requested by the corrected  
9 receivership order.

10:52:44 10 A. It is specifically requested. And, indeed, in  
11 earlier hearings on the United States first motion for  
12 contempt some of the questions that were asked then and in my,  
13 in the earlier deposition of Neldon Johnson on May 2nd we  
14 specifically asked whether or not there were any stock  
10:53:06 15 transfer records.

16 Q. If we could take a step back to Receiver's  
17 Exhibit 2129, the financial statement. How if at all is  
18 Receiver's Exhibit 2129 responsive to the corrected  
19 receivership order?

10:53:29 20 A. This is an original document, but it also tells me  
21 the financial condition of International Automated Systems for  
22 the fiscal years 1991 and 1992.

23 THE COURT: Miss Healy-Gallagher, every once in  
24 awhile I look at the clock, and I realize we've been going  
10:53:48 25 almost two hours. I'm not meaning to constrain your

1 examination. I'm trying to figure out timing. How many more  
2 exhibits do you have that you'll be going through with  
3 Mr. Klein before we turn over to cross-examination? Or how  
4 much time do you think we have? Some kind of rough trail  
10:54:04 5 marker for me.

6 MS. HEALY-GALLAGHER: Well, there are a couple of  
7 more examples of stock transfer documents, and then there are  
8 a few brokerage account statements for Neldon Johnson himself.

9 THE COURT: Okay.

10:54:19 10 MS. HEALY-GALLAGHER: We could probably group  
11 those, the brokerage statements just in terms of the  
12 generalities of why they're responsive.

13 THE COURT: Okay.

14 MS. HEALY-GALLAGHER: And it will take a second to  
10:54:34 15 hand everything around.

16 THE COURT: Okay.

17 MS. HEALY-GALLAGHER: If you're looking for a  
18 breaking point this would be fine.

19 THE COURT: And then after that how much do you  
10:54:40 20 have with Mr. Klein?

21 MS. HEALY-GALLAGHER: That will probably wrap it  
22 up.

23 THE COURT: Okay. Let's do that break right now  
24 then. And we'll come back -- how long should we have?

10:54:52 25 Miss Hicken, how long should we take? 10 after the hour we'll

1 come back. I have a noon meeting that I have to go to, and it  
2 will only take an hour, but I have to go. So we'll talk more  
3 about time when we get closer to noon.

4 We're in recess.

10:55:11 5 (Recess.)

6 THE COURT: We're reconvening now in United States  
7 vs. RaPower and others. Mr. Klein is still on direct  
8 examination.

9 Go ahead, Miss Healy-Gallagher.

11:13:52 10 MS. HEALY-GALLAGHER: Thank you, Your Honor. At  
11 this time I move to admit Receiver's Exhibit 2132.

12 THE COURT: Mr. Wall?

13 MR. WALL: No objection.

14 THE COURT: Mr. Paul?

11:14:05 15 MR. PAUL: Objection to relevance.

16 THE COURT: 2132 is received.

17 (Whereupon, Receiver's Exhibit 2132 was received.)

18 Q. BY MS. HEALY-GALLAGHER: Mr. Klein, I've placed  
19 upon the witness stand a document that's been marked  
11:14:18 20 Receiver's Exhibit 2133. And I've also handed around copies  
21 of Receiver's Exhibit 2133 to all counsel. Mr. Klein, do you  
22 recognize Receiver's Exhibit 2133?

23 A. I do.

24 Q. What is it?

11:14:39 25 A. It's a one-page document labeled, Transfer Order

1 from Transnational Transfer, Inc., to International Automated  
2 Systems, Inc.

3 Q. And you also have an original of the document  
4 that's Receiver's Exhibit 2133; correct?

11:14:59

5 A. Yes.

6 Q. Is the document that's marked a true and accurate  
7 copy of that original?

8 A. It is.

11:15:10

9 Q. So can you describe a little bit about what the  
10 contents of 2133 is?

11 A. This is a document apparently from this transfer  
12 company to International Automated Systems indicating that  
13 5.6 million shares were issued to six different people  
14 including 2.4 million shares issued to Neldon Johnson. And  
15 this is dated December 27th of 1991.

11:15:34

16 Q. How did you obtain the original for Receiver's  
17 Exhibit 2133?

18 A. This was among the documents I received from the  
19 sheriff's office.

11:15:49

20 Q. And why, Mr. Klein, if you do think this is  
21 responsive to, Receiver's Exhibit 2133 responsive to the  
22 correction receivership order?

23 A. It is. This is an original corporate document of  
24 International Automated Systems.

11:16:05

25 Q. It also shows assets that Neldon Johnson himself

1 held at one time; correct?

2 A. Correct.

3 MS. HEALY-GALLAGHER: I move to admit Receiver's  
4 Exhibit 2133.

11:16:22 5 MR. WALL: No objection.

6 MR. PAUL: Objection; relevance.

7 THE COURT: 2133 is received.

8 (Whereupon, Receiver's Exhibit 2133 was received.)

9 Q. BY MS. HEALY-GALLAGHER: Now, Mr. Klein, you also  
11:16:38 10 have a stack of four documents in front of you, Receiver's  
11 Exhibit 2136, Receiver's Exhibit 2137, Receiver's Exhibit 2138  
12 and Receiver's Exhibit 2139. Do you see those?

13 A. I do.

14 Q. And I've also handed around copies of those  
11:17:00 15 exhibits to counsel.

16 Let's start off, Mr. Klein, with Receiver's  
17 Exhibit 2136. We'll start off with that. Do you recognize  
18 this document?

19 A. I do.

11:17:13 20 Q. What is it?

21 A. It's pages from -- of a brokerage account statement  
22 from the brokerage firm Wilson, Davis and Company for Neldon  
23 Johnson for the year 1995.

24 Q. And with Receiver's Exhibit 2136, do you also have  
11:17:41 25 an original of this?

1 A. I do.

2 Q. Is Receiver's Exhibit 2136 a true and accurate copy  
3 of the original?

4 A. It is.

11:17:48 5 Q. And how did you get the original of Receiver's  
6 Exhibit 2136?

7 A. This was among the documents I received from the  
8 Millard County Sheriff's Office.

9 Q. And in your opinion how if at all is Receiver's  
11:18:07 10 Exhibit 2136 responsive to the corrective receivership order?

11 A. Two important reasons. First, these are personal  
12 records of Neldon Johnson that show his financial  
13 transactions; second, the particulars of this exhibit and  
14 others show funds he received by selling his stock in  
11:18:30 15 International Automated Systems and very large amounts of  
16 proceeds he received.

17 MS. HEALY-GALLAGHER: I move to admit Receiver's  
18 Exhibit 2136.

19 MR. WALL: No objection.

11:18:52 20 MR. PAUL: Objection; relevance.

21 THE COURT: 2136 is received.

22 (Whereupon, Receiver's Exhibit 2136 was received.)

23 Q. BY MS. HEALY-GALLAGHER: Please take a look,

24 Mr. Klein, at what's been marked as Receiver's Exhibit 2137.

11:19:13 25 Do you recognize this document?



1 A. I do.

2 Q. What is it?

3 A. It's a brokerage account statement from a brokerage  
4 firm Sierra Brokerage Services to Neldon Johnson for the  
11:19:31 5 period from April 3rd, 1996, to April 30th, 1996.

6 Q. If you take a look at the four pages. Is that the  
7 sole time period that we see in the Receiver's Exhibit 2137?

8 A. No. The first page is for April of '96, and the  
9 second page March of '96, and third and fourth page are  
11:19:54 10 February of '96.

11 Q. Do you also have an original of Receiver's  
12 Exhibit 2137 in front of you?

13 A. Yes.

14 Q. Does Receiver Exhibit 2137 appear to be a true and  
11:20:07 15 accurate copy of that original document?

16 A. It is.

17 Q. How did you get Receiver's Exhibit 2137?

18 A. This is among the documents I received from the  
19 Millard County Sheriff's Office.

11:20:21 20 Q. Would you take a look, please, at Receiver's  
21 Exhibit 2138? Do you recognize this exhibit?

22 A. I do.

23 Q. What is it?

24 A. It's an account statement, brokerage account  
11:20:52 25 statement from Alpine Securities, Corp., for Neldon Johnson

1 for the period July through September of 1994.

2 Q. Do you also have the original for Receiver's  
3 Exhibit 2138?

4 A. I do.

11:21:08 5 Q. In front of you?

6 A. Yes.

7 Q. All right. Is Receiver's Exhibit 2138 a true and  
8 accurate copy of the original that you see?

9 A. It is.

11:21:16 10 Q. Would you, please, take a look at Receiver's  
11 Exhibit 2139?

12 Do you recognize Receiver's Exhibit 2139?

13 A. I do.

14 Q. What is it?

11:21:40 15 A. It's a brokerage account statement from  
16 Smith Barney for Neldon Johnson for October 1995.

17 Q. Do you also have the original for Receiver's  
18 Exhibit 2139 in front of you?

19 A. Yes.

11:21:58 20 Q. Is Receiver's Exhibit 2139 a true and accurate copy  
21 of the original?

22 A. Yes.

23 Q. So now I'd like you to take a look at Receiver's  
24 Exhibit 2137, 2138 and 2139 together. For each of these

11:22:15 25 exhibits how are they responsive to the corrected receivership

1 order?

2 A. They show assets that Neldon Johnson had in terms  
3 of stock holdings or sales of stock such as the Sierra  
4 Brokerage statement shows that on April 3rd of 1996 he  
11:22:39 5 received \$424,000 in proceeds from sales of his stock over the  
6 prior months. So this tells me income he received during that  
7 time period that then hopefully will help me know what kind of  
8 funds he had so I can look to see whether or not they were  
9 assets purchased during that time period or other bank  
11:23:08 10 accounts. These documents are also relevant because they are  
11 original documents showing his personal financial matters.

12 MS. HEALY-GALLAGHER: Your Honor, I move to admit  
13 Receiver's Exhibit 2137, Receiver's Exhibit 2138 and  
14 Receiver's Exhibit 2139.

11:23:29 15 MR. WALL: No objection.

16 MR. PAUL: Objection as to relevance.

17 THE COURT: These Exhibits 2137 through, is it  
18 through -39?

19 MS. HEALY-GALLAGHER: Yes.

11:23:39 20 THE COURT: Are received.

21 (Whereupon, Receiver's Exhibits 2137 through  
22 2139 were received.)

23 Q. BY MS. HEALY-GALLAGHER: Mr. Klein, for all of the  
24 documents you've identified as having come to you from the  
11:23:53 25 Millard County Sheriff's Office, were any of those documents

1 produced to you in any other fashion?

2 A. I don't believe so.

3 MS. HEALY-GALLAGHER: Nothing further at this time.

4 THE COURT: Just a minute, Miss Healy-Gallagher.

11:24:11 5 I've got a couple questions that may suggest some for you.

6 Of all the documents that you found in the trash  
7 bags what was the most recent date?

8 A. I don't recall. I believe some were early 2000 or  
9 2001 or 2002, I believe. I didn't look at the index to answer  
11:24:49 10 that.

11 THE COURT: Thank you.

12 Does that suggest another question?

13 MS. HEALY-GALLAGHER: It does, Your Honor.

14 Q. BY MS. HEALY-GALLAGHER: Mr. Klein, to your  
11:24:57 15 recollection of the corrected receivership order, is there any  
16 date that beyond which documents about Neldon Johnson's  
17 personal financial life or International Automated Systems  
18 documents, is there any date restriction on documents that are  
19 responsive under the corrected receivership order?

11:25:17 20 A. I don't recall there being one.

21 Q. There is a date restriction on a certain  
22 declaration Mr. Johnson had to provide; correct?

23 A. Yes.

24 Q. But not with respect to documents that were  
11:25:36 25 required to be produced; right?

1 A. My understanding was that all company records were  
2 required to be delivered to me without restriction date.

3 Q. And all of Mr. Johnson's personal records?

4 A. Correct.

11:25:49 5 THE COURT: Thank you.

6 MS. HEALY-GALLAGHER: Thank you, Your Honor.

7 THE COURT: Mr. Wall?

8 MR. WALL: Thank you, Your Honor.

9 CROSS-EXAMINATION

11:25:57 10 BY MR. WALL:

11 Q. Mr. Klein, do you have Receiver's Exhibit 2123  
12 there in front of you, which is the IAS Board Resolution?

13 A. Yes.

14 Q. The date on that resolution is 1990, isn't it?

11:26:25 15 A. Yes.

16 Q. Do you have Receiver's Exhibit 2124, the IAS bank  
17 deposit book?

18 A. Yes.

19 Q. The bank deposit book contains records indicating  
11:26:41 20 deposits between 1993 and 1995; correct?

21 A. I believe so, yes.

22 Q. With regard to the Receiver's Exhibit Number 2126,  
23 which is the canceled checks, that stack of checks as you  
24 noted are between 1989 and 1990; correct?

11:27:11 25 A. In the exhibit these -- the four checks in the

1 exhibit are just 1989. You mean the stack?

2 Q. You looked at the stack, as well; correct? And the  
3 first check is from 1989 --

4 A. Yes.

11:27:23 5 Q. -- in the front? And the very last check is from  
6 1990; correct?

7 A. Correct.

8 Q. With regard to the U-Check checkbook, which is  
9 Receiver's Exhibit 2125, that binder contains documentation  
11:27:43 10 related to financial information from 1998?

11 A. The U-Check checkbook.

12 Q. Excuse me. From 1994; correct?

13 A. Correct.

14 Q. And that pertains to all of the records in that  
11:27:58 15 document?

16 A. Correct.

17 Q. You indicated that you had five other binders;  
18 correct?

19 A. Yes.

11:28:03 20 Q. And all of those binders pertain to transactions in  
21 the 1990s; correct?

22 A. Not all of the documents in the other binders are  
23 numbered. Some of them are marketing pieces or vendor  
24 information that don't have any dates.

11:28:20 25 Q. So there's some documents without dates?

1 A. Correct.

2 Q. And then the other documents are from the 1990s if  
3 they have dates.

4 A. I believe so.

11:28:30 5 Q. With regard to Receiver's Exhibit 2128, which is  
6 the IAS tax return, that tax return is from 1998; correct?

7 A. It's signed, the tax return is signed in 1991.

8 Q. 1991? Okay. And is that a return for 1989?

9 A. Correct -- well, it's a 1989 form. It's for a  
11:29:10 10 return, a tax period July of '89 through June of '90.

11 Q. Thank you.

12 Now with regard to the IAS financial statements in  
13 2129, which you testified about, those financial statements  
14 are from 1993; correct?

11:29:33 15 A. Correct. The signature is 1993. It's for fiscal  
16 years '91 and '92.

17 Q. Okay. And with regard to Receiver's Exhibit 2132,  
18 the OTC Stock Transfer information, the postmark on the  
19 envelope on the front upper right-hand corner is from  
11:30:03 20 April of 1998; correct?

21 A. Correct.

22 Q. And all of the documents that were contained within  
23 that envelope are from 1998.

24 A. Correct.

11:30:17 25 Q. With regard to Receiver's Exhibit 2123, the

1 Transnational Transfer order, that is from 1991; correct?

2 A. Yes.

3 Q. And with regard to the OTC stock journal invoice  
4 from Receiver's Exhibit 2134 --

11:30:45 5 MS. HEALY-GALLAGHER: Objection. That was not  
6 introduced.

7 MR. WALL: I understand it wasn't introduced.

8 Q. BY MR. WALL: That was a document that was found in  
9 the trash bag.

11:30:57 10 A. Yes.

11 Q. And that's from 1988; correct?

12 A. It wouldn't surprise me. I don't have it in front  
13 of me, and I don't have an independent recollection of the  
14 date.

11:31:08 15 Q. You don't have any reason to believe that it was  
16 from any time different than from that?

17 A. I do not.

18 MR. WALL: Your Honor, may I approach the witness?

19 THE COURT: Yes.

11:31:17 20 Q. BY MR. WALL: If I were to hand you a copy of that  
21 document would you recognize it?

22 A. Yes.

23 Q. I ask you to take a look at that document, and let  
24 me know if that refreshes your recollection as to when that  
11:31:32 25 document was created.



1 A. It does.

2 Q. It was 1988?

3 A. Correct.

4 Q. I'd like to turn your attention to Receiver's

11:31:50 5 Document 2136. That's the Wilson Davis account statement; is  
6 that correct?

7 A. Yes.

8 Q. That's from 1995; correct?

9 A. Yes.

11:32:04 10 Q. And Receiver's Exhibit 2137, that's the Sierra  
11 Brokerage account statement; correct?

12 A. Yes.

13 Q. That's from 1996; correct?

14 A. Yes.

11:32:16 15 Q. With regard to Receiver's Exhibit 2138, the Alpine  
16 Securities account statement; correct?

17 A. Yes.

18 Q. That's from 1994; correct?

19 A. Yes.

11:32:34 20 Q. And with regard to the Smith Barney account  
21 statement, that's Receiver's Exhibit 2139; correct?

22 A. Yes.

23 Q. And that's from 1995; correct?

24 A. Yes.

11:32:49 25 MR. WALL: Your Honor, pursuant to Rule 201 I'd ask

1 the Court to take judicial notice with regard to the corrected  
2 receiver's document 4192 Paragraph 26, which indicates that  
3 the date relevant to the receiver and the documents that were  
4 being sought is January 1st, 2005.

11:33:12

5 MS. HEALY-GALLAGHER: Objection to the  
6 characterization of that paragraph.

7 THE COURT: And tell me, is that paragraph about  
8 the affidavit?

11:33:24

9 MS. HEALY-GALLAGHER: That is about the affidavit,  
10 Your Honor.

11 THE COURT: Okay. And what was the 4192? I heard  
12 you mention that number. I don't know what that number is.  
13 Mr. Wall?

14 MR. WALL: Did I say 4192?

11:33:39

15 THE COURT: That's what I heard.

16 MR. WALL: There was 2139 or 95.

17 MS. HEALY-GALLAGHER: 491 is the ECF docket entry  
18 for the corrected receivership order.

19 MR. WALL: Oh, right.

11:33:53

20 THE COURT: I'm with you there, then.

21 Okay. I am noting for the record that the parts  
22 about the affidavit pertain to the period beginning in 2005.  
23 That was the subject of negotiation and discussion way back  
24 when.

11:34:08

25 MR. WALL: Your Honor, I'd also ask pursuant to

1 Rule 201 that the Court take judicial notice that in  
2 Paragraph 27 concerning tax returns, that the date that is in  
3 the corrected receivership order, which is docket Number 491,  
4 that the date was January 1st, 2010.

11:34:30 5 THE COURT: And I'm going to have to bring that up.  
6 But what's the context of that, Mr. Wall?

7 MR. WALL: Well, Your Honor, they have a tax return  
8 that they found purportedly in the garbage bin, which was an  
9 IAS tax return.

11:34:41 10 THE COURT: What's the context in the receivership  
11 order? You say there's a paragraph that mentions tax returns  
12 starting in a certain time.

13 MR. WALL: Oh, that they turn over the tax returns  
14 from the dates beginning on January 1st, 2010, to the present.

11:34:57 15 THE COURT: For all the receivership entities?

16 MR. WALL: Yes, Your Honor.

17 THE COURT: Okay. Miss Healy-Gallagher, any  
18 response to that?

19 MS. HEALY-GALLAGHER: That paragraph, I agree that  
11:35:04 20 it is January 1, 2010. And there is a huge umbrella of  
21 documents requested in Paragraph 24 of the receivership order.

22 THE COURT: Yeah.

23 MS. HEALY-GALLAGHER: That would include tax  
24 returns, as well.

11:35:18 25 THE COURT: Okay. I recognize there's a dispute

1 there about the significance of withholding anything before  
2 that date.

11:35:31

3 MR. WALL: Yes, Your Honor. I'm just asking for  
4 purposes of this case and the contempt matter that the Court  
5 take judicial notice of those particular dates.

6 THE COURT: And provisions. I've done that. Thank  
7 you.

8 MR. WALL: Thank you, Your Honor. That's all I  
9 have.

11:35:38

10 THE COURT: Okay.

11 Mr. Paul, anything on examination of this witness?

12 MR. PAUL: Very briefly.

13 CROSS-EXAMINATION

14 BY MR. PAUL:

11:35:47

15 Q. Mr. Klein, have you had the opportunity to review  
16 all the documents that were obtained after September 2019?

17 A. I've not reviewed every document.

18 Q. Have you found in your review anything that has  
19 proven helpful in identifying assets of the receivership  
20 defendants or affiliated entities?

11:36:13

21 A. Yes.

22 Q. What have you found?

23 A. I found invoices showing equipment and vehicles  
24 that were purchased. I found records of bank accounts. And I  
25 found, I've now identified with these records what brokerage

11:36:27

1 firms Mr. Johnson and I believe LaGrand Johnson and had  
2 accounts with.

3 Q. Have any of those identification of vehicles or  
4 accounts or transfer records identified any current assets  
11:36:49 5 that is still in the possession of the receivership  
6 defendants?

7 A. Yes.

8 Q. Like what?

9 A. Vehicles and real estate.

11:36:56 10 Q. And have you produced those documents today or have  
11 we talked about those documents today? Or what documents are  
12 those?

13 A. We have previously created a -- I previously  
14 created a document identifying vehicles that I believe are in  
11:37:15 15 the possession of the receivership defendants and Glenda  
16 Johnson, and I've asked for turnover of those vehicles. We've  
17 separately filed a motion seeking to turn over real estate  
18 that Glenda Johnson has and a lawsuit against Glenda Johnson.  
19 And we've produced documents relating to those.

11:37:41 20 Q. So are you saying that the exhibit that was used in  
21 this matter related to vehicles owned by the receivership  
22 defendants and Glenda Johnson and Exhibit 2162 was created  
23 using information that you received from these documents that  
24 are allegedly put in the garbage bags?

11:38:02 25 A. Among the documents in the garbage bag I found

1 purchase documents for some of the vehicles, at least one of  
2 the vehicles on that vehicle reconciliation list.

3 Q. And can you identify which documents in the garbage  
4 bags that included that information?

11:38:30 5 A. Yes. It's in a file folder for I believe an  
6 equipment sales company.

7 Q. Have you had these documents and records since  
8 October of 2019. How come they weren't brought up before  
9 today?

11:38:51 10 A. They -- it was our intention to question Neldon  
11 Johnson about them in front of the Court. And the first  
12 hearing date that the Court was able to give us was in  
13 December. And then that got postponed until January, and that  
14 hearing got postponed. We felt that it was important that the  
11:39:13 15 Court hear the testimony firsthand rather than doing it at a  
16 deposition.

17 Q. Why didn't you reach out to counsel to try to  
18 address these issues directly with counsel?

19 MS. HEALY-GALLAGHER: Objection; relevance.

11:39:28 20 THE COURT: Overruled.

21 THE WITNESS: Because I felt it was important that  
22 as the Court is considering whether or not to hold Mr. Johnson  
23 in contempt, that the Court be able to hear his testimony  
24 firsthand and see his reaction when confronted with the  
11:39:50 25 documents rather than that being discussed in a deposition or

1 through counsel.

2 Q. BY MR. PAUL: So it is your goal to find  
3 Mr. Johnson in contempt or find assets for the receivership  
4 estate?

11:40:03 5 MS. HEALY-GALLAGHER: Objection; argumentative.

6 THE COURT: Overruled.

7 MR. PAUL: Nothing further.

8 THE COURT: Okay.

9 Any redirect?

11:40:09 10 MR. PAUL: I'm sorry, Judge. I thought you were  
11 going to sustain. I'd like to hear the answer to that.

12 THE COURT: You want to give up.

13 Q. BY MR. PAUL: I'd like to hear the answer to that.

14 A. I have two goals. One is -- three goals. One is  
11:40:26 15 to identify documents that may be relevant; number two, to  
16 review documents that may lead to recoverable assets; and  
17 number three, as an arm of the Court I feel a responsibility  
18 to report to the Court on information that I find may indicate  
19 violations of the Court's order.

11:40:50 20 MR. PAUL: Thank you. Nothing further.

21 THE COURT: All right.

22 Any redirect?

23 MS. HEALY-GALLAGHER: Nothing, Your Honor.

24 THE COURT: Okay. Thank you.

11:40:56 25 Mr. Klein, you can step down.

1 That concludes your witnesses; correct?

2 MS. HEALY-GALLAGHER: That's right.

3 THE COURT: All right. Mr. Lehr, I always leave  
4 you out. You look like you're ready to stand up.

11:41:15 5 MR. LEHR: No.

6 THE COURT: Thank you. All right.

7 Mr. Willard, could you pick up that document that's  
8 on the printer that I thought you were going to get at the  
9 break?

11:41:24 10 If I understand the things we talked about needing  
11 to be accomplished today we're getting to the point where  
12 there would be some level of argument on what acts, if any, of  
13 contempt have been proven in addition to those that I found  
14 previously. And we would be -- and that's consistent with the  
11:41:47 15 statements which were very helpful that the parties provided.  
16 And we would be then going on to discuss what sanctions, if  
17 any, would be appropriate if any contempt is found.

18 And can I have the statements that I handed you  
19 earlier back? I've got a few minutes before I go to my  
11:42:10 20 meeting, so I wanted to give you some preliminary impressions  
21 that I've had as we've been -- as I've read the transcript  
22 from the January 23rd proceeding and as I have listened to  
23 evidence today, and as I have reviewed the statements that  
24 were filed by the Johnsons.

11:42:30 25 And I'm going to do my best to find these



1 assertions right now. Well, I think I can summarize them, but  
2 they're supported in our record.

3 The Johnsons' statements take the position on some  
4 issues that they were not raised in the contempt motion.

11:43:02 5 There are some factual issues not recited in the original  
6 contempt motion, but that doesn't mean they're not within the  
7 embrace of the general violations for which contempt is  
8 sought, so I don't think there was an obligation on the part  
9 of the receiver or the United States to raise every factual  
11:43:23 10 incident in its contempt motion.

11 In addition, there were -- and that pertains  
12 particularly to October/November 2019 events discussed on  
13 Page 8 of the Glenda Johnson, Randale Johnson, LaGrand Johnson  
14 response. There was a similar objection about e-mails never  
11:43:54 15 having been requested from LaGrand Johnson. The scope of  
16 documents to be produced under the receivership order was  
17 extremely broad. And we're going to get to that as we talk  
18 about some of these brokerage documents and banking documents  
19 that are historical and not so current.

11:44:18 20 Mr. Neldon Johnson raised several times in his  
21 response that his actions -- or his disclosures have been made  
22 to the best of his ability, such as the accounting that was  
23 required and the statements about recovery of documents held  
24 by third parties. I have the declarations of several third  
11:44:54 25 parties indicating that there was no contact by the Johnsons

1 to obtain documents from them. So when I look at the claim of  
2 best of ability I have a very hard time with that. I'm trying  
3 to let you know where I'm at in my thinking.

4 The attitude of the Johnsons, and by that last name  
11:45:19 5 term I include all of them, Neldon, Glenda, Randale and  
6 LaGrand, has been careless and indifferent. To some extent  
7 they portray themselves as being limited by their abilities  
8 and competence to organize, to recall, to summarize, to  
9 assemble evidence, to make contacts. And I'm puzzled because  
11:45:53 10 they presented themselves in marketing as the most competent,  
11 most capable, best qualified of all scientists and business  
12 and tax organizations. And I don't find persuasive the  
13 argument that they are simply unable or incompetent which  
14 they're now making to provide decent responses.

11:46:26 15 Specifically I have credibility concerns about  
16 Neldon Johnson and Glenda Johnson. We have a motion pending  
17 regarding the Solstice agreement. But the nature of that  
18 agreement, which is an exhibit -- attached to a declaration  
19 which is an exhibit in this proceeding. And the information  
11:46:46 20 that I've read in the briefing on the Solstice agreement is  
21 incredible in the sense that it is just not believable. It  
22 approaches the ridiculous to suppose that a \$35 million  
23 handwritten agreement with unintelligible terms could somehow  
24 be relied on them having been produced very late in this  
11:47:18 25 proceeding as creating enforceable obligations or rights. It

1 leads to a conclusion that I have made that they are, Neldon  
2 Johnson and Glenda Johnson, are not credible.

3 The use of multiple entities. The use of the  
4 evasive agreements, which I discussed in my early findings of  
11:47:45 5 facts further buttresses my conclusion that the actions of  
6 these parties, and that includes all of them because they were  
7 all involved to one extent and another in entities, are not  
8 credible, not done for business purposes, not done for  
9 comprehensible or documented business purposes certainly, not  
11:48:08 10 done for any business purpose which has been expressible in  
11 any testimony in the trial or subsequent proceedings.

12 Mr. Neldon Johnson's use of nominees, persons who  
13 replaces him, positions of ownership but maintain the complete  
14 control as we found in the earlier findings is further  
11:48:34 15 illustrated by the disputes about the vehicles. It's a shell  
16 game. They may be titled in one person's name, and that  
17 person claims they really belong to somebody else. And then  
18 Miss Glenda Johnson claims she has no control over the  
19 vehicles. And everyone claims that they're available for  
11:48:54 20 pickup by the receiver when they were obligated to deliver  
21 receivership assets. It's a shell game.

22 This latest testimony we've received today about  
23 the disposition of documents is extremely disturbing. Anyone  
24 under the types of orders that the Johnsons are under should  
11:49:15 25 have been extremely conscious about disposition of documents.

1 The assumption that Mr. Neldon Johnson says he made that the  
2 receiver already had these because another agency of  
3 government seized them years earlier and he didn't want to,  
4 quote, get in trouble for overproducing, is irrational, not  
11:49:39 5 believable.

6 All the parties, the Johnson parties have attested  
7 to their lack of knowledge regarding documents. But then  
8 Mr. and Mrs. Johnson are out there bagging up documents on the  
9 one day that a Millard County sheriff's deputy happen to be  
11:50:16 10 there. I'm left to wonder, I'm not making any finding on it,  
11 but I'm left to wonder what else in the landfill. But not  
12 even shredded, and certainly not produced to the receiver, and  
13 these documents weren't. And they're material to what the  
14 receiver needed to reconstruct the history of IAS and Mr. and  
11:50:35 15 Mrs. Johnson's finances. Mr. Johnson, everyone says, someone  
16 had these documents. I didn't know you meant these documents.  
17 These excuses are not enough.

18 I made excerpts from the transcript that I've been  
19 pulling as we go along. Mr. Johnson stated at 9:59 a.m. that  
11:51:00 20 he kept this body of documents we were talking about in the  
21 garage until he threw them away. And then just about five  
22 minutes later when he was asked if these documents were part  
23 of what he threw away, he said I would have no way of knowing  
24 that. I just had a box there and dumped them in the sack and  
11:51:26 25 threw them out. I was told, he doesn't say by who, they

1 didn't want a bunch of garbage. And I was to go through  
2 documents. But I paid no attention to what was in the  
3 documents or what they were, and how many, I couldn't tell  
4 you.

11:51:42

5 So on one hand they determined they weren't  
6 relevant; on one hand, he said someone told them that they  
7 weren't needed; and finally he says, I have no idea what I  
8 threw away.

11:52:03

9 The muddled thinking that Mr. Johnson engages in is  
10 really demonstrated at 10:15 a.m. this morning in the  
11 transcript. It was at Line 47 -- or Line 8, Page 47, and that  
12 line and page may change.

13 At the time that you disposed of the documents why  
14 did you do that?

11:52:21

15 It's because I had been told that there were half  
16 the documents they got up there that they couldn't use, they  
17 didn't want them. And they -- and so I had these other boxes.  
18 I mean, I could have brought them up. I don't know why I  
19 didn't. But I didn't want to be in trouble again for bringing  
20 up what they would call garbage.

11:52:37

21 I don't think he ever testified or no one testified  
22 as to him getting in trouble for bringing too much up. We've  
23 been fighting for years to get what we need. And it keeps  
24 dribbling in, to where they just had to go through them. If  
11:52:54 25 they already had electronic files, they're much easier to go

1 through than these kinds. They're old documents. How he  
2 thinks there's electronic files, he claims he was told that by  
3 Snow, Christensen, Martineau, but he certainly wasn't told  
4 that by the receiver.

11:53:11 5 I've never issued an order saying you're excused  
6 from producing what was given to the IRS in 2011 and 2012.  
7 It's never been a topic of discussion in any of our orders.

8 There's nothing there that they didn't already  
9 have, so what difference does it make to me? I couldn't  
11:53:32 10 figure out why I would need them.

11 On January 23rd, this is at 10:20 a.m. this  
12 morning, why did you testify that you did not know of any  
13 documents that have been destroyed?

14 I felt like they copied all of the documents I had  
11:53:51 15 in my possession.

16 That's not an answer to that question. The  
17 question is: Why did you testify under oath that you did not  
18 know of any documents that had been destroyed? Not because he  
19 didn't destroy any, not because he didn't discard any, just  
11:54:15 20 because he felt, he judged himself that they had everything  
21 they needed so he threw all of these away.

22 If you read that testimony from front to end where  
23 he's going through the disposal of documents it's apparent  
24 that he elaborates as he goes along, and he tends to embellish  
11:54:38 25 as he goes along. And I don't find any of that credible. And

1 it leads to a real concern about credibility in anything that  
2 Mr. Johnson says.

3 So as you go into your noon lunch hour, and I'm  
4 going to talk in a minute about what our schedule is going to  
11:54:55 5 be then, I want you to understand that I have some very strong  
6 feelings about who's believable and who's not. When we get  
7 back from lunch what I'm hoping I'll be prepare to do because  
8 I have Mr. Willard working while I'm at lunch and we've  
9 already worked on this some, but I'm going to go through the  
11:55:15 10 United States' position statement. I have marked things in  
11 Mr. Johnson's position statement, I've commented on a lot of  
12 those. They're not especially substantive, most of them  
13 pertaining to him having a reasonable belief that he did the  
14 best he can. And I've marked -- and you made it very clear in  
11:55:31 15 your formatting, Mr. Paul, where you were responding rather  
16 than reciting what the receiver and the United States said.  
17 But we're going to reconcile that, and I'm going to make some  
18 findings there because I have clear impressions, and I'm going  
19 to make those concrete as to what additional instances of  
11:55:47 20 contempt have been proven.

21 Now, I've been critical of the defendants, but I  
22 want to say something about the work of counsel. Mr. Wall,  
23 what you've accomplished in the case since you were brought in  
24 as CJA counsel has been an amazing turnaround in my view in  
11:56:06 25 terms of getting documents over to the receiver and getting

1 clarification. And it's apparent to me that you've worked  
2 long and hard hours in assembling material and trying to get  
3 it in an understandable format. And that's led us to the  
4 point where we are here today, which is not entirely  
11:56:25 5 satisfactory. But I think we never could have been close to  
6 this without your assistance.

7 Mr. Paul, the same thing. I think you've done a  
8 good job of responding to receiver requests. I don't think  
9 you've had as much to assemble and assimilate as Mr. Wall.  
11:56:40 10 But I greatly appreciate the work of counsel for the  
11 defendants. I think to some extent you've been obstructed by  
12 difficulties with your clients.

13 Now when we get back I'd like to go through the  
14 statements and make some kind of reconciled finding of  
11:56:57 15 additional elements of contempt, and then I'd like to talk  
16 about the sanctions. What would you suggest that I do to  
17 modify that sequence of events, Ms. Healy-Gallagher?

18 MS. HEALY-GALLAGHER: No recommendations. I think  
19 that sounds good.

11:57:15 20 THE COURT: Okay. Mr. Lehr?

21 MR. LEHR: No recommendations, Your Honor.

22 THE COURT: Mr. Wall?

23 MR. WALL: Your Honor, I think you've set a good  
24 course. Thank you.

11:57:23 25 THE COURT: Mr. Paul?



1 MR. PAUL: I agree.

2 THE COURT: All right. Thank you. Let's be back  
3 here at 5 after 1:00. Okay. Thank you.

4 We're in recess until 5 after 1:00.

11:57:34

5 (Recess.)

6 THE COURT: We're back in session in the  
7 United States vs. RaPower and others. And I intend to go  
8 through and make some findings based on the statements of  
9 issues that the parties contributed. I have a couple of  
10 questions. And I know I've probably asked you this question  
11 before, but who is Robert Johnson, Mr. Klein?

13:15:14

12 MR. KLEIN: Robert Johnson is no relation to  
13 Neldon Johnson. He is somebody who used to be in the grocery  
14 business that Neldon Johnson knew 30 and 40 years ago and has  
15 been a friend for decades because they were both in the  
16 grocery business.

13:15:37

17 THE COURT: Where does he live or did he live?

18 MR. KLEIN: He lives in Kaysville. And Robert  
19 Johnson was also an investor in IAS stock.

13:15:56

20 THE COURT: And have you been able to make any  
21 inquiries of him either by deposition or otherwise?

22 MR. KLEIN: Yes. We have reached a settlement with  
23 him, and he has turned over funds that he still had in his  
24 possession. And we had agreed on funds that once were his  
25 that had been paid -- transferred to others. So we have a

13:16:20

1 settlement with Robert Johnson.

2 THE COURT: Okay. Thank you.

3 MR. KLEIN: And an affidavit from him.

13:16:34

4 THE COURT: The other big question I have is  
5 there's some dispute about what was or wasn't turned over  
6 December 5th, 2019. What record do I have of what was turned  
7 over on December 5th, 2019?

13:17:11

8 MR. KLEIN: In the -- I believe in the first status  
9 report it indicated that we received from Glenda Johnson I  
10 think 78 pages, from LaGrand Johnson 400 pages, I might have  
11 those backwards, and I also got a flash drive from Randale  
12 Johnson. So I did receive documents from Glenda, Randale and  
13 LaGrand Johnson.

13:17:35

14 THE COURT: We'll talk more about that as I go  
15 through what I'm about to do here. But there's some places  
16 where I think I have an information gap.

13:18:05

17 I will say at the outset that many of the facts  
18 that have been summarized in the statements are undisputed.  
19 Some facts are disputed. I am passing over facts where I  
20 don't think there's significant proof that's been presented  
21 with regard to the fact at issue. Let me start.

13:18:32

22 First of all, in terms of the failure to obtain  
23 documents held by third parties or provide a declaration  
24 identifying documents once they had access to them, their  
25 location and efforts made to maintain them, it's clear to me

1 that all the Johnsons did not comply with Paragraph 24 of the  
2 corrected receivership order. I have entered additional  
3 orders on May 17th, 2019; July 8th, 2019, which was extended  
4 for Neldon Johnson till August 2nd; and December 5th and 6th,  
13:19:01 5 2019, with the provision of documents and identification of  
6 documents and the possession of third parties and efforts to  
7 obtain them. And there's no dispute that there was notice of  
8 those orders that I've issued, but there are documents which  
9 have not been provided.

13:19:20 10 The Johnsons did say that they wanted the United  
11 States to specify what they needed to do to purge their  
12 contempt. But when we went through the redline declaration  
13 exercise that was what was done. And it provided charts for  
14 each of them to fill out, identifying particular documents for  
13:19:41 15 each entity. But the Johnsons have failed to provide more,  
16 and they failed to provide declarations identifying documents  
17 that they once had access to, the location of those or efforts  
18 made to obtain them.

19 The testimony from the Johnsons is singularly vague  
13:20:02 20 in almost every instance about what was available. And when  
21 confronted with the document at times they will admit they had  
22 that document or they knew that document or they signed that  
23 document and then say that they had no possession or knowledge  
24 of that. So it's very hard to get a handle on what the  
13:20:27 25 Johnsons actually had by reason of their noncompliance with

1 that requirement of Paragraph 24, the corrected receivership  
2 order.

3 In Neldon Johnson's instance and Glenda Johnson's  
4 instance there's this partial handwritten January 18th, 2015,  
13:20:49 5 contract signed by Neldon Johnson on behalf of Solstice. That  
6 was after the May 17th deadline for compliance that that was  
7 produced. And he submitted that contract in support of his  
8 argument that Glenda Johnson is owed \$35 million. Mr. Johnson  
9 didn't provide other documents by the December 5th deadline  
13:21:15 10 set by the Court, and that partial Solstice document was the  
11 only thing.

12 Now October 11th, 2019, Glenda Johnson filed a  
13 three-page copy of the Solstice agreement, which also hadn't  
14 been produced in its entirety. But she also filed it in  
13:21:39 15 support of her corresponding allegation of being owed  
16 \$35 million. These are significant failures. The  
17 handwritten, unverified, unattested nature of that document  
18 suggests that it's highly questionable. I have a motion under  
19 submission right now about that document. And so that's all  
13:22:01 20 I'm going to say about it at this time.

21 There was an issue of whether Mr. Johnson filed a  
22 document specifying the scope of the QuickBooks record. He  
23 clearly didn't. I'm not sure how material that is because the  
24 QuickBooks file was delivered to the receiver. But it's clear  
13:22:26 25 Mr. Johnson didn't comply with that order.

1           The testimony of Neldon Johnson, Millard County  
2 Sheriff Deputy Brandon Loe and Wayne Klein establishes there  
3 were additional documents responsive to Paragraph 24 of the  
4 corrected receivership order in Neldon Johnson's and Glenda  
13:22:48 5 Johnson's possession that they affirmatively acted to conceal  
6 and destroy in September 2019.

7           And as I suggested the relatively evasive responses  
8 that they've given so far coupled with that happenstance  
9 observation of destruction causes me real concern about what  
13:23:13 10 else is missing. But in any event, we don't have what we  
11 don't have.

12           In October 2019, Glenda Johnson received documents  
13 from Pipeline Company about Neldon P. Johnson Family Limited  
14 Partnership Land in Texas and didn't deliver those timely, but  
13:23:36 15 assisted LaGrand and Randale in signing and returning them so  
16 that there was a purported easement granted, even though at  
17 that time the receivership was in full force and effect. No  
18 notice to the receiver in an action in derogation of the  
19 receivership's rights in property.

13:24:00 20           And there's an allegation by the United States that  
21 on December 5th, Glenda Johnson produced documents related to  
22 Solco and XSun, lens sales and contracts with those entities,  
23 and the receiver says those have not been produced before. I  
24 don't know if I've got a benchmark on what was produced on  
13:24:23 25 December 5th. You say that's Exhibits 2155 to 2158, but you

1 admitted today that 2155 and 2156 weren't previously produced.  
2 So I'm not clear on what was produced or was not in December.

3 MR. KLEIN: Among the documents that Glenda Johnson  
4 produced in December we initially stated that some of those  
13:24:48 5 documents had not been produced previously when, in fact, 2155  
6 and 2156 had been produced previously. 2157 and 2158 were  
7 documents that had been produced to the United States in the  
8 underlying tax court matter, but had not previously been given  
9 to the receiver.

13:25:10 10 MS. HEALY-GALLAGHER: And that was the underlying  
11 District Court matter in this case.

12 THE COURT: And do I have that anywhere in my -- so  
13 the absence of those documents is in the District Court  
14 matter? Is that what you're saying, Miss Healy-Gallagher?

13:25:26 15 MS. HEALY-GALLAGHER: In the underlying District  
16 Court matter, documents with Bates numbers Solco -- well, I  
17 don't want to misstate -- Solco-1 and RA3, the models at  
18 Receiver's Exhibits 2157 and 2158, those were produced to the  
19 United States in the underlying matter --

13:25:56 20 THE COURT: Right.

21 MS. HEALY-GALLAGHER: -- that led to the  
22 receivership.

23 THE COURT: Right. So how do we have a complaint  
24 about those? It says on December 5th, Glenda Johnson produced  
13:26:09 25 responsive documents which haven't been produced before. What

1 are those?

2 MS. HEALY-GALLAGHER: So they had not been produced  
3 to the receiver before. So the receivership order and the  
4 affiliates' order require Glenda Johnson to produce all  
13:26:21 5 documents responsive to Paragraph 24 about Solstice, Solco,  
6 XSun and all of those entities to the receiver.

7 THE COURT: And are you saying that they had an  
8 obligation to present exhibits from the underlying case?

9 MS. HEALY-GALLAGHER: Well, we have not undertaken  
13:26:39 10 to make a complete production of all the documents in the  
11 underlying case to the receiver. So, yes, actually the  
12 corrected receivership order places that burden on the  
13 Johnsons.

14 THE COURT: Well, I'm not going to find that to be  
13:26:53 15 an item of contempt. It is clear as I said earlier that  
16 Glenda Johnson with the others did not identify or recover  
17 documents from third parties and didn't disclose any efforts.  
18 We got to that in January. And the efforts were nonexistent  
19 but clearly inadequate.

13:27:16 20 LaGrand Johnson did not produce documents under  
21 Paragraph 24 of the corrected receivership order related to  
22 the affiliated entities. That was clearly established at the  
23 1-23 proceedings, and didn't deliver the Texas land easements,  
24 either.

13:27:38 25 He renewed the corporate status of IAS

1 November 4th, 2019. Didn't notify the receiver, didn't  
2 provide the document to the receiver and claimed to have  
3 authority to act for IAS. That's against my orders.

4 On December 5th, you recite, Miss Healy-Gallagher,  
13:27:59 5 that LaGrand Johnson produced credit card charges reimbursed  
6 or paid for by the receivership entities.

7 What do I have in the record that tells me that was  
8 done on December 5th? I don't have a declaration of what was  
9 produced that day as far as I can tell.

13:28:17 10 MS. HEALY-GALLAGHER: The receiver has that  
11 information.

12 THE COURT: Did we introduce those today? I don't  
13 remember.

14 MS. HEALY-GALLAGHER: We did not.

13:28:24 15 THE COURT: Okay.

16 I'm going to pass over that for now. And if you  
17 find that we can talk more about it.

18 Again, LaGrand Johnson along with Randale Johnson  
19 did not make efforts to recover or identify documents held by  
13:29:13 20 third parties and did not by December 5th disclose what  
21 efforts he had made. As shown last time in our hearing in  
22 January, those efforts were clearly insufficient, and shown  
23 also by the declarations of the third parties.

24 The financial statement issue. I didn't find any  
13:29:36 25 fault with your statement of what Mr. Neldon Johnson had



1 failed to do with regard to financial statements setting forth  
2 identity, value and location of all assets required by 25(G).  
3 August 2nd Mr. Johnson claimed he was unable to provide the  
4 statement. He didn't have and was not aware of information  
13:29:56 5 that enabled him to prepare a statement. That just  
6 presupposes that he was never making financial statements,  
7 which I find hard to believe. I do not believe it. He did  
8 attach some asset summaries, but Mr. Johnson asserted that  
9 those all belong to Mrs. Johnson. I don't find that to be  
13:30:22 10 credible.

11 There's a dispute about storage units, which I  
12 don't know that I can resolve with the type of clarity that I  
13 need to resolve in a contempt proceeding, so I'm going to pass  
14 that over.

13:30:37 15 Through the receiver's work rather than any  
16 disclosure by Neldon Johnson, the receiver discovered that  
17 Neldon Johnson funneled more than \$2 million to Robert Johnson  
18 from IAS during trial. After the asset freeze was entered,  
19 Neldon Johnson directed Robert Johnson to give him \$500,000,  
13:31:06 20 which Neldon Johnson delivered to Wisdom Farms to create a  
21 turbine prototype, continuing in the type of business that I  
22 intended to close off by my preliminary injunction --  
23 preliminary permanent injunction.

24 The turbine is receivership property. Mr. Johnson  
13:31:31 25 had input on it. He took possession of it on August 13th,

1 2019. And while it's on property located by Glenda Johnson in  
2 Payson Neldon Johnson purports to retain possession, but that  
3 possession belongs to the receiver. That prototype was not  
4 disclosed before the January 23rd hearing. That's in  
13:31:55 5 violation of the Court's orders.

6 There's no accounting provided by Mr. Johnson  
7 regarding expenditures of more than \$1,000 from 2005 to the  
8 present. There was a 48-page exhibit listing expenditures  
9 subsequent to 2012. It doesn't identify most of the  
13:32:19 10 recipients of those funds and only provides occasional  
11 explanations as to the purposes of the payments, and no other  
12 documentation was provided. That impedes the work of the  
13 receiver and the receivership, and it's in violation of my  
14 order.

13:32:34 15 As to the vehicles, I think the recitation of facts  
16 in the receiver statement is correct. What I'd like to do  
17 right here and now is resolve how we're going to get  
18 possession of the vehicles.

19 So, Mr. Wall and Mr. Paul, how do you propose that  
13:32:53 20 the possession of those vehicles be delivered over to the  
21 receiver? You've done a very good job of helping us identify  
22 them all. How are they going to be delivered? Do you want to  
23 take a minute and talk among yourselves?

24 MR. WALL: I appreciate that, Your Honor.

13:33:10 25 THE COURT: Go ahead.

1 (Discussion held off record.)

2 MR. WALL: Your Honor, it's as I thought. My  
3 client doesn't have any resources to transport or remove any  
4 of those vehicles. We've done our best to identify the  
13:33:55 5 location of those vehicles. The receiver I think is at  
6 liberty to go and pick up each and every one of them. Some of  
7 them are mobile; some of them are not. Some of them function;  
8 others don't. Some are trailers. And take them to wherever  
9 the receiver wants to dispose of them.

13:34:11 10 THE COURT: So, Mr. Klein, do you feel like you  
11 have a good idea where those vehicles are?

12 MR. KLEIN: I've been told where they are. Yes,  
13 Your Honor.

14 THE COURT: Okay.

13:34:23 15 MR. KLEIN: But what I don't have are keys to each  
16 of the vehicles. And so I guess what I would propose is I  
17 will arrange for a location where the -- where I can store  
18 those vehicles. And the ones that are drivable they can  
19 deliver them to that location, and the ones that are not I  
13:34:51 20 will take responsibility to retrieve them so long as there is  
21 not going to be any objection of me entering properties where  
22 those vehicles have been identified as being located.

23 THE COURT: Where do you think you're going to  
24 store them? In Utah County or up here?

13:35:05 25 MR. KLEIN: Either in Utah County or

1 Millard County.

2 THE COURT: Okay.

3 MR. WALL: Your Honor?

4 THE COURT: Yeah.

13:35:13 5 MR. WALL: It seems a little odd to me if the  
6 receiver owns the property where the vehicles are located.  
7 Does he own it?

8 THE COURT: We haven't adjudicated Glenda Johnson  
9 property right now.

13:35:26 10 MR WALL: Okay. Then that being the case, the  
11 challenge is if the keys are in the vehicle that's the  
12 location where there's keys are to be found. Otherwise,  
13 there's no information as to where the keys are. Some of  
14 those vehicles have been sitting out there literally for  
15 years.

16 THE COURT: Tell me exactly where the bulk of these  
17 vehicles are.

18 MR. WALL: It's out where the solar panels are set.

19 THE COURT: Okay.

13:35:50 20 MR. WALL: And what I did to try to identify their  
21 location was not only acquired by my client, but I had  
22 private investigator go and take photographs of the vehicles.  
23 And from those photographs in conjunction with what my client  
24 said, that's how I identified where those vehicles are located  
13:36:08 25 in the list I provided to the receiver.

1           So, you know, it's safe to say that those vehicles  
2           are at those locations. Some of them are rather large and  
3           cumbersome, Cats and military-type pieces of equipment. And  
4           once the receiver has them in his possession, I don't know how  
13:36:28 5           readily he'll be able to dispose of them. But you can run up  
6           some significant storage costs given the number of vehicles  
7           and their size.

8           THE COURT: Well, you own some warehouse space,  
9           too, don't you, Mr. Klein?

13:36:42 10           MR. KLEIN: I don't yet.

11           THE COURT: Okay. How do we solve this problem?

12           MR. KLEIN: Well, to the extent there are vehicles  
13           that are mobile, I'll identify a place they can deliver them  
14           there or make them available to me, and I can arrange for  
13:37:04 15           someone to sell them. For the other equipment I can either  
16           rent some storage space, move them there, or else I can then  
17           contract a equipment reseller and have them go out and look at  
18           the equipment and give me an evaluation of which pieces of  
19           equipment have value that they can sell for me.

13:37:28 20           THE COURT: Does the vehicle spreadsheet have a  
21           summary of the location of the vehicles?

22           MR. KLEIN: Yes, Your Honor.

23           THE COURT: Can you point me to that exhibit,  
24           counsel, or where I can find it?

13:37:49 25           MR. KLEIN: In Exhibit 2162, there's a column

1 saying, location. That's about the third from the last  
2 column.

3 THE COURT: All right. Well, I'm going to ask you,  
4 Mr. Klein, to submit an order for my signature directing  
13:38:11 5 delivery to a specific location of every vehicle that's  
6 reasonably drivable to that location. For some reason, I'm  
7 unable to open that document.

8 MR. KLEIN: I have an extra copy.

9 THE COURT: No. I'm going to get it now. I had an  
13:38:43 10 Acrobat error. It was user error, as it often is.

11 Does that list all of the vehicles that you claim,  
12 Mr. Klein?

13 MR. KLEIN: Yes.

14 THE COURT: Okay. Well, submit an order directing  
13:38:57 15 delivery of those vehicles that are drivable to a location  
16 where you want them and indicate --

17 Which ones are un-drivable, Mr. Wall?

18 MR. WALL: I didn't go out and look at the  
19 vehicles. I don't know which ones are drivable and which ones  
13:39:16 20 are not. And might I suggest, Mr. Johnson has asserted no  
21 interest, property interest in those vehicles. It may be  
22 possible to photograph those vehicles at their location and  
23 then find either people who are interested in purchasing them  
24 from online sources or equipment dealers who would then be  
13:39:38 25 willing to purchase them and move them on their own, because I

1 think we're running into a cumbersome problem that not only  
2 are there vehicles with keys in them, but then there's issues  
3 with regards to them being licensed and being able to  
4 transport them through the Department of Motor Vehicles. All  
13:40:00 5 kind of problems related that.

6 If they could be -- if the receiver intends to  
7 liquidate them then it seems if he were to have images of them  
8 at their location and then put them on the market through  
9 whatever resources he finds is most expeditious and  
13:40:18 10 advantageous, it solves the transportation problems. It  
11 solves the licensing problems. It solves mobility problems  
12 with regard to all of them because the buyers would then be  
13 assessing whether or not it was a value or not. And, of  
14 course, some of them will be junk and scrapped with metal,  
13:40:33 15 which I know there are companies that will move the vehicles,  
16 as well.

17 THE COURT: Did you take a picture of them?

18 MR. WALL: I have a series of most of them.

19 THE COURT: Have you provided them to the receiver?

13:40:42 20 MR. WALL: I think we may have. I think I provided  
21 some images. I didn't provide all of the images. I know  
22 there were a number taken by my investigator because I wanted  
23 to be able to see them.

24 THE COURT: Okay. Well --

13:40:55 25 MR. WALL: I didn't take the kind of pictures that

1 you would sell something. I just wanted a picture that it was  
2 there.

3 THE COURT: Right. Provide those pictures, and  
4 I'll let Mr. Klein decide how he wants to set up this order.

13:41:07 5 MR. KLEIN: May I suggest, Your Honor, that as part  
6 of the order that I'll submit will also grant me or any  
7 contractors access to the location where those vehicles are  
8 for the ones that are not drivable.

9 THE COURT: Do you see a problem with that,  
13:41:21 10 Mr. Paul or Mr. Wall, as to those locations that are  
11 identified on the sheet of vehicles?

12 MR. WALL: I do not, Your Honor.

13 MR. PAUL: I don't believe so.

14 THE COURT: Okay. All right.

13:41:36 15 MR. PAUL: Have we already addressed the vehicles  
16 with Glenda Johnson's name?

17 THE COURT: Well, is that subject to the other  
18 motion? I thought that was only about real estate. But is it  
19 also vehicles?

13:41:47 20 MR. PAUL: It hasn't been put at issue in this case  
21 or her case.

22 THE COURT: Well, the testimony by Mr. Johnson and  
23 by Ms. Johnson is extremely ambiguous. Mr. Johnson testified  
24 that despite DMV records showing that he owns 18 of the  
13:42:06 25 vehicles, he doesn't own them. He testified that all the



1 vehicles belong to Glenda Johnson. He transferred them all to  
2 Glenda Johnson. Glenda Johnson claims ownership of an  
3 additional 18 vehicles. At her January 23rd examination under  
4 oath she testified that each of these vehicles with one  
13:42:26 5 possible exception were purchased with receivership funds.  
6 And so it seems to me that that's resolved by her own  
7 admission.

8 MR. PAUL: I believe she may have underestimated  
9 the vehicles that she claims is hers at that time. I don't  
13:42:48 10 know which vehicles she was meaning. I do believe on the  
11 attachment, on the exhibit that the receivers provided today  
12 Exhibit 2162, there is a list of vehicles. And I think a vast  
13 majority of those would fall under the same production and  
14 delivery requirements that were just discussed with Mr. Wall.

13:43:10 15 THE COURT: Yeah.

16 MR. PAUL: But I believe there are as many as  
17 possibly five vehicles that are titled in Glenda Johnson's  
18 name that she may not have been thinking about during the  
19 questioning before.

13:43:23 20 THE COURT: Well, we've closed proof. Do you want  
21 to put her on the stand here and have her testify as to which  
22 ones? Because we've got to put an end to this. She testified  
23 one way, and now you're going to have her testify another.  
24 That's unique, but I'll let you do it if you want.

13:43:40 25 MR. PAUL: Well, I want to resolve this to the

1 satisfaction of the Court. I just don't know which vehicle  
2 she had in mind at the time, and I think she may not have  
3 fully understood what vehicles were titled in her name.

4 MS. HEALY-GALLAGHER: Your Honor, may I be heard?

13:43:58

5 THE COURT: Yeah. Let me just point out. The  
6 footnote, the United States submission says: For the possible  
7 exception to all being purchased with receivership funds, the  
8 receiver previously obtained documents from the DOJ from whom  
9 the 2014 Chrysler Town and Country was leased showing  
10 receivership funds were used for the lease downpayment and  
11 subsequently lease payments were paid by receivership  
12 entities. And Neldon Johnson confirmed this in his  
13 August 2nd, 2019, declaration.

14 Miss Healy-Gallagher, what do you want to say?

13:44:30

15 MS. HEALY-GALLAGHER: Well, first under the  
16 corrected receivership order there is a presumption of  
17 turnover of all receivership property and items purchased with  
18 funds from any receivership entity should be turned over to  
19 the receiver. If somebody has a claim to it, then that can be  
20 dealt with later. But the whole point of the corrected  
21 receivership order and the asset freeze was to marshal all the  
22 assets under the receiver. That's number one.

13:44:49

23 Number two, Mr. Klein reached out to counsel for  
24 Glenda Johnson in December and sent the vehicle spreadsheet.  
13:45:10 25 We can offer that e-mail as an exhibit if Your Honor would

1 like. But the conversation about this that we're having right  
2 now could have been resolved in response to Mr. Klein's e-mail  
3 at the time.

4 THE COURT: I have no doubt about that.

13:45:22

5 I think they're going to be turned over, and then  
6 they're going to be a claim back maybe against the receiver.  
7 Now I'm sure Mr. Klein does not want to seize a vehicle that  
8 was purchased with her funds, if they can be shown to be  
9 independently her funds. But you probably better doing do  
10 that by close of business.

13:45:41

11 MS. HEALY-GALLAGHER: And, Your Honor, we would ask  
12 that to the extent there's going to be a claim made against  
13 any potential vehicle purportedly titled or owned by Glenda  
14 Johnson that she bear the burden of proof on proving the  
15 source of funds. That once the vehicles go to the receiver  
16 they're presumed receivership property because of the  
17 proceedings that we've had.

13:45:56

18 THE COURT: I'm going to hold off on deciding who  
19 has a burden of proof. I don't see any proof right now.

13:46:11

20 MR. PAUL: By that means if they're titled in her  
21 name there should be a presumption that she owns that vehicle  
22 just the same way as the real estate issue is going resolved  
23 through litigation.

24 THE COURT: I'll weigh all of that when you present  
25 it to me. But right now all I have is her statement that each

13:46:23

1 of these vehicles except for one possible exception were  
2 purchased with receivership funds. That makes them  
3 receivership property.

13:46:39

4 MR. PAUL: Okay. We'll make arrangements to turn  
5 over all but one. Is that my understanding so there's no  
6 doubt?

13:46:57

7 THE COURT: My understanding consists of -- if  
8 that's the Town and Country, then you need to read  
9 Footnote 19 because I think there's strong evidence against  
10 her oral testimony. The dealership records show that the Town  
11 and Country was paid for completely by the receivership  
12 entities. So don't withhold something that is receivership  
13 property. But I'm going to let you have a day or two to work  
14 that out. But Mr. Klein will submit a turnover order for all  
15 them. But if you give them convincing evidence I don't think  
16 he's going to seize something that he clearly has no right to.

13:47:15

17 MR. PAUL: Thank you.

18 THE COURT: Mr. Paul, your client wants to talk to  
19 you.

13:47:28

20 MS. GLENDA JOHNSON: No. Can I talk to you?

21 MR. PAUL: No.

22 May I have a minute?

23 THE COURT: Sure.

24 (Discussion held off the record.)

13:49:22

25 THE COURT: Mr. Paul, anything more right now on

1 the vehicles?

2 MR. PAUL: No, Your Honor. If I understand  
3 correctly, we'll work that out with the receiver. We have a  
4 couple days to do so.

13:49:30 5 THE COURT: Yeah. It will take him a little while  
6 to get this order submitted for me. So give him what you've  
7 got. Find it right away.

8 MR. PAUL: I will.

9 THE COURT: This is now February 2020. The  
13:49:43 10 corrected receivership order was entered in November 2018.  
11 The time has long past to do this.

12 In terms of the requirement of an accounting of all  
13 funds received by the receivership defendants Neldon Johnson  
14 failed to provide information. And in his August 2nd  
13:50:06 15 declaration excused his failure by stating that the QuickBooks  
16 records are the primary record. And he asserted that Glenda  
17 Johnson is the only person that could provide further  
18 information. But there was no summary of information provided  
19 by her.

13:50:29 20 Now, the next paragraph of your statement,  
21 Miss Healy-Gallagher, is that you had contents of her laptop  
22 imaged in May of last year and that copies of that flash drive  
23 were delivered.

24 Do I have that in the record somewhere? It seems  
13:50:45 25 like we talked about that last year, but I can't remember

1 where. And that paragraph isn't footnoted.

2 MS. HEALY-GALLAGHER: My recollection of that is  
3 that we did talk about it last year at the hearing, so there  
4 may be testimony from those transcripts. I can take a look at  
13:51:02 5 that.

6 THE COURT: Take a look at it. If it's supported,  
7 include it, if not, don't.

8 But new information that we have from January 23rd  
9 is that Randale Johnson paid sums of money to Neldon Johnson  
13:51:18 10 totaling \$361,000, then later an additional 460,000. And  
11 Neldon Johnson provided no accounting for the receipt of those  
12 funds.

13 That's a lot of money. Documents about those  
14 payments were in possession of his son, but Neldon Johnson  
13:51:38 15 provided no accounting.

16 LaGrand Johnson testified that he paid over  
17 \$1 million to IAS in 2006 to 2010 as proceeds from his stock  
18 in IAS that he sold. Neldon Johnson provided no accounting  
19 for these funds even though LaGrand Johnson presumably had  
13:52:01 20 those records because he remembered it and testified to it.

21 In the 31 boxes delivered to the receiver in May of  
22 last year documents from Pacific Stock Transfer Company and  
23 other documents retained by the receiver we see that Neldon  
24 Johnson received 479,000 in proceeds of stock sales in  
13:52:27 25 addition to the 361,000 in payments from Randale Johnson. And

1 Neldon Johnson receipts were between 2007 and 2009.

2 Neldon Johnson provided no information to the  
3 receiver about proceeds that he earned from his personal sales  
4 of stock. Proceeds paid to him from his son's sales of stock  
13:52:56 5 or amounts paid to IAS from their sales of stock and has  
6 identified the sources of funds from himself and IAS, so  
7 we're left with another gap in information. That's a failure  
8 of the Johnsons to provide information again.

9 It's also clear that the Johnsons have failed to  
13:53:17 10 pay the attorney's fees and costs required by the civil  
11 contempt order that I entered previously. The deposition --  
12 the statements under oath on January 23rd reveal that  
13 non-receivership funds are available for payment of at least  
14 some of that fees award. But there's been no payment made.

13:53:40 15 I'm holding findings about the real estate of  
16 Glenda Johnson until I resolve that order. So that Section H,  
17 I guess it's large Roman -- no. I guess it's just H, H(2),  
18 I'm holding any findings on that until I get through this  
19 other motion. And I'm contemplating requiring a little bit of  
13:54:17 20 information from you on that.

21 I think I've made findings on the remainder of  
22 this. Oh, except Randale Johnson used receivership assets to  
23 conduct unauthorized testing on IAS equipment in November 2014  
24 after those assets were in the receiver sole control.

13:54:45 25 And the receivership defendants have not complied

1 with the corrected receivership order requirement to identify  
2 the source of funds for court filings and submissions. All  
3 four Johnsons expressed on January 23rd, 2020, ignorance of  
4 the sources for funds of filings and submissions. And as to  
13:55:09 5 Mr. Wall, of course, that's not required, but as to Glenda,  
6 Randale and LaGrand it's required.

7 Neldon Johnson testified on January 23rd that IAS  
8 gave Robert Johnson \$2 million. And so it's unclear,  
9 Mr. Neldon Johnson said in document 810 that Robert Johnson  
13:55:43 10 used his separate money to pay the Neldon Snuffer firm. But  
11 that's contradicted by his recent testimony that IAS gave  
12 Mr. Robert Johnson \$2 million.

13 So we have lack of information, lack of clarity in  
14 information, and so that part of the order has just been  
13:56:06 15 ignored by defendants.

16 What findings have I failed to make on the  
17 existence of contempt, Miss Healy-Gallagher?

18 MS. HEALY-GALLAGHER: I'm tracking that you have  
19 pretty much covered the field except for those specific  
13:56:25 20 provisions that you had questions on. I can offer with  
21 respect to LaGrand Johnson in terms of the documents that he  
22 produced on December 5th, this was in the transcript from  
23 January 23rd.

24 THE COURT: Let me bring that up. Just give me a  
13:56:50 25 second. Morning or afternoon?



1 MS. HEALY-GALLAGHER: Morning. I'm showing  
2 Page 72, Line 14 through 25.

3 THE COURT: Okay. I'm going there. Okay.

13:57:11

4 MS. HEALY-GALLAGHER: This is under questioning  
5 from the receiver about the source of the documents that  
6 LaGrand Johnson delivered to the receiver on December 5th.  
7 The question and answer that I have laid out:

8 Where were those documents that you delivered in  
9 December that had not been delivered previously?

13:57:27

10 Answer. Were they my personal credit cards?

11 Question. It appears to be a list of expenses that  
12 I'm guessing were paid by credit card.

13 Answer. I'm just saying, were they my personal  
14 credit cards?

13:57:41

15 Question. I don't know.

16 Answer. I think they were my personal credit  
17 cards.

18 Question. Why were those documents not produced  
19 previously?

13:57:52

20 Answer. Because they were my personal credit  
21 cards.

22 Now my understanding, Your Honor, were those credit  
23 cards expenses were purportedly expenses paid from LaGrand  
24 Johnson on behalf of IAS.

13:58:07

25 THE COURT: What paragraph is this -- point me to

1 the page in your document where I withheld a finding because  
2 based on this unclarity, your statement of issues.

3 MS. HEALY-GALLAGHER: Page 5.

4 THE COURT: Okay.

13:58:22 5 MS. HEALY-GALLAGHER: iii.

6 THE COURT: Right. The third paragraph of that  
7 section; correct?

8 MS. HEALY-GALLAGHER: Right.

9 THE COURT: Okay. That's supported in the record,  
13:58:36 10 and it should be footnoted to that transcript.

11 MS. HEALY-GALLAGHER: Yes, Your Honor.

12 THE COURT: Anything else?

13 MS. HEALY-GALLAGHER: That's my understanding.

14 No. Thank you, Your Honor.

13:58:44 15 THE COURT: All right.

16 Mr. Wall, what findings have I made in error?

17 MR. WALL: I have nothing to add, Your Honor.

18 THE COURT: Mr. Paul?

19 MR. PAUL: Well, I'm not quite sure what you're  
13:59:06 20 asking of me.

21 THE COURT: Well, I'm not asking you to reargue  
22 your case.

23 MR. PAUL: Okay.

24 THE COURT: I'm asking you to misstate -- tell me  
13:59:14 25 where I misstated or made a finding not supported by some

1 evidence today, because obviously I weigh the evidence and  
2 I've done that. But if I said something today that's not  
3 supported at all by evidence, I've been trying to be careful  
4 to pick up those things and not find on them until evidence  
13:59:31 5 was presented. But if there's something I said here that is  
6 just out of left field, I want to omit it right now. You'll  
7 have an opportunity to review the draft order and object to  
8 it, but if there's an obvious flaw in finding something that  
9 just has no basis of fact at all I want to know right now.

13:59:52 10 MR. PAUL: The only thing that comes to mind, Your  
11 Honor, that I'd like the Court to consider or to include, I  
12 believe, and I don't have it in front of me, I could probably  
13 try and find it. It might take a minute. You might be able  
14 to find it quicker than I. One of the reasons there's a  
14:00:13 15 production on December 5th, 2019, from the Johnsons is that  
16 the Court said in either a minute entry or an order that if  
17 documents or information wasn't produced by any of those  
18 defendants by December 5th, that it can't be used in any  
19 subsequent proceeding.

14:00:29 20 THE COURT: Yes. Yes.

21 MR. PAUL: So there was an effort to make sure that  
22 any documents that might be used, not necessarily -- so it  
23 expanded the universe of documents from Paragraph 24 because  
24 those were only documents that were of or relating to the  
14:00:49 25 receivership entities or the affiliated entities. And so I

1 think the remedy that the Court stated related to that  
2 December 5th deadline was that if documents weren't produced  
3 by that deadline then they could no longer be used.

4 THE COURT: That's correct.

14:01:06

5 MR. PAUL: So the Court has already created a  
6 self-executing effect for not producing any documents that  
7 they cannot be used in any subsequent proceeding.

14:01:31

8 So I think that's important that the Court keep in  
9 mind as it focuses on whether or not my clients have met their  
10 burden of production under Paragraph 24 or any other part of  
11 the contempt proceedings that the Court has ordered in a  
12 production. I think our filings that have been done with the  
13 Court and with the receiver have represented that there are no  
14 other documents subject to production.

14:01:48

15 THE COURT: Yeah.

16 MR. PAUL: And the Court has said if that's the  
17 case, then you won't be able to use them any other way. And  
18 so I just want to make sure that the Court is cognizant of  
19 that point.

14:02:04

20 THE COURT: I'm aware of that, and I appreciate you  
21 pointing it out. Thank you.

22 All right. Now we've been going for about an hour.  
23 Are we ready to talk about what sanctions would be appropriate  
24 based on what I found here?

14:02:19

25 MS. HEALY-GALLAGHER: Yes, Your Honor.

1 THE COURT: Okay. Go ahead.

2 MS. HEALY-GALLAGHER: Your Honor, as you've  
3 identified a few times today, the corrected receivership order  
4 was ordered October 21, 2018, and here we are in February 2020  
14:02:37 5 with glaring deficiencies and, in fact, outright defiance of  
6 the corrected receivership order after numerous contempt  
7 proceedings and orders in this case. As a result, the Court  
8 would be well within its authority to order the Johnsons  
9 incarcerated until they complied with every provision that you  
14:02:56 10 laid out on October 31st, 2018. And that would be a civil  
11 sanction here because the course of incarceration would be in  
12 place unless and until they fully complied with your order.  
13 And there are ways to effect that while someone is sitting in  
14 a jail cell.

14:03:17 15 Now, I also understand, Your Honor, and I certainly  
16 share this interest, in achieving some kind of resolution  
17 here, not just people sitting in jail cells. So we have some  
18 ideas about what can affect those solutions short of  
19 incarceration, but also with a stick after dates certain to  
14:03:43 20 comply.

21 So we'll start off, Your Honor, I recognize you put  
22 this in a previous order, the cutoff of the Johnsons' ability  
23 to use documents in terms of their date of production. The  
24 appropriate cutoff is actually August 2nd, 2019.

14:04:06 25 THE COURT: Yeah.

1 MS. HEALY-GALLAGHER: Because that is the last day  
2 that Neldon Johnson was given to make his declaration in  
3 compliance with Paragraph 26. That's well after the rest of  
4 the Johnsons were required to produce documents responsive to  
14:04:20 5 Paragraph 24 or explain why they hadn't done so. And, of  
6 course, Neldon Johnson shared the Paragraph 24 obligation.

7 So to the extent they failed to produce documents  
8 responsive to the corrected receivership order which includes  
9 as of May of last year the affiliates' order, they should not  
14:04:42 10 be allowed to use any documents that they cannot demonstrate  
11 were produced on or before August 2nd, 2019, in any claim  
12 against the receiver of the United States.

13 THE COURT: So what's different there is that I've  
14 excluded documents at some point from being used in this  
14:05:05 15 proceeding. But you want me to exclude them for all future  
16 proceedings against the receiver, such as claims for property.

17 MS. HEALY-GALLAGHER: Exactly, Your Honor. And  
18 that is an appropriate civil sanction for contempt such as the  
19 Johnsons have demonstrated.

14:05:26 20 THE COURT: Okay.

21 MS. HEALY-GALLAGHER: Because one of the purposes  
22 of a remedy for civil contempt is to put -- you know, to  
23 recreate the past as it should have existed absent the  
24 contempt. And it would be fairly legitimate to say they  
14:05:42 25 couldn't use any document produced after the May 17 deadline

1 because that was the first time the Court said, produce or  
2 else.

3 But one of the reasons, Your Honor, we filed the  
4 motion for additional sanctions when we did is that we were  
14:06:02 5 trying to get the receiver the information and documents he  
6 needed to make litigation decisions to meet his one-year  
7 statute of limitations.

8 Now we're well past that. He's made his litigation  
9 decisions, and he sued who he sued and perhaps there could be  
14:06:20 10 more. I'm not trying to speak for the receiver and cut him  
11 off or anything, but that was an important deadline. So if  
12 the Johnsons didn't produce a document on or before  
13 August 2nd at the latest and more appropriately May 17th they  
14 should not be allowed to use it in any proceedings with  
14:06:39 15 respect to the receiver or the United States going forward.

16 THE COURT: Do you have legal authority to show  
17 cases in which that has been done?

18 MS. HEALY-GALLAGHER: I have authority that  
19 supports the idea that an appropriate remedy is to recreate  
14:06:54 20 the past. So contempt sanctions can be as creative as needed  
21 to actually enforce the Court's order. So I don't have a  
22 specific citation for you in terms of a document, you know,  
23 cutoff.

24 THE COURT: I'm really interested in your statement  
14:07:10 25 about trying to recreate the past. The problem is we can't

1 recreate the past because we don't have documents. And it  
2 seems to me that that Solstice agreement, at least from what I  
3 see it of it and just on its face even, looks like an effort  
4 to create a fictionalized past. So it seems to me I should be  
14:07:30 5 putting an end to efforts to recreate the past.

6 MS. HEALY-GALLAGHER: Well, let me be clear because  
7 that wasn't my intent with that statement.

8 THE COURT: Okay.

9 MS. HEALY-GALLAGHER: Basically the Johnsons  
14:07:40 10 shouldn't be allowed to not produce documents responsive to  
11 and required by the corrected receivership order in a timely  
12 fashion and then later on use that document to defend against  
13 the very actions they prolonged, they prohibited, they delayed  
14 in the first place.

14:08:01 15 THE COURT: Yeah. Yeah. You know, to me that's an  
16 analog of the rule that if you don't produce it in discovery  
17 in a civil case you don't get to use it later. You can't hide  
18 the ball and then pull it out of a hat.

19 MS. HEALY-GALLAGHER: Exactly. And the attempt to  
14:08:16 20 recreate the past, that's more so if the document didn't exist  
21 in the past it can't exist in the future.

22 THE COURT: I see what you're saying. Okay.

23 MS. HEALY-GALLAGHER: It can't be used at a later  
24 time.

14:08:26 25 THE COURT: Well, you can include language in the



1 draft order which you probably figured out you're going to be  
2 submitting. I'm not going to say I'm going to order that, but  
3 I understand what you're asking for. That's one remedy you're  
4 proposing.

14:08:40

5 MS. HEALY-GALLAGHER: That is one remedy. Then the  
6 others go to a compliance by date certain and certification by  
7 the Johnsons of compliance by date certain. And if no  
8 certification of compliance by that date certain then issuance  
9 of a bench warrant in order to have a hard deadline and get  
10 this stuff done.

14:09:06

11 THE COURT: Okay. What kind of specific items are  
12 you asking for? I have little faith in the Johnsons' ability  
13 to provide me with anything. Maybe not ability, maybe  
14 willingness, I don't know what it is. But this has been  
15 amazingly unproductive what we've done so far. And so I kind  
16 of like the idea of capping the story right now because of  
17 that problem. But tell me what you're talking about.

14:09:20

18 MS. HEALY-GALLAGHER: Well, here are some things,  
19 and that's why the stick of the bench warrant which hasn't  
20 been in play yet, but that would be hopefully something that  
21 we would compel. So among -- let me turn to.

14:09:37

22 One of the things that we have seen is that Glenda,  
23 LaGrand and Randale Johnson have money that they received from  
24 IAS right at the end of trial or promptly thereafter.

14:10:12

25 THE COURT: Yeah.

1 MS. HEALY-GALLAGHER: For Glenda Johnson that's  
2 1.4 million in two different accounts. For Randale Johnson,  
3 that was \$260,000, and the same for LaGrand Johnson.

14:10:36

4 Now, in the January -- the 1.4 million for Glenda  
5 was partially addressed by the Court last year. The 260,000  
6 that went to Randale and LaGrand we talked about in January of  
7 this year. But what we would ask is turn it over to the  
8 receiver of those funds for safekeeping because they have  
9 shown, and Randy and LaGrand testified that they have spent  
10 all that money or nearly all of that money.

14:11:04

11 So to the extent either of them have amounts in a  
12 bank or retirement accounts up to \$260,000 they should be  
13 required to turn that money over to the receiver so that the  
14 receiver can keep it safe from further dissipation.

14:11:30

15 THE COURT: So have you done tracing or do you know  
16 of the existence of these accounts or shooting in the dark?

17 MS. HEALY-GALLAGHER: So we have a couple of  
18 exhibits.

14:11:42

19 MR. KLEIN: We have testimony from the January  
20 hearing at which both Randale and LaGrand indicated that some  
21 of the \$260,000 was put into retirement accounts.

22 THE COURT: That's right.

23 MR. KLEIN: And Randale testified that he has about  
24 50,000 of that amount left in cash.

14:12:00

25 THE COURT: Right. Did LaGrand say he had none?

1 MR KLEIN: LaGrand said he had none left, but he  
2 put some of it into a retirement account.

3 THE COURT: Right.

14:12:11

4 MR KLEIN: So to the extent it's a retirement  
5 account we can trace its sources being from IAS.

6 THE COURT: So a turnover order on those funds.

7 MR. KLEIN: Yes.

8 THE COURT: And that's only against LaGrand and  
9 Randale.

14:12:21

10 MS. HEALY-GALLAGHER: And we would also ask for  
11 Glenda to turnover the 1.4.

12 THE COURT: And that was a subject of a  
13 stipulation. When was that? Last fall?

14 MS. HEALY-GALLAGHER: Last summer.

14:12:31

15 THE COURT: Summer, okay. I'll have to go dig that  
16 one out. Okay.

17 You know, you're giving me a good overview of this.  
18 I'm going to decide how we're going to handle this in a  
19 minute.

14:12:47

20 MR. KLEIN: And I'll just remind Your Honor, the  
21 1.4 million is also at issue in the turnover motion with  
22 Glenda.

23 THE COURT: Right.

24 MR KLEIN: So that's --

14:12:56

25 THE COURT: Yeah.

1 MS. HEALY-GALLAGHER: Then consistent with the  
2 dissipation of funds from IAS, we would also ask that the  
3 Court require LaGrand and Randale Johnson to provide account  
4 statements for their retirement accounts and bank statements  
14:13:14 5 for -- excuse me -- for all deposits since November 21st,  
6 2015, with the filing of this complaint. And we would also  
7 ask that they be required to produce documentation showing the  
8 sources and amounts of all deposits into their retirement and  
9 bank accounts after that date.

14:13:38 10 THE COURT: And the date that you provided was  
11 October --

12 MS. HEALY-GALLAGHER: The date the filings of the  
13 complaint? No that was the 23rd.

14 MR. KLEIN: It was November 2015.

14:13:51 15 MS. HEALY-GALLAGHER: November 21st, 2015.

16 THE COURT: Okay. And that's for Randale and  
17 LaGrand, you want all bank statements and records turned over  
18 including IRA statements.

19 MS. HEALY-GALLAGHER: And retirement accounts.

14:14:04 20 THE COURT: Okay.

21 MS. HEALY-GALLAGHER: And, Your Honor, before the  
22 conversation about the vehicle turnover we had also  
23 anticipated that that would be a date certain certification of  
24 compliance, bench warrant if no compliance. But I understand  
14:14:35 25 you've --

1 THE COURT: Let's see if we can get all of that  
2 done before we even have a draft order.

3 MS. HEALY-GALLAGHER: Okay.

14:14:42

4 THE COURT: It seems to me there's no real reason  
5 for delay on that. And I don't think the defendants want to  
6 be dealing with you folks any more than you want to be dealing  
7 with them. So let's get the vehicles out of the way.

8 MS. HEALY-GALLAGHER: Just checking my notes.

14:15:36

9 And, Your Honor, I also understand that you plan to  
10 deal with the lien filing situation along with the motion for  
11 turnover of Glenda Johnson titled real property?

12 THE COURT: Yes. Uh-huh (affirmative). I'm near  
13 the end of that. I'm going to need a little more help  
14 probably from counsel to identify some documents in the record  
15 that I can't find. And I'll be getting a notice out about  
16 that real shortly.

14:15:56

17 MS. HEALY-GALLAGHER: Just on that note, Your  
18 Honor, on Friday afternoon of last week, the receiver  
19 identified two additional liens that Glenda Johnson filed on  
20 properties titled in her own name. One -- they're essentially  
21 the same as the one discussed in the January 23rd proceeding.  
22 But one in Howard County, Texas, and one in Utah County.

14:16:13

23 THE COURT: And who is the nominal beneficiary of  
24 those liens? You say she filed them, but is it an entity?

14:16:39

25 MS. HEALY-GALLAGHER: Anstram Energy.

1 THE COURT: Okay.

2 MS. HEALY-GALLAGHER: Like I say it's basically the  
3 same situation.

14:16:46

4 THE COURT: Okay. I need you to supplement your  
5 briefing for that.

6 MS. HEALY-GALLAGHER: For this matter.

7 THE COURT: Yeah. Put it in.

8 MS. HEALY-GALLAGHER: Okay.

9 If I may have just one moment?

14:17:05

10 THE COURT: Sure. And I'll have a couple questions  
11 for you.

12 (Time lapse.)

14:18:08

13 MS. HEALY-GALLAGHER: Simply because I'm not sure I  
14 covered this, but also with respect to the documents that the  
15 Johnsons did not produce by August 2nd at the latest and  
16 May 17th at the earliest, I would also ask to include a  
17 provision that if the Johnsons do want to use any document in  
18 defense of a receivership claim the burden should be on them  
19 to identify when they produced it to the receiver and how.

14:18:39

20 THE COURT: Say that again. I'm not sure I follow  
21 that.

22 Miss Mumford, can I give you a note here?

23 Say that again for me. I'm not sure I followed it.

14:18:55

24 MS. HEALY-GALLAGHER: Sure. So circling back to  
25 the request for the remedy to cut the Johnsons off from using

1 any documents that they didn't produce to the receiver by a  
2 specific date --

3 THE COURT: Yeah.

14:19:05

4 MS. HEALY-GALLAGHER: -- the additional piece that  
5 I'm asking for is not only bar them from using any document  
6 produced after a particular date, but if they do want to use a  
7 document that they believe they produced to the receiver that  
8 they be required to identify when they produced it and how.

14:19:32

9 THE COURT: Well, that makes sense, because we're  
10 going to have a dispute about whether or not it's produced.  
11 So that's how we resolve it. Okay.

12 MS. HEALY-GALLAGHER: With that I think --

13 THE COURT: Let me ask you a couple questions. Are  
14 you getting statements on the \$1.4 million account?

14:19:46

15 MR. KLEIN: Yes, Your Honor.

16 THE COURT: Okay. So that, what, stay in place  
17 order has been complied with so far.

18 MR. KLEIN: Correct.

19 THE COURT: Okay. That's great.

14:20:01

20 In terms of your draft order I'm comfortable with  
21 you including this evidence bar. I want you to make a motion  
22 for production of all the records for the retirement accounts  
23 and bank accounts. The amount of time that you take from  
24 today to file that will be the amount of time defendants have  
14:20:29 25 to respond. Do you follow me? You file it in two days, they

1 of two days to respond. If you file it for seven days or  
2 14 days that's what they get. So I'm letting you set your own  
3 schedule here. And then you'll get, regardless you'll get two  
4 days for a reply. I want to get this done. So that's the  
14:20:51 5 production of the documents related to those retirement and  
6 bank accounts. I think it makes some sense, but I don't think  
7 it's fair for the defendants to argue that right now.

8 And I think the issue of turnover of the IRAs  
9 depends on what that the evidence shows to some extent. We  
14:21:17 10 have some things in the January 23rd hearing unsupported by  
11 documents. So I want to see what else we have. We're moving  
12 a step beyond in my view.

13 The turnover for the 1.4 million is the other  
14 motion that I've got, so I'm dealing with that. So don't  
14:21:36 15 include that in the draft here, okay?

16 So when will you have a draft of this order for me  
17 to look at and for counsel to look at first before I see it?

18 MS. HEALY-GALLAGHER: A draft of the order, so not  
19 the motion?

14:21:49 20 THE COURT: No. I don't care when you do the  
21 motion. I gave you the ability to set your own clock on that.  
22 But the draft of the order from this hearing.

23 MS. HEALY-GALLAGHER: I would appreciate three  
24 weeks from today.

14:22:06 25 THE COURT: Okay. Three weeks from today. I'm



1 letting you set your own schedule again, is the 17th of March?  
2 Is that right?

3 MS. HEALY-GALLAGHER: It sounds reasonable.

14:22:21

4 THE COURT: Okay. Then, counsel, could you respond  
5 to that by the 27th of March? Because she'll have to get the  
6 transcript. That's part of the time that's burning, and  
7 she'll have to draft, so I'm giving you a little shorter time  
8 of 10 days. Could you do it by the 27th, Mr. Wall?

14:22:45

9 MR. WALL: I anticipate I could. Your Honor, there  
10 are a couple limitations that I would ask the Court to  
11 consider with regard to not using documents. They said they  
12 not be able to use documents in their defense or for claims  
13 after August the 2nd of 2019 against the United States. But  
14 if there were to be a criminal case, I think that it's overly  
15 broad to say that if there is a document that wasn't produced  
16 that if they were to be criminally charged by the United  
17 States and an indictment that they couldn't use those  
18 documents. I think it would go far beyond that.

14:23:07

19 THE COURT: What do you think about that,  
20 Miss Healy-Gallagher?

14:23:21

21 MS. HEALY-GALLAGHER: My intention is for civil  
22 matters, for collection.

23 THE COURT: Draft it that way, okay.

24 MR. WALL: And the second one was they added on the  
25 limitation that the defense or that Neldon Johnson would be

14:23:31

1 required to show any document that they intended to use was  
2 produced prior to August 2nd of 2019. That sounds like each  
3 and every document even though the United States may well know  
4 that it was produced before August 2nd of 2019 has to be  
14:23:55 5 established as having been produced before it could be used.  
6 I think that it should only be a limitation if there is -- the  
7 burden it seems appropriate that under the circumstances and  
8 the nature of this hearing that the burden be on Neldon to  
9 establish a document was produced before August, the 2nd, of  
14:24:15 10 2019 if there is a dispute as to whether, in fact, it was,  
11 rather than each and every document having to be established  
12 as having been produced prior to that date.

13 THE COURT: I'm going to let you work that out.  
14 I'm sure Miss Healy-Gallagher will draft something sort of  
14:24:32 15 workable. You can shoot it right back to her and say, could  
16 you fix this?

17 MR. WALL: I just wanted clarification because the  
18 way she postured it it sounded like in order to use it in  
19 their defense they would have to prove it was produced before  
14:24:48 20 August the 2nd, and I don't think it's the intention of the  
21 Court.

22 THE COURT: Well, if she admits it was produced I  
23 don't think there's going to be a problem.

24 MR. WALL: That wasn't the way she couched it.

14:24:58 25 THE COURT: I know.

1 MR. WALL: It would be helpful to have  
2 clarification from the Court if that's the intent that even  
3 though they may well know that the document was produced well  
4 before August 2nd that the defense has to prove that as a  
14:25:12 5 sanction it seems like that's beyond the scope of the  
6 contempt, because if those were produced, they weren't done in  
7 a contemptuous way.

8 THE COURT: Remind me what your degree was.

9 MR. WALL: I have degrees in physics, engineering,  
14:25:26 10 political science and law.

11 THE COURT: I have great confidence that you two  
12 will be able to write this the correct way that will not  
13 offend anybody's physics engineering or law. Or what's the  
14 degree I left out?

14:25:37 15 MR. WALL: Political science.

16 THE COURT: It may offend somebody's political  
17 science. I'm not worried about that.

18 That's the reason I like Mr. Wall,  
19 Miss Healy-Gallagher. Is he -- it's late in the day. I  
14:25:51 20 shouldn't tell the story. But I was talking to Judge Winder  
21 one time, he was a former judge in our court, and he was by  
22 everyone's assessment the best judge in the court. And I came  
23 into his office one day, and he said, I've got a 2255 alleging  
24 ineffective assistance by Ed Wall. Ed Wall. That's  
14:26:11 25 impossible.

1           Anyway, I don't know if you ever heard that story.

2           MR. WALL: I have.

3           THE COURT: Mr. Paul, can you have your objections  
4 to the order by March 27th?

14:26:23 5           MR. PAUL: I believe so, yes.

6           THE COURT: Okay. So we've got a plan for that.

7 And then you'll submit it to me by -- submit it to me by,

8 March -- April 5th, okay?

9           MS. HEALY-GALLAGHER: Do you want a notice filed on  
14:26:42 10 the Court's docket --

11           THE COURT: Yes.

12           MS. HEALY-GALLAGHER: -- on the exchanging of the  
13 draft?

14           THE COURT: The way we usually do it. I think  
14:26:49 15 we've done it before in this case, where you file your draft  
16 under the event notice of filing, you e-mail me a Word copy,  
17 they submit the objections in the redline format. That's how  
18 you submit it. And then you get time to look at that, and you  
19 submit the final version, and I try to reconcile. They'll  
14:27:07 20 have lots of great ideas, and you'll accept many of them.

21           MS. HEALY-GALLAGHER: No doubt.

22           THE COURT: Okay. What else do we need to do  
23 today?

24           MS. HEALY-GALLAGHER: I'm not aware of anything.

14:27:22 25           THE COURT: Mr. Lehr?

1 MR. LEHR: Nothing, Your Honor.

2 THE COURT: Mr. Wall?

3 MR. WALL: Nothing from Neldon Johnson, Your Honor.

4 THE COURT: Mr. Paul?

14:27:37 5 MR. PAUL: Nothing.

6 THE COURT: Let me say that again I greatly

7 appreciate the work of counsel in this case. You have given

8 me every step of the way such great roadmaps. All of you.

9 It's been extremely helpful. We could have spent three days

14:27:45 10 in this hearing, and you did it in less than six hours, so I'm

11 very grateful for that. We all have a lot of things to get

12 done, and you made this work very efficiently for all of us.

13 Thank you very much. We're in recess.

14 (Whereupon, the court proceedings were concluded.)

15 \* \* \* \* \*

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1 STATE OF UTAH )

2 ) ss.

3 COUNTY OF SALT LAKE )

4 I, KELLY BROWN HICKEN, do hereby certify that I am  
5 a certified court reporter for the State of Utah;

6 That as such reporter, I attended the hearing of  
7 the foregoing matter on February 25, 2020, and thereat  
8 reported in Stenotype all of the testimony and proceedings  
9 had, and caused said notes to be transcribed into typewriting;  
10 and the foregoing pages number from 1 through 149 constitute a  
11 full, true and correct report of the same.

12 That I am not of kin to any of the parties and have  
13 no interest in the outcome of the matter;

14 And hereby set my hand and seal, this \_\_\_\_ day of  
15 \_\_\_\_\_ 2020.

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KELLY BROWN HICKEN, CSR, RPR, RMR

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