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IN THE UNITED STATES TAX COURT

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In the Matter of: )  
PRESTON OLSEN & ELIZABETH OLSEN, ) Docket Nos. 26469-14,  
ET AL, ) 21247-16  
) Petitioners, )  
) v. )  
) COMMISSIONER OF INTERNAL REVENUE, )  
) Respondent. ) Consolidated

Volume: 2  
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Date: January 22, 2020

**Plaintiff  
Exhibit**  
973



1 IN THE UNITED STATES TAX COURT

2

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4 PRESTON OLSEN & ELIZABETH OLSEN, ) Docket Nos. 26469-14,  
ET AL, ) 21247-16

5 )  
6 ) Petitioners, )

7 v. )

8 COMMISSIONER OF INTERNAL REVENUE, )

9 ) Respondent. ) Consolidated

10 4th District Juvenile Courthouse-Provo  
11 137 Freedom Boulevard 200 W  
12 Courtroom #5B-5th Floor  
13 Provo, Utah 84604

14 January 22, 2020

15 The above-entitled matter came on for trial, pursuant  
16 to notice at 10:01 a.m.

17 BEFORE: HONORABLE ALBERT G. LAUBER  
18 Judge

19 APPEARANCES:  
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C O N T E N T S

	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
WITNESSES:					
FOR THE PETITIONERS:					
Preston Olsen		160	316		
Randale Paul Johnson	329	354			
Ken Gardner	378, 387	389			383
Richard Jameson	430	435			



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

2 (10:01 a.m.)

3 THE CLERK: All rise.

4 THE COURT: Please be seated. Good morning. So  
5 I believe we're about to do the cross-examination of Mr.  
6 Olsen; is that right?

7 MR. SORENSEN: Yes, Your Honor. But before  
8 that, we have a housekeeping matter.

9 THE COURT: Okay.

10 MR. SORENSEN: I'm sure the Court's going to be  
11 pleased with me again. It came to my attention after  
12 leaving the courtroom yesterday that even though the  
13 Respondent had invoked the exclusionary rule for  
14 witnesses, one of Petitioners' fact witnesses sat through  
15 the entire afternoon examination of Preston Olsen, which  
16 was one of the primary witnesses we didn't want overheard  
17 by other factual witnesses, Your Honor.

18 MR. JONES: And I had no idea that that even  
19 occurred. So it was brought to my attention this morning.  
20 I was unaware of that occurring. And I believe the reason  
21 why is he was not present at the time that was invoked and  
22 was not aware. I just questioned him in the hall about  
23 that. And he had no --

24 THE COURT: The witness was not in the courtroom  
25 at the time?



1 MR. JONES: Apparently, he was. So that is  
2 accurate, what he's stating; he was in the courtroom. I  
3 was not aware he was in the courtroom, and he was not  
4 aware that he was excluded. So that was the issue. So  
5 it's a --

6 THE COURT: Well, the discussion did focus  
7 mostly on Mr. Johnson. And he may have gotten confused.

8 MR. SORENSEN: Yes, Your Honor. But the witness  
9 that was present was Mr. Johnson's son. And there has  
10 been ample conversation between them. I don't know what  
11 has been said between the family members.

12 MR. JONES: I just can say I don't know if  
13 that's true. So --

14 MR. SORENSEN: But there's been ample discussion  
15 both lunchtime and afterwards, this morning. The concern  
16 Respondent has is there's no way to undo any harm.

17 THE COURT: So is Mr. Johnson's son going to be  
18 a witness?

19 MR. JONES: Yes.

20 THE COURT: Well, we'll have to deal with that  
21 when he's called.

22 MR. SORENSEN: Okay. Your Honor. I just wanted  
23 to let the Court know.

24 THE COURT: Okay.

25 MR. SORENSEN: Bearer of bad news. I apologize.

1 THE COURT: I don't know who the witnesses are,  
2 right? So I have to rely upon the parties to police their  
3 own people, and.

4 MR. SORENSEN: And this was a witness nobody  
5 from our table knew who he was, so we didn't know that he  
6 was in the courtroom. It came to our attention.

7 MR. JONES: I just didn't even know he was in  
8 the -- I mean, I'm faced this way.

9 MR. SORENSEN: Yeah, we're facing forward, not  
10 backwards.

11 THE COURT: Right.

12 MR. JONES: And I should know, so.

13 THE COURT: Okay. If seeing who's getting  
14 relief is required, we'll deal with that when he's called.

15 MR. SORENSEN: Thank you, Your Honor.

16 MR. JONES: We'll call Preston Olsen back to be  
17 cross-examined.

18 MR. OLSEN: I'll be sworn in again, no?

19 PRESTON OLSEN

20 having been previously sworn, testified as follows:

21 RESUMED CROSS-EXAMINATION

22 BY MR. SORENSEN:

23 Q Good morning, Mr. Olsen.

24 A Good morning.

25 Q Let's cover some of what you testified about



1 yesterday, okay?

2 A Okay.

3 Q You are an attorney, correct?

4 A Yes.

5 Q Graduated from law school in 2003?

6 A Yes.

7 Q And at that point, you went to work in New York  
8 at Cleary & Gottlieb, right?

9 A Yes.

10 Q I don't believe you testified to it, but you  
11 were primarily involved in securities and structured  
12 financial transactions?

13 A Yes, and derivatives.

14 Q And derivatives. How long were you there?

15 A Just about a year, almost a year is all.

16 Q Okay.

17 A Yeah.

18 Q And then you came to Salt Lake --

19 A Yes.

20 Q -- immediately after that?

21 A Yes.

22 Q And went to work for Ballard Spahr, correct?

23 A Yes.

24 Q And I believe you testified that you were  
25 primarily involved with municipal bond work?

1 A Um-hum, public financing.

2 Q Public financing, tax-exempt structuring?

3 A Yeah, just to the extent that they're  
4 municipalities issued tax-exempt bonds for public  
5 purposes.

6 Q Throughout that career, you would have to have  
7 done quite a bit of technical drafting of documents,  
8 wouldn't you have?

9 A Yes.

10 Q Contract?

11 A Yes.

12 Q Agreements?

13 A Yes.

14 Q How many contracts have you signed, or would you  
15 advise your clients to sign that's missing information?

16 A I guess it depends on what information was  
17 missing, but I'd probably advise them that they should  
18 complete the contract.

19 Q You wouldn't draft contracts with missing  
20 information, would you?

21 A I wouldn't draft them, no.

22 Q Okay. Let's look at Exhibit 12-J, if we could.

23 A Okay.

24 Q I believe this was -- oh, when you get there, I  
25 apologize.

1 A I'm there.

2 Q Wait till I get there. This is the purchase  
3 agreement you signed for the first year of purchasing  
4 lenses, correct?

5 A Yes.

6 Q Signed it in 2009?

7 A Yes.

8 Q Within the contract, what is the seller required  
9 to do; can you look at 2-A. I'll help you out; I  
10 apologize --

11 A 2-A?

12 Q -- for that broad question.

13 A I'm sorry, 2-A?

14 Q Yeah, of the agreement, under the agreement.

15 A Yes.

16 Q What is a seller required to do?

17 A It says, "Seller shall furnish, deliver,  
18 install, and start up the alternative energy system at the  
19 installation site by December 31, 2009".

20 Q To your knowledge, that did not happen, did it?

21 A To my knowledge, they didn't install them, no.

22 Q No start-up of use of your lenses, correct?

23 A Correct.

24 Q Is there a remedy in the contract for if they  
25 fail to do that?

1           A     Could I look through the contract to see if  
2     it --

3           Q     Please do. How about if you look at paragraph  
4     7?

5           A     Okay. Yes.

6           Q     We're attorneys, right?

7           A     Yes.

8           Q     We split hairs, parse words, correct?

9           A     Um-hum.

10          Q     What's your definition of the word "shall"?

11          A     That you have to do it.

12          Q     It's a requirement, right?

13          A     Yes.

14          Q     It's a must?

15          A     Yes.

16          Q     Did you receive a refund when they failed to  
17     comply with the terms of this contract?

18          A     I did not.

19          Q     You did not. Did you ask for a refund?

20          A     I did not.

21          Q     Okay. Can you turn to Exhibit A in this  
22     contract, page 7 of 7?

23          A     Yes.

24          Q     Is that completed, or is there missing  
25     information on that exhibit?

1 A There is missing information on the exhibit,  
2 yes.

3 Q The quantity is missing?

4 A Um-hum.

5 Q Whatever the model number is is missing?

6 A Correct.

7 Q Look at the page before that; who signed this  
8 contract?

9 A Me.

10 Q Did anyone else sign the contract?

11 A My understanding was that Neldon also signed it,  
12 but I don't have a copy of that.

13 Q We don't have a copy of a signed contract by Mr.  
14 Johnson, do we?

15 A I don't have one.

16 Q Okay. Let's look at Exhibit 15-J, okay?

17 A Okay.

18 Q This is a operation and maintenance agreement,  
19 correct?

20 A Correct.

21 Q Who's the agreement between?

22 A It's between LTB, LLC and PFO Solar, LLC.

23 Q It's actually between Preston Olsen and then  
24 handwritten in by somebody, PFL --

25 A Yes.

1 Q -- Solar. Do you know when that handwritten  
2 entry was made?

3 A I think when I signed it.

4 Q Is that your writing?

5 A It's my writing, yes.

6 Q Do you believe it's when you signed it?

7 A I believe so.

8 Q It wasn't done prior to that time, okay. Can  
9 you tell me what this contract defines the project as?  
10 And I'll direct you to the second paragraph, under  
11 "Recitals".

12 A It looks like the "power plant or other  
13 facilities associated therewith".

14 Q So it appears to be the operation of a power  
15 plant is the project of this agreement, correct?

16 A I think that's correct, yes.

17 Q Was a power plant ever operated in 2009?

18 A Not to --

19 Q To your knowledge?

20 A Not to my knowledge in 2009.

21 Q 2010?

22 A No.

23 Q 2011?

24 A No.

25 Q To your knowledge, was there ever a power plant

1 operated?

2 A To my knowledge, there was not.

3 Q Okay. Could we look at the last page of this  
4 document?

5 A Um-hum.

6 Q Who signed this document?

7 A Myself.

8 Q You, Preston Olsen, for, and you wrote in the  
9 "For" part, correct?

10 A Yes.

11 Q Who else signed the contract?

12 A I mean, it looks like a digital signature from  
13 Neldon Johnson.

14 Q For what entity?

15 A That's interesting. RaPower3 is what it says.

16 Q Is RaPower3 even a party to this contract?

17 A No.

18 Q No, they're not, are they?

19 A No. It looks like an error.

20 Q Did anybody sign this contract to your knowledge  
21 on behalf of LBV? I believe it's LTB, excuse me.

22 A It looks like it was not correctly signed.

23 Q Okay. Let's go to 17-J. Can you tell me what  
24 this is?

25 A A similar operation and maintenance agreement.



1 Q For 2012, correct?

2 A Yes.

3 Q And again, it looks identical; you handwrote  
4 information in?

5 A Um-hum.

6 Q It's your belief that was done when?

7 A I believe I did it when I signed it.

8 Q Okay. And again, this calls for the operation  
9 of a power plant, doesn't it?

10 A It does. It's likely this is an identical  
11 agreement.

12 Q It's likely an identical contract?

13 A Um-hum.

14 Q Would you go to the last page?

15 A Okay, yeah.

16 Q Well, before you go to the last page, who were  
17 the parties to this contract?

18 A The same, PFO Solar, LLC and LTB, LLC.

19 Q LTB. Can you tell me who signed this contract?

20 A It's Neldon Johnson, Hyath (ph.), and RaPower3.

21 Q And who signed for LTB?

22 A It's not clear here. It's not on here.

23 Q So there's no signature for LTB, is there?

24 A No.

25 Q Let's look at 19-J. It appears to be an



1 identical contract but this time for 2013, correct?

2 A Yes.

3 Q And again, you handwrote information on the  
4 first page, correct?

5 A Yes.

6 Q Your belief that it was done at the time the  
7 contract was made?

8 A I think so.

9 Q And who signed this agreement?

10 A LTB, LLC and PFO Solar, LLC is what the contract  
11 is supposed to be between.

12 Q Correct. And on the last page, who signed it?

13 A It's got the same signature block that Neldon  
14 Johnson, RaPower3.

15 Q And RaPower3, again, is not a party of this  
16 contract, are they?

17 A They are not.

18 Q And looking at 21-J.

19 A Okay.

20 Q It appears to be an identical agreement?

21 A Yes.

22 Q And again, handwriting on the front, correct?

23 A Correct.

24 Q And this is for 2014, correct?

25 A That's correct.

1 Q And it's also between you and PFO Solar and LTB,  
2 correct?

3 A That's correct.

4 Q Who signed this agreement?

5 A It's the same digital signature, Neldon Johnson,  
6 RaPower3.

7 Q And RaPower3 again is not a party to this  
8 contract, are they, or this agreement?

9 A That's correct. They are not.

10 Q During your testimony yesterday, you talked  
11 quite a bit about due diligence; do you remember that?

12 A Yes.

13 Q Okay. You testified that a significant part --  
14 and if I mischaracterize it, feel free to correct me.

15 A Yeah, correct.

16 Q A significant part of your due diligence was the  
17 progress you observed on the tours and the trips you made  
18 to Delta, Utah; is that a fair statement?

19 A That's true, yes.

20 Q Let's talk a little bit about the progress made  
21 down there, okay?

22 A Um-hum.

23 Q Can you open up the other binder and turn to  
24 Exhibit 121?

25 A Okay. I'm there.

1 Q This has been agreed that this is a picture of  
2 the site that was posted to a web page, RaPower3's web  
3 page on September 2009. Can you tell us what we're  
4 looking at right there?

5 A Yeah, it's some property. I think it's in  
6 Deseret. I don't know. It's just outside of Delta.

7 Q Just outside of Delta. Is this what's commonly  
8 referred to as the research and development site?

9 A I think so.

10 Q Now, I've had difficulty, I must confess. I've  
11 never been able to find out the exact number of towers  
12 erected on that site. It's been referred to between 15  
13 and 19.

14 A Um-hum.

15 Q Would you agree there's between 15 and 19 towers  
16 on the research and development site?

17 A I really don't know. I mean, it sounds --

18 Q On your observation, does that sound --

19 A It sounds like in the right range.

20 Q And you're aware those towers were erected in  
21 2006, correct?

22 A I'm not aware that they're all erected in 2006.  
23 I didn't know that.

24 Q Okay. Do you have any reason they were not  
25 erected prior to your involvement in this power

1 arrangement?

2 MR. JONES: I'm just going to object. He  
3 testified he lacks personal knowledge.

4 THE COURT: I'll sustain the objection.

5 MR. SORENSEN: Well, Your Honor, if I might  
6 address. He lacked personal knowledge as to the fact that  
7 they were erected in 2006. He did not testify that they  
8 were erected prior to his investment in the transaction.  
9 That was the question.

10 THE COURT: So you're not trying to pin down any  
11 year?

12 MR. SORENSEN: Just that they were in existence  
13 when he went down there for the first time to investigate  
14 and to see.

15 THE COURT: Okay. Well, phrase the question  
16 that way.

17 MR. SORENSEN: Okay.

18 BY MR. SORENSEN:

19 Q These towers existed the first time you went  
20 down there, did they not, to your recollection?

21 A I don't remember if they were all up or not,  
22 honestly. But there were some up, yes.

23 Q At the research and development site?

24 THE COURT: Mr. Jones?

25 MR. JONES: He said, "these towers". It's

1 vague. Are these --

2 THE COURT: I think he means the towers depicted  
3 in the photograph.

4 MR. JONES: Depicted in the photograph.

5 THE COURT: Is that fair?

6 MR. SORENSEN: The same one we're talking about,  
7 yes.

8 MR. JONES: Thank you.

9 BY MR. SORENSEN:

10 Q The towers on the research and development site,  
11 they existed when you went down there for the first time,  
12 correct?

13 A There were towers. I don't know if any others  
14 were erected. I don't remember.

15 Q You don't know?

16 A I don't know if they were all up at that time.  
17 But there were towers there.

18 Q To your knowledge, have any towers been erected  
19 other than the original ones at the R&D site?

20 A Um --

21 Q Now, let's qualify time frame.

22 A Yeah.

23 Q During the tax years, 2009 through the beginning  
24 of 2015.

25 A Um-hum.

1 Q To your knowledge, were there any additional  
2 towers erected at any location?

3 A During those time --

4 Q During those years.

5 A No, I don't believe during those years, no.

6 Q Okay. Let's look at Exhibit 122-J.

7 A Okay.

8 Q This would appear to be a picture of the same  
9 location, correct?

10 A Yes.

11 Q And for the record, this has been stipulated  
12 that this was a picture posted to the website December  
13 2010.

14 A Okay.

15 Q Does there appear to be significant progress  
16 made from the last picture?

17 MR. JONES: I would just object. This is an  
18 incomplete hypothetical that's being proffered because  
19 it's a --

20 MR. SORENSEN: Not hypothetical, Your Honor.  
21 We're asking for a comparison between two picture exhibits  
22 of the site. And his testimony that his due diligence  
23 included all the progress he observed at the site.

24 MR. JONES: Then I would ask that it be limited  
25 to what it stands for. He's going to compare photographs

1 that are selected. We deduced that it came from the  
2 website. We don't dispute that. But it's incomplete.

3 THE COURT: Well, the problem is you can capture  
4 different things in your photos. I mean, the first photo,  
5 121-J, only shows seven towers. The second one shows a  
6 lot more because of a different angle, probably.

7 MR. SORENSEN: I appreciate that, Your Honor.  
8 We have limited understanding. The IRS was not down  
9 there --

10 THE COURT: Right.

11 MR. SORENSEN: -- in 2010. These are pictures  
12 taken by the promoters, posted to their website for their  
13 members to view progress and other things that happened.  
14 I am limited by what we have. My question was simply,  
15 looking at the two pictures, tell us what progress was  
16 made.

17 THE COURT: You may not be able to infer that  
18 from the pictures. But I think you can ask him if he --

19 MR. SORENSEN: He may not, but he could  
20 identify --

21 THE COURT: I think you can ask him if he  
22 observed any progress during his sequential visits to the  
23 site, what specific progress he observed.

24 MR. SORENSEN: But Your Honor, I'm limited,  
25 again, by the pictures.

1 BY MR. SORENSEN:

2 Q So I'll ask you. This picture, last picture, do  
3 you see any significant progress in the pictures?

4 MR. JONES: I think Your Honor ruled on how this  
5 is to be taken, correct? You can ask him about his  
6 observations, but.

7 THE COURT: I think, yeah, ask him what his  
8 observations. You can't ask him what he infers from the  
9 pictures. It depends what the photographer captured in  
10 his lens.

11 MR. SORENSEN: Okay.

12 BY MR. SORENSEN:

13 Q Did you observe significant progress at the  
14 research and development phase between 2009 and 2010?

15 A I think I saw progress, yes.

16 Q Who is Betsy Olsen?

17 A Oh, that's my sister.

18 Q Is it the same sister that's the chemistry  
19 teacher?

20 A Yes.

21 Q Let's look at Exhibit 62-J for a moment.

22 A 62-J?

23 Q Yeah.

24 A That's in the first binder, right?

25 Q Yes, in the first binder.



1 A Okay.

2 Q And you'll notice at the bottom. There appears  
3 to be an email from you to your sister, correct?

4 A Yes.

5 Q Dated January 10th, 2012, correct?

6 A Um-hum.

7 Q So about two weeks after when the picture we  
8 were just looking at was posted to the website, correct?

9 A I have no idea when it was posted to the  
10 website.

11 Q It's stipulated that it was posted --

12 A Okay.

13 Q -- in December 2010.

14 A Yeah, whatever is stipulated, whenever.

15 Q So within a few weeks of when it was posted to  
16 the website, correct?

17 A If you say so.

18 Q How did you just --

19 MR. JONES: Could I just make a quick -- so this  
20 email that I'm looking at, are we at 62-J, because that's  
21 talking about 2012?

22 MR. SORENSEN: Yes, we're looking at the very  
23 bottom of the page. There's an email from Preston to his  
24 sister.

25 THE WITNESS: Um-hum.



1 MR. SORENSEN: Dated January 10th, 2012.

2 MR. JONES: But it's in reference to something  
3 you referred to just a moment ago as 2010, within a few  
4 weeks?

5 MR. SORENSEN: 2011.

6 MR. HOUTSMA: No, you said, 2010.

7 MR. SORENSEN: Oh, did I say '10? I apologize.  
8 The last picture we looked at would have posted to the  
9 website December 2010, so it was a few weeks before this  
10 email was written.

11 MR. JONES: This email --

12 MR. SORENSEN: Oh, I apologize.

13 MR. JONES: -- is in 2012.

14 MR. SORENSEN: I'm not making the connection.  
15 Okay.

16 THE WITNESS: It's three years later?

17 MR. SORENSEN: Let's not make a reference then  
18 to the picture. Let's just talk about the email.

19 THE WITNESS: Okay.

20 MR. JONES: Okay. And I also just note, I  
21 previously objected to the relevancy of a lot of these  
22 emails. This is one of them. We can wait to deal with  
23 that. But I don't know where this, to what --

24 MR. SORENSEN: Right now, Your Honor, all I've  
25 done is identified it.

1 MR. JONES: Right.

2 MR. SORENSEN: I haven't yet offered it.

3 MR. JONES: Okay.

4 BY MR. SORENSEN:

5 Q Again, this is an email you sent to your sister,  
6 correct?

7 A Um-hum.

8 Q And you sent it January 10th, 2012, correct?

9 A Yes.

10 Q And this email was discussing your involvement  
11 in the solar arrangement, correct?

12 A I think it was specifically talking about the  
13 stock.

14 Q Yes. But the second paragraph talks about what?

15 A It kind of just talks about kind of maybe some  
16 frustration about where IAUS is at right now.

17 Q And their property, correct?

18 A Yeah, it's kind of an interesting --

19 Q Can you please just answer the question? It  
20 discusses their property, correct?

21 A It discusses pictures of their property.

22 Q The pictures we were just going through,  
23 correct?

24 A I don't know if those same pictures.

25 Q But pictures like them?



1 A I don't even know that.

2 MR. JONES: I would object. It mischaracterizes  
3 the testimony.

4 BY MR. SORENSEN:

5 Q Okay. How would you describe the equipment to  
6 your sister in this email?

7 A I didn't describe the equipment.

8 Q You didn't? You didn't say at the very end,  
9 "And their stuff always looks a little like junk"?

10 A I don't know if I was talking about their  
11 equipment.

12 Q What were you talking about, what stuff?

13 A The junk that's all around the site. There's  
14 discarded things from previous R&Ds all over the place.

15 Q And so it could've been anything. But it was  
16 their equipment, their "stuff"?

17 A I think it was discarded stuff.

18 Q You think, but you can't remember. It could've  
19 been all their stuff, right?

20 A Exactly. You're asking me, and then you say I  
21 can't remember. And I don't understand; I'm supposed to  
22 remember, but you say I don't remember. They discarded --

23 Q This could've been applied --

24 A -- lots of stuff all over the site.

25 THE COURT: I'm going to overrule the

1 objection --

2 MR. JONES: What's the --

3 THE COURT: -- on relevancy grounds. The second  
4 paragraph email begins, "And who know IAUS has anything or  
5 not". So it would seem to me --

6 THE WITNESS: Um-hum.

7 THE COURT: -- this is referring to the site and  
8 then what he saw, the picture showed of the site.

9 MR. SORENSEN: Okay.

10 BY MR. SORENSEN:

11 Q With that in mind, let's turn to Exhibit 128-J.

12 A Okay.

13 MR. SORENSEN: Oh, Your Honor, I'm being  
14 informed by my helpers, my co-counsel, that you did not  
15 make a ruling on this, because I did not offer it. We'd  
16 offer Exhibit 62-J into evidence.

17 THE COURT: I've overruled the relevancy  
18 objection. We'll admit 62-J into evidence.

19 (Whereupon, the Document referred to as Exhibit  
20 62-J was received into evidence.)

21 BY MR. SORENSEN:

22 Q Are we at 128-J, Mr. Olsen?

23 A 128?

24 Q 128.

25 A Yes. Well, hold on a second. Yeah.

1 Q Can you tell me what that is?

2 A That looks like a picture of one of the R&D  
3 towers.

4 Q Could this have been one of the pictures you  
5 were referring to that their stuff sometimes looks like  
6 junk?

7 A I don't think it was necessarily this. But more  
8 that at the site, they just discarded, previously, R&D  
9 pieces of stuff. They wouldn't haul it off. They would  
10 just leave it on the ground.

11 Q Does this picture repeat -- I can't even speak.  
12 I apologize.

13 Does this picture appear to be a picture of a  
14 complete four-circle array on a tower?

15 A The problem is there's not context.

16 MR. SORENSEN: Your Honor, can we get a yes or  
17 no answer to the question?

18 BY MR. SORENSEN:

19 Q The question was does this picture appear to  
20 be --

21 A A complete one?

22 Q -- a complete picture of a four-circle array on  
23 a tower?

24 A No.

25 Q There are, in fact, missing and broken lenses,

1 correct?

2 A Yes.

3 Q Dangling wires, correct, that you can see?

4 A Yes.

5 Q Okay. Could this have been one of the pictures  
6 where you were describing their stuff as junk?

7 MR. JONES: Objection. Asked and answered.

8 MR. SORENSEN: I don't believe he ever answered  
9 the question, Your Honor.

10 MR. JONES: I believe he did.

11 THE WITNESS: I said it's not. I was talking  
12 about the stuff that's lying around on the ground.

13 BY MR. SORENSEN:

14 Q The question was simply, could this picture?

15 A No.

16 Q Okay.

17 THE COURT: Is 128-J objected to?

18 MR. SORENSEN: I believe it's into evidence.  
19 It's one of the pictures that Petitioners requested we put  
20 in.

21 THE COURT: Okay.

22 MR. JONES: Yeah, we don't. It stands for what  
23 it is. So yeah, we don't.

24 MR. SORENSEN: I do believe it was a picture  
25 requested by the Petitioners that we included. We did.



1 MR. JONES: Yeah, the pictures that were posted  
2 to website, we don't dispute their --

3 THE COURT: Okay.

4 MR. JONES: -- authenticity or that they were  
5 displayed on website. Again, it is what it is. They're  
6 selected.

7 THE COURT: But there was a relevancy objection,  
8 I'm asking?

9 MR. JONES: No.

10 THE COURT: No, okay. All right.

11 BY MR. SORENSEN:

12 Q Let's talk for just a moment, you made a  
13 statement yesterday. I want to make sure I again don't  
14 paraphrase it incorrectly.

15 A Okay.

16 Q You were asked, what did you do at the beginning  
17 of the year to start your tax return process.

18 A Um-hum.

19 Q And I believe your answer was you receive  
20 letters from CPAs who had done your previous years'  
21 returns asking for information to start the process; is  
22 that correct?

23 A Yes.

24 Q Who prepared your income tax return in 2008; do  
25 you remember?



1 A Probably me. I think I did, yeah.

2 Q You, in fact, used TurboTax to do it; do you  
3 remember that?

4 A Probably, yeah.

5 Q So what CPA would've sent you a letter the first  
6 part of 2009?

7 A That, yeah, that wouldn't've applied that year.

8 Q Would not have applied that year?

9 A No.

10 Q So the first year, when a CPA prepared your  
11 income tax returns, they didn't reach out to you, did  
12 they?

13 A No.

14 Q Okay. You talked about three CPAs who prepared  
15 your returns, Mr. Bolander, Mr. [Rit'-ter] or Riter --

16 A Yes.

17 Q -- whatever, and Mr. Jameson, correct?

18 A Yes, correct.

19 Q Isn't it true that all three of those names were  
20 provided to you by individuals associated with RaPower?

21 A That's correct.

22 Q Okay. You further testified -- oh, we'll get to  
23 that in a minute. You testified about how you were  
24 introduced to the solar system, correct?

25 A Um-hum, yes.



1 Q That is was through Matt Shepherd?

2 A That's correct.

3 Q And you went on and testified that your initial  
4 first impression was about the alternative energy sources,  
5 how you could help save -- I don't believe you said, save  
6 the planet. But that's what I think of when I hear about  
7 that.

8 A I don't think I would necessarily save the  
9 planet, but I thought, it was -- I mean, it's 2009?

10 Q Yeah.

11 A And it was just a really hot kind of area. I  
12 thought I could make a bunch of money in it, too.

13 Q That was your first thought when it was  
14 presented to you?

15 A Well, my first thoughts when it was very first  
16 presented to me, I was interested in finding out more  
17 about it.

18 Q But the alternative source of the energy was  
19 what was presented that you found interesting?

20 A Yes. Yeah, definitely.

21 Q Let's look at Exhibit 42-J for a moment. And  
22 I'm going to knock things on the floor before I'm done.  
23 We'll call it a chain of emails, for lack of a better  
24 terminology. And I'm specifically looking at the email at  
25 the bottom.

1 A Okay, one second. 42-J?

2 Q 42-J.

3 A Okay.

4 Q And this is an email dated July 9th from Matthew

5 Shepherd to you, correct?

6 A Yes.

7 Q Again, just looking that bottom small portion.

8 A Okay.

9 Q Can you show me in there where alternative

10 energy sources are discussed?

11 A Are you talking about the very bottom?

12 MR. SORENSEN: Oh, Your Honor, let's housekeep

13 for a minute.

14 MR. JONES: Yeah.

15 BY MR. SORENSEN:

16 Q You did receive this email, correct?

17 A Yes.

18 Q And it was from Matthew to you?

19 A Yes.

20 Q And it's discussing the solar tax credit

21 program, correct?

22 A Yes.

23 Q And that's the program that we're discussing

24 today, isn't it?

25 A Yes.

1 MR. SORENSEN: Your Honor, I'd offer Exhibit 42-  
2 J into evidence.

3 MR. JONES: I do have a relevancy objection. I  
4 think the initial inquiry is stating, this is how you  
5 introduce. And I understand that. But the premise that  
6 underlies that is this is everything. So I would also say  
7 I think it is incomplete to show the idea that's being  
8 advanced by Mr. Sorensen.

9 THE COURT: Well, it doesn't necessarily show  
10 what was going on in Mr. Olsen's mind because it's  
11 communication from Mr. Shepherd. But at least it shows  
12 that Mr. Shepherd told him.

13 MR. JONES: Right.

14 THE COURT: And it stands for that, and I'll  
15 overrule the balance of the objection.

16 MR. SORENSEN: Well, I could respond, Your  
17 Honor. I'm sure that cocounsel will adequately address  
18 any deficiencies I leave in the Court's impression of what  
19 this document is.

20 THE COURT: So yeah, I'll overrule this, admit  
21 this into evidence.

22 MR. SORENSEN: Thank you.

23 THE COURT: So 42-J is admitted.

24 (Whereupon, the Document referred to as Exhibit  
25 42-J was received into evidence.)

1 BY MR. SORENSEN:

2 Q Now, can you tell me, you've had time while we  
3 engaged in our --

4 A Sure.

5 Q -- discussion to read it. Where is alternative  
6 energy sources mentioned?

7 A Are you talking about the first email on the  
8 bottom; is that --

9 Q The first email on the bottom.

10 A Well, it talks about solar units. I think  
11 that's alternative energy.

12 Q It talks about solar --

13 A Aren't those synonymous?

14 Q -- units, or it talks about solar tax credit  
15 program?

16 A Well, number 2 says, buy our solar units. I  
17 don't understand.

18 Q With what? Buy our solar units with what?

19 A With your tax money.

20 Q With your tax money instead of giving it to the  
21 IRS?

22 A Yes.

23 Q But my question was this. Where does it talk  
24 about the revolutionary solar program that you testified  
25 about?

1           A       So you're asking me if the very first email I  
2       ever received had all the information about the program?

3                   MR. JONES:   And I would just object.

4                   MR. SORENSEN:   Your Honor, I object to this, we  
5       (sic) asking the question.

6       BY MR. SORENSEN:

7           Q       My question was very simple.  Where in the email  
8       is there anything talking about a revolutionary solar  
9       system?

10          A       Okay.  I would say that in the first --

11                   MR. JONES:   Just a moment.

12                   THE WITNESS:  -- email I ever received.

13                   MR. JONES:   Just a moment.  Just a moment.  I  
14       would object to the question that it assumes facts not in  
15       evidence.  He's asking where is this stated.  It was not  
16       sent by Preston.  He lacks personal knowledge of what Mr.  
17       Shepherd's state of mind in sending that was.

18                   MR. SORENSEN:  And may I respond?  Petitioner  
19       testified that his initial first response at being  
20       introduced to this was how wonderful the technology was,  
21       how great the solar process was going to be.  My question  
22       is this is the first contact; we'll go through several  
23       more.  It won't be incomplete before we're done.  But this  
24       was the initial contact, and there's no mention of the  
25       technology.

1 THE COURT: Well, but that shows the state of  
2 mind.

3 MR. SORENSEN: I understand, Your Honor.

4 THE COURT: Wait. I'm the judge here. Okay?  
5 That shows state of mind of the sender.

6 MR. SORENSEN: Right.

7 THE COURT: And the sender may have thought that  
8 what he cared about was the tax credits and using IRS  
9 money. That doesn't mean that was what was going on in  
10 his mind.

11 MR. SORENSEN: And I didn't ask what's going on  
12 in his mind. I asked, where in this email is there any  
13 discussion.

14 THE COURT: Well, the pitch is clearly about  
15 taxes. That's obvious from this email. And that's --

16 MR. SORENSEN: That's where we're headed.

17 THE COURT: -- all the email stands for. It  
18 doesn't show why he went into the transaction.

19 MR. SORENSEN: I appreciate Your Honor. I just  
20 wanted to go through the initial contact. It did not deal  
21 with anything but taxes.

22 THE COURT: Well, he may have gotten it in a  
23 promotional brochure somehow; that's separate from this.  
24 I don't know.

25 MR. SORENSEN: I know.

1 THE COURT: You can't put anything into one  
2 email.

3 MR. JONES: And I would --

4 MR. SORENSEN: Your Honor, I'm not trying to.  
5 I'm simply asking about one email now. We'll go on, on a  
6 bunch of emails.

7 MR. JONES: I also would just say, I don't know  
8 where the foundation has been laid to say that this is the  
9 first contact. I don't --

10 THE COURT: Well, it's the same date as he  
11 signed the contract, right, July 9th?

12 MR. SORENSEN: Well, not only that, Your Honor,  
13 the email says, "Liz (ph.) said you may be interested in  
14 our new system. Here are some facts".

15 MR. JONES: I don't know that that shows that's  
16 his initial contact. And I don't know he's --

17 THE COURT: Well, the email stands for what it  
18 is. All right.

19 MR. JONES: Right, yeah.

20 THE COURT: I can judge it in. Just let's move  
21 on.

22 MR. SORENSEN: Okay. And I apologize. My  
23 mind's slow. We did offer this into evidence, and it was  
24 received.

25 THE COURT: It has been received.





1 BY MR. SORENSEN:

2 Q And just to get into more trouble and to wrap it  
3 up.

4 A Sure.

5 Q Of the five bullet points --

6 A Yes.

7 Q -- how many relate to tax?

8 A All of them? Well, except the fifth one, I  
9 guess.

10 Q Except the fifth one. Now, the fifth one  
11 promises income for 35 years.

12 A Correct.

13 Q Have you ever received income from this program?

14 A No, not yet.

15 Q Okay. And the title given was Solar Tax Credit  
16 Program, correct?

17 A Um-hum.

18 Q That's how he described it to you?

19 MR. JONES: I just object. The email speaks for  
20 itself. I think we've been through this.

21 THE COURT: Right. Please move on to another  
22 email.

23 MR. SORENSEN: Okay.

24 THE COURT: If you're going to do more emails.

25 MR. SORENSEN: Unfortunately, Your Honor,

1 there's a string of them.

2 THE WITNESS: We're going to be here all day.

3 MR. SORENSEN: Yes. There's a bunch of them.

4 THE WITNESS: I don't delete emails, apparently.

5 BY MR. SORENSEN:

6 Q Now, let's go to 43-J.

7 A Okay.

8 Q And specifically, to the second page.

9 A Okay.

10 Q And I'm looking at the top. This is again a  
11 string email. I apologize.

12 A Sure.

13 Q The way they were provided by --

14 A Me?

15 Q -- Petitioners, the majority of them are string  
16 emails, and I'm trying to just pick out the ones. Okay?

17 A Okay.

18 Q Looking at the top of the page, can you tell me  
19 what that email is?

20 A The ones that's July 10th, 2008?

21 Q Yes.

22 A It looks like it's an email from me to Matt  
23 Shepherd.

24 Q And you sent it when?

25 A July 10, 2009.



1 Q And this is the day after you received the first  
2 email or the last email, correct, 42-J?

3 A Yes.

4 Q Yes. And this email seems to indicate -- oh.  
5 And you sent this email, correct?

6 A Yes.

7 MR. SORENSEN: Your Honor, I offer 43-J into  
8 evidence.

9 MR. JONES: I guess, I'd like to preserve the  
10 relevancy to see where the line of questioning goes.  
11 Again, we don't dispute that it's authentic. But I don't  
12 know what the relevance is yet.

13 THE COURT: I think I see the relevance. I'll  
14 overrule the objection.

15 (Whereupon, the Document referred to as Exhibit  
16 43-J was received into evidence.)

17 BY MR. SORENSEN:

18 Q This appears to be an email you sent the day  
19 after meeting with Matthew, correct? Now, do you call him  
20 Matthew or Matt; I don't want to step --

21 A I call him Matt.

22 Q Would it be inappropriate to call him Matt?

23 A That's sounds fine to me. Thanks.

24 Q This appears to be an email you sent the day  
25 after he stopped by your house and explained the program

1 to you, correct?

2 A I think he stopped by my office, but yes.

3 Q The first line, "Thanks for stopping by and  
4 sharing the great investment idea".

5 A Um-hum.

6 Q Can you tell me in that paragraph where you have  
7 any questions about a unique solar system, a innovative  
8 technology?

9 A I don't know if it -- I mean, I'm assuming  
10 you've read this.

11 Q I've read it.

12 A And I probably didn't talk about it in this  
13 email.

14 Q No. What do you talk about primarily -- let's  
15 establish something first.

16 A Yeah.

17 Q Looking at that email, the lower case letters  
18 appear to be your email, correct?

19 A I think that's correct.

20 Q And the capitalized letters that follow each  
21 paragraph would appear to be Matt's response to you,  
22 correct?

23 A Yes.

24 Q So part of it's you; part of it's Matt. Let's  
25 talk about your part.

1 A Okay.

2 Q That second paragraph, after you thank him for  
3 the investment idea, what's the concern you raise?

4 A The one that begins with "First"?

5 Q Yes.

6 A It looks like I'm worried about if I purchase  
7 the lenses, and they never get placed in service.

8 Q The issue we're facing in this Tax Court case,  
9 correct?

10 A These are some of the same issues, yes.

11 Q And you were also questioning the investment tax  
12 credits, the production tax credits; those were the  
13 questions you raised, correct?

14 A Yes.

15 Q Okay. Yesterday, you discussed the CPAs that  
16 you had talked to or had referenced to about this program,  
17 correct?

18 A Correct.

19 Q And you only reference three of them, correct?

20 A Yes.

21 Q Oh, one moment. Can you look at that email at  
22 the bottom?

23 A The one that's July 21st?

24 Q Correct.

25 A Yes.

1 Q Your brother-in-law, that wouldn't happen to be  
2 Betsy's husband, would it?

3 A No.

4 Q Who would that be?

5 A I think it's Ethan Kap, is my brother-in-law.

6 Q And you discuss this investment with him,  
7 obviously?

8 A Yes.

9 Q And his CPA sent you concerns, didn't he, or  
10 your brother-in-law sent you concerns from his CPA,  
11 correct?

12 A Correct.

13 Q So this was a CPA that you had information of,  
14 you may have never spoken to, but you received information  
15 of questioning the program, correct?

16 A It looks like he forwarded it to me, yes.

17 Q And so there were other CPAs you spoke to  
18 besides the three, or you had information from? Let's  
19 don't say "spoke to", because you obviously never spoken  
20 to her?

21 A I don't even know who it is.

22 Q There was information conveyed to you from  
23 another CPA of concerns of the program?

24 A Yes.

25 Q Did you ever get any response to the concerns

1 raised by this CPA?

2 A I don't remember.

3 Q It doesn't appear to be any in the email  
4 provided to us.

5 A I don't remember anything.

6 Q Okay. Did you speak to any unrelated third  
7 party about these or any other concerns; and when I say  
8 that, I mean anybody who was not related to the promotion?

9 A I'm sorry, about tax concerns?

10 Q These concerns your brother-in-law CPA had or  
11 your concerns about placed-in-service or some other  
12 concerns we're going to talk about?

13 A I'm sure I talked to some people about it.

14 Q You identified talking to a number of people.

15 A Yeah.

16 Q Three CPAs, Neldon, Greg, Matt, all of whom are  
17 related to the promotion.

18 A Yes.

19 Q Did you speak to any unrelated party to seek  
20 questions about your concerns?

21 A I guess you're assuming that the three CPAs are  
22 somehow part of the promotion?

23 Q Were the three CPAs referred to you by the  
24 promoters?

25 A Yes.

1 Q I'm assuming they're somehow tangentially  
2 related to the promotion, yes. Anybody else?

3 A I think I probably talked to my dad about it a  
4 little bit.

5 Q And your dad's qualification?

6 A I mean, he is an attorney as well. He's not a  
7 tax preparer, although I think he did graduate in  
8 accounting some long time ago.

9 Q Do you have anything in writing from him?

10 A No.

11 Q Is he going to be a witness today?

12 A No. You just asked me if I talked to him. I  
13 probably talked to my brother-in-law here, Ethan Kap.

14 Q Did Ethan buy any lenses?

15 A No.

16 Q Oh, by the way, Betsy, your sister, who you  
17 talked to, did she buy any lenses?

18 A No, she invested in the stock.

19 Q Okay.

20 A She thought that was a better idea.

21 Q But you've not provided any information to the  
22 IRS relative to any third party you spoke to besides the  
23 ones you've mentioned, is that correct?

24 A I have not provided anything to the IRS about  
25 conversations I had with just family members, I guess.



1 Q Okay. Going on with the due diligence you  
2 testified to yesterday.

3 A Um-hum.

4 Q You testified that you read material about the  
5 solar process, correct?

6 A Yes.

7 Q You testified that you watched videos about the  
8 solar process, correct, or watched videos? I won't  
9 clarify what it was about.

10 A Yeah, videos from the things they were  
11 developing. Is that what you're asking?

12 Q Well, I'm just trying to see what you testified.  
13 You said you watched videos in your due diligence?

14 A Yeah. I said I watched videos of the lenses  
15 being used to create heat, and videos of the turbine  
16 working.

17 Q Okay. And the material you read and the videos  
18 you've watched were all provided to you by the promoters,  
19 correct?

20 A Well, I did read quite a bit just on  
21 concentrated solar, just general stuff on the internet, as  
22 well.

23 Q Okay. But a lot of the stuff you read and the  
24 videos you watched were provided by the individuals  
25 associated with the promotion?

1 A A lot of the stuff I read was, yes.

2 Q Yes.

3 MR. JONES: And I just object to the line of  
4 questioning. I'm not sure what fact are we going toward  
5 from --

6 MR. SORENSEN: We're going to the business,  
7 whether he was actively engaged in a business, and the  
8 intention he had at that point.

9 MR. JONES: But what does it have to do with --  
10 you're asking about, did you get this from the promoters.  
11 I mean, if you're saying, did you conduct the activity,  
12 that means he's doing something. But I don't know. It  
13 seems like we're focusing, are those interactions related  
14 to the promoter or not. There is not a theory in this  
15 case about the activity that Preston Olsen engages in  
16 being a tax shelter or an abuse of tax shelter.

17 THE COURT: I think it goes to whether he  
18 conducted a business in a business-like manner is the  
19 first factor in the hobby loss regulations.

20 MR. JONES: Sure.

21 THE COURT: And the one factor, as you mentioned  
22 yesterday in connection to the return preparers, is  
23 whether he talked to advisors -- outside advisors, outside  
24 expertise people. And whether they're promoters or not, I  
25 think, affects the reliability of the information you

1 might be getting and whether you really sought out  
2 independent advice.

3 MR. JONES: Sure, okay.

4 THE COURT: Which I think is relevant.

5 MR. SORENSEN: Thank you, Your Honor.

6 BY MR. SORENSEN:

7 Q Moving on, you spoke about a presentation you  
8 attended at Thanksgiving Point in Lehi; do you recall  
9 that?

10 A Yes.

11 Q You testified it was in late 2009 or early 2010;  
12 is that your recollection?

13 A I honestly don't remember exactly when it was.  
14 But I probably did testify to that. I don't know the  
15 exact time. I'm sure --

16 Q Do you --

17 A -- somebody knows.

18 Q Well, let me try to help you; do you recall  
19 testifying in what we call the injunction case in District  
20 Court?

21 A Yes.

22 Q And about when did you testify, was it early  
23 2015 -- I mean, excuse me --

24 A I don't remember. I don't remember. It's a  
25 known fact. Someone knows it. I don't know.

1 Q 2018? Excuse me, I'm being corrected here.

2 Approximately two years ago, correct?

3 A That sounds right.

4 Q So two years closer to when that event occurred?

5 A Yes.

6 Q Do you recall testifying in the District Court  
7 that it was in late 2009 or early 2010?

8 A I don't recall.

9 Q There's a binder there that'll help you recall.

10 A Okay.

11 Q And it's not in either one of the Stipulations.  
12 It's the other binder.

13 A Which one? Oh, this transcript?

14 THE COURT: I don't think I have the other  
15 binder.

16 MR. SORENSEN: No, you're about to, Your Honor.

17 THE COURT: Okay.

18 BY MR. SORENSEN:

19 Q It is labelled "DOJ Depo Trial Transcripts".

20 MR. JONES: I don't have a copy.

21 MR. SORENSEN: Well, it looks like I'm going to  
22 be the only one without on, Your Honor.

23 THE COURT: Okay.

24 MR. SORENSEN: May I approach?

25 THE COURT: Yes.

1 MR. SORENSEN: I apologize. I lose myself.

2 THE COURT: This one's the witness?

3 MR. SORENSEN: The witness has one, Your Honor.

4 THE WITNESS: I have one, yes.

5 MR. SORENSEN: So now, everybody but me has one.  
6 But I have one, too.

7 THE WITNESS: You can use mine if you want.

8 BY MR. SORENSEN:

9 Q If you'll look in the binder, there should be a  
10 tab that says PO- and, I believe, -TR. Do you see that?

11 A TR?

12 Q POT.

13 A I see a T.

14 Q POT.

15 A Yes.

16 Q Look for P, O, and a T.

17 A Okay. I see that.

18 Q Preston Olsen transcript.

19 A Okay.

20 Q And can you turn to page 1,109? And I'm looking  
21 attorney line 15 and 16; do you see that?

22 A Yeah.

23 Q So in the District Court, you testified it was  
24 in 2009 or 2010, correct?

25 A I said it may have been 2009 or 2010.

1 Q And that was closer in time to when it happened?

2 I'm not trying to pin you down to a specific time frame.

3 I'm trying to get a general time frame.

4 A Someone knows. I don't remember the exact time.

5 I don't remember.

6 Q Okay. I don't know the exact time frame; but it

7 was sometime in that time frame, correct?

8 A I don't know. It may have been.

9 MR. JONES: I would just --

10 THE WITNESS: Does somebody know?

11 MR. JONES: I apologize. Just the testimony

12 that we're looking at to help him, and I know this is just

13 to refresh his recollection --

14 MR. SORENSEN: Trying to.

15 MR. JONES: -- it also indicates that he doesn't

16 really know. If you read line 15, it's his own --

17 MR. SORENSEN: But it may have been that time

18 frame.

19 MR. JONES: I'm trying to remember.

20 THE WITNESS: Yeah, been.

21 MR. SORENSEN: Okay.

22 THE WITNESS: That's what I'm trying to remember

23 the first one. I don't remember it.

24 MR. SORENSEN: Okay.

25 THE WITNESS: We could find out. Someone could

1 find out. It's an existing fact.

2 MR. SORENSEN: Unfortunately, we're here today.

3 And we don't.

4 THE WITNESS: But I don't --

5 MR. SORENSEN: So we're trying to refresh your  
6 memory.

7 THE WITNESS: Okay. Thanks.

8 BY MR. SORENSEN:

9 Q Do you recall what that presentation entailed?

10 A I remember that they spoke quite a bit about the  
11 development.

12 Q Just, I'm going to ask questions. My question  
13 was, do you recall what it entailed. I didn't ask you to  
14 describe it.

15 A No, no.

16 Q Just do you recall it?

17 A I recall some things that were discussed.

18 Q Neldon Johnson spoke, didn't he?

19 A I'm sure he did, but I don't recall him  
20 speaking.

21 Q Greg Shepherd spoke, didn't he?

22 A Probably, but I don't recall him either.

23 Q Mr. Bolander spoke, didn't he?

24 A I don't recall him speaking either. Is this  
25 Thanksgiving Point?

1 Q We better go back to the transcript.

2 A Okay.

3 Q Can you go to, it looks like it's the bottom of  
4 1,109 and the top of 1,110.

5 A Okay.

6 Q And just read that to yourself.

7 A 1,109?

8 Q 1,109, the last six lines and then the top of  
9 1,110. Have you refreshed your memory with those few  
10 lines?

11 A Yeah, in this deposition, or is this the trial  
12 transcript?

13 Q This is your transcript of your testimony under  
14 oath.

15 A Yeah, they said -- my interpretation of this,  
16 correct me if you don't think, they're not talking about  
17 that specific meeting.

18 Q You are.

19 A No, I'm not.

20 Q You say, "In the early meetings". What early  
21 meetings would there have been besides this?

22 A No, no, no. This the problem when you guys pick  
23 stuff out.

24 MR. SORENSEN: Your Honor, can we ask --

25 THE WITNESS: You don't read the whole thing.





1 MR. SORENSEN: -- that the witness simply  
2 address questions, not lecture?

3 THE COURT: Why don't you ask your question  
4 again, please?

5 MR. SORENSEN: Well, let's ask the question.  
6 BY MR. SORENSEN:

7 Q It appears that you're making reference to the  
8 fact that in the very early meetings you attended, Mr.  
9 Bolander made presentations, correct?

10 MR. JONES: Could I just interject an objection.  
11 So the transcript in 1,109 talks about --

12 MR. SORENSEN: Your Honor, I'm not asking about  
13 transcript. It was a very general question.

14 THE WITNESS: You were asking. Never mind.

15 MR. JONES: Yeah, you don't need to --

16 THE WITNESS: Okay.

17 MR. JONES: I'll just instruct my witness to  
18 take it easy, so.

19 Are you saying you're not asking about the  
20 transcript?

21 MR. SORENSEN: That question was, in the early  
22 meetings you attended, Mr. Bolander made presentations  
23 about the tax benefits of the structure. That was the  
24 question.

25 MR. JONES: And so we are not referring to the

1 transcript?

2 MR. SORENSEN: Not at this specific point, no.

3 MR. JONES: Okay.

4 THE COURT: Well, I thought you're using the  
5 transcript to refresh his recollection of what he said  
6 earlier about what occurred.

7 MR. SORENSEN: I was trying to, but he then  
8 testified or stated without a question being present that  
9 he couldn't really recall what was presented at that  
10 particular meeting. So now I'm asking a very general  
11 question that --

12 BY MR. SORENSEN:

13 Q At the early meetings he attended, Mr. Bolander  
14 made presentation about the tax benefits associated with  
15 this solar transaction; did he not?

16 A Yes.

17 Q And those were meetings that you attended,  
18 correct?

19 A Yes, I could tell you the one that I remember.

20 Q That's fine. You answered the question.

21 A Yeah.

22 Q And subsequently, you were introduced to Mr.  
23 Bolander by who?

24 A I think Greg Shepherd.

25 Q Greg Shepherd?

1 A Yeah.

2 Q And then you then went on and retained him to  
3 prepare your taxes, correct?

4 A Correct.

5 Q I thought it was a complicated way of getting  
6 there. I apologize.

7 A No, I'm sorry. I'm trying to be correct, I  
8 guess.

9 Q When you testified -- he's refreshing his memory  
10 about other things, trying to remember.

11 A No, no, no, I don't need this.

12 Q I know you're --

13 A -- I'll close it.

14 Q -- just perusing. Yesterday, when you testified  
15 about due diligence, you testified that, and correct me  
16 again if I'm wrong --

17 A Yeah.

18 Q -- along the lines that each year there were  
19 little kinks, but you felt they were really close to  
20 getting there; is that a fair statement?

21 A Yes, I think so.

22 Q And to your knowledge, was there ever any  
23 production of commercially sellable energy by this  
24 transaction?

25 MR. JONES: I'm just going to object to the

1       vagueness of that term of art that he's using. I don't  
2       know if he's --

3               MR. SORENSEN: Well, I'm not sure which term of  
4       art he's referring to.

5               MR. JONES: Commercially available energy.

6               THE COURT: Commercial.

7       BY MR. SORENSEN:

8               Q       Was there any power produced by this project and  
9       sold to third parties?

10              A       Not that I know of.

11              Q       Not in 2009?

12              A       No.

13              Q       Not in 2010?

14              A       No.

15              Q       And then you reinvested in 2011, correct?

16              A       Correct.

17              Q       No power produced in '11?

18              A       No.

19              Q       You reinvested in 2012?

20              A       Correct.

21              Q       No power in 2012 produced?

22              A       No.

23              Q       Reinvested in 2013?

24              A       Correct.

25              Q       But each year, they were very close?

1 A I felt they were.

2 Q Not to prolong it, but did you receive any  
3 rental income for your lenses in any year?

4 A Not in those years.

5 Q In any year?

6 A In any year, no.

7 Q Okay. And even with these apparent inability to  
8 produce results, you kept purchasing lenses even through  
9 2016, didn't you?

10 A Yes.

11 Q Okay. You testified yesterday that you had  
12 invested approximately \$70,000; do you remember that  
13 number?

14 A Yes.

15 Q And your testimony was, you were well aware that  
16 you could lose it; do you remember that testimony?

17 A Yes.

18 Q Isn't it true that each year you made an  
19 investment, you recouped more than the investment by April  
20 15th of the following year through your tax benefits?

21 A I'm not sure of each year, but that's generally,  
22 yes, correct.

23 Q So how could you ever have lost 70,000 if you  
24 recouped more than you invested through tax benefits?

25 A I don't know. I never really considered that.



1 Q Okay.

2 THE COURT: Well, the IRS could deny the tax  
3 benefits.

4 BY MR. SORENSEN:

5 Q You talked yesterday about a turbine you  
6 observed working, correct?

7 A Yes.

8 Q You observed that turbine working in the shop,  
9 correct, the workshop?

10 A No. Do you want me to get into more detail?

11 Q Well, it's a yes or no.

12 A No.

13 Q Where did you observe it working?

14 A It was in, like, a trailer.

15 Q What location?

16 A Location was outside the, yeah, the  
17 manufacturing facility they had down there and near Delta.

18 Q And the manufacturing facility is, I mean, I  
19 hate to guess, but several miles from the towers, aren't  
20 they?

21 A I think so.

22 Q I mean, just a round number, somewhere around  
23 five and ten miles away from where the towers are located?

24 A That makes sense, yeah.

25 Q So this turbine, when you saw it working, was

1 not connected to a tower, was it?

2 A No.

3 Q Like, the lenses were not producing heat to  
4 generate this?

5 A Correct.

6 Q So this was connected to some other power  
7 source, this turbine?

8 A It wasn't using lenses. I don't know what it  
9 was connected to.

10 Q Okay. But it wasn't using heat produced by the  
11 lenses?

12 A Correct.

13 Q Your lenses or anybody else's?

14 A Right.

15 Q And it wasn't connected to a generator, was it?

16 A I don't recall that.

17 Q Okay. Much to my disdain, we'll now go back to  
18 some emails.

19 A Okay.

20 Q And let me ask a question before we go there;  
21 how long did it take you to determine you were going to  
22 invest in this arrangement? Let me set the stage,  
23 remembering that July 9th, Matthew met with you and made a  
24 presentation. I mean, I'm not trying to cast negative  
25 aspersions, but made a presentation to you.

1 A Yeah.

2 Q How long before you decided to invest; do you  
3 recall?

4 A I don't recall.

5 Q Okay. Let's see if we can help you.

6 A Okay.

7 Q Let's look at 43-J.

8 A Okay.

9 Q Again, we talked about the second page of this  
10 earlier, correct?

11 A Yes.

12 Q Your questions. On the first page, there's  
13 another question you asked them on July 11th; do you see  
14 that?

15 A Yes.

16 Q You asked what his and his father's relationship  
17 was to the project or to IAUS, correct?

18 A Correct.

19 Q And he told you that they were the sales  
20 director, and he was on his father's sales team, correct?

21 A Yes.

22 Q And then the email I want to concentrate on is  
23 July 21st; what did you tell Matthew you had done?

24 A Applied for my LLC.

25 Q So at that point, apparently, you had decided to





1 engage in the transaction?

2 A Yes, roughly.

3 Q So it's roughly, not that I'm a mathematician,  
4 but 12 days.

5 A Um-hum.

6 Q Okay. Let's talk for just a second and see if  
7 we can agree to some generalities.

8 A Okay.

9 Q After the initial purchase which we've all  
10 agreed is somewhat different than the remainder, when you  
11 purchased later on, there was typically three purchase  
12 options, weren't there; do you recall that?

13 A I recall two of the three.

14 Q Okay. It doesn't matter what the other two  
15 were.

16 A Yeah.

17 Q You typically selected what was called option 2;  
18 is that correct?

19 A I don't know if it was called option 2.

20 Q All right. What was the option that you did  
21 select, not by number; what were the terms?

22 A The terms were -- okay. So before the end of  
23 the year, you pay ten percent of what they call the down  
24 payment.

25 Q How much of the down payment had to be paid --

1 A Ten percent.

2 Q -- do you recall?

3 A Ten percent, right?

4 Q Well, wasn't there an initial payment? Let me  
5 throw numbers out, and you correct me.

6 A Okay.

7 Q During those years, a lens cost \$3,500 correct,  
8 per lens?

9 A Yes.

10 Q The contract required a down payment of 10  
11 percent, correct -- 30 percent, excuse me.

12 A I think it's 30.

13 Q 30 percent, you're right, 30 percent.

14 A Yes.

15 Q \$1,050?

16 A Correct.

17 Q Upon signing, how much of that 1,050 was  
18 required to be put down?

19 A Ten percent.

20 Q Ten percent --

21 A Yes.

22 Q -- or \$105?

23 A Correct.

24 Q Okay. And that's typically the option you  
25 selected, correct?

1 A Yes.

2 THE COURT: It's for years after 2009?

3 MR. SORENSEN: Yes.

4 THE COURT: Right.

5 MR. SORENSEN: Yes, Your Honor. Although, not  
6 to mislead the Court and other parties. There's an odd  
7 year in 2011 where the Petitioner --

8 THE WITNESS: Oh, that is odd.

9 MR. SORENSEN: -- had the opportunity to elect a  
10 five-year spread. But that doesn't really impact what  
11 we're discussing.

12 MR. JONES: And I think it's fair to say that  
13 all of these amounts are in the Stipulation of Facts. I  
14 don't think we deviated from that.

15 MR. SORENSEN: No, we haven't.

16 MR. JONES: Yeah.

17 MR. SORENSEN: I just -- we're just leading into  
18 some questions about it.

19 MR. JONES: Okay.

20 MR. SORENSEN: But I don't want to mislead the  
21 Court to say they were all that way --

22 THE COURT: I understand.

23 MR. SORENSEN: -- because there is an early-odd  
24 year.

25 MR. JONES: Yeah, and I would just --

1 THE WITNESS: Two odd years there, kind of.

2 MR. SORENSEN: Yeah. 2009 and 2011 were --

3 MR. JONES: Yeah.

4 MR. SORENSEN: -- atypical.

5 MR. JONES: And if we're going on to another  
6 topic this leads into, fine. But I would say, I think all  
7 this stuff is already settled between the parties.

8 MR. SORENSEN: Oh, we're leading into other  
9 things, Your Honor.

10 THE COURT: Okay. Well, lead on.

11 BY MR. SORENSEN:

12 Q When were you required to pay the remainder of  
13 the down payment?

14 A I think you were supposed to pay it after you  
15 received your tax benefits.

16 Q So in fact, you were supposed to -- you could  
17 utilize your tax benefits to make the remainder of the  
18 down payment?

19 A Yes.

20 Q And you were not required to do so until after  
21 you got your tax refund?

22 A Correct.

23 Q Okay. That's where we were headed.

24 A Okay.

25 Q And let's look at a couple of emails that I have

1 to get into evidence.

2 A Okay.

3 Q Let's look at 46-J, please.

4 A Okay.

5 Q And I want you to look -- oh, tell me what this  
6 is first.

7 A The top one?

8 Q The top -- well, the top two.

9 A Top two. It's an email from Matt Shepard to me,  
10 May 16 --

11 Q Dated?

12 A May 16, 2011.

13 Q And then --

14 A And then it looks like --

15 Q -- there's an email --

16 A -- I respond May 16, just saying, thank you.

17 MR. SORENSEN: Your Honor, I offer into evidence  
18 Respondent's Exhibit 46-J. And we'll talk about it.

19 MR. JONES: So the purpose of this is to what,  
20 to --

21 MR. SORENSEN: I'll be glad to ask the questions  
22 before we address objections.

23 MR. JONES: Yeah, I guess I would reserve then  
24 until I know what we're doing here.

25 BY MR. SORENSEN:

1 Q Can you look at the second paragraph --

2 A Um-hum.

3 Q -- of Matt's email?

4 A Yes.

5 Q Specifically, the last line. Can you read it  
6 out loud? It starts with, "Also".

7 A Yeah. "Also you now only need to pay ten  
8 percent of the down payment now, and the rest of the down  
9 payment isn't due until after you get your money back from  
10 the Department of Treasury."

11 Q What, if anything, is your understanding of what  
12 would happen if you didn't get the refund? Do you recall?

13 A I always assumed that at that point you'd have  
14 to decide whether you wanted to -- yeah, just make the  
15 payment yourself. I don't know. I hadn't thought about  
16 that.

17 Q Do you recall any conversations where it was  
18 indicated that there'd be no need to make the payment if  
19 you didn't get the tax refund?

20 A I don't remember talking about that with anyone.

21 Q Okay.

22 THE COURT: Okay. Let me take the relevancy  
23 objection, Counsel.

24 MR. JONES: I guess I'm not sure what is this  
25 going toward, I mean what element are we satisfying,

1 what's the factual reason for it.

2 THE COURT: Well --

3 MR. JONES: Because I think the agreements say  
4 what they say, and you've got options. But I don't know  
5 that -- what is that going toward.

6 THE COURT: Well, the agreements are quite --  
7 they avoid promising any tax benefits explicitly. This  
8 email seems to promise tax benefits. I think it's  
9 relevant to his motivation entering into the transaction.

10 MR. JONES: Relevant to his motivations.

11 THE COURT: Yeah.

12 MR. JONES: So okay. I mean, we concede that  
13 tax was one of the motivating factor -- I mean, we would  
14 just concede that. There were tax benefits associated  
15 with this, and those were motivating factors.

16 THE COURT: Well, the question is how dominant  
17 it was, and the more ammunition Respondent can produce  
18 along these lines, I think, it goes to how dominant the  
19 motivation is. I mean, the more we hear about tax  
20 savings --

21 MR. JONES: Sure.

22 THE COURT: -- and the less you hear about  
23 saving the planet, I think that goes to what his true  
24 motivation was.

25 MR. JONES: Okay.

1 MR. SORENSEN: Your Honor, I don't believe the  
2 Court's ruled on the admissibility of it.

3 THE COURT: I have not. So overruling the  
4 relevancy objection, and we'll admit 46-J into evidence.

5 (Whereupon, the Document referred to as Exhibit  
6 46-J was received into evidence.)

7 MR. SORENSEN: Thank you, Your Honor.

8 BY MR. SORENSEN:

9 Q Well, now this was the initial down payment,  
10 correct, the \$1,050 per lens. That's the initial down  
11 payment, correct?

12 A I believe so. Yes.

13 Q And you testified yesterday, I believe, that you  
14 remained obligated to pay the rest, correct?

15 A I believe that's true.

16 Q Have you made any payments at any point since  
17 that time?

18 A I have not.

19 Q Okay. Do you expect to make any payments in the  
20 future?

21 A Right now, probably not --

22 Q Okay.

23 A -- because the whole thing is falling apart.

24 Q Okay. You've never paid more than ten percent  
25 down in those years that you selected that option, have



1 you? Never?

2 A I'm sorry, what?

3 Q You've never paid more than the 10-percent down  
4 payment in those years -- 30 percent. I'm getting  
5 whispered here.

6 THE COURT: So let me make sure what you  
7 understand. So the obligation was to pay 30 percent of  
8 the lens purchase price upfront.

9 MR. SORENSEN: Correct.

10 THE COURT: And the balance after installation  
11 of the equipment?

12 MR. SORENSEN: No.

13 THE COURT: But that --

14 MR. SORENSEN: Yeah, let me take it.

15 THE COURT: Okay. So there's 30 percent  
16 requirement of a down payment. But of that 30 percent  
17 sum, only 10 percent had to be paid at the closing, and  
18 the balance could be paid the following year.

19 MR. SORENSEN: The following year after you  
20 received the tax refund. And then the remainder, pursuant  
21 to the agreements, are paid out of rental income,  
22 commencing five years --

23 THE COURT: Okay.

24 MR. SORENSEN: -- after the first year that  
25 power is commercially produced and sold.

1 MR. JONES: So I would just note an objection  
2 here. So yesterday I began to talk about, and I brought  
3 up a Stipulation of Facts, and I began to go on this line  
4 of questioning, and that was squashed. So I don't know  
5 why we can talk about it now.

6 MR. SORENSEN: Your Honor, if I could address  
7 that. The objection was reading the stipulation paragraph  
8 into the record was not necessary, not questions about the  
9 exhibits.

10 THE COURT: This is a question whether he had  
11 liability to pay the remainder, right?

12 MR. SORENSEN: Yes.

13 THE COURT: And the stipulation said he did have  
14 a liability to pay the remainder.

15 MR. SORENSEN: That's what it says, Your Honor.

16 THE COURT: And I made the point that it seemed  
17 like it was a contingent liability --

18 MR. SORENSEN: Contingent liability.

19 THE COURT: -- because it only occurred --

20 MR. SORENSEN: And we're exploring his  
21 impressions and intent. And we've gotten them.

22 THE COURT: Okay. Well, I think this is an  
23 appropriate line of questioning.

24 BY MR. SORENSEN:

25 Q When you were considering your purchases of

1 these lenses --

2 A Um-hum.

3 Q -- you never negotiated the price, did you?

4 A No.

5 Q Just accepted the price at 3,500?

6 A Except that first --

7 Q The first --

8 A Yeah. Yes.

9 Q The first time?

10 A Correct.

11 Q You're now aware -- well, let me ask you this.

12 Have you at any point read the District Court's opinion

13 rendered in the injunction case?

14 MR. JONES: I just object to relevance. These

15 are tax years --

16 MR. SORENSEN: I'll connect the relevance, Your

17 Honor.

18 THE COURT: Okay.

19 MR. SORENSEN: The question is simply whether

20 he's read it.

21 THE COURT: Well, I'll allow him to pursue this

22 line of questioning. You can objection later if you think

23 it's going off the reservation.

24 MR. JONES: Okay.

25 THE WITNESS: I have read -- I don't know if I



1 have read the entire thing from front to back, but I have  
2 read it.

3 BY MR. SORENSEN:

4 Q Do you recall reading where the District Court  
5 found that the cost of the lenses was between 35 and \$70  
6 per lens?

7 A I don't recall.

8 Q Okay.

9 THE COURT: And by lens, Counsel, you mean one  
10 of the 17 pie-shaped slices. That's --

11 MR. SORENSEN: Actually, Your Honor, the Court  
12 found that that cost was for a triangular section that was  
13 then cut into two lenses.

14 MR. JONES: And I would object to that being  
15 used as evidence in this matter for a finding of fact.  
16 That's issue proclusionance (sic), would prevent them  
17 from --

18 THE COURT: I agree that it's not evidentiary in  
19 this case.

20 MR. SORENSEN: But I didn't ask for it.

21 THE COURT: I know.

22 MR. SORENSEN: I simply asked if the witness was  
23 aware of it.

24 THE COURT: Right.

25 MR. SORENSEN: Yeah.

1 BY MR. SORENSEN:

2 Q I believe -- and let me just -- I don't want to  
3 recharacterize it.

4 A Um-hum.

5 Q I believe you just testified that you weren't  
6 aware of any indication that there would be no requirement  
7 to pay if there was no tax refund; is that correct?

8 MR. JONES: Can you --

9 THE WITNESS: I don't remember.

10 THE COURT: That's a double negative.

11 MR. JONES: I apologize. I --

12 THE COURT: Can you make that -- that's a little  
13 hard to understand.

14 MR. JONES: Yeah. I --

15 MR. SORENSEN: Okay. I'm thinking as I talk. I  
16 believe the witness got it, but I'll try that again, Your  
17 Honor.

18 MR. JONES: I didn't get it, if that's okay. So  
19 I'd --

20 BY MR. SORENSEN:

21 Q I believe you testified earlier that to your  
22 knowledge, your recollection, you do not recall that there  
23 would not be -- another double negative -- there would be  
24 no requirement to pay the remainder of the down payment or  
25 any more if there was no tax refund?

1 A I don't remember that.

2 Q Okay. Let's look at Exhibit 47-J.

3 A Okay.

4 Q Are you there?

5 A Yes, I am.

6 Q I'm looking specifically at that bottom half of  
7 the page. Could you tell me what this is?

8 A It looks like an email from Greg Shepard, dated  
9 June 27, 2013, to myself and some undisclosed recipients.

10 Q So you can see that you received this email?

11 A Yes.

12 Q And you provided it to the Government, didn't  
13 you?

14 A I did.

15 MR. SORENSEN: Your Honor, I'd offer into  
16 evidence Respondent's Exhibit 47-J.

17 MR. JONES: Am I incorrect, this is already --

18 MR. SORENSEN: Is it in? No.

19 MR. JONES: No? I must have been looking at the  
20 wrong exhibit.

21 THE COURT: We did 46-J, and this is 47-J?

22 MR. SORENSEN: Yes.

23 MR. JONES: And this goes to --

24 MR. SORENSEN: Again, Your Honor, I will ask the  
25 questions, if he wants to reserve his objections so he can

1 see.

2 MR. JONES: I'd reserve, I guess, until I hear.  
3 I don't --

4 MR. SORENSEN: I believe maybe what we ought to  
5 do is just have a standing reserved objection, and I'll  
6 ask the questions about the exhibit, and then you can  
7 object. Would that be acceptable?

8 MR. JONES: Yes.

9 THE COURT: Okay.

10 BY MR. SORENSEN:

11 Q Can you concentrate specifically where it  
12 starts, "Once this known" -- and sorry about the bad  
13 grammar.

14 A I see that. Yes.

15 Q Could you read that out loud?

16 A The sentence?

17 Q Yes. Starting -- well, the remainder of that  
18 paragraph --

19 A Okay.

20 Q -- starting with "Once this known".

21 A "Once this known, the correct number of lenses  
22 to maximize the tax benefits can be purchased. Then when  
23 the refund comes, you have enough to pay off your lenses,  
24 and plus put money in your pocket. Simple. Well, for  
25 many, yes, but for many, no."

1 Q That seems to imply that the initial down  
2 payment pays off the lens, does it not?

3 MR. JONES: I would just object to he wouldn't  
4 have personal knowledge of what it implies, since he  
5 wasn't the sender -- drafter of the email.

6 MR. SORENSEN: I can ask him, Your Honor, his  
7 impression of what he read.

8 MR. JONES: But you didn't.

9 MR. SORENSEN: Okay. I'll rephrase.

10 THE COURT: All right. Please rephrase.

11 BY MR. SORENSEN:

12 Q Does that seem to imply to you that the only  
13 money to be paid is the initial down payment, because it  
14 says that it will pay off your lenses, correct?

15 A I always interpreted this to mean the 30  
16 percent. I mean --

17 Q Your interpretation was the 30 percent?

18 A Yeah.

19 Q Okay.

20 MR. SORENSEN: Your Honor, I'm offering into  
21 evidence Respondent's Exhibit 47.

22 MR. JONES: And I guess, is this the -- what new  
23 is this offering? I don't know that -- in terms of  
24 relevance, are we just driving the same point, or --

25 THE COURT: Well, I think it seems to go to the



1 same point made earlier that the way the thing worked was  
2 is that tax refunds were used to pay off the --

3 MR. JONES: So we're addressing the motivation?

4 MR. SORENSEN: And not to mislead counsel or the  
5 Court, we're going to come back to this exhibit because  
6 there's also a reference to how you determine how many  
7 lenses to buy.

8 THE COURT: Okay.

9 MR. SORENSEN: I'm going to circle back on that  
10 subject.

11 MR. JONES: Yeah, and I think yesterday he  
12 testified that he -- I mean, he testified pretty  
13 explicitly about -- he did make reference to what his  
14 taxes were would motivate him on how many lenses to  
15 purchase. I think he did.

16 THE COURT: Well, I asked him how he decided how  
17 many lenses to buy --

18 MR. JONES: Yeah.

19 THE COURT: -- and he said he made an estimate.  
20 And I think emails like this are relevant in flushing that  
21 out. So --

22 MR. JONES: Okay.

23 THE COURT: -- I will overrule the objection and  
24 admit 47-J into evidence.

25 (Whereupon, the Document referred to as Exhibit

1 47-J was received into evidence.)

2 MR. SORENSEN: Thank you, Your Honor. I'm going  
3 to apologize, Your Honor. One moment. I seem to have  
4 lost my place, which I do frequently.

5 THE COURT: You want to take a short break?

6 MR. SORENSEN: Please, Your Honor.

7 THE COURT: We're going to take a five-minute  
8 break.

9 THE CLERK: All rise.

10 (Whereupon, a recess was held from 11:14 a.m.  
11 until 11:22 a.m.)

12 THE CLERK: All rise.

13 THE COURT: Please be seated.

14 Have you found your place, Counsel?

15 MR. SORENSEN: I have, Your Honor.

16 THE COURT: Good.

17 MR. SORENSEN: Drudgingly, we'll be moving  
18 through many more emails.

19 RESUMED CROSS-EXAMINATION

20 BY MR. SORENSEN:

21 Q I want to explore for a second your intent. I  
22 believe your counsel just conceded that there was a  
23 significant tax benefit associated.

24 MR. JONES: I'd object to say I mischaracterized  
25 all the significance. We do concede there was tax

1 motivation.

2 MR. SORENSEN: Okay. There was a tax  
3 motivation.

4 BY MR. SORENSEN:

5 Q Would it be fair to say that it was your primary  
6 interest and concern?

7 A I would say secondary. But it was one of the  
8 motivations for sure.

9 Q Okay. Let's go back through a couple of emails  
10 early on, and see if we can explore that a little more.

11 A Sure.

12 Q We talked about 42-J.

13 A Okay.

14 Q The five bullet points, four of which were  
15 related to tax, correct?

16 A I don't remember.

17 Q Let's look at 42-J.

18 A Okay.

19 Q And when you get to 42-J, let's start with a  
20 couple of questions before, just to get there.

21 A Um-hum. I'm here.

22 Q I would assume Liz is your wife?

23 A Yes, that's right.

24 Q Do you know why Liz would reach out about the  
25 solar tax-credit program?

1 MR. JONES: I object. He's not going to have  
2 personal knowledge, unless it goes to his own  
3 understanding, I guess.

4 MR. SORENSEN: Your Honor, I asked for his  
5 knowledge. I said, do you know why.

6 THE COURT: I'll overrule the objection.

7 THE WITNESS: I don't think Liz reached out, but  
8 Matt probably reached out to Liz. We went to high school  
9 together, all three of us. We know each other.

10 BY MR. SORENSEN:

11 Q So you think that that may be just a slight  
12 mischaracterization where he said Liz said you may be  
13 interested in?

14 A I don't think that's a mischaracterization.  
15 It's just -- it says that Matt talked to her, I guess, and  
16 then emailed me and said Liz said you might be interested,  
17 I guess.

18 Q Do you have any idea why your wife would say you  
19 were interested in a solar tax --

20 A I have --

21 Q -- credit program?

22 A -- absolutely no idea.

23 Q Okay.

24 A I can't imagine she actually said that.

25 THE COURT: I mean, that may have been trying to

1 market this by saying --

2 MR. SORENSEN: I understand.

3 THE COURT: -- his wife already agreed to it.

4 MR. SORENSEN: I was just trying --

5 THE COURT: And that's effective marketing.

6 MR. SORENSEN: -- to explore, maybe there was a  
7 discussion about needing tax relief in the family or  
8 something. I don't know.

9 THE WITNESS: No, no, sorry. Go ahead.

10 MR. SORENSEN: Me and my wife would always like  
11 tax relief, Your Honor.

12 BY MR. SORENSEN:

13 Q Moving on then, in that email there were five  
14 bullet points?

15 A Yes.

16 Q Four of which dealt with taxes, correct?

17 MR. JONES: I object.

18 THE WITNESS: Yes.

19 MR. JONES: Asked and answered, and we can --

20 THE COURT: Okay.

21 MR. JONES: -- move on from this.

22 MR. SORENSEN: Going -- okay.

23 THE COURT: Well, he did not recall what 42-J  
24 said a moment ago, so I think Counsel is reminding him.  
25 So we can move on now.



1 BY MR. SORENSEN:

2 Q Let's move on real quick to 43-J.

3 A Okay.

4 Q That second page. Your primary concern again  
5 was taxes, correct?

6 A I'm sorry, where are we?

7 Q Looking at the top of the second page in 43-J.  
8 You ask a question -- actually, two questions in there.  
9 They were about tax consequences, correct?

10 A 42-J?

11 Q 43-J.

12 A Oh, 43-J.

13 Q Second page.

14 A Oh, second page.

15 Q The July 10th email from you to Matt. Second  
16 full paragraph.

17 A Oh, yeah. These are definitely tax questions.

18 Q They're definitely tax questions. There's no  
19 investment questions or return questions or procedure  
20 questions --

21 A No.

22 Q -- in that email. Okay.

23 A No.

24 THE COURT: Let me ask one question about that  
25 email. This is 43-J. Mr. Olson --

1 THE WITNESS: Sure.

2 THE COURT: -- says, "From reading the rule it  
3 seems like the biggest risk to an investor like me". So  
4 is that how you saw yourself, as an investor?

5 THE WITNESS: I think I just used that term  
6 generally. Someone that's putting up money to get  
7 involved in the program.

8 THE COURT: Um-hum. "And the biggest risk to an  
9 investor" like you "is the project isn't ever built. Do  
10 you know what happens to an investment funds if the  
11 project is never placed in service? Do you know when the  
12 project is expected to be placed in service?"

13 And the answer was, "Your units will be placed  
14 in service no later than December 31, 2009, as per  
15 contract".

16 And I think we saw before that if that didn't  
17 happen you were entitled to a refund of your down-payment  
18 money.

19 THE WITNESS: Um-hum.

20 THE COURT: But you never sought the refund?

21 THE WITNESS: I never sought the refund, no.

22 THE COURT: Okay. Counsel, you may move on.

23 BY MR. SORENSEN:

24 Q Let's go to Exhibit 44-J.

25 A Okay.

1 Q Can you tell us what this exhibit is?

2 A This looks like an email from me to Greg  
3 Shepard. Well, at the top, October 21st, 2009.

4 Q Right. Can you read the email you sent?

5 A Yeah. It says, "Hi, Greg. Any update on the  
6 new program? I would like to join it by end of the year,  
7 if possible, for the active-participant tax status.  
8 Thanks."

9 Q No questions about investment returns, or  
10 operations, or procedure. The only question is about tax,  
11 correct?

12 A That's correct.

13 Q Or the only comment.

14 A That's the only comment in here.

15 Q Okay.

16 MR. SORENSEN: Your Honor, we offer into  
17 evidence Respondent's Exhibit 44-J. Excuse me, it's got  
18 to be 44-R. I keep misstating it. They're not joint  
19 exhibits.

20 THE COURT: Right.

21 MR. SORENSEN: These are Respondent's exhibits.  
22 They are labeled J. I think you told --

23 THE COURT: Yeah, I think they're J in the sense  
24 that they are endorsed to the authenticity.

25 MR. JONES: Right.



1 THE COURT: But they are reserved relevancy.

2 MR. JONES: I was going to say, I don't have a  
3 problem with marking it J, so --

4 MR. SORENSEN: I'm going to say, they're all  
5 pre-marked J, so we better live with that.

6 THE COURT: Oh, we would have to go through and  
7 redo all these markings. So I think we'll leave them as  
8 J, all right?

9 MR. JONES: Agreed.

10 THE COURT: With objections.

11 MR. JONES: Right. Yeah. My only objection in  
12 the relevancy is what it goes to. I think we've spoken  
13 about the intent part, so I think that's been overruled.

14 THE COURT: Okay. So overrule any objection,  
15 and we'll admit 44-J into evidence.

16 (Whereupon, the Document referred to as Exhibit  
17 44-J was received into evidence.)

18 THE COURT: And I'll say, I mean, I don't know  
19 if it will simplify things, but I will overrule all  
20 relevancy objections to any email or other communications  
21 between Petitioner and the principals of the solar  
22 project.

23 MR. SORENSEN: Thank you, Your Honor.

24 BY MR. SORENSEN:

25 Q Okay. Let's talk. We have at length -- let's

1 see if I can keep these shorter. Let's talk about your  
2 belief as to income strains generated by these lenses.

3 A Okay.

4 Q I believe we've already identified that you  
5 anticipated rental income, correct?

6 A Correct.

7 Q Immediately, as the Court's noted, within  
8 moments of your signing a purchase agreement you also  
9 signed those lease agreements, those rental agreements,  
10 correct?

11 A Correct.

12 Q And they agreed to pay rental income when the  
13 lenses became -- began producing electricity for sale,  
14 correct?

15 A I don't remember. It was revenues. I can't  
16 remember if --

17 Q From the operation of power plants?

18 A Yes.

19 Q And power plants produce electricity?

20 A Yes.

21 Q Okay.

22 MR. JONES: It's not a question.

23 MR. SORENSEN: I believe there was a question.

24 BY MR. SORENSEN:

25 Q Power plants produce electricity, correct?

1 A Yes.

2 THE COURT: Well, the relevancy question goes,  
3 when do rental payments start. So just pursue that point.

4 MR. SORENSEN: Okay. Well, Your Honor, I would  
5 like to, for a moment, pursue the contracts, the  
6 agreements for rental payments.

7 BY MR. SORENSEN:

8 Q When you signed that contract or that agreement  
9 that you thought you were entering with LTB --

10 A Um-hum.

11 Q -- had you done anything to investigate LTB?

12 A I think I may have just looked on the Nevada --  
13 I mean, I don't know if this is the first time I signed  
14 it, just to make sure they're an existing entity, but  
15 nothing more.

16 Q Would it help you if I indicated to you that  
17 during the trial you indicated that you had done no  
18 investigation?

19 A Sounds about right.

20 Q So let's ask the question again. Did you  
21 investigate LTB at the time you entered into the  
22 agreements?

23 A No.

24 Q Did you investigate whether they had any  
25 experience operating power plants?

1 A No.

2 Q Solar-related power plants?

3 A No.

4 Q Did you investigate their wherewithal to make  
5 any payments? Their financial condition.

6 A Not the entity, no.

7 Q Did you even investigate as to who owned LTB?

8 A The only thing I was concerned about is that  
9 Neldon Johnson was able to -- was involved with them.

10 Q Would it help you if I told you that during your  
11 testimony at District Court you testified that you had no  
12 idea who was the owners of LTB?

13 A I have no idea who owns it.

14 Q So I'm confused as to why your testimony about  
15 Neldon Johnson, if you don't know that he's involved in  
16 ownership?

17 A I -- does he -- I believe that he was either  
18 managing or operating. I don't know if he owns any of it.  
19 I don't -- have no idea.

20 Q How did you know he was managing it?

21 A Well, as you pointed out, I thought he signed  
22 the contract. I hadn't noticed that he's signing with  
23 the --

24 Q So you don't know --

25 A -- RaPower3 --

1 Q -- if he has any relationship to it?

2 A I believe he does.

3 Q Okay. And we've established -- let me ask that  
4 question. Were you given any other option for a  
5 counterpart to the operating agreement -- counterparty?

6 A No.

7 Q LTB was the only entity that you had an option  
8 to go with, correct?

9 A I think that's correct.

10 Q To your knowledge, do you know whether any other  
11 individuals similarly situated to yourself went with any  
12 other entity?

13 A I do not know.

14 Q Okay. We've already established that you  
15 received no rental incomes, correct?

16 A Yes.

17 Q To your knowledge, did LTB, RaPower, or any  
18 other entity or individual involved with this solar  
19 arrangement, have a contract to sell electricity to a  
20 third party?

21 A Not to my knowledge.

22 Q To your knowledge, did they have a contract that  
23 would allow them to place electricity on any grid for  
24 transmission?

25 A Not to my knowledge. No.

1 Q In addition to the rental payments, there was  
2 another potential source of income, wasn't there?

3 A Yes.

4 Q Do you recall the name -- it was called the  
5 bonus program, correct?

6 A Bonus -- yeah.

7 Q Could you -- let's see if I can shorten in if  
8 I'd ask you -- the bonus program provided that those  
9 individuals who purchased lenses would also benefit  
10 through the gross income earned by IAS, correct?

11 A The first one was different, but the rest were  
12 that way.

13 Q The very first year was a contribution to a --

14 A A charitable organization.

15 Q -- charitable organization.

16 A Yes.

17 Q But the years at issue, 2010 through 2014 --  
18 remember, 2009 is not at issue.

19 A Oh, it's not? I thought it was part of this.

20 Q It was that all who invested would participate  
21 in the profits of IAS, correct?

22 A Correct.

23 Q In the early years they would get a percentage  
24 of the first one billion dollars of income earned by IAS,  
25 correct?

1 A That sounds correct, yes.

2 Q And in later years they would get a percentage  
3 of the first two billion dollars, correct?

4 A I think that's correct. Yes.

5 Q To your knowledge, did IAS ever have any income?

6 A Not to my knowledge.

7 Q Did you ever receive any bonus payments?

8 A No.

9 Q Let's look back at Exhibit 44-J for a moment.

10 A Okay.

11 Q Well, let me ask you before we look there.

12 A Yeah.

13 Q Did you anticipate receiving bonus payments?

14 A Yes.

15 Q Okay. Let's look at Exhibit 44-J.

16 A Okay.

17 Q And this is a email, again, in 2009.

18 A Okay.

19 Q Can you read the capitalized section of the  
20 bottom email out loud?

21 A The one that starts with "To all"?

22 Q Yes.

23 A Oh, yeah. "To all, 18 days left before the  
24 remarkable bonus program ends. Just in the last two  
25 months two-and-a-half million dollars has been allocated

1 in bonuses by IAUS for purchases of their solar units".

2 Q That would seem to mean that there was bonus  
3 money to be paid, correct?

4 A That's what it seems to indicate.

5 Q Did you get a percentage of that?

6 A No.

7 Q No, okay. Okay. Let's talk for a second. And  
8 just, I believe -- and just to be clear.

9 A Yeah.

10 Q The tax benefits you received.

11 A Okay.

12 Q In each year you claimed deductions related to  
13 this -- I'm struggling with how to classify it. The solar  
14 arrangement.

15 A Okay.

16 Q Your -- the lenses, correct?

17 A Yes.

18 Q Depreciation deductions, correct?

19 A Yes.

20 Q And you claimed credits, correct?

21 A Correct.

22 Q And you received refunds in each year, didn't  
23 you?

24 A I did.

25 Q You, in effect, for lack of a better term -- and



1 we used it here -- zeroed out your income-tax liability,  
2 didn't you?

3 A Or about close to it, yeah.

4 Q Well, it was one year where you owed \$1,000,  
5 correct?

6 A Yeah. Yes.

7 Q You and your wife during these years were making  
8 big money to some people, not so big money to other  
9 people; is that correct?

10 A I mean, I guess.

11 Q You're making a couple hundred thousand dollars  
12 a year?

13 A Yes.

14 Q Okay. And paying no income taxes?

15 A Correct.

16 Q Okay. When you filed your tax returns, those  
17 deductions and those credits were claimed based upon the  
18 contract purchase price, correct?

19 A Correct.

20 Q They had no relationship to the actual cash you  
21 paid, did they?

22 A That's correct.

23 Q Okay. Now, during the time that you were  
24 involved in this arrangement, were you ever told that you  
25 would make more from tax benefits than you spent?

1 A I'm not sure if I understand that exactly.

2 Q Were you ever told by the -- with anyone  
3 associated with the promotion, that the amount of the tax  
4 refunds you got would exceed the cost -- actual cash cost  
5 of investment?

6 A I do think that's how the things were supposed  
7 to operate, if they paid revenues, the lenses, and then  
8 paid off the --

9 Q No, you're not listening to my question.

10 A Okay.

11 Q And I apologize. It was a bad question,  
12 apparently. Let's try it again. Were you informed that  
13 your actual tax refunds --

14 A Um-hum.

15 Q -- would exceed your actual cash investment in  
16 every year? And when I say actual cash investment --

17 A Yeah.

18 Q -- I mean the down payment.

19 A Yeah. I am -- don't recall, but I'm certain  
20 that that was in some of Greg Shepard's many emails.

21 Q Well, let's look at some of them.

22 A Okay.

23 Q Let's look at Exhibit 33-J.

24 A Okay.

25 THE COURT: Counsel, 33-J?

1 MR. SORENSEN: 33-J.

2 BY MR. SORENSEN:

3 Q Do you recognize this?

4 A I don't, actually.

5 Q It was a document you provided to us.

6 A Okay.

7 Q If you provided it to us, do you assume you  
8 received it?

9 A I assume I received it, yes.

10 Q And this would appear to be a promotional  
11 material related to RaPower, correct?

12 A Correct.

13 Q Let's go to the second page.

14 A Okay.

15 Q There is a quick review, isn't there?

16 A Yes, there is.

17 Q What does it say of the tax benefit?

18 A It says, "Tax benefits: Payback is over 1.5  
19 times the down payment. Most" -- some weird word there --  
20 "in less than a year."

21 Q Most coming?

22 A Oh, coming, yes. Okay. I couldn't quite read  
23 that.

24 Q So the promoters or those related to the  
25 promotion --

1 A Um-hum.

2 Q -- are informing investors that they're going to  
3 get one and a half times their money back in less than a  
4 year, correct, from tax refunds?

5 A Correct.

6 Q Okay. Let's look at --

7 MR. SORENSEN: Oh, Your Honor, I move into  
8 evidence Respondent's Exhibit 33-J.

9 MR. JONES: I have no objection.

10 THE COURT: Okay. 33-J is admitted.

11 (Whereupon, the Document referred to as Exhibit  
12 33-J was received into evidence.)

13 BY MR. SORENSEN:

14 Q Let's look at 35.

15 A Okay.

16 Q Can you tell us what this is?

17 A It's some sort of diagram that I got in emails  
18 at some point.

19 Q And you provided it to the IRS or to us, didn't  
20 you?

21 A Yes. Yes.

22 Q And could you tell me what the oblong box on the  
23 left side says?

24 A Oblong box on the left side.

25 Q Dark box. It's about a inch from the margin in

1 the middle of the page on the left side.

2 A I'm sorry, I don't know what you're talking  
3 about.

4 Q Let me read it then.

5 A Go ahead.

6 Q Can you read where it says, "1.4 times money  
7 back" --

8 A Oh.

9 Q -- "/six months"?

10 A I do see that, yes.

11 Q Another claim that you're going to get about 1.4  
12 times the money back within six months, correct?

13 A Correct.

14 MR. SORENSEN: Your Honor, I move into evidence  
15 Respondent's Exhibit 35-J.

16 MR. JONES: The only thing I would ask on this  
17 is do we know -- do we know when this was sent? I don't  
18 know that I have an objection to it on other grounds, but  
19 I don't know --

20 MR. SORENSEN: Your Honor, all I could address  
21 is this was part of the discovery response provided to us  
22 by Petitioners. It's undated. The first time we received  
23 it was when we received it from Petitioners.

24 MR. JONES: Maybe we could just ask if he knows  
25 when --

1 THE COURT: Have you asked him --

2 MR. JONES: Yeah.

3 THE COURT: -- when he believes he may have seen  
4 this for the first time?

5 THE WITNESS: I don't know. There are the  
6 number 2012 on here in several places.

7 BY MR. SORENSEN:

8 Q In the examples, correct?

9 A Yeah.

10 Q Yeah. So is it likely that you received it  
11 sometime in 2012?

12 A I would think so. Yeah.

13 Q Okay.

14 THE COURT: Okay. Okay, we'll admit 35-J into  
15 evidence.

16 (Whereupon, the Document referred to as Exhibit  
17 35-J was received into evidence.)

18 BY MR. SORENSEN:

19 Q Now, I want to go back to your testimony  
20 yesterday.

21 A Okay.

22 Q You made a statement. You said -- and I wrote  
23 it down. Hopefully I got it word for word here.

24 A Okay.

25 Q You said, "Zeroing out my taxes was not a

1 consideration to me".

2 A Well, I said, in some ways -- I mean, I'm not  
3 sure what you're going to --

4 Q No, my question is, did you say that? Do you  
5 recall saying that?

6 A I recall talking about that with the judge, but  
7 I don't remember that exact statement.

8 Q Okay. Is in fact -- it's a fact that you did  
9 zero out on your taxes, correct? I guess that's just a  
10 lucky fortuitous happenstance?

11 A No, I never said that.

12 MR. JONES: But I would also say, the tax  
13 returns are in evidence. We can see what occurred there.  
14 I don't know that that's -- I mean, that's something that  
15 can be known.

16 THE COURT: Well, I think --

17 MR. SORENSEN: The tax returns show the zero  
18 income. They don't show the attempt to zero out the  
19 income, to get to that point.

20 THE COURT: Again, Counsel is pressing him on  
21 his primary motivation, which --

22 MR. JONES: Motivation.

23 THE COURT: -- I think that's relevant.

24 BY MR. SORENSEN:

25 Q Zeroing out your taxes was a significant

1 concern, was it not? Okay. Let's take out the word  
2 significant. Was a concern, was it not?

3 A Just yes or no?

4 Q Yes.

5 A I did base on the number of units I bought on  
6 what I thought would be my tax obligation.

7 Q So you bought a number of units designed to  
8 zero-out your taxes?

9 A Designed to use, yeah, any tax liability to  
10 apply towards purchasing the lenses, yes.

11 Q Let me ask it, just very clearly.

12 A All right.

13 Q You selected a specific number of lenses each  
14 year with the intent of using the tax benefits to zero  
15 your tax liability?

16 A Well, obviously the first year was a little  
17 different, as we've talked about.

18 Q Right.

19 A In the subsequent years I did -- I definitely  
20 approximated the number of lenses to purchase so that I  
21 would match my tax liability. Yes.

22 Q Well, in fact, the promoters had a simple  
23 formula for you to utilize to determine the number lenses,  
24 did they not?

25 A I think they did.



1 Q Let's explore that.

2 A I think it's in some of those emails.

3 Q Let's explore that. Let's look at -- starting  
4 with 40-J.

5 A Okay.

6 Q Do you recognize -- oh, you're not there. I  
7 apologize.

8 A I'm here.

9 Q Do you recognize this document?

10 A No. But I'm sure it's a document I provided  
11 that I got from the promoters.

12 Q And fortunately, this document's dated January  
13 17th, 2011, correct?

14 A Yes.

15 Q Can you read what is labeled number 1?

16 A Sure. "Your objective in purchasing your  
17 systems was and is to zero-out your taxes".

18 Q Okay.

19 MR. SORENSEN: Your Honor, I offer into evidence  
20 Respondent's Exhibit 40-J.

21 MR. JONES: No objection.

22 THE COURT: 40-J is admitted.

23 (Whereupon, the Document referred to as Exhibit  
24 40-J was received into evidence.)

25 BY MR. SORENSEN:

1 Q Now, I also would like to note in the bottom, in  
2 the highlighted bold section.

3 A Okay.

4 Q Right in the middle it starts, "It's always  
5 wise". Could you read that sentence?

6 A Sure. "It's always wise to check with your CPA  
7 or use Bryan Bolander".

8 Q Bryan Bolander was recommended as a CPA to most  
9 of the investors, was he not?

10 A Yes.

11 Q Okay. Let's go to 46-J.

12 A Okay.

13 MR. SORENSEN: Your Honor, can I have one moment  
14 in place?

15 THE COURT: You may.

16 MR. SORENSEN: Can I talk to counsel for a  
17 minute, Your Honor?

18 THE COURT: Yes.

19 (Counsel confer.)

20 MR. SORENSEN: Your Honor, I apologize. We just  
21 had a question about a whether a witness had entered the  
22 courtroom. Mr. Jones doesn't recognize him, and I don't  
23 recognize him, so we're assuming he's not a witness.

24 MR. JONES: I'm finding out more --

25 THE COURT: Okay.

1 MR. SORENSEN: I just don't want to get in a  
2 situation where we have that concern in the future.

3 MR. JONES: Oh, it is a witness.

4 MR. SORENSEN: It is a witness.

5 MR. JONES: I haven't met him in person, so I  
6 apologize.

7 MR. SORENSEN: Apparently it is a witness, Your  
8 Honor.

9 MR. JONES: I haven't met him in person, so --  
10 thank you. Yeah. Yeah, we had no intention of --

11 MR. SORENSEN: And I don't accuse counsel of  
12 that.

13 THE COURT: Okay. I got it. Okay.

14 BY MR. SORENSEN:

15 Q I believe we were talking about Exhibit 46,  
16 correct?

17 A Yes.

18 Q Can you read out loud second-to-last paragraph?  
19 It starts, "To help you".

20 A Sure.

21 Q Well, by the way, this is an email to you  
22 personally, correct?

23 A Yes.

24 Q From Matt?

25 A From Matt Shepard, yes.

1 Q Okay. Can you read that, please?

2 A "To help you or your friends know how many  
3 systems to purchase, you or they can fill out this simple  
4 form that I put together. I just need three numbers from  
5 your filed taxes, for the years you wish to get back for  
6 the last five years. It will only take five or so minutes  
7 if your tax returns are available, and I will put together  
8 a proposed plan that will blow you and your friends away.  
9 Please click this link to go to the form to get your money  
10 back."

11 Q So there was a form provided to you by someone  
12 related to the promoters to determine how many lenses was  
13 required, based upon the taxes you owed, correct?

14 A Yes.

15 Q Okay.

16 THE COURT: This is for five years, for carry-  
17 backs, right, not for the prospective year upcoming, it  
18 looks like.

19 MR. SORENSEN: Your Honor, I believe it uses --  
20 yes, Your Honor, it is. Correct. I apologize.

21 BY MR. SORENSEN:

22 Q Let's move on to -- one second while I flip the  
23 page -- to Exhibit 47-J.

24 A Okay.

25 Q The bottom part.

1 A Okay.

2 Q Can you see where -- can you read, it starts,  
3 "To all", and read about half that paragraph.

4 A I'm not seeing that. Sorry.

5 Q It's near the bottom. It says, "TO ALL" in  
6 capital letters, and then it says, "The RaPower".

7 A I'm sorry, are you on the second page?

8 Q No, you're on --

9 A 47?

10 Q -- first page in 47. Do you see an email  
11 labeled, "Maximizing your business part 3"?

12 A I do see that email, yeah.

13 Q Going down to the first full paragraph that  
14 starts, "TO ALL", in capital letters?

15 A I don't -- sorry, I don't see it, unless it's on  
16 the second page.

17 MR. SORENSEN: Your Honor, can I approach the  
18 witness for a moment?

19 THE WITNESS: Oh, oh, oh, I do see it. It's the  
20 very first paragraph. I thought you said second one.

21 BY MR. SORENSEN:

22 Q No.

23 A Okay.

24 Q Very first paragraph.

25 A Okay. Got you. Read the whole paragraph?

1 Q Down to where it says, "can be purchased". Read  
2 it out loud.

3 A Okay.

4 Q The Ra3Power (sic) --

5 A "TO ALL, the RaPower3 program is set up so that  
6 prospective new members calculate the taxes they expect to  
7 pay in the current year, and as an option, add that what  
8 they paid in Federal taxes for the previous year. Once  
9 this known, the correct number of lenses to maximize the  
10 tax benefits can be purchased".

11 Q So it appears that the promoters were advising  
12 how to zero-out your current year's tax liability as well?

13 A Yes.

14 Q Okay. Let's look to a different subject and  
15 talk about your lenses for just a moment.

16 A Okay.

17 Q This has been somewhat of a moving target.  
18 Let's look at Exhibit 50-J.

19 A Okay.

20 Q Do you see that bottom email?

21 A I do.

22 Q Could you tell me what this is?

23 A This is some -- excuse me -- correspondence  
24 between myself and Greg Shepard and Glenda Johnson.

25 Q Glenda Johnson was Neldon Johnson's wife,

1 correct?

2 A Yes.

3 Q And this email attempts to lay out your purchase  
4 history from 2009 through 2015, correct?

5 A Um-hum.

6 Q There are later years, but those are the years  
7 at issue in this email?

8 A Yes.

9 Q Based upon this email, it would appear that you  
10 bought either 59 lenses or 77, if you read your 2009  
11 purchase where you say it equals 20 lenses, correct?

12 A Correct.

13 Q Is that a correct recitation of the lenses you  
14 purchased in those years?

15 A I think it is.

16 MR. SORENSEN: Your Honor, I offer into evidence  
17 Respondent's Exhibit 50-J.

18 MR. JONES: I think you've already addressed  
19 my --

20 THE COURT: Okay.

21 MR. JONES: -- relevancy issues, so --

22 THE COURT: Okay. We'll admit 50-J into  
23 evidence.

24 (Whereupon, the Document referred to as Exhibit  
25 50-J was received into evidence.)

1 BY MR. SORENSEN:

2 Q You testified about your periodic trips down to  
3 the site, correct?

4 A Correct.

5 Q I believe you testified about observing lenses  
6 on pallets, correct?

7 A Yes.

8 Q Those lenses were stacked on pallets, and  
9 plastic-wrapped, correct?

10 A That's correct.

11 Q And I believe you testified it was your belief  
12 that they were brand new from the manufacturer.

13 A That's my belief, yes.

14 Q Do you remember or recollect, were they  
15 triangular, yet uncut lenses; do you recall?

16 A I don't recall.

17 Q Okay. On your various trips down there, did you  
18 ever ask anybody to specifically show you your lenses?

19 A I asked if my lenses were in these pallets, and  
20 they said yes. That's all. I mean, I didn't specifically  
21 say which ones, yes.

22 Q Do you know approximately how many lenses were  
23 on those pallets?

24 A Dozens, I don't know.

25 Q Dozens. Would it help refresh -- are you aware



1 that the District Court found that there were over 20,000  
2 lenses on pallets in the warehouse?

3 A That's not surprising.

4 Q No surprising.

5 A Well, it is a big number, that is surprising,  
6 but yeah.

7 Q There were multiple pallets, weren't there?

8 A Yes.

9 Q And you were looking at the front pallets -- and  
10 I don't want to testify, but having been there, there were  
11 pallets behind, weren't there, and the room -- as you  
12 observed the room, it was small opening but a large room.  
13 So it's potential, there were other pallets unseen through  
14 the door, correct?

15 A Yes. Certainly.

16 Q Okay. But the point I was making is that at no  
17 point did you specifically ask to see your lenses?

18 MR. JONES: I'm going to object.

19 THE WITNESS: Yeah.

20 MR. JONES: It was asked and answered.

21 THE COURT: Thank you.

22 MR. SORENSEN: I believe the answer was not  
23 responsive, Your Honor. He said, I asked if my lenses  
24 were there. He never said whether he specifically asked  
25 to see his lenses.

1 MR. JONES: I --

2 THE COURT: Well, if there are 20,000 lenses  
3 there, it seems safe to assume that -- I mean, he could  
4 reasonably infer that his were among them, right? I  
5 mean --

6 MR. SORENSEN: That's what the reference is,  
7 yeah.

8 BY MR. SORENSEN:

9 Q Did you ask whether any of your lenses had been  
10 installed on the R&D towers?

11 MR. JONES: I would just -- before he answers --  
12 I think this has also been asked and answered. I think  
13 he'd asked about that earlier in the day in the contracts,  
14 so --

15 MR. SORENSEN: I don't believe I did, Your  
16 Honor, about his specific lenses having been installed.

17 THE COURT: Okay. Well, ask him and let's do  
18 that quickly.

19 BY MR. SORENSEN:

20 Q Did you ever ask whether any of your specific  
21 lenses were installed on the towers at the research-and-  
22 development site?

23 A I mean, I want to answer this correctly, so --

24 Q Yeah.

25 A Just during these tax years, right?

1 Q Correct.

2 A No, I did not.

3 Q Okay. I mean, I'm just asking if you did or  
4 not. No -- nothing.

5 A Yeah, it's a little bit -- there's more  
6 complicated, but I don't know how much I could say.

7 Q Were you aware the lenses you observed on the  
8 pallets did not have serial numbers etched on them, did  
9 they, to your knowledge?

10 A I didn't look close enough. I don't know.

11 Q You were never told they had serial numbers on  
12 them, were you?

13 A I think I was told at one point they had serial  
14 numbers, but I don't know if that's correct.

15 Q Serial numbers associated with them, or serial  
16 numbers etched on them?

17 MR. JONES: Can I just ask you to clarify that  
18 question? You're asking him to pick?

19 MR. SORENSEN: Yeah. He indicated that at some  
20 point he thought there was a serial number, and I'm asking  
21 him was he informed whether the serial number was assigned  
22 to his lens or etched on a lens.

23 THE WITNESS: I don't know.

24 BY MR. SORENSEN:

25 Q Okay.

1 THE COURT: I'm not sure how it matters. I  
2 remember the contract -- the page of the contract, the  
3 exhibit, that it asked for a serial number. That was  
4 always blank. So --

5 MR. SORENSEN: It was always blank.

6 THE COURT: -- he didn't -- he would never know  
7 whether they were his lenses or not, right?

8 MR. SORENSEN: No. And he -- Your Honor, it's a  
9 bad area to question. If we had a different witness, we'd  
10 explore that further because other witnesses could  
11 testify, this one cannot.

12 THE COURT: Okay.

13 MR. SORENSEN: So I'll abandon where I was  
14 going.

15 BY MR. SORENSEN:

16 Q Each of your visits you were able to observe  
17 these pallets of lenses, weren't you?

18 A Yes.

19 Q Okay. The fact is, I think if -- I just want to  
20 explore one area. I believe your testimony when you  
21 testified on direct is you viewed these lenses as  
22 fungible.

23 A Yeah.

24 Q Is that the word you used?

25 A I did. Yes.

1 Q That would seem to indicate that there's no  
2 specific way to identify individual lenses, correct?

3 A Correct.

4 Q Okay. Now, let's talk about the system for a  
5 moment.

6 A Okay.

7 Q It was your initial understanding that the  
8 lenses would be bounded on a tower in a circular pattern,  
9 correct?

10 A Correct.

11 Q And that that circular pattern of lenses would  
12 then be focused on a collector, correct -- what was termed  
13 to be a heat collector.

14 A Yes, something to collect heat, yes.

15 Q Yes. And that that heat would then be utilized  
16 to heat a medium of some kind, correct?

17 A Yes.

18 Q And throughout the years that medium morphed  
19 from water to molten salt to oil, correct?

20 A I think that's correct.

21 Q Yeah. Never really settled on one; they were  
22 always moving around, correct? Is that your  
23 understanding?

24 A I don't know if they ever settled on one in the  
25 end, but I know it did change.

1 Q Okay. And that this heated medium would then  
2 move through pipes to a transfer unit, correct?

3 A I don't know what a transfer unit is.

4 Q Where the heat would then be utilized to turn  
5 water into steam.

6 A Yes. No.

7 Q What's your understanding? How was the heat --  
8 how was the heated oil and molten salt used?

9 A It was used to heat water.

10 Q To heat water.

11 A Yes.

12 Q To either super-heat it or steam. I don't  
13 understand the difference.

14 A Well, it was to super-heat the water, but it  
15 wouldn't turn to steam until it exited the system, yes.

16 Q But that was the -- where it was utilized, the  
17 heated medium, correct?

18 A That sounds correct.

19 MR. JONES: Can I --

20 BY MR. SORENSEN:

21 Q Your understanding.

22 A All right. Yeah.

23 MR. JONES: Can I just clarify "it", was is it?

24 MR. SORENSEN: The medium, the heat that was  
25 used to heat the medium would then be transferred to heat

1 water.

2 THE WITNESS: To water, yes.

3 BY MR. SORENSEN:

4 Q And that this steam would then be utilized in a  
5 turbine.

6 A Well, I mean, just my understanding is that that  
7 super-heated water is put into the turbine.

8 Q Okay.

9 A It turns to steam at the exit point of the  
10 turbine.

11 Q Okay. And the steam -- and that turbine is then  
12 connected to a generator --

13 A Correct.

14 Q -- to produce electricity?

15 A Yes.

16 Q I'm on trying to mislead you, I'm trying to get  
17 a view of the system as you understood it.

18 A That's -- yes, that's what I understand.

19 Q And that's what you understood, okay. Did  
20 you -- during the years at issue, though, you really  
21 weren't sure what the system was, were you?

22 A Correct, because they did have different --  
23 other ideas to use the lenses.

24 Q Okay. I apologize, I don't want to trap you or  
25 mislead you. Let's look at Exhibit 97.

1 A Okay.

2 Q In binder 2, I'm told --

3 A Okay.

4 Q -- if you don't have it out.

5 A I got it. Okay.

6 Q Can you identify what is the email under  
7 questions, details, answer?

8 A Yeah. It's an email from Greg Shepard to  
9 myself, dated February 5th, 2011.

10 Q And in fact, it's a copy below that to all,  
11 correct? Do you see where right below that it --

12 A Oh, yes. It does say, "To all".

13 Q And it says, "Preston had an interesting  
14 question".

15 A Yes.

16 Q Assuming you're Preston, correct?

17 A That's me, yes.

18 Q Can you tell us what your question to Greg was?  
19 Read it out loud.

20 A What?

21 Q Read out loud what your question --

22 A Oh, read out the text. "Hi, guys, I'm not sure  
23 if this is what Jim (ph.) was getting at, but I have  
24 always had a similar question. What is a system in terms  
25 of nuts and bolts? I have had people ask me what it is



1 specifically that they will be purchasing, and I don't  
2 know the answer. Thanks."

3 Q So you were somewhat unclear about what the  
4 system was throughout this time, weren't you?

5 A No. I don't think so. I mean, I could explain  
6 this.

7 Q So your email isn't asking what the system is  
8 because you don't understand it; is that not what it says?

9 MR. JONES: Can you restate that question? I'm  
10 not sure I heard that correctly.

11 BY MR. SORENSEN:

12 Q Your email doesn't say what is a system, I don't  
13 know?

14 A It says, "What is a system in terms of nuts and  
15 bolts?" That's what it says.

16 Q I don't know the answer.

17 A It does say that, yes.

18 Q Okay. During the numerous trips you went down  
19 to the site location --

20 A Um-hum.

21 Q -- did you ever see the system operating as you  
22 understood it, as we went through the steps, producing  
23 electricity?

24 A No.

25 Q Okay. To your knowledge, did it ever operate to

1 produce electricity that was sold?

2 A I don't know. To my knowledge, no.

3 Q Okay.

4 MR. SORENSEN: Oh. Your Honor, we would offer  
5 into evidence Respondent's Exhibit 97-J.

6 MR. JONES: I think my objection has been  
7 overruled. It's --

8 THE COURT: Okay. We'll admit 97-J.

9 (Whereupon, the Document referred to as Exhibit  
10 97-J was received into evidence.)

11 MR. SORENSEN: Your Honor, just to explore with  
12 the Court, I have unfortunately 15 or 20 more pages and  
13 numerous exhibits. I notice it's after noon. Do you want  
14 me to continue, or do you want to take a lunch break?  
15 Does the witness want a break? I anticipate -- I had said  
16 1 o'clock. I may make another hour, but it might be  
17 another hour and a half.

18 THE COURT: Well, maybe if I give you a five-  
19 minute break, you can slim it down a little bit, with the  
20 goal of finishing by 1 o'clock.

21 MR. SORENSEN: I could try that, Your Honor. It  
22 would be a good idea.

23 THE COURT: All right.

24 THE CLERK: All rise.

25 (Whereupon, a recess was held from 12:02 p.m.

1 until 12:12 p.m.)

2 THE CLERK: All rise.

3 THE COURT: Please be seated.

4 MR. SORENSEN: A couple of housekeeping matters,  
5 Your Honor. We've been informed that two of the witnesses  
6 the Petitioner wants to call have to testify today. And  
7 so we may be in a situation where we're going to go later  
8 in the day.

9 THE COURT: Okay.

10 MR. SORENSEN: We wanted to let the Court know  
11 about that.

12 MR. JONES: Thank you.

13 MR. SORENSEN: Two conflicts that we need to  
14 take care of.

15 Secondly, I'd like to, at this point, Your  
16 Honor, to try to shorten what I'm doing. Based upon the  
17 rulings of the Court, we'd like to ask the Court to accept  
18 all the exhibits that have relevancy objections at one  
19 time. We would be happy to allow Petitioner to reserve  
20 and address any of his relevancy objections that he thinks  
21 are necessary on brief. But that way I won't try to lay a  
22 minor foundation, and then move it into evidence, and  
23 hopefully move it along faster in that fashion.

24 THE COURT: Okay. Well, as I mentioned, I'll  
25 expand on that. I will overrule any objections based on



1 relevancy to emails or other communications between the  
2 taxpayer, and the principals of the solar project.

3 MR. SORENSEN: Okay.

4 THE COURT: And any promotional materials the  
5 principals of the project sent to the taxpayer.

6 MR. SORENSEN: And I believe that's all the  
7 materials we're talking about.

8 THE COURT: Okay. So --

9 MR. SORENSEN: That's all that is included.  
10 That's all we're talking about; all the exhibits that have  
11 relevancy objections are the emails and the promotional  
12 material that Petitioner provided to us, and then we then  
13 asked to be stipulated to. So if those can be received  
14 into evidence at this point, with reserved objections, we  
15 can move faster with the witness.

16 THE COURT: Right. I mean, there are obviously  
17 some passages in the emails -- it's like, how was your  
18 Thanksgiving -- that aren't relevant, obviously.

19 MR. SORENSEN: Aren't relevant. No.

20 THE COURT: So I will admit all of them for the  
21 content that goes to the availability of tax benefits, his  
22 motivations, and so forth.

23 MR. SORENSEN: Thank you, Your Honor.

24 THE COURT: So that will take -- I'll admit into  
25 evidence --

1 And Mr. Jones, that covers all the stip exhibits  
2 to which you had reserved relevancy objections, okay?

3 MR. JONES: I understand that. Yes.

4 THE COURT: Okay. Okay. So I will overrule all  
5 the relevancy objections, and admit all the -- the entire  
6 stipulations into evidence.

7 (Whereupon, the Documents referred to as  
8 Exhibits 34-J, 36-J through 39-J, 41-J, 45-J,  
9 48-J, 49-J, 51-J through 61-J, 63-J through 74-  
10 J, 76-J through 94-J, 96-J, 98-J, 100-J through  
11 111-J, and 113-J through 118-J were received  
12 into evidence.)

13 MR. SORENSEN: Thank you, Your Honor.

14 RESUMED CROSS-EXAMINATION

15 BY MR. SORENSEN:

16 Q Let's talk for a moment about your expectations  
17 during the project, okay? Would it be fair to say that  
18 you expected the project to be producing power fairly  
19 quickly, didn't you?

20 A I thought it would produce power in the near  
21 future, yeah, unfortunately, each year.

22 Q Well, the purchase agreement you entered into in  
23 2009 assured you that it would happen within the first  
24 year, didn't it?

25 A Yeah.

1 Q And you expected that?

2 A I did.

3 Q Okay. And you expected it each and every year,  
4 didn't you?

5 A I did.

6 Q Let's go through a few emails that talk about  
7 those expectations, okay?

8 A Okay.

9 Q Let's look at 51-J.

10 A Okay.

11 Q And most of these should be in the first binder.  
12 I apologize.

13 A Okay. That's fine. Okay. I'm there. 51-J.

14 Q This is an email dated May 19th, 2010, correct?

15 A Correct.

16 Q And in the second full paragraph it reads --  
17 that's the third line -- "And when done, it will be the  
18 last component necessary in completing a tower for  
19 producing of power", correct?

20 A Correct.

21 Q So the promoters are telling you you're almost  
22 there, aren't you?

23 A Yes.

24 Q Okay. Let's look at 52-J. This is an email  
25 dated July 14th of the same year. They're now telling you

1 that a different component is the last component to be  
2 finalized. And that's the heat exchangers, correct?

3 A Yes.

4 Q And it says, "When delivered", which is next  
5 week -- this is the last two sentences -- "When delivered,  
6 then both the vital mass unit and the solar energy systems  
7 can be completed, meaning producing power", correct?

8 A Correct.

9 Q Seems to indicate that's going to happen within  
10 the next week, doesn't it?

11 A Yes.

12 Q Didn't happen, did it?

13 A No.

14 Q Let's go on to 53, please. And I'm looking on  
15 53. It actually starts at the very bottom of the page,  
16 and goes to the next page.

17 A Okay.

18 Q The email is dated October 15th of that same  
19 year. And I'm specifically looking at the line that says,  
20 "Therefore, 21 plus 20 more equal 41 towers in the works";  
21 do you see that?

22 A I see that.

23 Q And then going above that it actually says,  
24 "Last week I said 21 towers would be finished". Were 21  
25 or 41 towers ever finished in 2010?

1 A No.

2 Q But the promoters seemed to indicate they're  
3 right there, aren't they?

4 A Yes.

5 Q Okay. Let's go to 54. Are you there?

6 A I'm there. Yes.

7 Q This is an email dated November 7th, from you to  
8 Greg, expressing concerns about the power, correct?

9 A Correct.

10 Q And you're asking him, "How long will it take",  
11 correct?

12 A Yes.

13 Q You didn't provide it, but do you know -- did  
14 you ever response to this email? Oh, wait a minute, you  
15 did provide it. Look at the very bottom. And they're our  
16 fault, I missed that. They're not sequentially in  
17 order --

18 A Oh, okay.

19 Q -- provided to us. Do you see where the bottom  
20 one is dated the next day?

21 A Um-hum.

22 Q From Greg to you?

23 A Um-hum.

24 Q And he says, "Don't know for sure, but we'll see  
25 how things go on our visit this Friday".



1 A Yes.

2 Q Do you recall how things went on the visit?

3 A Not this specific instance.

4 Q But there was no power production in 2010, was  
5 there?

6 A No.

7 Q Okay. Let's go to the next exhibit real quick.

8 55. And I'm looking at the bottom.

9 A Okay.

10 Q This is an email dated November 19 from you to  
11 Greg Shepard, correct?

12 A Correct.

13 Q Now, let's stop for a second. And I should have  
14 done this. Greg Shepard.

15 A Yeah.

16 Q Who is he?

17 A He's Matt Shepard's father.

18 Q Matt Shepard's father. And how long had you  
19 known Matt Shepard and Greg Shepard?

20 A Since I was in high school. So sometime --

21 Q Even earlier, wasn't it? Didn't you go to  
22 junior high with him?

23 A Oh, I may have. I don't -- yeah.

24 Q You testified in the District Court --

25 A Okay.

1 Q -- that you went junior high with him.

2 A Okay.

3 Q So it's a --

4 A Long -- it's a long time.

5 Q Long time. So you knew his father, Greg  
6 Shepard, the entire time, too, as well?

7 A I don't know if I knew Greg. I knew he existed.  
8 I don't know if I knew him personally. I mean, I knew of  
9 him. I don't know what the question is. I knew Greg and  
10 Matt for a long time.

11 Q Do you know what Greg's background is?

12 A Yes.

13 Q And what is that?

14 A It's strength and conditioning stuff.

15 Q Athletics-related, correct?

16 A Yes.

17 Q Not solar generation of electricity, was it?

18 A Correct.

19 Q Okay. In this --

20 THE COURT: Could I ask you a question about  
21 55-J? After number 5 at the top of the email it says,  
22 "Keep up the good work. I'm finding your two people a  
23 week. Pretty simple. Have people who don't like paying  
24 taxes visit RaPower3.com. Then if they're interested,  
25 give them your sponsor name and sign them up online. Your

1 commission check will then be mailed on the 15th."

2 So is what's going on here that existing  
3 participants, if you signed up -- it's like an Amway  
4 thing, if you signed up other people then you get a  
5 commission check, percent.

6 THE WITNESS: Yeah, there was like a multi-level  
7 thing going on.

8 THE COURT: Is that what they called a bonus  
9 program?

10 THE WITNESS: No.

11 THE COURT: What was the bonus program?

12 THE WITNESS: The bonus program was they said  
13 that if you bought the lenses you could participate in,  
14 like, gross profits of the company.

15 THE COURT: I see. Okay. But this referral  
16 thing, did you get in --

17 THE WITNESS: They had --

18 THE COURT: Did you recruit people and get these  
19 check commission?

20 THE WITNESS: I did not.

21 THE COURT: You did not.

22 MR. SORENSEN: Your Honor, I cut out a section  
23 of my discussion here.

24 BY MR. SORENSEN:

25 Q This was, in fact, a multi-level marketing

1 arrangement, wasn't it?

2 A There was one, yes.

3 Q It was operated that way --

4 A Yeah.

5 Q -- wasn't it?

6 MR. SORENSEN: And but it didn't seem relevant  
7 for the tax issues in this case, so we didn't pursue it.

8 THE COURT: Okay.

9 BY MR. SORENSEN:

10 Q Let me find out where I was for one moment.

11 This is an email. The bottom is an email from you to Greg  
12 Shepard, correct?

13 A Yes.

14 Q And in it you're asking about bonus monies,  
15 correct? Do you see the point number 2?

16 A Yes.

17 Q You were asking if they were going to be  
18 distributed before Christmas, correct?

19 A Yeah. That's true.

20 Q Did you get bonus payments?

21 A No.

22 Q Additionally, on number 1 you say, "Does that  
23 mean actually producing power to be sold"?

24 A Correct. That's what it says.

25 Q Never happened, did it?

1 A No.

2 Q Going on -- well, let me just ask a question.  
3 We just went through, I don't know, eight or ten emails in  
4 2010 --

5 A Um-hum.

6 Q -- with a list of failed promises; is that a  
7 nice way of putting it?

8 A Yeah.

9 Q Yet even with the failed promises from the  
10 promoter, you bought more lenses in 2011, didn't you?

11 A I did.

12 Q Okay. Let's look at 2011.

13 A Okay.

14 Q Let's look at Exhibit 57. Specifically looking  
15 at the second page.

16 A Okay.

17 Q Number 6.

18 A Okay.

19 Q It says, "A great number of towers were  
20 delivered this week by railroad cars. These will start  
21 going up very soon". To your knowledge, were any towers  
22 erected or completed in 2011? Any?

23 A Not to my knowledge.

24 Q Okay. Let's go to 58. An email dated August  
25 4th.

1 A I'm there.

2 Q That first line of the large paragraph states,  
3 "is the last thing we need", correct?

4 A Yeah, "This is the last thing we need to do in  
5 order to mass-produce every component", yes.

6 Q It seems that repeatedly we're being told, this  
7 is the last thing needed, correct?

8 A That's correct.

9 Q The next line -- or the middle line there it  
10 says, "In the meantime, everything is getting shovel-ready  
11 to put up between 60 and 100 towers"; do you see that?

12 A I see that.

13 Q Were 60 or 100 or any towers erected in 2011?

14 A Not to my knowledge.

15 Q Okay. Looking at 59. Well, let me just expand  
16 that question. To your knowledge, not only were there no  
17 towers in 2011, there were no towers in any of the tax  
18 years, were there?

19 A That's -- I think that's correct.

20 Q And let's -- in the future I'm not going to ask  
21 that question because that'll be the same answer for every  
22 year, correct?

23 A That's correct, yeah.

24 Q Looking at Exhibit 59.

25 A Okay.

1 Q This is an email from you to Greg, correct?

2 A Yes.

3 Q And you're asking in that last question, "Is  
4 IAUS" -- now, that's the same organization as we referred  
5 to as IAS, correct?

6 A I think that's the same, yes.

7 Q -- "still hoping to put up a hundred-tower plant  
8 this year?" Do you remember asking that question?

9 A I remember asking a lot of these questions, yes.

10 Q But apparently at some point in 2011, prior to  
11 October 24th, it was communicated to you or to others and  
12 you that they were going to develop a plant with 100  
13 towers, correct?

14 A Yes.

15 Q Did that happen?

16 A No.

17 Q Okay. Moving on to 61. And this one's a little  
18 complicated.

19 A Okay.

20 Q Because this is the only page we received, so we  
21 don't have the header of the email that I want to discuss.

22 A Oh, okay.

23 Q But at the bottom there's an email dated  
24 December 20 of 2011.

25 A Okay.

1 Q Do you see that?

2 A I see that.

3 Q I'm assuming the email above was sometime in  
4 December of 2011, and was responsive to a question, "We  
5 will have a project up and running in 2012?" The response  
6 is, "High probability"; do you see that?

7 A I see that.

8 Q "Will there be bonus money to be split in 2012?"  
9 Again, "High probability", correct?

10 A Correct.

11 Q Was a project up and running in 2012?

12 A No.

13 Q Was there bonus money paid in 2012?

14 A There was not.

15 Q Okay. Now, again, we just went through 2012.

16 A Um-hum.

17 Q There were promises made -- I mean, 2011, excuse  
18 me. Was it 2011 or 2012, let me --

19 A It was December 2011.

20 Q 2011.

21 A They're talking about 2012.

22 Q Yeah, but the earlier emails were all in 2011,  
23 correct?

24 A I think so.

25 Q Promises made by the promoters, correct?





1 A Yes.

2 Q Promises that were not kept?

3 A Correct.

4 Q And did you purchase more lenses in 2012?

5 A I did.

6 Q Okay.

7 THE COURT: And Counsel, maybe you can summarize  
8 this? I mean, perhaps if it's the case that promises kept  
9 being made and broken, and he still kept buying lenses --  
10 if that's all the next 40 emails will show, perhaps we can  
11 do this more concisely?

12 MR. SORENSEN: Your Honor, the fact is -- why  
13 don't -- my questioning -- and I apologize. I'm sitting  
14 down. My questions were actually drafted when there were  
15 objections to the emails.

16 THE COURT: Right.

17 MR. SORENSEN: Now that they're in, I will skip  
18 a bunch of these because there are emails -- let me ask  
19 these couple of questions, and then we'll skip them.

20 BY MR. SORENSEN:

21 Q Based upon what we were just discussing, do you  
22 have recollections of receiving emails in each year with  
23 updated reports on progress?

24 A Oh, yes.

25 Q And in your remembrance, were those updated

1 emails containing promises of future events as well?

2 A Yes.

3 Q Towers being built, projects being completed?

4 A That's correct.

5 Q They were never complied with or never -- they  
6 never came to fruition, did they --

7 A That's correct.

8 Q -- any of those promises?

9 A Yes.

10 Q And after each year receiving promises, you  
11 purchased lenses in the next year, correct?

12 A I did.

13 Q Okay. Let me skip several pages, Your Honor.  
14 Let's look at Exhibit 83-J for a minute.

15 A Okay.

16 Q This is an email dated June 6 from Greg Shepard  
17 to you and everyone else, correct? Oh, you're not there,  
18 I apologize.

19 A I'm here now, yeah. It says, "From Greg  
20 Shepard", and it apparently came to me. I don't see  
21 anybody else on the "to" line, but probably.

22 Q Oh. It says, "To all", though, doesn't it?

23 A Oh, yeah, it does.

24 Q And typically, the "to all" emails were to  
25 the --

1 A I think --

2 Q -- undisclosed recipients?

3 A I think so, yes.

4 Q There's a section in there that says, "Our  
5 attorney, Paul Jones, says that the most important thing  
6 we can do is get towers up and running so we could prove  
7 our technology claims", correct?

8 A That's what it says.

9 Q That's the attorney representing you today,  
10 correct?

11 A That is.

12 Q And to your knowledge, the project never got up  
13 and running, did it?

14 A No.

15 Q Technology claims were never proven, were they?

16 MR. JONES: I'm going to object to --

17 THE WITNESS: I don't know about that.

18 MR. JONES: That mischaracterizes -- or it's  
19 facts not in evidence.

20 BY MR. SORENSEN:

21 Q Was the technology ever proven successfully to  
22 operate a plant?

23 A I don't know the answer to that.

24 Q Was the plant ever successfully erected using  
25 this technology?

1 A No.

2 Q Let's ask that.

3 A Yeah.

4 Q Okay. Okay. Let's --

5 MR. SORENSEN: I guess, Your Honor, skip ten  
6 pages, so hopefully that helps.

7 THE WITNESS: All right.

8 BY MR. SORENSEN:

9 Q Let's talk about your involvement.

10 A Okay.

11 Q At some point in time, you became concerned  
12 about the passive-loss rules, didn't you?

13 A Yes.

14 Q As it relates to this investment, correct?

15 A Yes.

16 Q Do you remember when that was? Well, let's try  
17 to shorten time. Let's go to Exhibit 115.

18 A Okay.

19 Q And this will probably be in the second binder.

20 A Yeah, I've got it.

21 Q And that email is from you to Matt Shepard,  
22 correct?

23 A Um-hum. Yes.

24 Q Well, actually, the part I want to look at is --  
25 well, let me start over. Let's go to the second page of

1 that exhibit.

2 A Okay.

3 Q And there's an email dated August 17th, 2009  
4 from you to Matt; do you see that?

5 A Yeah, I do.

6 Q Can you read that for us, please?

7 A "Matt, quick question" -- the whole thing?

8 Q Yes. That paragraph.

9 A Okay. "Matt, quick question for you or your  
10 dad. I have some friends that might be interested in  
11 investing. They had a question that I cannot answer, and  
12 it is making me a little nervous. Do you know how this  
13 investment gets around the passive-loss rules? Basically,  
14 the idea that you cannot use the business-tax credit  
15 against normal wages because the investment in the solar  
16 panels might be viewed as a passive investment".

17 Q Well, let me follow up with a couple of  
18 questions the judge asked you a moment ago.

19 A Okay.

20 Q You obviously suggested this investment to some  
21 friends, didn't you?

22 A I discussed it with some -- yeah, friends and  
23 family, yeah.

24 Q And you told them about the investment?

25 A Yes.

1 Q Had they purchased lenses, you would have  
2 received a commission?

3 A No. I think this was before that existed.

4 Q Before the commission?

5 A I think so. And I never intended to do that.

6 Q So you don't know. But if there was a  
7 commission, you would have received one?

8 A No.

9 Q Okay. This seems to be an indication that you  
10 were wondering how the investment can, "Get around the  
11 passive-loss rules", correct?

12 A Um-hum. Yes.

13 Q Recognizing a concern or an issue with the  
14 passive-loss rules?

15 A Correct.

16 Q If we flip back to the page before, there's a  
17 response to your email, isn't there, dated August 20th?

18 A The one that starts below in blue?

19 Q Yes.

20 A Yes.

21 Q And we didn't get these in color --

22 A Right.

23 Q -- so I'm assuming the 1, 2, 3 is the blue part  
24 of the email that he's referring to?

25 A That makes sense, I guess. I don't know.

1 Q So there is a response, correct?

2 A There is a response.

3 Q And in that response Matt Shepard is telling you  
4 what his dad advises --

5 A Right.

6 Q -- about how to get around the investment --

7 A Passive loss --

8 Q -- the passive-loss rules, correct?

9 A Yes. Yes.

10 Q And we established Greg Shepard is not a tax  
11 attorney?

12 A That is for sure.

13 Q He's not a CPA?

14 A That is also for sure.

15 Q Not a tax professional?

16 A I think we all know that.

17 Q But he's advising you how to avoid the passive-  
18 loss rules?

19 A That is correct.

20 Q Okay. Let's talk directly about your  
21 involvement for a moment. Besides an occasional email --  
22 we're talking about them --

23 A Um-hum.

24 Q -- and reading what was sent to you in some  
25 investigation --

1 A Yeah.

2 Q -- what else did you actively do for the -- and  
3 I forget the initials now. It's your initials, right,  
4 PFO -- Preston Fredrick Olsen -- Solar -- yeah.

5 A Oh, the Solar, LLC. Yeah. Um-hum.

6 Q What did you do for the entity?

7 A Not much other than, like I say, go down every  
8 quarter to see if things were progressing.

9 Q Well, I appreciate the answer because you used  
10 the exact words you used when you testified at District  
11 Court.

12 A Okay.

13 Q Not much, right?

14 A Not much.

15 Q Okay. That's what I wanted to establish.

16 A Okay.

17 Q You didn't keep that in logs, any time sheets --

18 A No.

19 Q -- any --

20 A I didn't.

21 Q When you traveled you didn't keep any time-  
22 travel sheets?

23 A No.

24 Q No. And I believe we established yesterday -- I  
25 believe the judge asked, you didn't keep track of the



1 expenses and deduct them related to the business, did you?

2 A Nope, I didn't.

3 Q Any expenses?

4 A None.

5 Q Okay. And clearly -- and I'm not sure we went  
6 this direction. I'm losing it. As an attorney, you were  
7 required to keep time sheets early in your career, weren't  
8 you?

9 A I have in my career, yes.

10 Q Fact is, probably down to six-minute increments,  
11 weren't you?

12 A I think maybe 15, but yes. Something small.

13 Q So you knew how to keep records?

14 A Yes.

15 Q Okay. Talking about for just a moment the  
16 CPAs -- and we're probably going to cover areas that  
17 weren't covered. Who was Ken Oveson?

18 A I actually don't know. Should I know that?

19 THE COURT: Could you spell that, Counsel?

20 MR. SORENSEN: Yes.

21 THE COURT: Ken?

22 MR. SORENSEN: Ken Oveson, O-V-E-S-O-N.

23 BY MR. SORENSEN:

24 Q Let's look at Exhibit 116. It might help you  
25 remember.

1 A Okay.

2 Q Do you see an email dated November 20th, 2009  
3 from you to Ken?

4 A Oh, yeah. Yeah, yeah. Oh, yes.

5 Q Who was Ken Oveson, do you recall?

6 A I don't recall. I could recollect my memory  
7 here, but I honestly don't remember who this person is.

8 Q Okay. Well, let me just tell you, he's a CPA  
9 that was referred to you by Greg Olsen (sic) who withdrew  
10 your tax returns, correct?

11 A Greg Shepard, right. Yes.

12 Q Greg Shepard, I apologize.

13 A I am not related to him.

14 Q But if you look at the second page, what does he  
15 tell you?

16 A The second page?

17 Q Yeah. There's an email from him to you dated  
18 November 23rd.

19 A Oh, he says, "We're no longer working with Greg  
20 Shepard on this program. We suggest you contact him and  
21 get the name of the CPA he is now working with. Thanks."

22 Q So there were at least four CPAs that the  
23 promoters recommended to you, and you either hired or  
24 tried to hire, correct?

25 A Yes.

1 Q Okay. We've heard Mr. Bolander mentioned,  
2 right?

3 A Yes.

4 Q And he prepared three years of your tax returns,  
5 correct?

6 A I think so. Yes.

7 Q At some point in time after that third year, he  
8 informed you that he would no longer prepare tax returns  
9 that claimed solar tax credits, correct?

10 A For this -- for this, yeah. For these lenses.

11 Q For this promotion?

12 A Yes.

13 Q And that's why you then had to find a new one?

14 A Yes.

15 Q Okay. And when that happened, Greg recommended  
16 one to you, correct?

17 A That's correct.

18 Q Okay.

19 THE COURT: Mr. Olsen, did you -- when you were  
20 informed by Mr. Bolander that he would no longer prepare  
21 tax returns claiming it's -- did you ask him why that was?

22 THE WITNESS: I did.

23 THE COURT: What did he say?

24 THE WITNESS: He told me --

25 THE COURT: Well, no, let me -- I mean, what was

1 your understanding of why he stopped doing it?

2 MR. JONES: I don't think I can object to you,  
3 so --

4 THE COURT: Oh, you can.

5 THE WITNESS: Are you asking for hearsay, right?  
6 I had a long discussion with him, and obviously, he did  
7 help me in the appeals process. And he told me that he  
8 stood behind everything he did, but he just felt for his  
9 career that since the IRS was all over this, it was not a  
10 good idea for him to continue with it.

11 THE COURT: Okay.

12 BY MR. SORENSEN:

13 Q And let me ask you along those lines.

14 A Yeah.

15 Q The second one that you used, Mr. [Ritt'-er] or  
16 Mr. [Ride'-er] --

17 A Um-hum.

18 Q -- did you have a similar discussion with him  
19 about why he was --

20 A Very -- yeah, very similar.

21 Q And was his discussion, as well, that he would  
22 no longer do --

23 A Yes.

24 Q -- solar returns?

25 A Um-hum.

1 Q Okay. Let's talk just for a couple of  
2 minutes -- I'm going to get -- slapped down here in a  
3 minute -- the relationship you have with the promoters.

4 A Okay.

5 Q We talked briefly about Matt Shepard --

6 A Um-hum.

7 Q -- and Greg Shepard?

8 A Um-hum.

9 Q Now, they're not going to testify in this case,  
10 are they?

11 A I don't think so. I don't know.

12 Q They're not on the Petitioners' list to testify.

13 A Okay. I guess no.

14 Q Aside from your investment in these solar  
15 panels, solar lenses -- I don't want to call them panels  
16 because that's the wrong --

17 A Yeah.

18 Q -- technology -- do you have any other  
19 relationship -- or let me -- stop.

20 MR. SORENSEN: Strike that question.

21 THE WITNESS: Yeah.

22 BY MR. SORENSEN:

23 Q How do you know Neldon and Glenda Johnson?

24 A Well --

25 Q Or do you know?

1 A I do, yes.

2 MR. JONES: Can I just ask, what's the scope of  
3 this on cross-examining? What are we -- I'm not sure we  
4 asked about this on direct.

5 MR. SORENSEN: I believe Neldon Johnson's name  
6 came up repeatedly in direct examination. And I'm  
7 exploring his relationship and continuing relationship --

8 THE COURT: And testified when he signed the  
9 agreements, he knew Neldon Johnson was involved because  
10 his name is on the signature line, although not --  
11 digitally signed by Neldon Johnson.

12 MR. SORENSEN: Well, he also testified on direct  
13 about the site visits and the presentations made by Neldon  
14 Johnson at the site visitations.

15 MR. JONES: And so is this line of questioning  
16 on that type of relationship -- the business relationship?

17 MR. SORENSEN: I'm going to explore his business  
18 relationship with Mr. and Mrs. Johnson.

19 THE COURT: Okay. Well, I'll overrule the  
20 objection and see where you go with this.

21 MR. JONES: Okay.

22 BY MR. SORENSEN:

23 Q So --

24 A Yeah.

25 Q -- how do you know Neldon and Glenda Johnson? I

1 assume you do know them.

2 A I know them. I know them from meeting them, I  
3 guess, in the process of going down --

4 Q It's related to this solar --

5 A Yes.

6 Q -- transaction, correct?

7 A Correct.

8 Q Do you have any other relationship with him  
9 besides this solar relationship -- or through this solar  
10 relationship?

11 A I talk to Neldon all the time. I mean, I --

12 Q Not talking to him.

13 A Oh.

14 Q Do you have a business relationship, any kind of  
15 entity relationship, anything like that?

16 A Not with Neldon himself.

17 Q With any entity that he owns or controls?

18 A No.

19 THE COURT: We see he bought stock in some of  
20 these entities that he was connected with.

21 THE WITNESS: Oh, I did buy plenty of stock.  
22 It's all been canceled.

23 BY MR. SORENSEN:

24 Q Did you investigate Mr. Johnson prior to  
25 purchasing stock?

1 A No.

2 Q Were you aware that he had been charged with  
3 stock fraud approximately ten years prior to your  
4 purchasing the stock?

5 MR. JONES: I object to -- this is inadmissible  
6 character evidence to -- I don't know what we're --

7 MR. SORENSEN: I'm going to simply explore what  
8 he did to buy stock. He just has testified he purchased  
9 stock from an entity.

10 MR. JONES: But you introduced the idea that he  
11 was --

12 MR. SORENSEN: Your Honor, I have not asked one  
13 word about stock, but stock has come up in multiple  
14 responses. And the implication is, is that stock's part  
15 of the transaction ongoing. And I have -- I want to  
16 explore that a little bit.

17 THE COURT: Well, there's no evidence I've seen  
18 so far about any charges against Mr. Johnson.

19 MR. SORENSEN: I'm going to try to ask the  
20 Petitioner a couple of questions, and that will be all, so  
21 we're done with it, Your Honor.

22 THE COURT: Okay. I'll allow it.

23 BY MR. SORENSEN:

24 Q And I totally lost where we were, but let's  
25 start over.



1 A Stock fraud.

2 Q Did you investigate the stock or the entity  
3 prior to purchasing stock in IAS?

4 A Not the entity itself, no. I mean, other than  
5 just going down to see the --

6 Q Or the principal?

7 A No.

8 Q Were you aware that Mr. Johnson had been charged  
9 and entered into a consent decree with the FCC for stock  
10 manipulation and fraud?

11 A I'm aware of that. I don't remember when I  
12 became aware of it. Yes.

13 Q Did you continue to buy stock in the entity that  
14 he controlled after becoming aware of that?

15 A Yes.

16 Q Okay. Are you familiar with an entity known as  
17 Anstrum Energy, LLC?

18 A Can you spell it?

19 MR. JONES: Just I would object to, again, line  
20 of questioning. I don't know what relevance it has to  
21 this case.

22 THE COURT: Well --

23 MR. SORENSEN: I'm going to establish a  
24 connection between the Petitioner and that entity which is  
25 owned or controlled by Neldon Johnson.

1 MR. JONES: For what purpose? I mean, what --

2 THE COURT: Well, we'll have to see. I mean, I  
3 think he's entitled to lay a foundation. And then we'll  
4 see if the question is relevant or not.

5 BY MR. SORENSEN:

6 Q Are you familiar with an entity entitled Anstrum  
7 Energy, LLC?

8 A Can you spell it for me?

9 Q Well, it's spelled twice in the documents I have  
10 two different ways, so I'll --

11 A I think they're two different entities is the  
12 problem. I'm aware of both of them, but only because -- I  
13 had never heard of that entity until you emailed my  
14 counsel. Yes.

15 Q Anstrum Energy, LLC?

16 A With a U?

17 Q With the U.

18 A I had never heard of that before.

19 Q Is it interesting that both entities with  
20 different spellings have the same business address?

21 A I didn't know that.

22 THE COURT: I'm not sure that's a proper  
23 question, Counsel. Maybe you can just be more direct.

24 BY MR. SORENSEN:

25 Q Are you aware that both entities have the same

1 mailing address?

2 A I am not aware that they both have the same  
3 mailing address.

4 Q Okay. What is your relationship to Anstram with  
5 an A?

6 A With an A. Actually, I'm the sole principal in  
7 that company.

8 Q Anstram Energy, LLC?

9 A A. With A.

10 Q With an A?

11 A Yes.

12 Q I asked you if you had a business relationship  
13 with Glenda or Neldon Johnson, and you indicated no.

14 A I thought -- no. You said Neldon. I don't have  
15 one with Neldon, but I have had one with Glenda.

16 Q I believe I said both, but okay. What is your  
17 business relationship --

18 A Sorry. I thought you said Neldon.

19 Q -- with Glenda?

20 MR. JONES: Again, I'm not sure where this is  
21 going, if it's relevant to this case.

22 MR. SORENSEN: We're not there yet, Your Honor.

23 THE COURT: I mean, it all goes to his purpose,  
24 motivation in getting involved with the program.

25 MR. JONES: But what year are we even talking

1 about. We're talking about -- when was this entity  
2 formed? I mean, I don't know what it has relevant to the  
3 tax years at issue.

4 THE COURT: Well, I expect counsel will explore  
5 that.

6 BY MR. SORENSEN:

7 Q Again, the question was do you have a business  
8 relationship with Glenda?

9 A Yes.

10 Q And what is that relationship?

11 A The entity Anstram with an A has acquired some  
12 of her contracts to continue to develop this technology.

13 Q And that's an entity that you wholly own?

14 A Yes.

15 Q And how much did you pay for those?

16 A The way it's being worked out is that I pay for  
17 them in kind by developing and then giving her the  
18 projects, the properties back.

19 Q And you valued those properties at how much?

20 A I think around \$50 million.

21 Q And you, in fact, filed a lien against the  
22 receiver in the District Court action; didn't you?

23 A I did.

24 Q On behalf of that entity?

25 A I did.

1 Q And behalf of Glenda Johnson?

2 A On behalf of that entity.

3 Q Well, the notice was recorded and returned to  
4 Glenda Johnson. What is her relationship to that entity?

5 A She is an employee in that entity.

6 THE COURT: Am I right that this all postdates  
7 the tax years at issue?

8 THE WITNESS: That started, like, November 2019.

9 THE COURT: So the idea here was to sort of try  
10 and continue the business that had been shut down?

11 THE WITNESS: Yeah. I'm trying to continue the  
12 technology in some lawful way. I mean, I think it's great  
13 technology.

14 MR. SORENSEN: Your Honor, can I ask a question?

15 BY MR. SORENSEN:

16 Q In fact, the purpose of the lien was try to stop  
17 the foreclosure sale by the court-appointed trustee; isn't  
18 it?

19 A The purpose of the lien --

20 Q Receiver.

21 A -- is that I think there is money owed back to  
22 this entity for work that's been done on those properties.

23 THE COURT: Counsel, I'm beginning to question  
24 the relevance of this.

25 MR. SORENSEN: Okay. We'll move on.

1 THE COURT: This has happened after the District  
2 Court action?

3 MR. SORENSEN: Yes, Your Honor.

4 THE COURT: Three years after?

5 MR. SORENSEN: Just the continued activities of  
6 the Petitioner related to the promoters.

7 THE COURT: But how does that affect anything  
8 for the tax years at issue?

9 MR. SORENSEN: It does not, Your Honor. I  
10 was --

11 THE COURT: Okay. Let's move on to a different  
12 topic.

13 MR. SORENSEN: Let's move on.

14 BY MR. SORENSEN:

15 Q Were you aware in 2014 that the Oregon Tax Court  
16 had issued an opinion relative to this promotion?

17 MR. JONES: I --

18 MR. SORENSEN: It's a question, Your Honor,  
19 about his knowledge.

20 MR. JONES: But what's the scope? We didn't  
21 discuss anything about his --

22 MR. SORENSEN: It's going to go to the actual  
23 business purpose and the knowledge of whether or not he  
24 was conducting a business.

25 MR. JONES: How so?

1 THE COURT: And this is an event that happened  
2 in --

3 MR. SORENSEN: In 2014, Your Honor.

4 THE COURT: Okay. I'll allow --

5 MR. SORENSEN: Which is a year --

6 THE COURT: -- him to pursue this.

7 MR. SORENSEN: -- in the issue.

8 THE WITNESS: I am vaguely aware. I don't know  
9 the case.

10 BY MR. SORENSEN:

11 Q So you didn't review the opinion where the  
12 Oregon Tax Court ruled that this could not be a business  
13 or a trade?

14 A No. I haven't reviewed that opinion.

15 Q But you were aware that it had been issued in  
16 2014?

17 MR. JONES: Objecting --

18 THE WITNESS: I have no idea.

19 MR. JONES: -- it mischaracterizes his  
20 testimony.

21 MR. SORENSEN: I believe he testified that he  
22 was aware of it.

23 MR. JONES: He said vaguely aware of it.

24 THE COURT: Counsel, again the penalties are off  
25 the table now.

1 MR. SORENSEN: Penalties are off the table, Your  
2 Honor.

3 THE COURT: So what's the relevance --

4 MR. SORENSEN: But it does --

5 THE COURT: -- of his knowledge whether or not  
6 some court had ruled on this?

7 MR. SORENSEN: Because he continued to buy  
8 lenses and continued to claim to operate a business when a  
9 court of competent jurisdiction, which we will argue on  
10 brief, had already entertained the question about whether  
11 or not the operation and leasing of lenses was a trade or  
12 business.

13 MR. JONES: Not to this taxpayer, and that is,  
14 again, primarily a subjective --

15 MR. SORENSEN: I'm only going to argue it as  
16 part of the sticks on the scale, Your Honor, about his  
17 motivation and intention of trying to run a business. If  
18 he had knowledge --

19 MR. JONES: He's not a party. He's vaguely  
20 aware of it. I don't know why he is imputed to --

21 THE COURT: I don't see how it's relevant.

22 MR. SORENSEN: Okay.

23 THE COURT: Respondent can argue on brief that  
24 that would be some --

25 MR. SORENSEN: All I was trying to establish --



1 THE COURT: -- non-Tax Court precedent that  
2 would support that that is not a trade or business, but I  
3 don't see how his awareness -- he may have thought it was  
4 wrong --

5 MR. SORENSEN: Okay.

6 THE COURT: -- it should have been appealed. I  
7 don't know.

8 MR. SORENSEN: Had he answered the question  
9 differently, I would have asked that. But he said he's  
10 vaguely aware. We'll let it go.

11 THE COURT: I'll let it go. Move on.

12 MR. SORENSEN: Yeah.

13 BY MR. SORENSEN:

14 Q And the last couple questions, I just want to  
15 establish -- and I spoke to Mr. Jones earlier, telling him  
16 I was going to do this.

17 A Okay.

18 Q There's been reference to the fact that Mr.  
19 Jones was initially paid by the promoters to represent you  
20 and others in the Tax Court, correct?

21 A Correct.

22 Q At some point in time, that arrangement ceased  
23 to exist. Are you aware of that?

24 A I am.

25 Q And that was at some time in the District Court

1 proceeding, and we won't go there. But that payment of  
2 his services by the promoters ceased, correct?

3 A Yes.

4 Q Are you currently paying the fees of Mr. Jones?

5 A I am not.

6 Q And do you know who is?

7 A All the other -- my understanding is that all  
8 the other cases, I guess, that are depending on this one.

9 THE COURT: Again, Counsel, what's the relevance  
10 of this?

11 MR. SORENSEN: Your Honor, we'll just --

12 THE COURT: I mean, this is a test case. One  
13 would expect in a test case that all the --

14 MR. SORENSEN: I just wanted -- yes, sir.

15 THE COURT: -- all the people represented by Mr.  
16 Jones -- some have opted out, but the ones who are still  
17 in, they're going to share the cost. That's perfectly  
18 appropriate.

19 MR. SORENSEN: That's perfectly allowable. I  
20 explained to Mr. Jones that I --

21 MR. JONES: Yeah. I don't see the relevance,  
22 but I --

23 MR. SORENSEN: -- just wanted to ask one or two  
24 questions to make sure the record is clear that the  
25 promoters are not paying Mr. Jones now.

1 THE COURT: That was established yesterday. And  
2 it's perfectly reasonable that the remaining taxpayers --  
3 MR. SORENSEN: Yes. I don't say it wasn't, Your  
4 Honor.  
5 THE COURT: Right.  
6 MR. SORENSEN: The only point was a question or  
7 two to make sure the record was clear.  
8 THE COURT: Okay.  
9 MR. SORENSEN: And I want to say --  
10 MR. JONES: I don't know for what purpose,  
11 but --  
12 MR. SORENSEN: -- I do want to inform --  
13 MR. JONES: -- it doesn't matter on the outcome.  
14 MR. SORENSEN: -- the Court that I did tell Mr.  
15 Jones that I was going to ask one or two questions and not  
16 dwell on it.  
17 THE COURT: Okay. Well, I think we're done on  
18 that.  
19 MR. SORENSEN: Yeah. I think we're done. Fact  
20 is, those were the only two questions I had on it, Your  
21 Honor.  
22 THE COURT: Okay.  
23 MR. SORENSEN: So we were done. And I have no  
24 further questions.  
25 THE COURT: Good. You beat it by ten minutes.

1 Well done.

2 Okay. So do you want to redirect now or after  
3 lunch or what?

4 MR. JONES: I will be very short on redirect, so  
5 if you don't mind, I'd probably just as soon have us get  
6 through it, if that's okay.

7 THE COURT: Now? Fine. Yeah. Sure. That's  
8 fine.

9 MR. JONES: Would that be all right with  
10 everyone. Thank you.

11 REDIRECT EXAMINATION

12 BY MR. JONES:

13 Q And I'm going to go back to yesterday when the  
14 judge asked you a question about your rental payments.

15 A Um-hum.

16 Q And so I'm just going to ask kind of a follow-up  
17 question on that. What made you continue to be confident  
18 that you would eventually receive rental payments? And  
19 for time frame purposes, I am talking about all the tax  
20 years that we're discussing here.

21 MR. SORENSEN: Your Honor, I hate to be the very  
22 first question, but the question was continue to receive  
23 rental payments. The testimony is he never received  
24 rental payments.

25 MR. JONES: And I concede that. I apologize.



1 Thank you. I agree my question was awkwardly worded.

2 BY MR. JONES:

3 Q What made you continue to believe that you would  
4 eventually receive rental payments in purchasing these  
5 lenses? I'm referring to --

6 A Yeah.

7 Q -- these tax years. And you continued to buy  
8 them.

9 A Right.

10 Q Why were you so confident?

11 A I sincerely believed they were making progress  
12 down there. And I thought that they would -- I was pretty  
13 confident within the five-year period they would have it  
14 up and running. That was in the agreement that they would  
15 start making payments after five years.

16 Q Okay. Thank you. On cross-examination, you  
17 talked about each agreement. I'm referring specifically  
18 again to these rental agreements.

19 A Um-hum.

20 Q Or excuse me, the purchase agreements. And you  
21 talked a little bit about being liable, the debt component  
22 that we discussed here. So did you believe that you would  
23 be liable to pay those amounts when you -- and I'm  
24 speaking of the time period you entered into those  
25 agreements. Did you believe you would be liable?

1           A     I believed they'd be paid in the same way the  
2 contract described them to be paid.

3           Q     Okay. And you did testify that now given the  
4 circumstances, you're not sure that that would -- you will  
5 ever have to pay that?

6           A     Well, I mean, the receiver owns all the  
7 property. I don't think it's gone forward.

8           Q     Okay. When do you think that belief -- so  
9 during the tax years at the time you're taking these tax  
10 benefits, what's your belief, that you owe the debt?

11          A     I believed that everything in those contracts  
12 would come to fruition but for -- honestly, today I still  
13 believe, but for the government blowing the whole thing  
14 up.

15          Q     Okay. Let's turn to Exhibit 97-J. I just want  
16 to give you the opportunity to -- you wanted to explain  
17 yourself, I think, in --

18          A     97-J?

19          Q     Yeah.

20          A     Oh, this. Oh, okay.

21          Q     This question that was asked in cross talked  
22 about your understanding of the system. And you wanted to  
23 explain yourself. Would you please do that?

24          A     Sure. There was some -- well, as we -- how much  
25 can I say? A lot? Can I just talk?

1 Q Sure.

2 A Okay. Obviously, everything that Greg Shepard  
3 said was optimistic but not always reliable. I think  
4 that's fair to say. And I think I had got some sort of  
5 email or something or spoken with him that said that in  
6 the future that the lens purchases would also include,  
7 like, a proportional ownership in the tower structure.

8 And that's kind of what I was confused about. I  
9 think he talks about it a little bit in here. And I was  
10 like, what is that? But anyways, I was trying to get  
11 clarification on that. Obviously, that was not the case.  
12 But it was confusing to me.

13 Q So did you understand that you were buying  
14 lenses?

15 A Yes.

16 Q And did you ever have confusion about that's  
17 what you were buying?

18 A I had no confusion other than that this -- he  
19 had mentioned something about having some ownership in the  
20 tower. Well, even he says in this -- but it's not  
21 correct. That was what I was trying to get at.

22 Q Okay. So this system is referring to something  
23 that you didn't believe you had purchased?

24 A I wasn't clear if they were in the future  
25 contracts going to add an interest in the tower structure.

1 Q Okay.

2 A And that's kind of what I was trying to get at.  
3 Obviously, I found out that that's not the case. It was  
4 just lenses.

5 THE COURT: Mr. Jones, I found that quite  
6 confusing too, because all the purchase contracts say  
7 you're purchasing some number of alternative energy  
8 systems.

9 MR. JONES: Right.

10 THE COURT: Not that you're purchasing --  
11 there's never a reference to a lens anywhere. It's always  
12 you're purchasing a system. It might be confusing as to  
13 what you actually own. You may have bought a lens, but  
14 did that give you ownership interest in the system? I can  
15 see how he would have been confused. I'm confused about  
16 that.

17 MR. JONES: Sure. And I hope that clarifies.  
18 Yeah.

19 THE WITNESS: I always understood it to be the  
20 lenses, but then someone mentioned something about a  
21 proportional interest in the tower structure. And I just  
22 kind of like, is that part of it? But it's not. It's  
23 always been lenses. But my understanding is today and  
24 then --

25 BY MR. JONES:



1 Q Okay. And just to clarify that point for the  
2 Court.

3 A Yeah.

4 Q There is no confusion in your mind at any point  
5 in time that what you are you buying was lenses?

6 A Yes. That is correct.

7 Q And when I say what you're buying, that is --

8 A What I was buying.

9 Q -- pursuant to the agreements --

10 A Yes. Yes. Yes. Yes.

11 Q -- we reviewed in this case.

12 A Yeah. At this point, I thought that in 2011  
13 that maybe they were going to be adding an interest in the  
14 towers or something.

15 Q Okay.

16 A I think that's what this refers to, but that's  
17 what I remember.

18 Q Okay. Thank you. You also testified about  
19 keeping records. And I want to clarify that point. So  
20 you did keep records for PFO Solar, correct?

21 A I mean, I kept the agreements, copies of the  
22 agreements, and just updated the registration each year.  
23 I mean, there weren't a lot of record keeping to be done.

24 Q And you were able to provide your tax preparers  
25 with financial information that you maintained, correct?

1 A Yes.

2 Q And so is it accurate to say you kept adequate  
3 books and records for PFO Solar?

4 A I think it was adequate for the --

5 MR. SORENSEN: Your Honor, I'm going to object  
6 to that. It calls for a legal conclusion on the witness's  
7 part.

8 MR. JONES: I asked for his belief.

9 THE COURT: I'll allow it.

10 THE WITNESS: I believe it was adequate for the  
11 business. There wasn't anything else to keep records of.

12 MR. JONES: Okay. And that's all I had on  
13 redirect.

14 THE COURT: Okay. Any recross, Counsel?

15 MR. SORENSEN: No, Your Honor.

16 THE COURT: Okay. Mr. Olsen, thank you for your  
17 testimony. It's been a long slog, and I appreciate  
18 your --

19 THE WITNESS: I appreciate your patience with  
20 me, Judge.

21 THE COURT: So that will end his testimony. Do  
22 you have a plan for the rest of the afternoon, after  
23 lunch?

24 MR. SORENSEN: Your Honor, it's Petitioner's  
25 plan -- but we've agreed we'll go as long as necessary.



1 MR. JONES: Yeah. So right now, we intend to  
2 call Randy Johnson next. And I think that we originally  
3 wanted to call Mr. Jameson. He's got a very brief  
4 testimony. But I think we ought to probably -- if it's  
5 okay with everyone -- address the expert, just because  
6 those are the two that have scheduling constraints.

7 THE COURT: The expert needs to go today too?

8 MR. JONES: Yes.

9 THE COURT: Okay. Well, I'm fine with that.

10 MR. JONES: Yeah.

11 THE COURT: We'll actually have the trial clerk  
12 check and make sure -- this is not my building, so I have  
13 no say over how long we're allowed to be here.

14 MR. JONES: Okay.

15 THE COURT: But hopefully we can stay until we  
16 need to.

17 MR. JONES: Yeah. And I'm hopeful we can get  
18 through those two. I don't anticipate asking -- Mr.  
19 Jameson's testimony is pretty limited. So I don't expect  
20 that to go very long. But hopefully, if he's okay, maybe  
21 he'll go last today. And then we'd be wrapped up for  
22 today and then start with Dr. Mancini and maybe Mr.  
23 Bolander, so --

24 THE COURT: Okay. For the experts, under Tax  
25 Court rules, once the guy is voir dired and qualified, his

1 expert report is his direct testimony.

2 MR. JONES: Correct.

3 THE COURT: My practice is normally to allow the  
4 witness to do a -- you might call it an executive summary.  
5 Three to five minutes. And if you wish to do that, I  
6 would permit that before you hand him over for  
7 cross-examination.

8 MR. JONES: Great. Yeah. And I was aware of --  
9 and so that is the intention, just to let him talk about  
10 what -- he went on some site visits, things like that.

11 THE COURT: Right. Right.

12 MR. JONES: So just let him talk about it.

13 THE COURT: And I've read both reports, so I  
14 know generally what's in there, but I think I wouldn't  
15 mind having a little refresher.

16 MR. JONES: A little color. Sure.

17 THE COURT: Okay? So why don't we come back at  
18 2 o'clock.

19 Yeah. Sorry?

20 MR. SORENSEN: One matter, Your Honor. Can we  
21 ask that the witness not discuss what was testified to  
22 with anybody?

23 MR. JONES: I think we'd be expected to do that  
24 anyway.

25 MR. SORENSEN: I don't know if they're going to

1 go to lunch together with other witnesses.

2 MR. OLSEN: That's fine.

3 MR. JONES: Yeah.

4 MR. OLSEN: Can I talk to my counsel?

5 MR. SORENSEN: Yes.

6 THE COURT: Yeah. Sure. Yeah. Yeah. The idea  
7 is that witnesses who have been excluded -- the reason  
8 they're excluded --

9 MR. OLSEN: Yes.

10 THE COURT: -- is so they can't mold their  
11 testimony --

12 MR. OLSEN: Okay.

13 THE COURT: -- to reflect your testimony, what  
14 they heard me say, of whatever. So the idea is you're not  
15 supposed to talk to them until they've --

16 MR. OLSEN: Okay.

17 THE COURT: -- completed their testimony.

18 MR. OLSEN: I will.

19 THE COURT: You can talk to anybody who's  
20 already testified, but they're aren't --

21 MR. OLSEN: Okay.

22 THE COURT: -- any of those people.

23 MR. OLSEN: I can do that. Thank you.

24 MR. SORENSEN: Do we want to address the witness  
25 that was in courtroom improperly yesterday now or when

1 he's called?

2 MR. JONES: Yeah. If you want to deal with that  
3 now, I can inform if he needs to come back. Again, it was  
4 inadvertent. His testimony is going to be about -- he has  
5 personal knowledge about how these lenses are  
6 manufactured. He has personal knowledge about how they  
7 were intended to be used in this technology. That's  
8 really it.

9 THE COURT: Okay. Well, I think it would  
10 probably be appropriate to avoid topics specific to Mr.  
11 Olsen or his interactions or what he thought Mr. Olsen's  
12 purposes were. You know what I mean?

13 MR. JONES: Yeah.

14 THE COURT: Anything that might have been  
15 affected by what he heard.

16 MR. JONES: Yeah. Thank you. And I don't  
17 anticipate that, but let me just bring up one issue. I  
18 can't imagine it's a problem, but I guess can we agree  
19 that we can speak about the lenses and they're agreed to  
20 be the same that we're talking about that were sold here?  
21 So if we're saying -- in other words, if laying  
22 foundation, right, to get him to talk about lenses, I've  
23 got to probably show him, hey, here's an agreement that  
24 Mr. Olsen --

25 THE COURT: That's fine. Sure. Yeah. Yeah.



1 Yeah.

2 MR. JONES: -- signed. And so --

3 THE COURT: Right.

4 MR. JONES: But I don't know if you care. We  
5 can skip to that. If we're kind of agreeing we're all  
6 talking about the same lenses.

7 THE COURT: Right. No. Agreed. I think you  
8 have a sense of what sensitive topics would be that he  
9 might have heard about Mr. Olsen. And I think just avoid  
10 those topics.

11 MR. JONES: Right.

12 THE COURT: Documents are fine.

13 MR. SORENSEN: And additionally, that there be  
14 no reference to Mr. Olsen's specific lenses. We don't  
15 have a problem with that.

16 MR. JONES: Yeah. And I think we're just --  
17 again, I think you guys would agree we have the pallet,  
18 right?

19 MR. SORENSEN: We're all talking about that  
20 pallet of lenses that existed at the warehouse.

21 MR. JONES: We're all talking about the pallet  
22 of the lenses, so I can just kind of rough into that,  
23 right?

24 THE COURT: Yeah. Yeah.

25 MR. JONES: Yeah. Nobody's got a problem with

1 that?

2 THE COURT: Right.

3 MR. SORENSEN: That's not the concern that we  
4 have.

5 THE COURT: That will save time if we don't --

6 MR. JONES: Yeah.

7 THE COURT: -- bother with the --

8 MR. JONES: And that way, we can kind of  
9 avoid --

10 THE COURT: Well, we'll play that as it goes.

11 MR. SORENSEN: Yeah.

12 MR. JONES: Sure.

13 THE COURT: If there's any problem, I'm sure  
14 Respondent's counsel will not hesitate to bring it to my  
15 attention.

16 MR. SORENSEN: I promise I won't. Yeah.

17 THE COURT: Okay. See you all at 2 o'clock.

18 THE CLERK: All rise.

19 (Whereupon, a recess was held from 1:01 p.m.  
20 until 2:04 p.m.)

21 THE CLERK: All rise.

22 THE COURT: Please be seated.

23 Mr. Jones, you may present your next witness.

24 MR. JONES: Thank you. The Petitioners call to  
25 the stand Randy Johnson. Randale Johnson is his full



1 name.

2 And you'll be sworn in to give testimony. If  
3 you'd just come to the podium and raise your right hand.

4 THE CLERK: Please raise your right hand.

5 RANDALE JOHNSON

6 having been duly sworn, testified as follows:

7 THE CLERK: Please state your name and address  
8 for the record.

9 THE WITNESS: Randale Paul Johnson. 936 South  
10 250 East, Unit 50553, Provo, 84605.

11 DIRECT EXAMINATION

12 BY MR. JONES:

13 Q Good afternoon, Mr. Johnson. May I call you  
14 Randy for the record? Is that okay?

15 A Yeah.

16 Q Can you tell us a little bit about your  
17 professional background?

18 A Yeah. My degree's in computer science. And I  
19 have worked on this project and previous projects for  
20 probably 30 years. I don't know.

21 Q And you said "this project". What is that?

22 A Solar projects, the lenses.

23 Q The lenses?

24 A Yeah.

25 Q Okay. We'll get to that here in just a minute.

1 Do you do work or did you do work for a company called  
2 International Automated Systems?

3 A Yes.

4 Q And what did you do for International Automated  
5 Systems?

6 A I worked on technology development and project  
7 development.

8 Q Okay. And what about for an entity called  
9 RaPower3. Did you ever work for that entity?

10 A No.

11 Q No? Just for International Automated Systems?

12 A Yeah.

13 Q Okay. And what time frame did you work with  
14 International Automated Systems?

15 A Most all the time, I think, up until 2016, I  
16 think.

17 Q '16?

18 A Yeah.

19 Q Okay. And when did you start?

20 A 1990 -- early '90s, I think.

21 Q Early '90s?

22 A Yeah.

23 Q Okay. And is all your work focused on  
24 development of technologies for International Automated  
25 Systems?

1 A Yeah.

2 Q And what are some of those technologies?

3 A Originally, we worked on the automated checkout  
4 lanes. We were the pioneers in that area and developed  
5 those. We were the first ones to develop that. And then  
6 we developed fingerprint, automated fingerprint  
7 technologies. We worked in automated restaurant point of  
8 sale. And we developed a prototype for airport security,  
9 things like that. And then the turbine and solar lenses  
10 and stuff like that, so --

11 Q Okay. And I won't go through those in detail,  
12 but were you involved in each of those that you listed  
13 off?

14 A Yes.

15 Q And were you involved in development, or how  
16 were you involved, I guess?

17 A Yeah. I'll say development. Yeah.

18 Q Okay. Are you familiar with an entity called  
19 LTB, LLC?

20 A Yeah.

21 Q And what is that entity?

22 A They lease the lenses that we were using.

23 Q Okay. So let's talk about -- when you say the  
24 leases that were being -- or excuse me. When you talk  
25 about the lenses, do you know Preston Olsen?

1 A I know him. Yeah. I don't know him well --

2 Q Okay.

3 A -- but I know him.

4 Q Are you aware that this case is about lenses  
5 that were leased to Preston Olsen?

6 A Yeah.

7 Q Okay. And so if I refer to those lenses, are we  
8 talking about the same thing? We're talking about  
9 lenses --

10 A Yes.

11 Q -- that go in the solar tower?

12 A Yes.

13 Q Okay. All right. I should ask a background  
14 question here. Did you have specific personal knowledge  
15 in the creation, manufacturing process of those lenses?

16 A Yeah. Firsthand knowledge of all of it.

17 Q Okay. Can you just maybe walk us through how  
18 they were conceived? And then if it's okay, I'll just go  
19 on and talk about the manufacturing process, if that's not  
20 too big a narrative there.

21 A Okay. Yeah. The first thing we developed was  
22 the turbine. And then we were looking for different ways  
23 to create heat for it. We were always interested in  
24 renewable energy. And so we wanted to develop a process  
25 that -- a way to collect heat from the sun. We tried a

1 few different things.

2 Q Sorry to interrupt you, but what time frame is  
3 this about?

4 A Probably 2001, 2000.

5 Q Okay.

6 A 2001.

7 Q Please continue.

8 A And so anyway, we worked in -- we tested out --  
9 for the first little while, we tested out parabolic  
10 mirrors for the troughs type. Some patterned after that.  
11 And as we were designing that, it became apparent that it  
12 was going to be -- we would later test it to aim it on the  
13 receiver. And it was a very difficult process.

14 And also with that, I mean, there are many  
15 difficulties that come with those trough systems that we  
16 found as we were trying to develop it. And mass  
17 production was one of them. The continual maintenance on  
18 those as far as adjustments, optical adjustments and so  
19 forth.

20 So we decided to look into lenses. And that was  
21 about, like I said, around 2001 probably, 2002. And we  
22 were trying to find out with Fresnel lenses why that -- if  
23 they're available, something we could just buy and use.  
24 And the only Fresnel lenses we could find that we could  
25 get made for us was about -- at the time, I think it was

1 three feet by a couple feet. They're small.

2 And the process to make those is called a  
3 casting process. So it's a lot more expensive. It's  
4 basically a mold, a casting mold. And it's expensive, and  
5 the process is slow, as far as mass production comparably  
6 to what you would -- that we assessed would be applicable  
7 to solar mass production. So we were looking at different  
8 processes of how to put an image into acrylic. And we  
9 called -- we looked into the extrusion process. And --

10 Q Can I just stop you right there. When you say  
11 an image, can you describe what you mean by that?

12 A Yeah. That's the ridges that create the  
13 refraction when the sun hits it. You have to have  
14 specific radiuses and angles of ridges, thousands of them,  
15 for the sun to hit the surface and focus it.

16 Q Okay. Thank you.

17 A So anyway, there was only a handful of companies  
18 in the whole world that did the extrusion process in the  
19 size that we needed. And we called them. And every  
20 single one of them told us that it couldn't be done. And  
21 one of the companies, they said they didn't think it could  
22 be done.

23 We convinced them to let us try -- because we'd  
24 have to customize their machine. This was Lucite  
25 technologies. At the time, they had 13,000 employees

1 throughout the world. They're a big company. So we  
2 started that process. We had a meeting with a bunch of  
3 different engineers that were experienced in different  
4 aspects of that extrusion as well as some -- engineers  
5 that we would need to develop the tool to put on the  
6 machine. And they listed out all the problems it would  
7 have and why it wouldn't work. And so we took those and  
8 tried to begin finding a way around it. And that was  
9 probably around 2003.

10 At the same time, we did buy lenses, the smaller  
11 lenses, and we put together a system where it was on a  
12 45-foot trailer. We built a dual-axis tracking system  
13 that would focus the sun. Each lens, we had a receiver  
14 that would focus the sun on and heat up the fluid. It was  
15 Dalton synthetic oil. A photosensor was what we used at  
16 the time to track the sun. And we would send the  
17 synthetic fluid into a liquid-to-liquid heat exchanger and  
18 create steam and run the turbine.

19 And we successfully did that. We put a bunch of  
20 lights, headlights from a truck, truck lights on the side  
21 of the trailer that we had it on. And we had the turbine  
22 hooked up to a generator. And we'd turn that on and run  
23 it.

24 Q Is this the same turbine that's contemplated  
25 being used in --

1 A Yeah.

2 Q -- this discussion?

3 A Yeah. It's the same.

4 Q And some of the materials?

5 A Same process, yeah.

6 Q Okay.

7 A Same turbine. And so we ran that. So we showed  
8 that in Mesquite. We had a lot of people come and watch  
9 it. One of them, Ned (ph.), was the power engineer of  
10 Boulder City. And he liked it. He testified in front of  
11 the city council about what he saw.

12 Anyway, so at that same time after we were  
13 producing heat and electricity with that, we were working  
14 on the lenses. So what we did was an extremely complex  
15 and difficult process. I mean, it took us a total of four  
16 years, I believe, roughly in that time frame and millions  
17 of dollars of development. We hired Brian Kraeger out of  
18 Ottawa, Canada. He owns a company called Bi-Con  
19 Engineering. His background in optics is that he designed  
20 optics for the Hubble Telescope. He designed optics for  
21 the shuttle.

22 MR. BRADBURY: Your Honor, I'm going to object  
23 to this. It's not relevant. This person's not here to  
24 testify.

25 MR. JONES: He's talking about the



1 manufacturing --

2 MR. BRADBURY: Whoever this person is from  
3 Canada.

4 MR. JONES: He's talking about the manufacturing  
5 process of how the lenses were created, and it's his  
6 personal knowledge of it.

7 THE COURT: I'll allow it.

8 THE WITNESS: So based on his background, he  
9 developed optics for mission to Mars. He's right now  
10 working on Joseph (sic) Webb Telescope that NASA's put out  
11 in space. So his background was what we were looking for.  
12 He's an expert in optics. And he's the one who designed  
13 these lenses.

14 But the difficult process of it was is there's a  
15 lot of -- first of all, you have thousands of ridges that  
16 you've got to cut into a metal. And the drum that we used  
17 is a cylinder, so you have to have all these angles around  
18 this cylinder, plus you have radiuses and angles of the  
19 facets of this image that we have to imprint into this  
20 plastic. Well, in order to have optic quality, when you  
21 cut into metal from a CNC machine, it's not polished. And  
22 the only reason why we were working with him was the fact  
23 that he also -- he had a diamond turning machine, which  
24 when you cut into the metal, it comes out with a mirror  
25 finish, like a tenth of a micron finish.

1           So we were devising -- and with him, it took us  
2 almost two years to get this design worked out so that we  
3 could get this and what the process was. We eventually --  
4 I'm telling you the progress of how he went through this.  
5 So we did -- even though it had to be on a cylinder, we  
6 cut them on flat plates, eight flat plates that would be  
7 wrapped around this cylinder. And the plates were nickel,  
8 which is a very hard alloy.

9           When we were machining them out, the diamond  
10 turning machine didn't quite have the travel that we  
11 needed and it was extremely slow. And this was part of  
12 the difficulty of the plan as well was that we had to  
13 actually take those to a regular high-tolerance CNC  
14 machine and cut on a three axis. When you do that, you  
15 don't have a mirror finish. So we cut all those plates  
16 anyway. And his process was to get those polished up to a  
17 mirror finish. And six months went by, and we weren't  
18 making the progress that we felt like that we should.

19 BY MR. JONES:

20           Q     What time frame is this now that you're speaking  
21 of?

22           A     Probably 2004, I think. I'm guessing.

23           Q     Okay.

24           A     So anyway, me and a colleague flew up to Ottawa.  
25 And our directive was to come back with that finished. So

1 we had no idea how long we were going to stay up there.  
2 Once we got up there, we saw the magnitude and the  
3 difficulty of what was going on. And we calculated it  
4 out. And had we not intervened and worked in this  
5 particular different direction to get those polished, the  
6 staff that he had at the time to polish it was not enough  
7 to get it done in the time frame that we needed.

8 So fortunately for us, there was a college  
9 nearby that had optic students there and the teachers or  
10 professors were on strike. So we were able to hire 30 of  
11 the optic students to come in. And we took a warehouse,  
12 rented a warehouse, set up tables, eight tables, and we  
13 had 16 stations. And we ran that for 24 hours a day for  
14 two months.

15 And Brian oversaw it. He made sure that every  
16 step was taken. And the polishing process was extremely  
17 tedious. I mean, if you count all the different -- the  
18 eight plates. There were probably 16,000 lines, roughly,  
19 that we had to get polished to a tenth of a micron finish.  
20 And when we cut those, those things are just gray.  
21 There's no reflection on there. That metal's just gray.

22 So we had to take that all the way from there up  
23 to a complete polish. And to do that, we had, like, 11  
24 steps. And if you miss a step, if you get up past a  
25 certain point and you can see that it's not perfectly

1 polished, you'd have to go back to those steps. It was a  
2 very long process. I wanted to die many times. But we  
3 got that done.

4 The precision on this was extremely high  
5 tolerances because you have -- in the extrusion process,  
6 you have two cylinders that have to have the same diameter  
7 because they're rotating -- they're interdependent on each  
8 other in the rotation of the extrusion process.

9 So for example, when we're wrapping this nickel  
10 plate around this drum, there's several things that need  
11 to happen. First of all, it has to be perfectly aligned.  
12 Second of all, it has to be attached to the drum. And  
13 nickel is very stiff.

14 And then number three, it had to have pure  
15 thermal conductivity to go through. So if you're  
16 attaching this, you have a nickel alloy and you have an  
17 epoxy, the epoxy has to have the same expansion rate as  
18 the metal or it will peel. And it also has to have the  
19 thermal conductivity because that cylinder is water-cooled  
20 because they have to keep that at a constant temperature  
21 when you're doing the extrusion process. So all that was  
22 very, very meticulously worked out.

23 We finally got it done. And then the head  
24 engineer of Lucite met us in Canada, looked at the tool to  
25 make sure that it would be something that they would still

1 consider doing. And he gave the greenlight, so we sent it  
2 to Lucite.

3 Now, what's interesting is that we had to have a  
4 custom mechanism to get it onto the tool, all the  
5 precision and everything. And then in addition to that,  
6 if you touched it with -- if anyone just touched that with  
7 their finger, we'd have to go back three steps on the  
8 polishing process to get that fingerprint out of there.  
9 That's how meticulous we were and had to be on those.

10 THE COURT: Mr. Jones, this is all sort of  
11 background information. And I understand that the  
12 manufacturing process for the lenses was extremely  
13 complicated and so forth, but if Respondent has agreed  
14 that these lenses were properly manufactured so that they  
15 could generate enough heat to --

16 MR. JONES: Fair point, Your Honor.

17 THE COURT: Then it seems like we don't need too  
18 much detail about all the complexity. I understand it's  
19 an extremely complicated process and it was very  
20 painstaking and frustrating for them. But by the time  
21 they got to our tax years, they had solved their problems,  
22 it appears, and were able to manufacture lenses that  
23 worked --

24 MR. JONES: Right. Yeah.

25 THE COURT: -- in a simpleminded sense.

1 MR. JONES: And I think that's the overarching  
2 point that we're trying to demonstrate, is that it was a  
3 very long, expensive product to come up with these lenses.  
4 So it's not --

5 THE COURT: Yeah.

6 MR. JONES: They're not just sort of a cheap  
7 piece of plastic. There's a lot that cost that goes into  
8 it. Anyway, so --

9 THE COURT: Well, it could be by the time they  
10 actually got around to manufacturing them, having incurred  
11 millions of dollars of some cost, the per unit extra cost  
12 to produce the end unit was not that high. But of course,  
13 like a pharma company, you've got to cover all of your sum  
14 costs --

15 MR. JONES: Exactly.

16 THE COURT: -- when you sell the stuff, right?

17 MR. JONES: Right.

18 THE COURT: Right.

19 MR. JONES: And that's the point.

20 THE COURT: Right.

21 MR. JONES: But if we're understanding that's  
22 the point, we can move on.

23 THE COURT: Okay. Good.

24 MR. JONES: Okay. Great.

25 BY MR. JONES:

1 Q So let's do that. Let's move on. And so we  
2 have kind of understood that it was a lengthy, costly  
3 product. You've got the lenses now. Okay. The idea,  
4 right, is they're going to be used somehow by this  
5 operator LTB. Is that your understanding?

6 A Yes.

7 Q Can you talk to me about what are the  
8 applications that these lenses were intended to be used by  
9 LTB? I mean, what was going to happen when they were  
10 leased back to LTB? What are these lenses going to do?

11 A Well, there are a lot of uses because it's heat.  
12 Electricity is one of them, but there's a lot of aspects  
13 of heat that were very important to us. Even if you  
14 produce electricity, we still wanted to capture the heat  
15 to keep the efficiency of the overall system high. So  
16 even if you're producing electricity at a low efficiency,  
17 we wanted to be able -- there's still excess heat that can  
18 be used for other processes. So either way, we wanted to  
19 use the heat.

20 Sometimes we had processes we wanted to just use  
21 the heat directly for. For example, when you're out --  
22 there are plenty of rural homes that use propane for heat.  
23 The system can heat a home. It can distill water. The  
24 brilliance of the concept of using the heat for heat  
25 storage is that -- and sulfuric acid, when you put water

1 in it, turns to heat, has exothermic reaction. And you  
2 can distill that. You can distill it from 10 percent up  
3 to 50 percent at about 120 C. And then you can distill it  
4 from 50 percent up close to 98 percent at 330 C.

5 And so you can take this system in the  
6 summertime and you can be in a winter place, live in a  
7 winter place, but you can take that and use it exclusively  
8 just to distill sulfuric acid during the summer when you  
9 don't need the heat and then use that heat by just adding  
10 water for your home, for other things there in the  
11 wintertime.

12 Q Okay.

13 A So that's one.

14 Q So storing heat. What else?

15 A Distilling water. So you could have -- with the  
16 turbine itself, you can use that to distill water. I went  
17 to the -- for example, I went to Mexico City and met with  
18 the government there because they were looking at putting  
19 a water desalination site on the Baja. And it was a very  
20 informative system. They were putting up I think it was a  
21 ten megawatts power plant just to distill water. That  
22 would consume all of the energy, whereas if you have a  
23 system like ours that's producing electricity and  
24 distilling water, the waste of the -- distill water's a  
25 byproduct of producing electricity when you do that. So



1 there's that.

2 And then the other thing was we were also  
3 developing photovoltaics, which is also both with heat and  
4 electricity. For example, with our system, if you put --  
5 which is what we did. You put a photovoltaic -- we've  
6 used monocrystalline. We've used the multijunction high  
7 density chips as well, or cells. But when you focus that  
8 focal point down onto those chips, you need to cool it.  
9 So our cooling system, we can still take the heat after  
10 you produce electricity from those PV systems and use the  
11 heat.

12 Q Okay. So you mentioned distilling water and  
13 then photovoltaic. When did those ideas or application --  
14 when were they being worked on?

15 A They were all simultaneous.

16 Q And what time frame are we talking about?

17 A We started working on all of them around roughly  
18 2003, 2004 we start working on all of them. For example,  
19 I'll use the photovoltaic system as an example. We got  
20 our patents in 2010. So there was a lot of work that went  
21 into that before those were even -- those patents were  
22 awarded.

23 Q Were you still working on them in 2009, for  
24 example?

25 A Yeah.

1 Q All of those --

2 A We wouldn't have gotten a patent unless we had  
3 been working on them previous to the patent, which is in  
4 2010.

5 Q Okay.

6 A So we had been working on it that whole decade  
7 practically before.

8 Q Okay. Just to clarify. That's those three  
9 applications. You would say those were being worked on  
10 during 2009, '10, '11, '12?

11 A Yeah. We were using -- yeah. We were using  
12 energy from the lenses to help develop all that. That was  
13 an integral part of that. The same with the structure.  
14 And we can get into the installing the lenses and so  
15 forth. But yeah. Those were all the things we were  
16 working on.

17 The interesting thing about photovoltaics and  
18 the reason why it was different than what anyone else was  
19 doing is that photovoltaics, the way that it's connected  
20 is in series. So each chip affects the other chip. So  
21 the way that photovoltaics CPV works is where they use a  
22 single chip for each one of those and then connect those  
23 in series.

24 But to be cost effective from our analysis, you  
25 needed a big lens to focus down. But if you're going to

1 do that, you'd have to have an array in the single focal  
2 point. And that becomes a problem with the existing  
3 systems the way they are today, because it's the lowest --  
4 to simplify, it's the lowest producing chip is what you  
5 get out of the whole system.

6 Q In terms of efficiency?

7 A In terms of production.

8 Q Oh, in terms of --

9 A Energy production.

10 Q -- energy production?

11 A Yeah. If you had the lowest producing chip up  
12 in the corner, the cell up there, if that's getting no sun  
13 because the sunlight doesn't quite catch that corner, all  
14 of those chips you lose that power. So that was the  
15 struggle in doing CPV.

16 What we accomplished, which had never been done  
17 before, is that we took every one of those. We did an  
18 array in the receiver where each one of those chips are  
19 independent of each other. So they don't affect the  
20 other. They're all acting independent. On the conversion  
21 side, again, which has never been done before, it looks  
22 like it's all in series and then stepped up from there.  
23 But all of these were independent.

24 And so when we started working on that, the  
25 first thing we did when we got the patents was we got a

1 feasibility study of that actual technology because it has  
2 other applications as well. And in doing this  
3 development, it also developed other applications. It's  
4 an instant charge battery. You can't use capacitors in  
5 current technology as a battery. And that's good for  
6 solar backup as well as for cars and other systems. In  
7 the windows, you can replace the gears because you don't  
8 have to have the constant speed of the mechanics.

9 MR. BRADBURY: Your Honor, I'm going to object.  
10 This is speculation, all these different technologies.  
11 It's irrelevant and speculation.

12 THE WITNESS: Except that we have a paper on it.

13 MR. JONES: Well --

14 THE WITNESS: Okay.

15 THE COURT: I am wondering a little bit about  
16 the relevance of all the other types of projects, like  
17 photovoltaic --

18 MR. JONES: Right.

19 THE COURT: -- that they're working on. I  
20 understand a lot of R&D going on, but the question in our  
21 case is whether these lenses were placed in service in --

22 MR. JONES: Right.

23 THE COURT: -- some kind of system. The fact  
24 they're working on biomass and photovoltaics and --

25 MR. JONES: Right. We'll move on, so no

1 problem.

2 BY MR. JONES:

3 Q Let me ask you this, sir. You do have a lot of  
4 projects. And those were intended to be how the lenses  
5 would be used. But let me ask you kind of I guess a  
6 simple question. Why is there no money being made in LTB?

7 MR. BRADBURY: Objection, Your Honor.

8 Speculation.

9 THE COURT: I'll allow it.

10 THE WITNESS: We're trying to finish the  
11 projects. I mean, really the idea is that -- I mean, we  
12 are and have been using the lenses to produce heat. The  
13 lenses themselves have multiple purposes on the same  
14 tower. So we can use that to actually distill sulfuric  
15 acid. We can use that to distill water and to produce  
16 electricity. But we can use it also for R&D. And we were  
17 using that -- the energy was imperative for that as well.  
18 So I mean, there was a lot of things that slowed this  
19 project down.

20 BY MR. JONES:

21 Q What were those things?

22 A Well, I mean, one of them is obvious here today.  
23 I mean, there was a lot of -- we have a limited amount of  
24 people that can work in certain areas of development.  
25 Now, you can hire out and contract out engineering once

1 you know what you need to get done. But if you're coming  
2 up with a new idea or solving a problem, it's hard to  
3 bring in someone else just to do that that is used to just  
4 working on specific refinements. And so our time was  
5 divided.

6 And we had a lot of pressure in many areas.  
7 There were other things. I mean, I think that sometimes  
8 as we were doing the development, we should have -- I feel  
9 like we could have subcontracted out other things a little  
10 more than what we did, I think, in hindsight. We went  
11 down a parallel path once. We went down a parallel path  
12 in one development on a project. We decided to -- while  
13 we were still doing the lenses, system that we have right  
14 now and using those lens systems in the towers and stuff,  
15 we also were working on to build a bigger lens and a  
16 bigger thing -- I worked with Somos Engineering (ph.) on a  
17 big five-megawatt power plant design where we had all the  
18 piping and everything completely designed. We flew in a  
19 guy from Chicago that was giving the design for all the  
20 installation for that.

21 I was working with another engineering firm,  
22 Pearson, on designing. We worked with probably five or  
23 six different civil engineering firms on the design of our  
24 tower. But we worked on this project. And that, in  
25 hindsight, was a mistake. We were working on this project

1 and that project. And that took some of our time away.

2 But it was trying to build those lenses a little  
3 bigger than what -- we were doubling the size. And the  
4 cost of the columns itself, because it had to be custom  
5 made, it wasn't the right direction. We didn't find that  
6 out until about a year later. So we lost probably a  
7 little bit of time there. But I think this right here has  
8 been the biggest burden to us.

9 THE COURT: Mr. Johnson, is the short answer to  
10 counsel's question that you didn't earn any income because  
11 you were still in the R&D phase? And unless you're  
12 performing R&D for somebody else under contract, you don't  
13 make any money during the R&D phase? R&D phase is a  
14 capital consumer, not income generator.

15 THE WITNESS: Yeah. I would say both. I would  
16 say both that and also we were still building the project  
17 out. So even though we were doing R&D, we were also  
18 trying to build out the projects.

19 THE COURT: But what was the projects? It  
20 sounded there were like five or six or more different  
21 possible projects that you were looking at.

22 THE WITNESS: Right. And we were working on a  
23 lot at the same time. I mean, I'm exhausted just talking  
24 about this right now. But the towers themselves are  
25 self-contained. We had earlier designs in 2008 and 2009

1 where they were all connected together. And it just  
2 cost-wise wasn't working.

3 So we made the tower self-contained where a  
4 turbine was going to be on every tower. We had 25  
5 turbines built for that. And that's what we were working  
6 on getting installed. I had met with several cities. I  
7 was the lead on getting a power purchase agreement with  
8 Needles, and that's the parallel project we worked on. We  
9 got a power purchase agreement with them to build a  
10 five-megawatt project.

11 And to do that, we made the mistake, in my  
12 opinion, of building too big of the lenses and all this  
13 stuff. And we went 95 percent of the way because we had  
14 been through three stages of developing these lenses, so  
15 we knew what we were doing. And we were building one that  
16 was 120 inches on the face, so you double that. So it's a  
17 big lens. So we work in parallel.

18 But we were finishing -- when I was doing that,  
19 I went around -- I was talking to cities like Pasadena,  
20 Glendale, Anaheim -- because California is a hotbed for  
21 wanting renewable energy. And all of them wanted firm  
22 power. The thing that solar was giving anyone was firm  
23 power because it's intermittent. And that's what our  
24 project gives.

25 So in doing that though, I had come across a



1 company called 3 Phases out of Manhattan Beach,  
2 California, that -- they're called a scheduler. What they  
3 do is they sell power intermittently like a commodity. So  
4 in California, you can sell power through the open market  
5 if you have what's called a scheduler. And that's what  
6 they are. And so he gave me a letter and said we'll sell  
7 whatever power you want us to --

8 THE COURT: Okay. I think you answered my  
9 question. Thank you.

10 THE WITNESS: Okay. So yeah. So we were  
11 developing -- we were building an actual project, both  
12 for -- I can't emphasize this enough. We really love the  
13 distillation of sulfuric acid because 75 percent -- this  
14 is public statistics -- 75 percent of industrial energy is  
15 not in electricity but in heat. And if we can build these  
16 plants in areas that are arid, we can ship that heat from  
17 the summer to these people.

18 And that's renewable because that very same  
19 sulfuric acid that's diluted on the site can be shipped  
20 back to us to distill. So unlike natural gas, where you  
21 burn it up, this is continuously renewable, and we love  
22 that. Even in Alaska where you would think there's not  
23 enough sun. But in the summertime, they have sun all the  
24 time. And you can distill that sulfuric acid all summer  
25 long. And so those were the things we were actually

1 building out. Although we were doing R&D, we were  
2 actually building that out too as well --

3 MR. JONES: Okay.

4 THE WITNESS: -- at the same time.

5 MR. JONES: All right. Well, thank you. I  
6 appreciate your testimony.

7 I'll pass the witness. That will be all I need  
8 to ask about.

9 CROSS-EXAMINATION

10 BY MR. BRADBURY:

11 Q Mr. Johnson, you mentioned you had a degree in  
12 computer science. When did you graduate?

13 A I graduated in probably '95, I think. '94, '95.  
14 I was in computer science before Windows. I was in back  
15 when they had DOS and Windows was just barely coming out.

16 Q And you earned a degree?

17 A Yeah. I did.

18 Q Did you study mechanical engineering?

19 A No.

20 Q Do you hold any professional licenses?

21 A No.

22 Q You talked about your role with IAS was  
23 technical development. Were you also vice president?

24 A You know what? We wore a lot of hats. I could  
25 have been. I mean, we were one of those small companies

1 that, yeah, I'm sure that I could be considered that.

2 Yeah.

3 Q Were you a board member?

4 A No.

5 Q You weren't a board member of IAS?

6 A No. I was secretary, so --

7 Q Secretary or vice president?

8 A Well, I did both.

9 Q Okay.

10 A I mean, again, it's a handful of people. No one  
11 really called anybody by their title.

12 Q Yeah. You talked about "we" a lot in your  
13 testimony. You said we did this, we did that. Who is we?

14 A The team of everyone who worked there.

15 Q Okay. What are their names?

16 A Neldon Johnson, Legrand Johnson. There was a  
17 Chris Taylor, Curtis Snow, Sam, Rob. I don't know. There  
18 was quite a few.

19 Q Neldon Johnson is your dad?

20 A Yeah.

21 Q And Legrand Johnson is your brother?

22 A Yes.

23 Q Do any of those individuals have an engineering  
24 degree?

25 MR. JONES: I'm going to object.

1 THE WITNESS: I don't know.

2 MR. JONES: I'm going to object. It's outside  
3 the scope of what my direct was. I don't know what --

4 THE WITNESS: We hire engineers. Every one of  
5 our -- our turbine was reviewed by a --

6 MR. JONES: Hold --

7 THE WITNESS: -- PhD mechanical engineer.

8 MR. JONES: That's not responsive to the  
9 question. I had an objection.

10 THE WITNESS: Oh, okay.

11 THE COURT: I'll sustain the objection.

12 BY MR. BRADBURY:

13 Q Were you compensated by IAS?

14 A Yeah.

15 Q What was your salary roughly, a range?

16 A I don't know. About 60,000 a year, I would  
17 guess.

18 Q Was that from 2000 -- or you said 1995-ish to  
19 2016, was the same salary every year?

20 A No. I think I was making under 50,000 up until  
21 probably about 2011, I think.

22 Q You're no longer employed by IAS, correct?

23 A No, I'm not.

24 Q And that's because the receiver took over the  
25 company from the --



1 A Yeah.

2 Q -- District Court case?

3 A Yeah.

4 MR. JONES: Objection. It's outside the scope  
5 of my direct. I don't know what relevance it has.

6 THE COURT: I'll overrule that objection.

7 BY MR. BRADBURY:

8 Q You talked about a number of different  
9 technologies that you were working on. And you said you  
10 talked to engineers. Did you hire any engineers to work  
11 for IAS?

12 A Yes.

13 Q They were outside consultants?

14 A Yes. Yeah.

15 Q You never had any on your staff of IAS?

16 A We may have had -- I think that Jeremy (ph.) may  
17 have been an engineer. And Curtis was a design  
18 technician. I guess so. Now, we --

19 Q What's Jeremy's last name?

20 A I don't know what his last name is.

21 Q When did he work at IAS?

22 A He worked for a couple years, I think.

23 Q When?

24 A 2000 -- I don't know. 2012 or '13. I don't  
25 know.

1 Q So this is after you developed the lenses?

2 A Oh, yeah.

3 Q You mentioned that you put together a system  
4 with dual-axis tracking in 2003. And that dual-axis  
5 tracking tracks the sun as it goes from east to west and  
6 up in the sky and then back down, right?

7 A Yeah.

8 Q Did you ever install that on any towers?

9 A We did a different dual-axis tracking system.  
10 The one that was on that system was tracking by the  
11 photovoltaic -- I mean, by the photo sensors. The ones  
12 that we did on the tower were the ones that we used the  
13 formula. It calculates the sun's position without having  
14 to use a photo sensor. So what we did was we had what's  
15 called an encoder --

16 Q So if you could --

17 A -- going east and west.

18 Q -- just answer my question yes or no. You did  
19 install a dual-axis tracking system on one tower?

20 A No, more than one tower, but yeah.

21 Q Is that at the test site?

22 A Yeah.

23 Q How many towers were at the test site?

24 A 19.

25 Q And when were they built?

1           A     The first three were built, I think, in around  
2     2006.  And I think that the rest of them were built around  
3     2008 or '09.  Somewhere in that range.

4           Q     And no other towers were erected at the test  
5     site?

6           A     None were put in the ground.  There were about  
7     200 trusses that were built with the lenses in it.  And  
8     then we had the actual columns on the site too ready to go  
9     into the ground.

10          Q     Was that at the test site?

11          A     Yeah.  Right off the -- they were all adjacent  
12     in the property.

13          Q     And when was that, those 200 towers were built  
14     or put on the ground?

15          A     Well, they had been worked on since probably --  
16     they've been being worked on probably since 2010 or so.  I  
17     don't know.

18          Q     Those 200 towers you're saying were built in  
19     2010?

20          A     No.  You said when were they worked on.  They  
21     were started on around probably 2010.  There were  
22     different intermittents when we were working on those.  So  
23     it was intermittent, but yeah.  Somewhere in that range.  
24     I don't --

25          Q     But there was only 19 ever fully constructed

1 before 2015?

2 A Yeah. Yeah.

3 Q You mentioned something. I think you just were  
4 confused. You said that individuals leased lenses. Was  
5 that accurate?

6 A Well, the LTB leased lenses from --

7 Q So individuals --

8 A -- whoever.

9 Q -- purchased the lenses and then they leased it  
10 to LTB?

11 A Yeah.

12 Q Do you have any role with LTB?

13 A No.

14 Q Do you know who owns LTB?

15 A No.

16 Q You talked about getting a power purchase  
17 agreement with somebody. Who was that?

18 A We did get a power purchase agreement. The  
19 power purchase agreement was with Needles.

20 Q And you did not get it?

21 A No, we got the power purchase agreement.

22 Q Do you have a copy of that?

23 A I don't have it with me, but I can get one.

24 Yeah.

25 Q Was it contingent on you developing this solar



1 power plant?

2 A Yeah. Well, no. It wasn't. I mean, yeah,  
3 obviously if the plant doesn't go up, they don't buy the  
4 power. Yeah.

5 Q So they never bought power from you?

6 A No. That was a parallel plant we were working  
7 on separately that we built too big -- that we were  
8 working on too big of the lenses. That was a process  
9 that, like I said, in hindsight we shouldn't have went  
10 that direction.

11 Q It failed?

12 A No. We just never got it done, so -- that was a  
13 different project that has nothing to do with the one  
14 we're working on.

15 Q Were there any consequences to breaking the  
16 power purchase agreement with Needles?

17 A No.

18 Q Towards the end of your testimony, you talked  
19 about this industrial energy is 75 percent heat.

20 A Yeah.

21 Q Where did you find that statistic?

22 A On the NREL site, the government site.

23 Q You also described running some headlights on  
24 trucks. Was that with the CSP system, the concentrating  
25 solar power?

1           A     No. That was with the turbine. And they  
2 weren't running lights on trucks. We set up -- it's in  
3 the photographs you have, I'm sure. But it was set up on  
4 the door of a semitrailer. And we had headlights, truck  
5 headlights, put on there. And it hooked into the  
6 generator that was ran by the turbine.

7           Q     And what was making the turbine move?

8           A     The solar.

9           Q     From what type of system?

10          A     Our lenses, the first phase of the lenses before  
11 these bigger lenses.

12          Q     Yeah. Was it CPV or CSP?

13          A     No, CSP.

14          Q     Okay. That was my first question.

15          A     Okay. I didn't understand what you were saying,  
16 so --

17          Q     You never put any electricity on the grid,  
18 right?

19          A     Not that I'm aware of, no.

20          Q     IAS never put any electricity on the grid?

21          A     Not that I'm aware of.

22          Q     Never sold electricity to anyone?

23          A     Not that I'm aware of, no.

24          Q     You said it took four years to develop lenses  
25 and cost millions of dollars to develop. Who paid

1 millions of dollars?

2 A Neldon did. I did.

3 Q You paid out of your own pocket?

4 A Yes. I did and my brother did, yes.

5 Q How much did you pay out of your own pocket?

6 A It came to probably almost a million dollars.

7 800 -- almost a million dollars, yeah. Roughly.

8 Q So you were making \$60,000 a year from 1995  
9 through 2016?

10 A Yeah. Yeah.

11 Q Where did you get a million dollars?

12 A Stock. I had stock --

13 Q Stock in what company?

14 A International Automated Systems. I had stock in  
15 that company. That's what I was -- I had stock to work  
16 for that company. And I sold it. I sold a big chunk of  
17 it to help develop these technologies.

18 Q So in addition to your salary, you were paid in  
19 stock from the company?

20 A Yeah. I guess. I mean, early on, I was given  
21 stock from my dad.

22 Q Did you write any checks to pay for any of the  
23 consultants for IAS?

24 A Me personally?

25 MR. JONES: I'm not sure how this is relevant



1 to --

2 THE COURT: Yeah. What --

3 MR. BRADBURY: He testified he had all these  
4 different roles. And so I'm asking what some of those  
5 roles were.

6 THE WITNESS: Those roles -- I hired them, but I  
7 didn't pay them.

8 THE COURT: Well, I think he explained he wore  
9 many corporate hats.

10 BY MR. BRADBURY:

11 Q And secretary was one of them. Does the  
12 secretary usually write checks?

13 A No. I didn't write a single check.

14 Q Okay. You talked about a Canadian optic expert.  
15 And you said he designed the lenses.

16 A Yeah. We hired him.

17 Q So IAS didn't design the lenses?

18 A Well, we hired him to design the lenses we  
19 wanted. We came up with the design. For example, the --

20 Q You didn't have the expertise to design lenses  
21 yourself. You had to hire that out?

22 A We had to hire out the optic side of it, but the  
23 design of the actual lens shape -- see, the interesting  
24 thing about when you're doing --

25 Q That's good. You answered the question.



1 A Yeah. Okay.

2 Q You said you went with a colleague to Canada.

3 Who was that colleague?

4 A Curtis Snow.

5 Q Was he an expert in solar lenses?

6 A No.

7 Q Is he an engineer?

8 A He's a design engineer. Yeah.

9 Q A mechanical engineer?

10 A No. He's not a mechanical engineer.

11 Q And you hired 30 students from a nearby  
12 university to polish lenses working day and night --

13 A Yeah.

14 Q -- for two months?

15 A Yeah. Under the direction of Brian Kraeger, who  
16 is the optics engineer directing all the -- exactly what  
17 we were doing.

18 Q Did you pay these students?

19 A Yes.

20 Q How much did you pay them?

21 A I don't know. It was a long time ago.

22 Q The five-megawatt plant that you were  
23 concurrently developing, was that with Needles, the thing  
24 you were talking about with Needles?

25 A Yeah.

1 Q And was that a CSP system?

2 A It was, and it would also -- we were also  
3 looking at doing the CPV part of it as well. Yeah.

4 Q What was part of the contract, the power  
5 purchase agreement you said you had?

6 A They didn't specify. It just had to be solar.

7 Q You talked about Lucite making the lenses after  
8 you developed the machine to do that.

9 A No, we customized their machine. It was  
10 their --

11 Q Customized Lucite's machine?

12 A Yeah. It was their machine.

13 Q That was in Canada?

14 A No. That was --

15 Q That was a separate thing?

16 A Yeah. It's a separate thing.

17 Q Okay.

18 A That's after.

19 Q So Lucite actually manufactured the lenses?

20 A On a subcontract basis. Yeah. We hired them.

21 Q How many did IAS buy?

22 A I don't know. I don't know the answer to that.

23 Q You're the vice president of the company. You  
24 don't know the answer to how many lenses you bought?

25 MR. JONES: Objection.

1 THE WITNESS: That's --

2 MR. JONES: Asked and answered.

3 THE WITNESS: -- correct.

4 THE COURT: Well, can you give an order of  
5 magnitude?

6 THE WITNESS: Thousands. Many thousands.

7 BY MR. BRADBURY:

8 Q When they arrived from Lucite, they arrived on  
9 pallets, correct?

10 A Yeah.

11 Q And they were wrapped in plastic?

12 A Yeah.

13 Q Were they rectangular shape and then you cut  
14 them --

15 A Yeah.

16 Q -- there in Delta?

17 A Yeah.

18 Q How much did Lucite charge you per lens?

19 A I don't know.

20 Q Or did they charge you by pallet?

21 A No, they charged per lens, I think. I don't  
22 know. Something like that.

23 Q Were you involved in the contract with Lucite?

24 A I was in part. I just don't remember.

25 THE COURT: Mr. Johnson, you said that the

1 lenses arrived from Lucite in rectangular form and then  
2 you cut --

3 THE WITNESS: No. Yes. So that's what I was  
4 explaining when we talked about the design of the lenses.  
5 So when you have a shape of -- when we were trying -- when  
6 were first doing the design of the lenses, it was coming  
7 out we were going to have to do four different cylinders  
8 until we finally figured out a design that would work on a  
9 single cylinder. And that's the design also that we came  
10 up was so that we could cut it on a diagonal.

11 So it would come off the extrusion process in  
12 kind of -- it's more of a square, but it's close to  
13 rectangular. And then we have a diagonal on it. And then  
14 we flip it. So we can use one tool instead of four  
15 because we were going to have to design four. So yeah.  
16 We came up with that process.

17 THE COURT: But what I'm going at, the things on  
18 the pallet, in what shape were those? Were they  
19 rectangular?

20 THE WITNESS: Yes. And they have a diagonal cut  
21 on them so we cut them and it turns into --

22 THE COURT: So if an investor bought 12 lenses,  
23 what did he own? Did he own a piece of a rectangular  
24 thing or several rectangular things or what?

25 THE WITNESS: I don't know. I mean, I wasn't a



1 part of that. But yes. Rectangular. I mean, it was a  
2 diagonal. When it was put in place, it was a triangular  
3 shape, so --

4 THE COURT: Right. But when the investor  
5 purchased the lens, say he purchases 12 lenses, what did  
6 he own?

7 THE WITNESS: I guess the triangular shape.

8 THE COURT: But they didn't exist. They were  
9 still rectangles.

10 THE WITNESS: Well, no. But we made the lenses.  
11 We cut them.

12 THE COURT: Right. But the things sitting in  
13 the pallets, if they're rectangular in shape, how would an  
14 investor know what his permitted share of those rectangles  
15 was?

16 THE WITNESS: I guess one sheet of it, I guess.

17 THE COURT: I'm sorry?

18 THE WITNESS: I guess a sheet. The sheet of it  
19 is a lens. When we put them in the frames, that's when we  
20 cut it and put it in the frame.

21 THE COURT: But that happened after you take it  
22 out of the pallets?

23 THE WITNESS: Yeah.

24 THE COURT: Right. Okay.

25 BY MR. BRADBURY:

1 Q So just to follow up on Judge Lauber's question.

2 The rectangle isn't put on the tower. You --

3 A It is, but it's in the shape of a triangle when  
4 we put it on the tower.

5 Q You have to cut it first?

6 A Yeah. But it's the same thing.

7 Q And fit it into the mold or fit it into the  
8 frame? Sorry.

9 A The frame. Yeah.

10 Q Okay.

11 A Yeah.

12 Q So is there any way one of those rectangular  
13 sheets could be placed in service on a tower?

14 MR. JONES: Objection. Calls for a legal  
15 conclusion.

16 THE COURT: Well, try and avoid the placed in  
17 service terminology.

18 MR. BRADBURY: Yeah. Sorry.

19 BY MR. BRADBURY:

20 Q Is there any way a rectangular sheet could be  
21 placed on the tower without being cut first?

22 A That's an interesting question. Yeah. You  
23 could, especially if you're using CPV.

24 Q Is that the way you developed it?

25 A It's not ideal.

1 Q And it's not the way you developed it?

2 A If someone asked us to do it that way, we could.

3 Q Did anybody ask you to do it that way?

4 A No. No one did.

5 THE COURT: I thought the critical point of the  
6 lenses was they were -- the thing on the tower was a  
7 circle. There's nowhere you can put rectangles and make  
8 them into a circle.

9 THE WITNESS: Well, that's if you put them all  
10 together. But if you're using one independently, yeah,  
11 you could focus it down onto a CPV system. The nice thing  
12 about the CPV system is that we don't need to have it as  
13 focused. In fact, a little bit unfocused is better  
14 because it's less heat and it's easier to cool. So for  
15 example, when we --

16 THE COURT: But all the photographs I saw of the  
17 site had circular --

18 THE WITNESS: Right. Right. And that's what  
19 I'm saying. He was asking could you, and I said yes.

20 THE COURT: And it looked like the circles are  
21 made up of pizza pie slices --

22 THE WITNESS: Right. Right.

23 THE COURT: -- of triangles of sort.

24 THE WITNESS: But he's asking could we take one  
25 of those in a square and use it on a tower. And I said,

1 well, yeah, we could if we wanted to.

2 THE COURT: But you couldn't have used it on  
3 these towers?

4 THE WITNESS: Well, we can customize it. It  
5 just wouldn't be ideal. It would not be ideal. I'm just  
6 saying that he was -- in that question could it, yes, you  
7 could. Would it be ideal? No. Would we want to do that?  
8 No.

9 BY MR. BRADBURY:

10 Q You talked about developing a photovoltaic  
11 system in about 2010; is that correct?

12 A No. Before that. We started before that,  
13 but --

14 Q You started everything under the sun in 2003 and  
15 2004?

16 A Well, we got the patents in 2010. I had a  
17 feasibility study by Tyler Gilbert, who has a master's  
18 degree from Stanford University in electrical engineering  
19 who did a review of that exact technology.

20 Q Do you have a copy of that review?

21 A I can find it. And then --

22 Q Did you provide it to the Department of Justice  
23 when they asked for it?

24 A We turned everything in, so as far as I know,  
25 that's in there. The other thing --



1 Q It wasn't in there.

2 A Okay. But that --

3 MR. JONES: Are you testifying or --

4 BY MR. BRADBURY:

5 Q I want you to look at an exhibit actually real  
6 quick. In the first binder over there is Exhibit 21-J.

7 A 21-J?

8 MR. JONES: There's a binder that's labeled --

9 MR. BRADBURY: It's volume 1.

10 MR. JONES: -- volume 1 of 2.

11 THE WITNESS: Oh, okay.

12 BY MR. BRADBURY:

13 Q And there's tabs that have the numbers.

14 A Okay.

15 Q Turn to 21-J.

16 A Okay.

17 Q Are you there?

18 A Yeah. I've got the book open. Do you have a  
19 specific number you want me to go to?

20 Q 21-J.

21 A Oh, that's what you were saying. Okay. I  
22 thought you were saying the binder was 21-J.

23 Q I'm sorry for the confusion.

24 A Okay.

25 Q The first page, I want you to look at the second

1 to last "whereas". It says, "Whereas the operator at the  
2 operator's sole discretion may also be operating,  
3 maintaining solar thermal energy equipment other than the  
4 alternative energy system of the owner of the installation  
5 site". Does solar thermal energy equipment refer to a CSP  
6 system?

7 A Okay. Where are we at?

8 Q The second to last "whereas" on the first page.

9 A Okay. And what are you asking?

10 Q About the terminology "solar thermal energy  
11 equipment". Does that refer to a CSP system?

12 A It could be both because both are CSP systems.  
13 For example, if you're talking --

14 Q A photovoltaic system is a CSP system?

15 A Yeah. Because you have to cool it. So I'm  
16 saying it's both. The oil that we use to cool the  
17 photovoltaics, we can use that heat.

18 Q Well, I thought you talked about making  
19 distilled water.

20 A Yeah.

21 Q How do you make water out of oil?

22 A Liquid-to-liquid heat exchange. What you would  
23 do is you'd take the heat that you're cooling the chips  
24 with. And you'd collect all those BTUs. And you'd run it  
25 back to a system where you'd bring that temperature up

1 above 200 degrees. And you can distill water that way. I  
2 mean --

3 Q So did you do that?

4 A Well, we did distill water. We distilled  
5 sulfuric acid. We weren't using a cooling system for the  
6 PV. We didn't actually fully tie that part of the system  
7 together, but that was the intent.

8 Q That was the intent. Never happened.

9 A To tie the CPV directly into distillation, but  
10 collecting the BTUs, yeah, that did happen.

11 Q Did you ever sell any distilled water?

12 A No.

13 Q Did IAS ever sell any distilled water?

14 A No.

15 Q Did IAS ever sell any distilled sulfuric acid?

16 A No.

17 Q You talked about the Mexican government briefly  
18 operating a plant to distill water. Did they hire IAS for  
19 consulting?

20 A No.

21 Q Did you ever provide them any --

22 A No.

23 Q -- expertise?

24 A No. No, we just had a couple meetings just to  
25 talk about what they were looking at.

1 Q You also mentioned heating a home. Did IAS ever  
2 heat a home?

3 A No, not that I can think of.

4 MR. BRADBURY: May I have just a moment, Your  
5 Honor?

6 THE COURT: Yes, you may.

7 MR. BRADBURY: Okay. We have no further  
8 questions, Your Honor.

9 THE COURT: Okay. Thank you.

10 Counsel, any redirect?

11 MR. JONES: I have no redirect.

12 THE COURT: Okay. Mr. Johnson, you're excused.

13 THE WITNESS: Thank you.

14 THE COURT: Thank you for your testimony.

15 THE WITNESS: I'm an introvert. I don't like to  
16 sit in front of people, so --

17 THE COURT: Yeah. I'd never believe you're an  
18 introvert.

19 MR. JONES: Thank you, Mr. Johnson.

20 Petitioners call their expert witness, Ken  
21 Gardner.

22 And Your Honor, I would ask if I may mark and  
23 pass out the expert witness report.

24 THE COURT: Okay.

25 MR. SORENSEN: Your Honor, can I have a moment



1 with counsel?

2 THE COURT: Yes, you may.

3 MR. JONES: I apologize. Randy, would you  
4 mind -- just the same witness exclusionary rule applies.  
5 So would you mind --

6 MR. JOHNSON: Going?

7 MR. JONES: Yeah. Thank you. I appreciate.

8 THE COURT: Well, can he stay after he's  
9 testified? He's not going to be recalled.

10 MR. SORENSEN: Your Honor, I just asked counsel  
11 if he was going to recall him or not. If he's not going  
12 to recall him, he can excuse him. He can stay.

13 MR. JONES: Oh, I apologize. Okay.

14 THE COURT: He can stay if he's not going to be  
15 recalled.

16 MR. SORENSEN: Yeah. That was my question, if  
17 he was going to be excused.

18 MR. JONES: I thought you were asking -- and it  
19 doesn't matter to me.

20 MR. SORENSEN: No. If he's not going to be  
21 recalled and he's excused, we don't care if he stays.

22 MR. JONES: Okay. I'll let him know, if he  
23 wants to come back.

24 You're okay with me passing out and marking  
25 this?

1 THE COURT: Sure.

2 MR. JONES: May I approach?

3 THE CLERK: All right. I'm going to go ahead  
4 and swear you in. Please raise your right hand.

5 KEN GARDNER

6 having been duly sworn, testified as follows:

7 THE CLERK: Please state your name and address  
8 for the record.

9 THE WITNESS: Ken Gardner, 5566 South 200 West  
10 in Washington Terrace, Utah.

11 THE CLERK: Please be seated. Thank you.

12 MR. JONES: And I've passed that exhibit to be  
13 marked as Petitioner's Exhibit 1.

14 THE COURT: Well, we need to mark it next in  
15 line. 145?

16 MR. JONES: Oh, I'm sorry. I'm sorry. You're  
17 correct. Yeah.

18 THE CLERK: Yes.

19 THE COURT: So 145-P.

20 THE CLERK: Yeah. 145-P marked for  
21 identification labeled expert witness report prepared by  
22 Ken Gardner.

23 (Whereupon, the Document referred to as Exhibit  
24 145-P was marked for identification.)

25 DIRECT EXAMINATION



1 BY MR. JONES:

2 Q Good afternoon, Mr. Gardner. Would you mind  
3 telling us about your educational background?

4 A I have a bachelor's and master's degree in civil  
5 engineering from BYU. Graduated in 1981. Did my graduate  
6 work in hydropower.

7 Q And what kind of graduate work -- did you work  
8 toward a degree?

9 A Yeah. That was towards a master's degree, the  
10 hydropower work I did.

11 Q Great. And what work have you done since you've  
12 completed your degrees?

13 A Graduated in '80 -- excuse me, yes, '81. I  
14 worked for several consulting engineering firms. And then  
15 in 1991, I established my own firm. Municipal  
16 engineering, land surveying. I worked in the hydro field.  
17 In 19 -- or excuse me, 2005, I sold my business and  
18 started a design-build renewable energy company. So we  
19 design and build solar, wind, and hydroelectric systems.

20 Q And who do you sell those systems to?

21 A Numerous customers. We've installed  
22 approximately 2,000 systems in the 14 years I've owned the  
23 business.

24 Q Okay. And what are you doing right now? What's  
25 your employment situation right now?

1           A     I sold the business to a company called We Are  
2 Machinery in July. I've agreed to stay on as an employee  
3 for five years. I work primarily in commercial solar,  
4 photovoltaic, and micro hydropower.

5           Q     Okay. And do you hold any professional  
6 licenses?

7           A     Yes. I'm a professional civil engineer, a  
8 professional structural engineer, a land surveyor. I  
9 retired that license. And I'm a master electrician.

10          Q     Great. And have you worked with solar energy in  
11 your career?

12          A     Oh, yes. That's primarily what I've been  
13 working on. Photovoltaics primarily.

14          Q     Okay. Are you familiar with concentrated solar  
15 power?

16          A     I am. I've studied it. I'm familiar with it.  
17 I bid several projects. So I understand the technology.

18          Q     Okay. And how many cases have you testified in  
19 in the last four years?

20          A     I haven't as an expert witness in four years.

21          Q     Okay. Are you a professional expert witness by  
22 trade?

23          A     No.

24          Q     No. Okay. So you don't do this very often?

25          A     No.

1 Q Okay.

2 A Just a half a dozen times.

3 Q Okay. Have you ever taught any classes about  
4 solar energy before?

5 A I have. I'm chairman of the board of directors  
6 of an organization called Solar Energy International. And  
7 we teach solar classes, renewable energy classes, all over  
8 the world. I was in Oman last month. I'll be in Tanzania  
9 next month. And I teach solar, water pumping,  
10 hydroelectric classes.

11 Q Okay. And were you hired to prepare a expert  
12 witness report in this case?

13 A I was.

14 Q Okay. And were you compensated for that?

15 A Yes.

16 Q Is your compensation identified in your report?

17 A It is.

18 Q Okay. And did you have an opportunity to visit  
19 the facilities in Delta, Utah?

20 A I did. I was there in 2015 and then later in  
21 2017.

22 Q Okay. Did you have other meetings about the  
23 technology outside of Delta, Utah?

24 A No. I met with Neldon Johnson several times to  
25 understand his background, his technology, and several

1 meetings since then.

2 Q Okay. And is the report you have in front of  
3 you, is that the report that you prepared?

4 A Yes.

5 MR. JONES: Okay. Subject to qualification voir  
6 dire or whatnot, I move to admit the report as the direct  
7 testimony.

8 THE COURT: Well, first, could you state the  
9 scope of his expertise that you're propounding?

10 MR. JONES: Sure.

11 BY MR. JONES:

12 Q So specifically, what did you do in your  
13 report --

14 THE COURT: I don't mean what he did. I mean,  
15 what is the scope of his expertise? He's not an expert in  
16 horse breeding. He's an expert --

17 MR. JONES: Right.

18 THE COURT: -- in what?

19 BY MR. JONES:

20 Q Are you an expert in solar power generation?

21 A Solar power generation, sure.

22 Q And the creation of solar energy systems?

23 A Yes.

24 THE COURT: Okay. Does Respondent recognize him  
25 as an expert with that scope of expertise?

1 MR. BRADBURY: May I voir dire --

2 THE COURT: You may.

3 MR. BRADBURY: -- the witness, Your Honor?

4 THE COURT: You may.

5 VOIR DIRE

6 BY MR. BRADBURY:

7 Q Mr. Gardner, do you have a degree in mechanical  
8 engineering?

9 A No.

10 Q Civil engineering you said?

11 A Civil engineering. Yes.

12 Q Now, you talked about being a contract  
13 instructor for Solar Energy International?

14 A Yes.

15 Q Who do you teach?

16 A Students sign up from all over the world and  
17 come to our --

18 Q Is it government employees or is private  
19 industry?

20 A It's a little of both.

21 Q You teach photovoltaic courses?

22 A Yes.

23 Q And then micro hydro?

24 A Yes.

25 Q Do you teach any concentrating solar power

1 courses?

2 A No.

3 Q I want to look at a couple of your projects that  
4 you listed on your qualifications sheet in your report.  
5 The first is DFCM UDOT Calvin Rampton Complex. Carport  
6 mounted. Was that --

7 THE COURT: Counsel, where are you in the  
8 report?

9 MR. BRADBURY: Sorry. It's the qualifications  
10 page. They're not numbered. So I have it as page 21  
11 from -- yeah. The original copy I got from Mr. Jones.  
12 There's a picture of Mr. Gardner at the top.

13 You're welcome to turn there too, Mr. Gardner,  
14 if you haven't already.

15 THE WITNESS: I'm there. I'm there.

16 THE COURT: Well, I see page 21, but it doesn't  
17 have a photo on it.

18 MR. BRADBURY: It might be --

19 THE COURT: Okay. I got it. I found it.

20 MR. BRADBURY: Okay.

21 BY MR. BRADBURY:

22 Q Was that first project a CVP project or photo --  
23 sorry, CPV --

24 Q No.

25 Q -- photovoltaic project?



1 A That's just a number of projects we listed.

2 That project took place about four years ago.

3 Q What is that project, that first one, then?

4 A We installed solar electric modules on an  
5 existing carport -- for existing carports.

6 Q It's not a CSP system, correct?

7 A No, it's not.

8 Q What about the VA medical center in Salt Lake  
9 City?

10 A These are all photovoltaic projects.

11 Q They're all photovoltaic?

12 A Um-hum.

13 Q And your report mainly discusses photovoltaic  
14 technology; is that correct?

15 A Yes. Um-hum.

16 Q But that wasn't really the technology being sold  
17 to taxpayers in tax years 2009 through 2014; was it?

18 A That's correct.

19 MR. BRADBURY: Based on that admission, Your  
20 Honor, Respondent agrees Mr. Gardner is an expert in CVP  
21 technology, but since that was not the technology being  
22 sold to Petitioners in the tax years at issue, we'd object  
23 to him being qualified as an expert in this case.

24 THE COURT: You didn't file a motion in limine.

25 MR. BRADBURY: We did not.



1 THE COURT: Okay. I'll overrule the objection,  
2 and I will recognize Mr. Gardner in an expert in solar  
3 power with a particular concentration in photovoltaic  
4 projects.

5 MR. JONES: Anything further?

6 MR. BRADBURY: No further questions.

7 MR. JONES: Okay. Your Honor, I will just ask a  
8 few follow-up questions about his visiting and then I'll  
9 turn the time -- is that appropriate or would you like to  
10 just accept the report as is as direct?

11 THE COURT: If you want to ask follow-up, that's  
12 fine. We still need to admit the report into evidence is  
13 the next thing.

14 MR. JONES: I apologize. Can I do so now? May  
15 we admit the report as his direct examination and then --

16 THE COURT: Okay. Any objection --

17 MR. JONES: -- supplement with some additional?

18 THE COURT: -- Counsel?

19 MR. BRADBURY: No objection.

20 THE COURT: Okay. We'll admit 145-P into  
21 evidence.

22 (Whereupon, the Document referred to as Exhibit  
23 145-P was received into evidence.)

24 MR. JONES: Thank you, Your Honor. Appreciate  
25 the reminder. Anyway, I hope it slips everyone's mind as

1 we go through this, but thank you, Your Honor.

2 RESUMED DIRECT EXAMINATION

3 BY MR. JONES:

4 Q Mr. Gardner, I'd just like to -- maybe if you  
5 wouldn't mind just discussing with us what you observed  
6 when you went to Delta, Utah. Just explain what happened  
7 there and what you did and what you observed.

8 THE COURT: Let me just add a caution. So your  
9 report, your written report, under our rules is your  
10 direct testimony. So normally, it would be possible just  
11 to have you say no more and do cross-examination. But as  
12 I explained to counsel, my practice is to let the expert  
13 give sort of a three- to five-minute executive summary of  
14 his main observations and conclusions. So that's what  
15 counsel is asking you to do now.

16 MR. JONES: Thank you, Your Honor.

17 THE COURT: We're not going to have you walk  
18 through the whole thing.

19 MR. JONES: Yeah.

20 THE COURT: I've read your report. It's in  
21 evidence. That's your direct testimony. But if you'd  
22 like to summarize it and the key points, this is the time  
23 to do that.

24 THE WITNESS: The thing that stands out in my  
25 mind when I went to the facility was the PV aspect of it,

1 the concentrated PV. I went to the laboratory and they  
2 were testing multilayer PV or multilayer PN junction  
3 systems, which is the next technology that will emerge in  
4 the solar industry. So I was very intrigued by the  
5 facility and what they've learned, what they've done since  
6 then. And I've addressed that in my report to some  
7 degree.

8 Concentrated PV solar is not something you see  
9 constructed very often. I've bid a few projects; didn't  
10 get them. I understand the technology. But I concentrate  
11 primarily on PV. I observed the towers. The system was  
12 turned on for me. It produced energy while I was there.  
13 I saw the generator running. Fascinating technology. I  
14 understand their dual-axis tracking system. I observed  
15 that in operation.

16 The generator itself, the turbine, was very  
17 unique. Never seen anything like that before. Neldon  
18 used the nozzle from a rocket to propel the turbine, the  
19 generator. It was fascinating. I commend him for his  
20 creativity. I was impressed by my conversation with him,  
21 his patents. He holds 35 patents. Has 50 pending. So I  
22 told Neldon I've never met anyone quite like him.

23 And so the fact that the facility was old, he'd  
24 have problems with the Fresnel lenses cracking. And he  
25 resolved that. We talked about that. So again, I was

1 impressed by what I saw. Yes, there was debris on the  
2 ground and some conditions of material piling up, but I  
3 looked beyond that to see what had been accomplished.

4 MR. JONES: Thank you.

5 Yeah. I have nothing further, so I'll --

6 THE COURT: Okay.

7 MR. JONES: -- pass the witness to cross.

8 CROSS-EXAMINATION

9 BY MR. BRADBURY:

10 Q All right, Mr. Gardner. You mentioned you  
11 visited the site in 2015. Was that in the fall of 2015?

12 A I've got the date written down. I could look  
13 that up for you. I believe it's on my notes. I think it  
14 was November of 2015, as I recall.

15 Q When in 2017? What time of year did you visit?

16 A Summertime.

17 Q I'm going to walk through your report with  
18 you --

19 A Okay.

20 Q -- and ask a bunch of questions.

21 A Sure.

22 Q So I'm going to start with what I have labeled  
23 as page 4. I guess it would be page 2. The page where  
24 you say, "Opinions rendered".

25 A Um-hum.

1 Q In the paragraph above that, you're listing some  
2 of your qualifications. You say you've authored  
3 publications relating to solar electric design and  
4 installation techniques?

5 A Yes.

6 Q What publications were those?

7 A I've written the manuals, the training manuals  
8 that I teach from. Photovoltaics, micro hydro, solar  
9 water pumping.

10 Q For SEI?

11 A For SEI.

12 Q You also mentioned that you hold two patents for  
13 surveying and engineering equipment?

14 A Yes.

15 Q So you know the process of getting a patent?

16 A Yes.

17 Q As long as you're not infringing on existing  
18 technology and are willing to pay the fee, can you get a  
19 patent from the patent office?

20 A Yes.

21 Q When did you write the manuals you just  
22 mentioned?

23 A I'm continually rewriting them. I started about  
24 ten years ago. I update them.

25 Q As a first draft or --

1 A Yes.

2 Q -- the first edition. You update it?

3 A I update them all the time.

4 Q I want to turn to your first opinion, opinion  
5 number 1. "The solar lens is a part and/or component that  
6 is related to the functioning of equipment that uses solar  
7 energy directly to generate electricity". Did I read that  
8 correctly?

9 A Yes.

10 Q Can any solar lenses produce electricity by  
11 themselves?

12 A No, they direct photons to a receptor, which  
13 then converts into electricity.

14 Q So the lenses need to be part of a system --

15 A They're a part of a system. Sure.

16 Q -- to create electricity?

17 A Yes.

18 Q Let's go to the next page, the second full  
19 paragraph. Talks about Fresnel lenses being used since  
20 the 1960s.

21 A Yes.

22 Q Is that right?

23 A Correct.

24 Q When were Fresnel lenses -- when did they start  
25 being made of plastic?

1           A     I don't know the exact date when they're made of  
2 plastic.

3           Q     I think later on in your report, four pages  
4 later, towards the top, the first paragraph. This is a  
5 page with footnote 8 on it.

6           A     Okay.

7           Q     So the first sentence says, "The use of plastic  
8 Fresnel lenses in solar energy applications has been  
9 viable since the late '70s."

10          A     Okay.

11          Q     Is that correct?

12          A     Yes.

13          Q     So that's not new technology?

14          A     No.

15          Q     Fresnel lenses are not new technology?

16          A     No, they're not.

17          Q     Let's flip back to the page -- I should number  
18 this one so I can just reference it. It's probably page  
19 4. It's got the picture of conventional lens and Fresnel  
20 lens --

21          A     Okay.

22          Q     -- on the top of it.

23          A     Yes.

24          Q     The first paragraph, the last sentence. It  
25 says, "Applications such as" -- I don't know this word --



1 "monocrystalline" --

2 A Yes.

3 Q -- "photovoltaic generation of electricity are  
4 often equipped with imaging Fresnel lenses and accurate  
5 tracking has to be employed to keep the focus of the lens  
6 in place on the receiver absorber". Did I read that  
7 correct?

8 A Yes.

9 Q Did you see any towers with a dual tracking  
10 system?

11 A Yes.

12 Q And it was operating?

13 A Yes.

14 Q How many towers had the dual tracking system?

15 A I believe all of them had the tracking system  
16 that were there. Many of them weren't operational --

17 Q And how many --

18 A -- at the time.

19 Q -- towers did you see?

20 A I saw the 19 when I was there.

21 Q And that was in 2015?

22 A Yes.

23 Q Did you see any others in 2017?

24 A No.

25 Q Which visit did you see the tracking system

1 work?

2 A 2015.

3 Q The first visit?

4 A Um-hum.

5 Q How long did you watch it work?

6 A I was there a couple of hours.

7 Q And it tracked the entire time?

8 A Yes.

9 Q Were all four of the circle arrays on the tower?

10 A Yes.

11 Q And all four had lenses?

12 A Yes.

13 Q There weren't any lenses that were broken?

14 A I don't recall them on that particular tower.

15 Others had broken lenses, not that one.

16 Q And you saw broken lenses on the ground?

17 A Yes.

18 Q And scrap metal on the ground?

19 A Um-hum.

20 Q In the second paragraph of that same page, the  
21 last line has a concentration ratio.

22 A Yes.

23 Q That's a concentration ratio for a CPV system,  
24 correct?

25 A For a nonimaging system, yes.

- 1 Q Would that be the same concentration ratio for a  
2 CSP system?
- 3 A Yes.
- 4 Q It wouldn't be higher?
- 5 A No. Wouldn't need to be.
- 6 Q Wouldn't need to be?
- 7 A Huh-uh.
- 8 Q What do you mean, need to be?
- 9 A You don't want an imaging system because it  
10 concentrates the light in a small area. Too much heat.  
11 So a nonimaging system spreads the light out. Easier to  
12 control. Especially in a PV system. Easier to generate  
13 the electricity needed.
- 14 Q In a PV system --
- 15 A Yes.
- 16 Q -- that's especially easier?
- 17 A Yeah.
- 18 Q Let's go two more pages. This is the page with  
19 the picture of a guy in a --
- 20 A Yeah.
- 21 Q -- crane thing?
- 22 A Um-hum.
- 23 Q The first paragraph, you mentioned a high  
24 temperature fluid.
- 25 A Yes.

1 Q Is that the same thing as a working fluid?

2 A It would be the oil that they eventually used,  
3 yeah.

4 Q So IAS proposed to use oil?

5 A Yes. They tried different fluids.

6 Q They tried molten salt?

7 A Yes.

8 Q And they tried water?

9 A Water. And they --

10 Q Did they --

11 A -- transitioned to the oil.

12 Q They finally decided on oil?

13 A Yes.

14 Q They never switched back?

15 A Not that I'm aware of.

16 Q Does changing the working fluid require changes  
17 to other components of the system?

18 A The installation I know is an issue on the  
19 piping going to the turbine or to the heat exchanger.

20 Q Because different working fluids can have  
21 different temperatures, right?

22 A Yeah.

23 Q So the higher the temperature could melt certain  
24 components if --

25 A Yes.

1 Q -- they're not designed correctly?

2 A Correct.

3 Q So changing that fluid or flip-flopping that  
4 decision makes it difficult to finish a project?

5 A It appeared to me that they were experimenting,  
6 still learning, still trying.

7 Q But you can't finish the project until you make  
8 that decision?

9 A Yeah.

10 Q That will influence the other components?

11 A Sure.

12 Q The picture on the left here with the man and  
13 the crane, did you take this picture?

14 A No.

15 Q Do you know who did?

16 A No, it was just in their literature.

17 Q Do you know when it was taken?

18 A I don't.

19 Q Do you know where this is?

20 A That same location, same --

21 Q The test site with the --

22 A Test site.

23 Q -- 19 towers?

24 A Yeah.

25 Q It looks like there's a shiny metal thing that

1 man is standing next to. Is that a receiver?

2 A That's a receiver. That's the focal point.

3 Q That's a receiver that will absorb?

4 A In that particular case, I'm not sure what that  
5 structure was, but that's where the energy would be  
6 concentrated. And then the heat from there would be  
7 transferred to the heat exchanger.

8 Q And you saw a heat exchanger --

9 A Yes.

10 Q -- on your visit?

11 A Um-hum.

12 Q This isn't it?

13 A No.

14 Q There wasn't one on the tower in this picture?

15 A No.

16 Q Was there one on the tower when you visited?

17 A Yes.

18 Q So this picture doesn't match the drawing to the  
19 right where it has the receiver below the focused rays?

20 A Well, it's where the solar is concentrated, but  
21 the energy is not being transported from that site. But  
22 that is the focal point. They're just demonstrating how  
23 much heat could be generated in that photograph.

24 Q By reflecting it into this metal bowl?

25 A Yeah.

1 Q Are the solar lenses in this picture connected  
2 to anything?

3 A No. No, they're not.

4 Q And they're not producing electricity then?

5 A No.

6 MR. JONES: Sir, I'm a little bit late on my --  
7 can you just clarify when you say connected to anything?  
8 I'm not sure I understood the -- I know you answered, but  
9 I don't know what that meant.

10 THE WITNESS: Energy's not being transmitted, is  
11 what you're asking. Yeah.

12 THE COURT: So what is the glowing white thing  
13 that's near that guy's right arm?

14 THE WITNESS: That is the concentrated sunlight  
15 on that --

16 THE COURT: So why isn't he burning up? I mean,  
17 could you be that close to that level of heat with his  
18 hand like --

19 THE WITNESS: Well, I'm sure he's got --

20 THE COURT: -- inches from it and not be --

21 THE WITNESS: He's got a glove.

22 THE COURT: He's got a glove on. Okay.

23 THE WITNESS: You can't see it, but I'm sure  
24 he's got a glove on. It would be very hot.

25 THE COURT: Okay. You may proceed.

1 BY MR. BRADBURY:

2 Q It looks like in this picture that only two of  
3 the arrays are filled with lenses; is that right?

4 A Yes. In that case yes.

5 Q You can't really see the other two very well,  
6 but it looks like --

7 A Right.

8 Q -- they're missing lenses.

9 A Right.

10 Q Let's go to the next page, please. The first  
11 paragraph. The third sentence in this paragraph. You  
12 say, "I observed the focused heat generated through the  
13 solar lenses at the facility in Delta, Utah".

14 A Correct.

15 Q Did I read that correctly?

16 A Correct. Um-hum.

17 Q So you saw the solar lenses focus sunlight?

18 A Yes.

19 Q You saw it create heat?

20 A Yes.

21 Q Did you see that heat or focused sunlight  
22 absorbed by a receiver?

23 A Yes.

24 Q And you saw the solar lenses used to create  
25 electricity?



1 A Yes.

2 Q Was that a CPV system?

3 A No.

4 Q That was a CSP system?

5 A Yes.

6 Q Which fluid was being used?

7 A Oil.

8 Q You saw it create electricity for how long?

9 A They turned the system on to let me see it.

10 Half an hour.

11 Q It was a half an hour?

12 A Um-hum.

13 Q It wasn't the whole day?

14 A No.

15 Q Was that the same time the tracking system was  
16 working?

17 A Yes.

18 Q So why did they not keep the system running?

19 A It wasn't connected to anything.

20 Q For the solar lenses you saw, did they have any  
21 identifying marks on them?

22 A No. They're up in the air. I couldn't have  
23 seen them.

24 Q Too far away? When you visited, did you see the  
25 solar lenses used to put electricity on the grid?

1 A No.

2 Q Now, let's go to your second opinion. I need to  
3 flip back to read it correctly. Opinion 2. "The system  
4 using a tower design and an array of the solar lenses,  
5 which was installed at facilities I visited in Delta,  
6 Utah, by International Automated Systems, Incorporated or  
7 its affiliated entities, is technically viable to generate  
8 electricity with either steam-operated generators or  
9 concentrated photovoltaic power". Did I read that  
10 correct?

11 A Yes.

12 Q Is technically viable the same thing as  
13 commercially viable?

14 A No.

15 Q Technically viable is more theoretical, correct,  
16 than practical?

17 A Yeah. It can be done. Yes.

18 Q You say that a system was installed when you  
19 visited. Was that in 2015?

20 A Yes.

21 Q And by installed, you mean it was producing  
22 electricity?

23 A It was turned on to show me how it would work,  
24 yes.

25 Q But it wasn't putting anything on the grid?

1 A No.

2 Q How many of the towers that you saw in 2015 had  
3 their arrays filled with lenses?

4 A Just the one.

5 Q Just the one that you were looking at?

6 A Yeah.

7 Q On the same page, let's go to the third  
8 paragraph. It starts with, "It is my belief".

9 A Okay.

10 Q And the last sentence, you say, "IAS conducted  
11 extensive testing". By IAS, do you mean Neldon Johnson?

12 A Yes.

13 Q Did you meet any other people on your visits?

14 A I met Randy and a few of the other technical  
15 people who were working on it.

16 Q Were any of the technical people trained  
17 engineers?

18 A No.

19 Q Were they licensed engineers?

20 A No.

21 Q Who else was there besides Neldon and Randy? Do  
22 you know any names?

23 A No, they were just employees, workers.

24 Q Were they working on towers?

25 A They were working on that tower where I was to

1 show the tower to me, how it all operated.

2 Q To put on the show for you?

3 A Yeah.

4 Q When did this extensive testing occur?

5 A Well, I could tell by their facilities they had  
6 volt meters. They had other just test equipment on the  
7 site. I could tell that work had been done trying to  
8 investigate how much heat was being produced, just the  
9 details.

10 Q Did you test the high efficiency multilayer PN  
11 junction?

12 A No. No, that wasn't accessible to me.

13 Q Did you ever see any test results?

14 A No. Not at the time.

15 Q Have you ever seen any?

16 A Just in my conversations with Neldon and his  
17 son.

18 Q You've seen test results?

19 A I haven't seen them. I've just heard them talk  
20 about them.

21 Q From Neldon and his son?

22 A Yeah.

23 Q Let's flip to the next page, please. The first  
24 paragraph, first full paragraph, talks about a company  
25 named Solyndra.

1 A Yes.

2 Q That it went bankrupt because of changes to the  
3 technology?

4 A Yes.

5 Q That's how quickly technology is changing?

6 A Correct.

7 Q Could IAS experience the same fate?

8 A I've talked to them about that. Yes. We bid a  
9 solar project recently, photovoltaic, for \$1.35 a watt.  
10 Five years ago, we would have bid the same project at \$4 a  
11 watt. Costs have come way down. And so photovoltaics are  
12 much more cost-effective than they were five years ago.

13 Q So competition would be much more stiff now?

14 A Yes.

15 Q And there's a big difference between IAS and  
16 Solyndra in that IAS never really started doing anything;  
17 is that correct?

18 A Right.

19 Q In the last paragraph on the same page, you  
20 mention a management control system. The second sentence  
21 of that last paragraph.

22 A For microgrids?

23 Q Yeah. Under microgrids, there's one full  
24 paragraph and then one partial paragraph.

25 A Yes.

1 Q So the partial paragraph.

2 A Yes.

3 Q Did IAS have a management control system?

4 A No.

5 Q There's nothing installed?

6 A No.

7 Q You see any test results for management control  
8 system?

9 A No. It wouldn't have been necessary for their  
10 product.

11 Q Let's flip over two pages.

12 MR. HOUTSMA: Did you say two pages?

13 MR. BRADBURY: Yes. There's a chart at the  
14 bottom.

15 THE WITNESS: Okay.

16 BY MR. BRADBURY:

17 Q The sun umbrella and box.

18 A Yes.

19 Q Did you create this chart?

20 A No.

21 Q Who did?

22 A The reference is there, but it's not very clear.  
23 That's just the standard bell curve of installation, it's  
24 called. Solar radiance comes up in the morning, peaks at  
25 noon, and then drops down. It creates a bell curve.

1 Q Did Neldon Johnson create this?

2 A No.

3 Q It's from a --

4 A This is a very common curve.

5 Q -- technical publication?

6 A Yeah. Very common curve. The green is what the  
7 typical energy used during a day. All it's showing is  
8 typical solar generation, typical energy use. The  
9 difference.

10 Q From the bottom of three pages before -- so the  
11 bottom of that page says, "photovoltaic trends history".

12 A Okay.

13 Q It's the same one with footnote 8.

14 A Yeah.

15 Q Through page 14, you provide a lot of general  
16 information. Is that accurate?

17 A Yes. Yes.

18 Q It's not really specific to IAS technology; is  
19 that correct?

20 A No, other than the photovoltaics.

21 Q Which they didn't start developing till 2015 at  
22 the earliest?

23 A 2010, I believe he testified.

24 Q Well, let's look at an exhibit about that. It  
25 will be in the first binder. I'm sorry, volume 1 of 2.

1 A Okay.

2 Q Exhibit 41-J.

3 THE COURT: 41-J, Counsel?

4 MR. BRADBURY: Yes. 41-J.

5 THE COURT: Isn't that second binder?

6 MR. BRADBURY: Oh, 41 is in binder 2?

7 MR. JONES: I think it is in the first one,

8 volume 1 of 2.

9 THE COURT: My volume must be different. Okay.

10 41-J.

11 MR. BRADBURY: Yes. Sorry, Your Honor.

12 BY MR. BRADBURY:

13 Q Have you found it, Mr. Gardner?

14 A Yes.

15 Q This is a document entitled Addendum from April  
16 7th, 2014.

17 A Yes.

18 Q Are you familiar with RaPower3?

19 A No.

20 Q You don't know its relationship to IAS?

21 A No.

22 Q Let's go down to the fourth paragraph. It says  
23 RaPower3 taxpayers used CSP technology.

24 A Yes.

25 Q It doesn't say CPV technology.



1           A     I'm just referring to Randy's recent testimony.  
2     The technologies in 2010 were being developed  
3     concurrently.

4           Q     So that's only based on Randy's testimony?

5           A     Yeah.

6           Q     Not any evidence you saw?

7           A     Not in here, no.

8           Q     Not anything you reviewed?

9           A     No. I'm not sure when they started their PV.  
10    Don't know.

11          Q     Let's turn to page 16 for me. It's probably 14  
12    for you of your report. There's a chart at the top "Cedar  
13    City, Utah". It has all the months and a bunch of  
14    numbers.

15          A     Okay.

16          Q     You on the right page?

17          A     I know where you're at.

18          Q     Okay. In the first full paragraph there, you  
19    say the dual-axis trackers are being used and tested by  
20    IAS?

21          A     Yes.

22          Q     You base that being used on the two hours you  
23    watched it; is that correct?

24          A     Yeah.

25          Q     You don't know if they are used beyond that?

1           A     Just my conversation with them, how they had  
2 developed it.

3           Q     But they weren't regularly being used for  
4 anything?

5           A     No. Because they weren't normally operational.

6           Q     Okay. At the end of the paragraph, that same  
7 paragraph, you make a bunch of assumptions to calculate  
8 this figure of 141,260 watts --

9           A     Yes.

10          Q     -- that can be collected. Is that per day?

11          A     No. That's power. That's instantaneous power.

12          Q     So that's all at once?

13          A     All at once.

14          Q     Okay. I didn't understand that. Thank you.

15          A     Energy is watt hours. Power is watts.

16          Q     Okay.

17          A     So what I was comparing -- if you go to the top  
18 there, those are the -- the numbers in that chart above  
19 are sun hours. If you multiply that times watts with an  
20 efficiency factor, that will give you energy or kilowatt  
21 hours per day.

22          Q     And how did you come up with an efficiency  
23 factor? Is that the four --

24          A     No.

25          Q     -- in the equation?

1 A It just depends on the technology, the various  
2 technologies.

3 Q So where did you come up with these numbers?  
4 The 33.315?

5 A That is the square meters of the four diameter  
6 collectors on the tower.

7 Q Did you measure them on the tower?

8 A No. It's just information I got off the design  
9 drawings that were provided to me.

10 Q Okay.

11 A The stamp drawings.

12 Q So you didn't measure it to see if they  
13 matched --

14 A No.

15 Q -- the design drawings?

16 A Wasn't going to get a ladder and go up there,  
17 so --

18 Q That picture of the guy holding the thing up,  
19 the metal thing, looked dangerous enough. I don't blame  
20 you. What about the 4? What is that?

21 A That's the four circular devices on each tower.

22 Q Okay. So the four arrays, each of them have  
23 35.315 square meters?

24 A Yes.

25 Q And then you assumed this 1,000 watts per square

1 meter?

2 A 1,000 watts per square meter is a typical value  
3 here in Utah.

4 Q Okay. On page 17, so the very next page with  
5 several pictures on it. At the bottom, you say that the  
6 system could produce 25,427 watts of power; is that  
7 correct?

8 A This is different than what you're looking at in  
9 the pictures. This is the PN junction, the multiple PN  
10 junctions. Just a second. Let me read it. I'm just  
11 saying that a typical photovoltaic module has an overall  
12 efficiency of 18 percent. So I'm just comparing the  
13 surface area of the receivers to, say, a monocrystalline  
14 solar module.

15 Q So 18 percent efficiency is kind of a standard  
16 number --

17 A Yes.

18 Q -- for CPV systems?

19 A Yes.

20 Q Okay. And when you talk about watts of power  
21 here, is that instantaneously?

22 A Yes. That's instantaneous power.

23 Q Okay. And is this an average? Sorry. Can this  
24 happen every single day, this amount of power?

25 A At 1,000 watts per square meter, yes.

1 Q Is it dependent on clouds?

2 A Yes.

3 Q And dependent on the system?

4 A Yes.

5 Q Dependent on how it's tracking?

6 A Yes.

7 Q And dependent on how long the sun is up during

8 the day?

9 A Right.

10 Q Is it dependent on how clean the lenses are?

11 A Yes.

12 Q Dependent on if there are lenses at all?

13 A Yes.

14 Q Let's stay on page 17 for just a second and look

15 at the second picture with the bigger crane.

16 A Okay.

17 Q Did you take this picture?

18 A No.

19 Q This was provided to you as part of the

20 materials you reviewed?

21 A Off their website.

22 Q Okay. You don't know who took this picture?

23 A No.

24 Q Do you know when it was taken?

25 A I don't.

1 Q Did you see this tower with all four arrays full  
2 of unbroken lenses during your visit?

3 A Yes.

4 Q This is the one you saw?

5 A One similar to it. They're all the same.

6 Q It was operating. Okay. Turn back one page,  
7 the page with the chart of Cedar City at the top.

8 A Right.

9 Q And the second full paragraph there, did you  
10 write this paragraph?

11 A Yes.

12 Q And this describes a CSP system, correct?

13 A Correct.

14 Q So during either of your visits, did you see the  
15 sun's concentrated energy heat oil?

16 A Yes.

17 Q This is the first visit?

18 A Yes.

19 Q And you didn't see it during the second visit?

20 A The system wasn't turned on, no.

21 Q Did you see a tower with four arrays full of  
22 lenses on your second visit?

23 A I don't recall if some of them were broken or  
24 not. I don't recall.

25 Q Did it still have a receiver on it?

1 A The lines were still connected, yeah. The oil  
2 lines were still connected to the receiver.

3 Q In 2017?

4 A Yeah.

5 Q Was it connected to the turbine?

6 A Yes. Just wasn't operational.

7 Q But the turbine was out there?

8 A Yes.

9 Q So in 2015, did you see the heated oil  
10 transmitted to a heat exchanger?

11 A Yes.

12 Q And you saw a heat exchanger produce steam?

13 A Yes.

14 Q Did you see a heat exchanger produce high  
15 pressure hot water?

16 A Yes.

17 Q It did both?

18 A Well, the hot water went through the turbine,  
19 yes.

20 Q And then created the steam?

21 A Yes.

22 Q So the steam wasn't used to drive the generator?

23 A It's super-hot water. As it comes out of the  
24 turbine, it turns into steam.

25 Q Okay. So to drive it, it is the hot water?

1 A Yes.

2 Q Okay. The next sentence here or sentence here,  
3 "The speed of the generator is dependent energy from the  
4 sun".

5 A Yes.

6 Q What is that sentence saying?

7 A That the generator will operate at different  
8 speeds depending on the intensity of the sunlight.

9 Q Okay. Did you see a generator "run wild"?

10 A Yes.

11 Q Is that a technical term you use in your  
12 courses?

13 A It's technical, yes.

14 Q What does that mean?

15 A The lights we have in this building, they  
16 operate at 60 cycles per second or 60 hertz. The  
17 generator could run, say, at 70 hertz or 50 hertz. It  
18 wouldn't be able to interconnect to a utility directly.  
19 And what I said in this paragraph, commonly what will be  
20 done is that AC unregulated energy is converted to DC  
21 current through a rectifier. That DC current is then sent  
22 back through an inverter that connects to a utility and  
23 produces 60 hertz. That's the easiest way to make this  
24 work.

25 Q Okay. Did you see that happen?



1 A No.

2 Q It wasn't connected to the grid at all?

3 A It wasn't connected to the grid, no.

4 Q Would that be dangerous to connect to the grid?

5 A No. Simple.

6 Q Without telling the utility?

7 A No, you'd have to have a net metering agreement  
8 to connect.

9 Q How do obtain a net metering agreement?

10 A You just submit a plan. It's a very simple  
11 process. And they review your facility. It's inspected  
12 by the county. The county approves it. They submit for a  
13 net meter application for you. And then the utility sends  
14 them that meter. And you can turn your system on.

15 Q How long does that take, that process?

16 A Three weeks.

17 Q Way less than 15 years we're talking about here  
18 developing --

19 A Yeah.

20 Q -- this program. Okay. Did IAS have a net  
21 metering agreement?

22 A Not that I'm aware.

23 Q Would that have been with Rocky Mountain Power?

24 A Yes.

25 Q Please turn over two pages. This one has "PN

1 Junction" at the top.

2 A Okay.

3 Q And then the last paragraph under International  
4 Automated System, IAS, concentrated photovoltaic. Your  
5 first sentence says, "IAS is developing concentrated  
6 photovoltaic device".

7 A Yes.

8 Q Do you mean a system?

9 A They were developing a photovoltaic cell,  
10 multijunction cell, three layers at least. A typical  
11 solar photovoltaic module only has one PN junction. And  
12 the reason for that is the solar electric or PV can only  
13 take so much of the sun's energy. It has to be a certain  
14 energy level in order to move electrons. And so a lot of  
15 the sun is wasted.

16 But if you have multiple layers, they can use  
17 different levels of energy or light to generate higher  
18 percentage of power. In this case, it worked a system  
19 that can do 43 percent. And now they've got a system that  
20 can go up to about 65 percent efficiency, which is unheard  
21 of. So I'm excited to see what they come up with.

22 Q We're going to talk about some of those numbers  
23 you just mentioned in a second.

24 A Okay.

25 Q You don't describe any of the other components

1 of the system; do you?

2 A No. No. It's fairly complex.

3 Q Only that one --

4 A Yeah.

5 Q -- thing. So that last sentence carrying over  
6 to the next page, the device uses multiple layered PN  
7 junctions.

8 A Yes.

9 Q Is the multilayer PN junction a major hurdle in  
10 the solar industry?

11 A It's the holy grail. Yeah. Neldon's done more  
12 progress on this than anyone I've ever seen.

13 Q So was IAS successful in developing one?

14 A They have been.

15 Q Has it been marketed?

16 A I don't believe so at this point, but my  
17 encouragement to him at lunch was you ought to do so.

18 Q You say the IAS multiple layer PN junction  
19 boosts efficiency to 43 percent?

20 A Yes.

21 Q Did you calculate that?

22 A No.

23 Q Did you see any test results?

24 A Just my conversations with Neldon.

25 Q That came only from Neldon?

1 A Yes.

2 Q Are you aware that the United States District  
3 Court discounted his testimony completely?

4 A No.

5 Q You also mentioned another figure of 65  
6 percent --

7 A Yes.

8 Q -- is unheard of in the industry? Did you  
9 calculate that number?

10 A No. Just again a conversation.

11 Q Again that came from Neldon Johnson?

12 A Um-hum.

13 Q When was that?

14 A Today.

15 Q Today?

16 A He and Randy both talking about it.

17 Q So you believe they're still developing this  
18 technology?

19 A It's still emerging, yeah.

20 Q Are they still developing it?

21 A Yes.

22 Q Is IAS still developing?

23 A I'm not sure who is.

24 Q That same paragraph, continuing on, it's that  
25 third full sentence. Starts with "IAS is developing an



1 oil bath to remove heat". Is that correct?

2 A Correct.

3 Q But then you say that distilled water is also  
4 used.

5 A They tried both.

6 Q Which one is being used?

7 A Oil now.

8 Q How do you know that?

9 A Just, again, a conversation with them.

10 Q So Neldon and Randy Johnson told you?

11 A Yes.

12 Q So they're not doing distilled water?

13 A Not that I'm aware of.

14 Q And sticking with that same page, let's look at  
15 the picture here. Again, did you take this picture?

16 A No.

17 Q It's part of the materials that you reviewed?

18 A Yes.

19 Q You don't know who took it?

20 A No.

21 Q Do you know when it was taken?

22 A I don't know.

23 Q Is this the receiver that you mentioned earlier?

24 A To the right?

25 Q Yes.

1 A Yeah. That's the nonimaging receiver.

2 Q What about the picture on the left?

3 A That's their PV cell.

4 Q So the label underneath, concentrated  
5 photovoltaic receiver developed by IAS, is that  
6 inaccurate?

7 A No. Maybe I don't understand your question.  
8 They're the ones that developed that cell, IAS.

9 Q So this is the cell, not the receiver --

10 A Well, that is the receiver.

11 Q -- on the left?

12 A PV receiver. Yes.

13 Q Is the same thing as a cell?

14 A Yes.

15 Q Okay. Did you see this during your visit?

16 A Yes. I saw them working on it.

17 Q In 2015?

18 A '17.

19 Q In 2017?

20 A Yes.

21 Q So this was not the same thing you saw in 2015  
22 on the tower?

23 A No. That was just concentrated solar on the --

24 Q Okay.

25 A -- tower.

1 Q You never saw this particular receiver --

2 A In operation.

3 Q -- or cell --

4 A No.

5 Q -- in operation?

6 A No.

7 Q The bottom of the same page, that last  
8 paragraph, the third sentence, you say that you were --  
9 I'm sorry. Let me see. Not the third sentence. The  
10 first sentence. You say that you are impressed with the  
11 engineers at IAS.

12 A Yes.

13 Q Is that right?

14 A Yes.

15 Q Who are those engineers?

16 A I was told that Neldon Johnson was an electrical  
17 engineer.

18 Q Did you confirm that?

19 A No.

20 Q Do you now know he's not an electrical  
21 engineering?

22 A I didn't know that.

23 Q Do you know it now?

24 A Well, you're telling me. I'm not sure if it's  
25 true or not.

1 Q Neldon didn't ever tell you he's an electrical  
2 engineer?

3 A I got that secondhand, I believe.

4 Q From who?

5 A I don't know that I can recall who told me,  
6 but --

7 Q And that's the only so-called engineer?

8 A Yes.

9 Q So saying engineers is inaccurate?

10 A Perhaps. I knew there was some other technical  
11 people I met at his office. I didn't ask him if they were  
12 engineers.

13 Q Was that Randy?

14 A No. No, there were some other men working  
15 there.

16 Q His son Legrand Johnson?

17 A No. I don't recall names.

18 Q And now I want to go to the third sentence of  
19 that same paragraph. It says, "The Fresnel lens power  
20 towers designed and installed by IAS have shown to be  
21 technically viable". When you say installed, do you mean  
22 those 19 towers you saw?

23 A Yes.

24 Q But most of them did not have lenses?

25 A Right.



1 Q Only one had a full --

2 A Full lens.

3 Q -- set of lenses?

4 A Yes.

5 Q So that was the only installation you saw?

6 A Yes.

7 Q And that was not connected to the grid?

8 A No.

9 Q Flip to the next page, please. I think it's the  
10 last page of the report. The first full sentence says,  
11 "Using Fresnel lens power towers to produce power using  
12 concentrated PV power appears to be more cost effective  
13 moving forward". Did I read that correctly?

14 A Correct.

15 Q When did you write that?

16 A Just as I put this report together.

17 Q So it was a few months ago?

18 A Yes.

19 Q You continue in that sentence, "because  
20 efficiencies of around 40 percent overall would be cost  
21 effective compared to standard PV systems". Is that  
22 correct?

23 A Correct.

24 Q To your knowledge, did IAS ever reach 40 percent  
25 efficiency?

1           A     Just in my conversations with him. The 43  
2 percent we talked about earlier.

3           Q     Just what Neldon told you?

4           A     Yeah.

5           Q     You didn't test that figure?

6           A     No. I didn't test it.

7           Q     You testified a little while ago that the  
8 technology has advanced so much that CPV is cheaper.

9           A     Yes.

10          Q     So is this sentence still true? That appears to  
11 be the most cost-effective route forward for IAS?

12          A     Well, efficiencies have gained to about 20  
13 percent in standard PV market. If he can gain 40 or 65  
14 percent overall, there's going to be a big market for  
15 that.

16          Q     But that hasn't happened?

17          A     Hasn't happened yet.

18                THE COURT: Mr. Gardner, I'm somewhat concerned  
19 with the extent to which some of your opinions appear to  
20 be heavily influenced by stuff you heard from Mr. Johnson  
21 rather than your own expertise. I mean, the expert, of  
22 course, is allowed to rely upon hearsay. But when hearsay  
23 comes from the promoter of the project, it would seem that  
24 you might question the accuracy of what you're being told.

25                THE WITNESS: Well, the 43 percent's not

1 unrealistic. I've read other documents that that level's  
2 been reached and researched by others, so I didn't  
3 question it.

4 MR. BRADBURY: Can I ask more questions on  
5 that --

6 THE COURT: Yeah.

7 MR. BRADBURY: -- Your Honor?

8 BY MR. BRADBURY:

9 Q Who else has hit this 43 percent figure?

10 A NASA in space uses very expensive solar that  
11 reaches those efficiencies.

12 Q In space?

13 A In space. It's expensive.

14 Q Not on earth?

15 A I'm sure there's -- I just can't remember all  
16 the articles I've read, but it's ongoing. This is  
17 something that's being studied all the time.

18 Q But to your knowledge, nobody has hit this 43  
19 percent figure?

20 A Just NASA.

21 Q And Neldon, according to Neldon?

22 A Yeah.

23 MR. BRADBURY: May I have just a moment, Your  
24 Honor?

25 THE COURT: Yes, you may.

1 (Counsel confer.)

2 MR. BRADBURY: Just a couple more questions, Mr.  
3 Gardner.

4 THE WITNESS: Okay.

5 MR. BRADBURY: We're almost there.

6 BY MR. BRADBURY:

7 Q Just to be clear, during your visit in 2015,  
8 only one tower had the full four arrays of lenses?

9 A Correct.

10 Q And each array or each of the four circles had  
11 17 pie-shaped lenses in it?

12 A Yes.

13 Q So that's less than 70 lenses total, correct?

14 A Yes.

15 Q So thousands of lenses were not installed --

16 A No.

17 Q -- that you saw?

18 A No.

19 MR. BRADBURY: I have nothing further, Your  
20 Honor.

21 THE COURT: Redirect, Counsel?

22 MR. JONES: I actually don't have anything  
23 further.

24 THE COURT: Okay. Thank you.

25 Mr. Gardner, thank you for your testimony.

1 THE WITNESS: Thank you.

2 THE COURT: You may step down.

3 MR. JONES: Thank you, Mr. Gardner.

4 At this time, if it would be okay if we would  
5 take a short break?

6 THE COURT: Sure.

7 MR. JONES: That would be all right? And I'll  
8 just make sure our last witness for the day is still here.

9 THE COURT: Okay. That's good.

10 MR. JONES: And then we'll go from --

11 THE COURT: Let me know when you come back,  
12 okay?

13 THE CLERK: All rise.

14 (Whereupon, a recess was held from 3:58 p.m.  
15 until 4:13 p.m.)

16 THE CLERK: All rise.

17 THE COURT: Please be seated.

18 Mr. Jones, you may proceed.

19 MR. JONES: Thank you. Petitioners' last  
20 witness for the day we'll call to the stand is Richard  
21 Jameson.

22 Come forward and be sworn in.

23 THE CLERK: Over here and please raise your  
24 right hand.

25 RICHARD JAMESON

1 having been duly sworn, testified as follows:

2 THE CLERK: Please state your name and address  
3 for the record.

4 THE WITNESS: Richard Jameson. Address is 782  
5 South River Road, Number 142, Saint George, Utah 84790.

6 THE CLERK: Great. Please be seated.

7 DIRECT EXAMINATION

8 BY MR. JONES:

9 Q Good afternoon, Mr. Jameson.

10 A Good afternoon.

11 Q Can you tell us about your educational  
12 background?

13 A I have a Bachelor of Science degree in  
14 industrial technology with a major in economics and a  
15 major in business administration. I have a Master's of  
16 Social Science interdisciplinary public administration  
17 with a major in economics. And I have a Master of Science  
18 degree in taxation.

19 Q Great. Do you have any professional licenses?

20 A I am an IRS enrolled agent. The National  
21 Association of Enrolled Agents has a class that they give  
22 through their fellowship stuff, and I'm -- it's a  
23 three-year course to represent clients and do taxes. I've  
24 graduated from that, so I'm a fellow of the National Tax  
25 Practice Institute. They have another three-year program



1 that gives you more intense study in how to defend clients  
2 in audits and appeals and to do tax research. And I've  
3 graduated from that one also. So I'm a master graduate of  
4 federal examination.

5 Q And what's your current profession?

6 A I am a tax preparer or tax professional.

7 Q Okay. How many tax returns do you prepare in a  
8 typical year?

9 A I'm semi-retired, so I do probably somewhere  
10 around 250.

11 Q Okay. And did you prepare tax returns for  
12 Preston Olsen?

13 A Yes, I did.

14 Q And what years did you prepare his tax returns?

15 A I think I started preparing his tax returns in  
16 2013, if I remember correctly, and I've done '14, '15,  
17 '16, and '17, and so forth.

18 THE COURT: For the 2013 tax year?

19 THE WITNESS: Yes, sir. The tax return. Yes,  
20 sir.

21 BY MR. JONES:

22 Q And I'll just represent to you in this case  
23 there are two tax returns at issue, 2013 and '14, that you  
24 prepared. Does that sound correct to you?

25 A Yes, sir.



1 Q Okay. Were you aware that Mr. Olsen's tax  
2 returns were selected for audit or examination by the IRS?

3 A Yes, sir.

4 Q And how did you become aware of that?

5 A I was contacted by Mr. Olsen when he received  
6 the audit notification letter from the Internal Revenue  
7 Service. I had him do a power of attorney so that I could  
8 represent him before the Internal Revenue Service in the  
9 exam process.

10 Q Okay. And he reached out to?

11 A Yes.

12 Q For representation? Okay. And did you  
13 represent him then in --

14 A Yes, I did.

15 Q -- the audit? And what was your role in that  
16 exam process?

17 A My role in the exam process was to coordinate  
18 with the IRS TCO to provide information that she requested  
19 on the information document request for the two years in  
20 question.

21 Q Okay. What's a TCO?

22 A Tax compliance officer.

23 Q Okay. Just making sure we're getting that on  
24 the -- and is that the person who examined the returns?

25 A Yes.



1 Q Okay. And did you ever receive any requests  
2 from that TCO?

3 A Yes. Once she got a copy of my power of  
4 attorney to represent Mr. Olsen, she sent the individual  
5 document request, the IDR, directly to me.

6 Q And what happened when you received it?

7 A When I received it, I reviewed them. I called  
8 to discuss it to make sure I understood exactly what she  
9 was asking for. I gathered the information, and then  
10 forwarded it to her as fast as I could get it to her. I  
11 think in the process of about 45 days, I provided almost  
12 200 or 250 pages of information that she had requested.

13 Q Okay. Did you respond to all of her requests?

14 A Yes, sir.

15 Q And were they complete responses?

16 A By the end of the 45 days. There were a  
17 couple -- when I sent the first couple of responses, I  
18 didn't have all of the information she requested, and I  
19 told her that. But as we got to the end, I kept giving  
20 her everything. So by the end of the 45 days, she had  
21 received everything that she requested on the IDR.

22 Q Okay. Were there any requests to which you  
23 refused to respond to?

24 A No, sir.

25 Q Were there any requests that Preston told you

1 not to respond to?

2 A No, sir.

3 Q Okay. Are you aware of any instances of lack of  
4 cooperation or participation by you or Mr. Olsen during  
5 the audits?

6 A No, sir.

7 Q Okay. Did Mr. Olsen ever seek professional  
8 advice from you?

9 A Yes, sir. We discussed it a couple of times  
10 during the audit process to make sure that the information  
11 he was providing met the Internal Revenue Codes and he was  
12 aware of what the Internal Revenue Code was all about,  
13 having to do with the operation of a business under Code  
14 section 162.

15 Q Okay. Was your advice to him limited to the  
16 exam?

17 A Generally, the exam is where most of my advice  
18 was, but no, it was not. I did help him with some other  
19 suggestions about how to make sure that his business would  
20 meet the Code sections.

21 Q Okay. Any other advice that you provided to  
22 him?

23 A Not that I can remember off the top of my head.

24 Q Okay.

25 A But I know that I do talk to my clients

1 occasionally. It depends on if they have a specific  
2 question about something. But I don't remember anything  
3 off the top of my head at the moment.

4 MR. JONES: Okay. All right. That's all I have  
5 for this witness. I'll pass him for cross-examination.

6 THE COURT: Counsel, cross-examination?

7 MR. HOUTSMA: Thank you, Your Honor. Matthew  
8 Houtsma for Respondent.

9 CROSS-EXAMINATION

10 BY MR. HOUTSMA:

11 Q Mr. Jameson, you submitted an expert report in  
12 the District Court case; didn't you?

13 MR. JONES: I'm going to object for lack -- it's  
14 outside the scope of my direct.

15 MR. HOUTSMA: My next question goes to bias,  
16 Your Honor.

17 MR. JONES: So just to --

18 THE COURT: Bias, but the only thing he  
19 testified to was that he believed that he fully cooperated  
20 with requests for information from the examining agent and  
21 that he gave some advice to Mr. Olsen about what you need  
22 to be in a trade or business. And I wonder how bias would  
23 be relevant to either of those things.

24 MR. HOUTSMA: Well, I mean, I think bias goes to  
25 credibility, Your Honor, in all situations really. My



1 next question might make it clear where I'm going with  
2 this. I might not get anywhere, but I'd like to ask the  
3 question.

4 MR. JONES: But are we talking about credibility  
5 to prove something -- in other words, are we in character  
6 evidence or what are we -- because if so, we haven't -- I  
7 mean, if he's impeaching a statement, that's one thing,  
8 but I don't think we're there.

9 THE COURT: Well, I'll let you ask the question  
10 of what his report -- I'll let you ask what the report he  
11 submitted to the district court involved.

12 MR. HOUTSMA: Thank you, Your Honor.

13 BY MR. HOUTSMA:

14 Q Mr. Jameson, you were compensated \$150 an hour  
15 to prepare the report for the District Court case,  
16 correct?

17 A That sounds familiar, yes.

18 MR. JONES: I mean, are we --

19 THE COURT: Again, I don't know what his hourly  
20 rate matters.

21 BY MR. HOUTSMA:

22 Q Are you being compensated to testify here today,  
23 sir?

24 A No.

25 Q Mr. Jameson, you mentioned you dealt with the

1 TCO in the case. Was that Kristi Williquette? Does that  
2 ring a bell?

3 A That sounds like her name, yes.

4 MR. HOUTSMA: Your Honor, may I approach to have  
5 a document marked for identification?

6 THE COURT: You may.

7 146-R, is that where we are?

8 THE CLERK: Yes.

9 (Whereupon, the Document referred to as Exhibit  
10 146-R was marked for identification.)

11 BY MR. HOUTSMA:

12 Q Mr. Jameson, if you want to turn to the last  
13 page. Is that your signature on the last page of this  
14 document?

15 A Yes, sir.

16 Q Okay. And so this is a document you sent to the  
17 TCO who was conducting, looks like the audit of tax years  
18 2013 and '14; is that correct?

19 A Yes, sir.

20 Q Okay. Now, in the letter, in the second  
21 paragraph there, the paragraph that starts with "The  
22 taxpayer", do you see that?

23 A Yes.

24 Q Okay. The second sentence, it says, "The  
25 taxpayer rents the solar lenses (an alternative energy

1 system as per Webster's dictionary) that are used to  
2 product heat" -- you meant produce there, correct?

3 A I meant produce, yes, sir.

4 Q Okay. So you're representing here to the IRS  
5 that those lenses produce heat?

6 A Yes. I'm representing that the lenses produce  
7 solar process heat.

8 Q But you don't know if any of the lenses the  
9 Petitioner bought were ever actually installed; do you?

10 MR. JONES: I'm going to object to  
11 mischaracterized evidence. He's making one conclusion  
12 from a different statement. I think that mischaracterizes  
13 his testimony. I also don't know what this is also  
14 leading to, but I'll just say the objection I'm primarily  
15 making is that that mischaracterizes the statement he  
16 read.

17 THE COURT: Well, the sentence said the taxpayer  
18 rents the solar lenses that are used to produce heat. I  
19 guess the question is whether he's asserting that the  
20 particular lenses that Mr. Olsen bought were used to  
21 produce heat or whether in theory these lenses can be used  
22 to produce heat. That may be ambiguous.

23 BY MR. HOUTSMA:

24 Q So again, Mr. Jameson, I'll just ask you --  
25 well, let's go to -- I'll skip ahead. One second. The

1 very last page right above your signature. Right above  
2 your signature, it says -- and you wrote the report,  
3 correct? You wrote this letter, correct?

4 A Yes, sir.

5 Q Okay. You wrote, "I know personally that the  
6 facts stated in the protest and accompanying documents are  
7 true and correct". You wrote that; didn't you?

8 A Yes, I did.

9 Q But you don't actually know whether the solar  
10 lenses Preston Olsen allegedly owned were ever used to  
11 produce heat; do you?

12 A I'm not sure I understand your question.

13 Q Do you know whether the solar lenses Preston  
14 Olsen allegedly purchased were ever put on towers?

15 A I'm basing my write-up on this and the audit on  
16 the fact that Mr. Olsen received a placed in service  
17 letter.

18 Q Okay. Let's talk about the placed in service  
19 letter.

20 THE COURT: Counsel, let me ask one question.  
21 It appears that this document is a protest that Mr.  
22 Jameson filed on behalf of Mr. Olsen to the IRS Appeals  
23 Office. Now, of course, protests are initially directed  
24 to the examining agent and are forwarded to IRS Appeals.  
25 But it would seem that the audit had already disallowed

1 the deductions, and this was a protest from that to the  
2 Appeals Office, not a communication during the  
3 examination.

4 MR. HOUTSMA: Well, Your Honor, I mean, the  
5 letter is to a TCO, which doesn't reference the Appeals  
6 Office. And it looks like it's for tax years 2013 and  
7 2014 for which the Stat Notice -- if you look at Exhibit  
8 8 -- Stat Notice was not issued until July 1st, 2016.

9 THE COURT: Okay.

10 MR. HOUTSMA: Although it was issued by the  
11 Appeals Office at that point. I only know by who the  
12 letter's addressed to. It seems to be addressed to  
13 someone in the exam function, not in the appeals function.

14 THE COURT: It says on the last page, he refers  
15 to submitting the protest. That sounds like something  
16 that's going to go to Appeals, but maybe it's just  
17 inaccurate terminology. I don't know.

18 BY MR. HOUTSMA:

19 Q Let me ask you this, Mr. Jameson. So in 2013  
20 and '14 when you were preparing the Petitioners' returns,  
21 you concluded that the solar lenses were placed in service  
22 because you saw a letter from RaPower3 saying that the  
23 lenses had been placed in service, correct?

24 A That is correct.

25 Q And in 2013 and 2014, you did not research how



1 RaPower3 placed in service your customer's solar lenses  
2 because you received a placed in service letter; is that  
3 correct?

4 MR. JONES: I'm going to object to that. I  
5 don't know that he testified that. It mischaracterizes --

6 MR. HOUTSMA: Well, Your Honor --

7 MR. JONES: -- his testimony.

8 MR. HOUTSMA: -- he did talk about the placed in  
9 service. He just mentioned that. So I'm just trying to  
10 figure out how he came to that conclusion.

11 MR. JONES: But his follow-up question seemed to  
12 come from his own -- it was like he was testifying about  
13 it. It's not a leading an objection I'm saying because  
14 it's cross, but I'm saying the derivation of what he said  
15 doesn't come from Mr. Jameson.

16 THE COURT: Well, are any of Mr. Jameson's other  
17 communications in evidence in the Stipulation?

18 MR. HOUTSMA: No, Your Honor.

19 THE COURT: So it seems like you're raising a  
20 question that's not in evidence and asking him about it.  
21 I don't see where you're going with that. I mean, I could  
22 see if it's something in the Stipulation where he relies  
23 on the placed in service, you might want to impeach him.  
24 But if only that's coming out of this thing, which is not  
25 even in evidence yet, I don't see where you're going.

1 MR. HOUTSMA: Okay. Well, the placed in service  
2 letters are in the Stipulation, Your Honor, but --

3 THE COURT: Placed in service letters. But --

4 MR. JONES: I would say if we're attacking the  
5 placed in service argument, we're outside of the scope on  
6 direct. And we were talking about the -- I mean, I'm  
7 limited on direct to cooperation and then advice that he  
8 provided Mr. Olsen, so --

9 THE COURT: Yeah. I mean, that's right. I  
10 mean, remember I said at the beginning that -- you made a  
11 motion in limine to exclude Mr. Jameson altogether. And I  
12 said I would let him testify limited to two points, any  
13 advice he gave the taxpayer as it might be relevant to  
14 being a trade or business and secondly cooperation with  
15 the IRS. And I do think that I would like you to limit  
16 your cross to those points. And if there's a question  
17 about placed in service, I don't think he's the guy to  
18 resolve that.

19 MR. HOUTSMA: Okay. Thank you, Your Honor. Can  
20 I just have one second?

21 THE COURT: Sure.

22 MR. HOUTSMA: Your Honor, I have no more  
23 questions.

24 THE COURT: Okay. Thank you. Anything --

25 MR. JONES: Nothing further.

1 THE COURT: Okay. Mr. Jameson, thank you for  
2 your testimony. And you're excused.

3 THE WITNESS: Thank you, sir. You have a nice  
4 day.

5 THE COURT: So we're not admitting 146-R?

6 MR. HOUTSMA: No, Your Honor. I would --

7 THE COURT: I see nothing to be gained for it,  
8 but --

9 MR. HOUTSMA: No. No, Your Honor. We're not.  
10 We're not admitting it. Thank you.

11 THE COURT: Okay. We will not admit 146-R.

12 MR. JONES: We would ask that we conclude for  
13 today and then if we could have a moment to just address  
14 maybe our schedule tomorrow.

15 MR. SORENSEN: I think, Your Honor, we're down  
16 to two witnesses, Respondent's expert and then Mr.  
17 Bolander. Now, I don't believe Mr. Bolander's going to  
18 take a whole more time than Mr. Jameson.

19 MR. JONES: That's right. It would be very  
20 comparable.

21 THE COURT: He would go first tomorrow?

22 MR. JONES: I would envision that. And then  
23 we --

24 THE COURT: Well, I mean, it's fine for me. For  
25 scheduling purposes, I'm very malleable. And if we need

1 to have Respondent go and have you go again, that would be  
2 fine for his convenience.

3 MR. JONES: I didn't speak on that point  
4 because --

5 MR. SORENSEN: No, no. We had asked if we could  
6 put --

7 MR. JONES: Yeah.

8 MR. SORENSEN: -- our expert on first, but that  
9 was envisioning it was going to be a complete long day. I  
10 believe as long as we're done by 1 o'clock, our expert is  
11 fine. So we can go with the normal course and have Mr.  
12 Bolander go first and then we'll go with our expert.

13 MR. JONES: Right.

14 MR. SORENSEN: And conclude the trial. I  
15 anticipate for all purposes; it will be done by 1 or so  
16 tomorrow.

17 MR. JONES: Right. And then we had a -- this  
18 may not be an appropriate time to raise, but I guess I  
19 will since we're talking about scheduling. Counsel had  
20 just discussed the premise of us not engaging in closing  
21 arguments but rather just --

22 THE COURT: That's fine. You can make your  
23 arguments in your brief.

24 MR. JONES: And making the arguments in the  
25 brief.

1 MR. SORENSEN: That's the preference, Your  
2 Honor.

3 THE COURT: Okay. And just again to look ahead,  
4 I would expect to order only one round of simultaneous  
5 briefing, I mean, to kind of keep the cost of this thing  
6 down. And if either party believes strongly that they  
7 would like to file an answering brief, you may move for  
8 permission to do that. That's my plan.

9 MR. SORENSEN: I'm hoping, Your Honor, you'll  
10 feel free to order a page limitation somewhere around ten  
11 pages.

12 MR. JONES: Yeah. Let's not --

13 MR. SORENSEN: That's a joke.

14 MR. JONES: I was going to say, please, don't  
15 joke.

16 THE COURT: So think about that overnight. That  
17 would be my plan. Okay?

18 So we're through for the day. Is that correct?

19 MR. SORENSEN: Yes, Your Honor.

20 THE COURT: And we'll resume at 10 o'clock  
21 tomorrow.

22 MR. JONES: Thank you, Your Honor.

23 THE CLERK: All rise.

24 (Whereupon, at 4:33 p.m., the above-entitled  
25 matter was concluded.)

1 CERTIFICATE OF TRANSCRIBER AND PROOFREADER

2 CASE NAME: Preston Olsen & Elizabeth Olsen, et al v.  
3 Commissioner

4 DOCKET NO.: 26469-14; 21247-16

5 We, the undersigned, do hereby certify that the  
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10 States Tax Court at its session in Provo, UT, in  
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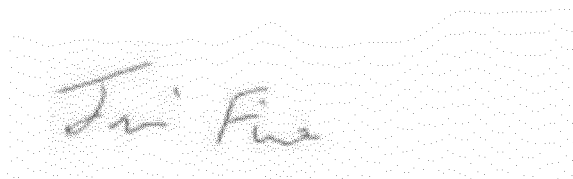


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