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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

MOHAMMAD HAMED, by his ) SX-12-CV-370  
authorized agent WALHEED )  
HAMED, )  
Plaintiff/Counterclaim Defendant, )  
v. )  
FATHI YUSUF and UNITED )  
CORPORATION, )  
Defendants/Counterclaimants, )  
v. )  
WALEED HAMED, WAHEED HAMED, )  
MUFEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC., )  
Additional Counterclaim Defendants.)  

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**March 6, 2017**  
Kingshill, St. Croix

The above-entitled action came on for MOTIONS HEARING  
before the Honorable Douglas A. Brady, in Courtroom  
Number 211.

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WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS  
HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND  
PROCEEDINGS OF THE CASE AS RECORDED.

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20 (Judge Brady accepted all exhibits into

21 evidence at Page 129 of the transcript.)

22

23

24

25

1 (The following proceedings commenced at  
2 10:00 a.m.)

3 THE COURT: Good morning, folks. Boy, that's  
4 a very impressive looking group of people back  
5 there. I'm going to ask for a recess of about two  
6 minutes to get my file.

7 (Pause in proceedings.)

8 THE CLERK: Mohammad Hamed versus Fathi Yusuf  
9 and United Corporation, SX-12-CV-370.

10 THE COURT: Could we put appearances on the  
11 record, please.

12 MR. HOLT: Your Honor, Joel Holt here on  
13 behalf of the plaintiff, with Jay Sheen, my  
14 paralegal, sitting at counsel's table.

15 MR. HODGES: Good morning, Your Honor. Greg  
16 Hodges on behalf of the defendants. Here with me  
17 this morning is Charlotte Perrell and Stefan  
18 Herpel, from my office. Mr. Herpel hasn't walked  
19 in the door yet.

20 Here he is.

21 THE COURT: Okay. And we have counterclaim  
22 defendants, I see Attorney Eckard and Attorney  
23 Moorhead. These issues are not directed towards  
24 those claims, so I assume that you gentlemen are  
25 here for just observation purposes; is that

1 correct?

2 MR. MOORHEAD: Yes, Your Honor.

3 MR. ECKARD: That is correct, Your Honor.

4 THE COURT: Okay. The order setting this  
5 hearing suggested five areas that we would take a  
6 look at today, that is, five pending motions.  
7 Unless anybody has anything of a preliminary nature  
8 or any suggestion that we should proceed  
9 differently, we'll just go ahead according to the  
10 way the order is set forth.

11 MR. HOLT: Your Honor, the order that you set  
12 is how we're prepared to go. The only thing I will  
13 note is the witnesses we'll be calling have some  
14 overlap between the account -- I mean the statute  
15 of limitations, the first one, and the BDO report,  
16 which is later in it, and because I don't think  
17 that the people who have overlapping testimony will  
18 be on the stand long, I would ask just to let me  
19 put their testimony through at one time.

20 THE COURT: Agree. And do we need to  
21 sequester witnesses?

22 MR. HOLT: You know, I filed a brief motion  
23 this morning, but this is a Rule 104 hearing for  
24 the admission of the experts, so it's not really  
25 under the Rules of Evidence. I mean, if you want

1 to, but I think it will go faster --

2 THE COURT: I don't have any desire to, but --

3 MR. HODGES: Your Honor, just preliminarily,  
4 while we're certainly prepared to go in whatever  
5 order that you direct, and I note that the order  
6 does set forth the order, I would submit that the  
7 jury issue should be heard first, but obviously  
8 I'll follow the Court's version.

9 THE COURT: Why?

10 MR. HODGES: Because, quite frankly, I think  
11 it pervades everything, as far as the limitation  
12 issue --

13 THE COURT: Is that a -- it's not an  
14 evidentiary question, though, is it?

15 MR. HODGES: No.

16 THE COURT: It's just strictly a legal  
17 question.

18 MR. HODGES: And I would note that while you  
19 indicated that the plaintiff may submit evidence  
20 with respect to the statute of limitations, no  
21 other motion indicated that the Court was prepared  
22 to hear evidence on, and the Court did provide that  
23 we could appear telephonically, so as far as  
24 evidence on the other motions, we did not bring  
25 witnesses with us today.



1           THE COURT: Are there witnesses that you would  
2 have brought?

3           MR. HODGES: If the Court was going to  
4 actually conduct a Daubert hearing to determine  
5 whether to strike our expert report that was  
6 submitted in support of our claim, yes, we would.

7           THE COURT: Do the Daubert questions largely  
8 go away depending upon how the jury issue is --

9           MR. HODGES: Yes, Your Honor. And I think the  
10 statute -- who determines the statute of  
11 limitations also is important, because to the  
12 extent that the statute of limitations that he's  
13 raising right now relates to the claims, the  
14 competing claims and proposed distributions that  
15 are a part of the plan, that is to be initially  
16 determined by the Master with a final decision by  
17 this Court.

18           The Master is -- has been very intimately  
19 involved in this case for the last two-and-a-half  
20 years, and he is -- in our view, he is the person  
21 to at least preliminarily address anything that  
22 relates to the allowance, the validity, the amount  
23 of the parties' competing claims.

24           THE COURT: Very well.

25           So, Attorney Holt, you obviously are the

1           proponent of a jury, and I believe that you have  
2           suggested in your papers that a jury would --  
3           quoting -- pulling a line out of the United against  
4           Hamed case, that a jury needs to decide the issues  
5           for statute of limitations purposes. But doesn't  
6           that sort of run counter to what we're doing today  
7           that --

8           MR. HOLT: No, Your Honor. Your Honor, first  
9           of all, the preliminary decision on statute of  
10          limitations has to be whether or not there's a  
11          question of fact. If there's no question of fact,  
12          then it doesn't go to the jury. If it's a question  
13          of fact, then it does. And that is why, you know,  
14          we've come here prepared today to show that there  
15          is not a question of fact so that you can exclude  
16          most of the claims and save everybody time in  
17          dealing with them. And we've got seven witnesses  
18          we intend to call.

19          I'm surprised that they didn't bring a witness  
20          on the Daubert. Every time I've ever had a Daubert  
21          hearing, they don't take or bring witnesses, it's  
22          just normal you bring whoever you want to argue it.  
23          I have been in Daubert hearings where people just  
24          rely on their reports, because a Daubert hearing  
25          under 104 doesn't necessarily require evidence.

1 But we certainly plan to put on evidence about the  
2 BDO report.

3 THE COURT: To what extent does the report  
4 speak for itself? I mean, you've highlighted the  
5 portions of the report that indicate reservations  
6 as to allowing conclusions to be drawn from it, so  
7 what --

8 MR. HOLT: Well, we want to make a record more  
9 than that on the reliability of the report. You  
10 know, the report was quite extensive, and we've  
11 brought with us today witnesses, some of whom will  
12 testify -- most of whom will testify about both the  
13 statute of limitations and the Daubert. But we  
14 have an accountant that we want to call. We  
15 anticipate him rebutting whatever their guy said,  
16 but we can put him on without their guy. We  
17 brought another legal expert whose report has been  
18 produced to talk about accounting. And then we  
19 have -- we're going to put on a paralegal who goes  
20 through the report to show the errors in it,  
21 because one of the issues is how many errors are  
22 there that make it unreliable. So we've got quite  
23 a bit of testimony that we plan to put on today.

24 THE COURT: Well, you said in the beginning  
25 that you saw some overlap between the statute of

1 limitations and the --

2 MR. HOLT: Just with the witnesses'  
3 testimony.

4 THE COURT: But everything you've just  
5 described doesn't go to statute of limitations.

6 MR. HOLT: No. Each witness has something to  
7 testify on the statute of limitations, except maybe  
8 the last one -- no, they all do. And then -- and  
9 then some of the witnesses have additional  
10 testimony just about the BDO report, which would go  
11 more to the Daubert issue.

12 And by the way, we don't think that the  
13 Daubert issue depends on the jury trial. Whether  
14 an expert is heard or not is something that the  
15 Court has to decide. And we submitted a very brief  
16 page-and-a-half memo this morning where the Supreme  
17 Court in a footnote said that if a party wants a  
18 hearing on Daubert, then before the Court can  
19 exclude it, they need to have a hearing. So we  
20 think that that's a matter that you have to rule on  
21 one way or the other. We certainly think we're  
22 entitled to a jury trial, so I don't want to go  
23 that far, but I want to just say that whether we do  
24 or not, the BDO is something that we think you need  
25 to look at. And we also think once you look at it,

1           you're going to realize it's something that should  
2           be excluded, and it will certainly simplify the  
3           issues going forward in this case no matter which  
4           way you rule.

5           THE COURT: If the BDO report is out, is the  
6           David Jackson report out?

7           MR. HOLT: Um, yes, pretty much so. So would  
8           Mr. Schoenbach's expert opinion. I mean, they're  
9           here really to pick apart the BDO report and  
10          explain why you can't do the accounting. But we  
11          have a lot more than just experts. We've got fact  
12          witnesses that are going to talk about when Fathi  
13          Yusuf -- when the Yusufs knew about --

14          THE COURT: All right. Well, why don't we  
15          just -- I mean, I don't mean to cut you off, but if  
16          you have anything you want to tell me  
17          preliminarily, fine, but otherwise, let's just call  
18          witnesses.

19          MR. HOLT: Okay. We'd call Wally Hamed.

20                                 WALEED HAMED,  
21          having been first duly sworn, was examined and  
22          testified as follows:

23                                 DIRECT EXAMINATION

24          BY MR. HOLT:

25                 Q       Will you state your name for the record,

1 please?

2 A Waleed Hamed.

3 Q And where do you reside?

4 A 7 Southgate.

5 Q How old are you?

6 A 55 years old.

7 Q Can you tell me when you first started working  
8 at Plaza Extra?

9 A 1986.

10 Q And what were you doing there?

11 A I was managing the front end. I was managing  
12 the grocery department, as well as the meat, the  
13 produce. I did basically everything back then.

14 Q And while working at Plaza in the late 1980s,  
15 did you make any other investments?

16 A Yes, I did.

17 Q And what was that?

18 A I bought a duplex back in, I believe '87,  
19 '88.

20 Q And where is that located?

21 A That's in Carlton.

22 Q And what did you do with that?

23 A What I did is I bought it for 84,000. I put  
24 5,000 down and I was paying \$642 a month.

25 Q Okay. Did there come a time when you stopped

1 working for the Plaza Extra store?

2 A We continued working, but the store caught  
3 fire. Plaza Extra East, the only store that we had,  
4 caught fire on January 1992.

5 Q And so at that time Plaza did not have any  
6 open stores?

7 A No, sir.

8 Q Okay. What was the status of the apartments  
9 in Carlton?

10 A What happened, right after buying them,  
11 Hurricane Hugo came along and destroyed the apartment.  
12 I had insurance on it. Insurance paid me over \$100,000.  
13 I fixed the apartments. Kept the proceeds, the  
14 remaining proceeds out of it.

15 Q What did you do with the remaining proceeds  
16 that you received?

17 A I opened an investment account in Maryland,  
18 Prudential-Bache and Merrill Lynch.

19 Q And tell me about trading stocks. How did you  
20 trade stocks?

21 A I trade stocks -- I mean, I put some money in  
22 and then I took margin on the account. And the margin,  
23 basically what it does is it allows you to borrow money  
24 against the monies that you have that allows you to buy  
25 more stocks.

1 Q Okay. Did Fathi Yusuf know that you had this  
2 account?

3 A Yes, sir, he did.

4 Q And how do you know that?

5 A Because he also -- we always discussed that.  
6 He also had trading accounts. After I opened my  
7 accounts, he went ahead and he opened accounts for Plaza  
8 Extra as well.

9 Q Okay. Showing you Exhibit Number 1 --

10 MR. HOLT: And, Your Honor, I have a copy for  
11 the Court.

12 THE COURT: Thank you.

13 Q What is Exhibit Number 1?

14 A Exhibit Number 1 is United Corporation  
15 Prudential Securities statements.

16 Q Okay. So that's not your account?

17 A No, sir.

18 Q Okay. And who did the trading on that  
19 account?

20 A Exclusively Fathi Yusuf.

21 Q Okay. Now, after the fire in 1992, did there  
22 come a time you started working for Plaza Extra --  
23 actively working in the store?

24 A Yes. We started working, developing the  
25 St. Thomas store --



1 Q Okay.

2 A -- in '92, '93. I was mainly -- I spent a  
3 good amount of time in St. Thomas. I mean, probably 12  
4 months or so out of the year in '92 and '93 and also  
5 '94.

6 Q Okay. And what were you doing over there?

7 A I was managing the store, developing the  
8 store, making orders. Just overall doing the store.

9 Q Okay. Did you come back to St. Croix from  
10 time to time?

11 A Yes, I did. That's when we started working on  
12 the Plaza Extra East store, after the fire, to rebuild  
13 it as well as to open it back up.

14 Q And while you were in St. Thomas -- well, let  
15 me ask you this question: Did you file tax returns for  
16 '92, '93, and '94?

17 A Yes, I did.

18 Q And what year did you file those?

19 A I filed them in '95, sir.

20 Q Okay. And where were you residing when you  
21 filed those?

22 A I was -- most of the time I was really in  
23 St. Thomas, but I resided in St. Croix.

24 Q Okay. And showing you Exhibit Number 2, can  
25 you tell me what this is?

1 A This is my 1993 income tax return.

2 Q Can you examine that tax return?

3 A (Perusing document.) Yes, sir.

4 Q Does that tax return have trades on a stock  
5 account that doesn't belong to you?

6 MR. HODGES: Objection. Leading, Your  
7 Honor.

8 MR. HOLT: I'll rephrase it.

9 Q Can you tell me whether or not the trades on  
10 this 1993 tax return are all trades made by you?

11 A No, sir, they're not.

12 Q And where do the trades that are reflected on  
13 this tax return, where do most of them come from?

14 A Well, they come from United Corporation,  
15 Prudential accounts.

16 Q And that's Exhibit Number 1 that I showed  
17 you?

18 A Yes, sir.

19 Q If I looked at Exhibit Number 1, I can see all  
20 the trades that are marked up on your 1993 account?

21 A Yes, sir.

22 Q And the records in Exhibit Number 1, are those  
23 for the 1993 Prudential-Bache Securities account in the  
24 name of United?

25 A Yes, sir.

1 Q Okay. And who did your tax return?

2 A Brammer, Chasen & O'Neill. I believe that's  
3 what they were called at the time.

4 Q And who else's tax returns did --

5 A They did Fathi Yusuf's and the Yusuf family,  
6 and they did United Corporation as well.

7 Q All right. In 1995, which stores were open?

8 A Plaza Extra East and Plaza Extra St. Thomas.

9 Q Okay. And how were the stores doing?

10 A Stores were doing very well, especially right  
11 after Hurricane Marilyn.

12 Q And that was in St. Thomas?

13 A Yes, sir.

14 Q Was there a decision made to do something with  
15 the stores?

16 A It was a decision, really, to -- I mean,  
17 business was well. We had good business going on, and  
18 Fathi Yusuf decided that we needed to save some money,  
19 and by saving some money, meaning that we have to start  
20 putting some cash away.

21 Q Okay. And about when was that decision?

22 A Probably late 1995. Early, mid 1995.

23 Q Showing you Exhibit Number 3, can you tell me  
24 what this document is?

25 A (Perusing document.)

1 Q First of all, do you recognize what the cover  
2 page is?

3 A Yes, sir.

4 Q And what is that?

5 A It's a BDO -- it's a table out of the BDO  
6 report.

7 Q And you've reviewed the BDO report?

8 A Yes, I did.

9 Q And you're familiar with it?

10 A Yes.

11 Q And then what is attached to this -- what are  
12 these checks over the next five or six pages?

13 A These are cashier's checks that Fathi Yusuf  
14 basically directed certain individuals from the Hamed  
15 family and the Yusuf family to purchase.

16 Q And these checks were attached to the subfile  
17 in the BDO report?

18 A Yes.

19 Q So let's talk about these checks for a second.  
20 I see that there's one to Scotiabank, two to Sun Bank,  
21 nine to Great Western, one to Bank of St. Croix, and one  
22 to -- two to Barnett Bank in Florida; is that correct?

23 A Yes, sir.

24 Q And these are all cashier's checks?

25 A Yes, they are.

1 Q And the dates on these checks are all in  
2 September of 1995?

3 A Yes, sir.

4 Q Now, at the Bank of St. Croix, I take it that  
5 Plaza had an account; is that correct?

6 A No, we didn't have an account at Bank of St.  
7 Croix.

8 Q Okay. And did you have an account at the Bank  
9 of St. Croix?

10 A No, we didn't.

11 Q Okay. And then these Florida banks, Sun Bank,  
12 Great Western Bank, and Barnett Bank, did Plaza have  
13 accounts there?

14 A No, sir.

15 Q Did any member of the Hamed or Yusuf family  
16 have accounts in any of these banks, to your knowledge?

17 A Not to my knowledge, no.

18 Q Okay. So taking aside the local Scotiabank  
19 check and the Bank of St. Croix check, how did all these  
20 Florida checks come about? How did these certified  
21 checks get done?

22 A Well, Fathi said go ahead and -- you know, we  
23 had several members of the family, the Yusuf family and  
24 the Hamed family, that were going to college at the  
25 time. And he would say go ahead and give them the

1 money, whether it's -- I don't recall exactly how much  
2 money, but the money would be given to them. They would  
3 go up to the States where they go to college and they  
4 would go to these different banks and buy cashier's  
5 checks, then send the cashier's checks back to the  
6 Virgin Islands, and then Fathi would mail them or take  
7 it upon himself to take them to Amman Jordan Bank.

8 Q And this is about when the scheme started to  
9 start diverting money from the Plaza stores?

10 A Yes, sir.

11 Q Did Fathi know about each one of these  
12 checks?

13 A Yes, sir.

14 Q And did he deposit, to your knowledge, each  
15 one of these checks in an account in Jordan?

16 A To my knowledge, they should have been, yes.

17 Q Okay. Now, did this practice continue?

18 A Yes, it did.

19 Q Can you explain to the Court, just generally,  
20 what happened over the next five to six years as far as  
21 moving money around is concerned?

22 A Well, we took -- the plan is to go ahead and  
23 take cash, get family members to go to buy cashier  
24 checks, get several trusted employees to go and then buy  
25 cashier's checks. We opened bank accounts in family

1 members' names and we would deposit checks in those  
2 accounts, and checks would be written off of those  
3 accounts to be taken over to Jordan or mailed to Jordan.  
4 We would also have cash transported to St. Maarten.

5 MR. HODGES: Your Honor?

6 THE COURT: Yes.

7 MR. HODGES: I'd like to put an objection on  
8 the record. We're here -- as I understand, this  
9 testimony relates to a motion for summary judgment  
10 on the statute of limitations. As Your Honor is  
11 well aware, discovery has been stayed in this case  
12 since October of 2014. We have not deposed  
13 Mr. Hamed before or had a -- that is still an open  
14 issue.

15 While the order allowed the plaintiff to  
16 submit evidence, the evidence was limited to  
17 Mr. Yusuf's knowledge of any suspicious  
18 circumstances relating to information in his  
19 possession to trigger a duty to exploit his access  
20 to such information relating to the Hameds' fraud,  
21 conversion, breach of fiduciary duty. The  
22 testimony that we're hearing right now apparently  
23 relates to a cash diversion scheme that Mr. Hamed  
24 participated in.

25 But the bottom line is, we're here on a

1 summary judgment motion, and we're hearing evidence  
2 for the first time without the opportunity for  
3 discovery, and it -- I would object, quite frankly,  
4 to having any evidence at a hearing on a summary  
5 judgment motion. Either they have put a record in  
6 the form of an affidavit -- none of this  
7 information has been submitted by way of affidavit,  
8 ever, by Mr. Hamed. Certainly not in support of  
9 their motion for summary judgment. So if they want  
10 to withdraw their summary judgment motion, they  
11 can, but they can't effectively ask us to respond  
12 to an affidavit that is in the making here at this  
13 hearing this morning. It's simply not fair.

14 THE COURT: As you say, so far we haven't  
15 gotten to the operative issue of the type of --

16 MR. HODGES: Your Honor, right now, he's --  
17 Exhibit 3, he's not dealing with the statute of  
18 limitations. Effectively, he's attacking the BDO  
19 report.

20 MR. HOLT: Oh, no, no. That's a statute of  
21 limitations question.

22 THE COURT: All right. I assume we're on our  
23 way to get there.

24 MR. HOLT: We are. And that \$62,000 is listed  
25 in the BDO report, and we think it's barred by the



1 statute of limitations because Fathi Yusuf knew  
2 about it. So at the appropriate time, we'll total  
3 all those up and we'll present you an itemization  
4 of each one of those.

5 THE COURT: All right. So your objection is  
6 noted, Attorney Hodges.

7 BY MR. HOLT:

8 Q So I want to go back. When you wanted to  
9 divert cash, hard currency, how would that be done?

10 A Hard currency would be taken -- we would take  
11 it to St. Maarten.

12 Q And how would you take it to St. Maarten?

13 A Fathi Yusuf would arrange, or he would direct  
14 me to go ahead and take money to St. Maarten or one of  
15 the family members to take money over, or he would take  
16 it himself over.

17 Q And generally speaking, what amount of cash  
18 would be taken to St. Maarten?

19 A Thousands.

20 Q Okay. If you wanted to divert money by  
21 cashier's checks like we just saw, how would that take  
22 place?

23 A Cashier's checks would be done similar to what  
24 this report shows right here. The monies would be given  
25 to family members, and they would go to different bank

1 accounts or different banks and they would buy cashier's  
2 checks in lieu of cash.

3 MR. HODGES: Your Honor, may I object again?  
4 Again, these issues are apparently attempting to  
5 create an issue of fact regarding what Mr. Yusuf  
6 knew or should have known regarding --

7 MR. HOLT: (Shaking head.)

8 MR. HODGES: -- certainly that's the issue  
9 that's addressed in Item Number 1.

10 THE COURT: Right.

11 MR. HODGES: If they're going to effectively  
12 create a declaration on the fly, I would  
13 respectfully submit that Mr. Yusuf ought to be here  
14 to hear this. I would like to ask for a recess to  
15 see if he can get down here.

16 This has never been heard before. We've never  
17 had the opportunity to depose Mr. Hamed. And,  
18 quite frankly, I've never, in my 35 years of  
19 experience here in the Virgin Islands, had a  
20 summary judgment hearing where we have evidence  
21 that we're hearing for the first time being put on  
22 in support of a motion for summary judgment that  
23 they didn't bother to put in a declaration to  
24 support that motion. I would respectfully submit  
25 that they shouldn't be entitled to put on any

1 evidence, if they couldn't put it on in connection  
2 with their moving papers.

3 MR. HOLT: Your Honor, you put in the order  
4 that we could put on evidence. You put the burden  
5 on us, and we're prepared to proceed on that  
6 evidence as well as on the BDO report by testimony  
7 today. And we put one witness in, we have one  
8 witness who is here because -- he doesn't want to  
9 be here because it's tax season, but he's taking  
10 the time. And it's not going to take that long if  
11 we just go through and put it on the record. But I  
12 believe the plaintiff is entitled to put it on the  
13 record. I don't believe any of this is really a  
14 surprise to them. And you will see, as we go  
15 through it, most of the evidence is going to come  
16 from documents exchanged between the parties.

17 THE COURT: Very well.

18 MR. HODGES: Your Honor, but we're -- if all  
19 this testimony is used for is to create an issue of  
20 fact regarding whether Mr. Yusuf knew or should  
21 have known, we'll concede there's an issue of fact.  
22 He has a declaration that's on file in opposition  
23 to their motion for summary judgment that says when  
24 he discovered the information.

25 THE COURT: But he said it was 2011; correct?

1           MR. HODGES: That's correct, Your Honor. So  
2           at the most, this testimony is going to say he knew  
3           or should have known about it earlier. There's a  
4           contested issue of fact. Motion denied. So, you  
5           know, I don't understand the purpose of this  
6           testimony if all it's doing is to attempt to create  
7           the issue of fact that they didn't bother to create  
8           in their moving papers. We concede there's an  
9           issue of fact.

10           MR. HOLT: Your Honor, we're trying to show  
11           that there is not an issue of fact. We're the ones  
12           who moved for summary judgment.

13           THE COURT: Okay. I'm not going to stop the  
14           hearing. If you want to have Mr. Yusuf  
15           participate, you can try to get him here. Looks  
16           like we're going to go a little while.

17 BY MR. HOLT:

18           Q     Okay. Now, going to -- you mentioned taking  
19           American Express checks. Tell me how that would happen.

20           A     American Express checks, well, cash was given  
21           and employees or family members would go and buy  
22           American Express checks --

23           Q     Okay.

24           A     -- and bring them back.

25           Q     And then you testified that funds would be

1 moved by checks. Not cashier's checks, certified  
2 checks, just checks. Explain that to the Court.

3 A Well, there were checks -- we would -- at the  
4 store, we would change customers' checks. We would hold  
5 onto the checks, we will bundle the checks, we also have  
6 checks from our accounts that we use as enterprise  
7 accounts, and we would write checks out of them and mail  
8 those checks to Amman, Jordan.

9 Q Okay. And just for the record, when you talk  
10 about enterprise, what are you talking about?

11 A Those are accounts that we opened specifically  
12 for getting money around, or, really, putting cash on  
13 the side and getting those things out.

14 Q And did Fathi Yusuf know about the checks that  
15 would be transmitted in these various accounts?

16 A Yes, sir, he did. It was under his  
17 instructions to open those accounts.

18 Q Okay.

19 MR. HOLT: Could I have the witness shown  
20 Exhibit Number 4?

21 THE COURT: He may be shown.

22 MR. HOLT: If Your Honor would just indulge me  
23 a moment.

24 (Pause in proceedings.)

25 Q Can you tell me what Exhibit Number 4 is?

1           A     This is a chart that was done by the criminal  
2 accountants that we hired for the criminal case we  
3 had.

4           Q     So this was -- this is a letter to Hank Smock.  
5 Who does Hank Smock represent in this case?

6           A     Hank Smock is Fathi Yusuf's attorney.

7           Q     And this is from Ron Soluri?

8           A     Yes, sir.

9           Q     And who is Ron Soluri?

10          A     He's the managing director of the accounting  
11 firm Freed Maxick.

12          Q     And in this letter he's enclosing a copy of  
13 the transfers of monies that they have been able to set  
14 up that were being done; is that correct?

15          A     Yes, sir.

16          Q     So this shows all the different ways that you  
17 were funneling money over to different banks?

18          A     Yes, sir.

19                MR. HOLT: Your Honor, I'm going to ask him  
20 some questions about that chart, and we've made a  
21 blow-up because that thing is so small. May the  
22 witness use this chart?

23                THE COURT: Sure. Do you want to just give a  
24 preview of how we're going to get to the operative  
25 questions? How is all this leading to what you

1           need to prove?

2           MR. HOLT: In the BDO report, they list a  
3           number of checks that they say they didn't know  
4           about. And we're going to prove through this  
5           evidence -- and we've got some very detailed  
6           evidence to show you -- that they knew about all of  
7           these checks. So, therefore, they're barred by the  
8           statute of limitations because all these checks  
9           predate 2001nd we've got specific checks we're  
10          going to go through, and this is just a general  
11          background so you understand how we establish that  
12          basis.

13          THE COURT: So are you talking, then, about  
14          the statute of limitations for particular claims?

15          MR. HOLT: Yes.

16          THE COURT: As opposed to a statute of  
17          limitations that generally gives rise to -- that  
18          arises from a duty to inquire further into the  
19          records?

20          MR. HOLT: Right. Our statute of limitation  
21          is going to go to specific claims that were  
22          filed -- that aren't in the BDO report but were  
23          filed on September 30th, that's about five of those  
24          claims, and they will be toward the end of this  
25          testimony. And then our -- we will also go to a

1 number, but not all, of the claims in the BDO  
2 report that predate 2001.

3 THE COURT: Okay. That predate 2001.

4 MR. HOLT: Well, we think the statute is 2006,  
5 because under the motion we filed -- we all filed  
6 in September of 2012, so we think the statute of  
7 limitations is a six-year statute as we briefed in  
8 our motion, so we're just trying to beat September  
9 of 2006, but these all go even further back.

10 THE COURT: All right. Well, I suppose  
11 interrupting the testimony to get a handle on this  
12 isn't a bad idea. In your motion, you said that  
13 counterclaims have a --

14 MR. HOLT: Same date as complaint.

15 THE COURT: -- same date as the complaint.

16 MR. HOLT: Right.

17 THE COURT: And, therefore, only claims going  
18 back six years from the date of filing of the  
19 complaint --

20 MR. HOLT: Right.

21 THE COURT: -- should be considered.

22 MR. HOLT: Correct.

23 THE COURT: This, of course, has nothing to do  
24 with that particular --

25 MR. HOLT: Oh, yeah. I'm showing -- I am



1 going to show that a long list of specific claims  
2 that are in the BDO report, as well as a long list  
3 of claims outside the BDO report that they filed,  
4 are barred by the statute. These were all filed on  
5 September 30th, so that's when they really became  
6 official claims. We're going to put on evidence to  
7 show that those are barred.

8 Now, we also take the position that the BDO  
9 report is unreliable. If you throw out the entire  
10 BDO report, some of the statute of limitations  
11 issues become a little bit easier unless they try  
12 to assert the claims some other way. But, you  
13 know, we think you need to consider the evidence on  
14 both issues. And we've got some very detailed --  
15 we're going to start pulling out specific checks  
16 shortly, checks that they say they didn't know  
17 about that are in the BDO report, and we're going  
18 to show that they were deposited in Fathi Yusuf's  
19 account in Amman, Jordan.

20 THE COURT: This is not a hearing on claims.

21 MR. HOLT: I understand.

22 THE COURT: This is a hearing on what did  
23 Fathi Yusuf know and when did he know. So rather  
24 than get into an examination of what checks were  
25 prepared and filed for what purpose when

1 historically, can't we synthesize this to get to a  
2 point to simply answer the question that United  
3 versus Hamed asked, and that is, in essence, what  
4 did Fathi Yusuf know and when did he know?

5 MR. HOLT: I think we have to put on all this  
6 evidence to show that. And I don't think it's that  
7 long. I think he'd be off the stand if we hadn't  
8 taken interruptions. I think each witness will be  
9 fairly brief. But I understand the burden that I  
10 have to prove. You've laid it out. And we've come  
11 forth with these witnesses and prepared them, and  
12 spent quite a bit of time preparing them for  
13 today's hearing. And part of it all is going to  
14 require looking at specific checks so you can  
15 understand how the money flow went. And there are  
16 some claims, theoretically, that I could see Fathi  
17 Yusuf would say he didn't know about, like payments  
18 on credit cards, but the bulk of the claims you're  
19 going to see, it's easy, it's not hard to find,  
20 that he agrees he knew about them.

21 And therefore, what we're going to do is this  
22 witness and the next witness lay the factual  
23 foundation, and David Jackson will do the math to  
24 show the claims that are specifically barred.  
25 He'll do some math but only on claims outside the

1 BDO. And then we've got other witnesses that will  
2 talk about the statute of limitations in general  
3 and the BDO report.

4 THE COURT: All right. But again, this isn't  
5 a hearing on specific claims. It's a hearing on  
6 generally the statute of limitations.

7 MR. HOLT: Right, right. And we will ask you  
8 at the end of this hearing to bar all claims that  
9 emanate out of a partnership account record that  
10 predate 2006, really, 2003 or '04, because there  
11 aren't many after that. So we're going to ask for  
12 a general bar of all records of all claims for  
13 which there's a partnership record, and we're going  
14 to establish that Fathi Yusuf knew about all  
15 partnership records. And that's going to come out  
16 to about \$5 million in claims, a large amount of  
17 claims. So that's what we're putting on evidence  
18 for today to show that those are claims he knew  
19 about.

20 Easy example would be in a claim outside the  
21 BDO report, they have claims for gross receipts for  
22 1996 that the shopping center paid. And we'll put  
23 on testimony that Fathi Yusuf obviously knew about  
24 the gross receipts paid on his own shopping center  
25 in 1996, and we'll submit those claims are

1 generally barred. But we're just looking for the  
2 order that anything he knew about prior to that  
3 date were barred, and that will include all of  
4 these claims. And, you know, this is -- it's not  
5 really that painful because we've really tried to  
6 organize our presentation, but this is a step in  
7 this case that needs to be made. I mean, we didn't  
8 submit the BDO report. We think when we finish  
9 today, you're going to find that it's unreliable  
10 and throw it out, but you need to hear why I think  
11 that. You can't just take my argument.

12 THE COURT: Very well.

13 MR. HODGES: Your Honor, again, this is a  
14 summary judgment hearing. If testimony is  
15 required, summary judgment should be denied,  
16 period. But at a minimum, we're entitled to  
17 discovery before the Court enters summary judgment  
18 on a disputed issue. I note the Master is not even  
19 here. It's -- I will argue, and I think it's  
20 crystal clear from the plan provisions, that he is  
21 the person that should determine claims in the  
22 first instance. And he's not even here to hear the  
23 testimony. This is absolutely --

24 THE COURT: Okay. But I'm not here to hear  
25 any claims, that's why my questions to Attorney

1 Holt. But Attorney Holt suggests that to determine  
2 the answer to the operative question of were there  
3 suspicious circumstances that gave rise to a duty  
4 on Fathi Yusuf to examine documents that were in  
5 his possession, that somehow he says he needs to go  
6 through all this.

7 So you're correct that all of this surplusage  
8 is not going to be determined by me, any specific  
9 claims -- or at least not going to be determined by  
10 me today. We're not here to determine claims.  
11 We're here to determine what is the date from which  
12 claims may be presented.

13 MR. HODGES: But Mr. Holt has already argued  
14 on several occasions that only a jury can make that  
15 determination. Now, he's falling back and said  
16 well, wait a minute, I want you to make that  
17 resolution today after hearing testimony from these  
18 witnesses that we've never been able to depose.

19 THE COURT: All right. Well, he says that  
20 this is -- this precedes the jury issue, because if  
21 there's no questions of fact in dispute, then  
22 there's nothing for a jury to decide.

23 MR. HODGES: But we've already submitted a  
24 declaration from Mr. Yusuf as to when he discovered  
25 the defalcation, the breach of fiduciary duty and

1           so forth.

2           THE COURT:   And perhaps because of what  
3           Mr. Yusuf's declaration says, that's why all of  
4           this detail is necessary to show that,  
5           notwithstanding the declaration of Mr. Yusuf,  
6           there -- the plaintiff is trying to establish that  
7           there is no --

8           MR. HODGES:   But, Your Honor, I would  
9           respectfully submit, you can't take this live,  
10          fresh testimony that we've never had an opportunity  
11          to discover before and put it against Mr. Yusuf's  
12          declaration that's been on record since 2014 and  
13          say, well, I'll take the fresh versus the  
14          declaration.   That's not the summary judgment  
15          process.

16          THE COURT:   All right.   Well, we're going to  
17          continue.   There's no surprise as to what -- there  
18          shouldn't be a surprise as to the scope of what  
19          we're hearing today, although I must agree that I'm  
20          surprised at the extent of it.

21          But go ahead, Attorney Holt, but let's do it  
22          as expeditiously as you can.

23          MR. HOLT:   And, Your Honor, I might just point  
24          out, some of this testimony will eventually start  
25          overlapping into the BDO issue, the reliability

1 issue.

2 BY MR. HOLT:

3 Q All right. So if you could just take us  
4 through this chart, explain to the Judge how money would  
5 flow from the St. Thomas store and how money would flow  
6 from the store in St. Croix to Amman, Jordan.

7 MR. HODGES: Your Honor, I would object to any  
8 testimony regarding this unqualified document.  
9 Exhibit 4 hasn't been admitted and we would  
10 respectfully submit it should not be admitted.  
11 There's no indication where this chart came from,  
12 who prepared it, when, for what purpose.

13 MR. HOLT: It's the chart attached to the  
14 letter to your client's lawyer. I mean --

15 MR. HODGES: From Mr. Soluri who is certainly  
16 not one of our experts, or -- you know, so as far  
17 as I'm concerned, Your Honor, this is an exhibit  
18 that should not even be considered.

19 MR. HOLT: This is a 2004 exhibit. He's no  
20 one's expert. He was an accountant for United  
21 Corporation. He prepared this chart. Everyone has  
22 had this chart in discovery, and Mr. Hamed is going  
23 to explain the flow of money, which is part of  
24 going to show that there was no reasonable basis  
25 for Fathi Yusuf to assert that he did not know

1           about all of these transactions prior to the  
2           statute running.

3           THE COURT:   And what does this chart have to  
4           do with particular claims that are pending?

5           MR. HOLT:    Because there are numerous claims  
6           for checks, which we're going to get into shortly,  
7           where they claim that they didn't know about this  
8           check to such and such, and you're going to find  
9           out that that check was deposited into one of these  
10          accounts in Fathi's name.   So we're going to go  
11          through those, because that's how -- and I can tell  
12          you, as painful as it might sound, we've organized  
13          it to make it be less painful, but it's going to be  
14          better than trying this case in front of a jury.  
15          It's going to be far better off to clear up the  
16          issues for which there is no legitimate dispute and  
17          then proceed on the ones that are.

18          THE COURT:   All right.

19          MR. HODGES:   Your Honor, again --

20          THE COURT:   I hear your objection, and I'm not  
21          going to prevent the witness from testifying on it.  
22          Your objection is noted.

23          BY MR. HOLT:

24                 Q       Okay.   Can you explain first, how would money  
25          flow from the St. Thomas store to the various accounts



1 you've discussed and where would it end up?

2 A Plaza Extra store --

3 THE COURT: Let's do it, Mr. Hamed, so that  
4 everybody can see.

5 A Plaza Extra store was managed and directed by  
6 Fathi Yusuf. The monies would go -- the cash would be  
7 paid to vendors, it would be also used for loans for  
8 employees, for family. It would -- we would buy  
9 cashier's checks. We would pay wages out of it. All  
10 the cash would be transported to St. Maarten, and then  
11 we have other stuff that we do, we bought money --  
12 rather, money orders, cashier's checks, traveler's  
13 checks, and we also did customer checks and rebates.

14 Q Okay. Where would the cash be taken?

15 A The cash would be taken to St. Maarten into  
16 Fathi Yusuf account.

17 Q And what was the name of the bank there?

18 A Banque Fran -- France bank. I don't really  
19 know how to pronounce it. But it's a bank in the  
20 Dutch -- on the Dutch side.

21 Q And that's on this chart?

22 MR. HODGES: Your Honor, excuse me, objection.

23 The witness is testifying about a document, an  
24 exhibit that hasn't been admitted into evidence.

25 MR. HOLT: Your Honor, I'll move Exhibit 4

1 into evidence.

2 MR. HODGES: I would object, Your Honor. This  
3 exhibit -- the letter that hasn't even been  
4 admitted doesn't say -- it says relevant data. It  
5 doesn't say who prepared it, doesn't say when it  
6 was prepared, for what purpose. Certainly  
7 Mr. Hamed has not testified that he prepared it.  
8 The bottom line is, he shouldn't be entitled to  
9 testify about an exhibit that this Court knows  
10 nothing about.

11 THE COURT: Well, he says that he knows about  
12 it, and so that's -- and it's suggested that  
13 this --

14 MR. HODGES: Your Honor, may I voir dire the  
15 witness about this exhibit?

16 THE COURT: Sure. Yes.

17 VOIR DIRE EXAMINATION

18 BY MR. HODGES:

19 Q Mr. Hamed, who prepared this document?

20 A This document was prepared by Matt Rodina.

21 Q When?

22 A Back in 2004.

23 Q For what purpose?

24 A For the criminal defense attorney.

25 Q For the criminal case involving -- in which

1 you were a criminal defendant?

2 A Yes, and Fathi Yusuf, United Corporation, and  
3 Mike Yusuf and Willie Hamed.

4 Q Was this document ever used in court?

5 A We never got to court, sir.

6 Q Okay. So my question is: Was this document  
7 ever used in court?

8 A No, sir.

9 Q Was it ever admitted by any Court?

10 A Not to my knowledge.

11 Q Mr. Soluri is an accountant with RSM  
12 McGladrey; is that correct?

13 A Yes, sir.

14 Q And Mr. Soluri, you agree with me, do you not,  
15 that ultimately he refused to provide documents in his  
16 possession to Mr. Yusuf on request?

17 A I don't know what you're talking about, sir.

18 Q You don't -- you're not aware of that?

19 A No, sir.

20 Q You're the one that paid Mr. Soluri, aren't  
21 you?

22 A United paid Mr. Soluri.

23 Q You're the one that wrote the checks, aren't  
24 you?

25 A Not me. The office did.

1 Q You signed the checks to Mr. --

2 A I signed the checks because it's my duty to go  
3 ahead and do that.

4 Q All right. So you're the one that paid his  
5 bills; isn't that right?

6 A With the approval of Fathi Yusuf.

7 Q That wasn't my question, though, was it?  
8 You're the one that signed the checks that paid him.

9 A With the approval of Fathi Yusuf.

10 Q Did Mr. Yusuf approve Mr. Soluri not giving  
11 him the information that he requested?

12 A Like I said, I really don't know what you're  
13 talking about, sir.

14 Q This document that you were looking at, the  
15 chart, you say it was never used in any court. Do you  
16 know Matt Rodina prepared it?

17 A Yes.

18 Q How do you know that?

19 A Because Matt Rodina worked for Jack Dema that  
20 represented Mike Yusuf in the criminal case.

21 Q How do you know that Mr. Rodina prepared this  
22 document?

23 A Because we supplied him with certain factual  
24 evidence.

25 Q Is it only because his name is on the bottom

1 right-hand corner? Is that why you --

2 A No, sir. I said that we provided him -- we  
3 met with him, Mike Yusuf, Fathi Yusuf, Willie Hamed,  
4 Wally Hamed met with Matt Rodina to go ahead and go  
5 through this whole thing.

6 Q Now, would you agree with me, Mr. Hamed, that  
7 a lot of the money that you were talking about  
8 transferring went to accounts in your father's name in  
9 Jordan?

10 A No, sir, it didn't.

11 Q None? None whatsoever?

12 A I'm not too sure how much, but not the way you  
13 stated, sir.

14 MR. HOLT: Your Honor, I think we've gone --

15 A Most of the stuff shows --

16 THE COURT: Hold on, hold on, hold on. Stop,  
17 stop, stop. This is voir dire. You're going to  
18 have a chance to cross-examine, but this is on the  
19 chart.

20 BY MR. HODGES:

21 Q This chart does not reflect all monies  
22 transferred from cash in the stores to accounts in  
23 foreign jurisdictions, does it?

24 A I'm not sure, sir, no.

25 Q Well, you know it doesn't, does it?

1           A     I'm not sure.

2           Q     Well, you are sure because this chart doesn't  
3 reflect any money going into your father's accounts,  
4 does it?

5           A     I don't see where my father's account in here.  
6 All what I see is Fathi Yusuf account.

7           Q     All right. So in other words, this chart  
8 doesn't reflect the disbursement of all the cash that  
9 you were talking about to accounts. It only, you're  
10 saying, reflects accounts going to Mr. Yusuf's account;  
11 is that correct?

12          A     Yes.

13                THE COURT: And that's because your father was  
14 not a defendant in the criminal case?

15                THE WITNESS: That's correct, sir.

16                THE COURT: So if your father had been a  
17 criminal defendant, would we assume that the chart  
18 would have included checks made payable to him,  
19 too?

20                THE WITNESS: I assume so, yes, sir.

21 BY MR. HODGES:

22           Q     At no time during the course of this criminal  
23 investigation or prosecution did your father stand up  
24 and say, "Well, wait a minute, I'm a partner in the  
25 Plaza Extra stores," did he?

1 MR. HOLT: Your Honor, it's argumentative.

2 THE COURT: It's beyond the scope of this  
3 inquiry.

4 MR. HODGES: Your Honor, I would respectfully  
5 submit that this exhibit, A, is not admissible,  
6 but, more importantly, it can't be considered in  
7 connection with a motion for summary judgment that  
8 is supposed to be supported by affidavits that we  
9 have an opportunity to address. As you can see,  
10 we're dealing with this chart, effectively, for the  
11 first time today. I've never had an opportunity to  
12 depose Mr. Hamed. And, you know, again, I would  
13 respectfully submit it's unfair for the defendants  
14 to have to deal with summary judgment on the fly  
15 like this. It's -- it's not consistent with the  
16 rule and it's certainly not fair.

17 THE COURT: Very well. Your objection is  
18 noted. Let's just see where it leads us and to  
19 what extent you're going to need an opportunity to  
20 present contrary evidence.

21 MR. HOLT: Your Honor, I guess for the record,  
22 I should move to -- I was just going to move at the  
23 end all of my exhibits, but I guess I should do it  
24 one by one. I would move Exhibits 1 through 4 into  
25 evidence.

1           MR. HODGES:  Objection, Your Honor.  There's  
2           been no foundation laid for any of them.

3           THE COURT:  Well, the -- let's take -- start  
4           with Number 1.  That's the Pru-Bache accounts.  
5           When you say no foundation laid, Mr. Hamed  
6           identified what that exhibit was.  I'll admit  
7           Number 1.

8           Number 2 is the tax return, I'll admit  
9           Number 2.

10          Number 3 is a portion of the BDO report, so  
11          I'll admit that.

12          MR. HODGES:  Your Honor, may I be heard on  
13          that just briefly?

14          THE COURT:  Yes.

15          MR. HODGES:  This is one page out of the BDO  
16          report that was submitted to the Master in support  
17          of our claim pursuant to the Master's directive  
18          that all parties submit their competing claims by  
19          September 30th.  It was not -- the BDO report was  
20          not a report of a testifying expert that you would  
21          ordinarily see in the pretrial context that  
22          ordinarily gives rise to Daubert motions.  It was  
23          effectively the best report that BDO could submit  
24          based on the information available at that time,  
25          given the stay of discovery since October of 2014,



1 and it was not even filed with this Court. So the  
2 fact that they have attached exhibit -- one portion  
3 of it, I don't know what page of the report it is,  
4 and several checks that attached to it, it simply  
5 makes no sense. Particularly since the BDO report  
6 has never been properly before this Court.

7 MR. HOLT: Your Honor, if I may briefly  
8 explain. The witness testified about the checks  
9 attached to it. The checks are from a subfile in  
10 the BDO report of which this is just one of the  
11 files. We will introduce the BDO report, but his  
12 testimony is more relevant to going to the specific  
13 checks that he discussed and he said he knew about  
14 and talked about.

15 THE COURT: Very well. For the purposes of  
16 this motion and the hearing on this motion, I will  
17 accept all four of the exhibits.

18 (Plaintiff's Exhibits 1 - 4 admitted into  
19 evidence.)

20 DIRECT EXAMINATION (Cont'd)

21 BY MR. HOLT:

22 Q Okay. So can you go back with the chart and  
23 explain how the money flowed. I think you've gotten all  
24 the way to the French bank where the cash was going.  
25 How many accounts were there in the French bank in

1 St. Maarten?

2 A There were three. One of them was Fathi  
3 Yusuf, one of them was in my name, and one of them was  
4 for Hamdan Diamond.

5 Q And who is Hamdan Diamond?

6 A Hamdan Diamond is a company that Fathi created  
7 based on his late brother's name so we can go ahead and  
8 launder money, basically.

9 Q And did you have the authority to sign on all  
10 three accounts?

11 A Yes, I did.

12 Q Did Fathi have the authority to sign on all  
13 three accounts?

14 A Yes, he did.

15 Q And who received the statements from those  
16 three accounts?

17 A Fathi Yusuf.

18 Q And what was the address on all three  
19 accounts?

20 A 26-A Tutu Park Mall.

21 Q And what is that address?

22 A That is the Tutu Park store -- office or  
23 location for the St. Thomas store.

24 Q And during this time period, whose office was  
25 that?

1           A     That was Fathi Yusuf's office.

2           Q     Okay. Now, going across the top to where the  
3 checks -- the certified checks, Am Ex Traveler's checks,  
4 and the checks from various customers were deposited,  
5 how would that be routed?

6           A     That would be put in a binder -- not a binder,  
7 I'm sorry. They would be copied and --

8           MR. HODGES: Your Honor, may I stand?

9           THE COURT: Yes, sure.

10          A     They would be put together, put a list  
11 together, and it would be mailed over to the Amman  
12 Jordan Bank -- Cairo Amman Bank. I'm sorry.

13          Q     So it would go through those various accounts  
14 to the final account that we see there; correct?

15          A     Yes, sir.

16          Q     And that last account at the end, whose  
17 account is that?

18          A     That account was from the various Fathi Yusuf  
19 accounts and then finally it goes into the Fathi Yusuf  
20 account.

21          Q     That last account is an account in his name?

22          A     Yes, sir.

23          Q     Okay. Now, from the St. Croix store, if you  
24 could just give us --

25          A     Well, the St. Croix store, we did the same

1 thing. We would do the cash, we buy cashier's checks,  
2 we buy -- we pay customers with cash, we pay payroll  
3 with cash. We would send out either family members or  
4 we'd send out trusted employees to buy cashier's checks.  
5 We would have -- we would write checks out of our  
6 enterprise checks, I would -- my account and Mike's  
7 account, we write checks out of them and put them  
8 together. Me and Mike would -- Mike would hold them  
9 because he was in charge of the safe in the St. Croix  
10 store, he would hold onto them, put them together, we  
11 put them in an envelope, Express Mail envelope, with a  
12 total, and we would Express Mail it.

13 Q Okay. And would those same checks go through  
14 the various accounts and end up in one account?

15 A They would go into my account at Jordan Amman  
16 Bank and then eventually flow to the other account that  
17 I had, and then ultimately flows into Mr. Yusuf's  
18 account.

19 Q Okay. And the accounts that were in your name  
20 at the Amman Jordan Bank, could Fathi Yusuf sign on that  
21 account?

22 A Yes, he did.

23 Q And where would the account statements for all  
24 of these different accounts be mailed to?

25 A They would be mailed to Fathi Yusuf at Tutu

1 Park Mall.

2 Q Okay. And so this chart is basically how the  
3 funds would flow from the Virgin Islands to the  
4 different mediums you talked about into that final  
5 account in Amman, Jordan?

6 A Yes, sir.

7 Q And then the money in Amman, Jordan, would  
8 eventually be spent?

9 A Yes, it would be.

10 Q Okay.

11 MR. HOLT: Your Honor, I'm done with that  
12 chart. I'd like to show the witness Exhibit  
13 Number 5.

14 THE COURT: He may be shown.

15 You know, just to help me direct my focus, so  
16 far everything has been directed to this elaborate  
17 scheme that is, as the witness has said, to money  
18 laundering. But it's also presented as a joint  
19 venture and part of the efforts of the partnership,  
20 but the operative question for this motion and  
21 hearing is not what did Fathi Yusuf know about what  
22 was going on with the partnership, but rather at  
23 what point in time did Fathi Yusuf have information  
24 that should have made him suspicious to start  
25 looking at Mohammad Hamed to say, hey, you are

1 stealing from me.

2 MR. HOLT: Okay. Well --

3 THE COURT: We're going to get there?

4 MR. HOLT: They have listed a whole bunch of  
5 checks that they say they didn't know about, and  
6 we're going to start marking individual checks to  
7 show two things: one, they knew about them, and,  
8 two, to show that the BDO report is unreliable.

9 THE COURT: But then aren't we just -- we're  
10 not really answering the question that has to be  
11 answered, are we? Aren't we just trying to knock  
12 down claims that have already been presented as  
13 opposed to the question I just posed, and that is,  
14 when did Fathi Yusuf become suspicious that he was  
15 being cheated by his partner?

16 MR. HOLT: Well, Fathi Yusuf feels like he's  
17 cheated. Where were you cheated? And he lists  
18 3,000 claims. So we're going to have to look at  
19 each one of those claims to see if he was  
20 cheated.

21 THE COURT: We're not doing that today.

22 MR. HOLT: I understand that. But we're going  
23 to show you a process where you can eliminate most  
24 of those claims that predate a certain time period,  
25 so that's what we're doing.

1 THE COURT: Very well.

2 BY MR. HOLT:

3 Q Looking at Exhibit 5, can you tell me what  
4 that is?

5 A That is a copy of the mail that was sent to  
6 Fathi Yusuf in St. Thomas.

7 Q Are these sample envelopes from various  
8 accounts?

9 A Yes, they are.

10 Q Okay. So this is just a representative of  
11 different accounts -- envelopes mailed from various  
12 banks in either St. Maarten or Amman, Jordan, to Fathi  
13 Yusuf to show that he received those?

14 A Yes, sir.

15 MR. HOLT: Your Honor, we move Exhibit  
16 Number 5 into evidence.

17 THE COURT: Admitted.

18 (Plaintiff's Exhibit No. 5 admitted into  
19 evidence.)

20 Q Showing you Exhibit Number 6. All right.  
21 Now, have you seen Number 6 before?

22 A Yes, I have.

23 Q All right. You see the second check down  
24 payable to Hisham Hamed --

25 A Yes, sir.

1 Q -- for \$2598.98?

2 A Yes, sir.

3 Q Where would this check have -- did Hisham  
4 Hamed keep this check?

5 A No, sir, he didn't.

6 Q What did he do with this check?

7 A This is for part of the scheme of laundering  
8 money which is money was given to him to go ahead and  
9 buy cashier's check. It's written in his name as well  
10 as, you know, as you can see, all the people's name, but  
11 this particular check was written to his name.

12 Q And how would you know that this check then  
13 was deposited into one of the Jordan accounts?

14 A It has a stamp on it, for sure. And then if  
15 you look back on the back of the check where he signed  
16 it to endorse it, there's a stamp that says, you know,  
17 deposited in Cairo Amman Bank.

18 Q Okay. So this is an example of the check that  
19 would be written to Hisham Hamed, but he wouldn't keep  
20 the funds, he would endorse it and send it as part of  
21 the scheme to the enterprise account; is that correct?

22 A Yes, sir.

23 MR. HOLT: Your Honor, we'd move Exhibit  
24 Number 6 into evidence.

25 THE COURT: Admitted.



1 (Plaintiff's Exhibit No. 6 admitted into  
2 evidence.)

3 Q Showing you Exhibit Number 7. Can you tell me  
4 what this is?

5 A (Perusing document.) Exhibit Number 7, BDO  
6 table that has listed two checks, one for 2800, one for  
7 2900.50.

8 Q Okay. And then looking over on the next page,  
9 are those the two checks, one at the top for 2800, one  
10 at the bottom for 2900.50?

11 A Yes, sir.

12 Q Okay. And these are checks that, under the  
13 BDO report, it's claimed that Hisham Hamed took and kept  
14 and therefore, he should have a debt to Mr. Yusuf.

15 A Yes, that's what it says, yes.

16 Q Okay. Now, showing you Exhibit Number 8, can  
17 you tell me what Exhibit Number 8 is?

18 MR. HODGES: Your Honor, did you admit Exhibit  
19 Number 7?

20 THE COURT: Yeah, everything is admitted so  
21 far.

22 (Plaintiff's Exhibit No. 7 admitted into  
23 evidence.)

24 BY MR. HOLT:

25 Q Can you tell me what Exhibit Number 8 is?

1           A     This is a copy of Fathi Yusuf Amman Cairo Bank  
2 draft summary report that was done back in 2003, 2004,  
3 somewhere around that time.

4           Q     Okay. And what does that show you, going down  
5 to where we've made a mark on there?

6           A     That shows me that Hisham Hamed, the checks  
7 that were made out to -- cashier's checks that were made  
8 out to Hisham Hamed are actually deposited into Fathi  
9 Yusuf Cairo Amman Bank.

10          Q     Okay. So while Fathi Yusuf claims throughout  
11 the BDO report that he didn't know about these checks,  
12 these checks actually ended up in his account in Amman,  
13 Jordan?

14          A     Yes, sir.

15               MR. HODGES: Objection, Your Honor. There's  
16 no testimony and the BDO report does not say that  
17 Mr. Yusuf did not know about these checks. That is  
18 not true. This was submitted as a part of a claim  
19 that we were supposed to submit on September 30th.  
20 We have not had an opportunity to depose Mr. Hisham  
21 Hamed or Mr. Waleed Hamed about any of these  
22 transactions, nor have they deposed our expert or  
23 our witness about these transactions. We were  
24 required by the Master to submit our claim. These  
25 are simply part of an accounting claim that we

1 submitted.

2 THE COURT: Understood. And it's -- just to  
3 reiterate, we're not here to evaluate claims; and  
4 the operative question we haven't reached yet,  
5 so . . .

6 MR. HODGES: We still haven't reached it.

7 THE COURT: Correct.

8 MR. HOLT: And by the way, this question goes  
9 to two points: one, statute of limitations showing  
10 that Fathi Yusuf obviously knew about these two  
11 checks; also goes to the reliability of the BDO  
12 report, which we will start -- you'll start seeing  
13 a lot of these coming in.

14 BY MR. HOLT:

15 Q So, Exhibit Number 8 is the bank -- is the  
16 deposit into the accounts?

17 A Yes, sir.

18 Q Okay.

19 MR. HOLT: Your Honor, we move Exhibit  
20 Number 8 into evidence.

21 THE COURT: It's admitted.

22 (Plaintiff's Exhibit No. 8 admitted into  
23 evidence.)

24 Q And then can you tell me what Exhibit Number 9  
25 is?

1           A       (Perusing document.)   Exhibit Number 9 --

2                   MR. HODGES:   Your Honor, just for the record  
3           if I may, I would object to Exhibit Number 8.  
4           There's no foundation for that document.

5                   THE COURT:   Number 8, did you say?

6                   MR. HODGES:   Yes, Your Honor.

7                   THE COURT:   Well, it's his testimony only.  It  
8           says up top "Fathi Yusuf Cairo Amman Bank".

9                   MR. HODGES:   Somebody put that there.  I --  
10          where this document came from, he claims from a  
11          summary report.  What summary report?  In other  
12          words, we don't know the providence of this  
13          document, nor have I heard testimony about it.

14                   MR. HOLT:   Your Honor, I'll tie that up right  
15          now so we don't have to argue about where it came  
16          from.

17                   So let me have this marked as Exhibit  
18          Number 10.

19                   MR. HODGES:   And, Your Honor, if I may, just  
20          to elaborate, I think we're dealing with what  
21          amounts to a discovery rule as far as when  
22          Mr. Yusuf knew or should have known about untoward  
23          conduct of his partners or their agents.

24                   THE COURT:   Correct.

25                   MR. HODGES:   That discovery rule doesn't apply

1 to accountings. It applies to tort claims, fraud  
2 claims. The point is, when you submit an  
3 accounting, certainly it's our position that you  
4 submit your claims going back to the beginning of  
5 the claims. That's certainly the position that  
6 we've taken. So the fact that our accounting might  
7 have claims that go back into the '90s that  
8 Mr. Yusuf knew about is certainly not surprising.  
9 As I understand, Your Honor, for reasons that are  
10 not entirely clear from the order, gave them the  
11 opportunity to put on evidence regarding when my  
12 client knew or should have known about the -- what  
13 amounts to the tort claims, the fraud claims.

14 THE COURT: Everybody agrees, Attorney Hodges,  
15 is it correct, that accounts are settled as up to  
16 1994?

17 MR. HODGES: That's our position, Your  
18 Honor.

19 THE COURT: And does the plaintiff agree with  
20 that?

21 MR. HOLT: I agree with that, but that's not  
22 their position, because they're actually claiming  
23 some claims from him from 1993. That's those tax  
24 returns.

25 MR. HODGES: That's correct, Your Honor. We

1 do -- we did not -- according to Mr. Yusuf's  
2 declaration, he didn't discover that until 2012.

3 MR. HOLT: We're going to address it.

4 THE COURT: That's one claim in 1993?

5 MR. HODGES: '92 and '93, I believe.

6 THE COURT: All right. And there are no  
7 records for the partnership that predate 1994,  
8 1993?

9 MR. HOLT: 1992.

10 MR. HODGES: Yes, Your Honor, there is a  
11 document that has been referred to as the black  
12 book that addresses pre-1993 claims, and, in fact,  
13 it addresses the reconciliation that occurred at  
14 the end of 1993. But that -- you know, that black  
15 book certainly did not deal with the tax returns  
16 that were later discovered by Mr. Yusuf when he got  
17 the FBI information.

18 THE COURT: All right. Thank you.

19 BY MR. HOLT:

20 Q All right. Showing you Exhibit Number 10, can  
21 you tell me what this document is?

22 A It's two deposit slips --

23 Q No, I'm sorry. You're looking at Number 9, if  
24 I'm not mistaken.

25 A I'm sorry.

1 Q Are you looking at Number 9? You're looking  
2 at Number 9; correct?

3 A Yes, I am.

4 Q So before we get to Number 9, there's a  
5 question about Number 8. Number 8 is the sheet from  
6 the -- showing the Fathi Yusuf Amman account; correct?

7 A Yes.

8 Q So what is Number 10?

9 A Number 10 is the draft summary schedule or  
10 report that was given to us by the criminal -- the  
11 Department of Justice.

12 Q Okay.

13 MR. HOLT: And just for the record, Your  
14 Honor, I'm going to mark Exhibit Number 11, which  
15 is a Rule 26 disclosures in this case where this  
16 document was produced by the Yusufs. I ask the  
17 Court to take notice of it.

18 Q So you're familiar with this document?

19 A Yes, sir.

20 Q Okay. Now, you were asked, where is the  
21 deposit slip in here that shows Exhibit Number 8?  
22 Because Exhibit Number 8 is copied from a page out of  
23 here. Where is that shown in this document?

24 A Well, if you go to the index -- just give me a  
25 second -- that would be tab L, and we go to tab L, if

1 I'm correct --

2 Q I believe it's tab Q.

3 A Is it?

4 Q Well, maybe I'm wrong.

5 A It might be --

6 THE COURT: I think it's M.

7 Q I'm sorry?

8 A No. It's actually M.

9 Q Yeah.

10 A Tab M.

11 Q Okay. Tab M, and those are deposits analysis  
12 of the Fathi Yusuf Cairo Amman Bank done by the FBI?

13 A Yes, sir.

14 Q And the first page of that, do you see that  
15 document?

16 A Yes, that's what this page --

17 Q Yes. So Exhibit 8 is just a photocopy of the  
18 FBI analysis document produced in discovery?

19 A Yes, sir.

20 Q And that shows on that page, the first page of  
21 Exhibit M, the two checks for 2900.50 and \$2800.00?

22 A Yes, sir.

23 MR. HOLT: Your Honor, we would move Exhibit 8  
24 in, as well as Exhibit 10.

25 MR. HODGES: Objection, Your Honor. May I



1           voir dire the witness about this?

2           THE COURT:   Sure.

3                           VOIR DIRE EXAMINATION

4 BY MR. HODGES:

5           Q     Mr. Hamed, if you would, take a look at tab M  
6 that you just referred to?

7           A     (Complying.)

8           Q     Do you have it in front of you?

9           A     Yes.

10          Q     Would you agree with me that in bold capital  
11 letters to the right-hand side is the word "draft"?

12          A     Yes.

13          Q     Okay. Does that appear on Exhibit 8?

14          A     No, it doesn't.

15          Q     So Exhibit 8 is not a photocopy of tab M from  
16 what you referred to as the draft summary report; is  
17 that correct?

18          A     No, it is. It is, sir.

19          Q     It's not an exact photo copy because there's  
20 no "draft" on Exhibit Number 8, is there?

21          A     No, it's not, it's not the exact copy, but it  
22 is the same thing.

23          Q     Somebody removed the "draft" on exhibit --

24          A     Nobody removed it, sir. It was copied -- it  
25 was just copied that way.

1 Q Well, do you have a copy of this draft summary  
2 report that doesn't have "draft" stamped on it?

3 A No, definitely not.

4 Q So somebody removed the "draft"?

5 A Nobody removed it. You can make a copy of  
6 this, if you like.

7 Q So if I made a copy of tab M on my copy  
8 machine, wouldn't the word "draft" come out and reflect  
9 on Exhibit 8?

10 A Sir, it is what it is. I mean, the copy was  
11 made that way, and it's out of this book.

12 Q But let's just be fair. Somebody simply  
13 removed the "draft" from Exhibit 8; isn't that right?

14 A Nobody removed it, sir. It was a copy, and  
15 it's a copy out of the draft.

16 Q Okay. And do you know who prepared the draft  
17 summary report?

18 A The Department of Justice.

19 Q Well, who in the Department of Justice?

20 A I have no idea, sir. This was given to us by  
21 our attorneys.

22 Q Okay. Do you know when it was prepared?

23 A I don't know exactly -- exact dates, but it's  
24 between 2003 and 2010 or 2012, something like that.

25 Q Okay. Isn't it fair to say that each and

1 every page of Exhibit Number 10, is it, has the word  
2 "draft" on it?

3 A That is true.

4 Q Every page.

5 A Well, some pages are missing.

6 Q All the pages that are there have "draft" on  
7 it, don't they?

8 A (Perusing documents.) From looking at it,  
9 yes.

10 Q Okay. And then if you turn again to Exhibit  
11 M, which is -- Exhibit 8 is almost a copy of it, it  
12 looks like, except it doesn't have the "draft" on there,  
13 and it has some handwriting on there, do you know whose  
14 handwriting Exhibit 8 is?

15 A That was at Joel Holt's office.

16 Q When was that?

17 A Sometime, I think, either this week or last  
18 week.

19 Q Okay.

20 A I'm sorry. Last week -- yeah, last week or  
21 this week. It's Monday.

22 Q Okay. So you don't know who put all these  
23 entries on what is now shown as Exhibit Number 8, do  
24 you?

25 A Specifically, no, sir, I don't know exactly

1 who did it. But I know this was done and was supplied  
2 to us by our defense attorneys during that time.

3 Q Okay. And would you agree with me that this  
4 draft report was never filed in any court?

5 A I'm not sure, sir.

6 Q You don't know?

7 A No, I don't.

8 Q You don't know whatever was there -- have you  
9 ever seen what is referred to as a final report?

10 A No, sir.

11 MR. HODGES: Your Honor, I would respectfully  
12 submit that Exhibit 10 and 8 should not be admitted  
13 because there is no foundation laid for those  
14 documents.

15 THE COURT: Very well. Just for the purposes  
16 that we're here today, I'll admit it, and with --  
17 it's noted --

18 (Plaintiff's Exhibit Nos. 8 and 10 admitted  
19 into evidence.)

20 MR. HODGES: Yes, Your Honor.

21 THE COURT: -- the lack of the stamp "draft."

22 For the admission of Number 10, Attorney Holt,  
23 please substitute the cover page, the indexes and  
24 tab number M, rather than this whole document.

25 MR. HOLT: Oh, it's going to be evidence

1 throughout this case.

2 THE COURT: All right.

3 MR. HOLT: We didn't want to copy it. It cost  
4 a lot of money to copy, obviously. It has more  
5 than that one purpose.

6 THE COURT: All right.

7 MR. HOLT: And, Your Honor I just want to talk  
8 about Exhibit Number 8. This was blown up so these  
9 numbers would be bigger, so the fact that the  
10 "draft" -- we knew we were going to mark -- we came  
11 with these to mark. But if you look at Exhibit  
12 Number 10 where the word "draft" is, you'll see the  
13 exact amounts of these two checks, you'll see  
14 Hisham Hamed's name. There's no doubt that these  
15 checks were deposited into this Amman Jordan  
16 account.

17 MR. HODGES: Objection, Your Honor. Counsel  
18 can't testify.

19 THE COURT: Very well. We're not in front of  
20 a jury. I'm hearing everything as -- and I'll have  
21 to discern what's argument and what's evidence.

22 DIRECT EXAMINATION (Cont'd)

23 BY MR. HOLT:

24 Q All right. I believe I then marked as Exhibit  
25 Number 9 a document. Can you tell me what Exhibit

1 Number 9 is?

2 A Deposit slips.

3 Q Okay. Okay. And these are deposit slips in  
4 what account?

5 A Into Fathi Yusuf account.

6 Q And are these the deposit slips for those two  
7 checks?

8 A Yes. For the top one which is the 2800 is in  
9 the -- the top first page, and then the 2900.50 is on  
10 the second page, lower part.

11 Q So these are actually the receipts showing  
12 these were deposited into that account?

13 A Yes, sir.

14 MR. HOLT: Your Honor, we move Number 9 into  
15 evidence as well.

16 MR. HODGES: Objection, Your Honor. There's  
17 been no foundation laid for these documents.  
18 They're not in English, that I can tell. Mr. Hamed  
19 has not testified that he had anything to do with  
20 the preparation of these documents.

21 THE COURT: Do you want to ask him those  
22 questions?

23 MR. HODGES: I'd be happy to, Your Honor.

24 MR. HOLT: Well, let me just lay the  
25 foundation.

1 BY MR. HOLT:

2 Q Where did Exhibit Number 9 come from?

3 A It came in from the BDO report.

4 Q And you --

5 A I'm sorry. It came in -- yeah, I believe so,  
6 yes.

7 Q Didn't it come in from the binder that Matt  
8 Rodina provided?

9 MR. HODGES: Objection, Your Honor.

10 Leading.

11 A From the binder that Mr. --

12 Q -- Rodina prepared?

13 A No, sir.

14 Q You pulled these from the BDO report?

15 A I believe so, but it's also Bates stamped by  
16 the Federal Government, Department of Justice.

17 Q Okay. So these are part of the Federal  
18 Government.

19 A Yes, yes.

20 Q And so these came from the discovery in the  
21 criminal case.

22 A Yes, I'm sorry. I got confused. Yes.

23 MR. HOLT: Your Honor, so we'd move Exhibit 9  
24 into evidence.

25 MR. HODGES: Objection, Your Honor. Simply

1           because these documents apparently came from the  
2           discovery in the criminal case doesn't make them  
3           admissible.

4           THE COURT: For the purposes of this hearing,  
5           I'll accept it.

6           MR. HODGES: And again, Your Honor, they're  
7           not in English. The fact that numbers that appear  
8           to correspond with other numbers in this case  
9           appear on these documents, there's been no tie-in  
10          or correlation.

11          THE COURT: It's accepted for what it's  
12          worth.

13                         (Plaintiff's Exhibit No. 9 admitted into  
14                         evidence.)

15 BY MR. HOLT:

16          Q     All right. Showing you what I'm going to mark  
17          as Exhibit 11, which is the BDO report.

18          THE COURT: 11 is the Rule 26 notice.

19          MR. HOLT: This is Exhibit 12, Your Honor?

20          THE COURT: Yeah.

21          MR. HOLT: Okay.

22          Q     Are you familiar with Exhibit Number 12?

23          A     Yes, sir.

24          Q     What is that?

25          A     That's a BDO report, several charts in it.



1 Q Okay. And have you gone through this report  
2 to look at various accounts in it?

3 A Yes, I have.

4 Q And have you seen where they have indicated  
5 that there are accounts ascribed to you, Wally Hamed,  
6 accounts where you took money out and owed money back to  
7 the company?

8 A Yes, sir.

9 Q All right. Showing you Exhibit Number 13 --  
10 before we get to Number 13, let me just go to the BDO  
11 report one more time.

12 Looking at page 31 of the BDO report, do you  
13 see up in the top right-hand corner the account number  
14 058308313? On page 31?

15 A (Perusing document.)

16 Q Do you see the account in the top left-hand  
17 corner?

18 MS. PERRELL: Your Honor, I would object. My  
19 name is Charlotte Perrell, I'm also representing  
20 the defendants in this case. I have some greater  
21 familiarity with the BDO report. He's not offered  
22 into evidence the BDO report. We would object to  
23 offering the BDO report into evidence because that  
24 is not the complete BDO report.

25 The BDO report contains not only that specific

1 written section, but it also contains all of these  
2 schedules. All of these schedules tie back to  
3 every single check, every single receipt, every  
4 single credit card statement that was done. This  
5 is simply the schedule. The backup documentation  
6 that supports all of that is too voluminous for  
7 anyone to have brought on a Seaplane or even  
8 brought into Court today. It was supplied via a  
9 disk that was provided to everyone. So every  
10 single check, every single thing that is in there  
11 has a backup supporting document. So if he's going  
12 to try to produce the BDO report, that is not the  
13 entire BDO report. If you want to get into the BDO  
14 report and how extensive it is, we're happy to do  
15 that, but this is not the entire BDO report.  
16 Unless you have also the schedules and all the  
17 supporting documentation, that is clearly not the  
18 BDO report. It's not complete, and it shouldn't be  
19 admitted into evidence in this way.

20 THE COURT: All right.

21 MR. HOLT: Your Honor, we are going to get  
22 into specific schedules in the BDO report, but the  
23 BDO report is the one that contains the opinion  
24 that ultimately the Court must decide. What she's  
25 talking about is the backup to the opinion. And

1 right now we're going to ask him about the specific  
2 accounts within the BDO report, for two purposes:  
3 one is the statute of limitations and one is the  
4 unreliability of the report. So these are very  
5 specific questions about a number of accounts in  
6 here so the Court can understand how the money  
7 flowed in this company, how Fathi Yusuf was aware  
8 of it, and why BDO didn't do a reliable job in  
9 preparing this report. So it's two-fold.

10 THE COURT: All right. For the -- you've  
11 offered it; right?

12 MR. HOLT: Yes.

13 THE COURT: Recognizing it doesn't have the  
14 supporting schedules, I'll admit it.

15 (Plaintiff's Exhibit No. 12 admitted into  
16 evidence.)

17 BY MR. HOLT:

18 Q Okay. Looking at -- do you have page 31 open  
19 in the BDO report?

20 A Yes, sir.

21 Q And do you see up in the left-hand corner the  
22 account number column?

23 A Yes.

24 Q And what is the first account there?

25 A First account is 8313 -- ending in 308313.

1 Q From what bank is that?

2 A And that should be from probably Nova  
3 Scotia.

4 Q Okay. And there's an amount of money,  
5 \$578,800. Do you see that?

6 A Yes, sir.

7 Q And that's an amount that they claim that you  
8 took?

9 A Yes, sir.

10 Q And that you kept?

11 A Yes.

12 Q Okay. Showing you Exhibit Number 13, can you  
13 tell me what this document is?

14 A This is also a table from the BDO report.

15 Q And do you see the backup to that where they  
16 have this particular account listed?

17 A Yes.

18 Q Okay. And what is the -- what is that  
19 account?

20 A That account is, I guess we refer to it as the  
21 enterprise account. That's one of the accounts that we  
22 opened to go ahead and deposit cash into it and then  
23 funnel the money over or send the money over to Amman,  
24 Jordan.

25 Q Okay. And how often would you put cash in

1 that account?

2 A Oh, Mike would put -- or direct the -- what  
3 you call her, the lady that works at the cash room, to  
4 go ahead and make deposits probably on a daily basis or  
5 every other day.

6 Q Okay. And would that money eventually be  
7 taken over or sent over to Amman, Jordan?

8 A Yes, it would.

9 MR. HOLT: Your Honor, we move Exhibit  
10 Number 13 into evidence.

11 THE COURT: I'll accept it.

12 MS. PERRELL: Same objections, Your Honor.

13 THE COURT: Objection is noted.

14 (Plaintiff's Exhibit No. 13 admitted into  
15 evidence.)

16 BY MR. HOLT:

17 Q Okay. Showing you Exhibit Number 14 -- well,  
18 first of all, how would you then get -- would you send a  
19 check over for each deposit?

20 A No, sir.

21 Q How would you send checks over?

22 A We would put them -- we would probably -- when  
23 we accommodate the account, we'd do 95, we'd put 100,  
24 125, 75.

25 Q Showing you exhibit number --

1 MR. HOLT: I believe we're on 14?

2 THE COURT: Yes.

3 Q Can you tell me what this document is?

4 A This is a check made out to Maher Yusuf out of  
5 my account, but then Bank of Nova Scotia account ending  
6 in 8313, dated 6-11-99.

7 Q Okay. So explain to me this check. You wrote  
8 a check to Maher Yusuf; correct?

9 A Yes.

10 Q And did he put that in his account and keep  
11 that money?

12 A No.

13 Q What did he do with that check?

14 A This is part of the same account that we would  
15 put the money together and then I wrote the check out to  
16 Mike Yusuf, he would endorse the check, and then we  
17 would put the check in an Express Mail envelope and send  
18 it over to Amman, Jordan, Cairo Amman Bank.

19 Q Okay. And was that check then deposited into  
20 the Cairo bank account?

21 A Yes.

22 Q And so Mike Yusuf never got that money, did  
23 he?

24 A No, he didn't.

25 Q And that went into an enterprise account; is

1 that correct?

2 A That is correct.

3 Q And if I go to the FBI analysis, can I find  
4 that deposit as well?

5 A You sure will.

6 Q Okay. So looking at Exhibit Number 10, can  
7 you tell me where that check is?

8 A (Perusing document.)

9 Q To save time, can you turn to tab G, I believe  
10 it is -- I mean Q.

11 A (Perusing document.) All right. So I'm  
12 looking at the wrong return.

13 Q Tab Q, the second-to-the-last page.

14 A (Complying.) Yes.

15 Q Okay. And do you see that \$95,000 being  
16 deposited into that --

17 A That's deposited into my account, yes.

18 Q Okay. And that's your account at Cairo Amman  
19 Bank?

20 A Yes, sir.

21 Q And would that stay in your account or would  
22 that get moved to the account of Fathi?

23 A Ultimately it would be used by Fathi and moved  
24 to Fathi's account.

25 Q Okay. And while we're on -- you can just

1 leave that page up, we'll come back to it in a second,  
2 but while we're on Exhibit Number 13, which is the chart  
3 from the BDO account -- do you have Exhibit 13 in front  
4 of you?

5 A 13? No.

6 Yes, sir.

7 Q And looking at the Account 13 -- Exhibit  
8 Number 13, go to the very last page of that document.

9 A (Complying.) Yes.

10 Q And do you see where they have contributed a  
11 \$75,000 check to you?

12 A Yes.

13 Q And they say that you took out \$75,000 and  
14 didn't pay it back; is that correct?

15 A Yes.

16 Q Okay. Showing you exhibit number --

17 MR. HOLT: Am I on 15, Your Honor?

18 THE COURT: Yes.

19 MR. HOLT: Okay. And Your Honor --

20 MR. HODGES: Well, then, what was this  
21 exhibit? This should be 15.

22 MR. HOLT: That is 15.

23 Q Showing you Exhibit Number 15.

24 A (Perusing document.)

25 Q What is Exhibit Number 15?



1           A     This is a copy of a check from the Banque  
2 France -- Francaise Commerciale for 75,000, made out --  
3 I guess my name, for 75,000.

4           Q     Okay. And that check was the backup to the  
5 accounting in the BDO report showing you took \$75,000?

6           A     Yeah, that's the backup for the 75 they're  
7 charging me for.

8           Q     Okay. And was that check ever signed?

9           A     Check is not signed, sir, no.

10          Q     Is the check dated?

11          A     No, sir.

12          Q     Is there any indication that check was ever  
13 cashed?

14          A     No, sir.

15          Q     As a matter of fact, where does it indicate  
16 that check still exists?

17          A     That check indicate that it's still with the  
18 check stub.

19          Q     In the checkbook.

20          A     Yeah, in the checkbook, with the check stub,  
21 so it was never really negotiated.

22          Q     So there's no evidence that you ever received  
23 those funds, is there?

24          A     No, sir.

25          Q     But you're still charged with that in the BDO

1 report; correct?

2 A Yes, I am.

3 Q And then going on to Exhibit Number 16, can  
4 you tell me what this document is?

5 A This is from the BDO report and it has a table  
6 on it that has loan to third parties.

7 Q And this lists loans that they say you owe?

8 A Yes, sir.

9 Q Okay. Without going through them all, I want  
10 to just go to one loan to Adnan Rahal, R-A-H-A-L. Do  
11 you see that entry?

12 A Yes, first page.

13 Q And how much is that loan for?

14 A It's 40,000.

15 Q And who is he?

16 A That's my brother-in-law.

17 Q And did you loan him \$40,000?

18 A No, actually I loaned him 50.

19 Q So there's actually -- by the way, looking  
20 behind this document, is there actually a chit that  
21 shows the \$40,000?

22 A Yes.

23 Q Okay. So that's cash taken out of the drawer;  
24 correct?

25 A Yes.

1 Q And then you signed this check; correct?

2 A Yes, I did.

3 Q Okay. Now, if you sign a check but someone  
4 else's name is on it like in this case, Mr. Rahal's,  
5 what does that mean?

6 A It's a loan, it's approved by me.

7 Q Okay. So you approved that loan.

8 A Yes.

9 Q Okay. And then, I take it, if you loaned him  
10 50, there's another chit somewhere for that 50?

11 A I'm sorry?

12 Q I mean, if you loaned him another \$10,000,  
13 there should be another chit for that 10,000?

14 A Yes, sir.

15 Q And can you tell me, looking at the deposits  
16 into the Waleed Mohammad Hamed Cairo bank account, do  
17 you see a deposit for Mr. Rahal for the entire \$50,000?

18 A I see there's a deposit for \$50,000 repayment  
19 of that loan.

20 Q Okay. And --

21 THE COURT: Where are we looking?

22 Q Just for the record, can you --

23 THE COURT: Where is that?

24 MR. HOLT: It's going to be the --

25 THE WITNESS: Second --

1 MR. HOLT: -- second-to-the-last page of  
2 Exhibit Q, the name Badei Rahal, \$50,000.

3 MR. HODGES: There's no Exhibit Q.

4 THE COURT: 10.

5 MR. HOLT: On Exhibit 10, tab Q.

6 BY MR. HOLT:

7 Q So you were charged with having to repay this  
8 money, but, in fact, it was repaid; correct?

9 A Yes, sir.

10 Q And it was actually deposited into an account  
11 that was an enterprise account.

12 A Yes, sir.

13 Q Okay. All right. Showing you --

14 THE COURT: Just -- where on tab Q am I  
15 finding that?

16 MR. HOLT: On tab Q, the second-to-the-last  
17 page before R, the --

18 THE COURT: Okay. I see it.

19 MR. HOLT: About eight lines from the bottom,  
20 there's a \$50,000 entry and next to it is the name  
21 Badei Rahal.

22 THE COURT: Badei Rahal is the same as Adnan  
23 Rahal?

24 Q Is that --

25 A That is his brother, sir.

1 Q So he -- his brother brought him the check.

2 A Yes, because Adnan Rahal lives in St. Croix at  
3 the time, or in Texas, in the U.S., and Badei lives in  
4 Jordan.

5 Q Okay. And then --

6 MR. HODGES: May I ask what exhibit we're  
7 referring to?

8 MR. HOLT: Exhibit 10, tab Q, about the eighth  
9 line up -- tenth line up from the bottom,  
10 second-to-the-last page.

11 Q And while we're on this page, looking above  
12 that, do you see all these checks from V.I.  
13 Industrial?

14 A Yes, I do.

15 Q And that's a St. Croix business?

16 A Yes, it is.

17 Q Okay. And how did those checks end up in this  
18 Amman account?

19 A These are customer checks. Customers would  
20 come into the store, we would change the checks for  
21 them, we would hold onto those checks and they would be  
22 mailed to Amman.

23 Q Okay. And then looking on the page right  
24 before that, I see checks to the Government of Virgin  
25 Islands, HOVENSA, Mike Yusuf, Metro, Mafi. Where were

1 those checks from?

2 A I'm sorry?

3 Q Where would those checks be from?

4 A They would be from the individuals. They came  
5 to -- some of them would be the Government, or the VI  
6 would be customer checks. Maher Yusuf would be out of  
7 his account, the enterprise account that we use. Same  
8 thing with Mafi. Procter & Gamble would be rebates.

9 Q Okay. Explain what a rebate is.

10 A Rebates is -- those are sort of kickbacks or  
11 incentives that -- what you call it -- our suppliers  
12 would pay us in lieu of buying certain or certain  
13 quantities from them.

14 Q If you met certain limits, they would give you  
15 a rebate.

16 A Yes.

17 Q So you would deposit those rebate checks  
18 there.

19 A Yes.

20 Q So if I went through the Amman accounts for  
21 both you and Fathi Yusuf, I'd see lots of these checks,  
22 wouldn't I?

23 A Yes, you would.

24 Q Okay. And how would these checks be assembled  
25 to get over there?

1           A     They will be held in the safe until we  
2 accumulate enough to put together. Fathi Yusuf would  
3 call and say, "Hey, we need to go ahead and send this  
4 out." Me and Mike will get together, make copies of the  
5 checks, add them up, verify that they're all endorsed,  
6 they're all -- verify the amounts that we're going to  
7 send over, keep a copy of them, they would be put in an  
8 Express Mail envelope and mailed out.

9           Q     Okay. And --

10           MR. HODGES: Your Honor, if I -- again, we're  
11 not addressing the issue that we're here for on the  
12 summary judgment motion.

13           THE COURT: I guess this is trying to get to  
14 show the unreliability of BDO, so . . .

15           MR. HOLT: Yes, sir.

16           MR. HODGES: Well, I thought we were dealing  
17 with the --

18           THE COURT: We are, but I'm not going to take  
19 testimony twice.

20 BY MR. HOLT:

21           Q     All right. Showing you exhibit number --

22           MR. HOLT: Your Honor, first of all, I believe  
23 I need to move Exhibits 11 through 16 into  
24 evidence.

25           THE COURT: Noting the standing objection,

1           they're admitted into evidence.

2                   (Plaintiff's Exhibit Nos. 11 - 16 admitted  
3                   into evidence.)

4           Q       Showing you Exhibit Number 17, I just want to  
5           ask you this so I can understand a little bit more about  
6           what's going on. Can you tell me what Exhibit Number 17  
7           is?

8           A       (Perusing document.)

9           Q       What is Exhibit Number 17?

10          A       A receipt from Plaza Extra with my name.

11          Q       Okay. So tell me how this receipt works. It  
12          says your name on it, has 2,000 written in. Is that  
13          your signature?

14          A       Yes, it is.

15          Q       How did this come about?

16          A       I would need or any one of us that would need  
17          any cash, we'd go to the cash room, request the funds,  
18          receipt would be generated, we would sign for it and  
19          take the cash.

20          Q       Okay. So now we just talked about a receipt  
21          where we saw Mr. Rahal's name on it; correct?

22          A       Yes.

23          Q       So if you sign one with someone else's name on  
24          it, did that mean you were necessarily obligated for  
25          it?



1           A     If I -- I'm sorry.

2           Q     Well, let me -- I'm just trying to make a  
3 disfunction.  If there's a chit with your name on it  
4 only, that's your obligation; correct?

5           A     Yes.

6           Q     And if someone else's name is on it, that  
7 means it's their obligation; is that correct?

8           A     Yes, it is.  I would sort of either approve  
9 it.

10          Q     So your signature is on it because you approve  
11 it?

12          A     Yes.

13          Q     And if there's no signature on it, what does  
14 that mean?

15          A     That mean I didn't approve it or I didn't  
16 take.

17          Q     Okay.  In looking through the BDO report, I'd  
18 like to show you Exhibit Number 18, ask you if this is  
19 one of the charts that you looked at?

20          A     (Perusing document.)  Yes.

21          Q     Okay.  And this is a list of items that says  
22 that there were receipts for you; is that correct?

23          A     Yes, sir.

24          Q     And you see check marks on that list?

25          A     Yes.

1           Q     And then attached to the list are receipts  
2 that they charged to you; is that correct?

3           A     Yes, sir.

4           Q     Okay. Looking through the -- and this is part  
5 of the backup to the BDO report?

6           A     Yes, it is.

7           Q     Okay. So looking at the backup to the BDO  
8 report, can you just read each amount and state whether  
9 or not your signature is on it? Well, I tell you what,  
10 you don't need to read each amount. We'll total that up  
11 later. Is your signature on any of these --

12          A     No, they're not, sir.

13          Q     Okay. And if your signature is not on it,  
14 what does that mean?

15          A     I didn't receive the funds.

16          Q     Okay. And yet, on the cover list, these are  
17 charged to you; is that correct?

18          A     Yes, it is.

19                THE COURT: What about the box that says "sold  
20 by"?

21          Q     Whose initials are those in the box?

22          A     That's Yusuf Yusuf, Fathi Yusuf's son.

23                MR. HOLT: Okay. Your Honor, we would move  
24 Exhibits 16 and 17 into evidence.

25                THE COURT: 17 and 18?

1 MR. HOLT: I'm sorry, 17 and 18.

2 THE COURT: Admitted.

3 (Plaintiff's Exhibit Nos. 17 - 18 admitted  
4 into evidence.)

5 Q All right. Showing you --

6 MR. HOLT: So I'm on Number 19; is that  
7 correct, Your Honor?

8 THE COURT: Yes.

9 Q Showing you Exhibit Number 19, can you tell me  
10 what this is?

11 A (Perusing document.) This is table A from the  
12 BDO account.

13 Q And this lists people that supposedly you took  
14 funds out of the United account or the Plaza account to  
15 pay bills?

16 A Yes, sir.

17 Q Okay. Did you go through the receipts  
18 attached to that bill?

19 A Yes, I did.

20 Q Okay. And looking at the receipts attached to  
21 this exhibit, are these receipts that were part of the  
22 backup of the BDO account?

23 A Yes, they were.

24 Q So looking at the first one, it says Ali  
25 Mohamad Zater, do you see that?

1           A     Yes.

2           Q     And it says he makes a three-month payment of  
3 13,200; is that correct?

4           A     Yes, sir.

5           Q     Is this a draw to you?

6           A     Absolutely not.

7           Q     And who signed this one?

8           A     I signed it and Maher Yusuf signed it.

9           Q     And then looking over at the next page, the  
10 same name; correct?

11          A     Yes, it is.

12          Q     And this is a payback of that deposit, isn't  
13 it?

14          A     Yes, sir.

15          Q     Okay. And can you explain to the Court, why  
16 did Mr. Zater make a deposit and then why was it  
17 returned?

18          A     Back in 1996, the Hamed and Yusuf family  
19 decided to buy some gas station, the Texaco gas  
20 stations. We made a deal on them, and what we ended up  
21 doing was, we sold them. Fathi Yusuf made the  
22 arrangements with these individuals to go ahead and sell  
23 them these gas stations, and Mr. Zater was one of the  
24 guys that bought or had the deposit on the Peter's Rest,  
25 I guess, Peter's Rest service station, and he paid

1 13,200 as deposit to hold the gas station once it's  
2 closed.

3 Q Okay. And you returned that deposit to him?

4 A Yes. When the deal didn't go through, we  
5 backed out of the deal, and we give back the deposit  
6 that Mr. Zater paid.

7 Q How much do they say that you owe to Fathi  
8 Yusuf because of funds removed from Mr. Zater on the  
9 front page?

10 A Actually 26,400.

11 Q So they took the receipt from Mr. Zater, the  
12 payment back to him, and charged that against you?

13 A Yes, sir.

14 Q But that wouldn't be your obligation.

15 A Absolutely not.

16 Q He got his money back, didn't he?

17 A Yes, he did.

18 Q Okay. Looking at the next document, we see  
19 Amin Yusuf Mustafa, do you see that?

20 A Yes, sir.

21 Q All right. And that's a \$4,000 check;  
22 correct?

23 A Yes.

24 Q And then what is the next document?

25 A Next document is a refund of \$4,000.

1 Q Okay. So explain to the Court, what happened  
2 with this -- is he another gas station person?

3 A That is another gas station, Golden Cow,  
4 refer to it as Golden Cow, basic triangle, I guess.  
5 That's one of the gas stations that we had a contract  
6 on.

7 Q Okay. So he made a deposit down and then got  
8 it back when the deal didn't work out; is that correct?

9 A That is correct, sir, yes.

10 Q Then looking over on the cover sheet, BDO  
11 charged you \$4,000 for this transaction?

12 A Yes, they did.

13 Q Even though you had nothing to do with it  
14 other than return the money to him.

15 A Absolutely.

16 Q Okay. Looking at the next one, we see Al  
17 Fattah Aldalie. All the names are on the exhibit. How  
18 much is that for?

19 A \$16,000.

20 Q And what is this receipt?

21 A This is -- I believe it's the same situation  
22 with the contracts, but I'm not quite sure. But it's  
23 a -- it deals something with the gas stations, it's  
24 around that time. 16,000. And it says "to hold until  
25 Wednesday," and he have -- he receive the money back,

1 says "received in full, 7-9."

2 Q Okay. So this money was returned to him as  
3 well; is that correct?

4 A Yes, sir.

5 Q And on the BDO report, they actually still  
6 charge you with this obligation; is that correct?

7 A Yes, sir.

8 Q Okay. And what is the next item, the last one  
9 on here?

10 A Next one is a receipt for Plaza Extra, it says  
11 \$15,000, and it says "from Mike's trading."

12 Q Okay. And what does that mean?

13 A That's -- well, every now and then -- he's a  
14 vendor, Mike Strain (phonetic) is a vendor, and from  
15 time to time we would advance him money, or he would  
16 take a loan, and then he would reimburse us, either  
17 through trade or through cash.

18 Q Okay. And this receipt actually says received  
19 \$15,000 from Mike Strain; is that correct?

20 A That's correct, yes.

21 Q So even though the company received this  
22 money, the receipt down here for Mr. Joseph for 15,000,  
23 they charge you with this, don't they?

24 A Yes, they do.

25 MR. HOLT: Your Honor, we move Number 19 into

1 evidence.

2 THE COURT: Admitted.

3 MR. HODGES: Same objection, Your Honor.

4 THE COURT: It's noted.

5 (Plaintiff's Exhibit No. 19 admitted into  
6 evidence.)

7 Q Showing you what I'm going to mark as Exhibit  
8 Number 20, can you tell me what this document is?

9 A This is also a table from the BDO report,  
10 "Receipts - Other."

11 Q And this indicates that you owe \$4,130 for  
12 some receipts that you have?

13 A Yes, sir.

14 Q Okay. And looking over on the next page, the  
15 first one I think is for \$5?

16 A Yes.

17 Q Okay. Did you sign that one?

18 A No, sir, I didn't.

19 Q Whose signature is that on the bottom?

20 A I'm not sure, but it could be -- I'm not  
21 sure.

22 Q Would you ever just take \$5 out of cash?

23 A That would be either for \$5 -- not for me  
24 personally, but it could be for an employee, could be a  
25 refund for a customer or something, and I'll -- I would



1 go ahead and tell the service desk go ahead and do it.

2 Q And you didn't sign this receipt.

3 A I didn't see it, no.

4 Q And then the next one is for \$4,000. Do you  
5 see that?

6 A Yes.

7 Q And did you sign this receipt?

8 A No, I didn't.

9 Q And who is this receipt payable to?

10 A This is Fathi Hanun (phonetic), which is Fathi  
11 Yusuf former, I guess, son-in-law.

12 Q Okay. And so you didn't take this money, did  
13 you?

14 A No, I didn't.

15 Q So this is \$4,005 that they charged to you  
16 that you didn't take; is that correct?

17 A That's correct, sir.

18 MR. HOLT: Your Honor, we'd move Exhibit  
19 Number 20 into evidence.

20 THE COURT: Over the same objection, it's  
21 admitted.

22 (Plaintiff's Exhibit No. 20 admitted into  
23 evidence.)

24 Q All right. Showing you Exhibit Number 21, can  
25 you tell me what this document is?

1           A     This is my personal ledger that I kept while I  
2 was -- my house was under construction.

3           Q     Okay. And on this particular document, did  
4 you keep a ledger on the house that you built?

5           A     Yes.

6           Q     Did you review the BDO report to see if this  
7 was included in it?

8           A     Yes.

9           Q     And was this included?

10          A     Yes, it was.

11          Q     Okay. What was also included with that part  
12 of the report?

13          A     A bunch of receipts.

14          Q     Okay. And those are receipts where you took  
15 cash out of the store?

16          A     Yes.

17          Q     So when you took cash out of the store to pay  
18 somebody, you'd sign for it; correct?

19          A     That's correct, yes.

20          Q     And did you match up the receipts to this  
21 Exhibit Number 21 where you actually paid somebody?

22          A     There was some of them, yes.

23          Q     So they would actually charge you for taking  
24 the money from the store, but then they would charge you  
25 again when you would take that same money and pay a

1 vendor; is that correct?

2 MS. PERRELL: Objection, Your Honor. There's  
3 been no showing of exactly how BDO transacted this  
4 particular or any particular transaction. There  
5 was oftentimes adjustments made to show so that  
6 there would not be any kind of double counting.  
7 He's not provided that information.

8 BY MR. HOLT:

9 Q Did you review that account to see if they  
10 gave you credit for these?

11 A Yes.

12 Q Did they give you credit for any of these?

13 A Hardly.

14 Q Did they give you credit for any of these  
15 things in which you actually, quote, paid for them?

16 A No, sir.

17 Q So they would charge you for taking the money  
18 out of the store and then they would charge you when you  
19 actually used that same money for the purpose that you  
20 said you were going to use it for, pay a vendor?

21 A Yes.

22 MR. HOLT: We'd move Exhibit 21 into  
23 evidence.

24 THE COURT: Yes, noting the objection, it's  
25 admitted.

1 (Plaintiff's Exhibit No. 21 admitted into  
2 evidence.)

3 Q Now, did they talk about your house in the BDO  
4 report?

5 A Yes, they did.

6 Q And they actually talked about the  
7 construction of your house, didn't they?

8 A Yes, they do.

9 Q And they allocated funds that you removed from  
10 the store to pay for your house, didn't they?

11 A That's correct.

12 Q And to the extent you removed funds from the  
13 store to pay for things, that would be a correct charge,  
14 wouldn't it?

15 A Yes.

16 Q Okay. Showing you -- did they do the same for  
17 Willie Hamed for his house?

18 A Yes.

19 Q Showing you Exhibit Number 22, can you tell me  
20 what these are?

21 A That's Fathi Yusuf house and Maher Yusuf  
22 house.

23 Q Okay. Where is Fathi Yusuf's house located?

24 A In St. Thomas, Skyline.

25 Q I take it he has a house in St. Croix as

1 well?

2 A Yes, he does.

3 Q And he built that before the Plaza stores?

4 A Yes.

5 Q So this house in Skyline in St. Thomas, was it  
6 built while the Plaza stores existed?

7 A Yes, sir.

8 Q And do you see the time period that this was  
9 built, 2000-2004?

10 A That's correct.

11 Q And when you went to the BDO report, did you  
12 see any discussion of Fathi Yusuf building a house?

13 A Absolutely not.

14 Q Did you see any receipts that Fathi Yusuf took  
15 out of the store for that house?

16 A No, sir.

17 Q And Mike Maher Yusuf, did you see any  
18 discussion in the BDO report of the construction of his  
19 house?

20 A No, sir.

21 Q And were there any receipts from Mike Yusuf's  
22 house being built?

23 A No, sir.

24 Q Okay. Now, did Mike Yusuf take funds out of  
25 the cash of the store to pay for part of his house?

1 A Yes.

2 Q And he'd sign a receipt for those, wouldn't  
3 he?

4 A That's correct, sir.

5 Q But those receipts weren't in this report,  
6 were they?

7 A Absolutely not.

8 Q And Fathi Yusuf, when he built his house in  
9 St. Thomas, he would take receipts out of the St. Thomas  
10 store.

11 A That's correct.

12 Q And did you see those receipts in the BDO  
13 report?

14 A No, I didn't.

15 Q And did you see any discussion anywhere in the  
16 BDO report about Fathi Yusuf or Mike Yusuf building a  
17 house?

18 A No, sir.

19 MR. HOLT: Your Honor, we move Exhibit  
20 Number 22 into evidence.

21 THE COURT: Admitted.

22 (Plaintiff's Exhibit No. 22 admitted into  
23 evidence.)

24 MR. HODGES: Your Honor, just for the record,  
25 this has never been produced in discovery, and

1 we -- you know, as far as the dates, these dates  
2 were put on there, I didn't hear testimony  
3 regarding when these were actually built. He  
4 simply acknowledged the dates that were put on this  
5 document.

6 THE COURT: I think the one -- testimony was  
7 the one from St. Thomas was built before the Plaza  
8 store?

9 MR. HOLT: No. We didn't take a picture of  
10 the one from -- okay. There's a store -- a house  
11 on St. Croix that Mr. Yusuf owns that was built  
12 before the stores opened. We did not take a  
13 picture of that one.

14 THE COURT: Okay.

15 MR. HOLT: So I'll just clean that up.

16 BY MR. HOLT:

17 Q When did Fathi Yusuf -- what was the time  
18 period that he built his house on St. Thomas?

19 A At St. Thomas?

20 Q Yeah.

21 A It was between 2000 -- after 2000.

22 Q Up to what time period?

23 A 2005, 2004, I'm not clear on it.

24 Q And Mike Yusuf, when did he build his house on  
25 St. Croix?

1           A     Basically around the same time, 2001 to 2005,  
2     2006.

3           Q     And you were aware of it because they were  
4     removing funds to do that?

5           A     Yes, sir.

6           Q     All right. The BDO report, you're familiar  
7     with that; correct?

8           A     Yes.

9           Q     It breaks down funds allocated to each member  
10    of the Hamed family, in part, by identifying amounts  
11    removed from various partnership accounts for cash. Are  
12    you familiar with that?

13          A     Yes.

14          Q     Did Fathi Yusuf know about each one of these  
15    disbursements during the 1996-2004 time period when they  
16    were actually removed?

17          A     Yes.

18          Q     And the report actually identifies that as  
19    such, doesn't it?

20          A     Yes, it does.

21                MR. HOLT: Your Honor, I would move Exhibit  
22    Number 22 into evidence.

23                THE COURT: Admitted.

24                MR. HOLT: Your Honor, we move Exhibit  
25    Number 23 into evidence -- excuse me. We ask that



1 the witness be shown Exhibit Number 23.

2 THE COURT: The last -- you said Fathi Yusuf  
3 was aware of --

4 MR. HOLT: This testimony that he just gave  
5 goes to the BDO report, and we will actually tie  
6 that up a little bit with David Jackson.

7 THE COURT: Well, let me just ask the last  
8 two -- the last inquiry, rather than asking the  
9 reporter to read it back, that was relating to  
10 Fathi Yusuf's knowledge of the withdrawals for the  
11 purpose of the construction of those two houses  
12 shown on Exhibit 22?

13 MR. HOLT: No. The last questions were  
14 strictly to set up in the BDO report that BDO did  
15 not do a correct lifestyle analysis, because to do  
16 that, you've got to look at the assets of  
17 everybody, and they didn't look at the assets of  
18 Fathi Yusuf and Mike Yusuf. So that's really more  
19 towards the reliability of the BDO report, which  
20 Mr. Jackson will talk about.

21 THE COURT: I'm sorry. The question you asked  
22 about Mr. Fathi Yusuf's knowledge, what was that?  
23 If Fathi Yusuf was aware --

24 MR. HOLT: Oh, no. I just asked a totally new  
25 question. That has nothing to do with the houses.

1 I apologize. This goes to Fathi Yusuf's knowledge  
2 about funds withdrawn from the partnership accounts  
3 that he attributed to the Hamed family, did he know  
4 about these disbursements from the partnership  
5 accounts during the 1996 to 2004 time period when  
6 they were made.

7 THE COURT: What's the answer to that  
8 question?

9 THE WITNESS: Yes.

10 BY MR. HOLT:

11 Q Okay. Now, before I go to Exhibit A, I want  
12 to go to one more thing. When we -- this really relates  
13 to the houses. When we look at where the funds ended up  
14 in Jordan, were those funds used to buy land in  
15 Jordan?

16 A Yes.

17 Q Was some land bought jointly between your  
18 father and Mr. Yusuf?

19 A Yes.

20 Q And were some lands bought individually by  
21 your father and Mr. Yusuf?

22 A Yes.

23 Q And can you describe the land holdings in  
24 Mr. Yusuf's name alone as it compared to those of your  
25 father?

1 A Mr. Yusuf has much more.

2 Q Okay. And did you see anything in the BDO  
3 report which addressed that?

4 A No, totally not.

5 Q All right. Now, looking at --

6 MR. HOLT: I apologize, Your Honor. I think  
7 I'm at Exhibit Number 23?

8 THE COURT: 23.

9 MR. HOLT: Is that -- is that the one --

10 THE COURT: 23 is next.

11 Q Looking at Exhibit Number 23, do you see what  
12 this is? It's a claim distribution summary?

13 A Yes.

14 Q Okay. And these are a list of claims that  
15 United Corporation -- or I'm sorry, Mr. Yusuf has made  
16 against your father for partnership obligations?

17 A Yes.

18 Q Okay. And have you gone through, starting  
19 with down below in section 3 where we have F, G, H, I,  
20 and J, do you see those?

21 A Yes.

22 Q Okay. Showing you the backup -- see Exhibit F  
23 is \$60,000? Do you see that?

24 A (Perusing document.)

25 Q Do you see that number on there?

1 A Yes.

2 Q Mr. Hamed, do you see that number?

3 A Yes.

4 Q Okay. Showing you Exhibit Number 24, is this  
5 the backup that was submitted with this?

6 A (Perusing document.) Yes, sir.

7 Q Okay. And I have two questions about it.  
8 First, are all the dates in this backup, are they all  
9 either -- well, from 1993 to 2001; is that correct?

10 A Yes, sir.

11 Q And these are -- if you look at them, these  
12 are claims for what?

13 A Gross receipt tax.

14 Q Now -- and were these claims something -- and  
15 these are gross receipts tax paid by United Corporation.

16 A Yes, all United Corporation's.

17 Q So that would be taxes paid for the shopping  
18 center?

19 A For the shopping center, yes.

20 Q Would Mr. Yusuf be aware of those?

21 A Of course.

22 Q Showing you Exhibit Number G. This is called  
23 the black book balance owed United. I'll mark it as  
24 Exhibit Number 25. Are you familiar with that  
25 document?

1 A Yes.

2 Q And what is Exhibit Number 25?

3 A That's what I guess they refer to as the black  
4 book, a list of items.

5 Q Okay. And does that have a date on it showing  
6 when these items were trued up?

7 A It has 1993, December 1993.

8 Q Okay. Whose handwriting is this?

9 A Should be Fathi's.

10 Q And would Mr. Yusuf be aware of the  
11 information contained in this in 1993?

12 A Of course.

13 Q So he was aware of it before 2001?

14 A Yes.

15 Q Showing you Exhibit Number H, ledger balances  
16 owed by United, which would be Exhibit Number --

17 MR. HOLT: -- 26?

18 THE COURT: 26.

19 Q Can you tell me what this is?

20 A (Perusing document.) It's a ledger of United  
21 for Plaza.

22 Q Whose handwriting is this?

23 A This should be Maher Yusuf.

24 Q Okay. And these go back to what date?

25 A '94, '95.

1 Q Do you see '98 on there as well?

2 A '98 as well, yes.

3 Q Are these all sums of money that Mr. Yusuf  
4 would have been aware of before 2001?

5 A Yes.

6 Q Showing you Exhibit Number I -- I mean --

7 MR. HOLT: I'm sorry. Your Honor, I  
8 apologize. What number am I on?

9 THE COURT: 27.

10 Q Do you know what these items are?

11 A (Perusing document.)

12 THE COURT: Let's go back for a second to 26.

13 MR. HOLT: 20 --

14 THE COURT: 26. Is it only my copy that's  
15 virtually illegible?

16 MR. HOLT: Well, this is how the claim was  
17 submitted, Your Honor.

18 THE COURT: So this is part of the BDO --

19 MR. HOLT: No. These are separate claims  
20 submitted -- everything since Exhibit Number 24 are  
21 claims submitted directly by United -- or excuse  
22 me, Fathi Yusuf which are not part of the BDO  
23 accounting.

24 THE COURT: And what is the -- oh, I see it  
25 says "United paid out for Plaza", on top of 26.

1 MR. HOLT: Right. And, Your Honor, I believe  
2 I stopped moving exhibits in at Exhibit 20?

3 THE COURT: They're all admitted with the --

4 MR. HOLT: Okay.

5 THE COURT: -- with the objections noted.

6 MR. HOLT: Okay.

7 (Plaintiff's Exhibit Nos. 23 - 26 admitted  
8 into evidence.)

9 BY MR. HOLT:

10 Q All right. Looking at Exhibit 27, can you  
11 tell me what this appears to be?

12 A This is a print-out of the tenant account of  
13 V.I. Community Bank that Ben Irvin, who was the  
14 controller in St. Thomas --

15 Q Okay. And are these all accounts that Fathi  
16 Yusuf would know about?

17 A Yes.

18 Q What are the dates in these accounts?

19 A These date to January 1996 through December  
20 1996.

21 Q Okay. Showing you Exhibit Number J -- I'm  
22 sorry -- Exhibit Number 28, can you tell me what this  
23 is?

24 A (Perusing document.) This is a table that  
25 says "Funds Transferred from United's Tenant Account to

1 Plaza Extra - Owed to United."

2 Q Okay. And then there's a list of funds?

3 A There's a list of funds from January through  
4 December.

5 Q Okay. And they're all 1996?

6 A They're all 1996.

7 Q So these funds came from the shopping center  
8 account over to Plaza Extra supposedly?

9 A Supposedly, yes.

10 Q And these are all funds that Fathi Yusuf would  
11 have known about at the time that these funds were moved  
12 over?

13 A Yes.

14 MR. HOLT: Your Honor, I'm almost wrapped up  
15 with Mr. Hamed.

16 Q Showing you Exhibit Number 29, can you tell me  
17 what Exhibit Number 29 is?

18 A (Perusing document.)

19 Q This is a chart that you had made?

20 A Yes.

21 Q And this totals up all the amounts that you  
22 just went over that were listed as Exhibits F through J  
23 in the claims submitted by Fathi Yusuf on September  
24 30?

25 A That's correct, sir.



1 Q What are the total amount of those claims that  
2 would be barred under the statute of limitations if the  
3 Court so finds it applies?

4 A 1 million, 191 thousand --

5 Q -- 683.42?

6 A Yes, 683.42.

7 MR. HOLT: No other questions, Your Honor.

8 MR. HODGES: Your Honor, may I ask if we're  
9 going to take a lunch break?

10 THE COURT: Ah --

11 MR. HOLT: Your Honor, I'm sorry, I have one  
12 more I'd like to offer. And I would move all those  
13 exhibits into evidence, Your Honor.

14 THE COURT: All right. They're admitted.

15 Starting with the last one, tell me again --  
16 sorry I'm not keeping up -- 29, with the items in  
17 red, items Yusuf knew about before 2007. This is  
18 prepared by the witness?

19 MR. HOLT: He prepared the summary from the  
20 items that they submitted. And if you look at  
21 Exhibit A, the same numbers are on Exhibit A, we  
22 just raised the statute of limitations as to the  
23 Items F through the end because the other ones are  
24 rent, with you already have before you.

25 THE COURT: Okay.

1                   (Plaintiff's Exhibit Nos. 27 - 29 admitted  
2                   into evidence.)

3 BY MR. HOLT:

4           Q       Showing you Exhibit Number 30 and 31 -- well,  
5 can you tell me what these items are?

6           A       (Perusing documents.)

7           MR. HOLT: Your Honor, I apologize, these are  
8 really -- I should have asked for these before I --

9           THE COURT: What I have are both marked 31 and  
10 they're different documents.

11          MR. HOLT: Okay. So 30 should be the table  
12 and 31 should be the checks.

13          THE COURT: 30 is the table. Is that correct?

14          Q       Can you tell me what Exhibits 30 and 31 are?

15          A       It's a BDO table that charges me with \$285,000  
16 paid by Yusef Jaber.

17          Q       So in the BDO report, there's actually an  
18 allocation to you of \$285,000; is that correct?

19          A       That's correct.

20          Q       Okay. And then the backup to that are the  
21 Exhibit Number 31?

22          A       Yes, sir.

23          Q       Okay. And these checks are all made out to  
24 you for varying amounts signed by Yusef Jaber?

25          A       Yes.

1 Q Did you ever receive these checks?

2 A No, sir.

3 Q Is there any evidence that these checks have  
4 ever been cashed?

5 A No, sir.

6 Q And where were these checks located, to the  
7 best of your knowledge?

8 A They should have been in the safe.

9 Q And if they were --

10 A And the safe was controlled by Maher Yusuf.

11 Q And if they were in the safe when the Federal  
12 Government did the raid, where would they end up?

13 A With the Federal Government.

14 Q And do you see at the bottom, is this the  
15 Federal Government Bates stamp?

16 A Yes.

17 Q So you never received these funds, did you?

18 A No, sir.

19 Q And yet the BDO report charges you with this  
20 \$285,000; is that correct?

21 A That's correct.

22 Q Okay.

23 MR. HOLT: Now I have no other questions. I  
24 apologize, Your Honor.

25 THE COURT: All right. The last question you

1           asked, Mr. Hodges, would you prefer to take a break  
2           right now and then have an opportunity to  
3           cross-examine after our break?

4           MR. HODGES: Yes, Your Honor.

5           THE COURT: All right. Is an hour enough  
6           time?

7           MR. HODGES: Yes, Your Honor.

8           THE COURT: All right. Let's come back at  
9           1:15.

10          MR. HOLT: Your Honor, I'm reminded I didn't  
11          move 30 and 31 into evidence.

12          THE COURT: I'll admit it with the same  
13          objection noted.

14                   (Plaintiff's Exhibit Nos. 30 - 31 admitted  
15                   into evidence.)

16          THE COURT: Okay. Anything else to accomplish  
17          before we take this break?

18          MR. HODGES: Your Honor, quite frankly, I'd  
19          like to effectively argue that we haven't had any  
20          testimony effectively dealing with the issue that  
21          was on the summary judgment motion that was first  
22          out of the box.

23          THE COURT: I mean, I guess that this  
24          Number 29, that the red is supposed to -- we're  
25          supposed to be able to glean, from what we heard,

1           that knowledge of Mr. Yusuf predated a certain  
2           date.

3           MR. HODGES: They allege -- and you know, at  
4           this point in time we haven't contested it, but  
5           they allege that we knew of these transactions that  
6           are identified that he's been testifying to that  
7           are part of our --

8           THE COURT: Which go to striking specific  
9           claims.

10          MR. HODGES: That go to their attack on the  
11          reliability of the BDO report.

12          THE COURT: Right, right. Through an attack  
13          on specific claims.

14          MR. HODGES: That's correct, Your Honor.

15          THE COURT: Yeah.

16          MR. HODGES: They do not address when they  
17          claim my client, Mr. Yusuf, should have known --  
18          knew or should have known of untoward conduct by  
19          Mr. Hamed and his sons.

20          THE COURT: Of course he promised us seven  
21          witnesses and we're only halfway through the first  
22          one, so maybe we'll get to it.

23          MR. HODGES: But, Your Honor, what I'm getting  
24          to is that, quite frankly, this could turn into a  
25          discovery exercise more than anything else.

1           Because right now, you know, I can certainly -- I  
2           won't pass up an opportunity to cross-examine  
3           Mr. Hamed, but we're dealing with, effectively,  
4           through his testimony, the BDO report, they haven't  
5           addressed the Integra report, but the bottom line  
6           is the BDO report was submitted to the Master  
7           because we were directed to submit all our claims.  
8           The BDO report, as you see on the summary that's  
9           attached as -- excuse me, that's Exhibit 23, it  
10          says at the end of it, "This represents the amount  
11          known as of September 30, 2016, based upon the  
12          information available, not including any punitive  
13          damages to which Yusuf may be entitled. It is  
14          subject to further revision following the reopening  
15          of discovery." So, effectively -- and we have  
16          submitted this accounting and proposed distribution  
17          report. They have not. There is no such thing as  
18          an effort to account, like we did, on the part of  
19          Mr. Hamed. We haven't moved to strike their report  
20          for reasons that are quite clear, that it's a, we  
21          assume, a preliminary report subject to discovery.

22                 Why are we taking up Your Honor's time today  
23                 dealing with testimony that effectively relates to  
24                 a preliminary report that was submitted to the  
25                 Master, pursuant to his directions to submit our

1           claims, that are going to be determined by the  
2           Master pursuant to the plan that they agreed to.  
3           It -- I don't see that it makes sense. If the  
4           issue on the summary judgment is what my client  
5           knew or should have known within the statute of  
6           limitations, they haven't even addressed it with  
7           this witness. And I think that that's important.  
8           Because we could be here all day long  
9           cross-examining witnesses about things that really  
10          shouldn't be relevant to the issues that are before  
11          this Court.

12                   THE COURT: All right. Let's take our break.  
13           Why don't -- let's talk informally in chambers.  
14           I'll speak to counsel, any counsel that want to  
15           come in and talk about it, and then we'll put on  
16           the record what needs to be put on the record.  
17           Okay? Thank you.

18                   (Lunch recess was taken from 12:15 - 1:40  
19                   p.m.)

20                   THE COURT: Okay. Mr. Hamed, retake the  
21           stand.

22                   What's the pleasure of defendants?

23                   MR. HODGES: Your Honor, as we indicated in  
24           chambers, we have a flight back today at 3:20.

25                   THE COURT: We can do -- either keep going

1           today, if you're inclined to stay here, or we could  
2           resume first thing tomorrow morning, if that works.

3           MR. HODGES:   Quite frankly, Your Honor, as far  
4           as the testimony today, we were under the  
5           impression that there would only be testimony that  
6           related to the statute of limitations motion that  
7           would be presented, and we were prepared to -- and  
8           we do argue that no testimony should be submitted  
9           in the context of a summary judgment motion.  If  
10          testimony is required, then that essentially means  
11          there are disputed issues of fact that have been  
12          addressed by the parties' papers and the motion  
13          should be denied.

14          As I've indicated before, Attorney Holt has  
15          argued that Your Honor can't even decide the  
16          summary judgment motion because of disputed issues  
17          of fact, that a jury must do that.  And that is why  
18          I argued at the outset that we thought that the  
19          Court should address the jury issue or the motion  
20          to strike the jury issue first.

21          Under the circumstances, given the fact that  
22          we did not bring witnesses here for the BDO and the  
23          Integra reports, or expect that there would be any  
24          testimony regarding those, I don't think tomorrow  
25          is going to provide enough time.  In our view, we



1           need to have discovery on any of these issues if  
2           the Court --

3           THE COURT:   How about as to summary  
4           judgment -- the statute of limitations summary  
5           judgment?

6           MR. HODGES:   Well, right now, I'm prepared to  
7           stand on the papers based on the testimony that's  
8           been provided.  I mean, the papers create an issue  
9           of fact that -- if the Court is looking to deny the  
10          motion, in effect.  So, respectfully, I would  
11          submit that if the Court wants to forge on with  
12          hearing whatever testimony can be put on today,  
13          we're prepared to allow the off-island witness or  
14          witnesses to be called out of order so that the  
15          Court can accommodate them.  But as far as all the  
16          witnesses --

17          THE COURT:   And are you still trying to catch  
18          your plane or are you willing to forego that?

19          MR. HODGES:   I'm perfectly willing to do that.  
20          I don't know if that means that I'm going to be  
21          stuck without my toothbrush tonight, not to make  
22          light of it.

23          THE COURT:   There's a real nice Kmart just  
24          down the street.  There is a Plaza Extra this  
25          way.

1           MR. HODGES: I would prefer not to be required  
2           to stay here, Your Honor, but I'm prepared to do  
3           whatever the Court directs. Given the fact that,  
4           in our view, discovery -- we all -- no one disputes  
5           that discovery is needed in this case. There's  
6           been no discovery since 2014. I should not be  
7           required to cross-examine this witness or any other  
8           witness without having the opportunity to engage in  
9           reasonable discovery. And, quite frankly, just the  
10          prospect of going through and effectively using  
11          your valuable time for me to ask questions that  
12          essentially go to discovery issues doesn't make  
13          sense. So I would respectfully submit that we  
14          accommodate whoever we can today, out of order, and  
15          then, Your Honor, address the motions that we can  
16          address today, and I believe --

17          THE COURT: Well, at least to some extent,  
18          Mr. Hamed's testimony relates to the question of  
19          statute of limitations in the summary judgment  
20          motion, notwithstanding your belief that there  
21          shouldn't be any evidence taken, but -- so he's  
22          there. If you want to cross-examine him, you're  
23          welcome to do that. Otherwise, we can move on to  
24          other witnesses.

25          MR. HODGES: Well, if I cross-examine him, I

1 don't want the record to indicate that I'm doing so  
2 without reserving my opportunity to depose him and  
3 engage in discovery before these issues are  
4 effectively resolved. Again --

5 THE COURT: Both sides have suggested that  
6 these issues need to be resolved, including statute  
7 of limitations. This evidence goes, at least to  
8 some extent, towards the statute of limitations.  
9 If the suggestion now is that, well, we're not --  
10 the Court shouldn't be deciding statute of  
11 limitations yet because the parties need to take  
12 more discovery -- is that now your position?

13 MR. HODGES: To the extent that Attorney Holt  
14 is indicating that Your Honor is able to do that,  
15 and he's put on testimony that we've not been able  
16 to effectively prepare for based on discovery, yes,  
17 absolutely. If we were going to argue the motions  
18 that were before the Court based on the papers that  
19 were before the Court this afternoon, we would be  
20 prepared to argue that and we would be prepared to  
21 argue that Your Honor can make that decision. But  
22 given the fact that he's put on testimony that  
23 we've not been able to discover --

24 THE COURT: At least this testimony can't come  
25 as a surprise because it's in the order, the -- as

1 to the scope of what's going to happen with --

2 MR. HODGES: And I'm prepared to address that  
3 part of his testimony.

4 THE COURT: Very well.

5 MR. HODGES: With the understanding that I'm  
6 not foreclosed from engaging in discovery with  
7 respect to the balance of his -- the main portion  
8 of his testimony, which does not relate to the  
9 summary judgment, which relates to the BDO report.

10 THE COURT: Very well. You can go ahead.  
11 I'll agree that you can question him relating to  
12 the statute of limitations issue.

13 MR. HOLT: Your Honor, just for the record, I  
14 have one witness from New York who was planning on  
15 flying back this afternoon. I have one witness  
16 from St. Thomas who was planning on flying back  
17 this afternoon. I have one witness who is planning  
18 on flying to Washington, D.C., tomorrow morning.  
19 Mr. Jackson has taken off time from tax, but maybe  
20 he'll come one more time. But I would really like  
21 to get my witnesses, even if we have to go late  
22 today, to get them out of order.

23 THE COURT: Very well. I understand the folks  
24 from St. Thomas at defense table are saying that  
25 you will stay if necessary; right?

1           MR. HODGES: Your Honor, I will do whatever  
2           the Court directs. But I would respectfully submit  
3           deferring our requirement to examine or  
4           cross-examine until tomorrow really doesn't do us  
5           any benefit, because we haven't -- it won't allow  
6           us the opportunity to engage in discovery.

7           THE COURT: Let's go ahead and get the  
8           witnesses.

9           Mr. Hamed, you can stand down for now. We'll  
10          take the witnesses who have to be elsewhere. And  
11          I'll defer on that question as to whether or not  
12          you should or will need to cross-examine him on the  
13          statute of limitations issues.

14          MR. HOLT: We'd call Willie Hamed.

15                         WAHEED HAMED,  
16          having been first duly sworn, was examined and  
17          testified as follows:

18          MR. HODGES: Your Honor, just for point of  
19          clarification, is this the St. Thomas witness?

20          MR. HOLT: Yep.

21          MR. HODGES: All right.

22                         DIRECT EXAMINATION

23          BY MR. HOLT:

24                 Q       Can you state your name for the record,  
25                 please?

1 A Waheed Hamed.

2 Q And how long have you lived on St. Croix?

3 A I'm sorry?

4 Q How long have you lived on St. Croix?

5 A St. Croix, about 25 years.

6 Q All right. And have you ever worked at the

7 Plaza Extra store in St. Croix?

8 A Yes.

9 Q And when was that?

10 A 1990.

11 Q Did there come a time that you moved to

12 St. Thomas?

13 A Yes.

14 Q And why was that?

15 A For the new store that we opened up in

16 St. Thomas.

17 Q And when you moved to St. Thomas, what were  
18 your job duties?

19 A I was in charge of the front end, I was in  
20 charge of the cashier, service desk.

21 Q Who was your boss?

22 A Fathi Yusuf.

23 Q And where was he located at that time?

24 A In St. Thomas.

25 Q So he worked in the same store as you?

1 A Yes.

2 Q Okay. And he was --

3 THE COURT: I'm sorry. What year was that?

4 Q Starting what year?

5 A 1993.

6 Q Did there come a time in 1995 that Mr. Yusuf  
7 informed you you were going to do something with the  
8 cash receipts?

9 A Yes.

10 Q And what did he inform you was going to  
11 happen?

12 A I mean -- I'm sorry. Repeat the question.

13 Q What did he tell you to do?

14 A Well, he was in charge. Whatever is required  
15 to do with the cash, pay vendors, cut checks, whatever  
16 it is, it's -- it was his doing. I mean, whatever he  
17 wanted, I did.

18 Q Okay. And did there come a time that he would  
19 take cash down and buy certified checks?

20 A Yes.

21 Q And were they sent overseas?

22 A Yes.

23 Q And who would actually mail the checks?

24 A He would.

25 Q Okay. Did there come a time that he would go

1 through checks received just in the normal course of  
2 business for the store and instead of depositing them  
3 here, he would send them over to Jordan?

4 A Yes.

5 Q And who would send those checks?

6 A He would also.

7 Q Did there come a time when you would take cash  
8 and go buy American Express dollars and send those  
9 American Express funds overseas?

10 A Yes.

11 Q And who would send those American Express --

12 A He would also send those, too.

13 Q Would you also take cash to St. Maarten?

14 A Yes, I am.

15 Q And would he be aware of the cash that was  
16 taken to St. Maarten?

17 A He's the one that directed me to take them to  
18 St. Maarten.

19 Q And when you'd get to St. Maarten with the  
20 cash, what would you do with it?

21 A I would give it to his nephew.

22 Q And what was his name?

23 A Isam Yusuf.

24 Q Did that practice continue up until the time  
25 of the FBI raid?



1           A     Yes.

2           Q     And at any time did you ever handle any checks  
3 or funds that Mr. Yusuf did not know about as far as  
4 removing them from the store?

5           A     No.

6           Q     Now, would you get mail from time to time from  
7 the various banks in St. Maarten and Jordan?

8           A     Yes.

9           Q     And who would open that mail?

10          A     Fathi Yusuf.

11          Q     And who kept track of all the accounts in  
12 Jordan and St. Maarten?

13          A     He did. He had a ledger.

14          Q     Okay. Showing you Exhibit Number 32.

15                THE COURT: All these exhibits will be  
16 accepted. This is not an evidentiary hearing in  
17 the sense of a Rule 401 hearing tells me I don't  
18 need to rule on evidence, so I'll accept all of  
19 these for what they're worth.

20                MR. HOLT: Okay.

21                        (At this point the Court admitted all  
22 exhibits into the record.)

23          Q     This is a check for \$50,000; right?

24          A     Yes, sir.

25          Q     And it's written on a United Corporation Plaza

1 account.

2 A Yes, sir.

3 Q And that's in St. Thomas.

4 A Yes, sir.

5 Q Payable to you.

6 A Yes, sir.

7 Q And you signed it.

8 A Yes, sir.

9 Q And what happened with this check?

10 A As I recall, this check was used to bail out  
11 Fathi Yusuf in the criminal charges of immigration back  
12 in 1999.

13 Q Okay. So when we look at the back of this  
14 check, you see your endorsement; right?

15 A Yes.

16 Q And what on the back of that check tells you  
17 that you got cash for this check?

18 A Yes, I went and I cashed it and I had the cash  
19 and we went to bail him out.

20 Q And when it says 500 X \$100 bills, what did  
21 that mean?

22 A They gave me 500 one-dollar bills.

23 Q \$100 bills.

24 A \$100 bills, yes.

25 Q And this is about the time Fathi Yusuf was

1 arrested on immigration charges?

2 A Yes.

3 Q And this money was used to help post the  
4 bail?

5 A Yes.

6 Q Okay. Did you keep any of this money?

7 A No, sir.

8 Q Whenever you would write a check like this,  
9 would Fathi Yusuf always know about it?

10 A I'd never really write a check like that  
11 unless it requires -- and this check he was aware of it  
12 because I had to bail him out.

13 Q Okay. And whenever you removed any funds from  
14 the business, would he know about them?

15 A Yes.

16 Q Okay. And that was a regular practice that  
17 you had?

18 A Yes, sir. I can even elaborate. One day he  
19 wanted to take out a pint of Haagen Dazs ice cream, so  
20 he says, "Hey, Willie, go ahead and grab a pint of ice  
21 cream so we both have one each." So it would be equal  
22 all the time.

23 Q Okay. Showing you Exhibit Number 33, can you  
24 tell me what these documents are?

25 A (Perusing documents.)

1 Q And by the way, before I leave that, so if BDO  
2 said that that \$50,000 was money you owed the company,  
3 that would be incorrect, wouldn't it?

4 A That is incorrect.

5 Q All right. Looking at this series of  
6 documents, first, you see on top a contract of sale?

7 A Yes.

8 Q This was between you and a woman named Doris  
9 Cadoux?

10 A Yes.

11 Q And you were buying some property in Tabor &  
12 Harmony from her?

13 A Yes.

14 Q And you put \$20,000 down in cash?

15 A Yes.

16 Q All right. And then looking at the next  
17 document, do you see a withdrawal from Scotiabank of  
18 \$250,000?

19 A I'm sorry. You said --

20 Q I'm sorry. Do you see a deposit of \$250,000  
21 in Hisham Hamed's account?

22 A Yes.

23 Q And how did that deposit come about?

24 A We gave Hisham \$250,000 to deposit in his  
25 account and --

1 Q Was that to help you do this transaction?

2 A That was to pay for the property that we  
3 bought.

4 Q Okay. So then looking at the next document,  
5 this is a check from Hisham Hamed to Scotiabank for  
6 \$179,000?

7 A Yes, sir.

8 Q Okay. And then the next document is the  
9 receipt from Scotiabank showing that they actually  
10 issued a cashier's check or certified check on this?

11 A Yes, sir.

12 Q And the next document is actually the check  
13 from Scotiabank for \$179,000 that was payable to the  
14 seller of this property, Doris Cadoux; is that  
15 correct?

16 A Yes.

17 Q And then the next document is a list of  
18 closing items from Attorney King to finish this closing;  
19 is that correct?

20 A Yes.

21 Q And pay the realtor, the title company, tax  
22 stamps, and the lawyer; is that correct?

23 A Yes.

24 Q Were all these taken out of that same  
25 \$250,000?

1           A     Yes, sir.

2           Q     Okay. Now, when you closed that transaction,  
3 whose name went on the deed?

4           A     My name and Fathi Yusuf's name.

5           Q     Okay. And did there come a time that you then  
6 separated the two parties properties?

7           A     We separated both properties. We actually  
8 bought a property on Skyline that --

9           Q     Well, just hold on. On that property, you  
10 actually separated the two properties?

11          A     Yes.

12          Q     And the next document is the partition deed?

13          A     Yes.

14          Q     And Fathi Yusuf got one acre and you got one  
15 acre?

16          A     Yes, sir.

17          Q     So of that \$250,000, Fathi Yusuf got the  
18 benefit of half of that, didn't he?

19          A     Yes, he did.

20          Q     Okay. Now you want to tell us something about  
21 the land in Skyline?

22          A     On Skyline, we had the same concept. We  
23 bought two half acres; he took one, I took one.

24          Q     And did there come a time when you all decided  
25 to do a switch on them?

1           A     There come a time where I told him I don't  
2     want to live on Skyline, you can have the Skyline and  
3     I'll take the Estate Tabor & Harmony. I built my house;  
4     he built his house.

5           Q     And you built it on this land in Harmony?

6           A     Yes.

7           Q     So if the BDO report said that Hisham Hamed  
8     took \$250,000 for himself, that would be incorrect,  
9     wouldn't it?

10          A     That is totally incorrect.

11          Q     And those funds were split fifty-fifty between  
12     Yusufs and Hameds; correct?

13          A     Yes, sir.

14                MR. HOLT: No other questions.

15                THE COURT: Cross?

16                MR. HODGES: Your Honor, I would waive in  
17     order to --

18                MR. HOLT: No. If you're going to cross him,  
19     you gotta cross him now because he's flying back to  
20     St. Thomas. I mean, I've limited my direct, so  
21     there's not much to --

22                MR. HODGES: Your Honor, subject to our  
23     objection that we shouldn't be required to do any  
24     of this today, I respectfully -- this clearly has  
25     nothing to do at all with the statute of

1 limitations. Nothing.

2 THE COURT: Ah --

3 MR. HOLT: I respectfully disagree, but --

4 THE COURT: Here's why I disagree. To the  
5 extent that there are claims that are presented  
6 that suggest that Fathi Yusuf is saying in this  
7 action that these are situations where money was  
8 wrongfully taken from the partnership, and this  
9 testimony goes to the fact that at the time it  
10 occurred, that Fathi Yusuf knew about it, then it  
11 goes to whether or not he had an obligation at that  
12 time to review the documentation available to  
13 him.

14 MR. HODGES: Understood, Your Honor. With the  
15 proviso that we're entitled to discovery from  
16 Mr. Hamed, who we've never deposed, I'm prepared to  
17 do the best I can. I respectfully submit that  
18 we're -- by proceeding in this fashion, the Court  
19 is assisting Counsel to effectively tie our hands  
20 behind our back as far as our ability to  
21 effectively cross-examine these witnesses.

22 THE COURT: Until today, there's never been a  
23 suggestion that the motion for summary judgment  
24 can't be ruled upon until we complete discovery.  
25 There's not -- whatever it is now, Rule 56(f), I



1           guess now, the operative section. As a matter of  
2           fact, to the contrary, both sides have said these  
3           motions are ripe for determination now. Both sides  
4           have argued in briefing about the United versus  
5           Hamed case and the Supreme Court's decision in that  
6           case and the effect that -- of the discovery rule  
7           on the tolling of the statute of limitations or the  
8           date on which the statute of limitations begins to  
9           run. So all of this seems in line with that.

10           MR. HODGES: I would tend to concur with Your  
11           Honor, if Your Honor put the parties on notice and  
12           said, "I think the summary judgment papers may be  
13           deficient. I'm going to give the plaintiff an  
14           opportunity to submit further affidavits and the  
15           defendant to submit their affidavits." That's not  
16           what has occurred here. The plaintiff has  
17           effectively been able to put on testimony today  
18           that has not been tested by discovery whatsoever.  
19           And that is unfair.

20           THE COURT: Okay. All right. Do you want to  
21           cross or not?

22           MR. HODGES: Yes, Your Honor.

23           THE COURT: All the papers that were just  
24           discussed, that's all one exhibit; right?

25           MR. HOLT: Yes.

## CROSS-EXAMINATION

1  
2 BY MR. HODGES:

3 Q Mr. Hamed, isn't it true that Mr. Yusuf wasn't  
4 the only one you took directions and instructions from,  
5 it was your elder brother as well; isn't that correct?

6 A No, sir.

7 Q You never took any directions or instructions  
8 from your older brother?

9 A Advice.

10 Q He wasn't, in effect, Mr. Yusuf's right-hand  
11 man?

12 A Yeah, but Mr. Yusuf was running the store.

13 Q Isn't it true that your older brother was  
14 responsible for the cash safe on St. Croix?

15 A I don't know anything about St. Croix.

16 Q You're not aware that he was the one that was  
17 responsible for the cash going in and out of that  
18 safe?

19 A No, sir. I worked at St. Thomas.

20 Q And you say you personally carried money, cash  
21 money from St. Thomas to St. Maarten in order to divert  
22 cash from the taxing authorities?

23 A As per Mr. Yusuf instructions, yes.

24 Q And you did that repeatedly?

25 A Yes.

1 Q Okay. Now, you say Mr. Yusuf knew about all  
2 the money you took from the store; is that correct?

3 A I'm sorry. When you say "all the money," I  
4 don't know what money you're talking about.

5 Q You're saying every single withdrawal of cash  
6 that you took from the safe was known by Mr. Yusuf.

7 A I took where, sir?

8 Q Did you -- did the Hameds take money from more  
9 than one safe?

10 A I don't understand what your question is.  
11 You're asking me --

12 Q Isn't it true that if a Hamed or a Yusuf  
13 wanted to take cash, they would -- they were supposed to  
14 put a receipt, or a chit, as Attorney Holt referred to  
15 it earlier today, into the safe to evidence that  
16 withdrawal?

17 A Um, no, sir. I don't know what St. Croix did.  
18 I can tell you what St. Thomas did.

19 Q Okay. Every withdrawal of cash -- or let me  
20 ask you this: Are you saying that there weren't any  
21 cash withdrawals from the St. Thomas store?

22 A Yes, there were.

23 Q From the safe?

24 A Of course.

25 Q And you would put in receipts in order to

1 evidence those withdrawals.

2 A Yes, there was a ledger with the accounting  
3 girl in the back, yes.

4 Q Okay. And it's your testimony under oath  
5 today that you never withdrew any money from the safe in  
6 St. Thomas without putting a chit in there. Is that  
7 your testimony?

8 A I'm sorry. I don't understand your  
9 question.

10 Q Are you saying that you ever withdrew any --  
11 did you ever withdraw any cash money from the safe in  
12 St. Thomas?

13 A Yes, I have.

14 Q Okay. And are you saying each and every time  
15 you put a chit or a receipt in there that you -- when  
16 you withdrew that cash?

17 A Yes.

18 Q And that's based on simply your -- the  
19 honor -- it was a honor system? Mr. Yusuf was supposed  
20 to rely on you to actually put on a receipt every time  
21 you withdrew the money?

22 A There's no -- no, no, sir. Every time I took  
23 a dollar out, he was aware that I took a dollar out.  
24 Every time he took a dollar out, I was aware that he  
25 took a dollar out.

1 Q You were always with each other in the cash  
2 room?

3 A We lived in Plaza Extra for at least a year  
4 and a half together, yes.

5 Q Well, I'm not just talking about a year and a  
6 half in '93. I'm talking about from '93 to, say, 2003.

7 A We were neighbors.

8 Q Okay. Are you saying that there's -- it was  
9 impossible for you to go into the safe and remove cash  
10 without him seeing you?

11 A His office was right before that, so, yes, he  
12 had to see me every time I go into the safe.

13 Q And you're saying that he was there every  
14 moment that you were in the store?

15 A I would say 99 percent, yes.

16 Q So there's -- there's some percentage of time  
17 that he wasn't there that you could have gone into the  
18 cash room and withdrawn funds.

19 A What are you insinuating, sir?

20 Q Would you please answer my question?

21 A I don't understand your question.

22 THE COURT: Answer the question.

23 A I don't understand your question.

24 Q You're saying he was there 99 percent of the  
25 time you were there, all the time; is that correct?

1           A     Yes.

2           Q     So that one percent of the time he wasn't  
3 there, you had an opportunity to go in and remove cash  
4 without him seeing it, didn't you?

5           A     Every time a dollar is taken out, there was a  
6 receipt written and he would be aware of that receipt.

7           Q     But what if you removed cash, sir, and didn't  
8 put a receipt in there?

9           A     I don't think that ever happened. Ever.

10          Q     That's your testimony here today?

11          A     That is my testimony.

12          Q     Have I ever had an opportunity to ask you  
13 about that before?

14          A     I don't even know who you are, to be honest.

15          Q     Okay. So it's fair to say I've never examined  
16 you about that issue before.

17          A     No.

18          Q     And I think I heard your testimony, you never  
19 wrote a single check on the Plaza Extra account without  
20 Mr. Yusuf knowing about it?

21          A     Yes.

22          Q     Not one?

23          A     Not one, to my recollection.

24          Q     For the entire time you were in the St. Thomas  
25 store.

1           A     Yes.

2           Q     You are a plaintiff in the defamation case  
3 that's been filed against Mr. Yusuf, aren't you?

4           A     Yes.

5           Q     And isn't it true that in that case, you  
6 allege that Mr. Yusuf started defaming you in 2010?

7           A     I don't recall the year, but, yes.

8           Q     Okay. And that's when he claims that he found  
9 information that suggested that you and your brothers  
10 had improperly taken funds from the partnership; isn't  
11 that correct?

12          A     No, sir, that's not correct.

13          Q     Are you saying he knew about these claimed  
14 improper takings long before that and didn't say  
15 anything until 2010?

16          A     Ah, no, sir.

17          Q     All right. So isn't it fair to say that  
18 sometime around -- it's your position that sometime  
19 around the time he started accusing or allegedly  
20 accusing you and your brother of improper taking of  
21 funds is when he discovered it; isn't that right?

22          A     Negative, sir. No, no. He specifically told  
23 me in his office that he is coming after the Hameds and  
24 he's going to come after us and he's going to destroy us  
25 for some odd reason I have no idea about.

1 Q But the year. That was in 2010, wasn't it?

2 A I don't remember the year, sir.

3 Q Okay. But it's not your position that he knew  
4 about this from the beginning back in 1986, is it?

5 A Knew about what?

6 Q Knew about you and your brothers' improper  
7 taking of funds?

8 A No, sir. Everything that was taken he was  
9 aware of. He orchestrated everything. He planned -- if  
10 he wants \$50,000 to do whatever he wanted, he would have  
11 gone and said, "Hey, you take 50,000, I'm going to take  
12 50,000."

13 Q Tell the Court what you claim he is defaming  
14 you and your brothers about.

15 A That's a case that we would have to discuss  
16 with my attorney.

17 Q No. Just tell the Court what you claim  
18 Mr. Yusuf is saying about you that is wrong or false.

19 A He called me a thief. He threatened me that  
20 he wants to kill me. He threatened he wants to kill my  
21 father. He threatened he wants to kill my brother. His  
22 son pulled a gun on me.

23 Q Okay. So let's talk about the --

24 A All the stuff that he did --

25 MR. HOLT: Your Honor, let him answer the



1 question.

2 Q Let's talk about the thieving that you're  
3 talking about.

4 A Yes.

5 Q He made those -- if I told you your complaint  
6 says that he made those allegations in 2010, is that --

7 A I'm -- sir, I really don't remember the year.

8 Q I'm reading from paragraph 19 of your amended  
9 complaint. And I'm quoting. "In August or September  
10 2010, defendant Fathi Yusuf, with his son Mike Yusuf,  
11 met with Mohammad Hamed and Wally Hamed. Defendant  
12 Fathi Yusuf directly falsely accused Mohammad Hamed of  
13 stealing the 2 million dollars. Mohammad Hamed denied  
14 the allegations." That's one of many allegations in  
15 your amended complaint; isn't that right?

16 A Yes.

17 Q All right. And are you telling the Court that  
18 it's your position that Mr. Yusuf knew about this  
19 alleged theft long before September of 2010 or that  
20 he, as soon as he learned it, he made the accusation?

21 A Can you repeat that, please?

22 Q You're not telling the Court today, are you --  
23 correct me if I'm wrong -- that Mr. Yusuf knew about  
24 this alleged theft long before September of 2010, are  
25 you?

1           A     There was no theft.

2           Q     I acknowledge that you deny it, and your  
3 father denied it. We'll accept that. But you're  
4 alleging that in 2010 Mr. Yusuf claimed that your father  
5 had taken that money improperly; isn't that right?

6           A     I don't recall the year, sir.

7           Q     Well, I just read it from your complaint. In  
8 August or September of 2010. Do you think I would -- I  
9 wouldn't read it accurately?

10          A     I don't know.

11          Q     All right. Well, I represent to you that  
12 that's -- I'm reading from paragraph 19 of your amended  
13 complaint.

14          A     Uh-huh.

15          Q     So is it fair to say, sir, that it's your  
16 position that sometime in or around September of 2010,  
17 Mr. Yusuf at least thought he learned of an alleged  
18 theft, whether you -- acknowledging that you deny that  
19 there was any theft; isn't that correct?

20          A     That's what you said, yes.

21                MR. HODGES: No further questions at this  
22 time, Your Honor.

23                THE COURT: Okay. Any redirect?

24                MR. HOLT: I have no questions.

25                THE COURT: Thank you. You may stand down,

1 Mr. Hamed.

2 Next witness?

3 MR. HOLT: Your Honor, we're going to call,  
4 out of order, Larry Schoenbach.

5 THE COURT: Larry Schoenbach?

6 MR. HOLT: Yes.

7 LAWRENCE SCHOENBACH,  
8 having been first duly sworn, was examined and  
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. HOLT:

12 Q Can you state your name for the record?

13 A My full name is Lawrence, L-A-W-R-E-N-C-E,  
14 Schoenbach, S-C-H-O-E-N-B-A-C-H.

15 Q And where do you reside?

16 A I live in New York.

17 Q What is your occupation?

18 A I'm an attorney.

19 Q And do you specialize in any particular area  
20 of law?

21 A I am a criminal defense attorney. That's  
22 essentially all that I do. I do other things in  
23 addition but they're all related to criminal defense.

24 Q Are you admitted to the bar of any  
25 jurisdictions?

1           A     I am.

2           Q     Which bars?

3           A     I'm admitted to the bar of the State of New  
4     York. I'm also admitted to the bar here in the U.S.  
5     Virgin Islands. I'm admitted to the U.S. Supreme Court,  
6     a number of U.S. Circuit Courts of Appeal, and quite a  
7     number of U.S. District Courts.

8           Q     And how long have you been practicing law?

9           A     Since 1980.

10          Q     Is there any particular area of the criminal  
11     law that you do more than others?

12          A     Ah, I guess you would call me a white-collar  
13     defense lawyer, although I -- throughout my career as a  
14     criminal defense lawyer, I've handled virtually all  
15     kinds of cases.

16          Q     What is money laundering?

17          A     Money laundering is a crime under -- at least  
18     under Federal code, under 1950 -- 18 U.S.C. 1956 and 57  
19     that makes it a crime to structure or create a  
20     financial -- for lack of a better phrase, a financial  
21     structure, the purpose of which is to disguise the  
22     ownership or control of money. There are other aspects  
23     to it, but that's essentially what it is.

24          Q     And can you please tell the Court about your  
25     work experience in those areas.

1           A     Practicing primarily in New York, in the  
2 Southern District of New York, virtually all of the  
3 cases that I handle, whether it's a racketeering case, a  
4 drug case, a tax case, whether it's white collar, blue  
5 collar or black collar, virtually all of them have, as  
6 some component, a money laundering scheme.

7           Q     And have you ever been involved in a criminal  
8 case where there are multiple defendants that work under  
9 a joint defense agreement?

10          A     Virtually every case, gosh, for the last 20,  
11 maybe 30 years, I don't remember the last time I had a  
12 sole single-defendant case. Virtually every case is a  
13 multi-defendant case, whether it's only two defendants  
14 or sometimes as many as 75.

15          Q     And what is a joint defense agreement?

16          A     A joint defense agreement is a contract that  
17 is entered into and executed by all of the parties in  
18 the criminal -- on the criminal defense side, executed  
19 by each defendant, executed by each lawyer, so that all  
20 of the lawyers and all of the defendants can work  
21 together. It is done so that the attorney-client  
22 privilege is protected. Meaning once a joint defense  
23 agreement has been entered into by all of the  
24 defendants, whatever conversation has been made from one  
25 defendant is still confidential amongst all of the other

1 defendants.

2 Q And working under a joint defense agreement,  
3 do you just work on the issues related to your client or  
4 do you work on other issues? Explain how that works.

5 A No, no. That's the whole purpose of a joint  
6 defense agreement, in addition to protecting  
7 confidentiality and attorney-client privilege. It's to  
8 parcel out workload. I mean, when you're in a 60- or  
9 70-defendant case, there is huge volumes of work that  
10 has to be done. So that when I was a younger lawyer, I  
11 tended to do the grunt work. As an older lawyer, I get  
12 to lead those in charge or who I put in charge of the  
13 grunt work. And when I say "grunt work," what I'm  
14 referring to is there may be some lawyer or lawyers in  
15 the case who have a lesser responsible defendant. That  
16 person may be put in charge of all motions. There may  
17 be someone who has an expertise in Title 3 wiretaps.  
18 That lawyer would be put in charge of the wiretap  
19 motion. If there are wiretaps, there's another lawyer  
20 who has to listen to all of them. So it's an  
21 accommodation amongst all of the lawyers that were all  
22 pooled together toward one common goal.

23 Q Okay. And have you ever represented multiple  
24 defendants where one of the defendants was a  
25 corporation?

1           A     Many times.  And if I can say, I mean,  
2     sometimes I've represented the corporation, sometimes  
3     I've represented the controlling party, the controlling  
4     individual of the corporation.  Sometimes it's a public  
5     company.  Sometimes it's a private company.

6           Q     And if you're representing -- if you're in a  
7     case where there are multiple defendants and one of them  
8     is a corporation and you feel like you're not going to  
9     get them all off, what would be the common goal of those  
10    lawyers?

11          A     Well, in every criminal case, each individual  
12    lawyer has a responsibility to their particular client.  
13    And obviously it's the goal of each individual lawyer to  
14    achieve the best result for that client.  But in a  
15    multi-defendant case, we're all pulling our lawyers  
16    together hopefully in the same direction and hopefully  
17    at the same time.  If I can achieve the best result for  
18    my client by having the corporation take the guilty  
19    plea, where they basically bear the responsibility that  
20    the individuals could not, then obviously everyone is  
21    trying to do that.  Corporations can't go to jail.  
22    Corporations don't get the same consequences as  
23    individuals.  Frankly, if I have an individual client  
24    and a corporate client, if I can resolve the case by  
25    having the corporation take the plea and have the

1 sentence, I'm all the happier to do that, particularly  
2 where it's a private corporation. If it's a public  
3 corporation that's publicly traded, there are collateral  
4 consequences such as delisting from whatever exchange  
5 it's on where that doesn't really work.

6 Q Correct.

7 A But in the situation where it's a private  
8 company, it's a throwaway.

9 Q Okay. And in a criminal case involving money  
10 laundering, do you sometimes try to learn where the  
11 money trail is or where the money goes?

12 A No. I always try to learn the money trail.  
13 Not just sometimes. That's part of the job.

14 Q Okay. And you heard the testimony this  
15 morning where the defendants in this case actually had a  
16 chart made to try to determine what their clients had  
17 done with the funds?

18 A I did.

19 Q And is that something that would be common in  
20 a case like this?

21 A I would -- certainly in my cases and cases  
22 that I'm aware of, it would be done in virtually every  
23 case. If not by a chart, certainly by some kind of  
24 analysis. But it's incumbent on the defense lawyer to  
25 know, in a money laundering case, where the money went.



1 It's not our job, and frankly, it's -- it's counter to  
2 our job to trust the Government. I want to know where  
3 the money went because I want to know, frankly, if my  
4 client is guilty, if he is, more importantly, provably  
5 guilty, and I have to do that through some form of  
6 tracking of the money.

7 Q And that would also involve analyzing whether  
8 your client had knowledge sufficient to have criminal  
9 intent?

10 A Absolutely.

11 MR. HOLT: I tender Larry Schoenbach as an  
12 expert witness in the area of criminal law, with  
13 special expertise in the realm of money laundering  
14 cases.

15 MR. HODGES: Objection, Your Honor. That has  
16 no relevance to the issues in this case.

17 THE COURT: What's relevance?

18 MR. HOLT: Your Honor, he's going to talk  
19 about the BDO report and he's going to explain how,  
20 in this particular case, the FBI tried to do the  
21 analysis and --

22 THE COURT: I'm not going to -- I'll hear what  
23 he has to say. I don't think in this context it's  
24 necessary to determine his expertise.

25 MR. HOLT: Okay. What exhibit are we on?

1 THE COURT: 33?

2 MR. HODGES: 34.

3 THE COURT: 34.

4 BY MR. HOLT:

5 Q Were you asked to render some opinions in this  
6 case?

7 A I was.

8 Q And showing you Exhibit Number 34, can you  
9 tell me if that is the opinion letter that you sent?

10 A I'm sorry. What's your question?

11 Q Is that the opinion that you wrote in this  
12 case?

13 A Yes, it is.

14 MR. HOLT: And I take it then, Your Honor,  
15 you're just going to deem all exhibits admitted as  
16 we go?

17 THE COURT: Yes.

18 MR. HOLT: Okay.

19 MR. HODGES: Your Honor, I would object. I  
20 would object to the admission of this exhibit. It  
21 is -- there's been no qualification for him to  
22 offer any expert opinion regarding accounting  
23 records or offer an opinion on the validity of an  
24 accountant's opinion. There's been no testimony he  
25 has any accounting background. And I would

1 respectfully submit that while I understand the  
2 Court is anxious to move this thing along, this is  
3 just simply inadmissible --

4 THE COURT: Well, we're not in trial. In this  
5 pretrial hearing, I think I can -- everything  
6 presented is accepted and considered for what it's  
7 worth, so . . .

8 BY MR. HOLT:

9 Q You testified earlier that when you represent  
10 an individual defendant, you always try to learn the  
11 money trail. Does that involve doing accounting work,  
12 to a certain extent?

13 A I rely on forensic accountants for that. I  
14 mean, I have a familiarity with accounting, but I  
15 wouldn't go as far to say I'm an accountant. But it's  
16 part of the -- it's part of the practice. I have to be  
17 able to know numbers to be able to craft a defense for  
18 the client.

19 Q Okay. And I take it that the report lists the  
20 documents that you reviewed?

21 A It lists all of the documents I reviewed as of  
22 September. Since that time, frankly in the last few  
23 days or probably couple of weeks, I've looked at a  
24 couple of other documents.

25 Q Does that include the BDO report?

1           A     It does.

2           Q     Okay.  And I guess you also heard the  
3 testimony of Wally Hamed and Willie Hamed this  
4 morning or this afternoon?

5           A     I did.

6           Q     In rendering your report, did you do an  
7 analysis of the criminal case file filed against United  
8 Corporation and the other individuals?

9           A     I did.

10          Q     And what did you understand the accusations to  
11 be?

12          A     United, as a corporation -- and I don't  
13 remember the exact title, but United, Inc., plus a  
14 number of individuals, including a number of members of  
15 the Yusuf family and a number of the Hamed family, were  
16 charged with money laundering, tax evasion, and --

17               MR. HODGES:  Objection, Your Honor.  This is  
18 totally irrelevant to anything.  What occurred in  
19 the criminal case, in effect, and I believe that  
20 Attorney Holt indicated in his moving papers, was  
21 really irrelevant.  He was providing it ostensibly  
22 for background.  But this -- what happened in the  
23 criminal case simply isn't relevant to this case.

24               THE COURT:  All right.  Well, I'll hear him  
25 out and suggest that let's get to the point.

1           A     If I could finish my answer.

2                     And enterprise corruption under Virgin Islands  
3 Code as opposed to racketeering under the Federal code.

4           Q     And can you tell me whether or not the charges  
5 alleged that United Corporation was a criminal  
6 enterprise?

7           A     It was alleged to be, yes.

8           Q     Can you explain to the Court what that  
9 meant?

10          A     Enterprise corruption and racketeering are  
11 essentially the same, just different jurisdictions, one  
12 is Federal and one is local. It essentially asserts  
13 that an entity, in this case United, has become a  
14 corrupt entity through which a pattern of racketeering  
15 exists, in this case it could be tax fraud and money  
16 laundering.

17                     MR. HOLT: Could I have the witness shown  
18 Exhibit 35?

19                     THE COURT: He may be shown.

20                     MR. HOLT: And for the record, 35 is really  
21 two documents. It's the plea agreement and then  
22 the addendum to the plea agreement attached as one  
23 exhibit.

24          Q     So I take it you've reviewed this document,  
25 among other documents?

1           A     The plea agreement?  Yes.

2           Q     Okay.  So let's just go to the caption.  As a  
3 criminal lawyer, what does this caption tell you?

4           A     This caption tells me this is a charge by the  
5 Unites States of America, and it charges a number of  
6 defendants in the criminal case.  It lists Fathi Yusuf  
7 as the lead defendant, Waleed Hamed as the second  
8 defendant, and down through the line, with United  
9 Corporation being the last defendant listed.

10          Q     So when the U.S. Attorney issues an indictment  
11 like this, they usually name the lead defendant first?

12          A     Always name the lead defendant first.

13          Q     Okay.  And in your report --

14          A     Well, excuse me.  Let me rephrase that.  The  
15 lead defendant is by definition the first defendant.  If  
16 you're asking me who was the most responsible defendant  
17 or who at least does the Government believe is the most  
18 responsible defendant, that's almost invariably the  
19 first defendant named.

20          Q     Okay.  And did you address the issue of what  
21 Fathi Yusuf -- what his role was in your report?

22          A     I believe I did.

23          Q     And what is your understanding of what Fathi  
24 Yusuf's role was in this enterprise?

25          A     My understanding from all of the documents

1 that I read and the other analysis that I did, mostly  
2 that was a search through PACER, was that Fathi Yusuf  
3 was the lead defendant in -- not just because the  
4 Government put him as the first defendant, but because  
5 he was the person alleged to be the -- the mastermind,  
6 if you will, of the money laundering scheme.

7 Q And did you conclude whether or not Fathi  
8 Yusuf was the leader, based upon the evidence that you  
9 read?

10 MR. HODGES: Objection, Your Honor. That's  
11 a -- that's --

12 THE COURT: I'm listening. What's the  
13 objection?

14 MR. HODGES: He's basically asking this  
15 witness to conclude whether or not my client is the  
16 most responsible. I mean, they were all dismissed  
17 with prejudice.

18 THE COURT: Okay. For the same reasons I've  
19 given, not that I'm accepting this question and  
20 answer as soliciting expert testimony, but, yes, go  
21 ahead and answer.

22 A I can answer it this way: Whether or not  
23 Mr. Yusuf was most responsible or not I don't think is  
24 as important as he was, clearly, at least equally  
25 responsible as everyone else. He clearly knew

1 everything, as did everyone else, and I draw that  
2 conclusion, at a minimum, because that's what the Grand  
3 Jury said.

4           As I said in the report, the standard of proof  
5 for Grand Jury is by a preponderance of the evidence.  
6 It's the same standard of proof here in a civil context.  
7 So the fact that the Grand Jury voted an indictment  
8 tells me, as a criminal lawyer, there was at least more  
9 likely than not, because that's the standard, that  
10 Mr. Yusuf, as well as the other named defendants, knew  
11 everything that they were charged with doing. Whether  
12 that was proof beyond a reasonable doubt is an answer  
13 for a different day in a different court in a different  
14 proceeding. But that's not what I was asked to do.

15           Q     Based upon what you have read and what you've  
16 heard, do you have an opinion as to whether Fathi Yusuf  
17 was fully aware of all of the records of the criminal  
18 enterprise generated prior to the FBI raid in 2001?

19           A     I have no doubt whatsoever.

20           Q     Now --

21           A     Would you like to know why I have no doubt?

22           Q     Why do you have no doubt?

23           A     Like I said, one, because of the charges  
24 brought by a Grand Jury. And as the standard of proof  
25 is the same here, I drew that conclusion. The other is,



1 Fathi Yusuf admitted that himself. Part of the  
2 documents that I've read was a -- I believe it was a  
3 decision on a TRO, and I believe it was by this judge,  
4 but I'm not sure, I know it was Judge Brady, I assume  
5 it's the same judge, finding that Fathi Yusuf -- and I  
6 think to use Mr. Yusuf's own words -- did everything and  
7 knew everything. And I think that's in footnote -- it's  
8 in a footnote in my brief, probably around the 6th or  
9 7th page, if I can recall correctly.

10 But there were other indicia. Frankly, what I  
11 heard from Wally Hamed this morning was something I  
12 learned for the first time. Which gave me more  
13 confidence that Mr. Yusuf knew not just the essential  
14 facts but all of the facts regarding the money  
15 laundering scheme.

16 In the course of preparing my opinion letter,  
17 I was shown that chart, I don't recall what exhibit  
18 number it is, but it's -- when it's reduced to an 8 and  
19 a half by 11 piece of paper, it's virtually unreadable,  
20 certainly to my old eyes. When it was enlarged, I could  
21 read it. What I didn't know until today was that was a  
22 chart prepared by the defendants in the criminal case in  
23 connection with the joint defense agreement. For me, as  
24 a lawyer, I take that as an adoptive admission, as a  
25 legal matter, but just as a question of fact, the lead

1 defendant in a very serious criminal case had prepared a  
2 flow chart. It is exactly what a lawyer -- his lawyer  
3 should do and did.

4 The facts that are contained in that flow  
5 chart everybody in the case did know and had to know,  
6 because it was their life on the line at the time. It  
7 would be -- it would -- it would just be impossible not  
8 to believe that a criminal defendant in a serious case  
9 like this didn't know the facts that were contained in  
10 that exhibit, because the facts that were contained in  
11 it had to come from him or the other defendants in the  
12 case, and they all worked together toward the same end.

13 Q Okay. Did you review the BDO report?

14 A I did.

15 Q And what was your understanding of what the  
16 BDO report was trying to do?

17 A My understanding with that, it was an attempt  
18 at a partnership accounting from the beginning of time  
19 of the partnership until the -- I think 2015 or '16. I  
20 focused more on the time period from 1996 through 2003,  
21 especially through 2001 because that was the time period  
22 of the criminal charges and the criminal events  
23 underlying the criminal charges.

24 Q Do you have an opinion as to whether or not  
25 the BDO fairly and accurately reflects the partnership

1 accounting for that time period?

2 MR. HODGES: Objection, Your Honor. Obviously  
3 he's testified he's not an accountant, or a  
4 forensic accountant, for that matter, and he has no  
5 qualification to offer an opinion on that.

6 THE COURT: Very well. Your objection is  
7 noted. He can answer.

8 A I do have an opinion.

9 Q And what is that opinion?

10 A My opinion is that this report is unreliable,  
11 in large part for me, as a criminal defense lawyer, is  
12 because it makes no reference, in fact, has no comment  
13 in the report to the money laundering scheme from 1996  
14 through 2001 or the indictment that followed that in  
15 2003. There's a huge hole for, I don't know, a third of  
16 the time period, maybe, where there are no records, no  
17 documents, no analysis, certainly no forensic analysis,  
18 and no discussion of the criminal event which pervaded  
19 this entire scheme or this -- the company and the  
20 defendants during this time period.

21 Q Do you have an opinion as to whether or not  
22 there could be a reconstruction of the records related  
23 to the criminal enterprise prior to 2001?

24 A It would be difficult, if not impossible, to  
25 do that. I know that the FBI attempted to do that, and

1 they prepared a -- what I'll call a comprehensive  
2 report, but it can't be as comprehensive as it could  
3 have been had all of the records existed. The fact is,  
4 none of the records existed, and they had to be  
5 reconstituted by the FBI, and it was only with their  
6 authority and their power that most civilians don't have  
7 that they were able to reconstruct some of the  
8 records.

9 MR. HOLT: And, Your Honor, could I have the  
10 witness shown Exhibit Number 10? It's the big,  
11 thick draft summary.

12 Q And is this that document that you're  
13 referring to where the FBI tried to do a  
14 reconstruction?

15 A Yes.

16 Q Now, first of all, does that analysis have  
17 reviews of various bank accounts in Jordan and  
18 St. Maarten in it?

19 A I believe it does.

20 Q And after reviewing the documents that are in  
21 there, did the Federal Government come to a conclusion  
22 as to how much money Mr. Yusuf should be charged with as  
23 far as income tax return, versus Mr. Hamed?

24 MR. HODGES: Objection, Your Honor. As  
25 indicated before, this is a draft report.

1           There's been no conclusion testified whatsoever by  
2           the Federal Government.

3           THE COURT: Understood. You may answer.

4           A     Based on the report, which is Exhibit 10 in  
5           evidence, there was a \$4,000,000 -- approximately  
6           \$4,000,000 discrepancy in that the FBI found \$4,000,000  
7           that Fathi Yusuf had taken more than Mr. Hamed.

8           Q     Now, did this draft report have any impact on  
9           your opinion?

10          A     Well, it told me a few things. It told me how  
11          difficult it is to reconstruct documents when those  
12          documents have been destroyed. And I believe a great  
13          many were destroyed, according to Mike Yusuf, who  
14          learned, I think, in 2001 that there was an FBI or some  
15          law enforcement investigation, and all of those chits  
16          that were discussed earlier were destroyed.

17                 I'm sorry. Repeat the --

18          Q     Well, just, what was -- that report had what  
19          impact on your opinion? It told you that --

20          A     Yeah, how difficult it was to reconstruct, but  
21          at least it formed the floor of what could be an  
22          analysis of the financial accounting, forensic  
23          accounting for the partnership. It's why I was so  
24          surprised that the facts contained in the FBI report  
25          were not contained or even mentioned in the BDO

1 report.

2 Q Okay. And in the FBI report, did they do a  
3 summary, year by year from '96 to 2001 of what they  
4 thought the unreported income was?

5 A Yes, they did.

6 Q And those charts are in there?

7 A Yes, they are.

8 MR. HOLT: Your Honor, could I have the  
9 witness just briefly go over those charts which we  
10 have taken out of there and blown up into two  
11 boards?

12 THE COURT: You may.

13 Where is that in the report?

14 MR. HOLT: Well, each -- -- in these sub  
15 pages, you will find 1996 at subsection A, '97 is  
16 B, '98 is C, '99 is D, 2000 is E, and 2001 is F,  
17 and the summary is the first page of each one of  
18 those sections, and then each section has the  
19 backup to those summaries in it.

20 Q Okay. So looking at that chart -- and if  
21 you'd rather look at the pages, you can, whatever -- how  
22 much money did the U.S. Attorney's Office calculate was  
23 under-reported in 1996?

24 A (No response.)

25 Q Do you see the column where they say the

1 amount that they -- the amount that was the gross  
2 receipts and then the amount that was reported?

3 A 1996. Are you talking about the \$8 million  
4 total?

5 Q Yes. Do you see the two -- the two before  
6 that where they show how much was reported and how much  
7 they actually believe there was?

8 A Right. According to the 1996 income analysis  
9 that the FBI did, there were total sales of 44 -- almost  
10 \$45 million, but only 36 -- close to 37 million that was  
11 actually reported, leaving an unreported difference of  
12 about \$8 million.

13 Q And then what would be that number unreported  
14 for '97?

15 A Again, in '97, there was approximately \$43.7  
16 million of actual sales, approximately 38 million of  
17 reported sales, leaving a discrepancy of 5.8 million.

18 Q Okay. And without going into the specific  
19 numbers, what was the discrepancy of unreported income  
20 for '98?

21 A \$15,487,422.37.

22 Q What about for '99, the next chart?

23 A The total unreported sales were 15 million  
24 some \$90,000.

25 Q 2000?

1           A     \$16,051,000.

2           Q     2001?

3           A     11,976,000.

4           Q     Now, did the BDO report try to analyze where  
5 all that cash went?

6           A     No.

7           Q     Okay. And in order to do a full accounting of  
8 this company, you'd have to analyze where all that cash  
9 went, wouldn't you?

10          A     As a criminal defense lawyer, I hire forensic  
11 examiners all the time. I can't say that I've ever used  
12 BDO, but I use certainly their competitors. I was very  
13 surprised to see that none of these numbers or the raw  
14 data that supported it were contained anywhere -- were  
15 not contained anywhere in the BDO report.

16          Q     And did you see any of the bank accounts that  
17 the FBI looked at analyzed in that BDO report?

18          A     I did not.

19          Q     Now, taking the plea agreement in front of  
20 you, have you reviewed that document and the addendum to  
21 it?

22          A     I have.

23          Q     And in that document, did the U.S. Government  
24 indicate what it thought the total amount of unreported  
25 tax was?



1           A     It did.

2           Q     And what was the total amount of unreported  
3 tax the Government calculated after they analyzed all  
4 these records?

5           A     Well, I don't recall offhand. I know that the  
6 plea itself was to one specific year.

7           Q     But what was the total amount that the  
8 Government thought -- it would be the addendum to the  
9 plea agreement, the initial one.

10          A     My recollection was 70 million, but I'd have  
11 to look. The document would, frankly, speak for  
12 itself.

13          Q     I'll tell you what. Since the document speaks  
14 for itself, just to save time, what was the amount of  
15 taxes ultimately paid by United Corporation for the  
16 years 1996 to 2001?

17          A     I don't recall that, offhand. I know that was  
18 part of the plea agreement.

19          Q     Okay. Well, if I represent to you it was  
20 \$10,000,000, does that sound right?

21          A     That certainly sounds right.

22          Q     Okay. And that would be representing the tax  
23 owed, not really the total amount of money collected.

24          A     Right. That's the only thing the Government  
25 could recover was the tax owed.

1           Q     And did the BDO report do any analysis of the  
2 plea agreement or the sums discussed in the plea  
3 agreement?

4           A     There was no mention of it whatsoever.

5           Q     In your opinion as a criminal defense lawyer,  
6 can you tell me whether or not the BDO report is a  
7 document that you could rely upon at trial in defense of  
8 a client?

9           A     I would never rely on this report to defend a  
10 client.

11          Q     Why?

12          A     As I said earlier, it has a gaping hole in it  
13 that simply avoids the 800-pound gorilla in the room.  
14 There was a money laundering scheme that was on a  
15 massive scale for six, seven years, at least the six  
16 years that were charged. I don't think those were the  
17 only years that there was money laundering going on, but  
18 that was the charge. This doesn't speak -- this, the  
19 BDO report, doesn't speak to that in any way at all.

20                 And I likened it to a false alibi. Probably  
21 as a criminal defense lawyer, there's nothing worse than  
22 a false alibi. Because the defendant who puts forth an  
23 alibi that's demonstrably false does so to hide his  
24 guilt. A report that purports to be an accounting that  
25 fails to take in such an obviously important time period

1 and event, along with an FBI analysis that was  
2 extensive, but even that was only a minimum, not a  
3 maximum, tells me that this was frankly a sloppy-ass  
4 job.

5 Q And if you were having somebody do a report  
6 for you so that you could understand your defense, would  
7 you make sure they got every record available to you to  
8 analyze?

9 A To the extent they could, absolutely.

10 Q Okay. And so if the Yusufs and the people who  
11 procured this report had information but didn't give it  
12 to BDO, what would be your opinion about that?

13 A Shame on them.

14 MR. HOLT: No other questions.

15 THE COURT: Cross?

16 CROSS-EXAMINATION

17 BY MR. HODGES:

18 Q Good afternoon, sir.

19 A Good afternoon.

20 Q When were you retained by counsel for Hamed?

21 A I believe in 2014.

22 Q 2014?

23 A I believe so, yes.

24 Q Do you know when, approximately?

25 A Offhand, I would say maybe in the fall. Could

1 have been earlier than that, but I'm -- it's an educated  
2 guess, but it's a guess.

3 Q Okay. And is the report that was admitted as  
4 Exhibit Number 34 --

5 A That's right.

6 Q -- is that the only report that you've issued  
7 in this case?

8 A Yes.

9 Q No other report?

10 A I have drafts, but nothing that I have  
11 submitted.

12 Q And you're getting paid to prepare that  
13 report; is that correct?

14 A I am.

15 Q What was your agreement?

16 A My agreement was to be paid \$5,000 initially,  
17 like I said, in 2014. Another five when I prepared the  
18 report, and another 5 when I appeared in court. And I  
19 have been paid all those sums, plus my expense money to  
20 come down here today.

21 Q Okay. Is there any further sums that you're  
22 expecting to receive payment for?

23 A No.

24 Q So you're paid in full as you're speaking this  
25 morning -- or this afternoon?

1           A     I've been paid in full -- I should say one  
2     thing. I did speak to my wife the other night. I think  
3     the Hameds may have paid me an extra \$5,000 that I'm not  
4     entitled to and that I intend to repay. I think they  
5     made a mistake.

6           Q     Okay.

7           A     But I was owed 12,000, I was paid the 12, and  
8     then there's another wire in, we haven't figured out yet  
9     who that came from, but I think it was from Hameds, and  
10    if it is, I owe them that money back.

11          Q     And I think I heard you testify on direct that  
12    you, as a criminal defense lawyer, never rely on the  
13    work product of the Government in your defense; is that  
14    fair?

15          A     It's not that I don't -- never rely on it. I  
16    utilize it, but I want to do my own work.

17          Q     You don't trust the Government to get it  
18    right, do you?

19          A     Oh, no, on the contrary, I do trust the  
20    Government all too well, to the detriment of my client,  
21    but I want to know for myself. I do my own work, I  
22    don't just rely on the Government to do my work.

23          Q     Okay. You're not an accountant; is that  
24    correct?

25          A     That is correct.

1 Q You don't have any accounting background?

2 A None whatsoever.

3 Q Now, you said since your report, September 19,  
4 2016, you've looked at other documents, including the  
5 BDO report; is that correct?

6 A That's correct.

7 Q Have you looked at the full BDO report or just  
8 the exhibit -- Exhibit 12 that was admitted today?

9 A No, I can honestly say I've read every page  
10 of that report.

11 Q I'm talking about Exhibit 12. Have you looked  
12 at only Exhibit 12 or all of the supporting information  
13 that was provided with it?

14 A I'm sure it was -- may I see Exhibit 12? I  
15 assume it was just that.

16 (Perusing exhibit.) No. I've read Exhibit 12  
17 cover to cover. I slept through a good deal of it, but  
18 I have not seen any of the supporting documents.

19 Q Okay. Fair enough.

20 A I can say they were not provided to me.

21 Q Okay. So you've not looked at any of the  
22 schedules or supporting documents to the BDO report; is  
23 that fair to say?

24 A Yes, it is.

25 Q You've been talking about United and its being

1 charged as a criminal enterprise, is your testimony;  
2 isn't that correct?

3 A Correct.

4 Q We're not dealing with United in this case,  
5 are we?

6 A I don't believe so. Meaning I don't think  
7 they're in the caption, if that's what you're asking.

8 Q Okay. But we're dealing with a partnership  
9 here; isn't that correct?

10 A Right.

11 Q And the partners are who?

12 A Partners --

13 Q Who were the partners?

14 A -- were Mr. Yusuf and Mr. Hamed.

15 Q Okay.

16 A Fathi Yusuf, Mohammad Hamed. They were --  
17 originally ran their business through United, and  
18 ultimately it was found, I believe by this Court, to be  
19 a partnership as opposed to an entity, because United  
20 was a separate entity that owned the shopping center as  
21 opposed to the partnerships that owned the  
22 supermarkets.

23 Q Okay. And you're familiar with the plea  
24 agreement?

25 A I've read it, yes.

1           Q     And while you talked about Mr. Yusuf being the  
2 lead defendant, isn't it fair to infer that all of the  
3 individual defendants were equally involved in the  
4 amounts laundered?

5           A     I don't think they were all equally involved.  
6 They were certainly all equally responsible. But like  
7 any conspiracy, and certainly any criminal conspiracy,  
8 there were people who have greater roles and people who  
9 have lesser roles. But under the law, and I'm sure  
10 you're aware, everybody is equally responsible. But not  
11 everybody has equal authority and equal function.

12          Q     But would you agree with me that none of that  
13 responsibility was ever determined in the criminal case  
14 as far as the individuals were concerned?

15          A     I don't agree. I don't agree because --

16          Q     You don't agree that all of the individuals  
17 were dismissed with prejudice?

18          A     No, I certainly do agree that they were all  
19 dismissed -- all the individual defendants were  
20 dismissed with prejudice. But they were all indicted.  
21 And when there's an indictment, it means that all of the  
22 defendants who have been indicted had proof demonstrated  
23 to the Grand Jury, at least by a preponderance of the  
24 evidence. So from that point of view, I don't agree  
25 with your premise.



1           Q     Are you suggesting to the Court that simply  
2 because the Grand Jury indicted them, all of them must  
3 have some criminal responsibility?

4           A     No. They all have responsibility, but not  
5 necessarily criminal responsibility.

6           Q     Why does an indictment that is ultimately  
7 dismissed have any effect whatsoever on  
8 responsibility?

9           A     If you're asking me on criminal  
10 responsibility, it doesn't. But on responsibility, it  
11 does. Because the Grand Jury's standard of proof is by  
12 a preponderance of the evidence. Which means that a  
13 legal body of law, a Grand Jury, heard evidence and  
14 determined that all of these individual defendants and  
15 United had committed crimes, at least by a preponderance  
16 of the evidence. Whether that could be proof beyond a  
17 reasonable doubt is a different issue and one probably,  
18 in fact certainly, we'll never know because the charges  
19 were dismissed against the individual defendants when  
20 United took the plea.

21          Q     Now, the chart that you referred to, that was  
22 purportedly prepared as a part of a joint defense  
23 agreement?

24          A     That's the handwritten chart? If that's what  
25 you're referring to, yes.

1           Q     All right. Let me back up a little bit, back  
2 on that Grand Jury. Can you -- given your long  
3 experience as a criminal defense attorney, can you tell  
4 the Court roughly what percentage of cases are involved  
5 where the Grand Jury does not return an indictment that  
6 the prosecutor seeks?

7           A     That's a very difficult question to answer  
8 from me. Because when Grand Juries vote what's called  
9 no true bill, it's a secret event. The individual  
10 defendant who is the target of the Grand Jury may find  
11 out that he's not going to be indicted, but that's not  
12 public information. So the only ones who have that  
13 information are the individual prosecuting offices,  
14 either here or in St. Thomas. But that's not public  
15 information.

16          Q     Well --

17          A     In my practice I can tell --

18          Q     Isn't it fair to say that it's common -- or  
19 one of the common refrains that you can hear from a  
20 criminal defense lawyer is that any decent prosecutor  
21 could get a Grand Jury to indict a ham sandwich?

22          A     I think that was actually Governor Cuomo, the  
23 first Governor Cuomo, who said that.

24          Q     Okay.

25          A     What about it?

1           Q     In other words, isn't it fair to say that  
2 simply because a Grand Jury returns an indictment at the  
3 request of a prosecutor has no bearing whatsoever  
4 criminally or civilly as far as responsibility of a  
5 defendant?

6           A     I'd like to believe that as a criminal defense  
7 lawyer, but, frankly, you and I both know that's not  
8 true. When a Grand Jury is charged with a jury  
9 instruction, I assume they take it seriously.

10          Q     Okay. Now, you don't know who prepared that  
11 chart that you were talking about earlier, do you?

12          A     I heard today who it was, but otherwise in  
13 that -- I saw a name, but the name didn't mean anything  
14 to me.

15          Q     Okay. And you don't know whether that chart  
16 was ever used in any way, do you?

17          A     I don't know what you mean -- just only  
18 because I teach this stuff. Could you refer to it by  
19 its number? Sorry if I'm stepping out of role here,  
20 but . . . What exhibit, so that we know?

21          Q     Well, you just referred to it in your  
22 testimony.

23          A     Yeah, but not by number. I want to say it was  
24 Exhibit 4, but I don't recall.

25          Q     No, it wasn't.

1           A     Okay.

2           Q     Exhibit 4.  So we're talking about Exhibit 4.  
3     It was a chart, and you saw the blow-up of the chart  
4     during -- were you not in the courtroom the whole time  
5     this morning?

6           A     Oh, no, I was here.

7           Q     Okay.  You saw the chart and you heard the  
8     testimony from Mr. Hamed regarding the chart that was  
9     attached to this exhibit -- as a portion of Exhibit 4;  
10    isn't that correct?

11          A     If you could flip to the page that has the  
12    handwritten chart --

13          Q     (Complying.)

14          A     Yes, that's exactly what I heard.

15          Q     Okay.  And you know as you're sitting here  
16    today -- correct me if I'm wrong -- that Mr. Hamed,  
17    Mohammad Hamed, has been determined to be a partner of  
18    Mr. Yusuf, do you not?

19          A     I do know that.

20          Q     And he was determined to be a partner of  
21    Mr. Yusuf's since 1986; isn't that correct?

22          A     I believe so.

23          Q     Okay.  Now, the chart that you referred to in  
24    your direct testimony that was blown up and that's a  
25    part of Exhibit Number 4, do you see any reference

1       whatsoever to Mr. Mohammad Hamed?

2           A       I'd have to look at it, but if --

3           Q       If the witness may be shown the blow-up? Or  
4       do we have --

5           A       Excuse me. If you represent to me that  
6       Mr. Hamed's name is not there, I'll accept your  
7       representation. The chart speaks for itself. If his  
8       name is there, it's there. If it's not, it's not.

9           Q       Do you have any understanding why Mr. Mohammad  
10       Hamed may have been excluded from this chart?

11          A       I presume because he wasn't charged in the  
12       criminal enterprise or in the money laundering scheme,  
13       and, therefore, because he wasn't involved in the  
14       criminal enterprise and the money laundering scheme, and  
15       therefore didn't have his name appear on that chart.

16          Q       Did you review any of the pleadings filed in  
17       the criminal case?

18          A       I did sometime ago when I did the PACER  
19       search --

20          Q       Okay.

21          A       -- I did. But it was several years ago. I  
22       haven't looked at them since.

23          Q       Okay. It's fair to say that Mr. Mohammad  
24       Hamed was conspicuously absent with respect to  
25       everything that was filed in that case; right? The

1 joint defense effectively was that United ultimately was  
2 the enterprise, and Mr. Yusuf and the Hamed sons and  
3 Maher Yusuf were the folks that were operating that  
4 enterprise; is that right?

5 A Well, that's a multifaceted question. If you  
6 could break it up, I'm happy to answer you.

7 Q In other words, Mr. Mohammad Hamed was not  
8 included in the indictment because the -- at least as  
9 far -- apparently as far as the United States Government  
10 was concerned, he wasn't a partner or employed with or  
11 have any interest in the Plaza Extra partnership; isn't  
12 that right?

13 A Not even close. He wasn't charged because  
14 there wasn't any evidence against -- or at least  
15 according to the U.S. Attorney and the Grand Jury, there  
16 wasn't any evidence against Mohammad Hamed that he  
17 committed any criminal wrongdoing. That doesn't mean  
18 he's not a partner. That just means he's not a criminal  
19 partner.

20 Q Did you see one document, one word in the  
21 criminal case that even suggested that Mr. Mohammad  
22 Hamed was Mr. Yusuf's partner at any time between 1986  
23 and today?

24 A I saw the charges. They had nothing to do  
25 with Mr. Hamed. What conclusions you draw from that,

1 I'll leave that to you and Mr. Holt.

2 Q So it's fair to say that you didn't see one  
3 document, not one, that even suggested that Mr. Mohammad  
4 Hamed had an equity interest in the enterprise known as  
5 Plaza Extra Supermarkets?

6 A Of course I didn't see any documents. Why  
7 would there be? I mean, that's a -- with all due  
8 respect, Counselor, it's an absurd question. You're  
9 asking about apples and oranges. You're asking about a  
10 partnership interest and you're asking about a criminal  
11 enterprise. Mohammad Hamed had nothing to do with the  
12 criminal enterprise, at least according to the Grand  
13 Jury and the U.S. Attorney. Whether Mr. Hamed was a  
14 partner in a partnership is a different issue, and  
15 that's why I say they're apples and orange.

16 Q All right. Well --

17 A But if your question is, does Mr. Hamed's  
18 name -- Mohammad Hamed's name appear anywhere in the  
19 criminal case in an indictment or discovery? As far as  
20 I've seen, no, it does not.

21 Q It's not on the chart that we were talking  
22 about?

23 A Not there.

24 Q And it's not on that summary report prepared  
25 by -- or excuse me, draft summary report prepared by the

1 Department of Justice; isn't that right?

2 A I believe that's correct.

3 Q Do you know how much money, if any,  
4 Mr. Mohammad Hamed received from this criminal  
5 enterprise that he deposited in accounts in his name in  
6 Amman, Jordan, or anyplace other than the United States  
7 Virgin Islands?

8 A I don't know that Mr. Hamed received any money  
9 from the criminal enterprise. He may have received  
10 money. I don't know whether it was from the criminal  
11 enterprise or not. If he had received money from the  
12 criminal enterprise and was demonstrably aware of it, I  
13 would imagine he would have been indicted. He wasn't,  
14 so I can draw conclusions about that.

15 Q So you don't know how much money Mr. Mohammad  
16 Hamed received from or that was diverted from Plaza  
17 Extra Supermarkets to him in either foreign accounts or  
18 in local accounts?

19 A As you've said earlier and I've agreed, I'm  
20 not an accountant.

21 Q Now, the opinion -- the BDO report was not  
22 addressed in your opinion; is that correct, because --

23 A I'm sorry, was not?

24 Q The BDO report that you've testified about,  
25 that wasn't addressed in your written report; isn't that



1 correct?

2 A It didn't exist in my written -- at the time  
3 that I prepared the written report, I did not have it.  
4 I don't know that it existed at that time.

5 Q And if I recall correctly, you testified that  
6 the BDO report did not even reference or refer to the  
7 criminal case; isn't that right?

8 A Essentially, yes. I think at page 20 there's  
9 a half a sentence that refers to, almost in vanilla  
10 terms, a Government investigation or -- or a raid, but  
11 that's about it. It was, if I recall correctly, it's  
12 page 20, first paragraph. It references a time period  
13 from 1993, I think, to 2003, where it mentions this is  
14 the time period when the -- Government scrutiny, I think  
15 is the word, which I thought was a remarkable euphemism.  
16 But that's it.

17 Q If I told you that on page 5, the BDO report  
18 says that in 2001 charges were brought against United,  
19 Fathi Yusuf, Maher Yusuf, NejeH Yusuf, Waleed Hamed,  
20 and Waheed Hamed. As a result, the FBI seized financial  
21 records from the supermarkets and members of both the  
22 Yusuf and Hamed families as part of the investigation?

23 A Okay.

24 Q So it's -- it is referenced by the BDO report,  
25 isn't it?

1 A If it's on page 5, then, yes, it is.

2 Q Okay.

3 A But beyond that statement, with any analysis,  
4 no.

5 Q Now, you would agree with me, though, that the  
6 focus of the Department of Justice wasn't on the  
7 withdrawals as between Mr. Yusuf and his partner, who is  
8 not even identified in the indictment and may not have  
9 even been -- certainly there was no Court order  
10 determining him to be a partner at that time; isn't that  
11 correct?

12 A Are you referring to Mr. --

13 Q Mr. Mohammad Hamed.

14 A I'm sorry. What's your question?

15 Q I'm sorry. It was a double question. Let's  
16 break it down.

17 A Okay.

18 Q You agree with me that at the time the  
19 indictment was issued and up through the time of the  
20 dismissal of the individual defendants, there had been  
21 no determination that Plaza Extra Supermarkets was a  
22 partnership; isn't that correct?

23 A Certainly not by the U.S. Attorney or the  
24 Federal Government. I know there was a decision by  
25 Judge Brady; I don't recall the date of that.

1           Q     Okay.  And would it be fair to say that his  
2 decision determining whether there was a partnership and  
3 the term of that partnership was the first  
4 determination?

5           A     I don't know that, but if you represent that,  
6 I have no reason to dispute you.

7           Q     Okay.  So the criminal indictment was focused  
8 on pursuing alleged criminals who were either  
9 under-reporting or not reporting their income; isn't  
10 that right?

11          A     That's part of it, yes.

12          Q     Well, is there any other part of it?

13          A     Well, they were laundering money.

14          Q     Okay.

15          A     And they were -- turned United into a criminal  
16 enterprise.

17          Q     But the focus was to effectively recover for  
18 those either unreported or under-reported taxes; isn't  
19 that fair to say?

20          A     Yes.

21          Q     All right.  And that's not the focus of the  
22 BDO report, is it?

23          A     Taxes?

24          Q     Right.  What may have been owed to the taxing  
25 authorities, how much money was diverted from the taxing

1 authorities' attention, those things weren't the focus  
2 of that report, was it?

3 A No, they're not the focus of the report, but I  
4 look at them as the flip side of the same coin. In  
5 order to determine what tax is owed, the U.S. Attorney  
6 and the Department of Justice and the FBI would have to  
7 determine what was the gross income, to the best that  
8 they could to the extent that records existed. In this  
9 case where there's a partnership and it is to be  
10 determined what are the partnership assets, the same  
11 determination has to be made. It's just which -- it's  
12 just a different box that the result goes into.

13 Q Respectfully, the BDO report is focused on  
14 which partners or their family members took what from  
15 the partnership; right?

16 A Well, it's an attempt to do that.

17 Q Okay. And that's not what the Federal  
18 authorities were focused on. They didn't really care  
19 whether Hamed took more than Yusuf or Yusuf took more  
20 than Hamed, did they?

21 A Well, to some extent, that's not correct,  
22 because in order to determine tax, you've got to know  
23 who has -- who received the money and who has the  
24 control. So like I said, in order to determine tax, you  
25 have to make -- you have to find a gross number. In

1 order to split a partnership, you also have to find a  
2 gross number. But like I said, what you do with that  
3 gross number is the difference between the civil context  
4 here and the criminal context in -- in the District  
5 Court.

6 Q Now, as I understand it, you relied on the  
7 draft summary report that's Exhibit 10, that binder  
8 that's up there that was prepared by the Department of  
9 Justice, in forming your opinion; isn't that right?

10 A No, that's not correct. I reviewed it. I  
11 don't know that I relied on it. What I found remarkable  
12 is not that the report existed in draft form, or even in  
13 final form, but that the BDO report didn't include it,  
14 and didn't include the raw data that's contained in that  
15 report.

16 Q I thought you said you didn't read any of the  
17 raw data?

18 A Well, no. I didn't read the --

19 Q Schedules or any of the supporting documents.

20 A Well, I read what was in the FBI report.

21 Q So would it surprise you if BDO actually had  
22 reviewed and considered that draft summary report in its  
23 report?

24 A Would it surprise me? I would hope that they  
25 would have.

1 Q Okay. But you cannot testify that they did  
2 not, can you?

3 A I can't say what they didn't do because I  
4 haven't compared what you say are the schedules -- I  
5 haven't been provided them -- with the FBI report.

6 Q Okay. And you haven't seen a deposition of  
7 anybody from BDO, have you?

8 A That's right.

9 Q Now, the draft summary report analyzes all of  
10 the --

11 A Excuse me. You're talking about the FBI draft  
12 summary report?

13 Q Yes.

14 A Okay.

15 Q In fact, you have a summary of that draft  
16 report at the end of your opinion, do you not?

17 A I do.

18 Q And it summarizes the information contained in  
19 this draft report; isn't that correct?

20 A A very small piece of it, yes.

21 Q Now, do you routinely rely on draft reports in  
22 forming opinions?

23 A I rely on the FBI. Generally --

24 Q Wait a minute. Hold on. Do you know who  
25 prepared that draft summary report?

1 A Do I know whether -- you mean the person --

2 Q Yeah.

3 A -- or the entity?

4 Q Yeah.

5 A Well, that's one or the other.

6 Q Do you know who prepared it?

7 A I believe it was prepared by the United States  
8 Government. Whether that's the U.S. Attorney or the  
9 FBI, I don't know.

10 Q And what information do you have that shows  
11 that it was prepared by the United States Government?

12 A That was my understanding.

13 Q Was it an understanding given to you by  
14 Mr. Holt?

15 A Um, I don't recall if it was Mr. Holt. It  
16 could have been Mr. Hamed, could have been somebody  
17 else, but that was my understanding.

18 Q Okay. So correct me if I'm wrong, you don't  
19 know what human being prepared this document.

20 A I certainly don't know that.

21 Q You don't know when it was prepared?

22 A It was prepared during the context of the  
23 criminal case.

24 Q All right. And how long did that criminal  
25 case last?

1           A     A long time.

2           Q     Okay.  So you don't know when, during that  
3 long period that the criminal case lasted, that it was  
4 prepared?

5           A     That's right.

6           Q     You don't know whether it was ever vetted by  
7 anybody outside of the Department of Justice or whether  
8 it was ever even accepted as a final product, do you?

9           A     Well, I don't know that for certain.  I can  
10 extrapolate that if there was a guilty --

11          Q     Can you answer my question, sir?

12          A     Well, I'm trying to.

13          Q     That's a yes or no.

14          A     I don't believe it is.

15          Q     Either you know that it was or you don't.

16          A     No, I don't believe that's correct.

17          Q     All right.

18          A     Okay?  I don't know for certain who was the  
19 author of this.  There's no name on it.  But I know this  
20 was prepared -- "this," meaning Exhibit 10, was prepared  
21 in the context of the criminal case and looking back  
22 historically to a time period that was important.  
23 Frankly, whether it was prepared in 2003 or 2017 doesn't  
24 matter.  It's looking at time between 1996 and 2001.  So  
25 when it was prepared, it was sometime after the criminal



1 conspiracy concluded, but when it was prepared is not  
2 important. That it was prepared for the time period of  
3 the criminal conspiracy was important to me. And who  
4 did it? Someone from the Government. But who it was in  
5 the Government, I don't know.

6 Q Okay.

7 A And for me, it wasn't important who -- what  
8 name was on it.

9 Q And it wasn't even important that it was only  
10 a draft?

11 A That it was only a draft? You know, would I  
12 prefer that the draft name were not on it? Sure. The  
13 fact that it says "draft" is less important but not much  
14 less, because I believe this report was utilized by the  
15 Government and the defense to carve out the plea  
16 agreement. I mean, the numbers that United pled guilty  
17 to, not just for the one year where they took the tax  
18 evasion, but all of the years prior to that, had to come  
19 from somewhere. Frankly, they came from this book.  
20 "This book" meaning Exhibit 10. That's my  
21 understanding.

22 Q Understanding based on information that was  
23 supplied to you by Attorney Holt?

24 A No. Based on my knowledge of criminal  
25 practice, based on God knows how many hundreds of

1 conversations, if not thousands of conversations I've  
2 had with government prosecutors. The numbers have to  
3 come from somewhere. The U.S. Attorney didn't just pull  
4 a number, ten million, out of the air. They had to rely  
5 on something. I believe they relied on Exhibit 10.

6 Q Can you tie anything from the plea  
7 agreement -- I'm not sure what -- Exhibit Number 35, the  
8 numbers in the plea agreement to the numbers in that  
9 draft report?

10 A No.

11 Q You've never done that, have you?

12 A I have not.

13 Q At page 11 of your report -- excuse me, expert  
14 opinion --

15 A If you have an extra copy, I don't have one.

16 Q I don't, not with me. It is admitted as  
17 Exhibit Number 30 -- I can't read Attorney Holt's  
18 writing -- 37 or 34.

19 MR. HOLT: Here you go.

20 A (Perusing document.)

21 Q Okay. You see that summary that's at the  
22 conclusion of your opinion?

23 A I do.

24 Q That is a summary of the information that you  
25 drew from the draft summary report; is that correct?

1           A     I believe so, yes.

2           Q     And it talks about some income that identifies  
3 Mr. Fathi Yusuf, Wally Hamed, and Willie Hamed; is that  
4 right?

5           A     Yes.

6           Q     Nobody else?

7           A     It is what it is. That's what it says.

8           Q     Okay. So in other words, this analysis in the  
9 draft summary report doesn't analyze any income to  
10 Mr. Yusuf's partner who's been determined by this Court  
11 to be his partner, Mr. Mohammad Hamed; is that  
12 correct?

13          A     That's correct.

14          Q     Now, if the facts in this case are found to be  
15 that the laundered money that you've been talking about  
16 was used to buy -- at least used in part to buy land in  
17 Jordan in the joint names of Mohammad Hamed and Fathi  
18 Yusuf, would you agree that BDO's failure to analyze  
19 that transaction really has no significance?

20          A     They're forensic accountants. I would want  
21 them to analyze every financial transaction related to  
22 the Hameds and the Yusufs.

23          Q     Even if it has no meaningful effect; is that  
24 what you're saying?

25          A     No, that's what you're saying. I don't know

1 if it has no meaningful effect. That's not for me to  
2 decide. And, frankly, in an adversarial process, I  
3 don't know that one side can make that decision. If BDO  
4 was supposed to be independent, they'd analyze all of  
5 the forensic accounting and let the chips fall where  
6 they fall.

7 Q All right. So -- but let's be clear on this.  
8 Because you've never reviewed the schedules and  
9 supporting information to the BDO report, you don't know  
10 what information they reviewed and analyzed in reaching  
11 the opinions in their report, do you?

12 A I know what I read, and that's the thick BDO  
13 report without the schedules.

14 Q Okay. Now, I think you criticized BDO for not  
15 providing a full analysis of the company. Is that what  
16 you said?

17 A I don't recall saying that.

18 Q You think -- correct me if I'm wrong. You're  
19 criticizing BDO because they didn't analyze all of the  
20 transactions involved in this alleged criminal  
21 enterprise; is that fair to say?

22 A Yeah. There's a hole in this report that runs  
23 from 1996 through 2001.

24 Q The criminal enterprise, the money laundering.

25 A Yeah, yes.

1           Q     Okay.  And that's -- that's the criminal  
2     enterprise that is alleged to exist by agreement between  
3     Mr. Yusuf and his family and Mr. Hamed and his family;  
4     is that right?

5           A     I don't -- I believe so.  I don't draw a  
6     distinction, frankly, whether it's by agreement or not.  
7     The fact --

8           Q     Okay.  But --

9           A     Excuse me, I'm not done.  The fact is is that  
10    there was a criminal enterprise, it did go on from 1996  
11    through at least 2001 and as a forensic accounting  
12    report, I would presume that there would be some  
13    analysis of the events and the recordkeeping, to the  
14    extent it could be located, of that time period.  So  
15    whether there was an agreement or not to commit a crime,  
16    to me, is not relevant.  At least not for purposes of  
17    this answer.

18          Q     So you're not faulting them for failing to  
19    analyze the criminal enterprise itself.  It's just for  
20    failing to analyze documents available for a certain  
21    period of time.  Is that what you're saying?

22          A     Well, it's the fact that there -- no.  It's  
23    the fact that there is a criminal enterprise and it's a  
24    money laundering enterprise, the purpose of which is to  
25    disguise financial transactions, to hide financial

1 transactions, to conceal money being transferred,  
2 deposits being made, that make it very difficult, if not  
3 impossible, to do a full proper accounting. And there's  
4 no statement here from BDO that makes that admission.

5 Q Admission.

6 A Admitting that because there was a money  
7 laundering scheme, because there were documents that  
8 were destroyed -- I recall to mind specifically, I think  
9 it was Mike Yusuf and others, I don't recall who the  
10 others were, I assume there were some of the Hameds,  
11 learning of a Government investigation and destroying  
12 all of the chits that would show who owed what to who,  
13 and who took out money and who didn't, those records  
14 were all destroyed.

15 Q But are you aware of other information that  
16 attempts to recreate what was addressed at the  
17 resolution or alleged resolution of the accounting that  
18 occurred when those receipts or chits were destroyed?

19 A I'm sorry. I didn't understand.

20 Q In other words, if we agree that the receipts  
21 or chits were destroyed --

22 A Right.

23 Q -- that doesn't mean that you can't account  
24 for the information that was addressed by those  
25 receipts; right? If the parties agreed, after reviewing

1     them, I agree that we're 1.6 million in the hole to you  
2     after reviewing these documents, and let's destroy them  
3     so that the Government doesn't find them, if somebody --  
4     if there was testimony that says, yes, I heard them  
5     agree, wouldn't that be evidence that could be relied on  
6     to recreate those documents?

7           A     No, I don't believe so.  Because now you're  
8     relying on two dependent witnesses as opposed to an  
9     independent third party, such as a bank, financial  
10    statement, a bank statement, a wire transfer receipt, or  
11    some independent analysis.  I mean, yes, of course, the  
12    parties could stipulate, and this is a civil proceeding,  
13    so I assume they could do that, but obviously that  
14    hasn't happened.  So the only way to actually know what  
15    are the numbers is to have some kind of independent  
16    third-party analysis.

17          Q     Not -- and if those documents aren't  
18    available, you're saying it's simply impossible to  
19    account for?

20          A     It's very difficult, if not impossible.

21          Q     Okay.  It's not impossible is what you're  
22    saying?

23          A     Nothing is impossible.

24          Q     Okay.

25          A     But to come up with a true accounting is

1       extraordinarily difficult, and I don't believe that the  
2       BDO report does that.

3           Q       Again, without having looked at any of the  
4       supporting information for their report.

5           A       I just read the report.

6           MR. HODGES:   Thank you, sir.

7                               REDIRECT EXAMINATION

8           MR. HOLT:   Could I have the witness shown  
9       Exhibit Number 11?

10          A       I believe I have it in front of me.

11       BY MR. HOLT:

12          Q       This is a defendant's supplemental Rule 26  
13       disclosure in the civil case.   Could you turn to page 2  
14       and see where the document says "disclosures," look at  
15       Item Number 2 and read that into the record?

16          A       "Draft Summary Schedules prepared by the  
17       government in the matter of United States versus Fathi  
18       Yusuf, et al, CR number 2003-147 and attached and  
19       designated FY 009991-010247."

20          Q       And this is filed by the Dudley Topper law  
21       firm, at the bottom, signature page?

22          A       Ah, it's filed by -- yes, Dudley Topper.

23          Q       And if that's referring to Exhibit Number 10,  
24       you have no doubt that was prepared by the Government?

25          A       I have no doubt it was -- I had no doubt



1 before you showed me this. I have no doubt now that you  
2 have shown me this. "This" being Exhibit Number 11.

3 MR. HOLT: No other questions.

4 THE COURT: Thank you, sir. You may stand  
5 down.

6 THE WITNESS: Thank you, Judge.

7 THE COURT: Thanks for coming.

8 MR. HOLT: We call David Jackson.

9 DAVID JACKSON,

10 having been first duly sworn, was examined and  
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. HOLT:

14 Q Can you state your name for the record?

15 A David Jackson.

16 Q And what is your occupation?

17 A I'm a certified public accountant.

18 Q And you practice in St. Croix?

19 A I do.

20 Q And in your accounting practice, have you had  
21 the opportunity to look at various records of the Plaza  
22 Extra Supermarkets?

23 A I have.

24 Q And in preparation of your testimony today,  
25 did you also have an opportunity to look at the BDO

1 report that we've been talking about?

2 A Yes, I did.

3 Q Okay. Were you asked to prepare a schedule of  
4 all of the claims that are listed in the BDO report that  
5 Fathi Yusuf knew about based upon the partnership  
6 records and receipts and the different tickets and  
7 things which were contained in that BDO report?

8 A Yes, I did.

9 Q Okay, sir.

10 MR. HOLT: Could I have the witness look at  
11 Exhibit 36, Your Honor?

12 THE COURT: He may be shown.

13 A (Perusing document.)

14 Q So this is a summary chart that you prepared  
15 for your testimony today?

16 A That's correct.

17 Q And if I look at the left-hand side, I can see  
18 the page number from the BDO report where you've  
19 actually taken a figure and removed it as being  
20 something Fathi Yusuf knew about before 2005?

21 A That's correct. That's from my work papers.

22 Q And you have one for Mohammad Hamed, Wally  
23 Hamed, Willie Hamed, Mafi Hamed, and Shawn Hamed?

24 A Yes, sir.

25 Q And then as we come over, this shows the

1 various tables where this information came from?

2 A Yes.

3 Q And did you look at the backup to the BDO  
4 report to these tables to the extent you needed to to  
5 verify this information?

6 A Yes, I did.

7 Q And can you tell me the total sum of money --  
8 I take it this report has all the figures -- the total  
9 sum of money that Fathi Yusuf knew about prior to 2001  
10 based upon the partnership records in the first  
11 left-hand column?

12 A That would be \$5,432,286.14.

13 Q Now, the next column are claims that are  
14 listed in the BDO report as claims between 2001 and  
15 2012; correct?

16 A That's correct.

17 Q So in order to determine whether or not these  
18 particular claims fell before 2005, 2004, or after, you  
19 had to look at the backup information?

20 A Yes.

21 Q And in looking at those backup schedules, were  
22 you then able to pull out specific amounts of money that  
23 claims are made from before that date that are based  
24 upon partnership records, partnership tickets, or  
25 partnership checks?

1 A Yes.

2 Q And what is the total sum of that number?

3 A \$285,605.20.

4 Q Okay. So those are numbers that Fathi Yusuf  
5 would know about simply because those are reflected in  
6 the partnership records, either the financial records  
7 that were generated as part of the BDO report?

8 A Correct.

9 Q All right. Now, --

10 MR. HOLT: Your Honor, could I have the  
11 witness shown the BDO report?

12 THE COURT: He may be shown. That's -- is  
13 that the one --

14 MR. HOLT: I'm sorry. The BDO report.

15 (Discussion off the record.)

16 Q Now, you were asked to review this report?

17 A Yes.

18 Q Okay. And can you tell me, what was the first  
19 thing about this report that grabbed your attention?

20 A Ah, that would be the -- in the executive  
21 summary -- let me see -- the -- it would be in the  
22 executive summary at the bottom of the very first page,  
23 I was really kind of shocked by the differentiation  
24 between Mr. Yusuf and Mr. Hamed, based on a lifestyle  
25 analysis.

1 Q And this analysis, the same analysis, same one  
2 at the beginning, it's continued over at this ending  
3 report on page 63; is that correct?

4 A Correct.

5 Q All right.

6 MR. HOLT: Can I have the witness shown  
7 Exhibit Number 37?

8 THE COURT: He may be shown.

9 A (Perusing document.)

10 Q And you had this prepared for what reason?

11 A Basically because this is not a technique that  
12 I've typically seen used to -- in doing a partnership  
13 accounting method. The lifestyle analysis, or expense  
14 method is another method that they use, is typically  
15 used by -- I've seen it used by the Internal Revenue  
16 Service to prove up income that is not verified. I've  
17 seen it used by some divorce attorneys in determining if  
18 one of the spouses is trying to hide money or hide  
19 income. But I've never seen it used in a partnership  
20 reconciliation.

21 Q And were you surprised by the disparity  
22 between the Hamed lifestyle of 14 million and the Yusuf  
23 lifestyle for Mr. Yusuf and all his kids between 1986  
24 and 2012 of \$795,000?

25 A I was.

1 Q And why do you say that?

2 A Well, I have knowledge that the lifestyle of  
3 the Yusuf family was much more than 795,000. Just --  
4 I've lived on St. Croix for 18 years.

5 Q All right. And then when you looked into the  
6 BDO report, did you look at what records they did have  
7 to rely upon and what records they did not have to rely  
8 upon?

9 A I did.

10 Q And specifically that was found on page 22 of  
11 the report; is that correct?

12 A That's correct.

13 Q And showing you what's marked as Exhibit  
14 Number 38, did you have a chart then made up that would  
15 just show us, in color, what records were and weren't  
16 available?

17 A I did.

18 Q Okay. And is this the color chart that you  
19 had prepared?

20 A That's correct.

21 Q And you divided this into red, where there  
22 would be no reliable information, you do it in yellow  
23 where there was some information but not all, and then  
24 green where there was reliable information; is that  
25 correct?

1           A     That is correct.

2           Q     So if I look under -- let's take, for example,  
3 1996, I see yellow that there are some partnership  
4 records, red being there's no independent bank records,  
5 yellow being there's some Plaza East records, red  
6 meaning there's no records from the West, and there's no  
7 records from Plaza Tutu; is that correct?

8           A     That's correct.

9           Q     Okay. And so if I follow this chart through,  
10 basically I don't really see reliable information on a  
11 consistent basis until the 2008, 2009 period.

12          A     That's correct.

13          Q     Okay. Now, did you do a report in this  
14 case?

15          A     I did an opinion.

16                MR. HOLT: Your Honor, I'd like to show him  
17 Exhibit 39.

18                THE COURT: He may be shown.

19          A     (Perusing document.)

20          Q     Is this a report that you generated in this  
21 case?

22          A     It is.

23          Q     Okay. And based upon this report, were you  
24 asked specifically as to whether or not an accurate  
25 accounting could be done for this time period?

1           A     I was.

2           Q     And what were you able to conclude -- or what  
3 did you conclude in your report?

4           A     Basically that there was no set of usable or  
5 reliable accounting records, and that it was impossible  
6 to reconstruct the accounting transactions of Plaza  
7 Extra Supermarkets for the year 2002 through 2011 and  
8 for the period '86 through 2001.

9           Q     And on the chart that you prepared for BDO on  
10 page 22 of their report, is that the same finding that  
11 they reached when they talked about the limitation on  
12 their report?

13          A     It is.

14          Q     So they agreed with you that there were not  
15 sufficient reliable records to do an accurate  
16 accounting.

17          A     They did.

18          Q     And that's because all of these records were  
19 missing.

20          A     That's correct.

21          Q     And looking over on page 3 of their report,  
22 they also state as a limitation that this is not an  
23 audit review or compilation, and they do not express an  
24 opinion or provide any other form of assurance on the  
25 completeness or accuracy of this information; is that



1 correct?

2 A That is correct.

3 Q And can you do an accounting if you can't even  
4 rely on the completeness or the accuracy of the  
5 information you have?

6 A No.

7 Q Now, do you know who John Gaffney is?

8 A I do.

9 Q And are you aware that he gave a deposition in  
10 this case?

11 A I am. I used it in my opinion.

12 Q And showing you Exhibit Number 40, can you  
13 tell me whether or not this is the testimony that you  
14 referenced in your opinion?

15 A (Perusing document.) Yes.

16 Q And what did John Gaffney, the accountant, the  
17 current accountant for the partnership, what did he say  
18 about the records?

19 A Um, this is directly from his deposition: "I  
20 didn't get anything cohesive, like I -- I had one old  
21 backup at East, and it was, you know, as far as I was  
22 concerned, East and West were just using it to process  
23 payroll, and it was being used much like a word  
24 processor. There was no integrity when it came to  
25 general ledgers or anything like that, or anything that

1 would feed into a financial statement."

2 Q And you're reading from page 29?

3 A Yes, sir.

4 Q And that's where he was asked about the  
5 financial records before 2010, and that's his statement  
6 about it?

7 A That is correct.

8 Q Okay. And are you aware of Mr. Gaffney even  
9 trying to do a reconciliation of the accounts before  
10 2013?

11 A It's my understanding that he tried.

12 Q And was he able to do so?

13 A No, not to my knowledge.

14 Q And so Mr. Gaffney reached the same conclusion  
15 that you and BDO reached, that an accurate  
16 reconciliation couldn't be done.

17 A That's correct.

18 Q Now --

19 THE COURT: That was pre 2003, you said?

20 MR. HOLT: 2012.

21 THE COURT: 2012.

22 Q Now, did you prepare an analysis of the BDO  
23 report based upon the information you had available to  
24 you?

25 A Yes.

1 Q Showing you Exhibit Number 41. Can you tell  
2 me what this document is?

3 A (Perusing document.) This is just an analysis  
4 of the fact that the BDO method was unreliable.

5 Q And at the top you put the "partnership  
6 accounting records incomplete," and you mention your  
7 report, the Gaffney deposition, and the BDO report that  
8 we've already covered; correct?

9 A Correct.

10 Q And then you talk about the BDO report  
11 methodology being unreliable and you have five bullet  
12 points; is that correct?

13 A That's correct.

14 Q Okay. So what was the first bullet point?

15 A First bullet point is there are records that  
16 are now available and were not used in preparing the BDO  
17 report.

18 Q So there are actually records we know exist  
19 that BDO didn't use.

20 A Multiple bank account records.

21 Q And did you have the paralegal, Kim Japinga,  
22 prepare a chart of those records?

23 A I did.

24 Q And showing you Exhibit Number 42, is this a  
25 chart of the Yusuf accounts that are known to exist that

1 were not included in the BDO report?

2 A That is correct.

3 Q Okay. And if BDO was going to do a complete  
4 analysis, should they have looked at all of these  
5 records that we know are available?

6 A Yes.

7 Q Okay.

8 A That's my opinion.

9 Q Now, your second one, you talk about documents  
10 used without proper foundation. Do you see that?

11 A I do.

12 Q So let's talk about that. First of all, did  
13 you look at a check written to Hisham Hamed that was  
14 deposited into the Cairo bank account?

15 A I did. There was two or three.

16 Q Okay. And --

17 MR. HOLT: Your Honor, could I have the  
18 witness shown Exhibits 6 and 7 --

19 THE COURT: He may be shown.

20 MR. HOLT: -- and 8. 6, 7, and 8.

21 A (Perusing documents.)

22 Q Looking at Exhibit Number 6, do you see that  
23 there's a check to Hisham Hamed for \$2,598.98?

24 A I do.

25 Q Okay. And then you see how that check is

1 endorsed on the back and deposited to the Cairo Amman  
2 Bank?

3 A I do.

4 Q Okay. So if we look at the back -- if we look  
5 at the front of this check, it looks like Hisham Hamed  
6 got the check. But if you look at the back, we can see  
7 it was deposited in an account for the Cairo bank in  
8 Jordan; correct?

9 A That's correct.

10 Q And if we match up these account numbers, we  
11 can actually determine who actually held the account in  
12 Jordan, whether it be Fathi Yusuf or someone else;  
13 correct?

14 A Correct.

15 Q Is that what an accountant should do when they  
16 have records available?

17 A I would certainly have attempted to.

18 Q And then looking at Exhibit Number 7, do you  
19 see the two checks on the second page for 2800 and  
20 \$2900.50?

21 A Yes.

22 Q Okay. And looking at the first page, I take  
23 it that these two checks were actually allocated by BDO  
24 as funds owed by Hisham Hamed; is that correct?

25 A That is correct.

1 Q And is that acceptable, or should they have  
2 gone and looked at the back of the check?

3 A They should have looked at the back.

4 Q Okay. And looking at Exhibit Number 8, we see  
5 that those checks were actually deposited in the same  
6 Amman bank account of Fathi Yusuf. Do you see that?

7 A That's correct.

8 Q So had BDO just looked at the back of the  
9 checks, they could have determined that these checks  
10 didn't belong to Hisham Hamed but, in fact, belonged to  
11 Fathi Yusuf; correct?

12 A That's correct.

13 Q And under an accounting, instead of allocating  
14 this \$5700 to Hisham Hamed, they should have allocated  
15 this money to the account holder, Fathi Yusuf, shouldn't  
16 they?

17 A Should have.

18 Q Okay. Now, you already talked about not  
19 looking at the records that were available but not used  
20 and documents used without proper foundation. Showing  
21 you exhibit number --

22 MR. HOLT: Can I have the witness shown  
23 Exhibit Number 15, Your Honor?

24 THE COURT: He can be shown.

25 A (Perusing document.)

1 Q Do you see this check from the Banque of  
2 Francaise?

3 A I do.

4 Q Now, when an accountant looks at that check,  
5 should they be able to tell that the check has never  
6 been cashed?

7 A Well, it's obvious it hasn't been cashed. It  
8 hasn't been signed.

9 Q So it doesn't have a signature on it.

10 A Doesn't have a date, and it's still attached  
11 to the stub.

12 Q So would it be an acceptable accounting  
13 procedure for BDO to allocate this check to Wally Hamed  
14 just simply because his name was on the front of it?

15 A Yes.

16 Q It would be --

17 A Yeah, I mean, how can they? It's obvious that  
18 it has not been cashed.

19 Q Okay. You couldn't even cash this check if  
20 you had it, could you?

21 A No. There's no signature, no date.

22 Q Okay. So if BDO allocated this check to Wally  
23 Hamed, that would be an unacceptable accounting  
24 practice, wouldn't it?

25 A That's correct.

1 MR. HOLT: And I'm sorry, Your Honor, could I  
2 have the witness shown Exhibit Number 30 and 31?

3 THE COURT: He may be shown.

4 A (Perusing documents.)

5 Q Now, have you seen these documents before?

6 A Yes, I have.

7 Q And these are checks totaling \$286,000 that  
8 BDO allocated to Mr. Wally Hamed?

9 A That is correct.

10 Q And have you looked at the backup and looked  
11 at the checks?

12 A I have.

13 Q Okay. And are those checks -- have they ever  
14 been cashed?

15 A Ah, no.

16 Q And is it an acceptable accounting practice to  
17 allocate checks to Wally Hamed when there's no evidence  
18 that they have ever been cashed?

19 A That's correct.

20 Q That's correct, they should not be allocated?

21 A That they should not be allocated. Excuse  
22 me.

23 Q All right. So in your opinion, BDO actually  
24 looked at documents and relied upon them without a  
25 proper foundation.



1           A     It appears that way, yes.

2           Q     And then your next bullet point is doubling  
3 up. You're saying they didn't offset for identified  
4 cash against expenditures. What do you mean by that?

5           A     That in many cases they had taken -- given  
6 credit for money that Mr. Hamed had received and then  
7 they turned right around and they gave credit to him for  
8 expenditures as well. It was obvious that he had to  
9 have had the money from somewhere, so it's doubling up.  
10 They're saying that not only did he get the money, but  
11 that by spending it, they're doubling up the amount that  
12 assisted him under the lifestyle analysis.

13          Q     So if I can show that Mr. Wally Hamed received  
14 \$300,000 in draws from his company and those are draws  
15 he signed for, and I then turn around and take his  
16 receipt book where he took those draws and verified that  
17 it was spent for the workers on his house, that would be  
18 what you call doubling up.

19          A     That's correct.

20          Q     You can't charge him for the taking of the  
21 money and then charge him for the receipts.

22          A     No.

23          Q     Okay. And just to make it on a little more  
24 global picture, and we're going to get to this in a  
25 minute, there's actually an allocation in, like, 1993

1 where they said he took \$7.5 million -- they found \$7.5  
2 million in cash; is that correct? Or a charge on his  
3 tax return?

4 A That was a charge on his tax return.

5 Q If, in fact, he had 7.5 million in 1993, just  
6 assuming that, if he still had had the money, then you'd  
7 have to assume that he used that money for the credit  
8 cards and the other things he did; correct?

9 A Correct.

10 Q So you can't show cash that we can no longer  
11 locate and expenses without at least washing them out;  
12 right?

13 A That's right.

14 Q Okay. So -- and in doing a lifestyle  
15 analysis, you have to take into account not only cash  
16 that you've located, but you then have to offset it on  
17 any expenditures that you found he made.

18 A That's correct.

19 Q And you can't count the expenditures as  
20 another payment.

21 A No.

22 Q And they did that, didn't they?

23 A They did.

24 Q And that's not acceptable, is it?

25 A No.

1 Q And then you have "No equal balancing between  
2 the Yusuf and Hamed accounts"; is that correct?

3 A That is correct.

4 Q And what are you referring to there?

5 A That is the fact that under a lifestyle  
6 analysis or an expenditure method, it's called either,  
7 that if I'm going to use it for a partnership true-up,  
8 which is what they attempted to do in this situation,  
9 which, as I said before, I've never seen it used that  
10 way, I would have to do the lifestyle analysis or  
11 expenditure method on all parties combined. So nowhere  
12 in the BDO record did I see that on anyone other than  
13 Wally Hamed.

14 Q Okay. So if BDO, for example, looks at  
15 Mr. Hamed's house built during the 1990s and they decide  
16 that that is an expenditure they need to account for,  
17 then aren't they required to also look at the house that  
18 Fathi Yusuf built and Mike Yusuf built during this same  
19 time period?

20 A I would think so, yes.

21 Q Okay. So when you're doing a lifestyle  
22 accounting, if you're going to go out and count assets,  
23 you gotta count them evenly. Is that what you're  
24 saying?

25 A If you're going to do a partnership true-up,

1 yes.

2 Q And you also heard Wally Hamed talk about the  
3 land in Jordan, did you not?

4 A I heard that, yes.

5 Q So if BDO is really going to do an analysis of  
6 assets, wouldn't they have to determine whether or not  
7 Mr. Yusuf, in fact, had far more land in his name than  
8 Mr. Hamed had in his name in Jordan?

9 A Yes.

10 Q Okay. And they can't take someone's word for  
11 that if they're really going to use that type of  
12 analysis, can they?

13 A No.

14 Q They have to actually go do the work; is that  
15 correct?

16 THE COURT: Can you stop one second, please?

17 Can you read back the last question.

18 (The last question was read by the reporter.)

19 Q And they can't take the word of somebody for  
20 that, they actually have to go do the independent  
21 investigation.

22 A Yes.

23 Q All right. So just because Wally Hamed said  
24 that Mr. Yusuf had more land doesn't mean that you take  
25 that for that word; correct?

1 A No.

2 Q And if Mr. Yusuf said, "Oh, I don't have more  
3 land," you don't take him at his word either, do you?

4 A No.

5 Q As a matter of fact, would it be improper to  
6 rely upon statements made by Mr. Yusuf in this  
7 accounting if there wasn't backup for it?

8 A Ah, it would be improper, yes. I mean, you  
9 could use it for foundational, but you couldn't use  
10 it --

11 Q So if I found a check for, say, 1.5 million  
12 payable to Mr. Yusuf and he deposited it in one of his  
13 accounts, and he tells the accountant, oh, that was  
14 repayment of a loan, the accountant can't take his word  
15 for that, can he? He'd have to go see if, in fact, that  
16 was a repayment?

17 A Right.

18 Q Now, last of all, when a company is doing a  
19 report like the BDO report, what is the acceptable  
20 number of errors that you would expect to find in that  
21 report?

22 A Um, not very many. Two or three.

23 Q Beyond that, would you say it's unreliable?

24 A Definitely unreliable.

25 Q Okay.

1 MR. HOLT: Your Honor, can I have the witness  
2 shown Exhibit Number 1 and Number 3, I believe, the  
3 tax return, the 1993 tax return?

4 THE COURT: 1 and 2.

5 MR. HOLT: 1 and 2?

6 A (Perusing document.)

7 Q Now, were you also asked to look at some --  
8 look at Wally Hamed's 1993 tax return?

9 A Yes.

10 Q And in conjunction with looking at that tax  
11 return, were you also asked to look at the United  
12 Prudential-Bache brokerage account for 1993?

13 A Yes, I was.

14 Q And did you have all of the statements for  
15 1993 for United?

16 A No, I didn't.

17 Q You had, what, nine of them?

18 A It was nine, yes.

19 Q Okay. And on the list of documents that BDO  
20 was not shown, the last item was the Prudential-Bache --  
21 the United Corporation Prudential-Bache account?

22 A That's correct.

23 Q Okay. Now, while BDO didn't have that  
24 available to you, you had those -- that document  
25 available. Were you able to look at that document and

1 make a determination as to whether or not the trades  
2 reported on the BDO -- I mean, excuse me, on the United  
3 Prudential-Bache account, in fact, ended up on Wally  
4 Hamed's tax returns?

5 A It appears that way, over 4 million of them.

6 Q Okay. And showing you Exhibit Number 43, is  
7 this a summary that you did of that?

8 A (Perusing document.) Yes.

9 Q Okay. And actually, I take it Kim Japinga did  
10 this and you checked it?

11 A I did.

12 Q Okay. So if we look at the backup and we see,  
13 for example, on Wally's account there's 20,000 shares of  
14 a company called AALR sold, we could look at the United  
15 Prudential statement and we could see that that company  
16 is actually called Advanced Logic Refresh -- or Resh,  
17 and that had 20,000 shares; correct?

18 A Right.

19 Q And we could see that the amounts reported on  
20 Mr. Hamed's tax return were, in fact, the trades made on  
21 the United Prudential-Bache account.

22 A That's correct.

23 Q And you went through all of the stock analysis  
24 that we see here to do as much as you could with the  
25 nine statements you had?

1           A     That's correct.

2           Q     And based upon that, I take it the summary  
3 said that you found \$4,931,000.19 of trades on the  
4 United Prudential-Bache account that ended up on Wally  
5 Hamed's personal account.

6           A     Yes.

7           Q     Okay. And those trades should have been  
8 where?

9           A     They should have been credited towards  
10 Mr. Yusuf -- or they should have been on the United tax  
11 return.

12          Q     Okay. So those things should not have been on  
13 Wally Hamed's tax return.

14          A     No.

15          Q     And if BDO had been given the Prudential-Bache  
16 accounts for United Corporation like you had, do you  
17 think Prudential-Bache would have included that  
18 assertion in their report, that that was really Wally  
19 Hamed's money?

20          A     I would think so, yes.

21          Q     You would think they would still attribute it  
22 to him?

23          A     No, no, no. I would think that they would  
24 look at this and determine that it should have been on  
25 United's tax return and not Wally's.



1 Q And would they just assume that there was some  
2 type of error in transposing this information?

3 A It appears that that is exactly what  
4 happened.

5 Q And at the very least, they would go back and  
6 they would ask, why is United's account showing up on  
7 Wally Hamed's tax returns?

8 A Yes.

9 Q But they didn't have that document, did  
10 they?

11 A Nope.

12 Q So they weren't given the opportunity to do  
13 that work?

14 A No.

15 MR. HOLT: That's all the questions I have,  
16 Your Honor.

17 THE COURT: Thank you.

18 MR. HOLT: You know what, let me just -- I'm  
19 sorry. One more.

20 Q So based upon these items in Exhibit  
21 Number 41, your list, did you find the BDO report to be  
22 reliable or unreliable?

23 A It's unreliable.

24 Q And did it meet the accounting standards that  
25 you think it should be held to in this jurisdiction for

1 an accountant?

2 A Yes.

3 Q Did it meet --

4 A It did not meet them, no. And there's too  
5 many errors.

6 Q And that's for the reasons stated?

7 A Yes.

8 MR. HOLT: No other questions.

9 THE COURT: Cross?

10 MR. HODGES: Your Honor, may I ask the Court's  
11 indulgence for like a five-minute break?

12 THE COURT: Sure. We'll take ten minutes.

13 (Recess taken.)

14 MR. HODGES: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. HODGES:

17 Q Good afternoon, Mr. Jackson.

18 A Good afternoon.

19 Q When were you retained by Mr. Hamed or his  
20 counsel?

21 A Ah, not exactly sure. It was back in 2012 or  
22 '13.

23 Q And what were you retained to do?

24 A Originally, to come up with a partnership  
25 accounting after the criminal trial was over, and come

1 up with a method to basically allocate the income  
2 between the two parties.

3 Q And who retained you to do that?

4 A That would have been Wally Hamed.

5 Q Okay. Would you tell the Court what your  
6 agreement is as far as getting paid?

7 A At that time I was getting paid by the hour.  
8 I bill by the hour.

9 Q Okay. What was that?

10 A At that time it was \$185 an hour.

11 Q All right. Does that same engagement apply  
12 throughout the course of your involvement in this  
13 case?

14 A It does, but my rates are a little higher when  
15 I testify in court.

16 Q Okay. So is it fair to say that you've been  
17 charging -- did you say Wally Hamed -- \$185 an hour for  
18 all of your time to date except for today --

19 A No. In the beginning, it was the whole group,  
20 United group, I guess, that's Wally, and I was paid by  
21 the Plaza Extra group at that point in time.

22 Q Okay. Was Mr. Yusuf involved in that?

23 A I think that they shared in the fees at that  
24 point, at the very beginning, yeah.

25 Q Okay. This was before the lawsuit that was

1 filed by Mr. Hamed against Mr. Yusuf?

2 A Ah, no, it was during the lawsuit. I'm not  
3 exactly sure on the timing when the lawsuit was over.  
4 But my opinion was written about the same time.

5 Q The opinion that you -- you authored on  
6 August 1, 2014?

7 A Yes.

8 Q You're not suggesting to the Court that  
9 Mr. Yusuf agreed to your engagement or had anything to  
10 do with paying you, are you?

11 A My understanding at that time, both sides were  
12 asking me to come up with a partnership return, and we  
13 worked at that in trying to do that, and then later they  
14 decided, the Yusuf family, to have Mr. Gaffney prepare  
15 the return.

16 Q When you say "your understanding", was there  
17 some written understanding?

18 A No, there was nothing in writing. It was  
19 just -- that was -- it wasn't all the adversarial  
20 activity going on, I suppose. My role wasn't involved  
21 in taking sides, never has been.

22 Q Well, it has evolved. You are taking sides in  
23 this case now, aren't you?

24 A I'm just rendering opinions on what I see.

25 Q But you're taking Mr. Hamed's side, isn't that

1 fair to say, and you're getting paid by him?

2 A I'm getting paid to render an opinion, and my  
3 opinion is based upon what I see, and what I see is --  
4 are the facts.

5 Q Okay. So let's make sure I understand -- or  
6 the Court understands your payment arrangement first.  
7 Up until today, you were charging \$185 an hour?

8 A That's correct, uh-huh.

9 Q Okay. And how much are you charging to  
10 testify here today?

11 A \$250 an hour.

12 Q All right. And who do you expect to pay that  
13 bill?

14 A I expect Mr. Hamed to pay it.

15 Q Which one?

16 A Wally.

17 Q All right. Do you have a written agreement  
18 with him?

19 A I'm just working off my existing engagement.  
20 It's with him.

21 Q All right. Is that a written agreement?

22 A It is a written agreement, yes, uh-huh.

23 Q And when was that entered into?

24 A I don't have it with me. It was back about  
25 the time that I did the opinion, maybe 2013, 2012, along

1 that time.

2 Q Okay. Your opinion was August 1, 2014?

3 A Correct.

4 Q So you would have had a written agreement  
5 sometime before that?

6 A That's correct, uh-huh.

7 Q Okay. Have you ever prepared partnership  
8 accountings or true-ups before?

9 A Certainly have. That's my specialty.

10 Q Okay. Have you prepared any partnership  
11 true-ups or accountings that look back as long a period  
12 of time as 10 or 20 years?

13 A Not true-ups, no. I've prepared returns.  
14 Somebody else has done the true-up.

15 Q You say tax returns.

16 A Yes, uh-huh.

17 Q Okay. So you've never done a partnership  
18 true-up of going back more than ten years?

19 A Clarify your --

20 Q I'm asking. What is a true-up? What is a  
21 true-up?

22 A A true-up is where you determine which partner  
23 is allocated what portion of income and you make a  
24 determination on what distributions are made, all of the  
25 items of a partnership tax return. That would be a

1 true-up. And if one partner received more than the  
2 other, then you would come up with a method to true it  
3 up.

4 Q Okay. And you've never done one of those  
5 before?

6 A Oh, I have done those, yes, in that --

7 Q For more than ten year -- for going back more  
8 than ten years?

9 A No, never more than ten years, huh-uh.

10 Q When you prepare the ones that you have done  
11 that are less than ten years, you tabulate withdrawals  
12 taken by each partner over the time period covered;  
13 isn't that right?

14 A Correct, using the records that are provided  
15 to me.

16 Q Okay. Have you counted withdrawals by one  
17 partner regardless of whether the other partner knew of  
18 those withdrawals?

19 A I can't say that I have, no.

20 Q Well, it's --

21 A I haven't done tax returns for many criminal  
22 enterprises, if that's what you're asking me.

23 Q No. I'm not talking about tax returns. I'm  
24 talking about true-ups, if that's what --

25 A Well, typically my true-ups are in preparation

1 to do a tax return.

2 Q Okay. But you've never had partners dispute  
3 whether they knew about this or that withdrawal before?  
4 That's not unusual?

5 A I have, but typically it's resolved before it  
6 comes to me, and they have it resolved.

7 Q Okay. But if it's not resolved, if they can't  
8 agree whether one knew about it or the other knew about  
9 it, are you saying -- what do you do with that?

10 A I don't make that decision. I don't -- if  
11 they can't give me accurate records, either  
12 foundational, general ledgers, accurate bookkeeping, any  
13 of the foundational support for the partnership return,  
14 I wouldn't do the tax return. I mean, I'm not signing  
15 something that I don't know is correct.

16 Q Well, in doing these true-ups, wouldn't you  
17 agree with me that you should count all withdrawals by  
18 each partner, whether or not the partner -- one partner  
19 knew about it or not; isn't that fair?

20 A Sure, if I'm aware of them.

21 Q Okay. But, again, you're saying you need  
22 documentary evidence to support those withdrawals?

23 A That is true. I don't create.

24 Q You're not going to count a withdrawal unless  
25 you have a document that reflects that; is that fair?



1           A     That's correct.

2           Q     Now, you reviewed the BDO report; is that  
3 correct?

4           A     I did.

5           MR. HODGES: May the witness be shown Exhibit  
6 Number 12?

7           A     (Perusing documents.)

8           Q     Is this the report that you looked at?

9           A     That is, uh-huh.

10          Q     Is that roughly the width of the document that  
11 you reviewed?

12          A     That is, yes.

13          Q     Did you review anything else?

14          A     I reviewed the -- we did research on the items  
15 that were in there specifically leading back to the  
16 determination of the numbers that they attributed to  
17 Mr. Hamed, and then we looked at the supporting  
18 documentation, pulled those specifically. I did not  
19 look at all of the supporting docs. Only this.

20          Q     When you say "only this", you've only looked  
21 at the written BDO report that is -- if you'll look at  
22 your exhibit, it's 63 pages long; is that correct? 64  
23 pages long, I'm sorry.

24          A     That appears to be correct.

25          Q     All right. You've looked at nothing further

1 that was prepared by BDO; is that correct?

2 A I've looked at the -- at some of the  
3 supporting documentation that are referenced in here in  
4 determining what the total was that was attributed to  
5 Mr. Hamed on the schedule that I gave you earlier or  
6 that was submitted earlier. I looked at those. I  
7 looked at specific records. I didn't look at all of  
8 them.

9 Q Okay. When you say "Mr. Hamed", who are you  
10 talking about?

11 A Wally.

12 Q Just Wally?

13 A Well, all of the Hameds that are in this  
14 report.

15 Q Okay. So you're telling the Court, then, that  
16 you not only reviewed this report, but you reviewed all  
17 the supporting schedules that relate to the --

18 A No. I've already said that I did not review  
19 all of the supporting schedules. Only the ones --

20 Q No, you didn't let me finish my question. All  
21 of the supporting schedules that relate to the Hameds,  
22 you're saying you reviewed those.

23 A The ones -- yes. And I listed those. It's in  
24 my earlier submission.

25 Q In your earlier submission?

1           A     It's one of the documents that's been  
2 submitted, it's there.

3           Q     Well, it's not in your August 2014 report?

4           A     No, this report didn't exist when I did my  
5 August 2014 report.

6           Q     Right. And none of the other stuff that you  
7 talked about with Attorney Holt you've ever produced to  
8 us, have you?

9           A     Why would I produce it to you?

10          Q     Well, in other words, have we ever seen it  
11 before? This is the first time you've ever presented it  
12 to anybody; isn't that right?

13          A     That's correct.

14          Q     Now, in Exhibit 36, did you prepare this  
15 document?

16          A     I did.

17          Q     With help from counsel?

18          A     With the help of Kim.

19          Q     With the help of Kim who?

20          A     Japinga.

21          Q     Okay. Who is --

22          A     She's a paralegal.

23          Q     Paralegal employed by Attorney Holt; isn't  
24 that correct?

25          A     Yes.

1 Q All right.

2 A I need to see the report. I don't have it in  
3 front of me.

4 Q I need mine.

5 THE MARSHAL: (Looking for exhibit.)

6 MR. HODGES: It looks like this

7 (indicating).

8 THE COURT: Marshal, let him use this.

9 THE MARSHAL: I got it.

10 THE COURT: Oh, you got it.

11 Q Okay. You have Exhibit 36 in front of you,  
12 sir?

13 A Yes, I do.

14 Q And this is the document you prepared with the  
15 assistance of Kim Japinga?

16 A Yes.

17 Q Is she the one that came up with the FRE  
18 Rule 1006 summary chart language?

19 A That's correct.

20 Q Now, as I understand it, you have two columns  
21 for each of the five Hameds, one for showing amounts of  
22 claims that Fathi Yusuf knew prior to 2001, based on  
23 partnership records, and the other one, the  
24 right-hand-side one, amount of claims Fathi Yusuf knew  
25 prior to 2007, based on partnership records; is that

1 right?

2 A That's correct.

3 Q Now, what partnership records are you  
4 referring to that Mr. Yusuf knew about?

5 A These are the records in the earlier chart  
6 that are revealed.

7 Q What earlier chart?

8 A The BDO report. The BDO report designated  
9 that there were partnership records for this period of  
10 time.

11 Q Okay. So -- but which partnership records are  
12 you claiming he knew about?

13 A May I see the other exhibits?

14 Q I don't know which one you want, but . . .

15 A (Perusing documents) Exhibit 38.

16 Q Okay. Exhibit 38. All right.

17 So Exhibit 38 is what you're relying on to  
18 establish what Mr. Yusuf knew about, what partnership  
19 records he knew about prior to 2001 or prior to 2007?

20 A No. What I was using -- this particular chart  
21 has to do -- Exhibit Number 38 has to do -- it is a  
22 summary of everything that BDO put of the records that  
23 they had available. All right?

24 Q Well, wait a minute. Let's stop right there.  
25 You just testified under oath that you didn't review all

1 those documents, didn't you?

2 A That's correct, I did not.

3 Q Well, how do you know what they had or didn't  
4 have if you didn't review them all?

5 A Because they indicated that they had them and  
6 then they put them in the schedules. So what I did is  
7 looked at what they had, this is indicative of what they  
8 said they have and didn't have. I had no -- I didn't  
9 have near as much of this. And then I followed it  
10 through to the different tables that are referred to in  
11 the BDO report and pulled the check number that was  
12 there, and then we found the backup for the checks.

13 Q So, again, my question is, what partnership  
14 records do you claim that Mr. Yusuf knew about before --  
15 prior to 2001 that relate to all the numbers in  
16 column -- the left-hand column of Exhibit 36?

17 A That would be the records that BDO included.

18 Q So you're saying that Mr. Yusuf knew or should  
19 have known of all the thousands of records that BDO  
20 either referenced or attached to its report at the time  
21 that they were created?

22 A I assume so.

23 Q What do you mean you assume so? That's  
24 your -- I want to talk about your testimony. Is it your  
25 position that Mr. -- you're attributing knowledge to

1 Mr. Yusuf of all the partnership records, all of them,  
2 prior to 2001; is that correct?

3 A Yes.

4 Q Same thing for 2007. All partnership records,  
5 you're claiming Mr. Yusuf knew about or should have  
6 known about?

7 A All of the -- my understanding is, the records  
8 that are in the BDO report were submitted by Mr. Yusuf  
9 to them; is that correct?

10 Q I'm sorry?

11 A It is my understanding that the records in the  
12 BDO report were submitted to them by Mr. Yusuf.

13 Q Personally? Are you asking me a question?

14 A That's -- I'm answering your question. That  
15 is my understanding.

16 Q That's your understanding, that Mr. Yusuf  
17 personally handed to the BDO folks all of the records  
18 they reviewed. Is that your understanding?

19 A He supplied them to them, yes.

20 Q Okay. And so you're saying that all of the  
21 records, including -- let's say, for example, if the BDO  
22 folks relied on all of the information compiled and  
23 gathered by the FBI, let's assume that, you're saying  
24 Mr. Yusuf knew or should have known about all those  
25 records?

1           A     No, I'm not necessarily saying that. I don't  
2 know what he knew. Except that I know the BDO report  
3 was prepared at his behest -- request. All right?

4           Q     He hired them and paid for them. Is that what  
5 you're --

6           A     And several times in the BDO report, they use  
7 the wording that these were supplied to them by  
8 Mr. Yusuf, the records were.

9           Q     Okay. All right. So correct me if I'm  
10 wrong -- I just want to make sure I understand you --  
11 it's your understanding based on -- this chart  
12 effectively is attempting to tell the Court, correct me  
13 if I'm wrong, that Mr. Yusuf knew about all the  
14 partnership records, however vast they might be, prior  
15 to 2001 with respect to the numbers in column number 1,  
16 and prior to 2007 with respect to the numbers in  
17 column 2; is that right?

18          A     That's my understanding, yes. And all of the  
19 records in the BDO report were provided to them by him,  
20 or through his counsel.

21          Q     Okay. And that's the only basis of your  
22 understanding, the fact that --

23          A     No. And the fact that when I went back and  
24 looked at these checks, they were all dated prior to  
25 2007.



1 Q Okay. And if there was a check, you're saying  
2 Mr. Yusuf knew about it. Is that -- based on -- because  
3 it's in there.

4 A Well, he was in trial with the corporation and  
5 the records are there, they took it from the records  
6 that he provided to them, so I'm assuming that he knew  
7 about them, yes.

8 Q Okay. And as far as the records that were  
9 provided to BDO, that would include records provided by  
10 his counsel; is that correct?

11 A Yes, or whoever they got -- BDO said they got  
12 them from him.

13 Q Okay. And you say that when you saw the  
14 executive summary in the BDO report, you were shocked at  
15 its conclusion; is that --

16 A I was, yes.

17 Q Because of the disparity between the  
18 withdrawals reflected for Mr. Hamed and his family  
19 compared to the level of withdrawals for Mr. Yusuf and  
20 his family?

21 A That's correct.

22 Q Would you agree with me that the records  
23 reflect that the Hameds, Mr. Mohammad Hamed and his  
24 sons, had no other source of income other than the  
25 income they derived from the Plaza Extra partnership?

1           A     Would I be surprised?

2           Q     No.  I'm asking you, isn't it true that the  
3 records reflect that they -- that you've seen, that the  
4 only source of income they had for this entire period of  
5 time that we're talking about is the Plaza Extra  
6 partnership -- or, excuse me, Plaza Extra  
7 Supermarkets?

8           A     I don't recall that -- seeing that.

9           Q     Do you know of any other source of income they  
10 had during that period of time?

11          A     No, I do not.  I know they have other real  
12 estate holdings.

13          Q     Real estate holdings that were acquired  
14 through income generated by the Plaza Extra partnership;  
15 isn't that right?

16          A     I assume so, yeah.

17          Q     So what I'm asking you, sir, is, you can  
18 identify to this Court no source of income for any of  
19 the Hameds, other than the income generated by the three  
20 Plaza Extra stores.

21          A     I have no knowledge of that, no.

22          Q     Okay.  Now, the lifestyle analysis that you  
23 referred to in your direct testimony, that's an accepted  
24 form of analysis; isn't that correct?

25          A     It is for certain agreed-upon procedures,

1 yes.

2 Q What do you mean "certain agreed-upon  
3 procedures"?

4 A It's certainly not accepted for preparation of  
5 tax returns.

6 Q Okay. Well, you know, I understand that.

7 A I've never seen it used in preparation of a  
8 partnership return, ever.

9 Q Okay. But you've seen it done in connection  
10 with a partnership accounting or true-up as you've  
11 talked about, haven't you?

12 A No, I've never seen it done in a partnership  
13 true-up, either. Not a lifestyle analysis or an  
14 expenditure method.

15 Q Are you saying that it's improper to do  
16 that?

17 A I'm saying I've never seen it and I wouldn't  
18 know how to do it. What I'm saying is that what was --  
19 if you're going to do it for one partner -- and I'm not  
20 saying it's appropriate -- then you would do it for the  
21 other partner.

22 Q All right. Fair enough. Do you know whether  
23 Mr. Yusuf and his family have any other source of income  
24 other than the Plaza --

25 A I do not. I do not.

1 Q You don't know that?

2 A No.

3 Q So if I told you that they had an independent  
4 source of income, would that -- wouldn't that affect  
5 your opinion?

6 A Probably not, because my opinion is based upon  
7 the BDO report, and my assumption is that this is  
8 talking about the income from Plaza Extra, or the  
9 criminal enterprise.

10 Q You didn't see anywhere in the BDO report a  
11 mention that the only source of income for the Hameds  
12 was the Plaza Extra partnership and that that did not  
13 apply to Mr. Yusuf and his family?

14 A I don't recall reading that, no. I may have  
15 skimmed over it.

16 Q Okay. But wouldn't you agree with me, sir,  
17 that if one partner had an independent source of income  
18 and another partner didn't, a lifestyle analysis for the  
19 partner that didn't have an independent source of income  
20 might be different than the lifestyle analysis of the  
21 partner that did have an independent source of income?

22 A That's probably true, yeah.

23 Q Okay. The records that were relied on in the  
24 lifestyle analysis in the BDO report, they're identified  
25 in the report, aren't they?

1 A They are.

2 Q Okay. And you don't quarrel with the records  
3 that BDO actually considered in coming up with this  
4 lifestyle analysis, do you?

5 A Not -- not in general, no.

6 Q Okay. Now, taking a look at Exhibit  
7 Number 38, this chart that you did, did you also do this  
8 with Kim Japinga?

9 A That's correct, we worked together on it.

10 Q You did that with her as well?

11 A Yeah, we worked on it together.

12 Q Okay. In fact, would it be fair to say that  
13 she prepared it and you simply reviewed it?

14 A She has the software.

15 Q Okay. Now, as I understand it -- I'm trying  
16 to understand this exhibit -- the first column, any  
17 partnership records --

18 A Right.

19 Q -- that would mean all partnership records;  
20 right?

21 A That's correct.

22 Q And you're saying that there are no  
23 partnership records from 1986 to 1992; is that  
24 correct?

25 A Correct.

1 Q None whatsoever?

2 A None whatsoever. That's based on the BDO  
3 report as well.

4 Q Okay. Well, the BDO report didn't consider  
5 that period of time, did it?

6 A Yes, it did.

7 Q It did?

8 A Uh-huh.

9 Q Are you sure about that?

10 A Well, it basically -- it -- yeah.

11 Q It didn't start with the period of 1994 going  
12 forward?

13 A Okay.

14 Q Well, did it or didn't it?

15 A As I -- I guess it does, if that's what you  
16 say.

17 Q No. I'm not asking you what I say. I want to  
18 know what you say. You reviewed that report, didn't  
19 you?

20 A I did review it, yes.

21 Q All right. So when does it start?

22 A 1994.

23 Q All right. So you're saying that based on  
24 this Exhibit Number 38, that there were some partnership  
25 records in '94 through 2006; is that correct?

1           A     Right.  There was a fire sometime along  
2 there.

3           Q     When was the fire?

4           A     I believe it was in '92.

5           Q     Okay.  All right.  So then as I understand it,  
6 what you're saying is that from 1993 to 2006 there's  
7 some records of the partnership that --

8           MR. HOLT:  Your Honor, just -- he's not saying  
9 that.  He's saying that's what BDO says.  The BDO  
10 language is right below it.  He's just saying what  
11 BDO says.

12          MR. HODGES:  Your Honor, is he going to get on  
13 the stand or do I get --

14          MR. HOLT:  Mischaracterizes the witness's  
15 testimony.

16          THE COURT:  All right.  All right.  All right.  
17 Wait a minute.  Let him ask his question.

18 BY MR. HODGES:

19          Q     Mr. Jackson, are you -- is this chart your  
20 analysis of the BDO report?

21          A     That's correct.  And this is what BDO is  
22 saying, not what I'm saying.

23          Q     Oh, okay.  So do you agree with them or  
24 disagree with them that there are some records between  
25 1993 and 2006?

1           A     I don't have any opinion one way or the other.  
2     I know that there's -- there was none presented to me.  
3     Okay?

4           Q     None presented to you, what do you mean?

5           A     When I was preparing the tax returns or did  
6     the scope of the income.

7           Q     Okay. Well, you don't need to review all the  
8     records of a business in order to pay -- to prepare tax  
9     returns, do you?

10          A     You certainly need to have a lot of them,  
11     yeah.

12          Q     Well, if you were preparing the tax return in  
13     2014, why would you need to go back and review all the  
14     records from 1993 through 2006?

15          A     No, no, no. When I was originally engaged, it  
16     was because they had not filed a tax return since  
17     2000 -- I believe it was 2001. Because all of the money  
18     had been escrowed, tax returns had been held up by the  
19     Internal Revenue Service under a criminal  
20     investigation.

21          Q     Okay. All right. So then why would you go  
22     back past 2001?

23          A     Well, I didn't when I was working on doing the  
24     division of the income, that's correct.

25          Q     All right. So is it fair to say that you've



1 never independently, on your own, determined that there  
2 are -- what the level of the books and records of the  
3 company are prior to 2001?

4 A Well, in 2001 it wasn't called a partnership.  
5 It was called United Corporation.

6 Q Okay. All right.

7 A Okay? And, no, I'm not aware of any  
8 partnership records before that time.

9 Q All right. But what I'm talking about, when  
10 we say partnership, we're going to take Judge Brady's  
11 order where he declared there to be a partnership that  
12 went back to 1986. Okay?

13 A Correct, uh-huh.

14 Q So we're going to take that as gospel. And so  
15 the records I'm talking about are the records of the  
16 partnership that owned and operated the three Plaza  
17 Extra Supermarkets. Okay?

18 A Uh-huh.

19 Q So prior to 2001, did you independently  
20 determine what books and records the partnership  
21 possessed with respect to its business?

22 A No, I did not.

23 Q Never did that?

24 A No.

25 Q So you're not in a position, independently, to

1 determine whether there's some or none prior to 2001?

2 A True; correct, except I'm just going by what's  
3 been presented to me.

4 Q Okay. What Kim Japinga presented to you,  
5 based on a review of the BDO report; isn't that fair?

6 A This is a review of page 22 of the BDO report,  
7 right.

8 Q Okay. All right. So --

9 A This is just a reiteration of what they stated  
10 they didn't have and that didn't exist.

11 Q All right. So is it fair to say -- we  
12 started -- we agree that you didn't independently  
13 determine what records of the partnership exist before  
14 2001; is that right?

15 A Before 2001 yeah.

16 Q Did you do that after 2001?

17 A What I did after 2001, my knowledge of the  
18 records was that when the trial was -- or they reached  
19 their plea agreement, then they had a responsibility to  
20 file true and accurate tax returns after that. Okay?  
21 Which generated the lawsuit that came about after that.  
22 They had an independent counsel and a CPA prepared  
23 United tax returns for all of those years coming up to,  
24 I believe it was, 2012.

25 Q And who was that? When you say "they" had an

1 independent --

2 A The Yusuf family did.

3 Q Okay. And who was the person or entity that  
4 prepared those tax returns?

5 A It was Freed Maxick & Battaglia. RSM  
6 McGladrey at the time. Freed Maxick & Battaglia was the  
7 CPA firm.

8 Q Okay. And you're saying that the Yusufs did  
9 that, or was that in conjunction with the Hameds as  
10 well?

11 A It was not in conjunction with the Hameds  
12 because it was on a United Corporation tax return and it  
13 excluded the Hameds from ownership.

14 Q Okay. And this is a Freed Max --

15 A Freed Maxick & Battaglia.

16 Q Okay. Was that return ever filed?

17 A I believe they filed them and then they had to  
18 go back and amend them.

19 Q Okay. But let's go back to your independent  
20 knowledge of the books and records of the partnership  
21 after 2001. Did you ever take the time to independently  
22 determine what books and records of the partnership  
23 existed from 2001 to the most recent date that you can  
24 tell the Court?

25 A Rather than just doing inquiry, no. I wasn't

1 paid to do that.

2 Q Okay. So did you just rely on counsel's  
3 statement that there were no records, or how did you  
4 make that determination?

5 A Um, there were no records presented to me. I  
6 also relied on Gaffney's deposition. And we had copies  
7 of the bookkeeping that came from United at that time  
8 that was provided to us, and they didn't go back any  
9 farther than that.

10 Q Copies of the bookkeeping --

11 A That was prepared for United.

12 Q By whom?

13 A By Mr. Gaffney. And it was in the Sage --  
14 they had software backups that they brought to us. This  
15 was several years ago.

16 Q Right.

17 A I believe it was in Sage software, and we  
18 reviewed that and, from that, we determined that, you  
19 know, there was nothing, there was nothing back there.

20 Q Nothing back there --

21 A Nothing beyond about 2006, 2007.

22 Q Okay.

23 A In the Sage records.

24 Q That was based on the information who provided  
25 to you?

1           A     Ah, I'm trying to remember. They actually  
2 gave us a laptop computer with all the information on  
3 it. It would have come from opposing counsel. I'm not  
4 sure. I wasn't -- it was given to my firm on a CD, and  
5 then we didn't have the software, so they brought us the  
6 software and we installed it onto that laptop computer.  
7 And my understanding is, it was provided pursuant to a  
8 court order at that time.

9           Q     And can you -- when you say it was provided by  
10 opposing counsel --

11          A     Well, it was a court order. They were in the  
12 middle of a lawsuit at the time.

13          Q     Are we talking about this lawsuit, the one  
14 we're here for?

15          A     No, no, no. We're talking about the one where  
16 they determined it was a partnership.

17          Q     That's this case right here, sir.

18          A     No. This is something different, isn't it?  
19 It's already been determined that it was a  
20 partnership.

21          Q     Well, it's the same case. Same case.

22          A     Okay. Well, to me, it's different.

23          Q     Judge Brady is the one that issued the order.

24          A     I understand that. I read the order.

25          Q     Okay. All right. So what counsel provided

1 you the information as to what the available records  
2 were?

3 A It would have come from Attorney Holt's  
4 office.

5 Q Okay. And you accepted from them that there  
6 were no other records; is that fair to say?

7 A I accepted it from them, from Mr. Gaffney's  
8 deposition, and now I see it here as well.

9 Q Okay. When you say "see here", you're looking  
10 at Exhibit 38?

11 A I'm looking at the BDO report that had not  
12 been written at that time.

13 Q All right.

14 A Okay?

15 Q Now, the -- looking at Exhibit 38, any  
16 partnership records would include Plaza East records,  
17 Plaza West records, and Plaza Tutu records; right?

18 A I would assume so, yes. Remember, this is a  
19 rendition of the BDO, page 22.

20 Q Well, you and Kim Japinga prepared this;  
21 right?

22 A No. We just put it into a graph. BDO  
23 prepared it on page 22 in the report.

24 Q All right. So in other words, I think what  
25 you're saying is, in order for us to determine whether

1 or not you've accurately described what the BDO report  
2 really reflects, we'd have to go back and review it  
3 ourselves; right?

4 A Look at page 22, yes.

5 Q Okay.

6 MR. HOLT: It's quoted right on the exhibit.

7 Q Page 22.

8 MR. HOLT: It's quoted on the exhibit. It's  
9 right there.

10 A It's in the top line of the exhibit.

11 Q Okay. You're talking about the one in red?

12 A No, I'm talking about the one in blue -- or  
13 black. Page 22 of the BDO records.

14 Q Okay. So --

15 A This is a summary of what they said they had  
16 and did not have. Okay?

17 Q All right. Fair enough. Now, in your opinion  
18 from -- well, let's take Exhibit 37. This is your -- is  
19 this another exhibit that you prepared with Kim  
20 Japinga?

21 A That's correct.

22 Q Okay. And would you -- and I think we agreed  
23 that if a partner has an independent source of income,  
24 there's a different lifestyle analysis that would apply  
25 to that partner; isn't that correct?

1           A     True.

2           Q     Okay. Exhibit 39 is your opinion.

3           A     Right.

4           Q     This is the opinion that you authored and  
5 addressed to Attorney Holt on August 1, 2014; correct?

6           A     Correct.

7           Q     And in this opinion, you essentially  
8 determined that because of the absence of partnership  
9 books and records, it's impossible to perform any  
10 true-up or accounting before 2012; isn't that correct?

11          A     That was part of the reason. The other part  
12 of the reason, that there was a criminal enterprise  
13 going on at that time and there was no way for me to do  
14 an accounting of that.

15          Q     Well, did you say that in your opinion?

16          A     I did. If you go to the bottom of page 5, and  
17 at the top, I talked about their usable or reliable  
18 accounting records do not exist for two reasons. If you  
19 go to the footnote, you'll see my remarks.

20          Q     Okay. So -- but as I understand your  
21 testimony, you have never independently determined what  
22 books and records are available to the partnership  
23 during this period; is that right?

24          A     I have determined what was presented to me by  
25 all parties, and that was it.



1 Q I never presented any information to you, did  
2 I?

3 A No, you didn't.

4 Q The only information that was presented to you  
5 was by Attorney Holt, in coming up with this opinion;  
6 isn't that right?

7 A That's correct, uh-huh.

8 Q So, again, you never made an independent  
9 determination of what books and records existed that  
10 would have enabled you to do any kind of true-up or  
11 partnership accounting, prior to 2012; isn't that  
12 right?

13 A True.

14 Q All right. And does it shock you that another  
15 accounting firm doesn't accept that it's impossible to  
16 do that and they undertook to perform what you claim was  
17 impossible?

18 A I don't believe that they did that.

19 Q No. But it's not shocking --

20 A This BDO report is not even an opinion.

21 Q Right.

22 A It's an agreed-upon procedure, which falls  
23 short of an opinion.

24 Q Okay. But it was not offered as an opinion,  
25 was it?

1           A     Ah, it was crafted like an opinion and it's  
2 being used as an opinion and it's making an assertion.

3           Q     It was submitted in support of a claim that  
4 was required to be filed by September 30, 2016; isn't  
5 that right?

6           A     Therefore, it's an agreed-upon procedure.  
7 Correct.

8           Q     Okay. Did you attempt to do any true-up or  
9 accounting for the partnership at all that would be  
10 submitted to the Court on September 30, 2016?

11          A     No, I did not.

12          Q     Okay. You weren't asked to?

13          A     I was not asked to.

14          Q     And as far as you know, nobody else on behalf  
15 of Mr. Hamed was ever asked to?

16          A     That's correct.

17          Q     Okay. Mr. Jackson, it's fair to say that it's  
18 not unusual for partnerships, particularly verbal  
19 partnerships that have lasted for decades, there will be  
20 gaps in the records and things like that? That doesn't  
21 surprise you, does it?

22          A     No.

23          Q     In fact, that would be expected.

24          A     Well, I would think that some gaps, maybe, if  
25 it's a true partnership.

1           Q     Now, on Exhibit 42, these are -- this is,  
2     again -- I assume this is another chart that you  
3     prepared with Kim Japinga?

4           A     No, I did not. Kim Japinga did this on her  
5     own.

6           Q     Okay. You didn't participate in it?

7           A     No.

8           Q     Then you don't know whether any of these  
9     accounts are mentioned in the BDO report.

10          A     Well, I didn't see them mentioned anywhere by  
11     reference.

12          Q     Well, have you, to this date, gone through the  
13     BDO report and determined that not one of these  
14     accounts --

15          A     I have not, no.

16          Q     -- is mentioned in the report? So when you  
17     testified a little bit earlier ago, you didn't have any  
18     personal knowledge regarding whether any of these  
19     accounts were mentioned or not; isn't that right?

20          A     Correct.

21          Q     Okay. And are you aware, Mr. Jackson, that  
22     the claim that it relates to the foreign accounts is not  
23     in the BDO report, but it's in Mr. Yusuf's claim that  
24     was actually submitted to the Court? Are you aware of  
25     that?

1 A No.

2 Q You've never seen the summary account that  
3 identifies our claim -- when I say "our", I mean  
4 Mr. Yusuf's claim -- and shows how he accounts for what  
5 I would call set-asides or reserves, payments of debts,  
6 then the partnership withdrawal distributions and  
7 comparisons and so forth? You've never seen that?  
8 Exhibit Number 23?

9 A No. This is the first time I've seen this.

10 Q You've never seen it? Okay.

11 Well, just jump then, if you would -- this is  
12 an Exhibit A to the claim that my client filed on  
13 September 30, 2016, that was supported by, among other  
14 things, the BDO report that you have looked at. Okay?

15 A Uh-huh.

16 Q Take a look at page 2, Item Number Roman  
17 Numeral VII, foreign accounts. Net due to Yusuf, it  
18 says "TBD", to be determined, "following additional  
19 discovery"?

20 A I see that.

21 Q Okay. So the fact that BDO did not include a  
22 foreign account analysis is not relevant; right? They  
23 weren't asked to do that.

24 A Not relevant how?

25 Q Well, if they weren't asked to do something,

1 should they be faulted for not including an analysis of  
2 something they weren't asked to do?

3 A No, I -- it's an agreed-upon procedure, as I  
4 said before. You know, they're just doing what they  
5 agreed to do.

6 Q Okay. All right. And you weren't asked to do  
7 a true-up or an accounting for the period from 2001 to  
8 date, were you, by Mr. Holt or Mr. Hamed?

9 A No, I was not.

10 Q Okay. If they had asked you to do that  
11 true-up, you would have at least attempted to do it,  
12 wouldn't you?

13 A Yes.

14 Q Exhibit 30 and 31.

15 A (Perusing documents.)

16 Q I believe you testified -- correct me if I'm  
17 wrong, Mr. Jackson -- that the \$160,000 check was never  
18 cashed; is that right?

19 A That's correct.

20 Q Have you examined bank statements for the Bank  
21 of Nova Scotia account that's referenced here?

22 A 2000? I have not, no.

23 Q So you don't know from personal knowledge  
24 whether this check has been cashed or not, do you?

25 A I do not. My understanding is they were in a

1 safe.

2 Q Okay. And the understanding that you have is  
3 from counsel for Mr. Hamed; is that right?

4 A That's correct.

5 Q Okay. In Exhibit 30 there's some other  
6 checks. Is it your testimony that those other checks  
7 were not cashed as well?

8 A That's correct. These were all in the safe,  
9 all from Mr. Jaber to Mr. Hamed.

10 Q Okay. But you don't know that as a fact, do  
11 you?

12 A I -- no, I didn't actually go look in the  
13 safe, no, I didn't.

14 Q And you didn't actually look at the bank  
15 statement for the Scotiabank account that is -- these  
16 checks are written off, did you?

17 A Did not.

18 Q Now, you testified about Mr. Yusuf's house;  
19 isn't that right?

20 A No. I --

21 Q In the lifestyle analysis, you were saying, as  
22 I recall, you looked at -- you looked at the houses that  
23 were built and you said if you look at one partner, you  
24 gotta look at the other; isn't that right?

25 A What I said was that I'd never seen a

1 lifestyle analysis used in a partner true-up before, but  
2 if it was going to be used, that you would do a  
3 lifestyle analysis on both partners or all partners  
4 involved.

5 Q Okay.

6 A That would be the way that I would approach  
7 it, yes.

8 Q Even though one partner had an independent  
9 source of income and the other one didn't?

10 A I'm not aware of an independent source of  
11 income. This is about this particular enterprise.

12 Q What if you were told that it's undisputed  
13 that Mr. Yusuf had an independent source of income,  
14 would that change your opinion?

15 A It might. If I knew what it was.

16 Q Okay.

17 A But, still -- go ahead.

18 Q Now, Mr. Jackson, did you look at the analysis  
19 of the amounts charged to Mr. Yusuf's side of the column  
20 on the accounting prepared by BDO?

21 A Repeat the question.

22 Q Correct me if I'm wrong. The BDO report  
23 attempts to allocate withdrawals from the partnership to  
24 either the Hamed side or the Yusuf side.

25 A Correct.

1           Q     Isn't that right?  And BDO doesn't attribute  
2 all the withdrawals to the Hameds, they attribute  
3 withdrawals to Mr. Yusuf, too; right?

4           A     Right.

5           Q     And included in those withdrawals is a number  
6 of checks, very substantial checks, for money used to  
7 build his house; isn't that right?

8           A     Yes.

9           Q     You actually reviewed those checks.

10          A     I did not review those checks, no.

11          Q     But you don't dispute that the checks that  
12 were reflected in the BDO report included checks made  
13 payable to Mr. Yusuf that were used for the construction  
14 of his house.

15          A     I did not review those checks.

16          Q     So when -- you can't sit here today and  
17 testify that while Mr. Hamed was charged for lifestyle  
18 in the construction of his house, and Mr. Yusuf -- or  
19 excuse me.  You can't testify that Mr. Hamed and his  
20 family were the only ones charged in a lifestyle  
21 analysis for the construction of their home when there  
22 were checks made out that are in BDO's report that were  
23 used by Mr. Yusuf to construct his house?

24          A     You're confusing me again.  Please ask your  
25 question again.



1           Q     You admit that you didn't review the documents  
2     in the BDO report that reflect withdrawals by Mr. Yusuf;  
3     is that correct?

4           A     No. I looked at the withdrawals that were  
5     attributed to Mr. Hamed to determine if I could find out  
6     if they were accurate or not.

7           Q     Okay. My question --

8           A     And that's what we did. And we found several  
9     mistakes.

10          Q     My question is, you agree with me that you did  
11     not review the withdrawals that were allocated to  
12     Mr. Yusuf?

13          A     That's correct, I did not.

14          Q     So when Attorney Holt was making a big deal  
15     about not including Mr. Yusuf's house in the lifestyle  
16     analysis, you couldn't support that, could you? Because  
17     you don't know what checks were written that were used  
18     by him in --

19          A     That's correct, I don't.

20          Q     All right. Thank you.

21                 THE COURT: Redirect?

22                 MR. HODGES: Your Honor, I --

23          Q     Now, I need to ask you, because, quite  
24     frankly, Mr. Jackson, I don't understand --

25                 MR. HODGES: If the witness may be shown

1 Exhibits 1 and 2.

2 THE COURT: I think he may have them in that  
3 pile.

4 MR. HODGES: They look like this (indicating).

5 THE MARSHAL: Thank you.

6 THE COURT: We've got them right here. Sorry.  
7 Marshal, we got them.

8 A (Perusing documents.)

9 Q Now, correct me if I'm wrong, you testified  
10 that BDO improperly did not consider the  
11 Prudential-Bache account that's reflected in Exhibit 1  
12 in its analysis; is that correct?

13 A Correct. It was on the list of accounts that  
14 weren't in the report.

15 Q Okay. And how do you know they didn't review  
16 that?

17 A It wasn't included in the report, the BDO  
18 report.

19 Q In other words, this statement was not  
20 included in the BDO report, or what was not --

21 A The values weren't included.

22 Q I'm sorry?

23 A The account, the detailed account wasn't  
24 included in it.

25 Q Okay. And is this an account of Mr. Hamed or

1 one of his sons or Mr. Yusuf or one of his sons?

2 A This is the account for United Corporation.

3 Q Okay. So why would it be -- why would this  
4 account be reflected on one side of the ledger as  
5 opposed to the other? When I say "one side", the Hamed  
6 side or the Yusuf side.

7 A Well, it appears that this was booked into  
8 Mr. Hamed's tax return in 1993, the statement.

9 Q Okay. That's where I want to go. You're  
10 saying this information that's in Exhibit 1 somehow  
11 appears in Exhibit 2?

12 A That's correct, uh-huh.

13 Q And could you show us where that is?

14 A It's on Schedule D. If you look at Exhibit 2,  
15 and that would be Schedule D, which would be, I guess,  
16 the third page.

17 Q Third page of Exhibit D, what's the number on  
18 the bottom of the page, the UC number?

19 A UC000203.

20 Q Okay. All right. And so where does this  
21 Prudential-Bache account information show up in  
22 Exhibit 2?

23 A I did a summary that was submitted with this.  
24 There's another exhibit that has the detail.

25 Q But that's not part of Exhibit 2?

1           A     I don't see it here. Let me look.

2           Q     So you don't see it.

3           A     It's not a part of these exhibits. I actually  
4 did -- there was a reconciliation that was one of the  
5 exhibits that was presented earlier.

6           Q     Okay. A reconciliation that explains --

7           A     That ties this statement from United to  
8 Mr. Hamed's '93 tax return.

9           Q     Is that an exhibit that we've seen today?

10          A     I believe so.

11          Q     Can you help us --

12          A     I don't remember the Bates numbers.

13                THE COURT: Describe it.

14                THE WITNESS: It's just a summary of the -- I  
15 thought it had been submitted. It's in my work  
16 papers. I thought we looked at it earlier.

17          Q     So in other words, I'm trying -- and perhaps  
18 the Court is --

19                MR. HOLT: Exhibit 43.

20                THE COURT: Exhibit 43?

21                MR. HOLT: Exhibit 43 is a work paper.

22                Exhibit 2 is the tax return. Exhibit 43 is the  
23 work paper.

24          Q     43?

25          A     Uh-huh.

1 Q Well, I don't see it.

2 MR. HODGES: May I see that just for a second?

3 THE MARSHAL: (Handing document.)

4 THE COURT: Marshal, you can show this to the  
5 witness.

6 THE MARSHAL: Thank you. (Complying.)

7 BY MR. HODGES:

8 Q So are you saying that the exhibit that you  
9 have, Exhibit 43, explains how Exhibits 1 and 2 relate  
10 to one another?

11 A Yes.

12 Q Why don't you just explain that to us real  
13 briefly.

14 A Okay. Well, in the Prudential-Bache  
15 Securities by United Corporation, we were only given  
16 nine months of statements; right?

17 Q Right.

18 A So we went back through and we began to match  
19 up the transactions and the statements that were on his  
20 tax return, and they matched up almost to the penny.  
21 The trades, the dates, the amounts, everything. And so  
22 it appeared to me, in 1992, he had very little activity;  
23 '93, all of this activity, which was kind of  
24 unexplained; and in '94 there was nothing again on his  
25 personal tax return. So I was aware of the fact that

1 Wally has a Prudential-Bache account and United had a  
2 Prudential-Bache account, all of the tax returns were  
3 being prepared by the same CPA, and it appears that they  
4 got these transposed onto his return incorrectly.  
5 Overall, it was a loss, so I don't think anybody picked  
6 it up.

7 Q But you're aware that Mr. Wally Hamed carried  
8 this loss forward and continued to benefit from that  
9 loss in future years, don't you? You know that?

10 A Well, yeah, that's a capital loss carry  
11 forward.

12 Q All right. So if there was a mistake, he  
13 benefited from it; isn't that right?

14 A Well, he didn't benefit to the tune of  
15 \$7 million.

16 Q All right. Fair enough. But he never  
17 corrected that error, did he?

18 A I'm not sure he was even aware of it.

19 Q Okay.

20 A Because all of his returns were done at one  
21 time, my understanding.

22 Q Did you ever speak with -- who prepared this  
23 tax return?

24 A Ah, I believe it was Pablo O'Neill.

25 Q Did you ever speak with Mr. O'Neill about this

1 alleged error?

2 A I did not.

3 Q Wouldn't that be something you would  
4 ordinarily do before you conclude that he made an  
5 error?

6 A If I was asked to do that, yeah. I was just  
7 observing what was on the returns.

8 Q Okay. You were never asked to determine  
9 whether it was really an error that Mr. O'Neill made; is  
10 that correct?

11 A Right, that's correct.

12 Q All right. Now, I think, as I understand your  
13 testimony and these exhibits, the Hameds are claiming  
14 that the mistake is that a United Pru-Bache account was  
15 included in their tax return; isn't that correct?

16 A Correct.

17 Q If they had previously claimed it was a Hamdan  
18 Diamond account that was incorrectly put in their tax  
19 return, does that change your view in any way?

20 A I'm not familiar with that account you're  
21 talking about, but I do know that they both had  
22 Prudential-Bache accounts. Okay? United and  
23 Mr. Hamed.

24 Q Okay. And how about Hamdan Diamond, are you  
25 familiar with that entity?

1           A     No.

2           Q     So you're not aware that at some point in this  
3 case they claimed that the error was by including  
4 accounts belonging to Hamdan Diamond in the tax return.  
5 You're not aware of that?

6           A     No.

7           Q     Now, Mr. Jackson, you wouldn't disagree with  
8 me, would you, that particularly since this was not an  
9 audit or a formal opinion that the BDO was doing, that  
10 it was unusual for them to effectively charge Mr. Hamed  
11 for the numbers that are included in his own tax  
12 return?

13          A     Repeat your question.

14          Q     You're not faulting BDO for effectively  
15 relying on Mr. Hamed's own tax return in preparing its  
16 report, are you?

17          A     Well, there's two issues that I came up with.  
18 Number 1, they're showing these gross proceeds of almost  
19 \$7 million and they're treating those as though there  
20 were never another investment into it. In other words,  
21 if you're familiar with brokerage accounts, they churn  
22 the accounts, so a small amount of money can show up to  
23 be a large amount of gross proceeds.

24          Q     Uh-huh.

25          A     Okay. So that was one thing, the fact that



1 they attributed it to him as though he had that amount  
2 of money. All right? And the other thing was, my  
3 understanding is that they didn't have this account.

4 Q Now, your understanding is not based on  
5 anything other than what these folks told you --

6 A Exactly.

7 Q -- Mr. Holt and his crew; isn't that right?

8 A Right.

9 MR. HOLT: Your Honor, that's about the fourth  
10 time he's attacked me personally. Now, we're going  
11 to put Kim Japinga on and she's going to testify  
12 under oath where that Prudential-Bache account was  
13 produced in this case and why it wasn't in there.  
14 So we need to move past this, because that's not  
15 fair to attack me personally.

16 THE COURT: All right. I didn't understand --  
17 I mean, I obviously don't know the history, but I  
18 know from the outside, I'm not considering that a  
19 personal attack.

20 MR. HODGES: I certainly didn't intend it to  
21 be a personal attack, Your Honor.

22 THE COURT: Continue.

23 Q So Mr. Jackson --

24 THE COURT: The characterization to Mr. Holt  
25 and his "crew" --

1 MR. HODGES: That was --

2 THE COURT: But let's just move on and try

3 to --

4 Q The tax return that was actually filed -- so  
5 putting aside whether or not BDO knew about this  
6 Prudential-Bache account information, and this is -- you  
7 can tell from the number on there that it's part of the  
8 FBI information, can't you?

9 A Yes.

10 Q So if they said they reviewed all the FBI  
11 information, they would have reviewed that; right?

12 A You would think so, yes.

13 Q Okay. But on its face, there's nothing in  
14 Exhibit 2, the tax return, that would jump out at  
15 somebody like BDO or yourself doing something that they  
16 were asked to do that you weren't asked to do to say,  
17 you shouldn't rely on this?

18 A Right.

19 Q Isn't that right?

20 A Correct.

21 Q Okay. Thank you, sir.

22 Would you agree with me that the BDO report  
23 doesn't even suggest that it's intended to be a full,  
24 final and complete report?

25 A Would I agree with you?

1 Q Yes.

2 A Um, they disclaim it in several places, yeah,  
3 so I assume that's correct.

4 Q That they disclaim that they have had an  
5 opportunity to review any discovery or deposition  
6 testimony from Mr. Wally Hamed or any of his brothers;  
7 correct?

8 A Correct.

9 Q And you know as a fact that there's been a  
10 stay of discovery in this case altogether since October  
11 of 2014.

12 A I wasn't aware of that, but okay.

13 Q Okay. So in other words, if BDO filed a  
14 report that had -- that included gaps in information,  
15 and maybe even errors, as you've discussed, the fact  
16 that it was done without a large segment of discovery  
17 that remains to be done, would it surprise you that  
18 there would be a few errors in it, or that there would  
19 be gaps?

20 A It wouldn't surprise me if there's gaps, but  
21 some of the errors are pretty glaring.

22 Q Okay. But, again, you were never asked to do  
23 the same thing that they were asked to do.

24 A That's correct.

25 Q And would you agree with me that what they

1 attempted to do was an extraordinary undertaking?

2 A Certainly different, yeah.

3 Q Well, I mean extraordinary in the sense --

4 A I'm sure it was expensive, too.

5 Q Okay. It was an extremely time-consuming and  
6 expensive process; would you agree with that?

7 A Yes.

8 MR. HODGES: Okay. Thank you, sir.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 BY MR. HOLT:

12 Q I want you to look at Exhibit Number 2, the  
13 tax return.

14 A Okay.

15 Q And go to the fourth page, there's a section  
16 called "Capital Gains and Losses." Do you see that?

17 A Yes.

18 Q Okay. And on this fourth page we write down  
19 stock that we sold, how many shares, the date of the  
20 sale, the amount of the sale; is that correct?

21 A That's correct.

22 Q And just to make it easy, the third line item  
23 down is 20,000 shares of AALR, and it has the date and  
24 the amount; is that correct?

25 A That's correct.

1 Q And so what you did is you looked at the  
2 Prudential-Bache account and you saw that, in fact, that  
3 was a United transaction, not a Wally Hamed  
4 transaction?

5 A Correct.

6 Q So that would be an improper entry; correct?

7 A That's correct. The trades matched up.

8 Q Now, they raised a question about whether or  
9 not BDO might have had the Prudential-Bache account. If  
10 BDO had the United Prudential-Bache account and did the  
11 analysis like it did on all the other accounts, would  
12 they have then recognized that this tax return was done  
13 in error?

14 A I would say yes.

15 Q Okay. And if BDO didn't have the information  
16 made available to it, it would never be able to reach  
17 that conclusion, could it?

18 A That's correct.

19 Q All right. Now, going to Exhibit Number 30  
20 and 31 -- it should be in front of you -- the Jaber  
21 checks, do you see those?

22 A Yes.

23 Q All right. Look at Exhibit Number 30, which  
24 is table 11A, it's the BDO table.

25 A I gave it back.

1 Q And do you see where they list all the checks?  
2 They have \$285,000 summary here, do you see that?

3 A Yes.

4 Q And do you see over in the right-hand column  
5 that they have notes, they have a 1 and 2, you see all  
6 that?

7 A Yes.

8 Q What does note 1 on this report say?

9 A It says, "Deposit check received from  
10 Mr. Yusef Jaber could not be traced to any bank account  
11 nor ticket (account number is unknown)."

12 Q Okay. So they couldn't come up with any  
13 information that this check had ever been cashed  
14 anywhere, could they?

15 A No.

16 Q And yet, notwithstanding that, they still  
17 attributed that to Wally Hamed and said he owes  
18 Mr. Yusuf 286,000, didn't they?

19 A Correct.

20 Q Is that a proper accounting standard?

21 A No.

22 Q Now, you were shown Exhibit Number A, and  
23 Exhibit Number A is a list of claims, and they asked you  
24 about foreign accounts, net due to Yusuf yet to be  
25 determined. Do you remember being asked about that?

1           A     I do.

2           Q     Now, if I'm going to do a lifestyle analysis  
3 and I'm going to present it to this Court as evidence,  
4 don't I need to look at those accounts before I finish  
5 my report?

6           A     Well, before it's finished, yes.

7           Q     Okay. So if that was what they were going to  
8 do, they would need to qualify this by saying "we  
9 haven't finished this", wouldn't they?

10          A     If it's going to rise to that level, yes.

11          Q     Okay. And looking at the last page of the  
12 report, page 64, do you have that report in front of  
13 you?

14          A     I do not.

15          Q     I'll tell you what, I'll read you the last  
16 sentence and ask you, do you remember reading this  
17 sentence together with me where the last sentence says,  
18 "We have no obligation to update this report for  
19 information that comes to our attention after the date  
20 of this report." Do you remember us discussing that?

21          A     I do. I do remember that.

22          Q     Have you ever seen that in a report before?

23          A     No.

24          Q     Did you see anywhere in here where they  
25 indicated they intended to continue their work for any

1 reason whatsoever?

2 A I saw some reference that they would update it  
3 at some point with additional information, but then at  
4 the very last sentence in it, they said they didn't.

5 Q Okay. And then you were asked about  
6 independent sources of income, somehow suggesting, you  
7 know, Mr. Yusuf or maybe even Mike Yusuf have all these  
8 great independent sources of income. If, in fact, that  
9 were true, wouldn't a true lifestyle analysis have to  
10 analyze that in order to determine whether or not it was  
11 related to the partnership?

12 A Correct.

13 Q Okay. So even if Mr. Yusuf has other income,  
14 which is not -- there's no information before you -- BDO  
15 would have to look at that to determine whether or not  
16 that really explained the house he owns or the house his  
17 sons own, wouldn't they?

18 A Yes.

19 Q Okay. And they didn't do that, did they?

20 A Not to my knowledge.

21 Q All right. Now, you were also asked about  
22 whether Wally had any other income, but didn't you hear  
23 Wally Hamed testify this morning that he actually owns a  
24 small apartment complex out in Frederiksted?

25 A That's correct.



1 Q And you also heard him talk about having a  
2 small brokerage account?

3 A Yes.

4 Q So he had other income; right?

5 A Correct.

6 Q Did you see anywhere in this report where BDO  
7 analyzed that other income and excluded it from this  
8 report?

9 A I did not.

10 Q Okay. Now, I want to go back to this chart,  
11 Exhibit Number 36.

12 MR. HOLT: And you know what? I guess I am  
13 going to need him to have the BDO report in front  
14 of him, which I think is Exhibit 12.

15 THE MARSHAL: (Complying.)

16 A (Perusing document.)

17 Q So let's go to exhibit -- do you have Exhibit  
18 Number 36 in front of you?

19 A I do.

20 Q And then on Exhibit Number 36, I don't want to  
21 go down all 22, but let me just do samples. You see  
22 Item Number 1, page 24, table 2A?

23 A Yes.

24 Q Okay. So if we go to page 24 of the BDO  
25 report, under subsection B, we have a description called

1 "withdrawals from the partnership with a signed ticket  
2 and receipt." Do you see that?

3 A I do.

4 Q Okay. And then it says from '94 to 2001 the  
5 figure of \$848,718.

6 A Correct.

7 Q Okay. And because that sum allocated to  
8 Mr. Mohammad Hamed is based upon a signed receipt or  
9 ticket from the partnership records, you then listed  
10 this on your list as information that Fathi Yusuf would  
11 have known about.

12 A Correct.

13 Q And that's based in part upon the fact that  
14 this is a business record and in part on the fact that  
15 everyone has testified he was in charge of the business.

16 A That's correct.

17 Q Now, the next item here, \$5,000, do you see  
18 that's October 2001 through December of 2002?

19 A I do.

20 Q Now, in order to do that, could you stop here  
21 or did you have to go look at the backup information?

22 A I had to look at the backup.

23 Q So you went and pulled the table on this one.

24 A That's correct.

25 Q And you saw that it fell before 2002/2003.

1           A     That's correct.

2           Q     Okay.  So then because you actually looked at  
3 the table and you saw -- and because it's a withdrawal  
4 from the partnership, you then attributed it to  
5 something that Fathi knew about before 2007; is that  
6 correct?

7           A     That's correct.

8           Q     And so if we went down each table on each page  
9 all the way to the bottom, we would see how you came up  
10 with this number?

11          A     That's correct.

12          Q     And let's just go right down to the end.  Do  
13 you see number 21 and 22?  You see the PNC Banks to  
14 Hisham Hamed, but not in -- you see the 2800 and 2900?

15          A     I do.

16          Q     Okay.  And you included those because we  
17 actually showed this morning that those are traced to  
18 Fathi Yusuf's account in Jordan, didn't we?

19          A     That's correct.

20          Q     Okay.  So when you prepared this chart, you  
21 based it upon the information that either shows you that  
22 this was from a partnership record or other information  
23 that was made available to you showing that Mr. Yusuf  
24 knew about these before 2004?

25          A     Correct.

1 Q Okay.

2 THE COURT: Mr. Jackson, on the right-hand  
3 column, does that mean between the period 2001 to  
4 2007?

5 MR. HOLT: It would really be about 2001 to  
6 2005, because most of these were before then.

7 THE WITNESS: Right. It was listed in the  
8 report 2001 to 2012, so when we -- on page 24, so  
9 when I went back and looked at it, it was actually  
10 before 2007, on the actual summary.

11 THE COURT: But it's post 2001.

12 THE WITNESS: It is; correct.

13 Q You actually did a summary of that, did you  
14 not?

15 A I did, yeah.

16 Q And do you have that summary in your file?

17 A (No response.)

18 Q You actually pulled each of the tables for the  
19 ones on the right-hand column, didn't you?

20 A That's correct.

21 Q And then you looked to see what the date  
22 was?

23 A I did.

24 Q And do you have that table in your file?

25 A I have it in my work papers back there.

1 MR. HOLT: Your Honor, can I have him --

2 THE COURT: Sure.

3 MR. HODGES: May I see what is being handed to  
4 the witness?

5 MR. HOLT: Yep. I'm just going to pull the  
6 work papers on that item.

7 MR. HODGES: (Perusing documents.)

8 Your Honor, this all is subject to discovery,  
9 you know, it includes a letter from Attorney Holt  
10 to Mr. Jackson, it looks like question-and-answer  
11 worksheets. I would respectfully submit that --

12 THE COURT: We're going to have discovery,  
13 but . . .

14 MR. HODGES: He's prepared to -- in fact, I  
15 would like to see all this, but, you know, to  
16 analyze it right now is going to take some time.  
17 There's stuff in here that --

18 THE COURT: Well, it's not presented to you  
19 right now so that you can go through discovery.

20 MR. HODGES: Well, he's going to show it to  
21 the witness.

22 THE COURT: He's going to pull out his one  
23 worksheet or whoever it is, and it's only -- it's  
24 only in that package because it's not readily  
25 available otherwise.

1           MR. HOLT: I'll withdraw it, Your Honor. I  
2           don't have an extra copy of this, but I'd like to  
3           mark this as Exhibit 36-A so I can be consistent  
4           with this.

5           MR. HODGES: Your Honor, I would object to any  
6           new exhibits on redirect.

7           MR. HOLT: I'm just clarifying the question  
8           that the Court asked about making this  
9           determination.

10          THE COURT: All right. Objection is noted.

11 BY MR. HOLT:

12          Q     So, Mr. Jackson, before this chart was used,  
13          you then went through and you, for example, the \$5,000  
14          one, you'd look at page 24 and then you'd go to the  
15          backup on table 2B; is that correct?

16          A     That's correct.

17          Q     And there's a \$5,000 entry, so you would look  
18          to see what date that entry was.

19          A     That's right.

20          Q     Is that -- what's the date of that entry?

21          A     10-15-2001.

22          Q     2001. Okay. And that entry is based upon a  
23          withdrawal from the partnership through a receipt;  
24          correct?

25          A     Correct.

1 Q And then if you go down to Item Number 10,  
2 page 33, funds withdrawn from the partnership through  
3 checks, you have 22,400; right?

4 A That's correct.

5 Q And what are the date of those checks and the  
6 backup?

7 A There's a \$20,000 check in 2002 and then there  
8 was four checks in 2004.

9 Q Okay. And then looking at page 33, we have  
10 table 16B, you have the backup for the \$26,500; is that  
11 correct?

12 A That's correct.

13 Q Okay. And what's the date of those checks?

14 A All in October of 2001, all three of them.  
15 There's three of them that came together to make 26.5.

16 Q And those were based upon withdrawals from the  
17 partnership through tickets and receipts; is that  
18 correct?

19 A Yes.

20 Q And then looking at page 33, you had to pull  
21 17B to get this information; correct?

22 A Correct.

23 Q That's \$2,665. Do you see that?

24 A I do.

25 Q And what are the dates of those checks?

1 A 2001.

2 Q All right. Then the next one, table 24B,  
3 withdrawals from the partnership for Mafi Hamed through  
4 tickets and chits, you got basically a three-page backup  
5 on that one, didn't you, 188,000?

6 A Yes.

7 Q And so you had to look at the backup, all  
8 three pages; correct?

9 MR. HODGES: Your Honor --

10 A That's correct.

11 Q And what are the dates for those?

12 THE COURT: Hold on. Stop.

13 MR. HODGES: Your Honor, objection. I've been  
14 trying to hold my tongue as far as the leading  
15 questions. This is -- he's suggesting the answer  
16 in every question he asks.

17 MR. HOLT: I'll withdraw that question.

18 BY MR. HOLT:

19 Q Can you tell me whether or not you were able  
20 to determine the dates that the \$188,000 was withdrawn?

21 A I can, yes.

22 Q And what were those dates?

23 A 48,278 of it was in 2001 There was 140,625.31  
24 that was all in 2002.

25 Q Okay. And those were all withdrawals from the



1 partnership through tickets and receipts?

2 A Receipt -- I have receipt numbers, yes, sir.

3 Q Okay. And then going down to Item Number 18,  
4 table 25B, payments to third parties with partnership  
5 funds. Do you see that?

6 A Yes.

7 Q Okay. And what's the total number?

8 A 5,636.

9 Q What are the dates of those checks?

10 A 2,010 of it was in 2001 and 3,626 was in 2002.

11 Q And then looking over on the last one, Item  
12 Number 20, table 29B, those withdrawals -- well, how  
13 much were those withdrawals?

14 A 34,500.

15 Q And what are the dates of those withdrawals?

16 A That was October of 2001.

17 Q Okay. So the numbers on the left-hand column  
18 are all shown in the report, but the numbers on the  
19 right-hand column you had to go to the backup to see  
20 what the dates were?

21 A That's correct.

22 Q And that's what you did?

23 A Correct.

24 Q And those are the tables that you relied  
25 upon?

1           A     That's correct.

2                   MR. HOLT: I have no other questions, Your  
3     Honor.

4                   MR. HODGES: Very briefly, Your Honor.

5                   THE COURT: On that document?

6                   MR. HODGES: On the issue that's actually  
7     before the Court.

8                                   REXCROSS-EXAMINATION

9     BY MR. HODGES:

10           Q     Mr. Jackson, I think what you're -- as I  
11     understand your testimony in response to Attorney Holt's  
12     questions is that Mr. Yusuf had access -- or you believe  
13     he had access to all these partnership records that  
14     reflect these amounts that you just went over; is that  
15     right?

16           A     Yes, that's correct.

17           Q     Okay. But you're not testifying that he  
18     actually knew that there was something untoward going on  
19     with respect to the Hameds, even though he may have had  
20     access to those records. You're not saying that, are  
21     you?

22           A     I'm not sure -- I don't think so, but . . .

23           Q     In other words -- let me give you an example.  
24     You and I might have access to, you know, 20 years of  
25     information. It's all collected in -- let's say it's

1 even neatly collected in file cabinets stored in a  
2 warehouse that both you and I have access. The mere  
3 fact that we have access to it doesn't mean that I have  
4 a reasonable suspicion that you haven't been properly  
5 accounting for this or that. Fair enough?

6 A Okay.

7 Q In other words, you have no information --  
8 correct me if I'm wrong -- that even though Mr. Yusuf  
9 may have had access to this partnership information,  
10 that he had any reason to suspect any untoward conduct  
11 by the Hameds?

12 A I don't know how that's even relevant,  
13 untoward conduct.

14 Q Untoward -- let's say illegal, improper,  
15 suspicious.

16 A All I was asked to do was to go through, look  
17 at these that were listed in the report, and determine  
18 if they were sourced before 2007. And I did that.

19 Q Okay.

20 A Okay?

21 Q All right.

22 A And that's all I was asked to do.

23 MR. HODGES: Thank you.

24 THE COURT: Thank you, Mr. Jackson, you may  
25 stand down.

1 Finished?

2 MR. HOLT: You know, I have three more  
3 witnesses. Two are short, the two Hameds, and then  
4 Kim Japinga will be awhile. And, also, I do have a  
5 declaration from Gordon Rhea that I want to submit.  
6 If you need him to actually testify about it, you  
7 can, but I had him do a declaration, since under  
8 104 I don't think he needs to come, about the  
9 attorney's fees allocation in the BDO report.  
10 So --

11 THE COURT: In the BDO report, you said?

12 MR. HOLT: Yes. In the BDO report there's an  
13 allocation of attorney's fees, which Kim --

14 THE COURT: For the criminal work?

15 MR. HOLT: Right. And so he did just a  
16 declaration, which is somewhat consistent with what  
17 Mr. Schoenbach is saying, that the work isn't  
18 allocated individually, it was done collectively.  
19 So I'd like to mark that as an exhibit, and then if  
20 you decide you want him here to testify, I can  
21 bring him tomorrow, but I think under Rule 104 that  
22 the affidavit is all I need.

23 THE COURT: You may present it.

24 MR. HOLT: And what's my next exhibit number?

25 THE COURT: 45? What was 44?

1 (Discussion off the record.)

2 THE COURT: Anything after the tax info  
3 from --

4 MR. HOLT: What's that number?

5 THE COURT: This is 43.

6 MR. HOLT: And, Your Honor, this is just a  
7 declaration from Gordon Rhea. He attaches the plea  
8 agreement and the amendment to the plea agreement,  
9 and he explains the criminal case and basically  
10 talks about how there was a joint defense  
11 agreement, that pursuant to that, defense counsel  
12 worked together on behalf of all defendants, that  
13 the plea agreement resulted in the corporation  
14 pleading guilty only, and that after the plea  
15 agreement, that work continued under the joint  
16 defense agreement during the sentencing phase until  
17 September of 2012 when the joint defense agreement  
18 was terminated.

19 And he also then points out in paragraph 8  
20 that under the joint defense agreement, all legal  
21 and accounting work was done jointly on behalf of  
22 all of the defendants. The bills for attorneys and  
23 expenses reflected the work of counsel done for the  
24 defendants without allocating specific items to  
25 individual defendants. Simply because a bill was

1 directed to a specific defendant did not reflect  
2 their individual personal obligations, as the bills  
3 were the joint obligation of all defendants while  
4 the joint defense agreement was in place. All  
5 defendants were aware of this fact, as applications  
6 for payment of these bills was submitted under the  
7 joint defense agreement that had to be made to the  
8 U.S. Attorney, who would then have to authorize the  
9 funds to pay these bills from the defense accounts  
10 which had been frozen under Court order. And until  
11 the joint defense agreement was terminated, all  
12 legal bills were paid from the United Plaza Extra  
13 account.

14 And I recognize now I have the original and I  
15 gave you the copy, so I'd like to -- if I could  
16 substitute that. And Gordon Rhea was here today.  
17 I told him, because Rule 104, I wasn't sure if he  
18 was needed, but if you want me to have him testify,  
19 I'll have him come in tomorrow morning and go over  
20 it.

21 THE COURT: What's the claim in the BDO?

22 MR. HOLT: Well, Kim Japinga will talk about  
23 that. But in the BDO lifestyle analysis, they  
24 allocate approximately \$4 million of legal fees  
25 related to the criminal case to just the Hameds,

1 and they allocate about 300,000 just to the  
2 Yusuf.

3 THE COURT: If it's divided equally among the  
4 Hameds, there were three Hameds in the criminal  
5 case?

6 MR. HOLT: There were two Hameds and three  
7 Yusufs. And if you're going to allocate it,  
8 technically speaking, the partnership should have  
9 paid for it and it should just be allocated 50/50  
10 between Mr. Yusuf and Mr. Hamed, if you look at it  
11 from that perspective. But if you're going to  
12 allocate --

13 THE COURT: I don't need more than this. If  
14 defense does, then I'll require that Mr. Rhea  
15 appear.

16 MR. HODGES: Your Honor, why this is being  
17 dropped on us at this point in time in a context  
18 like this is -- I think it's unfair, it's not  
19 proper. I suppose the only thing that jumps out at  
20 me, after quickly reviewing it, is that while he  
21 keeps referring to the joint defense agreement, he  
22 doesn't attach it. That certainly is relevant to  
23 the statements that were made in this declaration.

24 MR. HOLT: Well, he can submit it. I don't  
25 have a copy. The dispute arose after the joint

1 defense was terminated, they didn't --

2 THE REPORTER: Excuse me? I can't hear you.

3 MR. HOLT: I don't have a copy.

4 THE COURT: Very well. All right. This is  
5 the next step. Next witness.

6 MR. HOLT: We call Mafi Hamed.

7 MR. HODGES: Your Honor, can we have like  
8 another very brief break so that --

9 THE COURT: What's the timing? I've got --  
10 these poor ladies have been here since 9:00 and you  
11 are talking very fast. So how much time are you  
12 going to need?

13 MR. HOLT: Well, Mafi Hamed is going to be  
14 about eight or nine minutes on direct. Shawn Hamed  
15 is going to be about the same. And then Kim  
16 Japinga is going to be probably half hour on  
17 direct.

18 THE COURT: I gave you the option, which I'll  
19 renew, to resume tomorrow morning since you missed  
20 your flight anyway. We'll take -- do you want to  
21 take five minutes right now?

22 MR. HODGES: If we may.

23 THE COURT: Let's take five minutes now and  
24 then you can decide that during the break.

25 (Recess taken.)



1 THE COURT: Okay. How are we going to handle  
2 the remainder of the evidence?

3 MR. HODGES: Your Honor?

4 THE COURT: Have you agreed between  
5 yourselves?

6 MR. HODGES: Good evening. Greg Hodges on  
7 behalf of the defendants' counterclaim against  
8 plaintiffs. Your Honor, I would submit that we  
9 should finish the testimony tonight, if the Court  
10 is prepared to do that, with our reservations in  
11 mind.

12 THE COURT: You say "reservations", you mean  
13 plane reservations or reservations about going  
14 forward?

15 MR. HODGES: No, no, no. Reservations about  
16 the whole process that's being sprung on us. The  
17 bottom line is, we have -- we didn't make --  
18 certainly had no clue that we were going to have  
19 seven witnesses today, that the hearing would be  
20 going on to tomorrow. One of my counsel has to get  
21 on a plane to go for medical issues tomorrow. I  
22 would -- the reason I would like to complete the  
23 testimony tonight, with the reservation of all of  
24 rights is that at least we can get that knocked  
25 out, and it would be our suggestion that the oral

1 argument on all the motions be held telephonically  
2 so that we don't have to come back here, and that,  
3 you know, we actually do it telephonically so that,  
4 you know, we don't feel like we have to come back  
5 here.

6 THE COURT: Okay. Attorney Holt, do you want  
7 to respond to that?

8 MR. HOLT: I'm willing to go forward tonight,  
9 Your Honor. You do have court personnel and I'm  
10 sympathetic to not wanting to stay. I can do it  
11 tomorrow morning as well.

12 THE COURT: All right. Let's forge ahead. Go  
13 ahead.

14 MR. HOLT: I'll call Mafi Hamed.

15 MUFEED HAMED,  
16 having been first duly sworn, was examined and  
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. HOLT:

20 Q Can you state your name for the record, after  
21 you're seated?

22 A Mufeed Hamed.

23 Q Excuse me?

24 A I'm sorry. What was --

25 Q Please state your name for record.

1 A Mufeed Hamed.

2 Q Okay. Mr. Hamed, when did you actually start  
3 working at the Plaza Extra store?

4 A Right after Marilyn, Hurricane Marilyn.

5 Q And that's around 1995?

6 A 1995.

7 Q And which store did you work in?

8 A Plaza East.

9 Q And just as it relates to this case, this  
10 hearing, at the time that you came, did you start  
11 working with your brother on something outside of Plaza  
12 East?

13 A Yes.

14 Q And what was that?

15 A It was four -- it was -- excuse me. Four  
16 duplexes in Estate Carlton.

17 Q Okay. And are those duplexes that you rent  
18 out?

19 A Yes.

20 Q And those are the houses that Mr. Wally Hamed  
21 testified this morning he bought in the late 1980s?

22 A Yes.

23 Q Okay. And did you take care of the books for  
24 them?

25 A Yes.

1 Q Okay. Showing you Exhibit Number 45, can you  
2 tell me what this is?

3 A (Perusing document.)

4 Q Did you have an opportunity to look at this  
5 before you came and testified today?

6 A Yes, I did.

7 Q And this is checks written on a bank  
8 account?

9 A Yes.

10 Q And what is that bank account?

11 A It's a Scotiabank account.

12 Q And what are the numbers that that Scotiabank  
13 account end in?

14 A 9811.

15 Q Okay. And what is that account used for?

16 A That is used for the apartment complexes -- I  
17 mean, the apartment buildings that we own.

18 Q So to the extent that those accounts show  
19 deposits into 9811, where would those deposits come  
20 from?

21 A Rental income.

22 Q And that's from the units.

23 A Yes.

24 Q The Carlton units.

25 A Yes.

1 Q And to the extent there's any checks going out  
2 of that account, that's expenses for what?

3 A Maintenance.

4 Q On those units.

5 A On those same units, yes.

6 Q Okay. So you're aware in the BDO report that  
7 they said that you should be paying all the money  
8 deposited in this account back to Mr. Yusuf.

9 A Yes, I saw that.

10 Q Okay. And is, in fact, that money owed to him  
11 for any reason whatsoever?

12 A None whatsoever.

13 Q And that's because it's related to income  
14 outside of Plaza?

15 A Yes.

16 Q Okay.

17 MR. HOLT: Now, can I have the witness shown  
18 Exhibit Number 46?

19 THE COURT: He may be shown. Let me ask as to  
20 Number 45, the page -- page number 1 has at the  
21 bottom total year 2002. My second page at the top  
22 says total year 2006. It sounds like there are a  
23 couple of pages missing.

24 Are all the other copies like that or just --

25 THE WITNESS: Yes, they are. Mine is like

1           that.

2           THE COURT: I assume it's not supposed to be  
3           like that.

4           MR. HOLT: No.

5           THE COURT: If you tell me you've got a  
6           printer there, too, I'll be really impressed.

7           MR. HOLT: Yes, Your Honor, let me substitute  
8           that with another full version of that. However,  
9           it's going to be the only copy that I have.

10          THE COURT: Well, we had one other exhibit  
11          that was only one copy; right?

12          MR. HOLT: Yes, that was the David Jackson  
13          chart.

14          THE COURT: That's 36-A, I think it was?

15          MR. HOLT: Yes. And what is this number?

16          THE COURT: This is Number 45.

17                 I think what we'll do on both of those, we'll  
18                 let the witness talk using the originals, but if  
19                 the originals could be left with the Court and then  
20                 plaintiff can go ahead and circulate the -- as to  
21                 36-A and 44, tomorrow you can get that taken care  
22                 of.

23         BY MR. HOLT:

24                 Q     Okay. So you now have the full document in  
25                 front of you?

1 THE COURT: No, no, no. This isn't the full  
2 document either. It's the same thing. The one I  
3 was just handed is the same.

4 MR. HOLT: I would have to print it out.  
5 These are backups to the BDO file. So I would have  
6 to print it out from that.

7 Your Honor, for the purposes of this  
8 testimony, I believe that this version can be used  
9 and substituted, because the real key is not the  
10 years but the total figure of 344,000 on the last  
11 page.

12 THE COURT: Very well.

13 MR. HOLT: Okay?

14 THE COURT: Yeah.

15 MR. HOLT: All right.

16 BY MR. HOLT:

17 Q Looking at Exhibit Number 45, do you see  
18 that?

19 A Yes.

20 Q What is the total amount of funds they claim  
21 are deposited into this account from 2001 through 2012  
22 that were allocated to you?

23 A \$344,929.13.

24 Q Okay. And was that income earned from the  
25 Carlton apartments over this time period or from the

1 store?

2 A Carlton apartments.

3 Q Okay. So 344,000 that BDO says you owe to  
4 Mr. Yusuf is, in fact, not money you owe him at all, is  
5 it?

6 A Absolutely not.

7 Q Okay.

8 MR. HOLT: Do you have Exhibit 45, Your Honor?

9 THE COURT: Yeah, I have the Exhibit 45 with  
10 the missing pages. So do I -- when you said -- the  
11 last question was that BDO says you owe Mr. Yusuf,  
12 is that -- is the claim 344 or is the claim 50  
13 percent of 344?

14 MR. HOLT: They claim 100 percent of it. They  
15 claim on that bank account, 9811, in the name of  
16 Mafi Hamed and Wally Hamed, from 2001 to 2012, they  
17 claim 344,000 in deposits that belong to them, and  
18 his testimony is, no, those were deposits from the  
19 rentals from the apartments out in Carlton.

20 THE COURT: Okay. So in other words, this is  
21 a claim that this money is owed back to the  
22 partnership; correct? As opposed to owed to  
23 Mr. Yusuf?

24 MR. HOLT: No. In the lifestyle analysis, the  
25 Yusufs claim that Mafi Hamed should pay that amount



1 of money directly to him for the money that he took  
2 out. And that's money from -- he established, from  
3 an outside source.

4 Q Now, did Mr. Yusuf know that you had these  
5 apartments out there?

6 A Yes, he did.

7 Q In fact, didn't store employees actually stay  
8 out there and the company paid for it?

9 A Yes, our butcher stays there.

10 Q Okay. So Plaza actually paid his rent to stay  
11 out there?

12 A Plaza Extra pays his rent.

13 Q And Mr. Yusuf knew that you had that separate  
14 account, did he not?

15 A Yes, he did.

16 Q Okay.

17 MR. HOLT: Your Honor, I'd like to show the  
18 witness Exhibit 46.

19 THE COURT: He may be shown.

20 Q Do you have 46?

21 A Yes, I do.

22 Q Can you tell me what Exhibit 46 is?

23 A It is a loan receipt.

24 Q And it's a loan receipt for how much money?

25 A \$500.

1 Q And did you sign this?

2 A I initialed it, yes.

3 Q Okay. And at the bottom, it says "Sergeant  
4 Barnes"?

5 A Yes, it does.

6 Q Who is Sergeant Barnes?

7 A Sergeant Barnes is -- he's a police officer  
8 that was working security, armed security for the  
9 store.

10 Q Okay. So what does this receipt show?

11 A He asked for a loan, we gave him a loan, for  
12 \$500.

13 Q And did you give him the loan, or the  
14 partnership?

15 A The partnership did. It was a business  
16 expense. I mean, a business --

17 Q And when you sat down with the Yusufs to  
18 true-up accounts like that, do they make you pay for the  
19 loan if he doesn't pay it back?

20 A No. Employee loans were a common thing.

21 Q And this is an employee loan?

22 A Yes.

23 Q And, in fact, this is receipt number 2844, do  
24 you see that at the bottom?

25 A Yes.

1 Q And they -- while there's an indication that  
2 you should be paying this \$500 back, in fact, that's not  
3 an obligation of yours, is it?

4 A No, it isn't. It's a business.

5 Q Showing you Exhibit Number 46-A, have you seen  
6 this document before?

7 A Yes.

8 Q Okay. So the first attachment is they say  
9 there's a \$100 there. Do you see that?

10 A Yes.

11 Q Did you sign that receipt?

12 A No.

13 Q And who is Jason?

14 A The bagger.

15 Q Okay. So this is apparently an advance to  
16 Jason?

17 A Yes.

18 Q Is this your obligation?

19 A No.

20 Q And on the next one, there's a charge for \$77.  
21 Do you see that?

22 A Yes. That's for Sergeant Barnes again.

23 Q Okay. What is the number \$77 for?

24 A That was for seven hours of work at \$11 an  
25 hour, night security. We would pay him cash at the end

1 of every night.

2 Q So this was a payment made by Plaza Extra for  
3 services rendered?

4 A Yes. For services rendered, yes, for security  
5 services.

6 Q And then go back to the cover of this. Do you  
7 see where they come up with the total of \$677?

8 A Yes.

9 Q Okay. And then you look over and you see  
10 receipt 2844 there for \$500? Do you see that?

11 A That's the same receipt as the previous.

12 Q So they charged you twice for that receipt,  
13 didn't they?

14 A Yes.

15 Q And, in fact, is any of that money owed back  
16 to Plaza or to Fathi Yusuf?

17 A No.

18 MR. HOLT: No other questions.

19 THE COURT: Cross?

20 CROSS-EXAMINATION

21 BY MR. HODGES:

22 Q Good evening, sir.

23 A Good evening.

24 Q Have I ever deposed you before?

25 A No.

1 Q So we've never had an opportunity to hear you  
2 respond to the complaints you have about the BDO report;  
3 isn't that correct?

4 A Correct.

5 Q Now, Exhibit 45 shows the income -- as I  
6 understand your testimony, shows the income received  
7 with respect to the duplex that you and your brothers  
8 own; is that correct?

9 A Correct.

10 Q Are you the owner or are you and your  
11 brothers?

12 A My brother is.

13 Q Okay. Which brother?

14 A Wally.

15 Q Just you and Wally own this?

16 A Wally is the property owner. It's under his  
17 name.

18 Q Okay. And he has always owned this property  
19 in his own name?

20 A Yes.

21 Q And so as I understand your testimony, you're  
22 testifying that all of the amounts shown on Exhibit 45  
23 represent income received by your brother in connection  
24 with the Estate Carlton duplex over a period from 2001  
25 to 2012; is that right?

1           A     Yes, it is.

2           Q     Okay. Do you know if he reflected that income  
3 in the tax returns filed with any taxing authorities?

4           A     That's a question you have to ask him. I  
5 don't know.

6           Q     Okay. You didn't actually receive any of this  
7 income; right?

8           A     I collected the rental income, yes.

9           Q     You collected it and gave it to him?

10          A     No. I deposited it.

11          Q     You deposited it into his account.

12          A     Into the Scotia account that we -- I'm a  
13 signatory on.

14          Q     Okay. Is that account in your name and his --

15          A     It's in my name and his name, yes.

16          Q     Joint --

17          A     Joint account, yes.

18          Q     Okay. So have you ever recorded that account  
19 in your tax returns --

20          A     No.

21          Q     -- from 2001 through 2012?

22          A     No.

23          Q     And you don't know whether your brother has?

24          A     No, I don't know. I'm pretty sure he did.

25          Q     Pretty sure he did?

1 A (Indicating.)

2 Q Is that what you just said?

3 A Sure.

4 Q And the expenses. Is there any expenses that  
5 are reflected on here that -- or is this all income?

6 A On the BDO report, you're talking about?

7 Q Yes, yes.

8 A It's apparently just all the deposits.

9 Q Okay. So the expenses aren't shown on here.  
10 I think I heard your testimony that this reflects --  
11 reflected the income and expenses. That's not correct;  
12 right? This only shows the income?

13 A No, it says here "deposits." It doesn't say  
14 expenses.

15 Q Okay. Now, didn't this report also have an  
16 adjustment page that went with it? Do you recall  
17 that?

18 A No, I don't recall that. I see an adjustment  
19 column here.

20 Q Okay. The adjustment column and adjustment  
21 amount, but you don't -- you never looked at the  
22 adjustment page that went along with this section of the  
23 report?

24 A No.

25 Q Okay. Exhibit 46 you said was a loan that you

1 authorized to Sergeant Barnes; is that correct?

2 A That is correct.

3 Q And when did Sergeant Barnes repay that  
4 loan?

5 A I don't think he did.

6 Q Why don't you think he repaid that loan?

7 A Because it was -- if it was repaid, it would  
8 have been canceled out.

9 Q Okay. So in other words, you're testifying  
10 here today that neither you nor your brother received  
11 the \$500 reflected by this loan?

12 A No.

13 Q Never received a payment back from Sergeant  
14 Barnes.

15 A No, no.

16 Q And who is it that decided to loan Sergeant  
17 Barnes the money?

18 A I did.

19 Q Okay. And you still say that you have no  
20 responsibility for that loan?

21 A Employee loans are a common thing. It's  
22 always been done that way.

23 Q So you're saying even though you authorized  
24 the loan, you have no responsibility for it.

25 A No, I have no responsibility for it, no.



1 Q Okay.

2 A It's a business.

3 Q And you know for a fact that that loan was not  
4 repaid?

5 A Yes.

6 Q Okay. 46-A is an advance made to Jason, one  
7 of your baggers; is that correct?

8 A It appears to be so, yes.

9 Q And you authorized that?

10 A It has "for Mafi" on it, so, yes, I did.

11 Q Whose handwriting is that?

12 A I don't know.

13 Q It's not yours?

14 A It's not mine.

15 Q And just jumping back to the other exhibit,  
16 45 -- excuse me, 46, the \$500 receipt, do you recognize  
17 the handwriting on that receipt?

18 A No. I just recognize my initial.

19 Q Okay. Was there somebody that ordinarily  
20 prepared these receipts or chits -- what do you call  
21 them? Receipts or chits?

22 A This would have been taken out of the service  
23 desk, the cash drawer, and the service desk employee  
24 would just write up this receipt.

25 Q And you would initial it?

1           A     She would dispense the money and I would  
2     initial it.

3           Q     Okay. 46-A, we're talking about the \$100  
4     advance to Jason, you authorized it; correct?

5           A     Yes, I did.

6           Q     And was it ever repaid?

7           A     Apparently not.

8           Q     You don't seem to be as certain about that one  
9     as you were about the 500. Are you certain whether it  
10    was repaid or not?

11          A     Apparently not. It hasn't been paid.

12          Q     Okay. Simply because it was a receipt found  
13    in the safe. Is that --

14          A     Yes.

15          Q     -- the assumption?

16          A     Yeah. It would be canceled out if it was  
17    paid. That's the common practice.

18          Q     Okay. The common practice would be if you  
19    find any receipt in the safe, it would be an outstanding  
20    loan --

21          A     Right.

22          Q     -- or advance?

23          A     This receipt goes up to the cash room on the  
24    second floor in the office. The employee would take it  
25    there and set it aside. When the employee that takes

1 the loan out pays that loan back, she finds the receipt,  
2 or she looks for the receipt, or she has it in her  
3 ledger in her Excel file, and she cancels it out. So  
4 apparently these two loans were never repaid.

5 Q Okay. And it's your testimony that the  
6 manager that authorized the loan has no responsibility  
7 for collection?

8 A No. Just like a bank manager when he  
9 authorizes a loan, is he responsible for it?

10 Q Are you asking me a question?

11 THE COURT: Move on, please. Move on.

12 Q The \$77 receipt, again, is your hand anywhere  
13 on there, other than the initial?

14 A That is my initial, that's it.

15 Q Okay. All right. Thank you, sir.

16 A You're welcome.

17 MR. HODGES: Oh, wait a minute. Hold on.

18 (Discussion off the record.)

19 MR. HODGES: Thank you.

20 REDIRECT EXAMINATION

21 BY MR. HOLT:

22 Q When you approve these employee loans, or  
23 initial them, is that because you're the manager on  
24 duty?

25 A Yes.

1 Q So if Yusuf Yusuf had been the manager on  
2 duty, then he might have to approve that?

3 A Yeah, he's given out a lot of loans, too,  
4 yes.

5 Q And if a loan that he gives out is not  
6 collected, do you hold him responsible for that?

7 A No.

8 Q When you all sit down and do your evening up  
9 of all of these chits, have you ever held another Hamed  
10 or Yusuf responsible for an employee loan that wasn't  
11 repaid?

12 A No.

13 Q And Fathi Yusuf certainly knows that practice,  
14 doesn't he?

15 A He sure does.

16 Q And if he looked at a chit, he could tell if  
17 that was an employee loan or whether or not that was a  
18 draw by you?

19 A Absolutely, yes.

20 MR. HOLT: No other questions.

21 THE COURT: Thank you, Mr. Hamed. You may  
22 stand down.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: Next?

25 MR. HOLT: We call Hisham Hamed.

1 HISHAM HAMED,  
2 having been first duly sworn, was examined and  
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. HOLT:

6 Q Can you state your name for the record,  
7 please?

8 A Hisham Hamed.

9 Q And I take it that you've also worked at Plaza  
10 Extra?

11 A Yes, I have.

12 Q Okay. And have you worked at the Plaza Extra  
13 store in Estate Pleasant?

14 A Yes.

15 Q And what would be your job when you worked at  
16 Estate Pleasant?

17 A Manager, and I used to manage the front end  
18 and the bakery area and the cash room.

19 Q Okay.

20 MR. HOLT: Your Honor, could I have the  
21 witness shown Exhibits 47 and 48?

22 THE COURT: He may be shown.

23 Q Looking at Exhibit Number 47, this is an entry  
24 from the BDO report indicating that you owe \$34,500?

25 A Uh-huh, yes.

1 Q And then there's backup to that. Do you see  
2 that?

3 A Yes.

4 Q And it says \$34,500?

5 A Yes.

6 Q And that's cash that you would have taken out  
7 of the account at the Plaza West store?

8 A Yes.

9 Q Okay. And is this amount still outstanding?

10 A No.

11 Q Okay. And why is that?

12 A Because Mike and I went through all the chits  
13 that we had, and then, you know, we allocated how much  
14 he had owed and how much I had owed, and then he had a  
15 remaining balance, which is Exhibit 48.

16 Q Okay. Exhibit 48 shows the balance that he  
17 owed you after you evened up the chits?

18 A Right. And then the 34,500, I kept it because  
19 I wanted to show my family, the Hameds, what I had taken  
20 out.

21 Q Okay. So at the time that you trued up with  
22 Mike, you could have torn that chit up.

23 A Yes, like he tore up the ones that he had.

24 Q Okay. And once you put them together, he owed  
25 you \$92,077; is that correct?

1 A Yes.

2 Q So then this chit replaced all of the other  
3 chits.

4 A Yes.

5 Q Okay. And when the Federal agents came and  
6 seized everything, because you hadn't torn yours up,  
7 they got that one; right?

8 A Yes, that's correct.

9 Q Did you ever have a chance to true up all of  
10 your chits with your own family?

11 A No.

12 Q Okay. Is that sum of money, \$34,500, due and  
13 owing?

14 A To who?

15 Q Is that owed to the Yusufs?

16 A No.

17 Q And would Mike Yusuf know that?

18 A Yes.

19 MR. HOLT: No other questions.

20 THE COURT: Cross?

21 CROSS-EXAMINATION

22 BY MR. HODGES:

23 Q Evening.

24 A Good evening.

25 Q Mr. Hamed, have I ever had a chance to depose

1 you or examine you under oath in any way?

2 A No.

3 Q This chit that is attached to Exhibit  
4 Number 47 was done around the time of the FBI raid;  
5 isn't that right?

6 A It was done on October 19, 2001.

7 Q Do you remember when the raid was?

8 A It was in October 2001. I don't remember the  
9 exact date, I can't recall right now.

10 Q So you don't know if this was before or after  
11 the raid?

12 A Obviously it's got to be before the raid  
13 because the Feds had it.

14 Q Okay. Or after the raid. Is that what you're  
15 saying?

16 A Yeah, probably, yeah.

17 Q Okay.

18 THE COURT: I'm sorry. I don't get --

19 THE WITNESS: Yeah, the Feds picked this up  
20 from my desk, so obviously it happened after.

21 THE COURT: So the second page -- you got  
22 34,500 before the raid.

23 THE WITNESS: Okay. What happened is, I got  
24 the 34 -- I had taken out \$34,500; right? And Mike  
25 had taken out more than -- the 92,077, so we went



1           ahead and we split the chits, and I said, okay,  
2           well, this is -- mine is done, his is done. His  
3           remaining balance was the \$92,077. So he tore up  
4           all his chits, and I saved this so I could show it  
5           to my brothers and my father.

6 BY MR. HODGES:

7           Q       And why would you have done that? Why would  
8           you want to show that to your brother and father?

9           A       Because I took out this money, and it goes  
10          against the Hameds.

11          Q       Okay. And you're saying that you and Maher  
12          Yusuf did what amounts to an accounting before the raid  
13          where the Department of Justice grabbed this chit off  
14          your desk? Is that --

15          A       Yes.

16          Q       And that accounting was with respect to the  
17          chits that were in the Plaza Extra West store; is that  
18          correct?

19          A       That's correct.

20          Q       Just between you and Maher Yusuf?

21          A       Yes.

22          Q       And you're saying that that accounting of your  
23          chits, just your chits and just his chits, resulted in  
24          him owing \$92,077?

25          A       Yeah, that's correct. That's because only him

1 and I worked in Plaza West at that time.

2 Q Okay. No other Hameds or Yusufs worked in the  
3 store at that time?

4 A Wally used to work at the Plaza West in the  
5 beginning initial phase, but he was based out of Plaza  
6 East.

7 Q So even though you agreed with -- as I  
8 understand your testimony, even though you agreed with  
9 Mike or Maher Yusuf before October 19, 2001 to split the  
10 chits and determine what was owed, he didn't do a chit  
11 for 92,000 until April 15, 2003; is that right?

12 A I'm not sure -- what do you mean? I don't  
13 understand the question.

14 Q When did you do this accounting with --

15 A We did the accounting in 2001.

16 Q Okay. So you're saying even though that  
17 accounting was done in 2001 the time that the Department  
18 of Justice grabbed this chit in Exhibit 47 off of your  
19 desk, the evidence of that accounting was not done until  
20 April 15, 2003; is that right?

21 A Well, this is the chit that I have that Mike  
22 signed. That's his signature on there that he said that  
23 he took that money out.

24 Q Okay. But I'm trying to -- why the difference  
25 between October 2001 and April 2003? It took you that

1 long to talk Mike into signing a chit, or what?

2 A No. He had other chits.

3 Q Oh. You're saying the resolution, the  
4 accounting actually did not occur around the time you  
5 issued this chit in October of 2001. Is that what your  
6 testimony is?

7 A I don't understand what you're saying.

8 Q When did the accounting between you and Maher  
9 Yusuf take place that --

10 A We did one in 2001. And I have this chit here  
11 in 2003. There's also other chits that he has that he  
12 signed for that are not -- you know, that I don't have  
13 them in front of me, but he signed for them and they  
14 were at different dates.

15 Q Right. And you're saying that his -- as I  
16 understand your testimony, because you sat down with him  
17 in October -- or was it in October of 2001 or before  
18 that? When did you do this reconciliation with Mike?

19 A I did the -- I signed this chit in 2001.

20 Q All right. So when did you do the  
21 reconciliation?

22 A What do you mean "the reconciliation"?

23 Q The one that you say you agreed with him that  
24 he owed more than you, and that resulted in the issuance  
25 of this chit that is identified at Exhibit 48.

1           A     What I'm trying to explain to you is that  
2 there were prior chits, so this was the final chit. So  
3 there may have been other chits that Mike had signed for  
4 that he destroyed them. So this is the last one that we  
5 have, which is Exhibit 48.

6           Q     That's the last chit that you have?

7           A     That -- no, not the last chit I have. The  
8 last chit for that period for the big safe. In the  
9 smaller safe there was other chits.

10          Q     All right. So you're -- so I'm -- pardon me  
11 if I'm slow.

12          A     I know, I'm a little bit confused. I'm not  
13 too good up here.

14          Q     So the reconciliation that you had with Maher  
15 Yusuf would have been shortly before or shortly after  
16 the October 19, 2001 chit?

17          A     It was shortly about -- before, yeah.

18          Q     Shortly before?

19          A     If not at that time when I signed that chit.

20          Q     Okay. Because you wouldn't have signed that  
21 chit in October 19, 2001, if you'd already reconciled  
22 with him and you agreed that you didn't owe anything but  
23 he owed more; right?

24          A     Well, I would have signed this chit because I  
25 would not have taken out \$34,500 one time.

1 Q Okay.

2 A Okay. There was an accumulation of chits, and  
3 that was the one that I said, okay, this is the total,  
4 he added up his side how much he owed. Okay? And then  
5 since that time, he took out more money, and then this  
6 is what he has the final product.

7 Q All right. So you're saying that -- between  
8 October of 2001 and April 15, 2003, he would have  
9 accumulated more chits that ultimately resulted in him  
10 agreeing that he owed \$92,000 and change and you owed  
11 nothing; is that right?

12 A That's correct.

13 Q And who wrote the word "Mike" on Exhibit 48,  
14 do you know?

15 A I did.

16 Q And that's his signature you're saying, or  
17 initials there in the circle?

18 A Yeah, that's his signature.

19 Q Okay.

20 MR. HODGES: Thank you, sir.

21 THE COURT: Anything else? Thank you,

22 Mr. Hamed, you may step down.

23 MR. HOLT: We call Kim Japinga.

24 MS. PERRELL: Wait, wait, wait.

25 (Discussion off the record.)

1 MR. HODGES: Your Honor, I'm sorry.

2 THE COURT: Go ahead.

3 BY MR. HODGES:

4 Q Mr. Hamed, did you study all of the BDO report  
5 that you've heard testimony about today?

6 A Did I study all?

7 Q Yes.

8 A In which capacity? I mean, for -- for the  
9 whole voluminous --

10 Q Yes.

11 A With the backup and the schedules and  
12 everything, no.

13 Q Okay. Did you ever look at a schedule that  
14 reflected that the \$92,077 that's on Exhibit 48 was  
15 actually charged to Maher Yusuf?

16 A Yes, I saw that.

17 Q You saw that. So you're not suggesting to the  
18 Court that he's trying to get away with not paying that  
19 \$92,000, are you?

20 A For that specific amount, no, but for other  
21 amounts, I think he's trying to get away, yes.

22 Q That wasn't my question, though, was it?

23 A No, but I was answering your question.

24 Q Okay. Thank you.

25 A Okay. You're welcome.

1 THE COURT: Thank you. You may step --

2 MR. HOLT: Just briefly.

3 THE COURT: Hold on.

4 REDIRECT EXAMINATION

5 BY MR. HOLT:

6 Q You saw where Mike Yusuf claimed that or  
7 admitted knowledge that he owed the 92,000; correct?

8 A Yes.

9 Q And that's what it's supposed to be; right?

10 A Right.

11 Q But because of that true-up, your 34,000  
12 wasn't supposed to be in this report, was it?

13 A That's correct.

14 MR. HOLT: Thanks. No other questions.

15 KIM JAPINGA,

16 having been first duly sworn, was examined and  
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. HOLT:

20 Q Can you state your name for the record,  
21 please?

22 A Kim Japinga, J-A-P-I-N-G-A.

23 Q And where do you reside?

24 A Coakley Bay Condos on the east side.

25 Q And what is your involvement in this case?

1           A     I'm sorry. Say that again.

2           Q     What is your involvement in this case?

3           A     In this case I work primarily on the  
4 documents, handling those for the attorneys.

5           Q     Okay. And when you say "handling the  
6 documents", what does that consist of?

7           A     Well, what that consists of is, I take in the  
8 documents. There was -- there were a number of  
9 documents from the FBI raid, a number of documents that  
10 were sent over from the FBI offices in Puerto Rico not  
11 too -- about a year ago, all the pleadings as well as  
12 any documents provided by our clients, as well as those  
13 produced by the other side. So what I do is I take all  
14 of those, I run them through a program so they can be  
15 searched, and then I put them in a database, and  
16 information against each document is entered into the  
17 database, such as type and date and a description, that  
18 kind of thing, Bates number.

19          Q     And does that include the documents that have  
20 been produced by Hamed to Yusuf and Yusuf back to  
21 Hamed?

22          A     Correct, it does.

23          Q     And then do you do an analysis of those  
24 documents?

25          A     I do.



1 Q Do you have a law degree?

2 A I do.

3 Q And where did you graduate from law school?

4 A University of Indiana in Bloomington.

5 Q And what background do you have in the  
6 analysis of legal documents?

7 A Well, I started out, after I clerked right out  
8 of law school, I worked as a special assistant to the  
9 director of management and budget for the State of  
10 Michigan, and there I was responsible for helping  
11 prepare the Governor's annual budget address, which of  
12 course was pretty voluminous in terms of documents that  
13 needed to be analyzed for the address.

14 After that I went to work on Capitol Hill. I  
15 was a counsel and a chief counsel for a subcommittee on  
16 civil service, and in that capacity, we had both  
17 legislative and oversight responsibility. Part of our  
18 oversight responsibility was to conduct investigations.  
19 Again, a lot of documents involved in those  
20 investigations.

21 And then finally, I worked a little over a  
22 decade for American Express, and I was a vice-president  
23 for human resources global compliance program, which  
24 meant that in the 35 countries where we had employees,  
25 my team was responsible for making sure that we were in

1 compliance with the labor laws of the particular  
2 countries, so we would do internal audits that were  
3 document-related, as well as our department was  
4 responsible for running the U.S. Affirmative Action  
5 program, so we were constantly responding to audits by  
6 the Department of -- Federal Department of Labor. And,  
7 finally, our group was responsible for sarbanes-oxley  
8 compliance as it related to human resource matters,  
9 executive compensation, stock options, restricted stock,  
10 and payroll. So, again, that was a pretty  
11 document-intensive responsibility.

12 Q Okay. And as part of your work in this case,  
13 have you reviewed the BDO report?

14 A I have.

15 Q And have you had a chance to personally  
16 perform an analysis of the BDO report similar to the  
17 analysis that you've been talking about?

18 A I did.

19 Q And can you tell us briefly, in looking at the  
20 BDO report, what -- how does that work?

21 A Well, in the report, the first part, which has  
22 been introduced into evidence, there are, by person, for  
23 each person, there are summary tables, and so what you  
24 do is you look at the summary information, and that  
25 refers you to footnotes, which then refer you to the

1 tables that we've been looking at. And then within the  
2 tables, you then have to go -- to understand where the  
3 information is coming from the tables, then you go to  
4 the documents that BDO provided as supporting documents,  
5 and they have those divided up by individual.

6 Q And have you done an analysis of the number of  
7 the tables files and subfiles?

8 A Yes, I've looked at everything.

9 Q Okay. And is the work you're doing, is this  
10 accounting work?

11 A No, no.

12 Q What is it?

13 A I would call it more fact-checking. Looking  
14 to see if the data presented in the report matches up  
15 with the documentation that was provided by BDO.

16 MR. HOLT: And I, once again, am lost on my  
17 exhibits. I apologize. What's the next?

18 THE COURT: 49 is the next one.

19 BY MR. HOLT:

20 Q All right. Showing you Exhibit 49, and this  
21 question relates to the statute of limitations, this  
22 series of questions. Can you tell me what Exhibit 49  
23 is?

24 A Okay. Exhibit 49 is the summary table out of  
25 the BDO report for Wally Hamed. And what they did for

1 each individual person is they created a chart, as you  
2 see here, and then all of the columns on the left, the  
3 descriptions are pretty consistent from person to  
4 person, and Wally, for example, has a few more items on  
5 his summary page than the others do, but . . .

6 Q And on this particular one, on the third line  
7 down, there's an allocation to Wally Hamed for  
8 \$1,778,000. Do you see that?

9 A I do.

10 Q And was the backup provided for this?

11 A No, it was not. There were -- I should back  
12 up and say there were instances in the tables -- I want  
13 to say maybe four or five, it might have been more than  
14 that -- where if they have identified a particular  
15 ticket/receipt/chit, depending on what you want to call  
16 it, they might say "this refers to the August 15, 2012."

17 Q Okay. And then in this file, the backup to  
18 this actually had a letter, did they not, on the next  
19 page?

20 A They did.

21 Q And that's on the next page; correct?

22 A Yes, it is.

23 Q All right. On this one they have a withdrawal  
24 of 1.6 million?

25 A That's correct.

1 Q So that doesn't match up to the number on the  
2 cover.

3 A No, it does not.

4 Q But that was given as the backup for this  
5 item.

6 A Yes.

7 Q Okay. And in looking at this letter, it's a  
8 letter dated August 15 of 2012, it's a letter to  
9 Mohammad Hamed from Fathi Yusuf, and it's discussing  
10 past confirmed withdrawals, 1.6 million; right?

11 A Yes, yes.

12 Q And so looking at this chart all by itself,  
13 can you tell whether or not that's a claim that predates  
14 2004 or a claim that postdates that?

15 A No, you can't tell what the date of the past  
16 confirmed withdrawals for Yusuf.

17 Q So in order to try to make --

18 THE COURT: Excuse me. While we got the rain,  
19 speak closely into the microphone.

20 A Sure. On this, for the past confirmed  
21 withdrawals of the \$1.6 million, you can't tell from  
22 this letter what date that 1.6 million is referring to,  
23 what the date of those withdrawals were.

24 Q Okay.

25 MR. HOLT: Could I have the witness shown

1 Exhibit 49-A, Your Honor?

2 THE COURT: She may be shown.

3 Q So in order to figure out when this  
4 1.6 million was allegedly due, did you have to do some  
5 further digging?

6 A I did.

7 Q And showing you Exhibit 49-A, what is this?

8 A This is an excerpt from the deposition of  
9 Maher Yusuf on April 3, 2014, in this case, in the 370  
10 case.

11 Q And in preparation for your testimony, did you  
12 excerpt some portions of his testimony where he talked  
13 about the truing up of the funds that are referred to in  
14 the previous letter you talked about?

15 A Yes.

16 Q And in his deposition, they talk about the  
17 destruction of chits and things like that?

18 A They do.

19 Q All right. And then over on page 65, do you  
20 see where they talk about how the records would come up  
21 to this sum of 1.6 million?

22 A I do.

23 Q And can you just explain that to the Court.

24 A Well, according to Mr. Yusuf, he said that  
25 when they did their true-up for the Yusuf side of it for

1 the Plaza Extra East store, they owed -- Yusuf said it  
2 was owed 1.3 million, and then the Hameds owed  
3 2.9 million, so the difference -- the difference would  
4 be 1.6 million owed by the Hameds.

5 Q And then these are the records that have  
6 been -- at least for the Yusufs, have been destroyed, or  
7 Mike says he threw them away?

8 A Yes, he said that he had heaps of receipts and  
9 that he tore them up.

10 Q And he tore them up before the raid or at the  
11 time of the raid?

12 A It would have been before the raid. And when  
13 I say he tore them up, I meant the Yusuf tickets or  
14 receipts.

15 Q Okay. So that claim would predate the raid in  
16 2001.

17 A Correct.

18 Q So if the statute of limitations is 2006 or  
19 whatever, then that claim would be barred by the statute  
20 of limitations.

21 A That's correct.

22 Q All right. Now, as for the BDO report, were  
23 you asked to do an analysis of that report?

24 A Yes.

25 Q So let me just go through a couple of the

1 things. First of all, Mr. Jackson was asked a lot of  
2 questions about Exhibit Number 38, it's the color chart.

3 A Yes.

4 Q And did you assist in the preparation of this  
5 report?

6 A I did.

7 Q Okay. And all of these color lines that we  
8 see on Exhibit 38, where did that information come  
9 from?

10 A That came from the BDO report. It's just a  
11 graphic representation of the text in the report.

12 Q Okay. So this is not information you  
13 generated. You just took their statement from page 22  
14 and you just turned it into a color graph.

15 A That's correct.

16 Q So if it's inaccurate in any way, it's because  
17 they reported the information inaccurately.

18 A Yeah. I didn't make any determination whether  
19 that was accurate or not. I just simply took what was  
20 reflected in the report.

21 Q All right. And if it's accurate, then this  
22 tells you where they thought they had reliable  
23 information and where they thought they had questionable  
24 information and where they had no information.

25 A That's correct.



1 Q Okay. Now, showing you Exhibit 42, were you  
2 asked to do an analysis of the documents that were not  
3 included in the BDO report of Yusuf accounts?

4 A I was.

5 MR. HOLT: Can I have the witness shown  
6 Exhibit 42?

7 THE COURT: She can be shown.

8 Q Now, in looking at Exhibit Number 42, this is  
9 the exhibit that David Jackson talked about?

10 A It is.

11 Q And this lists a number of accounts -- and  
12 these were just Yusuf accounts that were left out of the  
13 BDO report.

14 A Correct.

15 Q Okay. And what did you do to make a  
16 determination that all of these accounts were not in the  
17 BDO report?

18 A Well, I took a look -- a couple of things. I  
19 looked at the draft summary schedules that the FBI,  
20 U.S. Government, prepared to see what bank accounts they  
21 had listed, and then I looked -- did a search through my  
22 database to see what other documents we might have with  
23 accounts for the Yusufs' bank and credit card accounts,  
24 and then I compared that list to what was in BDO, and  
25 what you see in red are the accounts that weren't listed

1 in BDO as being analyzed by the BDO report.

2 Q Okay. So let's just look at the first  
3 account. That's Fathi Yusuf, and I'm going to call it  
4 BFC, Banque of Francaise Commerciale.

5 A Uh-huh.

6 Q Okay. So that's an account that is known to  
7 exist for Fathi Yusuf in the criminal case that was not  
8 in the BDO report.

9 A That's correct.

10 Q And have actually some of those accounts been  
11 produced in discovery back and forth between the  
12 parties?

13 A Yes, yes. Not complete, but, yes, they have  
14 been.

15 Q Okay. And then we see -- 1, 2, 3, 4, 5 -- six  
16 Cairo Amman Bank accounts for Fathi Yusuf.

17 A Yes.

18 Q And were any of those included in the BDO  
19 report?

20 A They were not.

21 Q Okay. And the account numbers on the right --  
22 which numbers do I have to look at to make sure these  
23 are different accounts instead of the same account?

24 A Okay. You look at the -- the first five  
25 numbers indicate what differentiate the accounts. The

1 last numbers started with 17, that's a consistent number  
2 for all of Mr. Yusuf's Cairo Amman Bank accounts, but  
3 the first five numbers are how you can differentiate  
4 when it's a different account.

5 Q And you're familiar with the chart that we  
6 discussed earlier prepared by the accountant for the  
7 criminal defense lawyers?

8 A Yes.

9 Q And it has these accounts listed on it?

10 A Yes.

11 Q And what is the approximate amount of dollar  
12 value of funds going through these accounts?

13 A It's millions.

14 Q Okay. And then we come down to the two credit  
15 cards for Fathi Yusuf: the American Express account, the  
16 Scotia Visa Gold account. How do we know these accounts  
17 exist for Fathi Yusuf?

18 A Because I had documents probably from the  
19 criminal -- from the -- probably documents that the FBI  
20 collected during the raid, and I had -- I just -- I just  
21 had to do a search on -- I have a typed description in  
22 the database that will tell me who has a credit card.

23 Q And were these accounts in the BDO report?

24 A No, they weren't.

25 Q All right. And then the next like six lines

1 on the left really is just one account at BFC; is that  
2 correct?

3 A Yes.

4 Q So that's another account -- do you see Hamdan  
5 Corporation, Fathi Yusuf, do you see that?

6 A Yes, I do.

7 Q Okay. And that's one of the accounts that was  
8 used to launder money?

9 A Yes, that's correct.

10 Q And that's on the main chart; is that  
11 correct?

12 A Yes.

13 Q All right. And then you see -- and actually,  
14 I missed one above -- Fathi Yusuf Merrill Lynch account  
15 above that, and then you see a Fathi Yusuf account below  
16 that and a Hamdan bank account below that. Do you see  
17 that?

18 A Yes, I do.

19 Q And were any of these -- first of all, are  
20 these three Merrill Lynch accounts known to exist  
21 between the documents exchanged between the parties?

22 A They are, yes.

23 Q And do any of these accounts show up in the  
24 BDO report?

25 A They do not.

1 Q And then we come down to the Scotiabank for  
2 Mike Yusuf, the credit card for Mike Yusuf, those two  
3 documents?

4 A Yes.

5 Q Those documents are known to exist because of  
6 the exchange of discovery in this case?

7 A That's correct.

8 Q And were any of those in the BDO report?

9 A They were not.

10 Q Okay. Then we see six accounts for Neje  
11 Yusuf?

12 A Uh-huh.

13 Q Okay. Are those known to exist through the  
14 discovery exchanged between the parties in this case?

15 A They are.

16 Q And are any of those included in the BDO  
17 report?

18 A They are not.

19 Q And then the last account, United Corporation  
20 Prudential-Bache account that we've heard so much about  
21 today. Did you do a search to see if that was included  
22 in the BDO report?

23 A I did.

24 Q Okay. And was that included in the BDO  
25 report?

1           A     It was not.

2           Q     Okay. Now, if we took all of these accounts  
3 and included them in the BDO report, how many subfiles  
4 would this create?

5           A     Well, it would be a number, because for each  
6 year, you could theoretically have 12 months of  
7 statements. I don't think there are 12 months for every  
8 year, but it would be a voluminous amount.

9           Q     It would be a lot of records.

10          A     It would, it would.

11          Q     And it would be millions of dollars?

12          A     Yes.

13          Q     Okay. Now, showing you Exhibit Number 42-A,  
14 and it goes with this one, can you tell me if you were  
15 asked to prepare an analysis of any mention of the FBI  
16 U.S. Attorneys' analysis that we've talked about  
17 today?

18          A     Yes.

19          Q     And did you do -- well, tell me, first of all,  
20 what did you do to see whether or not -- and when I talk  
21 about -- were you in court when I talked about Exhibit  
22 Number 10, the big, thick binder?

23          A     I was.

24          Q     And that's the document that you understand  
25 that we were looking to see if BDO had looked at?

1           A     Correct.

2           Q     Did you find anywhere in this report where BDO  
3 discussed the 1996, 2001 account or any of the large  
4 accounts that the FBI and U.S. Attorney reviewed in that  
5 analysis?

6           A     No, I did not.

7           Q     Okay. And so you did a search to see the  
8 number of times it was mentioned in the BDO report in  
9 text, and there was none; correct?

10          A     Correct. As well as looking at all of the  
11 documents provided by BDO.

12          Q     Okay. So then you did a same search for the  
13 exhibits to the report, which are all the backup;  
14 correct?

15          A     Correct.

16          Q     Did you see it listed anywhere?

17          A     No, no. There was a mention of a Cairo Amman  
18 Bank account for Wally, but the footnote said that the  
19 report -- that the account was not considered in their  
20 analysis, but it didn't say why.

21          Q     Okay. And did you see any mention of this FBI  
22 report listed in any of the BDO documents reviewed?

23          A     No.

24          Q     Okay. And had they included it in any of  
25 their tables or subfiles, it would have shown up in your

1 search?

2 A No, they did not.

3 Q But if they had, would it have shown up in  
4 your search?

5 A Oh, sure, sure. I mean, in addition to the  
6 search, I've physically looked at every document.

7 Q Okay. And then the Yusuf accounts that were  
8 located and analyzed by the FBI but not in the report,  
9 you also made a list of those?

10 A Yes.

11 Q Okay. And that's the next set of documents we  
12 see; is that correct?

13 A Yes. The next set of accounts.

14 Q Okay. And then were you also asked just to do  
15 an analysis of the number of files in the BDO report  
16 that addressed the specific Hameds and the number of  
17 files that addressed the Yusufs?

18 A I did.

19 Q And showing you Exhibit Number 50, can you  
20 tell me whether or not this is the results of your  
21 analysis?

22 A (Perusing document.)

23 MR. HODGES: This is what number?

24 MR. HOLT: 50.

25 A Yes.



1 Q So if I look in the right-hand column, I see  
2 Wally Hamed's name; correct?

3 A The left-hand column?

4 Q Yes.

5 A Yes.

6 Q I see 1,245 subfiles for him?

7 A That's correct.

8 Q And then if I go over, I look at Fathi Yusuf,  
9 I see 188.

10 A That's right.

11 Q So you then totaled at the top the number of  
12 files in the database, which was 3,253?

13 A Yes.

14 Q And of those 3,253, how many of these files  
15 were Hamed files?

16 A 2,907, or about 89 percent.

17 Q And how many of these were Yusuf files?

18 A 346, or almost 11 percent.

19 Q Okay. And then were you also asked to do an  
20 analysis of the attorney's fees --

21 A Yes.

22 Q -- that BDO allocated to the various Hamed and  
23 Yusuf parties?

24 A I was.

25 Q And showing you Exhibit Number 51, can you

1 tell me what that is?

2 A Yes. This is the allocation of the attorney's  
3 fees in the criminal case that BDO allocated between the  
4 Hameds and the Yusufs. So for the Hamed family, they  
5 allocated 95 percent of the total cost of the attorney's  
6 fees, and for the Yusuf family, they allocated five  
7 percent.

8 Q And while that's in black and white, we  
9 actually did a color version; is that correct?

10 A Yes.

11 Q So if we look at how they allocated the  
12 attorney's fees between the Hameds and the Yusufs, they  
13 allocated 95 percent of the total fees to the Hameds and  
14 five percent to the Yusufs.

15 A That's right.

16 Q So over 4 million to the Hameds and only  
17 237,000 for the Yusufs.

18 A That's correct.

19 Q And that's what BDO -- that's their  
20 allocation.

21 A Yes.

22 Q Okay. Now, were you then asked to do an  
23 analysis of just sample errors and omissions done by  
24 BDO?

25 A I was.

1 Q And does some of that analysis include things  
2 that we've discussed today?

3 A They do, yes.

4 Q And some of it will be things that we have not  
5 yet covered?

6 A Yes, that's correct.

7 Q Okay. So -- and these are -- showing you  
8 Exhibit Number 51, is this the analysis that you did?

9 THE COURT: 50 -- what number? 52?

10 THE WITNESS: Should be 52.

11 MR. HOLT: Okay. 52?

12 THE WITNESS: Uh-huh.

13 Q All right. So the first one -- these were  
14 sample errors and omissions that you found?

15 A Yes, this is a listing of them.

16 Q Okay. And so the first one you found is a  
17 \$1.5 million Hamdan check; is that correct?

18 A Yes, that's correct.

19 Q Showing you Exhibit Number 53, is this in the  
20 BDO report where this is mentioned?

21 A Yes, this is listed on table 35A under Fathi  
22 Yusuf's tab.

23 Q Okay. And so this actually you blocked off in  
24 red where there are checks that were made out to Fathi  
25 Yusuf which they then allocated as not being owed; is

1 that correct?

2 A Yes. What was kind of fascinating about this  
3 is, I looked at the note number 2 where it said, "These  
4 checks were paid to the order of Mr. Fathi Yusuf and  
5 used to buy cashier checks for Hamdan Diamond. As per  
6 Mr. Yusuf, these cashier checks represent a repayment of  
7 a debt of the partnership with Hamdan Diamond." And  
8 that kind of pricked my ears up because I didn't recall  
9 ever there being a debt owed by the partnership to  
10 Hamdan Diamond.

11 Q Okay. So showing you Exhibit Number 54, is  
12 this the backup in the BDO file to this analysis?

13 A Yes, it is.

14 Q Okay. And so in the BDO analysis, you can  
15 actually see specific checks written to Fathi Yusuf; is  
16 that correct?

17 A Yes.

18 Q And these checks are 500,000, 500,000,  
19 700,000, 700,000, 100,000, 100,000, and you see them  
20 all. Anyway -- 200,000 -- all these checks were listed  
21 actually in the cover; is that correct?

22 A On the table, yeah, table 35A.

23 Q And so these checks were paid to Fathi Yusuf  
24 but they weren't allocated as funds received by him; is  
25 that correct?

1           A     That's correct.

2           Q     And the note that BDO gave to justify that,  
3     again, could you read note number 2 into the record?

4           A     Sure.  "These checks were paid to the order of  
5     Mr. Fathi Yusuf and used to buy cashier checks for  
6     Hamdan Diamond.  As per Mr. Yusuf, these cashier checks  
7     represent a repayment of a debt of the partnership with  
8     Hamdan Diamond."

9           Q     Now, did BDO show any evidence of that debt?

10          A     No.  That's what was so interesting about it.  
11     And then when I didn't find anything related to this  
12     particular table under the account, I went and looked at  
13     each of the folders under -- that were listed to  
14     Mr. Yusuf, and I didn't find anything in those folders,  
15     either, related to a debt.

16          Q     Okay.  And so the only evidence of the debt is  
17     what Mr. Yusuf told BDO?

18          A     According to the footnote, yes.

19          Q     Okay.  And there was no backup for that?

20          A     I couldn't find any, no.

21          Q     Okay.  And then the second item on your list  
22     is the \$50,000 check that Willie Hamed discussed; is  
23     that correct?

24          A     That's correct.

25          Q     All right.  And showing you Exhibit Number 55,

1 is this a table from the BDO report where that check was  
2 mentioned?

3 A Yes, it is.

4 Q Okay. And what does this table in the BDO  
5 report tell you?

6 A It tells me that the \$50,000 check was charged  
7 against Willie.

8 Q Okay. And then the backup for this check is  
9 the check that Willie Hamed identified earlier today in  
10 his testimony, I believe it was Exhibit Number 32?

11 A Yes.

12 Q Okay. So even though his testimony that he  
13 cashed his check, bail for Mr. Yusuf, they have charged  
14 him with this fund; is that correct?

15 A Yes, that's what these two tables are  
16 showing.

17 Q Okay. Then the next item on your list are the  
18 checks for Shawn Hamed; is that correct?

19 A Yes.

20 Q All right. And showing you -- well, I'll tell  
21 you what, I think it's already been introduced. Exhibit  
22 Number 7 was the BDO chart -- you don't need to get it  
23 because I think you know it -- that was the BDO chart  
24 where they listed these two checks?

25 A Yes.

1           Q     And these two checks were actually charged to  
2 Shawn Hamed in the BDO accounting?

3           A     That's correct.

4           Q     And these are the ones that turned out to be  
5 deposited into Fathi Yusuf's account?

6           A     Yes.

7           Q     The next one is one called rebated checks.  
8 And showing you Exhibit Number -- this is a test --  
9 55?

10          A     56.

11          Q     Can you tell me what these checks are?

12          A     Sure. These are checks that were produced by  
13 the defendants, and you can tell that on the bottom,  
14 there's a Bates stamp Hamed v. United & Yusuf -  
15 defendants' production, and the first one is 0105413,  
16 and these came out of the FBI documents, because you can  
17 see their Bates number on there as well. And the first  
18 one is a Bellows International rebate check made out to  
19 Plaza Extra St. Thomas. If you go to the second page,  
20 we've got another rebate check for -- from  
21 Procter & Gamble to Plaza Extra Supermarket, and, again,  
22 we know this came from the FBI documents by the Bates  
23 number, and this was also produced by the defendants, it  
24 says Hamed v. United & Yusuf - defendants' production,  
25 and the Bates number on this one is 0105415.

1 Q All right. What's the next document?

2 A The next document, again, same -- came from  
3 the same two places, FBI and defendants, and its Bates  
4 number is 0107133, and these show the two rebate checks  
5 from Bellows and Procter & Gamble being canceled by the  
6 Cairo Amman Bank.

7 Q Okay. And then the remaining documents in  
8 this exhibit show the back of those checks being  
9 deposited into that account and then the entries into  
10 the account?

11 A Yes, yes. And the Bates number 0107134 is the  
12 canceled back part of the check and showing what account  
13 it goes into. And then the final document has a Bates  
14 number of 0062178 through 0062179, and this is the  
15 statement of Fathi Yusuf's Cairo bank account, and I  
16 know that by the number -- the account number at the  
17 top, it's in that box, and if you go to the last page,  
18 you can see that those two checks showed up in  
19 Mr. Yusuf's account.

20 Q And did those two checks deposited in his  
21 account show up in the BDO report?

22 A Yes. No, I mean, the checks did not -- no,  
23 the checks were not in the -- I'm sorry. None of this  
24 was shown in the BDO report.

25 Q Okay. None of these checks showed up in the



1 BDO report?

2 A That's correct.

3 Q Even though they were produced by the  
4 defendant and shown being deposited to Mr. Yusuf?

5 A Yes. In other words, these checks weren't  
6 credited against Mr. Yusuf, even though they ended up in  
7 his account.

8 Q Okay. The next one on here are the Mafi  
9 chits, and you were in the courtroom when Mafi Hamed  
10 testified about those?

11 A Uh-huh.

12 Q And both of those records, I believe it was  
13 table 25A and 25B -- I'm sorry, 25A and 25B were chits  
14 that were actually charged to Mafi that weren't his  
15 obligation?

16 A That's correct. The tables in the BDO report  
17 charged them to him.

18 Q Now, Mafi Hamed testified that one of the  
19 chits was double-charged to him. It was on two  
20 different accounts; is that correct?

21 A That's correct. And you can tell it because  
22 the ticket number is the same on both charts, and you  
23 can tell from the totals that he was charged for both.

24 Q All right. And the next number is Wally's  
25 Scotiabank account. Now, Mr. Wally Hamed testified

1 earlier today -- it's Exhibit Number 13 -- and in that  
2 account --

3 MR. HOLT: Maybe I should have her shown  
4 Exhibit Number 13, Your Honor.

5 THE WITNESS: Yeah, I don't -- that would be  
6 helpful.

7 THE COURT: She may be shown.

8 MR. HODGES: Your Honor, I would object to all  
9 this as being cumulative to the testimony we've  
10 heard earlier today.

11 MR. HOLT: Well, the one thing she's doing is,  
12 not each of them can testify that it was in the BDO  
13 report, so she's tying it up. If they want to  
14 stipulate that BDO charged him for that, I can move  
15 on.

16 MR. HODGES: Your Honor, frankly, you know,  
17 without having the BDO report to parse through on  
18 the fly like this, we can't do that. But, you  
19 know, whether it's in the BDO report or not,  
20 ultimately, either the Master or Your Honor will  
21 determine whether the BDO report is reliable. And,  
22 you know, you're going to have to make an  
23 independent determination. This non-practicing  
24 attorney can't help the Court make that  
25 determination.

1           MR. HOLT: This non-practicing attorney is  
2           doing fact-checking showing the BDO report  
3           contained numerous errors which makes it  
4           unreliable. And that's the purpose of this. And,  
5           yes, somebody is going to have to determine whether  
6           or not it's admissible, and that's what we think  
7           we're here for.

8           THE COURT: Proceed.

9 BY MR. HOLT:

10          Q     All right. So could you have the witness  
11          shown Exhibit Number 13?

12          A     (Perusing documents.)

13          Q     Okay. Table number 13 are accounts or checks  
14          that are allocated to Wally Hamed?

15          A     Okay. Yes.

16          Q     Okay. And Mr. Hamed testified that the  
17          Scotiabank account was the one where the funds were then  
18          used to transfer to Jordan; correct?

19          A     Correct.

20          Q     All right. And how much was the total amount  
21          in that account that they charged to him? How much was  
22          that account?

23          A     \$578,800.

24          Q     Okay. And did they give him credit for any of  
25          the deposits in the Amman account, like the \$95,000

1 check from Mike Yusuf?

2 A No. I mean, there are a few credits on here,  
3 but there's not the \$75,000 one.

4 Q There's not the \$95,000.

5 A Or 95. No, I'm sorry.

6 Q And then looking over on the very last page of  
7 this, do you see the \$75,000 item?

8 A I do.

9 MR. HODGES: May we have the exhibit number  
10 that she's referring to?

11 MR. HOLT: 13.

12 THE COURT: 13.

13 Q Do you see that?

14 A I do.

15 Q Okay. And what is that \$75,000 amount? Do  
16 you need to see the document?

17 A No. I believe this was the unsigned check;  
18 right? From BFC bank in Martinique.

19 Q Okay. So even though the check is unsigned,  
20 undated, and still in the account, under this chart they  
21 actually charge Wally Hamed for this; correct?

22 A That's correct.

23 Q All right. And then you had the unsigned  
24 chits that Wally talked about, both in chart 8B and 9B.  
25 Did you verify that those were charged to him?

1           A     I did.

2           Q     And did you verify that they were unsigned?

3           A     I did.

4           Q     And then looking at the receipts that were  
5 charged to Wally for the gas station refunds and the  
6 receipt of them on table 9A, did you look at that table  
7 to verify that those charges were actually charged to  
8 him?

9           A     I did.

10          Q     And did you look at the backup to determine  
11 that they should not have been charged to him?

12          A     Yes.

13          Q     Okay. Now, the next one is one that Willie  
14 Hamed testified about. Do you remember when he  
15 testified about the bill of sale -- I mean, buying the  
16 property in St. Thomas?

17          A     I do.

18          Q     Okay. Showing you Exhibit Number 57, this is  
19 the backup for the BDO account for Shawn Hamed. Do you  
20 see that?

21          A     Yes, I do.

22          Q     And these are funds they said Shawn Hamed owes  
23 to the partnership?

24          A     Yes.

25          Q     And then looking over on the second page, this

1 is -- the first page is the summary and the second page  
2 is the first backup?

3 A Yes.

4 Q Okay. And you see the 1998 charge for  
5 \$250,000?

6 A I do.

7 Q And then did you look behind the backup to  
8 confirm that that was the \$250,000 that Shawn deposited  
9 so that they could buy the property?

10 A Yes.

11 Q Okay. So even though Mr. Yusuf ended up  
12 owning one of the lots and Willie Hamed ended up owning  
13 the other lot, they still say that Shawn should have to  
14 repay the \$250,000?

15 A Yes, that's what this table says.

16 Q Okay. I think we've covered the 34,000 one.  
17 We've covered the 75,000. On the \$286,000 in Jaber  
18 checks, was that also a charge to Wally Hamed based upon  
19 the backup for that?

20 A They were.

21 Q Okay. Now -- getting near the end -- showing  
22 you Exhibit Number 1.

23 MR. HOLT: And, Your Honor, she needs to see  
24 Exhibit Number 40 -- you know what, let me just get  
25 the right number. And Exhibit Number 43. 1, 2,

1           and 43.

2                       (Discussion off the record.)

3           Q     Okay.  First, looking at Exhibit Number 1,  
4 this is a Prudential-Bache account?

5           A     Yes.

6           Q     Okay.  And this is the account that was for  
7 the United Corporation trading account; is that  
8 correct?

9           A     It is, that's correct.

10          Q     And you did a search in the BDO report to see  
11 if, in fact, they had this in their database?

12          A     Yes, I looked through the records and I didn't  
13 see anything in their supporting documents.

14          Q     Okay.  And you then took this chart and you  
15 compared it with Exhibit Number 2, which is Wally's 1993  
16 tax return?

17          A     I did.

18          Q     And then you did a line-by-line item review of  
19 trades on the United account and trades allocated to  
20 Wally on his tax return; is that correct?

21          A     That's correct.

22          Q     Okay.  And then Exhibit Number 43 is your  
23 summary of that?

24          A     Yes.

25          Q     Okay.  So you actually took each trade that

1 was on Wally's account and, where you could, you then  
2 traced it to the United Corporation account?

3 A Yes, on the Prudential Securities  
4 statements.

5 Q Okay. Now, the BDO report allocated how much  
6 money to Mr. Wally Hamed?

7 A This is the 4.9 --

8 Q You know, it's not a memory test. Let me see  
9 if I can find that.

10 A I was going to say. You're killing me here.

11 Q On page 32 of the report, for the 1993 tax  
12 return, they allocated \$7,587,000.

13 A Okay.

14 Q Okay. And you were able to track how much of  
15 this coming from the United Plaza account?

16 A Yeah, apologies, it's late. 4.9 million.

17 Q How much?

18 A 4.9 million.

19 Q Okay. And how many statements did you have  
20 from the Prudential-Bache account?

21 A I only had nine.

22 Q Okay. So you didn't have the other three  
23 statements.

24 A I did not.

25 Q Okay. And did you ever see any records from



1 Wally Hamed that would indicate that he traded any of  
2 the stocks on the 1993 return?

3 A No, no.

4 Q Okay. And so this is the analysis that you  
5 did.

6 A That's correct.

7 Q And you shared that with David Jackson.

8 A I did, yes.

9 MR. HOLT: Your Honor, I have no more  
10 questions.

11 THE COURT: Thank you.

12 CROSS-EXAMINATION

13 BY MR. HODGES:

14 Q Good evening.

15 A Good evening.

16 Q Do you work for anybody else other than  
17 Attorney Holt?

18 A No, I don't.

19 Q He's your sole source of income.

20 A That's correct.

21 Q How long have you been working for him?

22 A I'm sorry. Let me back up. Mr. -- Attorney  
23 Holt doesn't pay me.

24 Q Who pays you? Mr. Hamed?

25 A The clients, yes.

1 Q But this is the only case you work on?

2 A That's correct -- well, the Pil --  
3 Pullock (phonetic) -- the number of Hamed cases, I work  
4 on all of them -- a number of them, in addition to the  
5 370, like the 120s.

6 Q I see. I think what you're saying is you work  
7 exclusively for the Hameds in connection with their  
8 litigation against or involving the Yusufs; is that  
9 correct?

10 A Close. I don't do anything for Attorney Rohn  
11 in the cases that she has -- or the case that she has.

12 Q Okay. And what do you get paid to do that?

13 A I knew you were going to ask me that. I  
14 think -- I can't remember exactly, it's either 130 or --  
15 anywhere between 130 and \$160 an hour. I don't recall  
16 the exact amount. Less than 200, I can tell you that.

17 Q Okay. And has that been your hourly rate for  
18 the length of all this litigation?

19 A Yes. It hasn't changed.

20 Q And do you get any different rate for  
21 testifying?

22 A No, no.

23 Q And is your agreement with the Hameds in  
24 writing?

25 A No.

1           Q     You are married to Carl Hartmann; am I  
2 correct?

3           A     That's correct, yes.

4           Q     Are you licensed here in the Virgin Islands?

5           A     I am not.

6           Q     Are you licensed anywhere else?

7           A     Yes. The State of Michigan as well as  
8 Washington, D.C. And then the U.S. Supreme Court and a  
9 couple of circuit courts.

10          Q     Okay. And how long have you been doing this  
11 work for the Hameds?

12          A     At least since 2012.

13          Q     Okay. Now, if the facts showed that the  
14 lion's share of the money in the various accounts in the  
15 Exhibit 42 that you're familiar with, I believe those  
16 are the foreign accounts?

17          A     Let me just get it in front of me.

18                 Okay. I'm sorry. I have it in front of me  
19 now.

20          Q     What is Exhibit 42?

21          A     42. Is this the chart you're referencing?

22          Q     Okay. Yes, yes.

23                 So if the facts showed that the money that was  
24 deposited in and transferred to these accounts in  
25 Exhibit 42 ultimately were invested in real estate held

1 jointly by Hamed and Yusuf, there would be no harm in  
2 excluding these accounts; is that fair to say?

3 A I don't know. I'd have to see what the  
4 properties were and whether they matched up with the  
5 amounts in the accounts.

6 Q Okay. Have you seen the account information  
7 relating to any of these accounts?

8 A I have.

9 Q Okay. And just so the Court understands, you  
10 and other witnesses have been criticizing the report of  
11 BDO. Has Hamed submitted any accounting that reflects  
12 what he claims the Hameds' accounts reflect and what the  
13 Yusufs' accounts reflect and what the difference is?

14 A I'm not sure why they would do that.

15 Q My question is, have they done that?

16 A Not to my knowledge, no.

17 Q In other words, Mr. Yusuf, at least through  
18 the BDO report and the Gaffney reports, has submitted a  
19 proposed accounting; isn't that correct?

20 A Yes, that's correct.

21 Q But the Hameds have not.

22 A I don't believe they have the requirement to.  
23 I think Mr. Yusuf is the --

24 Q No. Please answer my question.

25 A I did.

1 Q Have they submitted an accounting?

2 A No, they have not, because they aren't  
3 required to. They're not the liquidating partner.

4 Q Oh, I see. So you're saying that the terms of  
5 the plan that require each partner to submit an  
6 accounting and a proposed distribution plan don't apply  
7 to the Hameds?

8 A I'm not saying that at all.

9 Q Then you do agree with me that they have not  
10 submitted any proposed accounting; is that correct?

11 A I don't want to answer because I'm not sure.  
12 I don't know what you mean by "accounting".

13 Q Do you know what they filed with the Court on  
14 September 30, 2014 -- excuse me -- 2016?

15 A I don't recall, off the top of my head. If  
16 you'd show me the document, I probably could --

17 Q You don't recall that on September 30, 2016,  
18 that both parties were required to submit their proposed  
19 accountings with the -- either the Master, in our case,  
20 which is what we did, or Hamed filed his with the Court  
21 on that date?

22 A I'm sorry. You're referencing --

23 MR. HOLT: Your Honor, I object. That's not  
24 what the requirement was. The requirement was to  
25 submit our claims.

1 THE COURT: Submit the claims.

2 A Yeah, that was what was throwing me. Yes, I  
3 do know that we submitted claims, definitely.

4 Q But no accounting claims.

5 A I'm not sure I understand what the difference  
6 is.

7 Q In other words, Hamed submitted nothing, not  
8 anything that purports to account for his withdrawals  
9 compared to Mr. Yusuf's withdrawals at all. There is no  
10 comparison; isn't that right?

11 A I'm trying to think. I think -- I think the  
12 only thing that we submitted in terms of withdrawals  
13 would have been the addition of the receipts on the  
14 Yusuf side. Did we submit the addition of the receipts  
15 on the Hamed side? No. No, we did not, I don't  
16 believe.

17 Q All right. In effect, the Hameds have not  
18 presented the Court with any proposed accounting of the  
19 partnership for any period of time; isn't that  
20 correct?

21 A If that's how you define it, I don't recall  
22 them submitting anything like that.

23 Q Okay. The deposition of Mr. Mike Yusuf or  
24 Maher Yusuf that you referred to earlier in your  
25 testimony --

1           A     Yes.

2           Q     -- you mentioned his destruction of chits or  
3 receipts. Do you remember that?

4           A     I do.

5           Q     Isn't it true that Mufeed Hamed destroyed  
6 chits as well?

7           A     That's not clear to me. I don't know. I  
8 don't recall -- I know in the testimony, that Mike said  
9 that they -- that the Hameds took their receipts because  
10 they needed to show them to Wally. Now, where they got,  
11 if at all, destroyed in that chain of events, I'm not  
12 clear.

13          Q     Well, you're the document person in this case.  
14 Have you ever seen those chits or receipts that they  
15 claim to have pulled and reconciled with Mr. Maher Yusuf  
16 in October of 2001?

17          A     Well, I know that there have been a number of  
18 chits produced that go back -- that are dated prior to  
19 that, like in 1997, for example, and if all those chits  
20 were destroyed, you would assume that those wouldn't be  
21 produced. So I don't have any way of knowing the old  
22 chits that predate that reconciling, whether they're  
23 part and parcel of that reconciling or if they are chits  
24 in addition to that reconciling.

25          Q     So you're saying you don't know whether or not

1 at the time -- at or around the time Mr. Yusuf, Maher  
2 Yusuf, testified that chits were destroyed in connection  
3 with the reconciliation that led to the determination  
4 that the Hameds had drawn \$1.6 million more than the  
5 Hameds, that the Hameds destroyed any chits or receipts  
6 as well? You don't know that?

7 A I don't know if some or all or none were  
8 destroyed, no.

9 Q Okay. But you know that there has not been a  
10 production of those chits or receipts by the Hameds in  
11 this case, don't you?

12 A Anything that we would have had that was a  
13 chit would have been in the documents that were swept up  
14 in the 2001 raid, which both sides have produced.

15 Q All right. So if they weren't in that FBI  
16 production of documents that both sides got, they  
17 weren't there; is that fair to say?

18 A Well, we know that they were there because  
19 there are chits that -- well, I shouldn't be that  
20 definitive. We know that there are chits that predate  
21 that reconciliation, and, like I said, I can't tell you  
22 if that's part of the 1.6 or if that's in addition to  
23 the 1.6.

24 Q Okay. Now, the foreign accounts that were  
25 referred to in the chart that you saw earlier today,



1 that's not all the foreign accounts that the parties  
2 held at any particular time, is it?

3 A These are the only ones that I found on the  
4 Yusuf side that were not in the BDO report. Whether  
5 there are additional accounts that I am not aware, I  
6 couldn't tell you. I don't know.

7 Q But listen to my question. The accounts that  
8 are listed in that diagram, those aren't all the -- even  
9 the Hamed accounts in foreign lands, are they?

10 A No, because there aren't any of Mr. Mohammad  
11 Hamed --

12 Q Okay. And they don't even have all of the  
13 Hamed sons' accounts in there as well; isn't that  
14 correct?

15 A For the foreign?

16 Q Yes.

17 A I'm unaware of any additional foreign  
18 accounts, other than the ones that are listed on that  
19 chart. You're talking about the big criminal -- the  
20 chart that was blown up, the criminal one?

21 Q Yes, that's correct.

22 All right. So you're saying that that  
23 identifies all accounts owned by the Hameds at any time,  
24 other than the accounts owned by Mr. Mohammad Hamed; is  
25 that right.

1           A     No.  What I'm saying is, based on the  
2 documents that I have, I don't see any other foreign  
3 accounts for the Hamed sons, other than what's listed on  
4 that chart.  I do have documents in my database that are  
5 from Mr. Hamed in a foreign account.

6           Q     Okay.  That are not listed on that chart.

7           A     That's correct.  That's correct.

8           Q     And the accounts that are listed -- how many  
9 accounts of Mohammad Hamed are not listed on that report  
10 or diagram?

11          A     You know, I didn't add them up.  It's a  
12 handful.  I would imagine maybe two, three.  I'd have to  
13 go back and look to be sure.  I don't know, I'm sorry.

14          Q     Okay.  You know it's at least two or three.  
15 Could it be six or seven?

16          A     I don't think it was that many, no.

17          Q     Okay.  Do you know that millions of dollars  
18 went through those accounts?

19          A     I haven't reviewed those bank statements in  
20 any detail recently, so I don't know how much money was  
21 in them.

22          Q     But you know that there was a lot of money  
23 going through them; right?

24          A     No, I don't.

25          Q     You don't?

1           A     I do not.

2           Q     Has BDO ever been deposed in this case, as far  
3 as you know?

4           A     No. As far as I know, they have not.

5           Q     Has any discovery been propounded regarding  
6 BDO's opinions and report?

7           A     No.

8           Q     Okay. Likewise, no discovery has been  
9 propounded with respect to any of the objections that  
10 have been filed by Mr. Hamed on September 30 that are  
11 supported by Mr. Jackson, by Mr. Schoenbach, and by an  
12 accounting firm out of Florida; isn't that right?

13          A     No, that's not accurate. For the claims that  
14 we -- that the accounting firm put together in Florida,  
15 prior to that, on two separate occasions, a list of  
16 questions were sent to John Gaffney through the Master.  
17 Judge Ross asked us to prepare that and then he would  
18 give them to Mr. Gaffney. He answered a few of the  
19 questions but not the majority of them.

20          Q     Okay. So you're saying some discovery but not  
21 much has been made of Mr. Gaffney, and that's about  
22 it?

23          A     He said that he didn't have time to answer,  
24 so, I mean, there were maybe five questions he  
25 answered.

1 Q Okay.

2 A Maybe more, seven, something like that.

3 Q The \$50,000 check from -- that you mentioned  
4 earlier that was charged to Waheed Hamed's account, are  
5 you familiar with that?

6 A Yes. I mean, yes, from the testimony today,  
7 so, yes, and the BDO report.

8 Q Right. And the check was made payable to  
9 Waheed Hamed; isn't that correct?

10 A Yes, that's correct.

11 Q All right. And as far as you know, is today  
12 the first time there's been any suggestion that the  
13 check was not for his benefit?

14 A I'm not sure what you mean. I'm sorry.

15 Q Has there been any discovery, any statement  
16 issued, any information that has emanated from the Hamed  
17 side that said, wait a minute, what are you charging  
18 Waheed Hamed for \$50,000 for?

19 A Well, the first time that we saw that they  
20 were charging Mr. Willie Hamed was in the BDO report.

21 Q Okay. In September of 2013?

22 A Yes -- no.

23 Q I mean, excuse me, 2017 -- or is it '16? I'm  
24 sorry.

25 A '16. It feels like about 2020, I'm sure.

1 Q All right. So after September 16, 2000 --  
2 excuse me, September 30, 2016, no further discovery, no  
3 investigation, no questions have been propounded by any  
4 party with respect to the accounting that was prepared  
5 by our side or the objections that were prepared by  
6 Hamed; is that fair to say?

7 A That's correct, yes.

8 Q Okay. And would you say that that applies to  
9 all of your criticisms of the BDO report and all the  
10 other criticisms that you've heard today, BDO has never  
11 had an opportunity to respond to them?

12 A We've done no discovery on the BDO report at  
13 all.

14 Q Okay. The allocation of fees by BDO has been  
15 criticized by the Hameds and, I understand, from you as  
16 well. When, other than today when we received a  
17 declaration from Mr. Gordon Rhea, has anything been said  
18 that suggests that that is improper?

19 A That the allocation is improper?

20 Q Yes.

21 A This is the first time we've heard of that  
22 allocation, so I can't imagine there would have been any  
23 time prior to this that there would have been a  
24 discussion.

25 Q All right. But you had the allocation on

1 September 30, 2016, and today at maybe 6:00 was the  
2 first time we got a response to that from anybody; is  
3 that correct?

4 A That would be correct, yes.

5 Q Okay. You're not saying that BDO did not  
6 review the FBI U.S. Government draft analysis that has  
7 been admitted as an exhibit in this case, are you?

8 A What I'm saying is there's no mention of it in  
9 their report or in the tables.

10 Q Okay. There's mention of the -- if you just  
11 plugged in FBI, you'd find it throughout the report,  
12 wouldn't you?

13 A I don't know. I haven't done that.

14 Q You didn't do that?

15 A I didn't plug in FBI.

16 Q You only plugged in, quote, "FBI/US  
17 Government.analysis", end quote, is that the only thing  
18 you plugged in?

19 A No. I read the report, I read all of the  
20 tables, and I looked at all of the documents, and I  
21 didn't come across anything that said -- that referred  
22 to the draft summary schedules.

23 Q All right. But you did see references to the  
24 FBI raid, the FBI recovery of records?

25 A Correct, yes.

1           Q     Okay.  So all you can say is the BDO report,  
2     in your opinion, did not refer to the draft report.  You  
3     cannot say that it didn't consider that draft report; is  
4     that fair to say?

5           A     Yeah, that's fair to say.

6           Q     All right.  Would you agree with me that the  
7     volume of documents that were produced by the parties in  
8     this case, produced by the FBI, are voluminous?

9           A     I would agree with that, definitely.

10          Q     Would you agree that it's actually a huge  
11     volume of documents?

12          A     Define "huge".

13          Q     Well, what would you call huge?  I mean, is it  
14     more than 160 bankers boxes of FBI documents?

15          A     Well, it would have to be, because the 160  
16     boxes of -- bankers boxes of documents were just the  
17     documents that were sent over from Puerto Rico.  That  
18     didn't include the documents that were scooped up as a  
19     part of the raid.  I think for the part of the raid,  
20     that that was around 50,000 documents, maybe.

21          Q     50,000 just from the raid itself?

22          A     Yes.  But in a big document case, that's not a  
23     huge number.  I've worked on other cases with Attorney  
24     Holt where we've had a lot more than that.

25          Q     Okay.  But you would refer to this as a big

1 document case?

2 A It's -- I would say it's pretty good, yes.  
3 It's not the largest I've worked on, but I would say  
4 that it's -- it's big enough.

5 Q And you would agree that the effort to account  
6 for the parties' withdrawals amongst themselves is a  
7 very complex process?

8 A It's almost an impossible process, because  
9 you've got so many missing documents. Even though you  
10 have over \$50,000 documents, you still have a lot of  
11 missing data, particularly the older data. I mean,  
12 there are just whole months, years, of statements  
13 missing, so it's very difficult to reconcile anything.

14 Also, you can tell -- when you've done a lot  
15 with documents, you can tell when you have holes in your  
16 documents, because, for example, you may have -- there  
17 was a period of time where your side produced some chits  
18 that were against the Hameds, but there were no Yusuf  
19 chits for that same time period, and I can't -- I'm  
20 sorry, it's been so long since I've looked at this, but  
21 that just doesn't make sense to me that there wouldn't  
22 be any corresponding chits, which suggests that there  
23 are holes in the data.

24 Q So you're talking about the 160 boxes of  
25 documents that I mentioned is far too little; is that



1 correct? There's much more than that?

2 A Yeah, that's just a -- that's a --

3 Q A small subset of the documents involved in  
4 this case?

5 A Well, part of the issue is that 160 bankers  
6 boxes, a lot of those were documents that were already  
7 produced on that disk, so in other words, when Attorney  
8 Perrell and I were going through the documents, a number  
9 of them had the Bates stamp from the Federal Government,  
10 so it was, in a sense, a duplicate, so I'm not sure you  
11 can say that it's --

12 Q Okay. But there was a separate and  
13 independent production of documents by the parties  
14 themselves, too; isn't that fair?

15 A Yes, yeah. That was by far the smallest  
16 portion of the three subsets.

17 Q Okay. And do you disagree with the statement  
18 that Hamed -- or the Hameds -- excuse me, Mr. Mohammad  
19 Hamed, as the partner -- determined by this Court to be  
20 the partner in the partnership at issue, was required to  
21 submit a proposed accounting on September 30, 2016?

22 MR. HOLT: Your Honor, he's well beyond --  
23 she's a paralegal who testified about documents,  
24 and now he's trying to get her opinion like an  
25 argument. That's my job.

1 THE COURT: If you know, you can answer. Or  
2 you can answer what you understand.

3 A I'm confused --

4 THE COURT: The order says what it says;  
5 right?

6 MR. HODGES: Yes.

7 BY MR. HODGES:

8 Q And I'm quoting from the order, section 9,  
9 step 6, the relevant part, I've left out words that  
10 aren't relevant to the accounting, but it says, "Within  
11 45 days after the liquidation of the partnership assets,  
12 Hamed and Yusuf shall each submit to the Master a  
13 proposed accounting and distribution plan for the funds  
14 remaining. Thereafter, the Master shall make a report  
15 and recommendation of distribution to the Court for its  
16 final determination." While the Yusufs did submit a  
17 proposed accounting and distribution plan -- you agree  
18 with that, do you not?

19 A You know, I don't know, to be honest. I don't  
20 know if you did or not.

21 Q Okay. Well, they submitted a document  
22 entitled "Proposed Accounting and Distribution Plan,"  
23 did they not?

24 A You seem to think they did. I don't know. If  
25 you say so, I'll agree, you know.

1 Q You've not looked at it?

2 A Clearly not recently.

3 Q Okay.

4 A Because I don't recall what you're talking  
5 about. That doesn't mean it doesn't exist. I just  
6 don't recall.

7 Q Okay. Fair enough. And is it fair to say  
8 that Mr. Hamed did not submit a proposed accounting or  
9 distribution plan on September 30?

10 A I know he submitted claims. I know that's  
11 what the Master requested.

12 MR. HODGES: Okay. Thank you, ma'am.

13 MR. HOLT: No recross.

14 THE COURT: Very well. Thank you. You may  
15 stand down.

16 THE WITNESS: Thank you.

17 THE COURT: All right. I'll take this under  
18 advisement. In terms of -- we've basically  
19 addressed today, I believe, the questions relating  
20 to statute of limitations. We've addressed  
21 questions relating to the viability or the motion  
22 to strike the BDO report. We haven't talked about  
23 jury. I don't think that requires any evidence.

24 Attorney Holt, you indicated before there's no  
25 evidence to present on the Integra report. The

1 motion to strike the partnership, the Hamed claims  
2 is on the list of what we're going to talk about  
3 today. We haven't discussed that either.

4 MR. HODGES: I'm prepared to argue on the  
5 phone if that would be acceptable to the Court.

6 THE COURT: I mean, we can do that. I mean,  
7 is it fair to assume that you both would like the  
8 opportunity to argue?

9 MR. HODGES: Yes, Your Honor.

10 MR. HOLT: Yeah, I'd like to argue the motions  
11 today.

12 THE COURT: I'm not going to do that.

13 MR. HOLT: Excuse me?

14 THE COURT: We're not going to do it right  
15 now. Just because --

16 MR. HOLT: Right now, I understand that. But  
17 just at some point I would, because I think it's  
18 important in moving this case forward, which we  
19 need to do.

20 THE COURT: We'll plan on that. And we'll  
21 also address, in our phone conference, where we're  
22 going from here, the plan going forward.

23 To the extent -- and I don't -- I'm not going  
24 to tell you to meet and confer because I really  
25 don't know what the dynamics are of the interaction

1 at this stage, and I don't want to do it if it's  
2 counterproductive to -- if you're not going to come  
3 to an agreement, then we'll just address that in  
4 our phone conference. If you're able to discuss a  
5 proposed discovery plan and where we're going and  
6 timing, then I'd be glad to hear a joint proposal  
7 when we do have our telephone conference.

8 Is there -- how much time do we need to --  
9 before we get together by phone?

10 MR. HOLT: I'm ready tomorrow, or whatever the  
11 Court -- whatever -- I know the Court has its own  
12 schedule.

13 THE COURT: How about you, Mr. Hodges?

14 MR. HODGES: Your Honor, my co-counsel that  
15 is -- was going to argue the summary judgment  
16 motion on statute of limitations has got an  
17 appointment in the United States for medical issues  
18 on Wednesday.

19 THE COURT: When do you return?

20 MR. HERPEL: I'm flying tomorrow afternoon,  
21 Your Honor, like at 4:30 or thereabouts. So I -- I  
22 just -- I don't know what time we can get out of  
23 here. Probably we would, you know, return to  
24 St. Thomas early and then be prepared to do an  
25 argument sometime tomorrow morning, I would

1 think.

2 MR. HODGES: Well, if we can do the argument  
3 tomorrow, it sounds like, on all the motions,  
4 that's okay with me.

5 THE COURT: Okay.

6 MR. HERPEL: I could do it later in the week,  
7 also, from Michigan. Wednesday would be a tough  
8 day, but Thursday and Friday I would be available.

9 THE COURT: Why don't we do it at ten o'clock  
10 Friday morning.

11 MR. HOLT: Your Honor, Friday is the bar  
12 admissions annual meeting, and I'm at that meeting.

13 THE COURT: All right. How about 11:00  
14 tomorrow morning? 11:00 tomorrow morning?

15 MR. HODGES: Yes.

16 THE COURT: All right. And everyone can  
17 appear telephonic. All right? Anything else we  
18 need to address tonight?

19 Tomorrow we'll be looking at primarily what's  
20 on the order. All right? On the order setting  
21 this hearing. That's --

22 MR. HOLT: Okay.

23 MR. HERPEL: Should we call in, Your Honor?

24 THE COURT: Call in, and if there's a  
25 different way we're going to arrange it, then we'll

1 let you know when you call in. But I'll see you at  
2 11:00 tomorrow. All right. Thank you all.

3 (The proceedings concluded at 7:45 p.m.)  
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CERTIFICATE OF REPORTER

I, TRACY BINDER, Registered Professional Reporter,  
Official Court Reporter, of the Superior Court of the  
Virgin Islands, Division of St. Croix, do hereby certify  
that I reported by machine shorthand, in my official  
capacity, the MOTIONS HEARING in the case of *MOHAMMAD  
HAMED V. UNITED CORPORATION AND FATHI YUSUF,*  
*SX-12-CV-370*, in said Court, on the 6th day of March,  
2017.

I FURTHER CERTIFY that the foregoing 383 pages are  
a true and accurate computer-aided transcription of my  
stenotype notes of said proceedings.

I HAVE HEREUNTO subscribed my name, this 15th day  
of March, 2017.

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TRACY BINDER, RPR  
REGISTERED PROFESSIONAL REPORTER  
Official Court Reporter



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