

IN THE DISTRICT COURT OF BANNER COUNTY, NEBRASKA

LEONARD MOSHER,)	Case No. CI 13 19
Plaintiff,)	
)	<u>COMPLETE TRANSCRIPT</u>
vs.)	VOLUME I - TESTIMONY
)	(Pages 1 to 188, incl.)
JANICE HERRELL and DENNIS)	
MOSHER,)	
Defendants)	

Proceedings had before DEREK C. WEIMER, JUDGE, at
Kimball, Nebraska, on February 27, 2017 and February 28,
2017.

A P P E A R A N C E S

For the Plaintiff:	Ms. Tracy Oldemeyer Attorney at Law 123 N College Avenue, #330 Fort Collins, Colorado 80524 (970) 221-2637
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For the Defendant: (Ms. Janice Herrell)	Mr. Robert M. Brenner Attorney at Law 1915 Tenth Street P.O. Box 370 Gering, Nebraska 69341 (308) 136-3424
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Mr. Justin N. Hesser
Attorney at Law
204 East 22nd Street
Cheyenne, WY 82001
(307) 634-8891

(Mr. Dennis Mosher)	Mr. John Sorensen Attorney at Law 1620 Avenue A P.O. Box 1557 Scottsbluff, NE 69363
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Lynn Namuth
Official Court Reporter
Sidney, Nebraska
(308) 254-4345

I N D E X

TRIAL TO THE COURT PROCEEDINGS

February 27, 2017

Pages 15 to 299

February 28, 2017

Pages 299 to 566

WITNESSES:

FOR THE PLAINTIFF:

(February 27, 2017)

Ms. Janice Herrell

Direct examination by Ms. Oldemeyer	Pages 75 to 174
Cross examination by Mr. Brenner	Pages 175 to 198
Cross examination by Mr. Sorensen	Pages 198 to 200
Redirect examination by Ms. Oldemeyer	Pages 200 to 214
Recross examination by Mr. Brenner	Pages 214 to 215
Recross examination by Mr. Sorensen	Pages 216

Mr. Dennis Stanley Mosher

Direct examination by Ms. Oldemeyer	Pages 219 to 237
Cross examination by Mr. Brenner	Pages 237 to 242
Cross examination by Mr. Sorensen	Pages 243 to 264
Redirect examination by Ms. Oldemeyer	Pages 264 to 282

Mr. Leonard Owen Mosher

Direct examination by Ms. Oldemeyer	Pages 284 to 295
Void Dire examination by Mr. Brenner	Page 296
Direct examination by Ms. Oldemeyer	Pages 297 to 339
Cross examination by Mr. Sorensen	Pages 340 to 361
Cross examination by Mr. Brenner	Pages 363 to 429
Redirect examination by Ms. Oldemeyer	Pages 429 to 447
Recross examination by Mr. Brenner	Pages 447 to 457

FOR THE DEFENDANTS:

Ms. Wendy Volk

Direct examination by Mr. Hesser	Pages 468 to 492
Cross examination by Ms. Oldemeyer	Pages 492 to 499
Redirect examination by Mr. Hesser	Pages 500 to 501

Mr. Paul Burgener

Direct examination by Mr. Brenner	Pages 503 to 532
Cross examination by Ms. Oldemeyer	Pages 532 to 546
Redirect examination by Mr. Brenner	Pages 546 to 547

Mr. Dennis Stanley Mosher

Direct examination by Mr. Sorensen	Pages 550 to 553
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WITNESSES:

FOR DEFENDANTS: (continuation)

Ms. Janice Herrell	
Direct examination by Mr. Brenner	Pages 554 to 562
Cross examination by Ms. Oldemeyer	Page 562
Cross examination by Mr. Sorensen	Page 563

<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled on .</u>	<u>Found</u>
101. Lois Mosher Revocable Trust Agreement	--	32, 39	39	--
102. First Amendment to Lois Mosher Revocable Trust Agreement	--	32, 39	39	--
103. Second Amendment to Lois Mosher Revocable Trust Agreement	--	32, 39	39	--
107. Email from Greg Dyekman to Kara Ronnau dated 4-30-14	--	39	39	--
108. Letter from Justin Hesser to Kara Ronnau dated 3-26-15	--	39	39	--
109. Email from Polli Bryant to Tracy Oldemeyer 9-27-16	--	39	39	--

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled on .</u>	<u>Found</u>
110. Letter from Gregory Dyekman to Leonard Mosher dated 4-13-12	--	39	39	--
111. Copy of Official Check dated 5-16-12	--	39	39	--
113. Letter from Gay Woodhouse to Gregory Dyekman dated 10-16-12	--	286	286	--
114. Letter from Gregory Dyekman to Gay Woodhouse dated 10-18-12	--	105	105	--
115. Letter from Gay Woodhouse to Gregory Dyekman dated 11-7-12	--	293	293	--
116. Letter from Gay Woodhouse to Gregory Dyekman dated 11-28-12	--	295	298	--
118. Email from Gay Woodhouse to Lois Mosher dated 1-16-13	--	130	130	--

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled on .</u>	<u>Found</u>
119. Email from Gay Woodhouse to Austin McKillip dated 4-1-13	--	62	62	--
122. Letter from Gay Woodhouse to Gregory Dyekman dated 2-15-13	--	307	307	--
124. Email from Greg Dyekman to Kara Ronnau dated 5-6-13	--	112	112	--
126. Email from Gregory Dyekman to Kara Ronnau dated 6-15-13	--	116	117	--
127. Email from Kara Ronnau to Gregory Dyekman dated 12-6-13	--	118	119	--
128. Email from Kara Ronnau to Kara Ronnau dated 1-30-14	--	92	92	--
129. Email from Gregory Dyekman to Kara Ronnau dated 1-27-14	--	40	40	--

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled on .</u>	<u>Found</u>
130. Email from Kara Ronnau to Gregory Dyekman dated 2-19-14	--	161	161	--
131. Email from Greg Dyekman to Kara Ronnau dated 5-6-14	--	40	40	--
132. Email from Gregory Dyekman to Kara Ronnau dated 5-7-14	--	40	40	--
133. Email from Kara Ronnau to Gregory Dyekman dated 8-26-4	--	150	150	--
134. Email from Gregory Dyekman to Kara Ronnau dated 3-13-15	--	152	152	--
135. Email from Robert Brenner to Kara Ronnau dated 9-1-15	--	40	40	--
137. Email from Robert Brenner to Tracy Oldemeyer dated 8-26-16	--	40	40	--
140. Tax Statement to Lois Mosher for Tax Year 2012	--	502	502	--

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled on .</u>	<u>Found</u>
141. Tax Statement to Lois Mosher for Tax Year 2013	--	502	502	--
144. Defendant, Janice Herrell's Response to Plaintiff's First Set Of Requests For Admissions To Defendant With Objections Noted	--	167	167	--
145. Defendant Janice Herrell Responses to Second Set Of Requests For Production To Defendant Janice Herrell with Objections	--	166	167	--
146. Report of Commodities Farm and Tract Detail Listings	--	40	40	--
147. Inheritance Tax Worksheet, Voluntary Appearance And Waiver Of Notice	--	136	136	--
148. Petitioner For Determination Of Inheritance Tax	--	136	136	--

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled on .</u>	<u>Found</u>
149. Amended Inventory	--	136	138	--
150. Second Amended Inventory	--	457	168	--
156. Bank Of The West Statements dated 3-9-12	--	41	41	--
157. Bank Of The West Account Statement	--	41	41	--
158. Bank Of The West Account Statement	--	41	41	--
159. Bank Of The West Account Statement	--	41	41	--
160. Bank Of The West Account Statement	--	41	41	--
161. Bank Of the West copies of checks	--	41	41	--
163. First American Title Insurance Company Final Statement	--	41	42	--
164. Copy of Cashier's Check	--	41	42	--

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled on .</u>	<u>Found</u>
165. Email from Wendy Volk to Janice Herrell dated 8-28-12	--	41	42	--
166. Copy of check	--	41	42	--
167. Approximation of Seller's Proceeds	--	41	42	--
168. Lowe's Lighting Spreadsheet	--	41	42	--
169. Copy of Lowe's Receipts	--	41	42	--
170. Cleaning bill for 5524 Hacker Circle Court	--	41	42	--
171. Dumpster Invoice	--	41	42	--
172. Invoice	--	41	42	--
173. Statement from Commercial Flooring	--	41	42	--
174. Adjuster Summary	--	41	42	--
175. Statement from Absolute Electric	--	41	42	--
176. Invoice from Wallstar LLC	--	41	42	--

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled on .</u>	<u>Found</u>
177. Letter from Bill Small to Wendy dated 8-31-12	--	41	42	--
178. Estimate from Wallstar LLC	--	41	42	--
179. Statement for Work	--	41	42	--
183. Invoice from First American Title Insurance Company	--	42	42	--
185. Invoice from Accustar Surveying	--	42	42	--
186. Record of Survey	--	42	42	--
187. Proposal from Residential Roofing	--	42	42	--
188. Invoice from Residential Roofing	--	42	42	--
189. Copy of Check	--	42	42	--
190. Copy of check from Bank Of The West	--	42	42	--
191. Invoice from City Abstract Company	--	42	42	--

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled on .</u>	<u>Found</u>
192. Letter from Tom Gaughan to Mr. Sorensen	--	42	42	--
193. Invoice from Western Nebraska Land Services	--	42	42	--
194. Hours worked Log	--	42	42	--
195. Ownership Report	--	42	42	--
197. Email from Kara Ronnau to Greg Dyekman dated 5-7-14	--	42	43	--
198. Bill Of Lading For Organic	--	42	43	--
199. Schedule F for 2015	--	42	43	--
200. Amended Complaint	--	42	43	--
204. Quitclaim Deed	--	44	44	--
205. Quitclaim Deed	--	44	44	--
206. Mineral Quitclaim Deed	--	44	44	--
207. Mineral Quitclaim Deed	--	44	44	--

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled on .</u>	<u>Found</u>
208. Mineral Quitclaim Deed	--	44	44	--
209. Bill of Sale	--	44	44	--
217. Order Determining and Assessing Inheritance Tax	--	44	44	--
220. Certificate of Mailing	--	44	44	--
229. Letter from Justin Hesser to Kara Ronnau dated 4-27-15	--	45	45	--
231. Appraisal of Real Property	--	45	45	--
232. Preliminary Analysis & Marketing Proposal	--	63	63	--
233. Certificate of ownership of Cemetery Lot	--	45	45	--
234. Transfer of Cemetery Lot/Space	--	45	45	--
235. Jewelry Impressions Diamond Certificate	--	45	45	--

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled on .</u>	<u>Found</u>
236. Farmers Alliance Mutual Insurance Policy	--	407	408	--
237. Farm Bureau Insurance Services Reply Memo to Louis Mosher dated 3-27-97	--	46	46	--
238. Repurchase Agreement from Rocky Mountain Federal Savings and Loan	--	407	408	--
239. Retail Installment Contract	--	407	408	--
240. Certificate of Title for Motor Vehicle	--	407	408	--
241. Installment Sale Contract	--	407	408	--
243. Retail Purchase Order	--	261	261	--
244. Installment Sale Contract	--	408	408	--
245. Statement from Panhandle Agency	--	408	408	--

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled on .</u>	<u>Found</u>
246. Policy from Travelers Insurance dated 11-14-12	--	47	47	--
247. Policy from Travelers Insurance dated 11-14-13	--	47	47	--
248. Policy from Travelers Insurance dated 9-25-14	--	47	47	--
249. Policy from Travelers Insurance dated 10-16-15	--	47	47	--
250. Email from Gregory Dyekman to Kara Ronnau dated 5-7-14	--	47	47	--
251. Policy from Travelers Insurance dated 10-20-16	--	63	63	--
252. Safeco Insurance dated 9-26-11	--	404	404	--
253. Safeco Insurance dated 9-26-12	--	404	404	--
254. Safeco Insurance Notice of Cancellation	--	404	404	--

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled on .</u>	<u>Found</u>
255. Farmers Mutual of Nebraska Renewal Certificate	--	353	353	--
257. Farmers Mutual of Nebraska Declarations	--	353	353	--
258. Farmers Mutual of Nebraska Declarations	--	353	353	--
259. Farm Bureau Insurance card	--	408	408	--
260. Farm Bureau Insurance Card	--	408	408	--
261. Plaintiff's Responses to Request for Admission of Genuineness of Documents, Requests for Admission, and Written interrogatory	--	47	48	--
263. Plaintiff's Supplemented Answers to Written Interrogatories	--	47	48	--
265. Responses to Requests for production of Documents to Defendant Janice Herrell	--	48	48	--

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled on .</u>	<u>Found</u>
267. Letter from	--	48	48	--
Justin Hesser to Kara Ronnau dated 4-27-15	--	64	64	--
269. #1 Properties Counter Offer Dated 1-15-13	--	64	64	--
270. #1 Properties Counter Offer dated 1-15-13	--	64	64	--
271. #1 Properties Contract to Buy and Sell Real Estate	--	64	64	--
272. #1 Properties Bill of Sale	--	64	64	--
273. #1 Properties Important Notice	--	64	64	--
274. #1 Properties Important Notice	--	64	64	--
275. #1 Properties Consent Amendment and In-Company Transaction Disclosure	--	64	64	--
276. #1 Properties Consent Amendment and In-Company Transactions Disclosure	--	64	64	--

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled on .</u>	<u>Found</u>
277. #1 Properties Receipt of Covenants	--	64	64	--
279. Email from Gregory Dyekman to Kara Ronnau dated 8-20-14	--	--	151	--
280. Email from Greg Dyekman to Leonard Mosher dated 2-4-13	--	64	65	--
284. Email from Gregory Dyekman to Gay Woodhouse dated 12-3-12	--	49	50	--
285. Email from Gregory Dyekman to Kara Ronnau dated 5-23-14	--	49	50	--
287. Email from John Sorensen to Kara Ronnau dated 1-27-14	--	54	54	--
288. Email from Kara Ronnau to Gregory Dyekman dated 5-22-14	--	50	51	--
290. Email from Gregory Dyekman to Gay Woodhouse dated 2-23-13	--	50	51	--

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled on .</u>	<u>Found</u>
291. Email from John Sorensen to Kara Ronnau dated 10-18-13	--	50	51	--
292. Email from Greg Dyekman to Kara Ronnau dated 9-25-13	--	50	51	--
293. Email from Monica Lincoln to Gay Woodhouse dated 3-20-12	--	50	51	--
294. Email from Gregory Dyekman to Kara Ronnau dated 9-4-13	--	50	51	--
296. Email from Gregory Dyekman to Gay Woodhouse dated 2-6-13	--	50	51	--
297. Email from Kara Ronnau to Gregory Dyekman dated 5-30-14	--	371	371	--
298. Email from Kara Ronnau to John Sorensen dated 10-23-13	--	409	409	--
299. Email from Kara Ronnau to Gregory Dyekman dated 11-5-13	--	56	56	--

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled on .</u>	<u>Found</u>
300. Email from John Sorensen to Kara Ronnau dated 1-8-14	--	65	65	--
301. Email from Kara Ronnau to Gregory Dyekman dated 7-7-14	--	409	409	--
302. Email from Gregory Dyekman from Kara Ronnau dated 5-7-14	--	58	58	--
304. Email from Kara Ronnau to Gregory Dyekman dated 8-26-14	--	374	374	--
307. Email from John Sorensen to Kara Ronnau dated 5-8-14	--	51	51	--
312. Letter from Kara Ronnau to Gregory Dyekman dated 9-2-13	--	459	459	--
315. Email from Gay Woodhouse to Greg Dyekman dated 7-23-12	--	51	52	--

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled on .</u>	<u>Found</u>
318. Email from J. Fred Volk to Greg Dyekman dated 1-16-13	--	66	67	--
319. Email from Gregory Dyekman to Leonard Mosher dated 1-24-13	--	67	68	--
322. Email from Leonard Mosher to Greg Dyekman dated 2-4-13 with 1099 MISC attachment	--	52	52	--
325. Email from Greg Dyekman to Kara Ronnau dated 4-29-13	--	52	52	--
329. Email from Greg Dyekman to Kara Ronnau dated 8-26-13	--	53	53	--
330. Email from Gregory Dyekman to Kara Ronnau dated 8-30-13	--	410	410	--
336. Email from Kara Ronnau to Gregory Dyekman dated 12-13-13	--	410	410	--

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled on .</u>	<u>Found</u>
345. Email from Gregory Dyekman to Kara Ronnau dated 4-19-14	--	411	411	--
355. Email from Greg Dyekman to Kara Ronnau dated 6-17-14	--	68	68	--
367. Mineral Quitclaim Deed filed 3-30-09	--	68	68	--
368. Mineral Quitclaim Deed filed 4-17-09	--	68	68	--
369. Mineral Quitclaim Deed filed 4-17-09	--	68	68	--
370. Trustee's Deed	--	54	54	--
371. Trustee's Mineral Quit Claim Deed filed 1-22-14	--	54	54	--
372. Trustee's Mineral Quit Claim Deed filed 1-17-14	--	54	54	--
373. Trustee's Mineral Quit Claim Deed filed 1-17-14	--	54	54	--
376. 2011 Lois Mosher tax return	--	54	54	--

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled on .</u>	<u>Found</u>
377. 2012 Lois Mosher tax return	--	54	54	--
378. Grange Insurance Association Claim Report	--	54	54	--
379. Letter from Robert Brenner to Kara Ronnau dated 9-1-15	--	54	54	--
380. State of Nebraska State Surveyor's Office	--	396	396	--
381. Memorandum of Lease	--	55	55	--
382. Spreadsheet prepared by Leonard Mosher	--	69	69	--
383. Notice of Valuation Change dated 5-17-11	--	69	69	--
385. Notice of Valuation Change dated 5-15-13	--	69	69	--
387. Certification of Identity	--	411,414	414	--

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled on .</u>	<u>Found</u>
388. Email from Leonard to Tracy Oldemeyer dated 1-24-17	--	397	397	--
389. MPCII Summary of Loss dated 9-18-13	--	69	69	--
390. MPCII Summary of Loss dated 8-31-15	--	69	69	--
391. Invoice of John Sorensen dated 9-25-13	--	69	69	--
392. Photograph	--	55	55	--
393. Photograph	--	55	55	--
394. Photograph	--	55	55	--
395. Photograph	--	55	55	--
396. Photograph	--	55	55	--
397. Photograph	--	55	55	--
398. Photograph	--	55	55	--
399. Photograph	--	55	55	--
400. Photograph	--	55	55	--
401. 1996 Nebraska Personal Property Return of Dan Mosher	--	55	55	--

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled on .</u>	<u>Found</u>
402. State of Nebraska Vehicle Registration forms to Daniel O. Mosher	--	55	55	--
403. Nebraska Personal Property Return of Leonard Mosher	--	56	56	--
404. Spreadsheet for crop year 2012	--	297	297	--
405. Spreadsheet for crop year 2013	--	369	370	--
406. Invoice from Leonard Mosher to Lois Mosher Trust	--	369	370	--
407. Spreadsheet for crop year 2014	--	369	370	--
408. Invoice from Leonard Mosher to Lois Mosher Trust	--	369	370	--
409. Spreadsheet for crop year 2015	--	369	370	--
410. Spreadsheet for crop years 2015-2016	--	369	370	--

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled on .</u>	<u>Found</u>
411. 719 Sterling Drive Timeline	--	472	472	--
412. Preliminary Analysis & Marketing Proposal dated 6-25-12	--	472	472	--
413. Photographs	--	451	451	--
414. Farm Service Agency Abbreviated 156 farm Record dated 1-31-17	504	505	505	--
415. Curriculum Vitae of Paul A. Burgener	--	535	535	--
416. List of Documents	--	535	535	--
417. List of Documents	535	536	536	--
418. Collection Details	--	540	541	--
419. Account Agreement dated 2-18-10	559	560	561	--

C E R T I F I C A T E

I, Lynn Namuth, official court reporter in the district court of Nebraska for the twelfth judicial district, do hereby certify that the within and following complete transcript contains all the evidence requested to be transcribed by me, and the rulings of the court thereon, from the proceedings had in or at the trial of the foregoing cause in said court; and that said complete transcript is a correct and complete transcription of the evidence requested to be transcribed from the record made at the time of said proceedings or trial.

DATED this 23rd day of June, 2017.

Lynn Namuth
Official Court Reporter

1 (At 8:54 a.m. on February 27, 2017 in the district court
2 of Kimball County, in Kimball, Nebraska, before DEREK C.
3 WEIMER, JUDGE, with Ms. Tracy A. Oldemeyer appearing as
4 counsel for the plaintiff and Messrs. Robert M. Brenner and
5 Justin N. Hesser appearing as counsel for the defendant
6 Janice Herrell and Mr. John Sorensen appearing as counsel for
7 the defendant Dennis Mosher, the following proceedings were
8 had:)

9 THE COURT: This is Case Number CI 13 19.
10 This is the matter of Mosher v. Herrell and Mosher. The
11 record reflects that the Plaintiff Leonard Mosher is present
12 with Counsel Tracy Oldemeyer. The Defendant Janice Herrell
13 is present with Counsel Robert Brenner and Mr. Hesser and the
14 Defendant Dennis Mosher is present with Counsel John
15 Sorensen.

16 These are civil proceedings in the district court of
17 Banner County, Nebraska, and they are scheduled today for the
18 first day of a two-day trial. The court and counsel had a
19 pretrial conference a couple of weeks ago in anticipation of
20 today's trial.

21 Counsel, before we get started there were a couple, I
22 don't know better logistical things or matters to discuss in
23 terms of scheduling for today and for tomorrow We'll get
24 started here in a couple of minutes. I had made some notes
25 for myself on Friday as I was reviewing everything in

1 anticipation for the trial for today, and I had made a note
2 to suggest that perhaps we dispense with opening statements
3 but if everybody is geared up and ready to make opening
4 statements that's fine. I don't care. I'm going to remind
5 everybody I've given you two days which is the two days you
6 all told me you needed. 4:30 tomorrow when I leave I'm done.
7 So that informs some of the other things we're going to talk
8 about here in a moment. So we can do opening statements. My
9 suggestion is that everyone keep them pithy and reasonably
10 short. You can take whatever time you want with them but
11 bear in mind that that's cutting into the trial time. I am
12 certainly going to dispense right now with any kind of oral
13 closing arguments. You can submit your arguments to me in
14 writing after the fact because again with the pretrial
15 conference and the prospect of in excess of 300 exhibits over
16 the next 30 hours or so I am going to have a little reading
17 to do when we're all done and so there's no reason to waste
18 time with closing arguments and I'll just tell you now that
19 my intention is to order plaintiffs to have theirs in 30 days
20 after the matter is concluded. I'll have the defendant's
21 closing arguments 45 days after that, not after that but 45
22 days after the trial is completed and then I'll give the
23 plaintiff an opportunity to submit a reply brief if needed
24 after that or 10 days after the plaintiff's briefs, excuse
25 me, the defendants' briefs or arguments are submitted.

1 As I was thinking about the matter, considering our time
2 frame of getting started and when I know I need to be
3 wrapping up in the evening, my intention is around noon to
4 find a natural breaking point to take a recess for a short
5 lunch break, and when I say short I'm talking 1/2 hour.
6 First of all there aren't a whole lot of options in terms of
7 where you're going to go and grab something to eat anyway but
8 more importantly trial time is going to be precious and so
9 we're going to want to get to our business. So, if we're at
10 a natural breaking point at a quarter to 12:00 and we come
11 back at 12:15 that's fine. I don't care but it will be a
12 half an hour lunch break and then I will need to be leaving
13 the building no later than 4:30 this afternoon. So we can go
14 until 4:30 and we can take a break right after someone asks
15 the question at 4:25 and answers it but I've got to be home
16 to get kids and I'm not going to miss that. So, that's the
17 deal there.

18 The other thing in that regard is to remember that we
19 are down in the county courtroom tomorrow and so it's going
20 to be tight quarters in that room but you can get down there
21 today and start getting things set up if you'd like. I don't
22 have any issue with that.

23 The last thing I was going to bring up this morning and
24 I'm, I'm, before we get into the evidence, two things I
25 guess, and they both relate to trying to keep the trial

1 itself as efficient and trial time as useful as I can, if you
2 run the numbers there it's about 15 hours of trial time.
3 Which means each side gets about seven and a half hours. I
4 don't care how you use your seven and a half hours. If you
5 want to spend the bulk of your seven and a half hours cross
6 examining somebody perfect, don't care. You want to spend
7 the bulk of your time in you presentation of your own case in
8 chief that's fine too. 4:30 tomorrow I'm done with this case
9 because that's what you all told me.

10 So, that leads me then to the 313 exhibits I think that
11 we have identified. We can do this one of a couple of ways.
12 We can spend the next two days duking out over each exhibit
13 and spend 20 minutes arguing objections or, and again, that's
14 fine, or in the alternative since I'm going to be ordering
15 you to give me written arguments anyway, I understand
16 everybody wants to be able to preserve their record and I'm
17 not trying to get in the way of the preservation of the
18 record but it seems to me that if you have an object to an
19 exhibit at the time of the offer you can stand up and say,
20 Your Honor, I object and I can say, great I'm going to take
21 the exhibit and you can tell me in writing what your
22 objection is in your written arguments because here's the
23 funny thing, and we've already talked a little bit about
24 this. I'm going to have to look, to look at the exhibit to
25 rule on the objection anyway but if you want to make your

1 objection orally and lay it all out in that regard on the
2 record, that's fine. I'm not trying to get in the way of
3 anyone's opportunity to preserve the record. I'm just saying
4 seven and a half hours for each side is going to burn by
5 quickly if we're going to spend 20 minutes arguing over a
6 bank record. So, that's all I was going to say.

7 So, we'll get stated if everyone is ready.

8 Ms. Oldemeyer, are you ready to go?

9 MR. SORENSEN: Your Honor, may I have just a
10 moment?

11 THE COURT: Sure.

12 MR. SORENSEN: Appreciating the preciousness
13 of time I just want to clarify on the, on the evidence that's
14 going to come from the witness stand, it is going to be
15 necessary for us to be able to call at least Stan Mosher, and
16 I'll be referring to him as Stan rather than Dennis, after
17 because to talk about what Leonard may have testified to. I
18 just wanted to be sure that I'm not going to run a fowl with
19 protocol here.

20 THE COURT: No one is going to run afoul
21 with me at all.

22 MR. SORENSEN: Okay.

23 THE COURT: Well, hope springs eternal.

24 MR. SORENSEN: All right, very good. That's
25 all.

1 THE COURT: All I'm saying is two days.
2 Ms. Oldemeyer.

3 MS. OLDEMEYER: I think to stip- -- we have
4 stipulation with respect to exhibits that will help with our
5 amended joint exhibit list.

6 THE COURT: Okay.

7 MS. OLDEMEYER: I'd like to go through those
8 just to make sure that the record is clear because exhibits
9 were renumbered after the pretrial.

10 THE COURT: Okay.

11 MS. OLDEMEYER: I believe we have a
12 stipulations of Exhibits 101 through 103 are admissible and
13 we'd offer those exhibits.

14 MR. BRENNER: Wait a minute, Judge, we're
15 going to do opening statements. We do intend to do an
16 opening statement, very brief.

17 THE COURT: Okay, so do you want to do
18 those after we do the or before the stipulations as talked
19 about or after?

20 MR. BRENNER: That's up to the court.

21 THE COURT: Doesn't matter to me. I'm
22 asking you what you want to do.

23 MR. BRENNER: I'd like to do, have the
24 opening statements done first and then we can go through the
25 evidence.

1 THE COURT: Okay.

2 MR. BRENNER: Thank you.

3 THE COURT: Then I'll take opening
4 statements.

5 MS. OLDEMEYER: Okay.

6 May it please the Court, Counsel. There are three key
7 people that plaintiff will call in this case. The plaintiff
8 Leonard Mosher, his sister Janice Herrell, who is the trustee
9 of the trust at issue, and their brother Dennis Stan Mosher.
10 Dennis and Stan [sic] have aligned their interest against the
11 Plaintiff Leonard Mosher. There are a few key dates, and
12 this is just brief chronology for the court, Lois Mosher
13 mother, died on February 6, 2012. Six months later in August
14 of 2012 mother's house goes up for sale. During the time of
15 2012 and 2013 there is Banner County farm ground at issue.
16 The south half of Section 24, Township 17, Range 58 west.
17 It's critical because what takes place with respect to that
18 farm ground in the 2012 and 2013 time frame become critical
19 when the defendants assert counterclaims in May of 2015.
20 January of 2013 mother's house is sold. The evidence will
21 show, Your Honor, multiple promises during this time frame
22 that the trust assets will be distributed in accordance with
23 the trust documents but no action was taken and in fact there
24 was an insistence upon an advance release before any
25 distribution would be made.

1 Mr. Mosher will testify that he filed this suit on
2 August 16, 2013. Why? The very specific concerns he had
3 raised prior to that date and they are alleged in the
4 Complaint.

5 There will be no evidence that Lois Mosher, mother,
6 ever put down in writing that any particular beneficiary was
7 to get any particular item of tangible personal property. We
8 have the trust documents.

9 September was the first accounting received as Exhibit
10 294. December 2013 a Petition For Inheritance Tax was filed
11 in Nebraska. January 2014 the first distributions of trust
12 assets started and this is some of the proceeds from the sale
13 of the home that occurred a year earlier as well as a few
14 deeds of property that includes the farm ground I mentioned
15 on the south half of Banner County. Those deeds were wrong.
16 They did not follow the trust. There was an accounting in
17 April of 2014. In May of 2014 the evidence will show Janice
18 Herrell through her authorized agents, her attorneys
19 indicated that she had possession of jewelry. 2015 those two
20 rings issues that Leonard Mosher had brought up prior to that
21 date. 2015, the next accounting was in March. The court
22 also, the evidence will show asked for a status conference
23 with respect to the lawsuit that had previously been filed.
24 That lead to the May filing by the defendant both of who
25 asserted counterclaims for jewelry, equipment and farm

1 income. All of this could have been avoided if the trust had
2 done what it was supposed to do way back when mother died.
3 The counterclaims are shown to punish Leonard Mosher for
4 pursuing valid claims he had with respect to trust assets and
5 turned into a personal attack. The last accounting,
6 September 2016.

7 Your Honor, the evidence will show at a minimum a
8 violation of the Wyoming statutes as alleged in the Amended
9 Complaint. The harm and the relief Mr. Mosher, Plaintiff,
10 seeks are on Exhibit 263, page 13, the damages. You'll see
11 many admissions through the attorneys and the exhibits before
12 the court. We ask that you return a verdict in favor of the
13 plaintiff based on those breaches and reject the
14 counterclaims.

15 Thank you.

16 THE COURT: Thank you.

17 Mr. Brenner or Mr. Hesser.

18 Mr. Hesser.

19 MR. HESSER: Thank you, Your Honor.

20 May it please the Court and Counsel. If I may approach,
21 I do have a memorandum of law that we would like provide.

22 THE COURT: Sure, that's fine.

23 Thank you.

24 MR. HESSER: To help the court through the
25 court, through the Wyoming Uniform Trust Code and I have

1 copies for the parties.

2 Your Honor, if I could kind of stand right here.

3 THE COURT: You're welcome to move around
4 as you see fit. Thank you.

5 MR. HESSER: Listening to the allegations
6 and characterizations by the plaintiff you would expect to
7 hear that the Mosher Trust has millions of dollars and there
8 is a large chunk of money missing. Your Honor, there's not
9 going to be any evidence today or tomorrow of that. In fact
10 it's quite the opposite. Lois Mosher had a modest trust and
11 Ms. Herrell has administered all the assets.

12 The value of the assets is important because under the
13 Wyoming Uniform Trust Code this court must justify Ms.
14 Herrell's actions as what is reasonable under all of the
15 circumstances. One of those circumstances is the value and
16 the nature of the property.

17 The real property has been dealt with. If you look at
18 the timeline and the complaint here is it's been five years,
19 look at the timeline, it's a little, just under three years.
20 All of two years all of the real property and a significant
21 portion of the income from the Wyoming real property was
22 distributed. Only a small reserve was kept and the Wyoming
23 Uniform Trust Code allows you to keep a small reserve.

24 The allegation about a release, the evidence will show
25 that the release was asked for and in the memorandum, Judge,

1 there's a Maryland case, one of the Uniform Trust Codes
2 specifically allows for a trustee to ask for a release and a
3 consent. If the Trust Code allows for it it's proper. It's
4 not a breach of any duty. There was no demand that it be
5 signed before distribution and in fact assets were
6 distributed and we still have no, obviously no release.

7 The January 2014 date is key. That's two years. The
8 additional three years is this litigation and plaintiff's
9 request. This is, this is, the way this went and the
10 evidence will show, provide an accounting. Ms. Herrell
11 provides an accounting. The plaintiffs come back with, well,
12 we need every check and every bank statement in support of
13 that. Okay, here you go. Then there's reference to a wind
14 lease and we have all the information about a wind lease.
15 Okay, then all the documents that show what happened with the
16 house in Wyoming. Okay, here you go. We've had pretty much
17 five years of that but certainly the three years have been
18 that. The litigation and the plaintiff. You will hear an
19 expert witness testify about the amount of farming income
20 that the Mosher Trust and Ms. Herrell should have received
21 from the plaintiff. This will establish that Ms. Herrell was
22 justified in waiting and trying to handle the Nebraska real
23 property. It's not a punishment. It will establish her
24 counterclaim.

25 Finally, Your Honor, you're being asked to award the

1 plaintiff damages, however, under the Wyoming Uniform Trust
2 Code limited, there are limited exceptions. The remedies are
3 equitable. A legal remedy of surcharge is only available if
4 the plaintiff can establish harm to the trust or its assets
5 or of improper benefit to Ms. Herrell. There is no such harm
6 or benefit in this case just an unsatisfied plaintiff's
7 belief that he should have received more.

8 Thank you.

9 THE COURT: Thank you.

10 Mr. Sorensen.

11 MR. SORENSEN: May it please the Court and
12 Counsel. The evidence will show here that Dennis, Stanley
13 Mosher and I'll be referring to him as Stan, that's what he
14 goes by, was sued in this lawsuit because he has three pieces
15 of old used furniture with a value of at most of about \$400
16 that were given to him by his mother before her death and one
17 old picture. That's the reason that he was sued in this
18 case. I think that at the end of the day the evidence is
19 going to show that this case has no merit. It certainly has
20 no merit as to Stan and I think the evidence will also show
21 has no merit as to Janice.

22 THE COURT: Thank you.

23 Okay, let's go back then, Ms. Oldemeyer, you were going
24 through some stipulations with respect to exhibits and so I
25 think you had indicated that you thought there was a

1 stipulation as to the admissibility of Exhibits 101 through
2 103.

3 MS. OLDEMEYER: We offer Exhibits 101 through
4 103.

5 THE COURT: Mr. Brenner?

6 MR. BRENNER: No objection, Your Honor.

7 THE COURT: Mr. Sorensen?

8 MR. SORENSEN: No objection

9 THE COURT: 101 through 103 are received.

10 (Exhibit Nos. 101, 102 and
11 103 are hereby made a part
12 of the official court
13 record.)

14 MS. OLDEMEYER: Your Honor, we'd offer Exhibits
15 107 through 111.

16 THE COURT: Mr. Brenner?

17 MR. BRENNER: No objection, Your Honor.

18 THE COURT: One hundred and I'm sorry, Mr.
19 Sorensen?

20 MR. SORENSEN: None, Your Honor.

21 THE COURT: Exhibits 107 through 111 are
22 received.

23 (Exhibit Nos. 107, 108,
24 109, 110 and 111 are
25 hereby made a part of the

1 official court record.)

2 MS. OLDEMEYER: Your Honor, we'd offer Exhibits
3 129 and 131.

4 THE COURT: Mr. Brenner?

5 MR. BRENNER: No objection, Your Honor.

6 THE COURT: Mr. Sorensen?

7 MR. SORENSEN: None, Your Honor.

8 THE COURT: One hundred and twenty-nine and
9 131 are received.

10 (Exhibit Nos. 129 and 131
11 are hereby made a part of
12 the official court
13 record.)

14 MS. OLDEMEYER: Your Honor we would offer
15 Exhibits 132, 135, 137.

16 THE COURT: Mr. Brenner?

17 MR. BRENNER: No objection, Your Honor.

18 THE COURT: Mr. Sorensen?

19 MR. SORENSEN: None.

20 THE COURT: 132, 135 and 137 are received.

21 (Exhibit Nos. 132, 135 and
22 137 are hereby made a part
23 of the official court
24 record.)

25 MS. OLDEMEYER: We'd offer Exhibit 146.

1 THE COURT: Mr. Brenner?

2 MR. BRENNER: No objection, Your Honor.

3 THE COURT: Mr. Sorensen?

4 MR. SORENSEN: None, Your Honor.

5 THE COURT: One forty-six is received.

6 (Exhibit No. 146 is hereby
7 made a part of the
8 official court record.)

9 MS. OLDEMEYER: Your Honor, we'd offer Exhibits
10 156 through 161.

11 THE COURT: Mr. Brenner?

12 MR. BRENNER: No objection, Your Honor.

13 THE COURT: Mr. Sorensen?

14 MR. SORENSEN: None, Your Honor, but could I
15 have those numbers repeated?

16 THE COURT: Yep, 156 through 161.

17 MR. SORENSEN: Okay, thank you.

18 THE COURT: And they are received.

19 (Exhibit Nos. 156, 157,
20 158, 159, 160 and 161 are
21 hereby made a part of the
22 official court record.)

23 MS. OLDEMEYER: Your Honor, we would offer
24 Exhibits 163 through 179.

25 THE COURT: Mr. Brenner?

1 MR. BRENNER: I'm just checking the list.

2 THE COURT: That's fine.

3 MR. BRENNER: No objection.

4 THE COURT: Mr. Sorensen?

5 MR. SORENSEN: None, Your Honor.

6 THE COURT: Exhibits 163 through 179 are
7 received.

8 (Exhibit Nos. 163 through
9 179 are hereby made a part
10 of the official court
11 record.)

12 MS. OLDEMEYER: Your Honor, we would offer
13 Exhibit 183, 185 through 195.

14 THE COURT: Mr. Brenner, that's 183 and
15 then 185 through 195?

16 MR. BRENNER: No objection.

17 THE COURT: Mr. Sorensen?

18 MR. SORENSEN: None, Your Honor.

19 THE COURT: One eighty-three and then 185
20 through 195 are received.

21 (Exhibit Nos. 183 and 185
22 through 195 are hereby
23 made a part of the
24 official court record.)

25 MS. OLDEMEYER: Your Honor, we would offer

1 Exhibits 197 through 200.

2 THE COURT: Mr. Brenner?

3 MR. BRENNER: Okay, 197 no objection nor 198
4 nor 199.

5 THE COURT: I think she also mentioned 200.
6 The offer was 197 through 200.

7 MR. BRENNER: That, 200, Your Honor, we'll
8 object on hearsay and relevance. That's the Amended
9 Complaint, to tell you what the document is with a bunch of
10 attachments and so we're objecting to that.

11 THE COURT: Mr. Sorensen, I'll take your
12 comments with respect to Exhibits 197 through 200.

13 MR. SORENSEN: I'll just repeat the same
14 objection that Counsel just made.

15 THE COURT: So I'll receive 197, 198 and
16 199. 200 you said is the Amended Complaint?

17 So I understand the objection I can take judicial notice
18 of a pleading and I'll do that and I'll receive 200 as a copy
19 of the, of the pleading. I understand the issue of the
20 object and that's, and to that extent I'll overrule the
21 objection and receive it as, as a pleading in the file.

22 Ms. Oldemeyer, you can continue.

23 (Exhibit Nos. 197 through
24 200 are hereby made a part
25 the official court

1 record.)

2 MS. OLDEMEYER: At this time, Your Honor, we
3 would offer Exhibits 204 through 209.

4 MR. BRENNER: No objection, Your Honor, from
5 us.

6 THE COURT: Mr. Sorensen?

7 MR. SORENSEN: None, Your Honor,

8 THE COURT: Two hundred and four through
9 209 are received.

10 (Exhibit Nos. 204 through
11 209 are hereby made a part
12 of the official court
13 record.)

14 MS. OLDEMEYER: At this time, Your Honor, we
15 offer I think its 217 and 220.

16 MR. BRENNER: No objection to 217 or 220.

17 THE COURT: Mr. Sorensen?

18 MR. SORENSEN: No objection

19 THE COURT: Two seventeen and 220 are
20 received.

21 (Exhibit Nos. 217 and 220
22 are hereby made a part of
23 the official court
24 record.)

25 MS. OLDEMEYER: At this time we'd offer

1 Exhibits 229 through 231 as well as 233 through 235.

2 MR. BRENNER: Wait a minute, I've got to get
3 those first numbers.

4 THE COURT: Two twenty-nine to 231.

5 MR. BRENNER: Okay.

6 THE COURT: And then 233 through 235.

7 MR. BRENNER: Your Honor, we have no
8 objections to 229 nor to 231. To 230 we object, that's a CD
9 with, I believe roughly 600 pages and it's duplicative, it is
10 also hearsay, foundation. We did not waive anything on that
11 one.

12 THE COURT: What about 233 through 235?

13 MR. BRENNER: We have no objections to 233
14 and 235.

15 THE COURT: That about 234?

16 MR. BRENNER: I'm sorry. I have no objection
17 to it either.

18 THE COURT: Okay, Mr. Sorensen?

19 MR. SORENSEN: I'll just repeat the same
20 objection, Your Honor.

21 THE COURT: So, I'll receive 229, 231, 233,
22 234 and 235.

23 Ms. Oldemeyer let me hear from you on 230.

24 (Exhibit Nos. 229, 231,
25 233, 234 and 235 are

1 hereby made a part of the
2 official court record.)

3 MS. OLDEMEYER: Your Honor, we can address that
4 if and when it comes up during trial.

5 THE COURT: Okay, so I'm not going to
6 receive that yet.

7 MS. OLDEMEYER: At this time, Your Honor, we'd
8 offer Exhibit 237.

9 THE COURT: Mr. Brenner?

10 MR. BRENNER: Your Honor, we would object on
11 hearsay.

12 THE COURT: Mr. Sorensen?

13 MR. SORENSEN: I'll just repeat Counsel's
14 objection, Your Honor.

15 THE COURT: Okay, Ms. Oldemeyer, what's
16 that exhibit. I don't have that in front of me.

17 MS. OLDEMEYER: Your Honor, it's, as produced
18 by defense counsel for purposes of trial. The first time I
19 saw it was when I saw their trial exhibits. I believe it's a
20 record upon which Defendant Herrell relies with respect to
21 issues related to jewelry but we can address the hearsay
22 object if and when it comes up during trial.

23 THE COURT: Okay, I'll reserve ruling then
24 on 237.

25 (Receipt of Exhibit No.

1 237 is taken under
2 advisement by the court.)

3 MS. OLDEMEYER: Okay, we'd offer Exhibit 250.

4 THE COURT: Mr. Brenner?

5 MR. BRENNER: No objection to 250.

6 THE COURT: Mr. Sorensen?

7 MR. SORENSEN: No objection, Your Honor.

8 THE COURT: Two fifty is received.

9 (Exhibit No. 250 is hereby
10 made a part the official
11 court record.)

12 MS. OLDEMEYER: Your Honor, we would offer
13 Exhibits 261 and 263.

14 MR. BRENNER: Was that 61 you said?

15 THE COURT: Two six one and two six three
16 is what I heard.

17 MR. BRENNER: Your Honor, to 261 we object on
18 the basis of hearsay and relevance. The same for 263. Those
19 are supplemental discovery answers by the plaintiff, Judge.

20 THE COURT: Okay.

21 Mr. Sorensen, did you have any additional comments you
22 wanted to make?

23

24 MR. SORENSEN: No, Your Honor.

25 THE COURT: All right, Ms. Oldemeyer.

1 MS. OLDEMEYER: These are again defense
2 exhibits. I assume they were offering them for purposes of
3 use against a party so they're not hearsay but we can allow
4 the witness to testify from them regardless of whether
5 they're actually received into evidence so, I think they are
6 properly admitted at this point in time.

7 THE COURT: I'll reserve rulings on 261 and
8 263 at this time.

9 (Receipt of Exhibit Nos.
10 261 and 263 are taken
11 under advisement by the
12 court.)

13 MS. OLDEMEYER: Okay, we would offer Exhibits
14 265 and 267.

15 THE COURT: Mr. Brenner?

16 MR. BRENNER: To 267 no objection. To 265
17 the same as we did to 261 and 263, relevance.

18 THE COURT: Just relevance or hearsay?

19 MR. BRENNER: And hearsay, I apologize.

20 THE COURT: I just wanted to be sure I knew
21 what your objections were.

22 Mr. Sorensen.

23 MR. SORENSEN: No further remarks on this.

24 THE COURT: So I'll receive 267, Ms.
25 Oldemeyer, did you want to be heard on 265?

1 (Exhibit No. 267 is hereby
2 made a part of the
3 official court record.)

4 MS. OLDEMEYER: No, Your Honor.

5 THE COURT: All right, I'll reserve ruling
6 on 265.

7 (Receipt of Exhibit No.
8 126 is taken under
9 advisement by the court.)

10 MS. OLDEMEYER: Just for clarity of the record,
11 Your Honor, Exhibit 266 now is stricken as duplicative as
12 Exhibit 110. I stipulated to the admissibility of them at
13 the time 166 now 266 I believe at the pretrial and I just
14 wanted the record to reflect that.

15 THE COURT: So there will be no offer of an
16 Exhibit 266 in this case, or at this, the trial, is that
17 right?

18 MS. OLDEMEYER: Correct.

19 THE COURT: I just want to be sure I'm
20 hearing what --

21 MS. OLDEMEYER: Yeah, because Exhibit 110 has
22 been received.

23 THE COURT: Got it.

24 MS. OLDEMEYER: Going to exhibit or page 21 of
25 the exhibit list we would offer Exhibits 284 and 285.

1 MR. BRENNER: Your Honor, no objections.

2 THE COURT: Mr. Sorensen?

3 MR. SORENSEN: None, Your Honor.

4 THE COURT: Two eight-four and 285 are
5 received.

6 (Exhibit Nos. 284 and 285
7 are hereby made a part of
8 the official court
9 record.)

10 MS. OLDEMEYER: Your Honor, we would offer
11 Exhibits, these are not in consecutive order but I'm looking
12 at page 22 of the exhibit list. We would offer Exhibits 288,
13 290, 293, 294 and 296.

14 THE COURT: Two eight-eight, 290 --

15 MR. BRENNER: Okay --

16 THE COURT: Yeah.

17 MR. BRENNER: Two eighty-eight we have no
18 objection; 290 we have no objection; 293 we object on, no
19 objection; 294 no objection, 296 no objection. If the court
20 followed me, sorry.

21 THE COURT: Okay, so, and again I'm
22 certainly not trying to put words anyone's mouth. Do you
23 have any objection to those five exhibits, Mr. Brenner?

24 MR. BRENNER: No, Your Honor.

25 THE COURT: Mr. Sorensen?

1 MR. SORENSEN: Could I get, was it 288, 289,
2 290 --

3 THE COURT: No. Two eighty-eight, 290,
4 293, 294 and 296.

5 MR. SORENSEN: Nothing. No, no objection,
6 Your Honor.

7 THE COURT: Those exhibits are received.
8 (Exhibit Nos. 288, 290,
9 293, 294 and 296 are
10 hereby made a part of the
11 official court record.)

12 MS. OLDEMEYER: Your Honor, plaintiff would
13 offer Exhibit 307.

14 MR. BRENNER: No objection.

15 THE COURT: Mr. Sorensen?

16 MR. SORENSEN: No objection, Your Honor.

17 THE COURT: Three hundred and seven is
18 received.

19 (Exhibit No. 307 is hereby
20 made a part of the
21 official court record.)

22 MS. OLDEMEYER: Your Honor, we would offer
23 Exhibit 315.

24 MR. BRENNER: No objections from Defendant
25 Herrell.

1 THE COURT: Thank you.

2 Mr. Sorensen?

3 MR. SORENSEN: None, Your Honor.

4 THE COURT: Three fifteen is received.

5 (Exhibit No. 315 is hereby
6 made a part of the
7 official court record.)

8 MS. OLDEMEYER: 325.

9 THE COURT: Mr. Brenner?

10 MR. BRENNER: Only on hearsay and relevance,
11 Your Honor.

12 THE COURT: Mr. Sorensen, did you have
13 additional comments?

14 MR. SORENSEN: No, Your Honor.

15 THE COURT: Ms. Oldemeyer, would you tell
16 me what 325 is.

17 MS. OLDEMEYER: It is communications between
18 the attorneys used as admissions against parties, it's Mr.
19 Dykeman but we can wait and address that exhibit as it comes
20 up during trial.

21 THE COURT: So I'll not rule one way or the
22 other. I'll reserve ruling on 325.

23 (Receipt of Exhibit No.
24 325 is taken under
25 advisement by the court.)

1 MS. OLDEMEYER: We would stipulate, excuse me,
2 offer Exhibit 329.

3 THE COURT: Mr. Brenner?

4 MR. BRENNER: Hearsay and relevance, Your
5 Honor.

6 THE COURT: Mr. Sorensen, anything else?

7 MR. SORENSEN: No, Your Honor.

8 THE COURT: Ms. Oldemeyer?

9 MS. OLDEMEYER: Again, we'll address it if it
10 comes up during trial, Your Honor.

11 THE COURT: Okay, I'll reserve ruling on
12 that then.

13 (Receipt of Exhibit No.
14 329 is taken under
15 advisement by the court.)

16 MS. OLDEMEYER: At the pretrial we stipulated
17 to the admissibility of Exhibit 240, now 340, that has been
18 removed as duplicative with Exhibit 287. So I guess we would
19 offer Exhibit 287.

20 MR. BRENNER: And we have no objection.

21 THE COURT: Two eighty-seven is received.

22 I'm sorry, Mr. Sorensen, I -- I keep my head down.

23 (Exhibit No. 287 is hereby
24 made a part of the
25 official court record.)

1 MR. SORENSEN: Well, I've added so much to
2 this discussion.

3 THE COURT: I apologize I didn't look up
4 from my notes. So did you have any comments on 287.

5 MR. SORENSEN: No, Your Honor.

6 THE COURT: Two eighty-seven is received.

7 MS. OLDEMEYER: Additional stipulations, Your
8 Honor, we would offer Exhibit 370 through 373.

9 THE COURT: Mr. Brenner?

10 MR. BRENNER: No objections, Your Honor.

11 THE COURT: Mr. Sorensen?

12 MR. SORENSSEN: None, Your Honor.

13 THE COURT: Three seventy through 373 are
14 received.

15 (Exhibit No. 370, 371, 372
16 and 373 are hereby made a
17 part of the official court
18 record.)

19 MS. OLDEMEYER: Your Honor, we would offer
20 Exhibits 376, 377, 378 and 379.

21 MR. BRENNER: No objections, Your Honor.

22 THE COURT: Mr. Sorensen?

23 MR. SORESENSEN: None, Your Honor.

24 THE COURT: Three seventy-six, 377, 378 and
25 379 are received.

1 (Exhibit Nos. 376, 377,
2 378 and 379 are hereby
3 made a part of the
4 official court record.)

5 MS. OLDEMEYER: We'd offer Exhibit 381.

6 MR. BRENNER: No objections.

7 THE COURT: Mr. Sorensen?

8 MR. SORENSEN: None, Your Honor.

9 THE COURT: Three eight-one is received.

10 (Exhibit No. 381 is hereby
11 made a part of the
12 official court record.)

13 MS. OLDEMEYER: Your Honor, we would offer
14 Exhibits 392 through 402.

15 THE COURT: Mr. Brenner?

16 MR. BRENNER: No objections, Your Honor.

17 THE COURT: Mr. Sorensen?

18 MR. SORENSEN: None, Your Honor.

19 MS. OLDEMEYER: Your Honor, Exhibit 403 has
20 been --

21 THE COURT: Hang on. Three hundred and
22 ninety-two through 402 are received.

23 Go ahead.

24 (Exhibit Nos. 392 through
25 402 are hereby made a part

1 of the official court
2 record.)

3 MS. OLDEMEYER: Exhibit 403 is a personal
4 property tax record of Leonard Mosher's. We would stipulate
5 to the admissibility of Exhibit 403.

6 THE COURT: Mr. Brenner?

7 MR. BRENNER: No objections.

8 THE COURT: Mr. Sorensen?

9 MR. SORENSEN: None, Your Honor.

10 THE COURT: Four hundred and three is
11 received.

12 (Exhibit No. 403 is hereby
13 made a part of the
14 official court record.)

15 MS. OLDEMEYER: At this point in time those, I
16 believe are all the stipulations.

17 THE COURT: Mr. Brenner, Mr. Hesser, did
18 you have additional exhibits?

19 MR. HESSER: Yes.

20 THE COURT: Go ahead, Mr. Hesser.

21 MR. HESSER: Yes, at this time I think under
22 Rule 106, the completeness rule, to the extent Exhibits 106
23 and 126 were offered we would offer Exhibit 299. The topic
24 of 106 and 126 concerns the receipt and release as does 299,
25 under Rule 106 completeness we ask that 299 be admitted.

1 THE COURT: So I don't, just so we're clear
2 I didn't note that 106 was offered.

3 MR. HESSER: I may have been --

4 THE COURT: I'm sorry you mentioned another
5 one?

6 MR. BRENNER: Two ninety-four was offered.

7 MR. HESSER: Yeah, I'm sorry. It would be
8 294.

9 THE COURT: Okay, so 294 would have been,
10 what was 106?

11 MR. HESSER: Yeah, so to the extent 294 is
12 offered, that email communication concerns the receipt and
13 release. Exhibit 299 also does and under the completeness
14 rule we'd ask that you receive that.

15 I have, I don't know if you want me to go through them
16 all, I have some additional ones under Rule 106 as well.

17 THE COURT: So 299 goes with 294?

18 MR. BRENNER: Right.

19 THE COURT: Is that right?

20 MR. BRENNER: Yes.

21 THE COURT: Okay, Ms. Oldemeyer, did you
22 want to be heard with respect to that?

23 MS. OLDEMEYER: No objection.

24 THE COURT: Two ninety-nine is received.

25 So just for my benefit, Mr. Hesser, and frankly for the

1 record's benefit would you, as you are asking about these
2 completeness issues would you reference the exhibit you're
3 wanting to offer and relate to the, to the exhibit that it
4 goes with, if that makes sense.

5 (Exhibit No. 299 is hereby
6 made a part of the
7 official court record.)

8 MR. HESSER: Yes, Your Honor.

9 We would offer Exhibit 302 because it relates to Exhibit
10 290 which was offered and received. The discussion in those
11 emails relates to farm income and expense documentation under
12 Rule 106 we'd ask 302 be admitted.

13 THE COURT: Ms. Oldemeyer?

14 MS. OLDEMEYER: No objection.

15 THE COURT: Three zero --

16 I'm sorry, Mr. Sorensen.

17 MR. SORENSEN: None.

18 THE COURT: All right, three zero-two is
19 received.

20 (Exhibit No. 302 is hereby
21 made a part of the
22 official court record.)

23 MS. OLDEMEYER: Your Honor, I did not write
24 down which exhibit they think that it goes with.

25 THE COURT: Three zero two I noted was, was

1 with 290.

2 MS. OLDEMEYER: Okay, thank you.

3 MR. HESSER: Your Honor, in addition we
4 would offer Exhibit 326 because 325 was offered, well,
5 actually 325 is not yet received. So to the extent, I guess
6 we'll address that when 325 comes up.

7 THE COURT: Okay.

8 MR. HESSER: I believe that is it for now
9 under Rule 106.

10 THE COURT: Any other exhibits outside of
11 that? Any other exhibits that you had wanted to offer at
12 this time, Mr. Hesser or Mr. Brenner?

13 MR. BRENNER: Yes, Your Honor, if you'll give
14 me a moment I'm trying to get to them.

15 They would be 152 through 155.

16 THE COURT: Mr. Sorensen, did you have any
17 comments on those?

18 MR. SORENSEN: No, Your Honor.

19 THE COURT: Ms. Oldemeyer?

20 MS. OLDEMEYER: Those, Your Honor, are portions
21 of, like 152 is a portion of Exhibit 194; 153, 154 and 155
22 are within Exhibits 107, 108 and 109.

23 THE COURT: Mr. Brenner?

24 MR. BRENNER: We are just, those are the
25 trust accountings that we've made and we just think that they

1 should be, they are separate from whatever is said in the
2 instruments to which they forwarded. That's our only
3 purpose.

4 THE COURT: But, again I'm not trying to be
5 difficult I just want to be sure, do you agree with Ms.
6 Oldemeyer that those documents, I understand that they are
7 separate documents --

8 MR. BRENNER: He says they are, my co-counsel
9 says they are included.

10 THE COURT: They are contained in those
11 other exhibits?

12 MR. BRENNER: Yes.

13 THE COURT: All right, just because I
14 don't, we don't need 14 copies of the same thing, unless you
15 can tell me why I should take separate copies of documents
16 that are --

17 MR. BRENNER: I could probably indicate we've
18 got a lot of duplication in emails.

19 THE COURT: I'm sure that's true.

20 MR. BRENNER: Thank you, and so what I am
21 trying to do because when the witness gets up there I wanted
22 to deal with just that instrument in its simplicity if it's
23 got to be talked about, and they are only a matter of short
24 pages. It's just the accounting itself.

25 Thank you, that's all of my purpose.

1 THE COURT: Ms. Oldemeyer, anything else
2 you wanted to say?

3 MS. OLDEMEYER: Without the complete documents
4 which are Exhibits 294, 107, 108 and 109 a person doesn't
5 even know the date. I mean there is a description in this
6 exhibit list of the date but those documents are undated and
7 I think the other exhibits are actually necessary for
8 completeness and accuracy and fairness.

9 THE COURT: All right, so I'm going to, I'm
10 going to reserve ruling on 152 through 155. We'll sort that
11 out at the time of the offer.

12 MR. BRENNER: Your Honor, we'd like to offer
13 223 and 224, 226 and 227.

14 THE COURT: So 223, 224, 226 and 227?

15 MR. BRENNER: Drop the 226 and 227. Sorry.
16 I found out why they, I have it marked duplicate.

17 THE COURT: That's okay. So let me go
18 back, again, I just want to be sure that I'm writing my notes
19 down right.

20 So you are offering 223 and 224?

21 MR. BRENNER: Yes, Your Honor, that's all at
22 this moment.

23 THE COURT: Mr. Sorensen?

24 MR. SORENSEN: No objection.

25 THE COURT: Ms. Oldemeyer?

1 MS. OLDEMEYER: Your Honor, Exhibit 223 is the
2 same as Exhibit 136. I don't care which one is used. No
3 objection to 223 and we withdraw our Exhibit 136 as
4 duplicative of 223.

5 THE COURT: Okay, 223 is received and 136
6 withdrawn.

7 (Exhibit No. 223 is hereby
8 made a part of the
9 official court record.)

10 MS. OLDEMEYER: And Exhibit 224 is the same as
11 Exhibit 119 only without the attachment.

12 We would offer Exhibit 119 which is the complete email.

13 THE COURT: Okay, Mr. Brenner?

14 MR. BRENNER: I'm checking at this moment.

15 THE COURT: Sure, that's fine.

16 MR. BRENNER: Yeah, that's fine, Judge. We
17 want the complete one.

18 THE COURT: Okay, so --

19 MR. BRENNER: We withdraw that offer.

20 THE COURT: I'll receive 119 and you're
21 withdrawing 224?

22 (Exhibit No. 119 is hereby
23 made a part of the
24 official court record.)

25 MR. BRENNER: Yes, Your Honor.

1 THE COURT: Okay.

2 MR. BRENNER: We'd offer 232.

3 MS. OLDEMEYER: No objection.

4 THE COURT: Mr. Sorensen?

5 MR. SORENSEN: None, Your Honor.

6 THE COURT: 232 is received.

7 (Exhibit No. 232 is hereby
8 made a part of the
9 official court record.)

10 MR. BRENNER: Your Honor, we would offer 246,
11 247, 248, 249 and 251.

12 THE COURT: So, 246 through 249 and 251?

13 MR. BRENNER: Yes.

14 THE COURT: Mr. Sorensen?

15 MR. SORENSEN: No objection.

16 THE COURT: Ms. Oldemeyer?

17 MS. OLDEMEYER: No objection.

18 THE COURT: Two forty-six through 249 and
19 251 are received.

20 (Exhibit Nos. 246 through
21 249 and 251 are hereby
22 made a part of the
23 official court record.)

24 MR. BRENNER: Your Honor, we would offer 268
25 through 277.

1 MS. OLDEMEYER: Your Honor, 268 is the same as
2 267 only 267 has a cover page on it and 267 has been
3 received.

4 MR. BRENNER: He says that's true so I agree
5 and withdraw that.

6 THE COURT: Okay, so starting then with
7 269?

8 MR. BRENNER: Yes, Your Honor.

9 MS. OLDEMEYER: No objection to any of them.

10 THE COURT: Mr. Sorensen?

11 MR. SORENSEN: No objection.

12 THE COURT: Two sixty-nine through 277 are
13 received.

14 (Exhibit Nos. 269 through
15 277 are hereby made a part
16 of the official court
17 record.)

18 MR. BRENNER: Your Honor, we would offer 280.

19 THE COURT: Mr. Sorensen?

20 MR. SORENSEN: No objection.

21 THE COURT: Ms. Oldemeyer?

22 MS. OLDEMEYER: Your Honor, this goes to the
23 whole issue, to whatever their objections are to email
24 exchanges between counsel that preclude the admission of mine
25 we're going to have the same objection with respect to

1 certain of their exhibits. Two eighty being one of them.

2 THE COURT: Okay, I'll reserve ruling then
3 on 280.

4 (Receipt of Exhibit No.
5 280 is taken under
6 advisement by the court.)

7 MR. BRENNER: Your Honor, we would offer 291,
8 292.

9 THE COURT: Mr. Sorensen?

10 MR. SORENSEN: No objection.

11 THE COURT: Ms. Oldemeyer?

12 MS. OLDEMEYER: Just one moment, Your Honor.

13 THE COURT: You bet.

14 MS. OLDEMEYER: Again, Your Honor, with respect
15 to objection that relate to our exhibits which are similar
16 email exchanges between Counsel we will reserve our
17 objections to those email exchanges until --

18 THE COURT: Okay, the court will reserve
19 ruling on 291 and 292.

20 (Receipt of Exhibit Nos.
21 291 and 292 are taken
22 under advisement by the
23 court.)

24 MR. BRENNER: Your Honor, we'd offer Exhibit
25 300.

1 THE COURT: Mr. Sorensen?

2 MR. SORENSEN: No objection.

3 THE COURT: Ms. Oldemeyer?

4 MS. OLDEMEYER: No objection to 300.

5 THE COURT: Three hundred is received.

6 (Exhibit No. 300 is hereby
7 made a part of the
8 official court record.)

9 MR. BRENNER: Your Honor, we'd offer 318.

10 THE COURT: Mr. Sorensen?

11 MR. SORENSEN: No objection.

12 MS. OLDEMEYER: I believe that is a duplicate
13 except it has the attachment, that is a duplicate of Exhibit
14 223 which has been received only this one now has the
15 attachment to it.

16 THE COURT: Mr. Brenner?

17 MR. BRENNER: It has the attachments as we
18 pointed out, that's why we're offering 318 because it, it
19 has, it's complete.

20 THE COURT: Which begs the question then is
21 223 incomplete?

22 MR. BRENNER: Well, it was offered and
23 nobody, you didn't rule on it.

24 THE COURT: I did rule on 223. Two twenty-
25 three was received because it was, it was a duplicate of 136.

1 MR. BRENNER: Right.

2 THE COURT: I don't care. I'll take
3 whichever one you'd like me to have but it seems to me, so
4 are you saying that you have no objection to 318?

5 MS. OLDEMEYER: I don't object.

6 THE COURT: All right, so I'll receive 318
7 and I'm going to have you withdraw 223, right?

8 MR. BRENNER: That's what we're looking at
9 right now.

10 THE COURT: Okay.

11 MR. BRENNER: Yes, Your Honor, we want in
12 318.

13 THE COURT: Okay, so I'll receive 318 and
14 I'll show 223 withdrawn.

15 (Exhibit No. 318 is hereby
16 made a part of the
17 official court record.)

18 MR. BRENNER: Okay, Your Honor, we offer 322.

19 MS. OLDEMEYER: We will reserve our objections
20 to that, Your Honor.

21 THE COURT: Okay.

22 Mr. Sorensen, did you have any specific objections you
23 wanted to raise?

24 MR. SORENSEN: I have no objections, Your
25 Honor.

1 THE COURT: All right, I'll reserve ruling
2 on 322.

3 (Receipt of Exhibit No.
4 322 is taken under
5 advisement by the court.)

6 MR. BRENNER: We'd offer 355, Your Honor.

7 THE COURT: Mr. Sorensen?

8 MR. SORENSEN: No objection.

9 THE COURT: Ms. Oldemeyer, when you are
10 there.

11 MS. OLDEMEYER: We objection on completeness.
12 There's actually a response from Ms. Ronnau to that email
13 exchange and so we object on completeness.

14 THE COURT: I'll reserve ruling on 355.

15 MR. BRENNER: Your Honor, we'd offer 367,
16 368, 369.

17 MS. OLDEMEYER: No objection.

18 THE COURT: Mr. Sorensen?

19 MR. SORENSEN: None, Your Honor.

20 THE COURT: Three sixty-seven, 368 and 369
21 are received.

22 (Exhibit No. 367, 368 and
23 369 are hereby made a part
24 of the official court
25 record.)

1 MR. BRENNER: Your Honor, we'd offer 382, 383
2 and 385.

3 THE COURT: Mr. Sorensen?

4 MR. SORENSEN: No objection.

5 MS. OLDEMEYER: No objection to 382, 383 or
6 385.

7 THE COURT: Three eight-two, 383 and 385
8 are received.

9 (Exhibit No. 382, 383 and
10 385 are hereby made a part
11 of the official court
12 record.)

13 MR. BRENNER: Your Honor, we'd offer 389 and
14 390 and 391.

15 THE COURT: Mr. Sorensen?

16 MR. SORENSEN: No objection.

17 THE COURT: Ms. Oldemeyer?

18 MS. OLDEMEYER: No objection to 389, no
19 objection to 390 and no objection to 391.

20 THE COURT: Three eight-nine, 390 and 391
21 are received.

22 (Exhibit Nos. 389, 390 and
23 391 are hereby made a part
24 of the official court
25 record.)

1 MR. BRENNER: Your Honor, we would offer 404
2 through 413.

3 THE COURT: Mr. Sorensen?

4 MR. SORENSEN: No objection.

5 THE COURT: Ms. Oldemeyer?

6 MS. OLDEMEYER: Your Honor, those are the ones
7 that the court ruled on and I have not had an opportunity to
8 pull them. I don't have an electronic copy of them so at
9 this time I would reserve my objections but I think there is
10 duplication in them.

11 MR. BRENNER: Judge, they're not duplicated
12 anywhere but they are the ones just for the record that
13 Leonard Mosher prepared that we had at the deposition of
14 February 13 and that's how it came to be and the 411 through
15 41 were also the items provided in the Windy Vought report.
16 So that's why.

17 THE COURT: So, I just want to be sure
18 we're clear, Mr. Brenner, I had written down 404 through 413
19 but you referenced 414 there. So is it --

20 MR. BRENNER: It's 411, 12 and 13. There are
21 three of them.

22 THE COURT: Okay, that's fine. I just
23 wanted, it's no problem I just want to be sure I'm making my
24 notes right. I'm going to reserve ruling on 404 through 413.

25 MR. BRENNER: Thank you, that's all.

1 THE COURT: Anything else, Mr. Sorensen?

2 MR. SORENSEN: All the exhibits that I had,
3 Your Honor, have been offered and received.

4 THE COURT: Okay.

5 So, just as a matter of course does anyone by any chance
6 have a clean copy of the proposed joint, the last version of
7 the proposed joint exhibit list?

8 MR. BRENNER: I do.

9 THE COURT: I'm going to borrow that for 30
10 seconds and then have the court staff make me a copy because
11 I can't, I know you all sent me an electronic version of it.
12 I couldn't find it in my emails. I know I received it but I
13 couldn't find it to make a copy. I'm going to have them just
14 make me a copy. I'll give it right back to you.

15 MS. OLDEMEYER: Your Honor, this is an extra
16 copy that I do not need.

17 THE COURT: It's an extra copy?

18 MS. OLDEMEYER: It's an extra copy.

19 THE COURT: Okay, did you want to take a
20 look at it?

21 MR. BRENNER: Yes, that looks correct.

22 THE COURT: Okay, thank you.

23 So, I'm not going to do that now but I'll go through
24 over when we take our lunch recess and I'll get my copy of it
25 in conformance with my notes. I think I kept --

1 MR. BRENNER: Judge, just so you know, none
2 of us had revised the sheet that was filed which included 404
3 through 413, just so you understood that.

4 THE COURT: Right. Yeah, I assumed that
5 because that came late in the week.

6 MR. BRENNER: Thank you.

7 THE COURT: Yep, no problem. I'll sort
8 that out after the fact.

9 Okay, other than that then are we ready to present
10 evidence?

11 MS. OLDEMEYER: We are, Your Honor.

12 THE COURT: Well, I guess we've presented
13 evidence but ready to get to our witnesses.

14 Okay, so, Ms. Oldemeyer, I will turn the matter over to
15 you and I will take your first witness please.

16 MS. OLDEMEYER: At this time, Your Honor, we'd
17 call Ms. Janice Herrell.

18 THE COURT: Ms. Herrell, if you'll step up
19 for me please. Ma'am, there are a couple of steps there,
20 please watch your step before you take your seat. If you'll
21 face me and raise your right hand.

22 JANICE EVA HERRELL

23 Called as a witness on behalf of the
24 plaintiff, having been first duly sworn,
25 testified as follows:

1 THE COURT: All right, please state your
2 full name for the record.

3 MS. HERRELL: Janice Eva Herrell.

4 THE COURT: Ms. Herrell, you are under
5 oath. Ms. Oldemeyer has called you to the stand, she'll
6 question you first. Mr. Brenner or Mr. Hesser, who is going
7 to be handling the cross? Mr. Brenner will question you
8 after that. Mr. Sorensen may also have questions and I think
9 just procedurally, ma'am, I'm going to have Ms. Oldemeyer
10 question you first then Mr. Sorensen then Mr. Brenner so that
11 way we're finishing up with your attorney.

12 MS. HERRELL: Okay.

13 MR. SORENSEN: Your Honor?

14 THE COURT: Yeah.

15 MR. SORENSEN: Could we reverse that? His
16 questions would be more extensive than mine I'm sure and he
17 may cover what I would ask.

18 THE COURT: Okay, that's fine. I was just
19 trying to make it easier for, whatever. That's fine with me

20 MR. SORENSEN: Okay.

21 THE COURT: Ms. Oldemeyer, please.

22 MS. OLDEMEYER: Can I ask Counsel a question
23 before I begin?

24 THE COURT: You bet.

25 MS. OLDEMEYER: Your Honor, may I approach with

1 exhibits.

2 THE COURT: You bet.

3 MR. BRENNER: Your Honor, just so you
4 understand, Counsel for both sides have got a volume in
5 binders and we know we have to pull out exhibits at the end
6 to give the reporter so I'm just telling you what we've laid
7 out there on the table.

8 THE COURT: Okay.

9 MR. BRENNER: Thank you.

10 MS. OLDEMEYER: And, Your Honor, versus using a
11 copy of Exhibit 294, Counsel has indicated they're okay if I
12 remove their copy of Exhibit 294 from their notebook.

13 THE COURT: That will be fine.

14 I'm guessing at the end of all of this we're going to
15 have a confab between the attorneys and the court reporter
16 because she isn't letting anybody leave with any of her
17 exhibits.

18 MS. OLDEMEYER: Your Honor, this copy is not
19 stapled.

20 MR. BRENNER: Because somebody had to turn the
21 pages.

22 MS. OLDEMEYER: I would ask that we use a
23 photocopy of Exhibit 294 that is stapled just for ease so we
24 don't accidentally lose pages.

25 THE COURT: That's fine.

1 Which exhibit are you on just so I'm --

2 MS. OLDEMEYER: That's Exhibit 294.

3 THE COURT: Thank you.

4 DIRECT EXAMINATION

5 BY MS. OLDEMEYER:

6 Q. Could you please state your full legal name?

7 A. Janice Eva Herrell.

8 Q. And your current address, ma'am?

9 A. 6314 South Salida Street, Aurora, Colorado.

10 Q. And are you employed?

11 A. As a nurse practitioner.

12 Q. Do you work full time?

13 A. Yes.

14 Q. Your mother Lois Mosher died on February 6, 2012,
15 correct?

16 A. Correct.

17 Q. And your mother's name was Lois Ardith Mosher?

18 A. Correct.

19 Q. And she was 88-years-old when she died?

20 A. Uh-huh. Yes.

21 Q. And your father proceeded your mother?

22 A. Yes.

23 Q. His name was Daniel Mosher?

24 A. Yes, Daniel O. Mosher.

25 Q. Middle initial O?

- 1 A. O, uh-huh.
- 2 Q. And he died October 26, 1996?
- 3 A. That sounds correct.
- 4 Q. When your mother died you had two living siblings?
- 5 A. Correct. Yes.
- 6 Q. Plaintiff Leonard Mosher?
- 7 A. Yes.
- 8 Q. And Dennis Stan Mosher?
- 9 A. Correct. Yes.
- 10 Q. And Dennis goes by Stan sometimes?
- 11 A. Yes.
- 12 Q. And then I understand you had a sibling Steve who passed
- 13 away?
- 14 A. Yes, his twin brother.
- 15 Q. What, after your mom died did you hire an attorney?
- 16 A. A personal attorney, no.
- 17 Q. Did you hire any attorney?
- 18 A. No.
- 19 Q. Okay, after your mom died did you know you were going to
- 20 be trustee of her trust?
- 21 A. Yes.
- 22 Q. And did you hire an attorney to help you as trustee of
- 23 your trust, of that trust?
- 24 A. No personal attorney, no.
- 25 Q. Did there come a point in time you hired an attorney

1 named Greg Dykeman?

2 A. He was the trust attorney.

3 Q. Was he helping you as trustee perform you duties as
4 trustee?

5 A. Yes.

6 Q. And he'd been an attorney for your mother before she
7 died, true?

8 A. Yes.

9 Q. And that's a firm in Cheyenne, Wyoming, where your
10 mother lived before she died?

11 A. Yes.

12 Q. And Mr. Justin Hesser, who is here representing you, he
13 works with Mr. Dykeman?

14 A. Correct. Yes.

15 Q. They're in the same firm?

16 A. Yes.

17 Q. You're also a beneficiary under the trust of your m
18 other's that you were administering, true?

19 A. Yes.

20 Q. Your brothers Stan and Leonard were the two other
21 beneficiaries?

22 A. Yes.

23 Q. And there are no other beneficiaries of the trust, true?

24 A. True.

25 Q. In her will in effect at the time of her death your

1 mother had nominated you as her personal representative,
2 true?

3 MR. BRENNER: Object, Your Honor, it's not
4 relevant.

5 THE COURT: Ms. Oldemeyer?

6 MS. OLDEMEYER: Your Honor, it's only relevant
7 for purpose of understanding it's a pour over will so a

8 MR. BRENNER: Excuse me, Your Honor, but even if
9 it poured over there's nothing yet indicated a probate that
10 has been complete that pours over anything.

11 THE COURT: So your objection is relevance?

12 MR. BRENNER: Yes.

13 THE COURT: The objection is overruled.

14 BY MS. OLDEMEYER:

15 Q. In her will at the time of her death your mother had
16 nominated you as the personal representative, true?

17 MR. BRENNER: Same objection, relevance.

18 THE COURT: The objection is overruled.

19 You can answer the question.

20 BY MS. OLDEMEYER:

21 A. I'm not so sure I understand the question.

22 Q. Turn to Exhibit 105 in the notebook in front of you
23 please. Do you have it there, ma'am?

24 A. I do.

25 Q. And is that a copy of the will of Lois Mosher your

1 mother?

2 A. Correct. Yes.

3 Q. And on page 5 of Exhibit 105 is that the first codicil
4 of the will?

5 A. Page 5 of 105, well --

6 Q. In the bottom right-hand-corner, ma'am, there are page
7 numbers in the yellow box. If you could turn to page 5
8 of 11 --

9 MR. BRENNER: Your Honor, to this line we
10 would still continue our relevance objection and may it be
11 continuing?

12 THE COURT: It is. Yes, it is.

13 MS. HERRELL: What's your question?

14 BY MS. OLDEMEYER:

15 Q. In the first codicil of the will of Lois Mosher did she
16 appoint you Janice E. Herrell as personal
17 representative?

18 A. Yeah, it says if she is unable to serve for any reason.

19 Q. She appointed you if she couldn't serve?

20 A. Correct.

21 Q. Okay, since your mother's passing on February 6, 2012
22 you've not been appointed by a court in any probate
23 proceeding in Nebraska to be personal representative,
24 true?

25 A. I think I understand what you're saying. True.

1 Q. And you haven't been appointed as personal
2 representative of your mother's estate in Wyoming or in
3 Colorado either have you?

4 A. You know, I think I understand your questions and I
5 think the answer is yes, but I have a little bit of a
6 hard time understanding the question.

7 Q. My question is has a court of law in the State of
8 Wyoming formally appointed you personal representative
9 of your mother's estate?

10 A. Well, I haven't been to court but I am, I am the trustee
11 of her trust.

12 Q. I'm asking you about the status of personal
13 representative under the will. Do you understand that
14 is a different issue?

15 A. I guess, I guess the part that I am a little bit
16 confused upon is I'm the trustee of her trust.

17 Q. Let me ask the question this way, have you participated
18 in any court proceedings in the State of Wyoming
19 subsequent to your mother's death?

20 A. No.

21 Q. Have you participate in any court proceedings in the
22 State of Colorado subsequent to your mother's death?

23 A. No. I haven't been to court regarding any of it before
24 today.

25 Q. You authorized Mr. Dykeman to communicate with your

1 brothers, the other beneficiaries of the trust about
2 trust issues, true?

3 A. I authorized Mr. Dyekman to settle the trust.

4 Q. Okay, so you delegated responsibility of settling the
5 trust to Mr. Dyekman?

6 MR. BRENNER: To which I object, Your Honor,
7 form.

8 BY MS. OLDEMEYER:

9 A. I asked Mr. Dyekman --

10 THE COURT: Hang on.

11 What is the objection to form?

12 MR. BRENNER: That, it's asking her to draw a
13 legal conclusion of what it is this lawyer is supposed to do.

14 THE COURT: You used the word delegate.
15 I'll sustain the form of the question.

16 BY MS. OLDEMEYER:

17 Q. If I understood your testimony, Mrs. Mosher, you asked
18 Mr. Dyekman to settle the trust?

19 A. That, yes, that's his responsibility.

20 Q. And that's your mother's trust where you were appointed
21 trustee?

22 A. Correct.

23 Q. The vast majority of the communications in the years
24 2012 and 2013 following your mother's death, with Mr.
25 Leonard Mosher about trust issues they were between Mr.

1 Dyekman on your behalf, and the attorneys for Leonard
2 Mosher, true?

3 A. I assume that's his role so I would say, yes.

4 Q. How many communications did you have with your brother
5 Leonard Mosher following your mother's death in 2012?

6 A. Well, when she, when she was alive several; then she
7 passed away. The day she passed away we talked. We
8 talked about the funeral and we talked probably every
9 day until the funeral.

10 Q. And the funeral was in February of 2012?

11 A. Uh-huh.

12 Q. Okay, following the funeral in February of 2012 how many
13 communications did you personally have with your brother
14 Leonard Mosher?

15 A. Okay, after the funeral, you're asking me how many
16 communications?

17 Q. Did you have directly with your brother Leonard Mosher?

18 A. If I understand you, let's see, well I know we spoke on
19 Easter of, he was, he had called me about the house. My
20 attorney told me that he had, he communicated with him.
21 I think the important part is to say too that when my
22 mom passed away --

23 Q. Mrs. Mosher --

24 MS. OLDEMEYER: Your Honor, I move to strike as
25 non-responsive.

1 BY MS. OLDEMEYER:

2 Q. My question is a number, how many times did you
3 personally speak with your brother Leonard Mosher after
4 your mother's funeral?

5 A. After my mom's funeral well, we went and got together so
6 that's one of them right there. We sat and talked about
7 that and then he told me, he had told me before that,
8 that he had an attorney and that we were to communicate
9 through the attorney. So, and then he called me on
10 Easter to make an offer to exchange the house and he
11 wanted 160 acres that he felt was his, so that was that
12 day and that didn't end up being a very good
13 conversation.

14 Q. Ms. Mosher, my question is very narrow and very specific
15 and since we are short on time all I want to know is a
16 number. How many times have you personally talked to
17 your brother once the funeral proceedings for your
18 mother were completed? One that you can remember?

19 A. Then when he filed the lawsuit I did do that and then
20 the other times since he had an attorney and I was told
21 that --

22 Q. Just a number, ma'am. Is it a fair statement you've
23 talked to him less than a handful of times since the
24 conclusion of your mother's --

25 A. That would be correct, yes.

1 Q. Thank you, and since this lawsuit was filed you've also
2 worked with Mr. Brenner, true?

3 A. He is my attorney, correct.

4 Q. Turning to Exhibit 101 in that notebook, what is Exhibit
5 101?

6 A. That is her, her Schedule B tangible personal property.

7 Q. If you could turn to the first page of Exhibit 101, is
8 it a lengthy exhibit, ma'am?

9 A. There's nothing on it.

10 Q. Are you looking at the first page of Exhibit 101?

11 A. Okay, I see it now.

12 Q. Are you on the first page of Exhibit 101?

13 MS. HERRELL: It's stapled together, just a
14 second. Page 1 of 18 pages, correct?

15 MS. OLDEMEYER: Yes.

16 MS. HERRELL: Okay, page 1.

17 BY MS. OLDEMEYER:

18 Q. Is that the trust that you are trustee to administer?

19 A. Yes.

20 Q. Turn to Exhibit 102, is that the first amendment to the
21 trust that you are to follow and administer?

22 A. Yes.

23 Q. In Exhibit 102 your mother made you the successor
24 trustee after she died, true?

25 A. True. Yes.

1 Q. Did you know the contents of Exhibit 102 about the time
2 of your mother's death in 2012?

3 MS. HERRELL: You're talking about the
4 Schedule B?

5 MS. OLDEMEYER: No, ma'am, I'm asking about
6 Exhibit 102, the first amendment to the Lois Mosher revocable
7 trust agreement.

8 MS. HERRELL: What is your question?

9 BY MS. OLDEMEYER:

10 Q. Do you have Exhibit 102 in front of you?

11 A. I do. I have 102, yes.

12 Q. And did you know the contents of Exhibit 102 about the
13 time your mother died in February of 2012?

14 A. I think your question is, and I'm not trying to be rude,
15 but my interpretation of your question is, is you see
16 nothing on schedule B it's because my mom felt that
17 there wasn't anything to put on schedule B.

18 Q. Okay, is there a schedule B in Exhibit 102?

19 A. Yes. I just saw it in here because I had it first in my
20 hand and I thought that's what you were referring to.
21 It's the end of 101, I apologize.

22 Q. Okay, I'm asking about Exhibit 102. Exhibit 102 is five
23 pages long. Did you know it's contents when your other
24 died in February of 2012?

25 A. Did I know the contents? I had read it.

1 Q. You had read it?

2 A. I read it when she passed away. I did read it, yes.

3 MS. OLDEMEYER: Let's go back to, and you
4 wanted to go there, Exhibit 101. I want to talk about the
5 last three pages, so if you'd got to schedule A which is page
6 16 of Exhibit 101?

7 MS. HERRELL: Okay, I have it.

8 BY MS. OLDEMEYER:

9 Q. Schedule A, are those specific items of real property
10 and personal property that your mother put in the trust
11 for you to administer?

12 A. Real property that I'm going to call, I'm sorry if I ask
13 because I want to make sure that I understand the legal
14 term that you have because I'm not a lawyer. So I just
15 want to clarify that. So the first one it's a property,
16 yes. And that is, it looks like, it's her home, I'm
17 sorry, at Hacker Circle. Yes, that's her home.

18 MS. OLDEMEYER: Your Honor, for expeditious I'd
19 ask the court to take judicial notice of Exhibit 204 which is
20 the deed putting the Hacker Court home into the trust.
21 That's been received into evidence, 205 is a quitclaim deed
22 also putting real property into the trust. Exhibits 206, -07
23 and -08 and -09 again are all exhibits which have been
24 received putting property into the trust as reflected on
25 schedule A, as well as Exhibit 369.

1 THE COURT: Those documents are already in
2 evidence. I'll take judicial notice, I guess of those
3 exhibits is the right way to do that.

4 BY MS. OLDEMEYER:

5 Q. Let's turn to the last page of Exhibit 101, that's what
6 you wanted to talk about earlier, that's a schedule B,
7 true?

8 A. True.

9 Q. To your knowledge did your mother at any point in time
10 ever put down in writing what she wanted as far as her
11 personal property going to a specific person?

12 A. My mom left this blank on purpose, and that's the best
13 way I can answer your question, because she said there
14 was not anything to put on the paper.

15 MS. OLDEMEYER: My question, Mrs. Mosher, is
16 very simple, yes or no.

17 MS. HERRELL: Well, it's Mrs. Herrell but
18 that's okay.

19 MS. OLDEMEYER: I'm sorry.

20 MS. HERRELL: It's okay. I understand.

21 BY MS. OLDEMEYER:

22 Q. I just want you to answer my question because we've got
23 a lot of evidence to get through. My question is, your
24 mother never put down in writing a specific item of her
25 personal property that she wanted to go to a specific

1 person, did she?

2 A. Well, in here --

3 Q. Yes or no?

4 A. -- she does talk about like the farm land, I mean it's
5 property and it's to go --

6 Q. Other than the trust documents themselves there's
7 nothing else is there?

8 A. I don't think so. Not that I'm aware of.

9 Q. Okay, and you are 100% certain that she never completed
10 anything like exhibit B as in boy, the last page,
11 schedule B, the last page of Exhibit 101?

12 A. Correct. Yes.

13 Q. And what was to happen, strike that. Exhibit 103, is
14 that also part of the trust documents that you are
15 responsible for administering?

16 A. Yes.

17 Q. In the trust documents were you charged with accounting
18 to the beneficiaries not less frequently than annually?

19 A. I believe, yes, that is correct. I was to, accounting I
20 provided to my legal advisories.

21 Q. But you were to account to the beneficiaries, true?

22 A. Through my attorneys.

23 Q. If you could turn to Exhibit 102, page 2, I want to talk
24 about paragraph c. as in Charlie, small Roman numeral i.

25 MS. HERRELL: I don't know if I see, you

1 said, okay, tell me again what exhibit?

2 MS. OLDEMEYER: I'm on Exhibit 102, page 2.

3 How about this, I'll put it up on the wall for you.

4 MS. HERRELL: To tell you the truth I've
5 never looked at a book like this before so it's, that's what
6 I'm trying to go through.

7 Which one did you say?

8 MS. OLDEMEYER: If you could bear with me just
9 a minute, I'm trying to expedite this for you.

10 MS. HERRELL: I can probably see this better
11 than that though.

12 BY MS. OLDEMEYER:

13 Q. I'm asking you about page two of Exhibit 102, paragraph
14 c. i., the undivided one-third interest in certain
15 mineral interests in Kimball County. Do you see that
16 paragraph?

17 A. Yes. Uh-huh.

18 MS. OLDEMEYER: I'm going to turn to Exhibit
19 373, and I'll put it up on the wall to expedite things
20 because I don't think it's in the notebooks in front of you
21 but I can get it if you can't see this.

22 MS. HERRELL: Okay.

23 BY MS. OLDEMEYER:

24 Q. Is Exhibit 373 the trustees mineral quitclaim deed that
25 you executed in order to follow that provision of the

1 trust document, Exhibit 102 c. i.?

2 MS. HERRELL: I hate to say this but I'm not
3 so sure I understand your question. I apologize it. So it
4 says, so C. i. said divide 1/3 interest and it lists some
5 land under, so I'm to compare it to this?

6 MS. OLDEMEYER: Correct.

7 BY MS. OLDEMEYER:

8 Q. Is this, Exhibit 373 what you believe conveyed the
9 mineral interest per paragraph C i.?

10 A. Well, let me take it, well, I think I'd have to say the
11 legal terms. I did use my, my attorneys to figure out
12 and compare to make sure that the mineral rights matched
13 her trust and that's how come we did the mineral
14 searches because to clarify it.

15 Q. Let me ask it this way, paragraph c. i., do you have it
16 in front of you? Let me put it back up. c. i. conveys
17 several sections but the Southwest 1/4 of section 21 is
18 one of them, true?

19 A. Yes.

20 Q. And so that was to go to, to the three beneficiaries of
21 the trust, you and your two brothers equally, an
22 undivided 1/3 interest, true?

23 A. True, yeah.

24 Q. And in Exhibit 373 you didn't convey the southwest
25 quarter of section 21, did you?

1 A. No, that's the one thing that I have legal advisers who
2 were helping and we did the mineral search to, to make
3 sure we had it straight.

4 Q. Yes or no, this deed, Exhibit 371 does not convey the
5 southwest quarter of section 21 does it?

6 A. You know, I can't answer that question. That's what my
7 legal, that's what I have attorneys for and that's what
8 they were working on and why we had the mineral search
9 to get it straight. That's all I can say.

10 Q. When you signed this deed on December, well, first of
11 all did you sign this deed on December 28, 2013?

12 A. That is my signature.

13 Q. Did you have any hesitation in signing that?

14 A. I again, you know, I had to trust the legal advisers
15 that I had. I know that one document had a typo of a,
16 and I don't know if that is one that had it so I did the
17 best that I could and I spent a lot of time and that's
18 the mineral search. I want to point out too that it was
19 difficult to understand the different land things, so
20 again that's why I had attorneys.

21 BY MS. OLDEMEYER:

22 Q. So you completely deferred to Mr. Dyekman and the other
23 attorneys who were representing you at the time?

24 A. I used their assistance, yes.

25 Q. Did you, did you have any input or did you follow their

1 direction?

2 A. You know, well, I, I, I did. I think that's the best
3 relationship I can with an attorney and looking it. So
4 I did the best that I could do. That's all I can --

5 Q. Turn to Exhibit 128 in that notebook in front of you,
6 please. Did Mr. Sorensen, on your behalf, convey copies
7 of certain recorded deeds to Leonard Mosher's attorneys
8 on January 27, 2014 as depicted in in Exhibit 28?

9 A. I think you'd have to ask him.

10 Q. Was Mr. Sorensen acting on your behalf as far as helping
11 administer the trust and get mineral deeds deeded out?

12 A. I asked him to settle the trust and that was part of it.

13 Q. Okay, you asked Mr. Sorensen to help settle the trust
14 and getting the deeds was part of it, true?

15 A. True.

16 MS. OLDEMEYER: We'd offer Exhibit 128.

17 MR. BRENNER: No objection, Your Honor.

18 THE COURT: Mr. Sorensen?

19 MR. SORENSEN: No, none, Your Honor.

20 THE COURT: One twenty-eight is received.

21 (Exhibit No. 128 is hereby
22 made a part of the
23 official court record.)

24 BY MS. OLDEMEYER:

25 Q. I'd like you to look at exhibit 307 which I'll put up on

1 the wall, it's been received into evidence. This is
2 another email from Mr. Sorensen also attaching another
3 trustee's mineral quitclaim deed. I'm turning to the
4 third page of Exhibit 307. In that deed that you signed
5 on December 28, 2013 did you convey the southwest 1/4 of
6 Section 21, Township 13, Range 57 west to yourself?

7 A. You know, what I think, I don't, did I convey it to
8 myself. I did. I received legal advice and my counsel
9 to help me on how filling out the forms. So I think
10 that's, I did what I felt was part of my responsibility.

11 Q. Okay, if this turns out you were wrong and this
12 particular parcel should have gone to your, you and your
13 brothers in an undivided 1/3 equal interest --

14 A. You know what, as long we follow the trust I'm, I just
15 what to follow the trust. I want to follow what my mom
16 wanted and that's, you know.

17 Q. Okay, on this particular portion of property in Kimball
18 County, Nebraska, is there oil and gas activity on that
19 parcel?

20 A. Well, I don't know. Right now, I can't, I don't think
21 that that actually is responsibility of the trust to be
22 able to sit here and answer that. So, I don't know.

23 Q. As you sit here today --

24 A. I don't know.

25 Q. As you sit here today do you know if there is oil and

1 gas activity on that particular property?

2 A. I do not know.

3 Q. If you go back to Exhibit 102, page 3, number G, and
4 I'll put it up on the wall here, Exhibit 102, page 3,
5 number G, you were to get all of your right title and
6 interest in and to mineral rights pertaining to real
7 property more particularly described as the southwest
8 quarter of Section 24, Township 13 north, Range 57 west,
9 true?

10 A. True.

11 Q. Did you ever execute a deed giving you those mineral
12 interests?

13 A. Did execute a deed, me personally, no.

14 Q. Did anybody?

15 A. I know that originally there was a typo on one of the
16 forms and it said Section 21 and it was a typo out of
17 the Dyekman office and it got corrected. So I know
18 that, that I know, all I can say I did deferred this to
19 my legal counsel and I, they were working on the
20 minerals.

21 Q. Yes or no, as you sit here today are you aware of any
22 deed executed by you as trustee conveying the southwest
23 quarter of Section 24, Township 13 north, Range 57 west
24 in Kimball County to you?

25 A. I did not study which ones that have been deeded to me

1 and not before I came today because I know that has not
2 been finished to my understanding.

3 Q. Let's go back to the previous page of Exhibit 102,
4 paragraph 3 and again that paragraph reflects that all
5 three kids were to get the following mineral interest in
6 paragraph 3 is an undivided 1/2 interest in and to all
7 of the oil and gas and mineral interest on the southwest
8 1/4 of section 24, township 17 north, range 58 west,
9 true.

10 A. That's what it says, yes, true.

11 Q. Have you executed a deed as trustee conveying an
12 undivided 1/2 interest in and to that particular
13 section?

14 A. I don't know.

15 Q. If I represent to you that there is no deed which
16 references an undivided 1/2 interest would you have any
17 reason to dispute that?

18 A. I would defer that to my attorneys to, to go through it
19 and to help me out on that because that is, it is
20 difficult for me to understand the language.

21 Q. And if it turns out that needs to be done you're willing
22 to do it?

23 A. I just want to follow the trust, whatever my mom's
24 wishes are in there and that's, that was always my
25 intention and plan.

1 Q. Per Exhibit 103 which is the second amendment to the
2 trust, paragraph b(i) and b(ii), the south half of
3 Section 24, Township 17 north, Range 58 in Banner County
4 was to be divided into your brother Leonard getting the
5 southeast quarter and you getting the southwest quarter,
6 true?

7 A. True.

8 Q. And you executed deeds that were recorded in January of
9 '14 conveying those interests?

10 A. True.

11 Q. Before you executed those trustee's deeds you had a
12 survey performed, true?

13 A. True.

14 Q. The survey in no way changed the contents of the legal
15 descriptions as reflected here in the trust document,
16 Exhibit 103, did it?

17 A. Did it change a description, I don't think so, no.

18 Q. Okay, and you spent \$2,100 of trust money to get a
19 survey before you executed the deeds, true?

20 A. True.

21 Q. If you could go to Exhibit 294, actually it's not in
22 that, it's a lose page I gave you. Two ninety-four is
23 the lose one I gave you stapled. If you could turn to
24 page 7, there is income listed in this draft accounting,
25 true?

1 A. Income listed, the sale of her home, true.

2 Q. Okay, there's other items of income that went into the
3 Bank of the West account as depicted on page 7 of
4 Exhibit 294, true?

5 A. True.

6 Q. And with respect to all of the trust income your
7 attorneys might reflect on a document like this, that
8 income was to be divided between you and your two
9 brothers equally?

10 A. Her house, yes, income. Yes, I think if I understand
11 your question correctly. Yes.

12 Q. Okay, by January of 2014 when you deeded out the mineral
13 interests in paragraphs c. i., ii and iii that we looked
14 at, you believed that your brothers were, had been
15 deeded out all the mineral interests that were expressly
16 identified in your mom's first amendment, Exhibit 102,
17 true?

18 A. Actually I was never under the impression we were done
19 with the mineral rights because I think there was still
20 some questions being brought up, so I don't think that
21 they are today totally but I think my brothers were. I
22 don't know. I just asked that we follow the trust and
23 that's what I had to do with my attorneys. They
24 understand the land descriptions and the mineral rights
25 better and I felt that that was the best I could do.

1 Q. With respect to Exhibit 102, paragraph h which I've got
2 up on the wall, to Janice Herrell, I leave all, and I'm
3 adding the I leave all but, my right, title and interest
4 in and to any other real property rights of any kind
5 which are not specifically described elsewhere in this
6 Trust, including after-discovered and after-acquired
7 real property rights. In January of 2014 were you aware
8 of that provision?

9 A. Yes.

10 Q. Did you believe any mineral rights discovered after
11 those that you deeded out would go to you?

12 A. Yes.

13 Q. And that your brothers would have no interest?

14 A. Well, if you go by that that's what it says, correct.

15 Q. Wasn't it your job to go by that?

16 A. Yes, and that is correct, yes.

17 Q. And is that what you have done up through today?

18 A. I followed the trust and have asked my attorneys to
19 follow the trust.

20 Q. You had a Mineral Ownership Report completed eight
21 months later after the January 2014 deeds in August of
22 2014, true?

23 A. I did because I could not get information from Leonard.
24 I could not. And I came to Kimball here and was
25 searching one day and I found something from a distant

1 relative and still couldn't get information asking my
2 attorneys through Leonard and I knew it, I didn't know
3 what mineral rights were out there. As you can tell I
4 don't know the lands and mineral things and it had to be
5 done because I had to settle the trust. I had been
6 asking since day one because I didn't understand the
7 mineral rights and what was out there to sell it to be
8 fair. I just wanted to be fair on it and everything. I
9 didn't want to, because I felt I could be sued if I
10 didn't, so.

11 Q. On Exhibit 108, page 6, there are two charges reflecting
12 mineral searches. The first one was for Sorensen, Hahn
13 & Morgan, that's Mr. Sorensen's firm, correct?

14 A. Correct.

15 Q. Your attorney, right?

16 A. The trust not mine personally, no.

17 Q. Okay, and September 2, 2014 Mr. Sorensen, acting on
18 behalf of the trust, incurred an expense for the trust
19 in the amount of \$693.75, true?

20 A. That sounds, yes.

21 Q. And then a Western Nebraska Land Service is also charged
22 the trust a fee that was paid on September 26, 2014 in
23 the amount of \$4,714?

24 A. Yes.

25 Q. Okay, and that was to use trust funds to search mineral

1 interests that would benefit you under provision h of
2 the trust that we just looked at?

3 A. Absolute not. No. It was lack of information that had
4 to be done. If you notice on the mineral search I have
5 relatives we were asking me too and one of the relatives
6 had a name on a piece of paper I did not see on the
7 mineral search and I did ask through my attorneys for
8 Leonard, but that has been asked since day one to get a
9 mineral, the mineral thing. I had no idea what it could
10 say on there. It could be giving it, and I was kind of
11 amazed a lot were given to my relatives and so we needed
12 to know that and Leonard, I couldn't get it.

13 Q. These relatives you're talking about, you're not talking
14 about Leonard or Stan?

15 A. No, I'm talking about my aunt and uncle and lots of
16 cousins and relatives and one of them is in here on a
17 paper that's not even there.

18 Q. Ma'am, you used trust funds to benefit non-beneficiaries
19 of the trust?

20 A. No, I used the trust, it had to be done because I could
21 not get the information. It had to be done to find out,
22 it didn't benefit them their names are already on it.
23 It didn't benefit them at all. I felt I could actually
24 legally be sued by one of them, by even Stan if we
25 didn't, maybe Leonard if they did not, we had to find

1 out the minerals. Whatever it was we had to fine out
2 the mineral rights.

3 Q. For yourself because you were going to get them?

4 A. No, it was for the trust. It was for everybody. I had
5 no, I still today don't, you asked me, I don't know and
6 I really don't know.

7 Q. Let's turn to a specific page of Exhibit 108. Exhibit
8 108 is the accounting that your attorneys provided and
9 on page 9, additional mineral interests that were
10 located by the title search expenses that exceeded
11 \$5,000, they're listed at a value of \$1.00, right?

12 A. Correct.

13 Q. So you spent \$5,000 to find information out about
14 something that has zero value?

15 MR. BRENNER: I'm going to object, Your
16 Honor, to the form of that question.

17 THE COURT: That's sustained.

18 BY MS. OLDEMEYER:

19 Q. The mineral interest that the title search located, what
20 value do they have?

21 A. Can anybody answer that? I don't know.

22 Q. Are you able to answer that?

23 A. What value to the -- I don't think there's much.

24 Q. Not much value. Is that your testimony?

25 A. You're asking, I'm not an expert so you're asking the

1 wrong person. If I was an expert I could give you an
2 answer but.

3 Q. You don't have any idea?

4 MS. HERRELL: Of what the minerals are worth?

5 MS. OLDEMEYER: Yes.

6 BY MS. OLDEMEYER:

7 A. I'm not an expert, no.

8 Q. There is a burial plot that is part of the trust true?

9 A. True.

10 Q. Well, before I turn to the burial plot, these mineral
11 interests that were located by the ownership report, is
12 it your understanding that a probate needs to be opened
13 in Nebraska so that someone can actually transfer
14 ownership of those mineral interest into the trust so
15 that they can be distributed out of the trust?

16 A. No, I just want to follow the trust.

17 Q. But in order to do that these mineral interests are
18 currently outside of the trust, true?

19 A. Correct, they're not, the ones I guess, there are some
20 not in the trust correct.

21 Q. I'm going to turn your attention to Exhibit 234, and I
22 can put it on the wall or we can get it from the book,
23 whichever you prefer but I want to look at Exhibit 234.
24 Can you identify what is Exhibit 234? Can you see that?

25 A. Yeah, there's a burial plot that Stan's twin brother is

1 buried on one side of it and that's the other side of it
2 that. I have had many discussions with Greg Dyekman.
3 It was identified early on what to do. I've even been
4 in the cemetery.

5 Q. Is it true that that burial plot is a trust asset and
6 has been since February of 2012?

7 A. Correct.

8 Q. But it wasn't until January 18 of 2017 that that burial
9 plot was actually transferred into the trust?

10 A. Correct. It was identified a lot earlier but, and
11 talked about and discussed a lot with the attorneys. I
12 did identify that to my attorneys and at that time they
13 did put it in there. So that was identified early on,
14 immediately after she passed away.

15 Q. But not done until January 18 of '17.

16 A. The paperwork looks like it wasn't done but identified
17 and discussed.

18 Q. I'm going to turn your attention to Exhibit 114 and I'll
19 put this up on the wall but you've got the book in front
20 of you. Is Exhibit 114 a copy of a letter that Mr.
21 Dyekman wrote on October 18 of 2012 on your behalf?

22 A. I don't know. I'm not seeing the letter.

23 Q. You have it there in front of you don't you?

24 A. Correct but I haven't read it.

25 Q. Okay, did he ever write a letter that he was not

1 authorized to write to your knowledge?

2 A. I think that's a question for him. I wouldn't know.

3 Q. You asked him to take care of things related to the
4 trust on your behalf?

5 A. I, to settle the trust.

6 Q. As you sit here today do you have any reason to think
7 that Exhibit 114 isn't Greg Dyekman doing exactly that,
8 fulfilling your wishes to take care of trust issues?

9 A. Well, if you give me time I could read it I guess. If
10 you want me to sit here --

11 MR. SORENSEN: Your Honor, if you're going to
12 take a morning recess could I ask that you do it soon?

13 THE COURT: Yep, we'll get through this
14 exhibit and then we'll take a quick recess.

15 MR. SORENSEN: Okay.

16 BY MS. OLDEMEYER:

17 A. No, I didn't give him permission to write that or was
18 even aware that he was putting stuff like that.

19 Q. Well, let me --

20 A. Stan did take his contents of the house and they are
21 valuable things, so he did take his items and I did tell
22 him that, so I guess that, and there was a lot of junk
23 in the basement and I donated to charity. So maybe,
24 let's see --

25 MS. OLDEMEYER: Your Honor, we'd offer Exhibit

1 114.

2 THE COURT: Mr. Brenner.

3 MR. BRENNER: No objection, Your Honor.

4 THE COURT: Mr. Sorensen?

5 MR. SORENSEN: No.

6 THE COURT: One fourteen is received.

7 (Exhibit No. 114 is hereby
8 made a part of the
9 official court record.)

10 BY MS. OLDEMEYER:

11 Q. I'd like to turn your attention to a sentence in the
12 middle of the last paragraph on Exhibit 114, it reads,
13 "Once the residence is sold, Mrs. Herrell intends to
14 accomplish the final paperwork to distribute the
15 remaining assets of this Trust incurred in accordance
16 with the terms of the Trust Agreement. Do you see that
17 sentence?

18 A. Yes.

19 Q. So in October of 2012 was, to your knowledge what was
20 holding up the trust was the sale of the Hacker Circle
21 home that your mom --

22 A. No. No. Leonard did not provide the information that we
23 needed to settle it and when I took over my
24 responsibility it was to get all of the assets and I
25 could not get information through the attorneys on

1 anything on the farm and the mineral rights on the land,
2 on the income and it was because, and I needed to do
3 that or I could be, that was my obligation as the
4 trustee or the other beneficiaries could come after me.
5 So we needed to get it to settle the trust. I had to
6 have it.

7 Q. You understood your obligations as trustee then?

8 A. Yes, and it was to collect all the assets.

9 Q. You understood your job was to collect all the assets?

10 A. Yes, and I was doing the best that I could.

11 Q. And that you were to treat your two brothers equally
12 with respect to your decision. Did you understand that
13 to be one of your duties?

14 A. I did and I want to point out --

15 MS. OLDEMEYER: No, I just a yes or a no.

16 MS. HERRELL: I did and Leonard knows that
17 because we've discussed it in a phone call.

18 MS. OLDEMEYER: Ma'am, there is no question
19 pending. Move to strike.

20 THE COURT: That's overruled.

21 BY MS. OLDEMEYER:

22 Q. I'm going to show you Exhibit 284 --

23 THE COURT: Hang on, let's take a quick
24 recess and let's keep it as close to five as we can.

25 Ma'am, you can step down.

1 (At 10:44 a.m. a recess
2 was taken accordingly.)

3 (At 10:53 a.m. on February 27, 2017 with counsel for the
4 parties present and the plaintiff and defendants present, the
5 following proceedings were had.)

6 THE COURT: The record reflects we took a
7 short morning recess. The Defendant Janice Herrell is on the
8 witness stand. She is in the middle of the direct
9 examination with Ms. Oldemeyer. The Court will note for the
10 record that the attorneys have returned to the courtroom
11 along with their respective clients.

12 Ms. Oldemeyer, you may continue with your inquiry of Ms.
13 Herrell.

14 Let me remind you that any answers you give to questions
15 will be taken pursuant to the oath you were previously
16 administered. Do you understand.

17 MS. HERRELL: Yes.

18 THE COURT: Okay, Ms. Oldemeyer, then you
19 may continue.

20 DIRECT EXAMINATION CONTINUED

21 BY MS. OLDEMEYER:

22 Q. Mrs. Herrell, did you understand Leonard Mosher also had
23 representatives, legal counsel in the year 2012
24 representing his interests?

25 A. Yes.

1 Q. Were you shared or provided copies, communications by an
2 attorney name Gay Woodhouse?

3 A. Correct, yes.

4 Q. And you understood Gay Woodhouse was working on Leonard
5 Mosher's behalf?

6 A. Yes.

7 Q. I put up on the wall Exhibit 116. Exhibit 116 is a
8 four-page document. The last two pages consist of a
9 spreadsheet. Have you ever seen Exhibit 116 before?

10 A. It doesn't, not, it doesn't look familiar. No.

11 Q. Have you ever seen a spreadsheet related to 2012 like
12 the last two pages of Exhibit 116?

13 A. No.

14 Q. Do you have any reason to dispute whether Exhibit 116 is
15 a true and accurate copy of a letter that Gay Woodhouse
16 sent to your attorney Greg Dyekman on or about November
17 28, 2012?

18 A. I think that's difficult to answer because I can't just
19 look at a form and say if it's accurate or not.

20 MS. OLDEMEYER: Okay, we'd offer exhibit 116.

21 THE COURT: Mr. Brenner?

22 MR. BRENNER: Hearsay, Your Honor, relevance.

23 THE COURT: Mr. Sorensen, did you have any
24 additional objections?

25 MR. SORENSEN: No, Your Honor.

1 THE COURT: Ms. Oldemeyer, I'll hear from
2 you on 116.

3 MS. OLDEMEYER: Earlier in her testimony Mrs.
4 Herrell indicated she was waiting for documents from Leonard
5 Mosher and for purposes of showing that she was receiving
6 information through her attorney Greg Dyekman Exhibit 116 is
7 just an example of one such communication.

8 THE COURT: My concern is less that and
9 more the issue of hearsay. So I'm going to sustain the
10 objection as to hearsay on Exhibit 116.

11 BY MS. OLDEMEYER:

12 Q. Let's turn to Exhibit 284, and I've got that up on the
13 wall, Exhibit 284 has been received into evidence and I
14 just want to ask you, this is a communication that Greg
15 Dyekman sent to Gay Woodhouse and he actually copied
16 you, correct?

17 A. Well, it doesn't look familiar to me but, so I'm going
18 to say, no.

19 Q. You might be looking at the wrong exhibit, ma'am.

20 MS. HERRELL: I'm looking at this.

21 MS. OLDEMEYER: I'm asking about Exhibit 284
22 which is what I've got up on the wall.

23 BY MS. OLDEMEYER

24 Q. Can you see that?

25 A. No.

1 MS. OLDEMEYER: Your Honor, may I approach with
2 a notebook?

3 THE COURT: Yes.

4 BY MS. OLDEMEYER:

5 Q. Mrs. Herrell, I put in front of you Exhibit 284, is that
6 a communication that your attorney sent on December 3,
7 2012 on your behalf?

8 A. I'm reading it. I don't know. That's not my email.
9 Let me sit here and read it. I don't feel like I've
10 read it before but it's been five years, six years.

11 Q. Ma'am, as you sit here today Exhibit 284 is not familiar
12 to you?

13 A. That's a tough one, let me read it here and see if it
14 sounds familiar.

15 Q. Well, let me ask a different question outside of that
16 exhibit. Do you remember in December of 2012 your
17 attorney raising on your behalf a requirement that any
18 beneficiary sign a release? Yes or no.

19 A. When we settled the trust, yes.

20 Q. Yes, you wanted the beneficiaries to sign a release when
21 the trust was settled?

22 A. When, so the release I think you should understand, is
23 what was explained to me is it's very customary. I
24 would sign a release too because we would agree with
25 whatever the trust said. So I sign a release. Stan

1 signs a release. Leonard signs a release that we agree
2 that it was settled the way of the trust and that was my
3 understanding so when it's all done. All done, he looks
4 at a page I look at a page and I sign a release too that
5 I agree. We all agree and that that is very customary
6 and it was explained to me by Greg Dyekman that's what's
7 done and so in that sense yes. It's customary.

8 Q. Okay, let me ask you another question, ma'am. I just
9 want to make sure it's in evidence. Exhibit 284 had
10 you, as an email recipient, did you communicate by email
11 with Greg Dyekman?

12 A. Some but not, not all. We did some I guess I should
13 say.

14 Q. And you had a work email address.

15 A. I have three email addresses.

16 Q. Okay, well we'll look at some. I've got, up in front of
17 you on the wall here, Exhibit 124 and I just want to ask
18 you, is one of your email addresses

19 HerrellJ@NJHealth.org?

20 A. Yes.

21 Q. Did you receive a copy of Exhibit 124 on or about May 6,
22 2013?

23 A. I know we talked about releases because to me that was
24 the summary at the very end. You sign off. It's like
25 signing off if you completed a procedure and I told them

1 it sounds like when we're all done with what I do. We
2 sign it so it was customary. So I kept saying, can we
3 get the release done because I thought that meant
4 closure. You're all done. Everybody agrees and you're
5 done and you go your own way. So I, that's what I used
6 the word for. So I think you're using it in a different
7 context than me.

8 MS. OLDEMEYER: I've actually moved on to a
9 different topic entirely.

10 MS. HERRELL: Okay, I'm sorry.

11 BY MS. HERRELL:

12 Q. I'm asking about Exhibit 124, did you, after receiving
13 Exhibit 124 in May of 2013 by email, did you object to
14 any of the statements Greg Dyekman made in that email?

15 A. Let me go back and look at it here and read it.

16 Q. No, you don't, I mean do you remember it?

17 A. I'm sorry I don't, five years ago what was in an email I
18 will have to reread it. I'm sorry. I think anybody
19 would. I hoped he think he was, I always thought we
20 were getting close to, I do agree with that. This
21 actually doesn't sound familiar to me.

22 MS. OLDEMEYER: We'd offer Exhibit 124

23 MRS. HERRELL: And I do want to say --

24 THE COURT: Hang on.

25 Mr. Brenner.

1 THE COURT: Hang on, ma'am. You've got to
2 just wait for a question to be asked and then you can respond
3 but right now the issue before the court is whether the,
4 there's an offer of Exhibit 124, so I need to hear from Mr.
5 Brenner and Mr. Sorensen.

6 MS. HERRELL: Well, I misspoke earlier.

7 THE COURT: That's fine. You can --

8 MR. BRENNER: Your Honor, we're going to
9 object on the basis of, part of it goes with, it's a string
10 and we would object on the basis of hearsay and relevance.

11 THE COURT: Mr. Sorensen, did you have any
12 additional objections?

13 MR. SORENSEN: No, Your Honor.

14 THE COURT: Ms. Oldemeyer?

15 MS. OLDEMEYER: With respect to the hearsay
16 objection, these are communications between the attorneys to
17 which Ms. Herrell was copied, and the statements, including
18 statements made are all used against her with respect to her
19 trust administration.

20 MRS. HERRELL: Can I --

21 THE COURT: No. You've got to stop
22 talking.

23 Ms. Herrell: I'm sorry but I said something
24 wrong earlier.

25 THE COURT: Hang on. Hang on.

1 It's essential that people speak when they are allowed
2 to and I can't emphasize enough, ma'am. I'll let you speak
3 when it's your turn. It's not.

4 So, you're arguing that these are hearsay, these aren't
5 hearsay because they're statements offered against her
6 interest?

7 MS. OLDEMEYER: Yes.

8 THE COURT: Mr. Brenner?

9 MR. BRENNER: Your Honor, these are
10 statements that include other attorneys that are speaking and
11 giving statements then they're making representations. The
12 only email that she can show that went to Janice Herrell was
13 the first one, top of page 1 of that exhibit.

14 MS. OLDEMEYER: One more comment, Your Honor?

15 THE COURT: Sure.

16 MS. OLDEMEYER: To the extent that he objects,
17 because the statements are by someone other than Mr. Dyekman,
18 for example Kara Ronnau at Kline Williams. Her statements
19 aren't offered for the truth of the matter asserted. We are
20 solely offering Mr. Dyekman's statements.

21 MR. BRENNER: But then it's not relevant.

22 MS. OLDEMEYER: To which he's responding to a
23 communication.

24 THE COURT: I'm going to have to, I'll have
25 to review exhibit 124 and I, and I'll have to issue a ruling

1 on that as I'm getting a chance to read it. If there's,
2 anyway so --

3 (Receipt of Exhibit No.
4 124 is taken under
5 advisement by the court.)

6 BY MS. OLDEMEYER:

7 Q. Mr. Herrell, in May of 2013 did you, as trustee of the
8 trust believe that you were close to being able to wrap
9 up the trust administration? Yes or no.

10 A. Yes.

11 Q. Turn to Exhibit 126, please.

12 MS. OLDEMEYER: Your Honor, may I approach and
13 get that larger notebook out of her way for convenience?

14 THE COURT: Yes.

15 BY MS. OLDEMEYER:

16 Q. Have you ever seen Exhibit 126 before?

17 A. Probably not and this is why I wanted to speak to you
18 earlier. My email address, when it goes to NJ Heath, a
19 lot of times National Jewish blocks them if they think
20 they're from an attorney, so I will not see them and
21 they will not come into my basket and that is, that's
22 what I wanted to mention on the other one. I know what
23 I said and I wanted to correct myself. Chances are a
24 lot of them I do not see.

25 Q. So with respect to Exhibit 126, despite the fact that

1 you may not have seen it before, did Greg Dyekman have
2 authority to communicate with Leonard Mosher's attorneys
3 about issues related to a receipt and release of claims
4 against you as trustee?

5 MR. BRENNER: I'm going to object to the form
6 of the question, Judge.

7 THE COURT: What is the issue on the form?

8 MR. BRENNER: She's trying to ask her, I
9 think what Greg Dyekman was intending or expressing.

10 MS. HERRELL: I just want --

11 THE COURT: Hang on.

12 Ms. Oldemeyer, is that what you were asking?

13 MS. OLDEMEYER: No, I was asking about his
14 authority.

15 THE COURT: That's what I heard too so I'm
16 going to allow her to answer what she believed his authority
17 was.

18 BY MS. OLDEMEYER:

19 A. To settle the trust.

20 Q. And he had the authority to address potential receipt
21 and releases by the beneficiaries related to trust
22 administration?

23 A. I just asked him to settle the trust.

24 MS. OLDEMEYER: Okay, we'd offer Exhibit 126.

25 THE COURT: Mr. Brenner?

1 MR. BRENNER: We'd object on hearsay and
2 relevance.

3 THE COURT: Mr. Sorensen, anything on that?

4 MR. SORENSEN: No, Your Honor.

5 THE COURT: So, I'm going to have to do
6 with 126 what I did with 124 which is to, I'll take it and
7 I'll rule on it after I've had a chance to read it.

8 (Receipt of Exhibit No.
9 126 is taken under
10 advisement by the court.)

11 MS. OLDEMEYER: And with respect to the hearsay
12 objection I think the court understands our position as it's
13 a statement of her through her attorneys so it's not hearsay.

14 THE COURT: Yes, I understand that that is
15 the position you're taking.

16 BY MS. OLDEMEYER:

17 Q. If you could turn to Exhibit 127, page 2, and if you
18 could read from the bottom of page 2 to the top of page
19 3 to familiarize yourself with it. Did you, on November
20 29, 2013 send an email to your attorney Greg Dyekman,
21 your attorney Greg [sic] Sorensen and copy Kara Ronnau,
22 Leonard Mosher's attorney?

23 A. I did.

24 Q. And in that email did you state, I'm sorry that Leonard
25 needs to sign the releases before he gets the land from

1 my parents. Did you state that?

2 A. In other words we're settling the trust. He needs to do
3 that to settle the trust. Yes.

4 Q. You said that?

5 A. Well --

6 Q. Yes or no?

7 A. Yes.

8 Q. And did you also state, after Leonard signs the papers
9 he can get his gift from my parents as they wished?

10 A. Again, it's back to we do it at the same time. I did
11 say that. I think that we have different understandings
12 of what I said but you as an attorney just looking at it
13 different than from my perspective but I did say that,
14 yes.

15 Q. And that was in November of 2013, true?

16 A. True. We were hoping to settle the trust at that time.

17 MS. OLDEMEYER: We'd offer Exhibit 127.

18 THE COURT: Mr. Brenner?

19 MR. BRENNER: Objection to hearsay and
20 relevance. Your Honor, that's one communication but this is
21 attaching several again, and they are communications of Kara
22 Ronnau and I would, therefore, object because they are not,
23 they're then hearsay and not relevant.

24 THE COURT: Ms. Oldemeyer, did you want to
25 be specifically heard on that one?

1 MS. OLDEMEYER: With respect to any statements
2 and communications from Kara Ronnau, those portions are not
3 offered for the truth of the matter asserted with respect to
4 communications by Greg Dyekman or by Janice Herrell herself.
5 Those are offered against her interest and they are not
6 hearsay.

7 THE COURT: The, her email is certainly
8 not, wouldn't be hearsay in that respect. It would be a
9 parties' statement offered against her but I'll have to
10 review the remainder of that exhibit and make a decision
11 about it. So I'll take it and rule on it as I think it's
12 necessary at the time I issue a final order.

13 (Receipt of Exhibit No.
14 127 is taken under
15 advisement by the court.)

16 MS. OLDEMEYER:

17 Q. I'm still looking at the third page of Exhibit 127, what
18 proceeded your email to which you include Leonard
19 Mosher's attorney, was it a communication from Greg
20 Dyekman that you still had not definite commitment to
21 drop the jewelry or house damage issues?

22 A. You know, I don't even recall even seeing any email like
23 that but --

24 Q. In November of 2013 did you understand Leonard Mosher
25 felt that you had not gathered or collected jewelry that

1 should be part of the trust?

2 A. The jewelry was not part of the trust, no.

3 Q. My question is, did you understand Leonard Mosher
4 claimed there was jewelry that should have been part of
5 the trust?

6 A. At that time I don't think he brought it up, no.

7 Q. And at that point in time in November of 2013 did you
8 believe Leonard Mosher had raised any claims related to
9 house damage to Hacker Circle?

10 A. He had raised concerns, yes.

11 Q. Were you aware a complaint was filed against you related
12 to the administration of the trust?

13 A. He's filed a lawsuit, yes.

14 Q. And did you understand he filed that lawsuit, did you
15 know he filed it in August of 2013?

16 A. I don't, well I received, I don't have the exact date
17 that I received papers that he filed a lawsuit, correct.

18 Q. Did your attorney every forward to you a copy of the
19 Complaint that had been filed against you in the year
20 2013?

21 A. I got the lawsuit, I guess I should, that's what I
22 remember hearing about it. I heard that there was a
23 possible lawsuit and Greg Dyekman thought he could
24 settle it and he was working hard to settle it and he
25 said we will get the papers signed at the very end, that

1 will mean that we all agree and I think he used the word
2 release so I thought that was a positive thing. So
3 that's the best I can answer it.

4 Q. Let me ask this question, you were served by certified
5 mail copies of the Complaint that your brother Leonard
6 Mosher filed against you and your brother Stan, true?

7 A. True.

8 Q. And that was in January of 2014, true?

9 A. That sounds correct.

10 Q. Prior to receiving those by certified mail had you ever
11 reviewed a copy of the Complaint?

12 A. I don't believe so.

13 Q. As you sit here today do you believe your attorneys
14 received a copy of the Complaint filed against you in
15 August of 2013?

16 A. I think what the problem is, it's hard for me to answer
17 that as I don't know how you separate the Complaint from
18 the lawsuit. So I think, I apologize, I think it's the
19 terminology. I don't understand the legal part of what
20 you're saying.

21 Q. The Complaint started the lawsuit. Does that help?

22 A. I wasn't aware, I just thought there was a lawsuit and
23 that's my understanding of it. I knew he was
24 complaining but it wasn't a, he was complaining. It
25 wasn't like a piece of paper. I just thought he was

1 complaining the next thing the lawsuit.

2 Q. When you became trustee of the trust in February of
3 2012, you knew you were entitled to the southwest 1/4 of
4 Section 24, Township 17, Range 58 west in Banner County,
5 true?

6 A. No.

7 Q. You didn't know you were going to get the southwest
8 quarter?

9 A. No.

10 Q. When did you first learn you were to get the southwest
11 quarter?

12 A. Leonard called me on Easter and told me.

13 Q. And you had reviewed the --

14 A. I had.

15 Q. You'd reviewed the second amendment?

16 A. Yes.

17 Q. And you knew you were to get the southwest quarter?

18 A. No.

19 Q. Okay, at some point in time you became aware you were to
20 get the southwest quarter?

21 A. He told me.

22 Q. And you didn't want, did you want to keep the southwest
23 quarter?

24 A. Yes, and what --

25 Q. Did Leonard farm the southwest and southeast quarter of

1 that land in Banner County?

2 A. I assume so, yes.

3 Q. He had for years, right?

4 A. Yes.

5 Q. And you knew that?

6 A. Yes.

7 Q. In 2012 did you tell him to stop farming the southwest
8 quarter and the southeast quarter? Yes or no.

9 A. Through attorneys he was to be told.

10 Q. To stop farming it in 2012?

11 A. Through attorneys he was to be told, yes.

12 Q. Were you aware in 2013 that Leonard Mosher was still
13 farming the southwest quarter and the southeast quarter?

14 A. I was told that, yes.

15 Q. Did you tell him to stop farming in 2013?

16 A. I told my attorneys to write him a letter.

17 Q. And in 2014 were you aware of whether Leonard Mosher was
18 still farming the southwest 1/4 and the southeast 1/4?

19 A. I don't recall when he received the letter and exact
20 dates of when it stopped.

21 Q. Do you as you sit here today have any memory of asking
22 him to stop farming the southwest 1/4 of the property in
23 Banner County that was deeded to you in the year 2014?

24 A. I know a letter was finally written. I hired another
25 attorney to do it and he didn't do it.

1 Q. Let's go to certain issues related to tangible personal
2 property, at the time your mother died she was a
3 resident of St. Andrew's Village near your home in
4 Aurora, Colorado, true?

5 A. Yes.

6 Q. How long had she lived there approximately?

7 A. About two years.

8 Q. Prior to living at St. Andrew's Village she lived at a
9 facility in Cheyenne, Wyoming, true?

10 A. She was in Aspen Winds, correct.

11 Q. And how long had she live at Aspen winds?

12 A. Approximately about a year.

13 Q. She owned a townhouse on Hacker Circle at the time of
14 her death, true?

15 A. Yes.

16 Q. But she had not lived in that home for at least three
17 years prior to her death?

18 A. Close to five years, well it's actually almost six
19 years.

20 Q. Who lived in her home?

21 A. My brother Stan.

22 Q. Anyone else?

23 A. His daughter visited, well did live there while she went
24 to school.

25 Q. After your mother's death were you communicating with

1 your brother Stan Mosher about matters related to the
2 trust?

3 A. Yes.

4 Q. Specifically did you understand the trust required the
5 Hacker Circle Court property to be offered to the Trust
6 Beneficiaries if they wanted to buy it?

7 A. Yes.

8 Q. Did you offer it to Leonard Mosher to buy?

9 A. Through the attorneys. He, he, they did discuss it. He
10 was aware of it.

11 Q. Did you offer it to Stan Mosher to buy?

12 A. He was aware of that too.

13 Q. And is it your testimony that both declined?

14 A. Stan had made, made an offer, not a written one, he had
15 talked about it and I know that it was brought back, it
16 came back through Dyekman to me that Leonard did not
17 want the house but it did take time and eventually I was
18 told that Leonard didn't want it because he valued it at
19 350,000 or something like that and it wasn't going to
20 sell for that. I mean he didn't like Stan's offer.
21 There were some words said but my understanding nothing
22 formal. It was all just words and nobody made any
23 serious attempts or anything.

24 Q. When, when your mother died Stan Mosher was residing the
25 Hacker Circle home, true?

1 A. Correct.

2 Q. Did you ask him to vacate the Hacker Circle home? Yes
3 or no.

4 A. Yes, he volunteered.

5 Q. And when did he vacate?

6 A. It was about five months afterwards.

7 Q. Did you ask him to pay rent to occupy the Hacker Circle
8 home during those five months?

9 A. Rent, no.

10 Q. Did you inventory the contents of the Hacker Circle home
11 in February of 2012?

12 A. Yes.

13 Q. Where is that inventory?

14 A. It wasn't written.

15 Q. You inventoried it in your head?

16 A. It was easy to write it in my head because it was junk
17 or it belonged to Stan.

18 Q. Was any of your mother's furniture in that home?

19 A. No.

20 Q. All the furniture in that home belonged to Stan Mosher?

21 A. Yes.

22 Q. The furniture that you're describing had it previously
23 belonged to your mother?

24 A. Most of it, but they swapped. Stan lived with my mom
25 for a number of years, for a number of time in 2000. At

1 that time he bought a television. He bought some chairs
2 and they swapped bedroom sets and the furniture had done
3 a lot of moving from homes and there was some stuff, old
4 stuff in the basement but, so I can say, yes, there was
5 junk stuff in the basement that did belong to my mom but
6 the stuff upstairs was not stuff that I can say that I
7 felt that was ever my mom's stuff.

8 Q. To your knowledge your mother had, other than the
9 facilities you've listed, one home, that was Hacker
10 Circle Court home?

11 A. Correct.

12 Q. And she'd lived there for at least 15, 20 years prior to
13 her leaving?

14 A. Well, it was, let's see, 1992 or 4. I think 1994.

15 Q. Okay, did Stan Mosher help you clean out the Hacker
16 circle home?

17 A. He removed his, his stuff. So, yes, he cleaned. He did
18 carpet. He cleaned the carpet. He paid for somebody to
19 do that. So he did clean.

20 Q. Did you let Stan Mosher take anything he wanted out of
21 the Hacker Circle home?

22 A. I asked Stan to take the things that belonged to him and
23 my mom had given him a lot of stuff over the years.

24 Q. When you say your mom had given him a lot of stuff, is
25 there anything in writing where you mom gave him

1 something in writing?

2 A. No, and I didn't write Leonard's down either.

3 Q. Is it true that you let Stan Mosher take anything he
4 wanted out of Hacker's Circle Court home after your
5 mother died on February 6, 2012?

6 MR. BRENNER: I objection, Your Honor, it's
7 been asked and answered, that same question and she said, no.

8 THE COURT: Well, what she said as I recall
9 was that she told him to take what was his. So, I'm going to
10 sustain the asked and answered question.

11 BY MS. OLDEMEYER:

12 Q. As you indicated to Stan he could take what was his.
13 Did you have an understanding there was some of his
14 stuff and some of your mother's stuff?

15 A. There was stuff in the basement that did belong to my
16 mom, yes.

17 Q. But absolutely no furniture?

18 A. Not usable furniture. I mean nobody would want to sleep
19 on a mattress that, so if you call it furniture, I
20 guess. It's not worth anything.

21 Q. Was there anything that Stan removed from the home that
22 he claimed was his that you questioned whether it was
23 his?

24 A. No.

25 Q. If Stan said it was his you believed him?

1 A. I believed my mom when she gave it to him. I was
2 present many times when my mom and I, even when she
3 lived there at Aspen, which basically lived with me
4 because she was at my house half the time, so I knew
5 everything that my mom told Stan. Everything. She gave
6 him the stuff that was in there because Leonard had a
7 full house and she'd already given Leonard a lot of
8 stuff before she moved out of the place and she wasn't
9 coming back for five years. She told the boys and
10 everybody to come take what they wanted. Leonard took
11 the guns and just a lot of stuff. Even grandchildren
12 came over and took stuff. So when she left there five
13 years before. You're talking about a place that was
14 only 1,500 square feet to begin with and people had
15 taken stuff that they wanted that was worth anything and
16 she gave it to them. She wanted them to take it because
17 it's going to sit empty. So that's the furniture issue
18 on it.

19 Q. With respect to any of the furniture that was in the
20 home did you ask Stan to provide proof that he had
21 purchased and brought it into the home?

22 A. No.

23 MS. OLDEMEYER: I'd like you to turn to Exhibit
24 118.

25 BY MS. OLDEMEYER:

1 A. Well, I should say the appliance but they were Stan's.

2 Q. In January of 2013 did you authorize Mr. Dyekman to
3 communicate with Leonard Mosher's attorneys about farm
4 income off the south-half of the Banner County property
5 that was to be divided between you and your brother?

6 A. He was to get, to get the -- yes, that was the assets.

7 Q. Okay, and did you understand there was discussion in
8 January of 2013 about whether the trust should pay the
9 property taxes?

10 A. I'm sure there was discussion, so.

11 Q. Were you part of those discussions?

12 A. Through the attorneys.

13 Q. So you would talk to Mr. Dyekman who then would talk to
14 Leonard's attorneys?

15 A. Yes.

16 MS. OLDEMEYER: Your Honor, we'd offer Exhibit
17 118.

18 THE COURT: Mr. Brenner?

19 MR. BRENNER: Your Honor, we will, no
20 objection.

21 THE COURT: One eighteen is received.

22 I'm sorry, Mr. Sorensen?

23 (Exhibit No. 118 is hereby
24 made a part of the
25 official court record.)

1 MR. SORENSEN: No objection.

2 THE COURT: I keep looking at my notes.

3 You need to be louder.

4 MR. SORENSEN: Well, I've been such a force in
5 this discussion here.

6 THE COURT: You need to be louder, Mr.
7 Sorensen, sorry.

8 BY MS. OLDEMEYER:

9 Q. Mrs. Herrell, on Exhibit 118, page 2, at the top, I'll
10 put that up here, this is a communication from Greg
11 Dyekman to Gay Woodhouse in January of 2013, is the
12 true?

13 A. It says that so that's true, yes.

14 Q. In January of 2013 was you brother Stan Mosher claiming
15 that your brother Leonard Mosher had a bunch of farm
16 equipment that should be part of your mother's trust?

17 A. He said it very early on, so I don't know exactly the
18 date.

19 Q. Well, what did you as trustee do then to collect the
20 farm equipment that your brother Stan Mosher claimed
21 should be part of the trust?

22 A. Well, my obligation as the trustee was that if anybody
23 identified something was to, to identify it and have it
24 investigated and that's what I delegated to my attorneys
25 to look at and also to Stan to collect the information.

1 Q. Okay, in January of 2013 did you have any concern about
2 farm equipment that was in the possession of Leonard
3 Mosher that you believed should be part of the trust?

4 A. I know that's my responsibility. No matter what was
5 brought up I was to identify it and just to list it and
6 have it investigated and that's, that's what. I had to
7 delegate that to Stan and the attorneys because that was
8 not my area but I know that it had to be done.

9 Q. Between January of 2013 when the issue was discussed in
10 Exhibit 118 and the time you filed counterclaims against
11 Leonard Mosher, what did you do to determine whether he
12 was in possession of any farm equipment that should have
13 been in the trust?

14 A. Delegated that to Stan and the attorneys to look at. I
15 felt that was the best that I could do.

16 Q. You didn't have any documents that would support Stan
17 Mosher's assertion that there was equipment that should
18 be in the trust did you?

19 A. There were receipts of stuff that were found in the home
20 and I did, they were given to the attorneys to sort out
21 and what to make with it. So I did that and that was
22 done early on.

23 Q. So with respect to the documents that you provided the
24 attorneys did you feel any of those records supported
25 Stan Mosher's claim that your brother Leonard was in

1 possession of farm equipment?

2 A. Well, I thought it needed to be looked at for sure and
3 again that's, I thought, I thought that it was
4 definitely something to be investigated.

5 Q. I've put up on the wall Exhibit 296 which has been
6 received into evidence and this is an email from
7 February 6, 2013 and the last page is a list of farm
8 equipment totaling \$103,000. Did you prepare that list?

9 A. No, but I did ask for it to be prepared because when
10 they brought it up I said well, we need to know and I
11 know that that was the first thing that I had to do was
12 get the assets.

13 Q. Did Stan Mosher prepare that list?

14 A. I asked him to.

15 Q. You asked Stan Mosher to prepare that list?

16 A. When he talked about the equipment I said I need to
17 know, Stan, if that's an asset to the trust I have to do
18 that for Greg Dyekman. He said you have to collect the
19 assets of everything, the mineral and any income off of
20 the farmland and that's what I always was asking, and he
21 mentioned it and I said, well you need to get a list if
22 you think it's part of the trust.

23 Q. Did you understand Stan's logic as to why he felt the
24 farm equipment should be part of the trust?

25 MR. BRENNER: I'm going to object, Your

1 Honor, on foundation and form.

2 MR. SORENSEN: Speculation.

3 MR. BRENNER: Yeah.

4 MS. OLDEMEYER: I'll rephrase my question.

5 THE COURT: Perfect. I'll sustain the
6 objection.

7 BY MS. OLDEMEYER:

8 Q. In February of 2013 did you have an understanding of why
9 Stan thought certain farm equipment should be part of
10 the trust?

11 A. My understanding, I thought there were still deeds and
12 stuff out there under my dad's name and then I knew if
13 they were under my dad's name that my dad's stuff was
14 put into my mom's through his Will. So I thought, well
15 that sounds like that would be part of the Trust.

16 Q. In 1997 when your mom first executed Exhibit 101 with
17 respect to the bill of sale of property, did she put any
18 farm equipment into the trust on that bill of sale?

19 A. To my recollection, no.

20 Q. And again your dad had died at least 19 years before
21 your mom did, right?

22 A. Correct. Yes.

23 Q. Exhibit 290 has been received into evidence and I want
24 to ask you about paragraph 2, is it a true statement you
25 didn't know anything about that equipment other than

1 what Stan Mosher told you?

2 A. Yes.

3 Q. Do you remember a period of time where in Nebraska you
4 needed to file a petition for inheritance tax?

5 MS. HERRELL: That who filed for it? I'm
6 sorry.

7 BY MS. OLDEMEYER:

8 Q. Did you as trustee participate in a process to get
9 inheritance tax in Nebraska determined for purposes of
10 settling the trust?

11 A. Well, that was, that's what the attorneys were working
12 on, yes.

13 Q. I'd like you to look at Exhibit 147. Do you have that
14 in front of you, ma'am?

15 A. One forty-seven, let me make sure. Yep, I do.

16 Q. Okay, and Exhibit 147 is in county court of Banner
17 County, Nebraska, Case Number PR 13-6 on the first page.
18 Do you see that in that top?

19 A. Yes.

20 Q. And does your signature appear on the second page?

21 A. Yes.

22 Q. And it's dated November 7, 2013, true?

23 A. True.

24 Q. Did you list any equipment as part of the inheritance
25 tax process?

1 A. Well, I don't think that was determined to probably put
2 in here at that time but I also did delegate it to the
3 legal sources, so.

4 MS. OLDEMEYER: We'd offer Exhibit 147.

5 THE COURT: Mr. Brenner:

6 MR. BRENNER: No objections.

7 MR. SORENSEN: No objection.

8 THE COURT: One forty-seven is received.

9 (Exhibit No. 147 is hereby
10 made a part of the
11 official court record.)

12 MS. OLDEMEYER: We'd also offer Exhibit 148.

13 THE COURT: Mr. Brenner?

14 MR. BRENNER: No objection.

15 THE COURT: Mr. Sorensen?

16 MR. SORENSEN: No objection.

17 THE COURT: One forty-eight is received.

18 (Exhibit No. 148 is hereby
19 made a part of the
20 official court record.)

21 BY MS. OLDEMEYER:

22 Q. Let's turn to Exhibit 149 in that notebook.

23 MS. OLDEMEYER: We'd offer exhibit 149.

24 MR. BRENNER: Your Honor, we'll object on the
25 basis of relevance and I believe I also raised, well,

1 relevance. That's an inventory for an estate not in the
2 trust.

3 THE COURT: Just a second.

4 Mr. Sorensen, did you have specific comments you wanted
5 to make with respect to 149?

6 MR. SORENSEN: Well, I think it is clear that
7 it's a filing made, it's an estate filing.

8 THE COURT: Ms. Oldemeyer, comments then on
9 the relevance of Exhibit 149.

10 MS. OLDEMEYER: If you could turn to page 7 of
11 Exhibit 11 there is a Schedule F for miscellaneous property.
12 Lines 1 through 8 correspond with the exhibit list that we
13 just previously looked at and total \$103,000. In addition
14 lines 9 through 15 add diamond earrings, pearl necklace,
15 eight Cameo pens, five gold chains, two silver necklaces, six
16 rings and three pens and my client would like to know where
17 that jewelry is.

18 THE COURT: Okay, so the relevance
19 objection is?

20 MS. OLDEMEYER: That it's highly relevant to
21 the claims my client is making with respect to this trustee's
22 failure to collect and preserve trust assets and this is a
23 document she signed, filed in the same case, PR 16 6 in the
24 county court of Banner County and the court can even just
25 take judicial notice of this pleading that she filed.

1 THE COURT: Anything else, Mr. Brenner?

2 MR. BRENNER: Yes, Your Honor, this is, these
3 items, where they say they're trust assets, that's the
4 problem. There's nothing says they are trust assets that are
5 on this document. Secondly, this has to do with has to do
6 with a Schedule F or whatever schedule, it doesn't matter, of
7 an amended inventory that's not a trust or anything
8 especially since the lady says I don't possess these and I
9 don't possess them. She's said that over and over.

10 MS. OLDEMEYER: I actually haven't asked her
11 that, Your Honor.

12 THE COURT: Okay, so I'm going to find that
13 the objection, it's a weight versus admissibility. I'll
14 receive Exhibit 149 and overrule the objection and any
15 continuing questions with respect to 149, that objection will
16 continue through, through the remainder of those questions.

17 Mr. Brenner, Mr. Hesser, Mr. Sorensen, you're welcome to
18 renew your objection as you see fit.

19 (Exhibit No. 149 is hereby
20 made a part of the
21 official court record.)

22 BY MS. OLDEMEYER:

23 Q. Looking at the first page of Exhibit 149, that's a
24 filing in the matter of the estate of Lois Mosher,
25 deceased, correct?

1 MS. HERRELL: You said 149?

2 MS. OLDEMEYER: On forty-nine.

3 BY MS. OLDEMEYER:

4 Q. Looking that the first page in the upper left corner?

5 A. I think I'm on the wrong page.

6 MS. OLDEMEYER: Your Honor, may I approach?

7 THE COURT: Yes.

8 BY MS. OLDEMEYER:

9 Q. Do you have Exhibit 149 in front of you?

10 A. I do.

11 Q. And in the upper left corner does it say, in the matter
12 of the estate of Lois Mosher, deceased?

13 MR. BRENNER: Your Honor, the instrument
14 speaks for itself.

15 THE COURT: I understand.

16 BY MS. OLDEMEYER:

17 A. Yes.

18 THE COURT: The objection is overruled.
19 Go ahead.

20 BY MS. OLDEMEYER:

21 Q. And does your signature appear on the first page?

22 A. Yes.

23 Q. Were you ever appointed personal representative?

24 A. That was a term that was used that I think I had to be
25 the personal representative to put things in the trust

1 and so I'm not so sure I understand the term of it but I
2 think the answer is, yes, but to put things into the
3 trust. I followed my, you know, what, I just followed
4 what my legal advice said to do and so that's.

5 Q. Turn to page 7 of Exhibit 149, please. Are the first
6 eight items those items Stan Mosher listed that we
7 looked at?

8 A. Those are the items that are being looked at to see.

9 Q. Okay, and you felt that it should be part of your
10 mother's trust when Stan raised the issue, correct?

11 MR. BRENNER: I'm going to object, Your
12 Honor, to the form of the question. It misstates the facts.

13 THE COURT: Ms. Oldemeyer --

14 MR. SORENSEN: I interpose an objection on
15 speculation, Your Honor.

16 THE COURT: Thank you, Mr. Sorensen.

17 Ms. Oldemeyer, do you have comments with respect to
18 that?

19 MS. OLDEMEYER: Well, I think her prior
20 testimony was she felt she had to raise or address Stan's
21 list of equipment as trustee of the trust, that was her
22 responsibility.

23 THE COURT: I think that's true. I think
24 that's consistent with what she said. I'm not sure that
25 that's the question you asked so I'm going to sustain the

1 objection and you can rephrase the question.

2 BY MS. OLDEMEYER:

3 Q. Are, on Exhibit 149, page 7, items 1 through 8 listed
4 the same pieces of equipment that you as trustee of the
5 trust felt you needed to address based on concerns Stan
6 Mosher had raised?

7 A. I believe so. I didn't check them all out to make sure
8 that they were all listed there but I believe, I believe
9 so.

10 Q. Okay, Exhibits [sic] 9 through 15, were those items of
11 jewelry that your mother owned at that time of her
12 death?

13 THE COURT: Just as a matter of
14 clarification, Ms. Oldemeyer, I think you referenced exhibit
15 9 through 15.

16 MS. OLDEMEYER: I'm sorry.

17 THE COURT: It's okay, I just want to be
18 sure that we're speaking, so if you can just rephrase that
19 question please.

20 BY MS. OLDEMEYER:

21 Q. Mrs. Herrell, looking at trial Exhibit 149, page 7, are
22 items number 9 through 15 listed there items of jewelry
23 that your mother owned on the date of her death?

24 A. They, they are missing and Leonard has them.

25 Q. Those are items of jewelry you believe your mother owned

1 at the date of her death, true?

2 MR. BRENNER: I'm going to object, Your
3 Honor, that's been, she's answered Leonard possess them.

4 THE COURT: It's a different question and
5 I'm going to, I'm going to allow her to answer that question.
6 The objection is overruled.

7 BY MS. OLDEMEYER:

8 A. She owned them and he took them.

9 Q. So, by the time you filed this Amended Inventory in
10 October 28, 2015 somehow you became aware that your
11 mother owned the jewelry that you've listed on page 7,
12 items number 9 through 15. Why didn't you know your
13 mother owned items 9 through 15 back in February of
14 2012?

15 A. And let me explain, when she was alive he took the
16 jewelry when she was alive and there were many
17 discussions, lots of tears and my mom, before she passed
18 away, we had a lot to talk about and she said, Janice
19 he's going to keep it. We know it. You'll just have to
20 give it. So the jewelry, I was so fed up by the time
21 she passed away that we gave up on the jewelry part of
22 it and it irritates me that he brings it up because we
23 all know where the jewelry is and a lot, the thing about
24 the jewelry was a lot of it was mine that I gave to my
25 mom. I traveled in the service. I bought her pearl

1 earrings, I bought her jade necklaces. I bought my mom
2 for every Mother's Day and Christmas holiday nice
3 jewelry that cost money and that was in there. She
4 always said, Janie, when I pass away it goes to you. My
5 dad had bought some things but I had bought a lot of,
6 and they weren't things you go ahead and insure all of
7 them but she had a lot of nice jewelry and it went
8 around in this trunk and the last person that had it was
9 Leonard. We know that and Leonard just told my mom he
10 wasn't going to get it, he could sue her, you know, and
11 my mom wasn't going to sue her son and there was lots
12 and lots of tears by her and I said, mom, let's not
13 worry about it. It's, you know, don't, just leave it
14 alone. So then he brings it up in this part of it and
15 I'm like Leonard, you didn't bring it up to begin with
16 because you just saw that it was something you wanted to
17 throw out that, we all know where it is. There could
18 have been lawsuits. It was a huge trunk that had lots
19 of things in it.

20 Q. Okay, so let me ask you about that trunk. You presently
21 have that trunk, true?

22 A. I presently have that trunk, yes.

23 Q. And in your deposition on December 19, 2016 you describe
24 what was in that trunk as costume jewelry?

25 A. Yes.

1 Q. And you've retained all of the costume jewelry that you
2 determined has no value, true?

3 A. Costume jewelry is junk?

4 Q. Yes or no? You've retained what you describe as costume
5 jewelry?

6 A. No, actually, let me tell you, when I went back and
7 looked at it at the deposition I went to my husband and
8 I said remember mom took those pieces out of there and
9 threw them across the room. My mom did not wear costume
10 jewelry. She only bought good stuff. Costume jewelry
11 is junk, trash you throw away. She did not, I didn't
12 really recognizes, and I said to my husband, where is
13 it? So we went looking around and then finally I spent
14 like, and then he goes your mom threw that away, he
15 thinks the next day. We never found it. The trunk was
16 there, so costume jewelry is, can be defined to
17 different people in different ways. My mom defined it
18 as something she would never wear and she never did.
19 She had to have something --

20 Q. So when you in your deposition testified that you have
21 the trunk?

22 A. Yes.

23 Q. And you had retained costume jewelry --

24 A. I thought at the time that I had it because I didn't
25 think we'd threw these, but we have these little pieces

1 away. I thought we just, and my husband said that when
2 he went back and he looked at it, I think she threw it
3 away when she lived at, if she went to her house and was
4 at her house most of the time even when she lived at
5 Aspen and when she was at our house. But he said he's
6 never seen it for quite some time. So I thought we
7 still had it at the house someplace but I never found
8 it.

9 Q. You mentioned you bought your mom a lot of jewelry. Did
10 you feel that at the time of her death you were entitled
11 to take back any jewelry you had bought her?

12 A. It was given to me, there was never a question of who
13 owned the jewelry. The jewelry was given to me a long
14 time ago, in fact --

15 Q. Mrs. Herrell, is there anything in writing that says,
16 like Schedule B to her trust, I give these particular
17 items of jewelry to my daughter whom I love whom gave
18 them to me? Is there anything in writing?

19 A. No, because our family knew who the jewelry was to
20 belong to.

21 Q. And these particular items that you've identified on
22 page 7 of Exhibit 149, how is it that you recall
23 specifically these items and their value?

24 A. I could have written pages over time of it and Greg
25 Dyekman said we need to put some things and I said this

1 is the best I can do and actually I remember the cameo
2 pens because they came from Stan when he was in the
3 service and so I thought, they need to try and be
4 relocated for him. We all know they were in that trunk
5 and Leonard had them.

6 Q. The jade necklace that you mentioned, that's not on
7 Exhibit 149, page 7 is it?

8 A. They were not part of the trust they were mine. They
9 were given to me and they were taken by Leonard and this
10 was all when she was alive and we talked about it.
11 Leonard remembers it. He knows. That was a lot of the
12 discussions and arguments that they had. He made it
13 very clear she wasn't going to, he wasn't going to give
14 them back.

15 Q. Okay, I want to go back in time just a little bit to
16 Exhibit 122, you knew prior to at least this Amended
17 Inventory that you filed that Leonard Mosher claimed
18 that there was jewelry that should have been part of the
19 trust estate that you hadn't properly accounted for,
20 correct?

21 A. I had given up on the jewelry long before she passed
22 away and it was, I finally just, I could not believe we
23 talked more about the jewelry because Leonard threw it
24 in there I think as just to be mean personally but it
25 was not, I mean we, he took a lot of the jewelry himself

1 and he knows he didn't put all that in there too. So if
2 he really wanted to talk about it he would have put the
3 men's jewelry because my dad had a lot of jewelry too
4 and. You know I feel like --

5 THE COURT: Hang on.

6 BY MS. OLDEMEYER:

7 Q. Exhibit 294 has been received into evidence. Did you
8 authorize Mr. Dyekman to make a statement on your behalf
9 about the furniture Stan removed from the house?

10 MS. HERRELL: Is this something I can read
11 here?

12 MS. OLDEMEYER: You can't read that. I'll
13 approach with Exhibit 294.

14 BY MS. OLDEMEYER:

15 A. On the first page of that Exhibit 294 did you authorize
16 Mr. Dyekman to make a statement on our behalf that the
17 used furniture that Stan removed from the house wouldn't
18 affect much of anything at a sale? Do you see that?

19 A. (No audible response had.)

20 Q. If you look up here I'm pointing to it with the red
21 light. "Frankly as we've discussed before the used
22 furniture that Stan removed from the house wouldn't
23 affect much of anything at a sale." Do you see that?

24 A. Yeah, I didn't authorize anything.

25 Q. Okay, and then he also goes on to say the only jewelry

1 Janice has was given to her years ago by her mother, do
2 you see that reference in that same sentence?

3 A. Well, that's true, yes.

4 Q. Could you identify for me right now what jewelry you
5 have that was given to you years ago by your mother and
6 the value?

7 A. Well, she gave me a defective ring. I combined it with
8 part of this ring. I gave it to her one time. She gave
9 it back too. So I guess you could say it's a
10 combination of both of ours together. One of the things
11 my mom and I did was we, we took another ring to a
12 jeweler, I was looking for the receipt of that one and I
13 couldn't find it. I sized her and she was going to wear
14 it and then she gave it back to me and I told her, I
15 think that's the one I got in Japan. So it's very hard
16 to say which is her jewelry and, I do, I do have that at
17 my house but I originally bought it for her, got it
18 sized for me. We added another little stone to it.
19 Went back to her, so I do, I do have that, yeah.

20 Q. At your deposition on December 19, 2016 you were asked
21 to bring all items of jewelry in your possession, right?

22 A. Correct.

23 Q. You didn't bring that ring, did you?

24 A. It's my ring. It's not, I don't recall that ever being
25 my mom's ring.

1 Q. You didn't bring that ring did you?

2 A. No.

3 Q. You didn't bring any rings?

4 A. No.

5 Q. But you specifically just described two rings didn't
6 you?

7 A. They were rings that, I think it's very difficult to say
8 that they were her rings because they were actually
9 originally my things. We combined two together. It
10 came back. I think that I would say that I own the
11 rings. I don't say that my mom ever owned the rings.
12 So, I don't think, I don't think people realize that we
13 were very close and she lived with me mostly.

14 Q. I'd ask you to turn in that notebook to Exhibit 132.
15 Exhibit 132 has been received into evidence but did you
16 communicate with Greg Dykeman in May of 2014 in response
17 to Leonard Mosher's claims about the trust should have
18 included rings?

19 A. Yeah, I don't, I threw my hands up when Greg brought
20 this up again. I said, you know, we're talking about
21 these rings again. I said, there was so much jewelry
22 that should have been included in the trust that he had
23 that was in there that he took. So my mother had a lot
24 of jewelry.

25 Q. And you understood that Mr. Dykeman was conveying to

1 Leonard Mosher's attorney you have only two rings that
2 were given to you by your mother years ago?

3 A. Those two we combined together, yes.

4 Q. Okay, and if you'd look at Exhibit 133, the last page,
5 are either of the two rings depicted there? These rings
6 that you described have transitioned through time with
7 respect to resizing and adding or removing of gems?

8 A. No.

9 Q. You understood in 2014 that Leonard Mosher was looking
10 specifically for two rings, correct?

11 A. Correct.

12 Q. And you'd seen pictures of the rings that he had
13 provided through that attorneys?

14 A. Correct.

15 Q. And Exhibit 133, the last page is an, are those rings he
16 was looking for?

17 A. Yes.

18 Q. Do you possess the two rings in any form whether just as
19 a diamond or a gem from them, in any form?

20 A. No.

21 Q. No?

22 A. No.

23 MS. OLDEMEYER: We'd offer Exhibit 133.

24 MR. BRENNER: Your Honor, for completeness
25 that would include or require the court to consider receipt

1 of 279. This, because 133 is the two pages before that
2 picture that she referred to are all about mineral interests
3 and not on the subject we just dealt with. But if the court
4 is going to receive 133, 279 for completeness because that
5 would go into the full explanation.

6 MS. OLDEMEYER: We have no objection.

7 THE COURT: Okay. The court will receive
8 133 and 279.

9 (Exhibit Nos. 133 and 279
10 are hereby made a part of
11 the official court
12 record.)

13 BY MS. OLDEMEYER:

14 Q. I'd like you to turn to Exhibit 288. You may not have
15 that.

16 MS. OLDEMEYER: May I approach with the larger
17 book?

18 THE COURT: Yes.

19 BY MS. OLDEMEYER:

20 Q. Have you ever seen Exhibit 288 before?

21 A. I've seen it, if not a similar list.

22 Q. Earlier in your testimony you talked about Leonard
23 having I think you said men's rings.

24 A. Well, he normally wears it but I notice he didn't wear
25 it today, but, yes.

1 MS. OLDEMEYER: I'm going to move on, I
2 apologize for jumping around. We'd offer Exhibit 134.

3 MR. BRENNER: Your Honor, we object to 134 on
4 relevance and hearsay. These are in 2015 and for example on
5 the first, bottom of the first page its talking about having
6 a hearing on this case. And so on the basis of if I see
7 right hearsay and relevance is what we would object on.

8 THE COURT: Mr. Sorensen?

9 MR. SORENSEN: Nothing more to add, Your
10 Honor.

11 THE COURT: Ms. Oldemeyer, did you want to
12 be heard on those objections?

13 MS. OLDEMEYER: With respect to the exhibit,
14 we're not offering Cara Ronnau's portion for the truth of the
15 matter asserted but we are offering the portion from Greg
16 Dykeman related to administration of the trust issues as
17 statements against his client's interest.

18 THE COURT: The court will take Exhibit 133
19 and I'll rule on whether it should be received when I've had
20 a chance to review it.

21 MS. OLDEMEYER: I think it's 134, Your Honor.

22 THE COURT: I'm sorry, if I said that wrong
23 it's 134 is what I was referring to. Thank you.

24 (Receipt of Exhibit No.

25 134 is taken under

advisement by the court.)

2 BY MS. OLDEMEYER:

3 Q. In March of 2015 did you understand the court wanted the
4 lawsuit that was kind of sitting out there doing nothing
5 to move along?

6 A. The court won the lawsuit, I don't understand.

7 Q. In March of 2015 had anything been going on with respect
8 to the lawsuit Leonard had filed against you?

9 A. Well, my understanding was Greg Dykeman was trying to,
10 and the attorneys were, the group of the, were trying to
11 get at the assets from Leonard, yes.

12 Q. And they filed a counterclaim on your behalf?

13 A. Correct.

14 Q. And those counterclaims included claims for farm
15 equipment of \$103,000 that Stan Mosher had raised with
16 you, right?

17 A. Yes.

18 Q. And it also included jewelry that you estimated in your
19 counterclaims between 5 and \$10,000 that you felt should
20 be part of the trust that Leonard possessed?

21 A. Correct.

22 Q. And it also included a claim for farm income that you
23 felt he hadn't turned over to the trust or you?

24 A. Correct.

25 Q. What was the arrangement that Leonard had with your

1 mother prior to her death with respect to any profits
2 received from farming the south 1/2 of the Banner County
3 property? The southwest 1/4 went to you and the
4 southeast 1/4 went to him.

5 A. She asked for her 1/3 of it and she wanted the 1/3 of
6 anything out there and Leonard said no and his response
7 was sue me and she said I don't sue my son.

8 Q. Your understanding wasn't that he could keep all the
9 income if he paid all the expenses and bought insurance
10 on Hacker Circle?

11 A. No.

12 Q. Okay, going back to Hacker Circle for a minute, you gave
13 clothes that belonged to your mother that were in that
14 home to an aunt, true?

15 A. Yes, her sister, yes.

16 Q. And in your deposition you testified that neither
17 Leonard or Stan helped you clean out the home didn't
18 you?

19 A. Correct.

20 Q. And you claimed you worked for four days moving massive
21 amounts of stuff?

22 A. Yes.

23 Q. A lot of which you felt was trash or donated to Good
24 Will, correct?

25 A. Yes.

1 Q. But you did have a garage sale?

2 A. We had two girls who were going to, they worked for
3 Volks and they suggested it and I thought it sounded
4 like a good idea because I was tired of, it would cost
5 more money to take stuff out than to, we had already
6 taken a lot of it out and some of it, she had an
7 exercise machine that was very heavy, didn't work, the
8 mattresses that were stained and my dad died in one of
9 them.

10 Q. My question is just about a garage sale. You authorized
11 a garage sale?

12 A. Yes.

13 Q. And you determined what was going to be sold at that
14 garage sale?

15 A. Yes.

16 Q. And the garage sale made \$400 cash?

17 A. Yes.

18 Q. And you did not deposit that in the trust account?

19 A. No.

20 Q. That's correct?

21 A. Correct.

22 Q. With respect to the Hacker Circle closing. You put the
23 Hacker Circle home up for sale in August of 2012, true?

24 A. Sounds correct, yes.

25 Q. And it sold at the end of January of 2013?

1 A. Yes.

2 Q. Between February when your mom died and when you put the
3 house on the market in August were there substantial
4 amounts of work that needed to be done to the home?

5 A. There were a lot of things that need to be, to get it
6 ready to sell, painting and new carpet to get a home
7 ready.

8 Q. And you replaced the roof?

9 A. Yes.

10 Q. Did you deposit all insurance roof claims into the trust
11 account?

12 A. When my mom was alive is when the damage happened to the
13 house so it went into her account at that time and then
14 we repaired it after she passed away.

15 Q. And so did you deposit insurance proceeds into the trust
16 account?

17 A. Yes.

18 Q. Which insurance proceeds then?

19 A. Well, when she, the claim was filed when she was alive
20 and she managed that herself. So that was, she put that
21 into the account there and then, I guess, I think that
22 answers your question.

23 MS. OLDEMEYER: Well, we'll look at that later.

24 BY MS. OLDEMEYER:

25 Q. Was there wall and ceiling damage that needed to be

1 repaired before the home could be placed on the market?

2 A. There was no damage. It was normal, normal wear of how
3 many years, 20 years of somebody living in it. It had
4 to be painted the window sills had to be redone from just
5 the wear of the weather and she had made the house
6 handicapped so all of that had to be made normal. With
7 doors taken off and we had rails and bars around and the
8 tub was done different, those things all had to be
9 redone to get it ready.

10 Q. Is it your testimony that Stan Mosher hadn't caused any
11 damage to the home himself?

12 A. No, he didn't cause damage.

13 Q. Okay, I'm looking at Exhibit 176 which has been received
14 into evidence. This first line on the Wallstar invoice
15 does state repaired all wall and ceiling damage and
16 retextured, correct?

17 A. Correct but the damage is from the wind and the water
18 outside. She had water, if you look at, she had the
19 windows sills from just the weather coming in. It was
20 kind of rotting. And so that was the damage that had to
21 be repaired.

22 Q. You're familiar with lease terms that might require a
23 security deposit in case damage is done to a home, true?

24 A. Correct.

25 Q. Was there a security deposit that Stan Mosher had

1 deposited?

2 A. No.

3 Q. And did you expect him to return the home, you as
4 trustee in February of 2012 to return the home in the
5 same condition as when he began, normal wear and tear
6 accepted?

7 A. He returned it in a better condition.

8 MR. SORENSEN: I don't know how much longer
9 there is on the direct, but if you're going to take a noon
10 recess.

11 THE COURT: Ms. Oldemeyer, do you have an
12 idea of how much more you've got?

13 MS. OLDEMEYER: Probably another 30 minutes at
14 most, so it might be a good time if you want to take a lunch
15 break.

16 THE COURT: All right, let's go ahead and
17 break for lunch

18 So, ma'am, you can step down.

19 It's eight minutes past 12:00 right now. Let's be back
20 at a quarter till and we'll get restarted.

21 (At 12:08 p.m. a recess
22 was taken accordingly.)

23 (At 12:48 p.m. on February 27, 2017 with counsel for the
24 parties present and the plaintiff and defendants present, the
25 following proceedings were had.)

1 THE COURT: We are back on the record in
2 Case Number CI 13 19, Mosher v. Herrell. The record reflects
3 that the attorneys of record have returned to the courtroom
4 along with the litigants. Ms. Herrell has retaken the
5 witness stand and I'll get back to you here in a moment,
6 ma'am.

7 We'd recess for a short lunch break during the direct
8 examination of Ms. Herrell. Counsel, over the lunch hour I
9 was going through the stipulations and my notes with respect
10 to the exhibits that were offered and I just, I had one note
11 that I wanted to go over with everyone. My suspicion is it's
12 nothing but I want to be sure we're all on the same page.
13 Ms. Oldemeyer I think, if I segregated my notes right that
14 the last exhibit that you had offered was Exhibit 403.

15 Lynn, do you have that noted as offered and received?

16 MS. OLDEMEYER: That would make sense, Your
17 Honor.

18 THE COURT: Okay.

19 MS. OLDEMEYER: And it's not on that amended
20 list that you were provided, it's an addition entitled
21 Personal Property Tax Statement of Leonard Mosher.

22 THE COURT: Perfect. That was why I was
23 confused because as I looked at my sheet it said any exhibit
24 identified by any other party and my suspicion was that we
25 all weren't just going ahead and globally receiving all of

1 them.

2 MS. OLDEMEYER: No.

3 MR. SORENSEN: That is just one that
4 inadvertently got left off, Judge.

5 THE COURT: That's fine. That answers my
6 question. I was just --

7 MR. BRENNER: And nobody had an argument.

8 THE COURT: I looked at that and went, wow,
9 nobody argued that every exhibit got offered and received,
10 okay. So what was that again? Personal property, how did
11 you want to describe that?

12 MR. SORENSEN: Personal Property Returns for
13 Leonard Mosher.

14 THE COURT: Okay, thank you. That cleans
15 it up nicely. I just was a bit perplexed. I think I was
16 going to go with confused but perplexed sounds smarter so
17 we'll go with that.

18 So, the other thing, I know there was a question about
19 tearing down equipment here and taking it down stairs this
20 evening. I don't have any issue with that. I assume there
21 will be someone here from the sheriff's office that will be
22 able to get doors open, that sort of thing. I'm reasonably
23 sure that the clerk's staff here closes up shop around 4:30
24 so I don't know, but when we take our afternoon recess I'll
25 endeavor to find someone who can help facilitate that.

1 So with all of that having been said we'll get back
2 started.

3 Ms. Herrell, before you take any additional questions
4 let me remind you of the oath that you were previously
5 administered. Any answers you give to questions put to you
6 by Ms. Oldemeyer or by Mr. Brenner or Mr. Sorensen will be
7 taken pursuant to that oath. Do you understand?

8 MS. HERRELL: I understand.

9 THE COURT: All right, Ms. Oldemeyer, then
10 I'll turn the matter back over to you for additional
11 questions.

12 MS. OLDEMEYER: Your Honor, at this time we'd
13 offer Exhibit 130.

14 MR. BRENNER: Your Honor, to 130 we have no
15 objection.

16 THE COURT: Mr. Sorensen?

17 MR. SORENSEN: Just a second here, I don't
18 think I have any objection, Your Honor.

19 THE COURT: 130 is received.

20 (Exhibit No. 130 is hereby
21 made a part of the
22 official court record.)

23 DIRECT EXAMINATION CONTINUED

24 BY MS. OLDEMEYER:

25 Q. Mrs. Herrell, when your brother lived in the Hacker

1 Circle for about five years was he married?

2 A. For five years, are you referring to Stan? He didn't
3 live there for five years.

4 Q. I'm sorry, I thought earlier in your testimony you
5 indicted he had lived there for five years --

6 A. Then I misspoke then. He lived there for about a couple
7 of years.

8 Q. Okay, and in the couple of years he lived in the home
9 before your mother died was he a bachelor?

10 A. Yes.

11 Q. And Exhibit 267, which is the really large notebook in
12 front of you, I've turned to that exhibit, that exhibit
13 is 155 pages long, true?

14 A. That is true, yes.

15 Q. And in there, starting at about page 59 would include
16 all of the records of expenses incurred for the home
17 related to your clearing it, getting it ready for sale
18 and ultimately selling it, true?

19 A. True.

20 THE COURT: Which exhibit are you on? I'm
21 sorry, I missed that.

22 MS. OLDEMEYER: Exhibit 267.

23 THE COURT: Thank you.

24 I'm sorry, go ahead, Ms. Herrell, you can answer.

25 BY MS. OLDEMEYER:

1 A. Yes, it looks like it.

2 Q. If I understood your testimony earlier your brother, you
3 testified your brother left when he vacated the home in
4 better condition than when he moved in, is that your
5 testimony?

6 A. He did a lot of cleaning and he got new appliances,
7 washer and a dryer and a stove and I know that being it
8 set empty for quite a while and that other people had
9 stayed in the home, my mom, so it, and I know he fixed
10 one of the toilets that wasn't working right, so in many
11 ways, yes.

12 Q. But the home needed extensive cleaning as reported in
13 the documents within Exhibit 267?

14 A. Well, we were getting it ready to sell. I had a lot of
15 painting done and repairs and stuff and you do have to
16 have it cleaned.

17 Q. Okay, I want to ask you about pages 97 through 99 in
18 Exhibit 267 and --

19 MS. HERRELL: Two fifty-seven?

20 MS. OLDEMEYER: I don't know if those are
21 numbered. Can I put it up on the wall?

22 THE COURT: So, ma'am, I think she's on
23 Exhibit 267, pages 97 through 99.

24 BY MS. OLDEMEYER:

25 Q. You have it in front of you --

1 MR. BRENNER: It's number --

2 BY MS. OLDEMEYER:

3 A. Okay, I know what you're speaking of.

4 Q. So, page 97 through 99 of that exhibit relate to an
5 insurance claim from West Nebraska Clean Service,
6 correct?

7 A. Correct.

8 Q. And that is from August of 2011, true?

9 A. True.

10 Q. And it shows a net claim of \$4,623.70, true?

11 A. True.

12 Q. And so was that money to be deposited in the trust
13 account?

14 A. No, my mom was alive. That went into her account.

15 Q. Okay, so on Exhibit 294, which that's the one I have a
16 free standing copy if it would be helpful?

17 A. Yeah, it might be.

18 Q. There might be at the very back of your blue notebook
19 there, all by itself. If you turn to page 7 of that,
20 what is the, I'll put it up on the wall, what is the
21 deposit there of \$2,674 for insurance proceeds roof
22 repair deposited on August 6, 2012?

23 A. Because when we had replaced, after she passed away
24 there was, if I referring to the same one then that was,
25 after you had it replaced then you get what was left of

1 her insurance to deal with that.

2 Q. Okay, so we're not missing roughly \$2,000 or so?

3 A. No. Not, that went into her, when she was alive, into
4 that account.

5 Q. It went into her personal bank account?

6 A. Yes, her personal bank account.

7 Q. And you and Stan were the ones who inherited the
8 proceeds of her personal bank account?

9 A. Well, actually I put it into the trust. I put it into
10 the money of the, I put it in there.

11 Q. Huh?

12 A. I put it in her trust account.

13 Q. You deposited all of your mother's bank accounts that
14 she had at First Interstate Bank into the trust account?

15 A. I put that in the, the \$1,000 and some into the trust
16 account.

17 Q. I'm asking you all of your mother's accounts?

18 A. Yes, at that. Yes.

19 Q. And let's talk a little bit about the trust. The trust
20 said you and Stan were to inherit all of her securities
21 and mutual funds, right?

22 A. Uh-huh.

23 Q. Yes?

24 A. Well, I wouldn't, I think that's, no, I don't think I
25 would word it that way. There were, there were, they

1 were, if they weren't, if they were out there and they
2 weren't identified and then they would be brought in but
3 if identified we didn't identify them is the way I read
4 it, the trust to be.

5 Q. Okay, so on page 3 of Exhibit 102 where it reads, all
6 mutual funds and other securities for which
7 beneficiaries have not been designated during my
8 lifetime shall be distributed equally either in kind or
9 following ordered liquidation per, between Dennis S.
10 Mosher and Janice E. Herrell. It's your testimony there
11 were no such mutual funds or securities because the
12 beneficiaries had been designated?

13 A. Correct. Well, I did ask Greg Dyekman to see if my, at
14 that time, how to, how to approach it, how do you find
15 ones that aren't identified if you don't know and there
16 weren't any that weren't identified that I know of.
17 There might be some still out there. It was my
18 impression there was but we didn't, I couldn't identify
19 anybody, so I didn't find any.

20 MS. OLDEMEYER: If you could turn to, in the
21 blue notebook, Exhibit 145, let me strike that because I
22 think tax returns have been admitted. Well, Your Honor, I
23 offer exhibits 144 and 145 which are discovery responses from
24 this defendant and we offer them as admissions against her
25 interest.

1 MR. BRENNER: Your Honor, there are
2 objections that were posed in 144 that I can quickly find and
3 also that I see in 145 that were opposed which we would
4 continue to stand on for purpose of any of those, the receipt
5 of 144 and 145 since I do not know how it's an admission
6 against interest.

7 THE COURT: Mr. Sorensen, did you have any
8 comments with respect 144 or 145?

9 MR. SORENSEN: No, Your Honor.

10 THE COURT: Ms. Oldemeyer, did you want to
11 be heard on anything further with 144 or 145?

12 MS. OLDEMEYER: No, with respect to the
13 objects, we'd take subject to the objections but there are
14 answers and partial answers.

15 THE COURT: The court will receive Exhibits
16 144 and 145 with the objections noted and I'll have to take a
17 look at those.

18 (Exhibit Nos. 144 and 145
19 are hereby made a part of
20 the official court
21 record.)

22 BY MS. OLDEMEYER:

23 Q. If you could turn to page 78 of Exhibit 145 near the
24 end, actually if you could turn to, are you on page 78?

25 A. Just about there. Okay, the TurboTax thing?

1 Q. Yep. You as part of your duties as trustee for the
2 trust helped file the 2012 federal tax return for your
3 mom?

4 A. Yes.

5 Q. Because she was deceased, and so this was filed in 2013,
6 right?

7 A. Uh-huh, yes.

8 Q. If you could turn to page 82 of Exhibit 145, do you see
9 that page?

10 A. Yes.

11 Q. Were the First Interstate Bank interest payments of
12 \$56.49 deposited in the trust account?

13 A. Yes.

14 Q. Were the ordinary dividends from Vanguard and Franklin
15 Templeton deposited in the trust account?

16 A. Yes.

17 Q. If you could look at Exhibit 109 which is that last
18 accounting received and show me where those deposits
19 were made?

20 A. (No audible response had.)

21 Q. I take it back Exhibit 109 is only a partial. So let's
22 go back to, in any of the Exhibits 294, 107, 108 or 109,
23 can you point me to where those deposits were made?

24 A. Well, they were put in her trust account.

25 Q. And the trust account, where the income is supposed to

1 be shared between you and your two brothers?

2 A. It was put, it was put into her trust bank account at
3 The Bank of the West, yes. All of her tax refunds were
4 put in there. I did two years of them.

5 Q. Okay, I'm not talking about tax refunds. I'm talking
6 about ordinary dividends from Vanguard and Templeton and
7 interest from First Interstate?

8 A. They went, that interest right there, that was her tax
9 refund, they went into her trust account.

10 Q. Do you understand the difference between ordinary
11 dividends and a tax refund?

12 A. Well, I know what the tax refund is. I know that I
13 contacted Greg Dyekman, my legal advisor, and then we
14 went through with these companies too to make sure that
15 it was done in the right account that it was. So I just
16 did the best that I could at that time.

17 Q. When your mom died on February 6, 2012 were there any
18 life insurance policies where she named her trust as the
19 beneficiary?

20 A. No. I couldn't find any and I did the best that I could
21 to find what she had out there. She had a, I would call
22 it a life policy, she had something that was designated,
23 everybody got a certain amount and I don't know the
24 exact words. I got all the paperwork and told everybody
25 where to file and how to get it. And it was, what was

1 the name of that? I wouldn't call it life insurance, it
2 was maybe her social security but I gave all the
3 information, Greg Dykeman I know contacted everybody and
4 they got, it was a certain amount. They had to fill out
5 this little piece of paper and Leonard I know was
6 informed.

7 MS. OLDEMEYER: I just wanted to ask you a few
8 questions wrap up questions about your counterclaims.

9 Your Honor, may I approach and hand her a copy of her
10 answer and counterclaims?

11 THE COURT: Yes.

12 BY MS. OLDEMEYER:

13 Q. Mrs. Herrell, I've handed you a document and it's
14 entitled Answer and Counterclaims of Janice Herrell. On
15 the first page and on the last page or second to the
16 last page it's dated May 27, 2015 signed by Robert
17 Brenner, your attorney, is that correct?

18 A. Certificate of Service.

19 MS. OLDEMEYER: The second to the last page,
20 the one right before that.

21 BY MS. OLDEMEYER:

22 A. Correct.

23 Q. Did you read this document before it was filed in May of
24 2015?

25 A. I read it at the time. I know that he sent me

1 everything, so.

2 Q. Yes or no?

3 A. Well, he sent me everything. I assume, yes at the time.

4 Q. Okay, if you could please read the basis of, I'm on page
5 8, paragraphs 44 through 46 which is your third cause of
6 action for theft or fraudulent concealment. Could you
7 please read your allegations that you've made in this
8 lawsuit?

9 MS. HERRELL: Forty-four you said?

10 THE COURT: Yeah, I'm on page 8, paragraph
11 44.

12 MS. HERRELL: Asserts that the reference to
13 the jewelry?

14 MS. OLDEMEYER: Yeah.

15 MS. HERRELL: In the Complaint?

16 MS. OLDEMEYER: And if you could read slowly so
17 the court reporter can take it down.

18 BY MS. OLDEMEYER:

19 A. Okay, Herrell asserts that the reference to jewelry in
20 the Complaint of the plaintiff are to the men and
21 women's and jewelry silver and gold which Leonard took
22 complete control of in June of 2009, which were in a
23 trunk picked up by Leonard. When he returned the trunk
24 in 2010 it was empty. Even upon demands of Lois Mosher
25 and late to the trustee he has refused to surrender the

1 items.

2 Q. And then paragraph 45?

3 A. Herrell asserts that Lois Mosher asked Leonard to return
4 her jewelry so that she may dispose of them the same but
5 all he wanted was a ring and but he returned a ring in a
6 plain envelop to her that was placed in her residence.
7 Further demand was made in vein.

8 Q. Let me stop you there, so you allege that Leonard Mosher
9 returned a ring in a plan envelop to your mom's place of
10 residence?

11 A. Yeah, back in 2009 or something like that.

12 Q. Okay, and then paragraph 46?

13 A. Forty-six, Herrell asserts that jewelry taken by Leonard
14 mainly a diamond between 5 and 10,000 to which judgment
15 is sought against Leonard.

16 Q. Okay, and then if you could turn to the next page, page
17 9, as part of your damages in your Complaint could you
18 read what you seek in paragraph D as in dog?

19 A. Upon that Herrell's second cause of action Leonard be
20 required it account for all the landlord share of crops
21 from 2008 to the present date, make payment of the
22 landlords share of copy sold to the fiduciary, also
23 subsidies on the trust land from 2008 until present and
24 interest placed upon that money at 12% APR until paid in
25 full.

1 Q. So your counterclaims again Leonard Mosher go all the
2 way back to 2008 when he was farming the south half of
3 Section 24, Township 17, Range 58

4 A. Yes. I think that, I think that that, I don't know I
5 think we talked about since my mom's death is what I
6 think it should be.

7 Q. Since your mom's death meaning --

8 A. Yeah.

9 Q. -- since February 6 of 2012 not going all the way back
10 to 2008?

11 A. The counterclaim is since her death but on the land part
12 of it she was alive at that time so, I know that she had
13 requested many times so that's a tough one to answer for
14 me to tell you the truth.

15 Q. Okay, Exhibit 131 has been received into evidence but is
16 it your understanding, Mrs. Herrell, that you had, in
17 May of 2014 that, and I'm looking at Exhibit 131,
18 Leonard had agreed to pay all expenses of the property
19 he farmed that was owned by his mother in return for the
20 right to farm the ground and not share the revenue?

21 A. Right after my dad died, okay, there was an agreement
22 between my mom and, and Leonard and that was, the way my
23 mom explained it to me then that it was, it was two or
24 three years and then she started asking for the revenue
25 and she wanted that to change and that's when Leonard

1 said he wasn't going to have anything to do with it. So
2 he said, no. So he kept the revenue and we moved on and
3 --

4 Q. And so the agreement was he didn't have to give any
5 revenue to your mother?

6 A. She tried to change that. His response was sue me and
7 she didn't want to sue her son. So that's, the
8 agreement was not by her and that was at least the last
9 probably five years of her life.

10 Q. So I am very confused. Why is your counterclaim limited
11 to the time frame since her death per your earlier
12 testimony in contradiction to what you've alleged in
13 paragraph D of your answer and counterclaims?

14 A. I think the counterclaim has to start from the time that
15 she died, so then maybe we should have changed the dates
16 on there. So I think that's why I use legal counsel for
17 so I'm going to have to defer that to them and I, I
18 don't feel comfortable asking for it because that's what
19 I have attorneys for to help me with the dates of what
20 times, the time frame.

21 MS. OLDEMEYER: I don't have any further
22 questions, Your Honor.

23 THE COURT: Mr. Brenner.

24 MR. BRENNER: Yes, Your Honor. Thank you.

25 CROSS EXAMINATION BY MR. BRENNER

1 BY MR. BRENNER:

2 Q. Ms. Herrell --

3 MR. BRENNER: Judge, when you're doing the
4 accounting, and I know we've already gone you know about
5 three, four hours --

6 THE COURT: We're just going to keep
7 plugging along.

8 MR. BRENNER: I know.

9 THE COURT: And we're going to get as far
10 as we can.

11 MR. BRENNER: Thank you. I just wanted to --

12 THE COURT: Yep

13 BY MR. BRENNER:

14 Q. A couple of things I was trying to pick up on here just
15 since lunch, I just want to first cover before I go back
16 to what was covered in the three hours and some this
17 morning. Did the Franklin and the Vanguard that she
18 pointed out to you in a tax return, those were items
19 that were not in the trust were they?

20 A. (No audible response had.)

21 Q. They weren't in the trust were they?

22 MS. OLDEMEYER: Object to the form of the
23 question, leading.

24 MR. BRENNER: I can lead I'm on cross.

25 THE COURT: It's cross.

1 BY MR. BRENNER:

2 A. No. Well, no.

3 Q. And do you, on those and anything like that including
4 her bank accounts she had another name on them?

5 A. Correct, at all times.

6 Q. And whose other name was on Franklin and Vanguard if you
7 recall this minute as you sit here?

8 A. The one was to me and one was to Stan.

9 Q. Okay, so they would go to whoever's name was on there at
10 the death, correct?

11 A. Correct.

12 Q. Now, I want to kind of go back and I'm sorry to do this
13 but when mom died you said you had a lot of
14 communications with Leonard and I assume Stan, funeral,
15 things that normally go on. At that time though, when
16 you had, I'm sorry the funeral arrangements to be made
17 for your mother, did you have a specific inquiry of
18 Leonard about jewelry?

19 A. I did, yes.

20 Q. And would you tell the judge what did you ask Leonard
21 about the jewelry?

22 A. I wanted my mom, I wanted some pearls they had and some
23 earrings and I wanted my mom to --

24 Q. Were they part of the jewelry that Leonard had taken?

25 A. Yes.

1 Q. And so what did Leonard say to you about giving you the
2 jewelry to put on your mother in the casket?

3 A. Well, he wasn't going to give the jewelry up that he had
4 in there so I went and bought some and then when I put
5 it on he told me, he said I wouldn't put real jewelry on
6 there because somebody's going to steal it. And I said,
7 you're not going to take her jewelry are you, Leonard?
8 And he said, well, I don't know what's going to be gone.
9 So I thought well, so I went and bought some fake to put
10 on her and switched them.

11 Q. Okay, now as I can see from the records as of March 20
12 of 2012 Leonard's attorney, this Ms. Woodhouse, had
13 possession of the trust and the amendments to the trust,
14 is that correct?

15 A. Correct.

16 Q. And so it wasn't six months afterwards that he learned
17 that he wasn't the trustee, he knew back about the time
18 mom died?

19 A. He knew it before she died.

20 Q. Okay, now the way the trust was set up there was
21 supposed to be funeral bills paid by the trust?

22 A. Correct.

23 Q. But who paid the funeral bills, Ms. Herrell?

24 A. I did.

25 Q. You didn't get reimbursed for those funeral bills did

1 you?

2 A. No.

3 Q. But you did get paid back for a \$203 for a funeral meal
4 and \$97 for a death certificate, is that right?

5 A. Yeah, the death certificate. Yes.

6 Q. I think a little further information of the family
7 history just might help. When dad was alive who handled
8 the finances of the home?

9 A. My dad.

10 Q. Who basically did all of the running of the family, so
11 to speak the operation or anything they did?

12 A. My dad.

13 Q. Okay, just so also, the Judge may be able to, there's
14 three siblings now alive. Leonard is the oldest, is
15 that right?

16 A. Correct.

17 Q. And then there was, you had had twin brothers, one is
18 deceased now but Stan Dennis Mosher?

19 A. Yes.

20 Q. And then you're the youngest?

21 A. Correct, yes.

22 Q. If I heard what you were telling Ms. Oldemeyer, you were
23 telling her that at times since about 2007 Lois has been
24 in different residences, is that the way to put it?

25 A. Yes, several.

1 Q. Okay, in fact she lived for a very short time after she
2 left the house, the Hacker Circle house, at an
3 independent living place, correct?

4 A. Correct.

5 Q. For about one month?

6 A. Yes.

7 Q. And then she moved to your house?

8 A. Correct.

9 Q. And then she moved to an assisted living with her sister
10 in Fort Collins?

11 A. It was pretty much independent living again, but, yes.

12 Q. And then she moved to actually, actually an assisted
13 living in Cheyenne?

14 A. Yes.

15 Q. And then from there to the hospital?

16 A. Yes.

17 Q. Which then from there she went to Saint Andrews?

18 A. Yes.

19 Q. And what is Saint Andrews, for the judge and I?

20 A. It's a nursing home.

21 Q. And that is where she departed this life?

22 A. Yes.

23 Q. Now Ms. Oldemeyer asked you about the tax return and I
24 think she mentioned it was Turbo Tax. Actually who did
25 the, when you did, did you have to do only '12 year tax

1 return or did you have to do '11 too? Do you remember?

2 Q. I assisted her with, when she was alive I assisted her
3 with '11.

4 Q. Okay, and then when you had '12 you did that through
5 Turbo Tax?

6 A. I did. I did discussing with Greg Dyekman basically,
7 the attorney and I called the IRS too actually because I
8 had concerns.

9 Q. Well, I know you have mentioned how Mr. Dyekman fits
10 into this, you said he was the trust attorney. Was that
11 the attorney that handled historically for dad and then
12 mom and that's how he kind of stayed doing it?

13 A. Yes

14 Q. Now I know you've told Ms. Oldemeyer and we've talked
15 about now conversations that occurred around funeral,
16 death of mom, then you mentioned about Easter of 2012
17 call. Who originated that call?

18 A. Leonard did.

19 Q. He called you?

20 A. Yes.

21 Q. Okay, would you tell me what did Leonard ask you?

22 A. He wanted to know if I would exchange 160 acres for
23 interest in the house and he told me I owned it and I
24 didn't know that I owned it and he called me a few
25 choice names and couldn't I read the deed and, I mean,

1 excuse me, the trust and I've even met with Dyekman and
2 the way I read it as being, sorry, I don't have, the
3 surface rights I know at times we were talking about
4 wind rights so I read the surface rights to be wind
5 rights. And that's the way I interpret it. I didn't
6 know and I, first of all I didn't know if he was correct
7 so I said, Leonard, I can't and I was going through a
8 hard time with my mom being gone.

9 Q. All right --

10 A. And so it was hard on me and I said I don't want to make
11 a decision now because I don't know what to say,
12 Leonard. I'm going to take this, take it as no because
13 one of the reasons being my mom always said when she
14 when she was alive she wanted to leave something to my
15 son. And I told him that on the phone. And I said she
16 couldn't because I didn't set up any special needs
17 trust. I told her she couldn't. And then later on I
18 know Dyekman said, I'm sure that that's what she wants
19 you to do is to leave, you know, so that he can have
20 something either, and the money to him because my son,
21 when my mom lived with us, the time she was with us, I
22 mean she had a special connection to all my kids but
23 especially to him and he'd push her around Costco every
24 Saturday. We'd trained him to do that and she said I
25 can't leave anything to him because you haven't done

1 that and so I told him that. I said he knew that. I
2 told him more than once of that and I said I can't, the
3 exact words that I used the time when I told him when I
4 sued him, sorry I talk too much, is I told him on the
5 phone, Len, you want me to pick between my disabled son
6 to give you the 160 acres or my special needs son, and I
7 said, Leonard I can't, that's an awful thing to ask me
8 to do, Leonard. I said, I'm not, it's not going to me.
9 I will do, show you it's going to my son when I'm dead,
10 so it's not about me. Otherwise maybe I would have
11 considered those kind of things taking the fact that he
12 farmed it. It was hard, and I even said, I said,
13 Leonard I'm very sorry, but do you understand where I'm
14 coming from. And I'll even prove it to you, not a dime
15 is going to go into my account at all, it's when I'm
16 dead. And I could tell he didn't care and he even, you
17 know, he said that I was a liar and he --

18 Q. Now, just before that conversation you said something
19 about some names were called?

20 A. He did, yes.

21 Q. So as a result of that tone and those words did you
22 pretty well cease verbally talking with Leonard?

23 A. Oh, he told me I was only to communicate through his
24 attorney.

25 Q. Okay, so he told you what to do?

1 A. Yes.

2 Q. Now I want to go to a piece, since we've been discussing
3 land. There was a situation that occurred in Kimball
4 County, the property in Kimball County some interest in,
5 mineral interest in some land in Kimball County,
6 correct?

7 A. Yes.

8 Q. And there was a section, section number 24, issue, do
9 you remember that?

10 A. I do.

11 Q. All right, can you explain to the Judge what was down on
12 the documents? Was it the correct description?

13 A. No, there was a typo. On the mineral interest, when
14 they originally got transcribed onto giving them to me
15 it was put, a 24 as put in instead, gosh, it is still
16 going to drive me crazy, a 24 and a 21 were mixed up and
17 then they had to be converted back again, but it was a
18 typo. It was identified and then it was switched back
19 around and --

20 Q. Is that a piece of ground, the one that was
21 misidentified, your mother, the trust, nobody had an
22 interest in those minerals did they? That's a totally
23 wrong piece of property, correct?

24 A. Correct, yes. Correct, the ones that was, yeah, the
25 mislabeled, yes, was totally wrong. Nobody, it did not

1 have to do with anybody.

2 Q. And, but then you found with the mineral search, 21 was
3 the right one to put down?

4 A. Correct.

5 Q. So it became you as the trustee to interpret and handle
6 the trust to put in the correct legal description, would
7 that be correct?

8 A. I identified it and then we got it corrected, yes.

9 Q. Didn't you in fact bring that up to the lawyer?

10 A. I did.

11 Q. And that is all property, the mineral interest in
12 Kimball County, correct?

13 A. Correct.

14 Q. Now, Ms. Oldemeyer talked to you about the lawsuit and
15 all that, actually it wasn't until late January of '14
16 that you got served with the papers, correct?

17 A. Correct.

18 Q. But by the time you got served with the lawsuit papers
19 you had already deeded out the real estate, correct?

20 A. Correct.

21 Q. You had deeded out the mineral that are under the trust?

22 A. Correct.

23 Q. And you had split up and sent out to each of the three
24 beneficiaries \$50,000 a piece?

25 A. Yes.

1 Q. And so that pretty well brought the trust account down
2 to around \$30,000, correct?

3 A. Correct.

4 Q. I'm going to go to Hacker Circle, the property. On
5 Hacker Circle Stan had been in the house at Hacker
6 Circle for, I think you said two years at the point in
7 time your mom died?

8 A. Yes.

9 Q. Did your mother have a security deposit that required
10 Stan to post a security deposit?

11 A. No, she wanted him to live in the house because it was
12 empty and she, I think she brought it up probably not
13 even Stan. I don't remember exactly the words were but
14 she was thrilled he was going to move in there because
15 it had been empty.

16 Q. Okay, so when mom died were you aware Stan was already
17 in the process of having a house built for himself?

18 A. Yes.

19 Q. Away from town?

20 A. Yes.

21 Q. So, you knew he was going to be moving out shortly?

22 A. Uh-huh.

23 Q. Is that a yes?

24 A. Yes.

25 Q. If I were to say that Stan moved out by Memorial Day of

1 2012 would that sound about correct?

2 A. Sounds about right, yes.

3 Q. And, therefore, in the first part of June did you go up
4 with your family and begin cleaning Hacker Circle?

5 A. Immediately, yes, and he started before that in working
6 on it. I asked him to and he did start. He started
7 with it, with sorting, taking his stuff and moving it
8 out and it was his stuff.

9 Q. All right now, you have mentioned that in the basement,
10 for example one of the things I heard you mention to Ms.
11 Oldemeyer was a mattress?

12 A. Uh-huh.

13 Q. This was a mattress that I think I heard you say was a
14 mattress your father had when he was alive and died
15 upon?

16 A. Uh-huh.

17 Q. Is that a yes?

18 A. Yes.

19 Q. And that mattress would have been in a poor shape?

20 A. Yes.

21 Q. Well, do you think you could sell such a mattress?

22 A. No, it wasn't usable.

23 Q. Okay, now I want to go to, I'm going to jump away and
24 I'll come back to the house. There was some bank
25 accounts that Ms. Oldemeyer asked you about that were in

1 mom's name, your name and Stan's name?

2 A. Yes.

3 Q. Is that right?

4 A. Yes.

5 Q. First Interstate Bank?

6 A. Yes.

7 Q. And you put \$1,023 and some cents, from that account
8 that actually was yours and Stan's into the trust
9 account?

10 A. Yes.

11 Q. So you put in money that you could have kept and half of
12 it is Stan's?

13 A. Yes.

14 Q. Was that okay with Stan you knew?

15 A. I forgot to ask him. I didn't ask him.

16 Q. Okay, then when it came to getting back to the house and
17 you talked about selling at a garage sale, there were
18 two little girls that sold it?

19 A. Uh-huh.

20 Q. Now, you didn't get the money, did you?

21 A. No.

22 Q. And that money was on stuff that otherwise you'd had to
23 buy a, or rent a dumpster to put it in?

24 A. And I discussed that with the Volks there and they said
25 it's going to cost more to move it out than it's, you're

1 going to go in the hole. We had already, you know, we'd
2 already paid for a couple, for some dumpsters already
3 and they said, well, let's see if we can get anything at
4 a garage sale and I said, let's go for it.

5 Q. And I'm sorry to say, do you know what those Volks or
6 the girls did with the money from the garage sale?

7 A. They donated it.

8 Q. To who?

9 A. The girl scouts.

10 Q. Did you believe that that was a reasonable action by you
11 as the trustee?

12 A. I did because my mom supported the girl scouts and I
13 thought, and they knew the Volks so --

14 Q. Just to be clear, I'm going to go around the room, did
15 Leonard help with the sale, the garage sale?

16 A. No.

17 Q. Did Stan help with the garage sale?

18 A. No.

19 Q. I'm sorry, did you help with the garage sale?

20 A. Well, I monitored it. I went back and forth but the
21 actual sale of it I had gotten the stuff ready for, they
22 did the sale.

23 Q. Who is they?

24 A. The girls.

25 Q. These two girls?

1 A. These two girls. They did it but I was, I had to get
2 back to work so I drove back to work but I as overseeing
3 it.

4 Q. Okay, I know this, it maybe something the Judge may
5 remember but I want to make sure, when you, this is in
6 Cheyenne and you work in Denver, right?

7 A. Yes.

8 Q. And so you'd go between Denver and Cheyenne, keep going
9 back and forth?

10 A. Yes.

11 Q. All right, I've got to ask you, did you ever get
12 reimbursed?

13 A. No.

14 Q. Did you ever get any compensation as trustee to this
15 day?

16 A. No.

17 Q. Have you been, other than the reimbursements it shows
18 that you expended, well, you paid for the roof repair?
19 Did you ever get otherwise paid money other than being
20 reimbursed for what you could document expenses?

21 A. No.

22 Q. I want to be clear on a couple of these things here,
23 first of all you have never, as trustee possessed and
24 held on to or had any location of the farm equipment
25 have you?

1 A. No.

2 Q. The jewelry that is, I don't even know that jewelry now,
3 there's, withdraw that. You have seen insurance
4 policies that Mr. Mosher had, Leonard Mosher, correct?

5 A. Correct.

6 Q. It has a list of jewelry in there, correct?

7 A. Correct.

8 Q. Do you recognize the items of jewelry in that, Mr.
9 Mosher's insurance policies?

10 A. Uh-huh, yes.

11 Q. And what are they? Where have you seen them before?

12 A. They're the ones technically that are supposed to be
13 mine, those are the ones that we're talking about here
14 that he has brought up to throw, that he's accusing me,
15 but he has them.

16 MR. BRENNER: Your Honor, may I approach the
17 witness on a couple of exhibits?

18 THE COURT: You may, and you have
19 continuing permission to do that.

20 MR. BRENNER: Thank you, Your Honor.

21 I'm about to, did we receive 154? This is where I was
22 talking about just using the accounting sheets.

23 THE COURT: I had 154 as offered but not
24 received because that was, that was I think a set you had
25 offered in the stipulations discussion 152, 153, 154 and 155

1 which are identified as Trust Accounting and I think the
2 objection was duplicative or cumulative.

3 MR. BRENNER: Okay.

4 MS. OLDEMEYER: Exhibit 108 is 154.

5 THE COURT: I guess just to be clear, Mr.
6 Brenner, I didn't, I didn't receive it but I didn't say I, I
7 reserved ruling.

8 MR. BRENNER: That's all right.

9 THE COURT: I reserved ruling is what I am
10 trying to say.

11 MR. BRENNER: Thank you, I got that. That's
12 what I'm trying to do now.

13 Can I ask questions here?

14 THE COURT: Sure.

15 BY MR. BRENNER:

16 Q. On 108, it's dated March 26 of '15 is that correct?

17 A. Correct.

18 Q. And in the back of it has what is described as Revocable
19 Trust Accounting, Lois Mosher?

20 A. Uh-huh, yes.

21 Q. I'm going to have you just use just because of turning
22 the pages, if you could look at that, tell the judge
23 that's page 3 of that, or it's the first page there but
24 it lists the assets on 108?

25 A. Uh-huh, yes.

1 Q. Okay, take the Judge, for simplicity, what's the first
2 property?

3 A. Is her house or Hacker Court.

4 Q. That's what you got it sold for, the net money you got?

5 A. Correct.

6 Q. And then what is the next one?

7 A. The property in Nebraska.

8 Q. All right, and then we have several mineral interests,
9 is that correct?

10 A. Correct.

11 Q. And then we have the plot and it says Nebraska but it
12 means it was mistyped there, it should be Cheyenne,
13 correct?

14 A. Yes, correct.

15 Q. And then, then it says Bank of the West account number,
16 there was \$100 opened it, is that right?

17 A. Yes.

18 Q. Now, but there's a couple of entries here I want to talk
19 to you about, on the page with income you've got some
20 refund from housing you deposited, correct?

21 A. Yes.

22 Q. In April of '12?

23 A. Yes.

24 Q. Was that housing where she was living at the time she
25 died?

1 A. Uh-huh.

2 Q. Okay, then there was on-line transfer that there were
3 checks that were written, it was an expense there,
4 reimbursement, correct?

5 A. Un-huh.

6 Q. A tax refund?

7 A. Yes.

8 Q. Would that have been for '11?

9 A. Yes.

10 Q. Okay, then there's insurance repair on the roof of
11 2,600?

12 A. Yes.

13 Q. And then we talked about that \$210,000 on Hacker Circle?

14 A. Yes.

15 Q. And then there is an IRS refund for the year 2012,
16 right?

17 A. Yes.

18 Q. And then the last entry, is that the bank account that
19 you and Stan had your names on it and retained?

20 A. Yes.

21 Q. Okay, then there's some pages of where you had to spend
22 money, correct?

23 A. Yes.

24 Q. And where we talk about the very first entry there was
25 the, the only reimbursement for the funeral was the

1 death certificates and the meal --

2 A. Yes.

3 Q. -- correct?

4 A. Yes.

5 Q. Now, I just, over here --

6 A. I paid some of these utilities on my own, too, I

7 noticed.

8 Q. You said utilities?

9 A. Yeah, I paid, one of the utility companies would not
10 accept the way the trust, and so I paid it out, I just
11 added it on to mine. I forgot to mention that too, but
12 I did pay the utilities on one of them there for quite a
13 while.

14 Q. So you paid the utilities out of your own pocket?

15 A. Uh-huh, well not all of them but there was, I should
16 remember which one the other day. It's minor but I did
17 pay it because the way they were saying, they said we
18 couldn't do a trust or something. Is] said I'll just
19 throw it into mine. I don't remember which one it was.
20 This is after Stan moved out and he paid the utilities
21 while he lived there and then the trust took over on all
22 except one of these. I don't know if it was, I should
23 have looked it up. I apologize, if it was light, it was
24 the utilities or it was one of those.

25 Q. And so you paid them yourself?

1 A. Yes.

2 Q. To take care of problem?

3 A. Yes.

4 Q. Okay, I notice here on the second page of those
5 expenses, at 129 of 14 you paid the Banner County
6 Treasurer for taxes?

7 A. Yes.

8 Q. For \$2,894.40?

9 A. Yes.

10 Q. That was real estate taxes right?

11 A. Yes.

12 Q. In Banner County, correct?

13 A. Correct.

14 Q. For the year 2012 and 2013, correct?

15 A. Correct.

16 Q. Half of '12 and all of '13?

17 A. Yes.

18 Q. With reference to the day that you took over as trustee,
19 to this day today as you sit here have you ever received
20 as trustee any farm income when the trust owned the land
21 in Nebraska for farming, did the trust ever get any
22 money from Leonard Mosher?

23 A. No.

24 Q. Then to be even more specific since 2014 to this day has
25 Janice Herrell obtained any farm income monies from

1 Leonard Mosher?

2 A. No.

3 Q. Within your power as the trustee, when you took over
4 dealing with the clothes of your mother, did you feel
5 that you acted in a manner consistent with her wishes
6 and within the considerations of what to be done with
7 the decedent's clothes?

8 A. When my mom was even alive, the answer is yes. She gave
9 to her sister her clothes, lots of clothes and, because
10 she had also her daughter, they needed the clothes. And
11 so my mom would give clothes to them and she said that
12 when she passed away that I would do the same thing.
13 She said that if there are any that, there wasn't really
14 anything really, you know, that are worn out give them
15 to Goodwill and then she said if you don't mind just
16 take, and I did that. My husband and I went and took
17 them to my aunt who lived in Fort Collins at that time.

18 MR. BRENNER: May I approach again, real
19 quick.

20 THE COURT: You're welcome to.

21 BY MR. BRENNER:

22 Q. Ms. Herrell, there is a form that was gone over with you
23 called Inheritance Tax Worksheet, Voluntary Appearance,
24 do you see that?

25 A. Yes.

1 Q. And when you, they have pointed out you signed it on,
2 well, we've got two pages, the same page, you signed on
3 page 2 and the same thing is on page 3, correct?

4 A. Correct. Yes.

5 Q. Where it says Representative/Petitioner, correct?

6 A. Correct.

7 Q. And this is something which John Sorensen made out, is
8 that correct?

9 A. Correct.

10 Q. He was hired to do matters for probate or inheritance
11 tax in Nebraska, right?

12 A. Correct. Yes.

13 Q. And he did that and since you, and you had to send him
14 money, correct?

15 A. Yes.

16 Q. Showing you then the petition that was here, you signed
17 that too, right, where it says petitioner?

18 A. Yes.

19 Q. And John Sorensen's signature is there?

20 A. Uh-huh.

21 Q. And then I'm going to show you what has already been
22 received, Exhibit 217. This was an order on the
23 inheritance tax, right?

24 A. Yes.

25 Q. And on page two of that it says that there was a total

1 tax to be paid of \$3,253, right?

2 A. Correct. Yes

3 Q. Leonard was to pay \$2,543?

4 A. Yes

5 Q. Did Leonard ever give you \$2,543?

6 A. No.

7 Q. The other one says 710. Did the trust pay all of the
8 \$3,253?

9 A. Yes.

10 MR. BRENNER: Your Honor, for what was
11 covered in direct today I'm going to withhold the rest of my
12 questioning on recalling this witness after Mr. Leonard
13 Mosher has testified.

14 THE COURT: Okay.

15 Mr. Sorensen, do you have questions?

16 MR. SORENSEN: Just a few, Your Honor.

17 CROSS EXAMINATION BY MR. SORENSEN

18 BY MR. SORENSEN:

19 Q. You talked about Stan Mosher left the Hacker Court
20 property in better condition than it was in when he
21 moved in?

22 A. Uh-huh.

23 Q. And that he did a lot of thing to improve the property,
24 correct?

25 A. He did.

1 Q. He had the carpet cleaned?

2 A. Uh-huh.

3 Q. Repaired and replaced some curb and gutter on the
4 property?

5 A. Yes.

6 Q. Purchased appliances that were left in the property when
7 it sold?

8 A. Yes.

9 Q. Paid utility bills and, electric and water bills?

10 A. Yes.

11 Q. Paid real estate taxes on the property?

12 A. Yes.

13 Q. Paid insurance premiums on the property?

14 A. Yes.

15 Q. And was there to keep the property occupied --

16 A. Yes.

17 Q. -- so it wouldn't be vacant? Do you know also if at
18 the time that, that Stan Mosher was staying in the
19 townhouse he also was staying on his farm ground in
20 Banner County for a good part of the week?

21 A. He had, he farmed, yes.

22 Q. And he had a fifth wheel trailer and he stayed out there
23 a good part of the time?

24 A. Yes.

25 Q. Until he actually built and finished his home there and

1 then moved?

2 A. Yes.

3 MR. SORENSEN: Okay, I believe that's all I
4 have for now, Your Honor.

5 THE COURT: Ms. Oldemeyer, do you have
6 redirect?

7 MS. OLDEMEYER: I do. I don't understand one
8 of my notes so I need just a minute. I apologize.

9 REDIRECT EXAMINATION

10 BY MS. OLDEMEYER:

11 Q. I want to make sure I understand your testimony
12 correctly, Mr. Brenner asked you about the dividends
13 that were reflected on the tax return for Vanguard and
14 Franklin Templeton. Is it your testimony that you felt
15 those did not need to be deposited into the trust
16 account or that you believe you did deposit them?

17 A. At that time I know I discussed this with my legal
18 counsel and we did where they were supposed to go and I
19 know we sat and we talked about them and, we did it on
20 the phone we didn't sit together, but we did it on the
21 phone. It was more than one conversation actually about
22 how to divide them and what account. So I know it was
23 done with his advice and with his counsel. It wasn't
24 just me sticking them in my account or anything, so.

25 Q. So your testimony is those funds were deposited in the

1 trust account at Bank of the West?

2 A. I know what was deposited in there was probably what was
3 due in that amount. So I know I discussed with him and
4 we went through dates and looked at it and said, so
5 that's all I can say. I mean if there was an error I
6 can honestly say I took his advice and that's what we
7 put them in because he helped me quite a bit and I
8 remember I called him back and I said I'm still a little
9 bit, go through this again and we went through it and
10 that's what I did. So I don't remember exact amounts.
11 Sorry, I can't remember that far back.

12 Q. If those were deposited in the Bank of the West account
13 that was in error and they shouldn't have been?

14 A. You know what, all I can say is I did what he said and I
15 assumed that he was correct and if he made a mistake
16 then it's a mistake but I don't think he made a mistake
17 and he went through it and he knows how to do it so I
18 did what he said to do, so.

19 Q. Okay, let's look at exhibit, let's look at Exhibit 108,
20 that's the income on page 4. I apologize, ma'am, I'm
21 going to ask you a completely different question. Well,
22 I apologize, I thinking as I'm talking. On page 4 of
23 Exhibit 11, is it a true statement that at least
24 through May of 2012 the funds available in the Bank of
25 the West bank account were less than \$8,000?

1 A. You have the accounting from me and I don't think I have
2 that document but it could be.

3 Q. Okay, the Hacker Court home needed to be sold before
4 there was cash available to pay significant expenses,
5 true?

6 A. Yes. Uh-huh.

7 Q. And once Hacker Court sold you reimbursed yourself a
8 little over \$8,000 that you had paid for the residential
9 roofing, right?

10 A. (No audible response had.)

11 Q. Look at Exhibit 108, page 6, the first entry?

12 A. Yes, because I had paid it to the, to the roofing
13 company what was, well, I don't have the document in
14 front of me but I know that was all done too because I
15 did it with the, again, Greg Dyekman but it was all,
16 that's what I owed them to get the roofing done.

17 Q. Okay, and you couldn't take it out of the Bank of the
18 West account at the time because the Bank of the West
19 account didn't have enough money to pay that expense?

20 A. That is correct.

21 Q. Okay, and so once cash went into that account you were
22 able to reimburse yourself?

23 A. Yes.

24 Q. Okay, Exhibit 111, if you could turn to that exhibit.

25 A. Well, that's the, that's the money that I put into the

1 account.

2 Q. Okay, and so these bank accounts that you say at Frist
3 Interstate Bank belonged to your mother that you closed.
4 You closed them on May 16, 2012, true?

5 A. That could be. That sounds right.

6 Q. And then according to Exhibit 108 you didn't deposit
7 those funds until a year later?

8 A. They, they didn't belong to the trust those were the
9 funds that were mine and Stan's.

10 Q. My question to you is in the intermeeting year where
11 were the, where was the check representing \$1,023.93 as
12 in Exhibit 11, where was, where were those funds? In
13 your personal account?

14 A. Probably. I don't know. Probably. I thought it was
15 possible that I put it in there. I'm sorry I didn't
16 know because I feel like it's almost.

17 Q. In your testimony with Mr. Brenner, you were talking
18 about these mineral interests and you referenced to a
19 typo and I want to clear that up a little bit with
20 exhibit, let's look at Exhibit 102, section G on page 3.
21 I have that up there. This is what mineral interests
22 were left to you on this first amendment your mom
23 signed, the Southwest quarter of Section 24, Township 13
24 north, Range 57 west. Do you see that?

25 A. Yes.

1 Q. Earlier in your testimony you mentioned a typo, is there
2 a typo in that paragraph?

3 A. When it was transcribed the 24 and the 21 --

4 Q. It's your testimony that that provision right there
5 should have been read Section 21?

6 A. No. No. It's when it was, it was, my understanding is,
7 I'm trying to remember which document, it was, it was a
8 typo then it got changed back and then somebody else
9 transcribed it wrong to something else so it kind of
10 went back and forth and it was very confusing to follow.
11 So that's how come I have a hard time explaining it but
12 if that is her original document it wasn't a typo there
13 it's just when it got transcribed. It got transcribed
14 wrong.

15 Q. Okay, I'm going to put up Exhibit 208. Exhibit 208 has
16 been received in the evidence, and this is the Mineral
17 Quitclaim Deed by which your mom put certain mineral
18 interest in her trust in June of 1997, true?

19 A. June of 1997, true.

20 Q. And that included the southwest 1/4 of Section 21, yes?

21 A. Yes.

22 Q. Okay, paragraph G which we were looking at, you can turn
23 to Exhibit 368 which has been received into evidence,
24 I've put it up here on the wall. I'll make it a little
25 bit small for a minute, 368 is actually a corrected

1 Mineral Quitclaim Deed that's to be returned to Mr.
2 Dyekman's firm from April of 2009 conveying the same
3 real estate mentioned in paragraph G unto Wesley M.
4 Phillips, trustee of the Wesley M. Phillips Living Trust
5 and Ester M. Phillips, trustee of the Ester M. Living
6 Trust, true?

7 A. That's what it says, yes.

8 Q. So after your mom signed Exhibit 102, the first
9 amendment she thereafter executed a Mineral Quitclaim
10 Deed giving that to somebody else, true?

11 A. No. No. You know, what I'm going to defer that to
12 people who can explain it better because I can tell you
13 I can't explain it well. I think I understand it but I,
14 I'm not going to.

15 Q. Okay, well, you testified you brought this --

16 A. I know that one of the documents I noticed was
17 transcribed wrong. I brought it to the attention but
18 don't tell me which, don't ask me the document right
19 now. I honestly had a hard time. You know, if I had
20 all the time in the world I could follow it but it's
21 almost like a nightmare if you want to know the truth,
22 to follow all the different things. I can't tell you
23 right now what mineral rights I own and I couldn't even
24 tell you what it said in there because, and that's why I
25 feel like I have attorneys for, to sort it out and to

1 work on it and follow my mom's wishes in the trust. You
2 know what I feel like that's the best I can do.

3 Q. Okay, let's go back to the summer of 2012 when, after,
4 or even when Stan was still living in Hacker Circle but
5 during the time frame when it was being clean out. Did
6 you ever ask Leonard Mosher to help you with that
7 cleanup process?

8 A. No. He was there but, no, I did not ask him.

9 Q. Leonard Mosher was there. What do you mean by there?

10 A. He was on the property and he, he even said in the
11 deposition that he always had a key and he, he had been
12 in there. The neighbors said that he had been in there
13 and Greg Dyekman even called and told me and the
14 neighbor told me too that he was, he had questioned some
15 papers on the outside.

16 Q. So you never asked Leonard Mosher to help clean up the
17 home?

18 A. I didn't think, no, I did not. I didn't ask him, no.

19 Q. Let's talk about the garage sale \$400, and it sounds
20 silly, we're talking about \$400, but you testified that
21 you approved that \$400 being donated to the Girl Scouts?

22 A. Yes.

23 Q. That's what you testified today?

24 A. Yes.

25 Q. In your deposition on December 19, 2016 did you tell me

1 that that \$400 went as a credit on an invoice the Volks
2 charged you?

3 A. Well, because I thought it --

4 Q. Yes or no, did you tell me that?

5 A. I did tell you that. I did.

6 Q. Okay, and Mr. Brenner asked you some questions about
7 Banner County real estate taxes and he testified for you
8 that those were --

9 MR. BRENNER: Excuse me.

10 BY MS. OLDEMEYER:

11 Q. -- those were paid for 2012 and 2013 and my question is
12 are you sure that's what you were paying when the Banner
13 County real estate taxes were paid?

14 A. Yes, I know that's what they were paid. I did not get
15 the tax notices. They went to Leonard and by the time
16 they came their way around to me they were late. So
17 they did get paid and we did question it and I had
18 brought that up to Greg Dyekman before and he said there
19 is a little bit of difference between the Wyoming law
20 and the Nebraska law and we thought we were going to
21 settle the trust at that time so he said when we settle
22 the trust we'll pay the taxes and then come to find out
23 he said, and they didn't come to me they went to Leonard
24 and he waited, my impression was he waited until they
25 were late and then we got them and then they got paid.

1 When I was aware of them they got paid.

2 Q. Okay, so it's your testimony that in the year 2012 nobody
3 ever brought up whether the trust should pay the
4 property taxes on the south half of property Leonard was
5 farming in Banner County?

6 A. No.

7 Q. Your testimony is no one brought that to your attention?

8 A. In 2012 when they were due, no.

9 Q. Okay, and in 2013 did anyone bring property taxes to
10 your attention in the year 2013?

11 A. But we were going to pay them when it settled. So Greg
12 Dyckman said we're not paying them because we will pay
13 with it settles and that's what you do in Wyoming. So
14 it was brought to our attention at that time and he said
15 don't pay them and then come to find out we did need to
16 pay them because it's the difference between the two
17 different states.

18 Q. If you could please turn to Exhibit 140 --

19 MR. BRENNER: If you want to offer 140 and
20 141 we have no objections.

21 MS. OLDEMEYER: I'm going to ask you questions
22 about it.

23 MS. HERRELL: Okay.

24 BY MS. OLDEMEYER:

25 Q. So do you know how to read a tax statement?

1 A. Well, I can, I've learned how to read this one? I think
2 I can probably answer your question. Go ahead.

3 Q. Okay, so did you know that taxes in the State of
4 Nebraska, I'm going to go in 2012 were due no later than
5 May 1st and no later than September 1st if you're paying
6 them twice?

7 A. No, because he had the tax statements.

8 Q. They had never been provided to your attorney?

9 A. I did not have them. I personally did not have them.

10 Q. Okay, and as you sit here today can you say Leonard
11 Mosher did not pay the taxes for calendar, that were
12 paid in 2012?

13 A. He paid half of them and the other half was not paid so
14 I paid that and the 2013 ahead of time all together.

15 Q. Are you sure, look at Exhibit 141. In the box there it
16 says, back taxes and interest due for 2012. So are you
17 sure that Leonard Mosher paid only half of 2012?

18 A. Yes.

19 Q. Didn't he pay half of 2013?

20 A. No.

21 Q. Okay, in 2013 did he pay half of the taxes due in 2013?

22 A. No.

23 Q. Okay, by chance you were paying these at or about the
24 same time you were issuing the deeds in January of 2014,
25 true?

1 A. It was I think a little bit before that, true.

2 Q. Okay, and by chance did you pay the taxes that would be
3 due in 2014 in advance?

4 A. No.

5 Q. It's not possible?

6 A. No.

7 Q. Where is your receipt for the taxes so we know what you
8 paid?

9 A. They're, they're around. I have them.

10 Q. They're actually available online, aren't they?

11 A. I don't know. To tell the truth I didn't know they were
12 on-line.

13 Q. Okay, if records indicate that property taxes were paid
14 on April 30 of 2012 for the south half of the property
15 in Banner County that Leonard farmed would you have any
16 reason to dispute that?

17 A. Well, if I have the years right he paid half, he paid
18 the part he has and then the other half did not get
19 paid. So we had, he paid half of them in 2012 and I had
20 to pay, I paid 2013 at the same time.

21 Q. Okay, I'm talking about in the year of 2012, on April 30
22 of 2012, do you have any reason to dispute that Leonard
23 Mosher paid half the taxes on the south half?

24 A. He paid half the taxes, so. I think, you know, I'd have
25 took. To tell you the truth I'd have to sit there and

1 study it. It's tough for me to say this and then half
2 the taxes of this. You know it is tough but I know I
3 paid what I could. I have documents of what I paid so
4 if I looked at the receipts I could tell you the dates
5 right on them and I don't have them in front of me, so.

6 Q. Taxes are paid in arrears, right? So you're paying 2013
7 taxes --

8 A. Correct.

9 Q. -- in 2014?

10 A. But I don't have the dates of when I exactly wrote the
11 checks out and stuff in front of me.

12 Q. Let's talk about the southwest quarter of the Banner
13 County land that was ultimately deeded to you per your
14 mom's wishes in the second amendment to her trust. What
15 is the quality of that farm ground?

16 A. Well, I don't think it's very good quality is what was
17 told to me.

18 Q. And why isn't it good quality?

19 A. It goes back to why I think my mom gave to me it's
20 because of the wind rights on it so I could give it to
21 my son and that's the time, that's the only thing I
22 could figure out. I wasn't aware of the land she was
23 giving to me at all. I had no idea. He knows that
24 because he was the first one who told me that because I
25 actually told my father he had it wrong, so.

1 Q. I want to go back to my question which was why is the
2 farm ground not good quality. Is it rocky?

3 A. I think I was told some of it probably is. I don't know
4 how you define good quality to tell you the truth but so
5 I don't know how to answer your question.

6 Q. And have you signed the southwest quarter to go into
7 CRP?

8 MR. BRENNER: I'm going to object, Your
9 Honor, that has no relevance.

10 THE COURT: Ms. Oldemeyer, what's the
11 relevance of that?

12 MS. OLDEMEYER: She's making claims for farm
13 income off of that particular section and if she's saying
14 it's not good quality and it's going into CRP, it reflects
15 the quality of the farm.

16 THE COURT: Okay.

17 MR. BRENNER: It's beyond the scope of cross
18 but, okay.

19 THE COURT: I'm going to give everybody
20 another chance to go around the room after she's done with
21 her direct again, so you can clean it up then if you'd like.
22 I'm going to overrule the objection.

23 You can answer that question. Was it placed into CRP?

24 BY MS. OLDEMEYER:

25 A. I've signed it but it's not in, it's, we haven't done

1 anything with it right now. It has been signed.

2 Q. It has been signed?

3 A. Yes.

4 Q. Okay, thank you. And these estate taxes that the trust
5 paid per the terms of the trust, was the trust to pay
6 any inheritance taxes due?

7 A. They paid them.

8 Q. Did you ever ask Leonard to pay inheritance taxes due?

9 A. I left it to the attorneys because they understand what
10 the law is and what you pay so I, I had to leave stuff
11 like that to them.

12 Q. And are you aware that your attorneys indicated that
13 \$375 would come out of your ultimate distribution from
14 the trust because those inheritance taxes were paid
15 late?

16 A. And I paid that.

17 Q. You're aware that 375 should ultimately come out of your
18 distribution?

19 A. It did. It came out of my pocket, my own checking
20 account. I paid those.

21 Q. I think we're talking about different things. The \$375,
22 did you put that into the trust?

23 A. I paid it out of my personal checking account. I put it
24 in the trust, yes. It went into the trust.

25 Q. And with respect to this, this sounds silly but the

1 carpet cleaning, did you have to get the carpets cleaned
2 again?

3 A. No, it, I thanked Stan for cleaning the carpet but I
4 said, Stan, it needs, we had to get new carpet. We were
5 selling the home and it was 20-year-old carpet and so I
6 appreciate him doing that but I, it didn't work. It
7 needed to be replaced.

8 MS. OLDEMEYER: No further questions, Your
9 Honor.

10 THE COURT: Mr. Brenner?

11 MR. BRENNER: I'll just do a couple of
12 questions now and reserve the rest.

13 THE COURT: That's fine.

14 RECROSS EXAMINATION BY MR. BRENNER

15 BY MR. BRENNER:

16 Q. The, did you ever get any money on CRP from the USDA?

17 A. No.

18 Q. And the 375, just again, that was the amount of money,
19 because the lawyers didn't get the inheritance tax in
20 within one year of death, there was interest that had to
21 be paid?

22 A. Correct.

23 Q. And have you before today put \$375 into the trust
24 account?

25 A. I did, yes. When I found out about it I did.

1 Q. Okay, now then would it be a correct statement that for
2 doing the kind of meticulous paperwork that would go in
3 inheritance tax or accountings that that was something
4 you left to lawyers that were engaged by you?

5 A. They did the accounting part I provided to them.

6 Q. And you would provide the bank statements, you would
7 provide whatever it is was asked, prove this up, you got
8 it?

9 A. Yes.

10 Q. And if I have it correct, again getting back \$1,023 and
11 sum that I went through that came from the account that
12 actually would have belonged to you and Stan?

13 A. Correct. Yes.

14 Q. And --

15 MR. BRENNER: I believe that's all for now,
16 Your Honor.

17 Thank you.

18 THE COURT: You bet.

19 Mr. Sorensen, anything else?

20 MR. SORENSEN: May I just have one second,
21 Your Honor?

22 THE COURT: You bet.

23 RECCROSS EXAMINATION BY MR SORENSEN

24 BY MR. SORENSEN:

25 Q. Mrs. Herrell, before the inheritance tax worksheet could

1 be finalized you had to have, do a search on Banner
2 County minerals or Kimball County minerals, right?

3 A. Yes.

4 Q. And if there had been Kimball County minerals discovered
5 that were part of the trust they would have had to be
6 included in that worksheet right?

7 A. Yes.

8 Q. And so you couldn't actually, until you had the mineral
9 title search finished you weren't in a position to
10 finalize the Nebraska inheritance tax worksheet?

11 A. That's true. Yes.

12 MR. SORENSEN: That's all the questions I
13 have.

14 THE COURT: Thank you, Ms. Herrell, you can
15 step down.

16 Counsel, we're going to take 10 minutes and then I'd
17 like to see everyone in chambers for a minute.

18 (At 2:16 p.m. a recess is
19 taken accordingly.)

20 (At 2:27 p.m. on February 27, 2017 with counsel for the
21 parties present and the plaintiff and defendants present, the
22 following proceedings were had.)

23 THE COURT: This is Case Number CI 13 19.
24 The litigants and counsel have returned to the courtroom. We
25 took a short afternoon recess during the presentation of the

1 plaintiff's case in chief and I'll turn the matter back over
2 here in a moment to you, Ms. Oldemeyer, to continue with your
3 presentation of evidence. Before I do that I did indicate
4 that I would visit with the clerk staff here with respect to
5 the availability of the county courtroom to set up for
6 tomorrow and I was advised that the clerks, there will be a
7 representative from the clerk's staff down there until 5:00.
8 So, we'll wrap up around 4:30 for today and that should give
9 everybody enough time to bail out and get downstairs and get
10 set up and arrange there. So, I think that answers that
11 questions.

12 MR. BRENNER: Thank you.

13 THE COURT: You bet.

14 So, with that then, Ms. Oldemeyer, I'll turn the matter
15 back over to you and I'll take your evidence, your next
16 witness, please.

17 MS. OLDEMEYER: At this time we would call
18 Dennis Stan Mosher.

19 THE COURT: Mr. Mosher, if you'll step up
20 for me please and again I indicated to Ms. Herrell there is
21 at least one step here, I think there's two, so just watch
22 your step as you step up so you're not catching a toe and
23 before you take your seat if you'll face me and raise your
24 right hand I'll swear you in.

25 DENNIS STANLEY MOSHER

1 Called as a witness on behalf of the
2 plaintiff, having been first duly sworn,
3 testified as follows:

4 THE COURT: All right, please take your
5 seat and state your full name for the record.

6 MR. DENNIS MOSHER: My full name is Dennis
7 Stanley Mosher.

8 THE COURT: All right, Mr. Mosher, I'm just
9 going to note for my, for record purposes, I see that you've
10 got an oxygen tank there with you and as you answered my
11 questions you sounded a little soft voiced in that regard. I
12 suspect one thing might have something to do with the other.
13 So if anyone is having any difficulty hearing Mr. Mosher just
14 let me know and I don't have any issue at all with any of the
15 attorneys sitting closer to the witness stand. I don't think
16 we'll have any issue picking up his testimony for the record
17 purposes but if any of you are having difficulty hearing him
18 please feel free to move around as you need to to visit with
19 him.

20 So, Mr. Mosher, Ms. Oldemeyer has called you to the
21 stand. She'll question you first, after that's done then, I
22 was thinking I would go to Mr. Brenner and then back to you,
23 Mr. Sorensen, but I don't want to do that wrong, do you want
24 --

25 MR. SORENSEN: It probably would be second.

1 THE COURT: Second, okay, so Mr. Brenner
2 after Ms. Oldemeyer and then Mr. Sorensen.

3 Ms. Oldemeyer, I'll take your questions then, please.

4 DIRECT EXAMINATION

5 BY MS. OLDEMEYER:

6 Q. Mr. Mosher, could you please state your home address?

7 A. My home address is 732 Third Avenue, LaGrange, Wyoming.

8 Q. And are you a farmer?

9 A. Retired farmer due to health reasons.

10 Q. Did you ever worked for the Volks?

11 A. I had my real estate license there for a short period of
12 time and when I saw this coming up with the townhouse I
13 went and put my Wyoming real estate broker's license
14 inactive because I knew I would be accused of some type
15 of comingling with the Volks because John and Jim Volk I
16 know very well. Roy Volk was a very good friend of our
17 dad. The Volks and our families go back very well and I
18 saw this coming and you can contact the Wyoming Real
19 Estate Commission, which I'm sure you already have to
20 find out that before this house was put up for sale I
21 put my license inactive because I didn't want anybody to
22 think I was getting a kick back.

23 Q. So my question was, you used to work for the Volks, is
24 that a yes?

25 A. I brokered real estate for him. I was not employed. I

1 was an independent contractor for a few months.

2 Q. Thank you. When you lived in the Hacker Circle
3 property, when did you move in?

4 A. I moved in shortly after my divorce in 2000. Dad was
5 gone. Mom was alone. She needed company and I moved my
6 stuff in there and took her on a trip and did things
7 with her.

8 Q. Okay, so 2000 is when you first moved in?

9 A. I first moved in.

10 Q. And between 2000 and 2012 did you remove any of the
11 furnishings of the home?

12 A. I removed my furnishings and I removed the furnishing
13 that mom gave me before she died.

14 MS. OLDEMEYER: Your Honor, at this point in
15 time may I provide the court with a copy of Wyoming Statute
16 1-12-102. It relates to Wyoming Dead Man's statute?

17 THE COURT: Yes.

18 MR. HESSER: Your Honor, at the same time
19 I'd like to provide if we could a Memorandum of Law regarding
20 the Dead Man Statute

21 THE COURT: Okay. Thank you.

22 BY MS. OLDEMEYER:

23 Q. Mr. Mosher, at any point in time when you lived in the
24 Hacker Circle property did you pay rent?

25 A. No.

1 Q. Did you provide any security deposit?

2 A. No, none was asked. I lived there off and on.

3 Q. In this case were you asked to produce documents showing
4 acquisition of all furniture you placed in the Hacker
5 home between the date you moved in and the date you
6 moved out in 2012?

7 A. Yeah, I bought it at a garage sale in Gillette, Wyoming
8 when I was working as an electrician.

9 Q. So your answer was I have no documents?

10 A. I have not documents. They were garage sale.

11 Q. Did you remove items of value from the home after your
12 mother died which had previously belonged to your
13 mother?

14 A. She gave me, she said --

15 Q. Just yes or no, sir. Did you remove items of value?

16 A. Yes.

17 Q. And what items of value did that previously belonged to
18 your mother did you remove?

19 A. There was a bedroom suit that we did some horse trading
20 for, there was a desk and a chair and there was a
21 painting and there was a dining room table that I took.
22 I left everything else.

23 Q. Did you take any jewelry?

24 A. No. I'm divorced. What would I need jewelry for?

25 Q. Each of the items that you just identified, could you

1 estimate the value of the bedroom set?

2 A. I don't know, \$100, 150 bucks.

3 Q. Is it solid wood?

4 A. Particle board. Mom and dad were not rich people. They
5 didn't buy high dollar furniture.

6 Q. The desk and chair, what do you estimate the value of
7 those two items?

8 A. A 100 bucks, 150 bucks.

9 Q. And the painting?

10 A. A 100, 150 bucks.

11 Q. And the dining room table?

12 A. Mom and dad bought that furniture new in 1981. I would
13 venture probably luck if it would get \$200 at a garage
14 sale, if that.

15 Q. Did you leave behind items of no value that you felt
16 belonged to you for your sister to clean up?

17 MR. DENNIS MOSHER: Would you ask that
18 question, please, again.

19 BY MS. OLDEMEYER:

20 Q. Did you, when you vacated the home, the Hacker Court
21 home, well, let me back up. When did you vacate the
22 Hacker Circle home?

23 A. I vacated it in, February 12 I bought a modular from
24 Stahla Mobile Homes in Kimball and they were in the
25 process of setting it on my farm in Banner County and

1 due to the lady at Stahla Mobile Homes, her mother dying
2 shortly after my mother died. She had a hard time
3 getting my house set due to weather conditions. It was
4 all set on the basement and I moved in Memorial Day
5 Weekend.

6 Q. Of 2012?

7 A. Yes.

8 Q. Did you pay any rent to your mother's trust for
9 occupying the Hacker Circle home between February 6 and
10 when you vacated on Memorial Day?

11 A. No.

12 Q. Going back to the question, when you vacated then about
13 Memorial Day Weekend of 2012 did you leave behind items
14 that belonged to you that you felt were of little to no
15 value for your sister to clean up?

16 A. No.

17 Q. You took all your junk?

18 MR. DENNIS MOSHER: Excuse me.

19 BY MS. OLDEMEYER:

20 Q. Did you take all of --

21 MR. DENNIS MOSHER: Are you referring to my
22 furniture as junk?

23 MS. OLDEMEYER: No. I am in no way. I
24 apologizes.

25 MR. DENNIS MOSHER: That's what you just said.

1 MS. OLDEMEYER: I did not mean to infer that,
2 sir.

3 BY MS. OLDEMEYER:

4 Q. What I am talking about did you leave behind --

5 A. No.

6 Q. You took everything that you felt belonged to you?

7 A. I took everything that I took into that house when I
8 moved in and I took a few items out.

9 Q. Okay, the furniture that you were offended I might have
10 called junk, can you identify what that furniture is?

11 A. I had an old recliner, I, really I had an old bedroom
12 set that I bought at a garage sale and I had some dishes
13 that I bought at an estate sale for a dollar. Just, I
14 mean, I, I'm not a, stuff that didn't have much value.

15 Q. Did you leave behind a couch?

16 A. That was mom and dad's couch.

17 Q. How many rooms are in the Hacker Circle home?

18 A. Well it's a three bedroom, two bath, 1,600 square foot
19 home with a double-car garage, unfinished basement.

20 Q. And the three bedrooms, were they all furnished?

21 A. One of the bedrooms had mom and dad's bed in it and mom
22 told me that Leonard wanted that bedroom suit. It was
23 taken downstairs and put in the basement for him. One
24 of the bedroom suits had one of my bedroom suits in it
25 and the other bedroom suit has the one that I took with

1 me that mom said I could have. And I'd also like to
2 note that Leonard had a key to that place all the time
3 and he could have went over there many, when I was not
4 there I, because he stated in deposition that he was at
5 the townhouse so I'm sure that, I don't know maybe we
6 need to ask him what he took out of the house.

7 Q. Well did he remove any of this furniture that we're
8 talking about?

9 MR. DENNIS MOSHER: Pardon?

10 BY MS. OLDEMEYER:

11 Q. Did you remove any of this furniture you were just
12 talking about?

13 A. After I left I don't know what he removed.

14 Q. Do you know what happened to the bedroom set that went
15 in the basement for Leonard Mosher?

16 A. I assumed that Leonard came and got it.

17 Q. Did you help your sister clean up the home in June, July
18 and August getting it ready for sale?

19 A. After I moved my stuff out I hired a cleaning lady and
20 we went in there and cleaned the carpets and cleaned the
21 kitchen and everything, getting it ready and I did a
22 short, keep in mind that I was also in the process of
23 starting to farm.

24 Q. Did you help your sister in the months of June, July and
25 August empty out the contents --

1 A. No.

2 Q. -- of the basement?

3 A. No.

4 Q. Did you ever provide your sister with written proof that
5 you were entitled to remove any of the contents of the
6 home?

7 A. No.

8 Q. The items that you listed for me, the bedroom, I think
9 you call it suit, bedroom suit, desk, chair, painting
10 and the dining room table, do you still have those
11 items?

12 A. I gave the bedroom suit to my daughter because she
13 wanted something of her grandmother's. I have the
14 painting. I have the dining room table in storage in
15 Fort Collins, Colorado, and the desk, a neighbor of mine
16 helped me move and I gave him the desk.

17 Q. How much a month do you pay to store that dining room
18 table?

19 A. I have a girlfriend in Fort Collins and I have it stored
20 at her house.

21 Q. So there's no charge?

22 A. No charge.

23 Q. Is your girlfriend using it?

24 A. At this present time, yes.

25 Q. Are you familiar with the counterclaims you filed in

1 this case against your brother Leonard Mosher?

2 A. Yes.

3 Q. And you're aware they were filed on the same day as your
4 sister's counterclaims?

5 A. I wasn't aware of that but if you say so.

6 MS. OLDEMEYER: Your Honor, may I approach with
7 a copy of the answer and counterclaim?

8 THE COURT: Yes.

9 BY MS. OLDEMEYER:

10 Q. Have you ever seen the answer and counterclaim filed in
11 this case on your behalf by Mr. Sorensen?

12 A. I'm sure. Yes.

13 Q. And it was filed on May 27, 2015 by Mr. Sorensen, true?

14 A. If that's the date of the filing, yes.

15 Q. And then if you could turn to paragraph 8 on page 3, in
16 that paragraph you allege the Last Will and Testament of
17 decedent directs distribution of any probate estate to
18 be made to the Revocable Trust which trust provided for
19 distribution of the residue of the estate to the trust
20 beneficiaries including you, this defendant, right?

21 A. Yes.

22 Q. And the other trust beneficiaries then entitled to the
23 residue of the trust estate would be Leonard Mosher and
24 your sister Janice Herrell, right?

25 A. Right.

1 Q. Paragraph 9 you allege certain items of farm equipment
2 are in the possession of Mr. Leonard Mosher in the
3 amount of \$1,00,00 that he needs to account to the
4 trust for?

5 A. Yes.

6 Q. Tell me the factual basis for that?

7 A. I have photographs of them. I took pictures of them and
8 the reason why I put that value, dad was a very, very
9 good farmer. He took good care of his machinery. I put
10 a value down that at the time of dad's death and what I
11 thought this stuff was worth and what was there.

12 Q. The value at your dad's death, your father died in 1996?

13 A. Right, and a lot of this was in good shape and mom
14 owned it so it had a value.

15 Q. And these photographs you mentioned, are those the
16 photographs that you marked as trial exhibits in this
17 case?

18 A. Yes.

19 Q. Those were taken in February of this year.

20 A. They were, yes, they were.

21 Q. February of 2017?

22 A. No, no, no, no, the way it says zero it was taken, it
23 was, the way that my camera sets it it's not February
24 it's 1202.

25 Q. I'm sorry, it's actually, I was thinking it was 17 but

1 the photographs are dated 02.12.16?

2 A. So but the way my camera is set up, I bought a new
3 camera and it defaulted to that 12.02 because that's the
4 same day that I called the sheriff and told him I was
5 going to be out there and Leonard chased me and there is
6 a sheriff's report with the Banner County Sheriff filed
7 that same day those pictures were taken.

8 Q. So let me ask a different question, what date did you
9 take the photographs of the equipment that you allege is
10 part of the trust?

11 A. 12-02 of '16.

12 Q. 12-02 of '16, so December 2 of 2016?

13 A. Wait a minute, yes.

14 Q. Okay, and that's a year and a half after you filed your
15 answer and counterclaim right?

16 A. Well, because Leonard has made his accusation that this,
17 this stuff disappeared and he claims I stole it so I
18 drove down a county road and had a, I went and bought a
19 Nikon camera with telescopic lens and stood on a county
20 road and took pictures of it to prove that has still has
21 it.

22 Q. So in 2013 did you provide your sister with a list of
23 equipment that you felt should have been part of the
24 trust estate?

25 A. Yes.

1 Q. You did?

2 A. Yes.

3 Q. Okay, and what was the factual basis that you used to
4 create that list?

5 A. The factual basis is it was mom and dad's.

6 Q. And so you did know since 1996 who had possession of all
7 of that?

8 A. I knew exactly who had possession of it.

9 Q. Who?

10 A. The gentleman that is sitting next to you.

11 Q. Okay, you'd seen it at his property?

12 A. Absolutely, yes. It's still sitting there today.

13 Q. You say a John Deere 4755 tractor?

14 A. That's the tractor that dad bought. I since believe
15 that Leonard has traded it off and I think he has gotten
16 rid of something that he shouldn't have.

17 Q. What factual basis do you have to say that the John
18 Deere 4755 tractor you allege should be part of this
19 trust was somehow disposed of by Leonard Mosher?

20 A. Because over the course of time when I was working as an
21 electrician I'd go out there with my dad. We had a very
22 close relationship. My daughter sat on that tractor
23 with her grandfather. I know exactly because dad would
24 go out there and start the batteries in the winter time.
25 He still owned that place.

1 Q. Okay, do you know whether your dad sold any of that
2 equipment to Leonard Mosher?

3 A. I don't know of a bill of sale.

4 Q. You don't know of a bill of sale?

5 A. Are you trying to tell me there is one that exists?

6 Q. No, I'm trying to ask you the factual basis for your
7 assertion that Leonard Mosher has the items that you've
8 listed in your counterclaim?

9 A. Because they are on the property that he inherited and
10 the photos will tell that.

11 Q. Is it basically your position that anything Leonard
12 Mosher possess and uses for farming in Nebraska must
13 have belonged to your mom?

14 A. No, that's absurd.

15 Q. So how do you distinguish between what you put in what
16 must be trust property and which Leonard Mosher must
17 have purchased?

18 A. Well, hopefully if Leonard goes by the law he would have
19 done a personal property tax return in the State of
20 Nebraska and we can see what was in dad's personal
21 property return and see if Leonard bought equipment and
22 put it on his personal tax return. That's one way of
23 checking it out.

24 Q. And you've done that?

25 A. Have I researched Leonard's personal property tax

1 return, no. It's not my job but I know what dad did.

2 Q. Prior to his death in 1996?

3 A. I know what dad bought.

4 Q. Okay, let's turn to paragraph 10 of your answer and
5 counterclaim. You allege plaintiff has taken certain
6 items of jewelry belonging to Lois Mosher which jewelry
7 is to be distributed pursuant to the terms of the trust,
8 tell me what jewelry plaintiff has taken?

9 A. All I know is that dad bought mom a lot of jewelry and I
10 know mom had a lot, and dad had a big diamond ring and
11 mom enjoyed jewelry and there were some cameos that I
12 bought. I was in the United States Navy and I was
13 stationed in Italy and I bought a bunch of Camoes and
14 gave to my mom. They all disappeared and I believe mom.
15 Mom said she put all her jewelry, put it in a trunk and
16 gave it to Leonard so he could see this stuff when he
17 was in charge of the trust and it all disappeared.

18 Q. Okay, who has possession of that trunk now?

19 A. I don't know.

20 Q. Okay, and have you asked your sister to see all items of
21 jewelry that she has in her possession that used to
22 belong to your mother?

23 A. No.

24 Q. Have you asked her whether she has any jewelry?

25 A. She told me she didn't. I believe her.

1 Q. So you believe your sister but you don't believe Leonard
2 Mosher?

3 A. That is very true.

4 Q. Paragraph 11 of your counterclaim, that reads prior to
5 the death of Lois Mosher plaintiff was renting farm
6 ground from her but failed to pay any of the rent to her
7 and retained all of the farm income. What is the
8 factual basis for you alleging that plaintiff was
9 responsible for paying any farm income to your mother
10 before she died?

11 A. Well, I moved in with my mom in 2000. My mom came to me
12 and I started buying farm ground in 2002 and mom came to
13 me and we were talking about income and she said, you
14 know, Leonard's not paying me any rent. And I said,
15 have you talked to him about it and she says, yeah.
16 I'll give you an example, I was staying in the townhouse
17 when the roof got hailed. I was paying the insurance on
18 the townhouse. Mom was alive. There was a hail claim.
19 I said to mom what do you want to do? She said, Stan, I
20 needed that money. I said why? Leonard's not paying me
21 any rent. He's not giving me any farm payments. He
22 refused to give me any money, he says sue. So I gave
23 mom the money for the hail insurance. She says, what
24 about the roof? I said, we'll worry about it later.

25 Q. Is it your testimony your mom didn't have sufficient

1 funds, well first of all let me back up. What year was
2 this hail claim?

3 A. Pardon.

4 Q. What year are you talking about with respect to this
5 hail claim?

6 A. The hail was like in '10 or '11.

7 Q. And did you know the balance of your mom's bank
8 accounts?

9 A. It was none of my business. Janice, I wasn't in charge.
10 I didn't see it at all.

11 Q. With respect to the bank accounts though you when she
12 died got money out of her bank accounts, true? Pursuant
13 to passing

14 A. I didn't get any money out of no account. I got some
15 money from the Franklin Templeton Mutual Fund that dad
16 had set up. That was not part of the trust from my
17 understanding.

18 Q. Have you seen the documents that were subpoenaed from
19 First Interstate Bank related to transactions in your
20 mom's account before her death?

21 A. No. I don't get involved in the finances. I trust
22 Janice.

23 Q. Or account ownership information received from First
24 Interstate Bank?

25 A. I don't know.

1 Q. And as you sit here today you're saying you didn't
2 receive anything from First Interstate Bank account?

3 A. That's very true.

4 Q. It would surprise you to know if you were a joint owner
5 or a beneficiary of a payable upon death account?

6 A. If I was then it wasn't, it's news to me. Now I was,
7 there was some CDs that mom had that she divided amongst
8 us three kids and we all got some CDs from First
9 Interstate Bank. Leonard got some. Janice got some and
10 I got some. Is that what you're referring to?

11 Q. Let's move on. Were you here when Janice Herrell
12 testified that claims relating to farm income should
13 start from the date of your mother's death?

14 A. Yes.

15 Q. Do you agree with that?

16 A. Absolutely. There's not a farmer, I own a section of
17 ground in Kimball County and I own eight and a half
18 sections in Banner County and there's not a farmer out
19 there that doesn't believe paying the landowner's third.

20 Q. Do you farm winter wheat?

21 A. Yes. I own 6,050 acres and never inherited an acre. I
22 paid for every acre myself.

23 Q. The tractor that is on your list, the John Deere 4755
24 tractor, what year is that?

25 A. I would say probably '91 if my memory serves me correct,

1 '90, '91, sometime in there.

2 Q. And the John Deere 7700 combine that you've got on your
3 list, when was that manufactured?

4 A. Dad bought that from Brighten John Deere in Kimball
5 probably. Steven and I went in the Navy in 1973 so dad
6 probably bought that in 1974, '75.

7 Q. And the Ford Loader Tractor, what year was that?

8 A. That was probably in the early '80s, purchased.

9 Q. And the Hillsboro Gooseneck Grain Trailer?

10 A. That was probably bought in sometime, dad had bought a
11 1976 GMC pickup to pull it and it didn't have enough
12 humph so, you know, I don't know, sometime in there.
13 When I was in the Navy it was purchased.

14 Q. So 1970's?

15 A. Late 70's early 80's.

16 Q. And, I want to ask you another question, you've got like
17 a catch-all of various farm equipment, plow, disks,
18 chisel, grain drills, how are we to determine whether
19 it's part of your counterclaim, an item of equipment?

20 A. I don't understand your question, ma'am.

21 Q. What various farm equipment does Leonard Mosher have
22 that you claim should be part of this trust other than
23 the specific items you listed?

24 A. The items that I listed is not Leonard Mosher's.

25 Leonard bought his first set of grain drills in 2000 and

1 he bought a set of John Deere 9400 in like 2001. I was
2 around when Leonard purchased that stuff. I'd like to
3 know what Leonard farmed with before then because he
4 bought ground in 1995 or '96. Whose equipment did he
5 use?

6 Q. And the values you state on this list totaling \$103,000,
7 are you stating those are 1996 values?

8 A. I got on Tractorhouse and Fastlight and I looked up
9 values and that's an average that I came up with.

10 Q. For back in 1996 or for --

11 A. No, whenever I was asked to put this list together.

12 Q. Okay, back in 2013?

13 A. Yes.

14 MS. OLDEMEYER: I don't have any further
15 questions.

16 THE COURT: Mr. Brenner?

17 MR. BRENNER: Yes, Your Honor.

18 CROSS EXAMINATION BY MR. BRENNER

19 BY MR. BRENNER:

20 Q. Mr. Mosher, did Janice Herrell, your sister as trustee
21 keep you informed as to the events of the administration
22 of the trust?

23 A. Yes.

24 Q. Did Janice Herrell, Trustee, provide you with
25 accountings of the trust?

1 A. Yes.

2 Q. And did you complain at any point as to those
3 accountings that she made?

4 A. No, because her best interest was doing mom's wishes.

5 Q. Okay, did anyone including Janice Herrell ever ask you
6 to sign a release before you got any property?

7 A. No.

8 Q. Did you ever expect to sign a release or a receipt
9 before you got any property?

10 A. No.

11 Q. Did Janice Herrell inquire of you when you could be out
12 of the Hacker Circle house after mom died?

13 A. Yes.

14 Q. And did you ever delay getting out of the Hacker Circle
15 house as a tactic to delay the matter?

16 A. No. Mom was born in Kimball and her last wishes was she
17 wanted her obituary in the Kimball paper and I was at
18 the Hacker Court and I was reading the Kimball paper
19 because I wanted to put mom's obituary in the Kimball
20 paper and the Kimball paper here put me on hold and then
21 they had a huge sale, Dar did at Stahla mobile homes on
22 modules and I knew the relationship, Leonard has never
23 bought a home in his life. Mom and dad gave him,
24 Leonard doesn't know real estate values. I knew he was
25 going to be very, very unreasonable in the value of the

1 trust because he knew I wanted it. I've owned a lot of
2 real estate. I know real estate values. I, I don't
3 play games with ignorant real estate people. When
4 people get stupid on values I don't play games with
5 them. So after I put mom's obituary in the Kimball
6 paper I called Dar at Stahla Mobile Homes, got in my
7 pickup and went over there and bought a modular and paid
8 cash for it.

9 Q. So you pretty well figured when mom died that you
10 weren't going to be able to acquire the Hacker Circle
11 house?

12 A. Yeah, because I know Leonard was not a very negotiable
13 reasonable person to deal with.

14 Q. Now would you agree that Janice as trustee pursued her
15 duties as trustee prudently?

16 A. Absolutely.

17 Q. At any time with any of the financial matters did you
18 have any questions that Janice was not performing by
19 what the trust said?

20 A. Nope. The only question I did ask of Janice is, is how
21 come the trust is not paying you, you're putting your
22 job in jeopardy, all the time, your family is suffering,
23 the trust should be paying you.

24 Q. But you're aware that she took no compensation?

25 A. She took none that I'm aware of and I believe her.

1 Q. Would you agree that you spoke to Janice Herrell and
2 informed her about the farm equipment which is what
3 brought it up?

4 A. Yes.

5 Q. And you provided as you said now the detailed list and
6 the value as it was in 2013?

7 A. Because I knew dad's equipment.

8 Q. And you also, would you agree that after you spoke to
9 Janice you tried to locate for her the, for the trust
10 the equipment to show where it was at?

11 A. Well, I told her but Leonard in 2010 had come on, I
12 bought part of Berglin's farm through Ray Freeburg and
13 I'd go to the grain cleaning facility and the sheriff,
14 Stan, the sheriff has, this was documented, Leonard came
15 on my property with his fists threatened me that I
16 picked something up off the road from his truck.
17 Leonard is, I don't know if I should say this but
18 Leonard has a problem with anger management and I knew
19 that if I stepped on that property, Leonard carries a
20 gun, I know I'd been shot at and I did not step on that.
21 So short of driving down a county road and taking
22 pictures to prove this, that's what I did. The proof is
23 in the pudding and the pictures.

24 Q. And you took pictures and gave them to your attorney
25 right?

1 A. I gave them to my attorney and I called my attorney that
2 morning, he asked me, John, if I'd go take pictures and
3 I turned on County Road 6 and here came a truck hauling
4 Becker Oil from Cheyenne. Leonard buys his diesel fuel
5 from Becker Oil and has it billed to a Wyoming address.
6 He doesn't pay Nebraska tax on it. And the county,
7 comes down County Road 6 towards me was Becker Oil. I
8 thought, oh, I know Leonard is there. I had some
9 friends with me, we were in the process of going to my
10 shop. I collect old pickups and I had just bought this
11 camera and I had loaded it up and I drove and took
12 pictures and then I went up to my shop and I thought I'd
13 get some more, and I called the sheriff the whole time I
14 did this and Stan was on the phone with me and I came
15 back and Leonard was following me in the white Dodge
16 pickup that's sitting over here across from the county
17 road and I have a 2016 Yukon Denali and I drove and I
18 was on the phone with the Sheriff and the Sheriff said
19 you head over here on the county road over there, and
20 Stan will back this up, it was a Nebraska trooper and
21 the Banner County Sheriff was waiting on Highway 71 on
22 the Pumpkin Creek, on the road over there waiting for
23 Leonard and then the Sheriff called me on the phone and
24 this was all documented the day the pictures were taken,
25 and the sheriff said that he's chasing somebody

1 suspicious on his farm and he didn't know who it was.

2 He knew who it was because he was right behind me. So

3 in his deposition he said he didn't know who I was.

4 Q. Well, my point is you were not expecting Janice to just
5 take your word for the equipment, correct?

6 A. Yes. This isn't her practice. She don't know farming
7 equipment. She was put in charge of the trust because
8 Leonard was telling people mom was crazy and Janice,
9 she's a caregiver. She's a nurse practitioner. I mean
10 she doesn't know farm equipment. She needed help and
11 Leonard was not providing any information as to mom and
12 dad's equipment. Taxes, Leonard was doing just the
13 opposite.

14 Q. Would you agree that Janice Herrell, as trustee take
15 whatever reasonable steps she could to take control of
16 and to protect the trust property?

17 A. Yes.

18 Q. You were aware that, you got a letter from Mr. Dyekman
19 in the very beginning of the administration of this
20 trust that said you had 120 days to file a claim, do you
21 remember that?

22 A. Yeah. I had no claim against Janice.

23 MR. BRENNER: Okay, that's all the questions
24 I have, Your Honor.

25 Thank you.

1 THE COURT: Mr. Sorensen?

2 MR. SORENSEN: May it please the court.

3 CROSS EXAMINATION BY MR. SORENSEN

4 BY MR. SORENSEN:

5 Q. Mr. Mosher, you were asked about the furniture that was
6 in the townhouse that has formally belonged to your
7 mother that she had given to you. Do you remember those
8 questions?

9 A. Yes.

10 Q. And you were also asked about the value and you gave a
11 range of values --

12 A. Right.

13 Q. -- when you were up there. When you were asked that
14 question in your interrogatories were you able to
15 reflect and think about each item of furniture more
16 carefully and place a value on it?

17 A. Yes.

18 Q. And when you did that, if in your answers to
19 interrogatory you indicated an old dining room set worth
20 about \$100 --

21 A. Right.

22 Q. -- would that be your estimation of the value of that?

23 A. Yeah.

24 Q. And a desk and chair worth about \$50, would that be your
25 estimation of value?

1 A. Yes.

2 Q. And a picture worth about 150?

3 A. Yes.

4 Q. -- would that be an estimation of your value?

5 A. Yes.

6 Q. And then a bedroom set worth about \$100?

7 A. Right.

8 Q. And that was the extent of the furniture that you
9 removed from the townhouse that had formally belonged to
10 your mother before she gave it to you?

11 A. Right, and when I moved that stuff into my modular that
12 set on one of my farms, I went to American Furniture and
13 bought a few thousand dollars' worth of furniture over
14 the next couple of months in Fort Collins.

15 Q. Now you are not a beneficiary in the trust of any of the
16 land?

17 A. No, I am not.

18 Q. Did all of the land go to your brother Leonard and to
19 Janice?

20 A. Correct. Yes.

21 Q. Did you have a discussion with your mother at some point
22 in time about the fact that you were not a beneficiary
23 of the land?

24 A. Yes, I did.

25 Q. Okay, and in that discussion did you also, did she also

1 visit with you about her, her, what property she had
2 remaining in the townhouse?

3 MS. OLDEMEYER: I'm going to object to the, it
4 calls for information in violation of the Dead Man Statute.

5 THE COURT: Mr. Sorensen?

6 MR. SORENSEN: Well, we intend to illicit the
7 substance of the conversation that Mr. Mosher had with his
8 mother where the furniture was given. Notice of intent to
9 offer this has been served on counsel. The substance of the
10 communication was also disclosed in our answers to
11 interrogatories that were served in, on January 18 of this
12 year, and I believe that there is a, you've been handed or
13 given a Memorandum of Law that discusses the, the
14 applicability of the Wyoming Dead Man Statute to this which I
15 believe in essence is that the, that's a procedural issue
16 that would be governed by Nebraska law and not a substantive
17 issue that would be governed by the Wyoming law that applies
18 to the trust.

19 THE COURT: Ms. Oldemeyer, I'll hear any
20 additional comments you'd like to offer.

21 MS. OLDEMEYER: I just think the trust
22 indicates expressly choice of law provision for Wyoming, in
23 particularly the Wyoming Uniform, I'm looking for it, Your
24 Honor, I apologize, the Wyoming Uniform Trust Code as
25 applicable to the trust and any other statute which may now

1 exist or hereinafter be enacted with respect to the powers of
2 trustees and again that Wyoming statute reveals directly with
3 issues related to the decedent and representatives of
4 decedent's trust.

5 THE COURT: Mr. Sorensen, anything else?

6 MR. SORENSEN: Since the Memorandum was
7 prepared by Mr. Hesser and Mr. Brenner, may I have them
8 interject their thoughts on this as well?

9 THE COURT: That's fine.

10 MR. BRENNER: Judge, the Wyoming statute
11 doesn't apply, first because it is only applicable to a
12 trustor or trustee, the executory, administrator, heir
13 representative, the person capable, incapable of testifying.
14 In this particular case we contend that it is a procedural
15 matter not governed by the Wyoming statutes and therefore it
16 would come back to Nebraska because what was in the trust is
17 how the trust is to be governed not if we're going to have a
18 court proceeding because that certainly wasn't contemplated.
19 We would further argue that at this point there has been an
20 offer both by the plaintiff and the defendant of what the
21 testimony of the mother has said toward things and this
22 notice that Mr. Sorensen gave complies with our law in
23 advance of this hearing.

24 MR. SORENSEN: May I also add, Your Honor,
25 that this is an area of inquire that was initiated by the

1 plaintiff when she asked Mr. Mosher if he had, about the
2 gifting of property. She phrased it in terms of a written
3 declaration. And she's raised the property list that would
4 have been part of the trust and/or will. Of course that's a
5 testamentary disposition and this was an inter vivos gift.
6 So I think that the, I think it's certainly proper to offer
7 because of the notice and the fact that it's the best
8 evidence available on this point. There is no other means to
9 induce this evidence except by the offer of the statement.
10 Notice has been served as is required by 25-804.2(e) and we
11 just think it's a proper offer.

12 THE COURT: Anything else, Ms. Oldemeyer?

13 MS. OLDEMEYER: Just because notice was given
14 doesn't mean that it's usable and we stand on our objection
15 that the Wyoming Dead Man's Statute applies. That statute is
16 in place for a very specific reason, there's, it's to avoid
17 self-serving circumstances like we're presented here where
18 you've got uncorroborated testimony of someone where they
19 want a ruling in their favor based on an oral statement and
20 for that reason we think the Wyoming Dead Man's Statute
21 applies and the hearsay statements that they attribute to
22 Lois Mosher being self-serving.

23 MR. SORENSEN: May I add one more thing,
24 Judge? Not to interrupt your thought process.

25 THE COURT: Sure.

1 MR. SORENSEN: Janice Herrell testified on the
2 examination through questions posed by Ms. Oldemeyer that she
3 was present when, when Lois Mosher gifted property to Stan
4 and to others and so that's, the area has already been
5 introduced by her and in the words of a former law partner,
6 the hide follows the horn and I think it's proper for that
7 reason as well as the compliance with the procedural
8 requirements.

9 THE COURT: Well, in all of the discussion
10 I'm not entirely sure that I recall the question except that
11 it seems to me that it goes, it relates to the issue of the
12 beneficiary. Not the beneficiary of the land but the
13 contents of the house, is my recollection of the nature of
14 the question.

15 I'm going to overrule the objection. I'll allow him to
16 answer the question and I'll allow the objection to the, I'll
17 allow the objection to the question in this line of inquiry
18 to continue and, Ms. Oldemeyer, you can renew your objection
19 as you see fit.

20 MS. OLDEMEYER: Thank you, Your Honor.

21 So, I'll just rely on the continuing objection.

22 THE COURT: That's fine. I'm just saying
23 if you think you need to jump it back in you're welcome to do
24 that. I will consider it continuing to the entirety of this
25 line of inquiry.

1 MS. OLDEMEYER: Thank you.

2 THE COURT: Go ahead, Mr. Sorensen. Why
3 don't you reask the question and just so that we can keep
4 things plugging along, you reask the question, I will, I will
5 read for purposes of the record an objection on the Dead
6 Man's Statute to that question and I'll allow Mr. Mosher to
7 answer.

8 Go ahead.

9 BY MR. SORENSEN:

10 Q. Mr. Mosher, and I want you to answer this as briefly as
11 possible, did you have a conversation with your mother
12 in which the topic of her furniture in the Hacker Court
13 townhouse was discussed where she gave that property to?

14 A. Yes.

15 Q. Would you relate the conversation that you had to the
16 court in terms of, let me strike that. Well, in our
17 notice of intent to offer we indicate this was a
18 statement in 2011?

19 A. Yes.

20 Q. Okay, so please tell the court the substance of the
21 conversation?

22 A. In the fall of 2011 I go down and see my mother at the
23 nursing home. I'd eat with her and she said to me, she
24 says, you know, she says you're not going to like it
25 when I die. I said, well, I probably won't mom, you

1 know, joking. And she said because you're not
2 inheriting any farm ground I'm giving you the furniture
3 and the townhouse and she says I'm hoping that you would
4 buy the townhouse from your brother and your sister,
5 you're already living there, and I said, thank you, mom.
6 I said, it's okay. And Janice knew mom wanted me to get
7 the furniture. Janice knew mom wanted me to buy the
8 townhouse from Leonard and Janice and I did make an
9 offer and when my offer was rejected --

10 MR. SORENSEN: Just, just keep to the issue of
11 the furniture right now.

12 BY MR. SORENSEN:

13 A. Okay, and mom said since you're not get any farm ground
14 you can have the furniture. Okay, thank you.

15 Q. And did she give you the furniture at that time?

16 A. Yes.

17 Q. Okay, now the items that you've discussed that you've
18 indicated that you removed that had formally belonged to
19 your mother, were those items, those were the items that
20 I guess that she was talking about?

21 A. Right, those were and I could have taken more but that
22 stuff was old. I mean the mattress that dad had died of
23 cancer on it, prostate cancer. I mean there was, I mean
24 this stuff was worn out, old, you know. But to mom,
25 this was mom's home.

1 Q. All right, now let's move on to another topic. During
2 your father's lifetime before his death, let's even go
3 back a little further, when you were growing did you
4 farm, did you help your dad on the farm?

5 A. Yes.

6 Q. Did Leonard help your dad on the farm?

7 A. Yes.

8 Q. Did your twin brother help your dad on the farm?

9 A. Yes.

10 Q. And I believe that after you got out of high school did
11 you join the Navy?

12 A. Yes.

13 Q. And so when did you actually come back and begin, come
14 back to Wyoming where you were living?

15 A. I came back to Wyoming in '77. I got honorably
16 discharged. I went to the University of Wyoming for a
17 year to become an ag teacher. The Union Pacific
18 Railroad was hiring college students in the summertime
19 and I went and applied and they said are you a Viet Nam
20 Veteran and I said, yes. I got hired on the spot. They
21 said go follow them electricians around. Okay. Some
22 head boss of Omaha come up and they, I was getting ready
23 to go back to school and he come and said do you want to
24 become an electrician? I said, what's it pay? And he
25 said more than teachers make.

1 MR. SORENSEN: Let me interrupt you for just a
2 second, and I'm only doing this because time is precious
3 here.

4 MR. DENNIS MOSHER: Okay.

5 BY MR. SORENSEN:

6 Q. During the period of time before you actually bought a
7 farm and started farming again, were you back from time
8 to time visiting your parents?

9 A. Yes.

10 Q. On those occasions when you were back, did you have
11 occasion to go to your dad's farm?

12 A. Yes. Yes.

13 Q. Before his death in 1996?

14 A. Yes.

15 Q. Were you familiar with his equipment because of your
16 growing up and farming with him?

17 A. Yes, very much so.

18 Q. Did you remain familiar with the equipment that he had
19 up through the time of his death?

20 A. Yes.

21 Q. And you were in a position to see and observe that
22 equipment from, on different occasions up until the time
23 of his death?

24 A. Right.

25 Q. Now when you went to the property in December of this

1 year and took the photographs could you discern visually
2 some of the same equipment that you had been familiar
3 with as a boy or as a younger man growing up as you went
4 back?

5 A. Absolutely.

6 Q. Now when you began to farm did you buy your own
7 equipment?

8 A. Yes. In January of '14 I bought an 876 versatile
9 tractor, a 40 foot crust buster John Deere, it's a crust
10 buster grain drills and a disk which I later sold to
11 Leonard in 2000 and nothing disrespectful towards my
12 father, dad only at 880 acres. In the fall of 2002 I
13 bought four and a quarter sections and every year after
14 that, I now own nine and a half sections. No disrespect
15 towards my dad but Leonard has made this claim that I
16 took a couple of grain drills that, they are in that
17 picture. I would have filed bankruptcy if I was farming
18 with the machinery that dad had because it wasn't big
19 enough let alone farm four and a quarter sections. I
20 mean I went to big four-wheel drive tractors. I've got
21 a set of 60 foot John Deeres consigned in Cheyenne right
22 now. The size of the equipment that I needed, dad's
23 stuff wasn't even a thought.

24 Q. So, after your father's death, did you remove any of his
25 equipment?

1 A. No. It wouldn't do me any good. I couldn't use it.

2 Q. All right, now when your dad was farming was there a
3 machine shed or a quonset building on the property?

4 A. Yes, dad built it.

5 Q. Is that the farm that Leonard now owns?

6 A. Yes, he inherited it, yes.

7 Q. And that would be the southeast quarter?

8 A. Yes.

9 Q. And the quonset building is on the southeast quarter?

10 A. Right. Yes.

11 Q. And is it depicted in some of the photographs that you
12 have taken?

13 A. Yes.

14 Q. Now did your dad have an assortment of normal tools that
15 a farmer or rancher would have?

16 A. Absolutely.

17 Q. Socket set, hand tools, air compressor, welders, torch
18 and cutter?

19 A. And also dad owned a bunch of rental properties in
20 Cheyenne. Dad had to, we grew up farming and doing
21 rental properties. Dad had all this equipment, all the
22 tools. There has never been a farm auction. Dad never
23 had an auction. Dad would never, the stuff that's in
24 that shop out there that he inherited.

25 Q. Did he keep all of that equipment in that quonset?

1 A. Absolutely, yes.

2 Q. During the period of time that you were living in the
3 Hacker Court apartment or townhouse, were you, was there
4 a period of time when you were living there when your
5 mother was still living in that place?

6 A. In the beginning. She was lonely and we took trips. My
7 oldest daughter, I took her, she graduated as a
8 pediatric doc- -- I took her, she graduated from med
9 school in Seattle. I would take her to go see the
10 grandkids, you know. Yes. And I'd take trips. I took
11 mom to go swimming with the manatees after dad died in
12 Florida. We took her down there on a trip in '97. I
13 mean mom was lonely. She was by herself. I had a
14 fifth-wheel camping trailer that I went and set up in
15 Las Vegas, her and her sister stayed in for a few
16 months. Mom, mom was lonely and so Janice spent a lot
17 of time. I spent a lot of time and Leonard was very,
18 very upset at mom because before dad died they did a
19 quitclaim on the north half of that farm section and the
20 east quarter and Leonard was very bitter and angry. He
21 wanted that farm all quitclaimed and mom says, no.
22 That's the house I lived in when I was born. That also
23 was the house I lived in when I was born and she says
24 I'm going to own that property until the day I die. And
25 because of that Leonard was very bitter and very angry

1 and he treated mom like, excuse my French, crap.

2 Q. Okay, now while you were, so when you moved in with your
3 mother, when she was still living was that by invitation
4 of her?

5 A. She asked me. She said, why don't you come on down.
6 I'm by myself. Dad's dead. I said, okay.

7 Q. Now, after she moved out of the Hacker Court apartment,
8 Hacker Court townhouse did she ever ask you, ask you to
9 leave when she moved out?

10 A. No.

11 Q. And did you continue to pay the expenses that were
12 incurred on that property?

13 A. I moved out like in, I bought Carl Johnson, I bought two
14 sections from Carl Johnson. Had a house on it, a
15 building I call it. I went in there and fixed it up in
16 '04 and I'd stay there and I'd go work as an
17 electrician. I carry an electricians license and in the
18 winter time I'd go work as an electrician to help pay
19 for things because I didn't have anybody giving me
20 anything so I had to do it myself. And I would stop in
21 and stay with mom and do things and talk to her and then
22 I bought some cows, I thought I should go get in the cow
23 business and that was kind of a financial mistake but
24 anyhow there were times, and then when mom left and went
25 with Janice the townhouse set there vacant. Everybody

1 had keys to it. I mean it just sat there vacant and mom
2 and Janice, I'd go down and see them and mom said, would
3 you move in that townhouse. It's just sitting there. I
4 said, okay, fine. You know, I said, I'll pay the
5 utilities, I'll pay the taxes and she said just take
6 care of the property for me.

7 MR. SORENSEN: Okay, may I approach, Your
8 Honor?

9 THE COURT: Yes.

10 BY MR. SORENSEN:

11 Q. Now, you've indicated that you paid the utilities. In
12 fact did you just recently searched to see if you still
13 had some records of utilities that you paid?

14 A. Yes.

15 Q. And have those been, did you, have they, of the records
16 that you still had did they show payments from 2010
17 through 2012?

18 A. Yes.

19 Q. And did you total those?

20 A. No, I just --

21 Q. Have you reviewed a total of those?

22 A. No, I haven't because I --

23 Q. I'm just going to show you what, what would be the water
24 and electric and power bills?

25 A. Sixteen hundred and fifty-three dollars.

1 Q. Is that --

2 A. Yeah, they are from February, 2010, you know, I wasn't
3 in this to get money out of anybody.

4 Q. I understand. I guess what I'm asking you is your
5 records reflect that you paid, the records that you
6 still have, that you paid all the utilities from 2010
7 through 2012?

8 A. Yes.

9 Q. And did you pay all of the electric from 2010 through
10 2012?

11 A. Yes.

12 Q. And if you look at that, what was the total of the
13 electric that you paid?

14 A. Two thousand, one hundred and fifty-four dollars and
15 twenty-five cents electric bills.

16 Q. Okay, and did you pay to have curb and gutter removed?

17 A. The neighbor across the street come over and he said the
18 curb was cracking out and will you pay your share?

19 Q. Did you pay it?

20 A. Yeah, I paid it.

21 Q. What was the amount that you paid?

22 A. Mom's share in front of her house was 675. I paid it.
23 I didn't want to bother mom.

24 Q. Did you pay taxes and insurance on the property?

25 A. Yes.

1 Q. Real property taxes?

2 A. Yes, I paid real property taxes and I paid the insurance
3 and I also carried a renter's policy on myself to cover
4 my goods because I did not want somebody to come back
5 and say that if there was a claim in the place that I
6 was going after mom's insurance for my stuff. I even
7 went and got renter's insurance on my stuff so there was
8 no misunderstanding of --

9 Q. Did you pay to have the carpet cleaned?

10 A. Yes, when I moved out and then --

11 Q. How much was, what did you pay to have the carpets
12 cleaned?

13 A. Two forty-nine.

14 Q. Okay, and when did you pay that?

15 A. I paid that in 6, 13 or 15 of '12.

16 Q. 6-15 of 2012?

17 A. Yeah, and Janice called me up and said when Wendy went
18 and did a walkthrough she said the carpets are worn out.
19 She said we're going to have to replace it. I said
20 fine, whatever.

21 Q. Okay, so while the, while the suggestion has been laid
22 out there that you were somehow taking advantage of your
23 mother or the court were you, were you paying
24 essentially all the expenses that --

25 A. I was paying the expenses, yes.

1 Q. -- in taking care of the property while you were there?

2 A. Yes, and the condition, there was, it has tall ceilings
3 and the ceilings, the heat and the tape was falling down
4 in the ceilings and textures. I mean this place was, I
5 mean I've owned quite a few properties and I mean you've
6 got to do maintenance on stuff.

7 MR. SORENSEN: May I approach again, Your
8 Honor?

9 THE COURT: Please you're free to move
10 around as you see fit.

11 BY MR. SORENSEN:

12 A. Also I paid mom's phone bill. The reason why, because I
13 had two hired men I bought phones and Leonard was buying
14 her these expensive phones that she couldn't even turn
15 on. I said, I'll take care of it, mom.

16 Q. You were asked about, I think by Mr. Brenner that a Ford
17 tractor that your dad had?

18 A. Yes.

19 Q. I'm going to show you what's been marked as Exhibit 243.
20 It's a little hard to read but take a look at that if
21 you would, I'm going to, let me move this out of there,
22 here just hold this for me --

23 A. Yep, that's the Ford tractor with a little motor in it
24 with dad's signature on the bottom and it was bought in
25 8 of, I want to say '82.

1 Q. All right, so if your brother in his deposition is
2 claiming that your dad didn't have a Ford loader tractor
3 would that untruthful?

4 MR. DENNIS MOSHER: Can I call it a lie?

5 MR. SORENSEN: No.

6 BY MR. SORENSEN:

7 A. No, it would not be truthful. This speaks for itself.
8 That's the truth and there are pictures.

9 MR. SORENSEN: I'd offer 243, Your Honor.

10 BY MR. SORENSEN:

11 A. And I did take pictures of that tractor in Leonard's
12 shop because the door was open as I drove by.

13 THE COURT: Mr. Brenner, do you have any
14 objection to 243?

15 MR. BRENNER: No, none.

16 THE COURT: Ms. Oldemeyer, comments.

17 MS. OLDEMEYER: No.

18 THE COURT: Two forty-three is received.

19 (Exhibit No. 243 is hereby
20 made a part of the
21 official court record.)

22 BY MR. SORENSEN:

23 Q. Do you remember the questions that were being asked of
24 your sister Janice that involved confusion over mineral
25 interest?

1 A. Yes.

2 Q. And there was a mineral quitclaim deed displayed on the
3 wall to the Phillips?

4 A. Yes, I know that 100%.

5 Q. Can you explain to the court what the confusion was as
6 to the minerals?

7 A. I bought, in 2015 I bought a section of farm ground at
8 auction over here and I got the mineral rights and
9 shortly after that, I don't know mom calls me up on the
10 phone and she says, I got this thing in the mail from
11 this guy who wants to lease the mineral rights. And she
12 said you are the only one in the family that owns farm
13 ground in Kimball County, which is true. So I went and
14 got the piece of paper from her and looked at it and I
15 said, mom, I own nine and a half sections and I know
16 every legal description up here. I said, mom, that's
17 not my legal description to a quarter section. She
18 says, well, would you call this guy and find out what it
19 is so this is like, I don't know '06, '07, somewhere
20 around there. I called the guy up and he says I'm
21 looking for Dan Mosher. I said Dan Mosher is my dad and
22 he's deceased and he says, was he married and I said,
23 yes, to my mom Lois Mosher. He said, I would like to
24 talk to her. And I says, why this quarter section?
25 Your dad owned that ground for two years and sold it and

1 he kept the mineral rights. Mom did not even know that
2 dad kept the mineral rights. She wasn't aware of it to
3 put it in the trust. So when Leonard, when mom changed
4 the trust and Leonard didn't show up at Steve Melchior's
5 office there, I took mom over to Greg Dyekman's office
6 and mom was very upset because, over some wind turbine
7 contracts and Greg Dyekman set there and asked mom, like
8 all attorneys do when they revise a trust, have you
9 acquired any new assets? My mom says, no. I said wait,
10 you forgot the mineral rights in Kimball County. And so
11 we added them, that's way they're in the revision. We
12 added them. Well, when that all got taken care of and
13 transferred and everything, nothing personal against the
14 courthouse here but they did a typo and Mr. Phillips was
15 reading, cause they always put the mineral rights in the
16 Kimball paper and Mr. Phillips was reading the Kimball
17 paper and saw his legal description, his mineral rights
18 being changed and he come unglued. So, then they went
19 to the courthouse and they went to Greg Dyekman and they
20 all got it straightened out.

21 Q. Was that --

22 A. That's why there has been all this money spent on trying
23 to clarify that because it was a typo and then they got
24 it changed back because it was the section next door
25 because just by luck Mr. Phillips, somebody was reading

1 the Kimball paper when they always put the mineral right
2 in and they saw their legal description mineral rights
3 being transferred due to mom's trust. So that all got
4 changed. That's the reason why it was brought in the
5 original trust because mom, in all honesty didn't know
6 that dad had them. And I don't know if Leonard, I think
7 Leonard may have known they were there but he's not
8 talking, so.

9 MR. SORENSEN: You know, I think I'll bring my
10 cross to a conclusion for right now so that Ms. Oldemeyer can
11 do the redirect if she wants to and we can, and then reserve
12 the balance for tomorrow.

13 THE COURT: Okay. Thank you.

14 Ms. Oldemeyer, do you have redirect?

15 MS. OLDEMEYER: I do.

16 THE COURT: Okay.

17 REDIRECT EXAMINATION

18 BY MS. OLDEMEYER:

19 Q. Have you reviewed the mineral ownership report that the
20 trust purchased in August of 2014?

21 A. No.

22 Q. Do you know if it reflects this typo that you're
23 describing being correct?

24 A. I don't know but it's in the courthouse records down
25 below. I don't know. I'm sure that the people that was

1 hired to do this that's their job.

2 Q. Okay, and so if this typo that you're talking about as
3 corrected appropriately it would be your testimony
4 you're your mother would have owned it when she died?

5 A. Yes, and that was the one that she was, this Kimball
6 County 160 acre quarter section that all of a sudden
7 appeared on the revision because when the original trust
8 was devised in 199- -- after dad died mom didn't know
9 dad still owned it, that dad had the mineral rights.
10 And mom thought because I owned ground in Kimball she
11 gave me the letter.

12 Q. Turn to Exhibit 243 was a receipt, one page, very
13 grainy, I think it relates to a tractor and you said
14 that's a tractor your dad owned? Do you recall that?

15 A. Absolutely, Leonard has set on it. He's pushed snow on
16 it.

17 Q. When did you first see that document?

18 A. When did I first see that document --

19 Q. When did you first see Exhibit 243?

20 A. Janice told me about it.

21 Q. When did you first seen it?

22 A. Well, --

23 MS. OLDEMEYER: Look at me, Mr. Mosher.

24 BY MS. OLDEMEYER:

25 Q. Do you remember when you first saw it?

1 A. No, I've seen a lot of receipts of dad's and stuff that
2 Janice had. I can't remember.

3 Q. Okay, do you know if it was prior to today?

4 A. Yes.

5 Q. Okay, within the week?

6 A. I went through, Janice had a bunch of stuff I went
7 through and stuff. You know, Janice had a bunch of
8 receipts and, so.

9 Q. You made a statement in your testimony with Mr. Sorensen
10 that, I do not have anyone giving me anything. Was that
11 a reference to your parents giving Leonard Mosher
12 things?

13 A. That was a reference nobody gave me, I own nine and a
14 half sections of farm ground and nobody gave me any farm
15 ground. I paid for every acre myself. That's what that
16 references to.

17 Q. Is it a dig at your brother?

18 A. No, it's just I'm very proud that I've made it myself.

19 Q. You feel that your brother has been given things?

20 MR. SORENSEN: Objection on relevance, Your
21 Honor.

22 THE COURT: Ms. Oldemeyer?

23 MS. OLDEMEYER: I think he referenced in this
24 testimony the north half of the farm ground at issue in his
25 testimony and that's where I'm going.

1 MR. DENNIS MOSHER: Leonard wanted --

2 THE COURT: Hang on. Hang on.

3 The form is a bit argumentative but I'll allow it, so
4 you can answer and let's just try and keep it between the
5 lines.

6 BY MS. OLDEMEYER:

7 Q. Leonard wanted the whole farm. He didn't get all of it.
8 Now he got, but he was mad and he was very disrespectful
9 towards mom after dad died because of that.

10 Q. And when your mom died he did get the north half, true?

11 A. Yeah, because it was done in a quitclaim. I don't know
12 if it was done legally or not but.

13 Q. As you sit here today whatever equipment that you think
14 Leonard Mosher owns that was your dad's, what evidence do
15 you have that your dad did not gift that farm equipment
16 to Leonard Mosher just like your mom gifted you the
17 contents of that Hacker Circle home?

18 A. Well, dad never told me he gave it to Leonard so I don't
19 have any, I can't say. All I know is that mom and dad
20 were still married and everything that mom has goes to
21 dad, I mean that dad has goes to mom. I'm sorry.

22 Q. How many acres in Nebraska does Leonard Mosher farm to
23 your knowledge?

24 A. Well, he inherited a section.

25 Q. How many acres does he farm?

1 A. You mean of farmland? You know, I really don't know.
2 He has a couple thousand acres. I don't know what he
3 has. Some of that was given to him.

4 Q. The 880 I think you, is what you mentioned your dad had,
5 where was that?

6 A. That was the section and there's an east quarter that's
7 across the road from the old house. The section that
8 Janice inherited was refer to as the Hay's quarter. Dad
9 bought that quarter in the '60's.

10 Q. It's the same farm ground that's subject of your
11 counterclaim for farm income, true?

12 A. It's the same farm ground that's the subject to
13 counterclaims --

14 Q. Your counterclaims?

15 MR. DENNIS MOSHER: That Leonard is farming
16 now?

17 MS. OLDEMEYER: Yes.

18 BY MS. OLDEMEYER:

19 A. Yeah.

20 Q. If you could turn to --

21 MS. OLDEMEYER: Mr. Sorensen, have you had the
22 photographs up there in front of the witness, your exhibit?

23 MR. SORENSEN: No.

24 MS. OLDEMEYER: They are received into
25 evidence, are they up here?

1 MR. SORENSEN: No.

2 MS. OLDEMEYER: Where are the exhibits that
3 have been received?

4 THE COURT: I don't think the court
5 reporter has taken any of them because I think we've been
6 using the books. So I'm sure they're around but I don't
7 think she has them.

8 MR. SORENSEN: No.

9 BY MS. OLDEMEYER:

10 Q. I've put in front of you what I believe are the
11 photographs that you referred to earlier in your
12 testimony. Those are labeled Exhibits 392 through 400
13 and I'm going to put up on this wall the list of
14 equipment that is in Exhibit 120. This is the third
15 page of Exhibit 120 that I put up on the wall. Is that
16 the list of farm equipment that you prepared?

17 A. Yes.

18 Q. Show me in the photographs that you have in front of you
19 where there's a John Deere 4755 tractor?

20 A. It's not there because I think Leonard got rid of it and
21 bought this one. I think he sold dad's tractor, traded
22 it or did something and we have made that statement
23 earlier.

24 Q. This one, which exhibit number are you referring to?

25 A. Exhibit Number 292 --

1 MR. BRENNER: Three.

2 BY MS. OLDEMEYER:

3 A. Or 392, I'm sorry.

4 Q. Okay, where in the photographs in front of you is a 1988
5 Ford grain truck?

6 A. If you go to Exhibit Number, by the way there's the
7 tractor I used to sit on.

8 Q. I just want to know which picture is the 1988 Ford grain
9 truck?

10 A. I don't, hang on here maybe I missed it. Right here in
11 Exhibit 398 is the back of the Ford grain truck. Dad
12 bought that truck.

13 Q. You think that's the 1988 Ford grain truck?

14 A. I know it is the back end of it.

15 Q. That's photo 398?

16 A. I may not be quite sure on the year but that is dad's
17 old grain truck.

18 Q. Okay, where in the photographs is the John Deere 7700
19 combine?

20 A. I did not take a picture of the John Deere, hang on
21 here, I don't know if I got a picture of the 7700
22 combine. No, I did not get a picture of the John Deere
23 7700 combine.

24 Q. Is there any reason why you failed to take a photograph
25 of that important piece of equipment?

1 A. You know I was out there taking pictures and this crazy
2 man come up in a white dually pickup and started chasing
3 me. So I probably didn't have time to take a picture of
4 it.

5 Q. Okay, where in the photographs is the Ford loader
6 tractor?

7 A. The Ford loader tractor, you can see the back end of it
8 is in dad's shop which now Leonard got, but if you look
9 at Exhibit Number 394 you can see the back end of it and
10 there is the little controls of loader over there.
11 That's a Ford tractor. Those are the controls for the
12 loader. That's, this was in Leonard's shop. He had
13 those doors open because that day he was having diesel
14 fuel delivered from Wyoming from Allen Becker Oil.

15 Q. Which photograph depicts the Hillsboro gooseneck grain
16 trailer?

17 A. Okay, you can see a part of that, that's right next to
18 the grain trailer. Leonard has the sideboards off.

19 Q. Which exhibit number are you referring to?

20 A. I'm referring to Exhibit Number 398. You can see, if
21 you look here at the red truck you can see a top piece,
22 that's the gooseneck. There is the trailer. Leonard
23 has the side, the trailer is parked in front of the
24 truck blocking the cab to the truck and that's the
25 gooseneck grain trailer right there.

1 Q. And what about the flatbed utility trailer? Which
2 photograph is that in?

3 A. You know, I don't have, I don't have that. He probably
4 has that in his shop.

5 Q. Did you read in Leonard's deposition where the attorneys
6 asked if they could come to his property and walk it and
7 look in that shed?

8 A. I wasn't aware of that.

9 Q. You read his deposition you testified?

10 MR. DENNIS MOSHER: Leonard's deposition?

11 MS. OLDEMEYER: Yes.

12 BY MS. OLDEMEYER:

13 A. I didn't read, I don't have a copy of Leonard's
14 deposition.

15 Q. Well, I thought earlier in your testimony --

16 A. No, I was told things out of deposition but I do not
17 have a copy of it. Is a picture of the combine there?

18 Q. Okay, is there a red auger depicted in those pictures?

19 A. Yeah.

20 Q. Tell me about the red auger?

21 A. Well, do you know what an auger does, it augers wheat.

22 Q. Augers what?

23 A. It augers wheat.

24 Q. Okay, is that something your dad owned?

25 A. Dad owned quite a few augers. He, that was probably

1 Leonard's auger but that wasn't the auger that dad
2 bought. That would have been one Leonard. I will give
3 credit. He did purchase something.

4 Q. Okay, tell me about Exhibits 401, 402 and 403. What
5 relevancy do those have to your counterclaim?

6 A. 402 is, Leonard went over there and bought license
7 plates in 2015 to property that dad owned. 401 is
8 personal property tax in 1996 that Leonard signed, and
9 it also has the John Deere 1991 tractor on it and the
10 adjusted basis is 14,400. Dad traded, I believe dad
11 traded a Case International off on that tractor and so
12 that a\is the adjusted basis and if you go to --

13 A. The tractor you're --

14 MR. SORENSEN: Excuse me, let him answer. You
15 asked a question and

16 THE COURT: She's, he is trying to answer
17 your question I think. I've only heard about two documents
18 so far.

19 BY MS. OLDEMEYER:

20 A. And then if you got to 403 exhibit there's Leonard's
21 personal tax return. I don't know what year this is but
22 he also has 199- -- this is tax year 1997, after dad's
23 death, that same tractor with 14,400 cost basis 1921 has
24 been tracked, transferred from dad's personal property
25 to Leonard's Nebraska personal property return.

1 Q. Exhibit 401 you were mentioning a 1996 tractor that was
2 traded in --

3 A. The 1996 --

4 THE COURT: Hang on, hang on, you've got to
5 let her ask the question.

6 MR. DENNIS MOSHER: Okay.

7 BY MS. OLDEMEYER:

8 Q. And my question to you, is that 1996 tractor depicted in
9 Exhibit 401 on your list here?

10 A. No, because the tractor that's 1991 was the 4755 because
11 I know dad, because my daughter sat with grandpa in that
12 tractor. After dad's death Leonard transferred that
13 tractor over, it's on his 1997. At some point in time
14 he disposed of that tractor and probably bought the
15 tractor that's in this picture, traded it, sold it, I
16 don't know but it was dad's tractor.

17 Q. So the '97 transfer of that tractor to Leonard Mosher,
18 is it your testimony that that couldn't have been a sale
19 or a gift from your dad to Leonard Mosher?

20 A. Unless he's got a bill of sale I don't know.

21 MR. DENNIS MOSHER: So I have a question to
22 ask.

23 THE COURT: Hang on, nope you don't get to
24 ask questions.

25 MR. DENNIS MOSHER: Okay.

1 BY MS. OLDEMEYER:

2 Q. The fax line of those three exhibits we're discussing,
3 it's February 1 of 2017, true?

4 MR. DENNIS MOSHER: February 1 of 2017?

5 BY MS. OLDEMEYER:

6 Q. Let's look at Exhibit 401 there's a fax line on it from
7 the Banner County clerk of February 1, 2017?

8 A. Yeah, that's when they were faxed.

9 Q. Okay, had you seen them before February 1 of 2017?

10 MR. DENNIS MOSHER: Which one are you talking
11 about?

12 MS. OLDEMEYER: Exhibit 401.

13 BY MS. OLDEMEYER:

14 A. No.

15 Q. Okay, and let's look at Exhibit 402, that's got a fax
16 line of January 31 of 2017. Had you seen that document
17 before January 31 of 2017?

18 A. Yes.

19 Q. When?

20 A. In about 2005 or '06 I went to the courthouse in Banner
21 County to register my equipment and the clerk over there
22 came to the window and gave me this and I said, ma'am,
23 these aren't my trailers. She says who are they? I
24 says, it says Danial O. Mosher. She said, will you tell
25 your dad to please come in. I said, ma'am, my dad's

1 been dead in 1996. She said, whose been paying this? I
2 says, well, they're probably still dad's trailers but
3 Leonard just comes in and pays for the license plates.
4 So, yeah, I saw that and that's what, that's when I knew
5 that if dad had transferred this stuff, dad was, dad was
6 a smart businessman. He don't leave loose ends. If he
7 had given that stuff to Leonard there would have been a
8 bill of sale. These things would have transferred over
9 because that's just the way dad does business.

10 Q. And this, this experience that you just described, you
11 said that occurred in 2005 or 2006?

12 A. Somewhere like that when I was over there licensing some
13 of my tractors and some of my trailers and equipment. I
14 had like five pickups. I had a lot of farm machinery to
15 farm all the acres I owned.

16 Q. Okay, give me the year that you remember your daughter
17 setting in the tractor?

18 A. Dad purchased that tractor in '91. We went out there,
19 my daughter was born in 1980 and she's now a doctor.
20 She's 36. So it would have been, we had come back and
21 visited dad, so, yeah, it would have been some time. I
22 just remember her sitting on that tractor with grandpa.

23 Q. In Mr. Brenner's questioning you were asked, did sign a
24 release, did you ever sign a release?

25 A. Nope.

1 Q. You were unrepresented by counsel in the year 2012,
2 true?

3 A. You know, I called Greg Dyekman up and Greg Dyekman said
4 he represents the trust, I got to go get my own attorney
5 so I called John Sorensen up. So --

6 Q. When did you call John Sorensen up?

7 A. I don't know when, sometime. He's here so that's proof
8 I called him.

9 Q. I just want to know when that representation started.
10 When you first had a lawyer?

11 MR. SORENSEN: Objection on relevance, Your
12 Honor. This is going way-far afield from anything that was
13 covered in, in examination.

14 THE COURT: Ms. Oldemeyer, what's the
15 relevance of when he hired counsel?

16 MS. OLDEMEYER: Because he indicated he didn't
17 sign a release and I want to know if that was on advice of
18 counsel or whether he was making a choice.

19 THE COURT: Well, if that's the case then
20 that's irrelevant because it's attorney-client privilege so
21 the objection is sustained.

22 MS. OLDEMEYER: Okay.

23 BY MS. OLDEMEYER:

24 Q. I'm going to go back and ask you about, you, in Mr.
25 Brenner's question you said, he knew I wanted, and I

1 think you were referring to the Hacker Circle home?

2 A. Yeah, mom made it very clear.

3 Q. No, I just want to ask you a question about that

4 testimony, that he in that statement, he knew I wanted

5 the Hacker Circle home, are you referring to Leonard

6 Mosher?

7 A. Yes.

8 Q. Was an appraisal ever prepared in the, before you moved

9 out in May of 2012?

10 A. I don't know.

11 Q. Okay, did you ask the trustee that an appraisal be

12 prepared for the Hacker Circle home?

13 A. I wasn't the trustee and I wasn't in charge of that. I

14 don't know.

15 Q. But you were communicating with the trustee?

16 A. What I did was everybody was aware that I wanted that

17 townhouse so I went to Janice and I said to Janice, I

18 said I've got some cash, farming pays. I said I would

19 like to buy the townhouse. It needs a new roof, it

20 needs carpeting, it needs paint. I said, you know,

21 appraisers are like opinions, everybody has one.

22 Everything is only worth what somebody is willing to pay

23 so I called Janice and I said, Janice, I'll give you

24 \$180,000 cash today. I get 60,000 back, Leonard gets

25 60,000 and Janice gets 60,000. I will eat the roof. I

1 will eat the carpeting. There will be no real estate
2 commission, no nothing. I will take the property as is.
3 So I was going to have, I was going to have 230, 220 in
4 it and I had the cash to do. So Janice called Leonard
5 up on the phone and Leonard say, no, it's worth 350,000
6 and I thought, you know what, Janice came back to me and
7 said Leonard want's 350 and I thought, you know, Leonard
8 you never bought a house in your life, you don't know
9 what the opinion of real estate is. You know, I've been
10 buying, I like buying real estate. So I just told
11 Janice, I said, nothing personal against your client but
12 I don't compete with stupidity. So I just said forget
13 it. I'm out of the, I'm out of the running so I went and
14 bought me a modular and put it on one of my farms.

15 Q. And you did that within six days of your mom passing
16 away?

17 A. Absolutely.

18 Q. So this conversation about offering Janice 170 cash for
19 the house occurred between February 6 and February 12 of
20 2012?

21 A. It happened real quick because I wanted to know, do I
22 move, what do I do because I knew Leonard was going to
23 be very unreasonable. So do I move out, do I move back
24 in, what do I do? So let's just get the ball rolling so
25 I can cross this one off the list and go to buy

1 something else.

2 Q. Have you seen the trust documents that talk about the
3 disposition of the Hacker home?

4 A. I, it's been a long time. And what does it say?

5 Q. If one of the beneficiaries wants to purchase the house
6 the trustee shall obtain an appraisal at the trust's
7 expense to sell the shares of the other two
8 beneficiaries in the house at that appraised value?

9 A. I don't agree to that. Just because the trust says we
10 should do it doesn't mean I have to do it. I've had a
11 Wyoming real estate broker's license since 1997. The
12 salesman I passed the first time and the broker's I
13 passed the first time. I do not put value on
14 appraisals. Something is only worth what somebody's
15 willing to pay and that's from practical experience of
16 being in the real estate game and just because the trust
17 said that, I didn't want to go buy it so I didn't buy
18 it.

19 Q. Earlier in your testimony with Mr. Brenner you mentioned
20 Leonard Mosher has anger management issues, he carries a
21 gun and things like that. At what point in time did
22 your relationship with your brother come where you
23 feared you might fear for your safety?

24 A. When the trust was changed.

25 Q. In 2009?

1 A. Yeah, and I'll tell you why, the reason the trust was
2 changed.

3 Q. No, that's not my question, so since 2009 you felt your
4 brother had anger management issues and you felt for
5 your safety?

6 A. I grew up with Leonard. I saw his anger. I saw his
7 control. I saw how he was uncontrollable. I've been
8 the blunt of it. Yeah.

9 Q. So, why did you never change the locks on the Hacker
10 Circle home knowing he had a key?

11 MR. SORENSEN: Your Honor, I'm going to
12 objection at this, this is going way far afield and the
13 relevance of this if any is so remote it's not, it's just
14 taking valuable court time for nothing.

15 THE COURT: What is the relevance of
16 whether or not he had the locks changed?

17 MS. OLDEMEYER: I think it goes to this
18 witnesses credibility and some of the testimony he's given
19 about being afraid of Leonard Mosher and he being a threat
20 when he lived for three plus years given his testimony
21 knowing Mr. Mosher had a key and could come and --

22 MR. DENNIS MOSHER: I did have the --

23 THE COURT: Hang on, you've got to let --

24 MS. OLDEMEYER: -- come and go through his home as
25 he claimed Leonard could and did.

1 THE COURT: I'm going to overrule the
2 objection.

3 You can answer that question. Did you have the locks
4 changed?

5 BY MS. OLDEMEYER:

6 A. I had the locks changed and I gave a copy to mom and
7 Janice and they gave a key to Leonard.

8 MS. OLDEMEYER: I don't have any other
9 questions.

10 THE COURT: MR. Brenner, do you have
11 additional questions for this witness?

12 MR. BRENNER: No, Your Honor.

13 THE COURT: Mr. Sorensen, do you have --

14 MR. SORENSEN: Not at this time.

15 THE COURT: Okay, thank you, Mr. Mosher,
16 you can step down.

17 MR. DENNIS MOSHER: Thank you.

18 Who do I give these to?

19 THE COURT: You can just, why don't you
20 leave them right here on the corner of the desk and that way
21 we can see what everybody wants to do.

22 So what is everyone's preference here at this point? Do
23 we want to take, it's five after 4:00. I don't mind if we
24 want to continue for a while we certainly can.

25 Ms. Oldemeyer, do you have a preference?

1 MS. OLDEMEYER: (No audible response had.)

2 MR. BRENNER: I'd like to go ahead because I,
3 you're right about the time.

4 THE COURT: I understand that's why I'm
5 asking. I'm not --

6 MR. BRENNER: I'm willing to go ahead.

7 THE COURT: Okay.

8 MS. OLDEMEYER: We'd call Leonard Mosher.

9 THE COURT: Mr. Mosher, if you'll step up
10 for me, please.

11 Watch your step before you take your seat and if you'll
12 face me and raise your right hand.

13 LEONARD OWEN MOSHER

14 Called as a witness on his own behalf,
15 having been first duly sworn,
16 testified as follows:

17 THE COURT: All right, please take your
18 seat and state your full name for the record

19 MR. LEONARD MOSHER: Leonard Owen Mosher

20 THE COURT: Mr. Mosher, you're under oath.

21 Ms. Oldemeyer has called you to the stand, she'll question
22 you first. I don't image we'll get to any questions from the
23 other attorneys yet today but on the off chance that we do
24 Mr. Sorensen would start and then Mr. Brenner would have
25 additional questions after that.

1 Ms. Oldemeyer, you may inquire of this witness.

2 DIRECT EXAMINATION

3 BY MS. OLDEMEYER:

4 Q. Please state your home address, sir?

5 A. 4318 Hayes Avenue, Cheyenne, Wyoming.

6 Q. What is your occupation?

7 A. A farmer.

8 Q. In which state do you farm ground?

9 A. Nebraska.

10 Q. How many acres do you farm?

11 A. About 2,380 acres.

12 Q. You're here about issues related to your mother's trust,
13 true?

14 A. Yes.

15 Q. You understand you brought the lawsuit?

16 A. Yes.

17 Q. Per Exhibit 102, the first amendment to the trust, your
18 mother switched the trustee from you to your sister,
19 Janice Herrell, are you aware of that?

20 A. Yes.

21 Q. When did you first learn that your mother switched the
22 trust from you to Janice Herrell?

23 A. I, I thought I was the executor of the trust so I hired
24 Gay Woodhouse and then once she got the copy of
25 everything she informed me that I was not.

1 Q. So it was after your mother's death?

2 A. After my mother's death.

3 Q. In the lawsuit do you want your sister to follow the
4 terms of the trust that are reflected in Exhibits 101
5 102 and 103?

6 A. Yes.

7 MS. OLDEMEYER: I am going to approach and hand
8 you a notebook.

9 THE COURT: You are welcome to come and go
10 as you see fit.

11 BY MS. OLDEMEYER:

12 Q. Could you turn to Exhibit 113?

13 A. Okay.

14 Q. What is Exhibit 113?

15 A. One thirteen is communications from my attorney at that
16 time, Gay Woodhouse, to Gregory Dyekman and dated
17 October 16, 2012.

18 Q. To your memory what were the issues that you were having
19 Gay Woodhouse communicate with Greg Dyekman over in
20 October of 2012?

21 A. One is when the ground was going to be, or when the deed
22 was going to give out the ground as the trust would say
23 and one of the reasons why I had issues is because being
24 a winter wheat farms the ground is being farmed an then
25 a crop is being planted, crop insurance is going on to

1 it, so then you have the farm program coming in, so
2 every piece of farm ground there is constantly something
3 in play and so that's why I --

4 Q. And with respect to all those issues was property taxes
5 also an issue that Gay Woodhouse raised in October of
6 2012 on your behalf?

7 A. Yes.

8 Q. And this relates to the farm ground that you were
9 farming, the south half of Section 24, Township 17,
10 Range 58 west in Banner County, Nebraska?

11 A. Yes.

12 Q. And did Gay Woodhouse also raise on your behalf a
13 request that you be updated on trust administration
14 activities like sale of the residence and personal
15 property items in the home?

16 A. Yes.

17 MS. OLDEMEYER: We'd offer Exhibit 113.

18 THE COURT: Mr. Brenner?

19 MR. BRENNER: Object, Your Honor, on hearsay
20 and relevance.

21 THE COURT: Mr. Sorensen, any additional
22 objections.

23 MR. SORENSEN: No, Your Honor.

24 THE COURT: Ms. Oldemeyer, did you want to
25 be heard on those objections?

1 MS. OLDEMEYER: No.

2 THE COURT: I'll take Exhibit 113, I'll
3 have to review it to decide whether it's admissible or not.
4 (Receipt of Exhibit No.
5 113 is taken under
6 advisement by the court.)

7 BY MS. OLDEMEYER:

8 Q. Can you briefly relate for the court the history of you
9 farming, and so I don't have to repeat the legal
10 description when I, in my questioning when I refer to
11 the south half I'm referring to the south half of
12 Section 24, Township 17, Range 58 west in Banner County,
13 okay?

14 A. Okay.

15 Q. So can you briefly relate for the court the history of
16 you farming the south half?

17 A. I've been farming the south half ever since I got out of
18 high school which is back in 1971.

19 Q. Did you farm it with your dad?

20 A. Yes.

21 Q. And did you farm it after your dad passed?

22 A. Yes.

23 Q. After your dad passed did you have an agreement with
24 your mother about continuing to farm that property?

25 A. Yes.

1 Q. What was the agreement with your mother?

2 MR. BRENNER: Objection, Your Honor,
3 foundation, hearsay.

4 THE COURT: Well, here was my hesitancy in
5 the discussion about what we're doing with furniture and what
6 we're doing with everything else, I, there was already
7 discussion about what the arrangement was and that was, with
8 Mrs. Herrell. I'm going to overrule the objection and he can
9 tell me what. The objection will continue.

10 MR. BRENNER: Thank you.

11 MR. LEONARD MOSHER: Go ahead and answer?

12 THE COURT: Yes.

13 BY MS. OLDEMEYER:

14 A. Okay, the agreement I had was with my dad and my mother
15 before my dad passed away and it was about six years
16 before my father passed away and he had cancer for about
17 the last four years of his life and he was in no way
18 shape or form to do anything on the farm. So I more or
19 less, he come to me and he says, if you farm this ground
20 and pay the taxes on it, pay the liability insurance on
21 it, pay the insurance on the house, that would pretty
22 much equal about the same income as if there was any
23 income on the ground at that time. And my dad also said
24 that if, if you can't do it then he said just forget it
25 but that was the agreement that I had with my dad and it

1 continued with my mother after my dad's death.

2 Q. And so with respect to any income over and above those
3 expenses what were you to do with it?

4 MR. LEONARD MOSHER: Pardon?

5 BY MS. OLDEMEYER:

6 Q. If there was income over and above those expenses what
7 were you to do with it?

8 A. Then that was just for my income.

9 Q. Okay,

10 MR. BRENNER: I'm sorry, I couldn't hear
11 that. What was that?

12 MR. LEONARD MOSHER: That was just my income.

13 BY MS. OLDEMEYER:

14 Q. With respect to your testimony about paying insurance on
15 the house, is that the Hacker Circle home?

16 A. Yes.

17 Q. After your mother died did you learn that the south half
18 that you'd been farming was to be divided with your
19 sister getting the southwest quarter and you getting the
20 southeast quarter?

21 A. Yes.

22 Q. Did you communicate with your sister about you taking
23 the southwest quarter?

24 A. Yes. I offered her a deal through her attorney.

25 Q. Did you ever talk to her directly?

1 A. No.

2 Q. And did she reject that?

3 A. Through her attorney, yes.

4 Q. After your mother died in 2012 who was to pay the
5 property taxes of the south half?

6 A. The trust.

7 Q. In the year 2012 when the first payment became due no
8 later than May 1, 2012, who paid those?

9 A. I did.

10 Q. When the second payment came due no later than September
11 1, 2012, who paid those?

12 A. I think I did.

13 Q. Turn to Exhibit 115, at some point in time did you gain
14 information that your sister Janice Herrell was required
15 to devote tremendous effort to cleanup and repair the
16 house after Stan Mosher vacate?

17 A. Yes.

18 Q. And where did you get that information?

19 A. From my attorney through a letter from Greg Dyekman
20 dated November 7, 2012.

21 Q. Was that concerning to you?

22 A. Yes, it was.

23 Q. Why?

24 A. Because I, nobody, no communications to me at all and I
25 did not know what was all going on.

1 Q. And did you think it was something that somehow should
2 be adjusted in the trust accounting?

3 A. Yes, once I learned that there was quite a little bit of
4 clean up expense, yes, I felt that Stan should be paying
5 for it.

6 Q. And did you ask your attorney to convey that to the
7 trustee's attorney?

8 A. Yes.

9 Q. And is Exhibit 115 her fulfilling that request?

10 A. Yes.

11 Q. Did you also have a concern in November of 2012 about
12 the contents of the home?

13 A. Yes.

14 Q. What was your concern in November of 2012 about the
15 contents of the home?

16 A. Well, my mother had furniture and one of the things was,
17 I was, would have kind of liked it for sentimental
18 reasons so I had a piece of furniture. I did not have
19 any so, that's kind of what I wanted and then it was
20 good furniture so there was a value to it and in the
21 insurance that I as paying on the house I had full
22 content replaceable insurance.

23 Q. I want to ask you first, there was testimony earlier
24 today about somebody putting, I think it was a bedroom
25 set in the basement for you, do you recall that

1 testimony?

2 A. Yes.

3 Q. Were you ever offered a bedroom set of your mothers?

4 A. No, I wasn't. There was no communications of any kind.

5 Q. And you mentioned good furniture, can you relate for the
6 court what you mean by it was good furniture?

7 A. My mom and dad did buy, they bought oak furniture. I
8 mean everything was sold wood. There was nothing cheap.

9 Q. And how do you know that?

10 A. Well, because sometimes you had to move this stuff and
11 it was pretty heavy to move.

12 Q. And you mentioned insurance, full content insurance, did
13 you pay for insurance on the Hacker Circle home?

14 A. Yes, I did plus along with an umbrella policy.

15 Q. Okay, and did you hear your brother testify that he also
16 insured the home?

17 A. Yes, I did.

18 Q. Did you ever communicate with your brother about whether
19 the home was double insured?

20 A. No, I did not. I never even thought about it.

21 Q. Okay, did you ask Gay Woodhouse to convey to Mr. Dyekman
22 your concerns about Stan Mosher removing items from the
23 home?

24 A. Yes.

25 Q. And the possible value of those items?

1 A. Yes.

2 Q. And whether or not she was aware he was removing those
3 items?

4 A. Yes, through a letter from Greg Dyekman.

5 MS. OLDEMEYER: We'd offer Exhibit 115.

6 MR. BRENNER: Object, Your Honor, foundation,
7 hearsay, relevance.

8 THE COURT: Mr. Sorensen.

9 MR. SORENSEN: The same.

10 THE COURT: Did you have additional
11 comments you wanted to make, Ms. Oldemeyer?

12 MS. OLDEMEYER: No, Your Honor.

13 THE COURT: The court will take Exhibit 115
14 and I'll rule on its admissibility as I have a chance to
15 review it.

16 (Receipt of Exhibit No.
17 115 is taken under
18 advisement by the court.)

19 BY MS. OLDEMEYER:

20 Q. If you could turn to Exhibit 116, please. Can you
21 identify for the court what is Exhibit 116?

22 A. One sixteen is a letter from my attorney at the time,
23 Gay Woodhouse, to Mr. Dyekman, dated November 28, 2012.

24 Q. And in that letter did she include an attachment that
25 you prepared?

1 A. Yes, she did.

2 Q. Would you tell the court a little bit about the
3 attachment that you prepared, what is it?

4 A. The attachment is because one of the things that was
5 brought up, even though I had the agreement with my
6 mother when I planted the wheat and everything, one of
7 the questions was brought up about, okay, what about the
8 income after she passed away, what about all these
9 expenses. And so this is a spreadsheet that I made up
10 using the expenses I had at the time.

11 Q. Okay, and so on page 3 of Exhibit 116, did you request
12 that you paid the property taxes for 2011 that were due
13 in 2012 on the southwest quarter?

14 A. Yes.

15 Q. And what was the amount that you indicated you paid?

16 A. Eight hundred and forty-one dollars.

17 Q. Is that on the southeast quarter on page 4 of Exhibit
18 116?

19 A. I'm sorry, okay, the southeast quarter of 24, property
20 taxes for 2011 was \$841.21.

21 Q. Okay, and that's on the southeast quarter, correct, on
22 page 4?

23 A. Yeah.

24 Q. If you could turn to the proceeding page, what is the
25 amount of property taxes paid in 2012 by that date on

1 the southwest quarter?

2 A. Southwest quarter was \$748.53.

3 Q. And so you pay those sums?

4 A. Yes.

5 Q. Would you have put them on your summary if you hadn't
6 paid?

7 A. No, I wouldn't have.

8 Q. And with respect to this November 28, 2012 letter were
9 you asking that the Nebraska property be distributed out
10 of the trust, you getting the southeast quarter and your
11 sister getting the southwest quarter?

12 A. Yes, I was.

13 Q. And why were you asking for that?

14 A. Because in 2013 we would have gone into a whole new
15 group of issues. 2014, by not distributing the property
16 we created a whole bunch of more problems which we're
17 here to discuss today.

18 Q. And your request that that distribution be made in
19 November of 2012, was that rejected?

20 A. Yes, it was.

21 MS. OLDEMEYER: We offer Exhibit 116.

22 MR. BRENNER: May I have one voir dire
23 question, Judge?

24 THE COURT: Yes.

25 VOIR DIRE EXAMINATION BY MR. BRENNER

1 BY MR. BRENNER:

2 Q. Mr. Mosher, would you look at, you said you prepared the
3 attached two pages?

4 A. Yes.

5 Q. And you see up in the top right corner one of them says
6 page two and the next one says page three?

7 A. Yes.

8 Q. And page one's not there, is it?

9 A. Page one was part of the email that I sent with this.

10 Q. But it's not there is it?

11 A. No, it's not.

12 MR. BRENNER: Your Honor, we would object on
13 the basis of hearsay and relevance and now adding that it is
14 not complete.

15 THE COURT: Mr. Sorensen, did you have any
16 objections to raise with Exhibit 116?

17 MR. SORENSEN: No, Your Honor.

18 THE COURT: Ms. Oldemeyer, did you want to
19 be heard with respect to any of those objections at this
20 time?

21 MS. OLDEMEYER: I do and I have page 1 and it's
22 part of another exhibit I think counsel has offered, but I'm
23 looking for a box that apparently I didn't bring in, it's
24 this box.

25 MR. BRENNER: Judge, it's, she objected to

1 the exhibit that I offered which had page 1.

2 THE COURT: Okay.

3 MR. BRENNER: So just as a --

4 MS. OLDEMEYER: Which exhibit is that, Mr.
5 Brenner?

6 MR. BRENNER: I believe it would be 404.

7 MS. OLDEMEYER: Exhibit 404 which deposition
8 exhibit number?

9 MR. BRENNER: Forty-four.

10 MS. OLDEMEYER: We would offer defense Exhibit
11 404 so that for purposes of responding to Mr. Benner's
12 objection to Exhibit 116.

13 MR. BRENNER: I won't object to receiving 404
14 but still the letter is the first two pages and that's still
15 on hearsay and relevance. Thank you.

16 THE COURT: For clarity in the record I
17 will receive Exhibit 404 and as to Exhibit 116 as with the
18 other series of emails between counsel the court will note
19 the objection and I'll rule on those, the admissibility of
20 those documents when I've had a chance to review them.

21 Ms. Oldemeyer, I'm going to give you about two more
22 questions and then I've got to go.

23 (Receipt of Exhibit No.
24 116 is taken under
25 advisement by the court.)

DIRECT EXAMINATION CONTINUED

(Exhibit No. 404 is hereby
made a part of the
official court record.)

MS. OLDEMEYER: Okay, no problem, Your Honor.

BY MS. OLDEMEYER:

Q. Can you look briefly at Exhibits 118 and 119. What are those?

A. Communications from Gay Woodhouse to Austin McKillip
which is my attorney dated April 1, 2013.

Q. And in Exhibit 118 which has been received into evidence did Mr. Dyekman offer on his behalf that, that you expect the trust now to pay the taxes he's going to need to send a check for one-third of the net proceeds to the trustee? Are you aware that he'd made that offer?

A. Yes.

Q. Did you accept that offer?

A. No. Actually, yes, I did.

Q. Okay, and what was your understanding of next proceeds?

MR. LEONARD MOSHER: What exhibit are you on?

MS. OLDEMEYER: I'm on Exhibit 118. I just put it up on the wall here, sir.

In the interest of time why don't we finish that up tomorrow morning.

THE COURT: That's fine.

1 So why don't you take a seat, Mr. Mosher.

2 Counsel, if you want to start taking things downstairs
3 you're welcome to do that. We'll reconvene in the morning
4 then at 9:00 in the county courtroom here in Kimball County
5 and I'll just remind everybody it's not a problem in that
6 respect that we have our trial continued tomorrow morning
7 just be aware that there will be 50 high school students
8 banging around the building as well so there'll be a lot of
9 activity in the building. So bear that in mind.

10 All right, see you in the morning.

11 MS. OLDEMEYER: Thank you, Your Honor.

12 (At 4:28 p.m. the evening
13 recess was taken
14 accordingly.)

15 (At 8:53 a.m. on February 28, 2017 in the district court
16 of Kimball County, in Kimball, Nebraska, before DEREK C.
17 WEIMER, JUDGE, with Ms. Tracy A. Oldemeyer appearing as
18 counsel for the plaintiff and Messrs. Robert M. Brenner and
19 Justin N. Hesser appearing as counsel for the defendant
20 Janice Herrell and Mr. John Sorensen appearing as counsel for
21 the defendant Dennis Mosher, the following proceedings were
22 had:)

23 THE COURT: This is Case Number CI 13 19.
24 This is the matter of Mosher v. Herrell and Mosher. The
25 record reflects that the Plaintiff Leonard Mosher is present

1 with Counsel Tracy Oldemeyer. The Defendant Janice Herrell
2 is present with Counsel Brenner and Counsel Hesser and Mr.
3 Dennis Mosher is present with his attorney John Sorensen.

4 These are civil proceedings in the district court of
5 Banner County. We are conducting the trial on the merits of
6 this matter in the Kimball County Court today having started
7 the trial yesterday. We had recessed after our session
8 yesterday during the presentation of the plaintiff's case in
9 chief. Mr. Mosher the plaintiff had taken the stand and he
10 was in the middle of his direct examination and we'll get
11 back to that here in a moment.

12 Let me visit with everyone a little bit in terms of
13 logistics for the day. We'll take a morning recess at some
14 point in the next couple of hours and give everybody a chance
15 to stretch their legs, that sort of thing. There are, just
16 because we're on a different floor I'll just give you a note
17 that there are facilities for everyone to use as needed that
18 are on this floor as well as both the floor above and below
19 us, so if you need those sorts of things they are available.
20 And then we'll plan to break sometime around lunch, the noon
21 hour for a short half hour or so lunch recess and then we'll
22 come back and continue with our afternoon session and look to
23 take another afternoon break sometime midafternoon and then
24 we'll need to be wrapping up at some point around that 4:30
25 time frame again for me this afternoon. So, we'll see where

1 we are as we work through the rest of the day.

2 Anything come up overnight that we need to go over
3 before we get back to the presentation of evidence, Ms.
4 Oldemeyer?

5 MS. OLDEMEYER: Not from plaintiff.

6 THE COURT: Mr. Sorensen?

7 MR. SORENSEN: No, Your Honor.

8 THE COURT: Mr. Brenner?

9 MR. BRENNER: Yes.

10 THE COURT: Okay.

11 MR. BRENNER: A couple of times yesterday
12 when objections were made to a piece of evidence and you
13 said, you said it two different ways, you said taken but
14 reserved to decide later.

15 THE COURT: Right.

16 MR. BRENNER: Then you used also I reserve it
17 until later, the word taken was, if the court understands I'm
18 not knowing whether or not, I think it meant or you meant,
19 that's why I'm asking, that all of those were reserved until
20 you make a later decision or whenever you do decide on the
21 receipt of the exhibits. Am I right?

22 THE COURT: I purposely chose the word
23 taken. I am leaving the building with them.

24 MR. BRENNER: Sorry. I didn't mean it that
25 way.

1 THE COURT: So, what I mean is I didn't
2 receive the exhibit.

3 MR. BRENNER: Thank you.

4 THE COURT: I took them so that they don't
5 leave the building with anybody other than me or her.

6 MR. BRENNER: Thank you. That's the only
7 reason for the question.

8 THE COURT: And then I will, I will as I'm
9 reviewing the evidence I'll make rulings relative to the
10 receipt of those exhibits when that, when the ultimate ruling
11 is made.

12 Other than that anything?

13 MR. BRENNER: That's it. Thank you, Your
14 Honor.

15 THE COURT: So with that then, again I
16 understand these quarters are a little more cramped than the
17 quarters were upstairs. I appreciate everyone's willingness
18 to accommodate. It's County Government Day so we have a
19 bunch of high school students here to learn about what goes
20 on in this building so they're using the big courtroom for
21 that purposes today.

22 So, Mr. Mosher, if you'll step up here. There is a step
23 here and it's a short foot fall so watch your step so you
24 don't stumble and before you take your seat I'll have you
25 face me and raise your right hand.

1 LEONARD OWEN MOSHER

2 Called as a witness on his own behalf,
3 having been first duly sworn,
4 testified as follows:

5 THE COURT: All right, please take your
6 seat.

7 I know we went over this yesterday but just again for
8 clarity in the record, Sir, would you state your full name
9 for the record.

10 MR. LEONARD MOSHER: Leonard Owen Mosher.

11 THE COURT: Mr. Mosher, you had begun your
12 direct testimony yesterday and we took the evening recess
13 during that testimony so I'm going to turn you back over to
14 Ms. Oldemeyer for further questioning. She will have
15 additional questions and then Mr. Sorensen, Mr. Brenner may
16 have questions after that.

17 Ms. Oldemeyer, you may continue then with your inquiry.

18 MS. OLDEMEYER: I don't have a copy of 404, is
19 it in the book?

20 MR. BRENNER: It's in the book.

21 MS. OLDEMEYER: It's in the book.

22 MR. BRENNER: Our book.

23 Where is the other book?

24 THE COURT: All of the books should be in
25 here I just was trying to find space for them.

DIRECT EXAMINATION CONTINUED

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BY MS. OLDEMEYER:

Q. In your notebook, Mr. Mosher, could you please turn to Exhibit 116, and if you could turn to page 3 of Exhibit 116. Do you recall yesterday we were talking about that and Exhibit 404 which is a copy of that plus one page was admitted into evidence but I want to ask you about this particular page. Could you explain to the court what the, the box that begins with Expense for the crop means?

A. Well, I had no way of communicating with the landowner or the trust at the time so this is my way to explain this a little bit and then what needed to be done and everything. It was a box that I just put in trying to communicate.

Q. Thank you. And yesterday when we left off we were asked, I was asking you about what was, what was the communication in January of '13 with respect to the terms of the agreement you would have with the trust for farming the south half of the Banner County property? What were those terms?

A. That I agreed to the terms of 1/3, 2/3 net.

Q. Net what?

A. Net expenses.

Q. Okay, February 2015 we're one year after your mother's

1 death, correct?

2 A. Yes.

3 Q. Had you received any accountings from the trustee?

4 A. No.

5 Q. If you could turn to Exhibit 122 in that notebook in
6 front of you. What is Exhibit 122?

7 A. It's a letter from attorney, my attorney Gay Woodhouse
8 to Mr. Dyekman dated February 25, 2013.

9 Q. And did Ms. Woodhouse send that on your behalf?

10 A. Yes.

11 Q. What issues on February 25, 2013 did you ask Gay
12 Woodhouse to address with the attorney for the trustee?

13 A. The issues with the farm equipment, 1988 grain truck.

14 Q. Had you received a list of equipment that Stan Mosher
15 prepared?

16 A. Yes.

17 Q. And you were, through your attorney responding to that
18 list that Stan Mosher prepared?

19 A. Yes.

20 Q. Back in February of 2013?

21 A. Yes.

22 Q. And did you in fact provide your attorney with a copy of
23 a title to a, is it a truck or piece of equipment?

24 A. It's a farm truck.

25 Q. Okay, and the purpose of providing a copy of that title

1 was what?

2 A. To show that I owned the truck.

3 Q. And had owned it since when?

4 A. Well actually if you look at the exhibit on page 3 of 3
5 that you'll see that my dad and I owned the truck
6 together from brand new but after my dad passed away it
7 just passed the owner to me.

8 Q. And that would be 1996?

9 A. Yes, yeah, that was 12-13-96.

10 Q. And did you express through your attorney that most of
11 the equipment listed on Stan's list was at least 33-
12 years-old and is no longer useful in farming operations?

13 A. Yes. I did

14 Q. Through your attorney on February 25, 2013 did you also
15 convey to the attorney for the trustee that your
16 understanding was that Stan Mosher caused damage to the
17 home which reduced the value?

18 A. Yes.

19 Q. And that you felt that Stan Mosher's use of the home and
20 the poor condition of the home when he final left it
21 definitely effected when the home could be ready to be
22 put on the market?

23 MR. BRENNER: I'm going to objection, Your
24 Honor, leading.

25 THE COURT: That's sustained.

1 MS. OLDEMEYER: I'd offer Exhibit 122.

2 THE COURT: Mr. Sorensen?

3 MR. SORENSEN: I reserve.

4 THE COURT: Mr. Brenner?

5 MR. BRENNER: Hearsay and relevance.

6 THE COURT: Anything else, Mr. Sorensen?

7 MR. SORENSEN: No, Your Honor.

8 THE COURT: Ms. Oldemeyer, did you have
9 additional comments you wanted to make with respect to 122?

10 MS. OLDEMEYER: No, Your Honor.

11 THE COURT: The court will take Exhibit 122
12 and I'll reserve ruling until I've had a chance to review the
13 document.

14 (Receipt of Exhibit No.
15 122 is taken under
16 advisement by the court.)

17 BY MS. OLDEMEYER:

18 Q. In the February 25 letter of 2013 that your attorney
19 sent to the trustee's attorney, Greg Dyekman did she
20 also raise the issue of property taxes?

21 MR. BRENNER: I'm going to object, Your
22 Honor, testifying from an instrument not received.

23 THE COURT: That's overruled.

24 BY MS. OLDEMEYER:

25 A. Yes.

1 Q. And did she indicate that you in fact paid the taxes.

2 MR. BRENNER: Same objection and leading.

3 THE COURT: It's leading so that's
4 sustained.

5 BY MS. OLDEMEYER:

6 Q. What did your attorney state with respect to the taxes?

7 MR. BRENNER: I'm going to object, Your
8 Honor.

9 THE COURT: That's hearsay. I need to know
10 what he, I'm sustaining the hearsay objection. What she said
11 is hearsay.

12 BY MS. OLDEMEYER:

13 Q. Did you, did you communicate through your attorney
14 whether you paid the taxes?

15 A. Yes, I had and I state that I was not obligated to pay
16 the taxes.

17 Q. In February 25 of 2013 did you attorney on your behalf
18 mention anything about jewelry?

19 A. Yes.

20 Q. And what do you recall the attorney mentioning about
21 jewelry?

22 MR. BRENNER: I'm going to object, Your
23 Honor, hearsay.

24 THE COURT: That's hearsay, that's
25 sustained.

1 BY MS. OLDEMEYER:

2 Q. What did you ask your attorney to convey on your behalf
3 with respect to jewelry?

4 A. I was questioning what happened to three rings my mother
5 had.

6 Q. And those three rings, what was important to you about
7 them?

8 A. That they had enough value that they should be
9 considered property of the estate.

10 Q. And when you say the estate is that the trust?

11 A. The trust, yes.

12 Q. Let's turn to Exhibit 125. In May of 2013 had you
13 retained the law firm of Kline Williams to also
14 represent your interests?

15 A. Yes.

16 Q. Why?

17 Q. Gay Woodhouse was a local Wyoming and we were dealing
18 with Nebraska real estate. My mother passed away in
19 Colorado and we were using a Wyoming trust and I needed
20 a law firm that was qualified to practice in all three
21 states.

22 Q. Okay, and do you recall in May of 2013 whether the
23 attorneys conveyed any information to Mr. Dyekman on
24 your behalf?

25 A. Yes, on May 31, 2013.

1 Q. And what do you recall asking Kline Williams to convey
2 to Greg Dyekman in May of 2013?

3 MR. BRENNER: Your Honor, he's reading from
4 an instrument to be able to testify, apparently it's not from
5 his own memory and so he's having to refresh his memory by
6 reading the instrument in front of him. We would object to
7 that use and what he's doing, Your Honor.

8 THE COURT: Ms. Oldemeyer?

9 MS. OLDEMEYER: I think its proper to have a
10 witness refresh his recollection from a document.

11 THE COURT: I think that's true but I think
12 you have to do that in the right sequence. Do you remember?
13 No, I don't. Would something help you refresh your
14 recollections? So there is a record of what it is he's
15 doing. So the objection at this point is sustained.

16 BY MS. OLDEMEYER:

17 Q. In May of 2013 did you ask your attorney to communicate
18 with Greg Dyekman?

19 A. Yes.

20 Q. About trust issues?

21 A. Yes.

22 Q. In May of 2013 had you received an accounting?

23 A. No, I had not.

24 Q. In May of 2013 had the issue with respect to the rings
25 that you felt should be in the trust been resolved?

1 A. No.

2 Q. Had the issues with respect to your brother's, your
3 impression of, of the issues related to Stan Mosher and
4 the Hacker Circle home been resolved?

5 A. No.

6 Q. Do you recall a period of time where you were asked to
7 sign a receipt and release?

8 A. Yes.

9 Q. And what do you recall about being asked to sign a
10 receipt and release?

11 A. I was asked to sign the receipt and release before I'd
12 receive any trustee proceeds.

13 Q. And were you asked, do you recall when you were asked to
14 sign that receipt and release?

15 A. It was in, I think in the summer of 2012.

16 Q. You were asked before you filed the lawsuit?

17 A. Yes, it was before the suit was filed.

18 Q. Okay, and turn your attention just chronologically to
19 the year 2013 did the, did the trust pay the taxes on
20 the south half of the property you farmed in Banner
21 County that was in the name of the trust?

22 A. In 2013 I paid the first half.

23 Q. And do you recall that amount?

24 A. Roughly about \$1,000.

25 Q. Okay, can you explain for the court why you filed this

1 lawsuit in August of 2013?

2 A. I was asked to sign a release before I'd receive
3 anything. I needed communications with the farm ground,
4 both farm program, crop insurance, liability insurance,
5 nothing was moving at all so I asked to file the suit.

6 Q. Had the trust paid any of the property taxes by that
7 point in time on the south half?

8 A. No.

9 Q. Is there an Exhibit 294 in that notebook? It's a loose
10 document? It's a copy of Exhibit 294?

11 A. No, there's not.

12 MS. OLDEMEYER: Your Honor, may I approach with
13 a copy?

14 THE COURT: Yes. You're free to move
15 around as you see fit.

16 MS. OLDEMEYER: Better not do it very much
17 though.

18 THE COURT: Just tight quarters. Tripping
19 hazards all around.

20 BY MS. OLDEMEYER:

21 Q. Mr. Mosher, I've handed you a copy of Exhibit 294, have
22 you ever seen that document before?

23 A. Yes, I have.

24 Q. And did you see that approximately when?

25 A. I seen it September 4 of 2013 also I've seen it numerous

1 times since then.

2 Q. Did you have any concerns upon your review of Exhibit
3 294?

4 A. Yes, I did.

5 Q. What were your concerns?

6 A. Well, first of all the accounting is a draft.

7 Q. Anything else?

8 A. Without refreshing my memory with it I can't remember.

9 Q. Well, let me ask it this way, do you recall whether you
10 had received any proceeds from the sale of the Hacker
11 Circle home when you reviewed that in September of 2013?

12 A. No, I had not.

13 Q. Do you recall, do you recall if Exhibit 294 in any way
14 addressed jewelry?

15 A. Nothing was being addressed at that time.

16 Q. What about anything being addressed with respect to
17 furnishing that were in the Hacker Circle home?

18 A. No, nothing was being addressed at the time.

19 Q. Or what about your concerns about damage to Hacker
20 Circle caused by Stan's occupancy?

21 A. Yeah, at that time I had no communications that anything
22 was being done.

23 Q. Did there come a point in time where you became aware
24 that the trust had paid \$2,100 for a survey?

25 A. Yes, I did.

1 Q. And what did you think of that?

2 A. If you go back to the trust document which is a very
3 basic well written document it doesn't say that any
4 survey has to be done to give out the deeds.

5 Q. And in September of 2013 had you received a deed deeding
6 the southeast quarter of the Banner County property you
7 were farming? Had you received a deed?

8 MR. LEONARD MOSHER: What was the date again?

9 MS. OLDEMEYER: September of 2013.

10 BY MS. OLDEMEYER:

11 A. No, I had not.

12 Q. Let's turn your attention then to January of 2014. In
13 January of 2014 did you receive any distributions from
14 the trust?

15 A. Yes.

16 Q. And what distributions do you recall receiving in
17 January of 2014?

18 A. The deed to the southeast quarter.

19 Q. Okay, did you also receive any cash?

20 A. Yes, I did.

21 Q. How much cash did you receive?

22 A. Fifty thousand.

23 Q. How did you receive it?

24 A. Just got the mail one day and there was a check.

25 Q. Was there --

- 1 A. No explanation what it was for or anything.
- 2 Q. Did you also receive copies of any mineral deeds?
- 3 A. No.
- 4 Q. At some point in time did you receive by way of deeds
- 5 any mineral interests that you felt that you were
- 6 entitled to under the trust?
- 7 A. No.
- 8 Q. Do you believe you received all of the mineral interest
- 9 you're entitled to under the trust?
- 10 A. One of the reasons of this suit is to clarify everything
- 11 that was supposed to be done in the trust.
- 12 Q. At some point in time did you learn a mineral title
- 13 search needed to be done?
- 14 A. I was unaware of what the minerals were so the only
- 15 thing I understood was what was the Banner County ground
- 16 and I think I had a pretty good idea of who owned that
- 17 but I don't know of any other properties.
- 18 Q. Are you aware of whether the trust paid for a mineral
- 19 title search?
- 20 A. Yes, I am.
- 21 Q. And what do you think of the trust paying for a mineral
- 22 title search?
- 23 A. The search just benefited Janice.
- 24 Q. Do you think it's a proper trust expense?
- 25 A. No.

1 Q. If you could turn to Exhibit 133, the last page. This
2 is an exhibit that's been received into evidence. What
3 is depicted on the last page of Exhibit 133?

4 A. A copy of an appraisal of two diamond rings.

5 Q. And what are those diamond rings?

6 A. Those are my mother's rings that she give me one time
7 that she wanted insurance put on in case they were lost
8 or stolen or whatever and so I went to the insurance
9 company and they said I had to have an appraisal so
10 Tellman's Jeweler in Scottsbluff was able to do that
11 appraisal.

12 Q. When was the last time you had physical possession of
13 the two rings depicted on the last page of Exhibit 133?

14 A. At the time of the appraisal.

15 Q. Which was when?

16 A. It was 2009.

17 Q. After you had possession of them what did you do with
18 those rings?

19 A. Gave them back to my mother.

20 Q. And have you seen them since?

21 A. No.

22 Q. You mentioned insurance in that was there a point in
23 time where you were purchasing insurance on Hacker
24 Circle?

25 A. Yes, I was.

1 Q. And so is it Hacker Circle insurance that you were
2 referring to?

3 A. Actually the, what happened was I was insured with Farm
4 Bureau for some reason for 15, 18 years all of a sudden
5 decided that they weren't going to insure property in
6 Nebraska so I was forced to, that was the reason why I
7 went to another insurance company and that's also going
8 through two different insurance companies since then.
9 They got all put on one policy.

10 Q. But those rings were on an insurance policy that you
11 purchased on Hacker Circle, true?

12 A. Yes.

13 Q. Exhibits 107, 108 and 109 are additional accountings
14 received into evidence. Have you seen those?

15 A. Yes, I have.

16 Q. And upon your review of those accountings, do you have
17 any concerns about trust administration?

18 A. Yes, I do.

19 Q. What are those concerns?

20 A. Well, first of all this is a draft and then, and then
21 also the IRS tax refund, there's a lot of refunds here.
22 There's some money that is not here that has been later
23 discovered and also when the sale of the property on
24 Hacker Court, and this was dated April 30 of 2014 it
25 also shows that the proceeds for the sale of the house

1 sat pretty much in a bank account for over a year before
2 they were distributed. Also not all of the proceeds
3 from the sale of the house have been distributed as of
4 today as is what is stated in the trust.

5 Q. And in any of the additional accounting you've seen does
6 it account for the issues of jewelry that you believe
7 should be in the trust?

8 A. No, it doesn't.

9 Q. Who do you believe possess the jewelry?

10 A. Janice.

11 Q. Why?

12 A. Because my mother was with her down in Colorado and I
13 think that through the time she was in the nursing home
14 and whatever that I think that Janice currently has
15 possession.

16 Q. In any of those accountings does it address the issues
17 raised previously through your attorney with respect to
18 furnishings?

19 A. No, it does not.

20 Q. Or Stan's occupancy of the Hacker Circle home?

21 A. No.

22 Q. For purposes of this litigation did you kind of prepare
23 an all-inclusive list of what you believe are issues or
24 damages that you seek from the court with respect to
25 relief?

1 A. Yes.

2 Q. And did you memorize that list?

3 A. No.

4 Q. Can you relate, would it be helpful to refresh your
5 recollection by looking at the list?

6 A. Yes, it would.

7 MS. OLDEMEYER: Your Honor, may I approach with
8 Exhibit 263?

9 THE COURT: Yes.

10 BY MS. OLDEMEYER:

11 Q. Actually are you able to read things if I post them on
12 the back wall?

13 A. Yes.

14 MS. OLDEMEYER: Why don't we do that.

15 BY MS. OLDEMEYER:

16 Q. Is that too small for you, sir?

17 A. Just a little bit. That's fine right there.

18 Q. With respect to attorney's fees do you seek recovery of
19 attorney's fees in this case?

20 A. Yes.

21 Q. Can you explain to the court why you seek recovery of
22 attorney's fees?

23 A. Because a very basic clear written trust has not been
24 fully fulfilled as we are speaking today and I also had
25 to hire, actually one attorney and then go to a second

1 attorney before anything was paid or distributed and
2 that was almost, almost 23 months from the passing of my
3 mother before anything was distributed.

4 Q. With respect to Gay Woodhouse's firm, how much have you
5 paid her firm?

6 A. It was \$2,800.

7 Q. And with respect to Kline Williams, how much did you pay
8 Kline Williams in the year for 2013?

9 A. It was --

10 MR. BRENNER: Your Honor, I'm going to object
11 as to not relevant at this point in the case as to whatever
12 his attorney's fees or anything.

13 THE COURT: I'll overrule it. He can
14 finish.

15 MR. BRENNER: Continuing objection?

16 THE COURT: Yes.

17 MR. BRENNER: Thank you.

18 BY MS. OLDEMEYER:

19 A. -- is 12,300.

20 Q. And in 2014?

21 A. 7,177.

22 Q. And in 2015?

23 A. 21,696.

24 Q. And in 2016?

25 A. 4,830.

1 Q. And you've incurred additional fees here in 2017,
2 correct?

3 A. Yes, I have.

4 Q. How much have you paid to date?

5 A. That figure up there is a little old. It's probably --

6 MR. BRENNER: Your Honor, I'm going to object
7 again, speculation, foundation, hearsay.

8 THE COURT: I understand the nature of the
9 objection. I'll allow him to tell me what he thinks his
10 lawyer's fees are.

11 BY MS. OLDEMEYER:

12 A. To this date about 15,000.

13 Q. Did you estimate the value of the contents of the Hacker
14 Circle home that you think should have been adjusted by
15 the trust?

16 A. Yes, I did.

17 Q. And what was that amount?

18 A. Well, considering that the furniture was all good
19 quality and that was stated yesterday in testimony also
20 that it was good quality furniture, I figure at least
21 1/3 of that value should be about 5,000.

22 MR. SORENSEN: I'll object and move to strike
23 on foundation, Your Honor, speculation, conclusion.

24 THE COURT: I think it goes to weight
25 versus admissibility. I'll overrule the objection.

1 BY MS. OLDEMEYER:

2 Q. Do you also think that part of the trust should have
3 been the value of the two rings that we just looked at?

4 A. Yes.

5 Q. Okay, and the values that you assign to those?

6 MR. BRENNER: Same objection, Your Honor,
7 hearsay, foundation, relevance at this point, speculation.

8 THE COURT: The objections are overruled
9 and I'll find that it's a weight versus admissibility issue.

10 Go ahead.

11 BY MS. OLDEMEYER:

12 A. It is roughly about 8,000.

13 Q. Okay, did you include the \$2,100 for the survey, right?

14 A. And you mentioned --

15 MR. BRENNER: This, Your Honor, I'm sorry but
16 is this whole line I'm having a continuing objection?

17 THE COURT: Yes.

18 MR. BRENNER: Thank you.

19 THE COURT: That's fine.

20 BY MS. OLDEMEYER:

21 Q. And you mentioned the Hacker Circle Court proceeds that
22 sat in a bank account for a year?

23 A. Yes.

24 Q. Did that cause you any harm?

25 A. Well, according to the trust it wasn't distributed so

1 somebody should be paying interest on it.

2 Q. And then do you challenge the trust expense of the
3 mineral search?

4 A. Yes.

5 MR. BRENNER: Object, Your Honor, also
6 leading.

7 THE COURT: That's sustained.

8 BY MS. OLDEMEYER:

9 Q. Let's look, well, do you seek in this case recovery of
10 Banner County property taxes that you paid?

11 A. Yes, I did.

12 Q. And you stated those amounts in your testimony. You
13 questioned trust expenses related to attorneys' fees?

14 A. Yes.

15 Q. Why?

16 A. Because if the trust was followed though they wouldn't
17 exist.

18 Q. And do you ask the court to have the mineral interests
19 deeded to you appropriately per the terms of the trust?

20 A. Yes, I do.

21 Q. And you mentioned earlier money that came to light that
22 should have been in the trust, what are you referring to
23 there?

24 A. On a 2012 tax return of my mother's there was some
25 interest money there.

1 Q. Is that the money we covered in Janice Herrell's
2 testimony yesterday?

3 A. Yes. Yes, that information just came to light here
4 about a month ago.

5 Q. Let's go to Exhibit 267, the third page. First of all
6 have you seen this letter date April 27, 2015? I don't
7 have a copy for you but do you know if you've ever seen
8 it?

9 A. Yes.

10 Q. Well, let me ask it this way, do you ever recall a time
11 where the trustee was indicating to you that you were
12 going to be required to produce a substantial amount of
13 documentation related to farming of the south half?

14 A. Yes.

15 Q. And what was your reaction to that?

16 A. I was actually asked to present documents all the way
17 back to the year 2000 that showed farming expenses, tax
18 returns, checks, cancelled checks, and I was a little
19 surprised because my mother passed away in February 6 of
20 2012 and I was really surprised that to settle the trust
21 I had to prove documents back to the year 2000.

22 Q. In this case have you produced summaries of your farming
23 income and expenses?

24 A. Yes.

25 Q. Have you produced your Schedule S from your tax return -

1 -

2 A. Yes.

3 Q. -- that relates to farming income? Have you produced
4 bills of lading?

5 A. Yes.

6 Q. Receipts for purchase of seed and things like that?

7 A. Yes.

8 Q. Insurance policies?

9 A. Yes.

10 Q. Have you signed a release so that the trustee could get
11 documents from the FSA?

12 A. Yes.

13 Q. And have you waived notice of the subpoenas that the
14 trustee issued?

15 A. Yes.

16 Q. Let's turn to the counterclaims just very briefly, I put
17 up behind me page 3 of Exhibit 285 which has been
18 received into evidence. Have you seen a list like that
19 before?

20 A. Yes.

21 Q. What is that?

22 A. That's a list of all of my rings that I have on my
23 insurance policy.

24 Q. Okay, have all of those items been appraised?

25 A. Yes, I think so. I think they're part of the appraisal,

1 yes.

2 Q. Okay, and did there come a point in time in this lawsuit
3 where there was confusion as to whether you thought the
4 trustee should be looking for all seven items?

5 A. Considering the majority of those are my wife's rings I
6 didn't understand exactly why that was part of their
7 countersuit.

8 Q. Okay, and do you recall a period of time where you
9 looked at your insurance policy say in the year 2014 to
10 determine what, on your homeowner's policy there on your
11 home in Cheyenne, to determine whether it listed any
12 jewelry?

13 A. Yes, I did. Once I did I did realize that the two rings
14 of my mothers were on there.

15 Q. And why are the two rings that you claim Janice Herrell
16 has on your home owners policy in 2014 for the home you
17 own in Cheyenne, Wyoming?

18 A. Because under the agreement that my mother and I had
19 that I would pay the insurance and take care of the
20 insurance on her house and on the farm ground, the
21 liability insurance, and so, then I had my own
22 insurance policy and when I was trying to take care of
23 all three issues some of the insurance companies want
24 different things, they have to do different policies and
25 everything and for some reason the agent just put all

1 the rings on one policy.

2 Q. Okay, and that included rings you did not possess?

3 A. Yes.

4 Q. Let's talk about the farm equipment that Stan listed for
5 you and the trust has counterclaimed and Stan Mosher has
6 counterclaimed against, do you have in your possession
7 any farm equipment that should be part of your mother's
8 trust?

9 A. No.

10 Q. At any point in time after February 6, 2012, --

11 A. No.

12 Q. -- have you possessed any farm equipment that should be
13 part of the trust?

14 A. No.

15 Q. When your deposition was taken on December 19, 2016 did
16 counsel ask if they could come to your property in
17 Banner County and look for farm equipment?

18 A. Yes.

19 Q. And what did you say?

20 A. Yes.

21 Q. Did they come?

22 A. No.

23 Q. You've looked at the photographs that Stan Mosher has
24 offered in this case, correct?

25 A. Yes.

1 Q. Do any of those photographs show farm equipment that
2 should be part of the trust?

3 A. No.

4 Q. Do any of those documents show any of the farm equipment
5 on Stan Mosher's list?

6 A. No.

7 Q. Okay, let's talk about farming, tell me about the
8 quality of the farm ground on the south half of Section
9 24, Township 17, Range 98 west in Banner County?

10 MR. LEONARD MOSHER: The south half you're
11 asking a question about?

12 MS. OLDEMEYER: Yes, the total south half.

13 BY MS. OLDEMEYER:

14 A. Okay, the total south half, the east is the better half
15 of the ground. The west is kind of hilly, rocky and at
16 one time it was under a CRP because it was actually in a
17 CRP contract for 21 years. It's pretty high erodible
18 ground.

19 Q. What does it mean if property is CRP versus actually
20 being farmed?

21 A. One of the qualifications for CRP ground is its highly
22 erodible ground. That means that it's, any yield on it
23 is going to be very poor. You have to be very careful
24 how you farm it because a slight wind will cause it to
25 blow.

1 A. And I think yesterday you indicated you'd been farming
2 the south half with your dad since you've finished high
3 school?

4 A. Yes.

5 Q. So the CRP for 21 years that you just mentioned, was
6 that before or after you graduated from high school?

7 A. That was actually put in after.

8 Q. Okay, so what, to your memory what years was the
9 southwest quarter in the CRP?

10 A. I think it, I honestly can't tell you.

11 Q. You don't remember?

12 A. I don't remember.

13 Q. Okay, tell me about the farming years from 2012 through
14 2016. Were they good farming years, was there a
15 drought, what are those just generally?

16 A. We're dealing with a drought. We had a freeze, had some
17 hail in there, there was not really a good year there.

18 Q. The crop that was harvested in the summer of 2012, what
19 happened to that crop?

20 A. My half was that I cleaned it and I had a dollar expense
21 a bushel cleaning that crop and then I did sell my share
22 of that crop.

23 Q. What about the southwest quarter?

24 A. The southwest quarter I just, for argument sake I just
25 figured number 1 at Frenchman Valley Coop, number 1

1 wheat, and figured that at a price on it and I had it in
2 a bin for a couple of years and then I just eventually
3 gave it away. It really didn't have any value. Nobody
4 wanted it.

5 Q. Is that because it sat so long?

6 A. No, it's because, the ground is highly erodible and we
7 had a drought and everything and when you have freeze
8 damage the wheat has a tendency to become real thin and
9 you have voluntary weeds come in, volunteer rye and just
10 the majority of the issues. One year there was a freeze
11 that come in and really kind of ruined the wheat. But
12 the wheat gets so bad that Frenchman Valley Coop will
13 not take it and what do you do with it, especially when
14 I have no communication with the landowner, and I kept
15 trying to ask that too, so.

16 Q. In your testimony you said, figured number one wheat,
17 what do you mean by that? What is number one wheat?

18 A. Roughly wheat is traded on a one through five grade,
19 five being a sample grade. When Frenchman Valley Coop
20 or any, Scholar Grain, any of the local elevators buy
21 grain they go by test weight, they go by the protein
22 level. They also go by what's in the wheat, you know,
23 if there's rye in there, if there's weed seeds and test
24 weight is part of that too.

25 Q. So is number one good quality?

1 A. Number one is the best, yes.

2 Q. So if the wheat that you described that you ultimately
3 had to give away wasn't any good, why would you figure
4 it at number one wheat?

5 A. For argument sake. For this reason we're sitting here
6 today.

7 Q. You didn't want your sister to claim you didn't treat
8 her fairly?

9 A. Yes.

10 Q. Was there a profit or a loss on the winter wheat
11 harvested in the south half in the summer of 2012?

12 A. There is a loss.

13 Q. Let's talk about the summer, the crop harvested in the
14 summer of 2013 from the south half, what happened to
15 that?

16 A. Without the crop insurance records in front of me, but
17 we're talking of highly erodible ground so that means
18 you're not going to have any really great crops on there
19 and that's one of the reasons it's, was in CRP because
20 it is highly poor crop and then if you look on the maps
21 you'll see there is a lot of white areas in there.
22 Those white areas are considered zero, that they don't
23 produce anything.

24 Q. While you're talking there let's put the map up so you
25 can explain what you're talking about. I'm going to put

1 page 11 of Exhibit 146 which has been received into
2 evidence up. What, can you explain for the court what
3 is, on page, depicted on page 11 of Exhibit 146?

4 A. That's a farm service map of section 24.

5 Q. And I'm going to hand you a laser pointer. Can you
6 point to the southwest quarter of the south half that
7 you were just talking about?

8 A. This is the southwest quarter right there.

9 Q. Okay, and you said something about white, is there any
10 white on that map that is up on the back wall?

11 A. Yes, there is. If you see the white areas here and in
12 here this is all more or less white sandstone rock,
13 highly erodible. This here will blow and then if you
14 notice down here you'll see this white in here going
15 across. Now the areas here that the farm service has
16 actually marked and you see the arrows there that the
17 farm service actually put acres to. That is ground that
18 is so poor that you just don't pull in there. I mean
19 piles of rock, piles of sand whatever. And then if you,
20 one of the interesting things about this map is that,
21 let's say you have, I think there's 178 acres of farm
22 ground on here because you do rotations. This is a
23 field, this is a field, so every one of these fields
24 would have a wheat crop on it so you would have roughly
25 about, I can't read the acres on there but its roughly I

1 think figures about 78 acres. I'm guestimating on that.
2 Anyhow but if you take the white out of here and if we
3 were able to figure the acreage on this white and then
4 the dark here that's up here, see this is where your
5 yield is going to be is in this dark area.

6 Q. And you're pointing with your laser pointer --

7 A. Yeah.

8 Q. -- to the upper right portion of the blocks that's in
9 the lower left portion?

10 A. Right, and then if you notice in this area here it's a
11 little bit lighter but it's not dark. It is a little
12 bit lighter so that means the yield is going to be
13 lighter or not, you know, not as good as up in this dark
14 area. So then you've got, so we're dealing with at the
15 best maybe 28 acre a bushel of wheat up in the best of
16 the farm ground on here and then if you take the zero
17 and start figuring the zero where the white is and then
18 you start taking out the gray areas here where the, you
19 know, this center part here that goes across is kind of
20 a lighter gray so that would have the better yield of
21 maybe 18 on a good given year with rains and everything
22 and then if you look at this piece of ground, if you
23 could lay it flat you'll see that there's, where it's
24 white, that this is a pretty high ridge of hill in there
25 and that was one of the reasons why some people consider

1 it a good place to put windmills for a wind contract.

2 Q. So with respect to the crop that was harvested in the
3 summer of 2013 was there a profit or a loss?

4 A. There was a loss.

5 Q. Expenses exceeded the income?

6 A. Yes.

7 Q. Did you sell the grain that was harvested off the south
8 half in 2013?

9 A. I sold my share of it, yes.

10 Q. When you say your share what do you mean?

11 A. My 2/3.

12 Q. And --

13 A. And actually I had to clean it before I could sell it.

14 Q. Right. Is there an important distinction between being
15 an organic farmer and a non-organic farmer?

16 A. Yes, there is.

17 Q. Can you explain to the court the difference?

18 A. Non-organic is what the majority of the farmers are here
19 in Kimball County. That means that they just farm with
20 chemicals. They farm the no-till. They just farm
21 however they want to and then they take their wheat into
22 the local elevator, Frenchman Valley, Scholar, whoever
23 it is and they sell their wheat.

24 Q. When you had the arrangement with your mother and you
25 were entitled per that arrangement to all of the profit,

1 could you sell all of the wheat as organic wheat?

2 A. Under the 1/3, 2/3 share, no, I couldn't.

3 Q. But with your mother before she died you could?

4 A. I could.

5 Q. Explain to the court the difference, what happened under
6 the 1/3, 2/3 that you couldn't sell certain portions of
7 the crop organic?

8 A. Well, under my mother's agreement, the agreement was
9 that I got the whole crop because I was paying her
10 insurance on her house. I was paying the taxes on the
11 farm ground and I was also paying the liability
12 insurance on the farm ground and so given that agreement
13 I was able legally to sell that wheat as organic.

14 Q. And then what happened?

15 A. Then when my mother passed away, because it went to a
16 1/3 to 2/3 share then the property owner at that time,
17 the 1/3 which would have been the trust or Janice
18 Herrell later, she would have had to get certified
19 organic.

20 Q. With respect to then to 2014, by the 2014 harvest the
21 deeds had been provided for the, breaking the southeast
22 and southwest in half, correct?

23 A. Yes.

24 Q. With respect to the crop harvest in the summer of 2014
25 for the southwest quarter what happened to that?

1 A. I had it in a bin there and I didn't know how to market
2 it or anything. I did take my 2/3 share and did pay a
3 clearing company a dollar a bushel to clean it. I was
4 able to sell part of it, my share. And because I had no
5 communicates to do what, to do what with it I figured to
6 stop an argument I would pay number 1 because there was
7 no organic certificate so I had no other choice but to
8 guess on what to do and the guess was that I consider it
9 as conventional farm ground and pay her number one
10 wheat.

11 Q. When you say pay her, are you talking about writing her,
12 doing the math and writing her a check?

13 A. No, I'm talking about putting it down as, towards the
14 expenses because the whole thing was a net loss.

15 Q. Okay, what about income? How did you then do the
16 income?

17 A. I figured, how I figured if you want to go to those
18 charts that I presented. I actually took the acres, and
19 we can see on the map here, but I took the steps here
20 and I took each one of those strips and what they
21 produced and I went and put that on harvested. Put it
22 in a bill of lading, weighed it out and then I divided
23 that total crop by 1/3, 2/3 share. And then when I, I
24 figured the expenses because it was a net 1/3, 2/3
25 lease, I figured the expenses and everything and because

1 there was income you value the wheat, you know, I paid
2 her on paper as number 1, then there was money but I had
3 to take that money and put against the other farming
4 expenses. So that's why it shows income but yet the
5 other current expenses off-set that income.

6 Q. And so on the summaries that you prepared each year,
7 that's how you calculated the income and that's how you
8 calculated the expenses?

9 A. Yes.

10 Q. At any point in time when you were dealing with farming
11 for the trust or Janice Herrell did you ever overstate
12 income?

13 A. No, I had no reason to because the income wasn't there
14 to do it.

15 Q. Did you overstate expenses?

16 A. On the expenses one of the things, because I farm other
17 farm ground besides this I, I had to use a benchmark and
18 the benchmark I use is put out by the State of Nebraska,
19 they nickname them NEB Guide. But I had to use
20 something that was a benchmark to document all of my
21 expenses. If I did not then we'd be arguing over that.
22 Okay, how much did it cost to combine or how much to
23 haul. So I had to use the standardize, so I
24 standardized it by using the State of Nebraska's
25 numbers.

1 Q. And you did that for every year?

2 A. I did that for every year.

3 Q. In 2014 was there a profit or loss?

4 A. It was a loss.

5 Q. The summer of 2015 was there a profit or a loss?

6 A. It was a loss.

7 Q. At some point in time you were asked to quit farming --

8 A. Yes.

9 Q. -- Janice Herrell's property?

10 A. Yes.

11 Q. Do you recall about when that was?

12 A. It was right after I planted the 2016 crop. So once
13 that was planted I agreed to not farm it after it was
14 harvested.

15 Q. Okay, what is a bill of lading?

16 A. A bill of lading is what I use to, and if you haul wheat
17 to a conventional elevator they will give you a weight
18 slip, which kind of is everybody's bill of lading.
19 Everybody that does business has some type of a bill of
20 lading. I use my bill of lading that I have copied from
21 four different companies and the USDA.

22 Q. In this case have you read a report of an expert of
23 Janice Herrell's named Mr. Bergner?

24 A. Yes, I have.

25 Q. And do you agree or disagree with the opinion he states

1 in his report?

2 A. I disagree.

3 Q. Can you state for the court why you disagree with his
4 opinions?

5 A. I disagree because he was not factual on the information
6 that he was give. The agreement I had with Janice
7 Herrell and the trust was 1/3, 2/3 net.

8 Q. And to you net means the expenses that you put on the
9 summaries?

10 A. Yes.

11 Q. And provided to them?

12 A. Yes.

13 Q. Anything else about his report that you disagree with?

14 A. Yes, I disagree on how he figured everything but I think
15 that might be something we want to leave with the
16 expert.

17 MS. OLDEMEYER: I don't have any further
18 questions for you.

19 THE COURT: I don't recall, who was going
20 to start?

21 Mr. Sorensen, then let's do this just so that everyone
22 can kind of plan, let's take your cross examination, yeah,
23 we're on cross. You're cross examination, Mr. Sorensen and
24 then we'll take our recess and then we'll pick up with yours,
25 Mr. Brenner.

1 MR. SORENSEN: Okay.

2 MR. LEONARD MOSHER: Before we have a start is
3 there a chair I can set this on?

4 MS. OLDEMEYER: Here I'll, may I?

5 THE COURT: Yeah, that's fine.

6 MR. LEONARD MOSHER: They are all taken up over
7 here.

8 THE COURT: All right, Mr. Sorensen.

9 CROSS EXAMINATION BY MR. SORENSEN

10 BY MR. SORENSEN:

11 Q. Mr. Mosher, let's start with referring to the Hacker
12 house, the fact is that you didn't know at the time of
13 your mother's death what furniture was in that house did
14 you?

15 A. I knew that she had furniture in there.

16 Q. You didn't know what it was?

17 A. No, I did not.

18 Q. And in your deposition testimony December 19 you
19 acknowledged that you hadn't had any idea what furniture
20 was in her house when she died?

21 A. No.

22 Q. Had no idea what furniture she had --

23 A. I knew after the funeral --

24 MR. SORENSEN: Let me finish my question, sir,
25 then you can answer. Okay.

1 BY MR. SORENSEN:

2 Q. You didn't have any idea of what furniture she owned at
3 the time of her death?

4 A. At the funeral we did go over there to her house
5 afterwards and the majority of her furniture was in, at
6 the time of the funeral.

7 Q. Okay, well when I asked you in your deposition, well,
8 sir, do you know what was there --

9 MS. OLDEMEYER: Counsel, page and line?

10 MR. SORENSEN: Yeah, we're talking about page
11 100 --

12 MR. LEONARD MOSHER: Can I see that document,
13 please?

14 MR. SORENSEN: -- deposition page 100, line 6.

15 BY MR. SORENSEN:

16 Q. Your deposition taken in December of last year?

17 MS. OLDEMEYER: Hang on just a second, Counsel
18 I'm not there.

19 Okay.

20 BY MR. SORENSEN:

21 Q. Question, Well, sir, do you know what was there when
22 Lois Mosher died on February 6, 2012?

23 MS. OLDEMEYER: I am going to just object to
24 the form of the question only because the witness doesn't
25 have the deposition transcript in front of him.

1 MR. BRENNER: He doesn't have to.

2 THE COURT: I was going to ask, does he
3 have to have it in front of him?

4 MR. SORENSEN: No.

5 MS. OLDEMEYER: I think counsel just reading
6 it, is he going to ask him did he testify to that?

7 MR. SORENSEN: I'm reading from the
8 deposition.

9 MS. OLDEMEYER: But in order to answer the
10 question of did he testify to that --

11 MR. SORENSEN: I'm going to give the answer to
12 him and ask if he agrees with it.

13 MS. OLDEMEYER: Okay.

14 BY MR. SORENSEN:

15 Q. Okay, well, sir, do you know what as there when Lois
16 Mosher died on February 6, 2012? Answer, No. That was
17 truthful testimony when you gave it, correct?

18 A. Mr. Sorensen, I did not have that in front of me so my
19 memory is not that good to go line-by-line, so do you
20 have a copy where I could see that, please.

21 MR. SORENSEN: I'm going to hand you a copy of
22 your deposition and line 6 is right there on page 100.

23 BY MR. SORENSEN:

24 Q. And again, was that your testimony in your deposition
25 that you did not know what was there when your mother

1 died?

2 A. Yes, that's my testimony.

3 Q. Okay, and then on page, another, well let me ask you
4 another question about that. You really didn't go to
5 your mother's townhouse very often at all did you?

6 A. I never went over there.

7 Q. So, you never went over there and you didn't know what
8 was there when your mother died in February of 2012,
9 correct?

10 A. No, I don't know what was there.

11 Q. Okay, now if you never went over there you really don't
12 have any personal knowledge of any damage that Stan
13 Mosher did to the Hacker townhouse during his period of
14 occupancy do you?

15 A. No.

16 Q. You were present in court when your sister Janice
17 testified about the improvements that Stan had made to
18 the townhouse and he testified to the improvements that
19 he had made, the things that he had done, do you have
20 any knowledge that would dispute any of that testimony?

21 A. On, on the information that you presented on the, on the
22 townhouse from Wendy Volk that there is a bill for
23 cleaning and repairs to the house and if the house was
24 in such immaculate condition then the bills were not
25 needed.

1 Q. My question to you is, do you have any personal
2 knowledge of any damage that your brother Stan Mosher
3 caused to the Hacker townhouse?

4 A. Just from what I was presented from the sale of the
5 house.

6 Q. All right, now your father had farm machinery at the
7 time of his death, correct?

8 A. No.

9 Q. He didn't?

10 A. No.

11 Q. If he had farm machinery at the time of his death it
12 would have passed to your mother, Mrs. Mosher, correct?

13 A. I do not know what the will he had was so I, that was
14 under, the will that he had was under an attorney in
15 Cheyenne and that was the will that they used for his
16 death.

17 Q. Now your dad had purchased and owned a John Deere 7700
18 combine, correct?

19 A. Yes.

20 Q. Do you have that combine?

21 A. No.

22 Q. Did you buy, have you previously testified that you
23 purchased a John Deere 7700 combine?

24 A. Yes.

25 Q. Is that combine and the, at your farm today?

1 A. Yes.

2 Q. Okay, do you have more than one John Deere 7700 combine?

3 A. I have three John Deere combines.

4 Q. Okay, do you have more than one John Deere 7700 combine?

5 A. Yes.

6 Q. And your father had purchased a John Deere 7700,

7 correct?

8 A. He purchased a 7700 and I purchased 77, I have a model

9 7720, so that is the model of it, yes.

10 Q. Well, do you have a model 7700?

11 A. Yes, I do.

12 Q. How many?

13 A. One, of that particular --

14 Q. And your dad had one as well?

15 A. Yes, he did.

16 Q. Okay, and you don't know what happened to your father's

17 7700 combine?

18 A. I think he traded it off. I really didn't pay

19 attention.

20 Q. Okay, in your deposition we talked about a Ford loader

21 tractor and you were perplexed by what, what we meant?

22 A. Yes, I am.

23 Q. Your dad had a Ford loader tractor --

24 A. My dad --

25 Q. -- a small Ford loader tractor?

1 A. If you google a Ford loader tractor it doesn't show.
2 I'm trying to figure out what a Ford loader tractor is,
3 it actually come up with a tractor that was, one was a
4 backhoe that they call, and I don't exactly understand
5 what a Ford loader tractor is.

6 Q. Now, Mr. Mosher, you're a farmer and you've been farming
7 for a number of years, a loader tractor in the farming
8 world is a very commonly understood piece of equipment
9 isn't it?

10 A. No, it's not because usually you buy a tractor and then
11 you put a loader on it, so if you were to sell it at an
12 auction it would be classified as a tractor with the
13 loader on it or without because loaders can be removed.
14 They are not part of it. So a loader is not in the
15 serial number of the tractor.

16 Q. In your deposit- -- well, let me ask you this, okay,
17 when you purchase a loader, a Ford tractor where did you
18 buy it?

19 A. I bought it at Sumner Implement.

20 Q. When?

21 A. When, in probably around '87, something like that.

22 Q. Do you know for sure when it was?

23 A. No, I don't.

24 Q. I'm going to hand you what has been marked as Exhibit

25 243 --

1 MR. LEONARD MOSHER: Okay.

2 MR. SORENSEN: May I stand here, Your Honor?

3 THE COURT: Absolutely.

4 BY MR. SORENSEN:

5 Q. Isn't Exhibit 243 an invoice from Sumner Implement to
6 your father for the purchase of a Ford loader tractor
7 for the sum of \$8,000?

8 MR. SORENSEN: I have a copy of that same
9 exhibit, Your Honor. May I show it to the witness?

10 THE COURT: Yes.

11 BY MR. SORENSEN:

12 A. Well, you're going to have to tell me what this says
13 because I cannot read it.

14 Q. Okay, it's a retail purchase order from Sumner Implement
15 Company, Scottsbluff, Nebraska to Daniel Mosher,
16 Cheyenne, Wyoming, dated September 1, 1981. It
17 describes one, it looks like 1300 tractor, 1 7700
18 loader, Ford motor, and a cutter. It has, he had a
19 trade in and a cash balance of \$5,000. It describes a
20 Ford loader, 7700?

21 MR. LEONARD MOSHER: No, go back and read that
22 again to me.

23 MR. SORENSEN: Can I take a 30 second break.

24 THE COURT: Yep.

25 MR. SORENSEN: Thank you, Your Honor, I just

1 needed to clarify the numbers.

2 BY MR. SORENSEN:

3 Q. You asked me to tell you what, help you read this
4 exhibit?

5 A. Yes.

6 Q. It's a model 1300 tractor, Ford tractor --

7 A. Okay.

8 Q. -- equipped with a model 770 [sic] loader and with a
9 model 739 or 938 rotary cutter on the back. Does that
10 help you?

11 A. Well, what you're telling me and what I'm reading, I can
12 hardly read this. So it's really hard to read this so,
13 okay, yeah, that's what it says. It says a 1300
14 tractor. Yes, it does.

15 Q. Do you dispute that your father purchased a Ford 1300
16 tractor --

17 A. It says it right here.

18 Q. -- with a load, a 7700 loader in 1981 from Sumner
19 Implements?

20 A. Okay, you asked me about a loader-tractor. This is a
21 1300 tractor.

22 Q. And it's equipped with a frontend loader, correct?

23 A. As an accessory. Yes, it has one --

24 Q. And that was a piece of equipment that your father
25 purchased and owned?

1 A. Yes, he did.

2 Q. And he owned it when he died?

3 A. No, he didn't.

4 Q. What happened to it?

5 A. I don't know because --

6 Q. Now were you farming in 1996?

7 A. Yes.

8 Q. And have you been continuously farming since 1996?

9 A. Yes.

10 Q. And in 1996 was the year of your father's death,

11 correct?

12 A. Yes.

13 Q. Had you purchased any farm land before 1996?

14 A. Yes.

15 Q. How much land did you purchase?

16 A. Let's see, just short of 2,000 acres.

17 Q. In 1996?

18 A. No, you asked if I had purchased farm ground before

19 1996.

20 Q. Let me clarify. As of 1996 had you purchased any farm
21 ground?

22 A. As of 1996, yes.

23 Q. And how much, how many acres had you purchased?

24 A. Well, you were the attorney of 1,100 of it so that was

25 1,100 acres there and then I previously owned 640 acres.

1 Q. Were you buying, selling, trading and acquiring
2 equipment during those years?

3 A. Yes, I was.

4 Q. And that would be through the '90s?

5 A. And the '80s.

6 Q. The '80s and the '90s?

7 A. (No audible response had.)

8 Q. Since 1996 have you purchased or acquired any tractors?

9 A. No.

10 MR. SORENSEN: May I approach again, Your
11 Honor?

12 THE COURT: You sure can.

13 BY MR. SORENSEN:

14 Q. I'm showing you a photograph that has been marked and
15 received in evidence as 392, is that a tractor located
16 on your farm in Banner County?

17 A. Yes, it is.

18 Q. Is that a tractor you had purchased?

19 A. Yes.

20 Q. Did you trade anything for that tractor?

21 A. No.

22 Q. From whom did you purchase the tractor?

23 A. Frank Implements.

24 Q. When?

25 A. I can't remember.

1 Q. Well, do you have any idea?

2 A. No.

3 Q. Okay, and 397, there are some older tractors pictured in
4 there?

5 A. Yes, there is. Them pictures are dated December 12,
6 2016, about two months ago.

7 Q. Is that equipment that is located on your farm?

8 A. Yes, it is.

9 Q. Is that a tractor that your father owned in the
10 background?

11 A. No.

12 Q. Is it one that you say you purchased?

13 A. It's one that I really don't know where it came from.

14 Q. It's on your farm and you have no idea where it came
15 from?

16 A. No.

17 Q. Okay, how all of your, is all of your, strike that and
18 I'll ask it this way. Do you own farmland in counties
19 other than Banner County?

20 A. No, I don't.

21 Q. So all of your machinery and equipment would be kept on
22 your farm or farms in Banner County?

23 A. Yes.

24 Q. Let me show you, Mr. Mosher, what has been marked as
25 exhibit --

1 MR. SORENSEN: Again, Your Honor --

2 THE COURT: You're fine. You're free to
3 move around.

4 BY MR. SORENSEN:

5 Q. Exhibit 255?

6 A. Yes.

7 Q. Is there a personal property, is that an insurance,
8 certificate of insurance for equipment that you own?

9 A. Yes.

10 Q. And on there doesn't it describe a model 7720 combine?

11 A. Yes.

12 Q. There's no model 7700 combine shown on that property, on
13 that insurance is there?

14 A. No, there is not.

15 Q. Okay, and then on the next one, 256, excuse me 257?

16 A. Okay, what you insure is equipment with a value so
17 there's no reason to insure a 7700 combine because it
18 has no value. So, you look at this and even this
19 combine here has been taken off but you have to, if it
20 catches fire while you're harvesting. So that's what
21 it's on there for.

22 Q. I just, my question is you didn't list any 7700 combine
23 on your insurance?

24 A. It had no value.

25 Q. And 258 is another insurance effective date of 2005?

1 A. Yes.

2 Q. There's a John Deere 4650 tractor --

3 A. Yes.

4 Q. -- and a 7720 combine?

5 A. Yes.

6 Q. Okay, and then you're insuring a 1982 Ford 1300 tractor?

7 A. Yes.

8 Q. And that's the same model tractor that your father
9 purchased from Sumner Implement at that time?

10 A. Yes, it is.

11 Q. You're insuring a 1986 John Deere 4650 tractor?

12 A. Yes.

13 Q. And a 7720 combine?

14 A. Yes.

15 MR. SORENSEN: So we'll offer, Your Honor,
16 Exhibits 255, 257, 258.

17 MS. OLDEMEYER: No objection.

18 THE COURT: Two fifty-five, 257 and 258 are
19 received.

20 (Exhibit Nos. 255, 257 and
21 258 are hereby made a part
22 of the official court
23 record.)

24 BY MR. SORENSEN:

25 Q. Now you previously stated that your father didn't own

1 any machinery at the time of his death, is that correct?

2 A. That's correct.

3 Q. I'm going to hand you Exhibit 401 which I know by now

4 you've had a chance to study. And Exhibit 401 is a

5 personal property tax return filed in Banner County for

6 your father, Daniel Mosher in the year of 1996, correct?

7 A. Yes.

8 Q. And doesn't that list on, on it a John Deere tractor

9 acquired in 1991, adjusted basis of 14,400?

10 A. Yes, but I think you're going to have to explain it.

11 I'll explain --

12 MR. SORENSEN: Just a second.

13 MR. LEONARD MOSHER: Okay.

14 BY MR. SORENSEN:

15 Q. And you signed that tax --

16 A. Yes, I did.

17 Q. -- and you signed that for your dad?

18 A. Yes, I did.

19 Q. You're reporting in 1991 his ownership of a John Deere

20 tractor that he acquired in 1991, correct?

21 A. Yes.

22 MS. OLDEMEYER: I must have missed it, Counsel,
23 what exhibit is that?

24 THE COURT: 4 - 0 - 1 is what I wrote down.

25 MS. OLDEMEYER: Thank you.

1 BY MR. SORENSEN:

2 Q. Okay, Mr. Mosher exhibit, I'm going to hand you Exhibit
3 403, which is a two-page exhibit and is that, isn't that
4 your personal property tax return for the year 1997?

5 A. Yes, it is.

6 Q. And don't you on Exhibit 1997 [sic] list your father's
7 John Deere tractor acquired in 1991, cost basis \$14,400
8 and a grain cleaner, a 1986 grain cleaner, correct?

9 A. A '96 grain cleaner.

10 Q. Well, acquired in 1996?

11 A. Yeah. Yes, it's there.

12 Q. Okay, then I'm going to show you what's been marked as
13 your personal property tax return for the year 1998, a
14 two-page exhibit.

15 MS. OLDEMEYER: Which exhibit?

16 MR. SORENSEN: It's part of the same one.
17 It's part of Exhibit 403 and it would be pages 3 and 4.
18 They're not numbered. They are all one exhibit.

19 MS. OLDEMEYER: Your Honor, may we staple that
20 exhibit so that it's for the record and the page numbers
21 don't get rearranged during questioning?

22 THE COURT: Yes. Yep, that's fine. Let's,
23 hang on. We'll staple it after Mr. Sorensen is done with his
24 questions and everybody can see when we staple it so it's all
25 in the right order.

1 MR. SORENSEN: Yeah, I haven't numbered it yet
2 but I will.

3 THE COURT: Okay, we'll do that with
4 counsel watching so everybody's on the same page and nobody
5 is confused and we're all happy with --

6 BY MR. SORENSEN:

7 Q. Now, you have --

8 MR. SORENSEN: Excuse me, Judge, I didn't mean
9 to step over your --

10 THE COURT: I was just babbling.

11 BY MR. SORENSEN:

12 Q. You have the second page of your 1998 property tax
13 return, right?

14 A. Yes.

15 Q. And on your second page of your 1998 property tax return
16 what do you show?

17 A. That John Deere tractor.

18 Q. The same one that your father listed in 1996?

19 A. No, it's not.

20 Q. Are you saying that's a different tractor?

21 A. Yes, it is.

22 Q. Okay, and you list a grain cleaner?

23 A. Yes.

24 Q. That you show acquired in 1996?

25 A. Yes.

1 Q. And then in 1989, personal property tax return, right?

2 A. These are all showing a John Deere tractor. Okay, this
3 one here does not have it on here. It's showing a grain
4 auger and grain cleaner but on all my tax forms it's
5 showing John Deere tractor. It doesn't say model, it
6 doesn't say anything.

7 Q. Your right, it just shows the cost basis and the year of
8 accusation --

9 A. Right.

10 Q. Right? And it's exactly the same as your father's. The
11 exact same cost basis --

12 A. And I'm sure 50 farmers have the same thing.

13 Q. Okay, so in 1999 you're paying personal property tax on
14 two items, a grain cleaner with a cost basis of \$1,895
15 and an auger with a cost basis of \$950, correct?

16 A. Yes.

17 Q. Now you accurately reported your personal property
18 taxes?

19 A. Yes.

20 MR. SORENSEN: Okay, now I'll do some assembly
21 here, 1997, '98, '99.

22 THE COURT: Would you, before you put a
23 staple in that, would you just hand that to Ms. Oldemeyer so
24 she's comfortable with pagination.

25 MS. OLDEMEYER: I would --

1 THE COURT: It wasn't an issue I just want
2 to be sure that we've got it right, too.

3 MS. OLDEMEYER: I think the record will have to
4 speak for itself now as to what --

5 THE COURT: Okay.

6 BY MR. SORENSEN:

7 Q. And I think just to clarify the record, Mr. Mosher,
8 Exhibit 403 is an exhibit with six pages, please look at
9 the lower right-hand corner --

10 A. Yes.

11 Q. -- and you'll count, you'll agree that it's a six page
12 exhibit?

13 A. Yes.

14 Q. The first two pages, 1 and 2 are your 1997 tax return,
15 personal property tax return?

16 A. Yes.

17 Q. The second, pages 3 and 4 would be 1998, correct?

18 A. Yes.

19 Q. And 5 and 6 would be 1999?

20 A. Yes.

21 MR. SORENSEN: Okay, thank you.

22 THE COURT: Mr. Sorensen, why don't you
23 hand that to me.

24 BY MR. SORENSEN:

25 Q. Now your dad, your father also had an 18-foot four-axel

1 7 by 18 foot grain trailer, correct?

2 A. Yes, he did.

3 Q. And he also had a 18-foot utility or machining trailer?

4 A. No, he didn't.

5 Q. Now Exhibit 402 is a copy of a registration certificate
6 from the year 2014 for Daniel O. Mosher showing a 4-
7 axel, 7 by 18 foot trailer on the top one, correct?

8 A. Yes.

9 Q. And an 18-foot machinery, 18-foot machinery trailer on
10 the bottom one?

11 A. Yes.

12 Q. You were licensing those two trailers belonging to your
13 father in the year 2014?

14 A. By accident, yes, I was.

15 Q. And how was it by accident?

16 A. Because I go into the courthouse and I pay my property
17 taxes, I pay my personal taxes and I also have all my
18 license plates. I usually try to do it in May or June
19 and I just go in there and I ask them what, what I owe
20 and they present me a bill and I write them a check and
21 it wasn't here until just about a year ago I realized I
22 was doing this.

23 Q. Well, we know one thing, your father didn't buy any
24 equipment after 1996 did he?

25 A. No, he did not.

1 Q. So from 1996 through 2014 you continued to license your
2 father's two trailers?

3 A. That explains why I had extra plates and stickers and
4 all the time.

5 Q. So, you, strike that question. Now your dad, I say your
6 dad, I mean Daniel Mosher. Your father had owned a
7 quonset building on the farm that you did not inherit it
8 from parents, correct?

9 A. Yes.

10 Q. That would be the southeast quarter, right?

11 A. Yes.

12 Q. And in that quonset building your father kept all of his
13 tools, his equipment, welders, cutting torches, hand
14 tools, jacks, all the miscellaneous farm equipment that
15 farmers customarily need and use, correct?

16 A. No.

17 Q. He didn't keep his tools in that quonset?

18 A. No.

19 Q. Where did he keep his tools?

20 A. My dad was a resident of Cheyenne, Wyoming, and in
21 Nebraska if you keep anything like that the assessor
22 comes over and then they start assessing taxes and we've
23 had the assessor out there off and on through the years
24 looking at stuff. So there was nothing of tools or any
25 type of like that in there.

1 Q. Your testimony is that the assessor come to your
2 property and inspects your property and goes through
3 your personal equipment?

4 A. They, they go in there, they look at stuff. The one
5 year I painted a farm house --

6 Q. Isn't that why you report what --

7 A. Yes, you do.

8 Q. -- the personal property on the personal tax form?

9 A. Yes, it is but they also come out and check.

10 Q. Did you, were you buying, using, and acquiring and
11 keeping tools and equipment?

12 A. Yes, I was buying, using and keeping equipment that I
13 owned, yes.

14 Q. So, is it your testimony that your father kept all of
15 his tools over in Cheyenne, Wyoming?

16 A. Yes, it is.

17 Q. So he would have to then load them in his truck and
18 bring them over if he wanted to work on a piece of
19 equipment --

20 A. Yes, he would.

21 Q. Is that your testimony?

22 A. Yes, it is.

23 MR. SORENSEN: May I have just a second,
24 Judge?

25 THE COURT: Yes.

1 MR. SORENSEN: Well, I think that's all my
2 questions for now.

3 Thank you.

4 THE COURT: Okay, Mr. Mosher, I indicated
5 we'll take a short recess here for the morning session so if
6 you want to take, you can step down.

7 Let's, it looks like it's about 10:35 so let's come back
8 at a quarter till 11:00 and we'll get started again with the
9 cross examination by Mr. Brenner and any redirect from Ms.
10 Oldemeyer.

11 Thank you.

12 (At 10:32 a.m. a recess
13 was taken accordingly.)

14 (At 10:44 a.m. on February 28, 2017 with counsel for the
15 parties present and the plaintiff and defendants present, the
16 following proceedings were had.)

17 THE COURT: We are back on the record in CI
18 13 19, the matter of Mosher v. Herrell and the record
19 reflects that the attorneys have returned to the courtroom
20 along with their respective clients and Mr. Mosher has
21 retaken the witness stand.

22 I am going to run out of tablet space here so hang on.

23 Everyone keep their seat.

24 I get a little persnickety about the tablets I'm using.

25 So, anyhow we're back, we're back in the courtroom and I'm

1 apparently ready to go. Mr. Mosher has returned to the
2 witness stand.

3 Mr. Mosher, I'll just remind you of the oath you were
4 previously administered. We're going to begin here in a
5 moment with the cross examination by Mr. Brenner and then
6 after that Ms. Oldemeyer may have questions for you in
7 redirect.

8 I've reminded you of your oath.

9 Mr. Brenner, I'll turn the matter over to you and will
10 take your inquiry.

11 CROSS EXAMINATION BY MR. BRENNER

12 BY MR. BRENNER:

13 Q. Mr. Mosher, first of all when your mother died you, you
14 didn't go over to the mother's house afterwards because
15 Stan was there, isn't that correct?

16 A. After the funeral we went over.

17 Q. No, I'm trying to say you didn't go over there with Stan
18 being there did you?

19 A. I don't know who was there at the time at the funeral.

20 Q. Both Janice, well Janice was over at the house and her
21 family, none of them saw you there, is that correct?

22 MS. OLDEMEYER: Object to foundation.

23 MR. BRENNER: Well, I'll rephrase it.

24 BY MR. BRENNER:

25 Q. You weren't there when Janice was there or Stan was

1 there were you?

2 A. I thought after the funeral we went over that, that's
3 what I was thinking, but.

4 Q. You'd be wrong wouldn't you?

5 A. You know, I can't remember.

6 Q. Now, to keep going, one of the things that struck me
7 when you were going through, and I will get back to it
8 again a little bit, after a moment but you made up each
9 year, and I'm talking about '12, '13, '14, '15 and '16
10 kind of a spreadsheet, correct?

11 A. Yes.

12 MR. BRENNER: My I approach the witness, Your
13 Honor?

14 THE COURT: Yes, as I've said to Ms.
15 Oldemeyer and Mr. Sorensen, you're free to move around as you
16 see fit.

17 BY MR. BRENNER:

18 Q. I'm handing you Exhibit 404, that has a page 1 that
19 wasn't on another document earlier, is that correct?

20 A. Yes.

21 Q. But it's the three pages are what you made up, correct?

22 A. Yes.

23 Q. And you asserted them to be the truth, right?

24 A. Yes.

25 Q. Okay, I handed you what is 405 which is three pages in

1 length, you made that up didn't you?

2 A. Yes.

3 Q. And those are your documents that you prepared, is that

4 correct? 405?

5 A. Yes.

6 Q. When did you give 405 to Janice Herrell?

7 A. Probably in January.

8 Q. January, what year? You sure?

9 A. The documents you're showing me, let's see, so this one
10 here was dated 2-4-2014 so I would send her a 1099 along
11 with these documents, because 1099's are due in January
12 or the latest February.

13 Q. So you, we'll get to the 1099's in a minute. 406, one
14 page, did you send that to Janice Herrell?

15 A. Yes.

16 Q. That's another invoice, right, that's what it says?

17 MR. LEONARD MOSHER: Wait a minute. Let me see
18 the previous exhibit.

19 BY MR. BRENNER:

20 A. Well it's not another exhibit, I mean another invoice
21 it's the same invoice.

22 Q. Okay, so we have the invoice you sent out, is that
23 correct?

24 A. Yeah, you have two copies of it.

25 Q. All right, and 407, one page, did you send that to

1 anyone?

2 A. Yes.

3 Q. Who did you send that to?

4 A. Janice.

5 Q. When?

6 A. They would have probably been in January.

7 Q. Of what year?

8 MR. LEONARD MOSHER: Let me see it.

9 Mr. Brenner, you're taking these exhibits and spreading
10 them out. This is part of another of what I sent too. So
11 would you give me the previous one. You're breaking this
12 down. You're taking the 2014 information and you're dividing
13 it up.

14 BY MR. BRENNER:

15 A. And so this would be --

16 MR. LEONARD MOSHER: Let me see the 214 one.

17 MR. BRENNER: Two fourteen?

18 MR. LEONARD MOSHER: Yeah, the year 2014.

19 MR. BRENNER: Sir, I haven't even gotten to
20 '14 yet.

21 MR. LEONARD MOSHER: You just handed me a 2014
22 --

23 MR. BRENNER: That's right. That's right,
24 it's in your hands.

25 MR. LEONARD MOSHER: That's right. So let me

1 see the previous ones because this is part of a statement.

2 Okay, here. Okay, now this is dated 214.

3 MR. BRENNER: What is, you're talking that

4 406 is dated --

5 MR. LEONARD MOSHER: Yes.

6 MR. BRENNER: 2-4 of '14?

7 MR. LEONARD MOSHER: Yes.

8 BY MR. BRENNER:

9 Q. That's an invoice. What do you have in your hands
10 that's Exhibit 407?

11 A. I just have more or less a statement of what the costs
12 are. I know what this is. I was trying to help Janice
13 out because sometimes people, when they are passive
14 property owners they have a tendency to use this
15 information for their personal income tax and if you
16 were going to use this here this, the trucking that was
17 from another statement, you would put this on line 18 of
18 the F form of your taxes and being this would be
19 something that she would put on her form. I sent her a
20 copy of Schedule F and the directions and everything.
21 Hopefully she could take it to her accountant or whoever
22 did the taxes to benefit her but usually when you have
23 expenses because of the net farming costs then she would
24 know what to do with those expenses for her own personal
25 information.

1 Q. But, getting back, sir, this one says 2014 crop year,
2 1/3 landowner 2/3 tenant, right?

3 A. Yes.

4 Q. And that's your document you prepared, Exhibit 407?

5 A. Yes.

6 Q. And I'm going to hand you Exhibit 408, do you recognize
7 408?

8 A. Yes.

9 Q. Isn't that some document invoice you sent?

10 A. Yes.

11 Q. And in what year did you actually send this?

12 A. '15.

13 Q. Yeah, for what years?

14 A. '13 and '12.

15 Q. 2012 and 2013?

16 A. Yes.

17 Q. And they were, you have expenses. The first thing you
18 start out with 239.79 which crop-share costs you just
19 have whatever year that is or is there a certain year?

20 A. I would have to have all the documents to explain it.

21 Q. Well, all documents? This is what you say you sent her.

22 A. Okay, I don't know what that is.

23 Q. Showing you what has been marked as Exhibit 409, two
24 pages, did you prepare 409?

25 A. Yes, I did.

1 Q. And that is again a document you prepared, right?

2 A. Yes.

3 Q. And what year was this to cover?

4 A. It says 2015 crop year.

5 Q. All right --

6 MR. LEONARD MOSHER: Let me see what the second
7 page was you handed me there.

8 BY MR. BRENNER:

9 Q. Do you see a second page?

10 A. Yes, I do.

11 Q. Did you prepare the second page too?

12 A. Yes, I did.

13 Q. All right, and showing you what's been marked as Exhibit
14 410, did you prepare that?

15 A. Yes, I did.

16 Q. And what does that pertain to?

17 A. The 2016 wheat crop.

18 Q. And that, to the southwest quarter only, correct?

19 A. Yes.

20 Q. And when we're talking about the Exhibit 408 or 9 only
21 was to the southwest quarter too, correct?

22 A. Yes.

23 Q. And all of these document you prepared, correct?

24 A. Yes.

25 MR. BRENNER: Your Honor, I offer 405, I

1 believe 4 has already been received, through 410.

2 MS. OLDEMEYER: No objection.

3 THE COURT: 405, 406, 407, 408, 409 and 410

4 are received.

5 (Exhibit Nos. 405 through
6 410 are hereby made a part
7 of the official court
8 record.)

9 BY MR. BRENNER:

10 Q. Changing subject, Mr. Mosher, I'm going to get back to
11 the jewelry. Now, actually when we were seeing one of
12 the displays up here there was a list of jewelry that
13 was exchanged that came from your counsel didn't it?
14 She gave the list, right?

15 A. You'll have to refresh my memory.

16 Q. All right, well, I want to, do you recall that your
17 lawyer indicated that there were only two items of
18 jewelry at issue?

19 A. Yes.

20 Q. And those are pictured on an attached appraisal?

21 A. Yes.

22 Q. Showing you Exhibit 297, the top entry there, that's
23 from your lawyer isn't it?

24 A. Yes, it is.

25 Q. And it's talking about the two rings, correct?

1 A. Yes.

2 Q. And in here do you recall that as part of the chain
3 there at the time of the jewelry there was also a
4 discussion about the need for a mineral search by your
5 lawyer?

6 MR. LEONARD MOSHER: Can I see it?

7 MR. BRENNER: Yeah, page 2 of Exhibit 297 to
8 Greg Dyekman and I will draw your attention to the second
9 paragraph where it says, "Please make", if you could read
10 that out loud to his honor.

11 BY MR. BRENNER:

12 A. Okay, "Please make every effort to complete the search
13 for additional mineral interests and bring clarity to
14 the missing jewelry issue as soon as possible."

15 Q. And then the, in the order of events then we have your
16 lawyer that I've already pointed out sent a message
17 dated May 30 of '14 where it says there's only two
18 pieces in question, right?

19 A. Yes.

20 Q. Not three?

21 A. Yes.

22 MR. BRENNER: Your Honor, we would offer 297.

23 MS. OLDEMEYER: No objection.

24 THE COURT: Two ninety-seven is received.

25 (Exhibit No. 297 is hereby

1 made a part of the
2 official court record.)

3 BY MR. BRENNER:

4 Q. Now, I'm going to take you back to that before, at 297
5 I'm going to show you Exhibit 302 and draw your
6 attention to an email, first page, where your lawyer is
7 writing and lists the jewelry that, that's inquired
8 about, right?

9 MS. OLDEMEYER: I'm sorry, I, can you,
10 objection, form of the question.

11 THE COURT: Okay, what's the issue on form?

12 MS. OLDEMEYER: I didn't actually hear it.

13 THE COURT: Okay, so can you just restate
14 your question, Mr. Brenner?

15 MR. BRENNER: Thank you, Your Honor.

16 BY MR. BRENNER:

17 Q. On page 1 of Exhibit 302 your lawyer writes to Mr.
18 Dyekman and lists, I think it's seven pieces of jewelry?

19 A. Yes.

20 Q. Do you see that?

21 A. Yes.

22 Q. Those are the same seven pieces that are in and under
23 your insurance policy, right?

24 A. Yes.

25 Q. Now, and that is the, that occurred on May 7 of '14?

1 A. Is that what date is?

2 MR. BRENNER: You can look and confirm it.

3 BY MR. BRENNER:

4 A. Yes.

5 Q. Now let's see if we have this right, this is when the
6 jewelry came up with an issue in '14, right?

7 A. No.

8 MR. BRENNER: Your Honor, we'd offer 302.

9 THE COURT: 302 has already been received.

10 MR. BRENNER: Thank you.

11 BY MR. BRENNER:

12 Q. Showing you then 304, and I'm, do you see at 304 the top
13 email from your lawyer?

14 A. Yes.

15 Q. Now, if I read this right, "With regards to the jewelry,
16 it is our continued position that the 14 KW ladies
17 diamond cluster ring and 14KY mothers ring should be
18 included in the Estate for distribution." It's just two
19 pieces, right?

20 A. Yes.

21 Q. But those other pieces are on your policy?

22 A. Yes.

23 Q. Which items of jewelry have been identified were your
24 mothers?

25 MR. LEONARD MOSHER: Explain that.

1 BY MR. BRENNER:

2 Q. Those items that were identified on your insurance
3 policy were your mothers?

4 A. Well there was just two rings of my mother's on that
5 insurance policy.

6 Q. But there were seven items on that insurance policy that
7 you said you went and insured for your mother?

8 A. No, I said I insured my wife's rings and my rings and
9 there was, my mother's rings and the insurance company
10 combined everything together. So two of those rings are
11 my mother's the rest are my wife's and mine.

12 MR. BRENNER: Your Honor, I'd offer 304.

13 MS. OLDEMEYER: No objection.

14 THE COURT: 304 is received.

15 (Exhibit No. 304 is hereby
16 made a part of the
17 official court record.)

18 BY MR. BRENNER:

19 Q. Mr. Mosher, what you are doing or what you are
20 presenting to this court, you're raising the issue of
21 the right of the trustee to make in her discretion
22 random distribution or selection among the
23 beneficiaries, is that correct?

24 A. Yes.

25 Q. And, and your issue or problem is how she interpreted

1 the trust, correct?

2 A. Yes.

3 Q. And you're clear on that, right?

4 A. Yes.

5 Q. And you understand that you are challenging the trust?

6 A. No, I'm not.

7 Q. Well, if the trustee is to be able to make
8 interpretations from the trust, correct?

9 A. The trustee is supposed to follow the word of the trust.

10 Q. Okay, well in the trust if particular mineral interests
11 are not specifically laid out who gets them?

12 A. I think the trust was very clear on the minerals who
13 gets them.

14 Q. Who gets them if the minerals are not specifically
15 identified?

16 A. Then we'd each get a third.

17 Q. And how do you get to that, arrive at that conclusion,
18 sir?

19 A. By what the trust says.

20 Q. Well, doesn't the trust say that if any real estate or
21 property that is not otherwise listed it would go to
22 the, it goes to Janice Herrell?

23 A. Let's go over the trust.

24 Q. Well, my question to you is that, is that what the
25 interpretation you're asking His Honor to make is that

1 no matter if it's, if it's not listed and it's other
2 real property, which is what mineral interests are, they
3 are to be divided 1/3 each. Is that what you're saying?

4 A. Let's see what the trust says. I'm going by what the
5 trust says. That's what I want to do, follow what the
6 trust says. So let's go over the wording in the trust.

7 Q. Well, I'm going to go, I'm just trying to find out
8 because I took your deposition, right?

9 A. Yes.

10 Q. And you told me in the deposition did you not that you
11 wanted a share of all of the minerals?

12 A. Let me see what I said in my deposition.

13 Q. I am going to read you what the deposition question,
14 page 211, Counsel, starting on line 11 and --

15 MR. LEONARD MOSHER: Do you have a copy that I
16 can read?

17 MR. BRENNER: Well, I'm just going to ask
18 you, sir.

19 MR. LEONARD MOSHER: I would like to see a
20 copy, please.

21 MR. BRENNER: I will in a minute. I want to
22 find out if you're doubting what I'm reading.

23 BY MR. BRENNER:

24 Q. I just want, question read, I just want to make sure I
25 understand you correctly. That one of your complaints --

1 MS. OLDEMEYER: I'm sorry, Counsel, you're on
2 page 111 of his deposition?

3 MR. BRENNER: Two eleven.

4 THE COURT: Two eleven.

5 MS. OLDEMEYER: Thank you. I apologize. Bear
6 with me just a minute. Thank you

7 BY MR BRENNER:

8 Q. The question on line 11, I just want to make sure I
9 understand you correctly that one of your complaints is
10 that you want to be -- you want to receive your interest
11 in these minerals. Is that correct. Your answer, Yes.
12 Question, You're going to ask the judge that you be
13 given an equal share of these minerals? These are the
14 minerals that are undistributed so far -- Answer, Okay.
15 Question, -- that the mineral title report located.
16 Answer, Yes. Question, You intend to ask the judge to
17 be distributed in equal share? Yes, if it's not covered
18 under the trust, yes. That is how it is covered under
19 the trust, yes.

20 MS. OLDEMEYER: Could you reread that, please?

21 MR. BRENNER: Okay.

22 BY MR. BRENNER:

23 Q. Answer, Yes. If it's not covered under the trust, yes.
24 How is that covered under the trust? Question, Didn't
25 you testify earlier that you wanted -- that you had not

1 received all the mineral interests? Answer, Yes.

2 That's all the further I would like to go. Did you give
3 those answers?

4 MS. OLDEMEYER: That's not the complete answer.

5 MR. BRENNER: Yes. How does the trust read
6 on that? And we can, I see no point, I'm trying to --

7 BY MR. BRENNER:

8 Q. Did those questions and those answers, were they given
9 in the deposition?

10 MS. OLDEMEYER: I objection to the form of the
11 questions because he didn't read the entire answer.

12 THE COURT: Did he read the entire answer
13 to that question, the last question that was asked?

14 MS. OLDEMEYER: There was an objection
15 interposed and the answer continued.

16 MR. BRENNER: It wasn't an objection if you
17 really want to, Ms. Oldemeyer, I don't want to be accused of
18 any wrongdoing here, is there something you'd like to see,
19 sir, in the exhibits in front of you. That's not an
20 objection

21 MS. OLDEMEYER: Then there's a, well then
22 there's the answer, then the witness --

23 MR. BRENNER: The answer is yes, again.

24 MS. OLDEMEYER: And more.

25 MR. BRENNER: I want to see if this is part

1 of the needing to be divided or if it's part that's assigned
2 to somebody.

3 THE COURT: Okay.

4 MR. BRENNER: Yeah.

5 BY MR. BRENNER:

6 Q. Did those questions and those answers, were they give?

7 MR. LEONARD Mosher: Can I see that?

8 MR. BRENNER: I started at line 11 on page
9 211.

10 MR. LEONARD MOSHER: Okay

11 MR. BRENNER: You can read it to yourself and
12 see that I read the question and the answer correctly. I
13 stopped on line 5 of the next page, 212.

14 BY MR. BRENNER:

15 A. Yes, that is what I said in that deposition.

16 MR. BRENNER: Right. And since you have that
17 in front of you why don't you turn to page 177.

18 MR. LEONARD MOSHER: I don't have a 177.

19 MR. BRENNER: Well, I'm going to tell you you
20 do have 177.

21 MR. LEONARD MOSHER: Come up here and show it
22 to me.

23 MR. BRENNER: You have the entire deposition,
24 sir. Handing you again your deposition, you'll see page 177
25 there.

1 MR. LEONARD MOSHER: Okay.

2 BY MR. BRENNER:

3 Q. Looking at, taking you to page 177, line 15, looking at
4 the second page of Exhibit 15 with respect to mineral
5 interest there and the undivided 1/3, do you, do you
6 challenge with respect to that, whether you're entitled
7 to 1/3?

8 MR. LEONARD MOSHER: Now what is Exhibit 15?

9 MR. BRENNER: Well, that was a mineral report
10 but let's go on, your answer was, yes. Your challenging --

11 MS. OLDEMEYER: There was an objection
12 interposed by Mr. Brenner.

13 MR. BRENNER: I agree and I withdraw it.

14 MS. OLDEMEYER: You did?

15 BY MR. BRENNER:

16 Q. And the answer was, yes, you're challenging aren't you?

17 A. Yes, is what's printed here, yes.

18 Q. Thank you. Now in your deposition do you recall that
19 you were raising the issue that there was more than one
20 trust?

21 A. No.

22 Q. If you will turn to page 55 there in your deposition,
23 line 1 and 2, do you see that?

24 A. Okay.

25 Q. My question to you then in the deposition, Is there more

1 than one trust agreement? Answer, Yes, there is. That
2 was your answer to a question which I just asked you a
3 moment ago, correct?

4 A. Yes

5 Q. Do you recall me asking you, withdraw that. Can you
6 testify about the condition of the Hacker Circle house
7 when Janice Herrell took over as trustee?

8 A. No, I can't.

9 Q. Would you agree that you have never paid the inheritance
10 taxes that were awarded by the court that you now have
11 an obligation for?

12 MS. OLDEMEYER: I would object to the form of
13 the question, argumentative

14 THE COURT: It's cross, it's a little
15 argumentative. I'll allow it, just again said the same thing
16 to her yesterday, keep it between the lines.

17 MR. LEONARD MOSHER: Explain.

18 BY MR. BRENNER:

19 Q. Weren't you, wasn't there an order of assessing
20 inheritance taxes again you, Mr. Mosher?

21 MR. LEONARD MOSHER: For what?

22 MR. BRENNER: For your inheritance from your
23 mother.

24 MR. LEONARD MOSHER: From my mother, okay. At
25 what, at what, what are we talking about? What inheritance

1 on what?

2 MR. BRENNER: Inheritance taxes?

3 MR. LEONARD MOSHER: On what?

4 MR. BRENNER: On the land you inherited.

5 BY MR. BRENNER:

6 A. The land I inherited okay. Yes, I was not informed of
7 any taxes on that.

8 Q. But your attorneys were. Are you going to tell me your
9 attorneys never conveyed to you that you were ordered to
10 pay some inheritance taxes?

11 MS. OLDEMEYER: Object to the form of the
12 question. It assumes facts not in evidence.

13 MR. BRENNER: The order determining is in
14 evidence.

15 THE COURT: I'm certain that's true. I
16 don't know what his attorney, what he, what's the facts not
17 in evidence that you're asserting he's assuming?

18 MS. OLDEMEYER: That he was ordered to
19 personally pay those taxes versus the trust which paid the
20 taxes. That's the testimony from yesterday. Those are the
21 facts that we got from Janice Herrell yesterday.

22 THE COURT: I know I wrote down at least,
23 hang on --

24 MS. OLDEMEYER: Your Honor?

25 THE COURT: Go ahead, I'm listening I'm

1 just looking.

2 MS. OLDEMEYER: The discussion of the \$375 --

3 MR. BRENNER: No, that's the interest that
4 was ordered and that has nothing to do with it.

5 MS. OLDEMEYER: But that was the area, the
6 topic where the discussion took place.

7 THE COURT: So I have in testimony from, it
8 would have been on the cross examination of Janice Herrell by
9 Mr. Brenner reviewing Exhibit 217, trust taxes paid, excuse
10 me, inheritances taxes of 3,253 in taxes and then my notes
11 from her testimony, plaintiff was to pay about 2,500. My
12 point is that's what I noted she testified to.

13 MS. OLDEMEYER: Okay.

14 THE COURT: So, if that is what she
15 testified to then that's the basis for his question and I'll
16 allow the question, so the objection is overruled.

17 BY MR. BRENNER:

18 Q. Did you ever pay the amount that was assigned to your
19 name for inheritance taxes by the court in Nebraska?

20 A. No.

21 Q. Now, do you recall that attorneys for Janice Herrell
22 inquired about what were the mineral interests that
23 existed in Nebraska for them to be able to do reports?

24 MR. LEONARD MOSHER: Ask that question again.

25 BY MR. BRENNER:

1 Q. Wasn't there an inquire of you seeking for you to tell
2 what mineral interests were in the name of Lois or Dan
3 Mosher?

4 A. The question was asked of me but I would have no
5 knowledge on what mineral rights my parents owned and I
6 would have no reason to know that.

7 Q. So you never told your attorneys what you knew?

8 A. I didn't know anything to tell them.

9 Q. So when I asked you on page 88, starting on 87, Wasn't
10 there an inquiry of you, seeking you to tell what
11 mineral interests was in the name of Lois or Dan Mosher?
12 Answer, Through my attorney, yes. Question, Okay. And
13 did you provide that information? Answer, I told them
14 what I know. So you did give them information?

15 A. Which is I don't know anything.

16 Q. Now, do you recall me asking you if you could show or
17 demonstration one witness who can claim that Stan Mosher
18 damaged the Hacker Circle house? Do you recall me
19 asking you that?

20 A. No, I don't.

21 Q. Okay, do you, can you give one witness that can show
22 that Stan Mosher damaged the Hacker Circle house?

23 A. Just what the exhibits that were put in here from the
24 sale of the house from the Volk's.

25 Q. That doesn't say Stan Mosher did it does it?

1 A. I'd have to look at it and see.

2 Q. Well, that's not my question. My question was
3 witnesses?

4 MR. LEONARD MOSHER: The witness?

5 BY MR. BRENNER:

6 Q. Do you have one witness who can say Stan Mosher damaged
7 the Hacker Circle house?

8 A. No.

9 Q. Would you agree that you need to clean up a house before
10 you sell it?

11 A. I would agree, yes.

12 Q. That you would have to paint it?

13 A. Not all the time, no. That house was just painted right
14 before my mother left there.

15 Q. Well, how do you know that, sir?

16 A. Because the painting crew from Scottsbluff come over and
17 painted that.

18 Q. Well, do you have any proof of that?

19 A. No, I don't have any proof.

20 Q. Well, but when I asked you in your deposition, page 107,
21 Counsel, lines 2 and 3, and that followed, had you had
22 to clean up a house before selling it? Yes. Question,
23 this is the line 2 and 3, have you had to paint it?
24 Yes. Isn't that to be expected, you would have to paint
25 it?

1 MR. LEONARD MOSHER: Okay, what was the
2 question again?

3 BY MR. BRENNER:

4 Q. Have you had to paint a house before you can then sell
5 it?

6 MR. LEONARD MOSHER: If I had to paint a house
7 before I was going to sell it, is that what your question
8 was?

9 MR. BRENNER: Well, yes, since you said it
10 before that, that you had had several houses.

11 MR. LEONARD MOSHER: Okay, and your question is
12 to my deposition on page 107?

13 MR. BRENNER: Yep, lines two and three.
14 Didn't you answer, yes?

15 BY MR. BRENNER:

16 A. Yes, to you asked a question if I had houses. Yes, I
17 have and had to paint, yes.

18 Q. That's an interesting question, tell the judge how many
19 house have you lived in since you came out of school?

20 A. (No audible response had.)

21 Q. Isn't it just the one you're in now?

22 A. Well, actually a couple.

23 Q Where, sir? Isn't that house you're in now your mom and
24 dad gave you?

25 A. No.

1 Q. It isn't one that they gave you?

2 A. No.

3 Q. How long have you been in the house you're in now?

4 A. Well, my wife and I we got married and then we lived in
5 an apartment house and then we had this house built and
6 we had some custom stuff done, we had the house built.

7 Q. One house right?

8 A. You asked lived in. You didn't say owned.

9 Q. Well, you've only had one house?

10 A. Yes.

11 Q. If you had to have repairs wouldn't it be correct to say
12 that some repairs have to be made to make the house look
13 right?

14 A. Depending on how the house was taken care of and lived
15 in, yes.

16 Q. And would those be ordinary and necessary? You see I'm
17 following the line of questions.

18 A. I see what you're saying and answered, yes, they would
19 be.

20 Q. Did you ever try to get ahold of Wendy or Fred Volk, the
21 realtors trying to sell the house?

22 A. No.

23 Q. Do you have any documents to prove that Janice Herrell
24 breached her fiduciary duty of impartiality?

25 MR. LEONARD MOSHER: Explain your question.

1 MR. BRENNER: Well, I asked you in your
2 deposition that same question.

3 MR. LEONARD MOSHER: And what page was that on?

4 MR. BRENNER: Page 112, line 5 through line
5 11.

6 BY MR. BRENNER:

7 Q. Isn't it accurate what you've testified under oath then?
8 Now, what facts or what documents do you have to prove a
9 breach of fiduciary duty of impartiality by Janice
10 Herrell? What documents? Your answer, It's what
11 documents I don't have. Okay. So you don't have any,
12 do you? Your answer was, No. Do you agree?

13 A. At the time of the deposition, yes, that was the correct
14 answer but since the deposition and since discovery we
15 have received some other documents, yes.

16 Q. What discovery have you gotten since December 19?

17 A. We've actually received some tax information on money
18 that wasn't put into the trust account and we've
19 received some other stuff. Information has been slowly
20 coming in and it seems like the longer this goes the
21 more information we get that should have been from day
22 one.

23 Q. But under oath at the time of --

24 A. Yes.

25 Q. -- December 19 you said you didn't have any right?

1 A. At that time I said that, yes, but it has been coming in
2 since.

3 Q. And you also said the same question to loyalty. I asked
4 you and you said you had no documents, is that still
5 true?

6 MR. LEONARD MOSHER: Where is that that?

7 MR. BRENNER: That's on page, well, we'd
8 start on page 115 at line 7 and it goes clear over to page
9 116, line 1 with a no.

10 MS. OLDEMEYER: I object to the form of the
11 question.

12 MR. BRENNER: While he's looking --

13 THE COURT: I think he's just looking at it
14 right now. I'm not sure there is a question pending. So he
15 can look at that and then --

16 BY MR. BRENNER:

17 Q. Have you read that?

18 A. Yes, I'm reading it.

19 Q. Okay, so you do not have any documents to establish a
20 breach of fiduciary duty, impartiality or loyalty do
21 you?

22 A. Actually, yes.

23 Q. What?

24 A. The house, the money from the house that --

25 Q. Well, didn't you answer of what documents, the will. Do

1 you have any other? No?

2 A. At the time of this deposition no I didn't.

3 Q. So did you, now do you recall I took your deposition on
4 February 13 of this years?

5 A. Yes.

6 Q. Now, please tell me, since February 13 have you received
7 anything from Janice Herrell's lawyers?

8 A. I don't think so. The information is starting to get
9 filtered, so I do not know what is received.

10 Q. Well, let me ask you, February 13, I asked you if
11 everything you testified to in your deposition of
12 December 19 was truthful and you said, yes. Do you
13 recall that?

14 A. No, I don't but I'm sure it was. I'd say, yes.

15 Q. Do you have any documents that Janice Herrell reached a
16 fiduciary duty in the management of Lois Mosher's
17 assets?

18 A. Yes.

19 Q. Didn't you in your deposition on February 19, 2016
20 testify at line 19, was a no?

21 MR. LEONARD MOSHER: Would you show that to
22 me?

23 BY MR. BRENNER:

24 Q. Page 115, line 19?

25 A. Okay, that was dated on the date of my deposition but

1 since then, yes.

2 Q. Okay, now do you remember, I just asked you, on February
3 13, 2017 when I took your deposition you said your
4 answers on December 19 were truthful?

5 A. Yes.

6 Q. Okay, do you have any documents that establish a breach
7 of fiduciary duty to administer the trust?

8 MR. LEONARD MOSHER: As of today?

9 BY MR. BRENNER:

10 Q. Okay, I'm going to ask -- okay, tell me the answer?

11 A. Yes.

12 Q. Do you recall me, do you have any documents to establish
13 a breach of fiduciary duty to inform and account and
14 your, answer was no on December 19, correct?

15 A. Yes.

16 Q. Now, Mr. Mosher, are you saying that Janice Herrell paid
17 any improper expenses under the law?

18 MR. LEONARD MOSHER: What do you mean by under
19 the law? Under the trust?

20 MR. BRENNER: Well, the trust, yeah, try
21 that.

22 MR. LEONARD MOSHER: Okay, let's go under the
23 trust --

24 BY MR. BRENNER:

25 Q. My question is, are you saying, yes or no?

1 A. Yes.

2 Q. Now at page 127, lines 8 through line 12, I asked that
3 very same question?

4 A. Yes.

5 Q. And didn't you answer on December 19, 2016 that, and I'm
6 going to have to say I do not know. Is that the answer
7 you gave?

8 A. That's the answer I gave.

9 Q. And on February 13, 2017 didn't you testify under oath
10 that your testimony given December 19, 2016 was
11 truthful?

12 A. Yes.

13 Q. Mr. Mosher, are you asserting that Janice Herrell today
14 has possession of the equipment that has been discussed
15 at length yesterday and today?

16 A. She's the one that presented the list so she must know
17 where it's at.

18 Q. Well, so if she says, where it's at that would be
19 truthful?

20 A. It would be truthful, yes.

21 Q. So since she has said you have it she is telling the
22 truth?

23 A. Well, if I have it then I suggest she prove it.

24 MR. BRENNER: I think you just did.

25 BY MR. BRENNER:

1 Q. Mr. Mosher, wasn't it appropriate that the trustee
2 obtain a mineral search for Banner and Kimball Counties?

3 A. Whatever the trust required that's what I was going with
4 all I was interested in what Banner County property. So
5 if--

6 Q. So you're not interested in the Kimball County at all?

7 A. I did not even know of any mineral interests in Kimball
8 County at all and I didn't know what was in Banner
9 County. All I'm interested in, like I say, I did not
10 know.

11 Q. Okay, so let's make sure I have your answer clear for
12 the Judge and I, you don't care about anything in
13 Kimball County?

14 A. No, I said, I didn't not know about anything in Kimball
15 County.

16 Q. All right, but my question is wasn't it appropriate that
17 the trustee obtain a mineral search for Banner and
18 Kimball Counties?

19 A. If it benefited everyone in the trust, yes, it is. If
20 it was just for Janice's, for herself selfish interest,
21 no.

22 Q. Okay, so it had to benefit every beneficiary in that
23 trust to have something to be done by the trustee is
24 that what you're saying?

25 A. Otherwise she should pay it out of her pocket.

1 Q. But it identified what you had for mineral interest
2 didn't it?

3 MR. LEONARD MOSHER: In where Kimball County?

4 MR. BRENNER: Well, yes, Kimball and Banner.

5 BY MR. BRENNER:

6 A. Well, the Banner County deeds that you're talking about
7 are wrong, they're not done right so you're talking
8 about what is done in Kimball County that's actually
9 news to me.

10 Q. All right, well, we'll get to that in a moment. Do you
11 remember me asking you if it was appropriate that the
12 trustee obtain a mineral search for Banner and Kimball
13 Counties in your deposition December 19, 2016?

14 A. No, I don't.

15 Q. Page 202, line 25 going on to page 203, line 3, and
16 didn't I ask you, wasn't it appropriate that the trustee
17 obtain a mineral search for Banner and Kimball Counties
18 and your answer was yes?

19 MR. LEONARD MOSHER: What page was that?

20 MR. BRENNER: Page 202, line 25 going onto
21 page 203, lines 1, 2, 3.

22 BY MR. BRENNER:

23 A. Yes.

24 Q. Wasn't that the answer you gave me?

25 A. Yes.

1 Q. That was yes?

2 A. Uh-huh.

3 Q. And you also said, you know, a mineral search costs some
4 money and your answer was yes?

5 A. Yes.

6 Q. And you also said a title search was appropriate, isn't
7 that correct?

8 A. Yes.

9 Q. Those were truthful answers weren't they?

10 A. Yes.

11 MR. BRENNER: May I approach the witness?

12 THE COURT: Yes, please.

13 BY MR. BRENNER:

14 Q. Handing you what's been marked 380, have you seen that
15 survey before?

16 A. Yes, I have.

17 Q. That's a survey that was done, correct?

18 A. Yes.

19 Q. Now you actually posted a note to the FSA office saying
20 you disputed the acres that existed between the
21 southeast quarter and the southwest quarter didn't you?

22 A. Yes.

23 Q. And that survey is a survey, a registered survey by a
24 registered surveyor that made the marks and divided,
25 figured out the land, how much is in the southeast and

1 southwest, correct?

2 A. Yes.

3 Q. But you actually complained to FSA and wanted a survey
4 done, right?

5 A. Yes.

6 MR. BRENNER: Okay, Your Honor, I offer 380.

7 MS. OLDEMEYER: No objection.

8 THE COURT: I'm sorry, 380 is received.

9 (Exhibit No. 380 is hereby
10 made a part of the
11 official court record.)

12 BY MR. BRENNER:

13 Q. Now, I think you testified earlier and I could be
14 incorrect but I wanted to ask you again, did you say in
15 2014 there was a loss?

16 A. Yes.

17 Q. Crop loss?

18 A. Yes.

19 Q. I'll hand you 388, do you recognizes that?

20 A. Yes.

21 Q. That's your own insurance person to you telling and
22 putting down the information that you had no losses in
23 2014? No losses in '15 at all, right? Hope this helps
24 you. There were no losses in 2014 to your lawyer over
25 there.

1 MR. LEONARD MOSHER: Now, we're talking about,
2 what piece of ground are we talking about?

3 MR. BRENNER: Let's see, look here Unit 201
4 is a sect 24 (shared with a Janice?).

5 BY MR. BRENNER:

6 A. So there was no losses on that piece of ground in 2014.

7 MR. BRENNER: I offer 388, Your Honor.

8 MS. OLDEMEYER: No objection and we'd, let's
9 see, nope, no objection.

10 THE COURT: 388 is received.

11 (Exhibit No. 388 is hereby
12 made a part of the
13 official court record.)

14 BY MR. BRENNER:

15 Q. Mr. Mosher, have you ever served as a trustee?

16 A. No.

17 Q. I think I heard you correctly earlier testify that there
18 were no mineral deeds given out, is that correct?

19 A. From what I understand about the deeds, the ones that
20 were given out were incorrect.

21 Q. And then I thought I heard that there were mineral deeds
22 you are telling me there were mineral deeds?

23 A. There were but they're, they're wrong, the way I
24 understand it.

25 Q. So you're challenging to the interpretation that was put

1 to the mineral deeds is that correct?

2 A. Yes.

3 Q. And then that's again to the trust, correct?

4 A. Yes. It's to the, on how the mineral interests were
5 handed out from the trust, that they were handed out
6 wrong.

7 Q. Okay, but what I'm asking is that is to the
8 interpretation of the trust, correct?

9 A. The deeds don't follow the trust.

10 Q. Well, isn't it also accurate that --

11 A. That's why they're wrong.

12 Q. Isn't it accurate that one piece of property, there were
13 no interests owned by Moshers at all and so it was
14 corrected?

15 A. I, you're talking about something I know nothing about.

16 Q. Well, that's what I'm trying to find out from you and
17 your position. Are you asserting that the county
18 assessor goes out to the property and will look and see
19 if you've got tools, if you've got 4-wheelers or a
20 tractor?

21 A. Yes.

22 Q. The assessor doesn't handle that part do they, in Banner
23 County?

24 A. Actually they do.

25 Q. Who does it?

1 A. (No audible response had.)

2 Q. Are you saying Lori Hostetler, Lisa Cross, Monty
3 Stoddard?

4 A. I forgot, but Banner County just a few years ago divided
5 those offices out but they were handled by one office at
6 one time.

7 Q. Well, the office was the county clerk who is Lori
8 Hostettler --

9 A. Yeah, and then --

10 Q. So is Lori the person that is going out looking at
11 property?

12 A. Whoever goes out and looks at it and I do think it is
13 the assessor because that's where we go file the
14 personal property taxes is the assessor.

15 Q. When do you plant wheat on the year you're going to
16 plant wheat in the fallow ground? When do you plant it?

17 A. Either August or the first of September.

18 Q. You don't plant it in after the first of September?

19 A. Sometimes you plant after the first, sometimes you plant
20 before but the normal practice is after.

21 Q. And didn't you report to the FSA that you planted it
22 mid-September in the year 20 --, let me get it correct,
23 2015?

24 A. Yes.

25 Q. Do you have any document, sir, that is in writing that

1 defines what you used the word net, do you have any
2 document that you can give me, email, anything that
3 says, this is what net means to me, Janice Herrell or
4 Greg Dyekman or lawyers?

5 A. No.

6 Q. And isn't it the standard crop-sharing lease terms that
7 a landlord would share in the fertilizer for the crop?

8 MR. LEONARD MOSHER: Ask that question again.

9 BY MR. BRENNER:

10 Q. Isn't it a standard crop-sharing lease arrangement
11 between landlord and tenant that the landlord would have
12 a share, a percentage of the fertilizer cost?

13 A. Yes.

14 Q. And isn't it a fact that that is the term and the only
15 one that would be of the standard crop-sharing lease
16 arrangement within the, this community?

17 MR. LEONARD MOSHER: Can you define the word
18 standard?

19 MR. BRENNER: What is used by the
20 farmers/ranchers on a regular basis, studied for the last 25
21 plus years.

22 MR. LEONARD MOSHER: Could you, I, could you
23 explain that because I don't know what you're talking about
24 standard. Do you have a form or something?

25 BY MR. BRENNER:

1 Q. Well, that's my question to you, do you have any
2 document that you can show this judge that's in any of
3 this paperwork we've got here that ever said I'm going
4 to charge you for all my hauling, my record keeping, my
5 seeding, my combining, my looking at the matter? Do you
6 have any document that would say that?

7 A. Usually when a 1/3 --

8 Q. That's not my question, yes or no?

9 A. I have a document that, yes, is kind of a standard for
10 it but it's something that is cost-share and has columns
11 on what the landowner pays and what the farmer pays.

12 Q. And where did --

13 A. And you can write in whatever you want and the way I
14 understand it from back when my grandmother and
15 grandparents owned this particular farm ground that's
16 how it was done with the family back then and so I went
17 with what was a standard practice back then. My
18 grandmother paid a third of the harvest cost. She paid
19 some of the seeding cost and that was done back then.

20 Q. Now to be clear on some of these things, you carried
21 farm insurance but it didn't have the trust name on it,
22 correct?

23 MR. LEONARD MOSHER: What insurance are we
24 talking about?

25 MR. BRENNER: Farm insurance I thought I

1 said, if I didn't I apologize.

2 MR. LEONARD MOSHER: Are we talking crop
3 insurance, liability insurance --

4 MR. BRENNER: No, you had a farm policy with
5 Traveler's.

6 BY MR. BRENNER:

7 A. Okay, yeah, that was a liability insurance policy, yes.

8 Q. Only?

9 A. (No audible response had.)

10 Q. Only, right?

11 A. No, it had other issued stuff on it.

12 Q. Well, yeah, because it included the jeweler. But at the
13 same time you had a policy with Safeco, right?

14 A. Safeco was on the house at Hacker Court.

15 Q. Right, but you didn't have the jewelry on the house did
16 you?

17 A. I thought it was on there. When I went to look it
18 wasn't there, so.

19 Q. Well, but it's on every year of the policy that we've
20 presented of Traveler's, correct?

21 A. Yeah, up until the day, and the reason I've left it on
22 there is because there's been a dispute on where the
23 jewelry is and I have asked my attorney a number of
24 times, should I go down and file a police report because
25 we do have documented what the rings are and since

1 nobody knows where the rings are I feel we should file a
2 police report on it to let the authorities track it
3 down. Everything is computerized, let's go from there
4 and find out where the rings are.

5 Q. Well, you have to have a date and a possessor to do
6 that, correct?

7 A. I do.

8 Q. So you want to go get an insurance claim, right?

9 A. I don't want an insurance claim I want to know where the
10 rings are and if, and if this court would allow us to
11 say that the rings are missing at this time and let's
12 turn it over to the police and let's find out where they
13 are.

14 Q. So they can search your home, your property?

15 A. They can search my home, they can search Janice's home,
16 they could search Stan's home, they could search your
17 home or whosever.

18 Q. We just mentioned Safeco, sir. I'll hand you 252, do
19 you recognize that?

20 A. Yes.

21 Q. And do you, I'll hand you 253, is that the same, the
22 same company?

23 A. Yes.

24 Q. And handing you 254 --

25 A. Yes.

1 Q. Is that again through Safeco?

2 A. Yes.

3 Q. These are the policies we just got done talking about?

4 A. Yes.

5 MR. BRENNER: Your Honor, I offer 252, 253,
6 254.

7 MS. OLDEMEYER: No objection.

8 THE COURT: 252, 253 and 254 are received.

9 (Exhibit Nos. 252, 253 and
10 254 are hereby made a part
11 of the official court
12 record.)

13 THE COURT: Mr. Brenner, I don't want to --

14 MR. BRENNER: Sorry.

15 THE COURT: No, just let me ask this
16 question and then we'll see where we're at, do you have an
17 idea of how much more you've got? There's no wrong answer.

18 MR. BRENNER: I know that, I'm trying to
19 think to answer you correctly.

20 THE COURT: Okay.

21 MR. BRENNER: I can't give you exact because
22 I've got some more here and then I was going to talk to them
23 before I finished.

24 THE COURT: Okay.

25 MR. BRENNER: So maybe you want to decide

1 what I know is on your mind.

2 THE COURT: I'm just asking if everybody is
3 ready to take a lunch real quick or do you want to finish
4 your cross? I don't care.

5 MR. BRENNER: I think I can finish, we can
6 take the break if it's alright with everybody.

7 THE COURT: Take the break now and then
8 come back?

9 MR. BRENNER: Yes.

10 THE COURT: Any issue with that, Ms.
11 Oldemeyer?

12 MS. OLDEMEYER: None.

13 THE COURT: Okay, so, Mr. Mosher, you can
14 step down.

15 We'll come back in half an hour. It's five to 12:00
16 now, lets' plan to be back and going by 12:30.

17 Okay, thank you.

18 (At 11:45 the noon recess
19 was taken accordingly.)

20 (At 12:29 p.m. on February 28, 2017 with counsel for the
21 parties present and the plaintiff and defendants present, the
22 following proceedings were had.)

23 THE COURT: This is Case Number CI 13 19.
24 The matter is Mosher v Herrell. The record reflects that the
25 litigants have returned to the courtroom along with Counsel

1 of record. We had taken a recess during Mr. Brenner's cross
2 examination of the plaintiff.

3 Before we get back to that let me just visit with
4 everyone about our afternoon's logistics, at some point this
5 afternoon we'll take an afternoon recess and at that time, my
6 request of Counsel would be that, that you visit with Lynn
7 and make sure that we've got all of the exhibits that I'm
8 supposed to be taking with me generally lined out. I'm not
9 saying after we come back from the recess you can't use
10 exhibits I'm saying I just want to be sure that, that before
11 we evacuate the premises this afternoon we've got what we're
12 supposed to be taking with us. So, we'll use some time
13 there, maybe extend that break a little bit to give everyone
14 plenty of time to be sure and I will leave with her my notes
15 from the joint I've been trying to keep track and again,
16 just as a matter of reference to your comments from this
17 morning, Mr. Brenner, using specifically the words taking
18 with us because I know there are myriad of exhibits that I
19 have received and also a set, a subset of that that, or
20 subset of exhibits that I will take so that I can review and
21 then make determinations as needed after I've had a chance to
22 review them in the course of my work in resolving this case,
23 so my point is I think I've kept good track of those that
24 have been offered and received as well as those that have
25 been offered and not yet received but certainly Lynn is

1 keeping track on her notes as well, so we'll just be sure
2 that we're getting all of our exhibits out before we're done.

3 So with that, Mr. Mosher, could I trouble you to grab
4 that door, please. I don't know that we'll have any ambient
5 noise coming from the hallway but on the off chance that
6 someone is cranky about car taxes or something then we are
7 just dealing with what we're dealing with here.

8 Okay, so Mr. Mosher, let me remind you of the oath you
9 were previously administered and I will turn you back over to
10 Mr. Brenner and when he's finished with his questions then
11 Ms. Oldemeyer will have an opportunity to redirect.

12 Mr. Brenner, you may continue with your cross.

13 MR. BRENNER: Your Honor, I'd like at this
14 time to make some offers of exhibits.

15 THE COURT: Okay.

16 MR. BRENNER: Number 236, I have several so
17 I'm going to go slow.

18 THE COURT: That's fine. Hang on just a
19 second.

20 Before you start reciting, are these exhibits that
21 everyone is agreeing are going to be admitted or are, my
22 point is do --

23 MR. BRENNER: You need to ask her.

24 THE COURT: Every time?

25 MR. BRENNER: Yes.

1 THE COURT: Okay, that's fine.

2 So, Ms. Oldemeyer, do you have comments or an objection
3 to --

4 MS. OLDEMEYER: No objection to 236.

5 THE COURT: Thank you.

6 MR. BRENNER: 238 through 241, Your Honor.

7 MS. OLDEMEYER: No objection.

8 THE COURT: Exhibits 238, 239, 240 and 241
9 are received, and I don't think I said officially exhibit 236
10 was also received.

11 (Exhibit Nos. 236, 238,
12 239, 240 and 241 are
13 hereby made a part of the
14 official court record.)

15 MR. BRENNER: Your Honor, we would offer 244,
16 245.

17 MS. OLDEMEYER: No objection.

18 THE COURT: 244 and 245 are received.

19 (Exhibit Nos. 244 and 245
20 are hereby made a part of
21 the official court
22 record.)

23 MR. BRENNER: 259, 260.

24 MS. OLDEMEYER: On 259 and 260 I just want to
25 make sure that it's more than just one page.

1 Can you bear with me?

2 THE COURT: You bet.

3 MS. OLDEMEYER: We have no objection to 259 and

4 260.

5 THE COURT: Two five-nine and 260 are

6 received.

7 (Exhibit Nos. 259 and 260

8 are hereby made a part of

9 the official court

10 record.)

11 MR. BRENNER: 298, Your Honor.

12 MS. OLDEMEYER: Objection hearsay, relevance

13 THE COURT: Okay, 298 hearsay and

14 relevance. Got it. Is that one of the, that's going to be

15 one of the --

16 MS. OLDEMEYER: It's an attorney --

17 THE COURT: Yep, so I'm going to, I will,

18 to be consistent with what I've been doing I will take

19 exhibit 298 and I will rule on its admissibility after I've

20 had a chance to review it but I will note that it's been

21 offered.

22 (Receipt of Exhibit No.

23 298 is taken under

24 advisement by the court.)

25 MR. BRENNER: 301, Your Honor, is offered.

1 MS. OLDEMEYER: I don't want to be a pain but I
2 will waive my objections to 298.

3 THE COURT: Okay. Less work for me, that's
4 never a pain.

5 Three zero one?

6 MS. OLDEMEYER: Same objections, Your Honor,
7 hearsay -- no, 301 receive. It's okay.

8 THE COURT: Okay, exhibit 301 is received.

9 (Exhibit No. 301 is hereby
10 made a part of this the
11 official court record.)

12 MR. BRENNER: 309.

13 MS. OLDEMEYER: No objection.

14 THE COURT: 309 is received.

15 (Exhibit No. 309 is hereby
16 made a part of this the
17 official court record.)

18 MR. BRENNER: 330.

19 MS. OLDEMEYER: No objection.

20 THE COURT: 330 is received.

21 (Exhibit No. 330 is hereby
22 made a part of this the
23 official court record.)

24 MR. BRENNER: 336, Your Honor.

25 MS. OLDEMEYER: No objection.

1 THE COURT: 336 is received.

2 (Exhibit No. 336 is hereby
3 made a part of this the
4 official court record.)

5 MR. BRENNER: 345.

6 MS. OLDEMEYER: No objection.

7 THE COURT: 345 is received.

8 (Exhibit No. 345 is hereby
9 made a part of this the
10 official court record.)

11 MR. BRENNER: 387.

12 MS. OLDEMEYER: Well, we object to that. There
13 needs to be some foundation laid for that.

14 THE COURT: Okay, I will not receive 387 at
15 this time.

16 MR. BRENNER: She --

17 THE COURT: Hang on that was classified,
18 I'm sorry, the classification on there, Ms. Oldemeyer, waived
19 foundations and authenticity.

20 MS. OLDEMEYER: I mean, context relevancy.
21 That needs to be, that exhibit needs to be touch on.

22 THE COURT: Okay.

23 MS. OLDEMEYER: Thank you, I apologize to you.

24 THE COURT: That's okay. I'll note it as a
25 relevance objection and, Mr. Brenner, I'll certainly let you

1 circle back to that one as you need.

2 MR. BRENNER: I'm going to do it right away.

3 THE COURT: You're going to do it now,
4 okay.

5 MR. BRENNER: Approach the witness?

6 THE COURT: Yes, please.

7 BY MR. BRENNER:

8 Q. Mr. Mosher, you had indicated that the assessor's
9 office from Banner County would send out to try and look
10 into the property, is that correct?

11 A. (No audible response had.)

12 Q. Showing you 387, do you recognizes that request that
13 came out from the Banner County offices asking for
14 information so that you'd sign a form --

15 MS. OLDEMEYER: Object to the form of the
16 question. That assumes facts not in evidence.

17 MR. BRENNER: What? I don't know what's --

18 MS. OLDEMEYER: I apologize. Go ahead.

19 THE COURT: Okay.

20 BY MR. BRENNER:

21 Q. Isn't this the, a form that came out and you ultimately
22 signed to authorize the county official to come out to
23 the property?

24 A. No.

25 Q. Well, who signed it?

1 A. There's no signature on here.

2 Q. I know, my question is it's asking for the trustee to
3 sign it and you said the assessor's office came out so
4 I'm trying to find out who signed this form which was
5 addressed to the Lois Mosher Revocable Trust?

6 A. Nobody signed it, so.

7 Q. Well, they came out you said?

8 A. What they're asking here is to, they're using Farm
9 Service maps to show property lines.

10 MR. BRENNER: Correct.

11 BY MR. BRENNER:

12 A. Okay, and this was on this particular and I did not feel
13 that the Farm Service Agency had any right to use, I
14 mean the county to use any of the Farm Service Agency
15 maps or whatever to show property lines so I did not
16 sign this, but you asked me a question about personal
17 property. This is a question that you're asking me
18 about tax issues and the size of a piece of property or
19 legal description. So there's two different questions
20 that you're asking me. So what is it you want to know?

21 Q. Very good. Sir, did you provide the maps that your
22 counsel put up one on the wall and it broke down, did
23 you provide that map to the county assessor's office?

24 A. No.

25 Q. But you knew it was requested because it was sent to

1 you at your address, correct?

2 A. Yes.

3 Q. But did you turn that over to Lois Mosher when she was
4 alive for her to sign it?

5 A. No, I didn't because I disagreed with what they were
6 asking for and the reason why is because of the, the
7 ground currently had a legal description and this would
8 have changed the legal description of the ground that
9 she owned at that time.

10 MR. BRENNER: I offer 387, Your Honor.

11 MS. OLDEMEYER: No objection.

12 THE COURT: 387 is received.

13 (Exhibit No. 387 is hereby
14 made a part of this the
15 official court record.)

16 BY MR. BRENNER:

17 Q. Well that gets me back to a point that you testified to
18 your attorney, isn't it a fact that your mother asked
19 for her 1/3 monies?

20 A. She never asked me for it.

21 Q. She never did?

22 A. Never did.

23 Q. All the way up to the time she died she never asked for
24 it?

25 A. Never asked.

1 Q. Now you said in your direct testimony when you were
2 talking about Exhibit 404, that, excuse me, it was 116
3 that you had no way of communicating with the trustee?

4 A. What is 116?

5 Q. It doesn't matter. My question is your statement, you
6 had no way of communicating with the trustee?

7 MR. LEONARD MOSHER: I have to understand what
8 116 is before I answer the question.

9 MR. BRENNER: Why?

10 MR. LEONARD MOSHER: Because you asked me about
11 a document. I want to know what it is.

12 BY MR. BRENNER:

13 Q. You said you had no way of communicating with the
14 trustee, tell me what it is that formulated that answer
15 that you couldn't contact Janice Herrell?

16 A. I mean, there was, I tri- -- you know, one of the things
17 that has to happen in a trust for her to do this stuff
18 with the trust she has to do her stuff so she's the one
19 that should have stepped forward and said, okay, this is
20 what we're going to talk about in the trust. She did
21 not do that and so when I went to, when I learned that I
22 was not the executor of it then I asked to, okay, you
23 stay on and protect my interest. She knew that I had
24 questions about the house. She knew that I had all
25 these questions. There was no communications with her

1 at any time. None. I mean only through the attorneys.
2 So what I'm trying to say is that I have tried through
3 the attorneys, okay, let's sit down, let's negotiation
4 this issue, nothing has been done.

5 Q. Okay, let's try that again, my question is, you had no
6 way of communicating with the Trustee Janice Herrell.
7 Did you at any time make an attempt to contact Janice
8 Herrell?

9 A. Through the attorney, yes.

10 Q. That's not my question. Did you contact Janice Herrell?

11 A. Directly, no.

12 Q. Did anyone stop you from calling Janice Herrell?

13 A. No.

14 Q. Did you write her, Janice Herrell?

15 A. I sent 1099's once a year and then in 2015 I sent her
16 kind of explaining what to do with the information and I
17 received nothing, no questions, no nothing.

18 Q. Well, you did get questions didn't you?

19 A. Through the attorneys.

20 Q. All right but let's try, again I'm trying to have it
21 clear for the Judge. Janice Herrell didn't stop you
22 from calling her, contacting her did she?

23 A. No, she did not.

24 Q. All right, and you made personally no effort to reach
25 her, right?

1 A. No, I made no effort to reach her.

2 Q. All right, now let's talk about the 1099's. Now, sir,
3 do you understand that if you, a 1099 is given to
4 someone for which they have received some monies? Do
5 you understand that?

6 A. That is wrong.

7 Q. Oh, that's wrong?

8 A. Yes.

9 MR. LEONARD MOSHER: Do you have the 1099
10 instructions?

11 BY MR. BRENNER:

12 Q. All right, my question to you, sir, is you're saying you
13 can send a 1099 to someone who received no money from
14 you, is that what you're telling me?

15 A. Yes.

16 Q. Now, did Lois Mosher ask you to take your name off of
17 the insurance at any time? To take her name off of
18 covering her house at Hacker Circle or the farm?

19 A. No.

20 Q. You knew that Stan, your brother, was covering with
21 insurance the Hacker Circle, didn't you?

22 A. No, I did not.

23 Q. Didn't you get told that by both your mother and by
24 Janice that you were, that there was insurance?

25 A. No.

1 Q. Now I want to make sure I understand another thing you
2 said, in 2012, excuse me, for the year of 2012 real
3 estate taxes. Did you pay the entire year?

4 A. Yes.

5 Q. Did you pay the entire year of '13?

6 A. No.

7 Q. Did you pay any part of '13?

8 A. The first half.

9 Q. Now, I'm, now I understand, that's taxes that would be
10 paid in '14, did you pay the 2013?

11 A. I paid the first half of taxes in 2013.

12 Q. For what year?

13 A. For it would be for 2012.

14 Q. So, again my question a minute ago was, did you pay the
15 second half of 2012 in 2013 on the south half of 24-17-
16 58?

17 A. No.

18 Q. Did you pay any of 2013 which would be in '14 to pay for
19 the south half of 24-17-58 in Banner County?

20 A. All right, say the question again.

21 Q. Did you pay any of the taxes assessed for the year 2013
22 to the south half of 24-17-58 in the year 2014 or '13,
23 it could have been December, did you pay for the tax,
24 what's taxes for the year 2013?

25 A. No.

1 Q. Who paid them?

2 A. The trust.

3 Q. So you benefited from having taxes paid on your land
4 that you acquired for '12, the second half and all of
5 '13, correct?

6 A. Restate the comment.

7 Q. Isn't it true that you then personally benefitted from
8 having the taxes for the second half of 2012 and all of
9 2013 paid by the trust?

10 MR. LEONARD MOSHER: In what tax year?

11 BY MR. BRENNER:

12 A. They were paid, she paid the taxes in 2014.

13 Q. Right, for all of '13 and half of '12, correct?

14 A. Okay, yes, and I did not own the property at that time.

15 Q. You owned it when she paid it, didn't you?

16 A. When she give out the deeds then she paid the taxes,
17 yes.

18 Q. Now that's not accurate, is it?

19 A. Why isn't it accurate.

20 Q. She gave the deeds in December of 2013, correct?

21 A. I received the deeds in January.

22 Q. Well, they were deeded, in the records, it's in evidence
23 already that shows they were dated in December of 2013,
24 recorded.

25 A. Well, then I am wrong, they're showing that they were

1 dated in January.

2 Q. They're dated in January?

3 A. Yes, Colorado January dates on them.

4 Q. Colorado dates on them?

5 A. I mean in Colorado is where they were made and then
6 dated in January.

7 Q. You're sure of that?

8 A. Well, you want to prove me. Let's get them out --

9 Q. My question to you is, the taxes for all of '13 which
10 would be for the tax year, real estate tax year '13, the
11 trust paid it all, correct?

12 A. I paid some taxes on the first half too in there some
13 times have been crossing date wise and everything but I
14 did pay some tax the first half in '13.

15 Q. Right, but that was for the first half of '12, correct?

16 A. Okay, I would say, yes.

17 Q. And, but the second half of, for the south half of 24-
18 17-58 was paid by the trust and all of 2013 was paid by
19 the trust for the south half of 24-14-58, Banner County,
20 Correct?

21 A. In 2014, yes, they paid those, yes.

22 Q. In fact that would have been on January 29, 2014,
23 wouldn't it?

24 A. Yes.

25 Q. So you, when you got the property you didn't owe any

1 real estate taxes until the year 2015, correct? You
2 didn't have to pay anything?

3 A. I would have paid the 2014 tax year.

4 Q. In '15?

5 A. In '15.

6 Q. So you didn't have to worry for a whole several years
7 there, did you?

8 A. Explain the question.

9 Q. You didn't have to pay for the second half of '12, none
10 of '13 and the '14 taxes didn't come due until '15
11 correct?

12 A. Yes, so I owed for one tax year after the deeds were
13 done. So, yes, I paid for one tax year, yes, in '15.

14 Q. Now, you told your counsel today that you gave away the
15 wheat that was harvested during the time of the trust
16 owning the land, you gave it away?

17 A. Yes.

18 Q. Did you have any written authorization to do that?

19 A. Nope.

20 Q. Did you get a receipt for giving it away?

21 A. No.

22 Q. Did anyone write you in advance saying you're authorized
23 to give away this wheat?

24 A. No.

25 Q. And how much was the value of the wheat by the bushel?

1 Was that 3.88?

2 A. It's in those spreadsheets I gave you.

3 Q. And the question is, sir, that took away an income item
4 to the trust didn't it?

5 A. No, it didn't

6 Q. It didn't?

7 A. (No audible response had.)

8 A. Would you agree that the documents, there have been
9 emails between the lawyers for Janice Herrell and you,
10 agreed that a survey of the land was an appropriate
11 thing to do?

12 A. No.

13 Q. Well, the survey solved the actual acres didn't it?

14 A. No, it didn't.

15 Q. You're challenging the surveyor too, right?

16 A. Yes.

17 Q. So you've challenged the surveyor, the mineral search
18 people, I just want to see who else, and then the
19 assessor's office?

20 A. Nowhere in the trust does it require a survey to get
21 deeds.

22 Q. Well, --

23 A. Nowhere does it say in the trust that a mineral search
24 had to be done.

25 Q. Sir, does it say anywhere in the trust when you have to

1 distribute the money?

2 A. It says once the house is sold you distribute the money.

3 Q. It didn't say when it had to distribute did it?

4 A. No, it didn't and that's why we're here today because it
5 still hasn't been done.

6 Q. You haven't gotten money out of the sale of the house?

7 A. I've gotten a partial payment but not full payment.

8 Q. Okay, so we've got it clear, after January of 2014 the
9 real estate had been deeded out, correct?

10 A. Yes.

11 Q. Certain mineral deeds got recorded at least, correct?

12 A. They're wrong but, yes.

13 Q. And \$50,000 of the bank account went out to three
14 people?

15 A. Yes.

16 Q. And that left roughly 20, \$30,000 left, correct?

17 A. Actually I think the number is higher than that.

18 Q. But since then we have been in litigation too, right?

19 A. Yes.

20 Q. And the trust funds now are down to \$100?

21 MR. LEONARD MOSHER: Why?

22 BY MR. BRENNER:

23 Q. For paying for the lawyers for the trust.

24 MR. LEONARD MOSHER: And why is that?

25 BY MR. BRENNER:

1 Q. Because that's what the law allows, do you know that?

2 A. Okay.

3 Q. All right, so what else is in the trust if there's \$100
4 so to speak in the bank now, what else is in the trust
5 then at this moment that the trustee has?

6 A. If the money was distributed like it's said in the trust
7 at the time the house was sold then the attorneys
8 wouldn't need it to be there.

9 Q. Well, you sued them. You sued before the house money?

10 A. Because there was no payment being done. The house was
11 sold. The money sat in a bank account for almost a year
12 and nothing was being distributed. The lawsuit is what
13 pushed the payment on this.

14 Q. Okay, the payment occurred in January of '14?

15 A. Yes.

16 Q. And then you had Janice served with the lawsuit after
17 the money got distributed and so at that point, sir, you
18 continued the litigation. You didn't drop it, did you?

19 A. If she'd done what the trust required, very simple basic
20 wording in that trust. If she'd followed the trust we
21 would not have been here today but because she does not
22 follow the trust, what the wording is and it's a very
23 simple trust. I mean there's nothing complicated about
24 it.

25 Q. But you are challenging the interpretation --

1 A. I am, the way that she has not distributed the money as
2 to the wording of the trust.

3 Q. Okay, but you were challenging the interpretation to the
4 trust, correct?

5 A. No, I'm not charging [sic] the interpretation I'm
6 charging [sic] how she handles.

7 Q. Well, she did those actions, her attorney wanted to get
8 it resolved and offered an accounting, everything but
9 you continued with the litigation, correct?

10 A. If she would have distributed the full amount of the
11 house sale then we would not be here today but because
12 she hasn't done it, the attorneys haven't which are
13 generating money on this by not solving it. They have
14 more or less used up the money.

15 Q. So, but that's the litigation you started, correct?

16 A. For her to do it. Yeah, this litigation wouldn't even
17 have happened if she'd, when the house was sold, she'd
18 distributed the funds, but she didn't do that, did she?

19 Q. Would you agree that for more than three years since the
20 money got distributed you have continued to pursue the
21 litigation?

22 A. And she could have distributed at any time --

23 Q. Answer yes or no, sir?

24 A. Yes, I have and she could have distributed at any time
25 and ended it but she has not right up to this moment.

1 Q. Now, well now the money you know has had to go for
2 lawyer fees under the law, the question to you is, what
3 is it that you expect her to distribute to you now when
4 there's nothing, well, there's this burial plot in
5 Cheyenne?

6 MS. OLDEMEYER: Object to the form of the
7 question.

8 THE COURT: What's wrong with the form?

9 MS. OLDEMEYER: I think it started with a
10 statement about what law required.

11 THE COURT: Mr. Brenner, I'll have you just
12 restate your question for me, please.

13 MR. BRENNER: All right.

14 BY MR. BRENNER:

15 Q. Aside from the \$100 in the trust account to keep the
16 account open and the burial plot in Cheyenne, Wyoming,
17 those being the only contents that the trustee has?

18 A. Plus the rings, plus the furniture, plus --

19 Q. The equipment?

20 A. The equipment, yes, I'll agree with equipment, plus also
21 the misspent of money like for survey, mineral searches.
22 What happened to the money that was in the 2012 tax
23 return, the refund there? What happened to that money?
24 What happened to some of the dividend money? What
25 happened to all of this stuff, that's why we're here.

1 Q. Well, that's not what I'm asking you, what you just
2 answered. I was asking you what there is to distribute
3 and you just told me the equipment?

4 A. Yeah, the equipment is one of them, yes.

5 Q. So are you going to turn over the equipment to Janice so
6 she can get it somehow disposed or distributed?

7 A. If I knew where the equipment was yes, I would but as
8 far as I know Stan might have it, Janice might have it.
9 I do not know where the equipment is.

10 Q. Okay, so you're not saying that Janice Herrell has the
11 equipment?

12 A. She's the one that made the list.

13 Q. And you heard she got the list from your bother to which
14 they have ascertained it from records. My question to
15 you is, Sir, are you asserting that Janice Herrell is
16 currently in possession any of the equipment, yes or no?

17 A. Yes.

18 Q. And tell the judge what proof you can demonstrate to him
19 that Janice has it?

20 A. She's the one that made the list.

21 MR. BRENNER: She did, she got the list from
22 your brother.

23 BY MR. BRENNER:

24 A. Okay, she's the executor of the trust, she's the one
25 that's responsible for is the list accurate or not.

1 Q. The list is in the amended inventory in the county
2 court, it's not in the trust?

3 A. She's the one that put it in the trust because she's the
4 one --

5 Q. She put it in the trust?

6 A. She's the one that distributes the trust and runs it.
7 She's the one that calls the shots on it so she has to
8 document that the machinery exists.

9 Q. While you've been up there in the witness stand, before
10 this time after lunch, I noticed that you had a notepad
11 with you?

12 A. Yes.

13 Q. You were using that to refer to your notes?

14 A. If I was asked, yes.

15 Q. So you did look at that pad?

16 A. No, not at the time, no.

17 Q. What do you mean?

18 A. You didn't ask me any questions of where I would look at
19 the pad.

20 Q. We're not talking about me. Mr. Sorensen asked you
21 questions, your lawyer asked you questions. The
22 question is did you use that notepad to assist you in
23 answering questions?

24 A. No.

25 Q. Not at all?

1 A. No.

2 Q. But you had it up on your lap to look at?

3 A. Yes, there's no place to put it up here so had to ask
4 for a chair.

5 Q. But you carried up that notepad with you in our breaks
6 and everything, right?

7 A. Yes.

8 Q. And did you look at it to refresh your memory to answer?

9 A. No.

10 Q. But you never did?

11 A. No.

12 MR. BRENNER: Nothing further, Your Honor.

13 Thank you.

14 REDIRECT EXAMINATION

15 BY MS. OLDEMEYER:

16 Q. Is there --

17 MS. OLDEMEYER: I think it's my turn, I
18 apologize, Your Honor.

19 THE COURT: Nope, you're fine. I was just
20 coming back to you. I was just finishing a note. Go ahead,
21 Ms. Oldemeyer, you may redirect at this time.

22 BY MS. OLDEMEYER:

23 Q. Let's start with the notepad. You prepared that in
24 preparation for your testimony?

25 A. Yes, I took notes on a lot of these exhibits, yes.

1 Q. Okay, do you have any concerns if defense counsel wants
2 to look at any of that?

3 A. No, they can look at it all they want.

4 MR. BRENNER: Go ahead and go get it. We'll
5 take it.

6 MS. OLDEMEYER: Look at it, he wants it back
7 but you can look at it.

8 MR. BRENNER: We can look at it, that's what
9 I want.

10 MR. LEONARD MOSHER: No, it's actually over
11 there.

12 BY MS. OLDEMEYER

13 Q. You didn't have it during that last exchange did you?

14 A. No.

15 Q. Okay, let's talk a little bit about this lawsuit, there
16 are counterclaims filed against you, correct?

17 A. Yes.

18 Q. They seek in excess of \$100,000 in farm income?

19 A. Yes.

20 Q. They seek in excess of \$100,000 for farm equipment?

21 A. Yes.

22 Q. And then they also see a value for jewelry?

23 A. Yes.

24 Q. And you dispute those counterclaims?

25 A. Yes.

1 Q. So the lawsuit is, you started but there was added on to
2 by the defendants true?

3 A. Yes.

4 Q. Let's look at the deeds, strike that. In your
5 testimony when you were talking about deeds dates signed
6 and dates recorded. What were the dates the deed were
7 recorded to your knowledge?

8 A. They were January something.

9 Q. Thank you. You mentioned 1099 instructions when you
10 were being asked questions about 1099s and whether the
11 defendant Janice Herrell or the trust received money,
12 can you explain for the court what you rely upon in 1099
13 instructions for your actions?

14 A. The 1099 is something that you give to somebody and it
15 doesn't always have to be money it can be a beneficial
16 something. There's, if they received any benefit. It
17 doesn't have to be money but they did receive a
18 financial benefit from that.

19 Q. And when you sent that type of information did you also
20 send it with your summaries of expenses?

21 A. Yes.

22 Q. In that notebook to your left, can you grab that
23 notebook, sir? If you could turn to Exhibit 139. Are
24 you there, sir?

25 A. Yes.

1 Q. You were shown one page, the last page I believe of
2 Exhibit 139 which has now been marked as Exhibit 259, is
3 Exhibit 139 additional copies that you produced in this
4 litigation related to that homeowners declaration sheet
5 of Farm Bureau from November 17 of 2007?

6 A. Yes, it is.

7 MS. OLDEMEYER: We offer Exhibit 139.

8 THE COURT: Mr. Sorensen.

9 MR. SORENSEN: I'm going to wait.

10 THE COURT: Okay, Mr. Brenner.

11 MR. BRENNER: I'm going to objection on
12 relevance and hearsay.

13 THE COURT: Ms. Oldemeyer, did you have
14 anything you wanted to say with respect to those objections?

15 MS. OLDEMEYER: I think for purposes of
16 completeness it's important to know what home was insured so
17 let me ask my questions a different way.

18 THE COURT: Okay.

19 BY MS. OLDEMEYER:

20 Q. Exhibit 259, the one page of insurance policy with Farm
21 Bureau that defense counsel handed you. That Farm
22 Bureau policy, what was the home insured?

23 A. It was --

24 MS. OLDEMEYER: If I can help by directing your
25 attention to page 139 toward the bottom it says insured

1 location.

2 MR. LEONARD MOSHER: Is that page 1?

3 MS. OLDEMEYER: On page 1 under the section
4 endorsements there's a header insured location.

5 BY MS. OLDEMEYER:

6 A. Okay, yes, it shows 5424 Hacker Circle in Cheyenne,
7 Wyoming?

8 A. Yes.

9 Q. That was your mother's home?

10 A. Yes.

11 Q. Is that a policy you bought and paid for for the
12 arrangement with your mother?

13 A. Yes, it is. It's addressed to Lois Mosher at my mailing
14 address.

15 Q. Exhibit 301 has been received into evidence I believe.
16 Let me double-check this. Yes.

17 THE COURT: I have 301 as received.

18 MS. OLDEMEYER: Thank you, Your Honor.

19 BY MS. OLDEMEYER.

20 Q. Can you read on the back wall there, Mr. Mosher, I put
21 301 up there?

22 A. Yeah, that's an email from my attorney to Mr. Greg
23 Dyekman dated July 7 of 2014.

24 Q. And is that a communication from your attorney
25 indicating you're unaware of any other mineral interests

1 that were held as tenants in common by certain people?

2 A. Yes. I'm unaware of any mineral interest that are held
3 by Lois Mosher, Alberta Perry and Betty Wood.

4 Q. And again there's also an inquiry about the two rings?

5 A. Yes.

6 Q. Okay, let's go back to the mineral interests, I'd like
7 you to, I'll put it up on the screen, are you aware of
8 any point in time where attorneys for Janice Herrell
9 indicated that any mineral interests that weren't
10 specifically described in the trust would be shared
11 equally between the three trust beneficiaries?

12 MR. BRENNER: I'm going to object, Your
13 Honor, that will get into Rule 408 for sure. I know what
14 they are referring to and that was a proposal and I will
15 object to that line of questions.

16 THE COURT: Ms. Oldemeyer.

17 MS. OLDEMEYER: This Exhibit 108 has been
18 received into evidence, I'm just going to ask him about it.

19 THE COURT: Well, to the extent that it's,
20 to the extent that it's, I certainly will take a look at it.

21 Mr. Brenner, I understand your objection and I'll have
22 to review it when I'm in chambers looking everything over. If
23 it's settlement negotiations I'm going to dump it so --

24 MR. BRENNER: Thank you.

25 THE COURT: If that's the way, if that's

1 the context I won't consider it.

2 You can inquire at this time, Ms. Oldemeyer.

3 BY MS. OLDEMEYER:

4 Q. Okay, at the bottom of page 1 of Exhibit 108 does it
5 read, the property remaining to be distributed is as
6 follows which Janice proposes to distribute one-third
7 equally to Leonard, Dennis and Janice?

8 A. Yes.

9 Q. And it talks about the burial plot?

10 A. Yes.

11 Q. Proceeds in the bank account of the trust?

12 A. Yes.

13 Q. And then real property consisting of unleased fractional
14 mineral interest located in Nebraska?

15 A. Yes.

16 Q. Okay, so when you were asked questions about mineral
17 interest and whether you were entitled to them if they
18 weren't in the trust and whether you wanted them, I want
19 to understand from you, Mr. Mosher, what do you want
20 with respect to mineral interest that aren't
21 specifically identified by legal description in the
22 trust document?

23 A. That's probably why we're here today, part of the
24 reason, but I would like, if it says that, to kind of
25 get an idea of where the minerals go.

1 Q. Okay, with respect to the minerals, do you contest it
2 was improper for the trust to do the expense for the
3 title search?

4 A. Yes.

5 Q. Why?

6 A. Because --

7 MR. BRENNER: Your Honor, I believe that's
8 been covered in direct and in cross. This would be improper
9 redirect.

10 THE COURT: Ms. Oldemeyer?

11 MS. OLDEMEYER: I think he needs to clarify
12 specifically why he's challenging that in light of the
13 questions Mr. Brenner asked on cross examination about
14 whether his attorneys approved it or not. This is that.

15 MR. BRENNER: I don't think, Your Honor, I
16 don't think that he can clarify what his attorney said first
17 of all. Secondly, my comment is still, it's improper
18 redirect when it was direct in the first place. We had it on
19 the board. She went down every one of them then I went on
20 cross, that I understood to be the end of it.

21 THE COURT: I'll allow her to ask the same
22 questions and the objection is overruled.

23 MR. BRENNER: Thank you.

24 BY MS. OLDEMEYER:

25 Q. I felt that the mineral search was improper because it

1 was something that would benefit her.

2 Q. Her being Janice Herrell?

3 A. Yes.

4 Q. You were asked question about Exhibit 388, I'll put it
5 up on the back wall for you, about this Exhibit 388 and
6 I think I heard you reference crop loss?

7 A. That's a crop insurance form from my crop insurance
8 agent and there were no claims made in that year.

9 Q. Okay, so when we talk about in your direct testimony
10 when we talk about whether there was a loss, what loss
11 were you referring to?

12 A. The farming loss.

13 Q. Okay, whether expenses exceeded income?

14 A. Yes.

15 Q. Whether there was a --

16 MR. BRENNER: I'm going to objection, Your
17 Honor, leading.

18 THE COURT: Sustained.

19 MR. SORENSEN: Move to strike.

20 THE COURT: That last answer will be
21 stricken, you can rephrase.

22 MS. OLDEMEYER: I honestly don't remember what
23 it was so we'll move on.

24 BY MS. OLDEMEYER:

25 Q. Counsel asked you about a note on the Farm Service

1 Agency notations where you mentioned something about, in
2 reference to Exhibit 380, the survey, do you remember
3 when you wrote that note to the Farm Service Agency?

4 A. I think it was 2014, I think.

5 MS. OLDEMEYER: Your Honor, may I approach and
6 hand the witness deposition Exhibit 64 to see if it refreshes
7 his recollection?

8 THE COURT: You may.

9 MR. LEONARD MOSHER: All right.

10 BY MS. OLDEMEYER:

11 Q. When did you write that note to the FSA about the --

12 A. 11-3-15.

13 MS. OLDEMEYER: Thank you. I'll take that
14 back, sir.

15 MR. LEONARD MOSHER: Okay.

16 MR. BRENNER: We're going to want that
17 marked.

18 BY MS. OLDEMEYER:

19 Q. The survey that was done that you challenged the expense
20 from the trust, when was that survey done?

21 A. In '13.

22 Q. You were asked a lot about documents, are there any
23 documents to support your claims of breach of duty or
24 loyalty and breach of duty of impartiality?

25 A. (No audible response had.)

1 Q. I want to understand your answers when you say no. Can
2 you explain for the court what you mean?

3 A. Well, there is no documents per se but I do feel that
4 there, there has been money spent to benefit Janice that
5 normally should not have been spent.

6 Q. And with respect to who's in control of the trust and
7 when you get information, who controls all of that?

8 A. Janice does.

9 Q. If you could look at Exhibit 145 in that notebook, do
10 you see Exhibit 145?

11 A. Yes.

12 Q. Is that the exhibit within which there are the 2011 and
13 2012 tax returns? All the way toward the back, Mr.
14 Mosher.

15 A. Yes, it is.

16 MR. SORENSEN: Excuse me you said 145?

17 MS. OLDEMEYER: Exhibit 145.

18 MR. BRENNER: Yeah, that's what it is.

19 BY MS. OLDEMEYER:

20 Q. Is that where the tax returns are located?

21 A. Yes.

22 Q. And if you could turn to the 6th page of Exhibit 145
23 what was the certificate of service date?

24 A. January 22, 2017.

25 Q. When we talk about the Hacker Circle home and whether

1 your sister has the rings, are you relying upon
2 information you learned from any of Janice's
3 representatives?

4 MR. BRENNER: I'm going to objection on
5 foundation on that. It kind of depends on who she's claiming
6 as representatives.

7 THE COURT: Well, I think the question that
8 she asked calls for an answer of either yes or not.

9 MR. BRENNER: Thank you, that's what I --

10 THE COURT: Then the follow up question may
11 get into foundational issues so I'm going to allow him to
12 answer the question that was posed.

13 MR. BRENNER: Thank you.

14 MR. LEONARD MOSHER: Would you reask the
15 question?

16 THE COURT: Hang on, before she does that
17 the objection will be to this question as well I suspect but
18 either way I'm going to allow you to answer the, or ask the
19 question and then, Mr. Brenner, if you think you need to
20 interpose your objection you're welcome to do it.

21 BY MS. OLDEMEYER:

22 Q. It won't sound exactly the same because I don't remember
23 it but with respect to the claims you're making in this
24 case about the rings and the Hacker Circle home, are you
25 relying upon information from any of Janice's

1 representatives, yes or no.

2 A. Yes.

3 Q. Can you identify for the court which representatives?

4 A. Mr. Dyekman.

5 Q. I put Exhibit 107, page 5 on the back wall, do you see a
6 reference to taxes being paid on 12-2-13 under the third
7 column?

8 A. Yes, I do.

9 Q. Okay, do you know what those taxes pertain to?

10 A. No, I don't.

11 Q. Okay, counsel asked you about, are you raising the issue
12 of more than one trust, and this goes back to your
13 deposition. How many trusts does your mother have?

14 A. She had one with two amendments.

15 Q. Okay, and in your deposition when you asked the question
16 about more than one trust what were you thinking?

17 A. I was thinking about the amendments.

18 Q. Let's talk, let's talk about what your dad did, strike
19 that. In your answers to questions from defense counsel
20 you said, my dad did not own any machinery at his death.
21 Do you recall that testimony?

22 A. Yes.

23 Q. Can you explain for the court the basis for that
24 statement?

25 A. My dad had passed away from colon cancer and he had

1 fought colon cancer for a little over four years and he
2 was not physically able to do any farming and so he did
3 not have any equipment for that period of time that he
4 had cancer and actually a little bit before that because
5 he did retire.

6 Q. With respect to the tractor and the personal property
7 tax in '96 that you signed, what was that equipment?

8 MR. LEONARD MOSHER: What was the question
9 again?

10 BY MS. OLDEMEYER:

11 Q. You were show Exhibit 401, a personal property tax
12 statement I believe you signed in, I can put it up for
13 you, in 1996 --

14 A. Yes.

15 Q. -- do you recall that?

16 A. Yes.

17 Q. Explain for the court what, what was going on then?

18 MR. LEONARD MOSHER: Was that my personal
19 property tax?

20 MS. OLDEMEYER: You know what I don't have it
21 electronically. May I approach and grab Exhibit 401?

22 THE COURT: You sure can.

23 MR. BRENNER: It's up here.

24 THE COURT: I was going to say, I think
25 there are several over here.

1 MS. OLDEMEYER: Thank you.

2 BY MS. OLDEMEYER:

3 Q. Do you have Exhibit 401 in front of you?

4 A. Yes, I do.

5 Q. Okay, who owned that piece of equipment when that
6 document was signed?

7 A. It's my dad's personal property tax so, I really don't
8 know.

9 Q. What happened to it?

10 A. I really don't know either.

11 Q. We're talking about something that occurred over 20
12 years ago, right?

13 A. Yes.

14 Q. Let's talk about your dad and his diagnosis of colon
15 cancer. Did he ever move from one location to another?

16 A. Yes, he did. He, they used to own, my parents used to
17 live in Green Meadow Estate and there was a bi-level
18 house with stairs and so when they, when my dad was
19 diagnosed with colon cancer he knew that he was going to
20 have issues with stairs and there was a building in the
21 back that also held tools and whatever else at that time
22 and so when they left there they went over to the Hacker
23 Circle, moved over to Hacker Circle property at that
24 time and then pretty much everything that was tools or
25 whatever was distributed at that time and he also had a

1 motor home with a trailer that he pulled with a car,
2 that had a car trailer and that's referencing some of
3 the license plates here, but anyhow that was all
4 disposed of pretty much four years before my dad's
5 passing.

6 Q. And Exhibit 402, do you have that in front of you?

7 A. (No audible response had.)

8 Q. Exhibit 402 is --

9 A. No, I don't.

10 Q. You don't, I'm handing you exhibit 402, that motor home
11 and trailer that you were just describing is that in any
12 way related to Exhibit 402?

13 A. Yes, it is.

14 Q. How so?

15 A. This is something that had an issue but he bought it
16 from a welding shop down in Greeley, Colorado, and he
17 did not have a title for it because it was considered a
18 homemade trailer so that's the only reasons why but
19 that's what he used to pull a car on behind his motor
20 home and this is the trailer.

21 Q. And the trailer was disposed of?

22 A. Yes, it was.

23 Q. So how did it come to be in Exhibit 402 that there is a
24 record of plates associated with that trailer?

25 A. Because I have other trailers and when I went in to the

1 courthouse I just asked for my trailers and they
2 presented it and I paid for it and if you notice that
3 the fees on here now are for \$10 but for years they just
4 were just \$5 so you went in and licensed all of your
5 trailers, even semitrailers for just \$5.

6 Q. Do you have any other comments about Exhibit 402?

7 MR. BRENNER: I'm going to object to the form
8 of that question, kind of like talk about anything you want
9 to.

10 THE COURT: I understand. That question is
11 a bit broad so I'm going to sustain the form.

12 BY MS. OLDEMEYER:

13 Q. Well, let's keep moving, Mr. Mosher. The other, Exhibit
14 403, do you have that one there? That's the '96, '97,
15 '98 and '99 personal property taxes of yours?

16 A. No, I don't have it.

17 Q. Okay, but you remember that exhibit?

18 A. Yes, I do.

19 Q. Okay, can you explain for the court what is going on in
20 '97, '98 and '99 with respect to your personal property
21 taxes and the John Deere tractor on there?

22 A. Okay, when you, when you file personal property tax at
23 the courthouse on a new piece of equipment they ask you
24 for your depreciation schedule off of your personal
25 income tax and so if you buy a piece of equipment then

1 you go in and file in April at the time and so if there
2 was, that's how the county knows that you own a piece of
3 property because you're showing it on your income tax.
4 Sometimes they will ask for a sale of bill or whatever
5 to show that the amount that you're depreciating is an
6 accurate amount. So, that is, but that's what that
7 form, so actually one form ties together. They are kind
8 of, without the tax form its kind or really, doesn't
9 really show a whole lot.

10 Q. And I don't remember with respect to those exhibits but
11 did, did the personal property tax return say anything
12 as far as a make, model or year on John Deere tractor?

13 A. No, it did not.

14 Q. When you, well you testified you bought 1100 acres
15 through Mr. Sorensen?*

16 A. Yes.

17 Q. Using him as counselor, right?

18 A. Yes, counselor and I bought it from the Volks Prudential
19 real estate.

20 Q. Was there any equipment on that property when you bought
21 it?

22 A. Yes, there was. For some reason when you buy a piece of
23 property if there's old machinery, antique machinery
24 well you inherit that machinery also.

25 Q. It's abandoned by the prior owner?

1 A. Yes.

2 Q. I just want to make sure that we are clear on the
3 equipment at your property. There's an older tractor
4 described in Exhibit 397. Did that belong to your dad?

5 A. I, I don't know where it actually come from. He could
6 have bought it. It's, none of the equipment runs or
7 anything. It's actually if anything salvage and I have
8 a lot of issues with theft so I put it around my fuel
9 tanks.

10 Q. As you sit here today on your property do you have any
11 equipment that you believe should be part of Lois
12 Mosher's trust?

13 A. No.

14 MS. OLDEMEYER: No further questions.

15 THE COURT: Mr. Sorensen, anything else?

16 MR. SORENSEN: May I have just a second, Your
17 Honor?

18 THE COURT: Yes.

19 MR. SORENSEN: I don't believe I have any
20 questions, Your Honor.

21 THE COURT: Mr. Brenner?

22 RECROSS EXAMINATION

23 BY MR. BRENNER:

24 Q. A couple of things, Mr. Mosher. I'm going to hand you,
25 your counsel got up and showed you Exhibit 64 from the

1 deposition?

2 A. Yes.

3 Q. And I've marked now as Exhibit 414, take a look and see
4 if it's not the same document?

5 MR. LEONARD MOSHER: Now what document am
6 I supposed to compare this to?

7 MR. BRENNER: Well, the one that your lawyer
8 showed you.

9 MR. LEONARD MOSHER: Which one, you said, you
10 give me the number.

11 MR. BRENNER: I'll give it to you. Here you
12 go.

13 MR. LEONARD MOSHER: Okay.

14 BY MR. BRENNER:

15 Q. Is it the same?

16 A. Yes, it is.

17 Q. All right, we'll give this back to your lawyer and if
18 you'll turn, I think it's page 3, the writings on page
19 3, is that right?

20 A. Yes.

21 Q. And it's below where you signed your name?

22 A. Yes.

23 Q. And those are documents as to your FSA farming in Banner
24 County, the land in question, correct? This deals with
25 the southwest quarter of 24-17-58?

1 A. Yes. I don't know who wrote that on there but yes.

2 Q. Well, you told your lawyer you wrote it on there?

3 A. That's not my handwriting.

4 Q. Okay, that is what you told the FSA people, right?

5 A. Yes, I wrote it on another map.

6 Q. On another map?

7 A. Yeah.

8 Q. Could that have been written in prior years?

9 A. There was two years that I did not go into the Farm
10 Service Agency so when I actually went in I actually
11 signed up for two years.

12 Q. All right, this is for crop year '16 that your writing
13 is on, isn't it? If you look at the top of the former
14 page, it says for crop year '16?

15 A. Program year, yes.

16 Q. Program year '16, right?

17 A. Yeah, dated, okay, yes.

18 Q. All right and the information, you would have gotten the
19 information that you gave the FSA, this kind of
20 information you would give them the information, right?

21 MR. LEONARD MOSHER: What information would I
22 give them?

23 BY MR. BRENNER:

24 Q. Well, that's a good question in a way because one of the
25 notes they make is not all crop, let me see if I have

1 it, note, all cropland has not been reported for program
2 year '16.

3 MR. LEONARD MOSHER: Let me see what you're
4 saying

5 BY MR. BRENNER:

6 Q. You will see the note is right there below the cropland
7 report?

8 A. Yes.

9 Q. Okay, so according to the government agency you aren't
10 reporting all of that?

11 A. This had to do with spring crop is what it's
12 questioning.

13 Q. The, the one thing about it is in this document from
14 Farm Service Agency you explained to them what the terms
15 were between you and Janice Herrell didn't you?

16 A. Yes, 1/3, 2/3.

17 Q. One third and 2/3, right?

18 A. Right.

19 Q. That's all it says, right?

20 A. Right.

21 Q. Doesn't say net, doesn't say anything more just says
22 1/3, 2/3, is that correct?

23 A. That's for the farm payment information so you're kind
24 of mixing stuff around but that's what the government
25 wrote on there for their payments if there was a

1 payment, that's what they wrote on there.

2 Q. Well, it's on more than one place in the materials
3 that's why I'm asking --

4 A. And that is a Farm Agency form. That is a form that
5 they generate for their program.

6 MR. BRENNER: Your Honor, we'd offer 414.

7 THE COURT: Is it 414 or 413?

8 MR. BRENNER: 414 because 3 is a, we saw it
9 was already a number one over here.

10 THE COURT: Okay.

11 Ms. Oldemeyer, comments on 414?

12 MS. OLDEMEYER: Nope. No objection.

13 THE COURT: 414 is received.

14 (Exhibit No. 414 is hereby
15 made a part of this the
16 official court record.)

17 BY MR. BRENNER:

18 Q. And, Mr. Mosher you gave me your pad and a couple of
19 things in your pad, you said that Janice owes \$4,714
20 from Exhibit 108, is that how, am I reading it right?

21 A. Yes.

22 Q. Janice owes not the trust, that's what you wrote a
23 number?

24 A. Yes.

25 Q. Now 108 is, that is the accounting in and out, isn't it?

1 A. (No audible response had.)

2 A. I'll show you my copy of 108. That's a letter from Mr.
3 Dyekman in which he sent it to your lawyer and which it
4 the accounting?

5 A. Okay.

6 Q. Can you tell me where there is a 4714?

7 A. The problem is with my notes I take very poor notes so
8 if you're using my notes for something here good luck.

9 Q. Well, you understand me?

10 A. Yeah, I understand but I mean --

11 Q. Can you find it?

12 A. No, and I don't actually understand the question on my
13 notes there, your question from my notes.

14 Q. All right, but you also have in your notes that you paid
15 2013 taxes, isn't that what it's saying of 1589, because
16 it has the 1200 for '11 so you paid '13, both halves?

17 A. No, it's not saying that.

18 MR. LEONARD MOSHER: Can I have my notes?

19 MR. BRENNER: Yes.

20 MR. LEONARD MOSHER: Okay, thank you.

21 BY MR. BRENNER:

22 A. Okay, I was trying to figure out what had been paid and
23 what I paid and everything and if you add those two
24 number together they come up to 1589 but I did pay them
25 late so that's why the difference is from the 14 to the

1 89, I did pay a penalty.

2 Q. When did you pay them late?

3 A. I don't know.

4 Q. Okay, what year are we talking about?

5 A. It would be 2013. I guess, I don't know. We can sit
6 down and if you've got the time we'll go over --

7 MR. BRENNER: No, I just asked if you --

8 MR. LEONARD MOSHER: Well, let's go over it.

9 You ask questions let's go, let's sort this out because
10 you're asking me on my notes so let's go over it.

11 BY MR. BRENNER:

12 Q. Well, tell me what you're looking at, sir?

13 A. Well, I'm looking at exhibit in this blue notebook, 116.

14 Q. And what year does that cover?

15 A. And that covers, it would be what on the spreadsheet I
16 made out in 2012 and it would be covering property tax
17 year of 2011

18 Q. All right, so what's 2013 then? Your note says there
19 that you paid them both.

20 A. I don't know what that means.

21 Q. Isn't that what it says?

22 A. I put 2013 marked some arrows to it but, yeah, but I
23 don't exactly know what it means.

24 Q. Okay, one more thing out of your notes --

25 MR. LEONARD MOSHER: Okay.

1 BY MR. BRENNER:

2 Q. -- you said Stan changed the trust?

3 A. Yes.

4 Q. So you're telling me that your brother sitting back in
5 the back of the room, he changed the Lois Mosher
6 Revocable Trust?

7 A. He attempted to, yes.

8 Q. And when did Stan Mosher attempt to change the trust?

9 A. If you go to page, what is it, 116 down to number 3, the
10 way I read that is that he was looking to change the
11 trust on how the procedure distributed.

12 Q. And so you're saying Stan Mosher made changes --

13 A. He was challenging the way the trust was currently
14 written.

15 Q. He was?

16 A. Yes, he was by this statement.

17 Q. I, and you're looking at what exhibit?

18 A. I'm look at 116. It's from Greg Dyekman.

19 Q. 116?

20 A. That's what's a, no, it's 121, page 2 of 3, number 3.

21 MR. BRENNER: Okay, that exhibit is not in
22 evidence, sir.

23 MR. LEONARD MOSHER: I understand but you asked
24 from my notebook. You asked what it was from my notes and
25 I'm explaining what my notes are.

1 MR. BRENNER: I only have one more area,
2 Judge.

3 THE COURT: Okay.

4 MR. BRENNER: If I can find the exhibit.

5 BY MR. BRENNER:

6 Q. When your lawyer showed up on the screen there and was
7 asking you and you, Exhibit 108 which I'm showing, okay.

8 A. Okay.

9 Q. And she showed the first page and it talked about the
10 burial plot and then she went in to the parcels, right,
11 and it talked about the mineral interest or others in
12 number 3, right?

13 A. Yes.

14 Q. But the paragraph then goes on, it says, this will be
15 the final step in administering the trust and once it is
16 complete Janice will proceed with distribution of all
17 assets. If everyone agrees to the above distribution,
18 right?

19 A. (No audible response had.)

20 Q. This was a thing and it only required you, Stan and
21 Janice to all agree didn't it?

22 A. Yes.

23 Q. They didn't all agree did they?

24 A. No.

25 MR. LEONARD MOSHER: What's the date of that?

1 MR. BRENNER: March 25, 2015, your lawyer
2 used.

3 MR. LEONARD MOSHER: Okay.

4 BY MR. BRENNER:

5 Q. So it was not agreed, this was a proposal, compromised
6 proposal?

7 A. After your countersuit against me.

8 Q. What date did we countersue?

9 A. (No audible response had.)

10 Q. It was after March 15 wasn't it?

11 A. I don't know.

12 MR. BRENNER: I apologize, I was mistaken
13 with one more question.

14 BY MR. BRENNER:

15 Q. You told, you testified that you gave your mom the two
16 rings in the nursing home in 2009?

17 A. I don't remember what date. I had given them to her I
18 just don't remember the date.

19 Q. Well, in fact isn't it accurate that you put it in an
20 envelope?

21 A. I don't remember the date or anything on it.

22 Q. Well, where was she at at the time you claimed to give
23 it to her?

24 A. One time I give the trunk and everything to Janice and
25 then then one ring was in the nursing home and the other

1 ring, I think she had all along right after the
2 appraisal, she had it all along but she --

3 Q. So you didn't give two rings to your mom at any time did
4 you?

5 A. I did at one time one and one another time but I don't
6 remember the exact dates.

7 MR. BRENNER: Thank you, Your Honor.

8 MR. LEONARD MOSHER: I'll complete a police
9 report if you want.

10 THE COURT: Okay, thank you, Mr. Mosher,
11 you can step down.

12 Ms. Oldemeyer, do you have additional evidence you
13 intended to offer?

14 MS. OLDEMEYER: I just want to offer Exhibit
15 150 which is the Second Amended Inventory.

16 MR. BRENNER: I think that's already been
17 offered and we objected before.

18 THE COURT: Just a second, let me get to
19 it. I don't have it every having been offered.

20 MS. OLDEMEYER: I don't either.

21 MR. BRENNER: 1 - 5 - 0 you're talking about?

22 THE COURT: 1 - 5 - 0 identified in this,
23 do you have?

24 MR. BRENNER: Okay, we had, we had made an
25 objection in my poor recollection that we made an objection

1 to relevancy to it to this proceedings.

2 THE COURT: Okay, what I am saying is the
3 court report doesn't have any record of it being offered in
4 these proceedings. It may have been, I don't even have it in
5 my notes from the other day.

6 MR. BRENNER: We are talking about 150 right?

7 THE COURT: 1 - 5 - 0, the Second Amended
8 Inventory.

9 MR. BRENNER: That's what I --

10 THE COURT: It's fine. I don't -- I'm not
11 saying you can't make an objection I'm saying my records and
12 the court reporter's record have no, have no note in that
13 regard so in that respect you are objecting to its receipt on
14 the basis of?

15 MR. BRENNER: Relevancy, it's not best
16 evidence at this point.

17 THE COURT: Mr. Sorensen, did you have any
18 additional comments you wanted to make with respect to that
19 document?

20 MR. SORENSEN: No, no additional comments.

21 THE COURT: Did you have anything else you
22 wanted to say about the relevance or best evidence objection,
23 Ms. Oldemeyer?

24 MR. BRENNER: I think it should be treated as
25 the court treated Exhibit 149 which was the First Amended

1 Inventory. The court can take judicial notice of the court
2 pleadings in Case Number PR 13 06, and for those reasons we
3 offer Exhibit 150.

4 THE COURT: Is it a pleading?

5 MS. OLDEMEYER: It is, yeah.

6 THE COURT: That's been filed?

7 MS. OLDEMEYER: Yes.

8 THE COURT: I'll receive, I'll take
9 judicial notice of the Second Amended Inventory. I'll
10 receive 150. The objections are noted and are of record.

11 (Exhibit No. 150 is hereby
12 made a part of this the
13 official court record.)

14 MS. OLDEMEYER: And the only other exhibit we
15 would offer would be 312. It's a defense exhibit.

16 THE COURT: Mr. Brenner, comments on --

17 MR. BRENNER: Object on hearsay, relevance.

18 THE COURT: I'm going to take Exhibit 312,
19 I think that's again consistent with what I have been doing
20 with the other similar documents and I will rule on those as
21 needed in the course of the court's determination.

22 Ms. Oldemeyer, any additional evidence?

23 (Receipt of Exhibit No.
24 312 is taken under
25 advisement by the court.)

1 MS. OLDEMEYER: No additional evidence, Your
2 Honor. The plaintiff rests.

3 THE COURT: Okay, do we want to take a
4 quick recess? What do you want to do?

5 MR. BRENNER: Quick would be good because
6 then I have a motion.

7 THE COURT: Do we want to take that, let's
8 do the motion then now and then we'll take our recess.

9 Go ahead, Mr. Brenner.

10 MR. BRENNER: May it please the court,
11 Janice Herrell at this time would move to dismiss the
12 complaint brought against her in this matter by the Plaintiff
13 upon the basis that the evidence and the law establishes, A.
14 that there's been a challenge to the trust to which then
15 there is no standing. The same position we have taken in our
16 summary judgement and secondly that they have failed to
17 establish requisite elements for any breach of trust and then
18 and thereby associated to it any damages related thereto.
19 Those would both be in accordance with the law. Our brief
20 that we provided the court on our summary judgment would be
21 some of the citations we would make to the provisions of law.
22 Thank you.

23 I would ask you, it seems at this time it would be
24 appropriate, I know it's pressing you, to say I think we need
25 a ruling on the summary judgement.

1 Thank you.

2 THE COURT: Mr. Sorensen, did you have
3 comments you wanted to make with respect to that?

4 MR. SORENSEN: Well, I join in making that
5 motion but I would have a motion also to make on behalf of --

6 THE COURT: Go ahead.

7 MR. SORENSEN: May it please the court and
8 counsel. I move at this time that the complaint against
9 Dennis S. Mosher be dismissed for the reason that the
10 evidence fails to show any evidence that he has received any,
11 taken any improper distribution or property from the trust
12 which was the allegation made in the pleading. I think all
13 the evidence is that whatever property he received had been
14 gifted to him, given to him by his mother several years
15 before and that in any event even if the court should find or
16 question that gift the evidence is undisputed that both he
17 and Janice have paid and contributed each at least \$500 to
18 the value of the trust by contributing and depositing in the
19 joint account into the trust. So that would be a \$500 gift.
20 There is no evidence to support any evaluation of the minimal
21 items of property that would be over \$450. And on that basis
22 I think that the complaint against Dennis as to improper
23 taking of property from the trust should be dismissed.

24 THE COURT: Ms. Oldemeyer, did you want to
25 be heard on the motions for directed verdict?

1 MS. OLDEMEYER: Briefly, Your Honor. The
2 challenge to the trust, it's an effort by counsel to ignore
3 the abundance of Leonard Mosher's testimony. To ignore
4 Janice Herrell's direct testimony and the exhibits that have
5 already been received by the court. This is not a case about
6 interpreting the trust. It's a case about asking her to
7 follow the trust to its terms, and so we have established
8 elements of the breach of deed of trust. We talked
9 specifically about the deeds and how they're wrong and other
10 things and so for these reasons we think the court should
11 consider all the evidence and make a ruling based on its
12 consideration of all the evidence, that includes the exhibits
13 that are under the court's consideration. The court has not
14 yet ruled upon with respect to statements by an agent of
15 Janice Herrell within the course of the scope of that agency
16 that specifically state, address the issues related to the
17 claims against Stan Mosher, the furniture, the removing of
18 valuable items from the home. So for these reasons the court
19 heard evidence that Mr. Stan Mosher does still have the
20 furniture that, some of it, that is at issue. That's the
21 constructed trust argument against Stan Mosher and the
22 court's faced with the issue of dead man statute under
23 Wyoming line combined with the fact that agents of the
24 trustee in exhibits that we have offered that have been
25 objected to so that is not the logic the trustee used in

1 making decisions and ignoring Mr. Leonard Mosher's request
2 that the trustee deal with those issues in time.

3 MR. SORENSEN: Judge, I, I'm sorry, I didn't
4 mean to cut you off.

5 THE COURT: Sure, then I'll give you an
6 opportunity to respond.

7 MR. SORENSEN: This is a claim by one devisee,
8 I'm not sure it's proper for a suit. If you would add that
9 to the other arguments I already submitted.

10 THE COURT: Thank you.

11 Did that, did you need to add anything else based on
12 those comments, Ms. Oldemeyer?

13 MS. OLDEMEYER: I don't think so.

14 THE COURT: Mr. Brenner, anything else?

15 MR. BRENNER: Yes, Your Honor, in regard to
16 them saying that you've just got to take it that way, yes, I
17 understand how you would interpret that motion. I have no
18 doubt. The question in this case as we gave you the
19 memorandum of law, it requires, the burden is upon them, to
20 establish these facts. They have not established the various
21 elements that we went down the line, impartiality, loyalty,
22 accounting, they're trying to devise into it that if you
23 don't do it this way or whatever. We have done a full
24 accounting but there is rules that we gave you that is really
25 important in Janice's case. She relied upon professional

1 attorney's advisors who prepared the documents, who did the
2 documents all the way down the line. And I can point you on
3 this mis-description of the mineral interests where it was
4 drafted when, and that's the way it was laid out in the
5 document they put in that it was going to go out to Janice
6 Herrell on that 21, that property. It was all laid out and
7 the document were prepared by the attorneys as an
8 interpretation to the trust. They are continuing to
9 challenge interpretation that Janice did. Now, they're
10 saying that we should ignore, they seem to, ignore whose
11 fault we are here at. We're here because Leonard Mosher was
12 asked for Information, did not provide the information,
13 that's all in those emails you've gotten. Kept asking for
14 that and the jewelry, the equipment, all of that is there.
15 It shows up in more than one policy of his. It is our
16 contention that even if you could look at this out, the *In*
17 *re: Brennaman* case that it came out of our supreme court
18 points out that in the trust situation, now counsel is going
19 to say this is under Wyoming, but when they were looking at
20 the UTC they simply said some things are harmless, mean
21 nothing, cause nothing. In this case, Judge everything
22 happened. What have we have left? We've got a burial plot,
23 we have, we have this equipment. We have this jewelry that
24 we assert that Leonard has and he's trying to deflect saying,
25 no, you've got it because you put it on the list. We argue

1 to you that saying it's on the list is because she had to
2 take, Janice, I had to, I had one brother say it was there,
3 another brother says it's not, I am having to imperialistic
4 but I didn't put it in the inventory.

5 Thank you.

6 THE COURT: All right, let me unpack
7 everything just a little bit and then we'll go from there.

8 Mr. Brenner, you asked if I was going, if I was prepared
9 to rule on the motion for summary judgment. The motion for
10 summary judgment in fairness to me was given to me a week
11 before trial and it was given to me a week before trial
12 during a week that I had other matters unrelated to this
13 matter to deal with and it was given to me at a time when
14 everyone gave to me 487,000 pages of things to look at. Not
15 complaining, I'm telling you the fact that I didn't rule on
16 the motion for summary judgement is I suppose a ruling on the
17 motion for summary judgement in the sense that I didn't get
18 to it because I didn't get to it and we are here and I've
19 taken evidence.

20 The standard on a motion for directed verdict is high
21 and the court will overrule the motions for direct verdict
22 and I will take evidence, affirmative evidence from the
23 defendants.

24 So, let's take, if I give you 5, 10 minutes, how much do
25 you need? How much time?

1 MR. BRENNER: We've got our witness --

2 THE COURT: Okay, let's take a quick recess
3 and then we'll come back in, can we go five?

4 MR. SORENSEN: Yeah.

5 THE COURT: Okay, we'll be right back.

6 (At 2:04 p.m. a recess was
7 taken accordingly.)

8 (At 2:11 p.m. on February 28, 2017 with counsel for the
9 parties present and the plaintiff and defendants present, the
10 following proceedings were had.)

11 THE COURT: How are we going to present
12 evidence? I don't care.

13 MR. BRENNER: No, he's going to call a
14 witness.

15 THE COURT: We are back on the record in
16 Case Number CI 13 19. This is the matter of Mosher v.
17 Herrell. We took a short afternoon recess in the trial to
18 the court in this matter. The plaintiff has rested his case
19 in chief and now I will turn the matter over to the
20 defendants for presentation of their affirmative evidence in
21 this matter, and I will turn the matter over then to Mr.
22 Hesser for the defendant's first witness.

23 MR. HESSER: Thank you, Your Honor. We
24 would call Wendy Volk.

25 THE COURT: Ms. Volk, if you'll step up

1 here for me, please. Fairly tight quarters to watch your
2 step all the way across there. There is a step there. Would
3 you face me and raise your right hand.

4 MS. WENDY VOLK

5 Called as a witness on behalf of the
6 Defendant Janice Herrell, having been
7 first duly sworn, testified as follows:

8 THE COURT: All right, would you please
9 take your seat there, ma'am. State your full name and spell
10 your last name for the record.

11 MS. VOLK: My name is Wendy Volk, V, as in
12 Victor, O - L - K.

13 THE COURT: Ms. Volk, you are under oath.
14 Mr. Hesser has called you to the stand. He'll question you
15 first then I'll probably take questions next from Mr.
16 Sorensen if he has any and then this is Ms. Oldemeyer, she
17 may have questions after that and then we may circle back
18 around or not.

19 Mr. Hesser.

20 MR. HESSER: Your Honor, just real quick, am
21 I okay on the microphone. I know I'm kind of off to the
22 side.

23 COURT REPORTER: Yes.

24 DIRECT EXAMINATION

25 BY MR. HESSER:

1 Q. Ms. Volk, how are you employed?

2 A. I am employed as an independent with Number One
3 Properties.

4 Q. How long, as a real estate --

5 A. As a broker associate.

6 Q. How long have you been a broker associate?

7 A. Twenty-two years.

8 Q. During that time has it been in Cheyenne, Wyoming?

9 A. Yes.

10 Q. How many properties in Cheyenne did you sell last year?

11 A. I sold 90 properties last year.

12 Q. Describe for the court what your, what professional
13 boards or associations you are involved with?

14 A. I am on the Cheyenne Board of Realtors, the Cheyenne
15 Multiple Listing Service, Association of Realtors and
16 the National Association of Realtors and I'm a member of
17 the Graduate Real Estate Institute.

18 Q. And are you licensed?

19 A. Yes, I'm licensed.

20 Q. Let me take you, how are you acquainted or are you
21 acquainted with the Mosher family?

22 A. We grew up together.

23 Q. Okay, are you also familiar with 5424 Hacker Circle?

24 A. Yes, I am.

25 Q. How are you, how?

1 A. I was hired as the real estate agent along with my
2 brother to sell the property in the summer of 2012.

3 Q. Who hired you?

4 A. Janice Mosher on behalf of the trust.

5 Q. When were you, I think you said the summer, do you
6 recall the exact date you were first contacted?

7 A. My brother I believe was contacted the beginning of
8 June, I want to say June 9 or June 12.

9 Q. Okay, did you personally visit the Hacker Circle
10 property?

11 A. Yes.

12 Q. Was Ms. Herrell present with you when you visited the
13 property?

14 A. She was present with my brother the first time and then
15 I came the second time.

16 Q. In between the time your brother looked at it and you
17 looked at it would there have been any changes to the
18 property as far as you know?

19 A. No, it was just one day.

20 Q. Could you tell the court, I guess kind of just describe
21 the basic features, bedrooms, bathrooms, square feet,
22 that kind of thing of the Hacker Circle home.

23 Q. The property is a twin home. It has three bedrooms, two
24 bath, two car attached garage. It was built in 1994.
25 When we came to see the property it had a green trim

1 exterior, it was nicknamed Granny Green and the inside
2 was full of personal belongings. The garage was full.
3 The rooms were full of personal belongs that appeared to
4 belong to an older woman. Janice had told us it
5 belonged to her mother, to Lois. The garage was full.
6 The rooms were full. The unfinished basement was full
7 of personal items.

8 Q. When you say the house was full can you describe I guess
9 sort of the nature of the personal possessions?

10 A. Sure, it appeared to be of an older person's type of
11 décor, linens, towels, sheets, bedding, dishes, used
12 furniture, baskets, old floral arrangements, fake floral
13 arrangements. Things you would see in a grandmother's
14 home.

15 Q. In your experience as a realtor have you dealt with sort
16 of estate homes before?

17 A. Yes.

18 Q. In your experience, to the possessions in this house,
19 did it appear to be of the type that could be sold at an
20 estate auction or an estate sale?

21 A. Could it be sold at an estate sale, yes. Would that be,
22 you know, probably the most effective? No. It would be
23 mostly garage sale items similar to what we did with my
24 own grandmother's house.

25 Q. So were there any particular items in the house that

1 were, that struck you as very valuable?

2 A. No.

3 Q. After viewing the property what did you recommend to Ms.
4 Herrell?

5 A. We gave her two scenarios. One selling it in it's
6 current as is where is condition which would have been
7 difficult for someone to, particularly a consumer, a
8 buyer, to be able to see past the personal items in
9 order to see the true value of that asset which would
10 have been the home not the personal belongings. So we
11 gave her an as is where is price and then we made the
12 suggestion that once things were cleared out it would be
13 able to be listed and sold at a higher price. We didn't
14 know the full extent of how high of a price because we
15 really needed to get the contents out of the house.

16 Q. Did you prepare an initial market analysis for the
17 property?

18 A. Yes, after meeting with Mrs. Herrell we prepared a
19 market analysis. We gave her a price range of as is
20 where is, 200, I believe to 205,000 and fixed up at
21 minimum 210 to 215.

22 Q. Before you, we have a binder of the exhibits, is what is
23 marked there as 412, is that, is that the initial market
24 analysis?

25 A. Yes.

1 MR. HESSER: Your Honor, at this time I
2 don't think 412 has been received yet. We would offer
3 Exhibit 412.

4 MS. OLDEMEYER: No objection.

5 THE COURT: 412 is received.

6 (Exhibit No. 412 is hereby
7 made a part of this the
8 official court record.)

9 MS. OLDEMEYER: Your Honor, we don't have any
10 objections to 411 or 413 either.

11 MR. HESSER: Thank you. We would offer
12 those exhibits at this time.

13 THE COURT: 411 and 413 are received as
14 well.

15 (Exhibit Nos. 411 and 413
16 are hereby made a part of
17 this the official court
18 record.)

19 BY MR. HESSER:

20 Q. So what action did Ms. Herrell take as trustee with
21 regard to your recommendations?

22 A. She said if we could get a price range on what it cost
23 to do the suggested repairs to see if we could get
24 quotes for getting the roof replaced, there appeared to
25 be hail damage, to get estimates for painting, to get

1 estimates for possible staging, to get estimates for
2 replacing carpeting and estimate for replacing light
3 fixtures, anything that was dated being in the early
4 typically 1990's type decor.

5 Q. And so you were responsible for getting those estimates?

6 A. Yes.

7 Q. Did you receive then the go ahead from Ms. Herrell to
8 proceed?

9 A. Yes.

10 Q. Do you commonly as part of your role as a real estate
11 agent do this type of thing?

12 A. Yes.

13 Q. Did you pay up front the expenses, any of the expenses?

14 A. Yes, I did.

15 Q. Do you know if the Mosher Trust had the ability to cover
16 all of the costs?

17 A. I don't know other than I submitted the first \$1,400
18 approximately to Janice for reimbursement and at that
19 time she said that she could reimburse for that but the
20 additional expense for carpeting and painting and
21 staging would be something that upon a successful
22 closing that she would be able to reimburse at time of
23 closing.

24 Q. I'd like you to take me sort of through the process of
25 prepare the house for sale. What was the first step?

1 A. The first step is to first find out if there's anything
2 that the family members, you know, was going to be
3 removing from the house, there was nothing that I recall
4 that Janice wanted to remove from the house. We then
5 went through room by room to get the larger items out.
6 Any smaller items or damaged items, broken items, food
7 items past due we put those in another pile that would
8 be put into a large dumpster that we ordered, a roll-off
9 roofer's dumpster is what we used.

10 Q. So if I understand this you have two categories of
11 items, one straight to the dumpster and another, did you
12 have a garage sale?

13 A. We did. It was the last week of Frontier Days. I
14 believe that was Saturday, October, not October, August
15 2nd.

16 Q. What type of value did the items that ended up selling
17 at the garage go for, a rough estimate?

18 A. \$2.00, \$5.00, .25, .50, \$10 or \$20. I don't think, I
19 don't recall anything going over 20, \$30 but I didn't do
20 the garage sale. We hired two teenagers to do the
21 garage sale.

22 Q. And when you say hired, how were the teenagers, what
23 were the I guess, how were they paid?

24 A. They were paid from DEVO the LLC that my husband and I
25 own. So we paid them. I believe it \$10 an hour.

1 Q. Did they also receive the proceeds from the garage sale?

2 A. The proceeds they donated to the Cheyenne Animal Shelter
3 and to the Friday Food Bank.

4 Q. Would, how much would it have cost to dispose of all of
5 a the items sold at this garage sale?

6 A. I'm not an auctioneer but auctioneers usually come and
7 take everything and then they take a percentage, it
8 would be a percentage fee. I don't remember any
9 antiques or things that would have sold at a higher
10 price at an estate sale. So I don't think it would have
11 been more than a couple thousand dollars, really because
12 it would have been more effort to dispose of the things
13 that were used and not working.

14 Q. So the items that were sold, strike that. The items in
15 the garage sale, could those have either been sold as
16 part of a garage sale or just directly disposed of like
17 other items?

18 A. Uh-huh.

19 Q. Would it have cost more than \$400 to get a dumpster to
20 dispose of those items?

21 A. Yes.

22 Q. Okay, once the property was cleaned out what was the
23 next step?

24 A. Then we hired a contractor to come in to do the
25 painting, remove the light fixtures and once the

1 painting was completed we had the flooring installed,
2 both carpeting and vinyl and then we had it professional
3 cleaned and professional staged and then we listed the
4 property and launched the listing process.

5 MR. HESSER: Your Honor, may I approach?

6 THE COURT: Yes.

7 BY MR. HESSER:

8 Q. I'd like to discuss the expense in detail and I'm going
9 to switch binders here real quick, that is Exhibit 165
10 which has been admitted into evidence already, can you
11 describe for the court what that is?

12 A. That was an email that I sent to Janice Herrell on
13 Tuesday, August 28, giving a summary of the work we had
14 completed as of that date.

15 Q. Can you, using the Exhibit 165, take the court through
16 these specific expenses?

17 A. Sure, we itemized the expenses on the home as of that
18 date. We arranged for the house to be cleaned out on
19 the families' behalf. We hired Brianna Cusack and Grace
20 Dereemer to do the work and we filled a large
21 construction dumpster with trash. Attached is the
22 invoice of \$750 paid by DEVO LLC on your behalf. Last
23 week we had the home professionally cleaned by Debbie
24 Buchhammer and it really looks great. Attached is her
25 invoice for \$240 paid by DEVO, LLC on your behalf

1 yesterday. New interior and exterior light fixtures
2 were installed. Attached are the invoices totaling
3 \$422.50 paid buy DEVO, LLC on your behalf. Carpet
4 replacement completed by Carpet One/Commercial Flooring.
5 Attached is the invoice of \$3,225.61 that has not been
6 paid. We have not received the invoices for the
7 interior painting and other minor work. We'll send you
8 copies of these invoices as soon as we receive them.
9 You'll note that I paid for several of the invoices
10 through my husband's corporate business account, (DEVO,
11 LLC.) in order to get a corporate discount. The total
12 amount of these invoices due to DEVO is \$1,412.50.
13 Attached is a revised net, seller's net proceeds
14 estimate based on the work done to date. Let us know if
15 you have any questions. We are very pleased how well
16 all the work turned out. The home is being professional
17 staged today and professionally photographed tomorrow.
18 We will be emailing you the online visual tour as soon
19 as the photos are ready. Our office will be touring the
20 home next Tuesday at our sales meeting and our Cheyenne
21 real estate community will tour next Wednesday.

22 Q. Okay, if you could turn to 166, that's another exhibit
23 already received into evidence. Can you just tell the
24 court what Exhibit 166 is?

25 A. It's a Bank of the West check from the Lois Mosher

1 Revocable Trust reimbursing DEVO, LLC for the \$1,412.50.

2 Q. Those are the expenses you just talked about?

3 A. Yes.

4 Q. And those are the only expenses that, are those the only
5 expenses that the Mosher Trust paid prior to closing?

6 A. Yes.

7 Q. Could you flip back to 163, if you could tell the court
8 what that is?

9 A. That is a settlement statement that is prepared by, was
10 prepared by First American Title at the actual time of
11 closing when the house was sold on January 31 of 2013.
12 It has on the left-hand side a summary of all of the
13 borrow, the buyer's transaction charges and the
14 transactions in the right-hand column is the seller's
15 transaction charges.

16 Q. So would that show all of the expenses related to
17 improving and preparing the home for sale that were
18 taken out at closing?

19 A. Yes.

20 Q. Could you just briefly kind of outline for the court
21 what those expenses were and maybe what line items they
22 appear on?

23 A. Sure, the line item charges start on line item 500, the
24 reductions and the amount due to the seller. Okay, on
25 there it shows a summary, on line 502, is the settlement

1 charges of \$22,684.69 and that item is broken out in
2 greater detail on the second page. There is an owner's
3 title insurance policy of \$925 as per the negotiated
4 terms of the contract the seller agreed to pay \$3,000 in
5 buyer's closing costs. There was a proration of taxes
6 charged by the Laramie County Tax Assessor, the
7 Treasurer's office and that came up with a total
8 reductions from the sale, those are the expense of
9 \$27,407.21 and then the net proceeds due to the seller
10 which was \$210,592.79.

11 Q. The total amount, how much are we talking went to
12 improving or preparing the home for sale?

13 A. Sure, when we take out the \$3,000 that was for the
14 closing costs then there was a real estate commission of
15 \$11,900 so that comes up to total of \$14,900 out of
16 those \$27,000 and the remaining difference is the
17 expenses used for fixing up the home.

18 Q. Do you know if Ms. Herrell was watching the costs?

19 A. Yes.

20 Q. How do you know that?

21 A. She said that from a personal situation she and her
22 husband financially would not be able to spend a lot of
23 the money to fix up the house and she was very
24 appreciative if we could make sure that that was part of
25 our listing contract and agreement and outlined it

1 according that the trust would reimburse for out-of-
2 pocket expenses for fixing up the house and she was very
3 pleased that we could have it itemized on a settlement
4 statement so if there were any question as to where the
5 money went it would be outlined in detail accordingly.

6 Q. Did she ever question certain expenses or invoices
7 received?

8 A. Very much so.

9 Q. Could you turn to Exhibit 176 and also, it's going to be
10 a group of exhibits there?

11 A. Yes.

12 Q. Is that one of the invoices or bills that Ms. Herrell
13 questioned?

14 A. Yes.

15 Q. Could you perhaps just tell the court what that invoice
16 deals with?

17 A. This is from the contractor we hired to do the painting
18 and the other minor repairs. Wallstar LLC, the owner is
19 Bill Small. Bill had done an invoice and this is the
20 invoice for \$4,195.08 and he submitted that August 29,
21 2012 when the work was all completed. When we submitted
22 this to Ms. Herrell she wanted to know much more
23 specific detail of the breakdown of charges and I
24 believe then the other supporting documentation then was
25 outlined by Bill Small and he attached every invoice and

1 itemization of the hours they spent on the property and
2 the exact detail of work.

3 Q. Is it common in your experience to have such an itemized
4 report for things like painting and what you just
5 described?

6 A. Not in that level of detail. Typically a contractor
7 will provide something like this, what you see on your
8 Exhibit 176, but he went to great length to satisfy Ms.
9 Herrell on wanting to know specifically what those
10 charges were going to be relating to.

11 Q. And when you say great detail you're referring to
12 Exhibits 177, 178 and 179?

13 A. Yes, sir.

14 Q. If you could go back to 176, I'd like to ask you about a
15 line, the first line I believe on that invoice. What
16 was the wall and ceiling damage this is referring to?

17 A. Sure, this townhome has a vaulted ceiling and if I
18 recall correctly there was a crack in that high vaulted
19 ceiling and in order to repair that they were going to
20 have to set up scaffolding to be able to patch that
21 drywall repair and then I think there was also some
22 minor damage that was also related on a wall. There was
23 also just some minor cracks. It wasn't someone punching
24 a hole it was just cracks from I think age and wear and
25 tear. There also might have been some roof damage. I

1 don't remember seeing water damage but I think there was
2 something, you know, roof related perhaps that could
3 have caused a crack on the vaulted ceiling.

4 Q. But it was not the type of damage that was caused by an
5 individual?

6 A. No.

7 Q. So we talked about the expenses that you were or your
8 company was reimbursed for at closing, did the Mosher
9 Trust pay interest during the time from when you paid to
10 closing?

11 A. No, it was a very generous interest free loan.

12 Q. You mentioned the roof, did the roof need to be
13 replaced?

14 A. Yes.

15 Q. What do you know about when or who replaced it?

16 A. I believe that was one of the itemized charges. I
17 believe it was Residential Roofing, maybe 8,500, \$8,200.
18 I think that is one of your exhibits. I don't recall
19 which exhibit number it is but that was done I believe
20 July of 2012.

21 Q. Okay, we could, let's walk through the, before I go to
22 that exhibit let's, when was the house listed for sale?

23 A. The exact date was the beginning of August of 2012.

24 Q. What was the initial listing price?

25 A. \$249,900.

1 Q. How many offers did the Mosher Trust receive?

2 A. We received one offer and that was one month after we
3 reduced the price \$10,000. So in December of 2012 that
4 home had been on the market 140 plus days and we lowered
5 the price \$10,000 to \$239,900 and one month later we
6 received an offer.

7 Q. Did you make that revision in consultation with Ms.
8 Herrell?

9 A. Yes.

10 Q. Was a second market analysis prepared at that time?

11 A. Yes.

12 Q. And if you could turn to 232 which is another exhibit
13 that I believe --

14 A. Yes.

15 Q. Is that the second market analysis that you prepared?

16 A. This one, the date of this is January 11, 2013. We made
17 that price change in December. I recall we had one but
18 I believe we updated this one in January about the time
19 when we received the offer so we would be able to look
20 at, did we feel that it was a fair and reasonable price
21 range? Will we have any appraisal problems pricing it
22 in that price range of 239,900? And we'd also had some
23 recent sales that we were able to update into that
24 market analysis that we did not have at the time in
25 June.

1 Q. I'm going to switch binders on you again and show you
2 Exhibit 269 and also 270 and 271, can you just tell the
3 court what those exhibits are?

4 A. 269 is the accepted offer Number 2 that was negotiated
5 between the buyer and the seller. The buyer was Kevin
6 Speer, Dr. Speer. He made the offer to the Lois Mosher
7 Revocable Trust dated June 6 of 1997. The final agreed
8 upon terms was a purchase price of 238,000 with the
9 seller paying up to \$3,000 at time of closing for either
10 the buyer requested repairs or the buyers loan closing
11 costs.

12 Q. I'd like to switch gears just a little bit now. We've
13 talked specifically about the Hacker Circle property,
14 I'd like to talk a little bit more broadly about some
15 opinions you may have. First I'm going to ask you, have
16 you testified as an expert witness before?

17 A. Yes, I have.

18 Q. Has any court ever determined you were not qualified as
19 an expert?

20 A. No.

21 Q. As a real estate agent do you often have to determine
22 how much money will be spent to prepare a home for sale?

23 A. Yes.

24 Q. And what determines regarding whether to spend money to
25 improve a home before sale?

1 A. I encourage all my sellers to consider looking at
2 profession staging a home if at all possible or taking
3 the advice from a professional stage to have a property
4 decluttered, cleaned, updated, neutralized, remove any
5 excess furniture, food items, it's like taking an apple
6 to market, you need to polish the apple to take it to
7 market to fetch a better price.

8 Q. How have you come to that belief or that knowledge?

9 A. In the 22 years of real estate my husband and I both fix
10 and flip houses as well as on our existing clients over
11 the years we've been able to track which of our
12 properties sell for a higher price in a shorter time
13 period that have been staged and which homes that have
14 not taken that stager's advice have sold, what they do
15 sell for and it takes typically longer and it sells for
16 less price than a staged home does.

17 Q. I'd like you take the court through sort of an example
18 and if you could turn to, turn to 411 and perhaps if you
19 could just walk the court through this example.

20 Q. Sure. Often times people will say, Wendy, I don't
21 believe you. And so I took an actual transaction that I
22 was involved in this past year and it was 719 Sterling
23 Drive and it was an estate. The gentleman had passed
24 away. The heirs of the trust or the trustees had listed
25 the house initially in as is where is condition with

1 another real estate agent. They originally listed the
2 property for 425,000. It had not been cleaned. It had
3 not neutralized. It still had food in the cabinets,
4 trash, remnants of the gentleman's personal belongings.
5 They lowered the price \$5,000. It was on the market
6 almost two months. It was on the market 59 days. It
7 did not sell and the seller choose to take it off the
8 market November 4 of 2015. They asked for my
9 suggestions and recommendations and similar to what I
10 offered for the Mosher Trust I made the suggestion to
11 have it spruced up, that I get estimates before we do
12 any work, present the estimates, get the work completed,
13 get the house cleaned, staged, put on the market and
14 that's what we did. During that, we put it on the
15 market November, I'm sorry we did the work in November
16 2015 and December 2015 and we itemized all the work we
17 did on that particular house. We had the hardwood
18 floors refinished, the interior painted. We replaced
19 dated fixtures. The interior of the home was
20 professionally cleaned. The interior and exterior
21 windows were professionally cleaned. That added up to
22 \$7,600. We had it professional staged then for \$2,300.
23 So the sellers out-of-pocket expenses that they
24 reimbursed me at the time of closing was \$9,900. So
25 when we put the house on the market after that work was

1 completed, then you'll see the scenario of a spruced up
2 condition price. We put the house on the market January
3 5 of 2016. We listed it for a higher price of \$439,
4 900. The seller accepted a contract on January 29, 2016
5 and it was on the market a total of 24 days. The house
6 sold for 420,000 which is higher than what it was
7 previously listed for and the closing date occurred then
8 on March 7 of 2016. So we made a note there that all
9 the work that was completed, the home had been
10 professionally cleaned, all the work was completed,
11 professional staging, professional photos and an online
12 virtual tour which is the exact same things we did on
13 the Mosher home

14 Q. And on average how many homes would you say you do this
15 type of sprucing up on in Cheyenne, Wyoming?

16 A. I make the suggestion to all of my sellers. The sellers
17 that take the advice, typically it is 8 out of 10. My
18 sellers will go with this recommendation plan.

19 Q. If you could turn to, I think it's 413 and perhaps just
20 sort of walk the court through those and it might be
21 easier if we take them out, if you could walk the court
22 sort of through the final, you know, product after --

23 A. So to keep expenses to a minimum we decided to go with
24 replacing the exterior light fixtures, replacing the
25 numbers of the house but we kept the exterior color the

1 same to keep expenses down. We had the yard work
2 completed. Weeds removed, trees trimmed. There's more
3 detail of cleaning up the shrubs. We then, on the front
4 door area, the entry way we had new light fixture also
5 installed there. The page of the living room shows the
6 brand new carpet, the freshly painted walls, the
7 fireplace that had some brass trim that looked like in
8 the '90s and we had that professional painted black to
9 so neutralized the fireplace area. We took down all the
10 dated drapery and sheers that were on all the windows as
11 well as what was on the back door. This also shows the
12 vaulted ceiling where the repair work had been
13 completed. I think all the other pictures just show the
14 carpet. In the kitchen we had the kitchen countertops
15 refinished. I believe they were refinished. They were.
16 These are all refinished by Hard Tops of Wyoming and
17 paid for by DEVO and then each of the bedrooms just
18 shows professional furniture in each of these rooms.
19 Those are air mattresses with updated linens on them, up
20 dated pillows. Bathroom shows new flooring installed,
21 more contemporary shower curtains were installed,
22 accessorized bathrooms. In the master bathroom there
23 were handicap accessible features. We left some of the
24 grab bars but some of the other handicapped things like
25 around the toilet we removed and neutralized and that's

1 it.

2 Q. Thank you. Based on your experience are you
3 knowledgeable about what it costs to prepare a home for
4 sale?

5 A. Yes.

6 Q. And how are you familiar with those costs?

7 A. Of the 42 homes we sold last year 35 of them had staging
8 and all of 35 I gathered estimates so sellers could
9 review those estimates. My husband and I also did three
10 flip houses so I have a nice working relationship with
11 the different subcontractors and contractors that we use
12 around town and have a pretty good handle on what cost
13 estimates might be.

14 Q. Okay, do you have an opinion based upon your background,
15 training and experience as a real estate professional as
16 to whether or not it was reasonable and necessary for
17 the Mosher Trust to incur the expenses you discussed
18 earlier?

19 A. Yes.

20 Q. What is that opinion?

21 A. It would be in my professional opinion to go forth with
22 all of the recommended suggested items of decluttering,
23 cleaning out the house, removing of personal contents,
24 neutralizing, making it a more appealing room-by-room
25 basis for a current day market buyer. So the person

1 that bought it would, was approximately 48, 50-years-
2 old, a physician. They had students that were in high
3 school at Central High School which is adjacent to this
4 property. They spend their time between North Carolina
5 and Cheyenne for work and so the end result was the
6 consumer that bought it was a very different demographic
7 than the consumer that was previously living in the
8 property.

9 Q. And the basis of that opinion is your background,
10 training and experience?

11 A. Yes.

12 Q. Do you have an opinion based upon your background,
13 training and experience as a real estate professional as
14 to whether or not the Mosher Trust obtained a better
15 result on the sale due to the expenses and improvements
16 made?

17 A. Yes.

18 Q. What is that opinion?

19 A. My opinion is typically the town homes in this complex
20 that had unfinished basements sold for in the 210, 220
21 range. If they had a finished basement, had granite
22 countertops they could sell for higher. We did not want
23 to go through the expense to \$50,000 to finish the
24 basement so it was going to be more prudent to be able
25 to do approximately \$10,000 in repairs and neutralize

1 expenses to be able to sell the property which we did
2 for 238,000.

3 Q. Do you have an opinion based on your background,
4 training and experience as a real estate professional as
5 to whether or not the expenses incurred by the Mosher
6 Trust would have been incurred by an owner of a similar
7 home built 1994?

8 A. Yes.

9 Q. What is that opinion?

10 A. It would be approximately \$10,000, 8 to \$10,000 to
11 neutralize and make a more appealing property to be able
12 to sell in a timely fashion with the least amount of
13 headache.

14 Q. Do you have an opinion based upon your background,
15 training and experience as a real estate professional as
16 to whether or not the expenses incurred were related to
17 damage to the property?

18 A. Yes, I have an opinion. No, I do not believe there was
19 damage it was just ordinary wear and tear and a dated
20 decor.

21 Q. Do you have an opinion based upon your background,
22 training and experience as a real estate profession if
23 the property sold for a fair price?

24 A. Yes, it did sell for a fair price and that is my
25 opinion.

1 Q. Do you know if an appraisal of the property occurred?

2 A. Yes. The buyer was obtaining financing from a local
3 lender. The lender, as is normal protocol, offering a
4 loan has to order a third-party neutral appraisal. It
5 was appraised. We did actually receive a copy of that
6 appraisal from the buyer and it appraised for \$240,000
7 in January of 2013.

8 Q. Finally, Ms. Volk, will you tell the court how you're
9 being compensated?

10 A. I am not being compensated. I did this as a friend of
11 the family.

12 Q. Do you stand to gain anything as a result of your
13 testimony here today?

14 A. No.

15 MR. HESSER: No further questions.

16 THE COURT: Mr. Sorensen, do you have
17 questions?

18 MR. SORENSEN: I have none, Your Honor.

19 THE COURT: Ms. Oldemeyer, I'll take your
20 questions, please.

21 CROSS EXAMINATION

22 BY MS. OLDEMEYER:

23 Q. June 25 was your market report?

24 A. Yes.

25 Q. June 25 of 2012 --

1 A Yes.

2 Q. -- correct? And then was it first listed?

3 A. We listed that, and I don't have the Exhibit Number I
4 apologize, it was listed the first part of August of
5 2012.

6 Q. Were you looking for a particular document for that?

7 A. The listing contract.

8 Q. The listing contract. Thank you. The date of the
9 listing contract is the date it began?

10 A. Yes, when we began listing it for sale with a for sale
11 sign and going online with professional photos and also
12 showing it to prospective buyers.

13 Q. Okay, so I don't know if you can see behind me on this
14 wall?

15 A. Yes.

16 Q. I have got Exhibit 267 up and I'm on page 87, it a copy
17 of the email you reviewed with Mr. Hesser earlier and
18 it's dated August 28, 2012?

19 A. Yes.

20 Q. And the paragraph at the bottom indicates the home is
21 being professionally staged today and professionally
22 photographed tomorrow?

23 A. Yes.

24 Q. So I want to know in relation to August 28 when the
25 house actually, the public knew it was for sale?

1 A. That was right after, once we have it professional
2 photographed we usually get those photos that evening
3 and we usually go live then the next day. So if that
4 was on the 28th, the photos would have been the 29th so
5 I think we began showing it, it would have been very
6 close to the very end of August and we started showing
7 it I think that week right around Labor Day if I recall.

8 Q. When you went to the home in June, you said your brother
9 went first?

10 A. Yes.

11 Q. In June, and then you came a few days later or
12 something?

13 A. Yes.

14 Q. Did you have an understanding of whether anyone was
15 living in the home?

16 A. Yes, we had an understanding. There was no one living
17 in the home, that Lois Mosher had passed away.

18 Q. Did you understand or did you believe that Lois Mosher
19 was the last occupant of the home?

20 A. We were told by Janice that there might be some personal
21 things down in the basement, some mattresses that
22 belonged to Stan Mosher. I had not met him at the
23 house.

24 Q. Did you have an understanding of whether Stan Mosher had
25 lived in the house?

1 A. I did have an understanding that his items were in the
2 house. I don't know if he was living in the house.

3 Q. Did you go in that basement?

4 A. Yes.

5 Q. In June?

6 A. Yes.

7 Q. Was there a bedroom set down there?

8 A. There were a lot of mattresses down there. There was a
9 safe down there, it had nothing in the contents of the
10 safe and a whole lot of Christmas decorations and all
11 the things you would find in someone's basement for
12 storage purposes.

13 Q. When you walked through the house in June, in the
14 kitchen was there a dining room table and chairs?

15 A. Yes.

16 Q. And when you went through the bedrooms you indicated
17 there were three bedrooms?

18 A. Yes.

19 Q. Was there furniture in each of the bedrooms?

20 A. Yes, used furniture not brand new.

21 Q. My understanding from review of the exhibits is the
22 first work performed was the roof replacement on July 10
23 of 2012?

24 A. Yes.

25 Q. Okay, and then after that the next work was done by, I

1 believe this was an exhibit you already reviewed but
2 it's the detail of the, what's the name of the company
3 Wallstar?

4 A. Wallstar.

5 Q. Wallstar, thank you. The detail about Wallstar, they
6 started their work on July 24?

7 A. Correct.

8 Q. Okay, so do you know what, strike that.

9 A. One of the reasons we didn't begin doing interior work
10 is it's summer time and that's the busiest time to find
11 contractors to do work. So 7-24 was the soonest we
12 could get Wallstar in the property to begin the work, if
13 that was the question.

14 Q. Okay, so the house had, if you had been contracted say
15 in March of 2012 that work could have been done sooner
16 and the home could have been out on the market sooner?

17 A. Don't know. It's on market conditions.

18 Q. Let's talk a little bit about residential market
19 conditions in Cheyenne, Wyoming. Is there kind of a
20 best time of year to put your house on the market?

21 A. As a real estate agent I, I believe there's never a bad
22 time to put your house on the market.

23 Q. But is there a best?

24 A. Typically in terms of getting exterior photos it's ideal
25 to have it in the summer months when there's green grass

1 and green trees. Typically there's a higher demand for
2 properties in our summer. On average we sell in the
3 Cheyenne real estate market collectively in the Cheyenne
4 Multiple Listing Service there's approximately 150 homes
5 that sell on any given month. In the winter time that
6 typically is more along 100 to 120 homes. In the peak
7 of summer I think in the 22 years, I think the most
8 homes that have sold in a given month was close to 200.

9 Q. So the best time of year just based on the statistics
10 that you described would be, to have your house on the
11 market in the peak summertime?

12 A. Correct, before the snow.

13 Q. The appraisal you mentioned, that's the only appraisal
14 that was prepared was the buyer's appraisal?

15 A. Correct.

16 Q. And I'm going to hand you a notebook, Exhibit 145, if
17 you could turn to page 7 of Exhibit 145?

18 MS. VOLK: Page 7 you said?

19 MS. OLDEMEYER: Yes.

20 BY MS. OLDEMEYER:

21 Q. In the bottom right hand corner there should be numbers.

22 A. On the next page, page 8, does that being the appraisal
23 that you referred to earlier in your testimony?

24 A. Yes.

25 Q. And on page 10 does that indicate value by sales

1 comparison approach of \$240,000?

2 A. Yes.

3 Q. Were you ever asked in June of 2015 to do an appraisal
4 for purposes of one of the Mosher siblings potentially
5 buying it?

6 A. No, I am not a licensed appraiser so I cannot provide an
7 appraisal.

8 Q. But was it ever asked of you or did you ever communicate
9 with Janice Herrell or Stan Mosher that an appraisal
10 might be needed?

11 A. No. I had no communication with Stan Mosher.

12 Q. But you know him?

13 A. Yes.

14 Q. Did he use to work for your agency?

15 A. He did when our family owned, when Walik and Volk owned
16 Prudential Volk Real Estate I was the manager and Stan
17 was one of our associates. That would have been in the
18 early, let's see, 2005, early 2000, 2003, 2004. I'm
19 sorry, I was married in 1997. I can remember this now,
20 thank you, Stan, for a quick high sign, but in 1997 I
21 was married and Stan worked for us up until I think
22 about the time my daughter was born in 2000.

23 Q. When you were there at the property in June and did your
24 walk-through that you described, do you know what items
25 if any had been removed prior to ever going in it?

1 A. No, I don't know.

2 Q. The furniture that you described as used that you saw in
3 the home in June, was that sold at the garage sale?

4 A. Yes. Some of it actually was donated to I believe
5 Habitat for Humanity. The furniture, I don't remember
6 if there were any other organizations beside Habitat for
7 Humanity or Good Will. I apologize, I don't recall.

8 Q. In the living room, we talked about the kitchen and the
9 bedrooms, was there any furniture in the living room?

10 A. Yes.

11 Q. What was the furniture in the living room that you saw
12 in June of 2012?

13 A. A living room configuration, couches, chairs, a couch,
14 chairs, coffee tables, lamps. They were older than the
15 age of the townhome. The townhome was built in 1994.
16 The contents in there were more like '60s, '70s, '80s.

17 Q. And what condition was it in other than being old?

18 A. Used.

19 Q. Okay, was it damaged or anything?

20 A. Just worn.

21 MS. OLDEMEYER: No further questions, Your
22 Honor.

23 THE COURT: Mr. Hesser.

24 MR. HESSER: One moment, Your Honor.

25 MR. VOLK: Do you need your notebook back?

1 MS. OLDEMEYER: Your Honor, may I grab that
2 from the witness?

3 THE COURT: Yeah, absolutely. You bet

4 REDIRECT EXAMINATION

5 BY MR. HESSER:

6 Q. Ms. Volk, do you know when you were first contacted, was
7 there a phone call prior to viewing the property in
8 June?

9 A. I believe Janice Herrell contacted my brother first.

10 Q. Do you know when that was?

11 MS. VOLK: Do you mind if I look at my note?

12 MR. HESSER: No.

13 THE COURT: Ms. Oldemeyer, if you need to
14 step up to take a look at anything you're welcome to do that.

15 MS. OLDEMEYER: Thank you.

16 BY MR. HESSER:

17 A. Since my brother couldn't be here I just asked him, June
18 9, he said.

19 Q. And that was the first time he was contacted?

20 A. That's when he met Janice at the property at 11:00 to
21 walk through it for an initial listing consult. I don't
22 have the phone record when he took that call.

23 Q. Do you, what do you, what do you recall about the
24 furniture that was in the house?

25 A. It was not brand new. It looked like it could have been

1 in my grandmother's house. It did not appear to be a
2 collectable item like crystal, nothing stood out as
3 being. Just normal, average American furniture.

4 MR. HESSER: No further questions.

5 THE COURT: Mr. Sorensen, did you have
6 anything else?

7 MR. SORENSEN: No, Your Honor.

8 THE COURT: Ma'am, thank you for your time.
9 You are free to go.

10 Counsel, who is next?

11 MR. BRENNER: I think I am, Your Honor.

12 THE COURT: Okay, Mr. Brenner, I'll take
13 your next witness then.

14 MR. BRENNER: Your Honor, I need to get set
15 up.

16 THE COURT: Okay.

17 MR. BRENNER: Your Honor, we call Paul
18 Burgener to the stand.

19 THE COURT: Mr. Burgener, if you'll step up
20 for me please.

21 Sir, watch your step there, before you take your seat if
22 you'll face me and raise your right hand.

23 PAUL BURGNER

24 Called as a witness on behalf of the
25 Defendant Herrell, having been first

1 duly sworn, testified as follows:

2 THE COURT: All right, please take your
3 seat and state your full name for the record.

4 MR. BURGNER: May name is Paul Burgener.

5 THE COURT: Sir, for purposes of the record
6 would you mind spelling your last name?

7 MR. BURGNER: B - U - R - G - E - N - E - R.

8 THE COURT: Thank you. Sir, Mr. Brenner
9 has called you to the stand. He'll question you first, after
10 that Mr. Sorensen may have questions and that's Mr. Sorensen
11 right there and this is Ms. Oldemeyer, she may have questions
12 after that.

13 Mr. Brenner, you may inquire of this witness.

14 MR. BRENNER: Yes, Your Honor.

15 First I'd like to offer Exhibit 140, 141.

16 MS. OLDEMEYER: No objection.

17 THE COURT: 140 and 141 are received.

18 (Exhibit Nos. 140 and 141
19 are hereby made a part of
20 this the official court
21 record.)

22 MR. BRENNER: Trying to put exhibits in
23 order, Your Honor.

24 THE COURT: Okay.

25 DIRECT EXAMINATION

1 BY MR. BRENNER:

2 Q. Mr. Burgener, I'm sorry I was getting exhibits, did you
3 spell your last name for the record?

4 A. Yes, I did.

5 Q. Thank you. What is your current address?

6 A. My current address is 1635 Virginia Avenue in Gering,
7 Nebraska.

8 Q. And what is your profession, sir?

9 A. I'm trained as an agricultural economist. I am
10 currently working as an agricultural lender for Platte
11 Valley Bank in Scottsbluff.

12 Q. And where is your place, Platte Valley, it's in
13 Scottsbluff?

14 A. I'm in Scottsbluff, yes.

15 Q. And how long have you been at that business?

16 A. I've been there since December of 2013.

17 Q. Where were you at before that?

18 A. For one year previous to that I worked for Farm Futures
19 Magazine as a grain market analyst from November 1 of
20 '12 to December 1, '13. Prior to that for 22 months I
21 worked for Platte Valley Bank as well from March of '11
22 to October of '12. I took the year went to Farm
23 Futures, came back to the bank. Before that I spent 12
24 years as an agricultural economist for the University of
25 Nebraska Panhandle and Research Center.

1 MR. BRENNER: Mr. Burgener, we could go
2 through it but, Your Honor, it would probably be easier if I
3 put in a, his CV instead.

4 THE COURT: Okay.

5 MR. BRENNER: If I need to have it marked.
6 The next one is 415, am I right?

7 COURT REPORTER: Yes.

8 (Exhibit No. 415 marked
9 for identification.)

10 MS. OLDEMEYER: May I ask a questions, Your
11 Honor?

12 THE COURT: Sure.

13 MS. OLDEMEYER: I have no objection to the
14 admission of his CV to save time which brought out the issues
15 in my mind of time and I know the court needs to be done
16 today no later than 4:30, so I just wanted to go on the
17 record of saying I do want to have sufficient time for cross
18 examination.

19 THE COURT: Sure.

20 MS. OLDEMEYER: Okay, thank you.

21 DIRECT EXAMINATION

22 BY MR BRENNER:

23 Q. I'm going to hand you what I've marked as Exhibit 415
24 and ask you is that your curriculum vitae?

25 A. Yes, sir, it is.

1 Q. And that would represent and tell us your education,
2 your experience, your professional memberships and
3 committees, would that be correct?

4 A. Yes, sir.

5 Q. It also gives referenced journals that you've been
6 involved in, publications, is that correct?

7 A. Yes.

8 MR. BRENNER: I'd offer 415.

9 MS. OLDEMEYER: No objection.

10 THE COURT: 415 is received.

11 (Exhibit No. 415 is hereby
12 made a part of this the
13 official court record.)

14 BY MR. BRENNER:

15 Q. Now, in this particular situation, Mr. Burgener, I need
16 to kind of get a little bit of understanding what your
17 job is, or what that means to be an agricultural
18 economist. What's an agricultural economist?

19 A. An agricultural economist is trained in economics in an
20 applied field related directly to agriculture. Most of
21 it is based on what I would consider micro-economics or
22 firm level decision making. Decision making at the fine
23 level of decision making at the operator level, that's
24 where my training is, comes from and that's where my
25 experience is is the farm management side.

1 Q. Who makes use of services that you have, your abilities?

2 A. The extension service uses those folks, agricultural
3 lending, grain marketing firms, there's a number of
4 opportunities for students coming out of the school with
5 an agricultural economics agreement.

6 Q. As a part of your services do you evaluate agricultural
7 issues in terms, and the terms to be applied as a
8 standard?

9 A. Yes, I've done quite a lot of that especially when I
10 worked with the extension. We looked at the research
11 work done and then how that applied to agricultural
12 producers in this region. I've worked all the way from
13 Texas into the Dakotas on different projects.

14 Q. Have you been an expert in cases before?

15 A. Yes, I have.

16 Q. And is it in the area of agricultural economy as an
17 economist?

18 A. Yes, it has been.

19 Q. Would it also involved agricultural leases in terms of
20 agricultural work?

21 A. Trying to go back through and tabulate those in my
22 brain. There have been a couple of them that did
23 include lease work, yes.

24 Q. Now, what is your usual procedure in evaluating a lease
25 and rendering an opinion?

1 A. I'm looking for what is reasonable and customary for the
2 area and then whether or not those, those standards have
3 been applied in those leases.

4 Q. Now, you were retained by my office in this case for
5 Janice Herrell, is that correct?

6 A. Yes.

7 Q. And what in a broadest sense you were asked to do?

8 A. I was asked to evaluate the information given to me and
9 determine what, develop an opinion based on what is
10 reasonable and customary for dryland crop leases in
11 Banner County, Nebraska.

12 Q. All right, I'm going to hand you what has been marked as
13 416 which is a listing that was attached to a report you
14 gave. Is this the listing, to be saving time, of the
15 kind of materials that you got?

16 A. Yes, it is. This is the list that came with the
17 materials that I received.

18 Q. I'm going to show you Exhibits 404 through 410, if you
19 could quickly look at those and see if those are the
20 instruments to which you did examine and use for some
21 opinions?

22 A. Yes, sir, these are, these are the documents that I used
23 to go through and develop the, the financial numbers in
24 my opinion.

25 Q. All right, I'm going to show you real briefly Exhibit

1 140 and 141 and ask you if you've seen those before?

2 A. Yes.

3 Q. And also 1 page, page 37, Counsel, of Exhibit 161 that's
4 been received, do you see that?

5 A. Yes.

6 Q. And just so the judge may have what that page 37 is,
7 that's a check on the trust account to the Banner County
8 Treasurer, is that right?

9 A. Yes.

10 Q. Dated 1-21-14 for 2,894.40, correct?

11 A. Yes, sir.

12 Q. Before we get to asking any opinions or what you came up
13 with, what evaluation did you conduct?

14 A. I used the information that was given to me that was I
15 believe prepared by Leonard Mosher to, as settlement
16 sheets is what I called them. At the end of each year
17 for the trust early on and then for Janice Herrell later
18 on, but his settlement sheets, I went through there and
19 pulled the expenses and revenue from those and
20 calculated year-by-year what would have normally been
21 expected in 1/3, 2/3 customary lease.

22 Q. Okay, first of all did you understand there was a 1/3,
23 2/3?

24 A. That, yes, I did. I'm trying to remember exactly where
25 I recall that from. Well, part of it is explained in

1 the settlement sheets. There is the 1/3 pieces here as
2 well as from deposition information.

3 Q. That's what I was about to ask, you had the deposition
4 of, of Leonard Mosher of December 19, 2016, and then
5 later that's not on that list that gave you of 4-16 you
6 had the deposition of Leonard Mosher of February 13 this
7 year, is that correct?

8 A. Yes.

9 Q. And they have the exhibit for both depositions?

10 A. Yes.

11 Q. And you're able to read them, review them?

12 A. Yes.

13 Q. Did you have to make any assumptions in arriving at any
14 opinions you were going to arrive at?

15 A. I guess the initial thing was that the assumption is
16 that these are Leonard's papers that, you know, that is
17 and these are the ones, because of the way they are
18 entered I am assuming that those are what I have to work
19 off of. And then the only other assumption is that it
20 is a customary 1/3, 2/3 crop-share lease.

21 Q. All right, now did you see any document in the materials
22 provided to you that indicated that anything was
23 different than a customary 1/3, 2/3?

24 A. No, sir, I did not.

25 Q. Now, in fact you had access to FSA records that were

1 used in his deposition correct?

2 A. Yes.

3 Q. And that indicated a 1/3, 2/3 is that right?

4 A. It did, yes.

5 Q. Now, did, in looking then at the opinions did you make
6 up a report in this case?

7 A. Yes, sir, I did.

8 Q. And that report has been shared with Counsel, is that
9 correct?

10 A. Yes.

11 Q. Now, Mr. Burgener, based upon your background, training
12 and experience on what, on what are crop, standard crop-
13 sharing landlord-tenant cost sharing, what is it within
14 this community?

15 A. The --

16 Q. Do you have an opinion, yes or no?

17 A. Yes, I have an opinion.

18 Q. And what is that opinion, sir?

19 A. The standard crop-share lease on dryland cropland that
20 is in a wheat fallow system is a 1/3, 2/3 crop-share.
21 The tenant is entitled to 2/3 of the crop, the landlord
22 gets 1/3 of the crop. The tenant pays all of the
23 expenses except for 1/3 of the fertilizer and all of the
24 property tax and 1/3 of any crop insurance if the
25 landlord wants to insure their 1/3 share of the crop.

1 Q. Now, I should have asked it probably earlier on your CV
2 but have you ever given recently any dissertation
3 seminar on crop-sharing, leasing?

4 A. The most recent one I did was February 2, 2017. It was
5 at the Lorika Farm in Northwest Banner County and I did
6 a presentation there on customary crop-share leases as
7 well as some cash lease.

8 Q. And there is a difference between the two, right?

9 A. Absolutely.

10 Q. Now, Mr. Burgener, tell the court what was the basis for
11 your analysis for "standard crop-sharing" between
12 landlord and tenant within this community for the years
13 2012 to present?

14 A. The, working as a lender I see an awful lot of lease
15 relationships. My customers are working with landlords
16 regularly. I also work with some landlords. We have
17 not seen that relationship change for the standard wheat
18 fallow system for decades. That 1/3, 2/3 is there with
19 only fertilizer shared, crop insurance paid by the
20 landlord on their 1/3 of the crop if they choose to and
21 the landlord pays the property taxes.

22 Q. In fact when you came out to the extension service did
23 you have to do an initial study that dealt with the
24 particular area?

25 A. Yes, sir. One of the very first things that came, came

1 on my desk as I entered this area was a discussion, we
2 were changing, we were seeing some change in the dryland
3 cropping system. We were seeing additional crops added
4 in and moving to some no-till stuff. So early on I did
5 a lot of work with dryland crop leases and many of the
6 projects that I worked on including travel to Oklahoma
7 and Texas looked at dryland crop-share lease
8 arrangement.

9 Q. Now, the land that we are talking about is dryland,
10 correct?

11 A. It is dryland cropland.

12 Q. Now, Mr. Burgener, would it assist you to use a
13 demonstrative picture to illustrate your point?

14 A. Sure.

15 Q. And would that, showing you then I have a chart up
16 showing you fair sharing chart, was this prepared by
17 you?

18 A. Yeah, this is a slide from my presentation on February
19 2, 2017.

20 Q. Would you please explain to the court the basis then for
21 what you're trying to say about determining fair crop-
22 share?

23 A. The real way, and we took these numbers apart. I worked
24 on budgets, crop production budgets since the early
25 1990s when I was in Wyoming and continued that work

1 clear out through 2011. I still work with the
2 University closely, but the key to a fair share crop
3 arrangement is matching the percentage of revenue and
4 the percentage of expenses. So when you look at the,
5 the total costs and the total revenue, if the landowner
6 gets a 1/3 of the third of the revenue they should be
7 paying about 1/3 of the costs and yields and prices
8 will, will fluctuate that slightly but over the, on the
9 average over the long-term those should match up fairly
10 well. You can adjust the which inputs are shared, you
11 can adjust the crop-share but the really odd thing is
12 that these numbers tend to be very much tradition valued
13 in the agriculture community. That 1/3, 2/3 is stuck
14 pretty solid in the community and so it does fit there.
15 The other thing that we have found over time is that
16 landlords don't want to share additional inputs because
17 they're not comfortable making payments at different
18 times. They're not comfortable paying bills. They want
19 to pay one fertilizer bill and their property tax bill
20 and get their check at the end of the year. They don't
21 want to pay a lot of bills so they're willing to adjust
22 the share more likely than they are to adjust the
23 incomes.

24 Q. Now, Mr. Burgener, showing you the Balance Division of
25 Cost Chart, was this prepared by you?

1 A. Yeah, this is also one of my charts from my February 2nd
2 program.

3 Q. And what's the meaning of that chart?

4 A. The work that we did when I worked with the University
5 and, and in several different areas is that we, we
6 looked at how the balance-lease arrangements worked out.
7 On a wheat fallow system where it's wheat every other
8 year, 1/3, 2/3 sharing just the fertilizer and the crop
9 insurance at the same rate, the 1/3, 2/3 is traditional.
10 It also is balanced. If we add crops into that system,
11 we put two crops in three years, three crops in four
12 years or we go to a continuous crop system then the
13 percentage changes. The landlord typically would expect
14 a small percentage because there's more crops on those
15 area. We see about a 75/25 for anything that retains a
16 year of fallow. We get to a continuous crop system we
17 look at a 80/20. It's been a real struggle. I wrote my
18 first publication on this in 2004 I believe. It's still
19 been hard to get that tradition bound agricultural
20 community to switch away from the 1/3, 2/3.

21 Q. Now, in this, for the land in questions here there was
22 wheat strips and fallow strips, correct?

23 A. Yes.

24 Q. And so it's, every year, it's wheat every year but it's
25 on the strip method, correct?

1 A. It is a wheat fallow system so there is wheat planted in
2 fall, harvested the next summer, June/July, and then
3 that, that parcel will not have a crop on it until 15
4 months later when another wheat crop is planted in the
5 fall. So it is a true wheat fallow system.

6 Q. And is that the type of system that's subject to the
7 1/3, 2/3 standard system that you've mentioned?

8 A. Yes, sir, it is.

9 Q. Please tell the court, can parties enter into a written
10 agreement which may change these terms?

11 A. You know everything is negotiable and if I can, if you
12 can, there's a very good reason as either landlord or
13 tenant to go to something not conventional, yes, those,
14 those can be entered into in a written agreement.

15 Q. Okay, but if there's no written agreement between the
16 landlord and tenant, based upon your background training
17 and experience, what terms are commonly used?

18 A. The common terms is, is the 1/3, 2/3 share of the crop,
19 a 1/3, 2/3 share of the fertilizer and the crop
20 insurance and then the tenant pays the rest of the
21 expenses, the landlord is responsible for their own
22 property tax.

23 Q. Now, Mr. Burgener, is the court to understand that you
24 read the deposition of Mr. Mosher and it's exhibits
25 along with its attachments?

1 A. Yes.

2 Q. And you understood it?

3 A. As well as I can understand legal, yes.

4 Q. Okay, tell the court briefly, tell the court what you
5 took from Mr. Mosher, was his application that the
6 standard crop-sharing between the Lois Mosher Trust as
7 the landlord and Leonard Mosher as the tenant to the
8 south half of 24-17-58 for the period of 2012 through
9 '16.

10 MS. OLDEMEYER: Object to the form of the
11 questions.

12 THE COURT: What's the problem with the
13 form?

14 MS. OLDEMEYER: I also object, it, he's asking
15 this witness to testify about what Leonard Mosher testified
16 to.

17 MR. BRENNER: No that's not what I said.

18 MS. OLDEMEYER: Maybe I misunderstood the
19 question. It was a long question.

20 BY MR. BRENNER:

21 Q. Tell the court what you took from Mr. Mosher was his
22 application of the standard crop-sharing?

23 THE COURT: So, you're asking him to tell
24 me what he understood Mr. Mosher to be saying?

25 MR. BRENNER: Yes.

1 THE COURT: Okay, and your objection is
2 form on that basis, Ms. Oldemeyer?

3 MS. OLDEMEYER: And, yes.

4 THE COURT: The objection is overruled.
5 I'll allow it.

6 BY MR. BRENNER:

7 A. As I read in the deposition it's, it said he had crop-
8 share arrangement that was standard for the area, is the
9 way, that's the understanding I picked out of the
10 deposition.

11 Q. Mr. Burgener --

12 MS. OLDEMEYER: Your Honor, I didn't hear the
13 answer.

14 THE COURT: Can you repeat that answer,
15 sir?

16 MR. BURGNER: As I read the deposition what I
17 read was that there was a 1/3, 2/3 crop-share standard for
18 the area is the way that I read that he answered those
19 questions.

20 BY MR. BRENNER:

21 Q. Mr. Burgener, do you have an opinion based upon your
22 background, training and experience as to whether the
23 application of standard crop-sharing between the
24 landlord, the trust in 2012 and '13 and then Janice
25 Herrell in '14 through '16 was in accordance with the

1 standard crop-sharing between landlord and tenant within
2 this community? Do you have an opinion, yes or no?

3 A. Yes, I do.

4 Q. And what is your opinion?

5 A. My opinion is that based on the settlement sheets that I
6 have this was not a standard lease.

7 Q. And how did you come to that basis or analysis in
8 arriving at your opinion?

9 A. The settlement sheets that Leonard prepare split a
10 number of costs that were outside of the, of the
11 tradition of the reasonable and customary according to
12 the standards in that community. Many costs beyond
13 fertilizer were split on the settlement sheets.

14 Q. Okay, tell me which ones, please?

15 A. I'll just pick up the top one in 2012 these are, it's
16 been a while since I've read through these, but it
17 appears that combining was charged. It looks like a
18 portion of the seed cost is charged as well. The
19 fertilizer is charged as I would expect and I think at
20 least in the 2012 that's what it appears clear to me.

21 Q. Was there record keeping there?

22 A. There is record keeping. What's not clear to me is
23 whether it got over into Janice's of this one. Some of
24 them are clearer than others.

25 Q. Okay, try others so the court will know what you're

1 talking about and tell us what exhibit?

2 A. I'm looking at crop year '13, Exhibit 405, on this one
3 the landowner was billed for seed, liability insurance,
4 fertilizer, hauling, combining, the taxes is here and
5 which should have been there, the 100% of that is there,
6 recordkeeping is there. So there's several pieces there
7 that shouldn't have been, seed, liability insurance,
8 hauling, combining and recordkeeping should not be
9 shared expenses under traditional.

10 Q. Okay, in looking at then Exhibits 404 through 410 by the
11 year, did you put together an analysis of what you could
12 see should have been done by the year?

13 A. Yes, I did.

14 Q. And did you do it year-by-year?

15 A. Yes.

16 Q. And please tell me, I'm showing for demonstrative
17 purposes, you see a chart, this is for the southwest
18 quarter?

19 A. Right.

20 Q. What year, please?

21 A. 2012.

22 Q. Okay now, Mr. Burgener, have you arrived at an opinion
23 based upon your background, training and experience as
24 concerns the correct application of standard crop-share
25 in between landlord and tenant within the community for

1 the year 2012 on the trust ownership of the south half
2 of 24-17-58? Have you arrived at an opinion?

3 A. Yes.

4 Q. And what is your opinion?

5 A. My opinion is that the, the landowner, at this time the
6 trust, should have been paid an traditional \$1,800,
7 1,888 on the southwest quarter and then the, I broke it
8 into quarters because that's the way it was --

9 Q. Okay, so this is the southwest quarter, this first --

10 A. This is the southwest quarter.

11 Q. Now, the property taxes down here for 740 something, now
12 Mr. Mosher testified he paid the first half of 2012?

13 A. Right.

14 Q. But that covered the whole south half so how do you
15 apply this property tax right there?

16 A. When I went through this last night and looked at the
17 numbers there and reconfigured, I left this one alone
18 leaving this as the first half. So I left this one
19 alone. I made an adjustment on the next one.

20 Q. So then tell the court what is the next chart I'm
21 showing you?

22 A. The next chart is 2012, this would be the southeast
23 quarter.

24 Q. And that's still for 2012?

25 A. 2012.

1 Q. Is that again using his sheets that he prepared?

2 A. Yes. This is his sheets and then I took just the pieces
3 that, that should have been shared.

4 Q. Okay, so the figures that are on any of these charts
5 that we're going to be talking about, these are numbers
6 that came off of Leonard Mosher's sheets? You didn't
7 take them off of something else?

8 A. These are from either the, either the sheets that I have
9 here and then I did reconcile the bushels back to the
10 bills of lading that I have.

11 Q. Pardon me, the what?

12 A. The bill of lading documents that I have.

13 Q. Okay, so it was Mr. Mosher's bill of lading documents?

14 A. Yes.

15 Q. So you used his numbers, is that correct?

16 A. Yes, sir.

17 Q. Now, what did you find by looking at the southeast
18 quarter for 2012?

19 A. That the landowner should have been paid \$1,006.85 at
20 the end of the year.

21 Q. Now, I see there is property tax there?

22 A. Yes, sir, there is.

23 Q. And as I represented to you Mr. Mosher said he paid the
24 first half and that you've given him credit on the
25 southwest, didn't you?

1 A. Right.

2 Q. So this property tax, is that being doubled up?

3 A. It is given the information that I, that I recently
4 received, yes.

5 MS. OLDEMEYER: Your Honor, I've never seen
6 these documents.

7 MR. BRENNER: That's right.

8 MS. OLDEMEYER: I don't know how many new
9 exhibits we're going to add to the existing exhibit list.
10 I've been tolerant thus far but I object to any new exhibits
11 being introduced in this case.

12 MR. BRENNER: Judge, I am introducing these
13 to show, obviously for rebuttal and impeachment of Mr.
14 Leonard Mosher on the payment of taxes. These are the tax
15 receipts that will cover the second half of 2012 and all of
16 '13 and it shows it was paid by Janice Herrell and because of
17 the, the numbers that he has, that Mr. Mosher took is
18 different than that actual tax receipts, that's one thing.
19 And secondly is that he has taken it when it should not have
20 been an entry on his sheets, if you follow me.

21 THE COURT: Well, I'm, I'm concerned about
22 the ability of this witness to sponsor that exhibit first of
23 all. How does he get that exhibit in?

24 MR. BRENNER: I'm going to have him use it or
25 look at it to see if this is information that he relied on

1 for that purpose and then I will get it in with the next
2 witness.

3 THE COURT: Okay, well we can talk about it
4 then. To the extent that it's rebuttal, I understand what
5 Mr. Mosher's testimony is and to the extent that you're going
6 to be offering it in rebuttal to something he's testified to
7 I would, I understand Mrs. Oldemeyer's objection to new
8 exhibits but rebuttal, it's acceptable in that regard but I
9 don't, I'm not taking anything through this witness in terms
10 of a receipt of a document. I don't think he can sponsor.
11 Do you understand what I'm saying?

12 MR. BRENNER: Yes, I do.

13 THE COURT: I don't think he's the right
14 witness.

15 MR. BRENNER: I got that. I understand what
16 you're saying.

17 BY MR. BRENNER:

18 Q. Well, anyway at this point, Mr. Burgner, I would like
19 to have you assume that the testimony, for your
20 testimony here today that the tax statements as shown in
21 740 that I gave you earlier and showed you was 742 for
22 each half of the year?

23 A. Uh-huh.

24 Q. And you see the number that says property tax years and
25 you've already taken it off for the whole south-half on

1 the southwest quarter, correct, for the half of the
2 year?

3 A. Right, the first half I just left there.

4 Q. Yes, so what about this property tax on this line?

5 A. If Leonard hasn't paid that then that number, that 841
6 should not be there. If that 841 is not there then the
7 net number at the bottom would be 1,848.06.

8 Q. All right, now, Mr. Burgener, did you then go to, then
9 did you go and begin to do it for 2013?

10 A. Right, '13 was next.

11 Q. Now, Mr. Burgener, in reading the exhibits and
12 depositions again have you determined that in December
13 of '13, did you learn that the property had been deeded
14 out of the trust unto Leonard Mosher for the southeast
15 quarter and Janice Herrell for the southwest quarter?

16 A. Right.

17 Q. Mr. Burgener, did you arrive on an opinion based upon
18 your background, training and experience as concerns the
19 correct application of standard crop-sharing between
20 landlord and tenant for the year 2013 in the southwest
21 quarter? Did you arrive at an opinion?

22 A. Yes, I did.

23 Q. And what is your opinion?

24 A. Again, this one has a property tax issue. With the
25 property tax included it's 1,076.39 without the property

1 tax included it should be 2,083.92 paid to the landlord.

2 Q. That would again go to the trust, is that correct?

3 A. To the trust for the '13 crop, yes.

4 Q. And that would be in accordance with the standard crop-
5 sharing between landlord and tenant?

6 A. Yes.

7 Q. Then did you do the same for the southeast quarter in
8 2012 since it was still during the crop year in the
9 trust?

10 A. Yes.

11 Q. And I see again we have property tax paid there, is that
12 correct?

13 A. Yes, sir.

14 Q. And what did you arrive at for a conclusion or an
15 opinion as to the result of the southeast quarter for
16 2013?

17 A. With property tax included the number is 1,160.37. When
18 we take the property tax out then it would be 2,
19 1,167.90.

20 Q. All right, then going out to the next chart, did you do
21 one for 2014.

22 A. Yes, sir.

23 Q. Now, just to be on the safe side here, we didn't have
24 property tax or any of those issues in '14 through '16
25 did we?

1 A. No, we did not.

2 Q. Okay, and again you used Mr. Mosher's records that you
3 were given, is that correct?

4 A. Yes, sir.

5 Q. Those are the exhibits I've shown you earlier?

6 A. Yes, sir.

7 Q. And what conclusion did you arrive at for the southwest
8 quarter for 2014 would have been what the landlord
9 should have received from Leonard Mosher?

10 A. The landlord should have received in 2014, 2,421.35

11 Q. All right, and did you, you didn't have any need of
12 doing the southeast quarter did you?

13 A. Right the southeast quarter was no longer, now I'm only
14 looking at Janice Herrell as the landowner of that
15 southwest quarter.

16 Q. So that would be payable to Janice Herrell, is that
17 correct?

18 A. This would be to Janice, yes.

19 Q. And did you again arrive at a conclusion for the
20 complete year of 2015 for the southwest quarter?

21 A. Yes, sir.

22 Q. And showing you for demonstrative purposes 2015 for the
23 southwest quarter, again you used Mr. Mosher's figures?

24 A. Yes, I did and in this one I did have to make an
25 assumption.

1 Q. And what did you have to assume, sir?

2 A. My assumption is in the notes in the, on the document
3 from Leonard Mosher he said that the wheat was not
4 sellable but he was willing to pay, based on the price
5 at the elevator at that time, and this was dated January
6 of 2016 that the price was 3.88 so I had to use that
7 price because I did not actually have a settlement, I
8 didn't have a sheet there that had a price on it or a
9 value. That's the price I used. I also then paid him
10 for storage because it was stored in his bins a nickel a
11 month which is standard for this area, a nickel a month
12 for six months from a July harvest to a January
13 settlement. I did give storage costs. That storage
14 cost on the 1/3 of the crop that belongs to the landlord
15 is their cost, so you'll see \$135 there for storage.
16 You'll also see a 3.88 up there under price. Those were
17 assumptions I had to make to do this one.

18 Q. And what did you arrive at for a conclusion of what
19 Leonard Mosher owed to Janice Herrell for the southwest
20 quarter of 2015?

21 A. He owed Janice \$1,309.77.

22 Q. Now did you continue and proceed to do it for 2016?

23 A. I did do 2016 as well.

24 Q. And I've noticed some of them mention crop insurance,
25 did you find anywhere where crop insurance was paid on

1 any of the crops?

2 A. I believe back there in '13 there was crop insurance
3 paid and in Leonard's piece it showed what the total
4 amount was and that there is 1/3 of that that belonged
5 to the trust. So I did pick that one up. In the later
6 years I didn't see anything in Leonard's information
7 that said he paid Janice's share nor really should he
8 have. That's Janice's responsibility to pay for her
9 share of the crop insurance. Now she may not have
10 understood that and may not have known that piece but
11 there were not crop insurance expenses because there
12 were none on my sheets.

13 Q. So for 2016 what did you find should have been paid by
14 the landlord Leonard Mosher to Janice Herrell landowner?

15 A. \$1,037.40.

16 Q. And that appears to be just what the landowner's share
17 was from the wheat?

18 A. From the wheat. There was no fertilizer in '16 that I
19 could see on my sheets and there was no crop insurance
20 on my sheets.

21 Q. So he had no expenses for fertilizer for that year,
22 right?

23 A. None that I could find in the sheet that I was reading
24 from.

25 Q. All right, then Mr. Burgener, applying your background,

1 training and experience did you arrive at a total
2 financial conclusion for what would have been resolving
3 the financial situation between the landlord and tenant
4 which was the trust for two years and then Janice
5 Herrell for three years, did you arrive at an opinion
6 yes or no?

7 A. Yes, I did.

8 Q. And what is your opinion?

9 A. Okay, prior to making any adjustments to the crop
10 insurance the net due to Janice Herrell would be
11 \$4,768.53. The net due to the trust would be \$5,132.46
12 for a total of \$9,900.99, with the adjustment to taking
13 out the, the property tax that Janice paid for the trust
14 that number for the trust would be \$7,988.73 --

15 Q. Repeat that number again, please?

16 A. \$7,988.73, and the total for the whole time period would
17 be \$12,757.26.

18 Q. Now, Mr. Burgener, based upon what you have told this
19 court, to be clear and succinct is record keeping a
20 standard term of crop-sharing?

21 A. No, sir, it is not.

22 Q. Mr. Burgener, based on what you have told this court to
23 be clear and succinct as to your evaluation is hauling a
24 standard term, a crop-sharing leasing term?

25 A. No, sir, it's not.

1 Q. Now, do I have to pay if I want to haul it to, from
2 Banner County to Alliance, Nebraska, some further
3 distance, pick any destination, and there is a nearer
4 point, do I as landlord, when I tell the tenant to do
5 that do I pay something there?

6 A. Yes, if I make a request to have my share of the grain
7 delivered to a specific elevator further away than that
8 distance is my responsibility as a landlord to pay that
9 bill.

10 Q. Well, now is it usual that the tenant would use his own
11 elevator for weighing the crops?

12 A. It's not typical, the tenant, you know, we see a number
13 of different places where we scale. I have customers
14 who do use their own scales. I have customers who for a
15 matter of comfort and traceability will only use a
16 certified scale that, that they feel comfortable with.
17 So I have seen both. I'm not going to tell that I've
18 never seen anybody just use their own scales. It does
19 happen.

20 Q. Mr. Burgener, based upon what you've told the court to
21 be clear and succinct is combining charge a standard
22 term of crop-sharing?

23 A. No, sir.

24 Q. Mr. Burgener, based upon what you've told this court to
25 be clear and succinct is liability insurance being

1 charged against the landlord a standard term of crop-
2 share leasing?

3 A. No, sir.

4 Q. Mr. Burgener, based on what you've told this court is
5 crop insurance a standard term to charge the landlord
6 when they're not getting a share of it?

7 A. It is a standard piece to be charged to the landlord.
8 If there are crop insurance proceeds then those should
9 be split in that 1/3, 2/3 share.

10 Q. Mr. Burgener, based on what you've told this court to be
11 clear and succinct is tillage a standard term of crop-
12 sharing leasing?

13 A. No, sir.

14 Q. And Mr. Burgener, based on what you've told this court
15 to be clear and succinct is custom farming rates a
16 standard means of charging for crop-share leasing?

17 A. No, sir.

18 Q. And Mr. -- I don't know if I asked it, is recordkeeping
19 a standard term?

20 THE COURT: You did.

21 BY MR. BRENNER:

22 Q. Finally, Mr. Burgener, do you, did you have or do you
23 have any interest in the outcome of this case?

24 A. No, sir.

25 Q. Mr. Burgener, are you being paid for your services to

1 have looked at these reports, read the depositions, the
2 materials that you've discussed here today, and to
3 render your opinion?

4 A. Yes, I have.

5 Q. And what is your hourly rate you're charging so the
6 court knows?

7 A. My hour rate is \$100 an hour.

8 Q. And as you've indicated earlier you've testified as an
9 expert in other cases?

10 A. Yes, I have.

11 Q. Has there been any case in which you've not been allowed
12 to be an expert?

13 A. No, sir.

14 MR. BRENNER: Thank you.

15 That's all, Your Honor.

16 THE COURT: Ms. Oldemeyer.

17 CROSS EXAMINATION

18 BY MS. OLDEMEYER:

19 Q. You testified as an expert before in what?

20 A. In, I'm going to say several cases in Wyoming. I cannot
21 give you an exact --

22 Q. What was the topic?

23 A. The topic has always been in agricultural economics.
24 Valuing either damages or lost crop or I think at least
25 two of them had some lease information in them as well.

1 Q. In those cases were you holding yourself out as an
2 expert in negotiating farm leases?

3 A. I believe I've been hired as an expert in each of those
4 cases for my expertise in agriculture economics and farm
5 management. Part of farm management is understanding
6 lease arrangements. I am an accredited farm manager
7 with the American Society of Farm Managers and Rural
8 Appraisers and part of that expectation is that being
9 able to negotiate leases as a farm managers is part of
10 that job.

11 Q. So you do hold yourself out as an expert negotiating, in
12 negotiating farm leases?

13 A. I have, I have actually help negotiate leases, yes. I
14 do believe that is part of my accreditation, yes.

15 Q. Have you personally negotiated any?

16 A. Yes.

17 Q. Do you have a Nebraska real estate license?

18 A. I do not. I did those when I was with the Nebraska
19 Extension Service.

20 Q. Do you know if the Nebraska Real Estate division
21 requires a license for anybody who holds themselves out
22 as negotiating farm leases for compensation?

23 A. You know we just had this discussion this morning in the
24 bank, we are, we do have a farm management division.
25 Our farm management division is held through our trust

1 department and thus we do not, I do not have to have a
2 real estate license.

3 Q. In this case for the opinions you're expressing here
4 today do you need a Nebraska Real Estate License?

5 A. I don't believe so.

6 Q. How many hours have you spent in your studying of
7 materials and preparation for your report?

8 A. I think when I get home today I'll be right at 10 hours
9 total between testifying and everything it will be right
10 at 10 hours.

11 Q. Do you know anything about the quality of the farm
12 ground on that south half that you've expressed opinions
13 on?

14 A. You know, there's, I have not been on the place. I know
15 the location, I know the, I know that part of the county
16 and the one piece that shows up is, if you look at Farm
17 Service Agencies base yields it usually gives you some
18 feel. I would say it is probably a little less than
19 average land given those yields that I have seen on that
20 base for the panhandle of Nebraska.

21 Q. And in anywhere in the materials that you've read did
22 you determine whether any particular crop year the crop
23 was actually saleable versus Mr. Mosher bought it from
24 the trust at a certain price as reflected on his
25 summaries?

1 A. I just used his summaries.

2 Q. You were handed Exhibit 416, do you have that there
3 still, sir. It's a list of some of the times you
4 reviewed I think is what it was described as?

5 A. Yes.

6 MR. BRENNER: Did I offer, Your Honor, 416?

7 THE COURT: You did not.

8 MR. BRENNER: May I offer it now so she can
9 discuss it?

10 THE COURT: Well, she can discuss it
11 without offering it. I don't know if she wants it offered.

12 MR. BRENNER: Okay, thank you.

13 MS. OLDEMEYER: I'm going to mark another
14 exhibit and then both exhibits can be offered at the same
15 time. It's actually the third page that's not contained
16 within 416.

17 (Exhibit No. 417 is
18 marked for
19 identification.)

20 BY MS. OLDEMEYER:

21 Q. Mr. Burgener, do Exhibit 416 and 417 combined indicate a
22 list of all of the materials that you were provided by
23 counsel for purposes of the opinions you're expressing
24 in this case?

25 A. Yes.

1 MS. OLDEMEYER: We would offer 416 and 417.

2 MR. BRENNER: No objection, Your Honor, and
3 it's my fault, I made the copies. I missed that page.

4 THE COURT: 416 and 417 are received.

5 (Exhibit Nos. 416 and 417
6 are hereby made a part of
7 this the official court
8 record.)

9 BY MS. OLDEMEYER:

10 Q. Your report that you prepared in this case is dated
11 February 7 of '17, true?

12 A. Yeah, I believe so.

13 Q. Anything your read in Leonard Mosher's deposition taken
14 February 13 of 2017 change the opinions you're
15 expressing in this case?

16 A. No, ma'am.

17 Q. Are your opinions in this case limited then to the
18 expenses and sharing of expenses?

19 A. Yes.

20 Q. Can you define for me what it means to you, the term net
21 crop proceeds?

22 MR. BURGNER: Is that in my document?

23 MS. OLDEMEYER: No, just the term.

24 BY MS. OLDEMEYER:

25 A. I am going to say net crop proceeds from my perspective

1 would be crop sales minus relevant expenses.

2 Q. Was the word you used relevant? I have a hard time
3 hearing you because there's a fan.

4 A. Yeah, minus relevant expense.

5 Q. Is there any limitation on relative expenses?

6 MR. BURGNER: In relation to this or in
7 general?

8 MS. OLDEMEYER: In general.

9 BY MS. OLDEMEYER:

10 A. In general no.

11 Q. No limitations?

12 A. (No audible response had.)

13 A. Do you know what the agreement that Leonard Mosher had
14 with his mother about farming that property was before
15 she passed away?

16 A. I do not.

17 Q. In your study, I'm going to put Exhibit 118 on the wall
18 behind me, please let me know if you cannot see it, just
19 to expedite things, but have you ever seen that email
20 before that we've marked and has been received as
21 Exhibit 118?

22 A. You know, it may have been in my stuff. I looked at a
23 lot of things and determined which ones I thought were
24 very important and if it was there I, I don't recall
25 seeing it.

1 Q. So, as you sit here right now this is the first time
2 you're seeing, can you read that, sir?

3 A. Yes.

4 Q. Okay, as you sit here today this is the first time
5 you're seeing an email where it indicates that he's
6 going to need to send a check for 1/3 of the net crop
7 proceeds to the trustee. Is that a fair statement?

8 A. Uh-huh.

9 Q. Yes?

10 A. Yes.

11 Q. On Exhibit 117 the very first item listed is a CD I
12 think?

13 A. Yes.

14 Q. Okay, and what's on that CD?

15 A. Actually that, that, the deposition was there which is
16 the one thing that I spent time reading through and
17 multiple copies of several of these other pieces. It
18 was an enormous number of PDF files.

19 Q. You were given copies of bills of lading?

20 A. Right.

21 Q. Checks?

22 A. They were there, yes.

23 Q. You just chose not to look at them?

24 A. I glanced through them but I really based my opinion on,
25 on Leonard's settlement sheets because the volume of

1 stuff, the easy place to go was to the settlement
2 sheets.

3 Q. The years, let me back up. In your charts I have a hard
4 time translating because it says 2015, excuse me, 2012,
5 2013, 2014, when you put up 2012 are you talking about
6 the crop that was harvested in the summer of 2012?

7 A. Yes.

8 Q. And then that would include expense incurred in the fall
9 for the planting of the crop harvested in 2013?

10 A. Yes.

11 Q. Okay --

12 A. I will, I'm going to step back on that question because
13 I'm not sure how Leonard prepared those documents. If,
14 if I were doing it the expenses on the 2012 one would
15 include expe- -- would include the cost incurred in the
16 fall of 2011 for seeding and preparing the crop for
17 harvest in 2012 if I were doing it.

18 Q. But you don't know how the summaries you used --

19 A. I do not know. That was an assumption I made.

20 Q. Okay, the years 2012 through 2015 which years were, if
21 any, were drought or freeze years, or hail years for the
22 property that you're expressing your opinions on?

23 A. I wouldn't know that from the information I have.

24 Q. Do you agree with the concept that parties to a contract
25 can agree to anything whether it's a good deal or bad

1 deal for them?

2 A. Absolutely.

3 Q. In fact part of the service you provide going out to
4 these, doing these seminars like you described is for
5 purposes of educating people so they make better
6 decisions?

7 A. Yes.

8 Q. Not everybody follows this standard that you've
9 described, true?

10 A. True.

11 Q. Do you know if, in all of the information you've read do
12 you know if, when this email, Exhibit 118 was sent
13 behind me or sent whether Mr. Dyekman had received the
14 2012 crop year summary that formed the basis of your
15 opinion here?

16 A. No, I don't know that.

17 MS. OLDEMEYER: Okay, I've had an opportunity
18 to review the exhibit that Mr. Brenner, the tax records and I
19 don't have an objection so we can mark these as Exhibit 418.

20 MR. BRENNER: 417 it's marked here.

21 THE COURT: 417 was the, hang on, 417 is
22 the last page of the other.

23 MR. BRENNER: That's right.

24 THE COURT: So if you have a copy that's
25 already marked if you want to show that --

1 MR. BRENNER: Here it is.

2 THE COURT: Okay.

3 MR. BRENNER: Yeah, its 418, I got it.

4 THE COURT: All right, 58 stickers banging
5 around.

6 BY MS. OLDEMEYER:

7 Q. I'm handing you what's been marked as Exhibit 418.

8 THE COURT: So, you're, I'm sorry, just to
9 be clear 418 is received.

10 (Exhibit No. 418 is hereby
11 made a part of this the
12 official court record.)

13 BY MS. OLDEMEYER:

14 Q. Have you ever seen any of the pages in Exhibit 418
15 before?

16 A. Yes.

17 Q. When?

18 A. Late yesterday afternoon, 4:30ish.

19 Q. Okay, if you could turn to the page that has the two
20 receipts on it. I want to look at the bottom, that
21 where it says total collected \$2,057.56, paid in full.
22 Do you see that?

23 A. Yes.

24 Q. And that's for tax year 2013?

25 A. Right.

1 Q. Meaning those would have been paid in 2014?

2 A. Yeah, I believe that check was dated January something
3 in '14.

4 Q. In fact in the upper right-hand portion of that
5 particular document it says a payment date of 1-27-2014?

6 A. Right. Okay.

7 Q. So is it your understanding then that on 1-27-2014
8 someone wrote a check for the amount, well someone paid
9 \$2,057.56 for all of tax year 2013?

10 A. Correct.

11 Q. Because you pay in arrears, right?

12 A. Yes.

13 Q. Yes?

14 A. Yes.

15 MS. OLDEMEYER: I have a hard time hearing you.

16 MR. BURGNER: I'm soft spoken. I apologize.

17 BY MS. OLDEMEYER:

18 Q. Okay, and then let's look at the receipt above, that's a
19 payment date of 1-27-14 as well, isn't it?

20 A. Yes.

21 Q. And it shows for the 2012 tax year a paid in full amount
22 of \$836.84, true?

23 A. Yes.

24 Q. Okay, but the tax before credits that's due is a larger
25 amount, correct?

1 A. Right.

2 Q. So did, is it fair to glean from this that someone paid
3 half of the tax year 2012 tax return, property taxes
4 prior to January 27, 2014?

5 A. This, this document shows right up there just above the
6 T in receipt an X in the second half. So it is only for
7 the second half.

8 Q. Thank you. So the first half was taken care of before,
9 is that a fair statement?

10 A. Right.

11 Q. Did you see in the, all the records you reviewed that
12 the, the trust or Janice Herrell paid property taxes on
13 the south half in the year 2012 for 2011 property taxes?

14 A. I did not see such.

15 Q. Did you see any evidence that the trust or Janice
16 Herrell paid property taxes for the first half of the
17 property taxes payable in 2013 for the 2012 year?

18 A. No. Prior to seeing these yesterday my report showed
19 that I pulled off of the settlement sheets that Leonard
20 had that he had paid the taxes for each of those
21 quarters in '12 and '13. So that was the document that
22 I was going off of until I saw this last night.

23 Q. If, if the income that you claim is due the trust or
24 Janice Herrell, is that taxable income to the recipient?

25 A. My training is not in tax accounting so I'm, I don't

1 believe I'm qualified to offer an opinion on that.

2 Q. Okay, these standard leases that you describe, the
3 arrangements, are they terminable at the will of the
4 landowner?

5 A. They are terminable at the will of either party six
6 months before March 1.

7 Q. Because if someone is unhappy there ought to be a way to
8 get out of it?

9 A. True.

10 Q. In one of your opinions and I can't remember which year
11 it was, you had a reference to farm program dollars?

12 A. There were farm program payments included in Leonard's
13 settlement sheet for 2012. 2012 would have been the
14 final year of the Direct and Counter Cyclical Program
15 and this part would have been eligible for direct
16 payments at that time. So those would split according
17 to the crop-share. So both the southwest and the
18 southeast quarter would have had farm programs payments.
19 I pulled those from Leonard's settlement sheets.

20 Q. You pulled them from where?

21 A. From Leonard's sheets that I worked off of.

22 Q. And you said it's on the 2012?

23 A. 2012, yes. 2013 we went to a different program.

24 Q. Just under the standard arrangement that you're
25 describing you said the landowner doesn't pay for the

1 liability insurance?

2 A. As a landowner if I want liability insurance on that
3 piece of property I'm responsible for that if the farmer
4 is carrying liability insurance himself that's not my
5 responsibility. So because it's that trust I'm not sure
6 the arrangement that Leonard had with his mother. What
7 I can tell you is that the landowner would pay 100% of
8 their liability insurance if they want to carry
9 liability insurance on the farm. It should never come
10 into this discussion.

11 Q. Okay, so what evidence if any do you have that the trust
12 insured the south half for liability in 2012?

13 A. I have none.

14 Q. What about in 2013?

15 A. I have none.

16 Q. 2014, '15, '16?

17 A. '14, '15 and '16 they were no included on those
18 settlement sheets. Leonard didn't bill Janice for 1/3
19 of that because that's Janice's problem. Whether she
20 carried liability insurance on her farm or not is her
21 issue much like the property taxes don't show up in '14,
22 '15 and '16 because that was now deeded to her and it's
23 her issue.

24 Q. Is buying certified seed a good idea?

25 A. I spent 12 years working for the University of Nebraska

1 and they pounded into us that certified seed was always
2 a good idea. So, yeah, certified seed is, is
3 recommended especially if you're going to consider
4 holding your own seed and you have weed problems in
5 those fields.

6 MS. OLDEMEYER: I don't have any further
7 questions.

8 THE COURT: Mr. Sorensen, I think I
9 neglected to ask if you had questions. I apologize. Do you?

10 MR. SORENSEN: I do not.

11 THE COURT: Mr. Brenner, anything else?

12 MR. BRENNER: Yes, Your Honor.

13 THE COURT: Okay.

14 REDIRECT EXAMINATION

15 BY MR. BRENNER:

16 Q. Is the landowner required to carry liability insurance?

17 A. No.

18 Q. And now is certified seed required to be put in the
19 fields?

20 A. No.

21 Q. But the seed cost would be the tenants cost anyway
22 correct?

23 A. The seed cost is a tenant cost whether they use
24 certified seed or they provide their own seed.

25 Q. So it's their choice, correct?

1 A. Absolutely.

2 Q. And the idea is that if I put in cheap seed, get a cheap
3 result he's lost 2/3 of income because it's not very
4 good quality, right?

5 A. Exactly. They both benefit from a better quality seed
6 but again it is really the responsibility of the tenant
7 to make that decision.

8 Q. Have you ever seen a similar settlement sheets like
9 Leonard Mosher made up by and tenant, landlord or
10 presentation that you've been involved in over your
11 years?

12 A. No, sir.

13 Q. Is this the first one you've seen with these kinds of
14 costs taken against an owner?

15 A. Yes, sir.

16 Q. Well, the way this works out doesn't, if the owner, I
17 mean every year the owner is going to lose, correct?

18 A. Yes. I can't see a scenario where the yield and price
19 would get such that the landowner would ever net a
20 positive number.

21 Q. So it totally is covering the tenant's cost, the tenant
22 is going to make all the money, correct?

23 A. The only one to have any positive income would be the
24 tenant.

25 MR. BRENNER: I believe that's all, Your

1 Honor.

2 Thank you.

3 THE COURT: Anything else, Ms. Oldemeyer?

4 MS. OLDEMEYER: No further questions.

5 THE COURT: Thank you, sir, you can step
6 down.

7 Counsel, I need to step out for just a minute to check
8 my, check something in chambers and then I'll visit with all
9 of you here in a minute.

10 (At 4:17 p.m. a recess was
11 taken accordingly.)

12 (At 4:21 p.m. on February 28, 2017, with counsel for the
13 parties present and the plaintiff and defendants present, the
14 following proceedings were had.)

15 THE COURT: This is Case Number CI 13 19,
16 the mater is Mosher v. Herrell and we took a short recess. I
17 needed to check something and so I visited briefly with
18 Counsel in chambers and we think we might be able to get the
19 evidentiary part of this case wrapped in the next half hour
20 or so, if it looks like we're going to need longer than that
21 then we'll have to make some adjustments and that will be
22 fine and we'll sort it out. So with that I'm going to turn
23 it over to you, Mr. Sorensen, and I will take your next
24 witness please.

25 MR. SORENSEN: I'd call Stan Mosher.

1 THE COURT: Mr. Mosher, if you would step
2 up here for me, please and do watch your step, it's a short
3 step, I'm not sure you'll be able to put your oxygen machine
4 there.

5 MR. DENNIS MOSHER: I've got it.

6 DENNIS STANLEY MOSHER

7 Called as a witness on his own behalf,
8 having been first duly sworn, testified
9 as follows:

10 THE COURT: All right, please take your
11 seat. Again, Mr. Mosher, it kind of came up with the last
12 witness we had, I know yesterday, you're a fairly soft spoken
13 person. Ms. Oldemeyer, if you're having any difficulty
14 hearing him just let me know.

15 MS. OLDEMEYER: Thank you.

16 MR. BRENNER: Ms. Herrell is not in the
17 courtroom, Your Honor.

18 THE COURT: I have complete faith that with
19 her two attorneys here that she is capably represented and
20 that she can, you'll be fine Mr. Brenner and I'll note that
21 she's going to be back here shortly.

22 MR. BRENNER: Thank you.

23 THE COURT: So, Mr. Sorensen, you may
24 inquire of this witness.

25 MR. SORENSEN: I'd like to question from up

1 there.

2 THE COURT: Absolutely. You're welcome to
3 move around as you see fit.

4 DIRECT EXAMINATION

5 BY MR. SORENSEN:

6 Q. Mr. Mosher, you were here when Leonard Mosher used the
7 same lease terms that he had with your grandmother, that
8 they used those same terms with your mother and then
9 with the trust and that that always involved them paying
10 costs. Do you remember that testimony?

11 A. Yes, sir, I remember it.

12 Q. Do you know what the lease arrangement that your
13 grandmother had to her farmland when she was still
14 living?

15 A. Yes, I do.

16 Q. Did she pay the costs that Mr. Mosher testified to?

17 A. No.

18 Q. What expenses did she pay on the land that she leased?

19 A. She paid the taxes and, she paid the taxes. Nobody did
20 fertilizer back then, she got a landowners 1/3 and my
21 grandfather, Leonard Smith whose pictures is in the
22 courthouse down here, they would sit out there and count
23 the trucks and make sure they weren't being robbed.

24 Q. Now, you were also present when, when the plaintiff
25 testified that your father didn't keep any of his tools

1 and equipment in the quonset that's on the southeast
2 quarter, you heard that testimony?

3 A. I heard that testimony.

4 Q. And that he hauled his tools back and forth from
5 Cheyenne to the farm, do you remember that testimony?

6 A. Yes.

7 Q. Is that truthful testimony?

8 A. That's false. If you looked and saw what dad drove he
9 drove Cadillacs and Lincolns. I don't know of a farmer
10 that drove Cadillacs and Lincolns hauls tools to the
11 field.

12 Q. And then I'm going to show you exhibit, I think that on
13 your other testimony you went through all of the other
14 photographs and identified what is pictured in those
15 photographs as being property that had belonged to your
16 father but here was one that I don't think that you, and
17 that's Exhibit 396. I'm going to hand you Exhibit 396
18 and what is that?

19 A. That's a corn wagon that my dad purchased to use it at
20 harvest and auger wheat into the bins and we will call
21 it a poor man's trailer.

22 Q. Okay, and then while you were, is that, is that corn
23 wagon there when you took the photographs in December of
24 last year?

25 A. Yes, sir.

1 Q. I just want you, I don't know if the court was able to
2 see when you were discussing Exhibit 398 which was you
3 were talking about the farm truck and the trailer,
4 correct?

5 A. Right.

6 Q. Would you please show the court where the trailer is
7 visible and hold it up so the Judge will be able to see
8 it?

9 THE COURT: I can see it the way he was
10 holding it.

11 MR. DENNIS MOSHER: This is the grain truck
12 that apparently dad owned. This is the, that's a grain
13 truck. This is part of that gooseneck grain trailer. As you
14 can come and see down here, Leonard has the sideboard off of
15 it but this is not the cab of that truck. This is not the
16 gooseneck that comes over it and you unhook it and dad bought
17 this because he thought that would be the answer of having a
18 grain truck and back then pickups weren't big enough to pull
19 them and so then later he purchased that.

20 BY MR. SORENSEN:

21 Q. And is that the same trailer that is the subject of the
22 registration in Exhibit 402 which was the registrations
23 in 2014?

24 A. Yes, because one of the registrations states four axles
25 and that trailer does have four axles.

1 Q. And you identified in Exhibits 394 and 395 the back of
2 the Ford --

3 A. The Ford tractor.

4 Q. -- 1400 tractor --

5 A. That dad purchased from Sumner Equipment that has
6 signature on the bottom of that purchase, yes.

7 Q. And then your, the testimony that your brother gave in
8 his examination was that he didn't know what happened to
9 your dad's Ford tractor. Is that your dad's Ford
10 tractor?

11 A. Yes, sir. Yes.

12 MR. SORENSEN: I believe that's all I have.

13 THE COURT: Mr. Brenner, did you have
14 questions?

15 MR. BRENNER: No, Your Honor.

16 THE COURT: Ms. Oldemeyer?

17 MS. OLDEMEYER: None.

18 THE COURT: Mr. Mosher, you can step down.

19 Mr. Brenner, I'll take your next witness please.

20 MR. BRENNER: Your Honor, we'd call Janice
21 Herrell to the stand.

22 THE COURT: Ms. Herrell, if you'd step up
23 for me, please. Would you face me and raise your right hand
24 and watch your step there, please.

25 JANICE EVA HERRELL

1 Called as a witness on her own behalf,
2 having been first duly sworn,
3 testified as follows:

4 THE COURT: All right, thank you, ma'am.
5 Mr. Brenner will question you first then Mr. Sorensen, if he
6 has any, and then Ms. Oldemeyer.

7 Mr. Brenner.

8 DIRECT EXAMINATION

9 BY MR. BRENNER:

10 Q. Ms. Herrell, first of all I want to get to the taxes.

11 In 20- -- January of 2014 did you pay the real estate
12 taxes for the second half of 2012 and all of 2013 at one
13 time in '14?

14 A. Yes.

15 Q. And that covered the whole south half?

16 A. Yes.

17 Q. All right, the mineral deeds that were prepared that
18 are, have been put in evidence here, those were prepared
19 by Mr. Sorensen after the preliminary accounting report
20 was distributed, is that correct?

21 A. Correct.

22 Q. And now there was a comment about, and I'm to the
23 jewelry now, the rings. Mr. Leonard Mosher mentioned
24 about handing your mother rings or giving your mother
25 rings and I think I heard the nursing home?

1 A. Well, the nursing home he said in 2012 and the only
2 nursing home in 2012 that she was in was Life Care,
3 excuse me, 2009 he said, not '12, 2009 and I know on
4 July 2nd she was admitted and stayed until September in
5 2009 at Life Care because she broke her leg at, when she
6 was at Aspen Winds and was in there. She was pretty
7 sick some of that time with a blood clot and I thought
8 if you gave her rings at that time, that's the only time
9 that she was there because Aspen Wind was not a nursing
10 home; that he gave it to somebody who probably wasn't
11 even alert to take it.

12 Q. All right, but taking if for whatever is there you
13 didn't see the rings did you?

14 A. No.

15 Q. Now, and I think, and I'm just trying to be sure with my
16 notes, your mother had asked Leonard for the 1/3 monies
17 off of the crops, is that right?

18 A. Several times she did.

19 Q. Now, through your attorney you asked for the information
20 on the crops, correct?

21 A. I did and I asked for the money, too, several times.

22 Q. Now I'm going to get to the Hacker Circle house, do you
23 recall, okay, now Wendy Volk testified and I'm trying to
24 get some of this straight in my head, when your mom die
25 did you get ahold of anyone about the house right soon

1 after mom died?

2 A. I saw Jay Fred her brother and we were, I saw the first
3 time, he was at the restaurant, McDonalds right by her
4 house, I saw Jay Fred in there and I talked to him about
5 it and he came over, looked at the house, that's when
6 Stan was still living in it and then Wendy did come over
7 another time and then when we were all out and
8 everything so I think she was thinking of the first
9 visit not the second visit when she came to actually
10 look at the house to do the appraisal on it. When she
11 was talking I thought that can't be because she was a
12 family friend. I babysat Wendy, that's what she was
13 talking about and Jay Fred so I knew that. That's why I
14 wanted them to, or I went with them.

15 Q. All right, but when they were seeing it then Stan would
16 still been in the place?

17 A. Yes.

18 Q. Okay, now to be clear was there any furniture that was
19 put up for sale at that garage sale or any of that at
20 that time?

21 A. There was an exercise machine that was broken. She
22 might be calling that the furniture. There was a chair
23 that was actually broken, and I think she must be
24 calling that, that I said you guys aren't going sell
25 that and it went to the dumpster. So I don't think they

1 were able to sell it. It was actually broken and she
2 told me they didn't sell it. So I think she must be
3 referring to that. I don't know.

4 Q. Okay, and as to Mr. Hesser was asking questions about
5 staging, did, when you first were getting quotes did you
6 try and negotiate or whatever a person would call it?

7 A. Well, we tried to sell the house without the staging
8 because I thought let's try it, make it cheaper. Then
9 we had to do the staging and then the staging and then I
10 went to Wendy, she didn't mention that because we have
11 had words. I said Wendy bring the staging price down
12 and she did knock off a month and that saved quite a bit
13 of money. So you see that in the account there.

14 Q. Apparently during, you said you had gone up there with
15 your families, how many time would you have say you done
16 trips to Good Will?

17 A. My husband did three. I thought two, he said, I at
18 least did three in the big van and so we were loading it
19 and just taking stuff that wasn't worth it.

20 Q. Now back to the Easter conversation that you had with
21 Leonard. Did you discuss farming in that phone call?

22 A. Yes.

23 Q. And what did you ask or obtain from Leonard at that time
24 on the phone?

25 A. He wanted it and I said, no. Then after, we talked for

1 about an hour on the phone and I said, well, if I could
2 get, I could farm it the trust would get some money and
3 part of it would be mine and to go to my son who is
4 disabled. That's the whole point of it. I made it very
5 clear that this was not what --

6 Q. Did he ever indicate about his continued farming of the
7 ground?

8 A. No, in fact --

9 Q. What did he say?

10 A. He, he said that, he said on there that he would never
11 farm anything for me. He made it very clear and there
12 was another time he mentioned that but for the life of
13 me I can't remember. He made it very clear he would
14 never farm any of that so actually I thought he was
15 getting off of it on his own. He also said he wouldn't
16 pay me anything either. He never did.

17 Q. Did Leonard Mosher ever pay you any money for the
18 farming for '14, '15, '16?

19 A. No.

20 Q. And you did have a notice sent to him by September 1
21 through his attorney, correct?

22 A. Correct.

23 Q. To get off the ground?

24 A. Correct.

25 Q. There's been a question raised about your accuracy in

1 putting into the bank where the money came from, the
2 account, that was the \$1,023, do you understand what I'm
3 talking about?

4 A. Yes.

5 Q. And that it was in an account that was yours and Stan's?

6 A. Yes.

7 MR. BRENNER: Your Honor, I have marked a
8 document which I will show the witness, the purpose of this
9 is solely on that area of the 1023 and the account and --

10 (Exhibit No. 419 marked
11 for identification.)

12 BY MR. BRENNER:

13 Q. Showing you what has been marked 419, are those the
14 banking records as to the account that you ultimately
15 took out \$1,023?

16 A. Yes.

17 Q. Now, initially that account was in your mother and it
18 had your name, is that correct?

19 A. Correct.

20 Q. And then is there anyone else on there?

21 A. No.

22 Q. And at some point there was more than just you and your
23 mother?

24 A. Yeah.

25 Q. Okay, and then it went back to just you, your mother and

1 Stan?

2 A. Correct.

3 Q. And this is the records that show the \$1,023 ultimately?

4 A. Yes.

5 MR. BRENNER: Your Honor we would offer
6 Exhibit 419.

7 MS. OLDEMEYER: May I see it, Counsel?

8 MR. BRENNER: Yes.

9 MS. OLDEMEYER: I've got, you handed me but
10 there are multiple copies of the same thing so I want to know
11 what the actual exhibit consists of.

12 MR. BRENNER: I know I was just looking to
13 see, too.

14 MS. OLDEMEYER: Is the exhibit all of this?

15 Your Honor, our objection is that the cut-off date for
16 disclosing exhibits for this trial was long ago. They have
17 disclosed every piece of paper in this lawsuit and then some
18 and then today we're showing up with new exhibits and I think
19 at some point it's got to stop and so our objection is they
20 violated the court's order for disclosing exhibits that they
21 deem pertinent to the claims in this case.

22 THE COURT: Thank you.

23 Mr. Brenner, comments in that respect?

24 MR. BRENNER: Yes, Your Honor. The issue has
25 been raised about the accuracy of this \$1,023.50 coming from

1 an account that belonged to only Janice Herrell and Stan
2 Dennis Mosher and what I'm, these documents will show that at
3 the time of Lois Mosher's death they will show that it was in
4 in those two people's names. It had in the past had more
5 names but it got reduced to just the three names, Lois,
6 Janice and Stan.

7 MS. OLDEMEYER: I think it opens the door to
8 additional questioning then on what Mr. Brenner just stated.

9 THE COURT: What I, what I will confess
10 before we go any further that I can't recall, and I don't
11 want chapter and verse because I can listen to the record for
12 myself and figure it out. To the extent that I would receive
13 it at all because Ms. Oldemeyer is correct this is well past
14 any kind of discovery deadline, to the extent that it would
15 be received at all would be as a rebuttal document in
16 opposition to something that may have been testified to by
17 Mr. Mosher. Hang on. So this is what I am going to do just
18 to keep things moving along for today. I'm going to take
19 Exhibit 419, I'm going to reserve ruling until I can listen
20 to the testimony and see if it was, I don't remember if he
21 questioned the ownership of that account. If he did then I'd
22 receive it. If he didn't then I won't. Does that make
23 sense?

24 (Receipt of Exhibit No.
25 419 is taken under

advisement by the court.)

2 MR. BRENNER: And it's agreeable.

3 THE COURT: Perfect.

4 MR. BRENNER: And I agree it's for rebuttal.

5 THE COURT: Great. I'll take it then.

6 Give it to her.

7 Anything else?

8 MS. OLDEMEYER: I don't have a copy of Exhibit
9 419.

10 MR. BRENNER: Here.

11 MS. OLDEMEYER: Thank you.

12 THE COURT: You bet.

13 Mr. Brenner.

14 MR. BRENNER: That is all.

15 THE COURT: Thank you.

16 MS. Oldemeyer.

17 CROSS EXAMINATION BY MS OLDEMEYER

18 BY MS. OLDEMEYER:

19 Q. This one hour phone conversation that you described,
20 could you please give us the date?

21 A. It was Easter.

22 Q. Of what year?

23 A. The year she died. 2012.

24 MS. OLDEMEYER: No further questions.

25 THE COURT: Mr. Sorensen, I'm sorry, I keep

1 -- that's a terrible habit that I've gotten into, Mr.
2 Sorensen, and I apologize. So, please, if you have questions
3 I'll take them.

4 MR. SORENSEN: I just have one, Your Honor

5 CROSS EXAMINATION BY MR. SORENSEN

6 BY MR. SORENSEN:

7 Q. In addition to the assistance that I lended in preparing
8 the mineral deeds, Mr. Dyekman also participated in
9 helping provide information and legal descriptions and
10 such, correct?

11 A. Yes.

12 MR. SORENSEN: That's all the questions I
13 have.

14 THE COURT: Anything else?

15 MR. BRENNER: No, Your Honor.

16 THE COURT: Great. Does that mean that the
17 defense rests?

18 MR. SORENSEN: Yes.

19 THE COURT: I'm sorry, ma'am, you can step
20 down.

21 MR. BRENNER: Defendant Janice Herrell rests.

22 THE COURT: And Mr. Sorensen said you rest?

23 MR. SORENSEN: Yes, Dennis rests.

24 THE COURT: Okay, so I think that wraps up
25 our evidence. I appreciate everyone's diligence. I told you

1 two days, I said 4:30, it's 4:45. I'd say we did all right
2 all things being equal so we're set.

3 So 30 days, is that enough time for you, I mentioned 30
4 days yesterday, that may not be enough time. I want to give
5 everyone plenty of time.

6 MS. OLDEMEYER: Your Honor, I would actually
7 like to shorten the time because my memory is very poor and I
8 need a deadline by which to do it so 14 days.

9 THE COURT: Okay, 14 days for you and then
10 when --

11 MR. BRENNER: Fourteen.

12 THE COURT: Yeah, so you want 14, you guys
13 get 14 after that and 10 days after that for her.

14 MR. SORENSEN: So we're 28 then basically?

15 THE COURT: Right. What I'm trying to say
16 is in a normal argument I'd hear first from the plaintiff
17 then I'd hear from the defendants, then I'd hear from the
18 plaintiff any rebuttal that she had if she wanted to say
19 anything. So what I'm saying is I'll give Ms. Oldemeyer 14
20 days. So we've got a date that would be March 14th. Then
21 I'll take defendant's briefs or arguments March 28th and then
22 the following would be March, or April 4th would be the
23 following Tuesday so let's go, so if we go April 7th that
24 should be the following Friday so a fat 10 days?

25 What? I mean, yes?

1 MR. BRENNER: We have a counterclaim.

2 THE COURT: Yes.

3 MR. BRENNER: And if there's things brought
4 up in the reply or rebuttal brief to which address towards
5 our counterclaim I would like to be able to at least respond
6 to that.

7 THE COURT: All right.

8 MR. BRENNER: Just on the counterclaim.

9 THE COURT: That's fine. I want to give
10 everybody, I was planning for 60 days down the line anyhow so
11 if I give you, if I give Ms. Oldemeyer until the 7th, now
12 here's the deal and I'm not saying this to preclude whatever
13 additional comments she might make but if I don't get a
14 rebuttal from her --

15 MR. BRENNER: Then I don't need to.

16 THE COURT: -- then that's it. Right, I'm
17 done with argument. If I get a rebuttal from her that
18 relates to counterclaims then I would give each of you the
19 following Friday, seven days. So that would be the 14th I
20 think, of April.

21 MR. BRENNER: Thank you.

22 THE COURT: To get any surrebuttal with
23 respect to the counterclaims only.

24 MR. BRENNER: Thank you.

25 THE COURT: Anything else I can do for any

1 of you for today?

2 Ms. Oldemeyer?

3 MS. OLDEMEYER: No, thank you, Your Honor.

4 THE COURT: Mr. Sorensen?

5 MR. SORENSEN: That's pretty broad question,
6 Judge.

7 THE COURT: Well, you know I live to serve,
8 Mr. Sorensen.

9 MR. SORENSEN: I'm good. Thank you.

10 THE COURT: Mr. Brenner, anything else?

11 MR. BRENNER: No, the last time I did you
12 laughed at me.

13 THE COURT: That's true I did and I would
14 but I thought I would, just to be decent I ask.

15 MR. BRENNER: Thank you and I have nothing
16 but thank you.

17 THE COURT: Mr. Hesser?

18 MR. HESSER: No, Your Honor.

19 THE COURT: Fantastic. Thank you all for
20 your time.

21 (END OF PROCEEDINGS.)

22

23

24

25

