

**IN THE SUPREME COURT OF BELIZE, A.D. 2017**

**CLAIM NO. 131 OF 2016**

**BETWEEN:**

**SITTE RIVER WILDLIFE RESERVE ET'AL**

**CLAIMANTS**

**AND**

**THOMAS HERSKOWITZ ET'AL**

**DEFENDANTS**

**BEFORE:** the Honourable Justice Courtney Abel

Mr. Rodwell Williams, SC }  
Ms. Lissette Staine } for the Claimants  
Mr. Yohannseh Cave }  
Ms. Stacey Grinage } for the Defendants

-----

**21<sup>ST</sup> FEBRUARY, 2017**

**MORNING SESSION**

(Court convened at 9:00 A.M.)

5 THE COURT: Appearances?

MR. WILLIAMS: May it please you My Lord, in appear in this matter along with Ms. Lissette Staine on behalf of the Claimants and my friends Mr.

5 March 1<sup>st</sup>, 2017

Court Starts: 2.33 p.m.

THE COURT: Yes, appearances?

10 MR. WILLIAMS: My Lord, the appearances are as  
before. I appear with my friend Ms.  
Lizeth Staine, for the Claimants,  
Mr. Yohanseh Cave with Ms. Stacey  
Grinage for the Defendants.

THE COURT: Yes.

15 MR. WILLIAMS: My Lord, at the rising of the  
Court, I think that we have  
concluded the Claimant's case,  
closed. And I think it is for the  
Defence now.

20 THE COURT: First of all can I apologize for the  
late start, as you can see I was  
otherwise engaged.

5 MR. WILLIAMS: We understand that, My Lord,  
and we know that this Court is known  
for its' productiveness. So we do  
understand that.

THE COURT: Sorry about that, alright.

10 MR. CAVE: May it please you, My Lord, we wish  
to call as part of the Defence case,  
Mr. Douglas Stoesser.

*(Witness is being sworn)*

**EXAMINATION-IN-CHIEF OF MR. DOUGLAS STOESER BY MS.**

15 **GRINAGE:**

Q: Mr. Stoesser do you recall making a witness statement  
in relation to this matter?

A: I do.

Q: Did you sign the witness statement?

20 A: I did.

Q: If you were to see that witness statement again would  
be able to identify it?

5 A: I would.

THE COURT: Which tab is it?

MS. GRINAGE: Tab 28, My Lord.

THE COURT: Okay.

MS. GRINAGE: My Lord, permission to show the  
10 witness the witness statement.

Q: Mr. Stoesser, I ask that you kindly speak loudly and  
clearly so that we may hear you and His Lordship,  
may be making notes.

A: Okay.

15 Q: What is that in your hand?

A: My witness statement.

Q: Would you wish for this to form a part of the evidence  
in this case?

A: I would.

20 THE COURT: Any objections?

5 MR. WILLIAMS: Yes, My Lord, I have indicated to  
My Friend, and our objection  
relates to a number of paragraphs  
and to the attachment to the ---

10 THE COURT: Just identify the paragraph,  
please.

15 MR. WILLIAMS: It begins at paragraph 15, starting  
from, 'Ms. Brandi Greenfield  
published a photograph of herself  
with Andris Pukke in Belize June  
2009 -- which is the source of this  
image also has several other such  
photos. Furthermore, both Ms.  
Greenfield and Mr. Pukke stated in  
their testimony- all the rest of  
20 it. Then paragraph (16), which  
referred to extracts from  
transcript of testimony- paragraph  
(17), referring to what Mr. Pukke  
said at his parole hearing. Then

5

(18), some slide presentation by somebody. And it goes down the entire paragraph -- that

10

Chadwick's, knowingly referring to Pukke by his alias and thus Pukke was charged (in entire 18). (19),

15

goes back to the slide as D2. (20) there also reports of several lot owners. (21) Extract from

20

transcript of testimony. They are matters in twenty-two (22) again referring to Pukke and twenty-

three (23) in an email to Daini Anderson concierge. These were contradicted by testimony of GPA

Executive and himself during the- Again referring to the parole hearing in (23). As hearsay in

twenty-four (24). Also, objected to and in twenty-six (26) in

5 affidavit- or what proposed to be  
an affidavit by one David Hanlon,  
twenty-five (25). At the beginning  
25 here where it says, 'There is  
also sworn testimony, November  
10 2015 parole hearing by Mr. David  
Hanlon.

THE COURT: Twenty-five (25) what's that?

MR. WILLIAMS: Twenty-five (25).

THE COURT: Yes.

15 MR. WILLIAMS: We will be objecting to that  
and then (29) - some presentation  
of some -- Luke Chadwick and what  
he had purported to have said. And  
then (30) which referred to a copy  
20 of a slide by Chadwick A-6. And  
those are the items to which we are  
objecting and I will go on to  
indicate the basis of the

5 objection. I do not know if my  
Friend ---

THE COURT: Well let me find out if she has  
any umm-

10 MR. CAVE: We will oppose the objection, My  
Lord, in any event-

THE COURT: You have to keep your voice up.

15 MR. CAVE: Forgive me, My Lord. I am confused  
as to what is the basis of the  
objection. IF the basis of the  
objection is the same in relation  
to all of these things. Because if  
he could categorize them, if the  
objection is the same in relation  
to two or three items we can deal  
20 with that I would suggest  
respectfully.

THE COURT: Well I think some of them are  
obvious aren't they?

5 MR. CAVE: Well, I understand the basis on  
which he objections to them but we  
have arguments in opposition.

THE COURT: Alright, we will have to take  
this the long way.

10 MR. WILLIAMS: My Lord, taking the long way I  
perhaps --

THE COURT: All this stuff about parole  
hearing and extracts from that. Are  
you saying that is admissible?

15 MR. CAVE: Given the objection now, My Lord.  
Yes, we do.

THE COURT: On what basis?

MR. CAVE: My Lord, this is a witness who is  
giving evidence. This is a witness  
20 who proposes to give us evidence in  
relation to a direct testimony as  
to what he heard during the course  
of the -

5 THE COURT: The parole hearing?

MR. CAVE: Yes, the parole hearing. And these  
were statements made by persons who  
were connected to the Claimant. And  
My Lord, I am prepared to make  
10 submissions on the point. And I have  
in anticipation of some of those  
objections -

15 THE COURT: Why didn't he just say what he  
heard? Why did he put in extracts  
from a transcript from some other  
body.

MR. CAVE: In effect to what I understand his  
testimony to be. Is that he was  
present during the course of the  
20 hearing -

THE COURT: He could give evidence about  
that.

5 MR. CAVE: This is a verbatim representation  
- this is a true representation of  
what he heard. I understand that  
to be his testimony. In effect he  
is saying that I was there, I am  
10 giving direct testimony. What is  
recorded here in this transcript  
is what in effect I heard. I  
understand that to be his  
testimony. I do not believe that  
that takes it outside of the  
15 hearsay rule, My Lord. He is giving  
direct testimony in relation to  
what he heard. Except that he says  
this particular record hear is a  
true representation of what I  
20 heard. And I do not think there is  
any distinction between that and  
him saying for example by virtue  
of the *viva voce* evidence, okay



5 terms of the documentation  
exhibited, is that -

THE COURT: I share you may have to go  
through it paragraph - you will  
spend the whole day doing this now.  
10 Every paragraph that you are  
objecting to. And the basis on which  
you are objecting to it. I am not  
sure, because I will have to give a  
ruling on this.

15 MR. WILLIAMS: Very well, My Lord.

THE COURT: Take your time. Are we in Court  
tomorrow?

MR. WILLAIMS: This matter continues  
tomorrow.

20 THE COURT: This continues tomorrow okay.  
So we have all the time in the world  
right?

5 MR. CAVE: My Lord, as much as I like being  
here I don't think I want to spend  
all my time with you.

THE COURT: Well I am quite happy to spend all  
the time with your Mr. Cave. Witness  
10 I do not think you need to be  
tortured anymore, you can step down  
there while we go through this.

WITNESS: Thank you, My Lord.

THE COURT: So we will start with paragraph  
15 15 then. And it might be easier if I  
just deal with them paragraph by  
paragraph. So, I will hear you it,  
then I will hear him on it.

MR. CAVE: My Lord, I am thinking that it will  
20 go shorter than what Your Lordship,  
anticipate. The general basis, on  
which the objection is brought,  
appears to be the same. And I think

5 if we deal with the objection, I am  
certain our position on it- then  
that would apply across the board on  
the principle that the objection and  
the basis is the same. If the Court  
10 deposes of that- the Court deposes  
of all of them

THE COURT: They are different basis I  
understand.

MR. CAVE: Well I have only heard one (1).

15 THE COURT: No, you may have only heard one  
but I know that there will be more  
than one.

MR. WILLIAMS: What my Friend is saying, and  
I think if I understand him  
20 correctly and I know he spoke for  
himself there. But I think that  
would have been my approach. Given  
the number of issues to what items

5 we are objecting to; and I have  
clearly identified them. Essentially  
they are two grounds.

THE COURT: One is the hearsay statement  
and the hearsay documents.

10 MR. WILLIAMS: One is generally the hearsay  
and in relation to the documents  
itself that goes in relation to the  
statement.

THE COURT: And they encapsulate both?

15 MR. WILLIAMS: Yes, it encapsulates all, so I  
believe it is quite convenient but  
no contrary to the idea. I would have  
simply identify what I am objecting  
to, which I have done.

20 THE COURT: Yes.

MR. WILLIAMS: Indicate the two grounds, two  
basis and that's it. And then my

5 Friend, would no doubt respond and  
then, My Lord, would then determine.

THE COURT: Alright.

MR. WILLIMAS: And perhaps how that could play  
right into my Friend desire not to  
10 be with, My Lord all day.

THE COURT: Paragraph 15 it doesn't say of  
the words complained by the  
Claimants under paragraph -

MR. WILLIAMS: Actually it begins at Ms.  
15 Brandi.

THE COURT: Ms. Brandi Senior Global  
Employer. The 2.52.11 came from the  
personal Facebook Page of Ms. Brandi  
Greenfield, Senior - Publish a  
20 photograph of herself. Furthermore,  
both stated in their testimony --Did  
they give evidence? Which testimony?

5 MR. WILLIAMS: That is it; nobody referred to  
him has been called as a witness.  
Absolutely none and the testimony  
being referred to is in a  
proceedings; or an alleged  
10 proceedings where the transcript of  
what appears to be an attempt to  
transcribe. But we do not know what  
the source of this transcript is.  
And the transcript does not meet the  
15 requirements that the Evidence Act  
provides for Transcript of  
Proceedings to be put into any  
evidence in a Court Proceeding in  
Belize. So, if you would notice with  
20 a quick glance at the transcript, My  
Lord. But all statutes require  
certain things, if you wish to put  
in transcript of Court proceedings  
from jurisdiction- especially

5 outside Belize. The sections that  
deals with it very quickly is in the  
Evidence Act, I believe it is  
section 33 (1), let me get the exact  
section. It is s. 33 (1) (b). My Lord,  
10 for the assistance of the Court I  
can -

15 THE COURT: But I mean for instance this  
paragraph 15 you are suggesting that  
Pukke was involved with Sanctuary  
Tours as early as 2009?

MR. WILLIAMS: umm -

20 THE COURT: I know what the formal position  
is but I mean do you need to be  
objecting this for the sake of  
objecting?

MR. WILLIAMS: No.

5 THE COURT: I mean what I want to know is  
this going to the substance of your  
case?

MR. WILLIMAS: It doesn't. It doesn't really  
because there is a photograph which  
10 is exhibited and our position -

THE COURT: So, paragraph 15 is -

MR. WILLIAMS: Paragraph 15 is substance and  
I am guessing it is brining me at  
'furthermore'.

15 THE COURT: Furthermore, both Mr and Ms  
stated in their testimony during Mr.  
Pukke hearing that he was involved  
with Sanctuary as early as 2009.  
That is the substance of it.

20 MR. WILLIAMS: That is the substance of the  
hearsay there.

THE COURT: And you challenge that?

5 MR. WILLIAMS: Yes.

THE COURT: As in evidence of the truth of  
its contents.

MR. WILLIAMS: And what followed the  
purported extract from the  
10 transcript of his testimony.

THE COURT: No, I haven't come to that as  
yet.

MR. WILLIAMS: This is the following  
paragraph 16, really.

15 THE COURT: Yes, but they are two separate  
things you see. One is the  
transcript and one is the statement.

MR. WILLIMAS: This is reported on a statement  
that not this witness but that some  
20 third party. One Greenfield and  
Pukke said in a certain proceeding.

THE COURT: This is paragraph 15?

5 MR. WILLIAMS: This is paragraph 15 yes, My  
Lord, the last sentence there at the  
bottom. Furthermore it beings ...

10 THE COURT: Yes, furthermore both Ms.  
Greenfield and Mr. Pukke stated in  
their testimony. During Mr. Pukke  
Parole hearing in the U.S. Federal  
District Court Of Maryland, of  
November 13th 2015 that he was in  
Sanctuary Tours as early as 2009.  
15 The substance of that is that he was  
involved in Sanctuary Tours as early  
as 2009.

20 MR. WILLIAMS: They are putting in a statement  
which this witness is saying some  
other person - who are not witnesses  
in this case-

THE COURT: Which statement is this?

5 MR. WILLIAMS: My Lord, I am saying this  
witness is making a statement  
regarding two other persons,  
Greenfield and Pukke who are not  
witnesses in these proceedings. And  
10 this witness is seeking to say that  
they said certain things.

THE COURT: Is that what it says? That is  
not what I am reading.

15 MR. WILLIAMS: Both read, he and Pukke stated.  
And he goes on to say what they  
stated in their testimony during Mr.  
Pukke parole hearing. And this here  
as the truth of the statement he  
made. Truth of his content I think  
20 and the two people whom this witness  
statement is seeking to say - that  
those two persons who are not  
appearing in this matter. Who are

5 not witnesses in here, said certain things in a ---

THE COURT: And this is material to your case?

10 MR. WILLIAMS: Yes, this is material to my case and that is in repeat in relation to the hearsay objection. Because fundamentally a witness cannot take the stand- it is really.

15 THE COURT: Let me hear Mr. Cave.

MR. WILLIAMS: Very well, My Lord.

20 MR. CAVE: My Lord, if it pleases you. My Lord, the objection base on hearsay is understood on the basic principle. But I would submit respectfully, My Lord, that it does not dispose of the issue to say simply that this statement or this evidence which we

5                   purport to lead is *prima facie*  
hearsay, which we concede that it  
is. I think the objection to be  
successful must go further, in  
establishing that no exception  
10                   applies to the hearsay rule into  
which the evidence falls. Now we say  
that an exception applies and that  
indeed the basis on which this  
evidence is allowed to commence is  
15                   on a basis of an admission. An  
admission of a person, who is  
connected to the Claimant a person  
who is connected to the Claimant,  
who made a statement which is  
20                   adverse to the Claimant. My Lord, I  
would simply begin - May I be allowed  
to pass up these authorities, My  
Lord?

5 THE COURT: Have given him? Have you gotten a  
copy of it?

MR. WILLIAMS: --

MR. CAVE: Yes, I shared one with my Friends  
on the other side.

10 MR. CAVE: My Lord, I will begin by stating  
what we appear to be obvious, which  
is that a company begin artificial  
person - doesn't speak for itself.  
The company speaks through its  
15 officers, its agents, its employees  
and therefore, My Lord, we begin by  
saying that the statements of those  
person connected to the company (its  
officers, agents etc.) Those are the  
20 statements which we say are an  
issue. And we say that the statement  
of the persons who represents the  
Claimant are to be taking a

5 statement of the claimant or the  
Claimant company. In this regard  
therefore, any admissions by those  
persons connected to the Claimant we  
say should be treated as admissions  
10 of the Claimant.

THE COURT: And what is the evidence of Mr.  
Pukke's connection to Ms.  
Greenfield?

15 MR. CAVE: The paragraph itself says that Ms.  
Greenfield was a senior employee of  
Global Property Alliance who is the  
third named Claimant. Senior  
Employee of the third named  
Claimant. Mr. Kazazi during the  
20 course of his testimony in this  
Court also testified to that in-  
addition to it appearing in this  
witness statement here. Mr. Kazazi

5 confirms that by his testimony in  
this Court.

THE COURT: That Greenfield was a Senior  
Employee and what about Mr. Pukke?

10 MR. CAVE: Well, the evidence led in this  
Court, My Lord, is that Mr. Pukke  
was one of the original subscribers  
to Sittee River Wildlife Reserve.  
There is also evidence -

THE COURT: Between what period?

15 MR. CAVE: May I have a moment please, My Lord?

THE COURT: Yes.

MR. CAVE: Yes, My Lord, I am looking at the  
testimony of Mr. Usher. The common  
ground is that he was an original  
20 subscriber he was asked whether -

THE COURT: Which is when?

5 MR. CAVE: I think the company was formed in  
or about 2003. But he was a Board  
Member up until 2005 and he was asked  
specifically about his involvement  
in the company. His testimony was  
10 that he was contracted to market on  
behalf of GPA who is the third named  
Claimant. And there is also the  
testimony of Mr. Kazazi who has  
indicated that -

15 THE COURT: Contracted when?

MR. CAVE: This is—May I have a moment please  
again, My Lord?

THE COURT: --

20 MR. CAVE: My Lord, while my learned colleague  
looks for the specific aspect of the  
evidence I will submit further, My  
Lord. But, the evidence which we  
seek to establish by the other

5

witness- and we have put Mr. Usher in the witness box is that in November of 2013, he had introduced himself as a developer along with Mr. John Usher at a meeting of the Sanctuary Belize Home Owner's Association at which the first Defendant Mr. Thomas Herskowitz was present in his capacity as the treasurer of that organization. When I put that suggestion to Mr. Usher, Mr. Usher said he did not specifically recall but it was certainly possible.

10

15

20

THE COURT: But the operative part of the passage which is being impugned is that he was involved with Sanctuary Tours as early as 2009, right?

MR. CAVE: That might be retrospectively in Tours, My Lord. The evidence has

5 already been lead that he was an  
original subscriber of Sittee  
Wildlife Reserve.

THE COURT: Which was when?

10 MR. CAVE: This is in 2003 as early as 2003  
along with Peter Baker and other  
persons. He was one of the original  
subscribers of Sittee Wildlife  
Reserve and that evidence was  
15 accepted by Mr. Usher during his  
course of his testimony. That  
suggestion was accepted by him. As a  
matter of fact there are documents  
which establish that. And he also  
20 testified that he was a Board Member  
up until 2005. I think if there is  
any- what I anticipate and perhaps  
they can correct me, is that what  
they are saying there seems to be  
some dispute from their point of

5 view as to how recent was his  
involvement.

THE COURT: No, but that is not the  
operative part of this. This is  
about his involvement as early as  
10 2009.

MR. CAVE: In the Sanctuary Tours.

THE COURT: Yes.

MR. CAVE: There has been evidence led that  
persons were taken on tours of the  
15 facility and as a practice when  
there was an attempt to sell them  
residential lots. It may well have  
been a reference to the Sanctuary  
Tours and not the project itself.

20 THE COURT: The transcript?

MR. CAVE: I will completely rely on what I  
have indicated originally. It is not  
an official transcript in so much as

5 it is an indication by the witness  
that this is what I heard. It is  
simply a reduced to writing. What he  
is saying is that what is here  
reduced to writing is what I heard.

10 THE COURT: Where does he say that he heard  
this?

15 MR. CAVE: Paragraph 17, My Lord. That during  
Mr. Pukke Parole hearing in the  
report above, he and his attorney  
both testified that Mr. Pukke was  
using the alias Mark Romeo during  
the period of 2010 and 2011. I was  
personally at this Court hearing  
along with other IOSB Board Members  
20 - statement relating to this hearing  
was based on me personally hearing  
the testimony. Personal notes were  
taken during the hearing and a  
transcript of the hearing provided

5 to IFB by the Court Reporter for that  
case. He is saying that these were  
things that he personally heard.  
That he was present.

10 THE COURT: But he was not the maker of the  
transcript.

MR. CAVE: No he was not.

15 THE COURT: And you are saying that not  
being the maker of the transcript  
that is admissible?

MR. CAVE: My Lord, --

THE COURT: The document is admissible?

MR. CAVE: My Lord, it is not so much -

THE COURT: If he had said in his witness  
statement, 'Heard this..'

20 MR. CAVE: Indeed he had said so.

THE COURT: No.

5 MR. CAVE: He said so in paragraph 17.

THE COURT: What did he say at 17?

10 MR. CAVE: He said, 'During Mr. Pukke parole hearing in the report above, he and his attorney both testified that Mr. Pukke was using the alias Mark Romeo during the period of 2010 and 2011.'

15 My Lord, if that part the Court does not regard as objectionable then I would not even insist in standing on the issue of the transcript.

20 THE COURT: But that is the point. That is the difference, that is the distinction that umm—So you'd accept that all the transcripts should come out?

MR. CAVE: That is not quite what I said, My Lord. I said -

5 THE COURT: No, but I am not asking you  
what you said. I am asking you-

MR. CAVE: If I accept that? No, My Lord, My  
position was nuance, My Lord. What I  
simply said is that if the Court  
10 would have treated this particular  
statement as not objectionable we  
would not insist in relation to the  
transcript on that one.

THE COURT: I am asking you point blank  
15 whether you are insisting that the  
transcript is admissible.

MR. CAVE: Yes, My Lord. I stand on the  
submission which I made- which is  
that the transcript is admissible.  
20 What I was simply suggesting is that  
you would not insist upon perusing  
the issue any further. This is  
without prejudice to what our

5 position is, My Lord. If indeed the  
Court says, well this particular  
statement which appears in the  
paragraph 17 of the witness  
statement without the attachment is  
10 therefore not objectionable.

THE COURT: Well, I am minded to rule that  
the transcript is not admissible  
unless you can persuade me  
otherwise.

15 MR. CAVE: I have done my best, My Lord. And I  
do appreciate the Court's ruling  
whatever it is.

THE COURT: Because if he had included the  
words in the transcript inside his  
20 testimony, I mean that might have  
been a way around it. But the  
transcript is a separate document.

5 MR. CAVE: My Lord, I am willing to concede  
this much, perhaps if the inclusion  
of the transcript might include  
statements which would not come  
within the exception which we've  
10 indicate and I will concede that  
much, My Lord. But we insist in  
relation to the statement itself,  
his direct testimony as to what was  
heard by him from this particular  
15 person we say, My Lord, that that is  
absolutely admissible.

THE COURT: Alright, well I will certainly  
rule that all documentary  
hearsay/evidence specifically the  
20 transcripts of proceedings made by  
third parties not admissible being  
hearsay documents. And I will rule  
that to the extent that -

5 MR. WILLIAMS: My Lord, sorry I feel like you  
are going to the statements now.

THE COURT: Yes.

10 MR. WILLIAMS: And frankly if I may just  
address the point, My Friend made in  
regards to the statement. In my  
respectful submissions in the UK  
they are exceptions which are not  
here. This admission provision is  
not a provision of Belize Law at all.

15 THE COURT: Because in the UK hearsay  
second, hearsay is admissible.

MR. WILLIAMS: Yes, hearsay is admissible. It  
is absolute in our Jurisdiction a  
recent case at the Court of Appeal,  
20 **Blue Sky.**

THE COURT: I think I had made the ruling  
on it in another case myself.

5 MR. WILLIAMS: Yes, My Lord, had adopted the  
ruling.

THE COURT: It is not coming back to me  
now. Pardon?

10 MR. WILLIAMS: My Lord, had adopted the **Blue**  
**Sky** Ruling by the Court of Appeal in  
which I was fortunate to be  
involved. But those UK exceptions do  
not apply in Belize at all. Belize  
has the ancient Rule on Hearsay. And  
15 until Statute come to fix it this  
particular admission for instance,  
this purported admission. So, it  
does not work here in this  
Jurisdiction there is no exception  
20 to the general Hearsay Rule in  
Belize. Only if Statute gives you  
and Statute does not gives you that  
exception. So this section from  
Halsbury that My Learned friend is

5

alluding too is absolutely Statute based and the Statute is specific in relation to it. And the footnotes of his gobbet referred to a particular section of the UK Statute. With that

10

said in addition with regards to the other statements that we say is flying in the face of the General Hearsay Rule, it has no exception in

15

Belize. He is saying well look, this is a statement allegedly made by a person who is (I don't know) what is it - a connection with the Claimant?

20

My Lord, you asked him when? He takes you to the fact that yes, Mr. Pukke was one of the original subscribers and yes it is admitted that he was a director. But the evidence of Mr. Usher is that he seeks to be a director in 2005 and

5

has no relationship with the company at all. Then he says he believe Mr. Pukke may have been engaged. Engaged will be some contractor, not an officer. So there is no evidence in this Court with regards to these proceedings or in papers before the Court, that Mr. Pukke is an officer in 2005 in relation to the Claimants. And infact the evidence before this Court is that GPA is an entity which came into existence perhaps in 2013 or 14.

10

15

MR. CAVE: After the contract.

20

MR. WILLIAMS: Yes, after the contracted year, 2012. Is it 2012? 2012 GPA came into existence. And what Mr. Usher said he might believe that Mr. Pukke may have been contracted by GPA to do some work for GPA. But that so

5 far does not put him a position to  
be making admissions in relation to  
any of the Claimant. But I really  
like to say or put it this way that  
I would like to rest merely on the  
10 Principles I referred to earlier.  
The entire position is really not  
Belize Law, it is not an exception.  
You know what Belize Law is, you go  
to the Statute and the Statute is  
15 clear and that has been made clear  
in the **Blue Sky Case**. I think it is  
**Blue Sky Belize Ltd. V Belize  
Aquaculture Ltd.** This was in Court  
of Appeal going back a few sessions.  
20 So it is not a basis on which this  
could perhaps be sliding as, My  
Friend would want to have it. The  
Hearsay Rule is absolute 03.22.05.

5 MR. CAVE: My Lord, if I may be permitted to  
reply to what, My Learned Senior  
just said. Indeed I take particular  
exception to one of the things which  
was suggested which was that there  
10 is no exceptions to the Hearsay  
Rule, except those which are  
introduced by Statute. They are of  
course Common-Law exceptions. What  
My Learned Senior, was saying is  
15 that we were referring to or what we  
were permitting our position on was a  
UK Statute. Well, My Lord, I  
provided to My Learned friend, and  
to this Court Volume 17 of the  
20 Halsbury Laws of England which does  
infact refers to the **Civil Evidence  
Act 1968.** And I believe that is a  
reference to the Legislation to  
which My Learned Senior refers to in

5

saying or suggesting that that is the basis of our position. But

paragraph 61 is interesting, My Lord because that headnote states that

10

admissibility of certain hearsay evidence formally admissible at

Common-Law. I think it is clearly established that there is exceptions

15

which applies at Common-Law. And the paragraph says that there are four

(4) Rules of Law by virtue of which statements formally admissible as

exceptions to the Rule against Hearsay, are still admissible as

20

evidence of any fact stated in them by virtue of the Statute. In effect

the authors of Halsbury is that if Statute 3.24.06 it was the Common-

Law position in so far as it relates to these situations. These rules of

5

Law are those relating to the admission of, 1. Admissions adverse

to a party and we have indicated that these statements which we seek to

lead are statements which amounts to admission which are adverse to a

10

party in the proceedings. 2. Publish works dealing with matter of a

public nature. 3. Public documents and 4. Public records. Now the

15

footnote right at the bottom of the page says, 'The words in which in a

Rule of Law mentioned in the Civil Evidence Act [1968] Section 9(2) or

Section 9 (4), is described are intended to only to identify the

20

Rule in question and must not be construed as altering that rule in

any way. The Common Law position which existed prior to the Civil



And sites the old provision which is now the - and then such evidence is not admissible (that is referring back to the hearsay evidence) same as provided by the Civil evidence Act 68 and it sites note 2 for the Act and it gives you the various sections, which provides for the admission of first hand hearsay. Like, 'I heard him say...' Subject to compliance with procedural rules and preserves a number of Common-Law exceptions to the Rule against hearsay. And it sites section 9 and 61. If I ask, My Lord, to go to paragraph 61 now of the gobbet. Admissibility of certain hearsay evidence formally admissible at Common-Law which the Statute also incorporate, and created new

5  
  
  
  
  
  
10  
  
  
  
  
  
  
  
  
  
15  
  
  
  
  
  
  
  
  
  
20



5 proceedings? It would no doubt have  
to mean, a party to the proceedings  
or if you wish to extend it liberally  
it may be a party who takes part in  
the proceedings. In other words it  
10 is something that a person who is  
witness that is called would say.  
Would be reported to say, 'This so  
witness said, so and so and so...'

15 THE COURT: No, I do not think that is what  
he is saying, he is saying that -

MR. WILLIAMS: No, he is not saying that I am  
just - alright I will leave that  
apart. I am saying that could be  
included within the broad notion of  
20 a party. But he is saying in his  
context that a party here means the  
Claimant.

THE COURT: An agent of the company.

5

MR. WILLIAMS: A named person in the

proceedings. And because this is a

Corporate person that if there is

evidence that a person who has (I do

not know what level of connection he

10

has not indicated). Has some

connection with this party, then a

statement made by that person that

may be adverse to whom the person

making the statement or the party. I

15

would imagine made by the party - so

lets say a Director of a Company made

a statement adverse to his company

and that statement is made- lets say

in the presence of a person who is

20

then a witness in here, that would

be within the exception to the

Hearsay Rule. It can be within that

particular exception. If a Director

lets say of one of the Claimant's

5

Company made a statement and that statement is being reported by a witness who said I heard it, that can be an exception to the Common-Law Hearsay Rule which obtains.

10

However, what we have here is not that situation first of all in relation to that paragraph cited. 1.

15

We do not have a statement being reported as being said by any person in relation to which there is evidence before this Court who at the time of the alleged statement, one holds any office or position with the particular Claimant. 2. We

20

are not talking about a statement - and there is no evidence that the alleged statement made by the person was even made in the presence of the witness who is seeking to make that

5

statement or repeat that statement  
as admissible hearsay. 3. That

10

particular witness tried to weave in  
the papers that the Court had  
already ruled is in admissible for -

15

it is so fragrantly flies in the face  
of 33(1)(B) in terms of compliance  
for authenticity. The person seeks

20

to put himself in the very  
proceedings (the transcript). The  
person tries to put himself in there

and it is not surprising that he is  
seeking to say I put myself there.  
But the transcript themselves

doesn't tell you what is the source.  
Where it came from? Who are the  
people speaking? It doesn't even has

a heading to say which Court. So,  
you were present? Show me the

5 evidence that you were present in  
these proceedings.

THE COURT: That is why I was saying he has  
to go through them individually.

10 MR. WILLIAMS: But I believe this particular  
juncture may be of assistance  
throughout. But there is absolutely  
-so the views that even putting them  
together as my friend was trying to  
do, that they would escape. But they  
15 cannot escape because this person  
who is seeking to report this  
speech-

THE COURT: You accept that if there is  
evidence that he was there and he  
20 heard somebody who is an officer  
lets say, of the company against the  
company's interest then that is  
admissible.

5 MR. WILLIAMS: I would accept that. My Lord,  
it is admissible in the Old Common-  
Law exception. But I am saying that  
we do not have—

10 THE COURT: Well that is all I was going to  
Rule about in so far as the evidence  
discloses that this person was  
present when an officer of the  
company or an agent of the company  
at the relevant time made a  
15 statement which was adverse to the  
interest of the company then that  
would be admissible.

MR. WILLIAMS: My Lord, that is the law.

20 THE COURT: But that was what I was going  
to say in a global ruling.

MR. WILLIAMS: My apologies, My Lord.

THE COURT: Now, I hope that that would  
then help to determine admissibility

5

which I could then - using that test to apply in relation to any of this evidence. To save time I won't necessary do right now. I can do, but it would take us probably the rest of the day to go through each of them individually but it would be clear what test I will be applying.

10

MR. WILLIAMS: And that is a valid test in my respectful view.

15

THE COURT: And that would be my ruling.

So, the rest of the ruling would be to the effect that in so far as the evidence discloses that this witness was present and heard an officer or an agent of the Claimant made any statement adverse to the interest of the Claimant then such statement would be admissible under a Common Law Exception to the Hearsay Rule.

20

5

And will go further the ruling on the admissibility does not finally dispose of the matter, I mean I have heard you on this again. But it seems to me that the question of weight would also have to be determined by this Court. What weight to give to it, even if it is admissible. The Court would still have to determine, if it is admissible what weight to give to it- given the circumstances under which it was given.

10

15

MR. WILLIAMS: Yes, I accept that.

20

THE COURT: So that you will be enable in due course to address me on weight as well, even if it is admissible. Alright?

MR. WILLIAMS: Obligated.

5 THE COURT: Does that allow then to move  
on?

MR. WILLIAMS: Well-

10 THE COURT: You can make submissions later  
on the evidence that exist in the  
closing so that we can just get on  
with the evidence for the time being  
with the witness.

15 MR. WILLIAMS: My Lord, let me clarify as My  
Friend would - if there is another  
document which is attached.

THE COURT: Yes, paragraph what?

MR. WILLIAMS: It purports to be -

MR. CAVE: Paragraph 26.

MR. WILLIAMS: Paragraph 26.

20 THE COURT: Of Mr. David Hanlon?

MR. CAVE: It starts at 25.

5 MR. WILLIAMS: It is at 25 really and then it goes to 26, copy affidavit of David Hanlon. And that is an affidavit-well it purports to be an affidavit but then again our Rules clearly -

10 THE COURT: I think the Rules provides to this, isn't it?

MR. WILLIAMS: The Rules clearly knocks this out.

THE COURT: Yes.

15 MR. WILLIAMS: And I was expecting that, My Lord, will knock this out along with the transcript.

20 THE COURT: There is a rule that says affidavits hold for other proceedings and somethings are not admissible.

MR. WILLIAMS: Not admissible unless you get the authentication and all that. So,

5                   there is a clear Rule that excludes  
                    it.

THE COURT:       Yes, I seem to remember that  
                    somewhere in my mind but I will hear  
                    you on that.

10                  MR. CAVE: We don't stand for, My Lord.

MR. WILLIAMS: You don't stand for—well then  
                    it is - so I was just asking that it  
                    would be excluded.

15                  THE COURT:       Well, any affidavit evidence  
                    then I will also rule that were made  
                    in other proceedings would not be  
                    admissible.

MR. CAVE: That was the only one referred to,  
                    My Lord.

20                  THE COURT:       Yes, that would not be  
                    admissible in these proceedings.

MR. WILLIAMS: Oblige.

5 THE COURT: Could you now -

MR. WILLIAMS: I am sorry, My Lord, could I  
now take the other paragraph in  
terms of -

10 THE COURT: Yes, just let me make a note of  
this ruling that affidavit evidence  
sworn in other proceedings are not  
admissible in the present  
proceedings under Rules of Court. Do  
you know the section of the Rules of  
15 Court it is?

MR. WILLIAMS: Yes, I cite that- I think it is  
Section 35. I am sorry it is the  
Evidence Act. I am sorry.

20 THE COURT: I think it is also in the Rules  
you know.

MR. WILLIAMS: Oh alright, sorry in the Rules.  
I was looking in the Evidence Act.

THE COURT: Okay.

5 MR. WILLIAMS: And this is potentially-  
because we are dealing with a  
foreign document in a foreign  
proceeding -

THE COURT: Which makes it even more --

10 MR. WILLIAMS: Which makes it even more  
offensive to our procedure.

THE COURT: --

15 MR. WILLIAMS: If I may say this, not to  
divert, My Lord, for the CPR but  
under the Evidence Act it is *s. 33(1)*  
*(B) and Section 35.*

THE COURT: Evidence Act what?

20 MR. WILLIAMS: *S. 33(1) (B) and sub s. 2 and*  
*s. 35 of the Evidence Act deals with*  
that affidavit.

5 THE COURT: Alright, so the affidavit  
evidence is not admissible in these  
proceedings.

MR. CAVE: We understand, My Lord.

10 THE COURT: So, you can address me base on  
those rulings, the admissibility in  
conclusion in your submission on any  
of those provisions. But the ruling  
is that those things are  
inadmissible as I have ruled.

15 MR. WILLIAMS: Okay, so in relation to the  
paragraph in the witness statement -

THE COURT: It is as far as if they come  
under these rulings then they are  
inadmissible.

20 MR. WILLIAMS: They are inadmissible?

THE COURT: Yes.

MR. WILLIAMS: Oblige.

5 THE COURT: But if there is any  
disagreement about it later on you  
can address me on it and if need be  
I will make a ruling on it  
specifically.

10 MR. WILLIAMS: I cited the ones that I  
considered inadmissible based on the  
ruling and I have cited the specific  
ones or sentences in the paragraph  
so I will perhaps leave it as that  
15 so as to make some time.

THE COURT: Yes, so we can make some more  
progress.

MR. WILLIAMS: I just want to know if you are  
agreeing with that?

20 MR. CAVE: I understand the Court position on  
the CPR.

MR. WILLIAMS: Alright, okay.

THE COURT: Alright?

5 MR. WILLIAMS: Yes, My Lord.

THE COURT: Yes, you can come back Sir. So,  
subject to my ruling has indicated  
on admissibility those paragraphs in  
so far as the rules of admissibility  
10 as I have determined they are ruled  
inadmissible. Is that clear?

MR. CAVE: Yes, My Lord.

THE COURT: And subject to such  
admissibility your affidavit would  
15 be admitted as Examination in Chief.  
Okay?

MR. CAVE: Thank you, My Lord.

THE COURT: Alright then.

MR. CAVE: My Lord, I believe my Learned  
20 colleague would like to amplify  
right now.

THE COURT: Okay.

5 MS. GRIANGE: Yes, My Lord, permission to  
amplify?

THE COURT: Yes, you have discussed this  
with the other side?

MR. WILLIAMS: No.

10 THE COURT: No, alright well keep going  
until he stops you.

MS. GRINAGE: My Lord, I thought the—

MR. CAVE: She may have been led by believing  
that that wasn't the procedure  
15 because we were not -

MR. WILLIAMS: Go ahead.

THE COURT: Alright.

**EXAMINATION IN CHIEF OF MR. DOUGLAS STOESER BY MS.**

**GRINAGE Con' t:**

20 Q: Mr. Stoesser you have heard the testimony of Mr. Jose  
Baptista in this matter?

5 A: I did.

Q: And Mr. Baptista has tendered a letter from the Institute Of Chartered Accountants, dated the 12<sup>th</sup> September 2016.

THE COURT: What date is that?

10 MS. GRIANAGE: A letter from the Institute of Chartered Accountants of Belize, dated the 12<sup>th</sup> September 2016.

Q: Have you seen that letter Mr. Stoesser?

15 A: I have not.

Q: And you have heard Mr. Baptista stated that letter does not appear on the IOSB website, what is your response to that?

A: Since I did not know of the letter -

20 THE COURT: No, let me - I am not following this. One second I got to follow this.

5 MS. GRIANAGE: Mr. Jose Baptista.

THE COURT: Where is Mr. Jose  
statement?

MS. GRIANAGE: Jose Baptista witness  
statement -

10 MR. CAVE: I believe, My Lord, that was an  
additional piece of evidence  
introduced by way of  
amplification.

15 MR. WILLIAMS: It was a separate piece of  
paper. The letter is a letter  
on the result of the Institutes  
exercise, so it is a separate  
exhibit. It was given exhibit  
JB 4.

20 THE COURT: Of 12<sup>th</sup> of September?

MR. WILLIAMS: Yes.

MS. GRINAGE: Yes.

5 THE COURT: Alright.

Q: Yes, Mr. Stoesser you have heard Mr. Baptista's evidence that he has not seen this letter on the IOSB website. What is your response to that?

A: I was not aware of the letter, nor have the IOSB Board  
10 given me an instruction to insert it.

THE COURT: I was not aware of this letter-

-

WITNESS: Yes.

THE COURT: Nor, has what?

15 WITNESS: Nor did the IOSB Board give me any instructions to put it on the website.

Q: Mr. Stoesser what if any other document in relation to the audit were posted on the website?

20 A: Basically all of the documents back and forth - you know our documents and whatever Baptista supplied was also on the website.

5 Q: Do you recall whether if you have posted Mr. Baptista's  
letter in response?

A: In response to Mr. Herskowitz's letter?

Q: Yes.

A: Yes, it is posted.

10 Q: At paragraph 28 of your witness statement, you stated  
that the Defendant disputed that the source of some  
of the words complained of under paragraph 17 of the  
claim- and stated that these words were not posted on  
the IOSB website.

15 A: Ummm—

Q: How do you know what words were posted on the website?

A: I took and copy and pasted all of the text from every  
page of the website consolidated them into a single  
Word Document so I could in effect with a single  
20 search, search the entire website.

MS. GRINAGE: I crave your indulgence, My  
Lord.

5 MR. WILLIAMS: I do not know how much further  
you are going?

MS. GRINAGE: I have a few more.

Q: Mr. Stoesser you have also heard the evidence of Mr.  
John Usher and in his witness statement he attached  
10 certain statements that are allegedly posted on the  
IOSB website. Can you recall whether all of those  
statements - whether those statements were posted?

A: Well, when I looked at the form the petition some were  
from the website, some were not.

15 Q: Were those words that he referred to a full  
representation of what was posted on the website?

A: Somewhat, there was a very lengthy one that was  
incomplete. You know, it was cut and pasted. It was  
partly there and there would be gaps and then they  
20 were partly there. But what there was there was from  
the website but there were many gaps.

Q: What specifically that you discovered?

5 A: I am sorry I do not understand the question in regards  
to?

A: In relation to those statements that you said were  
copied and pasted -

10 MR. WILLIAMS: My Lord, I am not sure if we  
are going to a cross  
examination now of their own  
witness or clearly an  
amplification. It doesn't seem  
to me to be amplifying  
15 anything.

THE COURT: What are you amplifying  
Counsel?

20 MR. WILLIMAS: Except to seek to solicit some  
evidence in relation to an  
entirely new matter it would  
seem to me from this witness.  
And I do not accept that as a  
amplification at all.

5 MR. CAVE: My Lord, if I may, the  
amplification we say  
respectfully, My Lord, is in  
relation to a matter which  
arose in the testimony of Mr.  
10 John Usher. Your Lordship may  
recall that during the course  
of that testimony in my cross-  
examination of him I  
specifically put to him the  
15 suggestion as to whether he  
could say that the words which  
were represented in his  
witness statement as being  
published on the website -  
20 whether that was a true or  
correct representation of the  
words which were published.  
And I think I spent some time  
on that because Mr. Usher would

5

appear sometimes unsure having regard to what he says was his lack of familiarity with the computers and with

10

publications etcetera, in attention to certain publications online. Whether

15

he appeared unsure so I asked him specifically whether he could say whether the statements which he

20

represented as being published- whether those were the true and correct representation of what was published. Indeed whether they were the verbatim words representation of what he says are the statements which were defamatory. Now, this witness

5

by way of amplification is giving specific evidence in response to what he said during the course of his cross-examination. And that is simply the purpose of the amplification.

10

THE COURT: Which paragraph of the Rules deals with amplification?

15

MR. CAVE: Part 29 of it.

THE COURT: Party 29?

20

MR. CAVE: Which specifically says that one of the grounds on which a witness may amplify is - that he can comment on evidence given by other witnesses. 29.9 paragraph C- he may comment on

5 evidence given by other  
witnesses.

THE COURT: So what is the question?

Q: Mr. Stoesser you have also heard the evidence of Mr.  
John Usher he has attached to his witness statement a  
10 print out what he says was published on the IOSB  
website. What do you say in response to that?

A: I do not know if this is a proper thing to say- but  
the material presented to me and what he said -

MR. WILLIAMS: Excuse me for one moment, Mr.  
15 Usher has a print out?

THE COURT: Which attachment?

MS. GRIANGE: Tab H, My Lord, it would be in  
the trial bundle-My Lord, I am  
referring to Tab 22 of the  
20 trial bundle.

THE COURT: You want to give it to the  
witness?

5 MS. GRIANGE: Yes.

(Witness is given Tab H)

Q: At Tab H of his witness statement Mr. John Usher refers to certain statements that were published on the IOSB website. What is your response to that?

10 A: I have looked at Tab H, some of the statements here— well there is two parts that in effect to Tab H are alliteration of what is in the petition and there are a lot of cut and pasted materials. All of that cut and pasted material in Tab H, even though Tab H is  
15 supposedly relates to the website, none of that cut and pasted material here - that starts with Thomas Herskowitz, whatever is from the web page, none of it.

Q: What do you mean when you say cut and paste material?

20 A: Somebody - this is clearly from a Facebook page. All of the material that is in here, starting with Tom Herskowitz page. Clearly it is somebody looking at Facebook and simply cutting and pasting what they are

5        seeing in a Facebook dialogue. Parts of it all of it  
whatever, but none of (witness counts pages)  
everything after page 5 in Tab H has nothing to do  
with the IOSB website. In terms of the material in  
pages 1 through 5 -

10                    THE COURT:            So, nothing after page 5  
of the Tab H has anything to do  
with the IOSB website?

15                    WITNESS: Right, My Lord, it is not from  
the IOSB Webpage. It is taken  
from some other source. The  
material on pages 1, 2 and the  
very top most statement on page  
3 are from the Website. The  
next 4 statements on page 3 are  
20                    not on the website.

Q: Can you identify the four that you are referring to?

A: Well, there are the second, third and fourth and fifth  
items on page 3.

5

THE COURT: From where?

WITNESS: Okay the first one is, 'If there is only 100 Million in notes...'

THE COURT: Yes.

10

WITNESS: That is not from the Webpage.

15

Then the following three (3) items are also not from the Webpage. Then the material after that on page 3, 4 and 5 they are all from a single one of the Webpages and when I was earlier stating that there was material here that was partial- partially reproduce.

20

In that part, yes what is here is from the website but it is incomplete. There is many missing sections- there are

5 all these dot things where they  
have obviously truncated  
(selectively cut) material  
from the web page.

Q: How do you know that it is incomplete?

10 A: By comparison with the Webpage that this material is  
on.

Q: What specifically did you do to compare?

A: I looked at the Webpage. This material is unchanged  
on the Website where too today. So if I go look at  
15 what is on the Website it is still the same material  
that I am referring here. It hasn't been changed or  
modified it is just still there as it was at the time  
this was filed.

MS. GRINAGE: My Lord, I have no further  
20 questions.

**CROSS EXAMINATION OF MR. DOUGLAS STOESER BY MR. WILLIAMS.**

5 Q: I have a few questions for you Sir. You said in your witness statement that you are a member of the Board of the IOSB which is the second Defendant right?

A: I was.

Q: You were?

10 A: I am not a Board Member now.

Q: You are not a Board Member?

A: No.

Q: You have been fired, what happened?

A: I resigned.

15 Q: When did you resigned?

A: Early August 2016.

Q: You resigned in August 2016?

A: Yes.

Q: You said in your witness statement that you are the  
20 Webmaster of the IOSB site?

5 A: Correct.

Q: Did you resigned from that also?

A: I did not.

Q: You did not, so to this day you are the Webmaster?

A: Correct.

10 Q: You are aware of the severally running dispute between Thomas Herskowitz and the generally the Sanctuary Belize Project?

A: Well I am aware that there are disputes on various matters, yes.

15 Q: You were aware of the many disputes?

A: Yes.

Q: And in your capacity where you were a Director of the IOSB, can you tell this Court whether it was the Board of IOSB that decides what goes on the Website or whom  
20 decides what goes on the Website?

5 A: Virtually all material on the Website had to be approved by the Board. I had latitude for minor changes whatever. But bulk of the content virtually all of the content is approved by the Board before I post it.

10 Q: Okay, so you would say that the Board is responsible for the content of the ISOB Website?

A: Yes, that is because it is the IOSB Website.

Q: It is their Website and you as Webmaster. Could you tell the Court what is a Webmaster?

15 A: Well, basically I maintain and develop the Website.

Q: So you maintain and develop the Website?

A: Yes.

Q: AS Webmaster?

A: Yes.

20 Q: Maintain and develop the Website?

A: Yes.

5 Q: So the matters appeared on the Website which is owned  
by IOSB and then you provide the maintenance and you  
created the Website for them as per their  
instructions?

A: Basically material for the Website is discussed by the  
10 Board, approved by the Board and whenever they issue  
me material to be posted—

Q: You post it?

A: I post it, yes.

Q: Who is the Chairman of the Board?

15 A: Tom Herskowitz.

Q: So if Mr. Herskowitz were to ask that something be  
posted in his capacity or just if he were to ask that  
something be posted, he would not show many approval  
by the Board -he would just direct you to put it on  
20 the site?

A: No.

Q: What would he show you?

5 A: I need Board approval for content. If Mr. Herskowitz  
asked me that is not good enough, I need Board  
approval.

Q: What form this Board approval takes?

A: It is variable, it might be and often it is an e-mail  
10 with content or whatever.

Q: What form does the approval takes, and e-mail?

A: That is one way that they can approve.

Q: An e-mail from whom?

A: --

15 Q: I would suggest to you an e-mail from Mr. Herskowitz?

A: I will repeat I received e-mails from various people  
involved.

Q: Okay, thank you. You received e-mails directing you  
to put things on the site from various people  
20 involved?

A: Correct.

5 Q: My suggestion to you is that one of those people whom  
you take e-mail instructions from is Mr. Herskowitz,  
isn't that correct?

A: I do not view that as correct, no.

Q: You do not think that is correct?

10 A: No. I am typically --

Q: Okay, will ask you another question. You do not see  
my suggestion as correct?

A: I do not.

Q: You do not, now I want you to list the people on your  
15 Board for me when you were a Director there, list  
them. Give me their name of each of them.

A: Okay. Tom, John Crossen, Don Schneck, Sue -umm I am  
sorry she has a strange name. She was Sue- I might  
get it (Susan Mullikin) and Trisha Nelson, and of  
20 course myself, I am trying to think there were any  
other Board Members.

THE COURT: Sue, sue somebody.

5 Q: A girl name Sue?

A: Yeah, a girl name Sue. I am having a senior moment.

Q: No problem and we do not want to press you beyond—

A: I cannot believe I cannot remember her name since I worked closely with her.

10 Q: I am quite curious that you even forgot the Chairman's name?

A: I did not forget the Chairman's name.

MR. CAVE: MY Lord, that was the first name he mentioned.

15 MR. WILLIAMS: The first name is John Crossen that is what we have in our records.

MS. GRINAGE: It is Tom.

MR. WILLIAMS: That is the first name he mentioned, John Crossen.

20

THE COURT: No, Tom Herskowitz.

5 MS. GRINAGE: Tom was the first name.

MR. WILLIAMS: At that question, My Lord,  
when he was listing them?

THE COURT: Yes.

10 MR. WILLIAMS: I asked him to list the  
names.

THE COURT: I just put T.H I mean.

15 MR. WILLIAMS: But he did not say, T.H,  
My Lord, or did he say Thomas  
Herskowitz. That is the point  
I want to make. But I will move  
on, My Lord. But he did not  
mention Mr. Herskowitz name  
when I asked him to list the  
members of the Board.

20 WITNESS: I have.

THE COURT: Well that is not my note.

5 MR. WILLIAMS: Well I accept that, My  
Lord, and I will move on just  
to say that earlier on he said  
that Mr. Herskowitz was the  
Chairman that was one time he  
10 used Herskowitz's name. But  
I'll move on.

Q: Now, so it is fair then to say that you took  
instructions from any member of your Board in regards  
to matters on the Website?

15 A: No.

Q: Only from some?

A: Well, I was privy to the Board discussions so I knew  
the material being discussed and so when the Board  
have arrived at an agreement on material then I would  
20 then take instructions from Mr. Herskowitz but I would  
not do it unless it was a Board directive.

Q: I tried to ask you what form the directive take and  
you said and e-mail?

5 A: Oh well, the directive (that is how do I receive it) could from e-mail, it could have been me hearing it on a Skype call, it could have been on discussions going on the Board Facebook Page I receive instructions from various sources.

10 Q: And I am suggesting to you that you took instructions form Mr. Herskowitz.

A: Yes, but I will need to have that clarified if was an understood Board instruction then yes I would take it from Mr. Herskowitz.

15 Q: Did you take instructions from Mr. Herskowitz as to what go on the Website?

A: Yes, if appropriately approved by the Board, yes.

Q: So you do take instructions form him?

A: He is the Chairman of the Board.

20 Q: Yes, that is all I am trying to get at but you are running away from it so I will pursue it.

A: --

5 Q: Now, you said you are aware that there was a number  
of continuing litigation matters between Mr.  
Herskowitz himself—

THE COURT: Did he say that or  
disputes?

10 MR. WILLIAMS: Yes he referred to various  
disputes.

THE COURT: That is slightly different  
than litigation matters.

15 MR. WILLIAMS: My Lord, I agree with your  
observation.

Q: You are aware of a number of litigation between Mr.  
Herskowitz and Sittee River and Others, correct?

A: Yes.

20 Q: Infact you as a member of the IOSB - you are a member  
yourself?

A: I am a member of the IOSB yes.

5 Q: You are one of those persons in support of these numbers of litigations?

A: I -

Q: Let me repeat the question for you.

A: Yes, because it is ambiguous to me.

10 Q: Very well Sir, Mr. Stoesser you support these litigation actions by Mr. Herskowitz against Sittee River Wildlife Reserve; you are in support of him?

A: You meaning I have a personal opinion about them? I don't actively - I am not doing anything to actively  
15 to support them.

Q: Do you support Mr. Herskowitz initiatives in these litigations against the Sittee River Wildlife Reserve?

A: Are you referring to the winding up case? I'm sorry I  
20 am not -

Q: Alright, you said that you are aware that there are number of lawsuits by Mr. Herskowitz right?

5 A: Well, I am aware of his personal ones as well.

Q: Yes, you are aware even of his personal ones.

A: Yes.

Q: Where he has personally have sued?

A: Yes. I am sorry my problem is distinguishing between  
10 things involving the IOSB and things involving Mr.  
Herskowitz personally.

Q: Maybe it would be helpful if you would simply listen  
to my question and try to focus on the question I ask  
you and then you will appreciate what I am asking you  
15 about.

A: I heard your question.

Q: Presently I am asking you about Mr. Herskowitz.

A: Yes, okay.

Q: I am asking you in terms of all the litigations you  
20 are aware of that he is involved in with or against  
Sittee River (SRWR). Whether you are supporting him  
in all those particular matters?

5 A: Is my personal opinion in support of him, yes.

Q: I am not asking you about your opinion; I am just asking if you are in support of him.

A: I am sorry Mr. Williams I do not understand the meaning of the word 'support'. What do you mean by support? I  
10 am sorry.

Q: Alright, what do you understand 'support' to mean if I may ask you?

A: Well, support to me that word is ambiguous in the question because -

15 Q: What do you understand it to mean?

A: It could mean if I am actively involved in trying to support him in his lawsuits or am I simply personally in my opinion in favour of what he is doing. The latter is true the former is not.

20 Q: Okay, so you are in favour of what he is doing and only in that sense you are supportive?

A: Yes.

5 Q: The Baptista letter by Mr. Herskowitz complaining to  
- Not the one of the 12<sup>th</sup> My Lord. The initial Baptista  
letter in which he asked the Institute to take  
disciplinary process against Mr. Baptista, are you  
familiar with that letter?

10 A: I remember discussing it at the time.

Q: You remember that you posted that letter to the  
Website?

A: Yes, I did.

Q: You remember Mr. Baptista's written response to Mr.  
15 Herskowitz answering questions that he raised and  
demanding that he retract his defamatory statements  
in that letter, do you remember posting that?

A: I do yes.

Q: And you posted that one?

20 A: Yes.

Q: The source of the initial letter the first one Mr.  
Herskowitz complaint letter if I may refer to it as

5 that. That came to you from Mr. Herskowitz that is  
how you came in contact with that letter?

A: I am sorry I did not hear the very last part.

Q: I am suggesting to you that that letter you came in  
contact with it so as to post it on the site because  
10 Mr. Herskowitz gave it to you?

A: Yes, he supplied it.

Q: And asked you to post it?

A: In its sense, yes.

Q: The Website of the IOSB is an open Website, in other  
15 words any person who has the means of visiting  
websites would see what is on the site right?

A: It is what is called a Public Website, yes.

Q: It is a public -

A: It is available to everybody.

20 Q: Publicly.

A: --

5 Q: The intention is so that the public at large can access and visit the site, isn't that so?

A: That was not the primary intention.

Q: No, I am not asking you about 'primary'. Let me rephrase my question.

10 A: Okay.

Q: The intention is to allow any person, who can go to the Website and see what is on the Website, isn't that so?

A: That is the consequence yes.

15 Q: The consequence of it being open?

A: --

Q: But it was also your IOSB Board intentions that those consequences would follow isn't that true?

A: No.

20 Q: No?

A: No.

5 Q: Am I understanding you to be saying and you can correct me if I am wrong that the ISOB did not want the public at large to see what is on their Website?

A: For the general to see it? That was not the consideration of ours no.

10 Q: Of 'Ours' now are you speaking for yourself or the ISOB? You are here as an ISOB witness right?

A: Well I was a Board Member at the time.

THE COURT: What is that?

15 WITNESS: I was a Board Member at the time this was being done.

Q: Let me put it this way then the ISOB did not want what was on their site to be any secret?

A: Correct.

Q: They wanted the world to know?

20 A: That was not the intention.

5 Q: The Facebook page which you referred to when, My Friend asked you some questions- that Facebook page is who Facebook page?

A: It represents the ISOB and the Board.

Q: It represents the ISOB and the Board?

10 A: Yes.

Q: On the other hand thought, this Facebook page of the ISOB is not open to the public at large (my words) it is private to only those who are friends in that community?

15 A: Were you referring to the HOA page?

Q: The Facebook page is not open to me only to those people who are admitted in- given access.

A: Well, that is true of-

Q: Of the friend in the society?

20 A: Well, that is true of any what's called 'Closed Facebook Page', yes.

5 Q: Okay, so this is a 'Closed Facebook Page', that is a helpful word for me. The Facebook page is a closed Facebook page?

A: What Facebook page are you referring to?

Q: The ISOB Facebook page is a closed page?

10 A: There is no ISOB Facebook page.

Q: What is the Facebook page that, My Friend pointed you to?

A: --

15 MR. WILLIAMS: My Lord, the evidence as I understand it says the ISOB Facebook page.

A: There is -

Q: You've said that it represents the ISOB and the Board.

A: No, the Website two completely different things.

20 Q: Alright, so you want to change it?

A: No.

5 Q: Pause for a moment please let me just -

MR. WILLIAMS: My Lord, the Facebook page  
is posted it represents  
the ISOB and the Board  
that is two questions up.

10 A: I understood you to mean the Website I am sorry.

Q: I did not use the word Website at all.

A: That is why I am apologizing.

Q: Well now then I have to go back now to Website, because  
earlier I use the Website and you satisfied me that  
15 the Website was open to the Public. So now we go back  
now to the Website.

A: Okay.

Q: And you are confirming that the ISOB Website is a  
public access site?

20 A: Correct.

Q: Now I have to come now to the Facebook page. You  
recall, My Friend, did ask you about Facebook and the

5 screen shot that appears in Mr. Usher's statement and  
you commented on it.

MS. GIRNAGE: No, My Lord, I referred  
the witness to statements  
published on the Website at Tab  
10 H, My Lord. Not the Facebook  
page.

MR. WILLIAMS: Well even so, the witness  
commented on Facebook screen  
shots that he was pointed to.  
15 Anyway I will go there even if  
you did not I will go there.

Q: So you do not remember, My Friend, mentioned it I will  
take you now to - you have seen the allegations in  
relation to Facebook page posted in this claim?

20 A: I have seen Facebook material yes.

Q: You have seen it, correct?

A: Yes.

5 Q: Do you have access to that Facebook page?

A: What Facebook page?

Q: The Facebook page in relation to the material you have seen in this proceeding that is what I am talking about?

10 A: I do not know. The petition does not source where that material came from. I do not know which Facebook page it necessarily came from.

Q: Sir, let me rephrase my question. I do not want you to answer yours I want you to answer the question I  
15 ask you. You have said to this Court that you have seen materials considered screen shot from a Facebook page, which you saw. You have seen it, that is what you've said.

A: Do you mean I saw it actually on that Facebook page  
20 or did I see it in the Court material, I am sorry?

Q: You have seen it in the Court materials?

A: Yes, I have reviewed the Court materials.

5 Q: Okay, let's go ahead. My question to you is simply  
this the materials you have seen in the Court papers  
referencing a Facebook page -

A: In places it does yes.

10 Q: It references a Facebook page in places it does, can  
you say to this Court whether you have seen those same  
materials?

A: Where I am sorry?

Q: Can you say whether you have seen it on a Facebook  
page that you have access to?

15 A: No.

Q: You do not recall?

A: No.

Q: You simply haven't seen it?

A: No I am just saying that I may have well had seen it.

20 Do I remember seeing it, no.

Q: You do not remember seeing it?

5 A: In a year there -

Q: Hold on for a moment just focus on my question. You do not remember seeing it?

A: I do not.

10 Q: Do you remember seeing on any Facebook page posting concerning the Lawsuits between Mr. Herskowitz and SRWR?

A: I am sorry I am not sure I understand the question.

15 Q: Can you say whether you saw on any Facebook page anyone which you have access to, material comments having to do with the dispute between Mr. Herskowitz and the SRWR (Sanctuary Belize)?

A: Yes, sure.

Q: You have?

A: --

20 Q: Can you say which say Facebook page or whose Facebook page you have seen it on?

5 A: There are multiple Sanctuary related Facebook pages  
but on a whole it would be - I am sorry.

Q: They are multiple Sanctuary Facebook pages?

A: Yes.

Q: And you might have seen the materials we are referring  
10 to in terms of the dispute between Mr. Herskowitz and  
Sanctuary Belize on some of those pages?

A: Yes.

Q: I suggest to you that the ISOB do have a Facebook  
page?

15 A: I know of no such page.

Q: Now you have said that there are multiple Facebook  
pages in which you have seen the - can you indicate  
to us those Facebook pages that you have seen commence  
in relation to that matter?

20 A: Yes there is Mr. Herskowitz Sanctuary Belize HOA  
Facebook page. That is its proper name.

Q: To you knowledge it is a closed page?

5 A: It is a closed page, yes.

Q: But you have access to it?

A: Yes.

Q: And you have seen comments on it relating to the ongoing disputes between Mr. Herskowitz and SRWR?

10 A: Yes.

Q: You referred to this Facebook Page and Mr. Herskowitz IOSB Facebook page?

A: No, Sanctuary Belize HOA.

Q: Alright, let me find it here.

15 A: Facebook pages have names that is its name.

Q: Sorry, it begins with Herskowitz name is part of it?

A: No.

Q: Tell me the name of this Facebook page?

A: The formal name on Facebook is Sanctuary Belize HOA.

20 Q: What that supposes to mean, do you know?

5 A: I do know.

Q: You are a member right?

A: Yes, I know.

Q: So tell us what it means?

A: The name is actually historical in the sense that the  
10 page, I do not know the exact date but that page was  
founded in early 2014.

Q: I am just trying to ask you the name, what does that  
stands for what does it means?

A: Well it refers to the intended topic of that page when  
15 it was founded.

Q: Was it founded before the ISOB Website went up?

A: Well for atleast a year and a half or more, yes.

Q: There are other Facebook pages on which you saw to  
which you have access in which you saw commentaries  
20 about Mr. Herskowitz dispute and the SRWR (Sanctuary  
Belize Project), there are others?

5 A: Yes.

Q: Could you tell me about how many others you know?

A: Well there is another one is the Sanctuary Belize Owners Facebook page.

10 Q: The first Facebook page you referred to you called it Thomas Herskowitz Facebook?

A: He is the owner of the page.

Q: He is the owner of the first one?

A: Yes.

Q: The second one who is the owner of it?

15 A: Jerry Brown.

Q: By chance is Jerry Brown a member of the ISOB?

A: No.

Q: Is there another Webpage that you visited that you saw these comments?

20 A: Are there other Facebook pages?

5 Q: Are there other Facebook pages?

A: Yes, there is one called the Gathering. Another one I had access to for a while is called the SBKB Facebook page. Another one that contained Sanctuary contents but does not strictly devoted to Sanctuary is Belize  
10 Expats. At one point I counted that there were nine (9) Sanctuaries related Websites but some have come and gone.

Q: Okay thank you. So in terms of the specific Facebook  
15 comments that is in the petition as we would say (the papers that were filed) in terms of those Facebook comments there can say you say to this Court whether you have seen it on Mr. Herskowitz Facebook page?

A: --

Q: Are you able to say?

20 A: No.

Q: You are not able to say?

A: Well, may I clarify?

5 Q: My question is whether you are able to say to this  
Court that you have seen these screen shots or  
whatever that is printed in the claim. Whether you  
have seen any of those Facebook page reference  
comments on Mr. Herskowitz Facebook page? Simple  
10 question - or you cannot recall?

A: I am sorry, Sir. It is not a simple question. Because  
you are asking me if I actually saw them, I probably  
did.

15 Q: Okay, you give me the best answer you can and we go  
from there. You probably did see them?

A: Yes.

Q: You probably did see those screen shot comments on Mr.  
Herskowitz Facebook page the one that we have here in  
this claim right. You probably did right?

20 A: Correct.

Q: I suggest to you now, you cannot deny that they were  
not there when I suggest to you that they are there?

5 A: I am not attempting to.

Q: Let's move on quickly, and we go to the ISOB site?

A: Website?

Q: Yes, sir. The ISOB Website is open, open access?

A: A public site yes.

10 Q: And on that public site –

MR. WILLIAMS: My Lord, me and My Friend  
was just conversing on  
whether it might be a  
convenient time.

15 THE COURT: How longer do think  
you have?

MR. WILLIAMS: I expect to be much longer,  
My Lord, I must confess.

20 THE COURT: And do we have the  
whole of tommorw?

5 MR. WILLIAMS: We have the whole of  
tomorrow?

THE COURT: Tomorrow is what?  
Thursday?

10 MR. WILLIMAS: Yes, My Lord. We will  
finish with him not the whole  
of tomorrow but very early.

THE COURT: And what about -

15 MR. WILLIAMS: And they have one other  
witness.

THE COURT: Would we be able to  
finish it with both witnesses  
tomorrow?

20 MR. WILLIAMS: Undertaking that we should  
be able to finish, My Lord.  
I'll give it on both of our  
behalf how about that?

5 THE COURT: Can we see if we can go a  
little further?

MR. WILLIAMS: I can go a little further.

10 THE COURT: Let us see if we can go a  
little further because we did  
start a bit late.

MR. WILLIAMS: I know if, My Lord, travel  
back in today and the morning  
and the accumulation and -

15 THE COURT: I would like to make as much  
progress as we can today if  
we can yes.

MR. WILLIAMS: For me it is a fasten  
issue. But I can go on, My  
Lord.

20Q: Just allow me to direct your attention to the IOSB  
Website and you pointed to a few pages under Tab H  
right, you remember you were given them?

5A: Yes.

Q: And you say the first page, second page which have these illustrations on it?

A: Yes.

Q: The third page, the fourth page and the top part of the  
10 fifth page?

A: Yes.

Q: You see those materials?

A: Yes.

Q: The materials in there - there is in understanding that  
15 you say that it is disjointed but the material produced in there are posted on that Website we are talking about the IOSB Website?

A: Not all of them, no.

Q: I am suggesting to you that all the material here?

20A: And I am answering sorry, Sir, that there are statements that are not on the Website.

5Q: Well, I think you excluded 1, 2,3,4 paragraphs?

A: Yes.

Q: And I am suggesting to you that they are all on the Website on the IOSB Website?

A: I deny it.

10Q: You deny it?

A: --

Q: But the rest of it is there?

A: Yes.

Q: Now I will suggest to you that whatever is there is  
15 still to this moment- let me first break the question  
down this way. What we have put in the claim as you  
call it the petition (these 5 pages). I am suggesting  
to you that they are exactly what appear on your  
Website, except that it is not the total statements  
20 that appear here, but they are taken and produced from  
you Website?

A: Other than those four (4), yes.

5Q: The four (4) that you are saying that are not on your Website- I want to get some clarity here. You are not taking the position that they were never on your Website?

A: Correct.

10Q: Correct, what? What is correct, they were never on your Website?

A: Correct.

Q: Those four (4) that you have identified was never on your Website?

15A: Correct.

Q: So if I were to visit your Website today I would not find them?

A: Correct.

Q: Now I will suggest to you that at the time this suit was  
20 brought your Website was visited and an entire download was made in which these four (4) statements and the others appeared. - I will have to come back to that.

5A: --

Q: Let me ask you this question, do you recall receiving from my law firm on behalf of the Claimants in this suit address to Thomas Herskowitz and Independent Owners of Sanctuary Belize Limited dated 4<sup>th</sup> January 10 2016?

A: --

Q: Do you recall if you were privy to such a letter. It was addressed to Thomas Herskowitz and the independent Owners of Sanctuary Belize?

15A: If it is the letter I think it is, yes we the Board saw it.

THE COURT: What did he say?

MR. WILLIAMS: He said if it is the -

20 WITNESS: I said if it is the letter I think he is referring to yes the ISOB Board did see the letter.

5Q: I am asking about you, sir.

A: Yes, I saw it.

Q: I do not know if you want to speak for the Board here, you want to do that? I am asking about you, sir. You saw the letter?

10A: Yes, I think I did.

Q: And the letter was a response to - or making a complaint-

MR. WILLIAMS: The letter is here, My

Lord, it is in the bundle at Tab P.

It is the reaction protocol letter.

15 JU 1 Tab P. Tab Q, I am sorry

forgive me.

Q: So you are familiar with that letter, was that letter posted on the Website?

A: I do not remember.

20Q: You do not remember if it was posted on the Website?

A: It maybe, I do not know.

5Q: I am suggesting to you that you and your Board had no interest in posting that on your websites?

A: I would deny that.

Q: You were interested to post it on the site?

A: What our general policy - the Board's general policy is  
10 to put materials from both sides up on the Website.

Q: I am asking you if you were interested in posting that letter to your Website?

A: Was I interested?

Q: Well you told me you do not remember if it was posted,  
15 that's what you said.

A: Correct.

Q: Given your other comments, I am asking you if- you having seen that letter at that time whether you were interested in putting it on the site, whether you were?

20A: I personally or the Board?

Q: You, sir.

5A: I would have been neutral on the issue

Q: You were a part of the Board then, sir. And I am asking you when the Board got this letter -

A: I can only say to you, I would have no objection to posting it. I would be very happy to.

10Q: And my other question, sir did the Board agree to post this letter on the site?

A: I don't remember. I just don't remember if it is up there or not.

Q: If it is up there that means they did?

15A: If it is up there that means that the Board agreed that it should be posted.

Q: Now in terms of your personal view now, since you are there for both sides as you said. Did you post it on the site?

20A: Well I post everything on the site.

Q: Did you post this specific letter that I wrote and had at your Board?

5A: I do not remember if it got posted or not.

Q: I want to suggest to you that you did not post it.

A: I do no deny it.

Q: Did you read that letter?

A: Sure I did.

10Q: You sure you did?

A: A long time ago, a lot of material.

Q: I'll take you through it one step at a time. And perhaps I can take you through this first step. You are sure you read the letter?

15A: --

Q: Let me ask you this question did your ISOB Board instruct a response to this letter. This letter was making some serious allegations and threats. Did they respond to it?

A: All I know it was done through Tom yes. If I remember  
20 correctly Tom Herskowitz handle the responding to the letter.

5Q: Let me clear that, I did not hear you?

A: I said if I remember correctly Tom I believe handle the response to the letter.

Q: You believe Tom handle the response. The letter was address to Tom and it was address to your Board, IOSB.

10A: But -

Q: I am asking you if whether your board responded to this letter?

A: Well, I would say yes since I know we discussed the matter before any response would have come through Tom.

15Q: Alright we will break this down a little here. This letter that you received IOSB received was address to Tom and to the Board, two different parties oaky?

A: Yes.

Q: And you were aware of the disputes between them. You  
20 were aware and you carry the post of Mr. Tom Thomas Herskowitz complaint which the letter referred to right?

A: Yes.

5Q: On your site, right?

A: Yes.

Q: And the letter made complaints about - and it actually produced the items it was quarrying with from the Website correct?

10A: Yes.

Q: I am suggesting to you that neither you nor your Board instructed or directed anyone to respond to this letter on behalf of the Board?

A: I do not know that.

15Q: I am telling you that your Board did not instruct anybody to respond to this serious letter? You all did not instruct anyone to respond to it. Don't you agree with my suggestion that you did not?

A: No.

20Q: You Board instructed that a response be made to this letter of 4<sup>th</sup> January 2016?

5A: I can only say that I remember the Board discussing the letter - we had received the letter but do I know how or what response was made, I do not know.

Q: Let's distinguish between whether a response was made or whether the Board decide that they want to respond.

10 Let us distinguish that. (1) I am suggesting to you your Board discussed this letter and there was no decision or directive for the IOSB to respond to the serious allegations this letter makes?

A. No, I don't agree with that.

15 Q. Was there a decision by the Board to respond to it?

Q. That's what I am saying, I do not remember exactly how we decided about it. One thing I do know is the Board would not ignore that letter.

20 Q. Just answer my question, sir. You know the Board would not ignore the letter. Now, since you are dancing around and I have to call it dancing around whether the Board instructed a response, did you see any response from your Board?

25 A. It would have been done through Mr. Herskowitz.

Q. Did you see any response from your Board is my

5 question to you.

A. The truth is I simply don't remember what precisely was done.

Q. Well you should say that, man, rather than kicking the ball down the road. So you did not see,  
10 you do not remember if you saw any response from your board?

A. Correct, I assume there was.

Q. You are assuming there was?

A. Yes.

15 Q. Let's assume there was for the purpose of my question to you. Why didn't you post that response on the site?

MR. CAVE: My Lord, that is not really a fair question in the circumstances of what he has already  
20 said, I don't recall whether or not.

THE COURT: It's not a fair question.

MR. WILLIAMS: Very well, My Lord, I appreciate my learned friend's courtesy.

A. The implication is we decided not to post it,  
25 that's not correct.

Q. Oh there is a decision not to post it?

A. No, I am saying there was no such decision. I simply don't know. I mean I would have posted it had the Board said post it. Oversight we didn't think of

5 it, I don't know.

Q. Okay you simply don't know?

A. I simply don't know.

Q. And you cannot say that you saw any response anyway?

10 A. Because of the way we worked, no.

Q. You did not see a response. Thank you. Do you know whether your Chairman to whom the letter was also personally addressed whether he did a response in his own behalf?

15 A. I only assumed that he did.

Q. You don't know. You assumed that he did. And, was there any decision to post response on the site since you are being fair and balance? Was there a decision to post any response on your site fair and  
20 balance?

A. We have a web page devoted to the legal issues. I would have to literally go and look and see what is there. There is a lot of content. I just can't remember all of the linked items that are there. I  
25 have to go and look.

Q. You, Mr. Web master, would have to go and look now to see if any response was posted on the site?

A. I would.

Q. That is what you are telling this Court?

5 A. That's what I would do, yes.

Q. Very well, sir. Now you have taken a position and you cited four paragraphs?

MR. WILLIAMS: And My Lord it is on his 3 of the Tab, the H. And it says on page 3 that he  
10 identified four paragraphs. I don't know if I have them correctly. Just let me see if I have them correctly. The third page. You find it, the third page?

A. Yes, sir.

15 Q. And if I can refer to it this way there is the first paragraph?

A. That is on the website.

Q. Then the 2nd, 3rd, 4th and 5th paragraph that is what you say is not on the website.

20 A. Is not on the website.

Q. Correct?

A. Correct.

Q. Now, can you say to me when you discovered these were not on your site, when you came to that  
25 conclusion?

A. Shortly after I saw the Petition.

Q. Shortly after you saw. The Petition is the case that was served on the company, right?

A. Correct.

5 Q. When you saw that you discovered that it was not on your site? I am trying to clear this up for the benefit of the Court and my friend. You are calling this defamation suit that we are here today about that is what you are calling the Petition, right?

10 A. Yes, I think you call it the Form.

Q. The Claim. I call it the Claim. You call it Petition. So the lawsuit that was served on the company that is what you are referring to?

A. Yes.

15 Q. And that is when you first saw those paragraphs that you said is not on the site?

A. Yes.

Q. You are sure of that, sir?

A. I worked through every item and searched for them  
20 on the website, those four I did not find.

Q. Sir, let's go to the letter, then. Let me go to the letter that you read. Let's go to the letter, please.

Q. You see the letter?

25 A. Yes.

Q. It is dated the 4th of January?

A. Yes.

Q. And you read this letter in detail?

A. I read it.

5 Q. You read the letter in detail, man. That is what you told us. I am just trying to get quickly to the point I want to make.

A. I read it.

10 Q. Okay you read the letter. And this letter is complaining about matters on your website, right?

A. Yes.

Q. And it says that it is highly defamatory and all that, right?

A. No.

15 Q. It didn't say so. Alright then let's move on. Go to page 6 of the letter. Let's go to page 6 of your letter very quickly. You are at page 6?

A. Yes.

20 Q. And you see the four paragraphs that you said you saw the first time in the claim? Point them out to me in the letter on page 6 point each of them out to me starting from the top of page 6. Let's go to the second paragraph. Look at the second paragraph.

A. Yes.

25 Q. Look at the third?

A. Yes.

Q. Look at the fourth?

A. Yes.

Q. And look at the fifth?

5 A. Yes.

Q. Which are paragraphs you saw for the first time in the claim even after you read this letter so good?

A. I didn't say that.

Q. Do you see those four paragraphs I point them to  
10 you in the letter. Aren't those the same four paragraphs?

A. They are.

Q. My Lord can we rest for the evening?

THE COURT: Is this a convenient time now?

15 MR. CAVE: Yes, My Lord, only if the Court wants to go further.

THE COURT: Alright we will resume at 9 o'clock.

20

5

**2<sup>nd</sup> March, 2017**

THE COURT: Yes, appearances?

10

MR. WILLIAMS: May it please you, My Lord, the appearances are the same as yesterday.

THE COURT: Can I apologize again I had to sort out something else.

**CROSS-EXAMINATION OF MR. STOESER CONTINUES.**

Witness sworn.

15

Q. Okay, Mr. Stoesser, good morning again. I will continue to ask you a few more questions. Now, at the rising of the Court yesterday we were at the point where we were trying to clarify what was published on the IOSB website and Thomas Herskowitz HOA Facebook page.

20

THE COURT: You are going to have to keep your voice up.

Q. And let me ask you. The independent owners of Sanctuary IOSB is a non-profit?

25

A. Correct.

Q. So it is fair to assume that perhaps it don't own any assets?

A. No.

MR. WILLIAMS: Could you speak up and direct your

5 response to the Court.

A. Sorry, my voice isn't working, yes.

MR. WILLIAMS: Do you require some water?

A. No, I think I am good.

10 THE COURT: Would you prefer to sit down  
as well?

A. No, I am fine standing, thank you.

Q. Yes, my question was whether it has any assets to  
your knowledge?

A. No.

15 Q. How is it financed to run its affairs?

A. Through donations from its membership and others.

Q. In fact it solicits donations from the website,  
it invites financial contributions on its website, it  
does that?

20 A. I believe it does, yes.

Q. But you are aware it didn't have any real assets  
at all?

A. No.

25 Q. You said in your witness statement at paragraph  
5, I don't know if - - can be given his witness  
statement?

THE COURT: What was that tab again?

MR. WILLIAMS: 28 of the trial Bundle.

Q. In paragraph 5 of your witness statement, the

5 last page there, it says: "I make the final  
determination as to what is posted on the IOSB website"

A. Yes.

Q. You personally make the final determination what  
is posted. That is what you said here, right?

10 A. Right, I am the final arbiter.

Q. You make the final determination. So then it is  
fair to say that whatever is published on this site it  
is as a result of you exercising your responsibility to  
put on the site?

15 MR. CAVE: My Lord, if I may, I think if you  
look at paragraph 5 of that witness statement, the  
beginning of the sentence gives an entirely different  
complexion.

THE COURT: This is cross-examination let  
20 him - - what is your objection?

MR. CAVE: Well my objection is with respect  
to the fairness of the question. The question is, in  
the context of what appears there, that only part of  
his witness statement - - part of his sentence in  
25 paragraph 5 is being put to him. And when we went on  
that part which is being put to him changes the  
complexion of what was said.

THE COURT: I think he is well able to  
understand and answer the question.

5 MR. WILLIAMS: Obligated.

Q. So, let me put it to you then that whatever is on that website it is there because you have the final decision as to what would be there.

A. I don't decide what is going to be there but I am  
10 the only person with access to the website and therefore I will if I see problems with the material or whatever, I may take it back to the Board and object and say no I won't put this up because it has a problem and we would resolve of it.

15 Q. Let me then repeat my suggestion to you.  
Whatever ends up on the site is your responsibility.

A. Yes.

Q. Thank you.

Q. But since the site is owned by the organization  
20 IOSB, I am suggesting to you - - you told us earlier that they own it. You told us that the IOSB Association owns, is the owner of the website. And you were the web master.

A. Yes.

25 Q. You recall?

A. Yes.

Q. You told me just now that you make the final determination what would be on the site. So you are saying that you accept, that you are responsible for

5 whatever ultimately is on this site?

A. Yes.

Q. Do you agree with me - - I am suggesting to you now that you and the IOSB is responsible for what is on the site.

10 A. Yes.

Q. Thank you. Now let me ask that you be shown the claim form, please and the claim form is at Tab 1 in the Bundle, My Lord. I will ask you to turn to paragraph 16. You are at paragraph 16?

15 A. Yes, I am.

Q. And you see the sub-paragraph: "IOSB...right on to page 5? Begin at paragraph 16. "ISOB... and there is a paragraph there?

A. On page 5?

20 Q. Sorry on page 4. Forgive me. You see the first paragraph there below paragraph 16? "IOSB... begin there is...

A. "No legal connection...

Q. That statement appears on the ISOB website I put  
25 it to you.

A. I believe so, yes.

Q. You see the second paragraph that statement also appears?

A. Yes.

5 Q. You see the third one at the bottom of page 4 that also appears?

A. Yes.

Q. You see the fourth one on the following page 5 that also appears?

10 A. Yes.

Q. You see the fifth one?

A. Yes.

Q. GST that also appears?

A. I believe so, yes.

15 Q. Go to paragraph 17 now. At the bottom of page 5 "ISOB however Pukke is not...that also appears on the website?

A. Yes.

20 Q. Turn the page to page 6. The first paragraph there: "In the period..." that also appears on the website.

A. Yes.

Q. The second one?

A. Yes.

25 Q. That appears and the third one appears on the website.

A. Yes.

Q. Can you continue on page 7. Turn the page to page 7, please?

5 A. Yes, I have.

Q. Thank you. You see that diagram?

A. Yes.

Q. With the words in the diagram? That appears on the website.

10 A. It does.

Q. The two paragraphs below on page 7 appears on the website?

A. They do.

Q. And I would ask you turn to page 8. The first  
15 paragraph appears on the website?

A. No.

Q. You are saying that did you not appear?

A. It is not on the website.

Q. The second paragraph?

20 A. No.

Q. Third paragraph?

A. No.

Q. The fourth paragraph?

A. No.

25 Q. The fifth paragraph?

A. Yes.

Q. The fifth paragraph appears. And then below that where it says: "ISOB Belize lawsuit 1 SRWR self-dealing by John Usher."

5 A. Those are extracts from the website.

Q. Those are from the web page. Turn over to page 9. The paragraph saying 2A and B appear on the web page?

A. Yes.

10 Q. The next paragraph you say SRWR is in violation, it has the number 1 beside it. That appears?

A. Yes.

Q. Then the next paragraph B Belize Corporate law that appears?

15 A. Yes.

Q. And the paragraph immediately below that?

A. Yes.

Q. Then ISOB Belize currency regulation, that appears?

20 A. Yes.

Q. ISOB D investigation of public record that appears?

A. Yes.

Q. And turn the following page for me, please, where 25 it says ISOB 3 that statement also appears on the website?

A. Yes.

Q. The statements which you said does not appear on the website, witness, yesterday I asked you if you saw

5 those statements appearing in the letter we wrote to  
Mr. Herskowitz and the IOSB. Remember you had the  
letter yesterday?

A. Yes.

Q. And you told us you thoroughly read the letter?

10 A. No, I said I read the letter.

Q. You said you read the letter. And I brought to  
your attention, I showed you the letter and - - can he  
be shown the letter once more. The letter is in the  
witness Bundle for Mr. Usher at tab Q and it is in  
15 Mr. Usher's in the trial Bundle, My Lord. In the trial  
Bundle it can be found at tab 27.

A. Page 6.

Q. Now, the paragraphs at the top of page 6 in the  
letter are the same paragraphs that you said that you,  
20 when I took you through the Claim as to the statements  
produced on the website you said that - - if you look  
at the letter now at the top of page 6?

A. At the very top.

Q. At the very top. "All we know is many millions.  
25 You see that?

A. Yes.

Q. That paragraph, I am suggesting to you appears on  
the website?

A. That one does, yes.

5 Q. It does?

A. Yes.

Q. And it appears in the Claim Form which you looked at earlier?

A. I believe it does, yes.

10 Q. Now, next paragraph. If you go down there is a heading there: "Illegal procedures..."

A. Okay.

Q. Illegal foreclosures, you see that?

A. Yes.

15 Q. That appears on the website?

A. Yes.

Q. Now, the paragraph and it is also in the Claim Form. It is put in the claim form. The paragraphs appearing in the middle there, if there is only a  
20 million there is a strong suspicion there is still the issue this is about what was. You see those paragraphs in the letter?

A. Yes, I do.

Q. You say that first of all, that you read this  
25 letter so I am assuming that you read those?

A. Must have, yes.

Q. And you have chosen to put or the ISOB and yourself, statements on the website, certain statements, you all have populated the website with

5 certain statements, right, and you have identified what  
you said is on the site to us?

A. Yes.

Q. My suggestion to you, sir, is that those  
statements which you say are not on the site in fact do  
10 appear on the site.

A. They do not.

Q. Now, when you say they do not, I will have to ask  
you a further question in relation to that. My  
suggestion to you is that they are on the site along  
15 with the others which you said are there.

A. Those four statements are not on the website and  
were not ever on the website.

Q. Now when you wrote the letter and you read the  
letter and read those things, and this allegation is  
20 being made that it is there, that it is being published  
on the website and it is taken from the website, that  
is the allegation, did you answer the letter to  
indicate that those five paragraphs are not on the  
site?

25 A. I was not involved in responding to the letter.

Q. You were Director, sir, and the web master.

A. Well, yes, but I do not handle the legal affairs  
of the IOSB.

Q. I am not suggesting you handle the legal affairs.

5 I am suggesting to you that you are the web master, you  
are a Director of this organization and this  
allegation, this serious allegation is made in writing  
alleging these things and you are the one who has the  
final determination what is there and this allegation  
10 said that is on the site. And my suggestion to you is  
that you didn't see it fit to ensure that a response is  
made at that time denying this?

A. It is not my responsibility.

Q. As an open access or open source or whatever the  
15 phrase is, site, you told us that this means open to  
the public?

A. The term was a public site, yes.

Q. You have idea how much people would visit that  
site?

20 A. I do.

Q. What would you say?

A. It is possible to see statistics on people  
accessing the site. Approximately 8,000 unique IP  
addresses access that site. I do occasionally look at  
25 that web statistic to see what the traffic looks like  
on the site.

Q. Can you give us an idea of the traffic?

A. For the year of 2016 it is clearly technical and  
I am sure you don't want to go there but approximately

5 8000 unique identifiers. You don't know who they are but with different IP addresses. So, roughly 8000 unique entities access that website last year.

Q. Would that be equivalent to the viewers, would you say of the site?

10 A. In effect, yes.

Q. Now in relation to Tom Herskowitz HOA Facebook page?

A. Yes, correct.

Q. You have access within that page?

15 A. I am a member of that page.

Q. You were given access by Tom Herskowitz?

A. Probably.

Q. About two years ago?

A. Yes, I have been on it for a long time.

20 Q. And I wish to suggest to you that the paragraphs in the pleadings in the Claim Form which you still have, go to paragraph 18, the Claim Form is 1 in the tab, My Lord, paragraph 18. And you see 5 paragraphs?

A. I am sorry, which page are we on.

25 Q. Page 10 paragraph 18. I am suggesting to you that you have seen those comments on that Facebook page. Let's begin with the first one.

A. I probably have.

Q. Go to the second one.

5 A. Probably.

Q. Third one?

A. Probably.

Q. The fourth one?

A. Probably.

10 Q. The fifth one?

A. Probably.

Q. The paragraph that you said were never on the website, there is no probability about that. You are saying that you are sure it was never ever there.

15 These paragraphs on Mr. Herskowitz Facebook page you say you have probably seen them there?

A. Yes.

Q. You have any explanation for why the certainty against the five paragraphs not being on the website  
20 and these five probably on Mr. Herskowitz web page that you have seen? You have any explanation to the Court?

A. Yes. The web page is static, I control it, I know what is you know, I can easily check and verify what is there. In a year on Facebook I probably read  
25 over ten thousand posts and comments. In a single day there can be hundreds. So you are asking me to remember content from many months ago and having read thousands and thousands of Facebook status.

Q. That is what I am asking you to do. Now, I want

5 to suggest to you for the very reason you gave, I want  
to suggest to you that you are in a better or the best  
position to confirm to this Court that in fact the five  
paragraphs that were on your static site, IOSB were in  
fact there, was always there and I suggest to you is  
10 still there.

A. No.

Q. Let's move on. Very briefly though, before I  
move on, in terms of the Facebook page from Mr.  
Herskowitz's Facebook page where you probably saw the  
15 comments, would you have any idea in terms of the  
sharing community for that particular page? You have  
an idea?

A. How many?

Q. Yes, how many people had access to that closed  
20 community?

A. It has been increased right now it is four  
hundred and odd members.

Q. Are you still the administrator of it?

A. I am now. I am an administrator.

25 Q. You are one of a number of administrators?

A. Mr. Herskowitz owns the page and then there are  
two administrators in addition.

Q. Who are the two administrators in addition?

A. Myself and Tricia Nelson.

5 Q. Now, Mr. Stoesser, can you, you have your witness statement there still, right?

A. Yes, I do.

Q. You notice you swore a Certificate of Truth at the end of your witness statement? I want to ask you, 10 did you collaborate with Mr. Herskowitz when you wrote this witness statement and signed to it?

A. Well I know he reviewed it, yes. He looked at it.

Q. Mr. Herskowitz reviewed your witness statement?

15 A. I wrote it, yes.

Q. You wrote it yourself?

A. Yes.

Q. And after he reviewed it, you made changes to it?

A. I don't believe so, no.

20 Q. I want to suggest to you that paragraph 13, 31, 34 and 35 of your witness statement you didn't write that in your witness statement?

A. You are correct, I did not.

Q. When you signed your witness statement you saw it 25 there?

A. I am sure I did, yes.

Q. And you decided to take responsibility for what was there?

A. I didn't. I don't have any probably with what

5 was there, no.

Q. I want you to have a look at Mr. Herskowitz's witness statement. Can he be shown Mr. Herskowitz's witness statement. It is 35 in the Bundle, My Lord. Have a look at Mr. Herskowitz witness statement and  
10 look specifically to paragraphs 26, 31, 34 and 35. Would you agree with me that your paragraph 13 and his paragraph 26 are identical, word for word?

A. Yes.

Q. Your paragraph 31 and his paragraph 31 are  
15 identical, word for word?

A. Yes.

Q. Your paragraph 34 and his paragraph 34 are word for word identical?

A. Yes.

20 Q. Likewise your paragraph 35 and his paragraph 35?

A. Yes.

Q. You know when Mr. Herskowitz signed his?

A. No.

Q. You remember when you signed yours?

25 A. I would have to have a look at the date.

Q. You signed yours on the 3rd of I think it is June?

A. Yes.

Q. Look at the date for me. What date you signed

5 yours?

A. 3rd June.

Q. And see what date he signed his?

A. 6th June.

Q. So my suggestion is that you were collaborating  
10 with each other with regard to the preparation and  
signing of these witness statements?

A. No. All I can say is --

Q. You were not collaborating?

A. I did not know the identical information was in  
15 Mr. Herskowitz's.

Q. So you showed him yours?

A. I sent him mine for transmission to our  
attorneys.

Q. You said you sent him your witness statement for  
20 him to look over?

A. No. I said he had seen it.

Q. You said he reviewed it?

A. Well yes, I knew he had read it.

Q. Did you review his?

25 A. I never saw his.

Q. You never saw his?

A. No.

Q. So you would not be in a position to explain the  
coincidence that those paragraphs are ipsissima - - you

5 are not in a position to explain it since you said you  
did not see his and his was signed subsequent to yours  
and you did send yours to him?

A. I thought it was boiler plate from the attorneys.  
I thought that content was boiler plate from the  
10 attorneys because I was transmitting my material to Mr.  
Herskowitz to the attorneys.

Q. When was the last occasion you looked at Mr.  
Herskowitz's Facebook page HOA Association?

A. Probably day before yesterday.

15 Q. When you looked at it day before yesterday you  
said?

A. Yes.

Q. Did you come across a posting by Mr. Herskowitz  
reporting on a case he has with SRWR?

20 A. Sorry, that last part?

Q. Can you say whether you encountered a posting by  
Mr. Herskowitz on the site reporting to those people on  
the site that in December before we left the country  
the Court issued a permanent injunction saying that we  
25 had access and use of all amenities at Sanctuary  
Belize?

A. Yes, I saw that.

Q. You saw that?

A. Yes.

5 Q. Let me show this to you and --

MR. CAVE: May I ask the witness so that he is not able to say - - could he be excused for one moment because I may have a point to make in relation to this.

10 MR. CAVE: My Lord, I was indicating to my learned senior that I intended to raise an objection in relation to the relevance of the material which he intends to put to this particular witness on a procedure which I anticipated he wishes to adapt. I  
15 was just indicating to the Court because I don't want to make an objection which indicates my position to any witness who is in the box so I was just asking the Court to consider whether it would be appropriate for the witness to leave for the time being.

20 MR. WILLIAMS: We see no reason for the witness to leave. The witness merely indicated that he visited the Facebook page of the Defendant and he saw comments in relation to a case between the Defendant and SRWR where the Defendant.

25 THE COURT: Well if you don't mind the witness being present so I don't see the need for -- what is your objection?

MR. CAVE: My objection relates to the relevance of this line of enquiry. And the point I

5 wish to make because it will arise --

THE COURT: I am not sure what the enquiry will be as yet.

MR. CAVE: What is sought to be put to this witness is a statement which is entirely outside the parameters of what we are here to decide whether specific statements which were pleaded in the Claim Form were defamatory of the Claimants. Specific statements have been identified and those are the statements on which this particular claim is based. Now what we have here is a general fishing expedition seeking to bring in matters related to postings made long after the claim was filed and don't relate to this particular claim at all or any of the statements which they seek to base or premise their claim and that is indeed why I say, My Lord, that what is sought to be put to this witness at this stage is quite irrelevant. That is my objection, My Lord.

THE COURT: Both of you are more enlightened than I am about what you are talking about.

MR. WILLIAMS: Indeed because I have not really --

MR. CAVE: I can pass up my copy.

THE COURT: I don't know what the question was going to be either.

5 MR. WILLIAMS: My Lord, all I sought to get from this witness is whether he saw and read this posting on the first defendant's Facebook page and he said he did. I read it to you what it says and you confirmed that you did that, correct.

10 THE COURT: Well in terms --

MR. CAVE: No specific statement was put to this witness. The witness was asked if he saw postings about a case involving Mr. Herskowitz in December. The specific statement which is in issue here which he  
15 seeks to now put, that specific statement, so it would be unfair to say that a particular statement was put to him and he accepted that this particular statement is what he saw.

THE COURT: Well I think you got to  
20 appreciate that Counsel on both sides would have quite a wide latitude in cross-examination.

MR. CAVE: I do appreciate that, My Lord.

THE COURT: I don't know how far he intends to take the questioning but I am not going to interfere  
25 with Counsel's cross-examination.

MR. WILLIAMS: Obligated.

Q. Let me suggest to you that when you visited the page --

THE COURT: Did you want the witness to see

5 that?

MR. WILLIAMS: Yes, My Lord.

Q. You saw that particular posting?

A. I believe so, yes.

Q. Can you read what it says there. "In  
10 December...beginning from there

A. "In December just before we left the country to  
spend Christmas with our daughter, the Court issued a  
permanent injunction saying that we had access and use  
of all amenities at Sanctuary Belize.

15 Q. Thank you. I won't put the paper in, My Lord, I  
will just seek to have him indicate what he saw and  
read it. Thank you. Perhaps I will just ask for it to  
be identified, My Lord, rather than to put it in. Just  
for it to be identified?

20 THE COURT: Admitted as document B for  
identification.

Q. Now also on the website are publications of IOSB  
newsletters?

A. Yes.

25 Q. And there is a specific newsletter that is  
published on the website dated - - 25 in the trial  
Bundle, My Lord, tab 25.

Q. Where is it to be found is it attached to a  
witness statement?

5 MR. WILLIAMS: It is in the Bundle at tab  
25 in the trial Bundle at tab 25 it is in John Usher's  
witness statement and it is tab 0. Go to tab 0. This  
newsletter was published on the website. It is dated  
19th May, 2016, correct.

10 A. Correct.

Q. Are you aware who wrote the newsletter, the  
author?

A. No.

Q. But you do confirm it is published on the site?

15 A. Yes.

Q. And it is still on the site?

A. Yes.

Q. And you have read the newsletter and you are  
familiar with the contents, right?

20 A. I read most of the newsletters, yes.

Q. You have read this newsletter?

A.

Q. Let me direct your attention witness, look at the  
first page of this newsletter. It is in two columns,  
25 left and right column. I won't take you through the  
entire newsletter. But I want to draw to your  
attention some aspects of it. Could you go to the  
first column to the sentence beginning with: "Some of  
these developers... you see where it says there the

5 first column on the left go down about two-thirds of  
the way and could you read there for me?

A. "Some of these developers are already expressing  
interest in finishing Sanctuary Belize. The  
prospective developers will bid for and pay for the  
10 right to develop each community. This approach  
leverages the developer's capital and gets the  
development completed to standard in the shortest  
amount of time. The end result is that Sanctuary  
Belize is developed, Sittee River Wildlife Reserve has  
15 the required reserved funds to operate and maintain the  
community and SRWR (the reserve) and there is still no  
debt. "

Q. Could you continue the next paragraph.

A. "It cannot be overstated that the task of  
20 developing, maintaining, operating and governing the  
Sittee River Wildlife reserve are enormously complex  
undertaking. Once developed SRWR will include the  
infrastructure to support the Sanctuary Belize  
community with hundreds of residence, a marina, an  
25 airport, a resort, markets, restaurant and numerous  
amenities for recreation and leisure."

Q. Continue.

A. "The focus of this newsletter is on the  
independent owners of Sanctuary Belize plans for

5 development of the Sanctuary Belize vision. It is not intended to point out why the Sanctuary Belize vision has not already been delivered but to discuss how the IOSB plans on delivering the vision."

Q. Go to the next page, please. The second  
10 paragraph, "Until we are...

A. Under overview?

Q. No the second paragraph from the top in the left column. "Until we are..."

A. "Until we are able to gain a more complete  
15 accounting of SRWRS assets and liabilities we cannot be sure of our starting point. However, it is reasonable to believe that SRWR should still hold title to all of the lands that have not been sold as individual lots and that there is significant income from payments  
20 being made on lots which have been sold. We have been told that the notes held by SRWR could be as much as 120 million with monthly cash flow from the notes of one million.

Q. Continue to the next paragraph under overview.

25 A. "The IOSB plan is to use the SRWR assets to complete the Sanctuary Belize vision and establish a self-sustaining community free of debt with all Sanctuary Belize lot owners as equal and undivided co-owners. Beyond establishing a thorough baseline of

5 Sittee River Wildlife Reserve assets and liabilities we  
have broken the development planning into manageable  
phases."

Q. Go to the right column the first sentence at the  
top, the right column?

10 A. "The IOSB will publish the development  
requirements in request for proposals RFP to solicit  
proposals from interested developers."

Q. Then could you read the second to the last  
paragraph where it begins: "The developers will be  
15 selected..."

A. "The developers will be selected based on best  
value for the Sittee River Wildlife/Sanctuary Belize  
owners past performance."

Q. Thank you. And could you just read the last one  
20 there?

A. "IOSB will manage the overall development."

Q. Yes, that is what it says. Would you agree with  
me that this is IOSB putting out in its own newsletter  
its manifesto to take over the Sanctuary Belize  
25 development and operate and run it as its own?

A. Yes.

Q. In this newsletter on the other pages, there are  
three other pages, it invites donations to the ISOB?  
Look at the last page of the newsletter, the right

5 column?

A. Yes.

Q. And those donations would be used in forwarding this manifesto, this agenda to take over this project?

A. No.

10 Q. The donation would not be used in terms of what this newsletter was promoting?

A. No.

Q. Now you agree with my suggestion that this newsletter and statements in there represents a  
15 manifesto by the IOSB to pursue taking over of this project called Sanctuary Belize?

A. It is a description of what we would do if we prevailed.

Q. So you accept that your IOSB is fighting to take  
20 over this project?

A. Yes.

Q. As its own?

A. There was language there that indicated that it would involve all owners not the IOSB as such were we  
25 to prevail.

Q. So you do accept there is this struggle by your IOSB to try and take over this project?

A. Well to benefit owners, yes.

Q. Do you agree with my suggestion that the persons

5 that -- you are a purchaser of a lot in this project?

A. Correct.

Q. So you signed an agreement to buy a lot?

A. Yes.

Q. And you are still paying or you have paid in  
10 full?

A. I have paid in full.

Q. Your purchase agreement that you entered to  
purchase a lot, your agreement was for the purchase of  
a lot. If I can rephrase my question, I am suggesting  
15 to you that your agreement was for the purchase of a  
lot in the residential area and admission to membership  
of SRWR?

A. Yes.

Q. That was what you purchased and paid for?

20 A. Yes.

Q. Nowhere in your agreement you purchased anything  
else from what we just agreed you purchase?

A. Yes.

Q. Yes meaning there was nothing else that you  
25 purchased apart from the lot and admission to  
membership?

A. Well --

Q. Let me take you back again to your agreement. My  
suggestion to you is that your agreement that you had

5 with the sellers was to purchase a lot and to be  
admitted to membership, isn't that correct?

A. I was trying to remember if there was anything to  
access to amenities. I don't remember.

10 Q. I am suggesting to you that no amenities is  
mentioned in your agreement?

A. I think that is correct.

Q. You think it is correct that no amenity was  
mention in your agreement?

A. Unfortunately, yes.

15 Q. It is unfortunate but yes?

A. Yes.

Q. Your agreement mentioned what you were buying  
only.

A. Yes.

20 Q. Would you then agree with my suggestion? My  
suggestion to you that then there is no reason why you  
should be involved in any effort to try and cease  
control of this development?

A. No.

25 Q. It was never yours and you didn't buy it, isn't  
that so?

A. Yes.

Q. Thank you.

MR. CAVE: My Lord, just for my clarification

5 I think there were two questions asked I don't know  
whether the answer was in relation to the former or the  
latter. I think the latter question was it wasn't  
yours you didn't buy it I think there was a question  
which came before that. I am not sure which the answer  
10 was in relation to.

Q. Let me clarify the question. Your agreement that  
you had was an agreement simply to buy a lot in the  
residential community of Sanctuary Belize and to be  
admitted to membership of Sanctuary Belize. That is  
15 what you agreed and paid for?

A. That is not what I was sold but that is what I  
signed.

Q. That is what you signed. That is your contract,  
your agreement and that is what you paid for and you  
20 paid for it?

A. I did not receive what I thought I had purchased.

Q. My question to you, though, is whether you got  
the lot and membership that your agreement said you  
were purchasing.

25 A. Well I received a lot. There are issues with the  
membership.

Q. You are unhappy about the membership?

A. Yes.

Q. But you are a member?

5 A. I am a provisional member.

Q. You are a provisional member?

A. Only I did not know that at the time.

Q. So you got your lot and you knew that you are a provisional member?

10 A. I do now.

Q. And you do agree with my suggestion also that you got what you bargained for in that agreement?

A. No.

Q. You don't think so?

15 A. No.

Q. Is that why you believe you have a right to seek to advance a takeover of this development?

A. We were exercising our legal rights.

Q. So the objective of the IOSB, it has a heading  
20 here on the newsletter reclaiming the dream. I want to suggest to you that the objective of the ISOB is to take over the ownership and development of the Sanctuary Belize project?

A. To save it, yes.

25 Q. You wish to take it over to save it, is that it?

A. Yes.

Q. Mr. Stoesser, let me draw your attention and I want to put to you the items in paragraph 19 of the claim form. You have the claim form?

5 A. Yes, I think so.

Q. That is tab 1, My Lord, in the Bundle. I will put these things to you that you see there and I will ask for your response. I am suggesting to you that taken together the publications that preceded that are  
10 on the website on the once that you said you may have read on the Facebook page that taken together the first suggestion you see A, you are following me?

A. Yes.

Q. It is that the Claimants were guilty of numerous  
15 serious offences of a fraudulent and criminal nature. You agree with me?

A. No.

Q. It doesn't suggest that?

A. No.

20 Q. Let's go to B. That the Claimants and Mr. Bautista conspired to cook the books of Sanctuary Belize homeowners association and Sittee River Reserve.

A. No.

Q. It doesn't suggest that, okay. Go to C. That  
25 the Claimants with the help of Mr. Jose Bautista are engaged in a scheme to deceive and defraud purchasers and members of homeowners association of dues paid to Sittee River and Belize Homeowners Association and of the purchase money derived from the sale of their lots

5 in Sanctuary Belize. I put that suggestion to you.

A. I don't accept that.

Q. I go to D. That the Claimants and Mr. Bautista fabricated the audited financial statements for Sanctuary Belize Homeowners Association and passed them  
10 off as those of Sittee River Wildlife Reserve?

A. No.

Q. Go to E. That the Claimants are guilty of unethical and illegal conduct regarding the financing of Sanctuary Belize Project?

15 A. No.

Q. That the Claimants stole US87,500 in gross in stocks from the Government of Belize?

A. No.

Q. (G) that the Claimants collected gross sales  
20 taxes on behalf of the Government from homeowners on false pretence and then defrauded the government thereof as no such collection and payment was shown in the audit.

A. No.

25 Q. That the Claimants are engaged in an elaborate scam to fraudulently deceive homeowners to pay money to them which is then misappropriated and syphoned off into other projects and their pockets?

A. No. Let's go to I. That the Claimants are in

5 business with a notorious felon named Andris Pukke who  
pass off as Mark Romeo and in fact investor and  
Director of GPA by using a pattern of multiple  
companies with similar names to confuse owners and who  
was handling their moneys in a similar manner as in his  
10 alleged scam at Amerijet.

A. I agree with the first part about Mr. Pukke but I  
don't agree with the rest.

Q. You agree with the first part. Let's go to J.  
That Sittee River Reserve Board is in breach of Belize  
15 law and its duty to members by allowing a known felon  
to participate on its Board and in other Sanctuary  
Belize activities. You agree with that?

A. Basically, yes.

Q. Let's go to K. The allegation that the Claimants  
20 misappropriated and cannot account for about 6 million  
to 7 million plus per year from the project.

A. No.

Q. You don't agree with that?

A. No.

25 Q. Let me then quickly take you back to page 7. You  
see the diagram? You see the diagram there?

A. Yes, I do.

Q. You see the words appearing below SRWR reports?

A. I think you are referring to that lower right

5 corner statement?

Q. That lower right corner?

A. Yes.

Q. You want to read it quickly please?

A. "SRWR reports that GPA sends only four hundred  
10 thousand per month to Eco-Future for development. That  
leaves six million to seven million per year  
unaccounted for.

Q. Thank you. I take you to L in terms of the  
suggestions I am making very quickly to you.

15 A. Where are we?

Q. Page 12. That the Claimants are lying to owners  
about the project and where their money is going?

A. No.

Q. You don't accept that?

20 A. No. They simply refuse to tell us anything.

Q. I am suggesting to you that your statement on the  
website indicates that you all are saying they are  
lying?

A. No.

25 Q. Let's go to M. Your statement is alleging that  
the Claimants are guilty of embezzlement and at least a  
hundred million dollars is missing and cannot be traced  
to the project.

A. No.

5 Q. You all didn't say that on the website?

A. No.

Q. Let's go to N. That the Claimants are swindling homeowners out of their funds?

A. No.

10 Q. Let's go to O. That the claimants are acting unethically and illegally in foreclosing on some defaulting purchases in contravention of Belize and US laws and then pocket the proceeds.

A. There are issues about the legality of what they  
15 are doing but I don't know what they are doing with the proceeds. We don't know.

Q. That the reserve is acting in breach of trust.

A. Again an issue we have raised.

Q. You just raise these issues. You don't believe  
20 them?

A. It is just a question.

Q. Okay let me put this one to you then. (Q) that the reserve is not registered with FIU and is engaged in money laundering?

25 A. I think it was brought up whether at that time they were registered with the FIU. We have never said anything about the money laundering.

Q. Well let me take you to what was published on the website again. You do accept that the SRWR is

5 registered with the FIU?

A. I gather it is now.

Q. You know that it is now?

A. I believe they are now.

Q. I don't want to have to point out to you. I can  
10 point out the certificate to you. Let me do that.  
Well let me take you first of all back to paragraph 16.  
Sorry, let me take you to the letter of Mr. Bautista  
which you published on the website, please. The letter  
of Mr. Herskowitz concerning Mr. Bautista, the  
15 complaint letter to the institute let me point that  
out to you which you said was published on the website.  
It is tab 5, My Lord. And in Mr. Bautista's JB 1, you  
have Mr. Bautista JB 1 you have Mr. Bautista's witness  
statement, JB 1? The first exhibit there. This is Mr.  
20 Bautista's witness statement. The first witness that  
we called and it is attached, My Lord. Mr. Herskowitz  
letter dated August 13 to Reynaldo Magana attached to  
Mr. Bautista's witness statement. I wish to just draw  
your attention very quickly now to that letter that was  
25 posted on the website under the heading Summary. If  
you begin to read there four lines from the bottom very  
quickly if you may. "SRWR members...

A. You want me to read it?

Q. Yes, very quickly?

5       A. "The Sittee River members or Sittee River Reserve  
members, the homeowners at Sanctuary Belize should be  
given their financial statements for Sittee River  
Wildlife Reserve not some unrelated entity such as  
SBHOA. By not verifying the legal right to receive the  
10 membership fees or verifying the legal obligations of  
owners to pay such membership fees. I believe that PKF  
has committed professional malpractice. And knowing  
that these audited financial statements will be sent to  
the SRWR members in an attempt to confuse them and  
15 obfuscate the true financial condition of SRWR  
concerning the financial information that they are due  
for SRWR and not SBHOA makes PKF consisted in possible  
deception and fraud on the SRWR members. At the very  
least it does not uphold the level of professionalism  
20 expected of a licensed chartered accounting firm."

Q. Thank you. In light of that, do you agree with  
my suggestion that the allegation that the publication  
is accusing the Claimants and Mr. Bautista of hoisting  
fraudulent statements on the members?

25       A. Well I read it as suggesting that it possibly  
occurred.

Q. Okay that is how you read it. I think you have  
Mr. John Usher's witness statement?

A. No, I do not.

5 Q. It is the big one. I want you to find the FIU certificate. 23 I draw your attention to, My Lord, in the Bundle.

Q. You said you were aware that SRWR is registered  
10 with the FIU. You admit being aware of that?

A. I can tell that they are now registered, yes.

Q. Now go to page 9 in the claim.

A. Yes, sir.

Q. At the bottom, B. This is one of the items that  
15 appear on the website which you say is there. You want to read that quickly for me?

MR. WILLIAMS: My Lord, this is the  
pleading, page 9 paragraph 16 I believe, yes, 16 of the  
pleading. Could you read D for me sir, at the bottom  
20 of page 9.

A. "Investigation of public records shows that SRWR  
is not a registered non-profit company with the Belize  
Financial Investigations Unit (FIU) Belize requires  
that all not for profit companies register with the  
25 FIU. The FIU is an organization set up by the Belize  
Government to crack down on money laundering.  
Compliance with this law enables Belize to avoid  
banking sanctions from the US and other companies for  
not stopping money laundering in Belize." Then

5 something is missing.

Q. So you published that on the site. It says investigation of public records. Did you do any investigation to --

A. I did not. I personally did not.

10 Q. And as far as you are aware the ISOB to your knowledge didn't do any investigation?

A. I assumed Mr. Herskowitz did.

Q. You assumed he did. I am suggesting to you that even though you are not aware and you didn't do any  
15 investigation, even though you are now aware that the organization did have a Registration, to this day you are maintaining this statement on that website?

A. Yes.

Q. Are you still maintaining this statement on the  
20 website?

A. Yes, it is historical content, yes, it is still there.

MR. WILLIAMS: Thank you sir. I just want to finish by putting this last suggestion just to close  
25 off. I suggest to you that the website and the content is being used to defame the Claimants, to libelling them. What you have to say about the suggestion.

A. I absolutely reject that.

MR. WILLIAMS: Thank you.

5 A. You're welcome.

**RE-EXAMINATION OF MR. STOESER BY MS. GRINAGE**

Q. Mr. Stoesser, my learned senior asked you a question in relation to the purchase of your lot whether you got what you paid for and you said I did  
10 not receive what I thought I purchased. Can you explain to this Court what you thought you had purchased.

A. My decision to purchase was really based on two concepts that I understood at the end of the tour; that  
15 the development would be largely complete in two years and I purchased in November, 2013 and that the lots were increasing in value, if one bought a speculation lot, a second lot which at that time I did that in the next several years I would be able to sell it for a  
20 profit and use that profit then to help build my home. Neither of those things were true.

Q. What was represented to you at the time of your purchase?

MR. WILLIAMS: Objection.

25 MS. GRINAGE: I will rephrase the question, My Lord. What if anything was represented to you at the time.

MR. WILLIAMS: Objection.

THE COURT: Are you opening up a whole new

5 area in re-examination?

MS. GRINAGE: No, My Lord, the witness answered that I did not receive what I purchased.

THE COURT: That is the end of it, isn't it? You want to open up a whole new enquiry?

10 MS. GRINAGE: My Lord, the answer was ambiguous on cross-examination, My Lord, and I think we can clarify on re-examination.

THE COURT: I thought you were following up on his answer in re-examination.

15 MS. GRINAGE: Obligated, My Lord, I will move on.

Q. Mr. Stoesser, my learned senior asked you in relation to the letter from Thomas Herskowitz that was sent to the institute of chartered accountants. He  
20 asked the source of the initial letter. That came to you from Mr. Herskowitz and your response was yes, in a strict sense. Kindly explain to this Court what you mean in a strict sense.

A. I am not sure - - what was the context of what I  
25 said.

THE COURT: I am not hearing a word you are saying. Direct your answers to me.

Q. The question was that the source of the initial letter that came to you was from Mr. Herskowitz. And

5 you said yes, in a strict sense. Kindly explain what  
you mean when you say in a strict sense.

A. What letter are we referring to? I am sorry I a  
little lost.

Q. The letter from Mr. Herskowitz to the institute  
10 of chartered accountant with respect to the audit.

A. Unfortunately I don't remember the context of why  
I said that. This PKF is difficult for me because I  
was not that involved.

MR. WILLIAMS: I don't know if we can go  
15 there. He said he doesn't remember why he said it.

MS. GRINAGE: I have no further questions,  
My Lord.

THE COURT: You can step down then.

A. Thank you Your Lordship.

MR. CAVE: My Lord, if I may, we wish at this  
20 stage with your leave, My Lord, to call Mr. Thomas  
Herskowitz. His evidence appears at tab 35 of the trial  
Bundle.

Witness sworn.

25 **EXAMINATION-IN-CHIEF OF MR. THOMAS HERSKOWTIZ**

Q. Sir, could you state your full name for the  
record, please?

A. Thomas K Herskowitz.

Q. Could you say whether you gave a witness