

# **EXHIBIT O**

**Deposition of Stephen Snyder dated August 30, 2013**



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I N D E X

Deposition of Stephen M. Snyder

Friday, August 30, 2013

Page

Examination by Mr. Davis

6

Afternoon Session

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EXHIBIT

1- Letter, Snyder to Mandelbrot, 5-24-13,

21 pages

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1                   BE IT REMEMBERED that pursuant to Notice of  
2 Deposition and on Friday, August 30, 2013, commencing  
3 at the hour of 9:37 a.m., thereof, at the Law Offices  
4 of GOLDBERG, STINNETT, DAVIS & LINCHEY, 44 Montgomery  
5 Street, Suite 850, San Francisco, California 94104,  
6 before me, SUSAN D. YIP, a Certified Shorthand  
7 Reporter in and for the State of California, there  
8 personally appeared

9

10   STEPHEN M. SNYDER,

11

12 called as a witness herein by the Attorneys for the  
13 Defendants, who being by me first duly sworn, was  
14 thereupon examined and testified as is hereinafter set  
15 forth.

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1 A P P E A R A N C E S:

2 For the Plaintiffs J.T. Thorpe Settlement Trust, Thorpe  
3 Insulation Company Asbestos Settlement Trust, and  
4 Western Asbestos Settlement Trust:

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17 By: GARY S. FERGUS, ESQ.

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21 and doing business as The Mandelbrot Law Firm

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By: DENNIS D. DAVIS, ESQ.

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On behalf of the Witness, Stephen Snyder:

MOLLAND LAW OFFICES

30 5th Street

Petaluma, California 94952

By: MICHAEL MOLLAND, ESQ.

MMoland@MollandLaw.com

Also present: Michael Mandelbrot

1                                 ---o0o---

2                                 STEPHEN M. SNYDER,

3     having been first duly sworn, testified as follows:

4                                 ---o0o---

5                                 EXAMINATION BY MR. DAVIS:

6             Q.     State your full name.

7             A.     Stephen with a -- P-H-E-N, M. Snyder,  
8     S-N-Y-D-E-R.

9             Q.     Mr. Snyder, are you employed?

10            A.     I am retired from the practice of law.

11            Q.     I assume that means you're a member of the  
12     state bar?

13            A.     Yes.

14            Q.     And have been since how long?

15            A.     1972.

16            Q.     And when did you retire?

17            A.     Sometime in the latter part of 2012.

18            Q.     When you say you retired, what do you mean by  
19     that?

20            A.     I resigned from my law firm and have an  
21     agreement whereby I am paid my capital account over a  
22     certain period of time, and I participate in some  
23     recoveries that the firm is entitled to receive on a  
24     contingency fee and others I don't participate in, and I  
25     have no interest in the affairs of the firm.

1           I also have the right to rent an office from  
2 the law firm.

3           Q.    When you say you have a right to rent a room  
4 there, is that a right you've exercised?

5           A.    Yes.  It's mainly because I haven't gotten  
6 around to moving out yet but right now, my existence  
7 there is pursuant to that term.

8           Q.    Okay.  So you retired and severed all  
9 relationships other than the fact that you still have an  
10 office there, correct?

11           MR. MOLLAND:  Objection:  Vague and ambiguous  
12 as to severed.

13           THE WITNESS:  I severed relationships except  
14 that have a right to certain payments which come out of  
15 the capital account that I had with the firm and  
16 recoveries the firm might get from a case that I have  
17 been working on since 2006.

18           BY MR. DAVIS:

19           Q.    Are you talking about a single case where  
20 you're still receiving potential compensation?

21           A.    I don't receive any now but if the firm should  
22 ever receive compensation, I would participate in that.

23           Q.    But that's a single case you're making  
24 reference to?

25           A.    That is a single case.



1 Q. So other than compensation from the single  
2 case and a pay-out of your capital account, do you have  
3 any other financial stake in the law firm?

4 A. I don't believe so.

5 Q. What is the single case that you have a right  
6 to receive compensation on?

7 A. It is a lawsuit brought by the estate of  
8 Flintco Corporation, which is in bankruptcy, against  
9 Imperial Tobacco Company of Canada.

10 Q. And the plaintiff, could you say the name  
11 again?

12 A. The Flintco Company or the estate of Flintco  
13 Company, and I think co-defendants include the futures  
14 representative and the asbestos creditors committee.

15 Q. All right. So it's an asbestos bankruptcy  
16 case?

17 A. No. Well, Flintco is going through what I  
18 think is roughly termed a 524-G bankruptcy. This is an  
19 asset of the estate, and we have been retained specially  
20 to attempt to recover on that asset.

21 Q. What do you use your office at the law firm  
22 for, if anything?

23 A. I go there infrequently but my files are still  
24 there, and I haven't really had the time to the move my  
25 belongings out yet. My telephone still rings, and I

1 still have a computer terminal there.

2 Q. So are you saying that you have an office  
3 there simply because you haven't had time to the move  
4 your things out?

5 A. For the most part that's true, yes.

6 Q. Well, I'm more concerned about the other part  
7 as opposed to the most part.

8 Is there some other reason that you maintain  
9 an office at the law firm?

10 A. That's because that's where my files are  
11 and --

12 Q. When you say --

13 A. -- sometimes things like, for example, this  
14 deposition brings me to San Francisco, and that gives me  
15 a place to go to get ready for the deposition or to be  
16 during breaks.

17 Q. But you don't conduct any business relating to  
18 Snyder, Miller and Orton at that address, do you?

19 A. None whatsoever.

20 Q. Why do you still maintain your bar address at  
21 the Snyder, Miller and Orton address?

22 A. Because it is an address where I maintain my  
23 business records.

24 Q. That's the only reason is because it's an  
25 address where you have your business records?

1           A.    Well, I think the main reason is because that  
2 is the address that's been on there for a while and I  
3 haven't gotten around to changing it.

4           Q.    Okay. Well, do you think it's reliable to  
5 leave that as your address just because you haven't had  
6 a chance to change?

7           MR. FERGUS:  Objection:  Argumentative.

8           THE WITNESS:  Yes.  I think it's reliable  
9 because if somebody calls me there or sends mail to me  
10 there, I receive it.  The telephone is answered.  If I  
11 don't get the message directly, it's given to me.

12          BY MR. DAVIS:

13          Q.    Doesn't that give the impression to consumers  
14 who might be checking up on a lawyer that you still have  
15 some relationship to Snyder, Miller and Orton?

16          MR. MOLLAND:  Objection:  Calls for  
17 speculation.

18          THE WITNESS:  I can't answer that.  It's not  
19 the intent.

20          BY MR. DAVIS:

21          Q.    And you've never given that any authority, is  
22 that what you mean?

23          A.    I believe either we have or we are about to  
24 send out an e-mail that makes it very clear that this  
25 e-mail address is mine and my business address is there

1 but that I have severed relationships with the firm, and  
2 I think everybody that I have anything to do with has  
3 known for some time that I'm retired from the firm.

4 Q. What do you do for a living other than work  
5 for the trust, if anything?

6 A. You mean for compensation of some sort or  
7 another?

8 Q. Yes.

9 A. Nothing.

10 Q. What trust do you work for?

11 A. I work for the G-1 Trust, which is a Delaware  
12 trust. I work for four trusts headquartered in Nevada,  
13 which is the Western Asbestos Settlement Trust, the JT  
14 Thorpe Trust, the Thorpe Insulation Trust, and now the  
15 Plant Insulation Trust, and I really don't work for  
16 them, I am trustees of them. I guess my title is that  
17 of trustee.

18 Q. And are you a trustee then of the G-1 trust?

19 A. Yes, I am.

20 Q. And for how long have you been the trustee of  
21 the G-1 trust?

22 A. Since the G-1 plan became effective, and I  
23 don't have a clear recollection of the date but I  
24 believe it was sometime in 2010.

25 Q. And have you as trustee of the G-1 trust been

1 involved in any investigation of Mr. Mandelbrot in that  
2 case?

3 MR. MOLLAND: Objection: Vague as to case.

4 THE WITNESS: I have been aware of the  
5 existence of one, yes.

6 BY MR. DAVIS:

7 Q. What does that mean, aware of the existence?

8 A. I'm informed that the claims processor of the  
9 G-1 Trust is conducting an investigation of claims  
10 submitted by Mandelbrot.

11 Q. And do you know what triggered that  
12 investigation?

13 A. I believe several trusts initiated  
14 investigations when it became apparent that some trusts  
15 were having difficulty rationalizing the information  
16 they were receiving from Mr. Mandelbrot's firm.

17 Q. And what is it you know about these -- tell me  
18 what trusts you're referring to.

19 A. Well, this is just information that I have but  
20 trusts that process their claims through the Delaware  
21 Processing Trust, some of the trusts, I don't know the  
22 names of all of them, process their claims through the  
23 Varus processing facility, and of course the trusts  
24 headquartered in Nevada.

25 Q. Could I have the question read back?

1 (Record read as follows:

2 Q. "And what is it you know about  
3 these -- tell me what trusts you're  
4 referring to.")

5 BY MR. DAVIS:

6 Q. So how did you become aware that these trusts  
7 were quote "having difficulty rationalizing information  
8 received from Mandelbrot," end quote?

9 A. I don't think that's what I said.

10 Q. All right. Well, tell me how you became aware  
11 of whatever information it is that you know about these  
12 trusts and their investigations.

13 MR. MOLLAND: Objection: Overbroad, vague and  
14 ambiguous, calls for a narrative.

15 THE WITNESS: I think there was distributed a  
16 document authored by a Mr. Dunning, and I don't know the  
17 exact date but I think it was sometime late in 2012,  
18 that described irregularities that he had discovered in  
19 filings with those trusts by the Mandelbrot firm and  
20 that was the source of that information.

21 BY MR. DAVIS:

22 Q. Well, you've seen the Dunning communication,  
23 haven't you, that you're referring to?

24 MR. MOLLAND: Objection: Argumentative.

25 THE WITNESS: I saw it. I saw it at the time

1 that it came out from the Delaware trust.

2 BY MR. DAVIS:

3 Q. Isn't it in fact Mr. Dunning's reporting,  
4 self-reporting to the Delaware trust about the fact that  
5 he had discovered that your former employee, Mr. Lynch,  
6 had stolen money from the Mandelbrot law firm?

7 MR. MOLLAND: Objection.

8 BY MR. DAVIS:

9 Q. Wasn't that the nature of the report?

10 MR. MOLLAND: Objection: Vague and ambiguous.  
11 It's two questions, and it's argumentative.

12 THE WITNESS: I think the report speaks for  
13 itself. First of all --

14 BY MR. DAVIS:

15 Q. I am sure that it does. I'm asking you for  
16 the answer.

17 MR. MOLLAND: Please don't interrupt.

18 THE WITNESS: I'm not finished with my answer.

19 BY MR. DAVIS:

20 Q. Good. Please do.

21 A. The report says what it says, and it reports  
22 that, first of all, that there were questions from the  
23 Delaware trust to the Mandelbrot firm first, and I think  
24 that that was via representatives of ARPC.

25 And in responding to those questions, it then

1 discloses the results of a review that Mr. Dunning did  
2 into the files of the Mandelbrot firm that disclosed  
3 further irregularities, and whether it says anything  
4 about the motivation of the Delaware trust or ARPC  
5 having anything to do with Lynch sitting here today, I  
6 just don't know.

7 Q. Well, now you seem to know something about  
8 irregularities and further irregularities. I want you  
9 to tell me what the first irregularities are before the  
10 further ones that you made reference to were.

11 A. I'm kind of at a disadvantage because I don't  
12 have the document in front of me, but I think that the  
13 description of the irregularities ARPC brought to the  
14 attention of Mandelbrot are not very fully described as  
15 I recall or at least I don't remember what they are.

16 Most of the memorandum is devoted to a report  
17 by Mr. Dunning that he had discovered some 30 or so  
18 claims and in that respect, he attributes those  
19 irregularities to the conduct of a Mr. Lynch.

20 Q. So what are the first irregularities that you  
21 made reference to, if you know?

22 A. I don't have a clear recollection but I  
23 believe it had to do with falsified -- I don't know  
24 whether the term fraud was used but falsified signatures  
25 or verifications or notarial acknowledgments.



1 Q. What were the irregularities that you claim  
2 were raised by the trust before Mr. Dunning's  
3 disclosure?

4 MR. MOLLAND: Objection: Argumentative, vague  
5 and ambiguous as to 'claim'.

6 THE WITNESS: Claim to who?

7 MR. DAVIS: Read the question back.

8 (Record read as follows:

9 Q. "What were the irregularities that  
10 you claim were raised by the trust  
11 before Mr. Dunning's disclosure?")

12 MR. MOLLAND: Objection. Vague as to "what."

13 MR. DAVIS: I don't know what you just said,  
14 what your lawyer said, but it had nothing to do with my  
15 question so please answer the question.

16 MR. MOLLAND: Move to strike the argumentative  
17 colloquy by counsel. It's inappropriate.

18 THE WITNESS: You know, I don't know whether  
19 by that time the trust headquartered in Nevada had  
20 maintained, had initiated adversary proceedings with  
21 regard to Mr. Mandelbrot, but if it had, then that would  
22 disclose the contentions of the trust as of that time,  
23 and so I have difficulty answering that because I have  
24 difficulty with the timing.

25 BY MR. DAVIS:

1 Q. Did you ever meet with Mr. Lynch?

2 A. I have never met with Mr. Lynch with the  
3 possible exception of saying hello to him when he was  
4 working at the trust.

5 Q. Were you aware that Mr. Lynch had borrowed  
6 money from another trust employee while employed at the  
7 trust?

8 MR. MOLLAND: Objection: Vague and ambiguous  
9 as to time.

10 THE WITNESS: At some time very late, I became  
11 aware of that, yes.

12 BY MR. DAVIS:

13 Q. When? Was it late at night? I don't know  
14 what you mean by 'late'.

15 A. No, I mean chronologically.

16 Q. When?

17 A. Not too much time-wise, not too much far from  
18 the time of the deposition of Lynch.

19 I think it was after the deposition of Lynch  
20 and the declaratory relief action.

21 Q. So did you become aware that one of your trust  
22 employees was viewing Mr. Lynch while he was employed at  
23 Mandelbrot's law office?

24 A. The answer is the same with respect to that.

25 Q. So you didn't find out about that until you

1 say after Mr. Lynch's deposition, correct?

2 A. It was about that time. It could have been  
3 before; it could have been after. It could have been  
4 after the declaratory relief action.

5 Q. So in other words, until sometime at or about  
6 the time of Mr. Lynch's deposition, no one at the trust  
7 had disclosed to you the fact that a trust employee had  
8 been involved in litigation with Mr. Mandelbrot's  
9 employee?

10 A. Not that I recall now, no.

11 Q. When you learned that, did you make any  
12 investigation of how that could happen within your  
13 trust?

14 MR. MOLLAND: Objection: Vague and ambiguous  
15 as to "you".

16 THE WITNESS: Did I make any investigation?

17 BY MR. DAVIS:

18 Q. Did you cause any investigation to be  
19 conducted to find out how that had come about?

20 A. I believe that all of those issues at that  
21 time were under investigation.

22 Q. Were they under investigation before you knew  
23 that Mr. Lynch was being sued by a trust employee?

24 A. I think there was an investigation pending  
25 relating to the trust relationship with Mr. Mandelbrot

1 and when these facts became apparent, those facts were  
2 included within the investigation.

3 Q. You can understand how Mr. Mandelbrot would  
4 have been agitated when he discovered that your trust  
5 employee was suing one of his people, can't you?

6 MR. MOLLAND: Calls for speculation.  
7 Argumentative.

8 THE WITNESS: I'm not sure I can speak to how  
9 Mr. Mandelbrot would react to that or not.

10 MR. DAVIS: Okay.

11 Q. So you didn't think there was -- do you think  
12 that it's appropriate for your trust employees to have  
13 personal lawsuits against employees of attorneys filing  
14 suit or filing claims against your trust?

15 MR. MOLLAND: Objection: Vague and ambiguous  
16 as to appropriate.

17 THE WITNESS: I think that the appropriateness  
18 or the lack of appropriateness is a matter of the  
19 particular facts and circumstances involved.

20 MR. DAVIS: Well, you know that --

21 MR. MOLLAND: Please don't interrupt.

22 THE WITNESS: I'm not through with my answer  
23 please.

24 For example, in the case of Whitney Lauren, I  
25 had understood at the time I learned this that she was

1 not able to determine when she processed claims whether  
2 this was a claim that had been processed by Mr. Lynch or  
3 not at the Mandelbrot firm.

4 I was also told that every claim that Whitney  
5 Lauren processed was processed another time from  
6 beginning to end by another processor so there was a  
7 redundancy in the system that guaranteed that the undue  
8 end result conformed to the requirements of the matrix  
9 in the trust distribution procedures.

10 And so I, not knowing the circumstances of the  
11 lawsuit or the reasons for it, and also knowing that  
12 Mr. Mandelbrot had requested -- no, he had not  
13 requested, he had demanded that Whitney Lauren not  
14 process any more claims, you know, that was basically  
15 the extent of my knowledge. And as to whether any of  
16 this was appropriate or not is I don't think it's a  
17 conclusion that I reached based on that information.

18 BY MR. DAVIS:

19 Q. So it never occurred to you that it didn't  
20 have the appearance of proprietary for your trust  
21 individuals to be suing --

22 A. I think --

23 Q. -- Mr. Mandelbrot's employee, correct?

24 A. I think, personally, I think the appearance or  
25 lack of appearance of proprietary depends on the

1 individual facts and circumstances and is particularly  
2 dependent upon whether those facts and circumstances are  
3 fully disclosed and known, and so I think that would be  
4 my answer.

5 Q. So why was Mr. Lynch fired from the trust?

6 MR. MOLLAND: Objection: Vague and ambiguous.  
7 Argumentative as to 'fired'.

8 THE WITNESS: My understanding was that  
9 Mr. Lynch was not fired, that he was counseled because  
10 he was having difficulties performing his work, which,  
11 up to a certain point in time, had been very good.

12 He was having difficulties performing his  
13 work because of personal problems. That was brought to  
14 his attention. Some effort was made to cure those  
15 problems, including him coming in working after hours.

16 The end result of that was he was not able to  
17 carry his load and that he met with Sarah Beth Brown,  
18 and the two of them discussed it, and I think as I  
19 understand it, they both concluded that it was not  
20 likely that he was going to be able to maintain an  
21 adequate level of performance at the trust in the future  
22 so it was best that he leave.

23 Q. So you're not telling me Mr. Lynch voluntarily  
24 left his employment with the trust, are you?

25 A. I'm not ruling that out because I don't know

1 what would have happened had Mr. Lynch, for example,  
2 said, just put me back on probation as I was at the  
3 beginning. Take me off the full-time list and let me  
4 prove myself, and then I can go back on full-time if I  
5 prove that I can do the work.

6 As I understand it, he had made no such  
7 proposal and did not urge the trust to consider anything  
8 like that.

9 So there was an element of volition on his  
10 part in the sense that he was not urging the trust to  
11 give him yet another opportunity to get back on track.

12 Q. When did you first learn that there was some  
13 possibility that the Canadian claims were fraudulent  
14 claims?

15 A. I have difficulty with the conclusion  
16 fraudulent claims. I learned about the controversy  
17 relating to the fraudulent, to the so-called fraudulent  
18 Canadian claims after the Mandelbrot motion to compel.

19 Q. Okay. So you weren't aware that, well, let me  
20 ask it this way, in 2010, were you aware that Sarah Beth  
21 Brown was deposed in litigation relating to the Canadian  
22 claims?

23 A. I was aware that she was deposed because I do  
24 recall that she told me that her deposition was going to  
25 be taken in a records deposition.

1           I don't recall whether I was told that it was  
2 the Canadian claim or that it was a default judgment  
3 claim or if the communication to me mentioned the  
4 Canadian claim. I related it to any claim that I had a  
5 special recollection of.

6           Q.    So it wasn't reported to you that she was  
7 questioned at that deposition about Canadian not having  
8 any asbestos or sufficient asbestos exposure to support  
9 the claims that were filed in the Western case?

10           MR. MOLLAND:  Objection:  Vague and ambiguous  
11 as to time.

12           THE WITNESS:  Well, I'm not, I haven't read  
13 the deposition, and I haven't read the entire deposition  
14 and I haven't read the deposition of Mr. Canadian and  
15 I'm not sure that was the nature of the questioning.

16           BY MR. DAVIS:

17           Q.    Well, when you say you're not sure, given the  
18 fact you didn't read it, what is it that you are basing  
19 you're not sure upon?

20           A.    Well, no, I said I've not read all of it.

21           Q.    Oh, you've read parts of it?

22           A.    Read parts of it after it came to light.

23           Q.    So have you formed the impression there was  
24 adequate exposure to support the Canadian claims?

25           A.    Yes.



1 Q. Tell me how you formed that conclusion.

2 A. The Canadian claim when submitted in 2002, and  
3 you know, I had no information about the Canadian claim  
4 when it was submitted in 2002. It was supported  
5 apparently by the deposition of Mr. Canadian.

6 The information that was included in the true  
7 up, the proof up to the Superior Court judge that  
8 entered the default judgment cited pages from the  
9 deposition and took the position that they proved that  
10 Mr. Canadian worked in a shipyard in California.

11 But it did not include pages, again that he  
12 was aboard a ship called the POPE. The POPE was not a  
13 Western ship, and in fact, Mr. Canadian was not a  
14 shipyard worker. He was a soldier awaiting transit to  
15 the Philippines during World War II.

16 However, the same deposition, the pages of  
17 which were not included in the proof up, contained  
18 information that when he came back from the Philippines,  
19 he did so on board a ship called the MAYO.

20 The MAYO was a ship built by Western  
21 MacArthur, and his testimony regarding the MAYO was that  
22 he slept in a top bunk in transit from the Philippines  
23 and that he was right under a pipe that was insulated  
24 with asbestos-containing materials, and that he awoke  
25 every morning covered with dust from that pipe.

1           In my judgment, that would be adequate to  
2 sustain a claim against Western, whether it be in a  
3 default context or some other context in 2002.

4           And the reason I don't know and I can't reach  
5 the conclusion that in 2002 the submission was  
6 fraudulent is I don't know the state of mind of the  
7 people who submitted the default judgment claim.

8           They had a deposition that showed Western  
9 exposure. I don't know whether they just attached the  
10 wrong pages, whether they relied on the analysis of the  
11 early firm, which is the firm that actually put together  
12 the theory that the exposure was that of something other  
13 than a soldier, so I just don't have facts sufficient to  
14 reach a conclusion that in 2002, it was in fact a  
15 fraudulently submitted claim.

16           In 2006, the claim became the subject of  
17 publicity, and as I understand it, the Manville claim,  
18 which was a Manville asbestos claim, was amended, and I  
19 don't know this for sure but think it was amended to  
20 include the exposure of the MAYO such that there was a  
21 valid Manville claim to be brought and, of course,  
22 Western was a Manville distributor and the MAYO was a  
23 Manville ship.

24           By that time, the Canadian default judgment  
25 was already concluded and listed as a default judgment

1 in the records of the Western Asbestos Settlement Trust,  
2 and I do not know what thought was given to conforming  
3 the claim in the same manner that the Manville claim was  
4 conformed. And I don't know what the consequences would  
5 have been had that been done.

6 That's a subject now that we know what you  
7 brought to our attention after the motion to compel that  
8 we submitted to counsel for an evaluation, but I do know  
9 this, when Ms. Brown's deposition was taken in 2010, the  
10 person that submitted these documents to her apparently  
11 for the purpose of bringing to her attention that the  
12 claim was fraudulent, was and had been the employee at  
13 the Brayton firm when all of this became controversial  
14 in 2010. And he knew, I would believe, about the MAYO  
15 exposure and the MAYO exposure was not brought to  
16 Ms. Brown's attention.

17 That's kind of a summary of what I know.

18 Q. You refer to 2006 publicity. What are you  
19 referring to?

20 A. I became aware, as did all the trust  
21 fiduciaries, of an article, I think it had to do with I  
22 don't know the publication that talked about double  
23 dipping.

24 Now, there was a claim by a publication like  
25 the Wall Street Journal that plaintiffs double dipped by

1 making claims in the tort system and then seeking  
2 additional compensation allegedly more than they were  
3 entitled to by also making claims against trusts.

4 That is a long standing controversy and both  
5 sides have very well developed positions on it, the  
6 plaintiffs taking the position that they are being under  
7 compensated, and the insurance companies taking the  
8 position that through this process, they are being over  
9 compensated.

10 So the Canadian claim was the subject of an  
11 article, in fact, Mr. Brayton handed me that article.  
12 It was discussed at a trust meeting, well, it was  
13 discussed, but it was also discussed as a trust meeting  
14 with Mr. Brayton not present.

15 And that was the end of it.

16 Q. Is that the same publicity that brought to  
17 light or that published the Ohio court's ruling that  
18 Mr. Brayton's firm had been involved in improper  
19 conduct?

20 A. Yes, and I think that was, I think that was  
21 the subject of the conversation amongst the trustees and  
22 the futures representative on the subject of what  
23 consequences, you know, what consequences to the trust  
24 that might have given that this article had been  
25 published and this had come out and been disclosed.

1           What was not disclosed or discussed was  
2 whether this had anything to do with the claim that had  
3 been made against Western.

4           Q.    Did that cause you some concern about  
5 Mr. Brayton's firm dealing with your trust, the fact  
6 that he had been accused of essentially fraudulent  
7 conduct by a state court judge?

8           MR. MOLLAND:  Objection:  Argumentative.

9           THE WITNESS:  All I can relate to you is my  
10 personal recollection.

11          BY MR. DAVIS:

12          Q.    Let's start there.  What is your personal  
13 recollection?

14          A.    My personal recollection is that the  
15 information that we obtained was that this related to  
16 the conduct of an associate at the Brayton firm or  
17 perhaps the misconduct of an associate.

18                It focused on, it was a case against the  
19 tobacco company, the Laurel Art Company, relating to the  
20 asbestos contained in its micronite filter that the  
21 serious issues that were addressed as far as I remember  
22 at that time was that that associate had not adequately  
23 disclosed to the court that lung tissue samples that  
24 were being retained were subjected to destructive  
25 testing contrary to representations that the associate

1 had made to the court.

2 Frankly, I don't recall much, if any,  
3 discussion about Manville exposure or the claim against  
4 Manville but it could have been discussed.

5 BY MR. DAVIS:

6 Q. Don't you remember the Ohio court coming to a  
7 different conclusion than the one you just gave me that  
8 the Brayton firm was involved in institutional  
9 dishonesty to that court?

10 A. Sitting here today, I don't recall that  
11 conclusion.

12 I think that the article -- I mean there were  
13 several articles that we saw, and whatever portions of  
14 the opinion that I read had to do with the conduct of  
15 the individual, and the explanation given was that  
16 that's where it began and ended.

17 Q. So you didn't read the entire court opinion  
18 from Ohio?

19 A. I can't remember whether I did or didn't.

20 Q. And you weren't aware of the fact that the  
21 Brayton firm in its entirety was essentially disbarred  
22 in that court system?

23 A. I am aware that we concluded that the Brayton  
24 firm was not disbarred in its entirety in Ohio, that the  
25 disbarment was related to a single case, this one, and

1 that the basis for that disbarment related to the  
2 conduct of this individual attorney. That's what we  
3 understood.

4 Q. So you performed your own investigation into  
5 whether it was one individual or the firm, is that what  
6 you're saying?

7 MR. MOLLAND: Objection: Vague and ambiguous  
8 as to 'you'.

9 THE WITNESS: We considered the facts and  
10 circumstances.

11 BY MR. DAVIS:

12 Q. What facts and circumstances did you consider?

13 MR. MOLLAND: Objection: Asked and answered.

14 THE WITNESS: I have related them to you.

15 MR. DAVIS: Okay.

16 Q. And so you didn't consider anything other than  
17 what you just told me, is that correct?

18 A. I'm sure I considered other things. It was  
19 seven years ago.

20 Q. In other words, you can't remember anything  
21 else, correct?

22 A. This is as much as I can remember now sitting  
23 in this room.

24 Q. The individual you're claiming is not is  
25 Mr. Andreas, correct?

1           A.    Later, I learned it was Mr. Andreas, yes.

2           Q.    Did you ever speak with Mr. Andreas?

3           A.    No.

4           Q.    You certainly spoke with Mr. Brayton, correct?

5           A.    Yes.

6           Q.    How many times did you talk to Mr. Brayton  
7 about Ohio court's decision relating to his firm?

8           A.    I believe there were a series of conversations  
9 about the time of the trust meeting.

10                    Explanations were sought, the fiduciaries  
11 discussed it out of the presence of Mr. Brayton.

12                    I think we, I think we were aware that the  
13 information we had was also information that was  
14 available to the trust advisory committee which after  
15 all had appointed him to be the chair of that committee.

16                    And I think that's pretty much what I can tell  
17 you in response to that, other than the fact that there  
18 was no evidence of such a practice in any other  
19 jurisdiction, in any other case, and to our mind, this  
20 was not a practice that related to Mr. Brayton's  
21 relationship with the Western trust in terms of claiming  
22 or the California courts.

23           Q.    Well, did you make an investigation to find  
24 out whether Mr. Brayton's firm had been involved in  
25 improper conduct in its dealings with the trust?



1           A.    I think by that time, what was it, 2006, we  
2 were well into the process of evaluating claims from a  
3 number of firms, and our belief at that time was that  
4 the claims that we were getting from Mr. Brayton were  
5 fully substantiated by not only interrogatory and  
6 deposition responses but by the necessary medical and  
7 business or military or social security records.

8                        So there was no basis to conclude that  
9 anything that he was doing in relation to his  
10 relationship with this trust was anything but of the,  
11 you know, acceptable if not more than acceptable  
12 quality.

13           Q.    My question is did you conduct an  
14 investigation --

15                       MR. MOLLAND:  Objection:  Asked and answered.

16           BY MR. DAVIS:

17           Q.    -- as to Brayton claims based upon your  
18 discovery of a court finding that his firm had been  
19 involved in improper conduct with respect to asbestos  
20 claims?

21           A.    I think that my answer remains the same.

22                       His claims were evaluated by processors and by  
23 their supervisors, the same as everyone's else and at  
24 some point, there was knowledge about this and so those  
25 claims were investigated by people who had an

1 understanding of this issue.

2 Q. When you say investigated, are you simply  
3 talking about the normal claims processing activity?

4 A. Yes.

5 Q. So there was no investigation performed  
6 arising out of your discovery in 2006 of this conduct in  
7 Ohio, correct?

8 MR. MOLLAND: Objection: Vague and ambiguous.

9 THE WITNESS: I think I've described the  
10 events that occurred, the discussions that took place,  
11 and the fact that Mr. Brayton's claims continued to be  
12 processed, and whether you choose to term that an  
13 investigation or not is a conclusion you may reach.

14 We were cognizant of this, and we reached the  
15 conclusions that we reached, and we also took into  
16 account the fact that the trust advisory committee,  
17 having the same information, had reached a conclusion  
18 not to take any action with regard to Mr. Brayton's  
19 chairmanship of that committee.

20 BY MR. DAVIS:

21 Q. Did you perform any audit of Mr. Brayton's  
22 firm's claims based upon your discovery in 2006 of the  
23 state court judgment or order relating to his law firm?

24 A. All of Mr. Brayton's claims, each and every  
25 one of them, is audited. It's audited with all the

1 facts and circumstances in mind and as of a certain  
2 time, these were one of the facts and circumstances that  
3 people were aware of when they reviewed Mr. Brayton's  
4 claims.

5 Q. Are you still investigating the Canadian  
6 claim?

7 A. I wouldn't --

8 Q. I mean in the trust?

9 A. Yes. I would not use the word 'still'. I  
10 would use the word after we learned what we learned from  
11 your motion to compel, we retained outside counsel to  
12 conduct a separate special investigation concerning the  
13 trust's responsibilities with regard to this claim.

14 Q. What did you learn from my law firm that you  
15 did not already know?

16 A. Are you talking about me personally?

17 Q. You or the trust or whoever it was over there.  
18 You said we learned something as a result of your motion  
19 to compel discovery, but I'm trying to find out what it  
20 was that was new to you when you received our motion.

21 MR. MOLLAND: Objection: Vague and ambiguous.

22 THE WITNESS: Okay, well --

23 BY MR. DAVIS:

24 Q. That relates to the Canadian claim.

25 A. I'm not going to be able to give you a

1 corporate "you" answer. I can tell you what I  
2 discovered and I think I already have.

3 I discovered that there was this deposition,  
4 there was a transcript, certain questions were asked and  
5 documents were introduced. None of that was information  
6 that I had until the time of your motion to compel.

7 Q. And when you received the motion to compel,  
8 did you then commence an investigation of the Canadian  
9 claims?

10 MR. MOLLAND: Objection: Asked and answered.

11 THE WITNESS: I believe I have said that we  
12 did.

13 BY MR. DAVIS:

14 Q. Okay, and when did that investigation  
15 conclude?

16 A. I don't know that it has.

17 Q. Okay. Well, you've told me you've hired  
18 somebody to report on your responsibilities, right?

19 A. Yes.

20 Q. Is that Mr. Kecker?

21 A. Yes.

22 Q. So you're asking, what is Mr. Kecker's  
23 assignment to do?

24 A. To advise the trust of its responsibilities  
25 with regard to this claim.

1 Q. Okay. Anything more specific than that?

2 A. I think that's a pretty general -- I think  
3 that's a pretty general charge.

4 Q. So why do you need another lawyer to tell you  
5 what your responsibilities are? What is it that's so  
6 unique about this?

7 MR. MOLLAND: Objection: Argumentative.

8 THE WITNESS: Well, personally, I am  
9 disappointed that the trust did not become aware of the  
10 contents of this deposition in 2010, and I personally  
11 accept part of the responsibility for that because my  
12 executive director, Sarah Beth Brown, was given no  
13 information about the history and provenance of these  
14 default judgment claims.

15 Her understanding at the time was that they  
16 were claims listed on a spread sheet that the court had  
17 ordered the trust to pay, and that's where the  
18 responsibility of the trust began and ended.

19 So my orientation of her back in 2004 and all  
20 of this did not include a background on that.

21 I am also disappointed that either she or her  
22 attorney did not bring it to the attention of the  
23 trustees or the other fiduciaries at the time.

24 There are reasons for that, but I don't think  
25 any of them is sufficient to make me feel comfortable

1 that the trust did everything it could and should have  
2 done at that time to become aware of this and to look  
3 into it.

4 Her reasons, for example, were in addition to  
5 not knowing the history of default judgments, not  
6 understanding that this was a claim of fraud, and if I'm  
7 not mistaken, believing that the papers that had been  
8 pushed in front of her during a deposition would be  
9 available to her to review once the deposition  
10 transcript was sent to her and it never was.

11 You know, and in a professional environment,  
12 one would like to think, given what the content of that  
13 deposition was, that the trust could and should have  
14 done better.

15 So yes, I had a concern about that.

16 MR. DAVIS: We have marked as Exhibit 1 which  
17 is your letter of May 24.

18 (Whereupon, a letter, Snyder to Mandelbrot,  
19 5-24-13, was marked Defendant's Exhibit Number 1  
20 for identification.)

21 BY MR. DAVIS:

22 Q. You're looking at your watch. Do you need to  
23 do something, sir?

24 A. I'm going to try to adhere to some sort of  
25 schedule taking a break every hour or so.

1 Q. All right.

2 A. I find that I get kind of tired as the day  
3 goes along.

4 MR. MOLLAND: We are closing in on an hour, I  
5 think.

6 THE WITNESS: I just checked my watch.

7 BY MR. DAVIS:

8 Q. We have been here an hour. Do you need to  
9 take a break?

10 A. I think we have been.

11 Q. You let me know whenever it is you need to  
12 take a break.

13 Is Exhibit 1 a letter you signed on or about  
14 May 24, 2013?

15 A. It appears to be.

16 Q. Well, is it or isn't it? I mean take your  
17 time. I'm not trying to trick you here.

18 A. All right. I will look at it.

19 Q. Okay.

20 (10:33-10:38.)

21 THE WITNESS: I've read this letter and this  
22 is the letter I sent.

23 (10:53).

24 BY MR. DAVIS:

25 Q. You read it very carefully, didn't you?

1           I mean you started 20 minutes ago. You took  
2 20 minutes to read the letter.

3           A. I won't argue with you how long it took me but  
4 I read it.

5           Q. Did you read it carefully?

6           A. I read it with enough attention to be able to  
7 identify that it is the letter I wrote. It is not a  
8 reading that I would give to a letter like this if I was  
9 to re-evaluate the conclusions of it.

10          Q. Okay. Now, why does the letterhead have three  
11 trust names on it?

12          A. Because the investigation involved each of the  
13 three Nevada-based trusts.

14          Q. Do each of the trusts have separate and  
15 distinct interests?

16          A. Each of the trusts have some interests that  
17 are separate and many interests that are parallel.

18          Q. Who wrote Exhibit Number 1?

19          A. This letter?

20          Q. Exhibit Number 1 is the letter, yes.

21          A. I wrote this letter.

22          Q. Okay. You composed it yourself, correct?

23          A. Yes. I had assistance but I composed it.

24          Q. Well, that's not what I asked. I said, did  
25 you compose it yourself?



1 MR. MOLLAND: Objection: Vague and ambiguous.

2 THE WITNESS: I composed it with the  
3 assistance of my staff and based upon information  
4 supplied to me by my staff, and on legal issues, I  
5 consult with counsel.

6 BY MR. DAVIS:

7 Q. Did anyone make any changes or revisions or  
8 modifications to your composition of this letter?

9 A. I drafted, I think I was given suggestions and  
10 observations by people that at the end of the day, all  
11 the words in this letter are written by me.

12 Q. Whose suggestions and observations did you use  
13 in composing this letter?

14 A. I relied on information supplied to me by  
15 Sarah Beth Brown, Laura Paul, Chuck LaGrave, counsel at  
16 Morgan, Lewis and Bockius, in response to questions on  
17 legal issues that I had.

18 I took into account information supplied by  
19 investigators that the trust had retained. I believe  
20 that I had discussed the substance of the letter. I  
21 don't know whether I had specific language comments from  
22 these people but the substance of the letter and the  
23 conclusions with the other trustees and with the chair  
24 of the trust advisory committee and the futures  
25 representative and the counsel for the futures

1 representative.

2 Q. So did you pass around drafts to any of these  
3 people?

4 A. I believe that there was a draft in existence  
5 sometime prior to the finalization of this.

6 Q. You haven't answered my question.

7 A. I think it was available for others to see. I  
8 don't know whether I passed it around.

9 Q. Okay. So you don't know whether the draft was  
10 given to anyone?

11 A. I believe it was. I believe it was given.

12 Q. To whom?

13 A. Some of the people.

14 Q. Who? Specifically who got the draft, sir?

15 A. I can't remember.

16 Q. Okay.

17 A. Specifically.

18 Q. By the way, I didn't ask you this, do you have  
19 any medical problems that could impede your ability to  
20 testify today?

21 A. I just get tired.

22 Q. Other than just getting tired, you don't have  
23 any like neurological problems?

24 A. No.

25 Q. No Alzheimer's or anything like that?

1           A.    No, I don't.

2           Q.    Cause I notice you never make eye contact,  
3 which can be an indication of medical problems.

4           MR. MOLLAND:  It also can be an indication of  
5 other things, among -- I'm not done.

6           MR. DAVIS:  I don't care if you are not done,  
7 make your objection.  Don't sit here and argue.

8           MR. MOLLAND:  You are the one making a  
9 comment.  I'm making a comment back.

10           There is no requirement the witness stare at  
11 you when he talk and to suggest that there is is  
12 inappropriate.

13           MR. DAVIS:  No.  I'm asking him about medical  
14 conditions, and it's not a matter of staring.  He never  
15 looks, he never makes eye contact.  He's been looking at  
16 that coffee cup for two hours.

17           MR. MOLLAND:  Are you saying that there is a  
18 legal requirement that he look you in the eye?

19           BY MR. DAVIS:

20           Q.    I'm asking if you have any neurological  
21 problems that would prevent you from maintaining eye  
22 contact, sir.

23           MR. MOLLAND:  Please then, please confine your  
24 arguments to questions that are relevant to medical  
25 conditions.

1 BY MR. DAVIS:

2 Q. Sir, will you answer the question? Your  
3 lawyer -- please answer the question.

4 A. I think there are several questions.

5 Q. Do you have any medical problems that have  
6 anything to do with your failure to make any eye contact  
7 today?

8 A. I don't believe not making eye contact is a  
9 failure.

10 Q. Okay. So you're intentionally not making eye  
11 contact; is that your point?

12 MR. MOLLAND: Objection: Irrelevant.  
13 Badgering and harassing.

14 THE WITNESS: I am trying to concentrate on  
15 the words, and I can do that better if I turn my ear to  
16 you and just listen to the words, and then I can think  
17 more clearly if I am looking down thinking about my  
18 response.

19 I've sat through a number of these  
20 depositions, and I found that there is a lot of colloquy  
21 between counsel, and I'm trying to make an effort to  
22 focus on the question that's being asked of me because  
23 one thing that is clear, and this may be neurological or  
24 not depending on how you look at it, is if somebody asks  
25 me a question and I start answering it, and then if I

1 get interrupted, I'm going to forget part of what my  
2 response was going to be. I think that's true of just  
3 about anybody but it's become increasingly true of me as  
4 I've gotten older.

5           So, with all that in mind, I am looking at not  
6 the coffee cup because first of all, it has water in it,  
7 secondly, it was over here, but I'm looking at the table  
8 just trying to focus my concentration on the words that  
9 are being spoken so I don't lose track of them.

10           BY MR. DAVIS:

11           Q. Does the first sentence of your letter,  
12 Exhibit 1, accurately state when the trust began their  
13 investigation?

14           A. Yes, I believe it does.

15           Q. So the investigation began in late 2011,  
16 correct?

17           A. Yes.

18           Q. What does late 2011 mean to you?

19           A. Sometime between September and December.

20           Q. So prior to September of 2011, the trusts were  
21 not investigating Mandelbrot's claims, correct?

22           A. Prior to 2011 --

23           Q. I said September of 2011.

24           A. Excuse me.

25           Q. No problem.

1           A.    Prior to 2011, I do not believe the trusts  
2 were investigating claims submitted by Mandelbrot  
3 pursuant to section 5.7(a) of the trust distribution  
4 procedures.

5           Q.    I asked you whether they commenced that  
6 investigation pursuant to section 5.7(a) prior to  
7 September of 2011.

8           A.    I think I answered that question.

9           Q.    No, you left September out. You said prior to  
10 2011.

11          A.    I'm sorry.

12          Q.    That's okay.

13          A.    I apologize.

14          Q.    Good. Let's make sure we get an accurate  
15 record here.

16          A.    Okay. Prior to --

17          Q.    Go ahead.

18          A.    Prior to September 2011, I do not believe that  
19 the trust was investigating Mandelbrot's claims pursuant  
20 to 5.7(a) of the trust distribution procedures.

21                There was activity, I believe, evaluating  
22 those claims but the investigation under 5.7 was  
23 something that required authorization from all trust  
24 fiduciaries and that was not obtained until I believe  
25 September or after. It could have been after.

1 Q. Why did the trust file the adversary  
2 proceeding against Mr. Mandelbrot?

3 A. The trust had been receiving a series of  
4 complaints and threats from Mr. Mandelbrot to bring suit  
5 since as early as 2006. I think it first brought the  
6 attention of the court to this in connection with the  
7 2010 annual report, and then it did so again in  
8 connection with the 2011 annual report.

9 Those reports were the subject of hearings in  
10 April of 2011 for the first one and April 2012 for the  
11 second one. Each one of them said that if circumstances  
12 continued to deteriorate, it might be necessary for the  
13 trust to go to the court to bring this under the  
14 supervision of the court.

15 In 2011, things did deteriorate and among  
16 other things, a very specific threat to bring litigation  
17 was made by Mr. Mandelbrot in August of 2012, I believe,  
18 relating to an investigation that the court was already  
19 aware was in progress, based upon applications made to  
20 it earlier that year and pursuant to which the court had  
21 entered orders saying that it was authorizing  
22 examinations to take place, and in the face of that,  
23 having received a threat to bring suit even though the  
24 investigation essentially was doing what the court had  
25 authorized the trust to do.

1           I believed that it was time for the court to  
2 take this investigation under its direct supervision and  
3 to determine that it was being conducted properly and  
4 that that was the issue and the trust wanted the  
5 assurances of having the court's attention that if it  
6 was not doing this properly, that the court was made  
7 aware of it and Mandelbrot and the trust had the  
8 opportunity to present their versions of the  
9 investigation and have the court make a determination as  
10 to that.

11           Q.    So you brought suit because of all of what you  
12 call the threats of litigation by Mr. Mandelbrot?

13           MR. MOLLAND:  Objection:  Misstates testimony.

14           THE WITNESS:  Well, I brought suit because the  
15 threat of August the 3 followed by a meeting that we had  
16 with Mr. Mandelbrot at the end of August suggested that  
17 even though by that time we had brought this to the  
18 attention of the court on three separate occasions, that  
19 is, Mr. Mandelbrot's hostility and threats, that we  
20 weren't making any progress and that we were in fact  
21 going to have to get a determination as to the propriety  
22 of the investigation so that the prior history  
23 essentially gave credibility and added gravity to the  
24 August 3 threat to bring suit, which essentially was  
25 reiterated at a meeting that I attended with



1 Mr. Mandelbrot later that month.

2 Q. What meeting are you talking about?

3 A. Can't give you the exact date. I believe --

4 Q. What was the month?

5 A. I believe it was near the end of August, maybe  
6 the 29<sup>th</sup>.

7 Q. So other than the threats of litigation, was  
8 there any other reason why you filed the lawsuit?

9 MR. MOLLAND: Objection: Asked and answered,  
10 misstates testimony.

11 THE WITNESS: Well, the contours of the  
12 controversy, the complaints that Mr. Mandelbrot was  
13 articulating, which essentially repeated complaints that  
14 he had been making for some time, were sufficiently well  
15 defined and our disagreement with them was sufficiently  
16 understood by both sides that we felt that there was a  
17 real controversy that was ripe for determination by the  
18 bankruptcy court.

19 BY MR. DAVIS:

20 Q. Okay. You indicated the court had already  
21 authorized you to do something before you filed suit.  
22 What was it you were referring to?

23 A. After we made several unsuccessful attempts to  
24 interview witnesses who had filed declarations after the  
25 commencement of the investigation, we went to the court

1 in the general, under the general bankruptcy caption,  
2 not in any adversary proceeding, and applied for  
3 permission under Rule 2004, excuse me if I have that  
4 wrong, I'm not a bankruptcy lawyer, to be authorized to  
5 take the examinations of these witnesses.

6 Excuse me. I'm not done.

7 Q. Please go ahead.

8 A. At the several hearings that were conducted in  
9 the wake of those applications both on appeal and in the  
10 bankruptcy court, we presented evidence in the form of  
11 declarations and Mr. Mandelbrot presented his claims in  
12 the form of his contentions in connection with the  
13 various oppositions and motions to quash and motions to  
14 obtain stays, so we thought that that controversy not  
15 only had ripened but that for the most part it had been  
16 determined now on three occasions.

17 Q. Prior to September when you started this  
18 investigation, you meaning the trust, how many times had  
19 you personally met with Mr. Mandelbrot?

20 MR. MOLLAND: September 2011?

21 MR. DAVIS: Yes.

22 Q. That's the only time they started an  
23 investigation, right?

24 A. Well, I am aware of a meeting with the  
25 trustees, I believe it was calendar year 2006, wherein

1 Mr. Mandelbrot wanted to address all the trust  
2 fiduciaries and he is the only person that's ever done  
3 that, and an accommodation was made to allow him to do  
4 that. I think he did that in Reno in 2006.

5 I'm not sure I have the full contours of your  
6 question.

7 Q. I asked you how many times you met with Mr.  
8 Mandelbrot prior to the September 2011 initiation of  
9 your investigation.

10 A. Okay. I believe I also met with him in April  
11 of, I don't know whether this was prior or after,  
12 frankly, in connection with one of the annual reports  
13 when he made an appearance, and if it was April of 2011,  
14 then it was prior. If it was April 2012, then it was  
15 after.

16 Q. Any others?

17 A. Not that I can recall.

18 Q. Okay. But the annual report you're talking  
19 about is an appearance in court?

20 A. Yes.

21 Q. Okay. But my question wasn't whether you were  
22 in the same court building with Mr. Mandelbrot, I'm  
23 asking whether you actually met with him.

24 So did you actually have a meeting with  
25 Mr. Mandelbrot at this annual report hearing in April of

1       whichever year it was?

2           A.    I think that he appeared and we exchanged a  
3       few words but beyond that, I don't think there was more  
4       of a meeting.

5           Q.    Okay.  So the annual meeting, the annual  
6       report meeting was nothing more than an exchange of  
7       pleasantries, correct?

8           A.    I don't know whether they were pleasantries or  
9       just acknowledging each other's presence.

10          Q.    All right.  So are you saying that the only  
11       time you've met with Mr. Mandelbrot before beginning  
12       this investigation was when he appeared at a trustee's  
13       meeting in 2006?

14          A.    I believe that's the case.

15          Q.    Okay.  What efforts did you make to resolve  
16       the matter with Mr. Mandelbrot prior to initiating this  
17       transaction?

18               MR. MOLLAND:  Objection.

19               MR. DAVIS:  By you, I mean you personally.

20               MR. MOLLAND:  Objection:  Vague and ambiguous  
21       as to matters.

22               THE WITNESS:  I became aware of difficulties  
23       that Mr. Mandelbrot was having in his dealings with the  
24       trust as early as 2006.

25               I actually recall having correspondence with

1 him in 2006. The tone or the substance of the  
2 discussions really took two sort of related tracks: One  
3 was I am being treated as an outsider and my clients are  
4 being treated as outsiders and therefore the rules of  
5 the trust are not working for me, whereas they are  
6 working for others.

7           And specifically rules of the trust, the  
8 second one was specific rules of the trust are unfair  
9 and discriminatory and are evidence of breaches of  
10 fiduciary duty and corruption on behalf of the trustees,  
11 and that came up in several different contexts, the  
12 first category, for example, was manifested in concerns  
13 about interpretation of the TDP about what kind of  
14 exposure sites gave rise to what kind of benefits. The  
15 second was what kinds of requirements concerning the  
16 evaluation of the reliability of evidence were being  
17 imposed upon filers of trusts.

18           In answer to your question, I did have  
19 correspondence with Mr. Mandelbrot, not much, but I did  
20 have some correspondence with him in connection with  
21 those, but for the most part, I heard about this through  
22 my executive director and to a lesser extent through the  
23 director of claims and the individual Jill Roller who  
24 was putting together ship site lists, and I dealt with  
25 them through the way I instructed them to the extent

1 they were looking for guidance on how to respond.

2 Q. Okay. So your efforts to resolve it prior to  
3 initiating the investigation were largely delegating the  
4 responsibility to Sarah Beth Brown and others within the  
5 trust, correct, and giving them direction?

6 A. You know, I'm not sure I can accept the term  
7 'largely.'

8 Q. Okay.

9 A. I did have correspondence and some of it was  
10 pretty detailed with Mr. Mandelbrot, for example, on the  
11 interpretation of the exposure requirements under the  
12 TDP for the JT Thorpe Trust when it first came online.

13 But in terms of repetition and volume, yes,  
14 most of the effort that I contributed was to direct the  
15 efforts of the trust staff to deal with Mr. Mandelbrot  
16 in a way that was respectful of the fact that his  
17 clients were beneficiaries of the trust and that if they  
18 were having trouble or difficulty dealing with him, that  
19 they should look past that and realize that all trust  
20 beneficiaries needed to be treated fairly and equitably.

21 Q. At the 2006 trustee's meeting, Mr. Mandelbrot  
22 was allowed to attend, correct?

23 A. I think that's correct, and I think that was  
24 in Reno.

25 Q. But did you have any meeting with him at the

1 time of that trustee's meeting outside the trustee's  
2 meeting itself?

3 A. I don't believe so.

4 Q. So you've never had a one-on-one meeting with  
5 Mr. Mandelbrot or his representatives prior to  
6 initiating the transaction, the investigation, have you?

7 A. I believe my first meeting with him that  
8 involved substantive discussions --

9 Q. When?

10 A. Was --

11 Q. I'm sorry, go ahead.

12 A. Well, I do believe I asked him questions in  
13 the trustee's meeting. Can't remember what those were.

14 Q. You can't remember what you asked him?

15 A. No, can't remember. I know that the meeting  
16 in August of 2012, there were pretty extensive  
17 discussions but that was against the back drop of very  
18 well developed issues that were articulated in the  
19 correspondence, much of which involved me and  
20 Mr. Mandelbrot.

21 Q. We will get to those. Right now I'm trying to  
22 focus on pre September 2011.

23 A. Yes. I think I've answered that question.

24 Q. So the only communications you had with  
25 Mr. Mandelbrot that weren't simply acknowledging him in

1 person were some questions you asked him at the  
2 trustee's meeting 2006 but you can't remember what they  
3 are, correct?

4 MR. MOLLAND: Objection: Misstates testimony.

5 THE WITNESS: Well, unless I've forgotten  
6 another meeting.

7 BY MR. DAVIS:

8 Q. Well, that's always a possibility but I'm  
9 asking about the ones you actually remember.

10 A. No, I don't. There could have been another  
11 meeting or a phone call. I just don't know.

12 Q. I haven't got to the phone calls yet but let  
13 me do that.

14 Do you remember having any phone calls with  
15 Mr. Mandelbrot before initiating the meeting -- the  
16 investigation in September 2011?

17 A. Well, here is what I remember. I don't have  
18 phone calls with any counsel for claimants about their  
19 individual cases or their individual complaints because  
20 I believe that that is a responsibility that should  
21 remain with my staff, and I should hold them responsible  
22 for the results.

23 So the fact, I think my answer to that is no,  
24 but that was consistent with my practice across the  
25 board towards all claimant representatives.



1 Q. Okay. So you don't recall any of those such  
2 telephone conversations between the initiation of the  
3 September 2011 investigation, correct?

4 A. That's correct.

5 Q. Okay. Do you want to take a break now?

6 A. Sure, that will be fine.

7 (Recess 11:22-11:33.)

8 BY MR. DAVIS:

9 Q. Let's go back to the issue of meetings that  
10 you attended with Mr. Mandelbrot.

11 A. Yes.

12 Q. Now we're going to cover the time period after  
13 September 2011. Tell me what meetings you can recall.

14 A. Well, there were two more trustee meetings --  
15 no, there was one more trustee meeting.

16 I think the September 2011 meeting was a  
17 second trustee meeting. So there was one more trustee  
18 meeting.

19 There was a meeting in San Francisco or maybe  
20 there was just a meeting in San Francisco and not  
21 another trustee meeting. I may be confused about that.

22 There was a face-to-face meeting at the law  
23 offices of Morgan, Lewis and Bockius that I attended  
24 with Mr. Molland and I believe one or two other people  
25 from Morgan, Lewis and Mr. Mandelbrot.

1           There was a meeting again at Morgan, Lewis and  
2 Bockius that I believe was pretty well attended. I  
3 don't know all the names but I believe that you were  
4 there, Mr. Davis.

5           Q.    Okay, that one I remember.

6           A.    And then there was also a meeting in Novato at  
7 Mr. Mandelbrot's office attended by, among others, the  
8 executive director and myself, and counsel and you and  
9 Mr. Mandelbrot, I think, and your associate or partner,  
10 whichever the case may be.

11           Beyond that, and you know it's just a matter  
12 of how you define the term, there have been court  
13 appearances and depositions.

14           Q.    Leaving aside court appearances and  
15 depositions where you didn't actually, I mean sometimes  
16 you can actually have a meeting but I don't want them  
17 unless you actually had a face-to-face meeting with  
18 Mr. Mandelbrot.

19           A.    Yes. I don't recall at any of the depositions  
20 or court appearances having substantive discussion with  
21 Mr. Mandelbrot.

22           Q.    So I couldn't tell exactly, I mean I'm aware  
23 of the one where I attended and the two I attended so  
24 those are -- you refer to another face-to-face at  
25 Morgan, Lewis and you didn't mention me being there.

1           A.    You weren't there.

2           Q.    Okay.  So when was that?

3           A.    I believe that that was the one I referred to  
4 earlier that occurred at the end of August of 2012.  It  
5 was --

6           Q.    Right now, I'm only trying to identify.  We  
7 will get into details of them but I just want to figure  
8 out how many meetings there were.

9           A.    Well, that's what it was.

10          Q.    Okay.  There is the meeting in August of 2012,  
11 there are the meetings in San Francisco in Novato where  
12 I was in attendance so those three meetings.

13          A.    Yes.

14          Q.    Were there any other meetings after  
15 September 2011 where you met with Mr. Mandelbrot?

16               MR. MOLLAND:  Misstates testimony.  He told  
17 you about them.

18               THE WITNESS:  Well, no, I mean there was  
19 another meeting.  There was a mediation, and I believe  
20 that for a brief period of time in that mediation, all  
21 the parties were in the same room together and held some  
22 manner of discussion, although I don't think it was  
23 extensive.

24               BY MR. DAVIS:

25          Q.    Other than the three meetings I mentioned and

1 the mediation, what other face-to-face meetings did you  
2 have with Mr. Mandelbrot after initiating the  
3 investigation?

4 A. I think I've described all of them to you.

5 Q. All right. So let's start with the earliest  
6 one then which would be the August 2012.

7 A. Yes.

8 Q. And let's put it this way, that's the only  
9 face-to-face meeting you had with Mr. Mandelbrot between  
10 initiating the investigation and filing the lawsuit,  
11 correct?

12 MR. FERGUS: Objection: That misstates  
13 testimony.

14 THE WITNESS: I guess the only exception to  
15 that would be whether there was any conversation at all  
16 in April of 2012 when Mr. Mandelbrot appeared in Judge  
17 Efremsky's court in Oakland and had his say about the  
18 disclosures of the trust concerning the 2011 annual  
19 report.

20 MR. DAVIS: Okay.

21 Q. Well, let me ask it this way, do you recall  
22 having any discussion with him off the record in April  
23 of 2012, and by off the record, I mean where there  
24 wasn't a court reporter, that we weren't in court.

25 A. There were discussions on the record but I

1 don't recall any off the record.

2 Q. Okay. So tell me the August 2012 meeting,  
3 this was in the Morgan, Lewis office, correct?

4 A. Yes.

5 Q. And who was there?

6 A. Mr. Mandelbrot, myself, Mr. Molland, and one  
7 other attorney from Morgan, Lewis.

8 I think Mr. Molland -- I don't know whether  
9 Mr. Molland was part of Morgan, Lewis then or not.

10 Q. That's what I assumed you meant.

11 A. But Mr. Molland in whatever capacity.

12 Q. Okay. So Mr. Molland, and do you remember the  
13 other Morgan, Lewis lawyer?

14 A. It was a young man I believe to be an  
15 associate.

16 Q. Okay. So do you remember anyone else being at  
17 that meeting?

18 A. I can't remember whether Mr. Smith was present  
19 or not.

20 Q. Okay. So do you recall what the purpose of  
21 that meeting was?

22 A. There had been a meeting between the Morgan,  
23 Lewis lawyers and Mr. Mandelbrot and perhaps others. I  
24 wasn't there. It was a follow-up on that meeting that  
25 had happened earlier in the year.

1           There had been an incredible amount of  
2 litigation in the bankruptcy court and in the district  
3 court about efforts to get examinations scheduled for  
4 witnesses.

5           I think the initial request focused on  
6 interviews of eight, and I don't, I can't give you the  
7 details of the numbers but, you know, I went to that  
8 meeting with the impression that we had spent an  
9 enormous amount of money and obtained literally nothing  
10 with one or two possible exceptions, and there was the,  
11 one of the themes, well, first of all, there was a  
12 letter written after that meeting that kind of reports  
13 on the proceedings so that I think would have a more  
14 accurate statement of what occurred.

15           But what I recall was it was my effort to try  
16 to identify the issue, the problem, the concern, of the  
17 trust and over the years, there had been controversies  
18 about economic reports, declarations, interrogatories,  
19 and the rules pertaining to them.

20           Now there were controversies about disembark  
21 claims and what we call NAVSEA claims, sailors on  
22 shipyards going aboard ships. That was my first  
23 opportunity to try to convince Mr. Mandelbrot that this  
24 was all part of a single concern that the trust had.

25           The disembark claim simply was the latest

1 manifestation of it, although it was probably the most  
2 serious manifestation because it had grown in size and  
3 the substance of it was rife with difficulties, you  
4 know, the false signatures, the duplicated notarial  
5 acknowledgments and the reversals that we were just then  
6 discovering.

7           And I recall saying because he had produced at  
8 that meeting a 1977 General Accounting Office report  
9 that he insisted showed that just focusing now on the  
10 disembark claims, that yes, uniformed sailors did get  
11 off ships and work their regular duties in shipyards,  
12 and based upon my review of that document then and after  
13 the document showed just the opposite, but setting that  
14 off to one side, I said that our concern, and this is  
15 really what was within the competence of the trust  
16 processors, was to determine whether a witness that was  
17 given in support of a claim, providing evidence in a  
18 claim could, under the circumstances, credibly tell the  
19 trust in a believable way what a particular, now  
20 deceased sailor did on a particular day at a particular  
21 time at a particular place, whether it be a disembark  
22 claim, got off the ship and worked 30 days and here were  
23 all the variety of things that the person did, or what  
24 we call a NAVSEA claim, a shipyard worker got on the  
25 ship and not only got on the ship but worked in a

1 certain part of the ship and worked there for the entire  
2 period of the time that the NAVSEA records showed that  
3 that ship was present in the shipyard even though there  
4 might have been 10 or 15 other ships in the shipyard at  
5 that time.

6 I identified that as the core of our concern,  
7 and there was a continuity going back to almost the  
8 beginning of the relationship at least at the point  
9 where JT Thorpe got involved.

10 I recall, for example, an e-mail from Laura  
11 Paul, and I actually remember the name of the case  
12 because the case was the Snyder case, where Laura Paul  
13 had written to Mr. Mandelbrot that the declaration you  
14 submitted has to be acceptable according to the rules of  
15 evidence, you know, that lawyers customarily follow.

16 That basically was the heart of it so we were  
17 like ships passing in the dark, and it was just becoming  
18 increasingly clear that we were talking about one  
19 problem, and he was talking about another problem. His  
20 problem was what do I do about these disembark claims,  
21 how do I get those resolved.

22 Our problem was what do we do about the  
23 problem that gave rise to the economic report  
24 controversies, that gave rise to the disembark claims  
25 and now is giving rise to the NAVSEA claim and seems to



1 be getting bigger and bigger and bigger, and we did not  
2 have a meeting of the minds at that meeting. I was  
3 really quite struck by this, on what the problem was.

4 So from my perspective, we exerted enormous  
5 efforts trying to resolve that core issue with  
6 Mr. Mandelbrot, and I think what he expressed is that  
7 from his point of view, we were not exerting sufficient  
8 effort to resolve his problem, which was what do I do  
9 about these claims that I filed.

10 And I mean at that particular time, we had had  
11 on file since April of 2011, guidelines with regard to  
12 declarations. I am of the view that those guidelines  
13 actually perpetuated standards that the trust had been  
14 applying for some time before that time, and the filings  
15 that we got in say December, January and February 2012  
16 were clearly evident that they simply did not embrace  
17 the legitimacy of those guidelines.

18 They were completely outside the intent or the  
19 effort to get uniformity on obtaining believable witness  
20 foundations so that the trust could know how did the  
21 witness know this information and how under these  
22 circumstances can the trust be confident that that  
23 information is reliable. So that was really the heart  
24 of that meeting.

25 Q. Hadn't all the disembark claims been filed in

1 the years 2010 and 2011?

2 A. The disembark claims had been filed starting  
3 in 2010 and 2011. We were getting disembark filings in  
4 late 2011 and 2012.

5 Q. That's not what your motion says. So I'll  
6 show it to you. I've got it highlighted and a big  
7 square written on it.

8 MR. MOLLAND: Do you want to make that an  
9 exhibit?

10 MR. DAVIS: No, I don't.

11 Q. So you're now saying that disembark claims  
12 continued to come in 2012?

13 A. No, I said we were getting filings in  
14 disembark claims.

15 Q. What's the difference?

16 A. Late 2011, 2012.

17 Q. Was Mr. Mandelbrot's firm filing new disembark  
18 claims in 2012?

19 MR. MOLLAND: Vague and ambiguous as to 'new'.

20 THE WITNESS: And the answer to that specific  
21 question in disregarding filings that he was making in  
22 existing claims, I don't know.

23 BY MR. DAVIS:

24 Q. Claims, but disembark claims had been around  
25 since at least 2010, correct?

1           A.    A few had made it through the screen before  
2 this became identified as a problem.

3           Q.    Did the trust ever give a single final  
4 determination on a disembark claim?

5           MR. MOLLAND:  Objection.

6           THE WITNESS:  Every deficiency notice is a  
7 potential final determination.  That's the way that --  
8 excuse me.

9           MR. MOLLAND:  Can you let him finish?

10          MR. DAVIS:  He is finishing.  I haven't  
11 stopped him.

12          THE WITNESS:  Excuse me.  The way the system  
13 works is that it is the responsibility of the claims  
14 processor to identify for the benefit of the submitting  
15 firm what that processor needs to qualify the claim.

16                 It then is incumbent upon the submitting firm  
17 to decide whether to try to supply that evidence,  
18 withdraw the claim, or make a statement to the trust  
19 that this is all the evidence that's going to be  
20 submitted, please evaluate it in individual review or  
21 please make an offer that I can accept or reject.

22                 And that's why I say that every deficiency  
23 notice is potentially a final determination because it  
24 essentially puts in the hands of the submitting firm the  
25 ability to reach that result.