

2016 WL 6915740 (D.Minn.) (Partial Expert Testimony)
United States District Court, D. Minnesota.

Boris A. MIKSIC, Plaintiff,

v.

BOECKERMANN RESTROOM MAYER, LLC, a Minnesota limited liability company, f/k/a Johnson,
West & Co., P.L.C., Boeckermann Restroom Mayer, P.A., and Johnson West & Co., P.L.C., Defendants.

No. 15-cv-00539-JRT-BRT.

May 20, 2016.

Deposition of Arthur H. Cobb

Case Type: Contracts >> Breach

Case Type: Contracts >> Professional Services

Case Type: Fraud & Misrepresentation >> Negligent Misrepresentation

Case Type: Professional Malpractice >> Accountant

Case Type: Fiduciary Duty >> Banking

Jurisdiction: D.Minn.

Name of Expert: Arthur Howell Cobb

Area of Expertise: Accounting & Finance >> Accountant

Representing: Plaintiff

APPEARANCES

On Behalf of the Plaintiff: Gregory J. Stenmoe, Esquire, Briggs and Morgan, P.A., 2200 Ids Center, 80 South Eighth Street, Minneapolis, MN 55402, gstenmoe@briggs.com.

On Behalf of the Defendants: Michael T. Berger, Esquire, Hinshaw & Culbertson LLP, 333 South Seventh Street, Suite 2000, Minneapolis, MN 55402, mberger@hinshawlaw.com.

MAY 20, 2016

9:00 A.M.

The following is the deposition of ARTHUR H. COBB taken before Mari Skalicky, RMR, Notary Public, pursuant to Notice of Taking Deposition, at 333 South Seventh Street, Suite 2000, Minneapolis, Minnesota, scheduled to commence at approximately 9:00 A.M., MAY 20, 2016.

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PROCEEDINGS whereupon, the deposition of ARTHUR H. COBB was commenced at 9:00 A.M. as follows:

ARTHUR H. COBB, after having been first duly sworn, deposes and says under oath as follows:

EXAMINATION

BY MR. BERGER:

Q. Mr. Cobb, could you please state your full name for the record.

A. Arthur Howell Cobb.

Q. Do you have any other names or aliases you go by?

A. No. Although, I'm sure I'm referred to by other phrases and things. There are a number of kids in the neighborhood that call me Old Man Cobb. Other than that, no.

Q. Mr. Cobb, I represent Boeckermann, Restroom and Mayer, or BGM, in this lawsuit brought by Mr. Boris Miksic. Who are you retained by in this litigation?

A. My firm was retained by Briggs and Morgan.

Q. When were you first retained?

A. Approximately September of 2014.

Q. What were you retained to do?

A. Retained to make an analysis of documents and information related to the claims initially by Mr. Miksic and/or by Cortec, related to an absence of tax filings and related issues.

Q. Absence of tax filings. Are you referring to any specific forms?

A. I am.

Q. Which forms are those?

A. FBAR 5471, 320 and 320-A.

Q. Any other forms that you're referring to in your, either your expert opinion report or in your work for Briggs and Morgan?

A. Not that come to mind.

Q. Were you hired to advocate for Mr. Miksic?

A. Absolutely not.

Q. Were you hired to provide an unbiased opinion based on the facts and your professional background?

A. Yes.

Q. Have you done that?

A. Yes.

Q. Did you reach an expert opinion regarding the defendant's work for Mr. Miksic?

A. I did.

Q. When did you first reach that opinion?

A. Early 2016.

Q. You say early 2016. Is that January, February, or is it a little later?

A. In a final form, it's a little later. Be February, March.

Q. When did you first reach your opinion?

A. I don't recall specific times. The opinions have developed and become more substantiated. I don't remember initial time.

Q. Sometime in early 2016, though?

A. I believe so.

Q. How many times has your firm been retained by Briggs and Morgan?

A. I would guess over time, 30 or more and it is purely a guess. It's easy to find out, but I don't know.

Q. And during those retentions, are you always retained by Briggs and Morgan as an expert? That's a bad question.

A. I understood it, though. I don't recall an instance where we were not retained by Briggs, as opposed to Briggs as a client.

Q. My question was bad, and I apologize.

My question was: In all the times that your firm has been retained by Briggs, is it you the one that's being retained as the expert?

A. I don't know how to answer that as asked but, no. I think there have been retentions where I was not the expected testifying expert.

Q. Did you ever work directly for Mr. Miksic or his companies?

A. No. Not directly.

Q. Have you ever worked indirectly for Mr. Miksic and his companies except for this engagement?

A. Kind of.

Q. Can you explain that?

A. I was consulted by Gray -- an attorney at Gray Plant, if I am remembering correctly, as to a possible claim that Cortec and/or Mr. Miksic would have or may have related to a fire at a Wisconsin facility. The phone call, by my recollection, was less than half an hour.

Q. Was that Mr. John Fitzgerald at Gray Plant?

A. I have no idea.

Q. Was that the fire at the -- I think it's the Scener (phonetic) facility?

A. I don't know. I don't recall. We never did any work. Just had the discussion.

Q. Have you ever worked either for or against the defendants in this case?

A. Yes.

Q. Can you elaborate?

A. Sure. And I'm taking your words generally. I was involved in, I think, three, but related single-topic engagements regarding financial forecast or projections prepared or opined on by Brad Mayer. And at that time I recall that he was a partner in BGM.

Q. Do you know the year of those engagements?

A. I don't know the year. It's considerably -- a considerable time ago.

Q. More than a decade?

A. Yes. Probably more than two decades.

Q. Do you know Mr. Todd Taggart?

A. I do not.

Q. Do you know if you've ever worked with or against Mr. Taggart?

A. I do not. Although I read the first, maybe 10 pages of his deposition. And he had identified that he had worked with me at least or had contact with me at least by way of a telephone call.

Q. What did you do to prepare for your deposition today?

A. I read various materials.

Q. What did you read?

A. I read documents in our files and I read our report. I read Mr. Taggart's report.

Q. Did you also read Mr. Taggart's deposition?

A. No. Other than the first 10 pages.

Q. When did you receive Mr. Taggart's deposition?

A. Yesterday at about 5:00.

Q. Aside from reading and reviewing documents, did you do anything else to prepare for today's deposition?

A. Not really. But I had a meeting with Mr. Stensmoe in which he summarized some of the topics from Mr. Taggart's deposition.

Q. When did you have that meeting?

A. Wednesday.

Q. How long did that meeting last?

A. Approximately 20 minutes.

Q. Aside from the topics discussed during Mr. Taggart's deposition, did you talk about anything else?

A. No. Typewriters.

Q. Typewriters?

A. We talked about typewriters. It was very important.

MR. STENMOE: We can explain at another time.

A. Even though it's very important.

(Exhibit No. 82 was marked for identification by the Court Reporter.)

BY MR. BERGER:

Q. Mr. Cobb, I'm handing you what's been marked as Exhibit 82. Do you recognize this document?

A. Yes, I do.

Q. And this document is your defendants' notice of deposition of Arthur H. Cobb?

A. No. It's not mine. It's a defendants' notice of taking of deposition of Arthur H. Cobb.

Q. I thought that's what I said, but if I didn't -- if you notice on the bottom of the first page, it asks for production of documents and tangible items specified in Exhibit A. Do you see that?

A. Yes.

Q. If you turn to Exhibit A, which is the second-to-the-last page, there is a list of documents, requested documents. Do you see that?

A. Yes.

Q. Did you bring the requested documents with you today?

A. In part.

Q. In part. What didn't you bring?

A. I didn't bring all documents related to any fees or expenses incurred or charged by the deponent.

Q. Why not?

A. We do not provide copies of our time records.

Q. And is that what you brought with you today in this -- the documents that you brought with you, is that what you brought with you today in that banker's box sitting behind you?

A. And the -- and the ring binder here, yes.

Q. Do you mind if I take a look at what you brought?

A. Not at all.

Q. Let's go off the record for a second.

(Discussion off the record.)

BY MR. BERGER:

Q. Mr. Cobb, we just took a break off the record, and I looked at a portion of your file. Except for your billing records which you have not brought with you today, has there been anything else removed from your file?

A. Even the billing records haven't been removed from my file. I did bring certain of my billing records.

Q. Was there anything else that -- is there anything that has been removed from your file?

A. No.

Q. Mr. Cobb, are you a lawyer?

A. No.

Q. Have you gone to law school?

A. No.

Q. You were not asked to offer any legal opinions in this case, were you?

A. I was not.

Q. Are you capable of opining as to legal issues in this case?

A. Not that come to mind.

Q. What is your area of expertise?

A. I'm a certified public accountant. And my practice is comprised of litigation support and capital finance, with the litigation support being the great majority of the work.

Litigation support work breaks down somewhat in order of frequency, especially more recently, to financial damages, lost profits, patent, intellectual property damages.

And the next would be valuation of equity interest, typically. And the next, professional liability.

Number of years ago, most of the professional liability that we did had to do with disclosures, investment banking, broker-dealer disclosures and the like. More recently, more of our professional liability has related to accountants and accountants' practice.

After that, we're involved in a number of issues, typically in litigation: role and responsibility of the board of directors, their business issues. Within those, we deal frequently with business issues, including marketing, operating, financial, taxation, securities offerings issues.

Q. When you talked about more recently, you've been involved on issues relating to accountants and accountant practices, what does that mean?

A. We were retained from time to time to assist representation of parties with claims against accounting firms, and from time to time, to assist the defense of accounting firms that have had claims made against them.

Q. Any of those claims involve claims relating to preparation of personal income taxes?

A. Yes.

Q. When was the last time you took an engagement to opine on an accountant's practice related to preparation of personal income tax forms?

A. Where that was the key issue, probably not in the last 10 years. Preparation was a key issue.

Q. Was that a case that -- was it in litigation?

A. Yes.

Q. What was the name of that case?

A. I don't recall.

Q. Was it venued in state or federal court?

A. State court in Iowa.

Q. What were the names of the parties?

A. I don't recall as I sit here.

Q. How was the case resolved?

A. It ultimately settled.

Q. Was it filed, do you know?

A. I believe it was filed.

Q. What were the issues involved in that case?

A. There were claims as to failures to properly include revenues and losses. And another case more currently came to mind.

Q. Let's stick on the original case first. Revenues and losses, is this for an individual income tax filing, or is this for a business filing?

A. It was for both.

Q. The state or federal returns?

A. Federal.

Q. And let's talk about the case that you just remembered. What was that?

A. Looking at issues related to investment in securities structured to be tax shelters, as to the validity of the tax shelters, therefore, the deductibility and/or inclusion of losses.

Q. Was that a case that was in litigation?

A. Yes.

Q. In state or federal court?

A. I think federal.

Q. What jurisdiction?

A. Either or both Montana and New York.

Q. Who were the parties involved?

A. I don't recall the names as I sit here.

Q. Do you know what year?

A. Probably about five years ago. KPMG may have had some involvement. I don't remember specifically.

Q. Did you offer any testimony in that case?

A. No.

Q. Were you deposed in that case?

A. No.

Q. Do you know how the case was resolved?

A. I don't.

Q. In that case, were there claims made against accountants?

A. I believe so. And there was a case that in my mind is companion, although it was different parties.

Q. Let's go back. I want to stick on the second one first.

A. All right.

Q. The claims made against the accountants, what were those claims?

A. The accountants had not properly conducted due diligence related to the nature of the tax shelter, and therefore, the inclusion or deductibility of the related losses.

Q. And what's the companion case that you just mentioned?

A. Similar issues, is why in my mind it's companion.

Q. And was that case, the new case that you just remembered, was that state or federal court?

A. I don't know that it was ever filed.

Q. Who were the parties involved?

A. I don't recall the names.

Q. What year was your involvement?

A. Again, about four or five years ago.

Q. Who retained you for that case?

A. Two different Des Moines, Iowa law firms.

Q. What were their names?

A. I don't recall as I sit here.

Q. Going back to the second case that was either venued in Montana or New York, who retained you in that case?

A. Two law firms, one of them may have been Ross, Orenstein and Baudry. My recollection on that is not clear as I sit here.

Q. The first case that you mentioned, who retained you in that case?

A. I don't recall.

Q. Any other cases in which you recall providing an opinion relating to an accountant or an accountant's practices?

A. Sure.

Q. Relating to taxation issues?

A. Yes. I'm looking at page 43 of my report.

Q. Okay.

A. Next-to-the-last entry, Matthew Serrino and Lucille Serrino, et cetera, et al.

Q. What did that case involve?

A. It involved primarily audits conducted by PricewaterhouseCoopers, and reliance on those audits by PricewaterhouseCoopers in looking at valuation issues for purposes of estate and tax planning.

Q. Were the claims related to the audits or related to the tax planning?

A. Both, but the claims that I was more closely involved with were related to the audit.

Q. And you opined on the audit issues only?

A. From time to time, I opined on various of the issues, but in terms of deposition and trial, that's correct.

Q. Who were you retained by in that case?

A. Morvillo Abramowitz.

Q. Do you remember being deposed in the Genmar matter in 2012?

A. I do.

(Exhibit No. 83 was marked for identification by the Court Reporter.)

BY MR. BERGER:

Q. Mr. Cobb, do you recognize this transcript?

A. No. I can read what it is.

Q. And does this Exhibit 83 on the first page say it's the deposition of Arthur H. Cobb taken on December 7, 2012?

A. It does.

Q. Okay. If you turn to the second page, top right-hand corner page 7, do you see that?

A. I do.

Q. There is a question on line 10, it says, "Okay. What is your area of expertise?" Do you see that?

A. I do.

Q. And your recitation of your expertise, anywhere in there does that include any discussion of any tax expertise?

A. Not specifically. It's very difficult, though, to make considerations of valuation of business especially for an S corporation, an LLC or partnership and not specifically consider taxation.

Looking at issues of management, it's very difficult to go deep into issues of management without considering tax positions, financial predictions and financial forecasts, each, of course, generally speaking at least, have considerations related to taxation.

Q. When you're speaking about taxation, you're talking about taxation generally, aren't you, and not preparation of individual tax returns?

A. I am. That's true.

(Exhibit No. 84 was marked for identification by the Court Reporter.)

BY MR. BERGER:

Q. Mr. Cobb, I've handed you what's been marked as Exhibit 84.

A. All right.

Q. I'll represent to you that this is a copy of your CV from your report, and your report at page 45. Do you recognize this document?

A. I do.

Q. Is your CV complete and accurate in all respects?

A. No.

Q. What is not complete or accurate about it?

A. There are many positions that I've had, many additional things that would be -- could be included here to make it complete. It's a summary, as I think most resumes are.

Q. Well, let's talk about what specifically is missing from your resume that you would think would be relevant to your opinion in this case.

A. I don't -- I don't know how to answer that. That's -- do you want me to list my previous positions? I can do that if that would be helpful.

Q. Let's just keep this simple in terms of, you're listing previous positions at Cobb KPMG, Touche Ross, and Pricewaterhouse & Co. Does that list all of your previous employers prior to Cobb & Associates?

A. No.

Q. What is missing?

A. I was employed by Suburban Hospital in Bethesda, Maryland. I was employed by a Chinese restaurant in Deerfield, Illinois. I was employed by Bucky's Boy's Club in Bannockburn, Illinois. I was employed by the G.R. Kinney Shoe Company. I was employed by the University of Iowa. Those are the employments that come to mind. I was employed by the American University.

So these are specific employments. Board positions, for example, are not included here either.

Q. Do you have different resumes or different CVs for different engagements?

A. Sometimes. This is the general resume, but I have resumes that identify more specifically matters, especially by industry. Sometimes by function. For example, accountants' liability.

Q. What was the last time you updated Exhibit 84?

A. I don't know. Probably two years ago.

Q. You mentioned American University. What do you do for American University?

A. I participated in research regarding economic issues, including issues regarding consumption, personal finance, business, business combination, and overall economics.

Q. When you were employed by American University, did you have a title?

A. No.

Q. How long did that employment last?

A. Three months.

Q. What years or what year rather?

A. 1965.

Q. Before you went to the University of Iowa?

A. Yes.

Q. Now, you're currently with Cobb & Associates, is that correct?

A. Yes.

Q. You worked there since 1994?

A. Yes.

Q. What is the nature of Cobb & Associates?

A. We are licensed as a firm of certified public accountants. We practice in two areas: capital finance and litigation support, with litigation support being the great majority of the work that we do.

Q. Has that always been the nature of Cobb & Associates?

A. It has.

Q. Prior to Cobb, you worked for Cobb, Ludington & Associates, is that correct?

A. Yes.

Q. What was the nature of that business?

A. It was a firm licensed as a firm of certified public accountants practicing in two areas: litigation support, and capital finance, with litigation support being the majority of the business.

Q. Prior to that business, you worked for Churchill Advisors?

A. Yes.

Q. What was the nature of that business?

A. Churchill Advisors was involved in capital finance and litigation support.

Q. Same sort of business that Cobb & Associates is involved in?

A. Yes.

Q. And then prior to Churchill Advisors, you moved to Churchill Advisors in 1985, you worked for KPMG. Is that correct?

A. That's correct. I was a partner in KPMG.

Q. What did you do at KPMG?

A. I was involved in a practice that included capital finance, cost accounting, and litigation.

Q. What did you do for litigation at KPMG?

A. We assisted representation. Our clients typically were litigating attorneys, assisting representation of plaintiffs and defendants in litigated matters, litigated or arbitrated.

Q. Prior to KPMG, you were at Touche Ross & Co.

A. I was.

Q. What did you do at Touche Ross and Co.

A. I provided services in areas of capital finance, cost accounting and litigation support.

Q. Pretty much what you do now?

A. No. At Touche Ross, capital finance was certainly the majority of the practice, but ignoring magnitudes, very similar to what Cobb Associates does.

Q. And then from 1974 through 1977, you were at Pricewaterhouse and Co.

A. I was.

Q. What did you do at that business?

A. I was a member of the auditing department, assisting the conduct of engagements by application of Generally Accepted Auditing Standards to assist determinations of the fair presentation, conformance with Generally Accepted Accounting Principles of various clients.

I had a brief stint in the tax department -- one week by my recollection -- and then I was involved in consulting in three areas: litigation support -- or provision of services in three areas: litigation support, capital finance and cost accounting.

Q. As part of your professional career that we just walked through, did you do any work in tax preparation?

A. Not in preparation, but throughout, there has been a lot of work in taxation. I've not prepared tax returns, save perhaps the one week at Pricewaterhouse.

Q. That one week at Pricewaterhouse, did you prepare any tax forms for individuals?

A. Possibly.

Q. Do you recall?

A. Not as I sit here today.

Q. What experience do you have in preparing form 1040?

A. I don't recall specific experience preparing 1040's other than for myself and my wife.

Q. Do you have any experience in preparing form 5471?

A. I do not.

Q. What triggers filing requirements for form 5471?

A. Ownership of a foreign corporation. And if you look at my report, on page 16, 5471 is required by any U.S. person who controls a foreign business entity.

Q. What is the filing deadline for form 5471?

A. I don't recall as I sit here.

Q. How is it filed?

A. It can be filed paper or electronic.

Q. Bad question. Which governmental entity does it go to?

A. I think it goes to the IRS. It may go to the Treasury Department. As I sit here, I recall it goes to the IRS.

Q. Form 3520 and form 3520--A what triggers a filing requirement for those forms?

A. Individuals with foreign trusts in which they've created a foreign trust, transferred money or property directly or indirectly to a foreign trust, or has received directly or indirectly distribution from a foreign trust.

Q. Are those forms filed by the individual or filed by the trust?

A. It's my understanding that they're the responsibility of the individual.

Q. Do you know what the name of those forms are?

A. I've always heard them referred to as 3520 and 3520-A.

Q. Do you know what the filing deadlines are for those forms?

A. I don't recall as I sit here.

Q. Do you know what entity they're filed with?

A. Again, I recall that they're filed with the IRS. If it's not the IRS, it's the Treasury Department.

Q. Have you ever prepared Forms 3520 or 3520-A?

A. I have not.

Q. If I ask you about an FBAR, do you know what form that refers to?

A. I do.

Q. What form is that?

A. An FBAR is the report of foreign bank accounts.

Q. And then it has some TD numbers associated with it?

A. TDF 90.22.1.

Q. What triggers the FBAR filing requirements?

A. Individual holding, controlling foreign bank accounts.

Q. Is there a dollar number threshold?

A. There is. \$10,000.

Q. Is that individual account or aggregate?

A. I understand that it's aggregate.

Q. What's the filing deadline for an FBAR?

A. I don't recall as I sit here.

Q. Do you know if it's filed with a 1040 tax return?

A. I think that it is. I think that both FBAR and 5471 are typically filed with the tax return.

Q. Have you ever filed an FBAR?

A. I have not.

Q. Have you ever prepared an FBAR?

A. I have not. I have been an advisor and an analyst of the filing of FBARs, but I have not filed FBARs myself.

Q. What does that mean, you have been an advisor and an analyst?

A. I've had engagements regarding the requirement to file FBARs, the necessity in effect of filing FBARs, and 5471s.

Q. What was the last engagement you had to act in that capacity?

A. Summer and fall of 2015. Perhaps a little bit spilling into 2016.

Q. Was that engagement related to this litigation?

A. No.

Q. That engagement occurred after you were retained in this litigation, though, is that correct?

A. Actually, at least conversationally, it started significantly before. But the intensity of it was similar time frame to this engagement.

Q. And what did you do as part of that engagement?

A. I acted, advising an individual with significant international financial and business interests as to the existence of requirements related to disclosures of those interests and investments as part of U.S. tax filings. And specifically identified there were FBARs and 5471s, and I advised the extreme prudence of filing those.

Q. You advised the individual as opposed to an accountant or an accounting firm?

A. Yes.

Q. Did you prepare the FBAR 5471 filing for that individual?

A. No. I think those were prepared by the individual's law firm, if I'm remembering correctly.

Q. Do you recall any other engagements where you acted as either advisor or provided advisory services relating to FBARs or 5471 forms?

A. Yes.

Q. Tell me a little bit about those engagements.

A. Similar. Well, it was some differences. As part of an engagement, I advised legal counsel and the individual of the propriety of fully disclosing international investments in financial accounts and business interests. And then to the extent that those existed, there would need to be filings of appropriate internal revenue service forms, including related to the financial accounts and any business investments.

Q. When was that engagement?

A. Probably six, seven, eight years ago, in that time frame.

Q. Did you prepare any FBARs or form 5471s as part of that engagement?

A. I did not.

Q. Have you ever prepared an FBAR or form 5471?

A. No.

Q. Do you recall any other engagements where you acted as an advisor regarding Forms 5471 or FBARs?

A. Not as I sit here. I've had engagements where I've reviewed or analyzed information included in 5471s, but I was not in a position of being an advisor or a preparer.

Q. Do you recall any engagements in which you've acted as an advisor or a preparer of Forms 3520 or 3520-A?

A. No.

Q. And you've never prepared those forms, is that correct?

A. That is correct.

Q. Going back to Exhibit 84, your resume, you graduated from the University of Iowa in 1972?

A. I did.

Q. Did you obtain any honors?

A. I don't recall. I was a member of Beta Alpha Psi, the honorary accounting group.

Q. Did your bachelor's of business administration have a particular focus?

A. Yes, it did.

Q. What was that focus?

A. I had a major in accounting and a minor in quantitative methods, which is math and statistics applied to business and finance, although I can't tell you that Iowa had a formal minor program, at least at that time.

Q. As part of that undergraduate degree, bachelor's of business administration, did you take any coursework in tax preparation?

A. I did.

Q. How many credits?

A. I don't know.

Q. More than 10?

A. No.

Q. More than five?

A. Possibly. I think the credits were in groups of threes.

Q. More than one course?

A. I think so, but I don't remember specifically.

Q. A long time ago?

A. Obviously tax filters through other accounting issues as well. Are you calling me old, with this "a long time ago"? Of course, it was a long time ago.

MR. BERGER: Let the record reflect we were laughing.

A. 1972.

(Discussion off the record.)

BY MR. BERGER:

Q. Your resume also reflects that you graduated with a master's of arts degree from the University of Iowa in 1974, is that right?

A. Yes, it does.

Q. Did that master's of arts have a focus?

A. Yes, it did.

Q. What was that focus?

A. It had a major in accounting and a minor in quantitative methods. And again, I can tell you specifically that Iowa had a formal minor program at that time.

Q. Did that, was that a one- or two-year master's program?

A. Two.

Q. Did you go right from your undergraduate degree into the master's program?

A. I did.

Q. As part of your master's program, did you take any coursework in tax preparation?

A. Possibly, but probably not.

Q. You are also a certified public accountant?

A. I am.

Q. What year did you become certified?

A. I don't know. I guess '75, '76.

Q. To maintain -- and you're still a CPA now, is that correct?

A. I am.

Q. To maintain that license, do you need to take any continuing education credits?

A. Yes.

Q. Have you taken any continuing education credits related to the preparation of tax returns for individuals?

A. I have.

Q. Tell me about those classes.

A. I can't tell you about a number of them. Continuing education classes, starting from 1974 included information, considerations of taxation, and the like. More recently, I have -- in seminars, attended seminars regarding tax preparation, especially related to foreign tax accounts and foreign investment.

Q. When did you go to those? Tell me about those seminars.

A. The one that I have in mind is within the last year.

Q. What was the name of that seminar?

A. I don't recall.

Q. Where was it held?

A. In Minnesota.

Q. Where in Minnesota?

A. Probably Minneapolis.

Q. Where was the facility?

A. Oh, wait. I'm not so sure. Maybe Atlanta, Georgia or a suburb of Atlanta.

Q. Was it presented by an organization?

A. No. It was presented by an individual sponsored by the AICPA or the Minnesota Society of Certified Public Accountants or the Georgia society in conjunction with the AICPA.

Q. This was in the last year?

A. Within the last year.

Q. What is the name of the individual that presented it?

A. I don't recall.

Q. Do you have any of those course materials still?

A. Possibly.

Q. Have you taken any other seminars related to the preparation of income tax returns for individuals?

A. I'm sure I have over time. They don't come to mind. I would offer that it was not a key area of my continuing education, that being tax preparation or taxation, which I'm taking together.

Q. Do you consider yourself an expert in tax preparation or taxation?

A. In some areas.

Q. What areas?

A. From time to time, I've had significant expertise in taxation issues related to not-for-profit corporations and the subsidiaries of not-for-profit corporations. I've been integrally involved in the development and analysis of various tax-sheltered investments, including real estate limited partnerships, equipment limited partnerships, research and development limited partnerships, analyzing the tax ramifications, the deductibility, timings of deductibility and tax returns.

I also have expertise related to the taxation of S corporations, especially in relationship to valuing equity interests in S corporations.

I also have expertise in the accounting standards, including accounting standards as they apply to taxation. I also have expertise as regards Treasury Circular 230.

Q. Anything else you can think of?

A. I have expertise in the reading and analysis of tax returns, which just brought to mind another tax preparation issue engagement, if you're interested. Analyzing the information, the completeness of tax returns.

So do you want the other engagement?

Q. Let me -- I will ask in just a second on that issue, but let me ask you this.

A. All right.

Q. What is your expertise in the accounting standards related to taxation?

A. I have expertise in the professional standards, including the general standards, which apply to certified public accountants in practice, whether it's tax or otherwise.

And I'm looking at my report. Those are summarized at page 12, and the general standards apply broadly. There also are specific standards related to more individualized services of accountants, including auditing and review. I am familiar with those standards and how those standards impact accountants and accountants practicing in groups or firms.

I'm familiar with the AICPA statements on tax standards. I have conducted analyses of those; the application of those accounting standards per se.

I have served on the professional ethics committee of the Minnesota Society of Certified Public Accountants. In that context, did reviews, analysis of accountants in practice, and included issues related to audits and review and taxation.

And my knowledge of the general standards was important in those and was enhanced in those undertakings.

Q. You mentioned your expertise in accounting standards related to taxation. How did you gain that expertise?

A. Through my education, through continuing education, through my experience in analyzing tax returns and tax return information for a significant number of years, for a number of engagements, a number of industries, a number of individuals.

Q. But not in preparation of tax returns or tax forms yourself?

A. I am not a tax preparation person.

Q. Through education, what education gained you the expertise in accounting standards related to taxation?

A. Well, first, the accounting standards that relate to taxation include the general standards. I'm very familiar with the general standards. I've analyzed the general standards. I've applied the general standards in my own practice. I've applied the general standards in conducting reviews and analysis of KPMG offices of KPMG engagements.

I've used the standards, applied the standards in various litigated matters, various advisory matters over a long period of time.

The same applies for the AICPA professional standards that are more focused, for example, the auditing and review standards. I also, evolving over time, have read and analyzed, understood, applied the various statements and standards for tax services, more recently codified into seven standards.

And I have applied those, made considerations of those in various engagements.

Q. So if I understood your answer, you gained expertise in taxation standards based on your familiarity with the general standards, is that correct?

A. Because the general standards apply to all tax engagements.

Q. Again, my question was: You gained expertise in taxation standards based on your familiarity with the general standards, is that correct?

A. In part, yes. It's part of my basis.

Q. Anything else that I missed?

A. Regarding the general standards, I don't -- I don't know what you paid attention to but I don't know what else you want to know.

Q. Fair enough. My question is, you gained expertise in the taxation standards based on your familiarity with the general standards, you said in part. What else?

A. That's correct. Okay. The general standards apply to tax practice. So do the statements of standards for tax services, which are not part of the general standards.

Also, in instances, there are times where the auditing and review standards can also impact tax practice. So I'm familiar with those auditing review standards. I'm familiar with the tax standards. And I'm also familiar with the Internal Revenue Service, various of their publications, but including the Treasury Department Circular No. 230.

Q. You mentioned your expertise in taxation was related to your analysis of the AICPA tax standards. Is that correct?

A. Correct.

Q. And what did you -- what engagement were you involved in where you had to analyze those tax standards?

A. I was involved in an engagement recently that included specific consideration of the statements and standards for tax services. The Iowa engagement we touched on, had specific considerations of the standards for tax services.

Q. Did any of those engagements or the analysis of the AICPA tax standards relate to how the standards apply to the preparation of individual tax forms?

A. Yes.

Q. Which engagements or analysis did you do that gave you that expertise?

A. I think each of those I just discussed.

Q. Okay.

A. There are other issues as well; each of those.

Q. What are the other issues?

A. Well, it was not only the tax preparation, but also tax advice, issues of due diligence.

Q. So is it fair to say that you gained expertise in both the general standards as they relate to tax preparation and the AICPA's tax standards through your review of those standards and not through their direct application through tax preparation yourself?

A. Well, it's an unfair question. As you should know, I certainly did gain familiarity with those with reading those, reviewing those, analyzing those, and importantly, in the context of various engagements, not engagements where I was the tax preparer, but making considerations of their impact on tax preparation and on the tax forms that had been prepared.

And I would also refer back to the importance of the auditing and review standards, especially in relationship to this engagement as well.

Q. And you have mentioned engagement several times. Are those the engagements that we talked about earlier in this deposition?

A. There are. And as I said, there may be others, but those were the ones that came to mind. Other than the other one that I mentioned that you were going to come back to.

Q. Thank you. And what was that engagement?

A. We had an engagement in which we -- in which I made a reading and analysis of tax returns, individual tax returns for purposes of determination of the completeness and accuracy of the reporting of the tax returns, related preparation. Actually been involved in that, a number of engagements, but this one particularly comes to mind.

Q. So reviewing the completeness of the reporting, does that mean completeness of the returns, the information included in the returns?

A. The completeness and the accuracy of the information included in the returns.

Q. Did any part of that engagement address how the accountants acquired the information used to prepare the returns?

A. Generally speaking, yes.

Q. What do you mean by that?

A. That within the engagement, there were considerations of how the returns had been prepared.

Q. Is that a case that was litigated?

A. I think it was at least started, yes.

Q. Where was it started? What jurisdiction?

A. I don't really know but very sure it would have been Hennepin County.

Q. What year?

A. Say approximately 10 years ago.

Q. Who were the names of the parties?

A. I don't think I should tell you that.

Q. If it was started in Hennepin County, then it would be public information. Can you tell me the names of who the named parties were in the litigation?

A. That doesn't mean that I have a right to tell you that because I don't know if actually that it was started.

Q. Were you deposed in that case?

A. I was not.

Q. Did you testify in that case?

A. I did not.

Q. Who retained you in that case?

A. Meshbesh and Spence.

Q. That case was 10 years ago in Hennepin County?

A. If it was filed, I think it would have been filed in Hennepin County.

Q. Did you prepare an expert report in that case?

A. No.

Q. Outside of the seminar we talked about you attending in Atlanta relating to tax preparation, can you recall any other seminars that you attended relating to tax preparation?

A. Not specifically. I'm sure there have been a number of them. Not a large number but a number of them.

Q. If you can't recall them, does that mean you haven't attended any in the last 10 years?

A. No.

Q. You mentioned that the AICPA audit standard can impact on the AICPA tax standard. What do you mean by that?

A. I didn't say that, but it can impact on the -- on tax practice. So I'll speak hypothetically, although it parallels this matter. Firm of certified public accountants are conducting audits or reviews of a company, they need to follow the various professional standards regarding auditing review.

Those standards include, among others, gaining an understanding of an entity's business, understanding the entity's organization, operating characteristics, nature of its assets, liabilities, revenues, expenses. This would ordinarily involve a general knowledge of any of these production distributions, operating locations and material transactions with related parties, including owners.

And typically, that accountant's understanding of any of these businesses ordinarily obtained through experience with the entity, its industry or any of the industry's personnel. So if you and I are conducting a review, summary, we need to understand the entity's business and its ownership.

Q. Based on the audit standard?

A. Based on the audit standard. It's also very good practice across the board. That knowledge should be held when the same firm or the same individuals are involved in tax preparation for the company, and/or the related parties.

Q. Is there any standard that requires or imputes the knowledge from an audit to a tax preparer in the same firm?

A. Not that I'm aware of. I understand that that shows up as a point of law. As you asked me earlier, I don't practice law -- full-time anyway. But there is certainly case law that holds responsibility within an accounting firm, the knowledge held by an accountant, a group of accountants in an accounting firm is typically imputed across.

That was a significant issue in the Serrino matter that we touched on. The responsibilities become the responsibilities at a firm level.

Q. I'm not sure I got the answer to my question. My question is: Are there any AICPA standards or Treasury Department standards that require or impute the knowledge of an auditor at one firm, impute that knowledge to the tax preparer at the same firm?

A. Not that I know of.

Q. Is there anything in the professional standards or Treasury standards that require a tax preparer to look back through audit records in the same firm?

A. There can be indirectly, but I don't know of any that are direct. There is a responsibility for the tax preparer to gather -- have sufficient relevant data, information and the like. And that could be data that would be drawn from audit files. There is an -- auditor review files.

There is an overlap that occurs, and the overlap is that a company who is issuing financial statements in accordance with Generally Accepted Accounting Principles, which means on an accrual basis, very often has a tax provision.

And the tax provision frequently causes crossover between the audit and the preparation of related tax returns.

Q. Related tax returns for the business entity?

A. Yes.

Q. Do you know if that crossover or tax provision that you just described existed in this relationship between Mr. Miksic and the defendants?

A. **I do not. I've not seen the full set of Cortec financial statements or EcoCortec financial statements or Cortec Croatia financial statements.**

Q. Is there anything in the professional standards, the AICPA professional standards or Treasury Department regulations that requires a tax preparer to comply with the AICPA audit standard?

A. **As best I'm following your question, I don't know of a written standard in that regard that's that succinct.**

Q. Are you aware of any professional standards that would require a tax preparer for an individual income tax form to comply with the AICPA audit standards?

A. **As a stand-alone, no.**

Q. Anything that could be read in conjunction to require that tax preparer to be required to follow the AICPA audit standard?

A. **I think so.**

Q. And what is that?

A. **I think that there is a requirement within the tax standards; SSTS 2, "a member should make reasonable effort to obtain from the taxpayer the information necessary to provide appropriate answers to all questions on the return before signing as preparer."**

SST3 includes, "A member should not ignore the implications of information furnished and should make reasonable inquiries if the information furnished appears to be incorrect, incomplete or inconsistent either on its face or the basis of other facts known to the member."

And then it goes on regarding looking at more than one year. So as a tax preparer, there is a responsibility to make a reasonable effort to obtain information, to make inquiries.

Certainly those inquiries are based on information that is known to the taxpayer. Example, it says, "other facts known to the member." And to the extent that those facts of the member include that the member is conducting a review or an audit, especially with a related party of 100 percent ownership, that should cause the accountant to respect the standards, tax standards and audit and review standards, including having a general understanding of the entity's business as we already discussed.

Q. And you reached that opinion based just on your reading of the standards and not on actually preparing any tax forms and filing the tax standards, is that correct?

A. **No, that's not correct.**

Q. How is that incorrect?

A. Well, you have a compound comment, and you left many things out.

Q. Okay. Let me ask you --

A. So, for example, and I'll use my tenure at Peat Marwick. I officed within the tax department for my first two years there and consulted all but daily with tax partners, tax managers, and the like, and became very familiar with the interplay between tax and auditing and review and the importance of that, and the knowledge of that.

So I participated from time to time in the exchange of information and certainly in discussions, observation, analysis of the importance of the exchange of that information. So it wasn't just on a reading. You have an emphasis, and from your side of the table appropriate, I'm not a tax preparer. And -- but I spent a long career, and through that career, I've had many, many, many instances to analyze tax preparation, to analyze tax returns, what goes into tax returns and why.

So your question was: Did you only base it on the reading and as a tax preparer? And I think there is a big gulf in between those two.

Is that helpful?

Q. It is helpful. Thank you.

A. Good. Would you be interested in a two-minute break?

Q. Sure.

A. Me, too.

(A brief recess was taken.)

BY MR. BERGER:

Q. Mr. Cobb, are members of the CPA required to strictly comply with AICPA standards?

A. I think so. There are some of the standards that are subject to interpretation of course but, yes. And some of the standards will tell you that they're for guidance purposes.

Q. What does it mean if they're for guidance purposes?

A. They're recommended as opposed to requirement.

Q. That doesn't mean that an AICPA member is required to follow all guidance standards?

A. There are some guidance standards which

[Note: Pages 61-76 missing in original document]

A. Not as I sit here. Done hand in hand.

Q. How much of that 45 hours was spent talking to Mr. Miksic?

A. None.

Q. How much of that time was spent writing and preparing Exhibit 85?

A. I don't know. It was all done hand in hand.

Q. How much have you charged in total to date for your engagement?

A. I don't know. Let's look. It looks like someplace around \$22,000. I brought these copies for you, if you would like to have them.

Q. Thank you. Have you been paid that full amount?

A. Cobb & Associates has been paid. I don't know of any outstanding invoices that we have, which doesn't mean we don't have any, but typically, if we do, I know.

Q. What percentage of Cobb & Associates' annual income is derived from expert witness services?

A. Precious little. Let's take the word "witness" out. Litigation, probably 95, 96, 97 percent.

Q. 95 to 96 percent of Cobb & Associates' annual income is derived from litigation services?

A. No. 95, 96, 97 percent, someplace in that area is probably derived from litigation and related services.

Q. What does litigation-related services mean if not expert witness services?

A. There are engagements where we were retained to look at issues related to litigation, but there is not any anticipation that we would testify.

The majority of cases we're involved in settle. There are times when we're involved, and we're not called to testify. So by putting the word "witness" in makes it a small fraction.

Q. Got it. Turning to page 36 of Exhibit 85.

A. Do you want these?

Q. I'll get those later.

A. On page --

Q. 36.

A. All right.

Q. There is a heading at the top that reads, "Data or other information considered." Do you see that?

A. I do.

Q. Okay. Where did you get this information?

A. Some of it I received through Briggs and Morgan. Some of it I identified.

Q. Did you get any from Mr. Miksic?

A. I didn't get any information directly from Mr. Miksic.

Q. Was there any information you asked for, and I'm assuming you asked for information from Briggs and Morgan, is there any information that you asked for that you didn't receive as well?

A. I assume that as well. Yes.

Q. What was that?

A. I had asked for financial statements for Cortec Corporation, and more specifically, what I understood to be reviewed financial statements for Cortec Corporation.

Q. Is there anything else you asked for that you didn't receive?

A. Not that I recall.

Q. About a third of the way down your list of bullet points, there is a bullet point that reads "AICPA standards for tax services." What standard are you referring to?

A. I'm referring to the SSTS.

Q. Okay. In your list of documents here, in data and other information considered on page 36, I'm not seeing any invoices or statements of work for entities including Miksic's tax counsel in Minnesota, Miksic's tax counsel in Florida, or invoices from BGM, from Miksic's tax services. Are they included in here somewhere and I'm just not seeing them?

A. I don't -- I don't know. Certain of those we got relatively early on. I think they were even exhibits to depositions in some cases. And then later we got a specific binder of that material. The binder may not have been included on the list just by oversight.

Q. Did you review that binder that you're discussing?

A. I've read that binder. I -- I have it with me if you would like to see it.

Q. We'll look at it on a break. Thank you. Are there any other documents or data that you considered in reaching your opinions and conclusions that are not listed in this section?

A. Not that I recall. And there has not been any document that has been specifically not included, to my knowledge.

Q. I may have already asked you this, but since drafting your report, have you considered any additional materials in connection with this case, aside from Mr. Taggart's deposition?

A. No.

Q. Looking at pages 39 through 43 of Exhibit 85, is this a complete list of all of the cases in which you've provided testimony in the last four years?

A. Now that you've asked the question, it was true as of March 31st, 2016.

Q. It's not true now?

A. It is not true now.

Q. In what cases have you provided testimony since March 31st?

A. I have testified in 2016. Let's see -- in re the marriage of Bennett Horn and Lisa Goodman.

Q. Any other cases you can think of?

A. Not that come to mind, although I'm worried that I'm leaving one out.

Q. In the case you just mentioned, in re the marriage of Bennett Horn et al., what did your testimony relate to?

A. The fair market value of an asset that was at least partially marital.

Q. Have you ever had your testimony excluded from trial?

A. Of course.

Q. How many times?

A. I don't know.

Q. How many times in the last four years?

A. I don't know.

Q. Have you ever been precluded from stating at trial that you were a professor at the University?

A. Not that I know of.

Q. Have you ever had any testimony excluded or limited in cases involving professional malpractice of accountants?

A. No. Not that I know of.

THE WITNESS: Can you read the question back.

(Record read back.)

A. Not really.

BY MR. BERGER:

Q. What does that mean?

A. It means artificially, yes. In the Serrino matter, Pricewaterhouse Coopers moved that I could not testify about certain of the business valuations -- the business valuations conducted by Pricewaterhouse Coopers. And I don't know specifically, but I think the judge upheld that, noting that my analysis in my report had never included those specific considerations. So in reality, there is none of my testimony that was excluded. As a technical matter, somebody may say, well, Mr. Cobb was precluded from testifying about that. But I never had any intention of testifying about that. That's not an uncommon occurrence.

Q. Have you yourself ever been accused of professional malpractice?

A. Not yet. Well, not formally anyway.

Q. Have you ever received any professional sanctions or admonishments?

A. Not yet.

Q. Have you been convicted of a felony?

A. I have not, yet.

Q. Have you been convicted of a crime of dishonesty?

A. No.

Q. Do you anticipate ever being professionally admonished or convicted of a felony?

A. Well, that's a multiple question. Probably no. The Minnesota Board of Accountancy, instead of professionally denoting that someone is no longer licensed in instances where someone does not renew their license and also has not maintained their continuing education current with when they've conceded their license, the Minnesota Board of Accountancy says that their license was revoked.

And I think that's unduly and inappropriately harsh as a word. Its meaning doesn't matter. So I could envision at some point in time that

[Note: Pages 85-104 missing in original document]

Limited. I -- I only wish all that money went to me, but there is costs and the like.

Q. Fair enough. Turn to page 12 of your report.

A. I'm there.

Q. Bullet point on the bottom, it starts, quote, "The accountant should possess."

A. Yes.

Q. And then the ellipses. That is -- that quote, that's a combination of the accounting standards AR 100.26 and 100.28, is that correct?

A. Yes. Unless there is a typo in getting the cite.

Q. And the AR 100 standard, that applies to audit services, is that correct?

A. Audit and review.

Q. And audit and review, that's different than tax services, is that right?

A. Yes, it is. There can be overlap, part of which we have discussed but...

Q. Anything other than what we've already discussed?

A. Not that comes to mind.

Q. So is part of your opinion in this case based upon your conclusion that the defendants did not comply with the AR 100 standard?

A. Generally, yes.

Q. How does the AR 100 standard apply to the defendant's preparation of Mr. Miksic's Forms 1040, 5471, 3520, 3520-A or FBAR forms?

A. I understand from the documents that BGM conducted a review of Cortec, by my recollection in the documents available to me, as early as 2006. So in conformance with professional standards under review, that means that BGM would -- should possess an understanding of the entity's business. I don't know if you want me to re-read some of this but that would include, "... a general understanding of the entity's organization, including its operating characteristics, the nature of its assets, liabilities, revenues and expenses. This would ordinarily involve a general knowledge of the entity's production, distribution, operating locations, and material transactions with related parties. An accountant's understanding of an entity's business is ordinarily obtained through experience with the entity or its industry or inquiry of the entity's personnel."

So I find several things that I would expect not only in conformance with professional standards but as common sense in professional practice. Know your client and hear the nature of its assets.

Cortec's assets included EcoCortec. And in the -- I'm doing this from memory -- and in the review, review of financial statements, there is a specific footnote record regarding EcoCortec. There may be two. There may be two paragraphs. So there is knowledge of EcoCortec, operating location and a grounding in Croatia.

There is also transactions with related parties. That includes management, and importantly, management ownership. So I would only expect that BGM would have an understanding, knowledge and background of operations in Croatia. And through BGM's experience, my recollection that BGM had been working with Mr. Miksic and Cortec for some 20 years through a change of personnel from time to time, but a knowledge base.

And I believe that that would have included an understanding that Mr. Miksic and Cortec had business activities, operations in Croatia. And that then would play in -- would dovetail with the responsibilities and tax practice by the same firm, BGM, that there would be reasonable efforts to obtain from the taxpayer information necessary to provide appropriate answers

to all questions on the return, that there would be reasonable inquiries of information furnished to the extent it appeared to be incorrect or incomplete or inconsistent.

There is requirements to establish the facts. So that by following the auditing and review standard, I would only expect, and I think BGM would be required to have an understanding, and that understanding should have come into play in the inquiries made of Mr. Miksic and the follow-up to the inquiries made to Mr. Miksic.

Q. Relating to the review of Cortec and EcoCortec?

A. Relating to the information that should have been known to BGM.

Q. Is there anything in the AICPA tax standards that requires the defendants to conduct the same level of inquiry and have the same level of understanding as AR 100, as outlined in AR 100?

A. No. Certainly not word for word, but there does need to be within the tax standards, a reasonable effort to obtain from the taxpayer information necessary to provide appropriate answers to all questions. There needs to be reasonable inquiries, if the information furnished appears to be incomplete. So there is within the professional tax standards a need to gather information, to make reasonable inquiries and to get assurances that the information is not incomplete.

Q. Where in the tax standards does it require the tax preparer to get reasonable assurances that the tax information is incomplete?

A. So, for example, in SSTS No. 3, it states, quote -- I'm reading from page 13 of my report -- "A member should not ignore the implications of information furnished and should make reasonable inquiries if the information furnished appears to be incorrect, incomplete or inconsistent either on its face or on the basis of other facts known to the member."

And then it goes on -- well, let's go on because it does tie in. Continuing the quote, "Further, a member should refer to the taxpayer's returns for one or more prior years whenever feasible."

Q. Is there anything other than what you've just read there that requires the tax preparer to obtain reasonable assurances that the information provided by the taxpayer is complete?

A. Within Treasury Department circular No. 230, again, I'm reading a quote, "A practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service. Competent practice requires the appropriate level of knowledge, skill, thoroughness, and participation necessary for the matter for which the practitioner is engaged."

So in the context of thoroughness, there needs to be a thoroughness in terms of reasonable inquiries, reasonable effort to obtain from the taxpayer information necessary to answer the questions.

And without flipping through the Treasury circular in total or the SSTSs in total, those are the ones that come to mind.

Q. What knowledge, education, or expertise do you have to give --

A. I'm sorry. My mind wandered.

Q. Not a problem. You mentioned that the tax preparer has to, under the tax standard, I believe, I want to make sure I'm not misquoting you. You mentioned that the tax preparer has to conduct reasonable efforts to obtain the information from the taxpayer. Is that what you mentioned?

A. That's under the tax standards.

Q. How do you define reasonable efforts?

A. I think that there can be a judgment amount to that, but let me put "reasonable efforts" in context. If you and I send a client a letter and attach that engagement letter or immediately following that engagement letter, we have significant requests for information and we get no response to that. So we stop. We don't call. We don't talk to that individual. We don't make direct contact with that individual that is the client and the taxpayer.

Zero effort, not ever having talked to the taxpayer, for example, I don't believe constitutes a reasonable effort to obtain from the taxpayer information necessary to provide appropriate answers to all questions, including when there is a question that is not answered, including when there are default answers to the questions.

So we now need a reasonable inquiry because I don't think SSTS 2 and 3 can travel together. I need to make a reasonable inquiry if the information furnished appears to be incorrect, incomplete or inconsistent. And an information request coming back blank, especially year after year after year, certainly is incomplete.

Q. I'm not sure that answered my question but let me ask you a little differently. What is your knowledge, training or expertise that allows you to provide a definition of reasonable effort for inquiry for a tax preparer?

A. I'm a certified public accountant. I'm familiar with the standards, not only the general standards, audit review standards, but the tax standards. I, on numerous occasions through my career, have had the opportunity to read and analyze tax returns and disclosures made in tax returns.

Q. None of that expertise is based on your work as a tax preparer. Is that correct?

A. That's correct. I am not a tax preparer.

Q. And then under your discussion of the Treasury Circular 230, you discussed reasonable efforts. What's your knowledge, training or expertise that gives you the ability to opine as to the reasonable efforts required to comply with Treasury Circular 230 by a tax preparer?

A. I'll give you the same answer.

Q. And none of that is based on any experience you had in preparing tax returns, is that correct?

A. It's at least generally correct.

Q. What years did the defendants provide audit services for Cortec Corporation?

A. I'm not aware that they provided audit services. And I think it's defendant, isn't it? Yeah.

Q. Nice if it were.

A. Yeah. I was flipping to the individuals, yeah, it is defendants.

Q. You mentioned a financial statement, did you not?

A. I did.

Q. What years did the defendants prepare financial statements for Cortec Corporation?

A. I don't know how to answer that.

Q. Let me ask it a little differently then. What year financial statements did you see for Cortec Corporation prepared by the defendants?

A. I don't know how to answer that. An accounting firm would argue they don't prepare the financial statements. These are the financial statements of management. And management's responsible for preparing them.

The problem in the accounting business is that that often is not true, especially with smaller companies. Often the accounting firm does prepare the financial statements. So that's first.

Second, the financial statements includes different facets. It includes the numeric, in effect, financial statements that we frequently talk about: an income statement, a valid statement, statement of cash, statement of retained earnings and the like, but also an integral part of the financial statements are the notes to the financial statements.

The only materials that had been available to me related to the financial statements of Cortec were portions of the notes to the financial statements, which are part of.

And I read those notes, and I noted that the notes identified that the -- I don't remember the exact words but the note should be read in context with or were part of the review conducted by defendants.

So with that said, I recall seeing review materials for as early as 2006, and if I'm right, as late as 2011, but it might be '10.

Q. Turn to page 23 of your report. Last paragraph on page 23 of your report, does that refer to the Treasury requirement for signing a tax form, a 1040?

A. If you read the bottom of this Form 1040, it includes the representation that the information is true, correct and complete, including schedules and statements to the best of the knowledge of the signers.

Q. Is there a different standard for the taxpayer as opposed to the tax preparer?

A. Not that I know, although in terms of the words, in terms of practice, I think that there is.

Q. So in essence, are you saying that by signing the tax form, the 1040 form, as a preparer, that the defendants were certifying that the tax -- the 1040s were true, correct and complete?

A. To the best of their knowledge.

Q. And under the tax standards, their knowledge would come from the information supplied by Mr. Miksic?

A. Or otherwise gathered or known. And if that information is not adequate, they should not continue as the preparer.

Q. When you reached that conclusion, what do you base that on, your experience as a tax preparer?

A. You know, it's pretty tacky, we've well-established that I'm not a tax preparer. If you want to ask me a reasonable question of where the information is from, and my opinions are from, I would be glad to answer it. Recall "feisty."

Q. I recall. Please turn to page 29 of your report.

A. I'm there.

Q. The last paragraph on page 29, starts, "Mr. Edmunds" quote, "had no communications with," do you see that paragraph?

A. I do.

Q. What professional standard required a tax preparer to verbally communicate with a taxpayer in preparation of income tax forms?

A. As a general statement, I don't know of any, but if we look at the particulars here and we look at the facts. So, for example, let's go to the top of the page, Boeckermann's client questionnaires for 2006, '7, '8, '9 and '10 were blank. And despite that, we find that -- and then there was no written policy at the time, we find that Mr. Parnell had not ever asked Mr. Miksic if he had any personally owned foreign accounts. Mr. Parnell had no recollection of having been aware of any information that led Mr. Parnell to ask Mr. Miksic about foreign accounts.

Yet we look at the information known or knowable. We look at the publicly available information. We look simply at the common sense of it. And we focus back that the client questionnaires were blank.

It is difficult to imagine that Mr. Parnell did not ask. It's difficult to imagine that Mr. Edmunds had no communications with Mr. Miksic.

Q. You read the deposition transcripts in this case, haven't you?

A. I've read some. I don't know if I've read all or not.

Q. You read Mr. Miksic's deposition transcript?

A. I have.

Q. Ms. McGillivray's deposition transcript?

A. I have.

Q. Don't the tax standards allow the tax preparer to obtain information from a third party?

A. I think that they do. Or at any rate I don't know if they allow that. They certainly don't preclude that.

Q. That's not found in tax statement No. 3 at paragraph 8?

A. I would have to go back and look.

Q. And you're aware based on the reading of the deposition transcripts of Ms. McGillivray and Mr. Miksic that the defendants contacted Ms. McGillivray for information regarding Mr. Miksic's finances?

A. I think from time to time, they did.

Q. And you're aware of the fact that Ms. McGillivray testified that she forwarded the defendant's questions on to Mr. Miksic?

A. I believe that she at least indicated that.

Q. And you're aware of Ms. McGillivray's testimony that she provided financial information from Mr. Miksic to the defendants?

A. From time to time, yes.

Q. So based on that relationship, why was it necessary for the defendants to directly

[Note: Pages 121-128 missing in original document]

taxpayer. He's Croatian. He has personal involvement there that was well-known.

Q. What professional standard precluded my clients, the defendants, from obtaining Mr. Miksic's financial information through Ms. McGillivray?

A. To the extent that they -- if they had obtained complete information and complete understanding, it may have been fine. They clearly didn't have the complete information, and they -- they had responsibilities to get more complete information and they didn't.

Q. Regardless of how they communicated to Mr. Miksic, either through Ms. McGillivray or contacting Mr. Miksic directly?

A. The communication certainly was not direct and the communication certainly was not thorough and certainly didn't allow them to get the information to appropriately answer all questions or establish the facts or determine the relevant facts.

Q. You're aware of the fact that Mr. Parnell testified that he met with Miksic every year?

A. That's my recollection.

Q. And as part of those conversations, they discussed taxes?

A. I would assume so. I don't recall that. May well be there; just doesn't come to mind.

Q. And you're aware that Mr. Parnell was the relationship partner with Mr. Miksic?

A. I think that's right.

Q. You're aware that Mr. Parnell testified that any information that he got related to Mr. Miksic's taxes, he gave to the tax preparers at the defendants?

A. I don't recall that specifically.

Q. If that in fact occurred, would that change your opinion as to whether or not the defendants improperly -- did not properly communicate with Mr. Miksic regarding his tax preparation?

A. No.

Q. Please turn to page 18 of your report. Page 18, you've got three bullet points The third bullet point at the bottom, last paragraph there, reads, "Boeckermann prepared and filed delinquent Forms 5471 related to Cortec Croatia on or about August 24, 2012." Do you see that?

A. I do.

Q. Where did you get that information?

A. I think it showed up in the documents.

Q. When did Mr. Miksic start working with Holland and Knight? Was that November of 2011?

A. I think it was in 2011. It was late in 2011.

Q. Are you aware of the fact that Mr. Miksic gave Kevin Packman from Holland and Knight his power of attorney?

A. I don't recall one way or the other. He may well have.

Q. If Mr. Miksic gave Holland and Knight his power of attorney, does that mean once that power of attorney is filed with the IRS, can the IRS still communicate with the defendants or does the IRS need to communicate with Holland and Knight?

A. It's my understanding that they would communicate at least first directly with Holland and Knight.

(Exhibit No. 86 was marked for identification by the Court Reporter.)

BY MR. BERGER:

Q. Handing you what's been marked as Exhibit 86. Mr. Cobb, I'm handing you what's been marked as Exhibit 86 which is labeled power of attorney in declaration of representative. Do you see that?

A. I do.

Q. And No. 3 on the first page reads, "tax matters," it reads income Forms 1040, civil penalties, and matters pertaining to FBAR." Do you see that?

A. I do.

Q. And those are for tax years 2003 through 2011. Do you see that?

A. I do.

Q. And if we turn the page at No. 8, and it looks like Mr. Miksic's signature. Do you see that?

A. That's at No. 9.

Q. And No. 9, right.

A. Yeah.

Q. Thank you. Number 8, do you see a filing --

A. I don't know if that's actually a signature. I -- as you take it as his signature.

Q. Fair enough. Number 8, "The filing of this power of attorney automatically revokes all earlier powers of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document." Do you see that?

A. I do.

Q. So if Mr. Miksic filed this power of attorney on November 10, 2011, he revoked any power of attorney that he gave to the defendants. Is that correct?

A. I don't know that it's any. He would have revoked topics related to 1040 for 2003 through 2011 and regarding FBARs.

Q. So anything listed in No. 3 on the first page of Exhibit 86?

A. That would be my understanding.

Q. So once Mr. Miksic files this, then the IRS is communicating directly with Mr. Packman and Holland and Knight related to those three issues?

A. That's my expectation.

Q. Not communicating with Boeckermann anymore, is that correct?

A. That's my expectation.

Q. Who received the failure to file -- the notice of failure to file Form 5471 for Cortec Croatia?

A. It's my recollection that it went to Mr. Miksic.

Q. Did it ever go to the defendants?

A. I -- I don't know as a fact as I sit here.

Q. Your report though --

A. I would be surprised if it didn't at some point in time because of my understanding that it was defendant that ultimately filed the delinquent forms. I don't know the exact path, or I don't recall the exact path it took.

(Exhibit No. 87 was marked for identification by the Court Reporter.)

BY MR. BERGER:

Q. Handing you what's been marked as Exhibit 87, this document is labeled failure to file Form 5471. Do you see that?

A. I do.

Q. And it's dated May 26, 2012. Do you see that?

A. I do.

Q. It's addressed to Boris Miksic?

A. Yes, it is.

Q. And this form came out after the date of the power of attorney we just looked at?

A. Yes, it did.

Q. Is there any indication in Exhibit 87 that this Exhibit 87 ever went to the defendants?

A. No. Doesn't mean it didn't, but there is no indication on the face of the document.

Q. Okay.

(Exhibit No. 88 was marked for identification by the Court Reporter.)

BY MR. BERGER:

Q. Hand you what's been marked as Exhibit 88. Do you recall seeing this document in the documents that you reviewed?

A. Probably.

Q. This is Exhibit 87 -- or I'm sorry, 88, rather, is a cover letter from Holland and Knight. Do you see that?

A. I do.

Q. And first paragraph on the first page of Exhibit 88, it reads, "Regarding Cortec Croatia includes" --

A. You're going too fast. I don't see where you are.

Q. I'm sorry. First paragraph, first page, Exhibit 88, last sentence.

A. All right. I'm there.

Q. "Regarding Cortec Croatia you will find the requested Forms 5471 for the 2007 through 2009 tax years." Do you see that?

A. I do.

Q. And this letter is from Holland and Knight?

A. Yes, it is. It's on their letterhead.

Q. And attached to this letter are what?

A. Forms 5471.

Q. So does it appear that Holland and Knight and not Boeckermann prepared and filed the delinquent Forms 5471 related to Cortec Croatia on or about August 24, 2012?

A. No. It appears that Holland and Knight enclosed those. It doesn't indicate that Holland and Knight prepared those.

Q. Is there anything that you're aware of that would suggest to you that Boeckermann prepared and filed delinquent Forms 5471 related to Cortec Croatia on or about August 24, 2012?

A. Not that I recall as I sit here.

Q. They weren't -- they didn't have Mr. Miksic's power of attorney as of August 24, 2012, did they?

A. Not that I know.

Q. How could they file the 5471s for Cortec Croatia if they didn't have Mr. Miksic's power of attorney?

A. I don't know that they could file them. We were talking about preparing them.

Q. Well, your statement says prepared and filed delinquent forms.

A. Where are you reading? Oh.

Q. Page 18.

A. That may be a misstatement.

Q. That's not accurate, is that right?

A. If -- if Boeckermann didn't -- Boeckermann didn't file them, that's not accurate.

Q. Thank you. Please turn to page 20 of your report.

A. I'm there.

Q. Is it fair to say on page 20 of your report, you conclude that BGM, Boeckermann, and Mr. Miksic had an accountant-client relationship?

A. Yes.

Q. What do you base that conclusion on?

A. If you read page 20, you'll see that --

Q. Their long-standing relationship with -- between the accounting firm and the defendants and Mr. Miksic?

A. That's true. There are also a number of instances where it's identified. And I think it's in the affidavits by Mr. Parnell and Mr. Edmunds that they identify that Mr. Miksic was a client of their firm.

So here, the affidavit of Mr. Parnell, paragraph 4, the affidavit of Mr. Edmunds -- not Edwards -- Mr. Edmunds at page 4, identify that Boris Miksic is a client of our accounting firm.

Q. Are there any professional standards from the AICPA that generally govern the formation of accountant-client relationships?

A. Only very, very generally.

Q. Is there anything from the AICPA that governs the formation of an accountant-client relationship for a tax engagement?

A. Only very, very generally.

Q. What standards are you referring to?

A. I don't have the specifics in mind, but there are standards that over time, at any rate, that included even draft engagement letters and certain topics to be included in engagement letters, but the particulars don't come to mind.

Q. What standards are those that include draft engagement letters or standards for engagement letters?

A. As I said, I don't have the particulars in mind as I sit here.

Q. Would those be included in the general standards or the tax standards?

A. I'm not aware that they're in the tax standards. They may be in the general. They may be in more specific standards.

Q. What, if anything, defined the scope of BGM's relationship with Mr. Miksic for preparation of Forms 1040, 5471, 3520, 3520-A or the FBARs?

A. I would look first to the engagement letters. I would then look, including because they were not signed, I would then also want to discuss with Mr. Miksic what his expectations were to identify the expectations and the beliefs of the engagement.

Q. How does Mr. Miksic's expectations, his one-sided expectations establish the terms of the engagement between the two parties?

A. Well, there is a key phrase you just used, "between the two parties." So I want to identify what the two parties understood the engagement was.

Q. So you look at the understanding of both parties to determine what the scope of the engagement was, is that what you just said?

A. Amongst other things, but yes.

Q. And what are the other things you would look to? The engagement letters?

A. Well, that's part of what we've already been discussing. The engagement letters, I want to look at the services that were

[Note: Pages 141-148 missing in original document]

you with questionnaires and/or worksheets to guide you in gathering the necessary information.”

Q. I think that's what I said.

A. “Your use of such forms will assist in keeping pertinent information from being overlooked.”

Q. Good.

A. “Will assist.”

Q. I'm sorry. Where -- okay, “will assist in keeping,” got you.

A. Importantly, “will assist.”

Q. Assist who?

A. Assist Mr. Miksic, as well as assist Johnson West.

Q. Where does it say they'll assist Johnson West? It supplied -- the worksheet and questionnaires are supplied for Mr. Miksic to guide Mr. Miksic in gathering the information?

A. “We will furnish you with questionnaires and/or worksheets to guide you in gathering the necessary information.” So now it's gathered, right?

Q. Yes.

A. “Your use of such forms will assist in keeping pertinent information from being overlooked.” That assistance is not only to Mr. Miksic. It also is assistance to the tax preparer. That's assistance to the tax preparer, that, one, regarding pertinent information, which was not appropriately gathered; two, for being overlooked, which was not appropriately not overlooked.

Q. Where in this engagement letter or questionnaire does it require Mr. Miksic to return a completed questionnaire to the tax preparer?

A. I don't see that it does.

Q. Okay. And then it goes on, the bottom of page -- or paragraph 3, “You have the final responsibility for the income tax returns and therefore you should review them.”

A. I'm sorry. Where are you?

Q. Bottom of paragraph 3, page 1.

A. Okay.

Q. "You have the final responsibility for the income tax returns and, therefore, you should review them carefully before you sign them." Do you see that?

A. I do. And importantly, it's in bold.

Q. Correct.

A. Yes.

Q. And if you as a CPA were to receive an engagement letter from your client that is signed and dated, would you assume that your client read this engagement letter?

A. No.

Q. It's not reasonable to assume that your client read an engagement letter that he signed and dated?

A. In some circumstances, it may be.

Q. Turn to the questionnaire. It's at BGM 018047.

A. I am there.

Q. Under the heading "income information," do you see that?

A. I do.

Q. There is a question that reads, "Did you have any foreign income or pay any foreign taxes tax during the year?" Do you see that?

A. I do.

Q. In your report on page 25, you indicated that Mr. Miksic had distributions from the Rust Foundation, is that right?

A. Yes.

Q. In 2008 those distributions were over \$800,000, is that right?

A. They were.

Q. Is that income?

A. I don't know specifically. I expect that whether it's income or not, it should be reported and would be something that the tax preparer would want to know.

Q. And it should have been something that if Mr. Miksic had been following the questionnaire, he should have reported to the defendants, is that right?

A. You know, I think so. And someone could quibble, while a distribution isn't always income, and that's correct, but I would expect in the context of filling out this questionnaire that an individual taxpayer would disclose the distributions, whether they were technically income or not.

Q. Mr. Miksic ever disclose any distributions from the Rust Foundation to the defendants?

A. Not to my knowledge.

Q. Did he ever disclose the existence of the Rust Foundation to the defendants?

A. Perhaps. There is reference to foundation and to the accounts around the foundation. And I think it's a handwritten document from 2004, '5, '6, that was included as an exhibit to Mr. Miksic's deposition. I don't believe that document uses the word "Rust" or at least --

Q. Does it even refer to a foreign trust?

A. I don't know that it does. I think it -- I haven't looked at it in a while. I think it refers to a foundation.

BY MR. BERGER:

Q. Is this the document you're referring to, Exhibit 54?

A. Yes, it is.

Q. How would this document have informed the defendants about the existence of the Rust Foundation?

A. It would identify to defendants that there had been a setup. It reads, "Set up foundation, which will support PBS as its sole beneficiary."

Q. When was the Rust Foundation established?

A. I'd have to look back. Let me see.

Q. Does 1998 sound right?

A. I think so. I know it was before 2000.

Q. So how would this reference --

A. 1998, you're correct.

Q. How would this reference in Exhibit 54, "set up foundation which will support PBS as its sole beneficiary," and it looks like the handwriting on the top is dated somewhere in 2007, how does that relate to the Rust Foundation which is apparently already in existence in 2007?

A. I don't -- I don't know the particulars of that, but what this would do is put BGM on aware of foundation activity, and I think would reasonably cause them to make additional inquiries about foreign activities, whether income or not. And if I remember right, in this same schedule, looking down, there is also reference to foreign trusts.

Q. There is. It's the next page. Are you looking at Exhibit 4?

A. I am.

Q. It's under miscellaneous information.

A. Thank you.

Q. That is the fifth?

A. Yep. "Were you a grantor or transferor for a foreign trust, have an interest or signature or other authority over a bank account, securities account or other financial account in a foreign country".

Q. So where in Exhibit 54 is there any reference to either a foreign trust or account?

A. That was the question? Look at the second page.

Q. Okay.

A. And you'll see a letter addressed to Mr. Clifford Lozinski, Johnson West --

Q. Yes.

A. -- from 2005, that uses the word "trust."

Q. Sure. Does it say foreign?

A. It does not say foreign. I haven't read that in a while. I don't recall that it said "foreign."

Q. And just so we're clear, the documents attached to the letter you just referred to, the letters at BGM 020590, it looks like the documents attached to it starting at BGM 020594, those are draft documents, aren't they?

A. I recall that they are draft documents, yes, they are.

Q. Does anything in these draft documents to you suggest that the entities were actually formed?

A. Not in the documents themselves, no.

Q. So how would this Exhibit 54 put the defendants on notice of the Rust Foundation?

A. It wouldn't put -- I never said it would put them on notice of the Rust Foundation. It would put them on notice that there were trust foundations being discussed in the works, being drafted.

Q. Trust foundations being discussed is different than a trust being established, is that right?

A. I think that it is.

Q. And a trust -- an established trust, without knowing if it's foreign or not, you don't know if you have a 3520 or

[Note: Pages 157-160 missing in original document]

Q. Is it possible that there was and you just didn't see it?

A. Yes.

Q. If you turn the page, on page 9, at the end of the first paragraph on page 9, there is a reference to a website web.archive.org-www.johnsonwest.com, do you see that?

A. Yes, I do.

Q. Does that reference, the website refer to the quoted sections in the first paragraph on page 9?

A. Yes, it does.

Q. Do you know what year website you were looking at when you obtained those quoted sections?

A. I don't specifically recall.

Q. Possibly the 2011 web page that you looked at for the previous paragraph?

A. Yes.

Q. Do you know if that web page had a disclaimer on it?

A. Not that I recall.

Q. Is it true that -- would it be likely since web pages often have disclaimers, that the Johnson West website also had a disclaimer?

A. No.

Q. It would not be likely since they often have disclaimers?

A. Yes. It's, as you asked the question, the answer was no. It's certainly possible that there was a disclaimer.

Q. Okay. Thank you. Turning to page 21 of your report, middle paragraph, which would be the second paragraph on the page, fourth line in, about the middle of the line, it says, "Boeckermann was responsible to Mr. Miksic to provide complete professional services." What professional services are -- what complete professional services should they have provided?

A. The tax services. Perhaps others, but I focused on the tax services.

Q. Tax services related to filing a 1040 form?

A. Yes.

Q. For filing an FBAR?

A. Yes.

Q. For filing Forms 5471?

A. Yes.

Q. For filing Forms 3250 and 3250-A?

MR. STENMOE: 3520.

MR. BERGER: I'm sorry.

A. You got it transposed.

BY MR. BERGER:

Q. 3520 and 3520-A?

A. Yes.

Q. Were there any other tax services that they were required to provide complete professional services for?

A. Many tax services that they provided, but those are the ones that I focused on.

Q. Those are the ones that are the focus of this litigation, is that correct?

A. That's my understanding.

Q. You also go on to say, I believe, that they were responsible for understanding Mr. Miksic's business activities, background and financing interests. Do you see that?

A. I do.

Q. Is that a reference to accounting standard AR 100?

A. Yes, it is. Although, I think it applies generally in this setting as well.

Q. Based on all the reasons we talked about already?

A. I think so.

Q. Any other reasons?

A. Not that come to mind.

Q. Then on page 22, pages 22 through 23, there is a discussion regarding compliance for Forms 1040 and Form TDF 90-22.1 or FBAR, do you see that?

A. I do.

Q. Are you aware that in June of 2007, BGM or Johnson West at the time asked Mr. Miksic for information relating to his foreign accounts in 2006?

A. I think there was the information request that we looked at.

Q. I don't think we looked at it yet, but let's look at it now.

A. It's attached to the engagement letter.

Q. This is a different one.

A. All right.

Q. I'm handing you what's been marked as Exhibit 18. Do you recall seeing this

[Note: Pages 165-168 missing in original document]

Q. How many accounts did Mr. Miksic have in tax year 2006? How many foreign accounts?

A. I don't know. I don't know.

Q. Are you aware that Mr. Miksic testified that in response to this email from Mr. Schumacher he only provided information on two of his foreign accounts?

A. Yes, including from the face of this document.

Q. Are you aware that Mr. Miksic testified that he did not disclose all of his foreign account information because he was traveling?

A. I recall that he had acknowledged that he had not disclosed all of his foreign account information. I don't recall the why, wherefore of it as I sit here.

Q. Looking at Mr. Schumacher's email at the bottom of the page, does Mr. Schumacher in any way limit his request for information relating to Mr. Miksic's foreign financial accounts?

A. As I understand your question, no. He asked for -- he identifies that from Cory, he understands that Boris has interest in foreign bank accounts. And he identifies when U.S. persons have an interest in a foreign account that they're required to report certain account information to the IRS. No report has been filed, but I don't read into that a narrowing of his request.

Q. And then when Ms. McGillivray forwards that request on to Mr. Miksic, do you see any narrowing of Mr. Schumacher's request in Ms. McGillivray's email?

A. I do not.

Q. So if Mr. Schumacher at Johnson West is requesting information from Mr. Miksic related to his foreign accounts, what more should he have done to get a complete and accurate recitation from Mr. Miksic of all of his foreign accounts?

A. Mr. Schumacher?

Q. Yes.

A. I think there needs to be inquiry, even asking point-blank, are these all of the accounts? Are there any other accounts? Just some assurance that the information is complete.

Q. So you as a CPA, you ask your client for information relating to foreign accounts, your client responds, would it be reasonable for you to assume that if you're asking for, give me all the information on all your accounts, that your client is going to give you that information?

MR. STENMOE: Objection, mischaracterizes the document.

A. It may be. But I want to keep in context that the level of activities, not only personally but through Cortec Company, knowing that EcoCortec exists, when I look at the full family of information, I would expect that there would have been some additional inquiry. But in your hypothetical -- and it wasn't a farfetched hypothetical -- in your hypothetical, a CPA in preparing a tax return, preparing whatever analysis, asks for information, including broadly, and gets the information from an appropriate source, such as Mr. Miksic, that he should be able to take that information as presented.

Can we stop for a minute?

(A brief recess was taken.)

BY MR. BERGER:

Q. Mr. Cobb, in looking at Exhibit 18, is there anything on the face of this document that would have put BGM on notice, or the defendants on notice rather, that Mr. Miksic had anything other than the two foreign bank accounts that he disclosed for tax year 2006?

A. Not just on the face of it. Subject to the understandings, plural, of Cory, but on the face of it there is not. There was a request and two are identified.

Q. This has previously been marked as Exhibit 19. Mr. Cobb, have you seen Exhibit 19 before?

A. I have not, that I recall.

Q. I'll represent that this is Exhibit 19 from the deposition of Mr. Miksic's deposition -- Exhibit 19 from Mr. Miksic's deposition. Does that refresh your recollection?

A. No.

Q. Okay.

A. I don't recall that I had all of the deposition exhibits. Certainly had some of them, but if we looked at the binder, I think you'll see that I didn't have all of them.

Q. Oh. Did you ask for all of them?

A. I don't know.

Q. Did you ask for a complete copy of his deposition?

A. I asked for a complete copy of his deposition.

Q. And you ended up with a deposition without all the exhibits?

A. But we got a complete copy of the deposition, but we did not get all of the exhibits.

Q. Okay.

A. So I don't think I've seen this before.

Q. Okay.

A. I have read of its existence, as you can imagine.

Q. So the cover page of Exhibit 19, you see that this is a document that's addressed to Mr. Miksic?

A. Yes, I do.

Q. Are you aware that Mr. Miksic testified that he filed an FBAR to report his foreign accounts for tax year 2006?

A. I remember he testified that an FBAR had been filed for 2006.

Q. Do you know in 2006 whether the FBAR was paper form?

A. I don't remember specifically but I think it was.

Q. And do you see on the first page of Exhibit 19, it indicates to mail to the U.S. Treasury Department, U.S. Department of Treasury?

A. I do. Yes.

Q. Do you have any reason to doubt that Mr. Miksic did not file this FBAR, report foreign accounts in 2006 himself?

A. I don't have any reason one way or the other. The appearance is that he would have filed it.

Q. And turning to the second page of Exhibit 19, do you see there is a signature block at line 36?

A. I do.

Q. And that requires Mr. Miksic's signature?

A. That's how I read it.

Q. As a CPA, if you send your client a tax form for signature in filing, would it be reasonable for you to assume that your client would read that form before signing and filing it?

A. Not necessarily.

Q. Why not?

A. A number of clients don't read or don't read in detail, either before or after signing, either before or after filing, regardless of who filed.

Q. Would it be, as a CPA, would it be reasonable for you to assume if your clients had any questions regarding a tax form they were supposed to sign and file, that they would ask?

A. Yes. If they had questions.

Q. So if they don't have any questions, then you would reasonably assume that -- if they didn't ask, then you could reasonably assume they didn't have any questions about the form, is that what you're saying?

A. That's true. And I wouldn't -- I expected that they wouldn't have questions if they hadn't read it.

Q. This Exhibit 19, the accounts listed in Exhibit 19, those are the same accounts that we saw Mr. Miksic disclose in Exhibit 18, aren't they, accounts ending 5306?

A. 5306, yes.

Q. And 2827?

A. Yes.

Q. So in Exhibit 18, Mr. Miksic discloses two accounts, Exhibit 19, Mr. Miksic receives an FBAR identifying those same two accounts?

A. That's how I read this as well.

Q. And presumably then, Mr. Miksic filed this with the U.S. Department of Treasury?

A. I would presume that Mr. Miksic mailed this to the U.S. Department of Treasury as indicated on the first page.

Q. And as the taxpayer and person signing, Mr. Miksic has responsibility to make sure that Exhibit 19 is accurately -- or accurately reports his foreign accounts?

A. I think that's a fair generalization. I don't know if the form says the word "accurate" on its face or not. Traveling with a 1040, that's the presumption.

Q. Page 23 of your report.

A. Hand this back. I'm there.

Q. Page 23 of your report, starting at the top of the page, there is the discussion regarding Mr. Miksic's 1040 form. Do you see that?

A. I do.

Q. Then following that block quote, it's discussion following or regarding question 7A. Do you see that?

A. I do.

Q. And that discussion continues, question 7A was answered “no” for 2005, 2006, 2007 and 2010, and “yes” in Croatia for 2008 and 2009. Then there is a discussion about midway down in that last paragraph on page 23, it starts, “Boeckermann, Mr.” -- I'm sorry, “Boeckermann, Mr. Parnell did not know if the preparer or the software checked questions 7A or 8 during the 2005 through 2010 time frame. Boeckermann, Mr. Parnell did not know if the preparer or the software checked questions 7A and 8 during the 2005 through 2010 time frame.” Do you see that?

A. I do.

Q. Okay. In this section of your report on page 23, are you critical of the defendant's use of a software that would automatically check questions on a 1040 form?

A. Not specifically. It's dangerous when there is an automatic checking, and I think it's up to the preparer reviewer to gain comfort that the checking is appropriate.

Q. The questions, in fact, if these questions 7A were marked incorrectly on the 1040 form, how does that equate to any damages that Mr. Miksic has alleged in this case?

A. Well, had they been answered properly with “yes,” the next step of course would be for the preparer to -- preparer and reviewer to understand that question 7A specifically references Form TDF 90-22.1, the FBAR, and should progress to get additional information, and to identify the need to prepare and submit, file an FBAR.

Q. Do you know if Mr. Miksic had any FBAR filing requirements in the year 2005?

A. I don't know specifically, no.

Q. If Mr. Miksic had any foreign accounts that required FBAR filings in 2005, then the answer “no” to question 7A and the 1040 form would be incorrect, is that a fair assessment?

A. I lost track of your question. I'm sure it was good. Could you ask it again?

Q. Sure. If Mr. Miksic had any foreign accounts that required FBAR reporting for tax year 2005 and question 7A of the 1040 form was checked “no,” would that be an error?

A. I believe that it would.

Q. Then would that check “no” then to question 7A on the 1040 for year 2005 equate to damages that Mr. Miksic alleged in this case?

A. It may in part. I'm not aware that the Internal Revenue Service sought penalties related to 2005. I don't know that the extent to which in prudence -- and I'll use Holland and Knight, Holland and Knight in their investigation to understand the full scope of exposures and events. I don't know if they spent time looking at 2005 or not, but I'm not aware of the IRS -- I don't recall the IRS making claims, concerns related to 2005.

Q. Handing you what's been marked as Exhibit 23. If you turn to page marked Miksic 004258, does this refresh your recollection as to whether or not the IRS was assessing FBAR penalties for foreign accounts Mr. Miksic had in 2005?

A. It does. And I now see on page 1 as well that the tax periods they're looking at starts with 12-31-05.

Q. So, again, let me ask this question. If the defendants used a software program to answer questions 7A for the 2005, 1040 form and checked the 7A question "no," was that an error?

A. I understand that it would be an error.

Q. And does that error then relate to any damages Mr. Miksic allegedly suffered in 2005?

A. It would. It would relate to -- I'm looking at this, the page you pointed me, 4258, it identifies that there are 2005 penalties related to the 2005, 2010 FBAR exam. And the 2005 penalties at this juncture total \$152,188.

Q. My question then is: If the defendants continue to use their software for 2006, to answer the 2006 1040 question 7A "no," would that be an error?

A. Yes.

Q. And would that also relate to the damages Mr. Miksic is alleging in this case?

A. I understand that it would.

Q. Same question with respect to tax year 2007. If the defendants used their tax accounting software to prepare the 2007 1040 form for Mr. Miksic and answered question 7A "no," would that be an error?

A. Yes.

Q. And would that error also relate to Mr. Miksic's damages alleged in this case?

A. I understand that it would. And '06 is different because we just looked at -- there was an FBAR related to '06.

Q. Is the 2007 error similar to the 2005 error?

A. Yes.

Q. With respect to the software used by the defendants, the computer software, in answering question 8 in Mr. Miksic's 1040 forms for years 2005 through 2010, did they properly use that software to identify any foreign trust interest for Mr. Miksic?

A. Not to my knowledge.

Q. So for each year 2005 through 2010 where they use their tax accounting software to prepare the Form 1040 in answering question 8 with respect to foreign trusts, that's an error that continued for years '5, '6, '7, '8, '9, '10?

A. Yes.

Q. And that error that continued for years '5 '6, '7, '8, '9, '10, all of those errors relate to damages for the 3520 and 3520-A forms that Mr. Miksic is alleging in this litigation, is that correct?

A. That's my understanding. Keeping in mind that question 8 was left blank in '09.

Q. Turning to page 24 in your report.

A. All right.

Q. The second paragraph on page 24 reads, "Boeckermann, Mr. Edwards, deposed and said, 'the failure to file Forms 5471 with Mr. Miksic's individual tax returns was the responsibility of our CPA firm.' " Does Mr. Edmunds' affidavit reference or refer at all to Cortec Croatia?

A. Not that I recall.

Q. At the bottom of the page, there is a discussion regarding Form 3520 and Form 3520-A. Do you see that?

A. I do.

Q. We've already talked about Mr. Miksic receiving disbursements from the Rust Foundation?

A. Distribution.

Q. I'm sorry. Distributions from the Rust Foundation in 2008. And he also received distributions beginning in 2005, then again in '6, '7, and then finally in '8. Why did Mr. Miksic -- what happened after 2008 with respect to the Rust Foundation?

A. I don't recall. I know at some point in time it was wound up.

Q. By wound up, do you mean Mr. Miksic liquidated the Rust Foundation?

A. Yes. And as I recall, in addition to the 845 specific distribution, there was an additional amount later determined to be a a distribution.

Q. Do you know if Mr. Miksic ever disclosed to the defendants any of the distributions he received from the Rust Foundation?

A. I do not.

Q. If those distributions were income, you as a CPA, would you expect your client to report that income to you for tax preparation purposes?

A. Not necessarily.

Q. Why?

A. I'm dealing with somebody who has transactions in the EU and outside of the United States. From my experience, there often are disconnects that the money made out of the United States does not get reported for United States tax purposes.

So I would be well aware that there may be earnings in Croatia, Poland,

[Note: Pages 185-192 missing in original document]

MR. STENMOE: Objection, mischaracterizes the record.

A. That's generally what I remember.

BY MR. BERGER:

Q. Page 27 of your report.

A. I'm there.

Q. Second paragraph starts, "On or about January 27, 2011, when the IRS issued the failure to file Form 5471," do you see that?

A. I do.

Q. Who did the IRS send that form to?

A. You mean the notice, the failure to file form?

Q. Yes.

A. 5471, I recall that that went to Mr. Miksic.

Q. Do you know when if at all Mr. Miksic gave that form to the defendants?

A. I don't know a specific time frame.

Q. Do you know if that form mentions Cortec Croatia?

A. I don't believe that it does. I think it mentions EcoCortec, if I'm remembering correctly.

Q. So is there anything about that form that you believe would have put my clients on notice about Cortec Croatia?

A. Again, not taken alone. It certainly should have put the defendants on notice to make further inquiry and broader inquiry about any and all activities in Croatia.

(Exhibit No. 89 was marked for identification by the Court Reporter.)

BY MR. BERGER:

Q. Handing you what's been marked as Exhibit 89. Is this the form that you referenced in your report?

A. I think that it is.

Q. And again, there is nothing in this form that references Cortec Croatia there?

A. There is not.

Q. So just by mere fact that it mentions EcoCortec, it's your testimony that that should have been sufficient to put my clients on notice to make further inquiry regarding Mr. Miksic's connections to Croatia?

A. Of course not. You're again saying there is one thing. There are a number of things.

Q. What about this particular form in and of itself would put my clients on inquiry notice to go back and look at Mr. Miksic's connections with Croatia?

A. In and of itself, I don't think it necessarily does that.

Q. Okay.

A. To some extent what you're saying is, well, this is a tree, not a forest. This next one is a tree, not a forest. This one is an oak, not a forest. This is an elm, not a forest. Forest is very important.

Q. Do you know if the IRS issued a separate failure to file Form 5471 for Cortec Croatia?

A. I don't recall.

MR. STENMOE: Take about a 30-second break.

(A brief recess was taken.)

BY MR. BERGER:

Q. Page 30 of your report.

A. All right.

Q. There is a discussion of public information?

A. Yes.

Q. It starts, "Mr. Miksic's ties to Croatia have been publicly reported and would be expected to be generally understood by Boeckermann."

A. Yes.

Q. That's a reference to the audit standard AR 100?

A. It is, in addition to common sense and usual practice.

Q. So are you saying, in usual practice of tax preparation, the tax preparer would be expected to generally understand publicly reported information about the taxpayer?

A. When the tax preparer is preparing taxes for an individual such as Mr. Miksic with strong ties and long-standing ties to their accounting firm, when their accounting firm is also involved in the review and involved in tax returns for parents and the like, yes.

Q. So just by virtue of those facts that you recited, you're saying that my clients had an obligation to be generally knowledgeable about publicly reported information about Mr. Miksic, correct?

A. No. I don't think it's an obligation. I think there is some level of obligation within the review standards but there certainly is a practice of that. There is a general theory of know your client.

Q. In the tax standards or in the audit standards?

A. Much more in the audit standards and much more in common practice.

Q. Where is it in the tax standards that the client would be -- or that the tax preparer would be expected to be generally knowledgeable about publicly reported information on the taxpayer?

A. I didn't say that was in the tax statement. I don't think that it is. It should be, but it isn't, to my knowledge.

Q. Why should it be?

A. I think it's important, especially at this level, to have a general knowledge and understanding about your client.

Q. At what level?

A. We have a significant taxpayer. We have a taxpayer that's the owner of a significant review client and the like.

Q. So is it just based on the significance of Mr. Miksic's assets, is that what you're saying?

A. His presence, his ownerships, his relationship with the firm.

Q. Is there anything in the tax standards that require a differing level of effort based on the holdings or prominence of the taxpayer?

A. Not that I know of.

Q. Please turn to page 31 of your report.

A. I'm there.

(Exhibit No. 90 was marked for identification by the Court Reporter.)

BY MR. BERGER:

Q. Hand you what's been marked as Exhibit 90. Did you have a chance to look at Exhibit 90 during the preparation of your report?

A. I think so.

Q. What's the date on Exhibit 90?

A. May 18, 2012.

Q. And that's after Mr. Miksic granted power of attorney to Holland and Knight?

A. Yes, it is, as we looked at earlier.

Q. Not with respect to this document, I believe, is that -- is Exhibit 90 addressed to Mr. Miksic?

A. Yes, it is.

Q. Is there any indication that this document ever went to the defendants?

A. Not on the face of it, no.

Q. Are you aware of any other information that would suggest that this document was sent to the defendants?

A. No.

Q. At some point in time, did Mr. Miksic file Forms 3520 and 3520-A relating to the Rust Foundation?

A. It's my understanding that at some point in time, those forms were filed.

Q. Who filed those forms?

A. I don't know who specifically as I sit here.

Q. Do you know who prepared those forms?

A. I think there was a second accounting firm. If I'm remembering correctly, there was a second accounting firm.

Q. At the bottom of page 31, the last paragraph, you say, "Upon receiving this correspondence, the IRS notice," I think you're referring to --

A. 5471s.

Q. "for both EcoCortec and Cortec Croatia," is that correct?

A. I am.

Q. And we already know that the defendants never received the failure to file Form 5471 for Cortec Croatia, is that right?

A. I don't know if they did or didn't as a point of fact.

Q. You don't have any information to suggest they did, though, do you?

A. I don't.

Q. And that notice of failure to file Form 5471, the IRS issued that after Mr. Miksic granted his power of attorney to Holland and Knight?

A. As we've discussed.

Q. So getting back to that last paragraph on page 31, "Upon receiving this correspondence the IRS notice, I, Mr. Edmunds reviewed the 5471 instructions, determined that Mr. Miksic had a Form 5471 filing obligation and immediately completed a Form 5471 for each year in question." The next sentence then reads, "Mr. Edmunds did not appropriately determine that Mr. Miksic had Form 3520 and Form 3520-A obligations." What about reviewing the 5471 instructions would have alerted Mr. Edmunds to Mr. Miksic's Form 3521 and Form 3520-A obligation?

A. Again, you're inappropriately narrowing the instructions themselves, none -- but "Upon receiving this correspondence," so there is correspondence. "Upon the wealth of knowledge that BGM had or should have had, there should have been additional inquiries regarding foundations, additional inquires to Mr. Miksic, pointed and specific to have gathered the sufficient relevant data."

Q. Again, I'm sorry if I've asked you this, but what information you have reviewed specifically would have triggered Mr. Edmunds' inquiry about the Rust Foundation?

A. I would go back over the answers and the discussion that we've had. There is knowledge of a foundation. There is knowledge of overseas activities. There is knowledge of ties to Croatia. There is knowledge regarding caring for his family, et cetera, et cetera.

Q. So let me see if I understand. So any client that had potential overseas activities?

A. Not only potential, potential and had overseas activity.

Q. So any client that had potential or active overseas activity, are you saying every tax preparer then should ask specifically about a foreign foundation?

A. No, not with that news. You've narrowed the question. Again, that's a tree. I'm interested in the forest.

Q. Okay.

A. You know, at some point in time, and it should have been early on, you sit down face to face is the ideal, what else do you have that's international, what else are you doing overseas? Corporation trust, whatever, I want to know what you're doing overseas to determine whether there needs to be filings, what kind of filings on that.

Q. And, again, what part of the tax standard, the AICPA standard requires that face-to-face, sit-down meeting?

A. Face to face, not necessarily face to face. Good judgment does, but what it does require is due professional care, sufficient relevant data, diligence, care, and being thorough. And those should have taken, whether a tax preparer, tax reviewer, any CPA in any area of practice at some point in time, should have looked in the eye, maybe been on the phone, looking in the eyes most desirable, and said, we have a problem here, the IRS audited Cortec, here are the forms we're getting from the IRS. We want to know right now everything that you have that's overseas. I don't care what country it's in. I don't care if it's big or small. Let's get everything on the table.

Q. When did the IRS audit Cortec?

A. '10.

Q. Who did that IRS audit notice go to?

A. I don't remember if it went to the corporation or Mr. Miksic.

Q. Do you know when the defendants got it, if at all?

A. It's my understanding that they did get it, and I don't know the particular time as I sit here.

Q. Do you know if my clients were involved or engaged by Mr. Miksic to assist in that audit?

A. I think they did provide some assistance in that audit, in my recollection.

Q. Do you know when that engagement began?

A. I don't recall as I sit here.

Q. Page 32 of your report, sentence at the top. You're actually quoting from a specific document, is that right, IRS Form 886-1, February 4, 2014?

A. Yes.

(Exhibit No. 91 was marked for identification by the Court Reporter.)

BY MR. BERGER:

Q. I've handed you what's been marked as 91. Is this the document you're quoting from?

A. I think so.

Q. In fact, if you turn to page 7 of this document, is it the last sentence on page 7? I'm sorry, page 7 on the bottom of the document.

A. I'm sorry. Too many page numbers.

Q. Yes. I should have specified, Miksic 003653.

A. Yes.

Q. That sentence here you're quoting from, "Even becoming aware that the taxpayer had a filing requirement to file the Form 5471 for his 100 percent ownership in EcoCortec, both the taxpayer and the representatives failed to comply with these filing requirement," that sentence does not refer at all to Cortec Croatia or Rust Foundation, does it?

A. It does not.

Q. So why are you using that sentence to refer to Cortec Croatia and the Rust Foundation in your report?

A. I've been discussing -- there should be a specific inquiry. I want to know everything that is there, every single company. And I want to reflect on all the information that I have had, so kind of recalling, I know there their bank accounts -- I know that there is actually reference here on Exhibit 18. "We are this account to finance Cortec Croatia." So there is -- there is

a knowledge here that there is foreign activity. There is knowledge of EcoCortec. There is perhaps, and likely knowledge or the opportunity for knowledge of Cortec Croatia.

There is the ability to know your client and to make inquiries. The IRS is looking at all of this. I want to know everything. Let's get everything done.

So there is an awareness now that the taxpayer had filing requirements regarding international issues, that those requirements hadn't been met. And at that juncture, it's -- it's -- I believe it's important and it's incumbent upon the defendants to have identified more fully all of the enterprises, all of the indications of enterprises, and to pointedly and thoroughly gather sufficient relevant data in that regard, so that they could assist in compiling -- complying with all filing requirements.

Q. Did the defendants have a separate engagement with Mr. Miksic for the Rust Foundation?

A. I don't believe so.

Q. Turn to page 33 of your report. You have 30 -- or I'm sorry, seven bullets under your summary, do you see that?

A. I do.

Q. First bullet point, "Failing to exercise due professional care to be careful to be thorough or to obtain sufficient relevant data to prepare and file the required IRS forms for Mr. Miksic or to advise Mr. Miksic of requirements to file IRS forms." Have we discussed the basis, the entire basis for that opinion?

A. The entire basis, no. I'm sure we've left something out, but we certainly have hit the core of it.

Q. Can you think of anything that we've left out that you think is relevant to that first bullet point?

A. That we haven't talked about, yes. We haven't talked about not going back and looking at prior years' tax returns, which would have given the opportunity, and when the opportunity was taken, the opportunity was met to find the 2006 FBAR.

I don't think there was -- there was care, for example, in reading even the handwritten amounts that are here, not identifying Cortec Croatia.

So there are a number of places. I would almost have to flip pages and documents to identify. We've talked about checking the boxes and the like. So due professional care and being careful. We've hit a number of instances where they weren't -- they weren't thorough. And I think we've addressed the key elements of that.

And I don't believe they've obtained sufficient relevant data. And I think we've discussed the key elements of that as well.

BY MR. BERGER:

Q. You touched on reviewing prior year's tax returns. How many years back should the defendants have looked in terms of prior years' tax returns when preparing a tax form?

A. I haven't made that determination. It's certainly at least one, and one would have kept the 2006 FBAR that we looked at in play.

Q. So if in 2007, if they looked back and didn't find the FBAR, that's an error right there?

A. I believe so.

Q. And the 2008, was that just a continuation of the error if they looked back?

A. Well, let's put this together as it should have been with due professional care and being thorough and sufficient relevant data. In preparing the '07 I found the '06. And, therefore, I hopefully, properly prepare and file for 2007. And now for 2008, I'm looking back at 2007, which would have, and I'm just going to stay with just the FBAR as an example, I would have found the '07 FBAR. And therefore I would have -- they would hopefully prepare and file FBARs for 2008.

And now I'm in 2009, and I look back and so it goes. So it's not just a matter of saying, well, I'm now in 2010, should I look back at 2007? Or 2006, '6 should become '7, '7 should become '8. '8 should become '9, and the continuity of information should have been there.

Q. So you're aware of the fact that the defendants filed a FBAR for a U.S.B. account for Mr. Miksic for tax year 1988?

A. I knew that there was one filed. I don't remember the year as I sit here.

Q. So in 1988, if the defendants filed a FBAR to disclose a U.S.B. account for tax year 1988.

A. Right.

Q. Right? So 1990 comes around. Under your scenario the client should have -- the defendants should have looked back to the earlier tax year, determined whether there was an FBAR filed and done the appropriate inquiry for that year's tax filing, is that correct?

A. Yes.

Q. And so what you're talking about then is a chain of errors related to the FBAR that started with the first FBAR filing in 19 -- for tax year 1988, is that right?

A. That may be true, but importantly -- importantly in this matter because I don't need to go back that far. The problem existed from 2006.

Q. But from --

A. Where there is an FBAR related to two accounts and it's my understanding that neither of the accounts are U.S.B. accounts.

Q. So what I'm asking though is, so if there is a U.S.B. account FBAR filed for tax year 2008, so presumably then for tax year 2009 -- '89 rather, wait, sorry. Back up.

My understanding is that there is a FBAR filed for tax year 1988, for a U.S.B. account?

A. I don't really know if there is or isn't, but I recall that there was U.S.B. and information about that, so I accept your hypothesis so --

MR. STENMOE: UBS. I'm sorry. Is it UBS?

BY MR. BERGER:

Q. UBS. I'm sorry. I should be getting more caffeine. So the subsequent year after the first filing, the failure to look back at the previous years' filing identify the filed FBAR and conduct the appropriate inquiry, that's an error, is that right?

A. Yes, but the appropriate inquiry might identify that the -- that there wasn't any longer a filing requirement depending on the amount that's there or transfers of the amount or what have you. But I believe that in preparing the 1999 return, there should have been a look back at least one year to 1998.

Q. And same as far as preparing the 2006 return, there should have been a look back to 2005 and maybe 2007, there should have been a look back to 2006, '08 there should have been a look back to '07?

A. Yes.

Q. So for this '05 through '10 time frame, what you're talking about is just a sequence or continuation of errors with respect to looking back to tax returns, is that correct?

A. Yes.

Q. And that --

A. And I see a lot of tax returns that have three-year look-backs and five-year look-backs somewhat frequently that's included as a summary page, and with a cover letter to the taxpayer.

Q. So is it your opinion then that this failure to conduct this sequence of look-backs resulted in a corresponding sequence of damages to Mr. Miksic?

A. Yes.

Q. So what we're looking at is a continuation of errors and a continuation of damages for the 2005 through 2010 time frame?

A. I think there is some truth in that. I think you can take each engagement separately, and I understand there were separate engagement letters. And I'm aware of arguments often around statute of limitation issues. And it's a continuous relationship, and I think there is a continuous relationship.

The accounting firms, to my knowledge, without exception, have argued and upheld as a legal point of view that the individual engagements or annual engagements are individualized. But I think there is some connectivity there, not only in tax but also in auditing and review.

Q. So the errors in damages Mr. Miksic is alleging in this case are connected, is that what you're arguing --

A. I think there is a connection, yes.

Q. -- from 2005 through 2010 in terms of the errors and the damages?

A. I think that's true. Expect that that's true.

Q. And that's your professional opinion?

A. Yes, it is. There was a connection in the activities.

Q. And a connection in the damages, is that right?

A. I think so. With the damages flow.

Q. From the continuation errors?

A. Of course, although there are other causes here. It's not just -- the collective "this" wasn't caused just by not looking at the 2006 FBAR. There are a number of other factors, each taken together especially, they caused the same damages.

Q. Fair point. So with respect to the use of the tax accounting software, and the fact that it may or may not have been auto-filling the correct answer, is that an error that continued throughout this engagement of 2005 through 2010?

A. I don't know. Depends on the software, that that to me would be potentially much more individualized.

Q. What about the failure to ask about the Rust Foundation or any foreign account activity?

A. I think that's an annual event but obviously, the sooner that was asked for and identified, that should become carried-forward knowledge.

Q. So to the extent that Exhibit 54 which discusses Mr. Miksic's involvement of foundation --

A. I don't -- I don't know what 54 is. Let me look. Is it the one we looked at? I assume. Oh, it's the foundation document we looked at. All right.

MR. STENMOE: Yes.

BY MR. BERGER:

Q. And the cover letter from the Galena law firm in Exhibit 54 is actually dated November 1, 2005?

A. Let me share yours with you.

Q. To Mr. Clifford Lozinski.

A. Yes.

Q. So to the extent that --

A. If at that juncture, and that juncture is November 1, '05, so let's just assume that as our hypothetical date, but November 1, '05, BGM is saying there is a trust, a foundation, let's make the inquiries. Let's find out what is there. The trust has been in place since I think we said 1998. The funding requirements are there, the grantor, et cetera is all there. We now know about the Rust Foundation.

That triggers from '05. And if I know that in '05, I should know that in '06 and '07 and '08.

Q. So to the extent that this Exhibit 54, taken in context with all the other information that the defendants knew about Mr. Miksic, their failure to ask about the Rust Foundation begins in at least 2005 and continues through 2010?

A. Under this part of our conversation, yes.

Q. And the damages --

A. Although, you're now mentioning in the context. I'm supposed to context. You're supposed to one at a time. We've changed roles here a little bit here.

Q. So in relation to my last question.

A. Yeah.

Q. So if the error in not asking about the Rust Foundation occurs in at least 2005 and continues through 2010, then the damages relating to that error is a continuation through at least 2005 through 2010?

A. There is some continuation because of the causation. I mean, I don't know the legal interpretation of that, but if -- if considering everything in context, which I think is the right way and important, if this is found in '05, then the problem shouldn't exist in '06 and there wouldn't be damages. Shouldn't have existed in '07, there wouldn't be damages, if it existed so -- so it's upon a finding, absent the -- they found in '06 there was an FBAR and they didn't catch it. But assuming a more orderly process, as soon as you find it, you found it and that should carry forward.

Q. So they didn't ask in '05, they prepared the tax returns in '05, checked the box "no" for foreign accounts. Then when they prepare the taxes in 2006, they're going to look back at the '05 tax documents, see that it's checked "no," they are still under an obligation based on Exhibit 54 at least to ask about foreign foundations. They fail again in 2006. 2007 comes around. Prepare those tax returns, check the same box "no." Fail to ask.

And are these all related failures then with respect to the FBAR -- not FBAR but the Rust Foundation?

A. I don't know if they're related failures. They are somewhat individualized. But upon catching one of those failures, the following failure shouldn't have been there.

Q. But with respect to --

A. I don't see anything deliberate here. These are -- these are some CPAs doing their job. So my inference from reading the material is that if this group of people had been aware of this, and they should have been, but had been aware of this in '07, that they would have filed in '07 and, therefore, would have filed in '08 and filed in '09. I don't think -- and the '06 FBAR is troubling to me in this regard, but once they find it, I wouldn't expect that they would forget it.

Q. Fair enough. With respect to the Rust Foundation and at least Exhibit 54, it's your professional opinion that they, at least with Exhibit 54, and the host of other knowledge that they had, they were under an obligation to at least inquire into the existence of the Rust Foundation in at least 2005?

A. To inquire into the existence of foundations.

Q. And --

A. Foundation or foundations.

Q. Okay. And in not doing so, that relates to the damages Mr. Miksic is claiming with respect to the 3520 and 3520-A forms, is that correct?

A. Yes.

MR. STENMOE: Restroom break?

MR. BERGER: Yeah, absolutely. Actually, let me do ten more minutes, then we're done.

(A brief recess was taken.)

BY MR. BERGER:

Q. The second-to-the-last bullet point that you have, "failure to conduct appropriate further inquiry into Mr. Miksic's foreign holdings after receiving the IRS's May 25, 2012 notice," we've already talked about that May 25, 2012 notice, haven't we?

A. We have.

Q. And there is no evidence to suggest to you, at least, that the defendants ever received that May 25, 2012 notice?

A. I don't know factually if they did or not.

Q. But we know it was sent to Mr. Miksic after Mr. Miksic granted power of attorney to the Holland and Knight law firm?

A. As we've discussed.

Q. So is it fair to say that the second-to-the-last bullet point there is no longer accurate?

A. No.

Q. Well, how would the defendants have any duty to conduct further inquiry into Mr. Miksic's foreign holdings if they didn't receive the May 25, 2012 notice regarding Boeckermann's failure to prepare and file Form 5471 related to Cortec Croatia?

A. If they didn't receive it they may not have. But if they received it or received the information effectively contained therein, then there would be further inquiry and further assistance.

Q. Even if they were no longer retained by Mr. Miksic to provide tax services?

A. Probably not, if they were not retained by Mr. Miksic any further.

Q. And so let me ask you this: If Mr. Miksic had retained Holland and Knight to help him with his tax compliance in November of 2011, then what further obligation did the defendants have with respect to those same duties?

A. There could be instances where a taxpayer retains both an accounting firm and a law firm, means both of them have duties. It's not always the instance where one of them replaces or fully replaces the other.

Q. In those situations, though, doesn't the taxpayer typically allow the tax preparer to remain on the power of attorney without substituting in the tax counsel?

A. Not necessarily.

Q. Now, the last bullet point reads, "Failure to conduct appropriate further inquiry into Mr. Miksic's foreign holdings after receiving the IRS's letter of 3084 in the summer of 2012." And I think we already talked about the fact that there is no evidence that the defendants received that letter, is that correct?

A. I think that is correct.

Q. So if they didn't receive --

A. Or I don't know of any evidence.

Q. So if there is no evidence that the defendants received that letter, then they wouldn't have an obligation to conduct further inquiry into Mr. Miksic's foreign holdings, would they?

A. That would be the same as the discussion we just had.

Q. Okay. Now is a good time for a break.

(A brief recess was taken.)

BY MR. BERGER:

Q. Mr. Cobb, earlier we discussed the IRS audit of Cortec Corporation.

A. We at least identified it, yes.

Q. And roughly that started in about what year?

A. Without looking, by my recollection, about 2010.

Q. Then did Mr. Miksic fall under a personal audit?

A. At least to some extent, yes.

Q. And are you aware of the fact that the IRS actually initiated a criminal investigation of Mr. Miksic?

A. I don't know that. I've heard that Mr. Miksic was greatly concerned and intimidated because the concept of criminal had been thrown at him.

Q. Do you know when that concept of criminal had been thrown at him?

A. I do not.

Q. What year?

A. I do not.

Q. Do you know about what year Mr. Miksic's personal finances came under audit?

A. I don't recall as I sit here.

Q. Before 2014?

A. Yes.

Q. Are you aware of the fact that Mr. Miksic and Holland and Knight attempted to file FBARs and an updated FBAR for the year 2006 in April of 2014?

A. I don't recall that.

(Exhibit No. 92 was marked for identification by the Court Reporter.)

BY MR. BERGER:

Q. Mr. Cobb, I'll represent to you the Bates number on the bottom of the page, and the bottom right-hand corner denotes that these documents came from Mr. Miksic's files.

A. That's how I would read them as well.

Q. Do you see that these are FBAR filings made by Holland and Knight on April 18, 2014?

A. I'm -- so far, no. If you can point me to a page.

Q. Sure.

A. Oh, the very first page, owner email, rikesh.thakrar -- probably mispronounced that -- hklaw.com. So that would indicate that this submission initiated at Holland and Knight.

Q. Okay.

A. And it relates to the filing name Boris Miksic-2005 FBAR.

Q. And in fact if you look at the second-to-the-last page, Bates-labeled 006802.

A. Same there.

Q. Do you see the third-party preparer, use only preparer's name as Rikesh Thakrar from Holland and Knight? And I'm looking at lines 47, 48, and --

A. And 53, yep.

Q. Yes.

A. I read the same thing you do.

Q. So these are FBARs for tax years '5, '7, '8, '9 and amended return for FBAR for '06?

A. I find '09 on page 6790. '8 at 6774. I'm not reading all of the documents of course. Or even the document. I'm reading the cover sheets. '07 at 6760. And '06 at 6748, which to the extent it's different than the one we looked at, would be a refiling or an amendment. And '05, of course, starting at 6734. And it looks like all of them originated with Rikesh Thakrar.

Q. At Holland and Knight?

A. At Holland and Knight. The email address is an Holland and Knight email address. It doesn't show up on all the covers but...

Q. And the first page of this Exhibit 92 is a confirmation sheet, showing that the filing was received on April 18, 2014?

A. That's how I read it.

Q. And that is after the IRS began auditing Mr. Miksic's personal finances, is that your understanding?

A. I don't know as I sit here.

Q. But it's certainly after the IRS began auditing Cortec Corporation?

A. Yes, it is.

Q. Do you know if this 2014 filing by Mr. Miksic and Holland and Knight was complete and accurate with respect to identifying all the foreign accounts that Mr. Miksic had an interest in these particular years?

A. No.

Q. You don't know that or it's not accurate?

A. I don't know that.

Q. Please turn to Exhibit 23 which I've given you already.

A. Easy for you to say. Okay. I've got it.

Q. And Exhibit 23, this exhibit is dated March 26, 2015. Do you see that?

A. I do.

Q. Okay. If you go to page Miksic 004247.

A. I'm there.

Q. Do you see at G., the IRS made a fact finding that "Each of the FBARs that were filed did not include all the foreign bank accounts that he had a financial interest in, or ownership or other authority over"?

A. It's basically what item G. says, "Each of the FBARs that were filed did not include all foreign bank accounts that he" -- I take "he" of course is Mr. Miksic -- "had a financial interest in, or ownership authority over." And it continues, "He was knowledgeable of the FBAR filing requirements as an FBAR had been filed for the 2006 year. Mr. Miksic met the mitigation threshold conditions of IRM 4.26.16.4.6.1, so the mitigation guidelines for willful penalties were applied per IRM 4.26.16.4.6.3(3)." Then it goes on to mitigation guidelines.

Q. Thank you. So would you agree with the IRS's statement that Mr. Miksic was knowledgeable of the FBAR filing requirements as an FBAR had been filed for the 2006 year?

A. No.

Q. Why not?

A. It's my understanding that it was prepared and filed by BGM, and I would not -- and I would not expect Mr. Miksic, even with that filing, to be personally knowledgeable of filing requirements, whether there had been a filing for 2006 or not.

Q. We looked at the FBAR filing for 2006, didn't we?

A. Yes, we did. We both read over a typo. There is the "F field" instead of "filed."

Q. Got it. And that FBAR filing for 2006 was Exhibit 19, wasn't it?

A. Yes, it was.

Q. What about Exhibit 19 would suggest to you that that was filed by the defendants in this case?

A. As we discussed, it well may have been as instructed, it was -- well may have been mailed by Mr. Miksic.

Q. So just following the timing of the IRS audits beginning in 2010, 2011, then we've got Mr. Miksic working with Holland and Knight in 2014 to file FBARs and an updated FBAR for 2006, wouldn't you expect Mr. Miksic, if he's under an investigation by the IRS, to be very concerned about making sure that he files complete and accurate FBAR forms --

A. I would expect him to have concerns in that regard.

Q. Is Mr. Miksic at fault for not filing in your -- let me start over.

In your professional opinion, is Mr. Miksic at fault for not filing complete and accurate FBAR forms with his 2014 filing?

MR. STENMOE: Objection, vague.

A. There is layers to that. In terms of the view of the IRS, as a practical matter and national policy, the IRS must of course hold the taxpayer responsible. Because for the IRS to have a practical burden of chasing down tax accountants, tax advisors, lawyers or whatever, would make it impractical. So in the eyes of the IRS, the taxpayer has the responsibilities.

In the realities of certified public accountants, there are a number of individuals that rely -- a significant number of individuals and corporations, that rely on the tax accountants and therefore their responsibility is to the tax accountants.

With that said, there is still, I believe, some level of responsibility by a taxpayer.

Q. Do you believe there is some level of responsibility in Mr. Miksic?

A. Yes.

Q. And now, the IRS in assessing penalties, they can actually assess penalties against the preparer if they believe the preparers are at fault, can't they?

A. Magnitude of fault but, yes, the IRS has an ability to assess penalties against preparers.

Q. So if the IRS believed that Holland and Knight was at fault for failing to prepare, and properly file accurate and complete FBARs with their April 2014 filing, the IRS could have penalized Holland and Knight, couldn't they?

A. Theoretically at least, yes. As a practical matter, that doesn't often happen but...

Q. Theoretically?

A. That's theoretically possible, yes.

Q. When did the IRS issue their willfulness penalties or assess their willfulness against Mr. Miksic?

A. I don't recall without looking.

Q. Do you know if the willfulness penalties are associated with his FBAR filings?

A. Sitting here towards the end of the day, it's my recollection that the IRS had concerns of willfulness on all the filings. By "all," I mean, the FBARs, the 5471's the 3520 and the 3520-A.

Q. And you would expect that to be reflected in the IRS documents that you reviewed?

A. Of course.

Q. Looking at page Miksic 004248.

A. I'm there.

Q. Okay. Do you see that the IRS issued willfulness penalties against Boris Miksic for the years 2005 through 2010 years for not filing complete and timely Forms TDF 90-22.1?

A. I do.

Q. Do you know if --

A. That's the conclusion that the IRS set forth on this form.

Q. And at any time prior to this March 26, 2015 letter from the IRS, did the IRS issue any willfulness penalties against Mr. Miksic?

A. I don't recall as I sit here.

Q. Do you know if Mr. Miksic has appealed his FBAR penalties?

A. I think he's appealed penalties across the board, to my recollection.

Q. But do you understand that Mr. Miksic has appealed his FBAR penalties?

A. I don't recall the particulars as I sit here.

Q. Do you know if Mr. Miksic has paid any FBAR penalties?

A. As we touched on earlier, I don't know the specific amounts paid or the specific exposures as I sit here. I could look.

Q. In your professional opinion as a CPA, how would you apportion the fault for not properly filing FBAR penalties or, I'm sorry, not properly filing complete and accurate FBAR forms with the April 18, 2014 filing prepared by Holland and Knight?

MR. STENMOE: Objection, seeking a legal conclusion.

A. Apportion between Miksic and who?

BY MR. BERGER:

Q. And Holland and Knight.

A. I -- I don't know how to evaluate that. I don't know enough about the specific relationship between Miksic and Holland Knight and what information was provided.

Q. So you don't offer any opinion whatsoever as to whether Miksic was more at fault than Holland and Knight, or Holland and Knight was more at fault than Mr. Miksic in preparing and filing?

A. That's not something that I've considered.

Q. Would you agree with me that there is some fault apportioned to Mr. Miksic and some fault apportioned to Holland and Knight?

A. Yes.

Q. It's just the percentage of fault that you're not offering an opinion on, is that correct?

A. Each is some place between 0 and 100. As I sit here, I can be no more specific. It's not something that I've considered. Let me rephrase that. Each is between 1 and 99.

Q. Did Mr. Miksic have some fault in not disclosing the existence of the Rust Foundation to the defendants, especially since he took disbursements from that entity?

A. Yes.

MR. STENMOE: Objection, argumentative.

A. Yes.

Q. As apportioned --

A. **Although, it may have been argumentative, yes.**

Q. As apportioned between Mr. Miksic and the defendants, what percentage of fault would you apply to Mr. Miksic and what percentage of the fault would you apply to the defendants in terms of Mr. Miksic not disclosing the Rust Foundation to the defendants after he took disbursements from that entity?

A. **Again, it's not something I've specifically considered. I certainly, to the extent that I have considered that, weighted much higher towards the defendants than Mr. Miksic.**

Q. What percentage would you apply to the defendants as opposed to Mr. Miksic?

A. **I couldn't say as I sit here.**

Q. More than 50 percent or less than 50 percent?

A. **More than 50 percent.**

Q. With respect to the fault between Holland and Knight and Mr. Miksic in terms of filing complete and accurate FBARs, would you apportion the level of fault to Mr. Miksic greater than 50 percent or less than 50 percent?

A. **I don't know enough about that particular circumstance between Mr. Miksic and Holland and Knight.**

Q. What percentage of fault would you attribute to Mr. Miksic for not reading his tax returns before signing and filing them?

A. **Very little.**

Q. Even though the IRS places the

[Note: Pages 137-244 missing in original document]

administration as opposed to accounting or tax accounting. There in fact are not a lot of people to my knowledge and experience, including with tax clients, that actually examine returns carefully to fully acquaint themselves with the tax return at all, or with all items contained therein. And certainly don't attempt to ensure that there are no omissions and misstatements.

On the other hand, there are of course individual taxpayers that do do that. But I think it's quite reasonable to assume that there are many who do not. And when I start to look at the background activities of Mr. Miksic, I would not expect Mr. Miksic to have read and understood or to fully acquaint himself with omissions and misstatement.

Q. Are you aware that Mr. Miksic had post-secondary education here in the United States?

A. Yes.

Q. And what was that?

A. You know, I don't remember as I sit here, but I think it's engineering, chemical-engineering-related sort of things.

Q. Are you aware that he also had an MBA certificate program from Harvard?

A. Yes, but an MBA certificate from Harvard is not an MBA from a Harvard.

Q. Are you also aware of the fact that he had post-secondary education here at St. Thomas?

A. Yes.

Q. And are you aware --

A. Did he have it at St. Thomas before they were accredited or after? Because the answer is before. And I'm familiar with the program at St. Thomas, and although arguably, it should have been accredited for a long period.

Q. You're talking about the business program, right?

A. It certainly is a business program that very wisely and prudently exposes and educates students over a wide range of business activities. And the accounting program within that is a small part and taxation within the accounting program is a smaller part.

Q. So are you aware that Mr. Miksic testified that had he read his 1040 form and specifically questions 7A and 8 in part 3, labeled foreign accounts and trusts, if he had read those questions, he would have identified those answers as being incorrect for his 2006 returns?

MR. STENMOE: Objection, mischaracterizes the record.

A. I recall that at least regarding one tax return, he indicated that if he had read it, and if he had focused specifically on that issue --

BY MR. BERGER:

Q. Did he say specifically focus on that issue or if he had read it?

A. No. I'm telling you what I remember his -- I'm not putting words in his mouth, but if he had read it and if he had focused on that, that issue, he would have been on awares that it was misstated.

Q. So what fault, if any, then do you attribute to Mr. Miksic for not reading his returns before filing them?

A. Very little.

Q. Even though had he read his returns, he would have identified that questions 7A and 8 in part 3 foreign accounts and trust of his 1040 for his 2006 1040 form were incorrect?

A. Yes.

Q. You reviewed Mr. Taggart's report in this case?

A. I read Mr. Taggart's report.

Q. I previously marked this as an exhibit, and I don't remember which exhibit number it was. Taggart's report.

A. It got marked as his deposition.

MR. STENMOE: Right.

A. 81.

BY MR. BERGER:

Q. 81. Okay. Good.

A. You asked me to come along in case I could help out.

Q. Just give you another marked copy of Exhibit 81 for your reference. Did you disagree with any portion of Mr. Taggart's report?

[Note: Pages 249-256 missing in original document]

doesn't prevail on the appeal, he's out \$1,400,000.

So a way of thinking of it, he's been damaged right now even if he hasn't paid that. He's damaged because he has that liability.

Q. What happens if he prevails in this lawsuit before his appeal is heard, doesn't he set himself up then for a double recovery?

A. Sure does, yep.

Q. And that's fair?

A. I -- I don't think he has a choice. And if I'm making that judgment -- I'm not a judge -- I'm not going to judge that he gets harmed by not recovering anything and pay a million-4, when he's not -- he's the wronged party. I'm not going to harm the wronged party. It's one of the reasons that I touched on earlier, that settlements can be very important. You can settle and say, all right, here's what's been paid right now that's not under appeal. That's fine. We're going to agree on now, here's this million-4. And if he ends up paying the million-4, okay, here's how we're going to deal with it. If he doesn't pay the million-4, this here's how we're going to deal with it. Settlements are very nice because they have additional flexibility.

But from a damper perspective, I don't know how to say, well, it's subject to appeal, so it's zero. Well, it doesn't matter if I'm looking at a liability, if I'm compensating for his negatives, his negatives include the staring in his face \$1,400,000 of liability.

Q. It's not out-of-pocket money, though?

A. Not yet, but it's a loss. Every time BGM signs off on a review report, there are liabilities that are there, and all of those liabilities are in effect a detraction.

Q. But they're not realized liabilities?

A. They're recognized -- they're not recognized. They're realized. They're on there and they're real.

Q. So recognized, you mean they're not recognized in the sense that no money has been paid out on that?

A. That's right.

Q. So this --

A. They're recognized because they're recorded. They're realized when money is paid out.

Q. So this \$1,400,000 in FBAR penalties has not been realized by Mr. Miksic?

A. That's right, but it's recognized, and it's real. And to give him zero for it, I believe is wrong.

Q. So let me ask you this. I understand that you're not a tax preparer. Have you ever represented a tax preparer in trying to abate any penalties before the IRS?

A. I've represented taxpayers before the IRS.

Q. On an abatement of penalties issue?

A. I don't think abatement of penalties was an issue in the matter before the IRS.

Q. So you've never represented a taxpayer before the IRS in an attempt to abate FBAR penalty?

A. I think -- I know that's correct regarding FBAR, that is correct.

Q. So you have no way to predict the likelihood of the IRS's ruling on Mr. Miksic's appeal, is that fair?

A. That is fair. I don't know anybody that has that ability, other than maybe the IRS. But here's his exposure: His exposure is 1.4. If he doesn't get 1.4 and he loses 1.4, he's at a disadvantage.

Q. But if he gets 1.4 in this lawsuit, and he --

A. Pays nothing.

Q. -- his appeal goes through, then he nets 1.4?

A. That's right. Settlement is a good thing.

Q. Sweet deal.

A. Well, let's turn it around. Let's assume, which I think you will like, BGM is liable -- liability and causation are determined, and they don't pay anything for the million-4. And he ends up paying the million-4. Good deal for them. The wrongdoer just paid zero, when at the end of the day, the taxpayer lost a million-4. Terrible.

So I'm at the bottom of page 4, a little irony. Last sentence, "In addition, Cortec presumably engaged BGM to prepare its federal." So there is some at least presumption that there is a preparation in there.

And then on page 5, the last paragraph, “BGM was engaged by Miksic to prepare individual and corporate taxes as previously set forth.” So apparently, they were preparing the tax returns, which I agree.

Page 6, the -- there is a sentence and then a paragraphette, “The failure to file FBARs and Forms 5471 with Miksic's 2007-2010 -- ignoring the footnote -- individual tax returns, was the responsibility of our CPA firm and was inadvertent and unintentional on our part.” So once again we have from Mr. Edmunds -- I think it was Mr. Edmunds that identified the failure to file. Could have been Mr. Parnell.

Page 6, the last sentence, “In summary, the only appropriate damages that Miksic may be entitled to claim relative to Forms 5471 are professional fees related to appealing the IRS penalties with respect only to EcoCortec.” I think Cortec Croatia is there as well as we've discussed. It shows up in the notation, et cetera.

Oh-oh. I stopped highlighting.

Q. Well --

A. I was quite interested, especially with some of your questions today, because he agrees with some of the liabilities. Obviously, I think he and I both do, in places. There is nothing else that is going to jump out at me.

On page 9, the financial statements standards, we've talked about why I believe those are applicable through the firm.

Q. I'm going to turn to just the resume at page, after page 24.

A. All right.

Q. Resume shows that Mr. Taggart has a master's in accounting from the University of Nebraska. Do you see that?

A. I do.

Q. And University of Nebraska, is that a good school for master's degree in accounting?

A. As best I know.

Q. And he has a bachelor's of science and accounting from Union College. Is Union College a good school to obtain a bachelor's of science degree in accounting from?

A. I don't know at all. I know Union, if this is the Union that's in New York that just became a Division 1 hockey program for women hockey players, it's a very good school.

Q. Great answer.

A. But I don't know of its accounting or business program.

Q. Is there anything about Mr. Miksic's background, education --

MR. STENMOE: Mr. Taggart.

BY MR. BERGER:

Q. I'm sorry. Anything about Mr. Taggart's background, education or training that would suggest he's not capable of giving an expert opinion in this case?

A. No. Reads like he's a pretty decent, experienced guy. And he's got the big firm biases, of course, but --

Q. Okay.

A. Looks like a good education, good experience.

Q. Mr. Cobb, you've only produced one expert report in this case, is that correct?

A. That is correct.

Q. You have not issued any supplemental reports?

A. I have not.

Q. Do you have any in the works?

A. No. Not to say I wouldn't be asked to update something, especially regarding the damages, but I have not been asked to do any updating or supplements as of this time.

Q. Is it fair to say that when -- is it fair to say that your March 31st, 2016 report included your completed opinion as to a reasonable degree of professional certainty -- back up.

Is it fair to say that your report, your March 31st, 2016, included your complete opinion to a reasonable degree of professional expertise regarding the defendant's performance of tax services for Miksic?

A. As we've discussed, yes.

Q. No further questions.

A. So when you said there was ten minutes, I said there is 15.

Q. I guess we have more.

MR. STENMOE: Do you want to be on the record?

A. Yes. Can we go off the record for a second?

(Discussion off the record.)

A. You asked questions at page 36.

MR. STENMOE: Of your report.

A. Yes. Regarding page 36 and you asked questions either right before or after 36. And as I heard the question because, of course, the court reporting will show, who are the other Cobb & Associates people that worked on this or however you did. And I told you David Cobb and Lorna Beukelman.

And you'll see that on page 36, it says discussions with other professionals. And that of course includes David and Lorna, although mostly Lorna. It also includes another professional that I consulted with very early on. And there were documents shared with him, including the two affidavits. And I don't remember what else.

I consulted with Gary Surdel. Gary Surdel is a CPA who recently retired from Wipfli. I've known Gary since days at Touche Ross. Then went to Stirtz Bernards which ultimately included Gary in the name and Gary was the managing partner. I think he was also the managing partner of Wipfli's Minnesota practice. They made multiple mergers or acquisitions.

Gary practiced in the tax area as long as I have known him. So I discussed the affidavits with Gary and the nature of the information, his responses to the information, and his preliminary, by definition, opinions, and also his knowledge through his firm's development and from Touche Ross, and now part of Deloitte Touche, of course, through Stirtz Bernards and Wipfli of their practices to prepare, to review, especially regarding reviewing prior years' work papers and the like.

So I spent time with Gary over the phone. I had a brief meeting with Gary. Gary went to a meeting with me with Mr. Stenmoe, so I discussed the issue with Gary and got his observations as well. And then I thought that was important for you to know because it was part of the work that I did.

Q. How much of Gary's work and the conversations that you had with Gary influence your opinion in this case?

A. You know, I don't know how to answer that. Because we ended up from being looking at it differently, we ended up signing on the same sheet. So I don't know that it was influence, but there certainly was corroboration.

And I don't know how strong it's reflected in the opinions, but the one area where -- Gary deals in tax preparation more than I do, as you've emphasized and will continue, of course, and I was interested in Gary's observations on preparation, especially looking back one year to 2006.

Q. Okay. Let's take a break right now. I just realized that I want to get your file back for you that's being copied and I'll have a couple follow-up questions on that file. And then I think we're done.

(A brief recess was taken.)

BY MR. BERGER:

Q. Mr. Cobb, I'm looking at a black binder that you brought with today, and it's got a yellow Post-it notes on the spine that reads "Briggs payments." Do you see that?

A. I do.

Q. And then it's got a bunch of tabs and the first tab in the front is dated October 27, 2015. Do you see that?

A. I do.

Q. And then it's got another dated tab at February 2, 2016, and I don't see any other dated tabs in here. But my question for you is: Does this binder contain all the invoices you reviewed and all the payment information that you reviewed in ??