

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF COLORADO

IN RE: . Case No. 20-18118-EEB  
. Chapter 7  
SHERRY ANN MCGANN, .  
. 721 19th Street  
. Denver, CO 80202  
Debtor. .  
. Tuesday, May 3, 2022  
. 9:32 a.m.  
. . . . .

TRANSCRIPT OF EVIDENTIARY HEARING ON THE CHAPTER 7 TRUSTEE'S  
MOTION TO APPROVE SETTLEMENT AGREEMENT WITH 1450 OKA HOPE, LLC  
AND GAN-BEI-LA, LLC AND DEBTOR'S OBJECTION THERETO  
BEFORE THE HONORABLE ELIZABETH E. BROWN  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: SHERRY MCGANN (Pro se)  
P.O. Box 460853  
Denver, CO 80246  
For the Chapter 7 Trustee: Spencer Fane LLP  
By: DAVID MILLER, ESQ.  
1700 Lincoln Street, Suite 2000  
Denver, CO 80203  
(303) 839-3800

APPEARANCES CONTINUED.

Audio Operator: Courtroom ECRO Personnel

Transcription Company: Access Transcripts, LLC  
10110 Youngwood Lane  
Fishers, IN 46048  
(855) 873-2223  
[www.accesstranscripts.com](http://www.accesstranscripts.com)

Proceedings recorded by electronic sound recording,  
transcript produced by transcription service.



## APPEARANCES (Continued):

For 1450 Oka Kope, LLC      Frost Brown Todd LLP  
and Gan-Bei-La, LLC:      By: TIMOTHY SWANSON, ESQ.  
1801 California Street, Suite 2700  
Denver, CO 80202  
(513) 651-6800

Lathrop GPM LLP  
By: WILLIAM JONES, ESQ.  
675 15th Street, Suite 2650  
Denver, CO 80202  
(720) 931-3200

Fennemore Craig PC  
By: ALLISON HESTER, ESQ.  
3615 Delgany Street, Suite 1100  
Denver, CO 80216-3997  
(303) 292-2900



I N D E X  
5/3/22

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>FOR THE TRUSTEE:</u>				
Jeanne Jagow	15	117	--	--
<u>FOR THE DEBTOR:</u>				
Sherry McGann	166	--	--	--

<u>EXHIBITS</u>	<u>ADMITTED</u>
Trustee's Exhibit 1	18
Trustee's Exhibit 2	19
Trustee's Exhibit 3	20
Trustee's Exhibit 5	25
Trustee's Exhibit 6	27
Trustee's Exhibit 7	28
Trustee's Exhibit 8	30
Trustee's Exhibit 9	31
Trustee's Exhibit 10	33
Trustee's Exhibit 11	33
Trustee's Exhibit 12	38
Trustee's Exhibit 14	51
Trustee's Exhibits 16 and 17	65
Trustee's Exhibit 18	75
Trustee's Exhibit 20	80
Trustee's Exhibit 21	79
Trustee's Exhibit 23	69
Trustee's Exhibits 24 and 25	70
Trustee's Exhibit 27	72
Trustee's Exhibit 31	46
Trustee's Exhibit 32	47
Trustee's Exhibit 33	40
Trustee's Exhibit 34	40
Trustee's Exhibit 36	96
Trustee's Exhibit 37	95
Trustee's Exhibit 38	99
Trustee's Exhibit 39	107
Trustee's Exhibit 42	103
Trustee's Exhibit 43	108
Trustee's Exhibit 44	116
Trustee's Exhibit 45	109
Trustee's Exhibit 46	100



I N D E X (CONTINUED)5/3/22

<u>EXHIBITS</u>	<u>ADMITTED</u>
Debtor's Exhibit 2A	197
Debtor's Exhibit 4A	194
Debtor's Exhibit 5A	189
Debtor's Exhibit 7A	173
Debtor's Exhibit 8A	177
Debtor's Exhibit 15A	188
Debtor's Exhibit 16A	191
Debtor's Exhibit 17A	192
Debtor's Exhibit 23A	141

1



1 (Proceedings commence at 9:32 a.m.)

2 THE CLERK: All rise. The United States Bankruptcy  
3 Court for the District of Colorado is now in session, the  
4 Honorable Elizabeth E. Brown presiding.

5 THE COURT: Good morning. Please be seated. We are  
6 here in the case of Sherry Ann McGann, Case Number 20-18118.  
7 We're here for an evidentiary hearing on a trustee settlement  
8 motion.

9 Could we have appearances, please? Let's start with  
10 our debtor.

11 MS. MCGANN: All right. Yes, Your Honor. Sherry  
12 McGann.

13 THE COURT: Thank you.

14 MR. MILLER: Good morning, Your Honor. David Miller  
15 appearing on behalf of the Chapter 7 trustee and present with  
16 me in the courtroom is Ms. Jeanne Jagow, the Chapter 7 trustee  
17 in the within Chapter 7 bankruptcy case.

18 THE COURT: Thank you.

19 MR. SWANSON: Good morning, Your Honor.  
20 Tim Swanson --

21 THE COURT: I need you at the microphone.

22 MR. SWANSON: Good morning, Your Honor. Tim Swanson,  
23 Billy Jones, and Allison Hester on behalf of the settlement  
24 counterparties, 1450 Oka Kope, Gan-Bei-La, LLC. We're just  
25 observing.



1 THE COURT: Okay. Thank you.

2 All right. Any housekeeping matters before we begin?  
3 No?

4 MR. MILLER: I don't believe so, Judge.

5 THE COURT: Okay. So we'll start with some brief  
6 opening statements. It's trustee's motion so they get to go  
7 first.

8 MR. MILLER: Good morning, Your Honor.

9 THE COURT: Good morning.

10 MR. MILLER: Let me just first say that after two and  
11 a half years or so --

12 THE COURT: Yeah.

13 MR. MILLER: -- it's super nice to be back here in  
14 person.

15 THE COURT: I agree.

16 MR. MILLER: My walk over here today was just a walk  
17 down memory lane a little bit, so I'm glad to be here, and  
18 thank you for making the time for us today to hear this matter.

19 Your Honor, we're here on a motion to approve a  
20 settlement agreement entered into between the Chapter 7  
21 trustee, Jeanne Jagow, on one hand and two entities, 1450 Oka  
22 Kope, LLC and Gan-Bei-La, LLC, who were defendants in an  
23 adversary proceeding that the trustee had undertaken and  
24 commenced.

25 The evidence to be adduced today will show that



1 approval of the settlement agreement is in the best interest of  
2 the estate. The evidence will show that the settlement  
3 resolves longstanding and acrimonious litigation between the  
4 debtor and her ex-friends and business partners who comprise  
5 1450 Oka Kope, LLC and Gan-Bei-La, LLC.

6 By virtue of the settlement agreement before the  
7 Court, in exchange for dismissal of the adversary proceeding  
8 claims with prejudice and a mutual release, 1450 will release  
9 two deeds of trust it holds on the debtor's Grand Lake property  
10 located at 1535 Grand Lake Avenue in Grand Lake, Colorado, and  
11 those two deeds of trust were in the original combined  
12 principal amount of \$851,000 and they both accrued interest  
13 since execution, and 1450 and GBL, as I'll refer to them  
14 throughout the day, will withdraw their four previously filed  
15 proofs of claim in the debtor's case. All claims which  
16 Celestial Properties, LLC, 1450, and GBL hold against each  
17 other remain intact and are not affected by the agreement.

18 The debtor has interposed an objection to the  
19 settlement agreement and this was not unexpected. The debtor's  
20 actual objection, if you look at its contents, focuses on an  
21 allegation that her single-member entity, Celestial Properties,  
22 LLC, should be joined as an indispensable party to the  
23 adversary proceeding being settled today.

24 The trustee does not believe those allegations are  
25 germane to the Court's analysis as to whether a settlement



1 agreement should be approved under Rule 9019 and the settlement  
2 standards enunciated by the Tenth Circuit in that regard.

3 The debtor objects to the proposed resolution of  
4 claims in the adversary proceeding without the trustee litting  
5 [sic] those claims in full and to trial, a path down, the  
6 evidence will show, the trustee has declined to travel.

7 The evidence will also show that the debtor objects  
8 to the proposed settlement because she does not want the  
9 trustee to take what she has termed the path of least  
10 resistance to sell her house since approved. If the settlement  
11 is approved, it will create equity in the Grand Lake property  
12 by virtue of the removal of the two deeds of trust, and  
13 nonexempt equity in that property will be created and the  
14 trustee intends to use that equity as a path towards repayment  
15 of creditor claims.

16 The evidence will show that instead the debtor seeks  
17 to require the trustee to litigate her speculative claims that  
18 have been longstanding for numerous years and before her first  
19 bankruptcy case that was filed, which was a Chapter 11 case,  
20 and the evidence will show that this suggestion runs counter to  
21 the best interest of the estate, and the proposed settlement  
22 before the Court will constitute an appropriate exercise of the  
23 trustee's business judgment.

24 If this settlement is not approved, the evidence will  
25 show that the two deeds of trust that are contemplated to be



1 removed on the Grand Lake property by this settlement will not  
2 be removed voluntarily and the proofs of claim of 1450 and GBL  
3 will not be withdrawn. The trustee will have to litigate the  
4 adversary proceeding, be forced to respond to the motion to  
5 dismiss, prepare for, pay, and participate in a complicated and  
6 lengthy trial to hopefully achieve the same goal which is  
7 already accomplished by the settlement.

8 In order for the Court to approve the agreement  
9 today, the evidence today must show that the settlement  
10 standards meet the requirements under Rule 9019 of the Federal  
11 Rules of Bankruptcy Procedure and the established caselaw which  
12 sets forth the four factors to be considered in the context of  
13 approving an agreement before the bankruptcy court. And the  
14 evidence today will show that all four of those factors have  
15 been met and that the evidence and logic will persuade the  
16 Court that approval of the settlement agreement is appropriate  
17 and in the best interests of the estate. Thank you, Your  
18 Honor.

19 THE COURT: Thank you.

20 Ms. McGann, you may stand at the podium and give your  
21 opening statement if you wish, but keep in mind this is not  
22 your testimony.

23 MS. MCGANN: Okay.

24 THE COURT: This is just a bird's-eye view of what  
25 you think the evidence is going to show.



1 MS. MCGANN: Okay, Your Honor. Thank you. I have --

2 THE COURT: You need to be at the podium so you're in  
3 that microphone.

4 MS. MCGANN: Oh, sorry.

5 THE COURT: Thank you.

6 MS. MCGANN: Thank you, Your Honor. I have opening  
7 statements and an outline that I prepared, and it's quite  
8 lengthy and I'll be referring to it, so I didn't know --

9 THE COURT: It can't be lengthy. I'm going to give  
10 you about five minutes.

11 MS. MCGANN: No. No, I understand that and --

12 THE COURT: Okay.

13 MS. MCGANN: -- and I just was offering as exhibit --  
14 no.

15 THE COURT: No.

16 MS. MCGANN: Okay. So I took notes during our last  
17 call together on exactly what this hearing was to be about and  
18 to stay on task and be prepared for everything presented today.  
19 I respect the Court's time and appreciate it.

20 My notes are, the Court is not going to try actual  
21 claims being settled out of court and the Court is not going to  
22 try actual value of my home. It's my understanding that this  
23 hearing is about the trustee and if exercised business judgment  
24 appropriately in evaluating various assets and claims fairly to  
25 the best solution of the creditors and public policy.



1 THE COURT: Well said.

2 MS. MCGANN: Okay. I'm prepared to show exhibits  
3 illustrating the trustee did not and continues to not act in  
4 the best interest of all creditors, delaying payment to  
5 legitimate creditors by rejecting a proposal that will work in  
6 the best for all involved except maybe 1450 Oka Kope and  
7 perhaps Mr. Miller and his expectations for legal fees.

8 Mr. Miller filed objections with the Court to each of  
9 my exhibits, claiming no context and irrelevant. I believe,  
10 Your Honor, without context, you are ruling on whose opinion is  
11 right. I do not believe it is the intention of this Court to  
12 give away -- or to get in the way of good cause, and I deeply  
13 appreciate the opportunity to present the context.

14 I am not comfortable with the trustee telling the  
15 Court what is relevant. The trustee should strive for accuracy  
16 in the public interest and that should supersede any client or  
17 lawyer who is demanding more than the actual amount owed to  
18 legitimate creditors to come to a settlement. Context accuracy  
19 is relevant, and it's the best interest not only for the  
20 creditors but the public interest.

21 The trustee has demonstrated lack of care and is not  
22 acceptable nor excusable. She appears to have the creditors'  
23 interest and her interest above the public interest, if at all.  
24 It's bigger a problem than just Sherry McGann and should not be  
25 considered acceptable as the norm. However, I ask the Court



1 will consider my offer to pay legitimate creditors and allow  
2 protection and/or answer that I have constitutional right to be  
3 afforded.

4           The trustee has not engaged personally with me since  
5 January 18th, 2021. She's refused Mr. Miller -- she has used  
6 Mr. Miller at the expense of the estate to diminish fraud  
7 claims filed by 1450 Oka Kope. Thankfully, Mr. Miller has been  
8 successful, convincing 1450 to drop 1.5 million in false  
9 claims.

10           I have a solid plan to offer to satisfy legitimate  
11 debtors by funding \$70,568.21, which is my Exhibit 20 to  
12 explain how that's compared to the claims register. There's  
13 inflated claims register still tied with this account or with  
14 my bankruptcy dated 8/18/21. Exhibit 20 illustrates the actual  
15 valid claims. Exhibits 1 --

16           THE COURT: Okay. We'll go through all this --

17           MS. MCGANN: Okay.

18           THE COURT: -- detail when you put on your case.

19           MS. MCGANN: Okay. Thank you, Your Honor. Most  
20 alarming in one of the exhibits is that Mr. Miller wrote,  
21 quote, "After reviewing all the relevant documents, we also  
22 have no doubt the redemption agreement is valid." Mr. Miller  
23 and the trustee have refused to share what all the relevant  
24 documents are. I've requested a DocuSign document since  
25 October of '19 that has not been provided.



1           The realistic numbers of \$823,970, which I do have a  
2 witness willing to testify, versus the inflated value that  
3 they've come to an agreement of 1 million on the sale of my  
4 house still does not offer enough proceeds to pay legitimate  
5 debtors -- or creditors. If we went with what I believe, there  
6 would be \$55,531 left. That's using 823,970 as a sales price,  
7 minus \$614,000 in mortgages, minus 105,000 in exemptions. With  
8 6 percent realtor fees of 49,438, that leaves \$55,531.

9           Using their numbers that they propose with the exact  
10 same 1 million sales price, 614 mortgages, 105 exemption,  
11 6 percent at 60,000 for realtor fees leaves 116,000 for  
12 proceeds.

13           There's several buckets of collection and we can get  
14 into those if -- if you'd like to later. There's seven that I  
15 have listed out here.

16           My offer in -- is for them to in the proposed  
17 settlement agreement just to include some fraud wording which I  
18 believe we're at an agreement on that and what they would  
19 include.

20           It is also -- I've asked for them to include wording  
21 that the 49 percent due to Celestial Properties, LLC and/or  
22 must state the reason for not collecting from the creditor 1450  
23 Oka Kope, and the wording needs to be agreed upon.

24           I offered an example with Mr. Miller's Exhibit 19  
25 where I'm fine with saying Sherry McGann and the trustee is not



1 willing to exhaust additional fees in attempting to collect and  
2 further makes no warranty regarding validity of any agreements  
3 between 1450, Sherry McGann, and Celestial Properties.

4 I will immediately fund \$116,000 to be placed in a  
5 trust escrow within 15 days of all liens being removed by 1450  
6 Oka Kope and the execution of the revised settlement agreement.

7 I ask that the Court administer the trust escrow.

8 I've come up with this number that \$75,000 is a  
9 contingent amount to pay all legitimate creditors listed on my  
10 Exhibit 20.

11 \$50,000 to be paid in legal fees once all disputed  
12 claims are closed and claims register corrected, closed, and  
13 the full release of me, Sherry McGann. So thank you, Your  
14 Honor.

15 THE COURT: Thank you.

16 All right, let's have the trustee call your first  
17 witness.

18 MR. MILLER: Thank you, Your Honor. Would you like  
19 me to move my computer to the lectern to do my examination or?

20 THE COURT: Yes.

21 MR. MILLER: Susan's shaking her head no?

22 THE CLERK: No, that'll be fine. He needs to keep  
23 his --

24 MR. MILLER: Do you want --

25 THE COURT: I can't --



1 THE CLERK: It's fine if he keeps his computer for  
2 exhibits at his table.

3 MR. MILLER: Do you want me here or at the lectern?  
4 That's what I'm asking.

5 THE COURT: I'd prefer you at the lectern if there's  
6 room.

7 MR. MILLER: Thank you. Thank you. Yeah. I'm more  
8 used to that anyway. I'm going to just need a moment to plug  
9 in. I want -- don't want to lose --

10 THE COURT: Sure.

11 MR. MILLER: Not that I expect to lose power, but  
12 better safe than sorry, Judge.

13 Your Honor, the Chapter 7 trustee calls the Chapter 7  
14 trustee, Ms. Jeanne Jagow, to the witness stand.

15 THE COURT: Ms. Jagow, please come forward and be  
16 sworn by the Court's clerk.

17 THE CLERK: Raise your right hand, please.

18 JEANNE JAGOW, TRUSTEE'S WITNESS, SWORN

19 THE CLERK: Thank you. Please be seated.

20 DIRECT EXAMINATION

21 BY MR. MILLER:

22 Q Good morning.

23 A Good morning.

24 Q Can you please state your name and your business address  
25 for the record?



1 A My name is Jeanne Jagow, and my business address is  
2 PO Box 271088 in Littleton, Colorado, 80127.

3 Q And Ms. Jagow, can you just give a little bit of your  
4 business background to us this morning?

5 A I've been a practicing attorney since 1985, and I've been  
6 a panel trustee for the District of Colorado since 1987.

7 Q And are you familiar with the duties of a Chapter 7  
8 trustee?

9 A I am.

10 Q And can you briefly describe what your duties are for the  
11 Court?

12 A Well, basically my job is to administer the Chapter 7  
13 bankruptcy case which I'm appointed for the court by conducting  
14 the meeting of creditors, reviewing the documents filed in the  
15 case, and searching for any assets that can be liquidated for  
16 the benefit of the creditors. If nonexempt assets are located  
17 and liquidated, then it's my job to review the claims filed in  
18 the case and make distributions to the claimants.

19 Q That's after you've reduced the assets to cash?

20 A Correct.

21 Q And were you appointed as Chapter 7 trustee in this case,  
22 20-18118-EEB?

23 A I was.

24 Q Okay. To your knowledge, is this the first debtor --  
25 bankruptcy case for the debtor?



1 A It is not.

2 Q Okay. I've placed up on your screen Exhibit 1. Can you  
3 see that?

4 A I can see the very top of it.

5 Q I'm sorry. Well, that's probably good enough for now.

6 MR. MILLER: Your Honor and Ms. McGann, can you all  
7 see?

8 MS. MCGANN: The same, the top.

9 MR. MILLER: Great.

10 BY MR. MILLER:

11 Q I want to scroll through this. It's an 18-page document.  
12 It's the docket sheet from the first case. Are you familiar  
13 with it?

14 A I am.

15 MR. MILLER: Your Honor, if -- do I need to move the  
16 exhibits into evidence if they have not been objected to?

17 THE COURT: You still do.

18 MR. MILLER: Thank you. I wasn't sure.

19 THE COURT: And if you never refer to them at all, I  
20 won't probably look at them, so --

21 MR. MILLER: Okay. Your Honor, I would ask for the  
22 admission of Trustee's Exhibit 1.

23 THE COURT: Any objection?

24 MS. MCGANN: No.

25 THE COURT: It's received. And this is Case



1 Number 19-18971, okay.

2 (Trustee's Exhibit 1 admitted into evidence)

3 MR. MILLER: Correct.

4 THE COURT: And what kind of petition -- it's a  
5 Chapter 11.

6 MR. MILLER: It's a Chapter -- sorry, the first  
7 exhibit was just the docket sheet, Your Honor, and let me go  
8 back up to the top of it you can see is a Chapter 11.

9 THE COURT: Okay.

10 BY MR. MILLER:

11 Q And Ms. Jagow, have you seen Exhibit 2 before?

12 A I have.

13 Q And what is it to the best of your knowledge?

14 A It's the voluntary petition that was filed in the 2019  
15 Chapter 11 case.

16 Q When you saw that the debtor had previously filed a  
17 bankruptcy case, did that cause you to take any action?

18 A I reviewed the documents in the prior case as I normally  
19 do prior to the meeting of creditors in the current case.

20 Q And was one of the documents you reviewed Exhibit 2?

21 A It was.

22 MR. MILLER: Your Honor, I'd ask for the admission of  
23 Exhibit 2.

24 THE COURT: Any objection?

25 MS. MCGANN: No, Your Honor.



1 THE COURT: Received.

2 (Trustee's Exhibit 2 admitted into evidence)

3 BY MR. MILLER:

4 Q In addition to reviewing the petition --

5 THE COURT: Please don't continuously scroll.

6 MR. MILLER: I'm sorry, I'm -- you know, I apologize,  
7 Your Honor, I will do my best not to.

8 THE COURT: Okay. Thanks.

9 MR. MILLER: If I had a notebook, I just get to flip  
10 it back and forth, so --

11 BY MR. MILLER:

12 Q I'm sorry, and so in addition to the petition, did you  
13 also review the debtor's statement of financial affairs filed  
14 in her first bankruptcy case?

15 A Yes.

16 Q And if I call Case 19-18971-EEB, the first bankruptcy  
17 case, will you know what I'm talking about?

18 A Yes.

19 Q Okay. Turning to Exhibit 3, that's the statement of  
20 financial affairs that you reviewed?

21 A Yes.

22 MR. MILLER: Your Honor, I'd ask for the admission of  
23 Exhibit 3.

24 THE COURT: Any objection?

25 MS. MCGANN: No, Your Honor.



1 THE COURT: Received.

2 (Trustee's Exhibit 3 admitted into evidence)

3 BY MR. MILLER:

4 Q Ms. Jagow, turning to Page 4 of Exhibit 3, do you see  
5 Question 9? I've highlighted it.

6 A I do.

7 Q And what is Question 9?

8 A Question 9 asks the debtor to list any lawsuits, court  
9 actions, or administrative proceedings that they were a party  
10 to in the year before they filed bankruptcy.

11 Q And did Ms. McGann list actions to which she was a party  
12 prior to the bankruptcy case?

13 A Yes.

14 Q You can see three in front of you here?

15 A Yes.

16 Q And then four and five. Do you see that?

17 A I see them.

18 MR. MILLER: Let me scroll down a little bit. I'm  
19 sorry for the scrolling, Judge.

20 BY MR. MILLER:

21 Q In addition, on the statement of financial affairs, do you  
22 see Question 18?

23 A I do.

24 Q And what does Question 18 ask the debtor to disclose?

25 A Question 18 asks for the disclosure of any sales or



1 transfers of property within two years before filing  
2 bankruptcy.

3 Q And what was the debtor's response?

4 A The debtor responded with two items, the sale of a primary  
5 residence in Castle Rock to an unknown third party in March of  
6 2018 and a transfer of deeds of trust granted on property in  
7 Grand Lake to 1450 Oka Kope, LLC in February of 2019.

8 Q Now Ms. McGann states that there was \$810,000 in  
9 consideration given. Do you see that?

10 A I do.

11 Q You know the actual number is different than 810?

12 A Yes.

13 Q What's the number as far as you know it to be?

14 A It's closer to 800,000. It's a little bit less.

15 Q Wasn't there a \$500,000 loan?

16 A Right.

17 Q And then a \$351,000 loan?

18 A Sorry, a little bit more. Sorry for my math this morning.

19 Q That's okay. And in fact, if you look to, sorry,  
20 Exhibit -- I'm sorry, Schedule D, you -- oops. I'm so sorry.  
21 Do you see Ms. McGann's response to Question 2, secured claims?

22 A I do.

23 Q And do you see the -- what's the debt due in 2.1?

24 A It's a debt to 1450 Oka Kope, LLC in the amount of  
25 \$500,000 secured by the Grand Lake property.



1 Q Okay. And if you look to 2.2?

2 A That is also a debt to 1450 Oka Kope in the amount of  
3 \$351,000 also secured by the Grand Lake property.

4 Q That confirms it's 851 rather than 810?

5 A Yes.

6 Q Okay. Going back just a couple of pages, in response to  
7 Question 19 on Schedule B, do you see the question and the  
8 debtor's response?

9 A Yes.

10 Q What does Question 19 ask?

11 A Question 19 asks the debtor to disclose any non-publicly  
12 traded stock and interest in incorporated/unincorporated  
13 businesses, including an interest in an LLC, partnership, and  
14 joint venture.

15 Q And --

16 A And her response is --

17 Q What was her response?

18 A And her response was stock, Celestial Properties, LLC,  
19 sole owner, 100 percent, zero value.

20 Q And in addition, on Schedule B, there's a question that  
21 asks Ms. McGann or the debtor in Question 33 to list potential  
22 claims. Do you see that?

23 A I do.

24 Q And do you see the response of Ms. McGann here in response  
25 to Question 33?



1 A Yes.

2 Q Do you see two claims listed on Page 15 of 44? At the  
3 bottom here?

4 A Yes.

5 Q And I think that's it. In addition to reviewing  
6 Exhibit 3 --

7 MR. MILLER: I actually think Exhibit 4 is a  
8 duplicate of Exhibit 3 and include -- it's just the unsecured  
9 creditor schedule, Your Honor, so I don't think I'm going to  
10 use 4 because it's duplicative.

11 BY MR. MILLER:

12 Q And Ms. Jagow, did you also see that the debtor had  
13 amended her statement of financial affairs in her first case?

14 A Yes.

15 Q Do you see at the top of Exhibit 5, which I've turned to,  
16 it says Document Number 64?

17 A Yes, I see it.

18 Q Okay. And in the amended --

19 MR. MILLER: Sorry for the scrolling, Judge. I don't  
20 know how else to get to the spot.

21 THE COURT: No, I understand that.

22 BY MR. MILLER:

23 Q If you look to Page 4 of 8?

24 A I see it.

25 Q Do you see responses to listing claims within one year?



1 A I do.

2 Q And are these the same claims listed in the original  
3 bankruptcy schedules?

4 A I believe so.

5 Q Okay. There are five claims listed there?

6 THE COURT: Claims. You mean pieces of litigation.

7 BY MR. MILLER:

8 Q Five pieces of litigation. Volk Pacific Builders. Do you  
9 see that?

10 A I do.

11 Q There was an American Savings Bank breach of contract  
12 suit?

13 A Yes.

14 Q The Scheibel injunctive relief action?

15 A Yes.

16 Q The American Express collection action?

17 A Yes.

18 Q And then a domestics relation action. Do you see that?

19 A I do.

20 Q And again turning down to Page 6 of 8, do you see that in  
21 response to Question 18 the debtor listed the transfer of  
22 the -- by virtue of the deeds of trust on the Grand Lake  
23 property?

24 A I do.

25 Q And that didn't change on the amended statement of



1 financial affairs, did it?

2 A No.

3 MR. MILLER: Your Honor, I move for the admission of  
4 Exhibit 5.

5 THE COURT: Any objection?

6 MS. MCGANN: No, Your Honor.

7 THE COURT: It's received.

8 (Trustee's Exhibit 5 admitted into evidence)

9 BY MR. MILLER:

10 Q After reviewing the debtor's statement -- let me clear  
11 this. Apparently, I -- there we go. After reviewing  
12 Exhibits 1 through 5 and the docket sheet in the debtor's first  
13 case, what did that review reveal to you?

14 A It revealed that the information was consistent with the  
15 information filed in the Chapter 7 petition. It revealed that  
16 there was a 2004 examination, excuse me, of the debtor during  
17 the Chapter 11. Appears there was a discovery dispute and  
18 ultimately there was a motion to dismiss filed by 1450 Oka  
19 Kope, LLC.

20 Q Did you come to any belief with respect to the difficulty  
21 or the relationship of the parties in the first case?

22 A It appeared that there was some animus between them.

23 Q And based on the debtor's bankruptcy schedules and the  
24 claims listed, did you believe that the debtor had been -- did  
25 you form any belief about whether the debtor was litigious?



1 A She did list a number of pieces of litigation in her  
2 statement of financial affairs, so I suppose by -- by that  
3 standard, yes.

4 Q Okay. To your knowledge, was the debtor able to confirm a  
5 plan in her first bankruptcy case?

6 A She did not.

7 Q Are you aware of the outcome of the first bankruptcy case  
8 Ms. McGann filed?

9 A Yes, it was dismissed.

10 Q Okay. And do you know on whose motion it was dismissed?

11 A I believe it was the motion of 1450.

12 Q Okay. During the first case -- please turn to Exhibit 6.

13 A I see it.

14 Q Did you ever have a chance to review the debtor's  
15 objection to motion for relief from stay that was filed by the  
16 Scheibel and Menehune Ventures parties?

17 A Yes.

18 THE COURT: Excuse me.

19 MR. MILLER: Bless you, Your Honor.

20 MS. MCGANN: Bless you.

21 THE COURT: Thank you.

22 BY MR. MILLER:

23 Q Do you know why the debtor objected to the relief from  
24 stay motion of the Menehune Ventures case?

25 A I believe that she wanted the bankruptcy court to resolve



1 the matter rather than the Hawaiian court.

2 Q Okay. Did that happen --

3 THE COURT: Can I see the caption of this again,  
4 please?

5 MR. MILLER: I'm sorry, Your Honor. It was the  
6 debtor's objection to motion for relief from stay, Document  
7 Number 120 --

8 THE COURT: But whose motion?

9 MR. MILLER: It was the motion of Mary Scheibel;  
10 Menehune Ventures, LLC; Worthy Clay Scott; and Nick Braber.

11 THE COURT: Thank you.

12 MR. MILLER: Move for the admission of Exhibit 6.

13 THE COURT: Any objection?

14 MS. MCGANN: No, Your Honor.

15 THE COURT: Received.

16 (Trustee's Exhibit 6 admitted into evidence)

17 BY MR. MILLER:

18 Q And then you had mentioned that 1450 Oka Kope, LLC had  
19 filed their motion to dismiss. I've turned to Exhibit 7, and  
20 this is just the cover page of that document.

21 A I see it.

22 Q Okay. And are you familiar with this motion?

23 A Yes.

24 Q And what is it?

25 A It's their -- it's 1450 Oka Kope, LLC's motion to dismiss



1 the Chapter 11 case.

2 Q And in the motion, 1450 -- and if I call 1450 Oka Kope,  
3 LLC, 1450, will you know to whom I refer?

4 A Yes.

5 Q They set forth several grounds for potential dismissal of  
6 the first case. Are you familiar with them?

7 A I am.

8 Q And have you read this motion?

9 A I have.

10 Q And among the grounds for potential dismissal, I'm turning  
11 to Page 9 of 124.

12 A Yes, I see it.

13 Q Do you see the allegations in Item 8 starting in Paragraph  
14 35?

15 A I do.

16 Q What was one of the allegations that 1450 had made with  
17 respect to the debtor?

18 A That Celestial is the debtor's alter ego.

19 MR. MILLER: Move for admission of Exhibit 7.

20 MS. MCGANN: Yes, Your Honor. No problem.

21 THE COURT: Okay. Received.

22 (Trustee's Exhibit 7 admitted into evidence)

23 BY MR. MILLER:

24 Q And after the motion to dismiss was filed, are you aware  
25 of what the debtor did?



1 A Believe she filed an objection to the motion.

2 Q And I'm turning to Exhibit 8. Do you see that document?

3 A I do.

4 Q And what is it?

5 A It says response/objection to motion to dismiss.

6 Q And you can see by the header it was filed in Ms. McGann's  
7 first case?

8 A Yes.

9 Q And Exhibit 8 is approximately 20 pages long. Do you see  
10 that?

11 A I do.

12 Q And do you see this statement right here?

13 A Yes. I do.

14 Q And so even though the debtor filed a 20-page response,  
15 what's your understanding of the debtor's position with respect  
16 to the motion to dismiss?

17 A She did not oppose the motion to dismiss.

18 Q Okay. And that's stated in the beginning and in the  
19 preamble and then in the wherefore provision at the end. Do  
20 you see that there as well?

21 A I do.

22 MR. MILLER: Move for the admission of Exhibit 8,  
23 Your Honor.

24 THE COURT: Any objection?

25 MS. MCGANN: No, Your Honor.



1 THE COURT: It's received.

2 (Trustee's Exhibit 8 admitted into evidence)

3 BY MR. MILLER:

4 Q And after the debtor indicated that she did not oppose  
5 dismissal of the first case, do you know what action the court  
6 may have taken?

7 A I believe the case was dismissed.

8 Q And if you look at Exhibit 9, what is that?

9 A An order dismissing Chapter 11 case.

10 Q Okay. And what was the date that the Chapter 11 case was  
11 dismissed?

12 A September 1st, 2020.

13 Q Do you recall the date that the first case was filed?

14 A Let me see.

15 Q I'm turning back to Exhibit 1.

16 A It was filed October 17th, 2019.

17 Q So the case was in Chapter 11 for almost a year?

18 A That's right.

19 Q And to the best of your knowledge, did the debtor propose  
20 a plan in that case?

21 A I didn't see one.

22 Q Okay. To the best of your knowledge, did the debtor ever  
23 take steps to retain counsel to pursue any of the claims that  
24 she listed on her statement of financial affairs?

25 A Not to my knowledge.



1 Q And to the best of your knowledge, did the debtor make any  
2 recovery on any of the alleged litigation claims that she  
3 listed in the first case?

4 A Not that I'm aware of.

5 MR. MILLER: Your Honor, I move for the admission of  
6 Exhibit 9.

7 MS. MCGANN: Your Honor, I'm not sure if this is at  
8 the appropriate time, but there was a plan that was proposed  
9 and we did collect -- attempt to collect --

10 THE COURT: Okay. You'll be able to put on --

11 MS. MCGANN: Okay.

12 THE COURT: -- and refute whatever you want. The  
13 question is just whether the court's order, Exhibit 9, should  
14 be admitted into evidence.

15 MS. MCGANN: It's okay. No problem. Thank you.

16 THE COURT: Okay. So it's received.

17 Could you pull your microphone down and towards you?  
18 Yeah. You're just very soft-spoken.

19 (Trustee's Exhibit 9 admitted into evidence)

20 MS. MCGANN: Okay.

21 BY MR. MILLER:

22 Q Sorry, let me find something here. With respect to  
23 Exhibit 8, if you turn to Page 2 of 20, do you see the debtor's  
24 statement that I'm highlighting here?

25 A Yes.



1 Q You're aware that the debtor alleged that she did not know  
2 what the \$351,000 promissory note was for with respect to 1450  
3 Oka Kope?

4 A That's what that statement says.

5 Q Okay. Do you believe that's true?

6 A I don't know what the debtor knows.

7 Q Thank you. After the dismissal of the first case, did any  
8 time pass between that date, which was September 1st, 2020, and  
9 the filing of the second case?

10 A A couple of months passed by.

11 Q Okay. And then the debtor filed the within Chapter 7  
12 case?

13 A Yes.

14 Q Turning to Exhibit 10, are you familiar with this  
15 document? It's a 14-page document. I can go through it page  
16 by page if you'd like me to, or if you're familiar with it,  
17 just let me know.

18 A I'm familiar with it.

19 Q And what is it?

20 A It's the court's docket sheet for the 2020 Chapter 7 case.

21 Q This case?

22 A Yes.

23 MR. MILLER: Your Honor, I ask that you take judicial  
24 notice of the docket sheet and admit it into evidence.

25 THE COURT: Any objection?



1 MS. MCGANN: No, Your Honor.

2 THE COURT: Okay. It's received.

3 (Trustee's Exhibit 10 admitted into evidence)

4 BY MR. MILLER:

5 Q And turning to Exhibit 11, are you familiar with that  
6 document?

7 A I believe that's the voluntary petition filed in this  
8 case.

9 Q And you can see that's the case number right there?

10 A Yes.

11 Q Wow, I successfully did that. And in the petition, do you  
12 see the response to Question 9?

13 A I do.

14 Q And what is that response?

15 A That's the question that asks have you filed for  
16 bankruptcy within the last eight years, and the debtor replied  
17 yes and disclosed that a case had been filed in the District of  
18 Colorado on October 17th, 2019, that was assigned Case  
19 Number 19-18971-EEB.

20 MR. MILLER: Your Honor, move the admission of  
21 Exhibit 11.

22 THE COURT: Any objection?

23 MS. MCGANN: No objection, Your Honor.

24 THE COURT: Received.

25 (Trustee's Exhibit 11 admitted into evidence)



1 BY MR. MILLER:

2 Q And in conjunction with the second case, did the debtor  
3 file a statement of financial affairs and schedules?

4 A She did.

5 Q And turning to Exhibit 12, are you familiar with that  
6 document?

7 A I am.

8 Q And what is it?

9 A That's the statement of financial affairs for individuals  
10 filing for bankruptcy that was filed in this case on  
11 January 5th, 2021.

12 Q And on Page 4 of 50, do you see the debtor's response to  
13 Question 9?

14 A I do.

15 Q And what does Question 9 ask?

16 A Within one year before you filed for bankruptcy, were you  
17 a party in any lawsuit, court action, or administrative  
18 proceeding?

19 Q And do you see the debtor's response?

20 A Yes.

21 Q She's listed the Scheibel claim again?

22 A Yes.

23 Q The Volk Pacific Builders appeal?

24 A Yes.

25 Q The American Express action?



1 A Yes.

2 Q A lawsuit she had filed against Kathy Knutson, Karen  
3 Shudinis, Michael Shudinis, Ka'anapali Coffee Farms Lot Owners  
4 Association. Do you see that?

5 A I do.

6 Q And then you also see McGann v. 1450 Oka Kope, LLC for  
7 fraud. Do you see that as well?

8 A I do.

9 Q Turning to the debtor's bankruptcy schedules that are  
10 attached to the statement of financial affairs and schedules,  
11 Exhibit 12, do you see the debtor's response to Question 19?

12 A Yes.

13 Q What does she say in response to Question 19?

14 A That she owns private stock in 1450 Oka Kope of an unknown  
15 value.

16 Q And Question 19 asks the debtor to disclose any interest  
17 in LLCs or partnerships that she may have?

18 A That's right.

19 Q And so you can see here that she said she listed private  
20 stock in 1450 as an asset of hers, and do you know off the top  
21 of your head if this answer differs from what she listed in the  
22 first case?

23 A I think it does.

24 Q Okay. Well let's go back to Question 19 in the first case  
25 and see what the debtor --



1 THE COURT: I don't think we need to. It said  
2 Celestial 100 percent.

3 MR. MILLER: Okay. And it also said zero.

4 THE COURT: Correct.

5 MR. MILLER: Okay.

6 BY MR. MILLER:

7 Q And the debtor did not list an interest in Celestial on  
8 this bankruptcy case, did she?

9 A No.

10 Q And then if you look to Question 33 on Schedule B

11 A I see it.

12 Q -- Page 17 of 50, do you see the debtor's claims that she  
13 listed?

14 A Yes.

15 Q You can see a property settlement with Rodger Swany?

16 A I do.

17 Q And the Volk Construction claim?

18 A Yes.

19 Q A claim against 1450?

20 A Yes.

21 Q A claim against Wide Open Construction?

22 A I see that.

23 Q And a claim against Folkestad Fazekas, Matthew Patton, and  
24 Marc Patoile. Do you see that?

25 A I do.



1 Q Okay. What did your review of the claims the debtor  
2 listed in the statement of financial affairs and in response to  
3 Question 33 on Schedule B indicate to you?

4 A That the debtor had been involved in a lot of litigation.

5 Q And were you up to speed on what that litigation was when  
6 the case first commenced?

7 A Not when it was filed. I just knew what was in the  
8 schedules as they were filed with the court.

9 Q And since the filing of the case, have you become familiar  
10 with any of these causes of action?

11 A Yes, I've reviewed them all.

12 Q Let's go briefly through the claims that are listed in  
13 response to Question 33 on Page 17 here. You see the property  
14 settlement with Rodger Swany. Are you familiar with that  
15 claim?

16 A Yes.

17 Q To what does it relate?

18 A It's a property settlement ordered in the debtor's  
19 domestic marital dissolution matter.

20 MR. MILLER: Okay. And, Your Honor, before I move on  
21 any further, I move the admission of Exhibit 12.

22 MS. MCGANN: No objection, Your Honor.

23 THE COURT: I think it's already been received.

24 MR. MILLER: I'm sorry if I didn't keep track of  
25 that, Judge.



1 THE COURT: Oh, no it hasn't. Okay. Received.

2 (Trustee's Exhibit 12 admitted into evidence)

3 BY MR. MILLER:

4 Q And did you review the arbitration award that was the  
5 basis for this judgment?

6 A I did.

7 Q How much was the award? Do you know?

8 A \$144,883.

9 Q And to the best of your knowledge, was that reduced to  
10 judgment?

11 A I believe so.

12 Q And are you familiar with the basis for that award?

13 A Yes.

14 Q I've turned to Exhibit 34. It's a 21-page document.

15 A I see it.

16 Q Are you familiar with it?

17 A Yes.

18 Q And is that the arbitration award that we just discussed?

19 A Yes.

20 Q And are you familiar with the basis for the award that was  
21 given to Ms. McGann in that matter?

22 A Yes.

23 Q And what was the basis of the award?

24 A It's my understanding that the arbiter awarded her this  
25 judgment because her ex-spouse failed to cooperate in the



1 domestic relations case.

2 Q Want to turn to the specific provisions of this. I'm on  
3 Page 15. Are you there?

4 A I see it.

5 Q And can you read the first two sentences?

6 A "The arbiter would generally find that an equal division  
7 of the marital estate should -- would be equitable, but not in  
8 this case. Petitioner has significantly violated court orders  
9 and Colorado rules and laws."

10 Q And what's the next sentence? I meant to ask you to read  
11 that as well.

12 A "Petitioner cannot benefit from these violations."

13 THE COURT: Petitioner is the husband?

14 THE WITNESS: Correct.

15 MR. MILLER: Correct.

16 THE COURT: Okay.

17 BY MR. MILLER:

18 Q And so based on Mr. Swany's violations of court orders and  
19 failures to disclose his assets to the divorce court, is it  
20 your understanding that the court entered the order in favor of  
21 Ms. McGann in that case?

22 A Yes.

23 MR. MILLER: Your Honor, I move the admission of  
24 Exhibit 34.

25 MS. MCGANN: No objection, Your Honor.



1 THE COURT: Received.

2 (Trustee's Exhibit 34 admitted into evidence)

3 BY MR. MILLER:

4 Q And just for the record, Exhibit 33 would be a copy of the  
5 docket sheet in Ms. McGann's divorce action. Are you familiar  
6 with that, Ms. Jagow?

7 A I am.

8 MR. MILLER: And, Your Honor, I just move the  
9 admission of that docket sheet as well.

10 MS. MCGANN: No objection, Your Honor.

11 THE COURT: Received.

12 (Trustee's Exhibit 33 admitted into evidence)

13 BY MR. MILLER:

14 Q In Ms. McGann's first bankruptcy case, did she collect any  
15 of this money, to your knowledge, that was due to her?

16 A Not to my knowledge.

17 Q Did she retain any counsel in her first bankruptcy case to  
18 pursue this claim?

19 A Not that I know of.

20 Q When she filed the second case, did she make you aware  
21 that she'd collected any money?

22 A No.

23 Q In fact, looking at Exhibit 3, in response to  
24 Question 33 --

25 A Yes.



1 Q -- with respect to the Rodger Swany case, what did  
2 Ms. McGann state about that collectability in the first case?

3 A It says claim, Rodger Swany, marital settlement, not sure  
4 as to collectability as his property is located in Canada,  
5 arbitrator awarded \$144,883, and she lists a zero value for  
6 that asset.

7 Q Do you recall how in Exhibit 34 the arbitrator  
8 characterized Mr. Swany?

9 A She described him as uncooperative.

10 Q And did the terms of that award and the comments by the  
11 judge as well as the comments of the debtor in response to  
12 Question 33 in Exhibit 3 affect your analysis regarding how  
13 difficult it might be to collect that judgment from Mr. Swany?

14 A It appeared to be an uphill battle.

15 Q Why is that?

16 A Because he's not in the United States so it's a  
17 cross-border collection matter, and he's thumbed his nose at  
18 the Colorado courts in previous pleading -- proceedings, so I  
19 didn't expect he'd cooperate in the collection of the judgment.

20 THE COURT: Does that mean you didn't make any  
21 attempt to collect?

22 THE WITNESS: Oh no, we've tried to collect.

23 MR. MILLER: I haven't asked any of those questions  
24 yet, Judge.

25 THE COURT: Got it.



1 BY MR. MILLER:

2 Q Understanding that collection of this claim might be  
3 difficult, what actions have occurred in this Chapter 7 case  
4 with respect to Mr. Swany?

5 A Well, we've contacted -- we reached out to Mr. Swany and  
6 made demand for payment and he retained local counsel.

7 Q And what has happened since Mr. Swany retained local  
8 counsel?

9 A Well, we've attempted to negotiate a settlement with him,  
10 but we've been unable to achieve that to date.

11 Q Have you given up?

12 A No, it's still an open matter, but he has indicated that  
13 he may file for bankruptcy in Canada. He's made some offers,  
14 provided very minimal documentation.

15 Q Are you -- do you believe you're in a position to accept  
16 Mr. Swany's offers at the present time without that  
17 documentation?

18 A He hasn't provided any financial affidavit, so I can't  
19 accept any offers from him at his time.

20 Q Okay. One of the other claims that the debtor listed in  
21 her bankruptcy schedules was the Volk Construction claim. Let  
22 me get to Exhibit 12. Do you see that Volk Construction claim?

23 A I do.

24 Q To your knowledge, did the debtor pursue this claim in the  
25 first case?



1 A Not that I'm aware of.

2 Q To your knowledge, what is the Volk Construction claim  
3 about?

4 A I believe that's the first contractor on the Hawaiian  
5 property and that there was a dispute about the quality of the  
6 work done on the property.

7 Q And in whose name was the Hawaiian property when the work  
8 was done to your knowledge?

9 A I believe it was in the name of the Celestial LLC.

10 Q Celestial Properties, LLC?

11 A Yes.

12 Q Can we just call them Celestial?

13 A That'd be fine with me.

14 Q Okay. To your knowledge, did either Ms. McGann or any  
15 other party seek relief from stay to appeal -- pursue that  
16 appeal in her first bankruptcy case?

17 A Not that I recall.

18 Q Do you recall seeing anything in the docket sheet in the  
19 first case that Ms. McGann hired counsel to pursue that appeal  
20 in Hawaii?

21 A No.

22 Q To the best of your knowledge, what actions did the debtor  
23 take after filing her first case to pursue the Volk  
24 Construction claim?

25 A I'm not aware of any.



1 Q The next claim the debtor lists is a claim against 1450.  
2 The debtor states that they used fraud and coercion to seize  
3 Hawaii property and damaged McGann by preventing the operations  
4 of the business the property was built for. Do you see that?

5 A I do.

6 Q To your knowledge, did the debtor ever seek to hire  
7 special counsel to pursue her claims against 1450 in the first  
8 case?

9 A I don't believe so.

10 Q Did she ever pursue any claims without hiring special  
11 counsel in the first case against 1450?

12 A Not that I know of.

13 Q No adversary proceedings of your -- to your knowledge?

14 A I didn't see any.

15 Q Now these claims with respect to 1450, those are the  
16 claims that are being resolved by this motion that's before the  
17 Court. Is that correct?

18 A Yes.

19 Q Okay. And after serving as trustee in this case, have you  
20 been able to form any belief as to the nature of the  
21 relationship between the debtor and 1450?

22 A Yes.

23 Q Okay. And how did you form that belief?

24 A From the information provided in this case.

25 Q You reviewed the pleadings in this case?



1 A Reviewed the pleadings and information provided by both  
2 the debtor and the representatives of 1450.

3 Q And what is the belief with respect to the relationship  
4 between the debtor and the members of 1450 and GBL?

5 A Well, it appears that they were once friends who became  
6 business partners and then had a falling out so that they're  
7 now adversaries.

8 Q You're familiar with the redemption agreement that was an  
9 issue in the adversary proceeding?

10 A Yes, I've read it.

11 Q And the assignment of interest document?

12 A Yes.

13 Q Do you know to what they relate?

14 A They relate to the transfer of Celestial's interest in the  
15 property -- I mean, in 1450.

16 Q Turning to Exhibit 31.

17 A I see it.

18 Q Are you familiar with that document?

19 A I am.

20 Q What is it?

21 A It's the assignment of the limited liability membership  
22 interest.

23 Q Okay. And do you see Ms. McGann's signature there?

24 A I do.

25 Q And do you see the date of the agreement?



1 A It was -- it says it was executed to be effective on  
2 March 1st, 2019.

3 Q Do you believe it was executed on March 1, 2019 or  
4 thereafter?

5 A I don't know. It sounds like it's backdated, but I wasn't  
6 there.

7 MR. MILLER: Okay. Move the admission of Exhibit 31.

8 MS. MCGANN: No -- no problem, Your Honor. Yeah.

9 THE COURT: Okay. Received.

10 (Trustee's Exhibit 31 admitted into evidence)

11 BY MR. MILLER:

12 Q The next document, turn to Exhibit 32. Do you see that  
13 document?

14 A I do.

15 Q And what is it?

16 A It's entitled membership redemption agreement.

17 Q Okay. Do you know what it does?

18 A I believe that it transfers the interest of the LLC to  
19 1450.

20 Q The -- Celestial's interest in 1450?

21 A Yes.

22 Q To 1450?

23 A Correct.

24 Q And what do you see on the last page?

25 A I see the signatures of Sherry McGann, Manager, and Sherry



1 McGann personally.

2 Q And when you commenced the adversary proceeding against  
3 1450, did you bring any claims with relation to the validity of  
4 Exhibits 31 and 32?

5 A Yes.

6 MR. MILLER: And, Your Honor, I move the admission  
7 of 32.

8 MS. MCGANN: No problem, Your Honor.

9 THE COURT: Received.

10 (Trustee's Exhibit 32 admitted into evidence)

11 BY MR. MILLER:

12 Q And what were the claims that you brought with respect to  
13 the debtor's assignment of her membership interest in -- I'm  
14 sorry, the assignment of Celestial's interest in 1450 back to  
15 1450?

16 A I asked that those transfers be avoided.

17 Q You're aware that the debtor claims she's never signed  
18 these documents?

19 A Yes.

20 Q That they were supposed to be docusigned?

21 A That's right.

22 Q And that these don't contain the DocuSign seal and that's  
23 evidence that these documents were not signed?

24 A Yes.

25 Q And you're aware that Ms. McGann is upset that you believe



1 these documents may be valid?

2 A Yes.

3 Q Okay. Even if it's true that Ms. McGann did not sign  
4 Exhibits 31 or 32, would that have affected your decision to  
5 settle the adversary proceeding that's the subject of the  
6 motion to approve?

7 A Well, I still think it's a good idea to settle the matter  
8 as offered.

9 Q Even if Ms. -- even if Celestial were still a member of  
10 1450, would that have affected your desire to settle this  
11 adversary proceeding on the grounds that are before the Court?

12 A No.

13 Q Why not?

14 A Because the offer that was made by 1450 created a path for  
15 payment of the creditors in this case.

16 Q And whether or not Celestial is a member of 1450 to this  
17 date and whether the agreements are valid, is that addressed in  
18 the settlement agreement that's before the Court today?

19 A Yes.

20 Q And turning to Exhibit 14, are you familiar with that  
21 document?

22 A Yes.

23 Q And what is it?

24 A The motion to approve settlement agreement with 1450 Oka  
25 Kope, LLC and Gan-Bei-La, LLC pursuant to Bankruptcy Rule --



1 Federal Bankruptcy Rules of Procedure 9019.

2 Q That's the motion before the Court today.

3 A Yes.

4 Q And attached to the agreement -- I'm sorry, to the motion  
5 is the actual settlement agreement?

6 A That's right.

7 Q Okay. Do you see that?

8 A I do.

9 Q And you indicated that the claims that Celestial may hold  
10 against 1450 and GBL and the claims that those entities may  
11 hold against Celestial are addressed in the settlement  
12 agreement?

13 A They are.

14 Q And do you know how they're dealt with?

15 A The Celestial claims are not part of the settlement with  
16 1450.

17 Q If you look at Page 18 of 25, Paragraph 3(d).

18 A I see it.

19 Q I've just underlined it. Do you see that?

20 A I do.

21 Q And I can't help playing with that, I'm sorry. And what  
22 does 3(d) say?

23 A It says, "Except as otherwise provided in Section 4 and 5  
24 below, 1450, GBL, and Celestial reserve all other rights,  
25 claims, and defenses against each other."



1 Q Thank you. And 4 and 5 below are -- is the release  
2 provisions?

3 A Yes.

4 Q And just the mutual releases.

5 A Correct.

6 Q And then in both the release provisions in 4 and 5, do you  
7 see -- from here to here, do you see this language? I think  
8 the -- I wrote in the word four, but I -- you can see it's the  
9 word four. Do you see that?

10 A I do.

11 Q Can you please read that?

12 A "For the avoidance of doubt, this release shall not apply  
13 to any claims including, without limitation, crossclaims,  
14 counterclaims, rights of set-off in recoupment and defenses,  
15 actions, causes of actions, suits, debts, accounts, interests,  
16 liens, promises, warranties, damages and consequential damages,  
17 demands, agreements, bonds, bills, specialties, covenants,  
18 controversies, variances, trespasses judgments, executions,  
19 costs, expenses, or claims whatsoever Celestial, 1450, and GBL  
20 may hold against each other, including, without limitation, any  
21 claims which arise out of or are related to Note 1, Note 2, the  
22 LOI, the Maui property, or the membership transfer."

23 Q And to what does the membership transfer relate?

24 A It relates to the redemption agreement.

25 Q Those were Exhibits 31 and 32?



1 A Yes.

2 Q And so you carved them out of this settlement.

3 A I did.

4 Q You left those issues for another day.

5 A Yes.

6 Q Why did you do that?

7 A I'm not the trustee of Celestial, so those aren't my  
8 claims.

9 MR. MILLER: Your Honor. I move the admission of  
10 Exhibit 14.

11 MS. MCGANN: No objection, Your Honor.

12 THE COURT: Received.

13 (Trustee's Exhibit 14 admitted into evidence)

14 BY MR. MILLER:

15 Q The debtor also listed in her schedules --

16 THE COURT: Could I ask a question?

17 MR. MILLER: Yes, Your Honor.

18 THE COURT: Would you have the trustee clarify when  
19 she says she's not Celestial's trustee? But if the debtor's a  
20 hundred percent owner of Celestial, then the estate -- this  
21 estate holds the whole ownership of Celestial. So what is the  
22 intention as to Celestial and any claims it may have? Is that  
23 being abandoned in this estate or what?

24 MR. MILLER: No, not at this point.

25 THE COURT: I mean, let's ask --



1 MR. MILLER: We have not --

2 THE COURT: -- those questions of her, please.

3 MR. MILLER: Okay. Sure.

4 BY MR. MILLER:

5 Q Ms. Jagow, you've heard the Judge make inquiry with  
6 respect to the discreet differences between Celestial  
7 Properties, LLC, and your status as trustee for Ms. McGann.

8 A Yes.

9 Q Do you recall that when you filed the adversary proceeding  
10 that's being settled by this motion, you filed a motion at the  
11 outset of that hearing?

12 A I do.

13 Q And what motion did you file?

14 A I filed a motion for a preliminary injunction.

15 Q And why did you file that motion?

16 A We had been informed that 1450 was in the process of  
17 selling the Maui property. And we had asked them to hold the  
18 proceeds in reserve until we could review the matter and come  
19 to an agreement and they declined to do so. So I asked the  
20 Court to enter an order requiring them to hold the proceeds  
21 until the matter could be resolved.

22 Q And do you recall that the Court convened a hearing in  
23 that matter last summer?

24 A I do.

25 Q And what was the result of that hearing?



1 A The motion was denied.

2 Q Do you recall why the Court denied the motion?

3 A Because I'm not the trustee for Celestial. I -- while the  
4 bankruptcy estate holds the membership interest, I cannot act  
5 on behalf of Celestial because I'm not the manager or the  
6 trustee for Celestial.

7 THE COURT: That was not the Court's ruling.

8 THE WITNESS: Oh --

9 MR. MILLER: That --

10 THE WITNESS: -- did I misstate it?

11 THE COURT: The Court denied the motion saying that  
12 Celestial did not have standing, but specifically said you can  
13 put Celestial into bankruptcy --

14 MR. MILLER: You --

15 THE COURT: -- and be its trustee. You can act as  
16 its member. You can do all kinds of things. So my question  
17 now is, are you giving up -- abandoning the interest in  
18 Celestial?

19 BY MR. MILLER:

20 Q Ms. Jagow, did you file a bankruptcy petition for  
21 Celestial?

22 A I did not.

23 Q Why not?

24 A Because in reviewing the matter after the Court's hearing,  
25 I determined that that might create a conflict of interest in



1 | this case by creating a conflicting -- a competing bankruptcy  
2 | estate with this bankruptcy estate.

3 |           THE COURT: So are you abandoning the estate's  
4 | interest in Celestial?

5 |           THE WITNESS: Can I ask you -- answer you directly?  
6 | If this matter is approved and the claims are paid in full  
7 | through the sale of the Grand Lake property, I anticipate that  
8 | all other claims will be abandoned at the time the case is  
9 | closed.

10 |           THE COURT: Okay. So you believe you'll reap enough  
11 | equity from the sale of the residence to pay claims in full?

12 |           THE WITNESS: That's my hope, yes.

13 |           THE COURT: Okay.

14 | BY MR. MILLER:

15 | Q     And did you take action to insert yourself -- appoint  
16 | yourself as manager of Celestial Properties after the Court  
17 | denied the preliminary injunction?

18 | A     No.

19 | Q     Why not?

20 | A     Because I don't want to be responsible for the debts of  
21 | Celestial in addition to the debts in this bankruptcy case.

22 | Q     Before you could make any distribution to yourself as a  
23 | member of Celestial, what would your duties be with respect to  
24 | the disbursement of any assets that Celestial has in its  
25 | possession?



1 A Well, after winding up the affairs of the LLC and  
2 liquidating any claims and assets that it might own, I'd need  
3 to pay all of Celestial's debts before the member would be  
4 entitled to any funds.

5 Q Did you believe that that would be in the best interest of  
6 the estate?

7 A I did not.

8 Q Do you recall in the divorce case, the Court -- the  
9 divorce court analyzing the value of the debtor's interest in  
10 Celestial?

11 A Yes.

12 Q Get there. In the divorce action, do you recall if the  
13 Court assigned any value to Celestial Properties?

14 A Not that I recall.

15 Q Do you recall what the Court said with respect to whether  
16 there was any value that -- in the debtor's membership interest  
17 in Celestial Properties, LLC?

18 A I don't recall.

19 Q Okay. Looking at -- would reviewing Exhibit 34 help  
20 refresh your recollection?

21 A Is that -- if that's the arbitration award.

22 Q It is.

23 A Most likely it would.

24 Q Okay. First, let's look at Page 8 of 21.

25 A All right. I see it.



1 Q Okay. Do you see Paragraph 19?

2 A I do.

3 Q Okay. And what does the Judge write in the first sentence  
4 of Paragraph 19?

5 A It says, "During the construction of this property,  
6 Celestial Properties, LLC, has incurred significant debts."

7 Q And the second?

8 A "Celestial Properties, LLC, received a \$500,000 loan as  
9 well as an additional loan of \$351,010 from Kathy Knutson,  
10 which are secured by two deeds of trusts against Celestial  
11 Properties -- Celestial Property, LLC's Grand Lake Property."

12 Q And to your understanding, was this arbitration award  
13 entered before Ms. McGann's first bankruptcy case filing?

14 A I believe so.

15 Q So when Ms. McGann stated in her motion to dismiss that  
16 she didn't know what the \$351,000 was for, do you believe that  
17 was accurate?

18 A I don't know.

19 MR. MILLER: Just a moment, Judge.

20 BY MR. MILLER:

21 Q Looking at Page 10 of 21.

22 A Yes.

23 Q Do you see at the top Paragraph 2?

24 A I do.

25 Q The Judge is discussing the Grand Lake property?



1 A Yes.

2 Q And what does the Court say?

3 A "The arbitrary finds that the current value of the  
4 property is \$699,000." Should I keep reading?

5 Q Please.

6 A "Respondent has a first mortgage against the property with  
7 a balance of \$423,274, a second mortgage with a balance of  
8 \$139,236, and deeds of trust against the property in the amount  
9 of \$351,010 and \$500,000. The difference in the premarital  
10 equity and the current equity is a negative \$714,510. The  
11 arbitrary find -- therefore finds that there is no marital  
12 interest in this property. The Respondent is awarded the Grand  
13 Lake property and all value and debt related to same as her  
14 sole and separate property."

15 Q Do you recall who testified on the debtor's behalf at  
16 the -- in the arbitration in the divorce case?

17 A I think Kathy Knutson was one of the witnesses.

18 Q Turning to Page 5 of 21.

19 A Yes, sir.

20 Q Are you there?

21 A I am.

22 Q And the Judge is talking about the -- let me back up just  
23 so you can see the context here. In Section B, the Judge is  
24 talking about credibility of the witnesses and their testimony.  
25 Do you see that?



1 A I do.

2 Q And the Judge talks first about Roger Swany.

3 A Yes.

4 Q And what is the first comment she makes about Mr. Swany?

5 A "Husband was highly incredible about his income, his  
6 assets, his debts, his wife's earnings, the amount of his  
7 contributions to the Hawaii property, his family's finances,  
8 and his rights under his mother's trust."

9 Q And keep going.

10 A "Husband substantially refused to comply with court orders  
11 regarding discovery and disclosures, giving rise to significant  
12 doubts regarding most of his financial claims and leading to a  
13 consideration of appropriate sanctions under CRCP 16.2(j) and  
14 CRCP 37."

15 Q Thank you. And then, in addition, Ms. McGann testified.  
16 And then you can see, as you stated, Ms. Knutson testified

17 A Yes.

18 Q Rather than scroll, I've got my book out so we don't give  
19 everybody a headache, so -- getting back to the debtor's  
20 claims, in Exhibit 12, the debtor also listed a claim against  
21 Wide Open Construction. Do you see that?

22 A I do.

23 Q To your knowledge, did the debtor ever pursue this claim  
24 in the first case?

25 A Not that I know of.



1 Q And are you familiar with this claim?

2 A Yes.

3 Q And how are you familiar with it?

4 A I reviewed the documents that were provided regarding this  
5 claim.

6 Q And what's your understanding with respect to this claim?

7 A Wide Open Construction was the second contractor brought  
8 in to try to finish the Hawaii property. There's an insurance  
9 policy in place with an endorsement to cover the negligence and  
10 the property damage covered by Wide Open Construction, and the  
11 claim was denied by the insurance company.

12 Q And who was the claimant, to the best of your knowledge,  
13 in the -- with respect to the Wide Open Construction claim?

14 A I believe it was Celestial.

15 Q Okay. And you indicated that the -- you don't believe the  
16 debtor pursued this claim in her first case?

17 A I didn't -- don't recall seeing anything in her case about  
18 it.

19 Q Do you recall seeing that she ever sought relief from  
20 state of pursuing a -- any sort of action against Wide Open  
21 Construction?

22 A Not that I recall.

23 Q Do you recall she ever sought to hire special counsel or  
24 any counsel to pursue that matter?

25 A Not that I recall.



1 Q To the best of your knowledge, what actions were taken by  
2 the debtor after the 2019 case was filed to pursue this claim?

3 A I don't know of any.

4 Q To the best of your knowledge, in the gap period between  
5 September 1st, 2020, and the filing of the second case, are you  
6 aware of any actions the debtor took to collect on this claim?

7 A No.

8 Q The debtor also lists a claim against Folkestad Fazekas,  
9 Matthew Patton, and Marc Patolie, if I'm pronouncing that  
10 correctly. Do you see that?

11 A I do.

12 Q And to the best of your knowledge, what do these claims  
13 relate to?

14 A It's my understanding that they were the attorneys for her  
15 ex-spouse in the marital dissolution matter.

16 Q And what do you think these claims are?

17 A Well, I don't fully understand this, but I believe that  
18 the debtor thinks they're liable for the amount that Mr. Swany  
19 owes her because of their participation in the dissolution  
20 case.

21 Q And to the best of your knowledge, did Ms. McGann, either  
22 individually or through counsel, seek any recourse against the  
23 folks at Fazekas's firm and their lawyers in dependency of the  
24 divorce case?

25 A Not that I'm aware of.



1 Q And if you look at Exhibit 33, the docket sheet in that  
2 case, and we can certainly go through it, you've seen it  
3 before.

4 A I have.

5 Q Have you seen any actions taken to hold any of these  
6 attorneys liable for Mr. Swany's failures in that case?

7 A No.

8 Q Were their own failures in that case?

9 A I'm sorry.

10 Q Did she take any action alleging that the lawyers did  
11 something wrong in that case?

12 A Not that I could see on the docket sheet.

13 Q Okay. So after the case was filed and you reviewed the  
14 statement of financial affairs and schedules, what happened?

15 A The meeting of creditors occurred.

16 Q Okay. Do you recall when that was roughly?

17 A I think the first meeting, the initial meeting of  
18 creditors, was set for January 17th of 2021. So there was a  
19 brief meeting on that day, but because of the scheduling  
20 limitations, then I continued it to a future date, which I  
21 think was a week later, like January 24th, I think. And at  
22 that time, I conducted the full meeting of creditors and it  
23 lasted two or three hours.

24 Q So it was lengthy.

25 A It was.



1 Q Were there numerous creditors that appeared?

2 A Yes.

3 Q And did anybody question the debtor?

4 A Yes.

5 Q And who was that?

6 A Well, I did. And then the attorney for 1450 examined the  
7 debtor as well.

8 Q Okay. And after the 341 meeting, what happened in the  
9 case with respect to the debtor in 1450? Did they contact you?

10 A Oh, with regard to me?

11 Q Yeah.

12 A Yes. During the meeting, it became obvious, as it was  
13 from the schedules, that these matters listed in the schedules  
14 were complex. So I asked both parties to -- to send me an  
15 outline of their positions and their information that they had  
16 about these so I could get up to speed with the information  
17 that they had regarding these matters.

18 Q And once you saw the information from Ms. McGann and from  
19 the counsel for 1450, what did you decide to do?

20 A To retain counsel to assist me in the review of these  
21 claims.

22 Q And what sorts of tasks did you want or expect counsel to  
23 perform on your behalf?

24 A Well, to help me gather information regarding the complex  
25 claims that were disclosed in the case and to research them,



1 perhaps conduct discovery if necessary, or to bring any  
2 lawsuits that might be needed to prosecute any claims that were  
3 warranted to be pursued.

4 Q Do you believe that there was a focus to the review?

5 A Well, we reviewed everything, but I believe the debtor's  
6 primary focus was the 1450 claims. And so that's where I  
7 looked as well.

8 Q And are you aware of any dialogue which took place between  
9 1450's counsel and your counsel?

10 A Well, we exchanged lots of emails and communications. I  
11 also spoke with 1450's attorney.

12 Q And did you -- were there any attempts to negotiate with  
13 1450 prior to bringing any lawsuits?

14 A Oh, yes.

15 Q And what was the result of those discussions?

16 A Well, I did receive an offer to settle that I rejected  
17 because it wasn't sufficient to warrant the administration of  
18 the claim.

19 Q And eventually in the spring of 2021, did you become aware  
20 of any developments with respect to the Hawaii property that  
21 was owned by 1450?

22 A Yes.

23 Q And what happened?

24 A Mr. Swanson informed us that the property was under  
25 contract to be sold.



1 Q And did you make any request of 1450 in the event that the  
2 sale was consummated?

3 A Yes, I asked them to hold the proceeds from the sale until  
4 our matter -- the matter between us could be resolved.

5 Q Why did you want that?

6 A Because I didn't want them spending all the money if the  
7 bankruptcy estate was entitled to some of it.

8 Q And how did 1450 respond to that request?

9 A They declined.

10 Q When you learned of that stance, what action did you take?

11 A We filed a complaint, an adversary complaint, and a motion  
12 for injunction.

13 Q I've turned to Exhibit 16.

14 A I see it.

15 Q Are you familiar with that document?

16 A That's the court docket for the adversary proceeding.

17 Q Is that the adversary proceeding that you just discussed?

18 A Yes.

19 Q Okay. And if you turn to Exhibit 17.

20 A Yes.

21 Q So you're not turning, I'm flipping a computer, but I'm  
22 just so used to saying that. I'm sorry. Are you familiar with  
23 Exhibit 17?

24 A I am.

25 MR. MILLER: Your Honor, I'd ask that Exhibit 16 be



1 admitted into evidence.

2 MS. MCGANN: No objection --

3 THE COURT: And 17 as well?

4 MR. MILLER: 17 as well.

5 MS. MCGANN: I have no objection.

6 THE COURT: Okay. So 16 and 17 are both received.

7 (Trustee's Exhibit 16 and 17 admitted into evidence)

8 BY MR. MILLER:

9 Q And what is Exhibit 17?

10 A It's the complaint filed in the adversary case.

11 Q Okay. And it's a 20-page document, so I'm going to flip  
12 to the claims. And who was the complaint asserted against, if  
13 you know, in terms of the caption here?

14 A 1450 and GBO.

15 Q And would you describe this as pursuing some of the claims  
16 that the debtor thought she possessed against 1450 when she  
17 filed her case?

18 A Yes.

19 Q And the complaint contained a number of claims for relief,  
20 didn't it?

21 A It did.

22 Q Just briefly want to go through those. Apologize here.  
23 It's true the first claim was for declaratory judgment  
24 regarding the membership transfer.

25 A Yes.



1 Q That's the membership transfer that the debtor alleges she  
2 didn't sign.

3 A That's right.

4 Q But the resolution of that claim didn't affect your desire  
5 or willingness to settle.

6 A No.

7 Q It wasn't part of the calculus.

8 A No.

9 Q Because it didn't affect the Grand Lake property.

10 A That's right.

11 Q The second claim is a claim for an accounting regarding  
12 the financial back and forth between 1450 and its members. Do  
13 you see that claim?

14 A Yes.

15 Q Okay. To prove that -- to have an accounting, do you  
16 believe you would've had to hire any professionals?

17 A Probably some forensic accountants.

18 Q And had you done that at the initiation of the complaint  
19 yet?

20 A No.

21 Q Do you recall what the third claim for relief is?

22 A That's avoidance and recovery of the fraudulent transfer  
23 of the 1450 Oka Kope membership interest.

24 Q So if it turned out that the membership interest had been  
25 validly transferred, what was the third claim intended to do?



1 A To set aside that transfer.

2 Q Okay. And then the fourth claim, are you familiar with  
3 that?

4 A Yes. That's the avoidance and recovery of the fraudulent  
5 transfer of Notes 1 and 2, and the deeds of trust.

6 Q Is it your understanding as to whether or not Ms. McGann  
7 signed what we're called -- what was called Note 1 and Note 2  
8 personally?

9 A I believe she signed them as the Celestial.

10 Q There was no personal liability on those notes to the best  
11 of your knowledge.

12 A As far as I know, she has not.

13 Q Okay. And I'll get to those. We've got the proofs of  
14 claims with the promissory notes. In fact, I guess I can turn  
15 to them now just so we get this out of the way.

16 MS. MCGANN: Sorry. What exhibit is this on?

17 MR. MILLER: Right now, I am on 17 --

18 MS. MCGANN: Thank you.

19 MR. MILLER: -- but I'm about to move.

20 MS. MCGANN: Thank you.

21 BY MR. MILLER:

22 Q I've turned to Exhibit 23.

23 A Yes, that -- I see it.

24 Q And what is it?

25 A That's the claims register in this case.



1 Q Okay. And as part of the -- and what is a claims  
2 register?

3 A That's the Court record of the claims that have been filed  
4 in a case.

5 Q Okay. And to the best of your knowledge, did the  
6 Defendants in the adversary proceeding file claims in the  
7 debtor's case?

8 A Yes.

9 Q Okay. They filed four, didn't they?

10 A I believe so.

11 Q Claim 13, you see it here.

12 A Yes.

13 Q For almost \$500,000.

14 A Yes.

15 Q Claim 14, you see that --

16 A I do.

17 Q -- for GBL for 632,000 and change.

18 A Yes.

19 Q Claim 15 for 14,915.62.

20 A Yes.

21 Q And Claim 16 is for 449,458.04. Do you see that?

22 A I do.

23 Q Okay. And under the settlement agreement, what's  
24 happening to each of these claims?

25 A Those four claims are being released.



1 Q Thank you.

2 MR. MILLER: Move the admission of 23, Your Honor.

3 MS. MCGANN: No objection, Your Honor.

4 THE COURT: Received.

5 (Trustee's Exhibit 23 admitted into evidence)

6 BY MR. MILLER:

7 Q Turning to exhibit -- let me see if I've got the right one  
8 here. Turning to Exhibit 24, do you see that that's a proof of  
9 claim by 1450 Oka Kope for 499,878.74?

10 A I do.

11 Q And they filed a statement in support of the claim?

12 A Yes.

13 Q And do you see that therein in that document, 1450 tries  
14 to describe why it's filed its claim?

15 A Yes.

16 Q And what does 1450 say in Paragraph 8 with respect to the  
17 note?

18 A It says, "Celestial, the debtor's alter ego, has failed to  
19 make any payments due under the promissory note."

20 Q And if you look to the rest of the claim, do you see the  
21 promissory note?

22 A I do.

23 Q It's a three-page document.

24 A Okay.

25 Q And do you see who the maker of the note is?



1 A it says it is Celestial Properties, LLC.

2 Q And if you turn to Exhibit 25 -- I'm sorry. Yes,  
3 Exhibit 25. Are you familiar with that document?

4 A I am.

5 Q And do you see the claim there --

6 A I do.

7 Q -- for 632,384.72?

8 A Yes.

9 Q And again, they have filed a statement in support of the  
10 claim?

11 A Yes.

12 Q I don't know if this is the note. That's the letter of  
13 intent claim. Hold on just a sec. Turning to Exhibit 27.

14 THE COURT: Before we get too far, do you want to  
15 admit 24 and 25?

16 MR. MILLER: Yes, please, Your Honor. Thank you.

17 THE COURT: Any objection?

18 MS. MCGANN: No objection, Your Honor.

19 THE COURT: They're received.

20 (Trustee's Exhibit 24 and 25 admitted into evidence)

21 THE COURT: Now you said 27?

22 MR. MILLER: Yes. I'm at 27, Your Honor.

23 THE COURT: Okay.

24 BY MR. MILLER:

25 Q Are you familiar with this document?



1 A Yes.

2 Q It's a claim for 449,458.04.

3 A Yes.

4 Q And do you see that, again, statement in support of the  
5 claim was filed?

6 A I do.

7 Q And in Paragraph 3, what is 1450 Oka Kope with respect to  
8 the Celestial and the debtor?

9 A It says, "Based on discovery, creditor conducted pursuant  
10 to a 2004 exam in debtor's previously dismissed Chapter 11  
11 proceeding, Case Number 1918971, the Chapter 11 proceedings.  
12 Creditor asserts that Celestial, the debtor's wholly-owned  
13 single-member limited liability company, is the alter ego of  
14 the debtor."

15 Q And if you look to this promissory note.

16 A Yes.

17 Q Who is the maker on the promissory note?

18 A Celestial Properties, LLC.

19 Q Thank you.

20 MR. MILLER: Move to the admission of Exhibit 27.

21 MS. MCGANN: No objection, Your Honor. And may I see  
22 the last page of this exhibit?

23 THE COURT: Certainly.

24 MS. MCGANN: The signature on it.

25 THE COURT: So it's received.



1 (Trustee's Exhibit 27 admitted into evidence)

2 MS. MCGANN: Is this a notarized document or -- and  
3 it -- no objection on receiving.

4 THE COURT: Okay.

5 BY MR. MILLER:

6 Q Going back to the complaint, which is Exhibit 17. We'd  
7 gotten into that claim because I asked you what Note 1 and  
8 Note 2 were.

9 A Yes.

10 Q Just to bring you back to where you were. And then we  
11 went through those exhibits to familiarize yourself with those  
12 notes. What was your stance in the adversary proceeding with  
13 respect to Note 1 and Note 2?

14 A They were fraudulent transfers.

15 Q Okay. And with respect to the deeds of trust on the  
16 debtor's Grand Lake property?

17 A Also fraudulent transfers.

18 Q And why was that?

19 A Because there was no consideration given to the debtor in  
20 this case for those items.

21 Q For the two deeds of trust.

22 A Correct.

23 Q And the notes were in the name of Celestial.

24 A That's right.

25 Q And so your claim was, because there was no consideration



1 given for the deeds of trust and the notes were due by  
2 Celestial and not Ms. McGann, that those deeds of trust should  
3 be avoided and removed.

4 A That's right.

5 Q Moving to the fourth claim for relief on Page 13.

6 THE COURT: Before you go there, does anybody want a  
7 morning break? We'll break at lunchtime, but it's about 11,  
8 so --

9 MS. MCGANN: I'm okay, Your Honor.

10 THE COURT: Okay.

11 MR. MILLER: I'm fine.

12 THE WITNESS: I'm fine.

13 THE COURT: Okay.

14 THE WITNESS: Thank you.

15 THE COURT: Let's keep going then.

16 MR. MILLER: Thank you, Judge.

17 BY MR. MILLER:

18 Q The fourth claim for relief, Ms. Jagow. Are you there?

19 A I am.

20 Q And what did you seek by that claim?

21 A The avoidance and recovery of fraudulent transfers of the  
22 1450 Oka membership interest.

23 Q That was the transfer of the -- of Celestial's interest  
24 back to 1450?

25 A Yes.



1 Q And then the fifth claim for relief, just a short thing --  
2 shortcut things a little bit, are they the same claims to avoid  
3 the transfers under state law and not the bankruptcy code?

4 A That's right.

5 Q CRS 388105 is the State Fraudulent Transfer Act --

6 A That's right.

7 Q -- to your knowledge.

8 A Yes.

9 Q UFTA claims as you might call them.

10 A That's my understanding.

11 Q And the sixth claim similarly is an alternative theory to  
12 recover against 1450 and GBL under state law.

13 A Yes, that's correct.

14 Q And then the seventh claim?

15 A The seventh claim is for unjust enrichment constructive  
16 trust.

17 Q And what did you seek by that claim?

18 A To hold any transfers in trust for the benefit of the  
19 bankruptcy estate.

20 Q And in conjunction with that, did you ask the Court in the  
21 next claim for relief for any action?

22 A Declaratory relief declaring that it was a resulting trust  
23 for the benefit of the bankruptcy estate.

24 Q So the funds would be held from the sale proceeds.

25 A That's right.



1 Q And then there was another claim for one-and-a-half times  
2 damages, which is a statutory claim. Are you familiar with  
3 that?

4 A I am.

5 Q And then lastly, what did you seek with respect to the  
6 claims that have been filed by 1450 and GBL?

7 A I asked for disallowance of those claims.

8 Q Okay. And in conjunction with the filing of your  
9 complaint, you testified that you also filed a motion for  
10 preliminary injunction.

11 A That's right.

12 Q And I've turned to Exhibit 18. Are you there?

13 A I am.

14 Q And what is it?

15 A It's the Motion for Preliminary Injunction and Request for  
16 Expedited Hearing.

17 Q Okay.

18 MR. MILLER: Your Honor, move the admission of  
19 Exhibit 18.

20 MS. MCGANN: No objection, Your Honor.

21 THE COURT: Received.

22 (Trustee's Exhibit 18 admitted into evidence)

23 BY MR. MILLER:

24 Q And then are you aware as to whether or not there as any  
25 response by 1450 to the Motion for the Preliminary Injunction?



1 A I believe they objected.

2 Q Okay. And turning to Exhibit 19, what is that?

3 A Response in opposition to Motion for Preliminary

4 Injunction and Request for Expedited Hearing?

5 Q It's a 30-page document.

6 A Mm-hmm.

7 Q How would you describe 1450's defense in response to the

8 motion for preliminary injunction?

9 A They didn't agree to it.

10 Q Did you expect them to change their minds and roll over?

11 A I didn't.

12 Q Did you expect that they would vigorously litigate?

13 A I did.

14 Q And then the Court convened a hearing on the Motion for

15 Preliminary Injunction.

16 A Yes.

17 Q Let me turn -- sorry, back to page -- I'm sorry,

18 Exhibit 18. What were you trying to accomplish by filing the

19 Request for the Preliminary Injunction?

20 A Basically, I just wanted a standstill order that would

21 preserve the bankruptcy estates, if any rights in the proceeds

22 from the sale of the Maui property.

23 Q And did the Court schedule and conduct a hearing on that

24 motion?

25 A It did.



1 Q Were you there?

2 A Yes.

3 Q And what happened at the hearing?

4 A The motion was denied.

5 Q Do you have an understanding as to why the court denied  
6 the Motion for the Preliminary Injunction?

7 THE COURT: I think we've covered this. We've  
8 covered this today. Okay.

9 BY MR. MILLER:

10 Q As the Court suggested earlier this morning, she had  
11 indicated that in denying the Motion for Preliminary  
12 Injunction, Your Honor had indicated, that you could take  
13 action in other forms if you wanted to pursue these claims. Do  
14 you recall that?

15 A I do.

16 Q Did you find either of those options palatable?

17 A No.

18 Q You previously described why they were not palatable to  
19 the Court when your -- Judge Brown asked you about that. Is  
20 that your -- is that the answer that you gave to the Court, the  
21 reasoning why you did not want to pursue those claims in those  
22 other forms?

23 A Yes.

24 Q Those answers were that you'd be potentially creating a  
25 competing bankruptcy estate for Celestial.



1 A Yes.

2 Q And you did not want to become a fiduciary for Celestial.

3 A That's right.

4 Q Is it your understanding that Celestial has any debts?

5 A It's my understanding they do.

6 Q Okay. And debts that are different over and above the  
7 debts that are due to 1450 under those notes.

8 A I believe so.

9 Q Do you recall any discussion about 14 -- about the  
10 celestial debts in the divorce proceeding?

11 A Yes.

12 Q And what do you recall the judge determining there?

13 A I think the arbitrary held that Celestial had debts of  
14 over \$400,000 in her ruling.

15 Q In addition to denying the Motion for the Preliminary  
16 Injunction, did the Court make any other comments at the  
17 preliminary injunction hearing that you recall with respect to  
18 1450?

19 A I don't recall.

20 Q Do you recall whether or not the Court invited them to  
21 file a motion to dismiss?

22 A Oh, yes. They -- I do recall that now. Thank you. She  
23 did.

24 Q What did the Judge do?

25 A She invited them to file a motion to dismiss.



1 Q And what happened next?

2 A They filed a motion to dismiss.

3 Q Whoops. I go -- I've pulled up Exhibit 21. Are you  
4 familiar with that?

5 A I am.

6 Q And what is it?

7 A It's 1450's motion to dismiss the adversary complaint.

8 Q Okay. And they filed that when? Do you know?

9 A July 23rd, 2021.

10 MR. MILLER: Your Honor. Move the admission of  
11 Exhibit 21.

12 MS. MCGANN: No objection, Your Honor.

13 THE COURT: Received.

14 (Trustee's Exhibit 21 admitted into evidence)

15 BY MR. MILLER:

16 Q Backing up just a tad, I'm pointing you to Exhibit 20.  
17 Are you familiar with that document?

18 A Yes.

19 Q And what is it?

20 A It's the minute order entered on June 28th, 2021 after the  
21 Court's hearing on the Motion for Preliminary Injunction.

22 Q And it reflects the Court denied the motion, correct?

23 A Yes.

24 MR. MILLER: Your Honor, move the admission of  
25 Exhibit 20.



1 MS. MCGANN: No objection, Your Honor.

2 THE COURT: Received.

3 (Trustee's Exhibit 20 admitted into evidence)

4 THE COURT: You might want to consider as we go  
5 along, in the interest of time and efficiency, that we may not  
6 need every single piece of paper. If she's testifying what  
7 happened and, you know, they filed a motion to dismiss, we may  
8 not need the motion.

9 MR. MILLER: Sure.

10 THE COURT: So just consider that as we go because I  
11 don't know if we're going to finish today at this pace.

12 MR. MILLER: I'm making good progress, so --

13 THE COURT: Okay.

14 MR. MILLER: But I'm doing my -- thank you,  
15 Your Honor.

16 THE COURT: Okay.

17 BY MR. MILLER:

18 Q When the debtor learned that you were intending to resolve  
19 your claims with 1450, you recall that you took any action.

20 A Yes.

21 Q What was that action?

22 A She filed an objection with the Court.

23 Q And are you -- I've turned to Exhibit 22. Do you see that  
24 document?

25 A I do.



1 Q Is that the objection that she filed?

2 A Yes.

3 Q And it was in the adversary proceeding.

4 A Yes.

5 Q After the debtor filed this objection, did you eventually

6 reach an agreement with 1450 and GBL?

7 A Yes.

8 Q And that was reduced to writing?

9 A It was.

10 Q And Exhibit 14, which is in evidence, is that the motion

11 to approve the agreement as well as the agreement?

12 A I believe it is.

13 Q Get there. Sorry, they're out of order now a little bit.

14 And --

15 A Yes, it is.

16 Q And is Exhibit A attached to that document a true and

17 accurate copy of the settlement agreement that you entered into

18 with 1415 and GBL?

19 A Yes.

20 Q Prior to the motion being filed with the Court, did you

21 review the settlement agreement?

22 A I did.

23 Q And prior to entering into the agreement itself, what

24 actions did you take?

25 A I discussed the matter with you.



1 Q Okay. Was the settlement the product of arm's length  
2 negotiations?

3 A It was.

4 Q What are the essential terms of the agreement to your  
5 knowledge?

6 A The most important parts is that the deeds of trust on the  
7 Grand Lake property would be released and that the claims filed  
8 by 1450 and GBL would be withdrawn from the bankruptcy case and  
9 no further claims would be filed.

10 Q Have you formed a business judgment regarding the  
11 propriety of entering into the settlement agreement?

12 A Yes.

13 Q In forming the judgment, what did you review?

14 A I reviewed all the documents filed in this case and the  
15 information provided by both parties.

16 Q Did you review -- when you say the documents in both  
17 cases, does that include the documents we've gone over this  
18 morning?

19 A Yes.

20 Q The complaint that was filed as well?

21 A Yes.

22 Q Okay. And did you review the information that was  
23 provided by both parties before you had filed the lawsuit?

24 A Yes.

25 Q And in your business judgment, is the settlement agreement



1 in the best interest of the estate?

2 A Yes.

3 Q Do you believe you had any obligation to bring the 1450  
4 settlement offer to the Court?

5 A I do.

6 Q Why did you believe that?

7 A Well, once the offer was made by 1450 that created equity  
8 in the property in Grand Lake, I feel like I had a duty to  
9 notify the creditors and the Court that I had received this  
10 offer and to proceed forward with it as a path to payment of  
11 the claimants in this case.

12 Q What do you believe would -- if you had not brought this  
13 to the Court, do you hold a belief as to whether or not that  
14 would've been in the best interest of the estate?

15 A I don't think it would be.

16 Q Let's go into the details as to what factors you  
17 considered when making your decision to enter into the  
18 agreement. Are you familiar with the Court standards for  
19 approving settlement agreements under Rule 9019?

20 A I am.

21 Q And if you look to the Motion to Approve the Settlement  
22 Agreement. I'm on Paragraph 36. Do you see that?

23 A I do.

24 Q There's a four-factor test to be considered by the Court.  
25 Are you familiar with those four factors?



1 A I am.

2 Q Probability of success on the merits, potential difficulty  
3 in collection, complexity and expense, and the interest of the  
4 creditors and deference to their reasonable views. Are you  
5 familiar with that?

6 A I am.

7 Q Let's take them one at a time here. Looking at the first  
8 prong, the probability of success of the litigation on the  
9 merits. In light of the court's ruling of the preliminary  
10 injunction hearing, do you hold a belief regarding the  
11 probability that the complaint would succeed on its merits?

12 A It had some difficulties.

13 Q If you had to proceed with the litigation, what's the  
14 first thing that would have to happen?

15 A We'd have to move forward with discovery.

16 Q Well, first there's a motion to dismiss pending, isn't  
17 there?

18 A Oh, yes. We'd have to overcome the motion to dismiss.  
19 That's correct. So we'd need to respond to the motion to  
20 dismiss and win on that so that the motion to be denied before  
21 we could move forward with the -- the matter.

22 Q But at the time, you knew that the court had invited 1450  
23 to dismiss the complaint.

24 A I did. It was an uphill battle.

25 Q And had the lawsuit proceeded past the motion to dismiss



1 phase and you had engaged in discovery, do you hold a belief as  
2 to the complexity of the lawsuit?

3 A It was very complex.

4 Q And would it have required any witnesses other than lay  
5 witnesses?

6 A Oh, yes. Expert witnesses would've been required.

7 Q Okay. And even if you survived the motion to dismiss with  
8 respect to the claims as to the avoidance of -- let me pause  
9 for a second and back up. There are two buckets of claims in  
10 that complaint. The claims with respect to the debtor's  
11 ownership interest in Celestial and its claims with 1450.

12 A Mm-hmm.

13 Q Yes?

14 A Yes.

15 Q And then there were also claims with respect to Note 1, 2  
16 in the deeds of trust, correct?

17 A Yes.

18 Q What's the difference between those claims in your  
19 opinion?

20 A Well, one bucket of those claims belongs to Celestial and  
21 one belongs to the bankruptcy estate.

22 Q Which one belongs to the bankruptcy estate?

23 A The ones that belong to Sherry McGann, so the ones  
24 avoiding the Deeds of Trust and having the claims withdrawn in  
25 this case.



1 Q She didn't sign those notes personally, but they had  
2 asserted claims against her personally as an alter ego.

3 A They had.

4 Q Okay. And if you had moved forward with the bucket of  
5 claims that were personal to Ms. McGahn, did you have any  
6 belief as to how 1450 might respond?

7 A I believe that they would claim that she was the alter ego  
8 of Celestial.

9 Q And is that based on the other pleadings that they had  
10 filed in the case already.

11 A Yes.

12 Q The references to it in the Motion to Dismiss.

13 A Yes.

14 Q And they were prepared to litigate the alter ego issue in  
15 the Motion to Dismiss context.

16 A It appeared so,

17 Q And then they also referenced it in the proofs of claims  
18 that they had filed.

19 A They did.

20 Q And to your knowledge, has the debtor made similar  
21 statements during the pendency of this case?

22 A She has.

23 Q And so if 1450 is claiming the debtor was Celestial's  
24 alter ego and the debtor has made statements that she's also  
25 Celestial's alter ego, what effect do you think that might have



1 on the claims with respect to avoiding the liens on the  
2 Grand Lake property and her liability on those notes?

3 A It weakens the estate's claims,

4 Q And it's -- and is it possible that you could have lost  
5 those claims after going to trial?

6 A Yes.

7 Q How long do you think it would've taken to get to trial --  
8 if the Court denies this settlement agreement and then the  
9 adversary proceeding is reactivated, and the first thing you  
10 have to do is respond to the Motion to Dismiss, in your  
11 experience as a bankruptcy trustee, how long is it going to  
12 take to get from that stage to a trial in the bankruptcy court?

13 A Maybe a year.

14 Q Six months to a year, perhaps.

15 A Mm-hmm. Yes.

16 Q And do you believe you would incur any legal fees during  
17 that time period?

18 A Definitely.

19 Q What kind of legal fees?

20 A Well, attorney's fees, expert witness fees, forensic  
21 accounting fees. I don't -- that's --

22 Q Fees in responding to the Motion to Dismiss.

23 A Yep. Fees for every --

24 Q Fees incurred in discovery.

25 A Yes.



1 Q Trial preparation.

2 A Yes.

3 Q And then a trial.

4 A Yes.

5 Q Against an opponent who you might characterize as --

6 A Adverse.

7 Q Well-funded?

8 A Yes.

9 Q How much money do you have in the estate?

10 A About \$12,000.

11 Q As a result of the settlement that's before the Court,  
12 what happens to the claims that you had to avoid liability on  
13 Notes 1 and 2, and the two deeds of trust?

14 A The deeds of trust are released and the claims are  
15 withdrawn.

16 Q Do you have to incur any of the fees and expenses that we  
17 just mentioned to get that result?

18 A No.

19 Q Is there -- if the settlement agreement is approved, is  
20 there any risk that the -- that 1450 will come back and argue  
21 the -- make the alter ego argument we discussed?

22 A No.

23 Q Okay. And what is the consequence of the release of the  
24 liens on the Grand Lake property?

25 A The release of the Deeds of Trust create -- I believe,



1 creates equity in the property that's sufficient to pay the  
2 claims in this case.

3 Q And if you were to proceed with the litigation because  
4 this settlement is denied and you lose on the claims to avoid  
5 the debtor's liability on Notes 1 and 2, and the Grand Lake  
6 property, what would be the result of that with respect to your  
7 efforts to pay creditors?

8 A There would be no funds available for the unsecured  
9 creditors.

10 Q And by virtue of the settlement, do you believe a path to  
11 payment is created for creditors?

12 A I do.

13 Q And what is the path?

14 A The path is to sell the property in Grand Lake, pay the  
15 mortgages and the debtor's homestead exemption, and then pay  
16 the administrative expenses and unsecured claims that remain in  
17 this case.

18 Q And if you don't get an offer for the Grand Lake property,  
19 once this agreement is approved, that's sufficient to make a  
20 distribution to unsecured creditors, will you pursue a sale of  
21 the property?

22 A No, I can't.

23 Q And if you do not receive an offer to purchase the  
24 property for an amount that's sufficient to pay unsecured  
25 creditors, but the settlement is approved, will the liens on



1 the Grand Lake property that 1450 filed still be of record  
2 that?

3 A That -- yes.

4 Q Well, if the settlement is approved, will they give --

5 A If the settlement's approved, yes.

6 Q Will the 1450 liens be of record or will they be removed?

7 A They will have been released.

8 Q They'll have been released. And if you can't sell the  
9 property, to whose benefit will that lien release enure?

10 A The debtors.

11 Q One of the other factors that the Courts have enunciated  
12 with respect to settlement agreements is potential difficulty  
13 in collection of any judgment. Are you familiar with that --

14 A I am.

15 Q -- prong?

16 A I am.

17 Q Do you hold an opinion about how difficult it might be to  
18 collect any judgment against 1450 and GBL?

19 A I do.

20 Q And what is that opinion?

21 A I think that collection against 1450 could be difficult,  
22 if not impossible, because they indicated to us that they would  
23 distribute 51 percent of the funds received immediately up  
24 after the sale. And now, with the passage of time, I don't  
25 have any information whether they retained any funds at all.



1 Q Do you believe that they're holding funds so that they can  
2 pay you in the event that you litigate against them and obtain  
3 a money judgment?

4 A I don't know of any.

5 Q Is there any distribution or collection remedy that would  
6 have to be undertaken in order to effectuate the lien releases  
7 if you were to prevail at trial? Let me rephrase that. In  
8 your opinion, would there be any difficulty of collection in  
9 effectuating a lien release that might be ordered by the Court?

10 A I just record the judgment that would effectuate the  
11 release.

12 Q So there would be no collection required with respect to  
13 any success you might have on the debtor's bucket of claims.

14 A That's right.

15 Q But with respect to actually recovering money against 1450  
16 or GBL, that's where you believe it would be difficult?

17 A That's where the difficulty lies, yes.

18 Q Because they were willing to hold 51 percent of the funds  
19 in escrow had you agreed to that proposal.

20 A Yes.

21 Q And you did not agree to that proposal.

22 A I did not agree to it.

23 Q You wanted all of the money held.

24 A Right.

25 Q And the Court denied that, correct?



1 A That's right.

2 Q The third factor is the complexity and expense of  
3 litigation. I think we touched on that. Is there anything in  
4 addition you'd like to mention with respect to the complexity  
5 and expense? Or do you believe you've answered that  
6 appropriately?

7 A I think we've covered it.

8 Q Okay. The fourth factor is the interest of the creditors  
9 and deference to the reasonable views. Are you familiar with  
10 that factor?

11 A I am.

12 Q To your knowledge, did any creditors object to this motion  
13 to approve?

14 A They did not.

15 Q Okay. And have you considered the interest of the  
16 creditors in your decision to settle?

17 A I have.

18 Q What do you believe their interests are?

19 A I believe their interests are in being paid by the  
20 bankruptcy estate and that the settlement with 1450 creates the  
21 best path available to effectuate that payment.

22 Q Now, the debtors objected --

23 A Yes.

24 Q -- to the motion.

25 A Yes.



1 Q And what do you believe her reasons for objecting to the  
2 settlement motion are?

3 A She wants to retain her home.

4 Q And rather than use the home to create equity for the  
5 estate, she wants this agreement disapproved and for you to do  
6 what?

7 A Proceed to try to collect her other litigation claims.

8 Q The -- those are the ones we've already talked about  
9 today.

10 A Yes.

11 Q And faced with the option of liquidating a concrete asset  
12 or pursuing the debtor's litigation claims, which option  
13 appears to you to have most benefit for the creditors?

14 A Well, as a fiduciary, I have a duty to liquidate the most  
15 tangible assets over pursuit of ones that are -- collection is  
16 less likely.

17 Q And if the settlement agreement is approved, the four  
18 claims of 1450 and GBL, as we discussed, will be removed from  
19 the mix, correct?

20 A That's right.

21 Q And what effect will that have on other unsecured  
22 creditors?

23 A Well, that increases -- it decreases the number of the  
24 amount of unsecured claims, so it increases the likelihood of  
25 full payment of the remaining unsecured claims.



1 Q Why do you believe the approval of the settlement  
2 agreement will create equity in the Grand Lake property?

3 A Well, based on the information that I've received  
4 regarding the value of the Grand Lake property, the release of  
5 the Deeds of Trust creates significant equity in that property.

6 Q Have you contacted a broker in the Grand Lake area?

7 A I have.

8 Q And who is that?

9 A Melinda Lee.

10 Q And do you know what company she's with offhand?

11 A I think she's with Sotheby's.

12 Q What did you ask Ms. Lee to do for you?

13 A I asked her for a current market analysis of the value of  
14 the Grand Lake property.

15 Q Let me -- I'm trying to clear the screen here.

16 MR. MILLER: Just a second. I'm trying to get the  
17 clear button to work, Your Honor. Well, I'm sorry for the two  
18 arrows that I can't seem to --

19 THE COURT: That's fine.

20 MR. MILLER: -- get rid of.

21 BY MR. MILLER:

22 Q Are you familiar with Exhibit 37?

23 A I am.

24 Q And what is it?

25 A It's an email from Melinda Lee from August 16th, 2021.



1 Q Okay. And before she gave you Exhibit 37, do you have an  
2 understanding as to whether or not she went to the debtor's  
3 Grand Lake property?

4 A It's my understanding that she did.

5 Q And when I say the Grand Lake property, you know that I'm  
6 talking about 1535 Grand Avenue in Grand Lake, Colorado.

7 A I do.

8 Q Okay. And what did Ms. Lee tell you about the value?

9 A She told me that she believed that the current fair market  
10 value was 1.35 to \$1.5 million.

11 Q And what did that valuation in the Exhibit 37 mean to you?

12 A It meant that there was significant equity in that  
13 property.

14 Q Okay.

15 MR. MILLER: Your Honor, I ask for the admission of  
16 37.

17 MS. MCGANN: No objection, Your Honor.

18 THE COURT: Received.

19 (Trustee's Exhibit 37 admitted into evidence)

20 BY MR. MILLER:

21 Q And in connection with the potential equity in the  
22 property, turning to Exhibit 36, this is a payoff statement.  
23 Do you see that?

24 A I do.

25 Q And do you have an understanding as to what the payoff



1 statement relates to?

2 A I believe that's Cenlar first mortgage on the property.

3 Q Okay. And how much is the first mortgage?

4 A The total amount due on this statement is \$465,461.60.

5 MR. MILLER: I got it from here. Thank you.

6 I ask for the admission of Exhibit 36, Your Honor.

7 MS. MCGANN: No objection, Your Honor.

8 THE COURT: Received.

9 (Trustee's Exhibit 36 admitted into evidence)

10 BY MR. MILLER:

11 Q And in Exhibit 13, do you recall that Cenlar, before they  
12 changed their name, filed a motion in the debtor's bankruptcy  
13 case?

14 A Yes. A motion for relief from stay. Mm-hmm

15 Q Okay. And in the motion for relief from -- you're aware  
16 that the motion for relief from stay was eventually just  
17 dismissed.

18 A Yes.

19 Q Okay. You had objected to the motion to dismiss.

20 A Yes.

21 Q And in the motion to dismiss on Paragraph 14, do you see  
22 that the debtor valued the property at \$719,000?

23 A I do.

24 Q That's their restatement of what's -- what the debtor's  
25 statement of affairs contains and schedules. Do you believe



1 that's accurate?

2 A That's what the --

3 Q We can go back to exhibit --

4 A -- that's what the schedule showed, yes.

5 Q Yeah. And then the movement is the first deed of trust.  
6 They said they were owed roughly 439.

7 A Yes.

8 Q And that number, I think, is a little bit -- I don't want  
9 to leave this exhibit. We'll go back to confirm what  
10 Exhibit 30 said, the Cenlar payoff. Elevations Credit Union,  
11 you're aware of what that is.

12 A Yes. That's the second deed of trust on the property.

13 Q Okay. And then what are the other liens that are listed?

14 A The 1450 judgment liens.

15 Q And if you do the math on those, it says that there's  
16 negative equity in the property, correct?

17 A That's right.

18 Q And under your settlement, what happens to the fourth  
19 item?

20 A They go away.

21 Q Okay. And as to the payoff, they said they were owed 439.  
22 And then in the payoff statement, which is Exhibit 30 -- sorry,  
23 a lot of them open here. Maybe it's easier if I just do it  
24 this way. Sorry. It's Exhibit 37.

25 MR. MILLER: I'm sorry, it's not 37. My apologies,



1 Judge.

2 BY MR. MILLER:

3 Q It is -- oh, where was it?

4 A Was it 36?

5 Q Thank you. It's right next to 37. Four -- it's grown.  
6 It's now 465. Do you see that?

7 A I do.

8 Q And the principal is now 462 as opposed to the Motion for  
9 Relief from Stay when it was roughly 439. Do you see that?

10 A I do.

11 Q What does that indicate to you with respect to the debtor  
12 servicing of the first mortgage --

13 A It --

14 Q -- during the case?

15 A It indicates she's not making the payments on the  
16 mortgage.

17 Q And after Ms. Lee provided her a market analysis in  
18 Exhibit 37, that was done in August of 2021. Are you aware of  
19 that?

20 A Yes.

21 Q And did she ever update that valuation for you?

22 A Yes.

23 Q Let's look at Exhibit 38. I have opened Exhibit 38. Are  
24 you familiar with that document?

25 A I am.



1 Q And is that -- is -- are you a recipient of that email?

2 A I am.

3 Q And what did Ms. Lee tell you in December of 2021?

4 A That the market hadn't changed.

5 Q Okay. And this was done in response to a request?

6 A Yeah. We had asked her to update the market analysis that  
7 she had previously done.

8 Q Okay.

9 MR. MILLER: Move for the admission of Exhibit 38.

10 MS. MCGANN: No objection, Your Honor.

11 THE COURT: Received.

12 (Trustee's Exhibit 38 admitted into evidence)

13 BY MR. MILLER:

14 Q And was there any other update that Ms. Lee provided you?

15 A No, I think we recently asked her for one as well.

16 Q I've turned to Exhibit 46. It's an email dated  
17 April 18th, 2022 from Melinda Lee. Do you see that?

18 A I do.

19 Q And are you a recipient of that email?

20 A I am.

21 Q Okay. And what did Ms. Lee say re respect to the value of  
22 the property in today's market?

23 A She said that the market was still strong and it was  
24 unchanged.

25 Q Okay. She provided you with a property and relevant



1 proximity.

2 A She said there'd only been one sale in relative proximity  
3 to the Grand Lake property in this case.

4 Q Okay. And the remainder of 46, is this the sale that she  
5 talked about?

6 A It is.

7 Q The -- for \$1.612 million.

8 A Yes.

9 Q And is that the house?

10 A It is.

11 Q Okay.

12 A In Grand Lake.

13 Q And the debtor's house is in Grand Lake.

14 A That's right.

15 MR. MILLER: Your Honor, move the admission of  
16 Exhibit 46.

17 MS. MCGANN: No objection, Your Honor.

18 THE COURT: Received.

19 (Trustee's Exhibit 46 admitted into evidence)

20 BY MR. MILLER:

21 Q And when Ms. Lee went to the property, did she document  
22 the condition of the property?

23 A She did.

24 Q And did she send you the evidence that documented the  
25 condition of the property?



1 A She sent me pictures of the property.

2 Q So turning to Exhibit 42.

3 A Yes.

4 Q Are you there?

5 A I am.

6 Q And is this the property?

7 A Those are the pictures that she sent me of the property.

8 Q These would be the mushroom farm that's in the garage.

9 A That's my understanding.

10 Q And then this is the home on Page 4.

11 A Yes.

12 Q And Page 5?

13 A That's the view.

14 Q And what is the view?

15 A It's a view of Grand Lake.

16 Q Okay. And you're familiar what with what happened in

17 Grand Lake in the past couple of years.

18 A The East Troublesome Fire took place, which I believe

19 destroyed about 200 homes.

20 Q And do you have any understanding of what that may have

21 done to the remaining inventory of homes?

22 A A realtor and -- has indicated to me that there's great

23 demand for homes in Grand Lake because of the lengthy delays in

24 rebuilding the homes that were destroyed.

25 Q And do you hold an opinion about the attractiveness of the



1 debtor's property based on the pictures that you've seen in  
2 Exhibit 42 -- 32?

3 A I do.

4 Q 42, I'm sorry.

5 A I do.

6 Q And what is that opinion?

7 A It appears to be an attractive property. It needs some  
8 repairs, but it's got a beautiful location and it's a beautiful  
9 home.

10 Q You can understand why Ms. McGann doesn't want it sold?

11 A I do.

12 Q Do you sympathize with her?

13 A I'm -- I certainly do.

14 Q But what is your job in this case?

15 A My job -- I represent the interest of the unsecured  
16 creditors. So it's my job to liquidate the non-exempt assets  
17 and to pay the unsecured creditors.

18 Q Even if the debtor doesn't approve?

19 A That's right.

20 Q And she's not in Chapter 11, right?

21 A That's right.

22 Q And do -- what's one of the differences between Chapter 11  
23 and Chapter 7, in your opinion?

24 A Well, in Chapter 11, the debtor can be the debtor in  
25 possession and make decisions like a trustee would make.



1 Q Okay. Now, in addition to the CMA and reviewing the  
2 pictures, did you look at anything else just to give you a  
3 gauge of what values in the Grand Lake area might be?

4 A I looked at the Zillow values online.

5 Q And turning -- let me --

6 THE COURT: Judge, I move for the admission of  
7 Exhibit 42.

8 MS. MCGANN: No objection, Your Honor.

9 THE COURT: Received.

10 (Trustee's Exhibit 42 admitted into evidence)

11 BY MR. MILLER:

12 Q Turning to Exhibit 43 is -- what is it?

13 A That's a picture of the Zillow online screen for this  
14 property.

15 Q And do you know when this Zillow listing was pulled?

16 A I don't see a date on this page, so I can't be sure which  
17 one. I've looked at it frequently just to monitor the  
18 property, but --

19 Q And --

20 A -- I don't see a date on this one.

21 Q And Zillow estimates the property is worth \$1.418 million.  
22 Do you see that?

23 A That's its guesstimate, yeah.

24 Q You don't rely on that as being the be-all and end-all  
25 price, do you?



1 A It's just an indicator.

2 Q Ms. Jagow, what sets the price?

3 A The only way to determine what asset is worth is to offer  
4 it for sale and see what a willing buyer is willing to pay for  
5 it.

6 Q Your understanding from -- with respect to the Grand Lake  
7 real estate market, how long do you believe it's going to take  
8 to find a buyer for this property?

9 A It appears that it only takes 60 days to close a sale. So  
10 I expect we'll find a buyer within 30 days.

11 Q And is this estimate of value consistent with what your  
12 understanding of the value in the Grand Lake property market  
13 might be for this home?

14 A Yes.

15 Q Is it common for debtors to list their causes of action on  
16 their bankruptcy schedules?

17 A Oh, yes.

18 Q They're required to, aren't they?

19 A They're required to, yes.

20 Q If the debtors have a cause of action and they don't  
21 disclose it, what could happen to them?

22 A Well, that could be problematic because that would be  
23 failure to disclose an asset.

24 Q And do you believe it's part of your job to pursue every  
25 cause of action a debtor presents to you?



1 A It is not.

2 Q Why not?

3 A Well, you have to be practical as a trustee and be  
4 prudent. And so while a trustee needs to be advised that the  
5 existence of the claim, it's up to the trustee to decide if  
6 it's a good business decision to pursue a claim that's owned by  
7 the debtor when they file bankruptcy.

8 Q Do you believe Chapter 7 debtors have the right to tell  
9 you as trustee what assets you should pursue in order to do  
10 your job in this -- in any bankruptcy case?

11 A I do listen to what the debtors tell me, but it's my  
12 decision what assets to pursue.

13 Q You're the captain of the ship.

14 A I'm the trustee.

15 MR. MILLER: Just a moment, Your Honor.

16 BY MR. MILLER:

17 Q And if the market does not present you with an opportunity  
18 to sell the property at a profit, you indicated you will not  
19 sell it. Is that correct?

20 A I cannot.

21 Q One of the items that Ms. McGann indicated that you should  
22 pursue, as we stated, is the judgment against Mr. Swany.

23 A Yes.

24 Q Did you ever contact any counsel to discuss pursuit of  
25 that claim?



1 A No. We contacted the attorney that the debtor referred us  
2 to.

3 Q Is that Mr. Hobbes (phonetic)?

4 A Yes.

5 Q And did -- were there email communications that you recall  
6 between Mr. Hobbes, yourself, and I?

7 A Yes.

8 Q Okay. And what did Mr. Hobbes tell you with respect to --  
9 well, let me ask you this. Is Exhibit 39 the emails that we're  
10 talking about?

11 A Yes.

12 Q Looking to the second page of Exhibit 39, do you see that  
13 that's an email from me to Mr. Hobbes?

14 A I can't see the full page, so --

15 Q I'm sorry.

16 A -- I can't tell. Yes, it's from David to David. David  
17 Miller to David Hobbes, I believe.

18 Q Okay. And looking at the last sentence of my email to  
19 Mr. Hobbes, what did I ask or state there?

20 A You said, "You also indicated you only slightly recall  
21 Ms. McGann given the passage of time and that you do not do  
22 flat fee collection work and that Ms. McGann was inaccurate in  
23 representing you agreed to take on her entire case for \$5,000  
24 flat fee."

25 Q And how did Mr. Hobbes respond?



1 A He said, "Your note below is correct to the extent that I  
2 could -- that I could accurately recall at the time of our  
3 conversation. I have found our last email exchange with the  
4 bankrupt. And our retainer agreement was returned, signed, but  
5 the requested monetary retainer was never sent to us. The  
6 monetary retainer sought was \$3,000 Canadian, and the agreement  
7 was an hourly fee for service to register and enforce a foreign  
8 judgment in sense of collecting the amount owed against the  
9 judgment debtor in BC."

10 Q So was there -- did this confirm that in order to collect  
11 the judgment against Mr. Swany, you would have to incur legal  
12 fees on an hourly basis?

13 A Yes.

14 Q And pay that out of the \$12,000 that you're holding.

15 A Yes.

16 Q And what was your belief as to the recovery with  
17 Mr. Swany?

18 A That it'd be very difficult.

19 MR. MILLER: Your Honor, I ask for the admission of  
20 Exhibit 39.

21 MS. MCGANN: I have no objection, Your Honor.

22 THE COURT: Received.

23 (Trustee's Exhibit 39 admitted into evidence)

24 MR. MILLER: Did I ask for 43, Judge?

25 THE COURT: No.



1 MR. MILLER: I ask for the admission of Exhibit 43.

2 THE COURT: That's the Zillow.

3 MR. MILLER: The Zillow listing.

4 MS. MCGANN: No objection.

5 THE COURT: Received.

6 (Trustee's Exhibit 43 admitted into evidence)

7 BY MR. MILLER:

8 Q Do you recall that during the case, Ms. Jagow, I'm -- that  
9 Ms. McGann has communicated her displeasure with the case with  
10 the United States Trustee's Office?

11 A Yes.

12 Q Okay. And turning to Exhibit 45, are you familiar with  
13 that?

14 A Yes.

15 Q And is it a December 29th email from Ms. McGann to the US  
16 Trustee's Office?

17 A Yes.

18 Q You were copied in?

19 A I was.

20 Q And what does Ms. McGann say on Page 3 that I have  
21 highlighted?

22 A I have asked this question, and repeatedly, and made it  
23 clear that Celestial/McGann are the same from Day 1. And it is  
24 documented throughout emails and in transcripts taken during  
25 the 2004 meetings in which 1450 used to torture me and push me



1 ultimately to the Chapter 7 filing.

2 Q And is this an example of one of the documents that led  
3 you to believe that the debtor herself had stated that she's  
4 the alter ego of Celestial?

5 A Oh, yes.

6 MR. MILLER: Move for the admission of 45, Judge.

7 MS. MCGANN: No objection.

8 THE COURT: Received.

9 (Trustee's Exhibit 45 admitted into evidence)

10 BY MR. MILLER:

11 Q And you indicated that you would not sell the house in  
12 Grand Lake if this agreement is approved absent the ability to  
13 generate funds for unsecured creditors?

14 A That's right.

15 Q Have you run any scenarios about unsecured creditor  
16 repayment and what that might look like?

17 A I have.

18 Q And I've opened Exhibit 44. And what is 44?

19 A It's a draft proposed distribution that I prepared on  
20 April 14th, 2022 to see what distribution would look like if  
21 funds of a sale of \$1.2 million was received for the Grand Lake  
22 property.

23 Q And you also ran a projection for the sale at a million  
24 and the sale at 1,000,003.

25 A I have.



1 Q Okay. And you make some assumptions in these proposed  
2 distributions, don't you?

3 A Yes. There's some guesstimates and estimates there.

4 Q Okay. One of the -- well, one of the estimates is your  
5 trustee fee for the sale of the house --

6 A That's right.

7 Q -- depending on what it might sell at.

8 A Mm-hmm.

9 Q That fee is different whether the sale is 1.2 million or a  
10 different number, correct?

11 A Yes. I'm paid a percentage, so it depends on what -- how  
12 much the assets are -- if they're liquidated in the case, what  
13 the commission is.

14 Q Okay. Another assumption you made is with respect to my  
15 attorney's fees.

16 A Yes.

17 Q We put a number in here of \$135,000.

18 A Yes. That's an estimate I received from you.

19 Q And it's not an estimate of where we are right now, but  
20 where we might be at the end of the case if this matter  
21 continues.

22 A I believe that was an estimate through this trial.

23 Q I've not applied for any fees in this case.

24 A Not yet.

25 Q You don't have the ability to pay me yet, do you?



1 A I do not.

2 Q You've also estimated the administrative fees for the  
3 state CPA?

4 A That's right.

5 Q Okay. And in the next -- that's the administrative  
6 category. Is that fair?

7 A Yes.

8 Q Okay. And then below that there's a line and it says,  
9 "Number 1, First Bank unsecured." Do you see that?

10 A I do.

11 Q Okay. And that's a claim for \$9,600.14.

12 A That's right.

13 Q Now, you're aware the debtor told you she got a 1099 from  
14 First Bank.

15 A Yes.

16 Q Does that mean anything to you in the grand scheme of  
17 whether this claim should be paid?

18 A It does not.

19 Q Why not?

20 A Well, a 1099 -- the 1099(c) she sent me was a cancellation  
21 of debt document, which indicates of a taxable event to her but  
22 it does not affect -- it's my understanding that it does not  
23 affect the underlying debt that is owed.

24 Q And you made some other assumptions in here about the  
25 allowability of unsecured claims here with respect to Claims 14



1 through 17 at the bottom.

2 A Yes.

3 Q You see those are the GBL and 1450 claims.

4 A 14 and 15, yes.

5 Q Yeah. And then 13 is a secured claim that you don't pay,  
6 right?

7 A Not unless I sell the property that's secured by it.

8 Q Okay.

9 A That's right.

10 Q And then there's a claim for the United States Trustee's  
11 Office in there for \$1,950?

12 A Yes.

13 Q And what's your understanding of what that relates to?

14 A It's my understanding those are the Chapter 11 fees that  
15 remain due from the dismissed case.

16 Q Okay. And you understand the debtor disputes that that  
17 amount is due?

18 A I do.

19 Q US trustee hasn't withdrawn that claim, have they?

20 A They have not.

21 Q Have they confirmed with you whether that claim is still  
22 owing?

23 A I sent them the documentation -- I sent the US Trustee's  
24 Office the documentation that the debtor sent me, and they  
25 confirmed that they had not been paid; that they had in fact



1 asked for an offset of her tax refund, but then she had asked  
2 them to release it and they did so, and they're still due and  
3 owing.

4 Q Okay. And if the property sells for \$1.2 million and you  
5 pay the administrative claims as set forth and you pay the  
6 unsecured creditors as set forth, what is -- what does this  
7 show that there will be as far as a distribution of unsecured  
8 creditors?

9 A Approximately 74 percent.

10 Q And if the same scenario was run, but the -- and is there  
11 any money that goes back to the debtor?

12 A Not under that scenario.

13 Q Okay.

14 A Well, the homestead exemption.

15 Q The homestead exemption.

16 A The homestead exemption should be paid to the debtor.

17 Q Yes. And turning to Page 6 of 9, this is a proposed  
18 distribution. Let me -- hold on a second. I may have missed a  
19 page here. I forgot the first one. I apologize. Let's go to  
20 the first page. This is a distribution at a million dollars.

21 A That's right.

22 Q And it contains the same assumptions we just went through.

23 A Yes.

24 Q Okay. And at a -- if you were able to get a sales price  
25 of a million dollars and all of these claims were in the amount



1 specified in this scenario, what would be the distribution for  
2 unsecured creditors?

3 MR. MILLER: Bless you, Your Honor.

4 THE COURT: Excuse me.

5 MS. MCGANN: Bless you.

6 THE WITNESS: I think it's only about seven percent.

7 BY MR. MILLER:

8 Q At a million dollars.

9 A That's right.

10 Q Okay. And then if you were to sell the property at \$1.3  
11 million -- let me get there. Page 7 is your proposed  
12 distribution at 1.3.

13 A Yes.

14 Q And it makes the same assumptions.

15 A It does.

16 Q And how does a sale at \$1.3 million square with the  
17 ability to satisfy creditor claims?

18 A It would be a hundred percent distribution to unsecured  
19 creditors.

20 Q So if the property sells for 1.3 million, you believe that  
21 there'll be enough money to pay creditors in full?

22 A Yes.

23 Q And it looks like there might even be, at that level, some  
24 funds left over for the debtor, perhaps.

25 A Perhaps



1 Q \$25,000 in change.

2 A It could be.

3 Q And if the property -- once you hit that threshold of  
4 \$1.3 million or 1.275 perhaps --

5 A Mm-hmm.

6 Q -- if you were able to sell the property for 1.4, 1.5,  
7 1.6, in the range of what you're being -- advised values are,  
8 what happens to the extra money?

9 A It goes back to the debtor

10 Q And after the Motion to Approve is determined by the  
11 Court, if the motion is granted, will the amount needed to  
12 satisfy creditor claims in any way be dictated by the amount of  
13 future attorney's fees that you have to incur in getting the  
14 property to sale?

15 A Yes.

16 Q And how does it affect it? If there's more fees? How  
17 does that affect unsecured creditors?

18 A Well, the administrative expenses of the bankruptcy estate  
19 are required to be paid before the distributions to the  
20 unsecured creditors. So the more costs and expenses the  
21 bankruptcy estates incurs, the less funds are available to the  
22 unsecured creditors.

23 MR. MILLER: Your Honor, I move for the admission of  
24 Exhibit 44.

25 THE COURT: Any objection?



1 MS. MCGANN: No objection.

2 THE COURT: Received.

3 (Trustee's Exhibit 44 admitted into evidence)

4 MR. MILLER: I don't believe I have anything else for  
5 this witness, Your Honor.

6 THE COURT: Okay. Thank you. Do you have any cross  
7 exam that we could start in right now and then we'll still  
8 break at noon?

9 MS. MCGANN: Yes, Your Honor. Thank you.

10 THE COURT: Okay.

11 MS. MCGANN: I do.

12 MR. MILLER: Let me move my stuff here. Sure.

13 MS. MCGANN: If I'm going to be referring to exhibits  
14 that you put in, I'm going to have to, I guess, get my computer  
15 up there too.

16 THE COURT: Okay.

17 MS. MCGANN: Okay. I'm not sure how to do that  
18 though.

19 THE COURT: Well, maybe we ought to just break for  
20 lunch and --

21 MS. MCGANN: Okay.

22 THE COURT: -- you can either make the switch now or  
23 when you come back from lunch.

24 MS. MCGANN: That would be fine. Thank you, Your  
25 Honor.



1 THE COURT: Okay. So we'll come back at 1:30.

2 MS. MCGANN: Okay.

3 THE COURT: Everybody good with that?

4 MR. MILLER: Thank. you, Your Honor. Yes.

5 MS. MCGANN: Yeah.

6 THE COURT: Okay. All right.

7 MS. MCGANN: Thank you.

8 THE COURT: Thank you.

9 THE CLERK: All rise. This Court is now in recess.

10 (Recess taken at 11:51 a.m.)

11 (Proceedings resumed at 1:32 p.m.)

12 THE CLERK: All rise. The United States Bankruptcy  
13 Court for the District of Colorado is now in session, the  
14 Honorable Elizabeth E. Brown presiding.

15 THE COURT: Please be seated. Okay. We're back on  
16 the record in the case of Sherry McGann, Case Number 20-18118,  
17 and this is continued trial after our lunch break. I notice  
18 that both sides are here and present.

19 All right. Shall we begin with cross-exam? And  
20 Ms. Jagow, we'll recall you to the stand and remind you that  
21 you're still under oath.

22 THE WITNESS: Thank you.

23 CROSS-EXAMINATION

24 BY MS. MCGANN:

25 Q Hi.



1 A Good afternoon.

2 Q Okay. If we can look at Exhibit 9.

3 MR. MILLER: Just for the record, Your Honor, I think  
4 there are two Exhibit 9s. I think we both used numbers, just  
5 so you're aware.

6 THE COURT: Okay. That's a --

7 MS. MCGANN: Yeah, I apologize.

8 THE COURT: -- problem.

9 MS. MCGANN: I thought I was supposed to use numbers,  
10 and they were letters. I -- I'm sorry if I did that backwards.

11 THE COURT: You did, but that's -- we'll try to make  
12 do. Is it your Exhibit 9 that you want?

13 MS. MCGANN: Yes.

14 MR. MILLER: That's what I wanted to --

15 THE COURT: We'll have to call it letter A or  
16 something, and then we'll just --

17 MS. MCGANN: It's --

18 MR. MILLER: Should we call it 9A or something like  
19 that, and we do them all --

20 MS. MCGANN: Sure.

21 THE COURT: Okay.

22 MR. MILLER: -- like that, maybe?

23 THE COURT: We could do that.

24 MR. MILLER: We can just call them all A or something  
25 like that?



1 THE COURT: Okay.

2 MS. MCGANN: I read those instructions twice and I  
3 thought it said debtors were number -- were the number.

4 THE COURT: Well, somebody goofed. I don't know who  
5 it was, and at --

6 MS. MCGANN: Yeah.

7 THE COURT: -- at this point, it's too late.

8 MS. MCGANN: Yeah, I apologize.

9 THE COURT: So we'll make yours 9A, et cetera, 10A,  
10 whatever.

11 BY MS. MCGANN:

12 Q Okay. So I have Exhibit 9. Are you able to see that?

13 A I -- I do see it.

14 Q Okay. You testified a plan was proposed and I made no  
15 attempt to collect claims or to work the plan provided in the  
16 Chapter 11. And I believe that was your Exhibit 9 as well that  
17 we were -- when we were talking about the --

18 THE COURT: Which are you referring to? Your --

19 MS. MCGANN: Mine. Mine exhibit. Yes.

20 THE COURT: Then pull that one up, because --

21 MS. MCGANN: Yeah, that's what's up right here.

22 THE COURT: This is 9A?

23 MS. MCGANN: Yes, ma'am. Thank you.

24 THE COURT: Okay. Sorry.

25 MS. MCGANN: No worries.



1 BY MS. MCGANN:

2 Q So you testified that I made no attempts to collect claims  
3 or to work the plan. Was COVID in full swing during my Chapter  
4 11 from -- it was all of 2020, basically.

5 THE COURT: You know, Ms. McGann, one thing I'll make  
6 as a comment. Your cross-examination is not just to point out  
7 every time you disagree with a statement that she made because  
8 she may have made many misstatements. But really, the focus  
9 should be on the claims that you had and the value of those  
10 claims and the strength of those claims, rather than did she  
11 make a misstatement at some point.

12 MS. MCGANN: Okay. Thank you, Your Honor.

13 THE COURT: Sure.

14 BY MS. MCGANN:

15 Q If you could tell me the date on this that you see where I  
16 contacted Mr. Hobbs. What is that date?

17 A The date on the email is November 16th, 2020.

18 Q Okay. Can you tell me why a full year passed despite  
19 repeatedly asking to have the claim released or provided back  
20 to me for collection? Under your own Exhibit Number 39, it  
21 looks like -- and I'll pull that up here -- there was nothing  
22 engaged until February of '22.

23 A I'm sorry, could you state your question again?

24 Q Yes. My question is, why did a full year plus despite --  
25 pass from -- before you engaged in any type of collections with



1 Mr. Hobbs (phonetic), which is just one of the collections --  
2 buckets of collections available?

3 A We were working on other issues, and we finally had some  
4 time to devote to tracking down the attorney that you had  
5 previously contacted.

6 Q Okay. So you say it took 13 months before you did  
7 anything on this claim?

8 A No. I said that that's only our first opportunity to  
9 contact this attorney. We had been engaged in other  
10 negotiations with Mr. Swany and his attorney.

11 Q When did that begin?

12 A I don't have the date in front of me.

13 Q Okay. Exhibit Number 2.

14 THE COURT: 2A.

15 MS. MCGANN: 2A. I apologize.

16 BY MS. MCGANN:

17 Q Exhibit Number 2A. I'm pulling it up. This is a very  
18 detailed memorandum that was sent to you by my attorney, Liz  
19 German, and she went into a lot of detail with seven buckets of  
20 collection, so -- number one being the Swany bucket. This was  
21 provided to you in January, but are you saying you have no idea  
22 when you started to pursue this collection? Is that --

23 A I don't know the date when we originally spoke with  
24 Mr. Swany or his attorney, Mr. Garber --

25 Q Okay.



1 A -- but it was prior to the email that was sent to  
2 Mr. Hobbs.

3 Q Okay.

4 A These matters were, you -- were relegated to a backseat,  
5 if you will, while we pursued what we thought was the strongest  
6 and most likely successful claim in the case.

7 Q Okay. Can you explain why, then, when Liz asked --

8 MS. MCGANN: And I do have Exhibits 30 and 31 that  
9 I've not -- do not have on the thing, and I had them here for  
10 Liz to testify, but her mother passed away on Sunday, so she's  
11 not --

12 THE COURT: Whose mother?

13 MS. MCGANN: Liz German, my attorney. I have her  
14 listed as a witness.

15 THE COURT: Okay.

16 MS. MCGANN: But her mother passed away Monday, so  
17 she will not be available today.

18 THE COURT: We understood that.

19 MS. MCGANN: Yeah.

20 BY MS. MCGANN:

21 Q So I guess my question is, is when she sent this to you on  
22 January 21st, we started asking -- let me get the dates. I  
23 apologize. I don't have it in front of me right here. We  
24 asked for this claim to be released all the way up until  
25 October 21st, when she did send -- and there were several



1 times, but she did send an email --

2 THE COURT: Okay. You're not supposed to testify.

3 MS. MCGANN: Okay. I'm sorry.

4 THE COURT: Ask her a question.

5 MS. MCGANN: All right. Okay. You're right. I'll  
6 come -- let me come back to that. I apologize.

7 Okay. Your Honor, may I admit Exhibit 2 as letter  
8 sent by Liz January 22nd outlining in detail these seven  
9 specific buckets?

10 THE COURT: Okay. Any objection?

11 MR. MILLER: Your Honor, I had filed an objection to  
12 certain of the debtor's trial exhibits. Not all of them. This  
13 was one. First, she had filed this in the context of an expert  
14 witness disclosure, which it wasn't, and I filed a blanket  
15 objection to a number of exhibits on that basis. This one, I  
16 believe, was part of it. In addition, there are some hearsay  
17 statements in here. And I believe that the --

18 THE COURT: It's all hearsay.

19 MR. MILLER: Yeah. It's hearsay --

20 THE COURT: As were your exhibits, but she didn't  
21 object to yours. But you are objecting to hers, I take it?

22 MR. MILLER: I am.

23 THE COURT: Okay. Do you know what that means?

24 MS. MCGANN: I do, Your Honor, but this is a letter  
25 from my attorney that was sent directly to --



1           THE COURT: But it's an out-of-court statement  
2 offered for the truth of the matter asserted. So unless you  
3 have some exception to the hearsay rules, I have to sustain the  
4 objection. Now, you saw this morning the trustee's counsel put  
5 a lot of hearsay into evidence, but you didn't object, so I had  
6 to let it in.

7           MS. MCGANN: Well, I really don't object to those  
8 because I'm using them as my exhibits as well.

9           THE COURT: Well, that's fine.

10          MS. MCGANN: Okay.

11          THE COURT: But as far as this one goes, he's  
12 objecting on the basis of hearsay. So you've got to show me an  
13 exception.

14          MS. MCGANN: Well, I'm not sure if an exception would  
15 be that this is detailed information provided to the trustee  
16 that she's --

17          THE COURT: Okay.

18          MS. MCGANN: -- specifically requesting --

19          THE COURT: I'm sustaining the objection, then, if  
20 you don't have an exception because it is hearsay.

21          MS. MCGANN: Okay. Okay.

22          THE COURT: That doesn't mean you can't ask her  
23 questions about it -- about, you know, what she knew about the  
24 claims or what your attorney told her, or see if you can get it  
25 through testimony.



1 BY MS. MCGANN:

2 Q Do you feel that Liz did a very -- did a good job  
3 detailing all the information on the specific seven claims of  
4 buckets to collect?

5 A I received significant information from Ms. German about  
6 the -- the claims that you believe you hold in this case.

7 Q Did you review all of the documents provided?

8 A I did.

9 Q Okay. I'd like to refer to -- I believe it was -- it's  
10 13A for me, and it was your Exhibit 19 that's already admitted,  
11 I believe. No, I'm sorry. It's not 19.

12 THE COURT: If it's already admitted, why don't we go  
13 with that, so.

14 MS. MCGANN: Okay.

15 MR. MILLER: It is -- was it --

16 THE COURT: It's Trustee's Exhibit 19.

17 MR. MILLER: Thank you.

18 MS. MCGANN: 13 -- maybe mine was 19.

19 THE COURT: You have it highlighted on the other one.  
20 Go to the other screen. The other -- there you go. It's  
21 highlighted.

22 MS. MCGANN: Okay. But that's not the one. I  
23 apologize. It's the final arbitration award.

24 THE COURT: Okay.

25 MR. MILLER: That is Exhibit --



1 THE COURT: 13.

2 THE WITNESS: 13.

3 THE COURT: 13, Mr. Miller.

4 MS. MCGANN: 13A for me.

5 MR. MILLER: Oh, it's her 13. Okay.

6 THE COURT: It's also your 13.

7 MS. MCGANN: Okay.

8 MR. MILLER: It was my 34.

9 THE COURT: Okay.

10 MS. MCGANN: Okay.

11 MR. MILLER: That's why -- I knew it wasn't the 13.

12 I was trying to --

13 MS. MCGANN: So I don't need to admit it, so I guess  
14 we can just -- if -- I'll pull up Exhibit 34 that's already  
15 admitted.

16 THE COURT: Okay.

17 MS. MCGANN: Okay. Number 3, 5. I apologize. Hang  
18 on one second here. Number 3. Okay.

19 BY MS. MCGANN:

20 Q Okay. So you did testify you reviewed this arbitration  
21 award from Special Master Judge Arkin, and here on Page 5,  
22 Knutson testified in May -- or actually, it was April of 2020,  
23 that Celestial Properties, the 49 percent owner of 1450 Oka  
24 Kope. Do you see that here on Number 3?

25 A Yes.



1 MR. MILLER: Objection. I don't believe it was May  
2 of 2020.

3 THE COURT: Okay.

4 MR. MILLER: I just want to clear up, it was before  
5 the first case.

6 THE COURT: Overruled. Overruled.

7 MR. MILLER: Okay.

8 MS. MCGANN: The date is on this document.

9 BY MS. MCGANN:

10 Q In the beginning, where it says, "The Special Master heard  
11 the hearing on," what was that date there?

12 A Are you asking me?

13 Q Yes.

14 A April 4th, 2019; April 26th, 2019; and September 11th,  
15 2019.

16 Q Okay. How can a redemption agreement be considered valid  
17 in March of 2020 if it's two months prior, she's testifying,  
18 that I am at 49 percent?

19 MR. MILLER: Objection, Your Honor. Lack of personal  
20 knowledge, lack of foundation, and I'm not sure I understand  
21 the question.

22 THE COURT: Okay.

23 MS. MCGANN: Okay.

24 THE COURT: I don't understand it either.

25 MS. MCGANN: Okay.



1 THE COURT: Can you rephrase it?

2 MS. MCGANN: Yes, Your Honor.

3 THE COURT: Okay.

4 BY MS. MCGANN:

5 Q You have testified here that you believe the redemption  
6 agreement to be considered valid. You've also said that an --

7 THE COURT: Is that a question to her? You want her  
8 to confirm that?

9 MS. MCGANN: Yes.

10 BY MS. MCGANN:

11 Q Is that true?

12 A I think it's possible.

13 MS. MCGANN: Okay. May we look at Exhibit 19A,  
14 please? Oh, shoot. I'm in the wrong one. I'm sorry. I  
15 apologize. Sorry. 19A.

16 MR. MILLER: Is it 14?

17 MS. MCGANN: It's 19A that I have up.

18 BY MS. MCGANN:

19 Q I have it highlighted, and this is an email from  
20 Mr. Miller to me and copied to you on March 25th. In this  
21 email, Mr. Miller says, "After reviewing all the relevant  
22 documents, we also have no doubt the redemption agreement is  
23 valid." Is that your understanding?

24 MR. MILLER: Objection, Your Honor. I -- this letter  
25 was a settlement letter to Ms. McGann. I believe that I've



1 objected on the grounds of relevancy, probative value  
2 outweighed by the unfair prejudice.

3 THE COURT: Okay. I'm sustaining the objection, but  
4 you can still ask her if, in fact, her attorney claimed that  
5 the redemption agreement's valid.

6 BY MS. MCGANN:

7 Q Did your attorney, Mr. Miller, claim that the redemption  
8 agreement was valid with no doubt?

9 A Yes.

10 Q Okay. Do you still believe that to be the case after  
11 looking at Exhibit -- that we just looked at, 9A -- I'm sorry,  
12 13A, where Knutson testifies that the judge found her highly  
13 credible and that she testified in April of 2020 that Oka Kope  
14 is -- entirely is comprised of Celestial Properties LLC with 49  
15 percent interest and Gan-Bei-La with 51 percent interest?

16 A I believe that those -- it's the disputed fact.

17 Q Okay. On the redemption agreements that were admitted,  
18 did you see a DocuSign or a notary on those exhibits, 31 and  
19 32?

20 A Not that I recall.

21 Q Did you notice the signatures?

22 A I noticed there were signatures.

23 Q Did they look like signatures on all the other documents?

24 A I honestly did not compare them.

25 Q Would you like to compare them now?



1 A It's irrelevant to me and my decision in this matter, but  
2 if you would like me to do that and the judge wishes me to do  
3 so, I'm happy to do so.

4 Q Well, on the Exhibit 31 here, there's my signature,  
5 they're claiming. Does that look like my signature on -- I'm  
6 trying to find just something where I signed. I --

7 THE COURT: Where is the redemption agreement? Is  
8 that what we just saw?

9 MS. MCGANN: That's what you're seeing --

10 THE COURT: Okay.

11 MS. MCGANN: -- Your Honor. Yes, that's been  
12 admitted.

13 THE COURT: Okay.

14 MS. MCGANN: And they claim that is my signature.

15 THE COURT: Got it.

16 MS. MCGANN: As well as Exhibit 32. That signature  
17 as well.

18 BY MS. MCGANN:

19 Q Are these the only two documents that were not DocuSigned  
20 or notarized of all documents that you reviewed?

21 A I don't recall.

22 Q Do you find it strange that these are the only two  
23 documents that are not notarized and there's no DocuSign  
24 agreement when all rights were given away with no  
25 consideration?



1 MR. MILLER: Objection, Your Honor. It's irrelevant,  
2 and I'm not sure I actually understand the question. Did --  
3 she asked her if she finds it strange. I'm not quite sure how  
4 relevant that is to the inquiry before the Court.

5 MS. MCGANN: I'm saying, Your Honor, every document  
6 that has ever been presented between 1450 and myself is either  
7 notarized or DocuSigned. And I have --

8 THE COURT: I don't think that's true. I mean, the  
9 promissory notes I saw were not.

10 MS. MCGANN: The promissory note that -- yes, that  
11 you -- well, I'm not questioning on that yet, right? It's not  
12 my -- I'm not testifying on that yet?

13 THE COURT: No. But --

14 MS. MCGANN: Okay.

15 THE COURT: -- you're making an assumption that all  
16 the relevant documents were DocuSigned or notarized, and I'm  
17 not certain that I could agree with that assumption, so.

18 MS. MCGANN: Okay. If we could look at that deed of  
19 trust that was filed. Do you know your --

20 THE COURT: The proof of claim forms?

21 MS. MCGANN: Yeah.

22 MR. MILLER: Exhibits --

23 THE COURT: 23 would be one.

24 MS. MCGANN: I've got the -- I've got that, yeah, but  
25 those wouldn't --



1 MR. MILLER: Yeah. The note is 24 and 27.

2 MS. MCGANN: Okay. That's not the -- oh.

3 MR. MILLER: If you scroll down, the note's at the  
4 end.

5 MS. MCGANN: Okay. Great. Sorry.

6 BY MS. MCGANN:

7 Q Okay. Under this promissory note, how is Sherry McGann  
8 able -- I mean, Celestial Properties doesn't own Grand Lake  
9 House; Sherry McGann does. So how could a promissory note be  
10 signed or be drawn up in the name of Celestial Properties that  
11 doesn't own the home?

12 MR. MILLER: Go ahead and answer.

13 THE WITNESS: I don't know what your intent was when  
14 you signed this document.

15 BY MS. MCGANN:

16 Q Well, Page 3, the signature area here is not attached to  
17 the original document. This is not -- I mean, of course, I'm  
18 testifying, so I can't tell you this is not what was signed.

19 THE COURT: Well, Ms. McGann, why didn't you object  
20 to these documents coming into evidence if they're not  
21 authentic? If they've got pages added to them that weren't --  
22 aren't there in the original.

23 MS. MCGANN: I thought that would be when I would  
24 testify. I didn't know I could be -- I didn't know when my  
25 part was to -- that I'm going to be questioned on these.



1 THE COURT: Okay. Okay. Well, maybe you should save  
2 that line of questioning for when you testify.

3 MS. MCGANN: Okay. All right. Thank you, Your  
4 Honor.

5 BY MS. MCGANN:

6 Q Have I asked you to obtain a DocuSign document on these  
7 redemption agreements and transfers they've presented?

8 A Perhaps. I -- I don't actually recall. I only possessed  
9 the documents that you and 1450 have given me, the ones that  
10 are in the court record.

11 Q So did you ask for a copy of the DocuSign document that I  
12 requested?

13 MR. MILLER: Objection. That assumes that she  
14 requested it, and Ms. Jagow said she didn't recall.

15 MS. MCGANN: Well --

16 THE COURT: Do you want to rephrase it?

17 BY MS. MCGANN:

18 Q Have I requested the exemption agreement and the -- or the  
19 Number 31 and 32 exhibits, the exemption agreement and whatever  
20 these two are, I apologize, Exhibit 31 and 32. Did I request  
21 you to ask 1450 for that document in DocuSign or notary?

22 A You know, I don't actually remember that request, but I  
23 definitely remember you saying that this was not your signature  
24 because they weren't notarized and there was no DocuSign  
25 indicated on the form. So I do recall that.



1 MS. MCGANN: Okay. Okay. And I think I'll save this  
2 for my questioning when we get to that point.

3 BY MS. MCGANN:

4 Q Are you aware all debt is 100 percent from the Hawaii  
5 project, and Celestial Property has no debt or value other than  
6 49 percent due to the sale of the proceeds?

7 A I'm not aware of that.

8 Q Okay. Because you testified that Celestial Properties,  
9 you believed, had \$400,000 in debt.

10 A I've -- I read that in the arbiter's report.

11 Q Did you ever question me about that debt?

12 A We talked at the meeting of creditors. I don't remember  
13 the specific questions. It lasted quite a long time. I don't  
14 recall.

15 Q Our meeting of creditors was in January of '20 --

16 A One.

17 Q One, correct.

18 A I don't remember.

19 Q Okay.

20 MS. MCGANN: Okay. Your Honor, may I admit

21 Exhibit 20, which is the correct claims register?

22 THE COURT: So this is 20A?

23 MS. MCGANN: 20A, yes.

24 THE COURT: And this is a claims register that you  
25 created yourself?



1 MS. MCGANN: Yes, with explanations for each of the  
2 items 1-1, 2-1, 3-1, and so forth.

3 THE COURT: And you want this admitted into evidence?

4 MS. MCGANN: I would like to admit this into  
5 evidence.

6 THE COURT: Any objection?

7 MR. MILLER: Yes, Your Honor. It's not the claims  
8 register of the court. It's not the official document. This  
9 is Ms. McGann's interpretation of what she believes to be valid  
10 and not valid claims. And it's irrelevant to today's hearing.  
11 And it's not an official document. It contains hearsay.

12 THE COURT: Your response?

13 MS. MCGANN: My response, Your Honor, is that this  
14 can be put side to side with the claims register, and it will  
15 track 100 percent. And I'm using this for illustrations. And  
16 I do have additional exhibits that I'll be admitting along the  
17 way.

18 THE COURT: Maybe the best time to do this would be  
19 when you're presenting your testimony.

20 MS. MCGANN: Okay.

21 THE COURT: And you'll say, here's what I believe  
22 about the claims --

23 MS. MCGANN: Thank you.

24 THE COURT: -- on the claims register.

25 MS. MCGANN: Okay.



1 THE COURT: So I'm going to sustain the objection.

2 MS. MCGANN: Okay.

3 BY MS. MCGANN:

4 Q Do you feel it's important to have a correct claims  
5 register?

6 A Yes.

7 Q Okay. You also testified --

8 MS. MCGANN: I'd like to pull up 23A as an exhibit.

9 BY MS. MCGANN:

10 Q You testified you spoke with someone at the Department of  
11 Justice, and they said money was owed. Is that correct?

12 A That's correct.

13 Q Okay. Who did you speak with?

14 A So it was an email exchange between myself, Alan Motes,  
15 staff attorney at the U.S. Trustee's Office, and Krista Hale,  
16 who I believe is an auditor at the U.S. Trustee's Office.

17 Q Okay. If you can look here. Sorry. Mary Logan is the  
18 bankruptcy analyst for the U.S. Department of Justice. Do  
19 you see this email dated September 20th?

20 A I do.

21 Q And do you see that she said, "I just received notice that  
22 your check was issued 9/17/21, so you should receive it in a  
23 few days?"

24 A I do.

25 Q Okay. Are you aware that they -- the Department of



1 Justice withdrew this money from a tax return of mine?

2 A According to the information they gave to me, they did  
3 request that these fees be paid from your tax refund and then  
4 reversed that before the refund check was issued.

5 Q Did you say it was Krista Hall that you spoke --

6 A Krista Hale.

7 Q Krista Hale. Okay.

8 A Yes. That's --

9 Q That's her on this email here. I'm just seeing, her --  
10 she, right here, says -- she's talking about the fees that were  
11 paid. What Krista did was reverse it and send the check back  
12 to me because they did take it out of it, and those fees --

13 MR. MILLER: Objection, Your Honor. Is she asking a  
14 question, or is she testifying?

15 MS. MCGANN: I'm testifying. Sorry.

16 THE COURT: Okay. Ask the question.

17 MS. MCGANN: Okay.

18 BY MS. MCGANN:

19 Q Are you aware that Krista Hale worked very hard to get  
20 this refund back to me because it was taken in mistake because  
21 it was a fee that was filed after the Chapter 11 ended and they  
22 were still billing for the fees?

23 A That appears to be what Krista's email to you says.

24 Q But your testimony is that she's told you something  
25 different and that this is owed to me -- that I owe this debt?



1 A They refunded the money to you. The fees have not been  
2 paid. That is literally what the email says. Does it not?

3 Q No. The fees were paid. They were paid out of my tax  
4 refund, if you can see right here, from the Chapter 11  
5 quarterly fee. They did take the money.

6 A And then refunded it to you.

7 Q They only refunded it when I pointed out that the -- that  
8 it had ended, and this Krista did research, and she did find  
9 that it should not have been billed --

10 A Yeah.

11 Q -- and she did issue the refund.

12 A Thus, the U.S. Trustee has not been paid because they gave  
13 you back the money that had been offset from your tax refund.

14 Q Don't you find it peculiar, if they already had the money,  
15 that they would go through months of these emails to refund it  
16 to me?

17 A They're trying to do the right thing by you because you  
18 were in the Chapter 11 bankruptcy case.

19 Q So you're saying they made an exception refunding this to  
20 me?

21 A I have no idea.

22 MR. MILLER: Objection. She didn't say that.

23 MS. MCGANN: Your Honor, I --

24 THE COURT: I'm going to overrule it. You can answer  
25 the question.



1 THE WITNESS: I don't know.

2 MS. MCGANN: Okay. Your Honor, I would like to admit  
3 this as evidence that they did acknowledge that these fees were  
4 taken incorrectly from my taxes, and they did issue a refund to  
5 me, and they should not be on the claims register.

6 THE COURT: Okay. And how is that relevant to the  
7 settlement agreement that I'm being asked to approve?

8 MS. MCGANN: It's relevant because the claims are  
9 inflated.

10 THE COURT: Ah.

11 MS. MCGANN: And I'm trying to show the actual claims  
12 that are due so it won't --

13 THE COURT: And what's your point in showing what are  
14 valid versus invalid claims? Help me understand the logic.

15 MS. MCGANN: Okay. My point is because my offer is  
16 to pay all valid claims immediately upon, you know, the  
17 execution of this proposed agreement.

18 THE COURT: So you think the Court should not approve  
19 the present settlement agreement because you've made a better  
20 offer?

21 MS. MCGANN: I feel that my offer will pay legitimate  
22 creditors quicker. It doesn't involve valuing or the sale of  
23 the home. It includes the same amount that would be received  
24 if they were using the value of one million. And so I'm trying  
25 to illustrate that the claims register is not correct and it's



1 inflated. And I feel that that's an injustice to creditors as  
2 well as public policy. I've been trying to have this claims  
3 register corrected since November of '20 --

4 THE COURT: Well, the way you do that is to file an  
5 objection to claims. Have you done that?

6 MS. MCGANN: Yes. My attorney, Liz, did file  
7 objections and in Exhibit 19, which I don't believe I've got  
8 admitted yet, Mr. Miller himself states that this claim -- I'm  
9 sorry, when he answers me, he says that he has -- that the  
10 trustee has filed a claim. I'm going to find it -- two  
11 seconds. I'm so sorry.

12 THE COURT: I think that this might all be better off  
13 coming in --

14 MS. MCGANN: From me?

15 THE COURT: -- your testimony.

16 MS. MCGANN: Yes, ma'am. Okay.

17 THE COURT: Yeah.

18 MS. MCGANN: Okay. Okay. Yeah, it was Exhibit 21.  
19 I apologize. No, wait, that's not it. November 18th,  
20 Mr. Miller stated --

21 MR. MILLER: Hold on, Judge. I don't know what she's  
22 referring to as any exhibit.

23 MS. MCGANN: Okay. I'm sorry. One second. I'm just  
24 nervous. I apologize.

25 THE COURT: But you had asked to admit Exhibit 23A.



1 Is there any objection? It's a string of emails on the refund  
2 tax refund versus the unpaid Chapter 11 fees.

3 MR. MILLER: No objection, Your Honor.

4 THE COURT: Okay. It's received.

5 (Debtor's Exhibit 23A admitted into evidence)

6 MS. MCGANN: Okay. Yeah, this is Number 21A. No,  
7 that's not it. I'm sorry. Okay.

8 MR. MILLER: Would you like me to remove the green  
9 lines from the screen for you?

10 MS. MCGANN: No, it's okay. It's okay.

11 MR. MILLER: Okay. Let me take the --

12 MS. MCGANN: It's not -- that's not -- I'm just going  
13 to close this down.

14 THE COURT: It gets under his skin, you can tell.

15 MS. MCGANN: I know.

16 THE COURT: So I think you should put more of them up  
17 there.

18 MS. MCGANN: I'm sorry. I don't -- is that me doing  
19 that with my paper doing that?

20 MR. MILLER: Can I take a second and show

21 Ms. McGann --

22 MS. MCGANN: Yeah, please. I --

23 MR. MILLER: Judge --

24 MS. MCGANN: I apologize, I didn't know I was doing  
25 that.



1 MR. MILLER: I just want to let you know, if you want  
2 to highlight something, you see where it says "highlight"?

3 MS. MCGANN: Yeah.

4 MR. MILLER: You just press the corner, and then you  
5 can draw --

6 MS. MCGANN: I see.

7 MR. MILLER: -- like this.

8 MS. MCGANN: Okay.

9 MR. MILLER: And then if you want to get rid of it,  
10 where it says, "Clear All," you just press that button, and it  
11 goes away.

12 MS. MCGANN: I'm sorry, my paper was hitting that.  
13 Okay. I'm about ready to --

14 MR. MILLER: My life is nothing but straight lines,  
15 Your Honor.

16 THE COURT: I'm worried about you.

17 MS. MCGANN: Okay. I'm just trying to -- sorry.  
18 Okay. I feel like now that, a lot of this, I should be doing.  
19 Again --

20 THE COURT: Do you want to take a few minutes, look  
21 at your notes and see if you could be -- if you would --

22 MS. MCGANN: Consolidate some --

23 THE COURT: -- be better off covering it in your own  
24 testimony?

25 MS. MCGANN: I do, Your Honor. On Number 13A, was



1 that admitted? Because it was the same as --

2 MR. MILLER: That's the arbitration award, Judge. It  
3 was admitted as 34.

4 THE COURT: Okay.

5 MS. MCGANN: Okay.

6 THE COURT: So we have it.

7 MS. MCGANN: Okay.

8 BY MS. MCGANN:

9 Q In this document, are you aware that the special master  
10 found the value of Grand Lake to be 699,000 in April of 2020?

11 MR. MILLER: Just for the record, we're on  
12 Exhibit 13?

13 MS. MCGANN: 13 or your --

14 MR. MILLER: 34.

15 MS. MCGANN: -- 34, yes. And I'm going to find that.  
16 That says 699. Because you had pointed it out in your  
17 testimony.

18 THE COURT: You know, you can just ask that question  
19 of the witness.

20 MS. MCGANN: Oh, okay.

21 THE COURT: You don't have to find it in a document.

22 MS. MCGANN: Okay. Thank you.

23 BY MS. MCGANN:

24 Q Are you aware that this exhibit did show the special  
25 master found the value of the Grand Lake home in April of 2020



1 at 699,000 after appraisals and everything had been performed  
2 for this court case with Swany?

3 A I believe that's true.

4 Q Okay. Don't you find it odd that a year and a half later  
5 you're trying to claim 1.5 million in value on a home from a  
6 value that was agreed at 699,000 in April of 2020?

7 A Based on the information that's available to me now, the  
8 house could be worth as much as \$1.5 million.

9 Q Okay.

10 MS. MCGANN: And Your Honor, I don't know when I  
11 would call Donna Ready as a witness to --

12 THE COURT: During your case. We're still on the  
13 trustee's case.

14 MS. MCGANN: We're still on the trustee's. Okay. So  
15 I don't do that yet. Thank you.

16 THE COURT: Yeah.

17 BY MS. MCGANN:

18 Q If needs are met without the sale to bring the \$116,000  
19 needed, why would you continue to force a sale?

20 MR. MILLER: Objection, Your Honor. Assumes facts  
21 not in evidence. I am not sure I understand the question.

22 THE COURT: Sustained. Sustained.

23 MS. MCGANN: Okay.

24 THE COURT: You're making an assumption there that a  
25 116,000 is all that's necessary to pay off claims, but I'm



1 | guessing that's based on your assumption of what are the  
2 | valid -- quote/unquote, "valid" claims?

3 | MS. MCGANN: Well, it was based on their -- yes the  
4 | valid claims, Your Honor, on Exhibit 20 that I'll be --

5 | THE COURT: But that's your personal view.

6 | MS. MCGANN: And they had shown limits of, if they  
7 | had used a million dollars, what those --

8 | THE COURT: They did.

9 | MS. MCGANN: Which -- what those numbers would look  
10 | like, but again, that goes back to a not-correct claims  
11 | register.

12 | THE COURT: Okay. But do you have a question? Those  
13 | are going to be facts that you're going to --

14 | MS. MCGANN: That I testify.

15 | THE COURT: -- present in your case, but you need to  
16 | ask this witness a question. I mean --

17 | MS. MCGANN: Okay.

18 | THE COURT: -- I -- in other words, I'm sustaining  
19 | his objection that your question was loaded with a bunch of  
20 | assumptions --

21 | MS. MCGANN: I'm sorry. It's --

22 | THE COURT: -- that have not been established.

23 | MS. MCGANN: I'm sorry.

24 | THE COURT: That's okay.

25 | BY MS. MCGANN:



1 Q Do you know the value of your home on Zillow, and if it's  
2 comparable to what they --

3 MR. MILLER: I'd just object to the relevance, Your  
4 Honor.

5 MS. MCGANN: The relevance being that she's trying to  
6 assign my home at a high value on Zillow, and I'm wondering if  
7 she's done any comparison how it would relate for her own  
8 personal experience.

9 THE COURT: Okay. That's a yes or a no question.

10 THE WITNESS: I'm -- would you state the question  
11 again?

12 BY MS. MCGANN:

13 Q Yes. Do you know the value of your home on Zillow, and if  
14 it is comparable?

15 A Yes.

16 Q So it is -- you've checked --

17 A Yes and yes.

18 Q -- the value of your home?

19 A Yes.

20 Q Okay. Thank you. What are the charges Mr. Miller has for  
21 collecting the Swany judgment to date?

22 MR. MILLER: Objection? Can you rephrase that?

23 BY MS. MCGANN:

24 Q What are the charges Mr. Miller --

25 THE COURT: His legal fees?



1 BY MS. MCGANN:

2 Q -- is charging? Legal fees. I'm sorry, what are the legal  
3 fees Mr. Miller is charging the estate to collect Mr. Swany's  
4 judgment?

5 A I don't know.

6 Q Have I asked you that question prior to being here?

7 A Not that I recall.

8 MS. MCGANN: Can I ask Mr. Miller a question?

9 THE COURT: You know, the thing that's -- we have to  
10 keep in mind is she isn't giving up yet the Swany judgment and  
11 trying to collect it.

12 MS. MCGANN: Mm-hmm.

13 THE COURT: She's saying she may not need it. If  
14 you're -- if she's successful in getting approval of the  
15 settlement agreement, and the end result is that she sells your  
16 home, and it's enough to pay off all of what she believes are  
17 the valid claims, then there'd be no need to go after any other  
18 assets because the creditors are all paid.

19 MS. MCGANN: Mm-hmm.

20 THE COURT: And so she's just deferring action on  
21 that asset.

22 BY MS. MCGANN:

23 Q Is there a reason you will not release the claim back to  
24 me directly to pursue?

25 A Yes.



1 Q And that reason is?

2 A The administration of the case is not yet done.

3 Q If I were to be able to collect that -- oh I'm sorry, let  
4 me change this. Can you look at Exhibit 27A and 28A? And I'm  
5 going to open those right now. As well as 29A.

6 Did you have an opportunity to review these documentations  
7 on the appraisal for the property in Vancouver tied to  
8 Mr. Swany that would basically collect the judgment for the  
9 150,000 that is owed?

10 A I have seen these documents before, and I have reviewed  
11 them.

12 MS. MCGANN: Okay. May I admit these 27 and 20 --  
13 I'm sorry, 28A --

14 THE COURT: What are the differences? What's -- 27A  
15 is the ex-husband's home, the appraisal of it, right?

16 MS. MCGANN: Yes.

17 MR. MILLER: That's 28.

18 THE COURT: Ah.

19 MR. MILLER: And it hasn't been established that  
20 that's his home. Exhibit 27 are emails between Ms. McGann and  
21 potential counsel in Canada. Ms. Jagow has no personal  
22 knowledge of them, and it's irrelevant, and it's hearsay.

23 THE COURT: Okay. You're -- wait, just hold on. I  
24 just want to identify what these are.

25 MR. MILLER: Okay.



1 THE COURT: So 27A are emails.

2 MR. MILLER: Correct.

3 THE COURT: 28A is the appraisal of some real estate  
4 that you believe your ex-husband owns.

5 MS. MCGANN: It is listed that way, Your Honor, in --

6 THE COURT: Okay.

7 MS. MCGANN: -- the exhibit from the special master.

8 THE COURT: Okay. And what's 29A?

9 MS. MCGANN: And 29A is the title search that was  
10 done --

11 THE COURT: On?

12 MS. MCGANN: -- to show that he is the owner on that  
13 property.

14 THE COURT: Okay. On his home.

15 MS. MCGANN: Right.

16 MR. MILLER: Are you moving for the admission of all  
17 three?

18 MS. MCGANN: Yes, please.

19 MR. MILLER: They're all hearsay. There's no one  
20 here to testify as to the appraisal. It's also done in 2018.  
21 The title search, same thing. And 27 are emails between  
22 Ms. McGann and potential counsel, not anything that Ms. Jagow  
23 has personal knowledge about. And they're irrelevant.

24 MS. MCGANN: Your Honor, I don't believe they're  
25 irrelevant because they show that the value is there to be



1 collected. And that has been part of their argument, is that  
2 they don't know that there's value there, that they can't  
3 collect it, that I'm trying to show that the work had been  
4 done.

5 THE COURT: They did put on some testimony this  
6 morning on that. But -- and if you had objected on the basis  
7 of relevance, I would have sustained your objection, too,  
8 because she isn't saying that she won't pursue it. She's  
9 saying that if I need to pursue it after the sale of the home,  
10 your home, then she may go after that. But she doesn't -- she  
11 thinks she's going to sell your home for enough to pay the  
12 creditors in full. So this asset, a claim against your  
13 ex-husband, the judgment that you got against him, she's not  
14 disputing that there may be something there. She's just  
15 saying, I'm waiting to see if I need to do that to pay the  
16 creditors. And if she doesn't, if she -- if the settlement's  
17 approved, if she sells your home and pays off the creditors,  
18 that claim comes back to you, and you can go after your  
19 ex-husband.

20 MS. MCGANN: Okay, Your Honor. Thank you. And being  
21 that there's only 70,000 in legitimate creditors --

22 THE COURT: Well, that's an assumption you're  
23 making --

24 MS. MCGANN: Right.

25 THE COURT: -- that I'm not sure anybody else is



1 accepting.

2 MS. MCGANN: And when will I -- I'll be able to  
3 testify? We can go through that when --

4 THE COURT: As soon as you're done --

5 MS. MCGANN: Okay.

6 THE COURT: -- with her cross --

7 MS. MCGANN: Okay.

8 THE COURT: -- we'll see if they have other  
9 witnesses. When they conclude their case, I'm sure you'll be  
10 the next person up.

11 MS. MCGANN: Okay. Okay. I'm --

12 THE COURT: But -- so I'm sustaining his objection.

13 MS. MCGANN: Thank you, Your Honor. I'm going to  
14 wrap this up, then.

15 BY MS. MCGANN:

16 Q I just do want to ask that you're aware that Swany's  
17 lawyers filed six certificates of compliance when he was not  
18 compliant in the case -- in the -- in our --

19 A I don't have any personal knowledge about that.

20 Q Well, I have to ask how that's possible if you've reviewed  
21 all relevant documents that you said you did with Exhibit 2  
22 relating to Swany and those documents from Li, January 22nd.

23 A How would I know that the debt -- that your ex-husband's  
24 lawyers filed false certificates in your divorce? Is there  
25 something on the docket sheet that I missed?



1 Q Well, if we may --

2 THE COURT: We're not going to prove -- have her --  
3 she doesn't have knowledge about this.

4 MS. MCGANN: Okay.

5 THE COURT: So --

6 BY MS. MCGANN:

7 Q Then as you can see here with Exhibit 2, this was the  
8 letter that was sent from Liz to you. And she has the findings  
9 of fact in here, and she does discuss the documents. If we go  
10 to the collection of -- I apologize. Hang on. I'm going to  
11 get right down to where -- because this is one of the buckets  
12 of collections that we're discussing, and it's on the  
13 attorney's -- I'm just trying to find the number to get it in  
14 front of me.

15 THE COURT: I'm going to ask you, Ms. McGann, to move  
16 on --

17 MS. MCGANN: Okay.

18 THE COURT: -- and leave --

19 MS. MCGANN: Okay. For me to --

20 THE COURT: -- any -- just a minute. And leave any  
21 discussion about the judgment against your ex-husband, and you  
22 can present your testimony on your belief on that. But do you  
23 have any other -- aside from questions about that judgment, do  
24 you have any other questions for this witness?

25 MS. MCGANN: I don't -- no, not for the witness, Your



1 Honor.

2 THE COURT: Okay.

3 MS. MCGANN: But I do have a question for you. Will  
4 I be able to ask for exhibits to be admitted while I'm  
5 testifying?

6 THE COURT: Certainly.

7 MS. MCGANN: Okay. Thank you.

8 THE COURT: You may not get them in.

9 MS. MCGANN: I know, but I can --

10 THE COURT: But you can definitely ask.

11 MS. MCGANN: Okay.

12 THE COURT: Okay.

13 MS. MCGANN: Thank you. Okay.

14 THE COURT: All right. So we're ready -- do you have  
15 redirect?

16 MR. MILLER: I do not, Your Honor.

17 THE COURT: Excellent. All right. You may step  
18 down, Ms. Jagow. Thank you.

19 THE WITNESS: Thank you.

20 (Witness excused)

21 THE COURT: Does the trustee have any additional  
22 witnesses?

23 MR. MILLER: No, Your Honor.

24 THE COURT: Okay. So the trustee's now resting his  
25 case.



1           So, Ms. McGann, now you can call your first witness,  
2 which may be yourself.

3           MR. MILLER: Your Honor, might this be a good time  
4 for us to take a break so Ms. McGann can gather, and I see --

5           THE COURT: Yes.

6           MR. MILLER: -- that her pup may need to -- he's just  
7 walking a little.

8           MS. MCGANN: He's okay.

9           MR. MILLER: Okay.

10          MS. MCGANN: He's just -- yeah. He just moved  
11 because I moved.

12          MR. MILLER: Okay.

13          THE COURT: In the future, Ms. McGann, unless you  
14 have a medical necessity to have the dog with you, it shouldn't  
15 come to court.

16          MS. MCGANN: He is a medical alert service dog.

17          THE COURT: Well, I haven't been requested to --

18          MS. MCGANN: I apologize.

19          THE COURT: -- find that.

20          MS. MCGANN: I didn't know that -- I thought --  
21 because I have 105 in exemptions, I thought you knew that I had  
22 medical.

23          THE COURT: Uh-huh.

24          MS. MCGANN: I didn't -- I -- I didn't know I needed  
25 to file something with the Court.



1 THE COURT: Okay.

2 MS. MCGANN: He just goes everywhere with me. He's  
3 been in every hearing we've ever had.

4 THE COURT: Well, next time, you'll need to request  
5 it in advance --

6 MS. MCGANN: Yes.

7 THE COURT: -- and show me whatever your paperwork  
8 is.

9 MS. MCGANN: Absolutely. And that paperwork has  
10 been --

11 THE COURT: Because I have a dog, too, and I would  
12 love to bring him to court --

13 MS. MCGANN: I know.

14 THE COURT: -- but I can't.

15 MR. MILLER: I do have to say that the dog is more  
16 well-behaved than a lot of attorneys we see in the courtroom,  
17 Your Honor.

18 THE COURT: I know.

19 MS. MCGANN: He's very trained.

20 THE COURT: Okay. So we'll take a break and let you  
21 get set up on the witness stand, and -- about five minutes, I  
22 think.

23 MS. MCGANN: Should I call a witness -- I don't have  
24 to call myself first, right?

25 THE COURT: Not --



1 MS. MCGANN: Okay.

2 THE COURT: Not before the break. After the break.

3 MS. MCGANN: And --

4 THE CLERK: All rise. This court is in recess.

5 (Recess taken at 2:19 p.m.)

6 (Proceedings resumed at 2: p.m.)

7 THE CLERK: All rise. This court is reconvened.

8 THE COURT: Please be seated.

9 Ms. McGann, I understand from my staff that, during  
10 the break, you requested to put on witnesses by telephone or by  
11 Zoom?

12 MS. MCGANN: Yes, Your Honor. Donna is two-and-a-  
13 half hours from here, and I didn't realize that she was not  
14 able to do it by Zoom or phone call. I mean, I --

15 THE COURT: Well, you can't make assumptions that you  
16 can just do courtroom testimony any way you want.

17 MS. MCGANN: No, I know.

18 THE COURT: So if you had requested in advance to  
19 have it by Zoom, we would have made that accommodation, but we  
20 would have set up a practice session. It's too late at this  
21 point, and --

22 MS. MCGANN: Your Honor --

23 THE COURT: -- we never take telephonic testimony. I  
24 can't look at the person and judge their credibility by  
25 telephone.



1           THE COURT: Your Honor, I sent Donna the Zoom  
2 information that it was, and I apologize. I didn't realize she  
3 was not able to join with Zoom. She's standing by ready to do  
4 that. I thought that it was just me that had to be here, and  
5 she was two-and-a-half hours away. She's imperative.

6           THE COURT: What is she going to testify about?

7           MS. MCGANN: She's going to testify with their  
8 exhibit -- the exhibits that they have in for the value. She's  
9 going to testify --

10          THE COURT: The value of your home?

11          MS. MCGANN: Yes, she's going to test -- I -- she  
12 is --

13          THE COURT: Is she an appraiser?

14          MS. MCGANN: She -- here is -- here's what I wrote,  
15 just so I can stay calm.

16          THE COURT: Okay.

17          MS. MCGANN: I have Donna Ready to testify.  
18 Ms. Ready will testify as a non-retained expert witness whose  
19 opinions rise not from her enlistment as an expert,  
20 necessarily, but rather from her ground-level involvement in  
21 the events giving rise to the litigation on the Grand Lake  
22 property. Ms. Ready, I believe, meets the requirements of the  
23 26(a)(2)(B). She furnished a report containing, among other  
24 information, a complete statement of all opinions and basis and  
25 reasons for them. The report contained opinions, facts, and



1 data on how she reached her particular value for me on the  
2 Grand Lake home. She has 30 years of history -- she's who I  
3 bought the lot from in 1999. And she is testifying that the  
4 exhibits that they're using are not comparable. They're  
5 lakefront. They're old. She's to testify on their exhibits to  
6 validate how she came up with the value of my home being less  
7 than 900,000.

8 THE COURT: Okay. But she's not an appraiser. Is  
9 that correct?

10 MS. MCGANN: She's not an appraiser.

11 THE COURT: Okay.

12 MS. MCGANN: No, the only appraisal --

13 THE COURT: So did you object to this expert?

14 MR. MILLER: I did, Your Honor. I just -- I also  
15 want to say that I looked at my notes from the last hearing,  
16 and you made it clear at the last hearing that if somebody  
17 wanted to testify, other than the debtor, about the value of  
18 the property, that they would need to be certified appraisers  
19 and submit expert reports, and none of that was done. And I  
20 believe -- I was going to say, can we save some time, and I was  
21 going to explain that I think the exhibit is a one-page exhibit  
22 that says what Ms. Ready believes the value of the house is,  
23 which I would object to as being hearsay, and I don't believe  
24 it's an appropriate expert report.

25 There is no compliance at all with the Federal Rule



1 of Evidence 703, I think it is, or 704, nor Rule 26(b)(3),  
2 which talks about the disclosure of any cases they've been  
3 involved with as an expert, their compensation, documents  
4 they've reviewed, other learned treatises or the like that  
5 they've been involved with, and I set that forth in my  
6 objection. And the failure to comply with the rules means that  
7 it's not an appropriate expert report. And she's not an  
8 appraiser. She's a broker, and so --

9 THE COURT: Oh, she is a broker at least?

10 MR. MILLER: She's a broker. So she can be --  
11 Ms. McGann can testify about what her belief is, but I don't  
12 think that this person is competent to testify. So I don't  
13 know that we're missing anything by not having her.

14 THE COURT: Here's the thing. She -- if he had  
15 made -- if she had come to court, and you'd offered her as an  
16 expert on the value of your property, and he'd made those  
17 objections, I would've sustained them.

18 MS. MCGANN: Okay.

19 THE COURT: But he's correct, and this is another  
20 path for you to consider. As the owner of the property, you  
21 can tell me what you think the value of your home is and why  
22 you think that.

23 MS. MCGANN: Okay.

24 THE COURT: And maybe part of what you rely on is  
25 what your friend said to you. I don't know. But, you know, so



1 what I'm suggesting is you can still give me your belief as to  
2 what the home's worth and why. But as far as her testifying, I  
3 would sustain the objection that she's not properly qualified  
4 as an expert. There wasn't proper compliance with the  
5 disclosure requirements for experts. And she's not here in  
6 person. And, you know, we sent out an order on April 6th,  
7 about a month ago, saying this Zoom trial is now going to be in  
8 person.

9 MS. MCGANN: I saw that.

10 THE COURT: And so we assumed that you all understood  
11 that witnesses need to be in person as well.

12 MS. MCGANN: Okay.

13 THE COURT: So --

14 MS. MCGANN: Your Honor, I'm not aware of -- I didn't  
15 see, by the deadline, his objection to my expert witness list  
16 that was supposed to be filed by -- I believe it was the 25th.  
17 It was due on the 18th, and he --

18 THE COURT: Did you do that, Mr. Miller?

19 MR. MILLER: I did, Your Honor. And then I emailed  
20 Ms. McGann, as well as Mr. Swanson, providing them with a list  
21 of my objections to their --

22 THE COURT: Okay. Let's take a look.

23 MR. MILLER: -- exhibits. And I have a copy of it  
24 here, but it's not the court-stamped copy because --

25 THE COURT: We'll pull it up.



1 MR. MILLER: Okay.

2 THE COURT: Just give us a sec.

3 MR. MILLER: Yeah.

4 MS. MCGANN: I did receive the objection to the  
5 exhibits, but not for the expert witness. That --

6 THE COURT: Okay.

7 MS. MCGANN: And that was a different due date, my  
8 understanding was.

9 THE COURT: Oh, well, we'll take a look here.

10 MR. MILLER: It's April 25th, Judge.

11 THE COURT: But in any event, she's not here.

12 MS. MCGANN: I understand.

13 THE COURT: So that's a problem. But I was trying to  
14 make you feel better about the fact because, if he did do a  
15 timely objection, then I wouldn't have allowed her to testify  
16 anyway. She would have come all this way for nothing.

17 MS. MCGANN: So just for my own, because I've  
18 studied -- she doesn't meet the requirements under 26(a)(2)(B)?  
19 She didn't meet that requirement? I was just -- I just thought  
20 I -- I think just because of the fact that -- and I did put on  
21 the -- when I listed her as an expert witness, that I am not  
22 aware of previous testimony she offered, and there's no  
23 compensation to be paid for her testimony. She offered to  
24 testify for free, as she's the one that sold me the property.  
25 That was all on the exhibit, the expert witness exhibit under



1 my, I guess, definition of what it was.

2 THE COURT: So you think that that one-page  
3 submission complies with 26(a)(2)(B)'s requirements?

4 MS. MCGANN: I just thought that I -- I believed that  
5 the requirements were met for her to be -- testify as a  
6 non-retained expert witness because her opinions came from --  
7 not necessarily listed as an expert, but rather on the grounds  
8 of involvement in the event from the beginning, from the  
9 property.

10 THE COURT: Because she used to own the lot?

11 MS. MCGANN: No, I bought it from her. She's been  
12 involved from the beginning with the sale.

13 THE COURT: Did it have a house on it when you bought  
14 it?

15 MS. MCGANN: No, I designed and built it.

16 THE COURT: So her knowledge about the lot's kind of  
17 irrelevant at this point, isn't it?

18 MS. MCGANN: Just the value of the home, yeah, is  
19 what I want --

20 THE COURT: Well, you know that values change over  
21 time, and right now, we're -- I don't know about Grand Lake  
22 area, but in Denver, at least, it's a very hot real estate  
23 market, right?

24 MS. MCGANN: Mm-hmm.

25 THE COURT: Values are crazy high at the present. So



1 you know, even during the arbitration, they may have thought it  
2 was only worth less than \$700,000, and it could still be worth  
3 a million-five today because of this crazy market.

4 So -- all right. So I'm looking at the trustee's --  
5 those are all for the exhibits.

6 Can you keep scrolling, Ruth?

7 THE CLERK: I think that's all we've got.

8 MR. MILLER: That's when I filed, Judge. It's --

9 THE COURT: You didn't file anything about the expert  
10 not being allowed?

11 MR. MILLER: I -- we were told to object to exhibits,  
12 not to the witnesses themselves, and in the beginning of the  
13 document, my very first objection is a blanket objection to the  
14 debtor's exhibits and saying debtors submitted 1 through 17 --

15 THE COURT: Yeah. I see it now.

16 MR. MILLER: -- as alleged expert witness reports.

17 THE COURT: Mm-hmm.

18 MR. MILLER: So I did object to the exhibits, but not  
19 the witnesses.

20 THE COURT: Okay.

21 MS. MCGANN: I apologize. I just thought it was due  
22 a different date.

23 THE COURT: I know. You can still testify as to what  
24 you believe this property's worth.

25 MS. MCGANN: Okay.



1 THE COURT: So do you want to call yourself as your  
2 witness?

3 MS. MCGANN: Yes, Your Honor.

4 THE COURT: Okay.

5 MS. MCGANN: I call --

6 THE COURT: And as I understand it -- so we hadn't  
7 thought this through. It's the first time it's come up where  
8 we have a pro se party, so she doesn't have the ability to  
9 control her own exhibits from the witness stand. So we're  
10 going to swear you in and let you remain at the podium if  
11 you're okay with that.

12 MS. MCGANN: Yes, Your Honor.

13 THE COURT: Okay.

14 THE CLERK: Raise your right hand, please.

15 SHERRY MCGANN, DEBTOR, SWORN

16 MR. MILLER: Judge, just as a procedural point, how  
17 is this going to go? Is Ms. -- I once had to ask myself  
18 questions and answer them. Are you going to allow Ms. McGann  
19 to just testify in a narrative form this afternoon?

20 THE COURT: Yes.

21 MR. MILLER: Okay. Thank you.

22 THE COURT: But you can insert your -- I have no  
23 doubt you will insert yourself when you need to.

24 MR. MILLER: I'm going to try to be -- yes, Your  
25 Honor.



1 THE COURT: But I'd appreciate it if you're -- make  
2 wise choices.

3 MR. MILLER: I will be --

4 THE COURT: Okay.

5 MR. MILLER: -- make good choices, like my mom always  
6 told me.

7 THE COURT: That's right. Okay.

8 So Ms. McGann.

9 MS. MCGANN: Thank you.

10 THE COURT: State your name and your address and then  
11 go ahead and begin your testimony.

12 MS. MCGANN: Thank you. My name is Sherry McGann.  
13 My address is 1535 Grand Avenue, Grand Lake, Colorado.

14 THE COURT: Can you put the microphone a little bit  
15 closer?

16 MS. MCGANN: Colorado 80447.

17 THE COURT: Okay.

18 MS. MCGANN: Okay, Your Honor. I just want to know  
19 if I'm referring to an exhibit, do I stop and ask for it to be  
20 admitted right at that time or can I just refer to it and then  
21 go back to it?

22 THE COURT: Well, here's the thing. You can tell  
23 your story without any exhibits, and sometimes that's the most  
24 powerful testimony. But when you need to use an exhibit, then  
25 you need to have it -- identify it first, move for its



1 admission, and then, if the Court admits it, then you can talk  
2 about the exhibit. So you can't just start talking about it  
3 and scrolling through it until it's been admitted.

4 MS. MCGANN: Okay.

5 THE COURT: So --

6 MS. MCGANN: Thank you, Your Honor. And --

7 THE COURT: Sure.

8 DIRECT TESTIMONY

9 MS. MCGANN: I'm going to try to stay on focus here.  
10 So as -- when we began, it's my understanding that this hearing  
11 is not about what's being settled out, and it's not about the  
12 actual value of my home, yet there's a lot of conversations  
13 about the value of my home. So I'm trying to be prepared on  
14 that. The hearing is about the trustee and did she  
15 extradite -- exercise business judgment appropriately in  
16 valuating various assets and claims fairly for the best  
17 solution of the creditors in the public interest.

18 Mr. Miller has reiterated to me in correspondence the  
19 trustee, quote, "has a job to do and cannot expend sacred  
20 estate resources to have the judgment reversed." This is in  
21 Exhibit 19, and he is referring to the Volk insurance claim  
22 that is held in a state of stay in appeal. Yet he is asking  
23 for more than double the amount actually owed to creditors and  
24 refuses to adjust the claims register.

25 THE COURT: Let's stop for just a moment. You want



1 me to understand about the Volk construction claim, right?

2 That you believe that they did faulty construction? Is that --

3 MS. MCGANN: That's one of the seven buckets, yeah.

4 THE COURT: Right. Let's just focus on that one.

5 Tell me what you believe are your claims against Volk --

6 MS. MCGANN: Okay.

7 THE COURT: -- that are now owned by this estate.

8 MS. MCGANN: Okay.

9 THE COURT: What are they and why do they have merit?

10 MS. MCGANN: Okay. There's \$2 million in recoverable  
11 funds. I have hundreds of pages and documents -- Exhibit 5, 7,  
12 8, 10, 11, and 12 -- that I can pull up to illustrate and give  
13 context to the resources already expanded by the estate for  
14 protection and collection avenues. The --

15 THE COURT: Just tell me about this claim.

16 MS. MCGANN: Okay.

17 THE COURT: What'd they do wrong in the construction  
18 in your view?

19 MS. MCGANN: Okay. So -- okay. So just to tell you  
20 about the Volk claim.

21 THE COURT: And is this the Hawaii property?

22 MS. MCGANN: This -- this is the first contractor in  
23 the Hawaii property, yes.

24 THE COURT: Okay.

25 MS. MCGANN: If we could look at Exhibit 8A, I'd like



1 to show you -- oh, sorry. I pulled it out already.

2 THE COURT: I would love it if you would not get  
3 bogged down in the exhibits first.

4 MS. MCGANN: Okay.

5 THE COURT: Just tell me about this claim.

6 MS. MCGANN: Okay. So about this claim, and I do  
7 have Exhibit 8 for us, Volk walked off the job and had over  
8 half a million dollars in construction defect. There is -- I  
9 just -- I just want to have my notes in front of me. I'm  
10 sorry, Your Honor.

11 THE COURT: Okay.

12 MS. MCGANN: I've got Exhibit 6, 7, 8, 10, and 11,  
13 and 12 to refer to on the Volk claim. I was told by the RICO  
14 officer that this is the worst case of construction --

15 MR. MILLER: Objection to the hearsay, Judge.

16 THE COURT: Okay. So you can't tell what somebody  
17 else told you, but you tell me what you observed about the  
18 property.

19 MS. MCGANN: Okay.

20 THE COURT: What was defective in general?

21 MS. MCGANN: The roof was eight inches short on one  
22 side of the property. There were -- the concrete was not  
23 poured to the right depth.

24 I'd like to, again, admit Exhibits 10 and 11 and 12,  
25 which are documents -- forensic studies that were done by the



1 insurance company on the actual value -- or the actual damages  
2 caused by Volk to the property.

3 I know, in the trustee's testimony, she -- I'm sorry,  
4 she was talking about Wide Open Construction, so forget that.  
5 She wasn't talking about Volk.

6 But because of this Exhibit 8, this handwritten  
7 agreement, I was in -- I attempted to have mediation with  
8 Mr. Volk, and we ended up in front of the judge, Judge Liu, and  
9 I -- in eight minutes, the judge -- I was not represented by  
10 counsel, and in eight minutes the judge made this Exhibit  
11 Number 8 a valid agreement between Volk and I negating over  
12 \$2 million worth of insurance that is payable.

13 THE COURT: You mean, he crafted a settlement of his  
14 own?

15 MS. MCGANN: Yeah.

16 THE COURT: And had the parties agree to it?

17 MS. MCGANN: The -- Judge Liu never looked at  
18 anything.

19 THE COURT: Okay.

20 MS. MCGANN: She never saw this. She never saw any  
21 documents whatsoever. It was --

22 THE COURT: Okay. So let's not even talk about -- so  
23 in other words, you believe there was seriously defective  
24 construction work done. Did you -- and you made a claim to the  
25 insurance company?



1 MS. MCGANN: Yes, we -- yes, I did.

2 THE COURT: And did they pay the claim?

3 MS. MCGANN: The insurance company said that because  
4 of an -- of a settlement being reached between me and Volk,  
5 they were not paying the claim. So --

6 THE COURT: Okay. Now I get the connection of why  
7 you're showing those notes.

8 MS. MCGANN: Okay. Because that is the actual  
9 agreement that -- again, Judge Liu never saw this. This was  
10 never admitted. No one ever saw this. The hearing was only  
11 eight minutes. So --

12 MR. MILLER: I'll just ask to strike the statements  
13 about what Judge Liu saw or not.

14 MS. MCGANN: Exhibit 7 was prepared and this is --  
15 this is -- this is for an appeal, and there is 74 pages to this  
16 appeal that was done by an attorney at Holland & Hart, Steven  
17 Gray. He's out of Seattle, but he filed what he needed to to  
18 go to Hawaii to represent me for this claim.

19 THE COURT: Okay.

20 MS. MCGANN: Okay. And -- and it was put in appeal  
21 and it sits in appeal still because the bankruptcy stopped it  
22 in a state of stay. I -- the trustee testified that I -- or  
23 Mr. Miller implied that I had not done anything on this through  
24 the Chapter 11 or the 7, which is not true. We have  
25 inquired -- Adam Lang is an attorney in Hawaii. We've inquired



1 with him. We've called the bankruptcy court just to see where  
2 we are on the docket. But it does stay in a state of appeal.  
3 I just --

4 THE COURT: Didn't I give relief from stay to -- no,  
5 that was other litigation. Okay.

6 MS. MCGANN: Yeah, that was the Menehune, 153,000  
7 of --

8 THE COURT: Okay.

9 MS. MCGANN: -- attorney fees that they're claiming,  
10 Exhibit 19. Mr. Miller did say that it was in his file.

11 THE COURT: How did you come up with the \$2 million  
12 that you claim your claims against Volk Construction are worth?

13 MS. MCGANN: Because that is the value of the  
14 insurance policy that I am named an additional insured on.  
15 There is over that in -- and it is -- it is in this Exhibit 7 I  
16 would like to admit as evidence, the details of how much is  
17 owed through that insurance. There's also other exhibits that  
18 I will admit.

19 THE COURT: Okay. So let's --

20 MS. MCGANN: Okay.

21 THE COURT: Let's slow down here.

22 MS. MCGANN: Okay.

23 THE COURT: You want 7A to be admitted.

24 MS. MCGANN: 7A, please.

25 THE COURT: Which is entitled -- scroll down a little



1 bit -- "Defendant Appellant Celestial Properties and Sherry  
2 McGann's opening brief."

3 MS. MCGANN: Correct.

4 THE COURT: Okay. Any objection to this exhibit?

5 MR. MILLER: Yes, Your Honor. I think that you can  
6 take judicial notice that it was filed in the Hawaii case. I  
7 don't have a problem with that, but as far as taking notice  
8 that the facts -- the arguments contained within this appellate  
9 brief are true, I do take issue with. I believe that they  
10 would be hearsay. I don't believe that there -- it's relevant,  
11 but I have no problem with you taking judicial notice that  
12 Ms. McGann has appealed an adverse judgment entered against her  
13 in 2016.

14 THE COURT: Okay. She has indicated that she wants  
15 me to look at this from the standpoint of why she believed  
16 \$2 million is the value of the claim. So whether she's correct  
17 or not, this is her reasoning and her understanding of the  
18 valuation of the claim. Is that correct?

19 MS. MCGANN: That is correct, Your Honor. And  
20 also --

21 THE COURT: So I will accept it for that limited  
22 purpose.

23 MS. MCGANN: Thank you, Your Honor.

24 This is also to show the work that has already been  
25 done to collect this particular bucket of collection. So it



1 wouldn't be the trustees starting over from the beginning  
2 trying to build a case. The work and the legwork has all been  
3 done for this collection.

4 THE COURT: Okay.

5 MS. MCGANN: Okay.

6 THE COURT: So 7A is received for that limited  
7 purpose.

8 (Debtor's Exhibit 7A admitted into evidence)

9 MS. MCGANN: Okay. Was Exhibit 8 brought in as well,  
10 Your Honor --

11 THE COURT: No, not yet.

12 MS. MCGANN: -- to show -- that is to show the  
13 agreement that is negating the \$2 million of coverage on the  
14 insurance policy.

15 THE COURT: I got to tell you, I have no idea what  
16 this handwriting --

17 MS. MCGANN: Yeah.

18 THE COURT: -- means, and --

19 MS. MCGANN: Yeah.

20 THE COURT: -- it's not done by you, so you can't  
21 really fill that in for me. So --

22 MS. MCGANN: It is signed by me.

23 MR. MILLER: Well, she signed it.

24 THE COURT: You signed it, and it is by a Kale  
25 Feldman, mediator? Is that right?



1 MS. MCGANN: Yes, he was the mediator. This is --  
2 this is what our term sheet was that we came up with that Judge  
3 Liu inadvertently in that hearing made a actual valid agreement  
4 negating insurance coverage.

5 THE COURT: Well, it doesn't look like the judge, it  
6 looks like the mediator. So you engaged in some mediation --

7 MS. MCGANN: Right.

8 THE COURT: -- and signed off on it --

9 MS. MCGANN: Right.

10 THE COURT: -- as did they, right?

11 MS. MCGANN: Right.

12 THE COURT: So --

13 MR. MILLER: I can help.

14 THE COURT: Okay.

15 MR. MILLER: Maybe. It's not -- what Ms. McGann is  
16 saying is this is the agreement at the mediation, that when we  
17 went to court, the Hawaii state court said was a valid contract  
18 and denied Ms. McGann's complaint. And the -- Exhibit 7 is the  
19 appeal that Ms. McGann has initiated --

20 THE COURT: Okay.

21 MR. MILLER: -- because the judge and -- at the  
22 district court level determined there was a valid contract as a  
23 result of Exhibit 8. So it's not -- the mediator did do this,  
24 but there were two separate events. And what Ms. McGann has up  
25 in the upper left-hand corners, this is the agreement that the



1 judge made valid. So that -- this is a separate proceeding  
2 where the judge looked at this and said, this is a contract.  
3 And Ms. McGann doesn't believe that the judge gave it due  
4 credit.

5 MS. MCGANN: The judge didn't look at it.

6 MR. MILLER: And so she has appealed it.

7 Is that fair?

8 MS. MCGANN: That's -- that's close, but the judge  
9 never saw this. They just

10 MR. MILLER: Well --

11 MS. MCGANN: They never even -- they didn't even know  
12 there was a --

13 THE COURT: Okay. But you have that on appeal?

14 MS. MCGANN: -- the term sheets were never met. I  
15 mean, the terms were never met to form an agreement that we --  
16 this was -- this term sheet is, it says right here --

17 THE COURT: Well, that means they were in breach of  
18 the agreement. Is that what you're saying?

19 MS. MCGANN: Exactly. They -- they --

20 THE COURT: But that doesn't mean it's not a valid  
21 agreement. So in other words, Judge Liu believed this was a  
22 valid agreement and then negated any claim -- any further claim  
23 in the complaint against --

24 MS. MCGANN: Well, Judge Liu never saw this. She  
25 never saw any agreement. There was never any discussion of any



1 agreement. She just literally -- just general wording made it  
2 so all agree that we had come to an agreement. She just said  
3 we had come to agreement when there never was an agreement.

4 THE COURT: Well, this looks like a -- an agreement  
5 with signatures on the bottom of it.

6 MS. MCGANN: That -- that was an agreement to have  
7 additional work done at the property, to have -- like, you can  
8 see, they were supposed to have reports done from Colorado  
9 Concrete and what their scope of work was.

10 THE COURT: Okay.

11 MS. MCGANN: They were supposed to provide estimates.  
12 This was for Knox (phonetic), another third party. He was  
13 going to provide information. He was -- he came on site. He  
14 was coming on site, so that then, once that was done, we were  
15 supposed to have an agreement drawn up. And the two attorneys  
16 were going back forth [sic], working on an agreement, but  
17 nothing was ever established. There was no agreement ever  
18 established. And --

19 THE COURT: Okay. I'll have to take time to read  
20 this in full.

21 MS. MCGANN: Of course.

22 THE COURT: So --

23 MS. MCGANN: Yeah.

24 THE COURT: Okay.

25 MS. MCGANN: And I think Exhibit 7 will help -- will



1 help with that because it does address it in Exhibit 7. I just  
2 don't want to take up the time going through 74 pages, but it's  
3 very clear. And my point with these exhibits are that the  
4 trustee has claimed that it would cost too much to pursue other  
5 claims. And my point is, is there's a lot of work that's  
6 already been done that's not been considered.

7 THE COURT: Okay.

8 MS. MCGANN: And this is just one of the buckets.

9 THE COURT: So you want I -- to admit Exhibit 8A. Is  
10 there any objection?

11 MR. MILLER: 8 -- Your Honor, I think you can take  
12 judicial notice that an appeal has been filed of an adverse  
13 judgment against Ms. McGann, but the truth of the matter is  
14 contained within. I don't believe it is good evidence and is  
15 hearsay. We don't have the other side's briefs. They, I'm  
16 sure, argued to the contrary.

17 THE COURT: Okay. Overruled. It's received.

18 (Debtor's Exhibit 8A admitted into evidence)

19 THE COURT: Okay.

20 MS. MCGANN: Okay. Thank you, Your Honor. So there  
21 were several buckets of collection. And as the trustee did  
22 testify, it's been over a year, and we still have no resolve  
23 [sic] to our number one bucket of Swany, being 150,000 of  
24 collection. I don't have Mr. Miller's cost of breakdown for  
25 his charge, and I do feel quite confident in many conversations



1 with Mr. Hobbs and sharing the proof of the value that was  
2 there that I could have collected that a lot sooner. And I  
3 have asked for that to be released for quite some time.

4 We just discussed Volk. In addition to Volk, there's  
5 another -- another bucket. It's -- it's Wide Open  
6 Construction. This is the second insurance coverage of  
7 \$2 million that is available.

8 THE COURT: So what you're saying is that when Volk  
9 walked off the job, you then retained Wide Open Construction to  
10 complete construction?

11 MS. MCGANN: Yes, I did.

12 THE COURT: And that they also did defective work or  
13 what?

14 MS. MCGANN: Well, actually, Wide Open Construction  
15 did a really good job repairing all the damages that were done  
16 with Volk on the cottage.

17 THE COURT: Okay.

18 MS. MCGANN: I had a cottage and a barn that were  
19 being constructed, and my contract with Wide Open Construction  
20 was for the barn and the repair on the cottage.

21 THE COURT: Okay.

22 MS. MCGANN: Unfortunately, Mr. Swany and the  
23 neighbors all got involved with my builder and -- you can't  
24 make this up, pulled him aside and told him that I was --

25 MR. MILLER: Objection. What she believes that the



1 construction --

2 THE COURT: Hearsay, is that where you're getting?

3 MR. MILLER: Yeah, she's about to talk about what the  
4 neighbors told the people at Wide Open Construction. I think  
5 that's hearsay.

6 MS. MCGANN: That's not what I was going to say, Your  
7 Honor.

8 MR. MILLER: Okay. Sorry.

9 THE COURT: Okay.

10 MS. MCGANN: Okay. What I'm saying is I firsthand  
11 witnessed on the property, myself, Swany going to Wide Open  
12 Construction and telling them that I was a kept woman and --

13 MR. MILLER: It's --

14 THE COURT: Okay. Now you're talking about his out-  
15 of-court statements. Tell me what you believe would be a claim  
16 against Wide Open.

17 MS. MCGANN: Wide Open Construction interfered with  
18 my construction project. They testified in the hearing with  
19 Menehune, that's trying to collect the \$153,000 of lawyer fees  
20 that's on the claim registry. It's the 153 --

21 THE COURT: Is that your lawyer in Hawaii?

22 MS. MCGANN: No, that's Menehune Ventures. They're  
23 in a -- I don't know what number it is on the claims register,  
24 but it's the --

25 THE COURT: Just tell me the story.



1 MS. MCGANN: Okay. So the neighbors in the coffee  
2 farm were told by Swany that I had other intentions for the  
3 property than agricultural, which is not true. It was a  
4 mushroom farm from day one. It was supposed to be Maui  
5 Mushrooms and Microgreens, which is why I kept the name MMM  
6 here, Mystic Mountain Mushroom. Anyways, Wide Open  
7 Construction testified --

8 THE COURT: In what hearing? What context?

9 MS. MCGANN: This is the Menehune -- I know I'm going  
10 all over the place. I apologize.

11 THE COURT: See, I don't know who Menehune is.

12 MS. MCGANN: Okay. So Menehune is Collection  
13 Number 7, where they have \$153,000 in fees. It would be  
14 Exhibit 21 and 31. No --

15 THE COURT: And what's their basis for claiming fees  
16 against you?

17 MS. MCGANN: I don't -- I'm not sure. I've been  
18 asking my attorney and Mr. Miller since November 18th.  
19 Exhibit 21 and 31 from Mr. Miller show that he is going to file  
20 some motion to have it removed. I -- nothing ever happened.

21 THE COURT: None of this makes any sense to me.

22 MS. MCGANN: I know. I know.

23 THE COURT: So you got to connect the dots.

24 MS. MCGANN: Okay. So on the claims register,  
25 there's \$153,000. If we can open Exhibit 20, this is going to



1 help me.

2 THE COURT: Okay.

3 MS. MCGANN: 11-1, there's \$154,845.38 that is  
4 disputed, has been disputed from day one.

5 THE COURT: Okay.

6 MS. MCGANN: Okay. This is the neighbor that put  
7 Mr. Swany, who you've already seen is not credible for  
8 anything, testifying for two days on a loan that he was not  
9 part of and my project in Hawaii that he was not part of.  
10 Mr. -- this Menehune --

11 THE COURT: Okay. There must have been a piece of  
12 litigation.

13 MS. MCGANN: Yes.

14 THE COURT: Who was the plaintiff?

15 MS. MCGANN: The plaintiff was Menehune Adventures.  
16 It's Number 11 on --

17 THE COURT: I know that's a proof of claim.

18 MS. MCGANN: Okay.

19 THE COURT: But Menehune Ventures is your neighbor?

20 MS. MCGANN: Yes.

21 THE COURT: Okay.

22 MS. MCGANN: They're --

23 THE COURT: So your neighbor sued who?

24 MS. MCGANN: It's on --

25 THE COURT: Celestial? 1450?



1 MS. MCGANN: Me.

2 THE COURT: Sued you. Okay. Your neighbor sued you,  
3 claiming what?

4 MS. MCGANN: Claiming that I was not using the  
5 property for agricultural purposes.

6 THE COURT: And this was only permitted for  
7 agricultural purposes?

8 MS. MCGANN: It -- it -- there was no permit. It --  
9 it's an agricultural community.

10 THE COURT: Okay.

11 MS. MCGANN: It's a coffee farm. And --

12 THE COURT: Okay.

13 MS. MCGANN: -- he testified that he was part of the  
14 loan, that there was other uses of the property. It's -- it  
15 was --

16 THE COURT: Okay.

17 MS. MCGANN: -- just a -- it was just a -- it was  
18 just a attempt of Swany to do what he was doing to me.

19 THE COURT: So -- and Wide Open Construction became a  
20 witness in that lawsuit?

21 MS. MCGANN: Yes. Yes. Because Swany, who we know  
22 who he is, he's the number one that I got the judgment on.

23 THE COURT: Yeah.

24 MS. MCGANN: Okay. He went to Wide Open Construction  
25 and told them that I was a kept woman.



1 THE COURT: Okay.

2 MR. MILLER: Your Honor --

3 THE COURT: You can't talk about what you told them.

4 MS. MCGANN: Well, he testified on the stand. I was  
5 there when Wide Open Construction --

6 THE COURT: Okay.

7 MS. MCGANN: -- testified.

8 THE COURT: Okay. So let's say they testified that  
9 you were using the property for some other use.

10 MS. MCGANN: Which it wasn't even built, but yeah.

11 THE COURT: Why does that give rise to a claim  
12 against Wide Open?

13 MS. MCGANN: Well, actually, the claim against Wide  
14 Open is not that. That goes back to the Menehune and the  
15 154,000 of attorney fees that they're trying to claim.

16 THE COURT: Okay. So we're on a detour here.

17 MS. MCGANN: Okay. I know. It's so confusing.

18 THE COURT: Let's come back to why you think you have  
19 a \$2 million claim against Wide Open.

20 MS. MCGANN: Okay. Wide Open Construction has a  
21 \$2 million claim -- and this is where I've had -- and I'm going  
22 to call -- I don't know if you want me to pull the exhibits up  
23 yet. Okay.

24 THE COURT: Just tell me the story first.

25 MS. MCGANN: Okay. So Wide Open Construction, after



1 all the craziness involved with the neighbors and Swany, walked  
2 off the job. I had attorneys call a bond that was due that he  
3 showed in a contract that he had, but of course never really  
4 did. He refused to come back to the job site. There were  
5 damages leaving -- and this is all in the exhibit that I will  
6 pull up for you about this. Okay. That there were damages and  
7 so we made a claim to the insurance company, okay.

8 THE COURT: Because they walked off the job.

9 MS. MCGANN: Because they walked off the job and left  
10 damages. And everything is noted in -- there's like, 104 pages  
11 of photos, documents, what's due.

12 THE COURT: Okay.

13 MS. MCGANN: Okay.

14 THE COURT: And you submitted it to the insurance  
15 company.

16 MS. MCGANN: And we submitted it to the insurance  
17 company.

18 THE COURT: Who's we?

19 MS. MCGANN: The attorney.

20 THE COURT: Okay.

21 MS. MCGANN: It was Adam Lang.

22 THE COURT: Got it.

23 MS. MCGANN: Okay?

24 THE COURT: All right. And what was the response of  
25 the insurance company?



1 MS. MCGANN: They ignored completely. Adam Lang  
2 addressed it again. Okay. That -- this is Exhibit 15.

3 THE COURT: Don't worry about the exhibits for a  
4 minute.

5 MS. MCGANN: Okay. Okay.

6 THE COURT: So they denied -- they ignored the claim.

7 MS. MCGANN: They ignored it completely.

8 THE COURT: Then your attorney pestered them. Then  
9 what?

10 MS. MCGANN: So then we -- they pestered them and  
11 then we went to Holland & Hart to have an exhibit --

12 THE COURT: Just tell me the story.

13 MS. MCGANN: Okay. That Holland & Hart went through  
14 the denial with a fine-tooth cone [sic].

15 THE COURT: Okay.

16 MS. MCGANN: There's 13 pages of why it's not valid,  
17 that it's not valid --

18 THE COURT: Okay.

19 MS. MCGANN: -- that it's -- that they must pay the  
20 claim and that they're acting in bad faith. Okay?

21 THE COURT: Okay.

22 MS. MCGANN: There is -- and -- and I will show you  
23 the exhibit. The reason for this, there was an endorsement.  
24 I -- I am a commercial insurance agent --

25 THE COURT: Okay.



1 MS. MCGANN: -- and I specialize in construction. So  
2 I had an endorsement added to the policy to change the  
3 definition of "occurrence" because that's the first thing  
4 that's looked at in a court of law, is the occurrence. So this  
5 exhibit, which -- which I will show you, changed the definition  
6 of occurrence to include a construction contract for property  
7 damage. And then I went into definition to further define what  
8 the construction contract was.

9 THE COURT: Okay.

10 MS. MCGANN: Okay?

11 THE COURT: What was the end result with the  
12 insurance company?

13 MS. MCGANN: The end result is there still is no end  
14 result. Alan Van Etten was then hired because he is known in  
15 Hawaii as an attorney to -- that the insurance companies take  
16 seriously.

17 THE COURT: Okay.

18 MS. MCGANN: He also, on October 20 of 2016, he sent  
19 an email -- or not email, a letter to First Insurance Company  
20 of Hawaii, again with Adam's demand saying, you know, this is  
21 covered, and he included the Holland & Hart explanation of why  
22 it was included. Okay. They didn't reply. Again, they've  
23 left it sitting and have not replied. Mr. Van Etten told me  
24 that this is what these --

25 MR. MILLER: I'm going to object to what Mr. Van



1 Etten told her.

2 THE COURT: Okay. But the end result is you've done  
3 a lot of pursuing of it through attorneys, and at the present,  
4 they're still just not responding?

5 MS. MCGANN: Correct.

6 THE COURT: They initially denied at some point, and  
7 they haven't backed off that position?

8 MS. MCGANN: Right. Correct.

9 THE COURT: Okay.

10 MS. MCGANN: And so my exhibits, if -- if you'd like  
11 me to show at this point, are with -- I'd like to have  
12 admitted.

13 THE COURT: All right. Let's get the numbers first.

14 MS. MCGANN: Okay. Okay. So for -- this is for Wide  
15 Open Construction. Okay. Here is -- it would be Number 15.

16 THE COURT: 15?

17 MS. MCGANN: Yes. I'm going to pull these up as we  
18 go.

19 MR. MILLER: Should we just take them one at a time?

20 MS. MCGANN: 15A.

21 THE COURT: Sure. 15A.

22 MS. MCGANN: Mm-hmm.

23 THE COURT: Okay.

24 MS. MCGANN: This is the June 8th, 2018, letter from  
25 my attorney in Hawaii requesting the damages. It's 92 pages.



1 It's quite detailed.

2 THE COURT: Okay. She's offering that. Are you  
3 objecting?

4 MR. MILLER: I am. First, I'd like to do -- that's  
5 weird. Can I ask a voir dire question?

6 THE COURT: No.

7 MR. MILLER: Okay. I'm objecting to it because it  
8 contains hearsay. It's irrelevant to the issues before the  
9 Court today. And the claimant on the insurance policy is not  
10 the debtor; it's Celestial Properties, LLC.

11 THE COURT: Okay. Well, I'm overruling that and  
12 here's why. During the trustee's case, the trustee raised the  
13 issue of, well, the debtor herself didn't even pursue these  
14 claims so they can't have any real merit. So you put that at  
15 issue.

16 MR. MILLER: Sure.

17 THE COURT: So all right. It's received.

18 (Debtor's Exhibit 15A admitted into evidence)

19 MR. MILLER: Thank you.

20 THE COURT: What's the next one?

21 MS. MCGANN: Thank you, Your Honor. I would also  
22 like to admit Exhibit 5, which is the actual endorsement --

23 THE COURT: 5A?

24 MS. MCGANN: -- where it's changing the occurrence of  
25 definition to the policy.



1 THE COURT: Okay.

2 MS. MCGANN: This also applies to Volk and Wide Open  
3 construction. I have this endorsement on both policies.

4 THE COURT: Okay. Any objection?

5 MR. MILLER: Incomplete document. I don't know what  
6 these relate to because we only have one page of the document  
7 here.

8 THE COURT: Can you scroll down so I can see how it  
9 sort of ends?

10 MS. MCGANN: Page 1 --

11 THE COURT: It says it's Page 1 of 1, so.

12 MR. MILLER: But it's just an endorsement to a  
13 policy. We don't know what the policy is or --

14 MS. MCGANN: The policy number is on the top, Your  
15 Honor, and I'd be happy to provide the actual policies as well.

16 THE COURT: Correct. I'm going to receive it.

17 (Debtor's Exhibit 5A admitted into evidence)

18 MS. MCGANN: Thank you, Your Honor.

19 THE COURT: Next.

20 MS. MCGANN: Okay. Number 16A is the letter I was  
21 talking about with Van Etten. He -- this is October 30th. He  
22 sends this again from the June letter that Alan did to First  
23 Insurance Company.

24 THE COURT: So wait. Deeley King firm represents  
25 who?



1 MS. MCGANN: Me.

2 THE COURT: Okay. And that's to the insurance  
3 lawyers?

4 MS. MCGANN: Yes, this is basically a duplicate, like  
5 I was telling you, that Adam Lang sent and they ignored, and  
6 now d

7 THE COURT: Okay.

8 MS. MCGANN: -- supposedly this is the attorney that  
9 they will listen to.

10 THE COURT: Okay.

11 MS. MCGANN: Oh.

12 THE COURT: Any objection?

13 MR. MILLER: Well, Your Honor, you didn't approve my  
14 objection to the last letter --

15 THE COURT: Right.

16 MR. MILLER: -- so I don't believe you're going to do  
17 the same, but I'll just simply make a quick record that the  
18 claimant is Celestial, not the debtor. It contains hearsay.  
19 And if you look at this exhibit, Judge, it has a lot of emails  
20 between third parties who are not here today.

21 THE COURT: Okay.

22 MR. MILLER: I don't believe that they're relevant or  
23 that there's competent evidence, but I understand your prior  
24 ruling and --

25 THE COURT: Okay.



1 MR. MILLER: -- will respect it.

2 THE COURT: It's received.

3 (Debtor's Exhibit 16A admitted into evidence)

4 MS. MCGANN: Thank you, Your Honor. Number 17.

5 THE COURT: A.

6 MS. MCGANN: Yes, sorry, 17A. This is also -- I know  
7 the trustee had testified that she did not believe that  
8 anything was done on Wide Open Construction, and this is to  
9 show that --

10 THE COURT: So Mr. Van Etten is the Wide Open  
11 Construction lawyer?

12 MS. MCGANN: Yes. Okay.

13 MR. MILLER: You haven't ruled on that one yet. May  
14 I just have a moment?

15 THE COURT: Yes.

16 MR. MILLER: Just reiterating my objections that I  
17 said in the past, Your Honor.

18 THE COURT: Okay.

19 MR. MILLER: One other thing is that Ms. McGann's  
20 statement just mischaracterized Ms. Jagow's testimony. She  
21 didn't say that nothing had been done. The question was, has  
22 any -- was anything done in the first case? This preceded the  
23 first case. So I just want that --

24 THE COURT: Well, you asked many questions. Did they  
25 do it then?



1 MR. MILLER: I sure did.

2 THE COURT: Did they do it then? Did they do it  
3 then?

4 MR. MILLER: Yep.

5 THE COURT: Did they do it then? So yeah. I'm  
6 receiving it.

7 (Debtor's Exhibit 17A admitted into evidence)

8 MR. MILLER: Okay.

9 MS. MCGANN: Okay. For --

10 THE COURT: Uh-oh. Battery's running low. You  
11 better --

12 MS. MCGANN: Oh, shoot.

13 THE COURT: Make sure you're plugged in.

14 MS. MCGANN: I know. I don't have a plug in here  
15 today.

16 MR. MILLER: What kind of computer --

17 THE COURT: Okay. Talk fast then.

18 MR. MILLER: What kind of computer do you have?

19 MS. MCGANN: It's a HP.

20 MR. MILLER: Do you want to maybe use mine?

21 MS. MCGANN: If it will work.

22 MR. MILLER: If it'll fit?

23 MS. MCGANN: If it'll work, but I'll try to -- if you  
24 think. Thank you so much.

25 MR. MILLER: Well, and I don't want to run out of



1 power myself, but I think I'm okay for at least an hour here.

2 MS. MCGANN: Maybe it'll just -- thank you so much.

3 MR. MILLER: Oh, I'm sorry. Let's see if that'll  
4 fit.

5 MS. MCGANN: If my --

6 MR. MILLER: If it will, I'll just plug it -- we can  
7 plug it in here.

8 MS. MCGANN: No, I don't think so.

9 MR. MILLER: Do you see the spot for it?

10 MS. MCGANN: Nope.

11 MR. MILLER: You've got to have a charger, though.

12 MS. MCGANN: Yeah. My charger's, like, a --

13 MR. MILLER: No, no, no. But it plugs in, doesn't  
14 it?

15 MS. MCGANN: No. Uh-huh.

16 MR. MILLER: Yours doesn't plug in?

17 MS. MCGANN: No. It's like a magnet. That's okay.  
18 Thank you so much.

19 MR. MILLER: Sure.

20 MS. MCGANN: I'll -- I'll -- I'll go quick and --

21 MR. MILLER: I also have the books, so if we need the  
22 books --

23 MS. MCGANN: Yeah, that might be --

24 MR. MILLER: I only have one, though.

25 MS. MCGANN: That's okay. Thank you so much.



1 I'd like to admit Exhibit 4. This is the memorandum  
2 that Holland & Hart did in deep, deep detail as to why the  
3 coverage was afforded with the Wide Open Construction insurance  
4 policy.

5 THE COURT: 4A? Any -- do you want to want to say  
6 the same objections?

7 MR. MILLER: Same objection, Your Honor. Same  
8 objection, Your Honor.

9 THE COURT: Same ruling. It's received.

10 (Debtor's Exhibit 4A admitted into evidence)

11 MR. MILLER: Understood.

12 MS. MCGANN: Okay. Okay. So that's the Wide Open  
13 Construction.

14 Another bucket, and it was never addressed, is  
15 there's property located in Hawaii. I have a bike. I have  
16 many personal properties, my things that I bought for the farm  
17 and stuff, and nothing was ever addressed or any value or  
18 anything was even acknowledged. I had some very personal art.

19 THE COURT: This is in Hawaii, or?

20 MS. MCGANN: It was in the Hawaii house, yeah. I was  
21 locked out. Ms. Knutson used my home ten days before she  
22 locked me out of the house in Maui. So I had no idea I wasn't  
23 going to be able to get my stuff.

24 THE COURT: So it's your belief that the trustee  
25 should have gone after that personal property?



1 MS. MCGANN: Yeah, it's on the -- it's on the --

2 THE COURT: Schedules?

3 MS. MCGANN: -- schedules as values. It's just --  
4 was never addressed, including some personal and rare art. I  
5 did provide documents to show what was there, but nothing was  
6 ever addressed by the trustee.

7 I'd like to also just touch on the E&O claims. The  
8 trustee herself testified how difficult Mr. Swany was, and I  
9 can attest to that as well because he drug me through two years  
10 of litigation through the system, and I was not able to get out  
11 of it because his attorneys were filing these -- whatever  
12 they're called when an order's given. It's a compliance --  
13 certificate of compliance. There were six of them that were  
14 filed and that was noted in -- in the --

15 THE COURT: Okay. So you're going back again to  
16 claims against your ex-spouse.

17 MS. MCGANN: Yeah, well, that was actually a separate  
18 claim that I had listed because he had spent \$150,000 with  
19 these attorneys, and that's what the judgment is. Being in  
20 insurance, I'm very familiar how E&O policies work. I write  
21 them for professionals. I know that I have a very strong case  
22 to recover those fees that were -- that were spent with the  
23 attorneys based on they were stretching it out, they were  
24 filing false -- I mean, this -- it would have never been  
25 litigated for two years and drained me if they would not have



1 filed those false certificates of compliance.

2 Mike Wadley was my attorney and -- at the time, my  
3 personal attorney, and Liz spoke with Mike Wadley and did send  
4 a note to the trustee, and it is in Exhibit 2 in the details  
5 that he felt there was a valid case for the E&O.

6 MR. MILLER: Objection. Just to the conversation  
7 between Ms. German and Mr. Waddle.

8 MS. MCGANN: It's in -- it's in Exhibit 2 that I'd  
9 like to admit.

10 THE COURT: That doesn't mean it's not hearsay,  
11 though.

12 MS. MCGANN: This is a memorandum that was sent to  
13 the trustee on January 22nd, and she is very -- she is saying  
14 it --

15 THE COURT: Okay. You want to move for the admission  
16 of Exhibit 2?

17 MS. MCGANN: Yes, please, Your Honor.

18 THE COURT: Objection?

19 MR. MILLER: I did object to it, Your Honor, on my  
20 original list.

21 THE COURT: Didn't your client testify, Mr. Miller --

22 MR. MILLER: Yeah.

23 THE COURT: -- that she reviewed all this, and --

24 MR. MILLER: I did. I --

25 THE COURT: -- it was part of her formulation of her



1 approach to the case?

2 MR. MILLER: She did, Your Honor. And I said I  
3 objected to it initially. I didn't know what it was going to  
4 be used for today, and I haven't objected to it. I'm just  
5 looking at it to make sure. I know that it contains hearsay  
6 statements. I'm going to not object, Your Honor.

7 THE COURT: Excellent. It's received.

8 (Debtor's Exhibit 2A admitted into evidence)

9 MS. MCGANN: Thank you, Your Honor.

10 Okay. So my point is just that there is a lot of  
11 collection avenues that be -- that could have been examined and  
12 not -- I feel that a lot of the costs racking up with  
13 Mr. Miller is in arguing with me. I don't believe that they  
14 are taking seriously these claims. I don't believe that they  
15 have been reviewed, even though she says that they are.

16 THE COURT: What's your response to the fact that --  
17 as I heard the testimony of the trustee today, it sounded to me  
18 that she's saying, I got low-hanging, easy fruit to go after to  
19 get all these claims paid.

20 MS. MCGANN: That's what I feel, Your Honor.

21 THE COURT: My settlement takes away the two big  
22 claims of 1450 and then what's left is a doable amount of  
23 claims, and I can pay them by selling this house.

24 MS. MCGANN: Correct.

25 THE COURT: And her -- one of her duties under the



1 code is to liquidate the assets as expeditiously as possible to  
2 get creditors paid. Litigation takes a long time. It's very  
3 expensive. And then it goes up on appeal, where it can sit for  
4 years and years --

5 MS. MCGANN: That's right.

6 THE COURT: -- and the creditors get nothing in  
7 the -- whereas she has a piece of real estate by a beautiful  
8 lake that she thinks she can sell and pay the creditors like  
9 that --

10 MS. MCGANN: Yeah.

11 THE COURT: -- within 90 days total.

12 MS. MCGANN: Right.

13 THE COURT: So what's wrong with that being her  
14 business judgment?

15 MS. MCGANN: Well, I think, Your Honor, what's wrong  
16 with that is that she's just focusing on just that, and she's  
17 using a value that is not at 1.5 million. As much as I would  
18 love to believe that my house is worth 1.5 million, it just  
19 isn't.

20 THE COURT: Okay. So tell me what you think is the  
21 value and why you think that.

22 MS. MCGANN: Okay. I believe Donna is right on in  
23 her value. She used 823,970. She said that would be if we  
24 listed it for \$900,000, that would be where she came up with --  
25 coming up with that figure. I believe that to be true for --



1 for many reasons.

2 THE COURT: Okay.

3 MS. MCGANN: The deck is falling off the back and the  
4 front of the house. The house has been --

5 THE COURT: Okay. Go slowly on this.

6 MS. MCGANN: Okay.

7 THE COURT: I got to take notes.

8 MS. MCGANN: Okay.

9 THE COURT: So deck falling off front and back.

10 MS. MCGANN: Mm-hmm. The -- the house has been  
11 modified to house a commercial mushroom farm. Concrete's been  
12 cut. There is no third car -- three-car garage. It -- it is a  
13 full-fledged farm underneath the house. The original  
14 appliances are in the house from 1999, when I built it. The  
15 floor is destroyed and needs to be completely redone. In --

16 THE COURT: On the first level?

17 MS. MCGANN: On -- on the first level, yeah. The  
18 hardwood floors. The -- in -- 21 years ago, when I built this  
19 house, I did the design and built this house myself. I used  
20 boiler heating. It's a radiant heat, and there's these black  
21 flexible hoses that go up, and I've got six different zones  
22 that heat the house. There's been numerous construction defect  
23 claims based on this type of construction, but 21 years ago,  
24 that's what we used, and we didn't know.

25 So now I have a zone in the kitchen that has failed.



1 The entire floor needs to be ripped up. There is -- and I  
2 don't know the extent of that damage yet because Grand Lake  
3 Plumbing is coming out on May 6th to evaluate. We just shut  
4 that zone down to cause [sic] further damage. The pipes  
5 underneath the house where it -- the exhaust comes out is  
6 completely corroded and a rust -- and rusted and needs to be  
7 replaced. The windows are, again, 21 years old, and I did used  
8 to rent the property when I was building in Maui. That was  
9 a -- a rental. It was not my primary residence at that time,  
10 and it's been beat from the renters that have come through it  
11 for the -- from 2005 was when I started renting it until  
12 2013 --

13 THE COURT: The Grand Lake property, not the Hawaii?

14 MS. MCGANN: Yeah, Grand Lake, yeah. From 2005 to  
15 2017 or '18. I want to say '18, because that's when I moved  
16 back from the project.

17 THE COURT: Okay.

18 MS. MCGANN: So it -- it's been a rental. It's been  
19 abused. It's been beat. It is not at the value. What's  
20 valuable is the location --

21 THE COURT: Mm-hmm.

22 MS. MCGANN: -- for sure, and I know that because I  
23 bought that property. I'm very good at finding valuable  
24 property and -- and building it, as displayed by them selling  
25 the \$3 million property in Hawaii that I completely designed



1 and built myself, with all proceeds from me, Sherry McGann.

2 Celestial Properties, I've had in place since 2004.

3 It doesn't own anything. It never has until the Maui property.

4 It has no debt. It has no income other than very small amount

5 of rental property that I would -- it's always been on my

6 personal income taxes as a pass-through from day one. I -- I

7 just -- I've never had any income on it, other than the rental

8 income. My --

9 THE COURT: And now you're talking about Maui rental  
10 income?

11 MS. MCGANN: No, I'm all talking about Grand Lake. I  
12 never had any Maui rental.

13 THE COURT: What was Celestial's connection to the  
14 Grand Lake property?

15 MS. MCGANN: The only reason Celestial Property was  
16 ever listed was because, in 2014, when I went to buy that  
17 property, it's -- it was four -- four acres or six, I can't  
18 remember how many acres.

19 THE COURT: Wait, I'm getting confused. You said  
20 that --

21 MS. MCGANN: Okay.

22 THE COURT: What property did you buy in 2014?

23 MS. MCGANN: 2014, I bought the lot in Hawaii.

24 THE COURT: Ah. Okay.

25 MS. MCGANN: Yeah. And -- and that was bought for



1 \$660,225. I bought that in December -- I bought that in 2014.  
2 Okay.

3 THE COURT: Okay.

4 MS. MCGANN: What was I talking about?

5 THE COURT: You were talking about Celestial.

6 MS. MCGANN: Oh, the reason why Celestial Property  
7 was even on the Hawaii was because, at the time of purchasing  
8 that, lending was not favorable because they leased the coffee  
9 beans back. So FHA, Fannie Mae, Freddie Mac would not give  
10 traditional lending on that type. It's an agricultural  
11 property.

12 THE COURT: Okay. We -- I think we got sidetracked  
13 somehow, because you were telling me why you believed that the  
14 Grand Lake Property was only worth 800,000 or less.

15 MS. MCGANN: Yes.

16 THE COURT: And so you were telling me renters were  
17 hard on it and all the --

18 MS. MCGANN: Okay.

19 THE COURT: -- physical deformities that it has now,  
20 the warts on the property.

21 MS. MCGANN: Right.

22 THE COURT: How does that connect up now with  
23 Celestial?

24 MS. MCGANN: Well, other than the \$145,000 second  
25 that is on Grand Lake that was put for the Maui property, I'm



1 just -- I guess I'm just making --

2 THE COURT: So you took out a second on the Grand  
3 Lake property and used the loan proceeds for the Maui project?

4 MS. MCGANN: Yes.

5 THE COURT: Okay.

6 MS. MCGANN: Yes. That's -- the Elevations, which  
7 is the second mortgage that's due, \$145,000 --

8 THE COURT: Mm-hmm.

9 MS. MCGANN: -- that was taken out in 2014 and it was  
10 used as a down payment on the property in Maui.

11 THE COURT: Got it.

12 MS. MCGANN: Okay. And then I have 680 or 75,  
13 whatever the number is on the first mortgage.

14 THE COURT: It's still a legitimate lien against  
15 Grand Lake though, isn't it?

16 MS. MCGANN: Yes. Both --

17 THE COURT: Okay.

18 MS. MCGANN: -- of them are legitimate and, and --  
19 and both are current as well. Your Honor, the trustee --

20 THE COURT: You're current on the first mortgage,  
21 too?

22 MS. MCGANN: Yes, I am Your Honor.

23 THE COURT: Why has the value or the number -- the  
24 payoff number on that loan gone up?

25 MS. MCGANN: Yeah. Thank you for asking. That loan



1 was put in a state of modification in January --

2 THE COURT: You asked for a loan mod?

3 MS. MCGANN: Yes. In January of 2020. It took until  
4 February of 2022 for that loan modification to be complete. I  
5 did not bring with me, but there -- and this is what Liz could  
6 have testified to -- mountains of evidence and documents where  
7 I've tried month after month to get that loan modified.

8 THE COURT: But you did get it?

9 MS. MCGANN: But I did get it, and it was February of  
10 this year, and it is current since. The first payment was made  
11 February 1st.

12 THE COURT: So a little more than two years later?

13 MS. MCGANN: Yes.

14 THE COURT: Okay.

15 MS. MCGANN: It was -- I even worked with Cenlar's  
16 own attorney, Ilene Delacalle -- I can't remember her name.

17 THE COURT: Dell'Acqua.

18 MS. MCGANN: But anyways, just trying to get this --  
19 this modification going sooner.

20 THE COURT: Mm-hmm.

21 MS. MCGANN: And she was even unable. Like,  
22 everybody was throwing their hands up. We were just at the  
23 mercy of Cenlar.

24 THE COURT: So you suspended payments during that  
25 process?



1 MS. MCGANN: The -- yes. They told me not to make  
2 payments until the modification was done. I was told by Cenlar  
3 not to. So the minute that the modification went through, the  
4 payments have been made current.

5 THE COURT: Okay.

6 MS. MCGANN: And the second never was in default.  
7 I mean, it may have been late, but it -- it was -- it was  
8 caught up.

9 THE COURT: Okay.

10 MS. MCGANN: Okay. So -- so I know we were talking  
11 about the value of Grand Lake, and -- and I guess my -- my  
12 point, Your Honor, is all of these legal fees and all this  
13 arguing and everything going back, I'm offering the same amount  
14 that they could get if they sold that property for one --

15 THE COURT: You better testify now what this offer  
16 is --

17 MS. MCGANN: Okay.

18 THE COURT: -- that you've offered.

19 MS. MCGANN: Yes. Okay. So my test -- here's my  
20 offer to the Court. I just want to get it in front of me so I  
21 don't miss anything on this. Okay. Okay.

22 THE COURT: Did you have an objection, Mr. Miller?

23 MR. MILLER: Well, Your Honor, I mean, settlement  
24 offers aren't usually admissible, but you've asked her to --  
25 about it, so --



1           THE COURT: Well, settlement offers are not -- the  
2 whole settlement process is not supposed to come before the  
3 Court. But if part of her objection to this settlement  
4 agreement is there's a better offer out there, then I am duty  
5 bound to evaluate that, not to decide that -- gosh, this is  
6 echoing. Not to decide that her offer is going to be accepted,  
7 but whether or not the trustee's done proper due diligence in  
8 putting her offer on the table.

9           MR. MILLER: Yes, Your Honor.

10          THE COURT: So.

11          MS. MCGANN: Okay. Thank you, Your Honor. So my  
12 offer, A, would be the proposed settlement agreement that we're  
13 talking about with 1450. I've asked for frauding wording to be  
14 included. You know --

15          THE COURT: I don't understand.

16          MS. MCGANN: So I -- and I think we've actually  
17 reached an agreement on that, where they -- I just asked for  
18 the trustee --

19          THE COURT: Okay. You -- I thought you were going to  
20 tell me that you've made an offer to the trustee that is --

21          MS. MCGANN: I have.

22          THE COURT: -- a better way for her to pay off the  
23 creditors.

24          MS. MCGANN: I have.

25          THE COURT: And what is your offer?



1 MS. MCGANN: Okay. So my offer is to immediately  
2 fund 116,000 to be placed in an escrow, or a trust, whatever  
3 you call it, within 15 days of all liens being removed by 1450  
4 Oka Kope, and the execution of the revised settlement  
5 agreement.

6 THE COURT: Okay. And what's -- what would you seek  
7 to have revised? Now I understand where you were going before.

8 MS. MCGANN: Okay.

9 THE COURT: What are you asking to be revised?

10 MS. MCGANN: So I'm asking that -- so of that  
11 116,000, Exhibit 20, which I don't know the --

12 THE COURT: 20A?

13 MS. MCGANN: 20A, I apologize. I -- I'm not sure if  
14 it was admitted, but 20A does show that the legitimate  
15 creditors that are owed, and I do have other exhibits to show  
16 that I showed proof to correct the claim --

17 THE COURT: We'll go to that in a second.

18 MS. MCGANN: Okay. So that, I just figured \$75,000  
19 contingency in case I'm off on my \$71,000 calculation of  
20 legitimate fees.

21 THE COURT: Okay. So if I understand what you're  
22 saying now, let me test this out.

23 MS. MCGANN: Okay.

24 THE COURT: You're not so much against the trustee's  
25 settlement with 1450 where they drop their two deeds of trust



1 and promissory notes --

2 MS. MCGANN: Correct.

3 THE COURT: -- and withdraw any proof of claim  
4 against your estate.

5 MS. MCGANN: Correct.

6 THE COURT: That's good with you.

7 MS. MCGANN: That's --

8 THE COURT: You just don't want the trustee to have  
9 her next step be selling your home. You'd rather that you --  
10 she take the 116,000 you're offering and use that to pay  
11 creditors?

12 MS. MCGANN: Correct.

13 THE COURT: But the settlement that's in front of me  
14 is just the walk-away by 1450 in the estate.

15 MS. MCGANN: Yes.

16 THE COURT: And you're not really opposed to that?

17 MS. MCGANN: I -- I'm not opposed with them removing  
18 liens that were filed fraudulently to begin with in this court,  
19 so --

20 THE COURT: Okay. So I get that perspective.

21 MS. MCGANN: Okay.

22 THE COURT: But that kind of brings us around to the,  
23 we're not really fighting about anything here.

24 MS. MCGANN: No.

25 THE COURT: What you want to fight about is when



1 she -- after this settlement's approved, they've dropped their  
2 liens and withdrawn their claims, the minute she files a motion  
3 to sell your home, that's where you want to fight.

4 MS. MCGANN: I -- I guess, Your Honor, I -- what my  
5 argument or I guess what I'm asking for in this settlement is  
6 that they, one, acknowledge that they're settling because the  
7 motion that -- you know, the -- what's it called, the motion  
8 was filed to have those claims dropped, whatever that's called,  
9 the --

10 MR. MILLER: Motion to approve the settlement?

11 MS. MCGANN: No, it's called the --

12 MR. MILLER: The lawsuit?

13 MS. MCGANN: The lawsuit, yes. The adverse  
14 proceeding.

15 THE COURT: The adversary proceeding.

16 MS. MCGANN: Okay. So all I'm asking for is that  
17 they note that they had to do this here, this adversary filing,  
18 and come to an agreement that they would drop those four claims  
19 that should have never been there. See, Your Honor, I -- I  
20 was --

21 THE COURT: I understand, and we shouldn't --

22 MS. MCGANN: Okay.

23 THE COURT: -- spend our time on that.

24 MS. MCGANN: Okay. So the only thing --

25 THE COURT: But you totally disagree with their



1 | claims. I get that.

2 | MS. MCGANN: Okay.

3 | THE COURT: But they're wanting to walk away from all  
4 | this mess.

5 | MS. MCGANN: Right. And I'm --

6 | THE COURT: And you want them to walk away.

7 | MS. MCGANN: And I want them to walk away and drop  
8 | those. The only --

9 | THE COURT: But when I'm evaluating her giving up  
10 | claims against them, you think I should be evaluating the fact  
11 | that she hasn't gone after other claims --

12 | MS. MCGANN: Correct.

13 | THE COURT: -- but she still could.

14 | MS. MCGANN: Well, she hasn't gone after other  
15 | claims, nor has she gone after the most obvious, which is the  
16 | proceeds from the sale of the property that created the debt.

17 | THE COURT: Which property?

18 | MS. MCGANN: Maui property, the Hawaii property.

19 | THE COURT: Okay.

20 | MS. MCGANN: That should be the number one  
21 | collection.

22 | THE COURT: In your view.

23 | MS. MCGANN: In my view.

24 | THE COURT: In her view, that's messy. You know,  
25 | it's got risk, it's got delay, and she'd rather sell your



1 house.

2 MS. MCGANN: And --

3 THE COURT: But right now, the settlement doesn't  
4 contemplate approval of the sale of the house, does it?

5 MR. MILLER: It does not, Your Honor. It's just  
6 approval of the agreement that we'll drop the lawsuit, and  
7 they'll drop their liens and their claims in the case. And --

8 THE COURT: Right.

9 MR. MILLER: -- if I may just --

10 THE COURT: Got it.

11 MR. MILLER: May I say one thing? I --

12 THE COURT: Yes.

13 MR. MILLER: Thank you, Your Honor. Ms. McGann's --  
14 as she presented her proposal to the Court, the underlying  
15 feature that I think you may have grabbed on to is that her  
16 proposal can't work unless these liens are released first.

17 THE COURT: And she acknowledges that.

18 MS. MCGANN: That's --

19 MR. MILLER: Okay.

20 MS. MCGANN: No, that's not true, Your Honor. I  
21 can -- I don't need the liens released in order to fund the  
22 116,000 to pay.

23 THE COURT: Okay. But -- so you're going to allow  
24 their judgment liens to be against your home? Because they're  
25 going to --



1 MS. MCGANN: If they -- if they would like to fight  
2 for those judgment liens against my home in court, yes. I  
3 would -- I would like to present the evidence that they have  
4 for putting those liens.

5 THE COURT: Okay.

6 MS. MCGANN: That \$500,000 they gave me was never a  
7 loan. It was for me to deed the property into the -- to the  
8 LLC.

9 THE COURT: Okay.

10 MS. MCGANN: There was no loan.

11 THE COURT: So then, if I can summarize, you're  
12 saying, Trustee, just leave me to fight with 1450. Don't even  
13 bother settling with them. Drop your adversary, and they'll  
14 withdraw their proofs of claim against the estate, and then --  
15 but not necessarily against my home. And I will pay the  
16 trustee \$116,000 so that she won't go after my home.

17 MS. MCGANN: Correct. That -- I -- I think that's  
18 what -- what I said.

19 THE COURT: I mean --

20 MS. MCGANN: Yes. I'm saying, what I'm trying to do  
21 is offer legitimate creditors their payment. They've been drug  
22 along since 2018 and '19 on this --

23 THE COURT: Right.

24 MS. MCGANN: -- up to this point. I was forced into  
25 a Chapter 7, okay? I was also forced into a Chapter 11 because



1 of these false claims --

2 THE COURT: Okay.

3 MS. MCGANN: -- kicking me out of the limit.

4 THE COURT: We don't really have to resolve all that.

5 MS. MCGANN: Okay. Right. So --

6 THE COURT: Focusing on the settlement agreement.

7 MS. MCGANN: So my settlement, the only thing I'm  
8 asking for, Your Honor, the only thing I'm asking, that with  
9 the release of these claims, that they acknowledge that this  
10 was due to the adversary hearing being filed, that the trustee  
11 make no representation, like they've been making, that the  
12 redemption agreement is valid. I feel that they are negating  
13 my ability to collect going forward.

14 THE COURT: She's not going to be speaking for you if  
15 she -- if there are claims that are ultimately abandoned to  
16 you, she's not -- whatever admission she makes isn't going to  
17 be binding against you, so.

18 MS. MCGANN: So the fact that she's claiming the 49  
19 percent is a valid transfer, I guess I can't understand, and  
20 I'm asking --

21 THE COURT: Her lawsuit says the opposite, that it --

22 MS. MCGANN: Right, exactly.

23 THE COURT: It was without consideration.

24 MS. MCGANN: Okay. So my -- what I asked for in the  
25 agreement for them to just give me the reason why they're not



1 collecting the most obvious proceeds from the sale. And I even  
2 offered language. I said I would be okay if it said I agree --  
3 so this is my example. "Celestial Property is due the proceeds  
4 per" -- it's Exhibit 19 from Mr. Miller -- "not Sherry McGann,  
5 and the trustee is not willing to exhaust additional fees in an  
6 attempt to collect further, makes no warranty regarding  
7 validity of any agreements between 1450 Oka Kope, Sherry  
8 McGann, and Celestial Properties."

9 That's all I'm asking for. What I don't want, Your  
10 Honor, is after this is all over and said and done, and I go to  
11 collect my 1.3 million, roughly, that is owed to Celestial  
12 Property, that something in this agreement is negated because  
13 the trustee didn't collect what is the most obvious collection  
14 of all. And they're saying that's because of you.

15 THE COURT: Well, we can provide language that says  
16 that the trustee's statements of fact or admissions are not  
17 binding on the debtor.

18 MS. MCGANN: Okay. That -- whatever is going to  
19 protect -- and that's what I was hoping that, you know, coming  
20 to the court, too, because I could not reach that with  
21 Mr. Miller. All I'm looking for is protection going forward.  
22 I understand that this is not --

23 THE COURT: But you under --

24 MS. MCGANN: -- maybe the place to try it here.

25 THE COURT: Okay. But you understand that if you're



1 expecting to go after these seven or five, however many claims  
2 that are out there, post-bankruptcy, you can't also hang on to  
3 your house. So something has to be liquidated.

4 MS. MCGANN: I guess I don't understand that.

5 THE COURT: Just a minute. Something has to be  
6 liquidated to pay all the valid claims in the case.

7 MS. MCGANN: Yes.

8 THE COURT: You may disagree on which ones are  
9 valid --

10 MS. MCGANN: Correct.

11 THE COURT: -- but there are some valid ones.

12 MS. MCGANN: Yes.

13 THE COURT: And something has to be liquidated to pay  
14 them. She's only holding \$12,000, so she's got to liquidate  
15 something.

16 MS. MCGANN: I've offered 116,000 to pay those valid  
17 claims, which would include 75,000 for just a -- again, my --  
18 and we haven't gone over Exhibit 20 yet, but --

19 THE COURT: Okay.

20 MS. MCGANN: -- the claims are not all valid. There  
21 is 71,000.

22 THE COURT: Should we go over that right now from  
23 your point of view?

24 MS. MCGANN: Yes. If I can get my computer open to  
25 Exhibit 20. It might have died.



1 Did you say that I could use your book? Is Exhibit  
2 20 in here, Mr. Miller?

3 MR. MILLER: Sure.

4 MS. MCGANN: Okay. Thank you very much.

5 MR. MILLER: Hold on just a second.

6 MS. MCGANN: Just because my computer died. Sorry.

7 MR. MILLER: I need to pull up my computer with your  
8 exhibits?

9 MS. MCGANN: Of course. Of course.

10 MR. MILLER: Actually, yeah. Here.

11 MS. MCGANN: Thank you.

12 THE COURT: I won't have them, though, if --

13 THE CLERK: Well, we can get them.

14 THE COURT: What's that?

15 THE CLERK: Well, I think we have it.

16 MS. MCGANN: The judge won't --

17 MR. MILLER: Oh, the judge.

18 THE COURT: Okay.

19 MR. MILLER: You don't have it, Judge.

20 MS. HESTER: Yeah, she does.

21 MR. MILLER: Are you --

22 THE COURT: I don't have a book.

23 MS. HESTER: No, but she has an electronic --

24 THE COURT: So I need something to follow along.

25 MR. MILLER: You should have it electronically.



1 MS. MCGANN: I have it electronically.  
2 MR. MILLER: Has she delivered it to you?  
3 MS. MCGANN: 20A.  
4 THE COURT: Well, right now, the electronic screen is  
5 blank.  
6 MS. MCGANN: Oh.  
7 THE COURT: Says searching, then it shows no battery.  
8 MR. MILLER: But --  
9 MS. MCGANN: But you could --  
10 MR. MILLER: -- did she deliver a USB?  
11 MS. MCGANN: I did deliver two USBs. Yes.  
12 MR. MILLER: I could connect my computer to the  
13 podium and take my book back.  
14 THE COURT: Can you just do it from there? She tells  
15 you which one to pull up and you do it?  
16 MR. MILLER: Absolutely, Judge.  
17 THE COURT: I just need a way to --  
18 MR. MILLER: Absolutely.  
19 THE COURT: -- see it on my screen.  
20 MR. MILLER: I can do that, Judge. I will pull them  
21 up on the --  
22 THE COURT: Thank you.  
23 MR. MILLER: When she tells me which one she wants me  
24 to turn to, I will be her trial assistant.  
25 THE COURT: Okay.



1 MS. MCGANN: I'm sorry. Thank you.

2 MR. MILLER: Which document would you like me to pull  
3 up, Ms. McGann?

4 MS. MCGANN: Exhibit 20, please.

5 THE COURT: 20A.

6 MR. MILLER: Oh, I need to connect.

7 MS. MCGANN: 20A.

8 MR. MILLER: May I connect from here as opposed to  
9 the lectern, Your Honor? To -- for you to see the exhibit, I  
10 need to connect my computer here and not be at the podium.

11 THE COURT: Okay.

12 MR. MILLER: Would you allow me to do that?

13 THE COURT: Yes.

14 MR. MILLER: That's all I'm asking.

15 THE COURT: Yes.

16 MR. MILLER: Thank you.

17 THE COURT: I'm not sure I understand, but yes.

18 MR. MILLER: Well --

19 MS. MCGANN: I'll move out of the way.

20 THE CLERK: We trust you to --

21 MR. MILLER: -- I'm just trying to be as respectful  
22 and decorum appropriate as I can be, which means I'm going to  
23 be sitting here doing it from my -- from here and connecting --

24 THE COURT: That's okay.

25 MR. MILLER: -- instead of there, that's all.



1 THE COURT: Okay.

2 MS. MCGANN: Oh, thank you so much.

3 MR. MILLER: Am I up? I'm up. Let's get

4 Ms. McGann's --

5 THE COURT: 20A.

6 MR. MILLER: -- trial exhibits. Which one would you  
7 like me to turn to, Ms. McGann?

8 THE COURT: 20A.

9 MS. MCGANN: 20A, please.

10 MR. MILLER: If I can get it to -- maybe it's  
11 already --

12 MS. MCGANN: Would you mind just making it smaller?

13 MR. MILLER: Okay.

14 MS. MCGANN: Just a little bit. That way I can --  
15 yeah, like --

16 THE COURT: idea.

17 MS. MCGANN: Thank you.

18 MR. MILLER: How -- wait a second here. How's that?

19 MS. MCGANN: Thank you very much. Okay. So what I  
20 did was just take the claims register and went, line by line,  
21 every -- that was listed. This is the 18th of August, I  
22 believe. This is what was still sent to me, even though I was  
23 asking for a current revised one.

24 So if you go to the second page, this is where I  
25 break down and I give an explanation for each one. The first



1 bank, the trustee testified that I still owe the 9,600, even  
2 though I did receive a 1099-C and had to claim it as income.

3 THE COURT: Did you understand the trustee's  
4 explanation of that?

5 MS. MCGANN: Not clearly. I'm not sure why the bank  
6 takes a write-off and makes me show income if I still have to  
7 pay it. I assume that once it's paid, I'll probably get some  
8 corrected thing, possibly. It'll be an IRS thing I'll have to  
9 deal with.

10 THE COURT: Okay.

11 MS. MCGANN: Anyways, I went through and I just said  
12 valid, valid, valid, you know, the 2, 3, and 4 are valid.  
13 Number 5 is my daughter's student loan. I'm just a cosigner,  
14 and that is not an actual amount. It's less than that now,  
15 because she's current on it. It is not in default. The  
16 American Express, 37,890 is a valid claim that was used for the  
17 roofing material in Maui. Capital One, I assume it's valid. I  
18 just went through what it was.

19 THE COURT: Why don't you just focus on the ones you  
20 think are not valid?

21 MS. MCGANN: Okay. Okay. So the ones that are not  
22 valid would be the Home Depot, the Citibank. That has been --

23 THE COURT: Claim 8.

24 MS. MCGANN: Eight, yes. Yes, Your Honor, Claim 8.  
25 Also, there is Exhibit --



1           THE COURT: Why is it -- why do you dispute this  
2 claim?

3           MS. MCGANN: Well, without looking up everything, I  
4 can tell you right off the top of my head with Home Depot. So  
5 when you're in an island, and you're ordering part, you know,  
6 it takes forever to get there anyways, but the island, you add  
7 eight weeks. So I got all my doors and cabinets ordered from  
8 Home Depot when Volk walked off the job because I had to value  
9 engineer everything. So when the doors arrived, they were  
10 upside down. The slats on them were upside down. They were  
11 just -- were not able to be put on. There was, you know,  
12 \$40,000 worth of doors. They told me it was going to be  
13 another 12 weeks. I had to buy doors locally to get it down to  
14 six weeks to get it completed.

15           THE COURT: Did they eventually take the doors back?

16           MS. MCGANN: They never -- they did pick the doors  
17 up. They never issued a refund on the doors.

18           THE COURT: Ah.

19           MS. MCGANN: In addition to that, the cabinets, which  
20 were about 60,000, did not fit. There was problems. This is  
21 all documented.

22           THE COURT: Did they take them back?

23           MS. MCGANN: They did not, and I've went to the  
24 corporate office in Home Depot. I sent all this documentation  
25 to Liz that was forwarded on to the trustee, to -- and I do



1 have an exhibit here, some of these. I'll look at it in a  
2 second and pull which exhibit it is. But I guess my point  
3 being that nothing has been done about adjusting that claim  
4 register when I have provided documentation for over a year  
5 that it's not valid.

6 Home Depot's just a really big outfit, as you know,  
7 and I was dealing with someone in their corporate office, and I  
8 do have the documentation on it, but ultimately, with  
9 everything else going on, with Swany, with the lawsuits and  
10 everything, that just kind of got dropped and never collected  
11 again. But that is not owed. And I showed that stuff to Liz  
12 and we were well prepared to take Home Depot on for that.

13 THE COURT: So you might still file a claim  
14 objection?

15 MS. MCGANN: Absolutely, yes.

16 THE COURT: Okay.

17 MS. MCGANN: Actually, I'm surprised it's not filed.

18 I --

19 THE COURT: Well, you can file it.

20 MS. MCGANN: I thought it was filed with Liz telling  
21 them. And I have -- and I just don't know all the process, but  
22 I do have a note from Mr. Miller on November 18th where he said  
23 he was filing a claim against Number 11-1, which is the  
24 Menehune Adventures.

25 THE COURT: Why don't you scroll down.



1 MS. MCGANN: That is 154,845.38. So you can see --

2 MR. MILLER: That's a mischaracterization, Your  
3 Honor. I just -- I --

4 THE COURT: Okay.

5 MR. MILLER: I'm letting a lot of this go on because  
6 you've asked for it, Judge, but there are some -- some of the  
7 things are outrageous. And the fact that I said to h er I was  
8 going to file an objection is a mischaracterization. I said, if  
9 they don't get relief from stay and go liquidate that darn  
10 claim, I certainly will object to it. And then they went and  
11 did it.

12 THE COURT: I don't know what you're referring to,  
13 Mr. Miller.

14 MR. MILLER: The Menehune Ventures claim.

15 THE COURT: Sit down.

16 MS. MCGANN: Yeah.

17 THE COURT: Thank you. Let's go back to the Home  
18 Depot.

19 MS. MCGANN: Okay.

20 THE COURT: So you may still file an objection?

21 MS. MCGANN: So I file an objection with the court?

22 THE COURT: You can.

23 MS. MCGANN: Okay.

24 THE COURT: And if you don't -- if somebody doesn't  
25 file an objection that gets served on them, their claim is



1 deemed allowed by law.

2 MS. MCGANN: And I think that's my point, Your Honor,  
3 is I thought this objection was -- I know --

4 THE COURT: It hasn't.

5 MS. MCGANN: So would that have been Liz to do or  
6 Mr. Miller to do?

7 THE COURT: Or you to do.

8 MS. MCGANN: Or me.

9 THE COURT: Because you don't have counsel at this  
10 point.

11 MS. MCGANN: Okay. Right. But I had thought that it  
12 had been done.

13 THE COURT: No.

14 MS. MCGANN: So -- and I apologize, I'm just trying  
15 for my own clarification.

16 THE COURT: And they don't have to -- they're not  
17 there just to do everything you asked them to do, so.

18 MS. MCGANN: No, of course not. Yeah, I don't think  
19 that. It was just that it was my understanding when I got the  
20 information to Liz that -- and she forwarded that to the  
21 trustee.

22 THE COURT: She was hoping that they would  
23 investigate it.

24 MS. MCGANN: Okay. Got it. Okay.

25 THE COURT: But apparently not yet objected to it, so



1 you can control the situation by filing your own.

2 MS. MCGANN: Okay. Got it.

3 THE COURT: So you may still do that on 8.1. Okay.

4 MS. MCGANN: Okay.

5 THE COURT: Now let's talk about 11.1.

6 MS. MCGANN: Okay. So 11.1 is the same situation  
7 where I was under the impression that this was taken care of,  
8 and this is why I was upset that this was still showing on the  
9 claims register, but there's been many conversations on this.  
10 This is the -- they ripped me through the courts. You know, I  
11 already told you that story. This is the neighbors in Hawaii.  
12 This was Swany. This is the Wide Open Construction. And after  
13 putting Swany on the stand for days and days and days to  
14 testify on -- on a loan that he wasn't on, I just think they  
15 have a lot of audacity to ask attorney fees, so.

16 THE COURT: Did the court in the state court action  
17 in Hawaii -- I assume it was state court, right? Not a federal  
18 court?

19 MS. MCGANN: I don't -- I'm really not sure.

20 THE COURT: Anyways, it -- okay. Whatever --

21 MS. MCGANN: I have the claim number.

22 THE COURT: Wherever that litigation --

23 MS. MCGANN: Yeah.

24 THE COURT: -- the Menehune v. McGann --

25 MS. MCGANN: Uh-huh.



1           THE COURT:  -- litigation occurred, did the judge  
2 ever enter an order saying that you're liable to pay their  
3 legal fees?

4           MS. MCGANN:  No.

5           THE COURT:  Okay.  Okay.

6           MS. MCGANN:  No, Your Honor.

7           THE COURT:  So that's another one you might still  
8 object to, okay?  What else?

9           THE COURT:  Okay.  So the -- obviously all the Oka  
10 Kopes.

11          THE COURT:  Wait, scroll down so I can --

12          MR. MILLER:  I'm sorry.  That's me supposed to be  
13 scrolling.

14          MS. MCGANN:  All the way -- I'm sorry.

15          MR. MILLER:  I'm sorry, Judge.

16          THE COURT:  Oh, that's you.  Okay.

17          MR. MILLER:  I missed my cue.

18          THE COURT:  Keep up.  All right.  So Ford Motor is  
19 valid.

20          MR. MILLER:  Where do you want me?

21          THE COURT:  13, I think.

22          MR. MILLER:  Okay.

23          THE COURT:  Is that the first -- the next one you  
24 dispute?

25          MS. MCGANN:  Yes, 13, 14, 15, and 16.  I dispute all



1 of them. I have no idea where these numbers come from. I've  
2 repeatedly asked for accounting.

3 THE COURT: Okay.

4 MS. MCGANN: I don't get it.

5 THE COURT: Got it. And those are going to go away  
6 if the settlement's approved.

7 MS. MCGANN: Exactly. Correct.

8 THE COURT: And you actually want that aspect of the  
9 settlement?

10 MS. MCGANN: Yes. Yes, Your Honor.

11 THE COURT: Okay. So then what about 17?

12 MS. MCGANN: 17-1 is -- I believe we did admit that  
13 evidence from the Department of Justice where they were  
14 billing -- that -- what that has to do is they took it out  
15 of -- they were still billing under the -- because you have  
16 quarterly fees.

17 THE COURT: Mm-hmm.

18 MS. MCGANN: And when I filed for the Chapter 7, some  
19 paperwork glitch didn't stop them billing for the fees.

20 THE COURT: Ah. So they kept charging --

21 MS. MCGANN: So they kept charging --

22 THE COURT: -- Chapter 11 quarterly fees?

23 MS. MCGANN: Even though I was in the 7.

24 THE COURT: Okay.

25 MS. MCGANN: So --



1 THE COURT: And -- okay. So you could object to this  
2 one?

3 MS. MCGANN: Yes. And --

4 THE COURT: Because they haven't withdrawn it yet.

5 MS. MCGANN: Okay. And I did send stuff to Liz, and  
6 she took -- she did what she needed to do. And again, my bad,  
7 I thought it was, you know, taken care of.

8 THE COURT: It's not too late. Okay.

9 MS. MCGANN: So --

10 THE COURT: So scroll down some more, Mr. Miller.  
11 What's --

12 MR. MILLER: I think that's it, Judge.

13 MS. MCGANN: That is --

14 THE COURT: Oh.

15 MS. MCGANN: That is it. So --

16 THE COURT: Okay.

17 MS. MCGANN: So with these, if you go back up to the  
18 top, the valid claims I have listed out with the number that  
19 corresponds with the claims register. And --

20 THE COURT: Don't I put resolved and valid together  
21 on your chart? So it's about 85,000 and change, or 86?

22 MR. MILLER: The three resolved claims, Judge, those  
23 are -- that's the 1099 from First Bank.

24 THE COURT: Okay.

25 MR. MILLER: That's not resolved, it's due. The



1 fifth claim is the student loan co-guarantor.

2 THE COURT: Ah. Okay.

3 MR. MILLER: She's liable on the debt.

4 THE COURT: Yep.

5 MR. MILLER: And 17 in the resolved category is the  
6 U.S. Trustee's --

7 THE COURT: Fees.

8 MR. MILLER: -- fees. So those three aren't --

9 THE COURT: So they should still really be included.

10 MR. MILLER: That's right.

11 THE COURT: So it should be about 86,000 in claims --

12 MS. MCGANN: Okay.

13 THE COURT: -- when you delete the claims that we  
14 just went through for Home Depot, Meneshune, and then all the  
15 1450 stuff.

16 MS. MCGANN: Correct. Yeah, if you add the \$15,511  
17 to the \$70,000.

18 THE COURT: Okay.

19 MS. MCGANN: I see what you're doing.

20 THE COURT: Yeah.

21 MS. MCGANN: I -- you're saying I can object to  
22 those -- that 15,511.

23 THE COURT: Well, it doesn't sound like you'd have a  
24 good basis for objecting to those from what you've just said.

25 MS. MCGANN: So why do I have to pay my daughter's



1 student loan that's paid and --

2 THE COURT: Because you guaranteed it. So it's a  
3 debt. It's just a claim against your estate. You're not going  
4 to have to pay it after your bankruptcy.

5 MS. MCGANN: Oh, okay.

6 THE COURT: But the bankruptcy estate has a claim.

7 MS. MCGANN: I see.

8 THE COURT: You did contractually sign off --

9 MS. MCGANN: Yes.

10 THE COURT: -- on her student loan.

11 MS. MCGANN: So that it's on time and she's paying it  
12 just means whenever it settles that they're not going to use  
13 that number most likely.

14 THE COURT: Well, it's probably to your benefit or  
15 her benefit if they --

16 MS. MCGANN: Yeah.

17 THE COURT: -- pay it off here.

18 MS. MCGANN: Yeah, right. Yeah, no kidding. And  
19 that's pretty small for a four-year college. She's been very  
20 good.

21 THE COURT: It is.

22 MS. MCGANN: She was an RA, so.

23 THE COURT: Okay. So --

24 MS. MCGANN: Okay. So --

25 THE COURT: So we got about 86,000 in unobjected to



1 claims, and then you may object to the rest of these. And --  
2 but I -- you just need to know until somebody files a formal  
3 objection, these claims are deemed allowed --

4 MS. MCGANN: Okay.

5 THE COURT: -- and the trustee has to pay them. But  
6 her settlement takes away 13 through 16, which are the big  
7 number ones.

8 MS. MCGANN: Yes.

9 THE COURT: Okay.

10 MS. MCGANN: 1.8 million to be removed. So --

11 THE COURT: Right.

12 MS. MCGANN: I think how it's better for the  
13 creditors and just actually everyone involved is that I fund  
14 without having to sell the house, without having to go through  
15 the whole, you know, proving the value, seeing if we're wrong  
16 or whatever, is for me to fund the \$116,000, which I came up  
17 with that using -- I just used -- I'm going to show you. I'm  
18 going to tell you how -- exactly how I came up with that.

19 THE COURT: I understand your reasoning --

20 MS. MCGANN: Okay.

21 THE COURT: -- now, but the settlement doesn't  
22 include the sale of your home.

23 MS. MCGANN: Right.

24 THE COURT: So you're kind of jumping the gun here.  
25 You're anticipating because -- and rightfully so --



1 MS. MCGANN: Of threats. Yeah.

2 THE COURT: -- because she's indicated she's not  
3 going to pursue these other litigation claims because she  
4 doesn't -- because they're risky, they're expensive, and  
5 there's delay. And if she sells your home, she gets a wad of  
6 cash and pays the creditors in full or down to seven percent,  
7 depending on how much the home sells for. But her settlement  
8 with 1450 and GBL does not contemplate the sale. So you can  
9 still preserve that objection when she files a motion to sell  
10 your home.

11 MS. MCGANN: But why would a motion be filed to sell  
12 my home if I'm offering to bring more forward than what --

13 THE COURT: No, and that's --

14 MS. MCGANN: -- could be brought from a sell of the  
15 home?

16 THE COURT: And that's fine.

17 MS. MCGANN: Okay.

18 THE COURT: She may not agree. She thinks it may be  
19 worth up to a million-and-a-half dollars.

20 MS. MCGANN: Mm-hmm.

21 THE COURT: You're not offering enough to make that  
22 difference. So you know, that's something for you to keep  
23 talking and see if you can work out, but maybe you don't. But  
24 I'm just saying the fight you're fighting today is probably not  
25 the right fight, because you really are okay with 1450 and GBL



1 walking away from your home and walking away from this estate.

2 And that's really all that's at issue.

3 MS. MCGANN: All that's at issue for me is that I  
4 have my rights protected so I don't end up like I did with  
5 Exhibit Number 8 with some --

6 THE COURT: You want to be protected against any  
7 admissions that she makes --

8 MS. MCGANN: Right.

9 THE COURT: -- in the event that you want to pursue  
10 these other claims and she abandons them. And you want to  
11 preserve your ability to fight her sale of your home.

12 MS. MCGANN: Yes.

13 THE COURT: That isn't in front of the Court right  
14 now. So you have it preserved. And so the minute she files  
15 the motion to sell, which she has to do, then you file your  
16 objection. And that's what we fight about. Are you offering  
17 more than she's likely to get from the sale of the home?

18 MS. MCGANN: And that's when I would have Donna  
19 testify.

20 THE COURT: Okay. So --

21 MS. MCGANN: At that point, you're saying?

22 THE COURT: -- maybe it's not a problem that she's  
23 not here today.

24 MS. MCGANN: Right.

25 THE COURT: She'll come in person for that fight.



1 But the fight today is not really a fight now that we've -- am  
2 I missing something here?

3 MS. MCGANN: That's what I've been saying, Your  
4 Honor. I'm just trying to cut -- protect myself.

5 THE COURT: Okay. And I get that. This is  
6 confusing. You don't have the benefit of counsel here, even  
7 though you're a very smart insurance person and whatever else.

8 MS. MCGANN: Well, I'm obviously not that smart. And  
9 actually --

10 THE COURT: And a farmer and all those things.

11 MS. MCGANN: Yeah.

12 THE COURT: But you're not a lawyer. And so --

13 MS. MCGANN: But my lawyer didn't understand this.  
14 She said -- and I've got these dates here because --

15 THE COURT: We don't need to go over them.

16 MS. MCGANN: Okay. She just said she was bet -- you  
17 know, she -- I was trying to get information from November 1st,  
18 November 8th, November 11th, November 17th, so --

19 THE COURT: Okay.

20 MS. MCGANN: -- I didn't even have to file an  
21 objection to the --

22 THE COURT: Okay.

23 MS. MCGANN: -- proposed settlement agreement.

24 THE COURT: We are where we are today.

25 MS. MCGANN: All right.



1           THE COURT: I understand how we got here, but at this  
2 point, there's no -- nothing in the settlement that makes the  
3 debtor waive any claims against 1450 or GBL, or Celestial  
4 against those two.

5           MR. MILLER: That's not accurate.

6           THE COURT: Ah, because I was pointed to some of that  
7 today.

8           MR. MILLER: Well, no, you were pointed to the fact  
9 that there's a -- all the claims with respect to Celestial,  
10 GBL, and 1450 remain intact.

11          THE COURT: Right.

12          MR. MILLER: Well, yeah. So we're on -- but you've  
13 said more than that, Judge. You said --

14          THE COURT: I said the debtor.

15          MR. MILLER: -- the debtor. The agreement with 1450  
16 is a release of all claims that the estate has against 1450 and  
17 GBL and a release of all claims 1450 and GBL had against the  
18 debtor and the estate.

19          THE COURT: Ah.

20          MR. MILLER: So there's a release. There's a release  
21 in there of the claims.

22          THE COURT: Pull up that settlement agreement and  
23 show me where the debtor is included.

24          MR. MILLER: And -- sure. And --

25          THE COURT: I understand the estate is.



1 MR. MILLER: Here, let me just -- well, the only --  
2 the estate has what she had pre-petition, and we're releasing  
3 that. Let me see if I can't -- I'm on the wrong document.

4 MS. HESTER: 14.

5 MR. MILLER: Let me -- it's the wrong 14, so hold on  
6 a sec. Let me get my trial exhibits.

7 THE COURT: Okay. Release of trustee's claims.  
8 Okay. "On behalf of the debtor and the debtor's estate shall  
9 be deemed to have released, waived, and discharged 1450" --

10 MR. MILLER: I'm trying to highlight it for you.

11 THE COURT: -- "and GBL." So it is a release of you  
12 personally. It is not a release of Celestial.

13 MS. MCGANN: So Your Honor, and this is -- I know,  
14 I'm -- I'm sorry I keep beating this to death, but if all the  
15 debt is incurred by Celestial Properties, and there's no  
16 expenses or -- nothing with Celestial Properties except this  
17 Hawaii property, why are they not able to collect from the sale  
18 of the proceeds for this property?

19 THE COURT: Mr. Miller?

20 MR. MILLER: Well, first of all, Your Honor, you told  
21 us we couldn't hold those proceeds back, and so that was a year  
22 ago almost. And so we had no right to stop them from  
23 dispersing the money. They said they would disperse the money.  
24 If we --

25 THE COURT: Okay. I've been over this already today.



1 MR. MILLER: I -- you asked me --

2 THE COURT: I said that you can't have standing, as  
3 the trustee of Ms. McGann, in that capacity, to hold up things  
4 that involve Celestial.

5 MR. MILLER: That's right.

6 THE COURT: You can put Celestial into bankruptcy.

7 MR. MILLER: You said that.

8 THE COURT: You can sue on behalf of -- or move for  
9 injunctions on behalf of Celestial.

10 MR. MILLER: You're right.

11 THE COURT: That's not what -- how you were postured  
12 in the litigation.

13 MR. MILLER: And Ms. Jagow --

14 MS. MCGANN: I --

15 MR. MILLER: -- testified that neither one of those  
16 was in the best interest of the estate because they would  
17 create competing estates. There were additional creditors of  
18 one estate and not the other, and she didn't want the fiduciary  
19 duties of being in charge of Celestial. If Celestial was --

20 THE COURT: I see that happen all the time in the  
21 bankruptcy case -- in the bankruptcy world, but okay. That was  
22 her position.

23 MS. HESTER: Yeah, in certain cases.

24 MR. MILLER: And it depends on the case, Judge, and  
25 this isn't that case.



1 THE COURT: Okay.

2 MR. MILLER: Okay. What we have are a bunch of  
3 claims against 1450 that Ms. McGann had, like the claims  
4 against the liens on her house and the promissory notes that  
5 they're saying that she's personally liable for. We're getting  
6 those released. With respect to the claims that she had vis-a-  
7 vie what happened in Hawaii between Celestial and 1450, and any  
8 claims that she thinks she personally has to that, we're  
9 releasing and waiving. We believe that those claims mostly  
10 are -- lie with Celestial, just like the Wide Open claim where  
11 the client is Celestial --

12 THE COURT: Okay.

13 MR. MILLER: -- not the debtor.

14 THE COURT: So let's see if we can summarize here.  
15 The settlement does give up your personal claims against 1450  
16 and GBL, but not Celestial's. So if you -- if the trustee  
17 abandons any interest in Celestial to you, you, on behalf of  
18 Celestial, to the extent the law would permit, could go after  
19 those proceeds or anything else in the way of claims against  
20 1450 and GBL. That will not be put aside by the settlement.

21 MS. MCGANN: Okay. And when I'm asked -- and I have  
22 been by other attorneys -- why is the proceeds not being  
23 collected from the sale, I still am not understanding that --  
24 of the property.

25 THE COURT: Yeah, he didn't really --



1 MR. MILLER: Well, the money belonged to Celestial,  
2 not to Ms. McGann.

3 THE COURT: Right.

4 MS. MCGANN: But --

5 MR. MILLER: So that's why --

6 THE COURT: But the trustee --

7 MR. MILLER: -- we're not collecting it.

8 THE COURT: -- is the hundred percent owner of  
9 Celestial.

10 MS. MCGANN: Exactly.

11 MR. MILLER: That's right.

12 THE COURT: So answer the question now, why, on  
13 behalf of Celestial, she didn't make a -- you know, say -- hold  
14 her hand out at the settlement on the sale of the Maui  
15 property?

16 MR. MILLER: Well, she had been -- we had been in  
17 discussions with Mr. Swanson, saying that redemption agreement  
18 isn't valid and it's a fraudulent transfer. And they said,  
19 sorry, we're not going to give you any of the money. We plan  
20 to disperse it. We believe that the member of the LLC, 1450,  
21 was Celestial, not Ms. McGann. Celestial has its own debts.  
22 Creating a competing estate would be a breach of Ms. --

23 THE COURT: You didn't have to create a competing  
24 estate. You show --

25 MR. MILLER: You suggested that she file bankruptcy



1 for -- put that company in bankruptcy.

2 THE COURT: That's one option.

3 MR. MILLER: The other option was --

4 MS. MCGANN: I offered that.

5 MR. MILLER: -- to sue in state court. Neither one  
6 were palatable.

7 THE COURT: Or show up at the closing and stick your  
8 hand out and say, pay me. That didn't happen.

9 MR. MILLER: It did not happen, Judge.

10 THE COURT: And she's asking, why not?

11 MR. MILLER: We didn't believe we had good rights to  
12 it whatsoever.

13 THE COURT: So the estate having a hundred --

14 MR. MILLER: And I'm --

15 THE COURT: -- percent interest in the LLC did not  
16 give the trustee the right to act on behalf of Celestial?

17 MR. MILLER: The -- at the time, we have a redemption  
18 agreement and a reversion of the interest in Celestial back --

19 THE COURT: Okay.

20 MR. MILLER: -- to 1450.

21 THE COURT: I'm not satisfied with the answer,  
22 either.

23 MS. MCGANN: Thank you, Your Honor.

24 THE COURT: But that's -- it is what it is.

25 MS. MCGANN: That's --



1 THE COURT: She has chosen not to do that.

2 MS. MCGANN: That's part of my whole complaint --

3 THE COURT: Okay.

4 MS. MCGANN: -- with this, is it just doesn't make  
5 any sense to step in my shoes when it's convenient as Celestial  
6 Property --

7 THE COURT: Okay.

8 MS. MCGANN: -- and when it's not, to not. And I  
9 feel that an alliance has been made between them and 1450 in  
10 making this agreement valid. And it's not. And I -- and if  
11 this isn't the court to show that, then it shouldn't even be  
12 discussed, or get me to the right court where I can show the  
13 evidence that that is not a legitimate and valid redemption  
14 agreement.

15 THE COURT: Okay. Well, the claims will still exist  
16 to the extent they are still alive. If they've been -- if the  
17 law does away with them because you -- because the trustee  
18 didn't do something, or --

19 MS. MCGANN: That's what I'm --

20 THE COURT: -- because you didn't do something --

21 MS. MCGANN: -- fearful of, and I --

22 THE COURT: Well, and it may be the case. But it is  
23 what it is.

24 MS. MCGANN: So we do have it on record that we just  
25 didn't get a satisfactory answer as to why?



1 THE COURT: I didn't.

2 MS. MCGANN: Okay. Thank you, Your Honor. I  
3 appreciate that.

4 THE COURT: But that doesn't preclude me from  
5 approving the settlement. And where I'm at right now, now that  
6 we've gone around the mulberry bush a few times, is I don't  
7 think you're really opposing this settlement.

8 MS. MCGANN: No. I'm just -- I'm just trying to  
9 protect my rights --

10 THE COURT: Yeah.

11 MS. MCGANN: -- in this and ask why --

12 THE COURT: Yeah.

13 MS. MCGANN: -- you know, other avenues of  
14 collection, in addition to --

15 THE COURT: Right.

16 MS. MCGANN: -- the most obvious one --

17 THE COURT: And that was a fair thing to ask.

18 MS. MCGANN: Yeah.

19 THE COURT: But I'm going to go ahead and overrule  
20 your objection to this settlement because I don't think you  
21 really object to it any longer.

22 MS. MCGANN: Right. Correct, Your Honor.

23 THE COURT: Okay.

24 MS. MCGANN: I'm just looking to protect myself.

25 THE COURT: Got it. Which you'll do when she moves



1 to sell your home.

2 MS. MCGANN: Can we not --

3 THE COURT: Or not.

4 MS. MCGANN: -- come to an agreement to not sell my  
5 home and take the -- what I'm offering?

6 THE COURT: No. You can keep pursuing that with her.

7 MS. MCGANN: Okay.

8 THE COURT: But if she chooses to reject it and files  
9 a motion to sell your home, then you can file your objection,  
10 and we'll have a different hearing --

11 MS. MCGANN: I see, Your Honor.

12 THE COURT: -- on that issue.

13 MS. MCGANN: I see. And that's when I'll have -- be  
14 able to call, like you said, Ms. Reddy, and that's where it'll  
15 be.

16 THE COURT: As long as you comply with all the rules.

17 MS. MCGANN: Your -- you bet you will -- I will.

18 THE COURT: Okay. And if she's qualified to be an  
19 expert.

20 MS. MCGANN: Mm-hmm.

21 THE COURT: She may not be.

22 MS. MCGANN: Mm-hmm.

23 THE COURT: So --

24 MS. MCGANN: Mm-hmm.

25 THE COURT: But you can try again.



1 MS. MCGANN: Thank you, Your Honor.

2 THE COURT: Okay. All right. So we get to the end  
3 of our day, and we don't really have an objection remaining on  
4 this settlement. So Mr. Swanson, your client, looks like  
5 they're good to go.

6 MR. SWANSON: We support approval of the settlement  
7 agreement as set forth in the motion, and in --

8 THE COURT: Okay.

9 MR. SWANSON: -- as drafted in the agreement.

10 THE COURT: Okay.

11 MR. SWANSON: Thank you, Your Honor.

12 THE COURT: Very good. We'll go ahead and stamp that  
13 order now. Okay. I think that's it for today. And at least  
14 we've teed up a lot of issues going forward to know what's --  
15 what the issues are that still remains in the case. If  
16 somebody intends to object to claims, they better file some  
17 objections. If parties want to talk settlement of some kind of  
18 a deal to let the debtor stay in her home, talk about it.  
19 But -- and if at any point along the way a mediator would help  
20 in this process, we can always approve that.

21 I ask parties when they hire a mediator that they  
22 expect the estate to pay any portion of the mediator's fee,  
23 that you seek Court approval. There are some courts who don't  
24 think that's necessary, but I'd rather be safe than sorry. So  
25 we just file the application -- or you should, one of you



1 should.

2 So -- okay. All right. Thank you all.

3 MS. MCGANN: Thank you.

4 MR. MILLER: Thank you, Your Honor.

5 THE CLERK: All rise. This court is adjourned.

6 (Proceedings concluded at 4:03 p.m.)

7 \* \* \* \* \*

8

9

10

11

12

13

14 **C E R T I F I C A T I O N**

15

16 I, Alicia Jarrett, court-approved transcriber, hereby  
17 certify that the foregoing is a correct transcript from the  
18 official electronic sound recording of the proceedings in the  
19 above-entitled matter.

20

21

22

23

24 ALICIA JARRETT, AAERT NO. 428 DATE: March 13, 2025

25 ACCESS TRANSCRIPTS, LLC

