

1 \* \* \* \* \*

2 **LOU ROLFES, WITNESS, SWORN**

3 \* \* \* \* \*

4 DIRECT EXAMINATION

5 BY MR. ACKERMANN:

6 Q. Mr. Rolfes, how long have you been a CPA?

7 A. About 27 years.

8 Q. You're licensed then, since the 27 years?

9 A. Correct. I graduated from school in 1975. You have a  
10 two-year work requirement once you pass the exam, and then I  
11 was licensed in '77.

12 Q. All right. Now, we're going to be asking you essentially,  
13 about two categories of issues today. One is some expenses of  
14 the Bell Family Trust, and then the issue of capitalization of  
15 the Bell Family Trust. I'm going to take those separately if  
16 we can.

17 Give us a general feel for what you reviewed in connection  
18 with rendering an opinion regarding what you're going opine on  
19 as unreasonable expenses by the Trustee. What documents did  
20 you look at?

21 A. Primarily, I looked at from the period, I suppose, of late  
22 1996 through late 2011; just invoices and disbursements from  
23 the Trust, and then income of the Trust.

24 MR. DURAND: Your Honor, I'm going to interpose an  
25 objection to any testimony by this Witness on expenses of the

1 Trust. There was no mention of this, I believe, in the  
2 report that was furnished to me that Mr. Rolfes --

3 MR. ACKERMANN: We didn't furnish any reports, but  
4 the summaries in the bench book under Tab 50.

5 MR. DURAND: Well, I was furnished a report in which  
6 he opined that, based on a financial statement, there was  
7 unreasonably small capital.

8 MR. ACKERMANN: That was an affidavit in connection  
9 with a summary judgment, Your Honor. There was never an expert  
10 report tendered, and his deposition was never taken. I mean,  
11 this is not -- this bench book has been delivered timely, and  
12 had the summary in there, and has --

13 THE COURT: Where's the summary?

14 MR. ACKERMANN: The summary is under Tab 50, and the  
15 documents he relied upon, Your Honor, were provided to the  
16 Trustee by Ms. Bell herself.

17 So, it's not like there's any surprise.

18 THE COURT: All right. Let's --

19 MR. DURAND: Your Honor, if you look at Number 50,  
20 there's some spread sheets, Bell's expenses not related, but  
21 there's no indication that it was prepared by this Witness, or  
22 in connection with his testimony.

23 THE COURT: Well, but his testimony will -- I think  
24 there will be a link between his testimony and the document.  
25 What I suggest you do, Mr. Durand, is, rather than making a

1 general objection, if you wish to make specific objections at  
2 the time of questioning, then I'll deal with it. It's hard for  
3 me to do it on a general basis.

4 MR. DURAND: Yes, sir.

5 THE COURT: All right.

6 BY MR. ACKERMANN:

7 Q. Mr. Rolfes, you answered my question by saying in  
8 connection with your review of the expenses of the Trust you  
9 looked at the disbursements and income for the years '96  
10 through 2001, to the extent they were available?

11 A. Correct.

12 Q. Essentially, this box of documents here that were --

13 A. Right.

14 Q. -- sent to you as provided by Sue Bell, and it's marked  
15 '96, '97, '98, '99, 2001 disbursements?

16 A. That's right. It was primarily, you know, receipts,  
17 invoices, telephone invoices, credit card, gasoline, credit  
18 card, et cetera.

19 Q. Would you have also reviewed the bank statements that  
20 Ms. Bell gave to Mr. Sandoz?

21 A. Yes, I believe so.

22 Q. And, would you have reviewed the accountings that we have  
23 been talking about in this case, by Ms. Bell?

24 A. Yes. It was a spread sheet recapping receipts and  
25 disbursements over that five-year period.

1 Q. All right. Now, the summaries that you provided that we  
2 are going to be talking about, did they contain any information  
3 other than what you gathered from the documents Ms. Bell gave  
4 to Mr. Sandoz?

5 A. No. That's all I had to work with.

6 Q. So, to the extent that the documents may have some flaws  
7 to them, at least we're using her documents?

8 A. Right. In other words, there was one year, I believe in  
9 1998, where there was a four month gap, and we didn't have  
10 records for four months, but essentially, every number on those  
11 reports was derived from the five year re-cap prepared by  
12 Ms. Bell.

13 Q. All right. So, you would then have had copies of the  
14 checks paying the expense?

15 A. (Witness nods affirmatively)

16 Q. You'll have to answer out loud.

17 A. Yes. And, the supporting invoices, to the degree they  
18 were available, right.

19 Q. And, you then did an analysis for all the years '96  
20 through 2001?

21 A. Correct. When you say "analysis," I mean, what I did was  
22 I reviewed the -- well, the income, it's just passive royalty  
23 and farm land income. I mean, that part is simple.

24 The disbursement side, I reviewed the expenses as listed  
25 in the ledgers, and then tried to basically trace them back to

1 the supporting invoices.

2 Q. Were you able to trace them back? Did they match up on  
3 every instance?

4 A. Not on every instance, no.

5 Q. Now, did you summarize your findings with respect to those  
6 expenses?

7 A. Well, I summarized my findings, insofar as expenses that I  
8 would want to see documentation on to relate to how they  
9 related to the Trust.

10 Q. All right.

11 A. Expenses particularly related to the assets of the Trust,  
12 or the management of the Trust.

13 Q. All right. Is it fair to say then that you looked at each  
14 of the expenses to determine, in your opinion, what would or  
15 would not be related to the administration of the Trust?

16 A. That's correct.

17 Q. And, in terms of what you understood the Trust was to be  
18 administered for, you understood that the Trust had passive  
19 assets of mineral interests and farming?

20 A. Correct.

21 Q. So, it would be fair to say that you looked for evidence  
22 that a particular expense was connected to that particular  
23 function?

24 A. Correct. In other words, the primary two sources of  
25 income were the royalties Amerada Hess, which were basically

1 monthly, and some farm income, which really I suppose is  
2 farmer ran income. They weren't actually farming, in the sense  
3 of planting the crop and working the land. It was farm ran  
4 income.

5 Q. If you came across, say, an invoice to Ag Fuel, or  
6 somebody like that for diesel, you would assume that that was  
7 related to farming, and exclude that from the list?

8 A. Correct.

9 Q. All right. Let's go -- would your summaries then be  
10 quantified by what appears under Tab Number 50?

11 A. Yes, that's correct.

12 Q. All right. Could we go through each of those categories,  
13 please? Essentially, you have found a total between '96 and  
14 2001, expenses, which in your opinion are not related to Trust  
15 activities, a total of \$162,214.96?

16 A. Well, that's correct. Sixty thousand of that, I point  
17 out, is actual fees to Ms. Bell based on \$1,000 a month. The  
18 reason I listed that one is because there was a question as to  
19 the payment of those fees. It was --

20 Q. Sure. That's what we're here today --

21 A. Correct.

22 Q. All right. Now, let's go down the categories. BellSouth  
23 Mobility, what made you list that particular category? What  
24 was your methodology in excluding versus including invoices  
25 related to BellSouth Mobility?

1 A. There were three or four different phone numbers on the  
2 various phone bills, cell phones, home phones, et cetera. I  
3 want to say it was probably four different phone numbers  
4 between BellSouth Mobility and AT&T, and BellSouth.

5 Q. And, some of those phone numbers then would have been  
6 attributable to say the phone in Kaplan at the farm?

7 A. Right. If it was clearly a Kaplan exchange, I wouldn't  
8 list it.

9 Q. All right.

10 MR. DURAND: Your Honor, --

11 THE COURT: Excuse me. Go ahead, sir.

12 MR. DURAND: I want to interpose an objection. I  
13 didn't remember, and I just re-read the Complaint, and the  
14 Plaintiff did not plead that Ms. Bell, at any time, paid  
15 expenses which were not authorized by the Trust.

16 THE COURT: Mr. Ackermann?

17 MR. ACKERMANN: I have to pull the Complaint,  
18 Your Honor, it's been awhile.

19 Your Honor, Paragraph 40, is a factual allegation --

20 THE COURT: Just a minute, I'm pulling it up right  
21 now. Did you review Paragraph 40 --

22 MR. DURAND: Yes, Your Honor. I took that to mean  
23 that there were liabilities in existence at that time.

24 MR. ACKERMANN: I'm reading this. It says incurred  
25 the charges to third parties, and I would consider BellSouth

1 and Lexus of Baton Rouge --

2 THE COURT: Objection is overruled.

3 BY MR. ACKERMANN:

4 Q. I'm sorry, Mr. Rolfes, where were we? You were going on  
5 BellSouth, you were talking --

6 A. You asked me why I would list one phone bill as compared  
7 to the other.

8 Q. Yes. Did you try to distinguish the phone bill -- a phone  
9 number that was related to Sue Bell personally versus the farm  
10 in Kaplan?

11 A. Yes. That's exactly what I did.

12 Q. And, you would have then only listed the charges  
13 associated with phone numbers directly related to Sue Bell  
14 personally?

15 A. Correct.

16 Q. All right. AT&T, what would that have referred to,  
17 briefly, since it's not a very big one?

18 A. It was a small amount. I think it was the same thing. It  
19 would be long distance charges on those lines that I listed as  
20 personal.

21 Q. All right. Shell Oil Company, I'm assuming, is a gas  
22 credit card?

23 A. There were -- yes. There were numerous gas credit cards.  
24 The one thing I distinctly remember about those was there would  
25 be multiple charges on the same day. In other words, there



1 were multiple cards.

2 Q. There was more than one gas credit card?

3 A. Yes. There were at least three to the same credit card  
4 company. In other words, there would be Chevron card number  
5 one, card number two, card number three, and in numerous cases  
6 there would be charges to those, each of those three cards  
7 separately on the same day.

8 Q. And, who was the card name -- who was the name of the  
9 person on the card? Who was the account under?

10 A. I honestly can't remember the --

11 Q. Is it shown by the documents?

12 A. I think it would be shown on the invoices. But, on the  
13 invoice, in other words, it would delineate between card number  
14 one, two, and three, and then I would come to, you know, a  
15 total. But, in many instances there were charges to each of  
16 the three cards on the same chronological date.

17 Q. Right. But, I'm just trying to establish whether or not  
18 this was a credit card in the name of the Bell Family Trust, or  
19 a credit card in the name of somebody else.

20 I guess, let me show you what one receipt would be. This  
21 is in the subfolder of 2001 disbursements, and it looks like a  
22 credit card receipt.

23 A. Right.

24 Q. And, in fact, there's nothing that, apparently, the  
25 Trustee kept to determine for us whose name that credit card

1 was in?

2 A. Well, it says Sue Bell on the bottom here, but that's a  
3 BellSouth invoice.

4 On the Chevron, it looks like the second page of a two  
5 page invoice, so the name is not listed on there.

6 Q. Well, you were not able, then, to determine from these  
7 invoices kept by this Trustee, to the extent they are like the  
8 ones you're looking at, whose credit card this actually was?

9 A. Well, I don't remember what names were written on the  
10 invoices, if that's what you're asking. I don't know what name  
11 was written on the credit card. I never saw the actual  
12 physical credit cards.

13 Q. Most of the other invoices that you looked at were, like  
14 you said, BellSouth, et cetera, were under Sue Bell's name?

15 A. That's correct.

16 Q. Did you see any accounts for any of the charges that you  
17 put on your summary in the name of the Bell Family Trust?

18 A. Not that I can recall.

19 Q. All right. Now, let's talk about gas credit cards. Let's  
20 assume for the sake of argument that Ms. Bell did utilize her  
21 vehicle for, what the Judge may find to be, Trust purposes.  
22 What documentation would you have expected to see to support  
23 her business versus personal use of the vehicles?

24 A. Normally, you would look at some kind of mileage log, or  
25 some kind of expense reimbursement form, or something of that

1 nature to support the business portion of it. I didn't see  
2 anything of that nature.

3 Q. Does the IRS require a mileage log for auto expenses?

4 A. Generally, they not only require a log, but it's supposed  
5 to be contemporaneous I think is the word they use. In other  
6 words, maintained as you go along.

7 Q. Did you see anything in anything that you reviewed  
8 produced by Ms. Bell to the Trustee, or in the accounting  
9 produced by Ms. Bell that allocated her vehicle use in any  
10 fashion that the IRS finds acceptable?

11 A. No. I believe the disbursements were 100 percent of the  
12 invoices.

13 Q. All right. Now, we know during a certain period of time  
14 that she was working full time for two companies, Elizabeth  
15 Andrus, and a company by the name of WPS. So, it would be fair  
16 to assume that she was not using the vehicle leased during  
17 those periods of time 100 percent on Trust business?

18 A. That would be fair to say.

19 Q. And, that would then include the Chevron card and the  
20 Shell Oil Company card. Those were the only two gasoline  
21 credit cards you saw?

22 A. I think so. I think those were the only two. The only  
23 other fuel -- and I listed there with a notation -- Dulion  
24 (phonetic) Brothers, may be farm fuel, which would be Trust  
25 related.

1 Q. You say that why? Was there an actual --

2 A. There was no indication on the -- sometimes it would just  
3 list a fuel bill. On that one I think it was in increments,  
4 every month or every quarter, I can't remember.

5 Q. All right. Acura of Baton Rouge, what was that for?

6 A. There was a lease for a period of time on a Honda vehicle,  
7 and then there was a lease on, I think, an Acura or a Lexus  
8 vehicle. There were at least two different vehicle leases that  
9 I remember, and they were roughly, I think, I want to say \$600  
10 a month. Something like that.

11 Q. Did you, in any of the documents that the Trust, that  
12 Ms. Bell, provided to Mr. Sandoz, or the accounting, did you  
13 ever see a written lease between the Bell Family Trust, and  
14 either Acura of Baton Rouge, or Honda Finance Price Leblanc?

15 A. No. I didn't see anywhere where the Trust leased the  
16 vehicle, or where the Trustee, you know, had some kind of sub-  
17 lease back to the Trust, no.

18 Q. Now, let's assume Ms. Bell was using her leased Lexus for  
19 Trust purposes, but also using it, you know, to get around  
20 town, and to go shopping and things like that. Would you  
21 expect to see some sort of documentation of the differentiation  
22 between the Trust use of that vehicle versus personal use?

23 A. Yes. Well, normally you would. In other words, they  
24 prepared annual 1041 trust tax returns, and normally the person  
25 responsible for the accounting, in this case the Trustee, would

1 deliver that information to the tax preparer to distinguish  
2 between what was deductible and not deductible, in essence.

3 In other word, if it was not Trust related expenses, then  
4 it wouldn't be deductible on the tax return?

5 Q. Would that documentation that would be provided to  
6 differentiate between the usage, would that be like a mileage  
7 log? Could a mileage log be used for that purpose, too?

8 A. That would probably be the most commonly used method.

9 Q. All right. Did you see any documentation to suggest that  
10 this Trustee in any way seemed to differentiate between her  
11 personal use of the Lexus or the Honda versus the Trust use?

12 A. No.

13 Q. It looked like 100 percent of the lease payment was made  
14 from the Trust?

15 A. That's correct.

16 Q. Sue Bell pumping expense, why did you list that?

17 A. I honestly don't know what that is.

18 Q. Was there any documentation to back it up? Or is it  
19 just --

20 A. I think it was just a notation on an Excel spread sheet.  
21 The reason I listed that was, essentially the -- I don't know  
22 if that had to do with pumping as far as water well for the  
23 farm, or as far as something related to the royalty. I'm not  
24 certain.

25 Q. All right. Now, I skipped one. You also listed State

1 Farm, and you have a note down there that you included all  
2 checks written to State Farm, because you could not separate  
3 the insurance for the Acura or the Lexus. Would it be fair to  
4 say, though, that you only listed the State Farm auto insurance  
5 premiums?

6 A. That's correct.

7 Q. All right. So, as far as you know, you can't tell which  
8 one it was for, but it was for either one -- only the vehicles?

9 A. That's correct. I think in those cases I didn't have all  
10 of the invoices, so I just had a check payable to State Farm,  
11 and I couldn't tell what it was necessarily for, as far as  
12 describing which vehicle, but it was auto insurance or there  
13 would be a notation of that effect.

14 Q. And, then you've got one reference to Sue Bell  
15 reimbursement. Could you determine from the records what she  
16 documented that reimbursement for?

17 A. That \$635, I honestly can't remember. That was about six  
18 months ago.

19 Q. Then why did you list the American Express category?

20 A. That one I listed because it was primarily paying on a  
21 credit card for -- it was primarily, as I recall, like sporting  
22 goods, meals. I think it was primarily meals and sporting  
23 goods.

24 Q. I'll show you some -- these are disbursements in the 2000  
25 book. It looks like a bunch of receipts for Gator Cove

1 Academy, Reebok sneakers, Hane's three package briefs. Would  
2 that be sort of the receipts you would have pulled off for the  
3 American Express charges?

4 A. That's correct.

5 Q. And, there appears to be no documentation as to what that  
6 is, except somebody wrote on here BFT, Bell Family Trust, I  
7 guess?

8 A. Or, it seemed like in this case, they write "Dad". I  
9 assume that's the settlor of the Trust.

10 Q. So, would you have included that in the American Express  
11 charge?

12 A. Yes, because generally, the expenses for the Trust would  
13 be expenses incurred on behalf of the beneficiaries of the  
14 Trust, not the guarantor of the Trust.

15 Q. There's a service repair order to the Sportsman,  
16 apparently a sporting goods dealer in Abbeville, and it makes  
17 reference to "cleaned" and something "carburetor." It looks  
18 like there was some work done on a boat. It says, "Paid cash,  
19 10/27/01." How would you have listed something like that?

20 A. I don't know. I don't remember which category I would  
21 have put it in. I would have listed this as one that would be  
22 questioned.

23 Q. From that -- from just what you're looking at, can anybody  
24 determine what relationship the repair of a boat has to the  
25 Trust business except for the fact that it's in a document

1 apparently produced by the Trustee to Mr. Sandoz as Trust  
2 disbursements?

3 A. Other than it says owner is Wilfred Bell. It doesn't say  
4 indicating anything about the Trust. And, it's signed by  
5 Wilfred Bell.

6 Q. Something like this, if you weren't sure what it was, did  
7 you defer to inclusion, or did you defer to exclusion?

8 A. If I wasn't sure, or it wasn't obvious that it was Trust  
9 related, I listed it on the list.

10 Q. Here's another one to the Sportsman in Abbeville. It  
11 looks like payment on account. Who is the account name under?

12 A. Sue Bell, Chateau Place, Lafayette.

13 Q. And, it looks like somebody wrote on there --

14 A. Something for the farm. It made a notation for the Bell  
15 Family Trust farm.

16 Q. But, there's really no evidence as to what was bought at  
17 the sporting goods store in Abbeville?

18 A. That's correct.

19 Q. This here looks like a -- and, this is again in the 2000  
20 disbursements -- it looks like a statement of account for the  
21 credit card. Some of these look like May 5<sup>th</sup>, Academy Sporting  
22 Goods; May 7<sup>th</sup>, Academy Sporting Goods; May 7<sup>th</sup>, Outback  
23 Steakhouse; May 12<sup>th</sup>, Academy; May 13<sup>th</sup>, Sears Roebuck; May 13<sup>th</sup>,  
24 Don's Seafood Hut. Would those be some of the charges that you  
25 would be up on your --



1 A. That's correct. As I said earlier, I want to say the  
2 overwhelming majority of the American Express charges were  
3 either meals at restaurants, or sporting goods at sporting  
4 goods stores.

5 Q. And, the second page of at least this statement, which has  
6 got a closing date of June 15<sup>th</sup>, it looks like somebody didn't  
7 copy enough of, or cover up enough of it. That one actually  
8 says -- it's a personal statement, is it not?

9 A. Well, it says, "Personal card, Sue Bell."

10 Q. Here's an invoice, for instance, part of the 1999  
11 disbursements, for one package chocolate truffles, wafer  
12 cookies, white fudge. Would those be some of the things you  
13 would have listed, or would you have deferred to just the  
14 representation that they might have been Bell Family Trust  
15 payments?

16 A. Normally, I would list those --

17 Q. I won't go through the entire set, even though we have  
18 tabbed a bunch, but is it fair to say that you made a thorough  
19 review of all these in connection with your analysis?

20 A. That's correct.

21 Q. Now, the second schedule that you've prepared, essentially  
22 looks like it was just a comparison of the incoming and  
23 expenses by year. Is that correct?

24 A. Right. I didn't categorize the expenses on there, because  
25 I didn't want to duplicate what was done in that 200 page

1 spread sheet.

2 Q. And, essentially this looks like it's just for historical  
3 purposes?

4 A. That's correct. I was just trying to come up with a recap  
5 of all of the income, all of the expenses, and then, of course,  
6 what I don't list on there, of course, is whatever the net  
7 income was essentially, was then distributed to the  
8 beneficiaries.

9 Q. And, essentially, your analysis shows that in the year  
10 2000, the end result was this Trust had a net operating loss of  
11 \$2,775.76?

12 A. Yes. In the final year the expenses exceeded the income.

13 Q. And, that was before distributions to Trust beneficiaries?  
14 So, if we had added any --

15 A. There were no distributions to beneficiaries that year.

16 Q. All right. So, if we had added distribution of  
17 beneficiaries, like this Trust made every year except 2001, the  
18 loss would be higher?

19 A. That's correct.

20 Q. Now, you had prepared a similar schedule, I believe, in  
21 connection with an affidavit that you filed in this case, is  
22 that correct?

23 A. I think there was a preliminary schedule done in  
24 connection with an affidavit where I think we had, I think,  
25 incorrect or incomplete information on one of the years, so we

1 corrected it with this schedule.

2 Q. All right. This schedule then would be -- it would  
3 include as far as you know, all of the expenses and all of the  
4 income that you had available from the documents produced?

5 A. That's correct.

6 Q. Let's talk about, essentially, the financial status of the  
7 Trust, and I'd like to focus your time to after the Dation en  
8 Paiement occurred. In your affidavit that has already been  
9 submitted on record, I believe you indicated that it was your  
10 opinion that after the dation took place, the Trust did not  
11 have sufficient capital to meet its ongoing expenses. Do you  
12 still maintain that opinion?

13 A. Yes, very definitely.

14 Q. That would be supported, at least by your second schedule  
15 of net income per year?

16 A. Well, that's correct. In other words, after the dation  
17 the royalty income would be zero going forward, and there could  
18 possibly be some farm income, although I'm not certain of that.

19 Q. What did you understand to the water well that supplied  
20 the water necessary to farm?

21 A. As I understand it, the water well is physically on the  
22 acreage that was not retained by the Trust. So, presumably if  
23 they didn't have water, they couldn't grow rice.

24 Q. Now, let's see if we can do an analysis. Obviously, this  
25 future for this Trust, after the dation, wound up in a

1 bankruptcy proceeding -- but let's see if we can use some of  
2 the numbers that Ms. Bell utilized, and the CPAs utilized to  
3 try to project where this Trust was going, after the dation,  
4 expense-wise.

5 And, to do that, I'd like to refer you to the documents  
6 under Tab 47 and 49. I hope you brought your calculator, I'm  
7 going to ask you to do some calculations.

8 A. Okay.

9 Q. Now, we don't have financial statements on the Bell Family  
10 Trust for the year 2001, because the CPAs didn't do them.

11 But, we do have under the second tab what Ms. Bell  
12 produced for what she believes to be the 2001 income, and the  
13 2001 expenses, correct?

14 A. I see 1998 and the year 2000 on here.

15 Q. Okay. But, under the next tab -- I'm going to ask you to  
16 refer to this one and these, okay?

17 A. Okay.

18 Q. Because, by those three documents we should have then  
19 three years, '99, 2000, and 2001, correct?

20 A. Yes.

21 Q. All right. I'm going to try to go through the analysis  
22 with you to see if we can come up with a per acre cost of going  
23 forward, based upon the three year average, okay?

24 A. Fair enough.

25 Q. I'm going to do this on the board, I think, so I can keep

1 track of it.

2 All right. Mr. Rolfes, let's use the -- let's go with the  
3 assumption that the Trust had, at one time, 288 acres, and  
4 wound up with 103 acres, okay? Do me the favor of -- let's do  
5 it this way: For 1999, using Joan Martin's documents, what do  
6 we have for the expenses, the yearly expenses?

7 A. It looks like a total expenses of \$51,000 on the --

8 Q. That's 2000, isn't it? You're in 2000?

9 A. Yes. Okay, \$59,056.

10 Q. Fifty-nine thousand, fifty-six dollars, 59 cents.

11 A. Okay.

12 Q. Okay. And, then 2000 is what?

13 A. Fifty-one thousand, seven dollars, 33 cents.

14 Q. And, then Ms. Bell lists as the 2001 expenses how much?

15 A. It's 94,512.30.

16 Q. All right. Would you add those three up for me, please?

17 A. Well, ignoring pennies, it would be \$204,575.

18 Q. And, then let's divide by three.

19 A. That would work out to an average of about \$68,192 per  
20 year.

21 Q. All right. So, that's essentially, the three year average  
22 expenses utilizing the figures that the Trust gave us from  
23 Ms. Martin and Ms. Bell's help?

24 A. That's correct.

25 Q. Now, let's divide that by 288 acres.

1 A. Okay. That would give you about \$237 per acre.

2 Q. All right. Now, let's multiply that by 103 acres, which  
3 were left in the Trust after the dation.

4 A. Okay. That would give you \$24,388.

5 Q. As essentially, as best we can using a three year average,  
6 the cost to run this Trust as it had been run for the last  
7 three years, extrapolated over 103 acres?

8 A. That's correct.

9 Q. It's 24,388.

10 Now, after the dation in 2001, how much income did we have  
11 available to us from the minerals?

12 A. Zero.

13 Q. All right. And, how much income -- let's assume that they  
14 could farm, somehow Ms. Bell was going to open up the flood  
15 gates, and give us water, and they could farm after August of  
16 '01. I guess you've got to use the three year average income  
17 for the farm.

18 A. I actually had to do that in order to come to my  
19 conclusion, so just looking at my notes, if I could, the farm  
20 income over those three years was \$79,403.

21 Q. That's total?

22 A. A three year total, which is \$26,468 --

23 Q. Per year?

24 A. -- per year.

25 Q. Divided by 288?

1 A. Which was \$91.90 an acre.

2 Q. Times 103.

3 A. Is \$9,465.

4 Q. So, we have zero minerals, and we have potential farm  
5 income, if all things works as they did in the last three years  
6 and we get some water, of \$9,465?

7 A. Right. I had projected that on the retained 103 acres, I  
8 mean, just based on the historical figures they gave me, their  
9 expenses would be about \$24,000 or so, and their income would  
10 be about \$9,400 or so.

11 Q. So, we have about a --

12 A. About a \$15,000 annual shortfall just, you know, comparing  
13 apples to apples on that.

14 Q. Now, that assumption does not take into account any added  
15 expense to get the water, does it?

16 A. I read in one of the documents it would be \$43,000 to  
17 \$47,000 to drill a water well sufficient to farm the property.

18 Q. But, the analysis that we just did of a \$15,000 shortfall,  
19 is before adding the expense of the water well?

20 A. That's correct. It's just based on historical expenses.

21 Q. Now, we also know that in the year 2000 there was a  
22 \$266,000 expense to Ms. Bell that apparently wasn't on this  
23 2001 list of expenses. So, that's not in the average here, is  
24 it?

25 A. No.

1 Q. All right. If we were to add the -- obviously, if we  
2 were to add the \$47,000 that Mr. Wartelle talked about drilling  
3 a well, or the \$52,000 that Mr. Gaspard added, the numbers  
4 would be significantly higher?

5 A. Well, yes. I mean, they would have to come up with the  
6 capital to pay for the \$47,000 before they could -- I mean, I  
7 had to go through this process to -- I was asked to make a  
8 determination as to -- I would call it, as to the solvency of  
9 the remaining assets in the Trust, if you will. And, so I had  
10 to basically go through that mental process, and I was trying  
11 to, you know, to figure that out. Even if there was a way they  
12 could borrow against the value of the land, by the second year  
13 they would be back in a deficit position.

14 Q. And, that's assuming they could get a loan at all,  
15 correct?

16 A. Well, that's correct.

17 Q. And, did you see any evidence to suggest that around the  
18 time of the dation they had tried to get a loan, and been  
19 declined?

20 A. Yes.

21 Q. And, I'm assuming you've been through enough transactions  
22 with your clients and banks, to get a feel for whether or not a  
23 bank would or would not loan money to an operation that has a  
24 \$15,000 cash shortfall.

25 A. Well, that's correct. Actually, they only had \$1,900 in



1 the bank. Generally, the bank doesn't want to get into the  
2 farming business. They want to be in the loan collection  
3 business.

4 Q. And, would you have any reason to believe that a bank  
5 would loan money to a farming operation that doesn't have a  
6 committed water source to raise its rice?

7 A. I'm not a banker, so I mean, I can't speak to that with  
8 any expertise, but it --

9 MR. DURAND: Then I object to it, Your Honor.

10 THE COURT: Sustained. Next question.

11 BY MR. ACKERMANN:

12 Q. All right. Your conclusion that --

13 THE COURT: Mr. Ackermann, are you through with that  
14 board?

15 MR. ACKERMANN: I believe so. Yes, sir.

16 THE COURT: There's a button to push, and you get a  
17 printout of it. Not on there, somewhere on that board there's  
18 a button to push.

19 BY MR. ACKERMANN:

20 Q. Before we do -- before we copy it, can you give me that  
21 net loss per year that you came up with, so I can include that  
22 on the copy?

23 A. Yeah, I'll give you my exact figures. Again, ignoring the  
24 capital outlay to drill a well, I was projecting a \$15,530  
25 operating loss.

1 Q. Fifteen thousand, five hundred and thirty?

2 A. Correct.

3 Q. Okay.

4 A. And, that's, you know, prorating it based on just the 103  
5 acres, and all I had to go on was their actual historical  
6 figures.

7 So, projecting the three year average forward, those would  
8 be the results.

9 Q. So, would it be your conclusion that, in addition -- would  
10 it be your conclusion, then, the Trust did not have adequate  
11 capital to continue in its operations as three previous years  
12 seemed to indicate?

13 A. Yes.

14 Q. Would it be also your conclusion that the Trust was left  
15 with insufficient cash to pay its debts on an ongoing basis?

16 A. Well, yes. I believe I read the debt at that point in  
17 time was \$77,000 plus \$2,500 -- ignoring that \$266,000 invoice.  
18 I think the debt was between \$77,000 and \$80,000 at the end of  
19 '01, and they had \$1,900 of cash with which to pay that.

20 So, they had negative net worth, if you will, of about  
21 \$75,000.

22 Q. Let's turn to Tab 44, if you would, on the bench book,  
23 sir. There should be a letter in there from Ms. Bell to Frank  
24 Dawkins saying, "Please withdraw from the above cases, there  
25 are no funds which to pay for your services." That would

1 support your ultimate conclusion that the Trust was running  
2 out of available sources of funds to pay its debts?

3 A. Yes.

4 MR. ACKERMANN: That's all the questions I have with  
5 this Witness, Your Honor.

6 THE COURT: Cross-examination, Mr. Durand.

7 \* \* \* \* \*

8 CROSS-EXAMINATION

9 BY MR. DURAND:

10 Q. Mr. Rolfes, your spread sheet showing expenses unrelated  
11 -- expenses not related to Trust activities, is it correct that  
12 every item on there that you determined not to be related, is  
13 based on assumptions that you made?

14 A. Yes. That's correct.

15 Q. All right. You did not discuss with Ms. Sue Bell what she  
16 considered the business relation of any of these items to be?

17 A. No, sir.

18 Q. Did you see that 56, 58 page document that's been referred  
19 to as an invoice, listing everything she had done in the five  
20 years she was Trustee?

21 A. Yes. I believe I did see that.

22 Q. All right. Did you come away from that with the opinion  
23 that she was essentially, engaged full time as the Trustee over  
24 those five years?

25 A. No, I did not.

1 Q. Okay. If she was engaged full time, do you know where  
2 the Trust office was?

3 A. There was notations of office expenses. I'm assuming it  
4 was either at her home or in Kaplan. I think there was, at one  
5 time, a list of improvements to the land. I don't know if they  
6 built a small shed or building. I mean, it was a small amount,  
7 maybe \$8,000.

8 So, if there was an office, I assumed it was out of her  
9 house.

10 Q. Okay. If she had an office in her house, and she is doing  
11 Trust business from that office, she is entitled to incur  
12 telephone expenses, long distance expenses related to Trust  
13 business, is she not?

14 A. That would be a normal relationship, I would think.

15 Q. And, you don't know whether that is the telephone charges  
16 that you listed as unrelated or not?

17 A. Well, as I said, I listed the sum of about maybe four  
18 different phone numbers, cell phones, and there were multiple  
19 cell phone numbers and land line numbers, so to say which of  
20 those was her main office line, I couldn't say.

21 Q. But, you just said they were all on there.

22 A. I listed all of them except if it was the Kaplan exchange,  
23 that's correct.

24 Q. When asked about the pumping expense, which you listed as  
25 not related, did I understand your answer? You said, "I

1 honestly don't know what that is."

2 A. That's correct. In other words, my objective in this was  
3 in taking the tax returns that were prepared, the federal tax  
4 returns, and the spread sheet that was prepared, just to  
5 basically, if you will, put on my auditor hat and say which of  
6 these would be deductible related expenses to the Trust, and  
7 which of these would I like to see more documentation on before  
8 I could make that determination.

9 So, that would be certainly one of those I'd like to see  
10 some documentation on.

11 Q. But, you assumed it was not related?

12 A. Well, --

13 Q. I mean, you've got it on the list.

14 A. I listed anything that I would have a question as to  
15 whether it was related or not. In other word, just like, for  
16 example, the Trustee fees I listed on there at \$1,000 a month.  
17 I'm not saying, by listing it on there, that that's unrelated  
18 to the Trust. I'm saying, those are the expense areas that are  
19 in question.

20 Q. Would it be more accurate to title this document "Expenses  
21 which may or may not be related to Trust activities"?

22 A. That would be fair.

23 Q. Now, I want to ask you a few questions about the  
24 unreasonably small capital issue. What did you compute the '99  
25 through 2001 per acre expense for the Trust?

1 A. I took the actual expenses --

2 Q. No, but I mean, what was the -- do you have it written  
3 down somewhere what the --

4 A. Oh, yes, sir. I'm sorry. The expenses -- the average per  
5 year on the whole acreage was approximately \$69,000 per year.

6 Q. And, what does that down to on a per acre basis?

7 A. It worked out to --

8 Q. Two hundred and thirty-seven dollars?

9 A. Yeah. I had \$242 on my worksheet. I think Mr. Ackermann  
10 had \$237, but approximately \$240 per acre.

11 Q. All right. Now, after the dation, on August 31<sup>st</sup>, 2001,  
12 there were no more minerals, so the only business of the Trust  
13 at that point was the farming operation, is that correct?

14 A. As far as I know, yes.

15 Q. All right. And, did you check the next six months of  
16 expenses after August 31<sup>st</sup>, 2001, to see if the Trust was  
17 averaging \$240 a month in farm related expenses?

18 A. Well, I had through the end of 2001.

19 Q. Well, no, that's not my question. I want to know the six  
20 months after -- when the Trust was only in the farming  
21 business, the minerals were gone, August 31<sup>st</sup>, the next six  
22 months, do you know what the farming expenses were over that  
23 next six months?

24 MR. ACKERMANN: May I lodge an objection? It seems  
25 to be assumed that the Trust was in the farming business after

1 August of '01. I think Mr. Gaspard said it was not. Now, I  
2 may have misunderstood his testimony, but I thought that the  
3 Trust did not farm after August of '01.

4 MR. DURAND: My understanding is Mr. Gaspard said he  
5 has of proof of plan in this bankruptcy, because he was  
6 prepared --

7 THE COURT: He did some work. He did some --

8 MR. DURAND: He was preparing to --

9 THE COURT: -- land preparation.

10 MR. ACKERMANN: And, the Trustee --

11 THE COURT: But, when the case was filed, the Trustee  
12 suggested that he not proceed. I'll let the question go  
13 forward.

14 THE WITNESS: Well, the farm income for the rice crop  
15 was already received by August of 2001, which I think is about  
16 harvest time for a rice crop.

17 So, -- but to answer your question, for that period  
18 or for any period, there was no accounting that would  
19 distinguish between the farm income, the royalty income or any  
20 other income or expense.

21 BY MR. DURAND:

22 Q. Immediately after the dation, the Trust had 103 acres free  
23 and clear, correct?

24 A. I believe the Trust retained 103 acres.

25 Q. Okay. And, you saw no evidence that there was any debt,

1 mortgage, lien, or encumbrance against that property?

2 A. I saw evidence that there was \$77,000 of unpaid accounts  
3 payable. I didn't see that any of those vendors had filed a  
4 lien, specifically.

5 Q. At August 31<sup>st</sup> there was \$77,000 of unpaid bills?

6 A. In the documentation that I read, yes, there was, I think  
7 it was \$77,000. I don't know as of what date that was, with  
8 \$2,500 additional, I think, totaling \$80,000 of payables to  
9 vendors.

10 I only have information through the end of 2001, so I  
11 can't speak to future years to the same degree.

12 Q. Oh, I know what you're looking at. Turn to Item 47 in  
13 that desk book, please. That's the \$77,000 you're talking  
14 about?

15 A. No, that's Trust capital. That has nothing to do with  
16 debt. That's actually the equity of the Trust. That's the  
17 value, book value, if you will, of the remaining land, and  
18 improvements, and cash as of that date.

19 Q. And, it shows at the end of '99 and at the end of 2000  
20 there were no liabilities shown on that statement, correct?

21 A. That is correct. It shows zero liabilities.

22 Q. Would you conclude from that the Trust paid its bills as  
23 it went?

24 A. No, because it's a cash basis statement, so it wouldn't  
25 reflect liabilities or receivables.



1           It only reflects deposits and checks. And, it was  
2 prepared that way, because the federal tax return was also cash  
3 basis.

4 Q.   Now, if the Trust had 103 acres free and clear, on  
5 September 1<sup>st</sup>, 2001, it had \$17,000 in cash, and total accounts  
6 payable of less than \$4,000, --

7 A.   I think it had \$1,961 cash on the financial statement that  
8 I read.

9 Q.   On August 31<sup>st</sup>?

10 A.   On December 31<sup>st</sup>. I don't have a financial statement as  
11 of the date of the dation. I'm assuming there must have been  
12 something produced at that point.

13 Q.   Would that be relevant, how much cash the Trust had, in  
14 determining whether it had unreasonably small capital  
15 immediately after the dation?

16 A.   Well, certainly. I mean, that would be one of the assets  
17 to consider.

18 Q.   All right. I want to ask you to make some assumptions.  
19 I'm going to give you some assumptions. One hundred and three  
20 acres free and clear, \$17,000 in cash, \$4,000 in debts.

21 A.   Is there a -- are you referring to a financial statement  
22 as of August 31<sup>st</sup>?

23           THE COURT: Just make those assumptions.

24           THE WITNESS: Okay. I'm just going to make --

25           THE COURT: You don't need the back up. Just assume

1 that those numbers are correct for purposes of a hypothet.

2 THE WITNESS: Okay. Seventeen thousand in cash --

3 BY MR. DURAND:

4 Q. Four thousand in bills.

5 A. Okay.

6 Q. Now, I want you also to assume that in previous farm years  
7 the farm share of expenses with its tenant farmer have averaged  
8 \$5,000 or \$6,000 a year for the entire 288 acres.

9 A. Okay.

10 Q. Under that set of assumptions, do you believe that the  
11 Trust's farm business had unreasonably small capital as of the  
12 date of the dation?

13 A. They had assets of \$17,000 plus the value of the --  
14 whatever that prorated portion of the land, which would be  
15 about a third of \$63,000, \$20,000 -- the total amount of the  
16 land is listed as \$63,000 on the financial statement at the end  
17 of the year 2000. I don't know what the --

18 Q. Is that the cost, or the fair market value?

19 A. It doesn't indicate which it is on here.

20 Q. Well, I want you to assume that there's been two -- I'm  
21 going to represent to you there has been two appraisals of that  
22 property. One at \$1,100 an acre. One at \$966 an acre as of  
23 August 2001.

24 A. Okay. So, the remaining 103 acres would be worth  
25 somewhere -- at \$900 an acre, somewhere between \$90,000 and

1 \$100,000.

2 Q. Roughly \$100,000.

3 A. Okay. So, I don't know that I can answer the question as  
4 to whether the farm was viable, because of the issue of the  
5 ability to farm the land without water. I mean, as far as just  
6 if you had \$17,000 in assets, and \$4,000 in expenses, yes, your  
7 assets would exceed your expenses.

8 By definition under that assumption, the assets would  
9 exceed expenses. That would not constitute insolvency of those  
10 two numbers compared to each other.

11 THE COURT: Would that financial picture lead you to  
12 conclude that there was unreasonably small capital for  
13 remaining in business, or not?

14 THE WITNESS: Well, that's an extremely small amount  
15 of capital to run a business.

16 THE COURT: But, the business is as a lessor of farm  
17 property.

18 THE WITNESS: Well, if the expenses were, I think in  
19 his example, \$5,000 --

20 BY MR. DURAND:

21 Q. For 288 acres.

22 A. Okay. You know, I don't know the nature of the -- I'm  
23 assuming that the farm income they got was just farm rent  
24 income, there was no labor provided, there were no services  
25 provided.

1           So, if you could project the income on one, whatever  
2 that ratio is, one-third of the land presumably, the income  
3 would be, instead of \$24,000 would be \$8,000 --

4 Q.   Nine thousand, four hundred sixty-five is what you said  
5 when you computed for --

6 A.   Okay, \$9,000, and if the expenses would be \$5,000 --  
7 without a water well -- in other words, you have income of  
8 \$9,000 and expenses of \$5,000.   If you were just collecting a  
9 check from the farmer, I suppose you could collect a check for  
10 the net difference, \$4,000 a year.

11 Q.   If that 103 acres had water at no cost to the 103 acres,  
12 and under the assumptions I gave you, the Trust's farming  
13 business would have adequate capital to proceed with its  
14 farming business?

15 A.   It would have adequate capital to be a passive rent of  
16 farm land.

17 Q.   Correct.

18 A.   I mean, trader business is a whole different deal.   I  
19 never saw any trader business activity on the farm.   It would  
20 be able to collect farm rent, yes, in the future.   If they had  
21 no expenses, they could collect rent, certainly.

22 Q.   Well, and if the expenses were less than the amount of  
23 rent, then they could continue, is that correct?

24 A.   I'm assuming they could -- if the farmer -- I mean, I  
25 don't know the relationship of the person that was farming and

1 what would happen if he was only farming 100 acres versus  
2 288 acres. I don't know what negotiations -- I mean there are  
3 so many other variables.

4 THE COURT: All other things being equal.

5 MR. ACKERMANN: Your Honor, we'll stipulate --

6 THE COURT: Just numbers.

7 THE WITNESS: All other things being equal, yes,  
8 \$9,000 is greater than \$5,000.

9 MR. DURAND: Thank you very much.

10 THE WITNESS: That's undeniable.

11 MR. DURAND: It wasn't the question, but thank you.

12 THE COURT: Anything further?

13 MR. DURAND: No, sir. I'm sorry.

14 THE COURT: Any re-direct?

15 \* \* \* \* \*

16 REDIRECT EXAMINATION

17 BY MR. ACKERMANN:

18 Q. Expenses are \$5,000, assets of \$17,000, pretty simple  
19 equation. It all depends on one thing in this instance, right?  
20 A source of free water, is that right?

21 A. Correct.

22 Q. Did you see anything in the documents you reviewed, any  
23 kind of water usage agreements for a contract for water usage  
24 that gave the Trust a committed source of water that they could  
25 count on, or take to their bankers after the dation?

1 A. No.

2 Q. Essentially, the ability of this Trust to make any money  
3 was dependent upon the good nature of Ms. Sue Bell as the  
4 holder of the water rights?

5 A. Well, that's correct. In other words, as I said earlier  
6 to make the determination as to the solvency of the remaining  
7 assets in the Trust, I couldn't look at it in an isolated view.  
8 I had to look at the totality of the picture.

9 Q. And, your analysis of the three year average, essentially,  
10 is based upon the way the Trust operated for three years, and  
11 also assumed that the Trust would be able to continue farming  
12 as it had for three years? You assumed a water source?

13 A. That's correct.

14 Q. Okay.

15 MR. ACKERMANN: That's all I have, Your Honor.

16 THE COURT: Any re-cross?

17 MR. DURAND: No, sir.

18 THE COURT: Step down. Thank you, Mr. Rolfes.

19 (Witness is excused)

20

21

22

23

24

25