UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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WILLIAM I. KOCH,

Plaintiff,

v. 07 Civ. 9600 JPO

ERIC GREENBERG, et al.,

Defendants.

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March 26, 2013
9:45 a.m.

Before:

HON. J. PAUL OETKEN,

District Judge
and a jury

APPEARANCES

MORVILLO ABRAMOWITZ GRAND IASON ANELLO
Attorneys for plaintiff
BY: EDWARD M. SPIRO,
- and -
IRELL & MANELLA, LLP
BY: JOHN CHARLES HUESTON, Esq
MOEZ KABA, Esq.
MARSHALL CAMP, Esq.
BRUCE A. WESSEL, Esq.
Of counsel

DLA PIPER, LLP
Attorneys for defendants
BY: ANTHONY PAUL COLES, Esq.
- and -
SHARTSIS FRIESE, LLP
BY: ARTHUR J. SHARTSIS, Esq.
TRACY SALISBURY, Esq.
FRANK ALBERT CIALONE, Esq.
Of counsel

Also Present:
JASON WIETHOLTER, Trial Tehnician
ELIZABETH S. SEABROOK, Paralegal

(In open court; jury not present)

THE COURT: Please be seated.

(Case called)

THE COURT: Good morning, everyone. We're here for trial in this case. We are going to start with jury selection, but before we do, there are a few preliminary matters to address. I have received several letters over the last few days regarding certain evidentiary matters, so I'm going to address those first.

Are there any preliminary matters the parties need to address prior to those?

MR. HUESTON: Not for plaintiff.

MR. SHARTSIS: Your Honor, if we are talking only evidentiary matters, as you know, we raised a reconsideration motion on the refund. I don't know if you intended to address that?

THE COURT: Yes.

MR. SHARTSIS: You do? That will be fine.

Thank you.

THE COURT: Okay. Okay. Beginning with the first matter, defendant Mr. Greenberg has requested reconsideration of my ruling in plaintiff's motion in limine No. 3 related to the defendant's refund offers.

Upon further review of the law and evidence, I have decided to permit the evidence of Mr. Greenberg's refund offers

for certain limited purposes related to punitive damages.

First, I have concluded these refund offers are best characterized as outside the scope of Rule 408. Mr. Greenberg's offers to refund the contract price did not affect the validity or amount that Mr. Koch's fraud claim or GBL claims. The offers did not include any conditions of release of liability.

Moreover, one such offer was sent after the mootness argument had been rejected by the court. After considering all the circumstances, I have concluded that the offers were not fundamentally efforts to compromise a claim, but rather offers of a specific remedy provided for in the terms of the auction contract.

Second, with respect to the balance of the factors under Federal Rule 403, I have considered that it is Mr. Greenberg rather than Mr. Koch who faces the greater danger of unfair prejudice by the exclusion of the offers specifically with respect to punitive damages. If there were no punitive damages at issue in the case, I believe the analysis would be different, but punitive damages are very much involved in the case and implicate due process concerns, as the Supreme Court has held, and require consideration of factors such as the reprehensibility of defendant's behavior and degree of harm as well as other broad-based considerations, and requiring Mr. Greenberg to remain moot regarding his refund offers in the

face of evidence and argument regarding his alleged wanton disregard for the law, moral reprehensibility, would unfairly prejudice and, therefore, I conclude that the probative value of such evidence on the limited issue of punitive damages is not substantially outweighed by the danger of unfair prejudice or other considerations under Rule 403.

That being said, defendant's counsel may not attempt to utilize these refund offers as evidence going to liability, principal liability, or the overall validity of Mr. Koch's claims or his right to be pursuing these claims in this Court. I will instruct the jury to disregard any such inference and I will also consider an appropriate limiting instruction delineating the purpose for which these refund offers may be used and I'll consider any submissions on that front.

Second, the issue of the disclaimer. I've reviewed the parties' submissions on the peculiar knowledge doctrine, and I hold, in keeping with Judge Jones' original instruction and prior rulings in this case, that the as-is disclaimer in the auction contract is an express disclaimer that covers the representations at issue in the instant case.

First I am inclined to agree with her conclusion that the reasonable reading of the as-stated herein language is that it covers the conditions of sale rather than the entire catalog.

But, second, even if the general reference to

authenticity in the first clause of that provision covered the catalogs generally, it is a general provision that it is then explicitly limited by the subsequent specific disclaimers as to particular representations.

I don't believe there is any conception of authenticity that does not reduce to the enumerated provisions in the as-is portions of the disclaimer provision. Accordingly, as to plaintiff's fraud claim, fraud claims, he must prove peculiar knowledge because the as-is portion of the relevant contract acts as a broad-based disclaimer applying to all the representations at issue in the case.

That being said, plaintiff may nevertheless argue recklessness as an alternative theory of scienter for its fraud claim. The peculiar knowledge doctrine exception goes to justifiable reliance, whereas recklessness as an alternative for knowledge and deception relates to the separate fraud element of scienter or intent.

It is not inconsistent for a jury to hear arguments on recklessness despite the requirements of peculiar knowledge. I conclude that the concept of peculiar knowledge in the case law is a somewhat more generalized concept of knowledge; and, therefore, does not collapse into a requirement of actual knowledge of falsity for the purposes of the scienter element as defendant has argued.

The third evidentiary issue or legal issue is the

testimony of evidence regarding Maureen McCormick. Defendant has moved to exclude testimony and evidence of Maureen McCormick who has been offered to rebut certain evidence related to James Elroy. The motion to exclude Ms. McCormick's evidence is granted. This evidence is not, in fact, relevant to the matter for which I ruled that the Elroy evidence may be limited -- may be allowed. That is reliability of the plaintiff's investigation, nor is it warranted given the danger of this line of testimony of turning into a mini-trial on extraneous issues.

I also want to clarify and reiterate my earlier ruling on Mr. Elroy, to note that any mention of Mr. Elroy's inconsistent memoranda may come into evidence only insofar as the soundness of Mr. Koch's investigation and the centrality of Mr. Elroy's role are directly relevant and in play.

Then the final legal issue that has been teed-up with the parties' letters is character evidence of association with Mr. Kurniawan, K U R N I A W A N. Defendant seeks to exclude evidence of his association with Mr. Kurniawan as well as relating to association with Royal, personnel associated with Royal. I did specific a letter. I don't think I received a response from plaintiff since it just came in yesterday.

I'll give him a chance to respond. I will tell you I am inclined insofar as this would be simply character evidence in association with particular people or evidence about having

dinner with someone at Royal or Kurniawan. I am inclined to exclude it insofar as that is simply propensity evidence.

However, if there is something that is for another purpose, I would be open to it. Mr. Hueston?

MR. HUESTON: I can provide a shortcut here, your Honor. We have no intention of raising that, some connection between Kurniawan and Royal at the trial -- I am sorry -- Greenberg at the trial. We do intend to bring up certain e-mails that are a part of the joint trial exhibits which show exchanges between Mr. Kurniawan and Mr. Greenberg, but we don't intend to talk about Kurniawan's connections with Royal.

THE COURT: You mean Mr. Greenberg's connections with Kurniawan?

MR. HUESTON: Well, your Honor, you mentioned allegations of Mr. Kurniawan having dinner in connections with Royal. That is not something we intend to raise at all. Rather we do have some e-mails which show intent of Mr. Greenberg with Mr. Kurniawan, intent relevant to knowingly pushing off counterfeits, and that is direct intent evidence. We do intend to elicit that. This is e-mail exchange between Mr. Greenberg and Mr. Kurniawan.

THE COURT: This is the one with -- I am inclined to think that that e-mail exchange is relevant to issues of motive and intent because it shows Mr. Greenberg is sort of in the weeds in terms of describing the nature of the bottles. I

think it directly goes to the knowledge and intent and absence of mistake, but I'll hear from counsel for defendant.

MR. SHARTSIS: Within the broad outline that you have given of character, I propose we will object on item-by-item basis raising the matters that have been briefed so we don't have to argue it at length when we raise it. That will be best, we will see it and object. Will that be satisfactory to the court?

THE COURT: Yes, that is fine. The line that I have in my mind, if it is securely character evidence, then it obviously should be excluded under Rule 404. If it goes to motive, intent, absence of mistake, et cetera, then I would allow it.

As an example of the latter, I think something, an e-mail where Mr. Greenberg is describing even as to bottles that are aren't the 24 bottles at issue in the case but is describing specifics about what he views as authenticity in other bottles, I think that does go to absence of mistake, et cetera.

MR. SHARTSIS: On the narrow basis, we'll address it as it arises.

THE COURT: Thank you. Anything else before we call in the jury pool?

MR. HUESTON: Yes, your Honor, may I have a couple of minutes to confer with my client about one of the rulings?

THE COURT: Sure.

(Off-the-record discussion)

MR. HUESTON: Your Honor, thank you.

I've conferred with my client, and with respect to the refund offer, we're very concerned about how that might prejudice us at trial. I propose first, your Honor, if it is acceptable -- and the defense proposed this -- we would rather have a bifurcated second punitive damage phase where that came up.

If your Honor is not inclined to allow that, then we're inclined to simply drop the punitive damages claim and keep the refund out. We would rather proceed on that basis because we think it is entirely too prejudicial. Your Honor indicated that you would be inclined to stay with his initial ruling if, in fact, the punitive damages were eliminated.

THE COURT: If the punitive damages are out, isn't the case moot?

MR. HUESTON: No, the case is not moot, your Honor.

As Judge Jones found, Mr. Greenberg has had an opportunity to confess judgment. He can do so and the case can be moot with the payment of damages. He may do that. Simply the payment for the bottles themselves does not moot the case, and there is a specific finding by --

THE COURT: I thought she found it because of the punitive damages claim?

MR. HUESTON: No, your Honor it wasn't because of the punitive damages claim. We're happy to go into more detail on that. I think it was a broader rule than that.

This is about whether there was fraud committed, and that is what we're trying here, and there has never been an admission of such by the defendant. That is what the case is about. It is that as well as the monetary damages.

THE COURT: Mr. Shartsis.

MR. SHARTSIS: Your Honor, you're correct.

The fact was Mr. Greenberg offered to make Mr. Koch whole. The offer, in fact, included interest that had run up to the time that Mr. Koch brought his lawsuit. We accounted for everything he was due. We did move on that basis that the matter was moot. The count found that because there was a claim for punitive damages, it was not.

Your Honor, today the claim is half of what Mr. Greenberg originally ordered, and I believe we should hold their feet to the fire and proceed with the case. We can moot the case, your Honor. Mr. Greenberg will refund the amount of money that Mr. Koch is out for the 24 bottles. He stood by that for seven years.

The idea we're here at this point, having spent millions of dollars in defense over what are 24 bottles worth $350,000 with an offset, an offset by this Zachys claim, your Honor, this is a very, very low significant figure case that is

going to consume your court for two weeks, and we ought to be practical about this. We ought to be fair. We ought to be fair to Mr. Greenberg who has been subjected to five years or six years of litigation. Either let's go forward with the case as you have determined or we'll tender the money and we'll moot the case.

(Continued on next page)

MR. HUESTON: Your Honor, may I respond?

THE COURT: Yes.

MR. HUESTON: Your Honor, it's not just the bottles. There are, under the GBL claim, reasonable attorney's fees, there are other costs, and more importantly, your Honor, if they're ready to stipulate to judgment and admit liability and pay those costs, then I think this case can be resolved. That's what they've never been willing to do to date, and simply just sending the check back and saying give us the bottles back is not a resolution of this case. It does not moot the case.

MR. SHARTSIS: Your Honor, may I read what Judge Jones wrote?

THE COURT: Yes.

MR. SHARTSIS: Judge Jones wrote, "Greenberg's tender is insufficient because, based on the allegations in the complaint, plaintiff is entitled to punitive damages."

THE COURT: What about the conditional costs?

MR. SHARTSIS: Well, your Honor, we can brief that. As a matter of law, they are not entitled. They are not entitled to attorney's fees, they're not entitled to these inspection costs. They ran up millions of dollars with five experts. They're not even calling them all. It just -- your Honor, if I may just say something as a lawyer who's practiced a long time. This case is really an embarrassment to all of

us, that we could consume court time, we could spend what must now be cumulatively $14 million on a claim that is probably between 100 and $200,000. The legal system shouldn't be doing this. At all. Under any circumstance. Particularly when one of the parties, years ago, could have avoided the costs for both by accepting a full tender. And I just think we need to deal with this in an honest and fair way. If we're going to have the trial, if Mr. Koch wants to drop his punitive damages, that's fine. Let him do that. And then we'll make our tender, your Honor, you will rule. But we really need to cut through this. We're about to have citizens sit for two weeks in your courtroom over a claim, which is, as I said, a very, very low six-figure claim, consuming their time, your time, and my clients' money. There ought to be a way in this system not to have this kind of absurd result happen.

THE COURT: Well, I thought the premise of the case not being moot going forward and the premise of thinking of this as a legitimate claim is the idea of the plaintiff being able to establish punitive damages, that something really egregious happened here, so I'm a little surprised by the offer to drop the punitive damages claim because that, I thought, is what the case is about. I'm not going to say it's a waste of time. But I thought the point is to prove that this conduct was so bad it should be punished, but if it's not that, then what's the case about?

MR. HUESTON: Here's what the case is about, your Honor. This case is about somebody who pushed, and knowingly pushed, counterfeits into the marketplace, and that is important to have that brought to the public's attention and for there to be -- if he's ready to stipulate to liability, based on that, then I think we can come to an agreement that the case is mooted, but he hasn't been willing to do that. He's willing to write a check and say that he made no mistake at all, this isn't a problem with him, and I guess that Mr. Koch was just trying to pick a fight. Mr. Koch wasn't trying to pick a fight. Mr. Koch has been trying to out a problem in this industry, and we firmly believe that Mr. Greenberg's been a part of this problem. If he would like to go ahead and stipulate to liability on these -- these counts and we drop punitive damages, we can brief the issue of the related damages, your Honor, and proceed. But if Mr. Shartsis is right, then his argument would apply in any case where there are nominal damages but somebody has been accused of wrongdoing -- it's a waste of time, we shouldn't be here. Part of this process is accountability, and we seek accountability with this action, and that's what we've done since the very beginning.

THE COURT: Are you saying Mr. Koch wants an apology, essentially, or an admission?

MR. HUESTON: No, not just an apology. It's a

finding -- if he's not willing to do it, your Honor, he can simply stipulate to the findings here. If he doesn't want to, it's not an apology per se but it's an acknowledgment that these issues happened and because of that, then the damages are paid. That's what's been missing here.

As you've noted in the course of settlement correspondence, we believe there's just been some strategic attempts to shoot checks back to Mr. Koch to keep all this underwater, out of the public eye, to get the bottles back, and we believe just to send the bottles back to the next victim. That's what we were prepared to show in this case, that that happened over and over again with Mr. Greenberg. Mr. Koch wants that to stop, and that's what this case is about. If he's ready to say, okay, I'm done, we'll stipulate to what's here, we'll pay the monetary damages, then we are done. We can conclude this without a trial.

THE COURT: Let me read back what you said. "We'll stipulate to what's here." What do you mean by that?

MR. HUESTON: The charges in the complaint, your Honor.

THE COURT: So admit to liability.

MR. HUESTON: Right.

THE COURT: Should we take a break and settle this case?

MR. SHARTSIS: Your Honor, we've been trying, but I

don't want to go into it and explain why it's been so difficult unless the court wants to hear it. Let me just say this. I remember from law school there are five elements to fraud. One of them is harm and damage. There's no damage here, your Honor. That element is gone because Mr. Koch has been fully paid once he withdraws his punitive damage case, and this whole idea that we use the courts when people are not damaged to make some kind of moral point, I didn't read that part in the five elements of fraud.

So that's where we are. This is really practical. Stipulate to what? Mr. Greenberg's position is that he did not defraud Mr. Koch. I have yet to hear in this case someone pick up the bottle, one of those 24 bottles, and say, Mr. Greenberg knew this was in the auction and knew it was fake and sold it. And we're not going to hear that in this case, I don't believe. We haven't heard it yet. So that's really not on the table in this case because it doesn't exist. And the suggestion that Mr. Greenberg has always wanted to take these bottles and put them back in commerce, your Honor, you have the evidence and have had the evidence in front of you. What Mr. Greenberg said was: Take these bottles and we'll taste them in public. I do not intend to resell them. I intend to taste them in public to benefit a charity. Even if people come in and say whether they're real or not. Because Mr. Greenberg has always believed, and I will argue very heavily in this case, you've

got to taste the wine. Mr. Greenberg wanted to taste the wine. He was willing to have the public criticize him or not, based on a public tasting of the wine, so he could figure out whether they were real or not. That's the case. This is really -- this is so blown up out of proportion, it is astounding, the way we've gotten here. Couple hundred thousand dollars for $13 million of litigation. I mean, really. What are we doing here?

Let's have the case. Let Mr. Koch bring the case he brought seven years ago. Let him claim his punitive damages. Let him try to make the point that he told the court in front of Judge Jones that he was going to make and let's have our trial. If he wants to drop punitive damages, he can make that decision, but your Honor, we have designed an entire case based on your rulings on the 18th. We're ready to proceed. And Mr. Koch can make his election.

MR. HUESTON: Your Honor, we're ready to proceed too, and as I have stated, we do not think that the strategic settlement offers that he made in the course of the case and the years afterwards at all moots this case. It is about whether there was reckless or intentional conduct here that's reprehensible. That's the bottom line issue in this complaint. And it's not just the amount of dollars for the bottles. It's the related costs that come and attorney's fees that can be collected over time.

And by the way, Mr. Shartsis is making a lot of representations about cumulative costs. There's no basis to that. We disagree that it's cost that much money, and we have attempted to seek settlement and they've refused time and time again. There's a much longer story there that we won't bore you with, your Honor. But the bottom line here is, there is a central case. If they'd like to stipulate to liability, then fine. If the court is concerned that there may not be a case to go forward, then we'll counsel together, talk to my client again, and we'll consider whether we will go forward with the prejudice of the so-called refund issue coming into play with punitive damages still at stake.

THE COURT: What exactly is your client seeking other than the repayment?

MR. HUESTON: Your Honor, we're seeking an admission of liability, a finding that there is liability on these three counts. That's the critical component here. As well as the damages that are required under the law. But that's the critical finding.

THE COURT: What other damages?

MR. HUESTON: The statutory damages that come under the -- for instance, the GBL claims.

THE COURT: Which are on top of the actual damages?

MR. HUESTON: Yes. And attorney's fees, reasonable attorney's fees.

THE COURT: Is that under the GBL claims?

MR. HUESTON: Yes, it is, your Honor.

THE COURT: So does that make the case moot, Mr. Shartsis?

MR. SHARTSIS: Your Honor, first, it's discretionary. Second, in the school of the system should be fair, if the attorney's fees that were accumulated after what was a $700,000 refund offer that was rejected because of a claim for punitive damages, there's now no claim for punitive damages, why, under a discretionary attorney's fees provision for the court, would Mr. Greenberg have to pay attorney's fees when they were entirely 100 percent unnecessary five years ago? They -- and they should have ended because there should not have been a punitive damage claim at that time. There was punitive damages that kept it alive. Mr. Koch is dropping it right now just as we litigated 12 bottles for five years that he just willy nilly dropped a week ago. We -- we should just go forward and he should just make his election and we should have our trial. Either he should drop punitive damages, we'll do what we do to moot the case, if the court concludes, and we should proceed. If the court concludes that doesn't moot the case, we'll just keep on going and we'll have our trial, and we'll be done. But this is just the worst kind of game playing -- dropping bottles, dropping punitive damages, avoiding -- avoiding your Honor, avoiding Judge Jones dismissing the case based on this

claim, as you'll see, avoiding Judge Jones dismissing the case based on the claim, which they said on the 18th that Sutcliffe and Edgerton told Greenberg these bottles were fake, which they did not. So we need to finally get some control here.

THE COURT: Well, Mr. Hueston, do you agree we can proceed?

MR. HUESTON: Your Honor, let me make a couple points, if I may, for just a minute.

First of all, your Honor, we'd be happy to meet, if you think it would be helpful, lead counsel, yourself, and Mr. -- and Mr. Greenberg, if you think that would be productive. We're certainly here to be reasonable. We're not here to be unreasonable.

I do want to point out, in the complaint, it does make clear that there was other relief that's being requested under GBL -- injunctive relief, treble damages -- there is a cap there -- attorney's fees, and prejudgment interest. It's not about just the check that they've sent.

And then finally, your Honor, my first position, that would have solved all of this, we'd rather not drop our punitive damages claim, we think there is reprehensible conduct here, but we really think we're going to be prejudiced for the reasons that were explained to the court and which the court accepted in the last hearing, that we think could just be

solved if we bifurcated and had a separate short presentation on punitive damages, if it is necessary. That's just what the defense suggested anyway as an alternative position themselves. We're happy to go forward with that.

THE COURT: Well, the problem is, I'm afraid that will extend the two weeks we have for the trial in this case. And I don't have more than two weeks and a couple days because I have a criminal case immediately after, a criminal trial that is going to trial.

MR. HUESTON: Well, your Honor, I would stipulate to counting that against my clock, for instance, to put that on. I don't think it would be long at all to make the presentation on punitive damages after we've presented and had presumably a finding of liability in the case properly.

THE COURT: Mr. Shartsis?

MR. SHARTSIS: Your Honor, we prepared our case in reliance upon what you ordered on the 18th, and we're ready to go, and we will not have one of our witnesses, your Honor, toward the end because of that extension. We've taken that risk because we feel we can deal with everything and the whole case before he has to leave. That's the expert -- we raised that with your Honor on the 18th. We're taking that risk because the case we believe will be over. We won't have that other phase to try.

We should just do this, your Honor. We ought to

just -- we ought to just proceed and Mr. Koch can make his decision.

THE COURT: Okay. We're going to pick the jury, and I'm going to think about bifurcation in the back of my mind. And I'm going to think about whether the case is possibly moot. But as far as the refund offers, I've concluded that they meet the requirements of Rule 403 but only for punitive, so for that reason the issue of bifurcation becomes a possibly good solution.

MR. SHARTSIS: Your Honor, we're now prejudiced because of the --

THE COURT: Well, you asked for it.

MR. SHARTSIS: Well, we did, your Honor, but we also discussed the extension of the trial and the time, and we now have a witness --

THE COURT: A week ago you asked for bifurcation. I'm not going to hear --

MR. SHARTSIS: No, when you ordered it, your Honor, we designed the case to deal with both issues. That's what we do. We adjust to what the court says, and I'm ready to make an opening statement based on both --

THE COURT: The good news is, you're ready to go and we have our jury. Are we ready with the jury panel?

THE CLERK: We are.

(Discussion off the record)

MR. SHARTSIS: Your Honor, I just want to ask the court's permission that we have jury consultants and may they sit with us at counsel table?

THE COURT: Any objection?

MR. HUESTON: May they be introduced, please, your Honor?

THE COURT: Yes, just for the record, if you would.

MR. SHARTSIS: Sure.

MR. COOPER: Daniel Cooper.

MS. OLIVER: Susan Oliver.

THE COURT: Thank you.

MR. SHARTSIS: Thank you, your Honor.

(Continued on next page)

(Jury selection was reported but can be found under separate cover)

THE CLERK: Can I please have my now chosen jury rise while I administer the oath to the jury in this case. Again I will swear and affirm.

(A jury of 8 was duly sworn and impaneled)

THE CLERK: Please be seated.

THE COURT: Ladies and gentlemen, you are the jury for this case. Again thank you for your patience. I am now going to give you a chance to have a belated lunch.

Before I release the jurors for lunch, is there any preliminary matters? I assume I will have them come back in an hour. Anything else I need to address right now?

MR. HUESTON: No, your Honor.

MR. SHARTSIS: No, your Honor.

THE COURT: Okay, folks, we will start back in an hour. It is now 1:45. We'll start back at a quarter to 3:00, 2:45. Once again I want to repeat that you should not talk about the case yet. You haven't heard the evidence and there will be a time to deliberate at the end of the case but it is not yet. Please don't discuss the case with each other or with anyone else.

If you see any of the lawyers or witnesses, I am asking them not to say anything to you. It is not they're being rude, it just means I have asked them not to talk to you.

Mr. Skolnik will give you information about getting in and out of the appropriate place. Otherwise, I will see you back here in one hour. Thank you, folks.

(Jury excused)

THE COURT: You may be seated. Okay, folks, you all need lunch, too, perhaps more than any of us. When we come back, I'll go through the preliminary instructions.

What do you contemplate in terms of openings, length of time?

MR. HUESTON: Your Honor, I haven't timed it, but I am thinking it might go upwards of an hour, maybe shorter. I like to please on time estimates. We'll see.

MR. SHARTSIS: It could be as long as 90 minutes depending on what is said.

THE COURT: Well, I guess the answer is there is no reason to do openings today.

MR. HUESTON: Right. I wouldn't want to open and have --

THE COURT: It doesn't make sense to have openings, one party's opening. So I think we'll probably release the jury early and do openings tomorrow morning.

MR. SHARTSIS: That is fine, your Honor.

THE COURT: Okay. Is there anything else we can perhaps do now?

MR. SHARTSIS: No.

MR. HUESTON: Your Honor, or we can do it when the jury goes. We would like some clarification. I am hoping the court was heading in the direction of we'll do a bifurcation, it is on our time clock which would be very small in terms of the punitive aspect of the case and that way we balance the issue of prejudice, there is no prejudice which you recognize would come in our case proper, we are not forced to make some sort of Hobson's choice about dropping our punitive damages claim.

MR. SHARTSIS: Do you want argument on this?

My position is that Mr. Koch brought a case, that the issues we have raised are relevant to it. If he now after seven years wants to elect not to pursue punitive damages, he can do that. This has been a fact in the case completely. We have given you all the reasons why we think it is sort of fair play and substantial justice that this matter be in. We are now going to start the case tomorrow.

I am concerned whether we're going to finish it, your Honor, by two weeks from Friday. That means we are going to have two days of trial this week and we're going to run -- and this is just a burden on my client to have this thing, two and a half week trial over a few hundred thousand dollars of wine. We would like to do it all at once, get it done efficiently.

Mr. Koch can make his election. If he is so concerned about a fact of the case which happened, he can judge that. I

just think it is fundamentally unfair to deprive Mr. Greenberg of putting in the whole transaction under any circumstance. We should just go try this case and be done with it.

MR. HUESTON: Your Honor, it is not a time issue because we have agreed that we would stick within our 25 hours.

No. 2, the solution I've offered is the very solution offered by the defense which, of course, they were prepared to accommodate because they said we would take a bifurcated trial and do exactly what I am suggesting here.

What Mr. Shartsis is attempting to do -- and, hey, my hat is off to him because he is an advocate -- he is trying to get you to reconsider in general the ruling that came down last week where you said properly it shouldn't come into the case because it is just prejudicial outside of the punitive damages.

THE COURT: I realize it is a tough ruling because I think there is kind of no neutral situation because this evidence, obviously each side feels strongly about this evidence, but I have concluded it is relevant to punitive damages. For that reason, I am inclined to go with bifurcation.

MR. SHARTSIS: Bifurcation is bifurcation of the determination of the amount of punitive damages, but the facts that relate to the whole claim and punitive damages will go to the jury at the end of the first phase and then there will be a trial on the amount.

In that setting Mr. Greenberg is badly prejudiced. You don't have this whole proof of a claim, of a fraud claim and a jury looking at the fraud claim and concluding that punitive damages should be awarded.

THE COURT: I don't think, when you bifurcate punitive damages, I don't think you have the first phase deciding whether punitive damages are appropriate. That is all in the second phase.

MR. SHARTSIS: Let's talk about this practically. So we tell the jury about some of the transactions in the first phase and then we're silenced on the other aspect. Then what happens in the second phase?

We say surprise, the thing you didn't get to know is that when Mr. Greenberg first learned about the 1928 LaTour before any lawsuit was filed, he immediately said we should get this man his money back. The minute he is sued, he says there is a refund under the contract, you should get it back. That comes in at a second phase after the jury has already made up its mind --

THE COURT: On liability?

MR. SHARTSIS: -- on how bad Mr. Greenberg was because that is what punitive damage is about. There is not a trial on okay, there is liability, but how bad was he, really? Is that what the second phase is?

THE COURT: That is what the punitive damages phase

is, how bad was he?

MR. SHARTSIS: Then it will be much longer because while the plaintiff wants to take it out of their time, we don't want to take it out of our time.

We have been chasing so many rabbits down so many holes in this case that don't have anything to do with the 24 bottles in this case, we need to have that time to do it. Now what is happening is we are going to have a trial extended which is already now starting basically two days late.

The fundamental fairness of the jury forming its opinion of how bad Mr. Greenberg was, we are going to be in a punitive damage phase because they have concluded that there ought to be punitive damages. That simply deprives him of, I think, his due process in this matter. This is not something that was not integral to the transaction. This was integral to the transaction. This is not, by way of example, it is not some terrible tort and then a lawsuit happens and then somebody offers to make good. This is an ongoing transaction which contemplated a return.

You will hear, your Honor, in this case that Mr. Koch sought returns for other bottles. He sought returns. He had a seller master who would look at the bottles and say I don't like this one, I want to return it. He got one every time. Now we are going to excise another aspect of return, all to the prejudice of Mr. Greenberg. It just prejudices Mr. Greenberg

to deny him the right to show what the whole transaction was, and for that reason we think we ought to try the whole transaction, not just part of the transaction.

I don't want to go on. I don't want to make the same argument again twice. That is our view. Fundamental fairness entitles him to show all the things he did in the transaction.

THE COURT: There are two things. You are partially rearguing my original ruling.

MR. SHARTSIS: Correct, I agree I am.

THE COURT: I really don't think this idea it mitigates damages for the primary claim is not convincing to me. You have persuaded me on punitive damages. As of a week ago you were saying let's do a bifurcated trial.

MR. SHARTSIS: We did that with the view we would have this information in front of the jury. We didn't say we wanted a bifurcated trial and only put the refund in the second phase.

THE COURT: You want the refund and bifurcated?

MR. SHARTSIS: We think it is the whole transaction.

THE COURT: Do you want to respond? You don't have to.

MR. HUESTON: I think I am ahead so I usually don't open my mouth in that instance.

Your Honor, we are simply accepting what they suggested in the first page of their letter to the court, that with punitive damages at issue at the same time of liability,

Greenberg would be severely prejudiced.

Fine, the refund issue will be in that narrow punitive damage consideration, that is it. That answers their fairness issue and also balances the prejudice the court recognizes we would have in bringing in that settlement discourse into the main body of the case.

THE COURT: We all need lunch. I am going to think about it over lunch. I am inclined to do the bifurcated damages approach, but I do want to think about it. I will see you all in 45 minutes.

(Luncheon recess)

(Continued on next page)

AFTERNOON SESSION

3:10 p.m.

(In open court; jury not present)

THE COURT: Okay, folks. So we're just going to do the preliminary instructions for the jury and then I'm going to let them go and then we'll start tomorrow with openings.

Is there anything we need to address before we do the preliminary instructions?

MR. COLES: Your Honor, I spoke to Mr. Hueston quickly during the lunch break, and he had offered to go to chambers if your Honor was amenable to see whether or not the parties could resolve this case without going through the trial. Mr. Greenberg is willing to do that and we're willing to dedicate some time this afternoon to try and work that out, if your Honor wanted to involve himself. I'm not sure what your practice is in that area, but we're certainly willing.

THE COURT: I'd be happy to do whatever the parties would be open to. Perhaps we should go ahead and do the preliminary instructions, which shouldn't take too long.

MR. COLES: Yes, yes, and then we should discharge the jury for the day.

THE COURT: And let them go, and then, sure, we can talk. That sounds good.

Anything to add to that, Mr. Hueston?

MR. HUESTON: No, your Honor.

THE COURT: Okay. Great. We'll bring out the jury.

(Jury present)

THE COURT: Members of the jury, welcome back.

Now that you've been sworn, I'm going to briefly tell you something about your duties as jurors and give you some general instructions. At the end of the trial I will give you more detailed instructions, and those instructions will control your deliberations in this case.

At the end of the presentation of the evidence and my final charge to you, it will be your duty to decide from the evidence what the facts are and then to apply the law to those facts. In doing so, you must follow the law as I give it to you.

Remember, you are the sole judges of the facts. You must not take anything I may say or do during the trial as indicating what your verdict should be. Don't be influenced by my taking notes or typing on the computer. What I write down may have nothing to do with the trial or with what you need to be concerned about during the trial.

First, evidence. You will decide what the facts are from the evidence that will be presented here in this courtroom. That evidence will consist of the testimony of witnesses, documents, and other things received into evidence as exhibits and any facts on which the lawyers stipulate.

There are two kinds of evidence -- direct evidence and

circumstantial evidence. Direct evidence is testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence. That is, it is proof of one or more facts from which you can find another fact. You may consider both direct and circumstantial evidence in deciding this case. The law permits you to give equal weight to both or to none. It is up to you to decide how much weight, if any, to give to any evidence.

At times during the trial I may sustain objections to questions that are asked. When that happens, I will not permit the witness to answer or, if the witness has already answered, I will instruct that the answer be stricken from the record and that you should disregard the answer and dismiss it from your minds.

In reaching your decision, you may not draw any inference from an unanswered question, nor may you consider in your deliberations testimony that I've ordered stricken from the record. The law requires that your decision be made solely on the basis of the evidence before you. The items I exclude from your consideration will be excluded because they are not legally admissible evidence.

The law does not, however, require you to accept all of the evidence that I do admit. In determining what evidence you will accept, you must make your own evaluation of the testimony given by each of the witnesses and of the documents

presented to you and then determine the weight, if any, you choose to give to each witness' testimony or to an exhibit. There's no magic formula by which you should evaluate testimony or exhibits. At this time suffice it to say that you bring with you to this courtroom all of your experience and background of your lives. Do not leave your common sense outside the courtroom. Use it in your deliberations. The same types of tests that you use in your everyday dealings are the tests that you can apply in your deliberations.

What is not evidence? The questions and objections of the attorneys are not evidence and neither is the testimony I instruct you to disregard. So when a lawyer asks a question, that's not evidence. The answer of a witness is evidence. The statements and arguments of the attorneys during any part of the trial also are not evidence. Further, anything you may see or hear when the court is not in session, even if what you see or hear is done or said by one of the parties or by one of the witnesses, is not evidence. What matters is what you see and hear in this courtroom when you're sitting as the jury. Only what is admitted into evidence here when the court is in session and all the parties and jurors are present is evidence, competent evidence.

Expert witnesses. The rules of evidence ordinarily do not permit witnesses to testify about opinions or conclusions. There's an exception to that rule for what's called expert

witnesses. An expert witness is a person who, by education and experience, has become expert in some science or art or profession or calling. Expert witnesses give their opinions as to matters in which they profess to be experts and may also state their reasons for their opinions. You should consider each expert opinion received in evidence in this case and give it such weight as you think it deserves. If you decide that the opinion of an expert witness is not based upon sufficient experience or education or if you conclude that the reasons given in support of the opinion are not sound or if you feel the expert's opinion is outweighed by other evidence, you may disregard that opinion.

I should also caution you about certain principles governing your conduct as jurors in this case.

First, do not talk to each other about the case or about anyone who has anything to do with it until the end of the case when you go to the jury room to decide on your verdict, that is, when you deliberate.

Second, do not talk with anyone else about this case or with anyone who has anything to do with it until the trial has ended and you have been discharged as jurors. Anyone else includes members of your family and your friends. You may tell them that you're a juror in a civil case in federal court, but please do not tell them anything else about it until after you've been discharged by me, after your service as a juror is

finished.

Third, do not let anyone talk to you about the case or about anyone who has anything to do with it. If someone tries to talk to you, please report it to me immediately or to Mr. Skolnik. This includes the lawyers and the witnesses in the case. So if you do happen to run into one of the lawyers or witnesses in the elevator or in the hallway, please don't speak to them. And if they don't speak to you, it doesn't mean they're being rude. It's because I'm telling them not to speak to you while the trial is going on.

Fourth, please do not read any news stories or articles or listen to any radio or television reports about the case or about anyone who has anything to do with it. If there's any publicity about this trial, you must ignore it. You must decide this case based only on the evidence presented during the trial.

Fifth, do not do any research or any investigation about the case on your own. Do not go to visit any of the scenes described during the trial.

Sixth, do not use any social media or do any research on the case or to comment about the trial. This means no Facebook or Twitter or any other social media sites. The parties are entitled to have you personally render a verdict in this case on the basis of your independent evaluation of the evidence presented here in the courtroom. Speaking to others

about this case, including your family, before you deliberate or exposing yourself to evidence outside the courtroom, which may or may not be accurate, would compromise your service and fairness to the parties.

I'm going to permit you to take notes during the trial if you wish. You don't have to. You're not required to. If you do take notes, you should not be influenced by another juror's notes but should rely on your own recollection of the evidence. The notes are really just to help you if you want to refer back to something. But it's really your recollection of the evidence in the courtroom that matters.

You must not allow notetaking to distract you from the proceedings. Your notes are only a tool to aid your own individual memory, and you should not compare your notes with other jurors in determining the content of any testimony or in evaluating the importance of any evidence. Your notes are not evidence and are by no means a complete outline of the proceedings or a list of the highlights of the trial. Your memory should be your greatest asset when it comes to deliberating and deciding the case.

Burden of proof. Please remember this is a civil case. Those of you who have sat on juries in criminal cases, or who have watched on TV, you may have heard the phrase "proof beyond a reasonable doubt." That requirement does not apply in civil cases and you must put that notion entirely out of your

mind. In civil cases the burden of proof is different, and I'll explain it to you. On some claims it's preponderance of the evidence and on others it's clear and convincing evidence, but those are different standards from proof beyond a reasonable doubt, and I'll explain that in more detail after all the evidence has been received.

Finally, I'd like to just summarize the stages of the trial for you.

First, each side may make an opening statement. An opening statement is not evidence, nor is it argument. It's really an outline of what that party intends to prove during the trial, and it is offered to help you follow the evidence. Each side will give their version of what they intend to prove.

Next, the plaintiff will present witnesses and the defendant may cross-examine the witnesses. Then, if desired, the defendant will present witnesses and the plaintiff may cross-examine them. I may then permit the plaintiff to present additional witnesses to rebut the defendant's evidence. After that, the attorneys will make their closing arguments to summarize and give you their interpretation of the evidence. As with opening statements, the closing arguments are not evidence. After the closing summations, I will give you instructions on the law and then you will retire to deliberate on your verdict.

Please do not make up your mind about what the verdict

should be until after I've instructed you on the law and at the end of the case and then you've gone to the jury room and you and your fellow jurors will have discussed the evidence. Keep an open mind until then. Both parties deserve, and the law requires, that you give them an opportunity to be fully heard.

After all the evidence has been heard and the arguments and instructions are finished, you will meet to make your decision. You will determine the facts from all the testimony and the other evidence that is presented. You will be the sole and exclusive judges of the facts. I must stress that you must accept the rules of law that I give you, whether or not you agree with them.

That completes my preliminary instructions in this case. Given the time, I'm going to let you go for the day, and we'll start promptly at 9:30 tomorrow morning. I believe Mr. Skolnik has explained -- I know it's sort of complicated, this building, where to get to the right place, but hopefully you'll figure it out, and I believe you'll have key cards to get into the jury room. So please try to be here as soon after 9 as you can tomorrow, but definitely by 9:30. We'll have breakfast to entice you to come early. We'll have coffee and, I don't know, bagels or something, and those will be in the jury room.

So we'll start promptly at 9:30. And again, we'll start with the opening statements of the parties and then we'll

proceed directly to the witnesses. Okay?

Once again, I just want to remind you not to talk about the case with other people tonight and also not to talk about it with each other and keep an open mind.

I'll see you all tomorrow morning.

THE CLERK: If the jury can follow me into the jury room this way, please.

(Jury excused)

THE COURT: You may be seated.

So let me hear from the parties on what you think would be a helpful way to proceed. I mean, what I have in mind is, we could have an initial discussion with everybody in one room and then separate out into two separate rooms, and I'd be happy to go back and forth and hear from the parties, or if the parties would prefer something different, I'm open to whatever you all think.

MR. SHARTSIS: Your Honor, may I confer with my client?

THE COURT: Sure. Actually, I'm going to take five minutes.

(Recess)

(Continued on next page)

(In open court; jury not present)

THE COURT: Please be seated. Okay, counsel?

MR. SHARTSIS: Your Honor, I would suggest the good old fashioned separate the parties and have you talk to each group separately and see if there is something that you feel you can do based on what the groups say separately and see if we have somewhere to go.

MR. HUESTON: I want to make sure -- I talked to opposing counsel about it -- Mr. Koch does need to leave. He means no disrespect to the process by that, but there are personal issues he needs to attend to. We discussed how we will participate in this process. Hopefully if it gets close, terrific. If it moves down the right path, we can finish off things with principals either in the morning or at the next opportunity.

THE COURT: If the parties are okay, I am fine with that.

MR. HUESTON: May Mr. Koch be excused?

THE COURT: Yes. So I think I just have to talk to Mr. Skolnik about rooms. So I think we need to arrange, I think we have two rooms we can use back here, but I have to figure out exactly where. I will arrange that and be back in a few minutes.

(Court adjourned until Wednesday, March 27, 2013, at 9:30 o'clock am)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

WILLIAM I. KOCH,

Plaintiff,

v. 07 Civ. 9600 JPO

ERIC GREENBERG, et al.,

Defendants.

----------x

New York, N.Y.

March 27, 2013
9:41 a.m.

Before:

HON. J. PAUL OETKEN,

District Judge
and a jury

APPEARANCES

MORVILLO ABRAMOWITZ GRAND IASON ANELLO
Attorneys for plaintiff
BY: EDWARD M. SPIRO,
- and -
IRELL & MANELLA, LLP
BY: JOHN CHARLES HUESTON, Esq
MOEZ KABA, Esq.
MARSHALL CAMP, Esq.
BRUCE A. WESSEL, Esq.
Of counsel

DLA PIPER, LLP
Attorneys for defendants
BY: ANTHONY PAUL COLES, Esq.
- and -
SHARTSIS FRIESE, LLP
BY: ARTHUR J. SHARTSIS, Esq.
TRACY SALISBURY, Esq.
FRANK ALBERT CIALONE, Esq.
Of counsel

Also Present:
JASON WIETHOLTER, Trial Tehnician
ELIZABETH S. SEABROOK, Paralegal

(Trial resumed)

(In open court; jury not present)

THE COURT: Please be seated.

Good morning, everyone.

ALL COUNSEL: Good morning, your Honor.

THE COURT: Do the parties have any preliminary matters to address?

MR. HUESTON: Your Honor, I just want to confirm that we are going to be proceeding on a bifurcated basis and --

THE COURT: I'm going to address that in a second.

MR. HUESTON: Okay.

THE COURT: But any other matters, besides that? No?

MR. HUESTON: I do have one matter. I've been alerted, as of this morning, that counsel for defense in opening will want to talk about bottles that are not at issue in this suit, and I think that's inappropriate for the opening. We have our suit, it's been narrowed to the 24 bottles, that's how the jury has been instructed. I don't see at all how that's relevant to the case, and that should not be a focus on an opening.

THE COURT: Mr. Shartsis?

MR. SHARTSIS: Your Honor, actually, I don't intend to talk about the bottles. I'm going to use one as an example of the label color and simply as a demonstrative in opening. I'm not going to address -- I will however, advise the court that

the pleadings in the case, which are admissions by a party, that is the complaint, talk about 36 bottles, and the 36 bottles illuminate the irregularity of what the experts did, and I think we're entitled to do that. We have expert reports about 36 bottles, and we intend to use all of the bottles to talk about conclusions that were reached in this case, allegations about representations that were made about the bottles, because those are admissions. Those are admissions by the plaintiff, and those are relevant. They're evidence that has been looked at by any number of experts in this case, there's evidence -- they're evidence of opinions of experts about authenticity and inauthenticity, and --

THE COURT: Well, it's true that they could be admissions. I think it depends for what purpose you'd want to use them for. I mean, they can be admissions, but the case has been narrowed to the 24 bottles, and in that sense I think for purposes of the claims at issue in the case, the case is narrowed.

MR. SHARTSIS: Oh, of course it's narrowed. I'm not going to say that they're making claims now about those, your Honor, but we believe it's relevant in terms of having made claims and based expert testimony asserting that these bottles were inauthentic, asserting that these bottles had specific representations made about them, and I think we are entitled to present to the jury the consistencies or the inconsistencies in

the evidence that the experts have dealt with.

THE COURT: In any event, the bottle we're talking about is one of the 36 but not the 24?

MR. SHARTSIS: Correct. It's one of the 12 that was removed, your Honor. I'm just going to use a bottle to show a color of the label. That's going to be my purpose.

THE COURT: Okay.

MR. HUESTON: I'm fine with that, your Honor, for opening.

THE COURT: Okay. That seems fine.

Okay. Any other matters?

I guess that's it. Okay. Just to remind the parties of my ruling yesterday, I did rule that the refund offers are excluded under Rule 403 for purposes of liability but not for purposes of punitive damages. I want to note that that ruling is subject to revisiting if the plaintiff opens the door during liability arguments or evidence to reconsideration of that ruling with respect to the relevance of refund offers. I have decided to bifurcate the trial assuming that door is not open, so the first phase of the trial will be on liability, compensatory damages, and the second phase on punitive damages.

MR. SHARTSIS: Your Honor, then I need to ask a question about what I can talk about in opening, based on that. Your Honor, you'll recall that the refunds also included Mr. Greenberg's plan to have the bottles publicly tasted.

THE COURT: To have the bottles?

MR. SHARTSIS: To have the bottles publicly tasted. There's a second element to it. We intend -- without reference to the refund, without reference to the refund offer, we intend to adduce evidence that Mr. Greenberg at all times was willing to have these bottles tasted for authenticity, without regard to the refund. And I just don't want to do something that the court feels is inappropriate on that basis, but it's unrelated to the refund, without reference to the refund, unless the other side opens the door, Mr. Greenberg at all times -- it was his view that he knew whether the wine was fake by tasting it and was willing to taste it at all times. That's going to be a central part of our case.

THE COURT: Mr. Hueston?

MR. HUESTON: Yes. This is a mischaracterization of settlement offers, your Honor, and in the settlement offer it wasn't even about the bottles in dispute here. It was an offer to have some sort of charity wine tasting of bottles that weren't in this case. This is in the context of settlement about different bottles. It should not be a part of the case. Mr. Shartsis should not be talking about this in opening, because I think we're going to be showing to the court that that absolutely is inappropriate information to have injected into the trial.

MR. SHARTSIS: Your Honor, two things.

THE COURT: Well, it was a part of the refund offer.

MR. SHARTSIS: It was a part of the refund offer. Judge, that's a misstatement.

THE COURT: It was.

MR. SHARTSIS: Yes, it was.

THE COURT: Right. And I've excluded the refund offer.

MR. SHARTSIS: Right. But separate and apart from that, we're going to argue that these bottles should have been tasted. And I'm anticipating some arguments about, well, you needed the parties to agree, etc. Mr. Greenberg always believed they should be tasted, and I think he's entitled to say that. It doesn't relate to the refund offer at all. It relates toward his attitude of how you figure out whether something's fake. And he ought to be able to say: I always think you should taste these bottles and I was willing to do that at any time. Because he was. And that has nothing to do with the refund offer.

THE COURT: Mr. Hueston?

MR. HUESTON: Here's what I'm concerned about. I think -- I'm concerned that the defense is trying to lay a lot of trap doors to reopen the door. That's what they're going to try to do throughout the trial.

THE COURT: Well, they can't open the door. You can only open the door.

MR. HUESTON: Well, here's what I'm concerned about. So this whole notion of, you know, he wanted to taste the bottles at issue, there's not a scrap of evidence that the bottles at issue here, that Mr. Greenberg demanded that they be opened and that they be poured out and sampled to determine if they were counterfeits. That's just not in evidence and it's not in the settlement offer. So to begin to get into this and then potentially put us in a difficult situation about what settlement or offers were made has us completely outside the context of the case in chief. I suppose we could just continue to be silent and gagged on this for fear that doors will be opened if we try to impeach his credibility on that, but that's what I'm really concerned about. There's nothing in here about Mr. Greenberg saying, or his attorney saying: Open up the 24, 36 bottles here. That's what we need to do to test them.

THE COURT: Well, it's in the refund offer.

MR. SHARTSIS: It says, "It is my plan to use these bottles," these bottles, "in a charity wine tasting."

THE COURT: But you're reading from the refund offer. That's excluded.

MR. SHARTSIS: I'm just addressing the issue that Mr. Greenberg never had the view. That's been in the case the whole time.

THE COURT: You can generally. I know it's part of the defendants' position that you can't authenticate the wine

without opening it and tasting it. If you want to generally say that defendants' position is and has always been that it should be opened, that's fine, but that's something independent from the refund.

MR. SHARTSIS: No, your Honor. I'm going to be totally clear. The words "refund offer" will never leave my lips. I want to say, Mr. Greenberg was always willing to have these bottles tasted. That's independent of that. And I presume I may do that. Is that --

THE COURT: Yeah, as long as it's separate from the refund offer.

MR. SHARTSIS: Thank you, your Honor.

MR. HUESTON: Well, except, your Honor, I think -- I'm worried about it coming up in opening. I'm fine with everything he said except for the very last thing, that he's always been willing to open up these bottles at issue in this case. There's no evidence of that, even in the settlement discussions. That's not what is shown there. And for us to rebut that inevitably will have us having to get into that potentially, which I don't want to do.

MR. SHARTSIS: Your Honor, the evidence is clear that he was willing to do it. I mean, that is on paper. That evidence has now been excluded in terms of saying they offered a refund, but, your Honor, it would be not true to prohibit Mr. Greenberg from saying: I would have always opened these

bottles and tasted them. We know that. We're looking at the evidence. And I will be able to say that, and I won't say anything about a refund. I understand that's your ruling, and I'm going to proceed that way.

THE COURT: Yeah, it's my ruling, but I'm not sure what other evidence there is of such an offer outside the context of the refund offer, which is not admitted.

MR. SHARTSIS: I'm not saying he offered to do that. I'm saying his willingness. He was always willing to taste it.

THE COURT: Fine. I'm not precluding you from saying that in your opening.

Just to remind the parties, you're each going to have 25 hours during this trial. When you're standing, whether it's direct or opening or cross, that's your time, and we'll be keeping the time. Toward the end of the trial we'll tell you how much time you have left periodically. I'm not going to count your closings, your summations, but I am going to count your openings, okay?

Can we bring the jury in?

MR. HUESTON: Yes.

MR. SHARTSIS: And your Honor, while the jury is coming in, I know Mr. Hueston just moved the rostrum right next to the jury. If I can't hear him, can I just get up and move around the courtroom?

THE COURT: Sure.

MR. SHARTSIS: And I don't know if the court wants it that close to the jury. It's not my proposal.

MR. HUESTON: I'm not going to breathe on the jury. I know better than that, your Honor. I just want to be able to stand here. I'll have reference to a PowerPoint, and I think this will be a respectful distance.

THE COURT: Okay. As long as you can hear. If you need to move, you're welcome to.

MR. SHARTSIS: Might I ask, perhaps if he uses a microphone, we can all hear him?

MR. HUESTON: I think you'll be able to hear me. Trust my voice.

MR. SHARTSIS: That's fine. It's a big courtroom. I could not hear some of the jurors speak.

THE COURT: Well, there's a big echo in the courtroom. I'll see if there's a microphone Mr. Skolnik can get.

(Jury present)

THE COURT: You may be seated, jurors.

And you may be seated in the courtroom.

Good morning, ladies and gentlemen.

THE JURORS: Good morning.

THE COURT: Hope you all had a good night.

We're now ready to start with opening statements. As I said to you yesterday, opening statements of the lawyers are not evidence in the case. After you hear the opening

statements on behalf of the plaintiff and then the defendant, we'll start with the evidence in the case -- that is, the testimony of the witnesses in the plaintiff's case. After the opening statements, we'll be giving you -- as I mentioned to you yesterday, you'll have a chance to take notes if you'd like. You're not required to do so. But we'll give you pads of paper. We do that after the openings normally because we want you just to listen to the openings because it's not evidence, but then we'll pass out pads of paper.

Mr. Hueston?

MR. HUESTON: Yes, your Honor.

THE COURT: Opening statement on behalf of plaintiff?

MR. HUESTON: Yes, thank you, your Honor.

Good morning, ladies and gentlemen.

THE JURORS: Good morning.

MR. HUESTON: This case is a simple case about a seller who failed to disclose key information that any buyer would want to know before deciding to spend thousands of dollars on a purchase. This seller, you will hear, was one of the largest individual wine sellers in the world, and in October of 2005, which is the focus of this case, he put on a sale of his wine bottles that he promoted as "17,000 Bottles of Greatness." In his words, it was a best of the best collection. But you will hear that this seller knew of problems, concerns, and issues with his collection of wine;

problems, concerns, issues with bottles in that collection; problems, concerns, and issues which made many of those bottles worthless, or nearly worthless, not suitable for sale.

And we're here, ladies and gentlemen, because that seller didn't tell the buyers about those problems, issues, and concerns -- the very information that those buyers would have wanted to know before they went ahead and paid top dollar for what they thought was a best of the best collection. Instead, that seller kept that information to himself and got top dollar for those bottles, including $300,000 for 24 of the more important bottles that are at issue in this case.

So let me start now and tell you about specifically some of the things you're going to hear in this trial.

I'm going to using this. Hopefully it's big enough for you to see, but I'll be talking and explaining each part of it.

The fall of -- the October of 2005 sale, ladies and gentlemen, "17,000 Bottles of Greatness," was the seller, Mr. Greenberg, having a special sale of his bottles. He did it through an auction house called Zachys, and this was a very special auction. It was called a single-seller auction. Only Mr. Greenberg's bottles were part of this. And the catalog had a cover like this, and you will see it, and it had a couple of hundred pages of listings of these so-called "17,000 Bottles of Greatness." There's the cover of it.

Then you will also see, one of the most important parts in this catalog is a cover letter that was put together by Mr. Zacharia of Zachys, right? He's the head of the auction house. And you will see the seller, Mr. Greenberg, had a hand in that.

Now here's the deal. This Zachys auction kept talking about consignor, a seller. Never told the name of the seller. That was -- that remained anonymous. But look in this description of the catalog. I'm going to give you some highlights now of how this collection was pumped up and described. Right in the beginning, in this two-page introduction, it says, "Awe-inspiring it is to watch passionate collectors with unlimited resources amass treasures of quality and in quantity that stretch the imagination."

"Alexander the Greats of the collecting world." That's what was being used to describe Mr. Greenberg. "Mega collectors like these are as acquisitive as they are inquisitive, in their pursuit of the finest collectibles."

Start counting how many times you see the word "best."

"This collection is all about the best producers, vineyards and vintages. It is a best of the best collection. A collection like this could only be put together with tremendous thought, energy, and great knowledge of wine."

Well, that's according to Mr. Greenberg.

"The core of this collection is the finest European

wine produced in the 20th Century." There are references here to where the wines are coming from, including in this section, that some of the rarities were purchased directly from domains. Now "domain" is kind of a fancy word for where the vineyard is, where the winery is. A lot of these are coming from Europe so the suggestion, you will see, coming out of here is that these wines you could trace all the way back to the vineyards, back in Europe.

In fact, you will see that the bottles in this case are what are called Bordeaux, special sort of wine from a region in France. And in this two pages, the descriptions specifically highlight the number of the bottles at issue in this case. "Bottles of the 1811, 1832, 1864, and 1865 Lafite, as well as the 1864 --"

MR. SHARTSIS: Your Honor, I object to this. Those bottles are not in the case.

MR. HUESTON: Some of the bottles in the case.

THE COURT: Overruled.

MR. SHARTSIS: Those bottles have been withdrawn from the case.

THE COURT: Overruled.

MR. HUESTON: "-- as well as the 1864 and 1865 Latour, are of similar provenance to those tasted by Michael Broadbent." When you hear "provenance," that's like a history of the wine, where it came from. So there's a discussion that

there's something special in the way this has been traced, and then there's a reference to extremely rare magnums of Bordeaux Right Bank wines. That's directly what's at issue in this case, from 1900 to 1961. Petrus, Cheval Blanc, L'Eglise Clinet, and Lafleur. You'll hear that those are famous wine makers discussed specifically in this two-page description.

But there's more. Again, after all this, it's described as one of the greatest consignments -- that means a sale -- ever auctioned. "Some of the greatest wines of all time, in depth and breadth. Chances like this come around once in a lifetime."

Now Mr. Zacharia's picture is there in this cover letter and his name appears at the bottom, but we will show you evidence in this case that Mr. Greenberg was writing substantial portions of this. Mr. Greenberg was editing this. Mr. Greenberg asked for copies of this so he could look at it and make changes. This document is Mr. Greenberg's document. These are his words that he approved and that many times he wrote.

I'm going to give you some of the examples of what he was trying to impress upon the buyers about this collection.

You will see in this case an e-mail from Mr. Greenberg to Mr. Zacharia, September 23rd, 2005. And what you will see is a draft of that two-page cover letter and Mr. Greenberg responding in all cap letters. We'll see that's a habit of his

to respond in e-mails and insert in all capitals his responses. And you'll see, "Please see comments within and below text. I want to review the next draft as well." "Great wine: The quest." He wants these words in. "The collection is all about the best producers, vineyards, and vintages." These are his words, ladies and gentlemen. "It is a best of the best collection. That should be talked about." He wanted to push and promote this thing. It's nothing but the best of the best. "It was also assembled by me with painstaking effort." What's the suggestion there? That he's personally grabbing these bottles, thinking about them, putting them in, painstaking effort into this sale. "No consultants, etc." All just me, this careful collector.

There is a part of that draft that he didn't like. He said, "I don't think you should state the original size of my collection as it shows heavy selling, and I do not want my targeted cellar size listed, as it makes future selling have to be justified." Ladies and gentlemen, you will hear that Mr. Greenberg was in the business of buying and selling wine. He will tell you on the stand that he would try to buy low, sell high. Specifically, we'll see this evidence, and the evidence will show he was trying to keep that heavy selling out of this cover letter, to create the impression that these were treasures being pried from his hands to be offered in this special best of the best collection. Not that he was massively

starting a dump-out of his cellar of thousands and thousands of bottles.

In another portion of this, there is a section that Mr. Zachys *[sic]* wrote about a crumbling corpse, and Mr. Zachys in his draft said something along the lines, "It's hard to see here. Doubters may be reassured." Doubters. And what does Mr. Greenberg say? "This next sentence is questionable. Why beg the question of doubters?" The evidence will show that Mr. Greenberg didn't want anybody doubting this collection. Didn't want any questions. Didn't want any suspicions raised here. Just a best of the best.

And finally, Mr. Greenberg hits the landing here, presses it to close with strong words. "One of the greatest consignments ever auctioned, some of the greatest wines of all time."

That's what Mr. Greenberg said, ladies and gentlemen. This catalog, you will hear, has description after description of the wine. There's not a hint of problems and issues in that collection.

Now who were some of the buyers that were coming? Who were some of the people this catalog was sent to? They were people like Mr. Koch here. Mr. Koch, you will hear, is actually just a collector. Unlike Mr. Greenberg, he isn't in the business of buying and selling wines. Unlike Mr. Greenberg, he was just looking to buy what he thought was

the best of best. And you will hear that Mr. Koch read this description, read that persuasive cover letter and what came afterwards and thought these truly were wines without problems and issues, nothing but the best of the best and deserving of top dollar.

The evidence will show, ladies and gentlemen, that Mr. Greenberg knew better. He knew of issues with his collection, issues with bottles and other concerns which, if he had disclosed that information to the buyers, including Mr. Koch, Mr. Koch would have walked away, wouldn't have bought these wines. Instead, he kept it to himself.

Let's look at some of what you will see in this trial.

You will hear that someone by the name of Serena Sutcliffe came and visited Mr. Greenberg at his house where he had his wine cellar, this massive basement cellar. And she took a look at these wines and she found problems. You will hear that she, from Sotheby's -- that's a famous auction house -- looked in the cellar and said she had concerns over Mr. Greenberg's high value wines. You will hear Mr. Greenberg himself say that Sotheby's/Sutcliffe told him that he bought wines from Royal that might be bad.

Now let me just talk about this briefly, Royal. He's being told that a major supplier to him, called Royal Wines, is believed to be involved in counterfeiting, and he is being told that these Royal bottles in this collection in fact may be bad.

He will say that that visit by Ms. Sutcliffe from Sotheby's put him in a panic. Why? His collection was now infected with counterfeits. Mr. Greenberg concluded that he had purchased fake wine.

What next? Mr. Jamie Ritchie, who will testify here today, also from Sotheby's -- he's head of Sotheby's US wine department. He was there in Mr. Greenberg's cellar back in 2002, before this auction. He will say that Sotheby's pointed out wines that it believed were counterfeit, that Sotheby's pointed out wines it would not accept for sale without further documentation, further provenance, proof to us this really did come from the source it says on the bottle. And authenticity. That's another fancy word for, is it really the real McCoy, is it genuine? He will recall that they pointed out to Mr. Greenberg that some of the bottles had photocopied labels, which made them concerned that these bottles were fakes.

But it's more than just these visitors from Sotheby's. You'll hear that Mr. Greenberg did his own investigation. He made a document that he called the Royal Wine Fake Summary Notes. You'll hear a lot about this in this case. I'm just going to show you a couple highlights here in this opening statement.

The title of it was Royal Wine Fake Summary Notes. And in this introduction he called it "Wines believed to be fake and sold to Eric Greenberg." He describes what he did

here in this process. "Two sommeliers --" it's another fancy word for wine experts "-- assisted Eric Greenberg in this bottle by bottle process. Additionally," he writes, "outside experts, domains --" again, that's that word for vineyards themselves that are producing these wines in Europe "-- outside experts, domains, and importers of this wine, they were contacted and consulted on the authenticity --" that means the genuineness "-- labeling and corks of various wines."

And in fact, he hired somebody named William Edgerton to inspect a number of these bottles. He called it the "Wine Authentication Report of certain wines owned by Eric Greenberg." You will hear that Mr. Edgerton was limited to looking at 108 or so bottles by Mr. Greenberg to test. And he found many of these to be false and fake. But here's the first key piece of information you need to know. Of these listing of bottles, Mr. Edgerton numbered them, one by one -- 1, 2, 3, 4, 5, all the way up to over 100. And there's one bottle with a number 41 on it. And what Mr. Edgerton would do is he'd put a sticker with the number on the bottle, slap it on that bottle so he could keep track of the fake bottles and bottles that he examined. Mr. Edgerton concluded in the report that number 41 bottle, a 1928 Chateau Latour, was definitely counterfeit. That's what he concluded. And ladies and gentlemen, there are pictures of the 24 bottles in this case. You will see that one of the bottles sold by Mr. Greenberg through auction to

Mr. Koch has that Mr. Edgerton label right on it, with the number 41 with his initials. A fingerprint on the bottle was definite proof that a fake known by Mr. Greenberg was sold through that auction in this so-called best of the best collection.

But there's more. Mr. Greenberg keeps at it. You'll see that Mr. Greenberg is very upset that he has all these fakes in his collection, so he has got his own investigation, he's writing up his fake summary notes, he has an expert, and then he files an insurance claim. And you'll see notes of the insurance company that reflect Mr. Greenberg's own conversations with the insurance company. Sotheby's, they're writing down what he's saying. Sotheby's informed him there were counterfeit wines in his collection, that Mr. Greenberg said $1.6 million worth of his wine may be counterfeit -- or fraudulent, that he had $2.189 million worth of wines from Royal. And he's upset about that. He said: This is like I was sold a fake Picasso painting. Why was he doing it? He was writing to AIG and Fireman's Fund, two different insurance companies, because he was trying to get money from them for these fake wines.

Then you'll hear that Mr. Greenberg drafted -- had his lawyers draft a complaint to sue Royal. And here's what Mr. Greenberg was saying in that complaint. "Over the more than two-year period during which defendants' fraudulent scheme

continued, defendants knowingly sold plaintiff more than $2 million of wine, of which all or substantially all is counterfeit or fake." This was what was swimming around Mr. Greenberg's collection. "During that inspection, the auction house representative, a recognized expert in the industry, raised questions about the integrity of certain bottles of wine."

But that's not all. There was another representative from another famous auction house, Christie's. It's a Mr. Brierley. He came into his cellar as well. What did he see? He talked with Mr. Greenberg about areas of his cellar and problematic bottles which he said would require further investigation before Christie's would ever sell it. And he saw problematic bottles from Mr. Greenberg's collection at that Zachys auction in October of 2005. You'll hear him say he spotted bottles up for sale then that he saw at issue right there in his basement.

Ladies and gentlemen, you will hear that Mr. Greenberg knew of and personally investigated and found key issues and problems with his collection, with certain bottles of wine from manufacturers and vintages -- that means years -- that he noted carefully in his report. These 14 bottles are of the same vintage -- that means year -- same wine maker as the Royal bottles that he was writing up notes about and these experts were pointing out as problematic.

Now you're going to hear that Mr. Greenberg, although he's a massive wine seller, conveniently doesn't keep a bottle inventory to tell him where these bottles came from. But it doesn't matter, because the experts and others will show you that these bottles have the same problems with labels, same problems with corks, same problems with bottle shapes, same other indicators of fakeness that Mr. Greenberg himself wrote down and noted. And despite that, Mr. Greenberg had these bottles pushed up into this so-called best of the best collection without a hint or suggestion in that catalog that there was a problem, without a hint or a suggestion that he had been told that a portion of his cellar was infected with fakes, without a hint or suggestion that a number of his bottles may have been coming from Royal, a suspected and known counterfeiter.

But there's more. You will hear that Sotheby's came, as I just told you, they took a look at the bottles. Mr. Greenberg tried to come to a deal with them to sell his bottles at an auction in Sotheby's. You will hear that Sotheby's saw those issues and they wanted representations and warranties from Mr. Greenberg to stand behind those bottles, and that was one of the reasons why they couldn't come to terms and Sotheby's didn't sell his wine.

Same with Christie's. He tried to sell through Christie's. Christie's wanted, among other things,

representations and warranties that Mr. Greenberg would stand behind all those bottles of wine. They wind up not coming to terms and he's not able to sell through Christie's.

Ladies and gentlemen, you're going to hear a witness at trial who will tell you that Mr. Greenberg said words to the effect of: Hey, that's not problem. I can always sell my problem bottles, my wines, through Acker Merrall, another auction house. You're going to hear about Mr. John Kapon, who was the president and CEO of Acker Merrall -- that's another auction house -- and you're going to see -- this is an important moment in the case -- even though he thought that Mr. Kapon was somebody who'd just take his bottles when anyone else wouldn't, on one key occasion Mr. Acker -- Mr. Kapon said no.

Mr. Kapon, by the way, was somebody who was a trusted adviser for Mr. Greenberg. He, you will hear, sold bottles of Mr. Greenberg's wine before and after the auction at issue here, and Mr. Greenberg really respected Mr. Kapon's opinions, you will hear, because he had hired Mr. Kapon to be somebody who would examine his bottles and be an expert for him. So this is not somebody he didn't know of or somebody he didn't have any trust or regard for.

Mr. Kapon, you will hear, in November of 2004, was being asked by Mr. Greenberg to sell certain bottles of wine, and Mr. Kapon had some problems. In an e-mail in November of

23rd, which you will see in this trial, to Mr. Greenberg, he writes to Mr. Greenberg: Hey, I had to hold off putting the magnums -- by the way, a magnum is a big-sized bottle of wine. I'll go into all this too, by the way. This is a magnum. It's an oversized bottle of wine. "I had to hold off on putting the magnums on the December sale. There was not enough time to make a decision and do it correctly, as I had some doubts here and there and it was too close to the deadline."

What was Mr. Greenberg's response? Did he say, "Oh, my goodness, I can't believe it, one of my bottles has issues? Well, certainly bring it back." Was that his response? This was his response. "The entire consignment is pulled, and I want it back this week. I am fucking pissed," he said. "I am not going to have the integrity of my collection questioned and then verified by another collector. Make your decision. If my mags are good enough for Zachys, they're good enough for anyone else. And they are selling a lot of them in their December sale."

Now Mr. Kapon, you will see, in this e-mail, he doesn't want to lose Mr. Greenberg. He tried to work with him here. Here's what Mr. Kapon does. He looks at those bottles again. He says, "I just finished inspecting all the wines again. This is what I would have to do to fairly sell them." This is an important moment, ladies and gentlemen. Here's what he writes about two of the bottles. You see here, 1921 Cheval.

That's supposed to be a wine from 1921 from this wine maker called Cheval Blanc. And he writes about another one, a 1945 Lafite. And what does he write there? He's saying that: I'd have to put in the catalog all these little clues to the buyer about what the issues are here, including photocopied label, which he had a problem with, and including the vintage on the cork is there but there's no branding. It's not, you know, fire seared into the cork. It's a problem. He puts that in the catalog. And again, with the 1945, says: This is what I'd have to do. I'd have to say it's got a photocopied label on it.

What happens? Mr. Greenberg says: I'll take those bottles back. He doesn't want it out there with those descriptions.

And you will see in the Zachys catalog, there's nothing like this saying photocopied labels. They're just saying things like 1921 Chateau Lafite. And buyers like Mr. Koch are reading it saying, it says 1921, it's Chateau Lafite, I believe it really is a 1921 and it's a Chateau Lafite. Doesn't have these disclosures.

But that's not all.

Let's finish with these two. I'm sorry. I just told you about these two bottles, the 1921 Cheval Blanc and the 1945 Lafite. Well, guess what? Mr. Koch winds up buying two bottles of 1921 Cheval Blanc with, our expert will tell you,

photocopied labels and a 1945 Lafite with a photocopied label. No disclosure in the catalog.

But there's more here. Mr. Kapon has other issues with what are called Lafleur bottles. Lafleur is another famous wine maker in France that are in this case. Here's what he says. He says: Hey, listen, Mr. Greenberg, then there are the Lafleurs. "Without getting into the exact details of each of them, there is one fundamental problem: the corks all have the vertically --" meaning up and down, I had to remind myself of that "-- ovally Chateau Lafleur branded on the cork," which they only started using after 1966. And he says, "So I can't offer those Lafleurs in good conscience." He's telling him that: I can't even put these in a catalog and tell them about the problem. These are just bogus.

Look at the words here. This sort of brand, he says, they only started using that brand after 1966. Those Lafleurs weren't even close. There's like a 1920 to 1940s and 1950s. So Mr. Kapon says, no way. You will see in the documents, does Mr. Greenberg say, "Oh, my goodness, I can't believe it, just give me those back, I'm embarrassed"? Here's what you will see evidence of. First Mr. Kapon says: I don't want to sell wine that I have doubts over. Look what he writes next. "So please do not bully me into offering those wines." You will see evidence in those e-mails that Mr. Greenberg was yelling at him and bullying him: Sell those wines. Well, Mr. Kapon says no,

in November of that year, 2004.

Guess what, ladies and gentlemen? Guess what winds up in the sale? Lafleur, vertical -- up and down -- brand, with an oval, on 12 bottles that wind up in the hands of Mr. Koch.

(Continued on next page)

None of which was disclosed to Mr. Koch or any of the buyers, not a hint in the catalog that these corks are totally wrong for the date.

As a result, twelve of these Chateau Lafites are sold at top dollar. Just cover, if you notice, all the 24 bottles of wine, but there is layers and layers more of this, ladies and gentlemen. We'll get to just a little bit more here and then move on.

Bordeaux wine locators. You're going to see in Mr. Greenberg's own words, he calls Bordeaux Wine Locators the worst counterfeiting wine location in the world.

Ladies and gentlemen, what does he do? He has got this special auction coming up in October of 2005. It is supposed to be the best of the best of his collection. Does Mr. Greenberg make sure he keeps out those Bordeaux Wine Locator bottles which he figures is the worst counterfeiting operation in the world? The answer is no. He shows up at that auction. You will see Mr. Koch wound up buying 8 bottles which have the label Bordeaux Wine Locators on them.

There is not a hint of any problem with Bordeaux Wine Locators, not a suggestion or disclosure in the catalog that the consignor had some concerns if a bottle has a problem with Bordeaux Wine Locators it might be from one of the worst counterfeits in the world, far different from this best of the best promotion that he wanted for these bottles.

We're still not done. There is another example with the Chicago wine company. You will hear that Mr. Greenberg sent and sold over to the Chicago Wine Company a 1921 Petrus, and you will hear importantly that a customer first looks at it and says hey, I got a problem with this, I just inspected the Petrus that came in and have to reject it.

One 1921, there is no date on the cork. Another one has no vintage or year on the cork. He talks about yet another wine, the cork was coming away from the glass.

More than just the customer complaint, the Chicago Wine Company itself then says to Mr. Greenberg had either of these problems been apparent when I saw the photographs, we would not have offered these bottles for sale, not suitable for sale.

What happens, ladies and gentlemen? We'll show you even though Mr. Greenberg doesn't have a way, he says, to trace the bottles, we'll show you one of these bottles went into, at least one of them went into the wine sale of the so-called best of the best.

That 1921 Chateau Petrus which Mr. Greenberg knew had problems, Mr. Greenberg knew another auction house rejected it, was sold without any disclosures as best of the best. Mr. Koch wound up buying it.

Now, I have already been discussing evidence which shows that Mr. Greenberg was getting notice of bottles, was

trying to push these bottles, but there is layer after layer of evidence that shows that this was no mistake, these bottles wound up in this October 2005 collection.

Remember the e-mail that I just went there, if my mags are good enough for Zachys, they're good enough for everyone else. If there are problems, you sell them or I'll sell them into another auction house. Zachys is where he wines up.

By the way, ladies and gentlemen, I'll show you in court the agreement with Zachys, guess what, it doesn't have a requirement to show and represent that the wine is genuine and authentic. That is the one auction house that didn't require him to make those representations and that is the one auction house he goes with.

You will hear he said if he had counterfeit wine, he can also sale to Merrill because John Kapon will take them. That is what he found out is the exception. You will hear from someone named JJ Cortes. He was one who worked at Mr. Greenberg's house and helped out in the wine cellar. He will say he was around when Sotheby's came in and spotted problems with the seller. He didn't tell you -- he will tell you he heard chilling words from Mr. Greenberg he couldn't forget. What were those words? He said Mr. Greenberg said what they did to me I'm going to do to somebody else.

What else? You'll see an e-mail discussion with somebody named Rudy Kurniawan. This e-mail is October 11,

2004. You will see from Mr. Greenberg's own correspondence that he had caught Mr. Kurniawan once, not just once, but twice trying to pass on counterfeit wine to him, Mr. Greenberg.

Mr. Greenberg was mad. He was really mad at Mr. Kurniawan. He was writing e-mails that he was going to sue Mr. Kurniawan, he was writing e-mails to the auction house he wanted the auction house to tell the world that Mr. Kurniawan was a counterfeit crook so folks would know about him.

Then you will see that Mr. Greenberg had some discussions with Mr. Kurniawan and decided not to tell that information, and they got into an agreement to move wines and sell wines for each other. In this critical e-mail exchange in October of 2004, you will see words from Mr. Kurniawan, I can move some, actually try to move some of those suspect bordeaux for you. You will see evidence that Mr. Greenberg knows what suspect means when he says suspect wine.

Mr. Greenberg's response in his familiar all caps, I am putting it on auction. That is on October 2004, the next major auction for Mr. Greenberg, the Zachys 2005 auction at issue in this case.

After the Zachys auction, he is going back to Christie's trying to get them to auction his wine again. Christie's: After he sold off the so-called 17,000 bottles of wine with problems to Mr. Kapon, people like Mr. Koch and other buyers, do you know what he tells Christie's?

Hey, the good news, there is no more garbage in my collection. That has been sold. The garbage, ladies and gentlemen, was dumped off in part in this best of the best collection and wound up in the hands of buyers like Mr. Koch.

Now you're going to hear the judge instruct you that the defendant Mr. Greenberg has certain defenses he will raise in this case. I will talk about what the evidence will show with respect to some of those. You are going to see that in this 200 page catalog buried way at the back is a boilerplate disclaimer in small print.

Conditions of sale and limited warranty and there is a paragraph there. It says, and I will read this, the authenticity of property listed in the catalog is guaranteed only as stated herein and otherwise all property is sold as-is without any representations or warranties by Zachys Wine Auctions or the consignor as to merchantability, fitness for a particular purpose, correctness of catalog, description, size, quality, condition, rarity, importance, provenance, exhibit history, literature, previous storage conditions or historical relevance of any property.

You're going to hear, ladies and gentlemen, that when a seller has information and knows that a buyer would like to know before spending top dollar, he is not allowed to hide --

MR. SHARTSIS: Your Honor, I object to the statement of law in the opening.

THE COURT: I will note to the jury that the instructions of law will come from me later. I am going to give, as I said, this isn't evidence in the case and you will get the instructions of the law later, but the lawyers are allowed to characterize the law.

MR. SHARTSIS: Fair enough, your Honor.

MR. HUESTON: You'll learn that you can't use this as a way to excuse not telling buyers the information they would want to know, like his collection is defective or counterfeit, like questions have been raised by auction house after auction house, rejection after rejection, and specific problems with many of the very bottles he wound up putting up for sale.

What else are you going to hear from the defense? You're going to see Mr. Greenberg claim victim. He will point the finger at Mr. Koch and say you know what, it is Mr. Koch's fault he bought my crummy wine. He is going to --

MR. SHARTSIS: I object. This is argument. This is not evidence. This is just argument.

THE COURT: Overruled.

MR. HUESTON: He will say that Mr. Koch should have looked through all the bottles, the 17,000 bottles himself and figured out that he was getting bogus wine.

Let's start with this concept I showed you. Mr. Koch will take the stand and tell you he read the cover letter, talks about best of the best, greatest of the greatest, best of

best and when he went into the best of the catalog, said nothing about photocopy label, the wine said there 1921, he believed it when he said that, name of the vineyard, believed it when it said that. Not a suggestion or hint there were any problems.

Let's talk about inspection, though. Let's say that Mr. Koch somehow thought, you know what, I ought to try to get into the warehouse where these 17,000 bottles are and dig through them with experts and find out if there were problems. It would have been practically impossible.

You will hear Mr. Koch and other buyers get that catalog around two weeks or less than two weeks before the actual buy. You will hear our expert takes an average of 25 minutes per bottle to check out the bottle and determine whether it may be counterfeit, be questioned or be genuine. Sometimes counterfeits, you will hear an expert say, I can look at this and, boy, in one minute or 30 seconds I can tell you it is fake. Sometimes that expert takes longer. On average, it is 25 minutes a bottle.

You will hear that Mr. Koch wound up buying 2,600 or so bottles in this auction from Mr. Greenberg. 2,600 bottles, and so we have done a little math and you will hear it in the trial. At an average of 25 minutes per bottle, ladies and gentlemen, it would have taken an expert 27 weeks just to go through the bottles that Mr. Koch wound up buying.

Of course, buyers don't just -- if you're going to be going through this inspection, you probably need to look at other bottles before you decide if you're going to inspect, if you're going to buy them or not. If he would have tried to look at the 17,000 bottles, if you put them end to end and put them up, they would wind up being 11 times higher than the Empire State Building. You know how long it would take an expert to go through that? Over 7,000 hours.

That doesn't make any sense to me. I think you can comprehend that. It comes out to be three and a half years.

You will hear Mr. Greenberg knew that even Zachys wasn't looking at all 17,000 bottles. Inspection was not practical, ladies and gentlemen. Moreover, it wasn't a hint to Mr. Koch that there is a problem we should be investigating. Mr. Greenberg's own words were designed to reassure the doubters, you need not be worried, turn away any sort of instinct to inspect.

Ladies and gentlemen, consider this: This is one of the bottles that were bogus in this case. You can have an expert stare at that bottle for five hours, and you know what? It is like the the old Johnny Carson trick, I am a little older, like the card to the head, he is not going to be able to know the problems in Mr. Greenberg's head that Royal Wines were inspecting and selling, that Mr. Greenberg himself concluded bordeaux wine locators was one of the worst counterfeiting in

the world. Chicago Wine Locators said take these bottle back and we can't sell them, and they wound up at the auction. He knew that, the experts didn't know that, and certainly Mr. Koch didn't know that.

Without that information, it is a lot tougher. The fair way is just to tell the information. That is what this case is about and that is what Mr. Greenberg didn't do.

What else? He blames not only Mr. Koch, you'll hear he blames Zachys, the auction house. I am going to spend a quick moment on this. Zachys Auction House, ladies and gentlemen, you will hear evidence they specifically asked Mr. Greenberg, hey, buyers want to know about those older wines you have. Can you tell me some information about those bottles?

You will see that Mr. Greenberg starts by saying you should have stopped where he started -- he starts and writes back and says, you know, words to the effect I can't really tell you much about those. But then he changes his mind and 10 minutes later he writes back and goes you know what, yeah, those bottles, they're from this place and that place. You know what he leaves out? He leaves out mention that a number of bottles were from Royal. That is no mistake, ladies and gentlemen. He has already -- he already knows that in the world Royal is like a firebomb. That rung the bells of a five alarm fire with Christie's. That rung the bells of a five

alarm fire with Sotheby's and Zachys. He holds that information back.

Zachys is supposed to be looking at these things, but he is not giving Zachys the information to focus their attention to maybe reject the wines or push them back just like you saw Kapon and the others did.

What else?

You're going to hear part of the defense is hey, this is just 24 bottles in this case. There were 17,000 bottles. Come on! It is not that many bottles. It is not a significant part of the collection. That is wrong, ladies and gentlemen. The facts of this case will show that these 24 bottles were some of the key bottles, some of the trophy bottles that Mr. Greenberg was offering to lure the buyers to come to the so-called best of the best, greatest of all time collection.

Right in that cover letter Mr. Greenberg reviews in evidence, you will see the word it has sizzle in the collection. The sizzle, ladies and gentlemen, were these old famous bottles of wine like this that he was selling. These were not just some odds and ends bottles.

In fact, Mr. Greenberg approves and promotes the specific mention of a lot of these famous wine makers, many of which are in these 24 bottles, Lafite, Latour, Lafleur, extremely rare magnums of bordeaux wines, much of what you have in this case.

In fact, these bottles, these 24 represent a third of the bottles Mr. Koch paid for at a price point of $10,000.00 per bottle. They're significant. As I told you before, just these 24 brought Mr. Greenberg a tidy sum of over $300,000.

The other thing you're going to hear from the defense is that Mr. Greenberg tried to segregate or keep separate the bogus and fake bottles and he tried to keep separate the questionable bottles so that they wouldn't get out in the stream of commerce, that people wouldn't buy them.

Well, ladies and gentlemen, he has got, you will see, a problem with that. He was caught. The evidence is going to show he was caught with his hand in the cookie jar. One of the labeled bottles that is definitely fake with the No. 41 gets out right into the others. If he segregated, he didn't do a very good job of it.

You're going to be able to consider something called recklessness, not that someone intended to do it, but was someone aware of what happened and said see if it if goes, see if somebody else keeps it. That is fraud, too. We submit that is recklessness if not fraud.

You will hear more of that and I have given you a preview of the evidence. If he segregated these questionable and bogus bottles, how come John Kapon was being stuck with all those bottles? You didn't hear Mr. Greenberg, as you saw in the e-mail, saying oops, it came out of my segregated

collection, bring them all back. He was bullying them to sell. The same with the Chicago Wine Company, these bogus bottles came out of his collection. The segregation doesn't work.

What else are you going to hear?

You're going to hear that Mr. Greenberg today when he sued has a new definition of what he says is counterfeit or fake than what he used when he was suing people for counterfeit wine. You will hear him suggest you know what, I am kind of a different person today. I now think that you really only can tell if something is counterfeit or not if you actually open the bottle and pour it out and taste it. That is the only way.

Let's start with a couple of things you're going to hear in this case, ladies and gentlemen. Two of the experts are Michael Egan, Mr. Koch's expert, and Mr. Gil Lempert-Schwarz, Mr. Greenberg's expert. You'll be hearing them at trial. There will be a lot of things they'll say. There are two things I want to highlight. They were both asked have you concluded that any of these bottles here are authentic? Any one of them?

Mr. Egan says no, not one of these is authentic. You know what his expert says? No, not one of these bottles is authentic.

And then they're both asked this key question. Should any of these bottles have been put up for sale? Any one of them? Mr. Koch's expert, you might expect him to say no. What

does Mr. Lempert-Schwarz say? No, none of these bottles should have putting up for sale. Out of the mouths of the experts, both sides in this case.

Here is what is the most important thing. Mr. Greenberg put in evidence earlier, he has fake wine summary notes, he became an investigator himself. What did he look at? Did he pop open these bottles and say I tasted it and I think it might be fake? You are going to see years of evidence where he is looking at labels, he is looking at corks, he is looking at capsules, this thing that goes over the top of the bottle.

He is looking at bottle shape. He is looking at the package, ladies and gentlemen, to figure out are there indicators of fraud here? Because if there is, something in this package that looks wrong or fake, this bottle is not going to be worth anything. A collector like Mr. Koch or others is not going to buy a bottle if it might be a fake. That renders it worthless.

There is also going to be a suggestion, ladies and gentlemen, that it doesn't really matter what the bottle and everything else is. All that matters is the juice inside. I will pass this to you. You can pass this around. You are going to hear from Mr. Koch, you know what he will tell you? That these bottles of wine are very special. These are links to history. This bottle that is now being passed around, look at the label. The year, 1921. Holding that bottle of wine for

a collector like Mr. Koch is like making a connection through time in history.

When you hold that in your hand, you are transported to another era. It is not just the juice in the bottle; it is the whole package. That is why these people are paying thousands and thousands of dollars, sometimes more than $10,000.00 for a bottle that is supposed to be the real thing.

If these collectors who treasure these things like pieces of art, if they find out the label appears bogus, the cork is wrong, it doesn't matter if the juice inside might really be 1921 Lafite. The package and the piece itself is wrong.

You'll hear Mr. Koch say if somebody tried to sell him this bottle of juice and say I can guarantee you that the juice in here is 1921 wine, sir, would you pay the same amount of money for this as you would pay for this? The answer is of course not because what you want is the entire package together. That is the art of the collector. It is not just the juice inside.

You will hear that the collectors, if they pop this open and try to take a taste, it becomes almost worthless. You can't sneak some of the wine out and put the cork back on and stick it back in your cellar for another 20 years. They don't get into the bottles. Everybody examines the stuff on the outside to figure out if it is a fake or not. If you see

indicators it is fake, it is not worth much. Ladies and gentlemen, sellers should disclose that so buyers have fair notice.

I just made reference to Mr. Greenberg had no problem talking about fakes and counterfeits himself when he thought he was being defrauded. You see in May and June of 2002 the quotes of wines believed to be fake and sold to Eric Greenberg. June, 2002, he tells an insurer, and you saw this earlier, he likened buying a fake to buying a fake Picasso painting.

In June 2002, $1.6 million of his wine may be fraudulent. To the wine club, if the bottle came from Hardy Rodenstock in Germany, no matter what it says, I believe it is counterfeit. He didn't say I had to open up the bottle and drink it. If it comes from that person, I know it is counterfeit just like Bordeaux Wine Locators. What he did not say was it was given to buyers like Mr. Koch.

June 2003 he hired an appraiser to determine whether or not those bottles were genuine, suspect or counterfeit. The appraiser wasn't popping open those bottles to drink them. They were looking at the same thing the expert in this case looked at. In May of 2003, he threatened a lawsuit alleging a fraudulent scheme where the defendants knowingly sold Greenberg more than $2 million of wine, of which all were sub or substantially all was counterfeit or fake.

December 2003, they are fake in my mind. I do not

accept these as real. Then again in 2003, he told a wine retailer he bought suspect or bad mags, big bottles from Mr. Kurniawan. These are so fake, he said, you have no idea. He told a wine retailer that bottles bought were counterfeit. He told another wine retailer in 2004, the 49 Latour you just shipped is fake. The bottle itself is suspect. Bordeaux Wine Locators is the worst counterfeiting operation in the world.

Finally, ladies and gentlemen, you're going to hear a suggestion of maybe these bottles didn't even come from Mr. Greenberg. There may be a suggestion we can't prove these came from the 17,000 so-called bottles of wine. You will hear from a witness in this case tell you Mr. Koch, unlike Mr. Greenberg, actually did carefully track these bottles, and there is a careful bottle inventory that shows the bottles coming in from Zachys and the bottles coming out here today.

Ladies and gentlemen, as I began in my opening statement, I conclude on the same note. This is a simple case that brings up the following question: Can a seller who knows of problems in his collection, concerns, issues, questions, can that seller pump up a sale as a best of the best and keep that information to himself, or does fairness require that the buyers be told those concerns so that the buyers can look at those issues and decide for themselves what the fair price is or whether they should just walk away.

Mr. Greenberg was no novice at selling wine. He was

in the business of selling. He had a choice to make here. What was this choice? His fair choice was to just put these bottles up and disclose the bad things he knew about them and his collection and let the buyers decide, you know what, don't sell them at all, just keep them.

You know we'll hear that he made another choice, and it is the reason why we're here. His choice was not only to not tell the buyers about the problems he knew, but to misrepresent his whole collection as a best of the best from an historic collector the likes of which is Alexander the Great.

That is deception, ladies and gentlemen. That is a form of fraud. That is why I will be back talking to you at the end of this case to return the only verdict, and that of liability in favor of Mr. Koch. Thank you for your time in this case.

THE COURT: Thank you, Mr. Hueston. Mr. Shartsis, opening statement for the defendant?

MR. SHARTSIS: Yes, your Honor. May I consult with one of my partners for a moment?

THE COURT: Sure.

(Off-the-record discussion)

MR. SHARTSIS: Let me ask a little bit about timing?

THE COURT: Sure.

MR. SHARTSIS: My opening will be around 90 minutes, and if you'd like, I can start, we can take a recess or take a

recess and I can just go through.

THE COURT: Would the jury appreciate a bathroom break? You can take a five-minute break and then -- why don't we do that. The judge can use a break as well. Why don't we do a five-minute break and then we'll start with defendant's opening.

(Jury excused)

THE COURT: You may be seated.

(Recess)

THE COURT: Please be seated. Ready for the jury?

MR. SHARTSIS: I am ready, your Honor.

THE COURT: Please bring in the jury.

(Jury present)

THE COURT: Please be seated in the courtroom.

Okay, ladies and gentlemen, we'll now have the opening statement on behalf of the defendant. Mr. Shartsis.

MR. SHARTSIS: Thank you, your Honor.

Let me introduce myself to you again. We all stood up. My name is Art Shartsis. What a strange name, S H A R T S I S, so at least when you're -- (inaudible) the plaintiff has raised a whole host of issues here. We all heard them. I am going to address them all. I am going to do it late in this statement so you understand we're not going to avoid talking about all the things that Mr. Koch has raised.

I think it is very important, though, that there are

things you understand that were not told to you by Mr. Koch's lawyer, so you understand what actually happened here, what this whole transaction was and what all the parties get. We need to know everything in order to make judgments.

One of the things we need to know is that the bottles in this case were sold at a perfectly properly conducted auction, consistent with the way auctions of fine wine are held. The auction was by Zachys. You didn't get much feature here, but Zachys is one of the very top wine auction houses in the world. It is not some fly-by-night organization, and Mr. Koch's own experts will identify Zachys as one of the very top auction houses in the world who ran the auction in question properly.

Now, after hearing that opening, it might be surprising to know that the parties actually agree in this case, they agree on some very, very important facts that you didn't hear about. One fact they agree on is that in order to do this auction, Mr. Greenberg submitted all of his bottles to Zachys, a top auction house, with top authentic experts and it was Zachys who carefully inspected the wine before it was put up for sale. As Mr. Greenberg didn't inspect it, he gave it to experts to inspect, and they did that.

The second fact that is not going to be disputed is that after the people from a top auction house inspected the wine, determined which bottles they thought were authentic,

they rejected some bottles because they had concerns about them. It was Zachys who picked the bottles that would be in the auction, not Mr. Greenberg. Mr. Greenberg was just the consignor. He is the man who went to the auction house and said I have wine I'd like to sell, and it will be undisputed that Zachys looked at the bottles and looked at each bottle individually, inspected each bottle and decided which bottles would be in the auction and placed them in the auction.

17,000 bottles were auctioned. You'll learn Mr. Greenberg had many, many more bottles than 17,000. His collection was not being auctioned. Information about his overall collection was not what was happening. Individual bottles were being picked out of his collection by experts who examined them for authenticity and then the experts decided which bottles to sell.

It is not going to be disputed that the auction catalog described for every buyer, even Mr. Koch, what the terms of the auction were, what the buyers could rely on, what information was accurate and what information they could not rely upon. The contract said that directly, in plain English and not in small print. It is not going to be disputed.

It is not going to be disputed that Mr. Koch made a particular point of not reading the auction rules and disclosures, went out of his way knowing they were in the auction catalog, said I'm just not going to read those.

It is not going to be disputed that Mr. Koch had an opportunity to have any expert he wanted look at any bottle he wanted before he bought it. These were very expensive bottles. He bought 2600 bottles for $3.7 million. He decided to buy a lot of wine. Only a few of those bottles were the fine and rare bottles in this case and he could have had an expert examine those bottles, but he chose not to do that.

It is not going to be disputed that Mr. Koch, and this will become clear to you later, but why this is so important, could have just picked up the phone and called Zachys and asked them any question he wanted about any bottle in the case. In fact, he had dinner with Zachys the night before the auction when he could have asked any question he wanted about any bottle, but he didn't. He chose not to do so.

Now, there are 24 bottles in the case. Mr. Greenberg did not believe that any counterfeit bottles were being sold in the auction at all. Mr. Greenberg knew that there was one bottle which he learned about after the auction that should not have been in the auction. Mr. Greenberg had a collection of over 70,000 bottles, and out of that collection one bottle got misfiled. This bottle made its way into the auction. I am going to explain to you in a couple of minutes exactly how that happened.

There was a mistake made during the Zachys review of the bottles, and the bottle slipped through. So you're not

going to hear us saying Mr. Greenberg didn't know there was something suspicious about this bottle and the sticker. He did. He has been open about that since the minute he learned this got into the auction. I will explain to you how this bottle got into the auction by mistake.

As I mentioned, Mr. Koch sort of had the numbers, 17,000 bottles in the auction. Mr. Koch buys 2,600 bottles. He spends $3.7 million. That's the auction. Mr. Koch's own expert, a man named Michael Egan sitting here in the courtroom, a very fine gentleman, a real expert in looking at the outside of bottles, in effect tasting bottles, you'll learn, for wine, has said that Mr. Greenberg -- and Mr. Egan is an auction expert. He worked at Sotheby's, one of the three top, three or four top auction houses in the country -- in the world, actually, he will say that Mr. Greenberg was entitled, entitled to rely upon the Zachys experts to examine the wine that he proposed before the auction.

Mr. Egan is going to say that after Mr. Greenberg gave the bottles to Zachys, he was entitled to rely upon Zachys to pick the bottles that should be in the auction and to pick the bottles that should not be in the auction. That will be Mr. Koch's principal expert witness who will say that.

You will learn that Mr. Greenberg had no control, no control over the final selection of the bottles for the auction. So now we know what auctions are. There are facts he

didn't get. Mr. Koch's lawyer explained to you what happened.

The auction catalog disclosed its rules. It disclosed rules that applied to all of the people who were participating, all the bidders, including Mr. Koch. That auction catalog offered the wine as-is. A little later I will talk about the as-is provision. Remember Mr. Koch's lawyer in one breath, very briefly read through a whole impression called a boilerplate, but it is not boilerplate, it is a contract. It is a contract that binds people, Mr. Koch and everybody.

As-is, for an example, because I know some of you have said you have done this, is the way items are auctioned on eBay. Those are as-is items. As-is means that there are no representations, there are no promises about the wine, there is no promise that the descriptions in the catalog are accurate, there are no promises about anything. That's why they give people a chance to inspect because it is as-is.

The catalog expressly does not guarantee anything about the wine, nothing, and that is what it says. It is buyer beware. Mr. Greenberg made no promises to Mr. Koch. This was an as-is sale that bound everybody who was at the sale.

Mr. Koch is an extremely experienced auction buyer, extremely experienced. He has spent tens of millions of dollars at over a hundred auctions of almost every kind of rare thing you can imagine, paintings, rare antiques, rare coins, fine wine, photographs, rare minerals, rare Indian artifacts,

rare western goods. There are two other, I can't remember there are so many, but I'll get them out as we go through the trial.

Mr. Koch describes himself as a whale, a funny word. In the auction business a whale is somebody who is widely known to spend large amounts of money at lots of auctions, a whale.

In just October and November of 2005 -- and this auction happened during those two months -- Mr. Koch bid at six different auctions by really then the big, the two from Zachys, two from Sotheby's, two from Christie's. In those two months alone he spent $6 million buying wine during those months, very experienced.

Now, he claims he specifically chose not to read the as-is contract in this case, did not read that provision, and even though the contract said wine is sold as-is without representations, you'll hear Mr. Koch claim, because I am going to ask him the question on the stand, that he believes that both Zachys and the consignor, Mr. Greenberg, guaranteed the wine as authentic.

But if he just read the contract, he would know there was no such guarantee. Mr. Koch claims Mr. Greenberg made representations to him about the wine, and we are going to find out during trial what those are since all the representations were expressly disclaimed.

The evidence is going to show Mr. Greenberg didn't do

that, and he didn't know that counterfeit wine was being sold. He didn't intend to sell counterfeit wine through the Zachys auction, and it is Mr. Koch who has the burden of proving that he intended to, not Mr. Greenberg. Mr. Greenberg doesn't prove he didn't. The plaintiff must prove his case, and he is not going to be able to because it is just not true.

Now, before going into what actually happened at the background, we need a little background so I am going to give you background about the fine wine industry and I will give you some background about how really difficult it is to authenticate this wine when Mr. Greenberg was not an expert as Mr. Koch's lawyer suggested.

I will tell you about the auction. Let's talk a little bit about what was happening in the fine wine market because to listen to the plaintiff, it was an amazing surprise there might be fake wine somewhere in the market. Nothing could be farther from the truth.

I am showing you a copy of the cover of Parker's Wine Buying Guide. This is written by a man named Robert Parker, whose name will come up, maybe the most famous wine expert in the world, Mr. Parker publishes broadly.

In 2002, three years before this auction, and this was out earlier than that, he writes some articles, published both here and elsewhere, the same article, about fake wine in the market, not a secret that there are risks with the big

collections. In this article three years before the auction, he says, "Space does not permit me to discuss all of the shocking frauds I have learned of or have been called in to help prove."

That is three years before the auction. What else does he say? "With the technology available today, authentic-looking bottles, capsules, corks, and labels can be easily duplicated, and for these counterfeits, only a person who knows the taste of the wine could tell if the contents were bogus."

What else do they know in the wine market years before this action? The top auction houses like Zachys and Christie's and Sotheby's, aware of the growing evidence of phoney bottles, are going to great lengths to authenticate the legitimacy of each wine they sell.

And that's what is in this case. I will explain to you briefly how Zachys did that. Before the 2005 auction, top collectors and top wine tasters were all discussing the growing problem in the market. This was not a secret that the large collections were turning up fake bottles or suspicious bottles.

There were more counterfeits appearing in the market. Before the 2005 auction, Mr. Koch himself knew that he had fake wine in his own collection. It was another big collection. Mr. Koch has 30 or 40,000 bottles of wine located in four different cellars, a very serious collector and he knew he had

fakes.

He had the most famous counterfeit bottles in the world in his collection. He had four bottles that he paid a half a million dollars for in 1988 that were supposed to have belonged to Thomas Jefferson, but it turned out when they called Monticello two decades later, Monticello said no, Mr. Jefferson didn't happen to own those wines.

Before the 2005 auction, Mr. Koch knew of at least three different sources of counterfeit wine in his own collection. Long before this auction, you'll hear this, all of the top auction houses knew that these large collections could or usually did have fake wine. They knew that because when they would do sales out of the collections, they'd look through the collections and they'd find some fakes, and they didn't sell the fakes. They sold the good ones after the inspection, but that meant that every time a collection was done for a consignor, the auction house would know there was fake wine in the collection, the very thing Mr. Koch's lawyer said should have been disclosed.

But no auction house, no auction house ever discloses that they found fakes in the collection because they're not selling the fakes. They've looked at the bottles. They're selling what they think are the real bottles. As a result, the disclosure of information that doesn't relate to the bottles that are in the case is not information they disclosed. That

is the kind of information that Mr. Koch's lawyer said should have been disclosed, but you'll learn none of the top auction houses do that because they believe they're only selling good wine based on a careful examination.

That's the supposed misrepresentation. Didn't say I had fakes back in the cellar, but I'm not selling sakes? I am selling bottles that have been examined by the top experts at the top auction houses. All the experts are going to agree that no auction catalog ever says there are also some fakes not for sale.

How hard is it to authenticate wine?

Six years after the auction Mr. Egan came in to look at the bottles for Mr. Koch to determine not whether they were counterfeit. I want to talk about this some more, but whether they were marketable. Not a case about counterfeits, apparently, but just how marketable the bottles are based on what they look like according to Mr. Koch. According to us, it is about what is in the bottle.

Mr. Egan looked exactly what the Zachys auction experts looked at. They all looked at the same thing. They all had the same information. In order to make their determination whether he thought the bottle was not marketable, he didn't need to know anything about where the bottle came from or who Mr. Greenberg had bought wine from or what else ever Mr. Greenberg had done. That was not relevant. The

relevance is what did the bottle look like, not what happened someplace to some other bottle.

Here is a primer on how you authenticate wine. We are going to go through this sort of fun, what experts look at to figure whether a bottle of wine is not marketable or whether or not it is possible that the juice in the bottle is not the actual wine that is on the label.

Let me go through one at a time. The cork. Why do they look at the cork? They look at the cork because the cork has stamping on it. It is branded, branded. The branding is the name of the Chateau and the date. The cork may also be shrunk, may be old, may be deteriorated and so they look at that to figure out is the branding complete. By "complete branding," I am talking about both the name of the Chateau, the producer and the date. Is the cork complete?

Does the cork look like it is too old for the bottle or too young for the bottle? Maybe that is something you need to look at. They also look at it for condition. Has it shrunk? They look to see if the cork has been manipulated, somebody scraped off the date and added another one. I will show you some of that in a few minutes.

Then they look at the capsule, the portion that surrounds the bottle. These are stripped capsules. I will explain that, but the full capsule or portion of the capsule they examine it for age, material, what it is stamped on it, is

it dated, to see if the capsule is real. They look at the fill level. How high is the wine? Old wine shrinks, evaporates, leaks, the fill is down. If they see an old bottle with the top filled, that raises a question has somebody refilled the bottle or it is just not possible it was that way or maybe it was kept in the world's most perfect cellar. The experts study the filler, the color of the wine. Older wine tends to lose its color. They study the sediment, the gunk in the bottom of the bottle after all those years.

The experts are so good, you will hear Mr. Egan describe there is a certain kind of sediment from a certain kind of Chateau for a certain year, he can tell when he sees it, not something that most people know.

(Continued on next page)

MR. SHARTSIS: They look at the glass. Very complicated. Is it blown glass? Is it molded glass? Is it two-part molded? Is the glass striated? What color is it? 250 years that wine has been made, those bottles have changed. And you have got to be an expert in looking at all of those things to figure out, is this bottle probably a bottle that's about the same age?

And then you'll have the problem that after World War One and World War Two in France, there were bottle shortages, so they kept reusing bottles. Hard to tell which bottle goes with a correct bottle of wine.

And then at different times they would stamp the sides of the bottles, 75 centiliters, 150 centiliters, and the bottles eventually became required by law, but before that it was random. Some bottles have it, some bottles don't. The experts can try to tell you what that means.

The punt, which is the bottom of the bottle, changes over the centuries. Different design. Different design, different domain. Got to be an expert. Got to look at thousands of punts to know what you're doing.

The label, very important. I'll tell you two facts about labels that you'll hear. One new to me. I'm just learning about this. Hard to believe. Until 1973 -- just think about this. Wine has been made for 200 years. Until 1973, there was no standardized label for a bottle from a major

chateau in France. Not a single one with the exception of Mouton Rothschild. Not in this case. One of them started in the '20s, the rest of them started after 1973. Not a standardized label. So the wineries themselves might use different labels. Lots of different wine was sold through middlemen, called negociants, who would buy it by the barrel and bottle it themselves and put their own label on it. 1973.

Let me give you a great example right in this case. So I have here two bottles of Chateau Lafite. Not too hard to tell that they're not the same bottle. Right? Move up so you can view those. See it? The one in my right hand, it's yellow. No surprise. Nobody is hiding what that label looks like. One on the right hand *[sic]*, off white. Everybody have a good chance to see it?

So what does that mean? This bottle is a fake. Now I don't think anybody, if they knew that the label should look like this, would think this is a real label. It's yellow. It is not a Chateau Lafite label. Mr. Koch has 3600 of these in his cellar, all of them with the off-white label. He bought this bottle. And his expert, Mr. Egan, looked at the bottle, and he didn't say, "Oh, my god, I looked at that bottle, phony as a $2 bill." What he says is, "Well, I looked at the bottle and I noticed that the label was yellow and that meant I should examine the bottle further to see if it might be inauthentic." This label alone does not even establish that the bottle is

inauthentic in the expert's view. Not so clear. Not so clear.

That's labeling. Very difficult.

There are other labels on bottles. Importer labels. Negociant labels. You'll hear Mr. Egan describe there's one -- one supplier in Belgium who he claims probably very few people have ever heard of, and he looked at the label and he thought it was sort of askew. And he said: I know that label. Usually it's perfectly horizontal, so this might be a problem. That kind of information, that kind of training is required. That's what Zachys examined for. That's what Mr. Egan examined for.

Mr. Egan will tell you, it took him fully ten years, eight hours a day, fifty-two weeks a year, working with the other experts at Sotheby's to become good enough to figure out whether a bottle is real. It requires a real expert. He's looked at tens of thousands of every one of those elements, for chateau after chateau. He lives in the Bordeaux region of France where the bottles come from. He uses that knowledge. You'll hear him say he knew the size of vineyards in 1920 and that enabled him to know whether a label was the right size.

Mr. Greenberg's never even been to Bordeaux. Mr. Greenberg has never had the training. Mr. Greenberg, I'll explain to you -- he looked at corks, and I'll explain why, later. But Mr. Greenberg was not capable of knowing what the experts at Zachys knew and looked for.

One of the reasons it's so hard to understand what goes on in the bottles is this process called reconditioning. You'll hear about this. And I'm sorry to go on so long. It's a whole world here. Reconditioning is when bottles get old. Corks shrink, wine leaks out, and the fill drops in the bottle, so a couple ounces may be gone from the bottle. What do they do? It's amazing. They open the bottle, they take out the old cork, they add some more wine. They add more wine to some famous old bottle and then they call it a famous old bottle and it's considered real. And people like Mr. Koch and Mr. Greenberg spend tens of thousands of dollars for bottles of wine that they know includes some unknown wine used to top it up in some unknown amount and it may have been done some unknown number of times. But when that happens, new cork, new capsule, sometimes they replace the label because it's gotten beat up in the cellar or it's rotted. The bottle changes. So the idea that the average collector's going to look at these and say, "Oh, I know that bottle's fake," just is not true. It is not the way it is.

Now Mr. Koch's counsel mentioned that there are facsimile labels on these. Sounds terrible, right? Well, this sure is not an original. And it was pretty obvious. Nobody trying to defraud you, trying to sell a blue Chevy and delivered a red Chevy. Hard to pull that off. Nobody trying to defraud you with a yellow label on a Chateau Lafite bottle.

But at Zachys, in the catalog sometimes they -- they show the label. The label is clear. You can tell those labels if you look carefully, if you have an expert look. Some people -- many people are not experts, can't tell, but the experts can tell. They can look at that.

Now you're going to learn yet about other complications but I've gone on too long with this. But one thing is, it is really difficult to determine whether a bottle of wine is counterfeit by just looking at the outside and not tasting it. And understandably, Zachys, Christie's, Sotheby's do not take the collector's word for it that the bottle is authentic. They look at it themselves and they examine it. And if they don't think it's right, they give it back to the consignor. If they think it's right, they put it in the auction.

To determine whether the 24 bottles in this case were counterfeit, Mr. Koch did more than any auction house and any collector has ever done. He brought in five experts. Three from Europe, two from the United States. It took him four years. Four years. The work took four years to figure out whether they thought these bottles were not counterfeit. Scientists that no wine companies ever used. You'll hear about it. Not very easy. But not one of the five of them needed to know anything about Mr. Greenberg's cellar. They didn't even need to know that Mr. Greenberg had sold the wine. Or where

the wine came from. All of the things that Mr. Koch's lawyers argued that Mr. Greenberg withheld from Mr. Koch, not one of those things was necessary for the experts to come to their conclusions. Not one of them. They didn't care about that information.

Now I mentioned, after all their work, none of them know what's inside the bottles. Not one of them can tell you this bottle is not filled with Chateau Lafite 1945. They can't do it. The only way to know that is to take what's inside the bottle, to taste it, or you can actually do chemical tests on some bottles under some conditions. Mr. Greenberg's expert, who is also a very, very experienced expert, Mr. Schwartz, is going to tell you that tasting old and rare wine for authenticity is an accepted practice. Remember right in the beginning, Mr. Parker said, you got to taste it to see if it's bogus.

Mr. Koch, to prove his case, was free to have any expert taste any of these bottles, but he didn't. Mr. Greenberg has always been willing to have these bottles tasted to see if they're real. But they haven't been tasted. One of Mr. Koch's own experts, a man named Edgerton, the person that selected the bottles to be in the case, has done exactly that for other people. He has brought Robert Parker in to taste the wine to see if it's real.

And let me suggest here, there was a point made about,

well, you have to open the bottle and take some wine out to taste it, and then you'd ruin it. Really, a couple of points. One is, Mr. Koch claims that these bottles are fake. I could drop it on the floor, apparently, and it wouldn't matter. These are all supposed to be fake and worthless. So if they're worthless, why don't you taste them?

And moreover, we know that reconditioning replaces a couple of ounces of wine in the bottle. So you could take any of these bottles, pour out a couple of ounces, have Mr. Parker or other experts taste them, and then just replace the wine, the same way they replace a reconditioned bottle. You can taste these things, but they haven't done it.

Now you will learn that Mr. Koch himself has tasted a bottle of 1921 Petrus, like the bottle in this case, and based on taste alone, concluded the bottle was counterfeit. So we know it can be done. We know Mr. Koch can do it, and he did that before the 2005 auction.

So now let's talk about the auction. Let's talk about what happens.

So the story starts with Mr. Greenberg. Mr. Greenberg was a very fortunate man. Before he was 40 -- he didn't start with much in life. But before he was 40, he founded two internet companies, became wealthy. No question. Became interested in fine wine and studied what wine tasted like and what the good wine was to buy. Did not study how to

authenticate wine. He went into what can only fairly be described as a buying frenzy. He ultimately bought 75,000 bottles of wine. Just a gargantuan collection.

And while Mr. Koch's lawyer got up and showed all the things Zachys about what a great collection, Sotheby, Sotheby said this was one of the great wine collections of the world. And Sotheby's said that when they knew it included fake bottles. They knew they had fake bottles when Sotheby's wrote that. And I'm going to show you what Serena Sutcliffe wrote about this, and it was exactly the same thing Zachys wrote. This was one of the great collections of the world.

Mr. Greenberg bought his wine from a number of suppliers, lots of suppliers, to get 75,000 bottles. And he did that -- when he did that, he thought he was buying authentic wine. Why would he not buy authentic wine? If he thought it was fake, he wouldn't buy it. So he did in fact. But he put the cellar together so fast that he didn't have the tracking system. He couldn't say that he bought this bottle from that supplier and this bottle from that supplier. He owned 30 of these bottles, bought from a handful of suppliers. He can tell you who the suppliers were, he can tell you what the bottles were. He couldn't track this bottle to that supplier. He could do it for a few bottles, but mostly, for the 75,000, he couldn't.

Now by 2001, he did start to organize his cellar. And

so what did he do? He hired a part-time cellar manager, Thierry Lovato. You'll hear him testify by video. And he had Thierry Lovato prepare an inventory. So he had a 140-page list of 70,000 bottles, listing all the types of bottles he had, but not by supplier.

And then he decided he wanted to start auctioning off his wines, 2002. That's where the real story starts, with Serena Sutcliffe and Sotheby's. And the reason he wanted to do that, there were two reasons. He had bought way too much wine, no question. And he also began to view the wine as assets. He'd been a good buyer. He bought good wine. He wanted to start selling some of it and selling it for a profit. Nothing wrong with that.

So he now did what experts do. And this -- Mr. Koch will tell you, they do this too. He started culling the collection. Collections are collections. You want to have all the best stuff. And he bought so much, he started getting rid of the much less attractive bottles -- bottles that had torn labels or torn capsules or low fills or other reasons, but left desirable bottles. And ladies and gentlemen of the jury, he called those wines garbage. Garbage. Because they were less desirable. We heard Mr. Koch's lawyer say: Oh, garbage meant he was getting rid of the fakes. Garbage was the culling. It was the culling of wine. And you will hear Mr. Lovato say that when he would pull the bottles to sell, he would always pull

the less desirable ones. He'll get a good price, but Mr. Greenberg would be left with the most physically attractive bottles, that it had nothing to do with whether those were fake.

So Mr. Greenberg interviewed Sotheby's and Christie's and Zachys, and Mr. Koch's counsel said: Oh, they refused to sell these wines. There's no question that everybody refused to sell wine that, after they inspected, they thought wasn't salable, that there was something wrong with them. But that -- that's okay. It's obvious, because that's what the inspection process is. It's getting rid of the wine from the auction that the auction houses won't sell. Sotheby's in fact told him he had bad wine in his cellar, and that's the first time he heard it. And I'm going to describe that whole thing. This is very important. I'm going to do it a little later because it breaks up my story. But I'm going to talk about Sotheby's and I'm going to talk about the wine company that was involved, Royal Wine Merchants.

So he talked to Sotheby's, Christie's, and Zachys. Did not like -- Sotheby's contract he thought was completely one-sided. Didn't like it. Christie's, he didn't like the head of Christie's wine -- wine auctions in London, Michael Broadbent. Had been unpleasant to him at one point. He just wasn't going to do business with Christie's. So he picked Zachys. Zachys, a top -- top-rated company, actually had been

innovative. These other auction houses, you know, they all sit in a row and it looks like a big schoolroom and everybody raises his paddle with a number and the guy pounds the table with his mallet. Zachys got smart. They started doing the auctions in expensive restaurants with big wineries. More like a party. People come in and drink wines, see their friends, and they bring the auction right in the middle of that restaurant. Not a surprise, they were getting really good prices. Not a bad marketing move to do. That's what Zachys did.

Mr. Greenberg had bought wine from Zachys because he thought they sold good wine and reliable wine, so he liked that. And he liked their formula. And I wanted to make a very important point. Mr. Greenberg bought wine from Zachys after 2005, because he knew how careful they were in pulling out questionable bottles. Put his money where his mouth was after the 2005 auction. Kept buying at the Zachys auctions because he thought they were doing a good job and they were reliable. He'd seen them pull the wine out of his own collection. So he picked Zachys.

And another incredibly important thing, something Mr. Koch's lawyer didn't tell you. This wasn't Mr. Greenberg's only auction with Zachys. He had six auctions with Zachys before the auction here. Six auctions where he could see that Zachys was removing wine that they thought was questionable.

He knew they were going to do that. And he kept going back to them because he knew they were going to do that. He did not want to sell bad wine and he knew Zachys was really careful about keeping it out.

So let's see what happens at auction. I'm going to take you through the four steps of an auction.

First, as I mentioned, the consignor, Mr. Greenberg, proposes the bottles to the auction house. He says: Here are the ones I want to do. And here's how Mr. Greenberg did it. Took out his 140-page list, and he'd go down the list. This is probably our best example. He said: Okay, I got 30 Chateau Latour 1928. I want to sell three. He'd write three. Or I want to sell six. I've got 10 Lafite, whatever it is, want to sell two. Got Chateau Petrus, six of them, want to sell one. And he just marked that list, handed it to Thierry Lovato. Very important. Mr. Greenberg did not go pull the bottles from the seller. He didn't go pick bottles, oh, this is a bad one, you know, I'll just pass this one off. He had Mr. Lovato select the bottles, and Mr. Lovato culled the bottles. You'll hear that testimony. That's how they got selected. Greenberg's hand wasn't even in it at the point of selecting the bottles for Zachys to look at and then decide. There are a few times Mr. Lovato would come back to Mr. Greenberg because there were only two and give him a choice. But generally Lovato was the one who picked the bottles.

Then, as we know, the experts examined the bottles. That's what they do. The 2005 auction -- well, as I said, they had worked with Mr. Greenberg, six times, six different auctions before the 2005 auction. So in the 2005 auction -- and in those auctions Mr. Greenberg understandably believed -- the claim here is he was reckless. He was reckless? He gives his bottles to the top experts in the world to examine, and he's reckless? He understandably believed that the bottles at sale were just fine because independent experts had looked at them. Hard to be less reckless than doing that.

Now I mentioned before -- I don't want to go over it too much. Mr. Egan said this was the correct procedure. Mr. Koch's own expert says he's following the correct procedure by doing this. And the evidence will show that Zachys made every decision to select the wines based only on the outside of the bottle, did not need information about where the bottle came from, where Mr. Greenberg had gotten it. In 2005 -- and you will see they do ask Mr. Greenberg at one point in 2005 about the provenance, or the source, of the wine, and they want it because of pricing. They've already picked the wine. You'll see that evidence. That wine is in. They just want to see if they can put something in the catalog saying this wine came from so and so. But Mr. Greenberg was always clear, he couldn't match the bottle to the source.

In 2005 Mr. Greenberg decided to do an anonymous

auction. Mr. Koch's counsel suggested: Oh, my goodness, it's anonymous. Well, it sure wasn't a secret because his name did not appear in the auction catalog. And anonymous auctions are very common in the auction business. There are no secrets here. If Mr. Koch wanted to know who was auctioning, he could have called up Zachys and asked, and if he really needed to know the name and Zachys didn't give it to him, you know, he was free not to buy the bottles. Nobody forced him to do the auction. So he knew it was an anonymous auction.

And Mr. Zacharia went to California -- it was so important, the president of Zachys goes to California to look at the old and rare expensive bottles, and he takes with him a man named Fritz Hatton. Who's Fritz Hatton? He was the chief auctioneer for Zachys, but most importantly, he had been the head of Christie's wine auctions in the United States. This man was a real expert. And Zachys knew exactly what they wanted in him. It wasn't a situation where you can slip stuff through. And here it was. Hatton, on July 23, 2005, sends this e-mail to Zacharia and to Michael Jessen, another individual who goes to do the auction, and he lists exactly the bottles that they should pay the most attention to, because remember, this is 2005. Parker writes this article in 2002. People know there's bad wine in the marketplace. They know it. This is not a secret to anyone. And so here we have Fritz Hatton saying: You got to really look at these bottles. And

this will cover all the bottles in this case.

And I want to point one thing out, because it covers a large number of them. Most concerned with 19th century wine. And back, earlier. From 1870 and back. But most importantly, most concerned with Right Bank mags, 1900 to 1961. What's a Right Bank mag? You go through the area of Bordeaux, down a river, on the Right Bank are a bunch of chateaus. That's where the Right Bank mags come from. Magnum, double-sized bottle.

So they know exactly what they're going to look at. There's no secret here.

And they look at it. How do we know they look at it? Because here's the authentication notes. They look at it, they make a note. Looked at it, looked at the cork, looked at the capsule, looked at all the things that Mr. Egan looked at, and they decide, some bottles are in, some bottles are out. Not selling the ones that are out.

Now a mistake was made. A mistake was made. And let me show you exactly where the mistake is. Shows that you're supposed to look at Latours from 1900 to 1929. This bottle with the sticker, 1928, supposed to look at it. That's what it says. But it didn't happen. Because on the authentic -- authentication notes that show what they looked at, they miss it. They just plain miss it. In California. Mr. Greenberg understood they'd looked at it twice again when it got to New York. But in California, Mr. Greenberg was with them in the

cellar, and they'd asked him questions, even opened and tasted a wine while they were there. And if they'd asked Mr. Greenberg, you know, we've got this sticker on this, what does it mean, Mr. Greenberg would have been in a position to tell them, because as soon as he learned the sticker was on the bottle after the auction, he said that was a mistake. Told everybody, it was a mistake. So it gets in by mistake. One bottle out of a 70,000-bottle cellar, one bottle out of a 17,000-bottle consignment. The least expensive bottle in this case, $2800, less than 1 percent of Mr. Koch's claim.

So what's the next thing that happens? They now pick the bottles, they take them back to New York, they now create this beautiful auction catalog. And I'll tell you, it is beautiful. And it's talking about one of the best collections in the world, because it is one of the best collections in the world. And here's a page out of the catalog. And they give descriptions. In this case, "capsule cut to reveal fully branded cork." What branded means, date and the name of the chateau. These descriptions say nothing about the source of the wine. Not a thing. If Mr. Koch wanted to, he could have asked. And if he didn't get an adequate answer, he could have not bought. Nobody was forcing him to buy. He knew it was an anonymous consignment but he didn't ask who the consignor was.

Before the 2005 auction, Mr. Koch knew he had three suppliers who sold him fake wine. Hardy Rodenstock, Farr

Vintners and Wine Discovery. He knew it. But he never asked Zachys: Hey, by the way, any of this wine from Hardy Rodenstock, Farr Vintners, or Wine Discovery? Information he now claims concealed to him about the fact that there were bad sellers of wine. He doesn't do it.

Mr. Koch is at dinner the night before the auction, with Zacharia and others from Zachys. Could have asked. Not only that. If he's so concerned, he could tell them. He could say: You, I really got to tell you, there's bad wine out there and I know it because I bought some bad bottles. There's three suppliers. Doesn't tell Zachys. Gives them no warning.

By the 2005 auction, Mr. Koch had tasted a 1921 Petrus magnum, one of these big bottles. Knew it was fake. You have to understand this. He tasted the bottles. He knows it's fake. In this auction, he buys another 1921 Petrus magnum for $33,000, knowing he'd just tasted a fake one, without asking to look at the bottle, without asking did it come from Wine Discovery, where he had bought the other one. Does not ask a thing. Does not even warn Zachys that he knows that there are fake 1921 Petruses there. Doesn't do any of that. Spends the money. And you will see that Mr. Koch was already suspicious about the '21 Petrus that he bought at the auction before he took delivery, before he ever saw the bottles.

Now conditions of sale. Part of the catalog. Mr. Hueston read this, and it was very impressive, but this is

the contract. All bound by contracts. It's in writing and you get to read it. Let's look at what it says. "Authenticity of the property listed in the catalog is guaranteed only as stated herein and otherwise --" And the judge will describe to you what this means, the court determines the meaning. The meaning is, nothing has been warrantied or guaranteed about these bottles. All property is sold as is. It's got to be sold as is. These are used goods. These have changed hands over centuries. Nobody knows where they've been. Nobody knows where they've been stored. Nobody knows if they sat out in the sun for a month somewhere. It's got to be as is because nobody knows the history of these bottles. And it's sold without representations or warranties by both Zachys and the consignor, who's Mr. Greenberg, as to the merchantability. Merchantability is very important. Because Mr. Egan is going to testify that his definition -- his definition of whether wine is counterfeit is whether it's merchantable. He's going to say: Boy, I don't think this stuff is merchantable. And if Mr. Koch had read the contract -- you can decide whether or not he did -- he would know that there is no promise of merchantability in the contract. This is a contract. This is a writing. This is something that binds people. You don't get to say: Gosh, you know, that looks like boilerplate to me so I don't have to do it. This binds everybody. And Mr. Koch was bound by this.

And this goes on and says, we can't rely on the correctness of the catalog. Correctness of the catalog has all the information about the bottles, the descriptions, the size, the quality, the condition. It is as express as it could be. And this is a buyer who had bought at over a hundred auctions, spent tens of millions of dollars. This bound everybody, even Mr. Koch. Mr. Koch, he chose not to read it. Knew it was there, chose not to read it.

Now you have to understand, Mr. Koch is claiming that Mr. Greenberg misled him because Mr. Greenberg didn't make full disclosures, at the same time Mr. Koch is telling us that he made a point of not reading these disclosures. Think about that. Think about that.

In fact, regardless of whether Mr. Koch actually read this, Mr. Koch had an agent. Mr. Koch didn't want to spend two days at the auction lifting a paddle with a number. Didn't want to do that. He hired a man named Brian Orcutt, who had worked for him before, been one of his employees. He paid Mr. Orcutt $158,000 to sit at two days of auctions and lift the paddle for him. And Mr. Orcutt was experienced at representing people at auctions. And here is one of the two auctions Mr. Orcutt represented Mr. Koch at on behalf of Mr. Koch. "I agree that I will bid subject to, and hereby agree to be bound by, the conditions of sale printed in the catalog for this sale." Binds Mr. Koch just like everyone else.

The other thing that the contract did, twice it says you should inspect this. Mr. Koch's counsel went through this interesting exercise. It would take 85 years for him to inspect all the bottles, or less. But the fact is, these are rare and old. There are a couple of dozen of these bottles. Just a couple of dozen. So an intelligent businessman -- and no one would dispute that Mr. Koch is an intelligent businessman -- would clearly be able to have an expert inspect a few dozen bottles. He could pay Mr. Orcutt $158,000 to sit at the auction and raise his paddle. Mr. Egan would have cost a couple thousand dollars, at his billing rate, to have just looked at old and rare bottles. And more importantly, Mr. Koch had inspected items in other kinds of auctions. He'd already done this. He'd brought in experts in other auctions to look at items. And Mr. Egan is going to testify that based on his knowledge mostly about how many acres were in vineyards in the '20s, nevertheless, that he could have looked through the catalog and, in a matter of moments, in his opinion, would have determined that 15 of the 24 bottles in this case were not marketable in accordance with his opinion. Could have just thumbed through the catalog and said: Oh, my goodness, that label is too big. There's a problem with that bottle. That's all that was needed in this case because Zachys invited this. Why? Because the wine was sold as is. It's like buying a use car. Take it to your mechanic. Wine was sold as is.

Now then we get to the auction. The goods were sold. And that's all that happened in this case, in terms of what Mr. Greenberg did. Did the right thing, followed what Mr. Koch's expert said, put them for sale.

Now let's talk about Sotheby's. Let's talk about Sotheby's telling Mr. Greenberg that he had fake wine in his cellar. Let's see what that leads to.

Excuse me one second.

In 2002, he was trying to pick an auction house. Sotheby's shows up. And so there's Serena Sutcliffe. Does a brief tour of the cellar, spots a couple of bottles which she thinks may not be authentic. She points it out to Mr. Greenberg. He says, well, let's taste it. I got to taste it to see if it's real. He tastes it and in fact it's real -- excuse me -- it's fake. It's fake. He agrees. He tasted it and says, this does not taste correct for this kind of wine. So he does that. She takes him aside and says: You know, by the way, you know, you mentioned that you buy wines from a bunch of people, and one of them -- one of them is Royal Wine Merchants, and I think those guys sell fake wine. And that really bothers Mr. Greenberg that what he thinks is a magnificent collection nevertheless could have fake wine.

So she spotted a couple bottles in his cellar. She knows he buys from Royal. She believes Royal is an unreliable source. And so what does she do? Does she say: Well, I want

to get as far as away from this collection as possible, I don't want to have anything to do with you, I'm never going to sell your wine? No. She pursues him about as hard as she can because she wants to sell bottles out of the collection, the way Zachys did. And we know that because she says -- after knowing these facts, she sends him a proposed catalog. They write up the catalog. And what does she say? "Just occasionally in one's life, an extraordinary wine cellar comes to market. The Eric Greenberg Collection is such a cellar." The same thing that Zachys said. And she knows to a 100 percent certainty that he's got fake wines in his collection and to a 100 percent certainty that wine in that collection comes from Royal, comes from Royal, and she knows Royal sells fake wine. Then she says, "This is the mark of a collection amassed by a true wine lover and seeker of perfection." She never says, to the potential buyer: Oh, I just want to tell you, you know, there's some fake bottles back in the collection. We're not selling them, but we think you need to know that. That never happened because it never happens, ever, with auction houses. Very important point. Here is a second auction house doing exactly the same thing that Zachys did because their goal would be to inspect the bottles. And you will actually hear Ms. Sutcliffe testify. She's from London, going to be here by video. And she's going to testify that she would inspect bottles regardless of whether

they were from Royal or anybody else. And she would use her judgment looking at those bottles and what she called the intrinsic quality of the bottle, deciding whether to put it in the auction or take it out of the auction.

So once Mr. Greenberg heard that, he went nuts, frankly. Spent nights in the cellar looking at bottles. And he made a sort of crazy assumption. He began to find bottles that had problems. And if he found a bottle that had a problem, he assumed it was from Royal, even though he actually couldn't match all of the bottles to all of the suppliers. But he made the logical or illogical leap that she told him Royal sold fake wines, if he found a fake bottle that was one he had of a type he bought from Royal, must be Royal.

So he then creates -- he does one thing first I need to point out. He strips the capsules on the bottles he looks at. Very important. You see here. These capsules are stripped. That makes it really easy to look at the cork. In 2002, 2003, and 2004, and 2005, very few collectors stripped the cork on the capsules and put them up for auction. This made it easier for the auction house to look at the cork to see if there was a problem with the bottle. It made it easier for somebody inspecting the bottle, a buyer looking at it and seeing if there was a problem with the cork. This was not the mark of somebody who was trying to push off counterfeits. This was exposing what Mr. Greenberg believed was the critical

element in determining whether a bottle was counterfeit, and almost nobody else was doing what he was doing in this auction. And you'll hear experts talk about the significance of that.

So he did these notes. You saw these notes, the Royal Wine Fake Summary Notes. He put -- he finds about -- between 2 and 300 bottles in his cellar that have problems. And here's just one example. '28 Petrus mag. It's a type of bottle in this case, but this is not the bottle in this case, because he had a lot of these. This one, he writes down what he sees. "Badly obscured cork, no visible date on cork, no domain markings." Right? Doesn't show the chateau, doesn't show the date, doesn't show anything. And he does that for over 200 bottles. And in a few minutes I am going to show you, none of those bottles are in this case. None of them. Because we're going to track those descriptions to the bottles in this case.

So he did another thing. He had an assistant prepare a spreadsheet -- and I'm sorry you can't read this. You'll see it physically. I'll sort of point it out here. Here he has every invoice from Royal, all the wine he buys from Royal. And over here he notes whether he thought it might be fake. Called Fake Wine So Far. Can't see it from there, and I'm sorry that the graphic isn't better.

And here's what he did with that list. First, he did not suspect two thirds of the wine. You heard Mr. Koch's lawyers say, oh, he knew substantially all the wine was fake,

from Royal, etc. This is the record of what Mr. Greenberg saw. Two thirds of the wine under the Fake Wine column is blank because he didn't suspect it. So that is the evidence on what he thought he got from Royal. Two thirds of it, fine. Then he recorded the stuff I just showed you on the notes. Where he had notes, he marked those here. He marked them with dollar bills, the amount he'd spent. Still some columns to go. Well, then he made a guess. Maybe not the smartest thing to do, but he made a guess. He said, well, you know, I have other bottles that are like the ones I think are fake so they may be fake, and he puts them in a guess, or he guesses at it and he records the amount of the sale. Then he makes another guess, even more low grade. Here's the last guess, which is, I don't know, and he puts a question mark. These are all the bottles from Royal. And this gives us really a guide to bottles from Royal and bottles in the case.

So we now know what he looked at and what he summaried, right? That's the basis. What does he do with this? Makes an insurance claim. Sends this list, question marks and all, got blanks, shows exactly what he's concerned about and what he's not concerned about. This just goes to the insurance company. And something which cannot be a surprise to any of us, they denied the claim. That's what insurance companies do. Didn't go anywhere. Mr. Greenberg thought he would submit it to the company, they'd bring in experts, the

experts would figure it out. Instead they just said no. He hired a lawyer, Mr. Coles, who's with us at counsel table, and made a demand on Royal, sent a draft complaint, wanted his money back. In the end he settled for about $300,000 or so, and he winds up stuck with some of the bad wine. It's a compromise. He doesn't want to be in litigation. Life's too short for that. And so he compromises with Royal.

So what happens to the bad bottles? Pretty important. Couple things. If he has a bottle in his cellar, he's not sure about it, he takes that bottle which is in the shelf like this and he turns it around and puts it in like that, punt out. And he has bottles today, he's going to tell you, that when you walk into that cellar, punt out. Thierry Lovato takes some of the bottles that hadn't gone back to Royal, moves them over to another part of the cellar, segregated racks. And then some of them -- there were whole bunches of bottles of the same type, not good. Puts those in boxes, puts them in another room. By the 2005 auction, instead of pushing bottles into the marketplace, Mr. Greenberg has millions of dollars of bad bottles segregated. Over 300 bottles in his cellar taken out. And the suggestion that he's reckless in the auction, when he is removing the bottles from circulation, is something that you're going to have to judge as a jury. And as I said, somehow one bottle got in. No one denies that.

Mr. Greenberg was not secretive about his problems

with Royal. Not secretive at all. Sotheby's knew about it, Christie's knew about it, Zachys knew about it. Mr. Greenberg told Robert Parker about it. He said: Hey, you know, I bought wine from Royal. I think it's fake. Talked to the number one collector in the United States. Talked to the number one sommelier. You know the pretentious guy at a restaurant who tells you what wine you should have. Mr. Koch's own expert, Mr. Edgerton, is going to say, this was widely known. No effort, no effort to conceal this information from anyone. None.

Now we're getting down to the real heart of the case. Now we're going to talk about the 24 bottles and what they are. We know that there -- Mr. Koch's counsel mentioned 14 bottles that were part of the notes that are also in the case. He's got to be able to link those two things up. He's got to link the notes with the bottles in the case, right?

So I got our 24 bottles here. Let's look at those 14 bottles he mentioned. None of these bottles were sold to Mr. Koch. Not one. And let me tell you how we know it. The 14 match 14 that are in the case in terms of vintage and date, but that's where the match ends. And let me give you an example. One of the bottles in the case is a 1950 Chateau Lafleur magnum. When Mr. Greenberg looked at this bottle, he made careful notes and he said, "Date scraped off, newer looking cork." There's no date on the cork that Mr. Greenberg

looked at. Remember, he has lots of these bottles. The bottle in this case is not the bottle that he looked at. The bottle in this case, when Zachys looked at it and it came through Zachys to go through auction, "Capsule cut to verify vintage." Those are not the same bottle.

Look at another bottle. Excuse me. Chateau Petrus, 1928. You'll see this bottle is in the case. "No visible date on the cork. Vintage visible on cork." Not the same bottle. And you'll see that for all 14 bottles, because one thing we know for sure is that Zachys handled these bottles. And later on we'll explain to you there's doubt about where they went after Zachys. But we know -- and we've only done two of them. 14 bottles, out. Five more bottles.

What about these five bottles? So these five bottles never came from Royal at all. You heard the name Mr. Kurniawan. Never came from him. And how do we know they never came from Royal? Because we have all the invoices. And you can't find any of those five bottles on a Royal invoice. These five bottles.

So what about the last five bottles? These bottles are in the case, and there are Royal invoices about those bottles. Those must be the bottles that Mr. Greenberg knowingly put into this auction, knowing that they were fake. So what about those? Well, remember the yellow line? Yellow line means not concerned, don't believe it's fake, think it's

real. That's the last five bottles. They came from Royal all right, but when Mr. Greenberg looked at them, he thought, no problem here.

24 bottles.

Now I mentioned -- and I know it sounds strange. Maybe these bottles didn't come from Zachys. Maybe they did. There are serious questions about the chain of custody of these bottles. Very serious questions. As a matter of law, as a matter of law in the State of New York, an auction house must put a sticker on the bottle. Every bottle that's sold at auction must bear a sticker. Mr. Zacharia is going to testify here and he's going to say: We at Zachys put a sticker on every bottle, on every bottle, and that's how we know the bottle came from us.

Twenty-four bottles in the case, two of them have stickers. Two of them have the legally required sticker on it showing it came from Zachys.

Now I asked Mr. Edgerton about this, the man who put the bottles into the lawsuit. And I said, Mr. Edgerton, you worked -- you worked in Mr. Koch's cellar a lot. He spent thousands of manhours doing it. He was in this old cellar, the one from Florida, the one from Cape Cod. And I said, do they remove stickers from bottles in Mr. Koch's cellar? And the words that Mr. Edgerton used was, "It is verboten." It is forbidden to remove a sticker in Mr. Koch's cellar. And

Mr. Koch confirmed that it's their practice never to take a sticker off a bottle. So we got some problems here in terms of chain of custody.

But the problem actually goes deeper, even beyond the stickers. And here's why. A lot of people have looked at different bottles over time. There were five experts. Zachys looked at them. They even took some of these to the chateaux to look at. And every time somebody looked at a bottle, they wrote down what they saw on the cork. Looked at fingerprints. So we would expect that everybody would write the same thing on the cork. Right? Well, let me show you a bottle here.

Chateau Petrus, 1928 magnum. When Zachys sold the cork, "Vintage visible on cork." When Mr. Edgerton looked at it, "The capsule is cut to reveal an illegible brand." Supposedly the same bottle, 1950 Chateau Petrus. This is very interesting. When Mr. Edgerton saw it, he said no lettering could be seen on the cork. Then a bottle went -- a bottle, we don't know whether it was this bottle, but a bottle of 1950 Petrus went to Chateau Petrus to be reviewed, and the person who directed the movement of the bottle, who I'm going to get to in a minute, is a man named Jim Elroy who works full time for Mr. Koch, an investigator, and Elroy directs the bottle use and tells the experts what to do. He runs the investigation for Mr. Koch on these bottles. This bottle is taken to Chateau Petrus. Edgerton sees a bottle and says no lettering could be

seen on the cork. Chateau Petrus sees a bottle and says the cork has the wrong type of branding. Not the same bottle. Same vintage, same name. That is not the same bottle. That bottle does not have a Zachys sticker on it, and neither did the one I just showed you.

Now I just mentioned Mr. Elroy. Mr. Elroy ran Mr. Koch's investigation. And we know -- and I know it's a serious thing I'm about to say. We know that Mr. Elroy has falsified evidence in this case, the man who is responsible for that bottle going to that Chateau. And let me show you how he did it.

Trying to prove that a bottle was fake, Mr. Elroy claims to have been at a chateau, and at that chateau, he meets -- claims to have met with a man named Mr. Berrouet. After he gets back, what does he do? He writes this memo, or claims to write a memo on March 13th, 2006, and he writes to Berrouet six points, saying: You know, I met with you, and I just want to state back to you what it is that you said, just to be sure I've got it right. Just want you to confirm all these things. And number 6 says, "The cork is too long and in fact you advised, 'I have never seen a cork that long in any Petrus bottle.'" Berrouet sends back an e-mail -- you'll see all this -- specific date, specific hour, specific minute, specific second, and Berrouet's e-mail says: Everything you say in this memo is true. That's what I said. But there are a

few little things unrelated to this, you know, not quite right, but basically your memo is right.

What does Mr. Elroy do? Wants to give a memo to Mr. Edgerton, who can decide which bottles are going to be in the lawsuit, which bottles Mr. Koch is going to claim are fake. Does he give that to Mr. Edgerton? No. He makes a little change. He adds a little language, and here's what he adds. "Until now you have never observed a 1921 Petrus magnum and never heard of such a bottle." Little different than "the cork is too long." "All of the above causes you to believe the bottle is a forgery." He gives this memo to Mr. Edgerton so that Edgerton will believe the bottle is fake. He doesn't give him this one. And Edgerton, you'll see in Edgerton's reports, keeps saying: There were never any magnums made. Based on what? Based on the falsification of evidence. And you will not hear an expert in this case for Mr. Koch or for Mr. Greenberg say Petrus never made magnums. You got to look at bottle by bottle in this case. So we know, we know, that there's a reason to be really critical about the evidence that we see in this case, because we caught him doing that.

So let me wrap up. You've been really patient. I've gone longer than expected.

We spent a long time waiting for this case to come to trial. Mr. Greenberg is very, very concerned that you hear the whole story. So let me talk about the things, just

specifics -- and I'm going to do it quickly -- that counsel for Mr. Koch mentioned, and why they matter or don't matter. Not quite in the same order. I didn't take good enough notes.

He mentioned a man Mr. Kurniawan, and he showed you some e-mails about suspect Bordeaux. There's not a single bottle in this case from Rudy Kurniawan. Not one. Not one. And you'll hear Mr. Greenberg explain that with Kurniawan. Mr. Kurniawan at the time was among the most highly regarded collectors of wine in the world.

(Continued on next page)

Revered by everybody as a premier collector of wine, hugely credible. It turns out not true. Later Mr. Greenberg returns all the wine. After this auction he discovers there are problems and returns all the wine to Kurniawan, does not want to have it in his cellar, but there is not a bottle in this case from Mr. Kurniawan. This case is about 24 bottles in this room.

Next, Mr. Koch's lawyer talks about Mr. Cortes who said Greenberg told me what they did to me I'm going to do to them. What we didn't hear about Mr. Cortes says, Mr. Cortes was a disgruntled employee of Mr. Greenberg. He didn't like Mr. Greenberg. There was a severed relationship with Mr. Greenberg.

More importantly, the way Mr. Cortes' testimony came into the case, you will have to use the language I am about to use, the way he came into the case was he contacted Mr. Koch, Koch and his people, and he said I want to help you bring this asshole down. He came himself to try to attack Mr. Greenberg. That is where that comes from.

Let me tell you about Mr. Cortes because we are going to play his testimony. Mr. Cortes packed a number of auctions for Mr. Greenberg. We got Mr. Cortes have to admit that he never packed a fake bottle, he never took one of those segregated bottles in the cellar and put it up for auction. He was never told by Mr. Greenberg to take a bottle Mr. Greenberg

thought was fake and put it at auction. There is not one thing that Mr. Cortes can point to that supports any even implication that Mr. Greenberg directed a bad bottle into an auction.

Just remember those words, "I want to help bring down that asshole." That is not a very objective witness.

He talked about Mr. Richie, and you will hear Mr. Richie. He will be the first witness. Here is what the testimony is going to be. Mr. Richie is going to testify he was there with Serena Sutcliffe. They were there in the cellar together the first time Sotheby's had ever seen Eric Greenberg, and Richie is going to say well, you know what happened was Greenberg took me aside and said you know, I'm going to sell fake wine but I'm going to sell it through Aker Merrall, sell that fake wine through Aker Merrall.

This is the first time he ever meets this guy. They're complete strangers and he is trying to get him to sell his wine and he says that. There are credibility issues. The big credibility issue is this. Mr. Richie didn't tell anybody at Sotheby's. For the next four months Sotheby's trying to get in Mr. Greenberg's cellar. They were lusting after his cellar. You saw what Serena Sutcliffe said. They were doing everything they could do to get into his cellar.

You think if one of the experts from Sotheby's said this guy is out there trying to inject bad wine in the market, that Sotheby's would have stopped and distanced themselves.

Nobody heard Mr. Mr. Jamie Richie say this for 8 years. 2010 this comes out at his deposition, Greenberg said I'll sell it through Aker Merrall. Who is Aker Merrall?

By 2010 Aker Merrall is the number one auction house, wine auction house in the world, number one in the United States, number one in Asia. Who are they competing with? They are competing with Sotheby's.

What is Mr. Ritchie's position? It turns out now he is the head of auctions for Sotheby's in the United States and Asia, and who is beating him in the marketplace? Aker Merrall, the sort of random, arbitrary statement Greenberg said I am going to use Aker Merrall to unload the bad stuff, right?

We learn about it eight years later when Mr. Richie has a chance to slander his principal competitor, and that is what that is about. You'll see it because there is no other surrounding evidence that suggests that that happened. It just didn't happen.

You can understand completely when you understand who Mr. Richie is and what his interests are. You see the auction houses are pretty cutthroat and they need business, and if they can hurt another auction house, they will do it.

Chicago Wine. We had this e-mail. You know we're returning two bottles. There is no date on the cork. Mr. Koch said boy, you should have told me that. If I had only known somebody returned two bottles and they didn't have the dates on

the cork, I would have never bought those bottles. Mr. Greenberg, who is perfectly willing to accept returns, which he did, if somebody said I don't like your wine, he would have said fine, here is your money back. He got these bottles, sees this letter, the letter says no date on the cork.

Greenberg looks at the bottle, takes out his magnifying glass. There is a date on the cork. He sees a date on the cork. The thing is he is being critized for here that he was told there is no date on the cork. He is entitled to use his two eyes when managing his wine. He sees the date on the cork. He gives the bottles to Zachys to inspect. Zachys looks at those corks, those corks are fine and those bottles are in the auction.

We are not going to have somebody come up on the stand here and say oh, no, no, I looked at them, no dates on the corks. We are not going to see a witness, not going to know who said that, whether they were blind, we are not going to know anything about them.

What we are going to know is when Mr. Greenberg looked at the bottles, the bottles were fine. Mr. Greenberg looked at corks, and you're going to hear that at length. He would look at the corks because corks were easy.

If you looked at one cork and it said 1967, the bottle said 1961 on the label, he can figure that out. He looked at another cork, it is blank. He can figure that out. Then look

at the label. The label is cut by scissors, not die cut the way labels are cut. He can figure that out but he couldn't figure out all the things I showed you because he wasn't an expert. On this he could figure it out. He could see the date and he can move that on through the auction.

There was talk about Bordeaux Wine Locators. You're going to hear Mr. Greenberg's explanation, but the e-mail is a little tongue-in-cheek because he knew the guy who sent it to him. If they found a bottle that was bad, they would be sending it back. He is the worst counterfeiter in the world? Please, it was a friend of his.

The bordeaux -- you find there are Bordeaux Wine Locators, stickers on any number of bottles that Mr. Edgerton told Mr. Greenberg were just fine. Edgerton would say oh, my God, there is a Bordeaux Wine Locator label, we have to get rid of the wine. He said that is fine, that is Bordeaux Wine Locators, and you'll hear more evidence of that.

You have counsel go up and point, you remember, because there were all those stripped corks, to the vertical cork. You remember this is vertical cork. Vertical cork, it applies to twelve bottles in this case. Vertical cork, oh, my God, an outrageous fraud, Greenberg knew it was vertical. It never should have been sold.

John Kapon said it shouldn't be vertical. Greenberg takes the bottle to Zachys, strip, they look at it and say no,

this is fine. Greenberg thought it was fine. He had lots of bottles and tasted lots of bottles with vertical corks.

Members of the jury, will make this point: When Mr. Egan takes the stand, Mr. Koch's own expert, he is not going to to say the vertical cork means it is counterfeit. The vertical cork is fine.

Mr. Greenberg is being charged by Mr. Koch in this case for counterfeit wine on a feature on the bottle that even Mr. Koch's expert says is fine. Twelve of the bottles in the case have vertical corks. Zachys thought they were fine, Egan thinks they're fine, Mr. Greenberg's expert thinks they're fine, and we have heard the charge that that meant Mr. Greenberg was defrauding Mr. Koch.

I think I've covered the various things that have been said. Let me summarize for you where we are.

There is a second exclaim in the case. Mr. Koch also has the burden on the second claim. That second claim is that general business law claim, mistreated consumers. It applies also to the fraud. So let's go through this and then I will finish.

We know Mr. Greenberg segregated the bottles. Good thing, a good thing to try to keep the bottles out of circulation. Next we know more than almost anybody selling wine Mr. Greenberg exposed the corks so that people who had a right to inspect could inspect.

Next in dealing with consumers, Mr. Greenberg made a point of using an accredited fine wine auction house, not some fly-by-night organization. He went to the best with the best experts to deal with consumers.

Next, he had them inspect them. He had Zachys inspect the wine. So the wine in the auction would be appropriate knowing, as everybody did, that there were problem bottles riddling the marketplace. The only way you could do it was to inspect. He did exactly what Mr. Koch's expert says. He did exactly what Mr. Koch's expert said, he let Zachys pick the bottles. He didn't pick the bottles.

The consumers were told that the wine was sold as-is. Buyer beware. No secrets. And I just have to say, we had this clever graphic work. Mr. Koch's counsel thumbs through all 200 pages of this, and you to the back.

Well, when you got 200 pages of bottles, where else are you going to put it? That is where terms and conditions are always in the back of a catalog, always, always, no secret. And no secret to Mr. Koch and no secret to anybody who goes in and buys it as-is. Consumers know plainly and honestly what the terms are.

Consumers have a right to inspect before purchase. Invited twice. In the catalog. Finally Mr. Greenberg, because of the whole process, believed that the wine was authentic because it had been selected for auction by qualified experts

who had three times to examine those bottles.

Now, I've gone on a long time. I am sorry. This is important to Mr. Greenberg and there is a lot to understand here. One thing I believe in is juries really try to do their best, and I believe that as long as I have been a lawyer. I know you're going to listen to the evidence. You will hear Mr. Richie and then here Mr. Greenberg and go through all the stuff they went through, and I want to ask you, as I know the judge has, keep your minds open and listen to all the evidence.

If you understand what happened here, we are satisfied you're going to conclude Mr. Greenberg was perfectly responsible and there is no hard evidence that Mr. Greenberg intentionally put a bottle of wine at auction or intentionally concealed anything out of the norm that is done in the auction practices.

So thanks a lot for being attentive, and I appreciate it. I look forward to being able to present the case to you.

THE COURT: Thank you, Mr. Shartsis.

Okay, ladies and gentlemen of the jury, that concludes the opening statements of counsel for each side in this case. I am going to give you a break for lunch now and when we come back, we'll start with the evidence in the case.

I want to remind you you should not be discussing the case yet. You haven't heard any of the evidence yet. You heard the lawyers' opening statements regarding what each side

believes the evidence will show, but the actual evidence is what you're going to use to decide the case. I will let you go for lunch and we'll start back at 1:30.

We'll start with the evidence. Please continue not discussing the case until you're deliberating. Thanks for your attention.

(Jury excused).

THE COURT: Please be seated. Okay, ladies and gentlemen, we're going to take a little under an hour for lunch. Before we go to lunch, I wanted to ask the parties briefly whether there is anything you want to tell me about there was some possible discussions that I had with each side about possible resolution. You don't have to say anything. If there is anything you would like to report on the status of any possible resolution, I'll be happy to hear it. If there is anything else I can do, I will help.

MR. SHARTSIS: No, your Honor. We have been getting ready for trial overnight. We appreciated your time. It might be worthwhile at the end of the day you invite counsel in and get a status report.

THE COURT: Sure. Anybody, counsel?

MR. HUESTON: No, your Honor. Thank you.

THE COURT: Thank you very much. Have a good lunch.

(Luncheon recess)

(Continued on next page)

AFTERNOON SESSION

1:30 pm

(Trial resumes)

(In open court; jury not present)

THE COURT: Good afternoon. Please be seated. Are we ready for the jury?

MR. HUESTON: Yes, your Honor.

THE COURT: Okay.

(Jury present)

THE COURT: Please be seated.

Good afternoon, folks. As I mentioned, we'll now begin with the evidence in this case and we'll start with plaintiff's case. Before we do that, we'll hand out, as I promised, notebooks. As I said previously, you're not required to take notes, but if you would like to take notes, you're welcome to and these are for your own use only. None of these, by the way, none of these notebooks will leave the courthouse. So you'll leave from here every day and when the trial is over, we're going to destroy them. Don't worry about anything getting out there in any way.

THE CLERK: Pens, who needs pens? Make sure it works.

(Pause)

THE COURT: Okay. Plaintiff may call its first witness.

MR. KABA: Your Honor, plaintiff calls Mr. Jamie

Ritchie.

THE COURT: Okay.

JAMIE RITCHIE,

called as a witness by the Plaintiff,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KABA:

Q. Good afternoon, sir.

THE CLERK: For the record, could you please state your full name and please spell your full name for the record, please.

A. Jamie Ritchie, J A M I E, R I T C H I E.

Q. Good afternoon, Mr. Ritchie.

A. Good afternoon.

Q. Some preliminaries first.

You are appearing here today pursuant to a subpoena. Is that right?

A. Correct.

Q. You aren't here voluntarily to testify, are you?

A. No.

Q. Where do you currently work?

A. At Sotheby's.

Q. What is your title?

A. Senior vice president and I oversee the Asian and American wine business.

Q. What is Sotheby's?
A. Primarily an auction house.
Q. Do you know how long Sotheby's has been in business?
A. 1744.
Q. Sotheby's was established in 1744?
A. Yes.
Q. Since Sotheby's been auction wine?
A. Yes, since 1970.
Q. Since 1970, Sotheby's has been auctioning wine. Is that right?
A. Yes.
Q. When did you begin working at Sotheby's?
A. 1990.
Q. Have you been at Sotheby's continuously since 1990?
A. Yes.
Q. That is roughly 23 or so years?
A. Yes.
Q. In those 23 years that you've been at Sotheby's, have you always been in the wine department?
A. For most of them. I spent four years doing some other things at Sotheby's, but mostly in the wine business.
Q. What is your current title at Sotheby's?
A. Senior vice president, and I run the U.S. and the Asian wine business.
Q. In the 23 or so years that you've been at Sotheby's,

approximately how many wine auctions have you participated in?
A. I don't know, probably 250.
Q. About 250 wine auctions?
A. Something like that.
Q. Let me ask you just some basic information about wine auctions which may be helpful.
Are you aware at Sotheby's, may a buyer inspect wine prior to auction?
MR. CIALONE: Objection, your Honor, Sotheby's is not a party in this matter.
THE COURT: Overruled.
A. It is rare, but they may, but it happens.
Q. In the 250 auctions or so in which you participated, you observed it is rare that buyers inspect prior to auction. Is that right?
A. Correct.
Q. Let's talk about the rare occurrence when a buyer does inspect wine prior to auction. Have you ever heard of the buyer inspecting, let's say, a hundred bottles of wine prior to auction?
A. That would be a lot.
Q. I am sorry?
A. That would be a large amount of wine to inspect.
Q. Have you seen that in your experience that someone comes in and inspects a hundred bottles of wine?

A. I don't recollect that.
Q. Have you ever heard of a buyer inspecting 250 bottles of wine prior to auction?
A. Not at Sotheby's.
Q. Would you allow that to happen, someone come in and inspect 250 bottles of wine?
MR. CIALONE: Objection; calls for speculation and is a complete hypothetical?
THE COURT: Sustained.
BY MR. KABA:
Q. What is the most number of wines you observed a buyer ever inspect prior to auction?
A. It would be probably around 30 or 40.
Q. Just about 30 or 40 bottles?
A. Yes.
Q. Of the 30 or 40 bottles that you've observed a buyer come and inspect, how often has that happened?
A. Probably 10 times, I recollect.
Q. 10 times over the last 23 years?
A. There is a big glint from the sun coming through the window.
(Pause)
BY MR. KABA:
Q. Why is it that buyers rarely inspect wine before auction?
MR. CIALONE: Objection, your Honor, no foundation.

MR. KABA: The witness testified buyers rarely inspect wine prior to auction.

THE COURT: Overruled. You may answer.

A. They trust the information in the catalogs.

BY MR. KABA:

Q. Mr. Ritchie, have you had any interactions with the defendant in this case, Mr. Greenberg?

A. Yes.

Q. Let's discuss those a bit.

At some point you learned Mr. Greenberg was interested in auctioning his wine. Is that right?

A. Yes.

Q. Do you recall approximately when that was?

A. I think it was in 2001.

Q. At that time in 2001, had you heard anything about Mr. Greenberg's wine collection?

A. I think I knew of his reputation. I understood he had a large collection of wine.

Q. You say you heard about Mr. Greenberg's reputation. Is that right?

A. Reputation as a wine collector.

Q. Had you heard anything about sources of wines in Mr. Greenberg's collection?

A. I heard that he had acquired wines from Royal Wine Merchants.

Q. I ask you to speak up a bit so the jurors can hear you and everyone in court can hear you.
A. Thank you.
Q. Who is Royal Wine Merchants?
A. They're a wine merchant based in New York.
Q. What had you heard about Royal Wine Merchants in connection with Mr. Greenberg's collection?
A. Just that he acquired some wines from them.
Q. What was your view about Royal Wine Merchants?
A. We had found wines from other clients that had been counterfeited from them and those were not --
Q. I ask you to move the microphone a bit closer to you. Even I'm having a hard time hearing.
A. Sure.
Q. Could you just repeat that. What had you heard about Royal Wine Merchants?
A. We had come across wines they had that had not been authentic, and we declined to sell.
Q. What was the relevance to your mind about the fact that Royal was a source of some of Mr. Greenberg's wines?
A. Whenever Royal was a source, you have heightened awareness for counterfeit wines.
Q. Knowing Royal was a source, you had heightened awareness for counterfeit wines in Mr. Greenberg's collection --
MR. CIALONE: Leading and he is just repeating the

answer.

THE COURT: Yes, you just repeated the answer.

BY MR. KABA:

Q. Was it a concern to you that Mr. Greenberg had acquired certain wines from Royal?

A. If there were rare wines similar to that in his collection, we didn't know what was in his collection.

Q. At this point you hadn't been to his cellar?

A. Correct.

Q. What happened next?

A. We were invited to visit his cellar.

Q. When about did that happen?

A. In April 2002, I think.

Q. What was the purpose of your April 2002 visit to Mr. Greenberg's cellar?

A. To meet with Mr. Greenberg and visit his cellar to see the collection.

Q. Did anyone else from Sotheby's accompany you on this visit to Mr. Greenberg's cellar?

A. Serena Sutcliffe was with me.

Q. Who is Serena Sutcliffe?

A. The worldwide head of our wine business.

Q. Did Mr. Greenberg accompany you during this visit through his cellar?

A. Yes.

Q. Do you recall he was with you the entire time?
A. Yes.
Q. Can you tell us generally what you did during your visit to Mr. Greenberg's wine cellar in April 2002?
A. We had a general run through the wine cellar, we looked at some specific bottles. We looked at areas in the collection. It was a general overview of the cellar.
Q. How long did you and Ms. Sutcliffe spend with Mr. Greenberg looking at bottles of wine in his cellar?
A. Probably two to three hours.
Q. Do you recall any particular areas of Mr. Greenberg's cellar that you spent time in?
A. Yes, the beginning of the cellar there was an area with many rare valuable trophy bottles of wine. We spent a lot of time in that area, and we still circulated throughout the whole cellar. It is a large cellar.
Q. You mentioned you spent time in the trophy wine area of his area. Can you just tell us what are trophy wines?
A. Trophy wines are very rare, valuable wines which are generally older and a lot are in large format.
Q. Can you give us some examples of some trophy wines, Mr. Ritchie?
A. Large bottles of Margaux 1900, Short Run 27, 21, large bottles of --
THE COURT: I didn't hear. The first one you said

was?

THE WITNESS: Chateau Margaux, M A R G A U X.

THE COURT: The next one?

THE WITNESS: Cheval Blanc.

THE COURT: The last one was?

THE WITNESS: Petrus and Lafleur, Lafite.

BY MR. KABA:

Q. Let me identify some of the wines in this case. Pre-1950 magnums of Petrus. Would you consider those trophy wines?

A. Yes.

Q. Would you consider magnums of the Cheval Blanc trophy wines?

A. Yes.

Q. Would you consider pre-1960 magnums of Lafleur trophy wines.

A. Yes.

Q. You mentioned Lafite and how about Latours, large format bottles of Latours?

A. Yes.

Q. While you were in this area of Mr. Greenberg's cellar where he had what you referred to as trophy wines, do you recall any discussions you had with him about those wines?

A. Yeah, we pointed out some wines might have been counterfeit, counterfiet labels some with discrepancies between the labels and vintage on the cork, and we had a general

discussion of counterfeit wines and wines that we would probably have difficulty accepting for sale without authentication by Chateau.

THE COURT: And more research?

THE WITNESS: And more research, yes.

BY MR. KABA:

Q. Did you specifically point out counterfeit wines to Mr. Greenberg?

A. Yes.

Q. Did you specifically point out wines which had discrepancies between the labels and the corks?

A. Yes.

Q. Did you specifically point out photocopied labels to Mr. Greenberg?

A. Yes.

Q. Did you discuss generally with him wines that you would have some difficulty authenticating?

A. Yes.

Q. Did you identify any other general questionable wines that were in Mr. Greenberg's cellar?

A. I don't recall.

Q. Before you identified the counterfeit wines to Mr. Greenberg, did you open them and taste them?

A. No.

Q. You were able to identify the wines without, able to

identify the wines as counterfeit without tasting them. Is that right?

A. Yes.

Q. When you identified the wines to Mr. Greenberg that had authenticity issues, had you opened them and tasted them?

A. No.

Q. What was the significance to you of seeing wines with photocopied labels?

A. That they were were not authentic.

Q. Do you recall how many counterfeit wines or questionable wines you identified to Mr. Greenberg?

A. I don't.

Q. Was it more than a couple of bottles?

A. Yes.

Q. Was it more than five bottles?

A. I don't recollect how many.

Q. Did Mr. Greenberg ask you any follow-up questions about the counterfeit and questionable wines you were identifying for him?

A. I don't recollect.

Q. What, if anything, did you tell Mr. Greenberg about wines that Sotheby's was unlikely to accept for sale?

A. Sorry. I am not sure you mean.

Q. Did you identify wines to Mr. Greenberg that Sotheby's would need to do a lot more authentication work on before

selling?
A. Yes.
Q. I am asking what did you tell him about those wines?
A. Just that the wines in the collection we would have to do more research in order to be able to sell with possibly authenticating at the Chateau, which they're unlikely to do.
Q. Had you determined then that if you were unable to authenticate the wines, they could not be sold at auction?
A. We were not selecting what we could not authenticate.
Q. Were there wines you told Mr. Greenberg needed additional investigation in his cellar?
A. Yes.
Q. After you visited Mr. Greenberg's cellar in April 2002, did you tell your colleagues what you observed?
A. I would have had a discussion with Serena Sutcliffe about it.
Q. Do you recall what you discussed with her?
A. I don't.
Q. After you had been to Mr. Greenberg's cellar in April 2002 and identified counterfeit and questionable wines to him, was Sotheby's still considering an auction of his wines?
A. Yes.
Q. Why is that?
A. Because Mr. Greenberg had a very large collection of wine, a lot of authentic wine which we would have been very happy to

sell.
Q. What would you have needed to proceed with an actual sale of Mr. Greenberg's wines?
A. A list of wines and a signed consignment agreement.
Q. Were you relying on Mr. Greenberg to tell you here are the wines I'm going to consign for auction?
A. Yes, he would need to provide us with a list.
Q. And then would Sotheby's take that list and just sell it?
A. We would have to provide auction estimates, agree to the reserves and have a signed consignment agreement. We then start the process of inspecting the wines.
Q. Would you ask Mr. Greenberg any questions in the course of your inspection of the wines?
A. We were obviously expecting him to give us information about source of the wines and information he knew, and that is part of the consignment agreement.
Q. Have you heard of a term called provenance?
A. Yes.
Q. What is provenance?
A. The history of an item traced back for its history.
Q. Do you rely on a consignor to give you provenance information?
A. Yes.
Q. Would provenance information include finding out where a consignor like Mr. Greenberg acquired his wines?

A. Yes.
Q. We discussed a little bit earlier that you knew that Royal Wine Merchants was one of the sources for Mr. Greenberg's wines. Is that right?
A. Yes.
Q. Did you understand during your visit that Mr. Greenberg had wines in his cellar from Royal Wine Merchants?
A. I think he told me that prior to the visit.
Q. Would you have wanted to know from Mr. Greenberg if he was consigning wines from Royal Wine Merchants?
A. Yes.
Q. Why is that?
A. Because of heightened awareness of counterfeit wine.
Q. You referred to this term counterfeit wine a few times. How are you using that term?
A. Wine that is not what it is supposed to be, whether the contents of the bottle doesn't match the label, the bottle, the cork, the capsule.
Q. After the visit and after identifying counterfeit and questionable wines for Mr. Greenberg, did Sotheby's continue pursuing sale of his wines?
A. Yes.
Q. Did you prepare any materials further to the sale?
A. Yes.
Q. What do you recall preparing?

A. I think we prepared a proposal and a market program.
Q. What is a proposal?
A. It's an outline of how we would handle the sale from the beginning to the end.
Q. Do you recall what the contents of the proposal that you prepared for Mr. Greenberg was?
A. It would have included the catalog, the marketing, the time-frame, the process, the financial terms.
Q. Would the proposal have included a cover letter from Ms. Sutcliffe?
A. It may have, yes.

MR. KABA: May I approach, your Honor?

THE COURT: Sure.

(Pause)

BY MR. KABA:
Q. Mr. Ritchie, I have just handed you Exhibit 1070 in this case. Do you recognize it?
A. Yes.
Q. What is this document?
A. The proposal.
Q. A proposal of what?
A. For the sale of the Eric Greenberg collection.
Q. By the point you prepared this proposal, had you already identified counterfeit and questionable wines in Mr. Greenberg's cellar?

A. Yes, I think -- I can't see the date on it, but I think it was May.

MR. KABA: There is a cover letter that appears on 1070. Your Honor, may I publish the exhibit to the jury?

THE COURT: Are you going to move it into evidence?

MR. KABA: Yes.

THE COURT: Is there any objection?

MR. CIALONE: I have no objection to the document, but I am trying to find the cover letter and I don't see one. I see a cover. I think he is talking about the draft catalog introduction.

THE COURT: Is it part of the document?

MR. KABA: Yes, it is.

THE COURT: Okay, you may publish it.

BY MR. KABA:

Q. We can turn to Trial Exhibit 1073. There is a title here, "Appreciation of the Eric Greenberg collection." Do you see that?

A. Yes.

THE COURT: Is this part of the same document?

MR. KABA: Yes, it is. The Bates number on the bottom is --

THE COURT: You haven't moved it into evidence yet.

MR. KABA: I am moving into it it evidence.

THE COURT: Received, 1070 is received.

(Joint Exhibit 1070 received in evidence)

BY MR. KABA:

Q. Do you see Page 3 of this?

A. Yes.

Q. It says, it begins, "The Eric Greenberg collection is such a cellar," referring to an extraordinary wine cellar. Is that right?

A. Yes.

Q. Did you believe Mr. Greenberg's cellar was an extraordinary wine cellar?

A. Yes.

Q. Why did you include this language in the cover letter notwithstanding --

MR. CIALONE: Objection to the mischaracterization. This is not a cover letter. This is a draft of the catalog and introduction. There is no dear Mr. Greenberg, there is no signed --

THE COURT: Please rephrase.

MR. KABA: Sure.

BY MR. KABA:

Q. Why did did Sotheby's prepare a draft introductory letter to a consignment if you believed Mr. Greenberg had counterfeit and questionable wine in his cellar?

A. Because he still had a lot of wine which we would have liked to have sold which wasn't counterfeit.

Q. This proposal that you prepared was done prior to a consignment agreement. Is that right?
A. Yes.
Q. Is this a final proposal?
A. It is a final proposal. It is not the consignment agreement.
Q. Had you already identified the wines that would be sold as part of any Sotheby's auction?
A. No.
Q. Did you prepare this introductory letter with any specific wines in mind?
MR. CIALONE: Objection, your Honor. There is no evidence Mr. Ritchie personally prepared this.
BY MR. KABA:
Q. Mr. Ritchie, did you review this introductory letter?
MR. CIALONE: Objection to mischaracterization of this as a letter. This is a draft catalog introduction.
THE COURT: You can establish whether he was involved.
BY MR. KABA:
Q. Mr. Ritchie, did you review this draft introduction?
A. Yes, most likely.
Q. After you sent a general proposal and a marketing agreement, or a marketing proposal, what would the next steps be if Sotheby's were to proceed with a consignment?
A. A list of wines.

Q. After you obtained a list of wines?
A. We would provide auction estimates and proposed reserves, and we agree to those and have a consignment agreement.
Q. You mentioned now consignment agreement. What is a consignment agreement?
A. The agreement between Sotheby's and the consignor to sell the property.
Q. At some point did Sotheby's prepare a consignment agreement for Mr. Greenberg's cellar?
A. Yes.
Q. Did you send that agreement to Mr. Greenberg?
A. Yes.
(Pause)
Q. Mr. Ritchie, I have handed you a document, Trial Exhibit 293. What is this document?
A. A consignment agreement.
Q. Is this the consignment agreement you recall preparing for Mr. Greenberg?
A. Yes.
Q. Were you involved directly in the preparation of this agreement?
A. Yes.
Q. Is this consignment agreement something that Sotheby's prepares in its ordinary course when discussing a consignment with a potential seller?

A. Yes.

MR. KABA: I move to have Exhibit 293 evidence into evidence.

THE COURT: Any objection?

MR. CIALONE: Yes, your Honor, there is nothing in the authentication of the handwriting on this document. It has been described as an agreement. It is unsigned. It is a draft with handwritten comments. If we can establish whose handwriting it is, then I have no problem. I also confirm it is a draft, as it appears to be.

MR. KABA: I'll note for the record there had been no objection to the authenticity of Exhibit 293.

BY MR. KABA:

Q. Mr. Ritchie, do you recognize the handwriting on this document?

A. Yes.

Q. Whose handwriting is it?

A. Serena Sutcliffe's.

Q. This agreement, this draft consignment agreement was never signed, was it?

A. No.

MR. KABA: With that, your Honor, we move it into evidence.

THE COURT: Received, 293.

(Joint Exhibit 293 received in evidence)

MR. KABA: I would like to publish Exhibit 293 to the jury.

BY MR. KABA:

Q. Mr. Ritchie, I would like to direct your attention to Page 3 of this document. There is a Section 5, called representations and warranties. Do you see that?

A. Yes.

Q. What do you understand representations and warranties to mean in this draft consignment agreement?

A. The buyer makes, consignor makes these representations and warranties to Sotheby's.

Q. Let's look in the middle here. There is a representation that says the seller must tell Sotheby's. The seller has provided Sotheby's with any information you have concerning the provenance of the property. Do you see that?

A. Yes.

Q. What do you understand that to mean?

A. They have provided us with that information.

Q. That they, being the seller?

A. The consignor, yes.

Q. In this case, you are telling Mr. Greenberg if he was going to do consignments through Sotheby's, he would have to agree to this representation, right?

A. Yes.

Q. Let's look at another warranty that Sotheby's requires of

its consignors. Do you see here it says that you have no reason to believe that any lot of property is not authentic or is counterfeit. Do you see that?

A. Yes.

Q. What do you understand this to mean?

A. Exactly what it says, that the consignor has no reason to believe any lot of property is not authentic.

Q. Pursuant to this agreement, you expect the consignors to tell you any reason they have to believe that property is not authentic or counterfeit?

A. Correct.

Q. Do you take a collector's word that a bottle is authentic?

A. We will make our own judgment on it.

Q. But it is important to you, as you handled these auctions, 200 or more, that a consignor tell you --

MR. CIALONE: Objection, your Honor. The question is pretty leading so far.

THE COURT: Overruled.

BY MR. KABA:

Q. But it is important to you as the head of Sotheby's wine department that a consignor tell you if he has any reason to believe that wine he is consigning is not authentic or counterfeit?

A. Yes.

Q. You have included it, in fact, in Sotheby's consignment

contract, right?
A. Yes.
Q. So someone selling wine through Sotheby's would be required to tell you that property they are selling if they believe it is not authentic or counterfeit?
A. Yes.
Q. Would you have required Mr. Greenberg to sign this agreement if he was going to proceed with an auction through Sotheby's?
A. Yes.
MR. CIALONE: Objection; calls for speculation and leading. There is no basis to believe Mr. Ritchie is the person who decides what form of agreement is acceptable before Sotheby's proceeds with an auction.
THE COURT: Overruled.
BY MR. KABA:
Q. Do you recall Mr. Greenberg's reaction to this Sotheby's consignment agreement?
A. He was not happy with it.
Q. I realize that I asked you a question and there was an objection that we didn't have an answer to clearly in the record. Would you have required Mr. Greenberg to sign this agreement, this consignment agreement we see here, if he was to proceed with an auction at Sotheby's?
A. Yes.

Q. Let's talk a bit about Mr. Greenberg's reaction to the consignment agreement. Mr. Ritchie, I have just handed you a document that's been marked as Trial Exhibit 296. Do you recognize this?

A. Yes.

Q. What is this document?

A. It is an e-mail from Mr. Greenberg to myself, copied to Serena Sutcliffe and -- Carson which says he has received the agreement and he was not happy with it for a number of reasons.

MR. KABA: Your Honor, I move this document into evidence.

THE COURT: Any objection?

MR. CIALONE: No objection.

THE COURT: 296 received.

(Joint Exhibit 296 received in evidence)

MR. KABA: May we publish it to the jury?

THE COURT: Yes.

BY MR. KABA:

Q. Mr. Ritchie, do you see here in this e-mail Mr. Greenberg says a substantial portion of the language which is not acceptable?

A. Yes.

Q. Do you see that?

A. Yes.

Q. Is that what you recall Mr. Greenberg was unhappy with this

consignment agreement?
A. Yes.
Q. And he says here the agreement, "enforces warranties on me which I will never assume." Do you see that?
A. Yes.
Q. Do you recall Mr. Greenberg telling you that he specifically had problem with the warranties that Sotheby's was requiring of him?
A. Yes, he put it in an e-mail.
Q. We discussed some of those warranties, didn't we?
A. Yes.
Q. That included a warranty that Mr. Greenberg had no reason to believe any lot of wine he was consigning for auction was not authentic or counterfeit. Is that right?
A. Yes.
Q. Mr. Greenberg decided not to do business with Sotheby's, did he?
A. Correct.
Q. Did he ever sign this consignment agreement?
A. No.
Q. Did Sotheby's ever do a single auction of Mr. Greenberg's wines?
A. No.
Q. Do you recall around what time Sotheby's and Mr. Greenberg stopped discussing a possible consignment?

A. I think it was our second visit in June.
Q. Was that shortly after talks regarding the consignment agreement broke down?
A. Yes.
Q. Do you recall hearing about what Mr. Greenberg was going to do now that he wasn't talking to Sotheby's?
A. I heard he was talking to Christie's.
Q. What do you recall about that conversation that Mr. Greenberg was now talking to Christie's?
A. He was talking to Christie's, their estimates were higher than ours and that they weren't so concerned about the authenticity of wine, provenance of wines.
Q. You recall Mr. Greenberg was talking to Christie's and you said they weren't as concerned about the authenticity or provenance of wines?
A. Yes.
Q. What does provenance mean again, just to remind the jury?
A. The history of a wine, where it has been.
Q. At some point after Sotheby's decided, after Sotheby's did not proceed with the consignment of Mr. Greenberg's wines, did you come to observe Mr. Greenberg's wines sold through any other auction house?
A. Yes, through Zachys.
Q. Where did you observe Mr. Greenberg was selling wine through Zachys?

A. I think it was in some marketing material and in their catalog.

Q. Did you tell your colleagues anything about Mr. Greenberg's consignment of wines through Zachys?

A. Yes, that we would not have offered them for sale, certain bottles offered for sale unless we had them authenticated by the Chateau.

Q. What kind of bottles were these you were referring to that Sotheby's would not have offered for sale?

A. Rare, high value, large format.

Q. Do you recall any of the specific bottles?

A. I don't know. I think there is an e-mail over it.

(Pause)

BY MR. KABA:

Q. Mr. Ritchie, I have handed you Trial Exhibit 324. Do you see this?

A. Yes.

Q. What is this document?

A. It is an e-mail from Serena Sutcliffe which mentions the e-mail I previously said, from me to colleagues saying Eric Greenberg sent a small part of his collection to Zachys for sale of some wines.

MR. KABA: I like to move this into evidence.

MR. CIALONE: Objection. This is Mr. Ritchie's opinion and speculation based on his review of a list of wines

sold at a different auction, wines he never inspected, and I object to this.

THE COURT: Hold on. (Pause) Overruled. 324 is received.

(Joint Exhibit 324 received in evidence)

BY MR. KABA:

Q. Mr. Ritchie, you see here you have included a list of wines that Mr. Greenberg was selling through this Zachys auction. Is that right?

A. Yes.

Q. This includes Chateau Petrus 1921 mags. Is that right?

A. Yes.

Q. You have listed a number of Lafleur mags, 1945, 1947, 1950 Chateau Lafleur mags. Do you see that?

A. Yes.

Q. What were you telling your colleagues about your observation Zachys was selling these magnums of Mr. Greenberg's wines?

A. I was informing them because I was surprised to see them coming on the market. We wouldn't have offered them for sale without full provenance and authentication by the Chateau.

Q. Were you concerned these wines were being sold?

A. Sure, yes.

Q. You believed these wines may have been inauthentic?

A. Yes.

MR. CIALONE: Objection; calls for an opinion. He didn't inspect these wines.

MR. KABA: This is Mr. Ritchie's observations what he observed.

MR. CIALONE: His observations are an opinion. They have hired five experts who actually looked at the wines at issue, and now they're asking Mr. Ritchie, who is not a designated expert, to give his opinion on bottles of wine he has never laid eyes upon. Objection.

THE COURT: Overruled.

MR. KABA: He has 23 years of experience with wine auctions and was --

THE COURT: I have ruled.

MR. KABA: Sorry. I missed your ruling.

THE COURT: You may ask the question.

MR. KABA: I missed your ruling, your Honor.

THE COURT: Overruled.

MR. KABA: Thank you.

(Continued on next page)

BY MR. KABA:

Q. Now Mr. Ritchie, we were discussing earlier that -- the visit in April 2002 where you were in Mr. Greenberg's cellar and you were identifying counterfeit wines to Mr. Greenberg, is that right?

A. Yes.

Q. And at the time you identified counterfeit wines to Mr. Greenberg, what was his reaction?

A. He was unhappy.

Q. Do you recall anything else he said?

A. A little bit later, in a different part of the cellar, he said if he did have counterfeit wines, he could always sell them through Acker Merrall, who would take anything.

Q. So you heard Mr. Greenberg say --

MR. CIALONE: Your Honor, Mr. Kaba can make closing arguments.

THE COURT: That's sustained. But I'm not sure I understood what you said. Could you repeat your answer to that.

THE WITNESS: Sure. Mr. Greenberg said that if he did have any counterfeit wines in his collection, he could sell them through Acker Merrall because John Kapon would take anything.

Q. What is Acker Merrall?

A. Another auction house.

Q. And who's John Kapon?
A. The director of that auction house.
Q. How is it that 11 years later you still recall this comment that Mr. Greenberg made about Acker Merrall taking anything?
A. It was an extraordinary comment to make.
Q. How clear is your memory that Mr. Greenberg made this comment about Acker Merrall taking anything?
A. Very clear. I remember exactly where it took place in the cellar.
Q. Did Sotheby's ever do an auction of Mr. Greenberg's wine?
A. No.

MR. KABA: No further questions at this time, your Honor.

THE COURT: Thank you. Cross-examination?

MR. CIALONE: Yes, your Honor.

CROSS-EXAMINATION

BY MR. CIALONE:

Q. Good afternoon, Mr. Ritchie. I'm Frank Cialone. I represent Eric Greenberg. We met at your deposition a few years ago.

Mr. Ritchie, how did you learn that Eric Greenberg had decided to talk to Christie's instead of Zachys?
A. I think it was through a colleague of mine. I think.
Q. You learned that from an e-mail sent to you by Serena Sutcliffe, or by Chapin Carson?

A. Chapin Carson.

MR. CIALONE: That's Exhibit 304. The binders are all up there? May I approach, your Honor, to give the witness an exhibit?

THE COURT: Sure.

Q. Mr. Ritchie, you testified earlier that you heard that what Mr. Greenberg said was that Christie's was not as concerned about authentication or provenance. Do you recall that testimony just a few minutes ago?

A. Yes.

Q. In fact, what Ms. Carson reported to you was, Christie's did not seem to be as concerned about provenance, right?

A. Sorry. Which -- which number document?

Q. This is Exhibit 304. Again, you testified that what Mr. Greenberg said was Christie's wasn't as concerned with authenticity or provenance. In fact what was reported to you was that Christie's wasn't as concerned about provenance.

A. Correct.

Q. Okay. And that's different than authenticity, correct?

A. They're linked.

Q. And Mr. Greenberg was very clear from you from the very beginning that he did not know all of his sources of wine, correct?

A. Not all the sources of wine.

Q. And we'll get to the auction contract that you went

through, but before I get to that, let me ask you: You gave some testimony about buyers very rarely inspect wines, in all the 250 auctions you've done. In how many of those 250 auctions has a single buyer like Mr. Koch bought $3.7 million worth of wine?

A. Rarely.

Q. Something that happens occasionally?

A. Yes.

Q. Just like people coming to inspect wines before spending a lot of money on them is something that happens occasionally?

A. Yes.

Q. And then how many of those auctions, of the 250 auctions that you spoke about, has someone like Mr. Koch paid a guy $75,000 a day to sit at the auction and lift the paddle?

A. I don't know. We don't pay the agents.

Q. As far as you know, never?

A. I'm not aware.

Q. Mr. Ritchie, you went to Mr. Greenberg's house on April 29, 2002, right?

A. Yes.

Q. But you'd started discussing the possibility, internally, the possibility of doing an auction of Mr. Greenberg's wines in 2001, correct?

A. Yes.

Q. And let me say -- do you recall who was with you in the

cellar?
A. On which visit?
Q. On 2000 -- it's only one visit in 2002, right?
A. I think there were two visits.
Q. You visited Mr. Greenberg's home twice?
A. I think so, yes.
Q. You visited his house -- when was -- when was the first time?
A. I think it was April 29th.
Q. 2002, right?
A. Yes.
Q. Was there a subsequent visit?
A. Yes.
Q. Okay. So you actually went on another visit? When was that?
A. In June.
Q. June, after you got his comments to the consignment agreement?
A. June 17th, I think it was.
Q. So even though Mr. Greenberg gave you comments about the consignment agreement, you still went to his home?
A. Yes.
Q. You were still pursuing an auction. Correct?
A. Yes.
Q. It's not true that you would have required Mr. Greenberg to

sign that agreement, just a consignment agreement, right?
A. I don't recollect that we've ever taken out the warranties in an agreement.
Q. Well, but it was okay for him to make changes, right? It was okay for him to propose changes, correct?
A. He did propose changes.
Q. And in fact, on the top of Exhibit 293, the consignment agreement --
MR. CIALONE: Could you put that up please.
Q. It just says another draft, correct?
A. Sorry?
Q. It wasn't that he had to sign this agreement, just that you needed to reach an agreement, correct?
A. Yes, we needed to reach an agreement.
Q. And let's just take a look at the warranties paragraph, the warranties that Mr. Greenberg was so upset about.
Paragraph 5. This is on page 3. And the handwriting, that reflects Ms. Sutcliffe's comments about what Mr. Greenberg wanted to change, correct?
A. Her recollection of the comments, yes.
Q. Okay. And so where Sotheby's wanted Mr. Greenberg to warrant that he had no reason to believe that any lot of property is not authentic, how did Mr. Greenberg propose to change that warranty?
A. She wrote down "reasonable."

Q. So Mr. Greenberg just was willing to warrant that he had no reasonable reason to believe that any property was not authentic, according to this, correct?

MR. KABA: Objection, your Honor. This is speculation. Counsel's now asking Mr. Ritchie what he thinks Ms. Sutcliffe may have wrote, may have written on the document, and we've already established that the document was not --

THE COURT: You can answer if you have an understanding.

A. I don't know what he was -- I don't know.

Q. Does that strike you as a big change, to put in the word "reasonable" before "reason"?

A. This is Serena's -- what Serena wrote down.

Q. Certainly Serena wasn't saying, oh, Mr. Greenberg won't warrant that the property is real, right?

A. I don't think Serena -- Serena was making a notation.

Q. She didn't cross that portion out, did she?

A. No.

Q. She just inserted the word "reasonable" before "reason," right?

A. She did.

Q. Let me ask you, Mr. Ritchie, as somebody with all the experience you have, if you were looking -- if you were inspecting a wine bottle and you saw a vintage date on the cork, would it matter to you that some unidentified person had

failed to see that vintage date on the cork that you could see with your own eyes?

A. I'm sorry. Can you repeat that.

Q. Sure. If you were inspecting a bottle of wine, one of the things you do is look at the cork, right?

A. Yes.

Q. And you look for vintage years, right? And if you personally saw a vintage date, you, as a representative of an auction house, would it matter to you that some other person somewhere, who you didn't even know who they were, had been unable to see the vintage date on that cork?

A. If I knew that there was an issue with it, then I would get on the other colleagues to look at it as well.

Q. Right. But if you see the date, knowing that some other person had said, "Well, I can't see the date," does that matter?

A. We take everything into account.

Q. How would you take that into account?

A. We give it additional -- the bottle additional scrutiny.

Q. You'd look a second time to see if you could still see the date that you'd just seen before?

A. We'd ask colleagues to verify whether they see the same thing.

Q. How would you do that if you didn't know who the person was?

A. I said colleagues.
Q. I'm sorry. Ask your colleagues to see if they could also see the date.
A. Yes, yes.
Q. So you would have the same bottle reviewed a second or third time.
A. Yes.
Q. Okay. Great. And if you wrote in your catalog, "Vintage date visible," that would mean you'd seen it, right?
A. If we were comfortable with it, yes, then we'd put that in our catalog.
Q. Let's look at other lines in the agreement Mr. Greenberg made changes to.

Do you see Mr. Greenberg would provide Sotheby's with any information you had with problems in the property? Do you see that?
A. No, I don't. Sorry. Can you repeat, please.
Q. Sure. Just above the sentence or the phrase we were looking at before, it was, "You have provided all the sellers and Sotheby's with any information you have concerning the provenance of the property." Do you see that?
A. Yes.
Q. And what Ms. Sutcliffe did, she didn't cross that out after writing these notes down, right?
A. She underlined it.

Q. She underlined it. And what did she write next to it?

MR. CIALONE: Liz, can you blow that portion up. Just that block next to the handwriting, above it. Above it.

Q. And then what did Ms. Sutcliffe write next to that?

A. "Does not know origins."

Q. But Mr. Greenberg was very clear he didn't know the origins of all of the wines, right?

A. Of all the wines.

Q. And you continued to -- well, he didn't say he knew the origins of any of them, did he?

A. What he was mentioning there was all the wines, not any wines.

Q. And that didn't cause Sotheby's just to drop the ball and say, no, we're not going to do business with Mr. Greenberg, right?

A. Correct.

Q. It was not until a month later when you found out that Mr. Greenberg was going to go talk to Christie's because they weren't as worried about provenance, right?

A. I think when we left his house, we were pretty sure that we were finished with the arrangements.

Q. When you left his house when?

A. In June.

Q. But the e-mail from Ms. Sutcliffe -- Ms. Carson sent, that was in July, right?

A. Right, but when we left the house, I think we were pretty sure from our perspective that it was -- we were not going to reach an agreement. We left early.

Q. For quite some time, though, you pursued this auction consignment, right? Correct?

A. Well, from when to when?

Q. Well, for several months after your first visit.

A. What's several?

Q. More than two months?

A. So it's -- this was in May, our second visit was in June.

Q. Okay. You wanted to do an auction of Mr. Greenberg's wines, correct?

A. Of the authentic wines.

Q. And you would determine what was authentic and what was inauthentic by doing an inspection, correct?

A. We would certainly, yes.

Q. 'Cause that's what you do as an auction house, correct?

A. Yes.

Q. Mr. Ritchie, what does "going to zero" mean, or "going zero" mean?

A. Depends on the context.

Q. In the context of a consignment agreement, does that mean waiving a commission?

A. It could be.

Q. Do you recall Ms. Sutcliffe said as to Mr. Greenberg,

"We're not going zero unless a stunning collection"?
A. I don't recollect it, no.
Q. Ultimately you did go zero, correct? You offered to waive your commission to Mr. Greenberg, right?
A. I believe so. The terms are in the -- I think in the proposal.
Q. Now you don't know how many wines you pointed out to Mr. Greenberg as being inauthentic, correct?
A. Correct.
Q. You couldn't even say a few minutes ago if it was more than five bottles?
A. Correct.
Q. You don't know a single one is, correct?
A. I don't recollect.
Q. You didn't take any notes of what was counterfeit, correct?
A. Correct.
Q. You didn't have to write it down to make sure that nothing counterfeit got to you later, correct?
A. Correct.
Q. And then you sent Mr. Greenberg a proposal that we looked at earlier.
MR. CIALONE: If you would take Exhibit 1070, page 3, and put it on the screen, please.
Q. You sent this appreciation, you sent this to Mr. Greenberg, correct, as part of an overall proposal?

A. Yes.
Q. You helped write this, correct?
A. I don't know if I wrote it. I would have reviewed it.
Q. You made edits to it; do you recall that?
A. Probably.
Q. Would you like to see your edits just to make sure, sir?
A. If you want.
Q. Sure.

MR. CIALONE: Could we have 1011, please.

THE COURT: There's a screen by the witness. Is it possible to get the --

MR. CIALONE: Can we do it for that without publishing it to the jury, your Honor? Me and technology, we don't get along too well.

THE COURT: I was wondering if there's a way to activate the screen the witness has so it's not --

MR. KABA: Your Honor, it's being published to the jury and it hasn't been moved into evidence.

THE COURT: Yes, please take it down.

MR. CIALONE: That's what I've been trying to avoid. Sorry.

I'll move on it from this, your Honor. This is a -- if we can put 1070, page 3 up again, please, which has been moved in.

Q. And Mr. Ritchie, you wouldn't have lied to a potential

consignor just to get his business, right?
A. Correct.
Q. Sotheby's has integrity, correct?
A. I hope so.
Q. And Sotheby's told Mr. Greenberg that this was the introduction that Sotheby's could put in a catalog about his collection, correct?
A. I'm not sure of that. Maybe.
Q. Well, what was it?
A. It was an appreciation of the collection.
Q. What was it for?
A. For the proposal.
Q. And what was the purpose of the appreciation of the collection being in there?
A. It was probably proposal documents to hopefully encourage Mr. Greenberg to sell with us.
Q. An honest proposal to encourage Mr. Greenberg to sell with you, correct?
A. Yes.
Q. And part of the proposal, do you recall, was that, "Serena Sutcliffe would be pleased to write an introduction to the catalog describing your collection and clearly establishing it as one of the great cellars of the world." Do you recall that statement?
A. I don't recall it, but I'm sure it's here.

Q. And again, that was honest? You thought it was one of the great cellars of the world, correct?
A. Eric had a great cellar.
Q. Without even knowing what Mr. Greenberg was going to consign to you, you were confident saying this was one of the great cellars in the world, right?
A. If he had consigned inauthentic wines to us, we wouldn't have kept them in the sale.
Q. You would have kept those out of the sale, right?
A. Correct.
Q. But you wouldn't have said: Oh, by the way, there's some wines we took out of the sale that are counterfeit, correct?
A. Correct.
Q. You would never put that in a catalog, correct?
A. We would not put that in the catalog.
Q. In fact, in your view, the cellar is the authentic wines in the cellar, correct?
A. Yes.
Q. Do you recall sending Mr. Greenberg a letter the day after your visit telling him how impressed you were with his collection?
A. I don't recall that, no.
MR. CIALONE: Could we have Exhibit 1008. I'm going give it to counsel, and if it's okay, we'll publish it to the jury. May I have a moment, your Honor?

THE COURT: Absolutely.

MR. CIALONE: You don't have to say absolutely, but --

(Pause)

A. So 1008?

Q. Yes, sir.

MR. KABA: Your Honor, we first would need to establish the witness knows anything about the document. His name is not on it, he's not the purported author of it.

Q. Well, Mr. Ritchie, are you aware of the letter that Ms. Sutcliffe sent to Mr. Greenberg the day after your visit?

A. Yes, I've seen it before.

Q. You have seen this before?

A. Yes.

Q. And this is in fact the letter Ms. Sutcliffe sent in the ordinary course of business to Mr. Greenberg, correct?

A. Yes.

MR. CIALONE: Move this into evidence, your Honor.

THE COURT: Any objection?

MR. KABA: No objection.

THE COURT: It's received. What's the number again?

THE CLERK: 1008.

(Joint Exhibit 1008 received in evidence)

Q. Do you see in the second paragraph Ms. Sutcliffe says, "Jamie and I were deeply impressed with your cellar"? Do you see that?

A. Yes.
Q. "I can honestly say that it is one of the greatest collections I have ever seen," correct? She says that?
A. Yes.
Q. "Especially in the depth and richness of the white and red Burgundies," and then it goes on and on. And you said that, knowing Mr. Greenberg had counterfeits, correct?
A. Yes. He also had authentic wines.
Q. You said that, knowing Mr. Greenberg had bought wine from Royal, correct?
A. Yes.
Q. In fact, at the time you had no idea just how much wine he'd bought from Royal, correct?
A. Correct.
Q. In fact, you thought it might be as much as half to two thirds of his collection, correct?
A. No.
Q. You did not ever think that?
A. I did not ever think that.
Q. We'll get to that testimony in a moment, Mr. Ritchie. But let me ask you: You were proposing a single-consignor auction of Mr. Greenberg's wines?
A. Yes.
Q. You were going to advertise it nationally, correct?
A. Probably, yes.

Q. Do you recall submitting a proposal to Mr. Greenberg with all the promotional work you were going to do?
A. I recall that.
Q. Do you recall what the advertising plan was?
A. I don't.
Q. You do not, is that correct?
A. Correct.
MR. CIALONE: This is Exhibit 1013, your Honor. We'll provide it to counsel.
THE COURT: 1013?
MR. CIALONE: Yes, your Honor.
Move for admission of Exhibit 1013, your Honor.
THE COURT: Any objection?
MR. KABA: No objection, your Honor.
THE COURT: 1013 received.
(Joint Exhibit 1013 received in evidence)
Q. So Mr. Ritchie, do you see in Exhibit 1013 the marketing plan for the Eric Greenberg Collection?
A. Yes.
Q. And to include New York Times advertisements, correct?
A. Yes.
Q. Wine Spectator, Wall Street Journal?
A. Yes.
Q. If you go to the next page you'll see Wine Spectator.
A. Sorry. Yup.

Q. It's going to include cross-marketing to all Sotheby's other auctions, correct?
A. Yes.
Q. You would have wines from the Eric Greenberg Collection displayed in the building for these sales, correct?
A. I haven't got to that.
Q. Towards the bottom of the second page.
A. Yes.
Q. And you planned to go to Mr. Greenberg's house for three days to inspect the wines you were supposed to consign, correct?
A. That was to make a list for the auction. We still hadn't got a list of wines for the sale.
Q. Well, actually, if you would turn to the first page, at the bottom, you'll see, June 17 to 19, Serena Sutcliffe, Jamie Ritchie, and Robert Sleigh visit the seller to inspect, estimate, and select wines for the sale with you.
A. Yes.
Q. Then you would pack them up, catalog and pack them up?
A. Not at that time.
Q. Well, in July, right?
A. At a later date, yes.
Q. In July, right?
A. I don't recollect the date.
Q. Take a look at the next page.

A. Sorry. You're reading quicker than me.

Yes.

Q. And this was going to be an auction of at least $4 million of wine, correct?

A. Yes.

Q. And that was 2002 dollars, right?

A. Yes.

Q. Now do you recall you were given Exhibit 1014, an e-mail with concerns about the consignment? Do you recall that?

A. Yes. Number 296.

Q. I'm sorry, sir?

A. Number 296?

Q. Yes. Mr. Greenberg said that the contracts weren't acceptable because they do not include all items in the proposal, right?

A. Correct.

Q. And Sotheby's had saw those things but didn't put them in the contract, right?

A. Yes.

Q. Mr. Greenberg said there was language which was not acceptable, right?

A. Yes.

Q. Said it gives Sotheby's too much sole discretion, right?

A. Yes.

Q. Do you understand what that relates to?

A. No.
Q. Do you realize under the contract Sotheby's had sole discretion as to whether to seek -- actually to seek to make winning bidders pay? Do you recall that?
A. You're referring to the consignment agreement?
Q. Yeah. Do you recall that?
A. I --
Q. Sotheby's does not have any obligation to enforce payment by any purchaser. Do you recall that being part of Sotheby's contract with Mr. Greenberg?
A. I recollect that he -- that that was a complaint of his, yes.
Q. Do you also recall that Sotheby's wanted Mr. Greenberg to warrant that all ex -- all duties and taxes on the export and import of all the wines had been paid, correct?
A. Yes.
Q. And Mr. Greenberg, since he didn't know all the origins of the wine, couldn't do that?
A. I don't know what his -- what his -- that's his --
Q. That was one of the warranties he was complaining about, right?
A. I -- it's underlined. I can't recollect.
Q. Sure. And it says right next to it --
MR. CIALONE: Could you put 293 on the screen, please, Liz, at page 3, and just highlight the last four lines,

including the writing next to them. If you can do that.

Q. Sotheby's wanted Mr. Greenberg to warrant that required declarations of the export and import of the property have been properly made and that duties and taxes on the exported imported property have been paid, that you have paid or will pay any and all taxes or duties that may be paid, etc. Mr. Greenberg said he couldn't do that, he didn't know the origins of all the wines, correct?

A. I don't recollect that.

Q. According to Ms. Sutcliffe's comments, the warranties that he was complaining about, right?

MR. KABA: Objection, your Honor, for again, asking the witness to talk about what Ms. Sutcliffe may or may not have said.

THE COURT: If he understands it, he can answer.

A. I don't know.

Q. And certainly from Ms. Sutcliffe's comments, Mr. Greenberg isn't just saying, oh, I can't warrant the authenticity of my wines, right?

A. Correct.

Q. In fact, according to Ms. Sutcliffe's comments, he just wanted to be limited to reasonable information about an authenticity, correct?

A. I don't know.

Q. And Mr. Greenberg wasn't the only person to think that

Sotheby's comments -- Sotheby's contracts were too aggressive, was he?

A. I don't know.

Q. Well, let's take a look at Exhibit 304.

(Discussion off the record)

MR. CIALONE: Your Honor, I'd like to move 304 into evidence and publish it to the jury.

THE COURT: Any objection?

MR. KABA: No objection, your Honor.

THE COURT: 304 is received.

(Joint Exhibit 304 received in evidence)

MR. CIALONE: Liz, could you put that up, please.

And if you can just blow that up. Actually, blow up the bottom e-mail first.

Q. This is the e-mail we were discussing earlier, where Chapin Carson said -- and the date is July 17, 2002 -- that Mr. Greenberg called and said that he was very sorry and he's now talking to Christie's, right? Do you recall that?

A. Yes.

Q. And what he said is -- or what she referred to him saying is Christie's did not seem to be as concerned about provenance. Not authenticity but provenance, correct?

A. Correct.

Q. And who is Chapin Carson?

A. She's an employee of Sotheby's.

Q. And then if you look at the e-mail above that, that's from Ms. Sutcliffe. It says: Plus Mr. Greenberg wanted to change literally every line of the contract. I think she means figuratively every line, correct?

A. Seemed so.

Q. Yes. And she notes that: Our contracts are far, far too aggressively worded in comparison with Christie's, right?

A. That's her opinion.

Q. And she said and she has been saying that for a long time?

A. That's her opinion.

Q. Who's Lenoir Josey she refers to there?

A. Another wine collector.

Q. So it wasn't a surprise to you that Mr. Greenberg thought the contract was too aggressively worded.

A. I think it wasn't a surprise to Serena.

Q. And actually, do you recall that Mr. Greenberg was also concerned that Sotheby's was not going to be responsible for what it said in its catalog?

A. I'm sorry?

Q. Well --

A. Catalog or proposal?

Q. Earlier you testified -- you testified that people don't look at the -- they don't inspect because they rely on what's in the catalog, right?

A. Yes.

Q. And who writes the catalog?
A. Our specialists.
Q. Sotheby's does, correct?
A. Yes.
Q. After their rigorous examination Sotheby's inspects the wine and decides, this is what we're going to say in the catalog, right?
A. Yes.
Q. And we stand by that, right?
A. Yes.
Q. Except you wanted Mr. Greenberg to indemnify Sotheby's from any mistakes, correct, of Sotheby's, correct?
A. We wanted him to give us our usual warranties.
Q. Let's take a look at what those usual warranties would be. If you go back to Exhibit 293 at page 6.

MR. CIALONE: And blow up the second paragraph under Section 12.

Q. "Neither Aulden Cellars or Sotheby's will be liable for any errors or omissions in the catalogue or other descriptions of the property." So despite all this work and despite expecting that people would rely on the catalog, Sotheby's were going to say, not our problem if we make a mistake, right? Correct?
A. That's part of our contract.
Q. I'm sorry?
A. That's part of our agreement.

Q. That's part of your agreement.
A. Yes.
Q. In every one of the 250 auctions you've testified about doing, right?
A. I don't know if I said every agreement.
Q. And sometimes you make mistakes, correct?
A. Yes.
Q. Now, Mr. Ritchie, we looked at the proposed -- the appreciation of the Eric Greenberg cellar. In addition to not disclosing in there that, oh, by the way, Mr. Greenberg has counterfeit wines in his cellar, you also didn't say anything about Royal in that appreciation of Mr. Greenberg's cellar, right?
A. Correct.
Q. You knew for a fact that Mr. Greenberg had bought wine from Royal, correct?
A. He had told us that.
Q. Do you have any reason to doubt it?
A. No.
Q. And yet you didn't feel you needed to tell your customers, by the way, this consignor bought some wines from Royal.
A. This wasn't going to the customers, it was going to Mr. Greenberg.
Q. Well, the proposed appreciation that would establish Mr. Greenberg's cellar as one of the great cellars in the

world, who did that go to?
A. Sorry. This was entitled -- this was a document for Mr. Greenberg, not --
Q. Was it intended to be solely internal, if Mr. Greenberg actually consigned to Sotheby's?
A. We would put together the catalog, but we wouldn't necessarily reuse every word from the proposal and publish it.
Q. Well, why don't we take a look at Exhibit 1070.
If you would look at page 8 of Exhibit 1070, please.
A. Yes.
MR. CIALONE: Blow up the first two paragraphs.
Q. "Sotheby's will create a beautiful and compelling, hard-bound catalogue devoted exclusively to the Eric Greenberg Collection."
Looking at the second paragraph, "Serena Sutcliffe, Master of Wine and head of Sotheby's Worldwide Wine Department, would be pleased to write an introduction to the catalogue, describing your collection and clearly establishing it as one of the great cellars of the world."
That's what Sotheby's sent to Mr. Greenberg, and Sotheby's knew to a moral certainty that he had bought wine from Royal and he had counterfeit wines in his cellar, correct?
A. Correct.
Q. In fact, Mr. Ritchie, at the time you had heard that Mr. Greenberg had bought half to two thirds of his wine at

Royal, correct?

A. I'm not sure what you're meaning.

Q. Did you believe Mr. Greenberg had bought a majority of his wine from Royal?

A. I don't think so.

Q. Mr. Ritchie, you knew at this time that a connection to Royal would not mean that a wine was counterfeit, correct?

A. No. It gave us heightened awareness for counterfeit issues.

Q. Right. But it didn't mean the wine was counterfeit, right?

A. Not per se.

Q. It did not -- and Royal was not the only source of counterfeit wines, correct?

A. In what context?

Q. As of 2002, you knew there were other sources of counterfeits, correct?

A. Correct.

Q. You thought Wine Library was the source of counterfeits?

A. Correct.

Q. You thought there were others, correct?

A. Correct.

Q. You were absolutely confident that Sotheby's could do a single consignor auction and eschew counterfeits, right?

A. Yes. Obviously we would expect the consignor to give us information as to where he got the wines, where he knew.

Q. Now do you remember actually discussing provenance in your meeting with Mr. Greenberg?

A. Yes.

Q. Do you remember actually talking about it?

A. Yes.

MR. CIALONE: Can I have his deposition, page 69, line 21 through 70, line 6.

Q. And at your deposition I asked you:

"Let me start -- let me back up. You indicated that you would have discussed provenance during your initial visit, right?

"A. Mm-hmm.

"Q. Do you recall actually doing that with Mr. Greenberg?

"A. I don't recall the actual words or the actual conversation, no."

MR. KABA: Your Honor, for completion of the record, I request that the next question and answer also be read.

THE COURT: Okay.

Q. So I said:

"Do you recall if it was anything more than just a general statement that you would need provenance information?

"A. Well, when we were discussing counterfeit wines, authenticity and provenance, one follows on the other, so we would have had a general discussion on wines that we would be

able to sell, wines that we wouldn't be able to sell because we believed that they were counterfeit wines. We would need further authentication by the chateau, which is very unlikely, and then there were many wines, so provenance was one part of that conversation."

And that's all you remember?

A. That's my recollection.

Q. I'm going to have you take a look at Exhibit 324, Mr. Ritchie. This is a document with your comments about the Zachys auction. Do you recall that?

A. Yes.

Q. You didn't actually see any of those bottles that were in the auction, right?

A. Physically, in person?

Q. Yes.

A. No.

Q. And that's how you inspect bottles is physically, in person, right?

A. We would do a physical inspection, yes.

Q. And your opinion was based entirely on the photographs of the bottles, correct?

A. Yes, and the visit to the cellar.

Q. I'm sorry. Yes, and what?

A. And the -- and having been to the cellar.

Q. But you didn't actually recall seeing any of those bottles

in the cellar, do you?
A. No.
Q. So you visited the cellar, you don't know if you saw those bottles or you saw photographs --
A. Yes.
Q. -- correct? And based on that, you said, we would have needed to do further inspection, right?
A. No, based on that, I said we would have required full provenance and authentication by the chateau in order to sell the majority of these wines.
Q. Do you know what Zachys did to inspect those wines and authenticate them?
A. I don't.
Q. Now you stated that while you were at Mr. Greenberg's house, he told you -- and this was in April 2002 -- he told you if he had counterfeits, he could consign them to Acker Merrall because John Kapon would take anything, correct?
A. Correct.
Q. So Mr. Greenberg was telling you that he intended to sell fake wine at auction?
A. I don't know what Mr. Greenberg was intending to tell me. I'm just repeating what he said.
Q. But if he said he was going to sell counterfeit wines through Acker, he was saying he intended to sell fake wine at auction?

A. You can ask him. I don't know what he was intending to tell me.
Q. You didn't actually know if the statement was serious, correct?
A. It was an extraordinary statement, which is why I remember it very clearly.
Q. But you don't know if it was serious, correct?
A. I don't know what his intention was.
Q. You don't know if he actually intended to sell counterfeit wine, correct?
A. I don't know that.
Q. And for the next three months, after April 2002, Sotheby's pursued doing a consignment with Mr. Greenberg, right?
A. Working on consignment, yes.
Q. Sotheby's proposed to tie the company's name to the Eric Greenberg Collection, correct?
A. It was done with authentic wines, yes.
Q. Right, but to the name of a person who you, according to your claim, believed was going -- had just told you he was going to sell counterfeit wine intentionally at auction.
A. We wouldn't be selling counterfeit wine at auction.
Q. Right. But he would be.
A. No.
Q. Well, it would be at a different auction.
A. Not through us, for sure.

Q. But at Acker, and your name would be tied to a guy who went out and potentially sold counterfeit wine, and you were okay with that?

A. I was okay with us selling wine that was authentic.

Q. Did you plan to put in your catalog: By the way, Mr. Greenberg had told us he intends to sell counterfeit wine at auction?

A. No.

Q. You were going to nationally advertise to all of your most prominent clients the Eric Greenberg Collection even though Eric Greenberg had told you, oh, I'm just going to sell counterfeit wine through auction at Acker?

A. We didn't know that that was going to happen, sir. We were happy to sell authentic wine from Eric Greenberg.

Q. And while you were working on this auction, you e-mailed the chief executive officer at Sotheby's about it, correct? Do you recall that?

A. Correct, yes.

Q. Bill Ruprecht, is that his name?

A. Yes.

MR. CIALONE: Okay. If I could have 285.

A. Is it the same as 324 or not?

Q. It is not. I'm sorry. I can provide you a copy if you want.

A. That's okay.

Q. Thank you.

MR. CIALONE: Thank you, your Honor.

A. I've got it.

Q. And you see in Exhibit 280 --

MR. CIALONE: I'm sorry. I would move to admit Exhibit 285, your Honor.

THE COURT: Any objection?

MR. KABA: May I have a moment, your Honor?

THE COURT: Sure.

(Pause)

MR. KABA: The version I have of this document cuts off at the end of the first page. I'm not sure if there's language missing.

MR. CIALONE: That's the only version I have as well. We're focusing on the exchange between Mr. Ruprecht and Mr. Ritchie, the top half of those two e-mails.

MR. KABA: Well, as long as we can note that this document appears to be incomplete, we have no objection.

MR. CIALONE: Fine, your Honor. And again, it's only the top two e-mails we're focusing on.

THE COURT: 285, is it?

MR. CIALONE: Yes, your Honor.

THE COURT: Okay. 285 is received in evidence.

(Joint Exhibit 285 received in evidence)

MR. CIALONE: And if you would put that up, please,

Liz. Just blow up the top half.

BY MR. CIALONE:

Q. So, Mr. Ritchie, you were communicating with the chief executive officer at Sotheby's, asking him to spend money going out to Mr. Greenberg's house to pursue a consignment of wines, right?

A. Yes.

Q. And you didn't tell him: By the way, this guy told me he's going to intentionally sell counterfeit wine at auction.

A. We wouldn't have sold counterfeit wine at auction.

Q. But you didn't report that Mr. Greenberg was planning to commit a crime to your chief executive officer?

A. I don't recollect if I'd had a conversation with him prior to that saying that or not.

Q. Certainly in this e-mail you didn't say, that's something we need to be cautious about?

A. Correct, and I also spoke to him, so I don't know -- I don't recollect that.

Q. And certainly it wasn't mentioned in any other e-mail that we've looked at today at this trial, correct?

A. Correct.

Q. Now you say you remember this statement because it was so extraordinary, but you don't remember if Serena Sutcliffe was with you when Mr. Greenberg said it, right?

A. I don't.

Q. So you wouldn't remember if you actually discussed it with Ms. Sutcliffe after you left?
A. It would have been very likely.
Q. It would have been very likely?
A. But I don't recollect.
Q. But you don't remember doing it, and you don't remember if she heard it herself, correct?
A. Correct.
Q. And you don't remember discussing it with Bob Sleigh, correct?
A. I don't actually correct -- remember Bob Sleigh being on the first visit.
Q. You don't even know if he was there.
A. I don't recollect that, correct.
Q. So this extraordinary statement was made but you have no idea if Ms. Sutcliffe was near you when it's made and you have no idea if Mr. Sleigh is even on the property, correct?
A. Correct.
Q. Now let me ask you a little bit, Mr. Ritchie, about -- the first question to you is that you're appearing here by subpoena and not voluntarily. You have actually been willing to assist Mr. Koch with this litigation, correct?
A. Yes, we're happy to assist with -- with Mr. Koch.
Q. Do you know who Brad Goldstein is?
A. I know his name, yes.

Q. He works for Mr. Koch?

A. Yes.

Q. He's been running this investigation for Mr. Koch?

MR. KABA: Objection, your Honor. No foundation. This witness would have no idea who's running Mr. Koch's investigation.

THE COURT: If he knows. You can answer.

A. I don't know that.

Q. Mr. Goldstein contacted you on more than one occasion?

A. Yes.

Q. To talk to you about this litigation?

A. I don't recollect that.

Q. He asked you for a list of wines most likely to be counterfeited?

A. Yes.

Q. You gave him that list.

A. Yes.

Q. He asked you for a list of wines that Sotheby's has sold at auction.

A. Yes.

Q. And you provided him a database of that.

A. Yes.

Q. And these were items that you put together for him.

A. Yes.

Q. Let me ask, did you speak with Mr. Koch's counsel before

appearing here today?
A. Briefly.
Q. When?
A. Last night.
Q. First time?
A. Yes.
Q. Sotheby's has also done a full appraisal of Mr. Koch's entire wine collection, correct?
A. Some time ago.
Q. In fact, shortly before the Zachys auction?
A. I don't recollect when it was.
Q. And it's a very large collection, right?
A. Yes.
Q. Very impressive collection?
A. Yes.
Q. And you proposed, among other things, that Mr. Koch sell some of that collection.
A. I don't recollect that, but it's likely.
Q. Well, let me see if I can refresh your recollection.
MR. CIALONE: Your Honor, may I approach the witness?
THE COURT: Yes.
Q. And is this document with the Bates number Koch GZ8814 through Koch GZ9096, is that the proposal -- I'm sorry -- is that the appraisal or proposal of Mr. Koch's wine collection that you worked on? And much of it has been redacted.

A. Sorry. I'm not sure --
Q. Is that the proposal?
A. You've given me a sheet of paper. I'm not sure what I'm looking at.
Q. I just wanted to -- just looking at the entire document, is that the proposal that was given to Mr. Koch by Sotheby's? And I will direct you to specific pages momentarily.
A. It looks like it.
Q. Okay. If you would look at the page that at the bottom has a number Koch GZ8827, which should not be up on the screen. Do you see there under Collection Management?
A. Mm-hmm, yes.
Q. It discusses some of the buying and selling of Mr. Koch's collection?
A. I haven't read it, so would you like me to read it?
Q. If -- you should take a look at that page, yes, 8827.

MR. KABA: Your Honor, I'm just going to object. This hasn't been marked. It's not in evidence. If it's being used to refresh Mr. Ritchie's recollection as to whether or not a proposal was prepared, it seems like that's been accomplished. Reading portions of the document that's not in evidence into the record is entirely inappropriate.

THE COURT: Have you moved it in or not?

MR. CIALONE: No. I want to refresh his recollection that Sotheby's proposed to Mr. Koch that Sotheby's sell parts

of his collection and I'm going to direct him --

Q. Actually, if you would turn to page Koch GZ8830, I think it will accomplish that task.

THE COURT: Okay. You can direct him.

Q. So, Mr. Ritchie, if you would turn to Bates page Koch GZ8830.

A. Yes. Would you like me to read it?

Q. See where it says Recommended Sales Strategy, if you would take a look at it.

A. (Witness complies.) Yes.

Q. Does that refresh your recollection that Sotheby's in fact proposed to Mr. Koch that Sotheby's sell portions of his collection?

A. Yes.

(Continued on next page)

MR. CIALONE: Your Honor, I move this page only which was used to refresh his recollection, 8830.

THE COURT: Any objection?

MR. KABA: We object. There has been no foundation. Hearsay. It hasn't been established as a business record. The witness's testimony stands on its own.

THE COURT: Just to refresh his recollection?

MR. CIALONE: Yes.

THE COURT: I don't think you need it.

BY MR. CIALONE:

Q. Mr. Ritchie, Mr. Koch has, in addition to having a wine collection -- you can put that aside, thank you -- in addition to having a wine collection that Sotheby's help him sell, he has many other collections as well?

A. Yes.

Q. He is a prolific collector of art and memorabilia of various kinds?

A. Yes.

Q. Are you aware he sold a painting through Sotheby's?

A. I wasn't aware.

Q. Far as you know, Sotheby's is the only major wine auction house that Mr. Koch has not sued, correct?

A. I think that's right.

Q. I want to turn to what Sotheby's has had to say about Mr. Greenberg. Let me give you Exhibit 259. Do you have a

copy there?
A. Yes.
MR. CIALONE: I would like to move Exhibit 259 into evidence.
THE COURT: Any objection?
MR. KABA: Give me a moment.
THE COURT: Yes.
(Pause)
MR. KABA: No objection.
THE COURT: 259 is received in evidence.
MR. CIALONE: If you can put it on the screen, please, Liz, and if you blow up the top half.
(Joint Exhibit 259 received in evidence)
BY MR. CIALONE:
Q. Mr. Ritchie, do you recall before you visited Mr. Greenberg's house, you e-mailed your colleagues to talk about what you might accomplish on the visit, right?
A. Yes.
Q. Ms. Sutcliffe E-mailed you back, right?
A. Yes.
Q. And among other things, she discussed your travel plans, correct?
A. Yes.
Q. And she noted, referring to Mr. Greenberg, so we get the whole morning with the little B, large B, actually, right?

A. Yes.
Q. She was referring to Mr. Greenberg as the little bastard?
A. I don't know.
Q. You don't have any idea what that B stands for?
A. I don't, no.
Q. Do you recall you testified at your deposition it could be bastard or banana as far as you know?
A. Yes.
Q. That is honest testimony under oath?
A. Yes.
Q. Do you refer to Mr. Koch as the little B?
A. I didn't write this.
Q. Have you ever?
A. I wouldn't have used it, no.
Q. Does Ms. Sutcliffe?
A. I don't know.
Q. But she does to Mr. Greenberg, correct?
A. This is what is written in this e-mail.
Q. Mr. Ritchie, at the time you made the proposal to Mr. Greenberg in 2002, Sotheby's was the market leader in the wine auction business, correct?
A. I don't recollect.
Q. 55 percent of the business?
THE COURT: 55 percent of what?
BY MR. CIALONE:

Q. Do you recall Sotheby's had 55 percent of the market?
A. I don't recollect the market share at the time.
Q. If it was in the proposal, would it be true, the proposal you gave to Mr. Greenberg?
A. If it is in the proposal, it should be true.
Q. I will read to you from Exhibit 1070 at Page 17. In 2001 and 2002, year to date, Sotheby's sales in the United States alone have totaled 26 million versus 21 at Christie's, representing 55 percent of the current market share, right?
A. Yes.
Q. By 2010 when you gave your deposition, what place did Sotheby's fall into?
A. I don't recollect.
Q. Last place in the United States; is that correct?
A. I don't recollect.
Q. Would it refresh your recollection if I showed you a Wine Spectator article showing --
A. Yes.
Q. Would that?
A. Yes.

MR. CIALONE: May I approach, your Honor?

THE COURT: Yes.

(Pause)

BY MR. CIALONE:
Q. Mr. Ritchie, just looking at this Wine Spectator article,

on the third page you will see sales for various auction houses. Do you see that?

A. Yes.

Q. So where was Sotheby's as of 2010, what place?

A. Worldwide?

Q. Start with worldwide, worldwide you're in second place, right?

A. Yes.

Q. Behind Acker Merrall?

A. Yes.

Q. In your territory in North America, where were you?

A. My territory is Asia and North America.

Q. Where were you in North America? That is part of your territory, correct?

A. Yes.

Q. You were last place?

A. I am looking at New York.

MR. KABA: If this is used to refresh recollection, the question should be does this refresh your recollection as opposed to reading the document into evidence. I object.

THE COURT: Sustained.

BY MR. CIALONE:

Q. Mr. Ritchie, looking at this document --

A. Sorry, it is not in order. I am looking at the numbers. We are in 5th place, I would guess.

Q. It is a very competitive business, right?
A. Yes.
Q. It is helpful for Sotheby's to be known as selling counterfeits?
A. No.
Q. It helps Sotheby's to say other competitors or auction houses aren't concerned about authenticity?
A. No.
Q. In fact, you said that today about Christie's just a few minutes ago, and it wasn't true, right?
A. I am sorry?
Q. A few minutes ago you said Mr. Greenberg decided to go with Christie's because they weren't as concerned about authenticity and provenance, and I showed you the e-mail and you confirmed that that testimony was not true, right?
A. I am sorry. Can you repeat that?
Q. You testified on direct that when Mr. Greenberg decided to go with Christie's, he said it was because they were not as concerned about authenticity and provenance.

I got up and I said you learned that from an e-mail, and I showed you the e-mail. Your testimony was not true, was it?
A. It was provenance was true and that also included authenticity.
Q. And the part about authenticity was not?

A. Correct.

Q. In fact, for quite some time Sotheby's had been talking about how good it would be to have Christie's known for selling fake wines, correct?

A. No.

Q. In fact, you had actually wanted Christie's to sell fake wines from Mr. Greenberg, didn't you?

A. No.

Q. Give me Exhibit 249. Would you take a look at that, please.

MR. CIALONE: I move to have this admitted.

MR. KABA: Your Honor, this is not a document written by Mr. Ritchie. I don't know what the functional basis would be to have this in evidence.

MR. CIALONE: Among other things, it is an e-mail to Mr. Ritchie from his boss, Serena Sutcliffe, and directly contradicts his testimony he just gave.

THE COURT: Can I see the document.

MR. CIALONE: Sure. If I may approach, your Honor?

THE COURT: Yes.

(Pause)

MR. CIALONE: Just so you can understand the document, R B refers to Richard Brierley of Christie's.

MR. KABA: Again, your Honor, we'll note the objection clarified. The question to the witness was you have wanted to

do X. The document is not written by the witness, and so there is no proper basis to admit it into evidence with respect to this witness.

THE COURT: Overruled. You can ask. It is received.

(Joint Exhibit 249 received in evidence)

MR. CIALONE: If you would blow that up, please.

BY MR. CIALONE:

Q. This is dated March 4th, 2002. This is re Eric Greenberg, from Serena Sutcliffe, and you see at the bottom of the second paragraph it says -- I would love R B. R B is Richard Brierley, correct?

A. I believe so.

Q. Would you like me to read your deposition testimony about that? You would guess it is Richard Brierley. Richard, who is Mr. Brierley? Actually, let me ask you that?

A. Richard Brierley was the head of Christie's wine business in New York.

Q. What does D R C refer to?

A. Domain Romanee Conti.

Q. That is to be basically a wine, right?

A. Yes.

Q. Very high end wine?

A. Yes.

Q. After the the and, that word is?

A. Sorry?

Q. The word J A Y E R?
A. Jayer.
Q. Another very highly end, right?
A. Yes. I would love R B to take a slew of D R C and Jayer fakes from him, referring to Eric Greenberg.
Q. It would be a good thing if Christies was seen taking counterfeit wines, correct?
A. I disagree.
Q. If you recall earlier, we took a look at Exhibit 324, that was the one you noted your views about the Zachys auction. Put that up, please.

Ms. Sutcliffe's response to that -- Ms. Sutcliffe is your boss, correct?
A. No.
Q. Was she at that time?
A. No.
Q. What is her position at Sotheby's?
A. She is the head of the international wine department.
Q. Are you within the international wine department?
A. Yes, but I have different reporting structure. I report in New York and Hong Kong and I report to Serena Sutcliffe.
Q. They report to her?
A. I report to the managing director now in New York and previously report to the previous managing director in New York.

Q. She is the head of the department you're in, correct?
A. Yes, from a wine perspective.
Q. Ms. Sutcliffe's response to your e-mail is she refers to the wines, the wines that she previously referred to as one of the greatest sellers she had ever seen. That was a dog's dinner. I hope they -- with those bordeaux. Would you translate that into American, please.
A. It is a difficult one. I hear they come unstuck.
Q. Let me give you what you said in your deposition. Page 177 line 24 to 178 Line 12 -- 177 line 24 to 178 Line 12.
(Videotape played)
MR. KABA: I would like to take a look.
MR. CIALONE: Can you back it up.
MR. KABA: Your Honor, this is not impeachment. The witness testified that -- means unstuck on the stand and at his deposition he testified it is a phrase for translation, that come unstuck, slip over.
THE COURT: What is the --
MR. CIALONE: Slip over to means to embarrass themselves correct? I will move on with the rest of the questions.
BY MR. CIALONE:
Q. To slip over means to embarrass themselves?
A. Yes.
Q. Meaning in this context, to be caught selling fake wine?

A. Yes.
Q. So Ms. Sutcliffe was telling you she hopes Zachys would be caught selling fake wine in this action, correct?
A. I think it was in that competitive nature. I don't think it was intended and --
Q. Competitive nature would be good for your competitors to be caught selling fake wine?
A. I disagree.
Q. From the beginning before you went to Mr. Greenberg's house, Ms. Sutcliffe e-mailed you saying that you might, raising the possibility of spreading rumors about Mr. Greenberg's collection, right?
A. I am sorry?
Q. Do you recall that from the very beginning before you ever got to Mr. Greenberg's house, Ms. Sutcliffe raised with you the prospect of attacking your competitors and attacking Mr. Greenberg's collection on authenticity grounds. Do you recall that?
A. I don't recollect.
Q. Do you recall her saying if Mr. Greenberg didn't give Sotheby's the sale, we should ruin the sale for anyone else?
A. I recollect that, but I didn't pay any attention to it.
Q. But she said it?
A. She said it, but it didn't mean anything to me.
Q. And it was ruin the sale for anyone else by letting it be

known that we have to turn down so much stuff on authenticity grounds? right?

A. If that was what she put, but again I didn't take any credit --

Q. That is what the head of the international wine department at Sotheby's proposed to do if Mr. Greenberg went with another auction house?

A. I don't think she proposed to do.

Q. It would be good for Sotheby's?

A. I disagree.

Q. If competitors were caught selling counterfeit wines?

A. I disagree.

THE COURT: Mr. Cialone, are you almost done? I want to take a break fairly soon.

MR. CIALONE: I AM very close to being done.

THE COURT: Okay.

MR. CIALONE: In fact, your Honor, I am done. Thank you.

THE COURT: Thank you. Is there going to be redirect?

MR. KABA: There will be brief redirect.

THE COURT: Can we do a break first. I will give the jury a 10-minute break.

(Jury excused)

THE COURT: You may be seated. Mr. Ritchie, you are under oath. You may step down and take a bathroom break.

Please don't discuss the testimony because your testimony is ongoing. Don't discuss the substance of your testimony with anyone including your lawyers.

THE WITNESS: Thank you.

(Recess)

THE COURT: May be seated. After the redirect, who is the plaintiff's next witness?

MR. HUESTON: It would be Mr. Greenberg, your Honor.

THE COURT: I think we can probably go till 5:00 today.

MR. HUESTON: My concern would be, I hate to kind of start and have to kind of stop.

THE COURT: We need to use every hour we can. So we should plan to go till 5:00.

MR. HUESTON: Fine.

THE COURT: Bring the jury in, please.

(Jury present)

THE COURT: Please be seated. Okay. Redirect, Mr. Kaba.

REDIRECT EXAMINATION

BY MR. KABA:

Q. Good afternoon, Mr. Ritchie.

We heard during your cross-examination a series of questions posed to you about Sotheby's relationship with Mr. Koch. Now, you understand that you are under oath, right?

A. Yes.
Q. All the testimony you are giving today is truthful, isn't it?
A. Yes.
Q. You said that Mr. Koch is an important client of Sotheby's. Is that right?
A. Yes.
MR. CIALONE: Objection, your Honor.
THE COURT: Hold on.
MR. CIALONE: These are very leading questions.
THE COURT: Sustained. Please rephrase.
BY MR. KABA:
Q. Is Mr. Koch an important client of Sotheby's?
A. As important as every other client.
Q. Has Mr. Koch asked Sotheby's for assistance in detecting counterfeit wine in the market?
A. No.
Q. Earlier you were asked some questions about would Sotheby's expect to know if another buyer had not seen a date on a cork. Do you recall that?
A. Sorry. Would you repeat.
Q. Sure. Earlier during your cross-examination you were asked some questions about whether Sotheby's would want to know if another buyer had seen or not seen a vintage date on a cork. Do you recall that?

A. Another buyer? I am not sure, no.
Q. There was a question I believe posed to you whether Sotheby's would want to know if someone else had seen a bottle and had not observed a vintage date on a cork?
A. If we are looking at a bottle of wine, we like all the information about it.
Q. Is that important to you to know what anyone else has said about the potential inauthenticity of a bottle of wine?
A. All information is useful.
Q. We talked about the representations and warranties in Sotheby's consignment agreement. I would like to pull up Exhibit 293 in evidence.

You were asked if Sotheby's has ever made changes to its consignment agreement to your knowledge. Is that right?
A. Yes.
Q. Do you know if Sotheby's, to your knowledge, has ever made material changes to the representations and warranties it demands of its consignors?

MR. CIALONE: Objection, your Honor; lacks foundation.

THE COURT: Overruled. You can answer if you know.

THE WITNESS: Not to my recollection.

BY MR. KABA:
Q. You were also asked about some appreciation of Mr. Greenberg's cellar. Sotheby's was interested in pursuing an auction of Mr. Greenberg's cellar. Is that right?

A. Yes.
Q. Do you recall whether the appreciation of Mr. Greenberg's cellar that you had seen during cross-examination came before he signed the consignment agreement?
A. I don't think he ever signed the consignment agreement.
Q. So if a buyer -- sorry -- if a seller is going to proceed with a sale of wine through Sotheby's, before you send out a catalog, would you expect him to have signed a consignment agreement?
A. They must have done, yes.
Q. Does that mean that they must have agreed to the representations and warranties?
A. Yes.
Q. If we saw earlier, would that also mean that the seller must have agreed that they have no reason to believe that any lot of property is not authentic or is counterfeit?
MR. CIALONE: Objection. The document speaks for itself. This is quite leading.
THE COURT: Overruled. You can answer.
THE WITNESS: Sorry. Would you repeat the question.
BY MR. KABA:
Q. Does that mean that before a catalog gets distributed to any buyer, the seller would have had to have already agreed with Sotheby's that they had no reason to believe that any lot of property is not authentic or is counterfeit?

A. Correct.
Q. When you're preparing the catalog, Mr. Ritchie, do you rely on information provided by consignors?
A. We rely on them giving us all the information they have.
Q. So if another auction house had rejected wine from a consignor, would you have wanted to know that?
A. That is what the terms of the consignment agreement state.
Q. So you would have expected to know that?
A. Yes.
Q. I'd like to pull up Exhibit 249 in evidence, another document you were asked about earlier. The last paragraph here in Ms. Sutcliffe's e-mail to you, it says I'm going to get into e-mail talk with him and will ask the provenance.

Do you have an understanding what that means?

A. Ask the history of the wine, ask for the history of the wine, where did the wines come from, where did they source from.
Q. Was Ms. Sutcliffe indicating she was going to ask that of Mr. Greenberg?
A. I believe so, yes.
Q. It says later, if he replies to me that he got his Jayers and his D R C from Royal, I think we drop it, don't you? Do you see that?
A. Yes.
Q. What did you understand that to mean?

A. If he bought the Jayers and D R C from Royal, we don't pursue a sale.
Q. You expected to know if Mr. Greenberg was consigning wines from Royal. Is that right?
A. We would, yes.
Q. What would you do with that information?
A. Anything bought from Royal we would have had heightened awareness over the inspection process.
Q. I would like to pull up Exhibit 304 in evidence. Let's look at Ms. Carson's e-mail to you. You had a discussion a bit earlier with defense counsel.

Do you see here Ms. Carson is reporting a conversation she had with Mr. Greenberg and says he further said that Christie's did not seem to be as concerned about provenance.

Do you see that?
A. Yes.
Q. Is there a link between provenance and authenticity, in your mind?
A. The two are connected.
Q. How so?

MR. CIALONE: Objection. I ask the rest of the sentence be read, not as concerned about provenance while they were concerned, not as much as we are.

THE COURT: Okay. Fair enough.
BY MR. KABA:

Q. With that, how is provenance and authenticity connected, to your mind?
A. Provenance is the history of the wine, and they hope you determine authenticity.
Q. So if consignors have information about provenance, you expect to hear it from them?
A. Yes.
Q. Let's pull up Exhibit 324 in evidence. This was the e-mail, Mr. Ritchie, where you had identified certain fake wines being sold from Mr. Greenberg's collection to Zachys.
MR. CIALONE: Objection; mischaracterizes the document. We would have required full provenance and authentication. They're not saying they're fake.
THE COURT: Fair enough. Ask your question.
BY MR. KABA:
Q. Mr. Ritchie, what were you saying in this e-mail?
A. I was saying I doubted their authenticity because we would have required full provenance and authentication by Chateau, which doesn't really happen. I didn't believe these wines would be authentic.
Q. You were basing this belief that these wines would not be authentic on what information?
MR. CIALONE: Your Honor, this is just getting into Mr. Ritchie's opinion about wines he never looked at. The person who inspected those wines is sitting in the courtroom

today. She is on their witness list. They can call her. It is Ms. Downey who they will call by deposition. She is here.

Why are they asking Mr. Ritchie about his opinion of wines he has never seen?

THE COURT: You can ask him.

A. From the visit to Mr. Greenberg's cellar and what I saw, images I saw, I doubted their authenticity.

BY MR. KABA:

Q. Mr. Ritchie, the suggestion has been made that you think it is good for Sotheby's if other auction houses are caught selling fake wine. Do you recall that?

A. I recall it is to the contrary. We believe that we want a level playing field. We wish there is no counterfeit wine out in the market. We wish all of our competitors would not sell counterfeit wine.

Q. Were you troubled that you saw this wine that you believe was inauthentic being sold?

A. Clearly that is the message in my e-mail.

Q. You were also told or asked whether the statement you recall Mr. Greenberg making about being able to sell counterfeit wine through Acker is just you being competitive with Acker. Is that right?

A. I believe so.

Q. Have you ever heard anyone else in the 23 years that you've been working at Sotheby's say to you that if they had bad

wines, they could always sell it through Acker Merrall?
A. No.
MR. CIALONE: Objection, your Honor; relevance. This is really getting pretty far afield.
THE COURT: Overruled. You may answer.
MR. CIALONE: This is general repetition.
THE COURT: Overruled.
A. No, I haven't.
BY MR. KABA:
Q. While you have testified here today what you heard Mr. Greenberg say about being able to sell his counterfeit wines, have you ever made that comment about Acker publicly?
A. No.
Q. Have you ever told a reporter that Acker will sell counterfeit wines?
A. No.
Q. But you do remember Mr. Greenberg making that comment to you, right?
A. Clearly.
Q. It's been 11 years since you were in Mr. Greenberg's cellar?
A. Yes.
Q. And we've had a back-and-forth, your memory is not very clear about everything that was said?
A. In the cellar? It was 11 years ago. No.

Q. But you do have some clear memories, Mr. Ritchie?
A. Yes.
Q. What are those clear memories you have?
A. The clear memories of the conversation we had about counterfeit wines in the entrance in the first part of the cellar, the conversation about counterfeit wines, provenance, authenticity, in general terms about having to do further research and inspection for certain wines and about the comment about Acker Merrall.

MR. KABA: No further questions, your Honor.

THE COURT: Thank you. Is there going to be any -- do you want any recross?

MR. CIALONE: I have one or two questions, your Honor.

THE COURT: I will give you one or two.

RECROSS EXAMINATION

BY MR. CIALONE:

Q. Mr. Ritchie, did the documents you and your colleagues sent to Eric Greenberg after visiting his cellar reflect your honest assessment of his collection?
A. Yes.

MR. CIALONE: Thank you.

THE COURT: Thank you.

(Witness excused)

THE COURT: Mr. Ritchie may step down. Thank you. Plaintiff may call its next witness.

MR. HUESTON: Thank your Honor. Plaintiff calls Mr. Eric Greenberg.

THE COURT: Mr. Greenberg, come to the witness stand, please.

ERIC GREENBERG,

called as a witness by the Plaintiff,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HUESTON:

Q. Good afternoon, Mr. Greenberg.

A. Good afternoon.

Q. Mr. Greenberg, for years you bought wine from Rudy Kurniawan?

A. Yes.

Q. And you placed stickers with the name Rudy on bottles from him because, according to you, his wine was so good, correct?

A. Yes.

Q. You felt that his wine had an extra special provenance, correct?

A. Yes.

Q. That's because he was a particular buyer in your mind?

A. I don't know.

Q. You knew that Mr. Kurniawan was a high volume buyer and seller of wine, right?

A. Yes.

Q. In fact, knew that he spent upwards of a million dollars a month at auctions, correct?
A. It was a rumor.
Q. Sorry?
A. It was a rumor.
Q. Sorry, I still can't hear you?
A. It was a rumor.
Q. It was rumored?
A. Yes.
Q. That was your understanding, a million dollars per month, that is what you said in your deposition?
A. I can't say for sure, but that is what I heard.
Q. You had no idea the source of Mr. Kurniawan's wine, correct?
A. From what I understood, he was spending a million a month at auction houses alone.
Q. But you did not know the source of the various bottles of wine you obtained from Mr. Kurniawan. Is that right?
A. They were represented to be X and Nicolas collection, a special retailer in France.
Q. Let's go to Page 128 of your deposition, lines 21 to 23.

Mr. Greenberg, I will provide you a copy of your deposition.

A. Thank you, sir. What page would you like me to refer to?
Q. Page 128 lines 21 to 23.

MR. HUESTON: Counsel, do you have any objection to my playing this?

MR. CIALONE: I do have an objection, your Honor. This refers to a specific purchase, not to generally purchases of wine from Mr. Kurniawan.

MR. HUESTON: It is a general question and general answer. He can clarify if it is true.

THE COURT: You can clarify.

THE WITNESS: Which lines would you like me to look at, Mr. Hueston?

MR. HUESTON: Let's play Page 128 lines 21 to 23.

(Videotape played)

BY MR. HUESTON:

Q. That was the question asked of you and your answer, right, Mr. Greenberg?

A. Yes.

Q. In fact, Mr. Greenberg, you had caught Mr. Kurniawan selling you fake bottles of wine in late 2003, correct?

A. I bought bottles of wine from Wine Bid, consigned by Rudy Kurniawan which were determined were not authentic.

Q. You received those through Wine Bid, but you determined that Mr. Kurniawan was in the chain that had passed those wines to you, right?

A. Yes.

Q. About those wine bottles, you said they're so fake you have

no idea, right?
A. Yes.
Q. In fact, you were livid that you had gotten that wine from Mr. Kurniawan that was so fake, right?
A. I was livid I got fake wine. It had nothing to do with Mr. Kurniawan.
Q. You wanted restitution, didn't you?
A. I wanted my money back.
Q. You wanted the bottles destroyed, correct?
A. I don't recall that.
Q. You wanted punitive damages, didn't you?
A. I wrote an e-mail where I wrote that.
Q. You wrote that because you wanted it at the time, right, sir?
A. Sometimes I am hotheaded. I probably didn't mean it.
Q. You didn't write in the e-mail I am having a hard day, you might ignore this? You wrote you're livid and you wanted punitive damages, right?
A. No, sir. Sometimes I yell at my kids, and I apologize afterwards.
Q. You weren't yelling at your kids here, sir?

You were talking to a professional through your e-mail, correct?
A. Yes, and I told you what I said.
Q. You also said you wanted to bury his reputation, didn't

you?
A. I wrote that.
Q. You also said to that auction firm that you wanted the auction firm, "to notify everyone who has bought wine consigned from him that it may be suspect," correct?
A. I wrote that.
Q. You wanted to know where Mr. Kurniawan got his wine from, right?
A. I don't recall writing that.
Q. You recognize when you wrote to the auction firm that it was not right to pawn mistakes off on unsuspecting others.
That is what you wrote, right?
A. I don't have a document in front of me, sir.
Q. Let's put it in front of you. Let's go to Trial Exhibit 78.
A. Is it going to be on the screen or should I put on my reading glasses?
Q. Here you are, sir.
A. Thank you, Mr. Hueston.
Q. Trial Exhibit 78, for the record, is an e-mail chain beginning at the top from Mr. Eric Greenberg to Steve Griffin of Wine Bin, dated December 30th, 2003. Do you recognize this e-mail?
A. Yes, sir.
MR. HUESTON: We move this into evidence, your Honor?

THE COURT: Any objection?

MR. CIALONE: This is part of what we were objecting to in the letter we wrote to the court recently on our 404 (b) objection. It appears to just go to general back-and-forth with Mr. Kurniawan.

THE COURT: Yes. The objection is noted. Consistent with my earlier ruling, I am going to allow it. Exhibit 78 is received in evidence.

(Joint Exhibit 78 received in evidence)

BY MR. HUESTON:

Q. Mr. Greenberg I direct your attention to the second page of the e-mail chain, please, and if we can post that, please.

A. The second page or the back of the first page, sir?

Q. And we can --

A. I am not sure.

Q. I will help you in a second, sir. If we can go ahead and highlight there beginning where it is Eric Greenberg, Sunday, December 28th, 5:55 pm. Do you see that in front of you, Mr. Greenberg?

A. Yes, sir.

Q. You were writing to Steve Griffin, and he is at Wine Bid, right?

A. Yes, sir.

Q. This is not one of your kids, right?

A. No, sir.

Q. And you write to him, the subject matter is regarding third party inspection, correct?
A. Yes.
Q. "Steve, I have been very busy. Apologies for not getting back to you. The wines were consigned by Rudy Kurniawan of our Arcadia, California. I know this for a fact."
You wrote that, correct?
A. Yes.
Q. And you also wrote he also consigns some suspect/bad mags to Acker Merrall that I bought, bad news. You wrote that to Mr. Griffin, right?
A. Yes.
Q. So that was another occasion where you received what you felt were suspect wines from Mr. Kurniawan? You're referencing that in the e-mail, correct?
A. I actually hadn't seen that. Thierry Lovato did at an earlier date.
Q. You wrote in the e-mail and you're stating as a fact to Mr. Griffin, he consigns some suspect bad mags to Acker Merrall that I bought. That is what you wrote, right?
A. I wrote that.
Q. You said that was bad news?
A. I wrote that.
Q. And it was bad mags, right?
A. I wrote that.

Q. "Now I can proceed with a lawsuit without messing around." You wrote that, too, right?

A. I did.

Q. "There I will get punitive damage against one or both of you."

Who was one or both of you that you were referring to?

A. That would have been Wine Bid and/or Rudy Kurniawan.

Q. Your goal, you said, "My goal is to bury the consignor's reputation in the wine world." That was the goal you took the time to write out in this e-mail, right?

A. I wrote that.

Q. And you wrote, "we have too much faking going on." You believed that, too, right?

A. Yes.

Q. Then you asked, "I want your firm to notify everyone who has bought wine consigned from him that it may be suspect," right?

A. I wrote that.

Q. I am not going to read the rest, but you actually then took the time to write exactly what you felt was wrong with the bottles of wine that you got, right?

A. Yes.

Q. After you write about those bottles of wine, I want to direct your attention and we can highlight it. It is the photograph starting with I will not wait to file on the next

page. Can we highlight that, please.

You wrote I will not wait to file. You're referring to filing a lawsuit, correct, sir?

A. I was threatening that.

Q. You were threatening that?

A. Yes.

Q. You were intending Mr. Steve Griffin to take your threat seriously, weren't you?

A. Like I said, sometimes I am hotheaded. I wrote it.

Q. Putting aside whether you're a hothead, you had an idea from what you wanted from Mr. Griffin here, didn't you?

A. I don't understand your question, sir.

Q. Let me try to clarify.

You said if you want a solution, both you and your consignor will need to give me restitution and immediate refund with the bottles destroyed. That was your proposal, right?

A. Yes.

Q. And you also wanted to know where Mr. Kurniawan got the bottles from? You demanded that as well?

A. I wrote that.

Q. Did you get that information?

A. No.

Q. "He knows me and I know him. Play poker and you lose. These are so fake, you have no idea. I am livid about fakes."

You said all those things, correct?

A. Yes.
Q. You said you weren't sure you recalled the pawning off mistakes on others. Let me read this and see if it refreshes your recollection. "I have seen too many, and ignorant kids cannot make bad buys and think they're going to pawn their mistakes off on unsuspecting others"?
A. Sir, you just confused me. You combined a couple of questions. I don't know what to say. If you ask me a question at a time, I will be happy to answer it.
Q. You wrote that sentence I just read?
A. What sentence?
Q. Sorry?
A. That sentence is?
Q. I am looking at your grammar, sir. There were several comments. I read it through the end.
A. Please ask me the question you want me to answer.
Q. When you said, "and ignorant kids cannot make bad buys," you were referring to Mr. Kurniawan as someone you were referring to as an ignorant kid?
A. That was a pejorative term for him, yes.
Q. As we mentioned, as we saw earlier in the e-mail, this was the second time you had caught Mr. Kurniawan passing off suspect or bad bottles of wine to you, right?
A. I don't remember it that way.
Q. In the beginning of that e-mail you wrote to Mr. Griffin,

he also consigns some suspect bad mags to Acker Merrall that I bought. That was another buy you made of wines that you thought were suspect and bad from Mr. Kurniawan, correct?

A. Me or Mr. Lovato e-mailed me at an earlier date and this is an e-mail chain that I sent at an earlier date. He had suspect issues on a magnum of wine we bought, but I hadn't inspected it and he wrote me an e-mail saying he thought it looked funny, but we had to look at it.

Q. That wine you described Mr. Lovato wrote to you about was from Mr. Kurniawan. That was your understanding, right?

A. Yes.

Q. That is why you asserted it as such in the e-mail here to Mr. Griffin, right?

A. Yes.

Q. So two times you're representing?

A. No, not representing. I am telling you that the other one I didn't look at, one I did.

Q. Sir, after this incident where you referenced the bad/suspect mags received through Acker Merrall and your complaint about the wines you're getting from Mr. Kurniawan through Wine Bid, you continued to do business with Mr. Kurniawan, didn't you?

A. Yes.

Q. In fact, shortly after this, by May of 2004, you wanted him to help you move certain wines, right?

A. I'd have to -- I don't know where you're going with this, sir, so I don't answer your question.

Q. Let me see if I can help you with that.

I am handing you what has been marked as Exhibit 366. Exhibit 366 is a 4 page e-mail chain from the top from you, sir, dated, Tuesday, May 25th, to Rudy Kurniawan. Do you recognize this e-mail chain, sir?

A. Yes, I do, sir.

MR. HUESTON: At this time I move Exhibit 366 into evidence and ask to publish.

THE COURT: Is there any objection or just the same?

MR. CIALONE: I repeat my objection from earlier, your Honor.

THE COURT: It is noted. 366 is received.

(Joint Exhibit 366 received in evidence)

BY MR. HUESTON:

Q. I would like to direct your attention to the fourth page of that e-mail which we will also for your convenience pull up on the screen.

A. Okay.

Q. At the top of the page you write you should call me when looking to move certain wines, and I should do the same for you. We would both be better off.

Let me stop right there. You should call me when looking to move certain wines. You were discussing and

proposing that Mr. Kurniawan contact you to move wines, right?
A. No, I wasn't. Would you like me to explain?
Q. Sir, you wrote, when looking to move certain wines, these are your words, let's start with that?
A. I wrote that, but that is not like your interpretation is not what I meant. I would be happy to explain for the jury if you would like me to.
Q. Your attorney will have plenty of time to elicit what they want from you. I am going to start at basic level.

First let's establish you wrote those words, correct?
A. Which words, sir?
Q. "You should call me when looking to move certain wines," you wrote that, right?
A. Yes.
Q. When you said you should call me when looking to move certain wines, you didn't mean come over and help you lift up wines and physically move them, right, sir?
A. That would have been helpful. Maybe I should have.
Q. That is not what you intended when you wrote that, right, sir?
A. No.
Q. What you meant by move certain wines is help you sell certain wines, correct?
A. No.

(Continued on next page)

BY MR. HUESTON:

Q. To help you move out the door, to sell your wines, sir, that's what move means, doesn't it?

A. No, not at all. I'm happy to explain.

Q. Sir, let's go to the earlier part of that e-mail on page 3, "Rudy, I hope you are well." It says at the top, "You and I are the only people that cut our capsules the same way so I am positively sure that this was yours." You then list -- one, two, three, four -- five bottles with prices next to them. Right?

A. Correct.

Q. And these are -- it's a communication about selling wine, right?

A. No, it's a communication about wines at auction from Acker Merrall Condit, and if I would -- had known he was selling them, I could have called him directly and saved 20 percent of buyer's commission, so it's -- what the e-mail referred to was me saving money when I was buying wines that may have been consigned by him, and that's what the whole e-mail meant.

Q. Right. So moving wine is related to either the buying or selling of wine, right?

A. I don't know. I was just buying wine at auction. I figured I could save 20 percent on buying wines. That's what I meant, sir.

Q. Buying wine, that's right.

A. Yes.
Q. Okay. In fact, in this same e-mail chain, if we go to page 2 of the e-mail chain, Mr. Kurniawan, in the embedded e-mail dated May 25th at 2:40 p.m., writes to you, "Eric my friend." Do you see that?
A. Yes.
Q. And down on the fourth line, "Custom made 3L LP 61, and they are fantastic and real." You see his words there, right?
A. Yes, I do.
Q. He was letting you know that the wine was actually real, right?
A. Well, he said that, and I don't know the wine, 'cause I never had it, I never saw it, and I never even tried it.
Q. Real versus fake, isn't that right?
A. Well, that's what it read.
Q. You didn't write him back and say, "What are you talking about? I hope you're not talking about possibly fake wine." You didn't write him back and say that, did you?
A. No.
Q. Later that year, sir, Mr. Kurniawan in fact offered to help you move some of your wine as you had requested, didn't he?
A. I don't know what you're referring to. You'll have to show me a copy so that --
Q. You have no independent recollection of him offering to help you move wine?

A. We did several transactions together so I don't know which one you're referring to, sir. I'm sorry.

Q. Okay. I'm handing you Plaintiff's -- or Trial Exhibit 379 marked for identification.

A. Mr. Hueston, am I done with this one?

Q. You can just put it down. I may be going back to it. Pick up the new one.

A. Thank you. Should I look for this on the screen or the document?

Q. And Exhibit 379 is, for the record, an e-mail from Mr. Kurniawan to you dated October 11, 2004.

MR. HUESTON: At this time, your Honor, we would move this Exhibit 379 into evidence and ask to publish.

THE COURT: Any objection?

MR. CIALONE: No, your Honor.

THE COURT: 379 is admitted.

(Joint Exhibit 379 received in evidence)

MR. HUESTON: Thank you, your Honor.

Let's post this, please.

Q. At the top of the e-mail it's from Mr. Kurniawan to you, sir, subject prices, correct?

A. Yes.

Q. And under bullet point 4, sir, he says to you, "I can move some, actually try to move those 'suspects' Bordeaux for you." That's what he writes, correct?

A. He wrote that.
Q. And you've claimed that in deposition, under oath, that you didn't know what he meant by "'suspects' Bordeaux," is that right?
A. Yes, I said that.
Q. But in fact, sir, you've used the term "suspect" for questionable or bad wine yourself, haven't you?
A. I typically don't put quotations around it, though, and that's what was really strange to me. It still is strange to me, actually, and I can explain this one too, if you'd like me to sir.
Q. Sir, you use the term "suspect" for questionable or bad wine, don't you?
A. In singular and without quotes, yes.
Q. And, sir, you said you didn't really understand what he was referring to when he wrote "'suspects' Bordeaux," is that right?
A. No, I didn't say that. I said I'd be happy to explain if you'd like me to.
Q. I'd just like for you, if you could, to try to answer the question posed. Did you or did you not understand what he was referring to when he wrote that at the time?
A. The way you posed the question, I don't understand it.
Q. And, sir, you replied to this e-mail, didn't you?
A. Yes, I did.

Q. I'm handing you what's been marked as Exhibit 380.

MR. HUESTON: Exhibit 380, for the record, is an e-mail from Eric Greenberg to Rudy Kurniawan, Monday, October 11th, 2004, 6:17 p.m. At this time I would move this into evidence and ask permission to publish.

THE COURT: Any objection?

MR. CIALONE: No, your Honor.

THE COURT: It's received, 380.

(Joint Exhibit 380 received in evidence)

THE COURT: Post this, please.

Q. This is Mr. Kurniawan's e-mail to you with all caps responses from you embedded within this e-mail, correct, sir?

A. Well, actually, he has a few things in there that are in all caps that are not mine, but in general, yes.

Q. Okay. Looking down to the words, "I can move some, actually try to move those 'suspects' Bordeaux for you," you see that, sir?

A. Yes.

Q. You didn't respond, "I don't understand what you're talking about." You didn't write words to that effect, did you?

A. No.

Q. And you did not write, "Could you clarify. I know what 'suspect' means, but when you say 'suspects Bordeaux,' I'm totally lost." You didn't write anything like that, did you?

A. I didn't write "suspects," no.

Q. Instead, what you wrote there directly after that is, "I am putting it on auction." That's what you wrote, right?

A. I wrote that referring to the sentence, "PS, I tried the Georges Churchy 1899 Petrus," and that's what I wrote it to. In my deposition I got confused and made a mistake. So I'm happy to explain this, but that sentence refers to after it.

"1. I got the wire, thanks.

"2. The additional wines are here, but I will be in New York Wednesday through Sunday. Can we do next week, perhaps, etc., etc." He asked if I want a refrigerated truck. "Refrigerated truck."

Sentence 3. Do I want a Vogue Musigny. Yes.

Then the next: Include the wines you don't want, include the prices you want to sell. Okay.

So then you go down to PS, "I'm putting that on auction." It had nothing to do with the words "'suspects' Bordeaux," period.

Q. Sir, let's start with this. Right after, as you -- actually, point out a couple things here. You actually insert in all caps your response to different portions of the e-mail, don't you?

A. I don't understand the question, sir.

Q. Okay. Number 1. "Got the wire, thanks." And then you put in all caps, "Refrigerated truck." Right?

A. That referred to wine being shipped to me, not to the wire.

Q. And then, "Do you prefer refrigerated truck or overnight shipment so I can arrange?" Your response there, "Yes," in all caps, right, sir?

A. No. My response is, "Refrigerated truck."

Q. The word in all caps is "Yes," correct?

A. No, that goes to, "Do you want 1919 Vogue Musigny? I forgot to include on list. I can split 3 with you. I have six coming at 3,000 each," and that was the "Yes."

Q. And then after, "I can move some, actually try to move those 'suspects' Bordeaux for you," your words say, "I am putting it on auction," right?

A. The words say it there, and that's not what it refers to. It refers to the Georges Churchy 1899 Petrus he was talking about. It had nothing to do with "'suspects' Bordeaux," period.

Q. Sir, that's your story today, that it actually refers to Georges Churchy 1899 Petrus, correct?

A. It's the truth.

Q. And in your deposition that you had in this matter, you also swore to tell the truth there, didn't you?

A. Yes, I did.

Q. And in your deposition, where you swore to tell the truth, you didn't give the answer you gave in court today about this, did you?

A. I got confused. It was my first deposition.

Q. And, sir, in that deposition when you were asked to answer this, you did not say, "I'm getting confused. I'm not sure." You didn't say that, did you?

A. No.

Q. Let's go to your deposition on that. Let's go to deposition at 159, line 8 to 13.

A. Is that going on the screen, sir?

MR. HUESTON: Go ahead and play.

(Video played)

Q. Sir, you didn't show any uncertainty when making that answer there, did you, sir?

A. Well, actually, I can tell you that entire chain of information, if you'd like to have it, because that's what --

Q. Actually --

A. -- "'suspects' Bordeaux" refers to. I'm happy to explain that. And I did explain that precisely in my deposition.

Q. Sir, when you were asked that question, you gave that answer. You didn't show any uncertainty in that answer, did you?

A. Sir, if you'd like me to explain the '61 Latour Pomerol, I'm happy to do that.

Q. I'm not interested in your story today. I'm just establishing you gave a different answer then, sir.

MR. CIALONE: Objection to arguing with the witness here. If he doesn't want him to explain, he asks the next

question.

THE COURT: Next question.

Q. And, sir, let's go with the -- your story today. "I am putting it on auction. PS, I tried the Georges Churchy, 1899 Petrus, same as yours, 1899, 1900 mag," and it says there, "Not good for sure," right?

A. It says that.

Q. And your testimony today is that's what you're putting on auction, right?

A. Yes.

Q. Something that's not good for sure.

A. No. Actually, it was a different bottle and different vintage and he hadn't taken a look at my bottle, so I don't even know what he was talking about there. I let Zachys make that decision.

Q. And in any event, nowhere in this e-mail chain do you ask him to clarify, "What do you mean by 'suspects Bordeaux'?" You don't do that, do you, sir?

A. I didn't think it merited the time of even responding to it because I believed the wine was real, and I wouldn't sell fake wine, I've never intentionally sold a fake wine in my life, and I didn't think it merited any kind of response.

Q. And so you kept doing business with Mr. Kurniawan after that, right, sir?

A. Yes, 'cause I thought his wines were real.

Q. After you had written to Mr. Griffin that you had caught him for the second time passing counterfeits, right?
A. I didn't say a second time. After I caught him that first time, yes.
Q. And after referencing the Acker Merrall bad wine mag that you claimed came from Mr. Lovato that you asserted to Mr. -- the wine -- Mr. Griffin in the Wine Bid e-mail, in that same correspondence.
A. I'm confused by that question. I think you should break that down, if you could, please.
Q. Sir, in the e-mail with Mr. Griffin and Wine Bid, you refer not only to the wine that you got from Mr. Kurniawan through Wine Bid as so fake that you were ready to file a lawsuit, you referred to a separate incident where you felt you got bad wine through Acker, correct?
A. I referred to that.
Q. And that was a separate incident, wasn't it?
A. It was a separate incident.
Q. Okay. Mr. Greenberg, you are familiar with the retailer Chicago Wine Company, correct?
A. Yes, I am.
Q. And you sold wine through the Chicago Wine Company.
A. I sold wine to them, yes.
Q. Including magnums of 1928 and 1921 Petrus, right?
A. Yes.

Q. I'm handing to you what has been marked as Trial Exhibit 413.

A. Thank you, sir.

MR. HUESTON: Exhibit 413, for the record, is an e-mail from Eric Greenberg to Simon Lambert dated Wednesday, February 23rd, 8:19 a.m.

Q. Do you recognize this e-mail chain, sir?

A. Yes, I do.

MR. HUESTON: At this time we'd move this into evidence and ask permission to publish.

THE COURT: Any objection?

MR. CIALONE: Your Honor, we would like a limiting instruction on this as we discussed previously at the hearing last week for notice purposes as a matter asserted by the unnamed and unidentified customer of Chicago Wine.

THE COURT: Okay. The jury's instructed that with this document, and there may be certain other documents like this, it's what's called hearsay, which means that it's not admitted for the truth of the matters asserted in the statements, but it can be relevant to go to issues like the motive or intent or absence of mistake with respect to a party, or a person. In other words, it can show what someone knew or intended, but it's not admitted for the purpose that the statement itself is true.

You may proceed.

MR. HUESTON: Okay. Thank you, your Honor.

BY MR. HUESTON:

Q. Let's start with the embedded part of this e-mail. First of all, who is Mr. Simon Lambert?

A. Simon Lambert I believe is one of the principals of Chicago Wine Company. I'm not sure of the ownership structure.

Q. Okay. And this e-mail exchange was between you and Mr. Lambert of the Chicago Wine Company?

A. Yes, it was, yes.

Q. Okay. And in the embedded e-mail within, he writes --

A. Is that what's on the screen, sir?

Q. As I speak, it will be posted.

A. Okay.

Q. And in that embedded e-mail, which is on the screen, he writes to you, "Subject: FWD: Petrus 21 and 29," is that right?

A. Yes.

Q. And he writes to you -- below that, there is a notation written to him from a customer that Mr. Lambert refers to, right?

A. I don't see that on the screen. Oh.

Q. Okay. Near the bottom it goes down to, "Dear Simon," and then it flips over to the next page.

A. Okay.

Q. "I just inspected the Petrus that came in and have to

reject the following." Do you see that?

A. Yes.

Q. And the customer states, "1 ea 21, this has no date on the cork and the cork is shrunken at the base." Correct?

A. It says that.

Q. And then the next one makes a notation, "No vintage on the cork, no strip label," right?

A. It says that.

Q. And there's one other one there that says, "The 1921 cork coming away from the glass at the bottom" and "no strip label," right?

A. It says that.

Q. And there's a reference to a 1929 bottle, "no date or writing on the cork," right?

A. Yes.

Q. Okay. And then above that, Simon, that's Mr. Lambert, is writing to you directly, right?

A. Yes.

Q. And he writes to you, "The customer to whom we sold all of the 1921 and '29 Petrus magnums, having now received delivery from us, has today sent me the following (see below). I think the comments about the strip labels are to identify each magnum rather than a complaint, but obviously the unmarked corks are a different matter, as are the shrunken corks." He wrote that to you, right?

A. He wrote that.
Q. And he then says, "Had either of these problems been apparent when I saw the photographs, we would not have offered these for sale." Right?
A. He wrote that.
Q. And so he had issues with what he characterized as unmarked corks and shrunken corks, right?
A. The corks were actually marked, though, but yes, he writes that.
Q. That's what he writes on this, correct?
A. And the corks were marked. I saw with my own eyes as soon as I received them. I looked at it myself.
Q. I know that's what you want to say and get that out on the record, sir.
A. Actually, we have one here if you'd like to see it.
Q. We'll be able to see it all in due course.
A. But the corks are marked.
Q. I'd like to continue. May I continue with my questioning, sir?
A. Certainly.
Q. Thank you. I appreciate that.

That's what he wrote to you, and because of that, he returned the bottles to you, right?

MR. CIALONE: Objection, your Honor. Vague. Is he referring to Mr. Lambert or the unidentified customer?

THE COURT: Please clarify.

Q. Mr. Lambert wrote to you, sir, that, "Had either of these problems been apparent when I saw the photographs, we would not have offered these for sale." Right?

A. I don't know who looked at them, what kind of lighting they had, magnifying glass, anything else. As far as I'm concerned, they were wrong, but you know what, I stood behind my wine, as I always do, and I gave him a refund. He asked for a refund and I gave it. Just as if I was asked to refund for other wine, I would have given that refund. I have nothing to hide.

MR. HUESTON: Move to strike as nonresponsive, your Honor.

Q. Sir, Mr. Lambert writes to you, "Had either of these problems been apparent." He's referring to the two items he referred above, the unmarked corks and the shrunken corks, right?

A. Yes, he is.

Q. Okay. These bottles then came back to you, went into your inventory, didn't they?

A. Not until we fully inspected them to make sure they had cork markings.

Q. Handing you Trial Exhibit 415.

A. Would you like me to read this whole inventory, sir?

Q. One moment, sir. I'll let you know.

MR. HUESTON: Your Honor, Exhibit 415 is -- begins

with an e-mail from Thierry Lovato to Eric Greenberg, Subject: Wine Inventory, and at this time we'd move this into evidence.

THE COURT: Any objection?

MR. CIALONE: No, your Honor.

THE COURT: 415 is received.

(Joint Exhibit 415 received in evidence)

BY MR. HUESTON:

Q. Mr. Greenberg, this is a wine inventory that you kept?

A. It's an inventory of authentic wines we kept.

Q. And let's go to page 14 of this document, and for your convenience I'm going to have it put on the screen in front of you.

A. That's very kind. Thank you.

Q. And this wine inventory was sent on March 31st, 2005, from Mr. Lovato to you, correct?

A. Yes.

Q. And page 14 in this redacted inventory, it lists some of the bottles -- this is redacted -- in your inventory at that time, right?

A. Yes. This is three authentic bottles, I believed at that time, authentic bottles of Bordeaux Petrus, correct.

Q. By the way, you read something that's not -- there's no word "authentic" there, right, sir?

A. No. Inventory only had authentic wines.

Q. It just says, "Bordeaux red 3 magnum 1921 Petrus." Right?

A. The document reads for itself, sir.
Q. Okay. And that's what it says, correct?
A. I just said the document reads for itself.
Q. And on the front page of the document Mr. Lovato writes to you that this is your updated inventory, right?
A. Updated inventory of authentic wines, yes.
Q. And you had taken those returns of those three magnums that were discussed in the Simon Lambert e-mail in late February of 2005, right?
A. We took those returns.
Q. Okay. Three magnums of those 1921 Petrus came in late February, and here we have your wine inventory as of March 31st showing three magnums of 1921 Petrus, right?
A. Three magnums that we expected had cork markings that we then put into inventory after inspecting them and reflecting on this inventory, correct.
Q. Let's look at another inventory from your cellar.

Handing to you what's been marked as Plaintiff's Exhibit 426. Plaintiff's Exhibit 426 has a cover e-mail from Mr. Thierry Lovato to you dated July 30th, 2005, with an updated inventory, is that right?
A. With an updated inventory of presumed authentic wines, correct.

MR. HUESTON: Your Honor, we would move this document into evidence.

THE COURT: Any objection?

MR. CIALONE: No objection, your Honor.

THE COURT: Okay. 426 is received.

(Joint Exhibit 426 received in evidence)

MR. HUESTON: Thank you.

Q. And if we go, sir, to page 4 of this document.

A. Page 4?

Q. Yes. And I'll put it up on the screen for you. We see that --

A. Thank you.

Q. -- the cellar still contains the three 1921 Petrus magnums.

A. Yes, it does. And I can explain that too.

Q. Well, three 1921 Petrus magnums came back from Chicago Wine in February of 2005, correct?

A. Yes.

Q. We just reviewed the March inventory which showed those three magnums of 1921 Petrus, right?

A. Yes.

Q. And here at late July 2005, still showing three magnums of 1921 Petrus, right?

A. It shows that they would have been removed by Zachys the week before when they were at my house inspecting wines, two of them, and when Thierry updated it, there would have been one magnum left, which I still have, and it's here in this court.

Q. Sir, you consigned two magnums of 1921 Petrus for sale at

the Zachys October 2005 auction, right?

A. Yes.

Q. And those were two out of the three that came out of this inventory, right?

A. Yes, sir.

Q. And two out of the three that came originally back from the Chicago Wine Company, right?

A. I can't say for sure, but I believe so.

Q. But you agree that we saw three coming back from the Chicago Wine Company and then the March inventory showing the three and then the July inventory showing the three, correct?

A. It's the logical conclusion one would make.

Q. Okay. Now, sir, without my asking, you've repeatedly blurted out that you looked at and found a vintage or a date on the cork, is that right?

A. I didn't blurt. I just made a statement, sir.

Q. Okay. In fact, your own expert did not find a vintage or date on these bottles at issue here, the 1921 Petrus that Mr. Koch purchased, correct?

A. And Jeff Zacharia and I have, and I'm happy to go show him where that is today. Sometimes you will miss things. It does exist. I saw it at Mr. Edgerton -- when we had the Edgerton deposition. I saw it myself with my own two eyes.

Q. I know you have said you saw it. I asked you a different question. But let's get specific. And I'll help with a

document.

I'm handing you the rebuttal expert report of your expert, Mr. Lempert-Schwarz, which has been marked as Exhibit 106. You recognize this as your expert's rebuttal report, sir?

A. Yes.

Q. Sir, if you'd turn to Bates stamp 75, and report page 74, Mr. Lempert-Schwarz is actually describing the results of his inspection for that Chateau Petrus 1921, correct?

A. Yes.

Q. And if we go then --

MR. HUESTON: And if we can, if it's possible to put it up under Cork.

Your Honor, we'd move this into evidence. I'm sorry.

THE COURT: Okay. 106? I assume no objection to 106?

MR. CIALONE: No objection, your Honor.

THE COURT: Okay. 106 is received.

(Joint Exhibit 106 received in evidence)

MR. HUESTON: Can we post it, please. Let's put up page 74.

Q. And sir, there is a description here by Mr. Lempert-Schwarz of what he observes in the cork, correct, sir?

A. Yes.

Q. And in this description he talks about legible branding but there's no mention of seeing the vintage or date on that cork,

correct?
A. Correct.
Q. And you know that our expert, Mr. Egan, did not find a date on that cork, correct?
A. Yes, and it does have a date, as Zachys noticed, too.
MR. HUESTON: You can put that exhibit down.
Q. Sir, you didn't tell Zachys that the magnums that you got back from Chicago Wine in fact had been rejected from Chicago Wine, did you?
A. They weren't rejected. I processed a refund.
Q. You didn't tell them that you processed a refund for those, did you?
A. No. I thought they were real.
Q. You didn't tell Zachys that someone from Chicago Wine Company thought there were issues with those bottles, right?
MR. CIALONE: Objection. Mischaracterizes the evidence, your Honor. Chicago Wine Company forwarded an e-mail that you ruled is not admissible.
MR. HUESTON: I'm merely asking if he informed Mr. Zacharia of a concern from Mr. Simon at Chicago Wine Company.
MR. CIALONE: Again, Mr. Simon forwarded an e-mail from an unidentified customer. No evidence if Mr. Simon himself -- Mr. Lambert, I'm sorry -- himself ever looked at the bottles.

THE COURT: Well, you can ask the question, the general question.

MR. HUESTON: Sure.

BY MR. HUESTON:

Q. Did you ever convey to Mr. Zacharia or Zachys any of the concerns that were outlined in the e-mail from the Chicago Wine Company?

A. No, because they weren't credible.

Q. And in your mind, Mr. Greenberg, it wasn't worth it to allow Mr. Zacharia to consider what the Chicago Wine Company had said so he could assess whether it was credible.

A. He did assess it. He inspected the wine and actually saw a date. It's in the catalog.

Q. But you didn't tell him the issues as related by Chicago Wine, right?

A. I didn't need to. Zachys insisted on doing everything themselves and making their own decisions.

Q. We'll hear from Mr. Zacharia later on that.

And that bottle of 1920 --

(Discussion off the record)

MR. HUESTON: Okay. Are we ready to proceed?

Q. Mr. Greenberg, do you know of a company Bordeaux Wine Locators?

A. I don't know them personally, but I know of them.

Q. I'm sorry?

A. I don't know them personally but I know them.
Q. Okay. You purchased wine from Bordeaux Wine Locators, right?
A. No, I haven't.
Q. Okay. You had bottles in your collection that had strips indicating Bordeaux Wine Locators, right?
A. There were bottles which would have been imported by Bordeaux Wine Locators and sold to me through another distributor or retailer, but I've never ever had an individual commercial transaction with that company, sir.
Q. And sir, you had expressed an opinion at one point in time that the Bordeaux Wine Locators were some of the worst counterfeiters in the world, correct?
A. That's a joke, yes. Dave Smydo is a friend and -- yeah, as a joke: This wine bottle was so bad it was cellophaned. But, you know, incidentally, Mr. Edgerton came to my cellar, he told me I think at least seven bottles with their import strips were real.
Q. Okay. Let's look at whether this is a joke.
Handing you Exhibit 388.
A. Thank you.
Q. Exhibit 388 is an e-mail from you to a davidsmydo@sokolin.com, Subject: Account Review. Do you see that?
A. Yes, sir.

Q. Do you recognize this e-mail?
A. Yes, I do.
MR. HUESTON: Your Honor, we would move Exhibit 388 in evidence.
THE COURT: Any objection?
MR. CIALONE: No, your Honor. Sorry.
THE COURT: 388 received.
MR. CIALONE: Your Honor, actually -- sorry. No objection, your Honor.
THE COURT: Okay.
(Joint Exhibit 388 received in evidence)
Q. Sir, you wrote this e-mail in November 24th, 2004, correct?
A. It looks like it.
Q. Sorry?
A. Looks to be the case.
MR. HUESTON: Okay. And I'd like to pull out that first paragraph.
Q. You write to Dave, that's Dave Smydo, right?
A. Yeah, I was thanking him for the summary and wishing him a happy Thanksgiving.
Q. Well, you did more than wish him a happy Thanksgiving. You also talked about a '49 Latour that he had shipped that was allegedly fake, correct?
A. Yeah. They would ship me maybe a thousand bottles at a

time and Thierry Lovato would go through those and inspect those, and that one just wasn't right. I don't think they looked at it.

Q. Yeah. Right. So let's go to the second line there and examine that sentence. One other thing you wrote, "The '49 Latour you just shipped is fake and I am sending it back for a refund." You wrote that, right?

A. Yes.

Q. And you had looked at it, didn't you, to determine that it was fake, right?

A. Myself or Thierry or both, yeah.

Q. And you noted that, "The cork is not properly marked, the bottle itself is suspect, and the label is taped on with cellophane tape, making it obvious, and condition alone being doubly unacceptable. I will expect a refund on that as well." Right?

A. Yeah. They refunded my money.

Q. You were serious about getting that refund.

A. Sure, I was.

Q. And then you write, sir, "Bordeaux Wine Locators is the worst counterfeiting operation in the world." That's what you wrote, right?

A. And therein lies the sarcasm, because Mikey Dennison (ph) was a friend. I sat at his table for his wedding. Dave Smydo, Dave Stockton (ph), I used to go over to the Hamptons and I

used to hang out with them a lot, so, you know, I was buying thousands and thousands of bottles of wine from these guys and -- I wrote that, though. I wrote that. I was being sarcastic.

Q. You wrote that right at the end of complaining about a bottle of wine that you had to go to the pains to detect was fake and in asking for a refund, correct?

A. I wasn't complaining. I was doing business with a friend who rectified it, sir. That wasn't complaining.

Q. This is part of doing business, you detected a fake and got your money back, right?

A. Yes. Not complaining, though.

Q. There's no -- nothing funny about you detecting a fake and getting your money back, right, sir?

A. I wasn't worried about it. They gave me my money back and I wished him happy Thanksgiving, and I used a little sarcasm.

Q. Sir, when you wrote, "The Bordeaux Wine Locators is the worst counterfeiting operation in the world," that was the last line as you discussed the '49 Latour that you declared as a fake, right?

A. In this e-mail that is the last line besides, "Have a great Thanksgiving."

Q. In fact, sir, you sold wine at the Zachys 2005 auction that had the Bordeaux Wine Locators strips on them, right?

A. Yes. Hundreds and hundreds and hundreds of bottles,

correct.

Q. Right. Well, let's take a look at some of the ones in this case.

So, Mr. Greenberg, I'm going to take each of these eight bottles and hand them to you and ask if you could verify that each of these have the Bordeaux Wine Locators strip on them.

MR. HUESTON: I'll start with the, for the record, the 1950 Petrus Pomerol, which is Exhibit 228.

Q. I'm putting that before you, sir. Does that bottle in fact have the Bordeaux Wine Locators strip on it, sir?

A. Yes, it does.

Q. I'm now going to put before you what has been marked as Exhibit 212, which is the Chateau Lafleur Pomerol 1950, and ask: Does this have the Bordeaux Wine Locators strip on it, sir?

A. Yeah, it has the strip on it that expresses that Bordeaux Wine Locators imported it to another retailer, who sold it to me, yes.

Q. I'm now placing before you Exhibit 210, which is another 1950 Chateau Lafleur Pomerol. Does this also have a Bordeaux Wine Locators import strip on it?

A. Yes, it does.

Q. I'm now placing before you Exhibit 211, which is another purported Chateau Lafleur 1950. Does this have an import

sticker from Bordeaux Wine Locators?

A. Yes, it does.

Q. I'm now placing before you Exhibit 217, which is a 1950 Petrus Pomerol, and ask whether there is an import sticker from Bordeaux Wine Locators on it.

A. Yes.

Q. And Exhibit 222 is a 1945 Chateau Lafite Rothschild. Does this also have the Bordeaux Wine Locators strip on it?

A. Yes. I got that from D. Sokolin, and that would have been the importer.

Q. And Exhibit 214, another Chateau Lafleur 1950, does this also have a Bordeaux Wine Locators strip on it?

A. Yes, it does.

Q. And the last one, Exhibit 213, another 1950 Chateau Lafleur, does this also have the Bordeaux Wine Locators strip on it?

A. Yes.

MR. HUESTON: We'd move all those bottles into evidence, your Honor.

MR. CIALONE: I don't have an objection to that, your Honor, but I would just like the opportunity to take a look at them just after the court day is over.

THE COURT: Can you repeat the numbers. I'm not sure I got them all.

MR. HUESTON: Yes, your Honor. They should be numbers

222 -- this is a little out of order, but these should be the numbers. 222, 210, 211, 212, 213, 214, 217, 228.

THE COURT: And are those all within the 24 bottles at issue in the case?

MR. HUESTON: Yes, your Honor.

THE COURT: Okay. Those bottles, 222, 210, 211, 212 --

MR. CIALONE: Your Honor, those bottles, we want to add the objection of not laying the foundation that those bottles came from Zachys. I don't believe any of them have Zachys stickers on them, and they haven't put that testimony in yet.

MR. HUESTON: Well, we're going to be tying that up later in the case.

THE COURT: Yes. Subject to later objections, those will be received for purposes of being in evidence and subject to foundation issues that we may address later.

(Joint Exhibits 222, 210, 211, 212, 213, 214, 217, and 228 received in evidence)

BY MR. HUESTON:

Q. Mr. Greenberg, you did not tell Mr. Zacharia that you believed Bordeaux Wine Locators was the worst counterfeiting operation in the world, did you?

A. They're not the worst counterfeiting operation in the world, and Mr. Zacharia actually believed in the veracity of

Bordeaux Wine Locators, as did I.

Q. I'm sorry. Is that a no?

A. We believed in the veracity of wines imported by them.

Q. Sir, so you didn't tell Mr. Zacharia that you felt that Bordeaux Wine Locators is the worst counterfeiting operation in the world?

A. I didn't believe that.

Q. You didn't believe it though you wrote it in an e-mail. Today your testimony is it's a joke?

A. It was sarcastic.

MR. HUESTON: Your Honor, that completes that line of questioning. It's close to 5.

THE COURT: Yeah, it's close to 5. Why don't we break for the day.

Ladies and gentlemen of the jury, I'm going to let you go for the day. I appreciate your attentiveness, patience during the testimony. I appreciate your being on time as well this morning. We'll start up again tomorrow at 9:30.

Again, we're not going to be sitting on Friday, so you'll have Friday off. But we will go through tomorrow. And then we'll continue into next week as well.

Please, as I've said before, please don't discuss the case. It's not the point of the deliberations yet. Please don't do any research on the case, as I said before, and please have a good evening. I'll see you tomorrow morning.

(Jury excused)

THE COURT: Okay. Please be seated.

Anything we need to address with counsel?

MR. HUESTON: Not for plaintiff, your Honor.

THE COURT: Okay. Anything for defendant?

MS. SALISBURY: Your Honor, we just had one little housekeeping matter, I guess on timing. I think yesterday -- it was yesterday or the day before. I'm losing track. We were talking about bifurcation. I believe Mr. Hueston said that they would stipulate to counting a phase 2 "against my clock" and I thought we'd like some clarification on what that means. I'm not entirely sure. But there was a representation that if your Honor bifurcated this trial, it would not be counted as to our 25 hours, and I thought we should clarify what that means going forward so we know how much time we have, whether it applies to phase 2 or which phase. We are proceeding on the assumption that we have 25 hours for phase 1.

THE COURT: It's a fair point. I have to confess I didn't have a clear understanding, I guess, of the point. So Mr. Hueston, I'm not sure of what exactly that meant.

MR. HUESTON: Well, in fairness to your Honor, I did make that offer. You can bind me to that offer if you would like. What I can tell you in good faith is that we really don't intend to have a lengthy presentation in that phase. If your Honor requires it, I will live by keeping our presentation

in that phase within a total time allotment of 25 hours. I'd ask, though, that you perhaps reserve final judgment on that of time management until the case proceeds a little further.

THE COURT: Mr. Shartsis?

MR. SHARTSIS: Your Honor, I think we're going to be prejudiced if we do that. I'm sorry to say this. I thought I could comfortably arrange a major hearing on the 16th of April, in Orange County, a $23 million matter, and I never dreamed that that would be at risk, and I'm now concerned that I'm at risk for being at a major hearing where I've committed to the client to be there. That's a week and a half after the trial was supposed to be over, and I'm concerned. And I'd just like to be sure that we have a total 50 hours and then we're done. If it comes out of their time, it comes out of their time. That was the representation.

THE COURT: Well, but now you're saying you want me to stick with the -- I mean, my original thought was 25 hours should be enough for everything. Obviously if there's a deliberation in between phases, I'm not going to count that against anybody. And I'm not going to count closings against anybody. And I think we'll ultimately end up with a closing on the liability phase and then another closing on punitive damages, and frankly, I don't think there's much to the punitive damages phase beyond what's in the initial liability phase.

MR. SHARTSIS: Other than a discussion of the refund, your Honor, and what that meant.

THE COURT: Right. And I suppose there are issues of defendant's wealth. That was the original subject of your request to have a bifurcated trial.

MR. SHARTSIS: But all I'm saying is that seems to me that this whole thing shouldn't require, not counting closings, 25 hours for both phases and we should not be prejudiced by not being able to put in 25 hours into the first phase because that's the case we came to trial, and we understood.

THE COURT: No, but you were always -- I mean, I set the 25 hours each limitation when it was going to be a single phase, including punitive damages, so I don't know why the total for both phases should be more than 25 hours.

MR. SHARTSIS: I'm just talking about the stipulation that was offered in court. That's all I'm addressing.

THE COURT: I'm not sure what it meant. I don't think it could have meant that plaintiff would take all of their time out of the 25 and defendant's time out of the 25 because then you could go on and on.

MR. SHARTSIS: I only remember a statement, "It will come out of our time." That was the statement that was made in connection with that offer.

THE COURT: I thought it meant the total amount of each side's time, including the punitive phase, will be 25

hours.

MR. HUESTON: Yes, your Honor, that's what it meant.

MR. SHARTSIS: I have to suggest that Mr. Hueston was actually not authorized to talk for us when he said, "It will come out of our time."

THE COURT: Fair enough.

MR. SHARTSIS: That was not a statement we made or something we suggested to the court and now what I hear is that we're going to be set back a little bit so we've got to reserve time for a second phase, and I just want to object it to it, your Honor. I don't think that's where it started, and I think the statement that it would come out of the plaintiff's time, that the plaintiffs ought to be held to that. They made that statement, arguing to the court that we should have two phases.

THE COURT: So you think they should be held to it but not you.

MR. SHARTSIS: That's correct.

THE COURT: But then they have 25 hours and you have 28 hours?

MR. SHARTSIS: That's correct, your Honor.

THE COURT: Well --

MR. SHARTSIS: "Come out of my time," I think that's a clear meaning. And it was not come out of the defendant's time. And I want actually to have the benefit of the stipulation that was offered, and that's all I'm suggesting to

your Honor.

THE COURT: Well, that was just arguing for the bifurcation, which I've decided to do. I mean, this isn't a negotiation in the end. I'm going to decide how many hours. And at this point I'm going to decide it's 25 hours per side, including punitive damages. As things go on, you know, maybe I'll decide to revisit that, but I think it's premature to decide. But I'd like the parties to assume that they have 25 hours each in court for their side with respect to both phases. Okay?

Anything else to address today?

MR. HUESTON: Not for plaintiff, your Honor. Thank you.

THE COURT: Okay.

MR. SHARTSIS: We're done. Thank you.

THE COURT: Okay. Thank you very much. See you tomorrow morning.

(Adjourned to March 28, 2013, at 9:30 a.m.)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

WILLIAM I. KOCH,

Plaintiff,

v. 07 Civ. 9600 JPO

ERIC GREENBERG, et al.,

Defendants.

----------x

New York, N.Y.

March 28, 2013
9:38 a.m.

Before:

HON. J. PAUL OETKEN,

District Judge
and a jury

APPEARANCES

MORVILLO ABRAMOWITZ GRAND IASON ANELLO
Attorneys for plaintiff
BY: EDWARD M. SPIRO,
- and -
IRELL & MANELLA, LLP
BY: JOHN CHARLES HUESTON, Esq
MOEZ KABA, Esq.
MARSHALL CAMP, Esq.
BRUCE A. WESSEL, Esq.
Of counsel

DLA PIPER, LLP
Attorneys for defendants
BY: ANTHONY PAUL COLES, Esq.
- and -
SHARTSIS FRIESE, LLP
BY: ARTHUR J. SHARTSIS, Esq.
TRACY SALISBURY, Esq.
FRANK ALBERT CIALONE, Esq.
Of counsel

Also Present:
JASON WIETHOLTER, Trial Tehnician
ELIZABETH S. SEABROOK, Paralegal

(Trial resumed)

(In open court; jury not present)

THE COURT: Good morning, everyone. Please be seated.

ALL COUNSEL: Good morning.

THE COURT: Okay. Are we ready for the jury?

MR. HUESTON: We are, your Honor.

THE COURT: Okay. Please get the jury.

Mr. Greenberg, would you please come back to the witness box.

(Jury present)

THE COURT: Please be seated in the courtroom.

Good morning, folks.

THE JURORS: Good morning.

THE COURT: Okay. We're continuing with the testimony of Mr. Greenberg. Mr. Greenberg was sworn yesterday. You're still under oath.

Mr. Hueston, you may proceed.

MR. HUESTON: Thank you, your Honor.

ERIC GREENBERG, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. HUESTON:

Q. Mr. Greenberg, in April of 2002, Ms. Serena Sutcliffe and Mr. Jamie Ritchie visited your home, correct?

A. No.

Q. They came and came to your wine cellar in April of 2002, right?

A. But you're missing a person. Robert Sleigh was also there. He's one of their colleagues.

Q. Just asking about those two.

A. Oh, yes, sir, they did, yes.

Q. Thank you. And as I think we've established, Ms. Sutcliffe worked for Sotheby's auction house, correct?

A. Yes.

Q. As did Mr. Ritchie?

A. Yes.

Q. And you had indicated to Sotheby's that you were potentially interested in selling your wine, correct?

A. Selling a portion of my wine, correct.

Q. Okay. And Ms. Sutcliffe and Mr. Ritchie looked around your cellar for about an hour to an hour and a half that day, right, sir? That's what you recollect?

A. Thereabouts.

Q. Okay. And you were with them the entire time they were in your cellar?

A. Yeah. I was in the cellar the entire time. People might have been off in different directions.

Q. And during this visit in April 2002 Ms. Sutcliffe asked you a lot of questions about your wine and sources, correct?

A. She asked me questions about my wine and sources. I wouldn't characterize it as a lot.

Q. Okay. Let's go to your deposition, page 25, line 18, to

page 26, line 8.

MR. HUESTON: And counsel, unless you have an objection, I'm going to play that.

MR. CIALONE: No objection.

MR. HUESTON: No objection? Let's play it, please.

A. Does it come up on this?

Q. Yes, it will be up there.

(Video played)

Q. Sir, does that refresh your recollection that she actually asked you a lot of questions about your wine and sources?

A. Yes, she asked me questions. It refreshes my memory.

Q. So in your deposition you said she asked a lot of questions, right?

A. Yeah, but it's not like she asked me the history of my life. She asked me some questions.

Q. When you testified under oath a couple years ago, it was a lot of questions, right?

A. Well, let's call it a lot so it makes you happy.

Q. I'm just asking what you testified to under oath.

A. So we'll call it a lot.

Q. Thank you, sir. In fact, Ms. Sutcliffe told you that if you bought any wine from Royal, it's probably bad, right?

A. No. She said it could have problems. She didn't say it was bad.

Q. Okay. Let's go to your depo testimony, page 26, line 23,

to page 27, line 9.

MR. CIALONE: No objection.

27, line 11, is that the end of the answer?

Q. Before we play it, let me ask you this: Is it your testimony, sir, that she said it was probably or could be bad? Is that your recollection?

A. I haven't read my deposition in a while, but what I recall is she said you have to pay really, you know -- the essence of it was, you got to pay close attention because there are wines that she believed I would have problems with if they came from Royal, and she wasn't specific. She said: Pay attention, and don't tell anybody I told you this.

MR. HUESTON: Okay. Let's play the testimony, page 26, line 23, to 27, line 11.

(Video played)

Q. All right. So in fact, sir, you did say that she stated to you that it's probably -- could be bad wine, correct?

A. I think I said it a little bit differently, but I'm not going to argue with you, sir.

Q. All right. And, sir, what she said panicked you because according to you, Ms. Sutcliffe is one of the greatest experts of wine in the world, correct?

A. No, what panicked me was that I didn't realize I had fake wine in my cellar and I realized I might have a big problem.

Q. And you realized that because you recognized that

Ms. Sutcliffe, who told you that, is one of the greatest experts of wine in the world, correct?

A. No, I realized that because upon further inspection, I found fake wines, and she happened to tip me off on it, and she was credible.

Q. You retained an attorney, sir, in part because she was one of the greatest wine experts in the world and this gave you cause for concern, right?

A. No, I retained an attorney to help me resolve the problem.

Q. Let's go to your deposition, page 26, lines 9 to 12, please.

MR. CIALONE: No objection.

Actually, I would ask you to play through line 15.

MR. HUESTON: That's fine.

(Video played)

Q. Sir, you panicked --

MR. CIALONE: I asked through line 15.

MR. HUESTON: Let's play the extra lines. Let's do it. In fact, I can just -- are you ready to go or I can just read it. Go ahead.

(Video played)

Q. And based on what Serena Sutcliffe told you, as someone that you recognized as one of the greatest experts of wine in the world, right, sir?

A. Yes.

Q. Okay. Now Ms. Sutcliffe said that one of the things you can look at to determine counterfeit is photocopied labels, right?

A. One of the things but certainly not all.

Q. Okay. And you asked Ms. Sutcliffe and the Sotheby's visitors to help you understand what a counterfeit label would look like, correct?

A. In part.

Q. Okay. Now Ms. Sutcliffe raised questions about the integrity or authenticity of bottles in your collection, correct?

A. We looked at a few bottles.

Q. And she raised questions about the integrity of some of the bottles of wine in your collection, right, sir?

A. About three specific bottles.

Q. And you knew that Sotheby's was concerned and would have to do a great deal of work on your older wines, right, sir?

A. I would expect them to. I wanted them to.

Q. And you knew that Sotheby's had concerns over some of your most valuable wines, correct?

A. They said they had to do a full auction inspection, just like Zachys, yes.

Q. They actually specifically had concerns over some of your most valuable wines, right, sir?

A. Well, I recall them telling me that they had to do a full

auction inspection of the wines that were going to auction.

Q. And they also -- you also recall, sir, do you not, that they had concerns specifically over some of your most valuable wines?

A. I don't understand your question, sir.

Q. Sir, do you recall -- very simple -- that Sotheby's expressed concerns over some of your most valuable wines?

A. Can you define some of my most valuable wines.

Q. You know what, I think I'm going to just play your testimony.

Actually, you know what, hold on. We won't play the testimony. Let me just ask this: Do you recall Ms. Sutcliffe stating to you words to the effect of: I have concerns over some of your most valuable wines? Do you recall that or not?

A. Of her saying those exact words to me?

Q. Or words that are very similar to that.

A. She said that before she could auction wines she had to inspect all wines to make sure she was comfortable with them.

Q. So you don't recall her expressing any specific concerns about the most valuable wines in your collection, is that your testimony?

A. She was very clear that she would inspect every one of them before auctioning them.

Q. I just asked about that very specific comment. Do you not remember that?

A. When you say the wines, you're being -- I can't understand what you mean by that, sir. I'm sorry.

Q. Among the wines that she saw that raised concerns on her part with regard to authenticity were sections of 19th Century wines and early 20th Century wines. Does that help you?

A. Every auction house has concerns about those, so her having concerns about that would be consistent with Zachys, Christie's, or anybody else.

Q. I'm not asking what Zachys and Christie's would be concerned about. I just asked a simple question, and I'd ask that you focus on just my question, sir. Do you recall that she expressed to you in that visit that she had concerns about the authenticity of sections of your 19th Century and early 20th Century wines?

A. I recall that she said she would have to verify those, as would any auction house. That's what I recall, sir.

Q. Okay. And Mr. Ritchie, who was there, also told you about his concerns with wines in your cellar, correct?

A. No. I didn't talk to Mr. Ritchie at all. Ms. Sutcliffe did all the talking, and I had not one conversation with Mr. Ritchie.

Q. Okay. Well, let me just make sure I understand your testimony on this then. Sir, isn't it true that you told Mr. Ritchie you had decided to begin discussions with Christie's because they were less concerned about provenance?

A. At what time?

Q. During that visit in the cellar.

A. Absolutely not.

Q. Okay. At any time do you recall telling him that you had decided to begin discussions with Christie's because they were less concerned about provenance?

A. I don't recall that.

Q. You heard him testify yesterday to that.

A. Yeah, and I also heard a lot of other things that would cause me to doubt anything the man says.

Q. Okay. Well, that will be for the jury to decide.

Let me ask you this: Mr. Ritchie and Ms. Sutcliffe, sir, isn't it true, spoke with you about counterfeit wines and authenticity of wines in your collection, right?

A. They talked about it in general and we talked about three specific bottles. If you would like me to explain, I can explain that to you.

Q. Sir, do you recall Mr. Ritchie -- scratch that.

You heard Mr. Ritchie testify that you sold other questionable wines at Zachys, right?

A. I'm sorry? Can you please repeat the question.

Q. Sure. You recall that Mr. Ritchie yesterday said that you sold questionable wines at the Zachys auction, right?

A. He said it but -- yeah, he said it. I don't believe it.

Q. Okay. Among the wines he identified was a Chateau Petrus

1921 magnum, right?

A. Which auction are you referring to? Because let's go back to the specific e-mail. Why don't we bring that up so we can be very specific and answer it.

Q. Well, sir, it's my examination. I'm just asking your recollection.

A. I can't answer the question. I'm sorry, sir.

Q. Okay. Sir, do you remember selling questionable wines at any Zachys auction?

A. Wines that I thought were questionable?

Q. Yes.

A. No.

Q. Okay. So you deny that you sold questionable wines at any Zachys auction, right?

A. That's not what I said.

Q. Do you admit selling questionable wines at Zachys auctions?

A. There were wines that experts may have subsequently determined may not be marketable, may not be authentic, but at the time that I consigned the wines, I thought they were real, Zachys inspected them, and when they inspected them and they thought they were real, I thought they were real, and I thought I did the right thing by giving up my wines to experts to inspect.

Q. And that's why you told Mr. Ritchie that if you had any counterfeit wines in your collection, you could sell them

through Acker Merrall because John Kapon would take anything, right, sir?

A. That's absurd. I bought a million dollars' worth of wine from John Kapon. Why would I try to pawn off -- why would -- I bought a million dollars' worth of wine from John Kapon. If I thought he was selling fakes, I wouldn't be spending a million dollars with the guy. That is ridiculous.

Q. So you deny that he heard that from you, is that your testimony?

A. Oh, yes.

Q. Okay. After the Sotheby's -- the possible Sotheby's sale of your wines did not proceed in 2002, you spoke to a representative from Christie's about potentially auctioning some of your wines, correct?

A. Yes, sir.

Q. And you were speaking to them around the same time that you were speaking with Sotheby's, in 2002, right?

A. In the same year, yes.

Q. Okay. In fact, like Ms. Sutcliffe and Mr. Ritchie, there was a Richard Brierley of Christie's who visited your cellar in connection with a possible sale, right?

A. Yes.

Q. Okay. And while in the cellar Mr. Brierley of Christie's looked at some wines, correct?

A. Yes.

Q. And he told you about areas of your cellar that would require further investigation, correct?

A. Well, actually, it was the other way around. I showed him wines that I had segregated based on the work I did after Serena Sutcliffe came. I said we have to make sure we keep these out of auction, and they explained to me their authentication process.

Q. Sir, Mr. Brierley delivered what he described as bad news to you about issues concerning wine in your cellar, right?

A. I don't believe so, no.

Q. You don't recall him delivering any bad news to you, is that right? Is that your testimony?

A. No. No. I don't.

Q. Okay.

A. I mean, nothing that I didn't already know. I knew I had fake wines in my cellar. Everybody knew.

Q. And you understand --

A. I was very open about that.

Q. And you understand that Mr. Brierley also saw problematic bottles that came from your collection that were sold at the Zachys auction in October 2005, correct?

A. No.

Q. You have no understanding that he has concluded that, is that your testimony?

A. That is my testimony and my, you know -- if you can show me

something that says something different, I'd be really interested to see it.

Q. Okay. We'll hear from Mr. Brierley a little later in the trial.

Sir, to this date neither Sotheby's nor Christie's has done a single sale or auction of your wines, correct?

A. No.

Q. That's not correct?

A. Oh, I mean yes, correct, yes. I'm sorry. I was a little confused there. I apologize.

Q. Now, Mr. Greenberg, at some point in June 2002 you did receive a draft consignment agreement from Sotheby's, correct?

A. I received a draft agreement.

Q. Okay. And that consignment agreement, that's a draft agreement to sell your wines with them at an auction, right?

A. Yes.

Q. Okay. Let me hand to you what's been marked as Trial Exhibit 296.

A. Is this going to be on the monitor or is it -- because I would have to put my glasses on.

Q. It will be on the monitor, sir, but I'll give you a hard copy.

MR. HUESTON: It's already been published? Okay. I guess it's already been admitted and published. I don't have to hand it out. But I'll give a hard copy anyway.

A. That's very kind of you. Thank you.

Q. You're sure welcome.

Now, sir, this is the draft consignment agreement.

A. This is an e-mail.

Q. Well, it's the -- you know what, it is an e-mail cover letter concerning the consignment agreement, right?

A. Sir, you said you were going to give me a consignment agreement. This is an e-mail. I'm sorry.

MR. CIALONE: Objection. Misstating the document.

MR. HUESTON: Let me try again. Strike the question.

Q. This is an e-mail from you to Jamie Ritchie, correct?

A. Yes.

Q. And Jamie Ritchie was with Sotheby's.

A. Yes.

Q. Okay. And the subject is Consignment Agreement, right?

A. Yes.

Q. All right. I just want to review a couple of things on this.

Before I get into the specifics of the e-mail, sir, let me just ask you a couple of background questions. The consignment agreement sets forth the terms under which you would be willing to sell your wines, correct?

A. It sets the agreement between the two parties.

Q. And the two parties are you and the auction house --

A. Correct, yes.

Q. -- in this instance, right?

A. Mm-hmm.

Q. Okay. And Sotheby's was presenting to you in the draft consignment agreement the terms it would require if it was to sell your wines at auction, right?

A. Yes.

Q. Okay. And the consignment agreement had a number of terms in it, right?

A. Yes.

Q. Okay. And you reviewed that agreement, right?

A. It was very one-sided.

Q. Okay. I just asked if you reviewed it.

A. Yes. I said it was very one-sided.

Q. Okay. I know, but I just asked if you reviewed. The answer is yes to that, and you added you thought it was one-sided.

A. Yes.

MR. CIALONE: Objection.

Q. And then you sent an e-mail after you looked at this agreement to Mr. Ritchie at Sotheby's, right, and this is the e-mail?

A. Yes.

Q. Okay. And in the e-mail, sir, you said -- I'm going to read at line 3. You had a number of issues, but one of them is, "It gives too much sole discretion and enforces warranties

on me which I will never assume." That's part of your -- those were part of the concerns that you had, right?

A. Yes. I wrote that.

MR. HUESTON: Okay. Let's now turn to Trial Exhibit 293. This has already been admitted into evidence, and we'll just publish it.

Q. This is -- sir, if you'd take a look at this, this is the draft consignment agreement with Sotheby's, correct?

A. Yes.

Q. Okay. And I just want to turn you -- turn the -- let's turn to page 3, the section on representations and warranties. And if I can highlight one of them, starting at, "that you have provided Aulden Cellars and Sotheby's with any information you have concerning the provenance of the property; the property is from a private collection; that you have no reason to believe that any lot of property is not authentic or is counterfeit." You see that?

A. Yes, I see it.

Q. Okay. That was one of the warranties that they asked you to make, correct?

A. Yes. They also asked me to indemnify them for any mistakes they made when they would take no liability for those, and that was the liability that I could not assume. They wanted me to pay for them if they made mistakes in the catalog and be responsible for that, and that was the primary reason why the

thing broke down. I talked to the legal department, they didn't want to budge from that. It was crazy. You would never enter into that contract.

Q. One of the reasons you did not sign this, sir -- well, let me just back up a second.

A. That's the reason why I didn't sign it, you know, Mr. Hueston, and you can make up any other reason you want. That's what happened.

Q. Okay. One of the representations they wanted you to make was that you had no reason to believe that any lot of property is not authentic or is counterfeit, right?

A. Once they inspected it, I believed that it would be real.

Q. Okay. In fact, you had a suggested change. You didn't want to accept that as written, did you?

A. No, because it's extremely broad to say no reason, because anybody can make up a reason. I wanted to add the word "reasonable" in there, at the advice of my lawyer.

Q. Well, sir, did you have a reason to believe that any lot of your property was not authentic or is counterfeit?

A. As you know, being a lawyer, the word "reasonable" is incredibly, incredibly broad, and my lawyer told me if I sign that that I was being unwise.

Q. Sir, so you thought "reasonable reason" would be a more precise term that would protect you, is that right?

A. Not protect me. It would be more reasonable for us upon

which to enter a transaction.

Q. So you did not accept their proposed language: "You have no reason to believe that any lot of property is not authentic or counterfeit," right?

A. No, that's not what I said. I said I would accept "I would have no reasonable reason to believe."

Q. You would accept it if they adopted a change to their language, right?

A. Of course.

Q. Okay. And in fact Sotheby's didn't do a sale of your wine collection, right?

A. I declined to go with them because I wasn't going to warrant and be financially responsible for liability -- for mistakes they had made and take responsibility for their errors and omissions. That's why I didn't do it. You can't do that. They could do a shoddy job and all of a sudden you're being sued by somebody for work that they didn't do, and warranting -- and indemnifying them.

Q. And when you talked with Christie's, eventually they sent to you a proposed consignment agreement, correct?

A. You'd have to refresh my memory.

Q. Okay. Do you recall getting a draft consignment agreement from them?

A. I haven't seen one. I may have, but I haven't seen it, so if you have one and you want to show it to me, I'm happy to

look at it.

Q. Okay. Do you remember having a discussion with Christie's representatives highlighting issues that you had with the proposed consignment agreement?

A. Wait. Hold on a second. Now you talked about -- I told you I didn't remember consignment agreement. Now you're trying to get me to admit to a consignment agreement. I said if you have one, please show it to me and maybe it will refresh my memory, but I can't -- I can't answer your question as you posed it, sir.

Q. I'm going to get to that, sir. We'll take it one question at a time.

A. Okay. Thank you.

Q. Do you remember having a discussion by e-mail -- you can tell me you don't remember -- where you expressed issues with a proposed consignment agreement from Christie's?

A. When?

Q. In about August of 2002.

A. I don't recall a consignment agreement from August of 2002. There may be one, but I don't recall it.

Q. Okay. Let's first put -- I'm going to hand you Trial Exhibit 68.

A. Thank you.

MR. CIALONE: Could we get a copy, please.

Q. Trial Exhibit 68, sir, marked for identification is an

e-mail from you to an Anthony Hanson, Subject: Re Burgundy, and the date is August 4th, 2002. Let me just ask first: Do you recognize this as your e-mail, sir?

A. From reviewing trial documents, I recognize it.

MR. HUESTON: Okay. At this time, your Honor, we'd move this document into evidence.

THE COURT: Is there any objection?

MR. CIALONE: No, your Honor.

THE COURT: 68 is received.

(Trial Exhibit 68 received in evidence)

Q. Mr. Greenberg, does this refresh your recollection that you were in fact in correspondence with representatives of Christie's about proposed terms of the consignment contract?

A. Yes, it does, and I don't remember the agreement. I haven't seen it.

Q. Okay. And at that time when you were writing about it in the second sentence, you wrote, "We must discuss terms in the contract, including," a number of things, including warranties, right, sir?

A. That's what it says. I don't know what it's referring to, sir.

Q. Okay. That's what it says. It was your writing, right?

A. Yes.

Q. Okay. And if you go further on in the paragraph, it says, "As of now, I cannot agree to the contract sent," right?

A. It says that.

Q. All right. Let's now look at Exhibit 309.

A. I have not seen this. I need to read this entire document, sir. I have not seen this once.

Q. Okay. Well, let me just try something foundational, see if we can get this into evidence.

Proposed Trial Exhibit 309 is -- has a first cover fax to you from an Ian Mendelsohn saying, "Here are the changes in the contract," and there's an attachment document labeled Consignment Agreement. Do you see those?

A. Yes.

Q. Do you see those documents, sir?

A. Yes.

MR. HUESTON: Okay. And I'll note to the court there have been no objections to the admissibility of this document from defendants, so at this time I would move this document into evidence.

MR. CIALONE: No objection.

THE COURT: Okay. It's received. 309.

(Trial Exhibit 309 received in evidence)

MR. HUESTON: Thank you.

Q. Sir, this fax has attached to it a proposed consignment agreement between you and Christie's, correct?

A. Yes.

Q. Okay. And I want to direct your attention to page 6, and

I'll highlight it for you. There is a paragraph entitled Seller's Representations and Warranties. Do you see that?

A. Yes.

Q. And one of the representations that they asked you to make is number (iv), "Seller has no reason to believe that any lot of property is not authentic or is counterfeit." Correct?

A. It says that.

Q. And that language is almost identical to the Sotheby's proposed consignment agreement that I just showed you with respect to a representation and warranty about whether your property is not authentic or counterfeit, right, sir?

A. Sir, may I have the courtesy of reading the entire paragraph before I make any comment on it? I'm on the stand. I'd like to be able to make sure I tell the full truth.

Q. You may take time to read additional language, sir, but I'm only asking you in my question about subpoint (iv), which I read in full.

A. Yes. It's very much like that, just as it is that they would take no collection liability for people that didn't pay their accounts.

Q. So for demonstrative purposes, I'm posting the warranty that I just read from Christie's, and below it is the warranty we just covered from Sotheby's. The Christie's one says, "Seller has no reason to believe that any lot of property is not authentic or is counterfeit." Right, sir?

A. Yes. Once it's inspected by the auction house and they accept it and they tell me it's authentic, then there would be no reason for me to believe that it would be counterfeit.

Q. And the -- below it, the Sotheby's warranty asked you to say that you have no reason to believe that any lot of property is not authentic or is counterfeit. Right, sir?

A. That's what it says on the screen.

Q. Okay. And Christie's never did a sale of your wine collection, right?

A. No.

Q. Okay. You can put that aside.

But you did auction your wines through Zachys auction in October 2005, right, sir?

A. Yes.

Q. And they had a proposed consignment agreement, correct?

A. Yes.

Q. And they also asked you to make certain representations and warranties, right?

A. Yes.

Q. Okay. Let's go to Trial Exhibit 96 marked for identification.

Sir, I placed before you for identification Zachys Wine Auctions, Inc., Consignment Contract dated July 27th, 2005, naming you as a seller. Do you recognize this as the consignment contract that you signed with Zachys for the

October 2005 auction?

A. Yes.

Q. Okay. Let's go to page 3, sir, paragraph 18.

A. Yes.

MR. HUESTON: Let's publish it. I'm sorry. Would -- first I'll move it into evidence, with the court's permission, and ask to publish it.

THE COURT: It's received.

(Trial Exhibit 96 received in evidence)

MR. HUESTON: Thanks.

Let's post it, please, and go to paragraph 18. Let's go ahead and blow that language up.

Q. And I'm going to -- this is the section that gives the seller's representations and warranties, right, sir?

A. Yes.

Q. Okay. And --

A. I don't know if all of them are in here because I haven't read the entire contract, but it says that.

Q. I'm sure your -- certainly. And I'm sure your attorney, if I skip something, will bring it back out when he gets to speak to you. But in this paragraph, in case the jury can't read it, I'm going to read it, and you can tell me if I got something wrong.

"Seller represents and warrants that (i) seller has the right and title to consign the products for sale. (ii) the

products are, and until completion of sale by ZA, will be free and clear of all liens, claims, and encumbrances of others, ('liens') or restrictions on Zachys' right to offer and sell the products at auction. Good title will pass to the buyer of all products, free and clear of any such liens or restrictions. These representations and warranties shall survive the completion of the transactions contemplated hereby. Seller shall notify Zachys promptly in writing of any events or circumstances that may cause the foregoing to be inaccurate or breached in any way. If the seller is acting as an agent for a principal, seller or principal jointly and severally, assume all the obligations under this agreement. Seller agrees that the intended beneficiaries of this provision include all buyers of the products." That's what it says, right, sir?

A. That's what it says.

Q. Okay. Sir, that language I just read does not include a representation or warranty that you have no reason to believe that any lot of property is not authentic or counterfeit, does it?

MR. CIALONE: Your Honor, the document speaks for itself.

THE COURT: It's cross-examination. You can ask.

A. Doesn't say that.

MR. HUESTON: Okay. And for illustrative purposes, can we put the other two up.

Q. So at the top, we have the Sotheby's language where they asked for the representation that you have no reason to believe that any lot of property is not authentic or is counterfeit, right, sir?

A. We've been through this, yes.

Q. Thank you. And Christie's, that the seller has no reason to believe that any lot of property is not authentic or is counterfeit, right?

A. Yes.

Q. And those provisions that they asked for were not present in this paragraph or in the Zachys consignment agreement, right, sir?

A. That's correct.

Q. All right. Mr. Greenberg, you first started collecting fine wine around 1995 or 1996, correct?

A. California wines. I live very close to Napa Valley and Sonoma, so yes, I'd go up to wine country and sample wines and buy inexpensive California wines. That's where I caught the bug for the hobby.

Q. In about '95, '96, right?

A. Probably, yeah, yeah, that would be about accurate.

Q. And you began selling wines at auction in February of 2003, right?

A. Yes, I did.

Q. And that first auction of yours was with Zachys, correct?

A. Yes.

Q. And as of February of 2003, you had amassed or collected between 70,000 and 80,000 bottles of wine by that time, right, roughly?

A. I don't know. I mean, I could have been 50 to 60. I'm not sure. You know, the first full inventory we did was August 2003, so I couldn't tell you for sure, but it was a lot. It was over 50,000.

Q. Let's go to your deposition, page 93, lines 14 to 21.

MR. CIALONE: No objection.

MR. HUESTON: Okay. Play it.

MR. CIALONE: Actually, I'm sorry. I have to ask you to play to page 94, line 7 where the witness corrected himself.

MR. HUESTON: Well, I'm going to --

MR. CIALONE: I'm raising the objection. Your Honor, I'm raising the objection if counsel won't do it voluntarily, Mr. Greenberg then corrects his answer that counsel is going to play here.

MR. HUESTON: Look, I'm fine with playing it. He doesn't correct it, but let's play the whole feed.

MR. CIALONE: Page 94, line 7.

MR. HUESTON: That's perfectly fine. Let's play that.

(Video played)

MR. HUESTON: Keep playing it.

(Video played)

BY MR. HUESTON:

Q. It may have been 50, 60,000, may also have been 70, 80,000. That was your first recollection, right, sir?

A. I stood corrected. You know, as of -- you know, we -- as I sit here today, having put the thought into the lawsuit, it's probably more around the 50 -- it's probably around the 60,000 number. You know, I can't say for sure.

Q. And --

A. But I don't think it was 80,000 at that stage. Maybe a little bit later.

Q. That deposition was December of 2010.

A. Yes, sir.

Q. Several years ago.

A. Yes, sir.

Q. Your recollection was a little more fresh then than now, right, sir?

A. No.

Q. No? You've got more of a fresh recollection today of the earlier events than you did then?

A. Sir, I'm only 48.

Q. We're in the same zone. Got on you that.

Okay. You were buying wine as an investment in part, right, sir?

A. Yes.

Q. Okay. And wine has been a business for you since around

the year 2000, correct?

A. I wouldn't call it a business since 2000.

Q. Around the year 2000 you obtained a wholesale and retail wine license, correct, sir?

A. I think it was 2000 -- late 2001, early 2002.

Q. Okay. And that wine license permitted you to sell wine as a wholesaler, correct?

A. Wholesaler or retailer.

Q. Right. And the wine license --

A. But not with a retail storefront.

Q. Right. Because you didn't sell much wine, you didn't have a retail storefront, right?

A. No, I sell beer and wine in my health food store in San Francisco, but we actually don't even sell it anymore, so I have a storefront license for the health food store.

THE COURT: Would you mind pulling your mic just a little closer, Mr. Greenberg. Just if you could pull it down a little bit.

THE WITNESS: Yes, your Honor.

Is that better, your Honor?

THE COURT: Yeah, that's great. Thanks.

THE WITNESS: Okay.

Q. And you had a company called Innovation Wines, which was your wine sale company, correct?

A. Yes, sir.

Q. Okay. And do you recall forming that company in or around August of 2001? Does that sound about right?

A. Yes. It wasn't 2000.

Q. Okay. And when you formed that company, you were the president and sole managing member of that wine sale company called Innovation Wines, correct?

A. Yes, I was.

Q. Okay. And you received -- you applied for and received a license from California's Alcohol Beverage Control Commission, right?

A. Yes.

Q. Okay. And that license allowed your wine company, Innovation Wines, to avoid paying sales tax on purchases of wine held as an investment, right?

A. It --

(Reporter asked for clarification of answer)

A. Could you repeat the question, please.

Q. The license allowed your wine company, Innovation Wines, to avoid paying sales tax on your purchases of wine held as an investment, correct?

A. No. The license allowed me to sell my wine to wholesalers and retailers without -- without the restrictions placed on a normal consumer.

Q. And you only needed to pay sales tax on the bottles that you intended to drink, correct?

A. Yeah, but a lot of people charged me sales tax anyway, so I don't know. I paid a lot of sales tax.

Q. All right. Just trying to get your understanding. You only were required to pay sales tax for bottles of wine you intended to drink, correct?

A. I'm not a lawyer. I don't know the law.

Q. Did you know what you were required to do when you had your deposition in December 2010?

A. I don't understand your question, sir. Can you break that out, please.

Q. Let's just go to your deposition, page 100, lines 15 to 23.

MR. CIALONE: No objection.

MR. HUESTON: Could we play it.

(Video played)

Q. Mr. Greenberg, to you wines are an asset class, right, just like a stock or a bond?

A. Yes.

Q. All right. And it's true that the vast majority of the wines that you purchased for investment purposes, you did sell at auction, correct?

A. The vast majority of.

Q. The wines that you purchased for investment purposes, you did wind up selling at auction, correct?

A. The vast majority of my wines I've sold. I don't drink that much. I was prediabetic and high blood pressure,

285 pounds. I'd go to my wine cellar once every two to three weeks at most.

Q. Of course you weren't intending to drink 50 to 80,000 bottles of wine.

A. Sir, when the doctor told me I was going to be in a casket in six months, I decided I wasn't going to drink anymore.

Q. Well, even before that, you weren't intending to drink 50,000 to 80,000 bottles of wine.

A. Impossible. I got carried away with buying a lot of wine. It was a beautiful thing and I enjoyed it.

Q. In fact, sir, the vast majority of wines you purchased for investment purposes, you did sell at auction, right?

A. I've sold the most wine that I've sold through auction, correct, sir.

Q. And as of the date of your deposition, at least in December of 2010, Innovation Wines was still in business, correct?

A. Yes. I believe it's still incorporated, but I don't have my licenses.

Q. And when you decided to sell wines, sir, that you purchased as an investment, you did so when you thought the market conditions were right, correct?

A. No. I purchased the wine no matter what.

Q. I'm sorry. I'm not sure you heard my question. Let me repeat it. When you decided to sell wines that you had purchased as an investment, you sold them when you thought the

market conditions were right.

A. Actually, the wines I was culling and what I call garbage wines, wines from lesser producers, lesser vintages, wines that aren't going to last of age, I had 15,000 wines that I wanted to sell early on. I didn't really care about market conditions. I just wanted to remove them from the collection and cull the cellar.

Q. Okay. Let's play your deposition, page 105, lines 7 to 10.

MR. CIALONE: I'm sorry, your Honor. Incomplete. I would ask that he play from 104, line 23 to 105, line 10.

MR. HUESTON: Well, then we'll play it all the way through. I'm happy to accommodate counsel. We'll start there but we will finish at page 105, line 14.

MR. CIALONE: No objection.

THE COURT: Okay.

(Video played)

THE WITNESS: Which is accurate.

Q. Okay. Thank you.

A. I never sat in one of these boxes before so it's kind of like -- getting comfortable.

Q. I'll trade you for standing for hours.

A. Would you like to sit here, Mister? I'm happy to switch places with you.

Q. I would enjoy it.

Sir, at the October 2005 auction, you sold about

17,000 bottles of wine for nearly $9 million, right, sir?

A. Well, I didn't receive 9 million. I think I received around 7. Zachys I think received about 20 percent of it -- 18, 17. I don't know the exact number. But they got, you know, their fifth.

Q. Okay. Gross proceeds were about 9 million, from the sale?

A. I don't know. Maybe a little less. I don't know the exact number, but it's --

Q. But about 7 million came to you from that, right?

A. Yes, sir, yes, sir, that would be fair.

Q. And since the October 2005 auction, you've had additional wine sales, correct?

A. Yes, I have.

Q. In fact, in 2007 you had a large auction through Acker Merrall, correct?

A. Yeah, that was actually a date you guys served me with this lawsuit. I remember it very well.

Q. And at that auction you sold over 11,000 bottles of wine, correct?

A. Yes.

Q. And that auction brought in over $15 million, didn't it?

A. To Acker Merrall, but to me, about 12 million.

Q. Okay. And then you had another Acker auction in Hong Kong in May of 2010, right, sir?

A. Yes, sir.

Q. And that one, that auction you referred to as the Imperial Cellar auction, is that right?

A. I didn't refer to it as that; Acker Merrall did.

Q. Okay. Well, that's a title that you accepted, correct?

A. Yes, I did.

Q. All right. And at that one you sold 19,000 bottles from your collection in that auction, right?

A. Approximately.

Q. And that auction brought in nearly $20 million gross, right?

A. I think I took in 15 and it was about 19. I forget the numbers.

Q. And that so-called Imperial Cellar auction was supposedly the largest sale of wine ever in Asia, correct?

A. It was.

Q. And the Hong Kong auction in fact was, in your words, probably one of the greatest auctions that will ever be conducted in the history of the world, right?

A. There is no way to replicate the -- that auction in this world today. There's no way to replicate that wine.

Q. So if I'm adding correctly just on the bottles of wine in the auctions of October of 2005, October of 2007, and May 2010, you sold nearly 47,000 bottles of wine at auction, just through -- just through those three.

A. Yes, I did. (Continued on next page)

Q. You sold through other auctions as well over the past six, seven years?

A. When you say other auctions, can you be more specific?

Q. Any others other than those three.

A. Before this Zachys auction that we are talking about in this lawsuit, we had six auctions with Zachys. I think there were five with Acker Merrall. Then I have done individual consignments with Acker Merrall in 2010, 2011, I don't know. They were small consignments.

Q. Focusing on these three bigger ones, the total amount of money that came in from that was somewhere between 35 and $44 million, is that fair?

A. Yes.

Q. Through that time period, sir, through those sales, you were the largest individual seller of wine at auction in the history of wine auctions, right?

A. I don't know what the history of wine auctions is. I'm sure it's up there.

Q. Are you aware of any person who has sold more wine than you at auction?

A. A lot of people, Aubrey McClenahan who Sotheby's marketed for many years. He was a guy with Chesapeake who got under indictment. He had a hundred thousand bottles at Sotheby's moved, I don't know, through a series of 7 to 10 auctions, possibly a lot more than me. He was under margin calls and all

types of things to fight off his legal issues. Mr. McClenahan may have sold more than me.

Q. So there might be one or more other people, but you are up there in the top one, two, or three slots?

A. Yes.

Q. Let's go to Exhibit 435. I put before you Exhibit 435 marked for identification. Sir, I place before you for identification an email from you to Jeff Zacharia dated Friday, September 23, 2005. Do you recognize this email?

A. Yes, I do based on a review of documents.

MR. HUESTON: At this time, your Honor, we would move Exhibit 435 into evidence.

MR. CIALONE: No objection, your Honor.

THE COURT: It's received.

(Joint Exhibit 435 received in evidence)

Q. Mr. Greenberg, this is an email from you to Jeff Zacharia. The subject is Great Wine: The Quest." This is an email that addresses your comments on a proposed cover letter which was to be included in the catalog for the October 2005 auction, correct?

A. Quick comments, not edits.

Q. We'll get to that. The subject is "Great Wine: The Quest." That related to your auction sale, correct.

A. That was Mr. Zacharia's title for his introductory letter.

Q. You had input into this process, didn't you?

A. Jeff and I worked together a long time. We have a great relationship. Jeff always would send me things like this because he liked my input on the marketing.

Q. He liked your input, and you wanted to give input, didn't you?

A. I only gave -- I can't say that, because, you know, it's up to Zachys to market the wine. I'm not an expert in that. When he asks me to do it something, I do it for him.

Q. Let's look at what you said then. This is your writing in all caps, right?

A. Yes.

Q. Take a quick glance at the document. I'm not going to through all this right now. Every time we see in the document all caps, that's you writing and inserting comments on the proposed draft, right, sir?

A. Yes, comments.

Q. Let's start at the top. You actually tell him it's a good start, right?

A. Yes.

Q. Sir, right below that you say, "Please see comments within below text," right?

A. Yes, sir.

Q. "I want to review the next draft as well." That's what you told Mr. Zacharia?

A. I told him that, but he never sent to it me.

Q. You told him you wanted to see the next draft, right?
A. Yes, and he never sent it to me.
Q. You weren't reluctantly giving input, sir; you wanted to give input and you even asked for input on the next draft, right?
A. I gave him input when he asked, and I asked to see the next draft, which I never received.
Q. You asked to see the next draft because you were interested in helping craft a message in the cover letter, right, sir?
A. No. Because I wanted to make sure no misrepresentations were made.
Q. Let's look at some of what you typed in here. We are going to go down to the third paragraph, the sentence, "I do not think you should state the original size, as it shows heavy selling." Do you see that?
A. Yes.
Q. Sir, you did not want Zachys to include any language in the catalog suggesting that you had been a heavy seller of wine, correct?
A. At that time I wasn't such a heavy seller. After this auction, which was less than a third, then that would have been the case. But up until that time I had sold, but it wasn't a material portion of the 70,000 bottles.
Q. In the line before it, Mr. Zacharia's language was, "Incredibly enough, this is only a portion" -- scratch that.

Let me make sure I get the language right. "Actually, this is, incredibly enough, only a portion that was 4 times the size, almost 100,000 bottles," is that right?

A. Mr. Zacharia stated that. It was never 100,000 bottles. I was very uncomfortable with saying that, because he was saying it was way bigger than it was. That couldn't happen. That was a misrepresentation he wrote. I did not want that in there.

Q. In fact, what you said in response was -- you didn't say, what are you talking about, Jeff, I never had a collection of 100,000 bottles; you didn't write that in this email back to him, did you?

A. Sir, I have been the CEO of many companies and I get 500 emails a day. When I'm doing the all caps stuff, I don't even think. I just type it in. I don't even proofread it. I just type it in and press "send," because half of my day I'm on email.

Q. When you read that, what you typed in and sent was, "I do not think you should state the original size, as it shows heavy selling," right? That's what you wrote back?

A. That's what it says.

Q. That's because you did not want a potential buyer to perceive that you had in fact engaged in heavy selling, right?

A. Actually, as I sit here today, I was very uncomfortable with him saying it was almost a hundred thousand bottles. You know, I don't think it is material. Here's the thing. If

you're selling something on a fire sale, you don't receive a respectable bid. I wasn't in the fire sale business. That's why I didn't want to show heavy selling. Going-out-of-business sales and fire sales don't do well for sellers.

Q. Everything you just tried to explain, none of that is in this email. You simply say I don't want to be shown as a heavy seller, right, sir?

A. Sir, as I have read you on the Internet in interviews with you saying that emails are incomplete, incorrect --

MR. HUESTON: Objection, your Honor.

A. You said emails are incomplete and incorrect and that they can't be counted on, and you like to play with those because people don't really say what they mean in those. You can mischaracterize this all you want, sir, but I'm not going to be bullied by you.

Q. Sir, your testimony today, you are free to give any testimony you would like to this jury.

A. But I'm not going to be bullied by you or your client. I'm not going to be bullied by you.

Q. The jury will decide whether I'm bullying or not. I'm trying to ask you some questions, I would appreciate some answers. Your language in this email, sir, is "I don't think you should state the original size as it shows heavy selling." That's what you wrote, right?

A. That's what it says, sir.

Q. OK. You knew that the final draft of this cover letter was going to go to potential buyers for that auction in October 2005, right?

A. Final draft of what?

Q. The cover letter in that catalog was going to go to a number of potential buyers for the auction in October 2005, right?

A. There was going to be a cover letter that was included in the catalog.

Q. A cover letter that you knew would be read by buyers, right?

A. I don't know if buyers would read it or not, but it was going to be in there.

Q. Sir, by October of 2005 you had developed some ability to identify indicia of counterfeit or suspect wine, right?

A. Yes.

Q. In fact, in your Royal Wine fake summary notes, as early as 2002 you were able to identify different problems with wines you purchased from Royal, right?

A. Primarily corks. I paid attention to corks. That was my main thing.

Q. You also paid attention to capsules, correct?

A. Not so much. If a cork had a problem, then I'd figure out if the capsule looked right or not. But that was guessing. I didn't know anything about capsules.

Q. You made notes in your fake summary notes at times about capsules, correct?

A. Yes. If I saw something that didn't have a proper cork marking, then I would go through a laundry list of things and try to figure out everything else I could that could possibly be problematic. But the cork was the main thing.

Q. That laundry list included looking at times at labels, correct?

A. At times.

Q. It included at times looking at what is known as the punt, correct?

A. Sometimes. Rarely.

Q. What is the punt, by the way?

A. The bottom of the bottle.

Q. That little indentation thing?

A. No. It's the bottom of the bottle.

Q. Just the bottom?

A. Yes.

Q. Is it true that that indentation can be different by different wine manufacturers?

A. There's probably 20,000 types of punts out there on the market today.

Q. Before October 2005 you had taken high-intensity lights to corks on the bottles to verify dates and appearance, right?

A. Yes, sir.

Q. Beyond the Royal Wine fake summary notes, in late 2003 you were identifying fake and suspect wines to wine retailers like Wine Bid, correct?

A. Yes.

Q. In fact, we went through that email yesterday. You went bottle by bottle in your description to them of what you found to have issues with, right?

A. Actually, I took the bottles that I bought from distributors on release, I compared them exactly, and typed out the exact differences between bottles I got from release from the domains and the bottles that I was sold. So I was able to do a direct comparison.

Q. Right. Let's go ahead. This has already been admitted and published. Let's go right to Exhibit 78, page 2. On the second page you were writing to Mr. Griffin, "Steve," down a paragraph, "You want to know specifically about bottles?" Then you begin listing to him issues that you found with several bottles, right, sir?

A. Yes, sir.

Q. If we look at the first one, for example, the 99 Romanee-Conti mag, is that a magnum?

A. Yes.

Q. The first thing you wrote is "different bottle and punt," right?

A. Yes. That Romanee-Conti was just released and I had a

magnum I got from Wilson Daniels, who is the importer. I took that magnum from Wilson Daniels and I compared it directly to that magnum.

Q. You also noted that the label is printed by fake mechanism. That is something that you detected and noted, right, sir?

A. When I compared it to the Wilson Daniels magnum that I knew was good, it looked like it was printed from a fake mechanism.

Q. You wrote, "The year and monopole flag on top was scissor cut and not die stamped," right? You determined that as well, right?

A. I wrote that.

Q. You made a comment about font and print quality in the next sentence, right?

A. I wrote that.

Q. The next bottle, the 90 La Tache mag, that is another magnum by a manufacturer called La Tache?

A. It's Domaine de la Romanee-Conti.

Q. I'm going to the next bottle. I might have confused you there. It says 90 La Tache mag.

A. Yes. But everybody in wine knows that La Tache is made by DRC.

Q. I don't know that. Thank you for clarifying.

A. Mr. Koch knows that. He loves La Tache.

Q. The first thing you noted is different bottle and punt, right?

A. Yes, I wrote that.

Q. You also again detected that the label here was printed by a fake mechanism, right?

A. Yes.

Q. A couple of sentences down you state, "Wilson Daniels import labels on the back but bad print quality." You noted that as well, right?

A. Yes.

Q. Let's go to the next bottle. You made some observations of, I'm sure I'm going to mispronounce it, Dujac Echezeaux?

A. Actually, sir, that's pretty good.

Q. Here you noted that the dating on the cork is inconsistent in darkness and print of the rest of cork. You made that observation?

A. I wrote that, too.

Q. You thought it looked amateur?

A. Yes, I did.

Q. Based on that, you thought it was fake?

A. Yes, I did.

Q. The next one, '85 Jayer Brulees?

A. Jayer Brulees.

Q. Thank you. There you noted that the import tax stamp on the capsule had no corresponding import strip, right?

A. Yes.

Q. That was something that you noted that you felt was an

indicator that the bottle was counterfeit, right?

A. That is not necessarily an indicator. That was an observation on that bottle. The cork was the primary thing. I had more Jayer than anybody in the world. I knew a lot about Jayer. So it was the cork that gave it away to me.

Q. The first thing you noted was not the cork but your observation about the import tax stamp, right?

A. Sir, the order I put the words into is not the corresponding importance of what it says. I'm telling you under oath that it was the cork that gave it away.

Q. The second thing you note here is the 1985 on the cork is in the wrong font. You made that observation?

A. It was.

Q. That's another thing you observed which made you believe that this wine was fake or likely fake, right?

A. No, I can't answer that question. I said the import tax stamp and the import strip were not the indicia. It was the cork. I will say again it was the cork that made me believe it was fake. Your question as it was asked is incorrect.

Q. The definite give-away, as you wrote it, was the label and paper on the main label don't match in their composition. That's what you said in the third sentence?

A. May I explain?

Q. I'm asking you, is that what you wrote in the third sentence?

A. I wrote it.

Q. The collection of those things that you noted there was why you put this on your list when you were explaining to Mr. Griffin why you felt you had fake wines that made you so mad you were ready to bury the reputation of the consignor of the wine world, right?

A. Those were my descriptions of wines that are fake. They are written there, and you can see them.

Q. By the way, that work that you did, that was your own work, right? You didn't hire someone to do that. You did that work, right?

A. No. This was so bad it was like fifth grade math, which I do help my young kid with.

Q. You participated in it and noted each and every one of those items that was in the box, correct?

A. Yes.

Q. You returned these bottles to the Wine Plus because you had inspected them and determined that they were fake or suspect, right?

A. Sir, you have your vendors mixed up. You may want to re-ask the question.

Q. You returned them if you had concluded that they were fake or likely fake, right?

A. Yes.

Q. Handing you what has been marked as Exhibit 362 marked for

identification.

A. Thank you, sir.

Q. Sir, Exhibit 362 for identification purposes is an email from a Mr. Greg Koslosky to Eric Greenberg, subject 45 Rousseau Chambertin, dated March 17, 2004, is that right?

A. Yes.

MR. HUESTON: Your Honor, we would move this into evidence and ask permission to publish.

THE COURT: Any objection?

MR. CIALONE: No, your Honor.

THE COURT: It is received.

(Trial Exhibit 362 received in evidence)

Q. I want to turn your attention to the second page here, sir. In fact, you were writing in embedded email on the second page to Greg Koslosky. Who is Greg Koslosky, sir?

A. He used to be a wine salesman at one of my vendors in southern California.

Q. You're writing to him about a particular bottle of wine, is that right?

A. Yes.

Q. You make observations about issues that you had with this bottle, right, sir?

A. Yes. I compared it to bottles. I had several bottles of older Rousseau Chambertin, and I compared it to those, and it looked completely different.

Q. You documented issues with the date and the label, correct?
A. You know what was really funny is that it was a 1955 label, and then it was like blacked over and they put a 4 over it. When I got the wine in from him, I was like, Greg, did you even look at this.
Q. The issues you examined, detected, included issues with the date and label, right?
A. Yes. You can read it right here. Everything here I wrote, sir.
Q. I'm just making sure. You said sometime today that your testimony is different from the emails. I'm trying to be fair. You also noted, sir, you can also talk about other issues, including the bottle was not of the type used then. That's something you noted, right?
A. It looked like -- you know, I have probably -- one time I had 5,000 bottles of Rousseau, 4,000 bottles. It looked like one of my new bottles. After I looked at the date, I went over the racks, because it was in the same area of the racks. I pulled out a new bottle, and I looked at it. It's a new bottle.
Q. You noted that you looked at the label, right, you said a contemporary label with a 1955 blacked out with a yellow 1945. You had spotted that, right?
A. Yes, sir.
Q. You also noted later in the sentence something about the

capsule, the capsule does not look of age, right?

A. Yes. As I told you, I took out a newer bottle, and I'm, like, this doesn't add up, 2 plus 2 doesn't equal 5.

Q. The last thing you noted is the sedimentation is of an older wine. What is sedimentation?

A. Sedimentation is the little bit of like muddy stuff at the bottom of certain bottles. Some wines sediment more than others.

Q. You noted a sedimentation issue in that bottle as well, right?

A. I'm not an expert on sedimentation. That was more of a guess. I wouldn't take my word for what sedimentation should be on any single bottle. After seeing what Mr. Egan and Mr. Lempert-Schwartz do, I got to say I thought I knew a lot more back then than I know today.

Q. Mr. Greenberg, in 2002, 2003, and 2004 you had developed experience in authenticating wines and determining which wines were fake or likely fake, right?

A. Probably a middle school level version.

Q. By the way, in none of those emails do you say, gee, I don't know what I'm doing, but here are the issues. You just explained the issues that you spotted and said, I think these are fake or likely fake and I'm having those returned. That's what you did in those, right?

A. When my sixth grader turns in his math homework, I don't

have him qualify the math in it by saying I'm only in sixth grade, here are my problems.

Q. You were the CEO of a wine company and you were making demands on returns that were specifying specific issues with counterfeit indicia that you noted carefully in emails, right, sir?

A. Let's get this straight. I happen to be the sole shareholder. By the corporation laws of the state of California, I have to name a CEO. I basically had a wine collection and I incorporated, and I had to list myself as a CEO. I wasn't like some kind of wine expert with any training, a staff, or anything like that. It was just me.

Q. We have already established that you were, if not the biggest individual wine seller in the world, one of the biggest, right?

A. Yes.

Q. In these emails you're asking the jury to believe that you really didn't have any expertise after you were able to cite indicia after indicia of what you claim were fake and suspect bottles, right?

A. No. You're mischaracterizing what I said. What I said is I had basically a middle school level where I could compare things to each other. But after seeing what Mr. Schwartz and Mr. Egan do, I have no, no comparison in my expertise.

Q. Sir, you were capable of identifying your in own wines that

you sold through Zachys at October of 2005 issues and potential issues of fake and counterfeit problems that you consigned in October of 2005. You had capacity, didn't you, sir?

A. I don't understand your question.

Q. You just called it a middle school level education did you try to apply your middle school level of education as you are describing it today to the wines that you were consigning to Zachys for the October 2005 auction?

A. I looked at corks. If something had a cork marking on it, I submitted it to Zachys. They were the experts. I trusted Zachys. I had done at that time six auctions. This was my seventh auction. If Zachys thought it was fine, I believed them and I thought it was real. I'm not the expert. I hired an expert called Zachys. I was not able to render an opinion on authenticity that would be commercially acceptable.

Q. Sir, if you saw an issue with a cork or a label or a bottle, is it your testimony, sir, that it is just fine to send that off to Zachys and they are going to make the final decision, it's not your responsibility?

A. If I believe the bottle is real, I am comfortable sending it to them and submitting it to them for their opinion for inclusion or not.

Q. Sir, when you were consigning your bottle for auction to Zachys, you never sat down with Mr. Zachys and listed potential problems and issues that you had identified with your

collection that you were consigning with Zachys, did you?

A. Mr. Zachys?

Q. Mr. Zacharia of Zachys.

A. Sir, can you please repeat the question?

Q. Sir, before you sold your bottles at auction in October of 2005, you never disclosed to Mr. Zacharia any issues or concerns or questions that you had about bottles that you were consigning for sale at that auction, right?

A. Oh, actually, in 2002, when Fritz Hatton and Jeff Zacharia visited my home, I told them about Royal Wines then. I showed them Royal Wine boxes. I told them I had fake wines in my cellar. They had rejected wines from me all the way along. They knew I had fake wines in my cellar, and they knew that I would work with them to give them wines that we thought were OK, and they rejected wines from every single auction.

I told them a lot. They were partners. Not partners in a business sense. But I wanted to do the right thing. I believed I was doing the right thing by giving the wine to Zachys and having them accept it, and then I thought it was real. And if there was a problem with the wine, I would always stand behind it. If somebody wanted a refund, I'd be happy to give it.

Q. Sir, you never told Mr. Zacharia, for the consignments that you were preparing in October of 2005, that there might be bottles from Royal Wine in that collection? You did not tell

him that, did you?

A. He knew that for a fact.

Q. We will hear from Mr. Zacharia on that.

THE COURT: Would this be a good time for a brief break?

MR. HUESTON: Yes.

THE COURT: Why don't we take a ten-minute break. Ladies and gentlemen of the jury, please leave your notepads. We'll see you in 10 minutes. You may step down, Mr. Greenberg.

(Recess)

THE COURT: Welcome back, folks. We are continuing. Mr. Hueston.

MR. HUESTON: Thank you, your Honor.

Q. Mr. Greenberg, I want to go to the topic that we touched upon earlier, and that is back in 2002, after Serena Sutcliffe visited your seller and you retained a lawyer to begin moving forward and proceeding against Royal Wine. Sir, in addition to hiring a lawyer, you also personally called the owner of Royal, Jeff Sokolin, within a week or so after Ms. Sutcliffe's visit, correct?

A. Yes.

Q. You told him words to the effect of I want all my money back for every bit of wine that I bought from you, right?

A. Yes, sir.

Q. You even threatened Mr. Sokolin's life, didn't you, sir?

A. Absolutely not.

Q. So if Mr. Sokolin says that, you believe him to be a liar, is that right?

A. I'd say he is not telling the truth.

Q. And you know that he has said that, isn't that true?

MR. CIALONE: Objection, your Honor. That is not in evidence.

THE COURT: Sustained. You can ask.

Q. Are you aware that he has said that?

A. Yes.

Q. And you deny that that is true?

A. Yes.

Q. You are aware he said that under oath, correct, sir?

A. Yes, sir.

Q. On May 20, 2002, less than a month after Ms. Sutcliffe's visit, your lawyer wrote to Royal Wine Merchants, right?

A. There were a series of correspondences. I don't know which one you're referring to, sir.

Q. That seems to be roughly the right time frame?

A. Which time frame?

Q. May of 2002.

A. That may be when it started.

Q. Sir, let's get some documents in front of you. Sir, I'm putting before you marked for identification Trial Exhibit 267.

A. Thank you, sir.

Q. Trial Exhibit 267 for identification purposes is a 2-page letter to Royal Wine Merchants signed by Mr. Stanley Arkin and Anthony Coles.

A. Yes.

Q. Do you recognize this as a letter sent on your behalf in May of 2002 to Royal Wine Merchants?

A. Yes, sir.

MR. HUESTON: At this time, your Honor, we move this into evidence.

THE COURT: Any objection?

MR. CIALONE: No, your Honor.

THE COURT: 267 received.

(Trial Exhibit 267 received in evidence)

Q. Let's put this up on the screen. If I can direct your attention to the first sentence. Pointing the jury to the first line, To: Mr. Sokolin, that is the owner of Royal Wine Merchants, right, sir?

A. I believe he's the owner.

Q. It says, "This firm has been retained by Eric Greenberg to vigorously represent his interests in connection with your sale to him of falsely labeled and counterfeit wine." Was that the representation of your attorneys? Was that the nature of the representation that you had with your attorneys for this matter?

A. My attorneys wrote that.

Q. In the third line it says, "From our discussions with Mr." -- I'm sorry. Starting on the second line, "From our discussions with Mr. Greenberg, and an initial review of the facts and circumstances, it is clear that Royal Wine Merchants Ltd. has misrepresented the provenance and quality of substantial amounts of fine and rare wine sold to Mr. Greenberg." He made that assertion, right, sir?

A. Yes, sir.

Q. It was on your behalf, right?

A. Yes, sir.

Q. Let's go to the next paragraph, starting with the word "However." "However, Mr. Greenberg recently has discovered that a substantial amount of the wine he has purchased from Royal, possibly amounting to millions of dollars, was counterfeit or falsely identified," right?

A. It says that.

Q. At the end of that paragraph there is a request to refund to you over $2 million, right?

A. Yes. I want all my money back for everything they ever sold me. I would have given every bottle back.

Q. We can put that one aside. I'm handing you Exhibit 266 marked for identification. 266 marked for identification is a letter from your attorney Mr. Coles to another attorney regarding Eric Greenberg slash Royal Wine Merchants May 24, 2002. Do you recognize this letter and the attachment?

A. It's been quite a while since I've seen this. I haven't seen this in years. But I take it as a genuine document, yes.

MR. HUESTON: At this time we move that into evidence.

THE COURT: Any objection?

MR. CIALONE: No, your Honor.

THE COURT: It is received.

(Trial Exhibit 362 received in evidence)

Q. Let's put this up and go to the first paragraph. In the first sentence it says, "I am enclosing a list of wines purchased from Royal by our client, Eric Greenberg, including comments from some of Royal's sales material, that Mr. Greenberg has identified as fake or counterfeit as of May 19, 2002." That's what he said, right?

A. That's what he wrote, yes.

Q. And that was true?

A. Actually, I haven't read all the comments, so I can't comment on that without reading this entire thing. But I can represent that he wrote that. If you want me to read all these comments, I'm happy to do that, sir.

Q. Sitting here right now, you can't recall any reason to believe that this was not a true statement, right?

A. I haven't read the comments, but I can tell you that what he's written here is what he wrote.

Q. The next paragraph states, "As I noted to you, our client" -- that's you, right, sir?

A. Yes, sir.

Q. -- "is in the process of testing the entire $2,189,680.22 of wines purchased from Royal since January 2000." I'll stop there. That was a truthful statement as of May 2002, right, sir?

A. We intended to potentially test all, but we certainly didn't test all of it.

Q. That was a true statement, that you were in the process of testing, correct?

A. We were in the process of testing.

Q. He further says, "The enclosed draft only includes reference to wines that have been reviewed and identified as fake or counterfeit as at May 19, 2002," right?

A. To our best belief, correct.

Q. So it was an ongoing process?

A. Yes. And it was based on my beliefs which -- you know.

Q. Let's take a quick look at the schedule that is attached. It's one, two, three, four, five, six, seven, eight pages of wines listed.

A. That attachment has eight pages, yes.

Q. The title of it is "Wines claimed to be fakes" and handwritten "as of May 19, 2002," right?

A. Yes. I did not write this document, though.

Q. At the end of the document, the total as of that date, May of 2002, was $634,486.25, right?

A. The total of potential problematic wines, yes.

Q. We can put that one aside.

A. Thank you, sir.

Q. In fact, sir, you were testing by looking at them with high-intensity lights, right?

A. Sir, I wouldn't quite characterize it in my words as testing. I was looking with high-intensity lights. I'm not a scientist, so I don't really believe that I was in a testing process per se.

Q. Let's go to your deposition page 191/lines 3 and 4.

(Continued on next page)

MR. CIALONE: No objection.

MR. HUESTON: Let's play it, please.

(Video played)

BY MR. HUESTON:

Q. Okay. And sir, you were working with your attorney, Mr. Coles, on this, weren't you?

A. Sir, that was Mr. Wessel's words, "testing," and I was just trying to answer his question, and yes, I was working with Mr. Coles as my lawyer.

Q. Yeah. You were answering his question, but you didn't say, "I don't know what you mean by testing." You just said "yes," right, sir?

A. I didn't want to argue with the man, but "testing" wasn't my word, sir. I'm sorry.

Q. Okay. And you were assisted in this examination by Thierry Lovato, right?

A. What do you mean by examination?

Q. When you were looking at these wines, sir, and coming up with this list that was being submitted to Royal Wine, you were assisted by Thierry Lovato, right?

A. Thierry's my cellar master, yes. He worked with me.

Q. And you were also assisted by Andrew Dombrowski?

A. Yes, sir.

Q. And you described him as very knowledgeable about wines, right?

A. Yeah, they're really good at wine and food pairing. They're sommeliers, which means that you pair wine and food and serve it at restaurants, and they worked at wine retail shops so they knew the different brands and labels and things like that, like this is a Bordeaux and this is a Burgundy.

Q. And just to be clear, that document that was -- listed wines claimed to be fakes as of May 19th, 2002, which was the attachment to your attorney's letter, that total of $634,486 worth of wines, those were wines in your cellar, right, just to make sure the record is clear?

A. Yes. I was sold those wines.

MR. HUESTON: Okay. All right. Okay. Let's go to 283.

Sorry. Technical difficulties. One moment, please.

THE COURT: Sure.

Q. I'm going to hand you, sir, Exhibit 283 marked for identification.

A. Thank you, sir.

MR. HUESTON: I'm sorry, your Honor. I don't have an extra copy.

THE COURT: That's fine. What's the number?

MR. HUESTON: 283.

THE COURT: Okay. I have it.

MR. HUESTON: Trial Exhibit 283.

MR. CIALONE: No objection.

MR. HUESTON: Okay. I'd like to move 283 into evidence, please, and publish.

THE COURT: It's received, yes.

(Trial Exhibit 283 received in evidence)

BY MR. HUESTON:

Q. Sir, this is a letter dated June 5th, 2002 from your attorney, Mr. Coles, to Royal's attorneys about the dispute you have with Royal Wine Merchants, right?

A. I prefer not adopting your language. I would like to say that it was a letter regarding the issues we had with Royal.

Q. Okay. On the top it says, "I have shared your letter of May 29 with Eric Greenberg." So you had reviewed some correspondence from opposing counsel, right?

A. I guess so. I don't remember the exact correspondence today as I sit here. I'm sorry, sir.

Q. Okay. In the next paragraph it states, "First, you should understand that Mr. Greenberg believes that he has been defrauded over the course of two years by your clients who, it now appears, were part of a scheme to profit from the sale of counterfeit wine." That's what it stated you believed, right?

A. It's written there.

Q. Okay. And it says, "He," that's you, "further believes that it is predictable that other customers of Royal were victimized in the same manner." That's your other belief that was stated there, right, sir?

A. Well, I had no evidence or way of believing that. I thought that I couldn't be the only person.

Q. Sorry?

A. I thought that I couldn't be the only person potentially, but I had no evidence of that whatsoever.

Q. Sir, Mr. Coles -- let me just ask you this: Mr. Coles accurately set forth what your belief was at that time, right?

A. I -- the supposition, yes.

Q. Right. He's not putting anything that's false in these letters on your behalf.

A. Oh, of course not, but I couldn't say it to an evidence of certainty, no, sir.

Q. But you felt strong enough about it and certain enough about it to have your lawyer assert it in this letter to Royal dated June 5th, 2002, right, sir?

A. Yes. I hired a very good lawyer to take care of it for me. Thank you.

Q. And to reflect your views, right, sir?

A. The way he words it, a little different than I would, but, you know, that's what I hired him for.

Q. Okay. And sir, going to the next page, your attorney asserted for you in the last paragraph, "With regard to whether or not your client is in a position to pay 2.1 million, it is Mr. Greenberg's view that the liability to him is both a corporate and an individual liability and that Royal and its

principals are jointly and severally responsible for the damages he has suffered." Right?

A. He wrote that.

Q. Sir, at some point we talked about how the attachments to one of the early letters from your attorneys to the attorneys for Royal had a sum of money of upwards of over $600,000. Do you remember that?

A. Yes, sir.

Q. Okay. At some point you determined that in fact more than $900,000 of your Royal Wines were fake, right, sir?

A. We have a Royal Wine spreadsheet that has been used in evidence in the case, yes, that has that number on it.

Q. So the investigation that was ongoing, it went from determining over $600,000 worth of wine was fake to over $900,000, right?

A. I wouldn't call it an investigation, I would call it my review, but yes.

MR. HUESTON: Okay. Let's go to Exhibit 291.

One moment.

(Pause)

Q. Okay. I'm going to place before you Exhibit 291 marked for identification.

A. Thank you, sir.

MR. CIALONE: Can I -- they appear to have been ripping pages off. Can counsel identify it was what was on the

pretrial order.

MR. HUESTON: I'll give a different copy to the witness. Sorry.

MR. CIALONE: Well, what is it?

MR. HUESTON: 291.

MR. CIALONE: Well, I have an objection to that.

THE WITNESS: Can I have my attorney look at this, sir?

MR. HUESTON: Sure.

THE WITNESS: Mr. Cialone, can you please look at this.

MR. CIALONE: I do object to this being admitted, your Honor, because the attachments do not go with the letter. I have no problem with the letter itself. It's incorrect attachments that were produced by Royal.

MR. HUESTON: I can shortcut this. We can remove the attachment and ask that just the letter be admitted.

MR. CIALONE: Sure.

MR. HUESTON: The first two pages. Is that fine, counsel?

MR. CIALONE: Yes.

THE WITNESS: So I can take off this thing that was not supposed to be part of the letter then, Mr. Hueston?

MR. HUESTON: You may take that off, sir, yes. Thank you.

THE WITNESS: Oh, thank you. I just want to be sure I'm doing everything right.

THE COURT: So 291 is received, and it's the two-page letter.

MR. HUESTON: All right.

(Trial Exhibit 291 received in evidence)

BY MR. HUESTON:

Q. And this letter, sir, is dated June 11, 2002 from Mr. Coles, again, to counsel for Royal Wine Merchants, right?

A. Yes, sir, yes.

Q. And it states in the third sentence, "He has now determined --" that's a reference to you, right?

A. Yes, sir.

Q. "He has now determined that approximately $912,301 of wine he received is fake, and his review is continuing."

A. That's what it says.

Q. And that's an accurate statement, right?

A. Well, as I sit here today or back then?

Q. Well, back then, sir.

A. Back then I believed it.

Q. Okay. And he also states that there are a number of other wines that Mr. Greenberg believes will turn out to be fake upon further investigation. That was a statement made by him on your behalf, right?

A. As I sit here today, I don't believe it, but back then,

yes, I did believe it.

Q. Okay. And, sir, you're saying as you sit here today, but back then you were looking to obtain money from Royal Wine in a legal action against them, right?

A. Well, no, we never filed a legal action. In fact, the letter you gave me of May 20, the -- there's a sentence here, "Mr. Greenberg has indicated to us that it is his preference to achieve an out-of-court solution to this matter and would authorize us to take such steps as may be necessary to preserve and enforce his rights." I never wanted to go to court with them, and after being in this litigation, sir, I never want to be in litigation again. This has been the most horrible experience of my life.

Q. All right. Sir, thank you for that. I didn't ask you for that commentary. Let me just point you back to this.

At this time, sir, you were interested in obtaining money, whether it's through a filed lawsuit or a settlement, from Royal Wine, correct?

A. Yes, sir.

Q. And in support of that, your attorney was writing letters, making these representations, right?

A. He was writing those letters.

Q. And making representations at times on your behalf, right?

A. I -- that's what lawyers do. They advocate for their clients.

Q. And you wanted your lawyers to advocate for you so that you could get back as much of this money as possible from Royal Wine, whom you had determined to have sold to you upwards of $900,000 or more of counterfeit bottles of wine, right, sir?

A. I didn't say that. It was 912,000, I believe was the number.

Q. Okay. Let's go to the third paragraph here. There's another statement about what you were doing at the time. It said, "You should be aware that Mr. Greenberg is documenting each of the fakes by removing the capsule as appropriate, cleaning the necks of the bottles, and using high intensity halogen and incandescent lights in combination with two different types of magnifying glass to evaluate the bottle *[sic]* and other cork *[sic]* markings." You were doing those things, right, sir?

A. Yes. As I said, we looked at corks. Our number one thing was corks. That's the only thing I really knew what to do.

Q. And you've referenced this before. At some point in mid 2002 you actually created a document that identified the fake wine that you believed you had been sold by Royal, right?

A. There were a number of documents created. I'm not sure which one you're referring to, sir.

Q. Okay. Let's look at Trial Exhibit 107.

A. Thank you, sir.

Q. Trial Exhibit 107 marked for identification is entitled

Royal wine Fake Summary Notes. Do you recognize this set of ten-page typewritten documents entitled Royal Wine Fake Summary Notes?

A. Yes. It's been a central part of my life for a while now.

MR. HUESTON: Okay. We'd move to admit this document, your Honor.

MR. CIALONE: No objection, your Honor.

THE COURT: It's received. 107.

(Trial Exhibit 107 received in evidence)

Q. Let's look at some of the language here. The title of this is Royal Wine Fake Summary Notes. Did you write that title?

A. Yes, I did.

Q. Okay. And the first sentence says, "The following document is a set of notes to accompany the Royal Wine Merchants fake wine spreadsheet of wines believed to be fake and sold to Eric Greenberg." You wrote that?

A. Yes, sir.

Q. And then you described the methodology in your words that you employed on making these assessments. That's how you described it?

A. Yes.

Q. And the methodology is there. It includes cutting the capsule, cleaning with solvent, and the high intensity lights that were referenced by you earlier, right?

A. Yes, sir.

Q. It also states that two sommeliers assisted you in this bottle-by-bottle process. That was true?

A. Yes. Although the conclusions were mine.

Q. Today you say the conclusions were wrong.

A. No, I didn't say that, sir. I said the conclusions were mine but Andrew and Thierry did assist me.

Q. Okay. And then you additionally state that outside experts, domains, and importers were contacted and consulted on the authenticity, labeling, and corks of various wines. You did that too, didn't you?

A. We -- we did not contact any outside experts. We contacted one domain. I think there were a couple of importers. We intended to do more, but that -- we didn't do all of that, no.

Q. So you wrote that you contacted outside experts even though you hadn't done it, is that right?

A. Yes.

Q. And you wrote that you contacted domains, plural, even though, by your testimony today, you contacted -- did you say one domain?

A. Yeah, Domaine Costarella (ph), white burgundy producer.

Q. Yeah. And I'm not sure I caught that. Did you also contact importers?

A. I remember contacting one specifically, but there may have been more, because some of the people I dealt with were importers, but I can't remember here as I sit.

Q. Sitting here today, can you remember any importers you contacted in this process of compiling your fake summary notes?

A. Yeah, there was Chatterton, which imported Rayas, R-A-Y-A-S, and I did contact them, yes.

Q. And do you remember contacting any other importers?

A. If I did, I can't remember the names. It's a possibility, though.

Q. And the next paragraph, you state, "This is a working list and only represents a partial amount of the full quantity of wines purchased." Is that right?

A. Yes, sir.

Q. And again, you state in the next sentence, to be clear, "I'm only partially through the process," right?

A. Yes, as well as saying there may be minor redundancies or understatements.

Q. Just -- there are -- let's see. In your notes, I see a total of 86 bottles that you had examined to date, right? Total of 86 through 10 pages?

A. No, sir, actually -- what you said are bottles. I think there's something like -- I don't know. There's 100 something or 200 something bottles.

Q. You're right. I stand corrected.

A. Yeah, they're 86 types, sir.

Q. 86 types. And in fact, you're right. Number 86, it says there are 12 of those 1928 Beycheville bottles, right?

A. Yes, actually, those turned out to be correct rebottlings. I even made a mistake on those.

Q. That's your testimony today but not what you put in your Royal Wine Fake Summary Notes at the time, right?

A. Yeah. I made some mistakes. I made some mistakes, sir. I did.

Q. So over 100 bottles you examined in the way that you described in the first introductory section of this note, right?

A. Yes, sir. Yes, indeed.

Q. Okay. With the exception of the changes that you made to that one sentence about contacting -- using outside experts, that wasn't true?

A. Oh, I -- can you restate the question. I'm not sure I understood what --

Q. Okay. Well, I thought we were clear. You wrote here, additionally, outside experts were some of the people you consulted. That was not true, right?

A. Yes.

Q. Yes, it's not true?

A. Yes.

Q. Let's turn to the third page of the exhibit, and I'm going to ask you just about a couple of these. Entry number 15 is for 1950 Lafleur mag-1. Do you see that?

A. Yes, sir.

Q. And that was an entry for one magnum, a large format size bottle of 1950 Lafleur, right?

A. Yes, sir.

Q. And you made four entries of observations, right?

A. Yes.

Q. And that included, "The label seems to be photocopied and is not regular," right?

A. Yes.

Q. And no visible date on cork, right?

A. Correct.

Q. And there was a couple of others, new cork and no import strip?

A. Well, the most important thing was we couldn't see the date on the cork, it was new, meaning it was clear, and it looked like the cork had been removed and manipulated, so that was what we focused on were the corks, and, you know, some of the stuff may be out of order, but for us, the first thing was the cork. We looked at the corks.

Q. Yeah. Now you chose to include what you thought were the indicators of counterfeits in these notes, right, sir?

A. Well, the methodology was, if the cork had a problem, then we tried to figure out any other problem the bottle could have, because we were writing a list in order to try to get money back for wines we didn't think were authentic, but to us the cork was the number one thing. That was what we looked at.

Q. Okay. But with respect to entry number 15, you talked about the cork as item b, but item a was, "label seems to be photocopied," right?

A. Item b and c were the important things.

Q. I'm just asking if that's what -- that's the order you put it in when you wrote this up, right?

A. Well, it never said on the top that I was putting things in order by importance, but yes, it says that.

Q. You put the most important things lower in lists?

A. A lot of times, yes.

Q. Okay. Let's go turn to -- I'm going to have you keep that and I'm going to put in front of you your expert's report, Mr. Lempert-Schwarz, Exhibit 106.

And in fact, I think, to make it easy -- it's already been admitted into evidence -- I'm just going to put the section up on the screen.

A. Hold on. What page? I want to take a look at it.

Q. Sure. We'll give you a hard copy.

A. I think I might have one from yesterday. What page would that be on, sir?

Q. I'm going to turn you to page --

A. The rebuttal report?

Q. Yes. Just look for Exhibit 106.

A. Okay.

Q. That's the rebuttal report, and I'll turn you to page 48.

And we'll put it up on the screen to make it easy.

A. Page 106, you said? Is it TE 106 or -- TE 106. -- I want to get to the very specific page.

Q. Sure. I'll help you out with that. If you want, I'll go with the Bates stamp. It's down there as 49.

A. 49.

Q. Also up on the screen.

A. Well, hold on. I just need to read this.

Q. Sure. Okay.

A. These are very serious allegations. I take this very seriously.

Q. Okay. Do you have that in front of you?

A. Yes.

Q. Okay. And I've just -- just to make sure this is clear, we had an entry number 15 was a 1950 Lafleur magnum from your fake summary notes, right?

A. Yes.

Q. And two of the things that you noted was, "label seems to be photocopied," right?

A. Yes.

Q. And other is, "no visible date on cork," right?

A. Yes.

Q. And just turning to Mr. Lempert-Schwarz's report, he notes a number of things. Two of the things he notes is an issue with the label and an issue with the cork. Isn't that right?

A. Well, sir --

MR. CIALONE: Vague, your Honor, as to the "issue with." Compare that to what's in the Royal notes.

MR. HUESTON: I'll focus it more.

A. But there's also another thing. You know, Mr. Schwarz did this nine years later --

Q. There's no question, sir.

A. -- and the corks degrade. They're made out of wood.

Q. There's no question.

THE COURT: Next question, please.

Q. Let's go to the front label section of the page 48.

A. Which -- now you're confusing me, sir.

Q. I'm going to put it up right in front of you.

A. Okay.

Q. And if we can highlight, please, the third sentence starting with, "The print is in a thicker font with a much blacker color, and the vintage in particular stands out for having been printed in a very fat font, again unlike any other magnums of Lafleur inspected here and referenced in the past from magnums previously authenticated, inspected, and/or photographed." That's what it says, right?

A. That's what it says, yes.

Q. So it's a reference to the front label, the front label on the bottle, right?

A. Yes.

Q. And then if we turn to the next page, there is a paragraph about a cork, and in the last sentence, it says, "The vintage is not legible but clearly legible is the oval emblem of Chateau Lafleur," right, sir?

MR. CIALONE: Your Honor, objection. If he's purporting to read what it says about the cork, he's starting on the third line, fourth line.

MR. HUESTON: I am starting at the third and fourth line.

MR. CIALONE: Okay.

Q. That's what it says, right?

A. It says that.

Q. Okay. So those are two observations that your expert has made about this particular bottle of 1950 Lafleur, right?

A. Yes.

Q. Okay.

MR. CIALONE: Objection. Objection, your Honor. What do you mean by this particular bottle of 1950 Lafleur?

A. Well, it wasn't about the bottle in this case. I can tell you that.

MR. CIALONE: No. You're referring to bottle 6005 6?

THE COURT: Is it a particular bottle?

MR. HUESTON: Sorry. It's going to be entry -- I think the record is clear, but just to make the record clear, at Bates stamp 49, the beginning entry is Chateau Lafleur 1950

magnum Koch inventory 56 9.

MR. CIALONE: And I just wanted that to be clear, your Honor. There are five 1950 Lafleur magnums in this case. There are three 1950 Lafleur magnums discussed in Mr. Greenberg's notes. There's no evidence there's any connection between the two.

MR. HUESTON: Well, this is a speech, your Honor, and not an appropriate objection.

THE COURT: Okay. You'll be able to clarify that.

BY MR. HUESTON:

Q. Sir, going back to your Royal Fake Summary Notes, you make an observation about the label being questionable, namely, that it seemed to be photocopied, right?

A. Yes.

Q. Yes? And you also make an observation about no visible date on cork, right?

A. Yes, and if it didn't have an oval, I would have put that too. Every magnum that was consigned in this auction had a date on it, according to Zachys, and we saw a date, and we do believe there are, you know -- we do believe that there could be problems that some of these magnums aren't the ones I consigned.

Q. I'm not focusing -- just to be clear, I'm just focusing on some of the observations you made in your Royal Wine Fake Summary Notes that led you to allege that they were fake and

then some similar observations with bottles that are supposedly from the same wine maker and same year that your expert has made. That's all.

Let me go to -- and there was a mention by your counsel that there were five of these Chateau Lafleur 1950 magnums listed in Mr. Lempert-Schwarz's exhibit, and just to be clear for the record, those would be numbers 18, 19, 20, 21, and 22 from pages 48 to 56, and let's just quickly turn to page Bates stamp 51. There's a front label entry for Chateau Lafleur 1950 Koch inventory 58 3, and he makes the same observation about the label in that case -- namely, "The print is in a thicker font with a much blacker color and the vintage in particular stands out for having been printed in a very fat font, again unlike any other magnums of Lafleur inspected here and referenced in the past from magnums previously authenticated, inspected, and/or photographed." He made that same observation with this one as the bottle entry number 18, right?

A. Yeah, that -- you know what's interesting is I wrote down, "seemed to be photocopied."

Q. Can you answer my question, please.

A. I wrote down it seems to be photocopied, and he says nothing about photocopying here.

Q. I'm not asking about your other entry. I'm just asking if this entry, sir, is the same one that you saw in 18.

A. It's the same, but it's not what I wrote.

Q. And then if you go to the entry for bottle 20, he has the same entry again about the print being in a thicker font, issues with blacker color and vintage in particular stands out, and he writes again, unlike any other magnums of Lafleur inspected here and referenced in the past. Right?

A. Yes, sir.

Q. And going to page 54 of the report, Bates stamp 55, he makes the exact same observation with respect to another bottle of 1950 Chateau Lafleur, right, Koch inventory 55 2? Do you see that?

A. Mm-hmm.

Q. Is that a yes?

A. Yes, sir.

Q. Thank you. And then the next page, again, the same exact observation about the label for the Chateau Lafleur 1950 magnum Koch inventory 57 6, right, sir?

A. Yes, and nothing about a photocopy.

Q. Not photocopy but certainly a questionable label, right, sir?

A. I didn't have that kind of information. I just said it looked photocopied.

Q. And in fact, sir, going back to your fake summary notes, entry number 15, you not only say the label seems to be photocopied, you say "and is not regular," right?

A. Yeah, because these bottles that were consigned looked one way and this one didn't look the same way as these, because I thought these were good, and so did Zachys. We both thought they were real.

Q. And looking at item 16 in your notes, you were able to look at that 1950 Lafleur magnum and you were able to detect that that one had a questionable label, right, sir?

A. You know, sir, I had 30 bottles of 19 -- or magnums of 1950 Lafleur and 10 sources --

Q. Can I have a yes or no? Can I have a yes or no to that.

THE COURT: Please answer the question.

A. Yes.

Q. Thank you. Let's go to paragraph 53, if I can, of your Royal Wine Fake Summary Notes, and this entry describes three 1928 Latour bottles, correct?

A. Yes.

Q. And for these three bottles, for all three, your first entry is that you noted a photocopied label, right?

A. Which one is that?

Q. Number 53.

A. Oh, but number 52, there's a Latour bottle --

Q. Sir, I already told you that we're talking about 53.

A. Okay.

Q. Do you see 53?

A. Yes.

Q. First entry, a photocopied label, right?

A. Yes.

Q. And the next one is, "new cork on one with no markings," and there's an observation about on another is a new Latour cork, right?

A. Without the year.

Q. Right. So you were able to look at these three Latour bottles and detect a photocopied label and issues with the cork, right?

A. Yes.

Q. And in fact Mr. Lempert-Schwarz found similar issues with 1928 Latour bottles in this case, didn't he?

A. I don't know that.

Q. Okay. Well, let's look at a couple of examples.

Let's go to page -- make sure I give you the right page here. One moment.

Let's go to Bates stamp 68, which is report on page 67, and this is an entry number 27 in his report for Chateau Latour 1928, Koch inventory ending in the number 66 5. I'm going to direct your attention to front label. You see that? And in particular, the -- starting at the third line, "The label is a photo-laser copy of an original." Do you see that?

A. Yes.

Q. And then turning to the next page, there's an observation

about the cork.

A. Right.

Q. And in fact, what he states about this one is, in part, most of the normally visible branding or printing is not legible. That was his observation, right?

A. Oh, on all mine I said there are new corks and he says on his that it's very moldy looking, so these can't be the same ones. I'm sorry.

Q. It may be they're not the same ones. I'm just looking to see whether you're looking at some of the same factors as Mr. Lempert-Schwarz, and in this instance, sir, you observed an issue with a label and cork on the three 1928 bottles in your wine -- fake wine notes and here Mr. Lempert-Schwarz is looking at Chateau Latour 1928s and observing an issue in part with a photocopied label and a cork, right, sir?

A. Sir, as I told you, I always looked at corks, and I see that I have three blank corks, and you're referring me to something where he had a moldy cork. I thought you were going somewhere else with this. I'm sorry.

Q. And you were also -- you also observed not just the cork but the photocopied label, right?

A. Yes.

Q. And if we go to Mr. Lempert-Schwarz's next entry, it's another Chateau Latour 1928, entry number 28.

A. Which Bates page?

Q. Bates stamp page 70.

A. Okay.

Q. The next page. And here, once again, he notes under the front label, "The label is a photo-laser copy," at line three, "of the original." Do you see that?

A. Yes.

Q. And he notes an issue with the cork below, same as the last entry, "appears very moldy looking and most of the normally visible branding or printing is not legible," correct?

A. And again, he said the cork is moldy, and my corks on there I observed as being brand new and clear, and without any mold, sir.

Q. The visibility part is the same, right?

A. No. New and moldy are two different things.

Q. Okay. Well, visibility was mentioned as an issue for both, right?

A. I don't understand your question, sir.

Q. Okay. We'll move on to the next question.

Okay. Let's go to paragraph 23 of your Royal Wine Fake Summary Notes.

A. Entry number 23, you mean? 'Cause these aren't paragraphs.

Q. At Bates stamp page 4, number 23, there's a 1950 Petrus magnum listed there. Do you see that?

A. Yes.

Q. And here, you mention three items. The cork is manipulated

where the date should be, the capsule is new with no signs of age, and you also list questionable label and Nicholas stamp. Right?

A. Yes.

Q. And sir, you had sufficient training to identify a wrong stamp from Nicolas, is that right?

A. No, I had no training on wine whatsoever.

Q. Well, you wrote it down here as a reason why you thought this 1950 Petrus magnum was fake, right, sir?

A. Sir, you asked if I had training. I didn't have training.

Q. Okay. You had enough experience to feel comfortable identifying the Nicolas stamp as an issue for authenticity, right?

A. I wouldn't say I had enough experience. I wrote it down.

Q. Well, you wrote it down so that somebody reading it would take it seriously that this really was documentation of what you felt was a list of fake wines, right?

A. No. Actually, no. That list was not given to anybody. It wasn't given to Royal, it wasn't given to the insurance companies. That was an internal document. You're making a lot more out of it than what it was.

Q. Okay. Well, we'll see where this went.

Okay. Let's go to the expert report at page Bates stamp 80. This is entry number 3 of the report, Chateau Petrus 1950 magnum, Koch inventory ending at 29 3.

A. Page 80 in Bates?

Q. You have it right in front of you on the screen. Bates stamp 80.

A. Well, sir, I'm going to look at the paper, because the -- what's on the screen is selectively what you want me to see, and I want to look at the full document.

Q. Okay. And I'm going to direct your attention in particular to -- under Front Label, the second line that starts with, "In this case, whomever affixed this label was clearly not, as it completely lacks the detailing in the very advanced and sophisticated image that the original label employs." Do you see that?

A. Yes, it says that.

Q. There was an issue with the label identified by your expert, correct?

A. Yes.

Q. And later in that paragraph, there's an issue identified with the Nicolas stamp, right? If you look at the line starting with, "Further --"

A. Excuse me. Can you put it up on the screen, because I'm looking at something else right now.

Q. Sure. And it's highlighted for you now. "The further appearance of the Nicholas stamp, here also in the wrong hue of fuchsia which it should be, rather appearing pink, not a mitigating factor for it would not have been applied by the top

retailer, Nicholas," right?

A. I learned something today. I didn't know the stamps were supposed to be fuchsia.

Q. There was an issue identified here with the Nicolas stamp, and then he states, "Whoever did this, and why unknown, but it is a fact that the label is not an original," right?

A. That's what it says.

Q. Okay. Going back to your entry at number 23, when you were examining a 1950 Petrus mag, you identified issues including, at letter c, a questionable label and Nicholas stamp, right, sir?

A. Yeah. And I also identified a manipulated cork and he identifies a 1950 vintage that's legible. He also doesn't talk about a new capsule. So what he's saying is inconsistent with what I noticed, and I think you're misconstruing it, sir.

Q. No, I'm just pointing out that you were able to observe some of the indicators of counterfeit when you inspected bottles that your expert used in order to inspect and determine counterfeit, right?

A. Sir, I'm not an expert, but yes, I can look at a cork and I can look at things with my two eyes.

Q. Great. Thank you. We're done with that.

A. Can I put this away or you want me to keep it out, sir?

Q. That one you can put away. Thank you.

A. Okay. Thank you.

Q. Now at some point, sir, your attorneys did draft a complaint against Royal, right?

A. No. They drafted a draft complaint, which we never intended to file.

Q. Okay.

A. So it's a draft of a -- of a complaint. It's not a complaint. And it was never filed.

Q. Okay. Let's take a look at Trial Exhibit 332.

And Exhibit 332, sir, for identification is a cover letter to counsel for Royal Wine Merchants from your attorney, Mr. Coles, attaching a draft complaint, correct?

A. Yes.

MR. HUESTON: Okay. We'd move this into evidence.

MR. CIALONE: No objection, your Honor.

THE COURT: It's received.

(Trial Exhibit 332 received in evidence)

Q. And, sir, you just stated that you never had any intention to file a complaint, but at the second paragraph, first sentence, "Please note that Mr. Greenberg has authorized us to commence an action against Royal and its principals on or before May 30th." That was a true statement, wasn't it?

A. I'm not a lawyer. This is typically what you read in lawyer letters. I know I've received a lot of those in this case. So this is kind of consistent with that.

Q. I see. So are you telling the jury that your lawyers were

threatening to go forward when they had no intention of going forward?

A. No. They're keeping it as an option open. We never intended to file, but we didn't say we're going to give up our options.

Q. No. What it says in the letter to Royal -- Royal's counsel is that you had authorized your attorneys to start an action against Royal. That means a legal action, right?

A. My attorney's a good advocate, just as you are, Mr. Hueston.

Q. Sir, well, I'm not in the habit of writing things I don't believe in. I'm just trying to establish --

A. You don't?

Q. Is this, sir, an accurate representation of your intentions or not? Yes or no?

A. We were reserving that right.

Q. You were reserving the right to go forward and file the complaint, right?

A. We were reserving the right.

Q. And in fact, you attached a copy of the complaint that you were set to file against Royal. You sent it to Royal, right?

A. Actually, my attorney sent it to their attorney.

Q. Well, and they did it with your permission and consent --

A. Yes.

Q. -- of course, because you're the client and they're working

on your behalf, right, sir?

A. Yes.

Q. Let's look at the complaint.

That starts at the second page. And paragraph 1 starts with stating, "This is an action for fraud, breach of contract and related relief arising from the defendants'," that's Royal's, "knowing and intentional sale of fake and counterfeit wine to" you, "for the period starting January 2000 to March 2002." Right?

A. It says that.

Q. Okay. And at the end of that paragraph, it also states, "Over the more than two-year period during which defendants' fraudulent scheme continued, defendants knowingly sold plaintiff more than $2 million of wine, of which all or substantially all is counterfeit or fake." It said that too, right?

A. It says that.

Q. And that was a truthful assertion by your attorneys, right?

A. No. Actually, in paragraph 13, it says, "Plaintiff came to the conclusion that at a minimum, a substantial portion, if not all the bottles of wine purchased from Royal, were fake or counterfeit." It didn't say all. And then we gave them a spreadsheet with this, which had the 912,000. So we never believed that all of it was fake, and the documentation supports that. If you mischaracterize, that is not really

forthright, sir.

Q. All I asked you is if that one sentence was true or not. Thank you for jumping ahead and providing that other testimony.

Here's my question again. Here it is. "Over the more than two-year period during which defendants' fraudulent scheme continued, defendants knowingly sold plaintiff more than $2 million of wine, of which all or substantially all is counterfeit or fake." Did I read that accurately?

A. Yes, you did.

Q. And those were words that you authorized your attorneys to make, right, sir?

A. Yes.

Q. Okay. Let's go forward. Let's go to paragraph 11 and some of the specific assertions.

In paragraph 11, it states, "In the spring of 2002, plaintiff," that's you, "was considering the possibility of arranging an auction sale of part of his wine collection, including a number of bottles of wine that he purchased from Royal. In connection with analyzing whether to proceed with a sale, the representative of one international auction house inspected parts of his wine collection." Right?

A. Yes.

Q. And that was referring to your efforts to auction wine through Sotheby's, correct?

A. Yes. They never inspected my collection, though, so I

wouldn't have used that word, and in retrospect, I probably should have had a quicker -- I mean a more fine review of it, and we hadn't even determined which wines we were going to auction. It was mostly going to be American wines, which is pointed out in many Sotheby's e-mails, and so this paragraph, I would have to say I should have proofread it better.

Q. Well, so are you saying then, "one international auction house inspected parts of this wine collection," your assertion today is that's a false statement?

A. Yes.

Q. And the attorney who drafted this is Mr. Coles?

A. Yeah. He's sitting right there.

Q. And he drafted the false statement, right?

A. Yes.

Q. And but he's still here today and he's one of your valuable top dog litigators, in your words, right?

A. No, that was actually Mr. Wessel's word, calling him top dog.

Q. I think he read from one of your e-mails. Do you remember that?

A. No, I didn't.

Q. Okay.

A. I didn't call him a top dog.

Q. In any event, you never fired Mr. Coles for misrepresenting anything on your behalf, right?

A. Mr. Coles is a former deputy mayor of New York and an honorable man, and I don't think you should be impugning his character.

Q. I'm not impugning him at all. I just want to get the record straight. That's a false statement, you just said, right, "international auction house inspected parts of his wine collection"?

A. They visited my wine cellar and they scared me and told me that I had fake wine.

Q. And Mr. Coles got --

A. And I was angry.

Q. -- that information from you, sir?

MR. CIALONE: Objection, your Honor. Calling for privileged communication.

THE COURT: Hold on a second.

What was the question?

MR. HUESTON: Your Honor, here's the question:

Q. Mr. Greenberg, did you authorize Mr. Coles to make the statement, "one international auction house inspected parts of his wine collection"?

MR. CIALONE: And again, your Honor, that's a different question, but this one is also calling for privileged communications. Whether my client authorized him to do something, that's privileged.

THE COURT: He can ask the question whether he

authorized Mr. Coles to make this statement here.
A. I authorized Mr. Coles to handle the matter and I asked him to do it in a way that he saw fit in an aggressive fashion. So I didn't really carefully read what he had written because I wasn't experienced in this type of thing. So if it says that as I sit here today, I can't agree with it.
Q. Now in an aggressive fashion but an accurate fashion, right, sir?
A. I said an aggressive fashion, and, you know, I don't -- you know, we never -- we never filed this complaint and so I don't see this as being dishonest.
Q. Oh, okay. So -- but if it has statements that are not true and it's being attached as part of a settlement demand to Royal, it doesn't matter if it has false statements, is that your testimony?
A. Like Mr. Elroy's falsification of evidence?
Q. I know you want to try your case through that, and we'll get into Elroy later. I'm just asking about you, sir. It's just you right now. This document didn't just stay in the files of your attorneys. It was sent to lawyers from Royal to try to extract a settlement, right, sir?
A. It was sent to them to try to settle a dispute we had.
Q. Right. And so it was sent to them with what was supposed to be true statements of what you really believed, right?
A. Yes.

Q. And so you would never have wanted a complaint to go to opposing counsel with misrepresentations and falsities about what you had really done and inspected, right, sir?

A. No.

Q. No. Let's go to paragraph 12. "During that inspection the auction house representative, a recognized expert in the industry, raised questions about the integrity of certain bottles of wine." I'll stop there. That was a truthful statement, right, sir?

A. As I said, I wouldn't use the word "inspection." That was his choice of words. And I was angry about getting fake wine. I wanted to get a refund and, you know, that was it. I mean, there's nothing more to it than that. I was sold fake wine, I wanted a refund.

Q. So say anything to get your money back?

A. No, sir. I didn't say that either.

Q. All right. So this is a truthful statement then, isn't it?

A. I didn't say that either.

Q. Okay.

A. I said --

Q. I'll take that as your answer.

A. -- I wouldn't use the word "inspection," because they didn't inspect it. But they told me that Royal did sell fake wines.

Q. Let's go to paragraph 15. And this states, "As a result of

the above-described disturbing information, plaintiff also retained an independent wine consultant to inspect the authenticity of wines he purchased from Royal on a test audit basis." That's what was alleged here, correct, sir?

A. Mr. Coles hired Mr. Edgerton to come and look at 108 bottles of wine that we gave to him to inspect.

Q. And it also states here, "He reviewed a total of 108 bottles of wine and found that the bottles of wine that he inspected which were purchased from Royal appeared, to a reasonable degree of certainty, to be fake or counterfeit." Correct?

A. No. You're misreading that. He looked at a total of 108 bottles of wine, a lot of which were real, and represented not to be from Royal, and other wines I told him were from Royal because I thought that any fake bottle of wine I had came from Royal based on what Serena Sutcliffe told me, and so if I saw fake bottle of wine, I attributed it to them, and as I sit here today, I'm not really sure that's accurate.

Q. I know here, sitting here today, you're being sued and you're not sure this is accurate, but back then you were so sure it was accurate, you had your attorney send it to the other side to extract a settlement in the matter, right, sir?

A. It was because what Serena Sutcliffe told me. She didn't tell me any of my source -- she did not tell me that any other of my sources were fake. She only pointed out Royal.

Q. And I didn't get an answer to the question I posed so I'll try it again.

This states that the independent consultant reviewed a total of 108 bottles of wine, including certain bottles not purchased from Royal, to establish baselines. It says that, and you don't quibble with that. That was true, correct?

A. He reviewed 108 bottles, a lot of which are real and a lot of which were inauthentic based on our observations.

Q. I see. Where in this draft complaint does it say a lot of the ones he reviewed turned out to be real?

A. It doesn't.

Q. It doesn't. Because, again, you were writing things to get as much money as you could from Royal by sending this draft complaint, right, sir?

A. I didn't write that. My lawyer did.

Q. On your behalf, sir.

A. Okay.

Q. Any dollar they got out of Royal was going to come back into your pocket after subtracting attorney's fees, right?

A. Yeah. You know what's kind of funny is what I got back ended up all going to attorney's fees. I didn't get a dime and I sent them back wine.

Q. Well, we'll talk about what you got back as well.

(Continued on next page)

Q. You picked the 108 bottles for Mr. Edgerton to look at, right, sir?

A. Yes, I did.

Q. If you go to paragraph 16, it states that the consultant reviewed a number of different categories of items, right, sir?

A. Yes.

Q. That would include the style and measurement of bottles of wine obtained from Royal compared to those of the style and measurement of bottles of wine known to be genuine, right?

A. Yes.

Q. And that he inspected the color, condition, length, and markings on the bottles and capsules from bottles obtained from Royal, right?

A. Yes.

Q. Going to subpart 3, you compared the labels on bottles, right?

A. Yes.

Q. And on 4, inspected the corks on bottles, right?

A. Yes.

Q. He prepared a report based on that analysis, right, sir?

A. Yes.

Q. And you received that report, correct?

A. Yes.

Q. Let's take a look at that. Handing you Trial Exhibit 73 marked for identification. For the record, Trial Exhibit 73

marked for identification is entitled "Wine authentication report of certain wines owned by Eric Greenberg." Do you recognize this document, sir?

A. Yes.

Q. Is this the document prepared by Mr. Edgerton for you, sir?

A. For my lawyers.

Q. And for you?

A. Well, it was for my lawyers. He was an expert witness, so it was handled through my lawyers to maintain privilege.

MR. HUESTON: We move this document 73 into evidence, your Honor.

MR. CIALONE: No objection, your Honor.

THE COURT: It is received.

(Trial Exhibit 73 received in evidence)

Q. Let's go to page 3, please. At the bottom paragraph you will see that Mr. Edgerton explains that he looked at many factors, including capsules, bottles, labels, and corks in preparing this report, right, sir?

A. Yes.

Q. Mr. Edgerton put stickers on the bottles that he inspected, right?

A. Yes, he did.

Q. You saw him putting stickers on at least one bottle when he was at your home, right?

A. Yes.

Q. He was putting stickers on the bottles to make sure it was clearly identified which bottles were being reviewed, right?

A. No. Actually it was for the photographs. They were all exhibits, so he was putting stickers on for purposes of exhibits.

Q. For identifying them?

A. For exhibits, exhibits that referred to parts of the report.

Q. The stickers were numbered, right?

A. Yes.

Q. So you could look at a number on the sticker and then go back to his report and look at the number entry in the report, right?

A. Yes.

Q. By way of identifying the bottle to the report, right?

A. Yes.

Q. Based on that numbering, you could, sir, understand whether Mr. Edgerton had made a particular conclusion about a bottle, whether it was counterfeit, suspect, or not, right?

A. Yes.

Q. Mr. Greenberg, there were 108 stickered bottles, right, sir?

A. Yes. I think there was one that didn't have a sticker. Something like that.

Q. 107, 108?

A. Yes.

Q. It is possible, sir, that you sold bottles afterwards that Mr. Edgerton concluded were counterfeit or suspect, right, sir?

A. That's possible.

Q. It's also true, sir, that some bottles stickered by Mr. Edgerton and identified as counterfeit by him, you actually removed those stickers, right?

A. Yes. There were a lot that were authentic. After we were done settling, there was no need to keep stickers on authentic bottles.

Q. Sir, you didn't keep a record of which of the wines that Mr. Edgerton stickered that you removed the stickers from and which you did not remove the stickers from, right?

A. I'm not sure I understand your question.

Q. Sir, did you keep a record of which wines that Mr. Edgerton stickered that you then removed the stickers from?

A. No.

Q. You do understand, and it has been discussed here, that Mr. Edgerton did put a sticker number 41 on the bottle of 1928 Latour, right?

A. Yes.

Q. You had told Mr. Edgerton that that bottle of 1928 Latour was from Royal?

A. I told him that.

Q. Let's look at --

A. I couldn't be sure of it, though, because I had 30 bottles of 1928 Latour, and I only bought three from Royal. So I couldn't be sure that it was from Royal. But I did say that.

Q. Sir, just to be clear, to be fair, page 32, entry number 41. Let's pull that out from his report. Trial Exhibit 73. We'll post that. In the first line, after 1928 Chateau Latour it states, "Mr. Greenberg advises that this bottle was obtained by him from Royal Wine Merchants." That's a true statement, correct?

A. Actually, what is a true statement, that it says this or that it was in fact purchased from them? I got to know so I can answer your question truthfully.

Q. Did you advise Mr. Edgerton that that bottle was obtained by you from Royal Wine Merchants?

A. I advised him of that, yes.

Q. He lists various attributes of this bottle, right?

A. Yes.

Q. He says, After considering all of these attributes, this bottle of 1928 Latour," if we go to the next page, "is definitely counterfeit," right, sir?

A. Yes. And page 69 he says, "The authentication process is not a finding of fact, it's a finding of opinion." So based on his opinion, he thought it was definitely counterfeit.

Q. You jumped ahead to something else that you wanted to say. I just asked you, this conclusion there in the conclusion

paragraph is this bottle is definitely counterfeit, right?

A. His opinion is that it is definitely counterfeit, his opinion, and not a statement of fact.

Q. That statement "this bottle is definitely counterfeit" comes under the caption "Conclusion," right, sir?

A. Yes, sir.

Q. So the record is clear, Mr. Greenberg, you admit here that this bottle that we have just been talking about is fake, right?

A. There are experts that have come to conclusions on it. I really don't know. I'm not an expert. At this stage I want experts to tell me.

Q. Sitting here today, it's your testimony that you are not sure this is a counterfeit, is that right?

A. You asked me what conclusion I came to. I have to follow the expert conclusions at this stage of my life.

Q. In that stage of your life, when you were looking to extract a settlement from Royal, it was definitely counterfeit and was added up in the total of money that you were demanding from Royal, right, sir?

A. Yes.

Q. It's been your testimony, sir -- strike that. It's your claim, isn't it, that you have separated out in your home all the wines that you believe were counterfeit or even questionable, right?

A. I can't say that to a hundred percent certainty, but we've tried.

Q. For the October of 2005 auction, you had some involvement in the selection of bottles for that auction, right, sir?

A. I'm not sure I understand that question, sir.

Q. You were involved in the selection of bottles that were to go on auction in October of 2005 for the Zachys auction, right?

A. As you phrased it, no.

Q. You had no involvement at all, is that your testimony?

A. I put them on a spreadsheet, a certain number on a spreadsheet, and then Mr. Lovato, my cellar master, would select those and give them to Zachys. So my follow-up was checking off numbers on a spreadsheet.

Q. You made a list of wines that you desired to be included in the October 2005 auction, correct?

A. Not to be included. Proposed for Zachys to review and authenticate and then accept it if they thought they were authentic.

Q. You gave that list to Mr. Lovato, who was one of your employees, right?

A. He is a contractor. I wouldn't call him an employee.

Q. You pay him money for his work?

A. Yes. He works for me. But I mean he's not like a full-time employee on the payroll per se.

Q. Just so it is clear, because I'm not sure it was after the

opening statement, you didn't just open the doors to your cellar and have Zachys walk in and pick bottles for the auction, right?

A. No. There is $50 million inventory in there. That is not something that you would typically do.

Q. I'm being told I haven't marked this bottle as an exhibit yet. I'm going to put this in front of you. This is Exhibit 200. This is the Chateau Latour 1928 bottle, sir. If you would take a look at that, it has a sticker on it number 41. Do you recognize it?

A. If it's in fact the bottle I consigned, this would be it. But we have some serious questions about the custody of these bottles in this case.

Q. I see. Sir, do you have serious questions as to whether that bottle you're holding in your hands right now is actually one of the bottles that Mr. Edgerton examined and put a sticker on?

A. Oh, it's absolutely possible. It's also possible that Mr. Elroy did something with it.

Q. I know we are going to hear more from your counsel on that. But looking at that bottle, do you have any reason in looking at that bottle to believe that that is not in fact a bottle that Mr. Edgerton examined and labeled?

A. Sir, your firm has been found by courts to have destroyed data, to falsify data in this case --

MR. HUESTON: Your Honor, I object. This is a totally wrong accusation.

THE COURT: Please limit your responses to the question posed.

THE WITNESS: Yes, sir.

THE COURT: Next question.

Q. Looking at that bottle, is there anything on that bottle to indicate it is anything other than a bottle that Mr. Edgerton examined in his analysis of the 107, 108 bottles?

A. No.

Q. In fact, it has the same number 41 sticker that you had seen, right?

A. Yes.

Q. In fact, he initialed that bottle, didn't he?

A. Those are his initials.

Q. And you recognize them as his initials?

A. Actually, I don't recognize his initials. There are initials on there, but I don't know his initials.

Q. Let's go back to the complaint at paragraph 17.

A. The draft complaint? Can I get a hardcopy, please?

Q. Hold on a second. Let's go to page 6, Exhibit 332, paragraph 17.

A. Yes, sir.

Q. Paragraph 17 states, "Plaintiff," that's you, "has demanded from defendants" -- that's Royal, right?

A. Yes.

Q. -- "that they make available to him the provenance" -- that's the history, right?

A. Yes.

Q. -- "of all bottles of wine he purchased from Royal, including those tested by the independent consultant, which information defendants have refused to provide." That's an accurate statement?

A. Yes, it was.

Q. You demanded the provenance or the history of all the bottles of wine you purchased from Royal, right, sir?

A. Yes.

Q. But, sir, you cannot provide Mr. Koch with the provenance of all the bottles he purchased from you, right, sir?

A. Correct.

Q. Sir, despite the fact that you have been in the business of buying and selling wine, you have testified that you can't even go back one step to find out where the wine came from, right?

A. You're confusing me with prior testimony. I'm not sure I can answer your question.

Q. Sir, you can't even go back one step with your bottles of wine to determine where a particular bottle of wine came from, right?

A. Every single bottle I own? Yes, I can. There's bottles I can tell you. I just bought yesterday or two days ago some

brand new Dom Perignon champagne. I can tell you where I got that.

Q. Sir, in your cellar, and we will get to more of this later, if you have more than one source of a particular bottle of wine, you cannot tell where a bottle selected from that source has come from, right?

A. In many cases that is the case, yes.

Q. The final sentence of paragraph 17 says, "On information and belief, all or substantially all of the wines purchased from defendants are fake." That's what your attorney stated on your behalf, right, sir?

A. He stated that.

Q. You actually settled your dispute with Royal, correct?

A. Yes.

Q. You settled that sometime in early 2004, right?

A. Yes. It was December, end of January, I think, or something like that.

Q. As part of that settlement, Royal paid you some money and you returned some of the wine, right?

A. Yes, I did.

Q. In the complaint and in the correspondence we have reviewed, you have alleged that all or substantially all of the wine you purchased from Royal was fake, right, sir?

A. No, because we set up a spreadsheet that had the $912,000. We never thought it all was fake, sir. The spreadsheet

accompanied them, accompanied the draft complaint, every communication we had. So it was never all.

Q. The attached letter to Royal with the draft complaint had the assertion that we just reviewed: Upon information and believe all or substantially all of the wines purchased from defendants are fake, right?

A. There is a great famous Ronald Reagan line, There we go again, yes, sir.

Q. There we go again, yes, sir, because your lawyers wouldn't have made a representation about that, right, sir?

A. My lawyer wasn't making a misrepresentation. He was just trying to get a settlement done. Everybody understands that, sir. You're making a much bigger deal of it than it is.

Q. We will let the jury determine that. The $912,301 that you had listed from Royal as fake, do you remember that figure?

A. Yes.

Q. When you settled with Royal, you returned over approximately $360,000 worth of Royal wine, correct?

A. Yes, sir.

MR. HUESTON: Let's look at Trial Exhibit 80 marked for identification. Trial Exhibit 81 for identification is a two-page letter with an attachment from Mr. Coles to counsel for Royal. At this time, your Honor, we would move this into evidence.

MR. CIALONE: No objection, your Honor.

THE COURT: This is Exhibit 80, right?

MR. HUESTON: Yes, your Honor.

THE COURT: 80 is received.

(Trial Exhibit 80 received in evidence)

Q. Mr. Greenberg, do you recognize this as a letter providing a schedule of wines to be returned that you had purchased from Royal?

A. Yes, sir, I do.

Q. Going to the third and fourth page, this is actually a list of the bottles and vintages of wine that was being returned to Royal, right?

A. It seems to be the case, sir.

Q. You were personally involved in putting together this list, right?

A. Yes.

Q. You had directed Mr. Lovato to pull certain wines to send back to Royal, correct?

A. Correct. Yes, correct.

Q. I want to make sure it is clear. At the end of this list, it lists a total amount of $362,937 worth of wine that was being returned, right?

A. Yes.

Q. You wound up keeping, sir, between 500 and $600,000 of Royal Wine that you had earlier asserted was fake or counterfeit, right, sir?

A. Yes, I did, and there are reasons for that I'm happy to share if you would like to hear them.

Q. We will get to those later. You have previously testified, sir, that you don't recall which of these questionable Royal wines that you kept, which ones you decided to keep, right, sir?

A. I don't understand the question, counselor.

Q. Let me see if I can clarify it. I think you just stated you did keep upwards of $600,000 worth of Royal wine that you had earlier concluded was fake, correct?

A. No. Actually, the amount is wrong, sir.

Q. You had concluded a total of over $900,000 of wine was fake or questionable from Royal, right?

A. Yes.

Q. You returned over 362,000 of that to Royal?

A. Yes.

Q. The rest you kept in your cellar?

A. The rest we kept segregated, so not all of it is in the cellar. But the amount is 550,000, if you have proper math.

Q. Mr. Greenberg, do you recall when we were looking at the Royal Wine fake summary notes, Trial Exhibit 107, there was a 1921 Petrus magnum and a 1928 Petrus magnum identified as false?

A. Yes.

Q. Yes?

A. Yes, I remember.

Q. Do you see those there? Let's put those up. Let's go to the inventory here of the wines that you returned to Royal. This list does not in fact show that you returned any 1921 or 1928 Petrus magnum as part of your Royal settlement, right?

A. Correct.

Q. You know that Mr. Koch has alleged that in 2005, a year later, you did purchase magnums of counterfeit or suspect 1921 and 1928 Petrus from you, right, sir?

A. He is alleging that.

Q. Sir, you also recall in your Royal Wine fake summary notes that you identified magnums of 1950 Petrus, yes?

A. Yes.

Q. Let's go to Exhibit 80. There are no 1950 Petrus magnums returned to Royal, right?

A. No.

Q. You know that Mr. Koch has alleged that he purchased magnums of counterfeit or suspect 1950 Petrus from you, right, sir?

A. Yes.

Q. You also identified three magnums of 1950 Lafleur in your Royal Wine fake summary notes, right, sir?

A. Yes.

Q. At page 3, yes?

A. Yes.

Q. Then, if you look at the sheet of wines returned, those three magnums are not returned to Royal as part of the settlement, right, sir?

A. That's correct.

Q. You know that Mr. Koch has alleged that he purchased magnums of counterfeit or suspect 1950 Lafleur from you, right, sir?

A. Yes.

Q. You also recall, looking at your wine fake summary notes, that you identified 7 bottles of 1928 Latour as fake?

A. Yes.

Q. Taking a look at this sheet -- if you want to take a look at it, maybe you already know the answer -- there is no indication you returned any 1928 Latour bottles as part of your settlement with Royal?

A. That's correct.

Q. You know that Mr. Koch has alleged that in 2005 he purchased bottles of counterfeit or suspect 1928 Latour from you, right, sir?

A. Mora Lavery thought one was real, but yes.

Q. Let's try one more. You identify in your Royal fake summary notes a bottle of 1864 Latour, correct?

A. Yes.

Q. You remember that?

A. I remember that bottle very well, actually.

Q. That bottle you did not return to Royal, and it's not listed on the Royal sheet, right?

A. I drank it on my 40th birthday, and it was magnificent. We have that bottle here, too.

Q. I'm sure you're anxious to talk about that. I'd just like you to answer my questions, if you would. You know that Mr. Koch has alleged in 2005 he purchased a bottle of counterfeit or suspect 1864 Latour from you, right, sir?

A. Yes.

MR. HUESTON: Your Honor, this is a convenient breaking point if you would like to break.

THE COURT: Why don't we take our lunch break. It is 12:49. Ladies and gentlemen of the jury, I'm going to let you go for lunch and ask you to come back in just under an hour, at 1:45. Is that enough time? Great. As I said before, please don't talk about the case with anyone else or with each other. Have a God lunch. Leave your pads on your chairs. See you at 1:45.

(Continued on next page)

(Jury not present)

MR. HUESTON: Your Honor, one quick issue.

THE COURT: Sure.

MR. HUESTON: Your Honor, I believe what happened in his testimony when he blurted out something about your law firm has been involved in, he just made this accusation of -- I'm going to get the record. I actually saw some jurors taking notes. That was outrageous, totally unfounded, not called for by my question.

I have seen time and time again he appears to have planned to blurt things out to prejudice the presentation of this case. I will want to go back and think about what we can do to correct it. But just staying silent, number one, I don't think is enough. At a very minimum, there should be an instruction to Mr. Greenberg that he is never to make such an accusation, unless I call for it in my questioning. That does not appear to be following what you stated, your Honor, that you would allow put in play in this trial.

THE COURT: I do think I'm going to need to instruct the witness to limit himself to answering questions. Mr. Shartsis, do you want to address this?

MR. SHARTSIS: Your Honor, I'll address two things separately. On that issue, I think to instruct the jury is fine. I don't think anything came out.

On the other, I think Mr. Greenberg gave very direct

answers. Mr. Hueston is cherry-picking these documents. He is putting up an email and asking him about two words. He is putting up a contract that has a string of issues and he is asking him about one, saying isn't that why you didn't go forward with, for example, Sotheby's. I don't want to criticize another lawyer, but I don't think those are really fair and honest questions, to give a witness a document, ask about one or two words, when the witness is trying to say it wasn't just that.

THE COURT: It's essentially cross-examination.

MR. SHARTSIS: I think he is entitled to say isn't that word in there.

THE COURT: I have given him some leeway to fill in his answers.

MR. SHARTSIS: I think those are the other answers, your Honor. One, I agree with Mr. Hueston that we ought to have some instruction to the jury to disregard that. On the others I disagree. Mr. Greenberg, 95 percent of his answers are yes or no. He is answering the questions directly.

Occasionally, in my view, when counsel for Mr. Koch takes what is in my view, I'm going to say this, a cheap shot to do that one line here, one line there, I think Mr. Greenberg is entitled to defend himself. He is being charged with fraud. The plaintiff is trying to pick a word out of an email and pick a word out of a contract and claim that's the whole contract.

I think that is unfair and he is entitled to defend himself.

THE COURT: This is essentially cross-examination.

MR. SHARTSIS: I agree with that.

THE COURT: You will have the opportunity to bring out fuller answers on issues like this.

MR. SHARTSIS: Your Honor, I agree.

THE COURT: Of course. The way it works is he needs to answer the question. I'm not going to say you have to say yes or no if there is an answer that fills in a little bit of context. But I'm not going to permit the witness to go into separate matters that really aren't responsive to the question.

MR. SHARTSIS: Your Honor, I agree with that observation that he shouldn't do that. If that happens, I think we can have a motion to strike and do that. But I think cross-examination allows a witness to actually answer truth-fully about what he thinks. I think that is what's going on here. Mr. Hueston is a very skilled cross-examiner, but he is sort of cherry-picking here.

MR. HUESTON: May I speak?

MR. SHARTSIS: And that entitles the witness to defend himself. I feel very strongly he has that right.

MR. HUESTON: I'd like to stop the chess clock and argue this. Your Honor, first of all, there were many times where it was clear to me that Mr. Greenberg was just looking for opportunities to launch off onto different parts of

documents and stories. That is not an appropriate part of cross-examination.

We are on a chess clock here in this courtroom. If we weren't, I could see perhaps more license. The fact of the matter is there is a lot of material to go through. I am directing him to certain questions. I haven't heard objections from attorneys that they are unfair. Of course, they will be allowed all the time that they desire to go back and provide him every opportunity to explain and put out the stories that he wishes to put out. But that shouldn't be on my clock.

THE COURT: Right. He has to answer the questions, and I will be watching for it. Mr. Shartsis is correct that they don't all have to be no or yes answers if the answer requires a little bit more explanation. But they really do need to be responsive to the question posed.

MR. SHARTSIS: I agree with you.

THE COURT: On the particular matter that Mr. Hueston raised, we can discuss it after lunch. I'm not sure if it makes sense to call attention to something that was very fleeting, but I'll consider arguments about a limited instruction or request.

MR. HUESTON: Or a sanction if it happens again.

MR. SHARTSIS: Your Honor, please. We have already been through that. In fact, I think he is referring to the fact that there were violations of court orders, and none by

Mr. Greenberg in this case. Violations of court orders have been by the plaintiff.

MR. HUESTON: We are in trial here and I expect everybody to abide by the rules. That shouldn't be too hard to do.

THE COURT: OK. Have a good lunch.

(Luncheon recess)

AFTERNOON SESSION

1:50 p.m.

(Jury not present)

THE COURT: Anything you want to address before I bring in the jury?

MR. HUESTON: Not for plaintiff right now, your Honor.

MR. SHARTSIS: No, your Honor.

THE COURT: Please bring in the jury.

ERIC GREENBERG, resumed.

(Jury present)

THE COURT: Welcome back, ladies and gentlemen. Mr. Hueston, you may proceed.

MR. HUESTON: Thank you.

BY MR. HUESTON:

Q. Mr. Greenberg, before the October 2005 auction, Mr. Zacharia specifically asked you the source of your older bottles of wine for the auction, correct?

A. No.

Q. Let's start with Exhibit 430. Exhibit 430 marked for identification is an email the top of which is from Mr. Zacharia to Thierry Lovato, cc Eric Greenberg and others, dated August 24, 2005. Mr. Greenberg, are you familiar with this email?

A. Yes.

MR. HUESTON: We move this into evidence, your Honor,

and ask permission to publish.

THE COURT: Any objection?

MR. CIALONE: No, your Honor.

THE COURT: 430 is received.

(Trial Exhibit 430 received in evidence)

Q. Let's, if we can, focus on the top part of this email. This is an email that is addressed at the top here to Thierry, that's Thierry Lovato, someone you described as I think a contract employee?

A. A cellar master.

Q. In the third paragraph Mr. Zacharia writes, "On another matter, one of the issues we have been dealing with is people are more and more cautious when buying these older bottles. What will help us help Eric get top dollar for his old line is getting the provenance." Let's stop there. Provenance is the history of the wine, right, sir?

A. Yes.

Q. "European Private Collection and European Trader are not for many of our buyers at this point." Do you recall this request of Mr. Lovato or this issue being raised?

A. Well, today I recall this email.

Q. In fact, Mr. Lovato responds, correct?

A. I believe so.

Q. Let's go to Exhibit 432. I hand you Exhibit 432 marked for identification. Exhibit 432 is another email, it starts at the

top, from Mr. Zacharia to Eric Greenberg, cc Thierry Lovato, dated August 25, 2005. Are you familiar with this email?

A. Yes.

MR. HUESTON: We move this into evidence, your Honor.

THE COURT: Any objection?

MR. CIALONE: No, your Honor.

THE COURT: It is received.

(Trial Exhibit 432 received in evidence)

Q. The email we discussed prior to this one is in fact an embedded email starting with Mr. Zacharia about halfway down the page, Wednesday, August 24th. I'll highlight for the jury's reference what I just read. "On the another matter, one of the issues we have been dealing with is people are more and more cautious when buying these older bottles." That is the language we just read from the prior exhibit, right?

A. It was read.

Q. Above that, Mr. Lovato responds to Mr. Zacharia, correct, sir?

A. Yes.

Q. He states, "Jeff, I understand and agree with what you are saying about the older wines, but unfortunately I do not have any records, because Eric already had bought most of the older wines before I started working for him. You might want to ask him. Sorry I couldn't help. Thierry." He wrote that?

A. He wrote that.

Q. Then Mr. Zacharia writes directly to you at the top of the email chain, right?

A. Yes.

Q. He writes, "Eric, below was Thierry's response. This is becoming a hotter issue for us as more and more buyers are looking for this sort of information. Please let me know your thoughts on this." Do you remember him asking you that?

A. Yes.

Q. The hotter and hotter issue is knowing the products, right, sir?

A. The hotter and hotter issue is getting high prices from his clients.

Q. By providing more provenance on the older bottles, correct, sir?

A. Yes. Thierry authenticated these, and he was looking to get me more money for them, and he was asking to get provenance, which I couldn't provide. He knew that. I could only provide in some cases the source, which never told me the provenance and the history back to the grave, especially with 19th century wines, which are wines that predate 1900.

Q. In fact, in the interests of getting you, the client, more money, you actually did try to provide him with some information, right?

A. Not really.

Q. Let's see if you did or not. Let's go to Exhibit 97. I

hand you Exhibit 97 marked for identification. For identification purposes, it is an email from you, sir, to Jeff Zacharia dated August 25. Are you familiar with this email?

A. Yes, sir.

MR. HUESTON: We move this into evidence and ask permission to publish.

MR. CIALONE: No objection, your Honor.

THE COURT: It is received, 97.

(Trial Exhibit 97 received in evidence)

Q. You respond at 12:58 p.m. on August 25th, right?

A. Yes.

Q. Your response to him when he asked for that information is, "I cannot provide this. I had many sources and can not tie them to the bottles. Sorry," right?

A. Yes. I wasn't interested in getting more money for them, because I couldn't represent exactly where the bottles came from in many cases.

Q. But ten minutes later or so you in fact did, without him asking for anything else, provide him some additional information that related to this topic, didn't you?

A. I gave him some information relating to the topic, correct.

Q. Let's look at that of the this is Exhibit 98 marked for identification. Exhibit 98 is an email from you to Mr. Zacharia, August 25, 1:08 p.m.

MR. HUESTON: I would ask that we move this into

evidence and publish it.

MR. CIALONE: No objection.

THE COURT: It is received.

(Trial Exhibit 98 received in evidence)

Q. Sir, this is at 1:08 p.m., about ten minutes after you had already responded to Mr. Zacharia?

A. Yes. It is a response to all on an email I received a full day after the other email, where I probably cleared out 300 emails in ten minutes, that is correct.

Q. Thank you for adding that. I'm going to direct you to that question I asked, which is this email came from you to Mr. Zacharia ten minutes after you sent the Exhibit 97 to him where you said, "I have many sources and can not tie them to the bottles," right?

A. Yes.

Q. You then sent him this email that states, "The only thing I can tell you about the older Bordeaux is that they were purchased from Eddie Gelsman at wine library or Dave Sokolin at D. Sokolin in Southampton," right, sir?

A. Yes. In fact, what I remember is I can trace the 1893 Margaux in the sale to D. Sokolin company and the 1805 and 1832 Lafite Rothschild to Eddie Gelsman. I couldn't tie the rest to any other vendors. So that's what I meant.

Q. Sir, you also knew that a source of your older Bordeaux was Royal Wine, didn't you?

A. They already knew that.

Q. Sir, it doesn't say in this email the only thing other than Royal Wine that I can tell you; there is nothing like that, right, sir?

A. I left out six other sources. I left out Christy's, Zachys -- I left out Christy's, Sotheby's, Wine Bid, Atherton Wine Imports, Chicago Wine Company, and Royal. So there were seven sources. I left out a lot because I was only referring to the bottles I could definitively trace. You can make a really big deal out of this, as I'm sure you will, but that is what happened, sir.

Q. Of all those sources, only Royal Wine was a source where you prepared a list of fake wines, right, sir?

A. I returned wines to most of those vendors that were fake. At this stage in 2005 you guys are trying to make a really big deal out of Royal. The fact is, and you have the evidence on this, I returned fake wines to a lot of vendors, and Royal wasn't the big deal. The big deal was a lot of people. The entire industry was riddled with it.

Q. Mr. Greenberg, when Serena Sutcliffe discovered that Royal wine was in your cellar, she told you that they were a source of counterfeit wine, right?

A. Yes. She also didn't tell me that she believed Wine Library was a source of fake wine. You have her email where she says that, and she concealed that from me.

Q. You know, sir, that Sotheby's was interested in knowing that Royal Wine was in your cellar, right, sir? That was a fact they wanted to know?

A. That was never in my cellar. I don't know what you are talking about.

Q. That you had bottles of Royal Wine in your cellar.

A. They knew that. They knew I had Wine Library, they knew I had D. Sokolin, they knew I had Atherton Wine Imports, they knew I had John Armet, they knew I had Wine Club, Premier Cru. I gave them 15 or 20 sources. They knew all that, sir.

Q. Sir, on August 25, 2005, after Mr. Zacharia has made repeated attempts to find out more information about the older Bordeaux, you chose to tell him only about Eddie Gelsman and Wine Library and only Dave Sokolin --

MR. CIALONE: Objection.

THE COURT: Please rephrase on the ground it is compound.

Q. Sir, when you wrote this email back to Mr. Zacharia, when he had asked you directly about more information from the older Bordeaux, you said the only thing I can tell you is that they were purchased from Eddie Gelsman at Wine Library or Dave Sokolin at D. Sokolin, is that right, sir?

A. I was referring to three bottles. These wines were already accepted as being authentic. He wanted to get more money for them. And he never asked me any further questions, and he

included them in his catalog.

Q. Sir, there is no mention in here or disclosure about Royal as a source of older Bordeaux, right, sir?

A. He was told many, many, many times.

Q. You don't have a single email where you were informing Mr. Zacharia of Royal as a source of your older Bordeaux, do you, sir?

A. No, nor did I propose to my wife for marriage through an email. I did that in person.

Q. But you did put in writing these two sources which had not raised any alarm bells with Christy's and Sotheby's?

A. I don't understand that question, sir. That just threw me for a loop.

Q. Sir, you never disclosed to any of the prospective buyers in the October 2005 auction that a source, potential source, of your wines for auction was Royal Wine Company, right?

A. Zachys did not disclose that. Zachys wrote that catalog. They decided not to disclose it. They knew it. They had done seven auctions with me at this time, including this auction. They chose not to disclose it.

Q. You have no proof that you told Zachys your source is Royal Wine, right, sir?

A. They have acknowledged in their depositions that they knew I had wines through Royal, so I guess that is written proof.

Q. We will see what Mr. Zacharia says. Let's go to exhibit --

A. Can I put these away, Mr. Hueston?

Q. Yes, for now. I hand you Trial Exhibit 300 marked for identification. Exhibit 300 for identification is a June 26th letter to Mr. Jay Cortese at Fireman's Fund insurance from Anthony Coles, cc yourself, with an attachment. Do you recognize this document, sir?

A. Only through discovery in this case.

MR. HUESTON: I move this into evidence, your Honor.

MR. CIALONE: No objection, your Honor.

THE COURT: It is received.

(Trial Exhibit 300 received in evidence)

Q. On the first page of this document, first of all, it is dated June 26, 2002, correct?

A. Yes. My mother's birthday, actually.

Q. In the first, longer paragraph, it says, "I have enclosed a schedule prepared by Mr. Greenberg dated June 10, 2002," right?

A. Yes, sir.

Q. That schedule that is attached was in fact prepared by you, right?

A. Right. My executive assistant put in the invoices and dates of invoice and purchase amounts. The fake wine column and not reviewed columns were mine.

Q. Is that a truthful statement, that the schedule was prepared by Mr. Greenberg?

A. Mr. Greenberg, yes. The people that worked for me, sure.

I'm accountable for it, so yes.

Q. You were carbon copied on this letter? You received a copy of this letter?

A. I'm sure I did, but I did not -- remember, I had an insurance claim until after this lawsuit was filed. I don't recall seeing it, but I'm sure I got it.

Q. On the second sentence of that paragraph we were on, "The summary describes Mr. Greenberg's total purchases from Royal as well as those wines he believes are fake, and those wines, represented by a question mark, that appear to be suspicious," correct?

A. That's what it says, sir.

Q. Your attorney was submitting this on your behalf to make a claim to Fireman's Fund to pay you losses related to these alleged fake and questionable wines, right?

A. Well, this was a notice of claim. I'm sorry. It was a notice of loss. What I was told by my attorney is you have to let your insurance company know immediately and list everything you can possibly list, and then we will see if we get coverage. Then they can investigate this and take care of this problem. So he did write this on my behalf.

We never made a request for money. There was a notice of loss, which you can call a claim for your purposes. They denied it as a claim. But we never asked them for money. We not once asked them for money.

Q. Were you asking them for sympathy? You were putting in a request for a payment, weren't you?

A. Sympathy would have been nice. But no, I didn't ask for sympathy, sir.

Q. You put in a claim to the insurance company with the hopes that they would pay the claim that you asserted was a theft, right, sir?

A. If they had gone out and investigated and found out that wine was fake, yes, we would have wanted them to pay money, because that's why I buy insurance. My experience with that is I always get my claims denied. Insurance companies make their money by denying claims, unfortunately.

Q. Sir, you may have had all your claims denied, but you are not doing it for fun. You are actually submitting the claims hoping they are going to get paid, right?

A. I wanted them to investigate the problem. I didn't know anything about how to do this. If you notice the day of June 26, 2002, we got notified by them in November that they refused the claim, and it was at that time we had to go out and have Mr. Coles find Mr. Edgerton.

So we didn't find an expert. We didn't find anybody to do any investigation. We were hoping the insurance company would take care of it, because they are the professionals at dealing with things like this.

Q. To assist you in your claims, sir, you had your attorney

attach this schedule with your alleged fake wines and questionable wines, right?

A. Yes, the same one we sent to Royal. It's the same exact piece of paper.

Q. You sent it to Royal because you were hoping to get money out of them in settlement, right, sir?

A. We were hoping to settle, yes.

Q. You sent it to Fireman's Fund because you were hoping they would pay a claim, right?

A. Actually, I was hoping they would investigate, and if they found something incorrect, they would pay me. And they would also take care of Royal in the way they saw best fit, and it wouldn't by my issue.

Q. You were hoping they would investigate it and consider your schedule that you had to attached and sent in to Fireman's Fund, right?

A. That's an obvious answer, sir, yes.

Q. Let's quickly review the calculation at the end of this schedule. The total was $912,301 of fake wines so far, right?

A. Yes, sir.

Q. Next to that is an invoice total column that you had that you submitted to the insurance company showing total invoice from Royal of $2,169,580, right?

A. Yes, and a lot of question marks for them to try to figure out. We weren't sure.

Q. Question marks. When you put question marks in, you didn't put dollars next to those question marks, right?

A. No.

Q. Right. So the $912,301, just so the record is clear, doesn't include the ones that you put question marks next to, right?

A. No. It could be more, it could be less. They could have determined it was only $100,000 of fakes with their experts. It could have been more or less. We didn't mow.

Q. Could be. But at the time you submitted this, you were having your attorney submit your schedule asserting that you had determined that you had at least $912,301 in fake wine from Royal, right?

A. I hadn't made that determination. That was a belief I had, but it wasn't a determination of fact.

Q. It wasn't a determination of fact even though you put together a schedule called fake wines so far with a tabulated column totaling $912,301?

A. Correct.

Q. OK. In fact, today, sir, you are saying that your estimates of these fake wines were wild-ass guesses, right?

A. Today? I didn't say that today. I said it at my deposition.

Q. OK. Have you changed your position since your deposition in 2010?

A. Why don't we play the deposition so it's not quoted out of context.

Q. Sir, before I do that, isn't it true that you have said that you believed that you were reaching conclusions in 2002 about what wine was fake based on very little experience and wild-ass guessing?

A. You know what, I don't trust you, sir, so I would have to ask you to play the deposition.

MR. HUESTON: That's fine. Let's go to your deposition, page 51/lines 7 to 11.

MR. CIALONE: Lines 7 through 11?

MR. HUESTON: Sorry. One moment. Sorry about that. Page 50/lines 3 through 7.

MR. CIALONE: No objection.

MR. HUESTON: Let's play it, please.

(Video deposition shown)

Q. That was your testimony, right?

A. Yes.

Q. Thank you.

A. Especially the question marks, those were guesses. I just wanted to make sure I wasn't being quoted out of context. I did say I did a lot of guessing here.

Q. Let's make sure. You didn't tell the insurance company through your attorneys that your list of fakes up to $912,000 was just based on wild-ass guessing, did you, sir?

A. No, but I put question marks. If a question mark means a guess -- so I left out wild-ass question mark.

Q. So wild-ass guessing was just where you put question marks?

A. I had some guesses about other things, but those were good old -- those were a little bit more founded.

Q. You had wild-ass guesses, right?

A. The question marks, yes.

Q. Then you had guesses?

A. Yes.

Q. What else did you have?

A. Wines that in my limited experience I believed to be fake. Then there were ones, they are on the Royal Wine summary notes, where we didn't have cork markings and all that type of thing, and those are reflected on that.

Q. You never had to explain through your attorneys to the insurance companies that some of this was based on wild-ass guessing, right?

A. No.

Q. You didn't explain with a separate column, other than wild-ass guessing, that some of this is guessing, did you?

A. No.

Q. Then you didn't say that the wines that came up to 912,000, well, I think I might know this but I might not? You never said something to that effect, right?

A. No, because everyone knows that insurance companies do

their own examinations and don't take anything you say to be the truth and they make their own determination. They were going to independently investigate it. So you are correct.

Q. Because you feel that they are not going to be taking anything you are submitting seriously, you feel it was perfectly fine to submit a document that facially indicated you had done serious investigation when in fact part of it was based on, your words, wild-ass guessing, right, sir?

A. I submitted what I thought was a potential loss for them to investigate. And you are correct that I didn't tell them that I guessed on some things I thought had high likelihood or probable likelihood of being incorrect.

Q. Sir, did you personally communicate with a representative from Fireman's Fund?

A. I don't recall the conversation, although there have been notes produced. I don't recall actually talking to the man.

Q. In your deposition you actually said no, my attorney did, right?

A. I don't recall.

Q. Let's look at that, page 20/line 25 to page 21/line 3.

MR. CIALONE: No objection.

(Video deposition shown)

Q. Sir, that is not correct. You know that you in fact did talk to Fireman's Fund, right?

A. Two parts to the answer. I believe my attorney talked to

them, and there are notes that indicate that I talked to them, because he described Mr. Coles as being a top dog lawyer in New York, and Mr. Coles would not describe himself that way. So I think there were probably a couple of conversations. I will admit I probably talked to the guy. I just don't remember the conversation.

Q. So you will admit that, more than just your attorney sending in a schedule on your behalf, you actually got on the phone and talked to Fireman's Fund, right?

A. I think I was interviewed, from what I understand, about some kinds of I guess facts about the potential loss.

Q. I'm going to hand you what's been marked as Trial Exhibit 331.

MR. HUESTON: Your Honor, at this time we move Exhibit 331 into evidence. I will add that we will tie up the foundation with our custodial witness that we will be calling in the later in the case from Fireman's Fund.

THE COURT: Any objection?

MR. CIALONE: Subject to them getting proper authentication, your Honor, no objection.

THE COURT: It is received.

(Trial Exhibit 331 received in evidence)

Q. Turn, if you would, sir, to the Bates stamp 35 in Exhibit 331.

MR. HUESTON: If we could publish this, please, put it

up.

Q. These are notes you made, sir, which indicate to you that in fact you did speak or, in your words, may have spoken to Fireman's Fund, right?

A. No, these are not the notes that I reviewed. There are some handwritten notes.

Q. Let me see if we can make some progress on this. On page 35 it's Atlas progress notes, and it says "Insured: Eric Greenberg," right?

A. Yes, sir.

Q. It has a date June 5, 2002, correct?

A. Yes, sir.

Q. In that box it says "Jay Cortese." Do you remember speaking to a Jay Cortese, sir?

A. As I told you, I don't remember the conversation.

Q. The first line says "Insured talked quickly, and more than once I asked him to repeat names and phone numbers." "Insured" on the document refers to you, right, sir?

A. Yes, sir.

Q. Number 1 under that in the note says, "He's a wine collector with 40,000 to 45,000 bottles of wine"?

A. It says that.

Q. Number 2 says, "He did business with Royal Wine Merchants of New York from January 2000 to April 2002. He says he bought $2.189 million worth of wines from them."

MR. CIALONE: Your Honor, Mr. Greenberg has already testified he doesn't remember that conversation. This is Mr. Hueston reading a document that hasn't been authenticated yet. It is in subject to being authenticated, but now he is reading it.

MR. HUESTON: I'm going to ask him if he recalls making these statements. He can deny or say he made them.

THE COURT: You can ask him.

Q. Sir, do you recall making a statement along the lines of he did business with Royal Wine Merchants of New York from January 2000 to April 2002 and that you bought approximately 2.189 million worth of wines from them?

A. I have to deny your question, because I don't remember the conversation.

Q. I'm going to ask about point 3. On April 29, 2002, did you say that Sotheby's came out to evaluate bottles that you wanted to sell and they informed you that there were counterfeit wines in your collection? Do you remember saying that?

A. I don't remember saying that, sir.

Q. Let's go to number 4. The first line says, "Since that time, he's taken the capsules off of many bottles in order to examine corks, and he's examined labels, etc., and so far he feels he's lost at least $600,000 per his spreadsheet." Do you recall saying that to Fireman's Fund?

A. I don't recall the conversation. There is some factual

correctness in this, but some things I don't recall, I don't recall any of it, and some things are outright not true.

Q. Let's go to 5 because I think you remember this. Number 5 says, "He's hired a top dog litigation firm in New York, Anthony P. Coles." Do you remember saying that?

A. I don't remember saying that. I don't remember the conversation. I remember reading handwritten notes of Mr. Cortese where at the top right corner he writes "hire a top dog litigator." I don't remember this, but I remember seeing notes.

Q. I'm going to ask you on the entry of number 8, did you say that $1.6 million of your wine may be fraudulent?

A. That may have been if we added up all the question marks, but I don't recall saying it.

Q. Do you recall saying to Fireman's Fund more than once you consider this a theft loss?

A. I don't remember saying that. I called it a loss. They have technical terms. He may have written that down as his interpretation or his terminology for his trade.

Q. Let's move to page 33, where it has bullet 9.

A. You don't give me a page 33, sir.

Q. The pages may not be in precise order. It's Bates stamp 33. I'm calling it up on the screen.

A. Here it is. If I may have a moment, please.

Q. This is a continuation from the prior. Up in the box it

says continued, number 9.

A. Oops, that was miskeyed. In other words, he could have made mistakes. That is in there. It says right there, oops. So he could have made mistakes, Mr. Hueston.

(Continued on next page)

BY MR. HUESTON:

Q. Sir, he writes in at number 9 -- and I'm going to ask you if you recall this -- that you wanted them to participate in litigation costs against them, Royal. Do you remember making that request?

A. I don't remember making -- having the conversation. There are some things in here that are accurate and some things that are not.

Q. Sir, do you have any recollection telling Fireman's Fund you wanted to put Royal out of business so that nobody else will get scammed?

A. No.

Q. Do you have any recollection of telling Fireman's Fund, "They're trying to negotiate with him bottle by bottle but he says he can't trust them so he just wants all his money back"? Do you remember saying something like that to Fireman's Fund?

A. No.

Q. Do you recall saying to Fireman's Fund, "He won't give the wine back since they'd probably sell it to someone else"? Do you recall saying that?

A. No.

Q. Let's go to the Bates stamp 34, and I'll ask you, at the bottom of that box, whether or not you said that, "This whole fraud is theft." Do you remember saying something like that?

A. No, I don't.

Q. And do you remember telling Fireman's Fund that this is like buying a fake Picasso painting?

A. Grape juice in a bottle is far different from a 20 or $30 million Picasso. I did not say that.

Q. So this is a figment of Mr. Cortes' imagination?

MR. CIALONE: Objection. Argument.

A. It could be.

Q. It could be?

A. Yes.

Q. Okay. And, sir, we're done with this document.

A. Okay.

Q. You may put it aside.

This wasn't the only insurance company you asked your attorneys to submit a claim to, right, sir?

A. No, sir.

Q. Sorry?

A. No, sir.

Q. You actually had a claim submitted to another insurance company named AIG, right?

A. Yes.

Q. Another attempt to obtain some money for the losses that you had suffered, right?

A. No. Another attempt to have somebody assist me in the investigation and take care of the problem.

Q. You submitted or you had your attorneys submit a claim to

AIG, correct?

A. My attorney submitted a notification of loss. We never asked for money and we never filed a formal claim. You can call it a claim for these purposes, though. I'll accept that word.

Q. So it's your testimony that you submitted these claims but you had no intention of actually requesting reimbursement for losses, is that your testimony?

A. No. My testimony is, if the insurance company found out through their own internal investigation -- should I wait till you're done, sir?

Q. No, keep going. I'm listening.

A. If the insurance companies found out through their own internal investigation that I had in fact had a loss as a result of wine that Royal had sold me, then I would have liked to have been paid by the insurance company and have them deal with Royal in the ways that they saw fit.

Q. And to assist them in the investigation, you sent that schedule that we already reviewed, right?

A. They never did an investigation and we did send that schedule. So they didn't do an investigation, so I didn't assist them in an investigation.

Q. Well, there are notes that indicate that at least Fireman's Fund called you. That would have been part of an investigation, right, sir?

A. Well, actually, if you look back at some of those prior pages, they said they'd made a decision to deny the claim as early as early July.

Q. They were calling you to gather facts as part of the processing of the claim, right, sir?

A. No. They said my insurance policy lapsed about a year before and I switched to AIG, so they had no intention of ever doing an investigation. They did a phone call, though.

Q. The schedule that you put together with your list of fake wines and questionable wines that you sent to Fireman's Fund and AIG, you did not send that to Zachys, did you?

A. No.

Q. Mr. Greenberg, I'd like to talk a little bit about John Kapon. He is the CEO of Acker Merrall & Condit, right?

A. Yes.

Q. And Acker Merrall is a wine auctioneer?

A. And retailer.

Q. And Mr. Kapon is actually the head of Acker Merrall, right, sir?

A. Acker Merrall USA, no, his father still owns that.

Q. Okay.

A. John is the head of Acker Merrall Asia. But he does run both the businesses operationally.

Q. Okay. And you sold some wine through Acker Merrall on several occasions, right?

A. Yes.

Q. And in those dealings with Acker Merrall, you would correspond with and have meetings and discussions with Mr. Kapon, right?

A. Can you rephrase that question for me, sir.

Q. Sure. As part of your sales through Acker Merrall, you would have contact with and communications with Mr. Kapon from time to time, is that fair?

A. Yes, sir, that's correct.

Q. Okay. Now, sir, you testified I think, just to make sure this is clear, that you only sell wines through auction houses that you believe do a good job authenticating wine, right?

A. Yes, I did.

Q. And you relied on Mr. Kapon to authenticate wines that you were intending to sell at the 2003 auction he did for you, correct?

A. Yes.

MR. HUESTON: Okay. Let me get -- one moment, please.

I apologize. We have just this one copy.

Your Honor, I apologize. I have just one exhibit. This is Exhibit 326 marked for identification.

THE COURT: Okay.

Q. Mr. Greenberg, I'm handing you the copy.

A. Thank you.

MR. HUESTON: No objection? Okay. We'd move this

into evidence, your Honor.

THE COURT: It's received. 326, right?

(Trial Exhibit 326 received in evidence)

Q. And Mr. Greenberg, this is a --

MR. HUESTON: Let's post it.

Q. -- a 2003 Acker auction catalog with a cover e-mail to you, right, from Mr. Kapon?

A. Yes.

Q. And he tells you that your lots in the auction in that catalog are 135 to 142 and 200 to 396, right?

A. Yeah, and he's told me they look great, too.

Q. And let's go to page 22 of the exhibit.

This is an introduction to your section of the catalog, right, sir?

A. Yes.

Q. Okay. And in the middle of the introduction to the bottles you were selling through Acker, it says, "A recent acceptance that he has purchased more than he could ever possibly drink (his collection is valued well into eight figures), coupled by a general desire to put a lot of his assets into green right now, have resulted in this first of hopefully many offerings." Is that what it says?

A. That's what it says, and you know what, I never even read this before it was published. In fact, this is the first time I ever read this.

Q. Okay. And, sir, this Acker auction in March of 2003, do you recall this is the first of several auctions at which you were selling wine through Acker Merrall?

A. I've done a number of auctions with John.

Q. Yeah. And this is the first one of several, correct?

A. Yes, sir, I believe so.

Yeah. They called it awe-inspiring and like the Cooperstown of the wine world, which is the hall of fame for baseball.

Q. Okay. We can put that aside.

I'm going to hand you what's been marked as Exhibit 329, marked for identification.

A. Thank you.

MR. HUESTON: And for the record, Trial Exhibit 329 is an e-mail from AckerBids@aol.com to Eric Greenberg, dated April 6, 2003. I'd ask to move this into evidence.

MR. CIALONE: I do object to this, your Honor. It seems to be hearsay and irrelevant. E-mail from John Kapon.

MR. HUESTON: To Mr. Greenberg, and I intend to ask him about the statements that he was making to Mr. Greenberg, and it goes to knowledge, intent, and some of the issues that we covered with respect to similar e-mails that we discussed.

THE COURT: I'll allow it. It's received, 329.

MR. HUESTON: Thank you, your Honor.

(Trial Exhibit 329 received in evidence)

MR. HUESTON: Let's post that, please.

BY MR. HUESTON:

Q. Do you remember getting this e-mail, Mr. Greenberg?

A. Yes, I do.

Q. And this is an e-mail sent to you after the auction that I just reviewed with you, the catalog in the prior exhibit, right?

A. Yes, it is.

Q. And he is attaching your post-sales and invoice, right?

A. That's what it says.

Q. Okay. He says, "You did ok, but a lot of stuff didn't sell from the 1995, 1997, and other vintages," and he states, "I believe that your collection needs to stay more low-key due to... many whispers in the dark." Right, sir?

A. Yes. As Sotheby's stated, they intended to ruin my auctions based on authenticity reasons, and then there was another person who made false allegations about me concerning wines that were rejected by Zachys into this auction, which were not true, and we know that that person has spread many rumors about my wine collection, which is likely what happened here.

Q. Okay. Mr. Kapon doesn't say in this e-mail, "Boy, Christie's is out there ruining your reputation," there's no reference to Christie's, right, sir?

A. Actually, no. Ms. Sutcliffe worked for Sotheby's, and what

you --

Q. Or Sotheby's.

A. -- what you heard yesterday was about the e-mail, and they said: If they don't give us the auction, we shall ruin it, any auction he does on the grounds of authenticity. So "whispers in the dark" I attribute to that and a few other things.

Q. And it's not just whispers from Sotheby's. He's referring to "too many whispers in the dark" which affected your sale, right, sir?

A. I don't know how many people Sotheby's had whispering, you know, I mean, Sotheby's is a worldwide organization. You know, this is a complete speculation so I don't know where you're going with this, but this to me is exasperating.

Q. He finished that first paragraph with a recommendation, didn't he?

A. "I'll be calling you very shortly to discuss the unsolds"?

Q. No, end of the prior paragraph. "In retrospective, we should have avoided putting your wines on the cover or drawing excess attention to your consignment, but it is a lesson learned." That's what he concluded, right?

A. No. The lesson I've learned is that people in the wine world disparage people like you would not believe. For something that is a hobby and that you're supposed to have enjoyment over, there is more petty behavior and -- and disparagement and jealousy that comes out, and unfortunately

I've been a victim of that.

Q. Sir, Mr. Kapon wasn't trying to disparage you, right?

A. He's one of my very close friends, who I haven't been able to talk to for about a -- you know, a long time because of this lawsuit and the fact that Mr. Koch is suing him too.

Q. Mr. Greenberg, his recommendation to you is, avoid putting wines on the cover or drawing excess attention, right? That's what he said, as a good friend of yours?

A. Sir, the document says what it says and I'm going to agree that every word on the document is what it says.

Q. All right. And in fact, in the October 2005 auction you did with Zachys, you did not disclose in writing to the buyers that you were the seller at that auction, right?

A. No.

Q. And in fact, in your consignment contract with Zachys that we showed earlier in the trial as Exhibit 96, Zachys had a contractual obligation not to use your name in the catalog, right, sir?

A. I got to look at the contract. I don't -- I don't remember. We did -- we knew that it was going to be an anonymous or -- we called it 17,000 Bottles of Greatness, but there is one fact, and that I talked to numerous, numerous potential buyers before the auction and where they knew it was me, so the fact that my name wasn't published, it was no secret in the wine world. There was only a few people who could have

sold 17,000 bottles of wine, and everybody in the know knew exactly who it was, down to the 40 something people that participated in the preauction tastings in Los Angeles and New York, including Brian Orcutt, Mr. Koch's buyer.

MR. HUESTON: Let's move to -- let's put up Exhibit 96 already into evidence.

Q. This is your consignment agreement that you negotiated with Zachys Wine Auctions, correct, sir?

A. Yes.

MR. HUESTON: All right. And if we go to paragraph 15, if you can highlight that, please.

Q. One of the requirements in the contract is, "Zachys shall not use seller's name in its catalogs or advertising or disclose seller's name or identity to third parties unless seller has placed its initials after this paragraph." You see that?

A. Yes.

Q. And you didn't put your initials after that paragraph, did you?

A. Correct.

Q. Now I think you mentioned earlier you did sell nearly $20 million of wine at the so-called Imperial Cellar auction in 2010 with Acker Merrall, correct?

A. Acker Merrall sold the wine. You seem to forget about it was the auction houses that actually sold all these wines and

it wasn't me. I wasn't licensed to do that. But they did sell that in Hong Kong.

Q. Okay.

A. And, you know, a few years ago.

Q. And you -- for that auction you relied on Mr. Kapon and others to look at your wine and perform authentication, right?

A. Yes, Mr. Kapon, Mr. Lempert-Schwarz, and a company called Cru Consulting. We had three different authentic -- authentication parties, all of which had 100 percent veto rights over any single bottle.

Q. And that's because you believe Mr. Kapon is an expert in authentication of wine, right?

A. Yes, I do. But I don't agree with all of his conclusions.

Q. Okay. You were considering a sale of certain of your wine through Mr. Kapon and Acker in December of 2004, right?

A. Yes.

Q. And let's look at Exhibit 386.

Handing you Exhibit 386 marked for identification. And this is an e-mail at the top from you to AckerBids@aol.com, November 23rd, 2004.

MR. HUESTON: At this time we would move this into evidence and ask permission to publish.

MR. CIALONE: No objection.

THE COURT: It's received.

(Trial Exhibit 386 received in evidence)

Q. And you recognize this e-mail chain, right, sir?

A. Yes, sir, I sure do.

Q. Okay. I want to start first with the embedded e-mail of Mr. Kapon's e-mail to you, at November 23rd, 9:42 a.m. Do you see that?

A. Yes.

Q. And he writes, "Eric, I had to hold off on putting the magnums in December sale. There was not time enough to make a decision and do it correctly, as I had some doubts here and there and it was too close to the deadline." Do you remember him writing that to you?

A. Yeah, and then he said Rudy Kurniawan was coming to town and he wanted Rudy to authenticate my wine, after that Wine Bid experience and after the Acker Merrall experience, and that's why I took exception. There was no way in the world that I trusted Rudy Kurniawan as an expert to be looking at my wine or authenticating my wine, and in fact, Mr. Koch is suing him for selling him 160 bottles --

THE COURT: Let me direct the witness to please refrain from doing anything but answering the question.

THE WITNESS: Okay. Yes, sir.

Q. By the way, you still did business with Rudy Kurniawan after this explosion, right, sir?

A. I thought his wines were real.

Q. Okay. So everything you just said, you still did business

with him anyway, right?

A. But that doesn't mean he was an authenticator of wine.

Q. Okay. Well, let's look at exactly what was said here. Mr. Kapon says, "Rudy is coming into town next week and I asked him to take a look with me." He wasn't suggesting Kurniawan was going to authenticate. He was just saying he would like Kurniawan to assist him, right, sir?

A. I can't read his mind.

Q. Well, that's what it states right here in the language, right?

A. Well, "with me." "With" could mean -- "with" could mean that Mr. Kurniawan was going to authenticate the bottle and Mr. Kapon would be in the same room or behind him. I don't know what "with" means.

Q. And sir, you did respond at the top of the e-mail, right?

A. Yes.

Q. And in the first paragraph, sir, you make no mention of Mr. Kurniawan, do you? You bring him up in the second paragraph.

A. Well, I -- you know, as I've told you, sequentially is not necessarily the entirety of what is written. It is written in there that he's not authorized to look at my wine.

Q. Okay. So let's start at that second smaller paragraph. You actually -- this is your language, right? You write, "And one other thing." That's your language, right?

A. Yes, it is.

Q. And the "And one other thing" is about Rudy Kurniawan, right?

A. Yes, it is.

Q. Okay. Let's go to the top paragraph, which is not part of the "And one other thing." "John, I made the whole consignment based on YOU soliciting me to sell some of my magnums through you. If they are not in the sale, none of the wine is in the sale." That was the demand you made, right, sir?

A. I wrote that.

Q. Okay. And you were very mad at Mr. Kapon, weren't you?

A. No. No.

Q. No. That's why you wrote, sir, "I am fucking pissed"?

A. Well, if you know Mr. Kapon, he speaks like a sailor, so we've had a lot of nights out where I wouldn't be as -- too proud -- let me put it this way. I wouldn't want my children to hear the conversations and the tone, you know, and the words used.

Q. All right. I didn't -- point out to me where Mr. Kapon is using sailor's language in this e-mail chain.

A. Actually, he just posted -- printed a book of tasting notes where there's a lot of sailor's language. It's 500 pages long. So, you know, it's not in this e-mail. You're right. You are correct.

Q. The only sailor's words are coming from you, sir, in this

chain, right?

A. I'm not a perfect person.

Q. I didn't ask if you were perfect. Just asked if you were using those words.

A. It says it there, sir.

Q. And you stated to him, "I am not going to have the integrity of my collection questioned." You said that to him, right?

A. And verified by another collector. See, questioned and then verified by another collector. So I didn't mind John looking at my selection -- cellar. In fact, I've subjected John -- or he's done more inspections of my cellars than anybody, and I don't mind that. But I wasn't going to have another collector start looking at my wines and opining his opinion, especially someone where I returned a million dollars of fake wine to him in 2008.

Q. I understand that's your testimony today. When you wrote this e-mail, you didn't say, "I don't mind you looking at it, sir." You don't have any suggestion of that at all here, do you?

A. Well, I don't know where the rest of the e-mail chain is.

Q. Well, let me read a sentence that might refresh your recollection. It's what you put in all caps at the end of that first paragraph. "SO YOU ARE NOT LEGALLY AUTHORIZED TO SELL MY WINE IN THIS SALE UNTIL WE GET THIS RESOLVED." You put that in

all caps, right?

A. Yes, I wrote that.

Q. And, sir, in the middle of that paragraph, one of the things you were telling him was, "If my mags are good enough for Zachys, they're good enough for anyone else," right?

A. Yes, because the Lafleurs, those were -- those were authenticated by Zachys starting in 2003 and numerous times, and I had tasted them numerous times. Latour Pomerols, same thing. And in fact, many of the items we're talking about had been previously authenticated by Zachys, and I find Zachys was the gold standard for authentication. They're very good at it. And so I believed that if Zachys told me it was real, it was real, and based on the taste of the wines and the indicia being pretty much identical, I believed those wines to be real.

Q. And one of your gold standards for authentication is Mr. Kapon.

A. Yes, I think he's good --

Q. Mr. Kapon --

A. -- but I don't agree with all of his conclusions, as I've said. On Lafleur, I don't agree with him, and, you know, so --

Q. Okay. Let me ask you my next question.

A. Yes.

Q. You did not tell -- well, first of all, let me pause a second.

You got these magnums back from Mr. Kapon, right?

A. Wait a second. I can't tell what's going on from this document. You want to show me another document?

Q. Not yet. I just want to know if you recollect, sir --

A. I don't recollect anything without a document in front of me.

Q. Okay. Well, let me just try. Do you recollect, after this e-mail of December -- of November 23rd, 2004, actually getting these magnums back and consigning them for sale at Zachys in October 2005?

A. What are "these magnums"?

Q. The magnums that Mr. Acker -- Mr. Kapon had a problem about in the e-mail.

A. I don't know what you're talking about. When you say "these magnums," what are "these magnums"?

Q. Let me start with a simpler question.

A. This reminds me of "My Cousin Vinny" right now.

Q. I'm sorry. Let me finish my question and I'll also make sure I do not cut off your answer.

Sir, do you remember getting back any magnums at all after this e-mail exchange in around November of 2004, from John Kapon?

A. I can't refer exactly to what you're talking about and I don't know why you want to hide the document from me if you know you have it.

Q. I'm not hiding anything. I'm just asking your

recollection.

A. I don't recall.

Q. Okay. Sir, you did not tell Mr. Zacharia or anyone at Zachys that Mr. Kapon had expressed doubts about some of your magnums, right?

A. What magnums?

Q. Any magnums.

A. Any?

Q. Sure. The ones that were at issue here.

A. What ones? You haven't defined what one, what one is.

Q. Any, any of them.

A. I don't know what you're talking about, sir. I can't answer your question.

Q. Did you -- sure. Did you, at any time after November 23rd, 2004, up to the time of the October 2005 auction, tell Mr. Zachys that John Kapon, the CEO of one of the biggest wine auction houses in the country, had problems with a number of my magnums?

A. No. I still don't --

Q. Here's my question. Sir, did Mr. Kapon reject magnums here that were different than the ones you sold through Zachys?

A. I don't know what you're talking about.

Q. Well, you sold some magnums through Zachys in October 2005, right?

A. Yes.

Q. And you told Mr. Kapon he was rejecting magnums that were good enough for Zachys, right, sir?

A. The only magnums that John rejected, to my -- to my recollection, were Lafleurs, which Zachys had been authenticating since 2003, so if you're referring to Lafleurs, I believed that they were good, and at the top hundred tasting that was in, I think November or October of 2004, I tasted one with the same cork markings I had and I gave it 99 points. So based on taste, based on Zachys' authentication, based on my own experience, I thought they were authentic, and Zachys agreed with me.

Q. Sir, for you to say your magnums are good enough for Zachys, you must have been comparing the magnums here to the ones you were offering at Zachys, right?

A. I don't understand that question either.

Q. Well, did you just figure that these magnums were close enough to the types of magnums that Zachys were selling for you that John Kapon should just shut up and sell your magnums?

A. No, I never told him that. In fact, I recall saying: You know what, John, it's not worth the fight. Just send it back to me. Just as if, you know, if somebody doesn't want my wine, they can send it back. I'll give them their money back, for god's sakes.

Q. Sir, is it your claim that none of the counterfeit magnums that Mr. Koch purchased are the same as the magnums that

Mr. Kapon rejected?

A. Mr. Kapon only rejected the Lafleurs, and I don't know that they're even the same bottles, because I still have in my cellar segregated god knows how many. There are, from what I recall, a couple of '21 Cheval Blancs. Mr. Koch bought three, and two he says were not authentic, and I recall Mr. Kapon sending me back those, not based on rejecting them but -- and -- and a '45 Lafite, and I believe it's the same '45 Lafite. But he did not reject that. He did not reject that. Nor did he reject the '21 --

Q. I'm not asking you what he rejected.

A. -- Cheval Blancs.

Q. If you can just focus on the question. Let me just ask you a different question.

Sir, magnums of Bordeaux Right Bank wines dating from roughly 1900 to 1961 are extremely rare, right?

A. You know, I don't even know anymore. I have no opinions on this at this stage because of all this litigation that's been going on.

Q. Well, that's what was represented directly to the buyers in the October 2005 catalog, right, sir?

A. You'll have to refresh my memory.

Q. Sure. Let's go to Trial Exhibit 101.

MR. HUESTON: Exhibit 101 is a copy of the catalog for the October 2005 collection. We'd move it into evidence at

this time, ask permission to publish.

MR. CIALONE: No objection, your Honor.

THE COURT: Okay. It's received. You may publish.

(Trial Exhibit 101 received in evidence)

Q. And you recognize this copy as one of the catalogs for your single-cellar auction in October of 2005, right, sir?

A. After the auction that Zachys conducted for me --

Q. Right.

A. -- as the sales entity, yes.

Q. And -- okay.

MR. HUESTON: And if we go to page 7 and we pull out the language here.

Q. There's a representation that the auction has "extremely rare magnums of Bordeaux Right Bank wines from 1900 to 1961," right, sir?

A. Yeah, but I can't -- I can't comment on this until you show the entirety, because there's a thing at the bottom that's missing. Can you show the entire screen? 'Cause it's signed by Jeff Zacharia. Jeff Zacharia wrote that.

Q. Jeff Zacharia wrote that, but as we reviewed earlier, you reviewed a draft of the document and made inputs and changes on this document, didn't you?

A. Actually, I gave him some suggestions and I never saw another copy. Mr. Zacharia is in fact the author of this document that you're trying to ascribe to me. It is not my

document. It's Mr. Zacharia's document. It's his auction company, it's his license, and he had control and choice over everything in that auction.

Q. And the jury will decide the level of your authorship. But you did not object to the language there that on sale were extremely rare magnums of Bordeaux Right Bank wines from 1900 to 1961, right, sir?

A. No, I didn't.

Q. Okay. And the magnums that you sold to Mr. Koch include Bordeaux Right Bank wines from 1900 to 1961, right?

A. The wines that were allegedly sold by Zachys to Mr. Koch do include those wines.

Q. And the magnums that you sent to Mr. Kapon included Bordeaux Right Bank wines from 1900 to 1961, right, sir?

A. Yes.

Q. Okay. And in fact, at some point Mr. Kapon sent you his specific notes on the reasons he had doubts about those magnums, you had asked him --

A. I don't know what -- yes.

Q. Excuse me. Let me finish. -- that you had asked him to sell at the December 2004 auction, right?

A. I don't know what those magnums are. You seem not to want to bring out the documents, sir.

Q. I'm happy to bring out the document. Let's do it now. I have a lot of them. I'm just working through them as fast as I

can.

THE COURT: Was the question about Mr. Zacharia or Mr. Kapon?

MR. HUESTON: Let me see, your Honor.

Mr. Kapon. I apologize for any confusion.

THE COURT: Okay.

Q. Handing you what's been marked as Exhibit 389 for identification.

And this is an e-mail at the top from you to Acker Bids, which is John Kapon, November 28th, 2004, with an embedded e-mail.

MR. HUESTON: We'd move this into evidence, with permission to publish.

THE COURT: Any objection?

MR. CIALONE: No objection.

THE COURT: 389 received.

(Trial Exhibit 389 received in evidence)

Q. Okay. I want to start with the embedded e-mail, which is the earlier e-mail, and this is an e-mail from Mr. Kapon to you, Sunday, November 28th, right, sir?

A. Yes.

Q. Okay. And this is a follow-up to the earlier e-mail we just reviewed, right?

A. Yes, it is, sir.

Q. Okay. And he says, "I just finished inspecting all the

wines again." Right?

A. Yes.

Q. And then he says, "This is how I would have to catalog them. I am assuming you know the conditions that are abbreviated. If not, let me know and I will fill you in." And he then lists several bottles of wine and the detail that he would have to disclose about these bottles, correct?

A. Yeah, it's the same type of detail that's disclosed in every single auction catalog, you know, the conditions of the bottles. There's no difference there between that and any other auction catalog.

Q. That's not what I asked you. But --

A. But that is the answer to the question.

Q. Actually, the question was simply: Did he then set forth the bottles and suggested disclosures that would have to be made?

A. No. He had cataloging notes. Not disclosures, cataloging notes. And you can consider a catalog note a disclosure if you'd like.

Q. Okay. If you go down in the e-mail to 1921 Cheval, what did you understand him to be referring to there?

A. I don't know what spc and cuc stand for. Ts is top shoulder. Bin soiled label. Lscl might be light stains. Photocopied label. Old eroded cork. Vintage on cork but no branding, outstanding color and condition.

Q. Right. And this is for a 1921 Cheval. What did you understand that to mean, a magnum of 1921 Cheval Blanc?

A. Yes, sir.

Q. And he says, going down two more, as an example, 1945 Lafite, he would have to make certain disclosures there, right, sir?

A. He would have to catalog it this way. This is, you know -- your use of the word "disclosure," I don't agree with.

Q. Well, when you say catalog, let me try to clarify. He would have to put in a catalog to prospective buyers these notes, and for instance, for the 1945 Lafite, he's saying he would have to include a notation that it had a photocopied label, right?

A. Actually, it has a laser printed label, yes, you're correct.

Q. Okay.

A. A yellow laser printed label.

Q. Now you understand -- let's just stop on the 1921 Cheval Blanc. You understand that Mr. Koch has alleged that he purchased two fake 1921 Cheval Blanc magnums from you, right, sir?

A. He alleges that.

Q. And those are Exhibits 223 and 224?

MR. HUESTON: Do we have photos of that or am I going to have to move on?

(Pause)

MR. HUESTON: No. Okay.

Q. Let's turn to Exhibit 106, which you should have before you, sir. It's back to your expert for this case, Mr. Lempert-Schwarz, his rebuttal expert report.

A. Oh, god. Now you're going to ask me to find that with this massive stack.

Q. Oh, I can hand you another. Did you --

A. Here. I think I found it.

Q. Happy to hand you another copy.

A. I found it.

Q. You got it? Okay.

A. What Bates page would you like me to go to? Is there a Bates page you'd like me to refer to?

Q. I'll tell you in a second. Hold on. Getting everybody set.

A. Okay.

Q. If you go to Bates stamp Trial Exhibit 15, sir, there's entry number 1 for a Chateau Cheval Blanc 1921 magnum, right?

A. What page in the Bates report?

Q. Bates stamp 15, page 14. It's on the screen in front of you.

A. I'm going to look at the report, sir.

Q. Okay.

A. Okay.

Q. And that's -- number 1 is a Chateau Cheval Blanc 1921 magnum, correct?

A. Yes.

Q. If you turn the page to page 16, there's a number 2. It's another Chateau Cheval Blanc 1921 magnum, right?

A. Hold on. Let me look. Let me look. Let me look.

Yes, and as with the first one, it says it had cork stamps and he wanted to have further review, and yes, they are both on there --

Q. Okay. And that's number 2.

A. -- and consistent --

Q. I haven't asked you about the detail, sir. If we can just keep focused on my question.

A. Sure.

Q. Thank you. So there's a number 2. It says Chateau Cheval Blanc 1921 magnum, right?

A. Yes.

Q. Okay. And then if we go to page 17, which is Bates stamped 18, starting with, "My opinion," he says the bottle's contents would have been to be analyzed, but he writes, "Surely the label raises questions about who would have done this reproduction of an originally engraved label." He writes that?

A. 18 is Cheval Blanc.

Q. That's right, Cheval Blanc. We have the language up in front of you there.

A. Oh, okay. I'm sorry. I thought you were referring to something else.

Q. You see that there, right?

A. I'm trying to read it. Give me one second, if you could, please.

Yeah, he's basically saying that he has to see -- this was a Chateau negociant or another third party, because nobody knows, it's so long ago. You're correct.

Q. Actually, I'm just focusing on the language, he writes, "it's a reproduction of an originally engraved label." He puts that here?

A. That's what he put there.

Q. And if you go back -- let's compare it. Go back to Mr. Kapon's e-mail when he writes about the 1921 Cheval Blanc. One of the things he notes is there's a photocopied label, right?

A. Yes, and photocopied labels do not mean a wine is not authentic. In fact, you've never showed me one wine today where I thought it was inauthentic, sir.

Q. Sir, and Mr. Kapon is telling you that if he had to offer that 1921 Cheval Blanc for sale, he would have to make notes in the catalog to buyers that would have included the disclosure that that bottle had a photocopied label, right?

A. Absolutely. Are you kidding me? Of course he would.

Q. And --

A. Otherwise I'd be dishonest.

Q. Okay. Let's go back to page 18 again of Mr. Lempert-Schwarz's opinion for you.

A. Bates page 18?

Q. Bates 19. "The continuation of my opinion." And I have it up in front of you.

A. Okay. Thank you.

Q. He talks about the cork on one of the magnums of the 1921 Cheval Blanc, right?

A. Yeah. He says, "Under no circumstance would it be possible for a final verdict of the authenticity on such a bottle until it has been opened and tasted and lab tested." That's what he says.

Q. And he also says, "A few letters of what would be the words 'Chateau Cheval Blanc' are visible on the top part around the cork and underneath only a copy of letters of the words 'Fourcaud-Laussac' are found to be legible." Right, sir?

A. Let me see. That is now 80, 90 --

Q. Just asking if that's --

A. -- 92 years old. The cork would have degraded. Yes, it says that. And it's a 92-year-old cork.

Q. And he says, "Both lines were printed onto the cork rather than branded," right?

A. He says that.

Q. Let's go back to Mr. Kapon's e-mail, where he says that the

magnum of 1921 Cheval Blanc he reviewed had vintage on cork but no branding, right, sir?

A. Yeah, apparently Mr. Kapon didn't see the branding that Mr. Lempert-Schwarz did, but that's what he wrote.

Q. That's what e wrote and that's what would have had to have been disclosed to buyers, according to Mr. Kapon, right, sir?

A. I've answered yes to that question.

Q. And, sir, did you tell Zachys to catalog the 1921 Cheval Blanc with a note disclosing that it had a photocopied label?

A. They wouldn't have let me do that. It was Zachys' opinion and policy that they wrote their catalog, they wrote all representations in the catalog, and all descriptions of wine in their catalog, and they're in complete and full control of that process, and that is something that was a condition of doing business with them.

Q. Is it your testimony, sir, that they wouldn't have allowed you to tell them that John Kapon had noted that a magnum had a photocopied label?

A. They didn't want me to tell them anything. They were going to make -- they were the experts. They were going to make the decision.

Q. So it's your testimony you understood that Mr. Zacharia was not interested in getting any information from you that would raise an eyebrow or cause a question about potential inauthenticity of the bottles you were auctioning for sale, is

that right?

A. No, that's not right, because you are trying to say that something he was going to catalog one way and another auction company said was real as well hadn't cataloged it that way. Not inauthenticity. You're not saying -- you're misconstruing the entire thing, sir.

Q. I'm not trying to misconstrue anything. I just want to try to make the record straight.

It's not your testimony, sir, that Mr. Zacharia had no interest in hearing from you any evidence or clues that bottles you were offering to sale were in fact inauthentic?

A. That bottle is not -- we didn't believe that bottle was inauthentic.

Q. And Mr. Lempert-Schwarz, you said he gave some sort of ultimate opinion about the magnums of 1921 Cheval Blanc, but in fact with those bottles, he said that, "I would not necessarily recommend to a client that such a bottle be sold in the market." That's what he said, right?

A. That has nothing to do with inauthenticity. Yeah, he was suggesting some kind of a testing or tasting.

Q. That's your expert who said that, right?

A. Yes.

Q. And just to be clear, both your expert and Mr. Kapon looked at a bottle of 1921 Cheval Blanc and both concluded that that magnum had a photocopied or reproduced label, right, sir?

A. Yes, sir.

Q. And both your expert and Mr. Kapon concluded that on one magnum the cork had no branding, right?

A. They didn't both conclude that.

Q. Well, your expert concluded that.

A. But you said both, sir.

Q. All right. Your expert concluded that.

A. Are you trying to catch me in something here?

Q. Not at all. Your expert said that?

A. Okay. Please state the questions clearly.

Q. Just trying one more time. Your expert said that.

A. Yes, he did say that.

Q. And Mr. Kapon said that he would have to disclose vintage on cork but no branding, right?

A. There we go again. Yes.

Q. Okay. Let's turn to page 44 of Exhibit 101, please.

A. What's the Bates stamp? Which document is this? There's so many documents.

Q. 101. That's the auction catalog.

A. Okay. And what's the Bates number? 44?

Q. The Bates stamp number is 44.

And in fact, there is an entry on that page for a Chateau Cheval Blanc 1921, right?

A. Yes.

Q. And we just reviewed what Mr. Kapon said would have to have

been disclosed for that, for a 1921 Cheval Blanc with a photocopied label, right?

A. Yes.

Q. And there's no such disclosure here in this entry for the Chateau Cheval Blanc 1921 that was offered for sale, right?

A. No, there isn't. Zachys did not put a disclosure on there like Mr. Kapon did, that is correct, and I didn't see this, nor did I review it before the auction.

Q. And nor did you --

A. This was their work --

Q. And nor did you --

A. -- not my work.

Q. And nor did you let Mr. Zacharia know that Mr. Kapon had found a photocopied label and a branding issue on one of the -- on the cork of one of the 1921 Cheval Blancs, right, sir?

A. No, and everybody thought the magnum was authentic, including me, and including Zachys, and including Acker Merrall Condit. We all thought that magnum was authentic for sale.

Q. Let's go back to Exhibit 389.

He also discusses the 1945 Lafite with you, right?

A. Yes, sir.

Q. And he says if he were to list it in the catalog, he'd have to disclose, among other things, it had a photocopied label, right?

A. Actually, it's a laser printed label, so he was wrong on

that one.

Q. Okay. Well, he wrote photocopied label, right?

A. Yes, that's what he wrote, yes, sir.

Q. And your expert report on the 1945 Lafite at issue in this case at page 31 --

A. Give me the Bates number, please?

Q. Bates 31.

A. Bates 31?

Q. And we've got it up in front of you.

A. I want to see the whole document, sir. I don't want you to try to catch me on something here.

Q. No, not doing that at all.

A. Yes, you have been.

Q. Okay. Okay. I'd like to direct your attention to the front label section, and your expert writes in that section the front label of that bottle is a blatant reproduction of an original Lafite engraved label, right, sir?

A. Yes, and he says the cork bears all correct markings of a vintage 1945 on it as well as clear legible markings of a Chateau and outline, again held in comparison to similar bottles inspected before and seen at the Chateau. Sir, we thought this was authentic and so did Zachys and so did Acker. And you cannot show me one bottle, except for the inadvertently placed bottle of '28 Latour, that I had any knowledge of or any belief of that wasn't right. And I would have rectified that

if somebody asked me to, sir.

MR. HUESTON: Your Honor, move to strike after "Yes."

THE COURT: I'm going to caution the witness to please answer the question.

THE WITNESS: Yes, your Honor.

Q. Sir, both your expert and Mr. Kapon said that the magnum of supposed 1945 Lafite that they reviewed had a photocopied label, right, or a blatant reproduction of a label, right, sir?

A. Yes, it was so blatant that it was obvious.

Q. Okay. Obvious, sir, but not so obvious that it appeared in your catalog in the disclosure for the 1945 Lafite, right?

A. My catalog?

Q. The catalog with your 17,000 Bottles of Greatness, right?

A. Zachys was the auctioneer. It was their catalog. I was the consignor. It's their business, it's their business license. They ran the auction, they did the entire thing. I wasn't even there.

Q. You have no responsibility for what was said in that catalog, is that your position, sir?

A. It's my position that it's Zachys' catalog.

Q. Let's go to that catalog page and see at Bates stamp 51, which is the Zachys catalog 49, in the top left-hand corner.

A. What's the Bates number?

Q. 51. Page 49, top left-hand corner. Listing for Chateau Lafite Rothschild's 1945. And there's no mention of a

reproduced or photocopied label, right, sir?

A. No, there isn't. And there should have been.

Q. And do you contend that Mr. Kapon rejected a different magnum of purported 1945 Lafite than the one that Mr. Koch purchased?

A. No, I don't.

Q. Okay. You saved me some time so I'm just going to quickly move ahead. One moment.

All right. Let's go back to Exhibit 389.

A. I don't know what Exhibit 389 is.

Q. That's the e-mail from you to Mr. Kapon dated November 28th, 2004.

A. Okay. I'm there.

Q. We have it up on the screen for you as well.

A. Well, now I want to look at the document because we've been through this before.

Q. Sure. Happy to have you look at it.

A. Thank you, sir.

Q. After he talks about the photocopied label on the 1945 Lafite, he then says, "Then there are the Lafleurs," right?

A. Yes.

Q. And he states, "Without getting into the exact details of each of them, there is one fundamental problem. The corks all have the vertically, ovally Chateau Lafleur brand on the cork, which they only started using post '66." That's what he wrote,

right?

A. That's what he wrote.

Q. And that -- when he says post '66, he means after 1967, right?

A. Yes. I don't know that to be a fact, though, but that's what he wrote.

Q. Okay. And Mr. Acker --

A. Mr. Kapon.

Q. I'm sorry. Mr. Kapon --

A. I thought I was the one getting tired.

Q. Yeah. And Mr. -- and Mr. Kapon does not say: We'll disclose this with those descriptions of the cork and cellar. He doesn't offer to do that, does he?

A. No, because John had a different belief than Zachys did. We started authenticating in 2003 and I did.

Q. I know you want to talk about what else you did. I'm just talking about Mr. Kapon right now.

A. No. He had a different belief than we.

Q. And in fact I'm just talking about Mr. Kapon's belief. He says, "I cannot offer those Lafleurs in good conscience." That's what he said, right?

A. God bless him. He shouldn't.

Q. And that's somebody who you still use as an expert authenticator of your wine, right?

A. Yes.

Q. And after in fact he tells you that he wouldn't sell them, you offered Chateau Lafites with vertical over brand -- oval branded corks for sale at the Zachys October 2005 auction.

A. Sir, you may want to strike that question and repose it, because you got your vineyards wrong.

Q. Sir, after he made that disclosure to you that he would not offer those Lafleurs in good conscience because of the vertical, oval brand, you went ahead and sold, at the October 2005 auction, Lafleurs with vertical, oval brands, right?

A. See, I sold them with Zachys in 2003, 2004, and 2005. In fact, there were three that you guys dropped from the case like a week ago that had the same cork stamps.

Q. Just trying to get an answer.

A. That's correct, yes, yes.

Q. That's a yes?

A. I was trying to make sure I was accurate.

Q. Oh, okay. So the answer is yes to that?

A. Yes.

Q. All right. And in nowhere in the catalog that describes these bottles as best of the best is there a note, a warning, or a footnote that somebody you considered to be an expert, namely, Mr. Kapon, would not have sold those bottles because of that cork branding issue?

A. Actually, there is. In the introduction to the catalog there's a tasting note from Fritz Hatton, who is a wine expert,

who talked about sampling a '47 Lafleur with the same cork marking at my home and telling in that beginning of the catalog how great it was and then the same Lafleurs, 1947, '50, and 1950s at issues in this case were tasted the night before the auction by people, including Mr. Koch. He tasted that wine himself, with that cork.

Q. Let me try my question again. In no place in that catalog is it disclosed anywhere that Mr. Kapon would not sell the magnums that were being offered up here because of his concerns about the oval brands on those corks, right, sir?

A. Sir, you know he wasn't going to sell it. We've been through this.

THE COURT: The question is yes or no.

A. Yes.

THE COURT: Was it in the catalog?

THE WITNESS: No, it wasn't.

Q. Did you tell Mr. Zacharia that Mr. Kapon wouldn't sell those Lafleur magnums?

A. No, I didn't.

Q. Now you've been saying repeatedly, though I haven't asked you -- now I was going to ask you, so you can say it again if you'd like. You said that you disagreed with Mr. Kapon about his opinion, right?

A. His opinion on?

Q. That the Lafleurs couldn't be offered in good conscience

because of the oval brand on the cork that he highlighted to you in Exhibit 389.

A. Yes.

Q. You never told Mr. Kapon, "You're wrong," did you?

A. Actually, we have. Not in e-mails, but yes, I told him I didn't agree with him.

Q. You didn't tell him that in an e-mail response you made to him, right, sir?

A. No, just as I didn't ask my wife to marry me through an e-mail.

Q. The answer -- I'm sorry -- that's no in an e-mail response.

A. No.

Q. Okay. Okay. Let's quickly look at Exhibit 390.

A. Is that something I have or not?

Q. No. I'll hand it to you.

A. Okay.

Q. Handing you what's been marked as Exhibit 390 for identification. This is an e-mail from you to Mr. Kapon dated November 29th, 2004.

MR. HUESTON: We'd move this into evidence, with permission to publish.

THE COURT: Received.

MR. CIALONE: No objection, your Honor.

THE COURT: Received.

(Trial Exhibit 390 received in evidence)

MR. HUESTON: Okay. Let's put this up.

Q. You recognize this, sir, as your response to Mr. Kapon, right?

A. Yes.

Q. And here you respond, "Petrus changed cork in '66. You were saying the Lafleur did as well?" That's what you wrote, right?

A. Yes, because I thought it was such a coincidence, and that was something that Rudy Kurniawan said, and I was like, are you kidding me? Petrus changed in '66 and Lafleur does as well? And so I was like, there's no way. There's no way.

Q. Yeah. Well, you didn't write, "There's no way, you're wrong." You just asked him the question again, right?

A. You know, I'm sorry, sir. I'm sometimes sarcastic.

Q. Okay.

A. E-mail says what it says.

Q. And, sir, you know that of the 24 bottles at issue in this suit, 12 of them are Lafleur magnums from before 1966, right?

A. Yes, they are.

Q. And each of those 12 has in fact a vertically branded cork like what Mr. Kapon described in his e-mail, right?

A. Including the three '47s that were dropped, too, yes.

Q. Okay.

THE COURT: Would this be a good time for a brief break?

MR. HUESTON: Yes, your Honor. Thank you.

THE COURT: Okay. We'll take a ten-minute break.

Ladies and gentlemen, please keep your pads on your chairs, and we'll see you in ten minutes.

(Jury excused)

(Continued on next page)

(Jury not present)

THE COURT: Mr. Hueston, how much more time do you think you have?

MR. HUESTON: I'm going to try and sharpen my pencil and try to bring this to a close pretty quickly. At most 15, 20 minutes.

THE COURT: Great.

(Recess)

(Jury present)

THE COURT: Mr. Hueston, you may proceed.

MR. HUESTON: Thank you, your Honor.

BY MR. HUESTON:

Q. Let's go back to Exhibit 390, which has already been admitted into evidence. Post that, please. Let's go to the next segment of the email, Kapon to you on November 28, 2004, after he talked about the Lafleurs, he then listed a number of additional bottles he had problems with, right, sir, including a 61 L'Evangile, a 1961 Trotanoy, a 1981 Clos L'Eglise, and a 1961 La Chapelle, right?

A. No. He said that he would catalog them this way. He talked about photocopying labels. So I think he thought these were good wines.

Q. Let's take the mag of 1961 La Chapelle. There he says, "The 1961 La Chapelle is clearly a fake to me. I could not sell it." That's what he told you, right?

A. Right.

Q. He wasn't going to sell it, right?

A. Correct.

Q. Just like he wasn't going to sell the Lafleurs, right?

A. Yes.

Q. Then they continues. He says in the email, after the list of wines, he writes, "I am trying to run the most reputable business in the auction game right now which will have long-term benefits." Do you see that?

A. Yes.

Q. He says, "I do not want to sell wine that I have doubts over." You see that, correct?

A. Yes.

Q. Then there is the sentence, "You were the one insistent on the mags, and if I was confident about them after inspecting them, there would not be this big deal." Sir, you were insisting that he sell these, right?

A. No.

Q. So that is a false statement by Mr. Kapon?

A. I don't recall that statement. I don't believe it to be true.

Q. Let's go down a little bit further, where he writes, "So please do not bully me into offering these wines." He was referring to the fact that you were pushing him to sell those wines, right?

A. No. He is saying please don't bully me, which I wouldn't do. I told him to send the wines back.

Q. You weren't doing bullying him, is that right?

A. Correct.

Q. You were telling him that if you don't sell these magnums, you were going to pull the whole sale from him?

A. I didn't do that. I asked him to send the magnums back, we did the sale, and that's the record.

Q. You did threaten to pull the whole sale if you?

A. I didn't pull the whole sale. I had him send me the magnums back, and we proceeded with the rest of the sale.

Q. But that's what you threatened him in your email, is that correct?

A. That's not what happened. He sent back the mags, and we proceeded with the sale, and that was that.

Q. That was what you threatened in your earlier email, correct?

A. I may have written that in the earlier email, but I didn't intend on carrying through with it. And John Kapon has now auctioned 30,000 bottles of wine for me since.

Q. Another email that you wrote, today, sir, you're saying the jury should not believe, right, sir?

A. I didn't say that. The email says what it says. You can characterize it how you wish.

Q. In the last paragraph of the same Exhibit 390, sir, Mr.

Kapon writes, "You can call me on my cell if necessary today, but I said what I have to say, and I do not want to get yelled at on the phone or get into a further argument." You had been on the phone with him yelling at him about this, hadn't you?

A. That's not what it says.

Q. Sir, when it says "further argument," it refers to an argument you had already had with him, right, sir?

A. Sir, we haven't yelled at each other. We had been arguing all day.

Q. A further argument which he felt took place, isn't that right?

A. No.

MR. HUESTON: No more questions, your Honor.

THE COURT: Thank you.

CROSS-EXAMINATION

BY MR. CIALONE:

Q. Good afternoon, Mr. Greenberg.

A. Good afternoon, Mr. Cialone.

Q. Let me start with some of the wines that you have just talked about with Mr. Hueston regarding Mr. Kapon. How many bottles of wine have you sold to Acker Merrall?

A. Oh, boy, 35 to 38,000, approximately.

Q. In how many auctions?

A. Probably bordering on ten, eight to ten.

Q. Across how many years?

A. Since 2003 through the last one was 2010, so that's eight years.

Q. In your experience with John Kapon, would he sell a wine that he thought was counterfeit?

A. No.

Q. Would he sell a wine he did not believe was genuine?

A. No.

Q. Regardless of what was put in the catalog?

A. No.

Q. He would not have put some cataloging notes in and then sold a fake wine?

A. No, sir.

Q. Regarding these Lafleur magnums, did you believe that a vertical brand on a pre-1966 Lafleur magnum was an indication of authenticity?

A. No.

Q. Did you do anything to prevent Zachys from looking at the cork on the Lafleur magnums?

A. No.

Q. Did they actually look at the cork that was on the Lafleur magnums that you consigned?

A. Three times.

Q. Did you see them looking at them?

A. Yes, I did.

Q. We are going to cover in detail, on probably Monday at this

point, what happened in the Zachys inspection. But let me ask, did Jeff Zacharia come to your house to inspect wines?

A. Yes.

Q. Who is Fritz Hatton?

A. Fritz Hatton is the chief engineer and the senior consultant, he used to run Christy's wine department, known around the world for his tasting ability, his knowledge of wines and authenticity.

Q. Did Mr. Zacharia and Mr. Kapon come to inspect all 17,000-plus bottles at your house or just some of them?

A. All the rare and trophy wines.

Q. Did other people come to inspect the rest?

A. Yes, they had about six there. They were there for over two weeks, around two weeks.

Q. Let's focus on Mr. Zacharia and Mr. Hatton. These pre-1966 Lafleur magnums, is that the class of old and rare trophy wines?

A. Yes, sir.

Q. Did they inspect those at your house?

A. Yes, sir.

Q. Did you open one while they were there?

A. Yes, we opened a 47 Lafleur.

Q. A 1947 Lafleur bottle or magnum?

A. Magnum.

Q. So that's 1½ liters, one of those big bottles?

A. Yes, one of those big bottles.

Q. Why did you open one of them?

A. It's my belief that it's what's in the bottle that matters. First of all, it's one of my favorite wines. The first time I had it was with Robert Parker, and he's given it a hundred points. Robert Parker is the most famous wine critic in the world. We were talking about these wines. I said, you know what, guys, I'm going to open up a magnum. I told Thierry to go get a magnum of 47 Lafleur, and I said let's serve it to them blind.

Q. Let me ask, how many magnums of 47 Lafleur did you have in your collection at that point in time?

A. Oh, gosh, maybe 15 or so.

Q. Did you tell Thierry -- Mr. Lovato, correct?

A. Yes.

Q. Did you tell him which one to pick?

A. No. We had ones that were turned around in the racks that were not -- we didn't think were right. Of course, he got one of the ones that we thought were authentic.

Q. When you say you served it blind, what do you mean?

A. That means we didn't tell him what it was.

Q. Then did you eventually tell him what it was?

A. Yes. We had the bottle and the cork.

Q. Did you show that to them?

A. Yes. We handed them the cork and the bottle. They wrote

about that in their tasting note in the catalog.

Q. Was it a vertically branded wine?

A. Yes, sir.

Q. As far as you know, did they think that wine was authentic?

A. I think the best description is in the tasting note.

Q. Was that a positive description?

A. It was glowing. They raved about it and talked about how amazing it was. They liked it so much in fact they wanted me to serve one at the VIP dinner the night before the auction that Mr. Koch attended.

Q. A couple of times you mentioned Mr. Koch and Mr. Orcutt tasting wines. How did that come about that Mr. Koch and Mr. Orcutt tasted magnums of pre-1966 Lafleur from your collection?

A. As part of this sale, what you do in marketing a sale is I gave Zachys about 200, $250,000 of wine to open for their VIP clients so they can taste the collection, so they know the kind of wines that are in there and they have an opportunity to taste the wines for themselves.

We had a list of different types of wines in the different categories. We determined together -- one of the things that they are very insistent on is they wanted old Right Bank magnums because there are questions that people had about those and they are very rare.

Q. Which old Right Bank magnums were included in these cases?

A. In Los Angeles I believe it was a 47 cheveux blanc, and in

New York it was a 1950 and a 1947 Lafleur.

Q. Focusing just on those Lafleurs, did they have the vertical cork patterns?

A. Horizontal.

Q. Vertical, up and down.

A. I'm sorry. It's been a long day in this trial.

Q. I understand.

A. This wasn't easy, what I just went through.

Q. I understand that as well. Let me be clear. The ones Mr. Kapon complained about and ultimately rejected had vertical brands, right?

A. Yes.

Q. Meaning if you wanted to read it, you had to do this, correct?

A. Yes.

Q. Looking sideways. The ones that Mr. Koch alleges he purchased in this auction also had vertical branding, right?

A. Yes.

Q. So the "Lafleur" goes top to bottom or bottom to top?

A. Top to bottom.

Q. The ones that were opened and tasted, to your knowledge, also had vertical brands?

A. Yes, because that's what we thought were real and that's what we provided. I wouldn't have provided a magnum that was any different than that.

Q. To your knowledge, did anybody complain about that wine, the taste, at that tasting of the 47 and 50 Lafleur magnums with vertical brands?

A. No. I got a call from Jeff Zacharia the next morning, who told me they were the hit of the party and they were the rage.

Q. Did Mr. Zacharia tell you anything specifically about either Mr. Orcutt or Mr. Koch?

MR. HUESTON: Objection, hearsay.

MR. CIALONE: It goes directly to the state of mind about the authenticity of these bottles, your Honor.

THE COURT: Overruled. You can answer.

A. He didn't say specifically, but Mr. Orcutt told me there is a gentleman by the name of Leonard Riggio, who is the founder of Barnes & Noble. His wife was born in 1947. Mr. Riggio said he wanted all the 1947s. Apparently, they sat at the same table. Mr. Orcutt told me the story is that Mr. Koch told him to bid those wines up as far as he could.

MR. HUESTON: Objection, your Honor. Could we have yet another link in the hearsay?

MR. CIALONE: Again, your Honor, it goes to his state of mind about the authenticity of these bottles and why it was he did not believe it was necessary to tell Jeff Zacharia something that he thought was incorrect.

THE COURT: I'm not following all the levels of hearsay.

MR. CIALONE: Mr. Orcutt is an agent of Mr. Koch, or he was at that time. He was his buying agent.

THE COURT: OK. He can answer.

MR. CIALONE: I think he did, your Honor. Thank you.

THE COURT: Next question.

Q. Mr. Greenberg, did Mr. Koch buy magnums of pre-1966 Lafleur at the October 2005 auction, to your knowledge?

A. Yes, he did.

Q. Did all of them have vertical cork brands, to your knowledge?

A. Yes.

Q. Are some of those pre-1966 Lafleur magnums not at issue in this case?

A. Yes. There is a 1961 that was dropped and there was three 1947s that were dropped, to my memory. There might be more, Mr. Cialone.

Q. Did Mr. Koch also buy magnums pre-1966 Lafleur from the December 2004 auction at Zachys?

A. Yes.

Q. Did those have vertical cork brands?

A. Yes, sir.

Q. Are those at issue in this case?

A. No. They were dropped last week, I think on the 18th.

MR. CIALONE: Could you put Exhibit 105 on the screen, Ms. Seabrook, page 17. This is Mr. Egan's report.

Q. Mr. Egan is an expert in this case, you are aware of that fact.

A. Yes, a very professional man.

MR. CIALONE: I'm sorry. I apologize. Can you put it up to his screen or you do not have the capability?

Your Honor, we would like to offer in Mr. Egan's expert report, as Mr. Lempert-Schwartz's expert report was offered in a couple of hours ago.

THE COURT: Is there any objection?

MR. HUESTON: No objection.

THE COURT: It is received. What is the number again? Is it 105?

MR. CIALONE: 105, your Honor.

THE COURT: It is received.

(Trial Exhibit 105 received in evidence)

MR. CIALONE: Ms. Seabrook, could you put up Exhibit 105, page 17.

Q. Do you see from the top Mr. Egan is commenting about a 1945 Lafleur magnum?

MR. CIALONE: Can you blow that up, please.

A. Yes.

Q. That's one with the vertical cork brand, right?

A. To the best of my knowledge, yes.

Q. In fact, all the wines at issue in this case have vertical cork brands, right?

A. Yes, sir.

Q. Could you look at what Mr. Egan said about the cork on the bottom.

A. "The cork is 5.2 centimeters long, the regular length used by the top Bordeaux chateaux. The branding is clear and the first three digits of the vintage can be seen."

Q. Anywhere in his report does Mr. Egan say that a vertical cork brand is an indication that the wine is inauthentic?

A. No, sir.

Q. Let's take a look at page 19 of Mr. Egan's report. It is another 1945 Lafleur magnum. Do you see that?

A. Yes.

Q. Let's take a look at what he says about that cork.

A. "The cork is 5.2 centimeters long, the regular length used by the top Bordeaux chateaux. The branding is clear and the entire vintage can be seen."

Q. Does Mr. Egan, Mr. Koch's expert, see the entire branding on this cork say the vertical brand is an indication that it is inauthentic?

A. No, he doesn't.

Q. Let's take a look at page 21. It's a 1947 Lafleur magnum, right?

A. Yes, sir.

Q. This is one of the ones that's been dropped from the case, is that right?

A. Yes, it was dropped.

Q. Let's take a look at what Mr. Egan said about this cork on a pre-1966 Lafleur.

A. "The cork is 5.2 centimeters long, the regular length used by the top Bordeaux chateaux. The branding is clear, and the first three digits of the vintage can be seen."

Q. Let's take a look at page 23, a 1949 Lafleur magnum, right?

A. Yes, sir.

Q. What does Mr. Egan say about this cork?

A. "The cork is 5.2 centimeters long, the usual length for those used by the top Bordeaux chateaux. The branding can be easily read. The digits of the vintage are smudged."

Q. As far as you know, since we have moved into another year, 1949, did Mr. Egan say that vertical brands on Lafleur magnums from 1949 indicate inauthenticity?

A. No, sir.

Q. Take a look at page 25 of Mr. Egan's report. Now we are into 1950, right?

A. Yes, sir.

Q. What did Mr. Egan say about this cork?

A. "The cork is 5.2 centimeters long, the usual length for those used by the top Bordeaux chateaux. The branding can be easily read, together with the vintage."

Q. Let's take a look at page 26, another 1950 Lafleur. What does Mr. Egan say about this cork?

A. "The cork is 5.2 centimeters long, the usual length for those used by the top Bordeaux chateaux. The branding can be easily read together with the vintage. It is slightly damaged on one side."

Q. Since we are into 1950, let me ask again, did Mr. Egan say that vertical cork brands on the 1950 Lafleur magnum was an indication of inauthenticity?

A. No, he did not.

Q. Let's take a look at page 27 of Mr. Egan's report, another 1950 Lafleur, right?

A. Yes.

Q. Let's take a look at what Mr. Egan said about that cork?

A. "The cork is 5.2 centimeters long, the usual length for those used by the top Bordeaux chateaux. The branding can be read. However, the vintage is covered by a stain."

MR. HUESTON: Your Honor, I would ask that for each of these, the conclusions of Mr. Egan that each of these is counterfeit also be put into the record.

MR. CIALONE: I believe that counsel is fully capable of presenting his own expert witness's testimony. He can do that with him.

THE COURT: That's right.

Q. Let's take a look at page 28 of Mr. Egan's report, another 1950 Lafleur magnum. What does Mr. Egan have to say about this cork?

A. "The cork is 5.2 centimeters long, the usual length for those used by the top Bordeaux chateaux. The branding can be easily read, together with the vintage."

Q. Let's take a look at page 29, another 1950 Lafleur magnum. What does Mr. Egan say about that one?

A. "The cork is 5.2 centimeters long, the usual length for those used by the top Bordeaux chateaux. The branding can be easily read together with the vintage. There is a degree of staining on this particular cork."

Q. Now let's take a look at page 3, 1961. Let me ask, did Mr. Egan, as far as you know, say that vertical brands on 1961 Lafleur magnums are an indication of inauthenticity?

A. No, he didn't.

Q. What did he say about this cork?

A. "The cork is 5.2 centimeters long, the usual length for those used by the top Bordeaux chateaus. The branding can be easily read together with the vintage. There is a degree of staining on this particular cork."

Q. Mr. Greenberg, did you believe you needed to inform Zachys about John Kapon's opinion when you believed that opinion was wrong?

A. No.

Q. Had Zachys previously sold Lafleur magnums for you?

A. Yes, starting in February of 2003.

Q. Let me be clear. Pre-1966 Lafleur magnums?

A. Oh, yes.

Q. Did you believe that the Lafleur magnums that you consigned to the Zachys auction were genuine?

A. Yes.

MR. HUESTON: Objection. There is no foundation for that.

MR. CIALONE: For what?

MR. HUESTON: His belief.

Q. Why did you believe that the magnums of Lafleur that you consigned to the Zachys auction were genuine?

A. Because I tasted them and they tasted great. I tasted those things with Robert Parker, who is the foremost expert on wine. I had seen the corks, I had seen the bottles, and I believed they were real.

Q. Did you have Lafleur magnums in your collection that you did not believe were real?

A. There are some that are segregated, like those ones on there in the wine summary notes, when the cork was screwed up, I didn't think it was real.

Q. Did those have vertical corks?

A. I believe some did.

Q. Is that why you found --

A. No. It would be the dates scratched off. It would like it was manipulated, like somebody put a cork puller on it and messed with it and reinserted a cork after they had drunk it,

that kind of thing.

Q. Drunk and refilled it?

A. Yes, basically.

Q. Mr. Greenberg, let me move on to some background information. We have a limited amount of time today. I will be continuing on Monday, obviously. Where do you live?

A. I live in Ross, California, with my wife and two children. It's Marin County. I have an 11-year-old and a 7-year-old that I love very much.

Q. Just to be clear, where is Ross and Marin, County, California?

A. It's over the Golden Gate Bridge, next to the Golden Gate National Park. It's a really nice community because the kids can walk to school and ride their bikes. It's a nice place to be.

Q. What is your current occupation?

A. I invest in technology companies. I'm an entrepreneur of technology companies. I have a health food company. At one time I was 285 pounds and prediabetic, so I decided to build a company to serve the kind of food that I needed to eat to stay alive. I'm also a philanthropist. Worth magazine named me one of the top ten most generous Americans under 45 a few years ago.

Q. You testified --

A. I also wrote books, too. I wrote a books on politics

called Generation We, which was very successful and it was endorsed by Mohammed Yunus, winner of the Nobel Peace Prize.

Q. You testified about building a wine collection. I'm going to take a guess that that wasn't based on a health food company. What did you do to amass the wealth to give you the ability to amass this wine collection?

A. I was born in Brooklyn and raised in Las Vegas in a poor family. I started working at 14. I put myself through college. I ended up getting into the computer business and working for a firm which is now called Accenture, a systems integration firm. I ended up starting a business for a research company called Gartner Group.

This was back in 1994. So I got in right at the ground floor. There weren't companies around to build the electronic businesses that are powering our economy today. I built two companies that built hundreds of electronic businesses, many of which many of the people in this room are using today. We worked at eBay, E*TRADE, probably half of Wall Street's electronic banking and other things. It was your typical come from nothing and being in the right place at the right time and working really hard story.

Q. What were those companies called?

A. Viant and Scient.

Q. Which one was first?

A. Viant.

Q. When did you found Viant?

A. It got funded in '96. The business plan started in '95.

Q. At some point did Viant go public?

A. Yes, it did.

Q. What did you do after that?

A. After that, I was at Scient when that went public. I handed it over to the CEO, he ran it. I was at Scient when it went public. We went public there, too.

Q. Were you also a founder of Scient?

A. Yes, I was. I was a founder and chairman of both companies.

Q. How long were you at Scient?

A. About into 2000, and then I started another company.

Q. What company did you start then?

A. It was a venture capital company.

Q. When did you actually stop working at Scient?

A. I stopped working there in 2000, although I was on the board until the end, when we were sold to a private equity firm called Cerberus.

Q. Since working at Scient, what have you done? Let me ask you more specifically, have you founded other companies?

A. Yes.

Q. How many?

A. A medical publishing company, the healthy food company. God knows. I have invested in over 20 startups. My publishing

company where I write my books. I do stuff on the Internet around inspiration and getting youth to vote.

Also, I spend a lot of time in philanthropy. I have three major things I'm interested in. Number one is medical research. I funded the University of California San Francisco medical lab for genetic research. That was a multimillion-dollar grant that enabled an entire department to be built to do pioneering research on stem cells and other things. I gave a million dollars to Columbia Cornell in New York to research pediatric cardiology and genetic breast cancer research.

Then I supported homeless shelters, hospices, age relief funds. Additionally, I'm on the board of directors of the Shaw Foundation. We have cataloged 57,000 testimonies of victims of genocide not only from World War II -- I'm Jewish -- but from Rawanda and China as well. I believe that when you are gifted to receive, it's imperative that you give back to society.

Q. Let me turn to the subject of wine. You testified a little bit about your wine collection and about finding rare wines. Let me ask you a threshold question. We have heard some numbers today, 40,000, 50,000, 60,000, 70,000 bottles. Were all of those what you would term "fine and rare" wines?

A. No.

Q. Were the majority of them?

A. When I first started. Now, after I got started, yes, I

basically went for the best of the best.

Q. What led to your interest in fine and rare wines?

A. I have been with my wife since I was 30. I met her here in New York. She is from New Jersey. She was my real estate broker, and it was love at first sight when we were 30 years old. So, when she moved out there with me, we would go to Napa. We just had a great time. We fell in love with wine and the whole thing about walking around the vineyards and the taste, and just the experience of it all. It turned out to be a passion. Not just expensive wines. I can get a $10 bottle of pinot grigio and enjoy it. For me wine is just a beautiful thing.

Q. You testified on Mr. Hueston's exam you started with California wines. At what point did you shift into the French wines that are at issue now?

A. Thank God, I made a lot of money in 1998-ish, and that's when I started going to the French wines. There is a typical progression for many people. A lot of people stay with the California wines. I happened to meet a lot of friends that were into French wines, and they introduced me to Burgundy and Bordeaux. I proverbially got the bug. It was something that turned into a major hobby of my opinion.

Q. I want to focus your attention on the period from when you started collecting wine through the beginning of 2002, when Ms. Sutcliffe came to your home. OK?

A. Yes.

Q. During that period how many sources did you have for wines?

A. By that time 30 I would say. Ultimately it was up to 60 that I bought at least one bottle from at the end.

Q. When you started collecting fine and rare wines, did you give those sources some sort of direction of what you wanted?

A. Yes. I would tell them what kind of wines I wanted, what prices I was willing to pay, and I told them to do worldwide searches for the wines and to buy every single bottle they can get of them.

Q. Were you focused on a particular kind of wine, particular vintages?

A. My passion is Burgundy, which is an area of France, which known as for the fine pinot noir grapes that it has. I also like Bordeaux. But I collected from all over the world: Spain, Italy, Germany, of course France, United States, Portugal, Hungary, just everywhere. I really would say the majority of the collection was French, being Merlot, Bordeaux, Burgundy. Those would be the biggest three. And a lot of champagne, too.

Q. The wines at issue that have been specifically discussed, the Lafleurs, Cheval blancs that we heard about the other day, those are from what particular regions of France?

A. Yes, they are from Bordeaux. They are from the right bank. There is a river called the Gironde River. If you look on a

map, it's the east part of that river.

Q. Some of the other wines we have been hearing about, like start with the Jayers, are those Bordeaux?

A. No, they are Burgundys. They were made by a deceased wine maker by the name of Henri Jayer, who was considered probably the greatest wine maker to ever live. That was the Burgundy, which is in the center of France.

Q. You will recall we saw an email a while back that referred to DRC and Dujac. Are those Bordeaux or Burgundys or something else?

A. De la Romanee Conti DRC is a Burgundy, as is Dujac. It's owned by the Seysse family, friends of mine.

Q. Going back, in addition to these various sources that you have, did you buy wine at auction prior to early 2002?

A. Millions.

Q. What major auction houses did you buy wine from?

A. The biggest one was Acker Merrall, then Zachys, Sotheby's, and Christy's. I bought from all the major auction houses. I may have bought a little bit from Chicago Wines, but I think I bought mostly from them for retail.

Q. As you got the bug --

A. And Wine Bid, the Internet auction, which I still buy from. They are a good source of California wines.

Q. As you got the bug, as you put it, how did you go about educating yourself on wine?

A. I read everything I could. I read Parker's books. Michael Broadbent books. Serena Sutcliffe's husband David Peppercorn, has a number of really nice books. And Serena herself has written a lot of very scholarly articles. I did a lot of reading.

Then I went to a lot of restaurants and would taste a lot of wines with famous sommeliers. Sommeliers are people who prepare food and wine and they know a lot about wine. I also tried to find critics, like Robert Parker, Alan Meadows, Michael Broadbent, all the major critics.

Then collectors. The most famous collector in the world is a man by the name of Bipin Desai, and I would go to all of his tastings. In fact, we would host tastings together. Then there is Wilf Jaeger. And there's tons of collectors in New York. I was the biggest buyer in the world, so I was in the community. I was invited to everything. So I was able to taste quite a bit.

Q. Mr. Greenberg, you have spoken a lot about collecting these rare wines. Did you actually drink the rare wines that you had in your collection?

A. That was the whole point. That's what got me really hooked.

Q. As of the beginning of 2002, about how many different types of these fine and rare wines would you estimate you tasted?

A. At least 1500 of them. By that I mean 1500 bottles of wine

that were considered to be 100 point wines, top wines, nearly impossible to find, and wines that would be coveted by the top collectors in the world.

Q. You keep referring to these hundred points and 99 points. What are you talking about.

A. The way the wine world works is you have critics and they rate wines. A lot of them use a 100 point scale because they are used to that from going to school. A 100 point wine is called a perfect wine. Anything over 95 points is pretty remarkable. Anything under 90 points is not really a collector's wine, but they are still good. Under 80, then you probably don't want to drink it.

What I would be doing is getting the wines that were considered perfect or near perfect from the wine critics' perspective and the collectors' perspective.

Q. Through this experience of tasting these wines and reading about them, and so forth, did you believe as of early 2002 you could actually identify fine and rare wine by tasting it?

A. Oh, yes, without question.

Q. Identify wine in what way?

A. First of all, you have the bouquet, the smell of the wine. Then you have the entry and the taste of how it enters into your mouth. Then it's how it coats your mouth. It coats your mouth. Then it is how it concentrates on your mid palate. Then there is the finish. The finish of a good wine can last

for three or four minutes where you can still taste it. Then there is the color. There is the bouquet and the fragrance that comes out of the glass. It's a very tactile thing. Then it pairs wonderfully with certain types of foods.

Q. Did you personally have the experience of tasting wines and being able to determine what type of wine?

A. Yes.

Q. Is that something called blind tasting?

A. Yes. I can pick wines blind. In other words, the wine can be hidden from me, and I can taste it and I can tell you exactly what it is. Then they would reveal and then it would be right.

Q. In attending these various tastings with experts that you spoke about, did you encounter people who were better at wine tasting?

A. Oh, yes. I'm not the best wine taster. I can tell a wine type. But there are guys I know that can go down to the vintage and the year. I can't do that. Wilf Jaeger is one. Rijaf Parr is another. Mary Stone, whom we heard the name of, Daniel Johannes. Serena Sutcliffe is very good at that, actually.

Q. Did you bring wines from your own collection to some of these tastings that you spoke about?

A. Hundreds of bottles.

Q. Including rare wines?

A. Yes. I remember one tasting. This is embarrassing actually. Yes, in the six figures in some tastings.

Q. Did you bring old wines to some of these tastings?

A. As old as 1807.

Q. Did you bring some of the types that we have seen in this case, 19th century wines, and so forth?

A. Yes. In fact, before I bought them, I was tasted on them. So I had another reason to think they were authentic. And in many cases tasted them with very famous tasters and wine critics.

Q. When you brought wines from your collection to these tastings, did people raise questions about your wines?

A. No.

Q. Did you continue to bring wines from your collection to tastings attended by experts that you mentioned through 2005?

A. Yes, all the way into 2010, where I think we tasted -- at the Acker auction in China, I think we tasted about 500 bottles of my wine there.

Q. We are going to switch to another topic here. Some time ago Mr. Hueston showed you a portion of your inventory. Do you recall that?

A. Yes. He showed me a lot of things. I have this massive --

Q. You don't have to.

A. Thank God.

Q. When was the inventory of your cellar compiled in that

form?

A. The first time was August of 2003.

Q. Just to be clear, in August of 2003, what was the form that that inventory took?

A. We had the wine in racks. We knew kind of where things were. I just kept on buying. What we did is I have a very great executive assistant. We kept detailed purchase records on every single bottle, or every invoice I should say. So we had all that. We had a list of wines that I wanted to sell, which was about 150 cases or 15,000 bottles. No, 1,500 cases. A case is 12 bottles of wine. So about 15,000 bottles that we wanted to sell, which were wines that would not last a long time, wines that I had kind of grown out of.

One of the things I learned from Serena Sutcliffe was that my collecting tastes would change. She told me this. I met her in 2000 and had lunch with her and my wife in London. She said, what you like today you won't like tomorrow. And whenever you are ready to start selling the wines you have or you want help in getting wines, we are here for you. I was a big client of Sotheby's.

Q. Just to be clear, when Ms. Sutcliffe came to your home in April 2002, did you at that point have this list of wines that you wanted to sell put together?

A. Oh, no.

Q. Did you have any sort of list of your entire collection as

of April of 2002?

A. I only had a list of the wines, those wines that I wanted to sell which were off vintages, off years, wines that I didn't like the taste of, wines that wouldn't age. Some wines are perfectly good but they are not going to last more than five years.

Q. Did you have a list of your entire collection as of August of 2002?

A. No.

Q. Did you have any sort of inventory management system in place as of April of 2002?

A. No, sir.

Q. Did you keep all of your invoices?

A. Yes.

Q. Other than that, did you have any sort of inventory management system?

A. No.

Q. You talked about these directions that you gave to various sources, everything you could, essentially. Did you get wines of the same type and vintage from multiple sources?

A. Yes.

Q. Was that the case for most of the wines in your collection?

A. Yes.

Q. Were there some wines that you had one source?

A. Yes.

Q. Was that more the exception or more the rule, that you would just have one source for a particular kind of wine, just one bottle of it?

A. Like for instance, I had a bottle of 1742 Rudesheimer, which is a German wine from Sotheby's. They are a bottle known in the world, and I bought it. I knew where that came from. Or there might be some wines from Napa Valley, where I'm friends with the owner of the vineyard like Plumpjack and friends of the Getty family. So I would have those wines.

Q. So as of April 2002, how many such wines did you have in your collection where you could say I know where I got that one?

A. 2, 3 percent.

Q. As of April 2002, before Ms. Sutcliffe came to your home, did you believe that you had counterfeit wine in your collection, wines where what was in the bottle was not what the label said it was?

A. No, I didn't.

Q. Did you have an understanding about the extent to which counterfeit wine was a problem at that point in time, April 2002?

A. I read Robert Parker's book, and he talked about counterfeits. Everybody started talking about their wines being real. I thought it could be a problem as early as 2001, when I read his book in 2002. But I thought that my suppliers were all

selling me good wine and honorable.

Q. As of April 2002, prior to the visit to Sotheby's, had anyone talked to you the techniques that experts use to authenticate wines?

A. No.

Q. Had you ever gone to the chateaus in France to see what kind of labels and bottles and corks, and so forth, they had used over the years?

A. I have never been to a wine chateau in France. I have never been to a wine region in France. There are wine chateaus I have been to in the Napa Valley or the Sonoma Valley of California.

Q. You were asked some questions about the license that you got to buy and sell wine and a tax report on that, and so forth. Let me ask you, when you got that license, did you have to show that you knew anything about authenticating wine?

A. No. They just wanted to know I wasn't a felon. I have never been arrested in my life.

Q. Approximately when did you get that license?

A. That was I think August 2001.

Q. That was in your name personally or in the name of Innovation Wines?

A. It was Innovation Wines.

Q. Mr. Hueston brought out that you were the CEO of Innovation Wines, right?

A. Basically. It's an asset I own.

Q. How many other employees of Innovation Wines are there?

A. Zero.

THE COURT: Mr. Cialone, it's about 4:30. We are going to have to break pretty soon. Is it a decent time?

MR. CIALONE: One or two more questions, your Honor, on this subject?

THE COURT: Sure.

Q. Mr. Greenberg, since getting that license, have you devoted your full time and effort to the business of buying and selling wines, since August 2001?

A. No.

Q. Have you devoted half of your time to that business?

A. No.

Q. About what percentage of your time have you devoted to the business of buying and selling wines?

A. At times up to 5 percent, but probably about 1 percent, 2 percent.

MR. CIALONE: Your Honor, now would be good.

THE COURT: Ladies and gentlemen of the jury, we are going to break for the day, for the week. Tomorrow we are not going to be holding court, so to speak. Have a great weekend.

Once again I want to remind you to keep an open mind about the case. There is quite a bit more evidence to come in. Don't do any research on the case and, again, don't discuss the

case with anyone else or with each other until you deliberate. If anyone asks you about jury duty, please just tell them that you are on a jury in a civil case in federal district court and that's it.

We'll see you all at 9:30 on Monday morning. And if you would leave the packs here on your chairs, please. Thanks very much.

(Jury not present)

THE COURT: We'll see you all at 9:30 on Monday.

MR. CIALONE: Your Honor, one housekeeping matter. We would like to find out who the next witness after Mr. Greenberg is going to be. If we could find that out on Friday, tomorrow, rather than Sunday night.

MR. HUESTON: We have made an agreement between the parties to give 24 hours' notice of the next witness. We will abide by that once we get an estimate for how much more time Mr. Greenberg is going to be on the stand.

The housekeeping item I have, your Honor, is the following. We, I thought, had an agreement that this case is about 24 bottles and there would be no mention in this trial about what is not a part of this case. They elicited just that on Mr. Greenberg's examination. I would ask, your Honor, that that not happen again. I think that is consistent with how the Court addressed the status of matters shortly before we did our opening statements.

MR. SHARTSIS: Your Honor, there is no agreement by Mr. Greenberg. As I mentioned earlier, these bottles are part of the reports, they are part of what the experts looked at. They are highly relevant to a determination of what is allegedly authentic and what's not.

We are going to be comparing these to show to the jury what the experts thought about different bottles that they looked at, that claims were made on as much as 10 days ago. You could hear, for example, Mr. Greenberg testifying that the same cork, the vertical Lafleur cork, is on a number of bottles sold at Zachys at different times. No claims have been made on those. Purchased by Mr. Koch.

THE COURT: Are you talking about the 12 bottles that are no longer part of the case?

MR. SHARTSIS: They are no longer being claimed, your Honor. They were purchased by Mr. Koch. Mr. Koch brought a lawsuit about them. We have spent huge resources evaluating those and having experts testify about them. They are clearly probative, clearly probative, of the techniques and methods used to determine.

THE COURT: The experts do talk about them, so in some sense they are going to be in there.

MR. HUESTON: No problem with that, your Honor.

THE COURT: It's just a waste of the time.

MR. HUESTON: It is not just a waste of time. We are

going to have a problem, and I thought this was what was discussed, of examining an expert on what was in his report, including what was not in the report. What is prejudicial and has nothing to do with the case of 24 bottles is to make reference that something was dropped as if that's evidence of there wasn't something counterfeit about the bottle or there wasn't some issue about the bottle.

The fact that the case has been narrowed has nothing to do with whether we thought those other bottles were counterfeit. It's called narrowing the case. Let me finish, please. So for that reason we would ask that references to what the case once was and dropping be excluded as entirely prejudicial and probative of nothing in this case.

MR. SHARTSIS: Your Honor, you sat through a day in which we must have heard about 45 pottles that are not in this case, question after question of Mr. Greenberg about bottles not in this case and not being claimed about. I think we are entitled to the same latitude.

We are under time, your Honor. We have 25 hours. Time has been taken care of. I think we are entitled to use it. And it is only counsel's statement. He hasn't told us why he withdrew those bottles. He just withdrew them. If they want to get up and explain why two bottles that are identical and one is considered fake and the other is not something that a claim is being brought, they can do that.

THE COURT: It's a fact of the case. They can see the complaint. If you put evidence together, they can figure out that 12 bottles were in the case and now aren't in the case. What is so prejudicial about references to the fact that 12 bottles have been withdrawn from the case?

MR. HUESTON: First of all, we start with a couple of things. I don't care what Mr. Greenberg refers to in terms of bottles. He can talk about whatever bottles he likes. What I don't think is fair, your Honor, is pairing that with something that has been dropped with the suggestion that the dropping of a count or a bottle means that somehow we have conceded that the bottle is not counterfeit. That is not true at all.

We believe that those bottles are counterfeit. We have narrowed this case from the beginning to just the 24 bottles. That's what it's about. I don't see how they are prejudiced at all in talking about whatever bottles they want.

They can impeach experts or have Mr. Greenberg talk about other bottles. But referencing the fact that a particular bottle was attached to a particular complaint that was dropped, I frankly find counsel's comment very telling. He wants testimony to put into play why our complaint was narrowed. That is not a part of this case at all.

THE COURT: It's not part of the case. I'm not going to do some general limiting instruction that there can't be reference. If necessary, I'll give a clarifying instruction

that the case has been narrowed and those bottles aren't in the case. Mainly for waste of time reasons, I'm not going to allow more time about the other bottles. But if there is a reference to the fact that some bottles are or aren't in the case, I think that is not --

MR. SHARTSIS: Your Honor, the pleadings are admissions. We are entitled to use them. If it's in the pleading, it's a fact pleaded by a party. That is an admission. We have a 100 percent right to raise that issue and present it to the parties because it's an admission. It's an admission. We didn't plead it, they pled it.

MR. HUESTON: Your Honor, this is no different from a narrowed indictment. You don't put on the old complaint. That's not a part of this trial.

MR. SHARTSIS: It is not an indictment. It's a civil case in which there have been facts that have been alleged, and those are admissions. We are entitled to use them.

THE COURT: I don't see the prejudice, and I also don't particularly see the probative value except for impeachment. I'm not going to do a limiting instruction. The motion is denied subject to reconsideration if I see some prejudice or if there is a waste of time on this.

MR. SHARTSIS: Thank you, your Honor.

THE COURT: Have a good weekend everybody.

(Adjourned to 9:30 a.m., April 1, 2013)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

WILLIAM I. KOCH,

Plaintiff,

v. 07 Civ. 9600 JPO

ERIC GREENBERG, et al.,

Defendants.

----------x

New York, N.Y.
April 1, 2013
9:50 a.m.

Before:

HON. J. PAUL OETKEN,

District Judge
and a jury

APPEARANCES

MORVILLO ABRAMOWITZ GRAND IASON ANELLO
Attorneys for plaintiff
BY: EDWARD M. SPIRO,
- and -
IRELL & MANELLA, LLP
BY: JOHN CHARLES HUESTON, Esq
MOEZ KABA, Esq.
MARSHALL CAMP, Esq.
BRUCE A. WESSEL, Esq.
Of counsel

DLA PIPER, LLP
Attorneys for defendants
BY: ANTHONY PAUL COLES, Esq.
- and -
SHARTSIS FRIESE, LLP
BY: ARTHUR J. SHARTSIS, Esq.
TRACY SALISBURY, Esq.
FRANK ALBERT CIALONE, Esq.
Of counsel

Also Present:
JASON WIETHOLTER, Trial Tehnician
ELIZABETH S. SEABROOK, Paralegal

(Trial resumed; jury not present)

THE COURT: Good morning everyone. I received two letters from counsel for the parties yesterday. Counsel for Mr. Koch asks for an instruction regarding Mr. Greenberg's statement on the stand during cross-examination that, quote, your firm has been found by courts to have destroyed data to falsify data in this case, which is false. I am going to grant the request for an instruction that the jury should disregard that testimony and that plaintiff's firm has not been found to have destroyed evidence in this case.

There is also a request relating to other litigation. It's a little bit unclear from motion in limine number 4. Essentially, I think the parties agreed that the defendant was not going to use certain evidence of other litigations, so we didn't get into exactly the precise contours of what could be and could not be referenced. I'm not going to grant a limiting instruction at this point, because I think it was just a gentle reference.

If there is other evidence or arguments that I believe is for the purpose of arguing or presenting evidence on the position that Mr. Koch is litigious, I'm going to grant a limiting instruction that the jury may not consider that fact. It's not relevant, it's prejudicial.

Any other preliminary matters?

MR. SHARTSIS: Yes, your Honor. Your Honor, I wanted

to be sure we understood the process with the jury, because we will have to raise an issue. I understand that all eight jurors will be seated for deliberation. Is that correct?

THE COURT: Yes.

MR. SHARTSIS: I raise that because one of these jurors seems to be sleeping quite a bit, and that would matter if we weren't going to do that.

THE COURT: It is a fair question. We could go down to six, for example, if one of the jurors condition show up or got sick, we could go down to six. If it's a situation where we think the juror is really not participating, we could consider excluding the juror.

MR. SHARTSIS: If we are going to seat eight, it's not a problem. If you're only going to seat six, that is, if you would dismiss the last two or the last one, then it would be a problem. So for seating eight there is no problem.

THE COURT: OK. Anything else?

Please bring in the jury.

(Continued on next page)

(Jury present)

THE COURT: Good morning, ladies and gentlemen. I hope you had a good long weekend and that you are refreshed. You look refreshed. We will be continuing today with the testimony. As you know, defendant, Mr. Greenberg, is on the stand and we will be continuing with his examination by counsel for Mr. Greenberg.

One preliminary matter. There was a reference on Thursday, which was the last day we were in court. Defendant, testifying, stated words to the effect of, during cross-examination, "Your firm has been found by courts to have destroyed data, to falsify data in this case." I am instructing you to disregard that testimony. Put it out of your minds. The firm representing Mr. Koch has not been found to have destroyed or falsified data in this case.

We will continue with the testimony. Mr. Greenberg, you may come up to the stand.

ERIC GREENBERG, resumed

THE COURT: Mr. Greenberg, you are still under oath. You were sworn last week.

Mr. Cialone, you may proceed.

CROSS-EXAMINATION (continued)

BY MR. CIALONE:

Q. Good morning, Mr. Greenberg.

A. Good morning.

Q. I'd like to start by talking about Ms. Sutcliffe. When did you first meet Serena Sutcliffe?

A. It was June of 2000.

Q. Where were you?

A. I was in London with my wife. She invited us to lunch.

Q. During that lunch did you discuss wine collecting with Ms. Sutcliffe?

A. Yes. I was a big buyer from Sotheby's, and she offered to help me build my collection. She told me my tastes would change, and that whenever I wanted to sell wine, that she should be the one that would do it for me.

Q. In early 2002 did you decide to sell some of your wines?

A. That was something I was considering, yes.

Q. Why?

A. Two reasons. I had too many. The second was Ms. Sutcliffe was correct, my tastes had changed and there were a lot of wines that I no longer wanted to have in my collection or collect any longer.

Q. Did you continue buying wine after 2002?

A. Heavily.

Q. Why would you continue buying if you were also selling?

A. It's something called culling a collection. What that means is as your tastes change and you're refining what you are collecting. As I understood more about what investment grade wine was, I wanted to focus on the things that would store (a)

a long time, (b) I would want to have for a long time, and third, were more of an investment grade type. It was a good investment.

Q. In April of 2002 Ms. Sutcliffe came to your home, correct?

A. Yes.

Q. Who else was there?

A. Jaime Ritchie and Robert Sleigh from Sotheby's.

Q. Who is Robert Sleigh?

A. Robert Sleigh, I believe now he runs Asia for them, but at the time he was a specialist.

Q. Did you give these three folks a tour of the wine cellar?

A. Yes.

Q. Let me ask, when did you build that wine cellar?

A. Starting in 2000 and into 2001.

Q. What was the purpose of the wine cellar?

A. Wine, like this, is stored, needs to be stored at a constant temperature, and the lower the temperature is, the longer the wine keeps. You want it to be free of vibration, free of light, and at a certain humidity. If it is not at a certain humidity, the corks will dry out and the wine would evaporate. If you have a humidity over 70 percent, the labels become moldy and get ruined. So we kept our wine cellar at 47 degrees and 70 percent humidity.

Q. Who did you take on the cellar tour?

A. The three Sotheby's people.

Q. Was anyone else with you?

A. No.

Q. Was Jaime Cortes with you?

A. Not in the cellar. He was in the house doing his normal household management duties.

Q. What did Ms. Sutcliffe and her colleagues say to you about your wine collection?

A. It was the best they had ever seen.

Q. You testified last week about one wine they said was counterfeit, a 1900 Margaux. How did it come about that they identified that to you as counterfeit?

A. They didn't actually identify it. I asked them. During the year around 2000, one of the big things for wine collectors was to drink wines from 1900. There was a rerelease of 1900 Margaux, which was a very famous wine from a negociant. A negociant is a third party that sells wine between the wine producer and the consumer, called Barton & Guestier. They released 1900 Margaux.

I was wondering what she thought of those bottles because I had bought a number of them from a sources. They are supposed to be quite rare, they are very expensive, and so I showed to it her. I asked her tell me about this wine, I'm curious about it, because I have a lot of it.

She said that she was involved in a European Union case where there were people that didn't believe that the wine

was authentic and that she in her own mind didn't believe it was fully authentic, even though it tasted good. She also pointed out that the labels, despite being nice quality, where also photocopied.

Q. After she identified that one, did you have a further discussion about the issue of counterfeit wines?

A. Yes. I said, you told me about Royal and there is this bottle, so is this a big problem? She said no, no, no, no, this is something that happens to every major collector, it's in every major collection, it's something we deal with every day.

Q. Then did you ask them anything further about the subject?

A. Yes. I said, how can I figure out if I have wines that are problematic? She said, we can figure that out for you, but on a cursory glance, why don't you show me where your 1961 wines are and we'll take a quick spot check for you.

Q. Did they do that spot checks?

A. Yes, they did.

Q. What wines did they look at?

A. Two wines, 61 Latour, which I had about 130 bottles of the at the time. 61 Latour is rated by Robert Parker as 100 points, being perfect, one of the greatest wines of all time, and a 61 La Mission Haut Brion. I believe in my deposition I said 1959 but it was really 1961 upon reviewing my records. I had about 80 to 100 bottles of that. So they looked at those

200 or so bottles.

Q. How many did they identify as being problematic?

A. One of each.

Q. What did you do with the bottles?

A. I immediately opened them up at lunch. I wanted to taste them. When we opened them, the corks had the dates scratched off of them, and they also had photocopied labels.

Q. Did you taste the wines?

A. Yes, we did.

Q. What did you taste?

A. I don't know what was in there, but it wasn't wine.

Q. You testified about something Ms. Sutcliffe said about Royal. Let me ask you some questions about Royal. First, what did you tell her?

A. She told me that she believed that they trafficked in problematic wines at times.

Q. How did Royal actually come up in the discussion? Did she bring it up?

A. She asked who my source is, so I told her about 20 of them. Then she focused in on that source, and in a very hushed tone asked me to the no tell anybody else that she ever said anything, but you really need to be careful, because any wine that you have from them could potentially be problematic, I'm not saying it is, but it could be potentially problematic.

Q. When did you start buying wine from Royal?

A. Around 2,000, right in the beginning of 2000, maybe before I got married.

Q. Do you know where Royal is?

A. They are here in New York City.

Q. How were you introduced to them?

A. There is a very famous wine collect by the name of Wilfred Jaeger, Wilfred Jaeger. He was big in 19th century wines, wines from the 1800s, and other rare wines. I said, boy these are great, how do I get these? He told me of two vendors that he used to get these wines from.

Q. Who were the two?

A. Royal Wine Merchants and Wine Library.

Q. Did you start buying the wines?

A. Yes, I did, based on his recommendation and his positive experience and the fact that I tasted wines with him and many other people that were tremendous.

Q. Do you know how much wine you bought from Royal?

A. From this case, yes. I think it's something like $2.2 million.

Q. How big a portion of your collection was that?

A. Bottles, less than 5 percent. Dollars, 5 percent.

Q. Let's turn back to Ms. Sutcliffe. Before she left your home, did she say that Sotheby's was interested in auctioning your wines?

A. Yes. In fact, she wanted to do more than one auction. She

wanted to be the curator of my wine collection.

Q. After that discussion, what did you believe about the quality of your collection?

A. I was pretty blown away. When somebody like Serena Sutcliffe says this is the best thing I've seen and I've been doing this forever, and she had been doing it forever, and her husband is a famous wine critic, too, I didn't realize that I had done as good a job as I did.

Q. Mr. Greenberg, we heard Jaime Ritchie last week. He said that during that visit you told him that if you had counterfeit wines, you could always sell them to Acker Merrall because John Kapon would take them. Did you say that to Mr. Ritchie?

A. No, sir.

Q. Did you say it to anyone?

A. No, sir.

Q. As of April 2002 had you actually bought wine at auctions run by Acker Merrall?

A. Yes. I think it was something like a million dollars worth.

Q. Did you continue to buy wine from Acker after that?

A. Yes, to this day.

Q. Did you believe that Acker was willing to sell counterfeits?

A. No, not at all.

Q. We have also heard that you sold a lot of wine to Acker

Merrall in recent years, right?

A. Yes, I have.

Q. You did two single-owner auctions with them?

A. One in 2007 and one in 2010, and then some sales after that subsequently.

Q. In preparing for those auctions, did Acker Merrall reject some of your wines?

A. Yes, they did.

Q. Did they tell you that some of them might not be authentic?

A. Yes.

Q. Did they know that you had bought wine from Royal?

A. Oh, yes.

Q. Did they know about your dispute with Royal?

A. Yes.

Q. Did they know that you had bought wines from Rudy Kurniawan?

A. Yes, they did.

Q. Did they know that you believed that some of the wines that Mr. Kurniawan sold you were counterfeit?

A. Yes, in fact, they facilitated a return.

Q. Did they put any of that information in any of their catalogs for any of the auctions that you did?

A. No, sir.

Q. Do you recall how they described your wine collection in the catalog from the 2007 auction?

A. Mr. Kapon called it the greatest wine collection he had ever been exposed to in his entire professional career.

Q. Do you recall how they described your wine collection in the catalog for the 2010 auction?

A. I forget the exact words, but it was to the effect of in Mr. Kapon's 15 years in the wine business, it was the greatest collection that he had seen in his career, period.

Q. Let me take you back to 2002. If we can put Exhibit 1008 up, please.

A. Mr. Cialone, I forgot my glasses over there. Could you be kind enough to have somebody bring them to me?

Q. Sure.

A. It's one of the hazards of being 48 years old. Thanks.

Q. Is this a letter that Ms. Sutcliffe sent to you after she left your home?

A. Yes, it is.

Q. Take a look at the second paragraph, please. Do you see what Ms. Sutcliffe says there, what she says in that paragraph?

A. Yes, sir.

Q. Is that consistent with what they told you when they were at your house?

A. Yes, sir.

Q. It says, "I can honestly say that it is one of the greatest collections I have ever seen." Is that consistent with what they told you when they were at your house?

A. Yes, sir.

Q. It ends with "the collection is breathtaking."

A. Yes, sir.

Q. Did Sotheby's provide you with a formal proposal to sell your wine?

A. Yes.

MR. CIALONE: If you could put up Exhibit 1070, please.

Q. Is this the proposal that they sent to you?

A. This is the contents. It actually came in a big box, and it was a hardcover presentation, and it was professionally bound and put together. It was an amazingly impressive thing.

Q. Was this proposal for a single-owner sale?

A. Single-owner sale, Eric Greenberg collection. Her goal was to basically, to use her words, really build my prominence in the world of wine collecting.

Q. Let's take a look at page 3, please. This page is titled "Appreciation of the Eric Greenberg Collection." What did you understand this to be?

A. Ms. Sutcliffe told me that she was going to write an introduction that would be in the front of the catalog, and this was a draft of that.

Q. Could we take a look at the first paragraph, please. It starts with, "Just occasionally in one's life, an extraordinary wine cellar comes to market. The Eric Greenberg Collection is

such a cellar." It goes on in that paragraph, "It is my kind of cellar without doubt because it is a true connoisseur's cellar." Was that consistent with what Ms. Sutcliffe and her colleagues were telling you?

A. Yes.

Q. Did Sotheby's ever tell you that in order to do an auction of your wines, you would have to disclose that you had counterfeit wines in your collection?

A. No. She told me it was very common and not a big deal and it was a very small part of my collection.

Q. Did she tell you that she needed to disclose that you bought wines from Royal?

A. No.

Q. Did you ultimately agree to have Sotheby's auction wines?

A. No, sir.

Q. Why not?

A. They had an onerous one-sided contract that wasn't fair, and then they didn't put into their contract all the representations and all of the things that they were supposed to do to market the wine, in their consignment agreement. They ignored the commitments they made to me in the proposal and putting that into the contract.

Q. Let's take a look at Exhibit 296, please. Is this an email that you sent to Sotheby's after receiving the proposed contract?

A. Yes, sir.

Q. The underlining is not yours, correct?

A. No, sir.

Q. Looking at the phrase in the middle, it says, "It does not contain all of the agreements we made." What did you mean by that?

A. That was supposed to have marketing promotion dollars, advertising, deal with labor costs, deal with how the wines were going to be treated, and other things like that. None of that was in their consignment agreement.

Q. Let's take a look at the consignment agreement. This is Exhibit 293. Mr. Ritchie testified the other day this was Ms. Sutcliffe's handwriting. Did you talk to Ms. Sutcliffe to convey your concerns about the contract?

A. After I sent the email, Ms. Sutcliffe did call me at my home.

Q. Do the handwritten notes here reflect comments that you gave to her?

A. I think they are pretty accurate.

Q. Let's look at page 2, please, section 3. The second paragraph of section 3, reads, "Neither Aulden Cellars." What is Aulden Cellars?

A. By New York law you can't just be an auction house and auction wine, you have to have a retail partner. So Aulden Cellars was Sotheby's retail partner.

Q. Looking at that paragraph, "Neither Aulden Cellars nor Sotheby's has any obligation to enforce payment by any purchaser," was this provision of concern to you?

A. Very much so.

Q. Why?

A. If somebody bought $2 million of a $5 million consignment and said they weren't going to pay, then they had in obligation to collect the money. They basically could have burned away the value of the asset, and there was nothing I could do about it.

Q. Let's take a look at the next page, please. Looking at section 5, did the provisions of this paragraph cause you concern?

A. Yes, it did.

Q. We have had some testimony about this section. I'm going to ask you about, since it's so long, some of the individual clauses within it. Do you see about six lines down it says that you provided Aulden Cellars and Sotheby's with any information you have concerning the provenance of property. Was that something that caused you concern?

A. What you are not showing is her notes on the left. I couldn't. I only knew in general where I purchased wines, but I didn't know the chain of history from when the wine was on the vine. See, like here it says, "does not know all origins." I could have never warranted that, and I told them that. If I

had signed that, I wouldn't have been signing something I would truthfully commit to.

MR. CIALONE: Can you highlight "does not know all origins." It's in handwriting on the left.

Q. The next note is in the phrase that says that you have no reason to believe that any lot of property is not authentic or is counterfeit. What did you want to insert there?

A. "Reasonable." The word "reason" can mean rumor. So, if there is somebody who is not even a wine person and has rumor, that can be construed by somebody litigious to mean that I violated that provision, and I couldn't do that. I just wanted to be reasonable. I stand behind my wine. I always have and I always will. I just wanted to make sure that I wasn't setting myself up for a frivolous lawsuit.

Q. Further down, in section 5, there is some other warranty language highlighted -- if we can highlight that, please -- underlined by Ms. Sutcliffe, and then there are some notes on the side, that are declarations that the export and import of the property have been properly made and that the duties and taxes on the export and import of the property have been paid, that you have paid and will pay any and all taxes and/or duties that may be due on the net sale proceeds. Did that bother you, sir?

A. Yes. I did not know the history of the wine back to the grape, so there was no way I could have made the guarantee that

someone else had paid all the taxes, and I couldn't take responsibility for something I had no knowledge of.

Q. Let's take a look at the next page, please. It's section 7, the limited liability paragraph there. Did that provision cause you some concern?

A. Yes, sir.

Q. Why?

A. There is something here called presale estimates. I don't know if you want to highlight that.

Q. If you can explain it, please.

A. What happens is when you take a wine -- let's say something is worth $10. You will estimate it to be worth 7 to $10. Let's assume this is a bottle of wine. Then there is a reserve price, which is 20 percent below that. So effectively the reserve price is 50 to 60 percent of the value of this bottle of wine that's $10, so really it's $5.

If they lost the wine or they ruined the wine, they wanted to use presale estimates, which might be 60, 70, 75 percent of the $10 and give me that if they lose the wine versus replacement value, which is what the wine is worth. So instead of getting $10 back, I get $7 back.

I just said, you know what, why don't you insure it for replacement value, because that's fair.

Q. Can we take a look at the next page, please, section 10, private sales. Was that a provision that caused you concern?

A. Yes, because what this said is that for six days following the auction if something doesn't sell, they have the right to sell this $10 bottle of wine for $6 to whoever they want, and there was nothing I can do about it. That's also what I meant in my email when I said it gave them too broad rights over my property. What I wanted to have was my wine back, because I don't believe in giving away a $6 bill for $10.

Q. Take a look at the next page, please, section 12, the second paragraph. "Neither Aulden Cellars nor Sotheby's will be liable for any errors or omissions in catalog or other descriptions of the property and make no guarantees, representations," etc. Was that a provision that caused you some concern?

A. Specifically the words being liable for errors and emissions in the catalog or other descriptions. I'm being sued today for things that are in the catalog that I didn't write. They are saying they are not to be liable for any errors or omissions, which in fact means that I would be liable for it. That's just not fair. Just in the guise of fairness, how can you say that we're going to do this job for you but, by the way, we're not responsible for our mistakes, you are? So I couldn't live with that, I'm sorry.

Q. I want to turn your attention back to April of 2002. You have testified that after Ms. Sutcliffe left your home, you did some examination of some of the wines in your cellar.

MR. CIALONE: If you can put up the time line graphic, please.

A. If you can give me one second to have a drink of water, sir.

Q. Sure.

A. Thank you, Mr. Cialone.

Q. It says there, number 1, "Greenberg creates spreadsheet based on Royal Wine invoices." Was that in fact the first step of your work?

A. Yes.

Q. What was in that spreadsheet?

A. My assistant, she took the invoices and purchases of what I had bought from Royal and listed them for me so I could see exactly what was there. She kept all my receipts.

Q. Did that spreadsheet show you the individual bottles that you bought from Royal or just the fact that they were bought?

A. No, it was down to the invoice and bottle. But it didn't show you which bottle was in the cellar where. Go ahead, I'm sorry.

Q. For example, we have seen some 1928 Latour bottles in this case. How many 1928 Latour bottles did you own?

A. At one time 30.

Q. How many of those did you buy from Royal?

A. Only 3.

Q. Did this spreadsheet show you that you bought three of

those from Royal or did it show you which 3 bottles?

A. Just that I bought 3.

Q. What did you do once you had that spreadsheet created?

A. I went to my cellar, assisted as, we had talked about, by the food and wine experts, Mr. Lovato and Dombrowski. I wrote down notes on just a pad of paper. Then from there I went to my office and typed this up in Microsoft Word just to reflect the observations we made.

Q. How did you decide what bottles to look at?

A. If it was on the spreadsheet, if we had purchased it from Royal, then we looked at those bottles. Not all of them, but we looked at a cross-sampling of bottles we bought from Royal.

Q. What was your focus in that process with the bottles?

A. A lot of the old or rare, what people have called trophy wines in this trial. Not all of them. There was too many, but we looked at a lot.

Q. For example, we talked about the 1928 Latours. You said you owned something like 30 of them, you bought 3 from Royal. Did you look at just those 3 or did you look at all of them?

A. We looked at all of them.

MR. CIALONE: If we could put Exhibit 107 up, please.

Q. These are the notes that we saw last week, the Royal Wine fake summary notes.

MR. CIALONE: If we can below blow up the section, please, above number 1.

Q. How did you actually go about inspecting the bottles, Mr. Greenberg?

A. Looking at corks.

Q. How did you go about looking at corks?

A. We would peel off the capsules, which is that foil or metal thing on the top of the bottle. Like if you see those bottles over there.

Q. For example, is the capsule this, the red thing?

A. Yes, it is.

Q. Then what did you do to look at the cork?

A. You take high-intensity lights. We would get these lights from Home Depot that were really big, that was a million candles in strength, literally. We bought ten of them because they run out of energy pretty quickly. You would shine that in. Clean off the glass, you would shine it in. Then I'd be looking. Then Mr. Dombrowski and Mr. Lovato would be looking with me and we would try to see what it would say. Then what we would do is if we saw something that we believed looked good, we compared it to others.

Q. What were you looking for on the corks?

A. To see that they had dates on them primarily.

Q. If the cork looked right to you, what did you do with the bottle?

A. We put it back in stock.

Q. Did you make any notes on the bottles that looked OK?

A. No, we didn't.

Q. If the cork did not look right to you, what did you do?

A. We segregated it. We did that by turning around the rock and putting it in a special section of the cellar.

Q. Why was the first thing you looked at on the corks?

A. I believed that that was the truest indication of what was in the bottle. What got me there was when we opened up the 61 Latour and the 61 La Mission Haut Brion with Ms. Sutcliffe and Mr. Ritchie and Mr. Sleigh at my office, I was still incredulous. I didn't really believe that people had sold me fake wine. When I opened it up and the corks, the dates were scratched off, I asked them if that was something that was typical. They said this is the number one trick of counter-feiters.

MR. CIALONE: Looking at the first page, if we can blow up the middle paragraph, the last two sentences of the middle paragraph. Thank you.

Q. You mentioned sommeliers here. Is that Mr. Dombrowski and Mr. Lovato?

A. Yes, sir.

Q. You also mentioned that you spoke to the domain. Did you contact someone at the domain?

A. Thierry Lovato contacted Domaine Coche-Dury because he speaks fluent French.

Q. Did you contact at least one importer?

A. Yes.

Q. It also says outside experts. Did any outside experts comment on any of the wines described in the Royal Wine fake summary notes.

A. Yes, Mr. Edgerton.

Q. Let's take a look at page 7, please. Mr. Edgerton came later, right?

A. Yes.

Q. Let's look at items 55 and 56. The 1961 Latour bottle, is that the one that Ms. Sutcliffe told you about?

A. Yes.

Q. Then number 56, paragraph e, is that the other one that Ms. Sutcliffe told you about?

A. Yes. The cork had the last number scratched off. The first one, when we opened it up, they took the cork and said look how it has fake earmarkings. They were showing me and saying, look, this is what it is. That's what they taught me.

Q. On number c, or letter c, it refers to a photocopy label.

A. It's a letter in Roman.

Q. How did you determine that the label is photocopied?

A. If you take a dollar bill and you photocopied that off and you saw the difference between a true United States dollar bill and what you get out of the machine, it was that bad.

Q. Mr. Greenberg, did you know that all of the wines described in this document were bottles that you actually bought from

Royal?

A. No, sir.

Q. Why is it called the Royal Wine fake summary notes?

A. Serena Sutcliffe basically told me that Royal was my problem. She didn't let me know that there were other purveyors of bad wines; I had to find that on my own subsequently. But at the time I did this, it was my belief that if I had a problem with wine, it was originating at Royal, based on what she told me.

MR. CIALONE: If we could take a look at page 5. If we go down to item 42.

Q. You told me you bought three 1928 Latour bottles from Royal. One is described there, correct?

A. Yes, sir.

Q. If we go to the next page, there is actually how many 1928 Latours described on this page?

A. One, two, three, four, five, six.

Q. You bought three 1928 Latours from Royal?

A. Yes, sir.

Q. You described seven of them as counterfeit on the Royal Wine fake summary notes?

A. Yes, sir.

Q. Are there wines on the Royal Wine fake summary notes that you later learned were in fact authentic?

A. Yes.

Q. How did that come about?

A. When we did this at first, we didn't know too much except for what we saw. We focused mostly on corks. So yes.

Q. Then how did you learn that your conclusion was inaccurate?

A. For instance, when Mr. Lovato called Coche Domaine Dury, which is a producer of white wine -- they started producing wines commercially in 1978 -- Mr. Coche-Dury was a poor farmer. He explained to Thierry that he used no less than 3 different cork types on his 1978 vintage because he had no money to buy a consistent cork.

So there were two entries on there, 1978 Meursault Perrier and Meursault Charmes. There was another one, the last one on the sheet, 1928 Echezeaux. It was actually what a reconditioned 1928 Echezeaux should look at like. That is not a wine that people counterfeit anyway, because it's not a high enough value. There could have been others, but those are three examples.

(Continued on next page)

BY MR. CIALONE:

Q. So you had your assistant prepare a spreadsheet, correct?

A. Yes, sir.

Q. Then you did these notes, correct?

A. Yes, sir.

Q. What was the next step?

A. Then what we did is we took the wines that were on the Greenberg Fake Wine Summary Notes and we put them onto the spreadsheet, and, you know, we put those on the spreadsheet. And after that we did a few other things.

MR. CIALONE: And if you would just show Mr. Greenberg and the court Exhibit 62.

THE WITNESS: I think I'm reacting to the grapefruit juice I drank this morning. It was a little acidic.

Q. Mr. Greenberg, do you have Exhibit 62 in front of you?

A. Yes, sir.

Q. And is that -- what is that document?

A. This is the -- this is the spreadsheet that you had referred to.

Q. With the Fake Wine column filled in, correct?

A. Partially filled in, yes.

MR. CIALONE: And I'd like to move Exhibit 62 into evidence. I don't believe it has been moved in yet.

THE COURT: Any objection?

MR. KABA: No, your Honor.

THE COURT: 62 is received.

(Trial Exhibit 62 received in evidence)

MR. CIALONE: And Liz, if you would show Mr. Greenberg and the court the color-coded version of this document.

Q. Mr. Greenberg, do you see this color-coded version?

A. Yes.

Q. Is this something that you've reviewed before?

A. Yes.

Q. As far as you know, is it accurate?

A. Yes.

MR. CIALONE: Your Honor, I'd like to display this to the jury and actually move it into evidence, as Exhibit 62A.

THE COURT: This is just the highlighted version?

MR. CIALONE: Yes, and we're going to explain what the highlights mean.

THE COURT: Okay. Is that okay?

MR. HUESTON: No objection.

THE COURT: Okay. 62A is received.

(Trial Exhibit 62A received in evidence)

MR. CIALONE: Can you blow it up, please, a little bit so we can see the colors a little better.

Thank you.

Q. Now, Mr. Greenberg, you see on the middle of the page there's some items marked in orange?

A. Yes, sir.

Q. What do the orange mean?

A. Those are wines that came out of the Royal Fake Wine Summary Notes that we had observed with our own eyes as being problematic.

Q. Okay. And you see on the bottom there's a green cell there?

A. Yes, sir.

Q. What does the green mean?

A. Those wines that we didn't have the time or didn't inspect and I thought, based on those wines, there was a likelihood it could be fake but I had no empirical experience in reviewing it.

Q. And then what does the color blue indicate?

MR. HUESTON: I'm just going to ask for some foundation as to when this was colored, for purpose of trial or -- some foundation, please.

BY MR. CIALONE:

Q. Mr. Greenberg, was this prepared for the purpose of trial or was this prepared sometime earlier?

A. It was prepared earlier.

THE COURT: And just to be clear, when you said orange, I'm trying to make sure it's clear to the jury which is orange and which is yellow. Is it just the one that's orange?

MR. CIALONE: Yes, it's just that one thick one in the middle.

THE COURT: Okay.

MR. HUESTON: Your Honor, again, you know, I had said I had no objection. I had assumed it would be explained. I thought this was a demonstrative prepared by counsel for trial. If it's something different, then I'm going to object unless we get a foundation as to who highlighted it and when.

MR. CIALONE: It actually is a demonstrative prepared by counsel for trial.

MR. HUESTON: Okay. Thank you.

MR. CIALONE: Yeah. Thank you.

(Discussion off the record)

MR. CIALONE: Right. To be clear, the coloring, the highlighting was prepared by counsel. The document, of course, is the spreadsheet that we've all seen.

BY MR. CIALONE:

Q. Finally, Mr. Greenberg, what is -- well, before say finally, what does the blue indicate?

A. The blue indicates that I had no idea about the wines but based on what they were, there's a possibility that they could be wrong, and that was the wine that I wanted the insurance companies to inspect for me.

Q. What does the yellow indicate?

A. That there was no problems with the wine whatsoever and we believed it to be real.

Q. Now did -- the items in yellow, are those wines that you

looked at or wines that you didn't look at or a mix or what?

A. We looked at a lot of those wines.

Q. Okay. Does it include some old and rare wines that were in the category that you wanted to look at?

A. Yes, it includes a lot of old and rare and trophy wines.

Q. Does it include wines of types that are at issue in this lawsuit?

A. Yes, sir.

Q. And just looking at the first page about midway down, do you see there's a '21 Cheval Blanc magnum? Do you see that?

A. Yes.

Q. There's three of them?

A. Yes.

Q. And that one's yellow, right?

A. Yes.

Q. Are those wines you would have looked at?

A. I did look at them.

Q. And are there other '21 Cheval Blanc magnums in yellow on this document?

A. On this page? No. I think there's one other on the document. I had a few sources of that, I believe.

Q. Okay. Let's go to the next page. And about a few lines down, do you see there's another '21 Cheval Blanc magnum?

A. Yes, sir.

Q. Also in yellow, correct?

A. Yes, we looked at that.

Q. Okay. And then about a third of the way down --

MR. CIALONE: If you just blow up the whole page, it would be easier to see.

Q. About a third of the way down there's some 1945 Lafleur magnums. Do you see those?

A. Yes, sir.

Q. And there are other wines, again, of the types at issue in this case that are here in yellow, correct, on this document?

A. Yes, sir.

Q. So Mr. Greenberg, on the first page of this spreadsheet, there's a statement in the right-hand column that says: "Were fakes refunded." What does that refer to?

A. I received a shipment of '50 Petrus that had tattered labels and an overall bad appearance and so I asked the gentlemen at Royal if they would take a return on those and they said yes. That was on 3/14.

Q. And on the second page, again, the statement, "Fake Wines, Were fakes refunded appears," correct?

A. Yes.

Q. Or, "fakes returned," actually?

A. Yes.

Q. Why is that referenced? Why is that there? Is that a similar issue?

A. Those are the wines.

Q. Okay. Why is it in there twice?

A. Well, because one was the purchase invoice and one was a credit invoice, and when I filled this out, this is way after March 14th, and so I just made the allegation that I believed they were fake because I returned them for having tattered labels.

Q. So the invoice for the fakes returned was January 31, correct?

A. Yes.

Q. Did you continue buying wines from Royal after you received those 1950 Petruses?

A. Yes.

Q. Mr. Greenberg, I'd like to turn to the wines actually at issue today. Can you see me over here, sir?

A. Yes. I was just trying to move this off so -- it's kind of distracting. There we go.

Q. This is a 1945 Lafite magnum. Did you buy any 1945 Lafite magnums from Royal?

A. Not a single bottle.

Q. So are any of these described in the Royal Wine Fake Summary Notes?

A. No, sir, they wouldn't be, because I bought not one bottle of 1945 Lafite Rothschild magnums from Royal Wine Merchants.

Q. Did any of them appear on the fake wine spreadsheet that we've been looking at?

A. No.

Q. The next two bottles we have are 1949 Chateau Lafleur magnums. Did you buy any of these from Royal?

A. No, sir, not one bottle of 1949 Lafleur magnum was bought from Royal Wine Merchants.

Q. So they would not be described in either of these two documents we just looked at, correct?

A. No, sir.

Q. The next two bottles we have are 1921 Lafleur magnums. Did you buy any of these from Royal?

A. No, sir.

Q. Did you -- and by "any of these," I don't mean these specific bottles. I mean any 1921 Lafleur magnums in your collection?

A. Not one 1924 *[sic]* magnum in my collection or in this case would have been bought from Royal Wine Merchants.

Q. I'm sorry. 1921?

A. I said 1921.

Q. Okay. Thank you. So these would not appear on the two documents we just looked at, correct?

A. No, sir. There's no -- none there.

Q. Next two bottles I have are 1921 Cheval Blanc magnums. Do you recall we looked at some of those on the spreadsheet, right?

A. Yes, sir.

Q. Did you identify -- you bought some from Royal, correct?

A. Yes, four. You showed me four.

Q. Did you identify any of them today?

A. No. I thought they were real.

Q. Did you have other sources for 1921 Cheval Blanc magnums besides Royal?

A. Yes, I did.

Q. Next we have 1945 Lafleur magnum. Did you buy some of these from Royal?

A. Yes, I did.

Q. Did you identify any of them as counterfeit on the fake wine spreadsheet?

A. Yes.

Q. You did?

A. No. No. I'm sorry. I'm confused.

Q. Do you want to take a look?

A. No. I'm contused. I'm confused. I did not. Sorry.

Q. Okay. Are they described on the Royal Wine Fake Summary Notes?

A. No, they're not.

Q. And there are in fact three of them here at issue, correct?

A. Yes.

Q. And none of those bottles -- or any of those bottles would be on the Royal Wine Fake Summary Notes?

A. No, because we thought they were real.

Q. Did you have other sources for those wines besides Royal?

A. Yes. I believe I had three sources and -- of that wine.

Q. Mr. Greenberg, we have another 14 bottles that are at issue. Give me one second.

MR. CIALONE: This one is not at issue. We can take that out. Thank you.

Q. We have another 14 bottles here that are at issue. Are any of these wines described in the Royal Wine Fake Summary Notes?

A. No.

Q. And how do you know?

A. Because I thought they were real.

Q. Mr. Greenberg, I'm holding here a magnum of 1950 Lafleur. It's been identified as Exhibit 210. It's bottle number 60054.

Can you see this graphic that we put up here?

A. Yes.

Q. Looking on the right-hand side, does that show the three 1950 Lafleur magnums that you had identified as fake on the Royal Wine Fake Summary Notes?

A. Yes. This is the one I got confused with the '45, and that's what threw me for a loop earlier. Yes. This -- I wrote this.

Q. Okay. Looking at the first one, what's it say about the cork?

A. The first one says there's a new cork, which means there's no stains on it, and it looks like it's a brand new cork you'd

find from a bottle of wine you'd buy from let's say your Safeway or grocery store. And then secondly, it has no visible date on the cork.

Q. Okay. And then what does the second one say about the cork?

A. That it was a new cork that had the date scraped off of it. So in other words, somebody would have taken -- if this is a cork, they had taken a knife and scraped it off.

Q. And then what does the third one say?

A. That it was a new cork capsule that was protruding, which means the cork was popping out of the bottle, and I couldn't read the cork except for the date, which wasn't like the rest of the Lafleur bottles that I had. I mean, this was a complete outlier. It looked completely different from any other bottle.

Q. Okay. I want to show you on the left-hand side what Mr. Koch's expert said about this bottle, number 60054. He says, "The branding can easily be read, together with the vintage."

Is this one of the 1950 Lafleur magnums, Mr. Greenberg, that you described in the Royal Wine Fake Summary Notes?

A. No, it isn't. And it isn't because I couldn't read the branding with the vintage on any of those bottles. It couldn't be the same bottle.

Q. Let me look at the next bottle. This is another 1950

Lafleur magnum, Exhibit 211, bottle number 60055. Let me tell you what Mr. Egan said about this bottle. "The branding can easily be read, together with the vintage. It is slightly damaged on one side."

Is this one of the three 1950 Lafleur magnums that you identified in the Royal Wine Fake Summary Notes?

A. No. Can I -- can I see my -- the other side so I can make that comparison?

Q. Sure.

A. Thank you. Basically what Mr. Egan had observed is that the cork was easily read and looked okay, and on mine there was no visible date on the cork, the date was scraped off, there was a protruding cork, so if you look at that bottle, the cork's not sticking out of the bottle and -- and the cork could be read, and so can't be the same bottles.

Q. Moving to the next one, Exhibit 212, bottle number 60056, this is another 1950 Lafleur magnum.

A. Yes.

Q. Let me read you what Mr. Egan said --

A. Yes.

Q. -- about this bottle. "The branding can be read. However the vintage is covered by a stain."

Is this one of the 1950 Lafleur magnums that you described in the Royal Wine Fake Summary Notes?

A. No, sir, it's not. It has no semblance to any of those

that I observed.

Q. Now it does say that the vintage is covered by a stain. Do any of your notes --

MR. CIALONE: Can we pull out the right side, please?

THE WITNESS: Can we just leave it up? If we leave it up like this, I can read it easier.

MR. CIALONE: Let's leave both sides up.

Q. Do any of your notes talk about the vintage being covered by a stain?

A. No. In new-looking corks, new corks don't have stains on them, and if I had seen the stain on the cork, I would have documented that, and so if it said it had full branding but here I have my date's not visible, scraped off, corks protruding and a new cork doesn't have a stain on it, and so this is not the same bottle.

Q. The next one I have is another 1950 Lafleur magnum. It's Exhibit 213, bottle number 60057. What Mr. Egan says about this one, the branding can easily be read, together with the vintage. Is this one of the ones that you described in the Royal Wine Fake Summary Notes?

A. No, it isn't.

Q. Finally, we have a fifth 1950 Lafleur magnum. This is Exhibit 214, bottle number 60058. Mr. Egan writes, "The branding could easily be read, together with the vintage. There is a degree of staining on this particular cork." Is

this one of the 1950 Lafleur magnums that you described in the Royal Wine Fake Summary Notes?

A. No, because, again, there's a visible date on the cork, it's not scraped off, the cork's not protruding, and, you know, there's staining on it, which means it wasn't a new cork, and this is not the same bottle.

Q. Now, Mr. Greenberg, I've just taken you through five magnums of 1950 Lafleur. Approximately how many 1950 Lafleur magnums did you have in your collection as of the end of 2002?

A. I bought 30 of them from five sources, maybe six.

Q. Petruses. This is Exhibit 228, bottle number 60029. This is a magnum of 1950 Petrus.

MR. CIALONE: Liz, if you could put up -- oh, sorry. You've got it.

Q. 22 to 23 of the Royal Wine Fake Summary Notes. You identify two 1950 Petrus magnums?

A. Yes, sir.

Q. And can you read -- what did you write about the cork on the first one?

A. New cork and no date legible or text legible on the cork.

Q. And what about the second one?

A. The cork is manipulated where the date should be, and by that I mean, if this is the cork and you -- based on observing -- you know, I had ten of these things. Based on observing the rest of them, you know where the date's supposed

to be. Somebody had scratched it off with an instrument so there was no date on it whatsoever.

Q. Okay. So let me read to you what Mr. Koch's expert said about this bottle. He says -- about the cork on this bottle. "It is fully branded. However the last digit of the vintage is damaged and cannot be read." Is this one of the bottles that you described in the Royal Wine Fake Summary Notes?

A. No, because these didn't have branding and the cork dates were manipulated or were not there, or legible at all. It's not the same bottle.

Q. And just for comparison's sake, Mr. Greenberg, I'm going to show you in Exhibit 107 at number 82, do you see there b says, "187 visible on date, missing last digit on year"?

A. Yes.

Q. When you saw something like that, where just one digit of the date was missing, did you make a specific note of that?

A. Yes. So if my eyeglass case were the date, it had a 187, and where you'd expect to see the zero, somebody had scratched it off, so this like brown leather covering wouldn't even be there.

Q. But on this bottle that we just -- I'm sorry. Scratch that.

On the 1950 Petrus magnums that you looked at and described in your notes, it wasn't just one digit missing, correct?

A. No. It was like they would have taken -- they would have peeled all the leather off of this so if this is where the date was supposed to be, there was nothing there. I mean, the leather wouldn't be there so you'd see the, you know, magnetic metal underneath instead.

Q. All right. I'm going to turn to the next bottle.

This is Exhibit 217, bottle number 60030. This is another magnum of 1950 Petrus. I'll read you the description from Mr. Egan. "The boundary line of the branding can be seen together with a letter E. The first three digits of the vintage are legible but not the last." Is this one of the bottles that you described in the Royal Wine Fake Summary Notes?

A. No, it isn't.

Q. Why? How do you know?

A. Well, first of all, on a new cork, you wouldn't have the markings, and there was no -- on the first one, on 22, there was no date or legible text on the cork. The second one, we hear -- see where Mr. Egan made his observations that there were dates on there and there were no dates on the other one because it was manipulated and scratched off and Mr. Egan makes no mention of the cork being manipulated.

Q. That's Exhibit 218, bottle number 60031, another 1950 Petrus magnum. Mr. Egan writes, "ATEAU ETRUS is legible in large letters. The vintage cannot be seen." Is that a bottle

that you were describing here in the Royal Wine Fake Summary Notes?

A. No. And the reason is that a new cork and capsule with no date or text legible on cork, that's a physical impossibility. On 23, the cork is manipulated where the date should be. He doesn't talk anything about manipulation whatsoever. It seems to me he's talking about a cork that looks to be old and -- and not manipulated.

MR. CIALONE: Can you put the next page up.

Q. Mr. Greenberg, I'm going to turn back to the 1921 Petrus, which is Exhibit 225, bottle number 60025. Do you see here you did describe one 1921 Petrus magnum in the Royal Wine Fake Summary Notes, correct?

A. Yes.

Q. And what did you say about it?

A. It was a badly obscured cork where I couldn't see the date on cork or any domain markings.

Q. Okay. Now Mr. Koch has alleged that he bought this bottle as lot number 443 in the Zachys auction in October 2005. Can you see what Zachys said about this, about lot number 443?

A. Yes. That they saw part of the vintage visible on the cork. I remember looking at that with them and seeing the vintage on the cork ten years ago when this was our --

Q. Is the bottle that was in lot 443 in the Zachys October of 2005 auction the same bottle that you described in the Royal

Wine Fake Summary Notes?

A. No, it isn't.

Q. And Mr. Greenberg, we talked earlier about the color codings on the spreadsheet. Some of them on the Royal Wine -- on the fake wine spreadsheet, some were question marks. Were any of these bottles that I just talked to you about bottles that had question marks on them?

A. Not one single bottle.

Q. Were any of the ones that you just guessed were fake without looking at them?

A. No. I would have never consigned a wine that I thought was problematic in any way and I've never consigned or sold a wine that I thought to be problematic or fake.

Q. And let's turn next to the 1928 Petrus. And you see you did describe one as fake in the Royal Wine Fake Summary Notes?

A. Yes, sir.

Q. And what did you say about the cork there?

A. Badly obscured and no visible date on cork or domain markings.

Q. I have bottle number 60026 here. It is Exhibit 215. Mr. Koch alleges that this was sold as lot number 445 in the October 2005 auction. Let's see what Zachys said about that lot.

A. Vintage visible on the cork, and it didn't talk about the cork being obscured.

Q. Is that bottle, the bottle that was sold as Exhibit 445, the same bottle of wine that you described on the Royal Wine Fake Summary Notes?

A. No, it isn't, sir.

Q. Next is Exhibit 216, bottle number 60027. Mr. Koch -- another 1928 Petrus that Mr. Koch alleges was sold as lot number 446 in the October 2005 auction. Let's see what Zachys said about that bottle of wine.

A. "Vintage visible on the cork."

Q. Is that the same bottle of wine that you described in the Royal Wine Fake Summary Notes?

A. No, because I couldn't see a visible date on the cork or I couldn't see a date on the cork.

Q. Turn to 1864 Chateau Latour. Can you see, you did describe one 1864 Latour in the Royal Wine notes?

A. Yes.

Q. What did you say about that cork?

A. I couldn't see the date, really.

Q. And Mr. Koch alleges that this bottle was sold as lot number 401 in the October 2005 auction. Let's see what Zachys had to say about that.

A. "Cork fully stamped and been -- believed recorked in 1980 as 1980 is visible on the cork as well."

Q. Now when you were looking at cork dates, as you were doing the Royal Wine Fake Summary Notes, were differences in the date

that was on the cork and the date that was on the label something you were looking for?

A. Yes.

Q. Why?

A. Well, there were some fakes that I found where they would take a label from 1870, have it be an 1884 to increase the value of the wine, so if it was inconsistent, that was something I paid attention to.

Q. Mr. Greenberg, do you know what happened to the 1864 Latour bottles that you described in the Royal notes?

A. Yeah, I had a bunch of them and so -- I was born in 1964, so for my 40th birthday, I had a dinner party at my home and I decided to open the bottle, because sometimes you just can't see the dates on these old, old corks, and I opened the wine with my friends to try it, and if it wasn't right, I had another several of them and we were going to open up another one. And so we actually drank the bottle of wine and it was magnificent, and I even saved the bottle.

Q. This bottle?

A. Yes, I drank that on my 40th birthday.

MR. CIALONE: And your Honor, I'd like to move this into evidence as Exhibit 1096.

THE COURT: Any objection?

MR. HUESTON: We were told it's a demonstrative exhibit. We have no objection to that. That's what was

discussed.

THE COURT: Is it a demonstrative or --

MR. CIALONE: We had said in argument on this issue that some would be demonstrative and some we'd be moving into evidence.

MR. HUESTON: I think there was a motion *in limine* on this, your Honor. I think we can address that at a break.

MR. CIALONE: That's fine.

THE WITNESS: The --

THE COURT: Okay. We'll address it later.

Q. Mr. Greenberg, you said you --

MR. CIALONE: I'm sorry?

MR. SHARTSIS: Did we get the judge's ruling?

THE COURT: You can use it as a demonstrative for now and we'll address later whether it's in evidence.

Q. Mr. Greenberg, you said you drank that 1864 Latour at your birthday in -- on your 40th birthday. When was your 40th birthday?

A. 2004.

Q. I had a little trouble with the math. That was before this lawsuit was filed, correct?

A. Yes, it was. It was actually before the 1864 at issue in this case was consigned. And it was so good, I wouldn't -- you know, I mean, I --

Q. And was it -- was that something that you -- you would save

empty bottles like this?

A. Special occasion type bottles, yes, I do, and I've saved a number of bottles like that over time. You know, a lot of wine collectors save bottles 'cause it's part of the history of your life and, you know, I always thought one day I might have a room in my home where I put old, you know, bottles that we had drunk up on the wall, kind of like a piece of art, and that's why I was saving bottles like this and others.

Q. I'm going to turn next to the 1928 Latours, these last two bottles here on the table.

Mr. Greenberg, you testified earlier you had approximately 30 1928 Latours. How many sources did you have for those?

A. Probably five, six.

Q. Okay. And I want to look at what you said about the seven bottles you described -- the seven bottles of 1928 Latour that you described in the Royal Wine Fake Summary Notes.

A. "No cork, identification or date."

Q. Okay. And the second one?

A. "New cork," which means there's no staining, and it looked like it was new.

Q. And then the third one?

A. No cork mark -- well, the second one also, it was stamped 1928, but it's impossible that a new cork would be stamped like that with -- without having the rebottling indication on it.

Q. And the next one?

A. There were no cork markings and the cork was brand new. It was basically somebody took a bottle, filled it with something, and stuck in a cork and even put a date on the cork.

Q. And the next one?

A. Another new cork that reads 1928. And then, you know, I had 30 of them, and some of them I actually bought from Chateau Latour through Christie's and so they were actually released from the chateau directly through Christie's to me, and so I compared it to one of those, and it wasn't consistent with the corks that Chateau Latour just released to me.

Q. Okay. And then the last entry, there are actually three 1928 Latour bottles discussed, right?

A. Yes.

Q. What do you say about those?

A. They are new corks with no markings, and the third was a new blank cork with no markings.

Q. Okay. So I have Exhibit 227, which is bottle 59966, and let's look at what Mr. Koch's expert Michael Egan says about the cork on this bottle.

A. It's very stained and branding is illegible.

Q. Is that one of the bottles that you described on the Royal Wine Fake Summary Notes?

A. No. Because those said that they were new, which means they are clear. There's no stains on a brand new cork.

Q. Last one, Exhibit 200, number 59967, let's see what Mr. Egan said about this one. The cork is clearly branded?

A. Yes.

Q. Is this one of the bottles that you described on the Royal Wine Fake Summary Notes?

A. No. I didn't describe anything that was clearly branded and we didn't think there was a problem with.

Q. Mr. Greenberg, did you identify any of the 24 bottles of wine at issue in this case as fake on the Royal Wine Fake Summary Notes?

A. No.

Q. Did you identify any of them as fake on the fake wine spreadsheet?

A. No.

Q. I'd like to take you back to the fake wine spreadsheet, which we looked at earlier.

MR. CIALONE: You don't need to put it up.

Q. Exhibit 62. You're aware that your lawyer sent that to your insurance carriers, correct?

A. Yes, sir.

Q. Did your lawyer also send it to Royal?

A. Yes, sir. The same exact spreadsheet.

Q. Do you recall last week Mr. Hueston asked you about the draft complaint against Royal?

A. Yes.

Q. And I'd like to --

A. I will never forget that.

Q. I'd like to turn you to paragraph 15. Strike that.

Before I get to paragraph 15, do you recall that that complaint said that all or substantially all of the wine that you got from Royal was counterfeit?

A. Yes.

Q. Did you ever send a version of --

MR. CIALONE: Liz, could you put up Exhibit 62A, the color-coded version.

Did you ever send a fake wine spreadsheet to Royal that had all or substantially all of the Fake Wine column filled in?

A. No. We sent it to them, it was without the color, so the color wouldn't have been there. We sent this exact, exact document to them, including the question marks, including the blanks where we thought the wines were authentic.

Q. Did you ever believe that all the wines that you got from Royal were counterfeit?

A. Absolutely not.

Q. Did Royal ever agree that any of the wine that they sold you was counterfeit?

A. No. In the settlement there was a recital that they disputed that any single bottle was counterfeit.

Q. I'd like to take you back to 2002, okay? After Sotheby's

spoke with you, did you at some point talk to Christie's about auctioning your wine?

A. Yes, I did.

Q. Who did you speak with?

A. Richard Brierley, who is their head of North American sales.

Q. Thank you. Did Mr. Brierley come to your home?

A. Yes, he did.

Q. Was that in 2002?

A. Yes, sir.

Q. Before or after Sotheby's?

A. It was after. Maybe about a couple months, I think.

Q. When Mr. Brierley was at your home, did you tell him about Ms. Sutcliffe?

A. Yes.

Q. Did you tell him about Royal?

A. Oh, yes.

Q. What did you tell him?

A. I told him that I'd hired an attorney and that we found out that we had some counterfeit wines, that we had segregated the wines, and we were seeking a resolution with Royal, and I even showed him the wines that we segregated and what we thought were counterfeit.

Q. Now when you say the wines were segregated, can you tell us exactly what you mean.

A. Yeah. Yes. We did it three primary ways.

First of all, some wines we just put in boxes and put them in a separate room in the cellar in the front of a room so we boxed off, marked, you know, "don't touch" kind of thing.

The second one we did is we took parts of the racks and we set up a section in the racks where wines were kept where we thought there was a -- sorry -- there was a potential problem.

And then the third way -- and especially this is with magnums and larger bottles because, you know, they're harder to move around. We would -- you have the punt, which is the bottom of the bottle and the front. Normally a wine rack, that's placed like this (indicating) so the top -- the front of the bottle is facing you. We would turn it around so the punt's in front so we clearly knew that that was a bottle that could be potentially problematic.

Q. Okay. And just to show this was something other than a water bottle, so normally the bottle is facing out like this from the rack (indicating), correct?

A. Yes.

Q. And you would turn it around so it's facing like that (indicating)?

A. Yes, so it was completely obvious that we weren't going to let that get mixed into the stream of commerce.

Q. And you showed that to Mr. Brierley, correct?

A. Yes.

Q. What did Mr. Brierley say about your wine collection?

A. Best he'd ever seen in his entire career.

Q. Did he express interest in having Christie's auction your wine?

A. Several times.

MR. CIALONE: Can I have Exhibit 66, please. Not to the jury yet.

Q. Mr. Greenberg, do you have Exhibit 66 up in front of you?

A. Yes, sir.

Q. Can you tell me what that is, please.

A. It's an e-mail to me from Richard Brierley, copied to Ian Mendelsohn. I forgot to mention, Ian Mendelsohn from Christie's was at my home as well, and I copied Anthony Hanson, who was one of the people who was in London managing their wine program.

Q. Who is Ian Mendelsohn?

A. Ian Mendelsohn was a specialist at Christie's.

MR. CIALONE: Okay. Your Honor, I'd like to move Exhibit 66 into evidence.

THE COURT: Any objection?

MR. HUESTON: No objection.

THE COURT: 66 received.

(Trial Exhibit 66 received in evidence)

MR. CIALONE: Thank you, your Honor.

Could we put it up.

If you'd just blow up the first -- the top half.

Q. See here, Mr. Greenberg, Mr. Brierley says, "Thanks for your patience. I am enclosing the file of our initial estimates for many of the wines in the collection which will begin to give you an idea of the estimates that we have in mind."

A. It says that.

Q. And what do "the estimates" refer to?

A. As I had mentioned before, there is, you know -- this is a -- worth $10. You'd have a low estimate of about $7 and a high estimate of about $10 or maybe a little bit more, and then a reserve price below that. And so this is what you give to people who are at auction to help them understand the range of where the bidding can fall.

Q. Okay. And then what does the reserve price mean?

A. The reserve price is the -- let's say something doesn't sell. Let's say there's only three people in the room bidding on wines, and so something doesn't sell. And if -- if a reserve price is set up such that -- let's say if this is worth $10, somebody can't sit in the back room and bid 50 cents and get a $10 asset for 50 cents. So you set a reserve price as the lowest amount that can be taken for the wine before it's -- before it passes, before it's not able to be sold, and so this protects the seller of the wine from not having the wine

liquidated for 10 cents on the dollar.

Q. And is the reserve usually below the estimate, in your experience?

A. It's typically 80 percent of the low estimate, which represents about 60 percent of the retail value of the wine.

Q. Okay. And let's see what Mr. Brierley said about the reserves at the bottom of this portion.

MR. CIALONE: Can you highlight it, please.

Q. What did he tell you?

A. "As for reserved -- I am so confident in the strength of the collection that I would be happy to set all reserves at low estimate," which is unprecedented. "There is no sense in letting these great wines go for anything less."

Q. Just to be clear, the "which is unprecedented," that you added, he didn't write, correct?

A. Yes. I'm sorry. I've never seen anybody -- nobody, including all the people I've worked with, ever say that we're going to put reserves at low estimate. I mean, that's a very unusual thing to see. I've never seen it happen.

MR. CIALONE: Okay. And if I may approach, your Honor, to give him a paper copy?

THE COURT: Yes.

A. Thank you.

Q. What was attached to Mr. Brierley's e-mail?

A. Oh. These were wines that -- and their estimate prices.

Q. And most of this has been redacted, correct?

A. Yes, sir.

Q. Were there a number of trophy wines that he expressed interest in auctioning?

A. Yes, trophy wines I believe at issue in this case.

Q. Including magnums of 1921 Petrus, correct?

A. Yes, which -- yeah, yeah. He wanted to auction off '21 Petrus.

Q. And '28 Petrus magnums?

A. Yes, he did.

Q. And Lafleur magnums from the 1940s, correct?

A. Yes, he did.

MR. CIALONE: Can I have 69, please. Thank you.

Can we put that up for Mr. Greenberg and for the court, please.

Q. Mr. Greenberg, do you recognize Exhibit 69?

A. Yes.

Q. And what is it?

A. This was Christie's equivalent of a proposal that --

MR. CIALONE: Your Honor, I'd like to move Exhibit 69 into evidence and publish it to the jury.

MR. HUESTON: No objection.

THE COURT: 69 received.

(Trial Exhibit 69 received in evidence)

MR. CIALONE: Thank you, your Honor.

Can we put the second page up, please. Just blow up the text.

Q. This heading says: Promotional plan for the proposed sale of the Finest and Rarest Wines of Eric Greenberg. Did Christie's propose to advertise that sale of the Finest and Rarest Wines of Eric Greenberg nationally?

A. Yes, the New York Times, Wall Street Journal, and they represented here that that combined was a circulation of 2.9 million people.

Q. Based on your communications with Mr. Brierley, what did you believe about the quality of your wine collection?

A. Richard told me that -- I'm sorry. Mr. Brierley told me that it was the best he had seen, and he had worked on a lot of really big cellars because he was trained at Sotheby's, and he had done a lot of big stuff with them too.

Q. Did you hire Christie's to auction your wines?

A. I ended up not.

Q. Why not?

A. Well, you know, I grew up poor. I come from Brooklyn and I grew -- I started working at 14 and grew up in a lower middle class neighborhood. I think the house I grew up in has right now been foreclosed for $40,000. And I have met Mr. Broadbent before. Michael Broadbent ran Christie's wine department, internationally. And I had met him once and introduced myself to him, and he was quite dismissive of me. And then when he

realized who I was and that I had money and a lot of wine, then he started treating me differently, and I think it's rude, just rude to treat people that you're better than they are, no matter who you are, because at the end of the day we all have the same kind of blood in us, and so I just did not want -- I didn't feel comfortable working with this man on a day-to-day basis after he effectively, I felt, acted as if I was lesser than him.

Q. Now did Mr. Brierley visit your cellar again after 2002?

A. Yes, he did.

Q. Did he bring other people from Christie's?

A. Yes, and one time -- I think the last time it was the head of the -- new head of the wine department, David Elswood, who's a very nice man. Mr. Broadbent I don't think was head of the wine department then. I think he was a consultant.

Q. Did Mr. -- did Mr. Brierley continue trying to get wines from you, get you to consign wines to Christie's?

A. Yes, sir.

MR. CIALONE: Can you put Exhibit 1031 up to his Honor and to Mr. Greenberg, please.

Q. Mr. Greenberg, do you recognize Exhibit 1031?

A. Yes. You might want to highlight who is shown, because there are people on there who are kind of important.

Q. Not yet. What is it?

A. It's an e-mail I received from Richard Brierley.

MR. CIALONE: Your Honor, I'd like to move Exhibit 1031 into evidence.

THE COURT: Any objection?

MR. HUESTON: No objection.

THE COURT: 1031 received.

(Trial Exhibit 1031 received in evidence)

Q. What was Mr. Brierley discussing with you in this e-mail?

MR. CIALONE: If you would just blow up the first few lines of text, please. Thank you.

A. It was a private sale on my behalf, so he wanted to -- he was proposing that they sell my collection as a single collection for a heck of a lot of money.

Q. And you mentioned that some of the people at the top of this e-mail were important. Why is that?

A. Well, David Elswood was the head of their international wine department, Marc Porter is the president of Christie's International.

Q. Mr. Greenberg, did Mr. Brierley or anyone else from Christie's ever tell you that if they did a sale of your wine, they would have to disclose that you had counterfeit wines in your collection?

A. No. They knew I had counterfeit wines in my collection before they even wrote this.

Q. Did they ever tell you that they'd have to say that you bought wines from Royal as part of the sale of your wine?

A. No.

Q. Now you said that you told Mr. Brierley about Royal. Did you tell other people in the wine industry about your dispute with Royal?

A. Just about everybody I could.

Q. Did you tell Mr. Jaeger about your dispute with Royal?

A. I told Wilfred Jaeger about that, and he's a very connected, prominent wine collector, owns wine restaurants and other things of that nature.

Q. And what was his response?

A. He said -- he and I are friends, and he told me I overreacted and he didn't think that they had actually did what I said they did.

Q. To your knowledge did Mr. Jaeger continue buying wine from Royal after that?

A. Yes.

MR. CIALONE: Could we put the timeline back up, please, Liz.

Q. Going back to your inspection of wines as a result of your meeting with Ms. Sutcliffe, the fourth step refers to Mr. Edgerton, correct?

A. Yes, sir.

Q. When did Mr. Edgerton come to your house to examine wines?

A. It was right after Thanksgiving in 2002.

Q. And how long was he there?

A. One day.

Q. One day?

A. One day.

Q. And we had some testimony last week that he inspected 108 wines, correct?

A. At least, yeah.

Q. He did that in one day?

A. Yes.

Q. Who selected the wines for Mr. Edgerton to inspect?

A. I did.

Q. And how did you do that?

A. I took wines that were on the Royal Fake Wine Summary Notes, which were step 2, and then I took other wines 'cause, you know, out of 108, there were a lot of wines that Mr. Edgerton deemed to be authentic and -- and were authentic wines that he was using as baselines to compare, and so I gave him those wines as well, so real wines and wines that I believed were counterfeit.

THE COURT: Let me know when you're at a good breaking point. I want to do our morning break.

MR. CIALONE: We can do that now, your Honor.

THE COURT: Okay. Why don't we take a ten-minute break.

Ladies and gentlemen, I'm going to give you a ten-minute break. Please don't talk about the case. We'll see

you back in ten minutes. You can leave your notepads on your chairs.

(Jury excused)

THE COURT: Okay. Mr. Greenberg, you may step down. And you may be seated in the courtroom.

Okay. We'll come back in ten minutes.

(Recess)

(Continued on next page)

(Jury present)

THE COURT: Mr. Cialone, you may proceed.

Q. Mr. Greenberg, I'm going to put Exhibit 73 on the screen. This is the narrative portion of Mr. Edgerton's report to you. This is page 63. Do you recall Mr. Edgerton provided this index as part of the report?

A. Yes, sir.

Q. This listed each of the bottles that he looked at and his conclusion, correct?

A. Yes. This is 16 of those.

Q. It goes on for several pages after this, correct?

A. Yes, sir.

Q. In his report do you recall that Mr. Edgerton said that certain bottles came from Royal?

A. Yes.

Q. What did he base that on?

A. I told him they did.

Q. What did you base it on, telling him that?

A. It was based on the fact that Serena Sutcliffe told me they were my only source of fake wines.

Q. Other than the 1928 Latour that we have seen, did Mr. Edgerton find that any of the bottles in this case were counterfeit?

A. Not one.

Q. Did Mr. Edgerton put a numbered sticker on every bottle

that he inspected?

A. Of the 108?

Q. Yes.

A. Yes.

Q. Not just ones he found were counterfeit, but all of the ones, correct?

A. Yes, the good ones and the bad ones. It was the document for a potential way of resolving the issue. It was done at the advice of my attorney.

MR. CIALONE: I'd like to show Mr. Greenberg and the Court Exhibit 75. This is the Royal draft complaint that you were questioned about last week. If you would go to paragraph 15, please. In paragraph 15 it refers to you hiring an independent wine consultant, correct?

A. Yes.

Q. That's Mr. Edgerton?

A. Yes, sir.

Q. Mr. Hueston asked you last week about this paragraph. He said, "Where in this draft complaint does it say a lot of the ones he," meaning Edgerton, "reviewed turned out to be real?"

You answered, "It doesn't."

Mr. Hueston then asked you, "It doesn't because, again, you were writing things to get as much money as you could from Royal by sending this draft complaint, right, sir?"

Do you recall that questioning?

A. Yes, I do.

Q. Let's look at that paragraph a little more closely. What does the last sentence of that paragraph say?

A. "A schedule of the bottles tested by the consultant and found fake or counterfeit as is annexed hereto as Exhibit B."

Q. So you gave with the complaint a list of the wines that Mr. Edgerton had reviewed, correct?

MR. HUESTON: Objection. Foundation.

A. Yes.

Q. What was the schedule of the bottles of wine tested by the consultant and found to be fake or counterfeit that was annexed to the complaint as Exhibit B?

A. The spreadsheet that showed that over a third of the wines -- over two-thirds of the wines we thought were OK.

Q. Actually, the spreadsheet was something you prepared, right?

A. Yes.

Q. Did you also attach something Mr. Edgerton had prepared?

A. We sent the Edgerton report.

Q. You sent the Edgerton report to Royal?

A. No, to the lawyers.

Q. To the lawyers for who?

A. Royal. My attorney Mr. Coles did.

Q. So Royal actually saw the report that Mr. Edgerton prepared?

MR. HUESTON: Objection. Foundation.

THE COURT: If you know, you can answer.

MR. CIALONE: He just said it, your Honor.

A. I believe they did, although they took his name off of it. But yes, I think they did.

Q. Did you hide from Royal the fact that Mr. Edgerton found that many of the 108 wines he looked at were genuine?

A. No. It was part of the payment they got.

Q. Mr. Edgerton's report was done in January 2003. What did you do with the wines that he had looked at at that point in time?

A. We segregated them. We put them together because we thought there was a potential that we may end up needing them for a complaint or a settlement or for the insurance companies to use, that type of thing.

Q. Was that all the bottles he looked at, including the ones he found to be genuine, were set aside?

A. At first, yes.

Q. By that point in time Mr. Edgerton's report was early 2003 from the cover page, did you have a complete inventory of your wine collection?

A. No.

Q. When did you have a complete inventory of your wine collection?

A. August of 2003. That inventory, though, was the authentic

wines.

Q. What do you mean by that?

A. We did not have any wines that we thought were problematic or fake on that. For instance, wines that were returned from Zachys in the beginning of 2003 to us as being problematic, we segregated those and put those away. We did not put that in the inventory, because of value, they weren't of value.

Q. What did the inventory look like? What was it?

A. It was an Excel spreadsheet.

Q. About how long was it?

A. If you print it out regular, like in letter size, 140 pages with over 4,500 individual bottle entries.

Q. When you say individual bottle entries, was there one line per bottle or one line per what?

A. Sir, if you had a Poland Spring bottle of water and I owned 50 of them, there would be Poland Spring bottle of water and the number 50 next to it, if it was on the main cellar racks or in the case storage or off-site storage.

Q. Mr. Greenberg, I want to turn your attention next to Zachys. You did your first wine auction with Zachys, correct?

A. Yes.

Q. When was that auction?

A. It was in February of 2003, which means we started discussing it earlier.

Q. Was that a single-consignor auction?

A. No, sir.

Q. You were one of a number of consignors?

A. I was, and it was designated the Eric Greenberg Collection within a larger auction.

Q. Did Zachys come to your home like Christy's and Sotheby's had done?

A. Yes.

Q. When approximately did that happen, do you recall?

A. Fall of 2003, and it was Jeff Zacharia and Fritz Hatton.

Q. Did you tell Zachys about Royal during that visit?

A. Yes.

Q. What did you tell them?

A. I told them I had been sold fake wines. I told them about Serena Sutcliffe and what she had told me. I showed them the wines we had boxed up and segregated. I wanted them to have a full understanding of what was there, so that way we could make sure we put together a high-quality auction.

Q. Did Zachys ask you to tell them what wines or what kinds of wines you got from Royal?

A. No, sir.

Q. Did they ask you for your invoices from Royal?

A. No.

Q. Did they say in the catalog that you had bought wines from Royal?

A. No.

Q. Mr. Greenberg, why were you interested in having Zachys do an auction for you?

A. It turned out -- they had been marketing me for quite a while, at least a year prior. I used to eat dinner at a restaurant here in New York called Daniel, and that's where the wine auctions were held. Daniel Boulud and the sommelier there -- Daniel Boulud is the owner of the restaurant, and the sommelier is Jean-Luc Le Du -- introduced me to Jeff Zacharia at the time and said you should give me a shot with your wine auctions.

They had been doing that since 1990, but I said you guys are brand new, I don't know what kind of success you're going to have. It turned out that they changed the wine industry. They turned it on its head, because they made wine auctions into fun social events. As a result, the prices they got were extremely impressive and higher than the other auction houses in many cases.

Q. There are a few things you said in there I want to follow up on. First, how did their auctions look different than auctions that other people were doing at that time?

A. At a typical auction, it's like a classroom, so it would be kind of like the courtroom, not pews but seats. People would be sitting in rows of seats. They had paddles. It's kind of like you would see in the movies, where people are putting up paddles and this and that. At the Zachys thing, you'd sit at a

dinner table. There would be wine and you could order off a menu of food.

It was more like a festive party. It was a lot more fun. It wasn't boring. It wasn't some kind of a clinical thing. It was like a social event. It changed the dynamics of auctions. Since they innovated that, pretty much all of the great wine auctions are done that way now.

Q. You also said they were brand new but they had been doing this since 1990. Can you explain that?

A. Yes. As we talked about before, according to New York law, you can't be an auction house and just auction wine. You have to have a retail partner. Zachys is a wine retailer, probably one of the biggest in the country, if not world. So Zachys was the retail partner for Christy's since 1990.

Q. Does that mean they were doing Christy's auctions here?

A. Yes. They were doing it for I think 10 or 11 years.

Q. Then at some point did they start doing auctions for their own operation?

A. Yes, they did.

Q. How bought wines at auctions run by Zachys?

A. It was Christy's Zachys, and then it was just Zachys. So under both the regimes.

MR. CIALONE: Your Honor, I'm giving counsel Exhibit 325. If we could show that to Mr. Greenberg and the Court, please.

Q. Mr. Greenberg, is Exhibit 325 the auction catalog for the first auction that you did with Zachys?

A. Yes, sir.

MR. CIALONE: Your Honor, I move to admit 325 into evidence.

THE COURT: Any objection?

MR. HUESTON: No objection.

THE COURT: 325 received.

(Trial Exhibit 325 received in evidence)

MR. CIALONE: If you could put 85 on the screen.

A. What's interesting about that, I believe that those wines are some of my wines on the cover that they featured.

MR. CIALONE: If you would blow up the introduction on page 85, please, the first paragraph.

Q. Was this the introduction to the catalog, to the portion of the catalog that related to your collection, Mr. Greenberg?

A. Yes, sir.

Q. Who wrote that?

A. Jeff Zacharia. And I had no part in writing this, no review, no edit, nothing.

Q. You see that Mr. Zacharia in this introduction says that Mr. Greenberg, successful entrepreneur, has sought out the world's greatest wine and has amassed one of the most impressive private collections in the world, correct?

A. Yes, sir.

Q. At the time Zachys wrote that, they knew you had bought wine from Royal, correct?

A. Yes, they did.

Q. Did they know that you had counterfeit wine in your collection?

A. Yes, they did.

MR. CIALONE: Could we have 71, please. Can you show that to Mr. Greenberg and the Court, please.

Q. Mr. Greenberg, do you recognize Exhibit 71?

A. Not redacted.

Q. Let's move to the second page of it.

A. Thank you.

Q. Actually, let me give you a paper copy. It's a little easier. Tell me if you recognize it if I actually show it to you.

A. Thank you, Mr. Cialone.

Q. Looking at Exhibit 71, do you recognize it?

A. Yes, sir, I do.

Q. What is it?

A. It's the auction estimates for the wine that was going to be included in the February 2003 auction and the list of wines that would be included in the auction.

Q. Did you submit all of the wines that are listed in this document to Zachys for possible inclusion in the February '03 auction?

A. Yes, I submitted them for possible inclusion subject to authentication. There is one thing also. When we talked about reserves, you asked me about that earlier, you see it says 90 or 100 percent reserve and you have the low bid number. What they were doing is they were accommodating the fact that they believed that it was 90 percent or 100 percent reserved compared to a low estimate. So they had a different methodology from Sotheby's as well, kind of like Christy's, because of the strength of the collection.

MR. CIALONE: Your Honor, I move to admit 71 in evidence.

MR. HUESTON: No objection.

THE COURT: 71 received.

(Trial Exhibit 71 received in evidence)

MR. CIALONE: Could you put page 3 of Exhibit 71 on the screen.

Q. Mr. Greenberg, this is the first page of a 7-page list of wines that you submitted to Zachys for potential inclusion, correct?

A. Yes. It was subject to their authentication and approval of the wines. This is a list of potential candidates.

Q. Looking at this list, did you have more bottles of the kinds of wines here than are listed? For example, you have at the top one 1947 Cheval Blanc. Did you have more than one of those in your collection?

A. Yes. I could have had about ten of them.

Q. How did you go about actually pulling the bottles that you would submit for their inspection?

A. I would just say let's do one of those and one of those and one of those and one of those. I wrote it down, and Mr. Lovato and I, the cellar master, would look at them and make sure that they had cork markings and then send them to Zachys.

Q. How did you know Mr. Lovato would not select wines that you believed were counterfeit?

A. As he has testified and others have testified, they were told strictly not to include any bottle where we have a question or what is segregated in our cellar. In other words, if he saw a bottle that we hadn't segregated yet and he looked at and he didn't feel comfortable, he had a veto right over it, too.

Q. Did Mr. Lovato have assistance when he was pulling wines for auction?

A. Yes. Mr. Cortes would pull them also. This is a lot of work. JJ Cortes, who was my house master, also testified that he never placed a bottle into auction that was segregated or he believed to be counterfeit, either.

Q. Mr. Greenberg, at this point in time, late 2002-early 2003, is it correct that you couldn't tell which bottles you had that were from Royal?

A. No.

Q. It's not correct or you couldn't tell?

A. No, I couldn't tell. I'm sorry. I misunderstood your question. I'm sorry.

Q. Mr. Lovato could have pulled wines that you had gotten from Royal, correct?

A. Sure.

Q. Why were you willing to consign wines from Zachys if it was possible that wines from Royal would be included?

A. Because I thought they were real.

Q. Did you think that Royal, some of wines they sold you, were genuine?

A. Most of them were.

Q. Did you think Royal was the only source of counterfeits?

A. I subsequently found out no.

Q. Even if you had known with certainty that you bought a bottle of wine from someone else other than Royal, would you have known where that person got it from?

A. No. They never tell you who they get it from. They say private collector, comes from a restaurant, European trade, but they never tell you exactly who, because they don't want you to go around them and cut out the middleman.

Q. You have talked about auction houses and you've talked about some of your sources. When you bought wines from some of these other sources, say Wine Library, which you have mentioned, did you know who you were actually buying the wine

from?

A. I bought it from the retailer, but I didn't know where they got it from.

Q. Did you ever ask? Did you ever try and find out who they were getting wines from?

A. I asked.

Q. Did they tell you?

A. Never. In fact, the auction houses won't even tell you in many cases.

Q. Back to the pulling of wine for auction. Mr. Lovato goes out, pulls the wines. Then what happens to them?

A. They get put in a box and sent to Zachys.

Q. In New York?

A. Yes.

Q. Then did Zachys inspect those bottles in New York, to your knowledge?

A. They represented that they inspected them painstakingly.

Q. Did Zachys have the power to reject wines if they had doubts about authenticity?

A. By contract they had sole discretion and the right to reject any bottle for any reason, whether it was authentic or not.

Q. Did Zachys in fact reject some wines based on concerns about authenticity from the February '03 auction?

A. Yes, they did.

Q. Mr. Greenberg, I have here a bottle of 1990 Jayer Clos Parantoux?

A. Mr. Cialone, that's very impressive.

Q. I'm not reading the rest of the label. Is that one of the bottles that Zachys in fact rejected?

A. Yes, it is.

MR. CIALONE: Your Honor, subject to what we discussed earlier and coming back and addressing what was actually argued on the motions, I would move that into evidence.

MR. HUESTON: Subject to what was stated earlier.

THE COURT: Yes, I'll reserve on that. You can use it as a demonstrative. Just to be clear, I want to make sure everything is clear for the jury, we are talking about the 2003 auction?

MR. CIALONE: Correct.

THE COURT: Which is an earlier auction than the auction at issue in the case. Just so everyone is clear about it.

Q. Mr. Greenberg, that bottle has a sticker on the back, right?

A. Yes, it says the Eric Greenberg Collection.

Q. Why does it have a sticker even if it was not included in the February 2003 auction, if you know?

A. It has a sticker on it because Zachys, by New York law, is required to put auction stickers on the back of every bottle.

When they received it from the warehouse, it was told to me that they would be stickering all the bottles. They wanted the bottle uniquely identified as being from my collection. Here is the capsule, Mr. Cialone.

Q. Thank you. Mr. Greenberg, did Zachys in fact reject several bottles of 1990 Clos Parantoux from the February 2003 auction?

A. Yes. Actually, what happened is they had, Martine Saunier -- if you could hand me the bottle, I could explain it better.

Q. Sure.

A. This one is made in France. It is imported by somebody named Martine Saunier. Her logo is here. They asked Ms. Saunier to come and look at my Jayer wines, because I had a lot of them and they are rare. We had consigned 12. She found 6 to be not correct. She found them not to be correct because the corks were not of the type that were 1990 Clos Parantoux. This was something we didn't know. Also, if you look at this date label here, which is kind of sloppily put on, it doesn't match the paper of the label.

So they rejected 6 out of 12 of these. One of those was brought to me at the restaurant Daniel to taste, and I agreed it didn't taste right, because I knew this wine. We opened one and tasted it. I have the other 5, and this is one of them. They have been segregated in my cellar ever since.

To give you an idea of how big of a loss this is, this bottle just got auctioned for over $10,000 a bottle. I have 30 of these sitting in my cellar, $300,000 worth of them, that have been sold to me that were unauthentic and sitting there.

Q. Mr. Greenberg, you said you tasted one of these bottles, right?

A. Yes.

Q. On tasting it, what did you conclude?

A. It was something called a village wine, which is more of a generic type wine. Mr. Jayer made a lot of wine that was not necessarily designated as being a really a collectible special wine. So what is in here, according to the cork, is his 1990 village wine.

Q. Why did you keep this bottle instead of just dumping it if the label doesn't accurately reflect what is in the bottle?

A. Now that these bottles are worth 10,000 each if they are real, the village wine is probably worth $1,000 a bottle. So I'm not going to sell them; but to drink, it's a good wine.

Q. It's still a good wine?

A. It's a thousand-dollar bottle of wine, Mr. Cialone.

Q. Did Zachys state in the catalog that they had found counterfeit wines in your cellar?

A. No, sir.

Q. Let's take a look at the catalog, Exhibit 325, at page 104. If you could blow up the 1991, please. Zachys actually

accepted 6 bottles of Jayer Clos Parantoux, correct?

A. Yes. Not only that. FH is Fritz Hatton, who is their chief auctioneer, had his tasting note in here calling it great, outstanding plus. So Fritz was actually talking about how great this wine was.

Q. Did Zachys say that they had rejected 6 bottles of the exact same kind of wine that they are selling here from your cellar?

A. No. Their philosophy was a bottle of wine is either real or it isn't. We are going to take a look at it and we are going to review it based on what it is.

Q. If we could go back to Exhibit 71 at page 3, please. Did you sell some trophy wines, what has been referred to here as trophy wines, in the February 2003 auction?

A. Yes. Zachys explained to me that in order to establish my collection, they wanted me to part with some of my wines that were trophy wines.

Q. We see at the top 1921 Petrus magnum, correct?

A. Yes.

Q. 1928 Petrus magnum?

A. Yes.

Q. And some of the others of that nature, right?

A. 1950, yes.

Q. There are also some magnums of Lafleur in here, correct?

A. Yes, '45, 1947, 1950, and 1961.

Q. Did Zachys ask you where you had bought any of those wines?
A. No, they didn't. And they also had that vertical cork marking on them.
Q. Let's look at the bottom here. You see there is also a number of wines that are not trophy wines: $90, $100, $70, correct?
A. Yes.
Q. Was that part of what you referred to as culling your collection, selling these less valuable wines?
A. Yes. The technical term, this is kind of a -- it's a term in the industry, it was the garbage wines. 1997 and 1998 were not collectible vintages, and these were not great producers. Really I wanted to cull my collection, but I had to part with great wines in order to bring up the value of the consignment.
Q. You were asked last week about your reference to garbage wines to Mr. Brierley, correct?
A. Yes, sir.
Q. That was in 2006 or 2007?
A. It was in 2007 when we were looking at doing private sales.
Q. What did you mean by "garbage" when you told them all the garbage had been sold?
A. This auction in question was my seventh Zachys auction. I had done five with Acker Merrall and private sales, too. I had pretty much sold off all my lesser vintages, lesser producers.
Q. Were you referring to counterfeits as "garbage"?

A. No, because they were segregated. They knew I had those and they knew I wasn't referring to those. In fact, at Mr. Brierley's deposition he said at such.

Q. Did you still have counterfeits in your house, in your collection, in your cellar, in 2006 or '7, when you wrote that email to Mr. Brierley?

A. Millions of dollars worth.

Q. After the February 2003 Zachys auction, did you do other auctions of wine through Zachys?

A. Yes, a total of seven in all.

Q. Six prior to the October '05 one that we have been talking about, correct?

A. Yes, sir.

Q. At each of those auctions, was the process by which you submitted wines to Zachys the same as in February 2003, where you did the list and it was pulled?

A. Except for this auction at question for which I'm being sued.

Q. Let's leave that one aside. We'll talk about that one separately. In the six beforehand, did you give a list to Mr. Lovato each time?

A. Mr. Zacharia and I would agree on what we were going to sell, what I would submit to them I should say, then Mr. Lovato would in turn ship those.

Q. They would be shipped to New York, correct?

A. Yes. In fact, every single one of those up till this one, not including this one, Mr. Cortes would assist him in pulling and packing bottles where they both had the instruction never to take a bottle of wine that we believed was problematic.

Q. In each of those did Zachys have the right to reject wines if they had doubts about authenticity?

A. Yes.

Q. In each of those did Zachys in fact reject some wines?

A. I can't say each, but several times, yes. It happened more than once.

Q. Did you continue to buy wine from Zachys at auction after February 2003?

A. Yes. I still do. I'm still a client.

Q. I want to ask you next some questions about Rudy Kurniawan. When did you meet Mr. Kurniawan?

A. I believe it was summer 2003.

Q. How?

A. Bipin Desai is the most famous wine collector in the world and has these tastings. He knows all the chateau owners and he has his tastings in Bordeaux. Mr. Desai invited me to a tasting. In fact, we have co-hosted tastings before, one on the fine white wines. He invited my wife and I to a tasting which we attended, and he happened to see Mr. Kurniawan next to me at one of the tastings. It was in the summer, I believe, of 2003.

Q. Sometime thereafter you bought wine at auction that he had sold, correct?

A. Yes.

Q. Let's take a look at the email exchange about that which we saw last week. This is Exhibit 78.

MR. CIALONE: Liz, if you would put page 2 up. Then if you would blow up the middle email, the header in the first paragraph, please.

Q. This is your email to Steve Griffin, right?

A. Yes.

Q. Who was Steve Griffin?

A. He was, I believe, the chief financial officer of the online auctioneer Wine Bid.

Q. This was after you thought you had bought wines that Mr. Kurniawan designed to Wine Bid that were counterfeit, right?

A. Yes.

Q. And you were angry?

A. I was angry that I bought counterfeit wines.

Q. You threatened a lawsuit, correct?

A. That was an option we had opened to us, yes.

Q. You referred to punitive damages?

A. Yes, I did.

Q. If you see the date and time of this, it is December 28, 2003, at 5:55 p.m., correct?

A. Yes.

Q. Did you then talk to Mr. Kurniawan?

A. Yes, I did.

MR. CIALONE: If we can look at page 1 of the email, at the top. If we can blow up the header and the paragraph there, please.

Q. Does this email accurately reflect your conversation or what you believed after your conversation with Mr. Kurniawan?

A. Yes.

Q. You said, "I just had a lengthy conversation with Rudy Kurniawan. He and I have known each other, done tastings together, and I am convinced that he did not know what he was selling was not right," correct?

A. Yes.

Q. Then you went on to say that his goal, your main concern is ridding counterfeiting and Rudy is on board with that as well?

A. That's what Mr. Kurniawan told me.

Q. Your threat to sue him and seek punitive damages lasted a little less than 48 hours, right?

A. Yes, it did.

Q. If we could go back to page 2 and to your email to Mr. Griffin.

MR. CIALONE: If you would highlight the bottom two paragraphs there, please, Liz.

Q. You see here you have discussions of the issues with the wines. How did you know enough to be able to put this kind of

detail in?

A. Can you please rephrase that so I make sure I answer your question?

Q. Sure. Let's take a look at, for example, the 99 Romanee Conti mag. Different bottle and punt, the label is printed by a fake mechanism, on and on.

A. Yes.

Q. How were you able to point out all these details on that wine?

A. I got the wine on release from the importer Wilson Daniels. So there was nothing in the custody between the producer who grew the grapes, and it goes straight to Wilson Daniels and then to me. So I had actual magnums that come basically straight from the domain.

I compared them. I got them in. We started opening up our wines because we realized there is a counterfeit wine problem. We opened up the wine. Mr. Lovato brought it to my attention. I went down wine cellar and looked at it. I took two bottles, and I said this isn't the same wine. Then I documented what the differences were.

Q. Did you have wines straight from the importer, straight from the chateau, that were of the same type as any of the ones of the 24 bottles at issue in this case?

A. Yes. Oh, not straight from the importer, no. Sorry.

Q. For example, did you ever buy an 1864 Latour directly from

Chateau Latour through the importer?

A. No. I haven't bought them straight from the domain, no. I bought 28 -- in this case there is one. There is a 28 Latour which I had bought from Christy's, which is owned by Francois Pinot, who owns Chateau Latour as well. So in that case I did get that straight more or less from the source.

Q. Do you recall that in your email to Mr. Griffin you had said you wanted the wines destroyed?

A. Yes.

Q. Let's take a look at page 1 of Exhibit 78, Mr. Griffin's email, at the bottom. Do you see what he proposed to do rather than destroy the wines?

A. Yes.

Q. What did he say?

A. He proposed to have Martine Saunier, who was the importer of Jayer, and Wilson Daniels, who was the importer of the domain Romanee de la Conti wines inspect the wines rather than destroying them. I guess he is saying that he would do what they had suggested. I basically said that's fine with me.

MR. CIALONE: Could I have Exhibit 356, and if I could show that to the witness, please.

Q. Mr. Greenberg, can you identify Exhibit 356, please.

A. Yes.

Q. What is it?

A. It's an email from Rudy Kurniawan to me.

MR. CIALONE: Your Honor, I move 356 into the record, please.

THE COURT: Any objection?

MR. HUESTON: No objection.

THE COURT: It is received.

(Trial Exhibit 356 received in evidence)

Q. Mr. Greenberg, if you would look at the second page of Exhibit 356, towards the bottom, and then it continues on to the third page. Did Mr. Kurniawan follow up with you regarding the idea of the importers inspecting the bottles that you had returned to Wine Bid?

A. Yes. He said they brought all of the bottles to Martine, authenticated them, especially the Jayers. The stamp on the capsule means the wine is also bought in France, etc. He basically, if you read this email chain, represented that the wines are authenticated by her and didn't have a problem.

Q. Did you continue to buy wine from Mr. Kurniawan after this?

A. Yes, I did.

Q. Did you sell wine to him?

A. Some. Not much.

Q. Do you recall last week you saw --

A. I bought a lot more.

Q. Do you recall last week you saw an email where you said to Mr. Kurniawan, you should call me when looking to move certain wines and I should do the same for you?

A. Yes.

Q. What did you mean when you said that?

A. I bought four or five magnums, or large-format bottles, from Acker Merrall Condit at auction, and they added a 20 percent commission on that. I found out or realized that it was Rudy who had consigned those wines. So I said to him, whenever you're looking to sell trophy wines like this, let me know. Then basically I cut out the middleman and saved 20 percent. And if I had wines I was going to sell, I could let him know. If he wanted to buy them instead, he'd save money.

Q. You testified last week that you actually marked bottles that you got from Mr. Kurniawan. Why did you do that?

A. I had tasted extensively with Mr. Kurniawan, and he provided a lot of wines to three very prominent top 100 wines of all time tastings that were organized by Acker Merrall Condit. When I bought wines from Mr. Kurniawan, he represented to me that they came from the library of Nicholas Cellars, which was probably the most exclusive library of rare and old wines in the world. I thought the wines had a special provenance to them. I marked them because I wanted to make sure that I kept those wines because I thought they had a greater long-term investment value than other wines in my collection.

Q. I'm going to show you a couple of empty bottles of wine here. If you could point to me are the examples of the

stickers and the markings on those.

A. Yes, this is Thierry Lovato's handwriting that says "Rudy."

Q. There is another one on the back?

A. Yes, Rudy, yes.

Q. Then this one?

A. Yes, another one marked as Rudy.

Q. Thank you. Mr. Greenberg, focusing on the 24 bottles at issue in this case, did you buy any of those from Rudy Kurniawan?

A. No, sir, not one.

Q. I want to move into 2004. In 2004 did you reach a settlement with Royal?

A. Yes.

Q. Did you return wine to Royal or send wine to them under that settlement?

A. Yes, I did.

Q. Do you recall how much you actually sent to them?

A. I think it was $362,000 worth.

Q. Which was less than the amount of fake wine you thought you had, correct?

A. A lot less, yes.

Q. How did you choose which ones to send to Royal in the settlement?

A. The most egregious fakes and wines that I wouldn't want to drink. I would taste a lot of the wines that I couldn't see

corks on, and they actually tasted pretty good. So it was wines that I thought were egregious or I never drank. A lot of the wines that I would never sell I still continue to drink because they do taste good.

Q. Did you keep some wines that you believed were counterfeit?

A. Yes.

Q. What did you do with them?

A. Segregated them.

Q. At some point did Mr. Cortes asked ask you to give him some counterfeit wines?

A. Yes.

Q. When was that?

A. I don't know the exact date. Well, I actually do. We were packing up the wines to send back to Royal. He asked me if he could keep some fake bottles.

Q. What was your response?

A. No, I said, absolutely not. Mr. Cortes is always trying to make an extra buck. I thought he would try to sell them, and I didn't want that going on. I didn't want that liability.

Q. Did you ever tell Mr. Cortes that you intended to sell counterfeit wine?

A. Never.

Q. Did you say to him, what they did to me I'm going to do to someone else?

A. No.

Q. Does Mr. Cortes still work for you?

A. No, sir.

Q. When did he stop?

A. He didn't show up for work after Thanksgiving of 2004 one day.

Q. Just didn't show?

A. No. No call, no show. Called me later in the day, and we talked, and we just decided to part ways.

Q. Let's move forward to the October 2005 auction. Prior to that auction you had done six auctions with Zachys, right?

A. Yes.

Q. Approximately how many bottles had you sold?

A. 3, 4, 5,000, I don't know, something like that.

Q. We have seen evidence in the October 2005 auction you sold about 17,000 bottles. How big a proportion of your collection was that at the time?

A. A third, a little less than a third.

Q. Now I'd like to turn you to Exhibit 96, which was a consignment agreement between you and Zachys.

MR. CIALONE: Could you put that on the screen, please, Liz. Put page 2 of up, page 2, paragraph 8(b).

Q. It says here, "Withdrawal by ZA." That's Zachys, correct?

A. Yes.

Q. "Zachys reserves the right to withdraw any product at any time before the actual sale if in Zachys' sole judgment (i)

there is doubt as to the attribution, authenticity, quality, or portability of the product." Is that consistent with other auctions that you had done with Zachys, that they had the absolute right to withdraw any wines if in their judgment there was doubt about authenticity?

A. That's correct.

Q. Did they need your approval to withdraw wine if there was doubt about authenticity?

A. No, nor would they have given it to me.

MR. CIALONE: If you would go to page 3, please, paragraph 16.

Q. Do you see there it says, "Zachys agrees not to taste any wines or cut capsules and corks without prior written consent of seller." Mr. Greenberg, did you ever withhold consent to Zachys for cutting corks -- sorry -- for cutting capsules so they could inspect corks?

A. No.

Q. Did you in fact cut capsules many times yourself?

A. Yes. In fact, every one of those magnums you showed me in this case had the capsule removed.

Q. Why?

A. Because I wanted to people to be able to see the cork themselves. I had nothing to hide.

Q. We have spoken about the way in which wines were selected and pulled for the earlier auctions. Was something done

different in the October 2005 auction?

A. The fact that Zachys came to my home.

Q. They came to your home to do what?

A. To inspect the old and rare wines, trophy wines.

Q. Did you provide a list of the wines to Zachys that you proposed to sell?

A. We always would have a working list. But for the purposes when Mr. Zacharia and Mr. Hatton came to my house, they gave me a list of things they wanted me to look at.

Q. You said Mr. Zacharia and Mr. Hatton came to your house?

A. Yes.

Q. How long were they there?

A. They were there for a day.

Q. Who is Mr. Hatton?

A. Mr. Hatton is Zachys' chief auctioneer, principal, and head consultant and used to be the head of Christy's North American wine department.

Q. What wines did Mr. Hatton and Mr. Zacharia come to inspect at your home?

A. Old and rare, expensive, and trophy wines.

Q. I'm going to ask you some detail about them. Did somebody inspect the rest of the wines at your home?

A. Yes. They had six or seven people there that were there for two weeks. They were packing pallets. A pallet of wine is 720 bottles, or 60 cases. They had 25 ballots to move out of

the house in two weeks, two and a half weeks, and that filled probably three semis that would have gone across the United States.

Q. Who would actually pack the wines to send to New York?

A. Zachys.

Q. When they got to New York, what was your understanding of what they would do with them?

A. After they inspected them at the house, then they inspected them at least once, if not twice, at New York.

Q. I want to focus on Mr. Hatton and Mr. Zacharia coming to your house. First of all, where did they set up? Where did they actually go to the look at the wine?

A. Right outside the wine cellar.

Q. Why didn't they go in the cellar?

A. 47 degrees and 70 percent humidity, that's enough to give anybody a severe case of flu.

Q. Who actually brought them the physical bottles to look at?

A. They would give us a list, and Mr. Lovato would bring the bottles to them.

Q. Did you watch them as they were going through the wines?

A. Yes. Well, let's get this --

Q. Thank you. "Them" being Mr. Hatton and Mr. Zach?

A. Yes. The day they were there, I was there with them, because I wanted to make sure I could answer any question they had. I was working with the chief executive officer of a

company. For the other two weeks Mr. Lovato was working with the other Zachys folks.

Q. Did you watch the other Zachys folks, a group of I think you said four or six who were there for a couple of weeks?

A. No, I didn't. When I got home from work, I'd come to say hello, sometimes bring food. My wife is Italian, so she likes to feed people. So, you know, other than being pleasant -- they are nice people, so you want to treat them nicely if they are in your home.

Q. Mr. Greenberg, when you watched Mr. Hatton and Mr. Zacharia looking at the rare and older wines, was this the 28 Latour with the 41 sticker, was that one of the ones that they looked at?

A. No.

Q. Did they look at any 1928 Latours, to your knowledge?

A. Not in front of me.

Q. Did they look at any wines that had a sticker for Mr. Edgerton that you saw?

A. No, because those were segregated. Had I known that was on racks by accident, if I had seen that wine, I would have never let it go into auction. I would have known that it was not supposed to go.

Q. Mr. Greenberg, I want to ask you about something that Mr. Hueston asked you about, which is wines that were returned to you from Chicago Wine. Do you recall that?

A. All too well now.

Q. Do you recall what you were told by Chicago Wine about those?

A. That someone some unidentified customer couldn't see a date on the corks.

Q. Who was the individual at Chicago Wine who actually contacted you?

A. Simon Lambert, who was a gentleman I dealt with. I think he is one of the principal owners.

Q. Did Mr. Lambert ever tell you that he had personally looked at those bottles?

A. No, Simon didn't.

Q. Do you recall, at least as to one of the bottles, whoever it was said that they couldn't see a date?

A. Yes.

Q. Did you look at the wine?

A. And Mr. Lovato. Wait a second, it's right there, plain as day.

Q. Why did you process a return?

A. Because I always stand by my wine. If somebody doesn't want something I sold them, I'll give them their money back. It's not worth the argument. Simon is a nice guy. I was not going to argue with him. It's not anything to argue about. Just give him his money back.

Q. I'd like you to take a look at the catalog, Exhibit 101.

MR. CIALONE: If you could go to page 241, please, Liz.

Q. This is the October '05 catalog. Do you see here this is conditions of sale and limited warranty?

A. Yes, sir.

Q. Who wrote these provisions?

A. Zachys.

Q. Do you see it says, "All property is sold as is without any representations or warranties by Zachys wine auctions or the consignor as to merchantability," etc.?

A. I see that.

Q. Did you write those terms?

A. No. In fact, Zachys would not let us make any recommendations to any of their contracts.

Q. To your knowledge, Mr. Greenberg, did all of the auctions that you did with Zachys have similar conditions of sale stating that the wine was sold as is?

A. Yes. And every single auction I bought from has the same representation. I bought and sold from over a hundred auctions roughly maybe, and every single one has the same exact language. That's just the industry standard.

Q. Why were you willing to buy goods subject to an as-is provision?

A. Because I never had a problem with anything for any reason. They always gave me my money back or rectified the situation.

I never once had a problem with anybody about it, not once.

Q. As a buyer, did you ever call an auction house to ask questions about wines you were considering buying?

A. At least a dozen, if not two dozen, times before the auction, yes. I didn't physically inspect, but what I did is I made a lot of phonecalls.

Q. When you got wines after discovering the issue with Royal and Sutcliffe, did you start to inspect them when you got wines?

A. Yes, and at times I sent them back.

Q. Let's turn to the introduction of the catalog. This is page 6 of the exhibit, please.

MR. CIALONE: If you could blow up that paragraph, the third. Thank you.

Q. Mr. Greenberg, during his opening statement Mr. Hueston noted that the catalog said that some wines, I'm not purporting to quote him, but that some wines were purchased directly from domains. Do you see the sentence that actually discusses that?

A. Yes.

Q. What's it say?

A. "On occasion Burgundian and Rhone rarities were purchased directly from domains."

Q. What are Burgundian and Rhone rarities?

A. Burgundian is pinot noir. It's in the center of France. That is referring to the fact that Henry Jayer sold me wines

directly from his cellar. Rhone I think is referring to Guigal wines, which are made out of Syrah grapes that I got from New York Wines directly from Guigal, 1999s. In fact, Mr. Koch bought over 200 bottles of those 99 Guigals in this auction. I'm not being sued for those.

Q. Mr. Greenberg, did this auction have a lot -- did it include wines from all over the world or just from Burgundy and Rhone?

A. All over the world.

Q. Did you believe that this statement here was a representation that all the wines had come directly from domains?

A. No.

Q. Did you think it was a representation that any Bordeaux wines had come from domains?

A. The closest thing would be on like the 2,000 Bordeaux. You get them on release and you pay two or three years ahead of time for the wines. This is how it works. You have release pricing that's offered through an importer, and then you as the buyer pay for it three years in advance in futures. Then, as soon as the wine is released, it's shipped to you, straight to you. So, the 2000 Bordeaux in that auction, which Mr. Koch bought several hundred bottles, did come directly from the domains to me.

Q. Looking at this sentence or this phrase, "On occasion

Burgundian and Rhone rarities were purchased directly from domains" -- you saw the 24 bottles I had lined up on the table earlier, the 24 bottles at issue, correct?

A. Yes.

Q. Are any of those from Burgundy?

A. No.

Q. Any of them from Rhone?

A. No.

THE COURT: Would this be a good time for a lunch break?

MR. CIALONE: Sure, your Honor.

THE COURT: Ladies and gentlemen, I'm going to give you an hour for lunch. Don't talk about the case, leave your notepads, keep an open mind, and we'll see you in an hour.

(Luncheon recess)

AFTERNOON SESSION

1:45 p.m.

(Jury present)

ERIC GREENBERG, resumed.

THE COURT: Mr. Cialone.

MR. CIALONE: Thank you, your Honor.

CROSS-EXAMINATION (continued)

BY MR. CIALONE:

Q. Mr. Greenberg, before we broke to lunch, we were looking at the introduction of the Zachys October 2005 auction catalog. Did you think "best of the best" was a fair description of your collection at that time?

A. Yes.

Q. Why?

A. Sotheby's, Christy's, Zachys, Acker Merrall, Bipin Desai, Wilfred Jaeger, and probably 20 other top collectors, wine critics, auction houses, everybody else told me that I had the best collection they had ever seen.

Q. Mr. Greenberg, do you recall last week you were asked about an email that you sent to David Smydo of D. Sokolin in which you said -- do you recall being asked about that email in which you talked about a bottle that was fake, the cork not properly marked, the bottle itself is suspect, and the label is taped on with cellophane tape? Do you recall that?

A. Yes, sir.

Q. At the end of that email you say, Bordeaux Wine Locators is the worst counterfeiting operation in the world, have a great Thanksgiving. Do you recall that?

A. Yes, I remember that.

Q. Did you believe that Bordeaux Wine Locators was the worst counterfeiter in the world?

A. No. They are a wine importer. What that means is, those strict labels you see on the bottom of the bottles, they get paid 5 or $10 a bottle by a wine vendor, somebody who sells you wine, to import the wine in, make sure the duties and taxes are paid, and would make 5 or 10 or $20 a bottle to put their sticker on there because there has to be an identification of the person with a license to import.

Q. Did you believe that Bordeaux Wine Locators was engaged in counterfeiting wine?

A. No. I think that they may have been -- I don't think they looked at the wines they brought in. They would stick their sticker on it, import it, and then send it off to the person who sold it to me as a consumer.

Q. So why did you say that to Mr. Smydo?

A. Dave is a very nice guy, and I'm very close friends with Dave Sokolin who owns the company. His partner was a man named Mikey Danson, and we used to hang out a lot. They owed me at that time I think it was a couple of thousand bottles of wine. That's what the summary they are talking about in that email

was. They sent me what they were holding in their warehouse to send me. I was saying I got to send this one back. So it was just part of normal banter of people that are friendly with each other.

Q. Did you continue buying wine from them?

A. Yes, I did.

Q. We talked earlier about Mr. Edgerton. Did Mr. Edgerton inspect any wines with Bordeaux Wine Locators labels in your cellar?

A. Several, yes.

Q. Did he say that some of those were genuine?

A. Yes, he did.

MR. CIALONE: Your Honor, I have here Exhibit 323, which is part 3 of Mr. Edgerton's report. I'd like to move that into evidence.

THE COURT: Any objection?

MR. HUESTON: No objection.

THE COURT: It is received.

(Trial Exhibit 323 received in evidence)

MR. CIALONE: If I could approach the witness, your Honor, I'd like to give him Exhibit 73, which is the first part of Mr. Edgerton's report, so I can refer him back and forth without distracting the jury.

A. This says part 3 of 3 parts, is that right?

Q. Yes. I'm going to give you part 1. Mr. Greenberg, if you

would turn to page 67 of Exhibit 373, the document I just gave you.

A. The Bates number or the page number?

Q. I actually think they are the same.

A. OK. I was getting very confused the other day. I want to make sure I don't.

MR. CIALONE: Liz, if you would go to page 26 on the screen.

Q. Do you see bottle number 76 there, Mr. Greenberg?

A. Yes, sir.

Q. Looking at that picture, can you tell if that is a Bordeaux Wine Locators strip label there at the bottom?

A. Yes, it is.

Q. If you would look in the document I gave you, Mr. Edgerton's report. What did he say about bottle number 76?

A. Presumed genuine.

MR. CIALONE: Can we go to page 34, please, Liz.

Q. This one is a little hard to see, but do you see bottle number 79?

A. Yes, I do.

Q. Is that a Bordeaux Wine Locators strip label at the bottom?

A. Yes, it is.

Q. What did Mr. Edgerton tell you about bottle number 79?

A. Genuine.

Q. Let's go to page 38, please. Do you see bottle number 81?

A. Yes.

Q. Is that a Bordeaux Wine Locators strip label?

A. Yes, it is.

Q. What did Mr. Edgerton say about that bottle?

A. Genuine.

Q. Can we go to page 44, please. Do you see bottle number 83?

A. Yes.

Q. What did Mr. Edgerton tell you about that bottle?

A. Genuine.

Q. Is that a Bordeaux Wine Locators strip label there on the bottom?

A. Yes, it is.

MR. CIALONE: Go to page 49, please, Liz.

Q. Do you see bottle number 90?

A. Yes.

Q. Is there a Bordeaux Wine Locators strip label on it?

A. Yes.

Q. What did Mr. Edgerton say about bottle number 90?

A. Presumed genuine.

MR. CIALONE: Go to page 50, please, Liz.

Q. Do you see bottle number 91 on the right-hand side?

A. Yes.

Q. Is that a Bordeaux Wine Locators strip label?

A. Yes.

Q. What did Mr. Edgerton say about that bottle?

A. Genuine.

MR. CIALONE: Liz, will you go to page 53, please.

Q. Do you see bottle number 96 there?

A. Yes.

Q. Is that a Bordeaux Wine Locators strip label?

A. Yes.

Q. What did Mr. Edgerton tell you about that bottle?

A. Probably genuine.

Q. Thank you?

MR. CIALONE: Liz, can you put Exhibit 97 up, please.

A. Am I done with this one, Mr. Cialone?

MR. CIALONE: May I, your Honor?

THE COURT: Yes.

Q. Just leave it there. Sorry. Mr. Greenberg, do you recall being asked some questions about this exchange with Mr. Zacharia in which he mentioned provenance?

A. Yes.

MR. CIALONE: Liz, if you could blow up the middle email there from Mr. Zacharia to Mr. Greenberg.

Q. This is dated August 25, 2005. Is that before or after Mr. Zacharia and Mr. Hatton actually came to your house to inspect wines?

A. It's about a month afterwards.

Q. Do you see the subject line?

A. "Eric estimates."

Q. What does that refer to?

A. That refers to the pricing that we put on wines. I believe we were adding a couple of wines to the consignment and agreeing on the high estimate, low estimate, and the reserve prices.

Q. Based on Mr. Zacharia's email, what did you think his reason for raising provenance was?

MR. HUESTON: Objection. There is no foundation for what he thinks Zachariah's thoughts were.

THE COURT: Sustained.

MR. CIALONE: Let's go to the next page, please, Liz. If you would blow up the paragraph that starts with "On another matter," all the way through the end of that. Thank you.

Q. Mr. Zacharia says, "On another matter, one of the issues we have been dealing with is people are more and more cautious when buying these older bottles. What will help us, help Eric get top dollar for his old wines is getting the provenance. European private collection and European trade are not enough for many of our buyers at this point. People are much more comfortable when we can trace these bottles back at least to the previous owner, which is best if it is named to us. Wines for the nineteenth century will not fetch top dollar, in fact they will be much harder to sell, without provenance; the further back it can be ascertained, the more valuable the wine is. Please let me know your thoughts on this."

Did Mr. Zacharia say anywhere in this email that he needed provenance information in order to determine if the wine was authentic?

A. No, sir.

Q. Did he say anywhere in this email that he needed provenance information in order to determine if the wine was suitable for sale?

A. No, sir.

Q. Did he ever say that to you about the wines in the October 2005 auction?

A. No, sir.

Q. When Mr. Zacharia and Mr. Hatton were at your house inspecting the oldest and most valuable bottles, did they tell you they could not accept wines for auction without provenance information?

A. No, they didn't.

Q. You responded, "I cannot provide this. I had many sources and cannot tie them to bottles. Sorry." Why did you give that response to Mr. Zacharia?

A. Because that was the truth.

Q. Had you previously discussed with Mr. Zacharia your inability to tie specific wines to specific vendors?

A. Can you repeat the question, please?

Q. Sure. Had you previously discussed with Mr. Zacharia the fact that you had many sources and could not tie individual

bottles to specific vendors?

A. At all seven auctions Mr. Zacharia knew that I could not definitively trace bottles back to prior owners. That was something he knew walking into my cellar that day in July of 2005 and when he inspected the wines and determined them to be suitable for sale.

MR. CIALONE: Liz, can we go to Exhibit 98, please.

Q. You sent this email to Mr. Zacharia 10 minutes later, correct?

A. Yes.

Q. Why did you respond to his "Please let me know your thoughts on this email" twice?

A. Because if you notice at the bottom it's sent a day earlier. It was another email. This is a response to two different emails. I was at my desk. I probably, as I explained yesterday, or was it Thursday -- these days are blending into each other -- when you clean out your emails, you get your most recent ones up top. I have a tendency to clean out 3 or 400 emails at a time in a period of minutes.

I saw this again, and this was the first email he had sent me. I thought about for a few minutes some definite wines I could trace. That was the 1805 Lafite Rothschild, 1832 Lafite Rothschild which I got from Eddie Gelson at Wine Library, and also the 1893 Margaux which Mr. Koch bought that came from D. Sokolin in Southampton. When I omitted to put on

here was the specific wines, but I knew that I could trace those three wines to these two vendors.

Q. How did you know you can trace those three -- let me back up. You said 1805 Lafite, 18 --

A. 1832, sir.

Q. 1832 Lafite. What was the third one?

A. 1893 Margaux.

Q. Margaux is a newer name in this trial. Are those all Bordeaux?

A. Yes. Margaux is what they call a first growth. It is one of the most prestigious wineries in the world.

Q. How could you trace those three wines to individual vendors?

A. Because they are the only ones I had. I only owned one of them.

Q. Where did you get the 1805 and 1832 Lafite?

A. Wine Library.

Q. Where did you get the 1893 Margaux?

A. D. Sokolin & Company.

Q. Royal Wine also sold you 19th century Bordeaux, correct?

A. Yes, sir.

Q. Did they sell you any ones of which you only had one bottle?

A. No.

Q. Were they the sole source of any of those 19th century

Bordeaux?

A. I don't believe so.

Q. Did you have other sources of 19th century Bordeaux that you did not mention in this email Exhibit 98?

A. Several.

Q. Like what?

A. Wine Bid, Christy's, Sotheby's, Chicago Wine Company, Royal Wines, and Atherton Wine Imports. So I had seven in total.

Q. Atherton, Wine Bid, were either those sorts of individual wines of which you had one bottle of 19th century Bordeaux in the auction?

A. I may have. I think I bought an 1874 Lafite from them, which may have been in the auction. But I was never sued over that.

Q. Do you know how many 19th century Bordeaux Mr. Koch bought at the October 2005 auction?

A. 20.

Q. How many are at issue in this case?

A. One.

Q. Mr. Greenberg, did you intend to sell counterfeit wine at the October 2005 auction?

A. No, sir.

Q. Were you trying to deceive bidders?

A. No, sir.

Q. Did you know that you had consigned any counterfeit or

inauthentic wines?

A. No, sir.

Q. Did you believe that Zachys would sell counterfeit wine on your behalf?

A. Never.

Q. Did you believe that when you gave a wine to Zachys and they inspected it and they accepted it for the auction, that they would do their job carefully?

A. Yes.

Q. Did you trust their professional judgment?

A. Yes.

Q. Did you believe that the wines they accepted for sale were authentic?

A. Yes, I did.

MR. CIALONE: Your Honor, subject to further redirect and to calling Mr. Greenberg in our case to rebut anything that comes up in the remainder of plaintiff's case, I have no further questions. Thank you.

THE COURT: Thank you.

Redirect?

MR. HUESTON: Yes, your Honor.

THE COURT: Mr. Hueston.

REDIRECT EXAMINATION

BY MR. HUESTON:

Q. Mr. Greenberg, you just testified you had great faith in

Zachys' judgment, correct?

A. Yes.

Q. You relied on them to inspect your wines, correct?

A. Yes.

Q. No one is better than Zachys in inspecting your wines?

A. I didn't say that. I said I had great faith in them.

Q. Great faith in part because in your experience they did an excellent job at authenticating and reviewing your wines, sir?

A. Yes.

Q. In fact, as you stated, they got prices higher than the other auction houses for you, right?

A. Not in every case, but they got good prices.

Q. You didn't tell Zachys about Mr. Edgerton's inspection or his conclusions, because you didn't believe that Zachys needed to hear that, it wasn't necessary, right?

A. Yes.

Q. It wasn't necessary because, in your opinion, Zachys was the one who could inspect and catch everything, right?

A. I thought they would do a good job on their inspection. I think it is humanly impossible for any one human being to catch everything.

Q. But you claim and you believe that you were, before the October 2005 auction, extremely confident in their abilities to inspect and catch counterfeit wines, right?

A. Yes.

Q. Isn't it true, sir, that before that auction you told Zachys that you had little faith that their inspections were conducted well?

A. I don't understand your question.

Q. Do you have, sir, any recollection of you telling Zachys that you had little faith that their inspections were conducted well?

A. I recall an email where I was being sarcastic in 2004 about another auction that is not at issue in this case. Other than that, I don't recall.

Q. Another sarcastic email?

A. Yes.

Q. Let's go take a look. I am handing you an exhibit that we are marking as Exhibit 529.

MR. CIALONE: I'm sorry. What was the number on this?

MR. HUESTON: It's a new one. We are marking it as Exhibit 529.

Q. This is an email from you, sir, October 28, 2004, to Mr. Zacharia.

MR. HUESTON: At this time we would move this into evidence.

MR. CIALONE: No objection, your Honor.

THE COURT: 529 received.

(Trial Exhibit 529 received in evidence)

MR. HUESTON: Let's put this up, please.

Q. This email, sir, this is an October 28, 2004, right?

A. Yes.

Q. In the first line you write, "You have wine in here that is not mine and you are missing much," right?

A. Yes.

Q. Let's go down to the next you. "You are missing all my old Bordeaux and Burgundy and lots 1368 to 1387 are not mine," right, sir?

A. Yes.

Q. You meant what you said about that; that wasn't a laughing matter, right?

A. I meant that, yes.

Q. Then you wrote, "I have little faith that these inspections and estimates were conducted well based on what I see here." That's what you wrote to Zachariah, didn't you, sir?

A. I wrote that.

Q. This is the auction immediately preceding the October 2005 auction that is at stake in this trial, right, sir?

A. Yes, sir.

Q. In fact, you throw in one more. "You are missing about $300,000 worth" of your wine, right, sir?

A. I wrote that.

Q. That's no laughing matter either, was it?

A. Actually, I knew they would get it right.

Q. You knew they would get it right, but you wrote an email to

make sure that they get it right, because they had gotten it wrong, right?

A. Yes, sir.

Q. Sir, coming up to the October 2005 auction, you decided not to tell them everything you knew about your wines even though, in your words, you had little faith in their inspections, isn't that right?

A. No.

Q. Let's move on to a different area. Your attorney walked you through Mr. Egan's report on 12 magnums of supposed Lafleur wines at issue in this case, and he showed you portions of those reports. Do you remember that?

A. 12 magnums of?

Q. Lafleur wines.

A. If they in fact came from me, yes.

Q. You testified that Mr. Egan, who was hired by Mr. Koch, is a very professional man. You said that at this trial, right?

A. Yes, Mr. Egan is professional.

Q. Let's go back to Mr. Egan's report. Your attorney focused on only one portion of Mr. Egan's report. I want to make sure the jury sees what Mr. Egan's conclusions were on those 12 Lafleur magnums at issue in this case.

MR. CIALONE: Your Honor, I object to this. Mr. Hueston asked to have me show Mr. Egan's conclusions which are based on things different than the corks, like the number of

hectares. My response was he can put his own expert up. He is now going to ask Mr. Greenberg about Mr. Egan's opinions. I was only asking about his specific observations about what these corks said.

THE COURT: Where are you going with this?

MR. HUESTON: Your Honor, when I objected, you said, you will have a chance to complete the record. That's exactly what I want to do. He put up select portions of that. I want to make sure that the jury has no confusion that at the end of each one of those bottles where Mr. Egan said counterfeit.

THE COURT: Isn't this better done on Mr. Egan's testimony?

MR. HUESTON: Your Honor, I think it is directly on point, and it will be quick.

MR. CIALONE: It is not directly on point, your Honor. The point of it is that Mr. Egan felt the cork brands were correct just like Mr. Greenberg did. Other things he felt were not correct.

MR. HUESTON: That's cross-examination.

THE COURT: You can ask him that.

Q. Let's go to Trial Exhibit 105, which has already been introduced in evidence. I'll put a hardcopy in front of you, sir, even though we will have it up on the screen for your convenience. Turn to page Bates stamped 14. This is a magnum of purported 1921 Lafleur, a magnum. His conclusion, sir,

counterfeit, correct?

A. Yes.

Q. Let's go to the next page, the second one, another purported 1921 Lafleur magnum, sir. On the next page he again concludes counterfeit, right?

A. Yes, he disagreed with Zachys.

Q. On the next page, page 16, he concludes that the 1945 Lafleur magnum at issue in this case is counterfeit, right, sir?

A. That's what it says.

Q. On the next page another purported 1945 Lafleur magnum, conclusion counterfeit, right, sir?

A. Yes, his view was different than Zachys.

Q. On page 19, sir, another 1945 Lafleur magnum. Conclusion counterfeit, right, sir?

A. As of today, that's what he believes, yes.

Q. On page 23, a 1949 Lafleur magnum that you sold, again Mr. Egan concludes counterfeit, right, sir?

A. Sir, I didn't sell the magnums, Zachys did. So I'll have to answer no to your question.

Q. On the next page, 24, a 1949 Lafleur magnum, also conclusion counterfeit, right, sir.

A. Yes, that's what it says.

Q. On the next page, page 25, a 1950 Lafleur magnum, counterfeit, right, sir?

A. That's what he wrote.

Q. The next page, another 1950 Lafleur magnum, counterfeit, right?

A. That's what he wrote.

Q. Page 27, another 1950 Lafleur magnum, counterfeit, right?

A. Yes.

Q. The following page, 28, another 1950 Lafleur magnum, counterfeit, right?

A. That's what he wrote.

Q. The final supposed 1950 Lafleur magnum, on page 29, Mr. Egan's conclusion, counterfeit, right?

A. That's what he wrote.

Q. So, Mr. Egan, whom you described as a very professional man, his conclusion was that all the purported Lafleur magnums in this case are counterfeit, right, sir?

A. That was his conclusion, and that's not what Zachys or I thought in 2005, eight years ago.

Q. Mr. Lempert-Schwartz, your expert, concludes with respect to all of these 12 bottles that in his opinion it's not possible to recommend these bottles to be sold in the market. That was his conclusion, right, sir?

A. Yes, and I don't recall saying he thought they were counterfeit.

Q. But it was not possible to recommend these bottles be sold in the market, that's your expert, right?

A. Yes, and that's why I segregated probably north of 20 of those in my cellar which I'm not ever going to sell.

Q. We will get to segregation in a moment. Finally, Mr. Kapon, whom you regarded as an expert, said he couldn't offer any of these 12 Lafleur magnums for sale in good conscience, right, sir?

A. Actually, no, he didn't say that about these magnums.

Q. That's what he said in his email, right, sir?

A. No.

Q. Sir, let's put that back up, Exhibit 389, from Mr. Kapon to you, November 28, 2004. It begins in the paragraph, in the embedded. "Then there are other Lafleurs." He concludes, "So I cannot offer these Lafleurs in good conscience." That's what he says, right, sir?

A. He says that about those Lafleurs.

Q. Same 12 Lafleurs you testified earlier in my examination that wound up being sold to Mr. Koch?

A. No.

Q. We'll let the jury refresh your testimony on that.

A. How do they know they are the same ones? You're mischaracterizing yet again, sir.

Q. The jury will remember your testimony.

A. I hope so.

Q. Let's pull up Exhibit 96, which is your consignment agreement with Zachys, and go to paragraph 4. We are going

ahead and putting it up for you, sir. On the first page of this agreement, it states, "The products will be marketed in accordance with the marketing agreement attached hereto as Exhibit 2." Do you see that?

A. Yes, sir.

Q. Going to the Exhibit 2 attached to this consignment agreement, that is the marketing agreement between you and Zachys, right?

A. Without seeing Exhibit 2, I can't say what it is. My memory is not current.

Q. I'll give you a hardcopy.

A. Thank you.

Q. You can turn to page 64.

A. Is that Bates, Bates 64?

Q. It will say "at 96.0064."

A. Yes, I'm here.

Q. It's up in front of you. Under the print advertisements and marketing, do you see that it says there there will be two full-page advertisements featuring your sale that will run in The New York Times one or two weeks prior to the auction?

A. Yes, it says that?

Q. Then another one-third page advertisement showing your consignment's title, right, sir?

A. Yes, sir.

Q. The title was "17,000 Bottles of Greatness," correct?

A. Yes.

Q. And that there be a cover photo in The New York Times both the week of the auction and four weeks prior to the auction, right?

A. Yes.

Q. And that also there would be advertisements in the Wine Spectator on the Zachys website and the Zachys newsletter through email blasts and on various electronic wine cellar, correct?

A. Yes.

Q. The marketing agreement also refers to the auction catalog, correct?

A. I don't know.

Q. It says that a full color auction catalog will be distributed to over 2,000 top collectors, right, both nationally and internationally?

A. Yes.

Q. It says that the catalog cover will feature your consignment title, right?

A. Yes.

Q. That would be the "17,000 Bottles of Greatness," right?

A. Yes.

Q. It says, "There will be many descriptions and explanations of top regions and top producers throughout the catalog," correct?

A. Yes.

Q. It also mentions specifically a two-page introduction to your consignment, right?

A. Yes.

Q. And it explains what the purpose is. It's supposed to "highlight both the quality and storage conditions of your cellar," right?

A. Yes.

Q. Mr. Greenberg, you expected and hoped that readers -- I'm sorry -- that buyers would read that cover letter in the catalog, right?

A. Did I expect it? I don't know.

Q. You hoped that the letter was going to be read and not ignored, right?

A. You know, I think the wine spoke for itself. The letter in the front of the catalog is not material to what was in the sale. What was in the sale was the best of the best. In fact, if I recall correctly, out of the 2,600 bottles that Mr. Koch bought, a full 20 to 25 percent of them were rated 100 point wines, or perfect, by Robert Parker. That to me is best of the best.

Q. I'm going to go back to the question that I asked. Are you saying that you didn't think this cover letter was very important?

A. Actually, no, because you know what is important is the

wine that is being sold.

Q. The cover letter was a description of what was being offered on sale, wasn't it, sir?

A. No, the wine catalog was.

Q. Sir, you took the time to review that letter before it went into the auction catalog, didn't you?

A. Actually, no, I didn't see the final letter.

Q. Sir, you took the time to edit Mr. Zacharia's letter before it went into the auction catalog, didn't you?

A. No, I didn't. I just added a few comments.

Q. You did not edit?

A. No, I did not edit.

Q. You were involved in that, in writing parts of the letter, weren't you?

A. No.

MR. CIALONE: Your Honor, this is going well beyond the scope of my direct. I am trying to give leeway here, but --

THE COURT: Did you ask about the language in the catalog?

MR. CIALONE: I didn't ask about who wrote it. I just showed him what it says in order to correct the statement in the record about domains.

MR. HUESTON: He spent a lot of time on the catalog and the cover letter and meaning of the words. This is fair

recross.

MR. CIALONE: This is really just retreading ground going through the edits and suggestions. I didn't go through any of that stuff.

THE COURT: Please move on.

Q. Sir, it is your testimony that you didn't get to review the final draft, is that right?

A. I don't remember that.

Q. Let's put before you what is marked as Exhibit 525. I'm handing you what we are going to mark as Exhibit 524 marked for identification. Do you have that before you, sir?

A. Yes.

MR. CIALONE: 524 or 525?

Q. This is an email from Mr. Zacharia to you, subject your intro, dated September 29, 2005.

MR. HUESTON: We move that into evidence at this time.

THE COURT: Any objection?

MR. CIALONE: It's the same objection as before, your Honor. It's going beyond the scope. It's also the same document.

THE COURT: 524 received.

(Trial Exhibit 524 received in evidence)

Q. Sir, let's take a look at this. On September 29th Mr. Zacharia is writing to you your intro. Do you see that there as the subject?

A. Yes.

Q. He writes, "I thought I sent this to you earlier, but I don't believe I have heard back from you on this one. Please look this over and give me your thoughts or an okay," right?

A. That's what it says.

Q. Do you remember getting that email?

A. No, I don't.

Q. I'm handing you what we are going to mark as Exhibit 525. Exhibit 525 for the record is an email chain. At the top of the chain it's from you, Eric Greenberg, to Jeff Zacharia, September 29th at 3:41 p.m. Do you see that, sir?

A. Yes, I do.

MR. HUESTON: At this time we would move this into evidence.

MR. CIALONE: No objection, your Honor.

THE COURT: Received.

(Trial Exhibit 525 received in evidence)

Q. Let's back out a little bit. I'm not going to go over it again, but the embedded part of the email down below is the document we went over in my last examination of you with your all caps writing. "Good start. See comments." In lower caps, "I want to review the next draft as well." Right? Do you remember that and our discussion about that?

A. Yes.

Q. That was on September 23rd. On September 29th you

forwarded it to him again, saying, "I sent this to you last week," right?

A. Yes. This is really simple. I sent him the comments I sent the prior week. I didn't even pay attention to read this, because I thought I sent him my comments. That doesn't mean that I accepted or edited what he had wrote. That's why I didn't remember this. That's a simple explanation.

Q. We'll get to that. You in fact sent your edits to Mr. Zacharia twice, right?

A. No. Actually, the edits, yes.

Q. This is the second time?

A. Yes.

Q. You wanted to make sure he received your comments, right, sir?

A. No. Actually, it's another case of me going through God knows how many emails and cutting and pasting and moving on to the next thing. I didn't see it as a matter of major importance, sir.

Q. You said, I counted at least three times and I think more in counting, that Mr. Zacharia never sent the next draft to you, right?

A. I don't understand your question.

Q. You said that Mr. Zacharia never sent the new draft after that to you, right?

A. I didn't remember that.

Q. Let me see if we can help refresh your recollection on that. Let's take a look at what we are marking as Exhibit 526. Exhibit 526 is an email, starting on the top, from you to Jeff Zacharia on September 30th?

MR. CIALONE: Your Honor, again, way outside the scope. This appears to be an email with nothing attached to it. There is no context to it.

MR. HUESTON: This is Mr. Greenberg's own production. It's how he produced it. We would move this now into evidence, your Honor.

MR. CIALONE: It doesn't matter whose production it is, your Honor, if you're using it. There doesn't appear to be any content to the email.

THE COURT: I'm going to allow it. 526 received.

(Trial Exhibit 526 received in evidence)

Q. Sir, in the embedded email it says, "Subject: Updated intro," doesn't it? Do you see that? Do you see that, sir?

A. Yes.

Q. Mr. Zacharia is saying, "Please give me your thoughts," right?

A. Yes.

Q. Earlier he had told you, and I showed it to you on the other exhibit when he was trying to get input from you, he said -- he had said in Exhibit 524, "Please look this over and give me your thoughts or an okay," right, sir? That's what he

said on September 29th?

A. Show me. Can you please refer me back to that.

Q. Let's pop it back up there. I'll compare it so you can see it. That's what the email said on September 29th, 1 p.m., your intro.

A. OK.

Q. He asked you to "Look this over and give me your thoughts or an okay," right?

A. Yes, that's what he wrote.

Q. We have shown that you in fact did give input, right?

A. Input on what?

Q. You wrote back in all caps on one of the drafts, right?

A. That was actually before this. That all caps was on September 23rd. That's when I sent that. What you are trying to say here is that I was giving him this input on September 29th. That's not the case.

Q. Sir, he sent it again on September 29th, remember?

A. I don't remember this.

MR. CIALONE: Your Honor, since that is not in evidence --

MR. HUESTON: I just put the emails in front of him showing it again on the 29th.

MR. CIALONE: I'm sorry. I thought he said September 30th which was attached. Sorry. I withdraw the objection.

Q. Sent to you again on September 29th, right, sir?

A. Which was sent to me on the 29th?

Q. Just to put this in context, make sure you're not confused, Exhibit 524, September 29th, 1 p.m., Mr. Zacharia writes to you, quote, "Your intro. I thought I sent this to you earlier but I don't believe I've heard back from you on this. Please look this over and give me your thoughts or an okay." Do you see that?

A. Yes, I do.

Q. Then Exhibit 525, at the top of the email you write back to him, same date, a little later, "I sent this to you last week," right?

A. I sent him the edits of the 23rd that prior week, that is correct.

Q. The next day, September 30th, and this is Exhibit 526, Mr. Zacharia in the embedded email has a subject "Updated intro. Give me your thoughts," right?

A. Yes.

Q. You write back at the top, "Giving him his OK," right, sir?

A. He asked for my thoughts and I wrote OK. That wasn't my thoughts. I just said go do what you got to do, I didn't have time to deal with it.

Q. You didn't write in this email go do what you have to do, I don't have time for it; you didn't write that, sir, right?

A. I also didn't propose to my wife to get married through an email. None of this shows that Zachys or I in this case

thought any single bottle was counterfeit or had a problem, Mr. Hueston. You seem to ignore that repeatedly.

Q. You have talked about that Zachys -- that you were not involved in the catalog at all, right, in organizing or having input in the catalog, is that right?

A. At all?

Q. Right.

A. I can't agree with that.

Q. You testified, sir, that "I was the consignor. It's their business, it's their business license. They ran the auction, they did the entire thing," right?

A. I said that.

Q. Your testimony is they controlled the entire auction, right?

A. Can you show me my testimony?

Q. Sure. We will put it up.

A. Sometimes you like to trick me, and I don't want to be tricked here.

Q. I've never been trying to trick you. There is your testimony. Zachys was the auctioneer, it was their catalog, I was the consignor. It's their business. It's their business license. They ran the auction, they did the entire thing. I wasn't even there." That's your testimony, right?

A. I said that.

Q. In fact, sir, you were actively involved in deciding which

wines were going to be sold at your October 2005 auction and in which order they would be sold at that auction, right?

A. Yes.

Q. You gave input to Zachys on that, didn't you?

A. Yes. But that doesn't mean that I wrote their catalog. We have to go through and select the wines we are going to sell. Otherwise, there is nothing to sell. You know, you can construe that any way you want. I had to give them a list.

Q. Let's go to Exhibit 439. I have before you Trial Exhibit 439 marked for identification. It's an email from you to Mike Jessen, cc Jeff Zacharia, Fritz Hatton, and Thierry Lovato, dated September 27, 2005.

MR. HUESTON: I move this into evidence.

THE COURT: Any objection?

MR. CIALONE: Your Honor, same objection. I'm pretty sure I did not ask Mr. Greenberg about how sale lots were created. This is quite different from descriptions in catalogs.

MR. HUESTON: Your Honor, he elicited testimony suggesting that he had no involvement in the Zachys process at all, that everything went on behind the scenes.

THE COURT: It is sufficiently within the scope.

MR. CIALONE: That was the testimony that he elicited, not me.

THE COURT: There was testimony relating to the role

with respect to Zachys generally. I think this is within the scope sufficiently, and I'm going to allow it. 439 received.

(Trial Exhibit 439 received in evidence)

MR. HUESTON: Let's put it up, please.

Q. I'm directing your attention to the top of this page. This is you, sir, writing to Michael Jessen. Who is Michael Jessen?

A. Michael Jessen was a senior specialist at Zachys at the time.

Q. You were taking time that day -- I think you testified you only spent about 1 percent of your time dealing with your wine, right?

MR. CIALONE: Objection.

A. If you look at the totality of the last 11, 12 years, yes. But when you are doing a 17,000-bottle auction, Mr. Hueston, you know that I spent more than 1 percent of my time. Anything else would be absurd. Now you are mischaracterizing my testimony.

Q. No. Thank you for clarifying. That is very helpful.

Moving you to the first paragraph there, you write to Mr. Jessen, "Guys, Thierry made a couple of mistakes in the pulling process." Is that your contract employee Thierry Lovato?

A. Yes.

Q. The pulling process was what?

A. Pulling wines for the auction for Zachys to evaluate.

Q. You spotted some mistakes that he had made?

A. Yes. People make mistakes.

Q. "Thierry," you write, down below, "Please let us know of others. The catalog is being finalized in the next few days. Thierry had been communicating with Matt. That is not enough. Please communicate with all of us." You wrote that, right?

A. Yes.

Q. "All of us" meant you, too, right?

A. Yes.

Q. You were referencing the catalog that was being finalized in the next few days, right, sir?

A. I wanted to make sure Zachys had all the wines accurately that were going to be sold. It was a $9 million sale, sir. You would be paying attention to that.

(Continued on next page)

BY MR. HUESTON:

Q. You wanted to make sure that you were reviewing and seeing drafts of the catalog, right, sir?

A. No.

Q. Two lines down, "We need to resolve all of this before we go to press with the catalogue." Were you going to press with it too, sir?

A. No.

Q. Is that just the royal "we" you were using there?

A. I don't understand your question. Is that sarcastic or is that a question?

Q. It actually is a question. "We" meant you and Zacharia working together for this catalog, didn't it?

A. You know, I went to University of Michigan and we made the Final Four. I have nothing to do with the coaching, the players, the selection of the team or anything, but yes, we made it to the Final Four, and that's said in the same way. I also went to University of Texas, and I went to the game where we won the national championship. I wasn't on the team, I had nothing to do with the coaching. I mean, this is -- this is --

Q. Well, I think we can stipulate that you're not on the basketball team, but you were involved in putting up these wines for this auction, weren't you, sir?

A. I have season tickets for the Golden State Warriors, and when we go to those games and we win, I'm not on the basketball

team.

Q. Using the analogy, you're helping coach the process here, sir; it's a big difference, isn't it?

A. No, I'm not.

Q. Okay. Let's go to Exhibit 529 marked for identification. Sorry. 528. 528 marked for identification.

Is that an e-mail from Mr. Jessen back to you, September 25th, 2005, Zachys Wine Auctions, Revised Lotting?

MR. HUESTON: We move this into evidence, your Honor.

THE COURT: Any objection?

MR. CIALONE: No, your Honor.

THE COURT: It's received.

(Trial Exhibit 528 received in evidence)

Q. Okay. Let's go to the embedded e-mail down below. That's the e-mail from you, sir, to Mr. Jessen again on September 23rd, 2005?

A. Yes.

Q. And in the first line you write, "It is nice to finally see this." With respect to the lotting, right, sir?

A. Yes.

Q. Now on the attached pages there was a list of how Zachys was proposing to proceed with the auction, which types of bottles of wine they were going to offer and at what time in the day and on which dates, right, sir?

A. Actually, I don't understand your question. You tied three

or four thoughts together so you lost me.

Q. Okay. Well, I'll let you explain. What is lotting, sir?

A. Lotting is how you place a wine into the auction. For instance, in the top e-mail where I talk about lots that you'd like to break out, if you have a hundred bottles of water and you put in a lot as a hundred bottles, there could be very few people that would afford to buy a hundred bottles, so what you would do is you would break it into smaller lots so that way more collectors can bid on it and actually afford to buy it and create competition for the wine. That's what that's referring to.

Q. Okay. And then in the -- in fact, if we go to pages 2 and 3, they had sent to you in an earlier e-mail, namely, the one from Mr. Jessen of September 21st at 11:38 p.m., a revised lotting for your review and approval, for day one and then for day two. Correct, sir?

A. I don't think I've seen this e-mail before. Can I read the entire thing, please?

Q. Sure. Take your time.

A. Actually, I can't see it. Your specialist has highlighted things that cover up most of it.

Q. I handed you a copy, sir. You can take a look at the hard copy.

A. Where is it?

Q. That should be right where you put it down. Do you want me

to help you? I can help you.

A. Oh, is it this one? Oh, okay. I didn't look at the back of it. You didn't refer me to the back of this.

Q. Okay, sure.

A. Yes, okay.

Q. Okay. Does that refresh your recollection that in fact Zachys had sent you a draft revised lotting for both the days of the October 28th auction?

A. Yes.

Q. Okay. And then you had some comments and suggestions for them on that, didn't you?

A. I had suggestions on the size of lots and the flow of the lots in the sale, which is the same that I did with all my single seller auctions. This is very common. I mean, this is an industry standard practice.

Q. Let's take a look at your language in the embedded e-mail.

MR. HUESTON: Pull it up.

Q. And you start with -- start with the second -- third sentence. "As an overall note, we still have much to do." That means you and Zacharia, right?

A. No, that means Zachys has a lot to do. It's the same thing about we, team, this, that. You know, people that always start off a sentence with the word "I" really bother me, so I try to use the word "we." I'm a CEO of a company so when you're motivating people, you use the word "we." You don't say "I, I,

I, I, I."

Q. So you want the jury to basically see, every time you use "we," it really means "I." You don't want yourself included in this e-mail, is that it?

A. That's not what I said. The use of the word "we" shows respect.

Q. All right. Well, first -- the next sentence says, "First, we have to break up many wines into more lots and parcel lots, as they are too big, in effect causing the demand to shrink or not encouraging more competition." Right?

A. It says that.

Q. Okay. And then at the next sentence, you write, "I absolutely do not like the flow of the other wines." You expressed that concern, right?

A. Yes, I did.

Q. And then you then give commentary, "Having it by vintage chronologically is confusing and I will not approve it under any circumstance." That's what you commanded, right?

A. I wrote that.

Q. Okay. And then you write, "I understand that you want to limit the producer sections and that is fine, but I want all wines, in all categories, grouped by producer." You're telling them how to group it, right?

A. Yes, and remember, Mr. Hueston, all these wines are deemed to be authentic, so let's not confuse that either.

Q. And a sentence later you write, "You are proposing to start the auction with 1900 Burgundies when the room is still filling. No way," you write.

A. Correct.

Q. You were telling them you weren't going to allow them to do it that way.

A. Well, because what you want is most valuable wines going in auction when the room is full, so we started auction at 9 in the morning, you start with things that you know are going to sell through absentee bids, where people put in bids that are not there, and what you want is, when you have your best wines at the auction, for the room to be filled to create competition. This is a common business practice, sir, in which people make their living, and so you want to make sure that if you're doing this as an enterprise to maximize your returns, you're doing it in a way such that you get the best results for yourself, selling the authentic wine that Zachys approved.

Q. Right. So you're giving instructions about how to do the auction and maximize profits, right?

A. I wouldn't say it that way.

Q. Okay. And then at the bottom, you're not just signing off, you want them to stay in communication. The last sentence before you sign your name is, "When do you want to go through lots?" You had continued communication, right, sir?

A. I don't know if I had continued communication because I

haven't reviewed this e-mail, but I did say that.

Q. In fact, sir, you didn't have Mr. Lovato grab the bottles for this auction, you actually grabbed bottles and took bottles and selected them too, right, sir?

A. I don't understand your question.

Q. Well, when you were selecting bottles from your wine cellar for this auction, you were involved in pulling the bottles, right, sir?

A. There may have been one or two bottles that I pulled, but I don't remember if I in fact did that. But --

Q. Just turn to the next page and there's one answer. Look at it. "By the way, I consigned more than 14 bottles of '61 Latour. I believe we sent 18. Where are they? I personally pulled them." That's more than one or two.

A. Oh, actually, no, you're wrong, because Mr. Lovato put it on a cart and he asked me to approve the 18 bottles, and so by me saying I personally pulled them, Thierry would have me come in the wine cellar from time to time to personally approve which bottles got included, and so that was what he was referring to on that '61 Latour. He pulled them. I didn't do the labor where I pulled them and then put them onto the cart. Thierry would have me go into the wine cellar and actually look at the bottles to make sure those are the ones that we're including.

Q. So just so I get this straight, when you wrote, "I

personally pulled them," you didn't mean you personally pulled them, you meant someone else pulled them?

A. And I looked at them. And by the way, Mr. Koch bought those 18 bottles and is not suing me over those.

Q. Okay.

A. Those 18 bottles were authentic and Mr. Koch bought them and they're not in this lawsuit.

Q. Okay.

A. And you know that.

Q. Actually, we don't know that.

A. Yes, you do.

Q. We'll focus on the 24 in this case, sir, and I'll move on to my next question.

A. Convenient.

Q. Sir, just so the record is clear, you talked about what you did with the Royal wines. You're not going to contest that you submitted a sworn declaration that you don't know what you did with the Royal wines you identified as fake, right?

A. I don't understand this question.

Q. Okay. Let's go to Exhibit 510. That's your response to an interrogatory number 3 in evidence -- not in evidence.

MR. HUESTON: But we move it into evidence at this time, your Honor. It's an interrogatory response.

THE COURT: 510 received.

(Trial Exhibit 510 received in evidence)

Q. Here's a copy for you, sir. And let's go to interrogatory number 3. And the question asked you, "State the disposition or whereabouts of each bottle indicated to be fake in the submissions to the Fireman's Fund Insurance Company, as reflected on the pages produced in discovery." Do you see that, sir?

A. Where is that? Yes.

Q. Okay. And then you made a response to that, right?

A. Well, actually, my attorneys did this. I can't even understand like all these words and how they're grouped together and all that, but it looks to be that they said that the interrogatory was overbroad, unduly burdensome and oppressive and not reasonably calculated to lead to discovery of admissible evidence. Subject to and without waiving his objections, and so then they responded on my behalf. There's probably -- I think there's over a thousand auction exhibits and maybe close to a thousand filings in this case, so I can't say that I even read these interrogatories.

Q. Well, let's see if you did.

MR. CIALONE: Your Honor, if they're going to display the response -- if they're going to display the response without displaying the complete response --

MR. HUESTON: We're going to display the complete response.

Q. But first I'm going to establish that you verified this.

Turn to page 9 here.

A. Bates 9?

Q. Page 9 of the document. Bates 10.

A. Bates what?

Q. 510.0010. Captioned Verification, right, sir?

A. Yes.

Q. And you actually say, "I, Eric Greenberg, declare as follows," right?

A. Yes.

Q. That you have read the foregoing, that you had read everything, right?

A. Yes. I signed this from Lima, Peru, where I had no access to e-mail or anything else. My signature is on there. I was in Peru in the middle of the Amazon jungle.

Q. Okay. Well, you're in Peru in the Amazon jungle, but you declared under penalty of perjury that you read it all so I assume you did, right?

A. We did not commit perjury.

Q. Okay. Let's go back to your answer then. And we can display the whole thing.

I'm going to focus you -- you already read the first part. I'm going to focus on the next sentence. "Greenberg responds as follows: Greenberg is unable to state the disposition or whereabouts of each such wine, as Greenberg has not maintained an inventory system or other method of tracking

each wine in his cellar." That's what you said, right?

A. Yes. I also said my review was cursory and conducted without expert assistance based on my own very limited expertise.

Q. I know you said that. I know you want to get that in. Let's go a little further in this. "Greenberg has produced a list of the segregated wines but cannot state with certainty which such wines are the identical wines listed on the document Bates stamped FF00020-31," the Fireman's Fund guide.

MR. CIALONE: Your Honor, he should read the whole interrogatory response. Objection to reading parts of the response.

MR. HUESTON: Well, I'm entitled to highlight what I wish, your Honor.

Q. That's what you said, right, sir?

A. My attorney said that.

Q. Well, and you signed it, verifying that as true, correct?

A. I signed it.

Q. Okay. And then going further, "As Greenberg continued to review wines in his cellar, he came to the conclusion that some of the wines, the authenticity of which he had initially questioned, were genuine or likely to be genuine, for example, because he saw cork markings that he had not seen in his initial review. In such instances the wine in question would have been returned to the main portion of Greenberg's

collection."

A. Yes, and I also said here -- or they said that I consumed many of the wines listed on that document which further reinforced my belief that in some cases initial concerns regarding authenticity were unfounded.

Q. Right. So at least some of the wines that you listed as believed to be fake to the insurance company that you said came from Royal made their way back into your main collection, right?

A. I'm not sure I understand that one.

Q. Well, that's what that last paragraph means. As you continued to review wines in the cellar, you came to the conclusion that some of the wines, the authenticity of which he had initially questioned, were genuine or likely to be genuine.

A. If I consumed a wine, it couldn't have gone back in my collection, sir, so your question is -- needs to be rephrased. I mean, you're trying to do another one of those "My Cousin Vinny" things.

Q. Well, I know that's a favored phrase. This was asking you at the top in the question, what happened to the bottles that you put in the submission to the Fireman's Fund company. That's what this asked you and these are your answers, right?

MR. CIALONE: Your Honor, under Rule 106, if he's going to say, "These are your answers," he really ought to read the whole answer.

THE COURT: That's fair.

MR. HUESTON: Sure. Let's read the rest of it then.

MR. SHARTSIS: Read it from the top. You left out half a sentence.

MR. HUESTON: Well, Mr. Greenberg read the first sentence and I read the second sentence.

THE WITNESS: We should all read it together.

MR. CIALONE: No, you --

MR. HUESTON: I'll just read it from the top. "Greenberg incorporates the preliminary statement and general objections herein. Greenberg further objects to the interrogatory as overbroad, unduly burdensome and oppressive and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving his objections, Greenberg responds as follows: Greenberg is unable to state the disposition or whereabouts of each such wine, as Greenberg has not maintained an inventory system or other method of tracking each wine in his cellar. In general, many of the wines referenced were sent to Royal Wines as part of Greenberg's settlement with that company, as indicated in the document Bates stamped RW," with a series of numbers. "Other such wines have been segregated from Greenberg's collection by Greenberg. Greenberg has produced a list of the segregated wines but cannot state with certainty which such wines are the identical wines listed on the document Bates stamped FF," the

Fireman's Fund documents, "and Greenberg believes that many such wines may be authentic but need further review. After preparing the document Bates stamped [Fireman's Fund] in mid-2002, Greenberg continued reviewing wines in his cellar. Greenberg's initial review was cursory, and conducted without expert assistance and based on Greenberg's own very limited expertise. As Greenberg continued to review wines in his cellar, he came to the conclusion that some of the wines, the authenticity of which he had initially questioned, were genuine or likely to be genuine (for example because he saw cork markings that he had not seen in his initial review). In such instances, the wines in question would have been returned to the main portion of Greenberg's collection. Finally, Greenberg has consumed many of the wines listed on the document Bates stamped [Fireman's Fund], which... reinforced his belief that in some cases the initial concerns regarding authenticity were unfounded."

Q. That's what you wrote, right?

A. Yes, and remember the Fireman's Fund spreadsheet did have a lot of wines that I thought were real and we had a lot of question marks, we were asking them to investigate because we had no idea.

Q. Well, we're going to -- we're going to get back to that. I know you had testimony about that.

Let's take a look at -- quickly at Exhibit 107, which

you have seen a number of times. This is your Royal Wine Fake Summary Notes, right?

A. Yes.

Q. Actually, I'm just going to -- sorry about this. I meant to pull up your -- the fake wine spreadsheet, Exhibit 62.

A. Actually, this wasn't called fake wine spreadsheet, sir. You made up that name just now.

Q. We'll call it the -- to make sure you're happy, we'll just call it spreadsheet.

A. You're really good at marketing. If you ever leave law, I'd like to hire you as a marketing guy.

MR. HUESTON: Let's just put up the spreadsheet and let's go to page 8.

Q. And this, at page 8, you identify as fake on this one magnum of 1921 Petrus, right?

A. Yes.

Q. And --

A. Out of two.

Q. Right.

A. I purchased five.

Q. Yes. Focusing on --

A. So the ones -- I might have put in an entry that one was fake but I couldn't tell which person it was from, so this could have been from another purchase or this purchase, but the fact is --

Q. I'm not asking you that.

A. -- is that I did purchase five and I believe that I said one was wrong.

MR. HUESTON: Move to strike as nonresponsive.

THE COURT: Please answer the question. Wait till there's a question.

THE WITNESS: Yes, sir.

Q. Here you identify as fake one magnum of 1921 Petrus, right?

A. Yes, sir.

Q. And let's go to page 11 of this spreadsheet, and you identify another magnum of 1921 Petrus as fake, correct?

A. That I believed, without expert review, yes.

Q. And that's one that you identified as fake, correct?

A. Yes.

Q. And let's then move to Exhibit 107. Those were the fake wine notes at paragraph 2.

MR. HUESTON: Put that up.

A. I don't know, though, if those are the ones that I put in my --

Q. Well, I'm just going to direct your attention to paragraph 2, where you identify --

A. Can I see the whole page, sir? Can I please see the document?

Q. Sir, let me finish my question.

A. I'd like to see the whole document.

Q. Happy to give it to you.

A. Thank you.

Q. And I'm directing your attention to paragraph 2, where you identify the 1921 Petrus magnum as fake, right?

A. You did it again. You point out 2 on this spreadsheet where we told you earlier today that the ones that I thought I was sure about, I put on here. There's only one on here. And then you took me to 2, and what you've done is you've mischaracterized it yet again.

Q. Sir --

MR. HUESTON: I'm going to move to strike as nonresponsive.

Q. I think the question was: That's what it says at paragraph 2, referencing the 1921 Petrus magnum?

A. Yes, it does.

Q. Thank you. Let's turn to the list of wines you returned to Royal as part of your settlement. That's Exhibit 80.

MR. HUESTON: We'll put it up. It's already in evidence.

A. Yes.

Q. And you can confirm, sir, that you did not return any magnums of 1921 Petrus, right?

A. I can confirm that.

Q. Okay. So you identified a magnum of 1921 Petrus as fake in your Royal Wine Fake Summary Notes, right?

A. Yes.

Q. And you identified two magnums of 1921 Petrus as fake in your spreadsheet, right?

A. Yes. Well, actually, no. I identified one as being what I thought was really fake based on this, identified another one that I wanted further review on.

Q. Okay. Fake and maybe fake, right, but you didn't return either of those to Royal, right, sir?

A. No, sir.

Q. And you understand that Mr. Koch alleges that you sold him a magnum of fake 1921 Petrus, same rare producer, same rare vintage, same size bottle, right, sir?

A. He alleges that I sold him one that does not match what's on this sheet and --

Q. That's another fake that you had?

A. I don't get it. I don't understand your question.

Q. Okay. Remarkable coincidence, sir, that you sold Mr. Koch another fake of the same producer?

A. I didn't sell him anything that I thought was fake.

Q. Same rare vintage, same size, sir?

A. I had 15 from five vendors. I didn't sell him -- maybe it was 11. 11 or 15. I didn't sell him a single bottle of wine, or I should say Zachys didn't sell him a single bottle of wine that we thought was inauthentic. Not one.

Q. And you know that Mr. Egan, who you describe as very

professional, concluded that every one of the 24 at issue in this case is fake, right?

MR. CIALONE: Objection, your Honor.

THE COURT: Sustained.

Q. Let's go to Exhibit 107 again, which is your fake summary notes. It's in front of you. I'm going to put it up here for your convenience, though.

Paragraph 3, you identify a magnum of fake 1928 Petrus, right?

A. Yes.

Q. Going back to your spreadsheets submitted to the insurance company at page 10, Exhibit 62, you identify as fake one magnum of 1921 Petrus, right?

A. '21 Petrus? Do you have your facts right, sir?

Q. 1928 Petrus.

A. I thought you said 1921.

Q. No, '28. Thank you. You identified that as fake, right?

A. Yeah. Based on this Royal Wine Fake Summary Notes, which said that there was no visible date, and Zachys had a visible date and the one in the auction --

Q. I'm not asking you about that.

A. Of course not.

Q. I'm just asking you if you listed one 1928 as fake on your fake summary notes. The answer is yes to that, right?

A. Yes.

Q. Okay. And then you had one listed as fake 1928 Petrus on your spreadsheet to the insurance company, right?

A. Yes.

Q. And let's look at the list of wines you returned to Royal as part of your settlement, Exhibit 80, and you can confirm, please, that you did not return any magnums of 1928 Petrus to Royal, correct?

A. No.

Q. Mr. Koch alleges --

MR. CIALONE: We had all of this exam last week. 1921 Petrus, 1928 Petrus, he did all of this last week.

MR. HUESTON: No, your Honor. They went through each of these bottles, and I'm going back and making it clear what did and didn't happen here.

MR. CIALONE: Going back to do the same exam he did last week.

THE COURT: Well --

MR. HUESTON: Not the same exam.

THE COURT: I'll let you proceed. I am concerned somewhat about time, but I'll let you proceed.

Q. Sir, you understand that Mr. Koch alleges that you sold him two magnums of fake 1928 Petrus, same rare producer, same rare vintage, same size bottle, right, sir?

A. And they had cork markings as verified by Zachys. I thought they were real. And in my fake summary notes, I did

not think they were real and those were segregated. They are not the same bottles, sir.

Q. So they must be different and additional fakes from your collection, is that right?

A. I didn't say that.

Q. Okay. Let's go to -- back to your Royal Wine Fake Summary Notes again, paragraph 3 -- page 3, sorry, paragraphs 15 through 17. You identify three magnums of fake 1950 Lafleur, correct?

A. Yes.

Q. Now let's go to your spreadsheet, page 8. There too you identify as fake three magnums of 1950 Lafleur, right?

A. Yes. Which numbers were those? I'm sorry.

Q. It's right up in front of you, but that's the spreadsheet --

A. I was looking at my fake summary notes.

Okay. I have it. It's 15 to 17.

Q. Are you there?

A. Yes, sir.

Q. Okay. So there's the spreadsheet, and you identified on that three fake magnums of 1950 Lafleur, right?

A. Yes.

Q. And then look at the list of wines you returned to Royal, and you can confirm you didn't return any magnums of 1950 Lafleur to Royal, correct?

A. No, and these ones on here are segregated in my cellar and they did not have cork markings or anything else, and the ones in the sale had cork markings. They're not the same bottles, again.

Q. And you understand Mr. Koch alleges you sold him magnums of fake 1950 Lafleur of the same rare producer, same rare vintage, and same size, right?

A. That's what he alleges, and it's the same thing as one Toyota Siena minivan being pulled on recall. They've sold 16 million throughout the world. You're using the same logic here.

Q. 16 million 1950 Lafleur magnums, sir? These are rare bottles, aren't they, sir? Trophy collectibles. It's not a Nissan Sentra of the wine world, is it?

A. Actually, I had 30 of them and I found three to be problematic, so that's 10 percent I found to be problematic, and actually, I think I was pretty blessed that I didn't have more that didn't have -- that had the dates on the corks and we thought to be okay.

Q. These are rare trophy wines, sir, these are not Nissan Sentras of the world -- of the wine world, are they?

A. I don't understand your question.

Q. Just using your own words.

A. I didn't use the word Nissan Sentra, sir.

Q. I'm sorry. You said Toyotas. Are these the Toyotas of the

wine world? Does that change your answer?

A. Actually, Toyota makes a very good car. So I would put a Toyota up there with any car in the world. I own several.

Q. 1950 Lafleurs are some of the rarest wines that one can find and sought after in the world, right, sir?

A. I don't think anybody is seeking out 1950 Lafleurs today because Mr. Koch will sue them if they came onto the market, so you can't get a bottle today.

Q. All right. Okay. Unlike a Toyota, which you can get today.

Let's move on to page 4 of your Royal Wine Fake Summary Notes, paragraphs 22 and 23, and there you identify two magnums of fake 1950 Petrus, right?

A. Yes.

Q. And turning to page 10 of your spreadsheet, there you identify two fake magnums of 1950 Petrus, right?

A. Yeah. It's not the same bottles because there weren't dates on these '50 Petruses.

Q. Okay. Two other fakes of 1950 Petrus you identified.

A. Hey, you know what, I'm the first to admit, I was sold fake wine. I have $3 million of wine sitting at home -- or, you know, not $3 million of wine but 3 million -- what would have been $3 million of wine sitting away segregated so it won't come onto the market. I have been a victim of this too, and you're trying to make me into a criminal for being a victim.

Q. So let's see if you returned any of these fake wines that you were so upset about. Let's go to Exhibit 80.

Did you return any of them? Did you?

A. That's a very imprecise question. Please rephrase it.

Q. I'll be more precise. Take a look at the list. Do you see any 1950 Petrus magnums that you returned to Royal?

A. Not to Royal, no.

Q. And you know that Mr. Koch alleges that you sold him magnums of fake 1950 Petrus, same rare producer, same rare vintage, same size, right, sir?

A. And authenticated by Zachys and fully vetted by Zachys, yes.

Q. Okay. And then let's look back at the Royal Wine Fake Summary note at page 5 to 6, paragraphs 42, 43, 47, 52, and 53. Those were seven bottles of fake 1928 Latour that you identified, right, sir?

A. Yes.

Q. And then going to your spreadsheet at page 2, you identified three fake bottles of 1928 Lafleur. Correct?

A. Yes.

Q. Let's look back at what you returned to Royal.

You didn't return any bottles of 1928 fake Latour to Royal, right?

A. No, we believed we segregated them.

Q. Kept them in your cellar?

A. No, I didn't keep them in my cellar. I segregated them. Please be precise.

Q. Okay. You segregated them. I'm not sure the testimony was clear on that. Did you move them out of your cellar, sir?

A. We actually did in many cases put them into boxes in a different part of the cellar. We put them into separate racks. And those Latours should have been put in the boxes. The two that came up in this case should have been put into boxes. Mr. Lovato made a mistake, and we fully owned up to that mistake as soon as we were confronted with it and you understand what happened, and I can't talk about it.

Q. So the segregated bottles, sir, they were still in your wine cellar.

A. In a different portion, yes.

Q. Okay. So can you confirm with me you didn't return any of the 1928 Latours, not one, to Royal?

A. No, and I still have a bunch at home sitting there on a shelf segregated.

Q. And you understand Mr. Koch alleges you sold him bottles of fake 1928 Latours, same rare producer, rare vintage, same size, right?

A. Actually, that's not so rare. '28 Latour is pretty -- Latour makes 40,000 cases of wine a year, which is approximately 500,000 bottles. The fact that it's a 1928 means it's old, but '28 Latour is not rare.

Q. All right. Let's go to one that I think you'll admit is rare. An 1864 Latour. That's a rarity, isn't it?

A. Yes, it is.

Q. Okay. And at page 9 of your fake summary notes, paragraph 79, you identified one bottle of 1864 Latour, right?

A. Yes.

Q. And on your spreadsheet, you identified as fake a bottle of 1864 Latour, right?

A. Yes.

Q. You didn't return that. Let's look at the sheet.

You didn't return that to Royal, right?

A. I drank it on my 40th birthday, as I told you.

Q. Okay. So you drank a bottle of 1864, you say, but in fact Mr. Koch you know alleges that you sold him and he received a bottle of 1864 fake Latour, right? Same rare producer, same rare vintage, same size, right?

A. He's alleging that.

Q. Okay. And your expert, Mr. Lempert-Schwarz, with all the bottles I just discussed, he's testified that he has not concluded that any bottle of wine at issue in this case is authentic, right?

A. That's not what he said.

Q. He's testified that there were sufficient questions about the authenticity of every single bottle at issue, that they should not have been put up for sale, right?

MR. CIALONE: Your Honor --

A. You're misquoting him. You absolutely misquoted him.

MR. CIALONE: Your Honor, asked and answered.

THE COURT: Sustained. Sustained.

MR. HUESTON: I'm going to move on.

Q. You talked about Mr. -- some meetings and conversations with Mr. Kapon.

A. One second. When did we talk about a meeting with Mr. Kapon?

Q. Okay. Let me direct your attention, focus this. You had a number of the -- hold on one second. Make sure I'm getting this right.

Your attorney walked through bottle after bottle of the Lafleurs that Mr. Kapon wrote you an e-mail about saying, "I cannot offer those Lafleurs in good conscience." Do you remember that?

A. Yes, I do.

Q. Okay. And let's put in front of you Exhibit -- Trial Exhibit 390, which we've seen a few times.

MR. CIALONE: By few times, it was their putting it up 20 minutes ago.

MR. HUESTON: Okay. Thank you.

Q. And I'm going to direct your attention to this and ask about your response here at the top. When Mr. Kapon wrote to you about the bottles of Lafleurs, Mr. Kapon wrote below,

"Without getting into the exact details of each of them, there is one fundamental problem. The corks all have the vertically, ovally Chateau Lafleur brand on the cork which they only started using post '66." And at the top, sir, you write, "Petrus changed the cork in '66; you are saying that Lafleur did as well?" What did you mean when you wrote, "Petrus changed the cork in '66"?

A. I didn't believe that Petrus changed the cork in '66, nor did I believe that Lafleur did. And if you continue to not selectively read the e-mail, he talked about a hundred tasting in which I tasted the same magnum, a '47 Lafleur, we did it with six people at my table, I rated it 99 points and thought it was authentic, it was consigned by Wolfgang Grunewald, which he has done single-seller auctions for, who's Bipin Desai's best friend, so based on Wolfgang and Bipin, I believe that to be real, okay? And so I did not --

Q. Move to strike that.

A. -- I did not believe that Petrus or Lafleur had both changed, coincidentally, the corks in 1966. That is something another person told him that has been mentioned here, but I don't want to bring it up because I don't want to get in trouble with the court for saying something I shouldn't say today.

Q. You mentioned that Petrus changed cork in '66. That's your writing, you wrote that, right?

A. I didn't believe it.

Q. Okay. But that's what you wrote at the time, right?

A. That wasn't a statement of fact. It was a question mark as well. Semicolon connects thoughts together. And what I was saying to him, are you serious that they both changed the cork in the same year? You understand what a semicolon is, sir. You're very well educated.

Q. Sir, going down to the e-mail below from Mr. Acker, where is he referencing a Petrus changing the cork in 1966? He doesn't reference it at all.

A. Who's Mr. Acker?

Q. I'm sorry. Mr. Kapon. If we go to the e-mail below -- take a look at that, if you would -- he doesn't reference a Petrus changing cork in '66, does he, sir?

A. As you know from your scholarly article in the American Criminal Law Review that you wrote --

Q. Sir, you're not going to --

MR. HUESTON: Your Honor, this is entirely inappropriate.

THE COURT: Just answer the question. Please stop arguing with each other and just answer the question.

Q. Does Mr. Kapon talk about changing a cork for Petrus in 1966?

A. There are a lot of things in e-mail which you write that aren't a response to other things. It's just like a

conversation.

MR. HUESTON: I move to strike as nonresponsive.

A. There's nothing there.

Q. Okay. Thank you. There's nothing there by Mr. Kapon referencing a change --

A. That doesn't mean --

Q. Can I finish for the record?

A. Yes.

Q. -- indicating a change to the '66 -- the Petrus cork in 1966, right, sir? Is that a no?

A. You know it doesn't say it there.

Q. But you answer, "Petrus changed the cork in '66," after he observed the Lafleur having a vertical brand, right?

A. That's not what I answered. What I was trying to do with the semicolon was tie the two facts together because I didn't believe it, and that is my testimony.

Q. And sir, today it's true, is it not, sir, when you were observing, "Petrus changed the cork in '66," you were observing that Petrus changed the cork to vertical in '66, just like Kapon was observing with the Lafleur cork, correct? That's the coincidence, isn't it?

A. No. Here's the coincidence. The coincidence is that Rudy Kurniawan told John Kapon this and I didn't believe what Rudy had to say. I didn't believe it.

Q. And, sir, you're saying you didn't believe it today because

you know that there are three bottles of wine in this case, Petruses, before 1966, with vertical branding that you knew then was inappropriate for sending out wine, isn't that right?

A. That is incorrect.

Q. Let's look at three pictures from your expert report, Exhibits 215, 216, and 228.

MR. CIALONE: Your Honor, really, well outside the scope.

MR. HUESTON: The last couple questions on this.

THE COURT: You can answer. You can ask.

Q. Putting before you three of your expert's photographs of the three of the Petrus bottles at issue in this case. Do you see those, sir? They're close-up shots of the cork?

A. I'm trying to figure out which side is the top and the bottom.

Q. The red at the top is the capsule so that's the top up, right?

A. Well, 216, which is the top?

Q. Okay. If you hold it up, the lip's up at the top, sir, and then with each of the other two you have the capsules at the top, right, sir?

A. Yes. Now I got it. Okay.

Q. Those appear, you would agree, to be vertical markings, not horizontal, right, on those corks?

A. They are vertical, and I believe them to be perfectly

legitimate ways that they would have been marked, and we also know, as has been established, that negociants did most of the bottling, and your own witness next week will tell you how she spent nine hours authenticating this same kind of cork.

Q. You cut the capsules in the bottle just like Mr. Kurniawan, right?

A. Well, actually, he cut them like I did.

Q. You spent some time on Mr. Kurniawan, so let's talk about him.

Sir, you stated in your examination with your attorney that you marked the Kurniawan bottles because you thought they had greater long-term investment value than your other bottles, is that right?

A. At one time I did.

Q. Okay.

A. Not today.

Q. And let's put up Exhibit 380, which has already been presented to you and you've been walked through by your counsel as well. Just for the date here --

MR. CIALONE: Your Honor, again, this is really outside the scope. I did not go into this e-mail on my examination. This is something Mr. Hueston covered exhaustively last week. Apparently he wants to revisit it. It is far outside the scope and therefore he shouldn't have a chance to read through it.

MR. HUESTON: I'm not going through the e-mail again. I'm trying to establish a time reference to try to address what he talked about.

THE COURT: I'm concerned with the scope issue but I'll let you do this for purposes of time, time of events.

BY MR. HUESTON:

Q. Counsel talked about how --

MR. HUESTON: I just want to leave this up for a moment so we have a time reference.

Q. Your counsel talked about how you had in fact believed that he had given you counterfeit wines and you had talked about potentially suing him and seeking punitive damages and the like. Do you remember that part of your testimony, sir?

A. The part of my testimony that was over 48 hours in 2003, yes.

Q. Right. And that's around this time period of October 2004.

A. No, it's actually about -- it's greater than a year earlier, so you mischaracterized it yet again, sir.

Q. Sir, when you in fact got this -- just to make sure the record is straight about your relation to Mr. Kurniawan, when you got this e-mail -- when you sent this e-mail to Mr. Kurniawan, which in fact includes the language "suspects Bordeaux" -- here's my question.

MR. CIALONE: Your Honor, he just said he was not going to go into the e-mail, and in fact, Mr. Greenberg is

correct, he did misrepresent this e-mail because the exchange about the 48 hours Mr. Greenberg was talking about filing the lawsuit was in December of 2003, ten months earlier.

THE COURT: What is the question?

MR. HUESTON: The question is:

Q. Sir, by this point in time in October of 2004 you did believe that Mr. Kurniawan was in fact likely engaging in the business of selling fake wines, right?

A. No.

MR. CIALONE: Again, your Honor, this is outside the scope of the exam.

MR. HUESTON: No, it's not.

MR. CIALONE: He's already had his chance to do this. Apparently he wants to revisit the document. It's outside the scope of my exam.

THE COURT: Go to the next question.

Q. And, sir, at this time period -- well, you said no to that. Let's turn to your deposition, page 152, and we're going to start at line 18, and we're going to play through 154, line 12.

MR. CIALONE: Your Honor, again, I object. They did this already. Mr. Hueston spent about an hour on this document last week. I spent zero time on it in my exam. Why are we going back to it? It is outside the scope of the exam.

MR. HUESTON: Here's the answer. They elicited testimony suggesting they patched things up, everything was

fine, that they continued to do business. As testimony here makes clear, things were not fine. He suspected him and he kept doing business anyway. That's what this addresses. Direct impeachment.

THE COURT: Overruled.

MR. HUESTON: Okay. Let's play it.

(Video played)

BY MR. HUESTON:

Q. You did do business with him afterwards, didn't you, sir?

A. I bought wines from him.

Q. Sir, you have expressed several times in examination you're upset that Mr. Koch has sued you in this case, is that right?

A. You know as well as Mr. Koch.

Q. Is that yes or no, sir?

A. I think this is a horrible waste of resources.

Q. Okay.

A. That's my answer to the question. It's a horrible waste of taxpayer money. During a furlough of the military and cutting back of social services for the poor, it is a pathetic thing that two wealthy people are sitting in court here wasting taxpayer resources. That's what I think about this, sir.

Q. And in part, you've created the impression that you've never sued anyone, right? Is that your testimony?

A. I recall saying that in my deposition. I was incorrect. I put up a clock at auction at Sotheby's back sometime ago and

somebody didn't pay me for a quarter million dollars and we put a judgment against him. I've never collected the money, and I forgot on that day because I had forgot about that lawsuit. So that is what that is.

MR. HUESTON: Okay. Let's play page 44, lines 5 through 13.

MR. CIALONE: Your Honor, again, I'm really wondering where in my direct this was developed.

THE COURT: I think it's legitimate. I'm not sure there's impeachment here on this specific issue because he just explained what he said at his deposition.

MR. HUESTON: Well, this will show, your Honor, that -- this is very short. It's a nine-line clip. And what he just said is inconsistent with that, and I have a follow-up question.

THE COURT: Any objection?

MR. CIALONE: Your Honor, yeah. Rule 611 doesn't have a "well, if it's short, it's okay if it's outside the scope" exception.

THE COURT: I disagree that it's outside the scope, because he opened himself up to this several times. You can play it.

MR. HUESTON: Go ahead and play it.

(Video played)

Q. "What? Who?" You just mentioned one. What was that one

you just mentioned?

A. I told you the mistake I made, so are you trying to humiliate me right now, sir?

Q. No. Is that the only lawsuit that you filed?

A. As I sit here today, I can't remember if I filed another one.

Q. That deposition --

A. I am not litigious. I'm not litigious.

Q. Okay. Let's see. I'm not asking if you're litigious. I'm asking about your veracity here.

That depo, that was in December 2010, right, sir?

A. Yes.

Q. In fact, just three months earlier you filed a lawsuit against Bill Edgerton, didn't you?

A. Oh. That. That was part of this entire case, so the way I'd have to answer that is that Mr. Edgerton was seeking to make --

Q. I'm just asking a yes or a no. Did you file a lawsuit against Mr. Edgerton?

A. We did because he did some very bad things in conjunction with this lawsuit.

Q. Putting before you -- mark this as 532 for identification.

Do you recognize this as your complaint, Eric Greenberg v. William Edgerton?

A. Yes, it has to do with the fact that he was on my legal

team on my Royal --

Q. I didn't ask you any of that.

A. -- on my Royal issue and that he violated his legal and professional ethics as an expert witness. The man violated legal ethics.

MR. HUESTON: We move this into evidence, your Honor.

THE COURT: Is there an objection to this?

MR. CIALONE: Yeah, your Honor. Again, wondering how this is within the scope, and are we opening the door to other lawsuits? This establishes the fact that there's a lawsuit and merely about impeachment on the facts. This established the fact. So why he's moving in the pleadings is unclear. Again, it seems to be opening the door to some things he wants to keep out.

THE COURT: I didn't want to open the door to this case being about other lawsuits.

Q. Okay. Sir, two lawsuits, not zero, right?

A. I consider the Edgerton lawsuit part of my defense for this lawsuit, so there was one.

MR. HUESTON: Your Honor, then I may have to move it in. And maybe I can just establish it this way.

Q. The caption page doesn't have Mr. Koch's name on it. It's Eric Greenberg v. William Edgerton. That's what it says, right?

A. That's what it says.

Q. I'll move on.

A. And Mr. Edgerton was under the employ of Mr. Koch. And Mr. Koch indemnified him so that way he could turn coat and help Mr. Koch in his -- whatever this is.

Q. Sir, those are -- other than those two lawsuits, you have in fact threatened to sue Royal, right, but didn't file that lawsuit, right?

A. Yes.

Q. And you also threatened to file a lawsuit against Wine Bid, correct?

A. Yes.

Q. And we saw already that you threatened a lawsuit against Rudy Kurniawan, right?

A. Actually, that had to do with the Wine Bid thing so that's the same thing.

Q. Well, yeah. Once you got your money, then you dropped those threats, right, sir?

A. Actually, no. I dropped the threats before I got the money. You're incorrect, sir, again.

Q. And you threatened the life of Jeff Sokolin when you felt that he sold you counterfeit wine, right?

A. Absolutely not, and that's where you're stepping over the line. I have never threatened his life.

MR. CIALONE: I realize he'd like to get a different answer than he got last week, but it's still outside the scope

of my exam.

THE COURT: Sustained.

MR. HUESTON: Your Honor, is now a good time for a short break?

THE COURT: Sure. Why don't we take our afternoon break.

It's 3:28. We'll take ten minutes, folks. Please leave your pads on your chairs. We'll see you in ten minutes.

(Jury excused)

THE COURT: You may step down. You may be seated.

(Recess)

(Continued on next page)

(Jury not present)

THE COURT: How much longer do you have, Mr. Hueston?

MR. HUESTON: Ten minutes, your Honor, 15 max.

THE COURT: All right. Please get the jury.

(Jury present)

THE COURT: Mr. Hueston, you may proceed.

MR. HUESTON: Thank you, your Honor.

BY MR. HUESTON:

Q. Mr. Greenberg, you testified this morning about bottles of wine that Zachys rejected for a 2003 auction. Do you remember your testimony about that?

A. The Jayer ones?

Q. Right. Those were the bottles in your collection that Zachys believed to be counterfeit, right?

A. Those particular bottles in my collection, yes.

Q. Someone from Zachys delivered a couple of those bottles to you to taste at a dinner, right?

A. No. She had them at a restaurant where I was going to have dinner, and I tasted the wine before I had dinner.

Q. When you tasted them, you agreed that they were fake, right?, it wasn't what was listed on the label?

A. What I said was they were village wines and I would enjoy them as such and but they were not rare.

Q. You also said that they were worth a thousand dollars a bottle?

A. A Jayer village wine today would probably fetch that.
Q. You said, quote, to drink, it's a good wine, end quote. That's what you said this morning, right?
A. Yes. It's not what we would call a trophy wine, but it's a nice pinot noir.
Q. That's not what you said in your deposition. Let's play your deposition page 300/line 24 to page 301/line 9. I'm sorry. 300 starting at line 22 to 301/line 9.
(Video deposition shown)
Q. Let's move to another topic. Sir, you have claimed in the past that wines were fake without actually tasting them, right?
A. I don't understand that question.
Q. You made claims against people that they had sent you or sold you fake wines without actually having tasted them first, right?
A. Yes.
Q. Let's look at what we will mark as Exhibit 310. Mr. Greenberg, I put before you an email chain starting at the top from a Greg Koslosky of the Wine Club to you re 29 Cheval Blanc September 12, 2002? Do you recognize it?
A. Yes.
MR. HUESTON: We move this into evidence at this time, your Honor.
MR. CIALONE: Your Honor, same objection. Outside the scope to anything I did.

THE COURT: I will allow it. 310 received.

(Trial Exhibit 310 received in evidence)

Q. Let's go to the second page, an embedded email to you from Mr. Koslosky. Who was Mr. Koslosky?

A. Greg Koslosky was a salesman for the Wine Club of Santa Ana, California.

Q. Let's go to the final email. Sorry I misdirected you there. Going to the language here, you write, "Not good enough on this 29 Cheval Blanc. I want definitive provenance. The cork is not appropriately marked. And if the bottle came from Hardy Rodenstock in Germany, no matter what it says, I believe it is counterfeit." That's what you wrote, right?

A. I wrote that. Also on the first page I wrote Bordeaux Wine Locators I thought to be OK.

Q. Right. But with respect to this, you declared it counterfeit without opening it and tasting it, right?

A. I believed what I said here, yes.

Q. We are done with that. Handing you 353 marked for identification. This is an email chain that starts at the top, from you, sir, dated December 27, 2003, to a George Derbalian at AWWine.com re mags of Pomerol. Do you recognize this email, sir?

A. Yes, I do.

MR. HUESTON: We move this into evidence at this time.

MR. CIALONE: Same objection, your Honor. It is

getting really far outside the scope of anything I covered. It appears to be --

THE COURT: 353 received.

(Trial Exhibit 353 received in evidence)

Q. Let's put it up, please. Who is George Derbalian, sir?

A. George Derbalian is the proprietor of Atherton Wine Importers.

Q. In the first line you write, "I have inspected all the magnums, and my findings, coupled with the condescending comments of the person who wrote the letter, have convinced me I do not want this wine," right?

A. I didn't write that.

Q. I'm sorry. I misspoke. I stand corrected.

A. Yes, you did.

Q. I stand corrected. You in fact wrote the all caps portions in this email, right, sir?

A. Yes, sir.

Q. Thank you. Let me go a little further down. "Show me proof of receipt, and who is the German guy? If it is Rodenstock, they are fake in my mind." You wrote that, right, sir?

A. Yes, I did.

Q. Further down, the next all caps section, at the end of that it says, "Whereas it is true," and there is some discussion there. You finish that paragraph by saying, "I do not accept

these as real," right, sir? Do you see that language?

A. Yes. I'm just reading this to make sure I can answer your question accurately, sir.

Q. Those are your words?

A. Excuse me. If I may read this?

Q. Sure.

A. I'll be happy to answer your question. Yes, you know, these were consistent with the Lafleur cork markings I thought were real. But because I couldn't get a straight answer out of them for where the wine came from, I wasn't going to accept them as real.

Q. In the next paragraph, you write, "His logic is stupid. If someone can counterfeit currency, why would it be so hard to do a capsule?" right?

A. I wrote that.

Q. You were making these observations about bottles that were fake in your mind without actually opening and tasting them, right?

A. Yes, sir.

Q. We are done with that one. One last one. I put before you 354 marked for identification. 354 marked for identification is an email from you to George Derbalian, January 9, 2004. Do you recognize this email chain?

A. Yes.

MR. HUESTON: We move this into evidence, your Honor.

THE COURT: Same objection?

MR. CIALONE: Yes, your Honor. He said it was the last one, but same objection.

THE COURT: Received. 354.

(Trial Exhibit 354 received in evidence)

Q. Let's go to the top paragraph, "On another note." This is you writing to George Derbalian, right?

A. Yes.

Q. It says, "On another note, "I sadly found a number, around eight, of 87 Jayer CP bottles I bought from you that are counterfeit," right?

A. What it compared to is the same wine that Maureen Downey, sitting in the courtroom, brought to Daniel that night and George Derbalian was the one who tasted it. So he was familiar with the wine and he actually agreed with me on the wine.

Q. Sir, you didn't open those eight bottles to determine that they were counterfeit, right?

A. No, because we opened other bottles that were exactly the same, an indicia. So, I would consider it as if I had opened these bottles. And because he was with me, he would understand. That's why he took them back, because he agreed with me, and he apologized actually that he didn't check them out before he sent them to me.

Q. Because they looked like other wines that could be fake, but you didn't actually open them to determine by tasting them

that these very eight bottles were fake, right, sir?

A. No, we opened the 90 compared to that Ms. Downey brought, also a 95 that she brought to Daniel. We tasted those. Based on tasting experience, we determined that those were fake. So I did do this off of tasting experience.

Q. These are 87 Jayer bottles, not the 90 bottles, right, sir?

A. Yes.

Q. These are eight different bottles. You didn't taste these bottles, right, just to be clear?

A. No, I didn't.

Q. Thank you.

A. I still made the conclusion from the bottles I tasted.

Q. I want to direct your attention to the 1921 Petrus that was sold to Mr. Koch in this case.

A. Where are you directing my attention? Is there a bottle, a document?

Q. I'm going to get you one in a second. You claim you don't know where you got the 21 Petrus magnum that was sold to Mr. Koch, right?

A. That is correct.

Q. However, you have said in deposition it could have come from one of five sources, right?

A. Yes.

Q. In fact, you have said it's --

MR. CIALONE: Your Honor, again, way outside the

scope.

MR. HUESTON: Your Honor, this is my last line.

THE COURT: I'll allow it.

Q. You said that it could have come from Royal, right?

A. It could have.

Q. And you claimed it could have come from the Wine Club, right?

A. Yes.

Q. And it could have come from the Wine Library, right?

A. Yes.

Q. You said it could have come from D. Sokolin & Company, right?

A. Yes.

Q. And another company called Pritam Banerji, right?

A. Pritam Banerji is a close friend of Bipin Desai and had a company called International Wine Consulting. You know, because you have all the wine invoices.

Q. That's what you describe in your deposition as five possible sources of the wine that was sold to Mr. Koch, the 21 bottle of Petrus, right?

A. Those would be validated by our receipts. I believe you have a copy of all of my receipts.

Q. So the answer is yes, those are the five sources that could possibly be the source and those which you identified when asked directly about that bottle on deposition, right?

A. Yes.

Q. Today you said on examination from your counsel, when you bought wine from sources, you did not know where they got it from, right?

A. In most cases, yes.

Q. In fact, you said that you had asked but they never told you, right?

MR. CIALONE: Objection, your Honor.

A. That would be a little bit incorrect.

MR. CIALONE: Mischaracterizes the testimony. Mr. Greenberg said that they give general: A restaurant, a collector, etc.

MR. HUESTON: The testimony will be as it is in the record.

THE COURT: I will allow it.

Q. Sir, you have said that you do not physically inspect before buying at auction, correct?

A. I haven't, no.

Q. You said you would sometimes call and ask questions, right?

A. Yes.

Q. After the auction in October of 2005, Mr. Zacharia got in contact with you and told you that a buyer had a question about a 1921 Petrus magnum that you had sold, right, sir?

A. Yes.

Q. He asked you for the source of that 1921 Petrus magnum,

right, sir?

A. He asked me, as I recall -- can you show me the email chain? My memory is getting a little bit clouded at 3:30 in the afternoon.

Q. Let me ask you this. You recall that you didn't tell him that the source was Royal, right?

A. No.

Q. You didn't tell him the source was Wine Club, right?

A. No.

Q. You didn't tell him the source was Wine Library, right?

A. No.

Q. And you didn't tell him it came from D. Sokolin & Company, right?

A. No.

Q. Or Pritam Banerji, right?

A. No.

Q. Instead, you told him you got it from a top collector in Toronto or out of Europe from English royalty. That's what you told him, right?

A. No, it isn't. The email I sent back to him, I said I can't tell you for sure and some of my vendors told me it came from there. You're quoting Mr. Zacharia's email. He said to Mr. Koch, he cut and pasted the second half of my answer and sent that to Mr. Koch and didn't send Mr. Koch my true answer to the question. And that, sir, you know to be true.

Q. Let's look at your email. I'm going to hand you what we are going to mark as Exhibit 530. This is the email from you to Mr. Zacharia about the 1921 Petrus, right, sir?

A. Yes.

MR. HUESTON: We will move this into evidence, your Honor.

THE COURT: Any objection?

MR. CIALONE: No, your Honor.

THE COURT: Is it 530? 530 received.

(Trial Exhibit 530 received in evidence)

MR. HUESTON: Thank you. Let's put it up.

Q. Let's start at the bottom. Actually, start with the embedded email, Jeff Zacharia to Eric Greenberg, subject 1921 Petrus. "Eric, below is an email from the buyer of 1921 Petrus from your sale. Any specific information you can give me would be helpful. Thanks, Jeff." That's what he wrote you?

A. Yes, he wrote that.

Q. Then below that is language from the buyer. "Jeff, we would like to know the source of the magnum of 1921 Petrus that was purchased from Zachys on 10-28-05," correct?

A. Yes. This had nothing to do with your sale. Mr. Koch actually alleged in a lawsuit, which was thrown out by the judge, that bottle of 21 Petrus came from Hardy Rodenstock. Judge Jones in her decision threw that out due to lack of evidence.

MR. HUESTON: Your Honor, this blurting out, I move to strike.

THE COURT: The jury will disregard that answer, please. What is the question?

Q. The question is that's below the question from the buyer, right, sir that you read in the email, right?

A. Yes.

Q. The question was they would like to know the source of the magnum of 1921 Petrus, right?

A. It says that, among other things.

Q. Mr. Zacharia responds --

A. He also said it had nothing to do with my sale, too. You didn't finish that sentence.

Q. I'm focused on the source. Mr. Zacharia answers below his email from the buyer, "Any specific information you can give me would be helpful," right, sir?

A. Yes.

Q. In your deposition, when you were asked the sources of this wine, you gave those five sources you listed earlier and no other sources, right, sir?

A. I remember that in my deposition because I had gone through my purchase information as part of my work product.

Q. Let's play your deposition page 137/lines 4 to 16.

(Video deposition shown)

Q. Sir, you didn't say that you thought it came from a

collector in Toronto, right, sir?

A. Eddie Gelsman at Wine Library had told me that a lot of the mags I had had come from that. I also told Jeff I'm not sure which mag this is. I didn't go back and do all the purchase record research, either.

Q. Let's look at the top of your email.

MR. HUESTON: Let's put that back up, please, 530.

Q. At the top you write back, "I'm not sure which mag this is. A lot came from a collector in Toronto and many came out of Europe, in many cases from English royalty." That's what you wrote, sir?

A. That's what I wrote.

Q. You didn't write the five sources that you stated under oath in deposition, right, sir?

A. No, I didn't.

Q. When you were later asked in deposition about this email and this top collector reference, you stated, "As far as I know, it could have been nada," that's what you stated in deposition, right, sir?

A. That may be the case. I don't recall with complete certainty. You know what, people can make things up. I might have been lied to.

Q. Could have been made up, but that was the answer you provided Mr. Zacharia when Mr. Koch came knocking, asking for specific information on that bottle, right, sir?

A. No. I spent over $3 million defending myself in this action. I have learned a lot of things from defending myself in this action which I wouldn't have had recall at that moment in time. For you to construe this into me concealing something is completely a stretch.

Q. When you answered Mr. Zacharia, you said English royalty, but one thing you made sure you didn't say was Royal Wine, right, sir?

A. No, sir.

MR. HUESTON: That's it, your Honor. Thank you.

THE COURT: Any recross?

MR. CIALONE: Redirect, yes.

THE COURT: Redirect.

RECROSS-EXAMINATION

BY MR. CIALONE:

Q. Mr. Greenberg, looking at Exhibit 530, which you were just shown, do you know if you were even shown that document at your deposition?

A. No, I wasn't. Mr. Wessel never showed me this at deposition.

Q. Looking at Exhibit 354, this was your email to George Derbalian regarding some cases of some 1987 Jayer wines, do you recall that?

A. Yes.

Q. It says, "Corks of the AC wine (like we saw at Daniel that

night)." What does that refer to?

A. AC means village wines, the lesser wines that have come from Jayer.

Q. What does "that night" refer to?

A. The night that George and I had dinner at Daniel after Ms. Downey, sitting over here in the courtroom, delivered the two bottles to me that Martine Saunier had determined were not right and we shouldn't have included in the same.

Q. So you tasted bottles of similar indicia?

A. Exact indicia.

Q. Do you ever Exhibit 529, the email from Mr. Zacharia, which was I believe the first document Mr. Hueston showed you today.

A. There have been so many.

Q. This is your email dated October 28, 2004, to Jeff Zacharia.

MR. CIALONE: If I could actually ask if Mr. Koch's counsel would have that put on the screen, since we don't have an electronic copy?

MR. HUESTON: Certainly. Let's put that up.

MR. CIALONE: Thank you.

Q. If you would look at the top email, this is from you to Mr. Zacharia. You say, "You have wine in here that is not mine and you are missing much." What does that mean?

A. He sent me the estimates of reserves and list of wines in the sale. I think they got themselves crossed and they put

other people's wine on my list and missed part of my wine. I think it was an instance of poor cutting and pasting of the spreadsheet.

Q. Then you go on and say, "Very professional." You say, "Some of these reserves are absurd." What does that refer to?

A. That's like you have a $10 bottle and somebody says it's worth 5 to 7. You're not going to sell. It's like giving a $10 bill away for 5 to $7.

Q. Looking a little further down, it says, "You are missing all of my old Bordeaux and Burgundy." What does that mean?

A. All those trophy wines that were in the sale, an old Burgundy, probably 60 to 70 percent of the value they had forgotten to include in the spreadsheet.

Q. Did that bother you, that you were offering to design wines and they didn't list them when they got back to you?

A. No, because they hadn't gone to print with the catalog and they would have accounted for it. That's why, you know, when you have a good business relationship with somebody, you go back and forth and try to get things right. People make mistakes.

Q. Then you go on to say, "I have little faith that these inspections and estimates were conducted well based on what I see here." Did that have anything to do with the inspection of the wine for authenticity purposes?

A. No. I think to me it was that they weren't fully accurate

in what they were placing into my consignments. I wanted to make sure that the representations in the catalog would have been accurate.

Q. Looking at the cc line, it's to B. Nelson. Who is that?

A. Ben Nelson is a former Zachys employee who got replaced. His follow-up wasn't so good.

Q. Did he do a lot of the work in connection with your consignment to the December 2004 Zachys auction?

A. Yes, and shortly after this he was relieved from his duties at Zachys or left Zachys for some reason.

Q. Did he have any involvement in the October 2005 auction, or was he already gone by then?

A. He was gone. That was Michael Jessen, who is their person running their auctions today.

Q. We looked at some of the Mr. Egan's conclusions about the Lafleur bottles earlier. You recall your exchange with Mr. Kapon about the Lafleur magnums, the pre-1966 Lafleurs?

A. The one where I didn't agree with the cork markings?

Q. Yes. Did Mr. Kapon raise any other reason why he thought those wines were not authentic other than the vertical branding on the corks?

A. No.

MR. CIALONE: Can you put Exhibit 439 up, please, Liz. Blow up the top email.

Q. Do you recall Mr. Hueston asked you a number of questions

about your participation in determining lotting on the sale, right?

A. Yes, sir.

Q. What is lotting?

A. It's like if you have a catalog and you want to list a bunch of things for sale, it's how you would list the things for sale and how you would group them. Let's say if you're selling screwdrivers and hammers and machine tools and other things, you might have a section for hammers, different brands of hammers, different quantities of hammers, then you have a next section for wrenches, etc.

Q. In some of the bottles that I was holding up earlier today, I indicated that they were alleged to be a particular lot number in the auction. Sometimes it's one bottle in a lot, correct?

A. Yes.

Q. Other times it's more than one bottle in a lot, correct?

A. In fact, one time I had 60 cases of wine in one lot, called a super lot, 720 bottles, yes.

MR. CIALONE: Can you put up Exhibit 96, please, Liz. And if you could go to page 2, just the paragraph at the top, with the heading "Lotting."

Q. Do you see, Mr. Greenberg, that says that "Before the sale Zachys and seller agree to cooperate in establishing lotting for the sale?" Do you see that?

A. Yes.

Q. It goes on to say, "and Zachys agrees not to set the final lotting until it has seller's written approval," do you see that?

A. Yes.

Q. Anywhere in this contract does it say that Zachys and seller will cooperate in describing the characteristics of the wine, in saying whether corks are fully branded or labels are photocopied or anything like that?

A. No, they would have never done that.

Q. Is there anywhere in this contract say that Zachys requires your approval over what to say in the catalog about a particular bottle of wine?

A. They would never do that.

Q. We were looking at Exhibit 439 a moment ago, and it was from, I believe, September, correct, September 2005.

A. Oh, boy. If you can refresh me, Mr. Cialone, on that document.

MR. CIALONE: Can you pull that up, please.

A. OK, that one.

Q. By that point in time, the wine was already in New York, right?

A. Yes, sir.

Q. Did anyone tell you you should fly to New York and personally inspect 17,000 bottles of wine in order to tell

Zachys whether their catalog statements about the corks and labels, and so forth, were accurate?

A. No. That's why I hired Zachys.

Q. In any auction that you have done, has it been your job to tell the auction house what the description of the bottles should say?

A. No. In fact, they would not let you do that. That's not acceptable.

Q. I'm going to turn to another issue that Mr. Hueston asked you about. He took you to some interrogatory responses and he pointed out that some of the wines that you had identified as fake on the spreadsheet that was sent to the insurance carrier, some of them went back into the collection, correct?

A. Yes, that's what he said.

Q. I'm going to read you what your interrogatory response says with regard to that. "As Greenberg continued to review wines in his cellar, he came to the conclusion that some of the wines, the authenticity of which he had initially questioned, were genuine or likely to be genuine. For example, because he saw cork markings that he had not seen in his initial review, in such instances the wines in question would have been returned to the main portion of Greenberg's collection."

Mr. Greenberg, if you discovered that your original conclusion that a wine was suspect was wrong, did you see a problem with returning it to the collection?

A. No, sir.

Q. You testified earlier today about actually having Mr. Lovato call domains and be informed that some of your conclusions were wrong. Do you recall that testimony?

A. That he called a domain Coche-Dury.

Q. Do you think there is anything wrong with taking a wine that the producer itself told you looks right and returning it to your collection?

A. No, sir.

Q. Mr. Greenberg, I'm going to talk to you a little bit about Rudy Kurniawan. You stated in your testimony that the wines that he referred to as the, quote, suspects, closed quote. He put that word in quotes, right?

A. Yes, he did.

Q. Those were a 1961 Latour Pomerols, right?

A. Magnums.

Q. Were those wines that you actually tasted with Mr. Kurniawan?

A. They are wines that we tasted with him and are wines that have been authenticated by Zachys in 2003, starting in 2003.

Q. In the incident that you were describing on the testimony we saw on the video, did you actually taste a bottle or magnum of 1961 Latour Pomerol?

A. Yes. It was tremendous. Mr. Koch bought three of those off me in this auction, too. They are not in this case.

Q. Did you tell Mr. Kurniawan that you thought they were genuine?

A. Oh, yes. I told him they were genuine and he didn't know what he was talking about.

Q. Did you actually believe that they were genuine?

A. Yes, I did, and I still do.

Q. When Mr. Kurniawan wrote about moving the, quote, suspects, closed quotes, wine, did you think there was a problem with him offering to sell wine that you believed was genuine and you told him was genuine?

A. No. I told him the wine was genuine. I believed it was genuine. I wouldn't let him sell that wine. It turns out that the man later sold a lot of that wine. I think he wanted to get my wine off of me so he could sell it for himself.

Q. At some point obviously your opinion of Mr. Kurniawan changed, right?

A. Oh, yes, it did.

Q. When did that happen?

A. I was doing that large single-seller auction at we referred to in this courtroom. In October 2007 we sold 11,000 bottles of wine, it was called The Golden Seller. I remember that well because that is the day I was served with this lawsuit.

Q. What about doing that auction caused your view of Mr. Kurniawan to change?

A. Mr. John Kapon of Acker Merrall Condit, the president, told

me that anyone that he had sold me in the past that had sourced from Rudy or any wines that came from Rudy Kurniawan he would never accept in another auction. I asked him why. He said, because I don't have a belief that they are authentic.

Q. Was that a surprise to you?

A. It was a shock to me, because I had a million dollars in my inventory of Rudy Kurniawan wines.

Q. Between 2004, when we saw the email about the, quote, suspect, closed quote, Bordeaux, and October 2007, this interaction with Mr. Kapon, had you continued to buy wine from Mr. Kurniawan?

A. Yes, and Mr. Kurniawan also sold $40 million worth of wine onto the market.

Q. What did you do after that discovery, after that discussion with Mr. Kapon? What did you do with the wines you had from Mr. Kurniawan?

A. I forced a refund of all of my wines from Rudy Kurniawan to Rudy Kurniawan that was facilitated by Acker Merrall Condit, and every bottle went back to him except for the empties that I kept with his name on it.

Q. How did you know which wines you are bought from Mr. Kurniawan?

A. Because they had the stickers on it. Thank God we put the stickers on them.

Q. When you said at your deposition this is a bad guy, is that

what you thought when you gave your deposition? Was that what you thought back in 2004 when you got the email about the, quote, suspect Bordeaux?

A. Two-part answer to that, Mr. Cialone. (a) I shouldn't have used a pejorative word in my deposition, the S word. But I thought this guy is crazy in some way because this is a good wine. Then, I'm an emotional guy, and I got to live with that. It doesn't make me a bad person.

I basically took my impression of him now, and then I said this guy's a bad guy. And then going forward with the deposition, which wasn't played today, I actually said I reacted too strongly and I should have said he was a bad guy, because at that time I didn't think he was a bad guy. I bought a lot of wine from him, I thought the wine was real. He fooled me.

MR. CIALONE: Liz, would you please put up Exhibit 105, Mr. Egan's report, at page 37. Blow up the bottom portion through the "Conclusion: Counterfeit."

Q. You were asked about the vertical brands on the Petrus bottles, some of these photographs, right?

A. Yes.

Q. Looking at what Mr. Egan says, he concedes some of the branding, right?

A. Yes.

Q. Then he concludes counterfeit, right?

A. That's what he writes.

Q. In the middle he gives a summary of his opinion. In that summary does he say, and because the corks are vertically branded, they must be counterfeit?

A. No. In fact, he doesn't do that anywhere in his entire report.

Q. Let's look at the next page, since you were shown that.

MR. CIALONE: Will you take me to the next page, 38. Do the same thing, blow up the part about the summary and the conclusion.

Q. Again, anything about the branding on the cork, the orientation of that, is what caused Mr. Egan to say it was counterfeit?

A. No. Both Zachys and I thought the corks were OK and that's why we thought they were good for auction. This is Mr. Egan's opinion of what he may believe, and it says nothing on here about that.

Q. I understand that. I just want to focus on this issue of the vertical branding being a signal to you. Have you seen anywhere that Mr. Egan has said a pre-1966 Petrus needs to have a horizontal brand?

A. No. In fact, nowhere in his report does he write that, either, Petrus or Lafleur.

Q. Turning to another subject, you were asked about lawsuits that you had filed in the past. You indicated that you had a

lawsuit against somebody who was a participant in an auction at Sotheby's, right?

A. Yes. They bought a lot for me and they didn't pay their bill. Sotheby's could not get collection from them. So we got the identifying data of the buyer and filed a suit here in New York for collection, which is sitting there today. I never received the money, never pursued it. We just put it on the record, and that was it.

Q. How long ago was that filing?

A. 2003 maybe.

Q. Did anything happen in that case other than the filing itself?

A. There was a default judgment. The person never showed.

Q. Any depositions?

A. Nothing.

Q. Any court appearances?

A. Nothing.

Q. Was that something you forgot about by the time of your deposition?

A. Yes.

Q. Then we have the lawsuit against Mr. Edgerton. Why did you say you consider that part of this case?

A. Because Mr. Edgerton was once my expert witness working for my attorney in our Royal Wine matter. Mr. Edgerton had a duty of confidentiality under legal ethics and standards. It was

part of our litigation strategy or defense strategy here to file a complaint against Mr. Edgerton.

Q. How long did that case last?

A. It never got filed. I mean we never carried it through. It was only 60 days, and then it was dropped.

Q. You dropped it?

A. We dropped it.

Q. Mr. Hueston said to you, after talking about Wine Bid and Rudy Kurniawan and a few other things, once you got your money, you dropped those threats. Do you remember that questioning?

A. That asserting, yes.

Q. Did Mr. Koch ever request his money back?

A. No.

MR. HUESTON: Objection, your Honor. This is the subject.

THE COURT: Sustained.

MR. CIALONE: We had discussion about this, your Honor, and I think they have opened the door with that line of questioning even if we hadn't had discussion.

MR. HUESTON: Your Honor, I'm happy to address this at side bar.

MR. CIALONE: That's fine.

THE COURT: Please.

(Continued on next page)

(At the side bar)

MR. CIALONE: It doesn't go to him making the offer. It doesn't go to Mr. Greenberg making the offer. But after a line of very intense questioning that said once you got your money back, you dropped your threats, that is highly prejudicial. The jury is going to think, gee, what a surprise Mr. Koch was wants his money back. That is extremely prejudicial. I actually think this opens the door to the refund. We will brief that separately.

THE COURT: How does this go to the refund?

MR. CIALONE: This is not Mr. Greenberg making the offering. This is Mr. Koch asked you for one and would you be willing to give it to him. This is extremely prejudicial for him to be here.

MR. SHARTSIS: May I add something? There is going to be evidence that Mr. Koch's, one of his employees actually returned bottles for refunds from this auction. They returned some and they got refunds for them.

MR. HUESTON: So what? Mr. Koch?

MR. SHARTSIS: Yes, Mr. Koch. Mr. Curley -- may I finish? Mr. Curley, he received bottles, found bottles that they had problems with, shrunken corks, other things. They went back to Zachys and they asked for refunds, and Zachys gave them refunds. That's a fact of the case. We certainly cannot be kept from putting that in.

The issue that came up, and we'll deal with it as opening the door, was that Mr. Greenberg couldn't say, I sent him a check. Later we will address it again. The fact that Mr. Koch sought refunds for some bottles and did not seek them for other bottles is relevant to the transaction itself.

There is no question about it, that's what he did. He would go back and say, give me my money back for this bottle, give me my money back for this bottle, but didn't go back and say give me my money back for this bottle. Why is Mr. Greenberg deprived, deprived, of the right to explain what happened in the transaction?

THE COURT: What is the relevance of whether Mr. Koch asked for money back?

MR. SHARTSIS: Let me give you more relevance. He didn't ask for money back. He never had asked for money back for these 24. Mr. Hueston asked Mr. Greenberg about his opinion about the lawsuit, questioning whether it was fair for Mr. Koch to sue him. He asked him that question, and that gave rise to all of these things about whether you sued these people and didn't ask for your money back and you didn't sue those people.

He is put in the position where he can't say one of the reasons I think this is unfair is because I offered him his money back. He has been deprived of that. What the jury now believes is that Mr. Koch had to sue Mr. Greenberg to get his

money back. That is profoundly unfair. If Mr. Koch never asked for it, that's fine, the jury should know that. Then the jury won't think that Mr. Greenberg told Mr. Koch just to stuff it, because that is the impression that's left right now.

THE COURT: Counsel?

MR. KABA: Your Honor, this is exactly what they are trying to do. They are trying to say that Mr. Koch didn't ask for a refund, Mr. Greenberg would have given a refund. Mr. Greenberg has testified to that numerous times, I always give the money back, I always give the money back. This is not a breach of contract cause of action. This is not a you get a refund if you ask for it cause of action.

THE COURT: He has come pretty close, saying several times that he always offered a refund.

MR. KABA: What is the relevance then, your Honor, assuming Mr. Koch asked for it? That will just complete the circle -- let me finish -- to make it seem that it is Mr. Koch who denied the refund. Your Honor ruled that is not admissible, it has nothing to do with the fraud cause of action, it has nothing to do with the consumer fraud cause of action. Let me finish, please.

If they are going to say that there is evidence in the record that Mr. Curley sometimes sent some bottles back, then we will have to deal with that with Mr. Koch. They shouldn't get to completely backdoor the refund.

THE COURT: What about the question whether Mr. Koch ever asked for his money back?

MR. KABA: What is the relevance of that in a fraud case, your Honor? There is simply no relevance all. It is too prejudicial to complete the line that he would have given it if they asked for it.

MR. HUESTON: He actually denied what I asserted, and that was the end of that questioning. The questions merely were to rebut the impression that was created by counsel that he was a victim and never involved in any litigation. That was what the questioning did and that was all. He said no, and I moved on. That was not a door opener to the entire refund issue that had nothing to do with that. I have been very careful not to talk about anything at all about refunds or issues about trying to obtained refunds.

MR. CIALONE: He has talked a lot about refunds. He said once you got your money back, you dropped it, you threatened punitive damages, you threatened lawsuits.

MR. HUESTON: I did not say that.

MR. KABA: Look at the transcript.

MR. SHARTSIS: May I have one more?

THE COURT: Yes.

MR. SHARTSIS: The situation that has occurred here is that we had all this questioning about the Royal dispute. Mr. Greenberg goes after Royal and he goes after Royal because he

thinks he has bad wine, he threatens a lawsuit, and whatnot. And Mr. Greenberg said he was entitled to get his money back for having bad wine.

I think the major risk in this whole case when it's over, Mr. Hueston's argument to the jury in the end, he is going to say, hey, look, here was Greenberg who got bad wine and Greenberg thought he was entitled to get his money back for bad wine. So here is Mr. Koch, who got bad wine and he's entitled to get his money back for bad wine, and you, the jury, should get Mr. Koch's money back for him from Mr. Greenberg.

That's what's going to happen because there is an exact parallel there. Greenberg is going to be sitting there with his mouth taped shut saying, wait a minute, he could have gotten his money back just like I got my money back from Royal. Royal gave him a refund ultimately.

THE COURT: He said repeatedly that he always offers his money back. I'm not sure that they are assuming anything either way at this point.

MR. KABA: Having testified repeatedly he always offers his money back and then to be able to ask did Mr. Koch ask you for it, this is a back door to getting in prejudicial discussions that have been briefed and we have dealt with them.

MR. HUESTON: The point of Royal questioning was to go through the assertions he was making then versus now. I didn't spend any time on the monetary component except to know what

was done and how much came back and remained in his cellar. It was not about refunds.

MR. SHARTSIS: The only thing the jury can reach is that Mr. Greenberg believed he had fake wine and believed he was entitled to money back for that fake wine; Mr. Koch has fake wine and you, the jury, should give him his money back for fake wine. That is the most obvious point of everything that's gone on.

THE COURT: The question in the case is whether it is relevant to fraud. The fraud charged here is not what happened after the transaction.

MR. SHARTSIS: Your Honor, I accept that. My point is a little different. We are talking about a jury trial. We are talking about jurors who are sitting there thinking, well, what's good for the goose is good for the gander. If Mr. Koch bought bad wine and Mr. Greenberg says it's bad, he's entitled to get his money back; because Mr. Greenberg bought bad wine, Mr. Greenberg believed he was entitled to his money back. It is that simple with the jury.

MR. HUESTON: This is just a regurgitation of the earlier argument.

MR. KABA: That is exactly why it should not be admitted. It is exactly a backdoor to try to get in the refund.

MR. SHARTSIS: One more issue which actually has

gotten glossed over completely. The 1928 Latour, which we have heard about quite a bit, there was a refund offered not because a lawsuit was threatened. The minute the 28 Latour came up, Mr. Greenberg initiated a discussion through Zachys to give a refund for that bottle. Nobody had sued him. There was no claim of fraud. There was nothing. He just did that because it was the right thing to do.

That goes certainly to the consumer issue. As soon as he finds a problem, he immediately does it. Nobody has to sue him, nobody has the to threaten him. He has been deprived of presenting that. So this whole thing, he is getting his hands tied when they are trying to get Mr. Koch paid for bad bottles.

THE COURT: I still don't see how it is relevant. What becomes probative as to the actual fraud claim alleged here?

MR. SHARTSIS: We have a GBL claim.

MR. KABA: The GBL claim looks at the acts and practices, not what was done after the act was discovered.

THE COURT: I am going to say sustain the objection consistent with my prior ruling.

(Continued on next page)

(In open court)

MR. CIALONE: Your Honor, subject to further briefing on the issue we just discussed, I have no further questions at this time. And my reservation earlier as well.

THE COURT: Yes. Thank you.

Okay. Is there any redirect?

MR. HUESTON: No, your Honor.

THE COURT: Okay. Thank you very much. Mr. Greenberg, you may step down.

THE WITNESS: Thank you.

(Witness excused)

MR. HUESTON: Your Honor, we have a very short clip we'd like to play. Is there still time?

THE COURT: Okay.

MR. HUESTON: Your Honor, we want to play for impeachment the clip of Mr. Sokolin from page 8 -- page 10, line 8 of his deposition to page 11, line 14.

MR. CIALONE: Your Honor, we object to this. Mr. Sokolin's deposition is hearsay. He's not here. I mean, he's within subpoena range. If they want to call him, they can call him.

MR. HUESTON: It's impeachment, your Honor, and perfectly admissible for impeachment on the point that's been put at issue by Mr. Greenberg.

MR. CIALONE: It also appears to be straight 404(b),

to bring in collateral evidence of Mr. Greenberg, not Mr. Sokolin. And Mr. Greenberg, he gave his denial. You don't have to bring in extrinsic evidence about something entirely collateral.

MR. HUESTON: Your Honor, this is no different -- it's a credibility issue, the same credibility type issue that your Honor ruled about with respect to a third-party witness who will be coming in and testifying. This is directly on point, and by the party himself.

MR. CIALONE: No, your Honor. The third party issue, your Honor, is where a third party contacted Mr. Koch and said, "Let me help you bring this asshole down," about this specific lawsuit. It is not extrinsic evidence talking about the credibility on a completely collateral issue.

THE COURT: What is the testimony?

MR. HUESTON: This is the testimony of Mr. Sokolin saying he in fact remembers that his life was clearly threatened by Mr. Greenberg, and I think the jury is entitled to see it and judge his credibility.

THE COURT: Okay. Overruled.

MR. HUESTON: Okay. Let's play it.

(Video played)

THE COURT: Mr. Kaba?

MR. KABA: Your Honor, it's 4:40. Our next witness will be by deposition. The total time from both parties --

that both parties have designated is 42 minutes. It's Ms. Serena Sutcliffe at Sotheby's. I don't know if we'd like to start on that in the morning or not.

THE COURT: How is the jury doing? Should we break for the day?

You're very patient. Why don't we break for the day and start back at 9:30 tomorrow morning.

Ladies and gentlemen, as I said before, please continue to keep an open mind. I don't want you to do any research on the case. If you see anything on it, just close your browser and go read a book. And please continue not discussing the case.

Leave your pads on your chairs, and I'll see you tomorrow morning at 9:30.

(Jury excused)

(Continued on next page)

(In open court; jury not present)

THE COURT: Please be seated.

I just want to touch base with everyone on time. We've been doing our best to keep track of time, and I just want to give you where the parties stand. I've said that each party should anticipate that they have 25 hours per side. At this point -- give me a minute here.

Plaintiff has used up just over nine hours and defendant has used just over six hours. Hopefully that's not wildly inconsistent with how you view things. So you should use that in terms of planning ahead.

So tomorrow you have Serena Sutcliffe's deposition testimony, and then do you know what will be after that tomorrow morning?

MR. KABA: We'll have another deposition, your Honor, of Gail Clark, who is a witness from Fireman's Fund Insurance Company, and then we will proceed with -- she will also be by deposition, and we will have live witnesses that we've discussed with the other side.

THE COURT: Okay. All right. Thanks, everybody. See you tomorrow morning.

(Adjourned to April 2, 2013, at 9:30 a.m.)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

WILLIAM I. KOCH,

Plaintiff,

v. 07 Civ. 9600 JPO

ERIC GREENBERG, et al.,

Defendants.

----------x

New York, N.Y.

April 2, 2013
9:42 a.m.

Before:

HON. J. PAUL OETKEN,

District Judge
and a jury

APPEARANCES

MORVILLO ABRAMOWITZ GRAND IASON ANELLO
Attorneys for plaintiff
BY: EDWARD M. SPIRO,
- and -
IRELL & MANELLA, LLP
BY: JOHN CHARLES HUESTON, Esq
MOEZ KABA, Esq.
MARSHALL CAMP, Esq.
BRUCE A. WESSEL, Esq.
Of counsel

DLA PIPER, LLP
Attorneys for defendants
BY: ANTHONY PAUL COLES, Esq.
- and -
SHARTSIS FRIESE, LLP
BY: ARTHUR J. SHARTSIS, Esq.
TRACY SALISBURY, Esq.
FRANK ALBERT CIALONE, Esq.
Of counsel

Also Present:
JASON WIETHOLTER, Trial Tehnician
ELIZABETH S. SEABROOK, Paralegal

(Trial resumed)

(In open court; jury not present)

THE COURT: Please be seated. Good morning.

ALL COUNSEL: Good morning, your Honor.

THE COURT: Okay. Are we ready for the jury?

MS. SALISBURY: Yes, your Honor.

MR. KABA: We are, your Honor.

THE COURT: Okay.

(Jury present)

THE COURT: Please be seated in the courtroom.

Good morning, ladies and gentlemen.

THE JURORS: Good morning.

THE COURT: Hope you had a good evening.

We're continuing with plaintiff's case. Mr. Kaba.

MR. KABA: Your Honor, plaintiff will next call Ms. Serena Sutcliffe by deposition. We will display her video.

There are four documents referenced in Ms. Sutcliffe's deposition, which we'd also like to display to the jury, with the court's permission. Two of them have been admitted already, Exhibits 249 and 324. Two of them, marked Trial Exhibit 252 and 277, have not yet been admitted, and we'd request the court's permission to do so.

THE COURT: Give me the numbers again, please?

MR. KABA: Sure. It's 252 and 277, and I have a copy here, your Honor, of the transcript and all four exhibits.

THE COURT: Okay. Is there any objection to those exhibits?

MS. SALISBURY: If I could have just a second, your Honor?

THE COURT: Sure.

MS. SALISBURY: Thanks.

(Pause)

MS. SALISBURY: No objection, your Honor.

THE COURT: Okay. 252 and 277 are received in evidence.

(Trial Exhibits 252 and 277 received in evidence)

THE COURT: And how is it working with the counterdesignations? Are you putting them all together?

MR. KABA: Sure. Your Honor, we will play plaintiff's designations and defendant's counterdesignations. My understanding is after we've played portions -- plaintiff's designations and defendant's counters, defendant will play defendant's designations and plaintiff's counterdesignations.

THE COURT: Okay. So I'll be able to count the time separately. Got it. Okay.

MR. KABA: Yes, your Honor.

THE COURT: Okay. Great. You may proceed.

MR. KABA: I have a copy for the court reporter as well.

(Video deposition of Serena Sutcliffe played)

THE COURT: Okay. Does that complete Ms. Sutcliffe's testimony for plaintiff?

MR. KABA: Yes, it does, your Honor.

THE COURT: Okay. Counsel for defendant?

MS. SALISBURY: Thank you, your Honor. We'll play a clip as well.

Ms. Sutcliffe in her testimony refers to three -- several exhibits, three of which have not been admitted, which we would move into evidence -- 67, 1007, and 1011. Mr. Skolnik, can I give you a copy.

THE COURT: Please.

MS. SALISBURY: Thank you.

MR. KABA: We have no objection, your Honor.

MS. SALISBURY: Thank you.

THE COURT: Okay. 67, 1007, and 1011 are received.

MS. SALISBURY: Thank you.

(Trial Exhibits 67, 1007, and 1011 received in evidence)

(Video deposition of Serena Sutcliffe played)

MS. SALISBURY: That's all from the defendants, your Honor.

THE COURT: Okay. Thank you, Ms. Salisbury.

Okay. Hold on. Let me note the time. 10:27.

Okay. What's next?

MR. KABA: Your Honor, next we have, again by

deposition, a shorter clip than the one we've seen now, but it's Ms. Gail Clark, who was a custodian at Fireman's Fund, the insurance company we've discussed in the case earlier.

And there are two documents associated with Ms. Clark's deposition, one of which is Trial Exhibit 319, which has not yet been admitted and we'd move to admit it, with the court's permission, and the other is Trial Exhibit 331, which was the Atlas report that we had discussed earlier for which counsel for Mr. Koch's side will lay the foundation through Ms. Clark's deposition testimony.

THE COURT: Okay. Any objection to 319?

MS. SALISBURY: I'm sorry, your Honor?

THE COURT: Any objection to 319?

MS. SALISBURY: No.

THE COURT: Okay. 319 is received.

(Trial Exhibit 319 received in evidence)

THE COURT: And I'll receive 331 after the testimony.

MR. KABA: Your Honor, may I hand you a copy?

THE COURT: Please.

(Video deposition of Gail Clark played)

(Continued on next page)

MR. KABA: Your Honor, that's all we have for Ms. Clark's designation. We move Exhibit 331 into evidence.

THE COURT: Any objection?

MS. SALISBURY: No, your Honor.

THE COURT: 331 is received.

(Trial Exhibit 331 received in evidence)

THE COURT: Ms. Salisbury?

MS. SALISBURY: We have one short clip.

THE COURT: OK.

(Clark video deposition shown)

MS. SALISBURY: That's all, your Honor.

THE COURT: Thank you. Is there additional deposition testimony?

MR. KABA: Not at this time. We may have some later today, your Honor.

THE COURT: Are you ready for your next witness? We might want to do a break now.

MR. HUESTON: A break is fine, your Honor.

THE COURT: Why don't we do a 10-minute break. Please leave your pads on your chairs. We will see you in ten minutes.

(Jury not present)

THE COURT: Who is the plaintiff's next witness?

MR. HUESTON: Jaime Cortes, your Honor.

THE COURT: See you in ten minutes.

(Recess)

THE COURT: Ready for the jury?

MR. HUESTON: Yes, your Honor.

(Jury present)

THE COURT: Mr. Hueston, next witness.

MR. HUESTON: Thank you, your Honor. We next call Mr. Jaime Cortes.

JAIME CORTES,

called as a witness by the plaintiff,

having been duly sworn, testified as follows:

THE CLERK: State your full name. I'm going to ask that you spell your first and last name for the record.

THE WITNESS: Jaime Cortes, J-A-I-M-E, Cortes, C-O-R-T-E-S.

DIRECT EXAMINATION

BY MR. HUESTON:

Q. Good morning, Mr. Cortes.

A. Good morning.

Q. Why don't you pull the microphone a little closer to you. Sir, let me start with some background. Where were you born?

A. In San Juan, Puerto Rico.

Q. Where were you raised?

A. In Hillsboro, California.

Q. Are you married, sir?

A. I am.

Q. Do you have children?

A. Two.

Q. How old are your children?

A. Son that is 7, daughter that's 10.

Q. Mr. Cortes, what is your current job?

A. I'm an estate manager for an oil and energy guy in Hueston, Texas.

Q. What is his name?

A. Anthony Petrello, P-E-T-R-E-L-L-O.

Q. What do you do as an estate manager?

A. I manage all his properties, I manage all the people within his properties. We have a lot of construction projects. I oversee all the construction projects. I deal with the contracts in negotiating for construction projects. I'm also their private chef as well.

Q. Where is that located, your work?

A. A couple of locations, but his main residence is in Hueston, Texas.

Q. How long have you been employed by Mr. Petrello?

A. About eight and a half years.

Q. What did you do before you worked for Mr. Petrello?

A. I worked for Eric Greenberg.

Q. Do you recall roughly when you began working for Mr. Greenberg?

A. Either 2000 or 2001.

Q. Roughly, how long did you work for him?

A. For about four years.

Q. Do you recall roughly when you left?

A. Yes. I left November 29 of 2004.

Q. I'm going to place before you what I'm going to mark as Exhibit 533. I have handed you a document, sir, that has the title @Innoventures LLC at the top. At the back of it there is a page with a printed name and signature. Do you recognize the signature?

A. I do.

Q. What is it?

A. It's my signature.

MR. HUESTON: I move this into evidence at this time, your Honor.

THE COURT: Any objection?

MR. CIALONE: No, your Honor.

THE COURT: 533 received.

(Trial Exhibit 533 received in evidence)

Q. Let's take a look at this for a moment, sir. Going to the back of the document, is there a date on the document?

A. There is, July 25, 2001.

Q. I'm going to ask you, you recognize your signature. Do you recall signing this document?

A. I don't recall signing this document.

Q. But is this your signature?

A. It is my signature.

Q. Is it possible that you signed this document then?

A. It is possible that I signed the document. When I was leaving, I was asked to sign another document, and I refused to sign it. I don't remember this. Is it possible this is my signature and I signed this? This is my signature. There is a possibility I could have signed this.

Q. This document I put in front of you, does it have some sort of nondisclosure section in the first part of the document in the front?

A. My vision is a little bad.

Q. Let me try to blow it out a little bit here.

A. OK.

Q. Do you see that first paragraph?

A. Yes.

Q. It says, "At all times during my employment, I will hold in strictest confidence and will not disclose," and there is more language, right?

A. Correct.

Q. Do you remember seeing this?

A. I don't remember seeing this.

Q. Before you left employment with Mr. Greenberg, you do recall an attempt to have you sign something like that?

A. Correct. I was under the understanding that I was supposed to give Mr. Greenberg an inventory of furnishings that he had

offsite storage, furnishings. I had to complete the one inventory, and at that time I was going to receive a bonus, and I would sign that paperwork that they sent to me via mail.

Q. We'll get to the bonus later on. Did you decide to sign that document at that time?

A. No. I was insulted. I left.

Q. Let's go back now to your work for Mr. Greenberg. What was your job for Mr. Greenberg when you first arrived?

A. I was his house manager, consisted of house manager slash chef. I was the chef of the family. Whenever we entertained, I would do the cooking. We would hire people to come assist me as well. But I ran the house. We had a cleaning girl, a nanny, other landscaping, the automobiles. We had to make sure that everything ran like the Ritz Carlton at all times.

Q. Where was this house, sir, do you remember?

A. It's in Ross, California, 27 Upper Road.

Q. Is that Mr. Greenberg's main residence?

A. It is his main residence.

Q. At some point in time did you assume responsibilities for Mr. Greenberg's wine collection?

A. I did.

Q. Roughly, when did that happen?

A. I'd say a year and a half into my employment we had filled up the downstairs. As you walk into the house, there was a garage, equipment room. We started to build a wine cellar, but

we were filling up all the garages and that equipment room with wine. We needed to start going through all that wine to get it placed, because a wine cellar had just been finished being made.

Q. To be placed in the wine cellar?

A. To be placed in the wine cellar, correct.

Q. Did you have a role in that?

A. I had a major role in it. I myself and a gentleman by the name of Thierry Lovato and Andrew Dombrowski did the whole inventory, of course with Mr. Greenberg's help.

Q. As you began working at moving the wine, besides helping set up the wine cellar, as that work continued, what else did you do with respect to the wine cellar and the wine collection of Mr. Greenberg?

A. We would get shipments shipped to the house on a weekly basis or biweekly basis. My responsibility was to check the wine in and make sure that I was accountable for all the wine that was coming in. It was expensive wine. I had no idea if it was expensive or cheap, but I was told it was very expensive wine.

Q. From time to time did you also help put together wine that was being sold off out of the cellar?

A. After that fact, yes.

Q. Once you began helping with Mr. Greenberg's wine collection, roughly how much of your time was devoted to

working on the wine collection versus the other responsibilities you described?

A. After I initially started, when we got into the wine, 80 to 85 percent, because we needed to get the wine placed in the racks, because Serena Sutcliffe was coming to the house.

Q. Before we get to Serena Sutcliffe, let me ask you if you had an understanding of who maintained the records with respect to his wine collection.

A. There was one person. She didn't physically do the work. I would get an invoice, Thierry Lovato and I would get an invoice, and we would send the invoice off to Lori Atherton, who was I think Mr. Greenberg's assistant.

Q. She would keep invoices?

A. She would keep all the invoices, correct.

Q. I think you mentioned earlier that there was some work on an inventory.

A. Correct.

Q. Do you recall who suggested putting together an inventory?

A. Mr. Greenberg.

Q. Who decided what the inventory would include and not include?

A. Mr. Greenberg was in charge of everything.

Q. Do you recall or are you aware of whether Mr. Greenberg considered using a bar code or any other way of tracking individual bottles in his collection?

A. We didn't. But it was brought to his attention by Thierry Lovato at one time, and Mr. Greenberg just paid no attention to it.

Q. He decided not to go forward with that?

A. Correct.

Q. Do you recall how the wine inventory was maintained? Was there a list?

A. Yes. Like I indicated earlier, we had so much wine within the downstairs that what we did was we went through the boxes, we put it on notepads like this. Thierry Lovato had a computer, and then he put it on a spreadsheet. We would do a certain amount of work, and then we would ship it off to Mr. Greenberg.

Q. Send the inventory?

A. Send the inventory.

Q. You mentioned Serena Sutcliffe. I was going to ask you if you recalled having any conversations with Mr. Greenberg about the authenticity of his wines. Do you remember that coming out?

A. I do after Serena Sutcliffe left.

Q. Let's talk about Serena Sutcliffe. Do you remember meeting her?

A. I do remember meeting her.

Q. Describe what happened.

A. She came to the house one morning. Prior to her coming to

the house, we had been working on getting this inventory completed. It was between 60 to 75,000 bottles. It was a lot of long days of working 12, 16, 18-hour days and coming back the next morning doing the same thing. Our job was that we were pressured to get this inventory done.

Q. Pressured by who?

A. By Mr. Greenberg.

Q. Were you at Mr. Greenberg's home when Ms. Sutcliffe arrived?

A. I was.

Q. What happened when she arrived?

A. Mr. Greenberg was on a conference call upstairs in his office. I greeted her downstairs and brought her right down to the wine cellar, which is on the first floor of the house.

Q. What happened then, once you brought her down into the wine cellar?

A. I told her that Mr. Greenberg's on a conference call. I brought her in through the cellar, showed her around. She started pulling bottles, looking at the bottles. I kept on showing her different areas of the cellar. She had another gentleman with her. Don't know what the gentleman's name was. I stepped off to the corner and I could hear her saying to him, it's too good to be true, it's too good to be true. So I decided that I had to call Mr. Greenberg.

Q. First of all, what did you understand her to mean when she

said it's too good to be true?

MR. CIALONE: Objection, your Honor. Calls for speculation, no foundation.

THE COURT: Sustained.

Q. What did you observe her doing?

A. I observed her -- imagine this is a bottle on a rack. She'd pick it up, she'd look at the label like I'm doing. There's capsules, metal capsules, that go up to the top of the bottle. In some instances she would pull back the capsule. She asked me if it was OK. I said yeah, it's fine. Pulled it back to a certain point, and she would look at it, and then she'd put it back in the rack.

I took her through different areas of the cellar where there was big magnums, very impressive as you walk into the cellar. I went through the back, where there was regular bottles. She went through all the whole cellar until I felt uncomfortable that she was pulling back so many capsules that I had to call my boss to tell him, hey, you need to get down here.

Q. Do you remember roughly how many she picked up before you called Mr. Greenberg?

A. 25, 30.

Q. Did you hear her make a comment about authenticity of those wines during that time?

A. Not during the time that she was with me.

MR. CIALONE: Your Honor, objection. Hearsay.

THE COURT: Overruled.

THE DEFENDANT: Rephrase the question.

Q. Do you remember her saying anything about Mr. Greenberg's wine at that time other than what you mentioned earlier?

A. She had doubts.

MR. CIALONE: Same objection, your Honor. Calls for hearsay expressly. It is not a statement of Mr. Greenberg.

THE COURT: I'm going to sustain the objection except to the extent that it can be traced back to the defendant in terms of notice or intent.

MR. HUESTON: I think I can get a foundation for an utterance, your Honor. It's a reaction, and it is not for the truth of the matter asserted. I think on that basis it falls under a proper hearsay objection.

MR. CIALONE: It's not an excited utterance, your Honor.

THE COURT: I'm going to sustain the objection.

Q. Did you develop a concern so that you had to call Mr. Greenberg?

A. I did because we were instructed -- basically, no one was allowed in the cellar but myself, Thierry Lovato, Andrew, and Mr. Greenberg, and of course his wife. I had never seen someone pull back a capsule like that. I started to get concerned that Eric, Mr. Greenberg, was going to get upset with

me. That's why I called.

Q. What do you remember saying to Mr. Greenberg?

A. I told him that he needs to get down here because she's pulling back a lot of capsules and she's having doubts about the authenticity of some of these bottles.

MR. CIALONE: Objection, your Honor.

MR. HUESTON: That is directly to Mr. Greenberg.

THE COURT: Overruled.

Q. What did Mr. Greenberg do?

A. He rushed down. He got off his conference call and rushed right down.

Q. What happened next?

A. He was starting to walk around his cellar with Mrs. Sutcliffe and the other gentleman. I was walking with them for about three to five minutes longer, and then he ordered me to start doing inventory with Thierry Lovato, who was off to the side in the holding cell doing an inventory on the mass amounts of wine that we had.

Q. Do you recall hearing Ms. Sutcliffe saying anything to Mr. Greenberg?

A. Yes. I remember her telling Mr. Greenberg that he needed to get the wine authenticated. If they were to proceed -- if she was to proceed to sell some of his wine for him, she wanted to make sure she was selling real stuff.

Q. Do you remember her saying anything else?

A. Yes. I remember her recommending a gentleman by the name of Bill Edgerton. Bill, Mr. Edgerton, did end upcoming to the house one day and spent roughly about 12 hours with us, from morning to evening, looking at bottles of wine.

Q. We'll get to Mr. Edgerton in a little bit. Did you stay there for the remainder of her visit, or what happened?

A. No. I went back to the holding cell. If I recall correctly, I think we were supposed to have lunch, but off the vibe that I got I knew we weren't doing lunch. Shortly after I was doing inventory, she was gone, she had left, and Mr. Greenberg went up to his office.

Q. Did you talk to him later that day about the visit?

A. I did because of the fact that I would cook for him at night, and that was a good opportunity for me to catch up with him a lot. We would discuss what was going on at the house.

Q. What did he discuss about that visit, if anything?

A. That he was very upset to find out that he had so-called wines that weren't real, because his intentions were to have a really topnotch wine cellar. That's what he wanted. The way we were getting wines, it's very obvious that's what his intention was, to have the best wine cellar around.

Q. Did he discuss with you what he was going to do next?

A. Yes. He said that he was going to go after whoever sold him the fraudulent wine.

Q. Did he tell you how he was going to try to figure that out?

A. He was going to go through invoices. He went through invoices. But prior to that Mr. Edgerton came to the house, before we did that.

Q. I'll get to Edgerton in a moment. Let me ask you about the invoices while we're on it. Did he eventually get through his invoice review?

A. There was so much. We did get through some invoices. I don't know how many we got through, but we did get through some invoices.

Q. After the review of invoices, did Mr. Greenberg come to a conclusion?

A. Yes. He came to the conclusion that he had bought the majority of the wine from Royal Wine, Royal Wine Merchants, I think.

Q. Let's turn to Mr. Edgerton. You brought up Mr. Edgerton. How was Mr. Edgerton suggested?

A. Serena Sutcliffe.

Q. Did he eventually come to the house?

A. He did come to the house.

Q. Were you there that day?

A. I was.

Q. What was the purpose of his coming to the house that day?

A. To verify wines, to take a look at the authenticity of some wines.

Q. Do you have any recollection of what day of the week that

was?

A. It was a Saturday.

Q. Roughly how long was the visit with Mr. Edgerton?

A. I recall we started at 9:00 in the morning, and I don't know if we got done about 7:00 or 8:00 at night. We worked a lot of hours, so I wasn't sure. But he was there a long period of time.

Q. Who was there with you and Mr. Edgerton? Who else was there?

A. It was Thierry Lovato, Mr. Greenberg, myself, and Bill Edgerton. That's a total of four of us.

Q. Was Mr. Greenberg there the whole time?

A. Yes, he was there picking everything. He picked all the wines the entire time.

Q. That was the next thing I was going to ask. Who determined which bottles of wine Mr. Edgerton was going to be looking at?

A. Mr. Greenberg did.

Q. How did he do it?

MR. CIALONE: Objection. No foundation.

Q. Did you see him do it?

A. I saw him do it, yes.

Q. Did you see him take bottles out?

A. I saw him take bottles out. We walked through the entire cellar. We were picking so many bottles that Mr. Lovato and myself had to get involved to help carry the bottles. In the

holding cell we had set a table and we had flashlights, these really strong flashlights that would magnify within the glass. So if this was a dark colored bottle, supposedly these flashlights would magnify so you could see the cork. We were given these flashlights by Mr. Edgerton, and he was doing that and dealing with the labels, looking at the color of the wine. Many things he was doing.

Q. You had one of these flashlights, too?

A. We had like four of them throughout the cellar.

Q. Mr. Greenberg had a flashlight?

A. He had one as well.

Q. Was he using it?

A. He was more so picking the wine. But then, when they were going through the wines, he would flash it for Mr. Edgerton.

Q. Do you recall how many bottles roughly Mr. Greenberg pulled in his cellar that day?

A. I don't recall how many bottles, but I do recall that Mr. Edgerton reviewed 115 to 120 bottles that day.

Q. Do you recall whether Mr. Edgerton identified counterfeit bottles?

A. Yes, I do recall.

Q. That day?

A. That day, correct.

Q. You mentioned you worked until about 8:00 that night. Did Mr. Edgerton ever come back?

A. No. Thierry Lovato and I, actually we were mocking what he was doing because we just didn't think there was a science to it. It was pretty straightforward. But we had recommended that we thought it would be a wise idea to bring Mr. Edgerton back to look at the wine.

Q. Did you raise that idea with Mr. Greenberg?

A. I did.

Q. What did you suggest to Mr. Greenberg?

A. That we retain him so we could go through the entire cellar.

Q. Did you suggest a time period for that, how long you should look?

A. I don't recall, but I may have thrown a date out there, how much time I had thought. I don't recall that, though.

Q. What was Mr. Greenberg's reaction?

A. He didn't want to proceed.

Q. Were you concerned there were other counterfeit wines in the collection?

A. I wasn't --

MR. CIALONE: Objection. Relevance, his concern, your Honor, his nonexpert concern.

THE COURT: Sustained.

Q. You mentioned earlier that Mr. Greenberg determined that the majority of the wines came from Royal after you went through the invoices. Do you remember that?

A. Yes.

Q. Did you talk to him from time to time about what he was going to be doing about that?

A. Yes. He said he was going to sue Royal but he had some concerns because he had heard that they were connected to the Russian mob.

Q. Did you get an update from him about whether he was able to proceed?

A. Yes. I would ask him periodically at dinner, hey, what's going on with the Royal Wine situation? Sometimes he wouldn't say anything, and then one dinner he said, guess what, he goes, I've settled with Royal Wine. I said, great, I take it you've won. And he says, yeah. I go, what did you win? He says, none of your business. He goes, but better, he goes, I get to keep the wine. I go, great, you get to keep the wine.

I go, do you mind if I take a couple of bottles as a trophy of all the hard work that I've done? The reason I asked is because everyone, Thierry and Andrew, were getting paid hourly, they were getting paid $75 an hour, and I was on a salary. We were working 15, 20-hour days. So I figured that since the wine was phony, that he would give me a couple of bottles of wine. And he stated to me, absolutely not, I purchased that wine, what they did to me I'll do to them; what they did to me, I'll do to someone else.

Q. What did you understand him to mean by that?

A. I understood that he was going to sell the wine to a third party. That's what I understood it to be.

Q. I'm going to move to another topic. You mentioned that you assisted helping pack wines to send out for auctions or sales.

A. That's correct.

Q. Do you recall getting any instructions from Mr. Greenberg about how to go about packing the wines for sale?

A. Thierry and I had issues because, for instance, he had a lot of the same bottles, and if we came up to a bottle that was the same, we didn't know how to go about picking which bottle.

Q. Let me interrupt. When you say a bottle that's the same, what do you mean by that?

A. He may have had 10 Montrachets from '89 and they were 10 of the same vintage, 10 identical bottles, but they weren't identical. So we were always instructed to grab the shittiest bottles.

Q. What did you understand him to mean by that? By the way, who gave you that instruction?

A. Mr. Greenberg.

Q. What did you understand him to mean by that?

A. I understood it to be that just to give them the least attractive bottle. Not necessarily a fraudulent bottle. He never told us to give them a fraudulent bottle. He told us just to grab the shittiest bottles. He wanted always to keep the best bottles in his cellar.

Q. What are some examples of less attractive bottles?

A. For instance, if this is the label on the wine and the label is torn a little bit, if there are stains from the wine leaking off to the side of the capsule, if we had three bottles and two of the bottles the wine looked a certain color and one looked like a different color, we would give the one that didn't look the same as the other ones. But we were grabbing so many bottles in such a short time that we really didn't even have time to determine this. We were just packing. We were packing a lot of wines really fast.

Q. What about if you saw color differences on the label or capsule?

A. If we saw a photocopied label, we would send it. I personally asked Thierry Lovato about that. He says, just because it's photocopied doesn't mean that it's not real, because they are old farmers and maybe they lost the label and they just photocopied one and stuck it on the wine.

Q. As far as you know, there was no issue?

A. Yes, I didn't think there was an issue at all.

Q. Differences in colors on capsules and other things?

A. Correct.

Q. What would you do then if that happened?

A. We would always send the shittiest bottle.

Q. Now, sir, did you consider yourself an expert in detecting counterfeit at that time?

A. No, absolutely not.

Q. Or even today?

A. No, not at all.

Q. Were you instructed by Mr. Greenberg to examine the wines for authenticity issues before they were sent out for auction?

A. No, not at all.

(Continued on next page)

BY MR. HUESTON:

Q. What about wines coming in that he received?

A. Yeah, after Mrs. Serena Sutcliffe came to the house, he was very cautious. Any wine that we would receive, if we saw stains on the label or if something didn't look right to us, we would address it with Mr. Greenberg.

Q. Okay. But not for wines that were being sent out.

A. No, correct, not for wines that were being sent out.

Q. At the time that you were packing these bottles, did you think it was immoral or dishonest to pick what you called the shittiest bottles?

A. No, I didn't think it was at all because we were keeping -- just because a wine didn't look perfect, the bottle didn't look perfect, didn't mean that it wasn't a real wine, so no, we were -- we were just packing it and sending it off.

Q. Did you ever pack for an auction that had the title Best of the Best?

A. Not that I recall. I know I packed for -- before I left, we had packed for about four auctions. I never knew what the auction was for. Never knew what the catalog was. We were instructed to pack wine and that's what we did.

Q. Would you have felt comfortable packing the wine with the instruction shittiest bottles if it was supposed to be best of the best?

MR. CIALONE: Objection, your Honor. Calls for

speculation. He just testified he never looked at the catalog so how would he have any idea?

THE COURT: Overruled. You can answer.

Q. Go ahead.

A. Rephrase the question?

Q. Sure. Would you have felt comfortable picking, your words, the shittiest bottles at Mr. Greenberg's instruction if it was supposed to go to the auction that was supposed to be the best of the best?

MR. CIALONE: Objection, your Honor. Relevance. Mr. Cortes' opinion.

THE COURT: Overruled.

A. Yeah, I would have felt a little funky about it, yes.

Q. Let me turn to the topic of Mr. Greenberg's role in connection with his wine collection. How would you describe his role?

A. He was completely hands on. We -- we being Thierry, Mr. Lovato, and myself and Andrew -- we were just instructed on what to do and we did exactly what we were told.

Q. And what were some of the things that Mr. Greenberg did in conjunction with his wine cellar? What would you see him doing?

A. He would purchase wine, he would get ready for auctions for the wine, he -- occasionally he would come down and help us pack, but not -- not too often, and he would deal with the

vendors in purchasing a lot of wine. I know a lot of these people called because I would answer the telephone at the house and it was usually a wine merchant trying to sell Mr. Greenberg wine. So he was involved in it. He -- he did it all.

Q. Okay. There's been a representation that Mr. Greenberg might have averaged 1 to 2 percent of his time in the wine cellar. With respect to your time there, does that -- is that a truthful representation?

MR. CIALONE: Objection, your Honor. Lacks foundation.

THE COURT: If you know, you can answer. Based on your experience.

A. No, he spent a lot more than 2 percent of time on the wine.

Q. Did you ever have a conversation with Mr. Greenberg as -- as these auctions were taking place as to why he was selling his wine?

A. Yeah. He had mentioned that he had too much wine, number one, that he wasn't going to be able to drink it all, and got -- he needed funding for a company that he was starting.

Q. Do you recall any representatives from auction houses ever visiting Mr. Greenberg's cellar in the time that you were there?

A. Yeah, John Kapon would come, like I said, Serena Sutcliffe, I escorted her around the basement, and I think Christie's may have been there one day but it was on a Saturday and I wasn't

working. That's about it. That's what I recall.

Q. Do you recollect Mr. Greenberg ever telling Mr. Kapon or any other auction house representative about the Sutcliffe visit?

A. No, not at all.

Q. Do you remember him telling Mr. Kapon or anyone else that he may have had a lot of fraudulent wines from Royal Wine company?

MR. CIALONE: Objection. Lacks foundation, your Honor.

MR. HUESTON: Asking him whether he recalls.

THE COURT: Overruled. You can answer.

A. What was the question again?

Q. Sorry. Do you recall him ever telling any auction house representative words to the effect of, a lot of wines that may have come from Royal Wine company may be fraudulent or fake?

A. No, not at all.

Q. Let me get now to the end of your time there. You mentioned you left sometime late -- sometime late in 2004?

A. Yeah, November 29th, 2004.

Q. Okay. Can you describe the circumstances of your departure.

A. In my industry, you work with the family three to five years and then it's time to move on, and I felt that it was just time for me to move on. There's -- there's no challenge

for me. I was not happy. It was just time to move on.

Q. Okay. Were you being paid salary and bonus year after year?

A. Correct.

Q. Okay. In your -- up until 2003 were you getting salary and bonus?

A. Correct.

Q. Okay. What happened in 2004?

A. I knew that I was going to leave. I got another headhunter involved to replace my position. I told him that I wasn't going to stay until the end of the year, and we had an agreement that if I finished -- helped finish the wine inventory and finish all the furniture and art and other belongings that Mr. Greenberg had that they would give me my bonus -- that he would give me my bonus.

Q. An agreement with whom?

A. With Mr. Greenberg.

Q. Okay. And did you do all the things that you just outlined?

A. I did absolutely everything I had to do.

Q. And what happened?

A. They sent me the confidentiality agreement that they wanted me to sign and they also -- I was supposed to return the keys, which I did, and pick up a check for my bonus, and when I got to pick up the check, they offered me $2500, and I was

expecting 25 to $30,000, so I didn't sign it and I just left.

Q. How did you feel when you were leaving that day?

A. I was upset. I felt kind of relieved, though, because it's a new chapter of my life. I knew I was going to -- I'm good at what I do, I've been doing it many years, and for me to find employment is very simple, and I found something in Houston, Texas, I make double the money that I made while I was with Mr. Greenberg, just in a way better place in my life, so I'm thankful for Eric, actually, because I got there because of Mr. Greenberg.

MR. HUESTON: Thank you.

THE COURT: Cross-examination, Mr. Cialone?

MR. CIALONE: Give me one moment, please?

THE COURT: Sure.

(Pause)

CROSS-EXAMINATION

BY MR. CIALONE:

Q. Good morning, Mr. Cortes. My name is Frank Cialone. I represent Mr. Greenberg. Excuse me.

A. Good morning.

Q. And so let me just clarify one thing, because we heard some video this morning. You sometimes go by JJ Cortes, correct?

A. I do.

Q. But that's a different person than Jay Cortez who worked for Fireman's Fund, right?

A. Yes.

Q. Okay. Just clarifying that.

Now, Mr. Cortes, you said you were thankful for Eric Greenberg, right?

A. I was.

Q. Is that why you called him an asshole when you got in touch with Mr. Koch?

A. I thought that what Mr. Greenberg did was unethical, he had intentions to do so 'cause he told me on a couple of occasions that, "what they did to me," he was going to do to them, so someone that runs their life like that, I would consider an asshole, yes, I would.

Q. He said that to you more than once?

A. Yes.

Q. Do you recall you gave your deposition in August of 2010?

A. I do recall that.

Q. And that you had a chance to talk to counsel before that, right?

A. Correct.

Q. You spoke with Mr. Koch's counsel, correct?

A. Correct.

Q. You'd spoken with Mr. Goldstein, right?

A. Correct.

Q. And who is that?

A. I think he's a personal aide to Mr. Koch.

Q. You'd spoken to him five or six times?

A. Maybe more. I'm not --

Q. You'd spoken with Jim Elroy, right?

A. I'm not sure who Jim Elroy is.

Q. Investigator who met with you and Mr. Goldstein, right?

A. Correct.

Q. You had your own lawyer, right?

A. Yes.

Q. Which Mr. Koch provided for you?

A. He's -- Mr. Koch is paying my legal fees if Mr. Greenberg comes after me. Mr. Koch hasn't paid for my attorneys.

Q. He didn't pay for your attorney at your deposition?

A. No, he hasn't.

Q. Okay. But you were in your attorney's office for that deposition, right?

A. Correct.

Q. And do you recall that deposition testifying under oath, you said that, as you sat here that day, you had no reason to believe that Mr. Greenberg intentionally defrauded anyone, right?

A. I did state that.

Q. Okay. And let's look at the e-mail where you called Mr. Greenberg an asshole.

MR. CIALONE: Your Honor, I would ask to put up Exhibit 1048.

Can we show that to the witness, please, and the court.

MR. HUESTON: Is this moved into evidence?

MR. CIALONE: Just about to do that. I'll ask him if he recognizes it.

Q. Mr. Cortes, do you recognize this e-mail exchange between you and Brad Goldstein?

A. If you could magnify it, I will be happy to tell you.

Q. Sure. I could loan you my glasses but then I wouldn't be able to see it.

MR. CIALONE: Could you blow that up just a little bit, please, Liz.

A. Yeah, that's fine.

Q. Do you recognize that?

A. I do.

Q. Okay. Mr. Goldstein is director of corporate affairs at Oxbow Corporation, right?

A. Correct.

Q. That's Mr. Koch's company?

A. Correct.

MR. CIALONE: Your Honor, I'd like to move Exhibit 1048 into evidence, please.

THE COURT: Okay. I think we've addressed this on the previous motions, right?

MR. HUESTON: Yes. No objection, your Honor.

THE COURT: Okay. It's received, 1048.

(Trial Exhibit 1048 received in evidence)

BY MR. CIALONE:

Q. Now, Mr. Cortes, you reached out to Mr. Koch, right?

A. I did.

Q. You read about this case in the Wine Speculator.

A. I did not read about it. Someone told me about it.

Q. Okay. And you got -- once you heard about it, you got in touch with Mr. Koch.

A. Correct.

Q. And you were referred to Mr. Goldstein.

A. Correct.

Q. And you spoke to Mr. Goldstein.

A. Yes.

Q. You spoke to him several times.

A. Yes.

Q. And you sent him this e-mail, among other communications.

A. Correct.

Q. And you said, "I would love to meet with you and Mr. Koch to discuss my stay at the Greenbergs'. My info will help you guys bring this asshole down. Thanks, JJ." You wrote that.

A. I did.

Q. And here you are.

A. Correct.

Q. And you came up here from Texas.

A. I did.

Q. You came here voluntarily.

A. Absolutely.

Q. And you believe Mr. Greenberg owes you $25,000 bonus.

A. I'm a man of my word; he's not a man of his word.

Q. And you're angry about that. You're angry about that.

A. No, I'm not angry, I'm --

Q. You're not angry that he owes you $25,000, according to you?

A. I moved on.

Q. You told Mr. Goldstein you were angry?

A. I had mentioned that I was disappointed with not receiving my bonus.

Q. Did you tell him you were angry?

A. No, I didn't tell him I was angry. I said I was disappointed.

Q. Did you tell him you had resentment towards Mr. Greenberg?

A. No, I don't have resentments. I'm thankful for Mr. Greenberg.

Q. Did you tell him you felt spurned by Mr. Greenberg?

A. No, I didn't. That's not in my vocabulary. I never said that.

MR. CIALONE: Your Honor, I'd like to play Mr. Goldstein's deposition, 343, line 17 to 344, Line 10, as impeachment.

MR. HUESTON: Your Honor, I think this is appropriately played in their case if they'd like. I don't think it's appropriate to play it now.

MR. CIALONE: Oh, your Honor, you let them do precisely this with Mr. Sokolin as impeachment.

THE COURT: You can play it.

MR. HUESTON: Okay. That's fine. You can play it.

THE COURT: You can play it.

(Video played)

MR. CIALONE: We need to restart it with some volume, please.

(Video replayed)

MR. CIALONE: Can you turn it louder?

(Video replayed)

BY MR. CIALONE:

Q. Now, Mr. Cortes, at some point did you come to understand that Mr. Goldstein had actually been running all of the wine-related litigation for Mr. Koch?

A. Yes, I did.

Q. So was he lying there when he testified under oath about what you told him?

A. I don't think he's representing me in the right manner.

Q. Is he telling the truth when he says you told him that you had resentment?

A. No, he's not telling the truth.

Q. He lied under oath. That's your testimony.

A. I'm saying he's not telling the truth.

Q. He lied under oath?

MR. HUESTON: Objection, argumentative.

THE COURT: Sustained.

Q. Now let's talk about your statements under oath, Mr. Cortes. A few minutes ago you testified that Mr. Greenberg told you that he was selling wine at auction because he had too much wine and he needed money to fund a company, right?

A. Correct.

MR. HUESTON: Objection. Mischaracterizes the testimony.

MR. CIALONE: According to him, I didn't. He said it was correct.

THE COURT: You may continue.

MR. CIALONE: Thank you. I'd like to play from Mr. Cortes' deposition, page 93, line 13 to 22.

MR. HUESTON: One moment.

No objection.

THE COURT: Okay. You may play it.

(Video played)

BY MR. CIALONE:

Q. So Mr. Cortes, before you flew up here today from Texas, did you talk with Mr. Koch's counsel?

A. I did.

Q. Did you tell them --

A. I just met with them once.

Q. For how long?

A. Couple of hours. Two hours.

Q. Okay. By phone?

A. No, in person. You're saying before I came up here?

Q. Yeah. I'm sorry. Not a few years ago before you gave that testimony at deposition but before you came and testified differently at trial today, did you talk with them?

A. Yes. I've met with --

MR. HUESTON: Objection. Argumentative.

THE COURT: Sustained.

Q. How long did you talk to Mr. Koch's counsel --

A. Prior to coming up here?

Q. Yeah.

A. An hour.

Q. When was it?

A. Couple of weeks ago.

Q. Okay. Did you know you were going to come up here as of a couple weeks ago?

A. I did not.

Q. So how did that change?

A. They asked me to come up.

Q. So you spoke to them a second time?

A. My -- my attorney spoke with them.

Q. Okay. And then you came up here when?

A. Saturday.

Q. And did you meet with counsel again?

A. Yes.

Q. How long?

A. Two hours.

Q. How many lawyers were there?

A. My lawyer and two of their -- two or three of their attorneys.

Q. Two or three of their attorneys for two hours?

A. Yes.

Q. Did you talk about what you were going to testify to?

A. No. They emphasized to me all along that all they want is the truth.

Q. So were you telling the truth today when you said what Mr. Greenberg told you about why he wanted to sell wine or were you telling the truth when you gave your deposition under oath?

A. What --

MR. HUESTON: Objection. Argumentative.

THE COURT: Sustained.

A. I'm telling the truth today. Back then, that deposition went on for four, five hours. I was exhausted. I could only remember what I could remember. It was a long time that I hadn't worked with Mr. Greenberg.

Q. It's three years later now, though, than it was at your

deposition, right?

A. Correct.

Q. Now let's talk about your meeting with Ms. Sutcliffe. How long were you with Ms. Sutcliffe?

A. She got to the house in the morning. Like I said, Mr. Greenberg was on a conference call, so I met with her for about 25 to 30 minutes before I called Mr. Greenberg to come downstairs.

Q. Did you tell her your name?

A. Said, "Hi, I'm JJ. I work for the Greenberg family."

Q. Did you speak with her?

A. Briefly, walking around the cellar, showing her different areas of the cellar, yes, I did speak with her.

Q. Well, she told you lots of things about the wine she was looking at, right?

A. She wasn't talking to me directly about the wines. She was speaking with someone else that she was with.

Q. Who asked you if she could peel back capsules?

A. She didn't ask. She said that's proper protocol, it's what they do.

Q. So she walked into Mr. Greenberg's cellar and without asking anyone, she just started peeling off capsules?

A. She told me, "This is proper protocol. This is what we do."

Q. And you didn't tell her that was okay or not okay?

A. I didn't say anything, but after a certain number of capsules that she decided to peel back, I called -- I felt uncomfortable and I called Mr. Greenberg up in his office.

Q. And did she tell you that as she was peeling back these capsules, she thought the wines were counterfeit?

A. She didn't tell me. She was speaking with the gentleman that she was with.

Q. Who was that?

A. I don't know his name. He's a guy maybe a little bit taller than I was, older, dark hair. Don't remember who he is.

Q. Was it Jamie Ritchie?

A. Maybe.

Q. Was Robert Sleigh also there?

A. No.

Q. Did Mr. Ritchie talk to you?

MR. HUESTON: Objection. Objection. No foundation that he knows who Mr. Ritchie is. He described a person.

MR. CIALONE: Your Honor, we've had two witnesses testify Ms. Sutcliffe and Mr. Ritchie, that they were both in the cellar, Mr. --

THE COURT: He can ask on the theory that it could ring a bell that he doesn't otherwise know.

MR. CIALONE: Okay.

MR. HUESTON: I'm happy to hear if he recognizes the name, your Honor, but to incorporate it into the question.

THE COURT: Fair enough.

MR. CIALONE: Let's ask.

BY MR. CIALONE:

Q. Did this other person who was there whose name you don't remember talk to you?

A. Just an introduction. That was it.

Q. Did he have a British accent?

A. I don't even recall that. I know that Mrs. Sutcliffe did have a British accent.

Q. So you were in the cellar with them alone for 25 minutes and neither one of them spoke to you.

A. I wasn't alone. Thierry Lovato was there in the holding cell, doing inventory.

Q. Mr. Lovato was there as well?

A. Yes.

Q. Watching them walk through the cellar?

A. No. He was -- he was in the holding cell, doing inventory.

Q. Who actually accompanied these people and showed them the wines and showed them the areas in the cellar?

A. I did.

Q. For 25 minutes?

A. Until Mr. Greenberg came down, correct.

Q. Without them ever speaking to you.

A. They introduced themselves, I said.

Q. And you spoke to them, though.

A. I introduced myself.

Q. How did you go about showing them the wines and the areas, did you speak or just point?

A. Because I knew where the wines were located within the cellar.

Q. Did you point or did you speak to them?

A. I showed them, "This is where Mr. Greenberg houses the Bordeaux, this is where he houses the Burgundies, this is," and we walked. It's a big cellar, so I was showing them around.

Q. So you spoke.

A. Yes, I did.

Q. Okay. For 20 or 25 minutes.

A. It wasn't an in-depth conversation. I was showing them the wine. At a certain point she started to grab wines on her -- on her own.

Q. And neither of them remembers that you were there, do they?

MR. HUESTON: Objection. There's no foundation for this.

A. I don't know.

Q. And --

MR. HUESTON: And it's an improper question. How can he possibly talk about what somebody else remembers, your Honor?

THE COURT: Sustained.

Q. And so Ms. Sutcliffe actually removed capsules in your

presence.

A. She didn't move -- remove the entire capsule. Yes, she did. She brought them up to a certain point.

Q. I'm sorry. She did or did not remove capsules?

A. She did to a certain point. She brought them up to a point and then she peeled back the capsule and she put it back. And she says that was very common.

MR. CIALONE: I'd like to play from Ms. Sutcliffe's deposition, page 55, line 25, to 56, line 4.

MR. HUESTON: No objection.

THE COURT: Okay.

(Video played)

Q. Now I believe you said you then went to Mr. Greenberg and told him that Ms. Sutcliffe, who you'd spent all this time with, was removing capsules. Was he upset about that?

A. Yeah, he came down immediately.

Q. Mr. Greenberg actually, after the time Ms. Sutcliffe left, directed you to pull back capsules, correct?

A. No.

Q. He did not instruct you to pull back capsules so you could look at corks?

A. No, he did not.

MR. HUESTON: Objection. Vague as to time, your Honor.

MR. CIALONE: After Ms. Sutcliffe left the cellar.

Same time frame as the last question.

MR. HUESTON: At any time, in a year or in that day?

MR. CIALONE: Any time. We'll start with any time, until late November 2004.

A. I don't recall pulling back capsules myself. Thierry would; I wouldn't.

MR. CIALONE: I'd like to play from Mr. Cortes' deposition, page 151, line 3 through 12. Actually through 16. Strike that. Sorry. Page 151, line 3 through 25.

MR. HUESTON: No objection.

(Video played)

Q. And Mr. Cortes, I just want to ask you about one thing you mentioned. You said very few people were allowed into the wine cellar, right?

A. Correct.

Q. And the wine cellar was in Mr. Greenberg's home.

A. Yes.

Q. Had a lot of very valuable things in it?

A. Yes.

Q. Very breakable things?

A. Correct.

Q. You didn't think there was anything strange that Mr. Greenberg didn't allow just anyone to walk in, correct?

A. No, I thought it was normal.

Q. Now you talked about Mr. Greenberg saying to put the, as he

put it, the shittiest wines, right?

A. Yes.

Q. And that was a standing instruction?

A. Was a standing instruction, yes.

Q. And you always understood that instruction to include wines with photocopied labels, correct?

A. Just any wine that we thought wasn't as nice as -- if we had two wines, we would keep the nicer one in his collection.

Q. But you specifically understood, as you testified, that that included wines with photocopied labels.

A. Correct.

MR. CIALONE: And if you would play Mr. Cortes' deposition, page 94, lines 3 to 11.

MR. HUESTON: Hold on.

Your Honor, I don't think this is impeachment, but I have no objection to it being played.

THE COURT: Okay. You may play it.

(Video played)

MR. CIALONE: And I'd like to play from Mr. Cortes' deposition page 95, line 13 through 24.

MR. HUESTON: Your Honor, this is not impeachment, but I have no objection to playing it.

MR. CIALONE: It is impeachment, your Honor.

THE COURT: You may play it.

MR. CIALONE: If he's going to make a speaking

nonobjection, I'd like to respond. It's impeachment. Directly contradicts what he said that that was a standing instruction.

THE COURT: You can play it.

(Video played)

BY MR. CIALONE:

Q. You recall it only happened a couple of times, right?

A. He gave us instructions. We followed exactly what he told us.

Q. And it only happened a couple of times.

A. Telling us once was enough.

Q. It wasn't a standing instruction, though, it only happened a couple of times?

A. He told us a couple of times. We didn't have to ask him again.

Q. And you didn't think that the shittiest bottles meant counterfeits.

A. Correct, I didn't think that.

Q. You just thought it was ones that weren't pristine?

A. We wanted to keep the pristine ones in his cellar.

Q. And you didn't think there was anything wrong with keeping the pristine bottles as a collector.

A. Correct.

Q. You thought that was perfectly normal.

A. Correct.

Q. Now you testified you wouldn't have been comfortable

packing wines for a best of the best auction. The October 2005 auction, the catalog said the best of the best collection. What was your involvement in packing wines for that auction?

A. I wasn't there.

Q. You had no involvement whatsoever in that.

A. Correct.

Q. So whatever funky you might have felt or not have felt, you weren't involved?

A. He asked me if I would have felt that way and I said yes, I would have felt funky about it.

Q. And you have no idea what instructions were given to Mr. Lovato who actually did pack bottles for that auction, right?

A. I was gone. I don't know.

Q. But in the auctions where you did pack wine, you never packed counterfeit wines.

THE COURT: What was the question?

A. Not knowingly.

Q. In the auctions where you did pack wines, you never did pack counterfeits?

A. Not knowingly.

Q. And Mr. Greenberg never instructed you to pack counterfeits.

A. Not knowingly.

Q. And in fact Mr. Greenberg had segregated counterfeits.

A. Only a hundred eighteen of them. He had 75,000 bottles.

Q. And how many of those 75,000 -- did you know if any of those were counterfeit?

A. I'm not an expert. I don't know.

Q. Okay. And in fact, what's the 118 number, to Mr. Edgerton?

A. Mr. Edgerton's bottles.

Q. Let me ask you some questions about Mr. Edgerton. You said Ms. Sutcliffe recommended Mr. Edgerton?

A. That was my understanding.

Q. Is that what you heard her say?

A. It's what I thought I heard her say, yes.

Q. Okay. So Ms. Sutcliffe was not actually retained by Mr. Greenberg's lawyer in the Royal matter?

A. Rephrase that.

MR. HUESTON: Objection.

MR. CIALONE: Thank you. I think the objection was: Mr. Cialone blew the question. Let me try again.

Q. Mr. Edgerton was not actually retained by Mr. Greenberg's lawyer in the Royal matter?

MR. HUESTON: Same objection. No foundation.

A. I wasn't privy to that so I don't know.

MR. CIALONE: Okay. I'd like to play from Ms. Sutcliffe's deposition, page 160, line 12 through 161, line 3.

MR. HUESTON: Fine. No objection.

(Video played)

Q. Now you also testified that Mr. Edgerton came to Mr. Greenberg's home before Mr. Greenberg started pulling invoices, correct?

MR. HUESTON: Objection. Mischaracterizes the testimony.

A. Rephrase the question. I didn't hear what you were saying.

Q. Sure. Do you recall Mr. Greenberg went through invoices?

A. Correct.

Q. Did that happen before or Mr. -- after Mr. Edgerton came?

A. That was after Mr. Edgerton came.

Q. Okay. Did Mr. Greenberg prepare a spreadsheet showing his invoices from Royal Wines?

A. I never seen it. Thierry may have. I never seen it.

Q. When did Mr. Edgerton come to Mr. Greenberg's home?

A. I don't remember the date, but he was there from the morning till 7 or 8 in the evening.

Q. Do you remember the year?

A. It was 2000 -- 2003.

Q. And Mr. Greenberg didn't go through invoices at any time between April 2002 and 2003 when Mr. Edgerton came?

A. He may have, but Mr. Greenberg, like I said, spent the majority of his time up in his office buying wine and doing everything else, so I don't know what he did up there.

Q. You don't know what he did up there, do you?

A. I don't know what he did up in his office.

Q. You don't know if what he was doing in his office had anything to do with wine.

A. That's not true because I would get a lot of calls and I would transfer them over to him and they were a lot of wine vendors.

Q. Sure, but he could have been doing other functions for the various companies, right?

A. Maybe.

Q. You don't know.

A. I don't know.

Q. Now you thought Mr. Edgerton should come back and go through the entire 75,000-bottle cellar?

A. I had recommended it to Mr. Greenberg, just so we know what was real and what wasn't.

Q. Did you think that Mr. Edgerton was qualified?

A. Yes, I did.

Q. Did you have any doubts about his ability to do that work?

A. No, we didn't -- no, I didn't.

Q. Okay. Did Thierry Lovato express any doubts to you about whether Mr. Edgerton knew what he was doing?

A. Yeah, he -- Thierry made fun of --

Q. But you didn't have any doubts?

A. I didn't have any doubts.

MR. CIALONE: I'd like to play from Mr. Cortes'

deposition, page 150, line 14 through 24.

MR. HUESTON: No objection.

THE COURT: Okay. You may play it.

(Video played)

Q. Now before Mr. Edgerton came and did whatever work he did -- strike that.

Do you recall that at some point you took bottles that you or Mr. Greenberg or Mr. Lovato believed were questionable and you physically turned them around in the racks?

A. Yes, I do remember.

Q. Was that before or -- Mr. Edgerton got there?

A. I don't recall.

Q. What was the purpose of turning the bottles around in the racks?

A. If Mr. Greenberg had any doubt whether the wine was authentic or not, we would turn it around.

Q. I'll read to you from your deposition.

Actually, let me show you your deposition and see if it refreshes your recollection about when that occurred.

MR. CIALONE: Your Honor, if I may approach, I will give the witness his deposition open to page 39.

THE COURT: You may.

Q. And Mr. Cortes, if you would look at page 39, line 14 to 40, line 2, and just tell me if that refreshes your recollection about when this process of turning the bottles

backwards occurred relative to Mr. Edgerton's visit.

A. What line?

Q. Sure. 39, line 14, you see there's a question, "Prior to Mr. Edgerton getting involved," do you see that?

A. Yes.

Q. Okay. Just read there through your answer, which ends on the beginning of page 40.

A. Okay. "Prior to Mr. Edgerton getting involved, was there a process that you went through to determine the source of the wine that Mr. Sutcliffe -- Mrs. Sutcliffe had raised questions as to its authenticity --"

MR. HUESTON: Your Honor, I'm going to object to this. He asked if it would refresh his recollection, then the answer is yes or no.

Q. Yeah, actually, I didn't want to interrupt, but I didn't ask you to read it out loud. I apologize. Sorry.

A. Okay. So you want me to read it --

Q. Just read it to yourself and tell me if it refreshes your recollection about what occurred.

A. Okay. (Witness complies.)

Okay.

Q. So do you recall when that occurred?

A. This states that after Mrs. Sutcliffe came to the cellar. I don't recall.

Q. Okay. And then at some point you actually boxed wines up

and segregated them, right?

A. We did.

Q. And those remained boxed up and segregated at least until when you left in late November 2004.

A. Yes.

Q. Thank you. Now you were aware -- you testified that Mr. Greenberg at some point concluded that Royal had sold him counterfeits, right?

A. Yes.

Q. But he never told you he thought that every bottle he got from Royal was counterfeit.

A. Correct.

Q. And Mr. Edgerton didn't conclude that every bottle from Royal was counterfeit.

A. Correct.

Q. Now I'd like to talk to you a little bit about the confidentiality agreement that you were shown that you signed in July of 2001, is that correct, first exhibit Mr. Hueston gave to you?

A. Yes.

Q. That's your signature.

A. Yes.

Q. But at your deposition you claimed it wasn't.

A. I said it could have been my signature. I wasn't sure.

Q. Well, let's play from your deposition, page 165, line 14

through 166, line 4.

MR. HUESTON: One moment.

We're going to ask for the full excerpt here. Start at 164, line 15 and continue through 166, line 10.

MR. CIALONE: Okay.

THE COURT: Fine.

(Video played)

Q. It is your signature?

A. Looks like my signature.

Q. Well, is it or isn't it?

A. It is my signature. I don't remember signing this agreement. I know when I left, they wanted me to sign another agreement and I didn't sign it. That I do remember.

Q. Now when you first reached out to Mr. Goldstein, he asked you, "Do you have a confidentiality agreement?"

A. Correct.

Q. And you said no.

A. I said no.

Q. And then when you were confronted with that agreement at your deposition, you said, "It's not my signature. I didn't sign it."

MR. HUESTON: Objection. It mischaracterizes the testimony. It is what it is.

A. It was a long time ago. I could have signed it. I don't remember signing it. Like I said a couple seconds ago, I do

remember when they left *[sic]*, they wanted me to sign another one and I wouldn't sign it.

Q. Now the confidentiality agreement is dated, what, July 2001, is that correct?

A. Yeah, correct, 7/25/01.

Q. Not shortly after you started working for Mr. Greenberg.

A. I actually thought I started in 2000, but maybe I was wrong.

Q. And you were working in his home?

A. I was.

Q. You were seeing conversations he had with his family?

A. Yes.

Q. You were seeing business conversations he had?

A. Yes.

Q. You were seeing all the things of value that he had in his house?

A. I wasn't -- amongst his home, yes.

Q. So nothing unusual about him asking you to keep that in confidence, right?

A. I guess not.

Q. And that was before Mr. Greenberg had any understanding that he might have counterfeit wines, right?

A. Correct.

Q. That understanding that he might have counterfeit wines, that only happened with Ms. Sutcliffe's visit in 2002.

A. Correct.

Q. So the confidentiality agreement was not any effort to suppress information about counterfeit wines, right?

A. Correct.

Q. Now as far as you know, Ms. Sutcliffe didn't look at more than 20 bottles of wine in Mr. Greenberg's cellar, right?

A. She looked more. She was there longer than that.

Q. I'm sorry. Say that again?

A. I said she looked at more bottles. She was there longer. She was there for about 45 minutes -- 25 with myself and then she spent time with Mr. Greenberg.

Q. In terms of actually picking up bottles and looking at them, how many did she look at?

A. To my recollection, 25 to 40.

Q. In how much time was she able to do that?

A. 25 minutes.

Q. So she --

A. She was with me for about 25 minutes.

Q. Okay. Sorry. I didn't mean to interrupt you. 25 minutes to look at up to 40 bottles?

MR. HUESTON: Objection. Misstates the testimony.

A. Yes.

THE COURT: You can answer.

MR. CIALONE: Okay. I'd like to play from Mr. Cortes' deposition, page 153, line 15 through 17.

MR. HUESTON: No objection.

(Video played)

Q. And as far as you know, Mr. Cortes, Ms. Sutcliffe didn't say that any bottles in Mr. Greenberg's cellar were actually counterfeit, did she?

A. She had doubts about bottles, she had doubts about the provenance of the bottles, and she made Mr. Greenberg very clear about that.

Q. She had doubts, but she didn't say any were counterfeit.

A. Correct. She had doubts.

Q. She would need to do further investigation to make the determination, right?

A. I would assume so.

Q. And you don't know how many bottles she had concerns about, do you?

A. Pardon?

Q. You don't know how many bottles she had concerns about.

A. No, I don't.

Q. You don't know what percentage of the cellar she had concerns about.

A. I know that when she left, Mr. Greenberg made it very clear that he was not going to let her cherry pick his collection.

Q. Again, you don't know what percentage of his cellar she had concerns about.

A. Correct. I don't know.

Q. What does cherry pick mean?

A. Pick the bottles that she -- I took it as that she was going to pick the bottles that she wanted to use as consignment.

Q. So you think Mr. Greenberg was going to force Sotheby's to accept counterfeits?

A. I can't answer that.

Q. Okay. You do know that Ms. Sutcliffe was in awe of Mr. Greenberg's collection.

A. She was.

Q. Okay. In awe.

A. Yes.

Q. Now you testified that you were not aware of Mr. Greenberg telling any wine auction house about the visit with Sotheby's, this dispute with Royal and so forth. Do I have that correct?

A. That is correct. I wasn't with Mr. Greenberg 24/7. I was only with him while I was working. I was downstairs or doing stuff around the property.

Q. Sure. You don't know what private conversations Mr. Greenberg had with Mr. Kapon, right?

A. I don't know.

Q. You don't know what private conversations Mr. Greenberg had with Jeff Zacharia?

A. I don't know.

Q. In fact, you don't even know that Jeff Zacharia actually

came to Mr. Greenberg's house, do you?

A. You're right. I don't know.

Q. Do you know he was there in November 2002 for a tour of the wine cellar?

A. I don't know.

Q. So you have no idea what Mr. Greenberg told him on that visit, do you?

A. No, I don't.

Q. And you have no idea what Mr. Greenberg said to people when he was upstairs in his office working on wine-related matters, do you?

A. Correct. I don't know.

Q. Now you said Mr. Greenberg had something like 70,000 bottles of wine when you were putting it all away, right?

A. I would think he had about that amount. He had a ton of wine.

Q. Okay. And that was in 2002 when you were putting it away?

A. We started putting it away 2000 -- late 2002, 2003, I would think, or no -- yeah, 2002.

Q. Okay. But you didn't finish with the inventory until November 2004.

A. He kept on buying. He had futures. We were getting a ton of shipments on a regular basis, and I think I emphasized that a lot earlier.

Q. And so with all of that, it would have been impossible to

go out and pick up specific bottles from the collection that was bought from a specific vendor, right?

A. Correct.

Q. And that was the situation in 2002 when you started working on the inventory, right?

A. At that time we could have, because the bottles were all in boxes and we knew where they came from.

Q. All 75,000 of them?

A. Yes. We didn't have a cellar built.

Q. But you got them out of boxes to put them on the shelves before Ms. Sutcliffe's visit.

A. Correct.

Q. Before Mr. Greenberg knew anything about the possibility that he might have counterfeit wines.

A. Correct.

Q. Any bar coding at that point, it would have already been too late.

A. Yes, I feel it would have been too late.

Q. All right. Let's talk about this statement that you claim Mr. Greenberg made: "What they did to me, I'm going to do to someone else." When did he say that to you?

A. After he found out -- after he had found out that he had won -- he had settled with Royal Wine. I don't remember the date. I don't -- I know that it was after he had settled with Royal Wine.

Q. Do you remember the year?

A. It was probably 2003 because I left 2004 and I maintained with them maybe nine to ten months after that.

Q. Now according to your testimony Mr. Greenberg told you he didn't have to send wine back to Royal as part of the settlement?

A. That's what he told me.

Q. But in fact Mr. Greenberg did send nearly 200 bottles back to Royal, right?

A. I wasn't aware of that.

Q. You weren't involved in packing that.

A. No, I was not involved in packing that.

Q. You spent the majority of your time working in his wine collection but you weren't aware he was sending back 200 bottles of wine to Royal?

A. 200 bottles in comparison to what we were receiving every day and what we had in inventory was nothing.

Q. How about all the stuff that was segregated?

A. That was 118 bottles. Those never left.

Q. Those never were sent back to Royal.

A. No. They couldn't have been. They were in a room in a holding cell. When you walked in his holding cell, the room was 30 feet by 25 feet, floor to ceiling. The ceilings are probably 10 to 12 feet in that -- in that -- in that holding cell. The wines were off to the right-hand side in boxes, and

we had wines all around it. The only way you could get to that wine is moving hundreds and hundreds of cases. And I'm not sure if you've ever picked up a box of wine. They're very heavy. We used to walk in the cellar like we were Spiderman, if we had to move boxes.

Q. So when Mr. Greenberg sent wine back from Royal, he didn't go pick up the bad stuff that had been segregated?

A. No. That wine was there when I left.

Q. He went and took good wine.

A. I don't know what he took, but he didn't take what was there.

Q. Okay. Now when Mr. Greenberg made that statement to you, you thought it was something he said out of emotion, right?

A. Eric was like -- Mr. Greenberg -- excuse me -- was like a tyrant. He blew up all the time. So I -- I got accustomed to it.

Q. He wasn't blowing up at you.

A. Absolutely not, but he was -- he was upset.

Q. And you thought he said it out of emotion.

A. I knew that I never asked him about it again 'cause I strongly felt that he had intentions to ponder *[sic]* it off on someone else.

MR. CIALONE: Okay. I want to play from his deposition at page 145, line 24 to 146, line 15.

MR. HUESTON: No objection.

(Video played)

Q. And you kept working for Mr. Greenberg for nearly a year after that.

A. I did.

Q. And when you left Mr. Greenberg's employ, you thought he and his wife were good people, right?

A. I did.

Q. Now you claim that -- you have claimed that Thierry Lovato told you about this same statement by Mr. Greenberg, right?

A. Correct, and Steve Selover as well.

Q. Steve Selover told you or you told him?

A. Steve Selover said that he heard Mr. Greenberg say that he was going to do to other people what was done to him.

Q. And who is Steve Selover?

A. He was the contractor that built the wine cellar and did other renovation projects around Mr. Greenberg's home.

Q. So you never reiterated that comment to Mr. Selover, he came to you?

A. He had mentioned it to me.

MR. CIALONE: Okay. Can I play from his deposition at line -- page 121, line 12 through 20.

MR. HUESTON: That's fine.

(Video played)

Q. And you don't remember getting any reaction from either of them, correct?

A. No, none at all.

Q. And have you contacted both of them to see if they want to get involved in helping Mr. Koch in this lawsuit?

A. I have not.

Q. You haven't contacted them at all?

A. I occasionally would buy wine through Thierry Lovato, but I have not talked to him in regards to the lawsuit at all.

Q. Are you sure about that?

A. I'm positive.

MR. CIALONE: Okay. Nothing further.

THE COURT: Okay. Thank you.

Is there any redirect?

MR. HUESTON: Yes.

THE COURT: Okay. Mr. Hueston?

REDIRECT EXAMINATION

BY MR. HUESTON:

Q. Sir, you were shown an e-mail where you wrote to Mr. Goldstein that you'd like to help with Mr. Koch, right?

A. Correct.

Q. And you used the word "asshole," right?

A. I did.

Q. Was that truthful at the time you wrote that?

A. It was my feeling of Mr. Greenberg because of things that I'd had experienced in the past that I thought Eric deserved to be called an asshole.

Q. Okay. And what were those things?

A. I experienced, for instance, prior to me leaving, right before I left, we had a delivery gentleman bringing wine to the house and I -- that morning I started early so I probably got there around 9 in the morning.

MR. CIALONE: Objection, your Honor. This is really far afield. This seems to be getting into character evidence about interactions with a delivery gentleman.

MR. HUESTON: Not at all. He is trying to impeach him on the use of that word, "you think he's good people," and I have absolutely every right to have him explain why he wrote that.

MR. CIALONE: Your Honor, I have a right to show this witness's bias, but to go into "why did you think Mr. Greenberg was an asshole" is plainly character evidence, plainly a character assassination tactic.

MR. HUESTON: Put into issue directly by counsel.

THE COURT: I'll allow it briefly.

A. So as I'm walking into the house, the delivery guy is running out of the house and Mr. Greenberg is following him out of the house. The guy was panickedly running from -- running away from Mr. Greenberg, Mr. Greenberg was yelling at him to get the hell out of his house. Mr. Greenberg jumped on top of him and started to pounce on him as I'm walking in -- we're now in the driveway -- and I got in between Mr. Greenberg and the

gentleman, and I got hit in the back of the head.

(Continued on next page)

Q. Was there another incident like that?

MR. CIALONE: Oh, your Honor, please. This is straight-out character attack.

THE COURT: I'm going to sustain it.

Q. Is that the only time you saw something like that?

MR. CIALONE: Objection, your Honor. Same question phrased differently.

THE COURT: Sustained.

Q. Sir, counsel read or played some excerpt of your deposition stating that Mr. Edgerton was so quick, it gave you concerns, right?

A. Rephrase that again.

Q. That Mr. Edgerton's review was so quick --

A. Yes.

Q. -- that it gave you concerns. Did you have any other concerns other than the quickness of the review?

A. In regards to the authenticity of the wine?

Q. No. Just Edgerton's review or his ability to review.

A. I just thought it was very fast. He did it fairly quickly and it didn't seem like it took rocket science to do what he was doing.

Q. With respect to the segregation, you described it was just 118 bottles or so that were put aside?

A. Yes. They were put in different boxes. Because there was some magnums, there was regular 750 bottles, and there was

Bordeaux, Burgundies, Montrachet's, all kinds of different wines. All of these wines has different shaped bottles. So we couldn't put a perfect 12 bottles in a box and hope that they would fit. We had many boxes with that wine.

Q. Those boxes were put, you said, in a holding area?

A. They were put in a holding cell, correct.

Q. Outside the main wine cellar?

A. Outside the main wine cellar, before you walked into where all the magnums were at, before you got into the front door of the cellar.

Q. Did you ever accidentally walk in there and put your hand in one of those boxes and add it to an auction package?

A. There was no way you could do that, because there was so much wine around there.

Q. Those are the only bottles you remember being segregated or put aside, right?

A. 110 to 118 bottles, to 120 bottles. I'm not exactly sure.

Q. By the way, do you recall what Ms. Sutcliffe looked like? Do you have a general recollection?

A. I do.

Q. What? What did she look like?

MR. CIALONE: Your Honor, objection. He was in court this morning watching it on video.

A. I thought she looked like that but with gray hair.

Q. You saw her before that?

A. Yes.

Q. Sir, you don't work for Mr. Koch, right?

A. I don't.

Q. Did you receive any kind of compensation or any payment for testimony here today?

A. Absolutely not. I just want to do the right thing.

Q. Why did you decide to come to New York to give testimony to this jury?

A. Because Mr. Greenberg actually did what he said he was going to do.

MR. CIALONE: Objection, your Honor. No foundation. He is just repeating what counsel told him.

MR. HUESTON: That is totally wrong.

THE COURT: Overruled. Go ahead.

A. I just wanted to do the right thing, and those were his intentions.

Q. Counsel for Mr. Greenberg played you a couple of snippets from your deposition about the emotional, when you were asked about whether he was emotional, and then the lawyer asked you about whether it was cold or calculating, right?

A. Correct.

Q. Were you asked, sir, at two other different points in the deposition whether you believed in fact that he intended to go through with that?

MR. CIALONE: Objection, your Honor.

A. By who?

MR. CIALONE: Hearsay.

MR. HUESTON: What I'm going to do, your Honor, and I'm entitled to do it, I get my chance to play his prior consistent statements in that depo where it is clarified and his gives his testimony. I can do that right now.

THE COURT: OK.

MR. CIALONE: Your Honor, I'm sorry. He asked to play a prior consistent statement before the motive for fabrication arose?

MR. HUESTON: It is for the completeness of the record. He played misleading snippets, and we would like to play the rest so the jury hears it.

THE COURT: You can do it.

MR. HUESTON: Let's go to page 193/lines 6 through 19.

(Cortes video deposition shown)

MR. HUESTON: Then I would like to play page 122/line 17 through 123/line 3.

MR. CIALONE: Your Honor, I would ask that that be played all the way through 123/line 24.

THE COURT: OK.

MR. HUESTON: Your Honor, these are my excerpts. He has chosen his impeachment.

MR. CIALONE: Your Honor, under Rule 106, just like Mr. Hueston did on my examination, I get to ask that something

be played at the same time.

THE COURT: I have given the parties leeway to extend the periods of time.

MR. HUESTON: I'm fine with playing it. It's a separate point, and I'll bring that out on examination. That's fine.

(Cortes video deposition played)

Q. Mr. Cortes, did you think that Mr. Greenberg was going to do it in front of you?

A. I don't think so, just because I had way too much information of what was going on in his lifestyle, in his cellar.

Q. Sitting here today, sir, do you have any doubt about Mr. Greenberg's intentions when he made that statement?

MR. CIALONE: Your Honor, calls for opinion and speculation.

THE COURT: I'm going to allow it because there has been impeachment testimony at this level.

A. My understanding was that he was going to do it to someone else, and I still stand by that today, and that's what happened.

MR. HUESTON: Thank you. No more questions.

MR. CIALONE: I have a few, your Honor.

RECROSS-EXAMINATION

BY MR. CIALONE:

Q. Mr. Cortes, you knew too much, so Mr. Greenberg could never have sent out counterfeit wine if he wanted to with you there, is that is your testimony?

MR. HUESTON: Objection. It mischaracterizes his testimony.

A. I didn't say that.

Q. You said he wasn't going to do it in front of you because you knew too much?

A. Correct, because we packed all the wine. We did not know where the segregated bottles of wine were. We didn't know if all the bottles were real or not. He had over 60,000 bottles in the cellar and the holding cell.

Q. You didn't know where segregated bottles of wine were?

A. No, I knew where they were.

Q. You did know where they were?

A. Yes.

Q. You didn't know 200 bottles were returned to Royal?

A. Like I told you earlier, I wouldn't have learned, because it's such a small amount.

Q. So Mr. Greenberg could have sent out 200 bottles of counterfeit wine without your noticing?

A. If he did it on a Saturday, it's a possibility. I doubt it, but it's a possibility.

Q. You didn't know that Jeff Zacharia came to the cellar?

A. I did not know that.

MR. HUESTON: Objection. This is all asked and answered, your Honor. It's beyond the scope of my redirect.

THE COURT: Overruled.

Q. Mr. Cortes, Mr. Hueston asked you about Exhibit 1048, your email to Brad Goldstein with "bring this asshole down." That was your truthful feeling at that time?

A. At that time it was.

Q. That was five years after you stopped working for Mr. Greenberg, right?

A. I still had the same feelings.

Q. You still have that today?

A. No, I don't.

Q. Five years. You kept that feeling for five years and then dropped it?

A. I've moved on. Like I told you earlier, I'm thankful for Mr. Greenberg. I'm in a lot better play and I make a lot more money now.

Q. So, five years after you last worked for Mr. Greenberg and had started a new job and made a lot more money, you wanted to bring this asshole down, and then more recently you decided to be grateful?

MR. HUESTON: Your Honor, I think that counsel is opening the door to exactly the examination I started with Mr. Cortes in explaining why he was writing that, and I intend to go into that again. The door is open. If he wants to

continue, your Honor, it's at his own peril.

Q. Let me ask you this, Mr. Cortes. How many times did you see Mr. Greenberg between leaving his employment in November of 2004 and writing that email in December of 2009?

A. Never saw him.

Q. So you carried that grudge for at least five years?

MR. HUESTON: Objection. Mischaracterizes. The door is open. I'll have some recross/redirect.

MR. CIALONE: The door is not open, your Honor.

THE COURT: I'll decide whether the door is open. You can answer. Overruled.

A. I was angry only at the fact that he didn't keep up to his word, his end of the bargain, did not give me my bonus, and I did exactly what he had asked me to do.

Q. So that's what you were angry about?

A. I was not happy with it, but I had moved on. It was time for me to move on, and I did. It was a way better decision.

MR. CIALONE: I think that is pretty clear, your Honor, door is not open to some delivery man story.

MR. HUESTON: I object, your Honor. I don't think the testimony has been clear here, and I would like the right to ask some follow-up questions.

THE COURT: OK.

Q. Mr. Cortes, you testified at your deposition -- before I get to that, let me ask, 118 bottles from Mr. Edgerton were

segregated?

A. That was it.

Q. All of them were counterfeit?

A. I don't know if they were counterfeit or not, but we had 118 that had stickers on that were segregated, correct.

Q. Did Mr. Edgerton say they were all counterfeit?

A. I wasn't privy to that. I didn't see the report.

Q. I thought you were with him all day.

A. The report wasn't formed that day.

Q. Did he say anything that day about what he thought about the bottles?

A. He thought some weren't real and he explained the reasons why.

Q. You testified at your deposition that the only reason you thought Mr. Greenberg intended to defraud someone was because Steve Selover told you he made the same statement to him, right?

A. I can't recall that far back.

MR. HUESTON: Objection. That mischaracterizes. We will play other excerpts again. That mischaracterizes his testimony.

MR. CIALONE: I'd like to play from his testimony 193/24 to 195/line 12.

MR. HUESTON: It should start at line 6, your Honor.

MR. CIALONE: Your Honor, they have already played

that part, I think.

MR. HUESTON: That's the completeness.

MR. CIALONE: They have already played that part. This is questioning by a different lawyer.

MR. HUESTON: That gives the sequence and the context.

THE COURT: Please play the whole part.

MR. CIALONE: We'll play ping-pong forever, fine. 193/line 6 through 195/line 12.

(Cortes video deposition shown)

Q. You're sure Mr. Selover made that statement to you?

A. Yes.

MR. CIALONE: I'd like to play from Mr. Selover's deposition page 14/line 8 to 15/line 16.

MR. HUESTON: No objection.

THE COURT: OK, play it.

(Selover video deposition shown)

Q. One or two more questions, Mr. Cortes. After the bottles that Mr. Edgerton looked at were segregated and set aside, were there still any bottles that were turned backwards in the racks that you knew were questionable?

A. No, there was a lot of bottles still turned.

Q. When you packed for auction, you didn't take the bottles that were turned backwards because they were questionable, right?

A. I can't say that we did. We took what we had to take.

Q. You actually personally went and took bottles that had been turned backwards because they were questionable?

A. We were asked to pack. If it was amongst the shittiest bottle, we would take that bottle. I didn't know if it was a counterfeit bottle or not.

Q. Why were bottles turned backwards?

A. They may have had a question about it. They may have doubts about that bottle.

Q. You went and pulled a bottle that Mr. Greenberg had doubts about?

A. Not just myself. Thierry pulled bottles as well.

Q. You personally went and pulled bottles that Mr. Greenberg had turned backwards because he thought they were counterfeit?

A. I did, and I'll tell you why I pulled some of those bottles. I'll explain myself. When we had bottles, if we had certain bottles, let's say we had a vintage of, we'll go to Petrus, '82 Petrus, we went all the way down to the last bottle that was '82. That one, the last bottle before we went to another vintage, was turned around. Then the new vintage would start. That means that the '83s would start.

If this bottle was the shittiest bottle amongst the 5, 6, or 7, we would pull this bottle and put it in and then grab the one that was next to it, and we would turn that one and put it back in the rack.

Q. But you also turned bottles around in the rack because you

thought they were questionable, right?

A. Yes, correct.

Q. You would never take a bottle that you thought was questionable, questionable authenticity, and put it in a box to send to an auction, would you?

A. It wasn't my intention. I can't say that we did or we didn't. We were packing a lot of wine real fast.

Q. So fast that you would actually personally take a bottle you thought might be counterfeit and put in it a box and send it out?

A. I didn't know if the wine was counterfeit. I'm not an expert in the wine.

MR. CIALONE: Nothing further.

THE COURT: Is there redirect?

MR. HUESTON: Yes, your Honor.

FURTHER REDIRECT EXAMINATION

BY MR. HUESTON:

Q. Sir, you were questioned about why you wrote the word "asshole" in that email. Did you have a chance to explain all your reasons when counsel asked you?

A. I did not. No, I did not.

MR. CIALONE: Your Honor, I object to this. This is just character evidence. It's how he feels.

THE COURT: Sustained.

MR. CIALONE: Thank you.

Q. Sir, you were played a clip where you were asked about other evidence that you had. Are you an attorney, sir?

A. I am not.

Q. Sitting here today, sir, why is it that you remember the statement that you have been questioned about?

MR. CIALONE: Your Honor, this is beyond the scope. I didn't ask him why he remembered. I asked him what evidence he had. I played his deposition.

THE COURT: Overruled.

Q. You may answer.

A. I remember the statement, two reasons. One, because I was offended that the wine was fraudulent and he wouldn't even give me a bottle of wine; because his intentions were, like the statement says, that he was going to give it to someone else, he was going to do to someone else what they did to him.

Q. Is that something that remains with you, sir?

A. To this day it still remains with me.

MR. HUESTON: No more questions.

MR. CIALONE: Nothing further, your Honor.

THE COURT: Thank you.

(Witness excused)

THE COURT: Why don't we take an hour for lunch. It's 12:55. We will start back at 1:55 with plaintiff's next witness. Please leave your notebooks on the chairs, don't talk about the case, and have a good lunch. (Luncheon recess)

AFTERNOON SESSION

2:00 p.m.

(Jury not present)

THE COURT: Good afternoon. Any preliminary matters?

MR. CAMP: One, your Honor, on behalf of plaintiff. I don't know that it will necessarily come up, but I want to address it before the jury comes in so we don't have to do a side bar.

The issue we wanted to quickly raise, with respect to Mr. Cortes the Court had ruled that there were particular credibility issues pursuant to which the Court was going to admit certain extrinsic evidence to impeach. We made a similar argument with respect to the credibility of Mr. Greenberg, regarding extrinsic evidence to impeach him.

I wanted to make clear, however, as to, for instance, third party witnesses -- and we are about to call one -- our position would be, and I don't know whether this is an issue, that extrinsic evidence to impeach -- of course, the standard rule is it is not admissible on a collateral matter. Obviously, if they want to call a witness who says something different, that's fine, but in the typical course one would not play a deposition of somebody else who may testify during the testimony of a witness who was on the stand unless the Court rules that there is some sort of central issue pursuant to which extrinsic evidence should come in.

THE COURT: If it's not a collateral issue, you could do that.

MR. CAMP: Conceivably, right. If the witness's credibility is at issue on a central matter and there is direct impeaching testimony on that central matter, it could be admissible. Just to give your Honor an example, some context, with Ms. Downey, they have a witness on their list of live witnesses who may testify to some of the same events. It would certainly be our view that offering his deposition video to try to impeach her while she is testifying wouldn't be proper. I don't know that they are going to do that. But there could be some instances like that that come up during the course of the trial presentation.

MR. CIALONE: Your Honor, we are actually not planning on putting in the deposition of Mr. Christophe. I will note here we are actually going to object to the questions that I think he is going to ask, now that I hear Mr. Christophe's name. He is going to be asking Ms. Downey to recount a conversation that she had with Mr. Christophe for the truth of the matter, no purpose of notice, no evidence that that conversation ever related to Mr. Greenberg. So we will object if it comes up.

If you do let that hearsay in, I'm not sure why you would, but if you do, we will call Mr. Christophe live. And we would need to call him out of order because he is going out of

the country later this week

THE COURT: Remind me who they are.

MR. CIALONE: Ms. Downey used to work for Zachys. She left in late 2003, early 2004. Mr. Christophe during 2003 worked at Acker Merrall. Ms. Downey claimed she saw some wines she believed were wines she had rejected. She says she called Mr. Christophe and he confirmed that. I can't see how that comes in. It is plainly hearsay. But obviously they intend to try to elicit that hearsay.

MR. CAMP: To be clear, there was a 404(b) motion in limine on Ms. Downey's testimony about this other auction. The Court's ruling was that the evidence of the other auction would come in. We are offering it, obviously, to show intent, lack of mistake, knowledge that in fact Mr. Greenberg consigned on a prior occasion wines that had been determined to be counterfeit. Different auction.

Ms. Downey's testimony about how she reached the conclusion that they were in fact fake wines is something we plan to elicit. It did not turn entirely on a contact with Mr. Christophe. She compared the consignment and the catalog with her notes of conditions, looked at the Acker catalog.

THE COURT: She looked at the wines, she made a determination?

MR. CAMP: Right, exactly, and believes that she then saw them being sold through another auction. I assume that the

defense is going to try and impeach that conclusion. The fact that she was able to then confirm it would not be offered for the truth that she confirmed it but to show why she reached the conclusion she did, that is, her state of mind. If she is not impeached on her conclusion, then how she reached the conclusion or at least how she confirmed it is not really relevant.

MR. CIALONE: Your Honor, I'm pretty sure I went to law school and took evidence. A hearsay statement is admissible for state of mind when it is the state of mind of the declarant, Mr. Christophe, not for Ms. Downey's state of mind.

This is an end run. They want to say, well, it goes to intent because it shows Mr. Greenberg was consigning counterfeit wine. Goes to intent doesn't matter. They are offering it for the truth of the matter. They want you to believe that Mr. Christophe's statement is true. There is a hearsay statement that Ms. Downey is going to testify to, they want you to believe it's true, they want the jury to believe it's true. It's hearsay.

MR. CAMP: I'm pretty sure that the state of mind is not to show the state of mind of the declarant. You could offer it for a nonhearsay purpose to show something somebody said, to show what they believed.

THE COURT: It could be for anybody's state of mind if

it is relevant. If their state of mind is relevant, that would be a nonhearsay purpose. But I'm not sure how her or his state of mind would be relevant.

MR. CIALONE: How Ms. Downey's state of mind in 2003 about a conversation she never reported to the defendant is relevant?

MR. CAMP: To be clear, this would be responsive to what I assume is going to be their impeachment, which is you looked at the conditions, you say you looked at the catalog. They are going to call into doubt the credibility on that conclusion. The response is, well, in fact I did call Acker and confirmed that these were the same wines. So it goes to her credibility and her state of mind regarding the conclusion.

MR. CIALONE: Your Honor, I want to object to counsel saying what her testimony should be when the witness is sitting back there. And she has been here for a while. That is objectionable.

THE COURT: She probably shouldn't be here when we are talking about this.

MR. CAMP: She is not here at our request, but we could ask her to leave.

THE COURT: Would you step out just for a minute.

Which motion in limine was this?

MR. CIALONE: I think it was our number 1, your Honor. You ruled it wasn't excluded on 404(b), but certainly we could

make other evidentiary objections. I'm looking at the state of mind exception, Rule 803(3), a statement of the declarant's then existing state of mind.

MR. CAMP: Right, but the effect upon the listener is part of the concept of the nonhearsay use.

MR. CIALONE: That is a different thing, but it is still the effect on Ms. Downey. The effect on her is, oh, yes, I thought it was true. That's just an end run around the truth of the matter, your Honor.

THE COURT: It is not the first motion in limine. Which motion was it?

MR. CAMP: I think maybe their number 9.

MR. CIALONE: It was our number 10, your Honor, defendant's number 10. Your Honor, if a witness says out of court somebody told me this and that confirmed that my suspicions were true, then you are offering the out-of-court statement for the truth of the matter. That is exactly what they are trying to do. Saying it had an effect on her state of mind, it showed that she thought it was true. It's still truth of the matter.

MR. CAMP: Here is the problem. If I elicit from her that she came to know these wines intimately in assessing their authenticity at Zachys, she rejected them, she then saw a catalog from Acker, and based upon photos, the composition of the consignment, the description of the wines, conferring with

her own notes she came to believe that these may be the same wines she rejected that Mr. Greenberg had then consigned through another auction house, I assume they will then on cross try to impeach that conclusion. Well, ma'am, you didn't inspect those wines, you didn't know this, you didn't know that, you couldn't say if in fact they are the same wines.

Leaving out what she in fact did do to confirm gives the jury just part of the story about how she came to that conclusion and makes it seem less credible because she reached the conclusion preliminarily and then confirmed with it a third party.

THE COURT: How did she confirm it?

MR. CAMP: She called Mr. Christophe, who worked at Acker, the witness on their list, and said, are these Mr. Greenberg's wines, in substance. He confirmed they were Mr. Greenberg's wines. I believe she will testify that they then talked about certain wines that arrived late at the Acker auction, vintages and so forth, the description of their condition. This is, by the way, very close in time to when she rejected the wines from the Zachys auction.

The two of them came to the conclusion that in fact they were the same wines, some of the same wines, that had just been rejected by Ms. Downey. In substance, Mr. Christophe said it's the same wines.

THE COURT: How did Mr. Christophe know?

MR. CAMP: I believe her testimony is he took the judicious notes they had of the stuff that arrived late and then married the two, and it appeared to be the same lot.

MR. CIALONE: More hearsay. Your Honor, I recognize I get up and impeach Ms. Downey. I say, you don't remember the wines, you don't remember what you saw in the catalog, you don't remember which ones you rejected. As long as I don't do something stupid, like opening the door by saying, as you sit here today you have absolutely no reason to believe. She doesn't get to bring in hearsay.

The way they deal with that problem, they subpoena Mr. Christophe, he is here in New York, or they take his deposition, which they noticed and took, and get him to say you saw it, didn't you tell Ms. Downey they were the same wines? They don't want to do that, because they know what Mr. Christophe is going to say in response to it, and it's going to be quite ugly for them and for Ms. Downey. That's why they don't want to do it.

They don't get to say it weakens our proof, therefore we have to be allowed to let in hearsay. No. We have rules of evidence for a reason. There is no exception to the hearsay rule that says, gosh, the jury might not believe the witness unless you let in some hearsay. That doesn't happen.

THE COURT: It sounds like it's hearsay. I'm going to sustain the objection based on hearsay unless there is some

exception or there is some nonhearsay purpose.

MR. CAMP: I think at a minimum, your Honor, I should then be allowed to ask her whether she in fact as a yes/no proposition did anything else to attempt to confirm. Yes or no, what was it? I contacted Acker. If I don't elicit the substance of what he said --

MR. CIALONE: That is really an end run, your Honor. I would ask, since Ms. Downey was present in the courtroom and heard what counsel was saying, that she specifically be instructed not to refer to any communication with Mr. Christophe, which is hearsay.

THE COURT: OK.

MR. CIALONE: Thank you.

THE COURT: Anything else?

MR. CAMP: No, your Honor. Just to be clear, I can ask her if she in fact made a phonecall to Mr. Christophe.

MR. CIALONE: Objection, your Honor. What is the relevance of a phonecall unless he told her something? How is it relevant? Unless we hear the substance of the conversation, which of course is hearsay, what is the relevance of she called Mr. Christophe?

MR. CAMP: That goes squarely to the anticipated impeachment, which is you didn't really do anything, you're speculating.

MR. CIALONE: I'm not going to say you didn't do

anything. Again, if I open the door, I open the door. I'm going to ask her, did you see the bottles, you don't recognize them, you don't know which ones were rejected. I'm not going to say, gosh, you didn't do anything. What is the relevance of a phonecall to Mr. Christophe if we don't know what it says? And how does it have any potential to prove a material fact if he told her no, not the same bottles?

MR. CAMP: It goes to her credibility.

THE COURT: Goes to another step she took.

MR. CIALONE: To which? Which one?

MR. CAMP: It wasn't just someone who surrendered and said I'm going to come in a few years later and say I think they are the same wines, I actually took steps to confirm it.

MR. CIALONE: I'm looking for the steps to confirm exception to the hearsay rule, your Honor. It's not there. What exception to the hearsay rule?

THE COURT: It's not hearsay.

MR. CIALONE: Can she say I called somebody? How is that relevant? I called somebody. How does that have any tendency to prove or disprove an issue if we don't know what she discussed?

MR. CAMP: The subject of her call, did you do anything to attempt to confirm? Yes, I contacted somebody at Acker Merrall.

THE COURT: OK. Please bring in the jury.

MR. CIALONE: Your Honor, before we get started, I want confirmation that we can either call Mr. Christophe out of order this week or put in his deposition next week. It doesn't matter to me which one.

MR. CAMP: Certainly as to the substance of the conversation, we are going to object. I don't know that he testified to much of anything else.

MR. CIALONE: Apparently he should be allowed to say I'd like to call Mr. Christophe, I'd like to have Mr. Christophe say, yeah, here is what I told her. That's not hearsay.

THE COURT: If we need to take him out of order, we will arrange for that.

(Continued on next page)

(Jury present)

THE COURT: Good afternoon, folks. We will be continuing.

MR. CIALONE: Your Honor, I had requested an instruction to the witness. Since the jury is here, I would request it at side bar. You said you would give her that particular instruction.

THE COURT: I didn't say I would.

MR. CIALONE: I thought you had. I'm sorry. If it is denied, it's denied. If it is granted, I'd request it.

THE COURT: I'm not going to give a specific instruction. We will be vigilant, and I think we will be able to follow the ruling.

Next witness.

MR. CAMP: Your Honor, the plaintiff called Maureen Downey.

MAUREEN DOWNEY,

called as a witness by the plaintiff,

having been duly sworn, testified as follows:

THE CLERK: Can you please state your name and spell your first and last name for the record, please.

THE WITNESS: Maureen Downey. M-A-U-R-E-E-N, D-O-W-N-E-Y.

DIRECT EXAMINATION

BY MR. CAMP:

Q. Good afternoon, Ms. Downey. Ms. Downey, what do you do for a living?

A. I own a company called Chai Consulting, and we manage private wine collections.

Q. What does that involve, managing private wine collections?

A. It involves everything from doing an inventory or an organization to buying or selling or appraising anything that a wine collector or the family of a deceased wine collector might need.

Q. How long have you been managing private wine collections as a career?

A. Since 2005, when I left auctions.

Q. You mentioned auctions. What did you do before you started managing private collections?

A. I worked as a wine specialist in auction houses.

Q. Can you briefly describe for the jury what is the job of a wine auction specialist?

A. A wine auction specialist appraises the wine, gives valuation to particular bottles. We do all the physical inspection of the wine. Sometimes you go to the person's house and pack the wine. Authentication is part of the physical inspection. Setting reserves, working with clients, creating the lots, lotting. Everything that needs to be done in order for the catalog to be prepared so that the wines are represented to the sellers appropriately.

Q. I'm going to ask you a little bit more about that in a moment. Let me first ask if you could tell the jury when you got involved in the wine business and what your education and training has involved.

A. I started studying wine when I was 18 as a freshman in college. I won my first wine competition when I was 20 here in New York. It was a knowledge-only competition. When I was 22 I was certified as a sommelier. When he was 23 I took the advanced master sommelier exam. Based on my tasting ability alone, three weeks later I had a job managing at Tavern on the Green, which is a little scary, because I was 23 and some of the guys had been working there for 21 years. Then I continued to work in fine dining and fine wine until 2000, when I started working in auctions.

Q. 2000, is that when you started working specifically as a wine auction specialist?

A. Yes.

Q. You mentioned a few of the duties of a wine auction specialist. You talked about appraisal, is that right?

A. Yes.

Q. Sorry. You have to say yes or no for the court reporter.

A. Yes.

Q. What does an appraisal involve?

A. Appraisal is when you get a list of wine from a client, or a prospective client typically, and you return back estimates.

The estimates reflect current market values for the wine, what you could, you think, reasonably put in a catalog at any given time as the low and high estimate and also the reserve, which is the lowest number for which a bottle can sell or a lot can sell for the wine, so that the perspective client can make a decision as to if to sell or what to sell.

Q. In addition to pricing wines for potential auction, you also mentioned as a specialist you were involved with lotting?

A. Yes.

Q. What is lotting?

A. After the appraisal is accepted, a contract is usually signed and the consignor at that point -- they are called a consignor because they are sending in a consignment -- the consignor sends in their selection for sale, which is all of the wines that they intend to sell.

Then you have to look at that. Sometimes a single bottle will be worth enough to make a lot in and of itself. But sometimes you have to combine different bottles together, not even of the same kind but maybe of the same producer or the same vintage, in order for it to be worth enough to be its own lot in the catalog.

Q. In addition to pricing and lotting, I think you also finally mentioned assessment or inspection of the wine, is that right?

A. Yes.

Q. What does that involve?

A. That involves a lot of things. You're looking for the condition of the wine, so you want to understand the storage history of the wine. You want to look at it and make sure, for example, that all the corks aren't protruding, because that might mean that it has had heat damage. You want to make sure that the labels don't look like they have gone through a war, because that might mean that the storage history isn't good.

You want to look to see that the levels are appropriate. If the levels are really low, I wouldn't want to sell a bottle of wine that had a level like that (indicating). That might not look very good and it might not taste good. So it's all manner of storage and history, but it is also authenticating. So for the old and rare wines, you are looking at them for authenticity.

Q. Specifically looking at the authentication of wines as a wine auction specialist, how did you learn to do that part of the job?

A. Experience.

Q. Did you have any formal training or education in authenticating wines?

A. No. There is no formal education or training that exists anywhere, to my knowledge.

Q. When you say experience, what do you mean?

A. If you see the same bottle 40 or 50 times and then one gets

put up on a table in front of you and it looks inconsistent with the 40 or 50 that you saw before, that might stick out and you might start looking more closely at it. Or, if you have, for example, six of the same exact item up in front of you and five of them look the same and one of them looks very different. It's just a lot about paying attention and then asking questions and doing research.

Q. Has your knowledge in terms of mechanisms for authenticating wines remained the same throughout your career in wine auctions or changed over time?

A. I would think that it has changed over time. It's changed greatly. I've learned a lot.

Q. Did you ever work as a wine auction specialist for an auction company called Zachys?

A. Yes.

Q. When did you start working at Zachys?

A. I started working at Zachys in early 2002. As soon as the company -- as soon as Christy's and Zachys split, I was the first full-time employee at Zachys.

Q. I was going to ask, how big was the auction component of Zachys when you started there?

A. It was me.

Q. How long were you at Zachys?

A. A year and a half.

Q. Just so we have the time frame, it's 2002 until?

A. Till like August, July or August, 2003.

Q. In the course of your tenure at Zachys as a wine auction specialist, did there come a time where you worked on a consignment of wines for Eric Greenberg?

A. Yes.

Q. Did you know Eric Greenberg before that?

A. I didn't.

Q. What, approximately, was the date of the auction for which this consignment was initially received?

A. The date of the auction?

Q. The first auction of this consignment.

A. Of Eric Greenberg's line?

Q. Right.

A. I think it was in February of '03.

Q. Sorry?

A. February of '03.

Q. Just so the jury is clear, you understand this trial involves an auction in October of 2005.

A. Yes.

Q. You are referring here to a different auction by Zachys two years earlier, in 2003?

A. Yes.

Q. Were you still at Zachys in 2005?

A. No.

Q. Were you involved in the October 2005 auction that this

case involves?

A. No.

Q. I want to ask you to focus on the February 2003 auction with which you were involved. What was your role in connection with the consignment of wines from Eric Greenberg?

A. I started by getting lots of lists from Mr. Greenberg. I remember fax lists, I remember email lists. There were a lot of lists. I would price them out and then give them back to either Fritz Hatton or Jeff Zacharia, who were kind of the point person on the consignment. So I wasn't the point person on the consignment.

But the wines, after everything else was done, the contract was signed and all of that, when the wines came into the warehouse, I was the primary person in charge of vetting the wine. "Vetting" is the term we use for assessing and authenticating.

Q. Just so we are clear, the Mr. Hatton and Mr. Zacharia you mentioned, those are other Zachys employees?

A. Yes. Mr. Zacharia, Jeff Zacharia, is one of the owners of Zachys, and Fritz Hatton was a senior specialist. Excuse me. A senior adviser.

Q. Can you say very generally how many bottles, like more or less than a thousand, this consignment involved?

A. Over a thousand. We had eight tables that were a bit smaller than these tables here, and all the bottles went up at

once, and they didn't fit.

Q. Your job included attempting to, among other things, assess the quality and vet those wines for authenticity?

A. Yes.

Q. Now I'm going to ask you in a moment how you went about doing that. Let me first ask you, at any point during your tenure at Zachys did you speak to Mr. Greenberg directly about the subject of counterfeit wine?

A. I did.

Q. What did he say?

A. I remember a particular phonecall in which he was telling me about the labels for Chateau Lafleur. Specifically he stated that he had had to become an expert by himself because he had so many bad bottles of Chateau Lafleur that he had to learn how to look for photocopies. I was on the telephone with him and he was teaching me what to look at to notice if something was photocopied or not on these particular Lafleur labels.

Q. Did he tell you what in particular to look for when examining a Lafleur label to determine whether it was a photocopy?

A. Yes.

Q. What did he say?

A. You look for the fuzzy -- the paper becomes fuzzy and the ink becomes fuzzy, and under magnification the lines are not

fine lines of an ink press, they are fuzzier. But they are not necessarily pixilated like you would get off an inkjet.

Q. Did Mr. Greenberg tell you how he had come to learn this knowledge about the bottles of counterfeit Lafleur?

A. He said he had a lot of them and therefore had to become an expert in it himself, that he had been sold a lot of bad bottles.

Q. Just so we are clear about the wine we are referring to --

MR. CAMP: May I approach?

THE COURT: Yes.

Q. Exhibit 210, just to be clear, this is not one of the wines in this trial. This is same wine you were referring to, Lafleur?

A. Yes.

Q. There has been some discussion in this trial about Mr. Greenberg's experience with counterfeit corks. I want to be clear. Did your discussion with him focus on counterfeit corks?

A. No.

Q. What did it focus on?

A. Labels.

Q. I want to turn your attention back to the consignment of wine from Mr. Greenberg in February of 2003. The assessment part of your job, the assessing of the actual bottles, is that something you did in Mr. Greenberg's cellar or in a Zachys

facility?

A. No. The wines were all in the Zachys warehouse in Scarsdale, White Plains.

Q. How did they get there, if you know?

A. I actually don't. Typically, they are put on a truck and the truck is -- but I don't know who the carrier was.

Q. Did you personally go to Mr. Greenberg's cellar and decide which wines were going to get pulled for this consignment?

A. No.

Q. Who decided that?

MR. CIALONE: Objection. Lacks foundation.

THE COURT: If you know.

Q. If you know, did Zachys decide which bottles to put in this sale or was that something Mr. Greenberg decided?

MR. CIALONE: Objection. Lacks foundation and compound.

THE COURT: Please rephrase on compound.

Q. Do you know whether Mr. Greenberg or Zachys decided which bottles were going to be in the auction?

MR. CIALONE: Still compound, still lacks foundation.

MR. CAMP: It's a yes/no question.

MR. CIALONE: No, it is not, because there is an "or" in there, your Honor. The question would be do you know who decided.

THE COURT: Please rephrase it so it is not compound.

Q. Do you know who decided?

A. Mr. Greenberg decided what bottles would go in.

Q. How, once the bottles were in the Zachys warehouse, did you go about attempting to -- let me back up. You talked about part of the assessment job being to assess the quality and condition of bottles of wine and another part of it being authentication, is that right? You have to say yes.

A. Correct, sorry.

Q. How did you go about actually attempting to authenticate the wines that were in this consignment?

A. When all the bottles are up on the table, many, many tables, like 18 tables, tons of tables, you take all the bottles that are similar, because you're looking at them for their conditions. If something starts to stick out, then you look further.

I already had a couple of years of notes at that point of things to look for and of markers of counterfeit, of examples of correct production methods and counterfeit production methods. So, I would compare what is a known good standard or what was a believed good standard against the anomalies that I was seeing.

What I would do is use a magnifying glass and a straight razor and a torch, flashlight. You would do a number of things. I would look at the paper grain to make sure that the paper was of the correct type. I can tell that Lafleur

bottle, the ink is the wrong color, the paper is the wrong color.

You look at the glue staining. Sometimes the glue goes this way, sometimes it goes this way. Sometimes it's only on the outside, sometimes it's all around. Sometimes there shouldn't be glue. On old Burgundy they just used milk. There's a number of things like that that you look for.

The last thing that you ultimately do is you cut. That's what the straight razor is for. You make a cut around the capsule so that you can peel it open and hopefully see if there is a cork brand. It is correct that we never remove a capsule. To say did you remove a capsule would be totally incorrect, because we would never remove a capsule. But you would cut it so you could peel it back and look at a cork.

Q. In connection with your work more generally as a wine auction specialist and particularly the authentication part, was it your expectation at Zachys that collectors would tell you if they had particular information about wines in the consignment being potentially counterfeit?

A. Yes.

Q. Why, given your expertise in spotting counterfeits, would that be important to you?

A. I think it is just general business practice. When the consignor comes to the auction house, it's a partnership. The consignor is partnering with the auction house for the sale of

these wines. If one of those two parties isn't bringing full information to the table, that's disingenuous. So, we would always ask people for provenance history or receipts. I didn't typically ask people have they previously been told their wine was fake, because there is an expectation of honesty.

MR. CIALONE: Move to strike. She goes well beyond the question of giving her experience in spotting counterfeit. Now she is saying, I didn't typically ask, and she is saying what the expectation was.

THE COURT: I'm not going to strike anything. Move on to the next question, please.

MR. CAMP: Thank you, your Honor.

Q. When a collector gave you information or if a collector gave you information about a potential counterfeit in the collection, in a consignment rather, would that cause you to do anything differently in terms of how you go about attempting to authenticate?

MR. CIALONE: Calls for speculation, incomplete, hypothetical. I didn't realize he had designated her as an expert.

THE COURT: She can testify about her practice. Overruled.

A. Sorry. Can you repeat the question?

Q. Sure. As a wine auction specialist at Zachys, if you were provided information by a collector that particular bottles in

the consignment may be potentially counterfeit, is there anything that caused you to do differently in terms of how you go about either attempting to authenticate it or include it in the auction?

A. Yes.

Q. What's that?

A. I would probably err far more on the side of caution than otherwise. I would always look for all of the signs to be conclusive. But at the end of the day, if you can't say that it's necessarily fake, you're going to assume that it's real. I think had I known if I ever had somebody that would have said that to me, I would have gone the other direction. And if I couldn't prove that it was real, I would have assumed that it was not.

MR. CIALONE: I move to strike, your Honor. This is complete speculation and hypothesis.

THE COURT: Overruled.

Q. Just to be clear, Mr. Greenberg, in connection with the February 2003 auction, did not say to you that he had particular fakes in the consignment, right?

A. No.

(Continued on next page)

BY MR. CAMP:

Q. So turning back to what you did physically and in terms of your practice to assess the wines that Mr. Greenberg consigned, what, apart from inspecting them -- well, withdrawn.

In the course of attempting to authenticate the wines in Mr. Greenberg's consignment, were there any particular vintages or producers that came to your attention as potential counterfeits?

A. Yes.

Q. And what were those?

A. There was some 1990 Soldera, which is a Brunello di Montalcino. It's an Italian wine. There were a number of bottles of wine from Henri Jayer.

Q. Can you spell Jayer.

A. J-A-Y-E-R.

Q. And apart from looking at bottles and labels and so forth, did you do anything further to attempt to authenticate these wines that you just described, that had come to your attention?

A. Well, the Jayer wines, yes, absolutely. There were a number of them, and there were a number of them that I had an issue with, so I went to my superiors and I shared my concerns, and the importer of the wine, who's the sole importer, the only one who's ever brought the wine into the country, happened to be in New York, so she was called and she came up to the warehouse, and I set the bottles up just like with like. I

didn't pull them out or anything. And she went through all the bottles, and she pulled out almost all the same bottles that I had had problems with. By herself. And then I pulled out a couple more and she agreed that they were problematic as well. And we looked at them together and then we started cutting some capsules, and she supported my belief that the capsules -- or excuse me -- the corks were not correct. Henri Jayer has Grand Cru wines and he has a Cros Parantoux which is treated like a Grand Cru wine within the wine industry.

THE COURT: Hold on a second. I'm sorry. Like a what what?

THE WITNESS: Cros Parantoux.

THE COURT: Can you spell that.

THE WITNESS: C-R-O-S P-A-R-A-N-T-O-U-X.

THE COURT: Okay. Thanks.

A. All of those wines should have a Grand Cru style cork which has his signature on it. His village wines had a more generic cork. And when we cut some of these Grand Cru wines back, the capsules back, they had the generic corks. After that Jeff Zacharia actually called Henri Jayer, because he was still alive, and Jeff explained to me that Mr. Jayer had indeed confirmed what I thought and what Martine confirmed, that all of his Grand Cru and Cros Parantoux wines should have a Grand Cru cork with his signature.

Q. Okay. At that point did you reach a conclusion about these

bottles?

A. They had been vetted as -- as much as -- as is possible.

Q. Right. And did you contact Mr. Greenberg about your conclusions?

A. I did.

Q. And did you speak to him?

A. I did.

Q. What did you say?

A. I told him that I was really sorry, that his -- that there were a number of the Jayer wines that he had, and I told him all the steps that we went through 'cause it's -- that was rather an exhaustive authentication process. I told him all the steps that we went through because I didn't want him to feel like we'd come to this conclusion lightly. It's a big thing to tell somebody they've got fake wine in their cellar. So I was trying to let him know that we had done everything in his interests to -- to try to confirm this.

Q. What, if anything, did Mr. Greenberg say in response?

A. He told me that Henri Jayer was an old bat who didn't know what he was talking about.

Q. Henri Jayer, the guy who made the wine?

A. Yes.

Q. Okay. Did he say anything else?

A. One of the things that he said was that he was going to be in New York or he was in New York, I don't know which, and that

he wanted to taste some of them.

Q. All right. Did you make any arrangements for Mr. Greenberg to taste some of the bottles you had rejected?

A. I did. He told me that he was going to be at restaurant Daniel, and I lived in Gramercy at the time so I said I'll happily carry a couple bottles to the restaurant on my way home, and I did.

Q. Now were you present if and when they were tasted?

A. No. I dropped the bottles off with either the manager or the sommelier, I don't remember, and Mr. Greenberg was going to be dining there later that night.

Q. Okay. So after that night did there come a time when you spoke to Mr. Greenberg about those wines?

A. Yes.

Q. When was that, roughly?

A. I think it was the next morning, and he called me and he congratulated me on a job well done and he said that they were actually great, great examples of village wines and that they were delicious but that he agreed that they were not the Grand Cru wines that they purported themselves to be on the label and that he understood that we couldn't represent them and -- but that they were delicious and he was happy to pick them up and drink them.

Q. And just to be clear, when you say you couldn't represent them, did that mean you couldn't include them in the auction?

A. Yes, it does.

Q. And did Mr. Greenberg -- what, if anything, did he say about what he would do with the bottles that hadn't been tasted that you had rejected?

A. Well, he said he would be happy to pick them up and drink them because they were delicious village wines. And he understood that he -- that we could not represent them because they were not what they purported themselves to be, according to the label.

Q. Now after you had rejected certain wines from Mr. Greenberg's consignment, did there come a time when you believed you saw those same bottles being offered for sale through another auction house?

A. I did.

Q. How did that first come to your attention?

A. So several weeks later, I received an auction catalog from a competitive -- a competitor auction house, but that auction house was manned by some of my very good friends, so -- but I saw -- I saw the cover and it struck me, and then I looked inside and there was something that really stuck out to me. There is -- there is a character to a wine collection whereby when you look at a list and you work with a list for a long time, every wine collection is unique to every collector, and there are certain things that you just recognize about it. In particular, Henri Jayer is an incredibly rare wine and for

somebody to have large amounts of Henri Jayer sticks out. So when I looked at this catalog, I started going, wow, this looks really familiar, and I then started looking and I thought that I recognized a number of bottles that -- that I had specifically rejected. Not necessarily visually, but you have to understand that when I spend hours and hours in a warehouse writing down little notes about bottles, I'll remember a bottle, and when I read those descriptions, it's a picture in my mind. I get a visual of that bottle. So there was something about that consignment that really stuck out to me and I thought I recognized a number of the bottles that I had rejected.

Q. And did you do anything else internally in terms of Zachys at that point to try to determine whether what you were seeing in this other catalog was the same or included some of the wines you'd rejected?

A. I looked at my notes from the -- the wines that we had returned to Mr. Greenberg and --

Q. Your notes of what?

A. Well, I have assessment notes. You know, when you go through, you have to list every single bottle, you have to check it off, you have to make sure that it's there, you have to write down if there's a stain on the label, you know, that's an exhaustive file, and somewhere in that file is also a list of all the wines that were returned and why they were returned,

so I looked at that and I looked at the catalog and a lot of it jived to me.

Q. Now I want to ask you just a focused question. Did you do anything else to attempt to confirm your suspicions about these wines?

MR. CIALONE: Your Honor, objection. What was discussed before.

THE COURT: You can answer. I just want to caution that because of the rules of evidence, you can't testify to the substance of what anyone else told you because that would be hearsay, but you can answer the question short of that.

A. I called one of my closest friends who was working at Acker Merrall Condit and I --

MR. CIALONE: Objection, your Honor. Relevance.

Q. I'm not going to ask you what that person said. I was just going to ask you what the purpose of calling your friend at Acker Merrall was.

A. Well, it's a small industry and I cared about it, and the guys that worked at Acker were really good friends of mine at the time and I didn't want for them to be selling wine that I -- I knew to be fake and that the person who consigned it knew to be fake.

Q. Now was it typical for you to contact the competing auction house and discuss or seek to discuss the identity of a client?

A. Absolutely not.

Q. And why did you seek to do that in this case?

A. Because I care about the integrity of the industry and I -- I assumed that they would care, that they didn't -- wouldn't want to sell fake wine, wine that a consignor admitted to me was fake. I thought that might be useful.

Q. Now you testified that you left Zachys in late 2003, is that right?

A. Yes.

Q. Were you there in 2004 or 2005?

A. No.

Q. Do you know whether or not Zachys' authentication of wine in 2005 was as thorough as what you described in 2002, 2003?

A. I don't know.

Q. I want to turn your attention to a slightly different subject. There's been some discussion at the trial about stickers being applied to bottles sold at auction by Zachys, and I want to ask you, during your time at Zachys, did you become familiar with a sticker that you sometimes applied to bottles before they're -- when they're sold or before they're sold before they're shipped out?

MR. CIALONE: Objection, your Honor. Relevance. She just testified she doesn't know anything about the practices in 2005. Relevance.

THE COURT: Overruled.

A. Yes.

Q. Okay. So first, could you just describe the type of sticker we're talking about.

A. It's a round sticker about the size of a nickel and it says "Consigned from a Private Collection," and it usually has the name of the auction house on it.

Q. Okay. During your time -- your time at Zachys when was, in your experience, the sticker applied, if it was applied?

A. In the warehouse.

Q. Okay. Were there situations during your tenure at Zachys when it was more or less likely for the sticker to be applied before the bottle purchased by someone actually left the warehouse?

A. Yes.

MR. CIALONE: Objection, your Honor. Relevance. This is not about practices, it's about random situations that occurred before Mr. Greenberg consigned the wine to Zachys.

THE COURT: Overruled.

A. Yes.

Q. In what situations, in your experience at Zachys, was it more or less likely for stickers to be applied?

A. As the stickers are applied in the warehouse, they're not applied by specialists; they're applied by the warehouse guys. When a wine collection is assessed on site -- which means when a specialist or specialists go and they travel to somebody else's home and they do all the assessment and lotting there --

they put stickers on the boxes that correspond to lot numbers. All those boxes come back into the warehouse usually on pallets. In those situations those boxes would be reopened and stickered before the wine was shipped out. However, sometimes really large, large format or really rare bottles are packed directly into shipping appropriate containers, at the home of the consignor during the on-site assessment, because if you have a $20,000 bottle, you're not going to put that in a box that's warehouse appropriate; you're going to put that in a box that's shipping appropriate. So it's -- it's both -- it has happened and it is logical that for these large and very expensive rare bottles that are assessed on site, they go directly into a shipping box. The shipping box goes to the warehouse. It's got a lot sticker on it. When somebody buys that wine, the warehouse guys might not reopen that box to sticker the bottle because they don't have to repack it for shipping, so they could ship it directly out.

Q. And when you described large rare wines, was the -- if it had been authentic, the magnum of 1950 Lafleur I showed you consistent with that description?

A. Completely consistent.

Q. There's also been some discussion of taste testing rare and fine wines for authenticity, and I want to ask you, in your career as a wine auction specialist, have you ever cracked open a bottle and attempted to taste test it for authenticity?

A. Not for authenticity.

Q. Why wouldn't you do that?

A. Because it's not a valid measure of authenticity. It has already been proven that most of the benchmark wines that could be used as the benchmark for authenticity were fake. They were -- Robert Parker was tasting Hardy Rodenstock-made fake wines. The benchmarks are blown.

MR. CIALONE: Your Honor, unless she's going to say she was present when Robert Parker tasted wines from Hardy Rodenstock, she can't testify to that.

THE COURT: Well, yeah. There will be expert testimony in this trial, ladies and gentlemen of the jury, about the specialized expertise involving wine authenticity and authentication. I am allowing the witness, because she has some experience -- she's not testifying as an expert; she's testifying as a fact witness. And because she has experience in the industry, I'm allowing her to testify about what she saw and experienced in the industry, and you can consider that for what it's worth.

MR. CIALONE: Well, your Honor, then again, I would move to strike, because she hasn't testified that she saw Robert Parker tasting Hardy Rodenstock-made fake wines. She just said it. Didn't see it. She just said it. She does not have specific knowledge whatsoever of that tasting.

MR. CAMP: I think she was just explaining why she

didn't taste test at a wine auction.

THE COURT: Yes, overruled.

A. So again, a lot of the benchmarks that are out there for how these wines are supposed to taste are now known to have been based on inauthentic wine. That's one reason.

There's a second reason, though. If you take two bottles of wine, two twins, both born in France, and you separate them for 70 years, there are so many things that could happen to that wine in that time. Wine is a living thing and it changes over time, it goes through a process called autolysis, wherein different esters break down and different -- different things occur. These happen at different rates, depending on the temperature, how dark it is, if there are vibrations. So to take two bottles from totally different places and put them together and expect them to taste exactly the same is not relevant. And I think that in the last many years so many, quote-unquote, experts have been proven drastically incorrect on their ability to taste for authentication that I just -- I don't believe it.

Q. Let me ask you to turn your attention to a different subject. I want to ask you a couple of questions about how, in your experience, large collectors control the inventory or the bottles in their collection. In your experience as both a specialist and as a manager of private collections, have you become familiar with the ways that large collectors, let's say

people with collections in the thousands of bottles, manage their collections --

MR. CIALONE: Your Honor, again --

MR. CAMP: Can I finish my question.

MR. CIALONE: -- expert testimony. She hasn't been disclosed about how collectors maintain their selections. They seem to be trying to get in a standard of care witness here. This is expert testimony. It's opinion. It's completely inappropriate. If she hadn't -- if they want to call a witness to opine on this, they should disclose that in accordance with the rules.

THE COURT: What is the question about? The question's about --

MR. CAMP: I'm just asking about her personal experience with the way inventories of large collections are managed.

MR. CIALONE: Again, expert testimony based on somebody's experience. That's what expert testimony is. Not specific knowledge, not how she maintains the collection. They're calling for standards of care.

MR. CAMP: I'm sorry. Just to be clear, her percipient observations of how --

THE COURT: She can testify to what she's perceived.

MR. CIALONE: What is her relevance of what she's perceived unless they're trying to establish standard of care?

And you can't establish a standard of care by calling random witnesses and saying: Well, what did you see? That's expert testimony.

THE COURT: There will be expert testimony.

MR. CAMP: Sorry, your Honor. I couldn't hear the last thing you said.

THE COURT: I said there will be expert testimony.

MR. CAMP: Oh. May I continue my --

THE COURT: You may ask the question.

MR. CIALONE: Your Honor, there will not be testimony on this subject of maintaining collections. That's the subject of undisclosed expert testimony.

BY MR. CAMP:

Q. Ms. Downey, my question is simply: In your experience, both as a wine auction specialist and as a manager of private collections, you have firsthand percipient experience with the way large collectors manage and inventory their collections?

A. Yes.

Q. In your experience did any of those collections involve inventory systems where a collector could not identify where they got particular rare and fine wines?

A. No.

Q. Now finally, Ms. Downey, I want to ask you just a few questions about why you're here today.

You mentioned at the beginning of your testimony that

your current business is managing private collections, and just to be clear, do you manage any collections for Mr. Koch?

A. No.

Q. Manage any collections for Mr. Greenberg?

A. No.

Q. Is Mr. Koch paying you to come here and testify?

A. No.

Q. Where do you live?

A. San Francisco.

Q. Did Mr. Koch pay your travel expenses?

A. No.

Q. You have been in the courtroom for part of this trial, is that right?

A. Yes.

Q. Was that at Mr. Koch's request?

A. No.

Q. So, ma'am, let me just ask you, why are you here attending this trial and testifying before this jury?

A. I have been a vocal advocate against wine fraud since 2001. It's been very unpopular. I have suffered greatly at the hands of those who would like for this problem to not come to the fore, to not be talked about, to not be prosecuted, to not exist. I've been -- I've been threatened, I've been -- I've been not allowed to attend certain events because I'm a nuisance --

MR. CIALONE: Your Honor, this isn't really -- this is --

A. -- but I care --

THE COURT: Hold on.

MR. CIALONE: There's no testimony whether Mr. Greenberg did any of this to her. What is the possible relevance to this?

THE COURT: Sustained. Just limit it to a direct answer.

Q. Just to be clear, Ms. Downey, I was just asking, are you here out of your own personal desire to be here and testify voluntarily or because we asked you to come here?

A. I'm here of my own volition and because I care really deeply about cleaning up the fine and rare wine industry.

MR. CAMP: One moment, your Honor?

THE COURT: Yes.

(Pause)

MR. CAMP: Nothing further, Ms. Downey.

THE COURT: Okay. Cross-examination, Mr. Cialone?

MR. CIALONE: Yes, your Honor.

CROSS-EXAMINATION

BY MR. CIALONE:

Q. Ms. Downey, was it important -- is it important now for collectors of wine to maintain their collections in a way that lets them track individual wines to specific sources?

A. Yes.

Q. Was that important while you were at Zachys?

A. I wasn't working on behalf of collectors when I was working at Zachys so I'm not sure what the question is.

Q. So in 2003 you had no idea how people kept their collections, correct?

A. I didn't have nearly the knowledge that I have now.

Q. Did you have some idea?

A. Yes.

Q. Okay. So was it important in 2003 for people to maintain their collections in such a way that they could trace individual bottles to specific sources?

A. I would think so.

Q. Well, was it or wasn't it?

A. It was important to me.

Q. So did you ask Mr. Greenberg if that's how he did it?

A. I did not.

Q. Okay. Do you know if anyone at Zachys did?

A. I do not.

Q. So how would he have known it was important to Zachys if Zachys never asked him?

A. I would find it hard to believe that nobody asked him because it was part of standard procedure.

Q. Whose standard procedure?

A. The standard procedure of Zachys.

Q. Okay. So when Zachys asked him and he told them no, he couldn't, Zachys proceeded to take the collection, right?

MR. CAMP: Objection.

A. I don't know. I wasn't privy to the conversation.

Q. So even though you were the senior specialist, nobody told you how he maintained his collection.

A. It was not -- that was not part of the scope of my duties for that consignment, to know that.

Q. You were the person responsible for inspecting the wine, right?

A. Correct.

Q. You were the person who could decide ultimately whether or not to take the wine, right?

A. No, I wouldn't -- I wouldn't say that. I would bring in people if I had questions.

Q. If you had doubts about authenticity, would you accept a wine?

A. I would bring in other people and discuss my doubts.

Q. And if ultimately you had doubts about the authenticity, would you accept the wine?

A. I would bring in other people. It wasn't always my call to make the final call.

Q. And if the people who you brought in had doubts about authenticity, would you accept the wine?

A. The company would reject the wine.

Q. Doubt was enough, right?

A. Well, I -- I don't know what level of doubt you're talking about, but if we didn't accept the wine as being proveably authentic or representable, we would not represent the wine at sale.

Q. Well, I believe earlier you testified you would accept the wine unless you could prove it was not authentic. Is that accurate?

A. If my -- if my finding was that it matched all of my understood set -- my understood at that time set of parameters, then that's as good as I could do. If I didn't have more questions about it and it fit those standards, then I would accept it.

Q. And those standards being what you'd seen about physical features of those wines before, right?

A. Or what I had researched or what I had been told by producers.

Q. What you understood a cork should look like based on your experience and your knowledge, right?

A. And sometimes collective knowledge.

Q. Sure. And what you and as a company understood a cork should look like based on talking to producers, correct?

A. Correct.

Q. You have to answer audibly.

A. I'm sorry. Correct.

Q. I think I reminded you in my --

A. You did. Sorry.

Q. More than once. Based on what you as a company knew, right?

A. Yes.

Q. And would you agree your company had superior knowledge to Mr. Greenberg when he started doing auctions at Zachys?

A. I cannot answer that. I don't know his level of knowledge.

Q. Well, did he -- you've been sitting here for several days. You heard -- the first he heard about counterfeiting was in April of 2002. Eight months later was he teaching you how to authenticate wine?

MR. CAMP: Objection.

THE COURT: Hold on.

MR. CIALONE: I'm not sure what the basis of the objection is, your Honor.

MR. CAMP: Seems to be calling for her testimony about what she's heard during the trial.

THE COURT: Yes. Please rephrase the question.

MR. CIALONE: Sure.

Q. In December, when you spoke to Mr. Greenberg, when you were looking at the wines for the February '03 auction, did he seem to know more about authenticating wine than you did?

A. He told me about Lafleur labels to a level that was beyond what I knew at that point.

Q. So if he hadn't have told you about those, you wouldn't have been able to spot that they were facsimile labels?

A. I would have been able to spot it, but he pointed it out, so I actually wasn't working on that section of the collection at the time.

Q. So he wasn't trying to hide that from you.

A. No.

Q. Okay. He was very open about that.

A. And very friendly about it.

Q. In fact, he taught you how to find out that the bottles he was consigning that were estimated at more than $10,000, that they had facsimile labels, right?

A. No. He was proving to me that they didn't. He was telling me --

Q. The Lafleurs that you examined for the February '03 auction did not have facsimile labels?

A. Not to my knowledge, no.

MR. CIALONE: Let's have Exhibit 325, please. Put that on the screen at page -- let's just start at -- well, this has already been admitted so if we could go to page 85.

Q. And you see here, that's where the Greenberg collection starts?

A. Mm-hmm.

MR. CIALONE: Okay. And if we would go to page 91. And if you would just blow up lot -- get to page 91. Blow up

lot 709, please, on the right-hand side. The 1945 Lafleur.

Q. What does it say about the label?

A. It says facsimile label.

Q. So Mr. Greenberg helped to spot that, right?

A. I don't know if he helped me spot it. I'm actually surprised that we put that in a catalog. The bottle --

Q. It wasn't your practice to disclose facsimile labels?

A. Of course, but normally I would have rejected a facsimile label.

Q. But you didn't on this one?

A. Apparently not.

Q. And Mr. Greenberg helped you actually disclose --

A. May I clarify?

Q. Sure.

A. I don't know if I rejected this but I was overruled, but clearly this bottle made it into the catalog with the notes.

Q. So this is a bottle estimated at between 10 and $15,000 and you don't know if you rejected it or not?

A. It's been quite awhile, sir, and there were a lot of bottles.

Q. Well, you remember rejecting a bottle of a hundred bucks so do you remember rejecting this one?

A. I don't specifically remember if we had a conversation about whether I was rejecting this bottle or not.

Q. And you remember Mr. Greenberg explaining to you how to

look for facsimile labels, very distinctly, because you testified to that earlier?

A. No, how to look for photocopied labels.

Q. On Lafleur bottles.

A. Yes. Photocopies is different from facsimile.

Q. How?

A. Facsimile is any type of reproduction. It's a broad term for any type of reproduction.

Q. Thank you.

A. Photocopy is one particular type of reproduction.

Q. Thank you. That's very helpful, because there's been some confusion. Some facsimile labels are different than others, right?

A. Yes.

Q. And the ability to spot one kind of facsimile label doesn't translate into the ability to spot all kinds of facsimile labels, right?

A. Correct.

Q. And the fact that a collector can say, well, this bottle has a photocopied label does not mean that collector is able to determine that this bottle has a facsimile label, correct?

A. Of another production method.

Q. Yeah, of a different kind of method, right?

A. Correct.

Q. And facsimile and photocopy don't mean the same thing,

right?

A. Facsimile -- all photocopied labels are facsimile labels but not all facsimile labels are photocopied labels.

Q. Right. Thank you. A photocopied label is one kind of facsimile but there are many, many other kind of facsimiles, correct?

A. Correct.

Q. Some are harder to spot than others.

A. Correct.

Q. This one somebody at Zachys spotted?

A. Correct.

Q. And Mr. Greenberg did not hide that fact from Zachys.

A. Well, Mr. Greenberg wouldn't have written this. I would have written that.

Q. Right. So clearly if Mr. Greenberg had hidden it, you wouldn't have written it because he had hidden it.

A. Correct.

Q. But there was no way for him to do that because you inspected these very carefully.

A. Yes.

Q. Because you wouldn't put a $10,000 bottle of wine up on auction if you didn't think it was real, would you?

A. Not knowingly.

MR. CIALONE: Let's look at the next lot, please.

Q. 1947 Lafleur magnum. Another facsimile label, right?

A. Yes.

Q. Is that another one that you were able to spot because of the assistance Mr. Greenberg gave you in identifying it or were you able to do that yourself?

A. Well, I'm not going to say that I couldn't spot it without Mr. Greenberg. I just remember having a very nice conversation with Mr. Greenberg about his knowledge on the subject. It's not that I was not aware previous to that but I do remember it being quite a congenial conversation. It might have been that I called him to ask him about some of these. I don't remember how that came about.

Q. And his knowledge was specific to photocopied labels, not --

A. Correct.

Q. -- not all kinds of facsimiles, right?

A. I don't know. The only thing we talked about were photocopied.

Q. And then let's look at the next Chateau Lafleur, the next one on the item. Also facsimile labels?

A. Yes.

MR. CIALONE: Okay. And actually, Liz, if you would go to page 90, please. Can you just blow that whole page up a little.

Q. Except for the bottom right corner, these are all Lafleur, right, all Lafleur magnums?

A. Yes.

Q. But the labels are different sizes, right? Correct?

A. Yeah, that's kind of hard to say in a photograph.

Q. Well, it's not that hard to say. The one on the top left is smaller than the other, right?

A. It would appear to be, but I'm not -- I don't tend to prefer to look at photographs and make comments about -- 'cause you don't know angles, you don't know how big the bottle is, you don't know -- there's a lot that you can miss in a photograph.

Q. I agree. That's a very good point. And on that subject, you were here when Mr. Ritchie testified, right?

A. Yes.

MR. CIALONE: Okay. And if we could put Exhibit 324 up.

Q. Now Mr. Ritchie stated --

MR. CIALONE: If you would just blow up the text, please, of the bottom there. That's fine.

Q. Mr. Ritchie stated he determined these wines were counterfeit based on looking at the photograph, just by looking at the catalog, right? But you wouldn't do that, would you?

A. I'd prefer to look at real bottles.

Q. And that's what you did in this case, right?

A. Yes.

Q. In this very auction you looked at the real bottles, right?

A. Yes.

Q. And you were very, very careful, right?

A. I was.

Q. You spent ten hours, ten hours looking at just the 1921 Petrus magnum, right?

A. Yes.

THE COURT: Just to be clear, when you say this auction, you're talking about the '03 auction.

MR. CIALONE: February '03 auction.

THE COURT: This isn't the auction at issue in this case.

MR. CIALONE: That's right. It's not the auction at issue, but that's what this e-mail concerns.

Q. So Mr. Ritchie in this e-mail talks about the auction catalog for the February '03 auction and identifies all of these magnums that in the e-mail he says, "We would have required full provenance and authentication by the chateau to sell the majority of these," but on the stand he said were fake. So you personally looked at each and every one of these bottles, correct?

MR. CAMP: Objection to the description of testimony.

THE COURT: Yes, sustained as to the description.

Q. You looked at each and every one of these bottles, correct?

A. I did.

Q. And you reached a point in your professional judgment that

you felt that they were suitable for auction, right?

A. In my professional judgment, with three years of experience, I did. I would not reach the same conclusion today.

Q. How do you know? You don't have the bottles.

A. Because I have, through being a master of wine student, had very good contact with almost all of these producers and I have much better knowledge today of what was actually produced back then and what was not. It's been 11 years.

Q. Did you tell anyone -- right. And you've learned more now than you knew then, right? Did you tell anyone at Zachys that you didn't feel competent to inspect these bottles?

A. Absolutely not. I did feel competent.

Q. Did anyone, to your knowledge, tell Mr. Greenberg that the person responsible for looking at these bottles didn't have enough experience to make professional judgments?

A. Absolutely not. I was still one of the most experienced people in the industry.

Q. And you were extremely diligent about examining these kinds of wines, these old and valuable Bordeaux, correct?

A. Yes.

Q. And you didn't think somebody should say call Sotheby's and say, can you flip through the catalog and see if Zachys got it wrong, right? People could trust your judgment.

A. That I would call Sotheby's and ask them for a second

opinion?

Q. Yeah.

A. No.

Q. You wouldn't do that, would you?

A. No.

Q. Of course not.

A. Can I clarify that, though? That doesn't mean that I wouldn't reach out to other professionals in the industry if I had a question.

Q. Did you in connection with this auction, February '03 auction?

A. I don't remember.

Q. But you did whatever you thought you needed to do, right?

A. Yes.

Q. You reached out to Martine Saunier?

A. I did. Well, Ursula Hermacinski did, but yes, I spoke with her at length.

Q. And then somebody at Zachys, Mr. Zacharia himself called France to talk to Henri Jayer, right?

A. Correct.

Q. That's the kind of care you put into this job, right?

A. Yes.

Q. Because you want to protect people who -- the buyers, correct?

A. Absolutely.

Q. The notion that the auction house just protects the consignor, that's a myth, correct?

A. It is.

Q. And it's something you personally have written very angrily about because you don't like that myth.

A. I wouldn't say angrily, but I have --

Q. Forcefully?

A. -- I have written articles that state that --

Q. Right.

A. -- because I believe it.

Q. Because the auction house protects the buyers, right?

A. And the sellers.

Q. And as -- but doesn't -- correct. Protects the sellers by making sure what they sell is authentic, correct?

A. And that their wines are marketed correctly and that they are going to get highest prices and --

Q. Right. But not by passing off fakes.

A. Hopefully not.

Q. Certainly not what you plan to do, correct?

A. Not in my experience.

Q. Now you believe throughout the time you were at Zachys that Zachys was diligent in putting a tremendous amount of effort into protecting buyers, correct?

A. I believe that my team and I were.

Q. You continue to do work for Zachys?

A. No, I don't work for Zachys.

Q. Do you do contract work for Zachys?

A. I don't do any contract work for Zachys.

Q. Do you know who Matthew Chung is?

A. Yes.

Q. Who is Matthew Chung?

A. Matt is also one of our first employees at Zachys and Matt started working for me at my company a couple years ago and he actually just left.

Q. Okay. And you hired him at your company, correct?

A. Yes.

Q. You hired him because you valued his skill.

A. 'Cause he's great.

Q. And though you were not involved in the October 2005 auction that's at issue in this case, he was, right?

A. Correct.

Q. You don't have any questions about his integrity.

A. Not his integrity. He's not an expert in authentication, though.

Q. What did you hire him for?

A. Account management.

Q. What was --

A. Pricing.

Q. Sorry. What was his title at Zachys?

A. Account adviser.

Q. Was he a specialist also?

A. Yes. It's the same -- same thing.

Q. And he was one of the specialists that Zachys assigned to work on the auction, the October '05 auction?

MR. CAMP: Objection, foundation.

Q. If you know? Let me ask, do you know what his role was in the October '05 auction?

A. He told me that he went out to Mr. Greenberg's house to help pull -- or not pull the wines but to help pack the wines.

Q. And actually, on that subject of packing wines, you testified that Mr. Greenberg -- in connection with the February 2003 auction, Mr. Greenberg was the one who picked the wines to send to Zachys. Let me ask you about that.

MR. CAMP: Objection. Misstates the testimony.

THE COURT: I'm not sure what she said, but the jury will base its decisions on its own recollection of the testimony.

Q. Now -- I'm sorry. Mr. Greenberg decided which bottles to send to Zachys. Did he pull them personally?

A. I have no idea.

Q. So how do you know he's the one who decided which bottles to send?

A. Well, as the consignor, you typically return a list called a selection for sale --

Q. Right.

A. -- and that's the decision of what to sell.

Q. Well, but that list says, for example, one 1950 Lafleur magnum, correct?

A. I don't know. I haven't seen the selection for sale since I was at Zachys.

MR. CIALONE: Liz, can you put 71 on the screen, please.

Go to page 3, please.

Q. So this was an e-mail --

MR. CIALONE: Actually, go to page 2. I'm sorry.

Q. An e-mail from Jeff Zacharia. "Here it is, hopefully the final list." Dated December 20th, 2002.

MR. CIALONE: Can we go to the next page, please.

Q. Just looking on that list, you'll see there's one 1950 Lafleur magnum?

A. Yes. This list says consignor estimates, not selection for sale.

Q. That's fine. That's fine. It doesn't have to be that precise. But for example, Mr. Greenberg would ultimately send a list of the wines, the kinds of wines he wanted to sell, right?

A. There were so many lists that Mr. Greenberg sent in that I returned back that -- and I'm sorry, but we did -- we've talked about this before. When that e-mail said hopefully this is the last list, I don't know whether this is the last list of

estimates I sent back or the last list of changes he sent in. I have no idea, other than consignor estimates, what this list represents. Even though I made this spreadsheet, without more context, I cannot definitively tell you if this is a third list of wines that he sent in to price, if this is a final list of wines that he sent in to price, if this was his proposed selection for sale. I have absolutely no idea at what stage of the many, many lists that went back and forth --

Q. And I'm not asking you --

A. -- this refers to.

Q. And I'm sorry. I'm not asking you to tell me which of these this document is. Much simpler request. At some point in the process Zachys and the consignor reach agreement on what wines the consignor will submit, correct?

A. Correct.

Q. And let's just assume for now that on that list there was one 1950 Lafleur magnum, okay? Just assume that.

A. Okay.

Q. Okay. Mr. Greenberg had 30 1950 Lafleur magnums. Did he decide which ones to send in?

MR. CAMP: Objection to counsel's testimony.

THE COURT: Okay. I'm going to allow the question, but the part about the 30, assume he had 30.

Q. If Mr. -- well, if Mr. Greenberg had more than one, is it your testimony, base -- based on your personal knowledge, which

you gave earlier, that he decided which bottle to send to Zachys?

A. Ultimately I would say yes. Whether he or he had his agents do it, it's his decision. Certainly not my decision.

Q. Well, you don't know if he went and physically pulled the bottles, correct?

A. No, but if he's in charge, if it's his collection, whatever he sends in is what he's choosing to represent, so ultimately I would say that it is Mr. Greenberg's decision what gets sent out. Whether he pulls the bottle or not, the people that work for him work for him.

Q. Right. And he's instructed them what to pull, right?

A. That would be my understanding.

Q. He's given them instructions.

A. Correct.

MR. CAMP: Objection. Foundation.

MR. CIALONE: Well, she testified about it earlier, your Honor. She testified Mr. Greenberg decided which bottles to send.

THE COURT: Next question. You can ask.

MR. CIALONE: Thank you.

Q. He would give instructions, correct?

A. That's my understanding. That's what normally happens.

Q. And hopefully those instructions would be followed correctly, right? Right?

A. I have no idea.

Q. Now let me ask, you spoke a little bit about the process, about authentication and lotting and so forth. Lotting has nothing to do with authentication, correct?

A. When you're inspecting all the wine together, it's all a simultaneous process, so if you thought that you were going to have a case of something but then six of them have to get pulled out of the sale as inauthentic, that affects the lotting.

Q. Sure. The authentication might affect the lotting but the lotting -- say, well, I want these bottles first and these bottles in the back and these bottles to be in the middle of the auction, that has nothing to do with authentication, right?

A. Well, no, it does.

Q. How?

A. It can be greatly changed if the composition of the cellar changes because wines have to be pulled out for inauthenticity.

Q. Right. The authentication, if you find that wines are inauthentic, that can affect the lotting, but doing the lotting itself doesn't change the authentication process.

A. Correct.

Q. Thank you. Deciding what order bottles should be sold in, what orders lots should be listed in, that doesn't change the authentication process, right?

A. Correct.

Q. So Mr. Greenberg was consulted on what order should we put the bottles in the catalog, he's not having any role in the authentication process, correct?

A. No. I don't know that he was consulted about that, but no.

THE COURT: I want to ask just one clarifying question, if I could, about the lotting. You've talked about lotting. What's the significance of a lot? In your experience with auctions, you said someone comes up with a lot and there's some number of bottles and there's a lot number whatever, 10, in the auction catalog. Does that mean you can only buy an entire lot?

THE WITNESS: Yes. So if you have one, you know -- there's lot number 1 is a case, lot number 2 is a case, lot number is a case, lot number 4 is six bottles, lot number 5 may be six bottles of wine A plus six bottles of wine B combined together, and sold as one lot.

THE COURT: So you can only buy an entire lot.

THE WITNESS: You can only buy it as that one individual thing.

THE COURT: Okay. Thanks for that clarification.

THE WITNESS: Sure.

BY MR. CIALONE:

Q. Now, Ms. Downey, your role in the February 2003 auction was to do physical inspections of the bottles, correct?

A. Once we were at that stage.

Q. Sure. And your role was not to ask Mr. Greenberg for provenance information, correct?

A. No.

Q. It was not your role to ask Mr. Greenberg for other information about his cellar?

A. No, that would have been more appropriate for Jeff or Fritz or one of the senior people.

Q. And they could decide what they needed to ask him. Yes?

A. I -- yes. I'm not them.

Q. I want to talk to you about these Jayer wines that you rejected from the February '03 auction. Do you recall how many Jayer wines you rejected?

A. I honestly don't.

Q. Do you recall whether there were bottles or magnums?

A. I do not.

Q. Do you know if it was more than a dozen?

A. I believe that it was more than a dozen.

Q. Was it more than 50?

A. I -- wow. Anybody who'd have 50 bottles of Jayer is crazy. It was not more than 50.

Q. Mr. Greenberg in fact had thousands of bottles of Jayer, right?

A. I don't know.

Q. How many did Zachys sell?

A. I don't remember.

Q. Would you like to see how many were sold in the auction you were involved with?

A. Sure.

Q. We'll get to that.

MR. CIALONE: Can I have Exhibit 72 displayed for the witness, please, not to the jury.

Q. Ms. Downey, do you have that in front of you?

A. I do.

Q. Do you recognize the form, the acceptance sheet?

A. I do.

Q. Is that your handwriting on those lines?

A. It is.

Q. And this has been produced by Zachys as being the only Jayer wines that were rejected from this auction.

MR. CAMP: Objection, foundation for the knowledge of the Zachys production in which she wasn't involved.

THE COURT: Can you clarify.

MR. CIALONE: We'll have Mr. Zacharia -- subject to Mr. Zacharia testifying what was and was not redacted from the document. Is that okay?

THE COURT: Okay.

MR. CIALONE: May I publish it to the jury, please.

THE COURT: Yeah, subject to that.

Q. Does this refresh your recollection at all that you rejected six bottles each of the 1990 and 1995 Jayer wines?

A. That's what this says.

Q. I'm asking you, do you remember now, looking at this?

A. I -- yes, of course I remember this. I don't remember if this was all of them or if this was -- this is one page out of a lot of pages.

Q. Well, do you think there are any more Jayers that you rejected from this February 2003 auction besides those listed here?

A. I would have to see the totality of my notes to answer that with any certainty.

MR. CIALONE: Let's go to Exhibit 325, page 101. Just blow up the right-hand column, please, below the header. Thank you.

Q. Do you see you accepted all these Jayer wines?

A. Yes, but these are Henri Jayer wines for G Jayer, which is different than a straight Jayer.

Q. Sure, but it is another label for Jayer, right?

A. It is, but it's a separate label and it's I believe a different creature than straight Henri Jayer wine.

Q. Sure.

MR. CIALONE: Let's go to the next page, please, 102.

Q. And the first two are G Jayer and the rest are all Henri Jayer wines, right?

A. Yeah, it was like the bottom three lots on the first row and then the second row.

Q. The entire second column, right, the entire right-hand column, right?

A. Mm-hmm.

Q. Let's go to the next page. Entire page, Jayer wines there, right?

A. Yes, a lot of these notes are one or two bottles, or one magnum, so even though this is a lot of listings, it's actually not a lot of bottles.

Q. And then a lot of the notes are six bottles, correct?

A. A few of them. I saw three six bottles in one case, four six bottles. But most of them are ones, twos, or threes.

Q. Okay. Let's go to the next page.

A. A lot of Jayer.

Q. All Jayers?

A. Yes.

Q. And just to your point before, there's one that's one magnum, right?

A. Yup.

Q. And the rest are three magnums, six bottles, twelve bottles, correct?

A. Or one magnum.

Q. Sorry?

A. There's a second one magnum. There's three magnums, one magnum, six bottles, three magnums, first row.

Q. Are we on page 104?

A. Mine says six, three, six, one, six, six, three. Maybe that's a three. I'm sorry. I misread.

Q. Sorry. Would you like to correct that, because I'm confused.

A. Well, I'm sorry. I'm going down the line. I see six, three, six, one, six, three. I thought the bottom one was a one.

Q. And then the right-hand side is six, six, twelve --

A. It's crazy.

Q. -- six, six, six, twelve, right?

A. Yes. Sorry.

MR. CIALONE: And then Liz, if you could just blow up the bottom half, please.

Q. You see you have the 1990 Cros Parantoux -- on the left-hand side you have six of the 1990, and then the right-hand side you have six of the 1995?

A. Yes.

Q. And if we -- as we saw in Exhibit 72, you rejected six out of twelve of each of those, correct?

A. Correct.

Q. You accepted six out of twelve of each of those, correct?

A. Correct.

Q. Nowhere in this catalog does it say: We found counterfeit wines in Mr. Greenberg's collection. Right?

A. No.

Q. It's not right?

A. No, it -- nowhere in the catalog does it state that.

Q. And it also doesn't state: We're selling a lot of Jayers and we just want you to know we found some fake Jayers in your collection. Right?

A. No.

Q. You would never say that in a catalog.

A. No.

Q. And it also doesn't even say here, 1990 Henri Jayer Cros Parantoux: Six of the twelve bottles the guy sent us are fake. Doesn't say that.

A. No.

Q. Not anything you would ever put in a catalog, right?

A. No.

Q. Because the catalog talks about the real wine, the wine that you accepted for auction, correct?

A. Correct.

Q. While Mr. Greenberg decided -- may have decided which bottles to send to Zachys, ultimately Zachys decided which ones to sell, correct?

A. Of the ones that came into the warehouse.

Q. Sure.

A. Yes.

Q. Right. Zachys didn't take more out of the cellar. Mr. Greenberg decided he's got a cellar, he's deciding to send

these bottles to Zachys, and Zachys is going to decide which one of those it will actually sell, correct?

A. Correct.

Q. That's your job as the auction house, correct?

A. Correct.

Q. Thank you.

And while you don't believe tasting is a valid way to assess the wine, Mr. Greenberg did, right, with these wines?

A. Is that what he testified to?

Q. Well, that's what you testified to. You gave him the wines, he tasted them, and he said they were village wines.

A. Oh, yes, the ones that I returned to him.

Q. Yes.

A. Yes.

Q. He tasted them and said: You're right, these aren't the right ones.

A. Correct.

Q. And let me just understand, the way you figured out that they were not -- the six of the twelve of the 1990 and six of the twelve of the 1995s were not authentic is you cut the capsules, you peeled it back, and you looked, right?

A. Correct.

Q. So Mr. Greenberg had never seen that cork, correct?

A. I would have to believe that, 'cause the capsule was uncut.

Q. Right. Unless he had x-ray vision, he wasn't seeing it.

A. Correct.

Q. So that's not something he knew, correct?

A. Correct. There were a number of bottles that came in with the capsules already cut.

Q. Never?

A. No, there were a number, but I don't remember if they were any of the Jayers.

Q. Some of the big magnums, the Bordeaux, correct?

A. Yes.

Q. And Mr. Greenberg had actually cut some of those capsules to look at them himself, correct?

A. I don't know if it was Mr. Greenberg or the person who sold them to him, but by the time I got them, they were cut.

MR. CIALONE: Your Honor, I have a little bit to go and about to move to a new area. Is this an appropriate time for a break?

THE COURT: Sure.

MR. CIALONE: Thank you.

THE COURT: Why don't we take a brief break, ladies and gentlemen. We'll take a ten-minute break. It's 3:28. Please leave your pads. We'll see you in ten minutes.

(Jury excused)

THE COURT: Ms. Downey, you may step down.

(Recess)

(Continued on next page)

(Jury present)

THE COURT: Mr. Cialone.

MR. CIALONE: Thank you, your Honor.

BY MR. CIALONE:

Q. Ms. Downey, I'd like to ask you about your testimony regarding stickers. You don't know how many times the wines that Mr. Greenberg designed for the October 2005 auction were inspected, correct?

A. Were inspected?

Q. Yes.

A. I know that they were assessed on-site.

Q. How do you know that?

A. Because Matthew Chung was one of the people there, and he worked for me and he told me about that.

Q. Do you know if they were inspected at Zachys in New York a second time?

A. He did not say that.

Q. So you don't know?

A. I don't know.

Q. Do you know if the old and rare wines, like the 1950 Lafleur that counsel showed you, was inspected at Mr. Greenberg's home and then a second time at Zachys office in New York?

A. I don't know that, but I was told that they were inspected on-site, and Ben Nelson was out there leading that inspection.

Q. Ben Nelson didn't work for Zachys in 2005?

MR. CAMP: Objection.

Q. Did he?

A. I was under the impression that he was at that pull.

Q. At Mr. Greenberg's home in October of 2005?

A. Yes, either that or he priced the list. I thought that he was there.

Q. So he would have been listed in the auction catalog as being involved in the auction?

A. Not necessarily.

Q. Who told you that Ben Nelson was there?

A. I thought that I had heard that Ben Nelson was there inspecting the wine.

Q. I'm asking, from who?

A. Matt.

Q. Matt Chung, who else did Matt Chung tell you was there?

A. Neil, I think Damian. But I only remember Neil.

Q. That's it?

A. Yes.

Q. He didn't tell you that Jeff Zacharia personally went to Mr. Greenberg's house to examine the old and rare wines?

A. No.

Q. He didn't tell you that Fritz Hatton personally went to Mr. Greenberg's house to examine the old and rare wines?

A. I knew that Fritz Hatton had been there several times.

Q. Several times in 2005?

A. No, just several times.

Q. Did Mr. Chung tell you that Fritz Hatton went to Mr. Greenberg's house in 2005 to examine old and rare wines that were being submitted for the auction?

MR. CAMP: Objection. Calls for hearsay.

MR. CIALONE: She has already been giving hearsay, your Honor. I want to see just how much she knows. I want to see what her basis is for talking about the inspection that went on.

THE COURT: You can answer.

A. Not specifically.

Q. You don't know who actually inspected the old and rare wines, is that fair to say? You know what Mr. Chung told you?

A. Correct.

Q. But you don't know who at Zachys actually did what?

A. Correct.

Q. If Mr. Zacharia had represented that they were being inspected twice, you have no reason to doubt that, right?

A. No.

Q. You don't know if, after the bottles were packed in boxes in California and sent to New York, they were reopened to be inspected another time, correct?

A. I have no idea.

Q. And you don't know if, after the boxes were sent from

California to New York, some of the really special old and rare wines were reopened to be photographed for the catalog, correct?

A. I don't know.

Q. You have seen the catalog, correct?

A. Honestly, I haven't for quite a long time.

Q. Do you know if there are photos of bottles in that catalog?

A. That would be customary.

Q. It would be customary that those photos be taken in New York?

A. Yes.

Q. If the bottles were packed in California and sent to New York, they would have to be taken out of the box and photographed, correct?

A. Yes.

Q. If somebody had neglected to put on the sticker that was required by New York law, in California, certainly that mistake could be corrected when they took the bottle out and photographed it, correct?

A. I don't know where the photography occurred.

MR. CAMP: Objection to the testimony about New York law.

THE COURT: Sustained.

Q. Do you know if auction stickers are required by New York law?

MR. CAMP: Same objection.

THE COURT: You can answer if you know.

A. I believe that they are.

Q. If somebody had made a mistake on one of the 17,000 bottles in California when it was sent to New York, if the bottle was taken out to be photographed, they could correct that mistake?

A. They could.

Q. If it was taken out to be reinspected, inspected a second time, that mistake about not putting the sticker on could be corrected then, too, right?

A. It could.

Q. You don't know if any of this happened in the October 2005 auction, right?

A. No.

Q. At some point you wrote a post on the Internet about what you claim you saw in the Acker auction, right?

A. I wrote a post called "On Authenticating Wine." Is that what you are referring to?

Q. Yes.

A. Yes.

Q. That related to your claim that the very same bottles of wine that you rejected from one auction were sold in the Acker auction in 2003, right?

A. Correct.

Q. You claimed in that blog post that you saw those bottles on

the cover of the Acker Merrall auction catalog, right?

A. That is what I wrote for the purpose of the story.

Q. Right.

A. But, again, when I saw --

MR. CIALONE: Your Honor, I just asked if that's what she wrote.

THE COURT: Wait until there is a question.

Q. What you wrote for the purpose of the story, that you had seen the same bottles on the cover, that was false?

A. It was embellished.

Q. It wasn't true?

A. No, it was authorship.

Q. Did you see on the cover a photograph of the very same specific bottles that you had rejected?

A. On the cover I recognized the consignment as being Mr. Greenberg's.

Q. That's not my question. My question is, did you see the very same individual bottles of wine that you had rejected?

A. I cannot be a hundred percent sure.

Q. But you wrote that on the Internet?

A. I did.

Q. And you even wrote a second post on the Internet saying Hong Kong buyers beware because Mr. Greenberg had another auction, right?

A. I did not write that.

Q. You didn't write the Hong Kong buyers beware post?

A. I never wrote Mr. Greenberg's name.

Q. But you put a picture of him?

A. No, I didn't.

Q. Are you sure about that?

A. I didn't post a picture.

Q. OK. But the statement that you saw the same bottles on the cover was false?

A. No, it was authorship.

Q. Authorship can be fiction or nonfiction. Which was this?

A. I was describing a larger situation in a very short period of time in order to describe the work that auction houses do for both the buyer and the seller. When I say that I recognized the consignment, that would have been something that lay people would have had a hard time understanding. So I said that I saw some bottles that I had rejected. It was for the purpose of relaying the information to a broad group of people that might not be familiar with the auction terms.

Q. In fact, you said, "A few weeks later I saw them on the cover of a competitor's auction catalog."

A. That is what I wrote.

Q. And that was false?

A. It's not false.

Q. Did you see them on the cover of the competitive auction catalog?

A. I saw them on the consignment cover. When I looked at it, the totality of the details led me to believe that it was the same wine. Then I called and I confirmed that.

MR. CIALONE: Your Honor, she is not supposed to talk about what somebody else supposedly told her. It's hearsay. I would ask her to answer the question.

THE COURT: Yes. Please just answer the question.

Q. The statement that you saw the same bottles you had rejected on the cover of the Acker catalog was not true?

A. I'm not going to say it wasn't true. There was something that led me to believe, and I was confirmed in my belief.

Q. You also said you recognized small tears, marks on the labels, and T cuts, right?

A. Yes.

Q. You were referring to Jayer bottles of wine, correct?

A. Not necessarily.

Q. The bottles you had rejected were Jayer wines, right?

A. I rejected bottles other than Jayer wines.

Q. Your post titled "On Authenticating Wine" was specifically about Jayer wines?

A. It was, because it was in response to a post that Mr. Lempert-Schwartz are put up that refuted what I did at Zachys.

Q. Specifically, your post was about the Jayer wines were rejected?

A. I focused on Jayer.

Q. Then you said you saw them on the cover of a competitor's auction catalog, right?

A. Yes.

Q. You said you recognized your T cuts, right?

A. Yes.

Q. And that wasn't true?

A. No, it is true. But there was a totality of events.

MR. CIALONE: Can we show the witness, please, Exhibit 327. Not the jury, just the witness.

Q. Ms. Downey, is that the cover of the Acker May 2003 auction catalog?

A. I believe it is.

MR. CIALONE: Your Honor, I move to admit this.

MR. CAMP: I'm going to object because a color copy is marked as a trial exhibit. This seems to be a black and white.

MR. CIALONE: I appreciate that. Let me give her the color copy, if I could. If I may approach, your Honor?

THE COURT: Is this 327?

MR. CIALONE: It is 327, yes.

MR. CAMP: 330.

MR. CIALONE: 337, thank you.

MR. CAMP: 330, sir.

THE COURT: I'm sorry. What is it?

MR. CIALONE: It's three three zero, your Honor.

THE COURT: 330 received.

(Trial Exhibit 330 received in evidence)

MR. CIALONE: Can we put that up.

Your Honor, can I move 330 into evidence and publish it to the jury?

THE COURT: Yes. 330 is received.

MR. CIALONE: If we can turn it, please.

Q. Ms. Downey, while we are waiting for this, let me remind you, we looked at Exhibit 72 earlier, which was your assessment notes that were redacted and showed the six bottles of 1990 and six bottles of 1995 that you rejected.

A. Yes.

Q. Those were all bottles, meaning 750 milliliter bottles, correct?

A. I believe so.

Q. So they were not magnums, which are 1½ litters?

A. Correct.

Q. For comparison sake, the bottle of wine that Mr. Camp showed you earlier, the 1950 Lafleur, that was a magnum, but this is what we call a bottle, 750-milliliter, correct?

A. Correct.

MR. CIALONE: Apparently we can't rotate this. Your Honor, can I walk over to the screen, please, and point it out?

THE COURT: Sure.

MR. CIALONE: Thank you.

Q. Ms. Downey, the Jayer wines are these in front, right?

A. I believe so.

Q. And some of these in back?

A. I believe so.

Q. Are any of those 750-milliliter bottles?

A. No.

Q. So they are not the ones you rejected?

A. I don't know if I rejected magnums. I haven't seen my entire notes. I have one page of notes of what I rejected that I have seen today.

Q. You don't know what you rejected?

A. I don't remember completely. Some of these capsules are T cut, though.

Q. Do any of the 1990s or 1995s have T cuts?

A. Tragically, I cannot read one vintage on this thing.

Q. You accepted magnums of Jayer that Mr. Greenberg consigned, correct?

A. Clearly. They were in the catalog you showed me.

Q. In fact, you accepted every single one that he consigned?

A. I can't say with any accuracy, sir. It's been 11 years.

Q. You say it was a totality of details, correct?

A. It was. Every collection has a fingerprint.

Q. Collection has a fingerprint. You weren't saying it was the wine in the whole auction. You were saying it was the individual specific bottles?

A. First, I recognized them as Greenberg wines. Then I went

through and I recognized a number of entries that matched the number of wines, the same exact wines and the same exact quantity that I had rejected. Then that caused me to go to the next step and make a phonecall.

Q. Ms. Downey, you don't know how many bottles of 1990 Jayer Mr. Greenberg had in his collection?

A. No.

Q. You don't know how many Jayers at all he had in his collection?

A. No.

Q. Did you ever hear that he was the largest collector of Jayer in the world, that he had the largest collection? Did you hear that?

A. I don't know. And if I heard that, I don't know under what context. I don't know that.

Q. Were you aware that as of August 2003, after these two auctions, Mr. Greenberg stocked 45 bottles of 1990 Jayer Cros Parantoux? You don't know?

A. I am not. It's a remarkable number.

Q. You continued to work on auctions to which Mr. Greenberg consigned wines, right?

A. I did. It was the same consignment, though.

Q. You had another, consigned more wines --

A. It wasn't another consignment. This is terminology of the auction world. One contract is considered one consignment. So

even though it's the same consignment, sometimes there can be multiple sales under the same contract. While I was at Zachys, to my knowledge, there was one contract and one consignment that was spread out over two different sales.

Q. You worked on that second sale?

A. I did.

Q. Even though you thought Mr. Greenberg had intentionally consigned counterfeit wine to an auction, you worked on that sale?

A. I did.

Q. You didn't say anything to Mr. Greenberg about it?

A. No.

Q. You didn't give him a chance to say, no, Ms. Downey, those aren't the bottles, I have those bottles right here? You didn't?

A. No. I believed that he had done something bad. I wasn't going to talk to him about it.

Q. He could have shown you the bottles, the very bottles you rejected, if you had raised that question.

A. It would have been completely inappropriate, and I don't know what he would have done to me if I had actually gone back to him and told him what I believed.

Q. Instead, you're here ten years later, and if I were to show you the bottles, you wouldn't know if those were the ones you rejected?

A. That's correct.

Q. But you didn't do it then, when that could have been cleared up?

A. I went to my friends in another auction house because I was concerned for the business.

Q. But you didn't go to Mr. Greenberg, the consignor, and say, I think you've done something improper here and I'd like you to explain it?

A. No. I was told by Mr. Dombrowski if I did that, Mr. Greenberg would, quote, break my legs.

Q. You told Mr. Dombrowski?

A. He and I had lengthy conversations about his time working with Mr. Greenberg.

Q. Did you tell Mr. Zacharia?

A. I did.

Q. You told Mr. Zacharia specifically that Mr. Greenberg had intentionally consigned counterfeit wines?

A. I am confident that I relayed the story to my superiors at Zachys, because I was really upset that somebody would sully the market this way. I was very upset.

Q. You're sure you told Mr. Zacharia, or are you just saying you would have?

A. I'm not exactly sure of the conversation. I'm not exactly sure of what was said. But I remember that I was so upset about what had happened. I remember at some point there being

a conversation with Jeff, Mr. Zacharia, possibly Mr. Swerze, maybe somebody else. I don't remember a specific conversation. I don't remember specifically what was said. But I do recall a time in which there was some sort of communication among a group of us about the situation.

Q. Let me make it more simple. Did you ever tell anyone at Zachys that you believed that Mr. Greenberg had consigned counterfeit wines to Acker Merrall?

A. I would have. It's only logical.

Q. I'm not asking what's logical. I'm asking what you remember actually doing.

A. I don't have recollection of an actual conversation, but it is logical that I would have done that.

Q. Yet you continued to inspect wines that Mr. Greenberg had consigned?

A. Yes.

Q. And Zachys never put in the catalog that Mr. Greenberg was intentionally consigning fake wine to auction?

A. Not to my knowledge.

Q. You were confident you could inspect his wines carefully and approve those that were suitable for sale?

A. I was doing my best.

Q. You were confident that you could keep out those that were not suitable for sale, correct?

A. I was doing my best. I was in a precarious situation.

Q. You weren't the only one doing your best. You had all these other people you could talk to for input and information, right?

A. Correct.

Q. You are job was to really important to you, yes?

A. Yes.

Q. Not your job just because that's where you got your paycheck, but your job because it was protecting buyers?

A. Well, I felt an ethical need to do a good job as well as pride in my job, yes.

Q. You kept doing it well, correct?

A. I tried.

MR. CIALONE: No further questions.

THE COURT: Thank you.

Is there any redirect?

MR. CAMP: Just a couple of questions.

THE COURT: Mr. Camp.

REDIRECT EXAMINATION

BY MR. CAMP:

Q. Hello again, Ms. Downey.

A. Hi.

Q. The auction that you worked on for Mr. Greenberg at Zachys, that was in February 2003?

A. Correct.

Q. Was Mr. Greenberg's name advertised in connection with that

auction?

A. Yes. It was The Greenberg Collection.

MR. CIALONE: Your Honor, outside the scope.

MR. CAMP: I'm about to get at the document he asked about.

THE COURT: OK. Overruled.

Q. The Acker auction that happened a few months later that you described, was Mr. Greenberg's name advertised in that catalog?

A. No.

Q. It was an anonymous auction?

A. Yes.

Q. You were shown a cover. This is Trial Exhibit 330. Do you still have that in front of you?

A. I do.

Q. You testified that you believed the wines depicted on there were Mr. Greenberg's, right?

A. Yes.

Q. You were asked some questions about your conclusions with respect to those and the wines depicted in the catalog or contained in the catalog?

A. Correct.

Q. I want to show you a document in evidence Trial Exhibit 329.

MR. CAMP: May I approach, your Honor?

THE COURT: Yes.

Q. If you look at Trial Exhibit 329, you see it's an email the day after the date of the auction on this catalog, April 6, 2003?

A. Yes.

Q. Have you ever seen this email before from AckerBids@aol.com to Mr. Greenberg, so far as you know?

A. Yes. We saw this earlier in the trial, didn't we?

Q. Prior to the trial, had you seen this?

A. No, I had never seen it.

Q. If you could look down to the part that is being highlighted, do you see written, "In retrospective, we should have avoided putting your wines on the cover or drawing excess attention to your consignment, but it is a lesson learned." Do you see what I have had read?

A. Yes.

Q. Is that consistent with your conclusion that Mr. Greenberg's wines were depicted on the cover?

A. Yes.

MR. CAMP: Nothing further, your Honor.

THE COURT: Mr. Cialone?

MR. CIALONE: A couple of questions.

RECROSS-EXAMINATION

BY MR. CIALONE:

Q. Mr. Greenberg's wines or some of them were on the cover, right? Correct?

A. Yes.

Q. That doesn't mean the specific 12 bottles of Jayer that you rejected were on the cover, right?

A. I don't know if any of the wines that I rejected are on the cover.

Q. Thank you. Let me ask, do you see this email refers to too many whispers in the dark? Do you see that?

A. Yes.

Q. Particularly the Jayers? That major clients seem to be a little soft on your stuff, particularly the Jayers, but perhaps that is just coincidence?

A. Yes.

Q. Were you one of the whispers in the dark?

A. No, not back then.

MR. CIALONE: No further questions.

THE COURT: Thank you. Ms. Downey, you may step down. Thank you.

(Witness excused)

THE COURT: Plaintiff may call its next witness. Mr. Kaba?

MR. KABA: Your Honor, plaintiff will call Mr. Richard Brierley as the next witness, and it will be by deposition.

THE COURT: OK.

MR. KABA: Your Honor, I will note that plaintiff's portion is about 15 minutes, defendant's portion I understand

is about 25 minutes. That's about 40 minutes total. If it is OK with the Court and jury, we would like to run it all the way through.

THE COURT: I think that's fine.

(Brierley video deposition shown)

MS. SALISBURY: Your Honor, we now have some testimony from Mr. Brierley. He will refer in his examination to four documents, none of which I believe are in evidence yet -- 84, 85, 1028, and 1029 -- which we would like to offer into evidence, please.

THE COURT: OK.

MR. KABA: No objection, your Honor.

THE COURT: They are received: 84, 85, 1028, 1029. You may play the tape.

(Trial Exhibits 84, 85, 1028, and 1029 received in evidence)

(Brierley video deposition shown)

(Continued on next page)

MS. SALISBURY: That concludes the deposition, your Honor.

THE COURT: Okay. Would this be a good time to break for the day?

MR. HUESTON: Yes, your Honor.

THE COURT: Okay. Ladies and gentlemen of the jury, I'm going to let you go for the day. We'll start at 9:30 tomorrow morning.

I want to thank you for your patience and for continuing to keep an open mind about the case. Once again, as I said, please don't do any research on the case and don't discuss the case with anyone, including each other at this point. You'll have a chance to deliberate when we get to the end of the evidence.

We'll continue at 9:30 tomorrow morning. Have a good evening.

(Jury excused)

(Continued on next page)

(In open court; jury not present)

THE COURT: Please be seated.

Anything the parties need to address?

MR. CAMP: Not from plaintiff.

MR. SHARTSIS: No, your Honor. Thank you.

THE COURT: Okay. Just to give you where I am in terms of time keeping, what I said is I want you to basically think of each side as being allotted 25 hours total. At this point plaintiff has used about 11½ hours and defendant has used about 8 hours, 8¾ hours, thereabouts. So we're between a third and a half of the case. So please bear that in mind as we go forward.

And I'll see you all tomorrow morning, 9:30. Have a good evening.

ALL COUNSEL: Thank you.

THE COURT: Actually, we'll be a few minutes late. I have another matter in my real courtroom which will take five or ten minutes, so we'll probably start between 9:35 and 9:40. Good night.

ALL COUNSEL: Good night.

(Adjourned to April 3, 2013, at 9:30 a.m.)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

WILLIAM I. KOCH,

Plaintiff,

v. 07 Civ. 9600 JPO

ERIC GREENBERG, et al.,

Defendants.

----------x

New York, N.Y.
April 3, 2013
10:00 a.m.

Before:

HON. J. PAUL OETKEN,

District Judge
and a jury

APPEARANCES

MORVILLO ABRAMOWITZ GRAND IASON ANELLO
Attorneys for plaintiff
BY: EDWARD M. SPIRO,
- and -
IRELL & MANELLA, LLP
BY: JOHN CHARLES HUESTON, Esq
MOEZ KABA, Esq.
MARSHALL CAMP, Esq.
BRUCE A. WESSEL, Esq.
Of counsel

DLA PIPER, LLP
Attorneys for defendants
BY: ANTHONY PAUL COLES, Esq.
- and -
SHARTSIS FRIESE, LLP
BY: ARTHUR J. SHARTSIS, Esq.
TRACY SALISBURY, Esq.
FRANK ALBERT CIALONE, Esq.
Of counsel

Also Present:
JASON WIETHOLTER, Trial Tehnician
ELIZABETH S. SEABROOK, Paralegal

(Trial resumed)

THE COURT: Who is the plaintiff's next witness?

MR. HUESTON: Bill Koch, your Honor.

THE COURT: Are we ready for the jury?

MR. HUESTON: Yes.

THE COURT: Please get the jury.

(Jury present)

MR. HUESTON: Your Honor, we call Bill Koch to the stand.

WILLIAM KOCH,

called as a witness by the plaintiff,

having been duly sworn, testified as follows:

THE WITNESS: William Ingraham Koch, K-O-C-H.

DIRECT EXAMINATION

BY MR. HUESTON:

Q. Good morning, Mr. Koch.

A. Good morning.

Q. Mr. Koch, I'd like to start with some background questions. Where do you live?

A. I live in Palm Beach, Florida.

Q. Are you married?

A. Yes.

Q. Do you have any children?

A. Yes.

Q. How many children do you have?

A. Between my wife and me, we have six.

Q. Where did you grow up?

A. I grew up in Wichita, Kansas.

Q. Did you go to college?

A. Yes, I did.

Q. What college did you attend?

A. I went to the Massachusetts Institute of Technology, commonly known as MIT.

Q. Did you get a degree from MIT?

A. Yes, I got a Bachelor of Science.

Q. What was that in?

A. Chemical engineering.

Q. Did you go to graduate school?

A. Yes, I did.

Q. Where did you go to graduate school?

A. I went to MIT and then I took some courses at the Harvard Business School.

Q. Did you then pursue any other graduate degrees?

A. Yes. I got a Master of Science and I got a Doctor of Philosophy.

Q. Where did you get those degrees?

A. From MIT.

Q. Mr. Koch, what do you do for a living?

A. I run a company which I started in 1984 called Oxbow Carbon LLC.

Q. Could you describe briefly, what is Oxbow Carbon?
A. They have about 4 billion in sales. We buy -- we are the largest buyer in the world of waste product from oil refiners, which is called petroleum coke. It is the bottom of the barrel. It is 90-percent-plus pure carbon. We process petroleum coke and sell the product to aluminum companies.
Q. Usually, Mr. Koch, I have people put the microphone closer. Why don't you push it a little farther away.
A. Sorry. My wife tells me I talk too low.
THE COURT: This courtroom is tough because there is such an echo. You just have to speak as clearly as you can.
A. All right. Then also we have a large coal mine in Colorado. Then we handle a great deal of sulfur, which is primarily also a waste product from oil refining and gas processing. Then we have a very large natural gas reserve in Colorado.
Q. In total, roughly how many people does your company employ?
A. Directly about 15 hundred. Indirectly another 15 to 2,000 people.
Q. Has Oxbow been financially successful?
A. Yes, knock on wood. I hope it continues.
Q. Mr. Koch, have you been involved in any charitable organizations?
A. I have been involved in a number. I'm trying to scale that down now. Do you want me to list them?

Q. Let me ask about a few. Have you served on the board of trustees of museums?

A. Yes, I have served on the board of trustees of the Museum of Fine Arts in Boston, the board of trustees and the executive committee, which I no longer do because I moved out of Boston. I also served on the board of directors and executive committee of the University Hospital in Boston. I am no longer on that.

Q. Have you served on the board of commissioners for the Smithsonian American Art Museum?

A. Yes, I do. And I'm on the board, subboard I guess, of the American Society of -- no. Now I've forgotten the name of it. It's the American Institute of Science, Medicine, which is a national organization.

Q. Have you also been involved with schools and programs for children?

A. Yes, I have.

Q. Can you give a couple of examples there.

A. I've started a number of schools around the country, in San Diego, in Indiana, in Kansas, helped some in Massachusetts. Then I was on the board of three schools in Palm Beach. Actually, it was two schools that merged, and then I was on the board of the resulting school, and then I was on the board of a high school in Indiana. Then I founded a school in Palm Beach, West Palm Beach.

Q. Why did you found that school?

A. Very simply, in that area it's a retirement community and there is not much attention paid to education. I wanted my kids to get the best education possible and I didn't want them to leave home, as my brothers and I did. So I said the only way to do that is to start my own school. It's a school that has about 400 students.

Q. Does it provide scholarships for needy students?

A. Oh, yes. We have kids from 55 different middle schools and all levels of financial, from the poorest families to the richest families.

Q. Do date, sir, roughly how much have you donated to various charities?

A. Last time I counted it up, it was over 200 million.

Q. Have you ever been involved in any organization dedicated to fighting crime?

A. Yes.

Q. What's that?

A. It was the Kansas crime commission that the first female governor of Kansas appointed, or appointed me as head of the crime commission, and I funded it. I didn't want to have any political influences. I wanted to look at crime from its fundamental sources, not what was politically correct but what was actually going on.

Q. Let's talk a little bit about some of your personal pursuits. You mentioned sailing. Have you competed in

sailboat racing, sir?

A. Yes. I competed, started sailing competitively in 1985, gave it up about five years ago. I've competed in international competition worldwide.

Q. Did you compete at the world championship level?

A. Yes.

Q. Have you competed in America's Cup?

A. Yes.

Q. Did you compete in the 1992 America's Cup?

A. Yes. I was the skipper of the boat that won that cup.

Q. Sir, beyond your personal involvement in sailing, have you ever donated money to sailing organizations?

A. Oh, yes, I have, many sailing organizations for young kids or underprivileged kids.

Q. Let's move on to collecting. Before I get to wine collection, I want to ask generally, sir, what do you collect? Do you collect certain items?

A. I collect too many.

Q. What are some examples?

A. I've collected paintings, impressionistic as well as American paintings as well as western paintings. I've collected statues or sculptures. I have collected nautical paintings and nautical artifacts from the War of 1812. I have collected a lot of western ephemera.

Q. When you say that, is that times from the old West?

A. Yes. Examples I have collected western photographs on, I'm maybe the proud but stupid owner of one and only picture of Billy the Kid. It's interesting. Well, that's another story.

Q. Sir, what do you like about collecting?

A. I have two standards for collecting. I collect what I love, what makes me feel good, gives me a great sense of peace and enjoyment. Then I collect things that I think are extremely historical, things that I can look back and say this was part of history, such as I have Jesse James's gun and the gun that killed Jesse James. I look at that and say that's part of history, that's part of our American frontier.

Q. Sir, from time to time have you shown these collections to the public?

A. Oh, yes.

Q. What are some examples?

A. I had a big show at the Museum of Fine Arts in Boston. I have loaned paintings to such places as the Louvre, the Metropolitan. I have found, however, that I get the biggest thrill out of loaning paintings and loaning my collection to smaller museums, such as the museum in Topeka, Kansas, the Yellowstone Museum in Montana, Oklahoma City Museum, the Clark Museum in Massachusetts. I don't know how many museums I've loaned the collection to.

I had a show of my nautical collection just recently at the U.S. Naval Academy. The Smithsonian wants to show my

western collection. I have had requests. I have had my America's Cup collection shown in a couple of small museums.

Q. Let me move on to another topic. Sir, are you in the business of selling any of your artworks or collections?

A. My wife would like me to be, but I very, very rarely sell anything. My wife calls me a hoarder because I won't get rid of the stuff.

Q. Do you have a company through which you buy and sell collectibles?

A. No, I do not.

Q. Do you pay sales tax on items you buy for you collections?

A. Yes, I do.

Q. Do you try to claim business exemptions for your collectibles?

A. No.

Q. From time to time do you sell an item here or there from your collections?

A. I have, but extremely rarely.

Q. Let's go to wine collecting. Is that something you collect as well?

A. Yes. Well, I have collected it. I'm not collecting much anymore.

Q. How long have you been collecting wine?

A. I first started sometime in the late '70s and then in the '80s. I really binge-collected for a while. Then I slowed

down in the '90s, got back up a little bit in the 2000s, and then I stopped.

Q. Mr. Koch, why do you collect wine?

A. There are two types of wine that I collect, or I should say two main reasons. One is because I love it, love to drink it. What really appeals to me about wine, particularly super fine wine, is that you can taste the love that the vintner had for making it.

Q. When you say the vintner, that's the person --

A. The person who makes it, yes. You look at a good piece of art, you can see the love that the artist had for it. You listen to good music, you can hear it. Look at good craftsmanship. That really stimulates me, that passion.

Then I collect wine that is I think historically significant. There are four different makers of wine that I have been trying to collect every year of. That would be Petrus, Latour, Mouton, and Lafite. It's great to get a wine that, say, from the Civil War or Napoleonic wine. To me that is absolutely fantastic. I don't ever plan to drink those wines, I just love having them. And I've tried to collect a brandy from every year in which there was an America's Cup.

Q. Let me ask you some questions about how the wine is handled in your wine cellar. Do you keep your wine collection in a wine cellar?

A. Yes.

Q. Is there any particular temperature or setting you need to store wine?

A. Yes. I store it at 55 degrees and 60 percent humidity. The magic number of 55 degrees is, 2000 years ago when wine started to be made, they found the only way to store it was in a cave, and the temperature generally in the cave six feet in the ground is 55 degrees. So wine evolved to be at that temperature.

Q. In your wine cellar do you have any kind of inventory system to keep track of the wines that you buy, the bottles?

A. Absolutely. I have a computer inventory system that shows what the wine is, where it is in the cellar. Then, if you dig further into it, which I don't want to do, you could find the cost in order to buy it, where I bought it. Then we bar code every bottle, and we put that car code number in the computer along with the bottles.

Q. Does that allow you to track every bottle that comes in and then every bottle that goes out?

A. Yes. When I take a bottle out, I've got to put it through what you call a checkout thing that you have in the supermarket.

Q. Like a grocery store, a scanner?

A. A scanner. Every bottle that goes in gets scanned, every bottle that goes out gets scanned. I could give you the exact date on which I took a certain bottle out of the cellar.

Q. How long have you had that system in place?

A. Oh, my God, I think it's been since the '80s.

Q. Do you have someone who manages your wine collection?

A. Yes.

Q. Who is that presently?

A. That's Mark Curley. He not only manages that, he manages all my collections and all the real estate that I own, as well as a marina that we own that he operates.

Q. Roughly how long has he been in charge of managing your wine collection?

A. I believe since '93.

Q. Was Mr. Curley managing your wine collection in 2005 when you bought wine at the Zachys October 2005 auction?

A. Yes, he was.

Q. Going back to 2005, if you could remember, what do you recall some of his responsibilities were in managing your wine collection at that time?

A. Where do you want me to start?

Q. Let me be a little more precise. Did Mr. Curley's responsibilities include overseeing the inventory?

A. Yes.

Q. How about shipments of wine when they came in, what role did he have in that?

A. The wines would be shipped to either one of two places, either to his office on Cape Cod or my house in Florida. Then

he was responsible, he and his staff -- I think it is one person he has working for him on wine, but I may be wrong -- would be responsible for checking, looking at each bottle to see if there was anything wrong with it, if it was cracked, couldn't read the label, the cork was leaking, something. Same thing that you get when you open a carton of eggs to see if anything is wrong with one of the eggs.

Then he was responsible for entering it into the computer, all the information that he had about the bottle, where it came from, what price it was, the name of the wine, the year of it, etc. Then he was responsible for putting the bar code on it. Then he was responsible for putting it in either the right bin or putting it in storage if it were a young wine that needed to mature.

Q. You said that when he inspected or looked at wine coming in, it was like checking eggs in an egg carton?

A. That's correct.

Q. Was he looking at it to inspect for counterfeit?

A. No. I don't think he has that capability.

Q. Was he, to your recollection, doing anything to look for counterfeit back in 2005?

A. No.

Q. Let me ask you, sir, what is, in your view, questionable wine? What does that mean to you?

A. It means to me, generally means to me fake wine. It means

that there is some question about the shape of the bottle, some question about the glass, some question about the label, ink on the label, printing on the label, glue on the label, some question about the cork, some question about the sealant, the wax seal on the top, on the capsule. Anything that would raise doubts about its authenticity. It could be any number of those things.

Q. Do you collect questionable bottles of wine?

A. No, but unfortunately I have. So far, in my cellar, we have only examined about 20 percent of my cellar, and we found 421 questionable wines, which I believe are all fake, for which I paid 4.3 million bucks.

Q. Mr. Koch, when you buy wine, do you care only about the liquid inside the bottle?

A. No. I care about the whole package.

Q. Why is that?

A. The package says what's in the bottle. If you want to drink it, you want to know that that's what you're drinking. The other thing about it is the package has historical and artistic meaning to it, particularly on the Chateau Mouton Rothschild. In 1945 Mouton Rothschild or Rothschilds had famous artists paint the labels for them. So those are works of art. If you have a wine, say 1865, that's the year the Civil War ended, so to me it's a historical item as well as a work of art.

Q. I want to turn now to the October 2005 auction. For that I'm going to put in front of you what has already been introduced and shown to the jury as the catalog from the auction in 2005, which is Exhibit 325.

A. Do you mind if I get my reading glasses? Sometimes it's hard for me to see this stuff.

Q. Sure. I'm handing you Exhibit 101, which is a color copy of this catalog. I hand a copy up. Mr. Koch, I have put before you Exhibit 101.

A. Yes.

Q. Do you recognize it?

A. Yes, I do.

Q. What is it?

A. This is a Zachys wine auction catalog. It's called the "Fall Auction. Over 17,000 Bottles of Greatness."

Q. Is that the title of the catalog?

A. Yes.

Q. Do you recall receiving this, sir?

A. Yes, I did.

Q. Do you recall roughly when you received this catalog?

A. Not exactly, but it was within a week to ten days of the start of the auction.

Q. Mr. Koch, you just described when you remember receiving it. When you received it, sir, did you look at it, did you read it?

A. I didn't read every word, but I certainly looked at it.

Q. Taking a look, what do you remember looking at?

A. I remember looking at two things or three things. I looked at the introduction letter, or forward, called "Great Wine: The Quest."

Q. Is --

A. Do you want me to finish the answer?

Q. Go ahead. Sorry. I cut you off.

A. I looked at some of the pictures. I looked at the picture of Daniel the chef, because I know him, or I knew him. Then I thumbed through it and looked at the wines that I would be interested in.

Q. Let's start with the introductory letter that you referenced, if we can pull that up on the screen. That is titled "Great Wine: The Quest."

A. Yes.

Q. Sorry. I'm switching you around there. Mr. Koch, was this letter important to you?

A. Oh, yes, it was critical.

Q. Why was that?

A. Some very simple reasons. One is that this catalog --

MR. SHARTSIS: Your Honor, may I first interpose an objection and request that we have a foundation laid that Mr. Koch read this word for word, so we have a foundation, rather than talking about it in generality?

MR. HUESTON: I established a foundation. But I'm happy to ask that question, too.

THE COURT: OK.

Q. Mr. Koch, do you recall reading this cover letter?

A. Yes, I do.

Q. Turning back to it, was this important to you?

A. Oh, yes.

Q. Why was that?

A. Because of what it said. It basically said that this catalog was about one collector's collection and an outstanding, very knowledgeable collector, and it was the best of the best. I'll tell you why that was very important to me.

Q. OK. Why is that?

A. One is most auction catalogs, wine catalogs, have a whole lot of different collectors in it and they don't identify that as one collection. You always worry about it, that you get someone's bad wine or someone is selling off what has been described here before as his garbage. The other thing about it was it described how he went about getting it and how knowledgeable the collector was, he described where the wines came from, all of which to me are very, very important items or facts to know.

Q. I would like to direct your attention to portions of this. To be clear, did you read this cover letter in its entirety?

A. Yes, I did.

Q. Let's go to the first paragraph of it. You can look at your copy, Mr. Koch, and we'll put it up on the screen for others to read so you don't have to switch glasses. Is there anything in the first paragraph that was of importance to you?

A. Give me a second to read it, please.

Q. Sure.

A. Oh, yes. This was very interesting to me. Do you want me to tell you why?

Q. Yes, please.

A. "Passionate collectors," "unlimited resources," "amass treasures of quality and quantity." "Quality" is a key word. In my giving in to the wine business, I started off in college drinking things like wine in a box and Mogen David, etc.

Q. That's the kind of stuff I still drink.

A. Then, by trial and error, I improved and improved and improved, or my taste did. I want the highest quality. So quality was highly important to me.

After that, in the sentence, how could the Havemeyers acquired so many paintings by Degas. Degas is an outstanding artist. This is saying that the collector has the same taste or similar tastes to the Havemeyers, who acquired the best. How could William Randolph Hearst ever find enough space to display all those late medieval and Renaissance tapestries and sculptures, or the Saachis -- I can't pronounce the word, I'm sorry -- all of those contemporary paintings? Alexander the

Great of the collecting world. That says that the collector is Alexander the Great. He's up there with the highest collectors in the entire world. Of course, this is a once-in-a-lifetime opportunity to buy the greatest wine from one of the greatest collectors.

Q. Let me direct your attention to the second paragraph, blow it out there. I will ask if there was any of this that was of importance to you.

A. May I read it, please?

Q. Yes.

A. Wow. Do you want me to go through it?

(Continued on next page)

BY MR. HUESTON:

Q. Well, what I --

A. Or do you want to point things out to me?

Q. Well, I'll tell you what. Why don't you, if you can remember, describe for the jury what was of importance to you when you read this, when you received the catalog.

MR. SHARTSIS: Your Honor, I object. What's happening is, he is reading to the jury what's in the catalog and then saying, whoa, look at this. Why doesn't he testify about what he remembers without having his recollection refreshed, because this is just priming the witness to testify. Let him just say, I read it and here's what I recall and here's what was important to me. Because this is an improper examination. This doesn't give us live testimony of what this man believed at the time.

MR. HUESTON: Well, that's totally untrue. He's described in general why this was important and I've asked him to look at this and recall what portions of this were significant at the time. That's what we're doing.

MR. SHARTSIS: Your Honor, the case is about specific misrepresentations. Mr. Koch apparently is arguing that in 2005 he had specific representations that he relied on, and in 2013 we're placing a text in front of him and having him comment on it. I think he should be required to say from his recollection of 2005 that which he relied upon.

THE COURT: Well, the document's in evidence. I'm not going to limit how Mr. Hueston can use the document. I mean, it's up to the jury to decide credibility and to decide, you know, what he says he remembered. He says he read it. There's nothing improper about him using the document, I don't think.

MR. SHARTSIS: Your Honor, I don't dispute the document is in evidence. I do dispute that the witness ought to be able to say, what I really remembered I relied upon in 2005 was this, instead of having somebody put something in front of you and say, hey, how about this one?

MR. HUESTON: That's totally improper argument and mischaracterizing what Mr. Koch has already said. He's already said he looked at this and he really relied on it, and we're going into specifics, which is what anybody would expect.

May I proceed?

THE COURT: You may proceed. Overruled.

BY MR. HUESTON:

Q. So Mr. Koch, directing your attention to the first sentence, was there anything in the first sentence of significance to you?

A. Oh, absolutely.

Q. What was that?

A. That it says, "So it is with the extraordinary collection of wine, which comprises the entire catalog." That says it's one collector in this entire catalog and he's one of the best

collectors ever.

Q. What about the next sentence? You mentioned this earlier before I showed it to you. It says it is a best of the best collection. Did that have meaning to you?

A. Well, that's the third sentence. The other --

Q. Sorry.

A. -- said, "This collection is all about the best producers, vineyards, and vintages." And that's what I'm interested in. That's best producers, best vintages, best years. And it says the best of the best. And --

Q. Was he --

A. -- being an obsessive collector, I want the best of the best.

Q. And directing your attention to a couple sentences later, "A collection like this could only be put together with tremendous thought, energy, and great knowledge of wine." And it follows, "The consignor was incredibly energetic in amassing his collection, which he did on his own." Was that of significance to you?

A. Oh, absolutely. Said that the collector was extremely knowledgeable, he put a lot of energy into it, a lot of study, and he went after -- he was very energetic in getting the wine, which he did on his own, which means he didn't use resellers.

Q. Okay. At the bottom of the paragraph, it says, "Several smaller sales have taken place, but this is and will be by far

the largest." Mr. Koch, was that of significance to you?

A. Yes, it was.

Q. And why is that?

A. Well, there's more in here that was of significance to me.

Q. Go ahead.

A. It -- this offering represents less than a third of his current inventory. It also said that here, after many years of intensive buying, he felt that he had more wine than he needed. I've been in that position too. And so I said, well, I can understand why he'd be getting -- he'd be downsizing his collection. My wife's always after me to do that.

Q. Sir, did you get any sense that the consignor was in the business of selling wine?

A. No, not at all. I got in the -- I got in the sense that this was a kindred spirit to me and that he loved wine and all he was doing was downsizing. He wasn't a seller, he was a collector. Reseller -- sellers and collectors are oftentimes different animals.

Q. And, sir, what's the difference to you in buying from somebody who might be in the business of selling versus buying from really a collector or exclusively a collector?

A. A collector generally wants the best. He wants real wine. A seller just wants to make money off the wine. He doesn't care whether it's real or not. All he cares is about getting his commission. It's like a stockbroker.

Q. Did that affect your decision to decide to buy from an auction or a catalog or not?

A. Yes. It meant that this was a very, very good collection with real wines in it to me.

Q. All right. Briefly, I want to just go to the next paragraph. I won't do everything here unless you want to point something out yourself.

In the next paragraph, at the bottom part there's a statement, "On Occasion Burgundian and Rhone rarities were purchased directly from the domains as well as from other collectors who are personal friends of some of the world's greatest wine makers. The balance of the collection -- and much of the 'sizzle' -- is provided by older and often extremely rare examples of wines made by previous generations operating the same domains that provide such great wine today." Was any of that language of significance to you?

MR. SHARTSIS: Your Honor, I object. He's leading the witness. He's saying: Hey, how about this? That's all that's going on here, your Honor. I mean, this is leading the witness. He's reading the statements to the witness.

MR. HUESTON: There's no question that satisfies opposing counsel. I took it that he wanted something more directed and that's what I'm doing. I'm happy to step back and keep it more general. That's perfectly fine.

MR. SHARTSIS: Your Honor, my point is, you read

something to the witness and say, what about that, or, wasn't that important to you, that's clearly leading this witness to give testimony the lawyer's presenting.

THE COURT: Please rephrase the question.

BY MR. HUESTON:

Q. Okay. Sir, looking at that next paragraph, was there anything of significance in that paragraph to you?

A. Oh, yeah. He said he got a lot of the wines from the original makers, and you can't get any better than that. He also said that -- in here that he got it from other collectors rather than getting it from resellers, and that's highly important. Then he said that he got some previous generation, or wines -- older wines which are very hard to get, and he got those from very good sources.

Q. And why is that of significance?

A. So that's what it said to me.

Q. And why was that of significance to you?

A. Well, because a collector wants to make sure he gets something real. As I said before, a reseller is like a used car salesman. He doesn't care what the car is as long as he gets his commission.

Q. Let's -- if we can, I'd like to direct your attention to the second page of the cover letter.

And I was going to direct your attention to the big middle paragraph, but if you want to, if there's anything in

the first paragraph you'd like to mention, that's perfectly fine.

A. Well, the first paragraph basically says he's got some outstanding years, older rarities, which interest me a lot. The second paragraph --

Q. Yes.

A. Well, one thing that highly caught my attention is the second sentence which it's, "Most unusual, however, selection of 19th Century Bordeaux and Right Bank wines from 1921 through 1961 vintages, and bottles of 1811, 1832, 1864, and 1865 Lafite, as well as the 1864 and 1865 Latour are of similar provenance to those tasted by Michael Broadbent at the Jaeger tasting in 2001 and noted in his recent book 'Vintage Wine' as some of the greatest pre-phylloxera bottles he has ever tasted."

Q. Why was that of note to you?

A. Well, as I said before, I was trying to collect every year of Lafite and Latour as well as Petrus and Mouton, and here he has some of those wines that I didn't have, so -- and he -- he said it was similar provenance to those tasted by Michael Broadbent, who, at the time, was considered a great wine connoisseur and who liked to have very good provenance. Provenance to me is critical.

Q. What is that to you? Why is that significant?

A. Well, I looked the word up in the dictionary recently, and

basically provenance says owner, previous owners, but to me it means more than that. It means the -- not only the owner but it means how the wine was kept over the years, and that's highly important because wine can deteriorate if it's not kept properly.

Q. Okay. Is there anything else in that paragraph of note, before we go to the last paragraph?

A. Yeah. It says, "Multiple examples of extremely rare magnums of Bordeaux Right Bank wines from 1900 to 1961 -- Petrus, Cheval Blanc, L'Eglise Clinet, and Lafleur -- reflect the excitement over the 'rediscovery' of these wines, many of which were given perfect or near perfect scores by Robert Parker in the third edition of his influential book 'Bordeaux' published in 1998." Petrus, Cheval Blanc, and Lafleur to me are absolutely great wines. It's like collecting a Picasso, a Renoir, a Monet, etc. And in those years, 1900 to 1961, they're very hard to find. Also, magnums to me were very important, and there's a very simple reason for that is that bottles that are -- the bigger the bottle, the less the wine ages, and the reason for that is that what causes wine to age is the diffusion of oxygen through the cork into the bottle that starts a chemical reaction. If there's a higher temperature, the reaction proceeds faster. My 13 years at MIT, that's what I learned. There's very few things that I kept, unfortunately, but one is that -- is that with each 10 degrees

increase in temperature, it doubles the rate of chemical reaction. So you want to keep it at a very -- at a modest temperature.

The other thing that's important is the ratio of the surface area of the cork to the bottle, to the volume in the bottle. If you have a small, small bottle like this and the air diffuses through here and then it gets into here and the concentration of air in here is what -- what ages it. If you have -- even though the cork is bigger on a bigger bottle, if the volume is much bigger, it means the concentration is much lower of oxygen and therefore the slower the chemical reaction and the deterioration.

So getting magnums was highly important to me because that means there's a higher probability that the older wine will have aged less than in smaller bottles.

I'm sorry. I'm an -- I'm a nerd engineer and so that --

Q. I learned something as I listened.

A. Yeah.

Q. Is there anything else in that paragraph that you'd like to highlight before we move to the last one?

A. Well, Robert Parker -- one of the ways that I chose my wines when I had to taste it was by reading some of Robert Parker's Wine Advocate. That's a publication he put out, and if he rates something a hundred, a hundred, I say I want to buy

that just to taste it and find out what it's like and see if I like it. So that was important to me.

Q. Okay.

A. Well, there's another thing that's important here. He said he opened a magnum of Lafleur '47. Lafleur is a very rare wine. It's close to Petrus and it makes very little bottles from what I understand, so I happen to like that a lot. And the fact that they had some of those and someone tasted it and that was the same bottle that was going -- similar or identical or the twin or the -- of some of the bottles that were going up for auction, to me that said it was important. It was a blessing. Someone had blessed the bottles.

Q. Okay. Let's go, if we can -- anything else there before we go to the last paragraph?

A. No.

Q. Okay. Let's go to the last paragraph, and I'll ask you if there's anything there that you recall of significance to you as you reviewed the cover letter in the catalog.

A. Oh, yeah. This was also important to me. It was interesting that it says in here, "Auction is democratic," which it is. Anybody can buy from them, as long as you pay your bills. It has many lots of magnificent wines. The auction house built a strong relationship with the seller over years, both at retail and auction. And it's considered one of the greatest consignments ever auctioned. And a chance to

acquire some of the greatest wines of all time, in depth and breadth. And they fashioned a sale -- just what I was worried about with other auctions. I didn't want a sale that involved loose ends.

Q. What did you understand that to mean?

A. Well, miscellaneous wines that people prune out of their cellars. This was a real collection with balance, selection, and rarity. That to me -- those were real keywords. It wasn't a lot of miscellaneous junk from a lot of different people. It was just one guy, a fabulous collector, the Alexander the Great of collecting, and some of his outstanding -- most outstanding wines, the best of the best.

Q. Sir, when you read this, did it raise in your mind any doubts about the provenance of the bottles that were being offered for sale in this catalog, 17,000 Bottles of Greatness?

A. Not at all. In fact, it gave me a lot of confidence that it had been thoroughly vetted and checked and it had absolutely great wines in it of -- that were authentic.

Q. And after reading this, did you believe you had any reason to be concerned about provenance or authenticity of the bottles being offered for sale?

A. Not at all.

Q. Mr. Koch, you said you also reviewed the specific wine descriptions in the catalog?

A. Yes, I did.

Q. Okay. And I'd like to have you turn, please, to page 42 of the catalog. Page 42 of the catalog has, at lot 357 and 358, two of the bottles at issue in this case. Is this an example of the descriptions you were reading, sir?

A. Yes.

Q. And did you read these descriptions before deciding to purchase the wine?

A. Yes.

MR. HUESTON: Let's blow out the description, please, in Chateau Cheval Blanc 1921.

Q. And I'll direct your attention to that. Sir, as you read that description at the time, did you think it was a truthful description?

A. Yes, I did.

Q. And was there anything in that description that raised a concern or an issue with you in terms of authenticity or genuineness of the bottles offered there?

A. Not at all.

MR. SHARTSIS: Excuse me, your Honor. Perhaps we could have which description he's referring to. There's a long quote there, which is an opinion.

THE COURT: When you say description, was the question about any particular part or --

MR. HUESTON: Yeah, sure. Let me be more precise.

Q. There is the title of the bottle, Chateau Cheval Blanc

1921. You see that?

A. Yes.

Q. Okay. And when you saw that, what did you expect was going to be offered?

A. Chateau Cheval Blanc 1921.

Q. From the actual year?

A. Yes.

Q. Okay. And below it there is in bold italics some language. What did you understand that to be?

A. Well, that was a description of the bottle and -- description of the bottle and a slight description of the label and the capsule.

Q. And it says, "top shoulder, nicked and scuffed label, capsule cut to reveal fully branded cork." Is there anything in that description that raised any concerns to you about doubt of authenticity?

A. Not at all.

MR. HUESTON: Okay. Let's go to page 51 of the catalog.

Page 51 of the catalog, lot 409, blow it out here.

Q. It's a description of the Chateau Latour 1928. Do you see that there, sir?

A. Yes, I do.

Q. Okay. Is that one of the bottles that you purchased?

A. Yes.

Q. And there's a description there. Is there anything -- when you read that description, what was your view of what you were buying?

A. I was getting Latour 1928.

Q. And again, looking at that italicized bold language there, was there anything in that description that made you concerned about doubt or authenticity of the bottle in any way?

A. No.

Q. Go to page 57, lot 443. And we're going to pull up three here, 443 -- if we can do it on the screen, sir, 443, 445, and 446.

We'll start at 443. That is -- that lot is Chateau Petrus 1921. Is that one of the bottles you bought, sir?

A. Yes.

Q. And --

MR. HUESTON: Sorry. Let's just start -- we're going to crowd the screen. Sorry about that. Let's just stay on that one for a moment.

Q. And what in that description was meaningful to you?

A. Well, it was Chateau Petrus 1921, extremely rare.

Q. Anything in the description, in the bold italicized description of the bottle that gave any suggestion to you or hint that there was a concern about authenticity of the bottle?

A. Not at all.

MR. HUESTON: Let's go down to lot -- further down in

the page, lot 445. There it is.

Q. 445 is the first of two Chateau Petrus 1928 bottles. Anything there in the description, including the italics, that gave any concern about authenticity?

A. No, nothing.

Q. And how about the next one, 446?

A. No.

Q. Now there are notes there, "scuffed label, wine-stained label." Are those notes of concern?

A. No.

Q. Why is that?

A. Well, if you'd expect this wine to be in the cellar since 1928, you would expect the label to be stained and somewhat scuffed.

Q. Let's go -- and these were bottles that you purchased as well after reading the descriptions?

A. Yes.

MR. HUESTON: Let's go to the next page, page 58, lot 448.

Q. It's a Chateau Petrus 1950, first of three descriptions. This is 448. And anything in the description here that raised any concerns or issues or doubts?

A. None.

Q. Now I've noticed that some of these do have quotes down below. What are those quotes generally about?

A. Well, they're about what someone who would taste it had written about it.

Q. Tasted some other kind of bottle that was a 1950 Petrus, for instance?

A. Yes.

Q. Okay. But not this very bottle, right?

A. No. How could you taste it and then sell the bottle? Or sell the bottle with the wine in it? It was obviously an identical or similar bottle.

Q. Okay. Any suggestion or concern in here that raised an eyebrow or caused you to be concerned in any way?

A. No.

MR. HUESTON: Let's go to -- we can put these two up because they're very short entries, the Chateau Petrus at lot 449 and 450.

Q. Do you see those two, sir?

A. Yes.

Q. And when you read those, what did you think was on offer?

A. Petrus 1950.

Q. Any concern or issue raised here in terms of authenticity or any other kind of issue with the bottle?

A. Nothing at all.

MR. HUESTON: Let's go to page 62.

Q. Page 62 has several lots of Chateau Lafleurs, and you said earlier, sir, that these were some bottles of interest to you,

the Lafleurs?

A. Yes.

Q. Do you recall reading the descriptions of the Lafleurs?

A. I read them at the time but right now I don't recall it, but I know I did.

MR. HUESTON: Okay. Let's look at lots 479 and 480.

Q. Do you see those two at the top, Chateau Lafleur 1921 and lot 480, Chateau Lafleur 1921?

A. Yes.

Q. Are those two bottles at issue in the case?

A. Yes.

Q. Anything in the description there that raised an issue, concern, or doubt about the authenticity of those bottles?

A. No.

Q. And further down in the page, lots 481 and 482, they are for Chateau Lafleurs 1945, right, sir?

A. Yes.

Q. Are those two bottles purchased in the case?

A. Yes.

Q. Anything in those descriptions that raised any concerns, issues, or doubts?

A. No.

Q. Turning to the next page, some additional Lafleurs. Look at lot 483.

MR. HUESTON: Can we blow that one out.

Q. That's a description for a Chateau Lafleur 1945. Do you see that?

A. Yes.

Q. And what did that description tell you?

A. It was Lafleur 1945.

Q. Any concern or issue raised about authenticity there?

A. None.

Q. And then let's go to lots 488 and 489 in the same page. Those are for Chateau Lafleurs 1949.

MR. HUESTON: Put them up there.

Q. Are those two other bottles that you purchased?

A. Yes.

Q. And do these descriptions raise any issues about authenticity or raise any other concerns or doubts?

A. No.

Q. Going to the next page, page 64. We're getting towards the end.

A. Yes.

MR. HUESTON: Okay. Let's get up lots 492 and 493.

Q. Chateau Lafleur 1950. Did you purchase those?

A. Yes, I did.

Q. Anything in that description that raised any concerns about authenticity?

A. Not at all, no.

Q. And the next one, 494, any concerns there?

A. No.

Q. And I want to talk about another one.

MR. HUESTON: Let's go back to page 49, lot 324.

MR. SHARTSIS: Sorry. Number again, please?

MR. HUESTON: Page 49. One moment. I may have --

Q. Okay. Let's pull up, sir -- lot 394 on page 49 describes a Chateau Lafite Rothschild 1945. Do you see that?

A. Yes.

Q. Anything in -- is that one of the bottles that you purchased as well?

A. Yes.

Q. And anything in this description that raised any suggestion or concern about authenticity?

A. None, no.

Q. All right. Now you heard Mr. Greenberg testify that a Lafite that he had returned from John Kapon, he sold to you through the Zachys auction, this 1945 Lafite. Do you remember that?

A. Slightly.

MR. HUESTON: Okay. And let's pull up Exhibit 389, which is already admitted into evidence, which is the e-mail from Mr. Kapon in November of 2004, about nine or ten months before this auction. And specifically I'd like to blow out and highlight the description that Mr. Kapon stated that he would need to make for this same bottle. The 1945 -- if we can blow

that out, please. Can you highlight that in yellow? Great.

Q. Mr. Koch, do you see that before you?

A. Yes, I do.

Q. Now does this description raise any concerns to you about authenticity or other issues about the bottle?

A. It certainly does.

Q. And what is it about this description that raised concerns?

A. Photocopied label.

Q. Had you seen --

A. Mature --

Q. Go ahead.

A. Photocopied label, that was the main thing.

Q. Mr. Koch, had you seen a disclosure of photocopied label next to the 1945 Lafite, would you have bought it?

A. No.

Q. Why not?

A. Because I wanted a real label on a bottle. Photocopied label means it could have been done with a Xerox or some other machine, and it meant that a faker could have put it together.

MR. HUESTON: Okay. We're done with the auction catalog for now.

Your Honor, is now a good time for a morning break?

THE COURT: We could. It's -- yeah, it's 11:04. Why don't we take a break.

Ladies and gentlemen, we'll take ten minutes. Please

leave your pads on your chairs. We'll see you back in ten minutes.

(Jury excused)

(Recess)

(In open court; jury not present)

THE COURT: Okay. Please bring the jury.

(Jury present)

THE COURT: Okay. Mr. Hueston, you may proceed.

MR. HUESTON: Thank you, your Honor.

BY MR. HUESTON:

Q. Mr. Koch, I want to turn to a new topic and I'd like to ask you, before the October 2005 auction, did you try to inspect the bottles up for auction?

A. No, I did not.

Q. And why not?

A. Well, this letter was so glowing, so overwhelming, I said, what's the need to do it?

Q. There have been suggestions by opposing counsel in opening statement that you were investigating a Mr. Rodenstock and, sir, by 2000 -- October 2005 did you have a belief that counterfeiting was widespread and prevalent in the community?

A. Not at all.

Q. And what about this Mr. Rodenstock? When did you first get interested in him and what's the situation with that?

A. Well, I bought, in 1988 -- I think it was November and

December 1988, I bought four bottles of wine attributed or claimed to be Thomas Jefferson's bottles. They were very old bottles, very old glass, and they had an inscription carved into the bottles with say Chateau Lafite 1787, Th.J, for Thomas Jefferson, and claimed to be Thomas Jefferson's, and I bought those not to drink them but because they were supposedly owned by Thomas Jefferson, and he loved wine, and so it was great to have an artifact from one of our greatest presidents and founders of our country.

Q. And do you recall roughly what you paid for those bottles, each wine?

A. I paid different prices for them, but I -- all totaled, I think it was about $400,000 for four bottles of wine, average hundred thousand each.

Q. And were you paying that money for the liquid inside it or the bottle or what?

A. I didn't know what the liquid inside of it is, the probability of being vinegar. That's what wine deteriorates to is vinegar. And so I -- no, I was buying it because it was a Thomas Jefferson artifact and very rare and very unusual, and I was a wine lover and he was a wine lover.

Q. After you bought it did there come a time when you began to become concerned about whether they were real?

A. In 1991 there was an article that appeared in Wine Spectator, the title of it was "Authentic old bottles but did

they really -- were they really owned by Thomas Jefferson?" I think that was the title. I may be a little bit wrong on it. I read that -- I read that in 1991, but at the time between '91 and '92, I was doing the America's Cup. That's a situation where you have to be -- I did it 12 to 15 hours a day, seven days a week.

Q. The America's Cup work?

A. The America's Cup, yeah, for a year and a half, two years, and in fact --

Q. It took you out of circulation?

A. Well, they say you got to be committed to the commitment and --

MR. SHARTSIS: Your Honor --

THE COURT: Hold on. What's the objection?

MR. SHARTSIS: Could the witness answer the question without the lawyer suggesting what he wants the witness to say, please.

THE COURT: Please rephrase. What's the question?

MR. HUESTON: Your Honor, I just asked him more detail about what he was discussing. My question was:

Q. Took you out of circulation?

A. Totally. And then when I got back in 1993, I -- I -- I said, I got to check out this Thomas Jefferson thing, so I asked my in-house counsel to hire a lawyer -- or hire someone in Germany to go check it out. This Hardy Rodenstock was the

one who supposedly found the Thomas Jefferson in a -- as he said, in a walled-up cellar in a house in which Thomas Jefferson lived in Paris, and we had a lawyer investigate it. He came back and said, this all occurred because Hardy Rodenstock was in a fight with a fellow by the name of Frericks, the wine had been tested at a university, and it was carbon dated to be of the period. And there was an article I think in Rarities or something, said the final word on Hardy Rodenstock is all finished, Frericks had been discredited, the bottles are original, so I forgot about it.

Q. Did there --

A. We closed the case.

Q. Sorry about that. Go ahead and finish.

A. We closed the investigation. I said they're real. And in fact I used to take people down to my cellar and say, "You want to see Thomas Jefferson bottles?" And everybody said, "Yeah, I want to see them."

Q. Did there come a time later on where you became concerned again?

A. Absolutely.

Q. Roughly when was that?

A. March of 2005.

Q. And why did you become concerned later in time?

A. I'm trying to make a long story short. The Museum of Fine Arts in Boston wanted to show my collection -- 'cause I had

everything from guns to Indian artifacts to fine art, to statues, etc., etc., boat models -- at the -- at the museum, to show what a real collector does rather than a museum. And they wanted to put in some of the wine, and in particular they wanted to put in the Jefferson wine, or the Jefferson bottles. I said, "Well, you can't do that, because you put them in bright lights, standing up straight, the cork will shrink and fall in and destroy it." They said, "Oh, we can do anything." So I finally said no, but -- I said, "No, but I'll give you some empty bottles of the old period" that I had, and they said, "Okay, we'll want to put them in the catalog, but we need to know the provenance on it." And I said, well, I haven't got time to check out the provenance, so I assigned it to someone in my office, a fellow by the name of Brad Goldstein. I said, "Here, you find out the provenance of it."

And so first thing he did was call up the Monticello museum, the Jefferson Museum in Virginia. He got a response back that was shocking. He said -- he said they told him, I think it was -- I've forgotten the name of the person. Her last name was Stein. Ms. Stein said: Jefferson never bought Lafite or Mouton, and he never had his bottles engraved, and we have 95 percent of his records 'cause he was a compulsive recordkeeper, and they said we've gone through his stuff, and he never had any bottles engraved so we think they're fake, and we did a report on it. And I said, oh -- he came back and told

me that and I said, "Oh, damn it. Now I got to have another bloody lawsuit." Well, anyway, we started an investigation then of Hardy Rodenstock and these Jefferson wines. And we --

Q. Mr. Koch?

A. Yeah, sorry.

Q. Let me ask you, in terms of that, after March of '05, did you then go forward with an investigation of Hardy Rodenstock and these Thomas Jefferson bottles?

A. Yeah, we focused entirely on the Jefferson bottles and Hardy Rodenstock.

Q. And is that true in October of 2005?

A. Yes.

Q. And any clue by October 2005 from that that counterfeiting was a widespread phenomenon in the wine industry?

A. No, not at all. My only thought was that -- well, I could tell you what my thought was at the time was that these Jefferson artifacts were faked and we got to get to the bottom of it and we got to prove that they're fake because there have been instances where they, you know, they said they were real, they were fake, and then someone said they were real, so I said we really got to dig into it. And I didn't -- I thought the wine industry -- the rare wine business was so -- was relatively small and why would a faker fake wine. I didn't -- it never occurred to me at that time.

Q. All right. Mr. Koch, did you at one point own -- have an

ownership interest in the Chicago Wine Company?

A. Yes.

Q. And do you remember roughly when that was?

A. Yeah. I owned it from -- I owned a 50 percent interest from 1989 to 1996 or '7.

Q. Okay. And what was the nature of that interest?

A. I was a passive investor.

Q. And what does that mean, passive investor?

A. Well, I only visited the place once, and I was just buying it the way you would buy a stock on the --

Q. Of a company?

A. Of a company on the stock exchange.

Q. Okay. So you had no involvement in day-to-day operations?

A. Not at all.

Q. Or even month-to-month operations.

A. That's right.

Q. Okay. And let me ask you about something else. Have you ever tasted a bottle of wine and found that it was bad wine?

A. Oh, yeah. Lots of times.

Q. Okay. And what is that to taste a bottle and find it bad?

A. Well --

Q. What does that mean?

A. Wine deteriorates over time and it can -- and they call it -- it could deteriorate for any number of reasons. It was kept at a high temperature. I think you heard yesterday how

wine can change from Maureen Downey. She's absolutely right. It can change with time, and particularly, as I said before, temperature really affects it. If it's exposed to bright sunlight. And if you buy a lot of bottles of old wine, there's always bound to be one that is bad, and sometimes the corks aren't very good and they deteriorate, and when they deteriorate, oxygen diffuses in and it will destroy the wine. So when I go down and open some old, old vintages, open a bottle and say, this is bad, it's turned or it's corked, and then I go back, I've gone back and opened another bottle from the same source or in the same bin, it's good. It's just a probability. It's an error rate.

Q. Mr. Koch, let me direct your attention to one bottle in particular. Do you remember tasting a bottle of 1921 Petrus and finding it was bad?

A. Yes, I sure did.

Q. And what do you remember about that?

A. Well, we tasted it in -- I think it was June 4th, I think -- I have to look back -- in 2004.

Q. Now you just named a date years ago. How is it that you have that specific date in mind?

A. Well, I was asked about it at my deposition. I didn't know the date then, and I went back and looked at my database and found out when I took the bottle out.

Q. Okay. And what happened with that bottle when you took it

out?

A. Well, opened it up, poured it out, looked fine, tasted it, and it tasted off. It didn't taste like Petrus, 1921 Petrus.

Q. Now when you first tasted it, did you think, aha, must be counterfeit?

A. No, I thought, luck of the draw, I got a bad bottle.

Q. Did you at some later point in time begin to suspect that it might be counterfeit?

A. Absolutely.

Q. And roughly when was that?

A. That was sometime in November, I believe, of 2005.

Q. Let me get back to this idea of inspection. You said the catalog gave you no reason to even think about inspecting. Let's pretend the catalog gave you a real concern to go inspect. Back in 2005, sir, would you even have known what to look for or to do to inspect bottles of wine?

A. No.

Q. Did you have any training or expertise in that?

A. No.

Q. Did you have experts at hand who knew how to authenticate wine?

A. No.

Q. Before an auction do you know necessarily which wines you're going to win at auction or not?

A. No. Well, the only way I know I win is I have to say, I'm

going to pay, even though it goes to the moon, and generally I set a maximum of what I won't go over.

Q. So in this auction, sir, do you remember roughly how much wine you bought?

A. 2,669 bottles.

Q. And before you bought that, if you -- let's say you were going to go in and inspect, would you even know which bottles to inspect before purchasing?

A. No.

Q. Let's go now to the Zachys auction. Now you did not actually attend that auction, the actual auction.

Oh, you know what? I forgot one thing. Before we get to the auction, did you attend a promotional event for the auction right before the auction?

A. Yes.

Q. And what was that?

A. That was a -- a wine dinner and tasting put on by Zachys at restaurant Daniel's, you know, a very fancy restaurant here in New York City.

Q. Okay. And was that a time to inspect bottles?

A. No. How are they going to show 17,000 bottles in a restaurant?

Q. Let's go to the auction itself in October 2005. You didn't attend that auction personally.

A. No, I did not.

Q. Who was there to bid on your behalf?

A. Well, there was a fellow that I had used to advise me on what vintages were good and what were bad and what he thought the great wines were. That was a fellow that worked for a long time at Christie's, a fellow by the name of Brian Orcutt. I consulted a lot with him before the auction, and since I didn't want to be at the auction 'cause I had a company I had to run, I'd been away from it for a while, I said: You bid for me.

Q. Okay. So did you consult with Mr. Orcutt before the auction happened?

A. Yes, I did.

Q. Is that part of the services he provided?

A. Yes.

Q. All right. And then he attended the auction?

A. Yes. Well, he was going there anyway, so I asked him to bid for me.

Q. All right. And then you bought the wines that you just described, about 2600 bottles?

A. More like 2700 bottles.

Q. All right. Let me just put before you the invoice.

I'm handing you what's been marked for identification as Trial Exhibit 20 -- I'm sorry -- Trial Exhibit 100. Do you have that in front of you, sir?

A. Yes, sir.

Q. And do you recognize Trial Exhibit 100?

A. Yes, I do.

Q. What is it?

A. It's an invoice from Zachys to me.

MR. HUESTON: Your Honor, at this time we'd move Exhibit 100 into evidence.

THE COURT: Any objection?

MR. SHARTSIS: No objection, your Honor.

THE COURT: 100 received.

(Trial Exhibit 100 received in evidence)

Q. All right. And just briefly, sir, paging through this, is this an invoice of the wines you bought at the October 2005 auction?

A. Yes.

Q. And to your recollection did you pay for the wine after receiving the invoice?

A. Yes.

Q. And to your knowledge were the wines that you purchased shipped to you after the auction?

A. Yes.

Q. And where were the wines received?

A. You'd have to ask Mark Curley that. I'm not sure if they were shipped to Cape Cod or they were shipped to Palm Beach.

Q. And Mr. Curley was the one managing your wine collection at that time?

A. Yes.

Q. All right. We'll do that. In fact, he will be the next witness in this case.

(Continued on next page)

Q. I thought I was done with the catalog, but I've got to go back to it. If you could put the catalog back in front. Before I turn you to a page there, Mr. Koch, at the time that you purchased the wines at Zachys auctions, did you trust that the representations made in the catalog were truthful about the producer and vintage of the wines?

A. Yes, I did.

Q. Did you believe that Zachys and the consignors stood behind the wines they sold at auction?

A. Of course I did.

Q. What do you think it means for an auction house and a consignor to stand behind their wines?

A. That they are representing that these wines are true and real and as described in the catalog.

Q. You have heard some discussion in this trial about an as-is disclaimer. Let me turn your attention, if I can take you to page 238 of the catalog. Do you see that in front of you? There is this section here, "Conditions of sale and limited warranty."

A. Yes, I do.

Q. Do you know if you read this section before bidding on the wine or having someone bid on the wine at the October 2005 auction?

A. No, I did not read it.

Q. Have you seen since then words like this?

A. Yes.

Q. That you examined about this?

A. Yes.

Q. Let me draw your attention to the first numbered paragraph, "Conditions of sale." The first sentence begins with "The authenticity of property listed in the catalog is guaranteed only as stated herein." Then it goes on, "and otherwise all property is sold as is." Have you reviewed this language since the time of the catalog?

A. Yes.

Q. What does that language mean to you?

A. And I've litigated it, too.

Q. Put that aside. What does that language mean to you?

MR. SHARTSIS: Your Honor, I'm going to object this. There is no evidence that Mr. Koch read this. It's a legal conclusion he is about to give. The Court will instruct on what the language means. Mr. Koch's opinion about what the language means is not what the Court's required construction is.

THE COURT: He testified that he did not read it, is that right?

MR. HUESTON: He testified he did not recall reading it. I can ask if he remembers reading language like this around the time of this sale. I have a different question, your Honor.

THE COURT: I'm going to sustain the objection as to his understanding insofar as it is essentially a legal issue as to what the meaning of that language is.

Q. Mr. Koch, you don't remember reading this page at the time. Did you have an understanding that a page like this was included in the catalog at the time you received it?

A. Yes.

MR. SHARTSIS: Objection, your Honor. Mr. Koch, excuse me. I need to object. Mr. Koch has not said he didn't recall reading it, your Honor. Let's find out through the testimony. And I can make an offer of proof from what he has stated under oath at deposition. He says he did not read it.

MR. HUESTON: Your Honor, I have been cut off. The question I'm trying to get out is that Mr. Koch had an understanding that language just like this was in the catalog, and he is going to give an explanation about what he understood about it, regardless of whether he read these very words at the back of the catalog.

THE COURT: He can testify about that.

Q. Go ahead, sir.

A. I looked at a number of auctions, catalogs, read of bunch of these before, read them in Sotheby's catalogs and Christy's catalogs, and I have a very strong opinion of what that means.

Q. What is your opinion?

A. It's BS.

Q. Why do you feel that way?

A. Because this is a license to steal. I got in a number of arguments with the other catalogs, sellers, that they can describe something in the catalog, they can make big pictures about it, put glowing opinions in it, and then they say you can't rely upon what we tell you and therefore the as-is clause gets us out and we could sell you a fake and it's too bad, buddy. That's how I read this. It's a clause they use to let them steal and cheat.

Q. Mr. Koch, I want to briefly turn your attention to what is marked under paragraph 11 here, under the conditions, the reference to the respective rights and obligations of parties with respect to condition of sale and governed and interpreted in accordance with laws of the State of New York. Are you familiar with that being a part of these?

A. Yes.

Q. What was the significance of that?

MR. SHARTSIS: Your Honor, I object. Let's have a foundation that he actually read this.

MR. HUESTON: I have already provided the foundation, your Honor.

MR. SHARTSIS: That he read this?

MR. HUESTON: He said he hasn't read it. He said he has read very similar ones with the same sort of language that informs his views and belief.

MR. SHARTSIS: Your Honor, this is actually a case about this auction and this catalog.

THE COURT: I am going to sustain the objection.

Q. Sir, do you recall reading this --

MR. HUESTON: I'll try one more question, your Honor.

Q. -- this language or language substantially similar at or around this time?

A. Yes.

MR. SHARTSIS: Same objection, your Honor. Language substantially similar. This auction catalog is the issue, not substantially similar. I object.

THE COURT: Sustained.

Q. Let's move on from that. Sir, did you also sue Zachys over these 24 bottles?

A. Yes, I did. Well, I don't know whether these 24 bottles, but I did sue them.

Q. Why is that?

A. Because I because I bought some fake wines from their catalog and I believe they were responsible for it.

Q. Did you conduct some discovery in the case?

A. Yes.

Q. Did you learn information?

A. I learned -- yes, I did.

Q. Did you later reach a settlement with Zachys?

A. Yes, I did.

Q. You mentioned Mr. Rodenstock. Did you eventually file suit against Mr. Rodenstock?

A. Yes, I did.

Q. Do you remember roughly when that was?

A. I believe it was in 2006, but I could be wrong.

Q. Does August of 2006 ring a bell?

A. Yes, that's correct.

Q. There has been mention of Christy's. At some point did you file a suit against Christy's?

A. Yes. I bought -- of the top four -- well, they were in the top people who sold me fake wines.

Q. Do you recall roughly when you filed suit against Christy's?

A. I can't remember the year. It was '6 or '7 or '8. I just can't remember.

Q. Do you remember why you sued Christy's?

A. Yes. I sued them primarily because the lots of Thomas Jefferson wines, they said they were fake -- they said they were real and instead they were totally fake. We proved that. We even found the guy who did the engraving on it with a dentist drill. In those days they didn't have dentist drills. We even found where he bought the old bottles.

Q. Did the suit that you filed against Christy's also include a bottle that was not a Thomas Jefferson bottle?

A. That's right.

Q. Why is that?

A. We saw in the catalog that they were selling a fake bottle, and we said, all right, they are still selling fake. I will tell you that I went to Christy's a number of times, because I'm a big customer of theirs, and I said you're selling fake bottles. I even told them one that they were selling, and they withdrew it. I saw it, and I said they are still doing it even after I've told them. So I said I'm going to buy it and then I'm going to sue them because I want to stop them from selling fake bottles.

Q. Let's go back to the wines you bought at Zachys in October 2005. Sir, at the time that you bought those wines, in October of 2005, did you have any idea whatsoever that the person described as a collector in that catalog was in fact involved in the wine sales business?

A. No, I did not. In fact, if I knew that, I probably wouldn't have bought it from them, because his motivation was to make the margin.

Q. When you bought these wines in October 2005, did you have any idea that the consignor was in fact not capable of tracing his wines to specific sources?

A. Quite the contrary. I believed from this glowing catalog that he knew exactly where his sources came from, and I was shocked when I learned that he didn't know his sources or he couldn't trace bottles back to a source.

Q. At the time that you bought these wines in October of 2005 did you have any idea that Mr. Greenberg had been warned by Sotheby's that his higher-end wines required further investigation?

A. No, I did not.

Q. Would that event have been important to you?

A. Absolutely.

Q. Why is that?

A. If Sotheby's says it requires further investigation, it means there are indications that they could be questionable and they could be fake. I don't want to spend $10,000 a bottle on fake wines.

Q. Sir, in October of 2005 did you have any idea that the consignor had hired an attorney, had hired an expert, filed insurance claims, and threatened suit against a supplier of wine named Royal because he said he was sold a large number of fake or counterfeit wines?

A. I did not know that.

Q. Would that have been important to know to you?

A. Absolutely.

Q. Why is that?

A. Because it would have shown that his collection was riddled with fake wines.

Q. Sir, did you have any idea in October 2005 that Mr. Greenberg returned some but not all of the Royal Wines and that

Mr. Greenberg did not know which wines remained in his collection, which ones remaining were from Royal?

A. No, I did not.

Q. Would that have been something you would have wanted to know?

A. That would have been critical, because it means he didn't return all the fake wines that he claimed Royal had sold them, so they were going to be sprinkled in his collection, may be sprinkled in what he was selling in this catalog.

Q. Did you have any idea in October 2005 that Mr. Greenberg had stated in writing that Bordeaux Wine Locators was the worst counterfeiting operation in the world?

A. I wish I had known that.

Q. Did you wind up buying bottles through Zachys from him that had labels Bordeaux Wine Locators on them?

A. Yes, I did.

Q. Did you have any idea in October 2005 that John Kapon of Acker had rejected certain of his magnums and identified problems, that Mr. Greenberg then resold those magnums to you through Zachys?

A. No, I did not.

Q. Is that something you would have wanted to know?

A. Absolutely.

Q. Why is that?

A. If you got four auction houses saying we can't take all

your wine because there are questions about it, that is critical to know, because it means four auction companies think there are fakes in his cellar, and that's pretty damning.

Q. Sir, did you have any idea when you were buying in October 2005 that the Chicago Wine Company had rejected certain of Mr. Greenberg's magnums, had identified problems that are in fact present in the magnums that you purchased as well?

A. No, I did not.

MR. SHARTSIS: Excuse me. Objection. Misstates the evidence. There is no evidence that Chicago Wine had rejected magnums.

Q. Returned magnums to Mr. Greenberg and identified problems that are in fact present in the magnums that you purchased?

A. I did not know that.

MR. SHARTSIS: Excuse me. Your Honor, he is still misstating the evidence.

THE COURT: The jury will rely on its own memory of the evidence. As I have said before, questions from lawyers are not evidence in the case, and you will rely on your own recollection. OK.

Q. Is that something you would have wanted to know?

A. Yes.

Q. Why is that?

A. Same reason as before. I want to know if he had fakes in it and if he knew -- I'd really want to know if he had fakes in

it. And what you should do if you got fakes in your cellar is to not put them up for auction.

Q. Sir, if you had known that any of these wines were possibly counterfeit, would you have purchased them?

A. No.

Q. Or if any of the wines were even questionable, would you have purchased them?

A. No, absolutely not.

Q. I want to put before you what has been marked as Trial Exhibit 461. I'll give you a copy. It's already in evidence. I'll hand one up to the Court as well. Putting before you what has been previously admitted as Trial Exhibit 461, do you see that, sir?

A. Yes, I do.

Q. I'm sorry. It hasn't been admitted yet, so let's not publish it. Do you recognize this document?

A. Yes.

Q. How is it you recognize it?

A. It's addressed to Mark Curley, who manages my wine cellars, and he showed it to me.

MR. HUESTON: At this time we move this into evidence.

THE COURT: Any objection?

MR. SHARTSIS: No objection, your Honor.

THE COURT: 461 received.

(Trial Exhibit 461 received in evidence)

Q. Let's put this up on the screen. Down below there is a "from" that is MarkC, right? Is that Mark Curley?

A. Yes.

Q. To Jeff Zacharia, right?

A. Yes.

Q. That's from Zachys, Zachys auction house?

A. Yes.

Q. It's February 15, 2006, is that right?

A. Yes.

Q. It states, "Jeff, we would like to know the source of the magnum of 1921 Petrus that Mr. Koch purchased from Zachys on October 28, '05. This has nothing to do with your sale. We are trying to determine the line of ownership/provenance of this particular bottle. Any information you can provide would be most helpful."

Mr. Koch, do you recall why Mr. Curley was making this inquiry at this time in February of 2006?

A. Yes.

Q. Why was that?

A. When we were investigating Hardy Rodenstock, we contacted Mr. Frericks, who had the lawsuit against him. Mr. Frericks turned over or gave a lot of his documents to us. In those documents was a letter from David Molyneaux-Berry, I think that pronunciation is correct.

MR. SHARTSIS: Excuse me, your Honor. I believe this

is hearsay.

MR. HUESTON: It is not for the truth of the matter asserted. It is simply context for his answer.

MR. SHARTSIS: Context for his answer I don't believe is a recognized exception to the hearsay rule.

MR. HUESTON: It is not. It is not for the truth of the matter asserted.

A. Anyway --

Q. Hold on a second, sir.

A. I'm sorry.

MR. HUESTON: Let me try a different question, your Honor.

THE COURT: Yes. I'm trying to avoid --

MR. HUESTON: Let me try this.

THE COURT: Yes.

Q. Sir, was this being sent in connection with your effort to investigate Mr. Rodenstock?

A. Oh, yes. We found that Mr. Rodenstock had sold to Mr. Frericks a whole lot of imperials of 1921 and other '20s Petrus. We found a letter from Mr. David Molyneaux-Berry, who questioned the authenticity of those.

Q. OK.

A. I'm sorry.

Q. I don't want to get into that, because we are starting to talk about what other people said. This was connected to

looking at Mr. Rodenstock, right?

A. We came to a conclusion that Mr. Rodenstock was faking other wines than the Thomas Jefferson bottles, in particular 1921 Petrus.

Q. Very briefly to move away from those details, what was the purpose, then, of this email?

A. We wanted to see if it came from Mr. Rodenstock.

Q. Mr. Zacharia responds to Mr. Curley above, right?

A. Yes.

Q. It says, "Here is the response from the consignor." Who did you understand the consignor to be?

A. I didn't know at that point in time.

Q. Today we know it's Mr. Greenberg?

A. Yes.

Q. It states, "He bought the wines from two different sources. The wine either came from a top collector in Toronto or out of Europe from English royalty." Is that what it says?

A. That's what it says.

Q. You knew that this was the consignor from the October 2005 auction?

A. Yes.

Q. When you were shown this email and shown those two sources that are listed, what was your reaction?

A. My reaction was it was consistent with the introduction letter, the quest or whatever the title was. It was very

consistent with that because in that letter they said most of the wines came from the continent.

Q. "The continent" meaning what?

A. Meaning Europe.

Q. Did this letter raise concerns to you when you got it, or email, at first?

A. At first it didn't, but we still wanted to find out -- let me say this. It was an incomplete answer, but it was consistent with what was said in the catalog. Because it was incomplete, I wanted further investigation.

Q. Did you at a later point in time attempt to talk to the consignor directly?

A. I called. First thing I did was I called Jeff Zacharia and asked him who the consignor was. He said he couldn't tell me, but he would call the consignor and find out. The fact that he couldn't tell me is quite common in the auction business.

Q. Did he eventually give you information so that you could speak to the consignor?

A. Yes. He told me who the consignor was and he gave me his phone numbers.

Q. Did you wind up speaking to the consignor?

A. Yes. I called -- excuse me.

Q. Who was the consignor?

A. Eric Greenberg.

Q. Go ahead. You called him and what happened?

A. I called him and I had actually two conversations with him on the phone.

Q. Let's talk about the first one.

A. I can't remember in detail the first one, because I confabulate the two because they were extremely similar.

Q. Back up. Why were there two calls that were extremely similar?

A. At the time he gave me a lot of information and comments, on the wine and other comments. A couple of days later, three or four, I don't remember how many days later, our chief investigator that I had asked to investigate Hardy Rodenstock, an ex-FBI guy, was in my office, and I said to him I just got a load of information from this one guy Eric Greenberg, why don't you and I call him together so you could hear it from the horse's mouth. So Jim Elroy and I then got on the phone and called Eric.

Q. What do you recall Mr. Greenberg saying?

A. He told me a lot. I recall that I called him up, asked him about the '21 Petrus, told him I thought we believed it was fake. He told me he thought it came from Royal Wines but he can't locate any of this, trace any of these bottles back to the sources because he didn't keep those good records, he didn't keep that type of records.

He then started telling me about his lawsuit with Royal. He said he bought a tremendous amount of fake wine from

Royal. He said he had them investigated by an ex-CIA guy by the name of Jack Devine. He said they were really bad people. He said Jack Devine basically said that they were laundering money for the Russian mafia and that he settled with them and he settled cheap or he settled for a low amount because he didn't want the Russian Mafia after him. He said, I know what they could do to me. I asked him if they ever threatened him, and he said, no, but I know what they can do.

He told me a million dollars in fake wine is not worth the risk to me and my family. He also told me that Bordeaux Wine Locators sold a tremendous amount of fake wine. We talked about Hardy Rodenstock. He said he went to Europe with Royal Wines, they took him around, introduced him to Hardy Rodenstock, he had dinner with Hardy Rodenstock.

He said that he thinks now that Hardy Rodenstock is a bad guy. He then told me that he thinks that Hardy started off making a lot of fake wines but now has gotten more sophisticated and the organized crime has taken it over.

That's what he told me. He said that he is very reluctant to get involved in this, he'd help give us information, but he wanted to be behind the scenes. He didn't want to give any depositions, he didn't want to be in any legal proceedings because he was very worried about his family and what these mobsters would do to him.

Q. Mr. Koch, just to be clear, this is many months after the

auction?

A. Yes. I believe it was in May of 2006.

Q. What was your reaction when you heard this? First, I want to ask, is this at all similar to the earlier information you received from the consignor?

A. The first information I got was one story: It came from a top collector in Toronto, maybe from English royalty. Then the next story I got, it came from --

MR. SHARTSIS: Objection, your Honor. He did not get that from the consignor. There is no evidence. We have an email from Jeff Zacharia.

MR. HUESTON: Yes. It is his impression.

MR. SHARTSIS: I move to strike that answer.

THE COURT: I think he was describing the email, and the jury knows what the email is.

MR. SHARTSIS: I ask to strike the answer that says he got it from the consignor, because he didn't. It will be this record.

THE COURT: The jury will be able to decide based on the evidence what is in and what is credible from the testimony.

A. Sir, I apologize. I misstated. It did come from Jeff Zacharia. It didn't come from Eric Greenberg. I apologize.

Q. In the email. But the email references the consignor, right?

A. The email did, yes.

Q. That was the story you were talking about?

A. That was the story, the first story. The second story was it probably came from Royal but he couldn't locate it and there was organized crime involved. So I concluded he was trying to tell me to stay away from this, otherwise I'd get involved with organized crime.

Q. Mr. Koch, had you learned any of the information that came out in that call months after the objection, if you had heard any of that prior to the October 2005 outcomes, would you have proceeded and bought any of the wine bottles here?

A. I would have run away from that auction.

MR. HUESTON: No more questions, your Honor.

THE COURT: Thank you. Is there cross-examination?

MR. SHARTSIS: Yes, your Honor.

Please leave that exhibit up.

THE COURT: Mr. Shartsis.

MR. SHARTSIS: Give me a minute, your Honor, to do my Colombo thing.

CROSS-EXAMINATION

BY MR. SHARTSIS:

Q. Mr. Koch, you mentioned Hardy Rodenstock, is that right?

A. Yes.

Q. I presume from what you said that if Hardy Rodenstock had anything whatsoever to do with wine in this auction, you would

have run away from it as far as humanly possible, correct?

A. At that time I didn't know how bad Hardy Rodenstock was. Later on, I said, man, I'd never have anything to do with him.

Q. Mr. Koch, you just told us that you had determined that Hardy Rodenstock was behind the Jefferson bottles before the 2005 auction, correct?

A. Yes, but I also told you I wasn't sure how fake it was.

Q. The Jefferson bottles you had determined before the 2005 auction were fake?

A. We had determined that there was a lot of question marks. But, as I said, what we had to do was we had to really get to the bottom of it and find out what was totally fake about it. Some people had said -- one person said it was fake, another person in a university said it was real, so I wanted to get to the absolute bottom and have foolproof that it was fake. We had not done that by the time of this auction.

Q. Mr. Koch, you had proposed to display the Jefferson bottles in the show of your collection at the Museum of Fine Arts, correct?

A. Yes.

Q. You said, boy, I'd like to show my Jefferson bottles off, correct?

A. Yes.

Q. And the curator said, how do we know it from Thomas Jefferson, right?

A. No, the curator did not say that.

Q. It led you to call Monticello, correct?

A. Well, the curator --

Q. Excuse me. I just asked --

A. I'm sorry. May I finish?

Q. No, actually --

A. Actually, I am going to finish.

MR. HUESTON: Your Honor, I am going to object.

THE COURT: Hold on. He answered no to the question. Then you asked a question that assumed a yes answer, I think.

MR. HUESTON: Yes.

A. That's right. I disagreed with the --

THE COURT: Hold on. Wait until there is a question.

THE WITNESS: I'm sorry. I apologize.

THE COURT: Please restate the question.

Q. Mr. Koch, as a result of attempting to display your bottles at the Museum of Fine Arts, that led to you having Mr. Goldstein call Monticello, correct? Isn't that correct?

A. The precise answer is that the museum wanted to show them and put them in the catalog, but they wanted provenance. As a result of that request, I had Brad Goldstein call Monticello, that is correct.

Q. What happened was the museum said we have to know that these are Jefferson bottles, correct? That's knowing the provenance, right?

A. No. What they said is they would like the provenance. They didn't say we absolutely have to know.

Q. They said they would like the provenance?

A. Yes.

Q. Thank you. Based on liking, wanting to have the provenance or they would like to have the provenance, you then called Monticello, correct, had Mr. Goldstein call Monticello?

A. Yes.

Q. When Mr. Goldstein called Monticello -- you agree with me that Monticello is the most authoritative source of information about Thomas Jefferson, correct?

A. That's correct.

Q. You knew that in 1988, when you spent $400,000 on these bottles, correct?

A. No, I did not know that in 1988.

Q. In 1988 you did not know that Monticello was the ultimate source of information about Thomas Jefferson?

A. I knew that Monticello existed, but I did not know that they had 95 percent of his records.

Q. You knew Monticello existed. I'm sure, Mr. Koch, you knew that Monticello was the lifetime home of Thomas Jefferson, correct?

A. Yes, I did know that.

Q. When you bought the bottles, you spent $400,000 in 1988 bottles, you didn't even make a single phonecall to the home

and repository of the information about Thomas Jefferson to ask about bottles that were attributed to it, correct?

A. No, I did not.

Q. Right. In fact, when you bought the bottles in 1988, you had heard a story, a story about how they had been discovered in some cellar in Paris, correct?

A. Yes. Well, no, I didn't hear it. I read it.

Q. Thank you. You didn't hear it, but you read it?

A. Yes.

Q. You also read that the person who was supposed to have discovered the bottles in the cellar would not reveal even where the cellar was located, isn't that true?

A. Yes.

Q. You also knew that the person who was supposed to have discovered all of these Thomas Jefferson bottles in a cellar wouldn't reveal, wouldn't say how many bottles he had recovered, correct?

A. That's correct.

Q. Knowing all that in 1988, knowing that the person who claimed to find them wouldn't say where they came from, the person who claimed to find them wouldn't say how many there were, you spent $400,000 without even picking up the telephone and calling Mr. Jefferson's historic home and library and asking, by the way, did Thomas Jefferson buy bottles like this? Isn't that correct?

A. I didn't pick up the phone and call them. I relied entirely upon Christy's glowing catalog about it.

Q. You didn't buy these bottles from Christy's.

A. No, I didn't. I bought them from other people.

Q. You don't even know that Christy's had ever seen these four bottles that you paid $400,000 for?

A. I had no idea if Christy's had seen them or not. I knew that they did look at a lot of other -- I knew they came from the same source that the Christy's bottles came from.

Q. How did you know that, when this person wouldn't even tell you where the cellar was?

A. Because I knew it came from -- because he was the only one in the world who had Thomas Jefferson bottles.

Q. Mr. Koch, you couldn't even track how many bottles of Thomas Jefferson wine this fellow had.

A. I had no idea. Neither did Christy's.

Q. Right. He could have been selling 800 bottles of Jefferson wine, as far as you knew, correct?

A. I have since found out that he sold a lot of them.

Q. Right. He could have been doing that, right?

A. He could have, that's true.

Q. You made no effort, and you spent $400,000, to figure out just how many bottles he was supposed to be selling?

A. Yes. I was bloody naive. In hindsight, I was stupid.

Q. Mr. Koch, you own a $4 billion company. How naive are you?

A. When it comes to something that is a hobby, my biggest fault is I'm too trusting.

Q. Mr. Koch, how much money have you spent amassing all of your collections?

A. I have no idea, and I don't want to know.

Q. Mr. Koch, more than a hundred million dollars, correct?

A. I have no idea.

Q. Do you think not more than a hundred million dollars?

A. I said I do not want to know.

Q. So you have no idea just how much money it is that you spent amassing collections in 10 or 11 areas of rare and fine wines?

A. I have spent a ton of money, but I don't want to know, and I don't want my wife to know.

Q. Let's go back to this, Mr. Koch. You never talked to Christy's about the four bottles that you bought from them, correct?

A. From Christy's?

Q. Excuse me. Let me ask the question again. I don't want to mislead you. You never talked to Christy's about the four bottles of Thomas Jefferson wine that you bought from someone other than Christy's, correct?

A. No, I didn't.

Q. You never asked Christy's whether they had even seen those four bottles, correct?

A. No.

Q. You have no idea whether Christy's ever saw those four bottles, correct?

A. I have no idea.

Q. Mr. Koch, even though you didn't buy them from Christy's, even though you don't know whether Christy's ever saw them, you sued Christy's for those four bottles of wine you bought from somebody else, isn't that true?

A. I sued them because they authenticated the Thomas Jefferson bottles, yes, I did.

Q. Did they authenticate the four bottles that you bought?

A. No.

Q. Mr. Koch, you know that auction houses authenticate bottles, correct?

A. I believe they do.

Q. Right. They take the bottle, they bring out their experts, they look at the capsule, they will fold the capsule back, they look at the cork under magnifying and high light, correct?

A. Look, I've never seen an auction house authenticate a bottle, so I got to tell you sometimes I don't know what they do. It's a little bit of a black box to me. But I've learned here today that they do a those things.

Q. Your understanding is that they take out the physical bottle and they look at that physical bottle to look at different attributes to determine whether the bottle might be

questionable, correct?

MR. HUESTON: Objection. Vague as to time. Are you asking what he knew then or what he knows today?

THE COURT: Please clarify.

MR. HUESTON: Sure.

MR. SHARTSIS: Sure.

Q. In 2004 you knew that auctions house do have experts and physically examine the bottle to see if there might be questionable attributes?

A. At that time I didn't know what auction houses do.

Q. You owned an auction house, Mr. Koch?

A. Yes, but I told you I only visited it once. It was a black box to me.

Q. It was a black box to you, Mr. Koch. Did you buy the stock on the stock exchange?

A. No. I bought it from the guy who ran it.

Q. Right. You bought it from the owner, correct?

A. Yes. No, I bought it -- I'm not sure from whom I bought it. He was buying out a partner, and I got it -- I don't know. I just don't remember.

Q. What you do remember, Mr. Koch, is that you didn't buy a little portion of the stock, right?

A. Well, it was a little investment in terms of dollars. It wasn't -- it was about 50 percent of the company.

Q. Right. You owned half of the company, Mr. Koch?

A. Yes.

Q. Half of the company?

A. Yes.

Q. That company was involved in wine auctions, correct?

A. They were involved in a form of wine auctions which was a sealed bid auction. It was not an auction where you get a bunch of people in a room and display it and then hammer it down. It wasn't that type of auction.

Q. Did you make sure, Mr. Koch, when you owned half of an auction company, that they carefully looked at the wine that they sold to the public?

A. No, I did not.

Q. You had spent a half a million dollars, which was apparently insignificant to you, is that correct?

A. Well, a half a million is still a half a million. But compared to other investments, it didn't justify my spending any time on it.

Q. All right. So you were unconcerned, Mr. Koch, about a company that you owned and how they dealt with the public, is that correct?

A. As I said, I did not do the due diligence and I did not go there and find out exactly what he did and how he inspected the wine. In fact, when I bought it, I didn't even realize that there was fake wines around.

Q. Mr. Koch, the question I asked is, you were unconcerned,

unconcerned, about how a company that you owned 50 percent of dealt with the public in terms of authenticating wine, isn't that a true statement by me?

A. No, it is not a true statement.

Q. So you weren't concerned?

A. I just told you, I did not know what they did and I did not know to look for fake wines. If I had known there were fake wines, I would have been very concerned.

Q. You were so unconcerned that you made no effort to find out how the company that you owned dealt with the public in the sale of wine?

MR. HUESTON: Objection. Argumentative and asked and answered.

THE COURT: Sustained.

Q. Mr. Koch, let's go back to Hardy Rodenstock. When you had Mr. Goldstein call Monticello before the 2005 auction, he was told by the ultimate authority on Thomas Jefferson that Jefferson didn't buy those bottles, correct?

A. I think it would be more -- it wasn't that direct. It was more of a weasel word. They said we have no evidence that he bought those bottles. She was trying to be more polite than to say they were absolute counterfeit. But you could ask Brad directly that question because he is the one who talked to her.

Q. Right. You didn't talk to them, right?

A. No, I did not.

Q. So now what you want the jury to hear is that you believed that the people at Monticello were using weasel words when they said Mr. Jefferson didn't buy those bottles, is that what you want the jury to think?

MR. HUESTON: No, objection. First, argumentative. Secondly, he tries to elicit hearsay and then critiques when a hearsay response comes. I would ask for a proper nonhearsay-eliciting question, please.

THE COURT: Please rephrase.

Q. Mr. Koch, you believe that the people at Monticello used weasel words in telling Mr. Goldstein that the bottles were not from Mr. Jefferson?

A. I should have used more polite language. I'm sorry. I'm a blunt kid from Kansas.

Q. Mr. Koch, you're an MIT Ph.D, isn't that correct?

A. Yes, but it doesn't mean I'm a diplomat.

Q. Mr. Koch, you sit on the Smithsonian board, correct?

A. Yes.

Q. You sit on the boards of major museums?

A. Yes.

Q. Mr. Koch, you collect expensive and rare items in ten different areas, correct?

A. I don't know if it's ten, but it's up there.

Q. You can't keep track of how many areas?

A. I'd have to count them.

Q. We'll get to that. We'll give you a chance to count them. So, you understood, Mr. Koch, from Monticello that these bottles did not come from Mr. Jefferson as far as Monticello was concerned?

A. As I said, I'm relying what Brad Goldstein said to me on his --

Q. I'm asking --

A. Excuse me. May I finish my answer?

Q. I apologize.

A. You keep interrupting. My wife says I speak too slowly, and therefore she interrupts me all the time.

Q. I apologize, Mr. Koch.

A. Thank you. What I'm relating is the impression that I got from Brad Goldstein of his conversations with them. The reason I'm talking about it is because Brad asked them for a report that they had written and she refused to give it to him.

Also, they had said words, we have no evidence, or something polite like that, that Jefferson bought those wines or we have no evidence that he ever engraved them. That I think is -- but they were being very polite. I'm a little more blunt. I would say I conclude from that that Jefferson never bought them and these were fake.

Q. Mr. Koch, we are quibbling here. You understood from Monticello, they said we have no evidence that Mr. Jefferson ever bought the bottles, right?

A. That's right.

MR. HUESTON: Objection. This has been asked and answered several times.

THE COURT: You can answer.

Q. Do we have an answer to that question?

A. I said yes.

Q. No evidence, correct?

A. That's what I believe they said.

Q. You also believe they said, and Mr. Jefferson did not engrave his wine bottles, correct? You understood they said that?

A. They said they had no evidence that he had engraved it, and also said that they had dug up his dump pile and they never found any engraved bottles.

Q. Based on that, Mr. Koch, you believed the bottles were probably fake?

A. I did.

Q. Thank you. You knew the bottles were related to Hardy Rodenstock when you believed they were probably fake, correct?

A. I had a very strong position that they were, a supposition that they were, or conclusion, yes, I did.

Q. You were concerned -- let me ask the question differently. In other words, you at that point believed that Hardy Rodenstock was involved in selling you the fake Jefferson bottles, correct?

A. I believed at that time there was a very high probability that he had made fake wines, and I believed that I had to do a lot of investigation to prove that they were fake because they had been blessed once before, they had been blessed twice, for being real.

Q. You reached that high probability conclusion before the 2005 October auction at Zachys, correct?

A. Yes. I said there's enough questions here that I really have to investigate it.

MR. SHARTSIS: Your Honor, is this a good time for a break?

THE COURT: Yes. Why don't we take our lunch break, ladies and gentlemen. It's about 12:30. We will start up at 1:30. Please have a good lunch. Don't talk about the case. Leave your pads on your chairs. We'll see you at 1:30.

(Continued on next page)

(Jury not present)

MR. SHARTSIS: Your Honor, I have a matter.

THE COURT: Yes.

MR. SHARTSIS: Your Honor, we would asked for an instruction that there be no communication between Mr. Koch and his counsel regarding the examination while it's ongoing.

MR. HUESTON: That is perfectly fine, your Honor.

THE COURT: Mr. Koch, since you are currently on the stand, I'm going to ask that you not discuss the substance of your testimony with counsel. OK?

THE WITNESS: Yes, sir.

THE COURT: Thank you. Anything else?

MR. SHARTSIS: No. Thank you.

THE COURT: Have a good lunch.

(Luncheon recess)

AFTERNOON SESSION

1:35 p.m.

(Jury present)

WILLIAM KOCH, resumed.

CROSS-EXAMINATION (continued)

BY MR. SHARTSIS:

Q. Mr. Koch, before lunch we had started, but got a little diverted, talking about Exhibit 461.

MR. SHARTSIS: If we could have that up, please. Maybe you can enlarge that for Mr. Koch, please.

Q. Mr. Koch, do you recall you were asked questions about this exhibit toward the end of your examination by your own lawyer?

A. Yes.

Q. He asked you questions about whether whoever wrote the email had fully disclosed that Royal Wines was a possible source of the 1921 Petrus, do you recall that?

A. Having to do with this exhibit?

Q. Yes.

A. No. There was nothing about Royal Wines in this exhibit.

Q. No, no, no. He had asked you whether it disclosed that there was anything about Royal Wines in this exhibit. I'm just trying to get us calibrated here. Do you remember those questions?

A. Yes, I do.

Q. This is an email, correct?

A. Yes.

Q. As far as you are concerned, the email is incomplete because it doesn't disclose that Royal Wine may have been the source of the '21 Petrus, correct?

A. The email speaks for itself. It doesn't have Royal Wines in it.

Q. After this email was written, you wanted to find out who the consignor was of the October 2005 auction, correct?

A. Yes.

Q. You asked Zachys, right?

A. Specifically, I asked Jeff Zacharia.

Q. You asked Mr. Zacharia who the consignor was?

A. Yes.

Q. Mr. Zacharia reported back to you that the consignor was Eric Greenberg, correct?

A. First, Mr. Zacharia said he couldn't tell me, he had to ask the consignor. Then later he called me back and said the consignor was Mr. Greenberg.

Q. Asking the consignor -- first of all, this was an anonymous auction, right?

A. Yes.

Q. And you knew that?

A. Yes.

Q. You know "anonymous" means you don't see the name of the consignor in the catalog, correct?

A. I wouldn't say -- it wasn't categorized as an anonymous auction, but it did not have the consignor's name in it.

Q. Without quibbling, you knew it was anonymous because it doesn't have the name of the consignor?

A. That's true.

Q. And it's not unusual to bid at auctions where there are anonymous consignors, correct?

A. It's generally the standard practice not to have the person's name unless the person agrees to have his or her name put in.

Q. Correct. Anonymous auctions are very common, do you agree with me?

A. That's what I said. Standard, yes.

Q. Thank you. The consignor has a choice about whether to disclose the consignor's identity or not, correct?

A. Yes, he does.

Q. In this case, after you asked Mr. Zacharia who the consignor was, Mr. Greenberg did not have to identify himself, did he?

A. No.

Q. In fact, Mr. Greenberg willingly identified himself, didn't he?

A. He certainly agreed to have himself identified, yes.

Q. You called Mr. Greenberg, correct?

A. Yes, I did.

Q. You called him twice?

A. Yes.

Q. He was willing to talk with you both times, correct?

A. Yes.

Q. The second time you called him, you said you had an investigator on the phone, correct?

A. Yes.

Q. Even though you told Mr. Greenberg you had an investigator on the phone, he still willingly talked to you, correct?

A. He did.

Q. You didn't have to twist his arm to talk to you?

A. No.

Q. When you asked Mr. Greenberg some questions, he told you a number of things about Royal Wine, correct?

A. Yes, he did.

Q. He volunteered?

A. Yes.

Q. He told you, first, that he did not keep records or bar code his wine, correct?

A. I've already said that, yes.

Q. And he was forthcoming about that, correct?

A. Yes.

Q. He also told you that he was not sure he could match a bottle of wine to a source. He was forthcoming about that, wasn't he?

A. I don't recall that he told me that, but I assumed that from he said he didn't keep records.

Q. He indicated that he had in fact bought some Petrus '21 wines from Royal, correct?

A. I don't remember. He may have said that, I just don't remember specifically. He said, as I recall, it probably came from Royal.

Q. You don't remember that he said that he had bought some '21 Petruses from Royal?

A. He may have. I'm not denying it. He may have.

Q. All right. You didn't have to threaten him to have him say any of that, did you?

A. I didn't threaten him at all.

Q. He just willingly gave you that information?

A. He was willing to talk about counterfeit wines.

Q. He indicated to you that he thought that Royal Wine was connected with Hardy Rodenstock, isn't that true?

A. I'd have to refresh my memory on that. I don't recall that he did or not. He may have.

Q. Maybe we can refresh your memory. You looked at a report that Mr. Elroy wrote about this bottle?

A. Yes.

Q. If you looked at that, would that help refresh your memory?

A. Yes, it certainly would.

Q. If we looked.

MR. SHARTSIS: Could we get that, please. Approach the bench, your Honor?

THE COURT: Sure.

MR. SHARTSIS: Your Honor, I don't intend to submit this as evidence. This is purely to assist Mr. Koch to refresh his recollection.

A. Thank you.

Q. Mr. Koch, why don't you take a look at that for just a second and see if that is the report that Mr. Elroy wrote.

A. Yes, it is.

Q. I'm just going to ask you, as you look at it -- we are going to look at that third paragraph about Mr. Greenberg advised he did not keep records or bar codes of his wine. Do you see that?

A. Yes.

Q. The next sentence indicates that he had told you he didn't know for sure where he had obtained the wine?

MR. HUESTON: I am going to object to this. He can use it to refresh recollection in an appropriate manner, which is to have him read it. Then he can put it down and ask questions.

MR. SHARTSIS: That's fine.

Q. I'm going to ask you to read that third large paragraph. Read that and see if that reminds you of what you heard.

A. Yes.

Q. After having read it, do you now recall that he indicated that he wasn't sure where he obtained the wine?

A. Yes.

Q. Do you now recall, after having read it, that he indicated that he had purchased several bottles of '21 Petrus from Royal Wine Merchants?

A. Yes.

Q. Does it remind you that he also indicated to you, voluntarily, that Royal Wine Merchants are friends of Hardy Rodenstock?

A. Yes.

Q. He also went on to tell you that he had purchased a bottle from Bipin, do you remember that?

A. Yes.

Q. And that Bipin was a friend of Hardy Rodenstock?

A. Yes.

Q. You remember he voluntarily gave you that information?

A. Yes, he did.

Q. He also told you that he had discovered that he had purchased several fakes from Royal Wine Merchants, do you remember that?

A. Yes.

Q. At the time he said that, Mr. Koch, did you ask him what other wines he had purchased from Royal Wine Merchants that he thought were fake?

A. No, I did not. I was only interested in the '21 Petrus at that time.

Q. But even though he told you that he had purchased other wines from Royal, at that time you did not ask him what they were?

A. No, I didn't.

Q. As I think you said this morning, he also indicated that he thought some wines from Bordeaux wine locates were fake?

A. Yes.

Q. Do you ask him which ones?

A. No.

Q. Mr. Koch, we are done with that exhibit. Put it to the side, please. Let me ask you a little bit about your auction experience. You have bought goods at auction in the sale of very fine art, is that correct?

A. Yes, I have.

Q. I heard you say you bought masters, masters paintings at auction?

A. I don't think I used the word "masters," but I bought from very famous artists, paintings of very famous artists.

Q. You, of course, bought at wine auctions?

A. Yes.

Q. You bought more than half of your wine from wine auctions, correct?

A. I have never added it up, but it's a large amount.

Q. I think I asked you at your deposition and you said probably more than half. Does that sound right?

A. That sounds right.

Q. You have bought antiques at auctions?

A. A small amount of antiques from auctions.

Q. But you have been in the auction process buying antiques?

A. Only on rare occasions, not regularly.

Q. You bought guns at auction?

A. Yes, I have bought a number of guns in auctions.

Q. Bought antique firearms?

A. Those are guns.

Q. You bought antique coins?

A. Very few at auction. I've bought less than a half a dozen or less than a dozen at auction.

Q. But you have bought antique coins at auction?

A. Yes, I said yes.

Q. You have bought furniture at auction?

A. I thought you mentioned furniture already.

Q. No. I asked antiques.

A. Antiques. I got them confused. I'm sorry, I got them confused. I bought a number of antiques at auction, but I've bought a little bit of furniture at auction, not a lot.

Q. You collect American Indian art through the auction process, correct?

A. Art and artifacts. They are a little bit mixed up.

Q. Both art and artifacts at auction?

A. If you look at an Indian war shirt, that's both art and an artifact.

Q. Do you buy rare minerals?

A. Yes.

Q. Do you buy gold at auction?

A. The gold goes into the minerals, because I buy nuggets.

Q. Do you buy rare photographs at auction?

A. Yes.

Q. You buy western goods at auction, correct?

A. Western ephemera and items, yes.

Q. It would be correct to say that in the '80s you were a mad buyer of wine, and you bought wine from so many different auctions, you can't remember all the ones that you had done? That would be a fair statement, wouldn't it?

A. I can't remember all of the auctions I bid on in the '80s.

Q. True for wine as well, correct?

A. I could name some of the auction houses, but I can't tell you off the top of my head which bottle came from which auction. I can from my computer, but not from my head.

Q. Mr. Koch, you now have somewhere between 30 and 40,000 bottles of wine, is that right?

A. Do you want the precise number, last count?

Q. Sure.

A. In the summer I was told I had 43,300 bottles.

Q. Those 43,300 bottles are located in four separate cellars, correct?

A. Five actually.

Q. Can you tell us where the cellars are?

A. My first cellar was in Cape Cod. We filled that up. Then we put another cellar in an out-building that I have on Cape Cod. Then I have a cellar in Florida and a storage cellar in Florida, both in my same house. Then I have a house outside of -- in Colorado in which I have a small cellar there.

Q. At the time you were doing the auctions, you were aware that the auction houses might reject wine being put up for auction for any reason the auction house wanted, correct?

A. At the time I was buying wine?

Q. Yes.

A. I really didn't know the auction practice from the selling side. I knew the auction practice very well from the buy side but not from the selling side.

Q. Mr. Koch, you in fact did sell wine through a Christy's auction, correct?

A. Yes, I did.

Q. That was what was called -- I'm sorry. Go ahead.

A. That was in 1999.

Q. In 1999 in fact you, Mr. Koch, had the experience of being a consignor of wine through a major auction house, correct?

A. I wouldn't say I had much of an experience.

Q. Your bottles had the experience?

A. No, my staff had. The bottles had the experience, obviously, because they went through it, if they could experience things. But my staff at the time had the experience. They did everything with the auction house.

Q. Your staff had the experience of consigning your wine through Christy's?

A. Yes, that's right.

Q. You knew from that that Christy's would go through the wines you proposed and examine them to determine which wines they would accept for auction, correct?

A. I really wasn't that involved at that detail.

Q. Is the answer you didn't know that auction houses went through collections and pulled wine out that they thought was not auctionable?

A. As I said, they may have. I went over a list of what lines could be sold with the head of my wine collections at that time, which was a fellow named Mark Lazard. I let him deal with the auction house because at that time I was quite busy in my business.

Q. Let me understand this. What you did was you prepared a list of wines owned by Bill Koch, you gave them to an assistant, and then the assistant dealt with the auction house? Is that a correct statement?

A. That's not correct. My assistant, my manager of my arts

and wine at the time, prepared a list. Then he showed it to me. Actually, he negotiated with me what wines to put in. Then he gave it to Christy's. What happened after that, I wasn't involved.

Q. You are not suggesting, Mr. Koch, that you as the consignor did not have the final say over what wines would be submitted to Christy's to consider for auction?

A. Oh, I did, yes, I did.

Q. You understood that Christy's might not accept them all, correct?

A. They had the right not to accept it, but if they did or not, I don't know.

Q. That's really what I want to focus on. Starting back before the turn of the last century, you understood that after the consignor submitted the bottles to the auction house, the auction house had the right not to accept a bottle for auction, correct?

A. It's hard for me to remember what was in my head at 1999. I assumed it would be a negotiation with the auction house or, as someone said here, a partnership with an auction house.

Q. You said you assumed it would be a negotiation with the auction house. You assumed that you would come up with some bottles and you would have to negotiate with the auction house to have them sell the bottles that you wanted to sell, is that right?

A. No. I would assume that they would come back to me and say they want all of my '82 Petrus, which was an outstanding year to sell because they can make the most money off of that. I assumed that they would want more than I was willing to give. But it was at a two-way street.

Q. You also knew that they would not have to auction a wine that they didn't want to, correct?

A. As I said, I didn't know, but I'm sure I assumed that.

Q. Thank you. In your auction practices around the months that you did the Zachys auction in 2005, in October, in November and October of 2005 alone you bought about $6 million of wine at six different auctions together?

A. I did?

Q. Do you know that?

A. You're telling me something. I'm not surprised, but I didn't know that fact. Thank you for telling me.

(Continued on next page)

BY MR. SHARTSIS:

Q. Mr. Koch, do you have that exhibit in front of you?

A. I have it on the -- on -- what do you call these things, slaves?

Q. I call them screens.

A. Screens. I heard someone call them a slave, but --

Q. Do you have it up there? Can you see Exhibit 1024?

A. Yeah. Yes.

Q. Do you recognize this as a bill sent to William I. Koch at Oxbow Corporation?

A. Yes, I do.

MR. SHARTSIS: Your Honor, move this in evidence.

MR. HUESTON: No objection.

THE COURT: Okay. 1024 received.

(Trial Exhibit 1024 received in evidence)

MR. SHARTSIS: Can we publish this to the jury.

And Liz, could you just blow up the address.

Q. Mr. Koch, that's you there?

A. Yes.

MR. SHARTSIS: And then Liz, if you could pull up the very top, who it comes from.

A. Yes.

Q. And that's Brian Orcutt, right?

A. Yes.

Q. Mr. Orcutt was acting as your agent buying wines at

auctions, correct?

A. He was act -- acting both as my adviser and doing the bids for me.

Q. Well, he was your agent, right?

A. Well, you'd call him that.

Q. Well, you'd call him that, wouldn't you?

A. I don't know. I'd call him an adviser, but I don't --

Q. Did you pay him to buy wine own your behalf?

A. I paid him both to advise me and to buy wine.

Q. Right. And on the wine buying side, you authorized Mr. Orcutt to spend millions of dollars on your behalf, using his judgment, for your benefit, correct?

A. I wouldn't say that. I would say that he and I would discuss what wines that I ought to bid on before the auction and we'd agree upon which wines and then I'd generally give him a maximum to pay for it.

Q. Did you actually give him a maximum to pay, Mr. Koch, for each wine?

A. I don't remember, but that's generally my habit.

Q. Let me just ask the question straight out.

A. Yeah.

Q. Do you remember, Mr. Koch, aside from whatever your habit is, that you went through the catalog with Mr. Orcutt and said, here's my maximum for each of the wines that you talked about together? Do you recall doing that?

A. I don't remember it, but, yes, on some -- on some auctions I did. I do remember it.

Q. But how about this auction, the 2005 auction?

A. I believe I did, but -- I may not have, but I believe that I did.

Q. All right. So does looking at -- you see here that Mr. Orcutt represented you at six different auctions?

A. Yes.

Q. And I recall this morning you were explaining why it was you were unable to be at the Zachys auction in October of 2005. Do you remember that?

A. Yes.

Q. And you were also unable to be at these other five auctions, is that right?

A. Well, I don't remember -- I don't see the dates on these auctions so I can't remember whether I was occupied someplace else, but generally I would prefer to spend my time, rather than going to the auctions, in trying to do my work to make a profit to pay for them.

Q. Right. So you didn't attend these auctions.

A. No, I did not.

Q. And you had Mr. Orcutt attend in your behalf, correct?

A. Yes. Yes, I did.

Q. Thank you. And you paid Mr. Orcutt $303,016.44 so you wouldn't have to attend the auction, correct?

A. You're lumping two things together, or you're simplifying it, and that's not accurate. I paid him $303,000 for his advice as well as for attending and as well as for bidding for me.

Q. And his advice was that you'd get on the phone with him, you'd both open an auction catalog, and you'd look through the descriptions of the wines, correct?

A. That's right.

Q. And then you'd discuss which wines you wanted to buy.

A. Yes.

Q. And then he would go to the auction and he'd sit there and lift a paddle.

A. That's right.

Q. And for that he was paid $303,016.44?

A. That's right.

Q. Mr. Koch, you have, I think you said this morning about -- you found about 400 counterfeits in a quarter of your collection -- excuse me -- 20 percent of your collection, is that right?

A. The 20 percent is an estimate, but the 421 is a figure that I've gotten from someone adding up what all the experts have found.

Q. And that's about 5 percent of the wines that were examined found to be counterfeit in your collection.

A. Well, as I said, I haven't asked -- I haven't asked them --

I've tried to ask them, but -- exactly how much they've analyzed in my collection, but the estimate has been about 20, 25 percent or something of my collection.

Q. And so of the 25 percent, about 5 percent of those is --

A. Could be. That's --

Q. And you've found counterfeits in other collections you have, correct?

A. In other collections? Yes.

Q. Right. You have counterfeit guns you've found?

A. Yes.

Q. You've found counterfeit antiques?

A. One counterfeit antique.

Q. Found a counterfeit painting?

A. Found a painting that was -- I can't remember -- I got a mental block of the name but it wasn't painted by the person that it was attributed to but by the person's sister. That.

Q. And you actually thought you were buying the one of the person it was attributed to, right?

A. That's right.

Q. So it wasn't what you expected, correct?

A. That's true, but I liked the painting so much, I kept it, and it wasn't that high a price.

Q. You're right to do that.

Now you also found Indian artifacts that are counterfeit?

A. Yes.

Q. And you've found gold nuggets that are counterfeit.

A. One or two gold nuggets that were counterfeit, yes.

Q. Six of your collections you have found counterfeit things, correct?

A. Yes.

Q. You mentioned Robert Parker at some point in your testimony this morning. Robert Parker is very famous in the wine world, is that correct?

A. He's very famous as a wine critic and as a wine rater.

Q. And the way he rates wine is to taste it, correct?

A. Yes.

Q. And the way he is a wine critic is by tasting the bottle, correct?

A. That's correct.

Q. And he publishes a well-regarded newsletter that he tastes bottles of wine and he describes what he tastes and he gives them numerical ratings.

A. He rates them from 0 to 100 but mostly it's 70 or 80 to a hundred.

Q. And you have read his writings?

A. Some of them I've read.

Q. And when you were collecting wine, you would read Mr. Parker's writings --

A. Sometimes I would.

Q. -- for the purpose of figuring out whether you wanted to buy a wine.

A. Yeah. I wanted to buy the very best.

Q. And you believe you had a collection of the very best, correct?

A. No, I do not. I -- 'cause when I first started buying, I bought some lesser wines and bad years, but as I got more and more refined in my taste, I started buying only the -- only what I considered the very best.

Q. Right. So -- and you collected for over 40 years, is that right?

A. Well, I started collecting wine in the late '70s, so that's about 40 years.

Q. 35, 40 years?

A. Somewhere in there, yes.

Q. And during that period you improved your -- at least what you thought was your taste and judgment about what you were buying?

A. I wouldn't say improved it. I refined it. I mean, taste is a very individual thing, so --

Q. And you endeavored -- you've endeavored to create an outstanding collection, correct?

A. Well, I wanted a collection that I consider outstanding --

Q. Right.

A. -- that I love. Wines, you know -- as I said, you know, I

buy paintings that I love and I buy art that I love, and I buy wine that I love, and I buy guns that I love. I don't care what other people think. I just care what I consider about it.

Q. Thank you.

A. Sorry.

Q. Now, Mr. Koch, as a collector, you understand what the concept of culling is, don't you?

A. Yes, I do.

Q. Culling is when you look at your collection, as you do, and decide, well, you know, some of the things I collected in the past are really not what I want now or not the quality I want now so I'm going to get rid of those, is that right?

A. Well, that could be --

Q. But --

A. -- one explanation of culling.

Q. Right.

A. You know, I'm in the cattle business and we cull our cows.

Q. Right. And what you're doing in culling is removing undesirable collected items, correct?

A. Well, let me put it this way: When I cull, which I've done very rarely, unfortunately, I try to get -- get things that I -- to get rid of things that I no -- no longer like.

Q. Right. In fact, you sit on a museum board, correct?

A. I used to. Not anymore.

Q. Right. And when you sat on that museum board, the museum

culled its collections, isn't that true?

A. No, unfortunately, they did not.

Q. Did you want them to cull it?

A. Oh, of course, 'cause they were always short of money, and I said, if you sell the stuff in your basement, you could buy grand things with it.

Q. Right. And that's called deaccession?

A. That's right.

Q. And you wanted them to deaccession or to cull the collection of the museum.

A. Well, I advised them to, but curators are worse than I. They don't want to get rid of anything.

Q. Right. So let me ask you this, just -- and I want to change the subject just a little bit, and I will try to tell you when I'm changing the subject because I don't want to confuse you. In terms of your experience at auctions, in all of your buying of wine, have you ever seen at an auction wine bottles where the capsules were peeled back to expose any part of the cork? Do you remember ever seeing that?

A. I don't recall seeing that at the time, and as I said, I -- I don't recall ever going to a wine auction myself.

Q. Okay. But you looked at catalogs, correct?

A. Yes.

Q. In your experience -- I'm going to ask the question directly. In all of your buying of wine, you have never

observed a sale of wine in which the capsules were peeled back to expose any part of the cork, isn't that true?

A. Well, I'm confabulating or mixing some things up because in certain catalogs now I've seen -- I've seen that, and I've forgotten whether I've seen that before or not. I don't remember seeing that before.

Q. Okay. Mr. Koch, you talked about having a bar code system in your cellar.

A. Yes.

Q. You didn't start your collection with a bar code system, did you?

A. Well, I started with a couple cases of wine, so no, I did not.

Q. Well, it was more than that, Mr. Koch. You had been collecting for seven or eight years before you organized your cellar, isn't that right?

A. What do you mean by organized? Because at one time I collected a lot of wine and I said, we ought to put this -- all the Bordeaux together, all the Petruses together, and break them down by year, etc., and I've forgotten when I did that.

Q. All right. But do you remember I asked you that question at your deposition, I asked you, "When did you first start to organize the cellar after you started collecting wine?" And you told me sometime in '84, '85, or '86. Do you recall that?

A. Sometime in there, yes.

Q. Right. And that was about seven or eight years after you started collecting wine, correct?

A. Well, when I first started collecting --

Q. Well, just tell us whether it's seven or eight years after you started collecting.

A. No, I'm coming to that, because I'm trying to give you some background on it. I sold a whole bunch of stock in '83 and I got some money for it, and then I went out and started buying a lot of wine, so from -- from the '70s to '83 I had a tiny, tiny collection, and then '84, '85, I began to build it up, and then as soon as I got to where I thought it was getting a little overpowering, then I said we ought to -- we ought to organize it and we ought to bar code everything.

Q. And that was when you had about 10,000 bottles of wine, correct?

A. That was -- when I said that, that was a guess. I don't remember how much.

Q. But I asked you the question -- let's be sure we're not being confusing here. I asked you the question how many years you had been collecting before you started organizing your cellar. And you told me seven to eight, correct?

MR. HUESTON: Your Honor --

A. That's correct.

MR. HUESTON: -- objection. I'd like a page of the deposition, if we're referring to a deposition.

MR. SHARTSIS: Let's play it.

MR. HUESTON: Actually, I'd like to see it first before you play it.

MR. SHARTSIS: Sure. If you will look at page 149 and 150. Starting at line 22 on 149, ending at line 6 on page 150.

MR. HUESTON: Starting on what line? Sorry.

MR. SHARTSIS: 149/22, going to 150, line 6.

MR. HUESTON: No objection.

THE COURT: Okay.

(Video played)

MR. HUESTON: Your Honor, I guess I'm going to -- at this point it's in, but it's not impeachment. So --

THE COURT: Okay. That's for the jury to decide. You can continue.

BY MR. SHARTSIS:

Q. And then, Mr. Koch, by the time you finally decided you needed a better quality of organization, you had collected about 10,000 bottles, correct?

A. That's what I said in my deposition.

Q. Okay. Thank you. Now, Mr. Koch --

MR. SHARTSIS: Let's put up Exhibit 101, page 235, please. And can we highlight the Conditions of Sale and Limited Warranty up on the upper left. Blow that up.

Q. Mr. Koch, I'm showing you a page out of the Zachys catalog from 2005.

A. Yes.

Q. Let me just read this to you and ask if you read this at the time.

A. I could answer that now. No, I hadn't read it at the time.

Q. You had not -- you had not read the phrase that says, "Prior to bidding, all participants must read the Conditions of Sale & Limited Warranty contained in this catalog that state the terms governing the purchase of wine sold at auction. By participating in an auction, an auction participant agrees to be bound by the Conditions of Sale and Limited Warranty, printed in this catalog." And you did not read that, is that right?

A. No, I didn't read it at the time.

Q. In fact, you claimed you made a point of intentionally not reading it, isn't that right?

A. As I said before, I viewed all this as boilerplate.

Q. Well, this is -- Mr. Koch, you're in a $4 billion business.

A. Yes.

Q. The business you have writes contracts?

A. Yes.

Q. Would it be acceptable to you for one of your steel company customers to say, "I consider a term in the contract BS, I view it as boilerplate, and I'm not going to follow it"? Would that be acceptable to you?

A. If it is fraud, then I say it's not acceptable.

Q. So if you're -- so do you want to tell me -- have you conducted frauds in your business?

A. Have I?

Q. Yes.

A. We've tried not to. Absolutely not.

Q. All right. Fine. So in your business, Mr. Koch, in your business --

A. Yes.

Q. -- when you deal with a customer, is it all right for them to say, "I think the provisions in your contract is BS and boilerplate and I am just going to plain ignore it"? Is that okay with you?

A. It's okay if it violates US law.

Q. All right. And you understand, Mr. Koch, that the judge is going to tell the jury what the law is in this case and not you?

MR. HUESTON: Objection, your Honor. This is just argumentative. He asked for his answer and he gave it.

THE COURT: Sustained as to that.

Q. You do understand then that the judge is going to give the instruction here.

MR. HUESTON: Objection. Same objection.

MR. SHARTSIS: It's not argumentative, your Honor.

A. No, I understand the judge gives the instruction, but as a layman, I have -- and unfortunately, as Arthur Liman, a very

famous lawyer. Once said, I've had an extremely expensive legal education.

Q. Well, then you know, Mr. Koch, that boilerplate is not an excuse for not following a written contract, isn't that true?

A. As I told you before, if the boilerplate violates the law, then it is BS.

Q. And if the boilerplate does not violate the law, Mr. Koch, then you must comply with it, isn't that true?

A. Generally, yes, if it's a bona fide contract.

Q. And in this case, Mr. Koch, you didn't even know that this provision was in here.

A. Oh, I believe I knew, I believe at the time I knew it was in there because it's standard, it's -- boilerplate is a term that is used to -- that there are standard terms throughout a lot of different contracts, and I knew that all auction houses had this kind of stuff in it.

Q. You knew that all auction houses sold as is, correct?

A. Most of them did, as far as I knew.

Q. So you had specific knowledge that most auction houses sold as is, correct?

A. Yes.

Q. And you assumed that this sale was as is, correct?

A. Yes. But as I said before, if the "as is" is a license to steal -- and I've had debates with auction houses about it, and I'll say it again. I've litigated that and won.

Q. You litigated that in a wine contract, Mr. Koch?

A. Yes.

Q. And you've won? You have a judgment?

A. Yes.

Q. That a jury has found?

A. It's the highest court in New York State.

Q. And if that's so, then you would expect the judge to follow it here, is that right?

A. Of course I would. That's --

Q. Thank you.

A. That's the law of New York.

MR. SHARTSIS: Could we play 220 -- actually, counsel, I'm going to ask to be played 227, lines 13 through 21.

MR. HUESTON: First of all, it doesn't impeach what he says so I'm going to object generally, but if you are going to play it, we're going to play it through page 228, line 6.

THE WITNESS: By the way, may I have a -- see a copy of that too?

MR. SHARTSIS: Your Honor, what's your practice?

THE COURT: What's that?

MR. SHARTSIS: I don't know what the court's practice is.

THE COURT: We haven't been giving it to him, he's been playing it, but if he'd like a copy, he can see it.

MR. SHARTSIS: He can be provided by his counsel,

then.

THE COURT: Do you have a copy you can provide?

(Pause)

MR. SHARTSIS: No objection, your Honor.

THE COURT: Okay.

(Video played)

MR. SHARTSIS: Hold on.

MR. HUESTON: Yeah, I actually did object, it wasn't impeachment, but go ahead and play it through line 6.

MR. SHARTSIS: Could you start it again.

(Video played)

THE WITNESS: Aren't you going to play the rest of it?

MR. SHARTSIS: Yeah, she's just trying to pull it up.

THE WITNESS: Oh.

(Video played)

MR. SHARTSIS: Far enough for you, counsel?

MR. HUESTON: Yes.

BY MR. SHARTSIS:

Q. So Mr. Koch, you would agree with me that this testimony has you saying that you had never read an auction wine catalog, correct?

MR. HUESTON: Objection. He's already given his testimony. He's played this deposition clip. It is what it is.

THE COURT: You can ask.

A. Excuse me?

Q. Mr. Koch, you testified at your deposition that you had, quote, never, ever read the terms and conditions of a wine auction catalog, correct?

A. That's true.

Q. And you're here to tell the jury that actually you knew what was in the wine auction terms and conditions even though you had never, ever read one.

A. I had a general idea of what was in them, yes.

Q. You had never read one, correct?

A. No.

Q. And you made an assumption of what was in it, correct?

A. That's right. I made an assumption.

Q. All right. And the fact is that before the Zachys auction you had no understanding that wine was offered as is, isn't that true?

A. Well, I made a mistake there.

Q. Well, it's pretty -- the mistake you made was, you gave testimony that says, before this action -- Zachys auction, you didn't believe you ever thought that wine was offered as is, correct?

A. That's what I said.

Q. Thank you.

MR. SHARTSIS: Let's go back to 101, 0235. Can you blow up for me in the middle of the second column, Examination

of Wines.

Q. Mr. Koch, were you aware that prospective buyers were "invited by appointment to examine any lots prior to the auction at our temperature-controlled warehouse"?

A. Are you asking what I knew then or what I know now?

Q. Oh, what you knew then.

A. I don't believe I had an idea then, but I assumed that I could if I could always call them and ask them to examine it.

Q. So let me understand this. Did you or did you not know that Zachys offered to prospective buyers the right to inspect wine in 2002 -- at the time of this auction?

A. I don't remember. As I said, I didn't read this, so right now I can't tell you whether I -- I did or not, but I always knew I could call them and ask them to examine.

Q. That you could always call and ask to examine.

A. Yes.

Q. And you knew that you could always call and ask to examine, right?

A. Of course.

Q. Of course. And you did not.

A. No, I did not.

MR. SHARTSIS: Can we turn to page 240 of the contract. And could you highlight for me, please, the first 12 lines of Conditions of Sale.

Q. Mr. Koch, you didn't read this language either, correct?

A. No, I didn't at the time.

Q. And do you see in the middle of this --

MR. SHARTSIS: If you could, Liz, from "As is" through "merchantability."

Q. What it says is, "All property is sold as is without any representations or warranties by Zachys Wine Auctions or the consignor as to merchantability." Do you see that?

A. Yes, I do. I also see something in front of it that says, "The authenticity of property listed in the catalog is guaranteed only as stated herein."

Q. But you didn't read that, Mr. Koch.

A. No, I didn't, but I'm pointing it out that it's there.

Q. We're going to ask you about merchantability. Do you know what a disclaimer of merchantability is?

MR. HUESTON: Objection, your Honor. Mr. Shartsis didn't want me to get into this language, saying Mr. Koch didn't read it, but now he's saying Mr. Koch should get into this language, and he still is in the zone of he hasn't read it so what's the point?

MR. SHARTSIS: Your Honor, limited examination on merchantability.

THE COURT: Okay.

MR. HUESTON: Doesn't matter. Same basis he objected for me.

THE COURT: It's cross-examination. I'll allow it.

Q. Mr. Koch, do you know what a disclaimer of merchantability is?

A. Whether it could be sold or not is what I would say that means.

Q. Right. And is this one of those things you think is BS and boilerplate?

A. I think it conflicts with what they said before, the authenticity and merchantability. There could be other points about merchantability that does not pertain to authenticity, such as --

Q. Yeah, and you didn't --

A. -- such as whether the bottle is broken, whether there is no label on it, any number of factors that go beyond authenticity.

Q. And that's disclaimer, right?

A. Yes.

Q. And of course in the Oxbow contracts, you disclaim merchantability as well, is that right?

A. I don't think we make any point to it.

Q. Are you sure of that, Mr. Koch?

A. I haven't read our contracts recently, but we generally -- we generally guarantee the quality of something.

Q. Right. But you --

A. I don't think -- I don't think -- excuse me. May I finish, please?

Q. Sure. Sure.

A. I don't think we guarantee the merchantability of it or make any comment on merchantability. We leave it out.

Q. Don't you expressly disclaim merchantability in your contract?

A. As I said, I haven't -- I haven't read our contracts in a long time. They're standard.

MR. SHARTSIS: Your Honor, for the purpose of refreshing the witness' recollection, I want to approach him with --

THE COURT: Yes.

MR. SHARTSIS: -- a copy of the contract.

MR. HUESTON: Your Honor, this is not appropriate for refreshing of recollection. He's saying he just hasn't read it.

THE COURT: He said, "I haven't read it in a long time." It either will or will not refresh his recollection, but you can ask.

MR. SHARTSIS: Your Honor, and my favorite old judge said you can refresh recollection with a poem or song.

BY MR. SHARTSIS:

Q. So Mr. Koch, would you take a look at this. I'm going to direct your attention to page 6 in the, "No other warranties or representations of any kind are made --"

MR. HUESTON: Your Honor, I'd ask him to direct him to

what he wants to direct him to without reading it.

THE COURT: Yes. Please don't read it.

MR. SHARTSIS: All right.

Q. It's in paragraph 18, the entire paragraph.

A. What page is it on?

Q. Mr. Koch, you'll see it's at page 6. It should be up in the upper right-hand corner.

A. Okay.

Q. And then it's Warranties provision.

A. Yes.

Q. And just read that. I'm going to focus on the warranty of merchantability. See if it refreshes your recollection.

A. Yes, I see it.

Q. And does this refresh your recollection that your company, Oxbow, makes no warranty or representation of merchantability?

A. What it says to me is my lawyers have done a very good job in writing this.

Q. But your contract does not warrant merchantability.

A. It says that, yes.

Q. Thank you. Thank you. Now the Chicago Wine Company sold wine as is, didn't it?

A. I don't remember.

Q. So the company which you owned 50 percent of, you didn't take the care to determine how that company offered wines to the public, is that correct?

MR. HUESTON: Objection. It's argumentative and it's also asked and answered.

A. I already told you that I didn't pay any attention to that.

THE COURT: Hold on a second.

THE WITNESS: Sorry.

THE COURT: Sorry. You can go ahead and answer it. Overruled.

Q. Let me pose the question again. So, Mr. Koch --

A. Mm-hmm.

Q. -- as a 50 percent owner of a company that sold wine to the public, you were totally disinterested in whether or not that company sold wine to the public as is, is that right?

A. I've already told you I didn't pay any attention to the company.

Q. Thank you. Now, Mr. Koch, in your direct testimony you describe the "as is" clause as a clause where they let them steal and cheat, close quote, is that right?

A. It can be used to let someone steal and cheat, yes.

Q. And that's what you thought the Zachys auction had, which was a clause which could let them steal and cheat, correct?

A. I thought that for the auction houses to put that in allowed them to say anything they wanted in the catalog and not take responsibility for it, whether it was fake, real, or whatever.

Q. And that was your specific understanding on the day that

you authorized Brian Orcutt to lift the paddle to buy wine for you, that they were -- had a clause that would let them steal and cheat.

A. No, at that time I did not have that opinion. I have that opinion now after a lot of experience with fake wine, fake artifacts, fake everything. I've had tremendous experience with that recently and have litigated it.

Q. All right. So in 2005 all you thought was it was BS and boilerplate and therefore you didn't read it, right?

A. Well, that's what I think now.

Q. Well, that's what you thought then, Mr. Koch, clearly, isn't that true?

A. I probably did, but I don't -- I can't -- I can't go back and tell you each thing that I thought at the time, but I probably did.

Q. Well, not probably. You did because you chose not to read the provision because it was BS and boilerplate, right?

A. I -- I admitted that I think it was BS, and I still think it's BS.

Q. And still think means you thought it at the time, correct?

A. I probably did.

Q. All right. You did. Thank you.

A. But as I said, I said -- wait a minute. I said I probably did.

Q. Fine. And at the time, Mr. Koch, you probably thought that

the clause allowed them to steal and cheat, correct?

A. No, I did not say that.

Q. I'm just asking you the question.

A. I did not say that --

Q. All right. So what --

A. -- at the time. I said now I know they use that as a way to steal and cheat.

Q. So if it was BS, why was it BS at the time, Mr. Koch?

MR. HUESTON: Objection. Asked and answered.

MR. SHARTSIS: Not that one.

THE COURT: Overruled.

A. Would you repeat it, 'cause I'm getting a little muddled with your questions. Sorry.

Q. Mr. Koch, in 2005, when you bid at the Zachys auction, you intentionally chose not to read a clause in the contract because you believed it was, quote, BS and boilerplate. Why was it BS, Mr. Koch?

A. Well, because they could sell something and then disclaim it after they praised it; that's why.

Q. And you expressly understood that when you entered into the auction, correct, that they could sell it and then expressly disclaim it?

A. I can't tell you exactly what I thought at that point in time. I can't.

Q. So you don't know what BS meant when you decided not to

read the clause?

A. No, I knew what BS meant. I know what it meant. But as I said, I didn't have the sophistication at that time about how auction houses cheat -- cheat you.

Q. Not my question, Mr. Koch.

A. I know what it was, but I'm telling you --

Q. You're telling me something, but answer my question, please.

A. Okay.

Q. What was BS about it?

A. Well, I've already told you that, where they could praise something on two -- I've seen an auction house praise something and say, you know, this is Custer flag -- Custer's flag that was found at the battlefield, and then later on they say, we don't guarantee anything, it's as is, it is where it is, and I've had some discussions with some auction houses about that phrase and I said, how can they say something in a catalog and then try to deny it in the fine print? And that to me, just common law -- or just common sense, is fraud.

Q. But the fact is, you knew that in 2005 in this auction, correct?

A. I probably had a very good idea of that then.

Q. All right. And knowing that, knowing that, you sent Brian Orcutt $158,000 to go to that auction and spend $3.7 million of your money, knowing exactly that.

A. Well, as I said, I'm not exactly sure everything I knew at that time. I know a lot more now, and as I said, I did send him there, I did pay him $150,000 for it, which may or may not been a good investment, and I spent 3.7 million.

Q. And Mr. Koch, did you pick up the telephone and call Mr. Zacharia and say: You know, I don't like the BS boilerplate in your contract and I will not agree to it?

A. No, I didn't do that.

Q. Did you give Mr. Zacharia the choice of whether he should do business with you?

A. No, I didn't do that.

Q. Did somebody put a gun to your head and say you've got to go spend money at this auction?

A. No.

Q. No one forced you to buy as much as a single bottle at this auction.

A. That's true. I did it all on my own.

Q. And you went in and you bought those bottles at the auction knowing that you thought the clause was boilerplate and BS, correct?

A. Well, that's -- look, as I've already told you, I can't exactly say what I knew and didn't know at that time, but I probably did and I did it.

Q. And it's your view, Mr. Koch, that you are not bound by the terms of the contract, correct?

A. When there's fraud involved, I do not think anybody is bound by the terms of the contract.

Q. You didn't think you were bound by the terms of the contract when you sent Orcutt to the auction 'cause you thought it was BS.

A. Well, if there's fraud involved, then it is BS --

Q. Mr. Koch --

A. -- and I don't think anybody is bound by those -- by those terms if fraud is involved.

MR. SHARTSIS: Your Honor, I move to strike that answer.

MR. HUESTON: Well --

THE COURT: I'm not going to strike the answer. I will just let the jury know that I will give you more detailed instructions about when and how these provisions apply and how they relate to the law.

MR. SHARTSIS: Thank you.

Q. Now did you look at this contract, Mr. Koch, to see if there was a guarantee of provenance?

A. No, I told you I didn't look at the contract at the time, so --

Q. Did you look at the catalog to see if there was a guarantee of provenance?

A. No, I relied upon what was said in the catalog and what was said that this was the best of the best.

Q. Okay. So you did not look to see if there was a guarantee of provenance --

A. I've already told you that.

Q. -- right? And was there anything in this catalog on a wine-by-wine basis that said where a wine came from?

A. No.

Q. So you knew that going into this, you knew that for any wine you bought, there was zero information about the source of that wine.

A. Well, in the front of the catalog it said from the Continent and a lot came from other collectors and directly from the domains. That is pretty powerful to say.

Q. As to any -- can you tell me -- if we went through the catalog -- I'm going to shorthand this. If we went through the catalog and I pointed to a wine, could you tell me where that wine came from?

A. No, I can't, because it's not said, under each specific wine. It was said overall for the entire collection.

Q. Well, they're different wines. For example, Mr. Koch, one of the statements is about Rhone wines, right?

A. That's true. One of the statements is about Burgundy wines too.

Q. And neither of those wines are part of this lawsuit, right?

A. No, but it says a lot in there is -- came directly from the Continent, which is Europe.

Q. Mr. Koch, the reason you sat down with Brian Orcutt before this was to go through this bottle by bottle to say, I like that one, I don't like that one, right?

A. That's one of the reasons. No, one of the reasons was that I was -- sat down with Mr. Orcutt was to find out what he thought of each of the wines, which would be -- would match my collection, 'cause he knew my collection well, and --

Q. Right.

A. -- and which ones that were of a good year and of a good quality. That's right.

Q. On a wine-by-wine basis, correct?

A. On a wine by -- on a lot-by-lot basis.

Q. Lot by lot. So the lot would have the same bottles in it, it would be --

A. Sometimes it doesn't.

Q. Do you remember buying any lots that had a mixed collection?

A. Look, I'd have to go back and look at this. I have bought mixed -- mixed lots in the past. I'd have to go back and look at the invoice.

Q. But you cannot tell me there's a single bottle you can identify in the catalog where the actual source of that bottle was disclosed.

A. Well, when it says in the catalog Chateau Lafite 1858, that says what that is and it must have been come from Chateau

Lafite originally.

Q. And --

A. So that -- it doesn't say who all the intermediaries are and the ownership chains.

Q. Right. And the accuracy of that statement has been disclaimed in the catalog, correct?

A. I don't think so.

Q. All right.

A. In fact, I read it. The authenticity there, you don't --

Q. You assumed, Mr. Koch --

A. Yes.

Q. -- that the auction house could trace the bottle -- as to an 1860 Lafite, could trace the bottle from 2005 back 145 years to every owner and every place it had been?

A. That's really a jump on what I said. I didn't say that at all.

Q. I'm asking you. Did you believe they could do that?

A. No, I didn't say they could.

Q. In fact, Mr. Koch, you told us how carefully you keep your wine in terms of temperature and humidity, correct?

A. Yes.

Q. You do that to make sure the wine is really kept at its best condition and quality, correct?

A. Yes.

Q. It's really important to you how wine is kept, right?

A. Of course it is.

Q. Mr. Koch, there is not a single word in the catalog describing how any of these wines were maintained.

A. No, but -- no, I would disagree with you. When it says a collector that's the equivalent of Alexander the Great, that implies directly that he kept the wines in perfect condition, and when he says he bought it directly from the domain or from other outstanding collectors, that says that, because you wouldn't put -- you wouldn't put a Monet painting in a beach house where the windows are open and the waves come in and splash the painting. You know, that's --

Q. Mr. Koch, you made no inquiry into how any of this was stored.

A. No, I didn't.

Q. Thank you. And based on your reading of the catalog, not including the parts you didn't read, you believed that Zachys was guaranteeing the authenticity of the wine, is that right?

MR. HUESTON: Objection. That is asking -- he doesn't want him to give legal conclusions, I guess, until he wants him to give legal conclusions. I think that's an improper question.

MR. SHARTSIS: I just want to know his understanding, your Honor. I'm not asking what his legal conclusion is. What his belief was.

A. My belief was that they'd stand behind what was said in the

catalog.

Q. They'd stand behind what was said in the catalog.

A. Yes.

Q. What did that mean?

A. Well, that when they said Chateau Petrus 1921, it was Chateau Petrus 1921.

Q. Does "stand behind" mean that if there was a problem, they'd make good on it?

A. That they'd be held accountable for it.

Q. That they'd make good.

A. I don't know.

Q. So you don't know completely what "stand behind" is?

A. That I believed that they were giving me what they said they were giving me.

Q. And if it turned out, for example, they were giving you a bottle that had came with a torn label, do you expect them to stand behind that?

A. Well, if they said the torn label was torn, we'd inspect it and see if it was torn. If it wasn't torn, we'd say: We're giving you the bottle back.

Q. Right. And they would stand behind it, correct, when you give them the bottle back?

A. Generally they have.

Q. Thank you.

MR. SHARTSIS: Could we blow up 101, please. 6.

Your Honor, I'm about to go into a whole long area of examination. Would this be an appropriate time for a break?

THE COURT: We could take a brief break.

Ladies and gentlemen, why don't we take about a ten-minute break. Please leave your pads on your chairs. See you in ten minutes.

(Jury excused)

(Recess)

(Continued on next page)

(Jury present)

THE COURT: Mr. Shartsis, you may proceed.

MR. SHARTSIS: Thank you, your Honor.

BY MR. SHARTSIS:

Q. Mr. Koch, this morning your lawyer asked you a number of questions about the details of the introduction to the catalog. Do you remember that?

A. The introduction?

Q. The introduction.

A. The what? I'm sorry.

Q. Asked you a number of questions about the introduction written by Mr. Zacharia to the 2005 catalog. Do you remember that?

A. Yes.

Q. You testified that you had read that in excruciatingly careful detail, correct?

A. I didn't use those words, but I had read it.

Q. In extreme detail?

A. I don't know what you mean by extreme detail, but I read it.

Q. Line by line?

A. Yes, I read it line by line.

Q. Isn't it true, Mr. Koch, that when I asked you if you had looked at the catalog in 2010, you told me didn't recall if you had looked at it?

A. Well, that could be true.

MR. SHARTSIS: Counsel, I'm going to ask to be played page 120/lines 11 and 12.

MR. HUESTON: No objection.

THE COURT: OK.

MR. HUESTON: One moment.

THE COURT: Hold on.

MR. HUESTON: We are going to ask that it get played through line 25.

MR. SHARTSIS: In that case let's play through line 6 on page 121.

MR. HUESTON: That's fine.

THE COURT: OK.

A. Page 21 you're starting with?

Q. 120/line 11.

A. I can't hear you. I'm sorry.

Q. 120/line 11.

A. Thank you.

MR. HUESTON: We will be happy to do it. 120/line 1 through 121/line 6.

(Koch video deposition shown)

Q. Mr. Koch, you gave that testimony two years ago?

A. Yes, I did.

Q. Mr. Koch, when I asked you to describe the nature of your reading, you said you just looked at the wines and picked out

the ones you wanted and did not describe that you actually read the introduction, isn't that true?

A. Where is that in my deposition?

Q. Let's play --

MR. HUESTON: Before we play, there is no question in the deposition where you asked him to look at the cover letter or asked him about the cover letter.

MR. SHARTSIS: We are not arguing here. I'm entitled to play anything from the deposition of Mr. Koch at any time. That is the law.

MR. HUESTON: Actually, you're not, under the rules of evidence.

MR. SHARTSIS: That is not correct.

THE COURT: What is the question?

MR. SHARTSIS: Your Honor, I would like to play page 276/line 20 through 277/line 16.

MR. HUESTON: No objection to that.

(Koch video deposition shown)

Q. Mr. Koch, was that your testimony two years ago?

A. Yes, it was.

Q. Let's turn to Exhibit 101, page 6. This is the first page of the introduction by Mr. Zacharia that you testified about. Do you recognize it?

A. Yes.

Q. Mr. Koch, if Sotheby's had told you this was one of the

greatest collections in the world, would you have believed them?

A. At that time, yes.

Q. You know Mr. Brierley?

A. I met him once.

Q. You think highly of him, I think you told me at your deposition.

A. Are you asking now or when I met him?

Q. Do you remember, when you met him, that you thought highly of him?

A. When I met him, I did think highly of him.

Q. If Mr. Brierley had told you this was one of the great collections of the world, would you have believed him at the time?

A. Probably. I don't know. That's a speculative question.

MR. SHARTSIS: Would you blow up paragraph 2 for me, please. And would you blow up the last two sentences.

Q. Mr. Koch, you were asked questions about the individual who sold the wine here and indicated it was very important to you that that person not be a reseller of wine, is that right?

A. Yes.

Q. You have bought a lot of wine from people who were resellers, haven't you?

A. Have I?

Q. Yes.

A. I've bought a lot from auction houses who are resellers.

Q. Right. When you bought from auction houses, there have been anonymous consignors, right?

A. Yes.

Q. You have no idea whether they are in the business of selling wine or it's a rare one-off experience that they are selling it, correct?

A. That's right.

Q. Here it says, "He has decided to reduce the size of the collection to a more manageable level. He now believes about 30,000 bottles of the world's greatest wine should provide adequate supply and variety for future enjoyment. Several smaller sales have taken place, and this is and will be by far the largest." Do you see that?

A. Yes.

Q. You were told that whoever was selling this wine had had several sales before this sale, correct?

A. I was told that he had, yes, smaller sales had taken place. I was told that.

Q. Right. You read that this was not the only sale by this individual of his wine, correct?

A. That's true. But what it said to me was that he was downsizing. That's different from being in the business of buying and selling.

Q. It shows you that he had had several sales, right?

A. That's precisely what it showed. It showed that he was downsizing.

Q. It showed he had several sales, Mr. Koch, isn't that true?

MR. HUESTON: Objection. Argumentative.

THE COURT: Sustained.

Q. Mr. Koch, did you ask anything about the seller of this wine from Zachys?

A. Did I what?

Q. Did you call up Zachys and say, who is selling the wine?

A. Yes, I did. I asked him who consigned it and who consigned the '21 Petrus. I have already told you that.

Q. Right. But before you bought the wine, before the auction, Mr. Koch, did you call Zachys and ask any questions?

A. No, and I'll tell you why.

Q. Mr. Koch --

A. I'm going to tell you. Excuse me.

MR. SHARTSIS: Your Honor, could you instruct the witness, please?

THE COURT: Please wait until there is a question.

THE WITNESS: Excuse me?

THE COURT: Please wait until there is a question.

Q. There has to be a question outstanding, Mr. Koch.

A. What is it? I want to answer it.

Q. You have. That's why we are going to move on to the next question.

A. Fine. Move on.

Q. Mr. Koch, let's look at the next paragraph. Could we highlight the "On occasion" sentence. Mr. Koch, you focused on this sentence during your testimony this morning. Do you remember that?

A. Yes.

Q. First, Burgundian wines are not the wines in this lawsuit, correct?

A. No. Mostly Bordeaux.

Q. They are all Bordeaux, isn't that right?

A. I believe so.

Q. Do you know, Mr. Koch, what wines are in the lawsuit?

A. I can't remember them all, but there are 24 of them.

Q. You don't know whether they are Burgundy --

A. They are Bordeaux.

Q. They are Bordeaux, right?

A. Yes.

Q. None of them are Rhone wines?

A. No.

Q. So this representation about Burgundian and Rhone wines has nothing to do with the 24 wines that you bought, does it?

A. It certainly gave me the impression that it applied to a lot of his wines.

Q. It has nothing to do with the wines that you bought, isn't that true?

MR. HUESTON: Objection. Argumentative.

A. I'm not sure.

THE COURT: Overruled.

Q. You're not sure?

A. Yes.

Q. A sentence about Burgundian and Rhone wines has to do with the Bordeaux that you brought in this lawsuit?

A. "On occasion Burgundy and Rhone wines were purchased directly from the domains." That doesn't include Bordeaux.

Q. Right. Not only that, Mr. Koch, but this morning you said, you were misled because there was a misrepresentation that all of these wines had been brought from domains, isn't that true?

A. I don't remember what I said this morning exactly. But the words "as well as from other collectors who are personal friends of some of the world's greatest winemakers" that says to me --

MR. SHARTSIS: Your Honor, I'm going to move to strike this.

A. Excuse me. The world's greatest winemakers includes Petrus -- sorry, sir.

THE COURT: You can complete your answer.

A. The world's greatest wine collectors includes Petrus, Mouton, Cheval Blanc, etc. That's where I'm confused.

Q. Let's talk about your confusion. The first two words in this sentence are "on occasion."

A. Yes.

Q. Do you understand "on occasion" doesn't mean every one?

A. That's right.

Q. So, what you were told here is that some number, completely undefined, of Burgundian and Rhone wines were purchased directly from domains, is that right?

A. Well, what it says there, if you read it all in the context --

Q. Mr. Koch, could you please focus on what I have asked you.

MR. HUESTON: Objection, your Honor. I was going to ask for context, but the witness is asking to explain the context he is reading. He should be allowed to complete his answer.

THE COURT: Sustained.

MR. SHARTSIS: Which is sustained, my asking to strike?

THE COURT: Mr. Hueston's objection. I'm not going to strike it. He can explain his answer.

Q. Let me pose the question again, Mr. Koch. Do you see the words "on occasion"?

MR. HUESTON: Wait a minute. He was explaining. Let him finish his explanation.

A. I understand what "on occasion" means. But there is something else in here, "the balance of the collection, much of the sizzle." Those two sentences together said to me a lot of

the wines came from the greatest winemakers and some of them directly from the domains, and the balance is great. That's what it says.

Q. Mr. Koch, you understood that on occasion, that means sometimes, Burgundies and Rhones were bought from the domains, correct?

A. That's right.

Q. Thank you.

A. You're welcome.

Q. It says that there are rare examples of wines made by previous generations, is that right?

A. Yes, it does.

Q. You bought some of those wines, isn't that right?

A. Yes, I did.

Q. You're not suing Mr. Greenberg over some of those old 19th century wines that you bought from him, correct?

A. There are some wines I'm not suing him about, there are other wines on which I'm not suing that I believe are fake, and there's a bunch of them that are real.

Q. A bunch of them that are real, correct?

A. Yes.

Q. The wines that you are suing him on, you're suing him on one bottle of 19th century wine, correct?

A. I'd have to look at the lawsuit, but I think you're right. I'll take your word for it.

Q. Let's look at that. Let's look at the next page. Can we take the second paragraph and blow that up, please. And can you blow up the first six lines, please. Mr. Koch, this says, "The offering of Bordeaux, too, is wide-ranging with top growth chateaus represented by case quantities in modern wines with a selection of great classic vintages ranging back to the 1920's. Most unusual, however, is the selection of 19th century Bordeaux and Right Bank wines from 1921 through 1961 vintages." Do you see that?

A. Yes, I do.

Q. In your lawsuit you have here for the jury to see a single bottle of 19th century wine, is that correct?

A. Yes.

Q. You bought a number of bottles of 19th century wine, correct?

A. Yes, I did.

Q. That is one bottle out of 17,000 bottles that was consigned to auction of 19th century wine that you have in the lawsuit here today?

A. I'll take your word for it.

Q. And it's one bottle out of 2,700 bottles that you bought from Mr. Koch, correct? Excuse me. From Mr. Greenberg, correct?

A. One old bottle, one 18 -- actually, I did buy a bunch of other old wines from him. In fact, some of them listed here I

bought. But your arithmetic can be correct, 1 out of 2,669.

Q. Right. As you said, you did buy some of the other bottles that are listed. They are not in this lawsuit, correct?

A. They are not in this specific lawsuit.

Q. Not in this lawsuit, right?

A. In this specific lawsuit.

Q. You're not suing Mr. Greenberg over them, right?

A. What?

Q. You're not seeing Mr. Greenberg over those wines, correct? They are not in the lawsuit in this courtroom against Mr. Greenberg?

A. That's what I said. It's not in the specific lawsuit on which we are sitting today.

Q. Out of all the wines you have listed here, only one, the 1864 Latour, is in this lawsuit, correct?

A. I'll take your word for it.

Q. Go down a little farther. It says -- can we get the next sentence -- "Here is a reference to a similar provenance of those tasted by Michael Broadbent"?

A. Yes.

Q. Do you know what the provenance was of those wines?

A. No, I don't.

Q. Let's go down a little farther. We will find in the middle of the paragraph "Robert Parker." Three more lines. Did it influence you, Mr. Koch, that Robert Parker had tasted some of

the same vintages and years as these wines?

A. Somewhat.

Q. In fact, you said it influenced you that a bottle of Chateau Lafleur 1947 had been opened and tasted, correct?

A. Can you put that up here?

Q. Sure.

MR. SHARTSIS: Move down a couple of lines. Let's open this up a little bit. A little farther down.

MR. HUESTON: I would like to show the witness the whole paragraph.

MR. SHARTSIS: That's fine. In the middle, those lines from "Parker" down.

Q. Do you see there it says, "When Fritz and I were at the consignor's cellar to help prepare for this auction, he decided, in celebration of our visit, to open for us a magnum of Lafleur 1947"? Do you see that?

A. Yes, I see it.

Q. You say that influenced you in buying the wine here, that a Lafleur '47 had been tasted by Fritz Hatton and Jeff Zacharia, correct?

A. Yes, it did.

Q. The tasting was important, isn't that correct?

A. It depends upon who does the tasting.

Q. This was important to you, that Hatton and Zacharia had tasted the wine?

A. Had tasted one bottle.

Q. Right. It gave you comfort that the quality of the collection was good because those two individuals had opened a bottle and tasted it, correct?

A. That is certainly the implication here.

Q. And that's what it meant to you?

A. It meant to me that -- let me look at it here. Yes, it meant to me that some independent person was saying it was good.

Q. At the very bottom of this paragraph -- if you could mark that last line, just the bottom, last line -- do you see this talks about a bottle and it says, "all these Right Bank magnums sourced on the continent"? Do you see that?

A. Yes, I do.

Q. You mentioned that this morning, that you saw that phrase?

A. Yes.

Q. The continent is Europe, is that right?

A. That's what I believed it was.

Q. Hardy Rodenstock is in Europe, isn't he?

A. Yes, he is.

Q. Knowing that the bottles were sourced on the continent and knowing that Hardy Rodenstock is in Germany, on the continent, you made no inquiry at Zachys whether these wines might have come from Hardy Rodenstock, isn't that true.

A. I did not.

Q. Thank you. Now let's go to the catalog.

MR. SHARTSIS: Can we go first to page 44, Exhibit Number 44. Under the label on the right for Chateau Cheval Blanc '21, can you blow that up, please. About eight lines from the bottom, can you blow up the name Rodenstock for me, please.

Q. Mr. Koch, you were asked about the catalog, and you said that you had carefully read this description of Chateau Cheval Blanc and gave testimony about why you relied on the bottle, right?

A. What page is it on?

Q. It's on the screen in front of you.

A. I really don't like to look at the screen. Could I look at the catalog as well, please.

Q. Sure. You have to do it by lot. It's lot 357.

A. Thank you. Yes, I see it.

Q. Mr. Koch, when you carefully read this catalog and you saw the name Hardy Rodenstock, did you think, you know, there might be a problem here because Hardy Rodenstock sold me four bottles of Jefferson wine that were fake?

A. No. at that time I did not know that Hardy Rodenstock was faking a lot of other wines.

Q. Mr. Koch, you knew that Hardy Rodenstock had faked $400,000 of wine that you owned.

A. What I said was I hadn't proved that he had faked it,

because there had been a lot of -- some people had said it was fake, other people said it wasn't. In fact, before this catalog came out, we took that bottle to France to be cesium tested, and it came out negative, which meant that it was pre-atomic bombs. So I didn't know that it was fake or not by that time. I suspected it, but I didn't know.

Q. You suspected it and you knew that Rodenstock had sold it to you, right? I don't want to go through this morning's testimony again.

A. As I said, I suspected, but I didn't know that he was a widespread faker.

Q. Mr. Koch, did you or did you not read the name Rodenstock in the description of the 21 Cheval Blanc before you bought it?

A. I could have. It was certainly there.

Q. It was certainly there for you to read, correct?

A. Yes.

Q. It wasn't hidden from you, was it?

A. No, it was not. In fact, Hardy Rodenstock at that time was considered a real super wine connoisseur.

Q. Mr. Koch, you were investigating Hardy Rodenstock at that time, weren't you?

A. Yes, I was.

Q. Thank you. Now let's look at 0051.

A. What's 0051?

Q. It will come up on your screen, Mr. Koch. It's going to be

lot 400 and 401.

A. Thank you.

MR. SHARTSIS: On the upper description of Chateau Latour 1864, can you highlight "Hardy Rodenstock," please.

Q. Mr. Koch, you bought a bottle of 1864 Chateau Lafleur, it's your only 19th century wine in this case, is that right?

A. Yes.

Q. Here it says "Hardy Rodenstock." Do you remember reading that about the 1864 Latour?

A. It was there for me to read. I don't recall whether I read it or not, but it was there.

Q. You bought lot 401, do you recall that? There were two bottles of 1864 for sale.

A. Yes.

MR. SHARTSIS: Can we highlight all of lot 401.

Q. Lot 401 describes the bottle as upper shoulder, lightly bin soiled label, cork fully stamped with modern chateau foil, foil cut, believed recorked in 1980 as 1980 is visible on the cork." Do you see that?

A. Yes.

Q. Mr. Koch, do you remember reading that?

A. I don't.

Q. If you had read something that said that it was believed that it was recorked in 1980, would you have bought it?

A. I obviously did.

Q. But you don't remember reading this?

A. No, I did not.

Q. It wasn't concealed from you that the cork was believed to be recorked in 1980, was it?

A. No, it wasn't.

Q. Do either of these descriptions of Chateau Latour show the various history of where the wine came from other than Chateau Latour?

A. No.

Q. I'm sorry. The answer?

A. I said no.

Q. Right. No provenance, right?

A. Well, provenance is Chateau Latour 1864. Other than that, there is no provenance.

Q. Right. There is a 150 years missing in between?

A. That's right.

Q. Can we turn to 53, lot 410.

A. That's on two pages. There's a picture on 51 and on 52 is the --

Q. Let's stay with 51, which is Trial Exhibit 53.

A. I'm sorry. It's on 51. I'm sorry.

MR. SHARTSIS: Can we mark "Rodenstock" down there at the bottom.

Q. Mr. Koch, the bottle which is not among the 24 bottles you are suing Mr. Greenberg on is Chateau Latour 1929, correct?

You bought that bottle?

A. Yes.

Q. This bottle indicates that it was related to Hardy Rodenstock?

A. Yes.

Q. Do you remember reading that one?

MR. HUESTON: Objection. This is a misleading line. It doesn't say anything here about from Rodenstock. It's tasting notes underneath a description of the bottle.

MR. SHARTSIS: I didn't say it was from Hardy Rodenstock, your Honor.

MR. HUESTON: I believe that's what your question's presumption was, that --

THE COURT: Let me clarify. Mr. Koch, the tasting notes do not relate to a particular bottle but rather to the type of wine, that is, the vintage, is that not correct?

THE WITNESS: That's correct.

Q. Do you remember reading this?

A. No, I don't.

Q. Do you remember ever seeing Hardy Rodenstock's name in this catalog?

A. No, I don't.

Q. Were you familiar with the fact that Robert Parker had written tasting notes on Chateau Petrus 1921 tasted with Hardy Rodenstock?

A. Yes.

Q. Let's turn to page 57. Excuse me. 59 exhibit, 57 in the catalog.

A. Yes.

MR. SHARTSIS: Can we blow it up, please. This isn't the right page. I'm sorry. 59, Trial Exhibit 59. 0059 on this. There we go. Can you blow up for me below the Petrus label.

Q. The mark WA2/96 down at the bottom, do you understand, Mr. Koch, that is Wine Advocate?

A. Yes.

Q. That's Mr. Robert Parker's publication?

A. Yes.

Q. Here he says, "If ever I were to kill for a wine . . . 100," do you see that right above it?

A. Yes.

Q. You knew that was the tasting with Mr. Rodenstock, isn't that true?

A. At the time I didn't, but now I do, and I can tell you a very interesting story about this. Rodenstock did a bait and switch.

MR. SHARTSIS: Your Honor, this is not explaining an answer.

THE COURT: Please wait. Your counsel will have a chance to fill in.

THE WITNESS: I'm sorry.

THE COURT: That's fine.

Q. If we look at the top of this, we see in the description it says, "Part of vintage visible on cork." Do you see that?

A. Yes.

Q. Did you read that?

A. I'm sure I did.

Q. It was acceptable to you to buy a bottle which had only part of the vintage visible on the cork?

A. Yes.

MR. SHARTSIS: Let's go down below to the second Petrus '21. Can you mark "part of vintage visible on cork."

Q. The same question, Mr. Koch. Did you read that?

A. I'm sure I did. I don't remember.

Q. Are you sure you read all these descriptions?

A. When I decide to buy a wine, that's generally what I do.

Q. So, we could safely assume that when you read the descriptions, you saw the name Hardy Rodenstock in all the places I have just said, correct?

A. Sometimes I do not read the tasting notes.

Q. Sometimes you do, right?

A. Sometimes I do.

Q. Could we go to 0064, please. And can you go to lot 480. Mr. Koch, you bought Chateau Lafleur 1921?

A. Yes.

Q. In fact, you bought both bottles that were sold in this auction, correct?

A. I'll take your word for it.

Q. The '21 is in this case, is that right?

A. Yes.

Q. In 480 do you see any description of anything on the cork?

A. No.

Q. Were you misled about what was on that cork?

A. Well, if something was on the cork that was wrong and it doesn't say it here, I'm misled by omission. In fact, that's what this lawsuit is about. It's about that he is not telling me the whole story that he knew.

MR. SHARTSIS: Your Honor, we have a little filibuster up here.

MR. HUESTON: He is answering the question.

THE COURT: He is answering the question. Both sides have gone on some. I'm going to allow a little leeway to both parties.

MR. SHARTSIS: Go back to Exhibit 101, page 64, please. If you could pull up lot 481. And if you could highlight "fully branded cork" up there.

Q. Mr. Koch, do you see that the description of this bottle of Chateau Lafleur said "fully branded cork"?

A. Yes.

Q. Now let's look at the one below it. Again, this is a

Chateau Lafleur that describes a fully branded cork?

A. Yes.

Q. Now let's go back up to the one we showed Mr. Koch earlier, the Chateau Lafleur '21, bin 480. You see no description of a cork at all, is that right?

A. That's right.

Q. Did you notice when you read the catalog that sometimes there were different descriptions of corks?

A. Yes.

Q. You are aware that some corks showed they were fully branded and some showed they were not?

A. I don't know. Some said fully branded and others did not say anything about the cork.

Q. You were aware that the catalog said that?

A. I am now. At the time I don't remember.

Q. That's what I want to find out. When you read the catalog and looked at these descriptions, you don't recall that there were times when there was no mention of what was on the cork and other times when there was a mention that the cork was fully branded? Do you remember that?

A. Yes.

Q. You remembered that when you read it?

A. As I said, I don't recall everything I remembered -- I mean that I had at that time.

Q. I'm a little confused. When I asked you if you remembered

it, you said yes. Then I asked you did you remember it at the time.

A. I thought you said did you remember that you said that. I apologize. I'm not following you closely.

Q. Let me try again. Do you remember reading the descriptions in which Zachys laid out what they saw on the cork?

A. Generally, I have looked at all these descriptions.

Q. Do you remember looking at the portion of the description that talked about the cork?

A. Generally not.

Q. Let's talk about inspection. Mr. Koch, earlier I asked you the question whether you knew you could inspect, and you told me you knew you could inspect if you wanted, is that right?

A. I said I could always call and ask to inspect.

MR. SHARTSIS: Your Honor, I want to ask to play page 229/line 23 through 230/line 13.

A. What page are you on, sir?

Q. 229?

MR. HUESTON: That's not impeachment, but if you would like to play it, I'm not going to object.

THE COURT: You may play it.

Q. Before we play it, let me ask a question. Mr. Koch, you testified this morning that you had affirmatively concluded not to inspect, correct?

A. Yes.

Q. You said, what's the need to? That was your phrase, right?

A. That's right.

Q. What's the need to, because the catalog was so glowing in the beginning, right?

A. That's right.

MR. SHARTSIS: Let's play the deposition.

(Koch video deposition shown)

Q. Mr. Koch, you elected not to inspect, correct?

A. That's correct.

Q. You could have inspected?

A. The catalog says I could inspect.

Q. And you believed you could have inspected?

A. Did I believe it? I believe I could have asked for it. But we found one wine house that I said later on in this deposition that refused to let us inspect.

Q. Right. You could have asked for it, correct?

A. That's right.

Q. Zachys would have given you an answer, correct?

A. They would have given me an answer. I don't know if it would be positive or negative.

Q. Mr. Koch, you have to agree with me that since the catalog said you had a right to inspect, we could safely assume that Zachys would have said yes, you may inspect?

A. Not necessarily.

Q. So you believe that Zachys would write in its catalog,

twice, that bidders have a right to inspect, that you would ask to inspect, and they would say, oh, no?

A. It depends. There's a whole lot of circumstances where they would say no. We are moving the line over, you can't inspect it. I don't know. I know Jeff Zacharia. He's a nice guy, and I'm sure he would have honored his commitment. But other auction houses have not.

Q. We are not talking about other auction houses, Mr. Koch. We are talking about Zachys. You agree with me that Mr. Zacharia would have honored his commitment to allow you to inspect, is that correct?

A. I believe he would have.

Q. You believe he would, right?

A. As I said, I didn't ask, so I didn't know.

Q. Mr. Koch, you knew people at Sotheby's well, correct?

A. I'm struggling with this time period.

Q. You would have them come in to inspect your cellar before 2005?

A. Yes, I did, but I'm not sure I knew them well.

Q. I'm sorry. You knew the people at Sotheby's?

A. I knew the people, yes.

Q. You knew them well enough to come in before this auction, right?

A. To come inspect my cellar?

Q. To come inspect and do work in your cellar regarding your

bottles.

A. Yes. They had.

Q. You could have hired somebody from Sotheby's to go and take a look at these wines, correct?

A. I doubt it. I doubt if they would go and inspect a competitor's cellar.

Q. Didn't ask, did you?

A. No. As I testified before, I didn't think it was worth-while to inspect.

Q. But it would not have been difficult to inspect the rare and fine wines in this auction, correct?

A. Yes, it could have been.

Q. You don't know that, because you didn't try, right?

A. No, I can tell you why. Because the catalog was mailed only two weeks before the auction, I got it probably within ten days or so of the auction or less. For me to call up and find an expert and to go and inspect would have been a huge endeavor. You said, you could have. Yes, if I -- I didn't even know who the wine experts or who the authenticators were.

Q. Mr. Koch, you are about to buy $3.7 million of wine, right?

A. Yes.

Q. You made the affirmative decision not to inspect, correct?

A. I made the decision not to inspect, that's right.

Q. Thank you. Mr. Koch, you agree with me you can inspect by just looking at the catalog, right?

A. That I could?

Q. No. That you could get somebody just to look at the catalog?

A. At that time I didn't know anybody who could provide that kind of inspection.

Q. You didn't try to find anybody, right?

A. No.

MR. HUESTON: Objection. This is asked and answered repeatedly.

THE COURT: Overruled.

Q. You agree with me today that you know that it is easy enough to get somebody to look at the catalog to determine whether or not there might be counterfeits?

A. Today I'm a lot more knowledgeable and I can get someone to look at it.

Q. In fact, you had Mr. Edgerton do that with a Christy's catalog. You testified about that this morning, right?

A. Yes.

Q. Mr. Edgerton cost, what, about $200 an hour?

A. I don't know what it cost.

Q. Whatever it was, it wasn't too expensive for you?

A. It's been very expensive to me.

Q. You were happy to pay Mr. Edgerton because you asked him to examine a Christy's catalog?

A. That's true.

Q. Based upon examining just the catalog, just looking through the pages of the catalog, Mr. Edgerton claimed he could identify a fake wine for you by just looking at the pages of the catalog, correct?

A. There are some people could do that. Maureen Downey can. I'm sure Michael Egan can. There are a handful of super good inspectors or experts who can identify that. Only a couple of handfuls that I know of.

Q. You were here yesterday, Mr. Koch?

A. Yes.

Q. Maureen Downey couldn't tell the difference between at a magnum and a bottle on the cover of a page, isn't that true?

MR. HUESTON: Objection. Totally argumentative.

THE COURT: Overruled.

Q. Mr. Koch, you saw yesterday up on the screen Maureen Downey testify that a cover of a catalog which had a magnum was the same as a bottle, isn't that true?

MR. HUESTON: Objection. That mischaracterizes the testimony.

MR. SHARTSIS: I'm sorry. He's just read this, your Honor.

THE COURT: You can answer.

A. I frankly don't recall that. I know there was a lot of discussion about it.

Q. You don't recall Ms. Downey saying that it was just

authorship that caused her to make a false statement?

MR. HUESTON: Objection.

A. I don't think she made a false statement. Anyway, that's my opinion.

Q. That's what you said. You just raised Maureen Downey. You just volunteered her as somebody who is just terrific?

MR. HUESTON: He didn't raise anything. He is leading Mr. Koch.

MR. SHARTSIS: Your Honor --

THE COURT: Please ask a question.

Q. Mr. Koch, you were sitting here listening to Ms. Downey, and you're telling us you don't remember Ms. Downey being asked about why there was a magnum bottle on a cover and she published a website saying it was the same as a not magnum bottle? You don't remember that?

MR. HUESTON: Objection.

A. I remember that, but --

MR. HUESTON: Mischaracterizes the testimony.

A. She was using what they call poetic license or authorship. For her purposes I didn't call that misrepresentation.

Q. So, it wasn't misrepresentation by your standards, Mr. Koch, for somebody to put up a website saying that Mr. Greenberg had had a 750 bottle --

MR. HUESTON: Your Honor, that totally --

MR. SHARTSIS: Let me finish my question.

Q. It wasn't misrepresentation by your standards, Mr. Koch, that somebody would put on a website that Mr. Greenberg had 750-milliliter bottles, centiliter bottles, that he put in at auction that showed in a catalog bottles like this? That is not a misrepresentation?

MR. HUESTON: Objection, your Honor. Mr. Shartsis has intentionally misrepresented that testimony. I am going to finish my objection. Ms. Downey never said that she put up on a website Mr. Greenberg's name in an attachment to the article that she wrote for instructive purposes, and you know it.

THE COURT: Sustained.

A. I would say what she said was she recognized the collection from the picture and then she wrote about the fake bottles that were in that collection. That's what I understood.

Q. You didn't hear her say that the magnums on the cover, that she had written that the magnums on the cover were the bottles that Eric Greenberg had rejected?

MR. HUESTON: Objection.

A. Let's look at the testimony.

Q. I'm just asking you.

A. I said let's just look at the testimony refresh my memory, show me.

THE COURT: Let's move on.

Q. Mr. Koch, today you would have an expert examine the wines in an auction, correct?

A. Excuse me?

Q. You would have an expert examine wines before you bought them at auction today?

A. I buy very little at auction today because I'm tired of buying fake wine.

Q. Mr. Koch, my question is, would you have an expert examine wine at auction if you bought it?

A. It depends upon the wine.

Q. Old and rare, you would have an expert look at it, right?

A. For what?

Q. Old and rare, you would have an expert look at it?

A. Yes, of course.

Q. When Mr. Edgerton looked at a bottle at Christy's and found it was fake, you bought the bottle knowing it was fake, correct?

A. Yes, we did.

(Continued on next page)

BY MR. SHARTSIS:

Q. Mr. Koch, I'm going to change subjects here and put up a --

MR. SHARTSIS: Counsel, we're going to put up a demonstrative exhibit, which was used in the opening.

Could you please put up Exhibit G18.

Q. Mr. Koch, can you see that on the --

MR. HUESTON: Your Honor -- I'm going to ask that you identify what is -- if you're going to show this to him, what you're depicting in this demonstrative.

MR. SHARTSIS: I'm just showing him the Zachys sticker. That's the purpose. I was about to do that.

THE COURT: Is this in evidence or this is just a demonstrative?

MR. SHARTSIS: This is just a demonstrative.

THE COURT: Okay.

BY MR. SHARTSIS:

Q. Mr. Koch, you're aware that there are Zachys stickers on two of the bottles that are being claimed in this case?

A. I take your word for it.

Q. Well, you know that for a fact, right?

A. I haven't looked at the bottles, to tell you the truth, so I haven't -- I haven't seen the stickers.

Q. Have you ever looked at the bottles?

A. Have I ever looked at them? Yes, but I haven't inspected them for Zachys stickers.

Q. Okay. And you know I asked you about stickers at your deposition, right?

A. I've forgotten. You probably did.

Q. Right. And at your deposition you told me that in your cellars, in the Koch cellars, if there is an existing sticker on a bottle, you leave it on the bottle, correct?

A. Yes, that's our rule.

MR. HUESTON: Objection. If you're going to refer to the deposition, I'd like to have a page reference.

MR. SHARTSIS: Just asked him a question, your Honor.

MR. HUESTON: You're asking what he remembered in his deposition.

MR. SHARTSIS: Let me ask about Mr. Koch.

Q. If there's an existing sticker on a bottle in the Koch cellar, you leave it on the bottle?

A. That's our policy.

Q. And if Zachys placed stickers like this, that say Zachys, on bottles from the 2005 auction, those stickers would still be on the wine in your cellar, correct?

A. There's a big question. There's a big "if" in there. If they put stickers on them, we would leave them on.

Q. So if they put them on, they would still be on, correct?

A. That is an -- yes, if they put them on.

Q. Right.

MR. SHARTSIS: Can you display to Mr. Koch

Exhibit 444, page 1, please.

Q. Mr. Koch, take a look at this exhibit and tell me whether you recall Mr. Zacharia sending you this e-mail.

A. Yes, I do.

MR. SHARTSIS: All right. Your Honor, we move it into evidence.

MR. HUESTON: No objection.

THE WITNESS: Can you blow it up so I can read it, please.

MR. SHARTSIS: Sure.

THE COURT: What number is it?

MR. SHARTSIS: 444.

THE COURT: 444 is received.

(Trial Exhibit 444 received in evidence)

MR. SHARTSIS: Could you take the upper portion of the e-mail and blow up that portion.

BY MR. SHARTSIS:

Q. Mr. Koch, why don't you take a moment and read that.

A. (Witness complies.) Yes, I've read it.

Q. This was an invitation by Jeff Zacharia to you to a dinner the night before the auction, correct?

A. That's correct.

Q. And you accepted the invitation, correct?

A. Well, I went to it. I actually flew in from Colorado to attend it.

MR. SHARTSIS: All right. And if we could highlight the third sentence. Actually, we should highlight those three sentences, please.

Q. Mr. Koch, this says, "I would like to invite you to a very special tasting/dinner we are organizing before our October NY auction. The whole sale, over 2400 lots (17,000 bottles) is from one consignor." And that, of course, is consistent with what you understood, correct?

A. Yes.

Q. "It is by far the most magnificent offering we have ever had." Do you see that?

A. Yes.

Q. And those are Mr. Zacharia's words, is that right?

A. I assume he wrote it, but --

Q. Do you have any reason to believe that Mr. Greenberg edited that?

A. No.

Q. And then he says, "We're only inviting a handful of people and would be honored if you could come." Do you see that?

A. Yes.

Q. And you flew there to taste the wine.

A. I flew there to attend the dinner and taste some of the wine.

Q. Right. And there was highlighted the Chateau Lafleur 1947 and the Chateau Lafleur 1950, is that right?

A. Yes.

Q. You bought both of those wines, correct?

A. I believe I did.

Q. All right. And you remember tasting those wines.

A. No, I do not.

Q. You think you didn't taste the wine?

A. I said I don't remember tasting the wines. There were 28 bottles on there that I counted, and then if you consider that there are six glasses per bottle, that meant if I tasted all those wines, that meant I would have tasted something of the order of four and a half bottles of wine and I would have been comatose by that.

Q. Okay. So Mr. Koch, we'll accept that you weren't comatose by the end of the dinner --

A. No, I wasn't.

Q. -- but you tasted a lot of wines, correct?

A. I tasted a lot of wines, and I can't remember which wines I tasted and which I didn't.

Q. Were there any wines that were poured for you that you didn't taste? Did you push glasses away where you were offered tastes?

A. I don't remember.

Q. You don't remember whether you said, "No, no, I don't want to taste that wine"?

A. I remember I didn't want to get smashed that night and so I

didn't --

Q. Well, Mr. Koch, that's not my question.

A. As I said, I don't remember.

Q. All right. And you understood that the two main features of that evening are the two wines that are highlighted in Mr. Zacharia's letter, correct?

A. Yes. Well, that's what he said, but there were --

Q. Well, you said --

A. Excuse me. There were other wines in there that I found actually as interesting if not more interesting than those wines.

Q. And you -- and you remember those other wines, is that right?

A. No, I do not remember -- I remember what they were. There was a Domaine de la Romanée-Conti and La Tache, Petrus. I could go on and on about what was there.

Q. Mr. Koch, you just said you found other wine more interesting than those wines. How would you know the other wines are more interesting than those wines if you didn't taste those wines?

A. Because '45 was an outstanding year, Petrus is outstanding, there's --

Q. That's not my question. My question is --

MR. HUESTON: Objection. There is an objection. I ask him to allow the witness to answer the question. You posed

it, this is the answer.

THE COURT: Sustained.

A. How would I know that there were other wines that were more interesting without tasting them? Because I -- I read about some great wines, I've tasted some other wines of them and so -- and Parker rated a couple of them a hundred out of a hundred, so I was interested in those wines.

Q. Okay. So you're telling me that the statement "other wines were more interesting than these wines" means you did not taste them, is that right?

A. No. I'm not saying that. I said did -- did you -- did you ask me if I recalled tasting these wines. I said I do not recall tasting these wines.

Q. Do you recall tasting --

A. And I do not recall all of the ones that I tasted because there were so bloody many of them.

Q. Do you recall any?

A. No, I don't.

Q. All right. So you can't recall a single wine you tasted at that dinner?

A. No, I can't recall a single wine I tasted that night.

Q. So Mr. Koch, you would agree with me it's just as possible that you tasted Lafleur '47 as any other wine?

A. It is a high -- it is a probability that I tasted those wines, but I don't know. I don't even know if they opened

them.

Q. In fact, it's a high probability, is that true?

A. I would say it is a probability.

Q. Do you remember, Mr. Koch, tasting any wines that you thought tasted wrong?

A. I don't remember much about the evening. I tasted too much wine, and all I remember is meeting the senior Mr. Zacharia, I met Jeff there, I met some other people, we had a lot of wine and a lot of food, and I don't remember much else about it.

Q. Mr. Koch, you haven't subjected any of the wines in this case to a tasting, correct?

A. Absolutely not. There's a good reason for it, and that was 'cause it would destroy the evidence, and also tasting is incredibly unreliable.

Q. Well, let's talk about that, Mr. Koch. None of your evidence in this case is what's in the bottle, right?

A. It's not in the bottle because I don't want -- none of our evidence is in the bottle, no, because we did not want to destroy the whole bottle.

Q. Well, Mr. Koch, let's focus on that. Your evidence goes to the bottle itself, correct, the glass in the bottle?

A. Our evidence goes to the bottle, the corks, the capsules, the label, and what's put on the bottle.

Q. Right. Thank you. Now --

A. And also -- wait a minute. Let me finish. It also goes to

what we have learned about those bottles and what we have learned from the wine makers about those bottles.

Q. Mr. Koch, your expert, Michael Egan, doesn't know a thing about the bottle other than the bottle itself, correct?

A. You're going to have to ask Michael Egan about that. He has a tremendous amount of experience --

MR. SHARTSIS: Your Honor, might I ask that we get some control over this witness.

THE WITNESS: Excuse me.

THE COURT: Hold on. The question was, "Your expert, Michael Egan, doesn't know a thing about the bottle other than the bottle itself, correct?" Is there an objection?

MR. HUESTON: Yes. My objection is improper question, he couldn't possibly know what Michael Egan -- what's in Michael Egan's head.

THE COURT: Sustained.

Q. Do you know what your expert has done in this case, Mr. Koch? Do you know the work he's done?

A. I have --

Q. Do you know the work he's done?

A. No, I don't know all the work he's done.

Q. Okay. Do you understand, Mr. Koch, that Mr. Egan's report is based only on the bottle itself? Do you understand that?

A. I think it's based on other things besides the bottle itself.

Q. All right.

A. I think it's based on the knowledge he has, I think it's based on the glue that was used, I think it's based on the printing on the label, I think it's based upon the shape of the bottle, the shape of the capsule, the cork, etc., etc., etc. There's a whole number of things that can give you -- give you an indication that the bottle is fake. If you put them all together, the old saying is, if it squawks like a duck, if it walks like a duck, it's a duck.

Q. Mr. Koch, what Mr. Egan looks at is the bottle, the label, the cork, other labels, the punt, the glass, the capsule, correct?

A. Look, I'm going to --

Q. Mr. --

MR. SHARTSIS: Your Honor --

A. I'm going to answer the question this way. You have to ask Mr. Egan. He's right in the room. You can ask him.

Q. I'm going to ask him, Mr. Koch, but I asked you a question and you gave me a speech. So let me ask you this question: What you understand Mr. Egan looks at is the bottle, the label, other labels on the bottle, the punt, the cork, and the capsule, isn't that correct?

MR. HUESTON: Objection. This is argumentative. He's asked the question and he's already gotten his answer.

THE COURT: Sustained.

Q. Mr. Koch, if you poured the wine out of the bottle, would you still have the glass? Would you?

A. You could still have the glass, that's true.

Q. Right. And Mr. Koch, if you poured the wine out of the bottle, would you still have the label?

A. Yes.

Q. And you'd still have --

A. Well, possibly you would. Depends upon if you -- what you did with the bottle. A lot of people throw the bottles away.

Q. Mr. Koch.

A. Yes, Mr. Shartsis.

Q. Are you suggesting you'd throw evidence away?

A. No.

Q. All right.

A. I'm just saying -- I'm just saying that some people do throw bottles away.

Q. Mr. Koch, and do you -- would you throw evidence away, Mr. Koch?

A. No, I would not throw evidence away.

Q. All right. Thank you. Now --

A. But --

Q. Mr. Koch, let me ask you a question.

A. Sure.

Q. Don't give me a speech, all right?

MR. HUESTON: Objection with that commentary.

MR. SHARTSIS: Pretty clear.

A. Well, let's give each other speeches.

THE COURT: Next question.

Q. I'll be happy to do that, Mr. Koch.

A. Thank you.

Q. Mr. Koch, you poured the wine out, you still -- and you kept the bottle and didn't throw it away --

THE COURT: You said if, right?

MR. SHARTSIS: Pardon me?

THE COURT: You said if you.

MR. SHARTSIS: If you poured the wine out.

THE COURT: Okay.

Q. -- and didn't throw the bottle away, Mr. Koch, you'd still have the label, correct?

A. If you kept it properly, you would.

Q. All right. You'd still have all the stickers.

A. If you kept it properly, you would.

Q. You'd still have the glass.

A. Yes.

Q. You'd still have the capsules.

A. Yes, hopefully.

Q. You'd have the -- you'd have the cork, correct?

A. Well, the cork would have been damaged, but you'd have it.

Q. All right. In fact, you could see the cork better because it wouldn't be obscured by the dark glass.

A. Possibly.

Q. You'd have the punt.

A. Possibly, yes.

Q. You'd have all of the things that you understand that Mr. Egan has looked at to determine whether a bottle is authentic, isn't that correct, Mr. Koch?

A. No, because you're saying that Mr. Egan had -- I'm telling you that I do not know all the things that Mr. Egan did to it and you can very well ask him, but all I'm saying is I do not know how Mr. Egan did all of his testing. Actually, I just met him here at the courthouse.

Q. Did you read his report, Mr. Koch?

A. I read portions of his report.

Q. The portions of his report, Mr. Koch, when you read it, there was nothing other than the items I've just described that Mr. Egan looked at, isn't that true, Mr. Koch?

A. In the sections that I read, you're right, but I didn't study the whole report.

Q. All right. So in the sections I read in, right, and you'd agree with me that if you poured the wine out of the bottle, for the sections of Mr. Egan's report that you read, all of the same evidence would still be present if you didn't throw the bottle away, isn't that true?

A. No, it's not quite true --

Q. So what would be --

A. -- because --

Q. What would be missing, once the wine is poured out?

A. Because the evidence would have been changed because you took the capsule off and you -- you took the cork out. All those things change the bottle.

Q. Well, you'd still have the capsule, right? You don't have to throw the capsule away, do you, Mr. Koch?

A. You cut it, and that could modify how the capsule was put on, or damage it, so the old saying, you know, you don't touch it.

Q. You could photograph it, right?

A. Mr. Shartsis, I spent -- I spent --

MR. SHARTSIS: Your Honor, may I please just --

A. -- years at MIT doing research --

MR. SHARTSIS: I asked him a question, "Can you photograph it?" I think he can answer yes or no, you could photograph it.

A. You could --

MR. HUESTON: Your Honor, I'm going to object to this line of questioning as cumulative. He's asked him what he recalled Mr. Egan doing. He's answered. Anything's possible. We can go on with lots of possibilities. I think this is a waste of time at this point.

MR. SHARTSIS: Well, your Honor, I believe I'm entitled to cross-examine.

THE COURT: You can cross-examine but, you know, I don't want to get into knowledge about Mr. Egan. He'll be testifying about what he's going to testify about. And Mr. Koch has said what he knows about that.

MR. SHARTSIS: I'm also cross-examining on the grounds that Mr. Koch says you can destroy evidence, and I'm just trying to establish that all the evidence that you would use would still be here.

THE COURT: Okay. What's the question?

BY MR. SHARTSIS:

Q. Mr. Koch, you could photograph the capsule, is that correct?

A. You could photograph it, but photographs are often not necessarily accurate. Depends upon your resolution, it depends upon whether somebody has doctored the photographs, etc., etc.

Q. Are you suggesting you doctored photographs, Mr. Koch?

A. No, I'm not. I'm saying someone could.

MR. HUESTON: Excuse me.

THE WITNESS: I'm sorry.

MR. HUESTON: Objection. My objection is, he asked the question, Mr. Koch is entitled to answer it.

MR. SHARTSIS: Your Honor, my point is, Mr. Koch has very good counsel. His counsel can raise all the questions he wants. The question of "can something be photographed" I think is a pretty direct question.

THE COURT: Well, he just answered it.

MR. SHARTSIS: Well, but he went on and on, your Honor. I think I'm entitled to a clear yes or no.

MR. HUESTON: He didn't ask just a yes or no.

THE COURT: Not necessarily.

BY MR. SHARTSIS:

Q. Is it true that it can be photographed, Mr. Koch?

A. It can be --

Q. Yes or no.

A. It can be photographed.

Q. Thank you. Mr. Koch, you believe that the contents of the bottles in the case are worthless, correct?

A. Based -- yes, I do.

Q. And so the loss of the wine would not be of any financial value, correct? You pour the wine out, it's worthless, wouldn't be of any financial value.

A. If you pour the wine out, you're modifying evidence, and I'll tell you that I was trained as a scientist, and as a scientist, you don't -- when you're observing something, you leave it alone and you don't --

Q. Mr. Koch, worthless wine is of no value, is that true?

A. It's worth something as evidence, and you don't want to destroy the evidence. If you pour the wine out, you destroy it.

Q. And we'll never find out what's in the bottle then, is that

right?

A. You possibly could find it out other ways.

Q. We're never -- and you cannot tell us, Mr. Koch, having mounted this lawsuit, what is in the bottle, can you?

A. I can tell you that there's a cumulative enough evidence to show that it's fake.

Q. Mr. Koch, you can't tell me what's in the bottle.

MR. HUESTON: Objection --

A. I -- you're right. I can't.

MR. HUESTON: -- asked and answered, and this is also irrelevant.

Q. Thank you. Thank you. Mr. Koch, you've had a number of these bottles tested for caesium, is that right?

A. I don't know how many we've had tested, but I've had some tested for caesium.

Q. And the test for caesium is to take a bottle and determine whether the wine in the bottle may have some contents that was created after 1952, correct?

A. I believe it's -- the caesium I -- there was caesium isotopes that did not exist before the atomic bombs were tested.

Q. Right. So that's 1952.

A. Well, it could be '50.

Q. And Mr. Koch, you've had both of your Cheval Blanc magnums tested, correct?

A. Boy, you're going to have to ask some of my investigators. I don't remember that.

Q. You don't recall, Mr. Koch, that the caesium testing on both Cheval Blanc magnums showed no traces of wine after 1950?

A. I don't remember that, but as I said, I'm -- I was not intimately involved in directing all the testing and experts on it.

Q. Mr. Koch, you're bringing a lawsuit against Mr. Greenberg for fraud, is that right?

A. Yes.

Q. Have you just delegated everything to everybody else?

MR. HUESTON: Objection. Argumentative.

THE COURT: Sustained. Sustained.

Q. Mr. Koch, have you made any effort to figure out what these experts have said about wines you're suing Mr. Greenberg over?

A. I've interviewed -- I've talked to the experts, I've looked at some of the evidence, but if the experts say it's fake, I take their word for it.

Q. Okay. And did your expert on caesium tell you that the 1945 Chateau Lafite Rothschild magnum had no traces of caesium in that bottle?

A. I don't remember that.

Q. You don't remember that?

A. No.

Q. And you remember that the 1928 Chateau Latour bottle had no

traces of caesium? Do you remember that?

MR. HUESTON: Objection. There's no foundation to this. He's simply reading in presumptions of fact that aren't established in the case.

MR. SHARTSIS: Your Honor, we'll connect up when we have that expert.

MR. HUESTON: No, your Honor, there's no connecting up here. He can either say, "Are you familiar with this?" and if it's no --

THE COURT: Yeah, this is getting very much into the expert issues and, you know, I don't know that he --

MR. SHARTSIS: Your Honor, this is a gentleman who chose to -- he's responsible for bringing the lawsuit and he made a decision to sue my client, and I think we're entitled to know what he decided, what he knew of the fraud.

THE COURT: You can ask him if he knew, but if he doesn't know, you've got to move on.

MR. SHARTSIS: That's fine. I'm not arguing if he doesn't know.

BY MR. SHARTSIS:

Q. Did you know, Mr. Koch, that your expert concluded that one of the 19 --

MR. HUESTON: Objection. Here we go again, knowing what your experts are doing.

MR. SHARTSIS: He just told me to do that.

MR. HUESTON: If he wants to ask him was there caesium testing here, yes or no, he can ask that.

MR. SHARTSIS: Well, your Honor, that's pretty restrictive. This is a fraud case. He's claiming fraud. And I think I'm entitled to ask him what he knows about the fraud claim against my client.

MR. HUESTON: That's not what he's asking. He's asking what an expert has done, details of which are in reports and are going to be presented here in testimony at trial, and as Mr. Shartsis well knows, no side, either side, has a caesium expert. It's not in play.

MR. SHARTSIS: Your Honor, they just put up the report of our expert and questioned Mr. Greenberg. I think I'm entitled to do the same thing.

THE WITNESS: Your Honor, may I ask you a favor, please?

THE COURT: Sure.

THE WITNESS: May I run to the restroom while these guys are arguing, please?

THE COURT: Sure. Let's take a five-minute bathroom break.

THE WITNESS: Thank you.

(Jury excused)

(Continued on next page)

(In open court; jury not present)

MR. HUESTON: Your Honor?

THE COURT: Yes.

MR. HUESTON: Can we address the issue. Your Honor, my objection here is that there are a series of questions, the predicate of which is suggesting to the jury that there is caesium testing that may have been done and Mr. Koch, does he know about it or not know about it, and opposing counsel well knows, neither side has called a caesium expert. There is absolutely no caesium expert testimony coming into this case. So this is entirely misleading and irrelevant, and particularly if they're getting into, you know, what caesium testing may have been done outside of this case by some other expert. If he wants to say, did you choose to do a caesium test or not, that's fine, but after that, it's completely misleading.

THE COURT: Mr. Shartsis, is caesium testing at issue here?

MR. SHARTSIS: Well, your Honor, they have identified a caesium expert, we have deposed a caesium expert, there's evidence from the caesium expert that is useful because it shows exactly what I'm saying here, that the caesium expert tested bottles and found no problem at all. I think --

THE COURT: So is this your expert, this is their expert?

MR. SHARTSIS: Yeah.

MR. HUESTON: We're not calling a caesium expert at this trial, your Honor. There is no caesium expert testimony coming into trial.

MR. CIALONE: We were just told that for the first time.

MR. SHARTSIS: They identified the expert --

THE COURT: Are you going to present the evidence?

MR. SHARTSIS: Well, we might. I'd like to reserve that right.

MR. HUESTON: Well, in any event, even if he does want to reserve the right, that's for the expert if he calls him. It's not for Mr. Koch. He's not the expert.

MR. SHARTSIS: Your Honor, may I say this about these experts. Mr. Koch had 12 bottles he thought were fake and they're not fake. He had experts he called who gave evidence that harmed his case. He's just shedding them like crazy. He knows there's contrary evidence. He is managing a fraud case against Mr. Greenberg by excising all of the things that he himself originated --

MR. HUESTON: No, your Honor.

MR. SHARTSIS: -- he originated that hurt his case, your Honor. This doesn't seem very just to me to be able to do that.

MR. KABA: Your Honor, this argument from Mr. Shartsis, which he's repeatedly made, he made to Mr. Koch,

he's tried to make it in front of the jury that you dropped 12 bottles because Mr. Koch believes they're not fake, that is simply false. No testimony has come into this case that says that we dropped 12 bottles because we decided they weren't fake. Mr. Koch believes they are fake. We dropped -- let me finish, Mr. Shartsis.

MR. SHARTSIS: Should Mr. Koch be out of the room during this argument?

MR. KABA: He's the client. We've had many arguments with the parties here. He's a party to this lawsuit.

THE COURT: Yes, he can stay. Look --

MR. KABA: Your Honor, if I just may, on this one point, I think it's a very important point that Mr. Shartsis and others on Mr. Greenberg's side repeatedly make. We have streamlined this case. Defendant made a lot -- complained very much about how long this case will be. We decided to streamline this case. We decided to focus on one auction, 24 bottles in that auction. That does not mean the other 12 bottles are not fake, that does not mean that we are afraid of any other evidence that's been uncovered, that does not mean we're changing the contours of the case. We're changing the contours of what we need to present during our time at this trial.

THE COURT: The case is about the 24 bottles, I agree. The question is, is this caesium issue relevant to the 24

bottles?

MR. SHARTSIS: Yes, those are bottles, the 24 bottles. I'm reading right off the list of the 24 bottles, your Honor.

THE COURT: Well, I'm concerned about, you know, getting into specifics of expert testimony with a fact witness. You can generally ask some questions about caesium testing or something like that, but to get into details, point by point, of what the expert has concluded is properly done with an expert.

MR. SHARTSIS: I think they did that with Mr. Greenberg. They put up the report and they took Mr. Greenberg bottle by bottle through the report.

THE COURT: There were some questions along those lines.

MR. SHARTSIS: Yes. So why is it that they get to do that and I don't get to do that?

THE COURT: No. I've let you do it.

MR. SHARTSIS: Right. I have one more bottle to go. I have one more bottle to go.

MR. KABA: Your Honor, it was -- first of all, it was about a report in evidence. Second of all, we ask -- we asked him about specific factual things, label, photocopied labels. To ask about caesium testing for an expert that will not be testifying at trial, on a report that has not been admitted into evidence, that is not being offered by Mr. Koch as

evidence in this case, on a very scientific issue, where Mr. Koch is just a lay witness, is entirely inappropriate. They've asked many, many questions about it already. They should move on. Mr. Koch has testified he doesn't know about these issues.

MR. CIALONE: Your Honor, I just want to correct a couple things. We found out five minutes ago that Dr. Hubert is not a witness in the case anymore. His report is in fact a designated trial exhibit, designated by them. His findings are designated trial exhibits. And it's 4:30, so I expect this evening we'll be discussing whether or not we put that report of the designated trial expert, theirs, into evidence as an admission of a party opponent. It's not in evidence yet because we haven't moved it into evidence yet, just like Mr. Lempert-Schwarz' report was not in evidence yet until they put it up on the screen in front of Mr. Greenberg. We are obviously asking about their expert.

THE COURT: So what do you want to ask about this caesium testing?

MR. SHARTSIS: Well, based on what's happened, your Honor, the objection, Mr. Koch's responses, what I suggest we do with this, I would suggest -- it's 4:30 -- we adjourn. I'll come back, I'll take that report, I'll do exactly what they did with Mr. Lempert-Schwarz' report and I'll ask Mr. Koch questions just like Mr. Greenberg was asked questions so there

will be no dispute about it. I won't be asking about something that's not up in front of him. There was no -- no requirement that Mr. Greenberg had read or studied Mr. Lempert-Schwarz' report. Let me put it up on the board.

THE COURT: Well, how much longer do you have for the cross?

MR. SHARTSIS: You know, probably past 5, your Honor, so I'm going to go anyway. But it just sort of breaks where I am and, you know, this is a surprise to hear that a report that's been in evidence which we have spent a huge amount of resources with Professor Hubert doing and -- dealing with, that also has now evaporated in the case. And I would tell you, your Honor, I don't accept the argument that the 12 bottles, you know, are just fine. Mr. Koch volunteered he had yet other bottles of Mr. Greenberg's that were fake. I didn't ask him -- I didn't ask him about the 12 bottles. He volunteered that. So --

MR. HUESTON: Your Honor --

MR. SHARTSIS: -- what's good for the goose is good for the gander.

THE COURT: Well, you can ask about things insofar as they're factual. But getting into expert realms of technical knowledge about caesium testing or something I think is beyond the role of a lay witness.

MR. SHARTSIS: Let me just --

MR. HUESTON: Your Honor, actually, can I respond.

MR. SHARTSIS: Let me respond to -- your Honor, to what you said.

MR. HUESTON: Here's the filibuster. Can I respond.

THE COURT: You may finish and then Mr. Hueston will respond.

MR. SHARTSIS: Yes. Mr. Koch has testified that he knows exactly what caesium testing is. Your Honor, Mr. Koch gave laboratory equipment, laboratory equipment to this expert. He knows what it is. There's no question. He has told us a number of times he's a scientist. And I just -- I fail to understand how it is I can't ask him about tests that were done that showed the bottles are good and that he knows the testing protocol. He explained, right, the isotope, 1950, 1952. He's done all that. And I ought to be able to ask him, just as they asked about Gil Schwartz.

THE COURT: Mr. Hueston?

MR. HUESTON: Yes. Your Honor, a couple things. First of all, this is going to be a first time for me where another side is actually complaining that the opposing party is not going to call an expert, which is going to save everybody time. If they wanted a caesium expert, they could have lined one up and had him ready to testify, and they didn't. To then continue to argue that they will do -- and thank you, Mr. Shartsis for giving me my best argument -- try to convince

the jury that Mr. Koch is in fact a caesium expert, should be opining and giving answers to testimony they will never hear is highly prejudicial and an incredible waste of time, from opposing counsel who have been wailing and crying about wastes of time and resources from the beginning. It shouldn't go forward.

MR. SHARTSIS: Your Honor, may I just say, we have 25 hours here and so do they. You haven't heard me wailing and crying. And I don't believe Mr. Koch has tried to do us a favor in time. That seems to me the least credible thing I've heard all week, that he's trying to help us. So why can't I just use the evidence that's been in this case that he knows about, that he's seen, exactly the way they did, exactly the way they did.

MR. HUESTON: Because it's not in the case. The caesium report is not in the case and it's not coming in.

MR. CIALONE: We can put it in.

MR. HUESTON: You don't have a foundation to put it in.

MR. SHARTSIS: It's marked as evidence in this case.

MR. KABA: You still need a foundation. Because we may have marked an exhibit, it's not in evidence.

THE COURT: It was produced as an expert report for you.

MR. SHARTSIS: Yes, it was produced as an expert

report.

MR. KABA: It was produced as an expert report when Mr. Hubert was produced for deposition. He's not in this case.

THE COURT: How many more questions do you want to ask about this?

MR. SHARTSIS: I said I had one more question on this subject.

THE COURT: How many?

MR. SHARTSIS: On this subject of the testing, I was on my last one. I mentioned that to your Honor.

THE COURT: Okay. You can ask your last question.

Okay. Let's bring in the jury.

(Continued on next page)

(Jury present)

THE COURT: Please be seated.

Mr. Shartsis?

MR. SHARTSIS: Yes.

BY MR. SHARTSIS:

Q. Mr. Koch, finally, are you aware that the 1950 Chateau Petrus, Mr. Hubert determined that there was no caesium in that bottle?

A. I'm not.

Q. All right. Are you aware, Mr. Koch, that -- do you know who Mr. Molyneaux-Berry is?

A. Yes.

Q. And you hired Mr. Molyneaux-Berry to come in your cellar and examine wines?

A. Yes, I did.

Q. Consider him an expert, correct?

A. Yes.

Q. He'd worked at -- what is it -- Sotheby's as the head of Sotheby's wine?

A. Yes.

Q. And are you aware that Mr. Molyneaux-Berry, with regard to the 1928 Chateau Latour in this case, reached a conclusion that the bottle was probably genuine?

A. I'm not aware of that, but if he did, that's -- that's his opinion.

Q. All right. And that's somebody who you hired to do work in your cellar?

A. Yes.

MR. SHARTSIS: Let's look at 1025 and 1026.

(Pause)

MR. SHARTSIS: Your Honor, may we approach the bench. I want to make sure -- on an evidentiary issue.

THE COURT: Yes.

(Continued on next page)

(At the sidebar)

MR. SHARTSIS: I'm going to talk about Exhibit 1025 and 1026. Your Honor, these are the Elroy documents. We're going to be putting Mr. Elroy on by videotape to put these into evidence. I would like to ask Mr. Koch about them at this point and avoid having a squabble in front of the jury over the evidence. So I'd like some guidance from the court on that. Mr. Koch is aware of this event. I've questioned him on it at deposition.

THE COURT: What's the anticipated objection?

MR. KABA: Before they're published to the jury, there needs to be a foundation for these documents, before they get published to the jury. It's --

MR. SHARTSIS: Then I can recall Mr. Koch. I don't think we want to do that.

MS. SALISBURY: We can publish it to the jury and it can be wrapped up later.

MR. HUESTON: I'm not going to object as long as Mr. Shartsis gives Mr. Koch a fair chance to say if he's -- if he knows them or seen them and when he's seen them.

MR. KABA: And subject to laying the proper foundation.

THE COURT: Okay. So I think we can do that. We can publish them subject to foundation later.

MR. SHARTSIS: All right.

MR. HUESTON: And a fair foundation with what he knows and when.

THE COURT: Yes, yes.

(Continued on next page)

(In open court)

MR. SHARTSIS: Can we put up, please, Exhibit 1025.

BY MR. SHARTSIS:

Q. Mr. Koch, why don't you take your time and look through pages of 1025.

A. (Witness complies.) Yes, I've looked at 1025.

Q. And you've seen this before?

A. Yes, I have.

Q. And Mr. Elroy is the gentleman who heads your investigation in this case regarding the wine?

A. I'm struggling a little bit because he was the lead investigator, he now reports directly to the lawyers, so the lawyers are in charge of him now.

Q. But he was the -- at the time of this memo, March 13 of 2006, he was your head investigator, correct?

A. Yes.

Q. Reporting directly to you, correct?

A. No, he reported to Brad Goldstein, who reported directly to me.

Q. Mr. Goldstein is your publicist, right?

A. He was an investigative reporter and he knew how to dig things out, so that's why I put him in charge of it initially.

Q. He's -- he does public relations for your company, correct?

A. That's part of his job. Another part of his job is to communicate -- be in charge of all of our communications

internally as well as externally.

Q. So you -- and you've seen this document before. I just asked you that.

A. Yes, I have.

Q. Right.

MR. SHARTSIS: Let's show Exhibit 1026.

A. Yeah, I've looked at it. I've seen these quite a bit before so I don't need to review them in detail now.

Q. You've seen them all.

A. Yes.

Q. You understand that what this represents is supposedly -- and let's start with 1026.

MR. HUESTON: All right. I'm going to object. You can ask him what he sees rather than an assumption of a foundation.

MR. SHARTSIS: I don't understand that. I'm just asking him.

MR. HUESTON: Well --

MR. SHARTSIS: I'm asking about --

MR. HUESTON: He's about to suggest what it represents. I'd ask that he just ask the witness, "What is this document?"

MR. SHARTSIS: You know, your Honor, I'm allowed to ask leading questions on cross-examination.

THE COURT: You can ask, but please be careful about

characterizing the document.

MR. SHARTSIS: That's fine, your Honor.

BY MR. SHARTSIS:

Q. Mr. Koch, your understanding is that -- we're looking at this memorandum. This was a memorandum that Mr. Elroy sent to Mr. Berrouet at Petrus, correct?

A. Yes, it's a -- a memorandum describing what he was told when he visited Petrus.

Q. Okay. And then let's turn to page 2 of this, please.

A. Yes.

MR. SHARTSIS: And at the bottom of this, if we could -- actually, can we just blow up paragraph 6 and the paragraph beneath it. And let's highlight the paragraph beneath it.

Q. So the paragraph beneath it says, "It would be very helpful if you could send me a letter via e-mail or fax and confirm the above findings. I appreciate your help in this matter and look forward to hearing from you. I will keep you informed as to the progress of our investigation."

So Mr. Koch, you understand that this was a letter sent to Berrouet saying: I've stated some things you told me, could you confirm it, correct?

A. I believe that's what it says. I'm not sure it's a letter or whether it was a fax or an e-mail.

Q. All right. And then below -- and one of the things --

MR. SHARTSIS: Actually, if we could stay here at paragraph 6.

Q. He's written out in the paragraph 6, one of the things that he's trying to get confirmed is, "The cork is too long and in fact you advised, 'I have never seen a cork that long in any Petrus bottle.'" Correct?

A. That's what it says.

Q. And then below is the e-mail response, 3/27/06, right?

A. Yeah.

MR. SHARTSIS: And can we highlight that line that says, "In a message dated."

THE WITNESS: Can you blow it up a little more, please.

MR. SHARTSIS: I'm afraid that may be as much as we can do, but we'll try.

Q. "In a message dated 3/27/2006 at 10:19:21 Pacific Standard Time, berrouet@jpmoueix.com writes," and then it has the e-mail. You understand that is the response to this e-mail, correct?

A. It appears to be.

Q. And then let's turn to the next page.

A. Excuse me. I want to qualify what I said before was it doesn't have the e-mail format in it that, you know -- when you send an e-mail and you get one back, it's To, From, Subject, etc.

Q. Right.

A. This memo does not have that. When you said that was a response, I'm just pointing that out.

Q. Did you ever ask where those e-mails are?

A. No.

Q. Are you aware that Mr. Elroy can't produce them?

A. I'm not aware of that.

MR. SHARTSIS: All right. So let's now turn down where it says Translation, and give me the first two lines there, please. Highlight those.

A. I don't know who made this translation, but it's --

Q. Well, we'll hear that from Mr. Elroy.

A. It says, "We have received your courier dated March 13, 2006. All of [the] comments are true."

Q. Right. And so you understood that this purported to be Mr. Berrouet confirming all of the items 1 through 6 in the e-mail, correct?

A. That's what it says.

Q. All right. Now let's look at Exhibit 1025.

MR. SHARTSIS: And can we highlight the memo and the date, please.

Q. Now, Mr. Koch, it's your understanding that this is the same front page of the exhibit we just looked at, correct?

A. Well, it looks like they're identical except for the handwriting on it.

Q. Right. But the printed part is identical to what we just looked at.

A. Not quite. On this one, there's Defendant's Exhibit Number blah blah blah, and on the other one there's Defendant's Exhibit Number, which are different.

Q. Okay. But you agree with me that whatever the original document by Mr. Elroy is, is identical.

A. That's right.

Q. Okay. Thank you.

A. The original first page, the first page is identical.

Q. Correct. Now can we turn to the second page, please.

A. Of course.

MR. SHARTSIS: And can you highlight paragraph 6, please.

Q. Mr. Koch, paragraph 6 now says, "The cork is too long and in fact you advised, 'I have never seen a cork that long in any Petrus bottle.'" And would you agree with me that the next language is different than the document we just looked at? "Until now, you have never observed a 1921 Petrus magnum and never heard of such a bottle. All of the above causes you to believe the bottle is a forgery."

A. That is different, but I know for a fact that what this says is true because I visited Petrus and I asked him that question.

Q. Mr. Koch, that language was inserted by Mr. Elroy, correct?

A. As I told you before in my deposition --

Q. Well, could you just answer the question.

A. I am going to answer it if you let me finish, please. I know you don't like some of my answers but -- but as I told you before, Mr. Elroy dealt with this, wrote this. I did not. What I'm telling you is, I visited Petrus with the Ambassador of the United States to France --

MR. SHARTSIS: Your Honor, this is hearsay.

A. -- and both of them said that --

THE COURT: Hold on. Hold on.

MR. SHARTSIS: This is hearsay.

THE COURT: Hold on. Please just answer the question.

"Mr. Koch, that language was inserted by Mr. Elroy, correct?"

A. I don't know the answer to that. You have to ask Mr. Elroy --

Q. So --

A. -- as I told you that in my deposition.

Q. Mr. Koch --

A. Yes.

Q. -- you are unable to explain the differences in these two documents, correct?

A. I could -- I could give you a theory on it if you want.

Q. But you're unable to explain the difference, correct?

A. Well, I'm -- look, the only one who really knows is Mr. Elroy. The theory is that he --

Q. Mr. Koch, you're unable to explain the differences, correct?

A. I can explain it.

Q. Didn't you tell me in your deposition that you're unable to explain the differences?

A. I told you to talk to Mr. Elroy and that's the person who can -- who could explain it the most.

MR. HUESTON: Hold on a second. He asked if he could explain the difference, Mr. Koch said he could explain it, and then Mr. Shartsis rolled on. And can he be given a chance to explain it.

MR. SHARTSIS: Let's play the deposition.

MR. HUESTON: Wait a minute. What are we playing the deposition for? Can he explain?

THE COURT: Well, first he gets to finish his answer. He said he could explain it. You can explain.

A. Well, I talked to Mr. Elroy about it and he told me that he had two conversations about it and he screwed up on his documentation of those two conversations. Now that's what he told me. So --

MR. SHARTSIS: Your Honor, I move to strike this as hearsay. This is the rankest form of hearsay. We'll hear Mr. Elroy in this case. They're using Mr. Koch to import hearsay into the case which cannot be verified.

MR. HUESTON: No, your Honor. That is totally

inappropriate. Mr. Shartsis knew when he was going to start asking Mr. Koch about these memos that Mr. Koch didn't write them and he's asking him to explain them, and he's providing an explanation. He answered the question that Mr. Shartsis asked him.

MR. SHARTSIS: Your Honor, I asked him the question I asked him at his deposition --

THE COURT: Okay.

MR. SHARTSIS: -- which is whether he could explain the differences, at which point he said no.

THE COURT: You can play the deposition.

MR. SHARTSIS: All right.

MR. KABA: Counsel, can you let us know which portion you're playing.

MR. HUESTON: What's the deposition designation?

MR. SHARTSIS: We're going to give it to you in a minute.

Your Honor, from page -- on page 330, line 18 through 24.

MR. HUESTON: Line what? I'm sorry.

THE COURT: 24.

MR. SHARTSIS: Line 18 through line 24.

MR. HUESTON: Page 330?

MR. SHARTSIS: 330.

MR. HUESTON: Line 18 is the middle of the -- hold on.

We have the wrong --

(Pause)

MR. HUESTON: I have no objection.

THE COURT: Okay. You may play it.

(Video played)

BY MR. SHARTSIS:

Q. And that was your testimony, Mr. Koch, when your deposition was taken?

A. That's true. And --

Q. Your deposition --

A. That is true, but afterwards, after my deposition, I asked Jim Elroy for an explanation.

MR. SHARTSIS: Did I ask him about what happened after?

THE WITNESS: No, you didn't, but I volunteered it.

THE COURT: He volunteered it. Next question.

THE WITNESS: Sorry, guys.

Q. At the time of your deposition, Mr. Koch, you knew that Mr. Elroy had changed this document, correct?

A. I don't remember. I think that was one of the first times I saw it, but whatever I said in my deposition I'll stand by now.

Q. Well, you were at -- you were at Mr. Elroy's deposition when this came up.

A. As I said, in my deposition, I was only there for about an

hour and I don't remember everything you said, so --

Q. And you knew there was a claim of falsification of evidence against Mr. Elroy by the time of your deposition, correct?

A. By the way, this is not evidence. This is not evidence. We're not using it as evidence, so you're mischaracterizing it, sir.

Q. Mr. Koch, this falsified document was given to Mr. Edgerton, one of your experts --

MR. HUESTON: Whoa, whoa.

Q. -- to give an opinion in this case.

A. Mr. Edgerton is not giving an opinion in this case.

MR. HUESTON: Hold on, Mr. Koch. Objection. Objection. I'm going to object to "this falsified document," the characterization. You can ask what it is. I think there's been an answer.

THE COURT: Please. Yes, sustained as to the characterization. Please rephrase.

Q. Mr. Koch, you were aware that Mr. Greenberg had alleged that Mr. Elroy falsified evidence by the time your deposition was taken, isn't that correct?

MR. HUESTON: This is simply being brought in to try to prejudice, your Honor. He can ask about the document. That's what we understood was going to be asked about. We're fine with that going forward.

MR. SHARTSIS: Your Honor, I'm entitled to

cross-examine, and it's not for that purpose.

THE COURT: I agree, but I don't want to get into the characterization. Please just ask a question about the document.

MR. SHARTSIS: Well, because I'm going to ask about his testimony, now that he has explained it. After the deposition, he went and talked to Mr. Elroy.

BY MR. SHARTSIS:

Q. The fact is, Mr. Koch, you knew about the situation with the two different documents before your deposition, correct?

A. Did I say that in my deposition?

Q. Yes.

A. I did? Where? Where in my deposition? Would you point it out to me, please.

Q. Mr. Koch, let me ask the question. Are you saying that you were unaware that Mr. Greenberg had raised the issue of the fact that there were two --

MR. HUESTON: Objection. Again, here's the same characterization he's trying to get --

MR. SHARTSIS: Your Honor, he's just said he didn't know, and I'm entitled to cross-examine him on what he knew.

THE COURT: You can ask.

Q. Are you saying that you were unaware at the time of your deposition that Mr. Greenberg was claiming that there was a false document in the case?

A. I'm asking you where I said that at my deposition.

Q. I'm asking you: Were you aware of it, Mr. Koch?

A. I'm -- I don't remember right now whether I was aware of it or not.

Q. So it's your testimony that when I was asking you questions at the deposition, it came as a complete surprise to you --

A. May I look at -- I'm going to look at my --

Q. -- that Mr. Elroy had written two different documents?

A. I want to look at my deposition and see.

Q. Well, can you answer my question, please, Mr. Koch.

A. I'm trying to.

Q. Well, why don't you answer the question. You've been giving speeches all day, so why don't you answer my question.

MR. HUESTON: I'm going to object to the argument.

THE COURT: Sustained. Sustained.

Q. Are you able to answer my question, Mr. Koch?

A. I'd like to read my deposition first and find my answer to it because I don't want to conflict because actually, I've --

Q. Mr. Koch --

A. Wait a minute. May I finish my explanation. Because I'm a bit confused because this has gone back and forth and there's been a lot of "hubble bubble" over all this stuff, and I just want to make sure I'm consistent. That's all. Is that unreasonable?

Q. Let me just ask you a question, Mr. Koch. Do you

remember -- do you remember, Mr. Koch, by the time of your deposition, that you were aware that these two documents that we just put up on the screen existed?

A. I don't remember, and that's what I'm trying to find out, whether -- I'm confused about when I first saw these documents, whether I saw them before or after. I just -- as I said, I'm totally confused about it.

Q. So Mr. Koch, when -- at your deposition, having seen them for the first time, you weren't concerned at all about the fact that Mr. Elroy may have changed a document in the case, is that true?

MR. HUESTON: Objection. Objection. That's not his testimony. He said he's confused about when he saw it, and Mr. Shartsis is assuming in his questions --

THE COURT: Sustained.

MR. SHARTSIS: Your Honor, I want to ask him that question. May I just repose it.

Q. At the time of your deposition you were not concerned that Mr. Elroy had prepared two different documents, isn't that true?

A. What I said at my deposition is it was no big deal because I know for a fact both of these memos are correct and I know it directly from the horse's mouth, that is, Petrus, Chateau Petrus, which I visited with the Ambassador to France at the time, and he was sitting in this courtroom this morning and you

can -- you could call him to the stand and he'll confirm it.

Q. Mr. Koch, when I asked you the question if you could explain the difference at your deposition, you said no, isn't that true?

A. I did say that.

MR. HUESTON: Asked and answered, your Honor.

Q. Well, I -- you said no.

A. I said I couldn't; that's right.

Q. You said you couldn't. And at the same time, even though you could not explain the difference in the deposition, you were unconcerned about the fact that Mr. Elroy had provided two separate letters purportedly at the identical second, isn't that correct?

A. I wasn't concerned because both were accurate; that's why. Both were accurate, and I said I got it from the horse's mouth.

THE COURT: Is this a good time to break?

MR. SHARTSIS: Just fine.

THE COURT: Okay. Okay, folks, it's about 5:00. Ladies and gentlemen, we're going to break for the day. Have a good evening.

As I've said before, please don't do any research on the case. Continue to keep an open mind. You haven't heard all the evidence yet. And please continue to not discuss the case with each other or anyone else yet. We'll see you back here at 9:30. Have a good evening.

(Jury excused)

THE COURT: Okay. You may be seated.

MR. SHARTSIS: Your Honor?

THE COURT: Yes.

MR. SHARTSIS: Can I raise -- you know, remember when Mr. Greenberg was on the stand and we had this thing where Mr. Greenberg was going on, Mr. Hueston raised that. We came back, you indicated to Mr. Greenberg he ought to be more direct in his answers.

THE COURT: But I also said he doesn't necessarily have to answer yes or no and I gave him a fair amount of leeway.

MR. SHARTSIS: Not like this, your Honor. I'm asking him question one and I'm getting a speech that goes on and on.

MR. HUESTON: I will say I disagree, and I'd be happy to get the transcripts and we'll measure out long responses and nonresponsiveness, and I think I win on that one. So --

THE COURT: Well, you know, it's a judgment call, and I've tried to be appropriately judgmental, and because they're parties, I've given them a fair amount of leeway, you know, and I'm going to try to continue walking the line between making sure the witness is answering the question but also letting them explain their answers rather than necessarily yes/no answers, but I'll continue to bear that in mind.

How much longer do you think, Mr. Shartsis, for the

cross?

MR. SHARTSIS: Oh, half hour, maybe.

THE COURT: Okay.

MR. SHARTSIS: Little more, little less.

THE COURT: Okay. Great.

Anything else we need to address?

MR. HUESTON: No, your Honor.

THE COURT: Okay. We'll see you all tomorrow morning at 9:30. Have a good night.

(Adjourned to April 4, 2013, at 9:30 a.m.)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

WILLIAM I. KOCH,

Plaintiff,

v. 07 Civ. 9600 JPO

ERIC GREENBERG, et al.,

Defendants.

----------x

New York, N.Y.

April 4, 2013
9:41 a.m.

Before:

HON. J. PAUL OETKEN,

District Judge
and a jury

APPEARANCES

MORVILLO ABRAMOWITZ GRAND IASON ANELLO
Attorneys for plaintiff
BY: EDWARD M. SPIRO,
- and -
IRELL & MANELLA, LLP
BY: JOHN CHARLES HUESTON, Esq
MOEZ KABA, Esq.
MARSHALL CAMP, Esq.
BRUCE A. WESSEL, Esq.
Of counsel

DLA PIPER, LLP
Attorneys for defendants
BY: ANTHONY PAUL COLES, Esq.
- and -
SHARTSIS FRIESE, LLP
BY: ARTHUR J. SHARTSIS, Esq.
TRACY SALISBURY, Esq.
FRANK ALBERT CIALONE, Esq.
Of counsel

Also Present:
JASON WIETHOLTER, Trial Tehnician
ELIZABETH S. SEABROOK, Paralegal

(Trial resumed)

(In open court; jury not present)

THE COURT: Good morning, everybody.

ALL COUNSEL: Good morning.

THE COURT: Any preliminary matters?

MR. SHARTSIS: No, your Honor.

MR. HUESTON: No, your Honor.

THE COURT: Okay. Please bring in the jury.

Just so you all know in terms of time, I have down that plaintiff has used 13 hours and 24 minutes, defendant has used 11 hours and 34 minutes.

(Jury present)

THE COURT: Good morning, ladies and gentlemen.

THE JURORS: Good morning.

THE COURT: Welcome back. We're continuing this morning with cross-examination of Mr. Koch.

Mr. Shartsis.

MR. SHARTSIS: Your Honor, thank you.

WILLIAM I. KOCH, resumed.

CROSS-EXAMINATION CONTINUED

BY MR. SHARTSIS:

Q. Mr. Koch, I just want to do a little housekeeping with you before I go into questions.

MR. SHARTSIS: Could we show for the witness Exhibit 91, 0001. And can we display that for Mr. Koch,

please.

Q. Mr. Koch, do you have that in front of you, Exhibit 91?

A. Yes.

Q. Do you recognize this as the document sent to you from Zachys after the 2004 auction by Zachys in which you purchased wine?

A. I'm having a very hard time reading it.

MR. SHARTSIS: Can we blow it up.

A. Yes, that's what -- it looks like the invoice.

MR. SHARTSIS: And your Honor, move that into evidence.

THE COURT: Any objection?

MR. HUESTON: No, your Honor.

THE COURT: 91 received.

(Trial Exhibit 91 received in evidence)

MR. SHARTSIS: And can we just publish that to the jury so the jury can see what the document is.

Q. And Mr. Koch, that's from Zachys, is that right?

A. Yes.

Q. And the upper right it's dated December 3, 2004?

A. Yes.

Q. Addressed to you?

A. Yes, it is.

MR. SHARTSIS: And if we could just take a look at some of the wines. And highlight the wines on the page,

please.
Q. And then this shows wines that you purchased at that auction?
A. Looks like it.
Q. And these wines were purchased for you by Mr. Orcutt, correct?
A. I think so.
Q. And just so we understand it, this shows three prices.
MR. SHARTSIS: If we could just go up on the document a little bit. Actually, let's go back to the first page, the heading of the three columns.
That's good right there. Blow it up.
Q. The hammer price is the price that the auctioneer finally names for the high bidder, correct?
A. That's correct.
Q. And then the premium is an amount that the buyer pays to the auction house for the auction house service, correct?
A. That's correct.
Q. And then on the far right, that just totals the premium price and the hammer price, correct?
A. Correct.
MR. SHARTSIS: Could we display to Mr. Koch Exhibit TE 92.
Q. Mr. Koch, can you see that?
A. Again, I have a very hard time reading it, but I can see it

says Zachys, Zachys Wine Auction.

MR. SHARTSIS: Let's, for Mr. Koch, blow up the all the auction section right below that.

A. Yes.

Q. Mr. Koch, is this the catalog for the December 3, 2004 auction that matches the invoice we just saw?

A. Looks like it.

Q. And you looked through this catalog as well?

A. Yes.

Q. Read it as carefully as you read the 2005 catalog?

A. As I said before, I didn't read the entire catalog, but I read in the catalog what was interesting to me.

MR. SHARTSIS: Okay. Your Honor, I would move 92 into evidence.

MR. HUESTON: No objection.

THE COURT: Sorry. Any objection?

MR. HUESTON: I'm sorry. No objection.

THE COURT: Okay. 92 is received.

(Trial Exhibit 92 received in evidence)

Q. Mr. Koch, yesterday we were talking about 1921 Petrus that you had tasted in 2004. Do you remember that?

A. Yes.

Q. And yesterday you said it didn't taste like a '21 Petrus, is that right?

A. I said it didn't taste like Petrus. I'd never tasted a '21

before so --

Q. Right. So you'd never tasted a 1921 Petrus but you felt there was something wrong with the bottle, correct?

A. Yes.

Q. And what you thought was wrong, it wasn't that it didn't taste like a Petrus but it didn't taste like an old wine.

A. That's true. Both.

Q. And you're familiar with how old wines tasted.

A. I've tasted a number of them, but there's a lot of variability in taste.

Q. Right. But you know what an old wine tastes like, right?

A. I think I do.

Q. Okay. And this did not taste like an old wine when you tasted it, correct?

A. No, it tasted different.

Q. Okay. Mr. Koch, there's been reference by your counsel to Mr. John Kapon. You've heard that in court here?

A. Yes.

Q. And your counsel has pointed to Mr. Kapon as someone who did certain things about wine that should be followed, do you remember that?

MR. HUESTON: Objection to the characterization of my references, your Honor.

THE COURT: Sustained.

Q. Mr. Koch, your own view is that you don't think that

Mr. Kapon is a wine expert, do you?
A. He's -- he's had a lot of experience with wines, but he's not as expert as one that we would hire to authenticate wines.
Q. Right. You would not qualify him as a wine expert, correct?
A. Well, it depends upon your definition of an expert. He's an expert in selling wine, he's an expert in finding wine, but I don't think he's an expert in authenticating wine.
Q. All right. Thank you.

Mr. Koch, after collecting wine yourself for -- what did we figure -- 35 years, you don't believe that you yourself are qualified to identify fake wine, correct?
A. No, I'm not.
Q. And let's talk about the '21 Petrus in this case. You believe that that '21 Petrus is the work of a master forger, correct?
A. Yes.
Q. And a very impressive fake, in your view.
A. Yes, it is.
Q. Very difficult to determine that it's fake, is that right?
A. Not for a well -- well-educated expert it isn't, but for me, I couldn't tell.
Q. Let's talk about the efforts you've made to try to figure out whether these bottles are fake. You hired Mr. Edgerton, correct?

A. Yes.
Q. You hired Mr. Molyneaux-Berry, who had been the former head of Sotheby's?
A. Yes.
Q. You hired a gentleman named James Martin, who is --
A. Yes.
Q. -- a --
A. Sorry.
Q. And you understand -- and Mr. Martin is a forensic examiner of documents using electron microscopes and other sophisticated devices?
A. I believe he's an expert as well as in printing and other devices, but I've only met him here once.
Q. Okay. You hired Professor Hubert from France to do atomic testing on the wine?
A. Yes.
Q. You had bottles taken to Chateaus?
A. Yes.
Q. You had bottles taken to printing companies in France to see if they could advise you on the printing on the labels.
A. I don't know if we did or not. I know we -- we identified printers who had printed labels for Hardy Rodenstock --
Q. And do you know --
A. -- particularly the 1921 Petrus.
Q. And do you know whether bottles were actually transported

to the printers to have the printers look at the bottles to try to figure out whether the labels were authentic?

A. I don't know. That could have been. I just don't know.

Q. Mr. Koch, you described the introduction to the catalog and what concerned you. Mr. Koch, have you -- if you had suspected that even one bottle in the 2005 auction at Zachys was counterfeit, would you have walked away from the whole auction?

A. At that time I don't know. I really do not know whether I would have or not when that was -- how many years ago? A number of years ago. 2005. It's over -- close to ten years ago. I don't -- I don't remember what I would have done because I was not aware of counterfeit wines.

Q. If you had suspected that two bottles in the auction were counterfeit, would you have walked away from the auction?

A. I don't know. If I had suspected 50 bottles, I would have walked away.

MR. SHARTSIS: Your Honor, at this time I'd like to display to the witness Exhibit 498.

Q. Mr. Koch, I'm showing you Exhibit 498. Are you familiar with these Supplemental Responses and Objections to Defendant Eric Greenberg's First Set of Interrogatories?

A. Yes.

Q. And Mr. Koch, we're going to show you now page 22. Do you recognize your signature there on page 22?

A. Yes, that is my signature.

Q. And you verified the answers to these interrogatories, correct?
A. Yes, I did.
Q. And you understand interrogatories are questions sent by one party to another for the receiving party to answer it?
A. Yes, I do.
Q. And you verified the answers to these interrogatories under oath, correct?
A. Verified them to the best of my knowledge at the time, yes.
Q. Well, it says, "The matters stated in the foregoing document are true of my own knowledge," correct?
A. Yes, that's what I said.
Q. Right?
A. To my knowledge.
Q. Right. Your own knowledge. And you declared under penalty of perjury that that was true.
A. Yes.
Q. So Mr. Koch, could you turn, please --
A. I don't have the document so I can't turn.
Q. No. You're right. I'm not used to all the technology yet.
MR. SHARTSIS: Can we get 498 for Mr. Koch. Just put it up --
MR. HUESTON: Can you give him a hard copy, please.
MR. SHARTSIS: Sure, I could.
Q. Is it easier for you to use a hard copy, Mr. Koch?

A. Yes, I'd prefer it. It's easier to read for me.
Q. All right. Let me do that.
A. Thank you. What page do you want me to go to or --
Q. 498. Actually, let me -- so we don't get confused, it's page 8 in the document. It's Exhibit 498, 008, at the bottom.
A. I have it, sir.
Q. And there in the middle of the page is a small paragraph that reads, "According to an interview with Richard Brierley, Christie's former vice president and head of North American wine sales, Greenberg told Brierley that Sutcliffe had -- had inspected Greenberg's cellar and walked away because of the large number of counterfeits."
A. Yes, that's what it says.
Q. And that's what it says. And you verified that under oath, correct?
A. That's what I knew at the time.
Q. All right. And let's look at the next page. About five lines down it says, "Brierley also stated in that interview that he told Greenberg that Greenberg had counterfeit wine in his cellar." And sir, you verified that under oath, is that right?
A. Yes.
Q. And then finally, below that it says, at the bottom of that paragraph, "Brierley explained that of the 40 to 50,000 bottles in Greenberg's collection, roughly 10 to 15 percent appeared to

be counterfeit and that the potential sale fell through when Brierley refused to take certain vintages." And you verified that under oath, is that correct?

A. I verified that that's what I knew at the time.

Q. Mr. Koch, you had received, we saw yesterday, an e-mail from Jeff Zacharia inviting you to a dinner the night before the auction, right?

A. Yes.

Q. And you made a special trip from your house in Colorado to New York to attend that dinner, is that right?

A. I'm not sure it was from my house in Colorado. I was renting one at the time. I had been in Colorado for a length of time and I made a special trip there to come to the wine dinner, yes, I did.

Q. And you saw Mr. Zacharia personally, correct?

A. I remember meeting him for the first time there. Which Mr. Zacharia? There are two.

Q. Mr. Jeff Zacharia and his father, correct?

A. I met his father and I met Jeff, as I recall.

Q. Right. And when you met Mr. Zacharia, you didn't ask him whether there were any bottles that had any relationship to Mr. Rodenstock in the auction, correct?

A. No, it was in a big crowd and I just shook hands with him, said, "Great to meet you."

Q. Right. And you didn't ask him whether there were any

bottles from Farr Vintners that they were selling at this auction, correct?

A. No, I did not.

Q. And Farr Vintners had been one of the parties involved in the sale to you of the Jefferson bottles, correct?

A. Yes.

Q. And the 1921 Petrus that didn't taste old had been sold to you by Wine Discovery, correct?

A. Yes.

Q. And you didn't ask Mr. Zacharia whether Wine Discovery was involved.

A. No, I did not.

Q. And there you are with Mr. Zacharia. Did you warn Mr. Zacharia that you had determined what you testified yesterday about Mr. Rodenstock and the Jefferson bottles? Did you warn Mr. Zacharia about Mr. Rodenstock?

A. I did not because we were still in the midst of investigation of Hardy Rodenstock and that --

Q. So --

A. Excuse me. May I finish, please? And at that time we had not firmly proved that the Thomas Jefferson wines were fakes. There was still a lot of controversy about it.

Q. So you did not warn Mr. Zacharia about Rodenstock, correct?

A. It was inappropriate because there was a huge crowd of people.

Q. Mr. Koch, you didn't do it, right?
A. No, I already told you that I did not.
Q. Thank you.
A. You're welcome.
THE COURT: Would someone be kind enough to close the door. Thank you.
Q. Mr. Koch, in all of the auctions that you had been involved in for all of the different types of things you've collected, you've never seen an auction catalog that indicated that the consignor of the items being sold held or ever acquired a piece in a collection that was fake, counterfeit, or not authentic, isn't that true?
A. I'm a little bit struggling with it because I'm thinking I've seen a lot of things in auction catalogs that say "attributed to," which means they're not saying it was made by the person that they say it was attributed to. I've seen things like "believed to have been." I have seen things that -- in some catalogs where there was an indication that what is being sold was not made by the artist or someone else. I have seen that occasionally.
MR. SHARTSIS: Counsel, I'm going to ask to be played page 215, line 22 through line 3.
MR. HUESTON: No objection.
THE COURT: Okay. You may play it.
(Video played)

Q. Was that your testimony, Mr. Koch?
A. Yes.
Q. Thank you.
A. But I --
MR. SHARTSIS: Your Honor, I have no further questions at this time.
A. May I --
Q. No. I just asked you whether that was your testimony, Mr. Koch.
THE COURT: You'll have a chance to explain on redirect.
THE WITNESS: Okay. Thank you.
MR. SHARTSIS: Your Honor, we have no further questions at this time.
THE COURT: Thank you. Is there any redirect?
MR. HUESTON: Yes, your Honor.
REDIRECT EXAMINATION
BY MR. HUESTON:
Q. Mr. Koch, why don't you finish your answer.
A. I thought he was asking me if I'd ever seen in a catalog that anything was -- was -- was fake, or counterfeit, and I haven't seen anything that was counterfeit but I -- I said I was hesitating because I've seen things that said "attributed to," so different question of the different answer. That's all.

Q. And just for the jury's sake, what does it mean to you to see something "attributed to"?
A. It means that they don't know if it was actually made by that artist or that person, it says it could have been made by someone else, but there is some consensus that it could have been made by that artist. For example, in a painting, an artist will usually sign it. Sometimes the artists do not sign it and they don't know whether he made it or she made it or a student or someone working for the artist made it.
Q. And are you aware that in this case the expert retained by the defendant, Mr. Gilbert Lempert-Schwarz, has said that if the wines at issue here were to go to sale, they should have been disclosed as believed to be those wines?
A. Yes, I am aware of that.
Q. Would you have bought any of those wines if they said they were believed to be?
A. Absolutely not.
Q. Sir, you did a lot of work trying to identify the wines in this case as counterfeit, right?
A. Yes, I have.
Q. You spent time and money doing that?
A. Yes, a lot of time. I haven't spent a lot of time but I've hired a lot of people to spend a lot of time and I've spent a lot of money.
Q. You take this very seriously?

A. Extremely seriously.
Q. You don't want to allege someone has sold you counterfeit wine without confidence that the objects were in fact counterfeit, right?
A. Absolutely right. There's an old saying, don't make idle threats or false promises.
Q. Could you have avoided all this work if Mr. Greenberg disclosed the doubts he had and others had about the authenticity of the wines in this case?
A. No, I would not have done all this work because I wouldn't have bought those wines if he had just identified them; better yet, if he held them out of the auction.
Q. Let's talk a little bit about Mr. Rodenstock. They spent a lot of time on him. By the time of that October 2005 auction, Mr. Koch, you were aware of the Thomas Jefferson bottles with respect to Mr. Rodenstock?
A. Yes.
Q. Did you have any awareness at that time that Mr. Rodenstock was potentially counterfeiting anything else other than those historical items that were selling for around a hundred thousand apiece?
A. No, I was not.
Q. Now did you learn later in your investigation about Mr. Rodenstock and where -- what else he might have been counterfeiting?

A. Yes, we got some documents from this fellow Frericks who had sued Rodenstock and there were some letters in that from David Molyneaux-Berry saying that Rodenstock had a big -- or Frericks had a big collection of huge bottles of Petrus and Imperial, which is basically eight bottles in one.

Q. One of those giant bottles?

A. A giant bottle, and he said there were serious questions about that and he couldn't put it up for sale at Sotheby's because he couldn't verify that Petrus had actually made it, so they needed to do a lot more studying on it. And incidentally, as I said, that we didn't -- we didn't reach any firm conclusions on whether the Thomas Jefferson wines were fake by that time. In fact, before that auction we had taken it to France and had it verified or tried to date it through the so-called atomic testing and it came back that it was wine pre1945 or pre1950 so we were in doubts about whether -- it wasn't until March 2006 that when Jim Elroy took these bottles to Corning Glass Museum and they said that wasn't done with the tool, the engraving was not done with the tool that was in -- in existence in 1784, which was where the needle was, was fixed like this (indicating) and they pumped it with their feet to turn it and then they had to move the bottle around like this (indicating), said it was done with a flex -- with a flexible dentist drill or something like a dentist drill, you held the bottle and then you engraved it like this (indicating), and

when we found out that, we said, we have firm proof that the Thomas Jefferson bottles are fake, and that was in March of 2006.

Q. Sir, did you wind up filing suit against Mr. Rodenstock?

A. Oh, yes, I did.

Q. Did you get a judgment against him?

A. Yes, over a million-dollar judgment against him.

Q. And have you worked to publicize what you have learned about Mr. Rodenstock since that time, to get the word out about what he did?

A. Oh, yeah. That was one of my goals was to shine a bright light on these fakers and the resellers of these fakes.

Q. You were just shown these interrogatories, these legal responses that you did verify and sign, right, sir?

A. Yes, I did.

Q. And did you, sir, make sure that you disclosed everything you knew at the time that you signed that document?

A. Yeah. We wanted to say, here's everything we have.

Q. And, sir, you disclosed that -- sir, when disclosing that, were you then giving that information over so that the other side could take depositions and follow up on anything that was provided?

A. Absolutely. Absolutely. And in fact, well --

Q. Well, let me ask you this: You were shown specifically some answers about Mr. Brierley, right, sir?

A. Yes.
Q. And you were aware that of course Mr. Brierley was deposed under oath later, right?
A. Yes, he was.
Q. And their lawyers got a chance to ask him whatever they wanted.
A. Absolutely. We weren't hiding anything.
Q. With the benefit of those earlier disclosures you had, right?
A. That's true.
Q. And in fact he did give some different information later, didn't he, than what earlier you thought, right?
A. Yes, he did.
Q. Did you try to hide that?
A. No.
Q. Let's go to a new topic. You were asked about inspection. Sir, did you -- listening to the testimony at trial, is it your belief that Mr. Greenberg at one time was one of the biggest buyers and sellers of wine in the world?
A. Yes.
Q. And he stated he didn't inspect, right?
A. That's right. He stated it very clearly twice, that he did not inspect.
Q. And do you know of other wine collectors, sir?
A. Yes, I do.

Q. Did you ever hear of other collectors going into warehouses to inspect wine before auction?
A. I've never heard of one and in fact -- well, the experts say very few people inspect -- I mean the auction houses say very, very few.
Q. In October 2005 did you have any reason to believe that you should have done what no one else was doing for an auction advertised at that time as best of the best?
A. No.
MR. SHARTSIS: Objection, your Honor. Objection. Misstates the evidence. We had the first witness in the case say he'd approved ten different people to inspect 30 to 40 bottles of wine. This is a complete misstatement, "no one had ever done."
THE COURT: The jury will base its decision on its own recollection of the evidence of various witnesses. But I'm going to allow the question.
Q. And that's your understanding of collectors that you know, right, sir?
A. Well, it's extremely difficult to inspect, particularly 17,000 bottles, and if you want to bid on 3,000, it's going to -- it takes a long time to do an inspection properly. You have to take the bottles out of the premises and have some experts look at it under sophisticated equipment, and they won't let you take them out.

Q. Let me ask you about tasting. You were talked -- there was a lot of discussion about that. What's your view about the reliability of tasting in order to test if something is a fake or not?

A. Well, tasting is a very subjective test, it's not objective, and it's not qualitative, and -- or -- yeah, quantitative, and the -- I have found that after three sips on a wine, my taste buds change. It's only natural. Or if you eat garlic with the wine, your taste buds, your taste -- the wine interacts with whatever the food is to give you completely different taste. That's why they always say you got to drink certain wines with certain foods, 'cause they enhance each other. I don't know the science of that, and there are people who -- who do that. But I know of people who have tasted wines and have tasted them one year and next year they couldn't identify the same wines. Wines change with time. It's natural. So how can you taste a bottle -- and the wines change from bottle to bottle to bottle. Even in the own -- own vineyard, as I said before, you get a bottle that's corked or you get something else in it. It's not precise and it's not a hundred percent uniform. Plus people have different taste. What tastes great to me does not necessarily taste great to my wife, or my friends. So when I have a wine tasting at my house, I bring out three, four wines, I say, they say you should drink white wine with fish and you should drink red wine

with meat and you should drink Burgundies with some type of wild meat like deer or venison or you should drink Bordeaux with heavy meat like steaks and things. I look at it and say, it's all individual. You taste the wine -- you taste, drink whatever wine you want with whatever food and you find out what is good for you. What's good for me is not good for you. And so I look at it and say, that is not a way to measure anything, except do you like it or not.

Q. Mr. Koch, let me ask you this: Have you come to learn anything about whether tastings have been used by known con men to deceive people?

A. Oh, absolutely. Hardy Rodenstock was a fabulous at doing that. What he would do --

MR. SHARTSIS: Your Honor, perhaps we could have a foundation rather than a speech that he attended some tasting at which he saw that done and he knows this firsthand? He's not here as an expert on wine, claims he does not know about authentication, and he's about to tell a story about something that he has no firsthand knowledge about. That is all hearsay.

MR. HUESTON: I'm happy to provide foundation.

THE COURT: Okay.

Q. Mr. Koch, did you pursue an investigation of Mr. Rodenstock?

A. Yes, I did.

Q. And did that investigation include whether Mr. Rodenstock

used tastings as part of his fraud?

A. Absolutely.

MR. SHARTSIS: Your Honor, that is the essence of hearsay. He went out and found out information outside of this courtroom and Mr. Koch is now about to testify about what he claims his investigators found, and he has been --

MR. HUESTON: Your Honor --

MR. SHARTSIS: Excuse me. He's been quite clear that he has been hands off, that other people do the work, he does not, and now he's going to import into the court some account he received of something that happened outside of the court reported to him by somebody who's not here to be cross-examined.

MR. HUESTON: Your Honor --

MR. SHARTSIS: That is completely inappropriate hearsay.

THE COURT: I'm concerned about the expert issue.

MR. HUESTON: Yeah, my response is, he was asked why not taste and -- and they asked him it openly and broadly and he, in fairness now, on redirect, should have an opportunity to say why he thinks tastings aren't reliable and this is one of the reasons he learned. He won't talk about what someone said here or there. This is part of what they opened the door to.

MR. SHARTSIS: Well --

THE COURT: Overruled. You can answer.

Q. Go ahead.

A. Well, we interviewed a lot of people that dealt with Hardy Rodenstock and some that even worked for him, and what he would do is, particularly on 1921 Petrus, we found where he bought the bottles, magnums, we found where he had the labels printed up, and what we found was that he would have a big tasting in which he would invite wine resellers and wine pundits. He wouldn't invite very many collectors, 'cause those were his -- his marks. What he would do is he would take say 1957 Petrus, outstanding, pour it into the bottle with a 1921 label on it, then he'd put a cork in it, put a capsule over it, but also he put some what we call juice in it to make it smell and taste old. He was -- he was an expert in fragrances. He used to sell fragrances so he knew what chemicals would work and give you what kind of smell that you wanted. He did that because he was in the perfume business for a while. Then what he'd do, he would have an opening or have all these Robert Parker, Michael Broadbent, all these big shots at a three-day wine tasting where he would -- he would have wine for breakfast, lunch, and dinner, three times a day. And what he would do is then he'd say, I have this 1921 Petrus, which is extremely rare, and it was, because Petrus didn't make 1921 in the big magnums, and so he said, I have this, I found it, I'm not telling you where I found it because I want to get some more there. Then he'd open it up very carefully, put the cork in his pocket, and then he

poured this out into it, and Robert Parker tasted it and said, this is amazing, it's a hundred out of a hundred, but strangely, it tastes like -- a lot like 1957 Petrus. And then he raved about it. Everybody else raved about it. Then when I -- I read it, I said, man, I want that wine. All these guys say it's so great. So I went out and bought as many bottles as I could, which was three. I paid $33,000 for one of them, I think. And I said, this is great. Opened it up, man, it tasted like dish water. What he did was a bait and switch, a standard con trick.

Q. Mr. Koch, did you learn about this after that October 2005 auction?

A. I learned it a long time afterwards.

Q. Let's go -- oh, by the way, are you aware of Mr. Greenberg's expert ever asking to taste the wines to determine if they were fake?

A. No.

Q. Let's go to the catalog. You were shown various entries, including tasting notes, and let's, for an example, go to -- I'll find it in a second -- lot 410, which is at page 51.

This is one of the ones that Mr. Shartsis had you look at. Now this bottle is not in this case, right, sir?

A. No, it is not.

Q. And looking at this, I just want to make sure the jury understands, Mr. Koch, so I'll have you explain to them.

What's the difference between the bottle description and the so-called tasting notes? Can you explain that.

A. The tasting notes were made by Michael Broadbent here, who gave it a five stars, which is about the highest -- highest his rating.

Q. Is that -- just so the jury knows, is that what's now being highlighted in the quotes?

A. Yes, that's right.

Q. Okay.

A. And what these are is that Michael Broadbent tasted a wine, a different wine, a different bottle that was labeled Chateau Latour 1929. He did not taste this particular bottle, 'cause otherwise you couldn't sell it, because they had to open it up and then put the cork back and that would have damaged the bottle, damaged the wine in the bottle. So this is his opinion of another bottle said to be the same year.

Q. And, sir, looking at that description, where is the description of the bottle?

A. The -- it's right under -- it's the second and third lines down from the top. Well, let's see.

There, you've got it.

Q. As well as the title itself?

A. Highlighted. The title. It says, "top shoulder, bin-soiled label, capsule cut to reveal fully branded cork." That's the description of the bottle.

Q. And is that what you looked at?
A. Yes.
Q. And, sir, so did the tasting notes -- you said it doesn't tell you about the bottle, so the tasting notes don't tell you anything about the provenance or authenticity of the bottle, right, sir?
A. No, it doesn't tell you where it came from.
Q. And sir, anywhere in this catalog did it mention or suggest that a bottle came from Hardy Rodenstock?
A. It never did.
THE COURT: Mr. Hueston, there's a microphone that we added to the podium so --
MR. HUESTON: Sorry.
THE COURT: -- sometimes it makes noise.
MR. HUESTON: Yeah. I don't really need it. My voice is -- I was always told I talk too loud anyways.
Q. I want to show you this item, brought up in opening statement, a Coke bottle. Let me just put it in front of you for a moment.
Mr. Koch, what if I told you I could guarantee that the liquid inside that Diet Coke bottle is 1950 Petrus? How much would you pay for it?
A. Zero. Oh, I'd pay for what the Coke bottle is worth, which, what, I don't know what this is worth, $12 or something? That's what I'd pay for it.

Q. Okay.
A. I wouldn't pay $33,000 for it.
Q. And why is that?
A. Well --
Q. I'm guaranteeing you that the liquid in there is 1950 Petrus.
A. I wouldn't pay it because what you're buying -- the bottle says it's Coke and you're telling me it's Petrus, I'd say you're a pretty bloody good con artist if you could sell that.
Q. Does the packaging --
A. It's like I wouldn't buy the Brooklyn Bridge either.
Q. Did the packaging matter to you, sir?
A. The package is critical. The package -- because that's really what you pay for, you pay -- you pay for the package and you pay for the fact that the package says what's in the bottle.
MR. HUESTON: Let's put that lot number 410 back up, please.
Q. Now, sir, you were asked -- asked about the fact that the catalog didn't mention certain things. Do you remember that?
A. Let me find 410. I'm sorry.
Q. Sure.
A. I found it.
Q. You got it?
A. Yes.

Q. Okay. And based on your experiences in auctions, sir, is it your understanding that a catalog is supposed to disclose negative information?
A. It should disclose everything that's known about the bottle.
Q. Okay.
A. Everything.
Q. In your experience if an entry like this one doesn't mention the label, what does that mean to you?
A. Means the label's okay. It's good.
Q. And what if it doesn't mention the cork?
A. What if it doesn't? Means the cork is okay.
Q. So when there's no mention about a feature of the bottle, is that positive or negative?
A. That's positive. I mean, if they mentioned everything about it, it would take up -- they wouldn't have any tasting notes. It would be a long --
Q. Sir --
A. The catalog would be too clumsy to use.
Q. Sir, if the seller knew or suspected a problem with the label, for instance, would you have wanted to see that in the catalog?
A. Absolutely.
Q. If the seller knew of a problem or even a potential problem with the cork, would you have wanted that disclosed in the

catalog?

A. Absolutely. Otherwise, it's fraud.

Q. Let's talk about the "as is" clause. You were asked a lot about it. I'm going to just ask a few questions.

Mr. Shartsis asked you a lot about what you thought about the "as is" disclaimer. Did you believe the "as is" disclaimer allowed a seller to sell wine he believed may be fake without disclosing it?

A. No.

MR. SHARTSIS: Your Honor, I object to the question. Calls for a legal conclusion.

MR. HUESTON: Exactly --

THE COURT: He can testify to his understanding.

MR. HUESTON: Thank you.

Q. Did you believe the "as is" disclaimer allowed a seller to sell a wine he believed may be fake without disclosing it?

A. Absolutely not.

Q. Do you believe the "as is" disclaimer allowed a seller to dump wine that Zachys or other auctions houses expressed doubts over?

A. Absolutely not.

Q. Do you believe the "as is" disclaimer allowed a seller to put his suspect wines up for auction?

A. No.

Q. Do you believe the "as is" disclaimer allowed a seller to

hide information they knew about their wines that might lead you to walk away from the sale?

A. Absolutely not. And that's what really irritates me about this case is I thought I was getting the best of the best; instead I was getting shitty bottles and I got the worst of the worst. Excuse me. I was getting a little emotional there.

Q. Let me have you turn to Exhibit 461, which is already in evidence. This is the e-mail --

MR. HUESTON: If we can put it up, please.

Let me see if I have another copy I can hand you.

A. Oh, I'm sorry. I was looking at lot 461. I apologize.

Q. Well -- I'm not as organized here as I'd like. One sec.

A. I have a little hard time hearing, as you know.

Q. Okay. I'm going to give you a hard copy in front of you that -- it's in evidence, but there you are.

Now this is the e-mail where Mark Curley, your employee, was asking questions of Mr. Zacharia relating to the October auction, right?

A. Yes.

Q. And the question was, "We would like to know the source of the magnum of 1921 Petrus." Right?

A. Yes.

Q. And was there anything in there suggesting that you had determined it was a forgery or a fake?

A. Nothing. No. We just wanted -- we were just asking a very

simple question, what was the source.

Q. Okay. And at the top it says, "Here is the response from the consignor." Who did you understand the consignor to be?

A. Well, I know the consignor now is Eric Greenberg.

MR. SHARTSIS: Your Honor, I object. We're now arguing over a document that Mr. Koch didn't author or receive? And we're about to get another speech from Mr. Koch?

MR. HUESTON: Not true. Not true. He's testified that he did receive it and he questioned him about it, and I'm setting up some context for questions.

Q. You did receive this, right, sir?

A. Yes.

Q. And the next sentence says, "He bought the wines from two different sources. The wine either came from a top collector in Toronto or out of Europe from English royalty." Right?

A. Yeah, that's what he said, and that was consistent with what was in the introduction to the catalog.

Q. But you've heard at trial here Mr. Greenberg described five possible sources that are not these two, right?

A. That's right.

Q. In fact, he said that the top collector from Toronto thing could have been made up, right?

A. That's what he said.

Q. Sir, sitting here today, what did you understand him to be doing at this time?

A. He was conning me.

Q. Why do you think that?

MR. SHARTSIS: Your Honor, this is from Mr. Zacharia, not from Mr. Greenberg.

MR. HUESTON: Well, we'll get to Greenberg.

THE COURT: Well, the connection was, there was already evidence about where it came from. This is from an e-mail from Mr. Greenberg.

MR. SHARTSIS: No, this is an e-mail from Mr. Zacharia.

THE COURT: No, I know, but there was another --

MR. HUESTON: We'll get Exhibit 530 up, just to make it abundantly clear.

Exhibit 530 is already in evidence. Let's get it up there. Go to the bottom.

BY MR. HUESTON:

Q. There's the question that, "Jeff, we would like to know the source of the magnum of 1921 Petrus." That's the question you had, your employee was asking, right?

A. Yes.

Q. We just saw it, right? And then Jeff writing to Eric. That's Eric Greenberg, right?

A. That's right.

Q. He passed along the request to the consignor, Eric Greenberg, and response --

MR. HUESTON: Go to the top.

Q. "I'm not sure which mag this is. A lot came from a collector in Toronto and many came out of Europe, in many cases from English royalty." That's what he said, right?

A. That's exactly what he said.

Q. And he didn't say Royal Wine, right?

A. No, he did not.

Q. And he didn't give the other four sources that he testified to earlier in the trial, right?

A. No, he did not.

Q. All right. Let's go then to the time that you contacted him. You were asked questions about that and about July of 2006, a few months later, right?

A. Yes.

Q. And Mr. Shartsis put before you a memo to make sure you were reciting things as accurately as possible from that conversation that day, and I'm going to do the same thing. So let's put Exhibit 474 in front of you, which is a memorandum of that conversation of that date by Mr. Elroy, right?

A. Yes.

Q. Now, Mr. Koch --

MR. SHARTSIS: Counsel, I need a copy of the document.

Q. Now, Mr. Koch, earlier Mr. Curley did not suggest or say the bottle was fake, right?

A. No, he did not.

Q. But in this conversation had you, by that point, determined it was a fake?
A. Yes.
Q. And looking at your notes there did you confront Mr. Greenberg with that in that call?
A. Yes, I did.
Q. Now after, "Mr. Greenberg was told it is fake," what did he tell you?
A. Well, may I read the sentence in here? It says, "Mr. Greenberg was told that Bill Koch purchased a magnum of 1921 Petrus from Zachys."
Q. Well, let me --
A. "The bottle turned out to be a fake."
Q. Okay. And did he then -- without -- without reading it aloud, did he then tell you some information about Royal Wine, once confronted?
MR. SHARTSIS: I object, your Honor, to "once confronted." We had testimony that this was willing on behalf of Mr. Greenberg. I asked that six different times and he voluntarily said he was not pressured to do it, and the suggestion he was confronted is a complete misstatement of what Mr. Koch said.
Q. Well, Mr. Koch, did you tell him on that call this was a fake?
A. Yes, I did.

Q. Okay.

A. Well, he told me he believed the wine came from Royal Wine Merchants in New York.

(Continued on next page)

Q. Did he tell you that he purchased only several fakes from Royal when you were on that call?
A. Yes, he did.
Q. Did he disclose to you that he kept most of the fakes from Royal and put them back in his cellar? Did he tell you that?
A. No, not at all. He left that out.
Q. Did he say that fakes from Royal were in his cellar and were there before the October of '05 auction?
A. No, he did not.
Q. Did he tell you that you should check other purchases of rare Bordeaux you made from him in October of 2005 because you might have bought other Royal fakes?
A. No, he did not.
Q. Did he tell you to check your rare Bordeaux that you bought from him because he had already documented as fake many of the same rare wines, same rare vintages, and same rare bottles that you bought as fake?
A. No, he did not.
Q. Did he offer to give you a copy of the Edgerton report, which laid out a number of counterfeits and fakes?
A. No.
Q. You recalled, sir, that he mentioned Bordeaux Wine Locators, right?
A. Yes.
Q. This is with respect to a 1981 bottle of Petrus that you

bought, right, that's what this conversation is about?
A. Yes.
MR. HUESTON: Let's have a picture of the 1921 Petrus up, please, that's already in evidence in this case.
Q. I'm going to represent to you, Mr. Koch, this is a photograph of the 1921 Petrus that you purchased from the October 2005 auction. Do you see that?
A. Yes, I do. I take your word for it.
Q. Do you see a Bordeaux Wine Locators sticker on it?
A. No, I do not.
Q. Looking at this report of interview, did Mr. Greenberg say certainly Bordeaux Wine Locators seems to deal in a lot of fake wines?
A. Yes, he did say that.
Q. Was he joking when he said it to you?
A. No, he was bloody serious.
Q. But the bottle of 1921 Petrus you were talking about did not have the Bordeaux Wine Locators sticker, right?
A. No, it did not.
Q. By telling you that, was he admitting any wrongdoing with respect to the wine you were bringing up with him?
A. No, he was not.
Q. Did you only later find out that you had other bottles purchased from him with that Bordeaux Wine Locators sticker?
A. Yes, I did.

Q. He mentioned at trial here he had thousands of Bordeaux Wine Locators stickered bottles in his cellar. He said that here at trial. Did he tell you that when you talked to him?
A. No, he did not.
Q. He also mentioned to you, sir, that Royal Wine was laundering money for the Russian mob?
A. Yes, he did.
Q. Have you had an investigation of Royal Wine yourself?
A. Yes.
Q. Have you ever uncovered any evidence of that?
A. Not at all.
Q. He wrote he had fears of what might happen to him and his family from Royal Wine, right?
A. That's what he said.
Q. Did he tell you that he threatened the life of the owner of Royal Wine?
A. No, he did not.
Q. With all this information, the information he was disclosing about this 1921 Petrus, would you have wanted to know that before the auction, sir?
A. Absolutely.
Q. Just to make sure the record is clear, did he ever tell you in that call or the second call that one of his sources was Rudy Kurniawan, whom he had caught twice selling counterfeit wine?

A. No, he did not.

Q. And that John Kapon of Acker had rejected Greenberg magnums?

MR. SHARTSIS: Your Honor, he can ask him whether he told him what his mother's birthday was on this call. This is notes of a specific conversation and examination of, well, he didn't tell you the first bottle he bought was vin rosé. It is completely inappropriate. We are just going on to ask questions about things that counsel knows were not part of the conversation and were not inquired into by Mr. Koch.

MR. HUESTON: It was inquired into by counsel Mr. Shartsis to suggest that this was some sort of tell-all. I am getting out that in fact was nothing close.

MR. SHARTSIS: No, your Honor. It was inquired by Mr. Shartsis that this was an answer-all, that Greenberg fully answered the questions that he was asked.

THE COURT: I will allow one more.

Q. Sir, did he mention to you that the Chicago Wine Company had rejected certain of his magnums and identified problems that were likely present in the same rare magnums you purchased?

MR. SHARTSIS: Your Honor, same objection. It misstates the answer.

Q. You may answer.

A. No, he did not.

Q. Mr. Koch, you were asked about the cover letter to the 2005 auction, right?

A. Yes.

Q. Mr. Shartsis kept saying the letter written by Mr. Zacharia, right?

A. That's what he kept asking about, yes.

Q. Do you regard the cover letter as being written by Mr. Zacharia?

A. I would say it was partially written by Jeff Zacharia.

Q. Who is the other author?

MR. SHARTSIS: Your Honor, this is just a closing argument to the jury, allowing him now to say, well, what do you think of the evidence about that letter.

THE COURT: You need to lay a foundation for whether he knows who wrote what.

MR. HUESTON: Sure.

Q. Let's put in front of you, Mr. Koch, Exhibit 435.

MR. SHARTSIS: Personal knowledge at the time he read it, your Honor? We have been through a whole trial. We are now going to restate the evidence that the jury is supposed to evaluate?

MR. HUESTON: Actually, I'm almost done, and this is one of my last documents. I think since Mr. Shartsis kept arguing through his questions that this is Mr. Zacharia's document, and this is in evidence, I want to ask Mr. Koch to

clarify whether he thinks it's Mr. Zacharia's document.

MR. SHARTSIS: Your Honor, that is something he can ask Mr. Zacharia, not Mr. Koch.

THE COURT: Sustained. I think what is relevant here is what his understanding was at the time.

MR. HUESTON: OK.

Q. At the time did you think that Mr. Greenberg had any hand in writing that letter?

A. At the time?

Q. Right.

A. I had no idea.

Q. Is that something you would have liked to have known?

A. Yes.

Q. Let's talk about the one and only time you ever sold wine at an auction. That's way back in 1999?

A. Yes.

Q. At the time, sir, were you buying in bulk from Bordeaux Wine Locators, known to you as the worst counterfeiter in the world? Were you?

A. No.

Q. To your knowledge, was there any counterfeit in your collection at all at the time you were consigning wine in 1999?

A. I believed there was not any in my collection.

Q. Did you withhold any information from the auction house?

A. Absolutely not. I told my staff to tell them, show them

anything they wanted to see, Christy's.

Q. In that auction did you want to get rid of the garbage in your cellar, sir?

A. No, I did not.

Q. To sell the crappiest or shittiest bottles?

A. No.

Q. Did you try to sell any bottles that had previously been rejected by other auction houses?

A. No.

Q. Would you have ever even considered trying to go to another auction house to sell some wine if they had been rejected from one already?

A. No.

Q. Since that time have you determined that your cellar in fact has some counterfeit wine?

A. Yes. It has more than 421 bottles of fake wine in it, unfortunately.

Q. Since discovering that your cellar has some counterfeit wine in it, have you ever tried to sell even a single bottle of wine from your cellar?

A. Absolutely not.

MR. HUESTON: No more questions.

THE COURT: Thank you, Mr. Hueston.

Is there any recross?

MR. SHARTSIS: Your Honor, may we approach the bench,

please?

THE COURT: Sure.

THE WITNESS: May I go to the restroom again, please, sir?

THE COURT: Sure. And if the jury wants to stand up and take a stretch break, you may.

(Continued on next page)

(At the side bar)

THE COURT: Mr. Shartsis.

MR. SHARTSIS: Your Honor, there were two questions that counsel asked that I think opened up the door to what Mr. Greenberg did, clearly. One, he asked Mr. Koch, could Mr. Koch have avoided spending all of this money, could he have avoided spending --

THE COURT: You're saying opened the door to what?

MR. SHARTSIS: On the refund issue, your Honor.

THE COURT: OK.

MR. SHARTSIS: He goes through how hard it was, what his expenses were, all the experts he had to hire to do this, all of the things that happened after Mr. Greenberg offered him his money back. Then he says, could you have avoided all of this work, and Mr. Koch said no, I had to do all of this. He could have avoided all of that work, your Honor, because Mr. Greenberg would have given him his money back. That was their question, not ours.

MR. HUESTON: Can I answer that one before we go to the next one?

THE COURT: Sure.

MR. HUESTON: Your Honor, I was specifically answering and rebutting the issue of necessary, the suggestion by Mr. Shartsis in the exam to the jury through Mr. Koch that all sorts of crazy testing would be necessary to show something as

counterfeit. I wanted to make clear to the jury that Mr. Koch did whatever diligence he needed to do to establish that something was counterfeit because that's what he felt would have to be done in due course. That was the limit of that questioning. That was the purpose of that, and a fair response to what was raised.

THE COURT: I don't even remember that testimony.

MR. SHARTSIS: Your Honor, I can read you the whole question. He could have said, was all this work necessary to find out if it was fake, and he could have said yes.

MR. HUESTON: That is not what I said.

MR. SHARTSIS: That is not, exactly right. What you said was could you have avoided all this work.

MR. KABA: If Mr. Greenberg had disclosed the information.

MR. HUESTON: That was the question.

MR. SHARTSIS: Your Honor, Mr. Koch gets up and says, I had to incur all these massive costs because of this, and he did not. That is really terrible. I have said this before on this issue. The jury thinks that Mr. Koch was put to all of this expense and all of this trouble and there was nothing by Mr. Greenberg to avoid that.

The second issue is he was asked --

MR. HUESTON: Can I answer that?

THE COURT: Let him answer that.

MR. HUESTON: Mr. Shartsis himself has raised the expense issue over and over again. That is not something I barn-door opened. Throughout the cross: You spent lots of money. On opening statement: You spent lots of money. We have kept it very narrow in responding to that and why what he did is reasonable.

MR. SHARTSIS: Let me address the second one.

THE COURT: OK.

MR. SHARTSIS: The next thing was, are you aware of Mr. Greenberg's expert asking to taste the wine, suggesting that that was not something Mr. Greenberg would do. Mr. Greenberg proposed to have the wine tasted in public and to pay for it.

THE COURT: Repeat that again. I'm sorry.

MR. SHARTSIS: The question was this. The question was, in talking about tasting, trying to show that the request to taste was unreasonable or that our argument is unreasonable, Mr. Koch is asked directly, are you aware of whether Mr. Greenberg's expert asked to taste the wine. Right?

THE COURT: Right.

MR. SHARTSIS: Mr. Greenberg asked to taste the wine.

MR. KABA: No, he didn't. He made a settlement offer.

MR. SHARTSIS: Let me finish.

MR. HUESTON: I was very careful to ask just about the expert, not about Mr. Greenberg.

THE COURT: One at a time. Finish your point.

MR. SHARTSIS: Mr. Greenberg said that he wanted to have the bottles tasted in public and was prepared to pay the cost. There is no question that he did that, your Honor. Now the jury thinks that Mr. Greenberg never was willing to taste the wine, ever. That's the question.

THE COURT: I think that is a side issue. Mr. Koch had the wine. How does Mr. Greenberg's offer about -- what does that mean, that he offered to taste the wine?

MR. SHARTSIS: The suggestion is that Mr. Greenberg wasn't willing to taste the wine. They are going to get up in closing and say, you know, Mr. Shartsis said taste the wine, taste the wine, taste the wine. Mr. Greenberg's expert didn't even want to taste the wine. They are going to do that on closing, your Honor, and I'm going to be sitting there and not able to say, hey, by the way, Mr. Greenberg wanted the wine tasted. That is just unfair, your Honor. I can't believe it, that Greenberg can't say I wanted the wine tasted. Why can't he say, I wanted the wine tasted and I was willing to put my money where my mouth was to do it?

MR. HUESTON: Can I respond?

MR. SHARTSIS: Why is he muted on that issue?

MR. HUESTON: May I respond? Actually, I was going to ask for a Court instruction on this because of their suggestion. There has never been a discovery demand or request

to taste the wine from the other side. I laid off that question for fear that he would argue that that might implicate Greenberg somehow in that settlement offer, which was not a wine testing demand. Then I very narrowly stated what Mr. Lempert-Schwarz is going to say in his report, that he limited his review to bottle examination in his exam.

THE COURT: What about limiting it to the fact that Mr. Greenberg was open to have the wine tasted, just that?

MR. HUESTON: But he didn't. There is not any evidence in this case, your Honor, except some gratuitous document in a settlement course about how they are going to pour it out at some charity function. Where is that? There is no evidence at all. They have never made a demand in this case that we need to examine the bottles and or have them opened to taste it. It is not even there. For them to suggest otherwise is bringing something completely out of the case into the case. It's not right.

MR. SHARTSIS: Let me add one more global observation about what is going on. Mr. Koch gave his speech a number of times about how this is just a license to steal, a license to steal, that's what the agreement is, selling fake wine, saying too bad, a license to steal.

There is no evidence that Mr. Greenberg thought this was a license to steal, since he initiated, without any lawsuit, a refund on a bottle before anybody made any claims,

before anybody suggested fraud. When he heard about the '28 Latour, first thing he said was, refund that money. Nobody had sued him. Nobody had threatened him. Then, when the first lawsuit comes in, he offers a refund. That is not a license to steal.

What Mr. Koch has done by making his speech is left the impression that this was a vicious thing, that he is stuck with the bottles because of Greenberg.

THE COURT: The license to steal, that wasn't specifically about the as-is provision.

MR. HUESTON: Right.

MR. SHARTSIS: The whole point is this was an as-is provision.

MR. HUESTON: Can I respond?

MR. SHARTSIS: With the initiative to give a refund on an as-is contract. That's what it was. He was offering. As-is is one thing. But what a deal. You have an as-is contract where somebody gives you a refund. What that is being called is a license to steal, license to steal.

THE COURT: Mr. Hueston.

MR. HUESTON: Mr. Koch has never alleged that Mr. Greenberg stole anything from him. He never said Mr. Greenberg has stolen things from me. It's not a contract case. And how many speeches did we hear from Mr. Greenberg, speeches about victims, speeches about me, speeches that he always refunds.

He walked through the door he wasn't supposed to several times. I felt that he should have been sanctioned. He was allowed to put all that stuff out there. We have been very careful on this. There has been no door opened, and it should not be opened now.

THE COURT: I don't think the door has been opened. I have always said it's a tough ruling, but I'm going to stick with my original ruling based on Rule 403.

MR. SHARTSIS: Your Honor, I can't ask Mr. Koch that he understood Mr. Greenberg was willing to have the bottles tasted? I can't ask him that?

THE COURT: No, I don't think that is part it. On the particularly fraud claim that is brought and the other claims, I just don't think that the prejudice warrants given the probative value. I don't know what the probative value is as to whether he engaged in fraud.

MR. SHARTSIS: Your Honor, I understand that there is a business practice issue. A license to steal, how did they treat the as-is clause, that is the business practice. We have a consumer claim here.

MR. KABA: That's not the claim.

MR. SHARTSIS: That is a business practice.

THE COURT: It's all after the claims.

MR. HUESTON: That's right.

MR. KABA: It's the deception prior to.

MR. SHARTSIS: It's probative of the practices.

THE COURT: It's not probative, for precisely the reason that settlement offers are considered inadmissible, which is after-the-fact settlement offers, part of it is the policy of promoting them. Settlement offers aren't really probative of whether the previous conduct was fraudulent, etc.

MR. SHARTSIS: Your Honor, remember, there are a couple of refund issues --

MR. HUESTON: Your Honor, we are just regurgitating arguments again.

MR. SHARTSIS: May I finish?

THE COURT: Yes.

MR. SHARTSIS: One is the '28 Latour, your Honor. I want to stop for a moment. That is of a different nature from the, quote, settlement offer which we don't consider a settlement offer. The '28 Latour, Mr. Greenberg learns, is in the auction. He immediately says that should not be in the auction, give that person their money back.

MR. KABA: That's not true.

MR. SHARTSIS: Your Honor, that's not a settlement offer. The evidence of that is clear because it is noted in the letter. Mr. Greenberg memorializes that I had already offered the money back on the '28 Latour. That can't possibly be a settlement offer.

And that's got to go exactly to his conduct and

approach. No threat, no lawsuit, no claim of fraud, nothing. Yet the first thing that happens, he sees a bottle that he thinks shouldn't be in the auction, and he says I'm going to give these people their money back.

THE COURT: The same concept applies. The 403 analysis is the same for that because it is after the fact.

MR. SHARTSIS: Your Honor, it's not a settlement offer, because there is no demand, there is no claim.

MR. HUESTON: This is just the motion again, your Honor.

MR. SHARTSIS: May I finish, please? I'm just having trouble understanding, your Honor. There is no claim outstanding. There is no lawsuit outstanding. There is no assertion of anything. There is no demand. There is nothing. How is it a settlement offer when the seller of something identifies by himself that this is something that shouldn't be in the auction and on his own initiative he goes to the buyer says here is your money back, this shouldn't have been in the auction?

They are arguing that he is a venal criminal putting this stuff intentionally in the auction, when the first time he sees it he says this shouldn't be here, let's give them their money back. Why isn't that relevant to his conduct as a commercial party?

THE COURT: It's the same thing we have talked about.

I think the prejudice outweighs the probative value.

MR. SHARTSIS: The prejudice that he willingly on his own voluntarily identified something that was wrong, acknowledged it, and made right? The prejudice is that it hurts Mr. Koch. I agree it's prejudicial. But it's not wrongfully prejudicial, and it is not unfair that a guy who is conducting himself completely properly can't get up in front of the jury and tell them that. Why can't he tell them I saw this, I'm the one who saw the problem, I rectified it?

MR. KABA: First of all, there is no evidence that Mr. Greenberg saw the problem and immediately rectified it. There is simply no evidence of that. All of the conduct that he is complaining of happens after the fraud has been committed. It happens after the deceptive act has been committed.

The fraud and the deception that we are complaining about for which this case has been brought is the fraud and deception in selling counterfeit wine at auction. It's not what he did later. It's not the conversations, it's not the offers. It's everything before. It's his state of mind, his intent, and his deception in selling these bad wines.

When they want to talk about this offer supposedly that Mr. Koch never got, but this offer to refund on one bottle, they can bring that up and say it wasn't as bad as Mr. Koch wants you to believe, on punitives. It certainly is not relevant to whether the fraud and deception occurred at the

time of the sale of these counterfeit wines.

MR. SHARTSIS: Your Honor, one last point. The reason it is not in evidence is because we were not able to put it into evidence.

Let me pose something to your Honor. This is a fraud case. I sell something to somebody. After I sell it, I say, oh, my goodness, I was supposed to sell him the red Chevy, I sold him the blue Chevy. I call him and I say, you got the blue Chevy, I was supposed to sell you the red Chevy. That's a fraud?

That's what they are arguing on this bottle, that he sells something. We have said it is by mistake, he has acted completely by mistake. He learns about it. Nobody threatens him, nobody sues him, nobody claims fraud. It's just like a mistake, your Honor.

MR. KABA: That's like an embezzler who gets caught and says here is the money back, not a big deal, when that someone is on to him. That's why the prejudice outweighs any marginal probative value, and there is none.

THE COURT: I think this is essentially reconsideration, and I'm going to stand by my ruling. I don't think either of these two things opened the door.

MR. CIALONE: There has been a lot of questioning to that effect of Mr. Greenberg is going to get his money back but Mr. Koch isn't going to get his money back.

(Continued on next page)

(In open court)

THE COURT: It's almost 11:00. Why don't we take a five or ten-minute break. OK, folks? Leave your pads on your chairs.

(Recess)

THE COURT: Mr. Shartsis.

MR. SHARTSIS: Thank you, your Honor. Could we have Exhibit 461, please. And can we blow that up so Mr. Koch can see it on the screen.

BY MR. SHARTSIS:

Q. Mr. Koch, you were asked about this email just a few minutes ago by your counsel. Do you remember that?

A. Yes.

Q. You gave your testimony about whether you thought it was accurate or forthcoming, correct?

A. I don't know if I talked about whether it was accurate or not, but it was forthcoming.

Q. Let's look exactly at what this is.

MR. SHARTSIS: Could you mark the lower email, "Jeff, We would like to know."

Q. Here the question is asked, "Jeff, We would like to know the source of the magnum of the '21 Petrus that Mr. Koch purchased from Zachys on 10/28/05. This has nothing to do with your sale. We are trying to determine the line of ownership/ provenance of this particular bottle. Any information you can

provide will be most helpful."

Then let's look at what Mr. Zacharia responds. "Here is the response from the consignor. He bought the wines from two different sources. The wine either came from a top collector in Toronto or out of Europe from English royalty." That is the email that you saw, is that correct?

A. Yes.

MR. SHARTSIS: Can we put up 530, please. Can we blow that up, please. Let's go all the way down and see what Mr. Zacharia is asking. Is there any way to blow up individual sections so the jury can see it?

Q. Here is Jeff Zacharia writing to Eric Greenberg. He says, "Below is an email from the buyer of the 1921 Petrus from your sale. Any specific information you can give me would be helpful. Thanks, Jeff." Do you see that?

A. Yes.

Q. Then let's look at what Mr. Greenberg's response is. First he says, "I am not sure which mag this is." Then he says, "A lot came from a collector in Toronto, and many came out of Europe, and in many cases from English royalty." That was Mr. Greenberg's actual response, correct?

A. Yes.

MR. SHARTSIS: Can we compare that with Mr. Zacharia's description, please.

Q. Mr. Zacharia translates that email into saying he bought

the wine from two different sources. Do you see that?
A. Yes.
Q. It's Mr. Zacharia's email that you relied on, not Mr. Greenberg's, correct?
A. I hadn't seen Mr. Greenberg's email.
Q. You couldn't rely on it if you didn't see it, right?
A. That's right.
Q. You actually then had an opportunity to talk directly with Mr. Greenberg, correct?
A. Yes.
Q. Two conversations?
A. Yes.
Q. In those conversations you were free to ask any questions you wanted to ask, correct?
A. Well, I wouldn't ask him a question like when did you stop beating your wife. I wouldn't ask that. I only asked the questions that were relevant to what we wanted.
Q. Right.
A. Which was the source of the '21 Petrus.
Q. That's all you were asking him about, was the '21 Petrus, correct?
A. That's right.
Q. You weren't asking him about other things?
A. No. My subject of the call to him was about the '21 Petrus.

Q. This process was that you would ask Mr. Greenberg a specific question and he'd give you an answer, right?
A. I asked him a specific question, and then he started talking a lot about counterfeit wines. We both talked, had a conversation about counterfeit wines and Hardy Rodenstock.
Q. As you said before in your testimony when I questioned you yesterday, you believed that he was voluntarily giving you information, correct?
A. Yes. He was talking to me. There was nothing holding him back.
Q. Right, nothing holding him back. He didn't refuse to answer a single question that you asked, did he? Did he?
A. Well, he volunteered more than things that I'd asked.
Q. Right. He actually gave you more information than what you asked for, is that right?
A. Yes. Gave me the information about -- I was going to tell you what he did. He gave me the information about --
MR. SHARTSIS: Your Honor.
A. -- the Russian mafia and organized crime.
Q. Mr. Koch, how many times have you told us that?
A. As many times as I can.
Q. That's right. Thank you.
A. That's all right.
Q. He told you that he had purchased several fakes from Royal, correct?

A. I think he -- yes, he did.
Q. Right. You didn't ask what the other fakes were, right?
A. No. I didn't know if they were in the auction or still in his collection.
Q. The point is you didn't ask him what the fakes were?
A. No, I did not.
Q. He actually told you that he had taken a million-dollar loss, a million-dollar loss, with Royal, correct?
A. He said something to the effect of a million-dollar loss is not worth getting involved with the Russian mafia, something of that nature.
Q. Right. So we have the Russian mafia back. But what he did tell you is he had taken a million-dollar loss with Royal, correct?
A. He implied that there was a million-dollar loss. I'm not sure exactly his exact words.
Q. He said for a million-dollar loss in fake wine, it was not worth it to pursue Royal further, correct?
A. That's what we reported or Jim reported him saying.
Q. Then he made reference to Bordeaux Wine Locators as someone to be concerned about with regard to wine, correct?
A. He said they sell a lot of fakes.
Q. Right.
A. Yes.
Q. Mr. Koch, you had bought a number of bottles from Mr.

Greenberg which had Bordeaux Wine Locators stickers on them, hadn't you?
A. Yes.
Q. He didn't conceal that from you, did he?
A. No.
Q. He didn't make it impossible for you to look at a bottle and see a Bordeaux Wine Locators label on it, did he?
A. I don't know what he did. He might have take the labels off. I have no idea. Not the labels, but the stickers off. I just don't know what he did and didn't do.
Q. Are you saying, Mr. Koch, that you believe Mr. Greenberg removed Bordeaux Wine Locators stickers from bottles he sold to you? Is that what you are saying here?
A. I'm saying that is a possibility. That's all I'm saying.
Q. It's a possibility?
A. Yes.
Q. You believe that, is that right?
A. Let me say this: It wouldn't surprise me if he had.
Q. It wouldn't surprise you. Mr. Koch, you bought a bottle of 1945 Clos L'Eglise Clinet from Mr. Greenberg, didn't you?
A. Yes.
Q. It had a Bordeaux Wine Locators sticker on it, didn't it?
A. Could you show it to me so I can confirm that?
Q. You don't know?
A. I don't know.

Q. Do you think he removed the label from that one?
A. As I said, I do not know.
Q. You bought an 1811 Chateau Lafite from him with the Bordeaux Wine Locators sticker right on the bottle, isn't that true?
A. As I said, I don't remember. Probably.
Q. You're suing him for a 1945 Chateau Lafite magnum with a Bordeaux Wine Locators sticker on it, right?
A. I know that one has the label on it.
Q. Bordeaux Wine Locators'?
A. Yes.
Q. You're suing him for 5 Chateau Lafite magnums, and every one of them has a Bordeaux Wine Locators sticker on it?
A. Do you want me to take your word for it?
Q. No. I just want to know. You said you suspected he had removed them. I want to know --
MR. HUESTON: Objection. That mischaracterizes.
A. No.
Q. Do you know, sir, whether five Chateau Lafleur magnums that you bought from Mr. Greenberg have Bordeaux Wine Locators stickers them?
A. If you told me the bottles, I could confirm it.
Q. You don't know?
A. Right now I don't know the details of each and every bottle.

Q. Do you know, sir, that two of the 1950 Chateau Petrus magnums that you bought from Mr. Greenberg have Bordeaux Wine Locators stickers?
A. I'll give you the same answer.
Q. The answer is you just look at the bottle and see, right?
A. That's right.
Q. Mr. Greenberg couldn't conceal from you the fact that he had sold you bottles of Bordeaux Wine Locators?
A. No, he didn't conceal on those bottles.
Q. Mr. Koch, you were asked about the cork descriptions on wines.
MR. SHARTSIS: Could we see Exhibit 101, page 64, please, out of the catalog.
Q. Mr. Koch, you said that if there was nothing on the description regarding a cork, that was a positive sign, correct?
A. Yes.
Q. Let's take a look here. The lower lot, lot 480, has nothing about the cork, is that right?
A. That's right.
Q. Your testimony is that is a positive sign?
A. To me it is, yes.
Q. Then let's look at the other Chateau Lafleur. We see "reveal a fully branded cork"?
A. Yes.

Q. If having no information about a cork is a positive sign, this must be a negative sign, because it is the complete opposite of not having mentioned what the cork is?

A. No. It is an explicit positive sign because it says "fully branded cork."

Q. Can you tell the difference, Mr. Koch, between something that says "fully branded cork" and something that doesn't say anything about the cork?

A. Can I tell the difference?

Q. Yes. Does it appear different to you in any way?

A. One describes the cork, one does not.

Q. You believe that one that has no description of the cork has exactly the same meaning as one that has a complete description of the cork, is that your testimony?

A. I concluded that the person who wrote this didn't think it was appropriate or didn't think it was significant to put the cork on, a description of the cork. That means he or she thought it was fine.

Q. Your understanding when you read a document is if it doesn't say something, it actually says all kinds of things to you, is that right?

MR. HUESTON: Objection. Vague and ambiguous as to "a document." Are you referring to the catalog entry?

A. What it says to me is the person that wrote it -- I'm sorry. I couldn't hear.

THE COURT: Overruled. You can answer. Go ahead.

A. What it said to me was the person who wrote it did not think that putting the cork, a description of the cork in the catalog was significant.

Q. Is there somewhere in the catalog that says that, Mr. Koch?

A. No.

Q. It says if we don't list anything about the cork, we actually mean that it's completely fine? Is that somewhere in this catalog, Mr. Koch?

A. No.

Q. That's something that you have made up yourself to try to explain when there is no cork -- that you believe when it doesn't say anything, it means a bunch of things, right?

MR. HUESTON: Objection. Argumentative.

THE COURT: I'll allow it.

A. To me it's a logical conclusion.

(Continued on next page)

BY MR. SHARTSIS:

Q. Right. So the absence of information causes you to apply logic to place information where there is no information, is that right?

A. I -- I've already told you why I concluded.

MR. SHARTSIS: Could we put up 101, please, page 240. And can you blow up the top half of item 1.

Item number 1, please.

Q. Now, Mr. Koch, you were shown a Coke bottle and asked a question about whether you'd buy it, and I believe you said, "Well, if they guaranteed it, I would buy it," is that right? Has to be guaranteed?

MR. HUESTON: Objection. That is not what I suggested in the question or what came out in the answer.

Q. You believed that the wine in each of these descriptions were guaranteed, correct?

A. As I -- as I -- you've asked me a number of questions about this, and each time I said they'd stand behind it.

Q. Guaranteed.

A. Stand behind it.

Q. Stand behind it. And what does "stand behind it" mean?

A. They're saying what is in the bottle -- what is stated on the -- on the label is in the bottle.

Q. So let's look at this provision here. It says, "The authenticity of property listed in the catalog is guaranteed

only as stated herein and otherwise all property is sold as is, without any representations or warranties by Zachys Wine Auctions or the consignor," and the consignor is Mr. Greenberg, right? You knew that. You know it now.

A. I know it now. That's what it says.

Q. "-- warranties or representations by Zachys or the consignor as to merchantability, fitness for a particular purpose, correctness of catalog, description, size, quality, condition, rarity, importance, provenance, exhibition history, literature, previous storage conditions, or historical relevance of any property." Do you see that?

A. Yes.

Q. You now know, Mr. Koch, that that statement was printed in the catalog for the auction that you chose voluntarily to participate in, correct?

A. It was printed in the catalog. It's in the catalog.

MR. SHARTSIS: Thank you. I have no further questions.

THE COURT: Okay. Thank you. Anything further?

MR. HUESTON: Very briefly.

REDIRECT EXAMINATION

BY MR. HUESTON:

Q. I'm just going to ask you a couple questions about when you talked to Mr. Greenberg about that one bottle, the 1921 Petrus. Remember that?

A. Yes.
Q. Okay. Now that bottle didn't have a Bordeaux Wine Locators sticker on it, right?
A. No. I don't believe so.
Q. And so when he talked about how Bordeaux Wine Locators had counterfeiting issues, did you view that as some sort of confession?
A. No.
Q. Would you have wanted to know that information before going to that auction and buying from his collection?
A. Absolutely.
MR. HUESTON: No more questions.
MR. SHARTSIS: Just one question.
RECROSS EXAMINATION
BY MR. SHARTSIS:
Q. Mr. Koch, when you looked through the catalog, you were aware that there were Bordeaux Wine Locators stickers on a number of the bottles in the pictures, isn't that true?
A. I don't remember.
Q. You don't remember. So you don't remember looking through the catalog carefully enough to see the Bordeaux Wine Locators sticker.
MR. HUESTON: Objection. That mischaracterizes the testimony.
A. As I said, I do not remember.

MR. SHARTSIS: Thank you.

A. A lot of stickers on those bottles, on some bottles.

THE COURT: Okay. Thank you, folks. Mr. Koch, you may step down.

THE WITNESS: Thank you, sir.

(Witness excused)

THE COURT: And plaintiff may call its next witness.

MR. KABA: Plaintiff calls Mr. Mark Curley.

THE COURT: Okay.

(Witness sworn)

THE CLERK: Please state your name for the record and spell your first and last name, please.

THE WITNESS: Mark Curley, M-A-R-K, C-U-R-L-E-Y.

THE COURT: Okay. Mr. Wessel?

MARK CURLEY,

called as a witness by the Plaintiff,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WESSEL:

Q. Mr. Curley, can you tell us where you work.

A. I work for Centurion Residence Services.

Q. And what is that?

A. It's a small private company owned by Mr. Koch to employ all his private staff.

Q. And during Mr. Koch's testimony from time to time he

referenced Mr. Curley. That's you?
A. Yes.
Q. And how long have you worked for Mr. Koch?
A. Full time for 20 years now, but I also worked in high school, so all told, 25 years.
Q. You started to work for him in high school and college on a part-time basis?
A. That's correct.
Q. And then you became a full-time employee?
A. Yes, about a year after college I did.
Q. And where do you live?
A. I live in Cape Cod in Massachusetts.
Q. Can you generally describe for us your job responsibilities for Mr. Koch.
A. Generally I run all of his private properties, manage all the estates and the collections.
Q. Collections include those wine collections?
A. That's correct.
Q. And what responsibility do you have for the wine cellar?
A. Generally I oversee the management of the cellars and the security and the insurance, and the incoming and outgoing wine would also be under my responsibility.
Q. And do you keep track of inventory in the cellar?
A. Yes. I manage the inventory.
Q. And are there other people who work on that as well?

A. Yes.
Q. And beyond that do you have any expertise in wine?
A. No.
Q. I want to hand you Exhibit 420 for identification.
A. Thanks.
Q. Mr. Curley, what is Exhibit 420?
A. It's an e-mail from Mr. Koch to me, the subject line, Wines.
Q. And this e-mail is about the procedures in place for payment of wine?
A. Correct.

MR. WESSEL: Your Honor, we'd move 420 into evidence.

MR. CIALONE: No objection, your Honor.

THE COURT: Okay. 420 received.

(Trial Exhibit 420 received in evidence)

Q. So Mr. Curley, why did you write your e-mail to Mr. Koch?
A. At that time in 2005, we had had -- we had been having problems with the auction houses and the wine retailers not fully having shipments ready and saying they were ready and -- and we were receiving wines from time to time that weren't the wines that were purported to be for sale or sold to us so there was a lot of back and forth, but at -- it was kind of a discussion about when we should actually pay for the wine.
Q. And the arrangement that you worked out with Mr. Koch for Zachys after this e-mail exchange was what?

A. Reading from memory -- I'm not reading the whole thing, but from memory was that we would pay for auction invoices at the time of conclusion of the auction or upon receipt and then we would deliver a check when we picked up small retail purchases. Zachys had -- had other things besides auctions. They also sold retail.

Q. And in the e-mail you had a statement where you said when they tell you the wine is ready for delivery, then it's okay to pay, and you say, "Sometimes it's hard to believe the auction houses." You see that?

A. Yes.

Q. And what were you referring to there?

A. Like I said -- I think I said earlier, it's -- they didn't always have the wine that they said they did. I could name them by name from memory, but Zachys and Acker Merrall for sure would say, okay, the wine's ready, and at the time they wouldn't have the wine ready or they'd have a portion of the wine ready or they would deliver a case that wasn't actually what the wine was; it was a wrong year or wrong vintage or whatever.

Q. And Mr. Koch says at the top, in response to your request to him, you "need to check the wine we get against what we bought." Do you see that?

A. Correct, yes.

Q. And what was he referring to?

A. We would always check the wine to make sure it was the right year, the right vintage, the right producer. You know, whatever was on the invoice, I would read and -- and compare it to the bottles that were being delivered or I was picking up.
Q. If the invoice said it was a 1950, you'd check to make sure it wasn't a 1960.
A. Correct.
Q. And were there ever times you found a bottle that was leaking in some way?
A. Oh, yes, yeah.
Q. And you'd check for that as well?
A. Yeah, condition, overall condition of the bottle, you know, kind of like a piece of fruit. If it was all bruised and battered or if it was leaking or couple times the bottles were cracked, I would return them for condition or bring them back.
Q. And there were occasions when you checked and the bottle actually wasn't there. The case that didn't have the full amount or --
A. Oh, yeah, yeah. There was a case that came with nine bottles instead of twelve, there was -- sometimes there were discrepancies as far as -- they'd say it was a six-bottle case and three bottles showed up, or there were other cases where they made other mistakes when it was a better year than -- or, you know, different year than it was supposed to be and in their -- and not in their favor. They just made mistakes.

Q. In any event, you checked for all of that.
A. Yes.
Q. I want to turn to a different topic -- the security in Mr. Koch's cellars.
A. Yes.
Q. How does that work in the wine cellar?
A. All of the wine cellars are locked with -- locked and alarmed 24 hours, seven days a week, unless there's activity within the cellar, you know.
Q. And there's been some discussion in the case about Mr. Elroy. Does he have access to the wine cellar?
A. The only time Mr. Elroy is allowed in the cellar is when he's escorted. That's policy. Certain staff are allowed in to do functionary duties, but contractors and others are not allowed in without an escort, which would be either Mr. Koch or his wife or -- or the staff that's allowed -- that's on the allowed list.
Q. Mr. Elroy is not permitted to go in alone.
A. No. He doesn't have alarm codes, he doesn't have keys, so -- it's both keyed and alarmed in most instances.
Q. New topic. I want to talk a little bit about what your role was in the 1999 auction when Mr. Koch sold some of his wine. What was your role?
A. At that time I was managing estates but there was a different fellow who was overseeing the wine collection more

full time, and I assisted in the gathering up of the bottles because it was quite a few bottles that we all kind of pitched in to box and secure the wine to put it on the truck to go to auction. It was limited.

Q. And did Mr. Koch give you any directions about how you should handle the disclosures to the auction house?

A. It was full disclosure. We worked hand in hand with the auction house people. They came in and out of the cellar with us and they helped pack and -- there was nothing being hidden.

Q. You answered any questions that they had?

A. Of course.

Q. All right. I want to turn to the 24 bottles in this case and just ask you about the logistics. How did those bottles get into the courthouse?

A. I brought them here.

Q. And I'd like to give you Exhibit 1090A.

A. Thanks.

Q. And does this document list the 24 bottles?

A. Yes, it does.

MR. WESSEL: Your Honor, I'd like to move into evidence 190A.

THE COURT: Any objection?

MR. CIALONE: No objection, your Honor.

THE COURT: Okay. 1090A received.

(Trial Exhibit 1090A received in evidence)

MR. WESSEL: I may have misspoken. It's 1090A.

THE COURT: 1090A, yeah.

BY MR. WESSEL:

Q. All right. Mr. Curley, these are the 24 bottles that are in the case, correct?

A. That's correct.

Q. And you checked to make sure the right bottles got into the courthouse?

A. I checked and double-checked.

Q. Can you look at the column on the left where it says Bottle Number.

A. Yes.

Q. What does that column indicate?

A. That's an in-house bar coding system numbers. They're individual to each bottle.

Q. So when people talk about the bar coding, there's a number associated with the bar code?

A. Correct. Like a supermarket. Each bar code has a number, but in a supermarket every can of Coke has the same bar code number. In our wine database system, each bottle has its own individual number, so if it's a case -- or if it's three 1921 Petrus, they don't all get the same number. Each individual bottle gets its own number. It's done sequentially from 1 to -- as a new one is bought, the new number is produced.

Q. And there's other information on this Exhibit 1090A. Did

you check all of the information in 1090A against the information that's in the computer database?

A. Yes, I did.

Q. And is it accurate?

A. Everything is accurate.

Q. And then you checked the numbers on the bottles to make sure they matched the numbers on -- the bottle numbers on Exhibit 1090A.

A. Correct.

Q. You told us about the first column, the bottle, and I think the Vintage column and the Wine column, those are self-explanatory. What does the Size column refer to?

A. We do size by the liter, obviously. 1.5 liters is a magnum and 750 is a -- what people would call a regular bottle of wine, typical five-glass bottle of wine.

Q. So I'll ask you about this later, but this is -- the bar code number is 60055. This is a magnum.

A. Correct.

Q. So this indicates that of the 24 bottles, they're all magnums except the three that says 750?

A. That's correct.

Q. And then it lists the Purchase Date. What is that column?

A. That's the purchase -- the date it was purchased.

Q. So this is the date of the Zachys auction that we're talking about here.

A. Yes.
Q. And it indicates that the vendor is Zachys. And then the Lot Number, that indicates the lot number from the auction?
A. Correct. Taken from the -- the auction catalog.
Q. And then the Status, these all say Inventory. And for a wine that Mr. Koch might drink, then would that indicate in the computer database that that had happened?
A. I believe, our term is consumed.
Q. Now these 24 bottles, you brought them to New York before to allow Mr. Greenberg's experts to inspect them.
A. Yes, I believe these were all on that list that I brought. I brought more than this, but --
Q. Okay. I'd like to give you Exhibit 100A. So Exhibit 100 is already in evidence. Can you tell us what Exhibit 100A is. Your handwriting is on it.
A. This is a copy of the invoice from Zachys for the auction in October of 2005.
Q. And what did you -- your handwriting on it is to indicate what?
A. I handwrote on it our bar code numbers next to the bottles that I brought down for this trial.
MR. WESSEL: I'd like to move Exhibit 100A into evidence.
MR. CIALONE: Your Honor, I have no objection. I'd just like to do a quick double-check for accuracy over the

lunch break. I'm sure it is accurate, but --

THE COURT: Okay. Subject to that, 100A received.

(Trial Exhibit 100A received in evidence)

Q. So let's turn to page 5 of Exhibit 100A. If you look at lot number 493, Chateau Lafleur 1950 --

A. Yes.

Q. -- it says, 6050 -- 60050 next to it. Do you see that? Maybe it should be 4 --

A. Sorry. I thought you said 93. They brought up 83. Which one are we looking at, 83?

Q. The bottle number 60055 in your handwriting, what bottle is that?

A. That's the 1950 Chateau Latour, lot 493.

Q. And I'll hand you that bottle to see if you can confirm that that's what the bar code is on the bottom.

THE COURT: Don't drink it.

A. Lunchtime, isn't it? Yes, that's -- the bar code is on the bottle.

Q. You checked that against the computer database, which was Exhibit 1090A, the invoice on the bottle, and they all match up.

A. That's correct.

Q. So I'd like to talk to you a little bit about the bar code system and how the labels get affixed.

A. Sure.

Q. So we have a graphic on that.

When you started working for Mr. Koch, the bar code system was in place?

A. That's correct. It was there for several years before I started -- well, full time.

Q. So when you started working full time for Mr. Koch, it was already set up.

A. Correct.

Q. And it was continued in operation from that day all the way until today.

A. That's correct.

Q. Including in the 2005, 2006 time frame.

A. Correct.

Q. So were you personally involved in receiving the shipment from the October 2005 Zachys auction?

A. Yes, I was. I was there that day.

Q. So let's talk about the procedures that you used to take the Zachys bottles into the Koch bar coding system. What would have happened at step 1?

A. Step 1 is, immediately following the auction, the auction house typically, almost always, sends the -- sends the invoice to our accounting department or to Mr. Koch's office in Florida.

MR. WESSEL: Okay. So let's put back up Exhibit 100, 100A.

Q. So that document goes to the accounting department in Florida.

A. That's correct, and I also received a copy.

MR. WESSEL: Go back -- back to the chart.

A. By the -- yeah.

Q. So step 2, what does the accounting department do when they get the invoice from Zachys?

A. The accounting department was -- is still and was responsible to generate the bar codes for the wine, from the invoice.

Q. Do they actually generate the bar code labels?

A. Yes.

Q. And then what do they do with the bar code labels?

A. When they're done with a particular auction or sale -- or purchase -- excuse me -- they would send me the bar codes with a copy of the invoice attached.

Q. And this auction I think Mr. Koch testified he didn't know whether the wine was delivered to Florida or Massachusetts. Do you recall?

A. Yes. It was received at -- on February 15, 2006, at 1:30 in the afternoon by me.

Q. So it was delivered to the Cape Cod cellar.

A. That's correct, in our storage cellar across the street from the main house.

Q. So at that point the wine had arrived at the storage

cellar, you had the invoice and the bar codes from Florida, and then we get to step 3 of the process. What happens in step 3?
A. Well, as we received the shipment, as it comes off the truck that day, I would check the Zachys sticker in this case against the invoice and make sure it was a complete match, what the sticker said on the end of the box to what the lot purported to be on the invoice.
Q. So why don't I hand you this. This is some of the boxes that the actual wine came in. And can you tell us what the labels indicate.
A. Yes. These are the Zachys stickers that I was referring to a minute ago, and you can see they have quite a bit of information on them, the lot number, the purchaser, William Koch, this particular sticker, Chateau Lafite Rothschild 1870, quantity of bottles and the size of the bottle, and then they have some kind of bar code. That must be Zachys. And then they have all this other information -- the auction date, the auction number, customer number, location, consignor number, and stock DESC, which is probably stock description, and then some kind of in-house coding.
Q. And you or your staff checked that against the invoice to make sure that the box matches what's on the invoice.
A. Correct. We'd look at the lot and then we'd look at the size and we'd look at the wine and we'd look at the year.
Q. So if the boxes are bigger than the bottle, can you

describe to us how they're packed when they come in those boxes.

A. Yes, this is -- this is very typical of -- if it were a bigger bottle, it would be a bigger box, but inside there's a -- well, you can't really see it, it's hard to see, but there's insulation, styrofoam insulation inside that fits to the bottle and it protects it, not only during shipment from breakage but it's meant to protect shocking the wine, temperature fluctuations and things on the truck.

Q. And then if you look at the one on the back there has 60050 on it?

A. Yes.

Q. And that's the box that the bottle that's in front of you came in.

A. Yes, the exact box, lot 493.

Q. So after this step where you check the box, you make sure the box has what's on the invoice, what happens next?

A. Well, then the next several days would be spent opening every box, rechecking it against the sticker, and then rechecking it against the invoice, and then if everything matched, the year, the size of the bottle, the type of the wine, we would affix our bar code and typically put it back in the box it came in and put it into our storage cellar.

Q. And so showing us on the bottle in front of you, the bar code is affixed to the back there?

A. Yeah, it's right here. It's small, about an inch and a half by half an inch wide, and we always put them on the back like this, opposite the -- the main label.

Q. And then after you're done, then it ultimately gets to step 4, where it goes into the cellar.

A. Correct.

Q. And the bar code allows you to track the bottles if they end up in Florida or end up in Massachusetts or Colorado?

A. Yes. We track them every time they move and then when we do inventory.

Q. And does each place have a scanner like you see at a grocery store to check them in and out?

A. The main cellars have a scanner, and then we have a portable scanner we use when we're doing like work in the crate cellars or the storage cellars.

MR. WESSEL: Okay. I want to bring back up Exhibit 100A.

Q. And Mr. Curley, you added up the price that was paid for all of the bottles?

A. The 24 bottles, yes.

Q. The 24 bottles?

A. Yes.

Q. And what's the total?

A. It my math is right, it was $355,810.

Q. So if you add up all the numbers in the right column for

the bottles that you put the bar code numbers next to, the 24 bottles in this case, the total is $355,810.

A. That's correct.

Q. Mr. Curley, my last question is just to ask you about when the bottles arrived from Zachys.

A. Yes.

Q. Did they always have stickers, Zachys stickers on them, the bottles?

A. No, they did not.

Q. And did you go back and check other bottles from the October 2005 Zachys auction to see whether there were Zachys stickers on the bottles?

A. I did. I checked several dozen and out of those I found three.

Q. Most of the bottles that you received from Zachys, the Zachys 2005 auction did not have Zachys stickers on them.

A. That's correct.

Q. Let me just ask you to look at Exhibit 461, which is already in evidence. You can look at it on the screen.

A. Mm-hmm.

Q. The bottom e-mail, we've seen this a lot. The bottom e-mail is from you to Mr. Zacharia.

A. Correct.

Q. And you have communicated from time to time with Mr. Zacharia about shipments of wine?

A. Yes.
Q. And you were asked by someone else to send that e-mail?
A. Yes.
Q. And then he responded and you passed it along.
A. Yes.
MR. WESSEL: No further questions.
THE COURT: Okay. Thank you. Cross-examination?
MR. CIALONE: Yes, your Honor. Give me a moment.
THE COURT: Sure.
MR. CIALONE: If I could actually take a look at the box and bottles.
THE WITNESS: Did you want the boxes?
MR. CIALONE: I'll come get them.
THE WITNESS: Okay.
CROSS-EXAMINATION
BY MR. CIALONE:
Q. Mr. Curley, I'm Frank Cialone. I represent Mr. Greenberg. Let me ask, I noticed that some of these boxes say inventoried in October 2009?
A. Yes.
Q. What does that mean?
A. I can only assume that one of my staff put that on there when they inventoried the box -- or the wine.
Q. Now you were given earlier Exhibit 1090A. That's this one.
A. Yeah, I've got it here.

Q. And that just shows bottles being inventoried, correct?
A. Correct.
Q. Doesn't show them moving from one cellar to another, correct?
A. Correct.
Q. Doesn't show them moving out of the country?
A. Correct.
Q. Have you accompanied the bottles every time they've been moved?
A. No, I have not.
Q. And when you say the bottles were checked, they're checked based on the bar code sticker, right?
MR. WESSEL: Objection. Vague.
Q. When you say they're checked into inventory, they're checked out of the inventory, every time they're moved, somebody just scans the bar code, correct?
A. That's correct. We just keep track with the bar codes.
Q. Nobody actually goes to look at the bottle to make sure it's the same one, correct?
A. Well, typically you -- you confirm by the front label that it's the right wine and year that you're grabbing. If it's, you know --
Q. You look at the cork to make sure it's the same bottle?
A. No.
Q. Okay. I noticed this bar code on this one, Exhibit 211,

has actually been affixed with a piece of Scotch tape?
A. That's correct.
Q. They peel?
A. I'm sorry?
Q. They peel off?
A. Sometimes a little edge will peel back, yes. We find all kinds of Bordeaux Wine Locators, you know, sometimes the labels fall off.
Q. They're not cemented on or anything, they come off?
A. Correct.
Q. Now when you take the bottles in, do you ever have to strip off old bar code labels that other collectors have put on them?
A. From memory, I have not. I don't remember doing any of that.
Q. So as far as you know, it's not normal to see bottles coming in to Mr. Koch's cellar that already have some bar coding on them, right?
A. Actually, we see thousands coming in with bar codes. From recall, those would be newer wines, some other stock keeping unit, you know, database that someone else has been using.
Q. Newer -- I'm having a little trouble hearing you. Those would be newer wines?
A. Just from memory I'm thinking, you know, I have seen lots of bar codes on wine as it comes in, yes.
Q. So when the 2700 bottles came in from the October 2005

auction, you could pretty quickly notice there weren't any sort of bar codes on those, right?

A. From memory, I don't recall any at that auction.

Q. Now you mentioned something about stickers. You've looked at the October '05 stickers -- '05 bottles and didn't see a lot of Zachys stickers. Did you typically see Zachys stickers on bottles bought at Zachys auctions?

A. I've seen them, seen them from time to time, but they're definitely not always there.

Q. Okay. Well, we'll go through some of those in more detail a little bit later.

A. Sure.

Q. Now we've seen on the invoices, including Exhibit 100 or 100A, that it says shipped to Palm Beach Florida?

A. Yes.

Q. Was it in fact shipped to you in -- at Mr. Koch's home in Cape Cod instead?

A. That's correct. They -- I believe that Zachys had this on quite a bit of their paperwork because that was just like a default address or something, that we would never ship the wine to his office. That's what I'm saying.

Q. And then some of the wines were moved to Florida?

A. Yes, I -- I don't have exact figures or anything, but I -- some of these wines did move to the Florida cellar.

Q. Okay. Let me just ask you a question about Exhibit 420, if

I'm right. This is the one Mr. Wessel gave to you earlier, if you have it.

A. Yes, I have it right here.

Q. It's the one that said, "We have to believe the individual auction houses in this case, which in the wine world is very hard to do," but the date of that invoice, May 26, 2005, you've been finding that the auction houses were making mistakes?

A. They were making mistakes in their shipments, yes.

Q. They were also making mistakes in what they told you, right?

A. I -- yeah, I guess you could extrapolate that by saying they made a mistake. I don't know if they told me they made mistakes, but --

Q. But they also told you the wine's ready for shipment and it wasn't sometimes, right?

A. From time to time they would, yes.

Q. And that was something you had seen with Zachys, correct?

A. Yes.

Q. And something you'd seen with Acker Merrall, correct?

A. Yes, from memory, those are the two.

Q. Something you told Mr. Koch about, right?

A. Yes.

Q. And something you told Mr. Koch about as early as May 2005, correct?

A. Yes.

Q. Okay. Now I was a little unclear about what the specific policy was about when you would make payment. Did you make payment immediately after the auction or only when you actually knew the wines were ready to be shipped?

A. Well, from this e-mail we were trying to formulate a protocol because there was some frustration that once you pay and you don't get what you receive, it's very hard to, you know, make -- make it right, so the idea was, let's just deliver a check when we pick up the wine. It's not really reasonable to do that with an auction of the size of some of these because I couldn't -- I don't have a big enough truck to go pick up this kind of wine, so the auction houses got paid and then we got the wine delivered and we were like in a trusting -- I guess a trusting relationship with the big major auction houses.

Q. And how close in time did the auction house get paid to when you got the wine delivered?

A. I couldn't say exactly, but I mean, from memory, the payments were being made anywhere from a week to three weeks.

Q. Okay. So probably sometime in January, February 2006 is when Zachys was paid for the October '05 auction, right?

A. That's months. I said weeks.

Q. Well, you got the wine on February 15, 2006.

A. Right.

Q. Within a couple weeks of it being delivered or a couple

weeks of the auction?

A. No, of the auction.

Q. Okay. Thank you. I wasn't clear on that. Thank you.

A. Okay.

Q. Do you know how the bar codes labels were generated?

A. I knew who generated them. I don't know what kind of machine they used, if that's -- yeah.

Q. Use a computer laser printer?

A. Use a computer and printer. I don't know if it was laser.

Q. Some commercially available software, right?

A. Commercially available, I don't know. We had a private -- a private database.

Q. Okay. Now when the wine came in, you would actually look at it, right?

A. Yes.

Q. You checked the levels?

A. Yes.

Q. You looked at corks?

A. No.

Q. You wouldn't look at corks?

A. Well, yeah, I take that back. If the cork was protruding from the top or leaking, I would look at the cork and see if it's going to fall into the wine, that kind of looking.

Q. Would you look for shrunken corks?

A. If they were leaking, yeah. If there was something to

bring my eye to it, I'd look at the corks.

Q. And you would spend months looking at a shipment of wine, right?

A. From time to time I could find time in a rather busy schedule to assist the staff that was working on wine to do these intakes, yes, and I would spend -- but -- not months, but I might spend ten days to two weeks at a time inserting myself into the project.

MR. CIALONE: Okay. Your Honor, if I may approach the witness?

THE COURT: Sure.

Q. Mr. Curley, I've given you an e-mail exchange that has the Bates number Zachys 001795 at the bottom. Do you see that?

A. I see it, yes.

Q. And on February 16 -- I'm sorry -- February 15, 2006, you asked Zachys to confirm what wine auctions were being delivered this week, right?

A. Yes.

Q. And you got other wines delivered at that same time, correct?

A. Yes.

Q. And there was a lot of wine that was coming in at the same time, correct?

A. Yes.

Q. Do you recall informing Zachys it might take you up to 60

days to inspect every bottle?
A. I don't recall that off the top of my head, but does it say it on this e-mail somewhere?
MR. CIALONE: If I may, your Honor?
THE COURT: Yes.
Q. Mr. Curley, I've given you an e-mail exchange that has the Bates number Zachys 1788 to 1789. If you would look at the last e-mail and just let me know if this refreshes your recollection that you told Zachys it would take you up to 60 days to inspect all the bottles.
A. Yes, I see that.
Q. And you did in fact -- and this was referring to an auction that was held in September 2005, right?
A. The e-mail to Danielle was referring to the September 15, 2005 auction.
Q. Is that on the same day as the wines from October 2005?
A. No.
Q. Came in a day later?
A. No. It came in earlier. I don't know when it came in exactly, but I had already checked them in and this was the same -- this e-mail was the same -- it was a day later. Excuse me. We hadn't checked them in. We couldn't have checked them in in a day.
Q. Actually, if you would take a look at the other document I gave you earlier, the one with the Bates number 1795.

A. Yes.

Q. Do you see you wrote to Mr. Zacharia on February 15, "Could you please confirm which auction wines are being delivered this week."

A. Yes.

Q. And that was on February 15?

A. Yes.

Q. And he answered -- and somebody else from Zachys answered, "The September auction lots are being delivered this week." You see that?

A. Yes.

Q. And then, "Tomorrow the October ones will come"?

A. Yes.

Q. So did the September ones come on February 15 and then all the October ones came on February 16?

A. That sounds about -- that sounds about right.

MR. CIALONE: Your Honor, I'd like to mark this page Zachys 1795 next in order and I move for it to be admitted.

THE COURT: 1795?

MR. CIALONE: Yeah. What's the next number? It will be Exhibit 1098.

THE COURT: Any objection?

MR. WESSEL: I'd like to mark the other one as well.

MR. CIALONE: That was my very next sentence. And I'd like to mark the Zachys 1789 -- I'm sorry -- pages 1788 and

1789 as Exhibit 1099.

MR. WESSEL: No objection, your Honor.

THE COURT: Okay. 1098 and 1099 are received.

(Trial Exhibits 1098 and 1099 received in evidence)

Q. Now you told Zachys you wanted to spend up to 60 days looking at wines, right?

A. Yes.

MR. WESSEL: Objection. Misstates the document.

A. Oh, yeah.

THE COURT: Sustained.

Q. Well, did you or didn't you?

A. Well, I said it may take me up to 60 days to inspect every bottle, yes, I said that.

Q. Right. And in fact, it took even longer, correct?

A. I have no recollection of exactly how long it took me to check it in.

Q. Did Zachys complain you wanted to spend two months inspecting wines to determine if there were problems?

A. No. Not to my knowledge.

Q. And you in fact did return wines within that 60-day period, correct?

A. I don't recall. It's many years ago, and I did return wines to Zachys in the past, but I don't know if they were from this auction or the September New York auction.

Q. Okay.

A. If you have a document that I might have written, it might refresh my memory.

Q. Sure.

MR. CIALONE: Can we can show him Exhibit 1081.

Q. Do you recognize Exhibit 1081?

A. Unfortunately, it's very blurry. I can barely read it.

Q. You know, I have a paper copy.

MR. WESSEL: Your Honor, objection. 1081 is two different e-mails so the first e-mail involves Mr. Curley and it was from 2006, then there's another e-mail that has nothing to do with him. It's from 2007 and it's between Mr. Koch and Mr. Goldstein, so I do object to the use of the document with this top e-mail on it. The part he can ask Mr. Curley about is the Mr. Curley part.

MR. CIALONE: Well, I just asked him if he recognizes the document so far. Let me give him a paper copy so it will be easier for him to see.

THE COURT: Okay.

MR. WESSEL: Do you have one for the court?

BY MR. CIALONE:

Q. Now, Mr. Curley, if you would just look at the bottom half of the page, of the first page of Exhibit 1081, do you see that's an e-mail from you to people at Zachys?

A. I do.

Q. And it's dated May 2, 2006?

A. It is.
Q. And you are telling them about wines that you received from auctions in September and October of '05 that you want to return, correct?
A. That's correct.
MR. CIALONE: Your Honor, I'd move for --
A. I don't -- just one thing. I don't think it's complete, though, but -- it's cut off, like it should be more, but --
Q. Second page. Turn to the second page.
A. Oh, I'm sorry.
Q. There it is.
A. Yes.
Q. Okay. Does that appear to be complete?
A. It does now, yeah.
Q. Thank you.
MR. CIALONE: Your Honor, I'd move for admission of Exhibit 1081.
MR. WESSEL: Objection, your Honor. He can move the e-mail that Mr. Curley has seen and that he knows about, but the top part is from later and I don't think it was Mr. Curley.
MR. CIALONE: Your Honor, I'm wondering if counsel is actually objecting on authenticity grounds to a document that they produced and was sent to their client and by their client?
THE COURT: Well --
MR. CIALONE: Is that the basis for the objection?

MR. WESSEL: The basis for the objection is he asked Mr. Curley to authenticate an e-mail that Mr. Curley sent to people at Zachys and Mr. Curley authenticated that and it happens to be attached to a completely different e-mail. They have the version with just Mr. Curley on it, so why don't they use that?

MR. CIALONE: Your Honor, I have to say, raising an objection to a document they produced as to and from their client on authenticity grounds is astounding, but if they question the authenticity of documents they produced, I can understand that. I'm happy to just strike off to the top part of this or to provide a copy that is just the bottom e-mail because that's the only part I'm asking Mr. Curley about, and I understand they have some concerns about the authenticity of a document they produced.

MR. WESSEL: Your Honor, I never objected to the authenticity of the document, I objected to the fact that it's not fair of Mr. Curley to say, is this an e-mail you sent, he sent an e-mail 2006 and attach to it an e-mail he did not send, he wasn't copied on, that's from 2007. So I think, in fairness to the witness, he should just get the document, the e-mail that he sent.

THE COURT: Can we just use the one without the top part?

MR. CIALONE: Sure. I'm not going to ask about the

top e-mail so I'm not sure what's unfair that's printed on the page. But that's fine. That's fine. I understand the authenticity concerns.

THE COURT: So is there a different number for the one that doesn't have that?

MR. CIALONE: Not that I have at hand right now, your Honor. So I'm happy just to show the e-mail that Mr. Curley himself sent.

THE COURT: Is that okay?

MR. WESSEL: I have no objection to just showing Mr. Curley's e-mail. If they want the other document to come in at some other time, that's fine. They can ask for it to come in. And I'm not suggesting it's not authentic. I'm just saying Mr. Curley should be asked about Mr. Curley's e-mail.

MR. CIALONE: Which I'm going to do.

THE COURT: Okay. Why don't we say 1081A is the version of the e-mail that doesn't have the top e-mail, and that's admitted.

(Trial Exhibit 1081A received in evidence)

MR. CIALONE: Okay. So if we could just put that, Liz, on the screen and just pull up the bottom half of the first page.

BY MR. CIALONE:

Q. So Mr. Curley, you see that you were returning bottles with loose and sunken corks, correct?

A. Yeah, I mean, I didn't use the word loose but -- that I see, but I see they were leaking and the cork is falling in.
Q. Number 1, "Several bottles have loose/sunken corks," right?
A. I'm looking at number 1. It says, "Missing one bottle."
Q. Number 1 on the bottom section.
A. Oh, okay. Second number 1.
Q. "And others with bad corks," right?
A. Oh, yes. I remember this case.
Q. And this is in May of 2006, right?
A. It was.
Q. Two and a half months after the wines came in, correct?
A. I'm going to have to tie everything together because I have to look back and see when that sale was --
Q. Sure. The wines came in in mid February 2006.
A. -- for this auction because this wasn't the same auction that we're talking about in this case, so I'm trying to --
Q. Right. Right. Earlier e-mail --
A. This was the 0105 LA auction. Is there a document here that shows when that was?
Q. Sure. The one I showed you a moment ago, where you asked Mr. Zacharia what's coming in this week and he said on February 15, he said we're delivering from the September '05 today and the October '05 tomorrow. Do you recall that?
A. I do, I see it, but that doesn't tie it to this 0105 LA. I haven't seen that yet, so yes.

Q. Well, what about the one above it? Does it tie to the 9/15/05, September 2005 auction?
A. I see that -- yes, it ties it to that one.
Q. And Zachys was fine accepting the return two and a half months after you got the wine, correct?
A. Correct. It was the wrong wine.
Q. And was there anything to prevent you from bringing in an expert to look at the wine during those two and a half months?
A. I don't need an expert to tell me that a '92 isn't a '98, but --
Q. Sure. Was anything preventing you from bringing in an expert who could look more closely?
A. I would have to say no one was preventing me from doing anything.
Q. Now you said you're not an expert in wine, right?
A. That's correct.
Q. You know what a vintage date is, right?
A. It's what I believe to be the year of the wine.
Q. Right. And you can look at a cork and see if there's a vintage date on the cork, correct?
A. I suppose I could if I was asked to.
Q. And for example, we've had a lot of testimony about a 1921 Petrus magnum in this case --
A. Yes.
Q. -- that the catalog -- that Mr. Koch paid nearly $30,000

for and the Zachys catalog said part of vintage visible on the cork. Did you look at the cork to see if Zachys delivered what Mr. Koch had paid for?

A. I did not. I looked at the front label and I looked at the bottle to see if it was leaking and if it was cracked and the condition and the size, I guess. That's about all I looked at.

Q. Okay. And so -- and the same would be true of every bottle, correct?

A. Pretty much. It's pretty standard.

Q. You never looked at the corks to see if, when Mr. Koch paid money for a bottle that was a fully branded cork, that's in fact what he got, correct?

A. I did not. I didn't -- probably didn't even look at the catalog.

Q. And when bottles were checked in and checked out, you also never looked at the cork to see if it still looked the same as when it left, correct?

A. That's correct. When we check things in and out, we typically check the bar code, the vintage, the wine, and the size.

Q. Okay. Now you did look at the label, right?

A. Well, you have to look at the label to read the year and the type of wine, yes, I did look at the label.

Q. Do you recall looking at this label, 1945 Lafite, and seeing it was yellow?

A. I wouldn't have looked at color or anything. I would have looked for a date and the vineyard.
Q. Well, you understand Mr. Koch bought two magnums of 1945 Lafite that were in consecutive lots on the same day. Do you understand that?
A. I do from the invoice, yes.
Q. Sure. And so when you opened the two boxes --
A. Yes.
Q. -- that have sequential bar code numbers, did you notice that the labels were different colors?
A. Well, let me clarify. I didn't open every single lot and put every single bar code on it, but I was in the room with my staff and we were doing that functionary duty so I may or may not have opened up that bottle -- that particular box with that bottle in it and put the bar code on it. I might not have opened up the second one either.
Q. Well, how many people -- how many staff are involved in this process that you've testified you're in charge of, this process of receiving the wine, putting bar codes, bringing them to the cellar, putting them on the shelves? How many?
A. It varies from time to time. We have full-time staff that we allow to help out when large shipments would come in and we'd train them in how we do the duty. Sometimes we would even bring the accountant up that made the bar codes to help, because we were trying to process all the wine in a reasonable

amount of time, I guess.
Q. How many people were involved in this?
A. Sometime, from memory, there were probably four of us -- four to five.
Q. And again, if you look at Exhibit 100A, you see that the two 1945 Lafites aren't the only Lafite wines Mr. Koch got at that auction, right?
A. I'll take your word for it. A lot of pages.
Q. He got Lafite wines, he got dozens of them ranging from 1805 to 2000, 200 years' worth, spread out.
A. Yeah. I don't think we have every year yet, but we've got quite a few.
Q. Getting there. Are those on display, every year of Lafites?
A. Yes.
Q. Have you seen them?
A. Yes.
Q. Do you notice that?
A. From a distance. I've never looked at them close.
Q. Do you notice that this bottle's labeled yellow but on the all the others it's not?
A. To tell you the truth, I never noticed. There are several -- there are probably a hundred of the year there, and some have torn labels, some are faded, some are stained. I mean, they're historical.

Q. Okay. They all look somewhat different?
A. They all look somewhat different, I would say.
Q. And let me ask, Mr. Koch mentioned yesterday that if the catalog says a bottle had a torn label, that's something you would check, is that accurate?
A. No.
MR. WESSEL: Objection. Is what accurate, that Mr. Koch said that? Mr. Curley is not here to remember what Mr. Koch may have said yesterday.
THE COURT: Please clarify the question on that point.
MR. CIALONE: I'm summarizing his testimony. I'm not asking him to quote it.
Q. Is it accurate that if a bottle has a torn label, that is something you would check, a bottle -- strike that.
Is it accurate that if the catalog says the bottle has a torn label, that that's something you would check?
A. I would say it's the other way around. If -- if a wine was pulled out of the box upon receipt and it did -- the condition of it was bad, like it was wet or it was leaking or it had some -- some visible conditional problem, we may either just try and take -- return it because of that poor condition or, if it was a torn label or something or the label was taped on, I would maybe -- maybe once in a while we would refer back to a catalog and say, did it say that it had a label that was taped on or --

THE COURT: Mr. Cialone, can I interrupt. I'm going to have to stop at 12:30 because I have another matter that I -- is this an okay time?

MR. CIALONE: 12:30. Seems like an okay time.

THE COURT: I'm going to let you all go to lunch. We'll take an hour.

Ladies and gentlemen of the jury, please keep your pads there. We'll start back at 1:30. Please don't talk about the case, and as I've said, please keep an open mind.

Have a good lunch. See you in an hour.

(Jury excused)

(Luncheon recess)

(Continued on next page)

AFTERNOON SESSION

1:50 p.m.

(Jury not present)

THE COURT: Are we ready for the jury?

MR. WESSEL: Your Honor, we have 1081A. I can hand it up.

THE COURT: Sure. Thanks very much.

(Jury present)

MARK CURLEY, resumed.

THE COURT: Good afternoon, folks. Welcome back. We will continue with the testimony. Mr. Cialone.

MR. CIALONE: Thank you, your Honor.

CROSS-EXAMINATION (continued)

BY MR. CIALONE:

Q. Mr. Curley, do you recall seeing Exhibit 461, which was displayed earlier?

MR. CIALONE: If we can blow it up a little bit.

Q. This was your email asking Mr. Zacharia for the source of the magnum of 1921 Petrus?

A. Yes.

Q. Then, at just before 5 p.m. that same day, Mr. Zacharia responded, correct?

A. Yes.

Q. You followed up on that, right?

A. I don't follow. Will you please --

Q. You sent Mr. Zacharia another email asking for more information, right?

A. I don't recall.

MR. CIALONE: May I approach, your Honor?

THE COURT: Yes.

Q. I'm giving you a document that has a Bates stamp Zachys 1796 to 1797. If you see the exchange, the same exchange as in Exhibit 461 is on the second page?

MR. WESSEL: Your Honor, may I ask, since Mr. Cialone is taking documents that aren't on the exhibit list, that when he brings them out, he gives them an exhibit number to identify them for the record?

MR. CIALONE: Sure.

MR. WESSEL: I had asked him during the break if we could do that so the record would be clear.

THE COURT: Do you want to use the next number?

MR. CIALONE: Exhibit 1100.

Q. Mr. Curley, after getting Mr. Zacharia's response, you sent another email, right?

A. It appears that way. I don't recall it.

Q. About 45 minutes later?

A. Yes.

Q. Saying, would you please ask the consignor to nail down the provenance of the 1921 Petrus?

A. That's what it says, yes.

Q. The information, the top collector in Toronto and out of Europe, English royalty, that wasn't sufficient, right?
A. It appears that I'm asking for further information, correct.
Q. This is February 15, 2006. This is the day you received all 2700 bottles of wine?
A. I believe the dates concur, yes.
Q. Did Mr. Koch ask you to tell him when the wine came in so you could start asking questions about the Petrus magnum?
A. No.
Q. How did you know to start asking questions about that one bottle out of 2600 bottles the day you got it?
A. I don't recall exactly, but somebody else in the office asked me to ask the question.
Q. Was it Mr. Elroy, who is cc'd on this?
A. I really don't recall who. I see that Mr. Elroy is cc'd, but I don't recall if he asked me or if it was someone else.
Q. Seawolf410@aol.com, is that Mr. Elroy's address?
A. Yes.

MR. CIALONE: Your Honor, I move that into evidence.

THE COURT: Any objection?

MR. WESSEL: The document I was handed is two pages. The second page is 1081A. No, it's 461, sorry.

MR. CIALONE: It's identical to 461.

MR. WESSEL: They stapled 461 to another document,

which is fine. I just want the record to reflect that 461 is now attached to 1100. Then there is something at the top that Mr. Cialone didn't print out that I assume is irrelevant to all of this.

MR. CIALONE: Your Honor, I didn't produce this document, Zachys did. When I produce documents, they are accurate.

THE COURT: Was this the two pages?

MR. CIALONE: This is two pages that was produced to us. The page 1797 is the same email exchange as is in Exhibit 491. Sorry. 461. If you look carefully at the first page, it says, "Forward Koch wines." That is the subject line of the email, which probably explains why there is an email attached to it, because that is what is forwarded. I don't know what was the thing that was then forwarded on, because I have never seen it and it hasn't been produced by anyone, and I don't know who it was forwarded to.

MR. WESSEL: Your Honor, I have no objection. If there are other documents that aren't on the exhibit list that he would like to hand to me, we can cut through this much easier.

THE COURT: 1100 received.

(Trial Exhibit 1100 received in evidence)

BY MR. CIALONE:

Q. Had you in fact been discussing concerns about the 1921

Petrus magnum for some time before it was received?

A. I was not.

Q. Nobody had alerted you to concerns that Mr. Koch had?

A. No.

Q. Had Stephen Rhinecker alerted you to concerns?

A. To my recollection, no, I didn't know anything. Someone asked me to ask these questions.

Q. Do you know who?

A. I don't recall.

Q. Was it Brad Goldstein?

A. I suppose it could have been.

Q. Did Brad Goldstein raise with you issues about the 1921 Petrus before Mr. Koch bought that bottle?

A. To my recollection, no. But, again, it's several years ago. He could have.

MR. CIALONE: Liz, if you would put Exhibit 102 up for the witness, please.

Q. Mr. Curley, do you recognize Exhibit 102?

A. I don't think it is up yet. It's so fuzzy I can't read it.

MR. CIALONE: Can you expand it for him, please?

Q. I can give you a paper copy.

MR. CIALONE: If I may approach, your Honor?

THE COURT: Sure.

A. Thanks.

Q. Hopefully, that's a little better.

A. Yes. I can read this.
Q. That is an email from you to Mr. Koch, correct?
A. Yes.
MR. CIALONE: Your Honor, I move for admission of Exhibit 102.
MR. WESSEL: No objection, your Honor. He referred to Mr. Curley as Mr. Koch. I'm sure he would be happy to be Mr. Koch, but he is Mr. Curley.
MR. CIALONE: No. My question is, that is an email to you from Mr. Koch, correct?
MR. WESSEL: OK.
Q. Correct? You understood my question?
A. Yes. This is an email from me to Mr. Koch on November 4, 2005.
THE COURT: 102 received.
(Trial Exhibit 102 received in evidence)
Q. It is dated November 4, 2005, right?
A. Yes. I just said that, yes.
Q. Less than a week after the October 2005 auction?
A. That would be correct.
Q. You're going through notes from dealings with Sotheby's and trying to figure out if Sotheby's had told Mr. Koch to get rid of the 1921 Petrus magnums that he owned?
A. That's what it appears to be. That's what it says. But from memory, Sotheby's had come and done an appraisal in 2004,

I believe, and had made some recommendations. That's what it seems to be.

Q. The day before this email, you had a conversation with Brad Goldstein about that same wine, a 1921 Petrus magnum, right?

A. It says I had a conversation with Brad. These two wines, the '21 Petrus and the 1865 Latour, must have been the two I was referring to, I guess.

Q. Does Mr. Goldstein have any particular role in connection with Mr. Koch's wine collection?

A. Back then I assume you're referring to?

Q. Yes, as of that point in time, sure, early November --

A. Yes, Mr. Goldstein had been the one that called Monticello earlier that year, I believe.

Q. Mr. Goldstein's role was investigating potentially counterfeit wine, right?

A. He was involved.

Q. You were speaking to Mr. Goldstein, according to this email, as early as November 3, 2005, about 1921 Petrus magnums, right?

A. Yes, according to this.

Q. You testified earlier that you actually paid for the wine Mr. Koch bought at the October 2005 auction somewhere between one and three weeks after the auction, correct?

A. That's what I was guessing. That is kind of standard timing.

Q. So November 3rd, probably before he paid for the wines?
A. Probably.
Q. There was already suspicion that at least this wine for $30,000 might have some authenticity issues, right?
MR. WESSEL: Objection. Argumentative, misstates the document.
THE COURT: I'll allow it. Did you understand the question?
THE WITNESS: I'm going to ask him to repeat it because I was trying to refer back to the document.
Q. Sure. As of November 3rd there was already suspicion, at least as to this wine, the 1921 Petrus magnum that cost Mr. Koch $30,000, there was already some concern that there were authenticity issues with that wine, correct?
MR. WESSEL: Objection. Compound, many different factual statements.
THE COURT: If you understand it, you can answer.
A. I remember at this point in time I had no idea about authenticity or anything in that regard from my memory. Was the wine good, was it good to drink, has it spoiled, did it turn to vinegar, that kind of thing, that was the only thing I was dealing with with Sotheby's, and that's the only thing I can think of that this would refer to.
Q. You're not aware of any role Mr. Goldstein had other than looking into issues of potentially counterfeit wine, correct?

A. Brad was very busy otherwise.
Q. Sorry. Any role in connection with the wine collection, right?
MR. WESSEL: Objection. Vague.
THE COURT: He can answer.
A. It appears that Brad was looking into these wines. Is that what you are asking?
Q. I'm asking if you're aware of any role Mr. Goldstein had as of November 2005 in relation to Mr. Koch's wine collection other than looking into the possibility of counterfeiting.
A. In regard to the wine collection at that time, I believe that's what he was helping with.
Q. Thank you. I need to give you another exhibit.
MR. CIALONE: Can you show him Exhibit 1090, please.
Q. Mr. Curley, is Exhibit 1090 a report that's generated from Mr. Koch's inventory system?
A. No, this isn't inside the inventory system.
Q. I'm sorry?
A. I don't believe this is inside the inventory system.
Q. What do you mean "inside the inventory system"?
A. Part of the internal workings of the system. This is a list generated from there, but . . .
Q. That's what I mean.
A. OK, yes.
Q. Is it a report generated from the inventory system?

A. Yes, I would say.

THE COURT: There was a 1090A.

THE WITNESS: Yes. This is a shorter version.

MR. CIALONE: I'm happy to explain the difference, obviously subject to correction.

THE COURT: 1090A was a couple of emails where we took off one of the emails and called it 1090A?

MR. CIALONE: No. That was 1091A or something.

THE COURT: I just want to make sure the record is clear about what was admitted.

MR. CIALONE: 1090A was this document that came in this morning, which is a shorter version of 1090. It concerns fewer wines and it was produced just before trial.

THE COURT: Got it. I was confused. 1081A is the one with the email, I think.

MR. CIALONE: Right.

MR. WESSEL: 1090A is a subset of 1090.

THE COURT: Right.

MR. CIALONE: It's a subset of the bottles and it's more recent.

THE COURT: Yes. Thank you.

MR. CIALONE: There is a specific bottle I would like to turn the witness's attention to. I would move Exhibit 1090, your Honor.

MR. WESSEL: No objection.

THE COURT: 1090 is received.

(Trial Exhibit 1090 received in evidence)

MR. CIALONE: Liz, could you put that on the screen, please, and go to page 3. And if you could highlight the 1921 Petrus entries down there so they can be seen. Thank you.

Q. Mr. Curley, do you see there is a bottle number 45861 and that is marked "consumed"?

A. Yes.

Q. Is that the bottle that Mr. Koch testified to earlier that he drank on June 4, 2004?

MR. WESSEL: I object to the form of the question.

THE COURT: Yes. Please rephrase the question.

Q. Looking at this, do you know when it was consumed?

A. Looking at this, I do not.

MR. CIALONE: Could we give the witness Exhibit 509, please.

Q. Is Exhibit 509 another report that is generated from Mr. Koch's inventory system for his wine collection?

A. I've never seen this before. I don't believe so.

Q. Are those the same bottle numbers, the bottle ID numbers?

A. It's very fuzzy. It's very hard to read. If you can maybe give me a printed one. It's like out of focus.

MR. CIALONE: Liz, can you take the witness to the second page of Exhibit 509 and pull up towards the top where bottle 45861 is identified.

Q. Mr. Curley, do you see there there is a number of entries for bottle number 45861?

A. Yes, I do.

Q. Its status goes from order to inventory, do you see that?

A. Yes, I do.

Q. With that information, do you recognize this as a record produced from Mr. Koch's inventory?

MR. WESSEL: Objection. Asked and answered.

THE COURT: I'll allow it.

A. I don't recognize this format. It very well could be. The information looks familiar from what I have seen on the computer, but I've never seen it printed this way.

MR. CIALONE: Your Honor, I'm just checking to see if there was any objection to this document coming into evidence.

MR. WESSEL: Yes, there was, your Honor.

THE COURT: There was an objection?

MR. WESSEL: Yes. In February you asked us to identify to you our positions on documents. For that document we did not stipulate to authenticity, as opposed to most of the others. For that document we didn't stipulate to admissibility.

THE COURT: Can you represent anything about the source of the document, where it comes from? I can see it has a Koch Bates number.

MR. CIALONE: The Bates number at the bottom, Koch GZ,

means produced from Mr. Koch for the Greenberg Zachys litigation. It was produced in response to a specific request that we made for information from the inventory tracking system about the movement of these bottles. I'm a little stunned to hear that they don't stipulate to the authenticity.

MR. WESSEL: Mr. Cialone shouldn't be stunned, because we told him on February 2nd very clearly that we didn't stipulate to the authenticity or the admissibility. And you never asked any follow-up questions because you didn't want to know the answer, Mr. Cialone.

MR. CIALONE: Don't argue with me, please. He's the judge.

THE COURT: Is it a document produced from the same database?

MR. CIALONE: You would have to ask them. It's from their system. Apparently, it's inauthentic.

THE COURT: Can you represent anything about its source?

MR. WESSEL: Your Honor, on February 2nd, when we gave them this document, we said we had a problem with this because we don't know what it is. Mr. Curley has testified he doesn't know what it is. If Mr. Cialone would like us to check the database for this document tonight, I'm happy to do it. But you have to ask.

MR. CIALONE: Your Honor, they produced the document.

This is not a good-faith objection. They know it. They are actually claiming a document that they produced in this litigation in response to a discovery is not real.

THE COURT: Listen, he testified he wasn't familiar with the format of the document but that he had some familiarity with the information on the document. You can ask him about the information on the document.

MR. CIALONE: Can I show the document to the jury so they can see the information on the document?

MR. WESSEL: Your Honor, I don't want to make too big a point about this. We don't know what the document is. Mr. Curley said he didn't recognize it. The fact that we produced it when we told him on February 2nd if you have any questions about it let us know, to turn this into kind of a sideshow about a list -- he can look at it, but he would just be speculating as to what the information is.

MR. CIALONE: Your Honor, Mr. Wessel is speaking as if we had a discussion about this document on February 2nd. What we did on February 2nd is they had identified several hundred exhibits, we had identified exhibits, we identified our objections. We didn't go back and forth on each of the hundreds and hundreds of exhibits on that list.

THE COURT: I understand.

MR. CIALONE: Again, they produced this and they are claiming they do not know what it is.

MR. WESSEL: Your Honor, there were only one or two documents we raised an issue about, only one or two or three. It was a handful. But I'll let you rule on it so we can move on.

THE COURT: I'm going to reserve on the objection based on the testimony, but you can show it to the jury.

MR. CIALONE: Thank you, your Honor.

BY MR. CIALONE:

Q. You see, Mr. Curley, that bottle 45861? It went from order to inventory, right?

A. Yes.

Q. Are those terms used in the database that Mr. Koch has for his wine system, his wine collection?

A. I believe they are, yes.

Q. You traced the status of the wine with terms like "ordered" and "inventory," correct?

A. Correct.

Q. Then on June 18, 2004, it went from inventory to consumed?

A. That's correct.

Q. Then in 2007 it went from consumed back into inventory?

A. Yes. The bottle was put back into the cellar empty so we wouldn't lose track of it.

Q. Then, a couple of years later, you lost track of it because it went missing?

A. My staff made a mistake. I put that bottle back in the