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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TONY AND MII'S, INC., §
TONY THANGSONGCHAROEN, §
AND SOMNUEK §
THANGSONGCHAROEN, §

Plaintiffs §

v. § CIVIL CAUSE NO.
 § 3:17-CV-0609-B

THE UNITED STATES OF §
AMERICA §

Defendant §

ORAL DEPOSITION OF

STEVEN C. HASTINGS

December 5, 2018

ORAL DEPOSITION OF STEVEN C. HASTINGS, produced as
a witness at the instance of the Plaintiffs, and duly
sworn, was taken in the above-styled and -numbered cause
on the 5th day of December, 2018, from 8:55 a.m. to
12:32 p.m., before Jennifer L. Campbell, CSR in and for
the State of Texas, reported by machine shorthand, at
the offices of Freeman Law, PLLC, 2595 Dallas Parkway,
Suite 420, Frisco, Texas, pursuant to the Federal Rules
of Civil Procedure.

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A P P E A R A N C E S

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EXHIBITS

NO.	DESCRIPTION	PAGE
Exhibit 35	9
	Forced Liquidation Value Analysis of Certain Inventory Assets Owned by Mii's, Inc., Tie-Out and Support Binder	

REPORTER'S NOTE

Quotation marks are used for clarity and do not necessarily reflect a direct quote.

1 THE REPORTER: Today is December 5th, 2018.
2 The time is approximately 8:54 a.m. We are located at
3 Freeman Law, PLLC, 2595 Dallas Parkway, Suite 420,
4 Frisco, Texas 75034.

5 This is the deposition of Steven Hastings
6 in the matter of Tony and Mii's, Inc., Tony
7 Thangsongcharoen, and Somnuek Thangsongcharoen versus
8 The United States of America, in the United States
9 District Court for the Northern District of Texas,
10 Dallas Division, Civil Cause No. 3:17-CV-0609-B.

11 My name is Jennifer Campbell, certified
12 shorthand reporter, representing Lexitas, 6500
13 Greenville Avenue, Suite 445, Dallas, Texas 75206.

14 Will all persons present please state their
15 appearances and whom they represent.

16 MR. FREEMAN: Jason Freeman. I represent
17 the Plaintiffs.

18 MR. SMITH: Curtis Smith for the United
19 States.

20 THE WITNESS: Steven Hastings, expert
21 witness for the United States.

22 STEVEN C. HASTINGS,
23 having been first duly sworn, testified as follows:
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EXAMINATION

BY MR. FREEMAN:

Q. Could you please state your name for the record, sir?

A. Steven C. Hastings.

Q. And where are you employed, Mr. Hastings?

A. A company called ValueScope, Inc.

Q. And what is your title?

A. Principal.

Q. And what does that -- what does that mean?

A. I'm a equity partner principal. We have other principals that aren't equity partners, but we all like to keep it -- hierarchy the same.

Q. Understood.

Were you engaged by the United States as part of this lawsuit?

A. Yes, I was.

Q. And can you explain the nature of that engagement?

A. It was provide a opinion on the value of certain inventory with -- on a forced liquidation basis.

Q. And you were engaged as an expert in that capacity?

A. Yes.

Q. So the opinions that you've offered in your

1 report in this matter are expert opinions?

2 A. Yes, they are.

3 Q. What is your experience working in the bridal
4 gown industry?

5 A. Specifically, I have not worked in the bridal
6 gown industry. I have researched the industry, I
7 understand the industry. I have worked in other
8 clothing -- valuing other clothing types industries,
9 retail industries.

10 Q. What other clothing industries have you worked
11 in valuing?

12 A. We did -- valued a tuxedo distributor, and they
13 also did formal wear. That was years ago. I valued
14 other retail industry distribute clothes, but I don't
15 remember the names right now.

16 Q. Do you remember the name of the tuxedo
17 distributor?

18 A. No, I don't. I have to go look in my files.

19 Q. How long ago was that?

20 A. Probably about six years.

21 Q. Did you value the business or the inventory?

22 A. The business, but you know, inventory is always
23 part of a business.

24 Q. But was there a valuation specifically with
25 respect to the inventory?

1 A. I don't recall.

2 Q. Do you have any experience working in the
3 bridal gown industry?

4 A. As far as?

5 Q. Working in any other -- any other capacity as
6 an expert.

7 A. Not working in the industry, no.

8 Q. Have you ever testified regarding the valuation
9 of bridal gowns?

10 A. No.

11 Q. Have you ever held yourself out as an expert
12 other than this case with respect to bridal gowns?

13 A. No.

14 Q. Have you ever done an appraisal of bridal gowns
15 other than with respect to this case?

16 A. No.

17 Q. I'm going to ask you about the following
18 specific bridal gown manufacturers. I would ask you to
19 just please tell me everything that you know about each
20 of these manufacturers. The first one is Anjolie.
21 That's A-n-j-o-l-i-q-u-e. Are you familiar with that
22 vendor?

23 A. I don't recall if I've reviewed that or not.

24 Q. And wouldn't be familiar with their specific
25 line as we sit here today?

1 A. The Anjolie line?

2 Q. Yes, sir.

3 A. I may -- is it one of the lines sold by Tony
4 and Mii?

5 Q. This one is, yes, sir.

6 A. Yeah. The name sounds familiar from one of the
7 listings.

8 Q. Are you -- do you have personal knowledge about
9 this vendor or its lines?

10 A. No.

11 Q. Ask you about another vendor, Allure Bridal,
12 A-l-l-u-r-e. Are you familiar with this vendor?

13 A. Yes. I saw their -- reviewed their listings
14 and their pricings.

15 Q. Can you tell me what you know about this
16 vendor?

17 A. That they sell everything from quinces to
18 bridal dresses.

19 Q. Do you know any of the specific lines that they
20 carry?

21 A. Some of the lines are written down in the book
22 here.

23 Q. And "the book here" is your report?

24 A. Yes.

25 Q. And do you know where those are written? Are

1 they in the inventories that were provided by the
2 company?

3 A. Yes.

4 Q. Okay. But you haven't produced any additional
5 information --

6 A. No. They were on the handwritten notes in
7 the -- Tone's Excel spreadsheets.

8 MR. FREEMAN: And I'll go ahead and mark as
9 Exhibit 35 the expert report of Mr. Hastings.

10 (Exhibit 35 marked.)

11 Q. And so when I refer to Exhibit 35, we'll be
12 referring to your expert report.

13 So the references to Allure Bridal in your
14 report are from the spreadsheets and inventories
15 provided by the -- by the company, Mii's Bridal?

16 A. Yes, they are.

17 Q. Do you have any other -- do you know anything
18 else about Allure Bridal?

19 A. No. It's -- just from what -- the style lines
20 and the costs and the recommended retail prices that I
21 saw on the sheets.

22 Q. From the company? Is that what you're --

23 A. Yes.

24 Q. What about another vendor, Jasmine?

25 A. I didn't memorize all of their lines. I'm

1 sorry. I do have them --

2 Q. Just curious --

3 A. -- written down.

4 Q. -- if you -- if you know -- if you can tell me
5 anything specifically about that vendor or your
6 understanding of that vendor.

7 A. No. But if they're on the list, I could look
8 up and see what -- tell you what are the product lines
9 for Jasmine.

10 Q. But based on your experience, you wouldn't --
11 you wouldn't be familiar with those --

12 A. No, other than --

13 Q. -- lines?

14 A. -- other than what we reviewed on the -- on the
15 list of inventory.

16 Q. The company's inventory?

17 A. Yeah.

18 Q. How about Maggie Sottero Designs?

19 A. No. Same answer.

20 Q. How about Morilee, M-o-r-i-l-e-e?

21 A. Same answer.

22 Q. How about Angelina?

23 A. Same answer.

24 Q. How about Mon Cheri Bridal, M-o-n C-h-e-r-i
25 Bridal?

1 A. Same answer.

2 Q. How about Alfred Sung?

3 A. Same answer.

4 Q. How about After Six?

5 A. Same answer.

6 Q. Alexia Designs?

7 A. Yes, same answer.

8 Q. Bill Levkoff?

9 A. Same answer.

10 Q. Dessy Creations, D-e-s-s-y?

11 A. I don't recall seeing that one, but I have to
12 have my -- same answer. I don't recall unless they're
13 on the list here.

14 Q. Okay. Impression Bridal?

15 A. Same answer.

16 Q. Is it fair to say that outside of -- outside of
17 this case or prior to this case you did not have any
18 familiarity with those particular vendors?

19 A. Well, we did go into the vendors' Web sites and
20 try to look up style numbers and styles there and were
21 having extreme problems with that because of the age of
22 the inventory here. A lot of it weren't listed.

23 MR. FREEMAN: Object, nonresponsive.

24 Q. Were you able to cross-reference the codes in
25 any of the inventory listings to those Web sites?

1 A. Maybe a few, but I didn't -- I've got it
2 documented in some other work papers. But it turned out
3 to be a nonproductive exercise.

4 Q. The question again is: Outside of this case or
5 prior to this case, did you have any familiarity with
6 any of the vendors that I just listed?

7 MR. SMITH: Objection, form.

8 A. No.

9 Q. Now, I want to ask you just a little bit about
10 the industry, the bridal gown industry. Are you
11 familiar with the types of contracts that are in place
12 in the industry?

13 A. As far as inventory contracts?

14 Q. Inventory with vendors, yes, sir.

15 A. It varies.

16 Q. How does it vary?

17 A. Some are purchase as is, ordered special, some
18 are inventory that can be returned. A lot of -- a lot
19 of it is done online now.

20 Q. Is there -- with respect to the contracts
21 between retail stores like Mii's or other retail stores
22 and vendors, is there a standardized contractual
23 relationship?

24 A. Not that I'm aware of.

25 Q. Is there typically a contract between retail

1 companies and vendors?

2 A. Depends on the size and volume of a retail
3 company and what the vendors are.

4 Q. So with a company like Mii's, would there
5 typically be contracts with vendors?

6 A. I don't know. I didn't see any evidence of
7 contracts of vendors.

8 Q. Would you expect to see contracts with vendors?

9 A. Not for that -- necessarily that small of a
10 shop.

11 Q. And in a larger shop you would?

12 A. I would.

13 Q. But you don't know whether it's industry
14 standard to have a contract with a vendor?

15 A. I do not know whether it's industry standard.

16 Q. Do you know what time of the year bridal gown
17 stores typically place orders?

18 A. No.

19 Q. Do you know how long it typically takes for a
20 bridal gown vendor to ship orders?

21 A. How long from the date they receive the order
22 to shipping?

23 Q. Yes, sir.

24 A. Other than what Internet research says how long
25 it takes.

1 Q. Do you know how long that is?

2 A. I think I read it could be as little as one
3 week and as high as four weeks.

4 Q. Okay. So that's your testimony of your
5 understanding?

6 A. That's my recall from looking at one of the
7 sites where you can order a dress -- custom dress from.

8 Q. Mr. Hastings, have you ever acted as an expert
9 witness by providing a valuation of stock inventory?

10 A. Not with respect to just the inventory itself.

11 Q. As an expert witness, have you provided a
12 valuation specifically with respect to inventory?

13 A. Not specifically, but as the inventory relates
14 to the total value of a company.

15 Q. Have you ever as an expert witness provided a
16 valuation with respect to bridal dresses?

17 A. No.

18 Q. Have you ever been qualified in court to
19 testify as an expert in a case requiring you to provide
20 a valuation specifically of inventory?

21 A. Not that I recall.

22 Q. Have you ever been qualified in court to
23 testify as an expert in a case requiring you to provide
24 a valuation specifically of bridal dresses?

25 A. No.

1 Q. Have you ever given a deposition in a case
2 involving you as an expert providing a valuation of
3 inventory?

4 A. Not that I recall.

5 Q. Have you ever given a deposition in a case
6 involving you as an expert providing a valuation of
7 bridal dresses?

8 A. No.

9 Q. Do you consider yourself an expert in the field
10 of valuation of bridal dresses?

11 A. My research, my studies of the industry, and an
12 understanding of the perishable-type inventory, yes, I
13 do.

14 Q. Has that research and study been performed
15 since you were engaged in this matter?

16 A. Yes.

17 Q. And not before, correct?

18 A. Well, we're always performing continuing
19 education relief -- related to the valuation of
20 inventory, so -- and specifically the American Society
21 of Appraisers just issued, I think this last year --
22 within the last year --

23 MR. FREEMAN: Objection, nonresponsive.

24 Q. And my question was specifically with respect
25 to the field of the valuation of bridal dresses.

1 A. Oh, no. Just inventory in general training.

2 Q. Have you ever testified in a deposition or at
3 trial as a valuation expert with respect to specifically
4 the value of inventory?

5 A. I don't recall.

6 Q. With respect to the value of bridal dresses?

7 A. No.

8 Q. Have you ever served as an expert in a
9 Section 3 -- 6 -- excuse me. Strike that.

10 Have you ever served as an expert in a case
11 involving Internal Revenue Code Section 6336?

12 A. Which is --

13 Q. Which is the statute at issue in this case.

14 A. I'd have to go back and review my cases.

15 Q. But not that you're aware of as we sit here
16 today?

17 A. I don't know. I've had so many -- I've had so
18 many IRS cases that --

19 Q. Let me ask it --

20 A. -- I can't remember them.

21 Q. Let me ask it another way. Have you ever
22 served as an expert in a valuation case that resulted
23 from an IRS seizure?

24 A. Where the Department of Justice would have been
25 the respondent, I do not believe I have.

1 Q. Have you ever served as an expert in a case
2 providing a valuation where there was an allegation of a
3 wrongful --

4 A. Can I correct --

5 Q. -- IRS seizure --

6 A. Can I go back and correct?

7 Q. Yes, sir. Which question?

8 A. The seizure.

9 Q. Yes, sir.

10 A. Okay. I don't recall, I have to go back and
11 look at the file, but the Longaberger versus United
12 States may have been a seizure. It was a State issue
13 related, but the Longaberger building may have served as
14 collateral or something for the --

15 Q. Do you know when that case was, roughly?

16 A. Couple years ago.

17 Q. And the asset at issue was a building?

18 A. Issue was a tax issue related to the state --
19 the estate, but the estate still held ownership.

20 Q. And what was the specific asset?

21 A. The Longaberger building and properties.

22 Q. Real estate?

23 A. Yeah.

24 Q. Have you ever served as a valuation expert in a
25 wrongful seizure case, specifically, a wrongful seizure

1 by the IRS?

2 A. No.

3 Q. Have you ever served as a valuation expert in a
4 case involving an IRS perishable goods seizure?

5 A. No.

6 Q. Have you ever provided a valuation with respect
7 to property that was seized by the IRS?

8 A. No.

9 Q. Have you ever used the forced liquidation sale
10 methodology in an IRS seizure case?

11 A. No.

12 Q. This would be the first time?

13 A. For an IRS, seizure. It's not the first time
14 we used the forced liquidation.

15 Q. Have you ever used the forced liquidation sale
16 methodology in a seizure case?

17 MR. SMITH: Objection, form.

18 A. In an IRS seizure case or any seizure case?

19 Q. Any seizure case. And if so, which case?

20 A. I don't recall, but I -- there may have been a
21 case involving a corporate foreclosure where we looked
22 at alternatives.

23 Q. Do you know what kind of assets would've been
24 involved in that case?

25 A. I think intellectual properties, Web site,

1 software, other things like that. And we looked at
2 forced liquidation, orderly liquidation, other issues.

3 Q. Okay. Mr. Hastings, I want to take you to
4 page 30 of your report, which is marked as Exhibit 35.
5 And specifically on your CV, you have listed a number of
6 speaking engagements. Does this encompass your speaking
7 engagements over a certain period of time?

8 A. Yeah, maybe 20 years.

9 Q. Over 20 years?

10 So I want to go through these with you.
11 The first one is entitled "How to Finance Your Company."
12 Did this presentation involve the valuation of inventory
13 or bridal dresses?

14 A. No.

15 Q. The next one, "Employee Stock Ownership Plans,"
16 did this presentation involve the valuation of inventory
17 or bridal dresses?

18 A. No.

19 Q. The next one is "Documentation Linking
20 Systems." Did this one involve the valuation of
21 inventory or bridal dresses?

22 A. No.

23 Q. The next one is entitled "CORF -- What You Need
24 to Know to Run a Successful Business." Did this one
25 involve the valuation of inventory or bridal dresses?

1 A. No. And none of them did.

2 Q. Okay. And in fact, there are a number of other
3 items listed here as speaking engagements, and none of
4 these involved the valuation of inventory or bridal
5 dresses, did they?

6 A. None.

7 Q. Mr. Hastings, I'd like to take you to page 24
8 of your report. Again, this is part of your CV, and
9 there are a number of cases listed here. I'd like to go
10 through some of these with you. The first case you've
11 listed is Chrem, C-h-r-e-m, v. Commissioner of Internal
12 Revenue.

13 A. Uh-huh.

14 Q. Did this case involve the valuation of
15 inventory or bridal dresses?

16 A. No.

17 Q. The next one is Hawk v. Commissioner. Did this
18 case involve the valuation of inventory or bridal
19 dresses?

20 A. No.

21 Q. The next case is Red River Ventures v.
22 Commissioner. Did this case involve the valuation of
23 inventory or bridal dresses?

24 A. No.

25 Q. The next case is Bowey v. Commissioner. Did

1 this case involve the valuation of inventory or bridal
2 dresses?

3 A. No.

4 Q. The next case is Redstone v. Commissioner. Did
5 this case involve the valuation of inventory or bridal
6 dresses?

7 A. No.

8 Q. And Mr. Hastings, there are several pages of
9 cases, most of which involve you testifying for the IRS
10 or Department of Justice. But with respect to all of
11 these cases listed, did any of these cases involve the
12 valuation of inventory or bridal dresses?

13 A. Let me review my civil --

14 Q. Sure.

15 A. -- court cases, okay?

16 In particular, are you talking about retail
17 inventory? Or are you --

18 Q. I am --

19 A. -- talking about assets held?

20 Q. I am specifically talking about retail
21 inventory, but if you believe there's something
22 relevant, please feel free to point it out.

23 A. On page 28 --

24 Q. Yes.

25 A. -- in the middle, Kehrer versus Kehrer -- do

1 you see that?

2 Q. Yes, sir.

3 A. It's -- that involved a father-son buyout
4 dispute of the business, and involved in that was the
5 value of the inventory held, which was pipes that are
6 being cut and formed for sale.

7 Q. In that case, did you provide a valuation
8 specifically with respect to the value of the pipes at
9 issue?

10 A. It was only a part of the valuation, not a
11 specific opinion on them separately.

12 Q. As a component of the valuation, did you assign
13 a specific valuation to those pipes?

14 A. I believe we did.

15 Q. Do you recall the basis upon which you provided
16 that value?

17 A. It was cost basis.

18 Q. Cost basis?

19 A. Yeah.

20 Q. Did you reduce that cost figure?

21 A. No, because it wasn't obsolete inventory or
22 old.

23 Q. So if inventory is not obsolete, it would be
24 improper to reduce the value?

25 A. Depends on the age of the inventory if -- the

1 age has a lot to do with it.

2 Q. So --

3 A. Turnover has a lot to do with it, but --

4 Q. If the -- if the inventory has age, at what age
5 is it appropriate to apply a discount to the cost basis?

6 A. Anything -- it depends on the industry.

7 Q. Okay.

8 A. Some industries, you know, have to hold
9 five-year inventories, okay, just because of the volume
10 they serve, and some industries, you know, only hold
11 three-month inventories.

12 Q. But you believe you provided an analysis based
13 upon the cost of the inventory at issue in that case --

14 A. Yes, I did.

15 Q. -- and you -- and you did not reduce it?

16 A. No, because it was all current.

17 Q. Is there another case listed here that involved
18 the specific valuation of inventory or bridal dresses?

19 A. You know, I'd have to go back, but on page 29,
20 Golf-Chic Boutique, which is a ladies' pro shop that
21 sold ladies' garments and --

22 Q. Was that their primary asset?

23 A. Yeah. It was all golf stuff for ladies, so it
24 included, you know, skirts and dresses and shoes and
25 gloves and clubs and stuff.

1 Q. And you provided a valuation specifically with
2 respect to those garments?

3 A. I have to go back and review this file and see,
4 but that's one where that was some of the major assets
5 in it.

6 Q. Do you know on what basis you would've provided
7 that valuation?

8 A. I do not recall.

9 Q. You don't recall if it was based on cost
10 method?

11 A. I'm sorry. That's -- you know, that's seven
12 years ago. I don't recall. I'm just -- I'm just saying
13 that that might have had.

14 Q. Might have.

15 But as we sit here today, you can't say
16 definitively that in any of these cases listed here in
17 your CV that you provided a specific valuation with
18 respect to bridal dresses.

19 A. No.

20 Q. Or garments.

21 A. I may have garments with the ladies' boutique.

22 Q. Possibly.

23 A. Possibly. But I --

24 Q. But that's the only one?

25 A. Yeah. And being seven years old, I don't

1 recall really. All I know is I remember my wife saying
2 she had a lot of cool stuff.

3 Q. Mr. Hastings, I'd like to go to page 22 of
4 Exhibit 35, your report, and this is the beginning of
5 your CV. And you've listed your employment history
6 here. I believe we've established that during your time
7 at ValueScope, which was from 2006 to present, that you
8 have not been involved in the sale of bridal dresses in
9 any capacity.

10 A. No, I have not.

11 Q. And that you have not rendered an opinion about
12 the value of bridal dresses.

13 A. No, I did not.

14 Q. In your employment prior to that at Value
15 Capital, did you do either of those things?

16 A. I did business plans -- some of my work was as
17 contract CFO, and one of my clients at that time was a
18 company called Designing Texas and Bride TV, so I acted
19 as the CFO for --

20 Q. Did they -- did they sell bridal gowns?

21 A. No. But bridal gown --

22 Q. Did they manufacture bridal --

23 A. -- retailers would present -- no. All they
24 did, they do a TV show about brides.

25 Q. Did you come across -- strike that.

1 Did you deal in your capacity working with
2 that company with the valuation of bridal gowns?

3 A. No.

4 Q. And in your prior position as public service
5 director for the Finance Commission of Texas from 1994
6 to 2000, did you deal in any capacity with selling
7 bridal dresses?

8 A. Savings and loans, but not bridal dresses.

9 MR. FREEMAN: Let the record reflect a
10 moment of levity.

11 Q. Did you render any opinions about the value of
12 bridal dresses in your capacity there?

13 A. No.

14 Q. In your positions prior to that, is it fair to
15 say, sir, that you did not -- you were not involved in
16 the sale or purchase of bridal dresses nor rendering a
17 valuation opinion on bridal dresses?

18 A. Correct.

19 Q. Mr. Hastings, how many times have you testified
20 for the Government?

21 A. Twenty-nine, 30 times.

22 Q. Are those all tax cases?

23 A. Yeah, they would all be tax-related cases, yes.

24 Q. And is that in the last four years, or is
25 that -- is that longer?

1 A. No, that's longer. Seven years.

2 Q. How many times have you testified for a
3 taxpayer against the Government?

4 A. I have represented taxpayers.

5 Q. Have you ever testified for a taxpayer against
6 the Government?

7 A. I have worked with them against the Government,
8 but none of my cases went to court.

9 Q. Okay.

10 A. They all settled. I take tax cases that I know
11 I can win.

12 Q. But you've never testified against the
13 Government in a tax case.

14 A. I testified against the Department of Defense.

15 Q. In a tax case?

16 A. In -- no.

17 Q. Have you ever testified against the Department
18 of Justice?

19 A. Department of Justice was the attorneys for the
20 Department of Defense.

21 Q. Okay.

22 A. So yes, I have testified against the Department
23 of Justice.

24 Q. Ever against the Department of Justice Tax
25 Division?

1 A. No.

2 Q. Do you -- do you charge the same rate to the
3 Government to serve as an expert that you serve -- that
4 you charge to civil parties?

5 A. We charge the Government a flat \$290, all level
6 of staff.

7 Q. What do you charge to private parties?

8 A. Insurance defense, there's -- we charge a scale
9 that goes from -- sometimes, depending on the nature of
10 the project, \$420 for a principal down to 105 for lower
11 staff, so it's a graduated scale.

12 Q. But your rate in a case testifying for the
13 Government is \$290?

14 A. For all --

15 Q. Your rates specifically, your time.

16 A. My rate, my --

17 Q. Is that correct?

18 A. -- manager's rate, my associates' rates that's
19 worked on this project.

20 MR. FREEMAN: Strike as nonresponsive.

21 Q. Is your --

22 A. Yes.

23 Q. -- rate \$290 --

24 A. Yes.

25 Q. -- when you work for the Government?

1 And your rate when you work for a private
2 party is generally \$420?

3 A. Well, I mean, it could range from 390 to 420.

4 Q. Okay.

5 A. Depending on the nature of the project.

6 Q. Okay. Have you ever failed to qualify or been
7 disqualified by a judge in any case?

8 A. No.

9 Q. How much time do you spend serving as an expert
10 witness?

11 A. About 25.

12 Q. What do you do besides that?

13 A. I do valuations for financial reporting. A lot
14 of my clients are hedge funds. I do valuations for
15 mergers and acquisitions. A lot of my clients are
16 referred to me by attorneys that need a fairness opinion
17 on a transaction. I do a lot of valuations for estate
18 and gift and shareholder buyouts, shareholder stock
19 options for private companies. We do a lot of purchase
20 price allocations, which are becoming very interesting
21 nowadays because you are focusing more on the tangible
22 inventory because of the accelerated write-off rules.
23 Are you following me?

24 Q. Uh-huh.

25 A. So trying to get it out of goodwill and into

1 the tangible, so that's when you're specifically looking
2 more at property plant equipment; inventory, if that
3 needs to be written up; and those kind of items, because
4 once we can write that tangibles up, then you get better
5 tax benefits now. So --

6 Q. That was --

7 A. -- business consulting, we do -- we have a lot
8 of businesses that we'll go in and analyze performance
9 metrics, inventory turn, inventory sale. I mean, we --
10 we take a look, we know -- we research and we know what
11 their industry should be, what their inventory should be
12 turning at, and we assist them in identifying these
13 metrics and then working with them operationally to
14 figure out how to move the metrics to a more positive
15 financial position for them.

16 MR. FREEMAN: Objection, nonresponsive.

17 Q. I want to talk about your preparation for this
18 deposition, specifically, any oral information that
19 you've received related to this case. Did you obtain
20 any information about this case orally?

21 A. I'm sure I did.

22 Q. From who did you obtain that information and
23 when?

24 A. It would've been from US counsel.

25 Q. Do you know who that was specifically?

1 A. Mr. Curtis Smith.

2 Q. The one and only?

3 A. The one and only.

4 MR. FREEMAN: Let the record reflect
5 another moment of levity.

6 Q. What information was obtained?

7 A. Status of the depos, what was covered in a depo
8 briefly. Didn't give me the depos to read because I did
9 not look at those. I don't know, where he thought the
10 case was going. I mean, you know.

11 Q. Did you discuss where he thought the case was
12 going?

13 A. No. I mean, what the -- what the timing of
14 things were, what -- you know.

15 Q. Where did he believe the case was going?

16 A. To court. It wasn't going to be settled. I
17 wasn't sure I --

18 Q. What other information did he give you?

19 A. Oh, I don't recall.

20 Q. Did he give you any information relating to the
21 inventory?

22 A. Me information related to the inventory?

23 Q. Yes, sir.

24 A. No. Just the documents.

25 Q. What were you told about those documents? Or

1 was it all in writing?

2 A. It was all in writing.

3 Q. There's no --

4 A. I read the same thing. He didn't have any more
5 information than what the documents said than I did.

6 Q. There's no oral information given?

7 A. No. He told me about the IRS seizure, but
8 that's all written down also.

9 Q. Did you make any notes or records of this
10 information?

11 A. No.

12 Q. So nothing written?

13 A. No.

14 Q. You've done this before.

15 A. Yes.

16 Q. What did you do to prepare for this deposition?

17 A. I met with Mr. Curtis, and he -- on Monday, and
18 he asked me some questions about my report and how to
19 tie out some things, and I realized that I needed to
20 create a section "I" so we could tie it out. We just
21 talked about my report. We talked about it.

22 Q. Did you talk about any weak points in the
23 report?

24 A. There are no weak points in the report.

25 Q. Were there any concerns about any positions

1 stated in the report?

2 A. Mr. Smith had no concerns.

3 Q. Did anyone else?

4 A. The only people that read my report were my
5 staff, my partner.

6 Q. And --

7 A. He's the only one external other than you
8 that have read the report.

9 Q. Not another attorney that -- from DOJ?

10 A. No. Not that I know of. Nobody -- no other
11 attorney discussed it --

12 Q. Not that -- I guess I'm asking that you've
13 discussed it with --

14 A. No.

15 Q. -- in any way.

16 Was that the only preparation session that
17 you had?

18 A. Yeah.

19 Q. How long did that last?

20 A. Less than two hours.

21 Q. Were you shown any other documents?

22 A. Not that I recall.

23 Q. Did you ask any questions during that session?

24 A. Well, I asked questions about Jason B. Freeman.
25 I wanted to know your profile, I wanted to know --

1 Q. Expect you got glaring answers.

2 A. I wanted to know how you did your other
3 depositions, what were your -- what was your demeanor,
4 what was . . .

5 Q. While I've got your under oath, what bad things
6 did Counsel say about me?

7 MR. SMITH: Objection. I instruct you not
8 to answer. No. Just kidding. We'll let the record
9 reflect --

10 MR. FREEMAN: Won't hurt Counsel's
11 feelings.

12 MR. SMITH: Let the record reflect another
13 moment of levity.

14 MR. FREEMAN: Strike that one.

15 Q. Did you discuss what questions you could expect
16 during this deposition?

17 A. Yeah. But I was more like, Is he going to ask
18 me about this? He going to be asking me about that?
19 What -- you know.

20 Q. What were those --

21 A. Oh, I don't know.

22 Q. -- general topics?

23 A. I don't recall specifically, but generally, you
24 know, why forced liquidation? (Inaudible.)

25 THE REPORTER: I'm sorry. I couldn't --

1 THE WITNESS: Forced liquidation value, why
2 did you use forced liquidation value.

3 A. We talked about polyethylene bags and
4 preservation of dresses and how it's -- I think we had
5 some levity on some of the research done with clothing
6 stored in polyethylene bags as being very detrimental to
7 the clothing.

8 Q. Did you discuss how to answer any questions
9 about your qualifications as an expert?

10 A. Not at all.

11 Q. Any other questions about your methodology or
12 your conclusions?

13 A. No. Because he'd already read the report and
14 we have already talked about the report before that over
15 the phone.

16 Q. Did Counsel provide you any theory of their
17 case?

18 A. (Moving head side to side.)

19 Q. No?

20 A. Keep me in my little box, okay? That's what
21 they do. Just want this, okay?

22 Q. But your answer was a -- was a no?

23 A. No.

24 Q. Okay.

25 A. My theory is --

1 Q. Laid out here?

2 A. -- give my opinion on what I think the value of
3 the inventory is on a forced liquidation basis based on
4 my experience in valuation.

5 Q. Were you -- were there any specific discussions
6 about the scope of your assignment?

7 A. No. The scope of the assignment is worked up
8 during the contract phase.

9 Q. Okay. Let me ask you some questions about
10 that. What do you perceive as your purpose and function
11 in this case?

12 A. To give my opinion of the value of the
13 inventory on a forced liquidation basis.

14 Q. And that's it?

15 A. (Moving head up and down.)

16 Q. Is that a yes?

17 A. Yes, it was.

18 Q. So I'm going to ask you kind of again sort of
19 the same question, but define precisely what you were
20 engaged to provide an opinion on.

21 A. The value of the inventory. Of the dress
22 inventory.

23 Q. Based upon anything in particular? Any
24 particular standard?

25 A. Forced liquidation.

1 Q. So the value of the inventory based upon a
2 forced liquidation value?

3 A. Yes.

4 Q. And that's what your opinion specifically
5 provides, an opinion on the forced liquidation value of
6 the inventory?

7 A. Yes.

8 Q. You do not provide an opinion with respect to
9 the value of the inventory under a different standard.
10 Is that correct?

11 A. No, I do not.

12 Q. So if a different standard were applicable,
13 your opinion would not speak to it.

14 A. Not this opinion, no.

15 Q. If, for example, fair market value were the
16 applicable standard, your opinion does not address that
17 standard.

18 A. Fair market value defined as? Under what
19 methodology?

20 Q. Well, let's just assume for sake of this
21 question fair market value as defined by the American
22 Society of Appraisers.

23 A. Fair market value for a going concern?

24 Q. Fair market value of the inventory.

25 A. On a going concern basis? On an orderly

1 liquidation basis? On a -- there's very --

2 Q. Would it be fair for me to venture that the
3 answer to all of those is no, those were not the scope
4 of your opinion?

5 A. No, those are not the scope of my opinion.

6 Q. So you weren't --

7 A. I'm prepared to give an opinion on -- I'm not
8 prepared at this time to give an opinion on it, but I
9 could.

10 Q. Your opinions that you've provided and been
11 engaged to provide in this case do not provide an
12 opinion about the fair market value on any of those
13 other bases.

14 A. On an orderly liquidation basis?

15 Q. Correct.

16 A. No. On a in -- continued use?

17 Q. Correct.

18 A. On a going concern business?

19 Q. Yes, sir, correct.

20 A. No.

21 Q. In fact, then, you provide no opinion about the
22 fair market value of the assets, only about the forced
23 liquidation sale value; is that correct?

24 A. That's what this report does.

25 Q. So your opinion does not provide a fair market

1 value of the inventory. Correct?

2 A. My opinion does provide a fair market value of
3 the inventory based on forced liquidation.

4 Q. So it provides a forced liquidation value; is
5 that right?

6 A. Fair market value.

7 Q. Now, is that how the American Society of
8 Appraisers defines fair market value?

9 A. Fair market value, it depends on -- yeah,
10 you --

11 Q. That is?

12 A. Depending on -- they don't define --

13 Q. Or does it --

14 A. They don't fine -- define fair market value as
15 a particular circumstance, okay? Fair market value can
16 be defined in many -- in different circumstances.

17 Q. Let me ask you if this definition is correct as
18 you understand the American Society of Appraisers to
19 define the phrase "fair market value." "A professional
20 opinion of the estimated most probable price expressed
21 in terms of currency to be realized for property in an
22 exchange between a willing buyer and a willing seller
23 with equity to both, neither being under any compulsion
24 to buy or sell, and both parties fully aware of all
25 relevant facts as of the effective date of the appraisal

1 report."

2 A. I'm very familiar with that.

3 Q. Now, that is the definition of fair market
4 value.

5 A. Right.

6 Q. Correct?

7 A. For that, under no compulsion --

8 Q. And you have not --

9 A. -- to sell.

10 Q. -- provided a definition under that standard of
11 the inventory, correct?

12 A. I have not. So that --

13 Q. So the questions I asked before -- without
14 hedging, the questions that I asked before, your answer
15 to those is you have not provided a valuation of the
16 fair market value as defined by the American Society of
17 Appraisers with respect to the inventory.

18 A. On a going concern basis.

19 Q. You have not --

20 A. I have not.

21 Q. -- correct?

22 In fact, you have not provide -- you have
23 not provided an opinion of the fair market value as
24 defined by the American Society of Appraisers with
25 respect to the assets on a going basis or nongoing

1 basis, correct?

2 A. I have not on a -- on a going basis I have not.

3 Q. What about a nongoing basis?

4 A. This was a nongoing basis forced liquidation.

5 Q. So you have provided an opinion of the forced
6 liquidation value, correct?

7 A. Yes.

8 Q. But not the fair market value as defined by the
9 American Society of Appraisers.

10 A. On a going concern basis, no.

11 Q. I'm going to ask the question, but I'm going to
12 ask that you answer it as a yes or no. Have you
13 provided a fair market value valuation of the inventory?

14 MR. SMITH: Objection, form.

15 You can answer.

16 A. Just yes or no?

17 Q. Yes, sir.

18 A. Not under those strict definition terms.

19 Q. And you've not been engaged to determine the
20 fair market value of the inventory as defined by the
21 American Society of Appraisers; is that correct?

22 A. You need to dig a little bit deeper into the
23 American Society of Appraisers and look at other
24 definitions, particularly orderly liquidation or . . .

25 Q. I want to get to those. Why don't you tell me

1 what the other valuation standards are.

2 A. Well, there are guidelines set out by various
3 appraisal associations, okay?

4 Q. What are these?

5 MR. FREEMAN: Let the record reflect the
6 deponent is reviewing his report.

7 A. Turn to H-56. Okay. I'm sorry. H-53 where it
8 starts.

9 Q. Okay.

10 A. Okay. This is the Key Auctioneer appraisal
11 guidelines, okay? So it -- if you turn to H-55, you see
12 it talks about fair market value -- are you at H-55?

13 Q. Yes, sir.

14 A. -- fair market value, in-place use, orderly
15 liquidation. Turn the page, and you get forced
16 liquidation.

17 Q. So Key Auctioneers, is this a recognized --

18 A. Yes.

19 Q. -- authority in the industry?

20 A. Yes.

21 Q. And they have a specific definition with
22 respect to fair market value; is that correct?

23 A. Yeah. If you notice that the definition of
24 fair market value on -- is almost identical to the
25 American institute of appraisers, okay?

1 Q. And that, in fact, is industry standard
2 across --

3 A. Correct. And then so --

4 Q. -- most of the authorities?

5 A. -- you see in-place use and then you see
6 orderly liquidation and you see forced liquidation.

7 Q. So each of these are basically different
8 potential perspectives or models of what value might
9 mean.

10 A. Correct.

11 Q. But each is their own standalone, basically,
12 methodology or approach, correct?

13 A. Right.

14 Q. So fair market value is one, in-place use,
15 orderly liquidation value, and forced liquidation value,
16 and there may perhaps be other types of methodology.

17 A. Yes.

18 Q. According to the definitions listed here on
19 page H-55, you have not rendered an opinion specifically
20 with respect to that definition reflected of fair market
21 value, correct?

22 A. I have not.

23 Q. Do you understand how your opinion will be used
24 in this litigation?

25 A. For determining damages.

1 Q. Not whether a standard was breached? Do you
2 understand whether it will be used to determine whether
3 a particular standard was breached?

4 A. What kind of standard are you talking about?

5 Q. Do you -- ask it more broadly. Do you
6 understand if it will be used to determine whether there
7 was a violation by IRS employees?

8 MR. SMITH: Objection, form.

9 A. No.

10 Q. It's okay if you don't.

11 A. I don't know.

12 Q. Okay. But nothing's been told to you about
13 that, only that it will be used to determine damages, as
14 far as you know?

15 A. Well, I've read the motions, the pleadings, so
16 I know that there's allegations against the IRS.

17 Q. Did you personally do all of the work on your
18 opinions?

19 A. No. I had a staff person -- had a staff person
20 enter in -- if you look at the sheets, these are all
21 Tone's sheets.

22 Q. You didn't enter those yourself?

23 A. No, I didn't enter those myself. And if you
24 look on the Schedule Cs in Section B -- let's turn to --
25 so those would be pages B, dash -- nope, nope -- B,

1 dash, 9 through --

2 Q. You had staff enter these schedules in based
3 on --

4 A. Yeah. These were -- this is -- this is
5 interesting because this section, which in the report it
6 refers as the "C" section, okay? But it's -- you'll see
7 it up here at B-9 at the bottom. See that?

8 Q. Yes, sir.

9 A. You at that, B-9?

10 Okay. What's interesting is these were the
11 ones on the handwritten notes that matched Tone's Excel
12 spreadsheet, okay?

13 Q. Okay.

14 A. So the name, the number. And what the value of
15 this was is the handwritten notes indicated the
16 recommended retail price but also the wholesale price
17 they paid for it.

18 Q. Yes, sir.

19 A. Okay. So what my staff did is she went in and
20 looked at this list, took it to Tone's -- more
21 importantly took Tone's to find this list, okay? And so
22 all of these were on Tone's list, okay? But what was
23 valuable about this is it told me what the difference
24 between the -- what the markup was.

25 Q. You could see the markup.

1 A. I could see the markups. So I knew the other
2 expert report was wrong because it wasn't a flat
3 50 percent markup across the board; in fact, the markups
4 were more like 40 percent or -- so it wasn't . . .

5 Q. Your statement that it was wrong assumes that
6 this accounts -- this spreadsheet that you're referring
7 to accounts for all of the inventory in the store,
8 correct? As a logical matter to be correct.

9 A. If Tone's -- if Tone's inventory in the store
10 is correct -- because remember, we took this back to
11 Tone's inventory, okay? And we were able to find the
12 majority of that on here. But the value of it's just it
13 told us what the cost was. The wholesale cost.

14 Q. But your statement that it was wrong assumes
15 that the spreadsheets you're looking at account for all
16 of the inventory that was in the store.

17 A. Does -- I assume that Tone's listing accounted
18 for all the inventory in the store --

19 Q. And --

20 A. -- so that what we did --

21 Q. Correct.

22 A. Is -- and that's my assumption, that Tone's
23 inventory listing accounted for all the inventory in the
24 store.

25 Q. And if, in fact, there was a significant amount

1 of additional dresses that are not reflected on that
2 inventory, your opinion does not account for those.

3 A. No.

4 Q. And your opinion about Ms. Bonfield's expert
5 report does not account for that assumption, that there
6 may be additional dresses not reflected on the
7 spreadsheet she referenced.

8 A. I don't -- I don't think I'd go that far. All
9 I know is Ms. Bonfield just took Tone's number of retail
10 value and applied 50 percent to it, did no research, no
11 analytics.

12 Q. Based her opinion upon her years of experience
13 in the industry; is that correct?

14 A. Yeah, I --

15 Q. That your understanding?

16 A. I have no opinion on what that is. This -- I
17 took as analytical approach as I could.

18 Q. Understood. Your approach also assumes that
19 the wholesale values reflected in the handwritten notes
20 did not change over time as dresses were reordered.

21 A. They're very product-specific. I would -- as a
22 forensic accountant, I would say --

23 Q. But I'm asking --

24 A. -- these --

25 Q. -- if that's your assumption.

1 A. My assumption is that these are probably
2 accurate or probably very accurate, okay? This -- this
3 is painstaking work done right here. People don't do
4 painstaking work like this if it's not accurate, okay?
5 It's just -- it's just too -- and I've seen a lot of
6 documents. And I know when to call BS on certain
7 documents and when to not call BS. I don't think this
8 is a BS document.

9 Q. Okay. So who else helped in preparing your
10 report?

11 A. A staff person, data guy, intern, Mital Gupta;
12 an associate, junior associate, Erin Buck; and then a
13 manager, Brandon James.

14 Q. How many drafts were there of your report?

15 A. We don't keep drafts; we just keep overriding.

16 Q. Did you receive any written comments from
17 anyone about your draft reports?

18 A. No.

19 Q. Did you reach any conclusions that did not make
20 it into your final report?

21 A. My report -- such as?

22 Q. Did you render any conclusions during this
23 process that are not reflected in this final report?

24 A. I mean, I have my opinions of the taxpayer from
25 what I've analyzed here. Do you mean opinions --

1 Q. No.

2 A. -- related to the taxpayer?

3 Q. Not of the taxpayer, but with respect to the
4 inventory.

5 A. Oh, other conclusions outside this?

6 Q. Correct.

7 A. No.

8 Q. Were you asked to give your opinion on any
9 topics that are not addressed in the final report?

10 A. No.

11 Q. Are you willing and able to state all of your
12 opinions during this deposition that you will express at
13 trial?

14 A. Yes.

15 Q. What are the opinions that you have formed in
16 this case?

17 A. It is my opinion that the concluded range of
18 value based on a forced liquidation methodology is
19 between 15,000 to \$41,000.

20 Q. Is that the opinion -- the only opinion you
21 will express at trial?

22 A. Unless asked to issue another separate opinion
23 I will.

24 Q. Okay. Ask you about my expert in this case, or
25 experts. Would you agree that my expert is qualified to

1 ask -- to offer the opinion that she has offered,
2 Ms. Bonfield?

3 MR. SMITH: Objection, form.

4 A. I have no opinion on that. That's a legal --
5 that's a legal issue.

6 Q. Talk a little bit about the valuation method.
7 You've not been asked to give an opinion as to whether
8 the IRS was justified in conducting a seizure in this
9 case? Is that correct?

10 A. I did -- I have -- well, I did review the
11 process. And that's -- I did not say whether it was
12 justified or not, but just that the process.

13 Q. Do you have an expert opinion as to whether or
14 not the IRS was justified in conducting a seizure?

15 A. I do not understand the -- I have not -- I do
16 not understand the legal issues involved of what their
17 authority was, so I do not have any opinion on
18 justification.

19 Q. You're not opining on whether they satisfied
20 the standards necessary to conduct a seizure, correct?

21 MR. SMITH: Going to object to form and
22 foundation.

23 But you can answer.

24 A. No.

25 Q. And you are not opining on whether they

1 satisfied the standards necessary to conduct a
2 perishable goods seizure or sale, correct?

3 MR. SMITH: Same objections.

4 You can answer.

5 A. Well, I did recognize that they had six months'
6 notice on the board.

7 Q. Let me ask this another way. There are
8 specific requirements necessary in order to conduct a
9 perishable goods seizure or sale.

10 A. I am not aware of those.

11 Q. And you're not providing an opinion on whether
12 those were specifically complied with.

13 A. No, I am not.

14 Q. Was your valuation solely focused on the
15 inventory items of Tony and Mii's?

16 A. Yes.

17 Q. And is the forced liquidation value standard
18 the only method by which to value inventory?

19 A. No. I think we reviewed several methods in the
20 back earlier.

21 Q. And you opined on the forced liquidation value
22 of that inventory because that was the assignment given
23 to you, correct?

24 A. Correct.

25 Q. You don't opine on which standard is

1 applicable.

2 A. No.

3 Q. Or which is appropriate.

4 A. No.

5 Q. Only that based on the assumptions and
6 methodology set forth in your opinion, the forced
7 liquidation value is between 15,000 and \$41,000?

8 A. Yes.

9 Q. How does forced liquidation value compare to
10 orderly liquidation value or fair market value?

11 A. Okay. Let's go back to the premise of the
12 definition of orderly liquidation --

13 Q. Okay.

14 A. -- and just read that and then we can talk
15 about the components of it. So that would be on H-56.
16 No, H-55. (As read) "Orderly liquidation value: A
17 professional opinion of the estimated most probable
18 price expressed in terms of currency and the subject of
19 the equipment could typically realize at a privately
20 negotiated sale, properly advertised, professionally
21 managed, by a seller to obtain over an extended period
22 of time, usually time is 6 to 12 months, as of the
23 effective date of the appraisal. Further, the ability
24 of the assets or groups to draw sufficient prospective
25 buyers to ensure competitive offers is considered. All

1 assets are to be sold piecemeal as-is basis, purchaser
2 responsibility -- purchaser responsibility of removal.
3 Any deletions or additions of assets could . . . and
4 monetary appeal are necessary to gain the price
5 indicated."

6 Q. Which page is that definition contained on?

7 A. H-55.

8 Q. And is that the definition provided by the
9 American --

10 A. Well, that's the appraisal --

11 Q. -- Society of Appraisers?

12 A. -- Key Auctioneers, which is another
13 authoritative source.

14 Q. So let me ask you if the definition I'm about
15 to read is your understanding of the definition of
16 orderly liquidation value provided by the American
17 Society of Appraisers, and that is: "An opinion of the
18 gross amount expressed in terms of money that typically
19 could be realized from a liquidation sale given a
20 reasonable period of time to find a purchaser or
21 purchasers with the seller being compelled to sell on an
22 as-is where-is as of specific date."

23 A. Yes. I think the only difference between that
24 and this might be that this one says that it usually
25 takes 6 to 12 months; that says reasonable period of

1 time. I think the other is --

2 Q. So I recognize that both may be relevant and
3 helpful, but I do want to make sure we're comparing
4 apples to apples, because you have provided a definition
5 of forced liquidation value, and you have rendered your
6 opinion based on a definition of forced liquidation
7 value that is taken from the American Society of
8 Appraisers; is that correct?

9 A. I used the forced liquidation value of the
10 appraisal Key Auctioneers society.

11 Q. I want to ask you why you have provided a
12 definition of the term of "forced liquidation value" on
13 page 1 -- strike that.

14 On page 1 of your report, you have stated:
15 "For purposes of this analysis, forced liquidation value
16 is defined by the American Society of Appraisers as the
17 price that would be realized from a properly advertised
18 and conducted public auction with the seller being
19 compelled to sell with a sense of immediacy on an as-is
20 where-is basis as of a specific date."

21 Is that the standard that you are opining
22 upon today?

23 A. Yes. And I also went to the definition of the
24 auctioneers of that, so you --

25 Q. Which definition have you used in rendering

1 your opinion?

2 A. The definition I list here. They're
3 essentially the same definition.

4 Q. So let's kind of put the technicalities of the
5 definitions aside for purposes of this question. I just
6 want to know, how does forced liquidation value compare
7 to orderly liquidation value or fair market value?

8 A. Forced liquidation, everything goes on an
9 auction basis; and orderly liquidation, you're given
10 time. My experience with -- sometimes with orderly
11 liquidation, you have costs involved in orderly
12 liquidation, so you have the management cost of
13 liquidating the inventory; you have the holding costs,
14 the rent, the space of the inventory; you have maybe
15 other expenditures in there. So even though you might
16 be able to get two or three times the price under an
17 orderly liquidation, you have costs involved in the
18 orderly liquidation. And oftentimes by the time you
19 take out all those costs, you end up less than you would
20 get in a forced liquidation. That's why companies ask
21 us to analyze certain things based on forced or orderly,
22 based on time and holding costs, so --

23 Q. Do the definitions of forced liquidation or
24 orderly liquidation value or fair market value as
25 expressed by the American Society of Appraisers or those

1 definitions --

2 A. Okay.

3 Q. -- contained at page H-55 through H-57 of your
4 report take the costs into account in terms of the
5 defined values?

6 A. The forced liquidation I do not take in account
7 any costs.

8 Q. What about with respect to orderly liquidation
9 value?

10 A. What would those costs be, are you asking me?

11 Q. Are those factored into the definition of
12 orderly liquidation value? And please feel free to --

13 A. Well -- yeah. Those aren't factored into that
14 definition. I just know that there's costs involved in
15 orderly liquidations because I've valued them.

16 Q. Given the circumstances of this sale -- strike
17 that.

18 MR. FREEMAN: Object, nonresponsive.

19 Q. Given the circumstances of this sale, would an
20 orderly liquidation value be appropriate?

21 MR. SMITH: Objection, form and foundation.

22 You can answer.

23 A. I have no opinion on that.

24 Q. Why is that?

25 A. I think that's a legal question, isn't it? Do

1 the facts and circumstances indicate that an orderly
2 liquidation should've been used? I don't know. I don't
3 have an opinion on that.

4 Q. So you render no opinion on the appropriate
5 standard that should be applied, valuation standard.

6 A. For this circumstances?

7 Q. Correct. For the circumstances of this case.

8 A. Of this case.

9 Q. Yes, sir.

10 A. No, I have no opinion.

11 Q. Why is it that you cannot say that an orderly
12 liquidation value might be appropriate?

13 MR. SMITH: Objection to form and
14 foundation.

15 But you can answer.

16 A. I don't know. I mean, it's -- do the facts and
17 circumstances say that an orderly liquidation should've
18 occurred?

19 Q. Correct. That's the question.

20 A. You know, it was given to me that the facts --
21 I was told to assume that the facts and -- did not give
22 opinion that an orderly liquidation could occur.

23 Q. So the Department of Justice only wanted an
24 opinion based upon the forced liquidation value of the
25 inventory.

1 A. That's correct.

2 Q. In your report, you state that, "Due to the
3 nature of the company and the events occurring as of the
4 valuation date, we relied on the forced liquidation sale
5 for the subject interest."

6 What did you mean by "the nature of the
7 company and the events occurring as of the valuation
8 date"?

9 MR. SMITH: I'm sorry. Which page was
10 that?

11 MR. FREEMAN: Strike that question. We'll
12 come back to that.

13 Q. You performed a valuation of the inventory as
14 of a date in 2015; is that correct?

15 A. Yes.

16 Q. You based your analysis on tax returns from
17 2005 through 2010?

18 MR. SMITH: Objection, form.

19 Q. In part?

20 A. Based my other analysis based on tax returns
21 that were available or even -- that were available.

22 Q. Would you agree that you did not have the most
23 relevant financial data to perform a valuation?

24 A. What do you mean "a valuation"?

25 Q. The valuation that you performed in this case.

1 MR. SMITH: Objection, form.

2 Q. Would you agree that you did not have the most
3 relevant financial data in order to perform the
4 valuation you performed in this case?

5 A. Define "most relevant."

6 Q. Well, I ask this in the context of --

7 A. I mean, I'm looking at the inventory, right?
8 So the context of the inventory.

9 Q. Let me ask you, then, please explain to me
10 every way in which the taxpayers' Form 1120 tax return
11 was relevant to your analysis.

12 A. Well, the inventory in the Tone spreadsheets,
13 you know, would indicate higher in those years than what
14 they reported on their federal tax returns.

15 Q. So how were these tax returns relevant, or were
16 they not helpful at all?

17 A. No. They're a data point. They're information
18 what they're testifying, particularly the property tax
19 forms, which are more relevant. They go up through
20 2014.

21 MR. FREEMAN: Strike as nonresponsive.
22 Object as nonresponsive.

23 Q. I'm asking specifically about the federal
24 income tax returns Form 1120.

25 A. They are less important, okay, but they are a

1 relevant data point.

2 Q. Did they play a significant role in your
3 analysis?

4 A. They played a role as a relevant data point.

5 Q. If you removed them from your analysis, would
6 your valuation or opinion change?

7 A. No.

8 Q. Same question with respect to Tony and Mii, the
9 individuals' federal tax return Form 1040s that you
10 reviewed. If you removed those from your analysis,
11 would it change your opinion or valuation?

12 A. No. I mean, the personal tax returns --

13 Q. Yes, sir.

14 A. -- for the -- whatever years --

15 Q. The individuals.

16 A. -- they filed them?

17 Those only indicated that the business was
18 not a going concern.

19 Q. So that was really the only way those were
20 relevant to your analysis.

21 A. Just indicate that the business was not a going
22 concern.

23 Q. Okay. What about state franchise tax returns?
24 Did you review those or -- do you recall?

25 A. Yeah. They -- but the problem with those is

1 they didn't match the federal tax returns because you
2 only have to report the revenue in the state, so they
3 could've -- Tony and Mii, I didn't see -- they may have
4 had revenues from Arkansas or Oklahoma, and they didn't
5 report those on their franchise tax returns.

6 Q. Okay. So those franchise tax returns weren't
7 particularly relevant to your analysis; is that right?

8 A. Huh-uh.

9 Q. What about state sales tax returns?

10 A. No.

11 Q. Not particularly --

12 A. No.

13 Q. -- relevant to your analysis?

14 The county property reports that you
15 referenced, were those -- if you removed those from your
16 analysis, would they change your opinions or valuations?

17 A. I like the property tax returns. I think
18 they're a relevant data point. More than the federal
19 tax returns.

20 Q. If you removed those from your analysis, would
21 it change your opinion or valuation?

22 A. No, because my opinion that its range is
23 between 15 and 41, which would encompass those.

24 Q. And as far as their usefulness as a data point,
25 you have worked under the assumption that those

1 accurately reflect the inventory?

2 A. I'm working under the effect that they
3 testified when they filed those returns and signed them
4 that they accurately reflect it, but that doesn't
5 necessarily -- my opinion.

6 Q. And you have not reviewed a property tax report
7 from the year 2015, have you?

8 A. No, I have not.

9 Q. How exactly is the tax compliance of the
10 Plaintiff relevant to the value of the inventory? Or is
11 it?

12 A. It's their statement of what they believe the
13 value to be.

14 Q. So is it relevant to your analysis of the
15 valuation of that inventory?

16 A. It is a data point, but it did not -- it did
17 not -- did not --

18 Q. Ultimately --

19 A. -- encompass -- or ultimately result in my
20 answer based on my individual analysis.

21 Q. And how are the rent payments or other
22 obligations of the Plaintiff relevant to the valuation
23 of the inventory?

24 A. It tells me it's not a going concern.

25 Q. And how does that impact your analysis?

1 A. Well, it just -- it supports the fact that, you
2 know, if these assets were -- there's nothing else to
3 seize but the assets.

4 Q. Okay.

5 A. There's no intrinsic value. You can -- there's
6 no intangible value there.

7 Q. So I want to go to page 5 of your report in
8 Exhibit 35. And here under your Industry Outlook and
9 Performance, you've stated that, "Bridal gown" -- or
10 "Bridal store" -- let's see. "The bridal stores
11 industry grew 2.5 percent per year on average during the
12 five years to 2015."

13 How did this impact your analysis?

14 A. It just -- it just gives me an understanding of
15 where the industry was going, what was happening in the
16 industry, what had happened.

17 Q. Okay.

18 A. So this is sort of what has happened, and now
19 they look at, you know, what they see out in the future.

20 Q. Okay. In that same paragraph you state that,
21 "According to the latest data available from the Knot's
22 annual wedding survey, the average amount spent on
23 wedding gowns expanded from a low of \$1,099 in 2010 to
24 \$1,357 in 2014. This trend is expected to continue
25 through 2015 with revenue rising 2.3 percent to

1 \$4.3 billion during the year amid rising disposable
2 income."

3 How does this background information affect
4 your analysis or opinion?

5 A. It's my understanding -- it helps me understand
6 what's happening, but more importantly, other paragraphs
7 also, I see the industry has some growth to it; however,
8 there's a --

9 MR. FREEMAN: Object, nonresponsive.

10 Q. I'm asking specifically about these sentences I
11 read here.

12 A. Yeah. This is -- the industry's growing.

13 Q. You reflect that there's an average price for
14 wedding gowns in 2014 of \$1,357. How did that impact
15 your analysis?

16 A. It didn't.

17 Q. You did not take that into account?

18 A. No.

19 Q. Do you generally include information in a
20 report that is not taken into account in your analysis?

21 A. It's background information.

22 Q. You also referenced rising revenues,
23 2.3 percent projected increases in revenues. How did
24 that impact your analysis?

25 A. It didn't.

1 Q. And on page 6, you stated that, "According to
2 The Dessy Group, a manufacturer of bridesmaid,
3 social" --

4 A. Can you point me to the paragraph?

5 Q. Yes, sir.

6 A. Page 6? Okay. Got it.

7 Q. "According to The Dessy Group, a manufacturer
8 of bridesmaid, social occasion, flower girl, and social
9 designation wedding gowns, bridesmaid dresses generally
10 cost between \$75 and \$375, averaging at about \$200 per
11 dress."

12 How did this information impact your
13 analysis?

14 A. Oh, I could see that -- you know, we saw those
15 costs, but those are -- I mean, it did not impact.

16 Q. And how did the average dress price of \$200 in
17 that category impact your analysis or opinion?

18 A. It's relevant data when you look at what some
19 of these wholesale prices are for dresses, 148 to 395,
20 so . . .

21 Q. They were in line with --

22 A. They were in line. We haven't had too much
23 inflation during, you know, 2010 to 2015. There hasn't
24 been much inflation. So you don't -- you haven't seen
25 an acceleration in pricing of the wholesale value of

1 these dresses, so this is sort of relevant.

2 Q. Okay. On pages 5 and 6, you've referred to
3 marriage trends, particularly among millennials.

4 A. Uh-huh.

5 Q. How did these trends affect the value of the
6 inventory in 2015?

7 A. Again, this section is to get you an
8 understanding of what's happening in the industry. What
9 it's telling me is these trends may have affected Tony
10 and Mii as more and more millennials are not getting
11 married, as more and more of the markets are going to
12 online. So I'm not seeing the standalone
13 bricks-and-mortar -- it's not telling me that the
14 standalone bricks-and-mortar have a huge future. I
15 mean, even David's Bridal went bankrupt last month
16 because it has too heavy costs in bricks and mortar.

17 Q. We're talking about the value as of 2015,
18 correct?

19 A. Correct.

20 Q. The data reflected in this Section 3 is
21 national data, is it not?

22 A. Yeah.

23 Q. Have you made any adjustments whatsoever for
24 regional differences?

25 A. No. I don't think that'd be necessary.

1 Q. Have you made any adjustments whatsoever to
2 account for a particular socioeconomic group that may
3 frequent Mii's Bridal?

4 A. No.

5 Q. But you don't believe those changes would have
6 any impact?

7 A. No.

8 Q. Why is that?

9 A. Because Mii's Bridal was not a going concern.

10 Q. If you were to change that assumption and
11 assume that Mii's Bridal was a going concern as it had
12 been for the last 35 years, might those changes in
13 information impact your valuation?

14 A. No.

15 Q. And do you know -- do you have an opinion on
16 how regional differences in the North Dallas area or
17 North Texas area or Dallas-Fort Worth area, how those
18 might change the figures that are set forth in this
19 national data you've provided?

20 A. No.

21 Q. And do you have any idea how focusing on a
22 particular socioeconomic group might impact the data
23 that you've set forth in this Section 3?

24 A. I did not analyze that. But I could see Tony
25 and Mii's was struggling.

1 MR. FREEMAN: Objection, nonresponsive.

2 Q. You've spoken about -- or you've opined about
3 dress preservation. I believe your analysis starts on
4 page 7 of your report or is contained on page 7. What
5 do you know about dress preservation?

6 A. Only what I've learned in this case and only
7 what my wife has done with her wedding dress, okay?

8 Q. So you have a statement in this Section 3.2
9 that --

10 A. There is no --

11 Q. -- "There has been no evidence" --

12 A. -- "no evidence" --

13 Q. -- "to show that the inventory at Tony and
14 Mii's had been cleaned or stored in such a way as to
15 minimize that amount of damage over time. If the
16 subject interest were not stored properly to lessen
17 physical deterioration, a large discount to value would
18 be warranted."

19 First of all, what do you mean by "a large
20 discount to value would be warranted"?

21 A. Well, according to the preservation industry,
22 storing in polyethylene bags is really bad for a dress.
23 And the longer and longer it's stored in there, the more
24 and more the fibers of the dress are broken down, the
25 elasticity [sic] is broken down, discoloration occurs, and

1 all of that. So that's what -- that's what they're
2 saying here. And so I'm looking at what the
3 preservation industry is saying.

4 And let me -- we'll agree they're
5 self-serving, aren't they? That's what they're in the
6 business of.

7 Q. Sure.

8 A. Okay. So however, these dresses have been
9 stored for a very long time in polyethylene bags as was
10 evidenced by the pictures.

11 Q. So it's your understanding that these dresses
12 in Mii's Bridal were stored in polyethylene bags?

13 A. The plastic bags, yes. They were not cloth
14 bags.

15 Q. Okay. And so therefore you've come to the
16 conclusion that the dresses were not in good condition?

17 A. I'm coming -- I'm coming to the conclusion that
18 the preservation industry says that most likely you're
19 going to have problems with those dresses.

20 Q. Did you, in fact, apply the large discount that
21 you have referenced here in your analysis?

22 A. I applied the discounts based on the age of the
23 product, how long it's been sitting on the shelf.

24 Q. Not its physical condition?

25 A. I am looking at the age on the shelf and

1 indicative of what the physical condition and
2 obsolescence would be of that product.

3 Q. So the age is a proxy for the condition in your
4 analysis, the physical condition.

5 A. Yes.

6 Q. So --

7 A. One of the proxies.

8 Q. And obsolescence.

9 A. And that the turnover ratio was very, very low
10 on these products.

11 Q. Okay. So the large discount that you have
12 referenced here in paragraph 3.2, you did, in fact,
13 apply that large discount to render your opinion.

14 MR. SMITH: Objection, form.

15 A. I applied -- this was only one of the factors
16 to take into account, okay, not the factor.

17 Q. But did you, in fact, take this --

18 A. I took --

19 Q. -- into account?

20 A. -- that into account.

21 Q. So you have accounted for the large discount,
22 and perhaps more.

23 A. No. No. I think I accounted for a reasonable
24 discount.

25 Q. Well, you referred to a large discount here.

1 A. Seventy-five percent's a large discount.

2 Q. I think it is.

3 A. Okay.

4 Q. Yeah.

5 A. Right.

6 Q. Yeah. Eighty-five percent is as well. I'm
7 asking, have -- the large discount that you -- I'm using
8 your words, but the large discount you refer to, you
9 have, in fact, already applied that, correct?

10 A. Yes.

11 Q. Okay. And that is -- the application of that
12 discount was based upon the assumption that there was
13 obsolescence and that the inventory was not in good
14 physical condition, and those, perhaps, were inferred
15 from the age of the inventory. Have I stated that
16 correctly?

17 A. You have. Can we turn to reference B-5,
18 Section B-5, Schedule A-3? So what I'm looking at here
19 is -- you got it?

20 Q. I do.

21 A. And you're right. I don't have data here,
22 okay?

23 Q. By "here," you're referring to 2011, '12, '13,
24 and '14?

25 A. '14, yeah.

1 Q. Okay.

2 A. No tax returns -- no tax returns were prepared
3 for those periods. So I guess they were totally blacked
4 out as financial data, right?

5 Q. Okay.

6 A. Do you have data for those periods?

7 Q. I have some data for those periods.

8 THE WITNESS: Were we provided data for
9 those periods?

10 MR. SMITH: (Inaudible.)

11 THE REPORTER: I can't hear you.

12 MR. SMITH: I've given you everything we
13 have relative to those periods.

14 A. Do you have data that we don't have?

15 Q. I don't believe so.

16 A. Okay. What data do you have that relates to
17 those periods for the corporate data?

18 Q. I don't recall all of it, but I'm going to ask,
19 under the Rules of Evidence, I've got to ask the
20 questions rather than you. So let's just go to your
21 Schedule A-3.

22 A. Okay. What's interesting about the historical
23 trend is they tend to purchase what they sell. See
24 how -- and that -- I don't -- I wish I had the other
25 periods to look at. But -- so Tony and Mii, up until

1 2010, had a very history of purchasing almost
2 identically to what they're selling, okay? I can't
3 conclude --

4 Q. That it's the same inventory?

5 A. But --

6 Q. That's what you've inferred?

7 A. -- as a forensic accountant, it would indicate
8 that they're on a order process basis, order, buy, sell,
9 you know, or sell, order, buy.

10 Q. But you would admit that it is a further
11 assumption to assume that the same sell item is the most
12 recent that's been purchased; in other words, it appears
13 you have simply essentially assumed a sort of FIFO
14 approach here.

15 A. Yeah. And that's typically the way -- people
16 don't want the old stuff, okay? They want the new
17 stuff.

18 Q. Do you base --

19 A. This tells me --

20 Q. -- that conclusion --

21 A. This tells me that they are not building up
22 inventory. Do you see this? It tells me that they --
23 how are they building up inventory? How --

24 Q. Let me ask you, do you base your conclusion
25 that people want the new stuff rather than the old stuff

1 on your years of experiences in the bridal gown
2 industry?

3 A. No.

4 Q. All right. Let me -- let me just go back to
5 the dress preservation issue. To be clear, you have
6 already applied the discount that you've referenced in
7 paragraph 3.2.

8 A. Yes.

9 Q. Would your analysis or valuation change if you
10 were informed that the dresses were in new condition?

11 A. Depend on what category.

12 Q. I'm asking if your opinion would change if you
13 were given new facts to assume.

14 MR. SMITH: I'm just going to object to the
15 form of the question.

16 A. I don't know. I'd have to analyze those facts.

17 Q. Okay. So let's say that the new fact that
18 you're given to assume is that the inventory was in new
19 condition.

20 A. Okay.

21 MR. SMITH: I'm going to object as to form
22 again.

23 But you can answer.

24 A. All right. Let me tell you, this is only one
25 of the metrics to which we -- I analyzed the inventory.

1 The other methods were the age of the inventory; that
2 turnover is occurring, what I could see from the data
3 provided, okay; and that sales of the -- sales have been
4 trending down. If you go to the tax returns --

5 Q. Now, again, this data is through 2010, correct?

6 A. Well, the tax returns are through '16, I think.
7 The personal tax returns.

8 Q. But you've indicated that those were not
9 particularly relevant to your analysis.

10 A. No.

11 Q. I want to go back -- I'm not asking about other
12 factors; I'm asking specifically here with respect to
13 dress preservation. Now, I want to understand if your
14 analysis and valuation -- it's a yes or no question --
15 if your analysis and valuation would change if you were
16 given a new assumption, a new factual assumption, that
17 the inventory was in good condition.

18 MR. SMITH: Same objection as to form.

19 But you can answer.

20 A. May or may not. I don't know what the relevant
21 facts are or who is determining that.

22 Q. But we can both agree you've taken significant
23 reductions in the value under your methodology based
24 upon your understanding that the inventory was not in
25 good condition.

1 A. That is only one of several factors, okay.

2 Q. But you have taken a reduction based upon that
3 factor -- in part, based upon that factor?

4 A. That was a consideration.

5 Q. And so I'm asking if the --

6 A. But not the sole consideration.

7 Q. Now I'm asking if it would impact your
8 analysis -- and I have to assume it would, if we're both
9 being straightforward here. I have to assume that it
10 would impact your analysis if you were to make a new
11 factual assumption that the inventory was in good
12 condition.

13 MR. SMITH: Objection as to form.

14 You can answer.

15 A. It may not.

16 Q. It may not.

17 A. It may not.

18 Q. If you were --

19 A. And do you want me to tell you why?

20 Q. I do, but I'm going to ask you a couple more
21 questions first.

22 A. Okay.

23 Q. If you were to be given a new factual
24 assumption that the inventory was in retail sell
25 condition, would that change your analysis?

1 MR. SMITH: Same objection as to form.

2 But you can answer.

3 A. Depends on what the situation was.

4 Q. The situation presented in this case.

5 A. No, what the retail situation is. Yes, people
6 bought it to resell it. So I know it's in retail --
7 they're not keeping it as collectors' items, so . . .

8 Q. Right. So let's ask, if you were given a new
9 factual assumption that the inventory was in new
10 condition, would that change your analysis?

11 MR. SMITH: Same --

12 A. And you wanted --

13 MR. SMITH: Hold on.

14 Same objection.

15 You can answer.

16 A. And my valuation methodology would move to in-
17 use value? In-use? In-use?

18 Q. You're the expert. I'm asking --

19 A. Okay.

20 Q. -- what you'd do with that --

21 A. Okay.

22 Q. -- new factual information.

23 A. Remember we talked about in-use earlier?

24 Q. I do.

25 A. Okay. So I think what you're talking about is

1 saying give you the assumption, Mr. Hastings, that these
2 inventory is in use, okay --

3 Q. Would that perhaps --

4 A. -- would that perhaps. But I'm changing
5 valuation approaches. It would be different if it's
6 orderly liquidation. It'd be different if it's in-use.
7 It would be different if it was fair market value
8 method. So yes, I would change my valuation if I did an
9 in-use valuation.

10 Q. So what you're telling me is: One, you're
11 telling me, Hey, you're stupid, Jason; but two, you're
12 telling me you would --

13 A. You're not --

14 Q. -- those --

15 A. You're not stupid, Jason. I'm sorry if I
16 inferred that.

17 Q. No. I'm just very self-conscious.

18 Now, you're telling me that those new facts
19 would actually change the model under which you would
20 value it.

21 A. Yes.

22 Q. Okay. Now, you've cited in your dress
23 preservation section to a Web site called
24 affordablepreservation.com. That site -- and while I do
25 agree with you these are very self-serving sites that

1 are obviously trying to get people to engage in
2 purchasing their products or services, but that site
3 states that proper preservation techniques could keep
4 dresses intact for many years, does it not?

5 A. Yeah.

6 Q. All right. I want to talk about the valuation
7 approaches. You've listed three approaches in your
8 report, three potential approaches: the income
9 approach, the market approach, and the cost approach.
10 Which is the preferred method? All things equal.

11 A. Well, the income approach and the market
12 approach is -- are really for going concern analysis, so
13 I quickly eliminated that approach.

14 Q. The income and the market approach?

15 A. Yeah.

16 Q. All things equal, though --

17 A. So part -- so I concluded that the cost
18 approach was . . .

19 Q. Well, I see that. But all things equal, is one
20 of those three approaches generally a preferred
21 approach?

22 A. For going concern?

23 Q. For valuing an asset.

24 MR. SMITH: Objection --

25 A. Not necessarily, no.

1 Q. Have you ever testified that one is a preferred
2 method or approach?

3 A. No.

4 Q. Have you ever expressed an opinion, formal or
5 informal, that one a is preferred method?

6 A. No. I've testified many times that using
7 multiple approaches, income approach and market
8 approaches for a going concern, is better if you can
9 correlate them.

10 Q. But you've not used more than one approach in
11 this case.

12 A. No. Because I found that the income and market
13 approach were not applicable because this was not a
14 going concern.

15 Q. So can you list all of the reasons -- or
16 perhaps you just have -- as to why the market approach
17 was not appropriate?

18 A. I just need to start out with one reason first:
19 Is this a going concern, yes or no? Okay. No. Stop.
20 It's not a going concern. If it was yes, then I would
21 go down to the next level, okay? What is -- what is the
22 market out there and are there any comparable markets,
23 are there any transactions in that market, can I find
24 any trans- -- so there's a whole nother set of questions
25 on whether the approach is -- but once you start with

1 the first primary question of is this a going concern,
2 the income approach and market approaches are gone.

3 Q. If you were informed that a buyer sought to
4 purchase the inventory several months before this
5 seizure, would that have been relevant to your analysis?

6 A. I don't know. I don't know which -- what the
7 terms of the buyer was. And whether it would be
8 relevant or not. I don't know.

9 Q. If you were to learn that it was a cash
10 purchase of inventory, would that?

11 A. Not yet.

12 Q. If you were to learn that it was to purchase
13 the inventory on a note and pay it out over time, would
14 that be relevant?

15 A. Not yet.

16 Q. What do you mean by "not yet"?

17 A. I don't -- I don't know the particular facts.

18 Q. Well, let's just make up a number for purposes
19 here. Let's assume that someone offered to purchase the
20 inventory for \$500,000. Would that be relevant to your
21 analysis?

22 MR. SMITH: Objection, form.

23 But you can answer.

24 A. No.

25 Q. No.

1 A. No.

2 Q. Why not?

3 A. Because that's not the facts that were
4 presented to me.

5 Q. I'm asking you to make a new factual assumption
6 in asking whether that would be relevant to your
7 analysis.

8 A. Not under the forced liquidation method.

9 Q. So are you, in a roundabout way, telling me
10 that that would indicate that the forced liquidation
11 method would not be appropriate under those
12 circumstances?

13 A. That is not what I'm saying.

14 Q. Are you telling me that you would not consider
15 using the market approach under those circumstances?

16 A. I still would not use the market approach.

17 Q. Even though you believe it's better to
18 correlate values or look at multiple different
19 approaches?

20 A. This was not a going concern. There was no
21 market available.

22 Q. But I'm asking you to assume that there was a
23 market available because there was an offer to purchase
24 it. I'm asking you to make that factual assumption.

25 A. What are -- were those documents presented to

1 us?

2 Q. I don't know whether they were or not, but I'm
3 asking you to make that factual assumption.

4 A. I'd have to -- I'd have to analyze the offer
5 and the relevancy and the willingness of the buyer and
6 the seller, okay?

7 Q. Okay. But assume that --

8 A. Look at the terms --

9 Q. Assume you have --

10 A. -- of the offer.

11 Q. Assume you have a valid offer to purchase the
12 inventory. And I threw out a number, \$500,000. I'm
13 asking whether, if you had an offer to purchase the
14 inventory for \$500,000 in the months leading up to the
15 seizure, would that impact your analysis? And I
16 understand your testimony to be no.

17 A. No.

18 Q. You've listed here in paragraph 4.3 due to the
19 circumstances surrounding the company as of the
20 valuation date that you "determined that the replacement
21 cost method under the cost approach was the most
22 appropriate for the valuation of the subject . . ."

23 What do you mean by "due to the
24 circumstances surrounding the company"?

25 A. That the company was not a going concern.

1 Q. And that's what you mean by --

2 A. Yes.

3 Q. Okay. Can you tell me all of the reasons why
4 the cost approach was appropriate?

5 A. Because the income and market approaches were
6 not, and the only thing left were either reproduction
7 cost method, which is for people who actually
8 manufacture, or replacement cost. They did not fit
9 reproduction cost method, but they did fit replacement
10 cost method.

11 Q. Okay. And going back to my question about
12 whether the new -- a new factual assumption would change
13 your analysis, is there any amount of an offer that
14 would have changed your analysis? So the factual
15 assumption that I gave you, to assume that there was an
16 offer to purchase the inventory, is there any amount
17 that that offer could've been for that would have
18 impacted or changed your analysis here?

19 A. It's not the amount of the offer; it's the
20 character of the transaction itself that would have to
21 be analyzed, okay?

22 Q. But your testimony is: Even if there was an
23 offer like that, it would not impact your opinion on the
24 value.

25 A. Right.

1 Q. Okay. Can you explain the cost approach to me?

2 A. The replacement cost approach?

3 Q. Yes, sir. Well, the cost approach and then --

4 I understand the replacement cost method to be a

5 potential approach to the cost approach; is that

6 correct?

7 A. Right.

8 Q. So cost approach first.

9 A. The two major categories of the cost approach

10 are reproduction cost, what it would cost me to

11 reproduce this cup here; and the other cost is, well,

12 what can I go out and buy this ten-year-old paper cup

13 for or replace it for.

14 Q. And it's this latter methodology --

15 A. Yes.

16 Q. -- that you utilized.

17 A. Yes.

18 Q. The cost method, it assumes no intangible

19 value, correct?

20 A. Correct.

21 Q. And it assumes no value based upon reputation

22 or goodwill?

23 A. There is no intrinsic value or no goodwill

24 value in the cost approach.

25 Q. And the loss of a value as a going concern, it

1 doesn't account for any value there. Or it assumes
2 there is no value there.

3 A. Lack of -- a nongoing concern business has no
4 intrinsic value and has no goodwill value.

5 Q. Is there any more you want to explain to me
6 about the replacement cost method?

7 A. Not at this time.

8 Q. Is -- can you tell me why or how you determined
9 that that approach was the most appropriate to value
10 this inventory?

11 A. Well, first I started out looking at and
12 eliminating the two other approaches, and then I was
13 left with the cost approach. I looked at the two major
14 methods, and I determined that replacement cost. I am
15 looking at whether I -- what I would be able to replace
16 these for.

17 MR. FREEMAN: Do y'all want to take a
18 break?

19 MR. SMITH: Yeah, I could use one,
20 but . . .

21 THE WITNESS: I need to stretch a little
22 bit.

23 MR. FREEMAN: Why don't we go off the
24 record.

25 (A break was taken from 10:51 a.m. to

1 11:02 a.m.)

2 MR. FREEMAN: We're back on the record.

3 Q. (BY MR. FREEMAN) In paragraph 5.1 of your
4 report, you've stated that, "We made adjustments to the
5 subject interest value based on obsolescence and the
6 limited buyer market available for forced liquidation
7 sales."

8 By "obsolescence," do you refer to the
9 physical condition of the dresses?

10 A. No. That's by the age of the dresses. And it
11 could -- and obsolescence does include age and
12 physical -- potential physical condition.

13 Q. So combination?

14 A. Combination. As we talked earlier, the
15 opinions of the percentages were based on several
16 factors.

17 Q. Okay. And why was there a limited buyer
18 market?

19 A. Well, just by the nature of a forced
20 liquidation. There has to be people plugged in hunting
21 for it.

22 Q. That's an assumption of the --

23 A. Force --

24 Q. -- model that you used?

25 A. Yeah, of the model.

1 Q. Okay. Now, are those sorts of adjustments for
2 a limited buyer market, are those only appropriate when
3 you assume a bulk sale, or are they appropriate across
4 the board under this model?

5 A. I think appropriate for both.

6 Q. Okay. How did the adjustments for obsolescence
7 and the limited buyer market affect your valuation?

8 A. It reduced it from the wholesale cost.

9 Q. So those are the percentage reductions --

10 A. Yes.

11 Q. -- that we'll talk about in a little bit.

12 Now, on page 12 and throughout your report,
13 you've indicated that you reviewed several relevant data
14 sets. One is handwritten notes regarding the inventory
15 with wholesale and retail values that was created by the
16 company; is that correct?

17 A. Yes.

18 Q. And you've titled those or referred to them as
19 the "Detailed Notes."

20 A. Yes.

21 Q. Second, handwritten notes regarding the
22 inventory with retail values as of February 20th, 2014,
23 that were created by the company; is that correct?

24 A. Yes.

25 Q. And you've titled those the "02.20.2014 Notes"

1 or February 20, 2014, notes; is that correct?

2 A. Yes.

3 Q. And an Excel spreadsheet with inventory data
4 that was created by Tone Thangsongcharoen based on a
5 hand count of the inventory, and you've titled that the
6 "Tone Spreadsheet"; is that correct?

7 A. Yes.

8 Q. And also the certificates of sale of seized
9 property from the seizures and sale conducted on
10 March 4th, 2015.

11 A. Yes.

12 Q. Now, the February 20th, 2014, notes, what
13 was -- did you ultimately use this data set in your
14 valuation?

15 A. No, because there weren't any style numbers on
16 the inventory items, and I couldn't compare them between
17 databases, so I determined that that was not a relevant
18 data point.

19 Q. So you didn't rely on it?

20 A. No, because it . . .

21 Q. Indeed, you stated in paragraph 5.2 that, "In
22 analyzing the various inventory lists provided by the
23 taxpayer, we noted discrepancies in several areas,
24 including retail value provided on the handwritten notes
25 in Tone's spreadsheets."

1 Were there other major discrepancies that
2 you recall?

3 A. I think those are the major ones.

4 Q. Do you recall if the handwritten notes provided
5 higher values or lower values?

6 A. I don't know. You want to go look at some?

7 Q. Sure.

8 A. Generally, they were just different. Some are
9 lower, and some are higher, okay? And then -- and I'll
10 tell you what, you can do this if you want on your own.
11 It's easier. But section "I" that I gave you . . .

12 Q. Okay.

13 A. So -- and if you see the notes on the side --

14 Q. Yes, sir.

15 A. -- so these are notes of maybe some
16 discrepancies between the handwritten notes and the Tone
17 spreadsheet, okay? So remember, if you go -- go to the
18 last page of -- go to page I-21.

19 Q. Okay.

20 A. So do you -- does that number at the bottom,
21 597,752, ring a bell?

22 Q. Yes, sir.

23 A. That's the grand total of the retail price of
24 the Tone spreadsheets, right?

25 Q. Okay.

1 A. So this is an exact replica of the Tone
2 spreadsheet, and this is the document that ties the
3 handwritten notes to the Tone spreadsheet. And this is
4 what Mital Gupta is very good at putting together.

5 Q. It is impressive.

6 A. Okay. So what happens is -- you know, part of
7 it is you can look at -- in I-2 -- I-2. You there?

8 Q. Page I-2?

9 A. Yeah.

10 Q. Okay.

11 A. You got it?

12 Q. I do.

13 A. And if you look on the right-hand side, you'll
14 see a number, says D-20 on the second from the bottom.

15 Q. Yes, sir.

16 A. You see it?

17 Q. I do.

18 A. And come back and look -- read what it says:
19 "Item has been marked out on the notes," okay? So --
20 and you can go to the notes on page D-20 and see that
21 same exact item on the handwritten notes, same price,
22 same everything -- same retail price. Remember, Tone's
23 sheet did not have wholesale costs on it. So this is
24 where we matched up the handwritten notes wholesale
25 cost, but we didn't match up the item came -- the item

1 number, the description, the retail price, and then we
2 were able to get the wholesale --

3 Q. Okay.

4 A. -- cost on that, okay? But this handwritten
5 sheet showed that as marked off, like, sold, given away,
6 or just not there anymore, okay? So that's what this
7 spreadsheet does.

8 And then there's some that are
9 discrepancies on price, okay?

10 Q. Uh-huh.

11 A. And so we note a few on those were price. None
12 of it was material --

13 Q. Okay.

14 A. -- okay?

15 Q. Appears they go both directions --

16 A. Yes.

17 Q. -- but not a big difference.

18 A. Yes.

19 Q. Okay. Do you have a spreadsheet of this nature
20 summarizing the February 20, 2014, notes?

21 A. No. Because those -- those you couldn't
22 correlate to anything.

23 Q. Okay.

24 A. I mean, we did tell you the total value of
25 them, but without being able to correlate with other

1 data points, particularly the Tone spreadsheet, which
2 we -- which we thought -- we started out as that is our
3 major document we're working with, okay?

4 Q. Okay. Did that inability to correlate those or
5 any discrepancies you saw there, did it decrease your
6 perception of the credibility of those February 20th,
7 2014, notes?

8 A. I'm not -- so if you go to page 2 of my report,
9 the 2014 notes -- handwritten notes total \$255,000 were
10 the costs in there, but because I couldn't correlate
11 them with detailed notes or Tone's spreadsheets or any
12 other data set, I decided that they were not as useful,
13 okay?

14 Q. Did you have any concerns about their
15 reliability? Is that what you mean by "useful"
16 or . . . ?

17 A. No. I'm not sure -- I didn't -- not the
18 reliability but the usefulness in analyzing --

19 Q. Okay.

20 A. -- the actual wholesale cost because I couldn't
21 match them -- remember, I'm starting off with -- I'm
22 trying to prove up Tone's spreadsheet because that's
23 what Tone and his valuation expert used, okay? So
24 that's what I want to prove up, and that's what I want
25 to work off of.

1 Q. Okay.

2 A. These 2020s didn't help me because I couldn't
3 tie any data from the 2020s to Tone's sheets, okay?

4 Q. Okay.

5 A. But I could from the detailed notes. I could
6 tie most of them to the Tone sheets.

7 Q. Got it. Would it have helped if there was a
8 third-party inventory conducted?

9 A. You mean -- you mean other than Tone?

10 Q. Yeah, other than Tone.

11 A. I don't know.

12 Q. Would that have been helpful to your analysis?

13 A. I don't know. Depend on how it was done, when
14 it was done.

15 Q. If the IRS had conducted an inventory, would
16 that have been helpful to your analysis?

17 MR. SMITH: Objection, form.

18 But you can answer.

19 A. I mean, they did. They --

20 Q. As part of the sale?

21 A. Yeah. I mean, they had batches written down
22 and all of that.

23 Q. If they had conducted a more detailed
24 inventory, would that have been helpful to you?

25 A. I don't think it would be any more helpful than

1 the Tone spreadsheet.

2 Q. Okay.

3 A. Because I'd still be going back correlating to
4 handwritten notes.

5 Q. How else did you use the initial handwritten
6 notes? The detailed notes. Were they used in any other
7 manner?

8 A. The detailed notes showed wholesale costs.
9 Tone's spreadsheet did not show wholesale costs, okay?
10 The only thing they looked is -- with the detailed notes
11 is to find what's on the detailed notes to the Tone
12 spreadsheet; therefore, if I could correlate the model
13 number, the dress description, the designer, and the
14 sales price to the Tone notes, if all of those tied,
15 voilà, I had my wholesale value.

16 Q. Okay.

17 A. So that's the purpose of the handwritten notes
18 is to prove up the wholesale cost of the Tone
19 spreadsheet.

20 Q. Okay. Well, speaking of Tone's spreadsheet,
21 did you cross-reference any of the style numbers with
22 any vendors?

23 A. No. Remember, I -- as we talked earlier, I
24 tried to do that, and it just became fruitless. We even
25 called some of the designers, and they couldn't --

1 they -- their records didn't go back that far.

2 Q. Okay. Did you ask about any current pieces of
3 inventory when you called them? Are you saying their
4 records didn't go back to 2014?

5 A. Twenty -- right.

6 Q. Okay.

7 A. I mean, they don't -- yeah.

8 Q. So they didn't cover any of the years.

9 A. Yeah. I mean, it wasn't -- you know,
10 interviewing the designers on these quickly became
11 fruitless. You know, I had Erin Buck, she'd call and
12 talk and try to find out, give them SKU numbers and all
13 this, and they're just like, you know, leave me alone.

14 Q. Did you ever physically view the inventory?

15 A. Only pictures.

16 Q. Was the inventory in poor condition?

17 A. I couldn't tell from the pictures.

18 Q. So I want to talk about this standard forced
19 liquidation value. Forced liquidation value is defined
20 by the American Society of Appraisers as "the price that
21 would be realized from a properly advertised and
22 conducted public auction with the seller being compelled
23 to sell with a sense of immediacy on an as-is where-is
24 basis as of a specific date."

25 I take that definition from paragraph 1.3

1 of your report. I understand you applied this standard
2 because that was the scope of what you were asked to
3 do --

4 A. Yes.

5 Q. -- correct?

6 Do you have any opinion on how this
7 standard, if at all, is related to Section 6336 of the
8 Internal Revenue Code?

9 MR. SMITH: Objection, form.

10 A. I have not analyzed that. That's a good
11 question.

12 Q. I want to talk about this phrase "properly
13 advertised and conducted public auction sale." What
14 does that mean?

15 A. That it was advertised, that there were
16 attendees, and -- attendees from the public, and the
17 seller was compelled to sell. So it was advertised; six
18 people showed up, I think, six or seven, I don't recall
19 right now; and four purchasers.

20 Q. What is a public auction sale?

21 A. That means it's advertised to the public and
22 that the public is welcome. Anybody in the public who
23 read the advertisement is welcome to come.

24 Q. Now, is it just advertised, or is it properly
25 advertised?

1 A. Well, the definition says "properly."

2 Q. What does "properly advertised" mean?

3 A. I guess it's a subjective term depending on
4 what type of auction you're doing.

5 Q. So with the type of auction here, what does
6 "properly advertised" mean?

7 A. Well, we have an IRS auction that posts
8 potential seizures on their Web site, and we have a
9 buyer group that follows that, okay? And there are
10 buyers out there that make their living following that,
11 so . . .

12 Q. Is that your -- is that an assumption that
13 you've made, or do you know that from personal
14 knowledge?

15 A. Oh, I've been -- I've had clients involved in
16 auctions.

17 Q. Okay.

18 A. So I have experience with it.

19 Q. And so what exactly does "properly advertised"
20 mean in the context of this case?

21 A. That description of the product, the posting;
22 that it would be auctioned at some future date and that
23 they could follow the notice here for a period of time,
24 and in this case, six months; and that those who wish to
25 purchase this follow it and show some indication of

1 interest.

2 We get involved in -- been involved in
3 auctioning of, back in the downturn, rig equipment, oil
4 equipment, okay? Well, you don't go advertise in bride
5 magazine to sell oil rig equipment, right? But you
6 might -- you might -- if it was an IRS foreclosure, you
7 would advertise on the IRS Web site.

8 Q. What authority is there to support your opinion
9 about the meaning of the phrase "properly advertised"?

10 A. I don't -- I don't know of an authority.

11 Q. Have you ever provided an opinion about whether
12 an auction was properly advertised?

13 A. No.

14 Q. What does "properly conducted public auction
15 sale" mean?

16 A. That there's an opportunity, place for the
17 attendees to bid, to review the product, and to
18 participate.

19 Q. Okay.

20 A. Product review, participation.

21 Q. Participation.

22 So the right to participate to the
23 public --

24 A. Right.

25 Q. -- and the right to view the inventory.

1 A. Inventory.

2 Q. The key --

3 A. And an orderly method for the bidding process.

4 Q. Okay. And what authority supports your opinion
5 about the meaning of the phrase "properly conducted
6 public auction sale"?

7 A. Just my experience.

8 Q. Okay. Have you ever provided an opinion -- an
9 expert opinion on the meaning of "properly conducted
10 public auction sale"?

11 A. No.

12 Q. And I'm going to ask you to make an assumption
13 with me here. If you were to learn that one of the
14 government agents that participated in seizing the
15 property purchased items at the sale, would that be
16 consistent with a properly conducted public auction
17 sale?

18 MR. SMITH: Object as to form.

19 A. I wouldn't think it's inconsistent other than
20 what maybe -- any IRS rules or regulations that say it
21 isn't different, but I wouldn't think it would be . . .

22 Q. That wouldn't cause you any concern about the
23 integrity of the auction sale itself?

24 A. No.

25 Q. In the context of this case, if one of the

1 government agents that participated in seizing the
2 assets bought those assets, that would give you no
3 concern.

4 A. No. Because I think there was -- if that was
5 the only person there, that might be a concern. But
6 that wasn't the only persons there. There was enough
7 independent parties there.

8 Q. Were you, in fact, informed that a government
9 agent who seized the inventory actually purchased
10 inventory?

11 A. I am aware.

12 Q. You've stated that -- again, on page 14 -- that
13 it's your opinion -- "In my expert opinion, this
14 indicates a proper public auction as there were
15 sufficient potential buyers to ensure a competitive
16 bidding process."

17 Why does this indicate a proper public
18 auction?

19 A. We had six months' notice, we had indication of
20 interest, and we had six independent parties show up. I
21 looked at that as -- auctions I've been in, that's not
22 unreasonable.

23 Q. What does "competitive offer" -- what does
24 "competitive bidding process" mean?

25 A. That all parties involved in the auction knew

1 what other people were bidding. It's not a closed --

2 Q. That's what's necessary?

3 A. It's not a -- this was not a envelope auction,
4 okay? That I know what you offered, and I can come up
5 on that, and you know what I've offered, and --

6 Q. Okay. Have you ever testified that a public
7 auction ensured a competitive bidding process?

8 A. No.

9 Q. Have you ever rendered an expert opinion that a
10 public auction ensured a competitive bidding process?

11 A. No.

12 Q. Are there --

13 A. I have valued assets that would be sold at a
14 public auction to give the seller an idea of what to
15 expect out of a public auction.

16 MR. FREEMAN: Objection, nonresponsive.

17 Q. Are there other factors that could affect
18 whether there was a competitive bidding process than
19 those you have stated?

20 A. I don't know what they'd be at this time. I'd
21 have to research.

22 Q. Okay. How many buyers do you need to create a
23 competitive bidding process?

24 A. I don't think there's a set rule.

25 Q. I couldn't help but notice in your report

1 you've technically not provided an opinion that the
2 auction was properly advertised. Is it your opinion
3 that the auction was properly advertised?

4 A. I think in this circumstance it was as proper
5 as it could ever be.

6 Q. On page 14, you have stated that, "The 28 lots"
7 of inventory "sold for a total of \$17,480 to six buyers.
8 Of those buyers, five were considered third-party
9 arm's-length transaction parties with four purchasing
10 lots, including dresses, for a total of \$15,055."

11 What do you mean by "third-party
12 arm's-length transaction parties"?

13 A. That they were not family members or IRS.

14 Q. And what were you told about the buyers?

15 A. I don't -- you mean all the buyers?

16 Q. Yes.

17 A. I don't recall.

18 Q. Were you told that a -- an IRS agent purchased
19 inventory?

20 A. I think I saw that in the motions, pleadings.

21 Q. Were you -- did you ever discuss this with the
22 Government?

23 A. I don't recall.

24 Q. You don't recall that?

25 A. No.

1 Q. That's a very important piece of information, I
2 would think.

3 A. I don't -- didn't look at -- my assignment was
4 to value the dresses, so I'm looking more at who's
5 buying the dresses and what's going on with the dress
6 auction.

7 Q. Well, you've utilized the values realized at
8 the auction sale as a data point in your report,
9 correct?

10 A. Yes.

11 Q. And you have based those valuations on the
12 assumption that there was a properly advertised and
13 properly conducted auction sale, have you not?

14 A. Yes, I have.

15 Q. And you're telling me that it is not relevant
16 to those sets of assumptions whether an IRS agent
17 purchased assets at that public auction?

18 A. Not for my valuation assignment it is not.

19 Q. What if people were not allowed to enter the
20 auction? Would that impact your analysis?

21 A. I don't know. Don't know the circumstance.

22 Q. Well, let's assume that there was an individual
23 there who has sworn in a deposition that he wanted to
24 purchase all of the inventory and he was specifically
25 not allowed to enter the auction.

1 MR. SMITH: Object --

2 Q. Would that impact your analysis?

3 MR. SMITH: Objection, form.

4 A. Do I have that deposition?

5 Q. I don't know.

6 A. Did you have it? I guess you do.

7 THE WITNESS: Do we --

8 Q. The Government took the deposition. I --

9 A. Okay.

10 Q. -- have not been charged --

11 A. I'm not aware.

12 Q. -- with providing you with any depositions or
13 documents. I am asking you specifically, under that
14 factual assumption, which apparently has not been
15 conveyed to you, would that impact your analysis?

16 A. Again, I don't know, because I don't know the
17 circumstances.

18 Q. So you're telling me it would not impact your
19 analysis to learn that an individual was specifically
20 excluded from participating in the auction.

21 MR. SMITH: Objection, form.

22 A. I am telling you I cannot give you an opinion
23 based on the relevant facts that you have delivered me
24 in this last 30 seconds.

25 Q. Let's talk about on page 16 of your report, the

1 Liquidation Discounts. You've stated here that, "Under
2 an orderly liquidation, the company can afford to sell
3 off its assets to the highest bidder. It assumes an
4 orderly sale process in which the seller can take a
5 reasonable amount of time to sell each asset in its
6 appropriate season and through channels of sale and
7 distribution that fetch the highest reasonable price.
8 This would be over a reasonable time period, i.e., 90
9 days."

10 A. Yeah, I think that 90 days -- I don't know
11 where I -- I'd like to change that to 6 to 12 months
12 from -- I don't know why that got there.

13 Q. Well, if that's the definition contained in
14 the --

15 A. I think I -- I don't know for what reason I
16 added it. But it --

17 Q. So you're telling me your report is not correct
18 in this respect?

19 A. No. I'm just saying that this is -- this is --
20 this is a contended -- contended area, okay, of what
21 time frame is reasonable to sell.

22 Q. Can you tell me what this definition means?

23 A. What? Orderly liquidation?

24 Q. Yes, sir.

25 A. It means you have -- you've developed a

1 process, you've identified distribution and sales
2 channels, you've hired people to implement that, you
3 have developed a storage and pickup system, you have an
4 orderly process assigned to distributing the product.

5 Q. Okay. Did you author your written opinion
6 report?

7 A. Yeah.

8 Q. Did you review it multiple times?

9 A. Yes.

10 Q. Did you review it thoroughly?

11 A. I mean, there may be some -- yes.

12 Q. Did you review it thoroughly before signing it?

13 A. Yes.

14 Q. So under the definition contained in your
15 thoroughly reviewed, signed opinion, if a seller has 90
16 days to liquidate, would it be more appropriate to use
17 the orderly liquidation methodology or the forced sale
18 liquidation methodology?

19 A. If the seller were given 90 days, that might be
20 a case for an orderly liquidation.

21 Q. How long did you say that the assets had been
22 advertised for?

23 A. Six months.

24 Q. Okay. Is the IRS required to sell the assets
25 the same day that they're seized?

1 MR. SMITH: Objection, form and foundation.

2 A. I do not know.

3 Q. Are you aware that the IRS, in fact, has the
4 ability to seize property and sell it over a 90-day or
5 longer period?

6 A. I am not aware.

7 Q. But you are aware the IRS first issued a notice
8 of sale for these assets more than seven months before
9 the seizure.

10 A. September 1, 2014?

11 Q. Yes, sir.

12 A. Yeah.

13 Q. And that is slightly more than seven months
14 before the seizure at issue in this case, which was
15 March 4th, 2015?

16 A. Right.

17 Q. That indicates a period of more than 90 days,
18 correct?

19 A. Of what?

20 Q. The seven-month period -- strike that.

21 The notice of public auction that we're
22 referring to from September 1st, 2014, did it list the
23 date of the auction?

24 A. No.

25 Q. Did it list the location of the auction?

1 A. I don't recall.

2 Q. But it's your position that a notice of
3 auction -- this particular notice of auction was
4 sufficient advertising to render the seizure and sale
5 here a properly advertised public auction?

6 A. For an IRS seizure, yes.

7 Q. For an IRS seizure.

8 A. Right.

9 Q. That's an important caveat, I think.

10 A. I think so.

11 Q. If this were conducted outside of the context
12 of the IRS, I ask you, would this be a properly
13 advertised public auction?

14 A. It depends. It depends on whether there's
15 confidentiality that's being required in the sectors. A
16 lot of -- lot of -- lot of banks may seize property and
17 give an indication of what the property is but not tell
18 them -- just gives a description of the property but not
19 tell where it is, who owned it before, and that's only
20 found out when you get to auction.

21 Q. Well, I'm going to tell you, that sounds like a
22 very hedgy answer. And I'm asking you, with those
23 facts -- we're not assuming we're in the IRS context.
24 I'm asking you, based on those facts and that
25 September 1st, 2014, notice of public auction sale, is

1 that a properly advertised public auction?

2 MR. SMITH: Objection, form.

3 A. I think it could be.

4 Q. So I'd like to go to Figure 10 on page 16 of
5 your report. You've referenced liquidation value
6 percentages, which were, as I understand it, adjustments
7 to decrease your understanding of the wholesale value of
8 the inventory --

9 A. Yes.

10 Q. -- in order -- in order to arrive at your
11 valuation; is that correct?

12 Can you explain what these liquidation
13 value percentages are?

14 A. In a forced liquidation, you rarely get more
15 than 25 percent of the wholesale purchase cost. And
16 it's experience. And as the product and the inventory
17 ages, you get even less. And if a product gets over a
18 certain age, there's almost no value at all. So I've
19 deemed those to be eight-plus years are zero value,
20 greater than three years but less than eight was
21 15 percent value, and then 25 percent value of things
22 less than three years. People don't come to forced
23 liquidations to pay wholesale price. They can sit in
24 their chair at their own business and buy that.

25 Q. So what exactly did you base your determination

1 of these percentages on?

2 A. My professional experience.

3 Q. Have you ever professionally been involved in a
4 forced liquidation sale auction of bridal gown
5 inventory?

6 A. No.

7 Q. Did you rely upon any specific authority to
8 derive these percentages?

9 A. Just my professional experience.

10 Q. Did you run this model that is reflected on
11 page 16 and page 17 of your analysis, did you run this
12 model based on different draft percentages?

13 A. Different -- what do you mean "draft
14 percentages"?

15 Q. That is, did you run the model based upon
16 percentages other than those reflected in figure 10 of
17 your report?

18 A. I don't recall.

19 Q. You don't recall whether you utilized different
20 percentages --

21 A. Well, I mean, you can go into the Excel
22 spreadsheet and change this stuff all day long.

23 Q. Did you do that?

24 A. I can do it in my head right here.

25 Q. Did anyone else do that?

1 A. I looked at it on -- you know, I reviewed all
2 these models.

3 Q. Did you change those percentages at any point?

4 A. I may have. I don't recall.

5 Q. You don't recall trying different percentages
6 in there?

7 A. No. I instructed to my staff what I thought
8 was the appropriate percentages to do.

9 Q. Did you ever instruct them based on different
10 percentages than those reflected in Figure 10 and figure
11 11 of your report?

12 A. No. It would be different if it was an orderly
13 liquidation value or if it was an in-use value, okay?

14 Q. Right. But you never --

15 A. I did not instruct them to do other percentages
16 that would consider an orderly liquidation or an in-use.

17 Q. And you never ran these models based on
18 different percentages than those reflected here.

19 A. I mean, I didn't need to because I believe
20 these are the percentages that are appropriate.

21 Q. So you never ran them on other percentages.

22 A. I can't say that I never did. I don't recall
23 what those would be.

24 Q. You would admit that changing those percentages
25 could significantly impact the value that this model

1 produces.

2 A. Right. You double the percentages and you come
3 up with 80,000 --

4 Q. Right.

5 A. -- okay? You know, so in an orderly
6 liquidation, you may come up with -- depending on how I
7 analyze, the orderly liquidation, you may come up with
8 80 to 120,000, but not more than that.

9 Q. But you don't recall whether you ever ran this
10 model based on different percentages than --

11 A. No. Because then --

12 Q. -- what's reflected here?

13 A. -- I would have been asked to use an orderly
14 liquidation method or some other method.

15 Q. Did you discuss the percentages reflected here
16 with DOJ counsel?

17 A. No. I told him what I thought they are. And
18 why.

19 Q. Page 15 of your report, you've made a statement
20 that, "As the inventory ages" --

21 A. I see.

22 Q. Okay. -- "as is the case in the bridal
23 industry, the values decline as new styles are
24 introduced and consumers' tastes change. In a
25 liquidation scenario, in fact, no inventory would sell

1 at 100 percent of its wholesale cost due to the fact
2 that the types of buyers in a liquidation could buy
3 directly from the original manufacturer of the product
4 at the wholesale price."

5 Can you explain this statement?

6 A. Well, it's -- it was an attempt to, you know,
7 debunk the opposing expert's report, okay? Because why
8 would I come to an auction -- why would I come to a --
9 any type of auction and pay a price that I could go
10 direct to the manufacturer and pay for it, okay? I
11 wouldn't. I'm going there, I'm looking at an orderly
12 liquidation offer -- auction because I want a deal. I
13 want it less than what I can buy from wholesale. I'm
14 going to a forced liquidation to get a real deal because
15 I know everything's going that day. And so I'm a buyer
16 looking for a deal, and I'm not going to buy it at a
17 wholesale value. That's not why I'm there. I'm not
18 even buy it because of in-use, okay?

19 Q. So this statement is in the context of an
20 assumption that there is a liquidation scenario,
21 correct?

22 A. Everything goes.

23 Q. Right. You've made a further statement in that
24 same paragraph, "Also, the issues with dress
25 preservation methods . . . and whether the company

1 properly stored the subject interest in a manner as to
2 lessen physical deterioration. To account for this
3 obsolescence, we applied discounts to the wholesale
4 values based on the years the items were originally
5 purchased."

6 So I understand by that, perhaps among
7 other things, you took the physical condition into
8 account in the liquidation discounts. In part.

9 A. Yes.

10 Q. Can you tell me what portion of the liquidation
11 discounts was based upon this perceived physical
12 condition?

13 A. We looked at what the preservation industry
14 said, we looked at the age of the inventory, and we took
15 into account all of these factors. We looked at the
16 factors that this was not a going concern and that it
17 was going out of business and that the people showing up
18 were going to want a good deal.

19 Q. But you can't quantify for me how much of that
20 discount percentage was based upon the perceived
21 condition of the inventory?

22 A. No. It was -- there was enough relevant facts
23 there to say this is a low number.

24 Q. Kind of threw it all into the pile --

25 A. Yes.

1 Q. -- but you can't say which is accurate --

2 A. No. That's typical in valuation.

3 Q. So you made some assumptions there about the
4 physical condition of the inventory.

5 A. Yes. That the old -- I mean . . .

6 Q. And I don't need to know specifically. I mean,
7 you can point them out to me if you want, but I'm asking
8 if you made some assumptions in your analysis about the
9 physical condition of the inventory.

10 A. What do you have, 67 percent of the inventory
11 is five years or older?

12 Q. Is your assumption?

13 A. No. I'm just looking at the facts.

14 Q. The facts contained in your --

15 A. The facts contained --

16 Q. -- spreadsheet contained in --

17 A. -- in Tone's spreadsheet.

18 THE REPORTER: Okay. One at a time.

19 THE WITNESS: I'm sorry.

20 A. I'm sorry. Go ahead and ask the question.

21 Q. Well, then, my question is pretty simple, is:
22 You made some assumptions about the condition of the
23 inventory as part of your valuation model.

24 A. Based on observable facts.

25 Q. But you've indicated you did not actually

1 observe the inventory.

2 A. Observable facts being the age of the
3 industry -- inventory, the method that the inventory was
4 stored in, and the financial condition of the company at
5 the time of the sale.

6 Q. You made no assumptions about the physical
7 condition of the inventory? because I understood your
8 previous testimony to be that you did.

9 A. Well, that it was -- that the age of it is
10 saying a ten-year-old piece of inventory that's been
11 aged in polyethylene bags is probably not worth a
12 one-year-old inventory.

13 Q. Is that a roundabout or long way of telling me
14 you did indeed make some assumptions about the physical
15 condition of the inventory?

16 A. I made assumptions about the condition of the
17 inventory.

18 Q. If those assumptions were incorrect, the
19 liquidation discounts reflected in your analysis might
20 be incorrect as well.

21 A. Not necessarily.

22 Q. For example, if the inventory was in new
23 condition, the liquidations reflected in your analysis
24 might not be correct. Yes or no?

25 A. If the -- if it was in new condition --

1 Q. -- the liquidation discounts reflected in your
2 analysis might not be correct.

3 MR. SMITH: I'm going to object as to form.

4 A. Not necessarily, no. And I don't see it that
5 way. How is a piece of -- a dress purchased in 2010 in
6 the same condition in 2015 as it was in 2010?

7 Q. You're fighting the hypo there. I'm asking you
8 to make that assumption that runs counter to the
9 assumptions you've based your model on, and I'm asking
10 you to make the assumption that the inventory is in new
11 condition. Might your model then provide an incorrect
12 valuation?

13 A. I think I would have to have more facts to
14 change that. Who is saying it's in new condition? How
15 are they using it? What are the facts that they have to
16 present that it's in new condition?

17 Q. Let's assume that it's the very same people who
18 told you to assume that it's not.

19 A. The people that told me it was not in new
20 condition?

21 Q. Correct.

22 A. There aren't any people that told me it was not
23 in new condition. It was the fact --

24 Q. So you made that assumption on your own?

25 A. No. The facts tells me it's in -- not in new

1 condition. People didn't tell me. These are the facts.
2 These are the facts, that it's stored in polyethylene
3 bags, and the industry -- preservation industry says
4 that's bad, that'll destroy dresses. The facts are that
5 this is old, okay? The fact is this is a forced
6 liquidation and that -- so those facts, not opinions
7 from other people, of the condition of it tell me why
8 these percentages are the way they are.

9 MR. FREEMAN: Objection, nonresponsive.

10 Q. Were you shown the memoranda from the IRS
11 revenue officer who described all of the inventory as in
12 new and retail sell condition?

13 A. I saw that.

14 Q. Did you see the memoranda describing the
15 inventory as in good condition?

16 A. I saw that.

17 Q. And those had no impact on your analysis?

18 A. I do not think that they were qualified to make
19 that decision.

20 Q. But you were.

21 A. Based on the facts that I see and based on the
22 facts that I said.

23 Q. You were, but they were not, even though
24 neither of you have experience working in the bridal
25 gown store industry, and they had personally viewed the

1 inventory in detail and you had not.

2 MR. SMITH: Objection, form.

3 A. Their opinion did not weigh into my opinion.

4 Q. Your analysis rests on the assumption that the
5 inventory older than three years would have a value of
6 15 percent of its wholesale and that inventory less than
7 three years old would have a value of 25 percent of its
8 wholesale. If those percentages were not accurate,
9 would that affect your valuation?

10 A. Yes.

11 Q. Do you agree that wholesale value is not a
12 valid starting place for a valuation of inventory?

13 A. I'm assuming that's the purchase price.

14 Q. So it's -- is it your opinion that wholesale
15 value is a valid starting place?

16 A. Yes.

17 Q. If an IRS agent testified that wholesale value
18 was not a valid starting place for a valuation of
19 inventory, would that IRS agent be wrong?

20 A. I don't know the context of what she was
21 testifying.

22 Q. In this case with respect to this inventory.

23 A. I mean --

24 Q. Is it your opinion they would be incorrect?

25 A. I have to see the totality of the testimony. I

1 mean, you're asking me to just take out a phrase, and
2 I -- I can't do that.

3 Q. So you cannot testify whether -- strike that.

4 Would it change your opinion to learn that
5 one of the purchasers of the inventory at the seizure
6 who purchased about 200 dresses subsequently retail-
7 valued those very dresses at more than \$300,000?

8 A. Not relevant.

9 Q. Would it affect your opinion to learn that she
10 priced those dresses and sold those dresses for more
11 than \$200,000?

12 A. No.

13 Q. So it's your testimony that if informed that an
14 IRS -- that -- excuse me -- that a purchaser at the IRS
15 seizure who purchased approximately -- excuse me -- 305
16 gowns --

17 A. Refresh Bridal.

18 Q. Correct. -- that they subsequently retail-
19 valued those gowns at \$314,000 --

20 A. What did they sell them for.

21 Q. \$220,000.

22 A. So --

23 Q. Would that impact -- I take it from your
24 question that that's a relevant data point. Would that
25 impact your analysis?

1 A. That's an irrelevant data point. And let
2 me . . .

3 Q. So your testimony is it would not impact your
4 analysis.

5 A. It's apples and oranges.

6 Q. Okay. Talking about the value of the inventory
7 here still, correct?

8 A. He's talking about the retail value?

9 Q. Okay.

10 A. Is he talking about retail value and then
11 wholesale value, in-use value?

12 Q. Who's "he"?

13 A. What's he --

14 Q. She.

15 A. She. Maybe -- is it she? I'm sorry. I don't
16 know.

17 Q. Is there an assumption in creating a report as
18 an expert that the information provided by others is
19 reliable and accurate?

20 A. Yes.

21 Q. And if the information that was furnished was
22 not accurate, could that impact the opinions expressed
23 in your report?

24 A. Yes.

25 Q. Do you agree with the IRS's valuation of the

1 inventory of \$10,000?

2 MR. SMITH: Objection, form.

3 A. It's a data point to consider but is not my
4 opinion.

5 Q. So you disagree with that valuation number?

6 A. I don't disagree.

7 Q. Is it consistent with your --

8 A. No, it's not.

9 Q. -- report?

10 But is it your testimony that your report
11 could be incorrect?

12 A. No. I think my report is correct.

13 Q. So you disagree with the IRS's valuation of
14 \$10,000.

15 A. I do.

16 Q. Do you understand how the IRS arrived at that
17 valuation?

18 A. No.

19 Q. Do you understand that it was intended to
20 reflect a fair market value of the inventory?

21 MR. SMITH: Objection, form.

22 A. Has no -- that has no bearing in my analysis.

23 Q. The definition, to paraphrase, that has been
24 put forward to me of fair market value that was utilized
25 by the IRS was the standard of what would that asset

1 sell for today at an IRS auction if the seller were
2 compelled to sell. Is that a definition of fair market
3 value that you have ever seen?

4 A. No.

5 Q. That's not an accepted definition of fair
6 market value, correct? In the industry.

7 A. I don't -- I mean, you need to look -- we need
8 to look to IRS reg 5960. Are you familiar with that --

9 Q. I might be.

10 A. -- section of code, 5960?

11 Q. I might be. But I am asking you whether the
12 definition I just read is an accepted definition of fair
13 market value.

14 A. Within the American Society of Appraisers?

15 Q. I'm going to ask more broadly. In any context
16 that you are aware of. It's not for me.

17 A. No, it's not.

18 Q. The IRS then applied a 40 percent reduction to
19 obtain a figure known as a reduced forced sale value, an
20 RFSV. Is that a calculation you are familiar with?

21 A. Yeah, I've heard of it.

22 Q. Is that an accepted methodology to arrive at a
23 reduced forced sale value?

24 A. I don't know. I didn't analyze that.

25 Q. So I'll represent to you that the IRS reduced

1 its estimated wholesale value -- at least it attempted
2 to -- by 40 percent to arrive at its calculation, which
3 was a \$6,000 figure of the valuation. Under their
4 analysis, wholesale value was an important figure. I'm
5 going to ask you just a couple of questions about their
6 methodology for determining that wholesale figure that
7 they worked from.

8 A. Can we -- I just --

9 Q. Sir?

10 A. -- pause a minute and -- I generally do not
11 consider the IRS's opinion on any case. I particularly
12 carve it away from me. I want to be independent of it.
13 I don't want to see their reasoning. I don't want to
14 see the revenue agent's report. I don't want to see
15 the NOPA. I don't -- I don't care about that. I want
16 to do my own analysis, and that's what I did here. I
17 don't care what those guys say, okay, because I'm
18 independent, okay? So those -- whatever they did or
19 whatever they said has no meaning to me in my
20 assignment.

21 MR. FREEMAN: Objection, nonresponsive.

22 Q. While I got you in the hot seat and under oath,
23 I'm going to ask the question that I was going to ask
24 about the IRS's determination of the wholesale value.
25 If the IRS reduced the observed retail value by

1 98 percent in order to obtain an estimate of the
2 wholesale value, would that be a proper analysis?

3 A. I don't know. What was their reasoning that
4 they gave? And what was their analytics?

5 Q. If they gave no reasoning or analytics, is that
6 an accepted approach to valuing assets in the industry
7 or in any context that you're aware of?

8 A. Not in the industry, no.

9 Q. So I'm going to state what I've stated there a
10 slightly different way. Is there typically a
11 5,700 percent markup of inventory in the bridal gown
12 industry, to the best of your knowledge?

13 A. No.

14 Q. Assuming a 5,700 percent markup of inventory
15 would be pretty clearly erroneous.

16 A. Yes.

17 Q. Would that be reckless, in your opinion?

18 MR. SMITH: Objection, form.

19 A. I have no opinion.

20 MR. FREEMAN: Can we go off the record?

21 (A break was taken from 12:00 p.m. to
22 12:06 p.m.)

23 MR. FREEMAN: Back on the record.

24 Q. (BY MR. FREEMAN) All right. We are back on
25 the record. I've just got a couple more questions. Do

1 you have any opinion on the expert opinions that have
2 been expressed by Ms. Bonfield or Tony Thangsongcharoen
3 or Tone Thangsongcharoen?

4 A. I think we -- Bonfield is not proper valuation
5 opinion.

6 Q. Okay. Do you believe that with respect to the
7 other --

8 A. Oh, Tone? He's a layman. He gathered data.
9 But as far as his valuation, I think he is -- he's not
10 qualified.

11 Q. What about Tony?

12 A. Tony?

13 Q. Yes, sir, Tony.

14 A. Not qualified.

15 Q. What about them, Tony and Tone, makes them
16 unqualified to provide an expert opinion?

17 A. I mean, they're just providing what they posted
18 retail prices at. That's what Tone provided, okay,
19 retail prices and inventory items and names, okay? And
20 claims that the retail value is what I've been damaged,
21 which is incorrect.

22 Q. So is it your opinion that neither
23 Ms. Bonfield, Tone, or Tony, that none of them are
24 qualified to serve as experts in this case?

25 A. Yes.

1 Q. That's your -- that's your opinion?

2 A. They are qualified to bring facts to the table,
3 but as to giving an opinion of value, no.

4 Q. What about them makes them unqualified?

5 A. I just don't think they've been trained
6 properly.

7 Q. What do you know about their training?

8 A. I don't, other than that I don't see
9 credentials.

10 Q. So you know nothing about their training, but
11 you have based your conclusion that they are not
12 qualified as experts on your assumption that they are
13 not properly trained?

14 A. Yes.

15 Q. Do you have any specific opinions with respect
16 to the valuation figures reflected in Ms. Bonfield's
17 report?

18 A. Her report estimated the wholesale value based
19 on a rule of thumb of 50 percent, okay?

20 Q. And that's your primary concern --

21 A. And that the retail cost of those products is
22 not the forced liquidation value of the inventory.

23 Q. Is that the sum of your opinions about her --

24 A. Yes.

25 Q. -- expert opinion?

1 What opinions do you have about the
2 valuation figures reflected in Tone's expert opinion?

3 A. Well, I think Tone just came down to what are
4 the products and what are the retail -- what do we have
5 them posted for sale, and he said that's the value.

6 Q. And that is your -- that is the sum of your
7 opinion about Tone's --

8 A. That's his opinion is the retail sales price is
9 the value of the property. And I don't -- I disagree.

10 Q. And what about with respect to Tony's expert
11 opinion?

12 A. I don't see any relevancy there with that
13 opinion.

14 Q. Are there other objections that you're aware of
15 to their opinions?

16 A. Not that I know of.

17 Q. Any other objections to the methodologies
18 they've utilized?

19 A. No.

20 MR. FREEMAN: I've got no further
21 questions.

22 THE WITNESS: We're always willing to give
23 pro bono time up front on a case to research data, okay,
24 or to consult on strategy. I will get Mital or Erin to
25 pull stuff for you, okay?

1 valuation and appraisal? I know it's kind of a broad
2 question, but . . .

3 A. It is my life. It is my passion. It is all I
4 do. I have continued to expand my knowledge as far-
5 reaching as I can. My continuing education is very
6 significant because I hold a CPA; I hold an
7 accredited -- ABV, accredited business valuation; I
8 hold -- I'm certified in financial forensics; I am a
9 Chartered Global Management Accountant; I'm an
10 accredited senior appraiser; and I am certified
11 valuation analyst.

12 All of these designations sort of have
13 their specialties in what you focus on in the training.
14 A significant amount of my asset training on valuing
15 inventory and other assets are what I get from the
16 American Society of Appraisers and from the CPA society
17 business valuation of tangible and intangible assets,
18 primarily for determining purchase price allocations.

19 Q. Okay. Let me ask you, you mentioned you were
20 accredited in business valuations; is that correct?

21 A. Yes.

22 Q. Do you know how many businesses you had to
23 value over the course of your experience as a -- as an
24 appraiser?

25 A. I oversee about a hundred to 120 valuation

1 projects a year. So you put ten years on that, I
2 probably have experience with thousands --

3 Q. Okay.

4 A. -- of valuations. That's all our firm does.

5 Q. Are those all business valuations -- or what
6 percentage of that would you say are business
7 valuations?

8 A. Oh, 75 percent, in there. I mean, they include
9 asset valuations, a lot of medical equipment, a lot of
10 other type of asset valuations, inventory property.

11 Q. Okay. So as part of valuing a business, is it
12 relevant to have to value the inventory of that
13 business?

14 A. Quite often. Especially if it's a public
15 company.

16 Q. Why is that?

17 A. Because of the PCAOB, public company oversight
18 review board that reviews audits and valuations.

19 Q. Okay. Do you have a ballpark estimate on how
20 many times you've had to value the inventory of a
21 business over the course of your career?

22 A. Hundreds of times.

23 Q. Now, is it necessary from the standpoint of
24 the -- for example, to be an accredited appraiser, do
25 you have to have specific industry knowledge or

1 background in the item that you're appraising?

2 A. No.

3 Q. Okay. So is it -- how common is it to have to
4 get up to speed, so to speak, on the -- on the details
5 of a specific industry?

6 A. We at ValueScope have a significant amount of
7 tools to get us up on the industry.

8 Q. Okay.

9 A. We have IBISWorld, we have Bloomberg Research,
10 we have RMA data, we have the Standard & Poor's Capital
11 IQ, we have -- we spend hundreds of thousands a year in
12 just databases. That's all we are is a database
13 company, research company, and we have the tools and the
14 technology to get up to speed on any industry very
15 quickly.

16 Q. Okay. Does your business depend on that?

17 A. It does.

18 Q. Okay. Does your livelihood depend on your
19 ability to --

20 A. It does.

21 Q. -- get up to speed?

22 For something like a bridal industry or
23 wedding gowns, is it relevant in a forced liquidation
24 value to know specifics, such as how orders are placed
25 for bridal gowns?

1 A. No.

2 Q. Is it relevant to know the various contracts
3 between the vendors and the distributors for purposes of
4 obtaining a forced sale value of bridal gown inventory?

5 A. No.

6 Q. Have you had specific training on how to value
7 personal property as opposed to real estate or different
8 kinds of assets?

9 A. Yes.

10 Q. What kind of training have you had?

11 A. Continuing education. I mean, whenever the
12 American Society of Appraisers come up with new
13 guidelines of valuing inventory or personal property, I
14 am either taking the online training course on it or
15 webinar or am there, so I am very up-to-date on all the
16 valuation recommendations.

17 Q. Do you have a ballpark of how many times you've
18 had to provide an appraisal of personal property during
19 the course of your career?

20 A. Hundreds.

21 Q. Do you know how many times you've had to
22 establish -- or had to -- you've been asked to look at
23 the forced sale liquidation value of personal property?

24 A. Couple dozen -- a dozen times, maybe.

25 Q. How about for inventories? How many times have

1 you been asked to find the liquidation value -- forced
2 sale liquidation value of inventory?

3 A. Maybe half a dozen or more times. That's
4 cyclical business, forced -- it's -- you hit a
5 recession, you get more of it.

6 Q. Mr. Freeman has brought up an orderly
7 liquidation several times we talked about during the
8 course of this deposition; is that right?

9 A. Yes.

10 Q. Now, I didn't ask you to prepare an opinion on
11 orderly liquidation value; is that right?

12 A. That's correct.

13 Q. What did I ask you to prepare an opinion on?

14 A. Just the valuation I did.

15 Q. Okay. And we --

16 A. Yeah.

17 Q. A forced sale --

18 A. Forced sale.

19 Q. -- as opposed to an orderly liquidation.

20 A. Yeah.

21 Q. After having talked to Mr. Freeman sitting
22 here, do you have an idea what an orderly liquidation
23 value for the assets at issue in this report would be?

24 A. I could walk --

25 MR. FREEMAN: Objection, form.

1 A. I can walk him through the methodology and --

2 Q. If you don't know, that's fine.

3 A. Well, let's just -- I would -- I would look at
4 an orderly liquidation, bring up the facts of -- I would
5 come somewhere to 2X to 3X times my forced liquidation,
6 okay, as far as the top line goes.

7 But then in an orderly liquidation, you
8 have to look at probabilities of time frame of selling
9 the product because -- selling the inventory, and so
10 that -- in there you have costs. So you have management
11 costs of handling the orderly liquidation, and that
12 would be on a monthly basis. You have rent costs of
13 storage of liquidation. In this case, Tony and Mii's,
14 you might -- that case you'd have -- sometimes you have
15 fixed costs that you have to take care of right up front
16 in order to do the orderly liquidation, and in that
17 case, it might be I have to pay the back rent, I have to
18 get -- so I don't get this building shut down because I
19 don't have anyplace else to store it. So that'd be --
20 and then -- so then you take a look at those costs and
21 then you look at the probabilities, can I -- what is the
22 probability I can get this done in 3 months? 6 months?
23 12 months? And you would do a PWERM, probability-
24 weighted average return analysis on that. And that's
25 what -- how I would look at an a orderly liquidation.

1 MR. FREEMAN: I'm going to object. I need
2 to get a sidebar I think I need on the record.

3 MR. SMITH: Okay.

4 MR. FREEMAN: Is it your position that the
5 testimony just given would be a substitute for a written
6 opinion in this case?

7 MR. SMITH: No. I mean, it's because you
8 asked so many questions about an orderly liquidation.
9 I'm asking him if he would have an opinion on that. But
10 I wasn't -- I wasn't attempting to supplement his
11 opinion.

12 MR. FREEMAN: Would you intend to solicit
13 such an opinion at trial?

14 MR. SMITH: Actually, what -- you okay if
15 we go off the record, talk about it?

16 MR. FREEMAN: Sure.

17 (A break was taken from 12:22 p.m. to
18 12:24 p.m.)

19 MR. SMITH: Jason and I -- Freeman -- had a
20 conversation, and I'm going to ask Mr. Hastings
21 questions about an orderly liquidation value, whether he
22 has an opinion on what that value would be. And of
23 course, Jason may have some subsequent questions, and
24 we're going to reserve for a subsequent time whether or
25 not this would qualify as self-limited to his expert

1 report.

2 Is that -- is that correct, Jason?

3 MR. FREEMAN: Correct.

4 MR. SMITH: Okay.

5 Q. (BY MR. SMITH) Did I hear you correctly
6 that -- when you said order -- generally, these orderly
7 liquidation values are somewhere in the neighborhood of
8 two to three times the forced sale value as far as the
9 amount realized from the sale?

10 A. Correct. But the orderly -- but then I
11 continued on to say that there are costs involved in the
12 orderly liquidation that really reduces the value.

13 Q. Okay. And you talked about some of those
14 costs. Can you walk me through a little bit what an
15 orderly liquidation would look like? Is that -- because
16 we talked a little about the conditions of the forced
17 sale. Let's start there. I'm sorry. A forced
18 liquidation sale. The conditions of that would be all
19 of the stuff gets sold on one day; is that -- is that
20 correct?

21 A. Correct.

22 Q. Okay. What would an orderly liquidation look
23 like?

24 A. Well, generally, in orderly liquidation models,
25 you come up with your estimated time frames, and you

1 might look at 3-month, 6-month, 12-month time frame,
2 okay? And you would look -- and therefore, if it takes
3 you 3 months -- and so you might look at 2X and 3X. So
4 you've got your model where you're not only looking at
5 selling it at 2X, but you're looking at selling it at
6 3X, okay?

7 And you -- then you say, Okay, if I can
8 sell it in 3 months, I only have 3 months of management
9 fees, and I only have 3 months of rental expense, and so
10 therefore I will make more -- I will have to subtract
11 that from the purchase price. Also, any fixed costs
12 that you're required to pay in order to facilitate the
13 orderly liquidation. In Tony and Mii's case, it might
14 mean I have to pay the rent, the 20,000, right up front
15 to get -- to utilize the space for the inventory.

16 So -- and then you -- so you'd model that
17 maybe at 2X, 3X for 3 months, you'd model that at 2X
18 then 3X for 6 months, you'd model that at 2X and 3X for
19 12 months. And obviously, if it went 12 months, you're
20 going to have more management fees and more rental
21 costs, right?

22 So in oftentimes -- and then you'd take a
23 look and you'd probability weight those. Now, that's
24 where the -- some of the subjective nature comes in is
25 what's the probability I'm going to get this sold in 3

1 months, what -- in an orderly -- what's the probability
2 in 6 months, and what's the probability in 12 months --
3 in 12 months.

4 So after all of that is taken in
5 consideration, you can come up with a range of -- based
6 on the probabilities and based on 2X or 3X. Experience
7 has sometimes shown that often that range is negative
8 because of the costs involved and that your range in
9 this case may -- okay, orderly liquidation could be from
10 a negative \$10,000 to a positive hundred thousand
11 dollars, okay, and that the probability is somewhere in
12 between there, okay?

13 So that's sort of how I consult with
14 clients when they're sort of looking into I just put
15 this in auction and walk away from it, or do we do an
16 orderly liquidation. And so often you have to say to a
17 client, Let's model it and give -- let's give me your
18 best input --

19 Q. Okay.

20 A. -- on this. And so, you know, you don't know.
21 Sometimes forced auction is a higher price.

22 Q. Okay. And just the characteristics of the
23 sale, in an orderly liquidation, you would be able to
24 sell that item or that asset at any point during that
25 period; is that correct?

1 A. That's correct.

2 Q. You would just maybe have a time frame in which
3 you could sell the item, but you could sell it on any
4 day within that time period; is that correct?

5 A. Right. And you would have a manager that would
6 be reaching out to the other bridal shops and who would
7 create a presentation or something to send them.

8 MR. SMITH: Okay. With that, I'll pass the
9 witness.

10 FURTHER EXAMINATION

11 BY MR. FREEMAN:

12 Q. Mr. Hastings, it was your testimony earlier
13 that an orderly liquidation would not be a proper
14 valuation model under the circumstances of this case; is
15 that correct?

16 A. It's -- doesn't fit the facts of this case.

17 Q. So an orderly liquidation model would not be
18 the proper method --

19 A. If asked to assume different facts, then it
20 might.

21 Q. I asked you to assume some different facts, and
22 during that colloquy, your position was that an orderly
23 liquidation would not be the proper methodology in this
24 case; is that correct?

25 A. Pardon me. I didn't --

1 Q. Isn't --

2 A. What were the facts that you asked me to
3 assume?

4 Q. Let me just ask you another way. Is an orderly
5 liquidation a proper valuation method under the facts
6 that you have been provided about this case?

7 A. No.

8 Q. Have you, in fact, performed an orderly
9 liquidation valuation in this case?

10 A. I just outlined it in my testimony here, the
11 methodology. I can take that methodology and put it on
12 paper for you.

13 Q. Is that all that's required in order to create
14 an expert report?

15 A. No. There's --

16 MR. SMITH: Objection, form.

17 A. No.

18 MR. SMITH: You can answer.

19 A. No. There's -- there's other research that has
20 to go into it.

21 Q. But that is your final valuation and the exact
22 approach you would utilize?

23 A. I was giving you the CliffNotes, okay?

24 Q. Have you written an opinion or report providing
25 an orderly liquidation value in this case?

1 A. No.

2 Q. And again, you don't believe that an orderly
3 liquidation valuation would be appropriate under the
4 circumstances of this case that you have been given?

5 A. Under the circumstances of this case, I do not;
6 given other circumstances, I may.

7 Q. Given other circumstances in another case?

8 A. In a -- in a hypothetical case, an orderly
9 liquidation --

10 Q. Right.

11 A. -- might be appropriate.

12 Q. In some other case, that -- and set of facts,
13 that may be --

14 A. Right.

15 Q. -- appropriate.

16 A. If you want to change --

17 Q. I understand that.

18 A. -- the facts of this --

19 THE REPORTER: Wait.

20 A. Yes. If you want to change the facts of this
21 case, then an orderly -- I'd assume those facts, an
22 orderly liquidation may be the proper method.

23 Q. But under the facts that have been presented to
24 you by the Government, your belief is that an orderly
25 liquidation would not be the proper valuation model.

1 A. Yes.

2 MR. FREEMAN: No other questions.

3 MR. SMITH: I don't have any further
4 questions.

5 THE REPORTER: Any stipulations for the
6 record?

7 MR. SMITH: (Moving head side to side.)

8 MR. FREEMAN: No.

9 THE REPORTER: Thank you. All original
10 exhibits will be retained by the court reporter and
11 attached to the original transcript. This deposition is
12 now complete.

13 (Proceedings concluded at 12:32 p.m.)

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TONY AND MII'S, INC., §
TONY THANGSONGCHAROEN, §
AND SOMNUEK §
THANGSONGCHAROEN, §

Plaintiffs §

v. § CIVIL CAUSE NO.
§ 3:17-CV-0609-B

THE UNITED STATES OF §
AMERICA §

Defendant §

REPORTER'S CERTIFICATION
DEPOSITION OF STEVEN C. HASTINGS
December 5, 2018

I, Jennifer L. Campbell, Certified Shorthand
Reporter in and for the State of Texas, hereby certify
to the following:

That the witness, STEVEN C. HASTINGS, was duly
sworn by the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

I further certify that pursuant to FRCP Rule
30(e)(1) that the signature of the deponent:

_____ was requested by the deponent or a party
before the completion of the deposition and is to be
returned within 30 days from the date of receipt of the
transcript. If returned, the attached Changes and

1 Signature page contains any changes and the reasons
2 therefor;

3 X was not requested by the deponent or a
4 party before the completion of the deposition.

5 I further certify that I am neither counsel
6 for, related to, nor employed by any of the parties or
7 attorneys to the action in which this proceeding was
8 taken. Further, I am not a relative or employee of any
9 attorney of record in this cause, nor am I financially
10 or otherwise interested in the outcome of the action.

11 Subscribed and sworn to on this the 26th day
12 of December, 2018.

13 

14
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