

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## A P P E A R A N C E S

## FOR THE PLAINTIFFS:

Mr. Jason B. Freeman  
FREEMAN LAW, PLLC  
2595 Dallas Parkway  
Suite 420  
Frisco, Texas 75034  
(214) 984-3409  
jason@freemanlaw-llc.com

## FOR THE DEFENDANT:

Mr. Curtis C. Smith  
UNITED STATES DEPARTMENT OF JUSTICE  
717 North Harwood Street  
Suite 400  
Dallas, Texas 75201  
(214) 880-9734  
curtis.c.smith@usdoj.gov

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX

Appearances. . . . . 2

STEVEN C. HASTINGS

    Examination by Mr. Freeman . . . . . 5

    Examination by Mr. Smith . . . . . 130

    Examination by Mr. Freeman . . . . . 141

Reporter's Certificate. . . . . 145

EXHIBITS

| NO.        | DESCRIPTION  | PAGE |
|------------|--|------|
| Exhibit 35 | .....  | 9    |
|            | Forced Liquidation Value Analysis of<br>Certain Inventory Assets Owned by Mii's,<br>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:  
24  
25

1 EXAMINATION

2 BY MR. FREEMAN:

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

5 A. Steven C. Hastings.

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

7 A. A company called ValueScope, Inc.

8 Q. And what is your title?

9 A. Principal.

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

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

14 Q. Understood.

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

17 A. Yes, I was.

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

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

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

24 A. Yes.

25 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.)

14

15

16

17

18

19

20

21

22

23

24

25



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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  
15 \_\_\_\_\_  
16 Jennifer L. Campbell  
17 Texas CSR No. 8674  
18 Expiration Date: 05/31/21  
19 Lexitas - Dallas  
20 Firm Registration No. 459  
21 6500 Greenville Avenue, Suite 445  
22 Dallas, Texas 75206  
23 (214) 373-4977  
24  
25