

Volume 15

Pages 2971 - 3189

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Jeffrey S. White, Judge

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
VS.)	NO. CR 11-00573 JSW
)	
WALTER LIEW; ROBERT MAEGERLE;)	
and USA PERFORMANCE TECHNOLOGY,)	
INC.,)	
)	
Defendants.)	
)	

San Francisco, California
Wednesday, February 5, 2014

TRANSCRIPT OF PROCEEDINGS

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I N D E X

Wednesday, February 5, 2014

GOVERNMENT'S WITNESSESPAGE VOL.ROMETO, CECILY (RECALLED)

(PREVIOUSLY SWORN)	3004	15
Direct Examination resumed by Mr. Scott	3004	15
Cross-Examination by Ms. Agnolucci	3046	15
Redirect Examination by Mr. Scott	3067	15
Recross-Examination by Ms. Agnolucci	3083	15

JIANG, MEIQIN

(SWORN)	3088	15
Direct Examination by Mr. Axelrod	3089	15
Cross-Examination by Mr. Gasner	3156	15

E X H I B I T STRIAL EXHIBITSIDEN EVID VOL.

266	3072	15
266T	3072	15
311	3034	15
314	3036	15
318	3039	15
320	3038	15
321	3040	15
323	3039	15
324	3037	15
325	3033	15
325T	3033	15
329	3041	15
330	3041	15

I N D E XE X H I B I T STRIAL EXHIBITSIDEN EVID VOL.

332	3041	15
435	3024	15
436	3026	15
439	3030	15
439T	3030	15
447	3042	15
471	3072	15
471T	3072	15
517	3100	15
518	3100	15
519	3100	15
543	3100	15
544	3100	15
545	3101	15
546	3101	15
547	3101	15
548	3101	15
549	3101	15
550	3101	15
551	3101	15
552	3101	15

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I N D E XE X H I B I T STRIAL EXHIBITSIDEN EVID VOL.

4	553	3101	15
5	574	3102	15
6	576	3102	15
7	577	3102	15
8	579	3102	15
9	580	3102	15
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11	582	3102	15
12	590	3101	15
13	623	3101	15
14	624	3101	15
15	625	3101	15
16	626	3101	15
17	627	3101	15
18	628	3101	15
19	631	3032	15
20	632	3103	15
21	644	3136	15
22	645	3136	15
23	646	3136	15
24	647	3136	15

25

I N D E XE X H I B I T STRIAL EXHIBITSIDEN EVID VOL.

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5	649	3136	15
6	650	3136	15
7	651	3136	15
8	652	3136	15
9	653	3136	15
10	654	3136	15
11	825	3043	15
12	867	3104	15
13	868	3104	15
14	906	3011	15
15	907	3016	15
16	908	3021	15
17	919	3105	15
18	920	3137	15
19	921	3140	15
20	922	3147	15
21	923	3153	15
22	932	3014	15
23	933	3019	15
24	936	3006	15

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I N D E XE X H I B I T STRIAL EXHIBITSIDEN EVID VOL.

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5	940	3020	15
6	942	3015	15
7	1767	3049	15
8	1974	3051	15
9	2885	3061	15
10	2886	3062	15
11	2895	3055	15
12	2897	3052	15

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1 Wednesday - February 5, 2014

7:45 a.m.

2 P R O C E E D I N G S

3 ---000---

4 (Proceedings were heard out of the presence of the jury:)

5 **THE COURT:** Good morning. Please call the case.

6 **THE CLERK:** Calling Case Number CR-11-573,
7 United States versus Walter Liew, United States versus Robert
8 Maegerle, and United States versus USAPTI.

9 Counsel, please state your appearances.

10 **MR. HEMANN:** Good morning, Your Honor. John Hemann,
11 Pete Axelrod, and Richard Scott for the United States.

12 **THE COURT:** Good morning.

13 **MR. AXELROD:** Good morning, Your Honor.

14 **MS. AGNOLUCCI:** Good morning, Your Honor. Simona
15 Agnolucci and Stuart Gasner for USAPTI and Walter Liew.

16 **THE COURT:** Good morning.

17 **MS. AGNOLUCCI:** And Mr. Liew is here with us.

18 **THE COURT:** Good morning, everybody.

19 **MR. FROELICH:** Good morning, Your Honor. Jerry
20 Froelich for Mr. Maegerle, and Mr. Maegerle is present in
21 court.

22 **THE COURT:** Good morning.

23 All right. So the first order of business -- and I
24 apologize for the delay, but I was reading all this stuff.

25 What is the Government's response to the offer of proof

1 with respect to the Sherwin-Williams contract?

2 **MR. HEMANN:** Your Honor, we don't believe that the
3 Sherwin-Williams contract should be admitted into evidence. I
4 didn't have a chance until this morning myself to look at the
5 brief that Ms. Lovett filed last night on the issue. I thought
6 about it a little bit.

7 I think that the main issue with the Sherwin-Williams
8 contract is that it concerns a period of time well before the
9 trade secrets that are alleged in the Complaint, and it also
10 doesn't go to the core issues in the statute. The statute asks
11 whether -- or imposes an element of whether the technology is
12 public.

13 What the contract appears to say -- and I think that
14 there's some dispute on the actual legal effect of the
15 contract -- what the contract appears to say is that
16 Sherwin-Williams may make the information public if it wishes.
17 They could have an open house at Ashtabula and have people come
18 in and look around.

19 **THE COURT:** Remind the Court, when was Mr. Maegerle
20 at -- when did he leave DuPont?

21 **MR. HEMANN:** He left DuPont in 1991.

22 **THE COURT:** All right.

23 **MR. HEMANN:** And I believe that there is some
24 evidence --

25 **THE COURT:** So he was there at the time this contract

1 was entered into?

2 **MR. HEMANN:** He was employed by DuPont at the time the
3 contract was entered into, and he did work at some point in
4 time at the Ashtabula factory.

5 **THE COURT:** I'll hear from you Mr. Froelich. I
6 know -- I'm going to give you a full opportunity.

7 **MR. HEMANN:** So it doesn't really reach the core issue
8 of whether, in fact, the technology was public or not. And I
9 would proffer to the Court that were a witness from the
10 companies that purchased Ashtabula subsequent to
11 Sherwin-Williams were to testify, that testimony would be
12 categorical that the -- that the technology is not public and
13 has never been made public.

14 **THE COURT:** All right. Let me kind of back off. No,
15 finish your argument.

16 **MR. HEMANN:** So just a couple more things.

17 I think more importantly, though, I think what the Defense
18 argument is, fairly, is that this supports the objective
19 reasonableness of their belief that the technology was public.

20 The problem is that there's no evidence that either of
21 these defendants read the contract ever or --

22 **THE COURT:** But if it's an objective standard, is that
23 necessary?

24 **MR. HEMANN:** No, I don't think it is, but that gets
25 into the second issue, which is the contract does not say in

1 anything approaching plain English that the -- that the
2 technology is public, made public by this contract.

3 **THE COURT:** Let me tell you what my thought is --

4 **MR. HEMANN:** Sure.

5 **THE COURT:** -- before you -- obviously, I've been
6 giving this a lot of thought since it was filed last night, and
7 those of us who have no life other than trials read this stuff
8 at night and, you know, fall asleep reading it; but I have been
9 thinking about it seriously for quite a bit of time.

10 And, you know, the standard under 401 is pretty liberal.
11 If it has any tendency to prove any relevant fact, you know,
12 then it comes in.

13 And it strikes the Court that, number one, to the extent
14 that Mr. Maegerle was at DuPont when this contract was entered
15 into and he was an engineer working on this technology, you
16 know, a reasonable trier of fact could find that this
17 information would be available to him. The Government could
18 certainly argue to the contrary.

19 And the other thing that it would tend to show, in the
20 absence of any other evidence, just on its face, is that at a
21 time in roughly 1982 -- I don't know when the first sale,
22 commercial sale, of pigment was made -- but let's assume it was
23 close in time to '67. So by 1982, you know, Sherwin-Williams
24 had the right to treat this information as no longer
25 confidential, which would then be relevant to an issue as to

1 the definition of trade secret.

2 It strikes me that the arguments that the Government is
3 making about Sherwin-Williams is the stuff that rebuttals are
4 made out of. You could certainly -- I mean, the Defense is
5 taking a big risk, I assume they've done their due diligence,
6 but the Government would be free to come back and say whatever
7 competent evidence it could say about this contract and whether
8 it impacts, you know, the ultimate issue.

9 And that could basically -- you know, again, I'm not
10 telling the defense how to try their case, but it could
11 backfire. But, on the other hand, it's a very central part of
12 the defense in this case.

13 And I'm concerned that -- I believe that the defendant and
14 the Government should have a right to try their case. And I
15 don't think that this would be a 403 issue because, you know, I
16 would not allow, you know, a week's worth of testimony on
17 Sherwin-Williams because then we would have a minitrial on the
18 legal effect or the practical effect of the Sherwin-Williams
19 contract. But it is out there, and it does tend to put a
20 different spin on things than what, for example, Dr. Diemer was
21 saying.

22 So my view is this contract -- and I'm not -- and, by the
23 way, I don't believe with respect to this issue, this document,
24 that authenticity or hearsay issues would preclude putting the
25 document in.

1 So my strong inclination is to let it in and then give the
2 Government a chance to argue whatever it wants to argue or put
3 in evidence as to whatever relevant fact it believes meets this
4 testimony or this evidence, because that's the stuff that
5 rebuttal cases are made of.

6 So that's my view.

7 **MR. HEMANN:** And we'll submit, Your Honor --

8 **THE COURT:** All right. So you don't need to argue,
9 unless you want to --

10 **MR. GASNER:** Thank you, Your Honor.

11 **THE COURT:** -- say you're really right and here's why.

12 **MR. GASNER:** No. This has been an issue for a long
13 time. It was obviously a focus of the 17(c) subpoena. And,
14 so, we'll see what the Government wants to put on, if anything,
15 in rebuttal, but we would object to that because it's been an
16 issue for a long time. It was in my opening. It's --

17 **THE COURT:** Well, but it wasn't -- it wouldn't have
18 been crystallized. I mean, if you had tried to put this in
19 through Dr. Diemer or the other expert -- I forget his name at
20 this point --

21 **MR. AXELROD:** Mr. Dayton.

22 **THE COURT:** Pardon me?

23 **MR. AXELROD:** Mr. Dayton.

24 **THE COURT:** Yeah.

25 -- that would have certainly been -- then it would have

1 been clearly raised, and I would say the Government would have
2 been required at that point.

3 But I think in fairness to the Government, they would have
4 no way of knowing. They probably -- they may have reasonably
5 believed this wasn't coming in. So I'm not going -- I have a
6 lot of issues to bite off, but your purported -- your future
7 objections are not something that I'm going to deal with now.

8 **MR. GASNER:** Just while it's fresh in my mind, I did
9 try with both Gibney and Dayton, and the objections were
10 sustained because the Government assiduously avoided giving the
11 Sherwin-Williams document. Their plan all along has been to
12 just pretend it doesn't exist, sweep it under the rug.

13 So we will object to that.

14 **THE COURT:** Okay. That's fair. And, again, I'm
15 not -- I'm not ruling anything in or out at this point other
16 than that document.

17 Now, I want to talk about the partnership agreement that
18 was the subject of the second submission. And let me tell you,
19 Ms. Agnolucci, what my concerns are about this.

20 Putting aside some of the other issues, first of all, this
21 was entered into in 2004.

22 **MS. AGNOLUCCI:** Correct.

23 **THE COURT:** The tax year, the bankruptcy, et cetera,
24 was after this. So who or what is going to connect this up to
25 the issues in this case?

1 **MS. AGNOLUCCI:** Well, there's no -- I mean, the -- we
2 think that there's an automatic connection with the issues in
3 this case because it shows a partnership that continued over
4 time that started in 2004.

5 **THE COURT:** What's the evidence of it continuing past
6 August of 2004?

7 **MS. AGNOLUCCI:** The evidence is the money transfers
8 that continued to occur throughout the -- throughout the course
9 of the case that are consistent with this agreement, and that's
10 really going to be the subject of Mr. Klein's testimony.

11 **THE COURT:** All right. So that's the first point.
12 I'll get to the Government on that in a second.

13 Now it says party A shall be responsible for the project's
14 market promotion, and then it keeps talking about the project.
15 In the draft that I have, there's no definition of "project."
16 So how do we know what the project is? And that -- we're
17 talking about something that occurred in a foreign country.

18 **MS. AGNOLUCCI:** Well, Your Honor, I think that the
19 interpretation of this agreement is something that the jury
20 should decide. It's -- you know, to us it seems apparent that
21 this is a reference to the TiO₂ project because it is the
22 project Mr. Liew was working on during the time at issue, but
23 that certainly is something that the Government can probe
24 during cross-examination and that the jury should be entitled
25 to decide.

1 **THE COURT:** All right. Now, the third issue is the
2 hearsay issue, and you're asking that this be admitted under
3 residual exception. You were the one that argued -- not you
4 personally, but your side argued, and I read your brief on the
5 other issue, when the Government wanted to get something in,
6 you said this is something that is rarely used, should be used
7 with great caution and, et cetera, et cetera.

8 **MS. AGNOLUCCI:** Yes. And let me address that,
9 Your Honor.

10 First of all, there are three ways to get this in. One is
11 that it's a legally operative fact because it's a contract.

12 The second is that it goes to Mr. Liew's state of mind and
13 to his intent.

14 **THE COURT:** Well, let me -- I don't mean to interrupt
15 you, but I do want to deal with that because this comes up a
16 lot.

17 And, again, Mr. Liew has a right to testify or not
18 testify. If he were to testify, of course, anything that he
19 reasonably relied upon or anything that he felt prudent -- if
20 he said, "Hey, this money was not mine and, you know, it
21 belonged to -- it was not reportable income, and here's this
22 contract and I signed it," that's a different story.

23 But when you try to bring up this defense in the absence
24 of any testimony to support it, whether it's the defendant's or
25 not, then I think you get into issues of -- we're sort of

1 bordering on -- we're talking about now more relevance than
2 anything else.

3 To say it's a legally operative document, then assumes the
4 next problem, which is the authenticity. And what I see here
5 is some attorney certifying that this -- the person -- somebody
6 came into an office and verified that this is their signature.

7 It wasn't in the U.S. Embassy, which could have been done,
8 which is the way it's generally done. You have a hearsay
9 statement to prove authenticity, and it strikes the Court that
10 that is something that is not normally the way these contracts
11 are authenticated.

12 The way they're authenticated is the way this was done
13 with respect to, for example, the FBI agent who's testifying
14 about the Singaporean corporate documents.

15 So what's your response on that issue?

16 **MS. AGNOLUCCI:** Well, and I want to address the
17 residual hearsay issue --

18 **THE COURT:** Okay.

19 **MS. AGNOLUCCI:** -- and the authenticity issue.

20 Your Honor, if we had the choice as to how this had been
21 done, this is not what we would have chosen. We were referred
22 to this attorney, and that's the -- that is the only person who
23 was willing to communicate with us, and this is how she did it,
24 presumably because this is how they believe that it's done in
25 China.

1 The Government has her contact information and her
2 license, and is free to speak with her themselves and confirm
3 what she told us.

4 Now, on the issue of the residual hearsay exception, we
5 may have argued against it under other circumstances, but this
6 is a very unique circumstance that really is what the residual
7 hearsay exception is for, which is when there's a very material
8 fact and this is the only proof of that fact and it would be an
9 injustice not to allow the evidence.

10 Mr. Liew has made his best efforts to obtain a copy of
11 this agreement. We have done everything within our power for
12 almost two years now to obtain this evidence, and this is what
13 we have.

14 **THE COURT:** May I suggest to you that -- you know,
15 again, I'm not criticizing you because there are always
16 restraints to what one can do. But, you know, I allowed the
17 Government to do a Rule 15 subpoena deposition. You could have
18 done a deposition. We could have done video testimony. You
19 could do a certification in the United States Embassy. They
20 have facilities for doing that. That's the way it's typically
21 done.

22 So there are all -- so to say, you know, this is really
23 crucial to our defense, yes, that's -- you know, that's
24 certainly an argument, but then we have rules of evidence. We
25 have -- you know, that have been -- that the Court has to

1 follow for both sides.

2 Yes, you might say there's a fact out there that proves,
3 you know, categorically that either the defendants are guilty
4 or that they're not guilty; but if it's not admissible, it begs
5 the question to say, "But this is really important to my case."

6 That's a factor, but it's not -- it's not dispositive, and
7 the Court has to -- again, I'm not indicating at this point how
8 I'm going to rule on this.

9 **MS. AGNOLUCCI:** Yeah.

10 **THE COURT:** It may be -- and I want to hear from the
11 Government -- to the extent that this is going to be relied
12 upon by Dr. Klein -- it's Dr. Klein; right?

13 **MS. AGNOLUCCI:** Professor Klein.

14 **THE COURT:** Professor Klein, excuse me.

15 -- it may be a different kettle of fish. But to get this
16 document in the way it is, I will say, without -- but my
17 inclination is not to allow it in.

18 **MS. AGNOLUCCI:** And may I just address what Your Honor
19 just said about depositions? We did attempt to get both video
20 testimony and a Rule 15 deposition, and those requests were
21 declined. So although we could file a motion for a Rule 15
22 deposition with the Court and the Court could grant it, we've
23 looked into this; and when the -- first of all, there would be
24 no way to enforce it; second of all, when we can't make a
25 representation that the witness is available, it's -- you know,

1 it's a high standard; and, third of all, even if Your Honor
2 granted a Rule 15 deposition, the witness has declined to
3 participate in any of this.

4 So this is really the only way that we were able to get
5 this information.

6 **THE COURT:** All right.

7 **MS. AGNOLUCCI:** And I think that the hurdle of
8 Rule 901, in terms of authenticity, is not as high as the
9 Government would like it to be. It's really -- you know, it
10 can be met with circumstantial evidence, and I think any
11 question about this document would certainly be elicited in
12 cross-examination, and it would be for the jury to decide what
13 weight to give the document.

14 **THE COURT:** Cross-examination of whom?

15 **MS. AGNOLUCCI:** They could certainly cross-examine
16 Mr. Klein, for example, and say, "Well, did you -- what other
17 evidence is there? Is this the only evidence?" And, you know,
18 I'm not going to write their cross-examination for them, but
19 I'm sure that they would do it skillfully.

20 **THE COURT:** All right. Let me hear from you,
21 Mr. Hemann.

22 **MR. HEMANN:** So I dare say, Your Honor, that admitting
23 this document would violate probably every rule of evidence
24 other than privilege rules; and, so, it's a little hard to know
25 where to start. But if you look at the --

1 **THE COURT:** Give me your top three.

2 **MR. HEMANN:** I'll give you my top -- I can go down the
3 contract itself.

4 First of all, Party A is the investment partners
5 represented by Qiao Ning -- or Ning Qiao in the document. It
6 doesn't identify who those people are, and there's a grand
7 total of one payment over the 28 that we can trace into China
8 that went to Qiao Ning. It wasn't until 2010, and it went
9 through a Singapore entity rather than directly to Qiao Ning.

10 Number two, I agree with the Court's observation regarding
11 the project. The first sentence of the contract itself says,
12 "Party A shall be fully responsible for the project's market
13 promotion."

14 At the time that this was signed, there were multiple
15 projects that Mr. Liew was involved in in China, including this
16 ACR project that the Court heard testimony from Michael Marinak
17 about. Mr. Marinak testified that Mr. Liew had a list of
18 projects that he was working on. Mr. Zisko testified about
19 other projects that Mr. Liew was working on in China.

20 This contract does not have -- mention titanium dioxide or
21 the Pangang Group or Panzhihua or Jinzhou anywhere in the
22 contract. Indeed, it is dated two months before Mr. Liew's
23 letter to Hong Jibi seeking the Jinzhou contract in the first
24 instance.

25 So there's no -- in fact, the evidence would suggest,

1 quite to the contrary, that this has to do with a different
2 project, given Mr. Marinak's testimony and the documentary
3 evidence with regard to the ACR project that was going on at
4 the time.

5 Second of all, there is a -- there's a break -- third of
6 all, there's a breakdown in the contract with regard to the
7 way -- the responsibilities that the parties would undertake.
8 There is not a single piece of evidence in the record or, as
9 far as the Government knows, anywhere that the partners
10 represented by Qiao Ning undertook any of the responsibilities
11 that he was supposed to, which involve the middle stage within
12 Party A's purview.

13 The middle stage of what is a good question, but the
14 middle stage would seem to suggest the actual work on the
15 contract. The evidence has been uniform and undisputed that to
16 the extent that work was done, it was done by Walter Liew in
17 the United States.

18 There's a breakdown 60/40 in terms of the contract
19 amounts. The evidence before the Court is that it's about over
20 80 percent of the money earned by Mr. Liew, taken in by
21 Mr. Liew, went to China. There's not a 60/40 breakdown;
22 there's about an 83/17 breakdown.

23 And according to Professor Lewis' -- I'm sorry --
24 Professor Klein's testimony, a breakdown of profits within a
25 partnership would be post expenses. And all that happened in

1 this case is Mr. Liew took the expenses in the United States,
2 and all the profits went overseas, to whom we do not know.

3 So those are the relevance problems with this, because
4 this does not, on its face, show any connection to the actual
5 project that was contemplated or occurred.

6 **THE COURT:** Let me ask, has the Government done any
7 investigation -- you've known about this document for a
8 while -- as to the authenticity of this document?

9 **MR. HEMANN:** So just on the topic of when we knew
10 about it, we did not receive this until after the trial had
11 started. It was from -- or very close to -- certainly after
12 trial -- after the documents in the trial -- or I can find the
13 dates. Apparently, Mr. Weinberg, Christina Liew's lawyer,
14 obtained it. It was faxed to us at some point, and I want to
15 say maybe in December or January, from Mr. Weinberg -- or from
16 defense counsel through Mr. Weinberg.

17 We are under the same constraints that the Defense is
18 under in terms of going into China and dealing with a witness,
19 particularly a represented witness. We have no ability to do
20 that. We've done a great deal of investigation into whether or
21 not there is an actual agreement of any kind with Qiao Ning.

22 And I point out to Your Honor that we have pored over the
23 evidence that was discovered in the office and in the Liew
24 residence. There is not a single piece of paper that suggests
25 that there is any joint venture contract, that there is any

1 partnership agreement.

2 **THE COURT:** Were there any emails found in the myriad
3 of materials that were obtained from the defendants' various
4 places?

5 **MR. HEMANN:** No. This is the only -- and this goes to
6 Ms. Agnolucci's argument, I presume, under the residual
7 exception. The only piece of evidence in this case that there
8 is any kind of agreement between Mr. Liew and some joint
9 venture partner in China is this piece of paper.

10 **THE COURT:** All right.

11 **MS. AGNOLUCCI:** May I briefly respond, Your Honor?

12 **THE COURT:** Yes. I get your argument. Let me hear
13 final --

14 **MS. AGNOLUCCI:** First of all --

15 **THE COURT:** Because I don't have to resolve this at
16 this moment, because this will become more relevant -- not more
17 relevant -- this will become -- this will be crystallized, I
18 assume, sometime tomorrow when the Defense begins.

19 **MR. HEMANN:** I agree with that, Your Honor. I might
20 make the point that we do renew our *Daubert* motion as to
21 Professor Klein and Mr. Cox to the extent that either of them
22 are going to testify about the possibility of some ambiguous
23 agreement overseas.

24 **THE COURT:** All right. We'll get to that. We'll get
25 to that.

1 **MR. HEMANN:** Okay.

2 **THE COURT:** That's a remedy, and that's a scope-of-
3 ruling issue, not an issue on the merits.

4 I'll give you the last word.

5 **MS. AGNOLUCCI:** First of all, Your Honor, we did
6 produce this document in November. There are three versions
7 of -- there are two versions of it. The version we got from
8 Mr. Weinberg we gave to the Government in November.

9 **THE COURT:** All right.

10 **MS. AGNOLUCCI:** We then, immediately after receiving
11 it, started taking steps to authenticate it through deposition,
12 et cetera. And then we produced it again with the declaration
13 that sort of authenticates it in January. But the Government
14 has had it since November.

15 The second point is that there is ample circumstantial
16 evidence of this partnership with Qiao Ning. First of all,
17 Your Honor heard Peter Zisko testify that in 2006 he and Walter
18 Liew had a falling out because Walter Liew told him that he had
19 to transfer a certain share of the profits from one of their --
20 I believe it related to a micronizer to Qiao Ning.

21 Second of all, the individual who owns at least two, if
22 not three or four, of the companies is Qiao Ning's wife,
23 Li Rue. So there is a connection there that would support
24 this.

25 **THE COURT:** All right.

1 **MS. AGNOLUCCI:** And the last point I would make,
2 Your Honor, is that if Your Honor is not persuaded that this
3 document should be admissible, at the very least, under
4 Rule 703, Mr. Klein is entitled to rely on it.

5 **THE COURT:** Okay. Well, a couple of things. You want
6 to --

7 **MR. HEMANN:** One very brief point, Your Honor. Qiao
8 Ning is Christina Liew's brother-in-law, and the Defense
9 purports --

10 **MR. GASNER:** Brother.

11 **MR. HEMANN:** Brother. And the Defense purports that
12 he is Mr. Liew's joint venture partner. He is a -- he could
13 not be more affiliated with the Defense, and they've been
14 unable to procure his testimony.

15 We have attempted to, just like they have, get Rule 15
16 depositions in Singapore that would have been very
17 illuminating. We were unable. We ran into the same problem.

18 **THE COURT:** All right. All right.

19 **MS. AGNOLUCCI:** And I think Your Honor can understand
20 why he wouldn't want to associate himself with a criminal
21 matter and, you know, retained counsel and said, "Talk to my
22 lawyer."

23 **THE COURT:** Okay. My tentative view is that this
24 document is not admissible. It's not authentic. I've reviewed
25 carefully Rule 901 and Weinstein's treatise on 901, which I'm

1 very familiar with. And there are ways, there are
2 illustrations that Congress and the committee has given to
3 authenticating foreign documents. This doesn't come close to
4 any of those, not even close.

5 I also believe that, given the nature of the charges in
6 this case and the issue about foreign transfers, that the
7 reliability of this document, without any testimony, is
8 extremely suspect. It's extremely prejudicial to the
9 Government to not be able to cross-examine in any way any of
10 the makers of this contract.

11 So I think it's both -- it's both unreliable; the Defense
12 hasn't shown its authenticity; and to go to your last point,
13 Ms. Agnolucci, with respect to Rule 70- -- it's actually 703,
14 which, as it relates to evidence that might otherwise be
15 inadmissible, which the Court is inclined to rule is
16 inadmissible, it says, Rule 703 says, quote: (reading)

17 "The facts or data in the particular case upon which
18 an expert bases an opinion or inference may be those
19 perceived by or made known to the expert at or before the
20 hearing."

21 And here's the key language continuing the quote:
22 (reading)

23 "If of a type reasonably relied upon by the
24 experts -- by expert in the particular field in forming
25 opinions or inferences upon the subject, the facts or data

1 need not be admissible in evidence in order for the
2 opinion or inference to be admitted."

3 And then it goes on to say: (reading)

4 "Facts or data that are otherwise inadmissible shall
5 not be disclosed to the jury by the proponent of the
6 opinion or inference unless the Court determines that
7 their probative value in assessing -- in assisting the
8 jury to evaluate the expert's opinion substantially
9 outweighs their prejudicial effect," unquote.

10 So what I'm focused on is of a type reasonably relied upon
11 by experts in the particular field; and a nonauthentic document
12 like this, I would believe, as a matter of law, is not
13 something that any competent expert would reasonably rely upon.
14 They could rely upon partnership agreements, but not ones that
15 are not authentic and ones that were issued under these
16 circumstances.

17 So I'm not inclined to let Professor Klein rely on this
18 because I think it then bootstraps an otherwise unreliable
19 document.

20 And I think, frankly, that, you know, there might have
21 been -- and I don't know what they are, and it doesn't really
22 matter that there are other ways from which -- by which the
23 Defense could have given some indicia of reliability, some
24 indicia of authenticity. But if it's unavailable, the Court
25 deals with the facts as it finds them.

1 And the fact that a particular -- there are rules that
2 deal with admissibility of evidence where a witness or evidence
3 is unavailable, but this is not one of them. This is not one
4 of those circumstances.

5 So I don't think this document comes in at all. It
6 doesn't come in through Klein. And unless some other evidence
7 is forthcoming, that would be my ruling. So that's going to be
8 the basis.

9 You've got your point for appeal well preserved, and if
10 I'm wrong, the Ninth Circuit knows how to tell me that I'm
11 wrong. They've done it before.

12 **MR. HEMANN:** Your Honor, so we need to come up with a
13 time, and now probably isn't the time, Your Honor, to -- we've
14 been notified that Mr. Klein and Mr. Cox will be testifying
15 tomorrow. We don't believe, particularly in light of the
16 Court's ruling just now, that any of Mr. Klein's testimony and
17 part of Mr. Cox's testimony is admissible under Rule 702.

18 We'd like to address that with the Court. Obviously, the
19 Court's preference is, appropriately, to respect the time of
20 the jury. So I want to notify Your Honor that it is going to
21 come up tomorrow, and it is something that we're going to have
22 to deal with.

23 **THE COURT:** All right. I'll reserve time if we need
24 it. If the defendants still wish to call either or both of
25 these experts, they believe they can lay a proper foundation,

1 I'll certainly -- I'll certainly allow them the opportunity
2 to -- well, first, let's find out -- so a little bit of a
3 chicken-and-egg kind of a situation. We need the time. The
4 question would be who goes forward first. Does the Defense go
5 forward and attempt to lay a foundation outside the presence of
6 the jury, the Government gets to cross-examine; or does the
7 Government just get to voir dire the witness outside the
8 presence of the jury?

9 But I think both sides need to sort of take a sober look
10 at the state of the record as it may relate to the expert
11 testimony to see whether it's even -- it's viable or not.

12 I'm not going to rule out at this point on this record any
13 expert. I just ruled on what's been presented to me and gave
14 you my -- since the issue of 702 and 703 were raised, I gave
15 you my view about how 703 would apply in this case.

16 So one possibility is we meet tomorrow morning early at
17 7:00 o'clock, get the experts in here. But I think -- I think
18 both sides need to talk to each other about what's going to
19 happen so at least you can frame the issue for the Court, both
20 procedurally and substantively, what is going to happen so I
21 can make an appropriate ruling.

22 **MR. HEMANN:** Maybe we'll talk during the course of
23 some breaks today or -- and advise the Court either at a break
24 or just at the very end.

25 **THE COURT:** Yes. That will be great.

1 **MR. HEMANN:** Okay. And, Your Honor, looks like
2 there's one other matter, if it's appropriate, and it will take
3 me 30 seconds.

4 I just want to make a record that the United States
5 subpoenaed two employees of the Pangang Group through their
6 attorneys here in the United States, Mr. Arguedas and
7 Mr. Niespolo. Both of them have been released as material
8 witnesses on bond issued by Judge Corley. Judge Corley had
9 ordered them to appear during the Government's case in chief.

10 We were advised yesterday that neither of them may come to
11 the United States. So we will not be calling them, and the
12 Government intends to initiate bond revocation proceedings as
13 to two of them.

14 I just wanted to make the record in front of Your Honor.

15 **THE COURT:** All right. For whatever it's worth, you
16 made your record.

17 **MR. HEMANN:** For whatever it's worth, but I felt it
18 was appropriate that we had let the Court know that we had
19 called them and that they had not appeared.

20 **THE COURT:** Very well. Thank you -- let's bring --

21 **MS. AGNOLUCCI:** Just so Your Honor knows, we're going
22 to reattempt to obtain some other means of authenticating this
23 document.

24 **THE COURT:** Yes.

25 **MS. AGNOLUCCI:** You know, we've done everything

1 possible, I can assure Your Honor, but we will try again and
2 would like to reserve the right to --

3 **THE COURT:** Absolutely.

4 **MS. AGNOLUCCI:** -- reopen this issue.

5 **THE COURT:** Absolutely. I've only ruled on the
6 record, and I think you did a very good job, Ms. Agnolucci, of
7 crystallizing. I think you gave it your best shot and I really
8 thought about it, and you won me over with respect to the
9 contract with Sherwin-Williams. And I really noodled over this
10 issue, and I don't -- it doesn't hit any of the bells and
11 whistles.

12 I feel your pain as far as there's evidence out there that
13 could help your client, but it may not be -- you may not have
14 the link to get it in, and that happens frequently in trials.
15 And that's the reality of the law, and that's what we have to
16 follow.

17 All right. Let's get the jury in.

18 **MR. HEMANN:** Thank you, Your Honor.

19 (Proceedings were heard in the presence of the jury:)

20 **THE COURT:** Please be seated.

21 Good morning, everybody. Just to let you know that we are
22 starting a little later, but just to kind of let you know some
23 of the things that kind of go on is that, you know, we all,
24 counsel and the Court, have been working really hard late at
25 night, early in the morning on legal issues that are important

1 to make sure that you hear proper evidence in the case. So
2 it's not like we're saying, "Oh, we're going to start late and
3 keep the jury waiting." We've been working really hard, late
4 at night and in the morning.

5 And it ties into -- the process ties into the instruction
6 that the Court gives you every night, which is that the
7 admissibility of evidence and other legal matters is something
8 that is very, very important and the rules that apply because,
9 you know, countless generations in our country have taught us
10 that certain kinds of evidence are not appropriate for any
11 trier of fact to consider. And these are the things that the
12 Court has to look into, discuss with the parties, to make sure
13 that what it's doing is legally correct and it's the type of
14 evidence you can hear.

15 And it ties into the instruction that I give you at the
16 end of the day; that is, if you obtain any information outside
17 of that, the chances are that it would be inadmissible and it
18 would automatically be -- corrupt the process because the
19 parties wouldn't know about it. They couldn't cross-examine
20 the source of the information.

21 So it's not just sort of rules for the sake of rules. It
22 ties into everything that we do here when you're not here to
23 make sure that the evidence that you hear is what the Court
24 believes the law allows you to hear to make a proper decision.

25 So I wanted you to hear that little homily for the

1 morning, if you will, as we proceed with the agent's testimony.

2 And, as I do with all witnesses, I want to remind you that
3 you're still under oath.

4 **THE WITNESS:** Yes, Your Honor.

5 **CECILY ROMETO,**

6 called as a witness for the Government, having been previously
7 duly sworn, testified further as follows:

8 **THE COURT:** All right. You may proceed.

9 **MR. SCOTT:** Thank you.

10 **DIRECT EXAMINATION (resumed)**

11 **BY MR. SCOTT:**

12 **Q.** Special Agent Rometo, you recall when yesterday when we
13 broke, we were talking about a company called ESI Equipment and
14 Engineering?

15 **A.** Yes.

16 **Q.** And you recall that the company was registered on
17 June 22nd, 2008?

18 **A.** Yes.

19 **Q.** And it's owned by Qiao Mu?

20 **A.** Yes.

21 **Q.** And who is Qiao Mu?

22 **A.** Qiao Mu is Christina Liew's brother.

23 **Q.** During the course of your investigation, did you also
24 locate bank account information associated with the ESI
25 company?

1 **A.** Yes, I did.

2 **MR. SCOTT:** Your Honor, permission to approach with
3 Exhibit 936.

4 **THE COURT:** Yes, you may.

5 **BY MR. SCOTT:**

6 **Q.** Do you recognize that document, Special Agent Rometo?

7 **A.** Yes.

8 **Q.** What is it?

9 **A.** These are -- these are records that originally came from
10 Lorraine Lee and BSP Management, which was the incorporating
11 company, and they contain information about the striking off of
12 the company. They contain some information regarding the
13 articles of association, and they also contain information
14 regarding some of the accounts and other administrative matters
15 related to ESI.

16 **Q.** And did these documents come from Singapore?

17 **A.** Yes, they did.

18 **Q.** And yesterday we discussed records provided by the
19 Singapore government; correct?

20 **A.** Yes.

21 **Q.** And were these documents produced under the Mutual
22 Assistance in Criminal Matters Act?

23 **A.** That's correct.

24 **Q.** Is that also called MACMA?

25 **A.** Yes.

1 Q. Is that the method by which the U.S. Government obtains
2 these documents from the Singaporean Government?

3 A. Yes, it is.

4 Q. So going forward, when you describe documents coming from
5 Singapore, is that the method under which they were obtained?

6 A. It is.

7 MR. SCOTT: Your Honor, the United States offers into
8 evidence Exhibit 936.

9 THE COURT: Any objection?

10 MS. AGNOLUCCI: No objection.

11 THE COURT: Admitted.

12 (Trial Exhibit 936 received in evidence)

13 MR. SCOTT: Mr. Hemann, if you could bring up page 20
14 of Exhibit 936, please.

15 (Pause in proceedings.)

16 THE COURT: Do we have our system turned on?

17 THE CLERK: It is. I'll clear it and start over.

18 MR. HEMANN: I'm up on my screen here.

19 THE CLERK: Is your --

20 MR. HEMANN: Projector.

21 THE CLERK: Everything is plugged in totally?

22 MR. HEMANN: It appears to be plugged in.

23 (Pause in proceedings.)

24 THE CLERK: I'll clear it again.

25 (Pause in proceedings.)

1 **MR. HEMANN:** If I could just have one moment,
2 Your Honor. We're trying to sort out why.

3 (Pause in proceedings.)

4 **MR. HEMANN:** There we go.

5 **THE COURT:** I think we need Ms. Mahoney back.

6 (Laughter)

7 **THE COURT:** All right. You may please put that up.
8 Would you give the number again for the record, please?

9 **MR. SCOTT:** Page 20 of Exhibit 936, please.

10 **THE COURT:** All right.

11 **MR. HEMANN:** There we go. Thank you, Your Honor.

12 **BY MR. SCOTT:**

13 **Q.** Special Agent Rometo, do you see that page?

14 **A.** It actually isn't on my screen. My screen must be out of
15 range.

16 **THE CLERK:** Is it up there now?

17 **THE COURT:** It is, thank you.

18 **THE CLERK:** Is it on the jurors' screen?

19 **THE JURORS:** Yes.

20 **THE COURT:** Okay. Thank you.

21 **BY MR. SCOTT:**

22 **Q.** Special Agent Rometo, what information is provided on that
23 page?

24 **A.** So this information includes just some of the registration
25 information associated with ESI. It includes the name of the

1 director, which is Qiao Mu, his nationality, his occupation,
2 date of birth and such. It also includes an email address
3 listed for him, which is hong888usa@yahoo.com.

4 **Q.** And from your investigation, are you familiar with that
5 email address?

6 **A.** Yes.

7 **Q.** And whose email is that?

8 **A.** It's Christina Liew's email address.

9 **Q.** Mr. Hemann, if you could go to page 35 of the same
10 exhibit, please.

11 Special Agent Rometo, what information do you see on
12 page 35?

13 **A.** This information contains a resolution from the directors
14 that the Overseas Chinese Banking Corporation will be the bank
15 associated with ESI, and that the authorized signatories are
16 Qiao Mu as well as Christina Liew.

17 **Q.** And as authorized signatories, those two individuals
18 control the bank account?

19 **A.** Yes.

20 **MR. SCOTT:** Your Honor, permission to approach the
21 witness with Exhibit 937?

22 **THE COURT:** Yes.

23 **BY MR. SCOTT:**

24 **Q.** Special Agent Rometo, do you recognize that document?

25 **A.** Yes, I do.

1 Q. What is it?

2 A. This is a -- this is documentation from the OCBC Bank, the
3 bank of Singapore associated with ESI. It includes a summary,
4 as well as information about the signatories, customer
5 information, and it also contains transactional records
6 associated with the account.

7 Q. And from where was that document obtained?

8 A. This was obtained from Singapore via MACMA.

9 MR. SCOTT: Your Honor, the United States offers
10 Exhibit 937.

11 THE COURT: Any objection?

12 MS. AGNOLUCCI: No objection.

13 THE COURT: It's admitted.

14 (Trial Exhibit 937 received in evidence)

15 MR. SCOTT: Mr. Hemann, if you could turn to page 4,
16 please.

17 Q. Special Agent Rometo, on page 4 do you see information
18 regarding the opening of the account?

19 A. Yes.

20 Q. And what do you see?

21 A. The opening information includes the registered name of
22 the customer, which in this case is ESI Equipment and
23 Engineering. It also includes the fact that the account would
24 be in U.S. dollars, and it includes an address and the contact
25 person regarding the account, which is Christina Liew.

1 Q. Could you turn to page 5, please, Mr. Hemann?

2 Special Agent Rometo, is there also additional information
3 regarding the signature authority on the account?

4 A. Yes. This page contains information reaffirming that the
5 account was for ESI Equipment and Engineering and that the two
6 signatories will be Qiao Mu and Christina Liew.

7 Q. And Qiao Mu is Christina Liew's brother?

8 A. Yes.

9 Q. Special Agent Rometo, did you become familiar with a
10 company during your investigation called Huan Qu Process
11 Equipment Pte. Limited?

12 A. Yes, I did.

13 MR. SCOTT: Your Honor, permission to approach the
14 witness with Exhibit 906.

15 THE COURT: Yes.

16 BY MR. SCOTT:

17 Q. Do you recognize that document?

18 A. Yes.

19 Q. What is it?

20 A. These are ACRA records obtained from Singapore regarding
21 Huan Qu Process Equipment Pte. Limited. They contain
22 information regarding the opening of the company, its
23 registration, and its management.

24 MR. SCOTT: Your Honor, the United States offers
25 Exhibit 906.

1 **THE COURT:** Any objection?

2 **MS. AGNOLUCCI:** No objection.

3 **THE COURT:** It's admitted.

4 (Trial Exhibit 906 received in evidence)

5 **MR. SCOTT:** Mr. Hemann, if you could go to page 2,
6 please.

7 **Q.** Special Agent Rometo, what information do you see on
8 page 2?

9 **A.** So page 2 lists the name of the company, which was Huan Qu
10 Process Equipment Pte. Limited. It lists the type of company,
11 the stated activities of the company, as well as the director
12 and shareholder of the company, which is Li Rue, who is listed
13 as being the director as well as the shareholder.

14 **MR. SCOTT:** And, Your Honor, the parties have
15 stipulated that Li Rue is Christina Liew's sister-in-law and
16 resides in China.

17 **THE COURT:** Is that correct?

18 **MS. AGNOLUCCI:** Correct.

19 **THE COURT:** So stipulated.

20 **BY MR. SCOTT:**

21 **Q.** Turning to page 3, please, Mr. Hemann.

22 Is there information on page 3 regarding an additional
23 director of the company?

24 **A.** Yes. The second director is listed at the bottom and is
25 listed as Elaine Shu Peng Chin.

1 **MR. SCOTT:** And, Your Honor, the parties have
2 stipulated that Elaine Shu Peng Chin is Walter Liew's niece.

3 **THE COURT:** Is that correct?

4 **MS. AGNOLUCCI:** That is correct, Your Honor.

5 **THE COURT:** So stipulated.

6 **BY MR. SCOTT:**

7 **Q.** Turning to page 4, please, Mr. Hemann.

8 Special Agent Rometo, is there information regarding the
9 registration date of this company?

10 **A.** (Witness examines document.) Oh, I do see it. Yes. So
11 the date that the registration was lodged by Casey Lin &
12 Company, so it looks like the date it would have been entered
13 into ACRA, it's listed as June 30th, 2009.

14 **Q.** And turning to page 5, please, Mr. Hemann.

15 Is there an office address listed for the company?

16 **A.** (Witness examines document.) Yes.

17 **Q.** What is that address?

18 **A.** So the address that's listed is 10 Anson Road,
19 Number 35-11, International Plaza. And that's the same address
20 of Casey Lin & Company, which is the company that incorporated
21 Huan Qu.

22 **Q.** Mr. Hemann, go to page 64 of this exhibit, please.

23 Special Agent Rometo, is there information regarding the
24 ownership of this Huan Qu company?

25 **A.** Yes. This page lists the sole owner as being Li Rue with

1 a thousand shares.

2 Q. And Li Rue is the sole owner?

3 A. That's correct.

4 Q. And finally, Mr. Hemann, if you could turn to page 36,
5 please.

6 Special Agent Rometo, do you see information on page 36
7 regarding the "business ceased" date for this company?

8 A. Yes. This page lists the business as having ceased on
9 August 20 of 2010.

10 Q. Special Agent Rometo, during your investigation did you
11 also locate bank information associated with Huan Qu Process
12 Equipment?

13 A. Yes, I did.

14 MR. SCOTT: Your Honor, permission to approach with
15 Exhibit 932.

16 THE COURT: Yes.

17 BY MR. SCOTT:

18 Q. Do you recognize this document?

19 A. Yes.

20 Q. What is it?

21 A. So these are records from Singapore regarding the -- this
22 is further backup information regarding the incorporation of
23 the company and other details regarding the director and the
24 shares.

25 Q. And this information was provided by whom?

1 **A.** This information was provided by Casey Lin Consultants,
2 which is the incorporating entity of Huan Qu and it was
3 provided pursuant to a MACMA request to Singapore.

4 **MR. SCOTT:** Your Honor, the United States offers
5 Exhibit 932.

6 **THE COURT:** Any objection?

7 **MS. AGNOLUCCI:** No objection.

8 **THE COURT:** It's admitted.

9 (Trial Exhibit 932 received in evidence)

10 **MR. SCOTT:** Mr. Hemann, if you could go to page 28 of
11 this document, please.

12 **Q.** Special Agent Rometo, what information do you see on
13 page 28?

14 **A.** Page 28 reflects the approval by Huan Qu directors that a
15 U.S. dollar account be opened with the Development Bank of
16 Singapore, which is also known as DBS, and that that account be
17 signed only by Ms. Li Rue.

18 **Q.** And Li Rue is Christina Liew's sister-in-law?

19 **A.** That's correct.

20 **MR. SCOTT:** Your Honor, permission to approach the
21 witness with Exhibit 942.

22 **THE COURT:** Yes.

23 **BY MR. SCOTT:**

24 **Q.** Do you recognize that document?

25 **A.** Yes.

1 Q. What is it?

2 A. These are records from DBS Bank that were obtained
3 pursuant to a MACMA request from Singapore regarding the bank
4 account associated with Huan Qu.

5 MR. SCOTT: Your Honor, the United States offers
6 Exhibit 942.

7 MS. AGNOLUCCI: No objection.

8 THE COURT: Admitted.

9 (Trial Exhibit 942 received in evidence)

10 MR. SCOTT: Mr. Hemann, if you could go to page 16,
11 please.

12 Q. Special Agent Rometo, do you see information on page 16
13 regarding the closing of the account?

14 A. Yes.

15 Q. And what do you see?

16 A. So these records show that at that time, the balance was
17 approximately \$46,000, \$47,000; and then subsequently in that
18 month, money was withdrawn to account holder Li Rue, and then
19 the account balance was subsequently zero. The account was
20 closed on October 13th, 2010 -- 2010.

21 Q. And the account was closed by Li Rue?

22 A. That's my understanding.

23 Q. Special Agent Rometo, during the course of your
24 investigation, did you become familiar with a company called
25 Dongbei Process Engineering Pte. Limited?

1 **A.** Yes.

2 **MR. SCOTT:** Your Honor, permission to approach the
3 witness with Exhibit 907.

4 **THE COURT:** All right.

5 (Pause in proceedings.)

6 **BY MR. SCOTT:**

7 **Q.** Do you recognize that document?

8 **A.** I do.

9 **Q.** What is it?

10 **A.** These are ACRA records obtained from Singapore regarding
11 the opening and ownership of Dongbei Process Engineering Pte.
12 Limited.

13 **MR. SCOTT:** Your Honor, the United States offers
14 Exhibit 907.

15 **MS. AGNOLUCCI:** No objection, Your Honor.

16 **THE COURT:** Admitted.

17 (Trial Exhibit 907 received in evidence)

18 **MR. SCOTT:** Mr. Hemann, if we could go to page 2,
19 please.

20 **Q.** What information is provided on page 2, Special Agent
21 Rometo?

22 **A.** So this page summarizes the company information. So the
23 name of the company, Dongbei Process Engineering; the stated
24 company activity, which is engineering activities; as well as
25 the company director and shareholder, which is listed as

1 Li Rue, who is Christina Liew's sister-in-law.

2 **Q.** If we could turn to page 3, please, Mr. Hemann.

3 Towards the bottom of the page, is there additional
4 information regarding directors of the company?

5 **A.** Yes. So this section of the page lists the second
6 director, which is Elaine Shu Peng Chin, who is Walter Liew's
7 niece.

8 **Q.** Go to page 5, please, Mr. Hemann.

9 Special Agent Rometo, is there information on this page
10 regarding the office address of the Dongbei company?

11 **A.** Yes.

12 **Q.** What is that address?

13 **A.** So this address is, again, the same address that's listed
14 for Casey Lin & Company, which also incorporated Dongbei.

15 **Q.** If we can go to page 8, please, Mr. Hemann.

16 Looking first at the bottom of this page, do you see a --
17 excuse me. Looking first at the -- towards the top of the
18 page, is there information regarding the ownership of the
19 company?

20 **A.** Yes. So it looks like there are a thousand shares
21 allocated, all of which are allotted to Li Rue. So she would
22 be the sole owner of the company.

23 **Q.** And towards the bottom of the page do you see a date that
24 the company was registered?

25 **A.** (Witness examines document.) Yes. The company was lodged

1 into ACRA on July 1st, 2009.

2 **Q.** Mr. Hemann, if you would go to page 38, please.

3 Special Agent Rometo, on this page do you see information
4 regarding the date on which business ceased for the Dongbei
5 company?

6 **A.** Yes. It looks like -- sorry. It's just a little bit
7 small. I believe it says August 20th, 2010, is the date that
8 the business ceased. Yes.

9 **Q.** August 20th, 2010?

10 **A.** Yes.

11 **Q.** During your investigation, did you also locate bank
12 account information associated with this company?

13 **A.** Yes, I did.

14 **MR. SCOTT:** Your Honor, permission to approach with
15 Exhibit 933 and 940.

16 **THE COURT:** All right.

17 (Pause in proceedings.)

18 **BY MR. SCOTT:**

19 **Q.** Looking first at Exhibit 933, do you recognize that
20 document?

21 **A.** Yes.

22 **Q.** What is it?

23 **A.** So this is a document, documentation provided by Casey Lin
24 Consultants, regarding Dongbei regarding its ownership. It
25 looks like articles of association and other information

1 pertinent to the company.

2 **MR. SCOTT:** Your Honor, the United States offers
3 Exhibit 933.

4 **MS. AGNOLUCCI:** No objection.

5 **THE COURT:** Admitted.

6 (Trial Exhibit 933 received in evidence)

7 **MR. SCOTT:** Mr. Hemann, could you go to page 24,
8 please.

9 **Q.** Special Agent Rometo, what information is provided on
10 page 24?

11 **A.** This page lists information regarding the opening of the
12 bank account associated with this company. It would be at the
13 United Overseas Bank in Singapore, and the account would be
14 signed on to only by Christina Liew or Ms. Li Rue.

15 **Q.** Ms. Li Rue is Christina Liew's sister-in-law?

16 **A.** That's correct.

17 **Q.** And those two individuals have control of the bank
18 account?

19 **A.** Yes.

20 **Q.** Can you turn your attention to Exhibit 940, please? And
21 what is that document?

22 **A.** This is documentation provided pursuant to the MACMA
23 customs Singapore. This is from the United Overseas Bank,
24 Limited or Eastern Bank, Limited, and this is bank account
25 information related to Dongbei.

1 **MR. SCOTT:** Your Honor, the United States offers
2 Exhibit 940.

3 **MS. AGNOLUCCI:** No objection.

4 **THE COURT:** It's admitted.

5 (Trial Exhibit 940 received in evidence)

6 **MR. SCOTT:** Mr. Hemann, if we could bring up page 1,
7 please.

8 **Q.** Special Agent Rometo, do you see information on page 1
9 regarding the signatories on this account?

10 **A.** Yes.

11 **Q.** And who are they?

12 **A.** There are two signatories to the account. The first
13 listed signatory is Li Rue, and the second listed signatory is
14 Christina Liew.

15 **Q.** Does it list the name of the company at the top of the
16 page?

17 **A.** Yes. The top of the page lists Dongbei Process
18 Engineering Pte. Limited.

19 **MR. SCOTT:** Your Honor, permission to approach the
20 witness with Exhibit 908.

21 **THE COURT:** All right.

22 **BY MR. SCOTT:**

23 **Q.** Do you recognize this document?

24 **A.** Yes.

25 **Q.** What is it?

1 **A.** These are ACRA incorporation records related to LHV
2 Equipment and Services Pte. Limited, which is another company
3 registered in Singapore.

4 **MR. SCOTT:** Your Honor, the United States offers
5 Exhibit 908.

6 **MS. AGNOLUCCI:** No objection.

7 **THE COURT:** Admitted.

8 (Trial Exhibit 908 received in evidence)

9 **MR. SCOTT:** Turning to page 2, please, Mr. Hemann.

10 **Q.** What information is provided on page 2?

11 **A.** Page 2 provides, again, the name of the company, which is
12 LHV Equipment and Services Pte. Limited. The listed company
13 activity is wholesale of service establishment, equipment, and
14 supplies; and it lists the first director as being Li Rue, who
15 is Christina Liew's sister-in-law.

16 **Q.** And turning now to page 3, please, Mr. Hemann.

17 Is there additional information about directors on that
18 page?

19 **A.** Yes. The second director and the shareholder is listed as
20 Elaine Shu Peng Chin, who lives in Singapore and is Walter
21 Liew's niece.

22 **Q.** And is there also information on that page towards the
23 bottom regarding the date the company was registered?

24 **A.** (Witness examines document.) Yes. The date it was lodged
25 into ACRA and registered is May 4th, 2011.

1 Q. Turning to page 4, please, Mr. Hemann.

2 The top section of page 4, do you see information
3 regarding the address of the LHV Equipment company?

4 A. Yes. The address is listed as 637 Veerasamy Road,
5 Number 02-107, and this is the same address as
6 Ocean Consulting, which is the company that registered LHV.

7 Q. Turning to page 7, please, Mr. Hemann.

8 Special Agent Rometo, is there information concerning the
9 ownership of the LHV company?

10 A. Yes. This page actually differs from the first page in
11 that it lists Li Rue as being the shareholder of the company,
12 as the sole shareholder, with 2,000 Singapore dollars.

13 Q. And turning to page 26, please, Mr. Hemann.

14 In the second section of this page towards the top, is
15 there information regarding the date on which business ceased
16 for this company?

17 A. Yes. The date listed is September 30th, 2011.

18 Q. During your investigation, did you also become familiar
19 with bank account information related to LHV Equipment and
20 Services?

21 A. Yes.

22 Q. I'd like to show you Exhibit 937, which is already in
23 evidence.

24 Mr. Hemann, if you could bring up page 62, please.

25 Special Agent Rometo, do you see information related to

1 LHV on that page?

2 **A.** Yes, I do. These are records from OCBC, and the
3 registered customer information in this instance is LHV
4 Equipment and Services Pte. Limited.

5 **Q.** And is there a contact person listed for the account
6 towards the bottom?

7 **A.** Yes. The contact person is listed as being Li Rue.

8 **Q.** Turning to the next page, Mr. Hemann, page 63.

9 Is there information concerning the signature authority on
10 this account?

11 **A.** Yes. The sole signature authority on this account is
12 listed as being attributed to Li Rue.

13 **Q.** And Li Rue is Christina Liew's sister-in-law?

14 **A.** That's correct.

15 **MR. SCOTT:** Your Honor, permission to approach the
16 witness with Exhibit 435.

17 **THE COURT:** All right.

18 **BY MR. SCOTT:**

19 **Q.** Special Agent Rometo, I'm going to switch gears now.
20 We're going to talk about some records related to an HSBC
21 account we discussed yesterday.

22 Looking at that document, do you recognize it?

23 **A.** Yes, I do.

24 **Q.** What is it?

25 **A.** This is a collection of materials related to HSBC account.

1 This is the same account that we saw yesterday. It begins in
2 the prefix 503, associated with Qiao Hua.

3 **Q.** And remind the jury, who is Qiao Hua?

4 **A.** Qiao Hua is Christina Liew's father.

5 **Q.** And where were these records found?

6 **A.** Let me double-check.

7 (Witness examines document.) These were located in the
8 Liew residence.

9 **Q.** And did these documents include statements from this HSBC
10 Bank account?

11 **A.** Yes.

12 **Q.** And do these statements show financial transactions
13 related to Huadong Equipment Solutions?

14 **A.** Yes.

15 **MR. SCOTT:** Your Honor, the United States offers
16 Exhibit 435.

17 **MS. AGNOLUCCI:** No objection.

18 **THE COURT:** Admitted.

19 (Trial Exhibit 435 received in evidence)

20 **MR. SCOTT:** Mr. Hemann, if you could go to page 22,
21 please.

22 **Q.** Special Agent Rometo, do you see information here
23 regarding a deposit?

24 **A.** Yes. It looks like there was an amount credited of, looks
25 like, \$359,972.94.

1 Q. And what's the date of that?

2 A. 25th of June, 2008.

3 Q. Do you see towards the bottom it says, "By the order of"?

4 A. (Witness examines document.) Oh, yes. I'm sorry. "By
5 the order of Huadong Equipment Solutions Pte. Limited."

6 Q. And if you could turn to page 23, please, Mr. Hemann.

7 Do you recognize the information on this page?

8 A. Yes.

9 Q. And what do we see?

10 A. So this page includes the same account number, the listed
11 customer name of Qiao Hua. There's a deposit amount for
12 670,000 U.S. dollars.

13 Q. And turning to the next page, Mr. Hemann, page 24.

14 Is there a signature on that page?

15 A. Yes.

16 Q. What's the name?

17 A. The name is Walter Liew.

18 Q. And is there a date associated with this deposit?

19 A. Yes. The date is May 30th, 2008.

20 MR. SCOTT: Your Honor, permission to approach the
21 witness with Exhibit 436.

22 THE COURT: Yes.

23 BY MR. SCOTT:

24 Q. Do you recognize that document, Special Agent Rometo?

25 A. Yes.

1 Q. What is it?

2 A. These are records associated with the same HSBC account,
3 including some communications and transactions.

4 Q. And where was this document found?

5 A. (Witness examines document.) This document was also found
6 in the Liew residence.

7 Q. Do these documents show financial transactions related to
8 Huadong Equipment Solutions?

9 A. Yes.

10 MR. SCOTT: Your Honor, the United States offers
11 Exhibit 436.

12 THE COURT: Any objection?

13 MS. AGNOLUCCI: May I have one moment, Your Honor?

14 THE COURT: Of course.

15 (Pause in proceedings.)

16 MS. AGNOLUCCI: No objection, Your Honor.

17 THE COURT: Admitted.

18 (Trial Exhibit 436 received in evidence)

19 MR. SCOTT: Mr. Hemann, if you could go to pages --
20 page 3, please.

21 Q. Special Agent Rometo, do you see some emails on page 3?

22 A. Yes.

23 Q. Do they continue onto the following pages?

24 A. (Witness examines document.) Yes. There appears to be an
25 email chain of a few pages.

1 Q. And what does this email chain concern?

2 A. So this email chain is correspondence between a
3 representative of HSBC and Walter Liew regarding the account.

4 Q. And, Mr. Hemann, if you could go to page 5, please.

5 There's a message there dated July 1st, 2008. Do you see
6 that?

7 A. Yes.

8 Q. And who is that email from?

9 A. So this email is from Mr. Alex Leung, who is a
10 representative of HSBC, HSBC Bank; and it is correspondence
11 regarding a meeting that had taken place in Hong Kong last
12 month and Mr. Liew's correspondence regarding Mr. Liew's
13 activities with this account, including a deposit for \$674,817.

14 Q. And did we just look at a transfer for \$670,000 into that
15 account?

16 A. Yes, that would have been the approximate amount. I think
17 this has to do with the fact that there are two different
18 currencies being used.

19 Q. Mr. Hemann, if you could go back to page 3, please.

20 Do you see an email towards the bottom from Mr. Liew to
21 the HSBC representative?

22 A. Yes.

23 Q. And is that email referencing the same HSBC account?

24 A. (Witness examines document.) I'm assuming so, since all
25 of these are on the same email chain and they're all pertinent

1 to this account.

2 **Q.** Turning to page 30, please, Mr. Hemann.

3 Special Agent Rometo, what information do you see on
4 page 30?

5 **A.** So this is a handwritten note that's noted being to HSBC.
6 It's dated November 13th, 2008, and it lists request for
7 notations for transfer. The first is for 2.1 million U.S.
8 dollars to the Bank of China in the name of Qiao Hong, who is
9 Christina Liew. And the second notation regards -- also
10 regards a transfer -- there it is; I'm sorry -- for \$1,850,000
11 to a different bank in China in the name of Qiao Hong, who is
12 Christina Liew.

13 **Q.** And is there a signature on that page?

14 **A.** I believe there is, yes.

15 **Q.** And whose signature is that?

16 **A.** Walter Liew.

17 **Q.** And is that the same HSBC account at the top that we've
18 been talking about earlier?

19 **A.** I'm sorry. Can you scroll up one more time so I can
20 double-check?

21 (Witness examines document.) Yes, that's the same account
22 number.

23 **Q.** So this page concerns transfers from that HSBC account to
24 accounts in China?

25 **A.** Yes.

1 **MR. SCOTT:** Your Honor, permission to approach the
2 witness with Exhibits 439 and 439T.

3 **THE COURT:** All right.

4 **BY MR. SCOTT:**

5 **Q.** Special Agent Rometo, do you recognize those documents?

6 **A.** Yes, I do.

7 **Q.** What are they?

8 **A.** These -- this is an original document in Chinese and a
9 translation of that document. The translation -- so the logo
10 HSBC appears on both; and these concern information regarding
11 the same account that we just referenced, this account with the
12 prefix of 503. And it's correspondence between HSBC -- it's
13 addressed to Qiao Hua, and it lists his authorized
14 representative as being Mr. Liew.

15 **Q.** And is Exhibit 439 in Chinese?

16 **A.** Yes, it is.

17 **Q.** And is Exhibit 439T a translation of Exhibit 439?

18 **A.** It is.

19 **MR. SCOTT:** Your Honor, the United States offers
20 Exhibits 439 and 439T.

21 **MS. AGNOLUCCI:** May we have one brief moment, Your
22 Honor?

23 **THE COURT:** Of course.

24 (Pause in proceedings.)

25 **MS. AGNOLUCCI:** Objection, Your Honor.

1 **THE COURT:** May I see the document, please?

2 (Pause in proceedings.)

3 **MR. SCOTT:** Your Honor, I should also mention that the
4 parties have stipulated that this was found in the Liew
5 residence.

6 (Pause in proceedings.)

7 **THE COURT:** The objection is overruled. It's
8 admitted.

9 (Trial Exhibits 439 and 439T received in evidence)

10 **MR. SCOTT:** Mr. Hemann, could you put up page 2 of
11 Exhibit 439T, please?

12 **Q.** Special Agent Rometo, do you see page 2?

13 **A.** Yes.

14 **Q.** And is it a piece of correspondence?

15 **A.** Yes, it is.

16 **Q.** Who is it directed to?

17 **A.** It's directed to Mr. Qiao Hua in China.

18 **Q.** And who is it from?

19 **A.** It is from HSBC.

20 **Q.** And could you read the first paragraph, please?

21 **A.** (reading)

22 "Mr. Qiao:

23 "Thank you for the visit of Mr. Liew, your authorized
24 representative to the HSBC Premiere Center in Hong Kong to
25 make known matters related to our bank staff's service

1 regarding your high-interest investment deposit."

2 **Q.** And scrolling down the page, there's a third paragraph, I
3 believe, begins with "Accordinging."

4 **A.** Yes.

5 **Q.** Read that, too, please.

6 **A.** (reading)

7 "According to (our) records your authorized
8 representative, Mr. Liew, personally came to the HSBC
9 Premiere Center at our bank's main office in Hong Kong on
10 May 30th, 2008, to meet with a premiere customer service
11 manager (hereinafter service manager). During the
12 meeting, the service manager provided Mr. Liew the
13 relevant interest rates for fixed-term deposits as a
14 reference."

15 **Q.** You don't have to read the whole paragraph, but do you see
16 a reference in that paragraph to a \$670,000 deposit?

17 **A.** Yes.

18 **Q.** We already discussed the \$670,000 deposit to that account?

19 **A.** Yes.

20 **MR. SCOTT:** Your Honor, permission to approach the
21 witness with Exhibit 631.

22 **THE COURT:** All right.

23 **BY MR. SCOTT:**

24 **Q.** Special Agent Rometo, do you recognize that document?

25 **A.** I do.

1 Q. What is it?

2 A. This is correspondence from East West Bank to
3 USA Performance Technology, Inc., regarding the notification of
4 an incoming wire transfer from the Bank of China for \$119,385.

5 MR. SCOTT: Your Honor, the United States offers
6 Exhibit 631.

7 THE COURT: Objection?

8 MS. AGNOLUCCI: No objection.

9 THE COURT: Admitted.

10 (Trial Exhibit 631 received in evidence)

11 BY MR. SCOTT:

12 Q. And where was this document found?

13 A. (Witness examines document.) This document was found in
14 the USAPTI office.

15 Q. And towards the bottom of the large paragraph there, does
16 it say from where the money came?

17 A. Yes. It specifies that the sender bank was the Bank of
18 China, and I believe there's a wire that has to come through a
19 correspondent bank in the United States, which is why it's
20 listed as New York, by the order of PITT -- PIETC, Panzhihua
21 Company, Limited.

22 MR. SCOTT: Your Honor, permission to approach the
23 witness with Exhibit 325 and Exhibit 325T.

24 THE COURT: All right.

25

1 **BY MR. SCOTT:**

2 **Q.** Special Agent Rometo, do you recognize those documents?

3 **A.** (Witness examines document.) Yes.

4 **Q.** What are they?

5 **A.** This is a -- there's an original fax transmittal as well
6 as a translation, and it lists as the fax from Walter Liew to
7 Pangang Group, Jinzhou Titanium Industry Company, Limited, to
8 the attention of Wang Yanfu.

9 **MR. SCOTT:** And the parties have stipulated this was
10 located in the USAPTI office. Your Honor, the United States
11 offers Exhibits 325 and 325T.

12 **MS. AGNOLUCCI:** Your Honor, we're looking at 345. I
13 misheard. May we have a moment to look at 325?

14 **THE COURT:** Sure. Of course.

15 **MS. AGNOLUCCI:** Thank you.

16 (Pause in proceedings.)

17 **MS. AGNOLUCCI:** No objection.

18 **THE COURT:** Admitted.

19 (Trial Exhibits 325 and 325T received in evidence)

20 **BY MR. SCOTT:**

21 **Q.** Turning to page 3 of Exhibit 325T, Special Agent Rometo,
22 would you tell us what this document says?

23 **A.** So this is correspondence from Walter Liew to manager
24 Wang, and it's regarding invoice needed for advance payment on
25 the listed contract and regarding payment pursuant to that

1 contract.

2 Q. Is there a signature on that page?

3 A. There is.

4 Q. Whose signature is it?

5 A. Walter Liew.

6 MR. SCOTT: Your Honor, permission to approach with
7 Exhibit 311.

8 THE COURT: All right.

9 BY MR. SCOTT:

10 Q. Special Agent Rometo, do you recognize that document?

11 A. I do.

12 Q. What is it?

13 A. So these are a collection of documents. These are
14 receipts related to the same contract that we saw in the
15 previous exhibit, this PJTY prefix contract that's related to
16 the 30,000-megatons-per-year project.

17 MR. SCOTT: And, Your Honor, the parties have
18 stipulated that these documents were found in both the
19 residence and the USAPTI office, and the United States offers
20 Exhibit 311.

21 THE COURT: Objection?

22 MS. AGNOLUCCI: No objection.

23 THE COURT: Admitted.

24 (Trial Exhibit 311 received in evidence)

25 MR. SCOTT: Mr. Hemann, if we could just bring up the

1 first page of Exhibit 311, please.

2 **Q.** Is this one of the receipts you described?

3 **A.** Yes.

4 **Q.** Do all of the pages following this contain similar
5 receipts?

6 **A.** Yes, they do.

7 **MR. SCOTT:** Your Honor, permission to approach the
8 witness with Exhibit 314.

9 **THE COURT:** Yeah. Before we do that, let's take a
10 stretch break.

11 You can stand up as well, Agent, if you'd like.

12 (Pause in proceedings.)

13 **THE COURT:** All right. Please be seated.

14 You may continue.

15 **MR. SCOTT:** May I approach with Exhibit 314, please?

16 **THE COURT:** Yes, you may.

17 **BY MR. SCOTT:**

18 **Q.** Special Agent Rometo, do you recognize that document?

19 **A.** I do.

20 **Q.** What is it?

21 **A.** This is a document that was found in the safety-deposit
22 box hard drive, and it is an attachment to the 2005 contract,
23 the 05USSCY2 contract.

24 **MR. SCOTT:** Your Honor, the United States offers
25 Exhibit 314.

1 **THE COURT:** Any objection?

2 **MS. AGNOLUCCI:** No objection, Your Honor.

3 **THE COURT:** It's admitted.

4 (Trial Exhibit 314 received in evidence)

5 **BY MR. SCOTT:**

6 **Q.** Special Agent Rometo, you said this is an amendment to the
7 2005 contract?

8 **A.** That's correct.

9 **Q.** Looking at the first page at the top, could you read that
10 full contract number, please?

11 **A.** The contract number is 05USSCY32PGJZ185.

12 **MR. SCOTT:** Your Honor, permission to approach the
13 witness with Exhibits 324 and 320.

14 **THE COURT:** All right.

15 **BY MR. SCOTT:**

16 **Q.** Looking first at Exhibit 324, do you recognize that
17 document?

18 **A.** Yes.

19 **Q.** What is it?

20 **A.** This is correspondence between Mega International Bank and
21 Walter Liew regarding negotiation of letter of credit.

22 **Q.** And does this letter of credit concern payment under the
23 100,000-ton contract?

24 **A.** (Witness examines document.) Yes.

25 **MR. SCOTT:** And, Your Honor, the parties have

1 stipulated Exhibit 324 was located in the Liew residence and
2 the United States offers Exhibit 324.

3 **THE COURT:** Any objection?

4 **MS. AGNOLUCCI:** No objection, Your Honor.

5 **THE COURT:** It's admitted.

6 (Trial Exhibit 324 received in evidence)

7 **BY MR. SCOTT:**

8 **Q.** Just looking quickly at page 1, please, of Exhibit 324.

9 **A.** (Witness examines document.)

10 **Q.** Special Agent Rometo, do you see the -- about three lines
11 down, the letter of credit number?

12 **A.** Yes.

13 **Q.** And what is that?

14 **A.** LC571917/2009D.

15 **Q.** And does it have an amount listed to the right of that?

16 **A.** Yes. The amount is listed as 15,130,000 U.S. dollars.

17 **Q.** Turning your attention now to Exhibit 320, do you
18 recognize that document?

19 **A.** (Witness examines document.) Yes.

20 **Q.** What is it?

21 **A.** So these are two documents to Walter Liew from Mega
22 International Bank from Joseph Chan concerning amendments to
23 two different letters of credit.

24 **MR. SCOTT:** Your Honor, the --

25 **Q.** Did you say where that document was found?

1 **A.** (Witness examines document.)

2 **MR. SCOTT:** Your Honor, the parties have stipulated
3 that this was located in the safe-deposit box, and the
4 United States offers Exhibit 320.

5 **THE COURT:** Objection?

6 **MS. AGNOLUCCI:** No objection.

7 **THE COURT:** It's admitted.

8 (Trial Exhibit 320 received in evidence)

9 **BY MR. SCOTT:**

10 **Q.** Special Agent Rometo --

11 **MR. SCOTT:** Actually, Your Honor, permission to
12 approach with Exhibits 323 and 318?

13 **THE COURT:** All right.

14 **BY MR. SCOTT:**

15 **Q.** Special Agent Rometo, do you recognize Exhibit 323?

16 **A.** (Witness examines document.) Yes.

17 **Q.** What is it?

18 **A.** This is a commercial proposal from USA Performance
19 Technology, Inc., to Pangang Group international Economic and
20 Trading Corporation for Pangang 100K megaton per year of TiO2
21 bichloride process project.

22 **MR. SCOTT:** And the parties have stipulated that this
23 was located in the safe-deposit box, and the United States
24 offers Exhibit 323.

25 **THE COURT:** Any objection?

1 **MS. AGNOLUCCI:** No objection, Your Honor.

2 **THE COURT:** Admitted.

3 (Trial Exhibit 323 received in evidence)

4 **BY MR. SCOTT:**

5 **Q.** Special Agent Rometo, now turning your attention to
6 Exhibit 318, do you recognize that document?

7 **A.** Yes.

8 **Q.** What is it?

9 **A.** This is a document on USA Performance Technology
10 letterhead regarding the clarification of engineering design
11 fee for Contract Number 09USSCT32PGTY24.

12 **Q.** Is there a signature on that page?

13 **A.** There is.

14 **Q.** Whose signature is it?

15 **A.** Walter Liew.

16 **MR. SCOTT:** Your Honor, the parties have stipulated
17 that this was located in the residence, and the United States
18 offers Exhibit 318.

19 **THE COURT:** Any objection?

20 **MS. AGNOLUCCI:** No objection, Your Honor.

21 **THE COURT:** It's admitted.

22 (Trial Exhibit 318 received in evidence)

23 **MR. SCOTT:** Your Honor, permission to approach with
24 Exhibit 321.

25 **THE COURT:** All right.

1 **BY MR. SCOTT:**

2 **Q.** Special Agent Rometo, do you recognize that document?

3 **A.** (Witness examines document.) Yes.

4 **Q.** What is it?

5 **A.** So there are two components to the document. One is
6 documentation from Mega International Bank regarding the advice
7 of documentary credit to USAPTI from the Bank of China; and the
8 second is supporting documentation regarding the same contract.

9 **MR. SCOTT:** Your Honor, the parties have stipulated
10 that this was located in the safe-deposit box, and the
11 United States offers Exhibit 321.

12 **THE COURT:** Any objection?

13 **MS. AGNOLUCCI:** No objection.

14 **THE COURT:** It's admitted.

15 (Trial Exhibit 321 received in evidence)

16 **MR. SCOTT:** Your Honor, permission to approach with
17 Exhibits 329, 330, and 332.

18 **THE COURT:** Very well.

19 **BY MR. SCOTT:**

20 **Q.** Special Agent Rometo, do you recognize these documents?

21 **A.** Yes, I do.

22 **Q.** And what's contained in them?

23 **A.** These are a series of commercial invoices from
24 USA Performance Technology, Inc., to PIETC Panzhihua Company,
25 Limited.

1 Q. And do all three exhibits, Exhibits 329, 330, and 332,
2 contain commercial invoices?

3 A. Yes, they do.

4 MR. SCOTT: Your Honor, the parties have stipulated
5 that all three of these exhibits were located in the residence.
6 The United States offers Exhibits 329, 330, and 332.

7 MS. AGNOLUCCI: No objection.

8 THE COURT: Admitted.

9 (Trial Exhibits 329, 330, and 332 received in evidence)

10 MR. SCOTT: Your Honor, permission to approach with
11 Exhibit 447.

12 THE COURT: All right.

13 THE CLERK: I'm sorry. The number?

14 MR. SCOTT: 447.

15 THE CLERK: Thank you.

16 BY MR. SCOTT:

17 Q. Special Agent Rometo, do you recognize that document?

18 A. I do.

19 Q. What is it?

20 A. This is a document from Walter Liew to Joseph Chan at Mega
21 International Bank on Performance Group letterhead regarding
22 confirmations that transactions pursuant to a letter of
23 guaranty had been completed.

24 Q. Is there a signature on that page?

25 A. There is.

1 Q. Whose signature is it?

2 A. Walter Liew.

3 Q. Mr. Hemann, if you could just put up Exhibit 447 -- or --

4 MR. SCOTT: Excuse me, Your Honor. The parties have
5 stipulated that Exhibit 447 was located in the USAPTI office,
6 and the United States offers Exhibit 447.

7 THE COURT: Any objection?

8 MS. AGNOLUCCI: No objection.

9 THE COURT: It's admitted.

10 (Trial Exhibit 447 received in evidence)

11 MR. SCOTT: Mr. Hemann, if you could bring up page 1,
12 please.

13 Q. Is there a date on this document, Special Agent Rometo?

14 A. Yes.

15 Q. And is there also a number on the letter of guaranty?

16 A. Yes. The letter of guaranty number is JZCB08LG00001.

17 MR. SCOTT: Your Honor, permission to approach the
18 witness with Exhibit 825.

19 THE COURT: All right.

20 BY MR. SCOTT:

21 Q. Special Agent Rometo, do you recognize that document?

22 A. Yes.

23 Q. What is it?

24 A. This is -- this is information -- there's an envelope, a
25 handwritten note, as well as some printed information listed as

1 being sent to Walter Liew in Alameda from the IRS.

2 **Q.** And what information is contained in this document?

3 **A.** This information contains a handwritten note regarding
4 Mr. Liew's request for this information from the IRS, as well
5 as the associated documentation requested.

6 **MR. SCOTT:** And, Your Honor, the parties have
7 stipulated that this document was found in the Liew residence,
8 and the United States offers Exhibit 825.

9 **THE COURT:** Any objection?

10 **MS. AGNOLUCCI:** No objection.

11 **THE COURT:** It's admitted.

12 (Trial Exhibit 825 received in evidence)

13 **MR. SCOTT:** Mr. Hemann, if you could bring up page 1.

14 **Q.** Is that the envelope?

15 **A.** It is.

16 **Q.** And page 2, please, Mr. Hemann.

17 Could you read that handwritten note, please?

18 **A.** (reading)

19 "Dear Mr. Liew:

20 "I've tried several times to reach you by telephone
21 but have been unsuccessful. Per your request, I've
22 enclosed a copy of the Tax Treaty between the People's
23 Republic of China and the United States. I've also
24 enclosed Publications 514 and 901."

25 **Q.** And there's a signature of an individual, and does it

1 provide a title?

2 **A.** Yes. The title is listed as Taxpayer Services Specialist.

3 **Q.** And there are a couple dates on the top of the page.

4 What's the date of the note?

5 **A.** The date of the note is December 3rd, 1998; and the date
6 of the inquiry is November 6, 1998.

7 **Q.** And the following pages in this exhibit, does that contain
8 the information described in the handwritten note?

9 **A.** Yes. It contains information about the Tax Treaty between
10 the People's Republic of China and the United States.

11 **MR. SCOTT:** Your Honor, may I have one moment?

12 **THE COURT:** Yes.

13 (Pause in proceedings.)

14 **MR. SCOTT:** Your Honor, no further questions.

15 **THE COURT:** All right. Thank you.

16 Cross-examination, Ms. Agnolucci?

17 **MS. AGNOLUCCI:** Yes, Your Honor.

18 (Pause in proceedings.)

19 **MS. AGNOLUCCI:** Your Honor, may we have a one-minute
20 sidebar?

21 **THE COURT:** Sure. Of course. You may stand up.

22 (The following proceedings were heard at the sidebar:)

23 **THE COURT:** Yes, Counsel?

24 **MS. AGNOLUCCI:** Yeah, there's one issue that I want to
25 raise. I just want to alert the Court to the reasons why I'm

1 going into it on cross-examination, and I'm going to ask about
2 one of the companies, which is called ESI.

3 Yesterday during the testimony of Mr. Chang, Mr. Axelrod
4 suggested that there was no connection between an ESI China and
5 the ESI Singapore that we've all been hearing about. However,
6 there's evidence in the documents about that, and it's come to
7 our attention that one of the witnesses who was interviewed by
8 the FBI told the FBI that the Singapore -- the Singapore office
9 was the headquarters for the China office.

10 So I intend to go into that with the agent, and I just
11 want to, you know, alert Your Honor because there are three or
12 four documents that cover that, and that's why this is
13 relevant, is because yesterday the suggestion was made that
14 there was no connection, and, you know, we think that's
15 inaccurate based on what the FBI knew and learned.

16 **THE COURT:** All right.

17 **MR. SCOTT:** That's fine.

18 **THE COURT:** Fine? Okay. Great.

19 **MS. AGNOLUCCI:** Great.

20 **THE COURT:** All right. Thank you.

21 (The following proceedings were heard in open court:)

22 **THE COURT:** You may proceed whenever you're ready,
23 Ms. Agnolucci.

24 **MS. AGNOLUCCI:** Thank you, Your Honor.
25

CROSS-EXAMINATION

1
2 **BY MS. AGNOLUCCI:**

3 **Q.** Good morning, Special Agent Rometo.

4 **A.** Good morning.

5 **Q.** You said that you have been working with the FBI for about
6 three years?

7 **A.** That's right.

8 **Q.** Are you one of the main case agents on this case?

9 **A.** Assigned to this case. I wouldn't say I'm the main case
10 agent.

11 **Q.** You work with other agents on this case?

12 **A.** That's correct.

13 **Q.** Special Agent Ho?

14 **A.** Yes.

15 **Q.** And Special Agent Bozman?

16 **A.** I actually haven't worked with Mr. Bozman, but I've worked
17 with Special Agent Ho and Special Agent White.

18 **Q.** And do you generally keep apprised of what each other are
19 doing in the course of your investigation?

20 **A.** In general.

21 **Q.** You testified today that sums of money went to various
22 entities in Singapore; correct?

23 **A.** Yes.

24 **Q.** One of those companies is called ESI Equipment and
25 Engineering Pte.; correct?

1 **A.** Yes.

2 **Q.** For our purposes, I'm just going to abbreviate that to
3 ESI.

4 **A.** Okay.

5 **Q.** Did the FBI obtain documents relating to ESI's business
6 activities?

7 **A.** Not beyond the ACRA records that were referenced this
8 morning.

9 **MS. AGNOLUCCI:** Your Honor, may I approach the witness
10 with Exhibit 1787?

11 **THE COURT:** Yes, you may.

12 **MS. AGNOLUCCI:** Thank you.

13 **Q.** Special Agent Rometo, this is a document that the FBI
14 obtained pursuant to a search warrant; correct?

15 **A.** Just let me double-check.

16 (Witness examines document.) I don't have that listed
17 here, but I would assume so.

18 **MS. AGNOLUCCI:** Your Honor, the document has been
19 admitted, Ms. Ottolini is informing me. May we publish it,
20 please?

21 **THE COURT:** Yes, you may.

22 **MS. AGNOLUCCI:** Thank you, Your Honor.

23 **Q.** Can you please take a look, Special Agent Rometo, at the
24 bottom of the email chain on page 2 of the document?

25 **THE CLERK:** Something happened to the system.

1 **MS. AGNOLUCCI:** I'm sorry.

2 (Pause in proceedings.)

3 **THE COURT:** There we go.

4 **MS. AGNOLUCCI:** 67. 1767.

5 **THE CLERK:** 1767?

6 **MS. AGNOLUCCI:** Yes.

7 **THE CLERK:** 1787 is in. 1767 is not.

8 **MS. AGNOLUCCI:** I apologize. It's not up on the
9 screen.

10 **THE COURT:** All right.

11 **MS. AGNOLUCCI:** So let me ask Special Agent Rometo
12 about it.

13 **Q.** Is this a document that you seized from Mr. Liew's Yahoo!
14 account?

15 **A.** It might be. I don't have that listed on the list, but
16 I'm aware that Walter Liew used this address at USAPTI.

17 **Q.** And is this correspondence between Walter Liew and an ESI
18 China regarding the purchase of equipment?

19 **A.** There is information about that, yes.

20 **Q.** And does that --

21 **MR. SCOTT:** Excuse me. Does the witness have the
22 proper numbered exhibit in front of her?

23 **THE WITNESS:** I have 1767.

24 **MR. SCOTT:** Okay.

25 **THE COURT:** Thank you.

1 **BY MS. AGNOLUCCI:**

2 **Q.** And does that relate generally to the titanium dioxide
3 project?

4 **A.** (Witness examines document.) It lists the titanium
5 tetrachloride process of Pangang Group.

6 **MS. AGNOLUCCI:** Your Honor, I move to admit
7 Exhibit 1767.

8 **THE COURT:** Objection?

9 **MR. SCOTT:** No objection.

10 **THE COURT:** Admitted.

11 (Trial Exhibit 1767 received in evidence)

12 **MS. AGNOLUCCI:** Mr. Guevara, can you please blow up
13 the second page of the document, the bottom of the email chain
14 there?

15 **Q.** And, Special Agent Rometo, can you please read that?

16 **A.** (reading)

17 "Dear Mr. DelPizzo:

18 "We are ESI Equipment and Engineering Pte. Limited,
19 glad to contact with you. Regarding titanium
20 tetrachloride project of Pangang Group in China, the
21 USA Performance Technology, Inc., Dr. Liew, in charge of
22 relevant technical problems and engineering designs. They
23 forwarded your quotation of rotary valves MD11C848 to us.
24 We will follow up relevant commercial business. We hope
25 we can establish a good relationship with you in future.

1 "Best regards.

2 "Sherry."

3 **Q.** Did the FBI interview Sherry from ESI Equipment and
4 Engineering Pte. Ltd.?

5 **A.** No.

6 **Q.** Did the FBI investigate this Shenzhen office listed in the
7 email?

8 **A.** Yes.

9 **Q.** And did the FBI determine that that was a branch of a
10 Singapore company?

11 **A.** No.

12 **MS. AGNOLUCCI:** Your Honor, may I approach the witness
13 with Exhibit 1974, please?

14 **THE COURT:** Yes.

15 **BY MS. AGNOLUCCI:**

16 **Q.** Special Agent Rometo, is this a document that was seized
17 from Mr. Liew's email account?

18 **A.** (Witness examines document.) It isn't listed, but I guess
19 my assumption is yes because of the address listed at the top
20 of Walter Liew at USAPTI.

21 **Q.** And it's an email exchange between Walter Liew and an
22 individual named Gary Stewart?

23 **A.** Yes.

24 **Q.** That's someone the FBI interviewed during its
25 investigation?

1 A. That's correct.

2 Q. Does this relate to the purchase of bricks for a
3 chlorinator?

4 A. (Witness examines document.) Yes.

5 Q. And does it also relate to ESI Equipment and Engineering
6 Pte. Ltd.?

7 A. That's what's listed, yes.

8 MS. AGNOLUCCI: Your Honor, I move to admit
9 Exhibit 1974.

10 THE COURT: Objection?

11 MR. SCOTT: No objection.

12 THE COURT: Admitted.

13 (Trial Exhibit 1974 received in evidence)

14 MS. AGNOLUCCI: Mr. Guevara, if you could please go to
15 the page ending in 367.

16 Q. Does this appear, Special Agent Rometo, to be an agreement
17 regarding the purchase of chlorinator bricks?

18 A. Yes. It's an agreement between Quantum International and
19 ESI Equipment and Engineering.

20 Q. And do you see where it says, "Party B, ESI Equipment and
21 Engineering Pte. Ltd."?

22 A. Yes.

23 Q. There's an address there in Singapore?

24 A. Yes.

25 Q. And then it says that the Shenzhen office is in China?

1 A. That's what's listed, yes.

2 Q. Thank you.

3 MS. AGNOLUCCI: Your Honor, may I approach the witness
4 with Exhibit 2897?

5 THE COURT: Yes, you may.

6 MS. AGNOLUCCI: Thank you.

7 Q. Special Agent Rometo, is this another signed copy of the
8 agreement we were just looking at?

9 A. Yes.

10 Q. And is this a document that the FBI obtained from Gary
11 Stewart when the FBI interviewed Mr. Stewart?

12 A. Yes.

13 MS. AGNOLUCCI: Your Honor, I move to admit
14 Exhibit 2897.

15 THE COURT: Objection?

16 MR. SCOTT: No objection.

17 THE COURT: Admitted.

18 (Trial Exhibit 2897 received in evidence)

19 MS. AGNOLUCCI: Mr. Guevara, if you could just blow up
20 the section that says "Party B" again.

21 Q. Special Agent Rometo, does this, again, list for ESI
22 Equipment and Engineering Pte. Ltd. an address in Singapore and
23 then a China office in Shenzhen?

24 A. Yes.

25 Q. You testified that the FBI interviewed Gary Stewart;

1 correct?

2 **A.** Yes.

3 **Q.** Do you recall that Gary Stewart told the FBI that ESI
4 China is headquartered in Singapore?

5 **A.** Yes.

6 **MR. SCOTT:** Objection.

7 **THE COURT:** It's a little late. Overruled.

8 **MS. AGNOLUCCI:** Your Honor, may I approach the witness
9 with Exhibit 2895, please?

10 **THE COURT:** Yes.

11 **BY MS. AGNOLUCCI:**

12 **Q.** Do you recognize this document as a document the FBI
13 seized from Mr. Liew's email account?

14 **A.** Yes.

15 **Q.** And is it an email from an individual named Zhou Yonggui?

16 **A.** Yes.

17 **Q.** Is Zhou Yonggui employed by Pangang?

18 **A.** Yes.

19 **Q.** And is this an email from Zhou Yonggui to ESI China with
20 cc to Walter Liew?

21 **A.** Yes.

22 **Q.** And does this email pertain to the purchase of refractory
23 bricks?

24 **A.** (Witness examines document.) Yes.

25 **MS. AGNOLUCCI:** Your Honor, I move to admit

1 Exhibit 2895.

2 **THE COURT:** Objection?

3 **MR. SCOTT:** Yes, objection. Hearsay.

4 **THE COURT:** May I see it, please, Ms. Ottolini?

5 (Pause in proceedings.)

6 **MS. AGNOLUCCI:** And I would note, Your Honor, that the
7 author is one of the Pangang individuals the FBI interviewed.

8 (Pause in proceedings.)

9 **MR. SCOTT:** Ms. Agnolucci, for the Court, I don't
10 believe the FBI interviewed this individual.

11 (Pause in proceedings.)

12 **MS. AGNOLUCCI:** We've established that the FBI did, in
13 fact, interview him.

14 **THE COURT:** All right. Do you still object?

15 **MR. SCOTT:** Yes.

16 **THE COURT:** Where was this document found, Agent? It
17 was found in the Liew residence?

18 **THE WITNESS:** Can you remind me of the number?

19 **MS. AGNOLUCCI:** Yes.

20 **THE COURT:** It's Exhibit 2895.

21 **THE WITNESS:** Thank you, Your Honor.

22 **THE COURT:** I'll give this back to the witness so she
23 can look at the document itself.

24 **THE WITNESS:** There's no origin listed here on the
25 exhibit list.

1 **THE COURT:** All right. Well --

2 **MS. AGNOLUCCI:** I believe it was seized from
3 Mr. Liew's email account. That's how it was produced to us.

4 **THE COURT:** Is that correct, Mr. Scott?

5 **MR. SCOTT:** There's no indication of where the
6 document was found on the exhibit list, Your Honor.

7 **THE COURT:** Well, let's do this. I'll conditionally
8 admit the exhibit, and counsel should meet and confer to iron
9 this fact out. I'll admit it based upon counsel's
10 representation as to the way this was produced; and if we need
11 to do anything later on with it, we'll figure that out. But
12 I'll overrule the objection for now based upon counsel's offer
13 of proof as to the way this document was produced.

14 **MS. AGNOLUCCI:** Thank you, Your Honor. And that's
15 based on the fact that the email address on this document is
16 the same email address from which all of the documents produced
17 from Mr. Liew's email accounts came.

18 **THE COURT:** All right. Well, it's conditionally
19 admitted.

20 (Trial Exhibit 2895 received in evidence)

21 **THE COURT:** You may proceed.

22 **MS. AGNOLUCCI:** Thank you, Your Honor.
23 May we publish the exhibit, please?

24 **THE COURT:** Yes, you may.
25

1 **BY MS. AGNOLUCCI:**

2 **Q.** And, Special Agent Rometo, can you please read the content
3 of this email?

4 **A.** (reading)

5 "Dear Lucy:

6 "According to our inquiry and your technical
7 quotation, we have made the following arrangements for the
8 equipment purchasing for our TiO2 project.

9 "A delegation from Pangang Group, as the buyer, shall
10 visit U.S.A. to purchase the equipment stated in the
11 enclosed draft technical annexes with the help of the
12 USA Performance Technology, Inc., the process technology
13 provider. The agenda of this visit shall be as follows:

14 "1. Firstly, to visit your workshop.

15 "2. Secondly, to discuss and finalize the technical
16 annexes.

17 "3. Then to discuss and agree the commercial terms
18 and conditions, and

19 "4. Finally, to have the price discussion and
20 contract signing.

21 "In order to shorten the technical discussion time
22 and improve the efficiency of our work, we have made the
23 draft technical annexes. Please make your review and
24 study.

25 "If you have any comments or any additions or any

1 changes to the annexes, please let us know by email before
2 July 1 so that a preliminary agreement on the technical
3 annexes can be reached between us before we depart for
4 U.S.A. But, in any case, please make no change to the
5 format and structure of the annexes.

6 "The visit time of the delegation shall be between
7 July and August. If any change, we will inform you in
8 advance. The specific departure date of the delegation
9 for U.S.A. depends on the time of the preliminary
10 agreement on the technical annexes to be reached between
11 you and us.

12 "Since we have many firms to visit in U.S.A., the
13 specific time to have the meeting with you or to visit
14 your workshop cannot be fixed now. But, in any case, you
15 shall be informed ahead of schedule.

16 "Your earliest reply will be appreciated very much."

17 **Q.** And who is it signed by?

18 Mr. Guevara, could you show that part of it?

19 **A.** "Best regards, Zhou Yonggui."

20 **Q.** Did the FBI interview a number of individuals from Pangang
21 at the Roadway Inn?

22 **A.** Yes.

23 **Q.** And did the FBI interview Mr. Zhou Yonggui?

24 **A.** I did not interview him, but I understand from the
25 previous conversation that we did.

1 Q. Is the previous conversation the first time that you've
2 come to learn that the FBI interviewed this individual?

3 A. Yes, from Mr. Zhou.

4 Q. Is investigation of the financial allegations in this case
5 your responsibility?

6 A. No.

7 Q. Whose responsibility is it?

8 A. Meiqin Jiang.

9 Q. Is that an IRS auditor?

10 A. It is.

11 Q. But in terms of the investigation of the financial facts,
12 in terms of the FBI agents, would you say that that's in your
13 wheelhouse?

14 A. I would say it's in my bailiwick, among other things.

15 Q. And did you wonder whether the FBI should have asked
16 Mr. Yonggui about ESI, in light of this document?

17 A. Based on the entirety of the information that I know from
18 this investigation, it was not important that I review this
19 302, no.

20 Q. Was it important that you investigate ESI China?

21 A. Yes.

22 Q. And was it important that you investigate through Yonggui,
23 who wrote this email, whether ESI China was involved in the
24 purchasing of equipment for the TiO2 project?

25 A. We did review that information.

1 Q. But you didn't ask Mr. Yonggui about it?

2 A. I was not present when this individual traveled to the
3 United States.

4 Q. So whoever interviewed him didn't ask him about it?

5 A. I don't know.

6 MS. AGNOLUCCI: Your Honor, may I approach the witness
7 with Exhibit 1948?

8 THE COURT: Yes, you may.

9 MS. AGNOLUCCI: Thank you.

10 THE CLERK: 1948 was admitted yesterday.

11 MS. AGNOLUCCI: Thank you, Ms. Ottolini.

12 Mr. Guevara, can we please publish the exhibit, since it's
13 been admitted?

14 Q. Can you please read the top part of the email?

15 A. (reading)

16 "Hi, Chris.

17 "Please forward the proposal to ESI Equipment and
18 Engineering since they will be acting as our buying agent
19 for the project."

20 Q. And can you read below that, please?

21 A. The --

22 Q. The thread below that, starting with "Hi, Allen and
23 Walter."

24 A. (reading)

25 "Hi, Allen and Walter.

1 "I received a request from ESI Equipment and
2 Engineering in China for the exact same proposal I
3 provided to you for your project in Changshou. It seems
4 they are asking for a proposal to procure the equipment on
5 your behalf. Before I send them the proposal, I want to
6 check with you to be sure you are aware. Do you have any
7 problems if I send them the same proposal I sent you?"

8 **Q.** Thank you.

9 **MS. AGNOLUCCI:** Your Honor, may I now approach the
10 witness with Exhibit 2885?

11 **THE COURT:** Yes, you may.

12 **MS. AGNOLUCCI:** Thank you.

13 **Q.** Special Agent Rometo, is this a document that the FBI
14 seized from Christina Liew's email account?

15 **A.** Yes.

16 **Q.** And is it an email from ESI to Christina Liew regarding
17 TiCl pumps?

18 **A.** Yes.

19 **MS. AGNOLUCCI:** Your Honor, I move to admit
20 Exhibit 2885.

21 **MR. SCOTT:** Objection, Your Honor. Hearsay.

22 **THE COURT:** May I see it, please, Ms. Ottolini?

23 (Pause in proceedings.)

24 **THE COURT:** The objection is overruled.

25 **MS. AGNOLUCCI:** Thank you.

1 **THE COURT:** It's admitted.

2 (Trial Exhibit 2885 received in evidence)

3 **MS. AGNOLUCCI:** Can we publish the document, please,
4 Mr. Guevara?

5 **Q.** Special Agent Rometo, can you please read the text of the
6 email?

7 **A.** (reading)

8 "Dear Mr. Papadeas:

9 "We are ESI Equipment and Engineering Pte. Limited.
10 We are glad to contact you to inquire TiCl₄ pumps, which
11 used for Pangang's Spong Titanium Project in China. The
12 Dr. Liew from USA Performance Technology, Inc., who in
13 charge of relevant technological matters and engineering
14 services. We are entrusted by end user to follow up the
15 trading business.

16 "Please offer us your best price. Thanks."

17 **Q.** Thank you.

18 **MS. AGNOLUCCI:** Your Honor, I have one last document
19 along these lines. May I please approach the witness with
20 Exhibit 2886?

21 **THE COURT:** Yes, you may.

22 **MS. AGNOLUCCI:** Thank you.

23 **Q.** Special Agent Rometo, is this also an email that the FBI
24 seized from Christina Liew's email account?

25 **A.** Yes.

1 Q. And is it an email from ESI China to Christina Liew, or to
2 someone with copy to Christina Liew?

3 A. Yes.

4 Q. And does it relate to screw conveyors for the titanium
5 dioxide project?

6 A. Yes.

7 MS. AGNOLUCCI: Your Honor, I move to admit
8 Exhibit 2886.

9 THE COURT: Any objection?

10 MR. SCOTT: No objection.

11 THE COURT: Admitted.

12 (Trial Exhibit 2886 received in evidence)

13 BY MS. AGNOLUCCI:

14 Q. Special Agent Rometo, can you please read the text of the
15 email?

16 A. (reading)

17 "Dear Mr. Porterfield:

18 "We are ESI Equipment and Engineering Pte. Limited.
19 We were entrusted by end user Pangang Group to inquire
20 screw conveyors and degassing screw, which used at their
21 titanium tetrachloride project in China.

22 "The USA Performance Technology, Inc., is responsible
23 for relevant technology and engineering design. We mainly
24 assist them to follow up the trading business.

25 "We need manufacturer's detailed quotation to make

1 prepare for future procurement. So please offer us your
2 best price of corresponding products with technical
3 specification. Thanks."

4 **Q.** Thank you.

5 We've been talking up to now about a company called ESI;
6 correct?

7 **A.** Yes.

8 **Q.** Did Walter Liew own that company?

9 **A.** I know Walter Liew authorized money to be sent to that
10 company.

11 **Q.** Did Walter Liew own that company?

12 **A.** Not to my knowledge.

13 **Q.** And you would know because you've done a thorough
14 investigation; correct?

15 **A.** That's correct.

16 **Q.** Did he have signatory authority over that company's bank
17 accounts?

18 **A.** No.

19 **Q.** You also testified regarding a company called Huan Qu
20 Process Equipment Pte. Ltd.; correct?

21 **A.** Yes.

22 **Q.** Did Mr. Liew own that company?

23 **A.** No.

24 **Q.** And did he have signatory authority over any of its bank
25 accounts?

1 A. No.

2 Q. You testified regarding a company called Dongbei Process
3 Engineering Pte. Ltd.

4 A. Yes.

5 Q. Did Mr. Liew own that company?

6 A. No.

7 Q. Did he have signatory authority over its bank accounts?

8 A. No.

9 Q. You testified about a company called LHV Equipment and
10 Services Pte. Ltd.

11 A. Yes.

12 Q. Did Walter Liew own that company?

13 A. No.

14 Q. Did he have signatory authority over its bank accounts?

15 A. No.

16 Q. You testified regarding a number of bank accounts
17 belonging to the four companies we just talked about; correct?

18 A. Yes.

19 Q. Including bank accounts in Singapore in the name of those
20 companies?

21 A. Yes.

22 Q. It's true, is it not, that very little of the money that
23 went to those companies ultimately went to Mr. Liew?

24 A. I can't know that information.

25 Q. So you don't know where the money went?

1 **A.** I don't know where the money ended up.

2 **Q.** During the course of your investigation, did you attempt
3 to get overseas bank records evidencing where the money went
4 after it went to Singapore?

5 **A.** I believe we did, but it's very difficult. We don't have
6 a similar agreement with China that we do with Singapore, and
7 we don't have those records from Singapore.

8 **Q.** It's fair to say that it's very difficult to get
9 information from China?

10 **A.** Yes.

11 **Q.** And the FBI can't compel banks to give information?

12 **A.** That's right.

13 **Q.** And the FBI can't compel people to talk to it?

14 **A.** That's correct.

15 **Q.** Did the FBI speak with any of the individuals listed on
16 these companies' charts?

17 **A.** Yes.

18 **Q.** Did the FBI speak with Li Rue?

19 **A.** No.

20 **Q.** Did the FBI speak with Mu Qiao?

21 **A.** No.

22 **Q.** Did the FBI speak with Ning Qiao?

23 **A.** No.

24 **Q.** Did all three of those individuals decline to speak to the
25 FBI?

1 **A.** I don't believe we were even able to attempt to speak with
2 them because they are in China.

3 **THE COURT:** Ms. Agnolucci, is this a good time for a
4 break?

5 **MS. AGNOLUCCI:** I can be done in two minutes,
6 Your Honor.

7 **THE COURT:** Okay.

8 **BY MS. AGNOLUCCI:**

9 **Q.** Did the FBI obtain those individuals' bank account
10 records?

11 **A.** No.

12 **Q.** Did the FBI, from the records it obtained in Singapore,
13 see any evidence that the money went to Mr. Liew?

14 **A.** Not directly, no.

15 **MS. AGNOLUCCI:** I have no further questions.

16 **THE COURT:** Thank you.

17 Are you going to have redirect, Mr. Scott?

18 **MR. SCOTT:** Yes.

19 **THE COURT:** All right. Let's take our first break of
20 the morning.

21 Please remember the Court's usual admonitions, keep an
22 open mind, don't get outside information. And we'll see you in
23 15 minutes.

24 And you may step down.

25 (Proceedings were heard out of the presence of the jury:)

1 **THE COURT:** 15 minutes, Counsel.

2 **MR. AXELROD:** Thank you, Your Honor.

3 (Recess taken at 9:44 a.m.)

4 (Proceedings resumed at 10:01 a.m.)

5 (Proceedings were heard out of the presence of the jury:)

6 **THE COURT:** Let's bring the jury in.

7 (Proceedings were heard in the presence of the jury:)

8 **THE COURT:** Okay. Please be seated.

9 You may resume the stand, Agent.

10 You may conduct your redirect examination, Counsel.

11 **MR. SCOTT:** Thank you, Your Honor.

12 **REDIRECT EXAMINATION**

13 **BY MR. SCOTT:**

14 **Q.** Special Agent Rometo, do you recall on cross-examination
15 you were asked about an email from someone named Zhou Yonggui?

16 **A.** Yes.

17 **Q.** That is Exhibit 2895, which is in evidence.

18 **MR. SCOTT:** And, Ms. Ottolini, I'd like to put it on
19 the ELMO, if I could.

20 **Q.** Special Agent Rometo, can you see that?

21 **A.** Yes.

22 **Q.** And what's the date of that email?

23 **A.** The date is June 24th, 2011.

24 **Q.** And you discussed already that it was an email sent to
25 Walter Liew?

1 A. Yes.

2 Q. Concerning refractory bricks, and you were asked questions
3 about the company ESI?

4 A. Yes.

5 Q. Are you familiar with the date that the ACRA records from
6 Singapore said that business ceased for the ESI company?

7 A. Yes, I am.

8 Q. What is that date?

9 A. It is May 31st, 2011.

10 Q. So this email was sent after business ceased at the ESI
11 entity in Singapore?

12 A. Yes, it was.

13 Q. You were also asked on cross-examination about the
14 interview of Mr. Zhou --

15 A. Yes.

16 Q. -- by the FBI?

17 A. Yes.

18 Q. Do you recall that that occurred on July 19th, 2011?

19 A. That sounds right, yes.

20 Q. And you were asked why the FBI didn't discuss the issues
21 in this email with Mr. Zhou; correct?

22 A. That's correct.

23 Q. Did the FBI have this email at that time?

24 A. No.

25 Q. And why not?

1 **A.** I think a couple of different reasons. The investigation
2 is an ongoing process. When the individuals were here in the
3 U.S., they were interviewed at the time they were here; but
4 there are requests for email search warrants and additional
5 activities that go on on an ongoing basis. So at that time
6 that activity had not taken place.

7 And, in addition, the information that we discussed today
8 had not been brought to light, so there was no questions
9 related to any ESI.

10 **Q.** You were also asked questions about an ESI address in
11 Shenzhen, China?

12 **A.** Yes.

13 **Q.** Are you familiar with that address?

14 **A.** I am.

15 **Q.** Is there a business at that address?

16 **A.** Not -- I have no way of knowing that. I've looked it up.
17 There is a point on the street, but I've not located the actual
18 office.

19 **Q.** Have you located any other records suggesting there was an
20 actual office there?

21 **A.** No.

22 **Q.** During the course of your investigation, did you find
23 evidence that ESI in China and USAPTI were the same company?

24 **A.** I have seen evidence to suggest that USAPTI had some
25 ambitions to move into China and to take their business there,

1 but I have no information suggesting that ESI China was an
2 actual company.

3 **Q.** Are there any documents that describe the company that
4 showed that it was actually doing -- trying to do the same kind
5 of work that USAPTI was?

6 **A.** I haven't.

7 **MR. SCOTT:** Your Honor, permission to approach the
8 witness with Exhibits 471 and 471T.

9 **THE COURT:** All right.

10 **MR. SCOTT:** And 266 and 266T.

11 **THE COURT:** All right.

12 **THE CLERK:** These are not admitted exhibits; correct?

13 **MR. SCOTT:** Not yet, no.

14 **MS. AGNOLUCCI:** Mr. Scott, which documents did you
15 say?

16 **MR. SCOTT:** 471 and the translation and 266 and the
17 translation.

18 **Q.** Special Agent Rometo, looking first at Exhibit 471, do you
19 recognize that?

20 **A.** (Witness examines document.) Yes.

21 **Q.** What is it?

22 **A.** So this is information obtained pursuant to a search
23 warrant of Christina Liew's Yahoo! email. It contains an email
24 from the email address ESI China, and it's to Christina Liew's
25 email address Hong888USA. There's an email and then there is

1 also an attachment.

2 Q. Can you describe generally what that attachment is?

3 A. Sure. The attachment is a, looks like potentially a
4 PowerPoint or a type of document. It looks like it's a
5 template for sort of a brochure regarding ESI
6 Equipment and Engineering PTE, Limited.

7 Q. And is Exhibit 471T -- is Exhibit 471 in Chinese?

8 A. Yes, it is.

9 Q. And is Exhibit 471T a translation of that document?

10 A. Yes.

11 Q. Turning your attention now to Exhibit 266T.

12 A. (Witness examines document.)

13 Q. Do you recognize that document?

14 A. Yes.

15 Q. What is it?

16 A. This is also a series of emails to -- to and from, an
17 email chain, Hong Liew at -- hongliew@hong888USA.com, and then
18 there is an attached document, a couple of attached documents
19 and brochures.

20 Q. And from where was that document obtained?

21 A. I believe this was obtained from Christina Liew's email
22 address. Yes.

23 Q. And is Exhibit 266 in Chinese?

24 A. Yes, it is.

25 Q. And is Exhibit 266T a translation of that document?

1 **A.** Yes, it is.

2 **MR. SCOTT:** Your Honor, the United States offers
3 Exhibits 471 and 471T and 266 and 266T.

4 **MS. AGNOLUCCI:** I would object to both, Your Honor. I
5 note that 266 was not disclosed as a document to be used with
6 the agent.

7 **THE COURT:** Is that correct?

8 **MR. SCOTT:** I decided to use the document after the
9 discussion on cross.

10 **THE COURT:** All right. So the objection is with
11 respect to 266. What about with respect to the other document?

12 **MS. AGNOLUCCI:** With respect to the other document the
13 objection is hearsay.

14 **THE COURT:** Okay. Let me see the documents.
15 Ms. Ottolini, would you retrieve the documents from the special
16 agent?

17 (Pause in proceedings.)

18 **THE COURT:** The objections are overruled.

19 **MR. SCOTT:** They're admitted, Your Honor?

20 **THE COURT:** They are admitted.

21 (Trial Exhibits 471, 471T, 266, and 266T received in
22 evidence)

23 **MR. SCOTT:** Mr. Hemann, if you could put up
24 Exhibit 471T and Exhibit 266T, if that's possible.

25 **Q.** And if you could first, Special Agent Rometo, if you look

1 at Exhibit 471, do you see the email at the top.

2 **A.** Yes.

3 **Q.** Could you read that and tell the jury who it's from and
4 who it's to?

5 **A.** So the email is from the email address esi.china@163.net,
6 and it's to hong888USA@yahoo.com. And the email reads:

7 (reading)

8 "Director Liu and Director Qiao:

9 "Hello. Please review the two attachments to the
10 email, ESI company profile and required information. The
11 areas marked yellow in the (company) profile are the areas
12 which need supplement and amendment based on the required
13 information. Please correct any mistakes. Thanks."

14 **Q.** And after that email, is there an attachment?

15 **A.** Yes.

16 **MR. SCOTT:** Mr. Hemann, if you'd go to Exhibit 471 at
17 page 3 and 266T at page 7. I'm sorry, 471T at page 4, please.

18

19 (Pause in proceedings.)

20 **MR. SCOTT:** I'm testing Mr. Hemann's computer skills.
21 I apologize.

22 **Q.** Special Agent Rometo, do you see page 4 of Exhibit 471T?

23 **A.** Yes.

24 **Q.** And do you see page 3 of 266?

25 **A.** I see page 7 of 266, yes.

1 Q. Excuse me, page 7.

2 Looking at the content of those pages, can you compare
3 them for me?

4 A. These pages are very similar. They have two columns of
5 information listing subcategories: Company profile,
6 technology, engineering. One lists brand for agent, major
7 achievement, major clients, and contact.

8 The second lists company profile, technology, engineering,
9 technology and design experiences, major clients, and contact
10 us.

11 These documents are very similar and one seems to be -- it
12 seems to be a consistent template that's used.

13 Q. And if we could step back, Mr. Hemann, one page on each
14 document, so it would be 471T at 3 and 266T at page 6.

15 I jumped the gun and skipped the cover page. Could you
16 compare the cover pages of those documents?

17 A. The cover pages are also similar. They contain a company
18 title at the top, a photograph of an area; and then contact
19 information on the front page.

20 Q. And the document on the left, 260 -- 471T relates to ESI
21 Equipment and Engineering?

22 A. Yes.

23 Q. And the document on the right, 266T, is USA Performance
24 Technology?

25 A. Yes.

1 Q. Mr. Hemann, if we could go to page 8 of 266 and page 6 of
2 471.

3 Again, Special Agent Rometo, can you look at the
4 information on these pages and compare them?

5 A. The information on these pages is very similar. I think
6 almost verbatim the information is the same with the exception
7 of the replacement of USA Performance Technology, Inc., with
8 ESI Equipment and Engineering PTE, Limited.

9 Q. And, Mr. Hemann, if you'd go to the next page, page 7 on
10 471T and page 10 on Exhibit 266T.

11 Special Agent Rometo, do you see those pages?

12 A. Yes.

13 Q. And can you compare the information between them?

14 A. Yes. Again, this information is almost verbatim the same.
15 There is a replacement of information regarding USA Performance
16 Technology, Inc., with ESI Equipment and Engineering PTE,
17 Limited.

18 Q. Mr. Hemann, if you'd go to 266, page 12, and 471, page --
19 actually, strike that.

20 Special Agent Rometo, in the email that you read that
21 was -- attached to which was the ESI presentation, do you
22 recall that?

23 A. Yes.

24 Q. The substance of the email concerned a creation of that
25 PowerPoint?

1 A. Yes.

2 Q. And, so, items were being added to it?

3 A. Yes. It was being added to and/or edited by the
4 individuals listed here.

5 Q. And the date of that email was?

6 A. December 13th, 2010.

7 Q. And having -- have you had an opportunity to compare these
8 presentations?

9 A. Yes, I have.

10 Q. And the content, can you speak to the content of the
11 presentations throughout?

12 A. The content is almost exactly the same. This
13 USA Performance Technology PowerPoint template and the type of
14 information that's contained in it, including business
15 information and claims thereto is duplicated in this ESI
16 Equipment and Engineering PowerPoint.

17 Q. Do you recall on cross-examination you were asked
18 questions about emails from vendors related to ESI in China?

19 A. Yes.

20 Q. I'd like to use the ELMO again, if I could, Ms. Ottolini.
21 I'm putting up what's Exhibit 1948, which is in evidence.

22 And do you recall that email, Special Agent Rometo?

23 A. Yes.

24 Q. And the email on the bottom of the page, on the screen as
25 you see it, what does that concern?

1 **A.** So this is correspondence between a Christopher Toomey and
2 Allen Chang and Walter Liew. Mr. Toomey is expressing that
3 he's received a request from an ESI Equipment and Engineering.
4 It seems to be that this is the first he's heard, and it isn't
5 clear as to whether he knows what that company is. It reads
6 that it seems they are asking for a proposal to procure the
7 equipment on your behalf.

8 **Q.** And they're acting as -- the email on the top references
9 ESI acting as the buying agent for USAPTI?

10 **A.** Yes.

11 **Q.** Okay. I'd like to show you what's also in evidence,
12 Exhibit 2886. Do you see that email?

13 **A.** Yes.

14 **Q.** And is that an email to a vendor concerning screw
15 conveyors from that same ESI China address?

16 **A.** Yes.

17 **Q.** And while we're talking about it, do you see that it says,
18 "ESI.China@163.net?"

19 **A.** Yes.

20 **Q.** Do you know what 163.net is?

21 **A.** Yes. 163.net, it's very similar to a Hotmail or Yahoo! or
22 Google gmail account. It's a service through which anyone can
23 register an email address and select the name.

24 **Q.** Going back to the substance of the email, this concerns
25 ESI China acting as a -- in some role in the equipment

1 procurement area?

2 A. Yes.

3 Q. And could you read the first sentence under, "Dear
4 Mr. Porterfield"?

5 A. (reading)

6 "We are ESI Equipment and Engineering PTE, Limited.
7 We were entrusted by end user Pangang Group to inquire
8 screw conveyors and degassing screw, which used at their
9 titanium tetrachloride project in China."

10 Q. So this email suggests that ESI Equipment and Engineering
11 is entrusted by the end user?

12 A. That's correct.

13 Q. Which is Pangang Group?

14 A. Right.

15 Q. Not by USAPTI?

16 A. Right.

17 Q. I'm going to show you what's already in evidence as
18 Exhibit 2885. Do you see that document?

19 A. Yes.

20 Q. Is this very similar to the one we just looked at?

21 A. It is.

22 Q. And it deals with just a different type of component?

23 A. Yes.

24 Q. And, again, who -- could you read that first sentence?

25 A. (reading)

1 "We are ESI Equipment and Engineering PTE, Limited.
2 We are glad to contact with you to inquire TiCl4 pumps
3 which used for Pangang Spong Titanium Project in China."

4 **Q.** And, again, the end user -- the end user information, I
5 suppose, it's in the last sentence, could you read that, too,
6 "we are entrusted"?

7 **A.** (reading)

8 "We are entrusted by end user to follow up the
9 trading business."

10 **Q.** And, again, that's the end user Pangang Group?

11 **A.** It isn't listed here. I would assume so, yes.

12 **Q.** And there's a cc line on that email?

13 **A.** There is.

14 **Q.** Do you recognize that email address?

15 **A.** I do. That's Christina Liew's email address.

16 **Q.** And, quickly, I didn't ask you, but do you also see that
17 email address on the document we just looked at, 2886, the same
18 cc line?

19 **A.** Yes. Her email address is also on this document.

20 **Q.** Do you recall on cross-examination you were asked
21 questions about the signatory authority on the bank accounts
22 affiliated with certain companies?

23 **A.** Yes.

24 **Q.** And the signature authority for ESI, do you recall which
25 individuals have signature authority on those accounts?

1 **A.** Christina Liew and Qiao Mu.

2 **Q.** Christina Liew has power over the bank account affiliated
3 with ESI?

4 **A.** That's correct.

5 **Q.** And do you know whether Christina Liew entered into an
6 agreement to buy property in Singapore around the time that
7 we've been discussing these ESI China emails?

8 **A.** Yes.

9 **Q.** And do you know how much that property cost?

10 **A.** It was worth, I think, over 3 million Singapore dollars.
11 At the time -- I can't recall off the top of my head what the
12 exchange rate would have been. I think the exchange rate is
13 slightly less, so it would have been between 2 and 3 million
14 U.S. dollars.

15 **Q.** And was that approximately June of 2011?

16 **A.** Yes.

17 **Q.** You were also asked questions about Huan Qu company and
18 who had power over those accounts?

19 **A.** Yes.

20 **Q.** And did you speak to who had power over the bank account
21 associated with Huan Qu?

22 **A.** So the signature authority for that bank account was
23 Li Rue.

24 **Q.** And remind the jury who Li Rue is?

25 **A.** It's Christina Liew's sister-in-law.

1 Q. And who owned that company?

2 A. That company was owned by Li Rue and Elaine Shu Peng Chin.

3 Q. And who's Elaine Shu Peng Chin?

4 A. Elaine Shu Peng Chin is Walter Liew's niece.

5 Q. And you were also requested questions about who controlled
6 bank accounts related to Dongbei. Do you remember that?

7 A. Yes.

8 Q. And did you speak to who controlled the bank accounts
9 affiliated with that company?

10 A. Those bank accounts were controlled by Christina Liew and
11 Li Rue, Christina Liew's sister-in-law.

12 Q. And who owned that company?

13 A. The company was owned by Li Rue and Elaine Shu Peng Chin,
14 Walter Liew's niece and Christina Liew's sister-in-law.

15 Q. Finally, you were asked some questions about control of
16 bank accounts affiliated with LHV company?

17 A. Yes.

18 Q. Do you recall that?

19 A. Yes, I do.

20 Q. And who controls the bank accounts associated with LHV?

21 A. Christina Liew's sister-in-law, Li Rue.

22 Q. And do you recall who owns that company?

23 A. The company is owned by Christina Liew's sister-in-law,
24 Li Rue, and Walter Liew's niece, Elaine Shu Peng Chin.

25 Q. During the course of the trial -- first of all, do you

1 recognize Christina Liew?

2 **A.** Yes.

3 **Q.** And have you seen her here in the courtroom during the
4 course of the trial?

5 **A.** During the course of the trial, yes.

6 **Q.** And can you say where she's been sitting, generally, in
7 the courtroom during the trial?

8 **A.** She's not here today, but she's generally been sitting
9 really straight at my 12:00 o'clock about the second or third
10 row towards the wall.

11 **Q.** Thank you. You were also asked some questions on
12 cross-examination about money being transferred to Singapore,
13 and you answered that you knew that Walter Liew had directed
14 the transfer of money to Singapore; is that right?

15 **A.** That's correct.

16 **Q.** And do you know that Walter Liew transferred \$22 million
17 to these six companies we've talked about in Singapore?

18 **A.** I think it was over \$22 million.

19 **MR. SCOTT:** Nothing further, Your Honor.

20 **THE COURT:** Ms. Agnolucci?

21 **MS. AGNOLUCCI:** Yes, briefly, please, Your Honor.

22 **THE COURT:** All right.

23 (Pause in proceedings.)

24 **MS. AGNOLUCCI:** May I proceed?

25 **THE COURT:** Oh, yes. Please do.

1 Q. Because the FBI allowed him to?

2 A. I don't think we can compel people to return or not.

3 Q. You can compel people to remain, though?

4 MR. SCOTT: Objection.

5 THE COURT: Sustained.

6 BY MS. AGNOLUCCI:

7 Q. You also testified on cross-examination that you didn't
8 locate the business of ESI China at a Shenzhen address that was
9 listed; correct?

10 A. I did not find an online reference to that company at that
11 address.

12 Q. An online reference. Do you mean a Google Street View
13 search?

14 A. I did look around sort of Google views. I did not see an
15 indication that that company was at that address.

16 Q. Did anybody travel to China to look specifically at that
17 address?

18 A. No.

19 Q. No. Special Agent Rometo, you did a side-by-side
20 comparison of Exhibits 471T and 266T; correct?

21 A. Yes.

22 Q. Both appear to be PowerPoints regarding companies in the
23 TiO2 business?

24 A. Yes.

25 Q. And the ESI PowerPoint appears to state that ESI has

1 business related to TiO2; correct?

2 **A.** That's the statement.

3 **Q.** You testified that -- Mr. Guevara, can we please publish
4 Exhibit 1948?

5 Special Agent Rometo, you testified that this email shows
6 ESI acting as a buying agent for USAPTI; correct?

7 **A.** That's the statement within the email. We've received no
8 evidence that ESI was an actual buying agent.

9 **Q.** But the statement in the email is that ESI had business
10 activities?

11 **A.** That's Walter Liew's statement, yes.

12 **Q.** And the statement in the other emails you reviewed with
13 Mr. Scott are that the Chinese customer Pangang entrusted ESI
14 to purchase its equipment; correct?

15 **A.** Those are the statements, but they're contrary to other
16 documentation that I've seen which directly conflicts with
17 those statements.

18 **Q.** You testified that Christina Liew purchased a house in
19 Singapore; correct?

20 **A.** Yes.

21 **Q.** That property is titled in her name alone and not in
22 Mr. Liew's name; correct?

23 **A.** That's correct.

24 **Q.** You also testified that Christina Liew has signatory
25 authority over various bank accounts; correct?

1 A. Yes.

2 Q. Do you know anything about the specifics of the financial
3 arrangement the Liewes have within their marriage?

4 A. I do not.

5 Q. During the course of your investigation, didn't you come
6 to learn that they don't have any joint bank accounts?

7 A. I've seen records for, I think, between 70 and 80
8 different bank accounts controlled by the Liewes, so I'm very
9 unsure of their financial relationship.

10 Q. Have you seen records of any joint bank accounts between
11 the Liewes, any current joint bank accounts that the Liewes have?

12 A. I'm not sure. I've seen so many records, I'm just not
13 sure.

14 Q. Was it important to your investigation to determine
15 whether they held money separately or whether they shared
16 money?

17 A. The financial situation was so confusing. We attempted
18 but it was very difficult to unfurl the web of bank accounts.

19 Q. So you couldn't conclude that they shared any money?

20 A. That was not my conclusion yet, no.

21 Q. One more set of questions regarding the companies that
22 Mr. Scott asked you about.

23 LHV Equipment and Services Pte. Ltd., the owner is a
24 relative of Christina Liew, not Walter Liew; correct?

25 A. That's right.

1 Q. And the signature authority is with a relative of
2 Christina Liew, not Walter Liew; correct?

3 A. That's correct.

4 Q. Dongbei Process Engineering, the owner is a relative of
5 Christina Liew, not Walter Liew; correct?

6 A. That's correct.

7 Q. And the signatory authority is with Christina Liew and
8 Christina Liew's sister-in-law; correct?

9 A. That's right.

10 Q. Huan Qu Process Equipment, Pte. Ltd., the owner is a
11 relative of Christina Liew; correct?

12 A. That's right.

13 Q. And the signature authority is with the sister-in-law of
14 Christina Liew; correct?

15 A. Correct.

16 Q. ESI Equipment, the owner is Christina Liew's brother;
17 correct?

18 A. That's right.

19 Q. And the signature authority is for Christina Liew and for
20 her brother; correct?

21 A. That's right.

22 MS. AGNOLUCCI: Thank you. I have no further
23 questions.

24 THE COURT: All right. You're excused. No more
25 questions. No more questions.

1 are assigned to me by applying the accounting theories and the
2 tax law.

3 Q. How long have you been a revenue agent?

4 A. I started this job in June 2009.

5 Q. So that's about four and a half years?

6 A. That's right.

7 Q. Okay. Can you describe the training you've had as a
8 revenue agent?

9 A. When I started this job back in June, sometime June and
10 July of 2009, I completed my 1040 tax return trainings.

11 Q. And what did that consist of?

12 A. That consists of the instructions how to prepare 1040
13 returns, instruction how to examine 1040 tax returns. Also,
14 that consists of the procedures, how to communicate with the
15 taxpayer, as well as the audit -- audit techniques. Also, the
16 tax laws associated with the 1040 tax returns.

17 Q. And that training that you received, how long was that?

18 A. That's about four weeks classroom training with one week
19 workshop.

20 Q. Okay. So you've got four weeks in the class and then one
21 week with a workshop?

22 A. That's right.

23 Q. And at the conclusion of that, do you take an examination?

24 A. Yes. I finished some tests during the trainings in order
25 to be classified as a revenue agent who can examine the 1040

1 tax returns.

2 Q. And did you pass that examination?

3 A. Yes.

4 Q. After that -- you mentioned 1040s. Does that include --
5 are those just for individuals, or do those include some types
6 of businesses?

7 A. What I mean by 1040 tax return, that includes nonbusiness
8 tax returns and business tax returns. So they may be
9 applicable to individuals. For the business tax returns, it
10 mainly consists of Schedule C, the sole proprietorship.

11 Q. Okay. After the training that you successfully completed
12 for the 1040s, did you subsequently receive additional training
13 on C corporations?

14 A. Yes. I took advanced trainings on the C corporations back
15 in July 2011.

16 Q. And can you describe briefly what that training was, how
17 long it was and what it consisted of?

18 A. Sure. The training consists of the instructions how to
19 prepare the C corp. tax returns, instruction how to examine
20 C corp. tax returns, the applicable tax laws associated with
21 the C corporation returns, the audit procedures, how to work
22 with the taxpayers, how to -- the audit techniques, how to
23 examine C corp. tax returns, et cetera.

24 And for this trainings about three weeks in classroom
25 trainings with one-week workshops, and I passed the test. I

1 passed all the tests during the training in order to be
2 certified as a revenue agent who can work on the C corporation
3 returns.

4 **Q.** Could you briefly describe for the jury what -- we're
5 going to be talking more about C corporations, so could you
6 talk, in general terms, and explain what take C corporation is,
7 what its characteristics are?

8 **A.** Sure. A C corporation is a legal entity that is
9 established to conduct business activities and other associated
10 activities. A C corporation is separated from the -- its
11 owner. The owners of the C corporation, we call them
12 stockholders or shareholders, so the C corporation pay its own
13 tax based on the taxable income that they earned from the
14 business.

15 **Q.** And that type of corporation where the corporation pays
16 its own taxes is different than, like, a flow-through-type
17 entity; right?

18 **A.** That's right.

19 **Q.** Okay. And are those S corps.?

20 **A.** C corp. is different from the S corp.

21 **Q.** Right. So -- and let me switch gears then.

22 At some point in time did you receive training on
23 S corporations?

24 **A.** Yes.

25 **Q.** And can you describe?

1 **A.** Sure. Back in January of 2012, I had another advanced
2 trainings that includes S corporation and partnership returns
3 trainings.

4 For that training, I learned about the instruction how to
5 prepare and how to examine the S corporation return and the
6 partnership returns.

7 Also, I learn about the applicable tax laws relating to
8 these two entities. I learn about the audit procedures, how to
9 work with the taxpayers, as well as the audit techniques, how
10 to examine these business entities.

11 **Q.** How long was that training?

12 **A.** That training took about three weeks in classroom training
13 and one week workshop.

14 **Q.** And at the conclusion of that training, did you have an
15 examination?

16 **A.** Yes. I passed all of the tests during the training in
17 order to be certified as a revenue agent to work on the
18 S corporation return, as well as the partnership tax return.

19 **Q.** Okay. So with respect to the training that you've
20 described and the certifications you've described so far, you
21 had an initial training that was four weeks of classwork, plus
22 one week of workshop; right?

23 **A.** Yes.

24 **Q.** That's five weeks.

25 Then you had additional training on the C corporations,

1 and that was three weeks of course work and one week of
2 workshop; right?

3 **A.** Yes.

4 **Q.** Okay. So that's another four weeks.

5 And then on the S corporations, you had three weeks of
6 course work and one week of workshop?

7 **A.** S corp. and partnership together.

8 **Q.** Excuse me, S corp. and partnership. And that was another
9 four weeks total; right?

10 **A.** Yes.

11 **Q.** Okay. So in addition to that training as an IRS revenue
12 agent, do you receive separate annual training?

13 **A.** Yes. I receive enhanced trainings every year to keep
14 myself updated to the tax laws. So that's about 40 hours every
15 year.

16 **Q.** And in the course of your four and a half years at the
17 IRS, how many of those trainings have you had?

18 **A.** About four of them.

19 **Q.** Okay. So it's another four weeks of training?

20 **A.** That's right.

21 **Q.** Okay. Can you describe briefly for the jury the types of
22 cases that you handle in your -- maybe you can describe your
23 day-to-day work as a revenue agent and the kinds of cases you
24 handle.

25 **A.** Okay. As a revenue agent, I work closely with the

1 taxpayers and/or their representative. So I conduct my
2 examination in the fields. I conduct interview with the
3 taxpayer or their representative. I learn about their business
4 practice. I tour their business locations; and with the
5 information gathered during the tour, during the interview, as
6 well as learning their business practice, I closely examine
7 their books and records they use to prepare the tax returns. I
8 prepare returns based on my findings during the examinations.

9 **Q.** And could you describe -- give the jury a sense of sort of
10 the volume of cases that you handle on a regular basis?

11 **A.** Okay. I have about -- for every four-week cycle, I have
12 about between 25 to 30 cases I need to work on. So what that
13 means is about 25 to 30 tax returns I work on during the
14 four-week cycle that consists mainly of the business tax
15 returns. That includes the sole proprietorship, C corporation,
16 S corporation, as well as the partnership.

17 **Q.** And can you give an estimate of the numbers over your four
18 and a half years of different types of cases, like roughly how
19 many C corporation returns have you handled and S corporation
20 returns and sole proprietorships?

21 **A.** Okay. For the sole proprietorship, so I worked on
22 possibly about 150 tax returns, 150 tax years.

23 **Q.** Okay.

24 **A.** For C corp. I started working on the C corp. since 2000 --
25 sometime August 2011, right after the training. So that's

1 about, possibly, 60 tax returns that I work on. That's 60 tax
2 years.

3 For the S corp. and the partnership, I started working on
4 those returns sometime February 2012, right after the training.
5 I worked about approximately 50 tax returns relating to those
6 entities.

7 **Q.** And on all those returns you've examined, are you required
8 to look at the issue of gross receipts?

9 **A.** Yes. For every business tax returns that I work on, I'm
10 required to examine the gross receipt issue.

11 **Q.** And could you describe what gross receipts are for a
12 business?

13 **A.** Sure. Gross receipts generally is the total amount or
14 gross amount of incomes that receive from the service provided
15 or from the goods sold.

16 **Q.** And, so, in the course of your work as an IRS agent,
17 you've looked at gross receipts of how many different tax
18 returns, roughly?

19 **A.** That's close to -- if I add up all the business tax
20 returns together, that's close to 150 sole proprietorship, 60
21 C corp., 50 returns for entities, so that's close to 260.

22 **Q.** And prior to joining the IRS, can you describe your -- the
23 educational background that you have?

24 **A.** I graduated at San Francisco State University back in
25 May 2009, and I obtained a Bachelor of accounting.

1 **MR. AXELROD:** Your Honor, at this point in time, the
2 United States would offer Ms. Jiang as an expert in income
3 taxation.

4 **MR. GASNER:** No objection.

5 **THE COURT:** All right. Thank you very much.

6 You may proceed. And, again, ladies and gentlemen, I will
7 instruct you further at the end of the case.

8 Generally, people -- most witnesses are not allowed to
9 testify as to their opinions, only what they perceive with
10 their five senses. The exception has to do with expert
11 witnesses who the law allows to express their opinions.
12 However, as I'll tell you later in the case, you're not bound
13 by any expert's opinion, and you should treat the expert's
14 opinion with the same level of scrutiny as you would any other
15 witness and determine for yourselves how much, if any, of the
16 witness' testimony you wish to believe and find persuasive.
17 But I'll give you more information on that when we get to the
18 final instructions.

19 And with that you may proceed.

20 **MR. AXELROD:** Thank you, Your Honor.

21 **Q.** Ms. Jiang, in the course of your duties at the IRS, were
22 you assigned to assist in this prosecution?

23 **A.** Yes.

24 **Q.** And can you describe what you were asked to do?

25 **A.** I serve as assisting revenue agent on this case. So for

1 this case, I reviewed different types of records. That
2 includes the records that are prepared by -- the records of the
3 Performance Group corporation, as well as the USAPTI's
4 corporation's information. I also reviewed the records that
5 are prepared by the -- these two corporations return preparer.

6 I reviewed -- I reviewed records from various financial
7 institutions, as well as the information provided from some
8 foreign entities, including ACRA, as well as the entities who
9 assist corporations of the Singapore entities.

10 **Q.** And did that review also involve looking at the tax
11 returns that were filed by USAPTI and Performance Group over
12 time?

13 **A.** Yes. I review all of the returns that are prepared by
14 those two corporations. Based on the information and the
15 documents that I reviewed, I prepare my -- I prepared the
16 examiner -- the examination reports and summary charts based on
17 my findings.

18 **Q.** Okay. And as part of your work, were you asked to review
19 various financial records from financial institutions related
20 to Performance Group and USAPTI?

21 **A.** Yes.

22 **Q.** And in particular were you asked to review records from
23 Cathay Bank?

24 **A.** Yes.

25 **MR. AXELROD:** Your Honor, may I approach --

1 **THE COURT:** Yes.

2 **MR. AXELROD:** -- with Exhibits 517, 518, 519, 543, and
3 544?

4 **THE COURT:** Yes.

5 **MR. GASNER:** Your Honor, can I ask Mr. Axelrod to
6 repeat those numbers, please?

7 **THE COURT:** Please do.

8 **MR. AXELROD:** Of course. I'm going to be handing
9 Ms. Jiang Exhibits 517, 518, 519, 543, and 544.

10 **THE COURT:** All right. Do you have it, Mr. Gasner?

11 **MR. GASNER:** Thank you, Your Honor.

12 **THE COURT:** All right. Proceed. You may approach.

13 **MR. AXELROD:** Thank you, Your Honor.

14 **Q.** Ms. Jiang, I'm handing you these Exhibits 517, 518, 519,
15 543, and 544. And if you could just take a brief moment to
16 review those.

17 **A.** (Witness examines documents.) Yes.

18 **Q.** Okay.

19 **MR. AXELROD:** And, Your Honor, I would advise the
20 Court that the parties have stipulated that these records are
21 authentic records from Cathay Bank and are admissible.

22 **THE COURT:** Is that correct?

23 **MR. GASNER:** That's true, Your Honor.

24 **THE COURT:** All right. So stipulated. They are
25 admitted.

1 (Trial Exhibits 517, 518, 519, 543, and 544 received in
2 evidence)

3 **MR. AXELROD:** Thank you, Your Honor.

4 **Q.** Ms. Jiang, were you also asked to review records from Mega
5 International Commercial Bank?

6 **A.** Yes.

7 **MR. AXELROD:** And, Your Honor, may I approach with the
8 following records: 545, 546, 547, 548, 549, 550, 551, 552,
9 553, 590, 623, 624, 625, 626, 627, and 628?

10 **THE COURT:** Did you get those numbers, Mr. Gasner?

11 **MR. GASNER:** Yes, Your Honor.

12 **MR. AXELROD:** I'm hoping Mr. Gasner heard me.

13 **THE COURT:** I think he did.

14 All right. You may do so.

15 **MR. AXELROD:** Thank you.

16 (Pause in proceedings.)

17 **BY MR. AXELROD:**

18 **Q.** Ms. Jiang, I'm handing you Exhibits 545, 546, 547, 548,
19 549, 550, 551, 552, 553, 590, 623, 624, 625, 626, 627, and 628.
20 If you can just take a moment to review those.

21 **A.** (Witness examines documents.) Okay.

22 **Q.** Are those all records from Mega International Commercial
23 Bank?

24 **A.** Yes.

25 **MR. AXELROD:** Your Honor, the parties have stipulated

1 that these records are from Mega Bank and admissible.

2 **MR. GASNER:** That's true, Your Honor.

3 **THE COURT:** All right. Are you offering them?

4 **MR. AXELROD:** I am.

5 **THE COURT:** All right. They're all admitted.

6 (Trial Exhibits 545 through 553, 590, and 623 through 628
7 received in evidence)

8 **MR. AXELROD:** Thank you, Your Honor.

9 **Q.** Ms. Jiang, were you also asked to review records from
10 California Pacific Bank?

11 **A.** Yes.

12 **MR. AXELROD:** And, Your Honor, may I approach to show
13 Exhibits 574, 576, 577, 579, 580, 581, and 582?

14 **THE COURT:** Yes.

15 **THE CLERK:** What was the last one?

16 **MR. AXELROD:** 582.

17 **THE CLERK:** Thank you.

18 **BY MR. AXELROD:**

19 **Q.** Ms. Jiang, I'm handing you those exhibits and ask if you
20 recognize those.

21 **A.** (Witness examines documents.)

22 **THE COURT:** Let's take a stretch break while the
23 witness is looking at the records. You can take a stretch
24 break, too.

25 (Pause in proceedings.)

1 **THE COURT:** All right. Please be seated whenever
2 you're ready, ladies and gentlemen.

3 And you may proceed.

4 **MR. AXELROD:** Thank you, Your Honor.

5 **Q.** Do you recognize those exhibits as from California Pacific
6 Bank?

7 **A.** Yes.

8 **MR. AXELROD:** Your Honor, the parties have stipulated
9 that Exhibits 574, 576, 577, 579, 580, 581 and 582 are
10 authentic records from California Pacific Bank and admissible.

11 **MR. GASNER:** That's true.

12 **THE COURT:** Are you admitting them?

13 **MR. AXELROD:** Yes.

14 **THE COURT:** They're all admitted.

15 (Trial Exhibits 574, 576, 577, 579, 580, 581, and 582
16 received in evidence)

17 **BY MR. AXELROD:**

18 **Q.** Ms. Jiang, were you also asked to review records from East
19 West Bank?

20 **A.** Yes.

21 **MR. AXELROD:** And Your Honor, may I approach with
22 Exhibit 632?

23 **THE COURT:** Yes.

24 **BY MR. AXELROD:**

25 **Q.** Ms. Jiang, I'm handing you what's been marked as

1 Exhibit 632. Do you recognize that document?

2 **A.** Yes.

3 **Q.** Is that a record from East West Bank?

4 **A.** Yes.

5 **MR. AXELROD:** Your Honor, the parties have stipulated
6 that that is an authentic record from East West Bank and
7 admissible. The United States offers it.

8 **MR. GASNER:** That's true.

9 **THE COURT:** All right. Admitted.

10 (Trial Exhibit 632 received in evidence)

11 **BY MR. AXELROD:**

12 **Q.** Ms. Jiang, were you also asked to review records from the
13 Bank of China?

14 **A.** Yes.

15 **MR. AXELROD:** And, Your Honor, may I approach with
16 Exhibits 867 and 868?

17 **THE COURT:** Yes.

18 **BY MR. AXELROD:**

19 **Q.** Ms. Jiang, I'm handing you 867 and 868. Do you recognize
20 those documents as records obtained from the Bank of China?

21 **A.** (Witness examines documents.) Yes.

22 **MR. AXELROD:** Your Honor, the parties have stipulated
23 that these are authentic records from the Bank of China and
24 admissible, and the United States offers them.

25 **MR. GASNER:** That's true.

1 **THE COURT:** All right. They're admitted.

2 **MR. GASNER:** No objection.

3 **THE COURT:** I'm sorry. They're admitted.

4 (Trial Exhibits 867 and 868 received in evidence)

5 **MR. AXELROD:** Thank you.

6 **Q.** Now, Ms. Jiang, you indicated earlier that one of the
7 things you worked on was developing some summary charts related
8 to the information you reviewed in this case. Do you recall
9 that?

10 **A.** Yes.

11 **Q.** And based on your review, did you identify certain wire
12 transfers into the United States, coming into the
13 United States, for the benefit of Performance Group and USAPTI
14 related to TiO2 projects?

15 **A.** Yes.

16 **Q.** And did you prepare a summary of those transfers?

17 **A.** Yes.

18 **Q.** And is the chart or the summary that you created based on
19 the records that you just identified and other records that
20 have been admitted into evidence?

21 **A.** That's true.

22 **MR. AXELROD:** Your Honor, may I approach with
23 Exhibit 919?

24 **THE COURT:** Yes.

25

1 **BY MR. AXELROD:**

2 **Q.** Ms. Jiang, I'm handing you what's been marked as
3 Exhibit 919 and ask if you recognize that document.

4 **A.** (Witness examines document.) Yes. I prepared these
5 charts.

6 **Q.** Okay. And that's based on the exhibits we just discussed?

7 **A.** Yes.

8 **MR. AXELROD:** Your Honor, the United States offers
9 Exhibit 919.

10 **THE COURT:** Any objection?

11 **MR. GASNER:** None, Your Honor.

12 **THE COURT:** Admitted.

13 (Trial Exhibit 919 received in evidence)

14 **BY MR. AXELROD:**

15 **Q.** Okay. So the chart or charts we're about to look at, can
16 you describe what they contain, Ms. Jiang?

17 **A.** So this is the first set of the charts that I prepared.
18 This is the -- it shows the wire-in transactions. I prepared
19 it for each year from 2006, 2007, 2008, 2009, 2010, 2011.

20 **Q.** Okay. What I'd like to do -- Mr. Hemann, if you could go
21 to the second page of that exhibit.

22 And, Ms. Jiang, do you see on the screen before you the
23 incoming wires for 2006?

24 **A.** Yes.

25 **Q.** So can you describe for the jury what it is that we are

1 looking at?

2 **A.** This wire-in transaction shows the funds that received
3 from China to the United States, and I have -- I prepared six
4 columns. So the first column it shows the exhibit numbers. So
5 those are the -- those are the supporting documents to show why
6 there's a wire transfers and how they occurred.

7 The second column shows the dates the funds came into the
8 United States.

9 The third column is the beneficiaries of the funds
10 transferred in.

11 **Q.** And I see that, right, for 2006 it says PGUSA? Right,
12 that's what we're talking about under name?

13 **A.** Yes.

14 **Q.** Does that stand for Performance Group?

15 **A.** That's right, Performance Group USA.

16 **Q.** And are there other entries we'll see for later years
17 where it says USAPTI?

18 **A.** Yes.

19 **Q.** And are those the -- are those designations based on the
20 identification in the bank financial records relating to that
21 particular transfer?

22 **A.** That's true.

23 **Q.** Okay. Sorry, I interrupted. You were about to go, I
24 think, to the next column.

25 **A.** That's fine.

1 The next column is the reference contract. So that
2 will -- that's related to the business engagements that
3 Performance Group USA or USAPTI were involved in with the
4 Chinese customer.

5 The next column, it's called "Incoming Wire Receiving
6 Financial Institution." So that's the banks who received the
7 funds on behalf of the PGUSA or USAPTI.

8 Then the last column shows the amount of the funds that
9 were wired in.

10 **Q.** Now, so, if I'm tracking you, for the year 2006, what
11 you're showing is \$4.46 million coming in to the benefit of
12 Performance Group on those particular transactions?

13 **A.** That's true.

14 **Q.** That's the sum at the bottom?

15 **A.** Yes.

16 **Q.** Okay. What I'd like to do is go through just one of these
17 transactions with you, we're not going to go through all of
18 them, but go through some of the backup documentation for one
19 of these transactions. Okay?

20 **A.** Okay.

21 **Q.** And what I'd like to do is, the largest transaction there
22 is, do you see that, on August 8th, 2006?

23 **A.** Yes.

24 **Q.** And that's a 1.3-million-dollar transaction?

25 **A.** Yes.

1 Q. And it references in the Exhibit Number 527 on the left
2 column. Do you see that?

3 A. Yes.

4 Q. And, Mr. Hemann, could you bring up -- this is an admitted
5 exhibit -- if you could bring up Exhibit 527, page 1.

6 And, Ms. Jiang, what are we looking at right there?

7 A. This is a letter of credit prepared by the bank. So the
8 bank issue this letter to guarantee the payments for the
9 seller. So in this case, the applicant is Pangang Group
10 International.

11 Q. And, Mr. Hemann, if you could highlight that. It looks
12 like it's around line 50 there it says "Applicant."

13 A. So in here shows that Pangang Group is the customer of
14 this bank, of this China Everbright Bank.

15 Q. Okay.

16 A. So the bank issue this credit letter on the benefit -- for
17 the benefits of the seller who provided service to
18 Pangang Group.

19 Q. And who is that beneficiary? I think that's the next item
20 down in the letter of credit.

21 A. The beneficiary is Performance Group USA, Inc.

22 Q. Okay. And, so, they're the seller in the contractual
23 arrangement?

24 A. Yes.

25 Q. Okay. And if you look at the bottom of that page, 527-1,

1 does it indicate what contract this relates to? It kind of
2 carries over on to page 2 at the very bottom where it says
3 "contract equipment."

4 **A.** Yes.

5 **Q.** And could you read that line and the top of the next page?

6 **A.** Okay. On 45, line 45A, it says: (reading)

7 "Contract equipment and spare parts for fluid-bed
8 chlorination and purification of 30K MTPY TiO₂ by chloride
9 route project of Pangang Group Jinzhou Titanium Industry
10 Company, Limited. Total amount: 3,108,800 U.S.A.
11 dollars."

12 **Q.** And let me just stop you there. Then a little bit further
13 down does it have a specific contract number?

14 **A.** Yes.

15 **Q.** And is that the same contract number that you have in your
16 chart under the reference?

17 **A.** That's right. That's the contract number that I also
18 referenced on my summary chart.

19 **Q.** Okay. And we'll go -- you're familiar with that contract?

20 **A.** Yes.

21 **Q.** Okay. And, actually, if we could just briefly bring it
22 up, Mr. Hemann. That's Exhibit 313. If we could just briefly
23 look at the first page of the actual contract. 313.

24 Okay. So that's the contract for which these payments are
25 being made?

1 A. Yes.

2 Q. And if you look in the bottom there, it actually has that
3 same specific contract number?

4 A. Yes.

5 Q. Okay. Now, you also referenced in your chart -- if we
6 could go back to the summary exhibit, 919 -- other exhibits.
7 And what I want to do is briefly look at those.

8 Mr. Hemann, if you could go to Exhibit 526.

9 And can you describe, Ms. Jiang, for the jury what this
10 record is that we're looking at?

11 A. This is the wire confirmations that -- the wire
12 confirmation shows the wire-in transaction was completed. So
13 the wire amount is -- shows on the top, it's one point -- about
14 1.3 million.

15 Q. Okay. And it's actually -- and we'll get to this. If you
16 can see -- Mr. Hemann, if you can blow up on that exhibit, the
17 top half.

18 That shows a transaction occurring on what day?

19 A. That's on August 1st, 2006.

20 Q. Okay. And it's an amount of 1.394 million?

21 A. That's right.

22 Q. And that's a little different than the number on your
23 chart; right?

24 A. Yes.

25 Q. Okay. And why is that?

1 **A.** Pangang Group wires in this amount of money to the U.S.,
2 to the Performance Group USA. So through this transactions
3 some of the amounts were deducted that includes the -- that
4 includes the handling cost charged by the bank, as well as some
5 of the -- looks like some of the small amount of payment to a
6 third party.

7 **Q.** Right. And, so, the other exhibit that you identified on
8 your chart is Exhibit 525. Could we go to 525?

9 And, Mr. Hemann, if you could blow that up from the top.
10 Yeah.

11 What is Exhibit 525, Ms. Jiang?

12 **A.** Can you go to the top a little bit? It shows the advice
13 of -- advice of payment. So that's the advice of payment
14 prepared by the bank to notify the Performance Group they
15 received this amount of money from China.

16 **Q.** Okay. And you can see a moment ago when we were looking
17 at the wire transfer, it said it was 1.394 million, and that's
18 the number on the top of that payment advice; right?

19 **A.** That's right.

20 **Q.** But then below that there's a line "net proceeds." Do you
21 see that?

22 **A.** Yes.

23 **Q.** And that's the 1.3 million that's referenced on your
24 chart; right?

25 **A.** Yes.

1 Q. Why did you -- why is it that number that's on the chart?

2 A. Okay. As I briefly discussed earlier, some of the amounts
3 it's handling costs charged by the bank; and then there are
4 other small portion of them is the payments paid to some third
5 parties, which can be the subcontractors. So -- but for this
6 particular payments, it shows that the -- can you go up the
7 amount a little? Can you go to the top? Thank you.

8 So as you can see, the LC negotiation amount, that's
9 1,394,000. So Performance Group is entitled to these payments,
10 and that's the -- that's their payment received from the
11 Pangang Group.

12 And then after the handling costs and the small portion of
13 the amount to the third party, so 1.3 million, that's the --
14 that's the net proceeds to Performance Group.

15 Q. Okay. And this payment was pursuant to a letter of
16 credit; right?

17 A. Yes.

18 Q. And you're familiar with the letters of credit in this
19 case?

20 A. Yes.

21 Q. And for this letter of credit, did it require Performance
22 Group to present documents to the bank in order to actually get
23 this payment?

24 A. Yes. It's a requirement to issue a credit. In this case,
25 it's one of the requirements in their contracts.

1 Q. And Mr. Liew is the person who would provide those
2 documents to the bank?

3 A. That's right.

4 Q. So what I'd like to do is look -- and did he do so in this
5 particular case?

6 A. Yes.

7 Q. And I'd like to look at Exhibit 926 with you briefly.
8 Mr. Hemann, if you could bring that up.

9 And, Ms. Jiang, do you recognize this Exhibit 926?

10 A. Yes. This is the package of the documents prepared by the
11 bank.

12 Q. Okay. So this is what the bank in the U.S. gets to then
13 send over to ensure payment on the letter of credit?

14 A. That's true.

15 Q. Okay. And in the top it says, "Amount negotiated 1.394."
16 Do you see that write below the letter of credit?

17 A. Yes.

18 Q. Okay. So we're looking at the documents that relate to
19 this particular payment that we've been talking about; right?

20 A. Right.

21 Q. And if you go -- Mr. Hemann, could you go to the second
22 page of that document?

23 And, Ms. Jiang, do you recognize that?

24 And maybe you could blow up the top half of that,
25 Mr. Hemann.

1 Do you recognize that document?

2 A. Yes.

3 Q. What is it?

4 A. This document is called "Bill of Exchange." So this is a
5 financial instrument prepared by the bank, by, in this case,
6 it's Chiao Tung Bank. Chiao Tung Bank issued this document to
7 order China Everbright Bank to make payments to Performance
8 Group.

9 Q. And who signed that?

10 A. Walter Liew.

11 Q. Now, we're looking at Chiao Tung Bank. Chiao Tung was
12 later bought up by -- or, excuse me, became Mega International
13 Commercial Bank; is that right?

14 A. That's right.

15 Q. Okay. And if we could go to the next page, to 926-3.

16 Do you recognize that document?

17 A. Yes.

18 Q. What is it?

19 A. This is a commercial invoice issued by Performance Group
20 USA, and it's billed to Pangang Group international for the
21 service provided or the equipment sold to Pangang Group.

22 Q. Okay. And, so -- and who signed that document?

23 A. Walter Liew.

24 Q. And, so, this is Performance Group's invoice that they
25 need to submit to then get paid on the contract; right?

1 A. That's true.

2 Q. Okay. Now, if we could step back out to your summary
3 chart, to 919, page 2.

4 And we were looking at this transaction on August 8th,
5 2006; right?

6 A. Yes.

7 Q. And what I want to do is talk to you about after those
8 funds came in for the benefit of Performance Group, what
9 Performance Group did next with it.

10 So can you briefly describe what the next step was once
11 this money came to the bank in the United States?

12 A. Okay. After receiving these funds, Walter Liew as the
13 president of the Performance Group USA, instructed the bank to
14 wire out these funds to, in this case, it's to two different
15 parties.

16 Q. Okay. And, so, Mr. Hemann, could you bring up
17 Exhibit 528?

18 And, Ms. Jiang, do you recognize this document?

19 A. Yes.

20 Q. Are these the instructions that you were just talking
21 about?

22 A. Yes.

23 Q. Okay. And, Mr. Hemann, could you blow up the letter from
24 "Dear Joseph" down to the signature block?

25 And, first of all, Ms. Jiang, the amount received by

1 Performance Group was \$1.3 million, give or take; right?

2 **A.** Yes.

3 **Q.** If you add up those two payments that are now being
4 disbursed, is that the total of the amount that was received?

5 **A.** Yes.

6 **Q.** And the first payment, could you describe what the
7 instructions were? Actually, if you could just read the wire
8 transfer amount for payment one and then where it was going.

9 **A.** After receiving the funds, Walter Liew directed the bank
10 to wire out total amount of \$38,031 to Bank of China, and the
11 beneficiary of -- beneficiary name of that account is Qiao
12 Hong.

13 **Q.** And who is Qiao Hong?

14 **A.** Qiao Hong is Christina Liew, Walter Liew's wife.

15 **Q.** And where did those funds go?

16 **A.** To Bank of China.

17 **Q.** Okay. So they went to an account at the Bank of China in
18 China?

19 **A.** Right, to the account that's owned by Qiao Hong.

20 **Q.** Now, there's another payment down there as well; right?

21 **A.** Right.

22 **Q.** So how much is that payment and where did that go?

23 **A.** After receiving the funds from the Chinese customer,
24 Walter Liew directed the bank to wire out total amount of
25 1,272,000 to Huadong Equipment Solutions company.

1 Q. Now, I want to ask you some questions about that transfer,
2 and in particular I'm going to use this demonstrative board,
3 which is marked -- actually, it's not marked with a number
4 right now, but this is a board -- have you seen this board
5 before?

6 A. Yes.

7 Q. Okay. During the testimony of Mr. Guan?

8 A. Yes.

9 Q. Okay. And this has information about Mr. Liew's tax
10 returns -- the tax returns that Mr. Liew filed on behalf of
11 USAPTI and Performance Group?

12 A. Yes.

13 Q. Okay. And it identifies gross receipts for various years?

14 A. Yes.

15 Q. Okay. So going back to this 1.3-million-dollar transfer
16 in August of 2006, did Mr. Liew declare those funds that his
17 business received on his tax return?

18 A. I don't think so.

19 Q. Okay. Well, when you say you don't think so, why not?

20 A. The funds that -- after having control of this
21 1.3 million, this 1.3 million, it's not on -- it's not reported
22 as gross receipts or gross income on the company's books.

23 Q. And let me step back and ask you.

24 Mr. Hemann, if we can go back to 919, page 2.

25 And just focusing on that particular transaction for a

1 moment, does that transaction constitute gross receipts for
2 Performance Group for that tax year?

3 **A.** Yes.

4 **Q.** And why do you say that?

5 **A.** Because Performance Group got paid for the service they
6 provided to Pangang Group for the goods they sold to
7 Pangang Group. So they got paid for the service they
8 provide -- they provided.

9 **Q.** And they got paid under the contract that we briefly
10 looked at, Exhibit 313; right?

11 **A.** That's true.

12 **Q.** And, Mr. Hemann, if you could bring up 313 again,
13 Exhibit 313. And if we could go to page 4.

14 And, Ms. Jiang, could you read -- we'll blow up the top
15 paragraph there.

16 And could you please read that?

17 **A.** (reading)

18 "Pangang Group International Economic and Trading
19 Company Limited, Chengdu City, Sichuan, China, as
20 entrusted by Pangang Group Jinzhou Titanium Industry
21 Company, Limited, as one party (hereinafter referred to as
22 the Buyer) and Performance Group USA, Inc. as another
23 party (hereinafter referred to as the Seller) agree to
24 enter into the present contract for fluid-bed chlorination
25 and purification of a 30K MTPY TiO₂ by chloride route

1 project of Pangang Group Jinzhou Titanium Industry
2 Company, Limited, under the following terms and
3 conditions."

4 **Q.** So in this contract Performance Group is the seller;
5 right?

6 **A.** That's true.

7 **Q.** And no other party is identified as the seller?

8 **A.** No.

9 **Q.** And the seller and buyers have certain obligations and
10 responsibilities that are identified in this contract; don't
11 they?

12 **A.** Yes.

13 **Q.** And if we could go look at -- if we could go to page 5.
14 Mr. Hemann, if you could go to the next page. And if we could
15 highlight paragraph 2.1.

16 And, Ms. Jiang, could you please read that?

17 **A.** Okay. (reading)

18 "2.1. The Buyer agrees to purchase from the Seller
19 and the Seller agrees to sell and supply to the Buyer the
20 Contract Equipment, the Seller's Engineering and Technical
21 Documentation, Service and Training in order to
22 successfully construct fluid-bed chlorination and
23 purification of a 30K MTPY TiO₂ by chloride route project
24 at the end user's site all under the conditions and terms
25 as stipulated in the present Contract and its

1 Attachments."

2 **Q.** And could you go, Mr. Hemann, to the next page, to
3 paragraph 2.5?

4 And, Ms. Jiang, could you please read that paragraph?

5 **A.** (reading)

6 "2.5. The Seller shall have the overall and general
7 technical sole responsibility for the complete, correct,
8 and quality performance of his obligations in the Design,
9 Service, Training supply of the Contract Equipment and the
10 Technical Documentation all in accordance with the
11 stipulations of the Contract and its Attachments."

12 **Q.** And, Mr. Hemann, if you could go to page 22, and highlight
13 paragraph 14.7.

14 And, Ms. Jiang, could you please read that paragraph?

15 **A.** (reading)

16 "14.7. No assignment, cession, or transfer of any
17 rights or obligation arising under the present Contract
18 shall be made by one party to a third party without the
19 previous written consent of the other party."

20 **Q.** So, Ms. Jiang, under this agreement, was any party
21 entitled to payment under the contract other than Performance
22 Group?

23 **A.** No.

24 **Q.** As part of your investigation, did you look at tax returns
25 filed by Mr. Liew on behalf of Performance Group?

1 A. Yes.

2 Q. And, Mr. Hemann, could you bring up Exhibit 637?

3 And, Ms. Jiang, do you recognize that document?

4 A. Yes. This is 1120 C corporations filed by Performance
5 Group for tax year 2006.

6 Q. Okay. And I want to go -- Mr. Hemann, could you blow up
7 the gross receipts line?

8 Now, the gross receipts for that year is identified in the
9 tax return as \$1,852,799. Do you see that?

10 A. Yes.

11 Q. Okay. That amount did not include the transactions that
12 we just discussed, did it?

13 A. No, it didn't include.

14 Q. And, in fact, if we could back out and go back to the
15 summary chart at page 2, I want to ask you about -- I want
16 to -- so that identifies a whole series of wires for the year
17 2006; right?

18 A. Yes.

19 Q. And for each of those transactions, did Walter Liew
20 control the incoming wires received on behalf of Performance
21 Group that are identified in those transactions?

22 A. Yes.

23 Q. And did all of those wire transfers constitute gross
24 receipts for Performance Group for the year 2006?

25 A. Yes.

1 Q. So the gross receipts received by Performance Group that
2 you identified based on these records is \$4,461,702.09?

3 A. That's true.

4 Q. Okay. And that is different than the gross receipts that
5 were identified by Mr. Liew in the 2006 tax return?

6 A. Yes.

7 Q. Okay. And it's also different -- well, we'll talk about
8 how it relates to the taxes later.

9 Now, let's -- so we just -- we kind of went in detail for
10 the year -- for this particular transaction 2006. What I'd
11 like to do is ask you about the year 2007.

12 So if we could go to the next page of your chart. And
13 could you describe for the jury what we're looking at?

14 A. So this shows the wire-in transactions for 2007, and there
15 are four transactions. And it shows that the funds transferred
16 from the U.S. customer -- sorry, the Chinese customer, the
17 Pangang Group, to the Performance Group.

18 So the Performance Group got paid for the service they
19 provided, and the total actual gross receipts income that
20 identify the total amount is \$772,540.

21 Q. Okay. So that's gross receipts for tax year 2007?

22 A. Yes.

23 Q. And if we look at the tax return for 2007 that Mr. Liew
24 had filed, did he identify all of those gross receipts on his
25 return?

1 A. Not all of them.

2 Q. Now, he did identify, if we look at your chart, the two
3 transfers in the Cathay Bank. Those were identified as gross
4 receipts; right?

5 A. Yes.

6 Q. But the funds that were received at Mega Bank were not
7 identified as gross receipts?

8 A. That's true.

9 Q. And for that year, for 2007, did -- again, did Mr. Liew
10 control all of the incoming wires received on behalf of
11 Performance Group that we're looking at on your chart?

12 A. Yes.

13 Q. And let's move on to 2008 on your chart.

14 And if Mr. Hemann could advance us.

15 So, Ms. Jiang, again, could you describe for the jury what
16 it is that we're looking at?

17 A. Okay. So this is a similar chart that I prepared, but
18 it's for 2008. That shows the wire-in transaction, the funds
19 transferred from Pangang Group to the Performance Group USA.
20 So the total amount of gross receipt income that I identify is
21 4.6 million; and according to the information that I reviewed,
22 the sales transaction has -- was completed based on the
23 information that I reviewed.

24 So in here Performance Group is the seller and the
25 Pangang Group is the buyer.

1 Q. And, so, in 2008, Performance Group received \$4,619,906?

2 A. Yes.

3 Q. And does that constitute gross receipts for Performance
4 Group for that year?

5 A. Yes.

6 Q. And did you look at Mr. Liew's -- the return that he filed
7 on behalf of Performance Group for 2008?

8 A. Yes.

9 Q. And he identified \$368,581 as his gross receipts for that
10 year?

11 A. Yes, instead of 4 million.

12 Q. Now, did he control all of the wires that came in that are
13 identified on your chart?

14 A. Yes.

15 Q. Now, I want to ask you about 2008, because -- you're aware
16 of the fact that Mr. Liew filed bankruptcy on behalf of
17 Performance Group on January 14th of 2009; right?

18 A. Yes.

19 Q. And you've reviewed materials related to that bankruptcy?

20 A. Yes.

21 Q. And you are aware of the fact that he testified in a
22 bankruptcy proceeding in February of 2009, February 4th, 2009?

23 A. Yes.

24 Q. And are you aware of the fact that he had told the trustee
25 that Performance Group had closed down since the beginning of

1 November 2008?

2 **A.** Yes.

3 **Q.** Okay. Now, if you look at your chart here, we can see on
4 October 22nd, 2008, there was actually a receipt of one
5 point -- \$1,359,980 on a particular contract?

6 **A.** Yes.

7 **Q.** Okay. Now, let's move forward to 2009.

8 **A.** So for this chart that I prepared, again it shows the
9 wire-in transactions that the transfers come from Pangang Group
10 to PGUSA or USAPTI. So the total amount of gross receipts are
11 received by these two corporations. The total amount is 4.9
12 millions.

13 **Q.** Okay. So -- and let me -- let's -- this is the first time
14 we're seeing a transaction where the funds are going to USAPTI;
15 right?

16 **A.** Yes.

17 **Q.** And it references a particular contract; right?

18 **A.** Yes.

19 **Q.** And you're familiar with that contract?

20 **A.** Yes.

21 **Q.** And, Mr. Hemann, could you bring up Exhibit 317? And if
22 you could blow that up.

23 Is this the contract that is referred to in your summary
24 chart?

25 **A.** Yes. That's related to the 100K TiO2 project.

1 Q. Okay. And if you look -- if you look on the contract in
2 the bottom, there's a contract number in 317. Is that the same
3 number that you've identified as a reference in your chart?

4 A. That's true.

5 Q. Okay. And I'm not going to go through all the terms of
6 that contract with you; but under the terms of that contract,
7 was anyone other than USAPTI entitled to payment of those fees?

8 A. No.

9 Q. And for 2009, going back to your chart, Mr. Liew
10 controlled all of -- the disposition of the funds that came in
11 from those wires?

12 A. Yes.

13 Q. And you indicated there's almost \$5 million of funds. Did
14 those all constitute gross receipts for the two businesses that
15 are identified?

16 A. Yes.

17 Q. Okay. And you've reviewed the tax returns filed by
18 Mr. Liew on behalf of USAPTI and Performance Group for the year
19 2009; right?

20 A. Yes.

21 Q. Okay. So if we look here at 2009, the Performance Group
22 return is for -- excuse me, the USAPTI return is \$713,685;
23 right?

24 A. Yes.

25 Q. Okay. So that's a lot less than 5 million?

1 A. That's true.

2 Q. Let's move on to 2010. Can you describe for the jury what
3 we're looking at with 2010?

4 A. Okay. So this chart shows the wire-in transactions for
5 2010. So the transactions represent the funds transferred from
6 Pangang Group to USAPTI or Performance USA. So the total
7 amount of gross receipts they collected is 7.7 million.

8 Q. Okay. So for 2010, there's -- it looks like there's one
9 payment in August of 2010 to USAPTI for 6.2 million; right?

10 A. Yes.

11 Q. And then the rest of the payments are to Performance
12 Group; right?

13 A. That's true.

14 Q. And that totals the 7.7 million.

15 For that year did Mr. Liew control the disposition of
16 those funds that were received on behalf of Performance Group
17 and USAPTI?

18 A. Yes.

19 Q. And looking at his return for 2010 -- first of all, there
20 was no return filed for Performance Group in 2010; was there?

21 A. No.

22 Q. Okay. And no return for Performance Group filed in 2009
23 either; right?

24 A. No.

25 Q. Okay. So for 2010 for performance, he identified gross

1 receipts of \$895,448?

2 **A.** Yes.

3 **Q.** Okay. How does that compare to \$7,753,009.64?

4 **A.** A lot less.

5 **Q.** Okay. I want to ask you to look -- so all of these funds
6 are gross receipts for the business -- businesses?

7 **A.** Yes.

8 **Q.** Okay. And then let's look -- you also did the year 2011?

9 **A.** Right.

10 **Q.** Okay.

11 **THE COURT:** Before we get to that, maybe this would be
12 a good time to take our break.

13 **MR. AXELROD:** Yes, Your Honor.

14 **THE COURT:** All right. So, ladies and gentlemen,
15 we're going to take our second and last break of the morning.

16 Please remember the Court's admonitions and keep an open
17 mind, and don't receive any outside information. And we'll see
18 you in 15 minutes.

19 And you may step down, Agent.

20 (Pause in proceedings.)

21 (Proceedings were heard out of the presence of the jury:)

22 **THE COURT:** Before we start our break, what's your
23 updated estimate now, because I want to tell them before they
24 leave what we're looking like in terms of schedule.

25 **MR. AXELROD:** Yes, Your Honor. We will not finish

1 today. I think, you know, things have slowed down a little
2 bit, and we will finish tomorrow at some point in the morning,
3 depending on how much cross-examination there is of this
4 witness.

5 We have at least three more witnesses after this witness
6 and, you know, I would expect that we'll take up probably a
7 couple hours tomorrow morning with testimony.

8 **THE COURT:** All right. So you all should discuss the
9 matter with Defense counsel after we break in the afternoon so
10 they'll have a sense of when, if at all, they need to have a
11 witness available tomorrow.

12 And I plan on telling the jury that the Government is
13 likely to rest tomorrow, and then if there's going -- if the
14 defendants choose to put on a defense, they'll start right
15 away, and we expect testimony to be completed -- to fill in the
16 blank. Do you imagine that would be next week?

17 **MR. GASNER:** That we would rest, Your Honor?

18 **THE COURT:** Yes.

19 **MR. GASNER:** It depends. We have -- if Mr. Maegerle
20 testifies, that could be lengthy.

21 **THE COURT:** Okay.

22 **MR. GASNER:** Mr. Cooper is our technical expert. He's
23 going to be lengthy. So a lot depends. And over the weekend
24 we're going to be working to assess whether Mr. Maegerle's
25 going to testify and also to work with Mr. Cooper to see how

1 long. So it's a little -- it could be done during the week.
2 It might go a little bit into the following week, but I don't
3 think much.

4 **THE COURT:** All right. Well, the likelihood is, then,
5 still there's a high likelihood the jury will get this case in
6 this calendar month --

7 **MR. GASNER:** Absolutely.

8 **THE COURT:** -- if not -- if not sometime the week
9 after next depending upon how things unfold here.

10 **MR. GASNER:** Yes. And, Your Honor, I would just point
11 out I think we're probably not going to get past the revenue
12 agent today. I probably have 45 minutes or an hour of cross.
13 We may go longer tomorrow than just the two hours that
14 Mr. Axelrod predicted.

15 It would be of great assistance to the Defense to have the
16 weekend to get organized and not just have to throw up a
17 witness late in the day.

18 **THE COURT:** All right.

19 **MR. GASNER:** And especially in light of the Court's
20 ruling, we had planned on Mr. Klein and Mr. Cox, and now I've
21 learned that the Government thinks that they have nothing to
22 say. So we may be a little short of witnesses late in the day.
23 I know the Court has a rule you rest and you're done, or you
24 don't have a witness and you're done.

25 **THE COURT:** I know that, but I will -- I will -- we'll

1 break when the Government's done.

2 **MR. GASNER:** That would be fantastic. Thank you,
3 Your Honor.

4 **THE COURT:** And perhaps, perhaps in terms of under the
5 heading of be careful what you wish for, we might use that time
6 to start the arguments.

7 **MR. GASNER:** I'd rather do that. Ms. Lovett is back
8 at the office, and she'll be ready for that; but getting
9 witnesses here in light of a change in the landscape --

10 **THE COURT:** I understand. So let's -- on the
11 assumption the Government will rest tomorrow, we'll have
12 motions. We'll start, depending on when it is, I'm not
13 going -- the Court has a criminal calendar starting at 1:30,
14 but there's a possibility, I'm just alerting you, that we might
15 fill in that time to at least begin the arguments. I'm looking
16 forward to getting the outline that you all -- Ms. Agnolucci
17 committed to.

18 **MS. AGNOLUCCI:** If I did, Your Honor --

19 **THE COURT:** I assume she at least had apparent
20 authority to do that, if not actual.

21 **MR. GASNER:** We're ready to make good on that promise.

22 **THE COURT:** Okay. So that's what I think we'll start
23 doing.

24 Yes, Mr. Hemann?

25 **MR. HEMANN:** Well, we have an imaginary associate back

1 in the office, Your Honor, working on the Rule 29 motion.

2 **THE COURT:** I thought it was the entire people of the
3 United States.

4 **MR. HEMANN:** The entire people of the United States
5 are working on it. We have Doug Wilson down there pounding
6 away.

7 So we would probably be inclined to ask the Court to sort
8 of stick for the Rule 29 purposes with the Friday morning idea
9 just so that we could be a little bit more prepared on the Rule
10 29; but I do think it would be useful to raise and discuss the
11 *Daubert* issue tomorrow when we're done. It will give the
12 Defense time to plan and us time to address it. So that would
13 be our suggestion.

14 I did want to raise one other issue that we can take up
15 either at the beginning or the end of the break. One of the
16 questions that Ms. Agnolucci asked Special Agent Rometo was
17 whether the FBI was aware of joint checking accounts, and
18 Ms. Rometo's, Special Agent Rometo's response was there are
19 about 60 or 70, I don't know, and there was a couple of
20 follow-up questions.

21 And she had in her mind that there were, but she couldn't
22 say definitively. There are, and we're up to about five now.
23 They've gone down to check. We'd like to recall Special Agent
24 Rometo to answer that question, or alternatively call another
25 agent. We have an IRS CID agent who's capable of answering the

1 question. It was an important point that the Defense made
2 regarding commingling of funds. It was the last point that the
3 jury heard, and the answer came out in a way that was not --
4 doesn't assist the jury in the truth-seeking function.

5 **THE COURT:** All right. I understand the argument.
6 I'm sure you're a hundred percent in favor of that; right?

7 **MS. AGNOLUCCI:** Yes -- Well, Your Honor, we -- if the
8 Government wanted to recall a witness, that would be fine;
9 however, we're not aware of any currently opened joint bank
10 accounts. So --

11 **THE COURT:** I think you should meet and confer.

12 **MS. AGNOLUCCI:** Yeah, we would want --

13 **THE COURT:** Because we don't want a bell to be rung,
14 if you will, in front of the jury. So at least let's get an
15 agreement as to whether documents exist that would tend to
16 support that; and if the Defense says, "Well, wait a minute,
17 you're mistaken, here's why," and you can't agree on that, I'd
18 like to be able to resolve that.

19 **MR. HEMANN:** We will, Your Honor. And I would just
20 like to point out that the question wasn't: Are there any
21 currently opened joint bank accounts? The question was: Are
22 you aware of any joint bank accounts. The response was: There
23 have been about 60 or 70 over time. And over time there
24 certainly have, including for some of the Singapore entities.

25 **THE COURT:** All right. Why don't you all talk to each

1 other.

2 **MR. HEMANN:** We'll talk.

3 **THE COURT:** Let's take our break, and then we'll see
4 where we go. Thank you.

5 (Recess taken at 11:44 a.m.)

6 (Proceedings resumed at 12:05 p.m.)

7 (Proceedings were heard out of the presence of the jury:)

8 **THE COURT:** All right. Let's bring in the jury,
9 please.

10 (Proceedings were heard in the presence of the jury:)

11 **THE COURT:** All right. Please be seated.

12 Just one moment.

13 (Pause in proceedings.)

14 **THE COURT:** Proceed.

15 **MR. AXELROD:** Thank you, Your Honor.

16 **Q.** Ms. Jiang, I think we were just about to talk about the
17 year 2011.

18 Mr. Hemann, could you bring up the next page in that
19 exhibit?

20 And, Ms. Jiang, could you describe what we're looking at?

21 **A.** So this is the wire-in transactions. There are five
22 transactions shows that the funds transfer from Pangang Group
23 to USAPTI and Performance Group USA. So both U.S.
24 corporations, they got paid for the service they provided, and
25 the total amount of gross receipts they collected from the

1 Chinese customer is about 5 million.

2 **Q.** And then did you actually kind of summarize all this year
3 information in another chart?

4 **A.** Yes. I prepared a summary chart to show the actual gross
5 receipts that received from the Chinese customer.

6 **Q.** Okay. And if you could go to page 8, Mr. Hemann, the next
7 page.

8 Is this that summary on the screen?

9 **A.** Yes.

10 **Q.** Okay. So could you describe to the jury what we're
11 looking at?

12 **A.** Okay. So this is the total wire-in funds. At the bottom
13 it shows the total actual gross receipts, the Performance Group
14 USA and USAPTI. The total amount they receive from the
15 customer was about 27 million.

16 **Q.** Okay.

17 **A.** And this is the actual gross receipts they collected, and
18 this should be reported before any business deductions or any
19 applicable credits.

20 **Q.** And I want to talk a little bit about some of the other
21 work that you've done.

22 As part of your investigation, I think earlier you
23 testified that you reviewed the returns filed by Mr. Liew on
24 behalf of the two companies; is that right?

25 **A.** Yes.

1 Q. And did you also look at other records that were
2 maintained by the IRS?

3 A. Yes.

4 MR. AXELROD: And, Your Honor, may I approach with
5 Exhibits 644 through 654?

6 THE COURT: Yes, you may.

7 BY MR. AXELROD:

8 Q. Ms. Jiang, I'm going to hand you a series of Exhibits 644,
9 645, 646, 647, 648, 649, 650, 651, 652, 653, and 654, and ask
10 if you recognize those documents.

11 A. (Witness examines documents.) Yes.

12 Q. Do you recognize those as IRS records?

13 A. Yes.

14 MR. AXELROD: And, Your Honor, the parties have
15 stipulated that these exhibits are records of the IRS and
16 admissible.

17 MR. GASNER: That's true.

18 THE COURT: Admitted.

19 (Trial Exhibits 644 through 654 received in evidence)

20 MR. AXELROD: Thank you, Your Honor.

21 Q. Ms. Jiang, did you prepare a chart reflecting the tax
22 return information that you have?

23 A. Yes.

24 MR. AXELROD: And, Your Honor, may I approach with
25 Exhibit 920?

1 **THE COURT:** Yes.

2 **BY MR. AXELROD:**

3 **Q.** Ms. Jiang, I'm handing you what's been marked as
4 Exhibit 920, and ask if you recognize that document.

5 **A.** (Witness examines document.) Yes. That's another set of
6 charts that I prepared based on the review of the records.

7 **Q.** Okay. So that's based on the exhibits that have been
8 admitted in this case?

9 **A.** Yes.

10 **MR. AXELROD:** Your Honor, the United States offers
11 Exhibit 920.

12 **MR. GASNER:** No objection, Your Honor.

13 **THE COURT:** Admitted.

14 (Trial Exhibit 920 received in evidence)

15 **BY MR. AXELROD:**

16 **Q.** And we're going to go -- so what's this chart that we're
17 about to look at, Ms. Jiang?

18 **A.** This chart will show that -- the total amount of gross
19 receipts reported by both corporations and the unreported gross
20 receipts amount that was not claimed -- was not reported on the
21 return.

22 **Q.** Okay. And, so, now on the screen is the chart, and if you
23 could explain to the jury what it is and how it works.

24 **A.** Okay. So there are two charts on this sheet. The top --
25 the top portion of the chart, it shows the total amount of

1 gross receipts reported by Performance Group USA or USAPTI.

2 And as we know, that for Performance Group they only
3 prepare returns for 2006, '7, and '8; and we can see the
4 amounts on the second column.

5 And for USAPTI they receive -- or they filed returns and
6 reported the gross receipts amount as indicated in this chart.
7 So they filed return for '08, '09, and '10, as well as '07; but
8 for '07 there's no income or expenses information on the
9 returns.

10 **Q.** So let me just stop you there.

11 So on this top portion of the chart that we're looking at,
12 you combined the receipts that were reported in the Performance
13 Group return and in the USAPTI return to come up with sort of
14 like a total reported gross receipts?

15 **A.** Yes. The reason I combined them together is because
16 during the time I was reviewing the tax return for the gross
17 receipt amount received by these two corporations, and I see
18 some of the gross receipts they reported, it was not reported
19 on the correct tax return.

20 For example, for during 2008, in 2008 the gross receipts
21 that received from -- that should be received from Performance
22 Group, but they reported on the other corporation's tax return.
23 They reported the 500,000 on the USAPTI's tax return, and they
24 are separate entities, and I don't know why they did it.

25 But for the purpose of the tax calculation and the report

1 preparation, I combined them together because it will give the
2 taxpayer, the corporation, some tax benefits of paying less tax
3 liability of about 170,000 if I combine the entities together.

4 **Q.** Okay.

5 **A.** So there's some tax benefits there.

6 **Q.** So then if you could walk us through. So the top part is
7 the total reported gross receipts. That's what's on the
8 returns. What's the bottom part?

9 **A.** The bottom part shows the amount they reported and the
10 amount they did not reported, but we identify earlier as shown
11 on my previous chart that I identified.

12 So here it's just from the second column, total actual
13 gross receipts less the total amount of gross receipts they
14 reported, and that's equals to the unreported gross receipts
15 that they not -- they did not report on the tax returns.

16 **Q.** Okay. So you take what was reported, you subtract out --
17 excuse me.

18 You take the total amount, which you identified in the
19 summary chart, Exhibit 919; right?

20 **A.** Yes.

21 **Q.** And then you subtract out what they reported, what was
22 reported in the returns by Mr. Liew; right?

23 **A.** Right.

24 **Q.** And then that gives you this figure on the right side,
25 which is the total unreported gross receipts?

1 **A.** Yes. The total amount unreported income between 2006 to
2 2010 is close to 17 million.

3 **Q.** Okay. And based on those figures, did you determine the
4 corrected taxable income based on the actual gross receipts?

5 **A.** Yes.

6 **MR. AXELROD:** Your Honor, may I approach with
7 Exhibit 921?

8 **THE COURT:** Yes.

9 **BY MR. AXELROD:**

10 **Q.** Ms. Jiang, I'm handing you what's been marked as
11 Exhibit 921, and ask if you recognize that document.

12 **A.** (Witness examines document.) Yes. This is another set of
13 summary chart that I prepared based on the records I review.

14 **Q.** And what does that summary chart describe?

15 **A.** This will show that -- the corrected tax computation, what
16 corrected tax amount should be based on the actual gross
17 receipts and other adjustments that I identified during my --
18 by reviewing the records.

19 **MR. AXELROD:** Your Honor, the Government offers
20 Exhibit 921.

21 **MR. GASNER:** No objection.

22 **THE COURT:** Admitted.

23 (Trial Exhibit 921 received in evidence)

24 **MR. AXELROD:** And, Mr. Hemann, could you go to the
25 second page of that?

1 Q. And did you do these calculations or computations for each
2 of the tax years that we're talking about?

3 A. Yes.

4 Q. And, so, now before you is the computation for 2006. Can
5 you please describe to the jury what it is that we're looking
6 at?

7 A. Okay. So here it shows two portions. The top portion
8 shows the corrected taxable income that I calculated, and
9 the -- yes.

10 So taxable income, what I mean taxable income, that's on
11 the return there's a line called "Taxable Income." Basically,
12 it's from the gross income, and then minus all of the
13 deductions and applicable credit, so that arrives to the
14 taxable income.

15 Q. So let me just stop you there.

16 So the claimed taxable income means that on the tax return
17 for 2006 for Performance Group, Mr. Liew had identified that as
18 zero?

19 A. That's right.

20 Q. Okay. And that's Exhibit 637?

21 A. Yes. It's on the return.

22 Q. And then you add in the unreported gross receipts that you
23 identified?

24 A. Yes.

25 Q. And then that gives you the taxable income that's

1 adjusted; right?

2 **A.** Yes.

3 **Q.** And then could you explain the rest of your analysis?

4 **A.** Yes. So after adding the unreported gross receipts, then
5 we got to the taxable income adjusted. And also we allowed
6 additional net operating loss that carried forward from 2005.
7 So there's adjustments of \$8,721.

8 **Q.** So you applied the adjustments that were on the tax
9 return; right?

10 **A.** Yes.

11 **Q.** Okay.

12 **A.** So it shows the corrected taxable income for 2006, it
13 should be 2.6 million.

14 **Q.** And then from that did you determine what the actual tax
15 liability should be?

16 **A.** Yes. So in order to calculate the corrected tax based on
17 the corrected taxable income, so the applicable -- the tax rate
18 in this case of 2.6 million taxable income, the tax rate should
19 be close to 34 percent. So we used the 2.6 million times
20 34 percent. So that will give us the corrected tax liability.
21 And I generated and determined this amount by using the
22 software.

23 **Q.** Okay. And, so, that results in the \$884,061.91?

24 **A.** Yes. That should be the corrected tax they should pay.

25 **Q.** And then did you do this same analysis for each of the tax

1 years based on the same kinds of records?

2 **A.** Yes.

3 **Q.** So if we could go to the next page.

4 And we don't need to go through the analysis again, but
5 can you describe sort of what the bottom line is for 2007?

6 **A.** Okay. So for 2007, the corrected tax liability should be
7 109,000 based on the corrected taxable income of 322,000.

8 So in here we see the tax per return amount is zero. So
9 the difference compared to the corrected tax liability and the
10 tax per return, that will give us the additional tax due and
11 owing. So that's 109,000.

12 **Q.** And, Mr. Hemann, can we go to the next page and look at
13 2008?

14 And, Ms. Jiang, can you briefly describe that slide?

15 **A.** Okay. So this is for 2008, the tax computation. As we
16 see, this year's a little bit different since on the return
17 they claim negative -- on the top bottom -- I'm sorry, on the
18 top, the first line they claim negative 46,000. So, basically,
19 according to their return, they have a loss.

20 But applying -- by adding the unreported gross receipts
21 amount of 3.7 million, so that will give us the 2008 corrected
22 taxable income. It should be 3.7 million.

23 **Q.** And from that, what was the tax due and owing?

24 **A.** The tax due and owing, it's about 1.2 million. That's
25 about -- also it's close to 34 percent of tax rate.

1 Q. And this 2008 was the last year, last full year, of the
2 operation of -- the last year before Performance Group went
3 into bankruptcy; right?

4 A. Yes.

5 Q. Okay. Let's look at 2009.

6 A. Okay. So for 2009, the 2009 corrected taxable income
7 should be 4.2 million as we can see at the top portion of my
8 analysis, because I made adjustments of the unreported gross
9 receipt amount by adding the 4.2 million as taxable income. So
10 it gets to the corrected taxable income is 4.2 million.

11 So based on that, the corrected tax liability should be
12 1.4 million. And in this case on their return they only
13 claimed taxes for -- sorry, \$644. That's the amount they
14 claimed on their return as tax.

15 Q. And you say "they." You're talking about the
16 corporations, right, USAPTI --

17 A. I'm sorry. Yes, the corporations.

18 Q. That's okay.

19 But all of those returns were filed by Mr. Liew?

20 A. Yes.

21 Q. Okay. And let's go to 2010.

22 A. So for 2010 they had -- sorry, the corporations, the
23 USAPTI, they claimed taxable income is 22,000. So we -- I add
24 back the unreported gross receipts of 6.8 million. It gets to
25 the 2010 corrected taxable income in total of 6.8 million.

1 So based on that amount, the corrected -- the additional
2 tax due and owing should be 2.3 million, and on their return
3 the total amount of the tax they declared is only \$3,391.

4 **Q.** And then did you do a summary? I think the next page is a
5 summary of all of these taxes?

6 **A.** Yes. This is a summary chart that shows the additional
7 tax due and owing, what it should be for each year, and the
8 bottom shows a total due and owing for a total -- for five
9 years it's about 6 million tax.

10 **Q.** So let me ask you, that's what was due and owing based on
11 your analysis; right?

12 **A.** Yes.

13 **Q.** How much -- for those same tax years, for 2006 through
14 2010, how much did Mr. Liew declare on behalf of Performance
15 Group and USAPTI if you totaled it up?

16 **A.** That's close to about 4,000.

17 **Q.** It's close to about \$4,000?

18 **A.** Yes.

19 **Q.** Now, you also went through what the businesses' actual
20 taxable income would be for those years; right?

21 **A.** Yes.

22 **Q.** And what were the actual taxable income? You know, what
23 was that figure?

24 **A.** The difference it's about 17 million in total.

25 **Q.** So if the actual taxable income was about 17 million and

1 they paid about 4,000, what's that work out to for the actual
2 tax rate of those businesses?

3 **A.** That's about -- I did a calculation on that. That's about
4 .02 percent.

5 **Q.** Okay. So two tenths of a percent?

6 **A.** Yes.

7 **Q.** And if the companies had paid taxes on their actual
8 taxable income, would that be that 6-million-dollar figure on
9 the screen?

10 **A.** Yes.

11 **Q.** And what would that work out to as in tax rate?

12 **A.** As I described earlier, the average tax rates, it should
13 be about close to 34 percent.

14 **Q.** Okay. I want to ask you about the work you did -- I want
15 to switch gears a little bit and talk about the transfers. We
16 talked about this a little bit in the beginning. We looked at
17 some wires that were -- the funds came into the United States,
18 and then Mr. Liew directed funds to go to China and Singapore.
19 Do you recall that?

20 **A.** Yes.

21 **Q.** So in the course of your work, did you review records
22 related to Mr. Liew's transmission of funds on behalf of
23 Performance Group and USAPTI to entities in Singapore?

24 **A.** Yes.

25 **MR. AXELROD:** And, Your Honor, may I approach with

1 Exhibit 922?

2 **THE COURT:** Yes.

3 **BY MR. AXELROD:**

4 **Q.** And, Ms. Jiang, I'm handing you what has been marked as
5 Exhibit 922, and ask if you recognize that document.

6 **A.** Yes. That's another set of summary charts that I
7 prepared.

8 **Q.** Okay. And did you prepare those based on records that had
9 been admitted into evidence in this case?

10 **A.** Yes.

11 **Q.** And what does that chart describe? What does it show?

12 **A.** That will show the wire-out transactions which the funds
13 transfer from Performance Group USA, USA Performance
14 Technology, to various Singapore entities.

15 **MR. AXELROD:** Your Honor, the Government offers
16 Exhibit 922 into evidence.

17 **MR. GASNER:** No objection.

18 **THE COURT:** It will be admitted.

19 (Trial Exhibit 922 received in evidence)

20 **BY MR. AXELROD:**

21 **Q.** Okay. So this is the first page. Could we go to the next
22 page?

23 And, Ms. Jiang, could you describe what it is that we're
24 looking at?

25 **A.** Okay. So this is -- will show the two parties on the

1 left, that's the Performance Group USA and USAPTI; and then the
2 entities on the right, those are the Singapore entities either
3 owned by Walter Liew, Christina Liew, or the companies
4 associated with the Liews.

5 **Q.** Okay. Meaning their relatives?

6 **A.** Yeah. Meaning -- yes.

7 **Q.** And what's depicted on this particular slide, this slide
8 that we're looking at?

9 **A.** Okay. So as you remember earlier, after receiving the
10 funds from the Chinese customer called Pangang Group, so after
11 having control of the funds, Mr. Liew transfer out these two
12 funds to Lawrence Process Engineer, the company owned by
13 Christina Liew.

14 **Q.** And there's a bank account for Lawrence Process Engineers;
15 is that right?

16 **A.** That's right.

17 **Q.** Okay. And who has signature authority over that
18 particular account?

19 **A.** Both Walter Liew and Christina Liew.

20 **Q.** Okay.

21 **A.** And for -- so we can see two transactions here: The
22 901,000 in July '06 and 707,000 in November '06. So those
23 funds were wired out to the Singapore entities, but without
24 claiming -- without reporting these two amounts as gross
25 receipts on the Performance Group's tax return.

1 Q. Okay. And did you go through a similar summary for each
2 one of these entities?

3 A. Yes.

4 Q. So, Mr. Hemann, could we go to the next slide, please?

5 A. So this one shows the wire-out transactions, the funds
6 transferred from Performance Group to Huadong Equipment
7 Solutions. And Huadong Equipment Solutions, it's owned by
8 Walter Liew.

9 Q. And was there a bank account associated with that company?

10 A. Yes.

11 Q. And who had authority over that bank account?

12 A. Both Walter Liew and Christina Liew.

13 Q. And I'm not going to ask you to go through each one of
14 those transactions, but at the end is there a summary slide
15 that sort of captures all the transactions depicted on that
16 slide?

17 A. Yes. In later years 2008, both Performance Group and
18 USAPTI, they also wire out funds to other foreign entities,
19 which is shown on the rest four entities.

20 Q. Okay. So let's go to the next slide.

21 And what are we looking at here?

22 A. Okay. So that's just -- we can see Performance Group
23 transfer out the funds to ESI, and also the USAPTI also wired
24 out funds to ESI; and none of these funds were reported on the
25 corporations' tax returns.

1 Q. So the first -- so these are funds -- and this looks like
2 the first slide where we're seeing some funds coming from
3 Performance Group and some coming from USA Performance
4 Technology; right?

5 A. Yes.

6 Q. Okay. And those transfers begin in February of 2009?

7 A. Yes.

8 Q. And they continue all the way through till April of 2011?

9 A. Yes.

10 Q. And ESI is -- who owns ESI?

11 A. ESI is owned by Christina's brother, Qiao Mu.

12 Q. So that's Walter Liew's brother-in-law?

13 A. Yes.

14 Q. Okay. And --

15 A. Can I point out the last transaction here?

16 Q. Yes.

17 A. Because I want to point it out. Because I prepared this,
18 I want to just present it real quick.

19 Q. Yes.

20 A. Okay. So for the last transaction, the ones on
21 April 15th, 2011, so that's 1.3 million wired out to the ESI.
22 And as we can see, the originator is Performance Group; but as
23 we know, that the Performance Group at that time it went
24 bankrupt. So they still have the funds to wire out to the ESI.
25 So that's the point I want to make.

1 Q. Okay. Did ESI have a bank associated with it?

2 A. Yes.

3 Q. And was Christina Liew one of the -- have signature -- was
4 she one of the people that had signature authority over that
5 account?

6 A. Yes.

7 Q. Let's go to the next slide.

8 And can you describe what we're looking at here?

9 A. So this shows two transactions, the wire-out transactions
10 that the funds transfer from USA Performance Technology to
11 Huan Qu Process, the company located in Singapore.

12 Q. And is that company owned by Mr. Liew's brother-in-law?

13 A. This -- Huan Qu is owned by Christina's sister-in-law --

14 Q. Okay.

15 A. -- Li Rue.

16 Q. Rue, excuse me.

17 Then let's go to the next slide.

18 And what are we looking at there?

19 A. So here shows the wire-out transactions, that the funds
20 transfer from USAPTI/USA Performance Group to Dongbei Process
21 Engineering, the entity that's located in Singapore.

22 Q. And the next slide.

23 A. This one it shows the -- again, it's wire-out transactions
24 that the funds transfer from USA Performance Technology to LHV
25 Equipment. So this is the company located in Singapore.

1 And after this, I prepare a summary --

2 Q. So let's look at the next chart.

3 A. -- a summary chart to show --

4 Q. Okay. So this shows -- can you describe what we're --
5 what this shows?

6 A. Yes. So as we can see in the prior analysis that I did,
7 it shows the amounts of specific transactions that transferred
8 from both U.S. corporations to the Singapore entities.

9 And here it shows the total amounts that wire out to the
10 Singapore entities, the companies either owned by Walter Liew,
11 Christina Liew, or their relatives.

12 Q. And when it came to directing these funds out of the
13 accounts in the United States, whether it be Performance Group
14 accounts or USAPTI accounts, who was making that direction?

15 A. Walter Liew.

16 Q. Okay. Now, did you also look into the downstream
17 activity, the transfers once they got to these accounts in
18 Singapore, where they went into China?

19 A. Yes.

20 Q. And did you review records associated with that activity
21 and prepare a chart?

22 A. Yes.

23 MR. AXELROD: Your Honor, may I approach with
24 Exhibit 923?

25 THE COURT: Yes.

1 **BY MR. AXELROD:**

2 **Q.** Ms. Jiang, I'm handing you what's been marked as
3 Exhibit 923. Do you recognize that document?

4 **A.** Yes. This is another set of summary charts that I
5 prepared.

6 **Q.** And is it based on the records that have been admitted in
7 this case?

8 **A.** Yes.

9 **MR. AXELROD:** Your Honor, the Government offers
10 Exhibit 923.

11 **MR. GASNER:** No objection.

12 **THE COURT:** Admitted.

13 (Trial Exhibit 923 received in evidence)

14 **MR. AXELROD:** And can we go to the second page,
15 Mr. Hemann? Thank you.

16 **Q.** Ms. Jiang, can you describe what we're looking at?

17 **A.** Yes. So after receiving the funds from the U.S.
18 corporations, Performance Group or USAPTI, so it shows the
19 three Singapore entities; and after very short periods of time,
20 they wire out the funds to China.

21 So we can see the beneficiaries who receiving this money
22 is Qiao Hua. Qiao Hua is Christina Liew's father. And this is
23 the HSBC account that's owned by Qiao Hua, but Walter Liew has
24 signature authority on this account.

25 **Q.** Okay.

1 **A.** And then the next one, the next one -- the next two
2 transactions shows the funds transfer from the Singapore
3 entities to China, the account of -- the Bank of China, the
4 bank account owned by Qiao Ning; and Qiao Ning is Christina
5 Liew's brother.

6 **Q.** Okay. And, so, just the first one, the Huadong transfers,
7 they go to that HSBC account in the name of Qiao Hua; right?

8 **A.** Yes.

9 **Q.** The Huadong Equipment account that they're coming from,
10 who controls that account?

11 **A.** Huadong account is -- the bank account is controlled by
12 both Walter Liew and Christina Liew, and the sole -- the
13 share -- it's a corporation. The shareholder of this company
14 is Walter Liew.

15 **Q.** Okay. And were you able to develop, with respect to that
16 HSBC account, where some of the funds went after that?

17 **A.** Yes. I see some further activities after reviewing this
18 transaction.

19 **Q.** Could we go to the next slide?

20 Okay. So can you describe what we're looking at in this
21 slide?

22 **A.** Okay. So the first top portion of the chart is just the
23 one that we review it in the previous chart that shows the
24 Huadong Equipment that wire out the funds to the HSBC account,
25 the account owned by Christina's -- Christina Liew's father.

1 So after that, we can see the bottom portion of the chart
2 it shows that Walter -- there's instructions that are prepared
3 by Walter Liew, and shows that -- how he wanted it to disburse
4 these funds after some of this is mature. So the information
5 will show how he wanted it to disburse the funds.

6 **Q.** Okay. And then is there a final sort of summary of this
7 information?

8 **A.** Yes.

9 **Q.** And, so, could you describe, we're now looking at that,
10 what this chart shows?

11 **A.** This chart gives us ideas on after receiving the funds
12 from Performance Group USA and USAPTI, so four of the -- four
13 of the Singapore entities, they wire the funds from Singapore
14 and to China to the account owned by Qiao Hua, Christina Liew's
15 father, and also to wire out the funds to Qiao Ning, Christina
16 Liew's brother.

17 And we can see that at the bottom it shows the total
18 amount wired out to these two individuals, it's about -- it's
19 8 million. And, again, none of this were -- these funds were
20 received initially by the Performance Group or USAPTI, and none
21 of these were reported on the return.

22 **MR. AXELROD:** I have no further questions, Your Honor.

23 **THE COURT:** Thank you.

24 Let's take a stretch break, ladies and gentlemen, while
25 Mr. Gasner is getting ready.

1 (Pause in proceedings.)

2 **THE COURT:** For the jurors who had questions about the
3 chair comfort, we're going to bring some back supports
4 tomorrow. I hope they will fit; but if you want to bring
5 pillows, your own pillows from home, you can do that.

6 This is sort of the best we have. We can't put rolling
7 chairs up there because we have liability issues if you slide
8 off. So bring a pillow if you want and bring whatever support
9 you want.

10 We're going to have some back supports. I'm not sure if
11 they'll fit, but hopefully they will work. Thanks for your
12 note.

13 All right. Whenever you're ready, Mr. Gasner, you can
14 commence.

15 **MR. GASNER:** Thank you, Your Honor.

16 **CROSS-EXAMINATION**

17 **BY MR. GASNER:**

18 **Q.** Good afternoon, Ms. Jiang.

19 **A.** Good afternoon.

20 **Q.** My name is Stuart Gasner, and I represent Walter Liew and
21 USAPTI. Good to see you.

22 **A.** Okay.

23 **Q.** You said, I think, that you had been a revenue agent for
24 about four years; is that right?

25 **A.** Four and a half years.

1 Q. Is most of your activity as a revenue agent doing audits
2 with individuals?

3 A. With individuals, the taxpayer, or their representatives.

4 Q. In terms of those interactions with taxpayers, do you meet
5 here in San Francisco typically?

6 A. We're in Oakland office. So the taxpayer I mainly working
7 with, they are mainly in the East Bay area, but some of them in
8 San Francisco.

9 Q. Is this what people think of when they get a letter from
10 the IRS and it says, "You're going to be audited"? Is that the
11 process that you are typically involved in on the IRS side?

12 A. For the revenue agent, it's a little bit different from
13 the tax officer. Usually with the tax officer, the taxpayer
14 will get the letter from IRS; but for us, for IRS agent, we --
15 normally it's -- the initial contact with the taxpayer will be
16 a phone call; and if we cannot reach them, then there will be a
17 letter sent out to them.

18 Q. Let me just get clear on just what the kind of hierarchy
19 of personnel is at the IRS.

20 So in what most people think of as an audit, who would
21 they be typically dealing with? Is that called a tax officer?

22 A. The tax officers conduct the examination in the office.
23 What that means, the taxpayer will come into the IRS office and
24 bring in the documents to support their return information.

25 Q. And there's a back-and-forth dialogue with the taxpayer

1 about what the situation was?

2 **A.** Yeah. Yes.

3 **Q.** And sometimes there is an adjustment to the tax return,
4 things like that?

5 **A.** Yes.

6 **Q.** The taxpayer will offer their explanations, and they're
7 either accepted or rejected by the tax officer; is that the way
8 it works?

9 **A.** Yes.

10 **Q.** How does a revenue -- in your job as a revenue agent, are
11 you involved in that same process or a different one?

12 **A.** A similar process, but I mainly work with the taxpayer or
13 their representative at their business location or their rep's
14 office.

15 **Q.** And are these situations where you go to the actual
16 business and then look at their records on site?

17 **A.** That's true.

18 **Q.** Is that most of what your job is?

19 **A.** Yes.

20 **Q.** Okay. And then just continuing with our education about
21 how the IRS works, are there people called special agents at
22 the IRS?

23 **A.** Yes.

24 **Q.** They have gold badges; is that right?

25 **A.** I think so, but I'm not a special agent.

1 Q. When did you get involved as, what I think you called,
2 you're the assisting revenue agent on this case; is that right?

3 A. Yes.

4 Q. When did you first get involved, Ms. Jiang?

5 A. That's sometime in June 2013.

6 Q. Prior to that point, was there any IRS agent assigned to
7 this case as far as you knew?

8 A. The IRS agent? Yes.

9 Q. And who is that?

10 A. That's a special agent that I work with, Justin Fletcher.

11 Q. Okay. So you've only been involved since June of 2013;
12 true?

13 A. Yes.

14 Q. Your sources of information for all the charts and
15 documents you went through with Mr. Axelrod has been primarily
16 from the FBI; is that right?

17 A. You mean where are they found -- where the documents were
18 found or --

19 Q. Well, it sounds like in your usual practice as a revenue
20 agent, you would go to the business and gather all the
21 information yourself; true?

22 A. Yes. Most of the time, yes.

23 Q. In this case, you didn't visit with USAPTI at all, did
24 you?

25 A. No, not the office.

1 Q. Because there had been search warrants in July of 2011 and
2 the business was long since closed; true?

3 A. Yes.

4 Q. Okay. And you've never talked to Walter Liew?

5 A. No.

6 Q. You never talked to Christina Liew?

7 A. No.

8 Q. Have you talked personally to anybody at USAPTI?

9 A. No.

10 Q. So that's what I'm kind of trying to get at. In terms of
11 the source of the information that you're relying upon as an
12 expert here, can you tell us what your sources of information
13 were?

14 A. The source of information, I guess I cover it in the
15 direct examination, and that includes the records of what both
16 corporation has. So that was provided -- that were provided to
17 me, and also the books and records prepared by the
18 corporations' return preparer or the accountants.

19 And the other information I review is the information that
20 we received from various Singapore -- sorry, various financial
21 entities.

22 And the other type of records that I review is from the
23 foreign entities, which including ACRA or some of the companies
24 who help with incorporation of those foreign entities.

25 Q. Thank you for that explanation.

1 Are you aware, though, that the FBI seized many, many
2 documents, both hard copy and electronic, from USAPTI?

3 **A.** Yes.

4 **Q.** Do you have some sense of the quantity of those documents?

5 **A.** Compared to my -- compared to my individual case, that's a
6 lot.

7 **Q.** Okay. But are you aware that it's electronic evidence
8 measured in terabytes of data, many computer servers, thumb
9 drives, laptops, things of that nature?

10 **A.** I don't know exactly how many of them. I'm sorry. I just
11 know the information some are hard copy, some are from the
12 disks or thumb drive, yeah, that's true; but I don't know
13 exactly how much the quantity were.

14 **Q.** Did you do your review over at your offices in Oakland?

15 **A.** I did it both places. I did some of the works in the
16 attorneys' office; and then I did some of the works in my
17 Oakland office.

18 **Q.** And by "attorneys," you mean the legal team from the
19 Department of Justice?

20 **A.** Yes.

21 **Q.** And the rest of it was back at your tax offices in
22 Oakland; right?

23 **A.** Yes.

24 **Q.** In terms of what you worked with, did you have some boxes
25 of documents that you yourself reviewed?

1 **A.** I did not get the boxes. They did not provide me the
2 boxes. The boxes is available to me in their office, so I
3 reviewed them at their office.

4 **Q.** And what was the quantity of documents that you actually
5 reviewed in terms of number of boxes, bankers boxes, for
6 example?

7 **A.** I'm sure it's over 10 or 20, but I did not count.

8 **Q.** All right. So in getting, though, from everything that
9 was seized, both at USAPTI and at the Liew residence, to get
10 those many terabytes of data down to 10 or 20 bankers boxes,
11 who did that selection?

12 **A.** Don't get me wrong on the 10 to 20, because, like I said,
13 that's not the exact number.

14 **Q.** All right.

15 **A.** I did not count them.

16 **Q.** Fair enough.

17 **A.** And then the terabyte, I'm not sure that's the exact
18 quantity.

19 **Q.** Okay. But, whatever, it was a quantity of boxes that you
20 could see in one place in a conference room, for example?

21 **A.** Yes.

22 **Q.** And I won't hold you to 10 or 20, but my question is: Of
23 the quantity that you actually worked with, who selected those?

24 **A.** I have no idea.

25 **Q.** Did you work with anybody other than the lawyers for the

1 Department of Justice in reviewing those documents?

2 **A.** And the special agent and FBI.

3 **Q.** The IRS special agent. And who from the FBI did you work
4 with?

5 **A.** Like, Cecily Rometo and Chris. And, I'm sorry, I just
6 don't remember their last names exactly.

7 **Q.** We met both of them. Any others?

8 **A.** Nathan and Cynthia Ho.

9 **Q.** All right.

10 **A.** I guess --

11 **Q.** So you've worked, basically, with the legal team and the
12 FBI case agents in going over the documents that you reviewed;
13 true?

14 **A.** Yes.

15 **Q.** Okay. And that's kind of a different process than what
16 you ordinarily do in your usual revenue agent function where
17 you're actually at the business and there's some back and forth
18 interaction with the taxpayer; true?

19 **A.** That's -- for some of my cases, I don't necessarily meet
20 with them if they're not -- if they don't show up or if they're
21 not compliant. I still can finish my examination without them.

22 **Q.** All right. So you're used to just having a big pile of
23 documents and digging in on your own; true?

24 **A.** That -- yes, that can be true.

25 **Q.** But most of the time as a revenue agent, there's some back

1 and forth with the taxpayer where you dig into the facts;
2 right?

3 **A.** Yes.

4 **Q.** Okay. Now, Mr. Axelrod asked you some questions about
5 different kinds of corporations and training that you've had in
6 dealing with those. Do you remember that in direct
7 examination?

8 **A.** Yes.

9 **Q.** Now, the one that you talked mostly about, I think you
10 called it a C corp. And I'll just write that on the board. So
11 that's the letter C corporation. Do you remember talking about
12 that?

13 **A.** Yes.

14 **Q.** Why is it called a C corp.?

15 **A.** A C corp. -- why is it called C corporation?

16 **Q.** That's a section of the Internal Revenue Code; is it not?

17 **A.** Yes.

18 **Q.** Okay. And in a C corp. there is a corporation that is an
19 entity that pays taxes on its own; right?

20 **A.** Yes.

21 **Q.** And the typical C corporation also has shareholders;
22 right?

23 **A.** Yes.

24 **Q.** And if the C corporation pays dividends, for example, to
25 the shareholders, the shareholders have to pay taxes on the

1 dividends as income; right?

2 **A.** Yes.

3 **Q.** So there's double taxation with a C corp.; true?

4 **A.** Yes.

5 **Q.** Okay. And you mentioned also that there's an S corp.

6 That's another section of the Internal Revenue Code?

7 **A.** Yes.

8 **Q.** And I think that Mr. Axelrod talked about that a little
9 bit as a pass-through; is that right? Do you remember him
10 saying that?

11 **A.** Yes.

12 **Q.** And an S corp. is more like a partnership or a joint
13 venture; true?

14 **A.** Yes.

15 **Q.** And it's like that because the corporation itself doesn't
16 pay any taxes, but all of its income passes through to the
17 partners or joint venturers or Sub S shareholders; true?

18 **A.** The S corporation is similar like a partnership.

19 **Q.** Okay.

20 **A.** It's a flow-through entity that flow through the
21 distributed share to its shareholders or partners; but when you
22 mention the joint venture, I'm not sure what's the legal form
23 for joint venture you mean.

24 A joint venture is a very general term to me. So it needs
25 to be a very specific tax entity in terms of the tax filing.

1 For tax filing purpose, they can be a partnership. They can be
2 a C corporation. They can be a limited liability. So a joint
3 venture, it's very general term to me.

4 **Q.** Okay. And you mentioned limited liability. That's called
5 an LLC, right, a limited liability corporation?

6 **A.** Limited liability company.

7 **Q.** Company. Okay.

8 And that has -- that's taxed more like a partnership;
9 right?

10 **A.** It can be a sole proprietorship or it can be a
11 partnership.

12 **Q.** Okay. So part of your analysis and your expert opinions
13 here today depends on the fact that we are dealing with
14 C corporations; right?

15 **A.** Both -- yes, both Performance Group and USAPTI, both
16 corporations are -- they file with the State of California as a
17 C corporation.

18 **Q.** Okay. And just to be clear, if we were dealing with an
19 S corp. or a partnership, the entity itself wouldn't pay any
20 tax; you would just look at the pass-through to the partners?
21 True?

22 **MR. AXELROD:** Objection.

23 **THE COURT:** Sustained.

24 **THE WITNESS:** That depends.

25 **THE COURT:** Just a moment. I sustained the objection.

1 That means you don't answer.

2 **THE WITNESS:** Oh. Sorry.

3 **BY MR. GASNER:**

4 **Q.** Okay. So let's just keep track. In terms of the things
5 that you testified to that were important to your opinion, one
6 is the type of entity; true?

7 **A.** State your question one more time, please.

8 **Q.** So in order to look at how much tax is owed and how gross
9 receipts should have been handled, you've got to think about
10 the type of entity; don't you? That's one important factor in
11 your analysis?

12 **A.** Yes. Most of the business or business entities, for their
13 return preparation purpose, there's a line called gross
14 receipts.

15 **Q.** Now, another factor that you mentioned was you went
16 through in detail with Mr. Axelrod about a sample transaction
17 in 2006. Do you remember talking about that?

18 **A.** Yes.

19 **Q.** Okay.

20 **A.** Yes.

21 **Q.** And this is when we were talking about the incoming wire
22 transfers and then the going into banks, and then being wire
23 transferred to Singapore. Do you remember that line of
24 questioning?

25 **A.** Yes.

1 Q. Okay. And in that regard, one of the things that
2 Mr. Axelrod asked you about was the contracts in particular.
3 Do you remember that line of questioning?

4 A. Yes.

5 Q. And he pointed out several provisions of the contract that
6 showed exactly who the seller is and the buyer. Do you
7 remember that line of questioning?

8 A. Yes.

9 Q. Is it fair to say, Ms. Jiang, that another important part
10 of your analysis is the contracts at issue? True?

11 A. The contract is one of the source documents that we use to
12 determine how the sales were generated or how the services were
13 performed -- generated.

14 Q. Now, if the contract had mentioned other parties as
15 sellers of the services, that would change your analysis; true?

16 A. Can you speak your question one more time, please?

17 Q. So Mr. Axelrod pointed out that the Singapore companies
18 like Huadong or ESI were not listed in the contract as sellers.
19 Do you remember him asking you about that?

20 A. Yes.

21 Q. Now, if ESI or Huadong, for example, had been listed in
22 the contract as a seller, would that change your analysis?

23 A. That depends because based on the contract they signed,
24 Walter Liew signed as -- for the interest of Performance Group
25 and USAPTI, no other parties.

1 Q. Understood.

2 And had the contract been structured so that Performance
3 Group was one party but a Singapore company or Chinese company
4 was another party to the contract, that would change the
5 analysis; true?

6 A. I didn't get a counter course to see that; and to my
7 understanding, if that happens, it shows other entities on the
8 contract, okay, it need to be notified by the buyer. It need
9 to be disclosed to the buyer.

10 Q. Okay. But if in the negotiation -- you didn't review any
11 documents about the negotiation of the 30K contract, did you?

12 MR. AXELROD: Objection.

13 THE WITNESS: I didn't review --

14 THE COURT: Wait. Overruled.

15 You can answer that yes or no. Did you review such
16 documents?

17 THE WITNESS: I did review some of the proposals
18 before the contract were finally finalized.

19 BY MR. GASNER:

20 Q. Did you come to understand that there was one business
21 deal involving a 30,000 metric tons per year contract --

22 A. Yes.

23 Q. -- in China?

24 Okay. So let's call that the 30K contract. Is that okay?

25 A. Sure.

1 Q. All right. And did you come to know the details of how
2 the 30K contract was negotiated?

3 A. From my understanding is there are some of the back and
4 forth communication between Walter Liew and the other
5 representative that represent the Pangang Group.

6 Q. But in terms of the meetings in China and the verbal back
7 and forth in the negotiation, you didn't have access to that
8 kind of information, did you?

9 A. I was not at their early meeting, but I see some of the --
10 I saw some of the written communication between the buyer and
11 the seller.

12 Q. So is it fair to say, Ms. Jiang, that in your analysis,
13 the documents you looked at, you didn't see another seller
14 besides the Performance Group in the records you reviewed;
15 true?

16 A. Performance Group and USAPTI.

17 Q. Okay. And if there were additional parties in those
18 contracts, that would -- you said it depends. You'd have to
19 look at that separately; true?

20 A. There were not -- I don't see -- are you particular -- are
21 you referring to the contract that's signed by the Performance
22 Group/USAPTI and the Pangang Group, or are you referring to
23 other contracts? Because I have seen many contracts for this
24 case.

25 Q. I'm asking you a hypothetical question.

1 **A.** Okay.

2 **Q.** Okay. And that is, if the contract for the 30K project
3 had different parties as sellers, that would be something you
4 would need to consider in your tax opinions; true?

5 **A.** If the contract is signed by all the parties and they all
6 agree to the contract, yes, I need to consider that.

7 **Q.** And that might change the taxation requirements if, for
8 example, a Singapore company had been listed as a party and
9 funds had been directed to that party pursuant to the contract?

10 **A.** I need to -- in order to determine the gross receipts, I
11 need to -- I need to see who provided service and what type of
12 service provided by each party; and then for the other
13 individuals that it's not related to the Performance Group or
14 USAPTI, I don't think I have access to -- I don't think I -- I
15 did not -- I did not examine those returns, basically.

16 **Q.** Okay. So would it be fair to say that a second important
17 factor in the analysis that you did is the contract terms?

18 **A.** That's an important -- that's an important contract, but
19 it may not necessarily, like, true without it. There are some
20 cases there are no contracts between the seller and buyer.

21 **Q.** But part of your analysis is the fact that either
22 Performance Group or the 30K contract or USAPTI with the 100K
23 contract were the official parties on the contracts; true?

24 **A.** Yes.

25 **Q.** Okay. And then I think I heard you say a third thing,

1 which is the type of service provided. Is that important in
2 the kind of analysis that you gave in court here today?

3 **A.** Yes. The type of service provided, and who has the
4 control, and who has the -- who provides the directions on
5 these services in terms of the, like, for example, like for the
6 subcontractors, they bind to -- if the sub -- for the
7 subcontractor of the corporation, they bind to the corporation.
8 The corporation provide them the instruction.

9 So for any income that received from the -- for any income
10 received by the corporation, they need to be recognized as
11 income on the corporation return.

12 **Q.** But if I understand you correctly, you need to look at who
13 the parties are and exactly what they're doing; fair?

14 **A.** Yes.

15 **Q.** Okay. And do you remember when Mr. Axelrod was
16 questioning you about the 2006 sample transaction, he showed
17 you Exhibit 526? Do you have that in front of you, Ms. Jiang?

18 **A.** I can look for it if you want me to.

19 **Q.** Could you please?

20 And that's already been admitted. And, Mr. Guevara, if
21 you could put that up on the screen.

22 **A.** Then I just look at the screen then.

23 **Q.** Fine, if you can see it.

24 **A.** There's too many here.

25 **Q.** Yeah. Okay. Whatever's easiest for you.

1 And this showed an amount wired --

2 **A.** Sorry. It doesn't show on my screen. It's off.

3 **Q.** It's not showing?

4 **A.** It's out of range it says.

5 **THE COURT:** Give it a couple seconds.

6 **THE WITNESS:** Okay.

7 **THE COURT:** We have a little bit of a hiccup on this.

8 **BY MR. GASNER:**

9 **Q.** I can give you mine -- well, mine's got writing on it. I
10 have another copy.

11 If you can find 526.

12 **A.** 526, okay.

13 **Q.** Thank you.

14 **THE COURT:** Agent Jiang, is it up there now?

15 **THE WITNESS:** No.

16 **THE COURT:** It's still not up there. Okay.

17 **BY MR. GASNER:**

18 **Q.** We can got with the paper copy.

19 **A.** (Witness examines documents.)

20 **THE CLERK:** You said 526?

21 **MR. GASNER:** 526. Did that already land on your desk?

22 **THE CLERK:** I've touched them all, and put them back
23 up there --

24 **MR. GASNER:** Okay.

25 **THE CLERK:** -- but I'm just checking to make sure.

1 **MR. GASNER:** Your Honor, may I approach? I've got a
2 copy of the exhibit.

3 **THE COURT:** Yes. Why don't we do that.

4 **THE WITNESS:** Sorry. I cannot find it.

5 **MR. GASNER:** That's quite all right.

6 **THE CLERK:** Counsel, actually, it would be in the box
7 over there because it was on January 16th that it was admitted.

8 **BY MR. GASNER:**

9 **Q.** Agent Jiang, do you have a copy of 526 in front of you?

10 **A.** Yes. The first page, yes.

11 **Q.** And that shows a net payment of one million three hundred
12 ninety-four dollars -- one million nine hundred ninety -- I'm
13 sorry; let me start all over again -- \$1,394,773; true?

14 **A.** Yes.

15 **Q.** Okay. And that was net of some wire transfer fees?

16 **A.** (Witness examines document.) I don't think so.

17 **Q.** Okay. That was the --

18 **A.** I think that's the gross.

19 **Q.** That's the gross amount? I might have misheard you.

20 And Mr. Axelrod also asked you, in connection with the
21 next step of this transaction, about Exhibit 525, which has
22 been admitted. And I can give you a copy of that, if it's okay
23 with the Court.

24 **THE COURT:** Yes.

25 **MR. GASNER:** Your Honor, if I may approach?

1 **THE COURT:** That's fine.

2 **THE WITNESS:** (Witness examines document.)

3 **BY MR. GASNER:**

4 **Q.** Now, 525 you talked about as the next step in this
5 transaction after the 1.394 million was sent from China
6 Everbright Bank to Chiao Tung Bank?

7 **A.** Yes.

8 **Q.** And Chiao Tung Bank is what used to be Mega Bank. Are you
9 familiar with that?

10 **A.** Yes.

11 **Q.** Okay. So let's call it Mega Bank just for short.

12 So Mega Bank gets \$1.394 million, and then on Exhibit 525
13 it talks about LC transfer for Thayer Scale. Do you see that a
14 little bit further down?

15 If you could highlight that, Mr. Guevara, "LC transfer for
16 Thayer Scale, \$66,092."

17 Do you see that?

18 **A.** Yes.

19 **Q.** All right. Now, is it your understanding that Thayer
20 Scale is a third party that Mr. Liew directed that some of the
21 incoming money be paid to?

22 **A.** Yes.

23 **Q.** And right below that there's an LC transfer for Delta
24 Ducon. Do you see that?

25 **A.** Yes.

1 Q. Did you become aware in your work of what Delta Ducon did
2 on the titanium dioxide project at issue here?

3 A. I don't remember.

4 Q. Does it sound right that both Thayer Scale and Delta Ducon
5 were vendors that provided equipment or services in connection
6 with the project?

7 A. Possibly.

8 Q. Okay. And I believe that if we go to your summary chart
9 919 -- and if we can put that up, Mr. Guevara -- for 2006, that
10 if we focus in on the same transaction we're talking about on
11 August 8th, 2006, right in the middle -- perhaps you can
12 highlight that one, Mr. Guevara. Put a box around it better
13 yet.

14 The wire amount is 1.310. Do you see that?

15 A. Yes.

16 Q. And your opinion was that the correct amount that should
17 have been reported as gross receipts was that 1.310 million;
18 true?

19 A. I want to explain these transactions here.

20 Q. If you can just answer my question first, I'd appreciate
21 it.

22 Your testimony was that the 1.310 is the correct amount
23 that should have been reported as gross receipts by Performance
24 Group; true?

25 A. Yes. That's on my -- yes. That's on my analysis.

1 Q. So there's nothing wrong -- if a gross amount comes in and
2 then the business owner directs that it be transferred to
3 vendors with instructions to the bank, that's perfectly
4 appropriate; true?

5 A. Can you state your question one more time, please?

6 Q. Yes.

7 So on 525, just so that we're clear, on Exhibit 525, what
8 happened is that \$1.394 million came in; true?

9 A. Uh-huh. Yes.

10 Q. And roughly 66,000 went to Thayer Scale; right?

11 A. Yes.

12 Q. And roughly 17,000 went to Delta Ducon; right?

13 A. Yes.

14 Q. And those monies went to those vendors straight out of
15 Mega Bank; true?

16 A. Yes.

17 Q. And it's proper that those amounts weren't reported as
18 gross receipts; true?

19 A. For those two amounts?

20 Q. Yes, just those two. That's all I'm talking about. As
21 far as those go, you don't have a problem with those two being
22 deducted from the gross receipt by Mega Bank; true?

23 A. Let me think about it, this question.

24 Q. Okay. Please do.

25 What are the factors that you're thinking about?

1 **A.** When I work on this analysis, I consider the one point --
2 I want to just tell you the analysis because I don't know how
3 to answer your question.

4 **Q.** Please.

5 **A.** Okay. So the amounts that -- the amounts that received --
6 received from the -- received from the Pangang Group, it should
7 be 1,394,000. So that's the gross. That's the -- that's the
8 amount. That's the amount. That's the amount they received it
9 for the service they provided.

10 And then for the deductions here, for the banking fees,
11 for the third-party deductions here, I don't see any of these
12 amounts claimed on the books or claimed on the return. I,
13 basically, just gave the -- I did not examine this specific --
14 I don't see them on the books.

15 And then I just take a conservative way to recognize the
16 net proceeds as gross income. But the actual amount they
17 received before deducting any deduction, the amount they
18 received is 1.1 million 395,000. That's how I come up with my
19 analysis. That's my thinking in working on this particular
20 transactions here.

21 **Q.** Okay. Wait. Let's just break that down a little bit.

22 This transaction was in 2006; right?

23 **A.** Yes.

24 **Q.** Pangang was not involved at all with USAPTI at that point;
25 true?

1 **A.** In '06, USAPTI did not exist.

2 **Q.** And Pangang had no involvement in 2006, did they, at
3 either Performance Group or USAPTI? True?

4 **A.** Say that again, please.

5 **Q.** Pangang had no involvement in this particular 2006
6 transaction; right?

7 **A.** I don't think so, because on this advice of payment it
8 shows the issue is by China Everbright Bank. So this is the
9 bank on behalf of the Pangang Group. So there's some
10 relationship there.

11 **Q.** Okay. Well, let's just get clear on the parties here.

12 **THE COURT:** Mr. Gasner, when you get to -- I don't
13 want to interrupt your train of thought; but when you get to a
14 convenient point, I'd like to break at some point.

15 **MR. GASNER:** This is a fine time to break, Your Honor.

16 **THE COURT:** Is that okay?

17 **MR. GASNER:** Absolutely.

18 **THE COURT:** All right. You may step down, Agent,
19 until tomorrow. Thank you very much.

20 **THE WITNESS:** Thank you.

21 **THE COURT:** Anybody who wants to leave, please do so.
22 I'm going to lock the door and giver the jury their
23 instructions.

24 (Pause in proceedings.)

25 **THE COURT:** All right. Let's lock the door then.

1 (Pause in proceedings.)

2 **THE COURT:** Oh, let the agent leave. She doesn't have
3 to stay.

4 (Pause in proceedings.)

5 **THE COURT:** The door is locked. I'm going to remind
6 you of your proper conduct as jurors. Then I'm going to give
7 you an update on the schedule.

8 First, keep an open mind throughout the trial and do not
9 decide what the verdict should be until you and your fellow
10 jurors have completed your deliberations at the end of the
11 case.

12 Second, because you must decide the case based only on the
13 evidence received in the case and on my instructions as to the
14 law that applies, you must not be exposed to any other
15 information about the case or to the issues it involves during
16 the course of your jury duty.

17 Thus, until the end of the case, or unless I tell you
18 otherwise, do not communicate with anyone in any way and do not
19 let anyone else communicate with you in any way about the
20 merits of the case or anything to do with it.

21 This includes discussing the case in person, in writing,
22 by phone, Smartphone, or electronic means, via email, text
23 messaging, or in or on any Internet chat room, blog, website,
24 including such social networking media like Facebook, Myspace,
25 LinkedIn, YouTube, Twitter, or other feature.

1 This applies to communicating with your fellow jurors
2 until I give you the case for deliberation, and it applies to
3 communicating with everyone else, including your family
4 members, your employer, the media or press, and the people
5 involved in the trial, although you may notify your family and
6 your employer that you have been seated as a juror in the case.

7 But if you're asked or approached in any way about your
8 jury service or anything about this case, you must respond that
9 you have been ordered not to discuss the matter and to report
10 the contact to the Court.

11 Because you will receive all the evidence and legal
12 instruction you properly may consider to return a verdict, do
13 not read, watch, or listen to any news or media accounts or
14 commentary about the case or anything to do with it.

15 Do not watch -- do not do any research, such as consulting
16 dictionaries, searching the Internet, or using other reference
17 materials; and do not make any investigation or in any other
18 way try to learn about the case on your own.

19 The law requires these restrictions to ensure the parties
20 have a fair trial based on the same evidence that each party
21 has had an opportunity to address. A juror who violates these
22 restrictions jeopardizes the fairness of these proceedings, and
23 a mistrial could result, which would require the entire trial
24 process to start over.

25 If any juror is exposed to any outside information, please

1 notify the Court immediately.

2 So tomorrow, again, all these are estimates, but we have a
3 reasonable estimate that tomorrow the Government will finish
4 its case and do what's called rest at the end of their case.

5 And then at that point the parties -- the Court has to
6 discuss matters, legal matters, with the parties, and that will
7 take a little bit of time or a lot of time; but it will not be
8 in your presence, so you don't have to worry about it taking up
9 your time.

10 And then after that, if the defendants wish, they're not
11 obliged to but if they wish to put on a defense in terms of
12 calling -- an affirmative case calling witnesses and,
13 et cetera, then they have a right to do so, and they have a
14 right not to do so if they wish; and they don't have to do
15 anything more in the case if they don't wish to do so. It's up
16 to them. We will find that out after the end of the case.

17 My guess is we'll start, if there's going to be a Defense
18 case, it's their option, we'll start that next week. That
19 should take probably a week, maybe a little more; and after
20 that we'll be ready for deliberations, getting the case to you,
21 closing arguments, jury instructions, and the like, all of
22 which even if Murphy's law were to strike us, we'd still be
23 done in the schedule that we talked about and certainly finish
24 within this calendar month in terms of getting the case to you.
25 Then it's up to you as to what you would like to do.

1 As to the two jurors who are in those makeshift seats, we
2 are going to bring in pillows, or you can bring in your own
3 pillows; and feel free, if you wish, to have more breaks to
4 stand up. Just raise your hand and we'll do it. I mean, I'm
5 game for all the breaks I can get, so you don't have to fight
6 any resistance from me, and probably the parties as well.

7 So we'll do the best we can. Those are soft seats. This
8 is the Government. You know, we don't have a lot to have
9 really cushy seats. So we'll do the best we can. Bring in
10 whatever you like to bring in in terms of cushions and
11 supports. We'll bring in our own, and see if we can make it
12 more comfortable for you.

13 So we're going to start again tomorrow bright and early at
14 8:00. We're going to have a regular trial day tomorrow, and
15 perhaps we'll go as long as we need to but no later than the
16 usual breaking time of 1:30.

17 Thank you very much for your attention, and I'll see you
18 tomorrow.

19 (Proceedings were heard out of the presence of the jury:)

20 **THE COURT:** So, Counsel, obviously the note that we
21 got was a housekeeping note, but it's generally related. You
22 heard what we talked about. The two jurors on the end are
23 feeling some discomfort because of those seats. So we'll try
24 to accommodate them as much as we can, but we're kind of
25 limited to do so.

1 And I think it would be inappropriate to, basically, take
2 two jurors who are in the box and move them out into the other
3 seats.

4 **MR. GASNER:** No objection to pillows.

5 **THE COURT:** Pardon me?

6 **MR. GASNER:** No objection to pillows for the jurors.

7 **THE COURT:** Okay. We'll try pillows and maybe more
8 frequent breaks.

9 So just to recap, if we -- I don't know that -- if there's
10 any issues that we need to address tomorrow morning, and we can
11 certainly begin to address, perhaps, tomorrow morning the
12 *Daubert* issues after you all meet and confer on those, even
13 though it looks like the Defense won't be putting on their case
14 till next week. They won't be because I'm not going to require
15 it.

16 We should -- if you wish to start discussing the issue, if
17 you feel like you're ready, then let us know and we can meet
18 with you earlier and at least start going over that.

19 We'll then continue the discussion, assuming we have time
20 between the end of the testimony and the Government's case and
21 the Court's need to go to the criminal calendar. We'll use
22 that time, first, to discuss any outstanding evidentiary
23 issues; and then to go -- begin at least with the defendants'
24 presentation with respect to their motion for judgment of
25 acquittal or judgment as a matter of law.

1 So is there anything the parties wish to bring up before
2 we adjourn?

3 **MR. GASNER:** Yes, Your Honor, just very briefly.

4 **THE COURT:** Yes.

5 **MR. GASNER:** I got an email from Mr. Hemann last night
6 in anticipation of Paul Cooper's testimony, one of our experts.

7 **THE COURT:** Remind me what his --

8 **MR. GASNER:** He's the technical expert.

9 **THE COURT:** Oh, yeah. Okay.

10 **MR. GASNER:** He wrote an 80-page report that I'm sure
11 the Court has poured over in detail --

12 **THE COURT:** Yeah. Every word.

13 **MR. GASNER:** -- full of technical detail on titanium
14 dioxide. And Mr. Hemann said that under a reverse Jencks, he
15 wanted all the correspondence and emails with the expert.

16 I talked to him this morning and I said that that was a
17 first for me, getting that kind of request, having reverse
18 Jencks apply to an expert. And Mr. Hemann relented and said
19 really what he wants is the draft reports.

20 And I told him that I still -- I looked at the rule. I
21 mean, the fact that it's new to me is not very persuasive, but
22 I did look at the rule.

23 **THE COURT:** If it's new to Ms. Agnolucci, then we'd
24 have --

25 **MR. GASNER:** Yes, exactly.

1 But I did look at the rule, 26.2 of the Federal Rules of
2 Criminal Procedure.

3 **THE COURT:** Yes.

4 **MR. GASNER:** And a statement under the reverse Jencks
5 rule is a written statement that the witness makes and signs or
6 otherwise adopts or approves.

7 And my view is a draft expert report is the exact opposite
8 of that. It's necessarily tentative and not yet approved.

9 The other two statements under the reverse Jencks rule
10 clearly don't apply. It's got to be a substantially verbatim
11 contemporarily reported recital of an oral statement, and then
12 the third is a statement to a Grand Jury. So the only one
13 that's even in the ballpark is a statement the witness makes
14 and signs or otherwise adopts and approves.

15 And then there would be the irony that even in the civil
16 rules, where you've got lots more discovery, the parties don't
17 exchange drafts of the expert's report or -- and, so,
18 ironically, what Mr. Hemann is asking for is something that the
19 civil rules wouldn't require.

20 And I'll note also that Rule 16 of the Federal Rules of
21 Criminal Procedure provides for really a very truncated form of
22 expert disclosure. It's simply a summary. We went way above
23 that in our 80-page expert report, but I do think it's very
24 clear that we would not have to provide the draft reports of
25 our expert.

1 **THE COURT:** Everybody can sit down. You don't have to
2 be standing. I'm sorry. You may be seated.

3 **MR. GASNER:** So that's the issue, Your Honor; and if
4 the Court has clear views on it, perhaps we can --

5 **THE COURT:** I don't because I've not been confronted
6 with it before. I think I'm going to need some authority on
7 this because the plain language, it may -- the Defense may feel
8 it helps their side; but there may be some other authority,
9 either in the committee notes or cases even, but I'd like to
10 see that authority before I go that far.

11 Quite frankly, it's just never been an issue; and double,
12 quite frankly, I don't know that I've had very many cases where
13 I've had expert witnesses for the Defense in a criminal case.
14 So it's a little bit of a new experience for this Court. I've
15 had it happen in civil cases.

16 So I'd like -- we don't have to resolve that now, but I'd
17 like to get some more authority, and I think the burden on this
18 is more on the Government than on the Defense.

19 **MR. HEMANN:** Indeed, Your Honor. We've got some
20 breathing room. I wanted to make the request last night in
21 advance of potentially having the experts today and next week.
22 I think we've got a little bit of breathing room. I'll get
23 some authority. I will discuss it with Mr. Gasner.

24 My real concern is if there are substantial changes in the
25 expert's opinion from when they first looked at it to -- an

1 evolving opinion is obviously something that is probative of --

2 **THE COURT:** Well, probity is not the issue, though, of
3 course. There may be lots of stuff that's probative; but the
4 last time I looked, there's no such thing as, shall we say,
5 reverse *Giglio*.

6 **MR. HEMANN:** Correct. That's correct, Your Honor.

7 **THE COURT:** Okay. So, you know.

8 **MR. HEMANN:** But there is this tie into the reverse
9 Jencks Act to the substance of the testimony. And, so -- or
10 the reverse Jencks rule. So we'll do -- we'll meet and confer.
11 I'll look at the authority. I'll share it with Mr. Gasner, and
12 it may not end up being an issue that needs to be discussed
13 with the Court.

14 **THE COURT:** Now, again, I'm not trying to make work
15 for anybody or certainly extend the trial, but I would imagine
16 that assuming you don't reach closure, and it's something that
17 the Government wants to pursue, I would imagine that the
18 Government could do an examination of the witness which may or
19 may not bring other writings within the scope of the reverse
20 Jencks Act.

21 **MR. HEMANN:** Correct.

22 **THE COURT:** I mean, I accept fully Mr. Gasner's
23 representation and offer of proof; but let's say the witness
24 says, "Hey, you know, I did a draft that's substantially
25 identical and I, actually, even signed it, but I just didn't

1 send it to the other side," that may well -- and, again, I'm
2 just making it up. So I don't know that it I can make sort of
3 a categorical ruling at this point, but I'd still want to see
4 some authority on the point.

5 And what I'm trying to avoid, frankly, which you get,
6 frankly, in patent cases is, you know, having interminable belt
7 and suspenders -- whatever the appropriate term is, you'll have
8 to tell me someday -- long cross-examination where you said,
9 "You have a period here and you have a comma there."

10 **MR. HEMANN:** Of course not, Your Honor.

11 **THE COURT:** So, anyway, I'll see you all tomorrow and
12 then see where we go, and we'll do it in a very deliberative
13 fashion.

14 Thanks, everybody.

15 **MR. HEMANN:** Thank you, Your Honor.

16 **MS. AGNOLUCCI:** Thanks.

17 (Proceedings adjourned at 1:30 p.m.)

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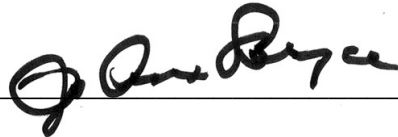
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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Wednesday, February 5, 2014



Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
U.S. Court Reporter