

# Exhibit 11

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
- - -

UNITED STATES OF AMERICA: CIVIL ACTION

:  
vs. : No. 1:90-cv-00229  
: 1:17-cv-00006

ROBERT BRACE, ROBERT :  
BRACE FARMS, INC. and :  
ROBERT BRACE and SONS, :  
INC. :

- - -  
Tuesday, October 3, 2017  
- - -

Oral Deposition of TODD M. LUTTE, taken  
at the DoubleTree by Hilton Hotel, 301 West DeKalb  
Pike, Summit 11, King of Prussia, Pennsylvania  
19406, beginning at 8:49 a.m., before Barbara C.  
Stalheim, Certified Shorthand Reporter and a  
Notary Public.

- - -  
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1 (At 11:22 a.m. a recess was taken  
2 until 11:35 a.m.)

3 - - -

4 (Mr. Devlin left for the day.)

5 - - -

6 MS. BROWN: So during our break,  
7 Mr. Kogan was speaking to the witness, who is  
8 represented by counsel, about the testimony  
9 he was giving. That is a violation of the  
10 ethical rules, and we'd like Mr. Kogan to  
11 please ask the question that he asked  
12 Mr. Lutte on the record with Counsel present  
13 so I can hear it.

14 MR. KOGAN: Okay. It was the same  
15 question that I asked earlier, and that  
16 question was if a disturbance of a tributary  
17 connected to Elk Creek was different for  
18 purposes of inquiring about a Jurisdictional  
19 Determination than a tributary that was not  
20 connected to Elk Creek, which was a question  
21 that was already posed on the record.

22 MS. BROWN: Well, for the record, it  
23 does not matter if the question was already  
24 posed on the record. Mr. Lutte is,

TODD M. LUTTE

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1 obviously, represented by counsel, and you  
2 can only speak to him with me present about  
3 the substance of his testimony and anything  
4 relating to this litigation.

5 I would advise Counsel to not do that  
6 again.

7 MR. KOGAN: Okay. Now you're assuming  
8 that I approached Mr. Lutte. Mr. Lutte came  
9 out of the men's room, you know, and he  
10 said --

11 MS. BROWN: Counsel, you are the  
12 attorney here, and you are the one who is  
13 bound by the rules of professional conduct.  
14 Mr. Lutte is not.

15 MR. KOGAN: Okay.

16 MS. BROWN: You should have ended the  
17 conversation immediately.

18 Now you may begin.

19 MR. KOGAN: Okay. Thank you, Counsel.  
20 I appreciate that.

21 I'd like to submit into evidence for  
22 the record three different letters -- three  
23 different letters to Mr. Lutte dated  
24 April 18, 2011, May 11, 2011, and June 15,