

Exhibit 13

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

UNITED STATES OF AMERICA, :
Plaintiff :
v. : Civil Action Nos.:
: 1:90-cv-002229 and
: 1:17-cv-0006
ROBERT BRACE, ROBERT BRACE :
FARMS, INC. and ROBERT :
BRACE and SONS, INC., :
Defendants :

Deposition of JAMES SMOLKO, taken before
and by Sonya Hoffman, Notary Public in and for the
Commonwealth of Pennsylvania on Monday, January
8, 2018, commencing at 9:14 a.m., at the offices
of Knox McLaughlin Gornall & Sennett, P.C., 120
West Tenth Street, Erie, PA 16501.

Reported by Sonya Hoffman
Court Reporter

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A P P E A R A N C E S

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Also Present:

Robert Brace

Beverly Brace

Randy Brace

Ronald Brace

1 MR. KOGAN: You have effectively. Now, let's look
2 at here --

3 MR. MELNICK: No. I have not.

4 MR. KOGAN: Here we go, Photograph No. 7. Another
5 one --

6 MR. MELNICK: Excuse me.

7 MR. KOGAN: Photograph No. 7 --

8 MR. MELNICK: No. Stop. Let's go outside again
9 because, again, you're putting words in my mouth,
10 so let's talk this through.

11 MS. BUCKLEY: Off the record, please.

12 (Discussion held off the record.)

13 MS. BUCKLEY: Can we go on the record, please.

14 Mr. Kogan, what did you just call me in the
15 hallway?

16 MR. KOGAN: I called you arrogant.

17 MS. BUCKLEY: Thank you.

18 MR. MELNICK: That's not what he called you, but.

19 MS. BUCKLEY: All right. Mr. Melnick, can you
20 please state for the record what Mr. Kogan called
21 me in the hallway.

22 MR. MELNICK: He called you an arrogant little,
23 and then I cannot determine what the next word
24 was.

25 MS. BUCKLEY: Thank you. Continue, Mr. Kogan.

1 MR. KOGAN: Yeah. We'll leave it to the
2 imagination, just like Mr. Smolko's answer we
3 leave to the imagination.

4 BY MR. KOGAN:

5 Q. Now, Mr. Smolko, Photograph 7 indicates that you
6 were a tile drain -- you indicate a tile drain on the former
7 Marsh property. Did the former Marsh property change hands?
8 Why is it called former?

9 A. Because Mr. Brace purchased it.

10 Q. Okay. So why didn't you say Mr. Brace's Marsh
11 property?

12 A. Former Marsh property.

13 Q. You're on Mr. Brace's property; were you not?

14 A. Former Marsh property. Mr. Brace's property.

15 Q. Okay. Now, where were you on Mr. Brace's --

16 A. I was on Mr. Brace's --

17 Q. -- property?

18 A. -- property.

19 Q. Where?

20 A. Along Elk Creek.

21 Q. Can you point where this -- can you point out on
22 that map where that drain pipe might be.

23 A. It's along Elk Creek on Mr. Brace's --

24 Q. Where?

25 A. -- property.

1 Q. -- answer the question.

2 MS. BUCKLEY: Objection.

3 MR. MELNICK: He was in the process of answering.

4 Q. Where approximately on that map were you?

5 A. On Mr. Brace's property along Elk Creek.

6 Q. So you're not answering the question, for the
7 record.

8 Okay. Next photograph, Mr. Smolko. Photograph 10
9 taken 10/2/13 at 17:25 hours, drain on the former Marsh
10 property. Where was that picture taken, Mr. Smolko, on Mr.
11 Brace's Marsh property?

12 A. Mr. Brace's Marsh property along Elk Creek.

13 Q. Mr. Smolko, your smug response isn't very
14 conducive to answering honestly in this deposition. I just
15 want to --

16 A. I am answering --

17 Q. -- warn you --

18 A. -- as honestly as I can.

19 Q. -- as a matter of law that if you give a false
20 answer under testimony that you know that that can result in
21 perjury.

22 A. I'm 100 percent sure that --

23 MS. BUCKLEY: Objection.

24 A. -- that's on Mr. Brace's property along Elk Creek.

25 Q. Where?