NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GORDON SCOTT STROH, Plaintiff-Appellant, v. SATURNA CAPITAL CORPORATION, Defendant-Appellee.	No. 17-35607 D.C. No. 2:16-cv-00283-TSZ MEMORANDUM* (Filed Dec. 24, 2018)

Appeal from the United States District Court
for the Western District of Washington
Thomas S. Zilly, District Judge, Presiding

Argued and Submitted December 3, 2018
Seattle, Washington

Before: GRABER, McKEOWN, and CHRISTEN, Circuit Judges.

Gordon Stroh appeals the exclusion of certain evidence from his trial. The jury unanimously concluded his termination from Saturna Capital was not retaliatory under the Sarbanes Oxley Act, 18 U.S.C. § 1514A. The parties are familiar with the facts, so we do not repeat them here. We have jurisdiction under 28 U.S.C. § 1291. We review for abuse of discretion the district

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

court's evidentiary rulings. *Harper v. City of Los Angeles*, 533 F.3d 1010, 1030 (9th Cir. 2008).

The district court excluded evidence related to the Saturna Capital Chairman's directive that certain employees install a backup computer system on his yacht and withhold certain information from the FBI if questioned. The district court based exclusion on its finding that the system was never installed and that the FBI never questioned the employees. Yet, Sarbanes Oxley protects whistleblowing regardless of whether the reported securities violation actually occurred. *See Van Asdale v. Int'l Game Tech.*, 577 F.3d 989, 1000 (9th Cir. 2009) (holding that a covered whistleblower need only demonstrate a reasonable belief that the "conduct being reported violated a listed law"). Although it was an abuse of discretion to exclude this evidence, the exclusion was harmless. In light of the totality of evidence presented at trial, it is highly unlikely that the admission of this evidence and any accompanying instruction would have changed the verdict. *See Harper*, 533 F.3d at 1030 (holding that "[a] new trial is only warranted when an erroneous evidentiary ruling 'substantially prejudiced' a party" (quoting *Ruvalcaba v. City of Los Angeles*, 64 F.3d 1323, 1328 (9th Cir. 1995))). There was overwhelming evidence that Stroh's reporting of this incident was not a "contributing factor" in his termination: (i) Stroh received an $80,000 bonus *after* the incident; (ii) Stroh threatened to quit unless he received a thirty percent raise, and never mentioned any concerns about this incident or the firm's regulatory compliance before leaving; and (iii) Stroh encouraged

other members of the legal department to quit to increase his bargaining leverage. *See Van Asdale*, 577 F.3d at 996.

The district court also excluded an internal compliance report written by Stroh in 2006 and evidence related to Saturna Capital's dealings with two entities purportedly linked to terrorist financing. The district court did not abuse its discretion with respect to its exclusion of the 2006 report because the report presented a risk of prejudice that clearly outweighed any probative value, which was minimal in light of the significant passage of time between the incidents involving the report and Stroh's termination in 2014. *See* Fed. R. Evid. 403. As to the terrorist financing evidence, the district court concluded that the lack of proven ties to terrorist financing rendered this evidence irrelevant. This rationale once again runs afoul of *Van Asdale*. *See* 577 F.3d at 1000. However, the district court offered an alternative ground for exclusion under its interpretation of *Lawson v. FMR LLC*, 571 U.S. 429 (2014). Stroh's opening brief did not address this issue and did not argue that the district court erred based on the alternate holding. "We have . . . held that the failure of a party in its opening brief to challenge an alternate ground for a district court's ruling given by the district court waives that challenge." *Rodriguez v. Hayes*, 591 F.3d 1105, 1118 n.6 (9th Cir. 2010) (emphasis omitted) (citing *United States v. Kama*, 394 F.3d 1236, 1238 (9th Cir. 2005); and *MacKay v. Pfeil*, 827 F.2d 540, 542 n.2 (9th Cir. 1987)). Thus, Stroh has waived his challenge to this alternate ground for exclusion, and "the district

court's disposition of [that issue] neither will be reviewed nor disturbed by this court." *MacKay*, 827 F.2d at 542 n.2. Regardless, even if we presumed error, excluding this evidence was harmless. *See Harper*, 533 F.3d at 1030.

AFFIRMED.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

GORDON SCOTT STROH, Plaintiff, vs. SATURNA CAPITAL CORPORATION, NICK KAISER and JANE CARTEN, Defendants.	Appeal No. 17-35607 No. 2:16-cv-00283-TSZ Seattle, WA Jury Trial – Day 9 (Verdict) June 28, 2017

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE
HONORABLE JUDGE THOMAS S. ZILLY
UNITED STATES DISTRICT COURT

APPEARANCES:

FOR THE PLAINTIFF:

CHRISTOPHER BRIAN WELLS
Lane Powell PC
1420 Fifth Avenue Suite 4200
Seattle, WA 98101
wellsc@lanepowell.com

CLAIRE LOEBS DAVIS
Lane Powell PC
1420 Fifth Avenue, Suite 4200
Seattle, WA 98101-2338
davisc@lanepowell.com

FOR THE
DEFENDANTS: JEFFREY B. COOPERSMITH
Davis Wright Tremaine
1201 Third Avenue, Suite 2200
Seattle, WA 98101
jeffcoopersmith@dwt.com

BRENDAN THOMAS MANGAN
Davis Wright Tremaine
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
brendanmangan@dwt.com

RACHEL H. HERD
Davis Wright Tremaine
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
rachelherd@dwt.com

MAX BAMBERGER HENSLEY
Davis Wright Tremaine
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
maxhensley@dwt.com

Andrea Ramirez, CRR, RPR
Official Court Reporter
United States District Court
Western District of Washington
700 Stewart Street, Suite 17205
Seattle, WA 98101
andrea_ramirez@wawd.uscourts.gov

Reported by stenotype, transcribed by computer

* * *

[1468] THE COURT: The jury has informed us they have a verdict. Let's bring in the jury.

(Jury enters the courtroom)

THE COURT: Let me address the presiding juror. I think it's Ms. Petrilli?

JUROR: Petrilli.

THE COURT: Has the jury reached a unanimous verdict?

JUROR: We have.

THE COURT: And have you filled out the verdict form, dated it, and signed it?

JUROR: Yes.

THE COURT: Would you hand it to the clerk, please?

THE CLERK: Thank you.

THE COURT: I'm going to read the verdict, and then I'm going to poll the jury by asking each of you whether it's your individual verdict and unanimous verdict of the jury.

Question Number 1: Do you find that plaintiff was terminated?

Answer: Yes.

Question 2: Do you find for plaintiff on his first claim for retaliatory discharge, in violation of the SOX Act?

Answer: No.

Question 3: Do you find for plaintiff on his second claim for retaliatory discharge, in violation of the Dodd-Frank Act?

Answer: No.

* * *

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

GORDON SCOTT STROH, Plaintiff, vs. SATURNA CAPITAL CORPORATION, NICK KAISER and JANE CARTEN, Defendants.	)	Appeal No. 17-35607 No. 2:16-CV-00283-TSZ Seattle, WA Jury Trial, Day 2 June 19, 2017

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE
HONORABLE JUDGE THOMAS S. ZILLY
UNITED STATES DISTRICT COURT

APPEARANCES:

FOR THE PLAINTIFF:

CHRISTOPHER BRIAN WELLS
Lane Powell PC
1420 Fifth Avenue Suite 4200
Seattle, WA 98101
wellsc@lanepowell.com

CLAIRE LOEBS DAVIS
Lane Powell PC
1420 Fifth Avenue, Suite 4200
Seattle, WA 98101-2338
davisc@lanepowell.com

FOR THE
DEFENDANTS: JEFFREY B. COOPERSMITH
Davis Wright Tremaine
1201 Third Avenue, Suite 2200
Seattle, WA 98101
jeffcoopersmith@dwt.com

BRENDAN THOMAS MANGAN
Davis Wright Tremaine
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
brendanmangan@dwt.com

RACHEL H. HERD
Davis Wright Tremaine
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
rachelherd@dwt.com

MAX BAMBERGER HENSLEY
Davis Wright Tremaine
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
maxhensley@dwt.com

Andrea Ramirez, CRR, RPR
Official Court Reporter
United States District Court
Western District of Washington
700 Stewart Street, Suite 17205
Seattle, WA 98101
andrea_ramirez@wawd.uscourts.gov

Reported by stenotype, transcribed by computer

* * *

[375] which he's saying, "Just say 'yes,'" violated, you know, the prospectus. But that's what the e-mail is.

Q You had already told him that?

A Yeah. Absolutely. And this is way past – at this point, we were now – we had tried the same strategy we did with the Developing World, where we involved the outside – I'm probably jumping ahead here – but, yeah, he had already killed the sticker. That was done and – yeah, we were trying to move forward other ways.

Q Do you recall an occasion in this same month, June of 2014, when the head of the IT staff came running into your office?

A I do.

Q What caused the – was she disturbed?

A She was upset, yes.

Q Who was that?

A It was Mallory Tallquist.

Q And what upset her?

MR. COOPERSMITH: Objection, Your Honor. This topic is not related to any protected activity covered by SOX or Dodd-Frank. It's a relevance objection I'm making.

MR. WELLS: Your Honor –

THE COURT: It also sounds like hearsay.

MR. COOPERSMITH: That's also true, Your Honor. Thank you.

[376] MR. WELLS: Well, thank you, Your Honor. We will have – Ms. Carten and Mr. Kaiser will testify directly about these events –

THE COURT: Well, that may be so, but this witness is not going to tell us about what some other employee said to him.

BY MR. WELLS

Q When Ms. Tallquist came to your office, did you then contact Jane Carten, or did she contact you around this time?

A Ms. Tallquist related certain concerns to me that I immediately got up and went to talk to Ms. Carten about.

Q What did Ms. Carten tell you?

MR. COOPERSMITH: Your Honor, again, it's the same objection on relevance. I understand that Ms. Carten, her words are not going to be hearsay. But it's relevance, because this has nothing to do with the protected activity under SOX and Dodd-Frank.

THE COURT: Well, it's – I don't know what the conversation is. I think I know, but he hasn't told us, so –

MR. COOPERSMITH: I also think the Court already ruled, pretrial, that this topic, which I

can't say out loud, is not going to be inquired into at this trial. I think that was the ruling prior to the trial.

MR. WELLS: I don't think so at all, Your Honor.

THE COURT: Let's have a quick sidebar.

[377] (The following proceedings were heard at sidebar)

THE COURT: Is this the directing-employees-to-deceive-the-FBI issue?

MR. COOPERSMITH: Exactly, Your Honor. I have to object, because otherwise the witness blurts out the testimony.

THE COURT: I understand. Well, the problem is, you ask a question, I'm not entirely sure which issue we're skirting about so –

MR. COOPERSMITH: I understand.

THE COURT: I'm violating Judge Zilly's Rule Number 1 in never having a sidebar.

I don't – this is –

MR. WELLS: Your Honor, if I may?

THE COURT: Yeah, you may.

MR. WELLS: Well –

MR. COOPERSMITH: And also, I think that the jury can hear every word that we're saying.

MR. WELLS: The directing of the chairman of the board of the investment adviser to lie to the FBI about concealing a system to continue operations, after the government had confiscated computer systems, violates the records-keeping requirements and the antifraud provisions of the Investment Company Act, the Investment Advisers Act, the Securities and Exchange Commission. It probably amounts to an attempt to commit criminal violations of other federal [378] statutes. And it certainly violates the code of ethics of Saturna, which invokes – or makes illegal and a violation of the code of ethics the violation of any securities regulation.

THE COURT: Well, Mr. Wells, it's propensity testimony, is what it really comes down to. As I understand it, Mr. Kaiser is alleged to have instructed the IT staff to build a redundant computer system and to lie to the FBI. And there's no allegations that these actions were ever taken. As a matter of fact, as I understand it, the IT staff didn't do that. I'm satisfied it's merely propensity evidence. And the fact that Mr. Kaiser may have acted improperly, in some way, in this area is not coming into this trial. That will be my ruling. I think we've gone over this in the motions in limine kind of ad nauseam, frankly, and I don't see that that's a violation of anything that gives rise to the claim you're making in this case.

MR. WELLS: But they ran straight to Mr. Stroh, and Mr. Kaiser was told Mr. Stroh is the one who told the employees to defy his order. And he was so

angry that he directed his daughter to fire the employees for listening to Mr. Stroh.

THE COURT: You'll have to prove that, and you're not going to get it in with this type of testimony. That will be the ruling, Mr. Wells.

(End of proceedings heard at sidebar)

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

GORDON SCOTT STROH, Plaintiff, vs. SATURNA CAPITAL CORPORATION, NICK KAISER and JANE CARTEN, Defendants.	)	Appeal No. 17-35607 No. 2:16-CV-00283-TSZ Seattle, WA Jury Trial, Day 1 June 16, 2017

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE
HONORABLE JUDGE THOMAS S. ZILLY
UNITED STATES DISTRICT COURT

APPEARANCES:

FOR THE PLAINTIFF:

CHRISTOPHER BRIAN WELLS
Lane Powell PC
1420 Fifth Avenue Suite 4200
Seattle, WA 98101
wellsc@lanepowell.com

CLAIRE LOEBS DAVIS
Lane Powell PC
1420 Fifth Avenue, Suite 4200
Seattle, WA 98101-2338
davisc@lanepowell.com

FOR THE
DEFENDANTS:

JEFFREY B. COOPERSMITH
Davis Wright Tremaine
1201 Third Avenue, Suite 2200
Seattle, WA 98101
jeffcoopersmith@dwt.com

BRENDAN THOMAS MANGAN
Davis Wright Tremaine
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
brendanmangan@dwt.com

RACHEL H. HERD
Davis Wright Tremaine
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
rachelherd@dwt.com

MAX BAMBERGER HENSLEY
Davis Wright Tremaine
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
maxhensley@dwt.com

Andrea Ramirez, CRR, RPR
Official Court Reporter
United States District Court
Western District of Washington
700 Stewart Street, Suite 17205
Seattle, WA 98101
andrea_ramirez@wawd.uscourts.gov

Reported by stenotype, transcribed by computer

* * *

[103] in there until we ask you to come into court. We're hopeful that we can begin at or shortly after 1:30.

And what's going to happen this afternoon is that I'm going to give you further instructions. I'm going to read the instructions but – preliminary instructions, what's evidence, what's not evidence, that type of thing. And then we're going to hear opening statements from the lawyers about what they think the case is about and what they think they can prove. And I anticipate that will go for a couple hours. I'm hopeful that we won't go beyond 4:30.

And it will be my goal that we'll never start before 8:00 – 9:00, sorry. 9:00, strike 8:00. 9:00 – and we'll never go beyond 4:30, at the end of the day. And our lunch will normally be an hour, but today we're going to give you a little extra time. There's some matters I want to discuss with the lawyers.

So the jury is now excused to go with the clerk. And she's going to give you some notepads. And if you want to take notes, you're going to be able to take notes during the trial. But the clerk is going to explain all of that to you in the jury room.

Please rise for the jury.

(Jury exits the courtroom)

THE COURT: There are a couple of matters that I want to discuss with the lawyers. I've been – they've been the [104] subject of motions in limine, they've been the subject of briefing, and more briefing, and then more briefing. But when we get all through

hearing about the issues and the briefing, I think I'm at a point where there are at least two or three issues which I think can't be discussed with the jury, unless I change my mind, which I'm probably not going to change my mind. But I will give you a chance to come back in an hour and tell me what I've done wrong.

The first deals with terrorist financing. You know, I'm not aware of any evidence that Saturna did, in fact, do business with any customer linked to terrorism. In 2016, the SEC did a report, and there were no findings with respect to that.

And I'm – I see no – does the plaintiff have any evidence that either this Al Rajhi Bank or the CAIR – don't know how you pronounce it – is linked to terrorism? If you can't make any connection, I don't see – I think it is not relevant, and it, under Rule 403, I think needs to be excluded. I'm giving you a warning now, because at 1:15, you're going to come back and try and tell me something different. But my present thinking is that you will not be permitted to refer to, or mention, those issues in your opening statement, and that most likely they will be precluded at trial.

The second one deals with directing employees to deceive the FBI. I think this is mere propensity evidence attempting [105] to show that because Mr. Kaiser may have acted improperly on some prior occasion, he would have acted improperly in connection with the circumstances surrounding Mr. Stroh's leaving the company. So that's the – that's the second issue that I'll hear from plaintiff at 1:15 about.

The only other issue is that you'll note that in the jury instructions that we've provided you, we dealt, in the jury instructions, with FINRA Rule 3270 and outside business activity rules. Once again, the plaintiff hasn't had a chance to respond to that, but I believe the *Egan* case that we cited is pretty – it's a district court case, but sometimes district courts can be followed, and I think that the logic of that case is appropriate.

So those are the three issues which I'll hear briefly from plaintiff's counsel at 1:15. And so what I'm telling you is that you should be prepared to remove those items from any mention in your opening statements.

Anything further we can do now?

MR. COOPERSMITH: No, Your Honor.

MR. WELLS: No, Your Honor.

THE COURT: We'll be in recess. See you at 1:15. (Recess)

THE COURT: Good afternoon, ladies and gentlemen.

MS. DAVIS: Mr. Wells should be back in just a moment, Your Honor. My apologies.

[106] (Mr. Wells enters the courtroom)

THE COURT: Thank you for joining us, Mr. Wells.

MR. WELLS: Sorry, Your Honor.

THE COURT: When the Court says 1:15, it means 1:15.

All right. I have indicated my preliminary rulings. I'll hear from the plaintiff's counsel as to why – let's talk about the terrorist financing, first.

MR. WELLS: Your Honor, I should mention that these three points are really the basis for the retaliation. And if they are all three removed from the case, there's really not much left for the plaintiff. Now, that starts with a term that is being misused here, we think. We seem to be ships passing in the night. Our point is not that there were a bunch of terrorists running loose around Saturna. Our point – in fact, we're not accusing any of the customers of ultimately being found to be terrorists. They were not.

THE COURT: Mr. Wells, get to what the point is.

MR. WELLS: The point is, there was an obligation, in every financial institution, to maintain policies and procedures designed to enforce the anti-money-laundering provisions of any number of statutes that were applied to Saturna, just like every other investment adviser. It was Mr. Stroh's job to make sure that there was a system of procedures, that it was adequate under the laws, including those that applied anti-money-laundering procedures to [107] investment advisers –

THE COURT: Mr. Wells, isn't the evidence relating to the possible formation of some sort of new

fund that was not related to the Amana funds? Isn't that what they were talking about?

MR. WELLS: I'm not sure what you mean, Your Honor. Oh, you mean with Al Rajhi?

THE COURT: Yes.

MR. WELLS: Well, Your Honor, that's business, and that would be a Saturna subsidiary's business, and Amana is, in fact, basically Saturna. Amana is the basket holding stocks that Saturna manages.

THE COURT: Well, but if they were opening an individual account with Saturna, I'm just not satisfied that it involved –

MR. WELLS: Your Honor, there was going to be a financial connection. The plan was for Al Rajhi to distribute shares in mutual funds that would be managed by Saturna, whether by –

THE COURT: All right. Here's what I'm going to do, Mr. Wells. I'm going to preclude you from talking about this in your opening statement. I'm going to give you – at an appropriate time, when your client is testifying, I'm going to excuse the lawyers – the jury – I could probably excuse some of the lawyers too – and you're going to have an opportunity [108] to make your offer of proof on the record. But I don't see the connection between this type of testimony that you're suggesting and the lawsuit you have dealing with whistleblower. That will be my ruling with respect to terrorist financing. You're precluded from discussing it in your opening statement.

Now, how about this directing the employees to deceive the FBI? Isn't that mere propensity evidence?

MR. WELLS: It's far more than that, Your Honor. The genesis of that was Mr. Kaiser's desire to have an operating system to keep the firm in operation when regulators did not want it to operate, because they would confiscate its computer system.

Now, it's hard to imagine a securities firm that would violate more regulations than one that set up a secret system to continue rolling while the government didn't want it to be. That's step number one.

THE COURT: Won't the evidence be that, although there may have been some discussion about this, it never happened? Is that true? Did it ever happen? Did they build a redundant computer system on his yacht?

MR. WELLS: No. But Mr. Stroh lost his job as a result of saying, "No way. You can't do that." When Mr. Kaiser convened this meeting, and the IT person, who was the head of the IT staff, came running into Scott Stroh's [109] office, and Scott Stroh said, "No way. That's not going to happen. We're not going to do that," and then Ms. Carten told Mr. Kaiser, "Scott Stroh" – they came running to Scott Stroh, the IT staff. And Scott Stroh said, "No, you can't do this." And Mr. Kaiser's next step was to say, "Well, let's fire the IT staff." And it was less than a month later that he fired Scott Stroh.

THE COURT: Isn't that mere propensity evidence?

MR. WELLS: No, Your Honor. It's the basis of the retaliation. It's a very close point in time when Mr. Kaiser is angry for [sic] Scott Stroh for saying you can't violate the securities laws, and any number of other federal laws, by telling the IT department to create a secret computer system to keep the business going when the government wants to look at your computer system. And it was Mr. Kaiser's anger with Scott Stroh for having told the IT department to defy Mr. Kaiser's directive that led to Mr. Stroh's retaliated termination, about a month later.

THE COURT: Well, I'm going to permit you to – we'll sort that out at trial. I'm just going to let you go ahead. I'm – I believe that it's propensity evidence, and I may have to strike it, but I'll permit you to try and develop it.

Do you want to be heard? You've written lots of briefs. Someone over there has written lots of briefs.

MR. COOPERSMITH: Well, I've looked at them, Your [110] Honor.

On that point, it is propensity evidence. And let me just say this, though, first. What Mr. Wells just said is that these three things, the so-called terrorist financing –

THE COURT: I don't want to hear about terrorist financing.

MR. COOPERSMITH: Okay. The FBI thing that you were just talking about, if that's his whole case, which is what he said, I don't know why we're here, because none of these things are covered by Sarbanes-Oxley or Dodd-Frank. But going to the point of the FBI issue – he said it's his whole case. None of it's protected activity. So I don't know why we're wasting our time with a jury trial when he's got three things that he says are the reason for Mr. Stroh's firing, that are not protected activity.

But going to the FBI thing, since that's what's at issue right this moment, that is propensity evidence. The Court is absolutely right. That never happened. There's one meeting with the IT staff where Mr. Kaiser makes a comment along those lines, and nothing ever happens. And it happens long before – he says a month before. That's not even true. We're looking for the exact date. I believe the complaint says early 2014, so it's, like, six months before.

MR. WELLS: No, no, no.

MR. COOPERSMITH: We'll check it. But the idea that [111] this is going to come in – the only reason it would come in would be propensity evidence, because it's not protected activity.

And here's my request, and I know you've read a lot of briefs, and I appreciate the Court paying close attention to it, as you have. But here's the – if Mr. Wells is going to be allowed to mention that issue about the FBI on his opening statement – you know, we don't like to object to opposing counsel's opening statement, if we

don't have to, but I think what – we're going to object at trial. And so he's going to take a risk that it's not going to come in at trial. We think the right thing to do would be to exclude it right now, because it is propensity evidence. It's exactly what 404 – Rule 404 prohibits. And I think it's going to be a much better, cleaner trial with the evidence excluded.

MR. WELLS: Your Honor, if this were the only piece of evidence, it would serve as highly relevant evidence as to the reason Mr. Stroh was fired, because he told his employer, directly through his CEO, that they could not set up a backup computer system and keep it secret, out on his yacht. And as a result, he got fired.

THE COURT: So but let me just – even if he, Mr. Kaiser, decided to fire "Employee X" because he refused to do what he wanted on this redundant computer system business, that wouldn't be admissible; would it? I mean, it's not [112] admissible under Rule 404. It's propensity evidence; isn't it?

MR. WELLS: No, Your Honor, because –

THE COURT: It's evidence of something else, dealing with someone else.

MR. WELLS: It's not in a vacuum, Your Honor. If the employee had – the IT – head of the IT staff, along with Ms. Carten, had not come running into Scott Stroh's office, then Mr. Coopersmith would have a point. Then it could be propensity evidence. But they came running in to Scott Stroh, who blew the whistle and said, "No, I'm the ref. You can't do that. I don't care

if the boss wants to do that. We're not going to do it." He doesn't have –

THE COURT: When does this happen? What's the timing? Do we have it nailed down?

MR. WELLS: June 12, Your Honor. And Mr. Stroh was terminated on July 17.

THE COURT: All of the same year?

MR. COOPERSMITH: He alleges in early 2014 in the complaint, Paragraph 20. That doesn't sound like –

MR. WELLS: Well, we have – there are exhibits.

THE COURT: Mr. Wells, don't cut off the other lawyer when he's talking.

I'm going to allow the plaintiff to go forward on this one in his opening statement. It may well be at trial that I'll cut off the inquiry and rule it's propensity evidence.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GORDON SCOTT STROH, Plaintiff(s), v. SATURNA CAPITAL CORPORATION, et al., Defendant(s).	Case No. 2:16-cv-00283-TSZ MINUTE ORDER SETTING TRIAL DATE AND RELATED DATES (Filed Jun. 24, 2016)

JURY TRIAL DATE	**June 19, 2017**
Length of Trial	10–14 days
Deadline for joining additional parties	July 22, 2016
Deadline for amending pleadings	November 23, 2016
Disclosure of expert testimony under FRCP 26(a)(2)	November 23, 2016
All motions related to discovery must be filed by and noted on the motion calendar no later than the third Friday thereafter (see LCR 7(d))	January 19, 2017
Discovery completed by	February 24, 2017

All dispositive motions must be filed by and noted on the motion calendar no later than the fourth Friday thereafter (see LCR 7(d))	March 30, 2017
All motions in limine must be filed by and noted on the motion calendar no later than the Friday before the Pretrial Conference (See LCR 7(d)(4))	May 18, 2017
Agreed pretrial order due	June 2, 2017
Trial briefs, proposed voir dire questions and jury instructions	June 2, 2017
Pretrial conference to be held at **10:00 AM**	June 9, 2017

These dates are set at the direction of the Court after reviewing the joint status report and discovery plan submitted by the parties. All other dates are specified in the Local Civil Rules. If any of the dates identified in this Order or the Local Civil Rules fall on a weekend or federal holiday, the act or event shall be performed on the next business day. These are firm dates that can be changed only by order of the Court, not by agreement of counsel or parties. The Court will alter these dates only upon good cause shown: failure to complete discovery within the time allowed is not recognized as good cause.

As required by LCR 37(a), all discovery matters are to be resolved by agreement if possible. Counsel are further directed to cooperate in preparing the final pretrial order in the format required by LCR 16.1.

The original and one copy of the trial exhibits are to be delivered to the courtroom the morning of the trial. Each exhibit shall be clearly marked. Plaintiff's exhibits shall be numbered consecutively beginning with 1; defendant's exhibits shall be numbered consecutively beginning with A–1. Duplicate documents shall not be listed twice: once a party has identified an exhibit in the pretrial order, any party may use it. Each set of exhibits shall be submitted in a three–ring binder with appropriately numbered tabs.

Counsel must be prepared to begin trial on the date scheduled, but it should be understood that the trial might have to await the completion of other cases.

Should this case settle, counsel shall notify Karen Dews at (206) 370–8830 as soon as possible.

A copy of this Minute Order shall be mailed to all counsel of record.

s/ Karen Dews
Judicial Assistant/
Deputy Clerk to
Hon. Thomas S. Zilly,
United States District Judge

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GORDON SCOTT STROH, Plaintiff-Appellant, v. SATURNA CAPITAL CORPORATION, Defendant-Appellee.	No. 17-35607 D.C. No. 2:16-cv-00283-TSZ Western District of Washington, Seattle ORDER (Filed Feb. 1, 2019)

Before: GRABER, McKEOWN, and CHRISTEN, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing and rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.