

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

S.C. SUPREME COURT

J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2022-000285
Unpublished Opinion No. 2022-UP-022

H. Hughes Andrews, ...Respondent,

v.

Quentin S. Broom, Jr, ...Petitioner.

**APPENDIX
VOLUME I**

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Hon. J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2018-002223

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SC Court of Appeals

H. Hugh Andrews Respondent,

v.

Quentin S. Broom, Jr., ...Appellant.

CORRECTED RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Quentin S. Broom, Jr.,	)	Civil Action No. 2008-CP-42-3397
	)	
Plaintiff,	)	
vs.	)	
Ten State Street, L.L.P., Timothy D. Scrantom,	)	
Mark Broadwater, and H. Hughes Andrews,	)	ORDER GRANTING QUENTIN S.
	)	BROOM, JR.'S MOTION TO
Defendants,	)	DISMISS
of which,	)	
Defendant H. Hughes Andrews, Individually and	)	
on behalf of Tri-Star Communications, Inc., as	)	
Third-party Plaintiff,	)	
vs.	)	
Quentin S. Broom, Jr.,	)	
	)	
Third-party Defendant.	)	

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SPARTANBURG COUNTY

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M. HOPE BLACKLEY

This case came before the Court on October 5, 2011, at a hearing held to consider Plaintiff Quentin S. Broom, Jr.'s ("Broom") motion to dismiss the counterclaims and third-party claims filed by Defendant H. Hughes Andrews ("Andrews"), individually and on behalf of Tri-Star Communications, Inc. ("Tri-Star").

Based on the argument of counsel for all parties and my review of the pleadings and memoranda of law submitted, I hereby GRANT the motion and dismiss all claims of Tri-Star and all claims brought by Andrews individually that overlap with any alleged injuries suffered by Tri-Star.

MOTION TO DISMISS STANDARD

The standard for a motion to dismiss under 12(b)(6) of the South Carolina Rules of Civil Procedure is whether the well-pled facts of a Complaint are sufficient to state a cause of action upon which relief can be granted. Rule 12(b)(6), SCRCP; see also Charleston Cty Sch. Dist. v. Laidlaw, Inc., 348 S.C. 420, 424, 559 S.E.2d 362, 364 (Ct. App. 2001). In considering a motion to dismiss under Rule 12(b)(6), the circuit court must base its ruling solely on the allegations set forth in the complaint. Cole Vision Corp. v. Hobbs, ___ S.C. ___, 714 S.E.2d 537, 539 (2011).

Such a motion may not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. Id. The question is whether, in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief. Id.

The standard does not admit matters outside the pleadings or conclusions of law. Carolina Winds Owners' Ass'n, Inc. v. Joe Harden Builder, Inc., 297 S.C. 74, 75, 374 S.E.2d 897, 899 (Ct. App. 1988). A motion to dismiss is directed solely toward defects in a plaintiff's claims for relief and is entered into without concern for the actual merits of the controversy. Id.

DISCUSSION

Tri-Star is a South Carolina corporation of which Andrews was a shareholder and creditor. (Countercl. ¶ 22). Broom was a director, officer, and a fifty percent (50%) owner of Tri-Star. (Id. ¶ 24). Broom contends the counterclaims and third-party claims must be dismissed because Andrews asserted derivative claims that failed to satisfy the pleading requirements of Rule 23(b)(1) of the South Carolina Rules of Civil Procedure. Andrews opposed the motion to dismiss, arguing that he has standing to bring his suit *directly*, as opposed to derivatively, such that Rule 23(b)(1) is inapplicable.

If Andrews lacks standing to maintain his claims directly, then he must bring them in compliance with Rule 23(b)(1), SCRCP. Although this case is not brought as a class action, our courts have applied the requirements of Rule 23(b)(1) to shareholders of a closely held corporation. See Clearwater Trust v. Bunting, 367 S.C. 340, 351, 626 S.E.2d 334, 339 (2006) (dismissing unjust enrichment claim brought by shareholder of closely held corporation for failure to comply with the pleading requirements of Rule 23(b)(1), SCRCP).

No argument was presented that even an attempt was made to comply with this rule. Instead, Andrews asserts he has standing to bring the claims directly because he sustained a loss separate and distinct from that of Tri-Star. (Andrews' Memo in Opp. 4).

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I. Standing To Bring a Direct Action

A. The general rule.

Firmly established law restricts individual shareholders from suing corporate directors or officers directly for losses suffered by the corporation. Babb v. Rothrock, 303 S.C. 462, 464, 401 S.E.2d 418, 419 (1991). "A corporation is a distinct legal entity." Todd v. Zaldo, 304 S.C. 275, 278, 403 S.E.2d 666, 668 (Ct. App. 1991). "[A] cause of action for recovery of an asset of a corporation belongs to the corporation as opposed to the individual shareholders." Id. Todd v. Zaldo, 403 S.E.2d 666, 668 (Ct.App. 1991).

A derivative action is brought when a corporation suffered an injury from actionable wrongs committed by its officers and directors. See Ward v. Griffin, 295 S.C. 219, 221, 367 S.E.2d 703, 704 (Ct. App. 1988). The corporation or its shareholders can bring the cause of action on the corporation's behalf, so long as they comply with the applicable rules. See id. If any relief is granted, it goes to the corporation; shareholders cannot recover the damages in their

individual capacities because their loss is the indirect result of the injury to the corporation. See id.

Where there are no allegations of a distinct injury to the shareholder, Ward, 295 S.C. at 221, 367 S.E.2d at 704, or where there is an action for misappropriation of corporate property, see Davis v. Hamm, 300 S.C. 284, 291, 387 S.E.2d 676, 680 (Ct. App. 1989), the action is derivative. If an allegation of damage to Andrews overlaps with any loss allegedly suffered by Tri-Star, then Andrews' claim is derivative and should have complied with Rule 23(b)(1), SCRCF.

1. Claim-By-Claim Analysis

This Court has carefully reviewed the counterclaims, reading them in the light most favorable to Andrews. In doing so, this Court cannot determine with certainty whether or not a particular loss to Andrews was alleged. Andrews has thus failed to allege any well-pled facts that are sufficient to show that he has standing to pursue this claim individually, whereby all recoveries would be paid to him directly, as opposed to the corporation.

Tri-Star is a South Carolina corporation of which Andrews was a shareholder and creditor. (Countercl. ¶ 22). Broom was a director, officer and a fifty percent (50%) owner of Tri-Star. (Id. ¶ 24) In each of the claims, Andrews clearly alleges losses suffered by the corporation. None of the corporate injuries are different from the loss allegedly suffered by Andrews.

In the breach of fiduciary duty claim, Andrews and Tri-Star allege they were injured by Broom "(1) paying himself from Tri-Star without consent or authority from Andrews; (2) selling substantially all of the assets of Tri-Star at below market value and without authority or consent of Andrews; and (3) converting Tri-Star's money and/or assets for Broom's own use and benefit." (Countercl. ¶ 36) In the breach of contract claim, Andrews and Tri-Star allege they

were injured when Broom (1) "disposed of the assets of Tri-Star at substantially below their market value," and "paid himself approximately five hundred twenty thousand (\$520,000) dollars in salary and/or distribution." (Id. ¶¶ 40, 42) In the conversion claim, Andrews and Tri-Star allege they were injured when Broom took possession of "monies and equipment belonging to Tri-Star." (Id. ¶¶ 55-56)

With regard to the claims for breach of contract accompanied by a fraudulent act, breach of the covenant of good faith and fair dealing, violation of S.C. Code § 33-8-300, and violation of S.C. Code § 33-8-420, Andrews and Tri-Star simply re-allege the mismanagement and dissipation of Tri-Star's assets as alleged in the prior derivative claims. (Id. ¶¶ 44, 49, 59 & 65)

Even when viewed in the light most favorable to Andrews, each counterclaim seeks recovery for misappropriation of corporate property. Andrews was required to bring such claims in a shareholder derivative action.

The remaining claims for promissory estoppel, fraud, and negligent misrepresentation are brought by Andrews only. However, there are no allegations within these causes of action that Andrews suffered a particular loss that is separate or different from the losses suffered by Tri-Star. These claims merely re-allege the mismanagement and dissipation of Tri-Star's assets as set forth in the previous claims. (Id. ¶¶ 71, 78 & 88)

Andrews states that Broom's "overall mismanagement of Tri-Star resulted in significant personal financial losses to Andrews . . . includ[ing] uncollected payments due Andrews from Tri-Star for the sale of gaming machines and other goods, non-payment of a \$130,000 loan Andrews made to Tri-Star, liquidating Tri-Star assets (in which Andrews had a substantial personal interest) at substantially below market value, and by unilaterally and without Andrews' consent or authority paying himself at least \$520,000 in salary and distribution thereby

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SPARTANBURG COUNTY

diminishing the value of Andrews' potential distributions and Tri-Star's ability to repay the aforementioned obligations." (Memo in Opp. 4) However, characterizing an injury as "personal" does not make it so.

In Todd v. Zaldo, the counterclaim plaintiff "characterized the damages as personal because Georganne Apparel Company, Inc. and MIV Textile Sales, Inc. were small closely held corporations" and, as Mr. Zaldo put it, "[m]y corporation is totally my money" Todd v. Zaldo, 304 S.C. at 277, 403 S.E.2d at 668. The Todd court stated that the "mere characterization of damages by Zaldo as personal versus corporate does not prove their true nature." Id. After the Court of Appeals analyzed the categories of claimed damages, it determined them to be clearly corporate in nature. Id. at 278, 403 S.E.2d at 668. This determination applies equally to the case at hand since Tri-Star's assets are corporate assets, not personal assets.

Andrews' counterclaims also allege Tri-Star failed to pay a debt owed to Andrews (shareholder loan) and/or his company, Drews, Inc. (Gaming Machine financing).¹ Tri-Star is not named as a defendant in this action, which has been pending for more than five years. An attempt to add Tri-Star as a defendant now would be futile. See Jackson v. Doe, 342 S.C. 552, 558, 537 S.E.2d 567, 570 (Ct. App. 2000) (Rule 15(c), SCRPC only applies to a substitution or change in party, not the addition of a defendant).

¹ Andrews loaned Tri-Star one hundred thirty thousand dollars (\$130,000) on or before August 31, 2005. (Countercl. ¶ 25) Tri-Star purchased "Pot-O-Gold" video gaming machines ("Gaming Machines") and other goods and services from Drews Distributing, Inc., a South Carolina corporation ("Drews, Inc.") owned 100% by Defendant Andrews. Drews, Inc. distributed by assignment to Andrews all rights to payments from Tri-Star. (Id. ¶ 26) As of October 31, 2005, Tri-Star owed Andrews the sum of three million six hundred twenty-six thousand, three hundred ninety-three and 17/100ths dollars (\$3,626,393.17) for Gaming Machines and other goods and services sold to Tri-Star, of which one million one hundred ninety-four thousand three hundred sixty-two and 83/100ths dollars (\$1,194,362.83) is for the actual unpaid portion of the purchase price (the remaining amounts being accrued and unpaid finance charges). (Id. ¶ 27)

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B. Exceptions to General Rule.

Relying on exceptions to the general rule, Andrews next argues he should be allowed to bring his claims directly because (1) full relief cannot be had through a recovery by the corporation and (2) shareholders in a closely held corporation need not bring their claims derivatively. (Memo in Opp. 5-6) None of the allegations in the counterclaims provide a basis for deviating from South Carolina's general rule that "(1) the assets of the corporation belong to the corporation and not to the stockholders individually, and (2) the liability of corporate officers for misappropriation of corporate property is an asset of the corporation" Davis, 300 S.C. at 288, 387 S.E.2d at 678.

Andrews' conclusion that he cannot be afforded full relief through recovery by Tri-Star is not supported by the factual allegations in the pleading. A motion under Rule 12(b)(6) or Rule 12(e) admits the well pleaded facts in the complaint, but it does not admit the inferences drawn by the plaintiff from such facts, nor does it admit conclusions of law. Carolina Winds Owners' Ass'n, Inc., 297 S.C. at 76, 374 S.E.2d at 899.

Andrews incorrectly relies upon an Arizona case which recognized an exception for closely held corporations. See Johnson v. Gilbert, 621 P.2d 916 (Ariz. Ct. App.1980). In Johnson, a contractor and a real property owner formed a corporation to develop property. Id. at 917. Eventually, a disagreement arose and a lawsuit was filed. Id. The Arizona court concluded that plaintiffs and defendants "operated more as partners than in strict compliance with the corporate form." Id. at 918. As Andrews acknowledged, the Johnson exception has never been applied by our courts. (Memo in Opp. 6)

In Davis v. Hamm, the Court of Appeals expressly cited Johnson v. Gilbert and recognized that *other* jurisdictions applied the exception, but the court refused to apply it to the

case at hand because the plaintiff was not a shareholder of the corporation when the complaint was filed. Davis, 300 S.C. at 288, 387 S.E.2d at 678. Two years later, the Court of Appeals again had an opportunity to adopt this exception for closely held corporations, and in declining to do so, the court stated as follows:

As an additional theory, Zaldo argues he may recover damages personally because Georganne Apparel Company, Inc. was a close corporation with only three stockholders. He seeks to have Georganne Apparel viewed more as a partnership than a corporation. See Johnson v. Gilbert, Davis v. Hamm. This record does not support application of these principles. Mr. Zaldo did business in the corporate form. He testified the business operated as a corporation. He recognized it was owned by the shareholders. This record does not present a factual scenario sufficient to ignore the corporate nature of Georganne Apparel, Inc.

Todd, 304 S.C. at 279, 403 S.E.2d at 668-69 (internal citations omitted).

In the years since the Davis and Todd cases, our appellate courts have consistently rejected exceptions to the general rule, even when those cases involved closely held corporations. See Babb, 303 S.C. at 464, 401 S.E.2d at 419-20; Brown v. Stewart, 348 S.C. 33, 51, 557 S.E.2d 676, 685 (Ct. App. 2001).

This record does not present a factual scenario sufficient to ignore the corporate nature of Tri-Star, Inc. As such, this case does not support the application of the exception for closely held corporations.

THEREFORE, IT IS ORDERED AND ADJUDGED that the present motion to dismiss is GRANTED and the claims of Defendant Andrews, brought individually and on behalf of Tri-Star, Inc., are dismissed, with prejudice.

10/31/11
Date: M. Hep. Blackley
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The Honorable J. Mark Hayes, II
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Quentin S. Broom, Jr.,	)	Civil Action No. 2008-CP-42-3397
	)	
Plaintiff,	)	
vs.	)	
Ten State Street, L.L.P., Timothy D. Scrantom,	)	ORDER DENYING MOTIONS TO
Mark Broadwater, and H. Hughes Andrews,	)	RECONSIDER
	)	
Defendants,	)	
of which,	)	
Defendant H. Hughes Andrews, Individually and	)	
on behalf of Tri-Star Communications, Inc., as a	)	
Third-party Plaintiff,	)	
vs.	)	
Quentin S. Broom, Jr.,	)	
	)	
Third-party Defendant.	)	

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M. HOPE BLACKLEY

This matter comes before the Court by way of consecutive motions to reconsider filed by Defendant H. Hughes Andrews, Individually and on behalf of Tri-Star Communications, Inc., as a Third-party Plaintiff, pursuant to Rules 59 and 60, SCRPC. Specifically, Hughes asks this Court to reconsider its Order of November 1, 2011, dismissing all of the claims brought by Hughes, individually and on behalf of Tri-Star Communications, Inc.

A hearing was held on October 5, 2011, to consider Broom's motion to dismiss all of the claims. On October 7, 2011, this Court issued a Form 4 and requested submission of a formal Order from Broom's counsel. On October 24, 2011, attorneys for Hughes filed a motion to reconsider, before entry of the Court's formal Order.

On November 1, 2011, this Court entered the formal Order dismissing all claims. On November 11, 2011, Hughes filed a supplemental motion to reconsider the formal Order.

On December 17, 2012, a hearing was held, and after careful consideration of the record in this case, the submissions of the parties, and arguments of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of laws or facts not appropriately considered. Accordingly, this Court hereby DENIES the motions pursuant to Rule 59(e) and 60(b), SCRPC to reconsider this Court's Order filed November 1, 2011.

AND IT IS SO ORDERED.

5/ J. Mark Hayes II
The Honorable J. Mark Hayes, II
Pat Botafasoc

1/30/13
Date:

Spartanburg, South Carolina

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SPARTANBURG COUNTY
BY Pat Botafasoc D.C.
DATED 2/1/13

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Quentin S. Broom, Jr., Respondent,

v.

Ten State Street, LLP, Timothy D. Scranton, Mark
Broadwater, and H. Hugh Andrews, Defendants,

Of whom H. Hugh Andrews, Individually and on behalf
of Tri-Star Communications, Inc., is the Appellant,

v.

Quentin S. Broom, Jr., Third-party Defendant.

Appellate Case No. 2013-000514

Appeal From Spartanburg County
J. Mark Hayes, II, Circuit Court Judge

Unpublished Opinion No. 2015-UP-030
Heard September 11, 2014 – Filed January 14, 2015

REMANDED

John S. Nichols and Blake Alexander Hewitt, both of
Bluestein Nichols Thompson & Delgado, LLC, of
Columbia, and Rodney F. Pillsbury, of Pillsbury & Read,
PA, of Greenville, for Appellant.

James R. Gilreath, of the Gilreath Law Firm, PA, of Greenville; Patrick E. Knie, of Patrick E. Knie, PA, of Spartanburg; Susan Foxworth Campbell and Whitney Boykin Harrison, both of McGowan Hood & Felder, LLC, of Georgetown and Columbia, respectively; all for Respondent.

PER CURIAM: This is an appeal from the trial court order dismissing H. Hugh Andrews's amended complaint pursuant to Rule 12(b)(6), SCRPC. The trial court found Andrews's claims were derivative in nature; therefore, it ruled his failure to comply with the requirements of Rule 23(b)(1), SCRPC, was grounds for dismissal. On appeal, Andrews argues the trial court erred in finding that all his claims were derivative. He maintains that he appropriately maintained certain claims in his individual capacity, and, therefore, Rule 23(b)(1), SCRPC, did not apply to them. Andrews also contends that even if all his claims are derivative, he should not be required to follow the procedures set forth in Rule 23(b)(1), SCRPC. Finally, Andrews contends the trial court erred in failing to grant his motion to amend his pleadings to comply with Rule 23(b)(1), SCRPC. We remand.

After the trial court dismissed Andrews's claims, Andrews filed two motions: a motion for reconsideration and a motion to amend his answer and counterclaims. The court heard arguments on these motions in the same hearing. During the hearing, Andrews requested the trial court allow him to amend his pleadings because he wanted to

bring the factual allegations of the complaint current to information that was learned from discovery so that in the event that there would be an appeal, the appellate court would be looking at the information that was known to the parties because it's a 12(B)(6) motion and it's not a summary judgment motion.

Broom argued that because the trial court dismissed the counterclaims, Andrews was "asking to be permitted to amend something that does not exist." Following the hearing, the trial court denied the motion to reconsider but did not rule on the motion to amend.

Because the record indicates the trial court never ruled on the motion to amend, we remand to the trial court for a ruling on this motion. On remand, the trial court is instructed to consider whether justice requires the amendment and whether Broom will be prejudiced by the amendment. *See* Rule 15(a), SCRCP (stating leave to amend shall be freely given when justice requires and does not prejudice any other party); *Stanley v. Kirkpatrick*, 357 S.C. 169, 174, 592 S.E.2d 296, 298 (2004) (recognizing "the party opposing the motion has the burden of establishing prejudice").¹

REMANDED.

FEW, C.J., and THOMAS and LOCKEMY, JJ., concur.

¹ In light of our decision, we decline to reach the remaining issues.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD
NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY
PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Quentin S. Broom, Jr., Petitioner,

v.

Ten State Street, LLP, Timothy D. Scranton, Mark
Broadwater, and H. Hugh Andrews, Defendants,

Of whom H. Hugh Andrews, Individually and on behalf
of Tri-Star Communications, Inc., is the Respondent,

v.

Quentin S. Broom, Jr., Third-party Defendant.

Appellate Case No. 2015-000583

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Spartanburg County
The Honorable J. Mark Hayes, II, Circuit Court Judge

Opinion No. 2015-MO-057
Submitted September 22, 2015 – Filed September 30, 2015

REVERSED

James R. Gilreath, of The Gilreath Law Firm, PA, of Greenville; Patrick E. Knie of Patrick E. Knie, PA, of Spartanburg; Susan Foxworth Campbell, of McGowan Hood & Felder, LLC, of Georgetown; and Whitney Boykin Harrison of Columbia for Petitioner.

John S. Nichols and Blake Alexander Hewitt, of Bluestein Nichols Thompson & Delgado, LLC, of Columbia; and Rodney F. Pillsbury, of Pillsbury Law Firm, LLC, of Greenville, for Respondent.

PER CURIAM: Petitioner seeks a writ of certiorari to review the Court of Appeals' decision in *Broom v. Ten State Street LLP*, Op. No. 2015-UP-030 (S.C. Ct. App. filed January 14, 2015). We grant the petition, dispense with further briefing, and reverse the Court of Appeals' decision.

Petitioner filed his original suit against defendants alleging various causes of action related to a joint business venture between petitioner and respondent. Respondent answered and raised counterclaims against petitioner. On petitioner's Rule 12(b)(6), SCRCp, motion, the trial judge dismissed respondent's counterclaims, finding they did not comply with the pleading requirements in Rule 23(b)(1), SCRCp, for derivative actions by shareholders. Thereafter, respondent filed a motion to reconsider pursuant to Rules 52 and 60, SCRCp, and a motion to amend the pleadings pursuant to Rule 15, SCRCp. Following a hearing on the motions, the trial judge denied respondent's motion to reconsider, but did not rule on respondent's motion to amend the pleadings.

Respondent filed a notice of appeal from the order denying his motion for reconsideration. On appeal, respondent raised two issues: (1) whether the trial judge erred in dismissing respondent's counterclaims for failure to comply with the pleading requirements of Rule 23(b)(1); and (2) whether the trial judge erred in dismissing respondent's counterclaims without allowing him to amend his pleadings. Petitioner argued the latter was not preserved for review because the trial judge did not rule on respondent's motion to amend. The Court of Appeals did not address these issues and, instead, remanded the case to the circuit court so the trial judge could rule on respondent's Rule 15, SCRCp, motion to amend the pleadings.

We find Court of Appeals erred in remanding the case for a ruling on respondent's Rule 15, SCRCP, motion because the issue on appeal—whether the trial judge erred in dismissing respondent's counterclaims without allowing respondent to amend his pleadings—was not preserved for review. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (noting that in order for an issue to be properly preserved for appeal, it must have been both raised to and ruled on by the trial court). Because respondent did not seek a ruling on the motion to amend, the Court of Appeals should not have addressed the motion, even if only for the sole purpose of remanding for a ruling. *See Noisette v. Ismail*, 304 S.C. 56, 58, 304 S.E.2d 122, 124 (finding the issue was not properly before the Court of Appeals and should not have been addressed where the record reflected the circuit court did not explicitly rule on the argument and the petitioner failed to show it made a Rule 59(e), SCRCP, motion to amend or alter the judgment on that ground).

Accordingly, the decision of the Court of Appeals is hereby

REVERSED.

TOAL, C.J., PLEICONES, BEATTY and KITTREDGE, JJ., concur.
HEARN, J., not participating.

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS

Quentin S. Broom, Jr.,)
Plaintiff/Third-Party Defendant,) C.A. No.: 08-CP-42-3397
v.)
Ten State Street, L.L.P.)
Timothy D. Scrantom, Mark Broadwater,)
and H. Hughes Andrews,)
Defendants,)
of whom,)
H. Hughes Andrews, Individually)
and on behalf of Tri-Star Communications,)
Inc., is the,)
Counter-Claimant/Third-Party)
Plaintiff.)

ORDER

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This matter came before the Court on a Motion to Amend filed by Defendant H. Hughes Andrews. The Court conducted a hearing on June 23, 2016, in Spartanburg.

Patrick E. Knie appeared on behalf of Plaintiff. Blake A. Hewitt and Rodney F. Pillsbury appeared for Defendant Andrews. R. Davis Howser appeared for the remaining Defendants.

After considering the motion, all memoranda, the oral presentations of counsel, and the applicable law, the Court grants the Motion to Amend.

This case has a lengthy history. It was originally filed in 2005. Andrews filed an answer that same year, and in 2006, he filed a motion to amend his answer. Andrews' amended answer asserted 10 counterclaims, several of which he purported to bring on his own behalf as well as on behalf of Tri-Star Communications, a corporation owned by Plaintiff and Andrews.



Plaintiff filed a motion to dismiss Andrews' counterclaims in September of 2011, asserting all counterclaims were derivative claims and pointing to Andrews' non-compliance with Rule 23, SCRCF, which contains special pleading rules for derivative lawsuits. The Court granted the motion to dismiss in a form order issued in October of 2011. This ruling was memorialized in a formal written order issued the following month.

Andrews filed two motions after the Court's order of dismissal. The first was a motion for the Court to reconsider its ruling that the counterclaims were derivative rather than direct. The second was styled as a motion to amend or supplement Andrews' answer and counterclaims. According to Andrews, the amendment's purpose was "to ensure that the pleadings reflect all facts and information currently known that arise under the same facts and circumstances alleged in Plaintiff's original complaint[.]"

The Court denied Andrews' motion to reconsider and Andrews appealed.

The Court of Appeals issued an unpublished decision that would have remanded the case and instructed this Court to rule on Andrews' motion to amend. *Broom v. Ten State Street, Op. No. 2015-UP-30* (S.C. Ct. App. filed Jan. 14, 2015). Plaintiff then petitioned the Supreme Court for a writ of certiorari, and the Supreme Court vacated the Court of Appeals' decision, noting this court "did not rule on [Andrews'] motion to amend the pleadings." *Broom v. Ten State Street, Op. No. 2015-MO-057* (S.C. Sup. Ct. filed Sept. 30, 2015). The Supreme Court then remitted the case to this Court.

Andrews sought a ruling on the motion to amend following this Court's receipt of the remittitur. During the hearing, Andrews' counsel orally moved, pursuant to Rule 7, SCRCF, to amend his client's pleading in the following particulars:

- First, to include the same additional facts and information alleged in Andrews' 2011 motion to amend.



- Second, to comply with all of the requirements of Rule 23, SCRCF.
- Finally, to state all counterclaims as both derivative claims *and* direct claims, understanding, however, that this Court has already ruled (and adheres to its prior ruling) that all of the counterclaims are derivative. Thus, the counterclaims will proceed as derivative claims only.

After the hearing, but prior to the signing of this order, Andrews furnished the Court and all parties with his proposed amended pleading, which is attached to this order as **Exhibit 1**.

Plaintiff opposed the motion to amend, arguing Andrews has waived the right to amend his counterclaims, that the previous dismissal of the counterclaims precludes their amendment, and that Plaintiff would be prejudiced by the amendment.

Rule 15(a), SCRCF, explains that after a responsive pleading is served, a party may amend his pleadings only by leave of court or with the written consent of the adverse party. The rule further explains, however, that leave to amend “shall” be freely granted when justice so requires and when the amendment does not prejudice any other party.

The Supreme Court has explained that prejudice is a lack of notice that the issue covered by the amendment is going to be tried and a lack of the opportunity to refute it. *Stander v. Kirkpatrick*, 357 S.C. 169, 174, 592 S.E.2d 296, 298 (2004).

The Court finds Andrews’ amendment does not cause any legally cognizable prejudice. The amended counterclaims all concern allegations of corporate mismanagement, self-dealing, and the dissipation of Tri-Star’s assets. Though these allegations are vigorously denied, these are the same allegations Andrews brought against Plaintiff in his original counterclaims. Since 2006, all parties were aware the counterclaims concerned charges of corporate mismanagement, self-dealing, and the dissipation of Tri-Star’s assets.

There is also no prejudice in allowing Andrews to comply with Rule 23, SCRCF; the pleading rule for derivative lawsuits. The parties engaged in extensive litigation before

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Andrews' counterclaims were dismissed shortly before the scheduled trial. While the Court believes the grounds for the dismissal were valid, non-compliance with Rule 23 is a technical defect which can easily be cured and which Andrews has offered to cure. The Supreme Court has explained that when a pleading is dismissed under Rule 12(b)(6), SCRPC, the losing party should ordinarily be granted an opportunity to amend his or her pleading. *Spence v. Spence*, 368 S.C. 106, 129, 628 S.E.2d 869, 881 (2006).

The Court appreciates, but does not agree with, Plaintiff's arguments in opposition to the motion. Rule 15 articulates the standard for a motion to amend—the motion should be granted unless there is prejudice. It is Plaintiff's burden to show prejudice. *Forrester v. Smith & Steele Builders*, 295 S.C. 504, 507, 369 S.E.2d 156, 158 (Ct. App. 1988). There is none here.

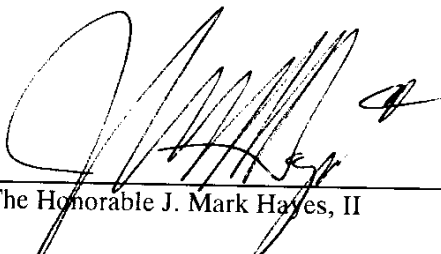
Because of this case's age and extensive history, the Court is ordering the parties to participate in mediation within 60 days of this order. If the case is not resolved in mediation, the Court will conduct a telephone status conference to schedule a brief period for the parties to conduct discovery and to schedule a date certain for trial.

Andrews has 10 days from the date of this order to serve and file the amended pleading attached as **Exhibit 1**.

This litigation is contentious, perhaps more contentious than most, but the Court is committed to moving the case towards its conclusion in a way that is fair and just to all of the parties. The Court fully expects the parties to do the same and is confident this expectation will be satisfied.

It is so ordered.

7/6, 2016


The Honorable J. Mark Hayes, II

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EXHIBIT 1 TO COURT'S ORDER

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Quentin S. Broom, Jr.,)
Plaintiff/Third-Party Defendant,)
v.)
Ten State Street, L.L.P.)
Timothy D. Scrantom, Mark Broadwater,)
and H. Hughes Andrews,)
Defendants,)
of whom,)
H. Hughes Andrews, Individually)
and on behalf of Tri-Star Communications,)
Inc., is the,)
Counter-Claimant/Third-Party)
Plaintiff.)

C.A. No.: 08-CP-42-3397

**SECOND AMENDED ANSWER,
COUNTERCLAIMS and THIRD-
PARTY COMPLAINT OF DEFENDANT
H. HUGHES ANDREWS,
INDIVIDUALLY and on behalf of
TRI-STAR COMMUNICATIONS**

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**TO: PATRICK E. KNIE AND JAMES R. GILREATH, ATTORNEYS FOR PLAINTIFF
AND THIRD-PARTY DEFENDANT QUENTIN S. BROOM, JR.**

By and through undersigned counsel, Defendant H. Hughes Andrews ("Andrews") answers the Plaintiff's Complaint and asserts multiple claims, on his own behalf and on behalf of the Third-Party Plaintiff, Tri-Star Communications, Inc. ("Third-party Plaintiff Tri-Star" or "Tri-Star"). In the event any claims are "derivative," see Rule 23, SCRPC, Andrews alleges and will describe how his demands for relief were ignored. Andrews also alleges he fairly represents similarly affected shareholders and that any further demand would be futile: this corporation only had two (2) shareholders with the plaintiff/third-party defendant being the responsible party for the losses sustained to Defendant Andrews and to Tri-Star Communications, both shareholders are

parties to this action, and the corporation has dissolved. Andrews would allege and show the Court the following:

For A First Defense
(By Way of a General Denial)

1. All allegations of Plaintiff's Complaint not admitted, qualified or explained are expressly denied.

2. As to Paragraphs 1 through 4 of Plaintiff's Complaint, Andrews is without sufficient information to admit or to deny the allegation as stated and therefore demands strict proof thereof.

3. As to Paragraph 5 of Plaintiff's Complaint, Andrews admits the allegation stated therein to be true to the best of his knowledge.

4. As to Paragraphs 6 through 17 of Plaintiff's Complaint, Andrews denies the allegations as stated therein and demands strict proof thereof.

5. As to Paragraph 18 of Plaintiff's Complaint, Andrews is without sufficient information to admit or to deny the allegation as stated and therefore demands strict proof thereof.

6. As to Paragraph 19 of Plaintiff's Complaint, Andrews admits the allegations set forth therein with the exception that Drew's Distributing, Inc. sold the equipment to Tri-Star and the obligations of Tri-Star to Drew's Distributing Inc. were assigned to Andrews, of which Plaintiff received due notice.

7. As to Paragraph 20 of Plaintiff's Complaint, Andrews is without sufficient information to admit or to deny the allegation as stated and therefore demands strict proof thereof.

8. As to Paragraphs 21 through 24 of Plaintiff's Complaint, Andrews denies the allegations as stated therein and demands strict proof thereof.

9. As to Paragraphs 25 through 27 of Plaintiff's Complaint, Andrews is without sufficient information to admit or to deny the allegation as stated and therefore demands strict proof thereof.

10. As to Paragraphs 28 through 32 of Plaintiff's Complaint, Andrews denies the allegations as stated therein and demands strict proof thereof.

11. As to Paragraph 34 of Plaintiff's Complaint, Andrews is without sufficient information to admit or to deny the allegation as stated and therefore demands strict proof thereof.

12. As to Paragraph 35 of Plaintiff's Complaint, Andrews admits the allegation stated therein to be true to the best of his knowledge.

13. As to Paragraphs 36 through 38 of Plaintiff's Complaint, Andrews denies the allegations as stated therein and demands strict proof thereof.

14. As to Paragraph 39 of Plaintiff's Complaint, Andrews is without sufficient information to admit or to deny the allegation as stated and therefore demands strict proof thereof.

15. As to Paragraphs 40 through 78 of Plaintiff's Complaint, Andrews denies the allegations as stated therein and demands strict proof thereof.

For A Second Defense
(Failure To State A Claim Upon Which Relief May Be Granted)

16. Andrews realleges each above paragraph, to the extent not inconsistent therewith, as if set forth fully hereunder.

17. Plaintiff's Complaint does not set forth sufficient facts and/or the requisite legal elements for the claims sought therein such that Plaintiff fails to adequately state a claim upon which relief may be given against this Defendant.

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For A Third Defense
(Unclean Hands)

18. Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth fully hereunder.

19. To the extent Plaintiff's complaint seeks equitable relief, Plaintiff's Complaint is barred by the doctrine of unclean hands.

For A Fourth Defense and By Way of Defendant Andrews'
First Counterclaim Against the Plaintiff and
First Cause of Action by Third-Party Plaintiff Tri-Star
(Breach of Fiduciary Duty)

20. Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

21. At all times relevant hereunder, Tri-Star was a South Carolina corporation with its principal place of business in Spartanburg County, South Carolina. Andrews, at all times relevant herein, was a fifty percent (50%) owner of Tri-Star, and he was also a personal creditor of Tri-Star.

22. Andrews has standing to bring this claim individually and on behalf of the Third-Party Plaintiff. He is the sole shareholder who suffered any actual loss as a result of Plaintiff's malfeasance and nonfeasance with and on behalf of Tri-Star. Tri-Star is now defunct after the Plaintiff eviscerated all of Tri-Star's assets and converted them for his personal use and gain.

23. Plaintiff was a director and a fifty percent (50%) owner of Tri-Star. Plaintiff managed the financial operations of Tri-Star. As a controlling shareholder/partner, Plaintiff owed a fiduciary duty to the company and to Andrews to act in the best interest of the company and of Andrews at all times regarding Tri-Star's operations.

24. As a stockholder, Andrews loaned Tri-Star one hundred thirty thousand dollars (\$130,000.00) on or about August 31, 2005.

25. As the assignee of a debt, as of October 31, 2005, Tri-Star owed Andrews the sum of three million six hundred twenty-six thousand, three hundred ninety-three and 17/100ths dollars (\$3,626,393.17) for equipment (hereinafter "the equipment") sold to Tri-Star, of which one million one hundred ninety-four thousand three hundred sixty-two and 83/100ths dollars (\$1,194,362.83) is for the actual costs of equipment sold to Tri-Star.

26. Tri-Star sold and/or transferred a substantial amount of the equipment to Worldwide Entertainment, S.A. ["Worldwide Entertainment"], a Dominican Republic corporation. Plaintiff managed and/or controlled the daily operations of Worldwide Entertainment.

27. At all times relevant herein, Andrews owned an interest in Worldwide Entertainment via his partial membership in and with Calum, LLC, the corporation which owned the majority of stock of Worldwide Entertainment.

28. Plaintiff failed to pay the taxes owed by Worldwide Entertainment.

29. Plaintiff refused to produce the financial statement of Worldwide Entertainment to Andrews.

30. In the summer and/or fall of 2004, Plaintiff and Andrews had a disagreement over the operations of Tri-Star and the operations in the Dominican Republic. Upon information and belief, Plaintiff undertook a concerted effort to liquidate the assets of Tri-Star and convert the same for his personal use and benefit, without authority or consent of Andrews.

31. Towards that end, without the consent or authority of Andrews, Plaintiff paid himself a wage and/or salary in the amount of four hundred thousand (\$400,000.00) dollars on December 15, 2004. Said distribution was made at a time when Tri-Star owed Andrews

substantial sums of money both as a shareholder, for a shareholder loan, and as a creditor of Tri-Star.

32. Upon information and belief, Plaintiff used the fraudulent payment of wages to obtain a mortgage on a \$3.5 million dollar home located at 6565 Allison Road, Miami Beach, Florida, 33141-4508. Upon information and belief, Plaintiff made a deposit in the amount of \$5,000.00 on or about January 24, 2005 and signed an "Agreement for Deed" on February 14, 2005 to purchase the same.

33. Further, without the consent or authority of Andrews, between January 1, 2005 and April 30, 2005, Plaintiff paid himself wages and/or salary distributions from Tri-Star in the amount of five hundred twenty thousand dollars (\$520,000.00). Said distributions were made at a time when Tri-Star owed Andrews substantial sums of money both as a shareholder, for a shareholder loan, and as a creditor of Tri-Star.

34. Without consent or authority from Andrews, Plaintiff sold, or caused to be sold, the equipment in the possession of Worldwide Entertainment to third parties for substantially below market value. Indeed, when Plaintiff expressed his intention to sell Tri-Star's assets, Andrews expressly informed Plaintiff not to do so without his prior approval and consent. Plaintiff deliberately ignored Andrews' instruction.

35. Upon information and belief, Plaintiff converted essentially all of the assets of Tri-Star for his personal use and benefit. Upon information and belief, between 2005 and 2011 Plaintiff has received an estimated two million (\$2,000,000.00) dollars from the use of the assets that formerly belonged to Tri-Star. All of this was without authority or consent from Andrews.¹

¹None of this information was available as of May 26, 2006, the date Defendant Andrews filed his First Amended Answer, Counterclaims and Third-party Complaint, because Plaintiff had not filed the income taxes where this income was reported.

Said revenues were received by Plaintiff at a time when Andrews was owed millions of dollars for payment on the equipment.

36. At a time when Tri-Star owed Andrews substantial sums of money both as a shareholder, for a shareholder loan, and as a creditor of Tri-Star, Plaintiff paid hundreds of thousands of dollars to his relatives, ostensibly as loan repayments. Upon information and belief, said loans were not legitimate. Additionally, Plaintiff gave preference to paying monies to relatives over paying the debts owed to Andrews.

37. Thereafter, Plaintiff unilaterally, and without the consent or authority from Andrews, liquidated Tri-Star. On August 13, 2009, Tri-Star was administratively dissolved by the South Carolina Secretary of State due to the failure of Plaintiff in filing income tax returns and other required documents.

38. Plaintiff's actions rendered Tri-Star incapable of paying the monies owed to Andrews, all at a time when Plaintiff paid himself and his relatives substantial sums of money.

39. Plaintiff materially and substantially breached his fiduciary duty to Andrews in one or more of the following particulars:

- a. Paying himself a salary and/or distributions from Tri-Star at a time when Tri-Star owed Andrews substantial sums of money;
- b. Selling the assets of Tri-Star Inc. at far below market value without authority or consent of Andrews;
- c. Converting Tri-Star's money and/or assets for Plaintiff's own use and benefit (or the benefit of his family members);
- d. Failing to exercise ordinary care and diligence commensurate with the standard of care applicable to similarly situated managers, officers and/or shareholders.

40. As a direct and proximate result, Andrews and Third-Party Plaintiff Tri-Star have been damaged, thereby entitling Andrews and Third-Party Plaintiff Tri-Star to actual and punitive damages hereunder in an amount to be determined by the Court.

For A Fifth Defense and By Way of Defendant Andrews'
Second Counterclaim Against the Plaintiff and
Second Cause of Action by Third-Party Plaintiff Tri-Star
(Breach of Contract)

41. Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

42. By and through the various contracts and agreements, Andrews contracted with the Plaintiff regarding the operations of Tri-Star and Worldwide Entertainment.

43. Without authority or consent from Andrews, Plaintiff disposed of Tri-Star's assets at substantially below their market value and/or converted them for his personal use and benefit (or the benefit of his family members).

44. Plaintiff did not use any of the proceeds to pay the loan given by Andrews to the monies owed to Andrews by and through his creditor assignments.

45. At a time when Tri-Star owed Andrews substantial sums of money, Plaintiff paid himself approximately nine hundred twenty thousand (\$920,000.00) dollars in salary and/or distribution within a four (4) month period of time. This was without authority or consent from Andrews. Additionally, Plaintiff distributed substantial sums of money to his relatives over repayment of monies owed to Andrews.

46. Plaintiff converted all of the assets of Tri-Star for his personal use and benefit and has received substantial sums of money since 2005.

47. Plaintiff's actions rendered Tri-Star incapable of repaying the monies owed to Andrews. Tri-Star is defunct has ceased operation.

48. As a direct and proximate result, Andrews and Third-party Plaintiff Tri-Star have been damaged, thereby entitling Andrews and Third-party Plaintiff Tri-Star to actual damages hereunder in an amount to be determined by the Court.

For A Sixth Defense and By Way of Defendant Andrews'
Third Counterclaim Against the Plaintiff and
Third Cause of Action by Third-Party Plaintiff Tri-Star
(Breach of Contract Accompanied by a Fraudulent Act)

49. Defendant Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

50. Plaintiff breached his contract(s) with Andrews.

51. Plaintiff had a fraudulent intent relating to the breaching of the contract and not merely to its making.

52. Plaintiff's breach was accompanied by a fraudulent act, which can be characterized by dishonesty in fact, unfair dealing and/or the unlawful appropriation of Andrew's money by design.

53. As a direct and proximate result, Andrews and Third-Party Plaintiff Tri-Star have been damaged, thereby entitling Andrews and Third-Party Plaintiff Tri-Star to actual and punitive damages hereunder in an amount to be determined by the Court.

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For A Seventh Defense and By Way of Defendant Andrews'
Fourth Counterclaim Against the Plaintiff and
Fourth Cause of Action by Third-Party Plaintiff Tri-Star
(Breach of the Covenant of Good Faith and Fair Dealing)

54. Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

55. There is an implied covenant of Good Faith and Fair Dealing in all contracts entered into or to be performed in the State of South Carolina.

56. Plaintiff's actions as alleged herein were unreasonable, willful, reckless, and unjustified, and amount to a breach of the implied duty of good faith and fair dealing inherent in all contracts.

57. As a proximate result, Andrews has suffered actual and consequential damages.

58. As a direct and proximate result, Andrews and Third-Party Plaintiff Tri-Star have been damaged, thereby entitling Andrews and Third-Party Plaintiff Tri-Star to actual and punitive damages hereunder in an amount to be determined by the Court.

For An Eighth Defense and By Way of Defendant Andrews'
Fifth Counterclaim Against the Plaintiff and
Fifth Cause of Action by Third-Party Plaintiff Tri-Star
(Conversion)

59. Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

60. Andrews had a right to possess monies and equipment belonging to Tri-Star.

61. Without authority from Andrews, Plaintiff took possession of these monies and/or equipment, or alternatively, exercised a right of ownership over the same, all to the exclusion of the rights of Andrews.

62. Such actions constitute conversion of Andrews' money and/or property.

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SPARTANBURG COUNTY
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63. As a direct and proximate result, Andrews and Third-Party Plaintiff Tri-Star have been damaged, thereby entitling Andrews and Third-Party Plaintiff Tri-Star to actual and punitive damages hereunder in an amount to be determined by the Court.

**For A Ninth Defense and By Way of Defendant Andrews'
Sixth Counterclaim Against the Plaintiff and
Sixth Cause of Action by Third-Party Plaintiff Tri-Star
(Violation of S.C. Code of Laws § 33-8-300)**

64. Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

65. The actions of Plaintiff were not in good faith.

66. The actions of Plaintiff were not within the degree of care that an ordinarily prudent person in a like position would exercise under similar circumstances.

67. The actions of Plaintiff were not in a manner that a reasonable person could believe were in the best interests of Tri-Star or its equal-interest shareholder.

68. Said actions constitute a violation of South Carolina *Code of Laws* § 33-8-300.

69. As a direct and proximate result, Andrews and Third-Party Plaintiff Tri-Star have been damaged, thereby entitling Andrews and Third-Party Plaintiff Tri-Star to actual and punitive damages hereunder in an amount to be determined by the Court.

**For A Tenth Defense and By Way of Defendant Andrews'
Seventh Counterclaim Against the Plaintiff and
Seventh Cause of Action by Third-Party Plaintiff Tri-Star
(Violation of S.C. Code of Laws § 33-8-420)**

70. Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

71. The actions of Plaintiff were not in good faith.

72. The actions of Plaintiff were not within the degree of care that an ordinarily prudent person in a like position would exercise under similar circumstances.

73. The actions of Plaintiff were not in a manner that a reasonable person could believe were in the best interests of Tri-Star and its equal-interest shareholder.

74. Said actions constitute a violation of South Carolina *Code of Laws* § 33-8-420.

75. As a direct and proximate result, Andrews and Third-Party Plaintiff Tri-Star have been damaged, thereby entitling Andrews and Third-Party Plaintiff Tri-Star to actual and punitive damages hereunder in an amount to be determined by the Court.

For An Eleventh Defense and By Way of Defendant Andrews'
Eighth Counterclaim Against the Plaintiff
(Promissory Estoppel)

76. Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

77. At the time Andrews went into business with Plaintiff in the formation of Tri-Star and its subsequent dealings with Worldwide Entertainment, Plaintiff promised Andrews that he would act in the best interest of Tri-Star and Andrews at all times regarding the management of the same.

78. This promise was unambiguous on its terms.

79. Andrews reasonably relied upon Plaintiff's promise.

80. Plaintiff expected and foresaw that Andrews would rely upon his promise.

81. Andrews was injured in reliance upon the promise by Plaintiff.

82. As a direct and proximate result, Andrews has been damaged as set forth fully hereunder, thereby entitling Andrews to actual and punitive damages in an amount to be determined by the Court.

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For A Twelfth Defense and By Way of Defendant Andrews'
Eighth Counterclaim Against the Plaintiff
(Fraud)

83. Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

84. Plaintiff represented to Andrews that he would manage the assets of Tri-Star and act in the best interest of Tri-Star and Andrews.

85. These representations were false.

86. These representations were material.

87. Plaintiff either knew the representations were false or made such representations with a reckless disregard of their truth or falsity.

88. Plaintiff intended Andrews to act upon Plaintiff's representations.

89. Andrews was ignorant of falsity of Plaintiff's representations.

90. Andrews relied upon the truth of Plaintiff's representations.

91. Andrews had a right to rely upon the truth of Plaintiff's representations.

92. As a direct and proximate result, Andrews was damaged, thereby entitling him to actual and punitive damages hereunder in an amount to be determined by the Court.

For A Thirteenth Defense and By Way of Defendant Andrews'
Tenth Counterclaim Against the Plaintiff
(Negligent Misrepresentation)

93. Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

94. Plaintiff made a false representation to Andrews.

95. Plaintiff had a pecuniary interest in making these statements.

96. Plaintiff owed a duty of care to see that he communicated truthful information to Andrews.

97. Plaintiff breached that duty by failing to exercise due care.

98. Andrews justifiably relied on Plaintiff's representation.

99. Andrews suffered pecuniary loss as proximate result of his reliance upon that representation.

100. As a direct and proximate result, Andrews was damaged, thereby entitling Andrews to actual and punitive damages hereunder in an amount to be determined by the Court.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant Andrews prays for the following relief:

- (a) that Plaintiff's complaint be dismissed with prejudice, with costs and attorney's fees awarded to Andrews;
- (b) that Judgment be entered against the plaintiff on all of Andrews' counterclaims, for actual and punitive damages, in an amount to be determined by the Court;
- (c) that Judgment be entered against the plaintiff on all of Third-Party Plaintiff Tri-Star's causes of action, for actual and punitive damages, in an amount to be determined by the Court; and
- (d) whatever further and just relief the Court deems appropriate under the circumstances.

/Signature page and verification attached

Respectfully submitted,

_____, 2016

Rodney F. Pillsbury (SC Bar #13067)
25 Mills Ave.
Greenville, SC 29605
Phone: (864) 241-9828
Fax: (864) 370-0599
Email: rodney@pillsburyfirm.law
ATTORNEY for H. HUGHES ANDREWS

H. Hughes Andrews, being duly sworn, says that he is the Defendant/Third-Party Plaintiff herein, he has read the foregoing amended answer and counterclaims and knows the contents thereof, that the same is true of his own knowledge, except as matters therein stated to be alleged on information and belief, and to those matters he believes them to be true.

SWORN to and Subscribed before me)

This ____ day of _____, _____)

Notary Public for South Carolina)

My Commission expires: _____)

H. Hughes Andrews

CLERK OF DISTRICT COURT
SPARTANBURG COUNTY
2016 JUL -6 PM 3:21
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Quentin S. Broom, Jr.,)
Plaintiff/Third-Party Defendant,)

C.A. No.: 08-CP-42-3397

v.)

Ten State Street, L.L.P.)
Timothy D. Scrantom, Mark Broadwater,)
and H. Hughes Andrews,)

Defendants,)

ORDER

of whom,)

H. Hughes Andrews, Individually)
and on behalf of Tri-Star Communications,)
Inc., is the,)

Counter-Claimant/Third-Party)
Plaintiff.)

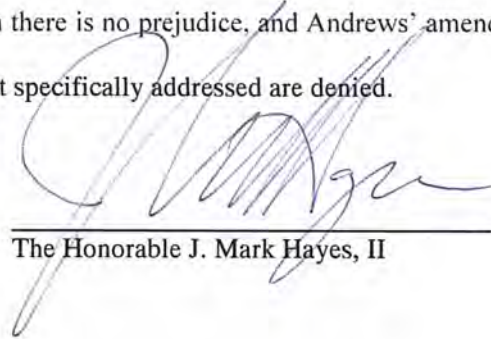
On July 6, 2016, this Court granted the motion of Defendant H. Hugh Andrews to amend his pleading. On July 15, 2016, Plaintiff filed a motion asking the Court to reconsider that order.

Andrews filed a letter opposing the motion. The Court did not conduct a hearing.

After considering all filings and arguments, the Court declines to alter its previous decision, which the Court believes follows the controlling legal principles. The law instructs that amendments should be freely allowed when there is no prejudice, and Andrews' amendments do not cause any prejudice. Any arguments not specifically addressed are denied.

It is so ordered.

10/14, 2016


The Honorable J. Mark Hayes, II

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS

Quentin S. Broom, Jr.,)
Plaintiff/Third-Party Defendant,) C.A. No.: 2008-CP-42-3397
v.)
Ten State Street, L.L.P.)
Timothy D. Scrantom, Mark Broadwater,)
and H. Hughes Andrews,)
Defendants,) **ORDER**
of whom,)
H. Hughes Andrews, Individually)
and on behalf of Tri-Star Communications,)
Inc., is the,)
Counter-Claimant/Third-Party)
Plaintiff.)

This case comes before the Court on a motion to dismiss. Plaintiff asks the Court to dismiss counterclaims brought against him by Defendant Hugh Andrews. The motion is denied.

This case has a lengthy history. This Court previously dismissed Andrews' counterclaims, holding the claims were derivative claims belonging to the parties' joint venture (Tri-Star Communications) and not to Andrews individually.

Andrews later moved to amend his pleading and this Court granted the motion. The amended pleading asserts the same sort of counterclaims Andrews originally alleged, however they are now asserted as direct claims *and* derivative claims. Andrews' motion indicated the allegations of direct claims were intended only to preserve his ability to make a future argument that a direct recovery was appropriate. The amendment was granted July 6, 2016.

In October of 2016, Plaintiff filed a motion to dismiss and or strike the counterclaims. This Court set a hearing for May 17, 2017.

The day before the hearing, Plaintiff filed a supplemental motion to dismiss with a supporting memo. The Court conducted the hearing on May 17 in Spartanburg. Attorneys Matthew Richardson, Patrick Knie, and Whitney Harrison were present for Plaintiff. Attorneys Rodney Pillsbury and Blake Hewitt were present for Defendant Andrews. Attorney Davis Howser was present for the remaining defendants, who are not parties to the motion.

Plaintiff seeks dismissal under Rule 12(b)(6), SCRCP. The Court denies the motion because a motion to dismiss under Rule 12(b)(6) requires the Court to confine its inquiry to the four corners of the pleading in question. *Spence v. Spence*, 368 S.C. 106, 123, 628 S.E.2d 869, 878 (2006). Andrews' amended pleading properly states counterclaims against Plaintiff. The Court adheres to its previous ruling that the claims are derivative and not direct. The Court is not aware, however, of any authority precluding Andrews from preserving for future argument his position that the claims are direct.

The Court does not agree with Plaintiff's argument that the counterclaims' prior dismissal is the "law of the case." There was a lengthy appeal in this matter—Andrews appealed this Court's prior decision dismissing the counterclaims. That appeal appears not to have touched the case's merits in any respect. Andrews made two arguments: that his counterclaims were direct, not derivative, and that if the counterclaims *were* derivative, he should be allowed to amend his pleading. The appellate courts did not resolve either issue, establishing any law for this case.

But assume, for the purposes of argument, an appellate court *had* decided the direct/derivative argument against Andrews. The Court is aware of no authority prohibiting Andrews from amending his pleading on remand to bring his counterclaims as derivative claims,

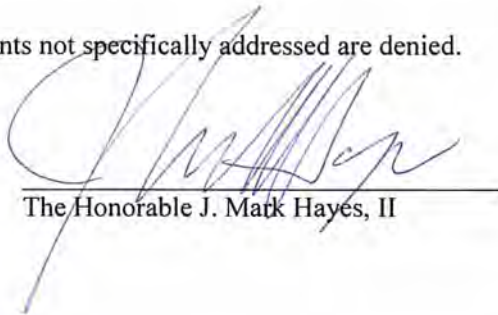


as he did here, and curing any pleading defect. The law favors disputes being resolved on the merits, and as this Court's order allowing the amendment explained, the amendment plainly causes no prejudice. Prejudice is a lack of notice that the issue covered by the amendment is going to be tried and a lack of the opportunity to refute it, *Stanley v. Kirkpatrick*, 357 S.C. 169, 174, 592 S.E.2d 296, 298 (2004), and from the time Andrews brought his original counterclaims in 2006, all parties have been aware Andrews was alleging Broom engaged in corporate mismanagement and self-dealing in the dissipation of Tri-Star's assets. The parties engaged in extensive litigation before Andrews' counterclaims were dismissed shortly before the scheduled trial. Moreover, the Supreme Court has explained that when a complaint is dismissed under Rule 12(b)(6), the losing party should ordinarily be granted leave to amend his or her pleadings. *Dockside Ass'n v. Detyens, Simmons & Carlisle*, 297 S.C. 91, 94-95, 374 S.E.2d 907, 909 (Ct. App. 1988).

The motion is denied. Any arguments not specifically addressed are denied.

It is so ordered.

6/1, 2017


The Honorable J. Mark Hayes, II

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
Quentin S. Broom, Jr.	)	
	)	C.A. No. 2008-CP-42-3397
Plaintiff,	)	
	)	
vs.	)	ORDER OF DISMISSAL WITH PREJUDICE
	)	WITH RESPECT ONLY TO TEN STATE
Ten State Street, L.L.P., Timothy D.	)	STREET, LLP AND TIMOTHY D. SCRANTOM
Scrantom, and H. Hugh Andrews,	)	
	)	
Defendants.	)	
_____	)	

It appears that the above action has been settled only among Plaintiff Quentin S. Broom, Jr. and Defendants Ten State Street and Timothy D. Scrantom.

Now comes the Plaintiff, through his undersigned counsel, and Defendants Ten State Street, LLP and Timothy D. Scrantom, through their undersigned counsel, requesting this Court to order dismissal with prejudice only as to the claims and action among Plaintiff Quentin S. Broom, Jr. and Defendants Ten State Street and Timothy D. Scrantom, pursuant to Rule 41(a)(2), SCRCF. The claims, counterclaims, and action between Broom and Andrews are not affected by this Order. Accordingly,

IT IS ORDERED that the above-entitled action is hereby dismissed, discontinued and forever ended, with prejudice only as to the claims and action among Plaintiff Broom and Defendants Ten State Street, LLP and Timothy D. Scrantom.

AND IT IS SO ORDERED.

The Honorable J. Mark Hayes, II
Presiding Circuit Judge, Court of Common Pleas
Spartanburg County

_____, 2017

We so move and consent:

s/Matthew T. Richardson
Wyche Law Firm
P.O. Box 12247
Columbia, South Carolina 29211-2247

Attorney for Plaintiff Quentin S. Broom, Jr.

s/R. Davis Howser
of HOWSER, NEWMAN & BESLEY, LLC
Post Office Box 12009
Columbia, South Carolina 29211

Attorneys for Defendants Ten State Street
and Timothy D. Scrantom



Spartanburg Common Pleas

Case Caption: Quentin S Broom Jr , plaintiff, et al VS Ten State Street L L P ,
defendant, et al
Case Number: 2008CP4203397
Type: Order/Dismissal

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2017-06-29 10:50:25 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	Civil Action No. 2008-CP-42-3397
	)	
Quentin S. Broom, Jr.,	)	
	)	
Counterclaims Defendant,	)	CONSENT ORDER
v.	)	TO REALIGN THE PARTIES
	)	AND CONFORM THE CAPTION
H. Hughes Andrews,	)	
	)	
Counter-Claimant.	)	
	)	
	)	

This matter is before the Court on the consent motion of Quentin S. Broom, Jr. to realign the parties and conform the caption to reflect that the only claims remaining in this case are H. Hughes Andrews' counterclaims against Broom. Andrews consents to the parties being realigned and the caption reflecting this change.

On June 20, 2017, the claims of Broom against former Defendants Ten State Street and Timothy D. Scrantom were released and dismissed. In addition, on June 20, 2017, Broom's claims against Andrews were dismissed by a consent stipulation with prejudice. Therefore, the only claims remaining in this matter are the counterclaims by Andrews against Broom.

Now, **IT IS ORDERED**, for good cause shown, that the Motion to Realign the parties and conform the caption is granted.

The Honorable J. Mark Hayes, II

_____, 2017
Spartanburg, SC

WE SO MOVE AND CONSENT:

s/Matthew T. Richardson

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Attorneys for H. Hugh Andrews



Spartanburg Common Pleas

Case Caption: Quentin S Broom Jr , plaintiff, et al VS Ten State Street L L P ,
defendant, et al
Case Number: 2008CP4203397
Type: Order/Consent Order

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2017-06-29 10:49:26 page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
H. Hughes Andrews,)
) Civil Action No. 2008-CP-42-03397
) PLAINTIFF,)
) v.s.)
) Quentin Broom, Jr.,)
))
DEFENDANT)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED. (CHECK REASON): ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled); ☐ Other _____.
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy; ☐ Binding Arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____.

THIS ORDER:

☐ Terminates the case. OR ☒ Does not terminate the case.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of judgment by the Court:

This matter came before the Court on Broom's motion for JNOV, or, in the alternative, for a new trial and his Motion to Alter or Amend and for Reconsideration. This matter additionally came before the Court on Andrews' Petition for Attorneys' Fees and Costs.

After considering the motions, the responses to the motions, arguments and various documents, the Court requests that Mr. Pillsbury prepare a formal Order denying Broom's motions. Mr. Pillsbury is also requested to prepare an Order granting the Petition for Attorneys' Fees and Costs as requested.

Factually, this is a difficult case due, in no small measure, to the age of the facts and the lengthy procedural history of the litigation. Nevertheless, in issuing its original Order, this Court felt that Andrews had met his burden of proof as to Broom's conduct and was entitled to damages pursuant to South Carolina Code Section 33-18-410. In that Order, this Court limited the actual damages to \$510,000. This Court also believed that Andrews presented a compelling case for punitive damages. In the original Order, the proper analysis was set forth. After another review, this Court's opinion has not changed and no alteration or change in the analysis or the amount is warranted.

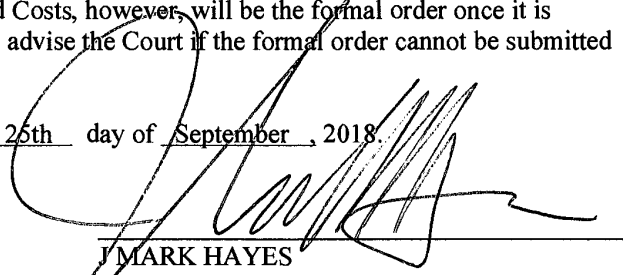
The issue of attorney's fees and costs was properly raised. While the defendant argues that plaintiff should not be declared the "successful" party for the purposes of an attorneys' fee award due to the limited award granted by this Court relative to the overall relief originally sought in the counterclaims,



this Court will award the full amount of attorneys and cost sought by Andrews' lawyers in the amount of \$194,406.53. This Court is aware of the protracted nature of this case and well aware that Broom brought numerous claims against Andrews. Even though Broom eventually abandoned the claims brought against Andrews, that abandonment was due to the efforts of Andrews' legal counsels. In reviewing the pleading history of this case, Andrews pleading of attorney fees appears consistent, therefore this Court cannot find a lack of notice or surprise to Broom. Even though the final petition arrived after the Court's requested deadline of 15 days, the form and substance of the petition complies with the traditional elements of an award of attorney fees and costs. This Court can find no prejudice suffered to Broom because of the delay in submitting the petition.

This email will be incorporated into a form 4 for filing. The final order of this Court on these motions and the Petition for Attorneys' Fees and Costs, however, will be the formal order once it is signed and filed with the Clerk of Court. Please advise the Court if the formal order cannot be submitted within 30 days.

Dated at Spartanburg, South Carolina, this the 25th day of September, 2018.



J. MARK HAYES
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2018, and a copy mailed first class this _____ day of _____, 2018 to attorneys of record or to parties (where appearing *pro se*) as follows:

CLERK OF COURT

ATTORNEYS FOR THE PLAINTIFF

Rodney F. Pillsbury
25 Mills Ave.
Greenville, SC 29605

Blake Hewitt
Bluestein Thompson Sullivan
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Columbia, SC 29202

ATTORNEYS FOR THE DEFENDANT

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Spartanburg, SC 29304

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McGowan, Hood & Felder, LLC
1517 Hampton St.
Columbia, SC 29201

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Quentin S. Broom, Jr.,)
Counterclaim Defendant,)
v.)
H. Hughes Andrews,)
Counter-Claimant.)
_____)

C.A. No.: 08-CP-42-3397

ORDER AND JUDGMENT

2017 NOV -8 AM 10:11
H. HUGHES ANDREWS

This case comes before the Court following a non-jury trial beginning June 26, 2017 and concluding June 28, 2017. Three witnesses testified. The parties introduced numerous exhibits. Following the conclusion of Andrews' case, Broom made a motion for directed verdict. The Court denied Broom's motion. Following the conclusion of all evidence, Broom renewed his motion for directed verdict. The Court denied Broom's motion and allowed the parties to make closing arguments.

The Court has done its level-best to consider all evidence and arguments. Having considered those materials, having also taken the opportunity to evaluate and weigh the credibility of witnesses, and having heard the arguments of counsel, the Court enters this order and judgment.

Brief Background Summary

This case is nearly 12 years old. It began in September 2005, when Quentin Broom sued Hugh Andrews, a law firm (Ten State Street), and two men who worked at the law firm: Broom v. Ten State Street, L.L.P., et al., C.A. No. 2005-CP-42-2875. Andrews brought counterclaims

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against Broom in 2006, pleading his counterclaims on his own behalf as well as on behalf of Tri-Star Communications, an entity he and Broom jointly owned. By consent motion and order, that case was removed from the docket pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure, and restored in 2008 under its current case number: Broom v. Ten State Street, L.L.P., et al., C.A. No. 2008-CP-42-3397.

There was an interlocutory appeal (more on that later) and parties were dismissed prior to trial. Shortly before trial, Broom also dismissed his claims against Andrews and all other parties.

Because of these intermediate events, the trial only concerned Andrews' claims, which were originally brought as counterclaims. The trial proceeded as though Andrews was the plaintiff and Broom was the defendant. Attorneys Rodney Pillsbury and Blake Hewitt were present for Andrews. Attorneys Matthew Richardson, Patrick Knie, Whitney Harrison, and McKinley Hyman were present for Broom.

The claims were contested, but it was generally established that Broom and Andrews had been co-owners of Tri-Star Communications, a business that ran video poker machines primarily in South Carolina during the 1990s. Following a ban of these machines in South Carolina, Broom and Andrews transferred them to the Dominican Republic and began operating them through a separate foreign entity (Worldwide Entertainment or "Worldwide" hereafter). It was generally established the business had 1,122 video poker machines in the Dominican Republic in the year 2005 via Worldwide, which Broom *de facto* controlled. It was generally established that unilaterally Broom orchestrated a sale of these machines in 2005 (over Andrews' objection) and that Tri-Star ceased operating almost immediately thereafter.

Andrews' claims against Broom can be generally characterized as fraud and self-dealing. Andrews alleges Broom paid himself an excessive salary without Andrews' consent.

Andrews also alleges Broom sold the video poker machines below market value; devising and executing a scheme to convert the machines to his own use without regard for Andrews' interests. Broom disputed each of these allegations. These matters were the focus at trial.

Preliminary Issues

Later sections of this order contain a detailed discussion of the evidence and the claims the Court found to be most relevant, but two preliminary matters require attention. Broom argues Andrews' claims are barred by *res judicata* (claim preclusion) and the law of the case doctrine. The Court has carefully considered Broom's arguments and respectfully denies them.

A few sentences about procedure are required to lay out these arguments. Andrews originally pled his counterclaims in 2006. He brought these on his own behalf as well as on behalf of Tri-Star.

Broom filed a motion to dismiss Andrews' counterclaims in September of 2011, seeking dismissal on the basis that all of Andrews' claims were derivative claims, pursuing recovery for harm done to Tri-Star in the first instance, not to Andrews individually. Broom claimed dismissal was warranted because Andrews had not complied with the pleading requirements for derivative lawsuits set out in Rule 23, SCRCP.

Andrews lodged two arguments in response to Broom's motion. First, Andrews asked the Court to relax the rule that derivative claims belong to the corporation and not the shareholder, noting this case involved a corporation with only two shareholders, one of whom was suing the other. Second, Andrews asked to amend his counterclaims.

The Court dismissed the counterclaims in November of 2011, directing in the order that the dismissal would be "with prejudice." Andrews appealed that order to the Court of Appeals.

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In 2015, the Court of Appeals issued an unpublished opinion remanding the case to this Court with specific direction for the Court to rule on Andrews' motion to amend his pleading. Op. No. 2015-UP-030 (S.C. Ct. App. filed Jan. 14, 2015). Later that same year the Supreme Court reversed, holding that the Court of Appeals should not have addressed Andrews' motion to amend—even if only for the purpose of remanding for a ruling—because this Court had not decided the motion. Op. No. 2015-MO-057 (S.C. Sup. Ct. filed Sept. 30, 2015).

Andrews began seeking a ruling on his motion to amend after the Supreme Court issued the remittitur. In July of 2016, this Court issued an order allowing Andrews to amend his pleading to state his counterclaims derivatively as well as directly, and to comply with the derivative pleading requirements in Rule 23.

The Court's order recognized and adhered to its ruling that all of Andrews' counterclaims were properly characterized as derivative claims. The Court allowed the claims to be stated by Andrews individually for the sole purpose of allowing Andrews to preserve for further review his argument that there is no distinction between direct and derivative claims when one of a corporation's two owners is suing the other owner.

Broom's "preclusion" arguments relate to this Court's 2011 dismissal of the counterclaims "with prejudice." The argument also involves Andrews' interlocutory appeal and this Court's 2016 order allowing Andrews to re-assert his counterclaims in a way that complies with Rule 23. Broom argues the 2011 dismissal of the counterclaims was a "final order." Broom contends Andrews abandoned his prior appeal of that final order and that the decision to dismiss Andrews' counterclaims is the law of this case. The Court disagrees.

First, the key term is not "final order," but "final judgment." A final judgment terminates the entire case. *Bone v. U.S. Food Serv.*, 404 S.C. 67, 75, 744 S.E.2d 552, 557 (2013) (quoting



Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Envt'l Control, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010)). Rule 54(b), SCRPC, allows a court to direct a final judgment on fewer than all claims in a case, but the rule also instructs that unless the Court expressly directs the entry of judgment, any intermediate order is subject to revision, at any time, until a final judgment is issued. A final judgment happens when a case reaches the "end of the road." *Baldwin Const. Co. v. Graham*, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004).

This Court's 2011 order was not a final judgment. The order dismissed Andrews' counterclaims, holding they were improperly pled as individual claims when they were in fact derivative claims that did not comply with Rule 23. That order did not direct the entry of any judgment. It was also not the end of the case. The order was not even the end of Andrews' pleading. Broom was still suing Andrews; Andrews' answer remained pending. Andrews moved to amend his pleading in response to the order dismissing his counterclaims. The counterclaims had not reached the end of the road as long as that motion remained pending.

The Court of Appeals recently noted "the ease with which pleadings may now be amended" and held "the fate of [a party's] counterclaims have not been finally determined as long as his motion to amend hangs in the balance." *Tillman v. Tillman*, Op. No. 5493 (S.C. Ct. App. filed June 14, 2017) (Shearouse Adv. Sh. No. 23 at 34, 36-37). The Supreme Court recently expressed the same sentiments, explaining amendments are "strongly favor[ed]" and "the court is encouraged to freely grant leave to amend." *Patton v. Miller*, Op. No. 27730 (S.C. Sup. Ct. filed July 26, 2017) (Shearouse Adv. Sh. No. 28 at 87, 99). The decision instructs "If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits." *Id.* at 100 (quoting

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Foman v. Davis, 371 U.S. 178, 182 (1962)). These principles point strongly in favor of allowing Andrews the opportunity to have his claims heard.

There has been no final judgment until *this* Order. There is no mandate or decision from an appellate court establishing *any* law for this case. The Court believes the proper application of the controlling principles counsel strongly in favor of parties' claims being heard on the merits.

A single cause of action: Andrews' amended pleading asserts 10 claims against Broom: breach of fiduciary duty, breach of contract, breach of contract accompanied by a fraudulent act, breach of the covenant of good faith and fair dealing, conversion, violation of the corporate standards for directors, violation of the corporate standards for officers, promissory estoppel, fraud, and negligent misrepresentation. Broom filed a motion to dismiss prior to trial, arguing Andrews' claims constitute a single cause of action for breach of the standards of care for an officer and director.

The Court agrees. Precedent explains the South Carolina Business Corporation Act codifies the common law duties owed by officers and directors to shareholders. *Clearwater Trust v. Bunting*, 367 S.C. 340, 349, 626 S.E.2d 334, 338 (2006). Andrews' pleading, evidence, and arguments consistently indicated his claims are classic claims for corporate self-dealing: Andrews claims Broom paid himself excessive and unauthorized salary without Andrews' consent, sold the video poker machines below market value, converted the machines to his own use, and failed to consider Andrews' interests. These claims constitute a single cause of action for breach of the corporate code.

Partnership Standards Do Not Apply: The parties contested the standard of care Broom owed to Andrews. Broom argued the standard was that of a director. Andrews argued Tri-Star

operated as a partnership notwithstanding the fact that Tri-Star was not a partnership, but was instead a corporation.

The Court is not aware of a vehicle or mechanism allowing the Court to impose partnership duties on the members of this corporation. These parties chose to operate through the corporate form—they did not form and operate a partnership. The applicable standards of care between Broom and Andrews are the standards from the corporate code; specifically, the standards of conduct for officers and directors from Articles 3 and 4 of Title 33, Chapter 8.

Merits: Andrews' claim under the South Carolina Business Corporation Act asserts actual damages for three (3) separate areas: (1) Reimbursement for Broom's unauthorized salary payments to himself; (2) Monies owed from the unauthorized sale of the video poker machines; and (3) Monies due Andrews from Broom's subsequent lucrative income from the Dominican Republic. After considering all the evidence, the Court finds in favor of Andrews as to the first item, but finds for Broom as to the latter two. The Court concludes Broom did not honor the applicable standards of care. Instead, the Court is convinced—and finds as a fact—that Broom acted fraudulently and with bad faith with regard to the monies Broom unilaterally paid to himself in 2004 and 2005.

To be sure, Broom and Andrews tell very different stories. Broom testified that it was a struggle for operations in the Dominican Republic to be profitable. There were problems converting Dominican profits to U.S. dollars and there were problems related to import and export taxes. Broom also testified about legal issues surrounding Worldwide's poker games in the Dominican Republic.

Broom said he worked for years without taking a salary to help the business get on its footing. Broom also said the parties always contemplated his being entitled to a salary, both

prospectively and retroactively. As to the latter point, Andrews testified that he consented to a salary for Broom only after Andrews was paid for the video poker machines he sold to Tri-Star. Andrews believed Broom should not have taken a salary because Andrews was never paid for those machines.

Broom controlled the financial operations of Tri-Star. He admitted that when he began paying himself a salary, he did not consult with Andrews as to the amount (because he believed he was not obligated to); nor did he even notify Andrews he had begun paying himself. Although Tri-Star had been in operation since 1997, Broom did not begin paying himself a salary until December 31, 2004. From the financial records of Tri-Star, Broom paid himself the following amounts on the following dates:

December 31, 2004	\$400,000.00
January 31, 2005	\$130,000.00
February 28, 2005	\$130,000.00
March 31, 2005	\$185,000.00
April 30, 2005	<u>\$ 75,000.00</u>
<u>Total</u>	<u>\$920,000.00</u>

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H. HOPE CLARKLEY

Broom testified he believed these were justified because the company had achieved profitability. However, the evidence directly refutes this assertion. For example, in order to pay himself \$400,000.00 in salary from Tri-Star on December 31, 2004, Broom borrowed \$325,000.00 from relatives and his other company, Best Games. [Pl. Ex. 23] If Tri-Star had been profitable enough to afford a \$400,000.00 salary payment to Broom, it would not have had to borrow 81.25% of that amount to make the payment.

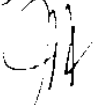
This transaction clearly and convincingly evidences Broom's bad faith and fraudulent intent. There is no legitimate business reason a company would borrow \$325,000.00 from

family members to make a self-dealing \$400,000.00 salary payment to an employee on the last business day of the year.

Other financial transactions demonstrate Broom's bad faith and fraudulent intent. In February 14, 2005, Broom purchased a \$3.5 Million-dollar estate in Miami, Florida. Within the context of the money transfers and payments Broom made to himself beginning on December 31, 2004, the Court is convinced the purchase was made as part of Broom's plan to close down the Dominican operations and re-open them without Andrews. The homestead exemption under Florida law would have made Broom *de facto* judgment-proof from any claims asserted by Andrews.

Additionally, whenever Broom wanted to move money from Worldwide to Tri-Star, he would simply have the funds wire transferred to Tri-Star's account. However, in order to meet Tri-Star's unilateral salary commitment Broom made for himself, it became incumbent for the Dominican Republic's partner in Worldwide (Edmund Elias Yunes) to wire transfer personal funds to Tri-Star. Mr. Yunes transferred \$100,000.00 on April 28, 2005 [Pl. Ex. 27] and \$90,000.00 on June 29, 2005 [Pl. Ex. 29]. Clearly, neither Tri-Star nor Worldwide were independently profitable as Broom testified.

As to the purported sale of the video poker machines themselves, Broom testified that he sold 1,132 video poker machines for the sum of \$400,000.00 in September 2005. The parties stipulated that Andrews did not receive notice of any potential sale until after the sale had already occurred. Andrews vehemently objected to the sale because he believed the machines were worth considerably more. Indeed, Andrews' expert witness, Mr. Mike Fletcher, testified that the CPU boards alone on the machines were worth \$1,122,000.00. Mr. Fletcher opined a value of the machines in September 2005 between \$1,767,150.00 and \$1,512,000.00.

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When testifying about the difficulty of operating the machines in the Dominican Republic to justify his salary, Broom stated that the machines had extensive licensing issues that needed to be overcome to have them domesticated in the Dominican. However, when it came to the sale of the machines, literally Broom only had one (1) piece of paper to document the entire sale of \$1,132 machines: a receipt showing someone paid Broom's employee, Frank Dillashaw, \$400,000.00 cash in US dollars. There are no title transfers; no deposit slips; no other documents of any kind evidencing the sale of 1,132 video poker machines.

Meanwhile, back in South Carolina, Broom never deposited the \$400,000.00 cash in Tri-Star's account. Broom made a \$400,000.00 deposit in Tri-Star's account on November 3, 2005. This was designed to give the appearance of depositing the funds from the alleged sale of the machines, however, the deposit slip reveals the \$400,000.00 came from multiple local accounts (money he allegedly borrowed from family and/or other companies he controlled). [Pl. Ex. 33]

Broom testified that he did not know what happened to the 1,132 poker machines formerly belonging to Tri-Star. He testified that the money he made in the Dominican Republic after closing Tri-Star was a different video game machine. The Court has serious reservations about the credibility of this testimony. Other than one manual, Broom did not provide any documented evidence to support his testimony that the machines were not the video poker machines formerly owned by Tri-Star: not one picture; receipt; title record or any other document which easily would have confirmed Broom's story.

Based upon the totality of the financial records and other evidence, the Court has serious concerns about Broom's purported sale in September 2005.. However, the prior Bankruptcy Court case significantly affects this Court's view of the video poker machines issue: *In re: Tri-Star Communications, Inc.*, C.A. 2005-45299-hb (D.Bnkpt.SC). There, the parties stipulated in



the bankruptcy proceeding that the Attorney General of the Dominican Republic did issue a directive against the video poker machines, making them illegal. (Bankruptcy Court Order Paragraphs 12, 13 and 14). With the prior stipulation by both parties, this Court must accept those facts as true. Thus, this Court will infer that the immediate motivation in selling the machines was the Attorney General's action of prohibiting the machines and not the Defendant's desire to open another gaming operation. The record from the bankruptcy proceeding also indicates that the sale/liquidation of the machines was unilateral on the part of the Defendant. Therefore, the manner of sale remains an issue in this case.

Again, the prior bankruptcy proceeding affects this Court's view of the manner of the sale. With the actions of the Attorney General weighing on the liquidation, a reasonable inference is that the sale of the machines would be at a discounted price. At the time of the sale, the machines were illegal in the Dominican Republic and the Attorney General was in the process of hunting for the machines. But for this stipulated factual background, this Court could be in position to more favorably view the sale of machines as theorized by the Plaintiff. The facts as stipulated to the Bankruptcy Court govern this Court's view of those facts. Therefore, this Court cannot award a value for the machines under theories of liability offered by Plaintiff. Additionally, if the machines were sold at a price below the dark market rate as testified by Plaintiff's expert, then both the Plaintiff and Defendant have suffered from a bad business decision forced on them by the machines being declared illegal and subject to government confiscation.

Regarding the monies Broom earned from his operations in the Dominican Republic following the liquidation of Tri-Star Communications, the Court is highly suspicious that the income was not related to the machines formerly owned by Tri-Star. However, the evidence in



the record does not support the conclusion that Plaintiff is entitled to income from Defendant's subsequent business. The financial success of Defendant's subsequent gaming venture standing alone does not meet the standard or burden of proof. While Plaintiff accurately summarizes many aspect of the record before this Court, the Defendant voluntarily dismissed all of its claims against Plaintiff. Therefore the burden of proof rest solely on the Plaintiff. Even though this Court does find the Defendant liable under the theories offered by Plaintiff for the payment of salary, the same theories are not support by the facts presented to reach into the Defendant's subsequent gaming venture.

The Court finds that Broom acted fraudulently and in bad faith. It is clear that Tri-Star did not have the income to support the exorbitant salary Broom unilaterally began paying himself on New Year's Eve 2004. The only reasonable interpretation, and the Court so finds, is that by the end of 2004, Broom began a scheme by which he would close down Tri-Star and open operations in the Dominican Republic with Tri-Star's video poker games under an entity deliberately designed to exclude Andrews. Broom conceived and executed a scheme to take all the cash out of Tri-Star, liquidate the company, and cut Andrews out of the business.

The Court finds these facts by clear and convincing evidence. The timeline and explanation Andrews offered in his closing summation was a compelling explanation of how different events fit together. The records of Tri-Star demonstrate that Broom was able to pull money out of Worldwide any time he wanted. Broom himself testified that he controlled Worldwide. Broom pays himself over \$1,000,000.00 in salary at a time when Tri-Star owed Andrews significant sums for the video games. Broom moved money out of Worldwide at a time when that company owed significant sums for taxes in 2003 and 2004. The court finds it incredulous 1,122 video poker machines would be sold and the sole record is a single piece of



paper stating \$400,000 in US dollars cash was received for 1,122 video poker machines. [Def.Ex. 14] Those funds, if ever received, were never deposited in Tri-Star's account.

When placed within the sequence of financial transactions, Broom's purchase in February 2005 of a \$3.5 Million dollars of a luxurious waterfront estate in Miami, Florida fits neatly into his scheme to cut Andrews out of the Dominican operations. The large monthly salary payments that Broom unilaterally paid himself (\$130,000.00 in January 2005; \$130,000.00 in February 2005 and \$185,000.00 in March 2005) correspond with the timeframe that Broom presumably would be attempting to secure a mortgage and needed to demonstrate a regular income stream.

Given how Broom secretly borrowed money from family and his other companies to give the appearance of legitimate transactions, it is clear that Broom's actions were fraudulent and in bad faith with respect to his obligations to Andrews and to Tri-Star.

Disposition/Recovery

Having concluded Andrews is entitled to a monetary judgment, the Court is required to again encounter the issue of direct claims versus derivative claims.

The monetary judgment represents the amount of harm the Court finds Broom's actions inflicted on Andrews. Broom gained from his conduct; Andrews is the only Tri-Star shareholder who did not gain. The recovery in a derivative claim normally goes to the corporation, but treating this recovery as a "derivative" recovery would require Andrews and Broom to equal shares in the judgment.

The American Law Institute has proposed a principle for handling such circumstances. This principle explains:

In the case of a closely held corporation, the court in its discretion may treat an action raising derivative claims as a direct action, exempt it from



those restrictions and defenses applicable only to derivative actions, and order an individual recovery, if it finds that to do so will not (i) unfairly expose the corporation or the defendants to a multiplicity of actions, (ii) materially prejudice the interests of creditors of the corporation, or (iii) interfere with a fair distribution of the recovery among all interested persons.

Principles of Corporate Governance: Analysis and Recommendations, A.L.I., § 7.01(d), cmt. (e) (1994). The rationale of this exception is that when the purposes of a derivative suit are absent, proceeding derivatively forces litigants to comply with formalities that are cumbersome and futile. *Id.*

South Carolina has examined this exception in four cases: *Davis v. Hamm*, *Todd v. Zaldo*, *Babb v. Rothrock*, and *Brown v. Stewart*. None of these cases apply this exception and none of them reject this exception. This Court notes its decision at the pleading stage declining to apply the exception and requiring Andrews to plead the claims derivatively.

Now that a full record has been developed, the Court is convinced the appropriate recovery in this case is to Andrews, individually. In a two-person corporation, one shareholder's self-dealing necessarily corresponds to the other shareholder's harm. The record proves that principle is true here. All of Broom's gains that were ill-gotten were of necessity taken at Andrews' expense.

There is no risk of a multiplicity of actions. Tri-Star was administratively dissolved in 2009 and it only has two shareholders, one of whom is suing the other.

There are no outside creditors here. Broom asked the Court to take judicial notice of Tri-Star's involuntary bankruptcy and the bankruptcy court determined there were no claims against Tri-Star other than the claims of equity holders (Andrews).

An individual recovery will not interfere with a fair distribution of the recovery among interested persons. Again, the Court's judgment reflects the amount of financial damage done to Andrews. The Court has not been presented with and has not been able to discover any sensible argument against Andrews receiving an individual recovery in these circumstances.

Damages

Under S.C. Code Ann. § 33-18-410(9), when an officer/director has acted fraudulently and in bad faith, as Brooms has done here, the Court may award the aggrieved party damages. The Court finds that Andrews has proven damages casually related to the fraudulent and bad faith actions of Broom. Andrews claims several different items of damage. First, it is undisputed that from December 31, 2004 until September 2005, Broom paid himself \$1,020,000.00 in salary (the bulk of which was done within a 120-day period). The Court will treat these payments as an unauthorized distribution. Therefore, Andrews is entitled to one-half of those payments, or, **\$510,000.00**. Andrews also argued for prejudgment interest on these distributions. Under South Carolina law, the Court does not find that he is entitled to prejudgment interest.

As discussed previously, the Court denies Andrews' claims for monies related to the sale of the machines and for monies related to Broom's earnings subsequent to the purported sale of the machines in 2005.

Andrews also request punitive damages. A detailed explanation of the purpose and legal requirements for awarding punitive damages can be found in *Mellon v. Lane*, 377 S.C. 261, 659 S.E.2d 236 (Ct. App. 2008):

Punitive damages, alternatively known as exemplary damages, are imposed as punishment. *Clark v. Cantrell*, 339 S.C. 369, 378-379, 529 S.E.2d 528, 533 (2000). Punitive damages are allowed in the interest of

society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future. *Id.* Moreover, they serve to vindicate a private right by requiring the wrongdoer to pay money to the injured party. *Id.*

At least three important purposes are served by a punitive damages award: (1) punishment of the defendant's reckless, willful, wanton, or malicious conduct; (2) deterrence of similar future conduct by the defendant or others; and (3) compensation for the reckless or willful invasion of the plaintiff's private rights. *Id.* The paramount purpose for awarding punitive damages is not to compensate the plaintiff but to punish and set an example for others.

On the issue of punitive damages, the highest burden of proof known to the civil law is applicable. Section 15-33-135 of the South Carolina Code provides: "In any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence." S.C. Code Ann. § 15-33-135 (Supp. 2003). Punitive damages can only be awarded where the plaintiff proves by clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights. *Taylor v. Medenica*, 324 S.C. 200, 220, 479 S.E.2d 35, 46 (1996); *Lister v. NationsBank of Delaware*, 329 S.C. 133, 149, 494 S.E.2d 449, 458 (Ct.App.1997).

There is no formula or standard to be used as a measure for assessing punitive damages. However, factors relevant to consideration of punitive damages are: (1) the character of the defendant's acts; (2) the nature and extent of the harm to plaintiff which defendant caused or intended to cause; (3) defendant's degree of culpability; (4) the punishment that should be imposed; (5) duration of the conduct; (6) defendant's awareness or concealment; (7) the existence of similar past conduct; (8) likelihood the award will deter the defendant or others from like conduct; (9) whether the award is reasonably related to the harm likely to result from such conduct; and (10) defendant's wealth or ability to pay. See *Gamble v. Stevenson*, 305 S.C. 104, 111-112, 406 S.E.2d 350, 354 (1991); see also *Welch v. Epstein*, 342 S.C. 279, 306, 536 S.E.2d 408, 422 (Ct.App.2000) ("Under *Gamble*, the trial court is not required to make findings of fact for each factor to uphold a punitive damage award.").

Id. at 289-291, 659 S.E.2d at 251-252.

The Court finds by clear and convincing evidence that Andrews is entitled to punitive damages. When all evidence is placed in context and within its timeframe, it is clear to this

Court that Broom engaged in a deliberate pre-planned scheme to shut down his business with Andrews by unilaterally paying himself an authorized salary of over one million dollars during the last months Tri-Star was in operation. The plan was meticulously conceived. For example, there is no legitimate business reason to borrow \$325,000.00 for the sole purpose of paying Broom \$400,000.00 in payroll two (2) weeks later. In order to make a payroll payment to himself of \$400,000.00 on December 31, 2004, Broom had to coordinate with family members in advance to obtain substantial monies loaned to him to help him effectuate this purpose. Similarly, when concealing the \$400,000 for alleged proceeds for the sale of the machines, Broom once again had to coordinate with family members to make this deposit on November 3, 2005. These actions evidence a clear intent to conceal the truth from Andrews.

The Court agrees with Andrews' argument that this scheme was pre-conceived well in advance and executed with surgical precision to cut Andrews out of the business operations in the Dominican Republic. The Court is equally concerned that Broom may likely have violated relevant tax laws with the manner by which he attempted to document the sale of the poker machines, given the fact that \$400,000.00 in cash was allegedly received in the Dominican Republic but this income was by Broom's admission not reported.

The Court also finds that awarding punitive damages in this case would deter others who may who may seek to engage in similar misconduct in the future.

The actual damages for Andrews totals \$510,000.00. Under South Carolina law, to pass constitutional scrutiny, a punitive award can be no more than ten (10) times actual damages. The Court finds that Broom's fraudulent and bad faith conduct warrants an award equal to Plaintiff's actual damages. An award of \$510,000.00 fairly and accurately reflects the scope of Broom's

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misconduct, is reasonably related to the harm suffered by Andrews, and satisfies all other factors outlined in *Gamble* and *Mellon*.

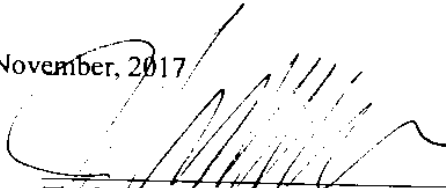
The Court has considered the reprehensibility of Broom's conduct and finds it was the result of an intentional design to deceive Andrews for Broom's financial benefit. See *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 587, 686 S.E.2d 176, 185 (2009) (requiring a court to consider the degree of reprehensibility when reviewing punitive damages). The Court has already considered the ratio and finds a 1 to 1 ratio of actual and punitive damages is reasonable and proportional to the harm inflicted on Andrews.

The Court has also considered comparative penalty awards. The harm to Andrews was purely economic, but it was the result of a meticulously-planned and executed scheme designed to siphon all the value out of Tri-Star while maximizing Broom's take and minimizing the extent to which the company would repay Andrews. South Carolina courts have long upheld punitive awards for cases involving fraudulent conduct. See, e.g., *Jordan v. Holt*, 362 S.C. 201, 608 S.E.2d 129 (S.C., 2005) (punitive award for self-dealing upheld). The Court believes a 1 to 1 ratio between actual damages and punitive damages is justified considering this history and was unable to locate any case suggesting the punitive award in this case was out-of-step with comparable awards.

Finally, Andrews has requested payment of attorney's fees and costs as permitted by SC Code 33-18-410(b): "If the court finds that a party to the proceeding acted arbitrarily, vexatiously, or otherwise not in good faith, it may award other parties their reasonable expenses, including counsel fees and the expenses of appraisers or other experts, incurred in the proceeding." Broom certainly has acted "arbitrarily, vexatiously, or otherwise not in good faith." As such, the Court finds that Andrews is entitled to attorney's fees and costs.

As noted above, this case has had a lengthy litigation history. As such, the Court will give Andrew's fifteen (15) days from the date of entry of this order to submit a petition for attorney's fees and costs. Broom will have fifteen (15) days from Andrew's petition to file any response or reply. Thereafter, the Court will rule on the attorney's fee and cost amount to be added to the awards set forth herein.

It is so ordered, this 2^d day of November, 2017


The Honorable J. Mark Hayes, II
Presiding Circuit Court Judge

11/2, 2017

2017 NOV -8 AM 10:12
M. HOPE BLACKBERRY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

H. Hughes Andrews,

Plaintiff,

v.

Quentin S. Broom, Jr.,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2008-CP-42-03397

**FINAL ORDER
and JUDGMENT**

This case came before the Court on a motion filed by the Defendant and a motion filed by the Plaintiff. The Defendant's motion is for JNOV, or, in the alternative, for a new trial, to alter or amend, and for reconsideration. The Plaintiff's motion is for attorney's fees and costs.

The Court conducted a hearing on the motions August 23, 2018.

On September 26, 2018, the Court entered a Form 4 denying the Defendant's motion and granting the Plaintiff's motion. The Form 4 explained this final, formal order would follow.

This has been a difficult case. Yet, after considering all of the parties' filings and arguments, as well as the evidence, the Court remains convinced its prior Order and Judgment is correct.

The judgment entered after the bench trial in this case was based principally on the Court's examination of the circumstances surrounding the Defendant's withdrawal of \$1,020,000 from the parties' business in 2004 and 2005. Business records show the Defendant paid himself \$400,000 on December 31, 2004 and that he made other large payments to himself over the following months.

The evidence also showed, however, that \$325,000 of the first salary payment was borrowed from the Defendant's relatives and from one of the Defendant's other companies. The

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evidence further showed that a partner in the Dominican Republic *personally* transferred \$190,000 into the business during this time. The business also owed significant sums for 2003 and 2004 taxes.

In the Court's view, the foregoing evidence proved Tri-Star Communications plainly did not have sufficient income to support the salary Defendant began paying himself on New Year's Eve in 2004.

The outcome of this case turned on a credibility determination, which was a factual dispute. The Plaintiff claimed he did not consent to the Defendant's salary and that circumstances of the loans and salary payments constituted strong evidence of a scheme to cut him out of the business. The Defendant claimed the parties agreed he was entitled to a salary, that he had the authority to set his salary, and that business had been doing well enough to support the salary. As described above, the Court believes the evidence directly refutes the Defendant's argument that the business had sufficient income to support the salary payments he was taking. The Plaintiff presented compelling evidence that the Defendant used his management of Tri-Star for his own benefit in 2004 and 2005 rather than for the benefit of Tri-Star and its other shareholder. The Defendant's explanation was not credible.

I.

The Defendant's motion challenges the admission of various items of evidence during trial. This was a bench trial and the Court elected to admit all evidence before evaluating it in a non-jury setting and giving weight to the evidence as it deemed appropriate. As described above, the outcome of this case ultimately turned on the factual finding that the Plaintiff's evidence was compelling and that the Defendant's explanation for the events was not believable and belied by the company having to borrow much of the money he elected to pay himself.

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The Defendant's motion also challenges the award of punitive damages. The Order and Judgment included an amount of punitive damages that was equal to the \$510,000 compensatory award. As stated there, the Court believes the Plaintiff made a compelling case for an award of punitive damages and that a 1 to 1 ratio between compensatory and punitive damages is evidence that the award is within constitutional boundaries and is not excessive.

The Court has considered the criminal penalties for similar misconduct as outlined in the Plaintiff's return to the Defendant's motion. Comparison to civil and criminal penalties can provide evidence that a punitive award is excessive. See *BMW v. Gore*, 517 U.S. 559, 583 (1996). That comparison does not suggest a punitive award of roughly \$500,000 is excessive.

All other arguments on the motion for a JNOV, for a new trial, and for reconsideration not directly mentioned have been considered and are denied. This pertains to all arguments that have been previously raised and decided in prior orders as well as any arguments properly made in the post-trial motion for the first time.

II.

Regarding the Plaintiff's motion for attorney's fees and costs, the first thing the Court must consider is whether the motion is untimely. The Defendant says it is not timely because the petition was due December 2, 2017 and the Plaintiff did not request an extension of that deadline until two days later.

The Defendant says original deadline for the petition to be filed was fifteen days from November 17, 2017, which would be December 2. The Court takes judicial notice that December 2, 2017 was a Saturday. On Monday, December 4, the Plaintiff requested an extension of the deadline. The petition was filed two weeks later, on December 15, 2017. The Court declines to find the petition untimely.

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The Plaintiff seeks an award of \$194,306.53 in attorney's fees and costs.¹ The Defendant opposes this motion and says the request for attorney's fees was not adequately pled, not adequately proven, and that the Plaintiff only prevailed in part and should not be granted fees and costs for his "unsuccessful" prior appeal.

First, the Court finds the request for attorney's fees was properly raised. As described in the Form 4, this litigation has been exceptionally lengthy. Litigation began in 2005 when the party who is now the Defendant brought several claims against the party who is now the Plaintiff. The Defendant abandoned those claims shortly before trial. The Court entered an order re-aligning the parties the day after the trial concluded.

The Plaintiff first requested attorney's fees in his amended pleading filed in 2006. This request was repeated in his second amended pleading filed in 2016. In both instances, the request was stated in regards to defending against the Defendant's claims, however, as noted above, from the time this litigation commenced until shortly before trial, the Plaintiff was defending those claims and campaigning determinedly to keep his own claims in court. The Court finds the specific request for attorney's fees provided straightforward notice the Plaintiff was seeking fees and costs.

Second, the Court finds the request for fees was adequately proven. The Defendant argues the Plaintiff did not present evidence that the parties' business—Tri-Star Communications—was a statutory close corporation and that the Plaintiff is therefore not entitled to fees and costs under § 33-18-410(b) (part of the Statutory Close Corporation Supplement). At the hearing, however, the Plaintiff produced a Tri-Star share certificate with the language required by § 33-18-109(a), indicating the company was in fact a statutory close corporation. This had been attached to a previous summary judgment filing filed by the Defendant.

¹ The Form 4 accidentally listed this amount as \$194,406.53.

Third and finally, the Court finds the Plaintiff prevailed to a significant extent and that it is appropriate to award the full amount of requested fees and costs. Section 33-18-410(b) allows a successful party to recover “reasonable expenses, including counsel fees.” It may be true that the Plaintiff only prevailed in part, and that the prior appeal was “unsuccessful,” but those things are true only when speaking in the most formal and technical sense. The Plaintiff proved a scheme to shut him out of \$510,000 in proceeds from the parties’ business. The Plaintiff proved the Defendant’s conduct was deliberate and reprehensible, justifying an additional award of \$510,000 for a total award of \$1,020,000. The prior appeal was part of the Plaintiff’s sustained effort to keep his claims in court; claims the Plaintiff eventually pursued to a successful outcome. The fact that the Plaintiff was not awarded relief for the sale of the video poker machines or additional damages due to the Defendant’s income from a subsequent gambling operation in the Dominican Republic does not afford any basis for reducing the fees and costs awarded.

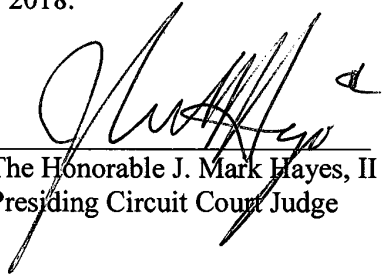
This Court has considered the nature, extent, and difficulty of the services rendered, the time and labor devoted to the case, the professional standing of counsel, the contingency of compensation, customary fees for similar services, and beneficial results obtained. This was an extremely difficult case. It required a great deal of effort to get it to trial and to try it. The hourly rates are reasonable, and the Plaintiff achieved a beneficial result.

All other arguments opposing the Plaintiff’s petition for attorney’s fees and costs not directly mentioned have been considered and are denied.

Judgment shall be entered in favor of the plaintiff Hugh Andrews against the Defendant Quentin Broom, Jr. in the amount One Million Two Hundred Fourteen Thousand Four Hundred Six and 53/100ths Dollars (\$1,214,406.53).

5 

It is so ordered, this 20 day of November, 2018.


The Honorable J. Mark Hayes, II
Presiding Circuit Court Judge

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2008CP4203397

Quentin S Broom Jr Tri Star Communications Inc	H Hughes Andrews	Quentin S Broom Jr	

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: **SEE ATTACHED ORDER**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
HUGHANDREWS	QUENTIN BROOM, JR	1,214,406.53

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

Court Reporter:

CPFORM4Cm
SCCA SCRPC Form 4C (Revised 2/17)

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
) IN THE COMMON PLEAS COURT
COUNTY OF SPARTANBURG)

Quentin S. Broom, Jr.,)
)
Plaintiff,)

vs.)

SUMMONS

Jury Trial Requested

C/A No. 2005-CP-42- 2875

Ten State Street, L.L.P.,)
Timothy D. Scrantom, Mark)
Broadwater, and H. Hugh)
Andrews,)

Defendants.)

TO: TEN STATE STREET, L.L.P., TIMOTHY D. SCRANTOM, MARK
BROADWATER, AND H. HUGH ANDREWS, DEFENDANTS

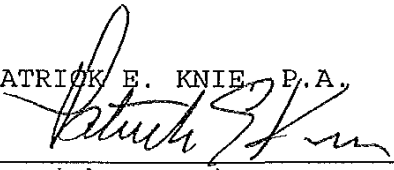
YOU ARE HEREBY SUMMONED and required to answer the

Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint on the undersigned at his office located at P.O. Box 5159, 250 Magnolia Street, Spartanburg, S.C. 29304, within thirty (30) days after the service hereof, exclusive of the day of such service, unless you received your copy by certified mail, in which case you must serve a copy of your answer on the subscriber within thirty-five (35) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

DATED at Spartanburg, South Carolina, on the 15th day
of September, 2005.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2005 SEP 16 AM 11:33
MARC KITCHENS

PATRICK E. KNIE, P.A.


Patrick E. Knie
S.C. Bar No. 3564
P.O. Box 5159
250 Magnolia Street
Spartanburg, S.C. 29304
Telephone No. (864) 582-5118
Telefax No. (864) 585-1615

James R. Gilreath
S.C. Bar No. 2133
THE GILREATH LAW FIRM, P.A.
110 Lavinia Avenue
Post Office Box 2147
Greenville, South Carolina 29602
Telephone (864) 242-4727
Telefax (864) 232-4395

ATTORNEYS FOR PLAINTIFF

FILED
CLERK OF COURT
JAMES R. GILREATH
2005 SEP 16 PM 11:33
JAMES R. GILREATH

PEK:mbg

STATE OF SOUTH CAROLINA)
) IN THE COMMON PLEAS COURT
COUNTY OF SPARTANBURG)

Quentin S. Broom, Jr.,)
)
Plaintiff,)
)
vs.) COMPLAINT
) Jury Trial Requested
) C/A No. 2005-CP-42- 2875
Ten State Street, L.L.P.,)
Timothy D. Scrantom, Mark)
Broadwater, and H. Hugh)
Andrews,)
)
Defendants.)

2005 SEP 16 AM 11:33
CLERK OF COURT
SPARTANBURG COUNTY

The Plaintiff, complaining of the Defendants herein,
respectfully alleges:

JURISDICTIONAL AND GENERAL ALLEGATIONS

1. The Plaintiff, Quentin S. Broom, Jr., (hereinafter referred to as "Broom,") is a citizen and resident of the County of Spartanburg, State of South Carolina.

2. The Defendant, Ten State Street, L.L.P., (hereinafter referred to as "Ten State Street,") is a limited liability partnership organized and existing under the laws of the State of South Carolina, and at all times mentioned herein, doing business in Spartanburg County, South Carolina. On information and belief, Ten State Street is a law firm which includes off-shore law and international law among its areas of practice, and owned or controlled by Timothy D. Scrantom.

3. The Defendant, Timothy D. Scrantom, (hereinafter

referred to as "Scrantom,") is a citizen and resident of the County of Charleston, State of South Carolina, and is licensed to practice law in the State of South Carolina. On information and belief, Scrantom is a partner and member of Ten State Street, L.L.P.

4. The Defendant, Mark Broadwater, (hereinafter referred to as "Broadwater,") is a citizen and resident of the County of Charleston, State of South Carolina. On information and belief, Broadwater is the business manager for Ten State Street, and in that capacity, acts as the general manager of trust and company services for the firm.

5. The Defendant, H. Hugh Andrews, (hereinafter referred to as "Andrews,") is a citizen and resident of the County of Spartanburg, State of South Carolina.

6. For a number of years, Andrews and Broom have been business partners, primarily in Tri-Star Communications, Inc., (hereafter referred to as "Tri-Star,") but also in other enterprises, including the ownership of various parcels of real estate and other businesses.

7. In the early summer of 2000, Andrews and Broom were considering a new business venture, and Andrews insisted that Broom consult with Ten State Street, a law firm which Andrews had been using for certain off-shore financial purposes.

8. Ultimately, Andrews and Broom decided not to pursue this business venture.

9. In December of 2000, Andrews and Broom decided to undertake a business venture through their company, Tri-Star, in the Dominican Republic. Andrews and Broom agreed that they would be equal partners in the venture.

10. Once again, Andrews insisted that they employ and retain Ten State Street for the purpose of investing money in their Dominican Republic venture through the use of off-shore companies.

11. Andrews insisted that both he and Broom each individually contribute Three Hundred Thousand (\$300,000.00) Dollars to the Dominican Republic venture through off-shore entities recommended, created, and used by Ten State Street.

12. As part of the off-shore planning by Ten State Street, Ten State Street either acquired or formed two (2) entities known as AKILAH, LTD. and Calum, LLC for use by Andrews and Broom.

13. As a result, both Andrews and Broom provided Three Hundred Thousand (\$300,000.00) Dollars each directly to AKILAH, LTD. pursuant to wiring instructions provided by Ten State Street for which they each received an "ordinary member contract in AKILAH, LTD.," a corporation in St. Vincent and the Grenadines. The "ordinary member contract" reflected the ownership interest of Broom and Andrews to be equal.

14. Broom later discovered that his "ordinary member contract" had been altered while in the possession of Ten State

Street with Broom's interest reduced from fifty (50%) per cent to twenty-five (25%) per cent.

15. After Andrews insisted that Broom use the services of Ten State Street, Broom complained of the amount of the legal and management fees charged by Ten State Street. As a result, Ten State Street provided Broom with a portion of a letter of engagement with Andrews which authorized the charges for various partners and employees of Ten State Street.

16. Thereafter, there were a number of substantial fee increases by Ten State Street without prior notice given to Broom.

17. Broom, Calum, and AKILAH, LTD. were also billed for services by Ten State Street for work performed uniquely for Andrews.

18. Ten State Street also charged management fees and other costs apparently connected with the management of the off-shore entities which Ten State Street had created.

19. Andrews and Broom, in connection with their Tri-Star business venture, each individually loaned money to Tri-Star. In addition, Drews, Inc., a company owned by Hugh Andrews, sold equipment to Tri-Star creating a debt, the amount of which is a matter of disagreement by and between Andrews and Broom.

20. In July of 2004, Broom learned that Drews, Inc. had written off the debt allegedly owed to it from Tri-Star on Drews' 2003 federal tax return.

21. Broom received no notification of that event, however, he was thereafter obligated to amend Tri-Star's 2003 tax return to reflect the write-off by Drews, Inc. as income to Tri-Star.

22. Broom is informed and believes that Ten State Street advised Andrews concerning the loan write-off.

23. At approximately the same time, Defendant Andrews was in the process of liquidating Drews, Inc. in the face of a judgment in excess of \$1.6 Million Dollars against it by IGT.

24. Broom is informed and believes that Defendant Ten State Street assisted Andrews in the liquidation of Drews, Inc.

25. The actions of Ten State Street and its members/employees, Scrantom and Broadwater, in jointly representing Andrews, Broom, and a variety of other entities in which Andrews was involved, created a conflict of interest which was never waived by Broom and which was detrimental to Broom's legal, business, and personal affairs.

26. In July of 2004, Broom became concerned about a number of the items mentioned hereinabove, and first individually, and then through newly retained legal counsel, attempted to obtain possession of his complete files from Scrantom and Ten State Street, as well as all documents relating to Andrews.

27. The request both by Broom and his attorneys met with repeated resistance and delays.

28. Broom was never permitted to secure the files of Andrews though Ten State Street jointly represented Andrews and Broom simultaneously.

FOR A FIRST CAUSE OF ACTION

As to Defendants Ten State Street and Scrantom
(Negligence in Performance of Professional Duties)

29. The allegations of the preceding paragraphs are incorporated and referenced as if stated verbatim herein.

30. Broom is informed and believes that Ten State Street and Scrantom were willful, wanton, reckless, grossly negligent, and negligent at the times and places hereinabove mentioned and failed to exercise due care and caution as would have been exercised by a reasonably prudent attorney under the circumstances then and there prevailing in the following particulars:

- a. In changing the ordinary member agreement of Broom in AKILAH, LTD. without Broom's authorization;
- b. In changing the ordinary member agreement of Broom in AKILAH, LTD. when Andrews and Broom had agreed to be equal partners in such venture;
- c. In repeatedly increasing the hourly rate of fees charged without notice to Broom;
- d. In repeatedly increasing the hourly rate charged for the various services and employees of Ten State Street when Broom had engaged Ten State Street at lower hourly rates;

e. In representing both Andrews and Broom simultaneously on matters which created a conflict without notice to Broom;

f. In representing both Andrews and Broom simultaneously on matters which created a conflict without securing a waiver from Broom;

g. In charging management fees and costs without notice to Broom and without his prior approval;

h. In charging Broom, Calum, and AKILAH for services performed solely for Andrews;

i. In failing to timely provide Broom's legal documents to him when requested;

j. In refusing to provide the legal documents of Andrews when requested by Broom;

k. In self-dealing with Broom's funds and charging Broom, Calum, and AKILAH excessive fees for services actually rendered in such other particulars as may be ascertained through discovery procedures undertaken pursuant to South Carolina Rules of Civil Procedure.

31. As a direct and proximate result of the willful, wanton, reckless, grossly negligent, and negligent conduct of these Defendants, Broom has suffered loss of income, diminution of his interest in AKILAH, LTD., loss of use of his property, payment of excessive attorney's fees and management fees, as well as other consequential and related damages.

32. Plaintiff is informed and believes he is entitled to a judgment for actual damages, plus such punitive damages as may be awarded, the costs of this action, and such other and further relief as to the Court may seem just and proper.

FOR A SECOND CAUSE OF ACTION

As to Defendants Ten State Street and Scrantom

(Breach of Contract)

33. The Plaintiff reasserts and realleges each and every allegation contained in the preceding paragraphs as if they were set forth herein verbatim.

34. Broom secured a contract for legal services and certain management services for which Broom agreed to compensate Ten State Street and Scrantom for the protection of his legal rights, legal advice, consultation, and other legal and management services performed by Ten State Street and Scrantom in their professional capacities as a law firm and attorney.

35. Implicit in the contract by and between these parties was the covenant of good faith and fair dealing which was breached by Ten State Street and Scrantom.

36. As a result of said breach of contract, Broom has suffered loss of income, diminution of his interest in AKILAH, LTD., loss of use of his property, payment of excessive attorney's fees and management fees, as well as other consequential and related damages.

37. Plaintiff is informed and believes he is entitled

to a judgment for actual damages, plus such punitive damages as may be awarded, the costs of this action, and such other and further relief as to the Court may seem just and proper.

FOR A THIRD CAUSE OF ACTION

As to Defendants Ten State Street, Scrantom, and Broadwater

(Breach of Fiduciary Duty)

38. The Plaintiff reasserts and realleges each and every allegation contained in the preceding paragraphs as if they were set forth herein verbatim.

39. The Defendants, Ten State Street, Scrantom, and Broadwater, at all times mentioned herein were acting in a fiduciary capacity to Broom.

40. The Defendants breached their fiduciary duties by engaging in conflicting legal representation in management services which presented a conflict to Broom's interests.

41. Alternatively, these Defendants are liable for conspiracy to breach a fiduciary duty in that these Defendants wrongfully conspired to, agreed to, and participated in the breaches alleged herein.

42. As a direct and proximate result of the breach by these Defendants of their fiduciary duty, Broom has suffered loss of income, diminution of his interest in AKILAH, LTD., loss of use of his property, payment of excessive attorney's fees and management fees, as well as other consequential and related damages.

43. Plaintiff is informed and believes he is entitled to a judgment for actual damages, plus such punitive damages as may be awarded, the costs of this action, and such other and further relief as to the Court may seem just and proper.

FOR A FOURTH CAUSE OF ACTION

As to All Defendants

(Common Law Fraud)

44. The Plaintiff reasserts and realleges each and every allegation contained in the preceding paragraphs as if they were set forth herein verbatim.

45. The Defendants set upon a course of conduct to defraud and mislead Plaintiff by making various representations outlined herein to Broom regarding his status as a member of AKILAH, the relationship by and among the Defendants, and other related matters.

46. The representations made by the Defendants were false, and the falsity of the same has been concealed by Defendants with repeated false and fraudulent assurances and promises.

47. Defendants knew that their representations to Broom were false and made the same to him in a reckless disregard for whether the same were true or false.

48. Broom was ignorant of the falsity of Defendants' representations, and Defendants knew that Broom was ignorant of the falsity of the same.

49. Broom relied on Defendants' false and fraudulent representations, and Defendants intended that he so rely.

50. The representations made by the Defendants unto Broom were material in that these representations were critical to Broom's individual and business success and his actions in reliance upon the representations.

51. Broom rightfully relied on the Defendants' representations since Andrews was a business partner of Broom and since Broom employed the other Defendants to protect and preserve his business interests.

52. As a direct and proximate result of the false and fraudulent misrepresentations and omissions made by Defendants unto the Plaintiff herein as aforesaid, Broom has suffered loss of income, diminution of his interest in AKILAH, LTD., loss of use of his property, payment of excessive attorney's fees and management fees, as well as other consequential and related damages.

53. Plaintiff is informed and believes he is entitled to a judgment for actual damages, plus such punitive damages as may be awarded, the costs of this action, and such other and further relief as to the Court may seem just and proper.

FOR A FIFTH CAUSE OF ACTION

As to All Defendants

(Constructive Fraud)

54. The Plaintiff reasserts and realleges each and

every allegation contained in the preceding paragraphs as if they were set forth herein verbatim.

55. Even if Defendants did not know or appreciate the representations made by them to Plaintiff were false or with an intent to deceive or conceal such from the Plaintiff, nonetheless, Plaintiff asserts Defendants should have known the falsity thereof and should have appreciated the affect of the concealment thereof in light of the confidential and/or fiduciary relationship enjoyed by each with the Plaintiff binding them to act in good faith and with due regard for the best interests of the Plaintiff.

56. The actions of the Defendants in conveying representations to Plaintiff set forth above constitute constructive fraud for which Plaintiff Broom has suffered loss of income, diminution of his interest in AKILAH, LTD., loss of use of his property, payment of excessive attorney's fees and management fees, as well as other consequential and related damages.

57. Plaintiff is informed and believes he is entitled to a judgment for actual damages, plus such punitive damages as may be awarded, the costs of this action, and such other and further relief as to the Court may seem just and proper.

FOR A SIXTH CAUSE OF ACTION

As to All Defendants

(Negligent Misrepresentation)

58. The Plaintiff reasserts and realleges each and every allegation contained in the preceding paragraphs as if they were set forth herein verbatim.

59. The Defendants made and participated in the making of representations of fact to Broom by means of various documents, reports, and statements as alleged in the Complaint.

60. The Defendants had a pecuniary interest in making these false representations to Broom as hereinabove described.

61. The Defendants owed Broom a duty of exercising due care to insure the statements and representations made were truthful and accurate.

62. In making these representations, Defendants misrepresented or omitted to state material facts necessary in order to make statements, in light of the circumstances under which they were made, not misleading.

63. In making these representations, Defendants misrepresented or omitted stating material facts necessary for Broom to make informed decisions.

64. It was reasonably foreseeable to Defendants that Broom would rely on such statements.

65. Among the direct and proximate causes of the representations and omissions to state material facts were the negligence and carelessness of the Defendants and the absence of any reasonable basis for belief in the truth of such statements.

66. At the time the misrepresentations and omissions

were made, Broom was ignorant of their falsity and believed them to be true, and reliance on the misrepresentations and the reliance of the knowledge and expertise of the Defendants, Broom was induced to act where he may not otherwise have acted.

67. As a proximate result of Defendants' negligent misrepresentations, Broom has suffered loss of income, diminution of his interest in AKILAH, LTD., loss of use of his property, payment of excessive attorney's fees and management fees, as well as other consequential and related damages.

68. Plaintiff is informed and believes he is entitled to a judgment for actual damages, plus such punitive damages as may be awarded, the costs of this action, and such other and further relief as to the Court may seem just and proper.

FOR A SEVENTH CAUSE OF ACTION

As to All Defendants

(Civil Conspiracy)

69. The Plaintiff reasserts and realleges each and every allegation contained in the preceding paragraphs as if they were set forth herein verbatim.

70. Broom is informed and believes that the Defendants combined and conspired to disseminate false and misleading information, to misappropriate Broom's assets without his knowledge and consent, and to otherwise injure and damage Broom.

71. Said Defendants' conduct was wrongful and illegal and caused Broom injuries and damages including, but not limited

to, loss of income, diminution of his interest in AKILAH, LTD., loss of use of his property, payment of excessive attorney's fees and management fees, as well as other consequential and related damages.

72. Plaintiff is informed and believes he is entitled to a judgment for actual damages, plus such punitive damages as may be awarded, the costs of this action, and such other and further relief as to the Court may seem just and proper.

FOR AN EIGHTH CAUSE OF ACTION

As to Ten State Street, Scrantom, and Broadwater

(Violation of S.C. Unfair Trade Practices Act,

Section 39-5-10, et.seq.)

73. The Plaintiff reasserts and realleges each and every allegation contained in the preceding paragraphs as if they were set forth herein verbatim.

74. The Plaintiff is informed and believes that the actions of the Defendants Ten State Street, Scrantom, and Broadwater constitute trade within the meaning of South Carolina Code 39-5-20(a).

75. The Plaintiff is informed and believes that the conduct of the Defendants in misrepresenting to the Plaintiff and misleading him, as more specifically set forth above, constitutes unfair and deceptive acts in willful violation of the South Carolina Unfair Trade Practices Act, Section 39-5-10, et.seq.

76. The actions of these Defendants impacted upon the

public interest of the people of the State of South Carolina and were capable of repetition.

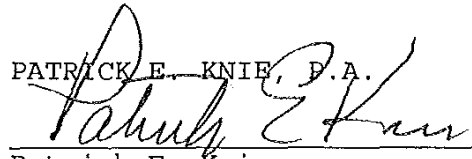
77. As a direct and proximate result of the unfair and deceptive trade practices committed by these Defendants, Broom has suffered loss of income, diminution of his interest in AKILAH, LTD., loss of use of his property, payment of excessive attorney's fees and management fees, as well as other consequential and related damages.

78. As a direct and proximate result, the Plaintiff is informed and believes that he is entitled to actual damages to be trebled for the willful violations committed and an award of reasonable attorney's fees.

WHEREFORE, Plaintiff prays for judgment of this Court declaring:

- a. Void and unenforceable all fee contracts with Ten State Street and/or Scrantom and restitution of all fees received by either under such agreements;
- b. Restitution of all fees paid to Ten State Street, Scrantom, and Broadwater;
- c. Actual and punitive damages and costs;
- d. Prejudgment interest at the highest rate allowed by law on monies lost;
- e. Treble damages and reasonable attorney's fees;
- f. Such other and further relief as to the Court may seem appropriate under the circumstances.

PATRICK E. KNIE, P.A.


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ATTORNEYS FOR PLAINTIFF

September 15, 2005

Spartanburg, South Carolina

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2005 SEP 16 AM 11:33
MARCO KITCHENS

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Quentin S. Broom, Jr.,)
Plaintiff,)
v.)
Ten State Street, L.L.P.)
Timothy D. Scrantom, Mark Broadwater,)
and H. Hughes Andrews,)
Defendants,)
of which,)
Defendant H. Hughes Andrews, Individually)
and on behalf of Tri-Star Communications,)
Inc., as a Third-party Plaintiff,)
v.)
Quentin S. Broom, Jr.,)
Third-party Defendant.)

C.A. No.: 05-CP-42-2875

**AMENDED ANSWER AND
COUNTERCLAIMS OF DEFENDANT
H. HUGHES ANDREWS**

**TO: PATRICK E. KNIE AND JAMES R. GILREATH, ATTORNEYS FOR
PLAINTIFF AND THIRD-PARTY DEFENDANT QUENTIN S. BROOM, JR.**

By and through their undersigned counsel, Defendant H. Hughes Andrews (hereinafter "Defendant Andrews") answering Plaintiff's Complaint, and brings this action on individually and on behalf of the Third-Party Plaintiff, Tri-Star Communications, Inc. ("Third-party Plaintiff Tri-Star"), allege and will show unto the Court the following:

For A First Defense
(By Way of a General Denial)

1. All allegations of Plaintiff's Complaint not admitted, qualified or explained are expressly denied.

2. As to Paragraphs 1 through 4 of Plaintiff's Complaint, Defendant Andrews is without sufficient information to admit or to deny the allegation as stated, and therefore demands strict proof thereof.

3. As to Paragraph 5 of Plaintiff's Complaint, Defendant Andrews admits the allegation stated therein to be true, to the best of his knowledge.

4. As to Paragraph 6 Defendant Andrews denies that he has been a business partner of Broom.

5. As to other assertions in Paragraphs 6 through 17 of Plaintiff's Complaint, Defendant Andrews denies the allegations as stated therein, and demands strict proof thereof.

6. As to Paragraph 18 of Plaintiff's Complaint, Defendant Andrews is without sufficient information to admit or to deny the allegation as stated, and therefore demands strict proof thereof.

7. As to Paragraph 19 of Plaintiff's Complaint, Defendant Andrews admits the allegations set forth therein, with the exception that Drew's Distributing, Inc. sold the equipment to Tri-Star and the obligations of Tri-Star to Drew's Distributing Inc. were assigned to Defendant Andrews, of which Plaintiff received due notice.

8. As to Paragraph 20 of Plaintiff's Complaint, Defendant Andrews is without sufficient information to admit or to deny the allegation as stated, and therefore demands strict proof thereof.

9. As to Paragraphs 21 through 24 of Plaintiff's Complaint, Defendant Andrews denies the allegations as stated therein, and demands strict proof thereof.

10. As to Paragraphs 25 through 27 of Plaintiff's Complaint, Defendant Andrews is without sufficient information to admit or to deny the allegation as stated, and therefore demands strict proof thereof.

11. As to Paragraphs 28 through 32 of Plaintiff's Complaint, Defendant Andrews denies the allegations as stated therein, and demands strict proof thereof.

12. As to Paragraph 34 of Plaintiff's Complaint, Defendant Andrews is without sufficient information to admit or to deny the allegation as stated, and therefore demands strict proof thereof.

13. As to Paragraph 35 of Plaintiff's Complaint, Defendant Andrews admits the allegation stated therein to be true, to the best of his knowledge.

14. As to Paragraphs 36 through 38 of Plaintiff's Complaint, Defendant Andrews denies the allegations as stated therein, and demands strict proof thereof.

15. As to Paragraph 39 of Plaintiff's Complaint, Defendant Andrews is without sufficient information to admit or to deny the allegation as stated, and therefore demands strict proof thereof.

16. As to Paragraphs 40 through 78 of Plaintiff's Complaint, Defendant Andrews denies the allegations as stated therein, and demands strict proof thereof.

For A Second Defense
(Failure To State A Claim Upon Which Relief May Be Granted)

17. Defendant Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth fully hereunder.

18. Plaintiff's Complaint does not set forth sufficient facts and/or the requisite legal elements for the claims sought therein such that Plaintiff fails to adequately state a claim upon which relief may be given against this Defendant.

For A Third Defense
(Unclean Hands)

19. Defendant Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth fully hereunder.

20. To the extent Plaintiff's complaint seeks equitable relief, Plaintiff's Complaint is barred by the doctrine of unclean hands.

For A Fourth Defense and By Way of Defendant Andrew's
First Counterclaim Against the Plaintiff and
First Cause of Action by Third-Party Plaintiff Tri-Star
(Breach of Fiduciary Duty)

21. Defendant Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

22. Third-party plaintiff, Tri-Star Communications, Inc. ("Tri-Star"), is a South Carolina corporation with its principal place of business in Spartanburg County, South Carolina. Defendant Andrews, at all times relevant herein, was a shareholder of and a creditor of Tri-Star.

23. Defendant Andrews has standing to bring this claim individually and on behalf of Third-party Plaintiff for losses and damages sustained to both via the malfeasance and nonfeasance of the plaintiff in his dealings with and on behalf of Tri-Star.

24. Plaintiff was a director, officer, and a fifty percent (50%) owner of Tri-Star, and in fact operated Tri-Star at all times at issue, including controlling Tri-Star books and records

and accounts, and as such owed a duties to Tri-Star and Defendant Andrews to act in the best interests of the company and of Defendant Andrews at all times.

25. Defendant Andrews loaned Tri-Star one hundred thirty thousand dollars (\$130,000.00) on or before August 31, 2005.

26. Tri-Star purchased "Pot-O-Gold" video gaming machines ("Gaming Machines") and other goods and services from Drews Distributing, Inc., a South Carolina corporation ("Drews, Inc.") owned 100% by Defendant Andrews. Drews Inc. distributed by assignment to Defendant Andrews all rights to payment from Tri-Star.

27. As of October 31, 2005, Tri-Star owed Defendant Andrews the sum of three million six hundred twenty-six thousand, three hundred ninety-three and 17/100ths dollars (\$3,626,393.17) for Gaming Machines and other goods and services sold to Tri-Star, of which one million one hundred ninety-four thousand three hundred sixty-two and 83/100ths dollars (\$1,194,362.83) is for the actual unpaid portion of the purchase price (the remaining amounts being accrued and unpaid finance charges).

28. Plaintiff controlled the operations of Jackpot, S.A. and Worldwide Entertainment, S.A., both Dominican Republic corporations [collectively "DR Businesses"], and had control of Tri-Star's business relationships and undertakings with respect to the DR Businesses, including but not limited to, importing Tri-Star Gaming Machines and ancillary equipment, providing Tri-Star services to the DR Businesses, maintaining the Tri-Star Gaming Machines, monitoring DR Businesses income and expenses, promoting business relations with individuals, governmental authorities, and other business enterprises in the Dominican Republic, making distributions and/or payments from DR Businesses to Tri-Star, paying applicable governmental taxes, charges, and duties related to the DR Businesses (imposed by both United States and Dominican

authorities), and undertaking such activities in the best interests of the DR Businesses and their constituents in accordance with applicable law and agreements.

29. At all times relevant herein, Defendant Andrews had an interest in DR Businesses via his ordinary member agreement in and AKILAH, Ltd which owns all of Calum, LLC, the entity which owns the majority of the capital interests in the DR Businesses.

30. Plaintiff transported or caused to have transported more than 1,100 Tri-Star Gaming Machines and various other related equipment for the use of the DR Businesses.

31. Plaintiff was reckless in the manner the Gaming Machines were imported, and such importation was documented so as to place Tri-Star's Gaming Machines at grave risk of confiscation or penalties to be payable to the Dominican Republic governmental authorities by Tri-Star or the DR Businesses.

32. Plaintiff has recklessly failed to cause the DR Businesses to pay all applicable charges to the Dominican Republic, which put Tri-Star's Gaming Machines at risk of confiscation, or impaired Tri-Star's ability to remove its Gaming Machines for resale in the United States or other markets, for fair market value of the Gaming Machines.

33. After repeated requests, Plaintiff has refused to produce the books and records related to DR Businesses to Defendant Andrews.

34. Without informing, obtaining consent, and authority, Plaintiff sold, or caused to be sold, the equipment in the possession of DR Businesses to third parties for less than fair market value. Indeed, Defendant Andrews expressly informed the plaintiff not to do so without his prior approval and consent.

35. Without informing, obtaining consent, and authority, between January 1, 2005 and April 30, 2005, Plaintiff made distributions to himself from Tri-Star in the amount of five

hundred twenty thousand dollars (\$520,000.00). Said distributions were made at a time when Tri-Star owed Defendant Andrews substantial sums of money both as a shareholder, for a shareholder loan, and as a creditor of Tri-Star.

36. Plaintiff materially and substantially breached his fiduciary duty to Defendant Andrews in one or more of the following particulars:

- a. Paying himself from Tri-Star without consent or authority;
- b. Selling substantially all of the assets of Tri-Star Inc. at below market value and without authority or consent of Defendant Andrews;
- c. Converting Tri-Star's money and/or assets for Plaintiff's own use and benefit;
- d. Failing to exercise ordinary care and diligence commensurate with the standard of care applicable to similarly situated managers, officers and/or shareholders.

37. As a direct and proximate result, Defendant Andrews and Third-party Plaintiff Tri-Star have been damaged, thereby entitling Defendant Andrews and Third-party Plaintiff Tri-Star to actual and punitive damages hereunder in an amount to be determined by the Court.

**For A Fifth Defense and By Way of Defendant Andrew's
Second Counterclaim Against the Plaintiff and
Second Cause of Action by Third-Party Plaintiff Tri-Star
(Breach of Contract)**

38. Defendant Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

39. By and through the various contracts, agreements, Defendant Andrews contracted with the Plaintiff to regarding the operations of Tri-Star and DR Businesses.

40. Without authority or consent from Defendant Andrews, Plaintiff disposed of the assets of Tri-Star at substantially below their market value.

41. Plaintiff did not use any of the proceeds to pay the loan given by Defendant Andrews or the monies owed to Defendant Andrews, by and through his creditor assignments.

42. At a time when Tri-Star owed Defendant Andrews substantial sums of money, without authority or consent from Defendant Andrews, Plaintiff paid himself approximately five hundred twenty thousand (\$520,000.00) dollars in salary and/or distribution.

43. As a direct and proximate result, Defendant Andrews and Third-party Plaintiff Tri-Star Communications have been damaged, thereby entitling Defendant Andrews and Third-party Plaintiff Tri-Star to actual damages hereunder in an amount to be determined by the Court.

**For A Sixth Defense and By Way of Defendant Andrew's
Third Counterclaim Against the Plaintiff and
Third Cause of Action by Third-Party Plaintiff Tri-Star
(Breach of Contract Accompanied by a Fraudulent Act)**

44. Defendant Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

45. Plaintiff breached his contract(s) with Defendant Andrews.

46. Plaintiff had a fraudulent intent relating to the breaching of the contract and not merely to its making.

47. Plaintiff's breach was accompanied by a fraudulent act, which can be characterized by dishonesty in fact, unfair dealing and/or the unlawful appropriation of Defendant Andrew's money by design.

48. As a direct and proximate result, Defendant Andrews and Third-party Plaintiff Tri-Star have been damaged, thereby entitling Defendant Andrews and Third-party Plaintiff Tri-Star to actual and punitive damages hereunder in an amount to be determined by the Court.

**For A Seventh Defense and By Way of Defendant Andrew's
Fourth Counterclaim Against the Plaintiff and
Fourth Cause of Action by Third-Party Plaintiff Tri-Star
(Breach of the Covenant of Good Faith and Fair Dealing)**

49. Defendant Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

50. There is an implied covenant of Good Faith and Fair Dealing in all contracts entered into or to be performed in the State of South Carolina.

51. Plaintiff's actions as alleged herein were unreasonable, willful, reckless, and unjustified, and amount to a breach of the implied In-Law duty of Good Faith and Fair Dealing inherent in all contracts.

52. As a proximate result, Defendant Andrews has suffered actual and consequential damages.

53. As a direct and proximate result, Defendant Andrews and Third-party Plaintiff Tri-Star have been damaged, thereby entitling Defendant Andrews and Third-party Plaintiff Tri-Star to actual and punitive damages hereunder in an amount to be determined by the Court.

**For An Eighth Defense and By Way of Defendant Andrew's
Fifth Counterclaim Against the Plaintiff and
Fifth Cause of Action by Third-Party Plaintiff Tri-Star
(Conversion)**

54. Defendant Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

55. Defendant Andrews had a right to possess monies and equipment belonging to Tri-Star.

56. Without authority from Defendant Andrews, Plaintiff took possession of these monies and/or equipment, or alternatively, exercised a right of ownership over the same, all to the exclusion of the rights of Defendant Andrews.

57. Such actions constitute conversion of Defendant Andrews' money and/or property.

58. As a direct and proximate result, Defendant Andrews and Third-party Plaintiff Tri-Star have been damaged, thereby entitling Defendant Andrews and Third-party Plaintiff Tri-Star to actual and punitive damages hereunder in an amount to be determined by the Court.

For A Ninth Defense and By Way of Defendant Andrew's
Sixth Counterclaim Against the Plaintiff and
Sixth Cause of Action by Third-Party Plaintiff Tri-Star
(Violation of S.C. Code of Laws § 33-8-300)

59. Defendant Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

60. The actions of the plaintiff were not in good faith.

61. The actions of the plaintiff were not with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

62. The actions of the plaintiff were not in a manner that a reasonable person could believe were in the best interests of the corporation and its shareholders.

63. Said actions constitute a violation of South Carolina *Code of Laws* § 33-8-300.

64. As a direct and proximate result, Defendant Andrews and Third-party Plaintiff Tri-Star have been damaged, thereby entitling Defendant Andrews and Third-party Plaintiff Tri-Star to actual and punitive damages hereunder in an amount to be determined by the Court.

**For A Tenth Defense and By Way of Defendant Andrew's
Seventh Counterclaim Against the Plaintiff and
Seventh Cause of Action by Third-Party Plaintiff Tri-Star
(Violation of S.C. Code of Laws § 33-8-420)**

65. Defendant Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

66. The actions of the plaintiff were not in good faith.

67. The actions of the plaintiff were not with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

68. The actions of the plaintiff were not in a manner that a reasonable person could believe were in the best interests of the corporation and its shareholders.

69. Said actions constitute a violation of South Carolina *Code of Laws* § 33-8-420.

70. As a direct and proximate result, Defendant Andrews and Third-party Plaintiff Tri-Star have been damaged, thereby entitling Defendant Andrews and Third-party Plaintiff Tri-Star to actual and punitive damages hereunder in an amount to be determined by the Court.

**For An Eleventh Defense and By Way of Defendant Andrew's
Eighth Counterclaim Against the Plaintiff
(Promissory Estoppel)**

71. Defendant Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

72. At the time Defendant Andrews went into business with Plaintiff in the formation of Tri-Star and its subsequent dealings with DR Businesses, Plaintiff promised Defendant

Andrews that he would at in the best interest of Tri-Star and Defendant Andrews at all times regarding the management of the same.

73. This promise was unambiguous on its terms.

74. Defendant Andrews reasonably relied upon Plaintiff's promise.

75. Plaintiff expected and foresaw that Defendant Andrews would rely upon his promise.

76. Defendant Andrews was injured in reliance upon the promise by Plaintiff.

77. As a direct and proximate result, Defendant Andrews has been damaged as set forth fully hereunder, thereby entitling Defendant Andrews to actual and punitive damages in an amount to be determined by the Court.

For A Twelfth Defense and By Way of Defendant Andrew's
Eighth Counterclaim Against the Plaintiff
(Fraud)

78. Defendant Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

79. Plaintiff represented to Plaintiff that he would manage the assets of Tri-Star and act in the best interest of Tri-Star and Defendant Andrews.

80. These representations were false.

81. These representations were material.

82. Plaintiff either knew the representations were false or made such representations with a reckless disregard of their truth or falsity.

83. Plaintiff intended Defendant Andrews to act upon Plaintiff's representations.

84. Defendant Andrews was ignorant of falsity of Plaintiff's representations.

85. Defendant Andrews relied upon the truth of Plaintiff's representations.

86. Defendant Andrews had a right to rely upon the truth of Plaintiff's representations.

87. As a direct and proximate result, Defendant Andrews was damaged, thereby entitling him to actual and punitive damages hereunder in an amount to be determined by the Court.

For A Thirteenth Defense and By Way of Defendant Andrew's
Tenth Counterclaim Against the Plaintiff
(Negligent Misrepresentation)

88. Defendant Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

89. Plaintiff made a false representation to Defendant Andrews.

90. Plaintiff had a pecuniary interest in making these statements.

91. Plaintiff owed a duty of care to see that he communicated truthful information to Defendant Andrews.

92. Plaintiff breached that duty by failing to exercise due care.

93. Defendant Andrews justifiably relied on Plaintiff's representation.

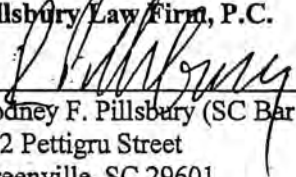
94. Defendant Andrews suffered pecuniary loss as proximate result of his reliance upon that representation.

95. As a direct and proximate result, Defendant Andrews was damaged, thereby entitling Defendant Andrews to actual and punitive damages hereunder in an amount to be determined by the Court.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant Andrews prays for the following relief:

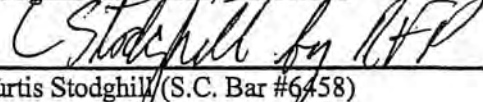
- (a) that Plaintiff's complaint be dismissed with prejudice, with costs and attorney's fees awarded to Defendant Andrews;
- (b) that Judgment be entered against the plaintiff on all of Defendant Andrews' counterclaims, for actual and punitive damages, in an amount to be determined by the Court;
- (c) that Judgment be entered against the plaintiff on all of Third-party Plaintiff Tri-Star's causes of action, for actual and punitive damages, in an amount to be determined by the Court; and
- (d) whatever further and just relief the Court deems appropriate under the circumstances.

Respectfully Submitted,
Pillsbury Law Firm, P.C.


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-and-

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ATTORNEYS FOR DEFENDANT H. HUGHES ANDREWS, and TRI-STAR
COMMUNICATIONS, INC. AS THIRD PARTY PLAINTIFF

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Quentin S. Broom, Jr.,)
Plaintiff,)

vs.)

REPLY TO COUNTERCLAIMS OF
DEFENDANT H. HUGH ANDREWS

Ten State Street, L.L.P.,)
Timothy D. Scranton, Mark)
Broadwater, and H. Hugh)
Andrews,)

C. A. 05-CP-42-2875

Defendants.)

of which,)

Defendant H. Hugh Andrews,)
Individually and on behalf of)
Tri-Star Communications, Inc.,)
as a Third-party Plaintiff,)

vs.)

Quentin S. Broom, Jr.,)

Third-party Defendant.)

The Plaintiff, replying to the Counterclaims of the Defendant H. Hugh Andrews
would show:

FOR A FIRST REPLY TO DEFENDANT ANDREWS' COUNTERCLAIMS

1. Plaintiff denies each and every allegation contained in Defendant
Andrews' Amended Answer and Counterclaims unless specifically admitted, modified or
explained herein.

FOR A FIRST REPLY TO DEFENDANT ANDREWS' FIRST COUNTERCLAIM

2. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

3. As to Paragraph 22, Plaintiff admits generally the contents thereof and would specifically show that at times Defendant Andrews was a creditor of Tri-Star.

4. Paragraph 23 is denied.

5. Paragraph 24 is admitted.

6. As to Paragraph 25, Plaintiff admits only that at various times Defendant Andrews loaned money to Tri-Star, all of which has been repaid.

7. As to Paragraph 26, the Plaintiff admits only that at times Tri-Star purchased gaming machines from Drew's Distributing, Inc. and denies the remainder of said paragraph.

8. Paragraph 27 is denied.

9. As to Paragraph 28, Plaintiff admits only that he had some involvement in the operations of Jackpot, S.A. and Worldwide Entertainment, S.A.

10. As to Paragraph 29, Plaintiff admits that Defendant Andrews had an ownership interest in the DR Business by virtue of his ownership interest in Tri Star and his Ordinary Member Agreement in AKILAH, LTD.

11. As to Paragraph 30, Plaintiff admits only that Tri-Star transported gaming machines and related equipment for use in the Dominican Republic.

12. Paragraph 31 is denied.

13. Paragraph 32 is denied.

14. Paragraph 33 is denied.

15. As to Paragraph 34, the Plaintiff would show that as Chief Executive Officer of Tri-Star, Plaintiff sold various gaming machines belonging to Tri-Star for valid business reasons and for fair market value in light of serious political circumstances then existing in the Dominican Republic.

16. As to Paragraph 35, the Plaintiff admits paying himself salaries for which he had authority from the Defendant Andrews. The Plaintiff would further that debt owed Defendant Andrews by Tri-Star was subsequently satisfied in full and in fact Defendant Andrews received distributions personally.

17. Paragraph 36 is denied.

18. Paragraph 37 is denied.

FOR A SECOND REPLY TO DEFENDANT ANDREWS' FIRST COUNTERCLAIM

19. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

20. Defendant Andrews' First Counterclaim does not set forth sufficient facts or the requisite legal elements for the claims sought therein and Defendant Andrews fails to adequately state a claim upon which relief may be given against this Plaintiff.

FOR A THIRD REPLY TO DEFENDANT ANDREWS' FIRST COUNTERCLAIM

21. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

22. To the extent that Defendant Andrews seeks equitable relief in his First Counterclaim, Defendant's Counterclaim is barred by the Doctrine of Unclean Hands.

FOR A FOURTH REPLY TO DEFENDANT ANDREWS' FIRST COUNTERCLAIM

23. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

24. To the extent that Defendant Andrews' Complaint seeks equitable relief, Defendant Andrews' Counterclaim is barred by the Doctrine of Laches.

FOR A FIFTH REPLY TO DEFENDANT ANDREWS' FIRST COUNTERCLAIM

25. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

26. The First Counterclaim is barred in all or in part by the Statute of Limitations.

FOR A SIXTH REPLY TO DEFENDANT ANDREWS' FIRST COUNTERCLAIM

27. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

28. The First Counterclaim is barred in all or in part by the Statute of Frauds.

FOR AN SEVENTH REPLY TO DEFENDANT ANDREWS' FIRST COUNTERCLAIM

29. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

30. The First Counterclaim has improperly joined several causes of action and should be dismissed, or in the alternative, Plaintiff moves to make said Counterclaim more definite and certain.

FOR A FIRST REPLY TO DEFENDANT ANDREWS SECOND COUNTERCLAIM

31. Plaintiff realleges each paragraph set forth hereinabove to the extent not

inconsistent herewith.

32. As to Paragraph 39, Plaintiff admits Defendant Andrews had certain business dealings with Tri-Star.

33. Paragraph 40 is denied.

34. Paragraph 41 is denied.

35. As to Paragraph 42, the Plaintiff admits that Tri-Star paid salaries to him.

36. Paragraph 43 is denied.

37.

FOR A SECOND REPLY TO DEFENDANT ANDREWS SECOND COUNTERCLAIM

38. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

38. Defendant Andrews' Second Counterclaim does not set forth sufficient facts or the requisite legal elements for the claims sought therein and Defendant Andrews fails to adequately state a claim upon which relief may be given against this Plaintiff.

FOR A THIRD REPLY TO DEFENDANT ANDREWS' SECOND COUNTERCLAIM

39. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

40. To the extent that Defendant Andrews seeks equitable relief in his Second Counterclaim, Defendant's Counterclaim is barred by the Doctrine of Unclean Hands.

FOR A FOURTH REPLY TO DEFENDANT ANDREWS' SECOND COUNTERCLAIM

41. Plaintiff realleges each paragraph set forth hereinabove to the extent not

inconsistent herewith.

42. To the extent that Defendant Andrews' Complaint seeks equitable relief, Defendant Andrews' Second Counterclaim is barred by the Doctrine of Laches.

FOR A FIFTH REPLY TO DEFENDANT ANDREWS' SECOND COUNTERCLAIM

43. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

44. The Second Counterclaim is barred in all or in part by the Statute of Limitations.

FOR A SIXTH REPLY TO DEFENDANT ANDREWS' SECOND COUNTERCLAIM

45. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

46. The Second Counterclaim is barred in all or in part by the Statute of Frauds.

FOR A SEVENTH REPLY TO DEFENDANT ANDREWS' SECOND COUNTERCLAIM

47. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

48. The Second Counterclaim has improperly joined several causes of action and should be dismissed, or in the alternative, Plaintiff moves to make said Counterclaim more definite and certain.

FOR A FIRST REPLY TO DEFENDANT ANDREWS' THIRD COUNTERCLAIM

49. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

50. Paragraph 45 is denied.

51. Paragraph 46 is denied.

52. Paragraph 47 is denied.

53. Paragraph 48 is denied.

FOR A SECOND REPLY TO DEFENDANT ANDREWS THIRD COUNTERCLAIM

54. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

55. Defendant Andrews' Third Counterclaim does not set forth sufficient facts or the requisite legal elements for the claims sought therein and Defendant Andrews fails to adequately state a claim upon which relief may be given against this Plaintiff.

FOR A THIRD REPLY TO DEFENDANT ANDREWS' THIRD COUNTERCLAIM

56. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

57. To the extent that Defendant Andrews seeks equitable relief in his third Counterclaim, Defendant's Counterclaim is barred by the Doctrine of Unclean Hands.

FOR A FOURTH REPLY TO DEFENDANT ANDREWS' THIRD COUNTERCLAIM

58. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

59. To the extent that Defendant Andrews' Complaint seeks equitable relief, Defendant Andrews' Third Counterclaim is barred by the Doctrine of Laches.

FOR A FIFTH REPLY TO DEFENDANT ANDREWS' THIRD COUNTERCLAIM

60. Plaintiff realleges each paragraph set forth hereinabove to the extent not

inconsistent herewith.

61. The Third Counterclaim is barred in all or in part by the Statute of Limitations.

FOR A SIXTH REPLY TO DEFENDANT ANDREWS' THIRD COUNTERCLAIM

62. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

63. The Third Counterclaim is barred in all or in part by the Statute of Frauds.

64.

FOR A SEVENTH REPLY TO DEFENDANT ANDREWS' THIRD COUNTERCLAIM

65. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

66. The Third Counterclaim has improperly joined several causes of action and should be dismissed, or in the alternative, Plaintiff moves to make said Counterclaim more definite and certain.

FOR A FIRST REPLY TO DEFENDANT ANDREWS' FOURTH COUNTERCLAIM

67. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

68. As to Paragraph 50, the Plaintiff would show that it states a legal conclusion instead of an actual allegation and therefore it is improperly pled.

69. Paragraph 51 is denied.

70. Paragraph 52 is denied.

71. Paragraph 53 is denied.

FOR A SECOND REPLY TO DEFENDANT ANDREWS FOURTH COUNTERCLAIM

72. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

72. Defendant Andrews' Fourth Counterclaim does not set forth sufficient facts or the requisite legal elements for the claims sought therein and Defendant Andrews fails to adequately state a claim upon which relief may be given against this Plaintiff.

FOR A THIRD REPLY TO DEFENDANT ANDREWS' FOURTH COUNTERCLAIM

73. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

74. To the extent that Defendant Andrews seeks equitable relief in his fourth Counterclaim, Defendant's Counterclaim is barred by the Doctrine of Unclean Hands.

FOR A FOURTH REPLY TO DEFENDANT ANDREWS' FOURTH COUNTERCLAIM

75. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

76. To the extent that Defendant Andrews' Complaint seeks equitable relief, Defendant Andrews' Fourth Counterclaim is barred by the Doctrine of Laches.

FOR A FIFTH REPLY TO DEFENDANT ANDREWS' FOURTH COUNTERCLAIM

77. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

78. The Fourth Counterclaim is barred in all or in part by the Statute of

Limitations.

FOR A SIXTH REPLY TO DEFENDANT ANDREWS' FOURTH COUNTERCLAIM

79. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

80. The Fourth Counterclaim is barred in all or in part by the Statute of Frauds.

FOR A SEVENTH REPLY TO DEFENDANT ANDREWS' FOURTH COUNTERCLAIM

81. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

82. The Fourth Counterclaim has improperly joined several causes of action and should be dismissed, or in the alternative, Plaintiff moves to make said Counterclaim more definite and certain.

FOR A FIRST REPLY TO DEFENDANT ANDREWS' FIFTH COUNTERCLAIM

83. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

84. Paragraph 55 is denied.

85. Paragraph 56 is denied.

86. Paragraph 57 is denied.

87. Paragraph 58 is denied.

FOR A SECOND REPLY TO DEFENDANT ANDREWS' FIFTH COUNTERCLAIM

88. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

89. Defendant Andrews' Fifth Counterclaim does not set forth sufficient facts or the requisite legal elements for the claims sought therein and Defendant Andrews fails to adequately state a claim upon which relief may be given against this Plaintiff, or in the alternative, Plaintiff moves to make the Counterclaim more definite and certain.

FOR A THIRD REPLY TO DEFENDANT ANDREWS' FIFTH COUNTERCLAIM

90. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

91. To the extent that Defendant Andrews seeks equitable relief in his fifth Counterclaim, Defendant's Counterclaim is barred by the Doctrine of Unclean Hands.

FOR A FOURTH REPLY TO DEFENDANT ANDREWS' FIFTH COUNTERCLAIM

92. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

93. To the extent that Defendant Andrews' Complaint seeks equitable relief, Defendant Andrews' Fifth Counterclaim is barred by the Doctrine of Laches.

FOR A FIFTH REPLY TO DEFENDANT ANDREWS' FIFTH COUNTERCLAIM

94. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

95. The Fifth Counterclaim is barred in all or in part by the Statute of Limitations.

FOR A SIXTH REPLY TO DEFENDANT ANDREWS' FIFTH COUNTERCLAIM

96. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

97. The Fifth Counterclaim is barred in all or in part by the Statute of Frauds.

FOR A FIRST REPLY TO DEFENDANT ANDREWS' SIXTH COUNTERCLAIM

98. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

99. Paragraph 60 is denied.

100. Paragraph 61 is denied.

101. Paragraph 62 is denied.

102. Paragraph 63 is denied.

103. Paragraph 64 is denied.

FOR A SECOND REPLY TO DEFENDANT ANDREWS SIXTH COUNTERCLAIM

104. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

107. Defendant Andrews' Sixth Counterclaim does not set forth sufficient facts or the requisite legal elements for the claims sought therein and Defendant Andrews fails to adequately state a claim upon which relief may be given against this Plaintiff or in the alternative, Plaintiff moves to make the Counterclaim more definite and certain.

FOR A THIRD REPLY TO DEFENDANT ANDREWS' SIXTH COUNTERCLAIM

108. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

109. To the extent that Defendant Andrews seeks equitable relief in his sixth Counterclaim, Defendant's Counterclaim is barred by the Doctrine of Unclean Hands.

FOR A FOURTH REPLY TO DEFENDANT ANDREWS' SIXTH COUNTERCLAIM

110. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

111. To the extent that Defendant Andrews' Complaint seeks equitable relief, Defendant Andrews' Third Counterclaim is barred by the Doctrine of Laches.

FOR A FIFTH REPLY TO DEFENDANT ANDREWS' SIXTH COUNTERCLAIM

112. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

113. The Sixth Counterclaim is barred in all or in part by the Statute of Limitations.

FOR A SIXTH REPLY TO DEFENDANT ANDREWS' SIXTH COUNTERCLAIM

114. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

115. The Sixth Counterclaim is barred in all or in part by the Statute of Frauds.

FOR A FIRST REPLY TO DEFENDANT ANDREWS' SEVENTH COUNTERCLAIM

116. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

117. Paragraph 66 is denied.

118. Paragraph 67 is denied.

119. Paragraph 68 is denied.

120. Paragraph 69 is denied.

121. Paragraph 70 is denied.

FOR A SECOND REPLY TO DEFENDANT ANDREWS' SEVENTH COUNTERCLAIM

122. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

125. Defendant Andrews' Seventh Counterclaim does not set forth sufficient facts or the requisite legal elements for the claims sought therein and Defendant Andrews fails to adequately state a claim upon which relief may be given against this Plaintiff, or in the alternative, Plaintiff moves to make the Counterclaim more definite and certain.

FOR A THIRD REPLY TO DEFENDANT ANDREWS' SEVENTH COUNTERCLAIM

126. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

127. To the extent that Defendant Andrews seeks equitable relief in his seventh Counterclaim, Defendant's Counterclaim is barred by the Doctrine of Unclean Hands.

FOR A FOURTH REPLY TO DEFENDANT ANDREWS' SEVENTH COUNTERCLAIM

128. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

129. To the extent that Defendant Andrews' Complaint seeks equitable relief, Defendant Andrews' Seventh Counterclaim is barred by the Doctrine of Laches.

FOR A FIFTH REPLY TO DEFENDANT ANDREWS' SEVENTH COUNTERCLAIM

130. Plaintiff realleges each paragraph set forth hereinabove to the extent not

inconsistent herewith.

131. The Seventh Counterclaim is barred in all or in part by the Statute of Limitations.

FOR A SIXTH REPLY TO DEFENDANT ANDREWS' SEVENTH COUNTERCLAIM

132. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

133. The Seventh Counterclaim is barred in all or in part by the Statute of Frauds.

FOR A FIRST REPLY TO DEFENDANT ANDREWS' EIGHTH COUNTERCLAIM

136. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

137. Paragraph 72 is denied.

138. Paragraph 73 is denied.

139. Paragraph 74 is denied.

140. Paragraph 75 is denied.

141. Paragraph 76 is denied.

142. Paragraph 77 is denied.

FOR A SECOND REPLY TO DEFENDANT ANDREWS EIGHTH COUNTERCLAIM

143. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

144. Defendant Andrews' Eighth Counterclaim does not set forth sufficient

facts or the requisite legal elements for the claims sought therein and Defendant Andrews fails to adequately state a claim upon which relief may be given against this Plaintiff or in the alternative, Plaintiff moves to make the Counterclaim more definite and certain.

FOR A THIRD REPLY TO DEFENDANT ANDREWS' EIGHTH COUNTERCLAIM

145. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

146. To the extent that Defendant Andrews seeks equitable relief in his eighth Counterclaim, Defendant's Counterclaim is barred by the Doctrine of Unclean Hands.

FOR A FOURTH REPLY TO DEFENDANT ANDREWS' EIGHTH COUNTERCLAIM

147. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

148. To the extent that Defendant Andrews' Complaint seeks equitable relief, Defendant Andrews' Eighth Counterclaim is barred by the Doctrine of Laches.

FOR A FIFTH REPLY TO DEFENDANT ANDREWS' EIGHTH COUNTERCLAIM

149. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

150. The Eighth Counterclaim is barred in all or in part by the Statute of Limitations.

FOR A SIXTH REPLY TO DEFENDANT ANDREWS' EIGHTH COUNTERCLAIM

151. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

152. The Eighth Counterclaim is barred in all or in part by the Statute of Frauds.

FOR A FIRST REPLY TO DEFENDANT ANDREW'S NINTH COUNTERCLAIM

153. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

154. Paragraph 79 is denied.

155. Paragraph 80 is denied.

156. Paragraph 81 is denied.

157. Paragraph 82 is denied.

158. Paragraph 83 is denied.

159. Paragraph 84 is denied.

160. Paragraph 85 is denied.

161. Paragraph 86 is denied.

162. Paragraph 87 is denied.

FOR A SECOND REPLY TO DEFENDANT ANDREWS' NINTH COUNTERCLAIM

163. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

166. Defendant Andrews' Ninth Counterclaim does not set forth sufficient facts or the requisite legal elements for the claims sought therein and Defendant Andrews fails to adequately state a claim upon which relief may be given against this Plaintiff or in the alternative, Plaintiff moves to make the Counterclaim more definite and certain.

FOR A THIRD REPLY TO DEFENDANT ANDREWS' NINTH COUNTERCLAIM

167. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

168. To the extent that Defendant Andrews seeks equitable relief in his ninth Counterclaim, Defendant's Counterclaim is barred by the Doctrine of Unclean Hands.

FOR A FOURTH REPLY TO DEFENDANT ANDREWS' NINTH COUNTERCLAIM

169. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

170. To the extent that Defendant Andrews' Complaint seeks equitable relief, Defendant Andrews' Ninth Counterclaim is barred by the Doctrine of Laches.

FOR A FIFTH REPLY TO DEFENDANT ANDREWS' NINTH COUNTERCLAIM

171. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

172. The Ninth Counterclaim is barred in all or in part by the Statute of Limitations.

FOR A SIXTH REPLY TO DEFENDANT ANDREWS' NINTH COUNTERCLAIM

173. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

174. The Ninth Counterclaim is barred in all or in part by the Statute of Frauds.

FOR A FIRST REPLY TO DEFENDANT ANDREWS' TENTH COUNTERCLAIM.

175. Plaintiff realleges each paragraph set forth hereinabove to the extent not

inconsistent herewith.

176. Paragraph 89 is denied.

177. Paragraph 90 is denied.

178. Paragraph 91 is denied.

179. Paragraph 92 is denied.

180. Paragraph 93 is denied.

181. Paragraph 94 is denied.

182. Paragraph 95 is denied.

FOR A SECOND REPLY TO DEFENDANT ANDREWS TENTH COUNTERCLAIM

183. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

186. Defendant Andrews' Tenth Counterclaim does not set forth sufficient facts or the requisite legal elements for the claims sought therein and Defendant Andrews fails to adequately state a claim upon which relief may be given against this Plaintiff or in the alternative, Plaintiff moves to make the Counterclaim more definite and certain.

FOR A THIRD REPLY TO DEFENDANT ANDREWS' TENTH COUNTERCLAIM

187. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

188. To the extent that Defendant Andrews seeks equitable relief in his tenth Counterclaim, Defendant's Counterclaim is barred by the Doctrine of Unclean Hands.

FOR A FOURTH REPLY TO DEFENDANT ANDREWS' TENTH COUNTERCLAIM

189. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

190. To the extent that Defendant Andrews' Complaint seeks equitable relief, Defendant Andrews' Tenth Counterclaim is barred by the Doctrine of Laches.

FOR A FIFTH REPLY TO DEFENDANT ANDREWS' TENTH COUNTERCLAIM

191. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

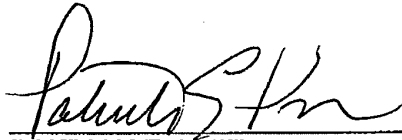
192. The Tenth Counterclaim is barred in all or in part by the Statute of Limitations.

FOR A SIXTH REPLY TO DEFENDANT ANDREWS' TENTH COUNTERCLAIM

193. Plaintiff realleges each paragraph set forth hereinabove to the extent not inconsistent herewith.

194. The Tenth Counterclaim is barred in all or in part by the Statute of Frauds.

WHEREFORE, having fully replied to Defendant Andrews' Counterclaims, the Plaintiff prays that this Court dismiss said Counterclaims or in the alternative, require the Defendant Andrews to re-plead eliminating misjoinder and properly stating the causes of action pled by this Defendant and for such other and further relief as to the Court seems just and proper under the circumstances.



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(864) 582-5118 SC Bar No. 3564

_____, 2006

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Post Office Box 2147
Greenville, South Carolina 29602
(864) 242-4727

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Quentin S. Broom, Jr.,)

Plaintiff/Third-Party Defendant,)

v.)

Ten State Street, L.L.P.)

Timothy D. Scrantom, Mark Broadwater,)

and H. Hughes Andrews,)

Defendants,)

of whom,)

H. Hughes Andrews, Individually)

and on behalf of Tri-Star Communications,)

Inc., is the,)

Counter-Claimant/Third-Party)

Plaintiff.)

C.A. No.: 08-CP-42-3397

**SECOND AMENDED ANSWER,
COUNTERCLAIMS and THIRD-
PARTY COMPLAINT OF DEFENDANT
H. HUGHES ANDREWS,
INDIVIDUALLY and on behalf of
TRI-STAR COMMUNICATIONS**

CLERK OF COURT
SPARTANBURG COUNTY
2016 JUL -8 PM 3:39
M. HOPE BLACKLEY

**TO: PATRICK E. KNIE AND JAMES R. GILREATH, ATTORNEYS FOR PLAINTIFF
AND THIRD-PARTY DEFENDANT QUENTIN S. BROOM, JR.**

By and through undersigned counsel, Defendant H. Hughes Andrews (AAndrews") answers the Plaintiff=s Complaint and asserts multiple claims, on his own behalf and on behalf of the Third-Party Plaintiff, Tri-Star Communications, Inc. ("Third-party Plaintiff Tri-Star" or "Tri-Star"). In the event any claims are "derivative," see Rule 23, SCRCP, Andrews alleges and will describe how his demands for relief were ignored. Andrews also alleges he fairly represents similarly affected shareholders and that any further demand would be futile: this corporation only had two (2) shareholders with the plaintiff/third-party defendant being the responsible party for

the losses sustained to Defendant Andrews and to Tri-Star Communications, both shareholders are parties to this action, and the corporation has dissolved. Andrews would allege and show the Court the following:

For A First Defense
(By Way of a General Denial)

1. All allegations of Plaintiff=s Complaint not admitted, qualified or explained are expressly denied.
2. As to Paragraphs 1 through 4 of Plaintiff=s Complaint, Andrews is without sufficient information to admit or to deny the allegation as stated and therefore demands strict proof thereof.
3. As to Paragraph 5 of Plaintiff=s Complaint, Andrews admits the allegation stated therein to be true to the best of his knowledge.
4. As to Paragraphs 6 through 17 of Plaintiff=s Complaint, Andrews denies the allegations as stated therein and demands strict proof thereof.
5. As to Paragraph 18 of Plaintiff=s Complaint, Andrews is without sufficient information to admit or to deny the allegation as stated and therefore demands strict proof thereof.
6. As to Paragraph 19 of Plaintiff=s Complaint, Andrews admits the allegations set forth therein with the exception that Drew=s Distributing, Inc. sold the equipment to Tri-Star and the obligations of Tri-Star to Drew=s Distributing Inc. were assigned to Andrews, of which Plaintiff received due notice.
7. As to Paragraph 20 of Plaintiff=s Complaint, Andrews is without sufficient information to admit or to deny the allegation as stated and therefore demands strict proof thereof.

8. As to Paragraphs 21 through 24 of Plaintiff=s Complaint, Andrews denies the allegations as stated therein and demands strict proof thereof.

CLERK OF COURT
STANLEY COUNTY
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9. As to Paragraphs 25 through 27 of Plaintiff=s Complaint, Andrews is without sufficient information to admit or to deny the allegation as stated and therefore demands strict proof thereof.

10. As to Paragraphs 28 through 32 of Plaintiff=s Complaint, Andrews denies the allegations as stated therein and demands strict proof thereof.

11. As to Paragraph 34 of Plaintiff=s Complaint, Andrews is without sufficient information to admit or to deny the allegation as stated and therefore demands strict proof thereof.

12. As to Paragraph 35 of Plaintiff=s Complaint, Andrews admits the allegation stated therein to be true to the best of his knowledge.

13. As to Paragraphs 36 through 38 of Plaintiff=s Complaint, Andrews denies the allegations as stated therein and demands strict proof thereof.

14. As to Paragraph 39 of Plaintiff=s Complaint, Andrews is without sufficient information to admit or to deny the allegation as stated and therefore demands strict proof thereof.

15. As to Paragraphs 40 through 78 of Plaintiff=s Complaint, Andrews denies the allegations as stated therein and demands strict proof thereof.

For A Second Defense
(Failure To State A Claim Upon Which Relief May Be Granted)

16. Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth fully hereunder.

17. Plaintiff=s Complaint does not set forth sufficient facts and/or the requisite legal elements for the claims sought therein such that Plaintiff fails to adequately state a claim upon which relief may be given against this Defendant.

For A Third Defense
(Unclean Hands)

18. Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth fully hereunder.

19. To the extent Plaintiff=s complaint seeks equitable relief, Plaintiff=s Complaint is barred by the doctrine of unclean hands.

For A Fourth Defense and By Way of Defendant Andrews'
First Counterclaim Against the Plaintiff and
First Cause of Action by Third-Party Plaintiff Tri-Star
(Breach of Fiduciary Duty)

20. Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

21. At all times relevant hereunder, Tri-Star was a South Carolina corporation with its principal place of business in Spartanburg County, South Carolina. Andrews, at all times relevant herein, was a fifty percent (50%) owner of Tri-Star, and he was also a personal creditor of Tri-Star.

22. Andrews has standing to bring this claim individually and on behalf of the Third-Party Plaintiff. He is the sole shareholder who suffered any actual loss as a result of Plaintiff's malfeasance and nonfeasance with and on behalf of Tri-Star. Tri-Star is now defunct, after the Plaintiff eviscerated all of Tri-Star's assets and converted them for his personal use and gain.

23. Plaintiff was a director and a fifty percent (50%) owner of Tri-Star. Plaintiff managed the financial operations of Tri-Star. As a controlling shareholder/partner, Plaintiff owed a fiduciary duty to the company and to Andrews to act in the best interest of the company and of Andrews at all times regarding Tri-Star's operations.

24. As a stockholder, Andrews loaned Tri-Star one hundred thirty thousand dollars (\$130,000.00) on or about August 31, 2005.

25. As the assignee of a debt, as of October 31, 2005, Tri-Star owed Andrews the sum of three million six hundred twenty-six thousand, three hundred ninety-three and 17/100ths dollars (\$3,626,393.17) for equipment (hereinafter Athe equipment@) sold to Tri-Star, of which one million one hundred ninety-four thousand three hundred sixty-two and 83/100ths dollars (\$1,194,362.83) is for the actual costs of equipment sold to Tri-Star.

26. Tri-Star sold and/or transferred a substantial amount of the equipment to Worldwide Entertainment, S.A. [AWorldwide Entertainment@], a Dominican Republic corporation. Plaintiff managed and/or controlled the daily operations of Worldwide Entertainment.

27. At all times relevant herein, Andrews owned an interest in Worldwide Entertainment via his partial membership in and with Calum, LLC, the corporation which owned the majority of stock of Worldwide Entertainment.

28. Plaintiff failed to pay the taxes owed by Worldwide Entertainment.

29. Plaintiff refused to produce the financial statement of Worldwide Entertainment to Andrews.

30. In the summer and/or fall of 2004, Plaintiff and Andrews had a disagreement over the operations of Tri-Star and the operations in the Dominican Republic. Upon information and belief, Plaintiff undertook a concerted effort to liquidate the assets of Tri-Star and convert the same for his personal use and benefit, without authority or consent of Andrews.

31. Towards that end, without the consent or authority of Andrews, Plaintiff paid himself a wage and/or salary in the amount of four hundred thousand (\$400,000.00) dollars on

December 15, 2004. Said distribution was made at a time when Tri-Star owed Andrews substantial sums of money both as a shareholder, for a shareholder loan, and as a creditor of Tri-Star.

32. Upon information and belief, Plaintiff used the fraudulent payment of wages to obtain a mortgage on a \$3.5 million dollar home located at 6565 Allison Road, Miami Beach, Florida, 33141-4508. Upon information and belief, Plaintiff made a deposit in the amount of \$5,000.00 on or about January 24, 2005 and signed an Agreement for Deed on February 14, 2005 to purchase the same.

33. Further, without the consent or authority of Andrews, between January 1, 2005 and April 30, 2005, Plaintiff paid himself wages and/or salary distributions from Tri-Star in the amount of five hundred twenty thousand dollars (\$520,000.00). Said distributions were made at a time when Tri-Star owed Andrews substantial sums of money both as a shareholder, for a shareholder loan, and as a creditor of Tri-Star.

34. Without consent or authority from Andrews, Plaintiff sold, or caused to be sold, the equipment in the possession of Worldwide Entertainment to third parties for substantially below market value. Indeed, when Plaintiff expressed his intention to sell Tri-Star's assets, Andrews expressly informed Plaintiff not to do so without his prior approval and consent. Plaintiff deliberately ignored Andrews' instruction.

35. Upon information and belief, Plaintiff converted essentially all of the assets of Tri-Star for his personal use and benefit. Upon information and belief, between 2005 and 2011 Plaintiff has received an estimated two million (\$2,000,000.00) dollars from the use of the assets

that formerly belonged to Tri-Star. All of this was without authority or consent from Andrews.¹ Said revenues were received by Plaintiff at a time when Andrews was owed millions of dollars for payment on the equipment.

36. At a time when Tri-Star owed Andrews substantial sums of money both as a shareholder, for a shareholder loan, and as a creditor of Tri-Star, Plaintiff paid hundreds of thousands of dollars to his relatives, ostensibly as loan repayments. Upon information and belief, said loans were not legitimate. Additionally, Plaintiff gave preference to paying monies to relatives over paying the debts owed to Andrews.

37. Thereafter, Plaintiff unilaterally, and without the consent or authority from Andrews, liquidated Tri-Star. On August 13, 2009, Tri-Star was administratively dissolved by the South Carolina Secretary of State due to the failure of Plaintiff in filing income tax returns and other required documents.

38. Plaintiff's actions rendered Tri-Star incapable of paying the monies owed to Andrews, all at a time when Plaintiff paid himself and his relatives substantial sums of money.

39. Plaintiff materially and substantially breached his fiduciary duty to Andrews in one or more of the following particulars:

- a. Paying himself a salary and/or distributions from Tri-Star at a time when Tri-Star owed Andrews substantial sums of money;
- b. Selling the assets of Tri-Star Inc. at far below market value without authority or consent of Andrews;

¹None of this information was available as of May 26, 2006, the date Defendant Andrews filed his First Amended Answer, Counterclaims and Third-party Complaint, because Plaintiff had not filed the income taxes where this income was reported.

- c. Converting Tri-Star=s money and/or assets for Plaintiff=s own use and benefit (or the benefit of his family members);
- d. Failing to exercise ordinary care and diligence commensurate with the standard of care applicable to similarly situated managers, officers and/or shareholders.

40. As a direct and proximate result, Andrews and Third-Party Plaintiff Tri-Star have been damaged, thereby entitling Andrews and Third-Party Plaintiff Tri-Star to actual and punitive damages hereunder in an amount to be determined by the Court.

**For A Fifth Defense and By Way of Defendant Andrews'
Second Counterclaim Against the Plaintiff and
Second Cause of Action by Third-Party Plaintiff Tri-Star
(Breach of Contract)**

41. Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

42. By and through the various contracts and agreements, Andrews contracted with the Plaintiff regarding the operations of Tri-Star and Worldwide Entertainment.

43. Without authority or consent from Andrews, Plaintiff disposed of Tri-Star's assets at substantially below their market value and/or converted them for his personal use and benefit (or the benefit of his family members).

44. Plaintiff did not use any of the proceeds to pay the loan given by Andrews or the monies owed to Andrews by and through his creditor assignments.

45. At a time when Tri-Star owed Andrews substantial sums of money, Plaintiff paid himself approximately nine hundred twenty thousand (\$920,000.00) dollars in salary and/or distribution within a four (4) month period of time. This was without authority or consent from

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Andrews. Additionally, Plaintiff distributed substantial sums of money to his relatives over repayment of monies owed to Andrews.

46. Plaintiff converted all of the assets of Tri-Star for his personal use and benefit and has received substantial sums of money since 2005.

47. Plaintiff's actions rendered Tri-Star incapable of repaying the monies owed to Andrews. Tri-Star is defunct has ceased operation.

48. As a direct and proximate result, Andrews and Third-party Plaintiff Tri-Star have been damaged, thereby entitling Andrews and Third-party Plaintiff Tri-Star to actual damages hereunder in an amount to be determined by the Court.

For A Sixth Defense and By Way of Defendant Andrews'
Third Counterclaim Against the Plaintiff and
Third Cause of Action by Third-Party Plaintiff Tri-Star
(Breach of Contract Accompanied by a Fraudulent Act)

49. Defendant Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

50. Plaintiff breached his contract(s) with Andrews.

51. Plaintiff had a fraudulent intent relating to the breaching of the contract and not merely to its making.

52. Plaintiff's breach was accompanied by a fraudulent act, which can be characterized by dishonesty in fact, unfair dealing and/or the unlawful appropriation of Andrews' money by design.

53. As a direct and proximate result, Andrews and Third-Party Plaintiff Tri-Star have been damaged, thereby entitling Andrews and Third-Party Plaintiff Tri-Star to actual and punitive damages hereunder in an amount to be determined by the Court.

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For A Seventh Defense and By Way of Defendant Andrews'
Fourth Counterclaim Against the Plaintiff and
Fourth Cause of Action by Third-Party Plaintiff Tri-Star
(Breach of the Covenant of Good Faith and Fair Dealing)

54. Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

55. There is an implied covenant of Good Faith and Fair Dealing in all contracts entered into or to be performed in the State of South Carolina.

56. Plaintiff=s actions as alleged herein were unreasonable, willful, reckless, and unjustified, and amount to a breach of the implied duty of good faith and fair dealing inherent in all contracts.

57. As a proximate result, Andrews has suffered actual and consequential damages.

58. As a direct and proximate result, Andrews and Third-Party Plaintiff Tri-Star have been damaged, thereby entitling Andrews and Third-Party Plaintiff Tri-Star to actual and punitive damages bereunder in an amount to be determined by the Court.

For An Eighth Defense and By Way of Defendant Andrews'
Fifth Counterclaim Against the Plaintiff and
Fifth Cause of Action by Third-Party Plaintiff Tri-Star
(Conversion)

59. Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

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CLERK OF COURT
SOUTH CAROLINA

60. Andrews had a right to possess monies and equipment belonging to Tri-Star.

61. Without authority from Andrews, Plaintiff took possession of these monies and/or equipment, or alternatively, exercised a right of ownership over the same, all to the exclusion of the rights of Andrews.

62. Such actions constitute conversion of Andrews= money and/or property.

63. As a direct and proximate result, Andrews and Third-Party Plaintiff Tri-Star have been damaged, thereby entitling Andrews and Third-Party Plaintiff Tri-Star to actual and punitive damages hereunder in an amount to be determined by the Court.

For A Ninth Defense and By Way of Defendant Andrews'
Sixth Counterclaim Against the Plaintiff and
Sixth Cause of Action by Third-Party Plaintiff Tri-Star
(Violation of S.C. Code of Laws ' 33-8-300)

64. Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

65. The actions of Plaintiff were not in good faith.

66. The actions of Plaintiff were not within the degree of care that an ordinarily prudent person in a like position would exercise under similar circumstances.

67. The actions of Plaintiff were not in a manner that a reasonable person could believe were in the best interests of Tri-Star or its equal-interest shareholder.

68. Said actions constitute a violation of South Carolina *Code of Laws ' 33-8-300*

69. As a direct and proximate result, Andrews and Third-Party Plaintiff Tri-Star have been damaged, thereby entitling Andrews and Third-Party Plaintiff Tri-Star to actual and punitive damages hereunder in an amount to be determined by the Court.

For A Tenth Defense and By Way of Defendant Andrews'
Seventh Counterclaim Against the Plaintiff and
Seventh Cause of Action by Third-Party Plaintiff Tri-Star
(Violation of S.C. Code of Laws ' 33-8-420)

70. Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

71. The actions of Plaintiff were not in good faith.

72. The actions of Plaintiff were not within the degree of care that an ordinarily prudent person in a like position would exercise under similar circumstances.

73. The actions of Plaintiff were not in a manner that a reasonable person could believe were in the best interests of Tri-Star and its equal-interest shareholder.

74. Said actions constitute a violation of South Carolina *Code of Laws ' 33-8-420*.

75. As a direct and proximate result, Andrews and Third-Party Plaintiff Tri-Star have been damaged, thereby entitling Andrews and Third-Party Plaintiff Tri-Star to actual and punitive damages hereunder in an amount to be determined by the Court.

For An Eleventh Defense and By Way of Defendant Andrews'
Eighth Counterclaim Against the Plaintiff
(Promissory Estoppel)

76. Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

77. At the time Andrews went into business with Plaintiff in the formation of Tri-Star and its subsequent dealings with Worldwide Entertainment, Plaintiff promised Andrews that he

would act in the best interest of Tri-Star and Andrews at all times regarding the management of the same.

78. This promise was unambiguous on its terms.

79. Andrews reasonably relied upon Plaintiff=s promise.

80. Plaintiff expected and foresaw that Andrews would rely upon his promise.

81. Andrews was injured in reliance upon the promise by Plaintiff.

82. As a direct and proximate result, Andrews has been damaged as set forth fully hereunder, thereby entitling Andrews to actual and punitive damages in an amount to be determined by the Court.

For A Twelfth Defense and By Way of Defendant Andrews'
Eighth Counterclaim Against the Plaintiff
(Fraud)

83. Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

84. Plaintiff represented to Andrews that he would manage the assets of Tri-Star and act in the best interest of Tri-Star and Andrews.

85. These representations were false.

86. These representations were material.

87. Plaintiff either knew the representations were false or made such representations with a reckless disregard of their truth or falsity.

88. Plaintiff intended Andrews to act upon Plaintiff=s representations.

89. Andrews was ignorant of falsity of Plaintiff=s representations.

90. Andrews relied upon the truth of Plaintiff=s representations.

91. Andrews had a right to rely upon the truth of Plaintiff=s representations.

92. As a direct and proximate result, Andrews was damaged, thereby entitling him to actual and punitive damages hereunder in an amount to be determined by the Court.

For A Thirteenth Defense and By Way of Defendant Andrews'
Tenth Counterclaim Against the Plaintiff
(Negligent Misrepresentation)

93. Andrews realleges each above paragraph, to the extent not inconsistent herewith, as if set forth *in toto* hereunder.

94. Plaintiff made a false representation to Andrews.

95. Plaintiff had a pecuniary interest in making these statements.

96. Plaintiff owed a duty of care to see that he communicated truthful information to Andrews.

97. Plaintiff breached that duty by failing to exercise due care.

98. Andrews justifiably relied on Plaintiff=s representation.

99. Andrews suffered pecuniary loss as proximate result of his reliance upon that representation.

100. As a direct and proximate result, Andrews was damaged, thereby entitling Andrews to actual and punitive damages hereunder in an amount to be determined by the Court.

WHEREFORE, having fully answered Plaintiff=s Complaint, Defendant Andrews prays for the following relief:

- (a) that Plaintiff=s complaint be dismissed with prejudice, with costs and attorney=s fees awarded to Andrews;
- (b) that Judgment be entered against the plaintiff on all of Andrews= counterclaims, for actual and punitive damages, in an amount to be determined by the Court;

- (c) that Judgment be entered against the plaintiff on all of Third-Party Plaintiff Tri-Star=s causes of action, for actual and punitive damages, in an amount to be determined by the Court; and
- (d) whatever further and just relief the Court deems appropriate under the circumstances.

Respectfully submitted,

Pillsbury Law Firm, LLC



Rodney F. Pillsbury (SC Bar #13067)
25 Mills Ave.
Greenville, SC 29605
Phone: (864) 241-9828
Fax: (864) 370-0599
Email: rodney@pillsburyfirm.law
ATTORNEY for H. HUGHES ANDREWS

July 7, 2016

/verification attached

CLERK OF COURT
SPARKMAN HUGHES COURT
2016 JUL -8 PM 3:40
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Quentin S. Broom, Jr.,)
)
Plaintiff/Third-Party Defendant,)

C.A. No.: 08-CP-42-3397

v.)

Ten State Street, L.L.P.)
Timothy D. Scrantom, Mark Broadwater,)
and H. Hughes Andrews,)

VERIFICATION

Defendants,)

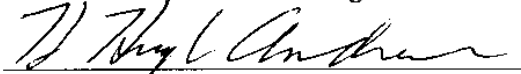
of whom,)

H. Hughes Andrews, Individually)
and on behalf of Tri-Star Communications,)
Inc., is the,)

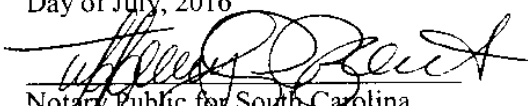
Counter-Claimant/Third-Party)
Plaintiff.)

SPARTANBURG COUNTY
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M. HOPE BLACKLEY

PERSONALLY APPEARED BEFORE ME, H. Hughes Andrews, who being duly sworn, states that he is the Counter-Claimant/Third-Party Plaintiff herein, and as such is authorized to make this Certification; he has read the foregoing Second Amended Answer, Counterclaims and Third-Party Complaint of Defendant H. Hughes Andrews, Individually and on behalf of Tri-Star Communications and that it is true to the best of his knowledge.


H. Hughes Andrews

SWORN to before me this 10th
Day of July, 2016


Notary Public for South Carolina
My Commission Expires: 10/18/21

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
3
4 H. Hughes Andrews,)
5 Plaintiff,) TRANSCRIPT OF RECORD
6 -vs-) 2008-CP-42-3397
7 Quentin S. Broom, Jr.,)
8 Defendant.) June 26 - 28, 2017
9) Spartanburg, South Carolina
10

11 B E F O R E :

12 HONORABLE J. MARK HAYES, II, JUDGE
13
14

15 A P P E A R A N C E S :

16 RODNEY F. PILLSBURY, ESQUIRE
17 BLAKE A. HEWITT, ESQUIRE
18 Attorneys for the Plaintiff

19 MATTHEW TERRY RICHARDSON, ESQUIRE
20 PATRICK E. KNIE, ESQUIRE
21 WHITNEY B. HARRISON, ESQUIRE
22 Attorneys for the Defendants

23 Linda D. Moffitt
24 Circuit Court Reporter
25

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1	<u>EXHIBITS</u>		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	P-1	Quentin Broom Tax Return - 2003	
4	P-2	Quentin Broom Tax Return - 2004	
5	P-3	Quentin Broom Tax Return - 2005	
6	P-4	Quentin Broom Tax Return - 2006	
7	P-5	Quentin Broom Tax Return - 2007	
8	P-6	Quentin Broom Tax Return - 2008	
9	P-7	Quentin Broom Tax Return - 2009	
10	P-8	Quentin Broom Tax Return - 2010	
11	P-9	Quentin Broom Tax Return - 2011	
12	P-10	Quentin Broom Tax Return - 2012	
13	P-11	Quentin Broom Tax Return - 2013	
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19		2005	
20	P-16	Statement of revenues and expenses	
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23	P-18	Statement of revenues and expenses	
24		9-30-2005	
25	P-19	General Ledger	

1	<u>EXHIBITS</u>		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	P-20	Copy of Arthur State Bank check # 4436	162
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20	P-37	Arthur State Bank statement	231
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22	P-39	Arthur State Bank statement	300
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24			
25			

1		<u>EXHIBITS</u>	
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	D-1	Promissory Note dated 12/21/99	
4	D-2	Purchase money security agreement 12/21/99	
5	D-3	Assignment of Drew's Receivables 11/11/2001	
6	D-4	Calum, LLC, structure chart 2/2/2001	
7	D-5	Tri-Star adjusting journal entries	
8	D-6	News articles	
9	D-7	Letters	
10	D-8	Letter dated 9/21/2005	
11	D-9	Transcript of bench trial	
12	D-10	Final order dated 6/1/2006	
13	D-11	Bankruptcy petition and final order	
14	D-12	Fax	
15	D-13	Letter dated 10/14/2005	
16	D-14	Receipt dated 10/24/2005	
17	D-15	Deposition dated 1/7/2005	
18	D-16	Defendant's Exhibit No. 18	
19	D-17	Tri-Star general ledger	
20		1/1/2003 to 12/31/2003	
21	D-18	Tri-Star general ledger	
22		1/1/2004 to 12/31/2004	
23	D-19	Fax dated 3/6/2001	
24	D-20	Check dated 4/29/2004	
25	D-21	Bergmann roulette machine manual	

1		<u>EXHIBITS</u>	
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	D-22	Letter dated 8/31/2016	
4	D-23	Fax dated 5/10/2001	
5	D-24	Letter dated 8/7/2001	
6	D-25	Letter dated 8/23/2001	
7	D-26	Fax dated 8/18/2003	
8	D-27	Fax dated 8/18/2003	
9	D-28	Andrews 2002 tax return	
10	D-29	Tri-Star 2003 tax return	
11	D-30	Civil docket sheet	
12	D-31	1997-98 Promissory notes	336
13	D-32	Letter dated 6/9/2005	336
14	D-33	Tri-Star permanent file index	
15	D-34	Tri-Star balance sheet 7/31/2001	
16	D-35	Russell's handwritten notes 8/19/2003	
17	D-36	Tri-Star accountant working papers	
18		1/1/98 12/31/2003	
19	D-37	Fax 8/11/2006	
20	D-38	Tri-Star balance sheet, income statement	
21		and general ledger 2002	
22	D-39	Tri-Star balance sheet, income statement	
23		and general ledger 2001	
24	D-40	1999 Tri-Star Accountant working papers,	
25		financial statements and tax returns	

1	<u>EXHIBITS</u>		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	D-41	2000 Tri-Star Accountant working papers,	
4		financial statements and tax returns	
5	D-42	2002 Tri-Star Accountant working papers,	
6		financial statements and tax returns	
7	D-43	2003 Tri-Star Accountant working papers,	
8		financial statements and tax returns	
9	D-44	Drew's Distributing corporate documents	
10	D-45	2004 Tri-Star W-2	
11	D-46	Letter dated 8/12/2003	
12	D-47	Business activity for Tri-Star	
13	D-48	Copy of passport of Quentin S. Broom, Jr.	
14	D-49	TSS and Russell Moore salary and	
15		real estate 5/18/2004	
16	D-50	TSS invoices	
17	D-51	Analysis	63
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20	D-54	Deposition	304
21	D-55	Deposition	305
22	D-56	Pot-O-Gold price per unit	345
23	D-57	Page of Tim Russell deposition	381
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25			

Motions

1 (Proceedings June 26, 2017)

2 (Plaintiff's Exhibits Nos. 1 through 15 premarked by
3 counsel; Defendants Exhibits Nos. 1 through 50 premarked by
4 counsel.)

5 THE COURT: We'll go on the record in the matter of
6 Andrews vs. Broom, 2008-CP-42-3397.

7 I got an email from Mr. Richardson indicating he
8 wanted to be heard on the motion for summary judgment.

9 You know, I'll be more than happy to -- to hear from
10 you. I think -- you know, I'm not going to rule on the
11 summary judgment motion.

12 We're here today at trial, so we're going to go
13 forward. And I'll be more than happy to hear anything
14 you'd like for me to hear in regards to the summary
15 judgment motion.

16 MR. RICHARDSON: Thank you very much, Your Honor.

17 In light of your comments, I'll be brief.

18 I'd like to address first, if Your Honor doesn't mind,
19 the 8:00 a.m. email this morning from Mr. Pillsbury.

20 We received this email in argument about the direct
21 versus derivative claims, and frankly, Your Honor, I don't
22 understand it.

23 The Court ruled without a motion to reconsider in
24 November of 2011, and then you reaffirmed that ruling in an
25 order June 2nd of 2017 that Mr. Andrews actually drafted.

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1 And on the record in that hearing -- and the ruling I'll
2 tell you is that you'd adhered to your previous ruling that
3 the claims are derivative, not direct.

4 And the -- in the motion to dismiss the counterclaims
5 on May 17th I cited to this code section orally but not in
6 the briefs, 33-14-105(a). And makes it clear that a
7 dissolved corporation continues its corporate existence
8 for, among others things, collecting its assets,
9 distributing remaining property and everything else
10 necessary.

11 And then in subsection (c) -- excuse me -- Subsection
12 (s)(3) it says dissolution does not subject its directors
13 and officers to standards of conduct different from Chapter
14 Eight, which is the -- the standards of conduct we know in
15 this case 33-8-300 and 420.

16 And then in that same section, 30 -- same code
17 section, 33-14-105(c)(5) it specifically says that
18 dissolution does not prevent the commencement of a
19 proceeding by or against the corporation in its corporate
20 name.

21 And so, you know, first of all, I don't -- there's no
22 timely motion to reconsider that issue. And I just think
23 that they're -- they've more than preserved their issue
24 about the direct versus derivative claims, but we're
25 proceeding under the derivative claims, and -- and they can

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1 even under the dissolved corporate entity.

2 And/but I would like to address Mason itself because
3 it -- it started by -- and I heard you. It's a very long
4 fact section, a lot of block quotes from curative counties
5 that -- if you just go and read the section on the breach
6 of fiduciary duty, because that's why Mr. Pillsbury cited
7 it to you this morning.

8 And, first, it recognizes breach of fiduciary duty has
9 been codified by 33-8-300 and 420. Okay. So, and that's
10 part of our motion to -- for summary judgment.

11 All of these counter -- all of these common-law claims
12 and the ones that are purely pled as direct claims like
13 promissory estoppel, fraud and negligent
14 misrepresentation -- all of those are -- should be part of
15 and consumed by the codification recognized by Mason.

16 And, second, it says specifically about breach of
17 fiduciary-duty claim in this context, it says, quote, "It
18 must be pursued through derivative and not individual
19 action." And he -- he didn't quote that part of the -- of
20 that section for you.

21 But then it goes on, and what happened to Mason on
22 breach of fiduciary duty is that it affirms that there's no
23 separate cause of action in that case because the loss was
24 not unique to an individual shareholder.

25 It made -- it made the liability, which would have

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1 made the liability to the individual, but instead found,
2 just as in this case, that the alleged mismanagement
3 impacts the -- all of the shares equally, no matter who is
4 responsible for it. The ownership, right, the ownership of
5 the company is what's affected by the damages claimed in
6 this -- in this case. And -- and it's why Mr. Pillsbury --
7 excuse me -- Mr. Andrews is going to say and has said half.
8 He's going to say here's my damages and we're -- I'm
9 entitled to half -- half because he is only 50 percent
10 owner.

11 So we're clearly within the realm of derivative claims
12 here. We also, I think appropriately, need to have these
13 claims narrowed to the -- to the claims that are -- only
14 claims that are permitted under this context 33-8-300 and
15 420.

16 And, frankly, Your Honor, I'm not sure what relief he
17 is requesting at this point in this email, but it should be
18 denied.

19 The reason I wanted to address that though is because,
20 as I pointed out, it does feed into our summary judgment
21 motion and, most particularly, to the conduct of the trial.

22 Now, it's been suggested -- but I don't want to speak
23 necessarily for Mr. Anders -- Andrews -- that he is not
24 pursuing certain categories that we think in our summary
25 judgment motion we've clearly laid out are -- are not

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1 appropriate to go to a trial.

2 For example, the 1999 note is obsolete. We've got a
3 chart to address that. I might invite Mr. Andrews' counsel
4 to either take this opportunity to confirm that they're not
5 pursuing the '99 note, or we'd like to proceed on the
6 argument because we believe it's fairly clear that it
7 should be knocked out.

8 MR. PILLSBURY: We've withdrawn that, Your Honor. The
9 portion of his claim that pertains to the -- the promissory
10 note we've withdrawn.

11 MR. RICHARDSON: Thank you very much.

12 And so, Your Honor, that's one reason why we did want
13 to have at least a brief hearing on the summary judgment
14 motion this morning.

15 So, and -- and again, that -- that is if you see if we
16 go to the complaint -- and we'll hear about this more in
17 the trial -- but that existing debt which did not exist,
18 but he claimed did, underlies every single claim that he
19 makes -- the payments that were being made on salary to
20 Mr. Broom, Sr., and etc., were done while this underlying
21 debt was owed. And so when that falls out a big part of
22 the foundation of these claims fall out.

23 On the deferred salary, we think it's clear at this
24 point, Your Honor, that there's been no presentation of
25 evidence that this salary was unreasonable or unsupported.

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1 We've supported our motion with the Andrews' testimony
2 where he didn't dispute that the salary was owed. He just
3 had a quibble about the amount. And we got the deposition
4 testimony from Mr. Russell who is Tri-Star's accountant
5 that says Broom's salary that was actually paid, all of it,
6 was, quote, a fair number. That's in his deposition 27-28.

7 And the reason I go through that, just briefly, is
8 because, although we got a brief legal argument mostly
9 addressing the motion to reconsider last week, today we
10 still do not have any -- any opposition, factual
11 opposition, to this, to this claim.

12 Specifically, in 56(e) it says when a motion for
13 summary judgment is made and supported as provided for in
14 this rule, an adverse party may not rest upon the mere
15 allegations or denials of his pleading, but his response by
16 affidavits, or otherwise provided in this rule, must set
17 forth specific facts showing there's a genuine issue for
18 trial. And if he does not so respond summary judgment is
19 appropriate, meaning we're entitled to judgment as a matter
20 of law -- shall be entered against him. That's the
21 deferred salary piece.

22 Liquidation, I just much more quickly go through the
23 same thing. It's in our brief, supported by the bankruptcy
24 findings of exigent circumstances in the Dominican Republic
25 and -- and letters that -- that admitted in that case and

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1 unopposed in this case, the -- the letters from Pat Knie in
2 2005, and, again, the machine's value.

3 That's an issue that's going to be -- going to be
4 brought up today. The machine-value chart is -- it has
5 a -- machine value chart is a -- is actually an issue,
6 because the very next motion that we would like to be heard
7 before starting this case is the motion, you know, to
8 exclude what we have been told is coming, which is a
9 Mr. Fletcher giving some expert testimony.

10 But here we've got laid out for Your Honor -- we're
11 happy to pass it up -- but the very clear evidence of
12 the -- of the plummeting value in Mr. Andrews' words that
13 these machines had that were virtually worthless and -- and
14 that's been supported just as we said in the rule with --
15 with evidence in our motion and unopposed.

16 And, Your Honor, again, the -- there's an issue that
17 the fourth out of the five issues -- loan repayments for
18 Broom, Sr. That's like the '99 note. We've been -- it's
19 been suggested that may not be pursued, but I would like to
20 address it unless that is not going to be pursued by Mr.
21 Andrews.

22 MR. PILLSBURY: Your Honor, as I explained in an
23 e-mail to counsel, that we won't claim it as an item of
24 damage, but that payment as a preference will be an
25 evidentiary discussion.

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1 MR. RICHARDSON: With that I'll move on to the fifth,
2 which is now the third, claim of damages, which is a very
3 strange claim in lots of ways.

4 Mr. Andrews is claiming loss profits of his --
5 Mr. Andrews -- from Broom's income after Tri-Star was
6 liquidated and after Tri-Star, without dispute, has ceased
7 all operations.

8 There's no dispute that these lost profits that
9 Mr. Andrews is claiming are from sources other than
10 Tri-Star, other, from any operations that these two men
11 were -- were operating together. And, in fact, Mr. Andrews
12 is claiming half of Mr. Broom's 2015 income, ten years
13 after they separated and after they parted ways and the
14 operation ceased.

15 And this is the -- the reason why I wanted to have the
16 summary judgment motion, is because their requires for
17 something like that, lost profits, is more than just
18 speculation and conjecture.

19 It's got to consist of actual facts upon which some
20 conclusion, reasonably accurate conclusion, regarding the
21 cause of those profits and the -- and the tie into
22 Mr. Andrews' Tri-Star ownership and the amount of the loss
23 which can we logically and rationally drawn.

24 And I am -- I am actually quoting from a -- from
25 Drew's Company -- unrelated to this Drew's -- vs. Ledwith,

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1 296 S.C. 2000 -- excuse me -- 207. And that's a quote from
2 the state Supreme Court.

3 And -- and here's why we're arguing this today and not
4 previously, is because two days ago on Saturday for the
5 first time we sought a chart that was produced itemizing
6 all of these lost profits that he's claiming without any
7 specificity. It's got a year. For example, 2015. And the
8 number is \$531,000. That's it. We have no idea how to
9 meet that.

10 Okay. Now, we're not -- we're not trying to play dumb
11 here. I mean, that's the number of his income in 2015.
12 But it's also -- he files a joint return. He has other
13 businesses. In fact, all of his income is undisputedly
14 from businesses unrelated to the businesses, again,
15 Mr. Andrews is part of.

16 And so that's why we think it's important now for us
17 to -- to kind of narrow the issues for trial so we can
18 focus on those things, as the rule says, that aren't having
19 any genuine issue of material fact.

20 And, Your Honor, I -- you know, obviously, we've got a
21 lot of other arguments in our brief, and we'll just rely on
22 the -- on the summary judgment memorandum about -- about
23 those. Thank you, Your Honor.

24 MR. HEWITT: Thank you, Your Honor. If it please the
25 Court.

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1 The claims have been narrowed substantially. Mr.
2 Pillsbury is going to talk about that, and that narrowing
3 is due in part to the excellent arguments of my brothers
4 and sister on the other side, some of their meritorious
5 summary judgment arguments. So we appreciate them raising
6 those. Mr. Pillsbury is going to talk about that in a
7 moment, articulate precisely how the scope of Mr. Andrews'
8 counterclaims have been narrowed.

9 But, Judge, what we have here, as you know -- and I
10 know you're painfully familiar with the allegations of this
11 case as are all the counsel who have been in it for a long
12 time -- the counterclaims allege that the now defendant
13 paid himself without his partner's consent, converted
14 company assets to his own use and failed to consider his
15 partner's interest. It's a classic loss of individual and
16 corporate opportunity claim, and the corporation in this
17 case exists on paper but is not longer active.

18 The efficacy of the e-mail Mr. Pillsbury sent this
19 morning was to signal, as we have tried to signal
20 throughout this case's life span, that if the Court
21 ultimately decides to enter a judgment in favor of
22 Mr. Andrews, we intend to ask the Court to specify that
23 that money judgment be a direct judgment, not a derivative
24 judgment, because if, for example, this loss of corporate
25 opportunity damaged Mr. Andrews by not receiving half of

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1 the income he should have received, well, there's no point
2 in that half of the pot going to a corporation that doesn't
3 exist any more. That money judgment ought to go
4 Mr. Andrews directly.

5 As the -- I think that's all I have. We can talk
6 about the procedural arguments for which I'm thankful. I
7 sort of feel like Herman's Hermits singing "Henry the 8th,"
8 versus singing the first.

9 THE COURT: well, let me ask you this.

10 Does the Mason case that was raised, derivative versus
11 direct claims, does that -- does that change your method of
12 proof?

13 MR. HEWITT: I -- no, sir. I don't think so at all.

14 The reason or a reason my co-counsel sent that e-mail
15 is because it's a 2015 case. We, obviously, didn't have
16 the benefit of it in 2011.

17 It is similar to Brown or Babb vs. Rothrock and Todd
18 vs. Saldo in that it involves a corporation with a small
19 number of shareholders but more than two.

20 That's one of the reasons that the Court of Appeals
21 said, hey, you're a plaintiff, your injury is common to
22 other shareholders. Some of them were not -- not all of
23 them were plaintiffs with him.

24 The difference in this case -- and I know it may seem
25 like a trivial factual distinction, but it's not -- there's

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1 only two shareholders. There's not four or five. And all
2 of the academic scholarship on this direct-derivative issue
3 says that that makes the difference.

4 THE COURT: So we can address that issue if Andrews --
5 now plaintiff -- meets their burden.

6 MR. HEWITT: It's -- it's completely unnecessary
7 unless the Court issues a judgment in Andrews' favor.

8 THE COURT: Okay.

9 MR. HEWITT: And with that I'll turn to Mr. Pillsbury
10 to articulate how the plaintiff --

11 MR. PILLSBURY: Well, Your Honor, I think we've kind
12 of identified the ones we've withdrawn, and we're ready to
13 proceed.

14 THE COURT: All right. So just to be sure that I'm
15 clear, we have 1999 notes gone.

16 You are making a claim for deferred salary, lost
17 profits.

18 And what was the third, loss of corporate opportunity?

19 MR. PILLSBURY: Yes, essentially.

20 THE COURT: Okay. All right. The -- who is -- who do
21 you plan on being your first witness?

22 MR. PILLSBURY: Mr. Fletcher, Your Honor.

23 THE COURT: And he's got his motion to -- motion to
24 exclude Fletcher's testimony as an expert, is that correct?

25 MR. PILLSBURY: Yes, Your Honor.

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1 THE COURT: Do you want to --

2 MR. RICHARDSON: We would like to, you know, address
3 it. Do you want to address it now?

4 THE COURT: Okay. I'll be more than happy to hear
5 from you.

6 MR. RICHARDSON: I'll tell you what, Your Honor, we'd
7 like to do, is address two more preliminary matters.

8 THE COURT: All right.

9 MR. RICHARDSON: And -- and I think we can deal with
10 Mr. Fletcher during -- during cross however.

11 THE COURT: Okay.

12 MR. RICHARDSON: The -- we've got -- last night we
13 were given exhibits from the -- from the defendants. In
14 fact, didn't -- didn't even receive them until 6:15 --
15 6:13 last night.

16 It contains tax returns for Mr. Broom from 2003 to
17 2015. Okay. And these, as we said and Your Honor knows,
18 Mr. Broom was the director and officer of Tri-Star until
19 the end of 2005.

20 The tax returns of his after 2005 that there were --
21 actually identified the first time on Saturday but provided
22 the first time last night, which are ours, are totally
23 irrelevant, and we would move that they be excluded.

24 We object to their use not only for the fact that they
25 expose Mr. Broom unnecessarily to disclosure of private

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1 information but that there is no -- been no connection and
2 no testimony, no even attempt at -- at opposition to the
3 summary judgment of how they tie in.

4 In fact, Mr. Andrews has testified himself that it is
5 only what he interpreted Mr. Broom's deposition testimony
6 to be that he has any basis for claiming that lost profits
7 of unrelated income after 2005. And they didn't even cite
8 to that testimony of Mr. Broom to try to introduce a
9 genuine issue of material fact on these post-2005 tax
10 returns. So we would move to exclude those tax returns of
11 2006 to 2015.

12 In addition -- and as I said -- we've got this damages
13 summary report that has a salary, the value of the machines
14 and then the lost -- the lost -- supposedly lost profits.

15 The updated damages summary that we got last night
16 shows prejudgment interest for the salary payments. And
17 the prejudgment interest, Your Honor, is -- should not --
18 should not be allowed and cannot be recovered for a number
19 of reasons.

20 Number one is it hasn't been specifically pled. It's
21 nowhere in the second amended counterclaims. So we've got
22 three cracks at it in -- in the pleadings, and not once
23 have they mentioned the word prejudgment interest until
24 this weekend.

25 Second, this is no -- these salary numbers are not

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1 liquidated amounts. They're not some agreement. Not only
2 is it disputed, but it's been uncertain both as to
3 liability and to amounts. We talked about Mr. Russell, the
4 Tri-Star accountant, saying it's a fair amount.

5 Mr. Andrews' agent admitted that Mr. Broom was
6 entitled to these -- entitled to these -- these salaries,
7 deferred salaries, and agreed to the amounts at a meeting
8 in which Mr. Andrews attended.

9 And -- and lastly there's -- excuse me -- there's no
10 agreement to any sum certain. So it can't be recovered in
11 any event, even if they hadn't pled.

12 But last -- and this is more like rearranging deck
13 chairs -- but -- but the code section that allows it is
14 34-31-20. And for prejudgment interest it's simple only
15 and they are -- their client's claiming compound interest,
16 which is interest on interest.

17 And I raised that last point to illustrate this point,
18 that had we known prior to today, or really last night,
19 that they were going -- they were going to request
20 prejudgment interest on the salary dispute and that -- ask
21 that it be compounded, we could have met that with -- with
22 expert testimony or some kind of rebuttal. But we're at a
23 point where that's too late, and we ask that the
24 prejudgment interest in addition to the 2006-2015 tax
25 returns be excluded, Your Honor. Thank you.

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1 MR. PILLSBURY: Your Honor, number one, they never
2 asked us in interrogatories about damages, so we provided
3 the information as a courtesy.

4 Two is we can go to the specifics on why the amounts
5 are what they are. And my suggestion would be that the
6 Court take that up at the time once the foundation has been
7 laid. But I can go into some particulars if the Court
8 wishes right now.

9 THE COURT: Probably not, because I think that they
10 are -- that defendant is raising issues that are
11 significant, but they're issues that are contingent on the
12 plaintiff meeting its burden of proof.

13 MR. PILLSBURY: Correct.

14 THE COURT: And so I don't have to rule on them
15 because plaintiff tells me his burden of proof, then I'm
16 not going to rule on them, so.

17 MR. PILLSBURY: Right.

18 THE COURT: All right. Anything else before we start?

19 MR. RICHARDSON: Yes, Your Honor.

20 I apologize, but I just wanted to bring back to your
21 attention the motion that we made to establish facts that
22 have been -- defined facts rather than have been
23 established by previous litigation.

24 You'd invited the parties to do that. We conferred
25 and then we filed our motion which included a proposed

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1 order that I can hand up if Your Honor would like a copy of
2 it.

3 THE COURT: I've reviewed it.

4 MR. RICHARDSON: And I haven't heard any dispute as to
5 any of those facts, and I think that speaks for itself,
6 Your Honor.

7 MR. PILLSBURY: Your Honor, we would -- number one,
8 I'm not sure -- there were a couple of different things
9 that were filed.

10 There was one thing that Pat filed on Friday that --
11 there was a cover letter that was e-mailed to me, I think,
12 on Thursday. I'm not sure whether the efilng ever went
13 through. So I'm not quite sure what -- I'm not sure if
14 I've seen what they're talking about, is what I'm saying.
15 But there was another thing. It depends on whether Matt's
16 office -- if Matthew's office filed it, then it was filed.
17 I'm not sure if --

18 MR. RICHARDSON: We filed it on Thursday, Your Honor.

19 MR. PILLSBURY: Right. There was -- and I'm not sure
20 if it went through, is the thing, because we tried to pull
21 it.

22 MR. RICHARDSON: Filed stamped copy June 22nd at
23 3:24 and on the docket...

24 MR. PILLSBURY: Then, Your Honor, if I may, I'll take
25 a look at that during a break if that's okay, and we can,

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1 but we've -- we've agreed to the issues regarding that
2 would affect the I.T.T. information, which is one of the
3 reasons why, you know, we withdrew that portion of the
4 claim. So I'm not sure that it's necessarily necessary at
5 this point.

6 THE COURT: I.T.E.?

7 MR. PILLSBURY: I.T.T.

8 THE COURT: I.T.T.

9 MR. PILLSBURY: That was the supplemental proceedings
10 litigation that was relevant to whether or not the -- the
11 promissory-note claim was -- you know, survived that we've
12 since withdrawn.

13 THE COURT: Okay. All right. And what I would
14 encourage the defense to do in regards to the issues that I
15 reviewed, if they are important to the defendant you might
16 want to raise it in cross-examination of -- like if they --
17 if plaintiff takes the position it's contrary to what
18 they've taken in previous actions or depositions or
19 bankruptcy filings or whatever, to point that out through
20 cross-examination.

21 MR. RICHARDSON: Thank you, Your Honor.

22 THE COURT: All right.

23 MR. RICHARDSON: And I apologize, Your Honor. So
24 you're reserving judgment on the motion to establish the
25 facts?

Michael Fletcher
Direct examination by Mr. Pillsbury

1 THE COURT: Correct.

2 MR. RICHARDSON: Or denying it?

3 THE COURT: Yeah. I am because I don't -- I'm not
4 dis -- I'm not saying that the items that I reviewed, that
5 somehow they're not truthful and didn't occur. I just
6 don't know that they have any relevance to what I'm fixing
7 to hear from the other side.

8 MR. RICHARDSON: Thank you, Your Honor.

9 THE COURT: Yeah. All right. Do you want to call
10 your first witness?

11 MR. PILLSBURY: Yes, Your Honor. I didn't set up some
12 of the projection stuff because I didn't know. I didn't
13 want to run afoul of getting in anybody's way if I might
14 indulge the Court for about five or ten minutes to connect
15 the electronics.

16 THE COURT: Okay. All right. Yeah. I'll step down
17 and come back in about five minutes.

18 MR. PILLSBURY: Thank you, Your Honor.

19 (Whereupon, a recess was taken.)

20 MR. PILLSBURY: Your Honor, at this time I'd call
21 Mr. Michael Fletcher to the stand, please.

22 MICHAEL FLETCHER, having been
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. PILLSBURY

25 Q Good morning, Mr. Fletcher. Can you identify yourself

Michael Fletcher
Direct examination by Mr. Pillsbury

1 for the Court, please?

2 A Yes, sir. My name is Michael Fletcher.

3 Q If you -- tell the Court a little bit about yourself,
4 you know, where you were born and raised and kind of what
5 you've done professionally up to this point.

6 A Okay. I was born in Greenville, South Carolina. I
7 live now in West Union, South Carolina. I lived most of my
8 life in South Carolina. A few years I lived in North
9 Carolina.

10 But basically I grew up. My dad was in the
11 vending-gaming business. So I grew up, you know, working
12 with my dad, I guess, as a young -- young kid. The
13 earliest I can remember is six, seven, eight years old
14 getting in the truck with him.

15 Went away to college. Was first -- we grew up in a
16 mill village over in Cityview, Woodside. I was the first
17 kid in my family or anybody in my family to go to college.
18 So I went away to college to the University of South
19 Carolina.

20 I actually majored in criminal justice. I graduated
21 from there and had been preliminarily hired by the Secret
22 Service, and they put a federal freeze on, so that didn't
23 work out.

24 So I came back home and taught school for a few
25 months, and then I actually opened a federal halfway house

Michael Fletcher
Direct examination by Mr. Pillsbury

1 in Asheville, North Carolina. It was a -- a program in
2 conjunction with the Salvation Army and the federal bureau
3 of prisons. And we actually opened a brand new facility.

4 I was the -- they call it a community treatment center
5 director, I think it was. And we actually received federal
6 prisoners in their last six months to a year term, and
7 we -- we got them back into society, got them a job. Some
8 of them had aftercare and that kind of thing. And we -- we
9 literally paroled them from our facility.

10 So I did that for a few years, and then I got married
11 and it didn't -- that didn't seem to be a real good thing
12 to do. I lived on the facility, and my wife wasn't real
13 keen on that.

14 So I came back to Greenville. That was in Asheville,
15 North Carolina. So I came back to Greenville. But still,
16 like any young kid, you know, I thought there were bigger
17 things than working for my dad.

18 So he had a real good friend that had also been in the
19 business, and they'd grown up together, by the name of Fred
20 Collins. And so I actually went to work for Mr. Collins
21 and worked for him for about 15 years and grew his company.
22 When I first went to work for him, you know, we had three
23 little offices and --

24 Q Let me stop you right there.

25 A Okay.

Michael Fletcher
Direct examination by Mr. Pillsbury

1 Q You mentioned that you worked with your dad in the
2 coin machine business.

3 A Yes, sir. We -- we were in the gaming and vending,
4 but we ended up being probably bigger vending than anything
5 else. And at one time we had 10,000 cigarette machines.

6 Q Okay. And this is when -- your dad's company?

7 A Yeah. That was when I worked with my dad, yes, sir.

8 Q Okay.

9 A Yes, sir.

10 Q And so after you got married, what is it that when you
11 went to work for Collins -- what was his industry?

12 A Well, he was mostly at that time -- we did a lot of
13 jukeboxes, pool tables, old pinball machines and video
14 games.

15 And then we were the first company that brought video
16 poker into South Carolina back when that became lawful.

17 But we -- we operated what we called in the gaming
18 business, was a route. We were a route operator. And so
19 we grew that company to the -- to the point at one time we
20 were the largest route operator in the United States. And
21 we had, you know, fifteen or twenty thousand machines
22 spread out across the country. We had offices in seven or
23 eight states, you know, hundreds of employees, that kind
24 of...

25 Q Okay. So with -- you were with Collins roughly from

Michael Fletcher
Direct examination by Mr. Pillsbury

1 what timeframe to what timeframe?

2 A Well, it about 15 years, probably '80, 1980, or so to
3 about '95, six, somewhere around in there.

4 Q And when you were with Collins what was your title or
5 what were your responsibilities?

6 A Okay. It was everything. I -- I started off. When
7 -- when Fred hired me, Mr. Collins hired me, he said he
8 wanted to bring me in and put me in the management training
9 program.

10 So I went to work the first day and realized they
11 didn't really have a management training program. So,
12 basically, I just started doing things. You know, I went
13 out and learned the business from his point of view.

14 I already kinda knew a lot about his South Carolina
15 operation because I'd worked with my dad and they were in a
16 lot of the same locations. So my titles changed over the
17 years.

18 At the -- at the end of my tenure, I mean, I was the
19 heir apparent to take over the company. And it became very
20 apparent that he was never going to retire, so there wasn't
21 going to be a company to take over unless something
22 happened to him.

23 So finally at that point after we'd -- I'd done about
24 everything I could possibly do -- I mean, I'd opened him
25 offices in multiple states. We'd done all kinds of things.

Michael Fletcher
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1 I guess I kinda got frustrated and got to the point where I
2 felt like I needed to do something else. So I actually
3 left him. And for about a year, you know, I didn't do
4 gaming.

5 Funny story is we had been very involved in the
6 political situation in -- in South Carolina, and I had been
7 very involved in the national association and actually went
8 around the country and taught seminars and things of that
9 nature.

10 So a buddy of mine and myself, we formed a little
11 company out of Columbia, South Carolina. And we actually
12 did litigation services. We did focus groups and mock
13 trials and things of that nature. So did that for about a
14 year, and then a lady that had been over --

15 Q Let me stop you right here. I just want to touch on
16 Collins for a little bit.

17 Now, you mentioned he -- he was one of the first ones
18 in the State of South Carolina to start doing video poker.

19 A We were the very first ones. At the time video poker
20 was not in South Carolina, and there was a guy by the name
21 of Si Redd. And Si had actually been a Seeburg jukebox
22 distributor for years and years and had come through South
23 Carolina and sold jukeboxes.

24 Back in those days if you sold a jukebox you basically
25 loaded four or five on a truck and you went around and went

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1 to different street route operators and showed them the
2 product, and that's how you sold a jukebox.

3 well, si had -- had kind of hooked up with some guys
4 and had created an old black and white -- they called it a
5 Draw 80 Poker. You know, it was a black and white monitor
6 that would just draw a poker game. And he had a company
7 called Sircoma. And it was Sircoma Draw 80s. And he went
8 on to make Draw 90s and things of that nature.

9 well, we were good friends with si because we bought a
10 lot of jukeboxes from him. So he came to us and asked us
11 if we wanted to put out the first, you know, video pokers
12 in South Carolina. So at Collins, we did. We put out some
13 of his Draw 80s.

14 About the same time he'd put them out in Vegas. He
15 was actually running the same product, and he kind of
16 created a new thing that we'd been familiar with in South
17 Carolina. He created revenue sharing in the Vegas market.
18 He actually put them in the casinos, and revshared them.

19 well, that's the only way we operated as street
20 operators. We put our products in different facilities --
21 convenience stores, truck stops, whatever. And we
22 revshared with the proprietor of those establishments. So
23 it was a perfect fit for us to try his product and -- and
24 for him to learn some things from us, and us learn some
25 things about him.

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1 Q So when -- when you talk about the route -- and I just
2 need to cover a couple of bases -- when you talk about the
3 route, is that essentially where you'll have like a
4 convenience store or some place of business where you
5 convince the owner to place one machine in? And it could
6 be jukebox, could be video poker or whatever that machine.
7 Is that essentially for that location that you do in
8 several different locations?

9 A Right. That's what a route operator does. He
10 basically owns the equipment of whatever persuasion it may
11 be, and he goes out into the street and finds places that
12 have space to put the games. And it could be a pool table,
13 jukebox, combination, a flipper game, a video game.

14 I mean, we were huge in Collins. We -- we were one of
15 the biggest video game operators when that phase hit -- Ms.
16 Pac-Man and Donkey Kong and Centipede and that kind of
17 thing.

18 So, yeah, that's what a route operator does, is he
19 puts his stuff in an establishment. You do a contract with
20 that establishment, basically, and you figure out how
21 you're going to split the revenue and the license fees and
22 things of that nature.

23 Q And when video poker came along, how was that
24 different revenue-wise than the traditional arcade game or
25 jukebox?

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1 A well, in those days about everything you did on the
2 street was a 50-50 split with -- with locations. And I
3 can't -- I can't remember exactly. I know what we did when
4 V.L.T.s came. But when video poker came it may have been a
5 little higher split to us since we were buying a more
6 expensive --

7 Q It was -- it was a bad question on my part.
8 Did video poker machines generate more or less revenue
9 than the traditional like arcade games?

10 A well, at the beginning they -- they didn't as much,
11 but it grew to be a -- a big business as it kind of took --
12 kind of took over the old pinball business and -- and the
13 other machines that folks had gamed on. So it -- it became
14 bigger than anything you had.

15 Q And how many different types of video poker machines
16 did Collins have when you left him?

17 A well, the business migrated dramatically over that 15
18 or 16 years I was with Fred.

19 When we started off with the -- with the original Draw
20 80 video pokers, they were wooden-cabinet games, old black
21 and white monitors, very simple 5-card Draw Poker game.

22 As the business evolved and the state evolved, they
23 brought what they call V.L.T.s into the state.

24 Q Now, the V.L.T. is what?

25 A It was just a vernacular for video lottery terminal,

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1 was what it was supposed to mean.

2 But we started bringing those into the state. Those
3 were much more sophisticated metal-cabinet games, multi
4 games on the same box, a lot of internal features and the
5 accounting features and things of that nature. And those
6 were here, you know, as we exited the state.

7 And there was multiple vendors at that time. I mean,
8 you had all of the big mega vendors like I.G.T. and Bally
9 and Williams and Aristocrat and all of those guys that had
10 brought V.L.T.s into the state.

11 And when I say brought, the route operators would
12 purchase those games, and the route operators would do the
13 same thing, go out and revshare them with the street
14 locations.

15 Q And so about how many video poker machines did Collins
16 have at the time that you left?

17 A When I left him in -- just in South Carolina or --

18 Q Whatever is the easiest. I'm trying to get a sense of
19 the order of magnitude that it was of the business.

20 A Well, in South Carolina we probably had -- I mean,
21 there had to be eight, nine, ten thousand probably at that
22 time. And -- and we probably had, you know, others in
23 other states that were -- that were lawful.

24 When -- when the business went away in South Carolina
25 there were about twenty-five to twenty-seven thousand games

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1 that everybody had in the -- in the State of South Carolina
2 in the year 2000 when -- when we went away.

3 Q And at the point that you left Collins in the mid 90s
4 would -- would you be involved in the acquisition and
5 selling of different video poker games?

6 A Yeah. When I -- when I left -- when I left Collins,
7 like I said, I kinda took that year of doing some other
8 things.

9 And then there was a lady that had worked for me at
10 Collins and she now worked for the South Carolina Coin
11 Operators Association, which was our trade association --
12 and by the name of Helen Sikes.

13 Helen called me one day and said, "Mike, would you go
14 over and meet with Hugh Andrews? He needs some help with
15 his distribution business."

16 And I'd never really been in the distribution
17 business, so it was kind of intriguing. So I went over and
18 met with Hugh.

19 We met several times, and then I basically agreed to
20 go to work for -- well, at that time it was called Drew's
21 Distributing. And in that experience I then became a
22 distributor. I was like the I.G.T.s of Bally's. I sold
23 product to all of those route operators that are actually
24 operating the games out there.

25 Q Okay. And when -- when Collins -- the time in the mid

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1 90s-ish, there were a number of different types of video
2 poker games. At that point as part of your role at Collins
3 did you try to assess which one seemed to be the best at
4 the time?

5 A Well, we -- we -- we did a couple of things.

6 Number one, we were one of the largest route operators
7 not only in the country but in South Carolina. And when
8 V.L.T. started coming to town, what I did is we went out
9 and we acquired the rights from every company we could for
10 their V.L.T. product.

11 So we had -- we had the I.G.T. line; we had the Bally
12 line; we had the Williams line. There was a company out of
13 Montana or somewhere at that time called Video Lottery
14 Consultants had a really good game. We had the U.S. Games
15 line. We had multiple lines.

16 And what our goal was, quite frankly, we were tying up
17 all of those lines because we were route operators ourself
18 to try to figure out which one of those V.L.T.s was going
19 to be the best ones in case we wanted -- we didn't want to
20 control six, seven, eight lines of product, but we wanted
21 to control a couple of the best lines of product.

22 So we literally went out and tested and tried every
23 V.L.T. that was known at that point to bring into Collins,
24 and then we made recommendations to Fred of which ones we
25 should keep, and then we basically let the contracts expire

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1 on the other ones and let them go back.

2 Q What -- what was one of the top lines that in your
3 experience bore fruit on?

4 A Well, the two best ones at that time was the little
5 company out of Montana, had a game called -- or called
6 Video Lottery Consultant. It was an old ugly black
7 cabinet, but it a great performing game.

8 And then the other one was a product out of Atlanta a
9 guy by the name of Michael Pace had designed. It was
10 called Pot-O-Gold. And at that time his company was called
11 Leisure Time, I believe, originally.

12 And so those were the two that we recommended to Fred
13 to keep. We felt that they were the best.

14 Well, Fred didn't like Michael Pace, so we didn't
15 keep -- we didn't keep Pot-O-Gold. We kept V.L.C., and
16 then we went and got I.G.T. And those were the ones we
17 primarily focused on at Collins at that time.

18 Q What -- what is it that made -- and it's P-O-T,
19 hyphen, letter O, hyphen, gold, G-O-L-D.

20 A Yes, sir.

21 Q Pot-O-Gold.

22 A Yes, sir -- Pot-O-Gold, yes, sir.

23 Q And what is it that made the Pot-O-Golds such a good
24 product as for video poker?

25 A Well, there was a lot of things that we liked about

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1 it and -- and, basically, one reason we thought it was the
2 best ones, because it had performed the best in our trials
3 on the -- on the street.

4 But Michael Pace was an engineering genius at the
5 time. I mean, he -- he had a game that was probably ten
6 years ahead of its time in a lot of different ways.

7 Number one, it had -- it had a menu where you could
8 put multiple games on the -- on the box itself. So you
9 could run anywhere from one to -- I think you could run up
10 to nine -- either nine or twelve. And I haven't played
11 with Pot-O-Gold in a long time.

12 But, basically, you could put multiple games on the
13 screen. You could set those games up different ways by the
14 way that they bet, you know, the maximum bet, the minimum
15 bet and percentage of -- of wins, all of that kind of
16 thing. Internally, he had all types of accounting
17 procedures and things that nobody had ever seen before.

18 So it was just -- it was a very sophisticated product
19 for the time, because at the time, you know, everyone was
20 operating, still operating, a lot of wooden-cabinet poker
21 type games and what we called 8 Liner games and things of
22 that nature. And -- and those were good games, but they
23 were nowhere close to the design of a Pot-O-Gold.

24 Q And what was the price point of a Pot-O-Gold verses
25 some of the other video poker?

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1 A Well, when you -- you were buying -- those days you
2 were buying the wooden-cabinet games. I mean, you know,
3 you can buy a kit and you can put a wooden-cabinet game
4 together for, you know, fifteen to two thousand bucks or
5 so.

6 Pot-O-Golds and V.L.T.s when they first came in the
7 marketplace were selling as high as, you know, \$9,000,
8 \$8,000. You know, in the early, early days there may have
9 been some we sold for as high as twelve, you know, much
10 like you would sell a game in the Nevada market or the New
11 Jersey market or something like that.

12 So they were -- they were extremely expensive. So it
13 was a total education process to migrate street operators
14 from what they had been running to this new product.

15 Q And now let's talk about when you went to work with
16 Mr. Andrews at Drew's Distributing.

17 What was the status of his -- about what timeframe is
18 this -- ballpark?

19 A I think it would have been about '96 or somewhere
20 around in there if I remember right.

21 What had happened is Helen had called me, as I was
22 starting to tell you. Helen had been a good friend of mine
23 and worked for me at Collins. She had been a good friend
24 of Hugh's. Hugh had been active in the coin op
25 association.

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1 So went over and met with him. We met several times.
2 And, basically, he needed somebody to come over and help
3 him with his distribution business. He had some route
4 businesses, and I had done that all of my life, so it was
5 kind of intriguing for me to do the distribution thing, so.

6 Q What -- what is a distribution thing?

7 A You sell product to the route operators.

8 Q Okay.

9 A The other thing that intrigued me about going to work
10 for Hugh is he had acquired the line from the Pot-O-Gold.
11 We'd give it up at Collins and -- and I didn't even know
12 that when I went over to meet with him. But he had
13 acquired that -- that exclusivity for that product.

14 Well, I knew the product and I knew what it could do.
15 So it was kind of a challenge to me. You know, it was an
16 exciting challenge to me, and I knew all of the street
17 operators in South Carolina because I was involved with the
18 coin op association. So it was just a perfect fit.

19 So I went over and -- and I think I originally went to
20 work for Hugh as his vice-president or something. But
21 within, you know, the first year or so I ended up being the
22 president of the company. He was more focused on all of
23 his route businesses, so he wanted somebody to kind of take
24 the distribution company and grow it and make it
25 successful.

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1 He had the product. He didn't really have a team to
2 get the product out there. There was some creative things
3 that were going to have to be done because, as I was
4 telling you earlier, you're going to have to take people's
5 mindset from spending, you know, \$1,500 on a product to ten
6 thousand.

7 So I -- I did a lot of things. I set up financing
8 programs with Firestone out of Boston and different things
9 and -- and we actually started financing games for route
10 operators and things of that nature so that we could get
11 more and more of the product out there.

12 Once we got the Pot-O-Golds out there and they started
13 seeing how they performed, it was just kind of a snowball
14 effect and -- and -- you know, we just -- we were the
15 exclusive distributor for Pot-O-Gold in South Carolina, and
16 we literally moved more product than the manufacturer did,
17 you know. And that was another story. We had a couple of
18 disputes with them because we were moving more product than
19 they -- than they could move in the rest of the country.
20 So it was an exciting time.

21 Q And -- and so about how many Pot-O-Gold machines were
22 in play during its peak roughly, just an idea?

23 A Well, when -- when the state went down, as I said,
24 there were probably twenty-five to twenty-seven thousand
25 games, and 90 percent, 95 percent of those were Pot-O-Gold.

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1 The others were an old game that had kinda held on
2 called Omega, and so it was out there. It was part of the
3 other three or four or five percent. So predominantly --
4 Pot-O-Gold was predominantly the game in -- in South
5 Carolina. We'd sold all of those.

6 Q Now, and as part of when you were working during that
7 time, were you familiar with what the value of these
8 machines are and were?

9 A Oh, absolutely, yes, sir.

10 Q And, like, how would you -- how would you go about --
11 I know it seems sort of elementary, but how is it that you
12 would go about if you were trying to negotiate a sale of
13 one of these machines? What factors would you take into
14 account?

15 A Well, early, early in the business, you know, we were
16 getting premium price for the product, no doubt, because it
17 was the, you know, number one producing game in South
18 Carolina and in some other markets.

19 But what you would do if a guy wanted to buy a
20 machine -- I mean, the factors you looked at was -- was,
21 you know, how many did he want to buy. I mean, we had
22 discounts based on volume, things of that nature.

23 But primarily you had a set price for one game. And
24 if I recall, we sold them in batches of five or ten. And
25 so if you bought, you know, ten, you got a little bit of a

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1 discount. If you bought 25, you got a little bit of a
2 discount. If you bought 50 or a hundred you get better
3 discounts, things of that nature.

4 But early on we were selling them, you know, nine,
5 ten, eleven, twelve thousand dollars apiece, you know, back
6 in the early days of Pot-O-Gold.

7 Q And when -- about what timeframe did video poker get
8 banned in the State of the South Carolina?

9 A We went away in 2000.

10 Q And up to that point or before that point, can you
11 tell the Court a little bit about what you were doing as
12 far as working with Hugh and trying to figure out what to
13 do with all of these games?

14 A Well, everybody in the business was -- was kind of
15 going through that because it was a sudden -- it was
16 somewhat of a sudden thing.

17 You know, we had a 12-month window when all of the
18 games had to be off the street in South Carolina.

19 So you had 600 street operators at that time. A lot
20 of those guys just went away, but probably out of that 600
21 street operators there was, you know, 25 to 50 guys that
22 survived and figured out an alternative way to -- to do
23 business.

24 At that time you had -- you had other markets that had
25 opened up -- you know, North Carolina, Texas. A lot of

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1 Pot-O-Golds had -- had ended up in -- or were going to
2 Indian country, you know, Native American Indian country,
3 because they had gotten big into gaming at that time and
4 were building casinos and things of that nature.

5 A lot of us were looking at foreign markets. You
6 know, one thing that I did for Hugh initially when we --
7 when we knew we were going away is we went to just about
8 every foreign market you can look at -- Venezuela, Belize,
9 the Dominican Republic. I mean, I'm the guy that went down
10 to the Dominican Republic. Puerto Rico.

11 You know, we -- we tried to look at other places where
12 gaming was lawful and could we take some of our product to
13 those other places and continue to do similar business to
14 what we'd done before.

15 Q And that's a little bit -- I want to follow up on
16 that.

17 So before there was any deal with Hugh and Quentin
18 about doing video poker in the Dominican were you involved
19 in scouting out different markets?

20 A Yeah, absolutely.

21 Q Okay. What -- what did you do along those lines?

22 A Well, that's what I was taking about. I wasn't
23 talking about Hugh and Quentin. I was talking about what I
24 was doing for Hugh.

25 Q Right.

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1 A I'm the guy that went and looked at all of those
2 markets and I -- I'm actually the guy that went over to the
3 Dominican Republic and took my guys, some of my guys that
4 worked for me as street operators -- gentlemen by the name
5 of Johnny Loom and Tom Young were the original guys we put
6 on the ground down there to operate the games, Hugh's
7 games, that we had shipped to the D.R.

8 One of the reasons we kind of decided on the D.R. is I
9 had a lawyer friend that was with Womble Carlyle in
10 Washington, D.C., that had a political relationship with a
11 gentleman that was related somehow. I want to say it was a
12 minister of finance or somebody at the D.R. So that's how
13 we -- we kinda focused in on that, and he helped us a lot
14 to get our first stuff established down there.

15 And our first business down there was street -- it was
16 very similar to what I had done. That's one of the reasons
17 I think Hugh wanted me to go look at it, is because, you
18 know, I had put games on the street, and thousands of games
19 at a time, and figured out how to build the infrastructure
20 around those so that you could service them and -- and
21 operate them.

22 And so our first step in the business down there, we
23 put them in the sport book places, I think, what they were
24 called. And, you know, it was much like putting them in a
25 convenience store or a truck stop. That's where you

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1 revshared them and that kind of thing. So that was -- we
2 kind of ended up in the D.R. That was one of the places we
3 shipped a lot of games.

4 Q Very quickly without going into -- what were some of
5 the areas that you scouted that you didn't end up putting
6 games in for Hugh?

7 A Well, we went to -- we went to the Venezuela, and it
8 was just a little bit too crazy for us. We didn't really
9 want -- we -- we looked at all kinds of stuff down there
10 from -- we went to Belize, and about the only real place we
11 saw opportunity was in the free trade zone on the Mexican
12 border.

13 I can't remember if we went to Mexico back in that
14 time or not. I mean, I ultimately ended up doing business
15 in Mexico in another company.

16 But the D.R. just ended up kinda coming together
17 because of that political relationship more than anything
18 else.

19 We'd actually went down there also and looked to buy a
20 casino. There was a casino down there. It was brand new.
21 It was a Ramada Inn at the time.

22 And there was a gentleman -- I'm trying to remember
23 his name -- but he was out of Boston. He was an American
24 that owned that hotel and casino. And we actually went
25 down there several times trying to buy that property or put

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1 games on that property because it was in -- it was in the
2 capital. It was in Santo Domingo, and it was -- it was a
3 good location. And we kind of were trying to do that. And
4 I can't recall if we ever put games there or not. I don't
5 think we did, but that was one of our goals.

6 Q And so if the point -- at what point did you leave
7 Hugh or leave working with Hugh?

8 A I would say probably 2002 or so.

9 We -- we did some other stuff after -- after video
10 gaming went down in South Carolina other than the D.R. We
11 had a little company we ran for a while called Adspace
12 Networks. We put plasma screens out and sold ads on them.
13 It was a company Hugh and I had bought some stock in with
14 some guys that were in gaming out on the West Coast.

15 But about 2002 or so I think I -- I left him. And
16 shortly thereafter I -- I went with another gaming company.

17 Q Well, and so you continued in the gaming industry for
18 another how many years?

19 A I -- I left Hugh, and I went into Indian gaming with
20 another gentleman, and we built a company and -- and sold
21 it three or four times. And -- and we kind of hit that at
22 the time right too. We were doing what we call Class II
23 Indian Gaming. So we developed some games and did real
24 well in that.

25 And I was there until about -- I think the last time

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1 we sold it, I left, was '11, maybe two thousand -- 2011 or
2 so if I recall.

3 Q And so from 2002 until 2011 you still were actively
4 involved in the gaming industry?

5 A I was doing gaming all over the country at that point
6 in time, and out of the country. We were one of the
7 largest Indian gaming companies at that time.

8 Q And tell the -- explain to the Court a little bit
9 about what kind of market there -- there was and is -- for
10 Pot-O-Gold machines, even though they were not legal in
11 South Carolina.

12 A Well, as I said, they -- there were markets that were
13 coming along about the same time we were going away.

14 You know, North Carolina was big; Texas was big. And
15 Indian gaming had gotten really big. And a lot of your
16 guys had taken Pot-O-Golds to Indian country and Leisure
17 Time, which I think it evolved into a company called U.S.
18 Games, was a big supplier to Indian country.

19 So when I got into the Indian gaming, you know, I'd
20 see Pot-O-Golds in California, Washington State, New York
21 State. I mean, they -- they were in a lot of the Indian
22 casinos.

23 There was an Indian casino in New York that I recall,
24 and probably 90 percent of his floor was Pot-O-Golds. And
25 actually the guy that had went to work for them had -- had

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1 at one time -- went to work for the Indian tribe had at one
2 time been the V.P. of sales for U.S. Games. He was a guy
3 by the name of Dick Martin. And he -- he literally -- at
4 that time Leisure Time and U.S. Games had kinda fallen on
5 the hard times. They eventually ended up in bankruptcy.

6 So there was a huge market of Pot-O-Golds being bought
7 and sold in the used market, because that was the only way
8 you could -- you could get them, you know, faster in the
9 used market than you could get them from the manufacturer.

10 I can recall a period of time when the manufacturer
11 guys -- there was a guy by the name of Al Johnson. And
12 then later on there was a guy out of South Carolina that
13 bought it out of bankruptcy or somehow acquired it named
14 Jack Gardner.

15 They would call guys like me. They were the
16 manufacturer, but they would call guys like us to see if we
17 could find them some Pot-O-Golds in the used market so they
18 could then sell them to one of their customers.

19 So there was -- there was still a huge presence of
20 Pot-O-Golds throughout the country and in -- in some other
21 foreign markets.

22 Q Okay. Such as where?

23 A Well, D.R. I mean, there was -- we took Pot-O-Golds
24 there, but there was -- there was Pot-O-Golds in Belize;
25 there was Pot-O-Golds in Venezuela. I mean, there were

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1 Pot-O-Golds in a lot of those foreign markets.

2 We -- we just kind of picked the one that we thought
3 we could do the best in. There were some of them -- other
4 reasons we didn't go to certain ones. But there were
5 Pot-O-Golds, you know, being shipped overseas into some of
6 the -- you know, Michael Pace was still around. And there
7 was a guy at the time by the name of Mike Mackey. And they
8 were shipping similar products over into -- you know, into
9 Russia even at the time back in those days. So there was a
10 lot of demand for similar V.L.T.s, you know, Pot-O-Golds.

11 Q And do you know one way or the other whether
12 Pot-O-Golds have been active in the Dominican Republic, you
13 know, as recently as the last couple of years?

14 A Yeah. There -- there's guys that still sell parts to
15 operators down there. I mean, I actually know that. And
16 they -- you know, they ship components that are Pot-O-Gold
17 components down to the D.R. So they -- I'm assuming there
18 are still games down there. There's no reason to have
19 those particular components and software and things of that
20 nature if you didn't have the machine.

21 Q And was it -- would it be small or -- I mean,
22 market-size, what? Any idea?

23 A Well, I haven't been down there in years, but based on
24 talking with the suppliers, I mean, there -- there has
25 still got to be multiple street operators down there based

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1 on the -- the volumes that they're shipping.

2 I mean, I talked to one guy, and he -- you know, he's
3 sending a hundred of this particular type of component at a
4 time. You know, if somebody's buying a hundred of
5 something, then he's probably operating five or six or
6 seven hundred games to need that many components.

7 So I would assume based on conversations with
8 suppliers that there's still a good many games down there.
9 And the -- and the country itself has developed, you know,
10 from just reading and things that I've seen in the
11 marketplace.

12 When we first went down there there were still
13 sections of the Dominican that was like a Third world
14 country. I mean, it was like going to Haiti or somewhere.
15 And so but those -- a lot of those areas have developed
16 from what I understand.

17 Punta Cana was a -- was a place we went early on that
18 was in very, very early rustic stages of development, or
19 from what I understand now there are big resorts there now
20 and things of that nature. So, it may be bigger. The
21 market may be bigger than it was back then.

22 Q The -- at one point -- as part of what you would do --
23 you've touched on it a little bit -- but sometimes people
24 would contact you trying to find Pot-O-Gold games. Is
25 that -- and that's a yes for the court reporter?

Michael Fletcher
Direct examination by Mr. Pillsbury

1 A Yes, sir, yes, sir. I'm sorry.

2 Q No. And so how long -- that kind of interaction or
3 networking when you're trying to locate or identify or
4 acquire used Pot-O-Gold games -- how long did you continue
5 to do that within the gaming industry?

6 A Well, people still call me today. I mean, I was in
7 the gaming industry so long, and I still do some consulting
8 for -- for different companies.

9 You know, I still get calls, and I don't get them
10 every day, but I still get calls up to today about gaming
11 issues or looking for product or do I know this guy, do I
12 know this location, do I know this Indian tribe or
13 whatever.

14 You know, after -- after 2000 when we went down, you
15 know, for that next five, six, seven years, I mean, there
16 was -- there was a lot of back and forth of guys buying and
17 selling Pot-O-Gold, because, you know, they were still --
18 as I said, there were still guys.

19 You had 25,000 of them that people were trying to
20 figure out what to do with. So there was a big market for,
21 you know, five, six, seven years after 2000 of that product
22 going and coming in different locations.

23 Q And at some point did you undertake an analysis of
24 what the Pot-O-Golds in the Dominican that is the subject
25 of the litigation -- what -- what those, the relative

Michael Fletcher
Direct examination by Mr. Pillsbury

1 value, of what those were worth?

2 A Yes, sir, yes, sir.

3 Q And what did you do in developing that opinion?

4 A Well, I -- I was called -- and I can't recall who
5 called me. It was one -- one -- one of you attorneys. It
6 may have been -- may have been Mr. Stodghill.

7 Somebody called me and asked me to take on that task.
8 And so, basically, what I did at the time is I basically
9 reached out to all of the people I would know around the
10 country that may or may not be operating Pot-O-Golds or
11 buying or selling Pot-O-Golds or things of that nature.

12 So I called, you know, half a dozen to a dozen
13 different fellows that I knew in the business and basically
14 found out what they were buying or selling Pot-O-Golds for
15 or components of Pot-O-Golds for at that time.

16 And I just kinda did a little analysis of all of those
17 numbers and came up with an average of what a Pot-O-Gold
18 was worth.

19 Q Okay. Well, let me break that down a little bit.

20 Number one, if -- just assume hypothetically in late
21 2005 if Hugh had called you and said I've got 1,100 machines
22 in the Dominican that I want to sell, would you have been
23 able to place those machines?

24 A Oh, yeah. You could have found a market for them.
25 They was -- there were markets for them.

Michael Fletcher
Direct examination by Mr. Pillsbury

1 I mean, all you had to do was -- was look at the --
2 the state markets that were open at the time that were
3 still operating those games.

4 I mean, there are still some today that are operating
5 those games. And my first go-to is I would have went to
6 Indian country, you know, if I was trying to sell them
7 because there's -- you know, there's still a great need and
8 a great use for Pot-O-Golds in -- in certain areas of
9 Indian country.

10 So they were -- and there were still all of the other
11 foreign markets. So there was plenty of places you could
12 buy and sell a Pot-O-Gold. There's Pot-O-Golds right now
13 today operating in locations that I know of in the United
14 States.

15 Q And when you did your market analysis, what was the
16 relative range that you came up with that the machines were
17 worth?

18 A Well, you had them selling.

19 MS. HARRISON: Objection, Your Honor. Is this -- this
20 being offered as an expert?

21 MR. PILLSBURY: Yes.

22 THE COURT: All right. You haven't qualified him as
23 an expert yet.

24 MR. PILLSBURY: Your Honor, at this point I would
25 tender him as an expert in the value of Pot-O-Gold video

1 games.

2 MS. HARRISON: We're going to reserve the voir dire
3 during cross.

4 THE COURT: All right. I'll qualify him in that way
5 then.

6 Go ahead.

7 Q All right. And so what -- what was the value range
8 that you -- you determined?

9 A Well, based on the guys I talked to they were -- they
10 were being bought and sold anywhere from, you know,
11 thirteen or fourteen hundred dollars, as high as, you know,
12 \$2,500 around that, that period of time.

13 Q The -- was there an average that you kind of came up
14 with at the time?

15 A I think it was 15 -- 1,575 or 15 -- let me look. I
16 can't remember. 1,575.

17 Q And that was per unit?

18 A Yes, sir.

19 Q And in your expert opinion was there a market for
20 1,100 Pot-O-Golds outside of the Dominican in the 2005
21 timeframe?

22 A Oh, absolutely, absolutely.

23 Q And in your experience as far as the interaction with
24 different markets, are there times when local markets might
25 close for a little bit and then reopen later?

Michael Fletcher
Direct examination by Mr. Pillsbury

1 A Oh, absolutely, yes, sir.

2 Q Does that happen somewhat often, I guess, in some of
3 the, like, Caribbean markets?

4 A It would. It happens in the U.S. markets quit a bit,
5 I mean, because you have states that enact legislation, and
6 then they change legislation, and then you have challenged
7 court cases and things of that nature.

8 So you've constantly got markets that are coming live
9 and then going dark and then coming live. I mean, that
10 happens today in various U.S. markets as well.

11 So that's -- that's -- that's where your need for used
12 games comes about or is created, through some of that.
13 But, once again, there's still markets that have been, you
14 know, Pot-O-Gold needed markets for the last, you know, 15
15 years.

16 I mean, there's -- there's Indians today that are
17 operating Pot-O-Gold in mega casinos that are like Las
18 Vegas casinos just because it was such a good game and it's
19 such a game that the players like to play.

20 When Harrah's Cherokee opened in -- over here in North
21 Carolina the predominant game on that Harrah's Casino was
22 Pot-O-Gold.

23 Q The -- and I think you mentioned this already. But
24 your -- in the process of doing this investigation you
25 found out that they continued to operate Pot-O-Golds in the

Michael Fletcher
Direct examination by Mr. Pillsbury

1 Dominican?

2 A Yes, sir.

3 Q And if the market shut down for a little bit and then
4 reopened, would that be anything extraordinary?

5 A Well, I mean, as an operator you wouldn't like that,
6 but if it shut down and opened back -- you know, it
7 would -- it could open back up easily.

8 I mean, there's -- there's circumstances that cause it
9 to shut down, and the circumstances change and cause it to
10 open back up. So as street operators we were kind of used
11 to that, unfortunately.

12 We -- we would go into lawful markets. They would
13 change. We'd have to go to a different market. We'd come
14 back. And that still goes on today, I mean, every day.

15 Q I have the benefit of -- assume for me that there were
16 1,122 machines. If you -- I don't know. Have you run that
17 calculation all the way out?

18 A No, I haven't. The -- the number that I'm, I guess,
19 more familiar with is what they were actually sold for.
20 I've heard that number batted around a couple of times, but
21 I haven't actually looked at that. But I -- I trust your
22 math. I don't have a way to add it up, I guess.

23 Q And assume that the Pot-O-Gold's -- 1,122
24 Pot-O-Golds -- sorry about the run-on -- were sold for
25 \$400,000. Was that below market value?

Michael Fletcher
Direct examination by Mr. Pillsbury

1 A Extremely below market value. I mean, that's -- I
2 have run that number. That's 363 bucks a machine if I
3 remember right.

4 Your components, I mean, unless -- and -- and I don't
5 want to speak out of turn, but I think the question you're
6 asking, if you looked at the game itself and you looked at
7 the components -- and from what I understand the market had
8 been shut down and Mr. Broom was selling the games -- you
9 could have taken the boards out of those machines, the
10 boards alone, and sold them for a thousand bucks in any
11 other market with the software in them -- the software.

12 You could have taken the chips out of the boards and
13 sold the chips. To -- to sell it -- to sell it for three
14 hundred -- I mean, the bill acceptor, the monitor --
15 there's tons of things in that game that's worth more than
16 363 bucks. So that would have been way -- in my opinion
17 would have been way below market value to sell them for
18 400,000 bucks.

19 Q So if I understand what you're saying, you -- you
20 could have just taken the components themselves, and those
21 individually would have been worth a lot more than the
22 400,000.

23 A Yeah. A machine is nothing more than a metal cabinet
24 made up of components. And the heart and soul of a
25 Pot-O-Gold -- it's still operated with, you know, computer

Michael Fletcher
Direct examination by Mr. Pillsbury

1 boards, electronic C.P.U. boards with chips that you
2 program your software.

3 So you could literally take the board in and out of a
4 machine or you could change -- at Drew's we sold software.
5 We sold software back in the heyday for, you know, five
6 hundred to seven hundred fifty bucks apiece. And it was
7 just a matter of two or three chips that you put on the
8 board to change certain components or certain features of
9 the game.

10 So that's all any machine is, a Pot-O-Gold or any
11 other machine. It's just a cabinet made up of components.
12 So in my opinion if you'd come to me and said, you know,
13 can you get rid of these 1,122 games, if I couldn't get rid
14 of the games I could have easily gotten rid of the boards
15 or the software or some of the components.

16 Q And what would that have -- what would that market
17 have been? I mean, ballpark figure, what is that?

18 A Well, as I said, you could have sold the boards or the
19 software for a thousand bucks easy. I mean, that -- that
20 would have been an easy sale in my experience and in my
21 opinion.

22 Q Okay.

23 MR. PILLSBURY: That's all I have, Your Honor.
24
25

1 CROSS-EXAMINATION

2 BY MS. HARRISON

3 Q Good morning, Mr. Fletcher. I'm Whitney Harrison.

4 Thank you for being here with us today.

5 A Yes, ma'am.

6 Q I want to make sure that I understand what your expert
7 opinion is in this case.

8 And so you're testifying today about the market value
9 of Pot-O-Gold machines in the United States for October --
10 or 2005 -- 2005.

11 A Of -- of any market.

12 Q Of any market in 2005.

13 A Yes, ma'am. That's what I was asked to do, yes,
14 ma'am.

15 Q So you were asked to evaluate what -- the price that
16 would be sold in the United States, the price to be sold in
17 England?

18 A The value of a Pot-O-Gold is what I was asked, what
19 could -- what would you -- could you sell a Pot-O-Gold for
20 in 2005, was the initial question I think I was asked.

21 Q And that was for a Pot-O-Gold that was in good working
22 condition?

23 A Well, I would assume that you're not going to sell a
24 Pot-O-Gold that's not in good working condition and you're
25 not going to operate a Pot-O-Gold that's not in good

1 working condition.

2 You've got to understand, as I said, a Pot-O-Gold is a
3 metal cabinet. That metal cabinet might have been
4 manufactured in the 90s, but the components in it may have
5 been updated throughout that course of time. It's much
6 like a computer, I guess.

7 Q Okay. So is your opinion though about what the price
8 would be for the whole machine or for a component?

9 A Well, I originally ran the numbers for them based on
10 the selling a machine, selling a whole machine.

11 Q And what was the number that you just offered me? Was
12 that thirteen or fourteen hundred through twenty-four
13 hundred?

14 A Yeah. When I called around the country, yes, ma'am.

15 Q Can you answer first yes or no? And then you can
16 explain anything you want to tell me.

17 A Yes, ma'am. It would -- it ranged from -- if I
18 recall, it ranged from twelve or thirteen hundred to
19 twenty-three hundred.

20 And that had a lot of different factors with it. I
21 mean, you got to understand I'm talking to a guy in
22 California or New York state or Florida or Washington
23 state.

24 He may be selling five at a time, 50 at a time, a
25 hundred at a time. There's a lot of different factors in

1 that range of numbers. But I'm talking to guys that talk
2 my language. We both know what a Pot-O-Gold looks like and
3 what -- what we're asking each other about.

4 So, I basically called around to a lot of different
5 markets, got that range of prices, got all that information
6 and then came up with an average, what I thought was an
7 average, price that you could sell them a product for at
8 that time -- Pot-O-Gold.

9 Q And before we get too far, I saw you pull some notes
10 out of your pocket while you're testifying. Can I see
11 those notes, please?

12 A Sure. It's basically -- I'm sorry.

13 Q Let's make sure that the court reporter can hear you.

14 A This is basically the analysis I wrote to come up with
15 that, that fifteen seventy-five number. And this is just
16 some notes of some guys that I talked to at that time. And
17 then this is just my resume that Mr. Pillsbury had asked me
18 for.

19 MS. HARRISON: I'd like to move this into evidence.

20 THE COURT: Any objection?

21 MS. HARRISON: I'd like to move this in.

22 MR. PILLSBURY: Sure. No objection, Your Honor.

23 THE COURT: Without objection Defense 51 or whatever
24 the next number is.

25 (Analysis marked Defendant's Exhibit No. 51.)

Michael Fletcher
Cross-examination by Mr. Harrison

1 Q Now, Mr. Fletcher, have you served as an expert
2 before?

3 A Yes, ma'am.

4 Q And tell me a little bit about that.

5 A It's been multiple times throughout my career as
6 working for Collins and for Drew's and for the coin
7 operators' associations. I've testified in cases
8 throughout the country, anything from a civil-action case
9 to a class action. Been a class action case here in South
10 Carolina. I was one of the primary liaisons for the
11 industry in regard to that.

12 I was the legislative liaison for the coin operators'
13 association. I'm the one that testified in front of the
14 senate, in front of the house committees, in front of --
15 I -- I actually went around the country at one point in
16 time for the -- for the amusement machine operators
17 association, which is the national association, and taught
18 seminars about contracts and legislative efforts and things
19 of that nature, so.

20 Q So have you been qualified as an expert witness in a
21 court setting?

22 A Yes, ma'am.

23 Q How many times has that happened?

24 A Multiple times, but I can't -- I mean, a dozen or so.
25 I can't remember all of them, but there have been multiple

1 times.

2 Q And are you getting paid today for your expert
3 testimony?

4 A No, ma'am.

5 Q And have you ever written any papers, books or
6 articles about the valuation of gaming systems?

7 A Probably. I'd have to -- I'd have to go look, but I
8 may have for A.M.O.A. or somebody.

9 Q You've never written any books or papers or article on
10 the international market though, have you?

11 A No, ma'am.

12 Q Now, you've mentioned a few times your work through
13 the national amusement industry. That was only in
14 connection to the United States, right?

15 A Yeah, the A.M.O.A.s and the U.S. National Association,
16 yes, ma'am.

17 Q And that didn't include any international markets, did
18 it?

19 A I don't know if we had any members. We may have had
20 some members that were international because we had -- it
21 was made up of operators, vendors, suppliers. So there
22 could have been some international members, if that's what
23 you're asking, that were part of A.M.O.A.

24 Q I'm sorry. Let me rephrase the question. I wasn't
25 clear.

1 You haven't taught any management seminars about
2 international gaming.

3 A No, ma'am. I've operated internationally. I mean,
4 I've been in international markets in a much bigger way
5 than -- than these boys were in the Dominican Republic.

6 Q And have you taught -- you haven't taught any courses
7 on international market value of gaming systems or anything
8 in regards to import-export issues, right?

9 A No, ma'am. I've dealt with all of those issues as
10 I've imported and exported games from my companies, and
11 I've bought and sold and operated games in international
12 markets.

13 Q You've never published or spoken about international
14 gaming regulations?

15 A I've spoken about international gaming regulations,
16 yes, ma'am.

17 Q And where did you do that?

18 A There've been several seminars throughout Indian
19 country where we took the same products that were operating
20 in Indian country to Mexico and forged that market. And
21 that's one of the markets that I was deeply involved in.

22 I and my engineers were the guys that wrote the
23 original Class Two Bingo Indian Gaming Regulations. Now
24 that you're asking me these questions, I'm remembering some
25 of these things. And these were the primary foundational

Michael Fletcher
Cross-examination by Mr. Harrison

1 regulations that opened up the Mexico market where I took
2 thousands of games and then ended up exiting that market
3 and sold those thousands of games into that market.

4 Q So to be clear, it's the Mexican market.

5 A Mexican market, yes, ma'am.

6 Q Were you buying or selling games in the Dominican
7 Republic in 2005?

8 A No, ma'am. I don't think so. I wasn't personally,
9 no, ma'am.

10 Q Did you ever buy or sell game machines from the
11 Dominican Republic after 2002?

12 A I moved some for a guy. I was a broker or kind of a
13 middle man for an individual on about 50 games at one point
14 that came out of the D.R.

15 Q And have you ever bought or sold games in another
16 country where the machines are outlawed and being hunted by
17 authorities?

18 A I was the guy that went to the Dominican Republic.
19 I'm the guy that set up these routes that these two
20 gentlemen are talking about. So, yes, ma'am, I have. I
21 was the one that -- I was the one that figured out how to
22 import them in and how to export them out. I set up the
23 banking arrangements, the political arrangements, all of
24 those things.

25 I'm the fellow that originally set it up down there.

Michael Fletcher
Cross-examination by Mr. Harrison

1 So I guess to answer your question, I had that experience
2 out of the D.R. --

3 Q What year --

4 A -- Before I left Mr. Andrews.

5 Q Oh, I'm sorry. I didn't mean to interrupt you.
6 What year were you setting all of that up?

7 A We originally went down there right after we left
8 South Carolina. That was in 2001. We were -- we were
9 exploring those markets.

10 Q So you weren't involved with exporting in 2005 after
11 banned.

12 A No. I was gone in 2005.

13 Q So you never bought or sold machines in another
14 country when machines have already been outlawed and
15 banned.

16 A Ask me that again.

17 Q So my original question to you was asking whether you
18 had experience with the selling of machines that were being
19 outlawed and being hunted by authorities. And you told me
20 you had experience from setting up in the D.R.

21 So I just wanted to confirm your experience in the D.R.
22 was not within the scope of when machines had been outlawed
23 and were being hunted by authorities.

24 A Oh, I wasn't there in 2005 if that's the question
25 you're asking. I did sell some games for somebody around

Michael Fletcher
Cross-examination by Mr. Harrison

1 that time, or I arranged for him to have a buyer.

2 Q So you've testified that you worked for Mr. Andrews at
3 Drew's Distributing, right?

4 A Yes, ma'am.

5 Q And you helped him with some of those other business
6 ventures too?

7 A Yes, ma'am.

8 Q And the majority of your work for Mr. Andrews was
9 located here in South Carolina, right?

10 A Yes, ma'am, until we started looking at the foreign
11 markets, yes, ma'am.

12 Q And you started looking at those foreign markets after
13 the 2000 shutdown in South Carolina?

14 A Yes, ma'am.

15 Q In your experience before working for Mr. Andrews
16 primarily was in South Carolina when you worked for Fred
17 Collins, the biggest video poker operator in the history of
18 South Carolina?

19 A No, ma'am. We were in multiple states. We were in
20 seven, eight or nine different states throughout the
21 country, all U.S.

22 Q All U.S.

23 A Yes, ma'am.

24 Q And you left working for Mr. Andrews in April of 2002?

25 A Somewhere in 2002. I don't remember the month.

Michael Fletcher
Cross-examination by Mr. Harrison

1 Q Would it -- would you be surprised if it was 2001?

2 A I probably wouldn't be surprised, but it's on my
3 resume. If you want to me look, I can probably tell you.

4 Q That would be great. Thank you.

5 A I'm not as good at those old dates as I used to be.

6 Q I appreciate you looking. I just want to make sure I
7 would the timeframe right.

8 A Well, I left -- I -- I ceased to be the president of
9 Drew's in 2001. I left Mr. Andrews in 2002.

10 As I testified about earlier, we had some other
11 businesses. We had a company called Adspace Networks,
12 which I was the president of. So I was still with Mr.
13 Andrews.

14 At the same time he had other partnerships that we
15 were still dissolving and relocating and things of that
16 nature. I mean, Mr. Broom wasn't his only partnership. He
17 had multiple partnerships that were route operators.

18 So I was with Mr. Andrews until 2002. And I'm trying
19 to see when I went to Nova. I went to Nova -- went over
20 there about two -- sometime in 2004, is when I went in the
21 Indian gaming.

22 Q So is it fair to say you left Drew's Distributing in
23 2001?

24 A At some point in 2001 I ceased to be the president of
25 Drew's because we weren't actively buying and selling stuff

Michael Fletcher
Cross-examination by Mr. Harrison

1 at that time. But I was still in the same facility, in the
2 same office, working for the same gentleman. And I was
3 titled as the president of Adspace Networks. But we were
4 still -- I mean, I was still there doing -- in the same --
5 pretty much the same capacity I'd always been in.

6 We didn't have business in South Carolina at the time.
7 So Drew's Distributing wasn't selling anything at the time.

8 Q So am I understanding though that your job was in
9 regards to Adspace, which is not dealing with Pot-O-Gold?

10 A My job was in regard to whatever Mr. Andrews needed me
11 to do, and we had thousands of Pot-O-Golds we had relocated
12 out of South Carolina, because you had to because they were
13 unlawful to be here.

14 And so on -- on any given day I might have sold some
15 Pot-O-Golds to somebody from -- from Georgia or North
16 Carolina. I might have sent my sales team to put out ten
17 plasma screens. I did whatever was necessary at that time
18 for us to continue to do business.

19 So I might have dealt with some Pot-O-Golds throughout
20 my tenure there. I don't want you to, you know, get misled
21 by that.

22 I just quit calling myself the president or we quit
23 calling me the president of Drew's Distributing. I became
24 the president of Adspace Networks, but we still had
25 multiple customers and people we had dealt with through our

Michael Fletcher
Cross-examination by Mr. Harrison

1 tenure in South Carolina that we were still dealing with in
2 whatever capacity, whether they still owed us money, we
3 were selling, you know, product to another market, whatever
4 it was.

5 Q And you moved out to Oklahoma to work for Bob Mosley,
6 didn't you?

7 A Never moved out to Oklahoma. I always lived in South
8 Carolina. I opened an office in Oklahoma, opened an office
9 in New York, opened an office in Texas, opened an office in
10 California, Washington State, the Dakotas -- North and
11 South Dakota. We were all over the country in Indian
12 gaming, but the company originated here in South Carolina,
13 Greenville, South Carolina. And I always lived in South
14 Carolina. I traveled a lot, obviously.

15 Q And you worked for Bob Mosley, right?

16 A Worked for Bob Mosley and a couple of other gentlemen
17 for about a year.

18 Q And Mr. Mosley didn't have any operations in the
19 Dominican Republic in 2005, did he?

20 A I don't think so. He was kinda like Hugh. He had
21 multiple companies too, but I don't think so.

22 I -- I went with Bob, and we formed a separate company
23 specifically to do Indian gaming and to build a class two
24 mega system. So I didn't mess with any of his other things
25 other than that.

Michael Fletcher
Cross-examination by Mr. Harrison

1 Q And you worked for Mr. Mosley during the years 2005
2 through 2012?

3 A No. I worked for Nova Gaming. Mr. Mosley and I
4 originally started that company with his son and
5 son-in-law, and then we -- we ultimately sold that company
6 a year and a half into that. I mean, we didn't change it
7 from Nova Gaming, but that company was sold three or four
8 times.

9 The first time we sold it, it was about a year and a
10 half to two years old. And then we sold it multiple times
11 after that. And then I -- I exited at -- at -- it was '11.
12 And then they sold it again, what was left of it, last
13 year. So that company is still a viable company in Indian
14 country.

15 But Bob was only -- to answer your question -- that's
16 a long answer -- but Bob was only a part of it for about a
17 year and a half or two years.

18 Q And now you're retired from gaming operations, right?

19 A I still do consulting. I still do -- you know, talk
20 to gaming people every day and get involved in ventures,
21 but I guess -- I'm not as active as I was for, you know, 35
22 years, I guess.

23 Q Are you making any income off of your gaming work?

24 A Yeah, I do, yeah.

25 Q Is that the primary source of income for you?

Michael Fletcher
Cross-examination by Mr. Harrison

1 A Oh, no, no, no, no, ma'am.

2 Q Where do you work now?

3 A I have a little restaurant in Greenville, South
4 Carolina.

5 Q Let's get back to the valuation that you were sharing
6 with us.

7 And so you testified that the range was between
8 thirteen hundred and twenty-three?

9 A Yes, ma'am.

10 Q Now, on your sheet that we just admitted into evidence
11 it says that it ranged from one thousand to twenty-three
12 hundred.

13 A Yes, ma'am.

14 Q Which number are we -- are we operating off of in the
15 hypothetical?

16 A Well, I'd use this one since it's written. I mean,
17 this is the one I did in 2005, so it's -- as I said, my
18 memory ain't absolute, but it's on this piece of paper.

19 Q And you just said 2005. Did you do your analysis in
20 2005?

21 A I did my analysis in -- in -- I want to say 2005.
22 And, quite honestly, I can't remember exactly. It was when
23 the lawyers called me and said could you do an analysis
24 based on your opinion of what the value of Pot-O-Gold is.
25 And I couldn't tell you today the exact date.

Michael Fletcher
Cross-examination by Mr. Harrison

1 Q So you don't remember.

2 A I couldn't tell you the exact date, no. And I
3 actually went back and looked. I don't know the -- I mean,
4 I -- this is my handywork. I mean, I wrote this, and I
5 guess I'm assuming I wrote it about that time because I
6 entitled it that. You know, the fall of 2005. So I'm
7 thinking it was sometime around that.

8 Q And you said that you -- you called maybe a handful,
9 half a dozen, a dozen people. Do you have any recordings
10 of who you called?

11 A No. I don't record people. No, ma'am.

12 Q So tell me a little bit about your method. How did
13 you --

14 A Well, you see some of my notes here. I called people
15 that I knew in the country that -- that had the same gaming
16 knowledge I would have and that had -- that had either
17 Pot-O-Golds or had sold Pot-O-Golds or had bought
18 Pot-O-Golds or operated Pot-O-Golds.

19 And -- and when I pulled all of this stuff -- you
20 look. These are some of the folks I talked to. I don't
21 know if you can read my chicken scratch, but, see, these
22 are some of the guys I talked to at that particular point
23 in time. These are some of the markets we talked about.

24 This is a guy I mentioned earlier that ended up
25 actually acquiring U.S. Games and was the manufacturer of

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Cross-examination by Mr. Harrison

1 Pot-O-Golds. Now, he's dead now. Poor old Jack died, I
2 think, a year or so ago. But he was the guy selling
3 Pot-O-Golds or he had acquired the original manufacture
4 that built the Pot-O-Golds.

5 Q Well, Mr. Fletcher, I'd like to go through and hear
6 the value for each of the individuals that you called. Can
7 you do that for me today?

8 A No. I can't remember. I mean, I can -- I can tell
9 you the range based on what I typed up, but Nick may have
10 been selling them for two grand. I mean, Kevin might have
11 been selling them for, you know, thirteen hundred. I mean,
12 I don't -- I don't have notes on every one of those
13 conversations, or I couldn't find them if I do.

14 Q Did you know that as an expert you have to disclose
15 the underlying facts or data that you used to reach your
16 conclusion?

17 A If you say so, ma'am. I'm -- I'm not an attorney. So
18 I don't.

19 Q So are you telling me today you can't give me the
20 exact numbers that each person gave you in creating your
21 average that you're providing to the Court?

22 A I can tell you that I sold more Pot-O-Golds than any
23 living human being in the history of the machine and I know
24 more people that bought and sold them than any living human
25 being in the history of the machine. And I'm assuming

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1 that's the reason these guys called me, is because they
2 knew that. I mean, I sold more Pot-O-Golds than -- we sold
3 the majority of the machines the manufacturer manufactured,
4 you know, myself.

5 So all I did in this analysis is I called guys that I
6 knew were actively operating, buying and selling product,
7 Pot-O-Gold product, at that time and place.

8 They all gave me different numbers based on different
9 set of circumstances, whether it be, you know, were they
10 buying or selling five versus fifty versus a hundred, as I
11 said earlier.

12 I took those numbers. I sat down at my little desk
13 and I figured out what an average was, and I typed up this
14 summary document, and that's what I did to come to this
15 conclusion of \$1,575.

16 If you sell the board it's worth a thousand bucks. I
17 -- I knew that. It didn't matter where it was coming from.
18 It didn't matter if it was in the Dominican Republic or Ten
19 Buck Two.

20 You could take the chips out of the board and sell
21 them for more than 363 bucks. All right. And yet -- and
22 that was -- that was kind of where I was, you know, getting
23 to my analysis, was trying to figure out how in the world
24 would you sell them that cheap. So that's where I came up
25 with my conclusions.

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1 Q I've got a couple of questions for you on that.

2 Now, you're saying that you could come up with the
3 price of a board is a thousand dollars. That's included in
4 this range that you've offered?

5 A No. This is for a saddle [sic] machine. I'm just --
6 I'm answering the question that Mr. Pillsbury asked me
7 earlier.

8 From what I understand -- and I haven't been
9 intimately involved in this case other than what they've
10 asked me to do. The machines were sold for \$363. You --
11 there's no reason in the world to sell a machine for \$363.

12 The bill acceptor is worth more than that; the monitor
13 is worth more than that; the printer is worth more than
14 that; the software is absolutely worth more than that, and
15 the software is made up of a set of chips that I can stick
16 in my pocket.

17 Okay. So -- so -- I -- and you're asking my opinion,
18 and I think that's what they were asking, was my opinion,
19 whether I'm an expert or not. Sold more Pot-O-Golds than
20 anybody. So I guess that's why they assume I'm an expert.

21 My opinion is I wouldn't have sold them for less than
22 a thousand bucks anywhere because the -- the main brain of
23 the machine, the software or the chips -- and whether you
24 sold it as a whole board or you sold it as a chips itself,
25 it's worth a thousand dollars.

1 Throw everything else away. Let the government
2 confiscate it, whatever you want to do with it. I don't
3 care. But that machine today and in 2005 is still
4 worth a -- that machine today is still worth a thousand
5 bucks.

6 You give -- you give me 400 of them and I'll go sell
7 them for a thousand bucks. Okay. And that's what my
8 conclusion was. And all I did, quite frankly, by calling
9 all of these guys was to validate my own personal
10 conclusion. And they -- and they helped me validate that
11 by the fact that they were doing the same thing throughout
12 their markets.

13 Q And -- and I appreciate that, and thank you for
14 explaining that for me.

15 I just want to make sure that the range that you're
16 providing though is the wholesale. You're not offering an
17 opinion on the value as written in your document on the
18 value of a different part. Your expert opinion is this
19 ranged from a thousand to two thousand, three hundred
20 dollars.

21 A That's the range for a machine.

22 Q A machine.

23 A Yes, ma'am.

24 Q And that is what you're offering, your testimony
25 today.

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Cross-examination by Mr. Harrison

1 A Well, that's what's I'm offering in regard to that
2 question, but if you asked me another question I'm offering
3 that the board is worth a thousand bucks.

4 Q I would love to go through that with you. I just want
5 to make sure that you are offering that in regard to a
6 machine.

7 A This document is in regard to machine. This was for a
8 machine, yes, ma'am.

9 Q And just -- just to clarify, you can't provide me any
10 of the amounts of the value of those machines from anyone
11 else that you called.

12 A I don't have any notes on it. These guys are all
13 still alive. I still talk to them, you know. So it
14 wouldn't be hard for me to, you know, talk with them.
15 But -- but I'm just telling you they said the same things
16 I'm saying to you. Yeah, Mike, I sold 50 the other day for
17 1,250 bucks, yeah, Mike, I sold, you know, ten the other
18 day for 2,200 bucks. I mean, that was our conversation on
19 the phone.

20 Q So they -- they didn't give you any invoices?

21 A No.

22 Q Didn't provide any --

23 A No, no. I didn't ask them for all of that.

24 Q Okay. And when you were chatting with them did they
25 tell you what year those machines were that they were

1 selling?

2 A They may have. They -- I mean, they could have.
3 In -- in the conversation we wouldn't have talked about
4 what year, because that means the year -- when we have a
5 conversation, operators, that means the year that the
6 cabinet was built.

7 As I was telling you, the -- the machine itself may
8 have had software put in it six months ago, updated
9 software, which technically kinda makes it a new machine in
10 the way that it operates.

11 So we would have probably talked about, you know,
12 software versions, you know, what kind of game were they
13 running or selling, did it have, you know, Spanish
14 software. That probably would have been part of the
15 conversation. Things of that nature. But I wouldn't have
16 said what year was the machine you sold last week. That
17 wouldn't -- that wouldn't have been part of our normal
18 vernacular to talk in, speak in.

19 Q And did you record any of the examples that you just
20 gave, whether or not the machine has Spanish on it, what
21 type of system was on it? You don't have any of that
22 written down.

23 A I didn't record anything. I mean, I didn't record
24 anybody if that's what you're asking.

25 Q That's what I'm asking.

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1 A No. I didn't -- I don't record people, so I didn't
2 record anybody.

3 Q And how many machines were involved in this survey
4 that you did?

5 A Well, I talked -- I talked to, at least from my notes,
6 eight different guys. I mean, you're talking thousands of
7 machines. I mean, for Standbare [sic] alone, he's in
8 Indian country. He at the time was working for the Creek
9 Nation. They probably had 5,000 machines at that time in
10 their -- in their little casinos. So you're talking
11 thousands of games between all of these guys that they were
12 handling.

13 Q But you can't tell me a number.

14 A Thousands is all I can tell you. I can't tell you
15 exactly.

16 Q And were all of these machines located in the U.S.?

17 A No, no. Kevin, if I remember, had sold some stuff
18 overseas.

19 Q Where did he sell?

20 A He sold some stuff over into the European market.
21 Dick Martin had sold some stuff for U.S. Games into the
22 European market. That's two I recall.

23 Q And did those prices deal with taking into account the
24 shipping costs?

25 A I'm sure -- I mean, I'm -- I don't even know if we got

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Cross-examination by Mr. Harrison

1 into that. I just asked them what they sold the game for.
2 I don't know that we got into shipping or import-export,
3 any of those conversations.

4 Q So you didn't ask anyone that you surveyed whether or
5 not they had purchased or sold games from the Dominican
6 Republic in October of 2005?

7 A I don't recall, ma'am. I mean, Mike Jenkins still
8 sells stuff into the Dominican Republic, so he may have
9 been selling stuff then. I'd have to ask him. I mean, I
10 don't recall. But he sells stuff down there today.

11 Q So you don't know if the games that you were asking
12 for data about were purchased at all during that time from
13 the Dominican Republic.

14 A If -- I don't recall, and it wouldn't have mattered.
15 The value of the Pot-O-Gold was the value of the
16 Pot-O-Gold. It wouldn't have mattered if it was coming
17 from the Dominican Republic.

18 I mean, when a guy's wanting to buy a Pot-O-Gold, he
19 doesn't care where it's coming from. He just cares what
20 components he's getting in it. And that's the way you
21 value it. It's what -- what was it worth, you know, based
22 on what it did.

23 And so a buyer even in today's market or in 2005
24 didn't care if it was coming from Texas, North Carolina,
25 the Dominican Republic or Europe. He just wanted to know

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1 what software did it run, what were the printers and bill
2 acceptors on it, what were the components. And that's how
3 you came up with the price.

4 MS. HARRISON: I'm going to move to disqualify Mr.
5 Fletcher as an expert on the fair market value of sale
6 prices for machines from the Dominican Republic to be sold
7 in the United States, and I respectfully request that his
8 testimony be stricken and he be disqualified as an expert.

9 The basis of that, first, is under Rule 705. He's
10 unable to provide the data which is the foundation to the
11 range that he is offering for the value of these machines
12 in October of 2005.

13 And I also believe he should be disqualified or not
14 have his testimony as to an expert witness pursuant to
15 Watson vs. Ford on the basis that while he does have
16 experience within the video game machine area, he does not
17 have it in regards to the sales in the Dominican Republic
18 in October of 2005.

19 THE COURT: Did you depose this witness prior to this
20 hearing?

21 MS. HARRISON: No, Your Honor, I did not.

22 THE COURT: All right. Anything?

23 MR. PILLSBURY: No, Your Honor. Well, I mean, if you
24 want me to respond.

25 Clearly, that everything she mentioned would go to

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Cross-examination by Mr. Harrison

1 weight versus admissibility. I can go through details if
2 you want, but I think he's clearly qualified. He explained
3 exactly what his basis was, what -- where the market figure
4 came from. And the argument she makes goes to, I guess,
5 the weight of it.

6 THE COURT: Anything in reply?

7 MS. HARRISON: Yes, Your Honor.

8 I feel like under Rule 705 I'm entitled to the actual
9 data, and right now I have a list of, looks like, six or
10 seven names. I have no actual numbers.

11 He is unable to tell me the value of machines in
12 October of 2005. So I'm basing it on just good faith to
13 the creation of this number.

14 Additionally, I've got a few places for jurisdiction.
15 It looks like there's three names or three places listed.
16 And I don't believe that's sufficient to create a number
17 range from 1,000 to 2,300.

18 THE COURT: Quite frankly, this Court is shocked that
19 you have not deposed this witness if this is such an
20 important issue for you, and to have not raised this and
21 have some other foundation to present to this Court. So
22 I'm going to deny the motion.

23 MS. HARRISON: Yes, Your Honor. If I may just state
24 for the record, Your Honor --

25 THE COURT: I'm -- I've ruled.

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1 Now, do you have anything else to say about my ruling?

2 MS. HARRISON: No, sir.

3 THE COURT: Okay.

4 MS. HARRISON: Thank you, Your Honor. I have just a
5 few more questions.

6 THE COURT: All right.

7 Q At the highest end of your range of 2,300 per machine
8 in October of 2005, wouldn't you agree a business would
9 have only paid that much if the machine was in a newer make
10 or model in pristine condition with the latest technology
11 and features?

12 A Would I -- ask me that -- ask me that again. I want
13 to make sure I answer you correctly since I'm not an
14 expert. Ask me that one more time. I got confused.

15 Q So at the highest end of your range at \$2,300 for
16 someone to pay for that price, would you agree with me that
17 that machine would have to be in pristine condition with
18 the most update-to-date features with -- within the
19 technology realm of like the system and the board and that
20 kind of thing to get to that value price in 2005?

21 A Not necessarily. I mean, it would -- it would be in
22 good shape. But there are not many Pot-O-Golds out there
23 that are in what I would call pristine condition.

24 Once again, the metal cabinet that it's setting in may
25 have been manufactured in -- in the 90s. You're selling it

1 in 2005.

2 You know, the good thing about a Pot-O-Gold is those
3 components in that machine was a workhorse. So the printer
4 might be three years old; the bill acceptor might be two
5 years old; the monitor might be five years old.

6 So I -- you, know with that, with we knowing that, I
7 don't know that I'd call it pristine. Is it in good
8 condition, operable with good software? The answer to that
9 would be yes.

10 Again, the 2,300 may be coming from the fact that the
11 guy's only buying five of them verses 50 of them. You
12 know, there's a lot of different factors that come up with
13 all of these different ranges of prices. And that's the
14 reason I didn't sit down and make a tone of notes, because
15 I knew that. I mean, I knew all of those things. I had
16 done all of that and bought and sold and built all of that.

17 You know, we -- we assembled the games here in South
18 Carolina. They came half assembled from the manufacturer,
19 and we -- we bought the components separately now that I'm
20 remembering back. we bought the printers separately; we
21 bought the bill acceptors separately; and we built -- we
22 bought the stands that the games set on; and we finished
23 the assembly part of the game ourselves here at Drew's
24 Distributing.

25 So you would just -- if a guy wanted to buy

1 Pot-O-Golds there's certain questions you would ask and --
2 and you would justify your price based on the answer to
3 those questions.

4 So I don't want to say pristine. I'd just say they'd
5 be in good working condition and operable to come up with a
6 \$2,300 price.

7 Q And is it fair to say the same conditions that you
8 just described would also have created the thousand-dollar
9 price?

10 A Yes, ma'am. And -- and some of the same factors --
11 your volume, how many. And, again, as -- you know, it was
12 based on where they were going and who wanted them. I
13 mean, like -- you know, like selling that cup. I mean, you
14 had to look at the components; you had to look at the
15 issues.

16 Q And let's talk a little about your time at Drew's
17 Distributing to kind of shift our focus a little bit. And
18 I just want to confirm. You were working at Drew's in 1999
19 through 2001.

20 A Well, yes, ma'am.

21 Q With the caveat of the 2002 --

22 A That I was still there, yes, ma'am, yes, ma'am.

23 Q And you would have been involved with the sale of the
24 Pot-O-Gold machines to Tri-Star, right?

25 A Absolutely, yes, ma'am.

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1 Q And I -- I can show you these examples. But I have
2 some exhibits where invoices were paid in 2000 for \$2,000.
3 In 2000 some other Pot-O-Golds were sold for a thousand.
4 In 2002 the Pot-O-Golds were sold for a thousand. In your
5 opinion in the range of 2000 to 2002 were those prices of
6 two thousand and one thousand dollars, is that reasonable?

7 A I'd have to see what you're talking about, number one.
8 Number two, you've got to understand we were selling to
9 ourself.

10 Tri-Star was -- was part of Hugh Andrews who was the
11 owner of Drew's Distributing. So, and I hadn't seen what
12 you're going to show me, but they would have probably got a
13 better price than Joe on the street, I would assume.

14 MS. HARRISON: And I'm going to hand Exhibit 47 for
15 the Court and counsel.

16 THE COURT: Defendant's or plaintiff's?

17 MS. HARRISON: Defendant's. And it towards the back
18 for everyone that's flipping in the notebook.

19 I apologize. It's not bates numbered. It looks like
20 we are three pages from the back of 47.

21 Q And so I'm just asking whether or not this was a
22 reasonable price. It's dated November 7th of 2002.
23 Whether you thought that was a reasonable price for the
24 number of games that were being sold at that time.

25 A Well, you originally asked me would that be a good

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Cross-examination by Mr. Harrison

1 price, and with my experience at Drew's Distributing. So
2 let me -- let me clarify a couple of things.

3 Q Thank you. Be great.

4 A Number one, this invoice is from Hugh Andrews to
5 Tri-Star Communications, so it's not from Drew's
6 Distributing.

7 If you go down and you look at the bottom of the
8 invoice it looks like Hugh must have had 69 games from
9 Danny Tollison. Danny Tollison was another one of our
10 partners with another company that was a street route
11 operator in South Carolina.

12 I'm trying to remember the name of his company, and
13 I'm sure Hugh will remember, but -- but I know Danny.

14 Then you go up underneath that, and the next 121 games
15 were used games bought from Sam Cox with Video Matic. Sam
16 was a local street operator here in South Carolina.

17 Lastly, I can't tell from looking at this invoice if
18 these were Pot-O-Golds or not because if you look at the
19 designation it basically says used video games.

20 I mean, it could have been a Pot-O-Gold or it could
21 have been used Omegas. It could have been -- I don't know.
22 I mean, so -- so I'm -- I'm definitely not qualified to
23 tell you what this invoice is because I'm not -- I can tell
24 you from my experience of what it don't say. And it
25 doesn't say Drew's Distributing and it doesn't say

1 Pot-O-Gold and things of that nature.

2 So it'd be hard for me to tell you if a thousand
3 dollars was a fair price or fourteen hundred dollars and
4 twenty-nine -- \$1,429 is a fair price without knowing a
5 bunch of other things.

6 If you could then tell me they were Pot-O-Golds I'd
7 have a list of questions as to what they were made up of,
8 and then I could probably tell you if this was a good price
9 or not.

10 Q Thank you.

11 Let me see if I can find an invoice that is more
12 helpful.

13 A Okay.

14 Q If you flip to the last page of Exhibit 47, can you
15 tell me if that was a reasonable price?

16 A Okay. This is Drew's, and this is made up of all
17 kinds of things. I mean, it's got -- it's got some used
18 Pot-O-Golds; it's got some 3-player blackjacks; it's got
19 some sit-down, some type of sit-down casino game; and it
20 looks like we just sold them all for a thousand bucks.

21 Q So you sold the Pot-O-Golds for a thousand dollars,
22 right?

23 A Yeah. There's some Pot-O-Golds in here, used
24 Pot-O-Golds, Geo 5. There's one -- let's see. One, yeah.
25 And then there's 77 of a T340.

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Cross-examination by Mr. Harrison

1 Q All right. Now, back in 2000 and 2001 you helped
2 Mr. Andrews explore some potential opportunities down in
3 the Dominican Republic, right?

4 A Yes, ma'am.

5 Q And that was in connection to Adspace?

6 A No, no, no. That was in connection to play -- to
7 place of games. I mean, I wasn't -- I'm the guy that
8 originally went to the Dominican Republic to decide whether
9 or not we were going to do business down there. That was
10 me.

11 It wasn't Mr. Andrews; it wasn't Mr. Broom. I went on
12 behalf of Mr. Andrews, and I'm the guy that originally
13 opened that market for Mr. Andrews.

14 Mr. Broom came at a much later date.

15 Q And that -- you did that in 2001, right?

16 A It would have been -- it would have been right at the
17 end of us going down.

18 We went down in South Carolina in June of 2000. So,
19 it could have been in 2000. You know, I'd have to go back
20 and -- and refresh my memory. But it would have been
21 between the time we went out of business in South Carolina
22 and the time we originally started operating down there.
23 So it'd have been sometime between June of 2000 and into
24 2001, yes, ma'am.

25 Q Is it fair to say that once it was decided Tri-Star

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Cross-examination by Mr. Harrison

1 was going to be operating in the Dominican Republic you no
2 longer went down there?

3 A No. I'd -- I'd have to go back. And, again, I
4 haven't studied this case. I'd have to go back and see
5 when Tri-Star operated down there. But I went down there a
6 lot of times when Mr. Broom went with us -- with
7 Mr. Andrews. And so I don't remember exactly when it
8 became a joint operation.

9 I just remember originally setting up for Hugh. And
10 y'all probably have some dates when Tri-Star became
11 involved. And Tri-Star was just a partnership that Hugh
12 and Quentin had had in South Carolina. And there came a
13 point in time when Hugh said to me he was going to bring
14 Quentin in and -- and part of the justification of that,
15 quite frankly, was -- because I'll be honest. And I always
16 liked Mr. Broom.

17 But I told Hugh at the time why, you know, why would
18 we bring somebody else in the operation, because we didn't
19 really need anybody else. We had people on the ground. We
20 were -- we were putting games out.

21 And Hugh's conversation with me -- I do recall this --
22 in justification was, well, Quentin is going to come and be
23 my partner and then that way he can do some of the work
24 and, you know, I may get paid back some of the money that
25 Tri-Star owes me. So that was the justification for Mr.

1 Broom becoming involved in the first place.

2 Q But it is fair for me to say that you stopped going to
3 the Dominican Republic for Tri-Star once it was decided
4 that Tri-Star was going to open operations in the Dominican
5 Republic.

6 A I don't know if I ever went for Tri-Star. I went for
7 Mr. Andrews. I don't -- and I don't know when Tri-Star --
8 if you could refresh my memory I can maybe answer better,
9 but I don't remember exactly when Tri-Star became the
10 operating -- my guys were already down there. I'm the guy
11 that put John England down there and Tom Young and all the
12 guys that were running the operation in the Dominican
13 Republic.

14 So I don't know when that happened, I guess is what
15 I'm trying to say. I'm not trying to evade your question.
16 I just don't remember.

17 Q Okay. And I'm going to just read to you from your
18 December 19th of 2005 deposition.

19 A Of what?

20 Q For I.G.T.

21 A I was deposed by I.G.T.? Are you sure? You might
22 want to check that, because I don't recall. You may want
23 to show me that deposition because I don't recall being
24 deposed by I.G.T., but maybe I was. And I'm not arguing
25 with you. I may have been, but because I've been deposed

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Cross-examination by Mr. Harrison

1 times before.

2 THE COURT: Refresh my memory again.

3 I.G.T. is what?

4 MS. HARRISON: I.G.T. is International Game
5 Technology.

6 THE COURT: Is that the name of --

7 MR. RICHARDSON: It's the supplemental proceedings in
8 which Mr. -- they were trying to pierce the veil to get
9 Mr. Andrews to pay for Drew's Distributing.

10 THE COURT: Thank you.

11 MR. RICHARDSON: That was Judge Floyd across the
12 street.

13 MS. HARRISON: Find that in two parts.

14 Q If you could once you get yourself familiar with the
15 document, if you could, turn to page 66 for me.

16 (Pause.)

17 A This is consistent with what I just said.

18 Q Line 15.

19 A Do you want me -- do you want me to read it?

20 Q Yeah, if you --

21 A It's consistent with what I just -- well, if you read
22 it, if you start it --

23 Q Why don't you start at line eight for me and just read
24 all --

25 A Yeah. I was going to say let's start up there where

1 the answer begins.

2 Q Absolutely.

3 A You asked me how many trips did I make to the
4 Dominican for Tri-Star. And my answer is, "No way for me
5 to know without going back and looking. I went a bunch of
6 times."

7 I went a bunch of times initially before Tri-Star ever
8 got involved, and then after they ultimately decided it was
9 going to be a Tri-Star project I probably still went a few
10 times. But then I didn't go any more after Tri-Star became
11 the company that was going to do business down there.

12 So I don't know exactly when Tri-Star stopped and
13 started, but I know I kept going even after Quentin got
14 involved because he went with us, you know. And I was -- I
15 was there on the plane with everybody.

16 Q So is the last time that you went down to the
17 Dominican in 2000 -- in 2001, right?

18 A Well, it had -- it would have had to have been -- you
19 know, I didn't go any more after I left. It would've been
20 in -- it could have been in 2002, I mean, when I was still
21 with Hugh. But I wouldn't have went after -- after I left
22 Hugh. I wouldn't have went any more that I recall. I
23 don't know of any reason I would have went. And I don't
24 think they ever asked me to go. They might have. You may
25 show me something that says I went at some time, but I

1 think 2002 would have probably been the last time I'd ever
2 went.

3 Q And on that last visit did you see where the Tri-Star
4 machines were located?

5 A At -- at some point -- again, I don't know when they
6 became Tri-Star machines, so let me qualify my answer. I
7 don't remember the date that that happened, and you
8 probably know that.

9 But every time I went down there I saw the machines.
10 At some point in time -- and I think this was after Quentin
11 got involved -- they opened what I call two or many
12 casinos. And those -- I'm -- I'm assuming were pretty much
13 Tri-Star at that time, because I think we had pretty much
14 operated in the sport books places on the street, much like
15 a street route.

16 But at some point -- and I'm -- I'm -- I'm 99 percent
17 sure Quentin was involved in this -- they leased some
18 buildings or bought some buildings and opened up -- I
19 remember two mini casinos which had multiple games in them,
20 you know, 50 or a hundred games or whatever. And I'm
21 thinking that's probably about the time it became Tri-Star,
22 but I don't know what time that was.

23 Q So you haven't seen any of the machines since 2002,
24 right?

25 A No, I haven't. Not that I recall. I haven't been

1 down there.

2 Q And you testified that you're familiar with the actual
3 sale of the machines in the Dominican Republic in October
4 of 2005?

5 A Yes, ma'am. From what I've been told by the attorneys
6 and everybody, they told me the details of that sale.

7 Q And who all told you that?

8 A Well, at the time I dealt primarily with
9 Mr. Stodghill. And I'm trying to remember the other -- the
10 other attorney. It was somebody else that worked with
11 Rodney. But I don't -- you know.

12 Mr. Stodghill -- I had a relationship with Mr.
13 Stodghill because at one time he had worked for me. And so
14 my memory going all the way back to 2005, which was 12
15 years ago, is my communications primarily were probably
16 with Curt, and he was probably the one asking me questions,
17 asking me my opinions and telling me facts if I recall
18 right.

19 Q Do you know how many machines Mr. Andrews is claiming
20 should not have been sold in October of 2005?

21 A If I remember right it was 1,100 or 1,100 and some
22 change, if I remember correctly.

23 Q And of those 1,100 and some change, do you know how
24 many were operational?

25 A I would think they all were. I don't know -- I don't

Michael Fletcher
Cross-examination by Mr. Harrison

1 know how you'd have sold them if they weren't operational.

2 Q And did -- did you inspect these machines?

3 A No, ma'am.

4 Q Did you ever see any pictures of them?

5 A I don't recall. I may have. But I don't recall.

6 Q So it's fair to say you didn't know what the
7 conditions -- they were in in 2005?

8 A I was told they were on the street operating. And
9 they wanted me to value them based on if I was going to
10 sell them into any other market, you know.

11 So I'm -- I know I was told they were on the street
12 operating. Nobody told me they were obsolete or
13 nonfunctional or whatever your other -- your other
14 description was a few minutes ago. So I would have made my
15 analysis based on the fact that they were operational,
16 functional games.

17 Q Do you know where they were kept when the gaming
18 became illegal?

19 A We had warehouses down there, and my guys stayed on
20 when it became Tri-Star. So I did have communications with
21 them from time to time, you know -- Johnny Young, Tom Young
22 and some of those guys. They were my route guys. I mean,
23 and we had some warehouses. So, you know, they may have
24 been in warehouses. I don't know. I mean, I wasn't there,
25 so I don't know.

1 Q Did you take into account the type of wear and tear
2 that the machines may have had?

3 A You know, it doesn't matter as long as they had the
4 right components in them.

5 Every Pot-O-Gold out there has had wear and tear.
6 Some of the Pot-O-Golds that are still operating today were
7 manufactured in the 1980s -- not the '90s -- the 1980s.

8 So it depends on the components. And the -- and the
9 metal cabinet is, quite frankly, for a Pot-O-Gold game, is
10 immaterial. It depends on what components are in them and
11 if they're functional and what market you're going to take
12 them to.

13 Q We talked a lot about components. Can you kind of
14 help me get an idea of these components? And I've got a
15 list. And I was wondering if you could tell me what the
16 price would be. So how much would a bill acceptor cost?

17 A Depends. There are multiple bill acceptors. There's
18 Mars bill acceptors; there's J.C.M. bill acceptors. So it
19 would depend on what model of bill acceptor you want to put
20 in it.

21 But your -- but your bill acceptors are going to
22 run -- and, again, I haven't bought bill acceptors in the
23 last three or four years. But your bill acceptors are
24 going to run, you know, five hundred to fifteen hundred
25 dollars depending on what model you buy and what functions

1 it has.

2 Q Did you know if the Pot-O-Golds that were being sold
3 in October of 2005 had bill acceptors?

4 A I don't remember. Seems like we -- I know we had bill
5 acceptors when we first went down there. We may have
6 converted to ticket dispensers at some point in time.

7 Q What about buttons from the face plates? Do you know
8 if they had those?

9 A Some of your Pot-O-Golds had -- had dual buttons.
10 They had face plate -- I'm assuming this is what you're
11 talking about. They had face plate, what we call, manual
12 buttons, and they also had buttons configured into the
13 design of the game on the touch screen monitor. They
14 primarily operated with touch screen monitors.

15 So some of them you had dual sets of button functions.
16 Some Pot-O-Golds you don't have dual sets-of-button
17 functions. But that's just -- that's another component and
18 another feature.

19 Q And what is the figure to reconfigure and modify
20 software for languages?

21 A You were -- you were buying software back in those
22 days because there's a lot of markets that were needing --
23 needing Spanish software. And then there was some European
24 markets, and even Brazil. I can remember Brazil, they were
25 selling Pot-O-Golds down there with Portuguese, because

1 that was a primary language.

2 You know, you might pay as high as a thousand bucks to
3 fifteen hundred bucks for a set of software configured a
4 certain way and going to a certain market.

5 And, again, that's my argument. If you're going to
6 sell those Pot-O-Golds -- and I know some of those
7 Pot-O-Golds down there had Spanish software in them because
8 we -- we'd put it -- put it in when I was still there. If
9 you were going to sell those things, selling the software
10 itself was worth more than 363 bucks.

11 Q In coming up with your number did you take into
12 account that in order to take the machines or the parts out
13 of the Dominican Republic that both import and export
14 duties would have had to be paid?

15 A They've been paying import and export duties from the
16 day one we went down there. So I would assume anybody that
17 was going to sell them from the Dominican Republic would
18 take that into account.

19 MS. HARRISON: I'd like to move to admit a memo from
20 January 16th of 2001.

21 THE COURT: If you're going to use it with the witness
22 you have to show it to him.

23 Q Have you ever seen this before?

24 A Well, I know who Ten State Street is because I went
25 down there and hired them. It says it's addressed -- the

Michael Fletcher
Cross-examination by Mr. Harrison

1 cover page says it's addressed to me, but the memo says
2 it's addressed to somebody else. So I'm not even sure if
3 they both go together.

4 Q I'm sorry.

5 A The cover page doesn't reference anything, but then
6 the memo itself is not -- not to me. I guess the crazy
7 thing, on the cover page there's no reference to what it's
8 about.

9 Q All right. So you've said that on the cover page it's
10 addressed to you, right?

11 A The cover page is addressed to Mike Fletcher at
12 Adspace.

13 Q All right. And flip to the -- to the last page.

14 A The very last page?

15 Q The very last page.

16 A Of this? Okay.

17 Q So am I correct that this is a fax cover sheet
18 confirming that 15 pages were sent on January 1st?

19 A Sent somewhere.

20 Q January 16th, 2001?

21 A Yeah, sent somewhere, but I don't know where it was
22 sent. But it's just sent to a phone number.

23 Q And it was sent to you?

24 A I don't know that. I don't have any idea.

25 Q Okay. Well, let's walk through this --

Michael Fletcher
Cross-examination by Mr. Harrison

1 A Okay.

2 Q -- if you could look on page one of the memo.

3 A Page one, yes, ma'am.

4 Q Page one. And I've marked some places for us to talk
5 about. If you could, read for me. Let's see. Let's go
6 and flip to page three.

7 A Page three.

8 Q Page three, that portion that's been highlighted for
9 you.

10 A Okay.

11 Q Could you read that for me?

12 A "This valuation will not present Dominican customs
13 duty issues since the games entered the Dominican Republic
14 free of customs duties, so their entity value will not
15 matter."

16 Q So Tri-Star had not paid duties on that, those games,
17 is that correct?

18 A Well, this says they entered free.

19 Q And let's flip back to page five. If you could, read
20 that, the first paragraph.

21 MR. PILLSBURY: Your Honor, I'm not sure if she's
22 trying to get portions of it admitted.

23 THE COURT: All right. I'm going to sustain the
24 objection.

25 The witness has stated clearly he's confused, doesn't

Michael Fletcher
Cross-examination by Mr. Harrison

1 know what this is, doesn't know what it is.

2 You're asking him questions about a document he --
3 you've not laid a foundation for. If you want to lay --
4 lay a better foundation, I think you can ask him questions
5 about it.

6 Otherwise, he's doing to be publishing just things.

7 MS. HARRISON: Okay. Thank you.

8 Q Mr. Fletcher, I'm going to switch out and we're going
9 to just jump ahead. I'm looking at Exhibit 19.

10 THE COURT: This defendant's?

11 MS. HARRISON: Defendant's, yes, sir.

12 Q Mr. Fletcher, can you tell me who this is addressed
13 to?

14 A It's addressed to me at Tri-Star Communications --

15 Q All right.

16 A -- which I never worked for, so.

17 Q And can you flip to the last page for me?

18 A The very last page.

19 Q The very last page, the transmission and verification
20 report.

21 A Again, it's -- it's a fax transmission report faxed to
22 a phone number. So, it doesn't tell who that is or if it's
23 me or not me or whatever.

24 Q Is this the fax number that you previously used?

25 A I wouldn't have a clue. I mean, this was in '06.

Michael Fletcher
Cross-examination by Mr. Harrison

1 THE COURT: You said this was 19?

2 MS. HARRISON: Exhibit 19, yes, sir.

3 Q It's been 16 years since this fax was sent. Can you
4 tell me that you didn't receive it, or just you don't
5 remember it?

6 A I don't have a clue. I mean, I -- all I can tell you,
7 it's got my name on the -- on the cover page.

8 Without me reading this whole document, I can't even
9 tell you what it's about. It appears to be about something
10 to do with a company called Calum. But, once again, until
11 I -- if I read it and digested it, I might could tell you a
12 whole of things about it. But right now I don't even know
13 that I've ever seen it.

14 THE COURT: Counsel may want to check the Court's 19,
15 because the Court's 19 is not -- he's referenced a fax
16 transmittal. There's no fax transmittal. He's referenced
17 a company called Calum. Court's 19 has nothing to do with
18 Calum that I can see.

19 MR. PILLSBURY: Your Honor, if I may approach just so
20 that we can compare, this is what you have. Yeah. So do
21 you have -- I think this is what they're talking about,
22 that attachment.

23 THE COURT: I don't see any fax transmittal.

24 THE WITNESS: It's on the very back, Your Honor. The
25 last page is the tax transmittal she's asking me about.

Michael Fletcher
Cross-examination by Mr. Harrison

1 She's asking me about this.

2 MR. PILLSBURY: It's not on mine.

3 THE COURT: We don't have that.

4 THE WITNESS: Okay.

5 MR. RICHARDSON: Is that not the same exhibit you have
6 in your notebook, Your Honor?

7 THE COURT: It's the part that we don't have, is he's
8 referencing a tax transmittal. There's no fax transmittal
9 to any of this, not the one that counsel just handed me nor
10 the --

11 THE WITNESS: He doesn't have this, is what she's
12 asking me about.

13 THE COURT: I mean, that may not be important. I
14 don't know.

15 MR. RICHARDSON: That last page of our exhibits. I
16 apologize.

17 MS. HARRISON: I can give you mine.

18 THE COURT: Okay.

19 Q Mr. Fletcher, you've testified that you helped set up
20 the Tri-Star business in 2001.

21 A No, ma'am. I helped set up Hugh Andrews' business in
22 the Dominican Republic in 2001.

23 Q Then --

24 A Tri-Star came at a later time.

25 Q And when you were setting up the business in 2001 you

Michael Fletcher
Cross-examination by Mr. Harrison

1 would have been informed about the import-export duties in
2 the Dominican Republic, right?

3 A I'm sure I would have been.

4 Q And this memorandum and the fax go through -- I'm
5 going to represent that to you -- the obligations of paying
6 import-export tax duties in 2001.

7 A Does this one? I know the last one had a couple of
8 references to free import, but I haven't looked at this
9 one.

10 Q Yes. Well, please take a look at it.

11 A So I don't have a clue.

12 Well, this -- this particular document -- and, again,
13 I'm skimming it -- but it references a whole bunch of
14 things.

15 It talks about -- it talks about some free import and
16 things of that nature since the machines will be consigned
17 to the national lottery.

18 It goes on to talk about the banking situation of
19 Calum, which I'm assuming Calum was -- and, again, I don't
20 know -- Calum might have been an entity of Tri-Star. But
21 it talks about their banking situation, which we had some
22 banking situations, I know, when I went down to sell for
23 Hugh about conversion rates, things of that nature.

24 I mean, it talks about a bunch of different stuff.
25 And I guess the confusing thing to me is the memorandum is

Michael Fletcher
Cross-examination by Mr. Harrison

1 addressed to Mr. LeClercq, which I don't remember who Mr.
2 LeClercq is. So even -- even, I mean, you're telling me
3 I've got this memorandum, but it's not addressed to me, so
4 I don't -- I don't know.

5 Q All right. And all I'm asking for you to tell me or
6 to confirm is there are import duties that were not paid in
7 2001.

8 A This says they were going to be free but I don't -- I
9 don't recall.

10 My recollection is when we originally set up down
11 there we did pay duties going in, so we sent them by
12 container if I remember right and, you know, a hundred or
13 two hundred at a time. And we had to pay duties, and they
14 had to set in customs for so many days before we could go
15 pick them up. And the same thing when we exported them.

16 Q Ten State Street is Andrews' lawyer, right?

17 A Ten State Street is a lawyer that I went down and
18 hired during the Drew's Distributing days for Mr. Andrews
19 to set up some trust funds and things of that nature for
20 his family and his children and things of that.

21 Actually I -- we originally hired Mr. Merline in
22 Greenville, South Carolina, who was a friend of mine -- Mr.
23 Merline, Sr. who is now dead. And his son, Dave Merline.

24 And Dave took us to Ten State Street, which was in
25 Charleston as I recall. And I can't remember the guy's

Michael Fletcher
Cross-examination by Mr. Harrison

1 name. It's probably in some of these documents. But he
2 was a barrister.

3 And we actually set up trust accounts, was the primary
4 purpose for Mr. Andrews. And I think we had a couple of
5 foundations and things of that nature for his children and
6 grandchildren and those situations. And then I know Ten
7 State Street kept advising us over the years because they
8 had -- they were an international law firm.

9 Q And you paid them to tell you about the legal issues
10 regarding imports and exports, right?

11 A And I did what?

12 Q They were paid to advise you on a variety of legal
13 issues, which can include import and export.

14 A It could have included. I can't tell you today, but
15 originally I hired them for what I'm saying.

16 Q And when you made your valuation did you take into
17 account that legal title was held by the Dominican Republic
18 and not Tri-Star?

19 A No, ma'am, no. I valued the machines based on what
20 they were worth if they were going to be sold in another
21 market or in the Dominican, going to be sold to somebody --
22 in the Dominican what they were worth.

23 Q Did you take into account the Itapis.

24 A The what?

25 Q The Itapis. It's I-T-A-P-I-S.

Michael Fletcher
Cross-examination by Mr. Harrison

1 A I'm not remembering what that is, but you can help me.

2 Q That's the sales taxes for the Dominican Republic. So
3 you didn't take that into account in your --

4 A No, ma'am, no, ma'am. I've told you everything I took
5 into account when I valued these.

6 Q So you didn't take into account that Mr. Broom would
7 be required to get the title back in order to have the
8 machines leave the country, or even their parts?

9 A All I took into account was the fact that he sold them
10 to somebody. So all of these things you're asking me
11 either took place or didn't take place. He either got
12 title back or he paid to export or paid to import or
13 whatever he did. They were sold.

14 Okay. My opinion was based on were they sold at a
15 fair market value, and my opinion still today is, no, they
16 were not.

17 You could have sold any one component out of that
18 machine for more than 363 bucks, period. That's what I
19 took into account, and that's all I took into account.

20 Q It matters though if you own the machine, right?

21 A Well, you -- you wouldn't -- hopefully, you wouldn't
22 sell something if you didn't own it. And my understanding
23 was he and Mr. Andrews owned them.

24 Q But you have to have legal title to own it, right?

25 A You're asking me legal opinions now, ma'am. You know,

Michael Fletcher
Cross-examination by Mr. Harrison

1 under certain circumstances you may not have to have legal
2 title. I don't know. We'd have to talk about what we're
3 talking about and -- and I can read the legalese.

4 Q Earlier you mentioned your guys that you had in the
5 Dominican Republic. Were those Tri-Star employees?

6 A Not originally.

7 Q Were they Tri-Star employees in 2001?

8 A Again, I don't know exactly when Tri-Star took over,
9 but they originally were -- were Mr. Andrews' employees.

10 When I set the operation up Mr. Broom was not
11 involved. When Johnny Loom and Tom Young -- and there were
12 several other guys -- came to work for us, Mr. Broom was
13 not involved.

14 At some point in time Mr. Broom became involved. I
15 think it became Tri-Star, and they probably were changed
16 over to Tri-Star employees. I just don't remember what
17 period of time that was. But it was not initially.

18 Q Just to kind of sum up everything we talked about
19 today, so you agree that the value that you provided to the
20 Court doesn't take into the account -- doesn't take into
21 account the condition of the machines, right?

22 A I agree that it doesn't take in the condition of the
23 machines?

24 Q Yes.

25 A No, I don't agree to that. The machines were

1 functional and operable, is what I was told.

2 Q They're all operable.

3 A They were functional, operable machines. So that's
4 what I took into consideration.

5 Q And you didn't take into consideration the
6 programming, right, of -- for language?

7 A No. I -- I knew that some of them had Spanish
8 programming on them. Yeah. I did take that into
9 consideration.

10 Q But in the valuation that you made to create your --
11 your data range, you didn't take into account the language.

12 A No. I did, ma'am. I took into account all of those
13 factors.

14 You understand -- what you keep missing is I know more
15 about that machine than Mr. Broom and Mr. Andrews put
16 together.

17 I'm the guy that brought that machine to South
18 Carolina originally from Collins Entertainment; I'm the guy
19 that sold more of them than everybody, anybody in the
20 world.

21 I took everything I knew and all of my knowledge about
22 that machine into consideration when I was asked to value
23 what they could sell for. I took every bit of that into
24 consideration.

25 Q But you didn't take into consideration the condition

Michael Fletcher
Cross-examination by Mr. Harrison

1 and these exact machines that were being sold in October of
2 2005, right?

3 A I didn't go down and look at the machines if that's
4 what you're asking me to do. I didn't see pictures of the
5 machines. I was told they were operable and functional
6 machines.

7 I knew what some of them were because I had took them
8 down there initially. So I knew what some of them looked
9 like because I'm the guy that went with my guys when we
10 first placed them. So I knew enough about the machines
11 based on what I was told to know what I could then go sell
12 them for or buy them for.

13 Q And your valuation did not take into account import
14 and export duties and sales tax, right?

15 A I didn't -- didn't think about import-export and
16 didn't care about import-export. It didn't matter in
17 regard to the value of the game itself.

18 Q And you didn't take into account the impossibility of
19 bringing games that were illegal in the Dominican
20 Republican -- Republic out, right?

21 A Somebody sold them, and they were sold to somebody.
22 So I didn't -- that impossibility didn't seem to be
23 impossible that you mentioned.

24 Q So it's fair to say that your value has absolutely
25 nothing to do with the October of 2005 games that were

1 sold.

2 A No, that's not fair to say. My evaluation is nothing
3 but about those 2005 games.

4 Q But does your valuation take into account the
5 circumstances in 2005 in the Dominican Republic where those
6 games were banned and it was illegal to be in possession of
7 those games?

8 A It wouldn't have mattered in my evaluation, and you're
9 putting words in my mouth. It wouldn't have mattered.

10 Any time you're selling Pot-O-Golds, they may be
11 coming out of a dark market into a light market. So it
12 wouldn't have mattered if they were coming from the
13 Dominican Republic or if they were coming from South
14 Carolina. It had gone dark.

15 When a guy's putting a price on that product, those
16 are factors that the guy selling it deals with. It doesn't
17 diminish the value of the game itself. None of that
18 diminishes the value of the game.

19 That cup is still worth what that cup's worth. You
20 got to figure out how to get it to him. But the value of
21 that cup doesn't change.

22 Q Thank you Mr. Fletcher.

23 THE COURT: Any reflect limited to what she went into?

24 MR. PILLSBURY: Yes, Your Honor, very briefly.

25 If I may approach, Your Honor.

Michael Fletcher
Redirect examination by Mr. Pillsbury

1 What I'm marking is for identification purposes
2 Exhibit 17, which was a November 4th of 2005 letter sent
3 from Mr. Broom's attorney to Mr. Andrews' attorney.

4 (Letter dated 11-4-05 marked Plaintiff's Exhibit No. 17
5 for Identification.)

6 REDIRECT EXAMINATION

7 BY MR. PILLSBURY

8 Q Okay. And -- and what I wanted to call to your
9 attention was page two of that letter --

10 A Yes, sir.

11 Q -- where -- just assume for the sake of argument that
12 960 of the games that were sold were in operating
13 condition. Do you see that?

14 A That's what it says, 960 were operational.

15 Q Okay. Now, the 960 -- you were asked one thing about
16 title. Would -- would Tri-Star have been able to sell the
17 games to anyone if they couldn't convey good title?

18 A You -- if you were going to buy them, you'd want good
19 title. I mean, you know, you'd want to know you were
20 buying something that was free and clear.

21 I can't say there wouldn't be somebody out there that
22 would buy them without good title, but you'd want good
23 title.

24 Q The 960 -- assume for the sake that 960 of the 1,122
25 games were actually operational. Would -- would that

Michael Fletcher
Redirect examination by Mr. Pillsbury

1 affect your -- your per piece value that you came up with
2 of 15 and 75?

3 A No, because I'd have -- I'd have to know -- there's
4 all kinds of things you could say to declare a machine
5 nonoperational.

6 I mean, they may have taken the bill acceptors out of
7 the other however many that is -- 300 or whatever. So I --
8 if I was going to consider that I'd want to know more
9 information about it.

10 All I considered was they told me the machines were
11 operational, they were functional, they could be used in
12 other markets. And that's the way I analyzed them.

13 Q Okay. And let me see if I could sort of clarify this
14 real quickly.

15 If -- if the unit was fully functional your -- your
16 evaluation was it was \$575 per unit?

17 A It --

18 Q I'm sorry. \$1,575 per unit?

19 A Right. That was the average.

20 Q Okay. And if it was -- if it wasn't operational, then
21 it just depended on what component parts would have been
22 able to be extracted.

23 A Right, because if it was not operational and it still
24 had the main boards and had the software that was -- that
25 was the brains, so to speak.

Michael Fletcher
Redirect examination by Mr. Pillsbury

1 If it was missing the -- the bill acceptor, that would
2 have been like it missing a leg or something. So you have
3 to analyze each machine as to why it was not operational if
4 you wanted to factor that into your -- your decision.

5 Q And the -- and regardless of what may have been going
6 on as far as legality, illegality, would that have
7 prevented anybody from getting, like, the components that
8 you mentioned in order to sell those at the prices that
9 you've testified?

10 A Oh, no. I mean, you could easily -- and I guess I
11 based my expert opinion on this. There've been markets
12 before that have gone dark, and they've gone dark quickly.

13 You may not want to go move the whole machine out of
14 that market and transport it wherever. So you may go and
15 pull the boards from those machines, because, again, that
16 was the brain.

17 And I guess what I said earlier is the board itself or
18 the software itself, worth a thousand dollars anywhere,
19 anywhere.

20 Q But if the unit was fully functional, at least as to
21 those 960, that value would be \$1,575 apiece at a time.

22 A That's average value, absolutely.

23 Q Okay.

24 A Absolutely. You could have sold them for that.

25 Q The last thing that I think you mentioned is that to

Michael Fletcher
Redirect examination by Mr. Pillsbury

1 the best of your knowledge these machines are still
2 operating in the Dominican.

3 A Based on conversations I've had with the people that
4 still sell components down there and ship games down there,
5 there are still Pot-O-Golds in -- in the Dominican, yes,
6 sir.

7 MR. PILLSBURY: That's all I have, Your Honor.

8 THE COURT: Thank you, sir. You may step down.

9 MS. HARRISON: May I redirect?

10 THE COURT: I usually do not if he kept it on the
11 subject matters that you went into with cross. Otherwise,
12 we'd never get through.

13 Did he go outside of your area that you asked?

14 MS. HARRISON: No, sir.

15 THE COURT: Okay.

16 Thank you, sir. You may step down.

17 All right. I'm made an assumption, and I hope
18 rightly.

19 The two volumes of materials and the volumes of
20 materials from -- from defendant and volume of materials
21 from plaintiff, these are admitted?

22 MR. PILLSBURY: They have not been, Your Honor.

23 MR. RICHARDSON: There's no objection to anything
24 other -- that's being expressed today except the 2006 Broom
25 tax returns to the 2015 Broom tax returns.

1 THE COURT: Okay. So every -- so all of defendants'
2 exhibits are admitted. But the tax returns are still
3 contested?

4 MR. RICHARDSON: We're fine with '03, '04, '05,
5 because that's during the time of the Tri-Star.

6 There's also two trial ledgers in his that we don't
7 object to.

8 MR. PILLSBURY: Your Honor, I had asked Mr. Richardson
9 which exhibits they planned on tendering, because there was
10 a volume of them that were related to I.G.T. that we were
11 withdrawing.

12 And so I guess if I knew which exhibits they were
13 tendering now I would -- there are some that have some
14 hearsay in them, obviously, with newspaper articles.

15 And so they have not been admitted. They've just been
16 tendered to the Court for identification at this point.

17 THE COURT: Okay.

18 MR. RICHARDSON: Your Honor, may I address that?

19 MR. PILLSBURY: And, Your Honor, I don't anticipate
20 any lengthy -- it's not going to be --

21 THE COURT: I mean, y'all are not -- I thought I heard
22 that y'all were not going to contest authenticity and those
23 type of issues so we didn't have to worry about those
24 witnesses.

25 MR. PILLSBURY: Correct. And we're not. So I guess

1 it would help me if I knew exactly in light of what we've
2 withdrawn and which exhibits they still want to go forward
3 with, that would help me, you know, get to the particulars.

4 THE COURT: Will y'all talk during lunch?

5 MR. PILLSBURY: We can, yes.

6 MR. RICHARDSON: Your Honor, I apologize, but, you
7 know, we had the status conferences starting two weeks ago
8 and last week to deal with this issue.

9 It's really, you know, burdensome, I think, for us to
10 find out finally this morning and to go through and try and
11 take some of those out.

12 I would just say the ones that we don't refer to, you
13 know, we can -- we can deal with after the fact, but
14 there's been no objection.

15 We've set up a time to talk. We didn't communicate
16 them. There's been no objection dealing with these. I
17 think -- you know, I think we would say that we proceeded
18 under the basis that there's no objection. And to the
19 extent they're used, they'll be admitted. And to the
20 extent they're not used, then we will withdraw them.

21 THE COURT: How about that, that if y'all refer to
22 them -- if they refer to them and you have an objection,
23 state the objection. And then if by chance, let's say,
24 they never refer to No. 11 at all and you don't refer to
25 No. 11, we just take it out completely.

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 MR. PILLSBURY: Yes. That's kind of what I had in
2 mind.

3 THE COURT: Okay.

4 MR. RICHARDSON: Yeah. Instead, he's asking us to go
5 back and do work product we could have done last week. But
6 we can't do it now.

7 THE COURT: Okay. Let's do it that way then.

8 Okay. And then whenever he gets to the point where
9 he's going to use any of the tax returns that you're
10 objecting to will y'all object to it at that time and we
11 can address it?

12 MR. RICHARDSON: Absolutely, Your Honor.

13 THE COURT: Okay. All right. Thank y'all very much.
14 We're going to take a lunch break. We'll see you back
15 at 2:00 o'clock.

16 (Whereupon, a recess was taken.)

17 THE COURT: Is the plaintiff ready to call their next
18 witness?

19 MR. PILLSBURY: Yes, Your Honor.

20 The plaintiff could call the defendant, Quentin Broom,
21 to the stand, please.

22 QUENTIN W. BROOM, JR., having
23 been first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. PILLSBURY

25 Q Good afternoon, Mr. Broom. You have water. Good.

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 A Thank you.

2 Q I just have a few questions by way of background.

3 Is it fair for me to say that for the most part you've
4 considered Mr. Andrews your partner when it came to
5 Tri-Star?

6 A We were shareholders, correct.

7 Q Okay. But for all intents and purposes, like, you
8 didn't have shareholder meetings.

9 A We -- we had some meetings.

10 Q Did you have shareholder meetings where you gave
11 notice that this is a shareholder meeting?

12 A Only originally when I set up the corporation, I mean,
13 when we purchased it from Mr. Holiday.

14 Q And after that none, correct?

15 A I don't remember.

16 Q Well, you would remember sending out a notice. That
17 would have been your --

18 A I didn't send out notice.

19 Q Right. And so those shareholder meetings to the
20 extent that that's what formal corporations did, you guys
21 never did that after the first meeting, correct?

22 A I know just -- just when I purchased the corporation
23 originally in '96.

24 Q Right. So the answer to my question would be, yes,
25 there were no other meetings, shareholder meetings, other

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 than that one in 1996.

2 A I -- I don't remember any.

3 Q Okay. well, if they took place, you would remember
4 it, correct, because you would have done a formal notice?

5 A It's been a long time, so I --

6 Q Right.

7 A Yeah.

8 Q I'm not trying to beat a dead horse. I'm just trying
9 to get an answer so I can move on. So there were no
10 shareholder meetings, correct?

11 A I don't remember any.

12 Q All right. well, if there had been shareholder
13 meetings, you would have been the one that would have
14 called them, correct? You would have done the formal
15 notice.

16 A Yes, or -- or our accountant, somebody. I don't know.

17 Q Right. And -- and that never took place.

18 A I -- I can't recall, no.

19 Q Did you ever give any notices for like a
20 board-of-directors meetings?

21 A I don't remember any.

22 Q Right. And -- and which means that they didn't
23 happen, right? I mean, let's just be -- there were no
24 board-of-director meetings.

25 A Well, I was the only director, so.

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 Q Right. And so there was no meeting that you held
2 where there was notice given or anything like that that you
3 do in --

4 A No. I don't remember any of that.

5 Q Right. And let me look at -- I'll show you what is
6 the original complaint in this action.

7 MR. RICHARDSON: Your Honor, of course this has been
8 dismissed, so it's not a pleading in this trial or in this
9 matter currently.

10 THE COURT: All right. I don't know what he's going
11 to do with it.

12 MR. RICHARDSON: I can tell you. I think we're about
13 to get into them. We're not going to allow a trial by
14 implication of a corporate -- piercing the corporate veil.

15 So if he's heading that way, Your Honor, we object.
16 And that's not anywhere in the second amended complaint or
17 the counterclaims.

18 Q If you would, turn over to page two. They're not
19 numbered. But paragraph six.

20 This was the original lawsuit that you brought against
21 Mr. Andrews, and it states, "For a number of years Andrews
22 and Broom have been business partners, primarily in Tri-Star
23 Communications, hereafter Tri-Star, and other enterprises."
24 Did I read that accurately?

25 A Yes.

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 Q Okay. And was that true when you filed your original
2 lawsuit?

3 A We were -- we were both shareholders of Tri-Star
4 Communications, Inc.

5 Q Okay. Do you want to flip through there and show me
6 where you mentioned anything about being shareholders of
7 Tri-Star, Inc.?

8 A Do you want me to read this?

9 Q Your original complaint, yes. Take your time.
10 (Pause.)

11 Q I'll represent to you that it's not in there, but feel
12 free to confirm.

13 A I mean, yeah. If it's not in here, it's not in here.

14 Q Okay. So when you filed the original lawsuit there
15 was no mention of being shareholders. It was he was your
16 business partner, correct?

17 A Well, we were just shareholders in Tri-Star. Tri-Star
18 was a corporation.

19 Q Okay. In the -- in the legal pleadings that when you
20 initiated this lawsuit against Hugh, you didn't say
21 anything about being shareholders. You said that you were
22 business partners in your pleadings.

23 A Yeah. I just agreed that if you said that the word
24 shareholder is not in here, I agreed with you.

25 Q Okay. Well, there was no mention when you filed your

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 original lawsuit that you guys were shareholders. You were
2 business partners, correct?

3 A That's -- that's what it says in the first -- on the
4 second page that you showed me?

5 Q I -- if you want to take your time and look through
6 it, I'll represent to you that nowhere --

7 A No. I --

8 Q -- in the document does it say anything about being a
9 shareholder.

10 A Okay. I'm okay with that.

11 Q He was your business partner, right?

12 A Yeah. We were --

13 Q And that's the way you treated him.

14 A Sure, as equal shareholders, correct.

15 Q No. That's -- you didn't -- you treated him like your
16 partner, right?

17 MR. KNIE: Your Honor, the question has been asked and
18 answer about eight times.

19 THE COURT: I think I got it.

20 Q Now, originally when you were doing this, the offshore
21 investment, originally you put up 300,000 and Hugh put up
22 300,000, correct?

23 A Yes.

24 Q And at some point there came a need for an additional
25 \$600,000, right?

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 A Yes.

2 Q And at that point I think that -- Mr. Andrews said you
3 need to come up with 300 and I come up with 300, correct?

4 A I don't remember it, but there was a reason I couldn't
5 come up with my 300.

6 Q Right.

7 A I don't remember the conversation, but yeah.

8 Q And so he -- there was an expectation when 600 was
9 needed that each of you would contribute 50-50. You would
10 come up with 300 more and he would come up with 300 more,
11 right?

12 A Would you say that again?

13 Q When 600,000 was needed there was an expectation that
14 it would be 50-50 again and that he would come up with 300
15 and you would come up with 300.

16 A Well, I don't know where the expectation was but I --
17 that's all the money I had, was 300 at the time.

18 Q Okay. Let me make sure. When 600 was needed, you
19 didn't have any other money to come up with.

20 A That's correct.

21 Q Okay. So in the -- in everything that was invested
22 offshore, Hugh had 900,000 and you had 300,000, correct?

23 A Yes.

24 Q All right. Now, when it -- let's come back to
25 Tri-Star of course. You were the one that controlled the

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 checkbook, right?

2 A At times.

3 Q Well, on a day-to-day basis you were the one or
4 somebody under your supervision --

5 A I was in charge.

6 Q Right. And, as a matter of fact, Hugh never saw the
7 checkbook itself, correct, up until the point, you know,
8 while the venture was pending?

9 A The checkbook was at the Drew's facility for a number
10 of years.

11 Q Was -- would -- would Hugh have been part of any of
12 the check writing for Tri-Star?

13 A I don't remember that he was.

14 Q Okay. And, as a matter of fact, that was really what
15 you did as part of your role with Tri-Star, right?

16 A I -- I directed the payments. Is that -- yeah.

17 Q In other words, it was under your control, not Hugh's.

18 A Yes.

19 Q Let me show you what's already been -- I guess it's
20 been admitted. Exhibit 17.

21 THE COURT: Is that plaintiff's or defendant's?

22 MR. PILLSBURY: This is plaintiff's. I'm sorry, Your
23 Honor.

24 Q This is that November 4 -- can you see this okay from
25 there?

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 A It's blurry.

2 Q Okay. That may be my eyes, not yours.

3 And this was after everything went south and the games
4 had been sold. And this is talking about the accounting
5 records, that you plan to turn the books over to Tri-Star's
6 accountant, Tim Russell, right?

7 A Yes.

8 Q Okay. So you had the books.

9 A I had the checkbook.

10 Q Yes.

11 A Yeah.

12 Q Right. And Hugh didn't have them, correct?

13 A Yes.

14 Q And so Hugh wouldn't necessarily know when you wrote a
15 check on a given day unless you told him about it, right?

16 A Can you repeat that again?

17 Q Hugh wouldn't necessarily know that you wrote any
18 given check on a given day unless you told him about it,
19 correct? Because he didn't have the checkbook.

20 A He -- he would get monthly financials.

21 Q Okay. But as you were writing checks you wouldn't
22 necessarily say I'm going to do a check for this or for
23 that.

24 A Not since inception in 1996.

25 Q Okay. And I'm glad you're talking about the inception

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 since 1996, because in 1996 what was your salary from
2 Tri-Star? I'll help you. Is that right?

3 A Salary from Tri-Star?

4 Q Yes.

5 A Yes.

6 Q Okay. In 1997 what was your salary from Tri-Star?

7 A I didn't take a salary that year either.

8 Q In 1998 what was your salary from Tri-Star?

9 A I didn't take salary that year either.

10 Q And in each of these years you two are splitting the
11 income of the business via K-1, correct?

12 A Yes.

13 Q Okay. So you split, in essence, the profits every
14 year, 50-50, with no one taking a salary, correct?

15 A That's correct.

16 Q All right. And so in 1999 what salary did you take
17 from Tri-Star?

18 A I didn't take my salary in '99.

19 Q And in 2000 what was your salary from Tri-Star?

20 A I didn't take the salary in 2000.

21 Q In 2001 what was your salary from Tri-Star?

22 A I didn't take a salary that year either.

23 Q In 2002 what was your salary from Tri-Star?

24 A I didn't take a salary that year either.

25 Q In 2003, no salary from Tri-Star, correct?

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 A That's correct.

2 Q From January 1st of 2004 until December 31st of
3 2004 -- I'm sorry -- until December 30th of 2004, how much
4 salary did you draw out during those days of the year?

5 A I drew a salary out in 2004.

6 Q Right. You took out money on the very last day of the
7 year, correct?

8 A I -- I don't remember the day.

9 Q Let's see.

10 (Pause.)

11 Q Plaintiff's Exhibit 14, page 31. Okay. The journal
12 entry on December 31st, that 400,000 is what you took,
13 correct?

14 A That's correct.

15 Q All right. So from January 1st, until, 2004 through
16 January 30th of 2004, you took zero salary, correct?

17 A I don't remember exactly the day it was taken. I
18 mean, I don't see that it shows it here but...

19 Q Well, it -- the journal entry is on the 31st, right?

20 A Yeah, but that doesn't -- I -- I don't know what day
21 it was. I don't know if it was the -- if it -- if it was
22 any time during the year. I don't remember that.

23 Q Well, it -- it was definitely in December, correct, at
24 the year end?

25 A I -- I really don't remember, but I definitely took

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 the 400 if that's what you're asking.

2 Q Right. And -- and so that would have -- at least that
3 entry -- because that entry doesn't appear any time before
4 December 15th, if it had been taken out before that time,
5 then it would have been booked then, correct?

6 A I -- I don't know. I really can't answer that
7 question.

8 Q Your accountant, the one that you used, didn't he book
9 the entries timely?

10 A I would think so, yes.

11 Q Okay. So you don't have any recollection that you
12 took out \$400,000 in March and he waited until the end of
13 the year to book it.

14 A Oh, he could have. I don't know. I was thinking that
15 it wasn't all taken out at one time. I thought it was a
16 couple of times, but I'm not sure.

17 Q Well, then why don't we do it this way. There are --
18 and I hate to take up time, but it's important on the
19 timing here. Those are all of the checks that were written
20 for 2004, correct?

21 A It's the general ledger, correct.

22 Q Yeah. And that reflects every check, debit or credit,
23 to the Tri-Star account for the year 2004, correct?

24 A I see some payroll entries that are not checks because
25 they were auto-drafted.

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 MR. KNIE: Could we be directed to a page here?

2 MR. PILLSBURY: It's the entire Exhibit 14.

3 Q And there's -- there's no payroll deduction that would
4 have included you prior to the December 31st journal entry,
5 correct?

6 (Pause.)

7 A I'm sorry. I'm still looking.

8 Q That's okay. Take your time.

9 (Pause.)

10 MR. KNIE: Your Honor, I would like to introduce an
11 objection here.

12 We've already testified that he took \$400,000 out, and
13 I see no reason to continue to look.

14 Q It's --

15 MR. KNIE: It's for the amount that he's conceded that
16 point.

17 MR. RICHARDSON: On the top of page seven -- on the
18 top of page seven.

19 MR. KNIE: It's --

20 MR. PILLSBURY: The timing of it is important because
21 it all happened right at year end.

22 A Yeah. I see it at the top of page seven.

23 Q And -- and that date is when?

24 A December 31st.

25 Q Right. So on December 31st, the last day of the year,

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 you paid yourself \$400,000 salary.

2 A Yeah. I just don't know if the date's correct. I
3 don't know if it's been entered correctly or not. But
4 that's exactly what it says.

5 Q Okay. well, you were the one in charge of the books,
6 right, from the company's standpoint?

7 A Yes, yes.

8 Q So if there's an error in there, that would have been
9 your responsibility.

10 A well, I didn't create the -- the general ledger, but,
11 yeah, I -- the salary was taken.

12 Q Right. And it was taken on the 31st.

13 A That's what the general -- the general ledger says.

14 Q Do you have any reason to believe that was not the
15 case?

16 A I don't.

17 Q Okay. And when you decided unilaterally to pay
18 yourself \$400,000, you didn't talk to Hugh about that,
19 right?

20 A We'd always agreed that I would take a salary.

21 Q Okay. well, you -- you had that agreement in 1997?

22 A Actually in 1996.

23 Q Oh, in '96. Okay. And so at the point that you
24 decided to start paying yourself this salary did you tell
25 Hugh that's what you were doing?

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 A I -- I didn't need to.

2 Q That's not my question. My question is did you tell
3 him.

4 A No. I did not.

5 Q Right. And so when you wrote your check from the
6 company account for \$400,000 out of -- after one, two,
7 three, four, five, six, seven, eight -- almost nine years
8 of no salary, you didn't see fit to tell him that you were
9 going to start paying yourself?

10 A I didn't write it out of the company account.

11 Q You didn't pay yourself a salary out of the company
12 account?

13 A No. You said did I write it out of the company
14 account.

15 Q I'm not trying to mince words with you.

16 A Well --

17 Q You -- you decided to start paying yourself a \$400,000
18 salary.

19 A Actually I called it into payroll, correct.

20 Q Right, right. And so you decided that you were going
21 to get \$400,000 in salary after nine years of not taking a
22 dime for salary, correct?

23 A After -- no. Actually, that was a salary for the
24 first four years.

25 Q That's not my question.

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 When you decided to pay yourself \$400,000 for whatever
2 you want to say you were paying yourself, you didn't tell
3 Hugh that you were going to start paying yourself \$400,000,
4 correct?

5 A No.

6 Q That's not correct or you didn't tell him?

7 A No. I didn't tell him.

8 Q All right. And so \$400,000 goes out of the account on
9 salary that you haven't told Hugh about on December 31st of
10 2004 and then -- okay. If you would, look at the next
11 exhibit, Exhibit 15, Plaintiff's Exhibit 15. Turn to page
12 13, please.

13 A Okay.

14 Q Now, beginning in 2015 within -- within 30 days of
15 paying yourself \$400,000, you then start paying yourself on
16 January 31st. You paid yourself \$130,000, correct?

17 A Where is this?

18 Q The journal entry for wages for officers.

19 A That's correct.

20 Q And, again, you at the time that you were paying
21 yourself the \$130,000 salary, you never said anything to
22 Hugh that you had started doing that, correct?

23 A That I had started doing that?

24 Q Yes.

25 A No.

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 Q Or that you were doing that.

2 A He was aware.

3 Q Oh, you told him?

4 A No. We had a meeting about it.

5 Q When did you have a meeting about it?

6 A At the office of Ten State Street.

7 Q And when?

8 A I think the meeting was in May of '04 or April of

9 '04 with our accountant present.

10 Q And -- and your testimony is at that meeting he had
11 agreed that you were going to start getting a salary of
12 \$130,000.

13 A We actually talked about a lot of things, including
14 the salary, salary note, offshore structure. We talked
15 about a lot of things.

16 Q Okay. Well, let's talk about salary. Shall we?

17 What was the amount that you say you agreed -- that he
18 agreed that you would start taking in 2005?

19 A I don't know that we agreed on it, but, ultimately, it
20 was my decision.

21 Q Okay. So you -- you admit that there was no agreement
22 to do it, correct?

23 A Well, we were discussing it. I mean, this was, you
24 know, a long time coming. And he had selective memory, so.

25 Q Okay. My question was you admit that there was no

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 agreement on it.

2 A There was agreement that I was going to take a salary.

3 Q There was agreement. And -- and what was the
4 agreement? How much?

5 A Well, it was -- some recommendations were made in that
6 meeting.

7 Q What was the agreement?

8 A That I was going to take the salary.

9 Q And what was the amount?

10 A I don't remember.

11 Q Right.

12 A But -- but it would have been -- would have matched up
13 to what you're saying.

14 Q It would have matched up to \$400,000 in 2004?

15 A For the past year's service, correct, through ninety
16 -- '97 through 2000.

17 Q So from 1997 to 2004 you paid yourself \$400,000 to
18 cover all of those years?

19 A From -- from '97 to 2000, I paid myself in 2004 to
20 cover the first four years of my salary.

21 Q So the agreement was that you would earn \$50,000 a
22 year?

23 A I don't remember the exact amounts but the...

24 Q Well, you're running the business.

25 A Yeah. But, I mean, you're talking --

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 Q Right? And it covers --

2 A -- about a long time ago.

3 Q It covers four years.

4 A Right.

5 Q And --

6 A So that's -- that's actually four years --

7 Q '97, '98, '99.

8 A It'd be a hundred thousand.

9 THE COURT: Gentlemen --

10 MR. PILLSBURY: I'm sorry.

11 THE COURT: -- we're making a recording. She's got to
12 take everything down. Y'all try not to speak over each
13 other.

14 MR. PILLSBURY: That's my fault, Your Honor. I'm
15 sorry.

16 Q Five-year period is what you say, and \$400,000.

17 A That's not correct.

18 Q Okay.

19 A I said nineteen -- I didn't take a salary for '96. I
20 took a salary for '97, '98, '99 and 2000.

21 Q And -- and where was this -- was this agreement ever
22 reduced to writing?

23 A Yes. There was a memo that was handed out at Ten
24 State's office.

25 Q Okay. And what was the amount that you were supposed

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 to get for those years?

2 A I don't remember exactly, but it amounted to roughly
3 that amount.

4 Q Well, again, I'm trying to figure out. You were the
5 one responsible for the books.

6 Feel free to do whatever math you want to do. But how
7 is it that you determined that you were entitled to 400,000
8 versus 300 versus 500?

9 A Because I talked to the -- our accountant. I got
10 advice from him. I got advice from Mr. Andrews' attorney
11 at that meeting and also got advice from my uncle.

12 Q And so what you're saying is based on all of that
13 advice there was an agreement that you would pay yourself
14 80,000 a year?

15 A Well, for the first four years, I think it was a
16 hundred thousand, because I took 400.

17 Q Oh, you're just saying that you didn't take...

18 A I just didn't take the '96 because we -- we -- you
19 know, I had already been working on a project before Hugh
20 came along. And, you know, Tri-Star really didn't get
21 going until October or November of '96.

22 Q All right. And -- and now I have to be really clear.

23 Was there ever an agreement on the amount that Hugh
24 agreed to? I know you have your position. But was there
25 ever an amount that Hugh agreed to?

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 A We agreed that I would be paid a fair salary.

2 Q We must have trouble with language.

3 What is the amount that you agreed to?

4 A I don't remember the exact amount, but it amounted to
5 what I took out. The meeting was, you know, at Ten State
6 Street. We had a lot of figures on a sheet, but it matched
7 up.

8 Q Okay. Well, so and what you're saying is Hugh agreed
9 to that amount?

10 A We -- yeah. We discussed it in the meeting.

11 Q Not my question. I mean, it would help me a lot if
12 you would answer my question and then explain whatever
13 answer you want to.

14 Did Hugh agree to an amount?

15 A I assumed he did because we were at the -- the meeting
16 to discuss that.

17 Q Okay. So, and your opinion now or your statement now
18 is that he did agree to a specific amount that you would
19 start taking a salary on.

20 A We -- we discussed it at the meeting.

21 Q Not my question. My question is did Hugh agree to a
22 specific amount for what you would be taking for salary.

23 A I think he did at that meeting, is what I'm telling
24 you.

25 Q And if you go back to page -- page 13. Then on --

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 A I'm still on the 2005?

2 Q Correct.

3 A Okay.

4 Q Two weeks later you pay yourself 130,000 again,
5 correct?

6 A In -- in February.

7 Q Right.

8 A That's correct.

9 Q And then in March, 30 days later, you pay yourself
10 185,000.

11 A That's correct.

12 Q Now, what would be the basis for paying yourself
13 185,000 versus 130?

14 A Well, now, we're into the salaries due from 2001
15 through two thousand -- up -- to catch up to 2005.

16 Q Okay. And my question is why did you pay yourself
17 185,000 instead of 130,000.

18 A Because I wanted to be paid the salary and it was --
19 it was past time.

20 Q Well, I know that's what you wanted, but why did you
21 use that number on March and not 130,000?

22 A I really don't remember other than we must have had
23 the money in the account and I wanted to get paid for the
24 amount that I was owed.

25 Q So the amount that you paid yourself was dependent

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 upon how much money was in the account?

2 A No. It was -- the amount I paid myself was dependent
3 on how much I was owed for salary that we had agreed to.

4 Q Okay. And -- and what was the amount of salary that
5 was agreed to?

6 A Like I said, I haven't seen that sheet of paper in a
7 long time, but we agreed to it. And I think the numbers
8 will match up.

9 Q Well, I guess -- you're the one earning \$130,000 and
10 you're in charge of the books. So I'm kind of looking to
11 you for that answer.

12 A Okay. Well, I guess I would have to tell you it's
13 like if you're an attorney and you're working on a case for
14 nine years and you finally get paid, you didn't earn all of
15 that money in one day. I guess that's the easiest way I
16 know how to explain it.

17 Q So, well, again, I'm trying to focus on the amount
18 itself. The -- the amount that you were paying yourself,
19 what was the amount that was -- that you decided to start
20 paying yourself from 2001 to 2004?

21 A 2001 to 2004 was 110,000 per year.

22 Q And why did you pay yourself more than that?

23 A I don't think I did.

24 Q The -- well.

25 A 110,000 times four is 440,000.

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1 Q Right. And you paid yourself 620,000 in 2005,
2 correct?

3 A Yeah. But that didn't include the 2005 salary. You
4 haven't asked me about that yet.

5 Q Oh, you got a bonus in 2005?

6 A No. In 2005 my salary increased to \$20,000 a month.

7 Q And -- and how -- how was that agreed to?

8 A Well, it was decided with input, again, from the
9 meeting we had, as well as Tim Russell, our accountant, Tim
10 Scrantom, Hugh's attorney, and my late uncle, Clarence
11 Glover.

12 Q The -- so what you're saying is there was an agreement
13 that you would start earning \$20,000 a month beginning in
14 2005.

15 A Did you say was or wasn't?

16 Q There was.

17 A There was an agreement? Can you repeat it? I'm
18 sorry. I just didn't hear it.

19 Q There was an agreement. Your testimony sworn under
20 oath is there was an agreement with Hugh Andrews that you
21 would start being paid a salary of \$20,000 a month for
22 2005.

23 A No. I -- I consulted with them and made that decision
24 myself.

25 Q Okay. It would shorten things greatly if you would

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1 just answer my question.

2 All right. My question was did you have an agreement
3 with Hugh to start paying yourself \$20,000 a month in 2005.

4 A Yes. I think we did.

5 Q And -- and when did you reach the agreement that you
6 would start earning \$20,000 a month?

7 A I think it was at the meeting in '04.

8 Q And -- and was that ever reduced to writing, these
9 amounts?

10 A We -- there was a -- a memo that was passed around at
11 the meeting, and I believe it was.

12 Q Do you have a copy of that memo?

13 A No, I don't.

14 Q I don't think I've ever seen anything that said that
15 you would get \$20,000 a month in 2005. And your testimony
16 is there is such a thing.

17 A Well, yeah. I remember us passing around a document
18 related to salary and a lot of other things at that meeting
19 in Ten State Street's office with Tim Scrantom, Mark
20 Broadwater who is a paralegal for Hugh's attorney, Ben
21 LeClercq, the attorney, and Tim Russell and myself.

22 Q And Exhibit 1, please. In looking at Exhibit No. 1 --
23 this is your tax return for 2003, correct?

24 A Yes.

25 Q All right. And in looking at the K-1 from Tri-Star --

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1 A Yes.

2 Q -- your income from Tri-Star was \$832,760, correct?

3 A In 2003?

4 Q Yeah. I'm sorry. 2003.

5 A Yes. Due to the writeoff that we had.

6 Q Right. And in 2004 --

7 A Hugh and I would have gotten the same K-1s.

8 Q Right. And that wasn't necessarily the -- during the
9 course of 2003 you would pay yourself and Hugh would pay
10 himself regular -- regular monies on equal amounts coming
11 out of the company, correct?

12 A Actually, I would issue checks to pay our shareholder
13 loans down.

14 Q Right. But even when there were no shareholder loans
15 at times you would still do a payment, equal amounts to you
16 and to Hugh, correct?

17 A There -- there -- we didn't reach a time when there
18 weren't shareholder loans until the end.

19 Q And this is part of -- in looking at Exhibit 15, the
20 Tri-Star financials for 2005, turn to --

21 (Statement of revenues and expenses 9-30-05 marked
22 Plaintiff's Exhibit 18.)

23 MR. PILLSBURY: Your Honor, this I am marking as
24 Plaintiff's 18. It is a document that was from a subset of
25 the defendant's records. So rather than introduce the

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1 whole thing, it's just one page.

2 MR. RICHARDSON: Your Honor, it is the pinna1 to a
3 page of Defendant's Exhibit 37, next to the last page of
4 Defendant's Exhibit 37.

5 THE COURT: Next to the last?

6 MR. RICHARDSON: Next to the last page in Defendant's
7 Exhibit 37.

8 MR. PILLSBURY: Your Honor, I have got it up on the
9 screen if that helps. Can you see?

10 Q All right. So this is the statement of revenues and
11 expenses as of September 30th of 2005 for Tri-Star,
12 correct?

13 A Yes.

14 Q All right. And if you go down, the wages of officers
15 was for the year to date, was \$620,000, correct?

16 A That's correct.

17 Q And that represented 54 percent of everything --
18 54 percent of all of the expenses.

19 A That's correct in that column. I see that.

20 Q Right. So more than half of all expenses for the
21 entire company were spent on your salary.

22 A On the salary I took, that's correct.

23 MR. PILLSBURY: I would move for admission of 18, Your
24 Honor. I think it's probably a part of the subset.

25 MR. RICHARDSON: We've already got it admitted with no

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1 objection.

2 MR. PILLSBURY: All right.

3 THE COURT: Thank you.

4 Q Do you remember when I took your deposition back --
5 way, way back -- in June -- July of 2007?

6 A Yes.

7 Q Okay. Now, at the time that that deposition was taken
8 we didn't necessarily -- we didn't have your tax returns
9 for 2005 to 2006, correct?

10 A In 2007?

11 Q Correct.

12 A I'm -- I'm not sure if you had them or not. I
13 don't -- I don't know.

14 MR. PILLSBURY: Your Honor, we -- I think there's an
15 issue in this case. Somewhere with the age of the case, we
16 don't have the original depositions. I mean, so the
17 parties have agreed to just use copies.

18 MR. RICHARDSON: Absolutely, Your Honor.

19 THE COURT: All right.

20 Q All right. So at that time do you recall I was asking
21 you about what money you were making from the Dominican
22 Republic? Do you remember?

23 A Yes.

24 Q And at that time do you recall that you told me the
25 only money you were making from the Dominican Republic was

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1 getting repayment on a loan from Frank Dillashaw?

2 A Getting repayment on a loan?

3 Q From Frank Dillashaw.

4 A Can you show me that so I could read it? Thank you.

5 Q Beginning on page 183 and I will...

6 THE COURT: Is this in part of the notebooks I have?

7 MR. PILLSBURY: No, Your Honor. I'll show it here on
8 the screen.

9 MR. KNIE: I can hand it up.

10 MR. RICHARDSON: would you like a copy, Your Honor?

11 THE COURT: No.

12 Q Okay. Does that refresh your memory about what you
13 testified to in July of 2007?

14 A Okay. Could you tell me what line number you're
15 referring to?

16 Q I am referring to line 15. "Have you" -- Question:
17 "Have you received any income from any person or entity in
18 the year since July -- January 1, 2005, for anything
19 related to video games or gaming out of the Dominican?"

20 MR. RICHARDSON: Your Honor, I apologize.

21 We may have the wrong deposition. That doesn't match
22 up at all with what we've got.

23 (Pause.)

24 MR. RICHARDSON: I apologize, Your Honor. We agreed,
25 but maybe we didn't make sure we have the same copies.

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1 Tell us the page and line numbers again, please.

2 MR. PILLSBURY: It's my page 185.

3 MR. RICHARDSON: And then line?

4 MR. PILLSBURY: Line 15.

5 MR. RICHARDSON: Okay.

6 MR. KNIE: We've got it.

7 MR. PILLSBURY: Good.

8 Q All right. So the question was, "Have you received
9 any income from any person or entity in the year since
10 January 1, 2005, for anything related to games or gaming
11 out of the Dominican?"

12 And you said, "From when?"

13 And I said, "January 1st of 2005. Outside of Tri-Star
14 through anyone."

15 Answer, "No."

16 A Yes. I see that.

17 Q And then question, "Any source?"

18 And you said, "Oh, I thought you meant through the year
19 2005."

20 Next page.

21 "No, yeah. Frank -- I invested some money with Frank,
22 and he's been sending me money since about June or July of
23 2006."

24 And Frank Dillashaw was the Tri-Star employee in the
25 Dominican, correct?

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1 A That's correct.

2 Q "And what money did you invest with Frank?

3 "My part of the sale of the machines.

4 "What amount of money?

5 It was your net, about \$150,000. Something like that."

6 A That's correct.

7 Q And then I asked about whether or not there was any --
8 any writings that memorialize this.

9 Was it a loan or an investment?

10 A It was an investment.

11 Q Okay. And...

12 A I mean, it was a loan to be paid back, but it was also
13 an investment.

14 Q Okay. And that was for 105,000 -- \$150,000?

15 A Like I said, something like that. It's been a while,
16 but yeah.

17 Q Right. And that was your only source of income that
18 you identified from the Dominican in your deposition,
19 correct?

20 A Yes, and that -- that began in 2006.

21 MR. PILLSBURY: Exhibit 3, please.

22 MR. KNIE: Your Exhibit 3?

23 MR. PILLSBURY: Correct. Plaintiff's Exhibit 3.

24 Q Okay. This is your 2005 income tax return.

25 A That's correct.

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1 Q And in your 2005 return on your foreign tax credit it
2 identifies that you actually grossed \$757,000 out of the
3 Dominican, correct?

4 A That's what it says. I think that's a foreign tax
5 credit.

6 Q Right. But that's the amount that you grossed that
7 year, that you reported?

8 A Yeah. I mean, I -- I don't remember that coming
9 directly from the Dominican Republic, but it says that
10 there, yeah. I -- I think all of our returns are that way.

11 Q Well, that's not something you disclosed to me in your
12 deposition.

13 A Yeah. I'm rereading the question, and I was confused
14 with your question.

15 Q Oh, so when I asked you about any money you had gotten
16 from the Dominican, you didn't understand that I was trying
17 to find out whether or not you had made \$757,000 in the
18 year 2005 from the Dominican?

19 A Is that -- that's the flow from Tri-Star, I think. I
20 think that's a K -- from a K-1 or something.

21 Q I represent to you it's not a K-1. I don't know what
22 it is, but it's not that.

23 A Well, I don't know what it is either.

24 Q Because I think you have a K-1 here from Tri-Star if
25 you flip over a couple of pages.

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1 I'll come back to that in just a second.

2 The next exhibit, if you'll flip to Exhibit 4,
3 Plaintiff's Exhibit 4 --

4 MR. KNIE: May it please the Court. We object to any
5 tax return after 2005 on a number of bases.

6 The first is relevance. There has been -- we haven't
7 been noticed of -- of any witness, any forensic accountant,
8 anybody that can evaluate these returns after 2005.

9 There has been no allegation, no cause of action in
10 this case for unjust enrichment and these are -- these are
11 also the personal returns of his wife to the extent that --
12 and we don't know what he plans to do -- but to the extent
13 that Mr. Pillsbury plans to ask questions about royalty
14 income, the information that he has in his exhibits does
15 not identify to whom the royalty income is payable each
16 year, and unless and until he has that type of information,
17 Your Honor, there is no reasonable basis for allowing these
18 returns into evidence.

19 And, furthermore, Your Honor, most of these returns do
20 not even indicate the country from which the royalties
21 come.

22 And so for all of those reasons we would say that the
23 returns should be inadmissible.

24 THE COURT: Why are you wanting to go into years past
25 2005?

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1 MR. PILLSBURY: A couple of things.

2 One, in 2006 in particular there's -- there's an
3 impeachment issue. This absolutely isn't what he said in
4 his deposition disclosing income.

5 And then beyond that it would go to lost opportunity
6 or unjust enrichment, you know, to the extent that, you
7 know, there's -- the evidence will support that the gaming
8 operations continued and he continued to make money. He
9 just made it without Hugh.

10 I know they argue to the contrary, but there is --
11 there's abundance of -- of imprint -- there's abundance of
12 evidence that you can establish, one, when you look at the
13 sequence of events on the way -- and I haven't gotten all
14 the way through money going out yet -- but the main reason
15 why I was getting to this particular return was it directly
16 contradicted what he said in his deposition.

17 THE COURT: Okay. And be that as it may, it needs to
18 relate to the cause of action or the damages that y'all
19 agreed to when we started this proceeding.

20 I mean, he could -- you know, he could give --
21 assuming he gave false information in tax returns all the
22 way up to 2017, that's not going to be relevant to the
23 case.

24 MR. PILLSBURY: Our position is, Your Honor, Frank
25 Dillashaw was the gentleman on the ground for Tri-Star and

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1 that there was a straw purchase of the machines. And you
2 see by the way that the volume of money that comes out
3 after the fact can only come out when there was a continue
4 of that kind of operation.

5 It is a clear inference to be drawn from the, you
6 know, the documented evidence.

7 MR. KNIE: Your Honor, in response, number one, we're
8 not a Re: Upson state, and that's exactly what he is trying
9 to do here when he's talking about that clear inference.

10 Number two, the -- he says, "I invested some money
11 with Frank and he's been sending money since June or July
12 of 2006."

13 So the -- the tax return, I would represent to you, is
14 not inconsistent with that at all.

15 MR. PILLSBURY: But \$150,000 loan that generates
16 \$240,000 in its first year is a pretty good investment,
17 Your Honor.

18 MR. KNIE: Your Honor, well, I mean, he's -- now he's
19 citing from the return that we're objecting to the
20 admission of, Your Honor.

21 I think we need to take it one step at a time. But we
22 come back to the fact that 12 years into this litigation
23 they have not pled unjust enrichment, and that would be the
24 only basis, if any, for getting into these subsequent
25 years.

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1 THE COURT: All right. I'm going to let you go into
2 them cautiously because, quite frankly, I haven't heard
3 enough testimony to actually understand what's going on.

4 But the tax returns -- if I consider them -- will be
5 limited just to be considered to the damages or the issues
6 that are actually in this case.

7 The reason I point that out is that for the sake of
8 time we're on our second witness and almost to the end of
9 the day. Try to keep it narrowed, focused to the issues
10 that actually I'm going to be deciding.

11 MR. PILLSBURY: Right. Okay.

12 MR. RICHARDSON: Thank you, Your Honor.

13 Q In looking at 2006, you reported \$224,000 from Frank
14 Dillashaw, correct?

15 A What page are you on? I'm sorry.

16 Q I just flipped it for you before.

17 MR. KNIE: Your Honor, the name Frank Dillashaw does
18 not appear anywhere in that exhibit. I'm not saying it
19 didn't but -- I'm sorry. I apologize.

20 MR. PILLSBURY: Looking at the same thing? I got it
21 right on the screen.

22 Q So your testimony in July of 2007 was you lent him
23 \$150,000 and he was repaying that loan. And that was your
24 only income coming out of the Dominican, correct?

25 A I just -- I don't agree. I mean, I agree with you

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1 about the 150. I'm just not seeing the loan.

2 MR. RICHARDSON: Your Honor, we will be happy to
3 stipulate that in 2006 -- given the Court's earlier
4 ruling -- that he was paid from Frank Dillashaw \$224,000.
5 No question about that.

6 MR. PILLSBURY: Right.

7 Q That you invested money with Frank Dillashaw --
8 \$150,000.

9 THE COURT: Did you hear his stipulation?

10 MR. PILLSBURY: I'm sorry?

11 MR. RICHARDSON: We stipulate that in 2006 -- subject
12 to the Court's ruling on the admission -- that Frank
13 Dillashaw was the source of income to Mr. Broom of
14 \$224,000. No question about that.

15 MR. PILLSBURY: Right. And my -- my question was in
16 his deposition he said that was the only source of money
17 from anything in the Dominican.

18 THE COURT: Okay.

19 Q And that money -- and that you had lent him a
20 hundred -- or invested \$150,000? That was your investment?

21 A That's correct.

22 Q And in -- with \$150,000 in year one he was able to pay
23 you 224,000?

24 A That's correct.

25 Q And that was for the operation of video games.

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1 A Yes. Gaming machines.

2 Q Right. And if we -- now, in your deposition you
3 said -- when I asked you how much money he had repaid you,
4 he had -- he had repaid you how much as of July of 2007?

5 A I'm sorry, Rodney. Where are you?

6 Q The -- I'm sorry. I was trying to find something that
7 I can't find at the moment.

8 The -- the amount that you invested was 150,000,
9 correct?

10 A Yes.

11 Q And -- and that was for the operation of video
12 games or -- or in the Dominican, correct?

13 A Yes. Gaming machines.

14 Q And -- and those were -- and so if we went through the
15 tax returns on your personal side that represent the
16 royalty payment from Frank Dillashaw, that would all be out
17 of the Dominican, correct?

18 A This -- you're referring to the 2006 return where it
19 says Frank Dillashaw?

20 Q Right.

21 A To --

22 Q And we could go through 2007, 2008, 2009. It would
23 all be out of the Dominican, correct?

24 A Through, yeah, 2006.

25 MR. KNIE: Objection, Your Honor. Beyond -- beyond

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1 2006 are we -- is the Court permitting him to go beyond
2 2006?

3 THE COURT: Yeah. I'm -- I'm glad you've asked that
4 simple question because I think maybe it's going to bring
5 everything together.

6 MR. PILLSBURY: Trying to lay the plan.

7 THE COURT: Yeah.

8 Q And so all of -- to the extent that your returns
9 reflect royalty payments from Frank Dillashaw for any year
10 after 2006 or beyond, that's related to your original
11 investment, correct?

12 A In the video games?

13 Q I don't know. I'm asking.

14 A Yeah, well, yeah. It -- more often due to some other
15 things, but yes.

16 Q Okay. And there's a couple of items I need to go
17 back.

18 (Tri-Star communications general ledger 2004 marked
19 Plaintiff's Exhibit 14.)

20 Q Look at Plaintiff's Exhibit 14. That's the general
21 ledger for Tri-Star for the year 2004, correct?

22 A Yes.

23 Q Okay. Now, a couple of questions. One is in the --
24 in the ledger whenever there is a debit for -- from
25 worldwide, that's money being transferred from worldwide to

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1 Tri-Star, correct?

2 A Yes. I assume so.

3 Q Okay. And for the Court's benefit, worldwide was the
4 entity that had money at the Dominican. It was the
5 operating entity within the Dominican that had a checking
6 account.

7 A Yes.

8 Q And so when a payment would be -- I assume it was wire
9 transferred, correct?

10 A Sometimes it was, and sometimes it was a check, I
11 think.

12 Q And, for example, in February of 2004 the \$90,000 that
13 shows up from worldwide, that would have been done at your
14 behest, correct?

15 A Yeah. Either myself or Frank. I really didn't -- I
16 didn't have a lot to do with the checks, but if he asked me
17 I would have said, yeah, send it.

18 Q Okay. And, in other words, you had the ability to
19 transfer funds from worldwide to Tri-Star.

20 A Not directly, but if I said transfer them, transfer
21 them. I wasn't a signatory on the account or anything.

22 Q Right.

23 A Yeah.

24 Q But what I'm saying is if you wanted money transferred
25 from worldwide back to Tri-Star, that would happen.

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1 A Not that easily, but, you know, we -- we had some
2 exchange rate problems. Sometimes things would get
3 delayed. But if I said, hey, if we've got the money, send
4 it, they sent it.

5 Q Okay. And so, for example, if we look at 2000 -- this
6 particular timeframe in February of 2004, there's 90,000
7 coming in from worldwide and there's 20,000 going out to
8 you personally, correct, on the same day?

9 A I don't know if that's to me or my father.

10 Q Well, feel free to look at that. Whenever your father
11 is paid, it designates it as senior.

12 A Well, sometimes it does and sometimes it doesn't, so,
13 but if I endorsed the back of the check, it definitely went
14 to me.

15 Q Same thing in May. In February 27th of 2004, 85,000
16 coming up from worldwide, that would have been something
17 that you would have requested to make happen, correct?

18 A It was done pretty much automatically when Grupo
19 Citron, worldwide's contractual -- who they had their
20 contract with, their operating agreement, would pay them,
21 Frank would pay all of the expenses for worldwide. And
22 what was left he would send to Tri-Star.

23 (Copy of Arthur State Bank check No. 4436 marked
24 Plaintiff's Exhibit No. 20.)

25 Q Exhibit 20. Does that look familiar?

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1 A Yes.

2 Q Okay.

3 MR. PILLSBURY: Let me move for admission of this
4 document.

5 A Well, but I don't see the back. Well, yeah I do.
6 Yeah, this is mine. Yeah, that's mine.

7 Q So that money comes in from worldwide \$90,000. And
8 the next day -- I mean, the same day you paid yourself
9 20,000, correct?

10 A Yes. A repayment on the shareholder loan.

11 Q Well, you -- you didn't pay Hugh. Is there a reason
12 why you would only pay yourself and not pay Hugh?

13 A No. I don't see where I paid Hugh.

14 Q Right.

15 THE COURT: Did you admit that?

16 MR. PILLSBURY: Yes, Your Honor.

17 MR. KNIE: No objection.

18 THE COURT: Without objection, be plaintiff's.

19 THE WITNESS: Sorry.

20 A Yes.

21 Q So you pulled 90,000 in from worldwide into Tri-Star,
22 and you pay yourself \$20,000. And you don't pay Hugh,
23 correct?

24 A Yes, in this period.

25 Q Now, aren't you supposed to pay yourself and Hugh at

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1 the same time?

2 A Well, we didn't have a priority agreement like that or
3 anything.

4 Q That wasn't covered in that meeting at Ten State
5 Street where you were going to get 20,000 a month?

6 A I -- I don't remember exactly what the agreement was
7 as to the loans, but I know he was going to get paid back,
8 and did.

9 Q If you'll flip over to the next page, page two of that
10 document, on 3/26/04 there's another hundred thousand
11 pulled out of Worldwide, correct?

12 A That's correct.

13 Q And -- and if you go through and look a little bit
14 before in March, by far the largest amounts that are being
15 paid are to you and Hugh, correct?

16 A Yeah, and that's probably -- since you asked me about
17 the 20 prior -- that's probably why the next one I paid
18 Hugh 40 and only paid myself 20.

19 Q Right. And which is why I get back to why did you not
20 pay Hugh 20,000 when you paid yourself 20,000.

21 A I don't know.

22 Q And without getting too burdened, essentially the
23 money that is in worldwide's account, a large portion of
24 that is based on this original investment that went through
25 Akilah and Calum, correct?

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1 A Can you -- can you repeat the phrasing of that again
2 because I -- that was a lot.

3 Q Okay. Essentially, I mean, I know there are
4 particulars because money went in different -- in essence,
5 for worldwide. The money that it had largely came from the
6 original investment that you guys had.

7 A Worldwide was paid from the operation of equipment.

8 Q Okay.

9 A That's how that money got into the account.

10 (Agreement for deed marked Plaintiff's Exhibit 21.)

11 Q Handing you what's marked as Exhibit 21,
12 Plaintiff's 21. Do you recognize that document?

13 A Yes.

14 Q And --

15 MR. KNIE: Your Honor, we're going to object to the
16 introduction of this or any discussion about it.

17 THE COURT: I don't even know what it is.

18 MR. KNIE: Well, I'm going to -- I'm going to
19 represent to the Court that it is entitled a deed. Well, I
20 can't get to that page. My fingers -- here we go. An
21 agreement for deed, a piece of property in Miami, Florida.

22 And, once again, there's no cause of action for unjust
23 enrichment.

24 The issue is, if anything, Your Honor, before the
25 Court what money may have come out of the Dominican after

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1 2006, but certainly not what it was used for.

2 THE COURT: And you intend to use this for what
3 purpose?

4 MR. PILLSBURY: Your Honor, I was using this to show
5 the sequence of events. It's a document that I had
6 overlooked when I was going through the series of checks
7 when he started paying himself.

8 He bought a house in Miami for \$3.5 million.

9 MR. KNIE: Your Honor, he's testifying about --

10 THE COURT: Let him finish.

11 MR. PILLSBURY: Yeah. And it just -- it fits right
12 into what our theory of the case is on -- you know, for
13 years there's zero money taken out, and then literally
14 within a 3-month period of time, 4-month period of time,
15 almost a million dollars is extracted from Tri-Star and
16 moving -- you know, buys a \$3.5 million house in Florida.

17 And I'm sure the Court is aware of, you know, the
18 homestead exemption that Florida provides.

19 So, again, it's a document that I had intended to
20 introduce in the series when these big checks started being
21 written for salary out of the blue. And it shows intent.

22 MR. KNIE: Your Honor, in response.

23 This piece of property -- since Mr. Pillsbury has been
24 testifying -- was financed a hundred percent.

25 It was later subject to a foreclosure action within a

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1 short period of time and ultimately disposed out of
2 foreclosure and sold. And the house was immediately on the
3 market and remained on the market upon purchase.

4 So there was no equity in it, no huge amount of funds.
5 Payment of it -- it's -- it's -- this is just irrelevant to
6 this proceeding, Your Honor. And, again, I keep coming
7 back to the words unjust enrichment. He's had 12 years to
8 plead it, and he hasn't pled it.

9 MR. PILLSBURY: We're not making a claim to the house,
10 Your Honor.

11 THE COURT: All right. Well, then why do you need to
12 get that particular document into evidence?

13 MR. PILLSBURY: Because it shows that in the sequence
14 of events that for the better part of ten years there is
15 zero salary taken out.

16 Without a word being said to my client beginning
17 December 31st -- 400,000, 130,000, 130,000, 185,000,
18 75,000 -- the -- and the financial showed that 620,000 went
19 out to Tri-Star on salary that had never gone out before.

20 And he makes an agreement to purchase a \$3.5 million
21 house in Miami on the waterfront in February of 2005.

22 It just shows there was an absolute intent from the
23 get-go to run Tri-Star into the ground, take as much as he
24 can and then do something else.

25 MR. RICHARDSON: Your Honor, no basis.

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 MR. PILLSBURY: And, I mean, and that's our --
2 that's -- Your Honor has asked, and it fits, you know.

3 THE COURT: Okay. I'll let the document come in for
4 what it's worth.

5 It's -- it's really stretching the facts I've heard so
6 far for me to come to that particular conclusion, but I'll
7 let it in for what it's worth at this time.

8 MR. PILLSBURY: Okay.

9 THE COURT: All right. Over plaintiff's objection,
10 we'll admit the document.

11 MR. PILLSBURY: Defendant's.

12 THE COURT: Defendant's, yeah.

13 MR. PILLSBURY: I know we switched sides again last
14 week.

15 Q All right. And in February 14th of 2005 you had
16 agreed to purchase a house in Florida for \$3.5 million,
17 correct?

18 A Yes. It's an agreement for deed.

19 Q Well, I mean, that's -- that was the intent, correct?

20 A Yes.

21 Q And that's where you moved to.

22 A Yes. Moved there in March of 2005.

23 Q Right. So you moved there in March of 2005?

24 A I think it was mid March, end of March, something
25 like -- something like that.

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 Q All right.

2 MR. PILLSBURY: Your Honor, if I may take just a
3 short -- make sure I've got what I need.

4 (Pause.)

5 MR. PILLSBURY: Your Honor, my client had to step out
6 to the restroom. I was kind of waiting for him to come
7 back.

8 THE COURT: Based on your conversation with
9 Mr. Hewitt, do you have anything else?

10 MR. PILLSBURY: Very insightful things. Let me check.
11 (Pause.)

12 MR. PILLSBURY: That's all I have, Your Honor.

13 THE COURT: All right. We're going to take a short
14 break.

15 Sir, I need to let you know you're in the process of
16 giving testimony, so you can't have any discussions with
17 anyone about the substance of your testimony. But you can
18 step down.

19 THE WITNESS: Yes, sir. Thank you.

20 THE COURT: We'll come back shortly.

21 (Whereupon, a recess was taken.)

22 THE COURT: All right. I need to remind you that you
23 remain under oath.

24 THE WITNESS: Yes, sir.

25 THE COURT: Yes, sir.

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 MR. KNIE: Thank you, Your Honor.

2 Pat Knie for the record.

3 CROSS-EXAMINATION

4 BY MR. KNIE

5 Q Mr. Broom, I would like to circle back a little bit
6 and talk about Tri-Star's inception and its U.S.
7 operations. Okay?

8 A Okay.

9 Q Tell the Court how you obtained the corporation
10 Tri-Star.

11 A Okay. I purchased it from an accountant who had done
12 our books -- my wife and I's -- for several years, and I
13 purchased it from him sometime in mid 1996.

14 Q All right. And for the Court's information we refer
15 to that as a shelf corporation.

16 A That's right. It had been in existence for a while,
17 and it was dormant and it was -- just -- just purchased
18 it.

19 Q And when you purchased it did you have a meeting of
20 the directors?

21 A Yes.

22 Q All right. And I'd like you if you've got Exhibit
23 No. 33, Defendant's Exhibit 33, in front of you, if you'd
24 take a look at it a minute with me, please.

25 A I've got a lot of this up here.

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 Q Let me do this. I'm just going to set the plaintiff's
2 exhibits aside for right now. We may come back to them.

3 Give you a little more room.

4 A You said 33. Yes, sir.

5 Q All right. You recognize that document.

6 A Yes.

7 Q And what is it, please?

8 A It's the minutes of a meeting of Tri-Star
9 Communications, Inc. held on 8/1/96.

10 Q All right. And who -- is there a signatory to that
11 document?

12 A Yes.

13 Q And who is that?

14 A It's my signature.

15 Q All right. And at that meeting did you elect yourself
16 as president and vice-president, secretary and treasurer?

17 A Yes.

18 Q And were you already the director?

19 A Yes.

20 Q So that makes you a shareholder, the sole director and
21 the sole officer of the corporation, is that correct?

22 A That's correct.

23 Q And in 1996, for the Court's information, were you
24 already in the gaming business with your wife in the United
25 States under some other names?

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 A Yes, and had been for a while.

2 Q And give us those names.

3 A Jackpot Amusement and Best Games Amusement.

4 Q And as a result of that did you buy machines from and
5 get to know Mr. Andrews?

6 A Yes, I did.

7 Q And was Tri-Star set up so that you could go into a
8 new video poker gaming adventure at a new location?

9 A Yes. I had bought it for that purpose. I was
10 actually under contract with a building already.

11 Q And at some point did Mr. Andrews talk with you about
12 having an interest in going into business with you at that
13 location?

14 A Yes.

15 Q And as a result did you agree?

16 A Yes.

17 Q Did you continue to run Tri-Star as the sole director
18 and sole officer throughout its history?

19 A Yes.

20 Q And do I understand that while a share of stock may
21 never have been issued to Mr. Andrews, on the Tri-Star tax
22 returns every year prepared by y'all's accountants you
23 always showed both of you as shareholders?

24 A That's correct.

25 Q And so how did you do with this gaming room in -- was

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 it Spartanburg County?

2 A Yeah. The first one was in Spartanburg and...

3 Q How did you do with it?

4 A Did good.

5 Q Okay. And as a result did -- did you expand
6 Tri-Star's operations?

7 A Yes. I sure did.

8 Q And from 1996 till the year 2000, just describe to the
9 Court. How big had Tri-Star gotten?

10 A It was a pretty large operation. We had at least two,
11 maybe three, game rooms in Spartanburg. I think maybe two.

12 We had a massive operation down in Dillon, South
13 Carolina.

14 And then we also had a convenience store route, a few
15 other locations, maybe 20, 30 locations, other than that.

16 Q So give -- and when you say a location, does that mean
17 a room or does that mean a physical location?

18 A Well, the -- there's a big difference between
19 operating a convenience store type route, which we did. We
20 would basically put machines in, help -- I would help train
21 their employees, you know, how to operate them, how to --
22 you know, general knowledge, give them knowledge about
23 that.

24 And, you know, we would drop the machines in the
25 location. We'd show them how to operate them, and that was

1 it.

2 But then when it came to a game room, it was an
3 entirely different animal. It was us managing the game
4 room from a build-out perspective, construction, laying it
5 out, choosing the location, signage, advertising. I mean,
6 you name it.

7 Q And so --

8 A Meeting with the contractors. And, basically, what we
9 would do is, for instance, one location might have 20
10 machines. And that particular location would require four
11 separate business entities under one roof, each with -- to
12 run 24 hours would have three employees per location.

13 Q Per room?

14 A Per room under -- under one roof. So if you had four
15 rooms, each room would have three employees. So it would
16 be a 12 -- a 12-employee operation, plus the manager, plus
17 you had technicians, the money collectors. It was quite an
18 operation.

19 Q And I don't want to belabor this, but just to kind of
20 sum it up, how many machines total did Tri-Star have by the
21 year 2000 would you guess?

22 A I -- it was three to four hundred, I think.

23 Q Okay. And then how many employees did you have?

24 A Well, I managed in total with the -- with the game
25 rooms and probably our technicians and route collectors,

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 you know, at one time we probably had close to a hundred
2 employees.

3 Q And during that period of time where were the books
4 for Tri-Star located?

5 A They were kept at Mr. Andrews' facility at Drew's -- I
6 guess it's Drew's Distributing.

7 Q And, basically, were you the C.E.O. of the company?
8 You ran the show?

9 A Yeah, yes, everything.

10 Q Did -- did Mr. Andrews play any active part in
11 Tri-Star?

12 A No, not really.

13 Q So the -- were you able to continue yourself to run
14 your businesses? You said Jackpot. And what was the other
15 one?

16 A Best Games. Best Games Amusement actually owned the
17 equipment and Jackpot -- I guess I think it's Jackpot
18 Amusement, actually, owned the physical business licenses
19 to operate in.

20 Q Did you turn those over to your wife to run?

21 A I turned those over to my wife. We had two, three --
22 maybe four game rooms ourself. And, basically, I abandoned
23 those operations to build up Tri-Star.

24 Q And so was a hundred percent of your business time
25 devoted to Tri-Star from '96 through 2000?

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 A Yeah, pretty much, yeah.

2 Q And then what happened in the year 2000?

3 A The legislature passed a law and we had to shut
4 everything down. I think it was like June 30th or the end
5 of June or beginning of July of 2000.

6 Q So what did you have to do with the machines?

7 A Well, we had to gather them all up. And we took them
8 and put them in storage in North Carolina. Had to get them
9 off the street, and then had to move them within 15 or 20
10 days later because the North Carolina legislature said you
11 couldn't store gaming machines, because everybody from
12 South Carolina was bringing their machines into North
13 Carolina. So then we had to move them to Georgia.

14 Q And at that point did you and Mr. Andrews start
15 looking for other options for your existing machines?

16 A Sure. Yes, we did.

17 Q And tell the Court the area, the places, the states,
18 countries that you looked.

19 A Well, we actually purchased -- we actually purchased a
20 building in North Carolina just over the line from Myrtle
21 Beach in Calabash. And we were going to kind of try to
22 replicate what had been successful before.

23 And so I picked out the building, got it renovated,
24 met with the contracts to set it up very similar to the way
25 I'd set up all of our other operations.

1 And we also looked in Georgia. We went down to the
2 Tennessee line. We looked in several foreign countries.
3 We looked in, obviously, the Dominican Republic. We went
4 to Belize. We went to Margarita Island, Venezuela. We
5 went to St. Martin. We went to Chetumal, Mexico. We went
6 to quite a few places.

7 Q And that was you and Mr. Andrews?

8 A Yeah. I think that he was on most trips. If not, it
9 was myself and Mike Fletcher. And I think you can pretty
10 much --

11 Q And I'm glad you mentioned Mike Fletcher. I believe I
12 understood Mike Fletcher's testimony that he was out
13 looking just for Mr. Andrews and not for Tri-Star to move.
14 Was that the case?

15 A I don't remember that. I remember Mike Fletcher being
16 very involved with Adspace, but he -- he went on a couple
17 of trips to the Dominican with us. And I -- you know, I
18 think he went to Belize as well.

19 Q And then I believe he also testified that when the
20 operation opened in the Dominican it was he that opened the
21 operation. Is that accurate?

22 A That's not accurate at all.

23 Q And who opened that operation?

24 A Actually Hugh and I did. I mean, we went down there.
25 And they had -- they had looked at another deal that didn't

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 pan out. And Tri-Star sent the first 314 machines, I
2 think, in like January of 2001. And they were the first
3 Pot-O-Golds to ever hit the island.

4 Q And, for the record, the first 314 machines, were
5 those all Tri-Star machines?

6 A Yes, all Pot-O-Golds.

7 Q And, for the record, when Mr. Elom and Mr. Young that
8 Mr. Fletcher was talking about -- when they got off the
9 airplane -- I'm assuming was an airplane -- and put their
10 feet on the ground in Dominican, were they on the payroll
11 of Tri-Star?

12 A Yes, they were.

13 Q And did Tri-Star hire other employees initially to
14 come down there?

15 A Sure. We took a lot of our trusted employees,
16 Tri-Star trusted employees that we had in our operations
17 because we thought it would be easier to -- to get things
18 set up. And that's exactly what we did.

19 Q And just to move things along, that didn't
20 particularly work out. They didn't know the language. It
21 was better to hire locals. Is that a fair statement?

22 A It was -- it was a nightmare, I mean, having to
23 coordinate flight schedules back and forth, having to
24 supply them with lodging, having to basically take care of
25 everything they needed. We'd have to pay their -- we had

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 to furnish an apartment; we had to furnish food,
2 electricity, transportation. I mean, it was a -- it was a
3 big mistake taking U.S. -- U.S. employees down there. But
4 at the time, I mean, it was our first time trying it. So I
5 didn't know any better.

6 Q And when you went and you studied on what you were
7 going to have to do to open up the operation in the
8 Dominican, what did you learn about what type of company
9 had to actually run the operation?

10 A Through, I guess, you know, talking with the employee,
11 I mean, talking with the attorneys there, we had to set up
12 a Dominican corporation.

13 Q And did Hugh Andrews recommend a law firm that was
14 capable of doing this and had the understanding to do this?

15 A Yeah. He had a group, Ten State Street in particular,
16 Tim Scrantom, that he was working with with his offshore
17 setup, whatever you want to call it. And he -- he
18 recommended we use them.

19 Q Was Mr. Fletcher correct in saying that there was some
20 offshore structure that Mr. Andrews had already set up
21 before Tri-Star used the services of Ten State Street?

22 A Yes.

23 Q And I'd refer you to Defendant's Exhibit No. 4. Do
24 you recognize that document?

25 A Yes, I do.

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 Q What is it?

2 A It is the offshore investment structure that
3 Mr. Andrews has set up with his attorney, Ten State Street,
4 to facilitate the opening of the Dominican Republic
5 corporations.

6 Q And we -- most of us in this room probably looked at
7 it more times than we'd like to, including the judge.

8 Is it a fair statement that the way it worked was that
9 there were two existing offshore entities, one called Akilah
10 and one called Calum?

11 A That's correct.

12 Q Okay. One owned a hundred percent of the other, and
13 that in addition -- and Mr. Andrews was already apparently
14 maybe involved in those companies somehow. It doesn't
15 matter.

16 A Yeah.

17 Q All right. And then did Ten State Street create some
18 new entities known as worldwide and Jackpot?

19 A Yes, they did.

20 Q And were those Dominican entities?

21 A Yes, they were.

22 Q And then is it my understanding that what Tri-Star was
23 going to do was, number one, put some capital into Calum
24 that would be funneled down to the Dominican to operate the
25 operations in the Dominican and that Tri-Star would also

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 sell its gaming machines to Calum, which would then turn
2 around and sell them to worldwide?

3 A Yeah. I think that Tri-Star did put some capital --

4 Q Okay.

5 A -- into Calum, but mostly it was machines sold to
6 Calum.

7 Q All right. And the -- the 300 and the 300,000 initial
8 investment by you and Mr. Andrews, do you remember that?

9 A Yes.

10 Q And then there was another 600,000 put in by
11 Mr. Andrews. Do you remember that?

12 A Yes.

13 Q Did you consider that as a loan to the company --

14 A Yes.

15 Q -- as opposed to a capital contribution?

16 A Yes.

17 Q And do you know if it was treated that way as well?

18 A Yeah. I think so.

19 Q All right. And we're going to -- I think we can get
20 some documents that will help us on that in a minute.

21 So to -- to understand it correctly, Tri-Star no -- no
22 longer even owned these machines that we're talking about
23 today that ultimately got liquidated.

24 A That's correct. They'd sold them to Calum.

25 Q Now, when you got your 314 machines into the Dominican

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 and started operating them, was there immediately a problem
2 that arose?

3 A Yes. The group that I actually signed the agreement
4 with in the Dominican Republic -- Sustavi -- they had a
5 contractual agreement with the Dominican National Lottery
6 or the lottery and national. And we -- actually, worldwide
7 or Jackpot one operated under that agreement. And we went
8 out and secured some buildings, renovated them, put
9 machines in them and opened them up and were shut down
10 within a week and a half.

11 Q You told us a lot there, but I heard you say that you
12 signed the agreement. Is that right?

13 A Well, the agreement with Sustavi, yes, I did.

14 Q So you're telling me that Mike Fletcher didn't sign
15 any agreement.

16 A No, sir.

17 Q Mr. Andrews didn't sign any agreement.

18 A No, sir.

19 Q You signed it.

20 A That's correct.

21 Q So then you, Tri-Star, were what to the worldwide
22 operation? What were you considered?

23 A The -- well, also in consideration of the agreement we
24 had with Sustavi, Ten State Street had Tri-Star assign
25 those rights to worldwide in -- and in return received a

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 consulting agreement between worldwide and Tri-Star.

2 Q Now, the problems that you encountered with almost the
3 immediate seizure of the 314 machines, was that a problem
4 that was a Tri-Star, it was limited to Tri-Star only?

5 A I'm sorry. Say that again.

6 Q That problem that you had initially with the 314
7 machines, was that a problem that was just a Tri-Star
8 problem, or was that something that every operator in the
9 country has problems with?

10 A Okay. No. That was -- it was actually a worldwide
11 problem because Tri-Star was, you know, consulting at that
12 point, I guess, with worldwide. But worldwide was the only
13 one affected by that seizure. The locations were actually
14 closed down by the casino commission.

15 Q And did Mr. Andrews come down there during that
16 crisis?

17 A He was already there. But as soon as it happened he
18 called his pilot and flew out of there the next day, or
19 even that day, I think.

20 Q What were his comments to you about any future
21 operations in the Dominican?

22 A It wouldn't be appropriate for me to say in the
23 courtroom, but basically he said I'm getting out of here.
24 He said you can come with me or you can stay down here.
25 And I stayed.

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 Q And did you fight through the legal problems?

2 A Yes.

3 Q Ultimately, did you find a new partner called Grupo
4 Citrin? Is that right?

5 A Yes. Actually, went to see the attorney based on what
6 happened, and, you know, said, you know, is there anyone
7 that can help us. And, you know, she recommended a few
8 people.

9 And, of course, the Sustavi people, you know, at this
10 point, there wasn't any trust with them because they,
11 basically, you know, hung us out to dry with the contract.

12 So I did a lot of cold calling in my broken Spanish
13 and went and knocked on some doors and got -- got to meet
14 the Grupo Citrin people who were some of the most powerful
15 people in the country in the gaming industry.

16 Q And, once again, during this period 2001, was a
17 hundred percent of your business effort devoted to
18 Tri-Star?

19 A Yes.

20 Q Now, and so did you reach an agreement with Grupo
21 Citrin?

22 A Yes. We ended up signing an agreement, facilitated
23 all of that with -- between worldwide and Grupo Citrin
24 through the Dominican attorneys.

25 Q And did that agreement provide that Grupo Citrin

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 wanted you to provide 1,250 machines?

2 A Yeah. That -- that was the problem, is that in order
3 for Grupo Citrin to help us they -- we had to turn over,
4 you know, basically what we were doing.

5 And they saw the contract we had with the Sustavi
6 group and the lottery and national, and they said, well,
7 you're going to -- you were going to give them 1,250
8 machines, we want them now and we'll provide you a means to
9 operate them but you're going to bring that many.

10 Q And would it be a fair statement to say that Grupo
11 Citrin was politically powerful in the country?

12 A Yes.

13 Q And so did you turn over -- were they able to get your
14 314 machines back?

15 A Yes. They -- actually after we -- they actually
16 helped us before we even signed the contract. You know, I
17 had developed a pretty good relationship with the son, and
18 they got them moved to one of their bonded, secured
19 warehouses, because they were in the lottery business as
20 well.

21 Q And so did you start shipping more machines in the
22 country?

23 A Yeah. We got -- once we got over the contract phase,
24 then -- well, when all this happened I sent everybody home,
25 because there wasn't any sense in anybody being down there

1 and working and collecting salaries and everything like
2 that.

3 And I kept myself and Frank Dillashaw. We got the
4 contract worked out, and we were ready to install all of
5 the machines. I brought the team back and started putting
6 machines at that point into sport books.

7 Q Okay. And you directed Frank Dillashaw. I mean, he
8 basically worked for you.

9 A Yes, yes.

10 Q And how much did he make a year, by the way?

11 A I think originally in 2001 he started out maybe sixty
12 or seventy thousand dollars a year, and I think in -- he
13 ended up making 110 plus. I think he got a little bit of a
14 management fee out of worldwide, so maybe 120, or 30. I'm
15 not sure.

16 Q And he worked for you.

17 A Yes.

18 Q So did -- did you ultimately get 1,122 total machines
19 in the country?

20 A Yes.

21 Q And what were they, what kind of machines?

22 A They were all Pot-O-Gold machines.

23 Q And who at the other end would start the shipping
24 process for you?

25 A Well, my -- my father was involved. One of Hugh's

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 employees that worked closely with Mike Fletcher -- Travis
2 Owens -- was involved. As a matter of fact, I think he is
3 the one that got all the shipping documents together and
4 the shipping invoices and prepared them for exportation and
5 customs.

6 Q Okay. And these invoices that you're talking about,
7 would they show a value of each machine that is being sold
8 from Tri-Star to Calum, to worldwide?

9 A Yes.

10 Q Okay. And we'll come back to that.

11 Now, did you and Mr. Andrews loan a good bit of money
12 each to Tri-Star to get it up and running and keep it
13 running over the first few years of this existence?

14 A Yes.

15 Q And was -- was it over a million dollars each that
16 each of you loaned?

17 A Yes, yes.

18 Q And what did you endeavor to do in terms of
19 prioritizing the payback of the Andrews loan?

20 A Well, I mean, I tried to pay down as -- as I could, as
21 fairly as I could. I mean, we didn't have any kind of
22 priority, loan priority, but, you know, I tried to treat
23 him the same way as my loans were being treated.

24 Q Well, did -- did you actually try to pay down his a
25 little quicker than your loan?

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 A Yeah. Actually, when we sold -- we also had a couple
2 of other entities in South Carolina and North Carolina that
3 owned these buildings that I was talking about. And
4 whenever we would sell the property I would apply it to
5 Mr. Andrews' loans.

6 Q Okay. And I direct you to Exhibit No. 12, Defense
7 Exhibit No. 12. I think you may have a cover letter and a
8 fax and spreadsheet or something. You got it?

9 A Yeah, I got it.

10 Q Is that -- who prepared that spreadsheet?

11 A Tim Russell.

12 Q And Tim Russell was, once again, the C.P.A. that
13 handled y'all's accounting?

14 A That's correct. He was actually referred to us by
15 Claudia Humphries who is Hugh's bookkeeper, I think as well
16 as you.

17 Q And does it reflect the manner in which the Andrews
18 and Broom loans were paid back over the years?

19 A Yeah. Maybe I'm -- sure it's correct, yes. Tim
20 Russell's.

21 Q And, basically, in August 2005 did you have them paid
22 down to where Mr. Andrews was only owed 130,000 and you
23 were owed 130,801.05? Is that right?

24 A Yes. That's correct.

25 Q And there's a cover letter that's associated with that

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 that I don't know is actually part of that exhibit.

2 Do you see a cover letter from Lee Broom and McVey
3 that's part of that exhibit? Let me show it to
4 Mr. Pillsbury.

5 (Pause.)

6 Q Anyway, to the extent...

7 MR. KNIE: Just to keep this moving, Your Honor, while
8 they're looking, I'm going to move on, and I'll come back
9 to it.

10 MR. RICHARDSON: Defendant's Exhibit 32.

11 Q All right. Take -- what I showed you is Defendant's
12 Exhibit No. 32. Why don't you flip through it real quick?

13 A Okay.

14 Q And do you see that Tim Russell is writing Curt
15 Stodghill?

16 A Yes.

17 Q And Mr. Stodghill, was that one of Mr. Andrews'
18 attorneys?

19 A Yes, it was.

20 Q Do you see that the letter says that Claudia -- and
21 that would have been Claudia Humphries -- asked for
22 information concerning repayments of the shareholder loans?

23 A Yes, I do.

24 Q And in response Mr. Russell states, "In 2004 Tri-Star
25 paid Hugh and Quentin each 285,000." Do you see that?

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 A I think it says 275.

2 Q 275. Thank you for correcting me. And then it
3 indicated you had loaned some new money to Tri-Star in
4 2004.

5 A Correct.

6 Q And then you see, it also says first four months of
7 2005 Tri-Star paid Hugh \$439,915.88 and Quentin \$40,000.

8 A Yes. I see that.

9 Q Is that what you remember to be the case?

10 A Yes, sir.

11 Q All right. The -- there was a lot of talk about
12 salaries.

13 When -- when you first opened Tri-Star and -- and Hugh
14 came on board did you tell him that you were going to defer
15 your salaries for several years and try to get the loans
16 repaid instead?

17 A We -- we talked about the salaries. I think we were
18 skiing out in -- somewhere up in Canada. I think Whistler.
19 And we talked about the salaries and I -- yeah. I remember
20 just saying I'm -- you know, I'm going to grow the company
21 and we'll worry about that at some point.

22 Q And when you discussed salaries was there ever a
23 time -- ever -- when Mr. Andrews said, no, you're not
24 entitled to a salary for running this company?

25 A No, sir.

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 Q As a matter of fact, did he agree that you were
2 entitled to a salary?

3 A Yes.

4 Q And as the sole director of the company was it your
5 understanding and belief that actually you didn't need his
6 authority, but, nonetheless, out of respect to him you at
7 least discussed it with him?

8 A Yes. That's correct.

9 Q In 2004 when the company really started making a lot
10 of money -- and it did, didn't it, in 2004?

11 A Yes, sir.

12 Q Did you have any discussions with anybody about fair
13 salaries and how to approach getting reimbursed for all of
14 those years that you'd been working and not getting paid?

15 A Yeah. Like I mentioned before, I talked with Tim
16 Russell who was the C.P.A. for Tri-Star. I talked with my
17 uncle. He has since passed away but --

18 Q But he was a C.P.A. and a tax attorney?

19 A A tax attorney.

20 Q Certainly knowledgeable.

21 A Yes, sir.

22 Q And -- and did you formulate some ideas about your
23 salaries after seeking their input?

24 A Yeah. I mean, Tim Russell kind of knew my job
25 description. And I had to fill my uncle in. But they

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 thought it was reasonable.

2 Q Okay. And at the same time was there a meeting that
3 was called in Charleston at the offices of Ten State Street
4 in 2004?

5 A Yeah. It was sometime. I remember sometime in 2004
6 we --

7 Q And I think you alluded to it when Mr. Pillsbury was
8 asking you some questions.

9 A Yeah, yeah.

10 Q The -- and let me get you to flip to Defense Exhibit
11 49. That'll be the next to the last exhibit in one of
12 those big books.

13 A I don't think mine goes to 49.

14 Q There you go. Have you seen that document?

15 A Yes.

16 Q All right. And when was the first time that you saw
17 that document?

18 A First time I saw this document was in a meeting with
19 Tim Russell, myself and Hugh and all of the attorneys at
20 Ten State Street at their office in Charleston.

21 Q And how was it presented to you?

22 A As part of a couple of memorandums to discuss about
23 the -- the ongoing business in the Dominican and just
24 topics that we were going to discuss at the meeting.

25 Q Okay. And did they have enough copies for everybody?

1 A No, no, they didn't. Tim Russell and I had to share
2 one.

3 Q Okay. That was going to be my next question.

4 So there were a number of topics discussed. And, if
5 you will, first of all, there's some handwriting at the top
6 of the page. Whose handwriting is that?

7 A That's the -- at the top of the page, that's mine.

8 Q Okay. And is that just some note-taking on various
9 subjects that was going on?

10 A Yes.

11 Q And then I believe there was a correction, talking
12 about a tax writeoff that occurred on the 2003 tax return.
13 But was that actually a writeoff taken by Mr. Andrews in
14 2002?

15 A Yes.

16 Q And when Mr. Pillsbury was asking you about that eight
17 hundred and something thousand dollars on your 2003 or four
18 tax return --

19 A I think it was 2003.

20 Q Okay. That was as a result of this event. That
21 wasn't money in your pocket.

22 A No.

23 Q That was just a number that got put on a page on a tax
24 return that showed as income to you. And you had to pay
25 the taxes on it, didn't you?

1 A That's correct.

2 Q Okay. But, anyway, so that note got written off.

3 That was gone. That was off the books of Tri-Star,

4 correct?

5 A That's correct.

6 Q All right. And then there's another note they talk

7 about 559,839. Was that the -- the \$600,000 that was due

8 back to Mr. Andrews from the loan to Calum less -- I guess

9 there was some -- wasn't there something when the money was

10 transferred back, there was a problem you had to pay?

11 A Yeah. But I'm not -- I'm not sure what the 559...

12 Q Okay. But, anyway, it was written off, is that right?

13 A Yeah, yeah. That's correct.

14 Q Okay. And so then it goes on to say Tri-Star of

15 course will suspend payment on the -- on this debt. And

16 that's Ten State Street's words, correct?

17 A Yes.

18 Q And then of course I think your name was misspelled a

19 couple of times, and you corrected that. They had an O-N

20 rather than an I-N. Is that your handwriting, you think?

21 A Yeah. I think so.

22 Q Okay. And then --

23 A This -- this -- this handwriting to the left of 2003

24 is not mine.

25 Q Okay, okay. And then it talks about how Tri-Star

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Cross-examination by Mr. Knie

1 still owes Mr. Andrews 934,915. That got paid down
2 dramatically after that to basically zero a year later,
3 didn't it?

4 A Yes.

5 Q Okay. And here's the figure I think we were talking
6 about. This loan should be reduced by funds in the
7 offshore company held for Hughes -- I think referred to
8 Mr. Andrews as Hugh -- \$398,331.73. Is that money that
9 went back to or was being held by Calum?

10 A Yeah. And that's -- that's where there was a problem,
11 because they had actually -- worldwide had put in a wire to
12 Calum --

13 Q Okay.

14 A -- for more than that amount. But they withheld taxes
15 or something.

16 Q And that -- and that money back August a year ago -- I
17 mean, you signed a letter saying that that was Mr. Andrews'
18 money and even though there was litigation going on and you
19 were both seeking damages against one another, you -- you
20 authorized him to get that money back a year ago, right?

21 A Yes.

22 Q That 400,000. Okay. And then it talks about you
23 discussing salary, and it talks about that you'd authorized
24 yourself a salary of \$180,000 a year and actually paid
25 yourself through June.

1 That's not actually accurate, is it? You didn't pay
2 yourself until the end of the year.

3 A Yeah. I think -- yeah. I think that's where I was
4 confused.

5 Q But it was your plan to pay yourself a significant
6 amount of money for the years '97, '98 '99 and 2000, is
7 that true?

8 A Yes.

9 Q Okay. Now, down below Ten State Street had written
10 out all of these years to talk about salary, and it's
11 '97 through 2004, is that right?

12 A That's correct.

13 Q Okay. And there were some amounts written in the
14 first four years. Is that your handwriting?

15 A Yes.

16 Q And the second four years, is that -- well, whose
17 handwriting is that?

18 A I don't know.

19 Q Okay. Well, who was sitting at the table with you?

20 A Hugh and -- Hugh and I, Tim Russell.

21 Q Poor question. Who was sharing the document with you?

22 A Oh, Tim Russell.

23 Q Who else would have been writing on the document?

24 A Tim -- Tim Russell.

25 Q And I added all of this money up, and I guess I'm a

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1 lawyer because I can't add very well. But, anyway, I think
2 it comes to just a little over a million dollars. Did you
3 actually pay it out exactly the way it's shown here?

4 A No.

5 Q But is the amount approximately the same?

6 A Yes.

7 Q And so for 2004 and 2005 did Quentin Broom, Jr.
8 actually get about a \$1,020,000 in salaries for past years?

9 A Yes. There's no figure for 2005 but...

10 Q Okay. Well, you started paying yourself a monthly
11 salary in 2005, right?

12 A Yes, yes, yes.

13 Q Okay.

14 A But you said all of these add up to...

15 Q Just, anyway, they speak for themselves.

16 A Okay.

17 Q Just don't worry about it.

18 So to recap, you as the sole director of the company
19 ultimately after having discussions with Mr. Russell, with
20 your -- with your now-deceased uncle and with the attorneys
21 for Mr. Scrantom, you decided to go ahead and start paying
22 you salaries, catch-up salaries, for basically up to nine
23 years.

24 A That's correct.

25 Q All right. And the -- as you actually paid it out in

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 2005 there was \$620,000 that you paid yourself in salary.
2 Did it represent current salary at \$20,000 a month, plus
3 salaries in large sums for 2001 through 2004?

4 A Yeah. I think that's the way it -- excuse me.

5 Q And from 2001 to 2004 did you try to pay yourself out
6 at a rate of \$110,000 a year?

7 A Yeah, I think so.

8 Q The 440,000?

9 A Yes.

10 Q Now, when you're at the meeting did Scrantom say to
11 Mr. Andrews, yeah, the man deserves a salary?

12 MR. PILLSBURY: Objection, Your Honor. That would be
13 hearsay.

14 MR. KNIE: Your Honor, it was in the presence of both
15 parties.

16 THE COURT: It's still hearsay.

17 MR. PILLSBURY: That makes it --

18 MR. KNIE: Your Honor, then under -- I don't have the
19 rule number.

20 THE COURT: I think I have ruled -- I think I've
21 ruled. Let's move ahead.

22 MR. KNIE: Okay.

23 Q In any event, you paid yourself the salaries that I
24 just went over, is that correct?

25 A That's correct.

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Cross-examination by Mr. Knie

1 Q Okay. Then how were you doing in 2005, the first six
2 months, the company?

3 A We were doing great until we got the --

4 Q What was the monthly revenues approximately?

5 A I think it was about \$180,000 a month profit coming in
6 through worldwide.

7 Q And the --

8 MR. PILLSBURY: I'm sorry.

9 What was that timeframe again?

10 MR. KNIE: 2005, first six months.

11 Q And so your salary is 20,000 a month; the total
12 revenue 180,000 a month.

13 A That's correct.

14 Q And of course you were catching up a lot of salary at
15 the same time.

16 A That's correct.

17 Q And so what happened in the summer of 2005 legally in
18 the Dominican?

19 A Without any notice the attorney general issued a
20 directive that there couldn't be any machines operating on
21 the street outside of a casino environment or a licensed
22 casino.

23 Q And then did they issue a separate directive?

24 A Yes. They said in the second directive that --
25 actually, the first directive said you had to have the

1 machines off the street within three days. I think it was
2 like 72 hours.

3 And then the second directive came a few days later
4 and said that the machines had to be retired within 20
5 days.

6 Q Okay. And unlike the 2001 problem, was this a
7 countrywide problem for all video poker operators except
8 casinos only?

9 A That's correct. You know, it was a countrywide
10 problem. Every state in the Dominican Republic -- every
11 province -- it was illegal.

12 Q And how many machines are we talking about?

13 A Where?

14 Q Countrywide and --

15 A They -- figure like 30,000 machines.

16 Q All right. And so were you in immediate fear that
17 your 1,122 machines were going to be seized?

18 A Yes.

19 Q And did you get them off the street?

20 A Yes.

21 Q Stored them?

22 A Yes, with the help of the Grupo Citrin and the
23 worldwide employees.

24 Q And then did you go to Grupo Citrin and ask for
25 political help, et cetera, et cetera?

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Cross-examination by Mr. Knie

1 A Yes. They -- they -- you know, they were doing
2 everything they could because they were -- it was a good,
3 profitable venture for them as well.

4 Q And -- and did -- did they say we need \$40,000 to
5 lobby for you in --

6 MR. PILLSBURY: Objection. Hearsay.

7 Q Well, let me --

8 THE COURT: You can rephrase it.

9 MR. KNIE: Okay.

10 Q What did you do to put Mr. Andrews and his
11 attorneys -- I know it's a serious question -- but what did
12 you do to put everybody on notice in the United States you
13 had a big, big problem?

14 A Communicated through you, that exactly what was
15 transpiring.

16 Q By letter?

17 A By letter, yes.

18 Q Okay. Take a look at Exhibits 7 and 8 and see if
19 that's a letter trail that took place in the summer and
20 fall of 2005.

21 A You said seven?

22 Q Seven and eight, yes, sir.

23 A Yes.

24 Q All right. What's the date of the first letter?

25 A The first letter is August 10th of 2005.

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Cross-examination by Mr. Knie

1 Q And to whom is it written?

2 A To Mr. Andrews.

3 Q All right. And, basically, it's telling them what you
4 were -- what we were just talking about, that there's a big
5 problem down there?

6 A Yes.

7 Q Was -- was there a later letter where we explained
8 that Grupo Citrin wanted \$40,000 and that you also needed
9 operating expenses? And you didn't want to put any in if
10 Mr. Andrews didn't want to put any in. Look at the
11 September 30th letter.

12 A September 30th?

13 Q Yeah.

14 A Yes.

15 Q Okay. Did you continue to take your salary at \$20,000
16 a month?

17 A I think until August or September.

18 Q And why did you continue to take your salary?

19 A Because I was trying to -- I was still working to
20 resolve this.

21 Q Did you particularly want to be down there at that
22 particular time in that particular environment?

23 A No. Because my -- my information, my name, passport,
24 everything was the only documents submitted for Tri-Star to
25 the Dominican authorities.

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Cross-examination by Mr. Knie

1 Q Were you concerned you might be arrested or worse?

2 A Yeah, sure was.

3 Q Were you also concerned that the machines had an
4 imminent threat of being seized?

5 A Yeah. They -- they -- they were even calling the
6 accountant and everybody wanting to know where the machines
7 were.

8 Q Okay. Was there a principal in Grupo Citrin that sent
9 you -- was it a voice mail message, or what kind of
10 message?

11 A Oh, no. Mr. -- Mr. Santos with Deloitte and Touche
12 who handled all of the books for worldwide and Jackpot left
13 me a voice message that -- that I had to turn over the
14 machines or he was going to turn us -- turn myself and
15 Frank Dillashaw who is the only other American present --

16 MR. PILLSBURY: Objection, Your Honor. This is
17 hearsay.

18 A He left me a message.

19 THE COURT: He can't -- it is hearsay. Sorry.

20 MR. KNIE: Okay.

21 Q Anyway, were you -- you very concerned about your
22 safety?

23 A Yes. I was afraid we were going to be turned over to
24 Interpol and the police, the national police.

25 Q Ultimately, did you tell Frank Dillashaw to sell those

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 machines for whatever you could get for them?

2 A Yes.

3 Q Okay. Before doing that did you make an investigation
4 as to the value in the Caribbean of those machines?

5 A Yes, I did. I -- I contacted a very large machine
6 broker in South Florida that exported machines to the
7 Dominican Republic. He had exported a lot of the
8 Pot-O-Golds. I mean, not for us but for all the other
9 operators. And also to Puerto Rico. He was everywhere.
10 And tried to see if he could find us a buyer.

11 Q And who was that? Who was that broker?

12 A It was International -- International Supply or...

13 Q Take a look at Exhibit 13.

14 MR. RICHARDSON: Defendant's Exhibit 13.

15 Q Defendant's Exhibit 13. Excuse me.

16 A Yeah. International Gaming Corp.

17 Q And just give us a summary of what you learned when he
18 got back to you by virtue of that letter.

19 A That there wasn't much of a market for them.

20 Q All right. And did he have an opinion as to their
21 value?

22 A Yes. He -- well, he said he had an offer for 350
23 each, and one for 400 each.

24 Q Okay. Were you concerned that if you took a check
25 that you'd have a hard time negotiating it?

1 A Excuse me?

2 Q That if you took a check from his proposed purchasers
3 you'd have a hard time negotiating it?

4 A Well, the -- the problem was, is that Mr. Santos was
5 wanting to pay the 2004 taxes that were due for worldwide.

6 Q And the money would have to go to worldwide because
7 they owned the machines.

8 A Right. The problem resulted from the wire to Calum to
9 repay Hugh.

10 Q Okay.

11 A I don't know. But, yeah, there were taxes due and --
12 and his name was on the account.

13 Q So --

14 A Mr. Santos.

15 Q -- long and short of it, what did you tell
16 Mr. Dillashaw to do?

17 A I told Mr. Dillashaw to sell the machines.

18 Q Did you tell him to sell them for cash?

19 A Well, he -- yeah. I told him if he had a -- he told
20 me he had someone interested in them. He was a cash buyer.
21 And there was a couple of reasons why he wanted to pay
22 cash.

23 Q All right. And is that what happened?

24 A Yes.

25 Q Now, when you gave your deposition in 2007, at that

1 point did you know exactly what had happened?

2 A No.

3 Q All right. After the deposition did you go back and
4 make some inquiry in the Dominican about that point?
5 Because you were asked about it in some other matters.

6 A Yes.

7 Q And, ultimately, did Mr. Dillashaw sign a bill of sale
8 to somebody for those machines?

9 A Yeah. He -- he -- he's -- got a bill of sale when he
10 sold them.

11 MR. KNIE: Do we know the number of that exhibit?

12 (Pause.)

13 Q And, in any event, all right, take a look at No. 14
14 and see if that's the bill of sale that you secured from
15 Mr. Dillashaw.

16 A Yes, it is -- it is.

17 Q All right. And then did you get -- did you get money,
18 put it into Tri-Star's account and immediately disburse to
19 yourself and to Mr. Andrews the proceeds of the sale of the
20 assets of Tri-Star?

21 A Yes.

22 Q And did Mr. Andrews receive a check or was mailed a
23 check on November 4th in the amount of \$130,000 for the
24 balance of this loan repayment?

25 A Yes.

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Cross-examination by Mr. Knie

1 Q And did he also receive \$60,000 as a final
2 distribution?

3 A Yes.

4 Q And did you receive like amounts? Except I think
5 yours was a hundred thirty-eight 0 one.

6 A Yes.

7 Q Okay. Did he also receive a replacement check for
8 25,000?

9 A Yes.

10 Q Okay. And did you keep a small amount of money in
11 Tri-Star to basically shut it down?

12 A Yes.

13 Q And about how much was that?

14 A A few thousand dollars. I -- I had talked to Tim
15 Russell about it, and I think that was adequate to cover
16 what we had to do.

17 Q Okay. And then you left your money in the Dominican,
18 or part of it, and I guess got out of town.

19 A Yeah. My -- my -- I think my last trip -- I think I
20 took like 27 trips in 2005 to the Dominican Republic. My
21 last one was in the -- sometime in October. And I didn't
22 go back again until May of 2006.

23 Q All right. In the meantime what did you do?

24 A I looked for other business opportunities. I tried,
25 you know, anything I could to earn income for myself and my

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Cross-examination by Mr. Knie

1 family. I helped my father with the route in North
2 Carolina; I helped my wife with a business in Georgia.

3 Q Put your house on the market that you'd just bought?

4 A Yeah. My house went on the market, I think, in August
5 of 2005.

6 Q Okay. And --

7 MR. PILLSBURY: Which house?

8 MR. KNIE: In Miami.

9 MR. PILLSBURY: Okay.

10 Q Anyway, ultimately, did you get back in touch in the
11 late spring or early summer of 2006 with Mr. Dillashaw?

12 A I talked to Mr. Dillashaw about every -- every other
13 day, yeah, kept in touch.

14 Q And why?

15 A Because I wanted to find a way to start earning income
16 again.

17 Q Okay. And so, ultimately, did you start earning
18 money, at least for some period of time, out of the
19 Dominican?

20 A Yes.

21 Q And as we sit here today are you no longer earning any
22 income or your wife earning any income out of the
23 Dominican?

24 A I haven't had any income out of the Dominican since, I
25 think, that business was winding down in 2010. And I

1 haven't had any income since maybe the first of 2011.

2 Q Okay. Now, in your deposition in 2007 you said that
3 you didn't know exactly what happened to the machines. And
4 I think there was an impli -- at least an implication in
5 the deposition that maybe some of those machines were being
6 used by Mr. Dillashaw. Have you since that time confirmed
7 otherwise?

8 A Yes. None of Tri-Star's machines were being used by
9 Mr. Dillashaw.

10 Q What were the primary machines in general of those
11 30,000 in the Dominican? I mean, were they a good part of
12 them Pot-O-Golds?

13 A Yeah. I would say there was at least 20,000
14 Pot-O-Golds. You know, Grupo Citrin lost a contract to a
15 guy that had a Mirangaze Port. He had a large operation.
16 He had bought like 900 machines out of Brazil. I mean,
17 there were a lot of people -- once they got to making
18 money, they were ready to let go of us and buy their own.

19 Q Now, in Mr. Fletcher's memo that he had in his pocket
20 today he said in part a Pot-O-Gold machine is no different
21 than any other item, it's all about supply and demand.
22 What kind of supply was there in the Dominican when you
23 left?

24 A A tremendous supply.

25 Q Okay. What kind of demand?

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Cross-examination by Mr. Knie

1 A Zero.

2 Q These machines -- were these machines in buildings
3 that weren't air conditioned and with the doors open to the
4 street?

5 A They weren't -- yeah. They weren't open air, but they
6 were -- they didn't have -- they weren't climate controlled
7 facilities.

8 Q And is the Dominican a humid area of the world?

9 A Yeah. It's an island, yeah, a tropical island.

10 Q When you -- when you contacted Mr. Dillashaw did you
11 find out what type of machines he started running?

12 A Yes.

13 Q What kind?

14 A It was a machine called a Bergmann Roulette.

15 Q And is it more efficient? Some -- I don't know
16 anything about the stuff. Does it make more money or
17 subject to making more money?

18 A Yeah, yeah. And -- and it reminded me when I didn't
19 see that -- that document of Mr. Fletcher's, but, you know,
20 when the machines were legalized again, some nearly a year
21 after they were made illegal, there was a lot of things
22 that changed with licensing fees and things like that. And
23 based on the dollar profit per machine we had when we were
24 operating in worldwide versus the dollar income that the
25 roulettes were earning, it didn't make sense to invest in

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1 the -- in the Pot-O-Golds. The roulettes earned three
2 times as much money. Ten people could play one game at one
3 time. They'd line up and hit all of the buttons.

4 Q On the same machine?

5 A On one machine. So literally you could have one
6 machine and pay one license, and eight or ten people could
7 gang up around it and play it.

8 Q Now, the -- talking about the value of these machines
9 coming out of the United States, okay, when Tri-Star
10 Communications through your father or through Travis Owens
11 would send out an invoice for the machines, do you have any
12 memory as to the amount that they would invoice worldwide
13 or Grupo Citrin for?

14 A Yeah. I don't think my father did any invoicing, but
15 I know Travis did. I think some machines were invoiced at
16 a thousand dollars. Some went to -- to sell to Calum and
17 some were invoiced at \$500 to sell to Calum.

18 Q All right. Let me show you a cover letter and an
19 invoice that I do not believe is in the packet that we
20 provided but, nonetheless, official business documents of
21 Tri-Star. Do you recognize these documents?

22 A Yes, yes. This is Travis Owens.

23 MR. KNIE: May it please the Court --

24 A Saying a seal on one of our containers was broken.

25 Q What's the date of that letter?

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1 A November 2nd of 2001.

2 Q And then what's the date of the invoice?

3 A Same -- same date, November 2nd of 2001.

4 Q And then the item No. 1, used V.L.T., with base.
5 What's a V.L.T.?

6 A It's a Pot-O-Gold.

7 Q What's the only kind -- well, okay. And is that the
8 only kind that you ever sent down to the Dominican through
9 Tri-Star?

10 A Yes. We never operated anything other than a
11 Pot-O-Gold in the Dominican Republic. V.L.T. is video
12 lottery terminal.

13 Q And what's the unit price?

14 A \$500.

15 Q So --

16 A Each.

17 Q -- \$500 per machine leaving the country. And that was
18 total of 84 machines, is that right?

19 A That's correct.

20 MR. KNIE: Your Honor, we would offer those two
21 documents as one exhibit at this time.

22 MR. PILLSBURY: No objection, Your Honor.

23 THE COURT: Without objection, it will be Defendant's
24 53.

25 (Letter and invoice marked Defendant's Exhibit No. 53.)

1 Q Mr. Fletcher was asked about import and export fees
2 due. Do you remember about those and how much they were
3 and what kind of issue there was with those?

4 A Yeah. The -- the way that the machines were imported,
5 the first 314 machines were imported under a license by the
6 Dominican National Lottery. And although customs
7 recognized the license, they didn't realize it wasn't
8 authorized.

9 Q Okay.

10 A But, nevertheless, customs duties and taxes on
11 importation are waived.

12 What -- what happens is upon entry into the country
13 you have to relinquish title to the equipment. And it
14 comes in the country. You operate it. And if you ever
15 want to export it, in order to get the title back you have
16 to pay the custom duties and taxes that were exonerated
17 coming in.

18 Q So let's say you wanted to ship this, these machines.
19 You had a buyer, let's say, in Mexico, and you wanted to
20 sell them to the buyer in Mexico.

21 You're telling me that you don't have title to them and
22 you'd have to tell the government what you were doing
23 basically to get them out of the country?

24 A Well, yeah, if -- if you wanted to. And this was, you
25 know, pre the confiscation period. You would have to

1 submit -- well, we actually, even though worldwide owned
2 the machines, the machines were consigned to Grupo Citrin.

3 Q So they would have had to --

4 A So you would have to ask Grupo Citrin to ask the
5 government for title. Grupo Citrin would get the title.
6 well, Grupo Citrin would have to pay the taxes, and then
7 they get the title, and then they would have to transfer
8 the title to worldwide in order to ship them out.

9 Q And then over the years from 2001 forward, how did the
10 condition, the overall condition, of these machines change?

11 A Well, they were in a salt-air environment. They were
12 extremely rusted. They had a lot of modifications to them.
13 You know, they -- they were --

14 Q Well, let's talk about the modifications.

15 What -- in what ways were they modified?

16 A Well, when we got down there and started operating,
17 first of all, I heard Mr. Fletcher say that these machines
18 operated on bill acceptors.

19 Well, that was not a true statement. Bill acceptors
20 are illegal in the Dominican Republic in a street
21 operation. So you can't have bill acceptors.

22 You can't have any kind of monetary device on the
23 machine on the street that takes Dominican currency or any
24 currency. It has to be operated via a token, so.

25 Q Okay. So you have to have a token device on the

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1 machine.

2 A So all of the bill acceptors were not -- I mean, all
3 of these bill acceptors were stripped off of the machines
4 before export, and a metal plate was put in.

5 And, you know, Tri-Star sold the bill acceptors and
6 put them back in the company that continued operating, but
7 these machines didn't have bill acceptors on them.

8 They didn't have progressive displays because they
9 kept breaking them. So we ended up getting plates for the
10 top of the progressive display.

11 Q All right. Now, you heard their expert witness on the
12 value of these machines testify this morning as to the
13 value of the boards and the bill acceptors and all of that.
14 Do you disagree with his evaluations of those parts?

15 A I didn't -- I didn't see his...

16 Q No. I'm saying he testified this morning. I think he
17 said the boards were worth a thousand dollars.

18 A You -- you can buy a Pot-O-Gold board right now on
19 eBay for \$185. I mean, we paid \$125 for software. I mean,
20 that's what Tri-Star wrote checks for.

21 Q So you -- you didn't spend a thousand dollars for
22 these boards.

23 A No.

24 Q Okay.

25 MR. KNIE: Excuse me, Your Honor.

1 (Pause.)

2 Q All right. Thank you, sir. That's all I have of you.
3 The Court or counsel may have more questions.

4 THE COURT: Lawyers approach a moment.

5 (Bench conference held off the record.)

6 THE COURT: All right. At this time we're going to
7 break for the day.

8 Just need to remind you, you're still in the process
9 of giving your testimony, so you cannot have any
10 discussions with anyone about the substance of your
11 testimony since you're still in that process. But thank
12 you very much.

13 You can step down.

14 All right. We'll go off the record.

15 END OF PROCEEDINGS JUNE 26, 2017

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1 (Proceedings June 27, 2017)

2 THE COURT: Sir, I need to remind you that you remain
3 under oath.

4 THE WITNESS: Yes, sir.

5 THE COURT: Any redirect limited to what he went into?

6 MR. PILLSBURY: Yes, Your Honor, a couple before we
7 get started on this.

8 At the end of the day yesterday the parties had agreed
9 to a certain stipulation, and it is regarding Exhibits 7 --

10 THE COURT: Plaintiff's or defendant's?

11 MR. RICHARDSON: Defendant's Exhibit 7.

12 MR. PILLSBURY: Defendant's. And it's germane to
13 redirect, which is why I'm raising the point right now,
14 Your Honor.

15 Defendant's Exhibit 7 is a series of letters. And
16 there's a letter of August 20th, another letter of
17 August 22nd, then a letter of September 30th from Mr. Knie
18 to Mr. Stodghill.

19 The -- the October 10th of 2005 letter -- does Your
20 Honor see that?

21 THE COURT: I do.

22 MR. PILLSBURY: Okay. If Your Honor goes to the
23 response from Mr. Stodghill on the 19th --

24 THE COURT: Correct.

25 MR. PILLSBURY: -- Mr. Stodghill states that he did

1 not receive -- the October 10th letter provides a deadline
2 of 5:00 o'clock p.m., October 13th of 2005. That's the
3 October 10th letter.

4 The response from Mr. -- and the letter on its face
5 indicates it was sent via telefax and via regular mail.

6 Mr. Stodghill responded on the 19th by first stating
7 that he never received this letter by telefax. He didn't
8 get it until regular mail on the 14th, which would have
9 been after the deadline had come and gone.

10 The parties have stipulated that the letter was not
11 received prior to October 14 of 2005.

12 THE COURT: Not received by Stodghill?

13 MR. PILLSBURY: Correct. And that in his letter on
14 October 19th of 2005, Mr. Stodghill had requested details
15 of any offer in order for Mr. Andrews to evaluate
16 reasonableness.

17 The parties have also stipulated that the sale took
18 place without providing any details to Mr. Andrews.

19 THE COURT: Sale?

20 MR. PILLSBURY: Sale of machines.

21 THE COURT: All right. Now, while we're on the topic
22 of Defendant's 7, I have -- my seven goes August 10 of
23 2005, August 17th of 2005 letter to Mr. Hodge, August 22
24 letter to Mr. Hodge, and then August 30 letter to
25 Mr. Stodghill.

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1 You had mentioned an August the 20th letter. I don't
2 have an August the 20th letter.

3 MR. RICHARDSON: I don't think there -- I don't have
4 an August 20th letter, Your Honor.

5 THE COURT: There's no August 20th letter.

6 MR. PILLSBURY: I'm sorry, Your Honor.

7 MR. RICHARDSON: And I am unaware of a -- what there
8 is, is there's a September 20th letter from Mr. Stodghill,
9 but that's Exhibit 8, the second page of Exhibit 8. So
10 it's not part of this grouping. But that's September.

11 MR. PILLSBURY: Your Honor, I beg the Court's
12 indulgence.

13 My paralegal just got here with some copies. I'm
14 trying to wean out what I don't need.

15 THE COURT: Okay.

16 (Pause.)

17 (Bank statements of Arthur State Bank marked
18 Plaintiff's Exhibits 22 through 34.)

19 MR. PILLSBURY: Thank you, Your Honor. May it please
20 the Court.

21 REDIRECT EXAMINATION

22 BY MR. PILLSBURY

23 Q Mr. Broom, yesterday you testified that the first
24 games that were done -- sent to the Dominican came from
25 Tri-Star, correct?

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1 A That's correct.

2 Q And -- and Tri-Star actually hadn't even -- they
3 hadn't paid for those games as of that time, correct?

4 A I don't know. They -- they had made a few payments
5 prior to 2000, but I don't know. It wasn't all paid off.

6 Q Right. And, as a matter of fact, most of it wasn't
7 paid off. Would that be fair, given the debt that was in
8 the promissory note?

9 A Yeah. Whatever was in the ledger is accurate.

10 Q Right. So would it be fair say that most of it had
11 not been paid for yet?

12 A Probably.

13 Q Okay. So that the games that Tri-Star put down there
14 were still the ones that Hugh hadn't been paid for even
15 though Tri-Star is the one that sent them.

16 A We -- we purchased from -- from Drew's.

17 Q Okay. The answer to the question is yes?

18 A I'm sorry. You said Hugh?

19 Q The games that Tri-Star sent down there, they -- Hugh
20 still hadn't been paid for those games, correct?

21 A Drew's -- yes. Drew's Distributing hadn't been paid
22 for them, that's correct.

23 Q Right. Now, a couple of things. You had mentioned
24 that the -- when -- when talking about what Mr. Fletcher's
25 testimony was there was a discussion you had with Mr. Knie

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1 about not having title. Do you remember that?

2 A Yes.

3 Q And so Tri-Star didn't have title to the games?

4 A I'm not sure if Tri-Star did or not.

5 Q Okay. Well, you were the one in charge, the man on
6 the ground. Did Tri-Star have title or not?

7 A Well, I assume that they did because Ten State Street
8 prepared a transnational sales agreement from Tri-Star to
9 Calum. They actually sent it to me. It was prepared by
10 Mr. Andrews' attorney saying that the -- that the games
11 were free of -- for title and all liens and encumbrances.

12 Q So did Tri-Star have title or not?

13 A I -- I assume so at that point because his attorney
14 wrote it up that way.

15 Q All right. And so at the time that they were in the
16 Dominican, Tri-Star still had title to the games?

17 A No. Tri-Star -- any importation of gaming equipment
18 in the Dominican Republic, title upon entry was
19 relinquished to the Dominican government. You had no
20 title.

21 Q And so Tri-Star didn't own any of the games?

22 A Worldwide. All of the machines that were in the
23 Dominican were owned by worldwide via the transnational
24 sales agreement that Ten State Street had Tri-Star sign
25 over to Calum. Calum then, in turn, sold them to

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1 worldwide. And at some point there was also an
2 intermediary involved called Valsolon Investments where
3 Calum sold them to Valsolon and then to worldwide. So
4 there was a lot of transactions going on.

5 Q Okay. But Tri-Star didn't have -- what interest, if
6 any, did Tri-Star have in the games at the time that they
7 were in as of June of 2015?

8 A The -- as of when? I'm sorry.

9 Q As of -- as of June of 2005.

10 A Okay. I'm sorry. I -- the date changed me. I need
11 to hear that again. I apologize. If you could just...

12 Q That Tri-Star didn't have title, correct?

13 A Correct.

14 Q And Tri-Star didn't have an interest.

15 A The only interest Tri-Star had was in how the games
16 performed via the consulting agreement between Tri-Star and
17 worldwide.

18 Q So in October of 2005 how could you sell them?

19 A We -- we were very fortunate that we -- that the
20 gentleman that purchased them did not care about that.

21 Q So Tri-Star actually had nothing to offer. They had
22 no title to these games, correct?

23 A Well, Tri-Star had -- I -- I believe the way it was
24 explained to me had been given the consulting agreement
25 with worldwide in consideration for the games to Calum or

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1 something like that. That's how it was explained to me.

2 And, you know, at that point in time worldwide hadn't
3 paid Tri-Star. There wasn't any money in worldwide; there
4 wasn't any money in Tri-Star. So we -- we sold the games.

5 Q Well, you can't sell what you don't own. I mean,
6 that -- that was worldwide. That was up to worldwide to
7 sell them, correct?

8 A Yes. But I was making the decisions for worldwide as
9 well. And so it was Mr. Dillashaw since the inception.

10 Q Okay. So you and Mr. Dillashaw controlled worldwide?

11 A We -- yeah. I mean, I pretty much directed worldwide
12 as well with Mr. Dillashaw's assistance.

13 Q And so when -- when we had spoken earlier about
14 transferring, wire transferring, money from worldwide to
15 Tri-Star, that's consistent. You controlled worldwide and
16 you controlled Tri-Star. So you could control the wire
17 transfer between the two companies.

18 A Well, I relied on Mr. Dillashaw because he was our --
19 he's actually a C.P.A., and he managed the account along
20 with Mr. Santos at Deloitte and Touche. And once all
21 expenses were paid at the Dominican Republic level, then I
22 told him to send the remaining funds to Tri-Star every
23 month since we were operating.

24 Q Well, but that didn't happen because you testified one
25 of the reasons why you were concerned about being there in

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1 2005 is that the taxes hadn't been paid by worldwide for
2 some period of time, correct?

3 A Yeah. That was -- that's correct, because Ten State
4 Street did not properly register the investment for
5 worldwide.

6 What happened, when the machines were sold to Calum
7 via the transnational sales agreement that I signed with
8 the gentleman from Calum, the machines were then sold or
9 transferred to worldwide and, in turn, were going to -- you
10 get a -- what's called a capital -- I guess it's like a
11 capital contribution. And with the foreign tax code
12 whenever -- that's how they encourage foreigners to invest.
13 And whenever you make a capital contribution into a
14 corporation in the Dominican Republic you're allowed to
15 send money out tax free.

16 The problem was, is that Tri-Star sold the machines to
17 Calum for five hundred and a thousand dollars each via
18 several invoices and two transnational sales agreements.

19 And then the plan was that Ten State Street was going
20 to sell them from Calum to another company and try to
21 create value there and get a registered investment in the
22 Dominican Republic for more than what they actually -- for
23 more than what actually Tri-Star had sold the machines for.

24 I think they were trying to conceivably say the
25 machines were back at a \$7,000 value and then get some kind

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1 of \$7 million tax credit so you could send \$7 million out
2 of the country tax free.

3 And of course that never happened because the Tri-Star
4 was -- and Mr. Andrews' employee, Travis Owens, was doing
5 the invoicing on behalf of Tri-Star, who also was at the
6 direction of Mike Fletcher. And they were invoicing the
7 machines to five -- at five hundred dollars to a thousand
8 dollars apiece on the customs documents.

9 So when the customs documents came in to the Dominican
10 Republic there was a big discrepancy on what Ten State
11 Street had told the Dominican attorney verses what actually
12 happened with the customs documents.

13 So we were unaware of that. When we wired money, the
14 first large payment to Mr. Andrews, the gross amount was
15 like five hundred and twenty-something thousand dollars and
16 the net amount after taxes was 400,000. And we were
17 shocked. You know, we didn't -- we didn't know that there
18 was going to be any withholding tax. And that happened in
19 '04, and that's what you're referring to.

20 Q Well, isn't that the reason why the prices were
21 reduced, to avoid that duty?

22 A No, not necessarily. That's what they were worth. I
23 mean, you know, they were -- they were written off as no
24 value. I mean, it's -- you could buy them for five
25 hundred; you could buy them for a thousand. That was the

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1 truth.

2 Q So your testimony -- the original invoices for the
3 games were about 7,000 -- the original ones.

4 A The original ones purchased from 1997 to whenever --
5 '99 or 2000 -- the original South Carolina machines -- I
6 think some of them were invoiced for seventy-two or
7 seventy-three hundred dollars, and some of them were
8 invoiced for \$6,900. But, yeah, they hovered around the
9 \$7,000 mark.

10 Q Right. And as far as the invoicing to Calum,
11 originally they were invoiced in the neighborhood of \$7,000
12 a game. Is that a fair statement?

13 A No. They weren't invoiced to Calum at \$7,000 a game.

14 Q Originally.

15 A No. They were not originally invoiced to Calum at
16 7,000. Tri-Star invoiced them to Calum at five hundred to
17 a thousand dollars apiece.

18 Q Right. And that was because of you -- the higher the
19 price that was listed in the invoice, the more duty was
20 paid on those games, correct?

21 A No. Actually, we had purchased them for that price,
22 but, yeah, technically you are correct.

23 Q Well, you -- you never purchased them because they
24 were never paid for.

25 A Well, actually we had -- we did purchase a lot of

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1 machines on our own, and that's in Mr. Andrews' testimony
2 in I.G.T. Tri-Star owned a lot of machines outright that
3 it had purchased.

4 Q Well, isn't it true that there was a substantial
5 amount owed? I mean, and, again, I don't want to get too
6 bogged down in this point. But most of the debt was left
7 unpaid for the games that ended up in the Dominican.

8 A The machines that were from South Carolina from '97 to
9 2000 is where that debt originated. That's the clearest
10 way I know how to answer.

11 Q And the question is most of that debt was never
12 paid -- most of it.

13 A I -- whatever, yeah. Whatever is reflected in there,
14 but, yeah, it was like a million dollars.

15 Q Okay. You had talked about the meeting. And I think
16 this is Exhibit 49. These -- these notes from this meeting
17 down in, I guess, Ten State Street. Do you remember this?

18 A Yes.

19 Q And was this the agreement that you were referring to
20 that was reached?

21 A An understanding, yeah. This was the memo that was
22 passed out by the folks at Ten State Street. I don't
23 remember if it was Tim Scrantom or Mark Broadwater or Ben
24 LeClercq, but all three of them were there. And that was
25 prepared and handed out in that meeting.

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1 Q Well, I notice in here that, like, there are
2 handwritten notes on some corrections. Who was making
3 those corrections?

4 A Which one are you referring to? I'm sorry.

5 Q Let's look at the tax year, for example.

6 A That is not my handwriting, so I assume it was Tim
7 Russell.

8 Q Okay. Do you know one way or the other?

9 A Yeah. It looks like his handwriting.

10 Q Okay. And these notes here, are those yours?

11 A Yes, they are.

12 Q All right. And --

13 A That was actually referring to what I told you that
14 Calum sent the money and they had to send an additional
15 amount, and I mentioned to them and said, hey, you know,
16 Mr. Andrews -- we actually sent over \$500,000, and the net
17 amount because of the withholding problem, it only came to
18 like 399 or right at \$400,000.

19 Q Are you done now?

20 A Oh, yes. Sorry.

21 Q Okay. The -- it says here that the salary that you
22 would agree to pay yourself, \$180,000 --

23 A Yes.

24 Q -- for the year 2004. And it indicated that you had
25 actually paid yourself that salary as of June.

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1 A Yes. But I don't think that's correct.

2 Q What's not correct about it?

3 A I don't know that I had taken that salary yet, but it
4 says that. I mean, Ten State had asked Tim Russell to send
5 down all of the books and records of Tri-Star --

6 Q And --

7 A -- prior to the meeting.

8 Q And the amount you set was \$180,000?

9 A That -- you know, I don't know who communicated that
10 to him, but, yeah, I would say that either they asked me or
11 Tim Scrantom came up with it. Somebody came up with it.

12 Q Right. But it would have been either you or somebody
13 on your behalf where you had decided on your own.

14 A Sure.

15 Q 180,000.

16 A That's correct.

17 Q All right. And so if June had been paid that would
18 reflect that \$90,000 in 2004 would have been paid in
19 salary.

20 A If it had been paid.

21 Q And then the amounts here -- 75, 75, a hundred to a
22 hundred -- that looks like Tim's handwriting.

23 A No. Actually 90 -- do we have a copy? If I could see
24 it a little bit better. I'm sorry.

25 MR. RICHARDSON: Defendant's Exhibit 49.

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1 Q Okay.

2 A Forty-nine or 29?

3 Q Forty-nine.

4 A Yes. My handwriting is in -- beside '97, '98, '99 and
5 2000.

6 Q Okay. So those are all your figures?

7 A Yes.

8 Q And it -- it was also that this salary for past years
9 shall be treated as a note payable to Quentin from
10 Tri-Star, correct?

11 A Yes. That's correct.

12 Q But you didn't do it.

13 A Excuse me?

14 Q You didn't do that.

15 A No. I didn't create a note payable.

16 Q Correct. So this term here as part of this, I guess,
17 agreement, this is just a term that you didn't agree with.

18 A No. I just didn't do it.

19 Q Okay. Well, so you didn't agree with the term?

20 A No. I -- if -- if there was salary that was
21 unavailable to me, I would have created a note payable. It
22 didn't happen. We didn't create a note payable.

23 Q Okay. It was discussed in this meeting that all of
24 this past due stuff would be treated as a note payable.

25 And -- and you didn't express any objection or you didn't

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1 say I don't agree with that.

2 A No. I did not.

3 (Bank statements from Arthur State Bank marked
4 Plaintiff's Exhibits Nos. 35 through 38.)

5 Q Okay. I'm handing you what's marked as Exhibits --
6 Plaintiff's Exhibits 22 through 38, which I will represent
7 to you are the portions of the bank statements of Tri-Star
8 Communications from 2004 through March of 2006.

9 MR. PILLSBURY: Judge, at the end of my examination --
10 I'll show copies of these exhibits on the screen, and then
11 I'll provide my set to Your Honor. I -- I don't have an
12 extra copy for the Court at this time.

13 MR. RICHARDSON: We -- we would like to reserve
14 judgment on objecting to them, Your Honor. He hasn't moved
15 them into admission, and we're not agreeing to them yet.
16 It depends on what he's asking him, I guess.

17 THE COURT: All right. You heard that, right?

18 MR. PILLSBURY: Yes, Your Honor.

19 THE COURT: Okay.

20 Q All right. Looking at Exhibit 22, which is the bank
21 statement for -- for October 30th through November --
22 October 31st through November 30th of 2004. Do you see
23 that?

24 A Yes.

25 Q Okay.

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Redirect examination by Mr. Pillsbury

1 MR. PILLSBURY: And the -- well, actually, do you have
2 an objection on -- I'd like to just --

3 MR. RICHARDSON: Ask him about it. They're marked for
4 identification purposes, right?

5 Q Okay.

6 MR. KNIE: Your Honor, I do -- I think we do have an
7 objection to this line of questioning.

8 This is his witness. He introduced the -- the
9 '04 ledger and the '05 ledger through his witness. I
10 didn't cross-examine on any of that, and now he is on
11 redirect going to challenge what's on the ledgers with the
12 bank accounts. I mean, he's basically going to challenge
13 his own direct testimony.

14 MR. PILLSBURY: Your Honor --

15 THE COURT: I don't know what he's going to use.

16 MR. PILLSBURY: Your Honor, there is -- there's a --
17 the relevance of these line -- this series of documents are
18 twofold.

19 One is one of it contradicts the terms of whatever the
20 meeting is that took place.

21 Two is he made representations about the financial
22 performance of Tri-Star. I think specifically he said
23 Tri-Star was making \$180,000 a month at the first part of
24 2005. These bank statements show that that's absolutely
25 not the case.

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1 And also the statements go to the sale of the machines
2 themselves that he had referenced in his testimony on
3 cross-examination about those funds and what happened with
4 those funds.

5 So that's the relevance of the series, and it's in
6 direct response to testimony elicited on cross-examination
7 about the financial performance of Tri-Star and the --
8 there's one piece of information that also goes to the
9 value of the games that I'll get to very quickly. And
10 there's another element on the sale of the games themselves
11 and the -- and the final disbursement that was made to the
12 shareholders that he went into on cross.

13 MR. RICHARDSON: Your Honor, if it's all right, I
14 mean, the final distribution was bankruptcy court findings.

15 You know, here's -- here's the 130 paid back for
16 distribution for shareholder, shareholder loans. Here's
17 the 60,000 distribution that's in the ledger too, I think,
18 that -- that was distributed.

19 So there isn't any question about the money coming in
20 and where it went. That's clearly in the ledger. And I'm
21 not sure that any of the total amounts are going to be
22 disputed.

23 I think he's going to dispute the timing of it and
24 maybe, you know, how it was -- came in. But to the -- to
25 the extent that --

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1 MR. PILLSBURY: Yes. I'm going to dispute that, Your
2 Honor.

3 THE COURT: Okay. I'll let him go ahead.

4 MR. PILLSBURY: All right.

5 Q Let's do this. Move to Exhibit 23, which is the bank
6 statement for -- and I'll essentially -- this is the
7 December bank statement because it covers the last business
8 day of November to the last business day of December. Do
9 you see Exhibit 23?

10 A Yes.

11 Q All right. Now, this is -- we had -- we had discussed
12 in your direct about the payment of the \$400,000 salary,
13 and you had explained to Mr. Knie that that was based on
14 the calculations from Exhibit 39 that we just looked at,
15 that schedule of 75, 75, a hundred and a hundred. Do you
16 remember that?

17 A Yeah. But you -- yeah. You showed me this before,
18 before that, that's correct.

19 Q And that -- that's what you said your payment schedule
20 was based on.

21 A Yeah. That's -- I think that's what we agreed that I
22 had taken out of Tri-Star in terms of salary through the
23 payroll.

24 Q And if you look at Exhibit 23 -- flip over to where it
25 shows the checks and deposits.

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Redirect examination by Mr. Pillsbury

1 A Yes.

2 Q Okay. When you paid yourself the \$400,000, you
3 actually had to put money in the Tri-Star account to show
4 that, correct? Tri-Star didn't have the money to pay you
5 \$400,000.

6 A I -- I'm really not sure what these loans were for,
7 but, you know, I see the deposit slips.

8 Q Yes. The deposit slips for \$240,000 on the 14th. And
9 those were 15,000, a deposit of checks for 15,000, 110,000
10 and 115,000, is that correct?

11 A Yes. I see that.

12 Q Right.

13 A That's correct.

14 Q And so and then there was also another check you wrote
15 from Best Games that you deposited in Tri-Star's account
16 for \$85,000, is that correct?

17 A That's correct.

18 Q And none of these transactions show up as a note
19 payable to anyone.

20 A I'm not sure. I haven't compared them.

21 Q Look at Plaintiff's Exhibit 15, the general ledger.
22 Here. If you want to, look on the 31st, and you can
23 confirm that none of these deposits were listed as a notes
24 payable.

25 THE COURT: 31st of what?

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Redirect examination by Mr. Pillsbury

1 MR. PILLSBURY: December -- December 31st of 2004 when
2 the \$400,000 salary payment was made.

3 A Mine says 2005. I'm sorry.

4 Q I'm sorry. Go to the 14th.

5 A Where are the note payables? I don't see where you're
6 looking. I haven't found it yet.

7 (Pause.)

8 Q Beginning on page 11.

9 A Are you talking about where my father loaned the
10 money?

11 Q The transaction that happened here on December.

12 A I don't even know what page you're looking on. Would
13 you please tell, give me a page number?

14 Q Let's move on.

15 The -- look at Exhibit 24, which are the bank
16 statements for January.

17 A Yes.

18 Q All right.

19 A This is 12/31/04 through 1/31/05.

20 Q Right. And if you -- if you flip over to the checks
21 and deposits --

22 A Yes.

23 Q Right. There's a deposit made on January the 4th, and
24 that was for the sale of the land that you had mentioned
25 before, correct?

Quentin W. Broom, Jr.
Redirect examination by Mr. Pillsbury

1 A Are you talking about the one fifty-eight?

2 Q Yes.

3 A Nine twenty-three.

4 Q Yes.

5 A I'm -- I'm not sure if that was a sale of land or what
6 it was.

7 Q Would it have been anything else?

8 A Unless it was a deposit -- or I'm -- I'm not sure. It
9 just doesn't say, but, I mean, I -- it could very well have
10 been from the sale of the building.

11 Q And in January of 2005 there's a wire transfer in the
12 Tri-Star for \$120,000. That would have been from
13 worldwide?

14 A Probably. It doesn't say that, but yeah.

15 Q Is there any entity that would make wire transfers
16 into Tri-Star's account in 2005 other than worldwide?

17 A No. I mean, not that I can think of.

18 Q So whenever we see wire transfers that's all money
19 coming from worldwide to Tri-Star, correct?

20 A I would think so.

21 Q And as we've already covered, you controlled
22 worldwide, by your own testimony, and that's how these
23 transfers were made, correct?

24 A Yes.

25 Q And Exhibit 25 --

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1 A Yes.

2 Q -- if you flip over to the deposits --

3 A Yes.

4 Q -- there's a wire transfer from worldwide for
5 thirty-seven five.

6 A I -- I see that.

7 Q And there's -- this is, I believe, a loan from -- is
8 Sue your mom?

9 A Is who?

10 Q Sue Brown.

11 A Sue Brown, no.

12 Q Okay. There's a -- there's a check for -- there's --
13 there's a transaction in here for 25,000. And that's
14 another, I guess, loan from one of your relatives.

15 A Actually, that looks like on 2/8/05. That looks like
16 my mother's handwriting.

17 Q Right. So that's what I meant. I may have had her
18 name wrong but...

19 A Yes. It's Ann Broom.

20 Q Okay. Ann Broom. And there was a loan that she made
21 for February of 2005, correct?

22 A That's correct.

23 Q And there are -- let's see, two wire transfers for
24 thirty-seven five and 95,000 from worldwide, correct?

25 A That's correct.

Quentin W. Broom, Jr.
Redirect examination by Mr. Pillsbury

1 Q And the -- the primary expense at this point is your
2 salary. This is when you start paying yourself the
3 \$130,000.

4 A Yes. That's correct.

5 Q So you had to borrow money from your mother in order
6 to make sure that you got your full \$130,000.

7 A I'm not sure how that transpired, but, yeah, I
8 borrowed it at the time that I took the salary.

9 Q Well, you wouldn't have borrowed it if you didn't have
10 to, correct?

11 A Actually, we borrowed money all of the time from my
12 parents when we couldn't get currency out of the Dominican
13 Republic.

14 You know, when you went to wire money out of the
15 account at worldwide, they had a banking crisis, and there
16 was a run on U.S. dollars. And a lot of times my parents
17 facilitated Tri-Star by loaning them money so that we could
18 pay our bills. I think that just from '04, '05, not even
19 counting since 2001 -- just in '04 and '05 they loaned over
20 a quarter million dollars.

21 Q Well, but, again, if worldwide had been -- if those
22 funds -- if Tri-Star had the money to pay your salary, you
23 wouldn't have needed to borrow money from your family
24 members.

25 A Well, actually at the time worldwide had the money or

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Redirect examination by Mr. Pillsbury

1 was owed the money from Grupo Citrin, so we knew it was
2 coming in. It's just a matter that the bank had no dollars
3 to wire.

4 What happened in 2003 is that there was a banking
5 crisis. The federal reserve of the Dominican Republic came
6 down and shut down three banks because they were
7 manipulating the exchange rate.

8 The exchange rate went from 16 to one to over -- at
9 one time it went to almost 60 to one. So what that meant
10 is that instead of reaching into your pocket -- because we
11 were earning pesos -- and taking 16 pesos to buy one dollar
12 you had to reach in your pocket and grab 50 or 60.

13 So with the closure of the three largest banks in the
14 Dominican Republic there was extreme pressure on the U.S.
15 dollar.

16 A lot of times Grupo Citrin couldn't pay us and a lot
17 of times we couldn't -- literally could not get money out
18 of the country. I knew that we were going to get it, and
19 that's why I borrowed the money from my parents.

20 Q But, again -- I'm sorry. I didn't mean to interrupt.
21 Are you finished?

22 A Yeah.

23 Q Okay. If Tri-Star had the money in its account you
24 wouldn't have had to borrow it from family members.

25 A That's correct.

Quentin W. Broom, Jr.
Redirect examination by Mr. Pillsbury

1 Q You had talked a little bit about the value of the
2 games. And some of these I'm just getting to because
3 there's in some of the bank statements. One of the checks
4 that is written is to Armaly Labs, Inc.

5 MR. KNIE: Which exhibit?

6 MR. PILLSBURY: This is that same bank statement.
7 It's just one of the checks.

8 Q Do you see that check for on February 2nd of 2005?
9 Well, that's when it's cleared. You wrote it January.

10 A Yes, yes, for Armaly Labs, board repair.

11 Q Right.

12 A Right.

13 Q And -- and so you paid them \$225 to repair the board
14 on the machines?

15 A That could have been for 10 boards, 15 boards. But he
16 definitely repaired our boards.

17 Q Okay. Well, I'm glad you mentioned that.

18 A I have no idea how many -- I think he charged \$75
19 apiece. I have no idea.

20 (Pause.)

21 Q Okay. And then there's another check to him for \$105
22 for another board repair, correct?

23 A Yes.

24 Q All right. And I believe that's the money that was
25 repaid to your mother?

Quentin W. Broom, Jr.
Redirect examination by Mr. Pillsbury

1 A Which? I can't really read that.

2 Q I'm sorry.

3 A I'm sorry.

4 Q The money that you brought in in order to pay yourself
5 the salary and then you reimbursed her about a week later.

6 A That was a loan from my mother that was repaid,
7 correct.

8 Q Right. Okay. All right. In looking at Exhibit 24
9 which are the -- this is the January statement. This was a
10 check that you wrote to Armaly in January. And this was
11 repairing 13 boards, right?

12 A Which check? which check number is that? It will
13 help me.

14 Q 4706.

15 A Yeah. It says board repair -- 13.

16 Q Right. And that -- so when 13 boards were repaired --
17 when more than one board was repaired it was actually noted
18 on the check itself, is my point.

19 A Yeah. And sometimes he -- he charged more for some
20 boards than others. But, yeah, depended on what the board
21 needed.

22 Q And in that -- in that month of January when you
23 started paying yourself the \$130,000 salary, that's when
24 there were wire transfers from worldwide for 120,000 and
25 then 120 -- \$32,000 in January, correct?

Quentin W. Broom, Jr.
Redirect examination by Mr. Pillsbury

1 A Yes.

2 Q Looking at Exhibit 25, February.

3 A Yes. I've got it.

4 Q The wire transfers from worldwide are 37,000 --
5 37,000 -- both thirty-seven five. So 75,000 plus 95,000,
6 correct?

7 A Yes.

8 Q And that's the month that you got the loan from your
9 mom for 25 to make payroll.

10 A Well, yeah, got a loan from my mom for \$25,000.

11 Q Exhibit 26 is the -- that's the statement from March
12 of 2005, correct?

13 A Yes.

14 Q Now, this is when you decided to pay yourself 185,000
15 instead of 130. Do you remember that?

16 A I'm sorry. Say that again.

17 Q This is the month that you paid yourself 185,000
18 instead of 130.

19 A Okay. Yeah. If it corresponds with the general
20 ledger, I mean, I -- I admit to that.

21 Q And the amount that was wired in from Tri-Star -- from
22 worldwide at that point was essentially 75,000, correct?

23 A Yes.

24 Q So Tri-Star made less money but you paid yourself
25 more.

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Redirect examination by Mr. Pillsbury

1 A That's -- well, I don't know what Tri-Star made
2 because I didn't know what was -- we didn't -- we don't
3 have a reflection of the amount of money that was owed from
4 worldwide during that month. That's what went into the
5 account.

6 Q Well, that's the amount that -- that's the amount that
7 was received, correct?

8 A Yes. I -- I received the -- I took the payroll out.
9 But I think that your question asked me is that the money
10 Tri-Star had. But Tri-Star could have had money owed to it
11 from worldwide in the consulting agreement and just
12 couldn't get the money out.

13 Q The April statement for April -- this is Exhibit 27.

14 A Yes. I have it.

15 Q All right. And when you look at the deposits for
16 April --

17 A Yes.

18 Q -- there's a wire transfer for 80.

19 A 83,000.

20 Q 83,000. Another one for 56,000.

21 A Right.

22 Q Another one for 45,000.

23 A Right.

24 Q And then there's a hundred-thousand-dollar one. But
25 this is from Mr. Evis personally.

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Redirect examination by Mr. Pillsbury

1 A This is actually from Edmond Uneze, and this is
2 exactly what I was referring to, is that we had -- Tri-Star
3 was owed money. And that's why it came in the following
4 month, because there was a run on dollars and you couldn't
5 get dollars when you needed to get them.

6 Q Who is Uneze?

7 A Mr. Uneze is the father of the gentleman that we had
8 the contract with, actually that worldwide had the contract
9 with Grupo Citrin.

10 Q And this is -- when you were discussing it in cross,
11 this is the family that is very powerful, correct?

12 A Yes. Mr. -- Mr. Liase and his son -- well, his
13 businesses -- they were one of -- and they controlled all
14 of the gaming on the island pretty much and very well
15 connected.

16 Q And at the time, in immediately before that payment, I
17 believe your passport reflects that you had been down there
18 for a day with -- in the Dominican.

19 Do you recall meeting with Mr. Nease and why he would
20 wire you -- why he would wire Tri-Star a hundred thousand
21 dollars out of his personal account?

22 A I don't recall my travel, no. But if I went down
23 there to see him it must have been because they hadn't paid
24 us any money, actually hadn't paid worldwide any money.

25 Now that -- now I remember exactly what happened. He

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Redirect examination by Mr. Pillsbury

1 couldn't get any dollars either, so he wired it out of his
2 personal account on behalf of Grupo Citrin.

3 Q And that money was owed to worldwide?

4 A Grupo Citrin paid worldwide, but it was actually owed
5 to Tri-Star because Tri-Star had the consultancy agreement
6 with worldwide.

7 Q But/and, again, I don't want to get too bogged down in
8 it, but worldwide hadn't paid the taxes, correct? That's
9 what you were so concerned about and why you had fear that
10 you might be arrested.

11 A Not at this time. You're -- you're talking about --
12 this is in April of '05.

13 Q Right. But --

14 A The -- the '04 taxes had not been filed, and you know,
15 Santos was in charge of that, and he hadn't even contacted
16 us about the '04 taxes.

17 Q Right. But the -- the taxes -- when did you find out
18 that the taxes hadn't been paid?

19 A It was about the same time as the machines were
20 seized.

21 Q So you had no idea at that point when worldwide was
22 sending you money that they shouldn't have been sending
23 Tri-Star any money due to the taxes owed.

24 A No. Actually, Mr. Dillashaw would have been on top of
25 that. He handled that account. He was basically our

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Redirect examination by Mr. Pillsbury

1 secondary C.P.A. in the Dominican Republic that was
2 employed by Tri-Star that -- that kind of oversaw the
3 account with Mr. Santos of Deloitte and Touche.

4 Q Yeah. But you were making -- you were paying yourself
5 \$180,000 for salary. And you didn't know that the taxes
6 were owed when this money was coming out?

7 A Well, it -- it wouldn't even have made a difference
8 because the liability was on the hands of worldwide. It
9 wasn't on the hands of Tri-Star.

10 And I assumed that Ten State Street -- you know, when
11 this happened, you know, I think it was the -- right around
12 the summer of '05 when Mr. Santos informed Mr. Dillashaw
13 that -- you know, I just assumed that Ten State Street was
14 on top of it because they -- they were the ones that were
15 responsible for setting up the registered investment.

16 Q Well --

17 A And they had billed us a lot of money to set up the
18 registered investment out of that 600,000 you have over on
19 the board.

20 Most of that never went to the Dominican. A lot of it
21 just went to attorney fees to set up this structure that
22 Mr. Andrews wanted us to use.

23 Q I've noticed a consistent pattern here. When it helps
24 you, you're in control. But when it hurts you, somehow
25 it's up to everybody else.

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Redirect examination by Mr. Pillsbury

1 MR. KNIE: Objection, Your Honor. Argumentative.

2 THE COURT: I sustain the objection.

3 THE WITNESS: I -- I apologize.

4 Q And in 2000 let's look at the May statement. In May
5 there was 150,000 transferred from worldwide --

6 A Are you on Exhibit 28 now?

7 Q Twenty-nine.

8 A Twenty-nine. I thought you said May. Twenty-nine is
9 June.

10 Q Right.

11 A So which one do you want me to look at?

12 Q The -- the deposits, the wire transfer.

13 A For which exhibit?

14 Q On 29.

15 A Okay. Yes.

16 Q And at -- at that point there was 150,000 that was
17 transferred, correct?

18 A Yes.

19 Q And at this point within Tri-Star, I believe it was
20 after April. From April to January you had paid yourself
21 \$520,000, correct?

22 A Whatever is reflected in the payroll. I have no doubt
23 about that.

24 Q And the day that they were seized was what day?

25 A I'm not sure exactly. It was when we got the letter

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Redirect examination by Mr. Pillsbury

1 if you have that.

2 Q which --

3 A I know -- I know it was June or July, something like
4 that. The end of June, the first of July. I can't
5 remember the exact date where we got the -- I think we
6 wrote Mr. Andrews the -- the letter. I think it's on that.

7 MR. RICHARDSON: It's the bankruptcy order. It's
8 already decided when the Dominican Republic shut down the
9 gaming.

10 Is that you're talking about?

11 MR. PILLSBURY: No. I'm asking about the letter that
12 he's referencing.

13 MR. RICHARDSON: I think he was trying to be
14 responsive to you, so I'm not --

15 Q Which letter are you talking about is the one from Pat
16 Knie to --

17 A Yeah. I think that letter -- one of those letters
18 made reference to the date.

19 MR. RICHARDSON: That the Dominican shut down.

20 A That the Dominican shut down. I thought -- is that
21 what you're asking me?

22 Q Yes.

23 A Yeah.

24 Q June 27th. Is that -- this is the August 10th letter.
25 Does that refresh your memory?

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Redirect examination by Mr. Pillsbury

1 A Yes. June 27th.

2 Q So it was almost the -- at the end of the month for
3 June, correct?

4 A That's correct.

5 Q And the amount received from worldwide at that
6 point -- if you look at Exhibit 30 there was only \$60,000
7 received for that month.

8 A I'm sorry? I'm -- I'm looking on 6/17/05. It was
9 65,000, and on 6/29/05 it was 90,000. That's June 7th --
10 June --

11 Q Correct. No. I was looking at the July statement.

12 A Okay.

13 Q And --

14 A Exhibit 30?

15 Q Yes.

16 A Yes, 60.

17 Q Okay. Now, what I'm showing you are Defendant's
18 Exhibits 13 and 14. They're in the black binders.

19 A Thirteen and 14?

20 Q Correct.

21 A Yes.

22 Q All right. So -- so everybody's on the same page,
23 in -- in October of 2005 that's when -- what -- what day
24 were the games actually sold by Tri-Star?

25 A Sometime after this, week or two after this letter.

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Redirect examination by Mr. Pillsbury

1 Q Okay. So --

2 THE COURT: Which letter?

3 THE WITNESS: Actually, this -- this estimate or
4 quotation from International Gaming Corp. dated October
5 14th of 2005.

6 Q And so there was an offer that came in on the 14th.

7 A Well, yeah. He was -- he made an offer and, you know,
8 that's -- that's what they offered.

9 Q And then Exhibit 14, this is the receipt? Is that?

10 A Yes.

11 Q Okay. And so it reflects that the games were -- and
12 this receipt was generated the date that the games were
13 sold?

14 A Yeah. I assume so.

15 Q And in the sale of the 1,122 games, this is the only
16 piece of paper that Tri-Star has to document the
17 transaction?

18 A That's correct.

19 Q There was -- there was no title work. There was no
20 contract as far as trying to convey title? It's just this
21 receipt?

22 A That's correct.

23 Q And the -- this money, I believe you testified, you
24 put in Tri-Star's account in order to do the final
25 distribution?

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Redirect examination by Mr. Pillsbury

1 A That's correct.

2 Q And the -- so was -- the money was received by
3 Tri-Star on October 24th?

4 A No. It was received after the 24th.

5 Mr. Dillashaw, I think, collected the money then in
6 the Dominican. And there were some issues because the
7 gentleman didn't want to write a check because it was -- of
8 the legality issue with the machines.

9 He also wouldn't agree -- in the Dominican any sale is
10 subject to a 16 percent value added tax which they call the
11 itapis. And he wasn't willing to pay that, and he couldn't
12 wire the money to us because if he wired it from his
13 account he was wiring it to Tri-Star's corporation. There
14 was a 25 percent withholding tax. So he had to have it
15 done via cash deal.

16 Q And the cash was deposited in the Tri-Star account?

17 A No, it wasn't.

18 Q Which account was it deposited in?

19 A The -- the sale proceeds. I did what I had always
20 done, and I went to my family.

21 There -- Tri-Star did not have an account in the
22 Dominican Republic; I didn't have an account in the
23 Dominican Republic; and Frank Dillashaw had an account, but
24 he was scared to put the money in his account.

25 worldwide at that time -- because we're talking about

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1 this particular timeframe -- worldwide had -- Mr. Santos
2 had told us that there were tax consequences and he was
3 looking for the machines to sell himself to pay the taxes.

4 So we couldn't put it in worldwide because he was
5 going to take the taxes owed and then anything left he was
6 going to wire out, which are subject to a 25 percent
7 withholding tax and a 16 percent sales tax. And,
8 furthermore, there -- there was -- there was no account to
9 put it in.

10 So I borrowed the money from my family members and put
11 the money in the account just like I had always done
12 through the history of Tri-Star and distributed the money,
13 paid my family members back.

14 Q Well, the -- the Tri-Star -- where was the money
15 actually deposit?

16 A The -- what money?

17 Q The \$400,000 that came from --

18 A Well, actually it was cash, and I think Mr. Dillashaw
19 ended up putting that money in his account and slowly got
20 what I had borrowed back to me.

21 Q So Tri-Star is owed \$400,000, and that was paid in
22 cash to Mr. Dillashaw.

23 A This -- this -- yes. Tri -- the machines were sold.
24 The buyer would only pay cash.

25 Q And at the time that this transaction was done is

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Redirect examination by Mr. Pillsbury

1 there any -- any record that Mr. Dillashaw has that this
2 was the amount he received?

3 A Just that particular letter there. But we trusted
4 him. I mean, he was running the -- the operation since
5 2001. He is a C.P.A. I had no doubt that he collected
6 that money.

7 Q Well, you also -- I think you testified that you lent
8 him 150,000.

9 A Actually, out of my portion, yes, because I borrowed
10 the money here. I paid back what was owed. And any money
11 at that point in the Dominican Republic was mine.

12 Q So Mr. Dillashaw kept -- he had \$400,000, and of that
13 \$400,000 you allowed him to keep 150 of it?

14 A Yeah. And the rest of it he sent back to me.

15 Q And that's what he used as his working capital to
16 start the new venture?

17 A The -- the 150,000, correct.

18 Q And so when you testified in cross-examination that
19 you had deposited the \$400,000 in the Tri-Star account and
20 then did the disbursements, that wasn't accurate.

21 A No. Actually, I deposited the amount of the sale into
22 the account, the exact amount, and distributed it.

23 Q You -- well, you didn't deposit the proceeds. You
24 just mirrored what the proceeds -- at least according --
25 and, again, this is the only evidence we have that this was

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1 the amount actually paid, right?

2 A I understand. Right.

3 Q There's no other documentation at all for 1,122 games.

4 A That's correct.

5 Q And you -- you weren't there in the Dominican when
6 this sale actually happened, correct?

7 A No. I was here.

8 Q And have you been told by your lawyer that Mr. Andrews
9 wanted to see the terms of any offer?

10 MR. KNIE: Objection, Your Honor. That's privileged
11 information.

12 THE COURT: I sustain the objection.

13 MR. PILLSBURY: Yeah.

14 Q Did you have any knowledge that Mr. Andrews wanted to
15 see the terms of any offer?

16 A I don't remember any knowledge of that. I could have,
17 could not have. But what I did know is that my information
18 was on file in the Dominican Republic. Mr. Dillashaw's
19 information was on file in the Dominican Republic.

20 Mr. Andrews was at home sitting in his chair, you
21 know, with no legal responsibility for the situation that
22 was down there.

23 When we submitted our documents way back in 2001 it
24 was only submitted on my behalf and Mr. Dillashaw because
25 Mr. Andrews couldn't produce a clean criminal record.

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Redirect examination by Mr. Pillsbury

1 Q well, you weren't there when it happened either.

2 A No. I wasn't.

3 Q The sale went forward and you were here.

4 A Excuse me?

5 Q You were in Miami when the sale went forward.

6 A I don't know if I was in Miami or if I was up here.

7 (Pause.)

8 Q Okay. The business arrangement you had with
9 Mr. Dillashaw, he kept the money, for 150,000 of it?

10 A Yes.

11 Q And the other portion of that money, what happened to
12 it?

13 A He eventually sent it back to me.

14 Q And when did that happen?

15 A When did which?

16 Q When did he send you the money?

17 A I don't remember. I don't know if he sent me back
18 some in '05 or '06, but I got the remaining money owed to
19 me back.

20 Q well, did you get it back in '05?

21 A I'm not sure.

22 Q Is there any reason why you wouldn't have gotten the
23 \$250,000 in cash that he got that he, I guess, owed to you?

24 A well, again, you know, he -- he was in a very
25 difficult position because he was basically scared for his

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1 life that at any time someone would come looking for him.

2 Q And how soon was it that the two of you went into
3 business in the Dominican?

4 A Actually, the law passed sometime in May or June of
5 2006. I mean, it's a totally different law. And I think
6 it was sometime right -- right at that -- right at that
7 time.

8 Q So there was no activity whatsoever up until July of
9 2006 as far as any business that you did in the Dominican?

10 A There was nothing legal in the Dominican Republic for
11 almost a year, from the time the attorney general gave the
12 directive on forward.

13 Q And-but you still -- when -- when you went into
14 business with Mr. Dillashaw that is the -- you had
15 testified about income that had come from the Dominican for
16 a period of time, and then it came not from the Dominican.
17 My recollection is your testimony was that after 2011 --

18 A Yeah. I think in 2010 the roulette machines that
19 Mr. Dillashaw was operating, the company had gone bankrupt
20 and could you no longer get parts. The machines were quite
21 old, but they performed very well. And you couldn't get
22 parts for them any more, and so just made the decision to
23 exit.

24 Q And how many machines did he have?

25 A I think he had about 500.

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1 Q Of the roulette machines?

2 A No. He had some Pot-O-Golds too. He had, I think,
3 like 75 Pot-O-Golds and the rest roulettes.

4 Q And that was the operation that continued until 2011?

5 A Yeah. They started phasing it out in 2010, but I
6 think by 2011 it was pretty much gone.

7 Q And all of the money that you received from -- in your
8 tax returns, which we've marked as exhibits -- I don't have
9 the numbers -- but the ones from 2005.

10 MR. KNIE: Objection, Your Honor.

11 THE COURT: Hang on.

12 Yes, sir.

13 MR. KNIE: I don't see how anything past 2005 is
14 germane to this proceeding. No unjust enrichment pled.
15 It's just outside the scope of redirect, Your Honor. He
16 had a chance to ask him on direct, and he didn't go into
17 those later returns.

18 MR. PILLSBURY: Under cross-examination he spoke
19 directly.

20 I mean, I'm simply following up on what he testified
21 to on cross, Your Honor. He said that the business with
22 Dillashaw, my recollection was, lasted through 2011.

23 THE COURT: All right. I'll let him go into it.
24 Go ahead.

25 Q And so when did business completely stop in the

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1 Dominican from your standpoint?

2 A Like I said, I think it wound down, started winding
3 down, in 2010, was maybe -- maybe a little bit in 2011 but
4 not anything to speak of.

5 Q And when we look at the -- let's look at 2006. And
6 this is going to be very quick.

7 (Pause.)

8 A Just this page?

9 Q No.

10 A Do you want me to turn to four?

11 Q Turn to it, please.

12 THE COURT: What exhibit?

13 MR. PILLSBURY: This is exhibit -- Plaintiff's
14 Exhibit 4. It's the 2004 tax return.

15 A Yes.

16 Q Okay. This is your return. And we had -- we had
17 looked at the other return in your direct that showed there
18 was seven hundred something thousand dollars made from the
19 Dominican. You just weren't sure whether that was Tri-Star
20 money or not. Do you remember that?

21 A Well, yeah. I don't know because there -- there
22 wasn't any machines operating after -- after the June
23 moratorium, so to speak. So I really don't know what it
24 is.

25 Q Okay.

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1 A I -- I would have to rely on my uncle to tell me, but,
2 unfortunately, you know, he passed away.

3 Q All right. And so, basically, with \$150,000 of your
4 money Mr. Dillashaw was able to return 224,000 of it in
5 operating only six months in 2006.

6 A Could you -- could you show me?

7 MR. KNIE: Objection, Your Honor. This is the exact
8 testimony, the exact questions, asked on direct.

9 THE COURT: And he's going to ask it again when we get
10 through this witness.

11 All right. So move on.

12 Q Correct?

13 A I'm sorry. What page are you on?

14 Q This is your supplemental income.

15 A Yeah. I see it. Royalties received 224,000.

16 Q Right.

17 A That's correct.

18 Q And that was the return on \$150,000 investment in only
19 six months of operation, or less.

20 A That's correct.

21 Q And these involved also Pot-O-Gold games.

22 A Yeah. He had, like I said, I think he had 75
23 Pot-O-Gold machines.

24 Q The Exhibit 5 --

25 A Exhibit 5.

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1 Q And if you want to just follow along with me,
2 Mr. Broom, so we don't --

3 A Okay.

4 MR. KNIE: Objection, Your Honor. I've got to object
5 to '07 on. Continuing objection to protect the record.

6 It was never mentioned on direct, and I never asked
7 him on cross about these returns.

8 MR. PILLSBURY: He -- he asked him about the business
9 operation in the Dominican. I'm just trying to -- I'm
10 literally trying to just close this door as fast as I can
11 get there.

12 THE COURT: Let's close the door as fast as you can.
13 This is -- the information about the subsequent
14 business with this Mr. Dillashaw is highly suspect to the
15 Court from what I'm hearing.

16 So I'm going to let him go into it because \$150,000
17 loan turns into \$224,000 in six months in an economy of a
18 nation that's being represented to me is -- the attorney
19 general is after everybody, everybody has been chased down,
20 they're trying to avoid paying taxes. It's suspect to this
21 Court, so this Court would like to hear some of this
22 testimony.

23 Go ahead.

24 Q The 2007, it's now up to \$565,621.

25 A Yes.

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1 Q Next exhibit, the next year, is 2008. This is
2 Exhibit 6. And if you want to just look along, I mean, you
3 can look at the document, but \$485,415.

4 A Yes.

5 Q Exhibit 7. \$297,222. And that's the amount that
6 you -- you know, that was your cut with Mr. Dillashaw,
7 correct?

8 A Yes.

9 Q Exhibit 8 is 2010. \$399,279.

10 A Yes.

11 Q It -- it doesn't look like the business is dying down,
12 at least to me. Exhibit -- this is 9, yeah, Exhibit 9,
13 2011. This is, I believe by your testimony, when things
14 were winding down.

15 A That's correct.

16 Q And the amount reported is \$370,500.

17 A That's correct.

18 Q And, again, that would be through Mr. Dillashaw.

19 A That's correct.

20 Q And is there any other business other than the
21 Dominican in 2011 with Mr. Dillashaw?

22 A Is there any other business in the Dominican with
23 Mr. Dillashaw?

24 Q Yeah. I -- other than the Dominican in 2011, was
25 there any business income with Mr. Dillashaw?

Quentin W. Broom, Jr.
Redirect examination by Mr. Pillsbury

1 A I can't remember if we had income from a -- other
2 country by then or not.

3 Q Exhibit 10 is 2012. And, again, this with
4 Mr. Dillashaw shows \$293,666.

5 A That's correct.

6 Q What -- what other business outside of the Dominican
7 did you have with Mr. Dillashaw?

8 A We -- we went to a different country to operate.

9 Q Jamaica?

10 A Yes.

11 Q The next exhibit in the Jamaican operations began in
12 2015?

13 A No. The Jamaican operations began in -- well, I first
14 went to Jamaica in 2007; then a few times in 2008; I think
15 2011. And I think it started either right at the end of
16 2011 or beginning of 2012.

17 Q The -- in 2013 -- this is the return for supplemental
18 income, and it doesn't specifically identify Mr. Dillashaw,
19 but that -- whatever line B should be, that would be your
20 arrangement with him?

21 A Yeah. He was assisting in the new operation, correct.

22 Q Right. And so is this the dropoff that you were
23 referencing earlier --

24 A No.

25 Q -- where it goes down to \$180,000?

Quentin W. Broom, Jr.
Redirect examination by Mr. Pillsbury

1 A I'm sorry. Which one are you on? Are you on 2012
2 or --

3 Q 2013.

4 A Is that No. 11?

5 Q It's 11.

6 A Okay. Yes, 176,000, 2013. Is that right?

7 Q I'm looking at the schedule E right here on the
8 screen, 2013.

9 A Yes.

10 Q And it looks to me like it's 188,000.

11 A Yes, that's correct, royalties received 188,000.

12 Q Which would be about half of what they were the year
13 before. But so when -- when did the operations in the
14 Dominican cease completely?

15 A Like I said, I think they ceased in -- they started
16 going down in 2010. By the end of 2011 it was completely
17 gone. I -- you know, I don't know the exact time in 2011
18 but...

19 Q All right.

20 MR. PILLSBURY: That's all I have, Your Honor, and I
21 would move for admission of the -- I'm not sure whether
22 they have the same arrangement with me that if we talked
23 about it, it's admissible, but I guess they've objected.

24 I've identified the tax returns, and so at this time I
25 would move to have them admitted.

Quentin W. Broom, Jr.
Redirect examination by Mr. Pillsbury

1 THE COURT: What about the bank statements?

2 MR. PILLSBURY: Oh, and those too, Your Honor. I'm
3 sorry.

4 MR. RICHARDSON: The deal is the ones that have been
5 previously provided, and, obviously, the bank statements
6 were new today and -- and you heard our objection about
7 the -- about the tax returns.

8 The bank statements, I don't think we have any
9 objection. I mean, they're -- they're the Tri-Star bank
10 statements, and if he had given them to us earlier it'd
11 have been under the same agreement.

12 THE COURT: Okay. All right. So the bank statements
13 will be admitted. I'll admit the tax returns that have
14 been referred to during the testimony.

15 MR. PILLSBURY: Correct. I did not refer to 2015.
16 His testimony is it was...

17 THE COURT: All right. Now, I'm going to let defense
18 counsel, if they believe that he went into areas, new
19 areas, I'll let them ask questions.

20 MR. KNIE: There is no reason, Your Honor. We're good
21 with what he's already testified to.

22 THE COURT: Okay. Sir, you may step down. Thank you
23 very much.

24 All right. Let's take a short recess.

25 (Whereupon, a recess was taken.)

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 THE COURT: Plaintiff ready to call its next witness?

2 MR. PILLSBURY: Yes, Your Honor. At this time we
3 would call Mr. Hugh Andrews to the stand please.

4 H. HUGH ANDREWS, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. PILLSBURY

7 Q Good afternoon, Mr. Andrews. Can you tell the Court a
8 little bit about yourself and your background, please?

9 A My name is Horace C. Andrews, II. I was born in
10 Spartanburg County. I lived here pretty much my whole
11 life. I went to Chapman High School.

12 My mother and father was in coin-machine business,
13 jukeboxes, pool tables and pinball machines and stuff, and
14 had a route. Along about the time I was born my dad
15 started that business, and I grew up in it cleaning up
16 machines and working in it at an early age.

17 At, I think, about age 17 my parents had saved about
18 \$8,000 for me to go to school on, college, and I had set
19 my -- I had found a beer joint for \$9,500 and had found a
20 lady to run it for me if I could buy it and I wanted -- I
21 approached my family about buying the beer joint and
22 putting my own machines in there. And they were kind of
23 disheartened that I wasn't going to college. I told them I
24 wasn't college material. So dad helped me with the rest of
25 the money to buy the beer joint.

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 A year and three months later I had my money back in
2 the bank and the beer joint was paid for. And it was -- it
3 was a little place called Triangle Grill on Howard Street
4 here in Spartanburg.

5 At age 20 I bought my second beer tavern, was called
6 Plantation 221 down in Moore, South Carolina, and put my
7 own machines in there.

8 I worked for my father on his route collecting money
9 off of machines for him and -- and working on the machines.
10 I learned how to be a real good mechanic on them.

11 Q And what kind of machines are we talking about if I
12 could get to that point?

13 A These were pin -- well, we had about 18 jukeboxes,
14 maybe 25 pool tables. We had -- and we had about 80
15 pinball machines as I recall on a route of about 30 or 35
16 locations.

17 Q And why don't -- to kind of move a little bit forward,
18 how -- how is it that you got into the video poker
19 business?

20 A At -- well, at age 70 -- I mean, in 1974 I bought half
21 my father's business. In 1978 I bought the other half.

22 Around 1980-81, right in there, video poker come to
23 South Carolina, and I was president of our state
24 association. I didn't like the fact that they come to
25 South Carolina. I thought this was -- this -- we had

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 pinball machines and we had a good living, and I thought
2 these were going to cause us to get everything outlawed and
3 not be able to operate anything.

4 But after a while it became evident that they were
5 here and they were here to stay, you know. And when in
6 Rome, you have to do what the Romans do.

7 I mean, everybody else was getting them. My locations
8 was forcing me to -- to want them, and they wanted them
9 bad, and I had to buy some.

10 We had a case in South Carolina. I had like 14 of
11 them or something at the time that the case come up about
12 video poker. And we actually won that case and got to --
13 we got to run the games here in South Carolina.

14 Q How -- how is it that your business model as far as
15 video poker morphed over time?

16 A Say that again. I'm sorry.

17 Q Poor question, and I apologize.

18 A That's all right.

19 Q Over time what -- tell the Court a little bit about
20 how -- how you would sell video poker machines and, you
21 know, versus doing routes and things like that.

22 A Okay. I started. I had -- I had -- I had a route. I
23 had machines. I was president of the state association and
24 knew all of the other operators in the state, good friends
25 with them.

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 It became apparent that they were going to stay. I
2 looked around and found a machine, a good machine, and a
3 man out of New Jersey that had these machines. And I -- I
4 called him and asked him about being able to buy some from
5 him. And he said to come and see him. And I went and
6 started handling his games.

7 And I couldn't -- I couldn't get -- I kept handling
8 more and more, and he kept getting bigger truck and bigger
9 trucks to bring them.

10 So the next thing you know I'd been in business in my
11 back yard ten months and sold \$1,800,000 worth of
12 equipment. And -- and it became apparent I was going to
13 have to get out of my back yard and get some more
14 employees.

15 Q All right. And so what -- how is it that you met the
16 defendant originally?

17 A Of course I moved to a bigger building and -- and --
18 and Quentin and his wife Amy -- I knew Quentin's father,
19 liked -- liked his father very much.

20 Quentin come to see me. They were a nice young
21 couple. And -- and he wanted to buy games from me and
22 needed some credit extended to him. And I was happy to do
23 that for him. And -- and that's how we -- we met.

24 And then we got to talking about business, and he
25 had -- he had two locations with 15 machines each, I

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 believe, one at the beach and one in Spartanburg. I may
2 have that a little wrong, but that's about right. And
3 his -- his 30 machines made more money than my whole route
4 did.

5 Q Right.

6 A And so he -- next thing, he wanted to be partners,
7 wanted me to be partners with him. And I said, well,
8 Quentin, why do you want me to be partners with you. I
9 said, you know, you make more money than I do. And he
10 said, well, you know the business a whole lot better than I
11 do and we might not have this kind of business always and I
12 want to know about the route business, I want to learn
13 about that. So we -- we entered into a partnership.

14 Q Let me stop you there.

15 The -- the route business -- I think that's what Mr.
16 Fletcher explained -- is when you go around and service
17 locations that may have a couple of machines.

18 A Two to five, yes, sir.

19 Q And that's one way that the machine operators would
20 have their revenue. And when you were describing Mr.
21 Broom's location, he would have a location that would have
22 like 15 or 30 machines in each location?

23 A That's correct.

24 Q Okay. And, now, the -- so where is it? How -- how
25 did it go from there when --

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 A well, we -- we operated together for about the next
2 three years or so.

3 He -- we continuously got -- we kept getting bigger
4 and bigger, and we kept growing. We kept growing these
5 kind of places like Quentin had.

6 We -- we actually got one in Dillon that we put three
7 rooms together or three big -- three great big rooms, 35
8 machines in each -- each section. So we had like 105 games
9 in that one. We had two more on the property.

10 This was 40 acres of land that we leased and started
11 building buildings on, and actually it was swamp land. We
12 had to -- we had to put a lot of kakina [sic] rock and
13 stuff in there and get solid ground to get these things on
14 them.

15 And -- and we built two more, I believe, with 35 games
16 apiece in it. And about that time -- we run them a little
17 while but not too long. And about that time, you know,
18 after that, we went out of business.

19 Now, all of this stuff while we were growing and
20 enlarging Tri-Star, I was sending machines to Tri-Star on
21 credit, you know, and -- and we were operating. And we
22 wasn't -- I wasn't worried about getting paid real quick,
23 and he wasn't paying me real quick, because we were
24 spending all of our money expanding.

25 And then we -- unexpectedly, you know, the state

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 outlawed them. I had always felt like we might be -- might
2 go down in -- in the State of South Carolina on operating
3 these games, but I'd never felt like it would be so sudden.
4 I felt like we'd have like a 3-year phaseout or something.
5 So it kind of shocked us all when it happened so quick.

6 Q And before -- before it was banned in the State of
7 South Carolina when you two were working together did
8 Mr. Broom ever tell you that he wanted to be a salary
9 employee?

10 A No.

11 Q Is that anything that you would ever have agreed to?

12 A No.

13 Q Did -- did you guys have any shareholder meetings, you
14 know, where they issue a notice and --

15 A No. It was -- I always thought we were just partners.

16 Q Would you make decisions together pretty much like
17 when you decided to up-fit a location, things like that?
18 Would that be a joint decision?

19 A Yes, it would.

20 Q Now, at the point that machines were banned in the
21 State of South Carolina, what did -- what did you do at
22 that point?

23 A I had either prior to -- you know, we had about six
24 months or so. We knew it was coming. But either prior to
25 that happening or right after it happened I began to search

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 the Caribbean and other places that maybe we could go to do
2 business even -- even the United States, some other states
3 we might go into.

4 And I had -- me and Charlie Hodge and another fellow
5 owned a jet airplane together, and I would fly to the
6 Dominican and check on -- you know, look around down there.

7 I flew to Belize. I flew to -- several times. And I
8 flew to St. Martin, I believe, Venezuela, Alamargaree
9 [sic], these sort of places, and looked at businesses down
10 there, casinos and stuff and what was the chances of us
11 getting down there and operating.

12 It's one thing to see somebody else operating a
13 business in a -- in a country, but you gotta learn, well,
14 can I -- can I get in there and I'm a -- unknown from
15 another country, are they going to let me operate there,
16 you know.

17 And -- and we met some people in the Dominican that,
18 actually, I'd met -- step back a little bit. I'd met a
19 fellow outta Pittsburgh that I knew. I can't call his name
20 now, but he introduced me.

21 He wanted -- there was a venture he wanted to be a
22 part of in Dominican. And he took me down there to meet a
23 gentleman, and that gentleman took us to a company. I
24 couldn't remember the name of it. But Quentin named it --
25 Sustavi. And they had a deal, they said, with the national

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 lottery that we could come down there and operate games
2 under their -- under their operation. And they wanted part
3 of the money and stuff.

4 And we drew up a contract. We changed it a time or
5 two. And then -- I don't know the final ending contract
6 was actually what it looked like but we -- we -- we had to
7 give them -- we were supposed to give them about 30 games
8 or so to go in their casino free. And, in turn, we'd do
9 this deal, and which we did.

10 And we -- and we got the -- we -- me and -- well, I
11 got to step back a little bit. I took Quentin down there
12 with me too because when we had -- and once we found a
13 place, I took him and asked to see did he want to be a part
14 of this, because me and Quentin together -- Tri-Star owed
15 me -- and I'm not much on figures -- but somewhere along
16 there it was, I thought, about a quarter of a million
17 dollars, about, I mean two -- two and a half million
18 dollars.

19 And there was no way for Tri-Star to pay me back --
20 Drew's Distributing. Now, I could afford to lose a million
21 and a quarter but Quentin couldn't afford to lose a million
22 and a quarter. He -- he -- basically, all of his
23 investment was in -- in the -- in Tri-Star. And it -- the
24 games become worthless; the business became worthless.

25 You know, we -- we're just sitting there. I was

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 sitting there with several businesses that I had done
2 business in '98. I was doing business with 18 corporations
3 and owned as much as 50 percent of them.

4 So, but everything was tied to video poker. So, you
5 know, your net worth became zilch all of a sudden.

6 Q Well, and at the point that you -- and I think you
7 touched on this. At one point extending the offer to
8 Quentin to allow him to participate in this was based on
9 what?

10 A Basically, I had a loan that couldn't be paid back.
11 He was a good friend of mine and maybe one day we could
12 make that loan good and he could -- he could get whole
13 again.

14 Q Okay. And I'm not going to go into all of the
15 particulars but that -- this process involved engaging in
16 Ten State Street and with the offshore entities?

17 A We had already -- I had already met Mr. Scrantom and
18 talked about an offshore business at probably two or three
19 years prior to this happening. And we've -- and I had
20 formed Akilah and Calum with him, but I had never -- and he
21 charged me \$40,000 the best I can remember to do that. But
22 we never done nothing with it. It was just -- just two
23 companies owned offshore. No money had been funded.
24 Nothing had been put in it.

25 Q So let me --

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 A At the time --

2 Q If I may, at -- at that point -- I think Mr. Broom
3 testified that Tri-Star was a shelf corporation that he
4 acquired that had been setting dormant. Is that -- you had
5 already set up Akilah and Calum and it had just been
6 sitting dormant?

7 A Yes, it had, yes.

8 Now, what happened was as -- as South Carolina was
9 going down we thought that we was going to go move across
10 the state line above Myrtle Beach into North Carolina. We
11 bought a building up there and remodeled it and everything,
12 and we were going to put games in there.

13 We met Mr. Scrantom for the -- I mean, we went and met
14 him, and we were talking about doing business there, buying
15 in North Carolina and paying off in trinkets and stuff
16 and -- and -- and then -- then maybe converting the
17 trinkets somewhere down the road with another entity for --
18 to get cash and they could come back and play our machines
19 again.

20 And we went to London to talk about maybe an offshore
21 company owning this situation.

22 Q And/but that never worked out.

23 A No. We never got the doors open.

24 Q And so eventually you ended up deciding to do business
25 in the Dominican?

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 A Yes.

2 Q And --

3 A And we decided to use Akilah and Calum since we were
4 going offshore to do business.

5 Q And originally how much did each of you contribute --

6 A Well, we --

7 Q -- for a membership?

8 A We had put -- oh, yeah. I started to say we'd put
9 40,000 in it, and maybe more in attorneys' fees. I don't
10 know. But when we decided to put money into the company we
11 decided to put \$300,000 apiece in.

12 Q Okay. And at -- at some point down the road was there
13 a need for more money?

14 A Yes, after. And I'm not sure exactly when, but, you
15 know, we -- we spent -- my guess is we had spent somewhere
16 around \$800,000 just remodeling those three casino places,
17 buildings, that we were going to operate down in the
18 Dominican. And -- and opened one and had it opened three
19 or four days and they locked, padlocked, the machines and
20 said, you know -- you know, you can't do this.

21 Now, whether the 600 -- whether the timing of that --
22 I don't remember whether it come before that or come after
23 that. May -- we might have put some more money in, just
24 not -- not to Akilah, Calum, but we might have put some
25 more money toward the Dominican some way or another besides

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 that. I'm not sure. But somewhere right in there became a
2 need for that.

3 Q So at some point there was an agreement that 600,000
4 more needed to be put back in.

5 A That's correct. Quentin called -- called me and
6 talked to me and said we need about \$600,000 more and he --
7 we were both in the United States at that time. But he
8 said he needed about \$600,000 more to put into the -- in
9 the Calum or Akilah. And I said fine, I got my 300,000,
10 you know, when do you want it. He said, well, I don't have
11 mine.

12 And I said, well -- he said I need you to put it in
13 there. I said, well, Quentin, if I put in \$600,000, I
14 said, it's going to dilute your stock. And he said, no, I
15 don't want to do that. I said, well, you come up with
16 your -- you know, we'll wait a few days. You call me back
17 in a few days and see if you can get your 300,000. He
18 called me back and said he couldn't. He said just go ahead
19 and do what you have to do.

20 Well, we -- I think we contacted Mr. Scrantom, and I
21 think we had a big long meeting about it and he agreed, you
22 know. Mr. Scrantom did what we wanted him to do.

23 Q And the -- so when all is said and done of the -- a
24 million two that was invested out of pocket between the two
25 of you, you had put in 900,000 and he had put in 300,000.

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 A That's correct.

2 Q Now, I'd like to talk a little bit about the games
3 that were shipped down there.

4 The -- what -- what was the condition of the games
5 themselves when they were going down there?

6 A Very good condition.

7 Q And when -- when you say that, what -- what do you
8 mean by that?

9 A I mean they were some of them brand new.

10 Q And --

11 A Never been used.

12 Q -- there was a mention, I think, that Quentin said
13 that the first 300 games that went down there were Tri-Star
14 games. Were -- were those games that he had ever paid you
15 back for or you had --

16 A No. I been paid for very little on them, but they --
17 but they were Tri-Star's games.

18 Q And so they were titled in Tri-Star. They just
19 haven't been --

20 A They still owed me for them.

21 Q Right. And of the -- when there was a decision to
22 move all of the Pot-O-Golds down to the Dominican, how much
23 of there was Tri-Star games originally?

24 A Just the 314. Now, we -- we -- we put another
25 eight -- 808 games down there. I had -- I told you before

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 I had 18 partnerships going.

2 I had -- I had people in South Carolina that needed
3 games that didn't have the money to partner up with me. I
4 would do so with them and, you know, around in the State of
5 South Carolina. And that's how I acquired all of these
6 partners.

7 Well, when we went out of business they, the games,
8 became, you know, worthless. You know, there's so many of
9 them, a thousand bucks, you could find people.

10 And I told my -- my partners in all of these that I
11 would pay the thousand dollars for them if they wanted to
12 get rid of them. And of course that didn't go over real
13 well.

14 You know, you have to think about it a day or two and
15 realize that this is what set in, this is where we are.
16 And most of them sold their games to me. Also, other
17 people out there.

18 That's back to Drew's Distributing and other people
19 who had them. They either had to warehouse them out of the
20 state or they had to sell them. And eventually some of
21 them sold them to me, when I was able to take those games
22 and bring them in and shop them out and get them ready and
23 send them to the Dominican.

24 Q So those were all relative -- at the time that the
25 Dominican venture started the 800 games that you've just

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 described weren't part of the inventory.

2 A Of -- of the --

3 Q Tri-Star.

4 A Tri-Star. No, no, they were not. And -- and -- and
5 we didn't -- we might have got down there with the first
6 314 early on to start with but we -- the other 800 didn't
7 come all at once, you know. We --

8 Q And -- and there was some discussion about at one
9 point the invoices were at \$7,000 and then it dropped down
10 lower than that. What -- what was that discussion about?

11 A The deal was, even though I was buying them for
12 thousand, we would -- we would market them up and sell them
13 to Calum, I think, at \$7,000, and that way once we had sent
14 all of these games down there that we could take that much
15 money back to the United States without paying taxes on it.

16 Q And -- and did that turn out to be --

17 A We'd take that out of the country and they wouldn't --
18 they would not charge us taxes on it. We'd have to pay
19 taxes in the U.S. but --

20 Q Right. And did that turn out to be the case?

21 A No. Something happened on that first shipment or
22 something and -- and we wasn't able to do it. And then
23 Quentin says we need the games to come down here as cheap
24 as we can get them in. And we sent some down there for
25 \$500, even though I'd paid a thousand dollars for them.

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 Q Right.

2 A But we sent -- sent them on down there. And that way
3 I think -- I thought we was paying duty as they went down
4 there. And I thought all of these games was going to
5 Calum -- and Calum, but evidently they were going to
6 Tri-Star.

7 Q Okay. And, now, when it -- when it comes to Tri-Star
8 as far as the books and the checks, did -- did you
9 participate in that at all?

10 A No.

11 Q When -- when was the next time -- tell me -- sort of
12 walk me through once the games got in place when -- just
13 the history of what happened there.

14 A Well, we spent a lot -- we spent a lot of time down
15 there. I mean, me and Quentin owned a con -- I mean, not
16 owned. But we rented a condo together down there.

17 We later, a year or so, moved to another condo and
18 lived there a while. And we would make trips back and
19 forth.

20 At some point after the games got -- these first --
21 once it got confiscated we -- Mr. Elelis' name come up. It
22 wasn't Edmond. It was his father's name come up. But
23 we -- but Quentin made a call and got a -- a meeting with
24 Mr. Elelis -- Edmond Elelis, which was the man's son -- the
25 following day.

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 I had an appointment back in Spartanburg. And I don't
2 remember exactly why, but I had to get home. And I'd
3 already planned on going home. And I told Quentin to meet
4 with him and see what he said.

5 Now, I thought we was outta business and probably
6 wasn't going to get back in business and just -- just meet
7 the gentleman and see what he said.

8 Well, evidently, Quentin -- and he did it. I mean, he
9 met with him and worked out a deal and -- and actually
10 apparently he looked at our Sustavi deal and said, you
11 know, we can do this if you give me this amount of money
12 you was fixing to give the other guy. And they worked it
13 out.

14 And next thing you know we're sending games. Edmond's
15 wanting games. I mean, he was wanting -- if we sent him 50
16 this week, he wanted a hundred next week. I mean, he
17 just --

18 Q And let me make sure my timeframes are good. The
19 first time it was shut down was 2001? When was it?

20 A I'm sorry. I don't know.

21 Q Yeah. But was it once -- once that cleared then --

22 A Yeah.

23 Q -- it -- how long was the period that --

24 A It wasn't long, just a -- just a few weeks, or even if
25 that long.

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 Q I see. And so when -- when it reopened and the games
2 started being shipped on a regular basis, what timeframe is
3 that roughly?

4 A I don't know. I mean, once Mr. Elelis -- once -- once
5 we got the go ahead to set the games -- the way we had done
6 business in the Dominican they said we couldn't do, it was
7 too much like a casino and they had 43 casino licenses in
8 the -- in the country.

9 Q And that's referring to when you spent the money to
10 build out a casino like --

11 A Yeah, and Sustavi. But once -- once -- and, you know,
12 once we met Mr. Elelis it wasn't long before he got the
13 okay from the president and everybody, big wheels in the
14 country, that we could go in the 800 sport books if we
15 wanted to.

16 Now, we didn't want all 800 sport books. They wasn't
17 all -- I mean, some of them were pretty rough.

18 Q Right.

19 A And looking and -- and there were places that didn't
20 look like they'd make money. But we picked the ones we
21 thought would make money. And Edmond helped us with that
22 too, and we started putting out games.

23 He would even -- he said he would send employees to
24 help -- and trucks and stuff to help get them there. And
25 we'd send some of our employees to help get them there and

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1 get them set up and everything.

2 Q Now, but when was the first time that you learned that
3 there were any problems in 2005?

4 A Through a -- through a letter from -- from Quentin's
5 attorney.

6 Q Okay. In August of 2005?

7 A Yes, sir.

8 Q And, now, by August of 2005 did you have -- had you
9 known anything about what was going on as far as the books
10 of Tri-Star?

11 A No.

12 Q Did you know anything about Mr. Broom paying himself
13 \$400,000 in 2004?

14 A No.

15 Q Did you know anything about him paying himself
16 \$620,000 in salary in 2005?

17 A No, sir.

18 Q Is that anything that you would ever agree to?

19 A No.

20 Q And was it a surprise to you that --

21 A It was because we hadn't made any money in three
22 years. Where did this money come from? I mean, all of a
23 sudden we're making tremendous money, and we wasn't. I
24 don't -- didn't understand that, but certainly didn't
25 understand anybody taking -- if we were making it, that was

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1 great. But why take it, you know?

2 Q And, as a matter of fact, did you -- I know there was
3 an entity on the ground that's been referred to as
4 worldwide.

5 A Yes.

6 Q That entity. And -- and worldwide would pay Tri-Star,
7 or was supposed to?

8 A Yes, just -- just to pay -- I mean, mainly was to pay
9 back for parts and stuff, and stuff we sent down there, and
10 employees. Quentin had sent some of his employees that he
11 was paying through Tri-Star.

12 Q And was there ever -- did you ever have any --
13 Mr. Santos. who is that?

14 A Mr. Santos owned or was principal owner of Deloitte
15 and Touche, a [sic] accounting company down there that we
16 hired.

17 We had -- we had to have -- in the Dominican, us being
18 foreigners, we could not have a checking account there in
19 our own -- and sign our own checks. Deloitte and Touche,
20 was our accountant. He handled our checkbook, and he wrote
21 the checks. And I think that was to assure that your tax
22 money was there at tax time.

23 Q Well, and tell me about that. What's the tax issue?

24 A Well, I don't know that the whole taxes, the
25 Dominican. I think it's about 25 percent on your profits.

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1 If you decide -- and I -- I think this is right. If
2 you decide to take out any money out of the country prior
3 to taxes being paid on it, you have to leave that 25
4 percent for them, plus another 25 percent. So -- so
5 50 cents on the dollar had to stay there to make sure the
6 taxes were paid.

7 Now, we got into a situation somewhere into the thing
8 where Quentin had -- we had -- we'd just gotten all of the
9 money -- not for these salaries, now. It was prior to
10 that. But we -- we'd -- he'd taken out the money, and back
11 to Tri-Star, and the taxes hadn't been paid for a couple of
12 years. And Mr. Santos was real worried about this. And we
13 met with him, and he told us. He told me about it.

14 MR. RICHARDSON: Objection, Your Honor. Hearsay.

15 THE COURT: Sustain the objection.

16 Q As a result of your conversation with Mr. Santos, what
17 did you tell him?

18 A Well, I told him not to ever let this happen again.

19 Q Okay.

20 A Not to let us get in trouble and take out too much
21 money. And then it has happened again, and he did let it
22 happen again.

23 Q And I'll get to that. When -- when there were, I
24 guess, shareholder payments -- let me phrase it this way.
25 We've got in evidence the general ledgers of Tri-Star,

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Direct examination by Mr. Pillsbury

1 which I understand you weren't privy to or didn't see.

2 MR. RICHARDSON: Objection, Your Honor. Leading.

3 THE COURT: Sustained.

4 Q Okay. On the general ledgers whenever there is money
5 that is transferred from worldwide to Tri-Star, was there
6 ever a need that you had for that money? In other words,
7 did you need to take money out of Tri-Star and -- and
8 because of that get -- require worldwide to pay Tri-Star
9 money?

10 MR. RICHARDSON: Objection, Your Honor.

11 A Only to get paid for --

12 MR. RICHARDSON: Objection.

13 THE COURT: I'm going to let him answer.

14 Answer it.

15 A Only to get paid for the games.

16 Q Right.

17 A Was the only reason, yeah.

18 Q Horrible question.

19 A Okay.

20 Q If -- was there ever a time that you needed money that
21 you had to have worldwide pay Tri-Star?

22 A No.

23 Q And -- and so at any point along the way in the
24 journal entries if there's a wire transfer from worldwide
25 to Tri-Star, was that ever anything that you either

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Direct examination by Mr. Pillsbury

1 requested or required?

2 A No.

3 Q And to the extent that there are shareholder payments
4 or loan repayments that are done immediately after
5 worldwide makes a wire transfer to Tri-Star, was that
6 anything that you requested?

7 A No.

8 Q Now, after you learned that there was a problem in the
9 Dominican did you want to go down there and investigate
10 yourself?

11 A Yes.

12 Q And this is one of Exhibit 7. This is a letter from
13 Mr. Knie to Mr. Hodge. And you had actually wanted to go
14 down there and investigate. And in that letter were you
15 admonished not to by -- by Quentin's attorney?

16 A Yes.

17 Q Now, when you went down there to investigate yourself,
18 how long had the games been locked up?

19 A I'm not sure. Not -- not long. A couple of weeks or
20 something. But I -- what had -- along about this time I
21 think we'd been -- we'd been sued my Quentin. Along about
22 this time I found out he'd taken out all of this money out
23 of the company, and along about this time he said the games
24 aren't operational any more. And I wanted to go see is
25 this true or not, you know.

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1 MR. PILLSBURY: This is -- it's just part of the
2 record, Your Honor. This is the original complaint.

3 MR. RICHARDSON: Your Honor, same objection as
4 yesterday. Obviously, it's been dismissed and is not part
5 of the pleadings.

6 THE COURT: All right. I don't know what he's going
7 to use it for.

8 (Pause.)

9 Q And this is the original complaint and the only --
10 that was done in September of 2005.

11 A I'm sorry? What?

12 Q The original complaint --

13 A Oh.

14 Q -- in this case when Mr. Broom was the plaintiff --

15 A Yeah.

16 Q -- was done in September of 2005.

17 A 2005, okay.

18 Q Is that consistent with your recollection?

19 A Yes, sir. I think so.

20 Q And this is before the games themselves were sold,
21 correct?

22 MR. RICHARDSON: Objection, Your Honor. Leading.

23 THE COURT: Do you want to rephrase it?

24 MR. PILLSBURY: Yeah.

25 Q By September of 2005 do you have any information that

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 the games had been sold at that time?

2 A No.

3 Q Now, when you went down to the Dominican did you have
4 any trouble down there? Were you able to get in and out of
5 the country just fine?

6 A No trouble whatsoever.

7 Q And when you went down there were you able to meet
8 with the different people from worldwide and all of your
9 regular contacts that you had already seen?

10 A Yes, a -- a lady lawyer that had structured some of
11 the stuff down there for us. I was able -- we were able to
12 meet with her. We met with Mr. Santos, was able to meet
13 with him.

14 I learned that day meeting with Santos that the taxes
15 were still owed for two years, back two years. Not one
16 year but two years.

17 Q 2003, 2004?

18 A I'm not -- I just remember he said two years.

19 Q Okay.

20 A And that -- at that point I got a little worried.

21 Q And --

22 A If Quentin had taken all of the money out, again,
23 there wasn't no money there and we -- we owed two years
24 taxes. I looked at Mr. Curt Stodghill and I said we might
25 ought to get out of here.

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1 Q Well, and was that because of the tax liability?

2 A Because of the tax liability. I was scared they would
3 lock me up and hold me for the tax money.

4 Q Right. And did that have anything to do with any
5 other issue?

6 A No.

7 Q And the tax liability that you're discussing was
8 because of those wire transfers from worldwide to Tri-Star?

9 A Correct.

10 MR. RICHARDSON: Objection, Your Honor. He would --
11 he would only know that through hearsay.

12 THE COURT: I'll let you cross-examine on that.

13 MR. RICHARDSON: Thank you.

14 Q And so at any point along the way were -- were you
15 ever given an -- oh, did you see the games while you were
16 down there?

17 A Yes.

18 Q And did at that time -- did there appear to be any
19 sense of urgency that there was an imminent loss?

20 A No.

21 Q Was there anything about that visit that made you
22 think that there was an imminent problem?

23 A No.

24 Q If there had been would you have done something about
25 it?

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Direct examination by Mr. Pillsbury

1 A I would have tried.

2 Q And the -- at any point along the way were you ever
3 given an opportunity to evaluate the business, the alleged
4 sale of the games to this third party?

5 A No. We were by letter from Mr. Knie to Curt
6 Stodghill -- we were -- we were notified they were thinking
7 about selling them. We responded and told them do not sell
8 them. The next thing I hear they have been sold.

9 Q And if -- if that offer had been made to you at that
10 point for you to buy them back would you have done that?

11 A Yes, I would have.

12 Q And -- and why would you have done that?

13 A They was selling them so cheap.

14 Q The -- there was some discussion in Mr. Broom's
15 testimony about roulette machines. Do you have any
16 familiarity with the roulette machines?

17 A We -- we were taken -- and I believe by Mr. Elelis --
18 at some point. We were taken and shown a real old roulette
19 game. I'm talking real old. And it looked like a piece of
20 junk. And it was electromechanical. It was something
21 probably made in the 1980s, 1970s.

22 And whoever took us there told us there was two of
23 them in the country, and they took us and showed us one.
24 Showed it to us. You know, we was able to open the back of
25 it, looked at it and see how it operated and everything.

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Direct examination by Mr. Pillsbury

1 And the -- and the thought was could you make this in
2 a video game and -- and bring it down here and operate it.
3 And I had had about -- I bought a hundred games for
4 \$2 million. That was what that I.G.T. lawsuit was about.

5 They had never given me the software for the machines
6 because there wasn't, so that I couldn't turn them on and
7 use them. And through arbitration I lost, and they said I
8 had to pay the other 700,000. That's what the whole case
9 was about.

10 But we had that -- we had those machines. They --
11 when it was all over they didn't want them back. And I
12 thought -- I said I wonder if we could find the programmer.
13 I knew one of the programmers that had programmed for these
14 -- for Silicon Gaming, which is where this game come from.

15 And I contacted him to see if he would write a program
16 on there that had a roulette wheel on it that only had 13
17 numbers, I think, on this little roulette wheel. And if he
18 would -- if he could do that. And he didn't want to do it
19 because he had -- he worked for Silicon Gaming and he was
20 scared, you know, this would -- would get him in trouble,
21 the man that had the contract wouldn't let him.

22 So we played around with that idea a while and then
23 just finally give up on it. So there was -- there was, as
24 I -- as I said before, I never knew of but of two games of
25 those games. I never seen but one of them. You couldn't

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Direct examination by Mr. Pillsbury

1 have found no more. I mean, this was an old thing.
2 They -- so for them to say that they're operating this
3 thing, this is not -- no way.

4 MR. RICHARDSON: Your Honor, he's got a summary
5 document that I object to because it includes calculations
6 of interest, prejudgment interest, and that I believe is a
7 legal issue we've already argued.

8 And either there's prejudgment interest or there's
9 not. And it's either simple or compound if there is
10 interest.

11 And we will agree to those calculations based on the
12 Court's legal -- and there's no reason for him to go
13 through any of that with this witness.

14 THE COURT: So you're saying that in the event the
15 plaintiff meets its burden and establishes that he's
16 entitled to something, that then it's just a question of
17 whether it's going to be prejudgment interest, will be
18 simple or compounded?

19 MR. RICHARDSON: And what the actual calculation is
20 for the number of days. I mean, that's just a mathematical
21 calculation. No reason to go through that.

22 THE COURT: If you knew my math skills --

23 MR. PILLSBURY: Well, Your Honor, what I can tell you
24 is under the Court's direction of what is considered, we
25 can agree to what the mathematical number is. Does that

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 help?

2 THE COURT: Okay. Yes.

3 MR. PILLSBURY: Okay.

4 MR. RICHARDSON: And -- and of course the threshold
5 question of whether or not there is prejudgment interest.

6 THE COURT: Okay.

7 MR. RICHARDSON: Thank you, Your Honor.

8 Q And let's see. Let me figure out how to do this. I
9 just need to get the principal amounts. In 2004 Mr. -- via
10 Tri-Star, Mr. Broom was paid a salary of 400,000. Is that
11 consistent with your review of the records?

12 A Yes.

13 Q And in 2005 he was paid a salary or paid himself a
14 salary of \$620,000. Is that consistent with your review of
15 the records?

16 A I was thinking it was 520 but...

17 Q There was 520, I think, in the first few months.

18 A I've got 20,000 several times, yes, sir.

19 Q Right.

20 A Yeah. Okay. 620, yes, sir.

21 Q Okay. And -- and so on these salary payments during
22 that timeframe or any timeframe did you ever consent to
23 that?

24 A No.

25 Q Were you ever informed that that was going on?

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 A No.

2 Q Is that contrary -- have you ever had a salary
3 arrangement with any partner that you've done business
4 with?

5 A No. Mr. Broom stole all of the money and then he
6 stole the machines.

7 Q Have you ever had a salary arrangement with any
8 partner in -- in a similar business model?

9 A No.

10 MR. PILLSBURY: Your Honor, to the extent that
11 there -- I'm trying to clean up some evidentiary issues.
12 To the extent that there is any ruling on revenues earned
13 by the defendant from the Dominican operations, the parties
14 have -- is that?

15 MR. RICHARDSON: Well, let me clarify.

16 MR. PILLSBURY: Yeah.

17 MR. RICHARDSON: And because we have no secrets,
18 depending on the drawing.

19 These are the numbers. We'll consent and when we --
20 they are -- you've admitted them over our objection.
21 They're tax returns from '05 to 2014. However, these
22 numbers are not the numbers on the tax returns from the
23 Dominican income or royalties. These are the total income
24 on all of the tax returns.

25 THE COURT: Of the defendant?

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 MR. RICHARDSON: Of the defendant. So everything that
2 he and his wife claimed as income each of these years.

3 MR. PILLSBURY: It's --

4 MR. RICHARDSON: Do you think it's just a --

5 MR. PILLSBURY: Well, there's a -- there's a slight
6 dispute in -- in what the defendant testified to as far as
7 the timeframe of business going down versus what is
8 reflected in the records.

9 But all I was trying to do is to the extent that
10 there's post revenue information, it comes right off of the
11 tax returns. And rather than have the witness say, you
12 know, these are the numbers from the tax returns,
13 ultimately, the Court is going to decide the revenue amount
14 and whether all of it or --

15 MR. RICHARDSON: I think I understand, Your Honor.

16 We don't have any objection to the numbers because
17 they're in evidence.

18 We do have an objection to this witness testifying
19 about Mr. Broom's tax returns and the numbers on those.

20 THE COURT: But those numbers are from the tax
21 returns.

22 MR. PILLSBURY: Yes, Your Honor.

23 THE COURT: Are those numbers that -- from the tax
24 return the numbers that relate to what y'all claim he
25 earned from the Dominican, or is that both his and her --

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 MR. PILLSBURY: That these are -- these are all the
2 monies that are identified as foreign income or that come
3 from the revenue royalty on the income tax returns.

4 For a period, for a long period, of time within the
5 returns it is identified as with Frank Dillashaw. And then
6 at some point it doesn't -- as Your Honor may have seen --
7 it doesn't have a name, but that's what it was to --
8 there's, frankly, a dispute between how long that business
9 went on and how -- how well it did, because he said it
10 dropped off, and then they moved it to Jamaica.

11 The numbers sort of support that that would have
12 happened in 2013, not 2011. That's -- but aside from that,
13 you know, these are the numbers from the returns and...

14 THE COURT: I -- I think I understand his theory. I'm
15 going to let him present them and then you can
16 cross-examine. I mean, I think I understand his theory.

17 MR. PILLSBURY: Okay.

18 MR. RICHARDSON: And this -- our objection is this
19 witness just doesn't have anything to add to that.

20 THE COURT: Right. The numbers are what the numbers
21 are.

22 MR. PILLSBURY: Right. And -- and so I can just mark
23 it and put it in. Or I didn't want to have to have him go
24 through and just pull out numbers that are already in
25 evidence, so.

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 MR. RICHARDSON: We object because the document
2 includes one year where he doesn't have the tax returns
3 included. But to that extent we know Your Honor would be
4 able to adjust for that.

5 We don't -- I think we've agreed to ask that it be
6 redacted. And otherwise we don't -- we don't object to the
7 demonstrative nature of it and don't dispute the numbers.

8 Q Initial that, that last year.

9 A Initial the strikeout?

10 Q Yeah. Okay. Let me mark this.

11 MR. RICHARDSON: I apologize, Your Honor. I wasn't
12 quite clear about why this witness was initialing it.

13 MR. PILLSBURY: To -- just to make sure that it was
14 clear that he's not making a claim on that 2015. It helps
15 you.

16 (Bank statement from Arthur State Bank marked
17 Plaintiff's Exhibit 39.)

18 MR. RICHARDSON: Your Honor, can we submit this by
19 agreement later?

20 MR. PILLSBURY: Yeah. We'll -- we'll just substitute
21 an accurate exhibit for this one. I won't be able to do it
22 before we close evidence but...

23 THE COURT: The way we're going you might be able to.
24 She's already marked it with her official exhibit. So be
25 sure that when y-all do replace it, give it to her so she

H. Hugh Andrews
Direct examination by Mr. Pillsbury

1 can make the adjustments.

2 MR. PILLSBURY: Right, right. Okay. And for the
3 record, this is Plaintiff's Exhibit 39.

4 THE COURT: All right.

5 Q Mr. Andrews, the -- when Mr. Fletcher started the
6 trial he had given his opinion that the value of the games
7 at the time was \$1,575. Do you agree with that assessment?

8 A No. I actually think they're worth more -- were worth
9 more like \$2,000, but, you know, well, of course he had a
10 range there but...

11 Q Right. And -- and so if -- if you were going to try
12 to place the games at that particular time, what -- what
13 would that -- what would that figure have been that you
14 could have gotten them for?

15 A I -- well, I don't know for sure what we could have
16 got because I hadn't -- I wasn't -- I ain't sold any in a
17 long time. But I'm thinking the game -- if somebody needs
18 a game, if it ain't worth \$2,000, it ain't worth nothing.

19 Q Okay. And if the \$400,000 -- if you had been given an
20 opportunity to get them at \$400,000, would you have done
21 it?

22 A Yes, sir.

23 Q Was that something you were financially able to do at
24 the time?

25 A Yes, sir.

Hugh Andrews
Cross-examination by Mr. Richardson

1 MR. PILLSBURY: That's all I have, Your Honor.

2 THE COURT: Let's take a short break before you get
3 started.

4 MR. RICHARDSON: Sure.

5 THE COURT: Sir, I need to let you know you're in the
6 process of giving testimony. So don't have any discussions
7 with anyone about the substance of your testimony. But you
8 can step down.

9 We will come right back.

10 THE WITNESS: Thank you, Your Honor.

11 (Whereupon, a recess was taken.)

12 THE COURT: Sir, I just need to remind you that you
13 remain under oath.

14 THE WITNESS: Yes Your Honor.

15 THE COURT: Yes, sir.

16 MR. RICHARDSON: May it please the Court.

17 CROSS-EXAMINATION

18 BY MR. RICHARDSON

19 Q Mr. Andrews, let's get it straight about your
20 testimony today because you've had plenty opportunity to
21 discover the facts to present your claims, haven't you?

22 A Yes, sir.

23 Q And you first brought those claims in May of 2006? Do
24 you remember?

25 A Brought what claims?

Hugh Andrews
Cross-examination by Mr. Richardson

1 Q The claims that we're here today about.

2 A Oh, well, yeah, I guess. I mean, whenever it come
3 about, I believe Mr. Broom brought a case against me and
4 Mr. Scrantom.

5 Q That's how it started. But then you brought the
6 claims against Mr. Broom, didn't you?

7 A I assume so, yes, sir.

8 Q Are you asserting claims against Mr. Broom here today?

9 A Yes.

10 Q And you brought those claims as a shareholder of
11 Tri-Star against its sole director, Mr. Broom, right?

12 A Whatever Mr. -- I guess Stodghill did. I'm not a
13 lawyer and I'm not into that. So I -- but, yes, sir,
14 whatever it says.

15 Q Fair enough. And you -- you're not claiming to be
16 more than a 50 percent shareholder in Tri-Star either.

17 A No, sir.

18 Q And these are the same claims, exact same claims,
19 today that you made originally?

20 A I think so.

21 Q And although you don't allege Mr. Broom was an officer
22 of Tri-Star did -- there's no question that he was the sole
23 officer of Tri-Star with full authority, right?

24 A That's -- that's true. I did not originally know
25 that, no, sir, but that -- that is true.

Hugh Andrews
Cross-examination by Mr. Richardson

1 Q That is true.

2 A I know that today, yes, sir.

3 Q And you've had a lot of opportunities -- excuse me --
4 yeah. We talked about this. You've had a lot of
5 opportunities to tell the truth, haven't you?

6 A Yes, sir.

7 Q You've testified under oath about the issues in this
8 case several times already, right?

9 A Yes, sir.

10 Q On January the 7th of 2007 you gave a deposition in
11 the I.G.T., Trentner [sic] litigation.

12 A Yes, sir.

13 Q And that's Defendant's Exhibit 15. And that was six
14 months before Dominican Republic banned the machines,
15 wasn't it?

16 A Yes, sir. I guess so.

17 Q Okay. November 17th of 2005 you gave a second
18 deposition in the I.G.T. litigation, didn't you?

19 A I'm sure, yes, sir.

20 Q And that has now been offered and marked as
21 Defendant's Exhibit 54. We move it into evidence.

22 MR. PILLSBURY: No objection.

23 THE COURT: Thank you.

24 (Deposition marked Defendant's Exhibit No. 54.)

25 Q And then you gave --

Hugh Andrews
Cross-examination by Mr. Richardson

1 MR. PILLSBURY: I'm sorry. No objection, Your Honor.

2 Q And then, Mr. Andrews, you gave testimony in federal
3 court during a trial on March 28th and 29th, in the I.G.T.
4 trial across the street.

5 A Yes, sir.

6 Q Do you remember testifying in the trial with Judge
7 Henry Floyd and --

8 A Not a whole lot, but, yes, I'm sure I did.

9 Q Okay. And that's the Defendant's Exhibit 9. And then
10 you also gave a deposition in this case August 30th of
11 2007. Do you remember that?

12 A Yes, sir. I mean, and I don't remember it. But if
13 you say it happened, I'm sure, yes, sir. I mean, if you're
14 reading off the things, so I agree.

15 MR. RICHARDSON: Thank you, Your Honor.

16 A Yes, sir.

17 Q And that deposition has been marked as Defendant's
18 Exhibit 55, and we move it into evidence.

19 THE COURT: Without objection?

20 MR. PILLSBURY: No objection, Your Honor.

21 (Deposition marked Defendant's Exhibit No. 55.)

22 THE COURT: Now, I have copies here with stickums.
23 Did y'all give it to the court reporter?

24 MR. RICHARDSON: The court reporter has marked copies,
25 yes, Your Honor.

Hugh Andrews
Cross-examination by Mr. Richardson

1 Q And now today you're here testifying again under oath.

2 A Yes, sir.

3 Q And you don't have a better memory today, do you, 10
4 or 12 years later, about the events of Tri-Star than --
5 that can -- much more contemporaneous testimony that you
6 gave in 2005 and 2007?

7 A I -- I -- I don't think so, no, sir. But sometimes,
8 now, this even since this case has been going on, I've
9 remembered things and stuff that's come to mind that may
10 not have come to mind six or seven years ago. I don't
11 know. But I do the best I can in four years. Sir, it's
12 been a long time.

13 Q And during the period of time from 1999 to 2002 you
14 were very much impaired in your judgment and ability to be
15 involved in your businesses, weren't you?

16 A Do you want to know if I was -- had active addiction
17 in my life? Yes, sir. I did. I don't know about exactly
18 the time, but probably during, yeah, during those times,
19 yes, sir.

20 Q Do you remember testifying that you were very much
21 impaired during that period?

22 A Yes, sir. Probably so.

23 Q You were focusing most of your time at that point on
24 drugs.

25 A I had -- I was under active addiction, yes, sir.

Hugh Andrews
Cross-examination by Mr. Richardson

1 Q And it was affecting your memory in 1999 and 2000,
2 wasn't it, for events and conversations and business
3 dealings? wasn't it?

4 A It could have, yeah.

5 Q It did. Do you remember testifying that it did?

6 A Probably, yes, sir.

7 Q And during this time you were not involved in the
8 day-to-day operations of any of your businesses, were you?

9 A No. I was not.

10 Q And you didn't pay much attention to Tri-Star during
11 this time either, did you?

12 A Well, as far as going down to the Dominican during
13 some of them times, we went. Me and Quentin -- me and
14 Quentin did everything together. We -- we rode motorcycles
15 together; we went snow skiing together; we -- we went back
16 and forth to the Dominican together.

17 Q But during the time in 1999 to 2000 you didn't pay
18 that much attention to Tri-Star either, did you?

19 A No, sir.

20 Q And you had -- excuse me -- one of the times you
21 actually talked about going down to the Dominican Republic
22 about Tri-Star, you had some problems and didn't get along
23 with all the locals, did you?

24 A I have no idea what you're talking about.

25 Q You didn't get into some trouble down there in the

1 Dominican?

2 A No, sir.

3 Q Do you remember the time where you got frustrated with
4 the Dominican and you turned to Mr. Broom and you said,
5 "You can have this stuff. I'm out of here."

6 A No, sir.

7 Q You don't remember saying that to him?

8 A No, sir. I do not.

9 Q You know Mr. Tim Russell, don't you?

10 A I do.

11 Q And he started working for you and Tri-Star when he
12 worked for Mr. Brown, who is your accountant, right?

13 A Mr. Brown is my accountant. I'm not sure about -- I
14 mean, Mr. Russell was Tri-Star's accountant. I'm not --
15 not sure if he was ever mine. I don't know.

16 Q Okay. Do you remember that he was working for
17 Mr. Brown when you first met him?

18 A I do not recall that, but I don't dispute it either.

19 Q Okay. And he was the Tri-Star accountant, as you
20 said, from -- but from 1998 to 2005, the whole time during
21 that period.

22 A As far as I know, yes, sir.

23 Q And you don't have any concerns about Mr. Russell as
24 an accountant, do you?

25 A The only -- the only concern that I have about him is

Hugh Andrews
Cross-examination by Mr. Richardson

1 when he -- he told Quentin that if I wrote -- after I wrote
2 this thing off that he would -- that Tri-Star would have
3 to -- would have to say it was profit to them or something.
4 And I don't think that's true. I don't think it's true
5 then and I don't think it's true today.

6 Q And you're not an accountant.

7 A I'm not an accountant.

8 Q Or a tax lawyer.

9 A No, sir.

10 Q And you're just talking about the recognition of games
11 of Tri-Star based on your cancellation of the 1999 note to
12 Drew's that got assigned to you?

13 A No. I'm talking about when -- let's see. I was
14 talking about that the -- the note from -- from Drew's
15 Distributing that was transferred to me and that -- that --
16 that we wrote off. That's what I'm talking about. And I
17 don't think that -- I don't think that -- that Tri-Star had
18 any -- any -- any responsibility to pay taxes on that.

19 Q And -- and you're not claiming that debt any more, are
20 you?

21 A Yes, I am. I always thought it -- I thought it always
22 should be paid. I think if -- if Tri-Star had made money,
23 they should pay me and...

24 Q You'd like -- you'd like to collect it but you --

25 A Yes, I'd like to collect it.

Hugh Andrews
Cross-examination by Mr. Richardson

1 Q But you're aware that your lawyers have conceded that
2 you're no longer --

3 A I'm aware of that, yes, sir.

4 Q Thank you. And you know don't have any other concerns
5 about Mr. Russell as an accountant except whether or not
6 they should have recognized gain on the cancellation of
7 debt.

8 A I do not. Yes, sir. That's correct.

9 Q Tri-Star was not a business venture where you just
10 contributed the machines as capital and Broom wanted to put
11 in sweat equity, was it?

12 A No.

13 Q No, it wasn't. And both of y'all were equal
14 shareholders?

15 A Well, I thought we were.

16 Q Okay. And you -- and you both loaned the business
17 money to capitalize and grow it, the business, right?

18 A Yes.

19 Q And you sold your -- your business, Drew's
20 Distributing, sold machines to Tri-Star. You didn't just
21 give them to Tri-Star.

22 A No. That's correct.

23 Q And you knew that Mr. Broom had given up his other
24 businesses to put all of his time into building and growing
25 Tri-Star beginning in 1997, didn't you?

Hugh Andrews
Cross-examination by Mr. Richardson

1 A He had -- he had other businesses, Jackpot Game and
2 the other company that -- that he had those. But mainly,
3 yes, sir, he -- he spent most of his time to Tri-Star,
4 correct.

5 Q And Curt Stodghill was your attorney the whole time,
6 wasn't he?

7 A Curt Stodghill was my attorney for several years. He
8 worked in-house for me. He was my in-house attorney for
9 three years. I'm not sure which ones. And he -- does that
10 answer?

11 Q He's been your attorney the whole time, hasn't he?

12 A Yes, sir.

13 Q He was in here yesterday even, wasn't he?

14 A Yes, sir.

15 Q And from 2000 to at least 2005 Tim Scrantom and Ten
16 State Street were your attorneys too, weren't they?

17 A Tim -- Tim Scrantom was my attorney in the beginning,
18 and then when me -- when I took Quentin down there and we
19 started doing things, he was mine and Quentin's attorney
20 from then on.

21 Q Okay. So from 2000 to at least 2005 Tim Scrantom and
22 Ten State Street were your attorneys, weren't they?

23 A They were my attorneys and they were also Quentin's
24 attorneys. They were Tri-Star's attorneys.

25 Q And you engaged them to provide you legal

Hugh Andrews
Cross-examination by Mr. Richardson

1 representation about collecting the notes from Drew's and
2 also to set up the Dominican operations, right?

3 A No, not -- I don't recall anything about Drew's,
4 asking Mr. Scrantom to do anything for me for Drew's.

5 Q You don't remember him drafting a demand letter and
6 filing a U.C.C. financing statement to protect your
7 interest against Drew's in the I.G.T. litigation?

8 A I do not remember that but...

9 Q And your attorneys that we just talked about
10 communicated with your other agents like Claudia Humphries
11 and Mike Fletcher, didn't they?

12 A They did.

13 Q And they worked together on your both personal and
14 business matters, didn't they?

15 A I guess mostly business matters. I don't know what
16 personal matters I had. But -- but I'm sure that if I'd
17 asked they would have helped.

18 Q And you did ask them to do that for you, right?

19 A I don't recall.

20 Q You asked them to work on your behalf and to protect
21 your interest.

22 A And which lawyer are we talking about now?

23 Q Well, Mr. Stodghill and Mr. Scrantom.

24 A I wouldn't say -- no, not Mr. Scrantom. But Mr.
25 Stodghill, I would say, yes, probably so.

Hugh Andrews
Cross-examination by Mr. Richardson

1 Q You realize why you hired Mr. Scrantom as a lawyer,
2 right?

3 A I hired him about setting up some offshore
4 corporations, and then later I hadn't used him in two or
5 three years. And we -- me and Quentin wanted to -- to do
6 this business in North Carolina and -- and we wanted to do
7 it through some business, some companies, in London. And
8 we went to see Mr. Scrantom about that and -- and he said
9 we'll just use these corporations you already got set up.
10 And that's what we did.

11 And from then on -- is pretty sure the bill might have
12 come to Drew's Distributing or Hugh Andrews or whatever,
13 but Tri-Star paid it.

14 Q And you approved some of those bills, didn't you?

15 A Yes. I approved them with Mr. Quentin. Quentin
16 objected to some of the -- the -- the high amount that Mr.
17 Scrantom had charged. We actually met Mr. Scrantom a time
18 or two and he reduced that bill but -- but, ultimately,
19 Tri-Star did pay it.

20 Q All right. I'm going ask you to turn to deposition
21 August 30th of 2007, page 97.

22 A You're going to have to help me up here.

23 Q This is deposition August 30th of 2007. That should
24 be the one, Defendant's Exhibit 55. I'll hand you the
25 copy.

Hugh Andrews
Cross-examination by Mr. Richardson

1 A Okay.

2 MR. RICHARDSON: May I approach the witness, Your
3 Honor?

4 THE COURT: Yes, sir.

5 Q Turn to page 97. And this deposition is when you were
6 under oath, wasn't it?

7 A Yes, sir.

8 Q And you can see if you start on line 18. And maybe
9 start on line ten where it says who are the attorneys.

10 A "Who were the attorneys for --"

11 Q I'll read it and just ask you. You just make sure I
12 read it right. Okay?

13 A Okay. Yes, sir.

14 Q The attorneys, you said Ten State Street.

15 A Right.

16 Q And then there's a question and an answer that's not
17 really relevant. And the followup with Mr. Knie starts on
18 page 18 -- I mean, line 18.

19 A Let me -- let me read --

20 Q Line 16.

21 A -- from where you started on down a little bit. I
22 mean, read to myself here a second.

23 Q Go ahead. I'm sorry.

24 (Pause.)

25 A Okay. Now let's go ahead.

Hugh Andrews
Cross-examination by Mr. Richardson

1 Q Let's go to line 15.

2 A Yes, sir.

3 Q This is part of your answer.

4 You said, "I don't know that the Ten State Street is
5 the attorney for Akilah. I do know he's the attorney for
6 us."

7 And on line 18 Mr. Knie asked you, "who is us?"

8 And your answer under oath was, "He represented Drew's
9 Distributing, myself, and he probably represented Tri-Star.
10 I don't know."

11 A That's true.

12 Q Is that -- is that accurate?

13 A That's correct. And -- and I can tell you today he
14 did -- he did represent Tri-Star too.

15 Q But he also represented you, didn't he?

16 A Yes, sir, yes, sir.

17 Q Personally.

18 A In the beginning, yes, sir.

19 Q And you relied on your attorneys, Mr. Scrantom and
20 Mr. Stodghill, and your employees, Claudia Humphries and
21 Mike Fletcher, to help you handle your businesses, didn't
22 you?

23 A Correct.

24 Q You didn't -- you don't dispute that Mr. Broom
25 sacrificed his time from other businesses and put it into

1 Tri-Star, do you?

2 A As I -- from what I know, Quentin only had two other
3 businesses, and they didn't require a lot of anybody's
4 time.

5 Q And so you knew he put all of his time into Tri-Star.

6 A Yes, sir. Most of his time into Tri-Star. Yes, sir.

7 Q And early on you and Mr. Broom discussed that -- that
8 he wanted a salary, but he -- but isn't that right?

9 A I don't recall that at all.

10 Q You don't recall agreeing to defer that until some of
11 the debt was paid off and a business --

12 A I -- I do not. I seen that piece of paper today or
13 for this morning for the first time. You don't have to
14 show it to me. I -- I just don't -- I don't recall it.

15 Q No problem. We'll get to it.

16 A Okay.

17 Q I want to know if you dispute Mr. Broom was entitled
18 to salary.

19 A No. I think he would have been entitled to salary at
20 some time because he did -- he did ask me to -- to go home
21 and -- and he wanted to do some work, because I had put in
22 all of the -- the -- you know, the machines.

23 He said that, you know, you've -- you've put in so
24 much of -- of your resources here, you know, I need to do
25 something. But -- but -- but -- but is he entitled

Hugh Andrews
Cross-examination by Mr. Richardson

1 additionally to be a 50 percent partner to -- to salary, we
2 make a bunch of money, that's no problem. It's -- it's a
3 problem when you're not making any money.

4 Q And so you don't dispute that Mr. Broom would have
5 been entitled to salary. You just don't agree on the
6 amount.

7 A I -- I -- I think a reasonable salary once you get
8 everything paid for. I was expecting to get my equipment
9 paid for and money back that's already been taken care of
10 here. But I did expect it at the time, and I would have
11 expected to have gotten that before he started taking the
12 salary.

13 Q And you just took a position that he should only get
14 paid \$60,000, didn't you?

15 A Do what, sir?

16 Q You just -- you took the position he should only get
17 paid \$60,000, didn't you?

18 A No, I didn't take that position.

19 Q All right. Let's turn to page 122 of the deposition
20 in front of you.

21 A Okay. Where is the numbers at?

22 Q Top right is the page numbers.

23 A Okay. I'm at 122.

24 Q I think we lost the audio.

25 THE COURT: Can everybody hear him still?

Hugh Andrews
Cross-examination by Mr. Richardson

1 MR. RICHARDSON: As long as the court reporter can.

2 THE COURT: She'll let me know.

3 Q The question was, "You didn't expect them to work for
4 five years without a salary, did you?"

5 A Where -- where is it?

6 Q And the answer that you gave was, "We had a discussion
7 to where he if he needed a salary, say 60,000 or so a year,
8 then I was willing to pay it."

9 Did I read that correctly?

10 A I -- I didn't -- I don't know where it's at, but I
11 assume you did read it correctly, yes, sir.

12 Q You can read lines two and three on page --

13 A Lines two and three. Okay. Hang on. "We had a
14 discussion to where if he needed a salary of 60,000 or so a
15 year, then I was willing to pay it. But to take excessive
16 salary is money out of the company. Like he was doing
17 needed to cease and stop. Then I offered if he didn't want
18 to run the Dominican business for 60,000 a year that I
19 would run it for 60,000 a year."

20 Q Did I read the first two lines, lines two and three,
21 correctly?

22 A You did, yes, sir.

23 MR. RICHARDSON: Thank you, Your Honor.

24 Q Mr. Andrews, now at \$60,000 year would have made him
25 the lowest paid management employee in Tri-Star, wouldn't

1 it?

2 A The only management employee in Tri-Star. Is there --
3 was there another one?

4 Q Do you know what Mr. Dillashaw was getting paid down
5 in the Dominican?

6 A I did not. I do not know, no, sir.

7 Q Okay. And do you think that Mr. Broom should have
8 gotten paid less than somebody who was working for y'all in
9 the Dominican?

10 A No. But, you know, I might think that Mr. Dillashaw's
11 salary was excessive if I knew what it was.

12 Q Do you know what Mr. Fletcher was getting paid in 2001
13 to be president of your Drew's Distributing?

14 A He started out working for me for \$60,000. Later it
15 went to about 80.

16 There was some -- there was some -- we made a bunch of
17 money years after, and there was some -- some money at the
18 end of the year. And I think he was probably making
19 somewhere around 250,000.

20 Q \$250,000 in 2001.

21 A That maybe. I -- I don't know what he made, but, I
22 mean, maybe.

23 Q In that ballpark.

24 A Yes, sir.

25 Q Okay. And in 2001 what was happening in Drew's

Hugh Andrews
Cross-examination by Mr. Richardson

1 Distributing?

2 A We were -- we were -- we had gone dark. We'd gone out
3 of -- out of business pretty much, yeah.

4 Q All right. The salary payments to Mr. Broom weren't
5 really hidden, were they?

6 A Say that again.

7 Q You -- the salary payments that Mr. Broom took weren't
8 hidden, were they?

9 A Absolutely, they were hidden. I had no idea he was
10 taking any.

11 Q Are you familiar with Advantage Payroll Service that
12 did all the salary payments for Tri-Star?

13 A No, sir.

14 Q Okay. Are you aware that those payments were reported
15 directly on all of the financial statements and the general
16 ledger?

17 A Oh, I'm sure they were, but I didn't ever see them.
18 And -- and, you know, I wouldn't have seen them until
19 after, those financials until after he had took all of this
20 money in that particular year.

21 Q But you knew your agents, Mr. Stodghill and
22 Ms. Humphries, were receiving these financial documents,
23 didn't you?

24 A I don't know that they received them or not but if
25 they -- you know, at some point we became aware that he

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Cross-examination by Mr. Richardson

1 took the money, so, you know.

2 Q And -- and if they were receiving them and you
3 don't -- if they were receiving them and you don't know it,
4 it's just because you didn't ask them to show them to you,
5 right?

6 A If -- as quick as one of them became aware that he'd
7 taken 400,000 or 520,000, I would have known it.

8 Q In fact, didn't you meet with your attorneys at Ten
9 State Street with Mr. Russell and Mr. Broom on May 18th of
10 2004 to finally resolve the issue of Mr. Broom's salary?

11 A I don't recall. I mean, I don't know.

12 Q You don't remember that meeting?

13 A I do not exactly. I -- I do remember we -- that --
14 that there was a meeting. There was two or three meetings
15 with me and Quentin with Mr. Scrantom, probably five or six
16 meetings. But they was -- I think there was one that Tim
17 Russell was there. I'm not sure about the time of it
18 but...

19 Q And do you remember discussing Mr. Broom's salary?

20 A I do not.

21 Q Do you remember your attorney, Mr. Scrantom, agreeing
22 that Mr. Broom's deferred salary payments were fair and
23 reasonable?

24 A I do not.

25 Q And do you remember signing off on the bills that

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Cross-examination by Mr. Richardson

1 showed that meeting when your lawyer sent you the bill?

2 A Say that again.

3 Q Do you remember actually signing off on the bills from
4 your attorneys for the -- for that meeting on May 18th?

5 A Signing -- signing off on the bills? What does that
6 mean? Does that -- I sign a check or --

7 Q I tell you what. We'll make it easy. Let's turn to
8 page -- Defendant's Exhibit 50.

9 MR. RICHARDSON: May I approach the witness, Your
10 Honor?

11 Q It's the last one in there. Let you take a look at
12 that, and I'm going to ask you. I'll ask you one
13 question -- a couple of questions.

14 Tell me when you're ready for the questions.

15 A Sure.

16 MR. PILLSBURY: Your Honor, I would object to this
17 exhibit because it contains hearsay.

18 THE COURT: well, it's been used already, so I
19 think...

20 MR. PILLSBURY: I don't think Exhibit 50 has. I think
21 49.

22 A Without even reading it, that's not my signature.

23 MR. PILLSBURY: Okay.

24 Q That's one of the questions. You'll get to answer it
25 when I ask it.

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Cross-examination by Mr. Richardson

1 A Okay. Do you want me to go ahead and continue
2 reading?

3 THE COURT: well, I don't know what he's going to use
4 it for, so I will let him ask the questions about it and
5 then decide whether it will be admissible.

6 MR. RICHARDSON: Thank you, Your Honor.

7 (Pause.)

8 Q Mr. Andrews, is that your home address, 1650 Belcher
9 Road?

10 A It is.

11 Q And is that your home fax number (864)599-6230?

12 A It is at the time.

13 Q At the time.

14 A At the time. I don't think it is today.

15 Q And is that your signature in the bottom right corner
16 of that page?

17 A No, sir.

18 Q Whose handwriting is that?

19 A I do not know.

20 Q And --

21 A I mean, I'm looking through page after page after page
22 with my signature on it, I mean, with somebody's. It's not
23 my signature, but, I mean, it's written out there to
24 look -- it's my name. It's not my signature.

25 Q Okay. And you gave Ms. Humphries the authority to

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Cross-examination by Mr. Richardson

1 sign your name on checks and deposits, didn't you?

2 A Yeah. I think she signed the checks for Drew's
3 Distributing.

4 Q In fact, you even gave her authority to sign your tax
5 returns, didn't you?

6 A I don't recall.

7 Q Let's turn to 114. Let's see if that's where it is.
8 Page 114 of the deposition.

9 A Is that the same book or --

10 Q Yeah. It's not the same book. It is the one in front
11 of you. Yes. Defendant's Exhibit 55. Can you turn to
12 114? We're going start at line 20. On line 20 -- and this
13 is part of the question. And I'm going read it, and you
14 tell me if I read it wrong.

15 "You're not sure whether you signed your 2002 tax
16 return where you took a writeoff on Drew's Distributing
17 receivable that had been assigned to you."

18 And your answer under oath was, "well, no. I'm not
19 sure whether I signed it or not. It's possible that Claudia
20 may have signed it."

21 A Right. But if somebody showed it to me I'd tell you
22 whether I signed it or not.

23 Q Fair enough. And then let's go to the top of page
24 15 -- page -- line two. The question --

25 A 115?

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Cross-examination by Mr. Richardson

1 Q The very next page.

2 A Okay. Yes, sir.

3 Q And the top at line two. "Certainly, she would have
4 had your authorization to do that."

5 And on line four your answer was, "Yes, she would
6 have."

7 A Okay. Yes. But most of my tax returns through the
8 years come from Eddie Brown, and it come directly to my
9 house. And me or my wife might have signed, but it
10 wouldn't have been -- it wouldn't have been very logical
11 for Claudia to sign a tax return, because I don't think
12 it'd have even comes to Drew's. It would, more or less,
13 come to my house. And it's possible that that's my wife's
14 signature, I mean, scribbling. I don't know.

15 Q Fair enough. But you had multiple other people that
16 had authority to sign your name on your behalf.

17 A Sure, sure.

18 Q And they were actually handling your business for you.

19 A Sure, yes, sir.

20 Q Now, if you look at the bottom of page two of this
21 Exhibit 50 -- go back to the notebook and look at the
22 bottom of page two.

23 A Two.

24 MR. PILLSBURY: Excuse me, Your Honor. This is the
25 part that I have the objection to. It's -- he hasn't

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Cross-examination by Mr. Richardson

1 established the foundation with this witness about. That's
2 the hearsay part.

3 MR. RICHARDSON: Your Honor --

4 THE COURT: I think you need to establish the
5 foundation with this document.

6 MR. RICHARDSON: I will -- I will be happy to do that,
7 but I would answer that it is an admission by a party
8 opponent as a statement of the party's agent concerning a
9 matter within the scope of the agency employment
10 801(d)(2)(B).

11 THE COURT: I heard nothing that would allow me to
12 come to that conclusion. You need to have laid a
13 foundation with this witness.

14 Q Ten State -- well, Ten State Street was your attorney,
15 wasn't it?

16 A In the beginning he was my attorney, and then he
17 pretty much became mine and Quentin's attorney for
18 Tri-Star.

19 Q And, specifically, also for Calum, right? Ten State
20 Street represented --

21 A He -- he -- he -- if he's the one that -- that founded
22 Calum and Akilah.

23 Q And when he did work for you for -- and Calum, he sent
24 you bills, didn't he, to be paid?

25 A I don't know, but I assume he -- I assume he did,

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Cross-examination by Mr. Richardson

1 yeah, yeah.

2 Q You would expect your attorney --

3 A Yeah. I would expect him to send me a bill, yes, sir,
4 yeah.

5 Q And page two of this fax addressed to you at your home
6 and to your home fax number contains a bill from Ten State
7 Street, your attorneys, for work on Calum, L.L.C.

8 A That's correct.

9 Q And at the bottom of that bill you see an entry.

10 MR. PILLSBURY: Your Honor, this is -- he's trying to
11 get the hearsay in, and it's not been established that this
12 witness has knowledge of the document itself or that
13 hearsay.

14 THE COURT: But he's -- he's established that Calum is
15 his and that Ten State Street does work for Calum and that
16 it went to his fax number.

17 MR. PILLSBURY: I think what he's trying to get -- the
18 information within the document is the hearsay. Just
19 because something is a business record doesn't necessarily
20 mean all of the information in it automatically comes in.
21 And what he's trying to do is to establish certain
22 meetings, certain timeframes using the -- the hearsay
23 information within the document itself. That's what I have
24 the objection to.

25 THE COURT: I think you could cross-examine him on

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Cross-examination by Mr. Richardson

1 that.

2 MR. RICHARDSON: Your Honor, it's -- it's a statement
3 from an attorney to his client which falls squarely within
4 (d)(2)(B), within the scope of agent. You can't get more
5 in the scope than sending a -- a lawyer sending a bill to
6 his client with the statements of what they did with this
7 client.

8 Now, if he wants to dispute that he didn't -- he's
9 actually already admitted he had the meeting. He just
10 doesn't remember what date, and this is refreshing his --
11 trying to refresh his recollection.

12 THE COURT: All right. I'm going to allow it in.

13 You can cross-examine him in any way you want, but the
14 substance or however you want it. So I -- simply because
15 I'm letting it in doesn't mean I'm going to give it a
16 significant amount of weight as to the matters that are
17 asserted therein.

18 MR. PILLSBURY: Okay. Thank you, Your Honor.

19 MR. RICHARDSON: Thank you, Your Honor.

20 Q And do you -- do you read at the bottom that there --
21 you know who Mark Broadwater is?

22 A I remember him, yes, sir.

23 Q He's part of Ten State Street.

24 A Correct.

25 Q And did work for you.

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Cross-examination by Mr. Richardson

1 A Yes.

2 Q With Mr. Scrantom, part of the team.

3 A Part of the time, yes, sir.

4 Q And do you see where on May 18th of 2004 on this
5 letterhead of Ten State Street that he says he met -- the
6 second line down -- met with Mr. Scrantom and clients?

7 A What? Now, which, what? The way -- the one I see
8 says September 3rd where we --

9 Q The top. If you go to page two you'll see it's
10 June 25th.

11 A June 25. Okay. Yes, sir.

12 Q And then at the very bottom entry on the -- in the --
13 in the second line on the far right it starts with, "Met
14 with Mr. Scrantom and clients."

15 A No. But they're not what -- that's not what I'm
16 reading. "Met with Mr. Scrantom regarding various issues."
17 This --

18 MR. RICHARDSON: Excuse me, Your Honor. Do you mind
19 if I just make sure we're on the same page?

20 A Okay.

21 Q See here. "Met with Mr. Scrantom and clients."

22 A Okay. "Search corporate files. Met with
23 Mr. Scrantom."

24 (Pause.)

25 A Okay. Let's go ahead with your question.

Hugh Andrews
Cross-examination by Mr. Richardson

1 Q I read it correctly?

2 A It -- it's --

3 Q Met with Mr. Scrantom and clients.

4 A And clients.

5 Q Yes. Now, if you'll turn to the next page at the very
6 top there's another entry for the same day, May 18 of 2004,
7 with the initials of Tim Scrantom. Do you see that?

8 A Conference with Mr. Broadwater, yes.

9 Q And you did not object to paying this bill for your
10 lawyer's time, did you?

11 A I wasn't -- if I didn't sign this bill -- somebody's
12 signature -- I wasn't the one that would have known or even
13 got it. Okay.

14 Q You --

15 A That's not my signature, is what I'm saying -- and --
16 and -- and when it says we met with clients and stuff, it's
17 talking about me and Quentin.

18 Q Okay. And my question is did you object to this bill
19 from your client for work for Calum or addressed to Calum?

20 A No -- I -- no, I didn't object, and, no, ever got it.
21 Okay.

22 Q And was this about the timeframe, May 18th of 2004, of
23 one of your meetings that you testified already that you
24 had with Mr. Scrantom and Mr. Broom?

25 A Yeah. It -- it wasn't. But I would -- when this

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Cross-examination by Mr. Richardson

1 bill, I would think, should have been paid by Tri-Star, and
2 I don't -- I mean, I don't know who paid it.

3 Q Can you turn back to page -- to tab 49, the previous
4 tab in that same book?

5 A Tab 49. Okay.

6 Q Now, when you walked into the meeting do you remember
7 Mr. Scrantom handing you a prepared agenda with typed
8 statements?

9 A I do not.

10 Q Do you remember discussing some of these issues about
11 writing off loans?

12 A I do not.

13 Q Do you remember discussing salary?

14 A I do not.

15 Q Do you ever remember reading or hearing that
16 Mr. Scrantom said that you had always agreed Mr. Quentin
17 was entitled to a salary?

18 A I -- I don't recall ever seeing this piece of paper
19 before this morning and -- and I told my -- my lawyer that
20 too. I mean, we looked at it and said. I said, "I don't
21 believe I've ever seen this before."

22 Q Okay.

23 A I don't -- don't know anything about it. Okay. Go
24 ahead.

25 Q And I'm asking a different question.

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1 A Okay.

2 Q Are you aware that your lawyer, Mr. Scrantom, had said
3 that Hugh had always agreed to Quentin -- was to received,
4 was entitled, to a salary? Were you aware of that?

5 A No, sir.

6 Q Okay. Were you aware that your attorney,
7 Mr. Scrantom, had said Quentin is also entitled to a salary
8 for his past years of service?

9 A No, sir. Don't recall that.

10 Q And looking at the Exhibit 49 again at the bottom,
11 have you seen or heard of the numbers assigned to the years
12 for Quentin's salary for his past years of service?

13 A Only this morning.

14 Q Now, you've agreed that Quentin ran everything down in
15 the Dominican for you and Tri-Star. Didn't he?

16 A Yes.

17 Q And you also did not object to the numbers that Mr.
18 Russell and your lawyer agreed were reasonable for
19 Mr. Broom to be paid for his salary. Did you?

20 A Again, the first time I was -- I was shown this this
21 morning. I don't recall ever seeing it before; I don't
22 recall ever talking about it before. It's not to say it
23 didn't happen. It's just I don't remember it. Okay. I
24 don't remember any of this.

25 Q And I'm asking the next thing. You also did not

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1 object during that meeting to these salary numbers either,
2 did you?

3 A If I didn't -- if I didn't know if they even come up
4 or not, I certainly wouldn't know if I objected to them or
5 not.

6 Q But you testified you just don't remember it.

7 A That's correct.

8 Q You don't remember just being -- sitting there quietly
9 and not saying anything.

10 A No, sir. I don't remember that.

11 Q And, in fact, it wasn't until after the Dominican shut
12 down the gaming and actually after Mr. Broom brought this
13 lawsuit that you first objected to Mr. Broom's salary.

14 A The first time I knew about it, yes, sir.

15 Q Were you aware that Tri-Star's accountant believed
16 Mr. Broom's salary was reasonable?

17 MR. PILLSBURY: Objection. Hearsay.

18 A I was not aware of that.

19 THE COURT: I'll sustain the objection.

20 Q Have you read Mr. Russell's deposition in this case?

21 A No, sir.

22 Q In 2004 and 2005 were you aware that Mr. Broom had
23 made arrangements for Tri-Star to be paid \$180,000 a month
24 by a consulting agreement?

25 A No, sir.

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Cross-examination by Mr. Richardson

1 Q You weren't aware of that. Were you aware that that
2 was after taxes were taken out in the Dominican?

3 A No, sir.

4 Q Let's turn to Exhibit -- Defendant's Exhibit 37 in
5 that book right in front of you.

6 A This one, 37.

7 Q Yes, sir. I believe we're going to the next to the
8 last page.

9 A Mine starts with 39.

10 Q Let's go to 37.

11 MR. RICHARDSON: Your Honor, may I approach the
12 witness?

13 A Do you think it's the other book?

14 Q It's -- yes. It's going to be in that other book. I
15 apologize.

16 A That's all right.

17 THE WITNESS: Doing this as fast as I can, Your Honor.

18 THE COURT: Take your time.

19 Q There's a page I want to ask you. That's not the
20 page. The last page on your -- in your copy, I believe.

21 At the top it says, "Statement of revenues and expenses
22 for the nine months ending September 30th of 2005." Do you
23 see that?

24 A Total revenue, yes, sir, yes, sir. That's the --

25 Q And on the right-side column is year to date, which is

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1 the total up to and through September 30th of 2005.

2 A Yes. Please help me.

3 Q See this number, year to date?

4 A Yeah, yeah, year to date, yes, sir.

5 Q And it's revenues, total revenues, year to date.

6 A Yes, sir.

7 Q And that number is \$1.135 million, isn't it?

8 A That's correct.

9 Q And you, at least since, learned that the Dominican
10 had shut down gaming in June of that year, didn't you?

11 A Say that. I'm sorry. Repeat.

12 Q And you know that the Dominican Republic shut down
13 gaming in June of that year, don't you?

14 A Yes, sir.

15 Q And so that would mean this is revenues for roughly
16 half of the year of operation.

17 A That's correct.

18 Q And that Mr. Broom's salary at \$20,000 a month would
19 be roughly \$240,000 a year. Wouldn't it?

20 A That's correct.

21 Q And that would be roughly one tenth of the revenues on
22 an annualized basis based on this year-to-date revenue
23 number, expected revenues, right?

24 A If -- if the revenue had been twice this amount, yes,
25 sir, for the -- for the year. I understand what you're

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1 saying.

2 Q And you agree with it, don't you?

3 A Yeah.

4 MR. RICHARDSON: Your Honor, he's already admitted to
5 the question, but I'd like to ask that Exhibits 31 and 33,
6 which show the loans to capitalize the company in the early
7 years from Mr. Broom be -- be admitted. I'm happy to ask
8 these questions of this witness, but he's already said that
9 they -- that Quentin had loaned money to Tri-Star in '97
10 and '98 to help capitalize.

11 THE COURT: Any objection without asking the specific
12 questions?

13 MR. PILLSBURY: No, Your Honor.

14 MR. RICHARDSON: Thank you.

15 (1997-98 Promissory notes marked Defendant's Exhibit
16 No. 31; Tri-Star permanent file index marked Defendant's
17 Exhibit No. 33.)

18 Q And you testified to this with Mr. Pillsbury about
19 when South Carolina video poker was shut down there was
20 really no market. They were virtually worthless, weren't
21 they, the machines?

22 A It wasn't that there wasn't no market. There was
23 plenty of market. The problem was that there was so many
24 games coming -- that needed to come out of South Carolina
25 that it -- that it made them -- made them worth not a lot

1 of money, yes, sir.

2 Q And it was actually like Mr. Fletcher explained. It's
3 the price is actually supply and demand. Isn't it?

4 A That's correct, yes, sir.

5 Q And you considered your Pot-O-Gold machines,
6 Tri-Star's Pot-O-Gold machines, in South Carolina after the
7 ban as virtually worthless.

8 A They were -- no. They were -- we were having no
9 problem selling them to -- to ourselves -- go down -- for a
10 thousand dollars apiece.

11 Q That's my next question. So you sent them to the
12 Dominican.

13 A Yes, sir, correct.

14 Q Thank you.

15 Let's turn back to the --

16 A I want to say one thing about -- we tried to buy games
17 from some of the operators that wouldn't sell them for
18 \$2,000 to me so I could move them on to the Dominican.
19 They just wanted to hang onto them. But, now, some of the
20 guys that didn't have a whole lot of money, they were
21 willing to let them go.

22 Q Now, let's -- let's -- and you actually testified that
23 you had seen these machines when you went down there. And
24 I wondered if you would turn to page 87 of your exhibit.
25 It's Defendant's Exhibit 55, the August 30th deposition.

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1 It's in the binder in front of you.

2 A It's in this one?

3 Q Yes. Page 87, line 12 through 14.

4 (Pause.)

5 Q Do you see where the question is, "As a practical
6 matter these machines" -- they're talking about the
7 machines in the Dominican -- "have got rust and corrosion
8 issues with them today."

9 And your answer was, "They may. I don't -- I haven't
10 seen them." And that was your -- your testimony under oath
11 in 2007, wasn't it?

12 A "As a practical matter they've got rust and corrosion
13 issues on them today. They may -- I don't -- I haven't
14 seen them."

15 Okay. We -- I don't know exactly how it is, but we
16 were shown -- we didn't look at all of them, but we were
17 shown a warehouse that they were in that belonged to
18 Mr. Elelis I think.

19 Q You -- you were shown the outside of a warehouse,
20 weren't you?

21 A Yes, sir. But you could see a few games in there, I
22 think, yeah.

23 Q But you didn't inspect any of them.

24 A No, sir. I did not.

25 Q I'm going to ask you to turn to Exhibit 9, the I.G.T.

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1 trial transcript, page 93.

2 A I'm not --

3 Q Defendant's Exhibit 9. It's in one of those books on
4 the right. Should be the one open.

5 A This one?

6 Q Defendant's Exhibit 9, yes, sir.

7 (Pause.)

8 A Okay. Exhibit 9. Starts -- okay.

9 Q And I apologize, but you've already -- have been
10 given -- you've given consistent testimony with that. So
11 let's move on and talk about Mr. Fletcher.

12 A Okay.

13 Q Mike Fletcher worked for you, we talked about, in 2001
14 already. And you knew that he was getting legal advice
15 about the Dominican operations from your attorneys, didn't
16 you?

17 A I assumed he was, yes, sir.

18 Q Okay. And this may be a little difficult, but I would
19 like to go to Defendant's Exhibit 4. And let's look at
20 that chart that we talked about during the course of this
21 case. Let me ask you. Do you recognize that chart?

22 A I do.

23 Q Mr. Andrews, can you pick that microphone up? There
24 you go.

25 A Sorry. I don't hear good, but I was starting to hear

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Cross-examination by Mr. Richardson

1 that.

2 Q Now, looking -- and now I'm -- I am also in the
3 deposition, Defendant's Exhibit 55, August 30th of 2007,
4 bottom of page 60.

5 MR. RICHARDSON: If I can approach the witness --

6 A Yes, please.

7 MR. RICHARDSON: -- I will open that up too.

8 Q Now, if you'll look down at page 60 at line 24 --

9 A Yes, sir.

10 Q -- you'll see the question about this exhibit looking
11 at this diagram. See the name Deloitte and Touche? Now,
12 do you see this in the far right-hand column?

13 A Yeah, I do, I do, yes, sir. Now I see it, yes, sir.

14 Q Okay. And it says the Dominican adviser is Daniel
15 Santos.

16 A Correct.

17 Q And do you remember how you got -- you got connected
18 with Mr. Santos through Mr. Fletcher?

19 A I don't recall how I got in touch, how I got sent to
20 him. But it -- it very well could have been Mr. Fletcher.

21 Q All right. I'm moving on to page 61 of the
22 deposition.

23 Do you remember that Mr. Fletcher pointed you to the
24 Dominican lawyers -- Pereyra?

25 A That's correct, yes, sir.

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Cross-examination by Mr. Richardson

1 Q And let me spell that for the court reporter.

2 MR. RICHARDSON: P-E-R-E-Y-R-A.

3 Q And Mr. Fletcher had something to do with connecting
4 you with that attorney in the Dominican, didn't he?

5 A Correct. I think so.

6 Q And you knew that there were discussions between that
7 law firm and Ten State Street on your behalf, don't you?

8 A That's correct.

9 Q And moving to -- in the deposition at the bottom of
10 page 64, in the deposition your left hand is on, if you'll
11 go to the bottom of page 64 --

12 A Wait a minute. Is this the one?

13 Q No, sir. The one that's open.

14 A This one. Page 64. I got you.

15 Q Start right down there.

16 A Okay.

17 Q And on line 21 you see part of the question. It
18 starts, "When Tri-Star and then you and Quentin decided to
19 do business in the Dominican did you -- you didn't have any
20 concern -- you had concerns rather about the legality of
21 going down there and what y'all were doing." Didn't you?

22 A Did I have any concerns about it?

23 Q Sure.

24 A Well, only -- no, I didn't. When we went down there I
25 thought everything was real nice and cool. But once we got

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Cross-examination by Mr. Richardson

1 there and talked to Pereyra they said you can't do what
2 they -- you know, supposed to be doing.

3 Q But you were -- you hired lawyers because you had --
4 you hired lawyers because you had concerns about doing it
5 right.

6 A Doing it right, yes, sir.

7 Q And as part of that you got legal opinions from and
8 advice from Ten State Street and Pereyra.

9 A Yes.

10 Q All right. Let's turn in the notebook to Defendant's
11 Exhibit 19.

12 A Ten State Street.

13 Q Do you see that? And on page 65 of the deposition do
14 you see -- follow along -- this is -- this is a fax from
15 your attorneys to your agent, Mike Fletcher, right?

16 A Yes. What it says.

17 Q And look at the fax number three lines under Mike
18 Fletcher. Is that the fax number you identified as your
19 home fax earlier?

20 A It is.

21 Q Okay. And certainly Mike Fletcher was armed with
22 whatever knowledge was in this memo if it was sent to him,
23 wasn't -- wasn't he?

24 A Yeah. If it's -- if it's -- if this is my home. This
25 may not be my home fax number. It may be my Drew's, but

1 I'm not -- I'm not sure. I recognize it, but I just don't
2 remember whether it's the home or whether it's his house or
3 my house or -- or at the Drew's building. But if it went
4 to Drew's building Mr. Fletcher would have got it real
5 quick. If it went to my house it might have took a few
6 days. But he would have got it, yes, sir.

7 Q Either way it's yours, right?

8 A Yes, sir, yes, sir.

9 Q All right. And I'm going to go over to page 67 of the
10 deposition. But you understood that the ownership of these
11 machines, once they went to the Dominican, that somebody at
12 the national lottery -- this first group of machines.

13 A Yes.

14 Q That National Lottery would own them, right?

15 A I -- I don't -- I just don't remember. I remember
16 something about that. I just -- I don't remember the
17 timeframe and all. But I don't object to it, no, sir, I
18 mean.

19 Q All right. well, let's just read your testimony --

20 A Okay.

21 Q -- under oath from earlier, you know, ten years ago.

22 A Yeah.

23 Q A little closer to the time. We'll start with line
24 nine, page 67, line nine.

25 A Line nine.

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Cross-examination by Mr. Richardson

1 Q "Your understanding" -- just tell me if I read this
2 correctly.

3 A Yeah.

4 Q All right. Was -- "What was your understanding as to
5 the ownership of the machines once they hit the Dominican
6 Republic? Who would be the owner?"

7 And your -- you answered, "In the beginning?"

8 And he asked -- he answered, "Yes."

9 And then you said the National Lottery would own them."

10 A That's correct.

11 Q And then on line 18 the question was, "And certainly
12 that was the -- at least the advice you were getting."

13 And your answer was, "From Pereyra."

14 A Okay.

15 Q And in line 22 you continued your answer by saying,
16 "In their opinion there was always a question that the
17 games -- that there was a question of whether they were
18 legal to operate in the National Lottery or not."

19 And then at the top of page 68 let's finish the -- the
20 one line -- one before. And the question, "Ten State Street
21 forwarded you this advice from Pereyra before it did to
22 Tri-Star, is that right?"

23 A That's correct, yeah, correct.

24 Q And your answer is, "It looks like they forwarded it
25 to Mr. Fletcher, is what it looks like."

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Cross-examination by Mr. Richardson

1 Is --

2 A Yes.

3 Q I read that correctly?

4 A Yes, sir.

5 Q And by looking at Defendant's Exhibit 19 you can
6 confirm that that is true.

7 A That's correct.

8 MR. RICHARDSON: Your Honor, I'd like to hand up
9 essentially a listing of exhibits that talk about the price
10 per unit of -- of the machines. Have this marked for
11 identification purposes as Defendant's Exhibit 56.

12 (Pot-O-Gold price per unit marked Defendant's Exhibit
13 56.)

14 Q Now, Mr. Andrews, do you remember testifying that
15 Drew's sold Tri-Star new Pot-O-Gold machines in the '97 and
16 '99 range for seven -- roughly \$7,000?

17 A Correct, yes, sir.

18 Q Okay. And do you remember in 2000 after the ban in
19 South Carolina that Tri-Star purchased from you machines
20 for about \$2,000?

21 A I see that, yes, sir.

22 Q And \$1,000.

23 A And \$1,000, yes, sir.

24 Q And you agree with these numbers, don't you?

25 A I do.

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Cross-examination by Mr. Richardson

1 Q Okay. And then two years later in November of 2002
2 Tri-Star purchased more machines from Drew's at \$1,000 per
3 machine.

4 A Correct. I see that, yes, sir.

5 Q And then are you aware that the machines were sent
6 down to the Dominican Republic? I think you testified to
7 that already.

8 A Yes, yes.

9 Q And you know that Mr. Broom ended up selling these
10 machines in October of 2005.

11 A Yes.

12 Q Have you -- if you don't mind in the -- in the
13 Defendant's Exhibit 13, ask you about that.

14 A This big book?

15 Q Yes, sir.

16 (Pause.)

17 Q Do you see this letter dated October 14th of 2005?

18 A Yes.

19 Q Have you seen it before?

20 A No.

21 Q You've never seen it before.

22 A No, not to my knowledge.

23 Q Turn the page to Exhibit 14. If you turn the tab --
24 to tab 14.

25 A Oh, the tap 14. I'm sorry. Yes, sir. Okay. Yeah.

1 Okay.

2 Q And have you seen this receipt for the sale before?

3 A No, sir.

4 Q And you -- you -- but you understand that they were
5 sold for a total of \$400,000, right, 1,100 machines?

6 A That's what I've been told, yes, sir.

7 Q And you have no reason to dispute that, do you?

8 A I have -- I have a lot of reasons not to believe it,
9 yeah. I think it was worth a whole lot more money, that I
10 don't think anybody would have sold them for \$400,000. I
11 think they wasn't sold. I think they was continued to be
12 operated down there at some point by Mr. Quentin. That's
13 what --

14 Q But you don't have anything other than your
15 speculation, do you?

16 A That's all, that's all.

17 Q And the value of machines, you can tell from this
18 summary of the exhibits in evidence -- that the value of
19 the machines substantially decreased from the initial price
20 of almost 7,000 per machine when new back in '99 to the
21 thousand dollars per machine when they were sold.

22 A This is something y'all generated?

23 Q Yes, sir.

24 A First time I seen it.

25 Q Yes, sir.

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Cross-examination by Mr. Richardson

1 A What are you asking me, if I agree with it?

2 Q No, sir. I am asking you another question.

3 A Ask it one more time.

4 Q Yes, sir.

5 You know, you realize, that the machine -- value of the
6 machines substantially decreased from the initial price of
7 \$7,000 when they were legal in South Carolina new to when
8 they were sold for a thousand dollars for used down in the
9 Dominican when they were virtually worthless, right?

10 A I -- I know they went from 7,000 a thousand due to
11 the -- so many games being brought to sell at one time in
12 South Carolina.

13 I think they've actually went up from that price to
14 around \$2,000 apiece. That's what I feel like.

15 Q And in the Dominican Republic you -- you knew there
16 was a banking crisis that caused a severe currency
17 devaluation sometime in 2003-2004?

18 A I'm not -- I'm not exactly -- about three banks and
19 all of that I -- I don't know that I recall that. But,
20 yes, we had the -- from time to time there was banking
21 problems down there, sometimes a little slow to get money
22 out. Sometimes we didn't want to take it out because of
23 the value of the peso to the dollar.

24 Q And during that period of time, '03-'04, there was a
25 significant devaluation of the peso, wasn't there?

Hugh Andrews
Cross-examination by Mr. Richardson

1 A That's correct.

2 Q And that made these machines even less valuable,
3 didn't it, in the United States?

4 A How would that be?

5 Q It made them less valuable in terms of using the pesos
6 earned by the dollars in the Dominican -- earned by the
7 machines in the Dominican to repatriate to buy dollars in
8 the states.

9 A Yes.

10 Q It just didn't make as much money for you.

11 A Correct. In other words, if you -- if you -- we went
12 down there making about \$15 a week. We increased the play
13 over the next couple of years to -- to about 300 percent.
14 It went up about -- we got about three times more play in
15 two or three years. So we increased the play. But the
16 peso had went down in value and they left -- we were still
17 at \$15 a week.

18 Q And so that -- that essentially made the machines less
19 valuable.

20 A No, it did not make the machines less valuable.

21 Q It made the return on the machines less valuable.

22 A Yes.

23 Q Okay. And, finally, you actually didn't even think
24 you could get those machine out of the Dominican Republic,
25 did you?

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Cross-examination by Mr. Richardson

1 A I don't know whether we could or not. I'm not -- I
2 wasn't down there when that happened. I just don't know
3 the laws, you know, what's --

4 Q Well, let's go to the end of Exhibit 15 in the -- in
5 the big book.

6 A Okay.

7 Q This is your deposition from January 7th of 2005 in
8 the I.G.T. litigation. You turn to page 122.

9 A I'm sorry -- 122?

10 MR. RICHARDSON: Excuse me, Your Honor.

11 A Yeah, please.

12 MR. RICHARDSON: Can I approach?

13 Q It's a little hard to read, but they're in the margin.

14 A I -- I see. Okay. Nine -- I got you. 119. We're
15 getting close. 128.

16 Q Page number and then the line numbers.

17 A Okay.

18 Q The way it prints the page number is on the left-hand
19 margin.

20 A What are we looking for -- 122?

21 Q Which is at the top of that page that I opened it to.

22 A Yeah.

23 Q If you start on line five --

24 A Line five, yes.

25 Okay. Question, "When Drew's sold" --

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Cross-examination by Mr. Richardson

1 Q How about letting me read it, Mr. Andrews.

2 A Okay. Sure.

3 Q If you don't mind.

4 A I don't mind.

5 Q You just follow along and tell me if I mess up.

6 Question, "When Drew's sold Tri-Star these machines in
7 August of 2000" -- and that just gives us, informs us, of
8 the answer. You can see that there's back and forth.

9 But -- but if you go down to line 16 you get the
10 answer.

11 "I didn't have anywhere else to go with the equipment,
12 you know. That was our best shot at going down there and
13 making money and being able to pay this stuff back.
14 Otherwise, it was pretty much -- pretty much kind of
15 worthless."

16 And if you don't mind, I'd like to skip down to 123.
17 In the middle of that page there's a question similar to
18 what we were talking about before.

19 There's, "why is that?"

20 And your answer was, "when we went to the Dominican the
21 exchange rate was sixteen to one."

22 A Yeah.

23 Q "In other words, they took 16 of their dollars to make
24 one of ours. And they're all pesos but the same thing.
25 And it got as high as 54 to one. And so it wasn't making

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Cross-examination by Mr. Richardson

1 as much money as when we first went down there. We really
2 wasn't making any money after their money went in the
3 gutter, and we couldn't in all honesty -- we couldn't get
4 the machines out of the country if we wanted to. If we
5 started to try, they'd just take them from us. It's kind
6 of a bad situation. We've just got to make the best of
7 it."

8 And the question, followup, was, "You can't take them
9 out of the Dominican Republic?"

10 And your answer was, "I don't think we could. I think
11 the fellow that we do business with down there is so
12 powerful that he'd just have us -- that he'd have us thrown
13 in jail if we showed up and he'd just keep our machines."

14 Was that your testimony in federal court under oath --

15 A It was.

16 Q -- across the street?

17 A It was. And it -- it applies to them being oper --
18 they were down there then operating.

19 If we went down there and tried to take our games out,
20 I was scared Mr. Elelis would either put us in jail or the
21 National Lottery would never give them back to us and let
22 us sell them.

23 But, now, when the -- once you pick them up and gotta
24 get them off the street, that's a different story.

25 Q And, in fact, this testimony was in January of 2005,

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Cross-examination by Mr. Richardson

1 six months before the Dominican Republic even banned the
2 machines, right?

3 A Yes, sir, yes, sir, correct.

4 Q So it -- it got even more dire after the Dominican
5 Republic banned them, didn't it?

6 A No. What Mr. -- if you can't -- if nobody can run the
7 machines in the Dominican, then Mr. Elelis has no reason to
8 put us in jail if we go down there to get our machines.
9 And he has no use for the machines either if they're -- if
10 they're not going to be operated. But when they were
11 operational if we decided to go down there and try to take
12 them, I don't know that Mr. Elelis would let us out of the
13 country with them.

14 Q And do you know if the Dominican government would have
15 let you out of the country with machines that were illegal?

16 A I do not know.

17 Q I want you to either turn in that -- in that
18 defendant's witness exhibit -- excuse me -- the Defendant's
19 Exhibit No. 6.

20 A That --

21 Q Okay. I apologize.

22 MR. RICHARDSON: Can I approach the witness?

23 A Yeah.

24 Q Thinking rather than talking. Right there.

25 A Okay.

Hugh Andrews
Cross-examination by Mr. Richardson

1 Q Do you recognize any of the -- that those are from
2 some of the papers down in the Dominican Republic?

3 A I don't recognize them, no.

4 Q Do you -- do you speak Spanish at all?

5 A No. I do not.

6 Q Do you have any -- did you have any taking time
7 looking at the -- the news or keeping up with what was
8 going on as far as --

9 A No, sir.

10 Q Okay. Let me finish the question.

11 A Okay. Yeah. Sure.

12 Q I shouldn't take that answer. But what I'm really
13 interested in is keeping up with the news and circumstances
14 in the Dominican after the government banned the machines
15 in June of 2005.

16 A No. And I didn't keep up with it before that either.

17 Q And if we turn to Exhibit 8 just two -- two tabs
18 back --

19 A Yes, sir.

20 Q Don't worry about the first page. But the second
21 page, do you -- do you recognize that letter?

22 A Give me just a minute.

23 (Pause.)

24 Q Do you recognize that letter, Mr. Andrews?

25 A Yes.