

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Clifton Newman, Circuit Court Judge

MAY 25 2011

SC Court of Appeals

Case No. 2015-CP-10-05463

The Boathouse at Breach Inlet, LLC, by and through
its member, Laurence O. Stoney, Jr.,Appellant,
v.

Richard S.W. Stoney, individually and as Member-manager
of The Boathouse at Breach Inlet, LLC and Crew Carolina, LLC, Defendants

and

Theodore Stoney, Jr., individually and as Trustee for Richard Stoney, Jr.
and Gregory G. Holmes, Third-Party Intervenors,

of whom

Richard S. W. Stoney, individually and as Member-manager
of The Boathouse at Breach Inlet, LLC and Crew Carolina, LLC is Respondent.

RECORD ON APPEAL - VOLUME III

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1 STATE OF SOUTH CAROLINA) COMMON PLEAS COURT
 2)
 3 THE BOATHOUSE AT BREACH) CASE NO.
 INLET, LLC, et al.) 2015-CP-10-5463
 4)
 5) Transcript of Record
 Plaintiffs,) Non-Jury Trial
 6)
 vs.) Date: March 11, 2020
 7)
 RICHARD S.W. STONEY, ET AL)
 8)
 9 Defendants.

10 * * * * *

11

12 B E F O R E:

13 The Honorable Clifton Newman

14 * * * * *

15

16 Krista Nicole Carney, Stenographic
 17 Court Reporter, transcribed by a
 18 Stenographic Court Reporter
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1 A P P E A R A N C E S

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25

1 (The following proceedings were held
2 3/11/20, Charleston County Common Pleas, Judge
3 Newman, 8:53 a.m.)

4 THE COURT: You may be seated. Good
5 morning.

6 Well, I heard from Mr. Kefalos last
7 night. And he stated that he didn't feel well. He
8 won't be able to return. So Mr. Barr is going to
9 carry the weight. He expressed that.

10 Well, continuing on. You may proceed.

11 MR. MCQUILLIN: Your Honor, may we take
12 up a brief preliminary matter. I brought this up
13 in our pretrial brief. I just want to make sure
14 that we're not caught at the end.

15 But in the event we do prevail the LLC,
16 the statute allow us for recovery of attorney's
17 fees and costs. And we're not ready to proceed on
18 that today, unless Your Honor wants us to. And we
19 contemplate having there being a second hearing or
20 a follow-up submission to that, just something
21 along those lines. I just want to make sure that
22 we're all on the same page there.

23 Because, otherwise, we don't have --
24 that full information from our accountant yet or
25 haven't generated a full bill from our fees.

1 That's putting the cart before the horse. But I
2 just want to make sure procedurally -- the way the
3 statute is worded is it says, if 'successful a
4 derivative action plaintiff can recover fees and
5 costs from the company.

6 THE COURT: May, shall?

7 MR. MCQUILLIN: It is discretionary,
8 too. I just want to make sure that's not something
9 that you expect us to take up today, in the event
10 you make a ruling today.

11 THE COURT: Mr. Barr, what do you think
12 about that?

13 MR. BARR: Well, I would not be
14 surprised that at the end of the evidence in this
15 case under advisement rather than ruling from the
16 bench. It's been a long and complicated. I was
17 just counting the number of legal issues involved
18 and they're significant.

19 I don't disagree that in any case where
20 attorney's fees are an issue. It's traditional, if
21 there's a finding of liability, under an authority
22 that permits it.

23 THE COURT: Think about it in a
24 bifurcated fashion.

25 MR. BARR: My favorite word,

1 bifurcation.

2 MR. MCQUILLIN: And you can decide,
3 Your Honor, if whether that's a hearing by written
4 submission of briefing by the end of the day?

5 THE COURT: All right.

6 MR. BARR: My friend wanted to use the
7 word of bifurcation, Your Honor.

8 THE MCQUILLIN: That doesn't mean we're
9 not trial attorneys. That's the point I wanted to
10 make.

11 MR. BARR: I clearly think if there's a
12 finding, Your Honor, of one that would trigger
13 fees, that that would trigger, that that would call
14 for a hearing on it, rather than some summary
15 submittal.

16 So if I may address Counsel, Your
17 Honor?

18 THE COURT: Yes, sir.

19 THE BARR: You're assuming a summary
20 submittal or a hearing?

21 MR. MCQUILLIN: I want to do whatever
22 the Judge wants to do. I'm just trying to see how
23 he wanted to handle it.

24 MR. BARR: Maybe we cross that bridge
25 when we get to it.

1 THE COURT: Yes.

2 MR. BARR: I think I'm up.

3 THE COURT: Go ahead, Mr. Barr.

4 MR. BARR: Your Honor, we call Dennis
5 Jarvis.

6 DENNIS JARVIS,
7 having been first duly sworn and testified as
8 follows:

9 THE CLERK: For the record, please
10 state your full name, spelling your last.

11 MR. JARVIS: John Dennis Jarvis,
12 J-A-R-V-I-S.

13 DIRECT EXAMINATION

14 BY MR. BARR:

15 Q. Good morning, Mr. Jarvis. Would you
16 tell the Court where you live?

17 A. Right now I'm off of Bees Ferry. I'm
18 building a house in Hollywood, but I use that as my
19 address.

20 Q. And what is your age?

21 A. 69.

22 Q. What's that again?

23 A. 69.

24 Q. And would you tell the Court what your
25 educational background is?

- 1 A. A BA from The Citadel.
- 2 Q. And what year?
- 3 A. 1974.
- 4 Q. And did you have any education
5 following that?
- 6 A. Education. Well, I went to high
7 school. I went to Richlands, Virginia.
- 8 Q. And what is your occupation or
9 profession?
- 10 A. I was an accountant, a CPA.
- 11 Q. A certified public accountant?
- 12 A. Yes, sir.
- 13 Q. At what time did you serve as the CPA
14 for the entities, including Crew Carolina and The
15 Boathouse at Breach Inlet?
- 16 A. I did.
- 17 Q. Can you remember, approximately, what
18 years that was?
- 19 A. I want to say 2012 until I sold my
20 practice in 2016.
- 21 Q. I will represent to you that in the
22 course of this case, an expert witness has
23 testified who's name is Donald Hallerbach. Are you
24 familiar with that name?
- 25 A. I reviewed his affidavit.

1 Q. And I will further represent to you
2 that in Mr. Hallerbach's testimony, he testified
3 that he relied in part on an affidavit prepared by
4 you. Do you recall preparing or signing an
5 affidavit in this case?

6 A. Yes, sir.

7 Q. Would you tell us under what
8 circumstances you were contacted, and by whom,
9 about that affidavit?

10 A. I was contacted by the law firm
11 Hanysworth, Sinkler and Boyd.

12 Q. And do you remember who individually
13 did that?

14 A. Quinn.

15 Q. McQuillin?

16 A. McQuillin.

17 Q. Mr. McQuillin.

18 And would you tell us the essence of
19 that conversation?

20 A. They wanted to come to my office, make
21 a backup of all working papers, e-mails, anything
22 that had to do with my work with The Boathouse
23 restaurant.

24 Q. And did they do that?

25 A. Yes, they did.

1 Q. And then at some time therefore, did
2 you have a conversation with them about an
3 affidavit?

4 A. They asked me to come down to their
5 office and sign an affidavit, yes.

6 Q. And was there any conversation about a
7 deposition?

8 A. Yes.

9 Q. Tell the Judge, the best you can
10 remember, about the circumstances in you're signing
11 the affidavit?

12 A. I guess I arrived at their offices one
13 morning, probably 9 or 10:00. We went to a
14 conference room. They prepared an affidavit and
15 backup of certain e-mails, working papers, I guess
16 that I had, that backed up the affidavit.

17 And there were certain items that --
18 they had to redo it several times, I remember that.
19 And then I signed it.

20 Q. Now, have you since reviewed that
21 affidavit? Have you recently reviewed it?

22 A. I did. There were certain items that,
23 I guess -- and, again, this is where I didn't
24 realize -- I know the importance of it, but the
25 wording was a little bit, I guess, different than

1 what I thought.

2 Q. Is the affidavit mistaken in any
3 respects?

4 A. There were certain items in there that
5 I guess the -- it bothers me that there were
6 certain conversations that apparently that I was
7 apart of that that they gave me backup for, but now
8 I just don't remember being quite that rigid, I
9 guess. You know, the gist of it is correct, but I
10 guess the actual wording I kind of had problems
11 with.

12 Q. What was your state of mind at the time
13 that you signed the affidavit -- or did you sign
14 one, the affidavit?

15 A. I did.

16 Q. At Haynsworth Sinkler Boyd?

17 A. I did.

18 Q. What was your state of mind, if you can
19 remember, on that day, with respect to signing the
20 affidavit or going to a deposition? What were you
21 told about a deposition?

22 A. Well, I guess if I didn't sign it,
23 there was going to be a -- if I didn't sign the
24 affidavit, there was going to be a deposition
25 taken.

1 Q. So if you didn't sign it, they were
2 going to take your deposition?

3 A. Yes.

4 Q. And did they suggest to you the length
5 of the deposition?

6 A. Again, to my memory, probably 10 hours.

7 Q. Now, Mr. Jarvis, I hate to intrude on
8 your personal circumstance, but are you now a well
9 man?

10 A. Now, yes. Physically, I've had some
11 issues.

12 Q. With what, if you don't mind me asking?

13 A. I had a tumor that had to have
14 radiation. I've had operations on my leg to remove
15 part of my femur.

16 Q. That's all malignant related?

17 A. When you say malignant related, there's
18 no cancer involved, no.

19 Q. Oh, there's no cancer. I see.

20 A. No. But it caused numerous MRIs. I'm
21 still taking a number of pills to rid myself of
22 this enzyme to put off by this tumor.

23 And I had a walker for a long period of
24 time that I had to use, because of the weakness
25 caused by the tumor. That's in the past.

1 Q. Were you suffering from that condition
2 on April 3rd of 2019?

3 A. I may be on a cane. I don't think I
4 was in a walker.

5 Q. But you had been diagnosed, with
6 whatever it is, as of last April?

7 A. Exactly.

8 Q. Now, subsequently, do you remember
9 receiving a subpoena from me to produce documents
10 to my office?

11 A. Yes, I did.

12 Q. And did you come to my office?

13 A. I did not. Well, excuse me, I did come
14 to your office and we talked about the affidavit.

15 Q. And you discussed the affidavit with
16 me?

17 A. I did.

18 Q. Now, do you have a copy of that
19 affidavit with you?

20 A. Yes, sir.

21 Q. Would you allow me to see it? Now, do
22 you remember when we talked about this affidavit
23 that I made notes, as you were telling me things,
24 and then I gave you a copy of it?

25 A. Well, I remember you reading a

1 paragraph. And I guess I didn't feel, you know,
2 comfortable with certain wording.

3 Q. Okay. But does the affidavit that you
4 just handed me, does it reflect the areas of that
5 affidavit with which you don't feel comfortable
6 with the wording?

7 A. Exactly.

8 Q. Does it?

9 A. Yes.

10 Q. All right.

11 MR. BARR: Your Honor, I would offer
12 this as an exhibit. I only have one copy of it.

13 MR. MCQUILLIN: Objection, Your Honor.
14 This was not previously marked as an exhibit. It's
15 this witness's prior statement that he gave in the
16 case with Mr. Barr's notes on. I don't think that
17 Mr. Barr can submit a prior statement of witness
18 with his notes on it into evidence. It's not
19 proper.

20 THE COURT: All right. Mr. Barr.

21 MR. BARR: I'm not submitting my notes
22 into evidence. Admittedly, the document has
23 strike-throughs that I made in this witness'
24 presence and gave him a copy.

25 The purpose of it simply to highlight

1 the areas that he's prepared to testify. The
2 witness has testified that there were some mistaken
3 provisions. There's nothing particularly
4 substantive.

5 We don't object to the witness
6 testifying to it, but I don't think it's
7 appropriate to have the affidavit marked into
8 evidence.

9 THE COURT: Let's hear the testimony.

10 Mr. BARR: Well, I would have to put it
11 on the screen. It would only be used
12 demonstrative.

13 MR. MCQUILLIN: Let the witness look at
14 it and ask him about it.

15 MR. BARR: Right.

16 MR. MCQUILLIN: Not on the screen.
17 Show it to the witness.

18 THE COURT: Do you need an extra copy?

19 MR. BARR: I propose to use a copier so
20 everybody can see what we're talking about up the
21 screen, Your Honor.

22 MR. MCQUILLIN: I have a clean copy, if
23 you want to put that on the screen, without Mr.
24 Barr's notes.

25 MR. BARR: Okay.

1 BY MR. BARR:

2 Q. Now, Mr. Jarvis, Counsel has allowed us
3 to see a clean copy -- why don't you look on the
4 screen there. And is this document that you see on
5 the screen the same document as the hard copy that
6 you brought with you today?

7 A. Yes, sir.

8 Q. It is, okay.

9 And if you will, please, describe for
10 Judge Newman -- and you may now refer to the hard
11 copy -- the areas of this affidavit that you
12 believe are mistaken. Just go from paragraph one
13 on down.

14 MR. MCQUILLIN: Objection, Your Honor.

15 THE BARR: Bed your pardon?

16 MR. MCQUILLIN: This witness just said
17 that he didn't believe -- he just stated that
18 couldn't remember certain things at the time
19 Mr. Barr went through it with him.

20 BY MR. BARR:

21 Q. Mr. Jarvis, is it your testimony that
22 the provisions of this affidavit are mistaken? Let
23 me be more specific. I invite your attention to
24 paragraph three.

25 A. I see.

1 Q. And if you look down on the screen --
2 Mr. Jarvis, if you look on the screen, you see
3 where my pen is?

4 A. Numerous occasions.

5 Q. The sentence says, when I began working
6 with Stoney and The Boathouse at Crew, I was
7 informed by Richard Stoney, Chip Robinson a former
8 comptroller and comptroller of The Boathouse, Jamie
9 Stabler, the current controller of The Boathouse,
10 on numerous occasions that Richard Stoney would not
11 paid the several hundred dollars receivable owed to
12 The Boathouse and crew.

13 I want to highlight the word numerous.
14 What is your present recollection of whether
15 you -- of whether that happened on numerous
16 occasions?

17 A. I think it could have been numerous.
18 There was a situation where I -- and, again,
19 Mr. McQuillin is going to tell me that never got
20 things that he has, where I -- where you showed me
21 that Mr. Stoney told me he would not repay the
22 loan.

23 But it's my understanding that the
24 Crew, the company that had the liability, that's
25 owned 100 percent by Mr. Stoney, didn't have the

1 capability to pay the loan.

2 Q. So are you saying that --

3 A. It says, Richard Stoney. And I did
4 sign it. But I would like to see the documentation
5 where -- because I can't remember -- and, again,
6 I'm sorry. This happened many years ago -- where
7 Richard specifically said to me, I'm not going to
8 pay this loan, okay. And, again, if you have those
9 documents, I will --

10 Q. Let me move on to another paragraph.
11 Now, let's go -- and, actually, it's the same
12 paragraph, but on the second page. That sentence
13 on paragraph three of the affidavit reads: I
14 learned that Crew was in conduit to which Stoney
15 would stiffen money. Are those your words?

16 A. I don't think I would use those words.
17 But, again, conduit and stiffen are really harsh.

18 Q. Those are harsh? Those are not words
19 that you would use?

20 A. Conduit and stiffen.

21 Q. So who wrote the words -- who wrote the
22 words conduit and stiffen in that sentence?

23 A. Who did it? It had to be someone that
24 they -- at the law firm of Haynsworth, Sinkler and
25 Boyd. I'm just saying, this is a little bit -- I

1 don't think I would use the word conduit and
2 stiffen. Crew did receive funds.

3 THE COURT: As a matter of information,
4 is the affidavit already in evidence?

5 MR. BARR: No, it's not, Your Honor. I
6 think that Mr. Hallerbach may have made some
7 reference to it in his testimony, but it's not in
8 evidence.

9 THE COURT: Okay.

10 THE WITNESS: I can see the two words
11 there.

12 BY MR. BARR:

13 Q. So what you're telling Judge Newman is,
14 those are words that you would not use; correct?

15 A. I don't think so.

16 Q. Let's look at paragraph four.

17 Paragraph four contains the statement that during
18 my time working with Stoney and The Boathouse from
19 2012 to '17, the due to/due grew considerably from
20 \$2,957,894.77 to \$4,373,507.83. Again, from
21 December 16th of '17, the due to/due from, that
22 Crew owed The Boathouse grew by \$183,532.14. Are
23 those correct numbers?

24 A. On my affidavit, I had --

25 Q. Does the copy that you brought today,

1 that we're not putting into evidence, does it show
2 some correction to those numbers?

3 A. Yes, sir.

4 Q. And those are your corrections; right?

5 A. I must have referred back to some
6 working papers.

7 Q. I think you can do this fairly
8 succinctly. What number has changed from what to
9 what? Tell us.

10 A. The ending balance \$4,373,507.83. I
11 have \$4,189,657.83.

12 Q. Those are your notes, not mine;
13 correct?

14 A. Exactly.

15 Q. And so what you're saying is the
16 \$4,373,507.83 should be \$4,189,657.83; is that
17 correct?

18 A. Yes, sir.

19 Q. Let's go then to paragraph six. The
20 affidavit states, I expressed concerns to Stoney --
21 Chip Robinson, Crew -- or that Crew was continuing
22 to take money from The Boathouse and had no
23 prospect of repaying it. These items were booked
24 at loans. Crew does not have a cash flow stream or
25 a tangible prospect. And after consulting with

1 Chip Robinson, we agreed that Stoney should treat
2 the monies owed from Crew to The Boathouse to
3 Stoney that must be repaid. Is that last phrase a
4 correct phrase? We agree that Stoney should treat
5 monies owed from Crew to The Boathouse that must be
6 repaid?

7 A. And that's where I have. I cannot
8 recall. And I would like to get some sort -- get
9 some sort a document that can refresh my memory. I
10 remember talking as far as -- when you say draw --

11 Q. I didn't say draw. The affidavit says
12 draw.

13 A. Well, it says draw. I remember that
14 term was used in a meeting -- after the meeting.

15 Q. So you remember it being discussed?

16 A. Yes, sir.

17 Q. Do you remember that there was an
18 agreement that it should be treated as a draw?

19 A. That I don't remember. And I
20 apologize, but I don't remember.

21 Q. That's all right. Let's move now to
22 paragraph eight. Paragraph eight says, when asked
23 Richard Stoney instructed me not to discuss the due
24 to/due from with other members of The Boathouse and
25 did not permit me to share the company's tax

1 returns with other members, including Laurence
2 Stoney; is that a correct statement?

3 Let's go to first of it. Instructed me
4 not to discuss the due to/due from with other
5 members of The Boathouse?

6 A. I can't remember now.

7 Q. Did he instruct you not to discuss
8 the --

9 A. I cannot remember if Richard Stoney
10 ever said that to me. I wish I could remember.

11 Q. Well, during the dates that you were
12 employed with The Boathouse and Crew, were those
13 the years that Richard Stoney and his former wife,
14 Lori, were going through their divorce?

15 A. I assume so.

16 Q. And did Lori ever ask you for access to
17 the books?

18 A. She did.

19 Q. She did?

20 A. She asked for a copy of the tax return.

21 Q. Say again.

22 A. She asked for a copy of the tax return.

23 Q. So let's go to the next part of
24 paragraph eight. I'm referring to Richard Stoney.
25 And did not permit me to share the company's tax

1 returns with certain number members, including
2 Laurence Stoney; is that correct?

3 A. I approached Richard and said that Lori
4 Stoney had asked for a copy of the tax return.

5 Q. And you're saying Lori; right?

6 A. Lori.

7 Q. The ex-wife. Go ahead.

8 A. And when I asked him, he said he would
9 get back with me. And he did. A couple days later
10 he said, release the tax return.

11 Q. Did he ever instruct not to share it
12 with Laurence Stoney?

13 A. I can't remember at this time. And I
14 wish I could see some documents that could refresh my
15 memory. I apologize.

16 Q. Do you remember if that's mistaken?

17 MR. MCQUILLIN: Objection, Your Honor.

18 He testified that he doesn't remember whether --

19 THE COURT: I sustain the objection.

20 THE WITNESS: I cannot say if --

21 THE COURT: I sustained the objection.

22 He said that he can't say. He doesn't know.

23 BY MR. BARR:

24 Q. If you believe there were mistakes in
25 this, why did you sign it?

1 MR. MCQUILLIN: Objection, Your Honor.

2 THE COURT: It's overruled.

3 BY MR. BARR:

4 Q. Go ahead. You can answer it.

5 How did you feel at the time?

6 A. Well, I certainly wanted to get out of
7 the offices of Haynsworth Sinkler Boyd. I did not
8 want to do a 10-hour deposition.

9 I thought I had, at the time, happily
10 reflected -- what do you say, looking back on it,
11 there were certain things that I wished I could
12 have asked for a change in that affidavit.

13 Q. So you just wanted to get out of there?

14 A. Yes, sir. And I thought -- you know,
15 the e-mails where I expressed my concerns to the.

16 Q. But with respect to paragraph eight,
17 you signed it because you wanted to get out of
18 there; right?

19 MR. MCQUILLIN: Objection.

20 THE COURT: Well, rephrase that
21 question.

22 BY MR. BARR:

23 Q. With respect to paragraph eight, if
24 it's not correct, you did not tell Laurence -- did
25 Richard tell you not to give it to Laurence, then

1 why did you sign it?

2 A. I cannot remember. At this time, I
3 cannot remember Richard Stoney ever saying not to
4 give it to Laurence Stoney. I don't remember. He
5 took a day or two after asking for Lori to have a
6 copy. And, again, if I had some documents that I
7 can refresh my memory or an e-mail.

8 MR. BARR: Mr. Jarvis, let me confer
9 with my client.

10 Thank you. Mr. McQuillin will ask you
11 some questions.

12 CROSS-EXAMINATION

13 BY MR. MCQUILLIN:

14 Q. Good morning, Mr. Jarvis. I'm sorry
15 about the health issues.

16 At the time when we signed your
17 affidavit and even when we released you from your
18 subpoena to testify in your case, we've done all we
19 could do, sir, to keep you drug into this case;
20 have we not, sir?

21 A. Yes, sir.

22 Q. You testified previously just now that
23 do you agree with the gist of your affidavit and
24 believe that it's accurate; correct?

25 A. The gift of it, yes.

1 Q. Sir, you're a consciences person; are
2 you not?

3 A. I try to be.

4 Q. And as a CPA, you realize that you have
5 to be careful about what you say and do; correct?

6 A. Exactly.

7 Q. And when you came to our office, sir,
8 you testified -- when you came to our office we had
9 a laptop out and to the extent you didn't agree
10 with something, we changed it; did we not?

11 A. You did.

12 Q. And for every paragraph in here you
13 went through and said, do you have a document that
14 supports that? And do you recall us showing you a
15 document for all of these things to make you
16 comfortable with this affidavit?

17 A. And that's where I have -- I don't want
18 to say blank, but I can't remember what document
19 from paragraph eight. And if you could do
20 something to refresh my memory.

21 Q. But you would not have signed this
22 affidavit, that you understood was under oath, had
23 we not shown you proof of each of these things that
24 weren't comfortable with it; correct?

25 A. Exactly.

1 Q. And as you sit here today, do you
2 recall us showing you documents that supported each
3 of the nine paragraphs in your affidavit and you
4 confirmed that they were accurate before signing
5 it; correct?

6 A. Well, I have to answer yes. But,
7 again, now I can't remember.

8 Q. That's okay. My point to the Court is,
9 when you signed this, you had the documents you
10 needed and you felt it was accurate; correct?

11 A. Yes, sir.

12 Q. And I understand now you're saying,
13 look I don't remember this or I don't have the
14 documents. You're not saying it's not correct,
15 you're just saying I can't remember and don't have
16 any proof to confirm it?

17 A. Yes. And what kind of document would
18 you have that would allow me to feel comfortable
19 stating that Richard Stoney would not allow me --
20 or do not discuss, which I didn't.

21 Q. But you would not have signed this, had
22 there not been an e-mail or something that we
23 showed you that made you comfortable signing;
24 correct?

25 A. Yes, sir. I'm wondering what that was

1 that you gave me. But, yes, I did sign it.

2 Q. And, sir, I know you said that the word
3 stiffen and conduit may not be words that you use?

4 A. Yes, sir.

5 Q. But you would agree that you learned
6 that Crew Carolina was an entity that Richard would
7 use to take money out of The Boathouse to pay
8 himself for personal expenses and other unrelated
9 entities that were owned wholly or in part by him;
10 correct?

11 A. Repeat that again.

12 Q. I'm reading on paragraph three of your
13 affidavit where it says, I learned that Crew was a
14 conduit in which Stoney would stiffen money out of
15 The Boathouse to pay him personal expenses and
16 other unrelated entities that were owned fully or
17 in part by him?

18 I'm asking you, you agree and you knew,
19 as the company's CPA, that Mr. Stoney would take
20 money from The Boathouse and put it into Crew to
21 pay himself for personal expenses and other
22 unrelated entities owned wholly or in part by him;
23 correct? That was his practice; was it not, sir?

24 A. After reviewing the work by the
25 forensic accountant, I would agree with this. And

1 in doing my work for them, doing their tax returns.
2 There were certain items going through the company
3 account that I did ask questions about.

4 Q. Questionable transactions?

5 A. Exactly.

6 Q. And, in fact --

7 A. And, for example, there was an interest
8 payment made to a bank every month. And I asked
9 Jamie -- I didn't ask Richard. But I asked Jamie,
10 I said what is this for? And I was never given a
11 clear answer.

12 In preparing the tax return I didn't
13 use it as a deduction. There were a numerous
14 amounts of life insurance premium paid through the
15 other company account. I did ask, but I never used
16 them as a deduction on preparing the tax return.

17 Q. Going to paragraph four of your
18 affidavit, sir, where you changed the numbers,
19 those numbers are by that \$183,532.14 number?

20 A. Yes.

21 Q. And that's because of Richard Stoney
22 practice of creating a management fee after the
23 fact and washing out what The Boathouse paid Crew;
24 correct?

25 A. You're probably exactly right. That's

1 probably the difference there prior to posting.
2 Maybe I had a working paper. It sounds correct to
3 me, what you're saying.

4 Q. Sir, I'm handing you what has been
5 marked as Plaintiffs' Number 18. Can you please
6 identify this document for the Court? This is your
7 affidavit; correct?

8 A. Yes, sir.

9 MR. MCQUILLIN: Your Honor, we would
10 like move Plaintiffs' Exhibit Number 18 into
11 evidence.

12 THE COURT: Any objection?

13 MR. BARR: No, Your Honor. This is a
14 clean copy of the marked up copy the witness has
15 been testifying to.

16 THE COURT: It's admitted.

17 (Plaintiffs' Exhibit No. 18 was
18 admitted into evidence.)

19 BY MR. MCQUILLIN:

20 Q. Just so the record is clear, you came
21 by our office, we showed you documents for this and
22 you were comfortable signing it and believed that
23 it was accurate at the time; correct?

24 A. Yes, sir.

25 Q. And as you sit here today, you're not

1 saying that it's inaccurate, you're just saying you
2 can't recall the specific documents we showed you
3 that made you comfortable signing this; correct?

4 A. Exactly.

5 Q. Sir, we can move on from the affidavit.

6 I want to show you what's been marked
7 as Plaintiffs' Exhibit Number 11 at this trial.
8 This is an e-mail from Chip Robinson to Jamie
9 Stabler. You see at the beginning it says, you
10 need to call Dennis, he's freaking out. And it's
11 says it's about a payment issue.

12 But then it goes up to say, I think
13 you're unwillingness to let him to have view access
14 to compete is making him suspicious. He didn't say
15 it, but it's clear that he has a real problem with,
16 quote, what's going on down there, close quote.
17 And he's investors are going to hold him
18 accountable for. Do you see that, sir, on this
19 e-mail?

20 A. This is an e-mail from Chip to Jamie.
21 This is the first time I've seen one. Did you show
22 this to me at your office?

23 Q. I believe I did. My question to you,
24 sir, is you were concerned about what you refer to
25 about questionable transactions and were worried

1 that the investors may would hold you accountable
2 for it; correct?

3 A. I was concerned about certain
4 transactions. And, yes, they could come back on
5 me. I'm sure they could, yeah.

6 Q. Because Richard's actions harmed the
7 company; correct, sir, in terms of taking money
8 from the company for personal matters?

9 A. I guess, yes.

10 THE COURT: With regard to me, who is
11 me?

12 MR. MCQUILLIN: Richard Stoney.

13 MR. BARR: What was that? I'm sorry, I
14 didn't hear that.

15 MR. COURT: It says he's suspicious,
16 who is he referring to?

17 MR. MCQUILLIN: Yes. Let me put that
18 in.

19 BY MR. MCQUILLIN:

20 Q. Let me put it up so we all know what
21 we're talking about.

22 A. I had Compete on my computer, Compete
23 software, which is what was used by The Boathouse.

24 Q. The question I was going to ask you is,
25 at the bottom of the e-mail it says, you need to

1 call Dennis, he's freaking out. Dennis is
2 referring to you, Mr. Jarvis; is he not?

3 A. Hold on. Where are you, sir? I don't
4 like the word freaking out. I don't like the word
5 freaking out.

6 Q. That's what Chip said. All I'm trying
7 to establish, sir, is that this e-mail that
8 Mr. Robinson wrote, do you believe that it's
9 referring to you, when he says he, the word he? He
10 didn't say it, but it's clear that he has a real
11 problem with what's going on down there and he's
12 afraid that investors are going to hold him
13 accountable for it. He's increasingly concerned
14 that you don't have any accounting background.

15 Those are all concerns that you
16 expressed. I just want to make sure that the
17 Court -- the Court's question was, this e-mail --
18 Dennis is referring to you; correct? And the word
19 he is referring to you? You don't know of any
20 other Dennis that performed accounting work?

21 A. No.

22 MR. MCQUILLIN: All right. Thank you.

23 THE COURT: Mr. Jarvis, what does that
24 mean to you, the phrase due to/due from?

25 THE WITNESS: It's a receivable, the

1 payable. The receivable on the books of Boathouse
2 and a payable on the books of Crew. It should be
3 the same figure. The receivable on the books of
4 Boathouse should equal the payable on the books of
5 Crew.

6 THE COURT: Meaning what?

7 THE WITNESS: That if The Boathouse
8 leant money to Crew, then it show up as a payable
9 on Crew's balance sheet.

10 THE COURT: All right.

11 Further questions, Mr. Barr?

12 MR. MCQUILLIN: I have one more. I'm
13 sorry.

14 THE COURT: You get several more since
15 I asked questions, but you can go now or let me
16 Barr go.

17 MR. MCQUILLIN: I'll let him go first.

18 REDIRECT EXAMINATION

19 BY MR. BARR:

20 Q. So under the due from/due to, is that
21 equivalent of --

22 A. Due from would be on the books of
23 Boathouse.

24 Q. If just you look at the terms
25 receivable and payable, are the due from/due to the

1 equivalent of one of the other?

2 A. I would think so.

3 Q. So which is which? Due from a
4 receivable or payable?

5 A. The due from would be the receivable.

6 Q. So a due from would be a receivable and
7 a due to would be a payable?

8 A. Yes, sir.

9 Q. Those are the equivalent?

10 A. That's the way I look at it, yes.

11 Q. I think that might be what Judge Newman
12 was asking you about.

13 MR. BARR: Do you have questions? I
14 have some more.

15 THE COURT: No. You're redirect is
16 now.

17 MR. BARR: My redirect. I think we're
18 ready, Your Honor.

19 THE COURT: Yes.

20 BY MR. BARR:

21 Q. Mr. Jarvis, we now have a hard copy of
22 the unedited or unmarked affidavit, for the record
23 it's Plaintiffs' Exhibit 18. And I'm putting it on
24 the screen now.

25 So with respect to Mr. McQuillin's

1 question about when he showed you the documents
2 that supported the statements made in this
3 affidavit. Do you remember that question?

4 A. Say again, sir.

5 Q. Do you remember Mr. McQuillin asking
6 you whether they showed you documents to support
7 all these statements?

8 A. I remember the statement, yes, sir.

9 Q. And did I understand you to say, a
10 moment ago in your testimony, that you do not
11 remember them showing you any documents reflecting
12 that Richard did not permit you to share the tax
13 returns with other members, including Laurence
14 Stoney? Do you understand that?

15 THE COURT: Objection, Your Honor.

16 BY MR. BARR:

17 Q. But you don't remember seeing that
18 document --

19 THE COURT: Hold on. An objection was
20 had. What's the objection?

21 MR. MCQUILLIN: The objection is, this
22 witness has testified he doesn't remember that now,
23 as he sits here today, and that he would not have
24 signed it had he not seen a document.

25 MR. BARR: That's for redirect, Judge.

1 That's not an objection.

2 THE COURT: Overrule the objection.

3 MR. BARR: Thank you.

4 BY MR. BARR:

5 Q. Did I understand you to say that you
6 saw no documents to support the proposition that
7 Richard told you not to share the tax returns with
8 Laurence Stoney?

9 A. I don't remember seeing a document. It
10 could have been in there, but I don't remember
11 seeing any documents like that in my working
12 papers.

13 Q. And was it your testimony, I think,
14 that you signed this to get out of the office of
15 Haynsworth Sinkler Boyd; right?

16 MR. MCQUILLIN: Objection, Your Honor.
17 Asked and answered.

18 THE COURT: Overruled.

19 BY MR. BARR:

20 Q. Is that right?

21 A. I wanted to get out of that office. I
22 did not want to do a 10-hour deposition.

23 Q. And you wanted to avoid a 10-hour
24 deposition; is that right?

25 A. Yes, sir.

1 Q. Did you feel intimidated?

2 A. A little anxiety, but no intimidation.

3 Q. You were a football player at The
4 Citadel; weren't you?

5 A. Yes.

6 Q. So you didn't feel intimidated, but you
7 felt anxious?

8 A. Well, I guess because I didn't -- my
9 procedures, I guess, in relaying my thoughts on
10 this receivable payable wasn't sufficient to
11 account for the problem at hand.

12 MR. BARR: Thank you, Mr. Jarvis.

13 Your Honor, I would like to mark the
14 marked-up copy as an exhibit for identification
15 only so that at least it will be somewhere in this
16 record, to the extent the record will be reviewed.

17 THE COURT: I was conferring with my
18 law clerk. I missed the first thing you said.

19 Confer with your client. I missed the
20 first part of what you said.

21 MR. BARR: So, anyhow, I would like to
22 mark as Exhibit 19, I think is the next one, but
23 for identification only the marked-up version.

24 MR. MCQUILLIN: The only thing that I
25 just want the record to reflect is that the

1 marked-up version contains Mr. Barr's notes on an
2 affidavit that this witness signed. So that the
3 record is clear, this is the attorney for the
4 Defendants' notes on the affidavit.

5 MR. BARR: Right. But at least the
6 record will contain that document.

7 MR. MCQUILLIN: I understand.

8 MR. BARR: And I'm handing it to the
9 witness and turn it over.

10 (Defendants' Exhibit Number 19 was
11 marked for identification only.)

12 RE-CROSS EXAMINATION

13 BY MR. MCQUILLIN:

14 Q. Mr. Jarvis, the due to/due from Crew
15 Carolina, setting aside the accounting terms, what
16 that means to -- and just in layman's languages
17 terms, Crew Carolina owes The Boathouse \$4 million;
18 correct?

19 A. Yes, sir.

20 Q. I wanted to make sure that we all
21 understood that.

22 A. Right.

23 Q. I want to ask you about another
24 document that was put into evidence in this case,
25 Plaintiffs' Exhibit Number 5, sir. And this is an

1 e-mail that you wrote to Mr. Stabler on January
2 13th, 2015; correct?

3 A. Yes, sir.

4 MR. BARR: Excuse me, Your Honor.
5 Unless this is responsive to the previous
6 testimony, I believe it's not competent at this
7 stage of the examination.

8 MR. MCQUILLIN: It is.. He was asked
9 about the documents that he reviewed --

10 MR. BARR: I'm sorry.

11 THE COURT: He can't hear you.

12 MR. MCQUILLIN: You brought this up on
13 redirect. And it goes to the question about the
14 due to/due from receivable that the Court has
15 acknowledged.

16 THE COURT: It's overruled.

17 BY MR. MCQUILLIN:

18 Q. Sir, you write Jamie in this e-mail, to
19 followup on our phone conversation, I believe that
20 Richard was concerned when I told him of my concern
21 of the intercompany liability between Crew Carolina
22 and The Boathouse at Breach Inlet. Since Richard
23 is 100 percent owner of Crew and 55 percent partner
24 of The Boathouse, the IRS would consider the
25 inner-company liability as a related party

1 transaction.

2 I am thinking that if Crew wrote off
3 the payable, it owes The Boathouse, that it would
4 be included in income for Richard -- or income for
5 taxes and The Boathouse wrote off its receivables,
6 Richard would get a deduction. Please call me with
7 any questions.

8 So what you're saying there is that at
9 some point in time Richard Stoney had reached out
10 and about writing off the amount of money that Crew
11 owes The Boathouse; correct?

12 A. Do I agree with you, yes. The term
13 write-off must have been used.

14 Q. And what you're telling me and your
15 advice to him was, because you're the sole owner of
16 Crew, if you write that off, sir, that's going to
17 be deemed as income to you; correct?

18 A. Writing off a liability, yes.

19 Q. And that's why he didn't write it off;
20 correct, because it wasn't beneficial?

21 A. I don't know what was going through his
22 mind at that time. I'm sure the partners for The
23 Boathouse would have a lot to say about it too.

24 Q. There's no dispute, though, sir, in
25 your mind, based on the books of the company, Crew

1 Carolina owes over \$4 million to The Boathouse;
2 correct?

3 A. Certainly, yes.

4 Q. And Richard used that money for
5 personal matters and other --

6 A. Not all \$4 million. I mean, there was
7 some transactions, as I said, I had questions
8 about.

9 Q. That's right. But I'm saying based on
10 this, you reviewed Mr. Hallerbach's affidavit in
11 this case; have you not, sir?

12 A. I did. And there were certain
13 transactions that were deadly. Personal expenses,
14 yes.

15 Q. And as a CPA, you testified in your
16 affidavit, that you believe Mr. Hallerbach's
17 affidavit to true and correct; is that correct,
18 sir?

19 A. Yes, sir. Yes, sir.

20 Q. And you don't disagree with anything
21 with anything in Mr. Hallerbach's affidavit?

22 A. With the credentials he had, no.

23 Q. And the affidavit we are referring to
24 is the affidavit that was filed with this Court in
25 January of 2017; correct?

1 A. Yes, sir.

2 MR. MCQUILLIN: Okay. Thank you.

3 MR. BARR: No further questions.

4 THE COURT: All right. Thank you, sir.

5 MR. BARR: Mr. Jarvis, you may be

6 excused.

7 We call Richard Stoney.

8 MR. MCQUILLIN: I think the control
9 timing and witnesses that are called. But
10 Mr. Stoney has testified at the phase one trial and
11 he also testified in this case and went through a
12 very lengthy examination previously in this case
13 with Mr. Barr previously in this case.

14 So he's already been examined. And I
15 believe under the Rule, since he's been examined
16 it's not appropriate to have called again now for a
17 third time to provide trial testimony.

18 THE COURT: Yes, sir.

19 MR. BARR: Well, Your Honor, I think
20 Counselor is invoking that motion in limine through
21 the side door here, by saying I should be barred
22 from my client's full testimony.

23 Your Honor might remember, he testified
24 when he was cross-examined when called in the
25 Plaintiffs' case and chief. And I reserved my

1 right to examine him in our case. So I think he's
2 entitled to tell his story.

3 When Counsel suggested this motion in
4 limine, the other day, which we never really have
5 argued, Your Honor took the word right out of my
6 mouth, how are we to remember in the context, the
7 full context in the full trial today what was said
8 almost a year and a half ago.

9 So I think it's quite inappropriate.
10 And, among other things, it denies my client to due
11 process.

12 MR. MCQUILLIN: Your Honor, under Rule
13 611(d), it says, after examination of the witness
14 has been concluded to all the parties of the
15 action, the witness may be recalled only in the
16 discretion of the Court.

17 And, Your Honor, Mr. Stoney has been
18 called at this trial and has been questioned by all
19 of the parties in this case for a lengthy amount of
20 time by Mr. Barr.

21 And so that's the basis of our
22 objection is Rule 611(d), in that this is frankly a
23 waste of everybody's time.

24 MR. BARR: Counsel's waived that. I
25 expressly the right to call it in our case in

1 chief. And it was incumbent on him at that time to
2 insert, Mr. Barr, if we do that we're going to
3 object to recalling him at a later stage.

4 THE COURT: Well, at your all's
5 leisure, you may read this advance sheet case of
6 State v. Frazier in Lexington. A defendant was
7 tried. It was a hung jury. And I showed up in
8 Lexington again. And he was found guilty on the
9 appeal. And the appeal depended on whether or not
10 I improperly permitted reply testimony.

11 The Court of Appeals made up of some
12 circuit judge's -- the Court of Appeal reversed,
13 saying Judge Newman wasn't supposed to allow
14 redirect and reply testimony. He went beyond the
15 rules.

16 And they referred to the hung jury and
17 all of that. And granted a reversal. And, of
18 course, the State of Appeal to the Supreme Court.
19 And sitting here this case out this morning where
20 the Supreme Court reversed the Court of Appeals and
21 says that Judge Newman was directly on point in
22 allowing this reply testimony.

23 Of course, I haven't read the whole
24 case as I'm sitting here. But it's interesting
25 that bring up this issue Rule 611 at this time.

1 But the -- strategically, as far as trial
2 procedure, and all is concerned, it's not uncommon
3 for a -- to call an adverse party, you know, maybe
4 to have the party testify that's really prepared or
5 just to have the benefit of cross-examine before
6 the person's lawyer gets an opportunity to develop
7 the testimony in a logical way and manner that they
8 might have planned to do.

9 And many times, particularly in wreck
10 cases, once the person has been called on by the
11 adverse party then they have nothing else to say.
12 But I take it from Mr. Barr that's not this case.
13 And everyone is entitled to their day in court,
14 included Mr. Stoney and further defense presented.

15 So I overrule the objection. And
16 before we start, we'll take a few minutes.

17 MR. BARR: As you were telling the
18 antidote of the case, which I haven't read, I was
19 hoping for vindication of Your Honor's original
20 ruling.

21 THE COURT: If they hadn't affirmed
22 with the Court of Appeals, I wouldn't have
23 mentioned it.

24 We're at ease for 10 minutes.

25 (A brief recess was taken.)

1 THE COURT: You're still under oath.

2 Yes, sir.

3 DIRECT EXAMINATION

4 BY MR. BARR:

5 Q. Good morning, Mr. Stoney.

6 A. Good morning.

7 Q. You've previously been sworn and I
8 guess, cross-examined. Let me start off more
9 basically. Where do you presently live?

10 A. I live with my wife in The Village of
11 Mount Pleasant at 714 Azalea Street.

12 Q. And I'm going to call you Richard, like
13 I did Laurence, so we have the record is straight.

14 You have two siblings, I believe, Ted,
15 who's in court with you, and a sister; is that
16 right?

17 A. That's correct. Ted is two years older
18 than me and my sister is Beverly is three years
19 younger than me.

20 Q. And are you and the Plaintiff,
21 Laurence, first cousins; correct?

22 A. We are.

23 Q. Your fathers were both lawyers here on
24 Broad Street?

25 A. That's correct.

- 1 Q. Where is your -- you're currently
2 married. What is your wife's name?
- 3 A. My wife's name is Deborah Bowlby.
- 4 Q. And what is her occupation or
5 profession?
- 6 A. She's a pediatric endocrinologist.
- 7 Q. At MUSC?
- 8 A. At MUSC.
- 9 Q. Do you have children?
- 10 A. I have children by a previous marriage,
11 two children; Richard, and my daughter Croft.
- 12 Q. Who testified yesterday?
- 13 A. That's correct.
- 14 Q. And you're children are --
- 15 A. While I was going to the bathroom. I
16 apologize.
- 17 Q. And your children both hold membership
18 interests as beneficiaries of trust; is that
19 correct?
- 20 A. That's correct.
- 21 Q. And when I say membership interest, I
22 mean The Boathouse at Breach Inlet?
- 23 A. That's correct. Croft has five
24 percent, which is held in trust by her mother, and
25 Richard has five percent that's held in trust by

1 Ted.

2 Q. What's your education?

3 A. I attended boarding school in North
4 Carolina. The same school my brother did, Ted.
5 Went to College of Charleston and graduated from
6 law school at the University of North Carolina
7 1979.

8 Q. And you were admitted to the bar of
9 South Carolina in 1979?

10 A. I was admitted in 1979, yes, sir.

11 Q. And then you practiced law '79 -- are
12 you still active?

13 A. I'm not active. I do some pro bono
14 work.

15 Q. But you're active on the roster of the
16 South Carolina Bar?

17 A. I am. But my first job was as a
18 solicitor, and then I was deputy solicitor under
19 Charlie Condor.

20 Q. What is it that inspired you to get
21 into the restaurant business?

22 A. Well, as bizarre as it is, I came to
23 the College of Charleston and went to boarding
24 school. And all my siblings were at college. Our
25 father was a wonderful guy, but he was also pretty

1 strict. And he said, if I was going to go to the
2 College of Charleston I had to flip the house. And
3 I didn't think that was a good idea.

4 So I went and mowed lawns my first
5 year. And I worked in a clothing store. And
6 halfway through the second year, I had had an
7 opportunity. I saw a building right there at the
8 College of Charleston. Of course, the College of
9 Charleston back then, was all total -- my freshman
10 and sophomore year was right around 1,500 max. And
11 I started the beginning of my sophomore year, a bar
12 member, Mr. Hog Penny Tavern -- I was 19 years old
13 and --

14 Q. What was the name of it?

15 A. The Hog Pin Tavern.

16 Q. So you opened that?

17 A. Yes. It was a well-known bar. There
18 was a Piccadilly above it, which was more of a
19 sandwich shop. And there was music and such.

20 And then I went off to law school.
21 Retained ownership, owned boats. And I always had
22 a relationship or fascination with restaurants and
23 bars.

24 And I could -- as far as what led me to
25 Breach Inlet, and that property, and into the

1 restaurant business was a restaurant that I had
2 seen out in California in, I think it was in 1992,
3 maybe 1993. I had a good friend up in Malibu.
4 There was a place called the Reel Inn. And it had
5 a fish sandwich board and, you know, just basic
6 five different types of fish, fresh everyday,
7 several of the preparations was red rice and
8 coleslaw. And I thought that was a wonderful
9 concept. So that was the juice that inspired my
10 desire to open a restaurant in Charleston.

11 Q. And was that first restaurant The
12 Boathouse at Breach Inlet?

13 A. It was.

14 Q. Before opening that restaurant, will
15 you tell Judge Newman what manner of due diligence,
16 if that's the right word, or investigation or study
17 did you do?

18 A. I was so impressed with the Reel Inn.
19 And the friends that had gotten married, had a
20 house not far from me. It was on Topanga Canyon,
21 right off the Pacific Coast Highway.

22 I had only been to California once
23 before in my life. But I went back been within the
24 next year. They knew the owner. I had an
25 opportunity to talk to the owner. They opened a

1 second location in Santa Monica. And I just
2 thought this was a slam dunk concept in Charleston,
3 South Carolina. Because at that time, pretty much
4 every restaurant in Charleston, even the ones in,
5 you know, positioned themselves or projected
6 themselves as being seafood was frozen, most of it
7 was fried. And I just thought the menu design,
8 being able to order fish mahi-mahi and have it
9 grilled or blackened, or whatever it was was a
10 great concept.

11 So I began reading different books. I
12 was involved with a case as a lawyer with the EOC.
13 I went back and forth to the World Trade Center
14 several times and had a book store in the basement
15 of EOC in the World Trade Center.

16 And I actually bought a book called
17 Restaurants That Work. It became kind of a bible
18 in the industry for about 10 years. And it was a
19 compilation of multiple restaurants and different
20 concepts that hadn't worked. You can still get it
21 online.

22 So I bought the book and several other
23 books and then I actually went to seminar to
24 determine a location. And within, I think, two to
25 three years, is which the site of Breach Inlet,

1 through a client of mine, became available. And
2 that was a former restaurant that was going out of
3 business, sitting on that parcel land.

4 Q. So that's approximately what year?

5 A. The year that I made decision to go
6 forward with The Boathouse?

7 Q. You're describing --

8 A. That year would be '95 when
9 negotiations started taking place. And I leased it
10 sometime in the early part of '96.

11 Q. What existed on the property at that
12 time?

13 A. It was almost embarrassing when it
14 existed. What the owner had done after Hurricane
15 Hugo in photographs showing that the basically the
16 whole -- the building that had listed the year
17 before.

18 MR. BARR: May I approach.

19 THE COURT: Yes, yes.

20 BY MR. BARR:

21 Q. We were discussing your inspiration and
22 your due diligence to get in the restaurant
23 business. And I think you said had studied a book
24 that you got from the World Trade Center bookstore,
25 Restaurants That Work.

1 Did you consult with any
2 restauranteurs?

3 A. Well, I was fortunate enough to have a
4 very dear friend, Peter Michaels, who was from
5 Belgium. And we were very close --

6 Q. I'm sorry, you're going to have to
7 speak a little louder.

8 A. I'm sorry. Even in the year 1997 we
9 had known each other for at least five years or six
10 years. But Peter owned some restaurant~~s~~s in New
11 York, three. And he had restaurants in Belgium.
12 And so I had the option to talk with Peter. I also
13 I attended a seminar in Myrtle Beach. I talked to
14 Harold about the --

15 Q. Harold Pratt-Thomas, I believe, was
16 your certified public accountant?

17 A. CPA when Pratt-Thomas, which later
18 merged into Dixon Hughes, which I don't know what
19 the name of the company is now.

20 And then actually talked with my
21 brother, Ted, about the real estate and about the
22 possibilities. And at the time it was a frontier.
23 I mean, literally people thought I lost my mind.
24 There's not enough road traffic or whatever. But I
25 thought the location was ideal.

1 And so I moved into the negotiations
2 with John Cantrell. Mr. John Cantrell would not
3 sell the property.

4 Q. Mr. Cantrell was the owner of the land?

5 A. Yes. I'm sorry.

6 Q. At Breach Inlet?

7 A. And Mr. Cantrell had owned it for quite
8 some time, wonderful fellow. Been in the military
9 and retired, had invested. And he owned the land.
10 He owned right across the street.

11 He wanted to sell it, but he said he
12 wouldn't sell it for a year or two years. I don't
13 remember the timeframe. And they are in the
14 records. In fact, he agreed to a lease, a 20-year
15 lease with the option to purchase. I think it was
16 within a year and a half, maybe two years. But I
17 think it was a year and a half.

18 So I signed the lease and then I, you
19 know, started the negotiations with the various
20 contractors and tried to decide how to build it.

21 Q. Let me interrupt you. By the time you
22 had negotiated the lease with Mr. Cantrell when you
23 started talking with contractors, had you
24 formulated a form of business plan, a concept, an
25 idea of what you wanted to do? Tell the Judge

1 broadly about how --

2 A. You know, after reading these books it
3 was obvious that one restaurant can only do so
4 well. And in order to really build and to save
5 money and call it a master plan, a business plan,
6 these books all indicated two restaurants as
7 opposed to three, three as opposed to four.
8 Meaning, the more the merrier until you get to the
9 point of meeting your term.

10 The goal was to me and the
11 recommendation was not to get too big. And so it
12 was a ratio of four to five units. It was also in
13 those books. There was one restaurant called the
14 Dock; D-O-C-K, which was right downtown Manhattan.
15 I think the guy ended up having two or three. And
16 the guy name was Ary something. I remember that.
17 Because I was just fascinated by their restaurants.
18 It was primarily a seafood restaurant.

19 I went to New York several times to
20 look at that. I flew up there. I had friends.
21 You know flights are very extensive. Flew up there
22 and stayed with friends, Peter Michaels.

23 And so that's when I decided, you know,
24 to have -- in my mind, I had always admired The
25 Chart House Group. In this room, you'd have to be

1 at least 50 years old to know that group.

2 But they actually -- right where the
3 Federal Courthouse is, they were in that building
4 when I was a young prosecutor with you. They had
5 beautiful restaurants and they were all pretty
6 properties. They had restaurants all over the
7 country; Boston, Colorado.

8 Q. Let me interrupt that direction and ask
9 -- so the idea was to establish more than one
10 restaurant; correct?

11 A. Right from the beginning.

12 Q. And what, if any, role did a management
13 company play in your concept?

14 A. Well, from the books and from Peter
15 Michaels and discussions, it's the, what I would
16 call, consolidation of the operations and the
17 management that it cost to run a restaurant.

18 So they were enormous cost savings if
19 you had three or four restaurants from the buying
20 power, negotiations, food purveyors, et cetera from
21 the accounting side and from operational side. And
22 on the operation side, it was clear, and just
23 common sense that you would use substitute manager
24 and substitute personnel, everything from
25 dishwashers on up, even if you had restaurants in

1 close proximity.

2 Q. And the goal of the management company
3 is -- the purpose of it is what?

4 A. The main goal is really cost savings,
5 is the word that I would use, tremendous cost
6 savings.

7 Q. And does that then become Crew
8 Carolina, LLC?

9 A. It did.

10 I refer back to the seminar when it was
11 called restaurant, a business of pennies. And, you
12 know, it talked about everything from how you buy
13 to literally ramekins, how big is, and how much
14 mayonnaise you put in it. And if you do, you know,
15 the different size ramekins, that you can save
16 \$30,000 over a year just by doing that, and in the
17 buying power. It was a great seminar.

18 Q. Back then to your plan for the
19 property, you told us that you entered into the
20 lease with Mr. Cantrell 20 years with an option to
21 buy. What, if anything, did you do with respect to
22 the construction side?

23 A. I did it all basically.

24 Q. Did you hire an architect?

25 A. I did. And I hired an architect,

1 Reggie Gibson, who's a very dear friend.

2 And then when we got into construction
3 me and my brother built a number of things and
4 redone a number of things. And so I talked with my
5 brother. He knew a fellow by the name of Michael
6 Lager (ph). Mike Lager was a young contractor. I
7 offered to pay Mike to use his license, which is a
8 huge cost savings. You know, he would pull all the
9 permits. He would certainly accept the job and be
10 responsible.

11 Q. What was your original estimate for the
12 cost of construction?

13 A. Usually off of my estimates, because
14 I -- they never -- it's so hard to estimate.

15 Q. What was the amount?

16 A. It was \$250,000. But on a second
17 generational space, you don't know what you're
18 getting in to. It's like buying a car without
19 opening the doors.

20 Q. And what did it ultimately cost?

21 A. About \$500,000, give or take \$10,000.

22 Q. How did you fund that?

23 A. Well, I started by using the escrow --
24 the -- what do you call it? The line of credit on
25 my house. I had an equity line on my house on

1 Sullivan's Island at the time. And once that was
2 exhausted I went to U.S. Foods, who I signed a
3 contract with on the food purchasing.

4 Q. Do did you ask U.S. Foods to loan you
5 money?

6 A. Yes. And I can't remember the exact
7 amount. It was between \$75- and \$100,000.

8 Q. Now, at what point did you form the LLC
9 The Boathouse at Breach Inlet?

10 A. The date would speak for itself. I
11 believe it was November of 1997. You know, I truly
12 believe that was the second one. I believe there
13 was an earlier one, because that has my son's name
14 on it.

15 Q. I'm going to hand you Exhibit 12, which
16 is the operating agreement.

17 A. And this is clearly the one that is in
18 effect today.

19 Q. So the operating agreement is dated
20 when? Exhibit 12 on the front, very front page.

21 A. I see. It's the 21st day of November
22 1997.

23 Q. So that's when the operating agreement
24 of the LLC was signed; correct?

25 A. Yes.

1 Q. And who were the initial members?

2 A. The initial members were my cousin,
3 Laurence, my brother, my son, and that issue. And
4 that was -- but that amount percentage was owned by
5 -- was in trust and then myself. And the
6 percentages on this operating agreement are
7 unfortunately inaccurate. I testified to that
8 earlier.

9 Q. Can you speak a little bit louder so
10 that your voice projects?

11 A. I'm sorry. I apologize. I'll get
12 closer to the microphone. I apologize.

13 Q. So the operating agreement reflects
14 what, in terms of the initial percentages? If you
15 could look to the back page?

16 A. This document doesn't it. I brought a
17 copy up here. The last page of the operating
18 agreement shows -- I'd put it up on the screen, if
19 I knew how to do it. But it says, Richard Stoney
20 owns 83 percent.

21 Q. I'll put that up on the screen.

22 So are you saying the exhibit doesn't
23 have a last name?

24 A. Unfortunately, it doesn't. But it has
25 last page, but not that. It goes to page 30.

1 Q. So am I showing on the screen what is
2 the last page of exhibit -- what is that 12?

3 A. Exhibit Number 12.

4 Q. So the initial percentages were, at
5 least, reflected on this for 83 percent for you,
6 four percent in trust for Richard, you; 12 percent
7 Laurence, and eight percent for Ted. Are you
8 saying that that was not actually correct or not --

9 A. Readily, no. I saw it years ago and
10 never corrected it. But Bobby Pearlman would have
11 drafted this. And the correct percentages are the
12 percentages since day one, acknowledged by
13 everybody that --

14 Q. I want to ask you what they were.

15 A. Okay.

16 Q. Why don't you tell us what --

17 A. Let me start with Ted -- Richard would
18 five percent, Laurence five percent, and Ted
19 10 percent. So that is 20 percent. So I would
20 have owned 80 percent.

21 Q. So the correct numbers on at least the
22 LLC were 80 percent to you, five percent Ted for
23 Richard, Jr., five percent to Laurence and
24 10 percent to Ted?

25 A. That's correct.

1 Q. And when did the restaurant open?

2 A. Well, you asked me earlier about the
3 construction.

4 Q. No, I don't want to ask you about that.
5 I want to ask you when it opened.

6 A. The restaurant opened in October of
7 '97. We began construction around October,
8 November of '96. But because of the difficulty of
9 building of the point and setback lines and FEMA --

10 Q. Let me interrupt you, please. So the
11 restaurant actually had opened by the time the LLC
12 agreement was signed; correct?

13 A. That's correct. That's correct.

14 Q. So the restaurant opened in October of
15 '97 and you entered into the LLC agreement in
16 November?

17 A. That's correct.

18 Q. Let me segue off of the actual The
19 Boathouse at Breach Inlet. Let's talk about it.
20 Your cousin, Laurence, what has been --

21 Well, first of your age relationship,
22 yours' and Laurence's?

23 A. He's somewhere 20 or 22 months older
24 than me. My brother is 22 months. But they were
25 in the same class in school.

1 Q. So Laurence was maybe two classes ahead
2 of you?

3 A. He was two classes ahead. Ted and
4 Laurence were in the same class. There's a big
5 difference when you're kids.

6 Q. What was your relationship growing up?

7 A. Basically cordial, not close, as
8 Laurence described. I never considered my
9 relationship with Laurence as close.

10 Q. Did there come a time, even though he
11 was two classes ahead of you, when you did
12 socialize with Laurence more than you had before?

13 A. Well, Laurence left Charleston quite
14 some time. He went to several boarding schools.
15 He traveled quite a bit, as far as schools and
16 colleges. With all due respect, I don't believe
17 Laurence finished college, but after --

18 Q. But my question is this: Did there
19 come a time when you --

20 A. Well, I'm going to get there.

21 Q. Okay.

22 A. What I'm saying is that Laurence was
23 out of town for quite some time, between schools
24 and between -- I think he Nantucket for a while and
25 ended up going to New York and working in

1 commodities exchange. During that period of time,
2 I saw Laurence infrequently. And now I think I'm
3 in law school and Laurence would come home two to
4 three times a year for Christmas or some particular
5 event. And I would see him.

6 By this time in my life, I'm very
7 involved in law and during law courses. I had two
8 dear friends from other countries. Laurence would
9 hang out with us at times. And I would see him
10 from time to time. I would say, when are you
11 coming to town, you know, during that period of
12 time.

13 And then he had some issues -- he
14 testified to before this Court with exchange. You
15 know, whatever he said, I certainly respect. But
16 at some point, he was no longer on the exchange and
17 he went to work on a racetrack for a while. He
18 just sort of disappeared for about four years.

19 And I didn't see him in Charleston,
20 that I can remember, for several years. The next
21 real reunion, I remember, is when Laurence had
22 moved to Atlanta and was living with his
23 girlfriend, at the time, named Robin, who he
24 subsequently married and had a child by.

25 Q. Did you see Laurence after he had moved

1 to Atlanta?

2 A. I saw Lawrence probably three or four
3 occasions in Atlanta.

4 Q. Now, before your acquaintance or
5 re-acquaintance with Laurence in Atlanta, in those
6 years when you would socialize with him, when he
7 would come home you were in law school, as you
8 described, and frankly growing up, how you would
9 describe Laurence's personality?

10 A. Laurence's personality changed
11 drastically, in my opinion, through, what I would
12 call, a few hard bumps.

13 When he was in New York he would drive
14 down in a Mercedes. He had a gold Rolex watch. He
15 gave his parents one Christmas Rolex watches. And
16 he flippantly said, you know, they were fake. He
17 had just an aura of arrogance. I've always thought
18 Laurence was insecure. All of has some
19 insecurities. But Laurence always wanted to be
20 some sort of a big shot.

21 But once he had this bump in the road
22 in Atlanta, and I'm seeing Laurence I also saw a
23 different side of Laurence. He was much more
24 humble. He was gracious. He was just much more
25 enjoyable to be around. The courtroom's had

1 some -- Your Honor has some viewing of Laurence.

2 Q. Now, at the time that Laurence was
3 living in Atlanta, was his father still practicing
4 law here on Broad Street?

5 A. His father was struggling to just live.
6 I had the good fortune of practicing law in the
7 same building with Uncle Laurence, who I loved and
8 one of the greatest people that I've ever known.
9 Laurence and his father had sort of sorted
10 relationship. I don't know why. I tried to
11 convince Laurence to come back to Charleston
12 several times. His brother, Tom, was physically
13 and mentally abusing his father.

14 Q. Well, what was his father's condition?

15 A. His father acute emphysema, according
16 to the last two to three years of his life he had
17 an oxygen tank. And he, ultimately -- I believe it
18 was cancer in which he died in 1992.

19 During that period of time, Laurence's
20 brother -- and they don't get along at all. He's a
21 few years older than Laurence. He's also a lawyer.
22 He was constantly threatening his father. And I
23 actually had to physically go out and separate them
24 one time. And this is a frail man.

25 Q. Did Laurence ultimately return to

1 Charleston?

2 A. In my recollection, he didn't return
3 until two to three months before his father died.
4 His father certainly had a very short lifespan by
5 the time he arrived.

6 Q. So Laurence had returned to Charleston
7 by the time you were forming Breach Inlet?

8 A. He'd been back by the time I formed
9 Breach Inlet. His father died, I believe, in 1992.
10 I'm not sure of the exact date. But about four
11 years later is when I was forming Breach Inlet.
12 And Laurence and I were seeing each other on a more
13 frequent basis, through these forced relationships
14 and mutual friends.

15 Q. With respect then to the formation of
16 The Boathouse at Breach Inlet, LLC, then under what
17 circumstances did Laurence become a member?

18 A. My recollection is that I was honestly
19 running out of money. We were about four to five
20 months over scheduled, the schedule as far as
21 operating.

22 You know, in the restaurant business
23 you have to hire people when you think you're going
24 to open. So I hired prematurely two or three
25 people, key people. It was getting quite

1 expensive. I was pushing as far as I could push to
2 get the CO and get the place open.

3 It was very difficult. And at some
4 point I was short about 50- or \$60,000 to carry
5 through. I had had a fellow who was supposed to
6 put in money and in the 11th hour backed out. A
7 guy named David Ingle, who we all know, approached
8 me and wanted to put in money. My brother Ted
9 offered to put in money. So Ted was putting in
10 money. I was going to take Dave Ingle's share.
11 That fell through. And Laurence had some
12 conversation which he said, I'll invest.

13 So Ted put in 25,000, if my
14 recollection is correct. And Laurence put 28
15 something.

16 Q. Well, let me show you the exhibits of
17 the operating agreement again. You had testified
18 that the percentages were not accurate. But what
19 about the initial cash contributions, are those
20 figures accurate?

21 A. Those figures are accurate.

22 Q. So testify and tell us what amount
23 Laurence put in?

24 A. Laurence put in 28,750. I said 25.
25 I'm mistaken. Ted put in 50. But Ted also, you

1 know, rendered services on pretty much on a daily
2 basis. Ted was very helpful. He was the one that
3 acquired the contract for me.

4 Q. But the amount of Laurence's initial
5 contribution is \$28,750?

6 A. That's correct.

7 Q. Now, how would you describe the
8 success, for lack of a better term, of Breach
9 Inlet, The Boathouse at Breach Inlet after it
10 opened?

11 A. Phenomenal. Quite unprecedented for
12 Charleston at the time. And as a result -- I mean,
13 it was back before there were any restaurants in
14 Mount Pleasant that anybody went to. There was one
15 restaurant out on Isle of Palms that --

16 Q. Do you recall any favorable publicity
17 during that time?

18 A. I had considerable publicity. One of
19 the ironies of the whole picture is that through a
20 friend of mine, who's a writer out of New York, Guy
21 Garcia, who was staff writer for Time magazine for
22 better of ten years. He was a published author of
23 multiple books. He had a -- and he was an
24 independent writer for a magazine, like an outside
25 magazine or whatever. Delta magazine hired him to

1 write an article on Charleston.

2 And he called me and this was about
3 three or four months before I opened. And he said,
4 I want to put y'all in there. And I said, that's
5 wonderful.

6 Q. Was that during the first year?

7 A. This is before we opened. This is
8 literally before we opened. The target date being
9 open in like August. And this publication is
10 coming out sometime in, you know, November. So
11 that story had to be by August. Well, we didn't
12 have our CO.

13 Q. CO meaning?

14 A. Certificate of occupancy. So we had no
15 ability to cook food in the restaurant. All the
16 food tasting, as far as the menu selection, we went
17 through like 14 or 15 type of lobster.

18 But to make sure it's clear to the
19 Court, to His Honor, we were able to -- Guy Garcia
20 was gutsy enough and I was fool enough to say,
21 let's go for it.

22 So we cooked the food at my house, we
23 set up the restaurant, as if it was open, in one
24 little room and took photographs. The article was
25 written. The restaurant fortunately opened to

1 great success. And I don't know how many
2 millions -- I forget how many millions a day saw
3 and read about it. My picture was in there. The
4 restaurant's picture was in Delta magazine for some
5 time.

6 Q. Let's talk about the second restaurant.
7 What was the second restaurant that you opened?
8 What's the name of it?

9 A. The name of it was The Boathouse on
10 East Bay.

11 Q. And when was that transaction -- let's
12 talk about when it was consummated and then we can
13 back up to tell about how you got there. When did
14 it open?

15 A. I wrote out a few notes here. The
16 Boathouse on East Bay was formed on January 8th,
17 '99. That would be the LLC and operating
18 agreement. It opened in February. So about a
19 month later it opened. February of '99 we opened
20 it. I literally was the foremen on that.

21 Q. So Breach Inlet opened in October of
22 '97?

23 A. Correct.

24 Q. And then a little over a year later,
25 East Bay opened in February of '99?

1 A. That's correct.

2 Q. And let's talk about The Boathouse at
3 East Bay. First of all, where was it located?

4 A. It was located around East Bay Street.
5 It's now called Biergarten.

6 Q. It is at the corner of East Bay and --

7 A. And Chapel Street.

8 Q. -- Chapel Street?

9 What was formally there?

10 A. A restaurant known as Arizona's. It
11 was a very popular restaurant, but I was actually
12 the lawyer for Arizona's. They never really made
13 any money. But they certainly ran a lot of people
14 through.

15 So I felt if I put the right brand
16 together, which was another Boathouse, with the
17 same menu, we would be successful, which initially
18 we were. Not at the level of The Boathouse on
19 Breach Inlet. There was a tremendous cost
20 involved, an older building in downtown and a
21 parking lot.

22 Q. You told us that the East Bay
23 restaurant opened in February of '99?

24 A. That's correct.

25 Q. Who are the members of that LLC at East

1 Bay?

2 A. Well, the members were the same members
3 that were members of The Boathouse of Breach Inlet.
4 In addition, my sister, Beverly Stoney Johnson --
5 her last name is Johnson, her married name, and
6 Michael Maloney.

7 Q. Now, right around that time, did you
8 also form the management company?

9 A. The management company, I believe, was
10 open before the restaurant, the LLC was formed. It
11 was December 21st, 1998.

12 Q. And that was Crew Carolina?

13 A. And that was two to three weeks before
14 The Boathouse at East Bay was opened in about two
15 months or a month and a half before Breach Inlet
16 opened.

17 Q. And that was Crew Carolina?

18 A. That was.

19 Q. So, once again, what was Crew
20 Carolina's role?

21 A. Well, it was mainly a management
22 company designed, based on these books, and other
23 information that I had seminars. And it was
24 designed to centralize purchasing, accounting
25 operation, et cetera. And at a great cost savings.

1 Q. Now, do you recall sometime around the
2 opening of East Bay there being a meeting at your
3 office?

4 A. I do. And Laurence, in his testimony,
5 remembers it well.

6 Q. Let me ask you, first of all, where was
7 your office at that time?

8 A. My office is on Broad Street, the same
9 building, 4951 Broad Street, where our grandfather
10 practiced and where my Uncle Laurence practiced,
11 even during that time period or right before.

12 Q. Who attended that meeting?

13 A. It was a meeting that I had called and
14 I ran and precipitated. And it was all the
15 investors of the restaurant. My sister, Laurence,
16 Michael Maloney, my brother, Ted, Jane Baker, who
17 by that time was my assistant. She was involved in
18 a meeting.

19 Q. Tell us about the meeting.

20 A. Thomas, who was our CPA, and Bobby
21 Pearlman, who was the tax attorney who I set up.

22 Q. Now, in that meeting, what, if
23 anything, was discussed about this business plan
24 that you've described to Judge Newman here today?

25 A. Well, you know, the Crew Carolina had

1 been formed, if I'm not mistaken, at this time. So
2 Crew Carolina was discussed. It was discussed how
3 that would function and how people would be paid
4 and such.

5 It was discussed to the members, the
6 cost savings. I don't remember the details. I had
7 an agenda. I remember having a very detailed
8 agenda. It also talked about other details, such
9 as, I believe -- I know that I was asking for it.
10 I received a car payment. I don't know that I
11 asked. But I informed them that I was going to get
12 a car payment that would be split between the
13 entities of about \$300 a month, if I remember
14 correctly. I was constantly using my vehicles as
15 my car.

16 And there was some paintings that
17 became a real bone of contention with Laurence,
18 which I never to this day understood. They were
19 paintings that were done -- I think the total costs
20 of those paintings in that day and time were like
21 \$5,000 for both paintings. They were personal to
22 me. And a woman from France, who was quite
23 talented, had done them as a favor to me. We had a
24 mutual in Charleston. She was here for like a
25 month.

1 Q. Among the discussions at that meeting,
2 was there a discussion about this management
3 concept with Crew Carolina would be the focal point
4 for managing both of the restaurants?

5 A. Yes. And I touched on that.

6 Q. At that point, had the concept of
7 creating this sweep account that I think Chip
8 Robinson testified about yesterday, had that also
9 been formed?

10 A. The sweep account that I think Chip
11 testified to is after that.

12 Q. It was after that?

13 A. It would be one central account, which
14 would be accrued. And then at one point, because
15 of banking and cost savings, with one of the
16 banks -- I believe he said Wachovia. I couldn't
17 remember, until he took the stand, which bank it
18 was.

19 They said we can take care of that,
20 which would eliminate -- because we had like 10 or
21 12 accounts. And this is years later, two to three
22 years later, where we had opened the catering
23 company. We had a lot of companies, including, I
24 think, Asheville may had been opened.

25 Q. Let me interrupt you there then. Let's

1 leave that conversation about that meeting.

2 I'll ask you, what other entities
3 therefore formed under the umbrella of this
4 business plan.

5 A. Yes.

6 Q. Do you remember what they were and when
7 they opened?

8 A. I know that there was Blue Water
9 Management, which was opened in June of 1999.

10 Q. And what was the purpose of Blue Water
11 Management.

12 A. Well, we'd already -- you know, when
13 you read these -- again, if you read Restaurant
14 That Works or some of these other publications or
15 attend seminars, they talk about you want to use
16 every component you can of which you have.
17 Meaning, you still have a kitchen and a kitchen is
18 sitting there empty for seven or eight hours, or
19 nine or ten hours so do a catering business. It's
20 ways to generate more income. So we try to do
21 that.

22 In all the restaurants, we tried to
23 create catering out of kitchens, which was very
24 difficult. And that's very involved discussions as
25 to why. But we moved towards that. And ultimately

1 we had put a catering kitchen on Robin Street.

2 Q. Okay. But I'd asked you what Blue
3 Water Management was for?

4 A. Well, it was specifically for the
5 catering and the specialty products that we were
6 going to -- and I've got a cookbook sitting over in
7 my briefcase. It has photographs of the
8 different -- in 2006 the book was published. By
9 2002 and 2003, we already different sauces.

10 Q. All right.

11 A. We had frozen products. We had these
12 blue cheese chips, pita chips that were that were
13 selling off the shelf. We couldn't keep up the
14 supply. Whole Foods wanted us to do it nationally.
15 So we were looking into that.

16 But Blue Water Management was the LLC
17 formed for what became those products and that
18 line.

19 Q. And by the time you formed Blue Water
20 Management, did Crew Carolina have an office
21 location?

22 A. It had, I believe, three primary
23 locations of Crew Carolina offices. The first one
24 being at The Boathouse in a very small, small
25 office. And then when the property that Ted and I

1 had on John Street, we moved to John Street because
2 we had three to four employees all total, including
3 myself, an accountant, and Jane Baker. I can't
4 remember the other one. I think there were four of
5 us in there.

6 Q. Did there come a time when Crew's
7 office was located on Romney Street?

8 A. Right. And I don't know the exact
9 year. Probably 2000 --

10 Q. But that was the location that was near
11 Laurence's office?

12 A. You know, that's from here to St.
13 Michael's Church. But it's within five minutes of
14 walking.

15 Q. So after forming Blue Water Management
16 in June of 1999, what was next formed?

17 A. Looking at my notes, Julian was formed
18 in July of 2002.

19 Q. And was that a Boathouse restaurant?

20 A. That was a Boathouse. And that was for
21 -- there was the third one.

22 And what I tried to do is I had the
23 uniforms were all the same. It was khaki shorts
24 and a red belt. But the shirts were different at
25 each one. It was brown in keeping with that

1 terrain and that environment. It was blue over at
2 East Bay. And at Breach Inlet they were white.
3 And it had the same logo, red cross letters --
4 excuse me red cross boards on the sleeves.

5 Q. After Boathouse on Lake Julian, what
6 was the next entity that was formed?

7 A. Carolina's, which was is a restaurant
8 that I bought.

9 Q. And when was that?

10 A. In January of 2004 is what I have.

11 Q. Where was that located?

12 A. That was a restaurant that was hugely
13 successful. And I thought it was going to continue
14 to be successful. The books had shown over the
15 last year or two it was descending. And I thought
16 if I brought in a great chef we would be fine. It
17 was located on Exchange Street. Exchange was
18 about --

19 Q. It was on Broad Street; correct?

20 A. Yes. And it was one of the most
21 popular restaurants in Charleston.

22 Q. And when was Carolina's formed?

23 A. January of 2004.

24 Q. And then what was next formed?

25 A. Then there was Boathouse on Falls,

1 which was, which would the forth restaurant. And
2 that was in March of 2007. And we had --

3 Q. And that was located in what city?

4 A. In Greenville, South Carolina. And it
5 was literally on The Falls. It was a building
6 owned by the Halter family, H-A-L-T-E-R.

7 Q. Please allow me to interrupt you.

8 A. Sure.

9 Q. So you talked about The Boathouse at
10 Breach Inlet, The Boathouse at East Bay, Blue
11 Water, The Boathouse on Lake Julian and Carolina's.
12 Were all of those restaurants actually opened and
13 operated for business?

14 A. They were.

15 Q. And now we're talking about The
16 Boathouse on The Falls. Was that ever operated?

17 A. No. We had plans. We were getting
18 ready to start the building. Cane Halter, Jr. was
19 a banker. He was in his early 40s. He was the
20 health, vivacious guy I'd ever known, wonderful
21 fellow.

22 And three months into that project,
23 meaning we had the plans, we the contract laid out,
24 we were getting ready to build. We spent quite a
25 bit of time on it. He called one day and said he

1 had brain cancer and was given something like 90
2 days to live.

3 Q. So that Boathouse on The Falls really
4 never begun?

5 A. That was the end. It was an incredible
6 location.

7 Q. Right in downtown?

8 A. It would have been a major, major
9 success.

10 Q. And what was formed next on Boathouse
11 on The Falls?

12 A. Well, somewhere in here -- I don't know
13 the day of it, when we formed Carolina Catering. I
14 didn't write it down. But somewhere in between
15 2002 and 2003, I believe Carolina Catering was
16 formed, which was a very successful catering
17 company for a number of years.

18 We brought in -- there was a restaurant
19 on Sullivan's Island at the time, but before that
20 it was another restaurant. And it was run by a guy
21 and his name is Phil Corr, C-O-R-R.

22 Q. Are you talking about the catering
23 operation?

24 A. Yes. And Phil Corr was accrued into
25 the catering. And we ended up having a contract.

1 We did all the catering for an art gallery. We did
2 catering for Boone Hall Plantation. We did
3 catering for --

4 Q. Forgive me for interrupting. Did you
5 also start up or attempt to start up a restaurant
6 in Knoxville, Tennessee?

7 A. Well, that's a very contracted story.

8 Q. Just make it brief.

9 A. I'll make it brief. The brief is that
10 it was a true con man who set us up. He was opened
11 and took up the money. And they claimed that they
12 were short this and short that. We got into that.

13 Q. What was the name of that?

14 A. It was Chota.

15 Q. Spell that.

16 A. C-H-O-T-O (sic). It's an old Indian
17 name. It was right on the river. It was an
18 already existing restaurant.

19 Q. So did Chota ever get started?

20 A. Yes. And it was doing very, very well.
21 We were not paid back the money we put in and so we
22 pulled out.

23 Q. And what was the next entity then?

24 A. I guess the next restaurant that --

25 Q. Did you form a restaurant on James

1 Island?

2 A. Yes. That's Ellis Creek.

3 Q. What was that initially called?

4 A. That was called The Boathouse on Ellis
5 Creek.

6 Q. And when was it created?

7 A. I believe in December of 2008. The
8 reason I say that is because I know I couldn't
9 begin the construction.

10 There were two sisters that owned it.
11 It used to be called Mi-Mi's. It was a very brunch
12 location on Ellis Creek. It had quite a following.

13 And it was a very small building. We
14 did it. When I say we, I did it again using
15 another contractor. And I did the contracting. I
16 did it all myself. And I built it in about 90 days
17 adding, you know, a kitchen, expansion.

18 Q. And when was Ellis Creek formed?

19 A. It was formed late 2008. As far as
20 formation, we took it over January 1, 2009. We
21 started construction January 2nd. We opened and it
22 burned to the ground, I think, 14 days after we
23 opened. I mean, literally to the ground.

24 Q. So if I have it correctly then in 1997
25 you testified Breach Inlet was open and then if I'm

1 counting them correctly Breach Inlet, Boathouse at
2 East Bay, Blue Water Management, Boathouse on Lake
3 Julian, Carolina's, Boathouse on The Falls, which
4 never got going, Chota in Knoxville, which you
5 talked about, Carolina Catering, which you talked
6 about, and then finally The Boathouse on Ellis
7 Creek.

8 So within the span from 1997 to
9 December of 2008, is it correct that you opened --
10 I guess on The Falls never opened. So maybe you
11 opened eight different restaurant operation
12 activities?

13 A. I believe that's correct.

14 Q. And were they all managed by Crew
15 Carolina?

16 A. They were.

17 Q. And was Crew Carolina at the ultimate
18 time in '08, was it still on Running Street?

19 A. In 2008, yes.

20 And we had, you know, the purchasing
21 power at that time. Despite other issues, the
22 purchasing power was amazing. I mean, when you
23 have that number of restaurants, Sysco and U.S.
24 Foods every year would be competing. Every year --
25 90 percent of the time I've been totally loyal to

1 U.S. Foods. I mean no disrespect to anybody, maybe
2 Sysco. They are very nice people, but I always
3 felt like we got a better deal with U.S. Foods.

4 Q. And I think Chip Robinson yesterday
5 testified to the two biggest cost items associated
6 with the restaurant business. I can't remember
7 what they were.

8 A. Food and labor, I'm sure.

9 Q. Food and personnel?

10 A. Labor, kitchen primarily.

11 Q. So this management -- Crew Carolina
12 Central Management, if I'm following correctly, was
13 designed and conceived up to substantially those
14 two major costs?

15 A. That's absolutely correct.

16 Q. Then after the formation of The
17 Boathouse on Ellis Creek in 2008, tell Judge Newman
18 whether this entire organization, whether you
19 encountered any catastrophes. So tell us what they
20 were.

21 A. Well, the first one was East Bay. And
22 my brother testified I was out of town, fortunately
23 not far away. And I phone call that Patrick
24 Greenwald had been shot and killed.

25 Q. Who is Patrick Greenwald?

1 A. He was my manager.

2 Q. The manager of The Boathouse at East
3 Bay?

4 A. Yes. And a very dear friend.

5 Q. Do you want to take a break?

6 A. No, I don't.

7 But what I want to say is it's almost
8 inconceivable what happened. And it was only
9 because of the person Patrick was. We had a
10 foundation to set up about seven or eight years
11 after.

12 Q. Well, what were the circumstances of
13 his death?

14 A. He was working at The Boathouse on East
15 Bay. There was a young man who was down on his
16 luck and he had obviously a drug problem. Patrick
17 was the sweetest guy in the world. He was a big,
18 burly guy. And he had -- he took everybody under
19 his wing. If Patrick had a hundred bucks left --
20 you know, he would give you the shirt off his back.
21 So he had taken sort of, over a period of time,
22 taken care of this young man. He was a 15-, 16-,
23 17-year-old dishwasher.

24 And he was hanging out with a bad
25 group. Patrick finally let him go. And on the

1 night this happened, he was out somewhere in North
2 Charleston. It's all documented. There's a huge
3 articles for a period of time. And this young man
4 said I know where you can get some cash. And he
5 was all messed up. They stole a car right on the
6 Exxon station right up here, two blocks from here,
7 they stole a car, somehow got there. And they
8 drove down to The Boathouse. And then they knew
9 what time it closed. And they banged on the back
10 door. And there was peephole.

11 And Patrick looked through the peephole
12 and saw this young man. And he went to open the
13 door. There were two other people right near
14 Patrick. Unfortunately he opened the door and he
15 saw that that guy had a gun. He slammed the door.
16 It was a metal door. And the guy took the gun and
17 shot twice and it went here, right through Patrick
18 (indicating).

19 Q. So he was killed in a --

20 A. He died within five seconds.

21 Q. I was asking you about catastrophes.

22 So what year was that, that Patrick Greenwald
23 was --

24 A. Teddy said yesterday 2003. I was
25 thinking it was 2004. It was the summer of 2003.

1 And the restaurant never recovered.

2 Q. What, in fact, if any, did Patrick
3 Greenwald's murder have on the business at The
4 Boathouse of East Bay?

5 A. It never recovered. I mean, literally
6 we had -- the guy that was there that held Patrick
7 has never recovered. That guy went off the deep
8 end.

9 Q. I'm asking about the business.

10 A. But this is part of the business. The
11 point is, in this glance of courtroom it seems like
12 it was just an event. It was more than an event.
13 It was catastrophic.

14 Patrick was so close to those employees
15 half of them were gone within a week. It wasn't
16 that they had anything against me. It wasn't that
17 they were upset with anything to do with the
18 restaurant. It was simply they could not go to the
19 building.

20 We were told that countless times by
21 people that were regulars. And it just -- it was
22 catastrophic, to say the least. I could go on.

23 Q. So your testimony is it had a bad
24 effect?

25 A. The books would reflect that. And

1 Laurence knew that. There were meetings that we
2 were tanking. But I still thought two to
3 three years we would be okay. It was that good of
4 a location. That we rebound, but we never
5 rebounded.

6 Q. In terms then of catastrophic events,
7 what, if anything, else happened?

8 A. Well, right after that in 2007 -- I
9 mentioned this earlier -- Carolina Catering was up
10 and going. And I mentioned earlier, it was by far
11 the top -- one of the top three catering companies
12 in the city, doing all sorts of weddings. And it
13 was growing. And Phil Corr came in one day and
14 said he had been diagnosed with throat cancer.

15 Patrick Greenwald was 42 or 43 years of
16 age. So he -- I, being the internal optimist, my
17 grandfather on my mother's side had had throat
18 cancer and he went 25 years. And Phil was dead
19 within a year and he died. With him, the catering
20 company never rebounded.

21 Q. Did any other --

22 THE COURT: Let's take a moment. Mr.
23 Gilliam leaves the courtroom.

24 (An off-the-record discussion was had.)

25 THE COURT: Go ahead, Mr. Barr.

1 BY MR. BARR:

2 Q. I think you were talking about -- I
3 think you had started talking again about The
4 Boathouse on The Falls.

5 A. No. You were asking about Carolina
6 Catering. I'll move on to the place on The Falls.
7 2007 was a very rough year. I lost Patrick and
8 also Cane that year.

9 Q. And Cane Halter was the banker who was
10 going to help you get the Greenville restaurants,
11 but it never got started?

12 A. He was a banker and a business man.
13 His family owned a lot of property. He became a
14 pretty good friend over the last year, year and a
15 half.

16 He came to The Boathouse on Lake
17 Julian. He had been to The Boathouse in
18 Charleston. He loved the concept. And he brought
19 it to me and it was all lined up, and signed, and
20 dotted and ready to go.

21 Q. Were there any other events after Cane
22 Halter's death?

23 A. Well, I believe Chip, without going
24 into any more detail, he went into how Lake Julian
25 and how we were up and running and doing very well.

1 And all of a sudden this five-lane highway -- we
2 knew that there was meant to be a highway. There
3 was some discussion when we bought the property.
4 But it went from a four-lane and possibility to
5 reality. And they started about six months or a
6 year after we opened, probably somewhere between
7 six months and a year. And they started it. It
8 was supposed to take like 12 months. And it took
9 like 26.

10 And I could recall one night where we
11 had the restaurant full of people, full. And a
12 bulldozer operator came and blocked the entrance.
13 And this is like 9:00 at night. Of course, they
14 were in a penalty clause-type deal. So you've got
15 these people -- and you've got like 100, you know,
16 participants or patrons of The Boathouse, were
17 locked into The Boathouse for like an hour.

18 I believe it was -- there was a big
19 article in the paper that something like 41
20 businesses went out of business in that 26-month
21 period of time. And that was a very huge,
22 successful -- it was hindsight is 20/20 and bad
23 luck. But that is probably one of the most popular
24 roads. That building -- that property is probably
25 worth 6.5- to \$7 million now.

1 Q. And this Lake Julian property, again
2 that's near Asheville, North Carolina?

3 A. That is in Asheville, North Carolina.

4 Q. How long did that obstruction last?

5 A. About 26 months.

6 And so it opened. And I gave -- Chip
7 Robinson had said, Richard, if this thing is not
8 making money, we're not breaking even, you have to
9 promise me you'll close it.

10 And that was in 2007 July is when I
11 think they finished. And in 2008, July of 2008 we
12 were short a little less than \$100,000 of a loss.
13 And so we decided to go through the 4th of July.
14 We shut down of July 5th.

15 Q. Of what year?

16 A. 2008.

17 And then within a month the whole
18 economy fell apart. And that was a whole impact
19 for all of the restaurants too. But, certainly,
20 that the end for Lake Julian. At that time, that
21 restaurant was probably worth -- it was put on the
22 market for \$3.5 million. And we ended up -- we
23 owed I think about 1.2 on the whole thing,
24 including the property place that we paid for.
25 That was FF&E primarily. And we had to take, I

1 think, 300,000 to the closing. It was terrible.

2 Two years earlier it was on the market
3 for 4 -- over \$4 million, if I remember.

4 Q. You eluded to this, I think --

5 THE COURT: You said it sold for
6 \$300,000.

7 THE WITNESS: No, Your Honor. I'm
8 sorry. It sold for 1.2 -- I think it was 1.2. I
9 mean, I could get the records. We had to take
10 300,000 to the closing. The attorney's fees and
11 everything else, some accrued interest and such.
12 So it was a horrible bath.

13 BY MR. BARR:

14 Q. And I think you made some reference,
15 perhaps just only in passing, but let's talk about
16 it. Is this right about the time of the national
17 economic recession?

18 A. Yes. And that impacted all of the
19 restaurants that were still left. I mean, for two
20 to three years. The recession was not -- you know,
21 it's like none of us, in my generation, had ever
22 seen.

23 Q. And so after the succession of these
24 catastrophes that you have now enumerated to Judge
25 Newman, were there any others?

1 A. Well, I just -- before I finish on the
2 recession, what I would like to say, you know, in
3 this clan of the courthouse and some improper and
4 some proper. But you do the best that you can with
5 what you got. And I'm just trying to save
6 everything. I was juggling and juggling.

7 But these banks became -- I mean, it
8 was like predatory. I mean, they wanted to change
9 everything. Meaning, it was no longer, you know,
10 you can be late on this or that. They wanted notes
11 paid down. They wanted the ratios. And as we all
12 know, the banking regulations changed quite a bit.
13 So that didn't help either. The Federal
14 regulations and the mood of the bank.

15 Q. Okay. But were there any other issues
16 that impacted the restaurants?

17 A. Well, I had touched on started The
18 Boathouse on Ellis Creek.

19 Q. And that's across the river on James
20 Island?

21 A. And it is an amazing piece of property.
22 And so I built that Boathouse in a very short
23 period of time. It opened in February of 2009.
24 The worst economic times that you can have.

25 And yet we opened and basically blew

1 the doors off. I mean, literally I think that's
2 why it burned. We still had construction work
3 going on. It burned so quickly after the fire -- I
4 mean, after the opening.

5 Q. How long after the opening did the
6 restaurant burn down?

7 A. Well, someone can look up a newspaper
8 article. It was 16 or 17 days.

9 Q. Less than 30 days?

10 A. Yes, it was less than 30 days.

11 And what happened is --

12 Q. As an aside, now we're in 2019. That
13 fire was in March of '09, I think?

14 A. Yeah, that sounds right.

15 Q. So we're now 10 years from that. Have
16 you since reopened a restaurant at that location?

17 A. Yes. It's called Ellis Creek Fish
18 Camp. And that was a mess for lots of reasons.
19 It's now doing well.

20 Q. So what was the net result, Mr. Stoney,
21 of these many, what I would call, catastrophes on
22 this organization that you formed and all the
23 entities that you formed?

24 A. Well, by 2010, I was in about as bad of
25 financial shape as I had ever been in. I felt like

1 about everything that could go wrong went wrong.

2 On top of that, it's been a very
3 personal journey. My wife at the time, Lori,
4 basically -- we separated about a year and a half.
5 I thought we'd be together. So after the fire,
6 within two to three weeks, she said the marriage
7 was over. And that was certainly a big impact.

8 Q. Had this business plan that you've
9 described for Judge Newman with the nine or so
10 entities managed by Crew Carolina, had that been
11 successfully implemented? That is, had these
12 catastrophes had not occurred, how would that
13 business plan have benefited The Boathouse at
14 Breach Inlet?

15 A. Well, in a multitude of ways. I mean,
16 not just from cost savings, but the whole goal, to
17 be honest -- as I said from the beginning, I mean
18 my goal was to take The Boathouse as an action
19 together. And we actually talked to somebody about
20 doing that, even when they weren't performing at
21 the level to see what we could get for them.

22 Because selling three to four
23 Boathouses as a brand, not only are you selling
24 those entities or those physical product, but
25 you're also selling something that's been created

1 to the public which has enormous value, as far as,
2 you know, marketability and such.

3 Q. Now, if I may change the subject matter
4 of the questioning. Who were your major -- perhaps
5 who are your major food suppliers for The Boathouse
6 at Breach Inlet?

7 A. Well, as Laurence testified to
8 yesterday, he seems to learned based on all the
9 bars that he was taking at me over a multitude of
10 years. It wasn't just a year. Always these little
11 jabs, which I find so interesting.

12 And let me answer the question. Our
13 major supplier were Sysco, Crosby's and Limehouse.
14 Limehouse is huge. They are the biggest produce
15 purveyor in the area.

16 Q. And Limehouse Produce is a local food
17 purveyor?

18 A. And they are very close friends of
19 Laurence.

20 Q. And U.S. Food and Sysco are more
21 national?

22 A. They're huge.

23 Q. And Crosby's is a local seafood; is
24 that right?

25 A. Yes. And we had a great relationship

1 with Crosby's. At one time, they even said they
2 wanted to put our name on the side of their trucks
3 that we bought so much fresh fish. And we had a
4 great relationship with them.

5 Even despite what Laurence attempted to
6 do, did I have -- I have people coming and
7 apologizing to me and talking about what Laurence
8 was saying.

9 Q. Well, what do you mean by what Laurence
10 attempted to say?

11 A. Again, he runs the gamut. I mean,
12 where Laurence held court -- not in this courtroom.
13 And I'm not trying to be cute in anyway indifferent
14 or condescending.

15 But Laurence has a drinking problem.
16 Laurence goes to the Carolina Yacht Club three or
17 four times a week, I'm sure. And Laurence
18 continually holds court at the Yacht Club. I have
19 never been a member of the Yacht Club that goes to
20 the Yacht Club on a regular basis.

21 In fact, the only time I've ever spent
22 any time at the Yacht Club, since I joined it,
23 reluctantly my father actually paid my initiation
24 fee. Because I consider it a place that's just not
25 my cup of tea. But out of respect for my father, I

1 joined. I've never been a major participant. But
2 my wife, who is Canadian, loves going there because
3 of the view and sits there. And she just ignores
4 all of the stuff that we both think is very
5 unpleasant. It's just a gossip center.

6 Where Laurence goes in the back bar.
7 You got a yacht club where you have several
8 different functions and vantages. But the back bar
9 is comprised of a bunch of people who are just
10 described honestly as gossips. They talk. They
11 drink just like a regular bar. It's something like
12 a neighborhood bar.

13 And it's not a week or two weeks that
14 goes by that somebody doesn't come back and says
15 that Laurence has said about me. And that goes
16 back 20 years.

17 Q. I think I was asking you about your
18 food suppliers.

19 A. Well, I related that to Laurence. And
20 what Laurence was saying to the food suppliers.

21 Q. That's where I'm going. That's my
22 question, what did Laurence say to the food
23 suppliers?

24 A. Everything from they're not paying
25 their bills to, you know, -- my understanding he

1 said to one, I wouldn't do business with him.

2 What's really interesting about what
3 Laurence said -- this is something the Judge can
4 take just judicial notice of -- Laurence implied
5 that if there were wine and alcohol salesmen that
6 weren't going to do business with us because our
7 credit wasn't good or something to that effect. I
8 can't remember. There's a record.

9 But you have to pay. You can't -- it's
10 by law you have to pay. We've never had any
11 issue --

12 Q. You can't credit?

13 A. You can't credit.

14 Q. So let's go back to the subject. As
15 Laurence testified yesterday, he deals with many of
16 the same food purveyors as you do; is that correct?

17 A. Not just food purveyors, but bankers
18 too.

19 Q. And so over the course of time, have
20 you had occasions to have conversations with
21 Laurence about what you testifying to now?

22 A. At least 15 times, over 20 years.

23 Q. Tell Judge Newman what it was you said
24 to him and what he said back to you, with respect
25 to what -- particularly respect to the food

1 purveyors?

2 A. I will just summarize it as it was
3 futile attempt to ask Laurence to not hurt The
4 Boathouse, to not hurt me. Why are you publishing
5 this? Why are doing this in public? You know, why
6 don't you come directly to me? What is the purpose
7 of this? And it was like talking to, you know, a
8 brick wall. And that's the Laurence that I knew
9 before we reunited and became what I've said as
10 somewhat cordial.

11 Q. Did he deny to you --

12 A. No.

13 Q. That he had --

14 A. No. No. And that kind of talk, no, I
15 did it. What you going to do about it?

16 Q. And what's your recollection perhaps of
17 the last -- of those, I'll call them,
18 confrontations, I'll call, the timing of it?

19 A. Probably -- maybe in the hallway out
20 here as I'm walking by. I mean, I don't know,
21 we've been cordial for the most part. I mean,
22 that's Laurence. I don't know. But out there on
23 the street, I don't know, six months ago.

24 Q. Let me ask you about The Boathouse at
25 East Bay. You told Judge Newman that it opened in

1 early 1999. It was the second of your restaurants?

2 A. That's correct.

3 Q. And I think you testified that -- well,
4 maybe you haven't. Was that on land that you owned
5 or was it leased?

6 A. You mean the second one?

7 Q. East Bay?

8 A. No.

9 Q. Was it owned or was it leased?

10 A. It was leased.

11 Q. And from whom was it leased?

12 A. Drew, D-R-E-W, whose mother and our
13 mother were very, very close. Two brothers, Jed
14 and Jeff. Jed being local and Jeff being in
15 business. I believe he worked for Walt Disney at
16 one time in a very high position. And Jed, who was
17 actually a client of mine for a years and was the
18 original owner of Arizona's.

19 Q. Tell Judge Newman, if you will, your
20 recollection of the circumstances under which
21 Laurence became a member at Boathouse of East Bay.
22 That would have been early?

23 A. Right.

24 Q. That was in 19 --

25 A. At the time that Laurence was offered

1 membership at The Boathouse at East Bay, the
2 relationship, while it was not -- it was bumpy.
3 And Laurence was already -- I mean, I heard him
4 yesterday. And I wanted to get to this at some
5 point, depending on when you ask the question about
6 the kitchen expansion. He got suspicious of the
7 kitchen expansion. I don't digress.

8 Q. Don't digress. Let's stick to --

9 A. What I'm trying to say is, you know,
10 the kitchen expansion was early on before East Bay
11 opened, or actually right after East Bay opened.
12 So at that time -- I think that was in 2000 was the
13 kitchen expansion.

14 So in 1999 when we had The Boathouse at
15 East Bay, it was my feeling that obviously I should
16 offer Laurence and any member of The Boathouse at
17 Breach Inlet, membership in The Boathouse at East
18 Bay, as well any other subsequent Boathouse.

19 That was my intent, just to bring this
20 brand and to bring everybody in and hopefully be
21 happy together and move toward.

22 Q. Okay. Well, I want to ask you
23 questions about what happened with respect to East
24 Bay. And you told Judge Newman that the restaurant
25 opened and it opened on leased land; correct?

1 A. Yes.

2 Q. From the Drew family?

3 A. That's correct.

4 Q. Did there come a time when some
5 friction began between the landlord and tenant,
6 between The Boathouse at East Bay and the Drew
7 family?

8 A. Yes.

9 Q. About how long after the opening of the
10 restaurant?

11 A. From basically day one. And so the
12 Court is very clear, I had great relationship with
13 Jed Drew. And I still have a great relationship
14 with Jed Drew. I do not care for his brother,
15 who's a know-it-all. And, basically, was the older
16 brother and influenced Jed.

17 So we entered into a lease. At least
18 Laurence was asked to be part of the lease. I
19 actually have it over there where there's a name.
20 I've got it in my briefcase right now. He refused
21 to sign on the lease.

22 So we entered into this lease. And
23 we're in this lease. And within months after
24 entering the lease, we knew we had big problems.
25 We had moisture under the building. We had odor

1 problems.

2 We then had an engineer -- we spent
3 probably, no exaggerating -- hiring Walter Bundy,
4 who's a well-known construction lawyer, including
5 engineers. But we spent probably over \$200,000
6 over a period of two and half to three years,
7 trying to rectify the moisture problem.

8 Meanwhile, the landlord and the lease,
9 which to me was very clear -- and I think if we
10 litigated the case, we would prevail through his
11 attorney, their attorney were saying they weren't
12 responsible for any odors found. They were
13 responsible for the foundation, but they consider
14 water under the building their responsibility. If
15 you go to a map --

16 Q. Let me interrupt you, please. I think
17 Laurence described the circumstances, at the time
18 that we're about to talk about it, as the tenant of
19 Boathouse at East Bay was about to lose the lease.
20 Had the relationship between the landlord and
21 tenant deteriorate?

22 A. Well, let me finish this point. And I
23 apologize if I'm being too longwinded. Literally,
24 tidal water. Every day water comes and goes under
25 that building. Where Laurence's business is right

1 now there's probably tidal water next to him.

2 There is water under that building every day.

3 So we didn't know that. And so we're
4 dealing with that. Meanwhile, Laurence is
5 criticizing me and my brother for these expenses
6 and whatever. Ted is helping, not getting paid a
7 dime to help with resolving what was an ongoing
8 issues.

9 The customers were talking about the
10 odor. The floors are buckling. And the landlord
11 is saying they're not responsible.

12 So litigation to -- during the
13 litigation, they -- there was a period where we
14 were not -- there was another five-year period,
15 about a year away. They're talking about -- it was
16 clear they were not doing anything to renegotiate
17 with us. And we called them on it. And we were
18 prevailing. They were -- I think they were really
19 worried about the litigation.

20 I wanted it over, because I considered
21 Jed a friend. And I didn't like how ugly things
22 were getting.

23 But what happened is, Ted and I looked
24 at it. There's a memo of 2000 -- and I forget.
25 I've got it over there -- where I sent to Laurence

1 and Beverly, my sister, and Michael Molony,
2 about -- I think it's 2007.

3 But in that document, I referenced what
4 we did, Ted and I found important. That was
5 because there was no choice. It was fold this
6 business, which we still, despite having the loss
7 of Patrick and all that happened, felt like we
8 could at some point move forward and pull out.

9 Otherwise, we'd be stuck with
10 continuing the business in its capacity and not
11 knowing what that fair market value would be when
12 we went to the end of that next five-year period.

13 So what happened is we -- and Teddy was
14 very reluctant. Dave was the only one taking
15 credit at the time. Certainly not me -- to enter
16 into any purchase of that property. And he did.
17 And he did it because he's an honorable guy. He
18 thought it was a very, very precarious slope. He
19 said, I don't think it's worth the kind of money.

20 Q. So you began negotiations with Drews
21 about buying --

22 A. We were literally in contract
23 negotiations, yes.

24 Q. Were the members aware of that?

25 A. I'm sure they were.

1 Q. The LLC members?

2 A. I'm absolutely sure. Obviously,
3 Laurence was aware because he's talking to the
4 Drews, he's talking to lawyers. He knows we're in
5 litigation. And the only reason that was --

6 Q. And what happened --

7 A. The lawyer called me to say, you know,
8 your cousin is trying to buy this building.

9 Q. All right. So their lawyer called you
10 and said, your cousin is trying to buy the
11 building?

12 A. Their lawyer called me and said, I want
13 you to know they're trying to buy the building. I
14 was shocked.

15 Q. Did you have a conversation with
16 Laurence about that?

17 A. I don't know when I called him, but I
18 know I did have a conversation.

19 Q. Describe that conversation.

20 A. Pretty much what he said under oath
21 yesterday, he thought it was a good business deal
22 and he whatever. I know what he was trying to do,
23 he was going to try to take the building from us,
24 in retrospect we probably would have been far
25 better off. I thought it was a terrible thing to

1 do to the membership.

2 Q. Did you and Ted end up buying the
3 building?

4 A. We did. And as a result of Laurence
5 interfering, Ted reminded me -- or some notation.
6 I forgot how much. We spent -- we ended up paying
7 100- to \$200,000 more for the building. Because
8 the Drews say, if you don't do it, they're going to
9 buy it. And I think Bill Craig is the one that
10 brought some sensibility to the two Drew brothers.

11 Q. Richard, do you believe that it is
12 reasonably practical to continue the operation of
13 The Boathouse at Breach Inlet with Laurence
14 continuing as a member?

15 MR. MCQUILLIN: Objection, Your Honor.

16 THE WITNESS: Absolutely not. And I
17 believe that --

18 THE COURT: Hold on. Mr. McQuillin.

19 MR. MCQUILLIN: The question calls for
20 a legal determination. That's a decision which
21 Your Honor needs to make it, whether or not it's
22 reasonably practical to carry on a business under
23 the LLC disassociation or expulsion statute. Based
24 on the way the question is worded, it's a leading
25 question and it calls for a legal conclusion.

1 MR. BARR: It's not a legal conclusion.
2 It's a factual one. The statute uses the phrase.
3 But the Court has to find whether the facts support
4 it. And certainly the subjective feelings of the
5 members or participants involved with that. I
6 think Laurence yesterday said, he didn't think it
7 was reasonably practical.

8 So may I continue the question?

9 THE COURT: Yes. Overrule the
10 objection.

11 BY MR. BARR:

12 Q. Do you believe it is reasonably
13 practical to continue the operation The Boathouse
14 at Breach Inlet with Laurence Stoney as a member?

15 A. Forward in time, I absolutely do not.
16 And Laurence obviously agreed yesterday.

17 Q. Is it feasible to keep the LLC
18 operating while he's a member?

19 A. No.

20 Q. Mr. Stoney, did you formulate the
21 business plan that you described to Judge Newman,
22 that you formulated at the beginning of all this --
23 did you formulate it with the intent that it would
24 fail?

25 A. Absolutely not. I would never fail

1 anything in my life.

2 Q. Did you formulate it with the intent to
3 cheat or deceive other persons?

4 A. Absolutely not. I've never even stolen
5 a piece of bubble gum. And to my detriment, I
6 think, the record in many ways shows what we've
7 attempted to do, including my brother and I trying
8 to rescue East Bay. We never even raised the rent.

9 You know, I wrote a letter to these
10 guys about the rent once we took it over. We were
11 eating about \$3,000 a month in rent for a period of
12 time. And Laurence was accusing us because we were
13 able to at least offset some of the losses.

14 Laurence testified -- not testified.
15 Laurence questioned Ted and I about the money that
16 we were able to negotiate with Pratt Thomas and
17 Dixon Hughes for rent.

18 Q. And for parking?

19 A. Yes. And it was about 3.5- to \$4,000 a
20 month that they paid for parking, which still put
21 us at a shortfall. What I did do right then in
22 this memo, which I have sitting right over there
23 and said, once this goes to fair market value,
24 we'll have to adjust it. Because the Drews would
25 have adjusted it higher. And even the leases that

1 I have been involved in, even The Boathouse at
2 Breach Inlet, I've never tried to make a penny off
3 of these.

4 Q. Did you formulate the business plan and
5 implement it with the intent that all the members
6 would benefit?

7 A. Absolutely.

8 Q. Why was Laurence not -- well, let me
9 ask about -- the first LLC was Breach Inlet, the
10 second was East Bay, and the third was Lake Julian;
11 is that right?

12 A. That's correct.

13 Q. Why was he not invited to participate
14 in Lake Julian?

15 A. Well, he wasn't happy about it. And we
16 talked about it. It wasn't a rude conversation. I
17 just said, Laurence, just based on what's happened,
18 I think it's best that --

19 Q. Did you conclude that it was not
20 reasonably practical at that time --

21 A. Absolutely.

22 Q. -- for Laurence to participate in the
23 next LLC?

24 A. It would have been a disaster. Even if
25 everything had gone beautifully.

1 MR. BARR: Thank you. Please answer
2 questions of counsel.

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. MCQUILLIN:

6 Q. Good afternoon, again, Mr. Stoney.
7 When Lake Julian and Asheville closed, that amount
8 was written off, the due to/due from Crew's books;
9 correct, sir?

10 A. You know, Mac, there's been so much
11 between Chip Robinson and Jamie. I defer to what
12 they said. I don't know how it was done. I
13 honestly don't.

14 Q. The due to/due from Carolina's
15 Restaurant, Lake Julian, and all of your other
16 failed restaurants is not on the balance sheet for
17 Crew Carolina. Does that refresh your
18 recollection, sir?

19 MR. BARR: Would you show me the top of
20 that? That's Exhibit 21?

21 MR. MCQUILLIN: Yes.

22 BY MR. MCQUILLIN:

23 Q. So are you telling me that you're not
24 aware of whether or not Crew Carolina wrote off the
25 due tos/due froms for Lake Julian or Carolina's?

1 A. I'm telling that I would defer to the
2 accountants. So I don't split hairs with you. As
3 you asked the question, I know the figure of 41,
4 whatever, and the due tos/and due froms is in
5 there. And I assume that The Breach Inlet --
6 excuse me The Boathouse at Lake Julian is in there.

7 Q. This is the Crew Carolina balance
8 sheet, sir. This would show any sort of due to/due
9 from.

10 Here, if you look, sir, we'll go
11 through the whole document. It's the Crew Carolina
12 balance sheet. This shows all of the assets and
13 liabilities to the company. There's one to Tommy
14 Westfield, the one that we're all here about today,
15 The Boathouse at Breach Inlet. There's Carolina's
16 that shows that it's 2000. But Carolina's is still
17 on there; correct, sir?

18 A. It says minus 2000.

19 Q. But Lake Julian is not on here is it,
20 sir?

21 A. I don't see Lake Julian.

22 Q. It's not on the last page either; is
23 it, sir?

24 A. Well, that's the owner's equities.

25 Q. My point is, sir, as the sole owner and

1 sole member of Crew Carolina, you wrote off the due
2 to/due from Lake Julian amount; correct? It's not
3 on the books, sir?

4 A. And I'm going to say for the third
5 time, I defer to the accountants. I don't know how
6 that was handled.

7 Q. You didn't make any collection efforts,
8 as the manager of Crew Carolina, to collect those
9 amounts; did you, sir?

10 A. Repeat the question.

11 Q. You're the owner and sole owner and
12 manager of Crew Carolina. Did you make any
13 collection efforts at all to collect the monies
14 that The Boathouse had provided to Crew? In other
15 words, when Crew -- when Lake Julian went under,
16 did Crew Carolina bring a lawsuit to get the money
17 back from Lake Julian?

18 A. No. Crew Carolina did not bring --

19 Q. Because you were involved with Lake
20 Julian; correct, sir? That would have hurt you if
21 you did that? So instead you just wrote it off the
22 books?

23 A. That's your assumptions running off the
24 books. I'm sure it's in here. I'm absolutely
25 certain that it is part of what Hallerbach has

1 looked at and what Chip testified to, and Jamie
2 testified to.

3 Q. Well, your lawyer asked you some
4 questions acting like there would be corresponding
5 due tos/due froms in the amounts that went out in
6 these other restaurants. But it's not on the
7 balance sheet; is it, sir?

8 A. Mac, you know, I don't know how else to
9 say it. I'm going to look at the judge right now
10 and say I really don't know. What I believed is
11 one thing that found incredibly revealing about all
12 this is you spent 500 hours and whatever \$80,000
13 I'm sure is unbillable, maybe \$100,000 by now with
14 Hallerbach. And he said there's no attempt to kill
15 anything blah, blah, blah. We've been
16 straightforward. Jarvis testified to that.

17 It was all there in the books. But I'm
18 not going to try to answer specific questions to
19 which I really don't feel comfortable, not know the
20 answer. I know that there's been no attempt to
21 conceal anything.

22 Q. Let's look at Plaintiff's Exhibit
23 Number 7 to our trial. You will see on 2010 tax
24 return that at least The Boathouse owes \$361,000
25 debt, meaning those were written off the books;

1 correct, sir?

2 A. I'm sorry, which tax return is this?

3 Q. This Plaintiffs' Exhibit 7?

4 A. Hold on. You're moving it so fast I
5 can't see it.

6 Q. Do you recall Mr. Stabler testifying
7 that there was forgiveness of debt, written off The
8 Boathouse's books?

9 I'll move on, Mr. Stoney. And I'll end
10 with this question. You talked about this Chart
11 House and this fancy restaurant in Malibu --

12 A. Whoa, whoa, whoa --

13 Q. Let me finish my question, sir.

14 You talked about the Chart House, the
15 restaurant in Malibu. Do you know whether the
16 managers of those restaurant took over \$4 million
17 to support other restaurants that they were
18 personally involved in and didn't have ownership or
19 for personal matters?

20 A. I actually would be surprised. The
21 Charter House, which I know also has all sorts of
22 financial issues. I would not be surprised if the
23 Charter House did not operate and much the same,
24 that we did with an account and there was money
25 moved from place to place.

1 As far as far as the other two that you
2 just asked, which are reeled, which you described
3 that are fancy. They're not fancy. If you Google
4 them, they're much like -- they're much like --
5 they're much less sophisticated than The Boathouse.
6 They're more of a fish shack-type places.

7 And I have no idea what they've done,
8 nor would you except -- or I hope the Judge would
9 not want me to expect to speculate what they may
10 have done. I stand by what's happened here. And
11 that's my answer.

12 THE COURT: Yes, sir.

13 MR. BARR: I have no more questions.

14 THE COURT: Okay. Thank you.

15 MR. BARR: We have a potential final
16 witness that will be very brief.

17 THE COURT: That's a relative term, but
18 go ahead.

19 MR. BARR: I agree with that. Famous
20 last words.

21 THE COURT: We are pretty close for
22 breaking for lunch.

23 MR. BARR: That's what I was going to
24 ask. Do you want to do that now?

25 THE COURT: Let's just break until

1 2:00.

2 (A lunch recess was taken.)

3 THE COURT: I have a question for
4 Mr. Stoney. And you can answer it from there.
5 These entries saying due to and due from, what does
6 all that mean to you?

7 THE WITNESS: Your Honor, I, again,
8 defer to the accountants. That's how it was set
9 up, set up back in 1999 when Crew Carolina came
10 into existence. Basically, what Dennis said is due
11 to/due from. So from one entity to the next.

12 THE COURT: Okay. And I've been around
13 a long time. How old are you.

14 THE WITNESS: I just turned 68.

15 THE COURT: So I'm due to, due from.
16 Of course, I haven't dealt with multiple
17 restaurants and all that. But what does that mean?

18 THE WITNESS: Well, I know that Bobby
19 Pearlman was discussed -- involved in that. Our
20 CPA was involved in that. I think Dixon Hughes.
21 It's a fairly -- I'm surprised he didn't answer as
22 he did. But I certainly don't represent to this
23 Court anything that I don't know of. That's what I
24 just told Your Honor. It was appropriate process
25 that was properly banking that was done at least as

1 early as 2000. And blessed our accounts every
2 single year. Dennis Jarvis never took issue with
3 it.

4 THE COURT: All right. Mr. Barr, any
5 questions based on the Court's question?

6 MR. BARR: I can't think of any.

7 THE COURT: Mr. McQuillin, any
8 questions?

9 MR. MCQUILLIN: No, Your Honor.

10 THE COURT: All right. Very good.
11 Your next witness.

12 MR. BARR: We call Ted Stoney, Your
13 Honor.

14 THE COURT: You're still under oath.
15 No. He's still under oath. You're
16 still under oath from yesterday.

17 THE WITNESS: Yes, sir.

18 MR. MCQUILLIN: Your Honor, we would
19 object to this document.

20 MR. BARR: I haven't said anything yet.

21 Your Honor, for the record, I just
22 handed Counsel a document that I would intend to
23 examine Ted Stoney about it. It's an e-mail chain
24 from Richard Stoney to Laurence Stoney June 23rd,
25 2010. Richard then forwarded to this witness, Ted

1 Stoney, on June 24th, 2010. I'll represent to the
2 Court and Counsel that this was always an exhibit.

3 MR. MCQUILLIN: Your Honor, my
4 objection goes more to the fact that every exhibit
5 they have used in this case was not premarked,
6 despite the Court's instructions, and despite us
7 meeting with Counsel to go through that. It's been
8 a surprise game from day one in this case.

9 So I don't necessarily have a problem
10 with the exhibit. It's just the surprise nature of
11 it not being premarked and following procedure and
12 stuff.

13 THE COURT: All right.

14 DIRECT EXAMINATION

15 BY MR. BARR:

16 Q. Mr. Stoney, you've been previously
17 sworn and testified. Of course, you're still under
18 oath.

19 How would you characterize the
20 relationship between your brother, Richard, and
21 cousin, Laurence?

22 A. Currently, it's about as bad as you
23 could get.

24 Q. How about coming up over the years?

25 A. Over the years, there are five Stoney

1 boys. We were all within four years of each other.
2 So we grew up attending family functions together.
3 We would meet at our grandparent's, our Stoney
4 grandparent's every Christmas Eve to exchange
5 presents. We spent a lot of time out in the
6 country place for dinner after church on Sunday and
7 that type of thing. It was your typical American
8 family.

9 Q. And then before the three of you were
10 in the courthouse -- well, is your cousin, Randall
11 Stoney, a lawyer in Charleston; correct?

12 A. That's correct.

13 Q. Have you had occasion to have
14 conversations with Lawrence, since the formation --
15 Laurence Stoney, since the formation of The
16 Boathouse at Breach Inlet relating to Laurence's
17 distributions?

18 A. On several occasions he's talked about
19 distributions.

20 Q. And in what manner? In what way?

21 A. In the fact that the distributions had
22 slowed down and diminished the amounts are cutoff
23 completely. And he was always upset that he was
24 not getting proper distributions or claimed not to
25 have proper distributions. He claimed about having

1 to pay taxes on distributions, that type of thing.

2 He claimed that monies were being
3 diverted from The Boathouse at Breach Inlet, to pay
4 for other entities, even though he was involved in
5 one of the entities that benefited greatly from
6 that relationship.

7 Q. Have you had conversation with
8 Laurence, with respect to Richard, that you would
9 consider to be threatening?

10 A. I have.

11 Q. And can you remember -- well, let me
12 get the exhibit marked that Counsel just addressed.

13 MR. BARR: What's our next number?

14 @THE COURT REPORTER: 20.

15 MR. BARR: Is that okay?

16 THE COURT: Yes, sir.

17 BY MR. BARR:

18 Q. We've marked as Exhibit 20, Mr. Stoney,
19 an e-mail. And let me just hand it to you and ask
20 you if you've see seen it before?

21 A. Yes, I've seen this before.

22 Q. According to the record, what does the
23 top header refer to?

24 A. It says, from Ted Stoney, my e-mail
25 address, to Capers Barr.

1 Q. And what is the date of date?

2 A. October 28th, 2015.

3 Q. All right. And what is the next one
4 down below?

5 A. This is from my brother, Richard, to me
6 on June 24th, 2010.

7 Q. And the one below that?

8 A. And the one below that is from Richard
9 to Laurence on Wednesday, June 23rd, 2010. And all
10 of them's subject is Breach distribution.

11 Q. And so is this an e-mail that you
12 forwarded to me when you were forwarding things
13 that you found related to this case?

14 A. That is correct.

15 MR. BARR: I would offer Exhibit 20.

16 THE COURT: Any objection?

17 MR. MCQUILLIN: Let me see it again. I
18 hadn't seen it.

19 THE COURT: I didn't hear what
20 Mr. Stoney said. What it is?

21 MR. MCQUILLIN: Your Honor, it's an
22 e-mail --

23 MR. BARR: It's an e-mail that he
24 forwarded to me, that he had collected as he was
25 collecting e-mails. The substance of these e-mails

1 are from -- let me see if I can get it straight.
2 The first e-mail would be from Richard to Laurence.
3 And then Richard is forwarded that same e-mail to
4 Ted. And the date is in 2010. It's dated in 2010.
5 And I'll get into the details.

6 THE COURT: Okay.

7 MR. BARR: And it was actually -- I
8 think it was Exhibit 2 in the standing trial, for
9 the record.

10 MR. MCQUILLIN: No objection, Judge.

11 THE COURT: All right. It's admitted.

12 (Defendants' Exhibit Number 20 was
13 admitted into evidence.)

14 BY MR. BARR:

15 Q. Let me hand it to you. And I'll get a
16 copy of it. This one has writing on it. And I'm
17 going to take the one without writing and put it on
18 the screen.

19 So the first e-mail in this chain is
20 from Richard to Laurence Stoney dated 2010, subject
21 Breach Inlet. Do you remember receiving this, Ted?

22 A. Yes, sir.

23 Q. And you see that the date of the e-mail
24 from Richard to Laurence is June 23rd, 2010 at
25 9:35 p.m. And then it looks like the next day,

1 June 24th in the morning at 10:12 Richard forward
2 today to you; correct?

3 A. That's correct.

4 Q. And as you said earlier, you sent it to
5 me in 2015; right, after this suit was filed?

6 A. That is correct.

7 Q. Now, getting down to the substance of
8 it, I'd like to invite your attention to paragraph
9 that I have -- I'm pointing to with my pen here,
10 which reads, we just need a number. Ted, said true
11 to pass conduct. You were abrasive and threatened
12 litigation. Contrary to what you believe, I am
13 working with all my creditors and day by day things
14 are improving.

15 Do you recall whether, in the days
16 leading up to these e-mail, you would have had a
17 conversation with Laurence that you would have
18 relayed to Laurence?

19 A. I am sure it was the very day before.
20 Because this is how these situations worked. I
21 would usually bump into Laurence at the back bar of
22 the Carolina Yacht Club.

23 I had a dear friend, who I would
24 sometimes meet there that would have a drink.
25 Because we just did not see each other that much

1 and we loved each other.

2 And so I would occasionally go down to
3 the Yacht Club. And sometimes when I went to the
4 Yacht Club I would bump into Laurence. And
5 Laurence usually always had some kind of discussion
6 regarding Richard and The Boathouse in the back bar
7 of the Yacht Club. And it was always in a negative
8 context.

9 And in this particular instance it was
10 concerning distributions and the fact that he was
11 not getting distributions, and that The Boathouse
12 at Breach Inlet was subsidizing some of the other
13 entities.

14 Q. And this is in 2010?

15 A. Yes.

16 Q. Now, again, this is Richard to
17 Laurence. But he also says -- Richard says,
18 contrary to what you believe -- and this is written
19 to Laurence -- I am working well with all of my
20 creditors. And day and day things are improving.

21 Do you recall whether, in the context
22 of Exhibit 20, and the conversation between you and
23 Laurence there was any discussion about the
24 purveyors?

25 A. That is correct. I mean, he was always

1 badmouthing Richard and the restaurants. He was
2 talking about the fact that they were on a cash
3 basis, because they had not -- we're slow in paying
4 bills, I think is the term he used.

5 Q. Do you recall him mentioning any
6 particular food purveyor?

7 A. Limehouse Produce, in particular, is
8 the one that I remember. Because he had an ongoing
9 relationship with, I think, Andrea of Limehouse.

10 Q. Do you recall any other conversations
11 with Laurence at the back bar -- strike that. Do
12 you recall a conversation with Laurence at the back
13 bar at the time supposedly associated with the
14 filing of this lawsuit?

15 A. I remember that one quite vividly,
16 because I was personally shaking after the
17 confrontation.

18 Q. So that would have been in the year
19 that the case was filed?

20 A. It was shortly before the case was
21 filed.

22 Q. 2015?

23 A. Yes, sir.

24 Q. Tell the Court about that.

25 A. I went back to the back bar to meet my

1 friend. And I walked in and Laurence was on his
2 perch at the bar. We exchanged pleasantries and
3 started talking a little bit.

4 He told me that his son was working for
5 a bridge company in Kings Bay, Georgia and making
6 \$90,000 a year. I remember that distinctly. And
7 then on a dime he turned. And he turned to me and
8 put his finger right in my chest. And he says,
9 you're not very neighborly, you're not being very
10 neighborly. I said what do you mean, Laurence? He
11 said, well, you dug a ditch across the Old Kings
12 Highway. And that's a road that runs through
13 Kensington. It used to be the Old Colonial Road.
14 But, somehow or another, we started calling it
15 Kings Highway.

16 And the reason I put that ditch there
17 was because he or his employees had no regard as to
18 tearing up that road. That road went right by a
19 duck pond. And I spent considerably money making.
20 So he would drive bulldozers and track hoes and
21 tractors across the property all the time,
22 irregardless of the weather. No consideration of
23 tearing up the road.

24 He had a fellow that worked for him
25 named Willy Butts. During deer season, Laurence

1 was in a deer stand. And Willy goes driving by
2 with one piece of machinery. And he flipped him
3 the bird. That's how much respect they have for
4 anybody.

5 Another time Willie Butts drove right
6 through my front lawn. It was very wet. Trenched
7 the whole thing up, tore it up.

8 So I put this road -- and, by the way,
9 the ditch was on my brother's and my property, not
10 Laurence's property. I was sure to not put it on
11 his property.

12 Q. Let's set the stage. This is on a
13 property that you call Kensington?

14 A. Correct. And unfortunately --

15 Q. Let me help the record and the Court.
16 As I understand it, there are three tracks up
17 there, three pieces of land?

18 A. Correct.

19 Q. And you and Richard own the middle
20 part?

21 MR. MCQUILLIN: Objection, Your Honor.
22 He's leading the witness.

23 BY MR. BARR:

24 Q. Okay. Which one do you and Richard
25 own? Of the three tracks, which one do you own?

1 A. The middle one.

2 Q. And who owns the one, if you're looking
3 at a plat, to the left?

4 A. Well, if you were looking at the plat,
5 it depends on which way the plat was turned. If
6 you're looking at the plat and the river is at the
7 top of the plat --

8 Q. Well, let's put the river at top.

9 A. The river is at the bottom of the plat.
10 Laurence's section would be on the left. Randall's
11 section would be on the right. And, unfortunately,
12 for Richard and I, are sections are in between.

13 Q. So this road you're talking about runs
14 between the left and right tracks through the
15 middle one?

16 A. Correct.

17 Q. Well, why don't we go on then about the
18 conversation in the Yacht Club.

19 THE COURT: Explain the road to me one
20 more time.

21 MR. BARR: Beg your pardon?

22 THE COURT: Explain where the road
23 runs.

24 THE WITNESS: The property, Your Honor,
25 is 675 acres. And it was divided up, I think,

1 shortly after Hugo, because it belonged to my
2 grandfather. And he had three sons. So it's
3 divided into three tracks. We tried to divide it
4 as fairly as we possibly could.

5 Randall's section was approximately 225
6 acres. My brother and I received 225 acres. And
7 then Laurence's section was a little bit bigger,
8 because it had some ricefield acreage that the bank
9 was broken on. And I don't know the exact number
10 of that amount of acreage there or Laurence's exact
11 acreage. But it's larger than Randall's section
12 and my brother's and myself.

13 And this is just an old dirt road that
14 traversed the entire three properties.

15 THE COURT: All right. Thank you.

16 BY MR. BARR:

17 Q. But to get the left track to the right
18 track, you'd have to go through?

19 A. Go through the middle track, yes, sir.

20 Q. I think you might have told me -- is it
21 correct that what you call the Old Kings Highway,
22 did it use to have the old posts on it?

23 A. They called it the road to Callie or
24 something like that. It had granite mileage
25 markers.

1 MR. BARR: Anything further, Your
2 Honor?

3 THE COURT: No.

4 BY MR. BARR:

5 Q. So going back to the conversation at
6 the Yacht Club, did Randall -- did Laurence talk to
7 you about anything else in that conversation, the
8 one that you said he struck his finger in his
9 chest?

10 A. Yes, he did. He brought up the same
11 stuff that he brings up every time, you know, that
12 my brother Richard was stealing from him, that, you
13 know, he had been taking money from The Boathouse
14 at Breach Inlet to support the other restaurants.

15 He's just very, very unpleasant to be
16 around. And I took it as being very intimidating.
17 And I will never forget the words -- those last few
18 words to me were, I'm going to get Richard. I'm
19 going to turn his world upside down.

20 Q. Now, I think when you testified
21 yesterday --

22 MR. MCQUILLIN: This is a conversation
23 after he filed the lawsuit; is that what he's
24 talking about?

25 THE WITNESS: No, sir. This was

1 before.

2 MR. MCQUILLIN: Right before he filed
3 the lawsuit?

4 THE WITNESS: About a month or six
5 weeks before, within that time period.

6 BY MR. BARR:

7 Q. Now, you testified yesterday and I
8 don't hear very well, as everybody can tell by now.
9 Do you, Ted Stoney, support or oppose this lawsuit?

10 A. I oppose it.

11 Q. And as trustee for Richard Stoney, Jr.
12 Have you consulted with your ward or beneficiary
13 about it?

14 A. I have.

15 Q. Do you oppose it or support it?

16 A. Oppose it.

17 Q. Did Laurence, in the many conversations
18 he had with you, did he ever complain about not
19 getting access to the books?

20 A. Never.

21 Q. What was his complaint?

22 A. His complaint was solely that he wasn't
23 getting money.

24 Q. After The Boathouse at East Bay was
25 formed and after the episode that you heard Richard

1 testify about with respect to the purchase of the
2 land at East Bay, was Laurence ever invited to
3 participate in any of the other restaurant
4 operations?

5 A. As Richard stated earlier, his
6 intention was to allow the original investigators
7 to continue participating in the restaurants as he
8 built his plan portfolio.

9 Unfortunately, by the time the next
10 restaurant, which was The Boathouse on Lake Julian
11 in Asheville, Laurence was already a such
12 antagonistic and disruptive member to two existing
13 LLCs, that he was -- he wanted to, but he was not
14 invited to participate in Lake Julian.

15 Q. Do you believe that it is reasonably
16 practical to continue the operation The Boathouse
17 at Breach Inlet with Laurence Stoney as a member?

18 A. Absolutely not.

19 MR. BARR: Thank you. Let me confer
20 with my client first.

21 Nothing further.

22 CROSS-EXAMINATION

23 BY MR. MCQUILLIN:

24 Q. Does Laurence Stoney have a son?

25 A. He does.

1 Q. What's his son's name?

2 A. He's Laurence Stoney, Jr. I think -- or
3 the III, but they call him LO.

4 Q. They call him LO?

5 A. Yes, sir.

6 Q. My client is Laurence Stoney, Jr. And
7 do you see his e-mail address? His e-mail address
8 is stoney@colemanmarine.com and
9 sales@colemanmarine.com; correct?

10 A. Correct.

11 Q. Have you ever communicated with my
12 client through the losIII@aol.com?

13 A. I don't know.

14 Q. I'll represent to you that my client's
15 son's e-mail that he used when he was at the
16 Charleston day school back in 3rd or 4th grade.
17 That has not been an active e-mail for years. At
18 the time of this Laurence Stoney, III would have
19 been 19 years old; correct, sir?

20 MR. BARR: Objection, Your Honor.

21 Counsel is testifying. He says, he's
22 representing -- or he's testifying that the e-mail
23 address is wrong. Certainly Laurence can testify
24 to that.

25 THE COURT: Sustained.

1 BY MR. MCQUILLIN:

2 Q. Do you know whether or not that e-mail
3 address on that screen is, in fact, my client's
4 e-mail's address?

5 A. I do not.

6 Q. But my client's name, you acknowledge
7 is Laurence Stoney, Jr.; correct?

8 A. Correct.

9 Q. And his son's name is Laurence O.
10 Stoney, III; correct?

11 A. Yes.

12 Q. Or LOSIII; is that correct?

13 A. That's correct.

14 Q. Just so you can see. When your brother
15 e-mailed my client and actually wanted to get
16 e-mails, he sent them to Stoney Coleman Marine;
17 correct?

18 A. No, I don't see that.

19 Q. Look down here at the bottom.

20 A. Oh, yeah.

21 Q. Stoney Coleman Marine. And it's
22 richard@crewcarolina.com communicated with my
23 client, Laurence Stoney.

24 My point is, sir, you can't say whether
25 or not my client received that e-mail; correct?

1 MR. BARR: Your Honor, Counsel may be
2 confused. The e-mail that was addressed to LOS,
3 III was not from Ted. It was from Richard.

4 MR. MCQUILLIN: I understand. I'm just
5 asking him about the e-mail address.

6 BY MR. MCQUILLIN:

7 Q. In your testimony, you said it was sent
8 to Laurence. You don't know whether or not it was
9 sent to my client or whether my client received it;
10 do you, sir?

11 A. I do not. Because I did not realize
12 that the wrong e-mail address was on here. For
13 some reason, it was a mistake in e-mail address.

14 Q. Thank you, sir. All right.

15 Back in 2009, when my client, was what
16 you as antagonistic and disruptive, that Richard
17 wouldn't Laurence be apart of Lake Julian; is that
18 correct?

19 A. That's correct. I think it was earlier
20 than that.

21 Q. Even earlier than that, okay.

22 But for all of those years, he's been
23 my client has been a member of The Boathouse at
24 Breach Inlet; correct?

25 A. Yes.

1 Q. And that entity has continued to
2 operate; correct?

3 A. Correct.

4 Q. And it's continued to carry on through
5 Crew; correct?

6 A. Correct.

7 Q. And you heard your brother's testimony
8 that The Boathouse at Breach Inlet stand to have a
9 very successful year next year; correct?

10 A. Correct.

11 Q. The Boathouse at Breach Inlet has
12 carried on and made money and made a profit, even
13 during the pendency of this litigation, while my
14 client was a member; correct, sir?

15 A. Yes, sir.

16 Q. The last part of this e-mail that you
17 were asked about from 2010 Richard stated, I have
18 been working well with all of my creditors and day
19 by day things are improving. Do you remember that?

20 A. Yes, sir.

21 Q. Sir, do you recall in your deposition
22 when I asked you about an e-mail that you sent to
23 your brother, Richard, in 2014 and said, I'm about
24 at my wits end in dealing with these loans that you
25 stuck me with. It's the same BS every month. Do

1 you remember writing that to your brother?

2 A. Yes.

3 Q. You remember us talking about that;
4 correct?

5 A. I don't consider him a vendor or
6 somebody that would reflect bad, you know -- I
7 don't consider myself the same category as
8 Limehouse Produce or Bankers or purveyors.

9 Q. I'm not asking you that.

10 A. Okay.

11 Q. But you went on to say, that you have
12 been more than patient your brother and tried your
13 best not to pressure him, much to your detriment.
14 But I realize more and more each day how much you
15 have negatively effected mine and Paula's life?
16 That's your wife; correct?

17 A. That's correct.

18 Q. And you remember writing that; don't
19 you, sir?

20 A. Yes.

21 Q. And you said, it might be a little
22 easier to be sympathetic with your plan, if you had
23 not traveled to Europe for three weeks, Mexico for
24 a week, and continued to own horses, be able to
25 send Croft to camp for \$1,000 a week, maintain a

1 swimming pool, et cetera. You said that; correct?

2 A. I'm not sure if I said \$1,000 a week.

3 I don't know if I would have known that.

4 Well, I'm not sure, because it's
5 blurred out. But whatever it, yes.

6 Q. You say, it might be a little easier to
7 be sympathetic to your plan if you had not traveled
8 to Europe for weeks, Mexico for a week, and to be
9 able to own horses and be able to send Croft to
10 camp at something \$1,000, maintaining a pool, et
11 cetera; correct?

12 A. Yes.

13 Q. And you said, it's really offensive
14 when you say that these things don't cost money?
15 Getting rid of all your horses would be the first
16 order of business? That's what you told your
17 brother; correct?

18 A. Correct. And he was getting rid of
19 some horses.

20 MR. MCQUILLIN: Thank you, Judge.

21 THE COURT: Sir, what's your
22 understanding of the due to/due from? What does
23 that mean to these financial papers?

24 THE WITNESS: I'm not an accountant.
25 I'm a simple guy. I was a real estate for

1 40 years. When I had my properties, I was so
2 simple that I set up a separate checking account
3 for each one.

4 But as I understand it in the
5 restaurant business, there is definitely an economy
6 of scale. You get discounts. You also get
7 incentives. And sometimes even cash awards if you
8 buy a certain amount of food.

9 So it's my understanding that this was
10 an accounting thing that was set up. And it was
11 fairly common practice, where the monies would come
12 in and go out to different entities to consolidate
13 costs and provide efficiencies of scale. And the
14 due to/from is like -- and I can't remember the
15 exact -- you know, it's like a debit and credit
16 thing. But one entity would pay for something and
17 then that would show as a debit to that entity.
18 And I might not have it right. But you know what
19 I'm trying to say.

20 THE COURT: Yes. Any other questions,
21 Mr. Barr?

22 REDIRECT EXAMINATION

23 BY MR. BARR:

24 Q. You were examined about Richard's trips
25 by Mr. McQuillin. And I think the document that

1 you were referring to eluded to, I don't care if
2 they are paid for or what. What were you referring
3 to; somebody else paying for it?

4 A. Richard is a very gregarious guy. He's
5 got lots of friends. He has friends in Belgium,
6 Italy. He has friends in Costa Rica, friends in
7 New York. Just about anywhere you want to go,
8 Richard has friends. And in every one of these
9 instances he was staying with friends.

10 Q. I see.

11 A. Rarely did he have to stay in a hotel.
12 He had dear friends that would sometimes even pay
13 like Dennis in Italy, for instance. He paid for
14 Richard to fly to his wedding, things like that.
15 When he paid polo in Costa Rica, people would pay
16 for him to fly down to Costa Rica.

17 But my point was that even though
18 you're not paying for a hotel, you're not paying
19 for a plane ticket, it still costs money.

20 Q. Sort of tough love between brothers;
21 right?

22 A. Tough love between brothers.

23 MR. MCQUILLIN: Very briefly, Judge.

24 One question.

25

RE-CROSS EXAMINATION

1 BY MR. MCQUILLIN:

2 Q. Mr. Stoney, you heard Ms. Stabler
3 testify -- and you have been made aware, though,
4 that your brother did, in fact, use Boathouse funds
5 to fly to the Bahamas, Key West, New York, and to
6 Europe; correct?

7 A. Yes, I heard that. Now, as far as New
8 York goes, that could have been on restaurant
9 business.

10 Q. Well, Ms. Stabler testified that it was
11 booked into due to/due from Richard --

12 A. Okay. Then it was a due to/due from.
13 So it's debt that Richard acknowledged back to The
14 Boathouse.

15 MR. MCQUILLIN: Okay. Thank you, sir.

16 THE COURT: Thank you, sir.

17 MR. BARR: We rest our case, sir.

18 THE COURT: All right. And matters
19 now?

20 MR. MCQUILLIN: Your Honor, we have no
21 reply witnesses. I will tell you that Randall
22 Stoney was informed of what happened yesterday and
23 ws very upset about it. He wanted us to call him
24 as a reply witness so he could explain what
25 happened.

1 We're not going to do that. I know he
2 asked Mr. Barr to explain what happened, explain
3 the situation. I don't believe Mr. Barr wants to
4 do. That would be our only comply.

5 THE COURT: Mr. Barr.

6 MR. BARR: I don't have anything to
7 say. I did have a nice conversation with
8 Mr. Stoney, who was expressive. But that's all I
9 can confirm.

10 THE COURT: All right. We'll take a
11 break and you-all are going to make some arguments
12 to me?

13 MR. MCQUILLIN: Briefly.

14 MR. BARR: And we had -- I had
15 suggested to Mr. McQuillin that -- and I'll say
16 this in part during my closing. I think there's as
17 many as 10 discreet, legal issues that are woven
18 into this case. And so I suggest maybe we make a
19 brief closing argument. And I would suggest to the
20 Court that you require us to file posttrial briefs,
21 if Your Honor will shorten it. In other words, you
22 would give us a page limit and a time limit.

23 And I think that way we can most
24 comprehensively address these many legal issues.
25 I'm not asking -- I will say that again in closing.

1 THE COURT: All right.

2 MR. MCQUILLIN: Your Honor, my only
3 thought is that if Your Honor wants something like
4 that, that's fine. But I think the legal issues
5 and the facts are pretty clear in this case. And
6 you've probably heard enough to make your decision.
7 But if you would like us to submit memorandum with
8 a limit, that's fine. But, to me, that's just
9 making more work for us after we've been gauged
10 with a second trial in this case. It's been going
11 on for five years.

12 But we will do whatever Your Honor
13 desires. But we are very happy to prefer not do
14 that, as well.

15 MR. BARR: Well, my thinking, Judge, it
16 would also be helpful for the record. From the
17 standing case, when we closed it we didn't have
18 summaries and there were no briefs. It was just an
19 order filed.

20 I don't know if you remembered this,
21 our motion to alter to amend, I started by saying,
22 this is sort of what my closing argument would have
23 been at the standing trial. But it's after that
24 close to the barns. I just think it would be
25 helpful for Counsel and the Court and the record to

1 have the lawyers in to say, these are the arguments
2 that we're making at the conclusion of the case.

3 THE COURT: Well, the purpose of the
4 break is give you-all an opportunity to think about
5 your closing argument. Tell me what -- you tell me
6 after you get through with your closing argument.

7 We'll take a break.

8 (A brief recess was taken.)

9 MR. MCQUILLIN: Are we going to do this
10 like normal closing where I get a reply?

11 THE COURT: Yes, sir. The Plaintiff is
12 the burden of proof gets the final word.

13 MR. MCQUILLIN: May it please the
14 Court. Your Honor, first of all, thank you and to
15 your clerks and the staff and everybody for working
16 and getting through this case with us. It's been a
17 long time coming and we're glad to finally reach
18 the end. And I also want to thank you to Capers
19 and George Kefalos. They put up a great case.

20 But, Your Honor, what you heard from
21 Mr. Barr and Mr. Kefalos was a lot of what ifs.
22 What if the road hadn't been built from Asheville?
23 What if a bulldozer hadn't blocked 100 people?
24 What if there hadn't been the tragedy that happened
25 at The Boathouse on East Bay? What if all of these

1 restaurants had been successful?

2 In all of those what ifs were
3 explanations as to why Richard was sucking money
4 out of The Boathouse to fund these other entities.
5 But there's one thing in this case that's not
6 disputed. No what ifs, no if or buts about it.
7 The Defendant, Richard Stoney, took an excess of
8 \$4 million from The Boathouse and put it into Crew
9 Carolina, which he admitted in the family court
10 case when it benefited him that it was alter ego.
11 And used that for personal matters and to fund
12 other business entities.

13 You saw in our first exhibit, Judge,
14 that Richard Stoney pulled cash out, weekend cash.
15 And it was booked as a due to/due from Crew
16 Carolina. And Your Honor had some good questions
17 about the due to/due from idea.

18 And so I want to give you an example
19 here. Let's say that I'm in an LLC with Mr.
20 Stoney. And then you and your law clerk are in
21 another LLC. And we -- and we each hire
22 Mr. Stoney, his company to manage our restaurants.
23 A due to/due from is not okay if Mr. Stoney is
24 managing your restaurant and taking the cash out of
25 it and putting it my restaurant and his restaurant.

1 A due to/due from is only appropriate when there's
2 common ownership, identical ownership across the
3 board.

4 You would not be okay with Mr. Stoney
5 managing your restaurant and pulling cash to
6 support mine and his restaurant, which is exactly
7 what happened here.

8 Your Honor, second, this is a derivable
9 action. And it's designed to allow minority
10 members, like my client, to bring actions to
11 protect the company, from when a manager does
12 something improper.

13 And keep in mind, Judge, the only thing
14 that Laurence Stoney has asked for in this case, in
15 his pleas, is the money that Richard Stoney took
16 out of the company be returned to the company.
17 That's the only thing we see.

18 Yesterday, Your Honor, I was frankly
19 floored when Mr. Kefalos and Mr. Barr brought up
20 the settlement negotiations with --

21 MR. BARR: Objection. Your Honor, I
22 didn't bring that up. I hate to interrupt Counsel.
23 But the record should reflect that Capers Barr and
24 Richard Stoney took no position as to that
25 initiative.

1 MR. MCQUILLIN: In fact, Your Honor,
2 what happened is Mr. Barr called Randall and said,
3 I think you're the only one that can settle that
4 could possibly help settle this case.

5 MR. BARR: That is not correct either.
6 There's no evidence of that. Randall Stoney is the
7 one who called me, Judge, and offered to get
8 involved in this.

9 So it's improper for Counsel to
10 testify, particularly about matters, that are, A,
11 not true, but, B, involving a fellow attorney. It
12 did not happen that way.

13 MR. MCQUILLIN: My point, Your Honor,
14 is that was clearly an act of desperation by the
15 Defendant in this case.

16 Frankly, Judge, there aren't many facts
17 in dispute in this case. And really what -- and I
18 told you I was going to make this brief. There are
19 a lot of legal issues in this case that I want to
20 talk to Your Honor about.

21 The first is the business judgment rule
22 doesn't apply. And I cited to the case of Kuznik
23 v. Bees Ferry. It cites other cases. And it says,
24 the business judgment rule does not apply, if the
25 partners have engaged in self dealing.

1 THE COURT: Is that the Bees Ferry in
2 West Ashley?

3 MR. MCQUILLIN: That's correct. That's
4 the case that happened here in Charleston.

5 So, number one, the business judgement
6 rule doesn't apply. Number two, Laurence Stoney is
7 a proper represented plaintiff under Rule 23. He
8 fairly and adequately represent the interest of the
9 company.

10 A South Carolina case has said that a
11 representative fairly and accurately represents the
12 company, when he vigorously prosecutes the interest
13 of the company through qualified counsel.

14 Another case out of Virginia says, the
15 most important factor for the Court to consider is
16 the remedy sought by plaintiff. And here we're
17 simply asking that the money that Richard Stoney
18 took from the company be returned to the company.
19 That case is 283 Virginia 638. The most important
20 factor.

21 Second, Your Honor -- or the third
22 legal issue in this case is latches. And latches
23 requires that a party, number one, have clean hands
24 if they're going to assert that defense, which
25 Mr. Stoney clearly does not. But, secondly, he has

1 to prove material prejudice.

2 And, Your Honor, heard testimony that
3 as recent as May of 2019, well after this lawsuit
4 was filed, Richard Stoney continued to take money
5 for personal matters, including payment for his
6 personal legal fees. That right there takes
7 latches off of the table.

8 Finally, Judge, and most importantly,
9 is that managers of a manager managed LCC owes
10 fiduciary duties to the company. And under the LLC
11 statute, those duties may not be eliminated by an
12 operating agreement. And so regardless of whether
13 there's an operating agreement in place in this
14 case, it doesn't matter. He owed the duty of
15 loyalty. He owned the obligation of good faith as
16 a manager. It cannot be waived. And the duty of
17 loyalty prohibits self-dealing. And there's no
18 other way to describe what Richard Stoney did when
19 he took money out of the cash and put it in his
20 pocket. He took money from The Boathouse at Breach
21 Inlet and used it to fund other entities that he
22 owned. That is, per se, self-dealing.

23 Finally, Judge, we also talked about
24 the idea of disproportionate distributions. Both
25 the operating agreement in this case and the

1 statute, assuming that there is no operating
2 agreement, do not allow for disproportionate
3 distributions.

4 The code section says, the member is
5 personally liable. And we cited this authority in
6 our pretrial brief, Your Honor. The code section
7 says, that distributions have to be made
8 proportionately.

9 In Section 5.5 of the operating
10 agreement, the purported operating agreement, it
11 says, the manager may make distributions to the
12 member in the same proportions as net profits and
13 net losses are allocated to members.

14 In fact, Judge, this is Scott Barns.
15 It's his form, the operating agreement. He was one
16 of the authors of the LLC Act. This was drafted by
17 Mr. Pearlman. This is the form operating agreement
18 that Mr. Barns has prepared. And he immediately,
19 when this case in, look at 5.5 or look at this
20 section. But 5.5 of the operating agreement
21 prohibits distributions, as well as the statute.

22 Your Honor, this is a shareholder
23 derivative action. It is an action exclusively in
24 equity, which is why we don't have a jury here on
25 some of the legal claims. And it's also why the

1 statute of limitations doesn't apply.

2 In McDuffy v. O'Neil, the courts
3 specifically ruled on this issue. And said that a
4 derivative action -- the statute of limitations
5 doesn't apply. And 324 S.C. 297. In Pelfry v.
6 Bank of Greer, 270 S.C. 691, South Carolina Supreme
7 Court published a shareholders derivative suit has
8 always been tried exclusively in equity, even where
9 the only relief allowable is the recovery of
10 damages. The suit is nevertheless one in equity
11 and not in law. So that issue has been ruled on by
12 several courts here in South Carolina.

13 Finally, Judge, the last legal issue I
14 believe that Your Honor heard was whether or not
15 the Court should pierce the corporate veil. And in
16 a lot of business divorce cases that I've had,
17 maybe three or four of the elements will veil. In
18 this case, literally every single element of the
19 star key factors have been met to pierce the
20 corporate veil. Crew Carolina didn't have a bank
21 account. It didn't follow corporate formalities.
22 It was undercapitalized. It never made dividends.
23 Richard referred to it as his alter ego. Every
24 factor is not met.

25 And, frankly, the more recent cases

1 that have examined piercing the corporate veil
2 focus less on factors and more on the fundamental
3 unfairness of allowing an individual to basically
4 use a corporate shell and take money and not be
5 held responsible.

6 Your Honor, we are asking for two
7 things in this case. The first is for monetary
8 damages. And that is that Richard Stoney pay the
9 money back that he took from the company. And as
10 you heard from Mr. Hallerbach there are three
11 categories of monetary damages that we see. One,
12 is the due to/due from Crew Carolina and Richard
13 Stoney, which totaled \$4,237,099.85. We've got our
14 cumulated interest figure for Crew Carolina,
15 \$428,107.23. And then the disproportionate
16 distributions made that Mr. Richard Stoney made to
17 his friends, \$234,857.00, for a total number of
18 \$4,964,000.08.

19 Your Honor, on top of that, if we were
20 to ask -- and Your Honor heard testimony -- that
21 Richard Stoney, when he found out about this
22 lawsuit, amended the lease and changed the lease
23 terms. Reduced it by 15 years and put over
24 \$900,000 in obligations relating to the bulkhead on
25 the company. We would ask that Your Honor in

1 equity void that lease and that the prior lease be
2 put in place. That was clearly outside of
3 Richard's -- that's clearly a breach of fiduciary
4 duty, and as a result should be voided.

5 But, Your Honor, again, thank you for
6 your time. And thank you for hearing us out. If
7 you have any other questions -- your questions on
8 the due to/due from were good questions. It is
9 permissible if all of the entities have the exact
10 same owners. It's not okay for a manager to take
11 money from that entity and give to support my
12 entity.

13 THE COURT: Okay. Thank you.

14 MR. BARR: Thank you very much. Judge
15 Newman, may it please the Court. I echo these
16 young lawyers. They have taught me a great deal.
17 I always thought that we call it practicing law,
18 because we never get it right. We keep working
19 until the end. And I don't know when the end may
20 be. And I'm not there yet, thankfully.

21 It's been a challenging case. And as I
22 stated in the comments before the break, it's not a
23 simple case. It's quite a complex case, which is
24 why we had asked in the first place that it be
25 assigned to this Court. I count nine, maybe 10

1 distinct legal issues that are involved in the
2 case. There's the issue of disassociation, which
3 Counsel, I guess, is saving for last. But since he
4 didn't mention it the first time up. If there's an
5 issue of disassociation, which I think is
6 inequitable remedy available to the Court in lieu
7 of purported damages, particularly because 90, if
8 not 95 percent of the members of this LLC do not
9 support this action. 90 or 95 percent are not of
10 the LLC are not asking Richard Stoney to be subject
11 to judgement for \$4 million, even if the Court
12 finds that he's liable for it. He's simply not
13 liable.

14 And I won't go too far. There's the
15 issue of standing, which the Court has already --
16 has only preliminary addressed. As a subset of
17 standing is the question of whether it's
18 appropriate to maintain a show of derivative suit
19 as a class of one.

20 The 4th legal issue is statute of
21 limitations. I believe that the statute of
22 limitations does apply to some of the causes of
23 action asserted in the complaint. Even the statute
24 of limitation doesn't apply, based on the delay of
25 the Plaintiff in this case, knowing -- certainly

1 being charged with constructive knowledge of what
2 he's now complaining about for 15 plus years.

3 There's the business judgment rule,
4 which my friend summarily rejects. There's the
5 piercing of the corporate veil. Those are nine
6 issues. What might be deemed to be contempt legal
7 issues is the construction of the operating
8 agreement itself.

9 It's a difficult case even for older
10 lawyers or younger lawyers to summarize capably in
11 oral summary when you're promising to the Judge to
12 be brief. Family disputes, as Your Honor has
13 reminded us, should be settled. And I don't think
14 anybody in the courtroom disagrees with that.

15 But I think Your Honor has, in the two
16 trials -- the two hearings that you held in this
17 case, has probably reached some conclusion about
18 the force of the personalities involved, which may
19 of in itself explain why it's not subtle.

20 But we are nevertheless dealing with a
21 number of facts that are undisputed. It's
22 undisputed that Richard Stoney conceived of a plan
23 to create a number of restaurants that would be
24 centrally managed for the purpose and sharing
25 substantial costs. The most substantial cost being

1 food and personnel. Even Mr. Hallerbach, the
2 expert witness, agreed, that this is an accepted
3 model. I think he said, when it's properly done or
4 something to that effect.

5 But that's not really disputed. But
6 the concept is a proper one. And its substantial
7 costs and expense savings would be obtained as a
8 result. So to say that the Breach Inlet does not
9 benefit from the plan that was formulated, to say
10 that Laurence Stoney doesn't benefit is a
11 misstatement. Because -- and I am going to use the
12 what if. Because what if everything had succeeded,
13 if everything had worked and equilibrium had to be
14 used. There would have been this substantial costs
15 of savings. The witnesses have agreed to that,
16 have conceded to that.

17 At its peak there were as many as nine
18 different entities up and running: The Boathouse
19 at Breach Inlet, East Bay, Ellis Creek, Lake Julian
20 up in Asheville on The Falls in Greenville,
21 Carolina's Restaurant. There was the Blue Water
22 Management that did retail sales and the cookbook,
23 Carolina Catering, that had a catering operation.

24 The reason that I'm throwing that all
25 back to the Court is because you heard testimony

1 about it is, that it's totally inconsistent with
2 the idea that this was a scheme concocted by
3 Richard Stoney to cheat people.

4 You'll notice, Judge, that my friend,
5 Richard Stoney -- and we have been friends for a
6 long time -- I've said this to his face -- is not a
7 very focused person in the sense from his testimony
8 even here today. I was having to steer him back on
9 track, because he wants to get off the point. And
10 perhaps that personality trait, attention
11 deficiency or whatever you might call it, relates
12 to what happened here. I can't say for sure. He
13 had good management people around him.

14 But I can suggest to the Court,
15 contrary to what my young friend argues or
16 Mr. Hallerbach, his paid expert, tried to say,
17 Richard is not out there to cheat people. It was a
18 well-intention, good-faith endeavor, which is the
19 essential component of the business. It was
20 entered into good faith. It was executed in good
21 faith.

22 And I've always been interested by the
23 fact that Mr. Hallerbach, in his testimony, and
24 Counsel in his argument, talk about Richard dipping
25 his fingers into the till. But at the end of the

1 day, the number that they agreed with, that Richard
2 owes back to the till is \$42,000. I say only
3 \$42,000. That's a lot of money, Judge. But over
4 the span of 20 plus years, dealing with nine
5 different entities, and with the testimony that
6 Richard -- Richard did pull money out, but he
7 injected money back in. And the net result of that
8 now, according to the books of the Breach Inlet,
9 which Mr. Hallerbach accepted, show that it's
10 \$42,000.

11 There's no dispute, but that this
12 organization of entities encountered major
13 catastrophes, perhaps extraordinary ones, if not
14 attributable only to normal, economic difficulties,
15 such as the national economic recession affected so
16 many businesses across the board.

17 Your Honor heard about them all. There
18 was a tragic murder of the manager at East Bay, the
19 highway construction at Lake Julian, the Greenville
20 restaurant, which probably didn't incur a whole lot
21 of debt. But then the Boathouse at Ellis Creek
22 that burned down less than 30 days after it opened.
23 All that caused the nosedive. All of those
24 unanticipated catastrophes.

25 And throughout all of this, Breach

1 Inlet openly recounted for the transaction.
2 There's nothing that was concealed. Everything was
3 open and obvious, and as I've said more than once.
4 Even though Laurence Stoney has paid apparently
5 over \$80,000 to Mr. Hallerbach and his firm, to
6 which he had a gazillion megabytes of data that
7 Mr. Hallerbach talked about. At the end of the day
8 his conclusion is that the amount owed by Crew
9 Carolina to The Boathouse at East Bay is whatever
10 \$4.1 something million, which he took straight off
11 of Boathouse's balance sheet. He doesn't challenge
12 that at all.

13 So he took the entry off the balance
14 sheet and then he calculated -- Mr. Hallerbach did,
15 calculated interest that was owed on it. And he
16 calculated bank penalties and he calculated tax
17 penalties. And certainly no business that loses
18 \$4 million can do so -- of this nature, can do so
19 without some pain being inflicted.

20 I don't mean to dismiss it, Judge. But
21 I am suggesting that it was the result not of any
22 willful, deliberate, or reckless conduct on Richard
23 Stoney's part, but it's a combination of factors
24 that makes it unavoidable.

25 THE COURT: Mr. McQuillin seems to --

1 argues that he --

2 MR. BARR: Beg your pardon?

3 THE COURT: Mr. McQuillin argued that
4 the mandate of the LLC, is that it must be compiled
5 with the operating agreements, that you cannot make
6 disbursements not in the agreement or in compliance
7 with the agreement, and under the LLC law you're
8 personally liable if you do so.

9 MR. BARR: You're talking about the
10 disproportionate distributions?

11 THE COURT: Disproportionate
12 distribution and any other activity that does not
13 comply with the mandates of the operating and in
14 the LLC statute.

15 What's your view of all that of? Do
16 you think that the catastrophe of just the sites or
17 cases of --

18 MR. BARR: If I may answer it this way,
19 Judge. Let me get a copy of the operating
20 agreement. I think the operating agreement
21 provides in article --

22 MR. MCQUILLIN: Mr. Barnes is saying
23 6.1, Capers.

24 MR. BARR: I beg your pardon?

25 MR. MCQUILLIN: 6.1.

1 MR. BARR: Right.

2 6.1. It does give the manager a wide
3 range of authority, Your Honor. And I happen to
4 pull up one that I highlighted. Let's see. I'm
5 reading from 6.1. And I don't remember this
6 exhibit number. The power shall be exercised by or
7 under the authority over the business and affairs
8 under the direction of the managers. And the
9 managers may make all decisions and take all
10 actions of a company, not otherwise provided for in
11 this operating agreement, including without
12 limitation.

13 In other words, this is not limiting
14 it, the following. And the think the first one,
15 the one that is extremely broad and a mean to
16 making and forming contracts, agreements, leases,
17 management contracts, and which is what we're
18 dealing with here, and undertaking by the company
19 that the necessary appropriate or advisable, and
20 furtherance of the purposes of the company in
21 making all decisions and waivers thereunder.

22 Well, what we're dealing with here is
23 was the creation of this organization of records is
24 that -- at the beginning. This happened to have
25 been the first operating agreement that was entered

1 into. And so I do believe on, by its clear
2 language, it authorizes the manager to enter -- in
3 the management agreement, as it says. But it also
4 enables to enter into undertakings binding the
5 companies.

6 So to the extent that Breach Inlet
7 entered into an agreement with Crew Carolina to
8 manage its business in order to centralize the
9 management and save cost of foods and save
10 personnel costs, and what have you, I think that
11 Mr. Stoney was authorized, under this language, to
12 enter into such an agreement.

13 I think that the agreement further
14 authorizes Mr. Stoney -- I'm sorry. Authorizes the
15 management of the company, which was Crew Carolina,
16 Mr. Stoney, single member, LCC, to then manage the
17 books of the companies in the way that he did.

18 And I hear Counsel when he says that
19 that's okay, as long as the same members are
20 members of each of the other entities. And I can
21 appreciate that rational, but I believe the
22 language of this nevertheless -- I think
23 Mr. Hallerbach even conceded that a LLC could
24 contract from management services with a manager
25 with a manager who's also managing other entities

1 that are unrelated. And so that's what's happening
2 here.

3 And I might also add that the same
4 members of Boathouse were also members at East Bay,
5 with the addition of a couple. But Laurence
6 Stoney, the primary complainant here, was a common
7 owner of both. So the Plaintiffs haven't bothered
8 has Mr. Hallerbach conceded of that receivable owed
9 by Crew to Breach Inlet, what was in turn owed to
10 Crew by the various entities. They could have done
11 that, but they choose not to do it for some reason.
12 And I suggest the reason it might be is because, at
13 least, those that are attributable to sure'ing up
14 East Bay is also beneficial to the punitive
15 Plaintiff in this case, Laurence Stony.

16 But my answer to Your Honor's question,
17 I think, lies here in the answer of the operating
18 agreement itself.

19 THE COURT: The statute cited in the
20 authorization agreement appears to have been
21 appealed in favor of another statute. For example,
22 it says pursuant to 33-43-802. And that statute
23 alone no longer exists in that same form.

24 So my question to you is: What impact,
25 if any, does that have on these proceedings?

1 MR. BARR: Your Honor is asking me a
2 question that I -- a proposition that I have not
3 known. So I cannot -- I don't know authoritative.
4 I'll be glad to brief that for you.

5 But there could be some stated language
6 in the LLC act, which addressed that. I would
7 suppose there probably is. But in the new act that
8 addresses the existence under the old. But it
9 would certainly -- it doesn't mean that LLC is
10 organized under the old act or invalid. It just
11 means that it's probably the frozen question of
12 what body of statutes governed that. I will be
13 glad to brief that.

14 As you know, in the pre-break colloquy,
15 I had proposed briefs in response to the evidence
16 that you've heard in this case and certainly
17 address that.

18 THE COURT: All right.

19 MR. MCQUILLIN: Your Honor, I think
20 it's just a typo. It says 43, which is not part of
21 the LLC act. 33-44-802.

22 THE COURT: So that's a typo?

23 MR. MCQUILLIN: It's just a type.

24 THE COURT: So that should be
25 33-43-802.

1 MR. BARR: Are you talking about the
2 typo in the operating agreement?

3 MR. MCQUILLIN: Yes. I don't know what
4 section he's looking at.

5 THE COURT: He's looking at page one of
6 the definitions 1.1. Under 1.1 bankruptcy members.

7 MR. BARR: Yeah. That's just referring
8 to -- in the operating agreement is referring to a
9 specific section. I don't know.

10 MR. MCQUILLIN: Just a typo. 33-44 and
11 then whatever policy.

12 MR. BARR: I see. Well, maybe that
13 bales me out, Judge.

14 THE COURT: It's just a question.
15 Because I don't have the answer. That's the one
16 thing I can do is ask questions. I don't have to
17 have the answers.

18 MR. BARR: Yes, sir. Good for you. I
19 have not bothered to code search that cited
20 section.

21 If I may continue, Your Honor.

22 THE COURT: Yes, sir.

23 MR. BARR: From a 10,000 foot level --
24 and I know I sound like a stuck record on this
25 point. From a 10,000 foot level there's just an

1 upside down proposition here that a five percent
2 member could be controlling the destiny of the
3 company where it's clear particularly in a
4 closely-held family LLC, except for maybe one
5 permanent member and one beneficial member, that
6 this result could obtain, which brings me around to
7 the association issues, Judge.

8 I was struck by the fact that in his
9 testimony yesterday, Laurence Stoney conceded that
10 it is impractical to continue this LLC with both
11 him and Richard Stoney as members. And, of course,
12 that is precisely the standard under -- the express
13 standard under the statute.

14 And, Your Honor, had asked yesterday
15 about the resolution of that. The LLC act provides
16 four of the procedures, if the Court finds it's
17 impractical. It's not a general impracticability
18 to operate the LLC. It's whether it's
19 impracticable to operate it with that member.

20 If you give me a minute, I copied -- or
21 I thought that I copied -- yes, I did -- the LLC
22 act in, article six discusses members
23 disassociation beginning with section 33-44-601
24 through 33-44-704. And I know Your Honor had asked
25 when I was making the opening statement how much

1 would Laurence be entitled to. And I responded
2 that that's statutorily provided for.

3 And if I could put my finger on the
4 appropriate section. I think it might be 33-44 --
5 it's under article seven, beginning 33.4.701 which
6 is entitled company purpose of distribution. And
7 it provides that under subsection C, if the price
8 is undetermined for purchased of a distribution --
9 and the interest are fixed or to be determined by
10 the operating agreement, the price shall go as
11 according to that.

12 In subsection small E says, the Court
13 shall determine the fair value of the
14 distributional interest in accordance with the
15 standards set forth in section 33-44-702. In
16 33-44-702, which is entitled court action to
17 determine fair value to provide for procedure. I
18 won't go over the full thing.

19 But my point is, Your Honor, that there
20 is a procedure and a formula set forth in 33-44-702
21 to determine that. I'll emphasize that the code
22 provides for fair value.

23 You might remember when I was
24 questioning Laurence about that yesterday, he
25 wanted to discuss the difference between fair value

1 and fair market value. And it's my understanding
2 that the difference is that fair market value is
3 what the share would be worth on the market. And
4 on the market five percent share probably would not
5 be worth a whole lot.

6 On the other hand, fair market is a
7 value that's calculated under the statute, under an
8 entirely different calculation. And it's not a
9 market place per the statute -- I mean, a
10 calculation. A calculation is evaluating the true
11 value of the particular member's share.

12 I also have proposed, under the
13 association remedy, which I think is available for
14 the Court, that the Court is empowered to award
15 reasonable fees and costs. I don't know whether
16 I'd say that I have multiple copies. I don't know
17 if you are interested in a hard copy. I have hard
18 copies of articles six and seven, if you would like
19 to have them.

20 THE COURT: Yes, sir.

21 MR. BARR: I might add those are
22 printed front and back, so that you're not confused
23 by them.

24 Mr. Hallerbach made a great deal of
25 reaching a conclusion that this money was

1 Mr. Stoney's personal money, notwithstanding the
2 fact that -- what I'm talking about this money,
3 this personal money, the \$4 million. I'm talking
4 about the big number that he pulled off of The
5 Boathouse balance sheet Excel. Notwithstanding,
6 the fact that Mr. Hallerbach, through Counsel
7 maybe, knew that Laurence Stoney, that these funds
8 were being -- these funds are the result of the
9 management of Crew Carolina having to do deal with
10 the management of a multitude of organizations,
11 that for the reasons I've discussed, were not
12 successful. But operations that again were created
13 by Stoney without or for that matter profit.
14 Again, by Richard Stoney, in good faith. Out of
15 all these polo matches and trips and things, at the
16 end of the day, the number \$42,000. Not a trivial
17 number. But that's the number that Mr. Hallerbach
18 is saying it's Mr. Stoney personal money.

19 Well, he's certainly looking at it from
20 an accountant standpoint, which you might remember,
21 Judge, that the testimony in this case, which I
22 think is not contradicted is, that sometime in
23 early 1999 Richard had a meeting down in his then
24 law office, not a block from here on Broad Street,
25 in which Laurence was present. He explained to

1 Laurence and other members the concept that he was
2 bringing forth with.

3 And at that time there were two
4 restaurants under operation; Breach Inlet and East
5 Bay under this common management scheme. So for
6 Laurence to say he was not aware of it, I think is
7 not correct. I think it would be disingenuous for
8 anyone to argue to contrary. So, at the end of the
9 day, Judge, we believe that the operating agreement
10 you gave Richard as manager, the authority to
11 engage in these relating transactions, with the
12 knowledge of the members of The Boathouse of Breach
13 Inlet, that's the important factor, that they
14 remember The Boathouse at Breach Inlet knew that he
15 was going to create these additional restaurants.
16 And they didn't object then and even after he
17 operated it, they didn't object to it later.

18 And then perhaps, finally, we'll get to
19 the statute of limitations. Mr. Laurence Stoney
20 has testified that he believed that he suspected
21 that Richard was robbing Peter to pay Paul, as long
22 as it didn't go over the first year that the two
23 entities were operating. And he sat on his hands.

24 He said variously that he sat on his
25 hands because they were all family. He said in the

1 prior hearing, he sat on his hands because he was
2 going through a divorce. It was a hard time. He
3 didn't have the time to deal with it.

4 But it's clear that the real complaints
5 came from Laurence Stoney when the distributions
6 started becoming less and less. And it's clear
7 that every refrain that he ever made to the
8 management was, where is my money, where is my
9 money, where is my money. And it's clear that
10 underlying all of this -- because the only thing
11 that distinguishes from the other members, the
12 other five percent members is, by his own admission
13 and agreement, is that he didn't get the same share
14 of distributions.

15 He was -- I don't know if he would be
16 barred by the statute now -- I believe he would
17 be -- from suing for those personal distributions
18 that he missed. But instead he elected to file
19 this for a derivative suit. So that the other
20 persons would have to pay for his fees and costs.

21 In 2018, when we heard the case on
22 standing, I think the testimony was then that he
23 had paid \$400,000 in legal fees, and another
24 \$40,000 in accounting costs. And goodness knows
25 the accounting costs are. And we don't know what

1 the legal fees are. But the costs are not -- the
2 costs that he's extended don't support, I
3 respectfully suggest, the end that he seeks and the
4 equitable resolution of this case, particularly in
5 light of Laurence Stoney own concession, that it's
6 not reasonably practical to continue the business,
7 as long as he and Richard are in the membership --
8 supports the alternative remedy of a buyout.

9 Thank you, Judge. I would like to
10 again to suggest you give me the opportunity to do
11 this a little more concisely than I've just done in
12 written form, limit me to pages, and that way I can
13 accomplish all the legal issues.

14 THE COURT: How many pages -- you want
15 me to limit you?

16 MR. BARR: I'd ask for 20, but if you
17 want less. I see you cringe on that. I would
18 think that given the facts and the law on the case
19 that that would be a reasonable number. But if you
20 want us to produce -- look, I'm serious, though,
21 Your Honor, as long it's more than two. I think it
22 would be helpful. And I think it would helpful to
23 the Court and helpful to Counsel and certainly
24 helpful to the record. So the record understands
25 the positions of the parties at the close of the

1 evidence.

2 THE COURT: All right. Very good.

3 MR. BARR: Thank you, Judge.

4 THE COURT: Mr. McQuillin.

5 MR. MCQUILLIN: Mr. Barr said at the
6 end of the day he thinks the operating agreement
7 gives Richard Stoney the authority to do all of
8 these things listed in here.

9 But, Your Honor, if you look at section
10 6.1 it specifically says, except for situations in
11 which the approval of the members are required by
12 this operating agreement or by the non-waivable
13 provisions of applicable law.

14 This is 33-44-103. The operating
15 agreement may not eliminate the duty of loyalty.
16 And then if you flip, or eliminate the obligation
17 that been paid in fair dealing.

18 And, Your Honor, Chief Justice Toal has
19 written an article on this, which we cited in our
20 pre-trial brief, that goes through this issue. It
21 says, it is a non-waivable mandatory provision that
22 cannot be waived. So regardless of whether the
23 operating agreement controls the statute controls,
24 Mr. Stoney had to comply with the duty of loyalty
25 and the duty of --

1 THE COURT: Can you e-mail me a copy of
2 that?

3 MR. MCQUILLIN: Sure. I cited it in my
4 brief, but I will e-mail you a copy.

5 Secondly, Your Honor, if this Court
6 does as what Defendants asks and determine that
7 maintaining a derivative action, the Court would
8 entirely undermine the idea of a derivative lawsuit
9 and thereby would condone corporate legal
10 malfeasance. And that is literally a quote from
11 the case. Angle Investors vs. Garrity, which 2009
12 UT 40. There's another case Eyesight vs. Blackburn
13 796 SW2.d 0. This is a Texas Supreme Court case.

14 Quote, we question wisdom from
15 preventing a shareholder and a close corporation
16 from enforcing his rights. Such an interpretation
17 could deprive a corporation any remedy it might
18 have as a result of the wrongs done by the major
19 shareholders.

20 THE COURT: Is eluding and malfeasance
21 that you refer to, is that the -- is that the
22 expansion into all of the other restaurants and
23 ventures? Or was the \$42,000 or so paid to --

24 MR. MCQUILLIN: Your Honor, it's all of
25 the money that Mr. Stoney took from the company and

1 used either for personal matters or to support
2 other entities that did not have common ownership.

3 The only other thing common with those
4 entities, Judge, is that Mr. Stoney was involved in
5 all of them. He took money out of The boathouse to
6 its detriment to benefit himself and these other
7 entities that he was involved in.

8 THE COURT: So nothing related to East
9 Bay is included in the 4.4 something million?

10 MR. MCQUILLIN: Correct, Your Honor.
11 In fact, East Bay only had \$2,000 equity involved
12 with The Boathouse. It's all received, according
13 to it's books.

14 What we're seeking, Judge -- if you
15 see, these are due to/due from Crew Carolina. I
16 showed you this the first time. These are
17 examples -- all that due to/due from, this is not
18 due to/due from Richard. He's taking -- Richard
19 Stoney weekend cash, \$100 Richard Stoney personal
20 cash, \$400 to Chris' girlfriend. Jamie was out of
21 town. At Christmas Richard took out \$2,000 from
22 Crew Carolina to get through Christmas. This is
23 due to/due from Crew, not Richard. He transferred
24 money from The Boathouse to his alter ego.

25 THE COURT: But you're seeking money

1 from -- does not -- Crew doesn't exist anymore?

2 MR. MCQUILLIN: No. Crew Carolina does
3 exist. But we're asking you to pierce the
4 corporate veil and hold Richard Stoney responsible.

5 THE COURT: Because of?

6 MR. MCQUILLIN: He meets every element
7 under South Carolina law for piercing the corporate
8 veil. If there were ever a piercing of the
9 corporate veil case, this is it.

10 Secondly, Judge --

11 THE COURT: You can get to all that you
12 want to. I want to pose questions..

13 MR. MCQUILLIN: Sure.

14 THE COURT: As to notice by Laurence
15 Stoney as to the motive of operation of these other
16 ventures and this venture by Richard Stoney, and
17 the statute that refers to notice 33-44-102, if he
18 was aware of this -- I assume that he had to be
19 aware of the restaurant, this street, that street,
20 Greenville, Asheville as a member of the
21 corporation LLC, if he knew about all of that, but
22 did he not take any steps to prevent it or stop it?

23 MR. MCQUILLIN: Your Honor, Mr. Stoney
24 testified and the evidence in this case is that he
25 knew about Crew Carolina and he knew about all of

1 these other restaurants. What he didn't know is
2 that Richard was taking money from The Boathouse to
3 support all these other restaurants by putting
4 money in his pocket.

5 THE COURT: He thought he was --

6 MR. MCQUILLIN: He thought that Crew
7 was doing -- the supposed purpose, the what if
8 purpose, is what if it saved money in food
9 purchasing, what if it saved money on this
10 something.

11 And there's nothing wrong with having a
12 management company. What's wrong here is taking
13 money from profitable company and using it to
14 support another company with different ownership.
15 To use Chip Robinson's word, the comptroller of the
16 company, The Boathouse was used as a blood donor
17 for the hemorrhages of Lake Julian and Carolina's.
18 Two restaurants with different ownership.

19 Those restaurants had losses. And
20 operating losses when Richard was pulling money
21 from The Boathouse at Breach Inlet to support
22 those, as well as pulling money from The Boathouse
23 for weekend cash or shipping horses for a horse
24 match or for work at his farm, or personal travel.

25 THE COURT: We know the 40 something

1 thousand.

2 MR. MCQUILLIN: That's included in the
3 Crew number two.

4 THE COURT: In fact, if those
5 businesses failed or some of them failed, one in
6 Asheville and --

7 MR. MCQUILLIN: Lake Julian.

8 THE COURT: Lake Julian, Greenville
9 didn't happen, the other one burned, et cetera,
10 that has no -- that's of no legal significant?

11 MR. MCQUILLIN: I'm not aware of
12 anywhere in the statute that says if your building
13 burns down or if somebody gets shot there and if
14 your restaurant is successful, that can violate the
15 duty and loyalty of the obligation of good faith
16 and fair dealing. And that's what the defendants
17 would suggest, Your Honor.

18 THE COURT: What is the purpose of this
19 knowledge and notice? To some degree, wrote about
20 definitions in the statute. The very next thing is
21 33-44-12, knowledge and notice. They spend a lot
22 of time under the statute.

23 MR. MCQUILLIN: What that means is that
24 the LLC is deemed to know what the manager knows,
25 and the manager managed the LLC.

1 THE COURT: Say again.

2 MR. MCQUILLIN: He said, if the LLC is
3 deemed to know what the manager knows in a LLC. My
4 client, Laurence Stoney is not a manager.

5 THE COURT: The member is not deemed to
6 know what they had actual knowledge of?

7 MR. MCQUILLIN: No. There's no
8 significance. In a manager managed LLC -- here we
9 go. In an member manager LLC, the member is deemed
10 to know. In a manager managed LLC he's not -- that
11 distinction is very real. When I started handling
12 LLC divorce cases with Scott Barns, that's one of
13 the first things he taught me. In a manager
14 managed LLC, the manager owes fiduciary duty to the
15 companies and its members. The members don't owe
16 any duties to the company and the other members.
17 Membered managed LLC, all of members owed fiduciary
18 duties to the company and each other, and are
19 deemed to be on notice of what the LLC knows, but
20 not so in a managed manager LLC.

21 THE COURT: Mr. Stoney is a member
22 manager?

23 MR. MCQUILLIN: He is. Richard Stoney
24 is a manager and member, yes, sir.

25 THE COURT: Okay.

1 MR. MCQUILLIN: And, Your Honor, you've
2 already ruled on this issue about the not
3 reasonably practical care in the business. We've
4 argued that before Your Honor.

5 But in Your Honor's order preliminary
6 denied that. You recognized this. And this is
7 proper. And I quote from cases, that that
8 statutory section sets a high bar. And there's a
9 case from the New Jersey Supreme Court, which is a
10 similar case. It says, it's only appropriate where
11 a member has engaged in conduct that it would,
12 quote, be unfeasible despite reasonable efforts to
13 keep the LLC operating while the disputed member
14 remaining affiliated with it.

15 And here, even during this lawsuit,
16 it's been able to operate. It's been profitable
17 and it's going to continue to be profitable. And
18 so the whole idea that a manager can take money and
19 do something wrong and then he can just move to
20 expel them, it makes no sense in equity. It
21 totally undermines the derivative action and it
22 doesn't comport with the requirements and case law
23 on what is reasonably practical.

24 THE COURT: Hold your point right here.
25 I have to send this lady off.

1 THE COURT: And is the impact, if any,
2 Mr. Stoney, Laurence Stoney, the Plaintiff being
3 disassociated for the past many, many years?
4 That's my last question. So you can both be
5 thinking about it in more detail.

6 (A brief recess was taken.)

7 THE COURT: Yes, sir.

8 MR. MCQUILLIN: My learned colleague,
9 Scott Barnes, has pointed me to an answer of your
10 question.

11 THE COURT: All right.

12 MR. MCQUILLIN: A disassociated member
13 is a term of art. And that is -- it's specifically
14 dealt with in the LLC act at 33-44-601. And
15 33-44-601, there are various offense of
16 disassociation. And when a member is
17 disassociated, all that means, Judge, they're still
18 a member. They just don't have voting rights. And
19 so that's what the term disassociated means. But
20 it's a term of art.

21 Your Honor, you heard Mr. Barr describe
22 Mr. Stoney yesterday with the witness Chip
23 Robinson, Mr. Stoney isn't a quitter. And we agree
24 with Mr. Barr on that statement. He's not a
25 quitter.

1 Chip Robinson told Mr. Stoney that his
2 practice of robbing Peter to pay Paul was not
3 sustainable. Richard didn't quit. Dennis Jarvis,
4 CPA, said, stop doing it. Richard didn't quit. In
5 2007 Mr. Stoney's own lawyer, you heard testimony,
6 Bobbie Pearlman, told him, you need to stop doing
7 this in 2007; you cannot do this practice, stop it.
8 Richard kept doing it. He didn't quit. And even
9 during this litigation, Mr. Stoney didn't quit.

10 Judge, there's only one way to make
11 Richard Stoney quite and that's punitive damages.
12 And so we would ask that in addition to the damages
13 that the company has sustained and the amount of
14 money that is owed to it, that punitive damages
15 also be awarded in this case. When your lawyer
16 tells you to do something and you don't do it,
17 that's defiance. That shows willful action.

18 He was told by his bookkeeper, his CPA,
19 his lawyer, and we sued him. And he still
20 continued do it. Thank you, Judge.

21 THE COURT: Do you want to go around
22 one more time? Mr. McQuillin gets the final word.

23 Do you have any other word before his
24 final word, Mr. Barr?

25 MR. BARR: Your Honor, I wouldn't want

1 my failure to do so to suggest acquiescence to my
2 friend's arguments.

3 THE COURT: Well, we know the defense
4 never rests.

5 MR. BARR: Thank you. Absolutely. I
6 can't think of anything specifically that I could
7 argue, unless Your Honor has some questions about
8 our position as to something that you might have
9 made notes of that Mr. McQuillin argued, which is
10 why I'm suggesting that perhaps there's a more
11 efficient way to deal with it would be with some
12 post-trial briefing.

13 THE COURT: It's basically -- I do have
14 a question. This is the function of the LLC. The
15 function of the LLC act. Of course, before there
16 ever was an LLC people incorporated, then to get
17 the benefit of a more, supposedly more relaxed tax
18 application of claims they came up with the LLC,
19 the direct flow to member, as opposed to paying
20 corporate tax on a LLC tax.

21 So then you have this many people. I
22 mean, don't put yourself on the line personally to
23 come up with an LLC like Mr. Stoney said he did to
24 ownership of that property, that he referred to.

25 So we have a situation, to a great

1 degree -- where Richard Stoney -- to a great degree
2 to function as a one-man operation, though the LLC
3 has some stipulations to the contrary. And the
4 statute has this notice provision people know about
5 things.

6 And as I pose a question to you, what
7 if there isn't a catastrophe or locked into that
8 agreement, or is it excused by a course of conduct
9 or acquiescence or whatever it might be would, that
10 make it an equitable to have someone restricted
11 formula.

12 MR. BARR: So I'm not sure if I follow
13 the question. You're asking our position as to
14 whether the strict terms of the agreement can be
15 equitably modified based on notions such of waiver,
16 estoppel and things like that.

17 THE COURT: Yeah, that's another way of
18 putting it.

19 MR. BARR: I couldn't cite any
20 authority for the Court. But I would be shocked if
21 it did not. If you think about the concept of the
22 LLC is that Your Honor was just visiting, it was --
23 I think it was intended to be in addition to the
24 tax benefits that Your Honor eluded to and the
25 limited liability for which the very name of the

1 act is designated, I believe that it also sets
2 forth a more relaxed form of organization and
3 management then would, for example, be a
4 corporation.

5 Mr. Stoney somewhat eluded to this in
6 his testimony. I think it came up. Or maybe in
7 just conversation with him, where you have a single
8 member of LLC and you're being -- they're trying to
9 pierce the corporate veil, when you don't have any
10 need. Well, that would be an absurd to say that
11 president is going to meet with himself is
12 therefore is not valid LLC. Now, maybe that's an
13 absurd, but I would be shocked if the authorities
14 did not recognize -- for example -- another
15 example, in this case, as Your Honor heard today,
16 the signed LLC agreement -- the operating agreement
17 assigned membership members in a proportion that's
18 entirely different from the way that it was carried
19 out. As Richard said, he can't explain that.

20 But Exhibit A to the very beginning
21 document says that the membership interest are
22 83 percent to Richard -- five percent to
23 Laurence -- Ted, as trustee, and eight percent to
24 Ted individually. But it never operated that way.

25 The way it ended up was 80 percent to

1 Richard, five to Ted as trustee, five to Laurence,
2 and ten individually. So I think that illustrates
3 perhaps -- at least what I think a court would do,
4 does that mean then that we go back and reform the
5 LLC to conform with the operate -- the strict terms
6 of the operating agreement? Or do we conclude that
7 because of the pattern of conduct, the manner in
8 which the business was conducted over the years,
9 between '97 and 2020, almost -- however many years
10 that is. So I think that's a good illustration
11 right there.

12 THE COURT: All right. I have two more
13 questions for you then. I'm not certain whether it
14 came up through testimony. When was the last
15 disbursement to Mr. Theodore Stoney?

16 MR. BARR: To Laurence Stoney?

17 THE COURT: Laurence Stoney. I know
18 the money was coming in good once and less than
19 once. Is there testimony when he last received
20 money?

21 MR. BARR: There's no testimony, Judge.
22 There may be some records in here which will
23 reflect that there were was \$10,000 distribution in
24 2010. And I don't remember whether it was in the
25 prior trial or deposition Laurence said that he

1 backdated that to 2007. Because he said he was
2 owed back from that.

3 And there's been some tendered
4 distributions to Laurence resolutions, which have
5 been returned. But that's not in the evidence in
6 this case.

7 THE COURT: And the, finally, what
8 should be -- if the Court were to conclude
9 that both sides have unclean hands, what's the
10 matter of that? If I agree with the defense that
11 Mr. Laurence Stoney by badmouthing the company and
12 Mr. Richard Stoney breached his agreement by not
13 complying with structures of the operating
14 agreement or any other matters that would lead you
15 to conclude that there are unclean hands on both
16 sides? And how should that impact my decision?
17 I'm like 12 people in a jury room deliberating with
18 myself. So I can ask you these questions.

19 MR. BARR: Very good.

20 THE COURT: This is a public
21 deliberation.

22 MR. BARR: That's a healthy thing. I
23 did some zoning work. And I loved to do that
24 zoning work because the zoning boards, you present
25 your case, the zoning presents there, and then they

1 deliberate right in front of you. It's very
2 enlightening. I would love to be on a jury to see
3 how the process works.

4 To answer your question, I think given
5 the flexibility associated with Court's of equity,
6 to arrive at resolutions that are fair, then it
7 simply becomes a balancing act. I think the Court
8 is then empowered to balance those competing and/or
9 conflicting or coinciding uncleaned hands. So to
10 render a decision that's related to it, I don't
11 think it creates a black-letter to the Court's
12 question.

13 Because to the extent that uncleaned
14 hands is a notion in equity, then necessarily it's
15 simply a factor that needs to be balanced. And I
16 don't think it would qualify or disqualify any
17 particular claim, per se.

18 I don't think, for example, we've heard
19 that in -- a party cannot assert himself guilty of
20 unclean hands. Well, I don't think that that's an
21 absolute statement. I think authorizes the Court
22 of equity to nevertheless balance that against
23 other things. And the Court could conclude that a
24 party who has unclean hands cannot rely on the
25 doctrine of laches.

1 But the Court is not required to. In
2 this case, for example, the Plaintiffs have argued
3 that we cannot assert laches because we're guilty
4 of unclean hands, because of all these double
5 dealing and personal conflict. But that's not a
6 correct proposition. I think there's even case law
7 as to this. The latch that is relevant to -- I'm
8 sorry, the unclean hands that is relevant to the
9 issue of laches must be unclean hands that
10 contribute to the Plaintiffs delay in filing the
11 suit. It's not just general unclean hands.

12 So there's a relevancy issue here.
13 What is the unclean hands relevant to? And I know
14 I'm speaking very broadly. But, respectfully, I
15 think Your Honor's question is very broad. And I
16 think you intended it that way.

17 And so I think that whether the Court
18 finds that both sides have unclean hands, it
19 doesn't reject one side's position or the other.
20 It's up to the Court to balance it under the
21 overall umbrella of the duty of the Court of equity
22 to arrive at a resolution that's fair. That's my
23 proposition at law.

24 THE COURT: Then finally, finally, I
25 was speaking with a juror who most recently who

1 just sat on a case. And they said it was tough
2 because the lawyers didn't tell us how much money
3 they wanted. So we have to figure it out
4 ourselves. We didn't have anything.

5 Of course, Mr. McQuillin has given me
6 his figure and you haven't. What's on your mind?

7 MR. BARR: Well, this answer will avoid
8 the question. But in a manner of speaking, because
9 under of the disassociation remedy, as I suggested
10 to Your Honor when we were talking about
11 disassociation, there's a formula for that.

12 And the formula is calculable,
13 according to the provisions of the statute, based
14 on appraisals and the like. So it will give the
15 Court -- remember, I don't have a number in mind.

16 THE COURT: So they would appraise the
17 value of the business and then give him five
18 percent of the value?

19 MR. BARR: I couldn't present to tell
20 you, Your Honor, exactly how they would engage in
21 that.

22 THE COURT: You are include that in --

23 MR. BARR: I can put that in my 20
24 pages, Judge. Again, the operative statute is, I
25 think, is 33.4.702. That's a part of the package

1 that I handed up to the Court and Counsel.

2 And I might say, Your Honor, to the
3 extent, that even as to that \$42,000 on the balance
4 sheet, the testimony is that that's -- that number
5 is being reduced as Breach Inlet. That number is
6 being reduced as Mr. Stoney injects more into the
7 operation of the business, without it being
8 assigned as compensation.

9 THE COURT: All right.

10 MR. BARR: So, Your Honor, it's a
11 question that I'm unprepared to answer. But if it
12 the question is answered in the context of
13 disassociation, then I think there's a formula --
14 there's an evaluation procedure under 33.4 -- maybe
15 701 and 702. I've never had to deal with it
16 before. But there's -- I see a provision of it.

17 THE COURT: You don't have to figure it
18 out while I'm asking you questions. I'm just
19 throwing out questions on my mind. Unlike
20 deliberating of a jury, you don't get proposed
21 orders.

22 MR. BARR: I don't. You're right.

23 THE COURT: All right. Let's see what
24 Mr. McQuillin has to say.

25 MR. MCQUILLIN: Your Honor, I'll start

1 where he did, which was section 33-44-701 is not a
2 formula that you applied to a member that's
3 disassociated. What that section applies to is at
4 the end of a term of a term LLC, a disassociated
5 member can be -- must be bought out at the end of
6 that LLC's term. If they are not bought out by the
7 end of that LLC's term, then you go to 703 -- I
8 mean, 702, which provides for the final court
9 action.

10 But there is a formula, as Mr. Barr
11 suggests, in the LLC act for determining the value.
12 That's done by appraisals and other stuff. And
13 they haven't come forward with any of that during
14 this trial, obviously.

15 Secondly, Judge, on the issue of your
16 question about unclean hands. A couple of points
17 to make there. Number one, this is derivative
18 action. And there are a lot of cases that say in
19 derivative actions that Laurence Stoney is
20 non-complainant. That the real party at interest
21 here is the company.

22 To the extent that you issue a verdict,
23 that money is going to the company. And so the
24 company's hands are the ones that you need to be
25 looking at in terms of a derivative action,

1 determining whether or not -- number one, focus on
2 whose hands you're looking at. Unclean hands may
3 be relevant as to the standing issue of our client.

4 And we briefed that in a 40-page memo
5 to Your Honor. And Your Honor has already
6 preliminary ruled that our client has standing.

7 But in terms of unclean hands, as it
8 relates to this case, if you determine that
9 Laurence Stoney has standing, the real party and
10 interest is the company. At that point, Laurence
11 is just a nominal plaintiff.

12 Number two, and we've cited this. We
13 called it our memorandum law in support of
14 standing. It is literally a 40-page memo that is
15 loaded with legal issues on all of this.

16 But it's a time honored maximum equity
17 that that he who seeks equity must do equity.
18 That's Taft versus Smith, 114 S.C. 306.

19 And cases has held that latches is not
20 available to someone who comes with unclean hands.
21 This is specifically a South Carolina Supreme Court
22 case, Emory 361 S.C. 220. Who he comes in equity
23 must come with clean hands. It is far more than a
24 mere -- I'm sorry. It is a self-imposed ordinance
25 that closes the door of the Court of equity to one

1 who is handed inequitableness or bad faith relative
2 to the matter of which he seeks relief. Whenever a
3 party who seeks to set the judicial machinery and
4 motion and obtain some remember has violated
5 conscious of good faith or other equitable
6 principal, his prior conduct then closes the door
7 and the Court will shut it against him.

8 Those are quotes from our briefs. So I
9 think to answer your question, Richard Stoney
10 cannot unlock on the doctor of latches if he's
11 violated under the statute his obligations of good
12 faith and fair dealings and his duty of loyalty.
13 And, therefore, in equity cannot assert equitable
14 defenses.

15 Really it's against the company. If
16 this Court determines that Laurence Stoney has
17 standing, it's incumbent that you look at it. Your
18 first question was about --

19 THE COURT: Was this in connection with
20 proportion of ownership? Mr. Richard Stoney and
21 his friends, daughter, Theodore, I guess they're
22 friends sometimes, not friends other times. And
23 these friends, they control 95 percent of the
24 interest; correct?

25 MR. MCQUILLIN: That's correct.

1 THE COURT: And your client controls
2 five percent?

3 MR. MCQUILLIN: Well, actually, we take
4 that back. Lori Stoney has an interest, as well
5 there's some interest held in trust -- at least
6 based on our first hearing, Ms. Stoney said that
7 she supported this action. She said, it's going to
8 hurt me in martial litigation, but I want the Court
9 to do what's right, I think is what she testified
10 to.

11 THE COURT: But we're back to saying
12 exact percentage actions kind of set forth as well.
13 But it's 85 percent, 90 percent, 95 percent. The
14 question really is, how would that work? We've
15 heard testimony throughout the hearing that due
16 to -- there's disasters and other things
17 Mr. Stoney doesn't have. \$5 million.

18 Considering that he would be the
19 beneficiary of the money he would be paying, what's
20 the point of it, if he is to come up with
21 \$5 million and then the majority owner makes a
22 distribution of 90 percent or 95 percent? What is
23 the point, basically?

24 MR. MCQUILLIN: Your Honor, the point
25 is the limited liability statute defines a limited

1 liability company that says a limited liability
2 company is separate and distinct from its members.
3 And the money in this case is going back to the
4 company, not to Richard.

5 And I understand Your Honor's question,
6 but in looking at it from -- but the law is --
7 they're separate and distinct.

8 THE COURT: It goes to the company and
9 not to Richard, but Richard has been the company.

10 So how do you -- and you're suing him
11 because he is been the company and not allowed
12 others to fully participate, I guess.

13 And since we're talking equity, how
14 does that -- would equitable maximum applies to
15 that situation?

16 MR. MCQUILLIN: Your Honor, all the
17 other members are recognizing phantom incomes from
18 the K1, while Richard Stoney was taking money from
19 the company.

20 THE COURT: So we did hear testimony on
21 that?

22 MR. MCQUILLIN: We did. I think Teddy
23 used the world phantom income in his testimony.

24 But, Your Honor, to answer your first
25 point. You asked about the course in dealing with

1 the operating agreement.

2 THE COURT: Yes.

3 MR. MCQUILLIN: Number one, our first
4 position to Your Honor is there is no operating
5 agreement. It wasn't signed and agreed to by all
6 the members. There's the testimony that Gregory
7 Holmes agreed to it, that Michael Cox agreed to it,
8 that Lori Stoney agreed to it. They have not
9 signed the operating agreement. It's only signed
10 Laurence Stoney, Ted Stoney, and Richard Stoney, I
11 believe. And so there is not a document signed and
12 agreed to by all of the members that makes it
13 binding on them.

14 THE COURT: Well, I mean, at the time
15 in 1997 there's an operating agreement signed by
16 everyone that then had an interest?

17 MR. MCQUILLIN: Yes, Your Honor. But
18 if you look at page nine of this operating
19 agreement -- I'll put it up on the screen so we can
20 see it -- it says, any such of admission -- this is
21 talking about admission members, additional
22 members. Any such admission must comply with the
23 requirements described elsewhere in this operating
24 agreement and is effective only after the new
25 members have executed and delivered to the manager

1 as appropriate a document, including the new
2 members. It's agreement to be bound by this
3 operating agreement.

4 So new members have been admitted and
5 none of them have signed or anything or have agreed
6 to be bound by this operating agreement. There was
7 no evidence presented by the Defendants in this
8 case.

9 So the first point is there no
10 operating agreement. And the default rules the
11 statute govern. Secondly, Your Honor, even this
12 operating agreement, if it does apply, references
13 the non-waivable provision of the statute.

14 And so my point is this, under either
15 the statute or the operating agreement, Richard
16 Stoney had no authority to take more than
17 \$4 million from Breach Inlet in breach of his
18 non-waivable duty and loyalty and the obligation of
19 good faith and fair dealing. I e-mailed Your Honor
20 and copied Counsel, of Counsel of Chief Justice
21 Toal's article. I will read you some quotes from
22 her article.

23 The duty of good faith and fair dealing
24 is not a default. It is mandatory. The LLC act
25 forbids the elimination of the obligation and good

1 faith and fair dealing. Thus, partners may not
2 limit the fiduciary duty of good faith and fair
3 dealing by contract. A good faith standard stands
4 as a floor below which fiduciaries may never fall.
5 The obligation of good faith and fair dealings is
6 described by former Chief Justice Toal as a
7 catchall provisions. The courts will apply it to
8 conduct the members world behavior into question.

9 And this is an opinion by her. She
10 said, courts will likely broaden the implication of
11 the obligation such that morally offensive behavior
12 that may not need to be breached the care or
13 loyalty standards will be deemed bad faith behavior
14 resulting in a breach of the obligation of the good
15 faith and good dealing.

16 And, finally, this is what she says in
17 the article. Finally, like the obligation of good
18 faith and fair dealing, the parties cannot waive
19 the duty of loyalty.

20 And so to answer your question if
21 there's a course of conduct or whether a restaurant
22 closing or a cookbook not being written well
23 whatever, that does not allow Mr. Stoney to violate
24 the duty of loyalty or the obligation of good faith
25 and fair dealing. And his actions in the case

1 clearly violated it, despite warnings from his
2 bookkeeper, his CPA, his own lawyer, and even the
3 filing of this lawsuit. Richard Stoney was not a
4 quitter. He didn't quit taking money from the
5 company, despite all of those things.

6 THE COURT: You know, I don't know how
7 it's related. But the Jade Street Case comes to
8 mind, where the contract down in Hilton Head, I
9 believe it was, doing this work his business was in
10 a LLC. So he claimed protections and said he
11 couldn't be personal liable. His license makes him
12 personally liable. That was sort of a case that's
13 in a big chip away at the protections of an LLC.
14 Because, you know, someone is a contractor and
15 they're doing the work and they have an LLC, then
16 they really don't have anything to protect them
17 from personal liability.

18 MR. MCQUILLIN: He actually wrote a big
19 article on Jade Street.

20 MR. BARNES: Do you mind, Your Honor?

21 THE COURT: Yes, sir.

22 MR. BARNES: As you know, 16J was
23 published by the Supreme Court. The opinion, it
24 was sort of misleading. So they withdrew it. They
25 published a second opinion on it.

1 And what that opinion says and what was
2 subsequent that was cited to it says, is that in a
3 limited liability company entity separate and apart
4 from the -- a limited liability corporation company
5 provides absolute liability to the members of
6 contracts and torts obligations of the LLC.

7 What it does not do -- 16J says sort of
8 unartfully in the first case is that a limited
9 liability company, which is provides vicarious --
10 provides against vicarious liability of other
11 members, does not provide limited liability to a
12 member who commits a tort.

13 So, for example, if all of us are
14 members of a limited liability company and I have a
15 limited liability company on driving the company's
16 truck. And while I'm out driving the company's
17 truck I drink a six-pack of beer, and I injure
18 somebody, the right answer is the limited liability
19 company is liable because an agent of that company
20 can produce a tort on that, working on behalf on
21 company. None of the other members have any
22 limited liability, because the limited liability
23 company -- the act provides absolute protection for
24 that.

25 But I have the liability in, my

1 capacity, as an individual who committed the tort.
2 I don't have liability in my capacity as a member
3 of the LLC. And that really doesn't make any
4 difference.

5 And so I think that's what the Supreme
6 Court meant to say in 16J. And there's a
7 subsequent case, which we've cited, which the Court
8 sort of straightens all of that out.

9 THE COURT: Of course, interestingly it
10 started as a contract, that the contractor
11 breached?

12 MR. MCQUILLIN: That's right.

13 THE COURT: And then they added in the
14 tort parts and negligence all of that. But thank
15 you.

16 MR. BARNES: Yes, sir.

17 THE COURT: All right. Anything else
18 here today? Have we sapped up the brains and the
19 knowledge?

20 MR. BARR: Well, I might say Your
21 Honor -- Your Honor posed a question that we've
22 been beating around for five years. And the punch
23 line of your question is, what's the point of it?
24 If Richard Stoney is 80 percent member of whatever
25 his percentage is -- I'm sorry, 55/60. And if a

1 judgment is rendered against him individually for
2 \$4 million. If he had \$4 million and wrote a check
3 and then the LLC declared distribution of it all,
4 wouldn't he get 55 or 60 percent of it back?

5 That's the point of it, kind of
6 question. Unfortunately, I don't think we're
7 dealing with an instance if Your Honor finds it
8 lawful, there will be any excess. Which is why I
9 asked Laurence Stoney, what's the end game. My
10 question to Laurence Stoney on the stand was
11 similar to what is the point of question? What
12 happens at the end of day if you grant him a \$4
13 million judgement against Richard?

14 What's your motive here to take out his
15 interest in this LLC and then apply that to a big
16 judgment and then take his interest in the land and
17 apply that to the judgment? So that's sort of my
18 version of what the point of it -- the question
19 that you pose.

20 I don't know that I have -- I think
21 it's important that Mr. McQuillin made an
22 interesting statement with respect of unclean
23 hands. Because it might signify a point about
24 which we agreed. And that is unclean hands could
25 disqualify Laurence, this class of one member, from

1 his claim that he has standing to represent the
2 corporation, to bring this action on behalf of the
3 corporation.

4 Because the point of it is, that this
5 corporation really doesn't want this action
6 proceeded. That's why I keep referring to it as
7 upside down. A single member class can certainly
8 articulate a claim on behalf of the corporation
9 that's been damaged. But here we got a case where
10 the corporation, more than the vast majority, at
11 least 90 percent of the corporation is saying, we
12 don't support this, we're not seeking this. We
13 don't want this. Don't give us this \$4 million.
14 We don't want this \$4 million. We don't want this
15 action to proceed. It's too disruptive to the
16 business.

17 I don't have a solution to that, other
18 than to say that the equitable resolution and the
19 fairness resolution is disassociation. That would
20 not be a penalty to Laurence Stoney. He would get
21 his fair value and get his costs.

22 THE COURT: All right. Mr. McQuillin,
23 you get the final, final word.

24 MR. MCQUILLIN: Your Honor, I'm going
25 to cite to you the Angel Investors case. In

1 closely held corporations it becomes easy for the
2 majority of shareholders to identify themselves as
3 a corporation. We recognize that closely held
4 corporations are more vulnerable to mal fees. The
5 nature of a closely held corporation where there's
6 often a small number of shareholders and many of
7 those who have close ties to each other lessens the
8 likelihood that a minority shareholder will speak
9 out against corporate maleficent.

10 In light of the greater vulnerability
11 and maleficent those present and closely held
12 corporations, we hold that a sole descending
13 shareholder in a closely held corporation qualifies
14 in a class of one of derivative standing. But
15 shareholder of one seeks by its pleading when
16 forced out of the company. There's no dispute that
17 that's what we're doing.

18 And, number two, does not appear to be
19 similarly situated to any member. And in this
20 case, Your Honor, we have stipulated to that fact.

21 And so Your Honor asked what is fair.
22 What is fair is that a minority shareholder can
23 bring a derivative action against the company to
24 seek the return of \$4 million that a manager took
25 out of the company to support himself and other

1 businesses.

2 THE COURT: Very good. Well, it's been
3 an interesting case. You represented your
4 interests well. We will have you-all submit
5 proposed orders in nine days.

6 MR. BARR: You want proposed orders?
7 Okay.

8 MR. MCQUILLIN: Next Friday, Judge?

9 MR. BARR: Your Honor, I'd ask for a
10 little more than that. I just need more than that.

11 THE COURT: Well, I'm asking you.

12 MR. BARR: When I was proposing 20
13 pages, I don't remember if I said 20 days or 30
14 days. But I was think it would require at least
15 30 days. If what you want is a proposed order
16 rather than a 20-page memorandum.

17 THE COURT: I do not. I do not want a
18 memorandum. I want proposed orders.

19 MR. BARR: That's a different charge
20 than a 20-page memorandum. So I would ask for
21 30 days.

22 THE COURT: I certainly don't want to
23 violate the opinion of Court of Appeals. Like the
24 judge in family court did by signing off on what
25 was said to him. There will need to be some

1 tweaking changes according to who I agree with.

2 MR. BARR: I think that's a good way to
3 approach it because then you can compare findings
4 and decide one way or the other.

5 THE COURT: So 30 days is fine.

6 MR. BARR: Thank you.

7 (The proceedings concluded at 4:01
8 p.m.)

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1 State of South Carolina)
2 County of Charleston)

3

4 I, Krista Nicole Carney, Official Court
5 Reporter for the Ninth Judicial Circuit of the
6 State of South Carolina do hereby certify that the
7 foregoing is a true, accurate and complete
8 Transcript of Record in the Court of Common Pleas
9 for Charleston County, South Carolina, on the 10th
10 and 11th days of March, 2020.

11 I do further certify that I am neither of
12 kin, counsel, nor interest to any party hereto.

13

14 June 8, 2020

15

16

17 _____
18 Krista Nicole Carney,
19 Official Stenographic Court Reporter

20

21

22

23

24

25

1 (The following proceedings were had
2 3/11/2020, Charleston County Common Pleas, Judge Newman,
3 9:51 a.m.)

4 THE COURT: You may be seated. Good
5 morning. Well, I heard from Mr. Kefalos last night
6 stating that he won't be able to return. Mr. Barr is
7 going to carry the weight. He expressed that.

8 Okay. Well, continuing on. You may
9 proceed.

10 MR. MCQUILLIN: Your Honor, may we take up
11 a brief matter. I brought this up in our pretrial
12 brief, but I want to make sure that we're not caught in
13 the end. In the event we do prevail. The LLCs statute
14 allows for recovery of attorneys' fees and costs. We're
15 not ready to proceed on that today unless Your Honor
16 wants us to. We contemplate that either there being a
17 second hearing follow-up submissions, something along
18 those lines. I just want to make sure that we're all on
19 the same page there because otherwise that full
20 information from our accountant yet or haven't generated
21 a full bill from our fees. But I want to make sure
22 procedurally. The way the statute was worded it says,
23 if successful a derivate action claim can recover fees
24 and costs.

25 THE COURT: It's meant to say, may shall.

1 disassociation. That section applies to is at the end
2 of a term, of a term LLC, a disassociated member can be
3 -- must be bought out at the end of that LLC's term. If
4 they are not bought out, then you go to 702, which
5 provides for the filing of a Court action. But there is
6 a formula as Mr. Barr's suggest in the LLC act for
7 determining the value. That's done by appraisals and
8 they haven't come forward with any of that during this
9 trial.

10 Second, your question about unclean hands.
11 A couple of points to make there. Number one, this is
12 derivative action. And there are a lot of cases that
13 say in derivative actions that Laurence Stoney is a
14 nominal plaintiff. That the real party in interest here
15 is the company. To the extent that you issue a verdict
16 that money is going to the company. And so the
17 company's hands are the ones that you need to be looking
18 at in terms of the derivative action in determining
19 whether or not -- number one, focus of whose hands
20 you're looking at.

21 Unclean hands may be relevant as to the
22 standing issue of our client. We briefed that in a
23 40-page memo to Your Honor preliminary ruled that our
24 client has, but in terms of unclean hands as it relates
25 to this case. Once you determine -- if you determine

CONFIDENTIAL MEMBER COMMUNICATION

August 9, 2005

D-1



Laurence Stoney
3561 Legareville Road
Johns Island, SC 29455

Dear Laurence,

I wanted to get back with you regarding your request for information from Chip Robinson, our Controller at Crew Carolina, LLC. I apologize for the delay, but I have been dealing with turnover of the entire management staff in Asheville for the last two weeks and have only been in Charleston a minimal amount of time.

As always, I am willing to provide any information necessary to insure you are comfortable with the businesses' operations and income. However, it is my understanding from Chip that you would like to see "everything" that has impacted the two restaurants you are involved in (i.e. Breach and East Bay) as well as Crew's books to the extent that Crew's expenses are passed along to the restaurants. While at first glance that may seem to be a reasonable request, it is going to consume quite a bit of time and considerable expense to pull together information on "credit card bills, who has a phone, car expenses...everything" as requested. While I always want to eliminate any concerns you might have I hope you understand that I cannot cause the operations at Crew to slow to a crawl to do accommodate such an unusual request.

What I'd like to do is sit down and go over what information you're looking for specifically and see if we can pull those things you have questions about. In the meantime, please keep in mind that Barry Gumb is preparing a valuation that will, according to Barry, levelize any "unusual" expenses. It is my assumption based on your agreement to have Barry do the work that you trust him to give you an accurate reflection of the financial state of your investment.

Please also keep in mind as Barry completes his valuation that I have agreed to a *Fair Value* valuation, as opposed to a *Fair Market Value* valuation that would take into account the status of your shares (i.e. minority shares in a closely-held business). I did so in an attempt to be overly fair and insure we dissolved the business relationship as gentlemen with no hard feelings. Obviously, and as Barry stated in our meeting on June 7th, considering the value in that manner is to your advantage, not mine.

CONFIDENTIAL MEMBER COMMUNICATION

I know in the past we have had issues regarding your feelings about my managing of the LLC's; to be specific, for over five years now you have said in public many unflattering things about me (more directly, accusing me of dishonesty) to numerous persons close to both of us, including Willie Islin, Walter Hundley, Furman Cole, Jimmy Lucas, Randell Stoney, Demi Howard, etc... and God only knows who else. But, I remind you that slandering the restaurant or myself does no one any good, and is in contradiction of the LLC agreement.

I realize that the source of your disillusionment with the restaurants stems from your feeling that you have not received as much money as you are due. I am, frankly, as I have stated before, insulted by the insinuation that I have mismanaged or misappropriated funds in the restaurants and/or Crew. Certainly I have had some decisions to make, as Managing Member and majority owner of the respective restaurants, that were necessary to the operations of the restaurants that were not necessarily "profitable" (e.g. the kitchen expansion at Breach and the security measures at East Bay), but they were my judgment calls on the best way to manage the business functions of the locations in question for the long-term.

As for your distributions specifically, according to my records you have received, since 1998, \$76,668 from Breach Inlet and \$17,611 from East Bay (including \$928 in 2003 when the restaurant *lost* money). This represents a return on equity of 266% for your \$28,750 investment in Breach and 39% on your \$45,000 in East Bay. Since we are only talking about an eight-year and six-year history respectively, I think those returns are very impressive, and I am very proud of what we have achieved as an organization (especially considering the business that we are in, which nationally averages roughly a 5% median Net Income on restaurants comparable to ours). I will admit that in my exuberance to get the investors some distributions out, I have retained less cash in the LLC's than would have been prudent according to my accountants, but I think erring on the side of too large a distribution would not be a source of disgruntlement on your end.

Laurence, there are decisions that I have had to make regarding staffing levels, advertising, menus, maintenance, etc... that may not be transparently beneficial to you as an investor, but I can assure you that I am only receiving distributions in a pro-rata share to what you have received. It is only logical that I would want to maximize my own value and return, and in doing so it inevitably increases yours as well. Pratt-Thomas, Gumb, and Co. has prepared our financial statements and tax returns from day one and you have had access to that information the whole time. I know it is frustrating that increased competition and cost of goods has decreased our sales and profitability, but I cannot control the rapid expansion of dining options in East Cooper any more than I can control beef and lobster prices. At the end of the day, you have to trust me. I'm not in business with my family and dear friends in an attempt to skim profits or benefits not available to them as well, I would think the fact that I haven't had a base salary increase in the history of the company would be just one example of that.

Please give me a call at your earliest convenience so we can discuss the information you would like to review. My thoughts are to set a meeting with Harold Pratt-Thomas, Barry Gumb and Rudy Thomas, which should completely answer all the

CONFIDENTIAL MEMBER COMMUNICATION

questions, and unfounded suspicions you apparently have. In the interim please keep this matter confidential as any outside discussion could impact the LLC. Your cooperation in that regard would be appreciated.

Sincerely,

Richard S.W. Stoney
Managing Member
The Boathouse on East Bay, LLC
The Boathouse at Breach Inlet, LLC

cc: Bobby Pearlman
Harold Pratt-Thomas

D-2

Capers G. Barr III

From: Ted Stoney <ted@thestoneycompany.com>
Sent: Wednesday, October 28, 2015 2:36 PM
To: cgb@barrungermcintosh.com
Subject: FW: Breach Dist



-----Original Message-----
From: richard@crewcarolina.com [mailto:richard@crewcarolina.com]
Sent: Thursday, June 24, 2010 10:12 AM
To: Ted Stoney
Subject: Fw: Breach Dist

Sent from my Verizon Wireless BlackBerry

-----Original Message-----
From: richard@crewcarolina.com
Date: Wed, 23 Jun 2010 21:35:25
To: Laurence Stoney <losill@aol.com>
Reply-To: richard@crewcarolina.com
Subject: Breach Dist

Left a message for you following a conversation you had with Ted yesterday. I am completely at fault for not updating you in light of the complexities of my domestic and financial situation.

That said Breach in the early fall will pay a 2010 distribution based on your 5 percent. We have been overhauling the entire Co and accounting. Very soon someone extremely capable will be running all of the financial matters. That person has tremendous experience.

Additionally we have never resolved your past distributions. As you know due to the performance of other entities no other Breach member has received a distribution. You are owed of the top of my head a 5 figure number which while I can't recall the exact amount you rejected. I am willing as I have said before to pay you reasonable interest on that sum up until our offer was extended.

We just need a number. Ted said true to past conduct you were abrasive and threatening litigation. Contrary to what U may believe I am working well with all of my creditors and day by day things are improving.

We either need to meet or instead of threats let's meet with Rudy Thomas and try and reach an agreement. If you want to waste money and time like Lori then tell me who your attorney is and I will cooperate in anyway.

Please give me a call Richard



From: Lori Stoney [mailto:lorigstoney@bc|south.net]
Sent: Friday, September 12, 2014 10:32 AM
To: MacQuillan, Mac
Subject: Re: Undeliverable Mail: "RE: Hi can u send me Richards' depo?:"

lets move forward with suing on Crofts behalf btw if you can get Laurence on board. I am going to have to tell the CPA I can't sign that return for her. It might start some interesting dialogue!

PLEASE NOTE NEW ADDRESS BELOW

Lori Dandridge Stoney, Attorney at Law
1156 Bowman Road - Suite 200
Mount Pleasant, S.C. 29464
Telephone: (843) 723-8683
Fax: (866) 364-2223

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MSCM000059

D-6



RE: Boathouse

Laurence Stoney [stoney@colemanmarine.com]

Sent: 12/17/2014 3:23 PM

To: "Richard Stoney" <richard@crewcarolina.com>

Cc: "Randell C. Stoney, Jr." <rstone@barnwell-whaley.com>; paulinkler@inklerlaw.com; sbarnes@hsblawfirm.com

Richard, Like I said make your best offer and we might not need all the pain. L

From: Richard Stoney [mailto:richard@crewcarolina.com]

Sent: Wednesday, December 17, 2014 3:16 PM

To: Laurence Stoney

Cc: Randell C. Stoney, Jr.; <paultinkler@inklerlaw.com>; <sbarnes@hsblawfirm.com>

Subject: Re: Boathouse

Laurence, based on the fact that you have copied our cousin Randell and two other attorneys I think it is obvious we are not going to get anywhere short of minimally mediation. Let me know - Richard

On Dec 17, 2014, at 2:40 PM, "Laurence Stoney" <stoney@colemanmarine.com> wrote:

Richard, I think the best way to go at this is for you to make your BEST offer up front. Keep in mind what you already owe me, plus interest and a cap rate based on recast numbers. Try 10% per year compounded yearly on all past due and a cap rate of 6% based on \$25,000 per year. Standing by L

From: Richard Stoney [mailto:richard@crewcarolina.com]

Sent: Wednesday, December 17, 2014 11:30 AM

To: Laurence Stoney

Subject: Re: Boathouse

Laurence, I am unfortunately still covered up with some other matters but wanted to get back to you a brief response per your request. My primary goal is to try and get with you as soon as possible, either alone or preferably with a 3rd party, and wind up in a mutual satisfactory way before the end of the year a buyout of your 5 percent of Breach. If we could reach an agreeable price I would need to have you agree to payment over 24 months or so along with a present day/transaction interest rate collateralized by your stock. I have a noon appointment I must attend but am free later today or tomorrow to either chat or meet. Understandably I anticipate that we will need to commit to setting aside some time to try and resolve this impasse. Communication I feel is the key. Just let me know if you think we can make some progress and your general thoughts. Thanks - Richard

On Dec 16, 2014, at 11:45 AM, "Laurence Stoney" <stoney@colemanmarine.com> wrote:

Richard, A brief outline of what you have in mind would be helpful. LOS

From: Richard Stoney <richard@crewcarolina.com>
Subject: Boathouse 5 percent interest
Date: December 16, 2014 at 10:16:12 AM EST
To: Laurence Stoney <Stoney@colemanmarine.com>

Laurence ,hope all is well. 2015 is about over and I am trying to complete a number of things before the end of the year. The last thing I want, given all that has transpired in my life over the past 5 plus years ,is to prolong the discord between us. If you are interested in trying to resolve as gentleman your interest in Breach I would suggest a meeting before Christmas. It would be my hope by meeting that we could reach a favorable resolution to this ongoing issue and put it behind us. Should you be willing to meet I would further suggest that we agree on a neutral and detached 3rd person to mediate for a couple hrs. Randell I am sure could give you the name of a few mediators . Regardless I would appreciate us initiating in the near future a civilized dialogue to get something moving. I will wait to hear back from you . Regards-Richard

D-7

EXHIBIT
D-7

10/14/2017

Print

From: Laurence Stoney <stoney@colemanmarine.com>
To: lawstoney@ballenth.net
Sent: Friday, December 19, 2014 11:26 AM
Subject: FW: BoatHouse

Try this

From: Richard Stoney [mailto:richard@crowe-carolina.com]
Sent: Wednesday, December 17, 2014 3:16 PM
To: Laurence Stoney
Cc: Randall C. Stoney, Jr.; <paullinkler@linklerlaw.com>; <stomes@hsblawfirm.com>
Subject: Re: BoatHouse

Laurence, based on the fact that you have copied our cousin Randall and two other attorneys I think it is obvious we are not going to get anywhere short of minimally mediation. Let me know - Richard

On Dec 17, 2014, at 2:40 PM, "Laurence Stoney" <stoney@colemanmarine.com> wrote:

Richard, I think the best way to go at this is for you to make your BEST offer up front. Keep in mind what you already owe me, plus interest and a cap rate based on recast numbers. Try 10% per year compounded yearly on all past due and a cap rate of 6% based on \$25,000 per year. Standing by L

From: Richard Stoney [mailto:richard@crowe-carolina.com]
Sent: Wednesday, December 17, 2014 11:30 AM
To: Laurence Stoney
Subject: Re: BoatHouse

Laurence, I am unfortunately still covered up with some other matters but wanted to get back to you a brief response per your request. My primary goal is to try and get with you as soon as possible, either alone or preferably with a 3rd party, and wind up in a mutual satisfactory way before the end of the year a buyout of your 5 percent of Breach. If we could reach an agreeable price I would need to have you agree to payment over 24 months or so along with a present day/transaction interest rate collateralized by your stock. I have a noon appointment I must attend but am free later today or tomorrow to either chat or meet. Understandably I anticipate that we will need to commit to setting aside some time to try and resolve this impasse. Communication I feel is the key. Just let me know if you think we can make some progress and your general thoughts. Thanks - Richard

On Dec 16, 2014, at 11:45 AM, "Laurence Stoney" <stoney@colemanmarine.com> wrote:

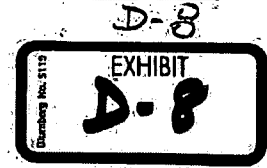
Richard, A brief outline of what you have in mind would be helpful. LOS

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4/5
MSCM000043

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW



134 MEETING STREET, THIRD FLOOR (29401-2240)
POST OFFICE BOX 340 (29402-0340)
CHARLESTON, SOUTH CAROLINA
TELEPHONE: 843.722.3388
FACSIMILE: 843.722.2388
WEBSITE: www.hsblawfirm.com

STAFFORD J. MCQUILLIN III
DIRECT DIAL NUMBER: 843.724.1120
EMAIL: mcquillin@hsblawfirm.com

April 24, 2015

Mr. Richard S.W. Stoney
1 Cool Blow St. Suite 201
Charleston, SC 29403

Re: Member Request for Information Pursuant to Operating Agreement and S.C. Code Ann. §
33-44-408
HSB File No. 37631.0001

Dear Richard:

On behalf of my client, Laurence Stoney, I am writing you in your capacity as manager of the Boathouse at Breach Inlet, LLC (the "Boathouse") to request information as provided in the Operating Agreement and pursuant to S.C. Code Ann. § 33-44-408. We request access to the following within ten (10) days of the date of this letter:

1. A current list of the names and mailing addresses of the members of the Boathouse, together with the allocation of net profits and losses for each member;
2. Copies of the federal, state, and local information or income tax returns for the Boathouse's most recent six (6) tax years;
3. The current Operating Agreement and all amendments or restatements;
4. Any leases entered by the Boathouse;
5. A listing of any member distributions made in the last six (6) years;
6. A listing of all accounts receivable or other amounts due to the Boathouse; and
7. The correct and complete books and records of account for the Boathouse.

I would prefer copies of the requested documents and will reimburse you for any copying expenses. In the event copies are not provided, I am willing to come inspect the documents at a convenient place and time.

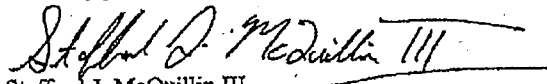
Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

Mr. Richard S.W. Stoney
April 24, 2015
Page 2

Please let me know if you have questions about this request.

Sincerely yours;


Stafford J. McQuillin III

D-9

EXHIBIT
D-9

10/4/2017

Print

From: Laurence Stoney <stoney@colemanmarice.com>
To: Lori <loristoney@bellsouth.net>
Sent: Tuesday, May 5, 2015 10:27 AM
Subject: RE: Boathouse

PLEASE let us know the instant your appeal comes back...L

From: Lori (mailto:loristoney@bellsouth.net)
Sent: Tuesday, May 05, 2015 10:13 AM
To: Laurence Stoney
Subject: Re: Boathouse

Interesting if he is trying to get it done before appellate decision.

Sent from my iPhone

On May 5, 2015, at 8:35 AM, Laurence Stoney <stoney@colemanmarice.com> wrote:

Good luck on your appeal. Scott, Mack and I are in process with Richard as we speak. L

From: Lori Stoney (mailto:loristoney@bellsouth.net)
Sent: Monday, May 04, 2015 11:55 PM
To: Laurence Stoney
Subject: Re: Boathouse

Hey! Just came across this and wondered what ever came of it? The Court of appeals decision in my case should literally be out any day. Will let you know what happens!

Lori Dandridge Stoney, Attorney at Law
1156 Bowman Road - Suite 200
Mount Pleasant, S.C. 29464
Telephone: (843) 723-8683
Fax: (866) 364-2223

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MSCM000042

D-10



10/4/2017

Print

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From: Lawrence Stoney <stoney@coolemanmarble.com>
To: Lori Stoney <loristoney@bellsouth.net>
Sent: Wednesday, March 9, 2016 6:17 PM
Subject: Re: Beachouse

The usual expected foot dragging crap. Last I heard the accountants were going thru books. Comment from all "dick is toast".

Sent from my iPhone

On Mar 9, 2016, at 2:56 PM, Lori Stoney, <loristoney@bellsouth.net> wrote:

Hey Bud,

What is the latest?

Still no word on the appeal unfortunately.

LS

Law Office of Lori Dandridge Stoney, LLC
1156 Bowman Road - Suite 200
Mount Pleasant, S.C. 29464
Telephone: (843) 723-8683
Fax: (866) 364-2223

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2/5
MSCM000041

From: "Laurence Stoney" <stoney@colemanmarine.com>
Date: March 10, 2016 at 12:02:03 PM BST
To: "Lori Stoney" <loristoney@bellsouth.net>
Subject: RE: Boathouse

Lori, I'm not sure who the accountants are but am told it will be after April 15th before they get back to me. LOSjr

From: Lori Stoney [mailto:loristoney@bellsouth.net]
Sent: Wednesday, March 09, 2016 6:33 PM
To: LaurenceStoney
Subject: Re: Boathouse

Accountants for you? Who is doing that for you? Can I please please please somehow get whatever info you find from 2011 forward? That is the last info I have and I know we are going to end up having our case remanded. Sigh. How is everything else in your world? I am going to the Bahamas in two weeks with Barbara and Deering Howe on their boat from Jupiter. I think they told me some funny back in the day stories about you....

Law Office of Lori Dandridge Stoney, LLC
1156 Bowman Road - Suite 200
Mount Pleasant, S.C. 29464
Telephone: (843) 723-8683
Fax: (866) 364-2223

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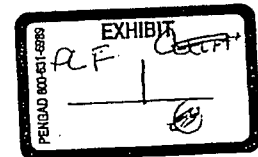
aboutmark

MSCM000040

CROSS ENTITY TRANSACTIONS
2007-2019

Payor Entity: Boathouse at Breach Inlet, LLC Payor Account: 2600-900

Payor Account Description	Journal Ctrl #	Reference	Note
Due To/From Crew Carolina	GJ-101-0001231	Withdrawal of 4000.00	RS Paycheck is the 2275.00 this was cash to deposit into his account
Due To/From Crew Carolina	GJ-101-0001240	Withdrawal of \$2000.00	RS Owe- Tempo work \$120, Tempo Work \$270.25, Personal Money \$400.00
Due To/From Crew Carolina	GJ-101-0001248	Withdrawal of \$400	The Due to due from RS are the 8 hours Tempo workd at the farm, and he work 4 hours here. Both at 17\$ an hour
Due To/From Crew Carolina	GJ-101-0002281	Dec Xfers	400 cash for Kris, 450 cash for rs for kris weekend fashion show 2000 cash for rs - xmas and Jamie out of town for 2 weeks
Due To/From Crew Carolina	GJ-101-0002158	W/D Aug 2013	\$500 rs profidio farm, \$100 rs personal cash \$625 Shelby/Profidio \$400 rs personal
Due To/From Crew Carolina	GJ-101-0002522	RS cash	Vet hospital bills for sophie snake bites, rs weekend cash



CROSS ENTITY TRANSACTIONS
2007-2019

Payor Entity: Boathouse at Breach Inlet, LLC Payor Account: 2604-000

Payor	Journal Ctr/ #	Reference	Note
Due To/From Richard S.W. Stoney	GI-101-0000449	RSWS Cash for France Vacation	None. (\$750)
Due To/From Richard S.W. Stoney	GI-101-0000473	Wire In RS Personal Acct	None. (\$5,000)
Due To/From Richard S.W. Stoney	GI-101-0000474	Wire In RS Personal Account	None. (\$5,000)
Due To/From Richard S.W. Stoney	GI-101-0000475	Wire In RS Personal Acct	None. (\$1,628.53)
Due To/From Richard S.W. Stoney	GI-101-0000476	Wire In RS Personal Acct	None. (\$3,000)
Due To/From Richard S.W. Stoney	C-101-0003706	CASH / RS Chicago	RS to provide receipts for this cash to Chicago RS texted Kathy asking her for \$400.00 for the weekend (I gave \$350 cash yesterday as well) RS has friends in town from Italy and Croft broke her arm riding today so he needs additional cash. the extra \$100.00 is for Kathy to go to Trader Joes and get groceries per RS.
Due To/From Richard S.W. Stoney	C-101-0006392	KATHY / Per RS	As needed to cover mortgage for Kensington, IRS payment and Lori support
Due To/From Richard S.W. Stoney	C-101-0005790	RSWS / 043012	Cash to Kathy for camera for Croft and cash for rs for weekend, horse feed and horse feeding person
Due To/From Richard S.W. Stoney	C-101-0007347	CASH / RS 4.5.13	Cash for RS to pay for a few hours of work on farm, as well as for Kts and RS prescriptions which JS is picking up and delivering.
Due To/From Richard S.W. Stoney	C-101-0007352	CASH / Cash 4.8.13	RS needs to "pay several things"
Due To/From Richard S.W. Stoney	C-101-0007353	CASH / Per RS text	400 for Jesse and rest for RS, shipping polo horses for a match, horse feed, polo fees and weekend money
Due To/From Richard S.W. Stoney	GI-101-0002039	W/D	300 cash rs 120 cash farm help 160 cash rs 173.38 blinds 61.83 richard car repair 691.90 bahamas flight
Due To/From Richard S.W. Stoney	C-101-0007696	JAMIE / 060413	\$500 rs perfidio farm, \$100 rs personal cash \$625 Shelby/Perfidio \$400 rs personal
Due To/From Richard S.W. Stoney	GI-101-0002158	W/D Aug 2013	750 cash to rs, greg bday party at farm. 250 for partial payment for work at farm after storm, clean up, etc. 60.00 croft co pay for infections dr 189.50 horse feed, rec. attached
Due To/From Richard S.W. Stoney	C-101-0009335	CASH / 3.14.14	Hotel accommodations for possible investor for Ellis Creek, feed for horses, Jackson davenport glasses
Due To/From Richard S.W. Stoney	C-101-0010659	JAMIE / 10.27.14 rec	1k cash tips for rs personal friend visitation (pm washed this out) croft performance, rs cash.....1k cash is for Croft trip and out of town guests.....20 k to charlie moore to repay a personal loan made to richard that rs infused into breach ops cash.....500 cash was requested in person by RS while eating lunch at sesame on the 18th, believe was for alken.....300 cash 250 went to perfidio, 50 to rs..... charges to rs personal are for old steg payments on old mt pleasant condo, needed to be paid to secure service at new DI condo
Due To/From Richard S.W. Stoney	GI-101-0002430	W/d's	\$275 Jaller \$73.93 Dover Saddlery \$100 Jet Blue Change fee DC Trip \$411.23 Dell for new computer...last charge here was used for Sali, they repaid via deposit \$597.87 additional charges from DC hotel not previously paid to JS
Due To/From Richard S.W. Stoney	GI-101-0002598		\$256.00 2 mos mobile ls Check #52405 Memo Line "Pers-Legal Fees". (Amount: \$1,800.00)
Due To/From Richard S.W. Stoney	C-101-0011697	JAMIE / receipts 4.10	
From Ops Checking	C-101-0021918	RSWS/Legal Fees	

CROSS ENTITY TRANSACTIONS
2007-2019

Payor Entity: Crew Carolina, LLC Payor Account: 2604-000

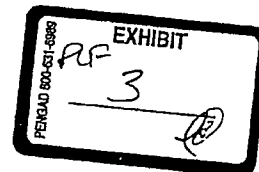
Payor Account Description	Journal Ctrl #	Reference	Note
Due To/From Richard S.W. Stoney	C-900-0001500	CASH / 6224	Check to Chip Robinson to pay him in complete for year end and civil matters per RS. Wrote the cash check due to the bank having to call and verify checks because of cashing too many. 505 RS- asked me for money, paying myself back
Due To/From Richard S.W. Stoney	C-101-0004500	CASH / 7087	\$250 RS personal money
Due To/From Richard S.W. Stoney	C-101-0004670	MISC / 1149	Check Written to Bank of America per RS Loan for Ellis Creek
Due To/From Richard S.W. Stoney	C-101-0004754	CASH / 6563	RS owe 3005 He needed cash, and I could not access the bank account by the time he needed it, this is due to me, Megan
Due To/From Richard S.W. Stoney	GI-900-0000309	Payment to Kathy Kelly for RS	None.
Due To/From Richard S.W. Stoney	GI-900-0000775	Wire to RS	None. (Amount: \$3,000)
Due To/From Richard S.W. Stoney	GI-900-0000775	Wire to RS	None. (Amount: \$25,000)
Due To/From Richard S.W. Stoney	GI-900-0000875	wire to RS and his horse guy	None. (Amount: \$11,000)
Due To/From Richard S.W. Stoney	V-900-0001125	TEMPO / D72409	24 hours farm 5 hours Tempo for Bobby .10 hours Tempo Asst. for Bobby
Due To/From Richard S.W. Stoney	GI-900-0001727	Ted Wachovia Note Pymt	None. (Amount: \$2,127.58)
Due To/From Richard S.W. Stoney	C-300-0001293	CASH / Misc	\$650.00RS used \$ for Lunch up, pay kensington people, craft riding pants \$500.00 RS owed Jamie Bowles this for Thursday and Friday cash I fronted to him...not sure what the funds were used for.

**Payments to
Greg Holmes & Michael Cox
by Year**

HOLMES PAYMENTS BY YEAR	
Year of Payment	Amount
2012	\$ 21,000
2013	35,000
2014	54,934
2015	22,000
2016	39,841
2017	33,200
2018	6,820
2019	14,708
	\$ 227,503

COX PAYMENTS BY YEAR	
Year of Payment	Amount
2019	\$ 7,354

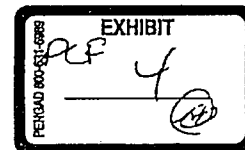
Source: Boathouse G/L by year



**BOATHOUSE
NONDEDUCTIBLE
PENALTIES AND FINES**

Tax Return Year	Nondeductible Penalties and Fines
2015	\$ 41,867
2016	2,854
2017	6,168
2018	43,840
Total	\$ 94,729

Source: Federal Tax Return for BBI by Year



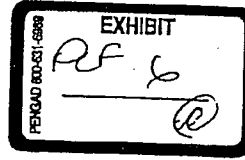
**BOATHOUSE
NONDEDUCTIBLE
PENALTIES AND FINES**

Year	Month	Account	Overdraft Fees
2017	Dec	Petty Cash	\$ 30.00
2017	Dec	Petty Cash	60.00
2017	Dec	Petty Cash	30.00
2017	Dec	Petty Cash	60.00
2017	Dec	Petty Cash	60.00
2017	Dec	Petty Cash	150.00
2017	Dec	Petty Cash	30.00
2017	Dec	Petty Cash	30.00
2017	Dec	Petty Cash	150.00
2017	Dec	Petty Cash	150.00
2017	Dec	Petty Cash	150.00
2017	Dec	Petty Cash	90.00
2017	Dec	Petty Cash	30.00
2017	Dec	Petty Cash	150.00
2017	Dec	Petty Cash	60.00
2017	Dec	Petty Cash	150.00
2017	Dec	Petty Cash	15.00
2017	Dec	Petty Cash	60.00
Dec 2017 Total			\$ 1,455.00
2018	October	Petty Cash	60.00
2018	October	Petty Cash	150.00
2018	October	Petty Cash	90.00
2018	October	Petty Cash	150.00
2018	October	Petty Cash	150.00
2018	October	Petty Cash	30.00
2018	October	Petty Cash	150.00
2018	October	Petty Cash	150.00
2018	October	Petty Cash	30.00
Oct 2018 Total			\$ 960.00
2019	October	Petty Cash	\$ 30.00
2019	October	Petty Cash	30.00
2019	October	Petty Cash	90.00
2019	October	Petty Cash	30.00
2019	October	Petty Cash	30.00
2019	October	Petty Cash	150.00
2019	October	Petty Cash	150.00
2019	October	Petty Cash	30.00
2019	October	Petty Cash	30.00
2019	October	Petty Cash	60.00
2019	October	Petty Cash	150.00
2019	October	Petty Cash	150.00
Oct 2019 Total			\$ 930.00
Average/month			\$ 1,115.00

Source: Bank Statements for Boathouse

Balance Sheet

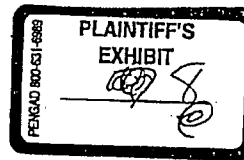
The Boathouse at Breach Inlet, LLC, Entity #101
Current Year as of 12/31/2019 Prior Year as of 12/31/2018



		Current Year	Prior Year	Variance
Assets				
Cash				
1000-000	Cash On Hand	3,573.05	3,573.05	
1040-000	Operating Account	32,787.28	33,910.15	-1,122.87
1045-000	Petty Cash Account	-19,392.82	-8,905.48	-10,487.44
1047-000	Savings Account	7,955.41	7,719.19	236.22
1047-100	Savings Account 2	98.50	98.50	
1160-000	Employee Advances	1,192.62	1,122.62	70.00
		\$23,888.70	\$8,570.79	\$15,317.91
Inventory				
1200-000	Food Inventory	1,056.43	530.24	526.19
1200-001	Food Inventory - Seafood	104.00	104.00	
1200-002	Food Inventory - Meats	953.56	3,072.83	-2,119.27
1200-003	Food Inventory - Produce	544.15	1,545.58	-1,001.43
1200-004	Food Inventory - Dairy	453.66	605.73	-152.07
1200-005	Food Inventory - Non-Perishable	1,150.43	1,797.01	-646.58
1200-006	Food Inventory - Bread	602.71	868.84	-266.13
1200-007	Food Inventory - Beverage	1,149.61	1,444.05	-294.44
1200-008	Food Inventory - Other	731.32	1,274.18	-542.87
1200-009	Food Inventory - Prepped	656.74	657.29	-0.55
1210-000	Liquor Inventory	4,721.87	4,501.04	220.83
1220-000	Beer Inventory	543.88	1,186.01	-642.13
1230-000	Wine Inventory	3,237.75	3,811.36	-573.61
1270-000	Nonalcoholic Inventory	226.17	1,605.82	-1,379.65
		\$17,167.20	\$21,585.79	(\$4,418.59)
Current Assets				
2600-900	Due To/From Crew Carolina	4,194,264.66	4,193,474.57	790.09
2600-901	Due To/From 38 Romney	3,681.51	3,681.31	0.20
2600-907	Due to/from Ellis Creek Prop. LLC	2,911.50	2,911.50	
2604-000	Due to/from Richard S.W. Stoner	12,835.19	93,208.08	-80,372.89
2630-000	Due To/From Crew Carolina, LLC	210.00	210.00	
2640-000	Due to/From Rice Market LLC	869.53	869.53	
		\$4,244,772.19	\$4,294,354.99	(\$49,582.80)
Fixed Assets				
1300-000	FF&E	346,919.04	343,270.93	3,648.11
1304-000	Leasehold Improvements	631,845.56	627,239.37	4,606.19
1305-000	Computers and Software	80,500.86	76,903.04	3,597.82
1309-000	Landscaping	600.04	600.00	0.04
1310-000	Kitchen	185,602.00	185,602.00	
1460-000	Accumulated Depreciation	(883,910.00)	(883,910.00)	
		\$361,557.50	\$349,705.34	\$11,852.16
Other Assets				
1401-000	Sec 754 Step Up Holmes	23,745.00	23,745.00	
1410-000	Loan Costs	75,000.00	76,000.00	-1,000.00
1420-000	Start-up Costs	75,601.81	75,601.81	
1470-000	Accumulated Amortization	(100,920.81)	(100,920.81)	
		\$73,426.00	\$58,426.00	\$15,000.00
	Total Assets:	\$4,720,811.59	\$4,732,642.91	(\$11,831.32)

Balance Sheet
 The Boathouse at Breach Inlet, LLC, Entity #101
 Current Year as of 12/31/2019 Prior Year as of 12/31/2018

	Current Year	Prior Year	Variance
Liabilities and Owner's Equity			
Current Liabilities			
1400-000 Catering Deposits	9,599.00		-9,599.00
2000-000 Accounts Payable	73,731.99	53,466.50	20,265.49
2300-000 Sales Tax Payable	3,871.69	49,170.74	-45,299.05
2355-000 Payroll Tax Payable		19,952.82	19,952.82
2400-000 Suspense	5,287.57	1,424.02	3,863.55
	<u>\$73,292.25</u>	<u>\$124,014.08</u>	<u>(\$50,721.83)</u>
Other Liabilities			
2553-000 NP-Peter Michaels thru RS		50,000.00	-50,000.00
2600-902 Due To/From Stoney Allanic	625,128.53	625,128.53	
2600-903 Due To/From 2 Island Marina	31,570.65	31,570.55	
2605-000 Due To/From Ted D. Stoney	-11,373.35	-680.51	-10,692.84
	<u>\$645,325.73</u>	<u>\$706,018.57</u>	<u>(\$60,692.84)</u>
Owner's Equity			
3500-103 Partner Draw - Michael Cox	7,954.00		-7,954.00
3501-001 Cap Account - Richard S.W. Stoney	2,366,475.25	2,366,475.25	
3502-001 Cap Account - Ted D. Stoney	413,642.70	413,642.70	
3503-001 Cap Account - Laurence Stoney	171,253.35	171,253.35	
3504-000 Partner Draw - Richard Stoney Jr.	2,798.00		-2,798.00
3504-001 Cap Account - Richard Stoney Jr.	170,056.35	170,056.35	
3505-001 Cap Account - Lori Stoney	227,774.35	227,774.35	
3513-000 Partner Draw - Greg Holmes	51,728.00	10,020.00	41,708.00
3513-001 Cap Account - Greg Holmes	243,748.70	243,748.70	
Current Earnings	225,880.56	104,285.21	121,595.35
	<u>\$4,002,193.61</u>	<u>\$3,902,610.26</u>	<u>\$99,583.35</u>
Total Liabilities and O/E:	<u>\$4,720,811.59</u>	<u>\$4,732,642.91</u>	<u>(\$11,831.32)</u>
OUT OF BALANCE	\$0.00	\$0.00	



RMC BK 0190 Pg 998 : pg 1

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) MEMORANDUM AGREEMENT
FOR RECORDING

This is a Memorandum of a the First Amended Least Agreement between Richard S. W. Stoney (Landlord) and The Boathouse at Breach Inlet, LLC, (Tenant).

WITNESSETH:

That for and in consideration of the covenants and agreements of the parties to be kept and performed as expressed in a certain Lease Agreement dated May 31, 2011, the parties state that:

1. The parties have entered into an amended Lease Agreement dated May 31, 2011.
2. That the initial term of the lease is January 1, 2001, through December 31, 2005.
3. That the tenant may renew the lease for six (6) additional consecutive five (5) year terms, ending on December 31, 2035.

REFERENCE is made to said First Amended Lease Agreement for all other provisions and conditions set forth in same.

IN WITNESS WHEREOF, the Landlord and Tenant have signed, sealed and delivered the within Memorandum Agreement for Recording this 31st day of May, 2011.

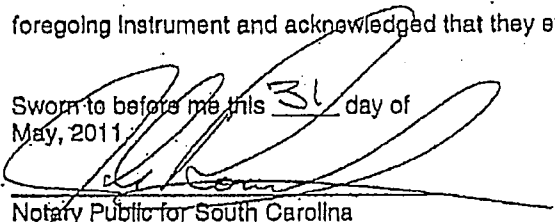
IN THE PRESENCE OF:

Richard S. W. Stoney, Landlord
The Boathouse at Breach Inlet, LLC
By:
Richard S. W. Stoney, Manager
Tenant

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON)

On this 31st day of May, 2011, before me, personally appeared Richard S. W. Stoney, Landlord, and The Boathouse at Beach Inlet, LLC, by Richard S. W. Stoney, Manager, Tenant, to me known to be the individuals described herein who executed the foregoing Instrument and acknowledged that they executed the same.

Sworn to before me this 31 day of
May, 2011.



Notary Public for South Carolina

My commission expires: 9-12-17

RECORDER'S PAGE



RMC BK 0190 Pg 998 : pg 3

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JOHN ROMANOSKY JR.
ONE COOL BLOW ST
SUITE 201
CHARLESTON SC 29403

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Charlo Lybrand, Register Charleston County, SC		

MAKER:
STONEY RICHARD S W

of Pages: 3
of References: []
of Sats: []

RECIPIENT:
BOATHOUSE AT BREACH ETC

Note: []

Recording Fee	\$ 10.00
Extra Reference Cost	\$ -
Extra Pages	\$ -
Postage	\$ -
Chattel	\$ -
TOTAL	\$ 10.00

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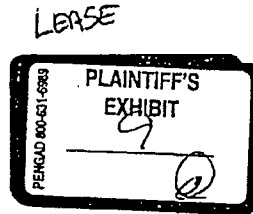
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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

LEASE AGREEMENT



THIS LEASE AGREEMENT, is made and entered into on this 13th day of February 2015, by and between 101 Palm Boulevard, LLC (hereinafter referred to as the "Landlord") and The Boathouse at Breach Inlet, LLC, (hereinafter referred to as the "Tenant").

WITNESSETH:

1. Premises: The Landlord hereby leases to the Tenant, and the Tenant hereby leases from the Landlord, the premises commonly known as 101 Palm Boulevard, Isle of Palms, S. C., (the "Premises"). The Premises includes the building located at 101 Palm Boulevard, parking lot, and bulkhead, but does not include the marina, docks, or gangway (i.e. the aluminum walkway leading to the docks).

TO HAVE AND TO HOLD THE PREMISES upon the terms and conditions hereinafter set forth.

2. Term. The term ("Term") of this Lease shall be for a period of five years beginning March 1, 2015, or as soon thereafter as Landlord delivers possession of the Premises to Tenant (the "Commencement Date") and ending at midnight April 30, 2020, thereafter unless sooner terminated in accordance with the terms hereof.

3. Rent. During the Term hereof, the Tenant shall pay rent to the Landlord per month, without deduction, set off, prior notice or demand in the amount of Fifteen thousand six hundred and no/100ths Dollars (\$15,600.00).

For each successive year of the lease term, including renewals thereof, the

monthly rental for each such year shall be increased by Three (3%) of the preceding years rent, rounded up to the next Ten and no /100 (\$10.00) Dollars.

All rent is payable in advance, on the first day of each and every calendar month during the Term hereof. All rent payments shall be made to the Landlord at 845 Lowcountry Boulevard, Suite H; Charleston, SC 29464 or at such other place as the Landlord may designate in writing to Tenant.

4. Security Deposit. None.

5. Use. The Tenant shall use and occupy the Premises solely for a restaurant and marina. Tenant shall also comply with all laws, ordinances, orders, or regulations of any lawful authority having jurisdiction over the Premises and the use thereof.

6. Assignment and Subletting. The Tenant may not, without the prior written consent of the Landlord, assign this Lease or any interest therein, or sublet the Premises or any part thereof, or permit the use of the Premises by any party other than the Tenant. Each subtenant or assignee shall be liable to Landlord for all obligations of the Tenant hereunder, but the Tenant shall not be thereby relieved of such obligations. No other person may reside at the Premises without the Landlord's prior written consent which consent shall not be unreasonably withheld.

7. Improvements. Any improvements, alterations and additions to the Premises desired by Tenant shall be made at Tenant's expense, in good and workmanlike manner and in accordance with plans and specifications which have been previously approved in writing by the Landlord. If the improvements, alterations, or

additions are to be made by a contractor other than Landlord's, Landlord reserves the right to approve such contractor, which approval shall not be unreasonably withheld, and to require adequate lien waivers, bonds, permits, licenses and insurance. All improvements and additions made by the Tenant and permanently attached to the Premises, including without limitation all partitions, carpets, lighting fixtures, doors, hardware, shelves, cabinets and ceilings, shall remain in the Premises and shall be surrendered to Landlord at the expiration or earlier termination of this Lease.

8. Utilities and Services. Tenant shall furnish, at its own expense and without damage or threat of damage to the Premises or any part of the Premises, any utilities or services required for its use of the Premises, including, but not limited to water, sewer, electricity, cable television and telephone service.

9. Maintenance. The Tenant shall, at its own expense, repair and maintain the existing bulkhead and all electrical, gas, plumbing, heating, air conditioning and ventilation systems within or serving the Premises in a reasonably good and safe working order and condition to the extent such is necessary to keep the Premises in a fit and habitable condition or as required by applicable building and housing codes materially affecting health and safety. In addition, Tenant shall make, any such repairs made necessary by the willful acts or negligence of Tenant, its agents, licensees, invitees, employees or visitors. Except as expressly provided above, Tenant shall, at its own expense, keep and maintain the Premises in good order and repair during the Term of this Lease, and shall surrender same to Landlord at the expiration or earlier termination of this Lease in as good condition as they were when received (or

subsequently improved), normal wear and tear excepted, broom clean, free of garbage and other waste.

Tenant agrees to promptly report to Landlord any malfunction of, or damage to, any electrical, gas, plumbing, heating or air conditioning system. Tenant agrees to be responsible for stoppage of the sewer line because of misuse and broken water pipes due to neglect or carelessness of Tenant.

10. Property of Tenant. Tenant may, and at the expiration or earlier termination hereof shall, remove all furniture, equipment, and other personal property which Tenant shall have placed in the Premises; provided that Tenant shall repair any damage to the Premises caused by the installation or removal of the same. All such property shall, during the Term hereof, be at the risk of Tenant only, and Landlord shall not be liable for any loss thereof or damage thereto resulting from any cause whatsoever; and each policy of insurance covering such property shall contain a standard waiver of subrogation endorsement. Any such property not removed at the expiration or earlier termination of this Lease shall be deemed abandoned and may be disposed of by the Landlord in any manner whatsoever.

11. Insurance. Tenant shall, during the entire Term hereof, maintain in force, casualty insurance on the Premises, including Landlord's possessions (if any), in such amounts and against such hazards and contingencies as Landlord shall deem fit, and Landlord shall be named the beneficiary in said insurance policies. Landlord shall not be obligated to insure any furniture, equipment, or other property placed in the Premises by or at the expense of Tenant. Tenant shall not permit any use of the

Premises that would invalidate or conflict with the known terms of any insurance policy covering risks insured by or for the benefit of Landlord.

12. Eminent Domain. If the whole of the Premises, or such portion thereof as will make the Premises unsuitable for the use contemplated hereby, be taken or condemned (including any conveyance in lieu thereof), then the Term hereof shall cease as of the date possession thereof is taken by the condemnor, and Rent shall be accounted for as between Landlord and Tenant as of that date. If any lesser portion of the Premises is thus taken or condemned, Rent shall abate in proportion to the loss of use occasioned thereby.

13. Indemnity. Tenant shall defend, indemnify and hold harmless the Landlord from and against any claims, damages, or expenses, whether due to damage to the Premises, claims for injuries to persons or property, or administrative or criminal action by a governmental authority, where such claims arise out of or from use or occupancy of the Premises by Tenant, its agents, employees or invitees.

14. Landlord's Entry. Entry in or on the Premises by the Landlord shall be as follows:

- (a) Tenant shall not unreasonably withhold consent to the Landlord to enter the Premises in order to inspect the Premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the Premises to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.
- (b) Landlord or his agent may enter the Premises without consent of the

Tenant:

- (1) At any time in case of emergency - prospective changes in weather conditions which pose a likelihood of danger to the Premises may be considered an emergency;
 - (2) Between the hours of 9:00 a.m. and 6:00 p.m. for the purpose of providing regularly scheduled periodic services at the expense of the Tenant such as changing furnace and air-conditioning filters, providing termite, insect or pest treatment, and the like, provided that the right to enter to provide regularly scheduled periodic services is conspicuously set forth in writing in the Lease and that prior to the entering, the Landlord announces his intent to enter to perform services; or
 - (3) Between the hours of 8:00 a.m. and 8:00 p.m. for the purpose of providing services requested by the Tenant and that prior to entering, the Landlord announces his intent to enter to perform services.
- (c) Landlord shall not abuse the right of access or use it to harass the Tenant. Except in cases under item (b) above, the Landlord shall give the Tenant at least twenty-four hours notice of his intent to enter and may enter only at reasonable times.
- (d) Landlord has no other right of access except:
- (1) Pursuant to court order;

- (2) as permitted by Sections 27-40-720 and 730 of the South Carolina Landlord-Tenant Act;
- (3) When accompanied by a law enforcement officer at reasonable times for the purpose of service of process in ejectment proceedings; or
- (4) Unless the Tenant has abandoned or surrendered the Premises.

15. Tenant's Default; Remedies. If Tenant shall fail to pay either Rent or any other sums of money becoming due hereunder within ten (10) days of receipt of written notice from Landlord, or if Tenant shall default in the performance of any of the other terms, conditions, or covenants contained in this Lease to be observed or performed by it and does not cure such default within thirty (30) days after written notice thereof or does not, within such thirty (30) days of receipt of written notice from Landlord, commence such act or acts as shall be necessary to remedy a default which is not curable within said thirty (30) days for reasons beyond the control of Tenant, and shall not complete such act or acts within sixty (60) days after receipt of written notice, or if Tenant shall become bankrupt or insolvent, or file any debtor proceedings, or file in any court pursuant to any statute, either of the United States or any state a petition in bankruptcy or insolvency or for reorganization, or file or have filed against it a petition for the appointment of a receiver or trustee for all substantially all of the assets of Tenant, or if Tenant makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement, or if Tenant shall abandon the Premises for a period of fifteen (15) days or more or suffer the Lease to be taken under any writ of execution and

such writ is not vacated or set aside within thirty (30) days, then in any such event the Landlord shall have the immediate right of reentry and the right to terminate and cancel this Lease. If Landlord should elect to reenter as herein provided, or should it take possession pursuant to legal proceedings, it may either terminate this Lease or it may from time to time without terminating this Lease, relet the Premises for such term and at such rentals and upon such other terms and conditions as the Landlord may deem advisable. If such reletting shall yield rentals insufficient for any month to pay the rental due by Tenant hereunder for that month, Tenant shall be liable to Landlord for the deficiency and same shall be paid monthly. No such reentry or taking possession of the Premises by Landlord shall be construed as an election to terminate this Lease unless written notice of such intention be given by the Landlord to the Tenant at the time of such reentry; but, notwithstanding any such reentry and reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach. If as a result of Tenant's default hereunder, Landlord shall institute legal proceedings or an arbitration proceeding for the enforcement of Tenant's obligations, Tenant shall pay all costs incurred by Landlord, including reasonable attorney's fees.

16. Remedies Cumulative Non-Waiver. No remedy herein or otherwise conferred upon or reserved to Landlord or Tenant shall be considered exclusive of any other remedy, but the same shall be distinct, separate and cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity; and every power and remedy given by this Lease Agreement may be exercised from time to time as often as occasion may arise or as may be

deemed expedient. No delay or omission of either Landlord or Tenant to exercise any right or power arising from any default on the part of the other party shall impair any such right or power, or shall be construed to be a waiver of any such default, or an acquiescence therein.

17. Quiet Enjoyment. If Tenant shall pay the Rent when due and perform and observe all of the other covenants and conditions to be performed and observed by it hereunder, Tenant shall at all time during the term hereof have the peaceable and quiet enjoyment of the Premises without interference from Landlord or any person lawfully claiming through Landlord, subject, however, to the terms of this Lease Agreement and any mortgages encumbering the Premises.

18. Estoppel Agreement. Within fifteen (15) days after written request thereof by the Landlord or any mortgagee under a mortgage covering the Premises, Tenant shall deliver in recordable form a statement to any mortgagee or to Landlord, certifying any facts that are then true with respect to this Lease Agreement, including without limitation (if such be the case) that this Lease Agreement is in full force and effect, that Tenant is in possession, that Tenant has commenced the payment of Rent, and that Tenant claims no defense or set-off to the due and full performance of its obligations under this Lease Agreement. Landlord shall furnish within fifteen (15) days of written request an Estoppel Certificate as to Tenant.

19. Subordination and Attornment. Tenant agrees that this Lease shall be subject and subordinate to any mortgages, now or hereafter placed upon the Premises, and to all modifications thereto, and to all present and future advances made

with respect to any such mortgage. Tenant agrees to attorn to the mortgagee, trustee, or beneficiary under any such mortgage and to the purchaser at a sale pursuant to the foreclosure thereof.

20. Notices. All notices provided for in this Lease Agreement shall be in writing and shall be deemed to be given when sent by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Landlord: 101 PALM BOULEVARD. LLC
c/o Richard S.W. Stoney
845 Lowcountry Blvd., Suite H
Mount Pleasant, SC 29464

If to Tenant: The Boathouse at Breach Inlet, LLC
c/o Richard S.W. Stoney
845 Lowcountry Blvd., Suite H
Mount Pleasant, SC 29464

Notices shall also be sent to the holder or holders of any mortgage covering the Premises at such address as such holder or holders may have given by notice as herein provided. Either party hereto, or any such holder, may from time to time, by notice as herein provided, designate a different address to which notices to it shall be sent.

21. Governing Law. This Lease Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina.

22. Successors. This Lease Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective, heirs, successors and permitted assigns, except as otherwise provided for in this Lease Agreement.

23. Nature and Extent of Agreement. This Lease Agreement,

including any exhibits attached hereto, contains the complete agreement between the parties regarding the terms and conditions of the lease of the Premises, and there are no oral or written conditions, terms, warranties, understandings or other agreements pertaining thereto which have not been incorporated herein. This Lease Agreement may be modified only by written instrument duly executed by both parties or their respective successors in interest.

24. Holding Over. This Lease expires at the end of the Term defined herein, but it is expressly understood that if Tenant holds over for another month at the end of said Term for any purpose other than the removal of its property, and Landlord accepts Rent for said month, such acceptance shall operate as a renewal of the tenancy for another month and for each additional month for which Landlord accepts Rent. Should Landlord require possession of the Premises, it shall give Tenant thirty (30) days to vacate the said Premises during such holdover period. The monthly Rent during the holdover period shall be a twenty-five (25%) percent increase above the monthly Rent paid for the last month of the Term as set forth herein.

25. Attorney's Fees. If Tenant defaults in the performance of any of the covenants of this Lease and by reason thereof Landlord employs the service of an attorney to enforce performance by Tenant, to evict Tenant, to collect monies due by Tenant, or to perform any service based upon said default, then the Tenant shall pay a reasonable attorney's fee and all reasonable expenses and cost incurred by Landlord pertaining thereto.

26. Caption and Titles. The captions and titles appearing within this

Lease are for reference only and shall not be considered a part of this Lease or in any way to modify, amend or affect the provisions thereof.

27. Grammatical Changes. The proper grammatical changes shall be understood and apply where necessary to designate the plural rather than the singular and the masculine or feminine gender.

28. Recordation. This Lease shall not be recorded, but a short form referring to this Lease, describing the Premises setting forth the term thereof may be recorded by either party. The cost of recording shall be the responsibility of the recording party.

29. Binding Agreement. The conditions, covenants and agreements contained in this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, executors, administrators and assigns. No rights, however, shall inure to the benefit of any assignee of Tenant unless the assignment to such assignee has been approved in accordance with the provisions set out in this Lease.

30. Severability. The terms of this Lease shall be severable. If any provision herein is adjudged to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

31. Additional Provisions. Tenant shall pay or caused to be paid all real property taxes and governmental assessments by the lawful taxing authorities against the land, buildings and all other improvements constituting the premises. Tenant shall also pay all insurance premiums for hazard insurance, wind and hail and

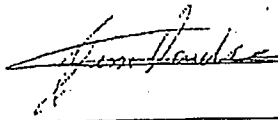
flood insurance for the leased premises.

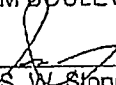
Tenant shall supply Landlord with proof of payment within ten (10) days from the date of delivery of all statements for the aforesaid taxes, insurance and assessments. Any payment not made within this ten (10) day period shall constitute and give rise to the default provisions contained herein.

IN WITNESS WHEREOF, the parties hereto have hereunto set their respective hand and seals on the day and year first above written.

WITNESSES:

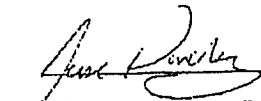

LANDLORD:
101 PALM BOULEVARD, LLC

 2/13/15


BY: 
Richard S. W. Stoney, Managing Member

DATED: 2/13/15

TENANT:

 2/13/15
 2/13/15

THE BOATHOUSE AT BREACH INLET, LLC

BY: 
Richard S. W. Stoney, Managing Member

DATED: 2/13/15

OPERATING AGREEMENT
(Management by Member-Manager)
OF
THE BOATHOUSE AT BREACH INLET, L.L.C.

This Operating Agreement of THE BOATHOUSE AT BREACH INLET, L.L.C. (the "Company") dated effective as of the 21st day of November, 1997, is (a) adopted by the Manager (as defined below) and (b) executed and agreed to, for good and valuable consideration, by the Members.

ARTICLE I - DEFINITIONS

§1.1 Generally

As used in this Operating Agreement, the following terms have the following meanings:

"Act" means the South Carolina Uniform Limited Liability Company Act of 1996 and any successor statute as amended from time to time.

"Articles" means the Articles of Organization filed with the Secretary of State of South Carolina by which THE BOATHOUSE AT BREACH INLET, L.L.C. was organized as a South Carolina Limited Liability Company under and pursuant to the Act.

"Bankrupt Member" means a Member who within the meaning of Section 33-43-802(A)(4) of the Act, (a) makes an assignment for the benefit of creditors, (b) files a voluntary petition in bankruptcy, (c) is adjudicated a bankrupt or insolvent, (d) files a petition or answer seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, (e) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding of this nature or (f) seeks, consents to, acquiesces in the appointment of a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member's properties.

"Business Day" means any day other than a Saturday, a Sunday, or a holiday on which national banking associations in the State of South Carolina are closed.

"Capital Contribution" means any contribution by a Member to the capital of the Company.

"Code" means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

"Company" means THE BOATHOUSE AT BREACH INLET, L.L.C., a South Carolina Limited Liability Company.

"Company Liability" means any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.

"Company Minimum Gain" means an amount determined by first computing for each Company Nonrecourse Liability any gain the Company would realize if disposed of the Company Property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Company Minimum Gain includes such minimum gain arising from a conversion, refinancing, or other change to a debt instrument, only to the extent a Member is allocated a share of that minimum gain. For any taxable year, the net increase or decrease in Company Minimum Gain is determined by comparing the Company Minimum Gain on the last day of the immediately preceding taxable year with the Minimum Gain on the last day of the current taxable year. Notwithstanding any provision to the contrary contained herein, Company Minimum Gain and increases and decreases in Company Minimum Gain are intended to be computed in accordance with §704 of the Code and the Regulations issued thereunder, as the same may be issued and interpreted from time to time. A Member's share of Company Minimum Gain at the end of any taxable year equals: the sum of Nonrecourse Deductions allocated to that Member (and to that Member's predecessors in interest) up to that time and the distributions made to that Member (and to that Member's predecessors in interest) up to that time of proceeds of a nonrecourse liability allocable to an increase in Company Minimum Gain minus the sum of that Member's (and that Member's predecessors in interest) aggregate share of the net decreases in Company Minimum Gain plus their aggregate share of decreases resulting from revaluations of Company Property subject to one or more Company Nonrecourse Liabilities.

"Company Nonrecourse Liability" means a Company Liability to the extent that no Member or related person bears the economic risk of loss (as defined in §1.752-2 of the Regulations) with respect to the liability.

"Default Interest Rate" means a rate per annum equal to the lesser of (a) one percent (1.0%) plus a varying rate per annum that is equal to the Wall Street Journal prime rate as quoted in the money rates section of the Wall Street Journal which is also the base rate on corporate loans at large United States money center commercial banks, from time to time as its prime commercial or similar reference interest rate, with adjustments in that varying rate to be made on the same date as any change in that rate, and (b) the maximum rate permitted by applicable law.

"Delinquent Member" means a Member who does not contribute by the time required all or any portion of a Capital Contribution that Member is required to make as provided in this Operating Agreement.

"Dispose", "Disposing" or "Disposition" means a sale, assignment, transfer, exchange, mortgage, pledge, grant of a security interest, or other disposition or encumbrance (including, without limitation, by operation of law), or the acts thereof.

"Distributional Interest" means all of a Member's interest in distributions by the Company.

"General Interest Rate" means a rate per annum equal to the lesser of (a) the *Wall Street Journal* prime rate as quoted in the money rates section of the *Wall Street Journal* which is also the base rate on corporate loans at large United States Money center commercial banks, from time to time as its prime commercial or similar reference interest rate, with adjustments in that varying rate to be made on the same date as any change in that rate, and (b) the maximum rate permitted by applicable law.

"Lending Member" means those Members, whether one or more, who advance the portion of the Delinquent Member's Capital Contribution that is in default.

"Majority In Interest" means the majority vote of both those Members owning a majority of the capital and those Members holding a majority of the Net Profits and Net Losses of the Company.

"Manager or Managers" means RICHARD S. W. STONEY, or any Person hereafter elected as a Manager of the Company as provided in this Operating Agreement, but does not include any Person who has ceased to be a Manager of the Company.

"Member" means any Person executing the Articles, this Operating Agreement, or hereafter admitted to the Company as a Member as provided in this Operating Agreement, but does not include any Person who has ceased to be a Member in the Company.

"Member Minimum Gain" means an amount determined by first computing for each Member Nonrecourse Liability any gain the Company would realize if it disposed of the Company property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Member Minimum Gain includes such minimum gain arising from a conversion, refinancing, or other change to a debt instrument, only to the extent a Member is allocated a share of that minimum gain. For any taxable year, the net increase or decrease in Member Minimum Gain is determined by comparing the Member Minimum Gain on the last day of the immediately preceding taxable year with the Minimum Gain on the last day of the current taxable year. Notwithstanding any provision to the contrary contained herein, Member Minimum Gain and increases and decreases in Member Minimum Gain are intended to be computed in accordance with §704 of the Code or the Regulations issued thereunder, as the same may be issued and interpreted from time to time.

"Member Nonrecourse Liability" means any Company Liability to the extent of liability is nonrecourse under state law, and on which a Member or related person bears the economic risk of loss under §1.752-2 of the Regulations because, for example, the Member or related person is the creditor or a guarantor.

"Membership" means any Member's interest in the Company, including, without limitation, rights to distributions (liquidating or otherwise), allocations, information and to consent or approve.

"Membership Interest" means a Member's right to share in profits and losses, and right to share in distributions, and has the same meaning as the term "Limited Liability Company Interest" defined in Section 33-43-102 of the Act.

"Net Losses" means the losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

"Net Profits" means the income and gains of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate as appropriate on the tax return of the Company filed for federal income tax purposes.

"Nonrecourse Liabilities" means Company Nonrecourse Liabilities and Member Nonrecourse Liabilities.

"Offsettable Decrease" means any allocation that unexpectedly causes or increases a deficit in the Member's Capital Account as of the end of the taxable year to which the allocation relates attributable to depletion allowances under §1.704(b)(2)(iv)(k) of the Regulations, allocations of loss and deductions under §§704(e)(2) or 706 of the Code or under §1.751-1 of the Regulations, or distributions that, as of the end of the year are reasonably expected to be made to the extent they exceed the offsetting increases to such Member's Capital Account that reasonably are expected to occur during or (prior to) the taxable years in which such distributions are expected to be made (other than increases pursuant to a Minimum Gain Chargeback).

"Operating Agreement" has the meaning given that term in the introductory paragraph.

"Person" includes an individual, partnership, limited partnership, limited liability company, foreign limited liability company, trust, estate, corporation, custodian, trustee, executor, administrator, nominee or entity in a representative capacity.

"Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative.

"Property" means all real property and personal property owned by the Company.

"Required Interest" means fifty (50%) percent of all Membership Interests.

Other terms defined herein have the meanings so given them.

ARTICLE II - ORGANIZATION

§2.1 Formation.

The Company has been organized as a South Carolina Limited Liability Company by the filing of Articles pursuant to the Act and the issuance of a certificate of organization for the Company by the Secretary of State of South Carolina.

§2.2 Name.

The name of the Company is THE BOATHOUSE AT BREACH INLET, L.L.C. and all Company business must be conducted in that name or such other names that comply with applicable law as the Members may select from time to time.

§2.3 Registered Office.

The registered office of the Company required by the Act to be maintained in the State of South Carolina shall be the office of the initial registered agent named in the Articles or such other office (which need not be a place of business of the Company) as the Members, may designate from time to time in the manner provided by law.

§2.4 Registered Agent.

The registered agent of the Company in the State of South Carolina shall be the initial registered agent named in the Articles or such other Person or Persons as the Members, may designate from time to time in the manner provided by law.

§2.5 Principal office in the United States; other offices.

The principal office of the Company in the United States shall be at such place as the Members may designate from time to time, which need not be in the State of South Carolina, and the Company shall maintain records there which are required by Section 33-43-405 of the Act and shall keep the street address of such principal office at the registered office of the Company in the State of South Carolina. The Company may have such other offices as the Members may designate from time to time.

§2.6 Purposes.

The purposes of the Company are the acquisition of the Property and real estate investment, business property investment, leasing, management and all other activities not prohibited by law which are incidental thereto.

§2.7 Foreign qualification.

Prior to the Company's conducting business in any jurisdiction other than South Carolina, the Members shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Members, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. At the request of the Members, each Member shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Operating Agreement that are necessary or appropriate to qualify, continue, and terminate the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

§2.8 Term.

The Company commenced on the date the Articles were filed with the Secretary of State of South Carolina for the Company and shall continue in existence for the period fixed in the Articles for the duration of the Company, or such earlier time as this Operating Agreement may specify.

§2.9 Mergers.

The Company may merge with another entity subject to the requirements of Sections 33-44-904 through 33-44-907 of the Act.

§2.10 No state-law partnership.

The Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than federal and state tax purposes, and this Operating Agreement may not be construed to suggest otherwise.

ARTICLE III - MEMBERS

§ 3.1 Admission of members.

After the formation of this Company, a person becomes a new Member:

(1) in the case of a person acquiring a Membership directly from this Company, on compliance with the provisions of Section 3.2 and 3.4 of this Agreement governing admission of new Members or, if this Operating Agreement contains no relevant admission provisions, on the written consent of all Members; and

(2) in the case of an assignee of a Membership if there is the consent of the Manager to permit the admission of a substituted Member pursuant to Section 33-44-503 of the Act.

§3.2 Representations and warranties.

Each Member hereby represents and warrants to the Company and each other Member that (a) if that Member is a corporation, it is duly organized, validly existing and in good standing under the law of the state of its incorporation and is duly qualified and in good standing as a foreign corporation in the jurisdiction of its principal place of business (if not incorporated therein); (b) if that Member is a limited liability company, it is duly organized, validly existing, and (if applicable) in good standing under the law of the state of its organization and is duly qualified and (if applicable) in good standing as a foreign limited liability company in the jurisdiction of its principal place of business (if not organized therein); (c) if that Member is a partnership, trust, or other entity, it is duly formed, validly existing, and (if applicable) in good standing under the law of the state of its formation, and if required by law is duly qualified to do business and (if applicable) in good standing in the jurisdiction of its principal place of business (if not formed therein), and the representations and warranties in clause (a), (b), or (c), as applicable, are true and correct with respect to each partner (other than limited partners), trustee, or other Member thereof, (d) that Member has full corporate, limited liability company, partnership, trust, or other applicable power and authority to execute and agree to this Operating Agreement and to perform obligations hereunder and all necessary actions by the board of directors, shareholders, manager, members, partners, trustees, beneficiaries, or other Persons necessary for the due authorization, execution, delivery, and performance of this Operating Agreement by that Member have been duly taken; (e) that Member has duly executed and delivered this Operating Agreement; and (f) that Member's authorization, execution, delivery and performance of this Operating Agreement do not conflict with any other agreement or arrangement to which that Member is a party or by which it is bound.

§ 3.3 Restrictions on the disposition of a membership

Membership and transferability of Memberships in the Company are substantially restricted. Neither record title nor beneficial ownership of a Membership may be transferred or encumbered without the consent of the Manager at the time of transfer. This Company is formed by a closely-held group who know and trust one another, who will have surrendered certain management rights (in exchange for limited liability) based upon their relationship and trust. Capital is also material to the business and investment objectives of the Company and its federal tax status. An unauthorized transfer of a Membership could create a substantial hardship to the Company, jeopardize its capital base, and adversely affect its tax structure. These restrictions upon ownership and transfer are not intended as a penalty, but as a method to protect and preserve existing relationships based upon trust and the Company's capital and its financial ability to continue.

A Disposition of a Membership in the Company may not be effected without the consent of the Manager at the time of Disposition.

It is the intent of the Members that the tax status of this Company be the same as for a partnership, and except as allowed by the Code and any corresponding rules and regulations, it is intended that this Company shall not allow free transferability of interests, and to the extent possible, this Operating Agreement shall be read and interpreted to prohibit the free transferability of interests of any Member. Any attempted Disposition by a Person of an interest or right in or in respect of the Company other than in accordance with this section shall be, and is hereby declared, null and void ab initio.

An assignee who becomes a Member has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of a Member under this Operating Agreement and the Act. Unless otherwise provided by this Operating Agreement, an assignee who becomes a Member also is liable for the obligations of the assignor to make contributions but is not obligated for liabilities unknown to the assignee at the time the assignee became a Member and which could not be ascertained from this Operating Agreement. Whether or not an assignee of a Membership becomes a Member, the assignor is not released from the assignor's liability to this Company.

(1) Subject to the provisions of the following sections, (i) a Person to whom a Membership in the Company is transferred has the right to be admitted to the Company as a Member with the interest in Net Profits, Net Losses, and capital so transferred to such Person, if (A) the Member making such transfer grants the transferee the right to be so admitted, and (B) such transfer is consented to in accordance with this section.

(2) The Company may not recognize for any purpose any purported Disposition of a Membership unless and until the other applicable provisions of this section have been satisfied and the Manager has received, on behalf of the Company, a document (i) executed by both the Member effecting the Disposition (or if the transfer is on account of the death, incapacity, or liquidation of the transferor, his representative) and the Person to which the Membership is Disposed, (ii) including the notice address of any Person to be admitted to the Company as Member and its agreement to be bound by this Operating Agreement in respect of the Membership being obtained, (iii) setting forth the Person's interest in Net Profits, Net Losses and capital after the Disposition of the Member effecting the Disposition and the Person to which the Membership is Disposed (which together must total the interest in Net Profits, Net Losses and capital of the Member effecting the Disposition before the Disposition), and (iv) containing a representation and warranty that the Disposition was made in accordance with all applicable laws and regulations (including securities laws) and, if the Person to which the Membership is Disposed is to be admitted to the Company, its representation and warranty that the representations and warranties in this Operating Agreement are true and correct with respect to that Person. Each Disposition and, if applicable, admission complying with the provisions of this section is effective as of the first day of the calendar month immediately succeeding the month in which the Manager receives the notification of Disposition and the other requirements of this section have been met.

(3) For the right of a Member to Dispose of a Membership or of any Person to be admitted to the Company in connection therewith to exist or be exercised, (i) either (A) the Membership subject to

(the Disposition or admission must be registered under the Securities Act of 1993, as amended, and any applicable state securities laws or (B) the Company must receive a favorable opinion of the Company's legal counsel or other legal counsel acceptable to the Manager to the effect that the Disposition or admission is exempt from registration under those laws and (ii) the Company must receive a favorable opinion of the Company's legal counsel or of other legal counsel acceptable to the Manager to the effect that the Disposition or admission, when added to the total of all other sales, assignments, or other Dispositions within the preceding 12 months, would not result in the Company's being considered to have terminated within the meaning of the Code. The Manager, however, may waive the requirements of this sub-part of this section.

(4) The Member effecting a Disposition and any Person admitted to the Company in connection therewith shall pay, or reimburse the Company for, all costs incurred by the Company in connection with the Disposition or admission (including, without limitation, the legal fees incurred in connection with the legal opinions referred above) on or before the tenth day after the receipt by that Person of the Company's invoice for the amount due. If payment is not made by the date due, the Person owing that amount shall pay interest on the unpaid amount from the date due until paid at rate per annum equal to the Default Interest Rate.

§ 3.4 Additional Members.

Additional Persons may be admitted to the Company as Members and Memberships may be created and issued to those Persons and to existing Members at the direction of the Manager. The terms of admission or issuance must specify the percentage of Net Profit and Net Loss allocable to such Person and the Capital Contribution applicable thereto, and may provide for the creation of different classes or groups of Members and having different rights, powers, and duties. The Manager shall reflect the creation of any new class or group in an amendment to this Operating Agreement indicating the different rights, powers, and duties, and such an amendment need be executed only by the Manager. Any such admission also must comply with the requirements described elsewhere in this Operating Agreement and is effective only after the new Member has executed and delivered to the Manager, as appropriate, a document including the new Member's notice address, its agreement to be bound by this Operating Agreement, and its representation and warranty that the representations and warranties required of new Members are true and correct with respect to the new Member. The provisions of this section shall not apply to Dispositions of Membership.

Notwithstanding the foregoing, the Members of the Company shall have a preemptive right to acquire additional, newly created Memberships of the Company, or securities of the Company convertible into or carrying a right to subscribe or acquire Memberships, except to the extent limited or denied by this Operating Agreement or the Articles.

§3.5 Interests in a member.

A Member that is not a natural person may not cause or permit an interest, direct or indirect, in itself to be Disposed of such that after the Disposition, (a) the Company would be considered to have terminated within the meaning of Section 708 of the Code or (b) without the consent of the Manager and a Required Interest that Member shall cease to be controlled by substantially the same Persons who control it as of the date of its admission to the Company. On any breach of the provisions of clause (b) of the immediately preceding sentence, the Company shall have the option to buy, and on exercise of that option the breaching Member shall sell, the breaching Member's Membership all in accordance with Section 3.24.

§ 3.6 Information.

In addition to the other rights specifically set forth in this Operating Agreement, each Member is entitled to all information to which that Member is entitled to have access pursuant to Section 33-44-408 of the Act under the circumstances and subject to the conditions therein stated. The Members agree, however, that the Manager from time to time may determine, due to contractual obligations, business concerns, or other considerations, that certain information regarding the business affairs, properties, and financial condition of the Company should be kept confidential and not provided to some or all other Members, and that it is not just or reasonable for those Members or assignees or representatives thereof to examine or copy that information.

The Members acknowledge that from time to time, they may receive information from or regarding the Company in the nature of trade secrets or that otherwise is confidential, the release of which may be damaging to the Company or Persons with which it does business. Each Member shall hold in strict confidence any information it receives regarding the Company that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any Person other than another Member or the Manager, except for disclosures (i) compelled by law (but the Member must notify the Manager promptly of any request for that information, before disclosing it, if practicable), (ii) to advisers or representatives of the Member or Persons to which that Member's Membership may be Disposed as permitted by this Operating Agreement, but only if the recipients have agreed to be bound by the provisions of this section or (iii) of information that Member also has received from a source independent of the Company that the Member reasonably believes obtained that information without breach of any obligation of confidentiality. The Members acknowledge that breach of the provisions of this section may cause irreparable injury to the Company for which monetary damages are inadequate, difficult to compute or both. Accordingly, the Member agree that the provisions of this section may be enforced by specific performance.

§ 3.7 Liabilities to third parties.

Except as otherwise expressly agreed in writing, no Member shall be liable for the debts, obligations or liabilities of the Company, including under a judgment decree or order of a Court.

§ 3.8 Withdrawal.

No Member may withdraw from the Company as a Member prior to the date specified in the Articles of Organization for dissolution of the Company.

§ 3.9 Classes and voting.

Unless the Articles state to the contrary or as provided by this Operating Agreement two or more classes or groups of one or more Members is established, there shall be one class of Members. A Required Interest of the Members of this Company, at a duly authorized annual or special meeting may elect to establish different classes or groups of Members. If so, the following provisions shall apply:

- (1) The rights, powers, or duties of a class or group may be senior to those of one or more existing classes or groups of Members.
- (2) If two or more classes or groups of one or more Members are established, then each class or group of Members, as far as waiver of notices, action by consent without a meeting, establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter relating to the exercise of the right to vote, shall be governed by the same provisions of this Operating Agreement as pertain to one class or group of Members.
- (3) Prompt notice of the taking of an action under this Operating Agreement that require less than unanimous written consent of the Members and that may be taken without a meeting shall be given to the Members who have not consented in writing to the taking of the action.
- (4) For the purposes of this section, the taking of an action includes amending this Operating Agreement or creating, under provisions of this Operating Agreement, a class of Membership that was not previously outstanding.

§ 3.10 Place and manner of meeting.

All meetings of the Members shall be held at such time and place, within or without the State of South Carolina, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof. Members may participate in such meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

§ 3.11 Conduct of meetings.

All meetings of the Members shall be presided over by the Chairman of the meeting, who shall be a Manager (or representative thereof). The chairman of any meeting of Members shall determine

the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him in order.

§ 3.12 Annual meeting.

The annual meeting of the Members for the transaction of all business which may come before the meeting shall be held on December 15 in each year (if not a legal holiday and, if a legal holiday, then on the next business day following) at the hour specified in the notice of the meeting. If the annual meeting is not held on the date above specified, the Manager shall cause a special meeting of the Members in lieu thereof to be held as soon thereafter as convenient, and any business transacted or election held at that meeting shall be as valid as if held at the annual meeting. Failure to hold the annual meeting at the designated time shall not work a dissolution of the Company.

§ 3.13 Voting lists.

The Manager, officer, or agent having charge of the records reflecting the Membership of each member of each class, if more than one class, shall make, at least ten (10) days before each meeting of Members, a complete list of the Members, entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order with the address of and percentage of Membership of each Member of each class, if more than one class, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the registered office of the Company and shall be subject to inspection by any Member at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any Member during the whole time of the meeting. The original records reflecting the Membership of each Member of each class, if more than one class, shall be prima facie evidence as to who are the Members entitled to examine such list or records or to vote at any meeting of Members.

Failure to comply with the requirements of this Article shall not affect the validity of any action taken at such meeting.

§ 3.14 Special Meetings.

Special meetings of the Members may be called at any time by the Manager or by the holders of at least ten (10%) percent of the Members entitled to vote at such meeting.

Special meetings of Members may also be called by the Manager upon the written request of the holders of at least ten percent (10%) of the Membership entitled to be voted at such meeting. Such request shall state the purpose or purposes of such meeting and the matters proposed to be acted on thereat

§ 3.15 Notice.

Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten

(10) nor more than sixty (60) days before the date of the meeting either personally or by mail, or at the direction of the officer or person calling the meeting, to each Member entitled to vote at the meeting, provided that such notice may be waived as provided in this Operating Agreement. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Company, with postage thereon prepaid. Any notice required to be given to any member hereunder or under the Articles of Organization need not be given to the Member if (A) notice of two consecutive annual meetings of the Company and all notices of meetings held during the period between those annual meetings, if any, or (B) all (but in not event less than two) payments (if sent by first class mail) of distributions during a twelve-month period have been mailed to that person, addressed at his address as shown on the records of the Company, and have been returned undeliverable. Any action or meeting taken or held without notice to such person shall have the same force and effect as if the notice had been duly given.

§ 3.16 Quorum of members.

Unless otherwise provided in the Articles, the holders of a majority of the equity interests of Memberships entitled to vote, as determined from the capital contribution of each Member as recorded by the books of the Company, represented in person or in proxy, shall constitute a quorum at a meeting of Members. The vote of the holders of a majority of the equity interests of Memberships entitled to vote, for each class if more than one class, and thus represented at a meeting at which a quorum is present shall be the act of the Members' meeting, unless the vote of a greater number is required by law, the Articles or this Operating Agreement.

§ 3.17 Majority vote; withdrawal of quorum.

With respect to any matter when a quorum is present at any meeting, the vote of the holders of a majority of the equity interests of Memberships (or Membership Interests as represented by percentage of capital contribution), present in person or represented by proxy, having voting power with respect to that matter, shall decide such matter brought before such meeting, unless the matter is one upon which, by express provision of the Articles or this Operating Agreement, or by any express provision of the statutes which is applicable to such vote unless overridden by the Articles, a different vote is required; in which case such express provision shall govern and control the decision of such matter. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

§ 3.18 Voting of membership.

Except as otherwise provided in the Act, each outstanding Member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of Members, except to the extent that the voting rights of the Member of any class or classes are limited or denied by the Articles or by this Operating Agreement.

On each matter submitted to a vote of the Membership (as opposed to a vote of the Members) each outstanding Membership shall be entitled to vote its percentage interest in the Company as set forth in Section 5.1 of this Operating Agreement.

Memberships owned by another limited liability company or corporation, the majority of the Memberships or voting stock of which is owned or controlled by this Company, and Memberships held by this Company in a fiduciary capacity shall not be voted, directly or indirectly, at any meeting, and shall not be counted in determining the total Memberships at any given time.

A Member may vote either in person or by proxy executed in writing by the Member or by his duly authorized attorney in fact. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest.

§ 3.19 Action without meeting.

Any action required by the Act to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall have been signed by the holder or holders of all the Memberships for each class, if more than one class, entitled to vote with respect to the action that is the subject matter of the consent, and such consent shall have the same force and effect as a unanimous vote of the Members. Every written consent pursuant to this section shall be signed, dated and delivered in the manner required by, and shall become effective at the time and remain effective for the period specified by, the Act. A telegram, telex, cablegram, or similar transmission by a Member, or a photographic, photostatic, facsimile, or similar reproduction of a writing signed by a Member, shall be regarded as signed by the Member for purposes of this section. Prompt notice of the taking of any action by Members without a meeting by less than unanimous written consent shall be given to those Members who did not consent in writing to the action. For purposes of this section, the taking of the action includes amending this Operating Agreement or creating, under provisions of this Operating Agreement, a class of Memberships that was not previously outstanding.

§ 3.20 Assignment of distributional interest.

Unless otherwise provided by this Operating Agreement:

- (1) a Distributional Interest is assignable in whole or in part;
- (2) an assignment of a Distributional Interest does not entitle the assignee to become, or to exercise rights or powers of, a Member;

(3) an assignment entitles the assignee to receive distributions, to which the assignor was entitled, to the extent those items are assigned and allocates to the assignee the assignor's allocable share of Net Profit and Net Loss; and

(4) until the assignee becomes a Member, the assignor Member continues to be a Member and to have the power to exercise any rights or powers of a Member.

§ 3.21 Distribution in kind.

Except as provided by the Articles or this Operating Agreement, a member, regardless of the nature of the Member's contribution, may not demand or receive a distribution from this Company in any form other than cash.

§ 3.22 Right to distribution.

Subject to the Act, at the time that a Member becomes entitled to receive a distribution, with respect to a distribution, that Member has the status of and is entitled to all remedies available to a creditor of the Company.

§ 3.23 Limitation on distribution.

No distribution may be made if, after giving effect to the distribution:

(1) the Company would not be able to pay its debts as they become due in the usual course of business; or

(2) the Company's total assets would be less than the sum of its liabilities plus, unless otherwise provided in this Operating Agreement, the amount that would be needed, if the Company were to be dissolved, wound up and terminated, at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of other Members whose rights are superior to the rights of the Member receiving the distribution. The Company may base a determination that a distribution is not prohibited upon the provisions of Section 33-44-406(b) and (c) of the Act.

§ 3.24 Buyout of disassociating member.

If, following the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any other event which terminates the continued Membership of a Member in the Company, a Majority in Interest of the remaining Members vote to continue the Company, the disassociating Member shall be entitled to receive any distribution which the disassociating Member was entitled to receive prior to the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any other event which terminates the continued

Membership of a Member in the Company. Subject to any Agreement of the Members otherwise, the Member shall additionally receive the fair value of the Member's Membership in the Company as of the date of the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any other event which terminates the continued Membership of a Member in the Company determined as provided in Section 33-44-701 of the Act. The date of payment shall be made pursuant to the provisions of Section 33-44-701(b) of the Act.

ARTICLE IV - CAPITAL CONTRIBUTIONS

§ 4.1 Initial contributions.

Each initial Member shall make the Capital Contribution described for that Member on Exhibit A at the time and on the terms specified on Exhibit A and shall make such additional capital contributions as may be required of Members from time to time and at any time. The value of the Capital Contributions shall be as set forth on Exhibit A. No interest shall accrue on any Capital Contribution and no Member shall have the right to withdraw or be repaid any Capital Contribution except as provided in this Operating Agreement. Each additional Member shall make such Capital Contribution at such time as established by a Required Interest.

§ 4.2 Subsequent contributions.

Without creating any rights in favor of any third party, each Member shall contribute to the Company, in cash, on or before the date specified as hereinafter described that Member's pro rata share of all monies that in the judgment of a Required Interest, is necessary to enable the Company to cause the assets of the Company to be properly operated and maintained and to discharge its costs, expenses, obligations, and liabilities. The Manager, following the Members' determination of the need for additional capital, shall notify each Member of the need for Capital Contributions pursuant to this Section 4.2 when appropriate, which notice must include a statement in reasonable detail of the proposed uses of the Capital Contributions and a date (which date may be no earlier than the fifth Business Day following each Member's receipt of its notice) before which the Capital Contributions must be made.

§ 4.3 Failure to contribute.

If a Member does not contribute by the time required all or any portion of a Capital Contribution that Member is required to make as provided in this Operating Agreement, the Company may exercise, on notice to that Member (the "Delinquent Member"), one or more of the following remedies:

(1) taking such action (including, without limitation, court proceedings) as a Required Interest may deem appropriate to obtain payment by the Delinquent Member of the portion of the Delinquent Member's Capital Contribution that is in default together with interest thereon at the Default Interest Rate from the date that the Capital Contribution was due until the date that it is made, all at the cost and expense of the Delinquent Member;

(2) permitting the other members on a pro rata basis or in such other percentages as they may agree (the "Lending Member", whether one or more), to advance the portion of the Delinquent Member's Capital Contribution that is in default, with the following results:

(a) the sum advanced constitutes a loan from the Lending Member to the Delinquent Member and a Capital Contribution of that sum to the Company by the Delinquent Member pursuant to the applicable provisions of this Operating Agreement,

(b) the principal balance of the loan and all accrued unpaid interest thereon is due and payable in whole on the tenth day after written demand therefor by the Lending Member to the Delinquent Member,

(c) the amount of the loan bears interest at the Default Interest Rate from the day that the advance is deemed made until the date that the loan, together with all interest accrued on it, is repaid to the Lending Member,

(d) all distributions from the Company that otherwise would be made to the Delinquent Member (whether before or after dissolution of the Company) instead shall be paid to the Lending Member until the loan and all interest accrued on it have been paid in full to the Lending Member (with payments being applied first to accrued and unpaid interest and then to principal),

(e) the payment of the loan and interest accrued on it is secured by a security interest in the Delinquent Member's Membership, as more fully set forth in this section, and

(f) the Lending Member has the right in addition to the other rights and remedies granted to it pursuant to this Operating Agreement or available to it at law or in equity, to take any action (including without limitation, court proceedings) that the Lending Member may deem appropriate to obtain payment by the Delinquent Member of the loan and all accrued and unpaid interest on it, at the cost and expense of the Delinquent Member;

(3) exercising the rights of a secured party under the Uniform Commercial Code of the State of South Carolina, as more fully set forth in this Section; or

(10) exercising any other rights and remedies available at law or in equity.

Each Member grants to the Company, and to each Lending Member with respect to any loans made by the Lending Member to that Member as a Delinquent Member pursuant to this section, as security, equally and ratably, for the payment of all Capital Contributions that Member has agreed to make and the payment of all loans and interest accrued on them made by Lending Members to that Member as a Delinquent Member pursuant to this section, a security interest in and a general lien on its Membership and the proceeds thereof, all under the Uniform Commercial Code of the State of South Carolina. On any default in the payment of a Capital Contribution or in the payment of such a loan or interest accrued on it, the Company or the Lending Member, as applicable, is entitled

to all the rights and remedies of a secured party under the Uniform Commercial Code of the State of South Carolina with respect to the security interest granted in this section. Each Member shall execute and deliver to the Company and the other Members all financing statements and other instruments that the Manager or the Lending Member may request to effectuate and carry out the preceding provisions of this section. At the option of the Manager or a Required Interest, as appropriate, or a Lending Member, this Operating Agreement or copy hereof may serve as a financing statement.

§ 4.4 Return of contributions.

A Member is not entitled to the return of any part of its Capital Contributions or to be paid interest in respect of either its capital account, or its Capital Contributions. An unrepaid Capital Contribution is not a liability of the Company or of any Member. A Member is not required to contribute or to lend any cash or property to the Company to enable the Company to return any Member's Capital Contributions.

§ 4.5 Advanced by members.

If the Company does not have sufficient cash to pay its obligations, any Member(s) that may agree to do so with the Manager's consent may advance all or part of the needed funds to or on behalf of the Company. An advance described in this section constitutes a loan from the Member to the Company, bears interest at the General Interest Rate from the date of the advance until the day of payment, and is not a Capital Contribution.

§ 4.6 Maintenance of capital accounts.

The Company shall establish and maintain Capital Accounts for each Member. Each Member's Capital Accounts shall be increased by (1) the amount of any money actually contributed by the Member to the capital of the Company, (2) the fair market value of any property contributed, as determined by the Company and the contributing Member at arm's length at the time of contribution (net of liabilities assumed by the Company or subject to which the Company takes such property, within the meaning of § 752 of the Code), and (3) the Member's share of Net Profits and of any separately allocated items of income or gain except adjustments required by the Code. Each Member's Capital Account shall be decreased by (1) the amount of money actually distributed by the Company to the Member, (2) the fair market value of any property distributed to the Member, as determined by the Company and the Member at arm's length at the time of distribution (net of liabilities of the Company assumed by the Member or subject to which the Member takes such property within the meaning of § 752 of the Code), and (3) the Member's share of Net Losses and of any separately allocated items of deduction or loss.

§ 4.7 Distribution of assets.

If the Company at any time distributes any of its assets in-kind to any Member, the Capital Account of each Member shall be adjusted to account for that Member's allocable share of the Net Profits or Net Losses that would have been realized by the Company had it sold the assets that were distributed at their respective fair market value immediately prior to their distribution.

§ 4.8 Sale or exchange of interest.

In the event of a sale or exchange of some or all of the Member's Interest in the Company, the Capital Account of the transferring Member shall become the Capital Account of the assignee, to the extent it relates to the portion of the interest transferred.

§ 4.9 Compliance with Section 704(b) of the Code.

The provisions of this Article IV as they related to the maintenance of Capital Accounts are intended, and shall be construed, and, if necessary, modified to cause the allocation of profits, losses, income, gain and credit pursuant to Article V to have substantial economic effect under the Regulations promulgated under § 704(b) of the Code, in light of the distributions made pursuant to Articles V and XI and the Capital Contributions made pursuant to this Article IV. In cases where § 704(C) and § 1.704-3 of the Regulations apply to Company property, Members' Capital Accounts shall be adjusted in accordance with § 1.704-1(b)(2)(iv)(g) of the Regulations for allocations to them of income, gain, loss, and deduction (including depreciation, depletion, amortization, or other cost recovery) as computed for book purposes, with respect to property. Notwithstanding anything herein to the contrary, this Operating Agreement shall not be construed as creating a deficit restoration obligation.

ARTICLE V - ALLOCATIONS AND DISTRIBUTIONS

§ 5.1 Allocations of net profits and net losses from operations.

Except as may be required by § 704(c) of the Code, and Section 5.2, 5.3 and 5.4 of this Article V, Net Profits, Net Losses, and other items of income, gain, loss, deduction and credit shall be initially apportioned among the Members as follows:

Richard S. W. Stoney	83%
Theodore D. Stoney, Jr., as Trustee for the Benefit of Richard S. W. Stoney, Jr. under Agreement dated November 19, 1997	04%
Laurence O. Stoney, Jr.	05%
Theodore D. Stoney, Jr.	08%

All profits and losses, etc., of the Company enterprise will be shared pro rata by the Members according to the percentage of the capital accounts of each as recorded on the books of the Company.

§ 5.2 Company minimum gain chargeback.

If there is a net decrease in Company Minimum Gain for a taxable year, each Member must be allocated items of income and gain for that taxable year equal to that Member's share of the net decrease in Company Minimum Gain. A Member's share of the net decrease in Company Minimum Gain is the amount of the total net decrease multiplied by the Member's percentage share of the Company Minimum Gain at the end of the immediately preceding taxable year. A Member's share of any decrease in Company Minimum Gain resulting from a revaluation of Company Property equals the increase in the Member's Capital Account attributable to the revaluation to the extent the reduction in minimum gain is caused by the revaluation. A Member is not subject to the Company Minimum Gain Chargeback Requirement to the extent the Member's share of the net decrease in Company Minimum Gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly a Recourse Liability or a Member Nonrecourse Liability, and the Member bears the economic risk of loss (within the meaning of § 1.752-2 of the Regulations) for the newly guaranteed, refinanced, or otherwise changed liability.

§ 5.3 Member minimum gain chargeback.

If during a taxable year there is a net decrease in Member Minimum Gain, any member with a share of that Member Minimum Gain (as determined under § 1.704-2(i)(5) of the Regulations) as of the beginning of that taxable year must be allocated items of income and gain for that taxable year (and, if necessary, for succeeding taxable years) equal to that Member's share of the net decrease in the Company Minimum Gain. A Member's share of the net decrease in Member Minimum Gain is determined in a manner consistent with the provisions of paragraph § 1.704-2(g)(2) of the Regulations. A Member is not subject to this Member Minimum Gain Chargeback, however, to the extent the net decrease in Member Minimum Gain arises because the liability ceases to be Member Nonrecourse Liability due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a Company Nonrecourse Liability. The amount that would otherwise be subject to the Member Minimum Gain Chargeback is added to the Member's share of Company Minimum Gain. In addition, rules consistent with those applicable to Company Minimum Gain shall be applied to determine the shares of Member Minimum Gain and Member Minimum Gain Chargeback to the extent provided under the Regulations issued pursuant to § 704(b) of the Code.

§ 5.4 Qualified income offset.

In the event any Member, in such capacity, unexpectedly received an Offsettable Decrease, such Member will be allocated items of income and gain (consisting of pro rata portion of each item of partnership income and gain for such year) in an amount and manner sufficient to offset such Offsettable Decrease as quickly as possible.

§ 5.5 Interim distributions.

From time to time, the Manager shall determine in their reasonable judgment to what extent, if any, the Company's cash on hand exceeds the current and anticipated needs, including, without limitation, needs for operating expenses, debt service, acquisitions, reserves, and mandatory distributions, if any. To the extent such excess exists, the Manager may make distributions to the Members in the same proportions as Net Profits and Net Losses are allocated to Members. Such distributions shall be in cash or property (which need not be distributed proportionately) or partly in both, as determined by the Manager.

ARTICLE VI - MANAGER

§ 6.1 Management by Manager. Except for situations in which the approval of the Members is required by this Operating Agreement or by nonwaivable provisions of applicable law, and subject to the provisions of §6.2, (i) the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Managers; and (ii) the Managers may make all decisions and take all actions for the Company not otherwise provided for in this Operating Agreement, including, without limitation, the following:

- (1) entering into, making, and performing contracts, agreements, leases, management contract and other undertakings binding the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and making all decisions and waivers thereunder;
- (2) opening and maintaining bank and investment accounts and arrangements, drawing checks and other orders for the payment of money and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements;
- (3) maintaining the assets of the Company in good order;
- (4) collecting sums due the Company;
- (5) to the extent that funds of the Company are available therefore, paying debts and obligations of the Company;
- (6) acquiring, utilizing for Company purposes, and disposing of any asset of the Company;
- (7) selecting, removing, and changing the authority and responsibility of lawyers, accountants, and other advisers and consultants;
- (8) obtaining insurance for the Company;
- (9) determining distributions of Company cash and other property as provided in §5.5.

§ 6.2 Actions by Manager; Committees; Delegation of Authority and Duties.

(1) In Managing the business and affairs of the Company and exercising its powers, the Manager shall act (i) through meetings and written consents as may be provided or limited in other provisions of this Operating Agreement; and (ii) through committees pursuant to §6.2 (2).

(2) The Manager may, from time to time, designate one or more advising committees, each of which shall be comprised of the Manager and one or more Members. At every meeting of any such committee, the presence of a majority of all the Members thereof shall constitute a quorum, and the affirmative vote of a majority of the Members present shall be necessary for the adoption of any resolution. The Manager may dissolve any committee at any time, unless otherwise provided in the Articles or this Operating Agreement.

(3) The Manager may, from time to time, designate one or more Persons to be officers of the Company who are not Managers. No officer need be a resident of the State of South Carolina or a Member. Any officers so designated shall have such authority and perform such duties as the Manager may, from time to time, delegate to them. The Manager may assign titles to particular officers. Unless the Manager decides otherwise, if the title is one commonly used for officers of a business corporation, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made to such officer by the Manager. Each officer shall hold office until his successor shall be duly designated and shall qualify or until his death or until he shall resign or shall have been removed in the manner hereinafter provided. Any number of offices may be held by the same Person. The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Manager.

(4) Any officer may resign as such at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Manager. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. Any officer may be removed as such, either with or without cause, by the Manager whenever in its judgment the best interests of the Company will be served thereby; provided, however, that such removal shall be without prejudice to the contract rights, if any, of the Person so removed. Designation of an officer shall not of itself create contract rights. Any vacancy occurring in any office of the Company may be filled by the Manager.

(5) Any Person dealing with the Company, other than a Member, may rely on the authority of any one Manager or officer in taking any action in the name of the Company without inquiry into the provisions of this Operating Agreement or compliance herewith, regardless of whether that action actually is taken in accordance with the provisions of this Operating Agreement.

§ 6.3 Powers of Manager. The Manager is an agent of this Company for the purpose of its business and the act of a Manager, including, but not limited to, the execution in the name of the Company of any instrument for apparently carrying on in the usual way the Company business or

business of the kind carried on by the Company, binds the Company, unless the Manager so acting has, in fact, no authority to act for this Company in the particular matter, except as provided in Section 33-44-301(e) of the Act, and the person with whom the Manager is dealing has knowledge of the fact that the Manager has no such authority.

§ 6.4 Number and Term of Office. The Manager of the Company shall be RICHARD S. W. STONEY. He shall serve as Manager of the Company for the life of the Company or upon removal as provided in Section 6.5 of this Agreement or upon resignation as provided in Section 6.6 of this Agreement. Unless otherwise provided in the Articles, the Manager need not be a Member or resident of the State of South Carolina.

§ 6.5 Removal. Any and all Managers may be removed, either for or without cause, at any special meeting of Members by the affirmative vote of two thirds of the Members entitled to vote at elections of Managers. The notice calling such meeting shall give notice of the intention to action upon such matter, and if the notice so provides, the vacancy caused by such removal may be filled at such meeting by vote of sixty six and two thirds (66.666%) percent of the Memberships represented at such meeting and entitled to vote for the election of Managers.

§ 6.6 Resignations. Any Manager may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time be specified then at the time of its receipt by the other Managers, if any. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

§ 6.7 Vacancies. Any vacancy occurring in the Managers may be filled by the affirmative vote of a majority of the Required Interest, though less than a quorum of the Managers. A Manager elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any Manager position to be filled by reason of an increase in the number of Managers shall be filled by election at an annual meeting or at a special meeting of Members called for that purpose.

§ 6.8 Place and Manner of Meetings. Meeting of the Managers, regular or special, may be held either within or without the State of South Carolina. Managers may participate in such meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

§ 6.9 First Meetings. The first meeting of the newly elected Managers shall be held without further notice immediately following the annual meeting of Members, and at the same place, unless by unanimous consent of the Managers then elected and serving, such time or place shall be changed.

§ 6.10 Regular Meeting of Manager. A regular meeting of the Managers may be held at such time as shall be determined from time to time by resolution of the Managers.

§ 6.11 Special Meeting of Manager. The Secretary shall call a special meeting of the Managers whenever requested to do so by the President or any two Managers. Such special meeting shall be held at the time specified in the notice of meeting. Except as otherwise expressly provided by statute, or by the Articles, or by this Operating Agreement, neither the business to be transacted at, nor the purpose of, any special meeting need be specified in the notice or waiver of notice.

§ 6.12 Notice of Manager's Meetings. All meetings of the Managers (annual, regular, or special) shall be held upon two (2) days written notice stating the date, place and hour of meeting delivered to each Manager either personally or by mail or at the direction of the President or the Secretary or the officer or person calling the meeting.

In any case where all of the Managers execute a waiver of notice of the time and place of the meeting, no notice thereof shall be required, and any such meeting (whether annual, regular or special) shall be held at the time and at the place (either within or without the State of South Carolina) specified in the waiver of notice. Attendance of Managers at any meeting shall constitute a waiver of notice of such meeting, except where the Managers attend a meeting for the express purpose of not objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

§ 6.13 Action Without Meeting. Any action required by statute to be taken at a meeting of the Managers, or any action which may be taken at a meeting of the Managers, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the Managers. Such consent shall have the same force and effect as a unanimous vote at a meeting.

§ 6.14 Quorum; Majority Vote. At all meetings of the Managers a majority of the number of Managers fixed by the Operating Agreement shall constitute a quorum for the transaction of business unless a greater number is required by law or by the Articles. The act of a majority of the Managers present at any meeting at which a quorum is present shall be the act of the Managers unless the act of a greater number is required by the statute, by the Articles or by this Operating Agreement. If a quorum shall not be present at any meeting of the Managers, the Managers present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

§ 6.15 Approval or Ratification of Acts or Contracts by Members. The Managers in their discretion may submit any act or contract for approval or ratification at any annual meeting of the Members or at any special meeting of the Members called for the purpose of considering any such act or contract, and any act or contract that shall be approved or be ratified by a Required Interest shall be as valid and as binding upon the Company and upon all the Members as if it shall have been approved or ratified by every Member of the Company.

§ 6.16 Interested Managers, Officers and Members.

(1) Interested Managers. No contract or transaction between this Company and one or more of its Managers or officers, or between this Company and any other limited liability company, corporation, partnership, association, or other organization in which one or more of its Managers or officers are managers or officers or have a financial interest, shall be void or voidable solely for this reason, solely, because the Manager or officer is present at or participates in the meeting of Managers or of a committee of Managers which authorizes the contract or transaction, or solely because such Manager's or Managers' votes are counted for such purpose, if:

(a) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Managers or the committee, and the Managers or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Managers, even though the disinterested Managers be less than a quorum; or

(b) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Members entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the Members; or

(c) The contract or transaction is fair as to this Company as of the time it is authorized, approved, or ratified by the Managers, a committee thereof, or the Members.

(2) Common or interested Managers may be counted in determining the presence of a quorum at a meeting of the Managers or of a committee which authorizes the contract or transaction.

(3) This provision shall not be construed to invalidate any contract or transaction which would be valid in the absence of this provision.

§ 6.17 Compensation. By resolution of the Managers, the Managers may be paid their expenses, if any, of attendance at each meeting of the Managers and may be paid a fixed sum for attendance at each meeting of the Managers or a stated salary as Manager. No such payment shall preclude any Manager from serving the Company in any other capacity and receiving compensation therefor. Members of any special or standing committees may, by resolution of the Managers, be allowed like compensation for attending committee meetings.

ARTICLE VII - INDEMNIFICATION

The Company shall indemnify the Members, and agents for all costs, losses, liabilities, and damages paid or accrued by such Members, or agents in connection with the business of the Company, to the fullest extent provided or allowed by the laws of the State.

ARTICLE VIII - TAX MATTERS PARTNER

RICHARD S. W. STONEY is designated as "tax matters partner pursuant to § 6231(a)(7) of the Code. Any Member designated as tax matters partner shall take such action as may be necessary to cause each other Member to become a notice partner within the meaning of § 6223 of the Code. Any Member who is designated tax matter partner may not take any action contemplated by §§ 6222 through 6232 of the Code without the consent of a Required Interest.

ARTICLE IX - NOTICE

Any notice or communication required or permitted to be given by any provision of this Operating Agreement shall be in writing and shall be deemed to have been given and received by the Person to whom directed (a) when delivered personally to such Person or to a Member or Manager of the Company to which directed, or (b) when posted in the United States mail if sent by registered or certified mail, postage and charges prepaid, addressed to the Person to which directed at the address of which such Person has notified the Company and all of the Member.

ARTICLE X - DISSOLUTION, LIQUIDATION AND TERMINATION

§ 10.1 Dissolution.

The Company shall dissolve and its affairs shall be wound upon the first to occur of the following:

- (1) the written consent of all Members;
- (2) upon the death, retirement, resignation, expulsion, bankruptcy, or dissolution of a member or the occurrence of any other event which terminates the continued Membership of a Member in this Company, unless there are at least two remaining Members and unless within ninety (90) days of an event described herein a Majority in Interest of the remaining Members agree in writing to continue the business of the Company; and
- (4) upon entry of a judicial decree that:
 - (i) the economic purpose of the Company is likely to be unreasonably frustrated;
 - (ii) another Member has engaged in conduct relating to the Company's business that makes it not reasonably practicable to carry on the Company's business with that Member;
 - (iii) it is not otherwise reasonably practicable to carry on the Company's business in conformity with the Articles of Organization and the Operating Agreement;
 - (iv) the Company failed to purchase the Member's distributional interest as required by § 33-44-701 of the Act; or

(v) the Managers or Members in control of the Company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to a Member; and

(5) entry of a decree of judicial dissolution of the Company under Section 33-44-801(b) of the Act or administrative dissolution as provided in Section 33-44-809 of the Act; and

(6) disassociation or death of a member who is also a manager subject to the provisions of Section 33-44-801(b)(3) of the Act, as amended from time to time.

§10.2 Winding up and termination.

On dissolution of the Company, the Manager shall act as liquidator or may appoint one or more Members as liquidator. If there is no Manager, then a Required Interest of the Members will appoint one or more Members as liquidators. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Act. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of the Members. The steps to be accomplished by the liquidator are as follows:

(1) as promptly as possible after dissolution and again after final liquidation, the liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed as applicable.

(2) the liquidator shall cause the notice described in Section 33-44-807 of the Act to be mailed to each known creditor of and claimant against the Company in the manner described in such Section 33-44-808 of the Act;

(3) the liquidator shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company (including, without limitation, all expenses incurred in liquidation and any advances described in Section 4.5) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine); and

(4) all remaining assets of the Company shall be distributed to Members as follows:

(a) the liquidator may sell any or all Company property, including to Members, and any resulting gain or loss from each sale shall be computed and allocated to the capital accounts of the Members;

(b) with respect to all Company property that has not been sold, the fair market value of that property shall be determined and the capital accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the capital accounts previously would be allocated among the Members if there were a taxable disposition of that property for the fair market value of that property on the date of distribution; and

(c) Company property shall be distributed among the Members in accordance with the positive capital account balances of the Members, as determined after taking into account all capital account adjustments for the taxable year of the Company during which the liquidation of the Company occurs (other than those made by reason of this clause (3)); and those distributions shall be made, if possible, by the end of the taxable year of the Company during which the liquidation of the Company occurs.

All distributions in kind to the Members shall be made subject to the Liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Company has committed and those costs, expenses, and liabilities shall be allocated to the distributee pursuant to this Section 10.2. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.

§ 10.3 Deficit capital accounts.

Notwithstanding anything to the contrary contained in this Operating Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the capital account of any Member results from or is attributable to deductions and losses of the Company (including non-cash items such as depreciation) or distributions of money pursuant to this Operating Agreement to all Members in proportion to their respective interests in the Company, upon dissolution of the Company such deficit shall not be an asset of the Company and such Members shall not be obligated to contribute such amount to the Company to bring the balance of such Member's capital account to zero.

§ 10.4 Article of dissolution.

After the dissolution of the limited liability company pursuant to Section 33-44-801 of the Act, the Manager or the authorized Member shall file Articles of Dissolution with the Secretary of State of South Carolina and take such other actions as may be necessary to terminate the Company. An "Authorized Member" will be a Member or Members appointed by a Required Interest.

ARTICLE XI - GENERAL PROVISIONS

§ 11.1 Books and records.

The Company shall maintain those books and records as provided by the Act and as it may deem necessary or desirable. All books and records provided for by the Act shall be open to inspection of the Members from time to time and to the extent expressly provided by the Act, and not otherwise. The Members may examine all such books and records at all reasonable times. The Company shall keep and maintain the following records in its principal place of business.

- (1) a current list that states:
 - (a) the name and mailing address of each current and past Member;
- (2) copies of the federal, state and local information or income tax returns for the Company's six most recent tax years.
- (3) a copy of the Articles and the Operating Agreement, all amendments or restatements, executed copies of any powers of attorney, and copies of any document that creates, in the manner provided by the Articles or Operating Agreement, classes or groups of Members;
- (4) unless contained in writing in the Operating Agreement:
 - (a) a writing seeking out the amount of cash, if any, and a statement of the agreed value of other property or services, if any, contributed by each Member and the times at which or events upon the happening of which any additional Capital Contributions are to be made by each Member;
 - (b) a writing stating events, if any, upon the happening of which the Company is to be dissolved and its affairs wound up; and
 - (c) other writings prepared pursuant to a requirement, if any, in any Operating Agreement.
- (5) correct and complete books and records of account of the Company.

The Company shall maintain its records, if any, in written form or in another form capable of conversion into written form within a reasonable time.

The Company shall keep in its registered office in South Carolina and make available to Members on reasonable request the street address of its principal United States Office in which the records required by this section are maintained or will be available.

The Company shall keep its books on the cash method of accounting.

§ 11.2 Amendment or modification.

The Operating Agreement may be amended and modified from time to time only by a written instrument adopted and executed by all Members. No Member or Manager shall have any vested rights in the Operating Agreement.

§ 11.3 Checks, notes, drafts, etc.

All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable to the Company shall be signed or endorsed by a designated person which may be appointed by the Manager. The designated person may be a Manager(s), officer(s), Member(s), or other person(s) as may from time to time be designated.

§ 11.4 Headings.

The headings used in this Operating Agreement have been inserted for convenience only and do not constitute matter to be construed in interpretation.

§ 11.5 Construction.

Whenever the context so requires, the gender of all words used in this Operating Agreement includes the masculine, feminine, and neuter and the singular shall include the plural, and conversely. All references to Articles and Sections refer to articles and sections of this Operating Agreement; and all references to Exhibits, if any, are to Exhibits attached hereto, if any, each of which is made a part hereof for all purposes. If any portion of this Operating Agreement shall be invalid or inoperative, then, so far as is reasonable and possible:

- (1) The remainder of this Operating Agreement shall be considered valid and operative; and
- (2) Effect shall be given to the intent manifested by the portion held invalid or inoperative.

§ 11.6 Entire agreement; supersedure.

This Operating Agreement constitutes the entire agreement of the Members and their Affiliates relating to the Company and supersedes all prior contracts or agreements with respect to the Company, whether oral or written.

§ 11.7 Effect of waiver or consent.

A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other

obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

§ 11.8 Binding effect.

Subject to the restrictions on Dispositions set forth in this Operating Agreement, this Operating Agreement is binding on and inures to the benefit of the Members and their respective heirs, legal representatives, successors, and assigns.

§ 11.9 Governing law; severability.

This operating agreement is governed by and shall be construed in accordance with the law of the State of South Carolina excluding any conflict-of-laws rules or principle that might refer the governance or the construction of this operating agreement to the law of another jurisdiction. In the event of a direct conflict between the provisions of this Operating Agreement and (a) a mandatory provisions of the Articles, or (b) any mandatory provision of the Act, the applicable provision of the Articles or the Act shall control. If any provision of this Operating Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Operating Agreement and the application of that provision to other Persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

§ 11.10 Further assurances.

In connection with this Operating Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Operating Agreement and those transactions.

§ 11.11 Notice to members of provisions of this agreement.

By executing this Operating Agreement, each Member acknowledges that he or she has actual notice of (a) all of the provisions of this Operating Agreement, including, without limitation, the restrictions on the transfer of Membership set forth in Article III, and (b) all of the provisions of the Articles. Each member hereby agrees that this Operating Agreement constitute adequate notice of all such provisions, and each Member hereby waives any requirement that any further notice thereunder be given.

§ 11.12 Counterparts.

This Operating Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

§ 11.13 Conflict provisions.

To the extent that one or more provisions of this Operating Agreement appear to be in conflict with one another, then a Required Interest, shall have the right to choose which of the conflicting provisions are to be enforced. Wide latitude is given to a Required Interest, in interpreting the provision of this Operating Agreement to accomplish the purposes and objectives of the Company, and may apply this Operating Agreement in such a manner as to be in the best interest of the Company, in their sole discretion, even if such interpretation or choice of conflicting provisions to enforce is detrimental to one or more Members.

§ 11.14 Attorney's Representations.

The parties all acknowledge that the Company's counsel, ROBERT B. PEARLMAN, prepared this Agreement on behalf of and in the course of his representation of the Company, and that:

- (1) THE PARTIES HAVE BEEN ADVISED BY MR. PEARLMAN THAT A CONFLICT EXISTS AMONG THEIR INDIVIDUAL INTERESTS; AND
- (2) THE PARTIES HAVE BEEN ADVISED BY MR. PEARLMAN TO SEEK THE ADVICE OF INDEPENDENT COUNSEL; AND
- (3) THE PARTIES HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT COUNSEL; AND
- (4) THE PARTIES HAVE RECEIVED NO REPRESENTATIONS FROM MR. PEARLMAN ABOUT THE TAX CONSEQUENCES OF THIS AGREEMENT; AND
- (5) THE PARTIES HAVE BEEN ADVISED BY MR. PEARLMAN THAT THIS AGREEMENT MAY HAVE TAX CONSEQUENCES; AND
- (6) THE PARTIES HAVE BEEN ADVISED BY MR. PEARLMAN TO SEEK THE ADVICE OF INDEPENDENT TAX COUNSEL; AND
- (7) THE PARTIES HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT TAX COUNSEL.

The undersigned, being all the initial Members, if any, as specified in the Articles, hereby certify that the foregoing Operating Agreement was unanimously adopted by the Members, effective the 21st day of November, 1997, TO WITNESS WHICH we have hereunto affixed our signatures.

WITNESS:

Kathleen Kelly
[Signature]

[Signature]
RICHARD S. W. STONEY

[Signature]
THEODORE D. STONEY, JR., as TRUSTEE
FOR THE BENEFIT OF RICHARD S. W.
STONEY, JR. UNDER AGREEMENT
DATED NOVEMBER 19, 1997.

[Signature]
THEODORE D. STONEY, JR.

[Signature]
LAURENCE O. STONEY, JR.

EXHIBIT A

<u>MEMBER</u>	<u>INITIAL CAPITAL CONTRIBUTION</u>	<u>PERCENTAGE EQUITY INTEREST</u>
1. Richard S. W. Stoney	\$	83.0 %
2. Theodore D. Stoney, Jr., as Trustee for the Benefit of Richard S. W. Stoney, Jr. Under Agreement dated November 19, 1997.	\$ 25,000	04.0 %
3. Laurence O. Stoney, Jr.	\$ 28,750	05.0 %
4. Theodore D. Stoney, Jr.	\$ 50,000	08.0 %

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
DOCKET No. _____

Charleston Capital Corporation)
)
Plaintiff)
)
v.)
)
Richard S. W. Stoney and)
The Boathouse at Breach Inlet, LLC)
)
Defendants.)
_____)

CONFESSION OF JUDGMENT OF
THE BOATHOUSE AT BREACH
INLET, LLC

The undersigned, The Boathouse at Breach Inlet, LLC, (hereinafter called "Boathouse") does hereby confess judgment and authorize the Clerk of Court to enter judgment against it in favor of Charleston Capital Corporation, or its successors and assigns, in the amount of ONE MILLION EIGHT HUNDRED TWELVE THOUSAND SEVENTEEN AND 69/100 (\$1,812,017.69), in Charleston County, South Carolina, or any other place in South Carolina or elsewhere that it may hold property subject to execution and sale. Interest shall accrue at the applicable statutory rate for post-judgment interest on the judgment from the date of the filing hereof in the office of the Clerk of Court for the Charleston County Court of Common Pleas. This Confession of Judgment is for money justly due Charleston Capital Corporation based upon the following:

1. On or about June 5, 2008, Richard S. W. Stoney (Stoney) made, executed, and delivered to First Federal Savings and Loan Association of Charleston (First Federal) a written promissory note, as amended, modified, and renewed by written instrument dated July 5, 2009, March 11, 2010, and September 28, 2011 (collectively referred to as the

Note).

2. Pursuant to the terms of the Note as last amended, Stoney promised to pay First Federal the principal sum of \$1,677,331.89, together with interest on the outstanding principal balance with a maturity date of December 5, 2011.

3. The promissory note was secured by a mortgage given to First Federal which was recorded on June 5, 2008, in the RMC office for Charleston County in Book L661 at page 184.

4. The promissory note given by Stoney was guaranteed by Boathouse.

5. First Federal assigned the mortgage and promissory note to Morrison Capital Fund VI, LLC (Morrison) pursuant to a certain Assignment of Mortgage dated December 29, 2011, and recorded in the RMC office for Charleston County in Book 0225 at page 551.

6. Morrison subsequently assigned the mortgage and promissory note to Charleston Capital Corporation pursuant to a certain Assignment of Mortgage dated November ____, 2012, and recorded in the RMC office in Charleston County in Book ____ at page ____.

7. Simultaneously with the Assignment of Mortgage from Morrison to Charleston Capital Corporation, and on or about November 7, 2012, Stoney, Boathouse, and Charleston Capital Corporation entered into a Forbearance and Modification Agreement wherein Stoney and Boathouse agreed to make certain payments to Charleston Capital Corporation as more fully set forth in the Forbearance and Modification Agreement.

8. Stoney and Boathouse failed to make the payments due under the aforesaid forbearance agreement.

9. The undersigned, The Boathouse at Breach Inlet, LLC, does hereby acknowledge that, upon entry of this Confession of Judgment in the records of a Court, its real and

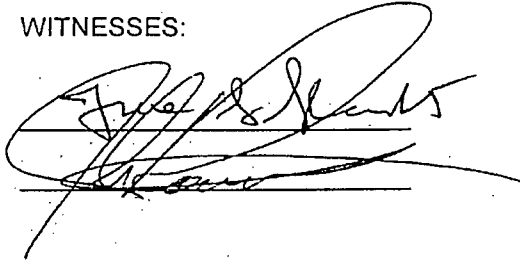
personal property will be subject to execution and sale in accordance with applicable law.

10. The Boathouse at Breach Inlet, LLC, therefore confesses judgment in favor of Charleston Capital Corporation in the amount of ONE MILLION EIGHT HUNDRED TWELVE THOUSAND SEVENTEEN AND 69/100 DOLLARS (\$1,812,017.69) plus any costs of collection, attorney's fees, and applicable post-judgment interest and authorize the Clerk of Court to enter judgment in that amount.

This 7th day of November, 2012 at Charleston, South Carolina.

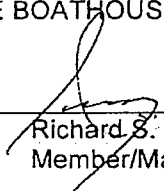
The Boathouse at Breach Inlet, LLC, by Richard S. W. Stoney, Member/Manager, being first duly sworn says that the above statement and Confession of Judgment, and the facts therein mentioned are true to its knowledge and further sayeth naught.

WITNESSES:

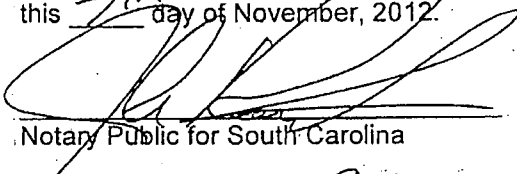


THE BOATHOUSE AT BREACH INLET,
LLC

By:


Richard S. W. Stoney
Member/Manager

SWORN to and subscribed before me
this 7th day of November, 2012.



Notary Public for South Carolina

My Commission Expires: 9-12-17



0220

COMMERCIAL GUARANTY

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
			16312R46	260 / 800		11917	
References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing ***** has been omitted due to text length limitations.							

Borrower: RICHARD S W STONEY
38 ROMNEY STREET
CHARLESTON, SC 29403

Lender: First Federal Savings & Loan Association of
Charleston
P.O. Box 118068
2440 Mall Drive
Charleston, SC 29423-8088

Guarantor: THE BOATHOUSE AT BREACH INLET LLC
38 ROMNEY STREET
CHARLESTON, SC 29403

GUARANTEE OF PAYMENT AND PERFORMANCE. For good and valuable consideration, Guarantor absolutely and unconditionally guarantees full and punctual payment and satisfaction of the indebtedness of Borrower to Lender, and the performance and discharge of all Borrower's obligations under the Note and the Related Documents. This is a guaranty of payment and performance and not of collection, so Lender can enforce this Guaranty against Guarantor even when Lender has not exhausted Lender's remedies against anyone else obligated to pay the indebtedness or against any collateral securing the indebtedness, this Guaranty or any other guaranty of the indebtedness. Guarantor will make any payments to Lender or its order, on demand, in legal tender of the United States of America, in same-day funds, without set-off or deduction or counterclaim, and will otherwise perform Borrower's obligations under the Note and Related Documents.

INDEBTEDNESS. The word "indebtedness" as used in this Guaranty means all of the principal amount outstanding from time to time and at any one or more times, accrued unpaid interest thereon and all collection costs and legal expenses related thereto permitted by law, reasonable attorneys' fees, arising from any and all debts, liabilities and obligations that Borrower individually or collectively or interchangeably with others, owes or will owe Lender under the Note and Related Documents and any renewals, extensions, modifications, refinancings, consolidations and substitutions of the Note and Related Documents.

If Lender presently holds one or more guaranties, or hereafter receives additional guaranties from Guarantor, Lender's rights under all guaranties shall be cumulative. This Guaranty shall not (unless specifically provided below to the contrary) affect or invalidate any such other guaranties. Guarantor's liability will be Guarantor's aggregate liability under the terms of this Guaranty and any such other unexpired guaranties.

DURATION OF GUARANTY. This Guaranty will take effect when received by Lender without the necessity of any acceptance by Lender, or any notice to Guarantor or to Borrower, and will continue in full force until all the indebtedness shall have been fully and finally paid and satisfied and all of Guarantor's other obligations under this Guaranty shall have been performed in full. Release of any other guarantor or termination of any other guaranty of the indebtedness shall not affect the liability of Guarantor under this Guaranty. A revocation Lender receives from any one or more Guarantors shall not affect the liability of any remaining Guarantors under this Guaranty.

GUARANTOR'S AUTHORIZATION TO LENDER. Guarantor authorizes Lender, without notice or demand and without lessening Guarantor's liability under this Guaranty, from time to time: (A) to make one or more additional secured or unsecured loans to Borrower, to lease equipment or other goods to Borrower, or otherwise to extend additional credit to Borrower; (B) to alter, compromise, renew, extend, accelerate, or otherwise change one or more times the time for payment or other terms of the indebtedness or any part of the indebtedness, including increases and decreases of the rate of interest on the indebtedness; extensions may be repeated and may be for longer than the original loan term; (C) to take and hold security for the payment of this Guaranty or the indebtedness, and exchange, enforce, waive, subordinate, fall or decide not to perfect, and release any such security, with or without the substitution of new collateral; (D) to release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or other guarantors on any terms or in any manner Lender may choose; (E) to determine how, when and what application of payments and credits shall be made on the indebtedness; (F) to apply such security and direct the order or manner of sale thereof, including without limitation, any nonjudicial sale permitted by the terms of the controlling security agreement or deed of trust, as Lender in its discretion may determine; (G) to sell, transfer, assign or grant participations in all or any part of the indebtedness; and (H) to assign or transfer this Guaranty in whole or in part.

GUARANTOR'S REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants to Lender that: (A) no representations or agreements of any kind have been made to Guarantor which would limit or qualify in any way the terms of this Guaranty; (B) this Guaranty is executed at Borrower's request and not at the request of Lender; (C) Guarantor has full power, right and authority to enter into this Guaranty; (D) the provisions of this Guaranty do not conflict with or result in a default under any agreement or other instrument binding upon Guarantor and do not result in a violation of any law, regulation, court decree or order applicable to Guarantor; (E) Guarantor has not and will not, without the prior written consent of Lender, sell, lease, assign, encumber, hypothecate, transfer, or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein; (F) upon Lender's request, Guarantor will provide to Lender financial and credit information in form acceptable to Lender, and all such financial information which currently has been, and all future financial information which will be provided to Lender is and will be true and correct in all material respects and fairly present Guarantor's financial condition as of the date the financial information is provided; (G) no material adverse change has occurred in Guarantor's financial condition since the date of the most recent financial statements provided to Lender and no event has occurred which may materially adversely affect Guarantor's financial condition; (H) no litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Guarantor is pending or threatened; (I) Lender has made no representation to Guarantor as to the creditworthiness of Borrower; and (J) Guarantor has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Guarantor agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Guarantor's risks under this Guaranty, and Guarantor further agrees that, absent a request for information, Lender shall have no obligation to disclose to Guarantor any information or documents acquired by Lender in the course of its relationship with Borrower.

GUARANTOR'S WAIVERS. Except as prohibited by applicable law, Guarantor waives any right to require Lender (A) to continue lending money or to extend other credit to Borrower; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of the indebtedness or of any nonpayment related to any collateral, or notice of any action or nonaction on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the indebtedness or in connection with the creation of new or additional loans or obligations; (C) to resort for payment or to proceed directly or at once against any person, including Borrower or any other guarantor; (D) to proceed directly against or exhaust any collateral held by Lender from Borrower, any other guarantor, or any other person; (E) to give notice of the terms, time, and place of any public or private sale of personal property security held by Lender from Borrower or to comply with any other applicable provisions of the Uniform Commercial Code; (F) to pursue any other remedy within Lender's power; or (G) to commit any act or omission of any kind, or at any time, with respect to any matter whatsoever.

Guarantor also waives any and all rights or defenses based on suretyship or impairment of collateral including, but not limited to, any rights or defenses arising by reason of (A) any right of appraisal, "one action" or "anti-deficiency" law or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale; (B) any action of remedies by Lender which destroys or otherwise adversely affects Guarantor's subrogation rights or Guarantor's rights to proceed against Borrower for reimbursement, including without limitation, any loss of rights Guarantor may suffer by reason of any law limiting, qualifying, or discharging the indebtedness; (C) any disability or other defense of Borrower, of any other guarantor, or of any other person, or by reason of the cessation of Borrower's liability from any cause whatsoever, other than payment in full in legal tender, of the indebtedness; (D) any right to claim discharge of the indebtedness on the basis of unjustified impairment of any collateral for the indebtedness; (E) any statute of limitations, if at any time any action or suit brought by Lender against Guarantor is commenced, there is outstanding indebtedness which is not barred by any applicable statute of limitations; or (F) any defenses given to guarantors at law or in equity other than actual payment and performance of the indebtedness; or (G) any defense of Borrower, whether voluntarily or otherwise, or by any third party, on the indebtedness and thereafter Lender is forced to remit the amount of that payment to Borrower's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, the indebtedness shall be considered unpaid for the purpose of the enforcement of this Guaranty.

Guarantor further waives and agrees not to assert or claim at any time any deductions to the amount guaranteed under this Guaranty for any claim of setoff, counterclaim, counter demand, recoupment or similar right, whether such claim, demand or right may be asserted by the Borrower, the Guarantor, or both.

GUARANTOR'S UNDERSTANDING WITH RESPECT TO WAIVERS. Guarantor warrants and agrees that each of the waivers set forth above is made with Guarantor's full knowledge of its significance and consequences and that, under the circumstances, the waivers are reasonable and

not contrary to public policy or law. If any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the extent permitted by law or public policy.

SUBORDINATION OF BORROWER'S DEBTS TO GUARANTOR. Guarantor agrees that the indebtedness, whether now existing or hereafter created, shall be superior to any claim that Guarantor may now have or hereafter acquire against Borrower, whether or not Borrower becomes insolvent. Guarantor hereby expressly subordinates any claim Guarantor may have against Borrower, upon any account whatsoever, to any claim that Lender may now or hereafter have against Borrower. In the event of insolvency and consequent liquidation of the assets of Borrower, through bankruptcy, by an assignment for the benefit of creditors, by voluntary liquidation, or otherwise, the assets of Borrower applicable to the payment of the claims of both Lender and Guarantor shall be paid to Lender and shall be first applied by Lender to the indebtedness. Guarantor does hereby assign to Lender all claims which it may have or acquire against Borrower or against any assignee or trustee in bankruptcy of Borrower; provided however, that such assignment shall be effective only for the purpose of assuring to Lender full payment in legal tender of the indebtedness. If Lender so requests, any notes or credit agreements now or hereafter evidencing any debts or obligations of Borrower to Guarantor shall be marked with a legend that the same are subject to this Guaranty and shall be delivered to Lender. Guarantor agrees, and Lender is hereby authorized, in the name of Guarantor, from time to time to file financing statements and continuation statements and to execute documents and to take such other actions as Lender deems necessary or appropriate to perfect, preserve and enforce its rights under this Guaranty.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Guaranty:

Amendments. This Guaranty, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Guaranty. No alteration or amendment to this Guaranty shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Arbitration. Borrower and Guarantor and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Guaranty or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act or omission, including the taking or disposal of any collateral shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This take or dispose of any collateral shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This take or dispose of any collateral, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any collateral, including any claim to rescind, reform, or otherwise modify any agreement relating to the collateral, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Guaranty shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

Attorneys' Fees; Expenses. Guarantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's reasonable attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Guaranty. Lender may hire or pay someone else to help enforce this Guaranty, and Guarantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's reasonable attorneys' fees and legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Guarantor also shall pay all court costs and such additional fees as may be directed by the court.

Caption Headings. Caption headings in this Guaranty are for convenience purposes only and are not to be used to interpret or define the provisions of this Guaranty.

Governing Law. This Guaranty will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions.

Integration. Guarantor further agrees that Guarantor has read and fully understands the terms of this Guaranty; Guarantor has had the opportunity to be advised by Guarantor's attorney with respect to this Guaranty; the Guaranty fully reflects Guarantor's intentions and prior evidence is not required to interpret the terms of this Guaranty. Guarantor hereby indemnifies and holds Lender harmless from all losses, claims, damages, and costs (including Lender's attorneys' fees) suffered or incurred by Lender as a result of any breach by Guarantor of the warranties, representations and agreements of this paragraph.

Interpretation. In all cases where there is more than one Borrower or Guarantor, then all words used in this Guaranty in the singular shall be deemed to have been used in the plural where the context and construction so require; and where there is more than one Borrower named in this Guaranty or when this Guaranty is executed by more than one Guarantor, the words "Borrower" and "Guarantor" respectively shall mean all and any one or more of them. The words "Guarantor," "Borrower," and "Lender" include the heirs, successors, assigns, and transferees of each of them. If a court finds that any provision of this Guaranty is not valid or enforceable, that fact by itself will not mean that the rest of this Guaranty will not be valid or enforceable. Therefore, a court will enforce the rest of the provisions of this Guaranty even if a provision of this Guaranty may be found to be invalid or unenforceable. If any one or more of Borrower or Guarantor are corporations, partnerships, limited liability companies, or similar entities, it is not necessary for Lender to inquire into the powers of Borrower or Guarantor or of the officers, directors, partners, managers, or other agents acting or purporting to act on their behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Guaranty.

Notices. Any notice required to be given under this Guaranty shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Guaranty. Any party may change its address for notices under this Guaranty by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Guarantor agrees to keep Lender informed at all times of Guarantor's current address. Unless otherwise provided or required by law, if there is more than one Guarantor, any notice given by Lender to any Guarantor is deemed to be notice given to all Guarantors.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Guaranty unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Guaranty shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Guaranty. No prior waiver by Lender, nor any course of dealing between Lender and Guarantor, shall constitute a waiver of any of Lender's rights or of any of Guarantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Guaranty, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Successors and Assigns. Subject to any limitations stated in this Guaranty on transfer of Guarantor's interest, this Guaranty shall be binding upon and inure to the benefit of the parties, their successors and assigns.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Guaranty. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Guaranty shall have the meanings attributed to such terms in the Uniform Commercial Code:

Borrower. The word "Borrower" means RICHARD S W STONEY and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Guarantor. The word "Guarantor" means everyone signing this Guaranty, including without limitation THE BOATHOUSE AT BREACH INLET LLC, and in each case, any signer's successors and assigns.

Guaranty. The word "Guaranty" means this guaranty from Guarantor to Lender.

Indebtedness. The word "Indebtedness" means Borrower's indebtedness to Lender as more particularly described in this Guaranty.

Lender. The word "Lender" means First Federal Savings & Loan Association of Charleston, its successors and assigns.

Note. The word "Note" means the promissory note dated June 5, 2008, in the original principal amount of \$1,720,000.00 from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

The Boathouse at Breach Inlet, LLC,
by and through its member, Laurence
O. Stoney, Jr.,

Plaintiff,

vs.

Richard S.W. Stoney, individually
and as member-manager of The
Boathouse at Breach Inlet, LLC and
Crew Carolina, LLC.

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-5463

**AFFIDAVIT OF
J. DENNIS JARVIS**

Personally appeared before me, J. Dennis Jarvis, who being duly sworn, affirms and swears
as follows:

1. I am a Certified Public Accountant and live in Hollywood South Carolina.
2. In 2012, I was retained to serve as the accountant for Defendant Richard S.W. Stoney ("Stoney"), the Boathouse at Breach Inlet, LLC ("the Boathouse") and Defendant Crew Carolina, LLC ("Crew") to prepare tax returns. I prepared these returns for tax years 2012 through 2015. Calvert and Co. purchased my business around 2017, at which time I stopped preparing the returns.
3. When I began working with Stoney, the Boathouse, and Crew, I was informed by Richard Stoney, Chip Robinson (a former Controller and consultant of the Boathouse), and Jamie Stabler (the current Controller of the Boathouse and Crew) on numerous occasions that Richard Stoney would not repay the several million dollar receivable owed to the Boathouse from Crew. I

1



learned that Crew was a conduit through which Stoney would syphon money out of the Boathouse to himself to pay for his personal expenses and other unrelated entities that were owned wholly or in part by Richard Stoney.

4. During my time working with Stoney, the Boathouse and Crew from 2012 to 2017, the Due To/From that Crew owed to the Boathouse grew considerably from \$3,578,945.77 to \$4,373,507.83. For example, from December 31, 2016 to December 31, 2017, the Due To/From that Crew owed to the Boathouse grew by \$183,532.14.

5. On July 7, 2014, I emailed Jamie Stabler, the Controller for Crew and the Boathouse, and stated “[t]he account Due To/From Crew Carolina on the books of the Boathouse went up between 1.1.13 and 12.31.13 by \$138,000. One of the first statements Chip mentioned to me when I took over filing the tax returns for Boathouse was that the Crew receivable would not be paid. I’m concerned that after posting the payroll and the management fee that the receivable is still going up.”

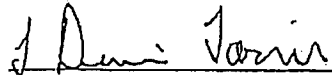
6. I expressed concerns to Stoney, Jamie Stabler, and Chip Robinson that Crew was continuing to take money from the Boathouse that had no prospect of being repaid, yet these items were being booked as “loans.” Crew did not have a cash flow stream or a tangible prospect of generating one, and, after consulting with Chip Robinson, we agreed that Stoney should treat the monies owed from Crew to the Boathouse as personal draws to Stoney that must be repaid.

7. In 2015, Richard Stoney proposed closing down Crew and writing off the \$4,041,603.03 receivable Crew owed to the Boathouse. In response, I informed him that “if Crew wrote off the payable that Richard would need to include it as income for tax purposes.”

8. When asked, Richard Stoney instructed me not to discuss the Due To/From with other members of the Boathouse and did not permit me share the Company's tax returns with certain members, including Laurence Stoney.


9. I have reviewed the affidavit of Don Hollerbach and believe that it is credible and reliable, and accurately reflects the financial realities of the Boathouse. I have no reason to dispute the contents of his affidavit.

FURTHER AFFIANT SAITH NAUGHT.

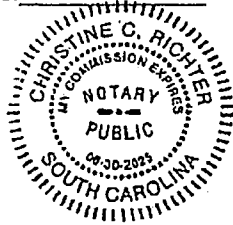
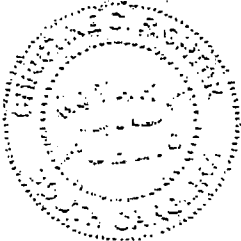


J. Dennis Jarvis

Sworn to before me this 3
day of April, 2019.



Notary Public for South Carolina
My Commission Expires: _____



Capers G. Barr III

From: Ted Stoney <ted@thestoneycompany.com>
Sent: Wednesday, October 28, 2015 2:36 PM
To: cgb@barrungermcintosh.com
Subject: FW: Breach Dist

—Original Message—

From: richard@crewcarolina.com [mailto:richard@crewcarolina.com]
Sent: Thursday, June 24, 2010 10:12 AM
To: Ted Stoney
Subject: Fw: Breach Dist

Sent from my Verizon Wireless BlackBerry

—Original Message—

From: richard@crewcarolina.com
Date: Wed, 23 Jun 2010 21:35:25
To: Laurence Stoney <losiii@aol.com>
Reply-To: richard@crewcarolina.com
Subject: Breach Dist

Left a message for you following a conversation you had with Ted yesterday. I am completely at fault for not updating you in light of the complexities of my domestic and financial situation.

That said Breach in the early fall will pay a 2010 distribution based on your 5 percent. We have been overhauling the entire Co and accounting. Very soon someone extremely capable will be running all of the financial matters. That person has tremendous experience.

Additionally we have never resolved your past distributions. As you know due to the performance of other entities no other Breach member has received a distribution. You are owed of the top of my head a 5 figure number which while I can't recall the exact amount you rejected. I am willing as I have said before to pay you reasonable interest on that sum up until our offer was extended.

We just need a number. Ted said true to past conduct you were abrasive and threatening litigation. Contrary to what you may believe I am working well with all of my creditors and day by day things are improving.

We either need to meet or instead of threats let's meet with Rudy Thomas and try and reach an agreement. If you want to waste money and time like Lori then tell me who your attorney is and I will cooperate in anyway.

Please give me a call-Richard

