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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas, 13th Circuit

Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2022-001777

Christopher Young and Biotech Restorations, LLC,..... Appellants/Respondents,

v.

Joanna Marie Paynter, a/k/a Joey Paynter, Samantha P. Nelson, and
Paynter Consulting, LLC,..... Respondents/Appellants.

RECORD ON APPEAL
VOLUME II

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	)	COURT OF COMMON PLEAS
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	)	
	)	
	)	
	)	
CHRISTOPHER YOUNG AND BIOTECH	)	
RESTORATIONS, LLC,	)	
PLAINTIFFS,	)	
	)	PARTIAL TRANSCRIPT
vs.	)	OF RECORD
	)	
JOANNA MARIE PAYNTER, A/K/A	)	
JOEY PAINTER, SAMANTHA P.	)	
NELSON, AND PAYNTER	)	
CONSULTING, LLC,	)	
DEFENDANTS.	)	
_____	)	

April 20 and 21, 2022
Pickens, South Carolina

B E F O R E:

THE HONORABLE LETITIA H. VERDIN, JUDGE; and a jury.

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P R O C E E D I N G S

1
2 THE COURT: The jurors have asked about taking notes.
3 I've told them that they can take notes. I'll give them
4 some instructions about it. But right now, we're in the
5 process of rounding up notepads for them all, so.

6 All right. A couple of quick things just about
7 trials with me just to let you know. The main thing I
8 want to -- I mean, I want everybody to try their case
9 vigorously.

10 And I say this to everybody who tries a case in front
11 of me. But this is our opportunity to show the public the
12 practice of law. And I don't like -- I don't like for us
13 to ever show a bad face to them. So if there's anything
14 we need to take up, let's take it up here at the bench, if
15 we can, you know, very quietly.

16 And the other thing is we told them that we're going
17 to finish tomorrow. And so we're going to -- we're going
18 to finish tomorrow. Okay. We might finish before then.
19 But we're going to finish tomorrow.

20 All right. Like I said, we're just waiting to get
21 notepads for everybody.

22 MR. FEW: Your Honor, a couple of things that I'd
23 like to take up.

24 THE COURT: Sure. We've got probably a couple
25 minutes to do that.

1 MR. FEW: Yes. Thank you, Your Honor.

2 So yesterday, we got into the fact that we are going
3 to vigorously object to opposing counsel trying to turn
4 this into a case about my client's tax return as some way
5 of attacking his character, and so forth. I believe
6 yesterday they said it went to his credibility.

7 And so I just wanted to kind of figure out how we're
8 going to deal with that.

9 THE COURT: Okay.

10 MR. FEW: Because my preference is when I come up to
11 something that I think might be controversial such as --
12 let's say a witness, also, starts testifying about
13 documents that we don't have. I've had opposing
14 counsel -- and I know Steve won't. I'm just giving a -- a
15 recent -- I still have some PTSD over it where the other
16 lawyer goes, we didn't get those documents in discovery.
17 I think that's something that's appropriate for a sidebar.

18 THE COURT: Yeah. So in other words, we'll just make
19 sure that when we -- I think I said, you know, at this
20 point, I'm not seeing their relevance right at this point.
21 But that very well could -- could happen.

22 Just -- and I know you'll do this, Mr. LeBlanc. But
23 if you get to the point where you feel like they are
24 relevant and you want to introduce them, we'll take that
25 up outside the presence of the jury.

1 MR. FEW: Well, and, Your Honor, he has an expert
2 witness that he intends to put up to testify about that
3 very issue.

4 THE COURT: Okay. I don't anticipate that he's
5 planning to put her up first since you're going first;
6 right? So --

7 MR. FEW: Yeah, yeah, sure. That's fine. So just as
8 long as that's out there.

9 And the other question I have -- and thank you so
10 much for your patience. And I agree a hundred percent
11 with your -- Steve and I have had several disagreements in
12 this case where we -- we to intend to do -- to meet your
13 expectations. Although I don't know if we can live up to
14 how good you told the jury as lawyers we were.

15 THE COURT: Y'all are.

16 MR. FEW: Steve might be, but --

17 THE COURT: I was not exaggerating in the least.
18 We've got two fantastic lawyers in here.

19 MR. FEW: Well, every time I finish a trial, I make a
20 list of two, three dozen things that I did dead wrong.

21 But Paynter Consulting is a Defendant in the case.
22 And they're in default. And -- and we, also, have eight
23 claims in the case, two of which, as I was going through
24 my stuff last night, really, I don't think are for the
25 jury. That would be claim two for the mandatory

1 injunction and claim seven for the constructive trust,
2 which is in equity.

3 I have never had a trial before where one of the
4 parties that we were suing was in default. But our
5 position is Paynter Consulting is in default. They are --
6 the allegations stand for what they are, which is that
7 Paynter Consulting has breached the contract. We'll put
8 up evidence of that as well. But, you know, one of --
9 our other -- one of our other claims is interference with
10 contract and a declaratory judgment of the breach of the
11 contract.

12 And I wish I was a good enough lawyer like Steve
13 maybe to know exact -- I -- I think -- I would think the
14 jury just gets told that Paynter Consulting is in default.
15 And that they have to accept that as a matter of fact.

16 And the other thing -- so there's three things, I
17 think. It's the relevancy, which you said we'll deal with
18 that after our direct testimony. And then that -- that
19 issue there.

20 And then the -- the third thing, Your Honor, is how
21 much of all of this -- some of these things are just going
22 to be straight up interpretation of this contract. And I
23 don't think that that's really a jury issue so much.

24 THE COURT: I'll just say I -- I've really got
25 questions. And, to be honest with you, I've got questions

1 why y'all are trying this in front of a jury. I mean,
2 I -- you know, y'all do it how you want to, but --

3 MR. FEW: And I -- I'll give you an answer, you know.
4 When we filed the lawsuit, you know how it is, you don't
5 know. And you do discovery and --

6 THE COURT: Sure. You don't have any idea --

7 MR. FEW: -- so I think I mentioned yesterday or two
8 days ago that we've pretty much satisfied ourselves that
9 we have not been able to prove that they have licensed the
10 technology to any third party. So we're not going to put
11 up any evidence of that because we don't have it.

12 THE COURT: Right.

13 MR. FEW: And so, you know, we thought there may be
14 damages. And, you know, Judge Gravely raised a point of
15 aren't these all speculative. And it does kind of fall
16 within that realm. Because he was not able to say here's
17 a contract that we didn't perform, you know.

18 And then that's where, frankly, the law, I think, is
19 a little confusing when you have interference with a
20 specific contract and then you have the inability --
21 the -- the just lack of effort to obtain contracts because
22 one party won't cooperate. And that's where we are really
23 in this case, so.

24 And so that is a -- so, you know, the third issue is
25 how much of this really does go to the jury. Because I

1 don't -- we do not believe that the jury should be
2 interpreting, for example, what paragraph four says about
3 whether or not Chris has a right to continue the business
4 and the partnership.

5 THE COURT: I mean, as I was looking at everything --
6 I looked at it over the weekend a little bit. And then I
7 looked -- had time, thankfully, yesterday to look at it
8 more. I have real questions if, ultimately, what the
9 jury's going to be deciding is just special
10 interrogatories, just deciding questions of fact under
11 special interrogatories.

12 I'm not sure, you know, what -- what y'all's thought
13 on it is. But, again, you know -- and I don't know what
14 y'all's thought is. It seems to me to be a cleaner case.
15 I wish I had -- I wish I had reviewed everything before
16 now a little bit to kind of see where the case stood, you
17 know, in depth.

18 But in a way, as I was sort of thinking about the
19 trial set up, I mean, it's not too late if anybody wants
20 to -- if y'all want to agree to do it non-jury. I don't
21 know if y'all would trust me to look at it or not.

22 But -- but if y'all prefer to go in front of the
23 jury, that's fine. I just think that -- that -- the only
24 thing I can think that they can do is -- is determine
25 questions of fact. And then I have to make certain

1 findings of law with regard to the contract anyway. I
2 don't know what y'all's thoughts are on that.

3 MR. FEW: Well, and -- and one of the reasons that
4 Steve had said we need to push back is, you know, we're
5 not putting up a big damages case. So that's the reason
6 we can -- we can be done so --

7 THE COURT: Yeah.

8 MR. FEW: I hope we can be done in two days.

9 THE COURT: Well, we can be. I feel real good --

10 MR. FEW: It's like that question in the deposition,
11 how much more time have you got? You know, and everybody
12 lies and says they'll be done in an hour.

13 Do you want to have a discussion about any of that?

14 THE COURT: Do y'all want to go outside and talk
15 about it for a minute or --

16 MR. LEBLANC: Well, I -- I'd like to address your
17 questions that you raised.

18 THE COURT: Yes.

19 MR. LEBLANC: I -- I believe the law is very clear
20 that contract interpretation is a matter of law. It's not
21 a question of fact for the jury to resolve. It is a
22 matter of law for the Judge to decide.

23 So if the evidence comes in of the contract, then we
24 will, certainly, be asking Your Honor to make rulings as a
25 matter of law. Is there a contract? What -- what does it

1 mean? What are the requirements? So absolutely.

2 THE COURT: Okay.

3 MR. LEBLANC: That may obviate a jury question, it
4 may not. I don't know. We have to see what the evidence
5 is that comes in.

6 THE COURT: Why don't y'all take just a couple of
7 minutes and go -- the two of y'all talk about that for
8 just a minute and just -- just get --

9 MR. LEBLANC: I want a jury trial because --

10 THE COURT: Okay.

11 MR. LEBLANC: -- if -- if Your Honor construes the
12 contract in the manner that says this is what it means,
13 then I want the jury to be able to weigh credibility of
14 witnesses --

15 THE COURT: Okay.

16 MR. LEBLANC: -- in the presentation. I think -- let
17 me -- I just heard this idea. So I -- I'll, certainly,
18 talk with Wes Few about it.

19 THE COURT: Oh, sure, yeah. Y'all take a few
20 minutes. Because they're still rounding up notepads.

21 MR. LEBLANC: I'd like to raise a couple -- a couple
22 of formalities.

23 THE COURT: Go ahead, sure.

24 MR. LEBLANC: Judges -- judges have different
25 formalities in the courtrooms. And, certainly, I can play

1 along with whatever -- whatever Your Honor wants. The
2 issue I have in this case is there's a Dr. Valerie
3 Paynter, the mother. Joanna Marie Paynter is here.
4 She's, also, a PhD.

5 THE COURT: Okay.

6 MR. LEBLANC: And there's her sister, Samantha
7 Paynter Nelson. If it's -- if it's okay with Your Honor,
8 I'd like to refer to her as Joey or Joey Paynter. Her
9 sister is Sam, Sam Nelson.

10 THE COURT: Of course.

11 MR. LEBLANC: And then Dr. Paynter as Dr. Paynter,
12 just so that the Paynters can get kind of straight.

13 THE COURT: That is -- that's great. That -- that
14 will be very helpful.

15 MR. LEBLANC: All right. The other issue is -- I
16 raised yesterday, or Monday. It seems like yesterday.

17 THE COURT: It feels like just a minute ago, doesn't
18 it?

19 MR. LEBLANC: When you don't sleep, it's -- it's all
20 one big day.

21 The dead man statute. That's a live [phonetic]
22 issue. I'm going to be objecting to any testimony from
23 Mr. Young that -- that relies on or references
24 communication with Dr. Paynter, who's deceased, or any
25 transaction with Dr. Paynter.

1 I don't know how -- and since I'm -- since I'm
2 already telling you that's the issue, I'm fine with just
3 standing up and objecting.

4 THE COURT: Yeah.

5 MR. LEBLANC: I think you'll understand what the
6 objection is. I don't want to have a speaking objection.

7 THE COURT: Well -- and, no, I understand. And --
8 and if you -- and that's perfectly fine.

9 Let me just say, that is one thing that I did some
10 research and my law clerk did some research on. I mean,
11 you know -- I mean, that is still good law in South
12 Carolina, of course. And -- and, you know, to the extent
13 that he's going to testify about anything that Dr. Paynter
14 said that is to Dr. Paynter's detriment and to his
15 benefit, I mean, there -- he's, certainly, a party and he
16 can't do that. But I know you know that, so.

17 MR. FEW: Yes, Your Honor. And what I think would be
18 extremely helpful to us -- so, apparently, Steve believes
19 that -- that this contract is not coming into evidence,
20 the one that they filed the prior lawsuit on. So,
21 perhaps, we can just go ahead -- I mean, I have a copy of
22 it. It's signed by both parties. It's the same thing
23 that they litigated in the prior case. I've -- you know,
24 we all have evidentiary battles. But the fact that this
25 contract is not coming into evidence is beyond anything

1 that I could ever imagine.

2 THE COURT: I don't want to put words in
3 Mr. LeBlanc's mouth. But I think what he has concerns
4 about is this red line contract that was attached to the
5 motion.

6 Am I correct?

7 MR. LEBLANC: No. I, also, have a problem with any
8 contract coming in. Because my clients weren't a party to
9 this contract. Dr. -- Dr. Paynter's not here. I don't
10 believe what he's going to put in as a contract was,
11 actually, agreed to by Dr. Paynter. That's the problem.
12 Oh, yeah, I -- I definitely contest the contract.

13 THE COURT: Let me take a look at this contract,
14 please. I -- I'm having --

15 Now, Mr. LeBlanc, I've been with you on a lot of
16 things here. I don't know that I can be with you on this
17 one.

18 MR. FEW: Your Honor, I -- what I did is I went back
19 and I pulled this from what Mr. LeBlanc filed. And he,
20 also, mentioned something on a request for admission
21 yesterday. And that's -- all we were saying in the
22 response to the request for admission is the contract is
23 the same contract that -- that y'all filed the prior
24 lawsuit on, which is this one.

25 At the early stages in discovery, I'm not always able

1 to go through it and look to make sure every word is every
2 word. We have no intention of introducing that ECFM 14.1
3 that Judge Cain referred to.

4 THE COURT: Okay.

5 MR. FEW: Now, what -- what I will do, when the other
6 contract that's dated January 1 -- or, actually, it was
7 signed on the 10th and the 16th of 2006, which is
8 substantially identical to this one, but for the red
9 lines. Once those two are in evidence, we absolutely
10 believe it would be our right to make a red line of that
11 and show it to the jury to assist the jury in
12 understanding the differences in those two contracts.

13 But we would not -- it would, essentially, be the
14 same thing. And if Your Honor doesn't allow us to do
15 that, those would be two things into evidence. And it
16 would be, basically, a demonstrative exhibit --

17 THE COURT: Just to show the difference in the two.

18 MR. FEW: -- to show, here are the changes.

19 THE COURT: The other -- the other contract -- you
20 just reminded me. The other contract, was it signed by
21 both parties?

22 MR. FEW: Yes, Your Honor.

23 MR. LEBLANC: It was signed --

24 MR. FEW: It was not notarized by Kay Barrett. I
25 have a copy of it as well.

1 MR. LEBLANC: The difference between the two
2 contracts is paragraph four.

3 THE COURT: Okay.

4 MR. LEBLANC: The first paragraph four that you have.

5 THE COURT: Right.

6 MR. LEBLANC: The last two sentences are not in this
7 contract. So a lot of their arguments about rights
8 pertain to those last two sentences.

9 Here's why that document -- document's not
10 admissible. Because I could show up tomorrow morning with
11 another document signed by him and Dr. Paynter or -- I'm
12 sorry. I could sign -- I could show up tomorrow morning
13 with another document signed by Dr. Valerie Paynter that
14 says in 2006 or 2005, she gave everything to me. And
15 there's nobody here to contest that.

16 That's why the dead man rule is such a binary,
17 inadmissible evidence rule. If he wants to get that
18 contract in, he needs to get somebody besides himself to
19 come in and testify to say, yes, I'm aware of a contract
20 between the Plaintiff and Dr. Paynter --

21 THE COURT: I think that's why he's got Kay Barrett
22 on his witness list, because she was the notary.

23 MR. LEBLANC: If she -- if Kay Barrett testifies,
24 absolutely, Your Honor, the first contract comes in,
25 absolutely. She's not the notary on the second one.

1 If Rose Dalton, whoever that is, if she comes in and
2 testifies, absolutely, the second one can come in,
3 absolutely.

4 THE COURT: Do you know who Rose Dalton is?

5 MR. FEW: I think she was a -- a paralegal of some
6 sort and --

7 Do you remember who she -- was she down here?

8 MR. CHRISTOPHER YOUNG: I think she was associated
9 with Clemson.

10 MR. FEW: Your Honor, I think that the -- the major
11 distinguishing factor to the extent that that's even
12 required that his testimony is not enough -- and, you
13 know, Mr. LeBlanc's hypothetical is -- is good for law
14 school discussion.

15 But they filed a prior lawsuit on this exact same
16 agreement. It was litigated to the extent that Judge Cain
17 said that is a valid agreement. And he was referring to
18 the May 30th document. So we have a litigated case with
19 an order from the Judge that says this is it.

20 So -- and -- and I don't think that -- that Chris --
21 even in any other case, we don't have to bring in the
22 notary. Because contracts don't even require a notary.

23 THE COURT: Okay.

24 MR. FEW: And so if -- if there were other documents,
25 it's just -- I'm -- I'm sort of at a loss for that whole

1 argument --

2 THE COURT: I understand.

3 MR. FEW: -- particularly with their prior lawsuit.

4 MR. LEBLANC: If I may respond.

5 THE COURT: Yes.

6 MR. LEBLANC: The prior lawsuit was between Paynter
7 Consulting, LLC, and the Plaintiffs in this case. Paynter
8 Consulting, LLC, never filed what you have in front of
9 you, never filed it. I said it in response to the motion
10 for summary judgment. Paynter Consulting did not file
11 that agreement.

12 They referred to an agreement. But we've always
13 contested whether those last two sentences were added by
14 Mr. Young after Dr. Paynter died. We don't have that. We
15 don't have any evidence that those last two sentences in
16 paragraph four existed in any agreement.

17 And, in fact, the -- the e-mail that was submitted
18 with their motion for summary judgment talked about we're
19 doing this to change the parties. That's all we're doing.
20 And you can see the red lines where Dr. Valerie Paynter is
21 changed to Paynter Consulting, LLC, and Christopher Young
22 is changed to Biotech Restorations. Okay. That's fine.
23 I don't have any problem with that. But it doesn't say
24 anything about this 10 percent to the heirs, or any of
25 that stuff.

1 MR. FEW: Your Honor --

2 MR. LEBLANC: Again --

3 MR. FEW: -- Judge Cain's order on Page 1 on May 30,
4 2006, Paynter and Biotech entered into a partnership
5 agreement for purposes of conducting business related to
6 the treatment of contaminated soil.

7 For the record, Paynter Consulting, I believe, was
8 formed with the assistance of this Memminger Wiggins
9 attorney -- and I've got it in here -- on -- in February
10 of 2006. Paynter Consulting did not even exist as an LLC
11 when they signed that first agreement.

12 Now, she had previously referred to her business as
13 Paynter Consulting. But she did not -- she did not have
14 it as -- as a formed LLC in the State of South Carolina.
15 And we can -- I can find it or we could just check on the
16 secretary of state. So absolutely. And then she filed
17 her lawsuit under the name of Paynter Consulting, LLC. So
18 they -- they knew what agreement they were litigating.

19 MR. LEBLANC: See, Your Honor, this is the problem we
20 have. Everything that Mr. Few just said was referring to
21 something Dr. Paynter said. How do we refute that?
22 That's why the dead man statute says you can't introduce
23 testimony about that.

24 THE COURT: I -- I understand. I understand. But
25 we've got signed and notarized agreements in this case.

1 Based on what I'm seeing, I'm going to allow these
2 agreements into evidence. And I understand your strenuous
3 objection to it.

4 MR. LEBLANC: Right. So when he authenticates it,
5 that's when I'll object. I don't need to say anything
6 more. I'm protected?

7 THE COURT: Sounds good.

8 MR. LEBLANC: You understand it's --

9 THE COURT: Yes, sir, absolutely.
10 Yes, sir.

11 MR. FEW: Your Honor, while we're --

12 THE COURT: Now, if he starts talking about the
13 formation and all the background to it and all that, and
14 talking about it, you know, in his discussions with her in
15 regard to this, now, that's covered -- I believe that's
16 covered under the dead man statute and he's not allowed to
17 do that.

18 MR. LEBLANC: And -- and just so I understand, you're
19 referring to the second contract --

20 THE COURT: Yes.

21 MR. LEBLANC: -- and not the first -- but the first
22 one. That's what I'm not understanding. If Kay Barrett
23 can testify -- we don't have a problem with the first one
24 coming in. It's just the second one doesn't have a
25 witness who can authenticate it.

1 THE COURT: I'm going to -- I'm going to allow it to
2 come in. She's a notary. And it looks like she had a
3 valid notary at that time, January 15th, 2014. So I'm
4 going to allow both contracts into evidence. And, again,
5 I understand your -- your strenuous objection.

6 MR. FEW: And, Your Honor, just for housekeeping
7 purposes while we're on it, there's, also, this
8 handwritten agreement that we were going to introduce. I
9 don't -- I'm trying to limit the number of exhibits that
10 we send back. I do think this is -- I was going to
11 definitely ask about this and maybe publish it to the
12 jury. But if you want to, I can hand this up now and we
13 can go over the same thing.

14 MR. LEBLANC: I don't know where it ends.

15 MR. FEW: It ends at these three. That's why we've
16 done the discovery.

17 THE COURT: All right.

18 MR. FEW: Steve, do you need a copy of that one?

19 MR. LEBLANC: No. I've got it.

20 THE COURT: Well, this is from 2004. Is -- I mean,
21 is this --

22 MR. FEW: Well, this just -- just goes to show that
23 that's the first agreement that they entered into. And
24 he'll -- he'll -- Chris will testify that Valerie Paynter
25 approached him and that that's her handwriting.

1 THE COURT: I mean, does that -- I mean, does that
2 add anything to any of this? I mean, it doesn't -- I
3 don't -- how does that hurt y'all in any way when you're
4 talking about you've got these two agreements --

5 MR. LEBLANC: Because it becomes cumulative. And
6 it's -- again, you just heard how he would proffer that is
7 Chris Young's going to testify that Valerie Paynter did --
8 right there, it's -- that's in the dead man statute.

9 We have no way to refute anything. We have no way to
10 test the veracity of it. That -- that's why the statute
11 exists. And -- and understand, Your Honor, these parties
12 got into a fight in this previous litigation 14, 16 months
13 before Dr. Paynter passed.

14 So I think that colors this whole thing. If they
15 really had these issues, they don't have a dead man
16 statute problem if they take them up with Dr. Paynter
17 while she's alive. But if they wait -- and she was
18 terminally ill back in 2015. If they wait 16, 18 months,
19 now -- now, they can say whatever they want. That's the
20 problem we have.

21 MR. FEW: Your Honor, we're, certainly, not saying
22 whatever we want. We're -- we're presenting it to you --
23 to yourself, as the Judge, if we choose to go non-jury or
24 to the jury.

25 I don't have the August 2015 complaint memorized.

1 But I was never under any understanding that there was a
2 dispute about how these -- how the relationship came to
3 be. Those are the three con -- those are the three
4 documents that show that there was a written agreement
5 between Valerie Paynter and Chris Young, the handwritten
6 one, the typewritten one, and then the second typewritten
7 one, which was after the time that they -- they both
8 became LLCs.

9 And so, you know -- and -- and I think we're -- I try
10 to respond to most anything. But that prior lawsuit was
11 filed in August of '15. The parties were in the process
12 of doing an accounting.

13 However, when Mr. LeBlanc says that that lawsuit was
14 solely for accounting, that's not true. There were 11
15 claims in it. They had breached fiduciary duty. They had
16 damages claims. They had a disillusion claim. The only
17 thing they litigated was the arbitration. By February of
18 2016, Judge Cain had issued his order sending it to
19 arbitration. Then they spent two more months with Sam and
20 Eric arguing over whether or not it would be with or
21 without prejudice. So -- so there was -- it wasn't like
22 we --

23 THE COURT: I got you. Y'all are making everything a
24 lot harder than it has to be. Okay. I'm just telling
25 you. I mean, I'm just saying to both of you, you're

1 making it a lot harder than it has to be.

2 MR. FEW: Well, I'm just trying to get these three
3 things into evidence.

4 THE COURT: They were -- no. They -- they entered
5 into this agreement. Again, you know, nothing outside the
6 four corners of the document that she said to influence or
7 impact him, especially to her detriment and his benefit.

8 But I'm -- I'm going to let the '04 handwritten
9 agreement in as well, subject to -- subject to
10 authentication. But, again, I don't want -- there can't
11 be testimony outside of this. Well, and we thought this.
12 And, therefore, she did this and blah, blah. We've got
13 the written agreement. That's it. Okay.

14 MR. FEW: And, Your Honor, can -- just to, hopefully,
15 speed us along when we get into trial, I'd like to be able
16 to step outside with Chris and kind of explain some of
17 this to him --

18 THE COURT: Okay.

19 MR. FEW: -- before he testifies.

20 THE COURT: Have you all got pads for the jury?

21 THE BAILIFF: I've got eight pads.

22 THE COURT: Eight pads.

23 THE BAILIFF: The clerk has gone to get some. He
24 said he may have to leave the grounds to get some.

25 THE COURT: Okay.

1 MR. FEW: I've got a few extras, maybe.

2 THE BAILIFF: I have a hodgepodge of pads here.

3 MR. FEW: But, Your Honor --

4 THE COURT: Do you mind letting the jury know that
5 that's what we're doing is rounding up some pads for them?

6 MR. FEW: I do think that it is inevitable that Chris
7 will testify about some of the things that went on during
8 the course of the partnership. We aren't -- I don't
9 intend to get him to say Dr. Paynter said this or
10 Dr. Paynter said that. But he is, certainly, we believe,
11 entitled to -- and I can work around it if -- if there's a
12 disagreement, or maybe we just get it on the record
13 that -- that it doesn't go in, if that's your decision.

14 But that he can testify about what was going on and
15 how -- what he did to respond to what was going on without
16 saying, you know, she said this or --

17 THE COURT: Well, he, certainly, can talk about
18 things, you know, that he did. That's -- that's,
19 certainly, fine. But -- but Mr. LeBlanc is -- is
20 absolutely correct, we can't go into, you know,
21 anything -- of course, he -- he thinks the dead man
22 statute covers these agreements as well. But anything
23 outside the four corners of these agreements that she
24 said, yeah. Because there's no way to --

25 MR. FEW: And we have the same concern with the dead

1 man statute about other witnesses saying what she was
2 going to say.

3 THE COURT: Understood, understood. Yeah, I think
4 Mr. LeBlanc knows it goes both ways.

5 MR. LEBLANC: Absolutely. Your Honor, here's -- and
6 I think I said this. My paralegal kicks me sometimes.
7 But Your Honor does understand that request to admit
8 number one that we submitted in response to their motion
9 for summary judgment asks the simple question of, is this
10 the contract you're suing on? Because we don't know. We
11 don't know. Because if it's the same thing that was filed
12 in the other suit by us, we --

13 THE COURT: No. I do understand. I do understand.
14 And I -- I think there may have -- as I look at this, I --
15 I wondered about that, if there may have been some
16 strategy involved in that. But, I mean, ultimately, now
17 that we're at the end of discovery.

18 MR. FEW: Your Honor, that -- that -- that was an
19 answer early in the case by me. I'm sure I consulted with
20 my client. And my point was we're litigating the same
21 thing. That's what -- that's what the answer says.
22 Anything that's different than what you litigated in 2015
23 is not what we're admitting to. That was not a denial.

24 THE COURT: I got you.

25 Okay. Have you got enough pads?

1 THE BAILIFF: I have 10 pads. I can bust some of
2 these down.

3 MR. FEW: I've got -- I, actually, brought some
4 extras.

5 MR. LEBLANC: Did you write any notes on them?

6 MR. FEW: I wish I'd have known.

7 THE COURT: The Plaintiff is a great guy.

8 THE BAILIFF: I just need four more.

9 MR. FEW: Two?

10 THE BAILIFF: Four.

11 MR. FEW: Four. You can split --

12 THE BAILIFF: And I can bust a couple of those down.

13 MR. FEW: Well, that's fine, you know, you buy the
14 most expensive ones and they don't tear. And you buy the
15 cheap ones and they -- and then you can't see what your
16 notes are.

17 THE COURT: That is true.

18 MR. FEW: Could -- in view of those things, if it --
19 if -- if I may --

20 THE COURT: Five minutes.

21 MR. FEW: Five minutes with Chris.

22 And, Steve, do you want to talk, too?

23 THE COURT: It's totally up to y'all --

24 MR. LEBLANC: This is about whether to go non-jury or
25 not?

1 THE COURT: Yeah.

2 MR. LEBLANC: And I'm having a little difficulty
3 understanding that. Why would that be a good deal?

4 THE COURT: I'm not saying it's -- I'm not saying
5 that -- that it would be a good deal. I'm just saying to
6 y'all, it does seem like there are a lot of issues of law
7 that -- that will be in this. And I'm, ultimately, trying
8 to -- I was noodling with the verdict form in this and
9 what it would look like. And it seemed like it was going
10 to be a lot of special interrogatories. But that's fine.
11 I mean, I'll do them.

12 MR. FEW: Your Honor, we -- we -- we believe that
13 once the evidence is -- is in and the Court has seen more
14 of it that we would be entitled to a judgment as a matter
15 of law. And we're going to have evidence that they were
16 trying to sell the asset --

17 THE COURT: Okay.

18 MR. FEW: -- during -- during the litigation. And if
19 that's not a breach --

20 THE COURT: Okay.

21 MR. FEW: -- of the contract, then --

22 THE COURT: Go talk for five minutes --

23 MR. FEW: Okay.

24 THE COURT: However -- whatever part of it you want
25 to use for anything -- talk to your client and talk to

1 Steve. Y'all do it.

2 Thank you.

3 Oh, we can give you your pads back, Wes.

4 MR. FEW: Usually, I show up at trial or deposition
5 and I'm grabbing one and there's only, like, three pages
6 left in it.

7 THE COURT: Thank you. I appreciate it.

8 (WHEREUPON, a break was taken.)

9 (WHEREUPON, Plaintiff's Exhibit Nos. 1, 2, and 3 were
10 marked for identification only.)

11 THE COURT: All right. Are we ready to proceed?

12 MR. FEW: Yes, Your Honor.

13 THE COURT: All right. Very good then.

14 MR. FEW: Your Honor, I don't intend to go there, but
15 my understanding would be that -- and I don't intend to go
16 there. But I just want to go ahead and bring it up so we
17 can run through this really smoothly. That if someone had
18 made a statement that had a legal effect, then there could
19 be an exception to that. Again, I don't intend to go
20 there. But when I was going through my mind about what
21 exactly could be said about any of this --

22 THE COURT: If it's somebody dead -- if it's somebody
23 dead, I -- I can't see how you're going to get into that.

24 MR. FEW: Nothing that they -- yeah. That's fine.

25 THE COURT: I -- you know, I just can't go quite as

1 far as saying that anything that's written and signed
2 can't ever be looked at, but, yeah.

3 MR. FEW: Sure. And that was going to be part of one
4 of -- a motion that I was going to be making is that
5 nobody can -- if there is anything they can say, that
6 would seem to be the only category of something that --
7 that they could testify about.

8 THE COURT: Right now, I'm not seeing it. But that's
9 kind of a cross that bridge --

10 MR. FEW: Well, if they stated an intention to
11 [inaudible] and are not going to comply with that
12 contract, or something like that, then I think that could
13 have legal effect. But I don't -- I don't think we even
14 need to go there.

15 THE COURT: Okay.

16 MR. FEW: That was really just -- I just wanted to --

17 THE COURT: Okay.

18 MR. FEW: -- in case it did come up later on.

19 THE COURT: Okay. That sounds good, yes.

20 (WHEREUPON, the jury came into open court at
21 approximately 10:17 a.m.)

22 THE COURT: Good morning, ladies and gentlemen.

23 Thank you so much for your patience with us.

24 Number one, we wanted to get note pads for you and --
25 because y'all asked to take notes. And I think that's a

1 really great idea. I'll talk to you about -- a little bit
2 about using the note pads. And I'm sorry. I should have
3 been more prepared for that.

4 Second, we've been taking up some matters of law in
5 here that are really streamlining this case. These
6 attorneys have been here since early this morning working,
7 getting -- getting this case even more streamlined for you
8 all. So although we did have to make you wait, which is
9 really truly my pet peeve to ever leave a jury waiting on
10 me or us, we were in here working, I assure you.

11 I need to go over a few things with you just very
12 briefly before we get started.

13 But, first, Madam Clerk here is going to swear you
14 in.

15 THE CLERK: If y'all don't mind standing. And raise
16 your right hand.

17 (WHEREUPON, the jury was sworn at approximately.
18 10:19 a.m.)

19 THE CLERK: Be seated.

20 THE COURT: Thank you so much.

21 INTRODUCTORY REMARKS

22 THE COURT: All right. As I said, we're going to go
23 over a few procedures that we're going to follow. The
24 first thing I want to say because hearing the caption of
25 the case reminded me, Mr. LeBlanc here mentioned, we have

1 a couple of Dr. Paynters in this and Ms. Paynter in this.
2 And so as not to confuse you, there is a lady who is
3 deceased, that was Dr. Paynter. She's going to be
4 referred to as Dr. Paynter. And then everyone else, he's
5 going to refer to them by their first name, just to keep
6 it straight in everybody's head. But he didn't want you
7 to think he was being casual, or anything like that. So I
8 just wanted to let you know that to begin with.

9 What I'm going to say to you now is not intended as
10 my charge on the law. You'll get my charge on the law
11 after you've heard the testimony and evidence in this
12 case, and you've heard closing arguments by the attorneys.
13 I just wanted to explain the procedure.

14 You're going to determine the facts in this case from
15 the testimony and evidence that you receive. You are the
16 sole judge of the facts. And a trial judge cannot comment
17 on the facts in any way in this case -- in any case. If I
18 do comment on those facts, please, disregard it. The law
19 does not allow me to have an opinion in this case, and I
20 don't.

21 The same law that makes me -- makes you the judge of
22 the facts makes me the judge of the law. I'm going to
23 give the law to you, as I said, at the end of the case. I
24 may have to make some legal rulings throughout the case.
25 And you're to take that law as I give it to you and apply

1 the facts as you find them to be. And from that, you'll
2 come up with your verdict.

3 Until I advise you not to -- to begin -- until I
4 advise you to begin your discussions, please, don't
5 discuss this case with anyone, even with your fellow
6 jurors. You'll probably have this case overnight. And,
7 once again, please, don't discuss it with your family or
8 do any kind of independent research. The only reason I
9 say that is because we don't want you to make your mind up
10 about any fact at all until you've heard all the testimony
11 and evidence in this case.

12 In just a moment, the attorney for the Defense is
13 going to -- excuse me, the attorney for the Plaintiff and
14 the attorney for the Defense are going to give what they
15 call an opening statement. That's not evidence. It is
16 just what they believe the issues in the case to be. And
17 they're going to lay out their case very briefly for you.

18 From time to time, the attorneys may say that they
19 need to approach on a matter of law. If it's something we
20 can take up real quickly here at the bench, then we'll do
21 so. If it's something where I need to excuse you for just
22 a moment to your jury deliberation room, then we can --
23 we'll -- we'll do that as well.

24 I don't want you to think we're hiding the ball from
25 you in any way. I told you earlier that I sometimes --

1 that I'm not allowed to make a comment on the facts.
2 Sometimes, in ruling on a matter of law, I do have to
3 comment on the facts. So as not to do that in front of
4 you, we'll either do it quietly up here or I'll just ask
5 you to step back there. But I assure you, if you're there
6 waiting on us, then we'll be in here working. And we will
7 very much endeavor not to keep you sitting and waiting as
8 long as you were earlier.

9 Also, on breaks, if you need a snack or you need
10 anything like that, these bailiffs are so wonderful. They
11 want you to be comfortable and enjoy your time here.

12 You're going to have to determine the credibility of
13 witnesses. Credibility just means believability. You do
14 that like you do every day. You look to see if anybody
15 has any interest or bias in the outcome of the case. You
16 look to see how the witness acts on the witness stand.
17 You match it up with what the physical evidence might be,
18 or what other witnesses have said. And from that, you'll
19 determine who, if anyone, you believe is telling the
20 truth.

21 Our alternates, you'll just stay with us throughout
22 the balance of the trial. If I have to replace a juror
23 for some reason, remove a juror, then you could just step
24 in just as if you were one of the 12 jurors all along.

25 Thank you so much for your service.

1 Sir, right here on the front row in the black shirt,
2 could you tell me your name, please?

3 JUROR #124, EARL REID: Earl Reid.

4 THE COURT: Mr. Reid, would you serve as foreperson
5 of this jury?

6 JUROR #124, EARL REID: I will.

7 THE COURT: Thank you so much. I appreciate it.

8 You'll lead the discussion when you go to your jury
9 deliberation room. You're sitting in the exact right
10 seat. You'll lead the discussions in the jury
11 deliberation room and, ultimately, sign and date the
12 verdict form.

13 Nobody's opinion is more important than another. I
14 just have to ask someone to -- to be in charge while
15 they're in there.

16 If you'll do that, I'd appreciate it.

17 And as I do appreciate all of your service.

18 This is an important case to both sides. And, as I
19 said, fantastic attorneys on both side. So I appreciate
20 so much your service here.

21 All right. Any objection to my initial instructions
22 from the Plaintiff?

23 MR. FEW: No, Your Honor.

24 THE COURT: Any from the Defense?

25 MR. LEBLANC: No, Your Honor.

1 THE COURT: All right. We're ready to go.

2 Mr. Few.

3 MR. FEW: Thank you, Your Honor.

4 May it please the Court.

5 THE COURT: Yes, sir.

6 OPENING STATEMENTS

7 MR. FEW: Ladies -- ladies and gentlemen of the jury,
8 I'm Wes Few. I grew up here in South Carolina. I
9 practice over in Greenville. Y'all might have figured
10 that out yesterday from the opening -- from the jury
11 selection.

12 This is my client, Chris Young, and his wife, Ann
13 Young. Chris lives in North Carolina.

14 What -- what we're trying to do today to try this
15 case in a couple of days is something that lawyers are not
16 really good at. And I can promise you I'm not really good
17 at it either. But we're going to do our dead level best
18 to present to you the evidence that you need to understand
19 what's happened here, and be able to render a verdict
20 based on what is going to boil down to being a contract
21 that was entered into. I'll go through the claims in just
22 a minute.

23 Chris Young was born in Michigan, went to college,
24 played sports there. He had a career as a probation
25 officer for a while. Then he worked for Dow Chemical. In

1 the 1990s, he found himself in the remediation business
2 and -- specifically, soil remediation, not groundwater
3 remediation, but soil remediation. And he worked with a
4 guy. And he started to learn a bit about the business.
5 And as the jobs came up, he started making connections
6 with people.

7 And then around 1998, he got referred to Clemson
8 University to a gentleman up there that they hired to do a
9 bench study. And what -- basically, what they did is they
10 took some soil from the contaminated site. They carried
11 it over to the lab.

12 They had a hypothesis about what might work. And
13 it's kind of -- and this is way over my head. But, like,
14 what type of bugs would do good to eat this stuff up and
15 make it go away. And these are like -- and, again, I'm
16 over my head -- PCBs, toxaphene, dioxins. These are not
17 like volatile organics that get down in the ground water.
18 This is stuff that's just in the soil. And if someone
19 owns that piece of property and they go to sell it,
20 they're not going to be able to sell it. Okay.

21 So I don't really know to what extent it's a -- it's
22 a major health hazard. But you can't sell the property
23 unless you clean it up. And so that's the business Chris
24 got involved in.

25 They hired a gentleman from Clemson to do some work

1 for them. His name is Ellis Kline. His name was
2 mentioned yesterday. He may or may not be called as a
3 witness here if -- if we don't need him.

4 The bench study worked well. And then Chris ended up
5 working with Mr. Kline in another venture for several
6 years. And he'll -- he'll tell you about that. That's
7 not altogether relevant, other than it's just part of his
8 background.

9 And then in 2004 -- and we've already -- certain
10 things are going to go into evidence and certain things we
11 may present. And -- and we have three exhibits here that
12 have already been entered into evidence. And every time I
13 do a trial, I tell myself and I tell my staff, I say, I
14 want to try this case with this many exhibits. Well, the
15 last two that I had --

16 THE COURT: Well, they're not in evidence yet. I
17 hate to interrupt you.

18 MR. FEW: Oh.

19 THE COURT: They're not in evidence yet. So I -- I
20 just want to be clear.

21 MR. FEW: All right. That's fine, Judge.

22 THE COURT: There has to be a foundation laid. But
23 you do intend to introduce them --

24 MR. FEW: Yes, Your Honor. My -- my apologies.

25 THE COURT: No. That's fine.

1 MR. FEW: So I usually tell myself and I make a list
2 because I know that jurors -- this is all new to you.
3 You -- you've never seen me until a couple days ago.
4 You've never seen Chris. We're getting ready to tell you
5 about a bunch of technologies.

6 The simple thing that we're really doing here is
7 we're interpreting a contract that Chris Young and
8 Dr. Valerie Paynter entered into in May of 2006. And
9 we're going to show you the documents and the activities
10 that led up to that, and what happened thereafter, and why
11 we're here today. Okay.

12 So the good news is in previous trials, I started
13 with 25 and ended up with 82. And then most recently
14 in -- in October, I started with a goal of 50 and ended up
15 with over a hundred. But today, my goal is 10. And so
16 far, we're at three. So if I can keep it under 10, that's
17 what I intend to do.

18 Because we just can't present everything to you. We
19 can't go through every single e-mail. And we don't need
20 to go through all those e-mails. All you really need to
21 do is understand who these people are, why they became
22 affiliated with each other, what were the terms by which
23 they agreed to be affiliated with each other, and did they
24 abide by those terms, and did they act in good faith.

25 Okay. Another thing that we've done to streamline

1 this case, my client, he doesn't look it, but he's 70
2 years old. And if we were to come in here -- we're not
3 going to be presenting a whole bunch of arguments about
4 damages and try to get a big damages verdict. The damage
5 that he has suffered that we're going to present to you is
6 that the business of the partnership came to a halt. Even
7 while Dr. Paynter was still alive, they quit doing
8 business with him. You're going to see evidence of that.
9 And I won't -- I'll just save that for you.

10 And then after the -- there's a provision in their
11 agreement that says that the heirs of the surviving
12 partner will get 10 percent of the business related to the
13 Factor. The Factor is the name that Dr. Paynter gave to
14 this technology that, basically, allows them -- and let me
15 go back to my -- you'll find that I -- I kind of dance
16 around sometimes. So bear with me.

17 They took that soil out of the lab and they took it
18 over to Clemson. And they tested it in small batches.
19 And they said, hey, we think this is going to work.

20 So then they'll go out to the actual site and they'll
21 mark out some plots, like four by ten, or something.
22 Chris will explain that to you. And they test it out
23 there. And if it works, then they do a full blown batch.
24 And they take it out there and they put it on the soil.
25 And what they're trying to do in this case -- again, over

1 my head, you don't really -- but I -- I know people are
2 interested, you know. You don't want to -- I don't -- I
3 don't want to just say, hey, it was this black box that
4 we're not going to tell you anything about. I do think
5 it's important that you understand, basically, what was
6 going on.

7 They would then send -- so there would be -- step one
8 would be the labs. Step two would be field testing. And
9 then step three would be to go out there and make it work.
10 And once you've made it work, then the property owner is
11 happy.

12 And what you're going to hear testimony about is the
13 value of this thing. And -- and people are going to use
14 extraordinary words to describe this. And there's going
15 to be lots of people not named Chris Young or Dr. Valerie
16 Paynter that wanted to be a part of this and -- and that
17 sought to be a part of it. And -- and that may be one of
18 the reasons that it fell apart. But there's no doubt that
19 they considered there was a lot of value to it.

20 Chris -- we have eight claims in the case. Okay.
21 Overwhelming; right? Don't be overwhelmed. Again, it all
22 gets back to the contract. What did the contract say?
23 What did the contract require them to do?

24 Contracts set forth rights, obligations,
25 responsibilities. Another thing about a contract is --

1 and I could geek you out on this, but I -- I won't. Any
2 time you enter into a contract, you have to abide by that
3 contract in good faith with the person that you enter it
4 into with. For example, if you have a landscaping
5 contract, you have to treat that landscaper with good
6 faith. Partnership agreements are different.

7 Partnership agreements carry a much higher level of
8 responsibility amongst the partners to each other. It's
9 what's known as a fiduciary relationship. It's a
10 fiduciary obligation. The best example of that would be
11 if you had someone in your family and they've passed away
12 and they had an estate that needed to be administered and
13 the siblings lived in Texas, and Idaho, and Pennsylvania.
14 And -- but there was a will that set forth -- sometimes,
15 they'll appoint a trustee. And that trustee is
16 responsible to make sure that junior gets his money when
17 he turns 30, but not before. That if money is set aside
18 for junior to go to college that he abides by that.
19 That's a fiduciary relationship. It's the highest level
20 of relationship that exists.

21 Now, that doesn't mean that Chris and Dr. Paynter
22 owed themselves a fiduciary relationship with respect to
23 his, you know, pole beam business in his backyard or his
24 trucking business. And I'm not saying he had one of
25 those. They owed themselves a fiduciary obligation with

1 respect to everything that had anything to do with the
2 partnership. We have claims for breach of a fiduciary
3 duty.

4 An unusual aspect here of this case is that
5 Dr. Paynter passed away in 2017. Before she passed away
6 and -- she -- and with the assistance of one of her
7 daughters who's here that -- "Joey" is the way Mr. LeBlanc
8 wants us to refer to her. So I'm going to -- I'm going to
9 do that as well. I'm going to try to stick to that as
10 well.

11 Joey was involved with her mom. They went and found
12 an attorney in Greenville. And they filed a lawsuit in
13 August of 2015 on these very same agreements that we're
14 litigating here today. Okay.

15 That case resulted in an order from -- it, actually,
16 got moved out of state court into federal court. And you
17 don't need to be worried about that, but that's what
18 happened. And the Judge looked at the agreement and said
19 the agreement's valid. It has an arbitration provision.
20 Y'all need to go to arbitration and resolve your dispute
21 in arbitration. You've probably heard of arbitration
22 agreements. Okay.

23 This arbitration agreement was a little bit unique.
24 And I'm going to go into that for just a second. Because
25 I want to give you a prelude of why it was important, as

1 to why the prior litigation ended up sort of in -- well,
2 it ended up in an order to arbitrate. And -- and they
3 never arbitrated.

4 The -- the agreement says that you would go to
5 arbitration and the arbitrator would take the steps
6 necessary to restore the partnership. I've been doing
7 this 23 years. I've never seen an arbitration agreement
8 that had that provision in there, but this one did. And
9 the Court enforced it and said, you have to go to
10 arbitration.

11 So we believe -- and what I'm trying to do right now
12 is just give y'all an introduction to the facts and then
13 let you draw your own conclusions once you hear the
14 evidence. But I'm going to step outside of that right now
15 and just tell you that we believe the evidence is going to
16 prove to you that the Paynters did not want to go to
17 arbitration because they did not want to restore the
18 business of the partnership as Dr. Paynter and Chris Young
19 agreed to in 2006.

20 They wanted to separate from the partnership. And
21 the reasons you're going to see are, very unfortunately,
22 Dr. Paynter was having health issues. She had cancer.
23 The -- Joey had moved home to live with her. There will
24 be evidence of -- of her infirmity and -- and her
25 inability to perform work. She had bad health. And she,

1 eventually, passed away.

2 Well, the partnership agreement says that the heirs
3 will get 10 percent of the ongoing profits. And they
4 would, also, get 10 percent of any sale of the Factor. So
5 the whole partnership is built around this thing called
6 the Factor.

7 And what you're going to see in the language of these
8 agreements is an important word. And the word is
9 "exclusive." Because they agreed that the partnership had
10 exclusive use of the Factor. And that's why they had the
11 provision in there that it would protect the heirs of
12 whichever one of them passed away first.

13 So if Chris had passed away first or if he had become
14 incapacitated, Dr. Paynter could have continued the
15 business of the partnership. That's what they agreed to.

16 We believe that given the interest of third parties
17 and people that wanted to pay money for this -- and you'll
18 see evidence of that. It was -- you know, we're
19 talking -- it's -- it's more money than I've ever had
20 any -- any opportunity to look at. That -- they made the
21 decision that they didn't want to abide by the partnership
22 agreement. That they wanted to, instead, have it
23 100 percent.

24 And I believe that they're going to testify that they
25 own it 100 percent, despite the fact that their mother's

1 lawsuit in 2015 was brought in the name of Paynter
2 Consulting, LLC, only. Okay. She didn't bring it in her
3 individual name. That tells you that the partnership
4 agreement that she entered into under the name of Paynter
5 Consulting, LLC, which was formed I'm pretty sure in
6 February of 2006 and then signed in -- in May of 2006, is
7 the agreement that they were intending to litigate.

8 And that provision had the 10 percent provision. And
9 we believe that they decided they wanted a hundred percent
10 and not 10 percent. And, again, my understanding is that
11 will be the Defendant's testimony on the stand is that
12 they do, in fact, own it.

13 What you're, also, going to learn as part of the
14 evidence -- and this relates to the breach of their
15 agreement, as well as the breach of the fiduciary duty.
16 So it's one thing to breach an agreement in the contract.
17 When you enter into a partnership agreement, you -- you
18 agree to work with your partner for the benefit of the
19 partnership. You, also, have certain disclosure
20 obligations under a fiduciary responsibility that you
21 wouldn't have to anyone else.

22 For example, if you are trying to do business on the
23 side, that's not permissible. And that would be a breach
24 of the agreement. And you, also, have to let somebody
25 know if -- if that's what you're doing.

1 So you might think that if something were important
2 enough to hire a lawyer in 2014 and write letters to
3 outline the dispute that they were having -- and, again,
4 this is going to show that this was Dr. Paynter and her
5 daughters that were involved in every step of the way in
6 selecting the attorneys, working with the attorneys,
7 working with the negotiations. That if the ownership of
8 the Factor all the sudden no longer became in the name of
9 Paynter Consulting, LLC, this is something that's worth --
10 alleged to be worth millions and millions of dollars,
11 maybe tens of millions of dollars -- I don't know -- that
12 there would be a lot of documents to show how ownership of
13 the Factor got transferred. Well, guess what? There are
14 none.

15 And the story that you'll hear from the Defendants is
16 that right after the 2015 litigation was sent to
17 arbitration, that that was when their mother gave them the
18 Factor. And then they owned the Factor to the exclusion
19 of the rest of the world without regard to what the
20 partnership agreement said. You'll even see evidence that
21 they told people that we just don't think the partnership
22 agreement exists, even though they went to court to get a
23 disillusion that they did not get.

24 So the partnership still existed. There's no
25 documents to corroborate that -- that, in fact, a transfer

1 occurred.

2 And another thing that you'll see evidence of is that
3 even after they alleged that that transfer occurred from
4 the mother to the daughters in May of 2006, right after
5 the final order from the federal court came out that said
6 go to arbitration that there's no -- again, there's no
7 documents to show that. And that they continued to
8 negotiate with third parties under the name Paynter
9 Consulting, LLC.

10 So they represented to the world and different people
11 when they were trying to work out a deal without telling
12 him any of this that there is no partnership agreement and
13 we're going to do a deal with you under the name Paynter
14 Consulting, LLC. And then their testimony in this case is
15 going to be, well, we owned it. The daughters owned it,
16 which is completely contrary to what is in the partnership
17 agreement. And we'll -- it's only two pages, thank
18 goodness. So you won't have any trouble directing your
19 attention to that.

20 Let me tell you about our claims. Again, we're not
21 going to be asking for a huge damages award. We do think
22 that one of the claims warrants a potential punitive
23 damage award. That will be up to you to decide that based
24 upon the conduct. Okay.

25 So we're -- we have a breach of contract claim with

1 Paynter Consulting, LLC. Well, Paynter Consulting, LLC,
2 did not answer the complaint. They're in default. So the
3 Judge will -- will give you instructions on -- on how to
4 handle that. We believe that it's going to be along the
5 lines that -- that there is a breach that Paynter
6 Consulting, LLC, cannot dispute that they breached the
7 contract because they chose not to defend the lawsuit.

8 We, also, have claims against the daughters for
9 interference with the contract. In simple terms, what we
10 have to prove for an interference of contract claim, which
11 is an intentional claim -- so we have to prove that they
12 intentionally interfered with the contract and caused its
13 breach. We don't think you're going to have any trouble
14 coming to the conclusion that that is, in fact, what
15 occurred here once you -- once you hear the evidence.

16 What we have to prove in that situation is that the
17 Defendant knew of the contract. That they took action to
18 procure -- procure the breach of the contract, and that
19 that caused Mr. Young and his company, Biotech
20 Restorations, damages.

21 The damages that he suffered was that the partnership
22 shut down. They didn't tell him -- they didn't tell him
23 what they were telling these other people, which is our
24 lawyers said that that partnership agreement doesn't exist
25 and we have the right to sell this technology to you.

1 As you can imagine, those other people had questions.
2 It will be a question for me and for you as well, did they
3 disclose the existence of the prior lawsuit when they were
4 negotiating with these other people? But, again, those
5 are things that are relevant.

6 But the main thing in this case is just the language
7 of the contract. Is it a valid contract? They filed a
8 lawsuit on it. So it's kind of hard for them to say that
9 it's not a valid contract. The prior court said it was
10 valid and sent the prior case to arbitration.

11 We, also, have a claim for what's called conversion.
12 And that, basically, means that you took something and
13 you -- and you didn't give it back. And so they held on
14 to possession of the Factor and wouldn't give it back.

15 Another claim that we have is what's called aiding
16 and abetting a breach of a fiduciary duty. Okay. I
17 explained to you a minute ago about what a fiduciary duty
18 is. It's an extremely high duty that you owe to someone
19 in the highest confidence. Basically, you -- you really
20 can't withhold anything from them.

21 That claim is very similar to the intentional
22 interference with a contract. But we're bringing that
23 claim, also. Because while Dr. Paynter was alive, she
24 would have been the individual that would have owed the
25 fiduciary duty to Mr. Young through her partnership,

1 her -- Paynter Consulting, LLC, to his LLC, Biotech
2 Restorations, LLC. And so, again, they knew about it.
3 They assisted in it.

4 We have a claim for breach of fiduciary duty. That
5 is a claim, I believe, that's against Paynter Consulting
6 only. But what you're going to see is the question that I
7 had. And you're going to see that this is not a situation
8 where the Defendants in this case came in long after the
9 fact and are having to put the pieces together of what
10 happened. They were involved all along. They were
11 involved.

12 Joey will testify, I believe, that she is, in fact,
13 the one that found the attorney, Mr. Englehardt, to bring
14 the prior lawsuit. And she was involved in -- in the
15 handling of the lawsuit, as well as negotiations to sell
16 the asset during the pendency of the 2000 -- I call it the
17 2015 lawsuit and that she was heavily involved in all of
18 those things.

19 And so, essentially, Joey was taking the lead amongst
20 the sisters to help her mom run the partnership. So, in
21 effect, she was -- while she may not have gotten paid as
22 an employee of Paynter Consulting, LLC, she stepped in and
23 was, essentially, acting on behalf of Paynter Consulting,
24 LLC.

25 So because she's a separate person, there's the claim

1 for interference with the contract. You -- we believe you
2 could find she was acting on behalf of Paynter Consulting,
3 LLC, during the lifetime of her mother. And those actions
4 would, in fact, represent a breach of the contract by
5 Paynter Consulting, LLC, for which the -- Joey was
6 involved in.

7 So a corporation has to act through its people. So
8 just because the corporation, Paynter Consulting, was
9 owned exclusively by Valerie Paynter, which is what we've
10 always understood, then, you know, she can act on behalf
11 of the corporation or -- or other people can act on behalf
12 of the corporation. And you'll see evidence that -- that
13 they did that as well.

14 The final claim that we have is we're going to be
15 asking you to declare that this is what's known as a
16 fraudulent conveyance. And the Court identifies certain
17 factors that you look at when you're making that
18 determination of is it a fraudulent conveyance.

19 In other words, was this a conveyance of the asset
20 from Paynter Consulting, LLC, to the daughters that was
21 intended to defraud Chris or to defraud others? We're
22 going to present evidence of that.

23 The key things are it was a gift so there was no
24 consideration for it. It was made within the family.
25 They maintained control of it. In fact, they continued --

1 and then the other thing we think is very important to --
2 to a fact finder is that they continued to represent to
3 third parties that they were going to do a deal with them
4 in the name of Paynter Consulting, LLC. And then in this
5 lawsuit, they have a completely different story, which is,
6 oh, well, my mother gave it to me in May of 2006. And we
7 own it. And so this lawsuit should have no effect because
8 we own it.

9 So that's our case. We look forward to presenting it
10 to you. I'm going to do everything I can amongst my list
11 of exhibits to highlight only the ones that we think you
12 need to understand. And then, of course, we'll respond to
13 anything that the -- that the Defendants have to say on
14 cross potentially with some additional exhibits.

15 But thank you so much for your time.

16 This is a very important matter. All jury trials are
17 important. But this is -- again, this is a case about a
18 contract and what these parties agreed to, and how, in
19 fact, they performed or failed to perform under the
20 contract.

21 THE COURT: Thank you.

22 Mr. LeBlanc.

23 MR. LEBLANC: Thank you, Your Honor.

24 May it please the Court.

25 THE COURT: Yes, sir.

1 MR. LEBLANC: Good morning.

2 I'm Steve LeBlanc. I'm a solo practitioner in
3 Greenville, South Carolina. Seated to my right is my
4 paralegal, Kim Parker. And immediately to her right is
5 Joey Paynter, Dr. Paynter's daughter.

6 Joey Paynter and Samantha Paynter are sisters. And
7 they're the only surviving children of Dr. Paynter. She
8 had an -- an infant child that died early. So these are
9 Dr. Paynter's only surviving children.

10 As Mr. Few said in his opening statement, this case
11 involves bioremediation technology. And I can tell you
12 that's complicated stuff.

13 I know firsthand because a long time ago in a former
14 life, I got out of the Navy. I was in the Navy,
15 submarines, got out, worked for -- as a consultant to the
16 Energy Department. And part of that job took me down to
17 the Savannah River site where they have a bioremediation
18 treatment facility. And I went down there and helped them
19 do their work.

20 And -- and it's pretty much like what Mr. Few said,
21 bugs, microorganisms, indigenous products interact with
22 some contamination and make it go away. I can't tell you
23 if they eat it and it goes away, or if they change the
24 chemical composition and it goes way. I don't know. I'm
25 not smart enough to know that.

1 I'm not sure you're going to hear any testimony
2 during the court -- during the trial about that on any
3 more of a specific level than that. It's -- it's sort of
4 magic. The bugs eat the contamination and it goes away.
5 That's all I know about it.

6 In November of 2019, I was practicing in Greenville,
7 South Carolina, in my own practice and Mr. Few and I,
8 actually, had offices one office part, same floor, same
9 building, one -- one vacant office or conference room
10 between us. And I got a call from one of my former
11 partners at another law firm, who said, hey, somebody
12 called me and they have a problem with bioremediation and
13 didn't you do some of this work a long time ago? You
14 might want to call them.

15 So I called them, Joey Paynter. And I talked to her.
16 And she pretty much described in a nutshell what Mr. Few
17 went through. Her mother, Dr. Paynter, and Mr. Young got
18 together in a partnership to -- for a business that would
19 remediate contaminated soil.

20 Now, Joey Paynter told me some stuff about who came
21 up with it. And I didn't hear that from Mr. Few, that
22 Dr. Paynter, actually, came up and developed this stuff.
23 I did hear that somebody named Mr. Kline and Chris Young
24 discovered this and developed it.

25 Well, you're going to be asked to decide some issues

1 in this case. And the simple answer is, if they
2 discovered it, we wouldn't be here right now. If they
3 knew what the -- the Factor was, if they knew what the
4 secret was to this bioremediation, we wouldn't be here.

5 So, again, Joey Paynter said, hey, my mom and Chris
6 Young got together in a business. They had a falling out.
7 My mom passed away. And we've now been sued.

8 So let me put that a little bit -- that chronology a
9 little bit in perspective. You heard from Mr. Few that
10 they had a falling out and a lawsuit in 2015. Dr. Paynter
11 died on September 4th, 2017. So there was no litigation
12 in between there. And my clients -- this lawsuit was
13 filed September 11th, 2019. So they asked me if I could
14 help them out. I'm happy to do that. I think it's an
15 interesting case. I think they need help.

16 I don't [sic] listen to podcasts before I heard about
17 this podcast, Mandy Matney's Murdaugh mystery podcast, or
18 something along that lines -- those lines. Now, if you're
19 in South Carolina, you've probably heard about a couple of
20 murders and a boating accident in the lower part of the
21 state. That's what that podcast deals with. Mandy Matney
22 has a podcast.

23 This case -- I'm not saying this case in any way is
24 involved in that. The reason I bring that up is because
25 in every episode -- almost every episode -- it's a weekly

1 podcast -- Mandy Matney starts out with, I don't know who
2 shot John Smith. And then the podcast goes on and
3 provides evidence that sort of leads -- leads you one way
4 or the other. And then the next episode, I don't know who
5 was driving the boat when the accident happened. And then
6 she presents evidence and goes on. This case, to me, is a
7 lot like that.

8 I don't know how Dr. Paynter's bioremediation
9 technology works. I don't think you're going to hear any
10 testimony about how it works. It's not really important
11 to this case. I don't know who discovered the technology.
12 But, as I said before, we wouldn't be here if somebody
13 other than Dr. Paynter discovered it because they would
14 know it.

15 A trade secret like the recipe for Coke is protected
16 by keeping it secret. There's not a title. There's not a
17 deed. You don't file anything. I'm a patent attorney.
18 Mr. Few's a patent attorney. Patents document stuff and
19 you get exclusive rights for 20 years. But trade secrets,
20 they last forever as long as you keep them a secret.

21 So I don't know who discovered this technology. But
22 I do know who knows it. Dr. Paynter knew it. Joey knows
23 it. Sam may have known it. That's all -- that's the only
24 testimony you're going to hear is who knew this
25 technology.

1 I don't know the value of this technology. I can
2 tell you it sounds valuable. Gosh, if you have
3 contaminated property that can't be sold, can't be built
4 on, it has no value. And if you can come in and fix that
5 property, this is some valuable technology. But I don't
6 know what the value is. You'll hear testimony about what
7 money was made or not made over the years. I don't know
8 the value of the -- the technology.

9 But it is enough -- it's valuable enough -- and you
10 know this now. It's valuable enough that -- after five
11 years of having a disagreement from 2015 to September of
12 2019, it's valuable enough that somebody sued somebody
13 else's daughters over it. So they're trying to get it.

14 I don't know what -- what agreement existed between
15 Mr. Young and Dr. Paynter. I don't know, wasn't there.
16 Her sister -- her daughters weren't there either. They
17 don't know. They weren't a party to the agreement. So I
18 don't know. It will be a -- that's a fact that you all
19 will have to determine.

20 I don't know why Chris Young didn't take up these
21 issues with Dr. Paynter sometime between 2015 when she
22 sued him and September 4th, 2017, when she died. If he
23 had these issues -- and -- and you heard in opening
24 statement, they didn't hide the fact that they weren't
25 sharing the secret with him anymore. They didn't hide the

1 fact that they're just going to sell it to somebody else.
2 They didn't hide any of that.

3 I don't know why if they knew all that back then that
4 he didn't file a suit back then. I don't know that --
5 why. I don't know why he then waited when -- Dr. Paynter
6 died on September 4th, 2017, why he waited until
7 September 11th, 2019, two full years to sue her daughters.
8 I don't know that answer. That will be up to you to
9 figure it out.

10 I don't know why Chris Young is suing Joey and Sam.
11 I don't -- they're not a party to this agreement. They
12 never agreed to anything with Chris Young or his company.
13 They're their mother's heirs. They're her children. You
14 all have to decide why that happened that way.

15 This should be an interesting case. We are going to
16 streamline it as much as possible. But there's --
17 that's -- that's a fence that's got two sides to it. We
18 do want to move the case along. We don't want to bore
19 you. We don't want to take up more time than we need to.

20 We're very familiar with the facts and the evidence.
21 Sometimes, we, actually, go too fast. And we don't
22 connect all the dots. And, you know, we get a dot here
23 and we think it's connected here. And you're saying, what
24 about this?

25 So, you know, the -- the -- we want to go fast, and

1 deliver it, and -- and expedite things as much as
2 possible. But we, also, don't want to miss points. So,
3 you know, we'll, certainly, be looking at the jurors for
4 feedback of if you have a quizzical look, or if you're
5 bored, or if -- if you're paying attention. That -- that
6 will tell us if we're going too fast or slow, those kind
7 of indicators. But I hope that we can present the
8 evidence clearly. I think it's a clear case. And I think
9 it will be a matter for you to decide the facts, just as
10 Judge Verdin said.

11 Thank you.

12 THE COURT: Thank you.

13 Mr. Few, are you ready to call your first witness?

14 MR. FEW: Yes, Your Honor.

15 Could we approach for one quick moment?

16 THE COURT: Sure.

17 (WHEREUPON, a bench conference was held.)

18 MR. FEW: Your Honor, may it please the Court.

19 The Plaintiff calls the Plaintiff, Chris Young.

20 THE COURT: All right.

21 THE CLERK: If you would, raise your right hand.

22 WHEREUPON,

23 CHRISTOPHER YOUNG,

24 after first having been duly sworn, testified as follows:

25 THE CLERK: Okay. Please state your full name for

1 the record.

2 THE WITNESS: Christopher Young.

3 THE CLERK: Okay. You can have a seat.

4 THE BAILIFF: Get up on the mic.

5 THE WITNESS: Get up. I'm long legged, so.

6 THE COURT: There we go. You got it.

7 THE WITNESS: How's that?

8 THE COURT: Yeah. That's great.

9 One thing I will warn you about this microphone is,
10 sometimes, if you're looking at me or you're looking at
11 the jury, you know, if you're not looking straight ahead,
12 it -- you'll kind of fade out a little bit.

13 THE WITNESS: Try to stay forward. Okay.

14 THE COURT: All right.

15 MR. FEW: Thank you, Your Honor.

16 THE COURT: Thank you.

17 MR. FEW: Okay. Ladies and gentlemen, usually, I
18 like to get back over here where you can look at the
19 witness. So you may have to -- but you're -- I encourage
20 you to look at Chris, and listen to his answers, and --
21 and hear what he has to say.

22 DIRECT EXAMINATION

23 BY MR. FEW:

24 Q Mr. Young, tell the jury a little bit about yourself,
25 where you were born, where you grew up, those types of

1 things.

2 A I grew up in a little town, Midland, Michigan. When
3 you're from Michigan, they teach you to use your hands.
4 So it's kind of in the middle of -- hometown of Dow
5 Chemical, for those of you that may be familiar with that
6 little company. My dad was a chemist for the company.
7 And his dad was a chemist for the company. And I grew up
8 there, went to high school there, went college just down
9 the road.

10 I ended up working for Dow, going to work for Dow in
11 the [inaudible] division where I was responsible for
12 developing -- helping the company develop agricultural
13 chemicals. And that's when I first got involved in
14 environmental work.

15 And I want to apologize, too. I'm -- I'm getting
16 over a case of bronchitis. So if I go to the water bottle
17 or cough occasionally, I promise I'm not contagious. I'm
18 just getting over that bout.

19 It was during my work with Dow -- I was involved in
20 the development of a -- of a compound called Dursban,
21 which you can get over the counter or you were able to
22 until quite recently and it was banded. And I was
23 involved in an aerial application on a test plot that got
24 over sprayed with the compound and went into -- I didn't
25 go into convulsions, but it made me pretty sick for a long

1 time. And I -- I still think it's why I've got this wide
2 part in my hair.

3 Chemical exposures became something of a concern for
4 me. And I got very interested in it. And I started doing
5 research into some of the compounds that Dow was making, a
6 number of which are pretty -- pretty toxic compounds.

7 And I -- I started writing some internal memos within
8 the company about toxicity issues and the long-term
9 effects that some of these compounds could have on people.
10 Because many of these compounds are -- are retained within
11 our bodies over a long period of time. And as they
12 accumulate, then they can trigger reactions within the
13 body that aren't necessarily good. For instance, if it
14 suppresses the immune response for any period of time,
15 then you become susceptible to a whole host of other types
16 of illnesses.

17 So I started writing these documents, all internal
18 documents. And, eventually, I found myself called to the
19 president's office, who advised me that I could either be
20 part of the Dow family or I could be a social worker, but
21 I couldn't be both.

22 So I made a decision, at that point, that I would,
23 you know, go in search of another -- of another
24 opportunity. And that's when I started pursuing
25 environmental work, so.

1 Q And you're -- you're giving a -- a good narrative
2 answer. But help the jury understand -- let's -- let's
3 talk about decades, like, when did you graduate high
4 school?

5 A 1969.

6 Q Okay. And then you went to college somewhere?

7 A Right, graduated in '72 from Central Michigan
8 University, and then some post-graduate work at --

9 Q And that's the Chippewas; right?

10 A Yes.

11 Q Okay. And I'm sure that you're -- you're 6'6", I
12 believe, or used to be?

13 A I was taller when I had more hair. But, yeah, I
14 played some short center with Central.

15 Q You played sports in college?

16 A Right.

17 Q All right. And let's kind of go through just your --
18 what you did that led you up to that. When you were
19 talking about Dow a minute ago --

20 A Right.

21 Q -- just go back to that. What -- what decade was
22 that? In the 70s? 80s? 90s?

23 A 70s, early 80s, right.

24 Q All right. And your -- your wife is here today;
25 right?

1 A She is.

2 Q Okay. And when did y'all get married?

3 A We were married in 1983.

4 Q And y'all have children?

5 A Well, we have two. I have one by a previous
6 marriage. And Ann has one by her previous marriage.

7 Q And so you were telling the jury that you were
8 working in -- in the chemical business?

9 A Right.

10 Q What did you then do when you -- when you -- you
11 said -- I think you testified you made the decision to
12 leave Dow. What -- that was in the 80s, I believe?

13 A Yeah. The -- a gentleman by the name of Dan
14 Vermucci [phonetic], who was the national sales manager
15 with Dow went over to another company called Velsicol
16 Chemical. Velsicol, at the time, was the countries
17 largest producer of a termite control product called
18 Chlordane. And if you live in a house that's more than
19 25 years old, it was probably treated with Chlordane. And
20 Chlordane has been banded.

21 And so my job with Velsicol was to go around the
22 country and remove all of the remaining Chlordane stocks
23 from the shelves and try to convince pest control
24 operators to replace it with a safer product.

25 So I did that work until I met the folks at Clemson

1 University, and Dr. Kline, and Dr. Paynter, and the folks
2 at -- at that lab.

3 Q Is Midland the lower peninsula or the upper
4 peninsula?

5 A It's the lower peninsula. It's very cold.

6 Q Yeah. Okay. So before we get -- and you -- you
7 talked about Clemson, you mentioned that. Tell the jury
8 how you got -- when did -- when did your career move you
9 into the remediation business, and a little bit about what
10 happened, and then what led you up to the -- to the time
11 that you approached Clemson University.

12 A When -- when I was working for Velsicol, I was
13 transferred to South Carolina. So Ann, and the kids, and
14 I moved to Columbia where we lived for 10 years. Excuse
15 me. The kids went to Irmo High. And I was working for
16 Velsicol on this research project to develop a termite
17 control product that was less toxic, would last as long
18 as, and still do a good job on termites.

19 And it was at that time when I -- I met the folks at
20 Clemson University. I was over there at a symposium on
21 chemical -- chemical termite control products. And I met
22 Dr. Ellis Kline. And I don't believe I met Dr. Paynter at
23 that point in time. I'm sure I hadn't.

24 And I got interested in his work. And shortly after
25 that, I started a -- a small -- small company called

1 Resource Technologies Environmental out of Columbia. I
2 left Velsicol. And the purpose of Resource Technologies
3 was to clean up contaminated sites using bioremediation.
4 And bioremediation, really, it -- it's not fairy dust.
5 And it's not magic. It -- it's just science, basically.
6 Because what it amounts to is using the natural bacteria
7 in soil --

8 MR. LEBLANC: Objection, Your Honor. This -- this
9 sounds like expert testimony. And I don't believe he's
10 qualified to testify to this --

11 THE COURT: Well, I'm -- I'm going to allow him just
12 to give the background on it. And I don't think the jury
13 wants or needs the detail.

14 All right. Go ahead.

15 THE WITNESS: Yeah. We were -- we were simply using
16 very basic bioremediation technologies -- techniques to
17 clean up gas station sites. In -- in South Carolina, all
18 these abandoned gas stations were sitting around,
19 literally thousands of abandoned gas stations.

20 So South Carolina created under -- through South
21 Carolina DHEC a program called the SUPERB Program to get
22 these sites cleaned up. Because, you know, gasoline that
23 was allowed to stay in the soil was finding its way into
24 groundwater. And whether we realize it or not, we all
25 drink groundwater.

1 BY MR. FEW:

2 Q So you -- what are the ways in which you've
3 encountered funding that would be provided to do a clean
4 up? You've just mentioned the State of South Carolina.

5 A Right.

6 Q What were the other just categories of -- of what
7 would motivate someone to spend the money to clean a site?

8 A The SUPERB Program was, basically, funded under two
9 separate gallon gas taxes in South Carolina. A private
10 individual, if you own a contaminated site and the state
11 requires you to take some action to mitigate any
12 environmental effects of that -- that that polluted site
13 might have -- unfortunately, the cost of clean up has --
14 has gotten very expensive. If you've ever been
15 unfortunate enough to own a piece of contaminated
16 property, you know that.

17 But if you can't afford to do it, then a lot of times
18 you're forced just to shut down the property or business
19 and declare bankruptcy. And that's, unfortunately, what
20 happens in many cases.

21 If the problem is big enough, if the property or the
22 chemical company or, you know, the generator of pollution
23 is large enough and the problem is large enough, then the
24 state can step away and call in EPA and declare the site a
25 Superfund site. Then federal funding comes into play for

1 the clean up.

2 Q Did you ever do any -- did your work ever involve any
3 Superfund sites?

4 A We worked at a couple of Superfund sites. But we
5 tried to avoid them, simply because the state agencies
6 were easier to work with than the federal government, no
7 surprise there.

8 Q Okay. So tell the jury about how you came to meet
9 Ellis Kline. What did -- what -- how did you meet him?
10 What did he do for you?

11 A Ellis had just moved his lab from Milkhaus South
12 Labs. It was, actually, an old milk house at Clemson
13 University where he built his lab. And he transferred the
14 lab over to the CAT center, the center for applied
15 technology. And he set up his lab there. And I -- and I
16 met him there.

17 And in the course of my business in Columbia, I had
18 run into a client in Brunswick, Georgia, a prospective
19 client, a company called Hercules Chemical. And Hercules
20 Chemical was the manufacturer of an insecticide called
21 toxaphene.

22 And the toxaphene is widely credited with having
23 saved the cotton property of the south, because it was the
24 only insecticide that could control boll weevil. But as
25 its name implies, it's a highly toxic compound. It's a --

1 it's a highly chlorinated compound. It's very toxic.

2 And the -- the property in Brunswick was broadly
3 contaminated with toxaphene. And we were asked if we
4 could possibly develop a bio, an on-site remedy, a way to
5 clean up that soil without Hercules having to dig up all
6 of it and haul it away to a primitive landfill.

7 Q Chris, tell the jury a little bit more, just so they
8 can get a feel for how did you find that -- how did you
9 come into contact with -- how did you come to know -- who
10 did you work with --

11 A Well --

12 Q -- the fact that this site was there --

13 A Yeah.

14 Q -- and that someone had to clean it up. And why did
15 they have to clean it up?

16 A Well, by that time, we'd done -- we'd been in
17 business cleaning up gas station sites around South
18 Carolina, North Carolina, Georgia for -- you know, for a
19 couple of years. So we had a reputation.

20 And -- and a gentleman by the name of Ed Copeland,
21 you know, found out about us, called me in Columbia,
22 and -- and said, look, I've got a friend who runs the
23 Hercules plant, Dave Smith, you know. He's the manager
24 here. Could you come down and meet with him, see if you
25 could help him deal with this toxaphene problem. Because,

1 he said, they've got a price to dig it up and haul it
2 away. It's going to cost them, you know, \$80 million.

3 Q Was the -- were they -- was the Government -- was a
4 regulator making them clean that up? Is that your
5 understanding?

6 A Yeah. Georgia EPD was -- was all over them. They
7 were getting ready to shut down portions of the plant, you
8 know, curtail production. It was -- it was going to be a
9 big mess.

10 Q So is it fair to say you approached Dr. Ellis Kline
11 about how he might could help you?

12 A Exactly, yeah. Ellis -- Ellis had particular
13 expertise in the field. Ellis was the first -- the -- the
14 first scientist in the United States who was allowed to
15 release a genetically engineered micro in the environment.
16 It was in tomato research out in California. So he had
17 specific expertise in this area.

18 And so I approached Ellis and asked him if he thought
19 it would be possible to develop, you know, a -- at the
20 time, everybody was working on super bugs. This is the
21 late 80s, early 90s.

22 Q Working on -- what was -- what did --

23 A Super -- well, genetically engineered organisms.
24 Before we got smart enough to figure out that was a path
25 we didn't want to go down, everybody was taking bacteria

1 into the lab because they were phasing into their DNA
2 characteristics that weren't inherent to that organism.

3 So in the case of toxaphene, we were -- Ellis thought
4 he could genetically engineer a bacteria that would,
5 actually, have an appetite for this toxic material.

6 Q Okay. You went over my head there.

7 A Sorry.

8 Q Did -- did you understand or have knowledge as to
9 whether or not Ellis had ever been involved in the
10 bioremediation business?

11 A Never, no. He -- never. This was new for him. It
12 was new for his lab. And he made that very clear that
13 this was kind of rolling the dice. He -- he thought he
14 could develop it. We ended up not going down the road of
15 the genetically engineered organism, but more the standard
16 bio, you know, basically, enhancing the performance of the
17 naturally occurring bacteria.

18 Q Did you enter into any contracts with Dr. Kline at
19 that time?

20 A I did. I entered into an agreement. They -- I -- an
21 agreement for them to develop the first generation Factor
22 for -- for us. I paid him a hundred thousand dollars from
23 the money that I got from Hercules Chemical -- somewhere
24 around a hundred thousand. I'm not sure if that was the
25 exact number. But I paid Ellis and, you know, his lab to

1 develop the compound for us. And I found out later that,
2 you know, Valerie -- or Dr. Paynter worked for Ellis at
3 the time.

4 Q Okay. But what did -- did -- did y'all follow
5 that -- tell the jury if y'all -- if you did kind of what
6 I was describing. You took him samples?

7 A Right. We collected soil samples from the Hercules
8 site in Brunswick, took them out to the lab. He performed
9 a series of bench studies where they take, you know,
10 anywhere from five hundred to a thousand grams of soil,
11 put it in a Buckner glass container and then mix in the
12 various amendments at various concentrations to see which
13 performs best under laboratory conditions.

14 And we tried to keep the lab conditions as close to
15 field conditions as possible. Because if it doesn't work
16 in the field, there's no reason doing it -- you know,
17 doing the work in the lab. So it was successful in the
18 lab. So we then carried it to the field to do field pilot
19 studies.

20 Q Okay. Help -- help -- help me understand. Did he
21 know it was going to work --

22 A No.

23 Q -- before?

24 Did you know that he was going to be able to solve
25 your problem?

1 A We hoped, but we didn't know.

2 Q Did you engage him based on the success of the
3 project, or did you just -- or did you just engage him to
4 do the research?

5 A It -- it was really just kind of a flier. I mean,
6 we -- I was relying on Ellis' expertise and the chance
7 that he -- that he -- he could. I mean, he was the only
8 one in his field that I was aware of that was doing that
9 work. So it was pretty much an article of faith.

10 Q This property was in Brunswick, Georgia?

11 A Correct.

12 Q Approximately how many acres were contaminated?

13 A It's about a 50-acre site right on the water.

14 Q And what time period was it that you --

15 A '97 -- '97, '98.

16 Q And about how long did -- did it take to -- from the
17 time that you became aware that there's a contaminated
18 site down there and you got in touch with him until y'all
19 started treating it on -- in the field?

20 A About a year.

21 Q And then how long did the treatment itself take to
22 produce results?

23 A The treatment only took 20 weeks.

24 Q So the -- essentially, the -- the bugs or something
25 that they came up with cleaned it up in 20 weeks?

1 A Yeah. They -- they -- they went from -- the State
2 establishes toxicity levels for almost every pollutant.
3 So there's an upper threshold, and then a threshold at
4 which they consider it -- consider it safe. And so we
5 went from the highly toxic threshold to the safe threshold
6 in that 26-week period.

7 Q What -- that was considered a success?

8 A Very much, yes.

9 Q Okay. What did you do -- well, let me ask you a
10 question about the parties. Did -- and you may have
11 answered this before. But Dr. Valerie Paynter -- when do
12 you first recall meeting Dr. Valerie Paynter?

13 A I -- I met her during -- probably during that first
14 trip of carrying the toxaphene soil up to the lab.
15 Dr. Kline introduced Dr. Paynter as the president of MSL,
16 Milkhaus South Laboratories and his -- his principle
17 assistant.

18 Q Can you say that word, MSL?

19 A MSL, Milkhaus South Laboratories.

20 Q That was Dr. Kline's business?

21 A Correct.

22 Q So you understood that Valerie Paynter, Dr. Paynter,
23 was working for him?

24 A Right.

25 Q Even in the early -- even in the late '90s time

1 period?

2 A That's right. She would work occasionally at the
3 University when -- I believe as an adjunct professor, you
4 know. But she wasn't -- I don't believe she was tenured
5 or full-time at any time.

6 Q Okay. When did you -- what -- what happened next in
7 your career? And how did you -- what happened next
8 between you and Dr. Valerie Paynter?

9 A Well, there was a -- there was a period from that
10 once we -- she -- once we were able to prove and we had
11 the data to -- to show that we could clean up the
12 toxaphene, we then spent the next series of months meeting
13 with Georgia EPD and EPA Region Four in Atlanta to get
14 approval for the process to use -- to, actually, use it in
15 the field. They required a bunch of additional testing.

16 So we spent another year, you know, and 15 months,
17 you know, grinding through that. And we -- we, finally,
18 did get it -- did get approval. But by the time we got
19 that done, Hercules had decided that they didn't want to
20 spend the money that -- to clean up the plant site. Part
21 of the plant site ended up becoming -- being declared a
22 Superfund site. But the rest of it remains as it was, you
23 know, 20 years ago.

24 Q What -- from -- from a -- in the bioremediation
25 business that we're talking about here, what other players

1 would be involved? You, obviously, need a -- a client and
2 a landowner. And you testified about a regulator.

3 A Right.

4 Q What about other consultants, or middle men, or
5 people that are already entrenched in the business? Who
6 are those people?

7 A The gatekeepers to the entire business -- the entire
8 environmental remediation business are the engineering
9 consulting firms, the -- the Earth Techs, the AECOMs, the
10 Amex, the -- you know, these are big engineering
11 consulting firms.

12 So if I owned a piece of property and it's
13 contaminated, my first call is to pick up the phone and
14 call one of these engineering firms. And then they come
15 out to my site and they perform a series of tests to
16 determine what the vertical and horizontal extent of the
17 contamination is. And then they make recommendations as
18 far as the clean up, you know, what they would recommend
19 as far as clean up.

20 So on the -- in the environmental continuum, we're
21 kind of -- the remediation folks are kind of at the bottom
22 of the ladder. We're the guys who, you know, have -- got
23 the dirt under our fingernails. And we're the guys who,
24 actually, do the clean up. But the engineers are further
25 up the chain than -- than are we with the owner of the

1 property at the top. So we -- they're the gate keeper.

2 Q When -- when you were doing these SUPERB gas stations
3 that you testified about earlier, did you get the leads or
4 the information about the potential opportunity to do work
5 at a certain gas station through some state publication,
6 or was there an RFP put it? How did that work?

7 A We were, actually, approached by a -- a group called
8 Earth Tech, which was right here in Greenville at the
9 time. And they were -- we did most of our clean ups with
10 Earth Tech.

11 So we would do the clean up. Earth Tech would
12 certify the clean up was complete. They would file the
13 certifications with the state. And then the owner of the
14 property would get a clean closure letter from the state
15 indicating that the clean up had been completed.

16 Q Earth Tech was a -- was an environmental consulting
17 firm?

18 A Correct.

19 Q Did they have their own lab, or did they send stuff
20 out?

21 A We always use independent labs. We didn't want
22 anybody to think we had our thumb on the scale. So we
23 always used independent labs so nobody would question the
24 data.

25 Q Was there ever an occasion where you were bidding

1 on -- on, like, an RFP or how -- the other jobs, once you
2 moved past doing the SUPERB sites --

3 A Right.

4 Q -- tell the jury the different ways in which you
5 would learn about something and what you would do to
6 attempt to get that business.

7 A A lot of -- a lot of it involved meeting with the
8 engineering groups. We used to conduct what they call
9 lunch and learn sessions. We would have the engineering
10 group gather all their engineers into their lunchroom and
11 we'd buy pizzas.

12 And then we'd put on, you know, a technical
13 presentation explaining our approach to doing clean up,
14 and the features and benefits of that, why cleaning it up
15 on-site was much more beneficial than digging up the dirt
16 and hauling it to a landfill, you know, hundreds of miles
17 away. So a lot of our work came from those -- those brown
18 bag lunches.

19 Some of it came from answering RFPs, requests for
20 proposals, that were -- were published. So we would
21 respond to those. And, you know, more times than not,
22 we'd get passed over because we were -- well, you know, I
23 was Biotech and, you know, I was a one-man operation.

24 So unless we could really peak their interest on the
25 unique aspect of the clean up and the fact that we were

1 using green and sustainable practices, you know, a lot of
2 times dig and haul -- or just digging it up and hauling it
3 away was the -- the selected option. So we had to fight
4 for every job we got.

5 Q What -- so if -- if the Brunswick, Georgia, Hercules
6 site was successful, even though you've testified
7 Brunswick didn't want to spend the money to clean up the
8 rest of the site.

9 A Right.

10 Q What happened with your and Ellis' relationship? Did
11 y'all continue the -- that business or that engagement of
12 him? What happened?

13 A I -- yeah. We -- we pursued it. We did -- we did a
14 number of jobs. We did -- we did clean up a bunch of gas
15 stations in South Carolina. And -- and then -- but we
16 were -- we were competing against a lot of other folks.
17 There was nothing that made us particularly unique in the
18 market place cleaning up petroleum sites.

19 But the technology that Ellis -- or that MSL had
20 developed and that, you know -- that I had paid for did
21 offer that unique feature. Because it could -- it could
22 do work. It could get results in the field that nobody
23 else could get. In other words, nobody else had -- prior
24 to the work we did at Hercules, no one else had been able
25 to biologically degrade toxaphene, nobody.

1 Q Okay. So you -- you kind of lost me for a second.
2 So did Ellis -- did you work with him to do these SUPERB
3 sites, or was it just the -- the Hercules work?

4 A Just the Hercules site. Yeah, we -- Research
5 Technologies Environmental, my -- my group out of
6 Columbia, we were doing the gas station sites without any
7 assistance from Dr. Kline and company, you know. We were
8 just using standard bio practices.

9 It was the addition of the Factor to the
10 bioremediation that Ellis -- Ellis' lab developed that
11 gave us that unique position in the marketplace where we
12 could go out and clean up toxaphene sites, or PCB sites,
13 or, you know, other pesticide sites like chlordane [phonetic]
14 that gave us a unique position in the market.

15 Q So what did you do -- why didn't you and Ellis do
16 more of those jobs?

17 A Ellis was, also, doing a lot of research into gene
18 signaling. He has right now patents on several gene
19 therapies for the treatment of HIV, for several cancers,
20 and myelinating diseases like Parkinson's and ALS.

21 And Ellis and I got to be friends. He convinced me
22 for a while -- for, actually, a couple of years, much to
23 my -- my wife's dismay, so I -- we, actually, stepped away
24 from the biological and focused on the work that Ellis was
25 doing on the human gene therapies.

1 So I got distracted a little bit and spent some time
2 in Africa setting up HIV clinical trials for him, which
3 were successful. And those technologies are going through
4 clinical trials right now, ultimately, hopefully, for
5 approval. But -- so I stayed on that course of -- until
6 about 2004 when I -- when Valerie -- when Dr. Paynter and
7 I got together.

8 Q Tell the jury what happened there. How did that come
9 about?

10 MR. LEBLANC: Objection, Your Honor. What we
11 discussed pre-trial.

12 THE COURT: All right. Just be careful.

13 BY MR. FEW:

14 Q Don't go into what she said. What did y'all do?

15 A We -- I was at the lab in Clemson. Valerie
16 approached me --

17 MR. LEBLANC: Same objection, Your Honor.

18 THE COURT: All right. I'm going to -- I'm going to
19 allow just this. And then at some point, we know they had
20 their talk, so. But I -- but the substance of the
21 conversations, anything like that, you, certainly, can't
22 get into. So the -- not the substance of the
23 conversations, or anything like that.

24 All right. Go ahead.

25 THE WITNESS: Dr. Paynter approached me and said, I'd

1 like to go into business with you.

2 THE COURT: Okay. Sustained. All right.

3 MR. FEW: Sorry.

4 BY MR. FEW:

5 Q Did you enter into any written agreements with
6 Dr. Paynter?

7 MR. LEBLANC: Objection, Your Honor. That's a
8 transaction.

9 THE COURT: Overruled. We've already talked about
10 the agreements.

11 THE WITNESS: I did.

12 MR. FEW: Your Honor --

13 THE WITNESS: A handwritten agreement.

14 MR. FEW: May I approach?

15 THE COURT: Certainly.

16 BY MR. FEW:

17 Q I'm going to hand you what we've marked as
18 Plaintiff's Exhibit No. 1. Take a minute to look at that.
19 And tell us if you recognize it.

20 A I do.

21 Q And what is it?

22 A It's the agreement I was presented in -- on
23 November 19th of 2004. And it's hand handwritten by
24 Dr. Paynter.

25 And should I read it? It's very short.

1 Q All right. No.

2 Did you sign it?

3 A I did.

4 Q And what's the gist of -- of what that agreement
5 says?

6 A That we will go into business together in a joint
7 venture for the environmental business and split any and
8 all profits 50/50.

9 Q And -- and so what happened next? Did you do any --
10 any projects?

11 A We did.

12 Q What was the first project that you did?

13 A The first project we did -- a colleague of mine in
14 California contacted me about a client site that he had
15 there with toxaphene. It was contaminated with toxaphene.
16 It was a -- an old pecan orchard that he had sold to a
17 developer. It was a 15-acre parcel of property that he
18 sold for \$5 million. And then they discovered the
19 pesticides. And the deal had fallen apart because it was
20 going to cost \$5.5 million to clean up the site.

21 So they hired us. We went out, cleaned up the site
22 over the course of about 20 weeks, and charged roughly a
23 half million dollars for it.

24 Q Okay. You -- I didn't follow you there. You said
25 that the -- that the -- was it your understanding that the

1 sale of that property did not go through because of the
2 toxaphenes?

3 A It, ultimately, did because of our clean up.

4 Q But -- but it was delayed, is that what you're
5 saying, until the property was cleaned up?

6 A Right.

7 Q Okay. So the landowner was who?

8 A A gentleman by the name of Stan Borello.

9 Q And where -- what state was that in?

10 A It was in Morgan Hill, California.

11 Q And California's a big state. Where?

12 A Super big. It has -- it has the dubious distinction
13 of having more contaminated sites than any other state in
14 the country.

15 Q Yeah.

16 A 92,000, to be exact.

17 Q A pretty -- pretty healthy regulatory scheme, too;
18 right?

19 A Well, they're -- that's one of the reasons we did so
20 much work in California during those formative years,
21 2004, '05, '06, '07. Because California has such tough
22 regulatory standards. It was -- yeah, we -- we spent a
23 lot of time in California.

24 Q Okay. So that project, is that the one you called
25 the Borello project?

1 A Correct, the Borello project.

2 Q And I guess, sometimes, you may refer to the project
3 by the location and/or the client; right?

4 A Right.

5 Q All right. So what did Dr. Paynter do with respect
6 to the Borello project?

7 A She did lab work --

8 MR. LEBLANC: Objection, Your Honor.

9 THE COURT: Okay. That's not covered. Because this
10 isn't to her detriment just to talk about, you know,
11 what -- what she, actually, did on the project.

12 All right. Go ahead.

13 THE WITNESS: Val did the lab work. Val's sole
14 responsibility in the partnership was to take the soil and
15 test the Factor on it.

16 MR. LEBLANC: He's testifying beyond the four corners
17 of the document in front of him.

18 THE COURT: All right. I'm going to allow that. I
19 think, again, that's not to -- it doesn't cover
20 everything. There are certain -- it doesn't cover
21 everything. And it doesn't sound like this was anything
22 he's saying that would be to her detriment.

23 BY MR. FEW:

24 Q Just tell them what -- so I had talked to you earlier
25 about -- well, you -- you had testified that, generally,

1 you take some samples, you run tests. And -- and so who
2 did that? And I understood it to be a three-step process.
3 Usually, you have samples that you test in the lab. Then
4 you -- I believe I understood that you would then do a --
5 a small scale field test.

6 A Right.

7 Q And then if that didn't work, you would order in dump
8 trucks of this stuff to go; is that right?

9 A Well, not dump trucks. I mean, one -- one ton of
10 formulated product would treat 2,000 tons of dirt. So --
11 but, yeah, you're right. There was -- there was
12 definitely kind of a division of services in -- in the
13 relationship that we had.

14 My job was to develop the business, find the
15 opportunities, do all of the -- you know, do all the leg
16 work involved, meeting with the regulatory folks. Then I
17 would -- I would collect the soil, send it back to
18 Dr. Paynter. She would identify the appropriate Factor to
19 use. And then I would have that formulated into the
20 finished product that would then be delivered to the site
21 where I would perform the clean up in conjunction with the
22 engineering firm.

23 Q All right. So how would you characterize the Borello
24 project in terms of its success or lack of success?

25 A It was definitely a success.

1 Q What sort of things -- what leads you to conclude
2 that it was a success?

3 A They're building a middle school on it right now.
4 I'd say that's pretty good.

5 Q What -- what did the -- did it pass the regulatory
6 standards, presumedly?

7 A It did, yes. As a matter of fact, the head of the
8 department of toxic substance control was so impressed --

9 MR. LEBLANC: Objection, Your Honor. Hearsay.

10 THE COURT: Sustained.

11 BY MR. FEW:

12 Q Okay. Mr. Young, what -- what was the -- what --
13 what happened next in terms of your relationship with
14 Dr. Paynter? Don't go into what she said. Just tell us
15 what you did and what y'all did in business together.

16 A We continued to do Borello-type projects in
17 California and wherever else we could identify the
18 projects for the next 10 years.

19 Q What was the approximate -- so Borello was in the
20 2004 --

21 A 2004, 2005.

22 Q How many acres was that one?

23 A 15 acres.

24 Q And that was a private owner?

25 A Correct.

1 Q And the next project you did -- I don't want to go
2 through all of them. But what -- what did you do -- yeah.
3 I think you've told us that you would find the projects.
4 And then Dr. Paynter, did she do pretty much the same
5 thing?

6 A It was -- it was the same on every project we ever
7 did. Val never went to the field. She always stayed in
8 the lab.

9 Q All right.

10 A Dr. Paynter, I'm sorry. I -- I'm so used to calling
11 her Val. It's hard for me to call her Dr. Paynter.

12 Q So what happened next with Dr. Paynter? Y'all --
13 y'all continued to do business. Did you enter into any --

14 A We did. We had a -- we had a big project come up,
15 the Northrop Grumman project in New York. I found out
16 about the project. I flew out there several times.
17 Northrop Grumman was -- they manufactured aircraft
18 propellers on Long Island since World War II.

19 They had dumped all of their solvents, as was an
20 industry practice, in a hole. And they -- they -- the
21 solvents -- a chemical call trichloroethylene, TCE, got
22 into the groundwater and had contaminated the Aquaphor.
23 And the -- the property was subject to a clean up.

24 We got an interview with the Northrop Grumman people.
25 They liked the prospect of being able to do the work, the

1 clean up on site. It would have saved them millions of
2 dollars and made us a -- a pretty good amount of money as
3 well.

4 We got the -- I got the soil samples. I sent them
5 back to the lab. And they just sat there for several
6 months. And it was -- well, you know, it was only after
7 that that I discovered that -- that Val -- Val was ill.

8 Q What time period was this?

9 A 2014.

10 Q Did you and Dr. Paynter enter into any other written
11 agreements, other than that one that we've entered as
12 Plaintiff's Exhibit No. 1?

13 MR. FEW: And we did enter that; right?

14 THE WITNESS: Yes.

15 MR. FEW: I'm asking the Court, we did enter that as
16 Plaintiff's Exhibit No. 1?

17 I'd like to move that into evidence.

18 THE COURT: You're objection is, certainly, noted.

19 All right. So entered.

20 (WHEREUPON, Plaintiff's Exhibit No. 1 was admitted into
21 evidence.)

22 THE WITNESS: Yes, we did.

23 BY MR. FEW:

24 Q You did. What time period were those? Do you
25 remember?

1 A 2006.

2 Q If I may approach. I'm going to show you what is
3 marked as Plaintiff's Exhibit No. 2. Take a look at that.
4 And tell us if you recognize it.

5 A I do.

6 Q And tell us what it is, please.

7 A This is the -- the general partnership agreement that
8 Val -- Dr. Paynter and I entered into on January 1st,
9 2006.

10 Q Look on the second page and -- and tell -- tell the
11 jury when -- I think the dates are different than what's
12 on the first page.

13 A January 10th, 2006, was the date the notary signed
14 it.

15 Q And the other one, is it the 10th or the 16th?

16 A The 16th. Dr. Paynter signed it on the 16th. I
17 signed it on the 10th.

18 Q Are those signatures notarized?

19 A They are.

20 Q Do you know who notarized that on behalf of
21 Dr. Paynter?

22 A I -- I know who she is now, yes.

23 Q And who is that?

24 A She is an attorney and friend -- long-time friend of
25 Dr. Paynter, Kay Barrett.

1 Q All right. And then did you enter into any other
2 agreements with Dr. Paynter related to this bioremediation
3 technology?

4 A We did. Subsequent to this agreement, we entered
5 into a modified agreement.

6 Q Okay. And do you remember when that was?

7 A I believe it was in May of the same year.

8 MR. FEW: Okay. Your Honor, if I may approach.

9 BY MR. FEW:

10 Q I'm going to hand you up what we've marked as
11 Plaintiff's Exhibit No. 3. And tell -- take a moment and
12 look at that. Tell us if you recognize it.

13 A I do.

14 Q Okay. And what is it?

15 A This is the -- the -- the second general partnership
16 agreement and the last that we had. Again, it's a
17 modification of the January 1st agreement. This one was
18 signed by both Dr. Paynter and myself on May 30th, 2006.

19 Q Is it notarized?

20 A It is.

21 Q Do you recall signing that?

22 A I do.

23 Q Without getting into the details, do you recall the
24 differences? Just with respect to the parties is all I'm
25 really asking.

1 A You know, the -- the principle that I recall was
2 the --

3 Q Don't -- don't say what Dr. Paynter said. But I -- I
4 guess what I'm asking you is, this agreement -- I'll try
5 to move quickly --

6 A Okay.

7 Q -- between Biotech Remediation [sic], LLC, and
8 Paynter Consulting, LLC, is it -- isn't it --

9 A Correct.

10 Q Okay. And then the one that we've marked as
11 Plaintiff's Exhibit No. 2 was between you and Dr. Paynter
12 individually, I believe, wasn't it?

13 A That's correct.

14 MR. FEW: Your Honor, we'd move that all -- I believe
15 Plaintiff's Exhibit No. 1 is already in over objection.
16 We'd move that Plaintiff's Exhibit Nos. 2 and 3 be entered
17 into evidence.

18 THE COURT: Your objection is -- is noted.

19 MR. LEBLANC: Thank you, Your Honor.

20 THE COURT: And those are so admitted.

21 (WHEREUPON, Plaintiff's Exhibit Nos. 2 and 3 were
22 admitted into evidence.)

23 BY MR. FEW:

24 Q Okay. So, Mr. Young, tell the -- you can put that
25 down for right now. Tell the jury how things went. And,

1 again, don't -- don't get into what Dr. Paynter said,
2 because she's no longer here. But what -- what was the
3 relationship like? Was it business? Was it personal?
4 You know, just a little bit about that so they can
5 understand it.

6 A I -- you know, I loved Val. She was a good friend,
7 you know. We -- I was living in Charlotte. She was in,
8 you know, Clemson. We -- we worked together for 10 years.
9 I mean, we talked sometimes for hours every day on the
10 phone, both before and after her husband, Malcolm, died.

11 There was -- in the entire 10 years that we worked
12 together, we never had a cross word. We never had a
13 disagreement. We never -- you know, she understood the
14 nature of the business, you know. We either -- you know,
15 she was running a one-person operation, as was I. We
16 either had a lot of money in the bank or we had no money
17 in the bank. I mean, it was -- it was just the nature of
18 running a small business.

19 But we were -- we were colleagues in the truest sense
20 of the word and -- and friends as well, you know. Like I
21 said, we -- until Val got ill, we never -- we never had
22 any kind of major disagreement at all, you know. I -- I
23 went to Sam's wedding, you know. I went to Malcolm's
24 funeral. When my granddaughter was born, Dr. Paynter came
25 to our house, came to my daughter's house and, you know,

1 brought Olivia a nice little gift, you know, we were
2 colleagues, friends. How could you be in business
3 together for 10 years and not be?

4 Q Approximately how many jobs -- I'll call them
5 projects for each individual site --

6 A Right.

7 Q -- did -- did you perform with Dr. Paynter after that
8 Plaintiff's Exhibit No. 3, the 2006 agreement was
9 executed?

10 A I -- I would guess roughly 12 to 15 projects of
11 varying sizes.

12 Q And -- and you were the lead; correct? So you -- you
13 were the one that was getting the funds and then sharing
14 the profits pursuant to the agreement; is that right?

15 A Correct, right.

16 Q And who did you pay? Did you pay Dr. Paynter
17 individually, or did you pay her LLC?

18 A Both, actually, until -- as I recall, we were -- we
19 were paying checks to her directly. And then once her LLC
20 was formed, we paid it, too, as I recall.

21 Q How much in general terms of dollars do you recall
22 you would have paid to Dr. Paynter during the course of
23 your business relationship?

24 A Just under a million dollars.

25 Q So what -- what happened? Tell us about what

1 happened in 2014, '15, '16.

2 A It was -- there was a long absence, a long silence, I
3 guess, is probably the best way to describe it.

4 Dr. Paynter just dropped off the radar. And it was during
5 the --

6 Q And I believe -- just for timing purposes, you -- you
7 had understood that she had a cancer diagnosis sometime
8 around to 2013; is that right?

9 A Right.

10 Q Okay.

11 A Right. And she --

12 Q What type of cancer was it? Do you know?

13 A Colon, as I recall. She ended up...

14 Q And were you still out trying to find job sites and
15 get work?

16 A Yes.

17 Q Well, at some point in time -- because we've told the
18 jury and there's a lawsuit that's on record. What do you
19 remember about the -- what I call the 2015 lawsuit?

20 A It -- it happened about the time, as I recall, when
21 the -- the Northrop Grumman project fell apart. We
22 weren't able to generate the data necessary to convince
23 Northrop Grumman that we could do the clean up. And the
24 data was just -- it was -- it wasn't like the data that I
25 had seen out of Dr. Paynter in the past. It was -- there

1 was just something wrong with it.

2 In this particular -- in this particular test, we
3 were -- we were testing the soil for PCBs, which we had
4 cleaned up before. And we always had good reductions, you
5 know, using the Factor to reduce PCBs. But in this
6 particular test, the -- the data was flat. There was no
7 difference between the control samples and the treated
8 samples, which I knew was impossible, you know.

9 So I just -- I just knew that somehow the data -- you
10 know, the data wasn't being generated. And it was during
11 that same time period, I later found out, that -- you
12 know, that -- that Joey got involved. And, you know,
13 the -- the whole thing started to fall apart.

14 Q Take a minute and explain to us -- because you -- you
15 were on to something that you thought was pretty big; is
16 that right?

17 A Right.

18 Q And -- and that was your opinion and the opinion of
19 many others or a few others?

20 A Yes. I mean, being able to do the work that we were
21 doing was more than just a scientific curiosity. It had
22 real market implications. But it was -- it was considered
23 to be a destructive technology.

24 The environmental industry is -- is kind of an
25 entrenched industry. And, you know, it's -- it's kind of

1 the -- you know, you've got a relatively small group of
2 people in the engineering consulting business that control
3 the flow of that -- that work. In any event, it was very
4 valuable. I -- the fact that we were able to do a job --
5 the Borello job very early on for \$400,000 and our profit
6 margins were 60 percent, you know -- so that -- by any --
7 by any small business metric, that's a great margin to
8 have.

9 So, yeah, I -- I think -- the only thing we lacked
10 was the ability to scale. What we needed to do is we
11 needed to move it from a cottage industry, you know -- we
12 needed to get some investments somewhere and to -- to
13 build it, you know, scale it up so that we could do more
14 than one job so that we weren't subject to those --
15 those -- you know, those -- those revenue oscillations.

16 Q So what efforts did you undertake, if any, to -- to
17 find -- to do that, to scale the business up, to find
18 partners, investors? Tell the jury about that.

19 A We -- we had a -- a brief encounter with a west coast
20 group. I was working, at the time, with a gentlemen by
21 the name of Rob Campbell. Rob had generated a lot of our
22 leads for us in California. And --

23 Q How -- how long had you known Rob Campbell?

24 A Rob worked with us on the Borello job, the very first
25 job in 2004.

1 Q So you had known him since 2006 [sic]?

2 A Correct.

3 Q Oh, Borello was the one you did under the handwritten
4 agreement, that was the first one?

5 A Right, right.

6 Q All right. So you've known him since 2004, '05, '06?

7 A Right.

8 Q Okay. What -- all right. I'm sorry to interrupt
9 you.

10 A So -- so Rob had -- Rob had some interest. We were
11 using him as almost our exclusive business development guy
12 on the west coast. And he had some contacts with a --
13 with a small family run bank that was interested in buying
14 an equity position in the company. And they would provide
15 the expansion capital we needed to hire some people, put
16 some boots on the ground, and -- and turn this into a real
17 business. So that was one example.

18 Q As they say, when you're selling a house, it just
19 takes one buyer; right?

20 A Right.

21 Q You've heard that. So what was your understanding,
22 because you never sold it; correct?

23 A No.

24 Q What was your understanding -- and not pie in the
25 sky, but just an expectation of what did you think it

1 might be worth back in the 2014 time period?

2 A I -- generally speaking, with a new technology,
3 you -- you take earnings from the previous two years and
4 then you apply some multiplier to that, if you're looking
5 for investment. I thought maybe the technology, you know,
6 if it were on the market would be worth five -- you know,
7 maybe \$10 million.

8 Q And did you -- what -- what did -- what kind of
9 communications did you have with anybody prior to the
10 lawsuit being filed along the lines of licensing, or
11 leveraging, or -- or scaling up the technology like you
12 testified to?

13 A I -- I was -- I was approached by a group out of New
14 York called One Law Partners that had an interest in
15 investing. They offered to bring \$5 million in business
16 capital to the table. Dr. Paynter was well aware of the
17 relationship with the group. I wasn't aware, at the time,
18 that there were other plans afoot.

19 Q What were the names of the people that were involved
20 with One Law Partners, if you can remember?

21 A Ron Kudos [phonetic], Ian Bell, Mick Warner. Those
22 are the only three that come to mind. There were several
23 others. But they were based out of Manhattan.

24 Q Did you make the initial contact with those folks?

25 A I did.

1 Q And then it's your understanding that they,
2 eventually, came to know who Dr. Paynter was, or she met
3 them, or --

4 A They did.

5 Q Do you remember when that was?

6 A It would have been in -- it would have been after
7 the -- before and after the 2015 suit, I believe.

8 Q Did you ever run any projections on your own that
9 showed what you thought, you know, y'all might be able to
10 do a transaction for, whether it been licensing or sale of
11 the technology?

12 A I'm not sure I follow.

13 Q Did you have a belief that the -- that it may be
14 worth -- or that you might could get more than the \$5
15 million I think that you testified to a minute ago?

16 A In conjunction with the -- the -- the assistance of
17 the One Law folks? You mean --

18 Q Well, just at that time. I'm just talking about the
19 value of the technology.

20 A Not -- not that I recall. I just -- I just remember
21 thinking -- you know, knowing -- and know to this date
22 that it -- it could be the basis of a hundred million
23 dollar business easily.

24 Q People probably wouldn't pay you that up-front,
25 though, would they?

1 A I wish.

2 Q Okay. Mr. Young, so what do you recall about the
3 2015 lawsuit?

4 A That -- that -- you know, that -- I was kind of blind
5 sided by that. I -- I had no idea there was the stated
6 level of dissatisfaction. Val had never indicated to me
7 any problems.

8 Q And your testimony was that during that time period,
9 you were working to get the Northrop Grumman job; is that
10 correct?

11 A Among others, right. We were pursuing a number of
12 different projects at that point in time.

13 Q And where was that Northrop Grumman job?

14 A New York.

15 Q Did you ever end up getting it?

16 A No, we did not.

17 Q Did you -- was Dr. Paynter asked to do the -- the
18 normal work that she would do, the lab --

19 A She was, yes.

20 Q That's what you were testifying about earlier --

21 A Right.

22 Q It didn't pan out?

23 A Right.

24 Q And what -- did you hire counsel for the 2015
25 lawsuit?

1 A I did, with the help of the One Law Partners, yeah,
2 the -- the One Law folks.

3 Q And just briefly, what -- what is your understanding
4 of what the lawyers did in the case and what came out of
5 it?

6 A You know, there was back and forth litigation on it.
7 I was the Defendant in that particular case. The claims
8 were, basically, that I had -- you know, I had cheated Val
9 out of funds from the -- you know, from the business.
10 There were a bunch of other claims, too. I -- I can't
11 recall what they were.

12 But they were ultimately -- they dismissed the case
13 after the accounting --

14 MR. LEBLANC: Your Honor, I need to object to that
15 testimony. He just testified that the case was dismissed
16 after the accounting. Dr. Paynter dismissed the lawsuit.

17 THE COURT: And I'm going to allow you to, certainly,
18 clear up anything like that in cross-examination.

19 MR. FEW: Thank you, Your Honor.

20 If it please the Court, I've -- I've handed the
21 witness a document.

22 BY MR. FEW:

23 Q Mr. Young, take a minute to flip through that and let
24 me know if you recognize it.

25 MR. LEBLANC: I object on relevance.

1 THE COURT: And this is the -- is it the final order?

2 MR. FEW: Yes, Your Honor. This is the
3 February 16th, 2016, order from Judge Cain, docket entry
4 25 in the federal case.

5 THE COURT: All right. I'll allow it for what it's
6 worth.

7 THE WITNESS: I do. It's the Court's order for us to
8 go into arbitration.

9 BY MR. FEW:

10 Q It's eight pages. But that's -- that's what you
11 understood it to be?

12 A Correct.

13 Q And did y'all ever go into arbitration?

14 A Unfortunately, not.

15 Q Is there anything -- well, I --

16 Strike that.

17 MR. FEW: Your Honor, I would move that this goes
18 into evidence. It's a public document. And I think it
19 clarifies the issue of who -- what happened from the prior
20 lawsuit.

21 THE COURT: And I know your objection is relevance.

22 MR. LEBLANC: I misspoke earlier. This is not the
23 order of dismissal. This is an order for arbitration.

24 THE COURT: An order for arbitration.

25 All right. Well, I will -- I'll admit it as

1 Plaintiff's Exhibit No. 4.

2 Is that right?

3 MR. FEW: Yes, Your Honor.

4 THE COURT REPORTER: I haven't marked that yet.

5 THEW COURT: Yes. Let's take just a moment to mark
6 it.

7 (WHEREUPON, Plaintiff's Exhibit No. 4 was marked for
8 identification and admitted into evidence.)

9 BY MR. FEW:

10 Q Mr. Young, once the 2015 lawsuit, which is what
11 resulted in that order for arbitration and is one of the
12 documents that came out of that, was initiated, did you
13 and Dr. Paynter continue to do the business of the
14 partnership together?

15 A No.

16 Q At the time that the lawsuit was commenced, I believe
17 you said you were working on the Northrop Grumman job?

18 A That and several other projects we were pursuing,
19 including a project in California.

20 Q Do you remember approximately when you would have
21 started looking into the normal things that you would do
22 to get a -- a beat on that Northrop Grumman job?

23 A I never really stopped pursuing, you know, the
24 opportunities. Because I was of the opinion that we could
25 probably repair whatever it was that was broken if we

1 could get beyond that. If we could, actually, get into
2 arbitration, we could -- we could fix it and, you know,
3 get -- get back on track. So I never stopped looking for
4 jobs out there.

5 Q Well, I'm not -- and I'm trying to just get an
6 understanding of had you been working on it since 2006, or
7 '09, or '11, or '13?

8 A At least, two years, as I recall.

9 Q And that was a project that you -- did you feel like
10 it was in y'all's wheel house?

11 A Very much so, yes.

12 Q Mr. Young, tell the jury the way that you've been --
13 you feel that you've been damaged by the actions of the
14 Defendants and Paynter Consulting in this case.

15 A That's -- that's a tough one. I mean, aside from the
16 loss of -- of business, you know, the -- the -- the fact
17 that -- that I was involved in the development of this.
18 Val probably did have the idea. I never believed
19 otherwise. It's very possible she came up with the basic
20 concept or, you know, the catalyst that was going to make
21 it work.

22 But, you know, I'm the one who paid for its
23 development. I'm the one that took it to the field. I'm
24 the one who commercialized it. And, you know, had I not
25 done that, it would have been just an unrealized concept

1 in the lab that never saw the light of day.

2 So, you know, it was hurtful from one aspect that --
3 you know, that I invested 10 years of my life and, you
4 know, most of -- you know, my Dow stock and my wife's Bank
5 of America stock in developing it. But, you know, just
6 the -- the idea that, you know, you can just kind of be
7 thrown under the bus after all of that, that somebody can
8 just say, well, you know, I'll -- I'll give it away, or
9 I'm going to take it and move on.

10 Q So did y'all have a contract for Northrop Grumman?

11 A We had been awarded the first phase of the work. But
12 that phase was contingent on being able -- you know,
13 moving on to the next phase. The larger portion of it was
14 contingent on the successful completion of the first. And
15 we were not able to do that because the Factor didn't
16 work.

17 Q Okay. So you -- you've testified that sometimes a
18 client would have success with your services and then
19 decide to only do 15 acres of however many hundred that
20 are contaminated. If the Northrop Grumman job had gone
21 through that first phase, what do you believe the profit
22 would have been to the partnership?

23 A Yeah. We pencilled that out. It would have been
24 somewhere between \$12 million and \$15 million.

25 Q That's for the whole site?

1 A For our portion of it, for our portion of it.
2 There -- there was a lot of other work that would have
3 been done. But for the -- the amount of soil that we
4 would have been contracted to clean up, it would have been
5 in that range, yes.

6 Q And so would that have all been done at one time?

7 A No. That would have been done over a period of
8 possibly two to three years. Because the process is
9 temperature sensitive. The -- the bacteria will go into
10 sort of a stasis below 37 degrees. So we wouldn't have
11 been able to do the work during the winter.

12 Q Okay. And you testified you hadn't gotten any other
13 jobs -- you hadn't done any job -- what was the last job
14 that you did, if you remember, with Dr. Paynter?

15 A We worked together on the -- for the New England Log
16 Home project in Massachusetts. Val and I worked together
17 on that one. That was another kind of groundbreaking
18 project. It was the first time biologic -- bioremediation
19 had been used to destroy dioxin. So it was very exciting.

20 Q What do you believe you're entitled to with respect
21 to the Factor under that partnership agreement from this
22 lawsuit?

23 A I -- I just want, you know, the -- all of the
24 notes -- all of Val 's formulas. Everything that we had
25 worked together to put, you know, the business together

1 were contained in a series of notes, laboratory notes, you
2 know, the -- the bench study documents, all -- it's
3 volumes, you know, boxes and boxes, all of the information
4 about how the Factor is formulated. The components that
5 go into that are contained within those -- those
6 documents.

7 Those should have been turned over to me when Val
8 died. Instead, Joey took them and has refused to turn
9 them over. That's all I want. I just want to be able to
10 continue the business the way the partnership agreement --
11 that we both stipulated in the partnership agreement.

12 We both envisioned that should one of us die, the
13 business could continue. And that's the way the agreement --

14 MR. LEBLANC: Objection, Your Honor. He's testifying
15 what Dr. Paynter's vision was.

16 THE COURT: All right. Well, I'll just -- I'll
17 strike that part of his testimony. And if you would just
18 talk about --

19 MR. FEW: Thank you, Your Honor.

20 I'll tell you what -- I'll tell you what I'd like to
21 do to wrap up. And I hate to read a document to you. But
22 I do think it's a good time to do that.

23 BY MR. FEW:

24 Q So, Chris, if you would just read or publish to the
25 jury -- if you need to get your readers -- what paragraph

1 four on Page 1 of Plaintiff's Exhibit No. 3 says. And
2 just -- it's not terribly long. But just read it slow
3 enough so that we can hear it and understand it. And I
4 can -- I can put it up on the screen, too. Actually, I
5 forgot about that.

6 MR. FEW: Is this ready?

7 THE WITNESS: You just want me to read it?

8 BY MR. FEW:

9 Q Yes, sir.

10 A The partnership agreement shall commence in -- on and
11 continue until dissolved by mutual agreement of the
12 partners. The partnership will terminate upon the death
13 or incapacity of a partner. Any outstanding revenues or
14 revenues anticipated from projects under contract at the
15 time of a death or incapacity will be paid to the
16 partner's designated beneficiary. In the event of a death
17 of a partner, the remaining partner has the right to
18 continue the business of the partnership by themselves or
19 in conjunction with any other persons they may select.
20 The continuing partner will pay 10 percent of net profits
21 annually to the heirs/estate of the deceased partner on
22 any contract involving the use of the Factor, and 10
23 percent gross from the sale of the Factor technology.

24 Q Have you been allowed to continue the business of the
25 partnership?

1 A No.

2 Q Why not?

3 A Because I -- I don't have all the data. I -- I can't
4 go to a client in good faith and say that I have, you
5 know, the Factor if some component of it has been withheld
6 or held back, as Joey and Dr. Paynter maintain they have.

7 MR. FEW: Your Honor, I'm -- I'm sort of at a
8 stopping point.

9 THE COURT: Okay.

10 MR. FEW: And -- and I think I may be done, but I
11 doubt we want to get started on cross, unless -- well, I
12 don't know what the schedule is.

13 THE COURT: All right. Ladies and gentlemen, we've
14 probably come to a good point for our lunch break. I'm
15 going to ask that you be back in your jury deliberation
16 room at 1:45. So we'll start back at 1:45.

17 And, please, don't discuss the case with anyone.

18 And -- but, otherwise, I hope you have a good lunch.

19 All right. Thank you.

20 (WHEREUPON, the jury was excused from open court at
21 approximately 12:10 p.m.)

22 THE COURT: All right. Sir, I'll just advise you
23 that over the lunch break -- and, of course, your attorney
24 wouldn't dream of doing this -- but you can't discuss your
25 testimony with anybody. All right. That would include

1 your wife. You can't can discuss your testimony with
2 anybody. It's just as if you were on the witness stand
3 all through lunch, except we are going to let you go get
4 something to eat.

5 THE WITNESS: Okay.

6 THE COURT: Okay. And so -- and then when we come
7 back, we -- then we'll begin cross-examination with
8 Mr. LeBlanc. Okay.

9 I have listened. I mean, a good deal does depend on
10 the credibility of the Plaintiff. I am going to ask
11 you -- I am going to allow you to ask him about his tax
12 returns. But when we're talking about the credibility of
13 a witness and impeaching him under Rule 608 -- and I had
14 to refresh myself, I freely admit.

15 Under 608(B), specific instances of conduct to attack
16 or support a witnesses character for truthfulness may not
17 be proved by extrinsic evidence, except convictions, of
18 course. However, in the Court's discretion, they may be
19 inquired into on cross-examination if it's probative of
20 character of the witness for truthfulness.

21 And I, certainly, will -- I'm going to exercise the
22 discretion to allow you to go into that. So as far as
23 proving it with any type of extrinsic evidence or putting
24 up witnesses at any point to prove it, I'm not convinced
25 that the rules would allow you to do that, of course.

1 All right. Very well then.

2 MR. FEW: Thank you, Your Honor.

3 THE COURT: Thank you.

4 (WHEREUPON, a lunch break was taken.)

5 THE COURT: Sir, do you want to retake the witness
6 stand?

7 Thank you.

8 I hope everybody had a good lunch.

9 (Pause.)

10 THE COURT: All right. The jurors wanted me to -- to
11 speak with both of you to say they have no trouble hearing
12 the witness. But they're having trouble hearing both of
13 y'all.

14 MR. FEW: Really. Okay.

15 MR. LEBLANC: Did they have trouble in the opening
16 statement? Really?

17 THE COURT: That's what they say. They said they've
18 had trouble hearing y'all, which is --

19 THE BAILIFF: They said both attorneys need to speak
20 up or get closer.

21 THE COURT: And it's hard because y'all don't really
22 have a mic. So everybody else has got a mic, except
23 y'all.

24 THE BAILIFF: I'm sitting right here and I couldn't
25 hear the witness.

1 THE COURT: You said you couldn't?

2 THE BAILIFF: No. I turned my hearing aids up as far
3 as I could and I couldn't hear the witness.

4 THE WITNESS: I'll speak up.

5 THE COURT: Well, okay.

6 THE CLERK: We can turn it up, like, from where you
7 are.

8 THE COURT: I'll just tell you, I touched that one
9 time and people were --

10 MR. LEBLANC: Do we sound quiet to you?

11 THE COURT: Wes does. You don't. But Wes does sound
12 quiet to me.

13 THE CLERK: Plus, when we have the trucks and stuff
14 going by.

15 THE COURT: That's it, you know. And -- but I'm
16 going to bet that nobody has ever called either one of
17 y'all quiet. Nobody has ever called me quiet. I've never
18 been called quiet.

19 THE WITNESS: Would it help if he moves the lectern
20 closer?

21 THE COURT: I don't know that it's mic'd. I don't
22 think the lectern's mic'd.

23 MR. FEW: No, I don't see one.

24 THE COURT: Oh, I see what you're saying. I'm sorry.
25 Okay. Yeah, now, I see what you're saying. My brain is

1 not...

2 (Pause.)

3 THE COURT: All right. Are we ready to proceed?

4 MR. FEW: Yes, Your Honor.

5 THE COURT: All right. Let's bring them --

6 MR. FEW: I do have a couple of quick questions for
7 him. And then I'll turn him over for cross-examination.

8 THE COURT: All right.

9 (WHEREUPON, the jury came into open court at
10 approximately 1:55 p.m.)

11 THE COURT: Well, while nobody in this room has ever
12 been accused of being quiet before, I have passed along
13 that the attorneys need to speak up. And they are going
14 to do that. We've been in here trying to kind of remedy
15 that a little bit, so.

16 All right. Thank you.

17 If you can't hear at any time, please, please, just
18 signal to me. Okay.

19 All right. Thank you.

20 Mr. Few.

21 MR. FEW: Yes.

22 Thank you, Your Honor.

23 Thank you, ladies and gentlemen.

24 I hope y'all had a good lunch. I didn't realize you
25 couldn't hear me.

1 BY MR. FEW:

2 Q Mr. Young, we were finishing up before lunch. And
3 I'd asked you questions about this Northrop Grumman
4 project that you were working on. And I asked you about
5 what type of profit levels you thought that y'all might
6 make on it. Do you recall that?

7 A I do.

8 Q And you gave us a number. So, apparently, that was a
9 pretty big job?

10 A It was.

11 Q But let's -- did -- did you believe you were going to
12 make any money -- you were going to make some money on
13 that project if you'd had the cooperation of Valerie
14 Paynter -- Dr. Valerie Paynter to do to the bench studies?

15 A Yes.

16 Q Now, and -- because you never had a job quite that
17 big before; right, where you made that kind of money? Is
18 that right?

19 A We were pursuing a couple other large ones. But that
20 would have been the biggest, by far, yes.

21 Q Okay. And what -- what made it so big? Was it just
22 the number -- the quantity, the acreage, or the --

23 A It was both the -- the volume of -- of soil that
24 required treatment, plus, the fact that we had proven
25 expertise or capability to degrade it. And the -- the

1 only other option available with Northrop Grumman was to
2 excavate the soil and haul it to a -- literally, to
3 another state for disposal. So we had several distinct
4 advantages in that project.

5 Q Were you under the understanding that they were being
6 forced by some regulatory agency to clean it up?

7 A They were.

8 Q What's the -- you were not sure how that project was
9 going to work out. I'm just trying to figure out if you'd
10 have just gotten a slice of that project, like, tell the
11 jury what's the minimum amount that you think you would
12 have made in terms of a revenue and how you would have
13 used that revenue to pay expenses, pay yourself, and pay
14 Paynter Consulting?

15 A It would have probably followed the same formula of
16 every other project, you know. We -- we used the profits
17 from previous projects to, you know, advance the companies
18 efforts, you know, identify new projects, pay expenses,
19 pay for the construction of the Factor, the actual
20 formulation of the Factor. And then any profits that
21 would have been left over would have been distributed.

22 Q I guess what I'm trying to understand is because the
23 project was so large, is it likely that you would have
24 done a small portion of it and then proven that success
25 and then moved on?

1 A That's the likely scenario I think, yes.

2 Q Okay. And can you point to any specific projects
3 that you think you would have obtained if you'd had the
4 cooperation of Dr. Paynter?

5 A That one is the one that comes to mind most often.
6 Because we had already proven that we could -- the Factor
7 would successfully degrade PCB's. Yet, in this particular
8 test, had she done it in a timely way or done it at all --
9 I'm not exactly sure that she had -- that we would have
10 had the evidence that we needed to show Northrop Grumman
11 that we could do the work. And we, therefore, stood a
12 very good chance of getting all of -- you know, or a
13 significant portion of the work, the clean up work.

14 Q Do you know if any other people were needed for you
15 to get that work, consultants? Or were there people that
16 were trying to put capital into the company?

17 A There were a couple of folks on the east coast that
18 were -- one gentleman, in particular, named Cook -- Tim
19 Cook, I believe, who had -- he had an association or
20 knowledge of people within the environmental group at
21 Northrop Grumman. And, you know, he was a -- he was an
22 advocate of our process. So I felt like he, you know,
23 could -- could help us.

24 Q How did you -- what communications did you have with
25 this Mr. Cook?

1 A A number of e-mails, phone calls, visits with him
2 personally when we were there. And as I recall, he had
3 relatives in the Charlotte area. So he was there on one
4 or two occasions as well.

5 Q What -- what was your understanding or what was he
6 representing that he -- what value did he bring to the
7 whole thing?

8 A He claimed that he had some influence or an
9 association with these people within the Northrop Grumman
10 environmental group and could position us for serious
11 consideration for the larger project.

12 Q Did you believe that he was working for your benefit?

13 A I did.

14 MR. FEW: That's all the question I have.

15 THE COURT: All right. Thank you.

16 Mr. LeBlanc.

17 CROSS-EXAMINATION

18 BY MR. LEBLANC:

19 Q You have the exhibits up there. If you would, take a
20 look at, I think, what's been admitted as Plaintiff's
21 Exhibit No. 3. That is the May 30th, 2006, general
22 partnership agreement between you and -- I'm sorry -- your
23 company and Dr. Paynter's company, Paynter Consulting,
24 LLC?

25 A Yes.

1 Q And you read paragraph four of that contract, that
2 agreement; right?

3 A Yes.

4 Q Could you take a look at paragraph 3B?

5 A Yes.

6 MR. LEBLANC: Did you do the yellow --

7 MS. KIM PARKER: I didn't do that.

8 THE CLERK: I think it's still warming up.

9 MR. LEBLANC: 3B.

10 MS. KIM PARKER: Here?

11 MR. LEBLANC: Yeah. That's good.

12 (Pause.)

13 BY MR. LEBLANC:

14 Q Do you see paragraph 3B, Mr. Young?

15 A I do.

16 MR. LEBLANC: Jury, can you read paragraph 3B from
17 there?

18 THE WITNESS: I --

19 MR. LEBLANC: I'm asking the jurors.

20 Can you -- can you all read that?

21 THE COURT: Do you want a pointer?

22 MR. LEBLANC: That would be great.

23 Thank you.

24 Remind me to give this back to you.

25 THE COURT: Oh, I will.

1 MR. LEBLANC: There we go.

2 BY MR. LEBLANC:

3 Q All right. Paragraph 3B, Paynter Consulting -- let
4 me know if I'm reading this correctly. Paynter
5 Consulting, LLC, having sole knowledge of the proprietary
6 Factor formulation -- did I read that correctly?

7 A So far, yes.

8 Q Okay. Is there anything in this contract, if we read
9 the whole thing, that says you have any knowledge of the
10 Factor technology?

11 A No.

12 Q Okay. So paragraph 3B says, Paynter Consulting, LLC,
13 is the only entity that knows about the Factor technology;
14 right?

15 A That's what that says, yes.

16 Q And then it says, Agrees to provide the
17 partnership -- that's Biotech Restorations and Paynter
18 Consulting; right?

19 A Correct.

20 Q With exclusive use of Factor formulated products. So
21 they can't provide it to anybody else, only the
22 partnership; right?

23 A Or Biotech.

24 Q The partnership. Paynter Consulting agrees to
25 provide the partnership -- that's Biotech Restorations and

1 Paynter Consulting in the partnership; right?

2 A You could look at it that way, yes.

3 Q If you mean "look at it that way," you mean read it.
4 Is that what you mean?

5 A No. Biotech was the only company using the product,
6 the only company that was authorized to use the product,
7 not Paynter Consulting.

8 Q Well, I -- I'm saying that doesn't this say that it
9 agrees to provide the partnership with exclusive use of
10 the Factor formulated products?

11 A That's what it says, yes.

12 Q Okay. And then it says, during the term of the
13 partnership; right?

14 A Right.

15 Q Okay. And what's the term of the partnership?

16 A The term of the partnership.

17 Q But how long does the partnership last?

18 A Until it no longer exists.

19 Q Okay. Or until it terminates?

20 A Okay.

21 Q Look at paragraph four, the second sentence, The
22 partnership will terminate upon the death or incapacity of
23 a partner. You're not disputing that Dr. Paynter is
24 alive, are you?

25 A Of course not.

1 Q Okay. She died on September 4th, 2017, didn't she?

2 A That's my understanding, yes.

3 Q And doesn't that terminate this partnership
4 agreement?

5 A Not in my view, no.

6 Q Fair enough. But if it did -- would you agree with
7 me if it did terminate this partnership agreement, then
8 the exclusive use of the Factor formulated products goes
9 away, too?

10 A No.

11 Q You don't agree with that either?

12 A No.

13 Q Okay.

14 A Would you like to know why?

15 Q No. I'm fine.

16 A Okay.

17 Q Your counsel can ask you why when he gets a chance.

18 A Okay.

19 Q All right. I don't want to misstate your testimony,
20 but I do want to move things along. I got the impression
21 from your testimony that you and Dr. Paynter were happy as
22 clams from 2004 until 2014; is that fair?

23 A That's -- yes.

24 Q And 2014 is when the Northrop Grumman bench study
25 didn't come out well?

1 A That's when Val got sick.

2 Q Okay. 2014 is when Dr. Paynter got sick; is that
3 right?

4 A Correct.

5 Q And I thought you testified that one of the problems
6 in 2014 was the bench test that Dr. Paynter conducted for
7 the Northrop Grumman work did not come out well, didn't
8 show a good result?

9 A Correct. I wasn't sure it was done.

10 Q You weren't sure it was done correctly, or done at
11 all, or --

12 A I wasn't sure --

13 Q Okay. So there's a problem with the bench test in
14 2014?

15 A In my view, yes.

16 Q And in your view, do you agree that the partnership
17 started getting a little strained right around then?

18 A No, it didn't.

19 Q You think everything was fine?

20 A I thought everything was fine.

21 Q You had no indication that you were going to get sued
22 on August 17th, 2015?

23 A Oh, I don't know what date it was. But I know I
24 was -- I know that I got notified of a suit in 2015. I
25 don't know exactly what day it was.

1 Q Right. I'm not picking points about what day it was.
2 It was August 18th. I'm just saying -- I think you
3 testified you were blind sided?

4 A Okay.

5 Q Okay. Yes, you did testify. Yes, you were blind
6 sided. Do you agree with all that?

7 A I was blind sided by the suit absolutely.

8 Q Okay. You had no idea it was coming. Blind sided
9 means you got hit from behind; right?

10 A That's my recollection, yes.

11 Q I mean, that's a term -- that's a -- that's a -- I
12 wish I could figure out the word for it. It's a -- it's a
13 term that you weren't really blind. You were hit behind.
14 You were blind sided. That's just a term. That's an
15 expression. That's what it is.

16 A Okay.

17 Q An idiomatic expression; right?

18 A (There was no response.)

19 Q Nobody hit you. You were -- you were just blind
20 sided.

21 Didn't you -- correct me if I'm wrong. By January of
22 2015, you fully believed that my client, Joey Paynter, was
23 trying to disrupt the partnership?

24 A Yep. Yes, but for another reason.

25 Q I'm just asking questions. We need to move this along.

1 A Okay.

2 Q You're -- you're a chatty guy. I -- I want to get
3 points out and sit -- sit back down.

4 A Okay.

5 Q So in January of 2015, you knew that Joey Paynter was
6 trying to interfere with your -- her mother's performance
7 in the partnership?

8 A I don't think I'd term -- I don't think I'd describe
9 it that way.

10 Q Do you recall having your deposition taken?

11 A I do.

12 Q You don't recall saying that?

13 A No, not really. But if you say I did, then...

14 Q All right. You know, your deposition was taken on
15 October 14th, 2020. Do you remember that, the first
16 deposition?

17 A I do.

18 Q And I don't mean to impeach you for something you
19 said two years ago. That's not my intent. But would you
20 agree that in January of 2015, you believed that Joey
21 Paynter was trying to interfere with her mother's
22 performance in the partnership?

23 A But for an entirely different reason. You're cherry
24 picking data. Joey had -- we had another project, the
25 Great Barrington project, where we were getting some

1 really good press. Joey wrote letters to the editor
2 saying, You're not giving my mom credit for her
3 participation in this. And if you don't redact your
4 publications, you're -- I'm going to sue you for libel.

5 Q Okay.

6 A So that -- to me, that seemed like interference.

7 So --

8 Q Okay.

9 A But that's an unrelated event, you know. I know
10 Joey's -- you know, when Val got sick, Joey stepped in and
11 started running the business.

12 Q Okay. I'm just -- I'm trying to reconcile how you
13 got blind sided in August when, I believe, you testified
14 that in January of 2015, you believed she was trying to
15 sabotage her mother's partnership with you?

16 A Well, sabotage is your word, not mine. I said I
17 think she was definitely involved in the business. But I
18 was not aware that a suit was going to be dropped on me.

19 Q You're right, interfere. You were aware in January
20 of 2015 that Joey Paynter was trying to interfere with her
21 mother's performance in the partnership?

22 A I think that's fair.

23 Q That's fair. All right. So in this time frame -- do
24 you recall your testimony about One Law Partners?

25 A Yes.

1 Q Okay. In this time frame is when you started having
2 an agreement with One Law Partners; is that right?

3 A When Val and I had an agreement with One Law
4 Partners.

5 Q Did Dr. Paynter and you ever have an agreement with
6 One Law Partners?

7 A Not a signed agreement, no. But she was involved in
8 the negotiations.

9 Q Right. She, perhaps, participated in the
10 discussions. I'm fine with that. But Dr. Paynter never
11 had an agreement with One Law Partners, did she?

12 A No.

13 Q Okay. So this time frame, for -- for the jury's
14 perspective, is 2015, middle of 2015; right?

15 A Right.

16 Q Okay. And, again, One Law Partners is a couple of
17 investors that wanted to invest in Biotech Restorations?

18 A It was an investment group out of New York.

19 Q Okay. An investment group.

20 Thank you for correcting me.

21 And One Law Partners was going to form a company
22 called what?

23 A Biopath.

24 Q Biopath Solutions; right?

25 A Yes.

1 Q And so One Law Partners was going to pitch in the
2 money?

3 A Right.

4 Q And Biopath Solutions was going to do the work;
5 right?

6 A Right.

7 Q And you granted a license to One Law Partners to
8 Dr. Paynter's technology, didn't you?

9 A Which I was empowered to do.

10 Q Okay. You just need to answer my question. Because
11 if you have this extra stuff, I've got to go in and
12 address that. All right.

13 Do you understand that?

14 A Yes.

15 Q Okay. So you licensed Dr. Paynter's technology to
16 One Law Partners?

17 A Yes.

18 Q Dr. Paynter did not do that, did she?

19 A No.

20 Q Okay. And that paragraph 3B there where it says,
21 Paynter Consulting having sole knowledge of the Factor
22 formulation agrees to provide the partnership with an
23 exclusive right to use the technology. It doesn't say you
24 can give that away, does it?

25 A I was involved -- I was responsible for all the

1 business aspects of the partnership, which included
2 licensing.

3 Q Okay. So you believe you could have given it away?

4 A Not given it away --

5 Q Licensed it. Sorry. I didn't mean to be flippant.

6 You believe that you could license Dr. Paynter's
7 technology to somebody else?

8 A I believed I could license our technology to them.

9 Q And when you say, "our technology," are you still
10 referring to the -- the bioremediation technology that
11 Dr. Paynter discovered?

12 A That Dr. Paynter discovered through my efforts,
13 through my capitalization, through my development that we
14 jointly owned.

15 MR. LEBLANC: May I approach?

16 BY MR. LEBLANC:

17 Q I'm going to pass you a document that'll be marked as
18 Defendant's Exhibit No. 12.

19 THE COURT: And I'll just let y'all know that you've
20 got blanket permission to approach the witness.

21 (WHEREUPON, Defense Exhibit No. 12 was marked for
22 identification only.)

23 BY MR. LEBLANC:

24 Q Do you recognize what's shown in Defendant's Exhibit
25 No. 12?

1 A I do.

2 Q And that's the license and distribution agreement
3 that you signed with One Law Partners; is that correct?

4 A That's correct.

5 Q And you signed this on August 14, 2015?

6 A Yes.

7 Q And, again, just for chronology, Dr. Paynter's
8 company, Paynter Consulting, sued you and your company
9 three days later; is that right?

10 A I don't -- again, I don't know the specific dates.
11 But I'll take you at your word, yes.

12 Q If I'm wrong, I'm sure he'll correct me.

13 And that's the lawsuit for an accounting.
14 Dr. Paynter's company sued you and your company for an
15 accounting of profits and a disillusion of the partnership.
16 She wanted out.

17 A Joey wanted out.

18 Q Did Joey Paynter sue you?

19 A Yes.

20 MR. LEBLANC: Your Honor, can I -- can I get the
21 record corrected? He just testified that my client sued
22 him in that 2015 lawsuit.

23 THE WITNESS: Her name doesn't appear on the suit.
24 But she was making all the decisions for her mother by
25 then.

1 THE COURT: All right. I mean, that's his -- that's
2 what he's alleging. Certainly, you've got the caption of
3 the document.

4 MR. LEBLANC: Absolutely.

5 BY MR. LEBLANC:

6 Q Would you, please, take a look at Plaintiff's Exhibit
7 No. 5 in front of you? That's the order for arbitration
8 that was put into evidence.

9 MR. FEW: It's Plaintiff's Exhibit No. 4.

10 MR. LEBLANC: Plaintiff's Exhibit No. 4. Sorry.

11 Thanks for correcting me.

12 BY MR. LEBLANC:

13 Q In the caption on that exhibit, do you see that?

14 A Yes.

15 Q Do you see Joey Paynter anywhere in that caption?

16 A No.

17 Q Okay. So she's not a party to that lawsuit. She did
18 not sue you.

19 A She's not on the paper.

20 Q Right. So when you said she did -- when you said she
21 did sue you, you were incorrect; right?

22 A No. I was not incorrect.

23 Q Okay. The exhibit that I just put into evidence --
24 or I'm sorry. Do you recognize what's shown in
25 Defendant's Exhibit No. 12?

1 A I do.

2 MR. LEBLANC: Your Honor, at this time, we'd move
3 Defendant's Exhibit No. 12 into evidence.

4 THE COURT: Any objection?

5 MR. FEW: Your Honor, I just have a concern that
6 we're going to get a bunch of stuff back there that
7 doesn't really relate, but.

8 THE COURT: All right. It --

9 MR. FEW: It's on relevance. But I...

10 THE COURT: Okay. It's so admitted.

11 MR. LEBLANC: Thank you.

12 (WHEREUPON, Defense Exhibit No. 12 was admitted into
13 evidence.)

14 BY MR. LEBLANC:

15 Q It was your intention in signing Defendant's Exhibit
16 No. 12, this license and distribution agreement with One
17 Law Partners, that there would be some bioremediation work
18 done; is that correct?

19 A Correct.

20 Q And your company would receive some sort of profit
21 sharing or revenue as associated from that work?

22 A Val and I both would, yes.

23 Q So the money -- any money that was received under
24 this license would go to the partnership?

25 A Correct.

1 Q And if it goes to the partnership, that, according to
2 the partnership agreement that we talked about -- or you
3 talked about earlier, you would split the profits 50/50?

4 A Right.

5 Q Do you know what the royalty rate was in Defendant's
6 Exhibit No. 12 that you agreed to?

7 A I don't.

8 Q I'll help you out.

9 MR. LEBLANC: Put up Defendant's Exhibit No. 12,
10 please, Page 2, paragraph 2.03.

11 BY MR. LEBLANC:

12 Q Could you look at the second page? Or you're welcome
13 to look at the screen. That's fine. Do you see this
14 royalty rate down there?

15 A I do.

16 Q And tell me what it is.

17 A It says, Royalty price.

18 Q Do you know what -- do you know what the royalty --
19 in that paragraph, do you see the highlighted part?
20 You're welcome to read the whole paragraph. But I'm
21 trying to point you to the part where it says what the
22 number is.

23 A Okay. Royalty of \$2 per cubic yard of soil treated.

24 Q Okay. So when you go to do a bioremediation job and
25 if you remediated soil that filled up that lectern, that'd

1 be about a cubic yard; right?

2 A Right. And if you did a big enough job, it would
3 fill up this room.

4 Q Right. I -- I'm just -- I'm not scaling it yet like
5 you want to.

6 A Okay.

7 Q So that -- that one cubic yard, what would your
8 royalty be?

9 A Two bucks.

10 Q And if you did a thousand cubic yards, what would
11 your royalty be?

12 A Two times a thousand.

13 Q All right. Let's see if we can do this. 16,400
14 cubic yards, what's your royalty?

15 A (There was no response.)

16 Q 32,800. Do you agree?

17 A Okay.

18 Q Okay. So it's two times the cubic yards. Does that
19 16,400 cubic yards ring a bell?

20 A Sure does.

21 Q What is that?

22 A It's the amount of soil that was treated at the
23 Milpitas site.

24 Q Okay. We'll get to that. All right. Defendant's
25 Exhibit No. 12, you signed it on August 14, 2015; right?

1 A Correct.

2 Q And Dr. Paynter's company sued you a couple days
3 later?

4 A Right.

5 Q Do you recall having meetings between the parties in
6 that lawsuit?

7 A I do, until Joey demanded that I be excluded from the
8 meetings.

9 Q Okay. But you did attend some meetings; right?

10 A Until I was excluded, yes.

11 Q Do you recall attending a meeting in May or April --
12 or May 2016 to discuss issues in the lawsuit?

13 A I had a number of meetings. I don't recall the
14 specific dates, but.

15 Q I know it's been six years. Do you recall during a
16 meeting in April or May of 2016 that you learned directly
17 from Joey Paynter, my client, that Joey, her sister, Sam,
18 and their mother, Dr. Paynter, had received offers to
19 purchase Dr. Paynter's bioremediation technology? Do you
20 recall that?

21 A I do.

22 MR. FEW: Objection.

23 Your Honor, could we approach?

24 THE COURT: Certainly.

25 (WHEREUPON, a bench conference was held.)

1 BY MR. LEBLANC:

2 Q You -- you testified that you had several meetings
3 during this litigation?

4 A Right.

5 Q And in this meeting in April or May of 2016, was this
6 a meeting to discuss the issues in the lawsuit?

7 A I -- I can't imagine any other reason for the
8 meeting.

9 Q You didn't have a mediator attend the meeting, did
10 you?

11 A We did have, as I recall. I -- I know that it was
12 suggested that there be a mediator. And we did meet with
13 a Mr. Stephenson.

14 Q Was Mr. Stephenson at this meeting in April or May of
15 2016?

16 A I don't recall.

17 Q And at this meeting in April or May of 2016, you
18 learned directly from my client, Joey Paynter, that her
19 intention was to break up whatever partnership you had
20 with her mother, Dr. Paynter?

21 A I did not know that. I just know that she was
22 demanding \$20 million from the One Law people.

23 Q You say you didn't know that. Did Joey Paynter tell
24 you directly at this meeting that it was her intention to
25 break up the partnership?

1 A She did not.

2 MR. LEBLANC: Okay. Your Honor, if I could open his
3 deposition from October 14 of 2020.

4 THE COURT: All right. Ladies and gentlemen, a
5 deposition -- you may already be familiar with that. But
6 that's testimony taken outside of the courtroom. Both
7 attorneys or all attorneys to a party are present and able
8 to ask questions.

9 And it's taken under oath. There's a court reporter
10 taking down everything that's said just like here. And
11 then a transcript is generated from that. And you can
12 take deposition testimony as the same as if it were being
13 testified to from this witness stand.

14 All right. Yes, sir.

15 Let the record reflect he's opening the original
16 transcript.

17 BY MR. LEBLANC:

18 Q Okay. I'm going to pass you up the transcript of
19 your deposition on October 14, 2020. Have you read that
20 deposition transcript before?

21 A In its entirety, probably not.

22 Q Well, you signed something saying that you had read
23 it and you didn't have any changes to it. Do you recall
24 doing that?

25 A No.

1 Q Okay. Would you take a look, please, at Page 142,
2 Line 15?

3 Are you there?

4 A Yep.

5 Q All right. Tell me if I read this correctly.

6 Question: What was in Joey's mind?

7 Answer: To abrogate the agreement so that she could
8 sell the technology.

9 Question: How do you know what was in Joey's --
10 what's in Joey's mind if you don't know what's in
11 Dr. Paynter's mind?

12 Answer: Because Joey has admitted as such -- as
13 much. Sorry.

14 Question: So when did you learn that Joey's
15 intention was to abrogate the partnership agreement?

16 Answer: In the -- in the -- in the meeting that we
17 had, that was made clear. It was the entire reason for
18 the initial suit.

19 Did I read that correctly?

20 A I -- yes.

21 Q So you did know as a result of that lawsuit that
22 Joey's intention back in April or May of 2016 was to
23 abrogate the partnership?

24 A I didn't say I know that. I just -- I inferred that.

25 Q Fair enough.

1 Thank you.

2 Okay. Talking about that lawsuit that was filed in
3 2015, you testified that it was dismissed; right?

4 A Right.

5 Q And it was dismissed at Dr. Paynter's request; right?

6 A Correct.

7 Q And do you know why she requested for it to be
8 dismissed?

9 A I think it was on the recommendation of an attorney
10 called Yale Galanter.

11 Q He recommended that she take a dismissal?

12 A That's what my attorney advised at the time, I
13 believe.

14 Q Did Dr. -- did Dr. Paynter have sufficient funds to
15 continue the lawsuit?

16 A I don't know what her financial situation was at the
17 time.

18 Q Right. But you do know what your financial situation
19 was at the time; right?

20 A I do.

21 Q Was that lawsuit expensive to you?

22 A No, not to me personally.

23 Q And why not?

24 A Because the One Law folks picked up the cost.

25 Q So the guys that you signed an agreement with on

1 August 14, 2015 paid your entire litigation fees
2 associated with that lawsuit that Dr. Paynter filed?

3 A We had some out-of-pocket expenses. I don't recall
4 exactly how much they were, but...

5 Q Do you recall testifying that One Law Partners picked
6 up the entire fee?

7 A Most of it, yes.

8 Q And after the lawsuit was dismissed, you attribute
9 all actions after June 2016 that dealt with the Factor
10 technology were actions taken by my client, Joey, here and
11 her sister, Sam Nelson?

12 A I'm sorry. I don't understand the question.

13 Q After that lawsuit was dismissed in May of 2016, you
14 can -- you attribute all actions related to the Factor
15 technology to be caused by Joey or her sister, Sam?

16 A Not only after but before.

17 Q After and before. Okay. So the lawsuit was
18 dismissed in May of 2016. And there was all sorts of bad
19 blood now, no doubt about it; right?

20 A Not on my part.

21 Q And you knew you no longer had access to the Factor
22 technology; right?

23 A I wasn't sure.

24 Q Well, did you try and get access to it?

25 A I did.

1 Q And in fact -- and we'll get into this. Your work
2 with One Law Partners, you needed access to that
3 technology, didn't you?

4 A Sure. That was the basis of the -- the whole basis
5 of the business was the Factor technology that we
6 developed.

7 Q Right. So in this time frame, we're talking about
8 2015 to 2016, the Milpitas job, you needed access to the
9 Factor technology; right?

10 A No.

11 Q Why not?

12 A Because we were able to do that job without the
13 Factor technology.

14 Q Really? We'll get back to that.

15 All right. So the lawsuit gets dismissed in May of
16 2016. And Dr. Paynter passed away in September of 2017;
17 right?

18 A Right.

19 Q And during that time period, did you ever sue
20 Dr. Paynter to say, hey, give me access to the Factor
21 technology?

22 A I tried to connect with her and Joey a number of
23 times. And they refused to respond.

24 Q And -- but you -- you knew you did not have access to
25 the Factor technology. They weren't sharing it with you

1 anymore; right?

2 A That's right.

3 Q And you -- you would consider that a breach of the
4 contract, a breach of the partnership agreement; right?

5 A Correct.

6 Q Under your understanding of the partnership
7 agreement?

8 A Well, I'm not a lawyer, but I -- I know that it,
9 certainly, violated the -- you know, the terms of the
10 agreement.

11 Q Okay. But you took no action against Dr. Paynter?

12 A Other than trying to approach her through Joey and
13 various other sources. I tried to reconnect with her and
14 see if we could fix what was broken.

15 Q And when Dr. Paynter died on September 4, 2017, you
16 knew that my clients, Joey and Sam, had possession of the
17 Factor technology?

18 A I did not.

19 Q You did not?

20 A I wasn't even informed of Val's passing until I did a
21 Google search and found she died.

22 Q Take a look at Page 260, please, Line 15.

23 260, Line 15, are you there?

24 A Okay.

25 Q Let me know if I read this correctly. I'll try and

1 do better.

2 Question: And so you have known that Samantha Nelson
3 and Joey Paynter had possession of the Factor technology
4 since, at least, Dr. Paynter's death?

5 Answer: And before, yes.

6 Question: And before? How long do you believe they
7 had possession of Dr. Paynter's technology?

8 Answer: By Joey's admission, the day after her
9 father died.

10 A Okay.

11 Q Okay. So my question to you before I went back to
12 your transcript was you knew when Dr. Paynter died that
13 Joey Paynter and her sister, Sam Nelson, had possession of
14 the Factor technology?

15 A I knew they had possession of the records, the -- the
16 lab notes and books, yes.

17 Q And they knew that before Dr. Paynter died?

18 A I don't know if they had --

19 Q I'm sorry --

20 A -- that before she died.

21 Q I'm sorry. They had that before Dr. Paynter died,
22 according to --

23 A They, certainly, had access to it. I don't know if
24 they had it.

25 Q And before Dr. Paynter passed away on September 4,

1 2017, you knew that Joey and Sam refused to turn over
2 their mother's bioremediation technology, these lab
3 notebooks to you?

4 A Okay.

5 Q Yes, you agree you did know that?

6 A I'm not sure -- what's the question again?

7 Q You knew before Dr. Paynter passed away -- we just
8 went over that they had possession of the trade secrets --

9 A Oh, right.

10 Q -- the technology. And you knew before Dr. Paynter
11 passed away that they were not going to give it to you?

12 A Correct.

13 Q And you knew before Dr. Paynter passed away that they
14 were trying to sell it?

15 A Correct.

16 Q And you -- all of those would breach the contract,
17 according to your understanding of the contract?

18 A Right.

19 Q Dr. Paynter passed away on September 4, 2017. I
20 don't know if Kay Barrett's going to testify, but you sent
21 her a letter, didn't you --

22 A I did.

23 Q -- right after Dr. Paynter died?

24 Do you remember the date of the letter?

25 A I do not.

1 Q September 17, 2017, does that ring a bell?

2 A No.

3 Q Does it sound about right, you know, two weeks after
4 Dr. Paynter died, you send Kay Barrett a letter?

5 A Okay. That tracks.

6 Q And just so the jury understands who Kay Barrett is,
7 tell them who Kay Barrett is.

8 A Kay is a -- a long-time friend of Dr. Paynter's.
9 They took vacations together, went to the theater
10 together, you know. They -- I don't know if they were
11 neighbors. But they -- they, certainly, lived close to
12 one another. And they were long-time friends. And I
13 believe Kay advised her on legal matters from time to
14 time.

15 Q Okay. So Kay's a lawyer?

16 A Right.

17 Q And what I was looking for is Kay's the person who
18 notarized that first partnership agreement; right?

19 A Correct.

20 Q That's what I was looking for. I -- I really wasn't
21 going into their vacation plans.

22 All right. So you sent Kay Barrett a letter on
23 September 17, 2017 -- or you're not sure when, but in that
24 time frame?

25 A Correct.

1 Q And you asked Kay Barrett to do what?

2 A To turn over the -- the disks that Val told me Kay
3 was in possession of that described the Factor and all of
4 its components.

5 Q So you asked Kay to give you the technology, give you
6 the trade secrets?

7 A I was following up on the instructions that I was
8 given to retrieve the information that I needed.

9 Q Who gave you those instructions?

10 A Dr. Paynter.

11 Q I'm sorry. Who?

12 A Valerie.

13 Q Dr. Paynter told you to contact Kay Barrett if she
14 died to get the technology?

15 A She said in the event of her death that she had put
16 everything on a disk, you know, in addition to the hard
17 copies. And that she had given that information to Kay to
18 be relayed to me. It's in a letter.

19 Q All right. This is that first partnership agreement
20 that Kay Barrett notarized. It's an exhibit in front of
21 you. And you're -- you just testified that Dr. Paynter
22 told you when she dies to go get the stuff from Kay
23 Barrett; right?

24 A That's correct.

25 Q And that's the same Dr. Paynter that said, Valerie

1 Paynter having sole knowledge of the proprietary Factor
2 formulation there -- right there, she said you could have
3 it?

4 A Of course, I helped -- you know, I helped develop it.
5 Why would I not?

6 Q Well, if you helped develop it, then why does she
7 have sole knowledge of it?

8 A Her lawyer put that document together, not mine. If
9 you are asking me to interpret the minutia of the
10 agreement, I mean, I can't. You --

11 Q Okay. So you don't agree with that statement?

12 A What part of it?

13 Q Val -- Dr. -- you don't agree with the statement --
14 it's in two -- 3B there, Valerie A. Paynter having sole
15 knowledge of the proprietary Factor formulation -- you
16 don't agree that's a true statement?

17 A No. I -- at the time, I did agree with it. That's
18 why she put it on the disk. And that's why it was
19 important for me to retrieve the disk.

20 Q All right. After Dr. Paynter died, you, also, sent a
21 letter to who?

22 A To Joey.

23 Q You sent a letter to Joey, didn't you?

24 A I assume so. You seem to think --

25 Q That's why I was pointing to her. I'm sorry. I

1 didn't mean to -- I was just trying to get faster here.

2 I'll -- I'll -- I'll represent to you that you did send a
3 letter to Joey Paynter on October 3, 2017. Do you recall
4 that?

5 A I sent a number of letters and e-mails to Joey saying
6 let's find some common ground here and move forward.

7 Q So it was an olive branch you were extending to Joey
8 Paynter?

9 A I think so.

10 Q And did you conclude that olive branch with the
11 statement that if she doesn't turn over the Factor
12 technology to you, you're going to file a claim against
13 her mother's estate?

14 A I may have.

15 Q How did Joey Paynter respond to that letter?

16 A I don't recall that she ever did.

17 Q I don't think she did. So what did you then do?

18 A I filed a claim against the estate.

19 Q And how did that work out?

20 A It didn't.

21 Q It got denied?

22 A By Joey. She was the executor of the estate. Of
23 course, she's going to deny it.

24 Q Well, she's the personal representative; right?

25 A Well, probate court didn't do it, Joey did. Joey is

1 the one who denied the claim.

2 Q Okay. But the -- the probate judge is in charge of
3 the probate court; right?

4 A I'm not sure you really want to go there.

5 Q Why don't I?

6 A On a probate issue?

7 Q Do -- do you agree that the probate judge is in
8 charge of the probate court?

9 A No. I'm just talking about the executor and the --
10 never mind.

11 Q The probate judge outranks the executor, doesn't it?

12 A I don't know. I don't know the probate court system.

13 Q Okay. At any rate, your claim was denied; right?

14 A For the \$55,000 that I had loaned Val, yes. That was
15 the claim against the estate.

16 Q Really? You didn't make a claim against the estate
17 for Dr. Paynter's technology?

18 A She didn't claim it as an asset of the estate.

19 Q And you knew that, didn't you?

20 A I didn't, no. That's why I made the claim.

21 Q You did not know that Dr. Paynter's technology was
22 not an asset of the estate?

23 A I don't recall if I -- I don't recall being informed
24 of what the assets of the estate were.

25 Q I'm going to pass you up a document that will be

1 marked as Defendant's Exhibit No. 62.

2 MR. FEW: Defendant's Exhibit No. 62?

3 MR. LEBLANC: Yep.

4 BY MR. LEBLANC:

5 Q Do you recognize what's shown in Defendant's Exhibit
6 No. 62?

7 A I recall it, yes.

8 Q And was this included in the letter that you sent to
9 Kay Barrett?

10 A I don't know.

11 Q You did send a letter to Kay Barrett; right?

12 A I did send a letter to Kay Barrett.

13 Q And -- and do you recall what's shown in Defendant's
14 Exhibit No. 62? That's yours?

15 A Yes.

16 MR. LEBLANC: Okay. Your Honor, at this time, we'd
17 move Defendant's Exhibit No. 62 into evidence.

18 THE COURT: All right. Any objection to that?

19 MR. FEW: No objection.

20 THE COURT: Then so admitted.

21 (WHEREUPON, Defense Exhibit No. 62 was marked for
22 identification and admitted into evidence.)

23 BY MR. LEBLANC:

24 Q Do you see at the bottom of this exhibit here --
25 well, let's start at the beginning. Okay. The jury is

1 not familiar with this.

2 What is this document?

3 A It's, apparently, a document from the probate court.

4 Q Well, this is a document you prepared, isn't it?

5 A It looks like a legal -- it looks like a court
6 document to me.

7 Q Do you see the handwriting down at the bottom there?

8 A Draft only?

9 Q Yes.

10 A Yes.

11 Q Isn't this what you sent to Kay Barrett?

12 A I don't know if this was sent to Kay Barrett or not.

13 Q Well, when I asked you before if you recognized the
14 document, I thought you said it was a document you
15 created. You're now saying it's not?

16 A I don't know. I mean, you -- you say I created it.
17 Okay. I created it.

18 Q Okay. Scroll -- so this is something that you sent
19 to Kay Barrett. And look at what it says there in that
20 box that's checked with an X in it. I'll read it. The
21 claim was satisfied upon surrender by Paynter heirs of
22 non-probate property in their possession and jointly owned
23 by Valerie Paynter and Christopher young.

24 Did I read that correctly?

25 A Yeah. But that's not something I put together.

1 Q Well, you said before you didn't know that
2 Dr. Paynter's technology was not part of the probate
3 estate. And I -- I -- I put this up there to show that
4 you did.

5 A No. The claim -- you know, the claim was never
6 satisfied.

7 Q Your claim against the probate estate was never
8 satisfied; right?

9 A Correct.

10 Q Because it was denied; right?

11 A Right.

12 Q And you didn't appeal that, did you?

13 A No.

14 Q And so you know that Dr. Paynter's estate closed in
15 April of 2019; right?

16 A Okay. I didn't know that, but.

17 Q Sorry I got off track.

18 All right. So what I was trying to get out of that
19 was you filed a claim against Dr. Paynter's estate?

20 A Right.

21 Q The claim was denied?

22 A Right.

23 Q You did not appeal that denial?

24 A I didn't know I had the option, but okay.

25 Q And you then sued my clients, Joey Paynter and

1 Samantha Nelson, in September of 2019?

2 A Right.

3 Q Okay. Why'd you wait so long between making a claim
4 in probate court and suing my clients a year later?

5 A Because I thought maybe we could pull back and not
6 have to rely on lawsuits to -- to make it work.

7 Q I want -- separate topic. Moving on. So I don't
8 want to confuse you. I want to establish clearly, you do
9 not know what Dr. Paynter's bioremediation technology is,
10 do you?

11 A I don't know what I don't know. I haven't had a
12 chance to read the books. So I don't know what may or may
13 not have been excluded.

14 Q Would you take a look at Plaintiff's Exhibit No. 1?

15 Okay. This is part of Plaintiff's Exhibit No. 1;
16 right?

17 A Right.

18 Q And this says you and Dr. Paynter agree to go into a
19 joint venture in the environmental business and split any
20 and all profits; right?

21 A Correct.

22 Q Nothing on that piece of paper tells you that you own
23 the technology, does it?

24 A No.

25 Q Show -- take -- take a look at the next page then.

1 And this is the second page of Plaintiff's Exhibit No. 1
2 that's up on the screen; right?

3 A Correct.

4 Q And it says, I, Chris Young, promise not to disclose
5 the names of the factors; right?

6 A Right.

7 Q So is it your understanding that the Factor
8 technology occasionally would -- was a combination of
9 factors, wasn't it?

10 A It was a basic platform that could be modified.

11 Q And the basic platform included factors A and B; is
12 that correct?

13 A That's how Val designated them.

14 Q That's how she coded it; right?

15 A Correct.

16 Q And factor A was what?

17 A Factor A.

18 Q Factor B was what?

19 A Factor B.

20 Q Okay. Didn't you know that one of the factors was
21 blood meal?

22 A No.

23 Q You never knew that?

24 A No.

25 Q You are aware that Dr. Paynter documented her

1 research fairly extensively in lab notebooks and -- and
2 binders in her laboratory; right?

3 A Val did not really care for the computer. So she was
4 hard copy all the way, yes.

5 Q And -- and I believe you've testified that she was
6 old school, she wrote down everything?

7 A Correct.

8 Q And that's what you want in this lawsuit. I think
9 you testified on direct that you want those books, you
10 want those binders, you want that documentation?

11 A I -- yes, absolutely.

12 Q But you've never seen anything in those books, have
13 you?

14 A I have seen some of the studies that were done. When
15 I would talk to Val about projects and I was in the lab,
16 she would pull one of the books out and would refer to,
17 you know, various points. But I never had a chance to sit
18 down and study them.

19 Q Okay. But you've never seen any formulas for her
20 bioremediation technology in those --

21 A Not a specific enumeration of the components, no.

22 Q Could you take a look at Plaintiff's Exhibit No. 3,
23 Paragraph 3B? So would you agree with me that Paragraph
24 3B of Plaintiff's Exhibit No. 3 and Plaintiff's Exhibit
25 No. 2 is identical, except for it substitutes Paynter

1 Consulting, LLC -- in Plaintiff's Exhibit No. 3, it
2 substitutes that in place of Dr. Valerie Paynter; is that
3 correct?

4 A It would appear to be, yes.

5 Q And there might be some punctuation. I don't mean to
6 mislead you on that, capital P's, or something like that.

7 A Okay.

8 Q But the substance is the same, except for the change
9 in the names; right?

10 A And the beneficiary statement, yes.

11 Q Yeah. But I'm talking about Paragraph 3B.

12 A Oh, okay.

13 Q Okay. You have all the partnership agreements ever
14 signed between you and your company and Dr. Paynter and
15 her company; right? They're -- they're in evidence right
16 there; right?

17 A I believe so, yes.

18 Q How many of those have Joey Paynter's name on them?

19 A None.

20 Q How many of those have Samantha Nelson's name on
21 them?

22 A None.

23 Q Did Joey Paynter or Samantha Nelson ever agree to do
24 anything with you or your company?

25 A No.

1 Q You knew -- you do know you've sued them for breach
2 of contract?

3 A Because they took over as management for their
4 mother.

5 Q All right. Almost done. New topic. Do you
6 recall -- do you recall testifying about Steve
7 Apelman [phonetic]?

8 A I do.

9 Q And your testimony on direct was that he loaned your
10 company some money?

11 A Actually, he brokered the money to our company.

12 Q Somebody else supplied the money. He -- he got it to
13 you?

14 A Correct.

15 Q And you paid him \$20,000 to do that, didn't you?

16 A I thought it was 30, but I can't remember right
17 offhand.

18 Q I wasn't there. So you think it was 30?

19 A 20 or 30. It was a finders fee, basically.

20 Q You had an obligation to pay that money back;
21 correct?

22 A Yes.

23 Q And you didn't?

24 A I did not.

25 Q And you believe that the money that he gave you was

1 reported on your tax returns?

2 A No.

3 Q You did not report that money on your tax returns?

4 A I did not.

5 Q Did you testify that you did?

6 A When?

7 Q At the deposition on February 24th, 2020.

8 A I believe I did.

9 Q Okay. So I don't want to beat a dead horse. You did
10 that, you reported that income on your taxes?

11 A I didn't know at the time. I believed we did. I
12 believed if it was income, it should have been reported.
13 And that's how I suggested it. But, you know, in
14 consulting with my CPA, I learned that it was a loan and
15 as such was not reportable as income.

16 Q Okay. So you said a lot there. I just want to ask,
17 did you or did you not report that loan on your tax
18 returns?

19 A I did everything my CPA told me to do --

20 Q Not what I asked. That's not what I asked. You
21 know, I asked you at your deposition, Did you report this
22 on your tax returns? And you said, Yes, didn't you?

23 A I believe I did.

24 Q But now -- you now know you were mistaken?

25 A I was mistaken.

1 Q And you just think you didn't have to report it?

2 A That's what my CPA said.

3 Q You agree you never paid Mr. Apelman or the investors
4 back on their money; right?

5 A That's correct.

6 Q And they sued you in New York?

7 A That's correct.

8 Q And they got a judgment against you for \$250,000?

9 A That's correct.

10 Q Okay. Next topic. Himel [phonetic] Automotive, do
11 you remember that name?

12 A I do.

13 Q Did you testify about them on direct?

14 A I did.

15 Q And tell me if this is accurate, Himel Automotive
16 invested or loaned your company, Biotech Restorations,
17 LLC, \$250,000.

18 A That's correct.

19 Q And you testified at your deposition that that loan
20 is reflected on your tax returns; correct?

21 A I was wrong.

22 Q But -- but you were mistaken?

23 A I was mistaken.

24 Q And you don't think it ever needed to be reported on
25 your tax returns; right?

1 A That's what my CPA said.

2 Q And you defaulted on that loan; right?

3 A That's correct.

4 Q And Himel Automotive sued you and your company in
5 Louisiana; correct?

6 A Correct.

7 Q And they received a judgment against you for
8 \$250,000?

9 A That's correct.

10 (WHEREUPON, Defendant's Exhibit No. 10 was marked for
11 identification only.)

12 BY MR. LEBLANC:

13 Q I'm passing you what's been marked as Defendant's
14 Exhibit No. 10, and ask you to take a look at that.

15 Do you recognize what's shown in Defendant's Exhibit
16 No. 10?

17 A I do.

18 Q What is it?

19 A It's a -- a note from Dr. Ellis Kline. I guess you'd
20 call it an affidavit.

21 Q That's what I'd call it.

22 A Okay. Stating that -- that Valerie Paynter was the
23 one who discovered and developed the Factor technology.

24 Q When?

25 A September --

1 Q No. When did she develop the Factor technology?
2 What year?

3 A 2004.

4 Q And who signed this document?

5 A Ellis Kline and Dr. Valerie Paynter.

6 Q And what's at the bottom of this document, this --
7 this part?

8 A The notary.

9 Q That's a notary subscription; right?

10 A Okay.

11 MR. LEBLANC: Your Honor, at this time, we'd move
12 Defendant's Exhibit No. 10 into evidence.

13 THE COURT: Any objection?

14 MR. FEW: No objection.

15 THE COURT: All right. So admitted.

16 (WHEREUPON, Defendant's Exhibit No. 10 was admitted
17 into evidence.)

18 BY MR. LEBLANC:

19 Q Okay. So when -- when you testified earlier about
20 you and Ellis Kline did some stuff back in 1997 and 1998,
21 you didn't mean to say that you all discovered the Factor
22 technology, did you?

23 A Yes, absolutely, had a role in it.

24 Q Okay. Ellis Kline doesn't agree with you; is that
25 correct?

1 A (There was no response.)

2 Q You have to --

3 A If that's your interpretation. It, certainly, not
4 mine.

5 Q Well, if you read it --

6 MR. LEBLANC: Please put Defendant's Exhibit No. 10
7 up on the board.

8 BY MR. LEBLANC:

9 Q So when I look at Defendant's Exhibit No. 10, as you
10 read it, I don't know how you come to any other conclusion
11 but that Dr. Paynter discovered the Factor technology.
12 And you come to a different conclusion?

13 A Yes.

14 Q I maybe should have covered this and, perhaps,
15 Mr. Few did cover it and I didn't pick up on it. What's
16 your education in this field?

17 A I'm -- I'm trained in organic chemistry, pesticides.
18 I've been doing remediation for close to 30 years. I've
19 cleaned up and closed dozens of contaminated sites. And I
20 played a role in the development of this technology.

21 Q Okay. And I, certainly, respect experience. The
22 school of hard knocks is -- is a powerful teacher. But in
23 1997, what technical experience did you have in this
24 technology?

25 A I had enough to go to Ellis Kline, who was a

1 recognized expert in this field.

2 Q And you helped discover the Factor technology?

3 A Yes. I'm the one who took it to the field and did
4 the testing at Hercules. I loved Val. I told you that
5 before. But Val's expertise up to this point involved
6 pectin research in peaches and the use of rutabagas for
7 ethanol production.

8 She -- she didn't play a role in the first part of
9 this. Why Ellis gave her this is anybody's guess. But
10 Val was dying here. She -- Ellis brought Val and Malcolm
11 here from California. So they were old friends. You draw
12 your own conclusions. But I know who developed the
13 technology.

14 Q All right. Thank you for that.

15 Would you, please, get Defendant's Exhibit No. 12
16 again? That's the license agreement with One Law
17 Partners.

18 A Okay.

19 Q Okay. And I -- I want to review so you know -- get
20 to have some context for where I'm going. You signed this
21 agreement on -- or this agreement is effective August 14,
22 2015; right?

23 A Okay. Yep.

24 Q And in this agreement, you granted One Law Partners a
25 license to Dr. Paynter's technology?

1 A A license, correct.

2 Q And Biopath Solutions is the company that was formed
3 to, actually, do the work, do the digging and stuff;
4 right?

5 A No. I mean, we were -- we were the entity that would
6 do, essentially, what Biotech did before, but under the
7 Biopath banner.

8 Q Okay. So when you say "we," you now consider
9 yourself part of Biopath Solutions?

10 A Right.

11 MR. LEBLANC: Would you put Defendant's Exhibit No. 5
12 up on the board again? It's my Exhibit No. 5, your
13 Exhibit No. 3.

14 Can you make this bigger?

15 MS. KIM PARKER: Which section?

16 MR. LEBLANC: This one.

17 BY MR. LEBLANC:

18 Q Do you see what's written in paragraph 3A?

19 A Yes.

20 Q Christopher W. Young -- I'll skip some of the
21 words -- and Dr. Paynter jointly agree to work exclusively
22 in support of the partnership and matters relating to the
23 development and commercial use of the Factor.

24 So when you became part of Biopath Solutions, you
25 were not working exclusively for the partnership, were

1 you?

2 A You're -- you're -- you're trying to conflate a
3 number of issues together, Counselor. That's not at all
4 true.

5 Q When you were working for Biopath Solutions, were you
6 or were you not working exclusively for the partnership?

7 A (There was no response.)

8 Q Pick one.

9 A I don't follow.

10 Q When you were working with Biopath Solutions -- I
11 think you just testified when Biopath Solutions started --

12 A Right.

13 Q -- you worked for them?

14 A I worked with them, yes.

15 Q Well, your parse on words. They paid you a salary,
16 didn't they?

17 A Well, sure.

18 Q How much did they pay you?

19 A But I paid Val, too. And she didn't work for me.

20 Q You paid Val a salary?

21 A No. I didn't pay her a salary, but I paid her. And
22 that doesn't mean that she worked for me.

23 Q Okay.

24 A The agreement we had -- the licensing agreement, yes.
25 We were working with Biopath. And as part of that

1 agreement, they paid me a monthly stipend or a monthly
2 salary with a royalty agreement --

3 Q Correct. So you're -- you're working for Biopath
4 Solutions, they're giving you \$10,000 a month about,
5 aren't they?

6 A If memory serves about --

7 Q Roughly. I mean, I could pull the document back up
8 and show that they agreed to pay you a hundred thousand a
9 year.

10 A And Valerie as well.

11 Q Did Dr. Paynter ever get paid by Biopath Solutions?

12 A I don't know what they paid her.

13 Q Did you ever share any of the money Biopath Solutions
14 paid you with Dr. Paynter?

15 A I did not.

16 Q Did you ever tell Dr. Paynter that Biopath Solutions
17 was paying you about \$10,000 a month?

18 A Oh, sure.

19 MR. LEBLANC: Defendant's Exhibit No. 66.

20 (WHEREUPON, Defendant's Exhibit No. 66 was marked for
21 identification only.)

22 BY MR. LEBLANC:

23 Q I just passed you a document that's been marked for
24 identification as Defendant's Exhibit No. 66. Do you
25 recognize that document?

1 A I do.

2 Q This is a request for proposal from Padre Associates,
3 Inc.; correct?

4 A Correct.

5 Q And this involves -- they're asking you at Biotech
6 Restorations to propose a job for them?

7 A Correct.

8 Q And that job is to remediate soil at the Milpitas
9 Unified School District in California?

10 A Correct.

11 Q And the volume of soil that you ended up remediating
12 was what?

13 A Just under 17,000 tons.

14 Q 16 -- well, I don't know about tons. 16,400 yards,
15 cubic yards.

16 A Okay. Then it would be, actually, more because it's
17 1.4 tons per cubic yard.

18 MR. LEBLANC: All right. So, at this time, we'd move
19 to admit Defendant's Exhibit No. 66 into evidence.

20 THE COURT: Any objection?

21 MR. FEW: I haven't seen a copy of it.

22 THE COURT: Okay.

23 MR. LEBLANC: Oh, sorry.

24 MR. FEW: No objection.

25 THE COURT: All right. It's so admitted.

1 (WHEREUPON, Defendant's Exhibit No. 66 was admitted
2 into evidence.)

3 MR. FEW: What was the number?

4 MR. LEBLANC: Defendant's Exhibit No. 66.

5 BY MR. LEBLANC:

6 Q So just for chronological context, you got this
7 letter on July 15, 2015; right?

8 A Right.

9 Q And Defendant's Exhibit No. 12 is your license
10 agreement with One Law Partners; right?

11 A Okay.

12 Q And you entered that a month later, August 14th,
13 2015?

14 A Right.

15 Q And, again, your testimony was earlier that
16 everything is peaches and cream between you and
17 Dr. Paynter; right?

18 A It was repairable, I thought.

19 Q Well, no. I thought you said everything was great
20 and you were blind sided by the -- her lawsuit against
21 you?

22 A I was, yeah.

23 Q Okay. So a month before the lawsuit, you get this
24 request for proposal from Padre Associates; right?

25 A Right.

1 Q And this is asking you to prepare a proposal to
2 remediate property that -- in California that's going to
3 be a school?

4 A Correct.

5 Q Kindergarten through sixth grade?

6 A Correct.

7 Q And how did you respond to this request for proposal?

8 A I submitted a proposal.

9 Q Before you did that, you entered into that license
10 agreement with One Law Partners, though; right?

11 A Actually, I submitted it beforehand. And it was --
12 actually, that job was awarded to Biotech prior to -- you
13 know, the agreement with One Law Partners.

14 Q So it's your testimony that you submitted a proposal
15 for this work on behalf of Biotech?

16 A Biotech Restorations, that's who they sent it to.

17 Q Did you produce that in this lawsuit?

18 A We produced 12,000 pages of documents. I --

19 Q I think we produced -- we produced 12,000 pages. You
20 produced --

21 A 99 -- 99 percent of those documents were authored by
22 me.

23 MR. LEBLANC: Defendant's Exhibit No. 65.

24 (WHEREUPON, Defendant's Exhibit No. 65 was marked for
25 identification only.)

1 BY MR. LEBLANC:

2 Q I'll pass you a document that's been marked as
3 Defendant's Exhibit No. 65. Do you recognize what's shown
4 in Defendant's Exhibit No. 65?

5 A I do.

6 Q This is the proposal from Biopath Solutions in
7 response to that request for proposal; right?

8 A Correct.

9 MR. LEBLANC: At this time, we'd move Defendant's
10 Exhibit No. 65 into evidence.

11 THE COURT: Any objection?

12 MR. FEW: Your Honor, I'm still not aware of the
13 relevance. It's not a document that he's signed. It's --
14 he just says he's seen it. I don't think it needs to go
15 into -- everything that he's ever seen needs to go into
16 evidence.

17 THE COURT: All right.

18 MR. LEBLANC: It's foundation for other testimony.

19 THE COURT: All right. Then I'll allow it.

20 (WHEREUPON, Defendant's Exhibit No. 65 was admitted
21 into evidence.)

22 MR. LEBLANC: Put it up, please, Defendant's Exhibit
23 No. 65.

24 BY MR. LEBLANC:

25 Q So on September 21, 2015, Biopath Solutions -- that's

1 the company formed by One Law Partners; right?

2 A Correct.

3 Q They respond to that request for proposal. And they
4 say, hey, we can do this work. This PCB impacted
5 property -- soil at the Milpitas Unified School District,
6 we can do that. We're their guy.

7 A Right.

8 Q Okay. And it, also, says that Biopath has the
9 exclusive license to Biotech Restorations proprietary
10 biotechnology?

11 A Correct.

12 Q And -- and I know this is a -- this lawsuit is all
13 about over is it Biotech Restorations proprietary
14 technology or is it Dr. Paynter's. I -- I don't mean to
15 criticize that. I'm just saying, we're talking about the
16 same thing here; right?

17 A Or -- yeah. The remediation process, right.

18 Q Yeah. But, I mean, the technology, though, when I
19 refer to it as Dr. Paynter's bioremediation technology and
20 this letter calls it Biotech Restorations proprietary
21 biotechnology, we're talking about the same thing; right?

22 A Yes.

23 MR. LEBLANC: If you'd scroll down a little bit
24 there.

25 Thank you.

1 BY MR. LEBLANC:

2 Q And this is where -- do you see in the proposal there
3 in the last line at that paragraph? That's where it
4 identifies that -- that Biopath is going to remediate
5 16,400 cubic yards of contaminated soil?

6 A Okay. Yes.

7 Q And as we said before in Defendant's Exhibit No. 12,
8 you would -- Bio -- Biotech Restorations would have
9 received how much of a royalty for that?

10 A According to that formula, \$2 a cubic yard.

11 Q So \$32,800; right?

12 A By that -- by that formula, yes.

13 Q Well, these are the documents we got. I wasn't
14 there. I'm just going off what the papers say. Did I --
15 am I following this correctly?

16 A (There was no response.)

17 Q I'll rephrase the question. When you signed an
18 agreement with One Law Partners, you agreed to license the
19 bioremediation technology to One Law Partners; right?

20 A That's correct.

21 Q And they agreed to pay you \$2 a cubic yard for that
22 license?

23 A They agreed to provide \$3 million to \$5 million in
24 business capitalization. And this was the formula that
25 would be applied for soils that were treated by the new

1 company.

2 Q Right. I -- I'm not talking about capitalizing your
3 company. I'm talking about the royalty that they would
4 pay you. They -- One Law Partners agreed to pay you \$2
5 per cubic yard that you remediated in exchange for their
6 use of the technology; right?

7 A Something like that, I suppose, yes.

8 MR. LEBLANC: Defendant's Exhibit No. 71.

9 (WHEREUPON, Defendant's Exhibit No. 71 was marked for
10 identification only.)

11 MR. LEBLANC: I've got about 10 more minutes.

12 THE COURT: Oh, great.

13 MR. LEBLANC: Don't sound so happy.

14 BY MR. LEBLANC:

15 Q I'll pass you what's been marked as Defendant's
16 Exhibit No. 71. Do you recognize what's shown in
17 Defendant's Exhibit No. 71?

18 A I do.

19 Q And what is that?

20 A It's a check -- it's two checks, actually, copies of
21 two checks made out to Biopath Solutions. Each check is
22 in the amount of \$307,500.

23 Q Okay. And these checks were paid to Biopath
24 Solutions why?

25 A Because the contract -- I had assigned the contract

1 to -- under the licensing agreement to Biopath as part of
2 the -- the deal for them to capitalize the company.

3 Q All right. Let -- let me see if I can say it
4 simpler. Biopath Solutions did the work that was in the
5 proposal; right?

6 A No. I did the work.

7 Q Oh -- oh, you did the work?

8 A I did the work.

9 Q You provided the labor?

10 A I hired the labor and supervised the labor, yes.

11 Q And you paid for all that?

12 A Yes.

13 Q How much did you pay for all that?

14 A I don't recall right offhand. But -- I don't recall.

15 Q Do you recall testifying that you didn't pay
16 anything?

17 A No. We had to have paid.

18 Q You -- I mean, Biotech Restorations, you --

19 A Oh, me, personally.

20 Q Well, you were Biotech Restorations. That's who I'm
21 talking about.

22 A See, you're conflating things again. I mean, you're
23 trying --

24 Q Okay.

25 A The contractors were paid.

1 Q Let me be more precise then.

2 A Please.

3 Q Biopath Solutions did the work; is that correct or
4 not?

5 A Under -- the work was done under the Biopath banner,
6 yes.

7 Q And Biopath Solutions got paid \$615,000 to do the
8 work?

9 A That's correct.

10 Q And how much of that \$615,000 did you expect to
11 receive on behalf of Biotech Restorations?

12 A We would have received the amount -- customary amount
13 from the markup of the product. So it's the cost of the
14 product that we would produce. When I say "we," normally,
15 it would have been Val and me. But we would have taken
16 our customary markup on that, whatever that was, and then
17 anything we would have gotten from Biopath would have been
18 on top of that.

19 Q All right. I'm confused. I thought you would
20 receive \$2 per cubic yard. That was the license
21 agreement.

22 A That is the royalty agreement.

23 Q Okay. What other money are you getting then?

24 A For producing the product.

25 Q So let me see if I understand this. You license the

1 technology to Biopath Solutions; right?

2 A (There was no response.)

3 Q They're going to pay you a royalty; right?

4 A (There was no response.)

5 Q And then you're going to provide the product to them
6 and mark it up. Then they have to pay you some more?

7 A Right.

8 Q All right. What did you -- of that \$615,000, how
9 much did you receive from that project?

10 A None.

11 Q And when I say "you," I mean you or your company,
12 Biotech Restorations.

13 A None.

14 Q Do you recall testifying in your deposition under
15 oath that your company received \$600,000 in profits from
16 the Milpitas project?

17 A (There was no response.)

18 Q You don't recall saying that?

19 A No, I don't. But --

20 MR. LEBLANC: Page 147, please.

21 THE WITNESS: We did receive \$615,000 for the
22 project. I mean, but, again...

23 BY MR. LEBLANC:

24 Q Do you recall testifying under oath that your
25 company, Biotech Restorations, LLC, received \$600,000 in

1 profits from the Milpitas project?

2 A Then I -- it wasn't profits.

3 Q I -- I wasn't there. My question is, do you recall
4 testifying that way?

5 A I really don't. But if you say I did, I did.

6 Q I -- I can read it to you, if you want. Let -- let's
7 do that. Page 147, Line 1.

8 A I'm sorry. What page?

9 Q Page 147, Line 1.

10 A Okay.

11 Q Are you ready?

12 A Okay.

13 Q Question: Were there any profits generated after
14 January 15, 2015?

15 Answer: Only on -- during the time after the -- the
16 One Law folks came aboard. There was one project that was
17 completed after that. That was the -- the Milpitas,
18 California project.

19 Question: And did you have any profits from that
20 project?

21 Answer: We did. Yes, we did.

22 Question: What were your profits from that project?

23 Answer: About \$600,000.

24 Question: And did you share any of those profits
25 with Dr. Paynter?

1 Answer: We did not.

2 Did I read that correctly?

3 A You did.

4 Q What's the date on those checks in Defendant's
5 Exhibit No. 71?

6 A March 22nd, 2016.

7 Q So that's when the lawsuit's still pending; right?

8 A Correct.

9 Q You testified in your deposition that you received
10 \$600,000 in profits and Dr. Paynter didn't get any of
11 that.

12 A You're playing a shell game, Counselor.

13 Q Did you testify that way? Did -- did I just read
14 your testimony?

15 A I was testifying in generalities. That 600,000 was
16 about the amount of the project of the contract that we
17 received that went to Biopath. I didn't mean to infer
18 that there was \$600,000 in profits received from that.

19 Q There was no inference. We read that. The question
20 was, What were the profits? The question was, And did you
21 have any profits from that project? The question was,
22 What were your profits from that project? And the answers
23 were, About \$600,000.

24 A Okay. I was --

25 Q I'm not playing a shell game. I don't -- I don't --

1 I don't appreciate that. I'm --

2 A Why would I say we had profits if we had none?

3 Q Pardon?

4 A Why would I claim profits if we had none?

5 Q I'll get to that. Good -- good segue.

6 A Okay.

7 Q Do you remember testifying on July 22, 2021, in that
8 seat you're sitting in right now?

9 A I remember being in this seat before, yes.

10 Q And you may not remember the day. It was summer of
11 last year. And we were in here because Paynter
12 Consulting, LLC, is in default; right?

13 A Okay.

14 Q So we were having a default hearing to determine how
15 much damages should be awarded against Paynter Consulting,
16 LLC. And you testified under oath, just like you are
17 today, that your company made \$500,000 on a PCB project in
18 California for the Milpitas School District.

19 A We did not make \$500,000.

20 Q I know. I'll get there. You're beating me. But you
21 did testify that you did. You did, didn't you?

22 A Okay.

23 Q I've got the transcript. I can read that to you,
24 too. You don't dispute that; right?

25 A (There was no response.)

1 Q There's not another Milpitas Unified School District
2 project that you did work on?

3 A No. But you're confusing the issues.

4 Q Your -- and I'm sure your attorney will clear it up.

5 A I'm sure he will.

6 Q But you did testify at that hearing that your
7 company, Biotech Restorations, LLC, made \$500,000 in
8 project -- in profit in that Milpitas job that we've been
9 talking about for 20 minutes?

10 A Okay.

11 Q All right. Now, I'm getting to the place where you
12 want me to go. What's today? April 20th. Do you
13 remember where you were February 24th of this year?

14 A No.

15 Q You should. You were taking another deposition;
16 right? Do you remember Mr. Few's office?

17 A Okay.

18 Q Okay. At that deposition under oath again, third
19 time, how much profit did you testify that your company
20 made from the Milpitas School District job?

21 A I don't recall.

22 Q All right. I'll help you out. On February 24th of
23 this year, 2022, you testified that Biopath never shared
24 any profits from the Milpitas work with you or your
25 company?

1 A That's right.

2 Q Okay. So the answer is zero?

3 A Right.

4 Q Not 500,000, not 600,000. Zero?

5 A Right.

6 Q Okay. And you testified that Biopath received
7 600,000 in revenue. And I take it to be that 615,000 in
8 checks you've got there?

9 A Right.

10 Q From the Milpitas project; right?

11 A Right.

12 Q But Biopath did not share any of it with you or your
13 company?

14 A That's correct.

15 Q And you testified that instead of receiving \$500,000
16 in profit from the Milpitas project, Biotech claimed all
17 of that money, \$615,000 --

18 A Correct.

19 Q -- as a business expense on your 2016 taxes?

20 A That's correct.

21 Q All right. And I hope I can do this without
22 disagreement. When you did the -- did the license
23 agreement to One Law Partners and the -- and then the job
24 proposal, you thought you would get \$2 a cubic yard for
25 remediating the soil; right?

1 A As a royalty.

2 Q Right. So \$32,800; right?

3 A (There was no response.)

4 Q You, actually, got zero profit?

5 A Right.

6 Q You got zero money. You got -- and -- and you
7 testified that you used your money to, actually, do the
8 work. You paid for people to do the work. You lost money
9 on that?

10 A Correct.

11 Q And you claimed all those checks that didn't come to
12 you as a business expense on your taxes?

13 A My CPA consulted with a tax attorney, specifically,
14 on that issue before we -- before we claimed it. So we
15 did everything according to the law on that.

16 Q So you were advised by an expert that that's the
17 right thing to do?

18 A We wanted to make sure we did. Who wouldn't?

19 Q So somebody said they were going to pay you \$615,000
20 to do a job; right?

21 MR. FEW: Your Honor, just objection about relevance
22 of all this. I mean, we're here on a partnership
23 agreement. And we're talking about tax deductions that
24 probably nobody in this room understands.

25 THE COURT: Will y'all approach just a moment?

1 (WHEREUPON, a bench conference was held.)

2 THE COURT: All right. Ladies and gentlemen, we've
3 come to a time for our afternoon break. If you'll step to
4 your jury deliberation room, please.

5 Thank you so much.

6 (WHEREUPON, the jury was excused from open court at
7 approximately 3:22 p.m.)

8 THE COURT: All right. Let's be in recess for 10
9 minutes.

10 (WHEREUPON, a break was taken.)

11 THE COURT: Yes, sir.

12 MR. LEBLANC: I understand the tax returns can't come
13 into evidence. I can use them to refresh his memory,
14 refresh his recollection?

15 THE COURT: Sure, certainly.

16 All right. Are we ready to bring the jury back in?

17 MR. LEBLANC: We're going to go until 5:00?

18 THE COURT: Until 5:00.

19 (WHEREUPON, the jury came into open court at
20 approximately 3:38 p.m.)

21 THE COURT: Thank you, sir.

22 Yes, sir.

23 BY MR. LEBLANC:

24 Q Just for context, I was trying to wrap up the
25 Milpitas project. And I just wanted to get the numbers in

1 the record again clearly all at one. So you thought under
2 your license agreement with One Law Partners that you
3 would receive \$2 per cubic yard of remediated soil; right?

4 A In addition to the markups, right.

5 Q And that would come to \$32,800; right?

6 A More than that, but, yes.

7 Q Well, the \$2 times --

8 A Just the royalty part, yes.

9 Q That's what I'm asking about.

10 A Right.

11 Q And you, actually, got zero; right?

12 A Right.

13 Q And I want to be clear about this because if I'm not
14 clear right now -- who paid for the product for the
15 remediation of the Milpitas project?

16 A I don't recall. I -- I suppose it must have been One
17 Law.

18 Q One Law or Biopath Solutions; right?

19 A Right.

20 Q I -- I thought you said you and your company did?

21 A We had some initial expense. This was a year-long
22 process. So on the front side of the -- all the
23 detailing, all the preliminary work that was done by me so
24 that would have been an expense worn by Biotech. And then
25 as we reached the agreement with Biopath -- or the

1 licensing agreement and assigned the -- the contract to
2 them, then it would have transitioned -- excuse me -- over
3 to Biopath.

4 Q Okay. I just want to be clear. I thought you
5 testified in the last break -- and you're -- it seems to
6 be different -- that you would have got your royalty, plus
7 Biotech Restorations would have made product -- profit on
8 providing the product for the job. You and Dr. Paynter
9 would have got some markup on that?

10 A Correct.

11 Q You say, "Correct." So did you provide any product
12 for this job?

13 A We did, but not Factor-based product.

14 Q Right. But did you provide -- that's what I'm
15 asking. The -- the stuff that you used to remediate the
16 soil --

17 A Right.

18 Q -- did that come from Biotech Restorations or Biopath
19 Solutions? That's my question.

20 A I ordered it from our blender -- from my blender in
21 Modesto, California. So I guess, technically, it came
22 from Biopath. But I'm the one who ordered it up.

23 Q Okay. You made the phone call, but Biopath paid for
24 that?

25 A I -- I assume so, yes.

1 Q You didn't -- your -- you or your company did not pay
2 for the blood meal or whatever went into the ground to
3 remediate the soil?

4 A Biotech?

5 Q Yes, sir.

6 A No.

7 Q That's -- I -- I'm sorry. I was -- you know, it --
8 I'm sure it's my fault. But I'm sorry if it was
9 confusing. I just wanted to clear that up.

10 Last topic. You testified on direct about the value
11 of the partnership or the value of the technology; right?

12 A Right.

13 Q And you testified that in your business, you believe
14 the value is based on the last couple of years of
15 revenues; right?

16 A Right.

17 Q Revenues are profits. I don't remember what you
18 said.

19 A I don't either.

20 Q It might be both; right?

21 A Sure.

22 Q Okay. So in 2015, when you got these investors from
23 One Law Partners saying they wanted to give you \$5
24 million, you said you thought the company was worth more
25 than that, based on historical revenues; right?

1 A I don't recall saying that, no.

2 Q I thought I heard a hundred million dollars come from
3 the stand.

4 A Again, you're -- you're cherry picking data, you
5 know, that -- I said that the company if it were
6 adequately capitalized and the projects were to evolve
7 could easily be worth a hundred million dollars.

8 Q Okay. I'm sorry. I misunderstood you. Do you
9 recall -- just so we understand how profitable Biotech
10 Restorations or the partnership was, do you recall Biotech
11 Restorations profitability in 2012?

12 A I do not.

13 Q I'm going to pass you a document that will be marked
14 as Defendant's Exhibit No. 47, and ask you to take a look
15 at it and see if it refreshes your recollection. And I
16 understand -- I don't know -- nobody knows what their
17 taxes were or their profitability 10 years ago. So I,
18 certainly, don't criticize you for not knowing. That's
19 why I'm passing this --

20 THE COURT: You're just marking that for -- just for
21 demonstrative purposes --

22 MR. LEBLANC: Correct.

23 THE COURT: And not for --

24 MR. LEBLANC: Correct.

25 But while we're at it, I forgot to move Defendant's

1 Exhibit No. 71 in as the two checks. I'm sorry.

2 THE COURT: Defendant's Exhibit No. 71, the two
3 checks you had forgotten to move into evidence.

4 Any objection to those?

5 MR. FEW: No objection.

6 THE COURT: All right. They're so admitted.

7 (WHEREUPON, Defendant's Exhibit No. 71 was admitted
8 into evidence.)

9 (WHEREUPON, Defendant's Exhibit No. 47 was marked for
10 identification only.)

11 BY MR. LEBLANC:

12 Q So I passed you a document that has been marked as
13 Defendant's Exhibit No. 47. And I -- my question is, does
14 that refresh your -- look at that document. I'll even
15 direct you to Page 5.

16 A Page 5?

17 Q Yeah. My -- my question is, when you review this
18 document, does that refresh your understanding of the
19 profitability of your company in 2012?

20 A It certainly -- what seems to be reflected in the
21 return.

22 Which page are we on?

23 Q It's the fifth page, Line 31.

24 A Schedule C?

25 Q Yes.

1 A Okay.

2 Q So when you look at that document, my question to you
3 is, do you now recall what the profitability of Biotech
4 Restorations was in 2012?

5 A It was negative \$51,000.

6 Q Okay. That means you lost money?

7 A Yep.

8 Q I'm going to do the same thing for 2013 and 2014.
9 And my question is, do you recall the profitability of
10 Biotech Restorations in 2013?

11 A I do not.

12 Q And I'll pass you a document that will be marked as
13 Defendant's Exhibit No. 48 for identification.

14 (WHEREUPON, Defendant's Exhibit No. 48 was marked for
15 identification only.)

16 BY MR. LEBLANC:

17 Q Page 4, Line 31 again.

18 A Okay.

19 Q After reviewing what -- the document that -- that has
20 been marked as Defendant's Exhibit No. 48, does that
21 refresh your memory of the profitability of Biotech
22 Restorations in 2013?

23 A You're referring to Line 31?

24 Q Yes.

25 A Okay.

1 Q And so what was the profitability of Biotech
2 Restorations in 2013?

3 A \$14,320.

4 Q If I can, I'll take that back.

5 A Do you want both of them?

6 (WHEREUPON, there was no verbal response.)

7 MR. LEBLANC: I don't have any further questions.

8 Thank you.

9 THE COURT: All right. Mr. Few, anything on
10 follow-up?

11 MR. FEW: Yes, Your Honor, I do.

12 REDIRECT EXAMINATION

13 BY MR. FEW:

14 Q I'm going to start with what's been marked as Exhibit
15 No. 4. You've heard Mr. LeBlanc say that the prior
16 lawsuit was only for an accounting. Do you remember that?

17 A I do.

18 THE CLERK: Press the power button.

19 MR. FEW: Power?

20 THE CLERK: Uh-huh.

21 THE BAILIFF: Do you need a dark room?

22 MR. FEW: I don't think so. I just need to zoom it a
23 little bit.

24 THE COURT: And if you need my pointer, I think
25 Mr. LeBlanc has -- it's up there.

1 MR. FEW: Oh, he left it up there?

2 THE COURT: Uh-huh.

3 MR. FEW: Do I zoom it over here?

4 THE CLERK: Uh-huh.

5 MR. FEW: That will go in?

6 THE CLERK: Uh-huh.

7 MR. FEW: I don't need to spend much time on this,
8 but...

9 BY MR. FEW:

10 Q Okay. Can you see that on the screen, Mr. Young?

11 A Yes.

12 MR. FEW: I'll use this pointer.

13 THE COURT: It's the fourth button down.

14 BY MR. FEW:

15 Q Right here, it says, Paynter -- and that's short for
16 Paynter Consulting -- alleged claims. And it lists 11
17 different claims there. And this is in evidence. But it
18 includes piercing the veil, breach of contract, breach by
19 fraud, fiduciary duty, loyalty, all these things. Is that
20 your recollection of what you were sued for?

21 A Everything but the kitchen sink.

22 Q Was -- was that lawsuit over something more than an
23 accounting?

24 A Yes.

25 Q Was there, in fact, an accounting that was done?

1 A There was.

2 Q What do you recall about that?

3 MR. LEBLANC: Objection, Your Honor. That is expert
4 testimony.

5 MR. FEW: He's knowledgeable of it. He's brought the
6 whole thing up that the lawsuit was only about the -- an
7 accounting.

8 MR. LEBLANC: I, actually, didn't say that. I said
9 it was for an accounting and a disillusion of the
10 partnership.

11 THE COURT: And -- and it was -- and there was an
12 accounting done with the final number?

13 MR. FEW: There was a -- a report done by Jay Gibson
14 of Elliott Davis.

15 MR. LEBLANC: Your Honor, if there was a report done
16 by Jay Gibson of Elliott Davis, we'd be looking at it.

17 THE COURT: Is there a report?

18 MR. FEW: Yeah.

19 MR. LEBLANC: Let's look at it.

20 THE COURT: Okay.

21 MR. LEBLANC: Can we approach?

22 THE COURT: Uh-huh.

23 (WHEREUPON, a bench conference was held.)

24 BY MR. FEW:

25 Q I'm going to show the witness a document called a

1 declaration of Joanna Marie Paynter. And tell me if
2 you've ever seen that document before?

3 A I have.

4 Q Do you recall -- what's the date on that?

5 THE COURT: He's asking for a copy.

6 THE WITNESS: May 19th, 2020.

7 MR. FEW: They made me a copy, I -- I don't --

8 THE COURT: Well, show it to him first.

9 (Pause.)

10 THE COURT: All right. You can proceed.

11 BY MR. FEW:

12 Q Mr. LeBlanc was asking you questions about when you
13 knew this -- when you knew certain things. Do you recall
14 that a minute ago?

15 A I do.

16 Q Take a look at that affidavit at Page -- at I believe
17 Paragraphs 12 and 13. And I can -- I can put it on the
18 screen. That way, we can --

19 MR. FEW: I -- I want to move this into evidence. It
20 will be our Plaintiff's Exhibit No. 5.

21 MR. LEBLANC: I think he needs to put it in under the
22 witness who said it. This is hearsay.

23 MR. FEW: Well, Your Honor, it -- it goes to the fact
24 that he's asking these questions about --

25 THE COURT: And what is this?

1 MR. FEW: It's her affidavit that they filed in
2 support of the -- the motion for protection of -- Joey
3 Paynter's affidavit in May of 2020.

4 THE COURT: Let me see that, please.

5 MR. LEBLANC: And we, certainly, don't object to him
6 asking Joey Paynter about the affidavit. But that's --

7 THE COURT: Yeah. I think it's got to come in with
8 Joey Paynter.

9 MR. FEW: That's fine. I'll just...

10 BY MR. FEW:

11 Q Mr. LeBlanc was just asking you questions about when
12 you learned that Paynter Consulting told you that they
13 were never going to do business with you. Do you remember
14 that?

15 A I do.

16 Q Okay. When did you learn for the first time that
17 Joey Paynter claimed to be the sole owner of the Factor
18 technology with her sister?

19 A You know, I -- to the best of my recollection, it
20 happened around the time that we met on the first suit, in
21 and around that time. I was -- I don't recall Val having
22 made any indication that she had given it to anyone.

23 Q No. What I'm saying is, when did you come to the
24 understanding -- take a look at the -- at the affidavit,
25 the declaration, I believe it is in paragraph -- where --

1 where they say that they became the owners of it.

2 A Yes.

3 Q When did you learn that they asserted sole ownership
4 of the Factor to the exclusion of Paynter Consulting, LLC?

5 A I'm -- you know, I'm really not sure. I'm -- I'm --
6 I -- again --

7 Q Did they ever write you a letter and say, dear Chris,
8 we want you to know that we said we -- we said Paynter
9 Consulting owned the Factor in the prior lawsuit, but it's
10 not transferred ownership to --

11 A No. I don't recall ever getting anything like that.
12 So this would have been the first that I heard of that.

13 MR. FEW: I have one copy of this as well. This is a
14 letter from the probate judge I want to show him.

15 THE COURT: If you'll show it to Mr. LeBlanc.

16 BY MR. FEW:

17 Q Mr. Young, you can put this one aside.

18 A All right.

19 Q We'll have to work with that later on.

20 The document that I just handed you is a one-page
21 document. Can you tell me if you recognize that?

22 A I do.

23 Q And what is it? Tell us -- tell us what it is.

24 A It's dated March 5th, 2018, from the probate court in
25 Pickens County from Judge Lorrin [phonetic] informing me

1 that she's returning a motion that I had filed for
2 declaratory judgment and suggested that I -- you know, I
3 take this up with circuit court.

4 MR. FEW: Okay. Your Honor, this is part of the
5 public record in the probate estate. And we would move
6 this into evidence.

7 THE COURT: Any objection?

8 MR. LEBLANC: No, Your Honor.

9 THE COURT: All right. Without objection, that will
10 be Plaintiff's Exhibit No. 5.

11 (WHEREUPON, Plaintiff's Exhibit No. 5 was marked for
12 identification and admitted into evidence.)

13 MR. FEW: Thank you.

14 BY MR. FEW:

15 Q Read this last -- can you read that last paragraph
16 there?

17 A For your information, the state inventory is
18 enclosed. Please note that it does not reflect the
19 partnership as an estate asset.

20 Q Do you know if the -- if -- so was the LLC disclosed
21 in -- in the estate that Joey Paynter administered?

22 A Not to my knowledge, no.

23 Q So this asset that is worth all this money was -- was
24 withheld from the probate estate?

25 A I think arguably it was the most valuable asset of

1 the estate.

2 Q And you got that letter from the probate judge
3 telling you to file in circuit court?

4 A Right.

5 Q Yale Galanter. Who is Yale Galanter?

6 A He was an attorney that -- that Joey brought into the
7 case from Miami, who claimed that -- his claim to fame was
8 he represented O.J. Simpson.

9 MR. LEBLANC: Objection, Your Honor. Hearsay.

10 THE COURT: Overruled.

11 BY MR. FEW:

12 Q Did you ever meet Yale Galanter?

13 A I did.

14 Q And how many times did you meet Yale Galanter?

15 A Once, I believe.

16 Q Was it at the same meeting that Mr. LeBlanc was
17 asking you about earlier, sometime -- I believe it was
18 towards the conclusion of the --

19 A Just before the suit was dropped, correct.

20 Q And the purpose of that meeting was to get the
21 lawyers and the parties together to resolve --

22 A That was my hope.

23 Q Like a settlement conference?

24 A Right.

25 Q Mr. Young, it's been made an issue about fees in the

1 prior case. What is your understanding of Mr. LeBlanc's
2 fee agreement in this case?

3 A My understanding is that Mr. LeBlanc has brokered
4 a deal for Joey to sell the technology to another
5 company.

6 Q And you understood that based on what?

7 A Statements by Mr. LeBlanc and, I think, Joey's own
8 admission.

9 MR. LEBLANC: Objection. Hearsay. He's now
10 testifying for me.

11 THE COURT: All right. I'll -- I'll sustain that.
12 Go ahead.

13 BY MR. FEW:

14 Q Did Samantha Nelson testify to that in her deposition
15 recently?

16 MR. LEBLANC: Objection. Hearsay.

17 THE COURT: Sustained.

18 BY MR. FEW:

19 Q Your understanding is Mr. LeBlanc has the case on a
20 contingent basis?

21 A That's correct.

22 MR. LEBLANC: Excuse me. Same objection. Hearsay.

23 THE COURT: Yeah. He already testified to that,
24 though --

25 MR. LEBLANC: That's when I stood up and objected.

1 THE COURT: You -- you stood up and objected when
2 he -- when he moved on to his second question.

3 BY MR. FEW:

4 Q If it is true that -- well, let me cover one thing
5 first. The -- when -- I think there's probably some
6 confusion on the jury's part about the prior lawsuit and
7 you didn't file another lawsuit. The result of that
8 lawsuit was that the dispute went to arbitration; correct?

9 A It was ordered -- the parties were ordered to
10 arbitration, correct.

11 Q And so that means the case would no longer proceed in
12 the Court, it would go to arbitration?

13 A Correct.

14 Q And did -- did the Plaintiffs, Paynter Consulting,
15 seek to go to arbitration afterwards?

16 A No.

17 Q And you remained hopeful that you would work things
18 out. Was that what you said?

19 A I continued to pursue that path, yes.

20 Q The Milpitas project that you've been asked questions
21 about, what was Valerie -- Dr. Valerie Paynter's
22 involvement in that project?

23 A Dr. Paynter was involved with One Law Partners
24 from -- from the onset. I mean, she was aware. I had
25 informed her of the licensing agreement with One Law

1 Partners. She was involved. They had crafted a salary
2 arrangement and royalty arrangement that would have been
3 equal to my own. So she was to be included in that
4 whole -- in that whole deal.

5 Q Well, did she do bench studies for that project?

6 A I don't -- no, she did not, I don't believe.

7 Q Was the One Law Partners agreement somehow kept
8 secret from Dr. Valerie Paynter?

9 A Not at all. She was right in the middle of the
10 negotiations.

11 Q And what were the names of those people that were
12 involved with One Law Partners?

13 A Ian Bell, Ron Kudos, Mick Warner are -- were three
14 that come to mind. But the whole deal was designed to
15 benefit us both, both Val and myself. And it was exactly
16 what we'd been trying to -- to find was an organization
17 that believed the model was -- was valid and were willing
18 to pump the money into the company to help it grow.

19 Q Did they -- they never provided the capital; is
20 that -- I'm assuming --

21 A No, they didn't.

22 Q Have you since come to learn that Dr. Paynter was
23 most likely incapacitated at some point in time before her
24 death and unable to do the things that she needed to do to
25 complete the bench studies?

1 A I did. I believe Val was, essentially, unable to
2 perform or was incapacitated for, at least, the last year
3 and a half of her life.

4 Q And when Mr. LeBlanc was asking you questions about
5 Joey Paynter telling you that she intended to -- he used
6 the word about abrogate. Do you remember that?

7 A I do.

8 Q And he -- as I understood his question, you were told
9 by her in this conference amongst all these lawyers and
10 parties that -- was it she intended to abrogate the
11 project -- the -- the contract?

12 A I think she used more of a collective, you know,
13 that -- that we -- you know, she -- that -- the statement
14 was never made that we intend to kill the agreement, you
15 know. It's just that it was clear that the intent was to
16 make -- somehow make the partnership go away.

17 Q His question almost sounded like that her intent was
18 to prevent the contract from moving forward. Did you --

19 MR. LEBLANC: Objection. Leading.

20 THE COURT: Sustained.

21 BY MR. FEW:

22 Q You testified a moment ago about during one or more
23 of these mediations or settlement conferences that Joey
24 Paynter insisted that you not be present?

25 A Correct.

1 Q When was that?

2 A When?

3 Q Uh-huh.

4 A It would have been during the negotiations with One
5 Law Partners.

6 Q And was that during the mediation, or was that --

7 A It was -- it was during the same -- it was roughly
8 during that same period of time. So the suit was still in
9 place, but we were trying to work through that, you know,
10 with the One Law Partners with the end goal being that the
11 suit would -- would go away once an agreement was reached
12 with all parties.

13 So I had already signed on. We were just waiting for
14 Val to sign on as well. And then we'd all move forward
15 together.

16 Q So when you were excluded from communications by
17 Joey, was that at the meeting when this Mr. Yale Galanter
18 was there?

19 A No, no. That was at a meeting with the One Law
20 Partners group, Ian Bell, and Ron Kudos, and Mick Warner,
21 that group.

22 Q About how long after you started communicating with
23 these One Law people did you inform Dr. Paynter of what
24 you were doing?

25 A I informed Val before I even met with them the first

1 time.

2 MR. FEW: That's all the questions I have.

3 THE COURT: Any follow-up?

4 MR. LEBLANC: No.

5 Thank you, Your Honor.

6 THE COURT: Thank you.

7 Sir, you can step down.

8 THE WITNESS: Thank you.

9 Should I just leave all this here?

10 THE COURT: Yeah. I'll tell you what, if you'd
11 gather those things up and set them right here on this
12 lectern, I'd appreciate it.

13 MR. LEBLANC: I'll get the transcript out of the way.

14 THE COURT: Oh, thank you. I appreciate it.

15 All right. Mr. Few.

16 MR. FEW: Your Honor, the Plaintiff calls Kevin
17 Dillard.

18 THE COURT: All right.

19 THE CLERK: If you would raise your right hand.

20 WHEREUPON,

21 KEVIN DILLARD,
22 after first having been duly sworn, testified as follows:

23 THE CLERK: All right. State your name for the
24 record.

25 THE WITNESS: Kevin Dillard.

DIRECT EXAMINATION

BY MR. FEW:

Q Good afternoon, Mr. Dillard.

I'm Wes Few. And we met for the first time in person today; is that right?

A Yes, sir.

Q And do you -- you've been here to hear some of the testimony the last hour or so; is that right?

A Yes, sir.

Q Have you heard anything that you have knowledge about?

A No, sir. I don't believe so.

Q What about the affidavit of Mr. Ellis Kline?

A Oh, I apologize. I got lost in the detail of all the taxes, and all that. I remember that time period when that document was -- was drawn up. And Ellis had a couple of discussions with me about that, yes.

Q What did he tell you about it?

MR. LEBLANC: Objection. Hearsay.

THE COURT: I'm sorry. What -- I -- I missed your question. I apologize.

MR. FEW: That's okay. He -- he was -- he was describing a conversation he had with Ellis Kline, who signed that affidavit, about what he heard him say about it.

1 THE COURT: All right. And I don't know any reason
2 that wouldn't fall under hearsay.

3 MR. FEW: Okay.

4 THE COURT: All right.

5 BY MR. FEW:

6 Q What -- how do you know Ellis Kline?

7 A He was a professor of mine at Clemson when I was an
8 undergraduate student. I had did some work subsequently a
9 few years later on behalf of his daughter. And then
10 several years after that, he asked me to help him with his
11 company that was in the midst of trying to develop a -- a
12 scientific product.

13 Q What's your -- what do you do now?

14 A I'm chief scientist for Columbia Therapeutic.

15 Q And how long did you work with or around Mr. Kline?

16 A It's still ongoing. It's been 13 years.

17 Q And did you know Dr. Valerie Paynter?

18 A Yes, sir.

19 Q Do you know Joey Paynter, who's seated over here?

20 A Yes, sir.

21 Q You met her before?

22 A Yes, sir.

23 Q What kind of -- how do you know Joey Paynter?

24 A I formally met Joey for the first time, I believe, in
25 early 2016 at a -- at a company dinner for Columbia

1 Therapeutic. She was in attendance with Dr. Paynter. I
2 had met her several times in the years before at
3 Clemson -- or in and around Clemson. But I don't think we
4 were formally introduced until 2016.

5 Q Did you have any interaction with her after meeting
6 her that first time?

7 A Yes, sir.

8 Q And what did that involve?

9 A It was casual, social, also, discussions with
10 Dr. Paynter on business matters.

11 Q Business matters relating to what?

12 A In early 2016, I had the opportunity to do some
13 consulting for an environmental firm. And after I won the
14 confidence of the CEO, I asked him if I could introduce
15 Dr. Paynter to the representatives of that company for the
16 purpose of, perhaps, looking into Dr. Paynter's technology
17 and their use thereof.

18 Q And what was this person's name?

19 A The company is Envirogenx. And the CEO was Jason
20 Dibble.

21 Q And what else -- what else do you recall -- what were
22 they looking to -- what was Envirogenx looking to do, and
23 what did you understand Paynter Consulting and Joey
24 Paynter -- what were they -- what was the goal?

25 A Okay. Envirogenx was involved in all different types

1 of -- of environmental clean ups at that time. And they
2 didn't have an active bioremediation capacity. And they
3 were looking to expand into that.

4 And secondary to their mission was to seek and find
5 new technologies and incorporate them into their model,
6 and then expand them, you know, accordingly. So they were
7 very excited to hear about this new technology. And they
8 wanted to meet with Dr. Paynter as soon as possible in the
9 hopes of -- of learning more about the technology and
10 putting together an agreement that would allow them to
11 test it to see it's efficacy.

12 Q And was this the same technology that we've been
13 talking about here in this lawsuit called the Factor
14 technology?

15 A Yes, sir.

16 Q How do you know that?

17 A I was present for all of the discussions being the
18 facilitator. And I, actually, had knowledge of
19 Dr. Paynter's work several years before that. Because I
20 met her on a regular basis. And -- and she discussed
21 different things with me under those circumstances.

22 Q And was Joey Paynter involved in the negotiations
23 with Envirogenx and Jason Dibble?

24 A Yes, sir.

25 Q What was her involvement?

1 A She was there as support for Dr. Paynter and, I
2 guess, a counselor to a certain degree.

3 Q Did she play a leading role, or what do -- what do
4 you recall about --

5 A These discussions were low key, informal. She was
6 there not to make primary decisions, obviously, but just
7 to make sure that Dr. Paynter understood everything that
8 was being communicated to her. Because, unfortunately,
9 Dr. Paynter was effected by her condition at that time.
10 But Joey was extremely helpful in that regard.

11 Q Do you remember -- you testified it was 2016 when
12 this occurred; is that right?

13 A Yes, sir.

14 Q Do you remember --

15 A And into 2017.

16 Q Do you remember when it started, when you first
17 started getting involved in any discussions with any of
18 the Paynters about this Factor technology?

19 A I can't give you a specific date. But I do recall
20 taking Dr. Paynter out to dinner to discuss this,
21 initially, in the late spring of 2016.

22 Q Were you ever informed by anybody on behalf of any of
23 the Paynters that there had been a lawsuit that they had
24 filed against Chris Young?

25 A Yes.

1 Q You knew about it?

2 A Yes, sir.

3 Q Do you know if the Envirogenx people knew about it?

4 A Yes, sir.

5 Q Did they have any concerns about it?

6 A They did. They asked about that on numerous
7 occasions. But they were informed that the lawsuit had
8 been dismissed or the -- we were under -- or they were
9 under the understanding that the partnership had been
10 dissolved, actually. But more -- I'm not a legal
11 authority, obviously. But Valerie insisted that -- or
12 Dr. Paynter -- excuse me -- that she was free to work with
13 whomever she chose.

14 Q Did Joey Paynter say the same thing?

15 A I believe so.

16 Q What were you going to get out of the -- if something
17 got worked out? What was your understanding? And I -- I
18 may be jumping ahead a little bit.

19 A Financially?

20 Q Yeah.

21 A There's two parts to it. Can I explain the whole
22 thing?

23 Q Sure, yeah.

24 A Okay. So I'm not an environmental scientist. I'm a
25 biomedical scientist. But I have a lot of microbiological

1 experience. That's why Envirogenx hired me. Envirogenx,
2 also, wanted to develop a biotechnology company, which
3 they were going to install me as chief technology officer.

4 But for my role as facilitating this arrangement,
5 there was never anything on paper, but what was floated
6 verbally was around a half million dollars.

7 Q Between you and Jason Dibble --

8 A Yes, sir.

9 Q -- of Envirogenx?

10 A Yes, sir.

11 Q Okay. So what is your understanding of -- of what
12 all transpired? I mean, was this just like one meeting
13 and it went on for a week or a month? I think you said it
14 went on from 2016 through 2017. Tell -- tell us what you
15 remember about -- like, once you made the introduction of
16 the Paynters to Envirogenx, everything that you understood
17 was the premise of why they were going to work together
18 and then what you know that -- what you can recall that
19 happened.

20 A Sure. Late in the summer of 2016, Mr. Dibble and one
21 of the principles of Envirogenx came to Clemson to meet
22 with Dr. Paynter and with Joey. I can't recall if that
23 was, you know, more than just a day or two. But those
24 initial discussions were positive. Envirogenx wanted to
25 set up a preliminary agreement that would allow them to

1 test the technology in a laboratory setting, bench-type
2 studies and, also, conduct a small pilot trial in the
3 field to show that it could be scalable. Because although
4 they were aware of the prior usage of the technology, they
5 didn't want to use any of that information for making a
6 decision, you know, going forward.

7 So they prepared a document outlining, you know,
8 these details and, also, outlined what they were going to
9 do for Dr. Paynter financially. And they presented that
10 to Dr. Paynter, I would say, in September of that year, or
11 thereabouts.

12 Q The initial meeting that you just described as I
13 believe you used the word "positive," were you in
14 attendance for that?

15 A Yes, sir.

16 Q What do you recall being represented by Joey Paynter
17 on behalf of Paynter Consulting to Dibble -- Mr. Dibble,
18 particularly with respect to ownership of the Factor?

19 A There wasn't any question of ownership that I can
20 recall. The main -- as was discussed before, the main
21 consideration was, was there any problem with Mr. Young
22 and -- and the partnership. It was understood that --
23 excuse me. It was understood that Dr. Paynter had the
24 sole ownership of the Factor. And I -- there was never
25 any discussion of it being, at that time, you know, shared

1 by, you know, anyone in the family. But in those initial
2 discussions, I don't believe that was an issue.

3 Q Did anyone ever represent or did you have an
4 understanding, at any point in time, that -- this was in
5 the summer of 2016; right, in that initial meeting?

6 A (There was no verbal response.)

7 Q Did anyone ever say that Joey Paynter and Samantha
8 Paynter Nelson were the owners of the Factor?

9 MR. LEBLANC: Objection, Your Honor. Hearsay.

10 THE COURT: Sustained.

11 MR. LEBLANC: He just asked if anybody else said...

12 BY MR. FEW:

13 Q Did you see any of the documents that were exchanged,
14 like a nondisclosure, or something like that?

15 A Yes, sir.

16 Q And who was that document -- do you remember who the
17 parties to -- to that document were?

18 A To the best of my recollection, they were all
19 addressed to Dr. Paynter.

20 Q Do you know if her company was a party to those
21 documents?

22 A Yes, sir.

23 Q Paynter Consulting, LLC?

24 A Yes, sir.

25 Q Do you know if she had any other companies?

1 A Not to my knowledge.

2 Q Had you ever done any work on the Factor? Did you
3 have any knowledge of it?

4 A Prior to those initial meetings?

5 Q Yes.

6 A I had knowledge of it, but I had not done any work,
7 no.

8 Q So do you know if Envirogenx ended up doing a
9 transaction with Paynter Consulting or any of the
10 Paynters?

11 A They did not. They wanted to vehemently. But a -- a
12 preliminary agreement was never reached that would allow
13 them to go forward to put together any kind of partnership
14 deal.

15 Q Was Chris Young made a part of any of these
16 discussions?

17 A Not to my knowledge, at least, not on the side of
18 Envirogenx.

19 Q It's your understanding that the Paynters represented
20 that he no longer had anything to do with the Factor; is
21 that right?

22 A I guess indirectly. It's just Dr. Paynter was
23 emphatic that she was free to do business with whomever
24 she chose. There was discussions within Envirogenx about
25 perhaps, working with Mr. Young if we had to in the

1 future. But that's about the only time that Envirogenx
2 discussed him with me.

3 Q Did -- are you aware if Envirogenx ever made any
4 offers to purchase the technology, or to license it, or
5 made any -- anything -- like, more than just a meeting and
6 a talk? Did they make any --

7 A Yes. They prepared a -- a memorandum of
8 understanding and presented that to Dr. Paynter specifying
9 what they were going to do financially and, also, putting
10 together the terms of the -- the studies that they wanted
11 to be conducted to demonstrate efficacy.

12 Q And you and I spoke for the first time, I think,
13 yesterday; right?

14 A Yes, sir.

15 Q And you mentioned a fellow name Dushane [phonetic].
16 Who is that?

17 A Who?

18 Q Dushane.

19 A Oh, sorry. I didn't understand. Yes. Ed Dushane is
20 the -- the principle of -- one of the principles of
21 Envirogenx that I mentioned previously.

22 Q And he was involved in these discussions as well?

23 A Yes, sir.

24 Q Okay. And were you ever made aware of any of the
25 monetary terms that were being proposed by Envirogenx?

1 A Yes, sir.

2 Q And what do you recall about that?

3 A I was privy to those documents, but it's been so long
4 since I've seen them. It's -- it's very difficult to say
5 exactly. But there was going to be an initial payment of
6 several million dollars. I'm thinking four to five,
7 perhaps. But, also, it was structured, you know, based on
8 the -- the performance of the efficacy studies and, also,
9 the performance of the company that was going, you know,
10 to be founded, you know, as the basis for taking the
11 product forward.

12 And I think there was, also, going to be a capital
13 state -- or excuse me, the -- an equity state in another
14 company that was going to be capped at 30 to 40 million,
15 thereabouts. I mean, these documents can be readily
16 obtained from Mr. Dushane.

17 Q What about was Joey Paynter privy to these documents?
18 Was she part of the --

19 A I believe so, yes.

20 Q And so what is your understanding of what happened?
21 Did -- did Paynter Consulting -- did they reject it, or
22 what do you know?

23 A After that document was presented, Dr. Paynter never
24 signed the agreement. And this persisted for several
25 months. I lobbied Envirogenx vigorously to give

1 Dr. Paynter, you know, time and consideration given, you
2 know, her health and all the other prevailing
3 circumstances. So this is how it led into the following
4 year. I believe there was a deadline of February of 2017
5 before that offer was going to be rescinded, which,
6 ultimately, it was.

7 But then after that fact, I lobbied Envirogenx again
8 heavily to make another offer, which they did. And it was
9 presented sometime in the summer of 2017. But the details
10 of that offer I can't speak to because I don't think I was
11 privy to any of those documents. Envirogenx had undergone
12 some restructuring of the board. But then the second
13 offer that was made was much less generous than the first.
14 But, ultimately, it was rejected as well.

15 Q Was your understanding that Envirogenx was a -- a
16 company that had the ability to -- to do large
17 transactions like that?

18 A Yes, absolutely.

19 Q Do you know, like, roughly what their annual sales
20 were, or anything?

21 A I do not know that. I'm sorry. I know that they did
22 work all around the world. So they -- they were heavily
23 engaged in various operations.

24 Q And it was your understanding throughout all that
25 that any claim that Chris Young or the partnership that he

1 had -- that Biotech had with Paynter Consulting had been
2 extinguished; is that correct?

3 A That's what Envirogenx was told. And they were never
4 able to do the due diligence to -- to prove that because
5 they were waiting for Dr. Paynter to sign that MOU in
6 order for them to perform a specific capital raise
7 dedicated to that purpose. I was told directly that it
8 was -- that around a quarter of a million dollars was the
9 estimation for the legal fees for the actualization of
10 that agreement.

11 Q That's the drawing up of the documents to get the
12 investors to become involved, the private placement
13 memorandum, or something like that?

14 A Yes, sir.

15 Q And so you -- you knew about the prior lawsuit and
16 Envirogenx knew about the prior lawsuit. But your
17 understanding is that the prior lawsuit had been resolved;
18 is that --

19 A We were told directly that -- that it was no longer
20 an issue and that Dr. Paynter said that she had the total
21 freedom to work with us, or with whomever.

22 Q Did anybody tell you that it had been -- that the
23 prior dispute had been sent to arbitration?

24 A I believe so, yes.

25 Q Did they tell you that it was resolved in

1 arbitration?

2 A I recall knowing that -- as I heard again today that
3 there was -- the case was dismissed because -- for
4 whatever reason. I -- I don't recall how I found that --
5 found that out. But I do recall knowing that at the time.

6 Q If -- if you -- if you had known there was a dispute
7 that is being litigated here in this lawsuit, would you
8 have been spending your time and energy to try to put that
9 deal together?

10 A No. The -- the only reason why anything was done
11 was -- was based on what Dr. Paynter had said verbally.

12 Q Just one second.

13 And have you ever met Chris Young?

14 A Not in person. I think we have exchanged a couple of
15 e-mails and maybe spoken on the phone -- on the phone one
16 time before today.

17 Q What do you recall about that?

18 A Mr. Young was asking if there were any relevant
19 materials that might, perhaps, be in Dr. Kline's
20 laboratory.

21 Q And was this after Dr. Paynter had passed away?

22 A Presumably.

23 Q And did you look for any materials and communicate
24 back with Mr. Young?

25 A I did. I had examined the notebooks in question and

1 just found them to be old, you know, dated, you know,
2 research notes, mostly just data points that had no
3 correlation to anything, unless you knew exactly what the
4 study consisted of.

5 Q Do you -- do you know if that was a complete set of
6 all of her laboratory notes related to the Factor?

7 A Oh, no, sir, I don't. I know that when we were at
8 Dr. Paynter's office, there were papers and notebooks
9 there as well. But I'm just referring to the notebooks
10 that were at Dr. Kline's lab that had been there for
11 years.

12 Q And did you review those to see if you could
13 determine the secret ingredient to the -- to the Factor?

14 A I just looked through them to see if there was
15 anything relevant. I wasn't looking for anything in
16 particular.

17 Q Okay.

18 A But anything relevant to a study that had been
19 completed, or anything along those lines. I wasn't
20 looking for, you know, the identity of a particular
21 substance.

22 Q Did you work with Dr. Paynter when she was doing her
23 research?

24 A No, sir.

25 Q Do you have any knowledge of what her tendencies were

1 for taking notes, lab notes, and things of that nature?

2 A Oh, she was as meticulous as one can be.

3 Q Would it -- would you be -- so if that's the case,
4 would you think that her laboratory notebooks related to
5 these -- the work that she did for the Factor or anything
6 else would have been complete with the information that
7 she needed to remember what she had done, and what she had
8 tested, and so forth?

9 A Yes. But the situation is a little bit complicated
10 because she did research at that -- at that laboratory
11 that was not related to the Factor as well, I believe.
12 And it went back over a period of many years. So -- so
13 that's probably what the data in those notebooks pertain
14 to.

15 Q When you -- did the data that you were able to
16 view -- when Mr. Young contacted you, I believe, was your
17 testimony; right?

18 A Yes, sir.

19 Q Did -- did it relate to the bioremediation of soil?
20 Could you tell that much?

21 A Just looking at the -- the data, it was indeterminant.

22 Q I'm sorry?

23 A It was indeterminant.

24 Q Okay. And approximately just from, like, a volume
25 perspective -- we use these bankers boxes. There's a

1 couple over there. Did you go through, like, a whole
2 bankers box full of stuff, or was it less --

3 A Well, these were -- these were binders that were, you
4 know, on a book shelf next to where her desk had been in
5 the laboratory. Those were the ones -- to my knowledge,
6 were the only ones that were in her possession.

7 And I -- I looked through all of those. There may
8 have been others in the laboratory. It was -- before it
9 was cleaned up, it was a very chaotic space with many,
10 many volumes of notebooks. But the ones that I thought,
11 specifically, were Dr. Paynter's were the ones that I
12 evaluated.

13 Q And -- and I'm -- I'm just trying to understand,
14 like, how was -- the notebooks that you did review, are
15 you saying they were more like these, like a three-ring
16 binder, or something like that?

17 A Yes, sir.

18 Q Would they have filled up a bankers box?

19 A Easily.

20 Q More than one, you think?

21 A I'm not good with -- with that. I would say three or
22 four.

23 Q Did you -- and you went through all of them?

24 A Yes. I perused all of the documents.

25 Q And how much time did you spend to do that?

1 A Three or four hours.

2 Q And were you able to identify any gaps, like there
3 were certain years that were missing?

4 A I -- I couldn't tell any of that information when the
5 studies had been performed. As I said, most of these
6 notebooks just contained -- just raw numbers, data points,
7 you know. They weren't complete reports. And so without
8 knowing, you know, what they were related to, that would
9 not be able to be determined.

10 Q Did you know a -- I mean, a Josh Nordan [phonetic]?
11 Did you ever deal with that person? Josh Nordan, do you
12 know that name?

13 A I know a Josh, yes.

14 Q A Josh that was related to these Factor negotiations?

15 A It's -- it's -- I remember a Josh, but I -- I don't
16 remember the -- you know, the exact identity.

17 Q You were -- so you've told us about your knowledge of
18 the Paynters trying to sell the Factor and their dealings
19 with Envirogenx; correct?

20 A Yes.

21 Q Do you know if they were negotiating with anybody
22 else?

23 A Prior to that, there may have been one other entity,
24 but I -- I can't speak to that exactly.

25 Q You just -- you don't have specific knowledge of it,

1 but you understood that there was somebody before?

2 A I believe so, yes.

3 Q And your -- I'm sorry. The -- hang on one second.

4 (Pause.)

5 MR. FEW: Thank you.

6 That's all the questions I have.

7 Thank you, Mr. Dillard.

8 THE COURT: Mr. LeBlanc.

9 MR. LEBLANC: Just a couple of questions.

10 CROSS-EXAMINATION

11 BY MR. LEBLANC:

12 Q Mr. Dillard, you and I've never talked or met, have
13 we?

14 A No, sir.

15 Q You testified about some negotiations between
16 Dr. Paynter, and Joey Paynter, and Envirogenx; right?

17 A Yes, sir.

18 Q And those discussions took place when?

19 A In 2016 and 2017.

20 Q So 2016. And I think I heard you say they had
21 another offer, a deadline at the end of February of 2017;
22 is that right?

23 A That was the deadline on the initial offer, yes.

24 Q On the initial offer. So there was an offer after
25 that in February 2017?

1 A Or an attempt to make a second offer, yes.

2 Q Okay. And -- and you were, generally, involved in
3 all of these discussions?

4 A Yes, to my knowledge.

5 Q At any time, did you observe Dr. Paynter to be
6 incompetent and incapable of discussing this technology?

7 A No, sir.

8 MR. LEBLANC: That's all the questions I have.

9 Thank you.

10 THE COURT: Anything else, Mr. Few?

11 MR. FEW: No, Your Honor.

12 THE COURT: Sir, you can step down.

13 Thank you.

14 Mr. Few.

15 MR. FEW: Your Honor, that's it for us.

16 THE COURT: All right. The Plaintiff rests?

17 MR. FEW: Yes, ma'am.

18 THE COURT: All right. Ladies and gentlemen, we've
19 come to a good breaking point for today. We'll start
20 tomorrow morning at 9:00 a.m. So if you'll be in your
21 jury deliberation room at 9:00 a.m.

22 According to the attorneys and what I'm seeing today,
23 we're on track for this case to be in your hands tomorrow.

24 Thank you so much.

25 Please don't do any independent research, or anything

1 like that. Just go home and forget you're a juror.

2 Thank you.

3 (WHEREUPON, the jury was excused from open court at
4 approximately 4:37 p.m.)

5 MOTIONS

6 THE COURT: All right. Any motions?

7 MR. FEW: Your Honor, we would renew our motion
8 for -- for -- I don't guess we put in any additional
9 evidence of it, but the affidavit that this was a no
10 consideration transfer. And, also, that there was
11 interference with the contract. And that the contract was
12 breached. And, of course, I'm still scratching my head
13 about the fact that -- how we deal with Paynter Consulting
14 is in default.

15 And so -- so we would renew our motion for -- for
16 summary judgment, and particularly on the transfer of the
17 asset. That affidavit is now on record. And that
18 affidavit states that it was given to them. And then this
19 witness just testified without any cross that they were
20 offering to sell it under the name of Paynter Consulting.
21 And that they were misrepresenting the status of the case,
22 so.

23 THE COURT: All right. Well, I appreciate -- I
24 appreciate your motion and your renewal of your motion.
25 Your motion is respectfully denied at this time.

1 Mr. LeBlanc.

2 MR. LEBLANC: Yes, Your Honor. I don't know how much
3 detail you want me to go into. I'm happy to answer any
4 questions you have.

5 Kim, can I get some help here.

6 MS. KIM PARKER: Oh, sure. I'm sorry. What am I
7 putting up?

8 MR. LEBLANC: Five.

9 (Pause.)

10 MR. LEBLANC: So the first basis, the Defendants --
11 my clients, Defendants Joey Paynter and Samantha Nelson,
12 move for a directed verdict on the basis of there's no
13 evidence that they had a contract with any of the
14 Plaintiffs. They're simply Dr. Paynter's daughters. They
15 are not signatories of this contract.

16 THE COURT: Well, Mr. Few, that is an interesting
17 point that, you know, how can they breach a contract that
18 they're not a party to?

19 MR. FEW: We can't have it both ways, Your Honor.
20 I -- I mean, the agreement -- that agreement is with
21 Paynter Consulting, LLC, so.

22 THE COURT: Okay.

23 MR. FEW: I've -- we've gone over that argument once
24 before. But now, we have all the evidence in. And there
25 is no evidence that they were parties to this agreement.

1 THE COURT: All right. Very well.

2 Yes, sir.

3 MR. LEBLANC: Thank you, Your Honor.

4 In the absence of a contract with my clients, that's
5 the first cause of action. And it's, also, the second
6 cause of action because that just repeats the first. It
7 says they breached the contract, mandatory injunction,
8 return lab notes. I -- I think they're duplicative. But
9 I just want to make sure we're addressing that.

10 THE COURT: All right.

11 MR. LEBLANC: We believe it, also, disposes of the
12 seventh and the eighth causes of action. Because my
13 clients, if they had no contractual obligations to the
14 Plaintiffs, how they can -- how can they do anything
15 fraudulent? All they did is attended their mother's
16 funeral and participated in the probate of her estate, ran
17 the probate of her estate as best they could.

18 And whether -- whether there was a fraudulent
19 transfer in May of 2016, or whether they inherited this
20 stuff through her -- Dr. Paynter's estate, it's the same
21 result. There's -- and -- and I'm going to get to this
22 one maybe in a minute, but I'll -- I'll stop at that.

23 THE COURT: All right. Mr. Few.

24 MR. FEW: Well, Your Honor, I've got claim seven as
25 being a claim in equity for constructive trust, which

1 would be in the benefit of the partnership --

2 THE COURT: Right.

3 MR. FEW: -- and the way the partnership agreement is
4 worded and -- and, again, thankfully, it's very short.
5 Paragraph four, specifically, contemplates a mutual
6 provision to allow the surviving partner to -- to continue
7 the business of the partnership and requires them to pay
8 the -- the 10 percent.

9 So it was contemplated that the Factor would be used
10 exclusively for the business of the partnership and,
11 thereafter, with that provision being required for 10
12 percent. That's what they agreed to.

13 Mr. LeBlanc chooses to focus in on -- on this other
14 provision that merely states what -- even if we take that
15 at what it's worth, it says that -- that she and then the
16 LLC had sole knowledge of the Factor in 2006.
17 Undoubtedly, Mr. Young didn't go into it much. But he --
18 he learned bits and pieces of what the Factor was.

19 So the -- in terms of the -- the constructive trust
20 argument, which is the seventh, we believe that's fully
21 within Your Honor's jurisdiction, as I do believe most of
22 the whole case is.

23 Your Honor, the -- the trust is needed to protect the
24 partnership property so that he can exercise his right to
25 continue the business of the partnership and pay the 10

1 percent to the daughters, which he's been unable to do
2 because he has not -- because they have interfered with
3 and caused the breach of the agreement. And that was the
4 reason for our initial having them in the case because
5 they were -- they were, clearly, acting on behalf of
6 Paynter Consulting, LLC.

7 And then on the fraudulent conveyance, Your Honor,
8 that is a claim for which -- I mean, we've gone over that
9 in -- in detail in our -- our earlier motion. But the --
10 the asset -- you just heard the testimony right here. The
11 asset was in the name of Paynter Consulting, LLC. They
12 continued to try to sell it in the name of Paynter
13 Consulting, LLC.

14 The people that they were negotiating with were told
15 that the prior lawsuit was resolved, which is not true.
16 And they were convinced that -- that Chris Young and/or
17 the partnership, which still existed because as
18 Mr. LeBlanc just asked him -- I mean, assuming he -- that
19 anybody that's not an expert can tell us if someone was
20 incapacitated or incompetent, which would have triggered
21 the partnership to terminate that the -- that was what was
22 owed of the partnership, Your Honor, that the -- the
23 property was in the name.

24 They filed the lawsuit in Paynter Consulting, LLC,
25 and not one document in the world says otherwise. And

1 then now they can -- they claim that they owned it and
2 they want to sell it. And we've, also, introduced
3 evidence from a third party that he was involved in those
4 efforts to sell it during Dr. Paynter's lifetime and --
5 and, also, specifically, immediately after the lawsuit was
6 -- the prior lawsuit was sent to arbitration.

7 So that's why we -- you know, that we -- and
8 Mr. LeBlanc was picking at the factors the other day. And
9 he pointed out the insolvency. That's not an absolute
10 requirement. But the evidence that we put in the record
11 then is that -- that she was practically insolvent. That
12 she was insolvent enough for -- and we -- this is not --
13 but insolvency is not an absolute requirement.

14 The key thing is that -- that it was a no
15 consideration transfer. It was done for the purpose of --
16 of defeating my client's rights under the partnership
17 agreement that they unsuccessfully litigated. They
18 maintained control over it. And it meets all of the
19 factors, whether or not -- and I don't know how I would
20 even present that she was -- you know, like, bringing a
21 bankruptcy expert to say what insolvent was.

22 THE COURT: Okay.

23 MR. FEW: The transfer was done to avoid the
24 partnership agreement.

25 THE COURT: All right. At this point, Mr. LeBlanc,

1 I'm going to respectfully deny your motion at this
2 juncture. All right.

3 MR. LEBLANC: There's more.

4 THE COURT: Sure.

5 MR. LEBLANC: The contract's up here. And -- and I
6 don't want to short script their argument of why there's
7 some continuing obligation after Dr. Paynter died. But
8 here's my understanding. They point to this statement
9 here that says --

10 Where's that pointer?

11 That says, In the event of the death of a partner,
12 the remaining partner has the right to continue the
13 business of the partnership by themselves or whoever they
14 select. And if they do, then they owe 10 percent to the
15 heirs.

16 And this term right here, "business of the
17 partnership," if you would go up a little bit right there.
18 Right there, Kim.

19 MS. KIM PARKER: I'm sorry. Up to where?

20 MR. LEBLANC: I need to read that part right there.

21 MS. KIM PARKER: I'm sorry. Hang on a second.

22 Am I going up or down?

23 RM. LEBLANC: Down.

24 MS. KIM PARKER: Sorry.

25 MR. LEBLANC: Another down.

1 Up -- up --

2 MS. KIM PARKER: I'm sorry. I'm a little tired,
3 clearly.

4 MR. LEBLANC: Okay. Right there.

5 So I said, The business of the partnership. So in
6 the death of a partner, the remaining partner can continue
7 the business of the partnership. And here's what it says,
8 The business of the partnership as set forth below relates
9 to the -- the treatment of contaminated soil, blah, blah,
10 blah, as applicable to that Factor technology.

11 So it's saying you can continue the business of the
12 partnership to remediate soil. You -- you may continue to
13 do that. And --

14 Now, go down to the bottom of 4.

15 And if you use the Factor, then you have to pay them
16 money. That doesn't mean they get the Factor. Goodness
17 sakes, Dr. Paynter owns the Factor 100 percent and then
18 she would die and -- and give it to him. That makes no
19 sense. That's not even a cogent argument. But I think
20 that's their argument.

21 And we respectfully think that the terms of the
22 partnership agreement say whatever this is -- there's a
23 couple of clear things. Paynter Consulting is the only
24 one who will ever know the Factor technology. And this
25 partnership goes away on the death of a partner. The

1 continuing partner can continue to do this business if
2 they want. But it doesn't mean that he, therefore, gets
3 the technology.

4 THE COURT: I find that there is ambiguity in these
5 two sections, for sure.

6 I don't read it quite as clearly as you do,
7 Mr. LeBlanc. But, there again, I'm going to respectfully
8 deny your motion as to --

9 MR. LEBLANC: All right. But, Your Honor, my -- I
10 guess one of the things I point out -- and correct me if
11 I'm wrong. Even if there is an ambiguity, the
12 interpretation, the resolution of the ambiguity is a
13 question of law.

14 THE COURT: Well, and if you -- and if you -- and I
15 can, certainly, review that and -- and have that -- and
16 keep that overnight and rule on it in the morning, if
17 you'd like.

18 MR. LEBLANC: Right. And do you understand what I'm
19 saying by that?

20 THE COURT: I understand.

21 MR. LEBLANC: I think -- and I might be wrong -- that
22 you -- that as a matter of law, the Judge decides.
23 Either -- I'm either correct or he's correct.

24 THE COURT: All right.

25 MR. LEBLANC: But the jury doesn't figure that out.

1 THE COURT: Right, right. No, definitely not. And
2 I -- as I said, I don't mind going over it again. At this
3 point, I -- I don't agree with your interpretation. But
4 I'm happy to -- to look at it again. All right.

5 MR. LEBLANC: There are some claims for breach of
6 fiduciary duty against my client.

7 THE COURT: Yeah. How does that come about, Mr. Few?

8 MR. FEW: Well, Your Honor, they -- they knew. It --
9 it would be the aiding and abetting. But -- but I would,
10 also, say that once -- once -- once they step in -- this
11 is where the difference comes up with -- with the parties
12 is once someone starts acting on behalf of the
13 corporation -- like I was saying earlier, the -- the
14 corporation can only act through the people.

15 And so when they're -- when they were -- and it was
16 clear from the testimony from Mr. Dillard that they were
17 operating -- that Joey Paynter was involved. And so that
18 would be the reason that we believe that -- that she,
19 also, undertook -- because if she undertook to act on
20 behalf of Paynter Consulting, LLC, taking a lead role, in
21 fact, then she -- she knew about the fiduciary duty. And
22 if she didn't, then she was involved in assisting her
23 mother, which would go to the aiding and abetting cause of
24 action.

25 THE COURT: I'm going to grant your motion as to

1 breach of fiduciary duty, and deny your motion as to
2 aiding and abetting.

3 MR. LEBLANC: Thank you.

4 That leads right into aiding and abetting. My motion
5 on aiding and abetting is --

6 THE COURT: Oh, I thought you already made your
7 motion on aiding and abetting. I'm sorry. Go ahead.

8 MR. LEBLANC: No. Mine was -- that was on breach of
9 fiduciary duty.

10 THE COURT: Yeah.

11 MR. LEBLANC: Now, I'll address aiding and abetting.

12 THE COURT: Okay.

13 MR. LEBLANC: I understand --

14 THE COURT: No. I'm sorry. I thought they were all
15 part and parcel of the same one. Go ahead.

16 MR. LEBLANC: If there was any aiding and abetting of
17 something, it had to have been done while Dr. Paynter was
18 still alive. This lawsuit wasn't filed or commenced until
19 I was -- accepted service for my clients on January 21,
20 2021. That was more than three years after Dr. Paynter
21 died on September 4, 2017.

22 So my clients could not have aided and abetted
23 something within the statute of limitations.

24 THE COURT: Well, Mr. Few.

25 MR. FEW: Your Honor, the -- the partnership

1 agreement with the provision that the asset -- that they
2 would go to arbitration and restore their -- and -- and
3 it, also, relates to his discovery. He didn't discover --
4 they didn't tell us that they were trying to sell to
5 Envirogenx. We discovered that in this lawsuit. As a
6 matter of fact, we fought hard for it and got those
7 documents on about the third tranche [phonetic] of
8 production.

9 So, you know, the discovery rule applies with respect
10 to when -- when he would have known about it. And I think
11 as has been shown and we'll show further, he wasn't
12 exactly being kept up-to-date on -- on what was going on
13 or being 153.

14 So it's only when he discovered it. And then, again,
15 he -- his -- he was of the belief that it could -- that
16 the whole thing could be worked out. So --

17 THE COURT: Mr. LeBlanc, you crossed him on that
18 issue about when he had knowledge; is that correct?

19 MR. LEBLANC: Yes, over and over. And his testimony
20 was unambiguous the few times it was that he said, I knew
21 in 2000 -- after June of 2016. I knew that Joey and Sam
22 were in possession of the technology, wouldn't share it
23 with me, and wouldn't turn it over to me, and were trying
24 to sell it. And they were doing all -- and I think their
25 theory is they're -- they're encouraging their mother to

1 do all that stuff. So he knew that.

2 Now, I don't know when he knew about Energetics [sic],
3 or you know -- I don't know everything in the case. And he
4 didn't know everything in the case. But the discovery rule
5 doesn't say you have to discover everything. He definitely
6 was on notice that whatever he's suing my clients for, he
7 knew about -- he knew what they were doing before
8 Dr. Paynter died.

9 MR. FEW: Your Honor, that's not accurate. He did
10 not know what they're doing. And if they wanted to do
11 anything to take legal effect, if they wanted to say what
12 they did say to other people, which is -- which is -- and
13 this is in the e-mails from [sic] tomorrow. Our attorneys
14 told us to treat the partnership agreement as if it did
15 not exist. They never told us that.

16 Eric Englehardt wrote a letter -- and this is not
17 even in evidence here. But Eric Englehardt wrote a letter
18 in, like, January of 2015. They engaged in conversations
19 to do an accounting. No one ever wrote -- no one ever put
20 him on actual, undeniable notice that we have no intention
21 of ever dealing with you ever again. They may have said
22 that at a settlement conference. But they did not say --
23 why would they have been at the settlement conference if
24 that was their ultimate position? So...

25 THE COURT: I -- based on my recollection and notes

1 of the testimony, I'm going to grant your motion as to
2 aiding and abetting breach of fiduciary duty. All right.

3 MR. LEBLANC: That leads to the next one, which is
4 the statute of limitations. I -- I tried to get it as
5 succinct as possible. And that was that before
6 Dr. Paynter died, he knew everything that he's suing them
7 about right now.

8 And I'll -- I'll hold out the fraudulent conveyance.
9 I'll address that separately. But before Dr. Paynter
10 died, he knew that Joey was in possession of the
11 technology. That's what he said. She wouldn't share it
12 with him and was trying to sell it herself. And he --
13 they're saying those are all breaches of this agreement.

14 So that's where I would say, well, you can't have it
15 both ways. I -- I don't think the agreement says that.
16 But if it does, you knew what they were doing before
17 September 4th, 2017. And so September 4th, 2020 -- and
18 this lawsuit hadn't started yet -- is the three-year
19 statute of limitations. I don't know how they avoid that.

20 THE COURT: Mr. Few.

21 MR. FEW: Your Honor, this lawsuit was filed -- first
22 off, the probate -- so this was where you get into the
23 fact that the LLC -- this -- this -- this asset that we're
24 all in here litigating about somehow escaped the probate.
25 The partnership agreement escaped the probate. All of

1 these things -- none of it was disclosed in the probate.
2 The probate court never had jurisdiction over these LLC
3 issues.

4 My client did -- as a pro se party, he filed a claim,
5 which Judge Lorrin wrote the letter back to him and said,
6 We don't have jurisdiction over a declaratory judgment
7 action. And, by the way, that asset is not even
8 disclosed.

9 So he did not know about it. The probate estate was
10 not even closed until 2019. Our lawsuit was filed
11 September 11th -- I believe I've got that right -- of
12 2019. And so we filed well within three years of -- of
13 knowing anything about their interference. We didn't know
14 about their specific interference. We did not know --
15 they didn't tell him, hey, we're doing this. That's not
16 been his testimony.

17 His testimony was simply that when they had the --
18 the conference after Judge Cain had -- had dismissed the
19 case that, you know, things were said and he was -- and
20 that's when she said, I don't intend to do it. But he was
21 not aware of the specific things that she was doing to
22 cause the breach.

23 THE COURT: All right. I'm -- I'm going to deny your
24 motion at this time on the statute of limitations. I know
25 we'll have an opportunity to revisit that later. All right.

1 MR. LEBLANC: And, Your Honor, I -- respectfully, I
2 don't want to put you on the spot. But if you can
3 identify to me the reason why, I'd be happy to pursue that
4 evidence tomorrow.

5 THE COURT: Okay. I think that -- I think there is a
6 question -- there is, at least, some question of the
7 actual date of his knowledge now so far as --
8 specifically, as it -- as it related to aiding and
9 abetting. I think that one's just a little clearer. And
10 I think that was a thin cause of action to begin with, so.
11 All right.

12 MR. LEBLANC: Still more. Sorry.

13 THE COURT: That's okay.

14 MR. LEBLANC: And I didn't mean to skip over
15 interference with contract. I thought that went the same
16 way as aiding and abetting. They cannot interfere with
17 the contract. Whatever interference they did with the
18 contract, that was the contract between --

19 THE COURT: Right.

20 MR. LEBLANC: -- the Plaintiffs and Dr. Paynter. And
21 whatever interference they could have done to interfere
22 with that had to have been done while Dr. Paynter was
23 still alive.

24 THE COURT: All right. Mr. Few.

25 MR. FEW: Your Honor, once again, my client was never

1 made aware about what was going on. They were negotiating
2 with all these parties behind his back causing the
3 interference, cooperating with these other people to get
4 information to use in the litigation. We've got tons of
5 stuff that -- that -- and -- and my client was never made
6 aware of the specifics of those things.

7 And -- and so while he knew that -- that Joey may
8 not -- that -- that's just not sufficient to put him on
9 notice of the specific things that they were doing. He
10 didn't know about that until -- until we really got the
11 details in discovery in this lawsuit.

12 And -- and that includes the stuff with Envirogenx.
13 I think I got those documents in either August or
14 September of 2020. Initially, we got a set of documents
15 that did not have all this information. We, initially,
16 got, like, 1,300 pages. And a great portion of that was a
17 bunch of bank records.

18 So he was not, specifically, aware of -- of the exact
19 things that they were doing to interfere with his
20 contract. He may have had a suspicion. But that doesn't
21 rise to the level of -- of having absolute notice that
22 they are taking affirmative steps to sabotage the
23 agreement, which is what they're doing. It's what they
24 were doing. And -- and they -- and so, Your Honor, we
25 just didn't know. I mean, he may have had a suspicion.

1 But a suspicion does rise to the level of having specific
2 knowledge that they were interfering with the contract.

3 THE COURT: Once again, I'm going to deny that
4 motion. But we may revisit it for the same reasons as I
5 stated before. We may need to revisit that one. Well, I
6 know we'll revisit it at the end of your case.

7 MR. LEBLANC: So in keeping score at home, it looks
8 like the first and second are out.

9 THE COURT: Yes.

10 MR. LEBLANC: And the fifth and sixth are out.

11 THE COURT: Yes. Correct.

12 MR. LEBLANC: And that statute of limitations
13 argument, I believe, applies to all the causes of action.
14 And I understand your ruling.

15 We, also, would renew our motion for directed verdict
16 based on res judicata.

17 THE COURT: And that's respectfully denied. Very
18 creative, but respectfully denied.

19 MR. FEW: Your Honor, if I may.

20 THE COURT: Yes, sir.

21 MR. FEW: The mandatory injunction given that it's
22 undisputed that they are in possession of the Factor
23 property -- in fact, that's their --

24 THE COURT: I didn't do anything with the mandatory
25 injunction -- or wait a second. I'm sorry.

1 (Pause.)

2 THE COURT: I'm sorry. I'm sorry.

3 MR. LEBLANC: If there's a question, we still have
4 the protective order that says I can't do anything with
5 anything until the case is over.

6 THE COURT: Right. I'm sorry, Mr. LeBlanc. I'm --
7 I'm admittedly getting a little tired, I believe, not of
8 you, just in general.

9 But the second cause of action, I -- I did not -- I
10 thought that was -- I'm sorry. My eyes were just
11 deceiving me. I have not, at this point, granted the
12 second -- that is -- as to the second cause of action.
13 That's still -- that's still in the case.

14 MR. LEBLANC: All right. And just so I'm clear, my
15 argument on that is the only thing they've alleged under
16 the cause of action for mandatory injunction was that my
17 clients breached the contract. That's why I felt that if
18 breach of contract -- breach of the agreement is granted a
19 directed verdict, I don't know how mandatory injunction
20 isn't, also. Because what is it -- what are -- what are
21 they alleging we did wrong that would support a mandatory
22 injunction?

23 THE COURT: Let me take a look at that second cause
24 of action a little bit more. But for -- but for right
25 now -- and I may -- let me look at it a little bit later

1 on this evening. But for right now, it's still in.

2 All right. We have a note from the Foreperson of the
3 jury. It says, Judge, we have one juror that is still
4 having a hard time hearing.

5 So I'm just letting you know. I -- and if I had to
6 pick who they're talking about, I think they're talking
7 about you.

8 MR. FEW: Sorry.

9 THE COURT: No. That's okay. It's a document driven
10 case. And I think what happens is when y'all look down at
11 the documents, your volume kind of drops a little bit.
12 That's when I have a hard time hearing people.

13 Okay. So we're going to maybe see if we can't hook
14 up a microphone or something to help with that. Maybe --
15 maybe we can turn it on and off.

16 I'll mark this as Court's Exhibit No. 1.

17 (WHEREUPON, Court's Exhibit No. 1 was marked for
18 identification and admitted into evidence.)

19 THE COURT: All right. Thank y'all.

20 All right. Let's start back tomorrow morning at
21 9:00.

22 Do you all feel we're still on track to finish
23 tomorrow?

24 Mr. LeBlanc, I'll put that --

25 MR. LEBLANC: Well, I believe I'll call Joey Paynter.

1 And I need to look at Rule 608. And I'll either bring in
2 the accounting lady to proffer the testimony, or I'll pass
3 on it.

4 THE COURT: All right. So it sounds like either way,
5 we must be -- we're -- we're in pretty good shape to
6 probably get it to the jury tomorrow. So good -- good
7 job, guys.

8 Thank y'all.

9 MR. FEW: Thank you, Your Honor.

10 THE COURT: All right. I'll see y'all tomorrow
11 morning at 9:00.

12 (WHEREUPON, the proceedings were concluded at
13 approximately 5:07 p.m., to be reconvened on
14 Thursday, April 21, 2022.)
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1 THURSDAY, APRIL 21, 2022

2 THE COURT: All right. I just wanted to do a little
3 clean up from yesterday and just go over a few things very
4 quickly. I admittedly -- and I told y'all yesterday I was
5 extremely tired by the end of the day. And I know y'all
6 were. I was just sitting here. I didn't have to get up
7 and do anything. But I wanted to -- just to point out a
8 couple things.

9 So far as aiding and abetting breach of fiduciary
10 duty, I just want to be clear that that cause of action
11 would predate any of the other causes of action. And --
12 and my thinking yesterday with regard to it -- like I
13 said, I thought that was kind of a thin one to begin with.

14 But I believe that the Plaintiff did have, at least,
15 some knowledge that there was something going on. From
16 his standpoint that there was something going on with the
17 daughters and the mother that was not in the best interest
18 of the LLC. However, I don't think it's been established
19 that so far as conversion is concerned or intentional --
20 excuse me, tortious interference with contractual
21 relations, I don't think it's been established that he had
22 knowledge such that the statute of limitations would have
23 begun to run at that time.

24 So far as the dec action, I don't think there's
25 really any reason for us to, you know, really address that

1 at this point. But at this point, I am going to deny your
2 motion as to the dec action. I just misspoke yesterday.

3 I will say the dec action may not reflect the
4 evidence that's been presented thus far. It may not a
5 hundred percent reflect that. It may -- I don't know if
6 there's any type of motion or anything you want to make at
7 some point on that.

8 But, in any event, those -- that's what's left is the
9 dec action, conversion, and what I call tortious
10 interference with a contract. I believe it's just called
11 interference with contract in the -- in the complaint.
12 Those are the causes of action, to my knowledge, that are
13 left. My law clerk has got to keep me straight.

14 Yes, sir.

15 MR. LEBLANC: The -- the dec action, which cause of
16 action is that?

17 THE COURT: That's cause of action two. So --

18 MR. LEBLANC: All right. That's the one you said
19 yesterday was still in?

20 THE COURT: It's still in.

21 MR. LEBLANC: Okay.

22 THE COURT: So I just wanted to make the record clear
23 because I think I was -- I was a little fuzzy yesterday
24 afternoon and -- and didn't really state my reasons for
25 everything too well.

1 All right. All that being said, are we ready to get
2 going with the Defendants case?

3 MR. FEW: I'm ready whenever they're ready, Your
4 Honor. I wanted to raise a few issues just for the
5 benefit --

6 THE COURT: Okay.

7 MR. FEW: So with respect to the -- we've been
8 discussing it and it seems that the Court and both lawyers
9 are in agreement that the interpretation of the contract
10 is a question of law that should be handled by the Court
11 and should not be handed over to the jury. In which case,
12 we look to the contract to see if there is an ambiguity.

13 And -- and one of the key provisions -- and I've got
14 a case for this. Because it's just black letter law --

15 THE COURT: Well, let me just stop you right there.
16 With conversion and intentional interference with -- or
17 tortious interference with contract, does the jury have to
18 interpret -- I mean, does there -- does there have to be
19 an interpretation of the contract at this point?

20 MR. FEW: Well, the -- for the -- for the
21 interference, no, there does not. The jury -- the jury --
22 the jury has to decide if those acts were, in fact,
23 interference. And what we're alleging as the primary
24 interference that we never found out about until this
25 lawsuit was the fact that the Factor was, actually,

1 conveyed to a different party.

2 THE COURT: Right.

3 MR. FEW: And that's what we never had notice of.
4 And that's the distinguishing factor that we want in the
5 record with respect to the aiding and abetting and the
6 interference with contract as to when the statute of
7 limitations would have been triggered for that. We did
8 not know about that until we got that affidavit. If we
9 had, we would have done something.

10 But the partnership agreement has to be read in -- in
11 its whole. And just briefly, thankfully, again, it's only
12 two pages. There's no termination date for it.

13 THE COURT: Right.

14 MR. FEW: It doesn't say it's five years renewable
15 upon consent of the parties. It, also, says -- and -- and
16 the point -- the point that Mr. LeBlanc is wanting to
17 refer the Court to and get the Court to read and have more
18 meaning than anything else is, basically, a recital, Your
19 Honor. I mean, it's paragraph three. And it's stating
20 what the facts are in May of 2006.

21 We then had nine years of performance under the
22 contract before the lawsuit was filed. But, also, really
23 importantly, this is what they, also, said not only in
24 paragraph four do we know that they, specifically,
25 contemplated what was going to happen when he passes away

1 or when she passes away, they, also, say that the
2 partnership shall commence on and continue until dissolved
3 by mutual agreement of the partners. They didn't seek to
4 do that.

5 And what they did seek to do was to dissolve the
6 partnership. They brought their lawsuit. And -- and I'm
7 beating a dead horse here on this part. But I just want
8 to say, they brought their lawsuit. And when they got
9 sent to arbitration, they still could have gone to
10 arbitration and sought an order of disillusion. That
11 would have been the -- the -- the legal thing to do.

12 If you chose to use the legal process, that's what
13 you would have done. Jurisdiction was with the
14 arbitrator. The same as -- he could have found for
15 judicial disillusion under the LLC statute, if they could
16 have proven it. They chose not to do it. They could have
17 gone to arbitration pro se.

18 So this whole issue of fees and everything -- so what
19 these people agreed to -- and so what Mr. LeBlanc wants to
20 do on behalf of his client -- and I applaud his effort.
21 He wants to render the mutual 10 percent to the heirs
22 meaningless as it relates to my client. And that just
23 cannot be done.

24 THE COURT: Yes, sir.

25 MR. LEBLANC: Your Honor --

1 THE COURT: I don't know that we absolutely have to
2 take all this up right now. But go ahead.

3 MR. LEBLANC: Yes. The -- the answer to your
4 question of does the jury have to have the contract
5 interpreted for a conversion and aiding and abetting, and
6 the answer is absolutely, yes. Because conversion is
7 we've taken something that doesn't belong to us. Well, if
8 the contract is construed the way we believe it -- it
9 should be construed, paragraph four, second sentence says,
10 The partnership will terminate upon the death or
11 incapacity of a partner.

12 This partnership under any reading goes -- went away
13 on September 4th, 2017. You cannot get around that
14 sentence.

15 THE COURT: Yeah, you can. There's more. There's --
16 there's more after that. I mean, I'm just saying, I don't
17 agree with either one of your interpretations of the
18 contract. I know you find that surprising, but I don't.

19 So I don't know that we have to -- that -- that we
20 have to settle this right now.

21 MR. LEBLANC: Right. I'm just answering the
22 question, does -- does it have to be construed for the
23 conversion --

24 THE COURT: Okay.

25 MR. LEBLANC: So -- so there's no conversion if he

1 doesn't have any rights to it. That's why --

2 THE COURT: I understand. No, I understand. And,
3 you know, I will tell you this, if we -- if we think ahead
4 to what could possibly happen in this case, the
5 possibilities that could happen in this case, I know -- I
6 hope you all have talked about the fact with one another
7 that there is no good remedy. Like, there's no good
8 remedy.

9 There's either a hundred percent win for you, a
10 hundred percent win for you. There's no good remedy. And
11 I'm assuming that's why this case wasn't settled. But,
12 you know, we're now sort of whittling it down to what the
13 actual case itself is.

14 I mean, to me, the case is the dec action. But
15 that's neither here nor there. But even if the jury were
16 to award money damages to the Plaintiff, then what do you
17 do? I mean, what do you do?

18 MR. FEW: We're not even really after a -- a money --
19 we -- we -- I mean, he's 70 years old. They -- they don't
20 seem to have any assets. He can't -- you know, he can't
21 afford to pay me any way. So he can't pay -- afford to
22 pay me. He can chase one of them in Belize and the other
23 one in California for a judgment. So --

24 THE COURT: Well, they do have a big asset at
25 present.

1 MR. FEW: And, Your Honor, we -- we -- so a couple
2 things here. Because you said you have an interpretation.
3 And I wonder if it might benefit everyone to know what the
4 three various interpretations are. Because our belief is
5 that what happened with paragraph four is it, essentially,
6 created a trust that was the business of the partnership
7 that involved the Factor. That's the only way that this
8 can be read without reading words out of it.

9 THE COURT: Who drafted that contract?

10 MR. FEW: This contract, according to Judge Cain, was
11 drafted by both sets of the parties.

12 THE COURT: Okay. But --

13 MR. FEW: And --

14 THE COURT: Lawyers?

15 MR. FEW: Well, they deny that under the dead man
16 statute. But here's what I do know, Memminger Wiggins --

17 THE COURT: I just want to make sure I'm not talking
18 about anybody in this room.

19 MR. FEW: It wasn't us.

20 THE COURT: Let me just be clear. That was a very
21 inartfully drafted contract --

22 MR. FEW: We didn't know any of these people.

23 THE COURT: That is in all truthfulness -- in all
24 truth, that is one of the most inartfully drafted
25 contracts that I've ever seen. And so it's -- and -- and

1 no offense to any --

2 MR. LEBLANC: I don't think a lawyer was involved in
3 it.

4 THE COURT: -- parties. And I -- and no offense to
5 any parties. In every possible outcome, it's just
6 impossible to -- to see every possible outcome.

7 But here's the situation, what that contract says --
8 in -- in reading that contract, it says that the Factor is
9 these -- is these -- is the Paynters. Okay. The Factor
10 is the Paynters. It never becomes an asset of -- of this
11 LLC. But what it does say is that he can continue the
12 business.

13 Now, I don't -- he can continue the business using
14 the Factor. And so that -- I mean, yes, it's making
15 terrible bed fellows. But that's what that says is he can
16 continue the business. And that any profits he gets from
17 using the Factor, they get 10 percent each -- each -- I
18 don't have the contract right in front of me -- each of.
19 That's what that contract says.

20 Now, how does that work mechanically? It works
21 horribly. I mean, it doesn't work. But that's -- if you
22 want my interpretation of the contract, it really is in
23 between what -- what y'all are saying is he can continue
24 his business, but nothing says they have to give up -- I
25 don't see anything that says they have to give up the

1 Factor.

2 MR. FEW: And we would consent to that, Your Honor,
3 that we get it, and they get it. And it's -- and it would
4 not be exclusive. That would be perfectly fine with my
5 client, I'm pretty sure.

6 Right?

7 MR. CHRISTOPHER YOUNG: Yeah.

8 MR. FEW: He'd be fine with that.

9 In fact, we were going to -- basically, I'm going to
10 be arguing to the jury for just a nominal damage award, if
11 we even -- you know, when we seek damages just in support
12 of those -- those numbers. But we've got some pretty
13 powerful evidence that we intend to put up today on the
14 intentional interference and -- and the nature and the
15 motivation behind the conduct.

16 But I think that -- that because of the value of this
17 thing, this case is probably going up on appeal no matter
18 what happens.

19 THE COURT: Sure, sure.

20 MR. FEW: And so that's why I really appreciate
21 you -- your -- your interpretation. Because your
22 interpretation is the one that's going to matter.

23 THE COURT: Not ultimately, but -- but still. So
24 that's -- I mean, that's -- that's where it is. I mean,
25 you know, when you think about an ultimate remedy and the

1 way that this case -- and I'm just speaking off the cuff.
2 I mean, I -- I'm not -- the way this thing -- the way this
3 thing probably works is -- probably should work is in the
4 end -- I don't know that this man would want to continue
5 having to go to Paynter, LLC, or the Paynters to -- for
6 them to -- to use the Factor every time. And I think
7 that's going to just spawn more problems.

8 And it sounds to me almost like if the jury were --
9 and I'm not saying the jury's going to. But if the jury
10 were to award him money and then they go off and sell the
11 Factor to somebody else, you know, that seems to me almost
12 that that's --

13 MR. FEW: Well, Your Honor, the way --

14 THE COURT: -- the way to work.

15 MR. FEW: The way I think -- because these cases, you
16 know, are -- is if my client and people that were skilled
17 in the art -- to use one of Mr. LeBlanc's terms that we
18 learned when we took the patent bar. If they knew those
19 components and had access to those -- to the true lab
20 notebooks in which the testimony has been when she didn't
21 know what was going to work, she would have written down
22 what she was doing and testing in 2004, 2006, or whenever
23 she came up with what -- with what is the Factor. If we
24 knew that, we could main -- we would, obviously, maintain
25 it in exclusion. Because we don't want the world to know.

1 And that someone would be doing the bench studies and --
2 and scaling it up. And I don't know that the daughters
3 are in a position to do that either.

4 And so that's the thing. It's not just a question
5 of -- because every site is different. And so that's
6 where -- but someone that knew the -- the -- the --
7 whatever it is that Steve says is not in the stuff that's
8 held pursuant to the Court order. The testimony today is
9 probably going to be that they know something that's not
10 in there and -- which then the parties could move on.

11 And, in fact, I mean, I -- we're getting into stuff
12 that -- because this is pretty much a non-jury matter.
13 But I told Eric Englehardt from the beginning we could do
14 this and we could appoint Tom Stephenson to be a
15 conservator or a receiver and this could work. So it is a
16 workable solution.

17 THE COURT: Well, but I -- and I don't see anything
18 that says -- I just -- I'm just -- I hadn't heard the
19 whole case. I don't see anything that says that he's
20 entitled to those notes or he's entitled to those
21 notebooks. Because, ultimately, from that, you could
22 deduce the Factor. And let me just say -- I haven't said
23 this. I think we've got three science majors sitting
24 here, I think. If y'all both passed the patent bar -- I
25 left --

1 MR. LEBLANC: Computer science.

2 THE COURT: Well, that's a science. I left graduate
3 school in biochemistry to go to law school. So I -- I
4 know a lot about, at least -- I don't know a lot of
5 science. But I, at least, know lab notebooks. And I know
6 what you're -- and I know how you keep data. And I know
7 how you might be able to use it to deduce this Factor.
8 And, ultimately, I just don't see anything that says that
9 he's entitled to the Factor.

10 But I sure do see that he's entitled to use the
11 Factor. That's -- I mean, that's ultimately -- that's,
12 ultimately, what I see in -- in this contract, if I'm just
13 laying all my cards on the table, at this point, and
14 giving y'all what I would consider to be an -- an advisory
15 ruling, which I don't like to do, so.

16 MR. LEBLANC: Your Honor, I think it was very
17 helpful --

18 THE COURT: Okay.

19 MR. LEBLANC: -- what you just said. If I could say
20 it back to you, that -- that will confirm if I understand
21 what you just said.

22 THE COURT: Okay.

23 MR. LEBLANC: The Paynters -- you -- preliminary
24 thoughts, the Paynters, Sam and Joey, would always have
25 possession of the Factor and don't need to share the

1 information with the Plaintiffs. But they would need to
2 provide the -- the product so that he can continue to
3 remediate soil.

4 So I said that back correctly. And you've made some
5 very astute rulings. And I'm not trying to suck up. But
6 I think -- I see that. I mean, I -- I can definitely see
7 that.

8 THE COURT: And I know y'all have thought of this
9 before. I know y'all talked and thought of this before.
10 But that's just how it strikes me when I read that
11 contract. And I looked at it again last night.

12 MR. LEBLANC: The -- the problem -- the practical
13 problem of that is my clients -- and -- and we may be able
14 to work around this. But I -- when you said that, I was
15 like, okay, I can see that. I see that reading, what you
16 just said and what I said back to you.

17 The practical problem is you have a partnership
18 agreement that was entered into in 2006 that now obligates
19 two people that weren't parties to the partnership
20 agreement to a forever obligation to be in this -- this
21 business that they don't -- they don't know what the
22 business is.

23 THE COURT: Yeah. And, I mean, ultimately, what it
24 is is they've got this, what everybody thinks is a very
25 valuable asset. And it sounds like a very valuable asset.

1 You've got this very valuable asset. And they are not in
2 a position to make it valuable.

3 So what they're -- the only possible way -- and I
4 mean, I'm just literally -- I'm not even talking legally.
5 I'm just talking how this would work is -- I mean, it
6 almost seems to me that they're going to have to hire
7 somebody to -- they're going to have to have somebody to
8 make this workable.

9 If they want to keep this -- if they want to keep
10 this Factor for themselves, which I -- I can totally
11 understand wanting to do. If they're wanting to keep this
12 Factor for themselves, they're going to either -- they're
13 going to have to get some third party to provide those
14 services to this man so that he can -- so that he can
15 continue this business.

16 Because -- because, otherwise, the -- the reading of
17 the contract, talking about carrying on the business, he
18 can't do that without the Factor, you know. He can't do
19 that without the Factor.

20 MR. FEW: Your Honor, I think what -- what doesn't
21 work is a practical matter. Because the agreement says
22 that the surviving partner can carry on the business of
23 the partnership. If you recall, the business of the
24 partnership requires someone to identify a -- a potential
25 application to secure some type of assurance that they may

1 get it and then do the bench testing.

2 Okay. These parties, like you said, they have not
3 cooperated. All right. They've made statements that they
4 never would cooperate. Not from my side because we've
5 always wanted to just do it.

6 So that is the thing with that interpretation that in
7 and of itself would render paragraph four, the creation of
8 the trust that is the business of the partnership. The
9 trust which requires him, if he chooses, to continue the
10 business of the partnership, to do all of the work and pay
11 10 percent. It's a pretty good deal for sitting -- for --
12 for not doing anything.

13 THE COURT: Yeah.

14 MR. FEW: That's what --

15 THE COURT: That's what having a big asset does for
16 you, yeah.

17 MR. FEW: That's what they agreed to. And I think
18 what Your Honor is saying -- and this is important, too.
19 Because the word exclusive is used in here. But they
20 didn't say exclusive after the death of a partner. But it
21 does say you can use the Factor. And it's all through
22 this agreement. In fact, the very purpose of it is --
23 this whole agreement is related to the Factor only.

24 So we cannot render paragraph four meaningless. And
25 the only way that that can be done -- and Chris thought

1 that he knew what it was. He thought that he -- you know,
2 as they were doing business, Dr. Paynter was the expert.
3 It was just easier to take the things to her.

4 And the thing is every site has to be tailored just a
5 little bit.

6 THE COURT: Yeah, sure.

7 MR. FEW: You know, the next scientist may not be as
8 good as she was. They may be a little bit lucky or
9 better.

10 But what -- what we need -- and, see, this is where I
11 think this -- the ownership of the Factor is now -- has a
12 license, essentially, to the business of the partnership.
13 And the only way he can have that -- and we'll sign a
14 confidentiality because we're not going to share it with
15 anybody, just like they're not going to share it with
16 anybody.

17 But if -- if he has access to it -- he's 70 years
18 old. We'll enter into whatever types of agreements that
19 he can use it and it could be used. That's the shame of
20 this whole thing is that this pixy dust, as Mr. LeBlanc
21 called it when we first came in here before Judge
22 Gravely --

23 THE COURT: I like that.

24 MR. FEW: -- has not been out there for use. And
25 what his fear is -- is that -- that these other

1 technologies have come along. And they've already got a
2 crack in, you know. And -- and just because you have the
3 best idea in the world --

4 THE COURT: Yeah.

5 MR. FEW: -- you've still got to put it into
6 practice. And he's the one that did that, you see.

7 So that is a workable solution. We believe that --
8 that this -- this partnership agreement in effect
9 inartfully drafted as it was -- and there will be evidence
10 that -- that immediately before this, Dr. Paynter was
11 consulting with this Memminger Wiggins guy, who is a
12 lawyer. He was a Clemson guy. He's a patent lawyer, I
13 think. He moved to Charlotte.

14 THE COURT: I know him.

15 MR. FEW: We got his subpoenaed documents. I
16 don't -- my client's understanding was that he drafted it.
17 But we don't have that into evidence because of the dead
18 man statute. I don't think we need it. Because Judge
19 Cain -- that's already been argued. And Judge Cain in his
20 order says it was collaboratively drafted.

21 However, the jury's going to hear that Memminger
22 Wiggins was involved. And -- and they would have the
23 right to find under -- construing it against them. But I
24 don't think we need to go -- I mean, I would prefer not to
25 have the jury --

1 THE COURT: Yeah.

2 MR. FEW: -- I -- I trust Your Honor way more than I
3 do a jury to interpret this contract. But that's the
4 way -- that's the only way that those words can be read to
5 have meaning is, essentially, there's a trust created.
6 And the trust would have been Dr. Paynter's and it would
7 have benefited Chris' heirs.

8 THE COURT: I think you're reading too much into it,
9 but -- into -- too much into what the -- the contract
10 says. Now, hey, did they -- did -- was it ever really,
11 truly contemplated that this situation would come about in
12 that? Absolutely not. But that's -- that's what --
13 that's what, to me, the contract says.

14 Now, to me, I wouldn't want to be in business with
15 somebody that didn't want to be in business with me. I
16 mean, that's just me. And I wouldn't want to. And this
17 Factor is pretty valuable stuff. And I would think they
18 probably would rather somebody have this Factor that could
19 use it.

20 And I know -- I believe, ma'am, you're a scientist,
21 too.

22 Oh, no, you're not. Okay.

23 MS. JOEY PAYNTER: I'm definitely not.

24 THE COURT: Oh, okay. For some reason, I thought you
25 were the -- a scientist.

1 MR. LEBLANC: Psychologist.

2 THE COURT: Psychologist. That's science.

3 MS. JOEY PAYNTER: Well, sometimes --

4 THE COURT: That's science.

5 I would think -- you know, everybody who's had some
6 time in the science world knows that you want something
7 good to be in the body of science. You want something to
8 help the body of science. So you want to get it out
9 there.

10 So it just seems to me -- I don't know. I'm not
11 trying to run you out of business. I'm just -- I'm just
12 saying it just seems to me like there's got to be some
13 number out there that you'd take that and -- and go on and
14 be happy to do something else. And -- because they can
15 probably sell this Factor and be done with all this for a
16 bunch of money.

17 MR. FEW: Well, Your Honor, the thing is that neither
18 party can -- neither party has any capital to pay each
19 other. So, I mean, we would be happy to -- in fact,
20 Mr. LeBlanc has represented to me that he's -- you know,
21 he's represented a group called Golder [phonetic]. And
22 there's buyers in the wings. And, you know, we would be
23 amenable to any of those types of things, absolutely. We
24 just -- we haven't gone far with the settlement
25 discussions in this case. We tried, but we haven't gone far.

1 THE COURT: I got that -- I got that sense. And so I
2 did get that sense. So, you know, just -- I mean, as I
3 was just -- y'all don't know how thinking about this case
4 has -- I know it's kept y'all up. But I'm not in this
5 case. And it's kept me up thinking about how this thing
6 would ever -- I mean, you know, I -- I mean, I want more
7 than anything for everybody to walk out this door and to
8 be satisfied. And we all know that that's probably not
9 going to happen.

10 But it just -- I mean, it just seems to me that if --
11 if they think they've got a buyer and there's some number
12 that y'all would be willing to give him to not have to do
13 business -- I mean, you don't have to give it to him -- I
14 mean, I would think -- like you said, you could enter into
15 some kind of agreement that this would be paid at a later
16 date when this thing is sold, you know.

17 I'm no business lawyer. And so I never was. So I'm
18 not trying to -- I'm getting into things that I probably
19 shouldn't suggest.

20 MR. FEW: Your Honor, we're amenable to all types of
21 solutions. Again, my client's 70 years old.

22 THE COURT: Yeah.

23 MR. FEW: He looks good. But he's 70.

24 THE COURT: I know. I was very surprised to hear
25 that you're 70, not that 70 is old. I'm not saying 70 is

1 old. I was just surprised.

2 MR. LEBLANC: He's looks younger every day.

3 THE COURT: I know. And his wife --

4 And then you married -- you must have married a
5 schoolgirl, so.

6 MR. CHRISTOPHER YOUNG: She was only 14.

7 MR. FEW: But, Your Honor, I -- I would say to --
8 to -- to quote my friend Jack Pringle disagree. This
9 agreement absolutely contemplates that this situation
10 would happen. That's why they wrote in the provision for
11 the heirs. They knew that they -- they knew that one of
12 them was going to likely pass away. And that they wanted
13 to be in business --

14 THE COURT: The idea was that everything was going to
15 be mutual. And it was all going to be one big happy
16 family. And it was going to continue on. It didn't -- it
17 didn't contemplate the situation where these parties are
18 suing each other, and mad at each other, and -- and don't
19 want to be in business together anymore, but they have
20 this thing.

21 MR. FEW: Well, in -- in -- but -- and, again, we --
22 we have to all look at what's in the document; right? And
23 what the document says is that if there is -- it says
24 there's no term on it. And there's this major provision
25 in here to provide for each party in the death -- in the

1 event of the death of the other.

2 And then the arbitration provision says that you'll
3 go to arbitration and it will be the arbitrator's job to
4 restore it. But that doesn't preclude them to have gotten
5 an order of disillusion to -- if that's what they wanted
6 to do. And that's what they were --

7 THE COURT: I get you.

8 MR. FEW: -- seeking.

9 THE COURT: I understand. I understand. But, you
10 know, we're -- I just want to -- I just am telling you
11 that when I read that contract, that's what I think the
12 only -- the only way out of this is that this man gets to
13 use the Factor for -- you know, for his lifetime. He gets
14 to use the Factor, continue on with the business. And
15 that when he -- and these ladies have to figure out a way
16 for him to be able to use the Factor. And then when he
17 does use the Factor, they get 10 percent of it.

18 MR. FEW: Your Honor, we would absolutely agree to an
19 order for that. I will provide an accounting. Steve and
20 I can start playing golf together again. I mean, this can
21 be done. It really is workable. And we would have -- and
22 we would -- you know, it's not like that -- you know, you
23 can go and use this stuff. And we would give -- we'd tell
24 them everything he was doing. And they could do the same
25 thing.

1 And then so we have it. And then they can take it
2 and -- and work a deal and sell it to somebody. They can
3 sell it so that everybody -- then -- then the technology
4 gets back out in the world. And the -- the import of this
5 agreement is enforced. That -- we would absolutely agree
6 to that.

7 But in order to do that -- and we would agree to
8 whatever orders of -- of secrecy of maintaining it.
9 This -- this happens in the world all the time.
10 Mr. LeBlanc's probably drafted a thousand of these
11 agreements over the years.

12 We would agree to maintain all of the information if
13 we get full disclosure of what the Factor is so that Chris
14 can use it --

15 THE COURT: That's the rub. Yeah, that's the rub
16 right there is -- is how does he get -- how does he get
17 the Factor? And this -- and this contract, specifically,
18 speaks to the Factor and that it stays with Paynter, LLC.
19 I mean, I -- I'm doing this off of memory. But it --

20 Thank you.

21 It says that --

22 MR. LEBLANC: Sole knowledge.

23 THE COURT: Oh, sole knowledge of the proprietary --
24 of the Factor. Yeah. I'm sorry. I couldn't read.

25 But it's -- but, you know, how -- that's it. They've

1 got sole knowledge of it. So it never says that they're
2 going to share any of that knowledge with him. And I
3 can't read that into there.

4 But it sure does say they're going to share the
5 technology with him. It sure does say that they're going
6 to share the technology with him. But I'm not seeing
7 anything or reading anything that tells me that they've
8 got to turn that Factor -- that Factor over.

9 MR. FEW: Your Honor, that --

10 THE COURT: Now, workably, I get it. It would be a
11 lot better -- it would be a lot easier just to have, you
12 know, him sign a confidentiality agreement. He never
13 gives it to anybody else. And he uses it. I get you that
14 that would work really great. But that's just not what
15 this contract says.

16 MR. FEW: Well, that's the only way that paragraph
17 four can be read to have the meaning that it was intended
18 to have. Your Honor, the -- the paragraph three
19 provision, again, in the inartfully drafted contract is a
20 recitation. Right above it, it says -- that's just
21 defining what they're doing.

22 If they wanted to say Chris would never have it,
23 then -- then, you know, I don't think we need to get into
24 would've, should've, could've. But -- but that's kind of
25 what -- what they -- I think that's where we are. If they

1 wanted to say at death, you know, they would have it and
2 he wouldn't, then that's what it would have said. But
3 if -- if that is the way that it's interpreted, paragraph
4 four, it -- it means nothing to him.

5 THE COURT: Do y'all want to go talk for five
6 minutes? You don't -- I mean, you don't have to.

7 MR. LEBLANC: We, certainly, can, absolutely. I
8 forgot what I was going to say as I stood up.

9 Oh, here's a hurdle we have, a practical hurdle.
10 Like I said, I understand your position on it. It seems
11 to obligate somebody to do something for life who's not a
12 party to the contract.

13 THE COURT: Right.

14 MR. LEBLANC: But I get that. That's --

15 THE COURT: Right.

16 MR. LEBLANC: -- what it is. But as a practical
17 matter -- and I'll tell you what the evidence that came
18 in, if you didn't hear it. Dr. Paynter had a falling out
19 with Mr. Young over an accounting. And the partnership
20 agreement said they split profits. Well, there's a lot of
21 monkey business that can go on when you're talking about
22 splitting profits versus splitting revenue.

23 So what I think we could possibly discuss is, hey,
24 instead of 10 percent of profits, we need 10 percent of
25 whatever comes in. You figure out what profits you get.

1 Because we don't have the ability to do that. And that's
2 what caused the rub with Dr. Paynter, you know, that
3 accounting stuff.

4 And the evidence that came in was in 2012, the
5 business lost \$50,000. In 2013 --

6 MR. FEW: Hold on. Hold on. Hold on.

7 They wanted an accounting. An accounting was done.
8 It said that she -- you know, they --

9 MR. LEBLANC: Can I finish?

10 THE COURT: We're making some progress here. This
11 is -- I think we're making some progress.

12 MR. LEBLANC: I'm just trying to express the
13 difficult -- the hurdle.

14 Do you -- do you see what I'm saying?

15 THE COURT: I see what you're saying.

16 MR. LEBLANC: I mean --

17 THE COURT: And so you're -- and so you're saying
18 y'all might be amenable to the revenue, not the profits.
19 Because, honestly, when everything's backed out and all,
20 it might be that they're talking about a loss, you know,
21 every year.

22 So why -- I mean, why don't y'all just take -- take a
23 couple of minutes and just --

24 MR. FEW: That would be fine, Your Honor. And I
25 think -- I think, you know, the reality is --

1 THE COURT: Will you go to the jury and ask them if
2 they'd like some snacks? Tell them that -- my apologies.
3 And would they like some snacks or coffee.

4 THE BAILIFF: We have that in place already.

5 THE COURT: Okay. Well, just give them my apologies
6 then.

7 MR. FEW: Your Honor --

8 THE COURT: And we'll be with them very, very
9 shortly.

10 THE BAILIFF: Okay.

11 MR. FEW: You know, I tell people this, running a
12 small law firm, you know, when my wife gives the debit
13 card to one of the teenagers, as I'm sure you well know,
14 they don't give it back. And she's at the Harris Teeter
15 and we've got to eat that night, I say, sweetie, just
16 use -- you know, when you're running a small business, you
17 don't have audited financial statements.

18 THE COURT: Yeah.

19 MR. FEW: Chris was doing, you know, the very best he
20 could. We could absolutely have a way more sophisticated
21 accounting system with -- under oath so we could -- we
22 could do it either way.

23 But he says he's agreeable to the -- to the revenue,
24 but, you know -- so, yeah. I'm happy to --

25 THE COURT: Yeah. Y'all just go talk for just a

1 minute.

2 MR. LEBLANC: And that's -- in 20 years, whenever I
3 talk to clients about licensing technology, I always tell
4 them it has to be a percentage of revenue, not profits.
5 Because profits can be --

6 THE COURT: And, you know, I mean, where is the
7 licensing agreement in this?

8 But, yes. But -- okay. Yes, y'all go talk. Y'all
9 go talk and see.

10 MR. FEW: You should have seen the partnership
11 agreement that a lawyer in Camden drafted between the two
12 doctors that I litigated --

13 MR. LEBLANC: Time frame? And I don't -- I don't
14 want to delay things any further.

15 THE COURT: Sure, sure.

16 MR. LEBLANC: But I'm not sure 10 minutes is enough
17 to talk.

18 THE COURT: I know. Y'all just -- y'all just go --
19 I'll tell you what, how about y'all give me an update in
20 10 minutes? How about that?

21 MR. FEW: Okay.

22 THE COURT: Just see if that is in any way helpful.

23 (WHEREUPON, a break was taken.)

24 THE COURT: All right. Mr. Few.

25 MR. FEW: Your Honor, back on the record.

1 This is Wes.

2 We have agreed to let the jury go.

3 THE COURT: Okay. Good.

4 MR. FEW: And we really thank the Court for indulging
5 us --

6 THE COURT: Sure.

7 MR. FEW: -- and allowing us to engage in these
8 initial settlement discussions, which we are eternally
9 hopeful that are going to work out. But -- and so what we
10 would ask is just a -- a reasonable period of time to let
11 the Court know that we have a settlement. It will
12 probably be before this law clerk of yours leaves. But a
13 couple of weeks maybe, or a -- whatever Your Honor thinks.

14 THE COURT: Sure.

15 MR. FEW: I -- I -- I think -- what we foresee is
16 that Steve and I are going to hammer out what would almost
17 be like a -- a mediation agreement with some bullet
18 points. And it's going to define a path forward for all
19 the parties. And -- and so we don't think that we would
20 need to come back before Your Honor.

21 THE COURT: Okay.

22 MR. FEW: If we do, we could finish up the case and
23 put it before Your Honor the things that you might need
24 to -- to rule on.

25 But did I get that right?

1 MR. LEBLANC: I -- I believe so. We will -- I think
2 we can work out an agreement. If we don't, then we would,
3 basically, continue the trial non-jury.

4 THE COURT: Perfect. I think that's a -- I think
5 that's a terrific resolution. And that -- that sounds
6 great.

7 I will tell you one thing. I am having to have -- I
8 can't believe I'm at this point in my life, but I am. I'm
9 having a knee replacement surgery on May 17. And so I
10 will be out for a month.

11 But I don't want to slow y'all down. If y'all need
12 something like that and you don't mind since it's non-jury
13 if you -- those two weeks -- like, those first two weeks
14 of June, I could do a Webex hearing, or y'all could just
15 wait until I'm back. I mean, I don't want to slow anybody
16 down with anything they need to do. But I just do need to
17 tell you that one caveat.

18 MR. FEW: Yes. Well, maybe Kevin Dillard can help
19 take care of you. He's taking care of his mom's knee
20 surgery. Kimberly did that for the first three or four
21 days. You're going to -- tell Chuck to take time off.

22 THE COURT: Do you think Chuck Verdin will take time
23 off?

24 No. But, luckily, my boys are going to be home from
25 college. We, actually, planned it so they'll be home from

1 college. So they -- they'll -- they'll do a lot better.
2 I'd rather them do it. Y'all both know Chuck. I'd rather
3 them do it.

4 MR. FEW: Your Honor, we -- but we just really
5 appreciate the way you handled everything. And I'll say
6 this just because I can, if you'll let me. Sometimes, we
7 just have to come to trial, you know.

8 THE COURT: Totally.

9 MR. FEW: But -- but I'm, also, going to say this,
10 there -- there's a tendency now for the Courts to say,
11 well, go mediate, go mediate, go mediate. And I just
12 don't find mediation to be all that. Occasionally, it is.
13 But when parties get down to the brass tacks is when they,
14 actually, evaluate their risk and rewards.

15 THE COURT: You know, a lot of times you just have
16 to -- you just kind of have to get into the testimony a
17 little bit, even though we hadn't finished the testimony
18 here. Sometimes, you've got to get into the testimony
19 just to sort of see and to -- just to get a clear picture
20 of things.

21 I mean, I don't ever -- I don't ever try to work a
22 case out. I, truthfully, never try to mediate a case
23 beforehand with the parties or not go to trial, or
24 something like that. Because I feel like if you're at
25 this point, then that might be where -- what you need to

1 do.

2 So I don't -- I appreciate you -- and I appreciate
3 you saying that. I've enjoyed working with y'all. This
4 has been an interesting case. And it's -- you know,
5 it's -- it's a tough one.

6 MR. FEW: We're going to -- we're going to -- we're
7 going to do everything we can to work it out, Steve and I.
8 We think everybody's got a lot of interests.

9 THE COURT: That's good.

10 MR. LEBLANC: I think in this state right now with
11 stuff going on with the judiciary, I think you cannot
12 ask -- just like you said to the -- to us before the jury
13 came in, you wanted us to present ourselves well for the
14 legal profession. I think that with the judiciary issues
15 in this state having a judge that's fair, and
16 knowledgeable, and consistent, I mean, I think that goes a
17 long way. And that's what we saw this week.

18 THE COURT: Oh, thank you.

19 That really makes me feel good. And I meant what I
20 said to the jury when I said, you know, y'all are
21 fantastic lawyers.

22 And -- and I have to admit something to you at this
23 point. You may want to take back everything you just said
24 because I think I had a little miscommunication. And I
25 already let the jury go. So I've been sitting here for a

1 minute like -- like a white knuckle in this thing.

2 MR. LEBLANC: I thought you had already, too.

3 THE COURT: Okay. I just -- just in all candor. But
4 when I went back there, y'all wouldn't believe what an
5 incredibly educated jury this is. I mean, they were --
6 y'all got the gold star jury. And they -- they really had
7 kind of the take of -- of y'all working together.

8 MR. FEW: I've told some people -- because we picked
9 a jury in federal court back in October. And my client
10 was a wonderful mother. And because of the length of the
11 trial, we lost all of the wonderful mother jurors that we
12 could have had.

13 THE COURT: Yeah.

14 MR. FEW: And -- but that panel was nothing like
15 this -- like this panel was -- the first, like, 27 out of
16 30 were, you know, all married, employed --

17 MR. LEBLANC: Engineers, CFO's. I didn't need
18 strikes. I could have taken the first 12.

19 THE COURT: Yeah. They were back there -- literally,
20 they had questions for me about differing provisions in
21 the contract. I'm not making any of this up. And then a
22 guy started talking about technology, you know, about oil
23 spills, and stuff like that. He was talking about that.
24 And then -- and then another guy started talking about a
25 licensing agreement. I was like I've got to get out here

1 because y'all are fixing to ask me questions I don't know
2 the answers to.

3 MR. FEW: Engage them to assist us.

4 THE COURT: Y'all really picked an awesome jury. So
5 I just wanted to let you know that. And they -- they
6 were -- they were very happy to hear that y'all were
7 working it out. Because they said that both of y'all's
8 parties seemed like really nice people. So they were
9 happy to hear that.

10 MR. FEW: And my other favorite point was when you
11 gently admonished us that this was our opportunity to show
12 the jury that the system works. So that was --

13 THE COURT: I mean, when people do serve on a jury,
14 they see, you know. And when it's great attorneys going
15 at it, they need to see that because they have so much
16 more respect. It's not something hokey on TV. It's --
17 it's literally people dealing with tough issues, so.

18 MR. FEW: Even though they couldn't hear me.

19 THE COURT: I'm sorry.

20 MR. FEW: Even though they couldn't hear me.

21 THE COURT: And I couldn't hear you.

22 Okay. I'm -- I'm at y'all's disposal. I can work
23 you in whenever, if you need it. But -- and I hope y'all
24 start playing golf together again. It's good to see
25 y'all.

1 MR. FEW: Thank you.

2 MR. LEBLANC: Thank you, Your Honor.

3 THE COURT: And good luck to both of y'all.

4 And good luck to your sister.

5 MS. JOEY PAYNTER: Thank you.

6 THE COURT: Thank you.

7 *****END OF PARTIAL TRANSCRIPT OF RECORD*****

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Partial Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Pickens County, South Carolina, on the 20th and 21st days of April, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 6, 2022

Hollie M. Jenkins, Court Reporter

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF PICKENS) 2019-CP-39-01224
)
)
CHRISTOPHER YOUNG)
) PLAINTIFFS)
) vs.) TRANSCRIPT OF RECORD
)
JOANNA M. PAYNTER)
) DEFENDANTS)

August 11, 2022
Pickens, South Carolina

B E F O R E:

THE HONORABLE LETITIA H. VERDIN, Judge.

A P P E A R A N C E S:

WESLEY D. FEW, ESQ.
Attorney for the Plaintiffs

STEVE LEBLANC, ESQ.
Attorney for the Defendants

APRIL HERRON
Official Court Reporter

There were no witnesses.

There were no exhibits.

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Certificate of Reporter 8

1 THE COURT: All right. I'll hear from whichever
2 one of you would like to go first.

3 MR. FEW: So, Your Honor, are we making a record
4 here?

5 THE COURT: We are. You don't want to?

6 MR. FEW: It doesn't matter to me.

7 What do you think, Steve?

8 MR. LEBLANC: It would be probably easier to not
9 have a record.

10 THE COURT: All right, let's not do it, all
11 right.

12 MR. FEW: Until maybe we get to the end.

13 MR. LEBLANC: That sounds good to me.

14 THE COURT: Okay, sure. Let's go off the record
15 then.

16 (WHEREUPON, off-the-record discussions were
17 held.)

18 THE COURT: All right, let's go on the record.

19 Mr. LeBlanc.

20 MR. LEBLANC: In the context of resuming the
21 trial, The Defendants Paynter, Joanna Paynter and
22 Samantha Nelson would rest.

23 THE COURT: All right, very well.

24 And I know, Mr. Few, you would have motions for
25 directed verdict but now that we've converted over to

1 nonjury trial, we'll just say the motion for directed
2 verdict. And I know you'd have a motion for directed
3 verdict and I'm going to hear from you. But I'll go
4 ahead and hear from you on your request to The Court
5 with regard to testimony. And then we'll talk about
6 the procedure of how to deal with all our outstanding
7 motions.

8 MR. FEW: Sure. Thank you, Your Honor, may it
9 please the Court. Wesley Few for The Plaintiff. To
10 kind of recap, without going into everything, we
11 started this trial in April in Pickens County before
12 Your Honor, as a jury trial. We agreed to release
13 the jury and go to nonjury, at that time. At that
14 particular time, that second morning of trial, we
15 were about to have the opportunity to hear the
16 testimony from Mr. LeBlanc's client, Dr. Joy Paynter;
17 which was going to include my plan of
18 cross-examination of her. They have now decided to
19 rest their case. And I just want to make sure that I
20 have preserved my right in the record to recall a
21 party, which she would have been a party, not a third
22 party, to get that testimony. And in lieu of that, I
23 am willing to submit to The Court some proposed
24 deposition testimony and any additional exhibits that
25 I think relate to the matters that remain in the

1 case. Which are the breach of the contract, the
2 transfer of the asset and the interference with the
3 contract.

4 And then my understanding, Your Honor, is that
5 we're going to have until August the 22nd to submit
6 to The Court our proposed constructions of the
7 contract. And then Your Honor is going to issue an
8 order setting forth what The Court's construction of
9 the contract is going to be. And I believe
10 Mr. LeBlanc wants that to include what causes of
11 action remain in this case. And then after that is
12 done, and The Court issues its order, Your Honor, I
13 understand you were going to give us 30 days to
14 provide you with proposed orders that would finish
15 out the case based on The Court's construction of the
16 contract.

17 THE COURT: Okay. All right.

18 And you're renewing your motions that you had
19 made at the end of The Plaintiff's case?

20 MR. LEBLANC: Yes. And I would have additional
21 motions that I can address in the proposed sequence
22 of events that we described.

23 THE COURT: Okay.

24 MR. LEBLANC: The only addition I would make,
25 Your Honor, is the difficulty that will occur if The

1 Plaintiff's are allowed to designate deposition
2 testimony, I would have to have the opportunity to
3 present testimony.

4 THE COURT: I don't -- at this point, I don't
5 foresee a need for that. But as I said, you know,
6 once we get proposed in orders, we'll take a look it.

7 But well, I think, Mr. Few, you stole my thunder
8 and you sort of laid out -- I'm just kidding. And
9 you laid out the plan going forward. And just to be
10 clear, did we say August 22nd was the -- either memos
11 or proposed orders on construction of contract?
12 August 22nd and then 30 days after that, we'll just
13 say September 22nd, would be our date for proposed
14 orders. Including findings of fact.

15 MR. FEW: Can it be thirty days after Your Honor
16 issues an order on the construction of the contract?

17 THE COURT: Okay, let's do that. All right,
18 I'll say that. Thirty days after I issue a decision
19 on that. But I anticipate issuing a decision on that
20 pretty close in time, pretty close in time. So all
21 right, very good.

22 MR. FEW: Thank you, Your Honor.

23 THE COURT: Thank y'all. I think we got it.
24 Anything else?

25 MR. LEBLANC: If we can go off the record, I

1 have--

2 THE COURT: Sure.

3 (WHEREUPON, the proceedings were concluded.)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Pickens County, South Carolina, on the 11th day of August, 2022.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

February 20, 2023

APRIL P. HERRON, Court Reporter

Chris Young (RTE) and Valerie Paynter (Paynter Consulting) agree to go into a joint venture in the Environmental business and split any & all profits 50-50.

Signed:

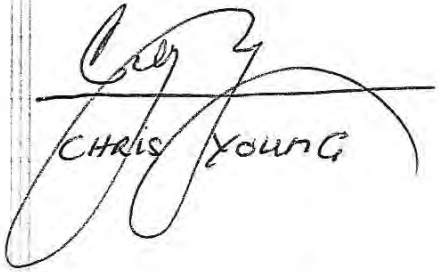

CHRIS YOUNG

11/19/04
DATE


VALERIE PAYNTER

11/19/04
DATE

I, Chris Young, promise not to disclose the name(s) of the factor(s) used for bioremediation. I will not use them for bioremediation or any other remediation without the written consent of Valerie Paynter (Paynter Consulting) and will abide by the financial agreement between RTE and Paynter Consulting when these factors are used in bioremediation.


CHRIS YOUNG

11/19/04
date

Witness Valerie A. Paynter 11/19/04

GENERAL PARTNERSHIP AGREEMENT

THIS PARTNERSHIP AGREEMENT is entered into on January 1, 2006 between the following parties:

Christopher W. Young
3913 Lake Spring Cove
Denver, North Carolina 28037

&
Valerie A. Paynter
200 Valleyview Drive
Clemson, South Carolina 29631



The above-named parties agree that upon the commencement date of this Partnership they shall be deemed to have become partners in business. The purposes, terms and conditions of this partnership are as follows:

1. Name - Each partner will operate and own 100% of an independent business for the purpose of supporting the partnership.
 - 1.a Christopher W. Young has incorporated Biotech Restorations, LLC to support the partnership.
 - 2.a Valerie A. Paynter has incorporated Paynter Consulting, LLC to support the partnership.
2. Principal place of business - The principal places of business of the partnership shall be Denver, NC and Clemson, SC.
3. Purpose - The business of the partnership is set forth below and relates to the treatment of contaminated soil, marine sediments and other media as applicable to the Factor biotechnology. To the extent necessary for the remediation of soil and marine sediments, the partnership will utilize proprietary products and services under an exclusive use permit which restricts the use of the Factor Biotechnology to this partnership for all environmental business applications.
 - 3.a Christopher W. Young and Valerie A. Paynter jointly agree to work exclusively in support of the partnership in matters relating to the development of and commercial use of Factor based products in the environmental remediation marketplace.
 - 3.b Valerie A. Paynter having sole knowledge of the proprietary Factor formulation agrees to provide the partnership; exclusive use of Factor formulated products during the term of the partnership, ongoing technical and scientific assistance in support of the partnership and the first option to incorporate new technologies into the partnership.
 - 3.c Christopher W. Young having developed existing markets and business opportunities agrees to provide ongoing business development and management of remediation projects in which Factor Products are in use and exclusive ongoing support of the partnership.
4. Term - The partnership shall commence on and continue until dissolved by mutual agreement of the partners. The partnership will terminate upon the death or incapacity of a partner. Any outstanding revenues or revenues anticipated from projects under contract at the time of a death or incapacity will be paid to the partner's designated beneficiary. In the event of a death of a partner, the remaining partner has the right to continue the business of the partnership by themselves or in conjunction with any other persons they may select.
4. Distribution of profits - The partners agree that net profits arising from the partnership will be distributed equally (50/50). A division of profits shall be made at such time as may be agreed upon by the partners and at the close of each fiscal year.
6. Control - The partners shall have exclusive control over the Factor Based Environmental Remediation Business and each partner shall have equal rights in the management and conduct of the partnership business. Any difference arising as to the ordinary matters connected with the partnership business shall be decided by a third party arbitrator chosen and agreed upon by the partners. Any act beyond the scope of this partnership agreement or any contract that may subject this partnership to liability shall be subject to the prior written consent of the partners.
7. Disputes - Disputes that would jeopardize new business, contracts, or existing clients and cannot be resolved by the partners within thirty days will be submitted to a mutually agreed upon arbitrator whose decision will be final. Any disagreements or differences that affect the management of the partnership business and would jeopardize new business,

contracts, or existing clients and cannot be resolved by the partners within thirty days will be submitted to an arbitration process designed to repair the partnership relationship and solve said differences or disputes.

8. Selling out - If a partner decides to sell their interests in the partnership business to the remaining partner the interests will be valued at two and one half the current business equity. Payment for the interests sold shall be made over a time period acceptable to both partners. No partner may sell his or her interests in the partnership business to a third party unless mutually agreed to by the other partner. Thirty days written notice of proposed sell out to the partner by the selling partner is required.

8.a Should the partners opt to sell all or any portion of the business, profits from the sale will be distributed on the same 50/50 basis.

9. Signatures of the Partners

Valerie A. Paynter
Valerie A. Paynter

Christopher W. Young
Christopher W. Young

[Signature]
Notary

G. David Utley
Notary

11/16/06
Date Notarized

My Commission
Expires
1/20/07



01-10-06
Date Notarized



GENERAL PARTNERSHIP AGREEMENT

THIS PARTNERSHIP AGREEMENT is entered into on January 1, 2006 between the following parties:

Biotech Restorations, LLC owned and operated solely by
Christopher W. Young
3913 Lake Spring Cove
Denver, North Carolina 28037

&

Paynter Consulting, LLC owned and operated solely by
Valerie A. Paynter
200 Valley View Drive
Clemson, South Carolina 29631



The above-named parties agree that upon the commencement date of this Partnership they shall be deemed to have become partners in business. The purposes, terms and conditions of this Partnership are as follows:

1. Name - Each partner will operate and own 100% of an independent business for the purpose of supporting the Partnership.
 - 1.a Christopher W. Young has incorporated Biotech Restorations, LLC to support the Partnership.
 - 2.a Valerie A. Paynter has incorporated Paynter Consulting, LLC to support the Partnership.
2. Principal place of business - The principal places of business of the Partnership shall be Denver, NC and Clemson, SC.
3. Purpose - The business of the partnership is set forth below and relates to the treatment of contaminated soil, marine sediments and other media as applicable to the Factor biotechnology. To the extent necessary for the remediation of soil and marine sediments, the Partnership will utilize proprietary products and services under an exclusive use permit which restricts the use of the Factor Biotechnology to this Partnership for all environmental business applications.
 - 3.a Christopher W. Young (representing Biotech Restorations, LLC) and Valerie A. Paynter (representing Paynter Consulting, LLC) jointly agree to work exclusively in support of the Partnership in matters relating to the development of and commercial use of Factor based products in the environmental remediation marketplace.
 - 3.b Paynter Consulting, LLC, having sole knowledge of the proprietary Factor formulation, agrees to provide the Partnership with exclusive use of Factor formulated products during the term of the Partnership, ongoing technical and scientific assistance in support of the Partnership and the first option to incorporate new technologies into the Partnership.
 - 3.c Biotech Restorations, LLC, having developed existing markets and business opportunities, agrees to provide ongoing business development and management of remediation projects in which Factor Products are in use and exclusive ongoing support of the Partnership.
4. Term - The Partnership shall commence on and continue until dissolved by mutual agreement of the partners. The Partnership will terminate upon the death or incapacity of a partner. Any outstanding revenues or revenues anticipated from projects under contract at the time of a death or incapacity will be paid to the partner's designated beneficiary. In the event of a death of a partner, the remaining partner has the right to continue the business of the Partnership by themselves or in conjunction with any other persons they may select. The continuing partner will pay 10% of net profits annually to the heirs / estate of the deceased partner on any contract involving the use of the Factor, and 10% gross from the sale of the Factor Technology.
4. Distribution of profits - The partners agree that net profits (after disbursement of expenses) arising from the Partnership will be distributed equally (50/50). A division of profits shall be made at such time as may be agreed upon by the partners and at the close of each fiscal year.
6. Control - The partners shall have exclusive control over the Factor Based Environmental Remediation Business and each partner shall have equal rights in the management and conduct of the Partnership business. Any difference arising as to the ordinary matters connected with the Partnership business shall be decided by a third party arbitrator chosen and agreed upon by the partners. Any act beyond the scope of this Partnership agreement or any contract that may subject this Partnership to liability shall be subject to the prior written consent of the partners.

I

7. Disputes - Disputes that would jeopardize new business, contracts, or existing clients and cannot be resolved by the partners within thirty days will be submitted to a mutually agreed upon arbitrator whose decision will be final. Any disagreements or differences that affect the management of the Partnership business and would jeopardize new business, contracts, or existing clients and cannot be resolved by the partners within thirty days will be submitted to an arbitration process designed to repair the partnership relationship and solve said differences or disputes.

8. Selling out - If a partner decides to sell their interests in the Partnership business to the remaining partner the interests will be valued at two and one half the current business equity (as determined by customary accounting principles). Payment for the interests sold shall be made over a time period acceptable to both partners. No partner may sell his or her interests in the Partnership business to a third party unless mutually agreed to by the other partner. Thirty days written notice of proposed sell out to the partner by the selling partner is required.

8.a Should the partners opt to sell all or any portion of the business, profits from the sale will be distributed on the same 50/50 basis.

9. Signatures of the Partners

Valerie A. Paynter
Valerie A. Paynter for Paynter Consulting, LLC

Christopher W. Young
Christopher W. Young for Biotech Restorations, LLC

Rose Dalton
Notary

5/30/2006
Date Notarized

My Commission Expires January 15, 2014

Rose Dalton
Notary

5/30/2006
Date Notarized

My Commission Expires January 15, 2014

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Paynter Consulting, LLC,	)	
	)	
Plaintiff,	)	C/A No.: 8:15-cv-03778-TMC
	)	
v.	)	ORDER
	)	
Biotech Restorations, LLC and Christopher	)	
Young,	)	
	)	
Defendants.	)	
_____	)	

This matter comes before the court on Defendants Biotech Restorations, LLC and Christopher Young’s motion to compel arbitration and stay the proceedings. (ECF No. 10). For the reasons set forth below, Defendants’ motion is granted.

I. Factual and Procedural Background

Plaintiff Paynter Consulting, LLC (“Paynter”) is owned and operated by Valerie Paynter in Clemson, South Carolina. (ECF No. 10 at 1). Valerie Paynter is a retired Clemson University professor who allegedly developed a biochemical formula used to remediate soil at heavily polluted sites. (ECF No. 1-1 at 4). Defendant Biotech Restorations, LLC (“Biotech”) is owned and operated by Defendant Christopher Young (“Young”) in Denver, North Carolina. (ECF Nos. 10 at 1; 10-1 at 1). Biotech is dedicated to managing contamination remediation projects. (ECF No. 10 at 1). On May 30, 2006, Paynter and Biotech entered into a partnership agreement for purposes of conducting business related to “the treatment of contaminated soil, marine sediments and other media.” (ECF No. 10-1 at 1). Under paragraph seven of the agreement, the partners agreed to handle disputes as follows:

Disputes that would jeopardize new business, contracts, or existing clients and cannot be resolved by the partners within thirty days will be submitted to a mutually agreed upon arbitrator whose decision will be final. Any disagreements or differences that affect the management of the Partnership business and would jeopardize new business, contracts, or existing clients and cannot be resolved by the partners within thirty days will be submitted to an arbitration process designed to repair the partnership relationship and solve said differences or disputes.

(*Id.* at 2).

The Paynter-Biotech partnership performed a number of contamination and remediation projects around the United States. (ECF Nos. 1-1 at 5; 11 at 2). On August 17, 2015, Paynter filed suit in the Court of Common Pleas for Pickens County, South Carolina, asserting against Biotech and Young several state causes of action related to breach of the partnership agreement. (ECF No. 1-1). Specifically, Paynter alleged claims for: (1) Piercing the Corporate Veil/Alter Ego; (2) Dissolution of Partnership; (3) Breach of Contract; (4) Breach of Contract Accompanied by a Fraudulent Act; (5) Breach of a Fiduciary Duty; (6) Breach of Duty of Loyalty; (7) Fraud; (8) Restitution/Unjust Enrichment; (9) Injunctive Relief; (10) Declaratory Judgement of Invalidity of Statement of Ownership; and (11) Action for Accounting. *Id.* On September 21, 2015, Biotech and Young removed the suit to this court pursuant to 28 U.S.C. §§ 1441 and 1446 and based upon 28 U.S.C. § 1332. (ECF No. 1).

On October 13, 2015, Biotech and Young filed the instant motion to compel arbitration. (ECF No. 10). In their motion, Biotech and Young argue that “Paynter’s claims are subject to a binding arbitration agreement that was made pursuant to a transaction in interstate commerce that is governed by the [Federal Arbitration Act]” (“FAA”). (*Id.* at 3). Specifically, Biotech and Young assert that the second sentence of the arbitration clause in paragraph seven of the partnership agreement is applicable to Paynter’s claims. (*Id.* at 6). Paynter filed a response in opposition on October 30, 2015, arguing that the parties intended for the second sentence of

paragraph seven to facilitate mediation, not arbitration. (ECF No. 13 at 3). The response also contends that any ambiguity in the contract should be construed against Young, the drafter of the agreement. (*Id.* at 6). In a reply filed on November 9, 2015, Biotech and Young maintain that the parties collaboratively drafted the agreement and that the term “arbitration” must be given its plain and ordinary meaning. (ECF No. 14 at 1–2). Additionally, Biotech and Young argue that any ambiguity in the terms of the agreement must be construed in favor of arbitration. (*Id.*)

II. Applicable Law

The Federal Arbitration Act (“FAA”) embodies a federal policy favoring arbitration. *Drews Dist., Inc. v. Silicon Gaming Inc.*, 245 F.3d 347, 349 (4th Cir. 2001). Pursuant to the FAA, arbitration clauses in contracts involving interstate commerce “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. “A district court therefore has no choice but to grant a motion to compel arbitration where a valid arbitration agreement exists and the issues in a case fall within its purview.” *Adkins v. Labor Ready, Inc.*, 303 F.3d 496, 500 (4th Cir. 2002) (citation omitted). In a questionable case, a court should compel arbitration “unless it may be said with positive assurance that the arbitration [agreement] is not susceptible of an interpretation that covers the asserted dispute.” *Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.*, 867 F.2d 809, 812 (4th Cir. 1989) (quoting *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582–83 (1960)).

However, “a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.” *United Steelworkers*, 363 U.S. at 582; *see also Adkins*, 303 F.3d at 501 (“[E]ven though arbitration has a favored place, there still must be an underlying agreement between the parties to arbitrate.” (internal quotation marks omitted)). “Whether a party agreed to

arbitrate a particular dispute is a question of state law governing contract formation.” *Adkins*, 303 F.3d at 501 (citing *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944 (1995)); *see also Rota-McLarty v. Santander Consumer USA, Inc.*, 700 F.3d 690, 699 (4th Cir. 2012) (“The question of whether an enforceable arbitration agreement exists . . . is a matter of contract interpretation governed by state law.”). “[G]enerally applicable contract defenses, such as fraud, duress, or unconscionability, may be applied to invalidate arbitration agreements without contravening § 2” of the FAA. *Doctor’s Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996). “[T]he party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration.” *Green Tree Fin. Corp.–Ala. v. Randolph*, 531 U.S. 79, 91 (2000).

In the Fourth Circuit, a litigant can compel arbitration under the FAA if the litigant can demonstrate: “(1) the existence of a dispute between the parties; (2) a written agreement that includes an arbitration provision which purports to cover the dispute; (3) the relationship of the transaction, which is evidenced by the agreement, to interstate and foreign commerce, and (4) the failure, neglect, or refusal of the defendant to arbitrate the dispute.” *Whiteside v. Telltech Corp.*, 940 F.2d 99, 102 (4th Cir. 1991). Furthermore, the Fourth Circuit has repeatedly compelled arbitration where the arbitration clause applies to any dispute “arising from or related to” the agreement. *Long v. Silver*, 248 F. 3d 309, 316 (4th Cir. 2001); *Kvaerner ASA v. Bank of Tokyo-Mitsubishi, Ltd.*, 210 F.3d 262, 265–66 (4th Cir. 2000); *Am. Recovery Corp. v. Computerized Thermal Imaging, Inc.*, 96 F.3d 88, 93 (4th Cir. 1996).

III. Discussion

Here, a dispute clearly exists between the parties because Paynter has asserted a number of claims related to management of the Paynter-Biotech partnership against Biotech and Young. Similarly, Paynter’s claims clearly relate to interstate commerce because the parties are diverse

and the partnership was formed to engage in business ventures in various states, Paynter alleges Biotech and Young have not adequately reimbursed it for expenses incurred performing contracts “around the country,” and Paynter alleges that Biotech and Young breached the partnership agreement while negotiating a licensing agreement in California. (ECF No. 1-1 at 2, 5–6). Further, Paynter does not dispute that the claims relate to interstate commerce. It is also undisputed that Paynter has not submitted its claims to arbitration. Hence, the question this court must resolve is whether the arbitration clause in paragraph seven of the partnership agreement “purports to cover the dispute” between the parties.

Biotech and Young argue that “all of Paynter’s claims are ‘disputes’ that arise from or relate to alleged breaches of the [Partnership] Agreement;” thus, the claims fall squarely within the scope of the arbitration clause. (ECF No. 10 at 7). Paynter concedes that its claims fall within the purview of “management disputes” described in the second sentence of paragraph seven,¹ but argues that, despite use of the term “arbitration,” the parties actually agreed to resolve such disputes through mediation.² (ECF No. 13 at 4–7). To support its argument, Paynter points out that, while the first sentence of paragraph seven provides for an arbitrator with final decision-making authority, the second sentence contemplates an “arbitration process” designed to repair the partners’ relationship and solve their differences. (*Id.* at 3–5). According to Paynter, this differentiation in language indicates the parties’ intent to provide for two different types of dispute resolution, and the process described in the second sentence is akin to mediation. (*Id.*) Paynter also argues that ambiguity in terminology should be construed against Biotech and Young because Young drafted the agreement. (*Id.* at 6).

¹ In its response in opposition to Defendants’ motion, Paynter states, “Every cause of action in the present case pertains to disagreements between Plaintiff and Defendants regarding the management of the Partnership. As such, this lawsuit triggers only the second remedy of Paragraph 7 of the Agreement.” (ECF No. 13 at 6).

² Paynter does not dispute the applicability of the FAA to the partnership agreement.

After a careful review of the parties' arguments and the applicable law, this court finds Paynter's arguments unpersuasive. As noted above, contract interpretation related to the enforceability of an arbitration agreement is governed by state law, *Preferred Home Inspections, Inc. v. Bellsouth Telecomms., LLC*, No. 3:14-cv-00673-MBS, 2014 WL 4793824, at *5 (D.S.C. Sep. 25, 2014) (citing *Rota-McLarty*, 700 F.3d at 699); see also *Swane Co. v. Berkley Cnty.*, No. 2:15-cv-02586, 2015 WL 6688072, at *4 (D.S.C. Oct. 30, 2015), and in this case, the parties do not dispute that South Carolina law is applicable.³ Under South Carolina law, "[w]hen a contract is unambiguous, clear and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary and popular sense." *C.A.N. Enters., Inc. v. S.C. Health and Human Servs. Fin. Comm'n*, 373 S.E.2d 584, 586 (S.C. 1988) (citation omitted). "A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation." *S.C. Dep't of Natural Res. v. Town of McClellanville*, 550 S.E.2d 299, 302 (S.C. 2001) (citation omitted). "Whether a contract is ambiguous must be determined from the entire contract and not from any isolated clause of the agreement." *Pee Dee Stores, Inc. v. Doyle*, 672 S.E.2d 799, 803 (S.C. Ct. App. 2009) (citing *Farr v. Duke Power Co.*, 218 S.E.2d 431, 433 (S.C. 1975)).

As Paynter points out, the first sentence of paragraph seven illustrates the parties' correct understanding of arbitration as a dispute resolution mechanism with a final decision-maker.⁴ See *Hodges v. Medasets Revenue Sys., LLC*, No. 1:07-cv-2985-WSD, 2008 WL 476140, at *3 (N.D. Ga. Feb. 19, 2008) ("The American Arbitration Association ('AAA') defines arbitration as the

³ In their filings, Paynter and Biotech both rely on principles of South Carolina contract law to advance their legal arguments. (See ECF Nos. 10 at 5; 13 at 3, 5–7; 14 at 2).

⁴ Paynter focuses its arguments on Young, claiming the precise terminology he used when drafting the first sentence of paragraph seven demonstrates his understanding of the arbitration process and his ability to draft precise dispute resolution procedures. (ECF No. 13 at 7). However, Valerie Paynter and her attorney reviewed and edited Young's draft before the parties executed the agreement. (ECF No. 14-1). Hence, the final agreement was the result of a collaborative effort between the parties, which evidences their mutual understanding of the arbitration process and alternative dispute resolution objectives.

submission of a dispute to one or more impartial persons for a final and binding decision.”); (ECF No. 13 at 7). However, this point serves to reinforce the parties’ use of the term “arbitration” in the second sentence, not diminish it. Having already displayed a clear understanding of the arbitration process in the first part of paragraph seven, it is unreasonable to conclude that the parties intended to use the term “arbitration” to describe a different process in the second part of the paragraph.

Although the parties’ description of the arbitration process in the second sentence includes objectives often associated with mediation (*i.e.*, a desire to resolve differences and repair the partnership relationship), these objectives are not exclusive to mediation. Further, the parameters established by the parties for arbitration of management disputes are arguably vague, but vagueness should not be conflated with ambiguity. Whereas ambiguity occurs when a word is susceptible of more than one meaning, vagueness describes a lack of clarity in legal drafting. *See Cash v. Maddox*, 220 SE.2d 121, 122–23 (S.C. 1975) (holding that lack of clarity in drafting a contract for the sale of land rendered the contract too vague and uncertain to satisfy the statute of frauds). Here, nothing in the second part of paragraph seven indicates a desire to subvert the parties’ earlier understanding of the binding arbitration process in favor of a non-binding process. The parties clearly understood the role of an arbiter in dispute resolution, and they agreed to submit management disputes to a process that involves an arbiter. Thus, when read as a whole, paragraph seven is not reasonably susceptible of more than one interpretation of the term “arbitration,” and this court finds that the parties agreed to arbitrate both management and non-management disputes.

Even if this court were to locate ambiguity in the arbitration clause, both South Carolina and federal law clearly support construing ambiguity in favor of arbitration. *Drews Distrib.*, 245

F.3d at 349; *Landers v. FDIC*, 739 S.E.2d 209, 213 (S.C. 2013). Paragraph seven provides for arbitration over a broad range of issues, and the dispute between the parties clearly arises out of and is directly related to issues contemplated in the partnership agreement. Accordingly, this is not one of those cases in which it may be positively said that the arbitration clause is not susceptible of an interpretation that covers the dispute between the parties. *Drews. Distrib.*, 245 F.3d at 349–50; *Zabinski v. Bright Acres Assocs.*, 553 S.E.2d 110, 118–19 (S.C. 2001) (citation omitted) (“A motion to compel arbitration made pursuant to an arbitration clause in a written contract should only be denied where the clause is not susceptible to any interpretation which would cover the asserted dispute.”).

Having determined that a valid arbitration agreement exists between the parties, the FAA requires this court to stay this matter pending arbitration of “any issue referable to arbitration” under the agreement, and the Fourth Circuit has found this stay-of-litigation provision to be mandatory. *Adkins*, 303 F.3d at 500. Accordingly, this action is stayed pending arbitration.

IV. Conclusion

For the foregoing reasons, Defendants’ motion to compel arbitration is **GRANTED**, and this action is stayed pending further order of the court.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

February 16, 2016
Anderson, South Carolina

**Probate Court
County of Pickens**

222 McDaniel Avenue B-16
Pickens, South Carolina 29671

KATHY P. ZORN
PROBATE JUDGE

Telephone (864) 898-5903

JODI B. BROOM
ASSOCIATE PROBATE JUDGE
KIMBERLY L. CISSON
CLERK

March 5, 2018

Mr. Christopher W. Young
137 Cross Center Road, #143
Denver, NC 28037

RE: Estate of VALERIE ANNE PAYNTER, Deceased
Case No.: 2017ES3900607

Dear MR. YOUNG:

I have received your claim on the above-captioned estate. Please find enclosed a stamped copy for your records.

As for your Motion for Declaratory Judgment, I am returning it in as much as you should file this in Circuit Court.

For your information, the estate Inventory is enclosed, please note that it does not reflect the Partnership as an estate asset.

Thank you in advance.

Yours very truly,

(Ms.) Kathy P. Zorn

KPZ/tlt

Encl.

cc: MS. JOANNA MARIE PAYNTER
24440 KATHLEEN DRIVE
LAGUNA NIGUEL, CA 92677

Tuesday, September 13, 2016

I, Ellis Kline acknowledge that Dr. Valerie Paynter was the one who discovered and developed the factor technology in 2004. I waive any rights to ownership of this factor technology.

Dr. Ellis Kline

Dr. Ellis Kline

Dr. Valerie Paynter

Dr. Valerie Paynter

STATE OF SOUTH CAROLINA

COUNTY OF Pickens

The foregoing instrument was acknowledged before me this 09/13/2016 (date) by Dr. Ellis Kline & Dr. Valerie Paynter (name of person acknowledged).

Notary Public J Taylor

Print Name: J. Taylor

My commission expires: 11/30/2025



PAYN-01282



ENGINEERS, GEOLOGISTS & ENVIRONMENTAL SCIENTISTS

DEFENDANT'S
EXHIBIT

4/20/22 66 B

To: Christopher W. Young, President
Biotech Restorations LLC
Cyoung2291@aol.com

From: Alan J. Klein, R.E.P.A., C.P.E.S.C., QSD/QSP
Padre Associates, Inc.
aklein@padreinc.com

Subject: Request for Proposal for Bioremediation of PCBs

July 15, 2015

On behalf of Milpitas Unified School District (District), Padre Associates, Inc. (Padre) is requesting a proposal for the bioremediation of PCBs in soil at the District's proposed new K-6 school site located at McCandless Drive, in Milpitas, Santa Clara County, California (Site). The site plan is presented in Plate A.

Approximately 16,400 cubic-yards of PCBs impacted soil will need to be remediate to concentrations less than U.S. EPA Screening Levels (RSLs) for residential land-use. PCBs have been identified at the Site in concentrations ranging from 0.24 to 0.51 mg/kg. The RSLs for total PCBs is 0.24 mg/kg.

Site Conditions

The Site consists of approximately 6.7 acres of vacant land that was formerly commercially developed. All buildings, asphalt and concrete paving have been removed from the Site. The source of PCBs appears to be undocumented fill material that was brought onsite during demolition activities. The fill material is described as primarily sandy clay with gravel. Analytical laboratory data for soil parameters including nitrate, TOC, pH, HPC, total iron and phosphorous are presented in Table 1.

Source of PCBs

Reportedly in 2014, during the demolition activities approximately 4,500 cubic-yards of undocumented fill material was stockpiled along the southwest property boundary of the Site. This stockpiled soil was later leveled out across the southwest portion of the Site. In June 2014 Padre observed several additional soil stockpiles (truckload size) in the southwest corner of the Site. These soil stockpiles were also leveled out across the southwest portion of the Site.

The lateral extent of PCBs in soil has been calculated to be approximately 177,000 square-feet, and is presented in Plate B – Bioremediation Area. The average depth of fill material impacted with PCBs has been determined to be 2.5-feet. Therefore, the total volume of soil to be bio-remediated for PCBs is approximately 16,400 cubic-yards.

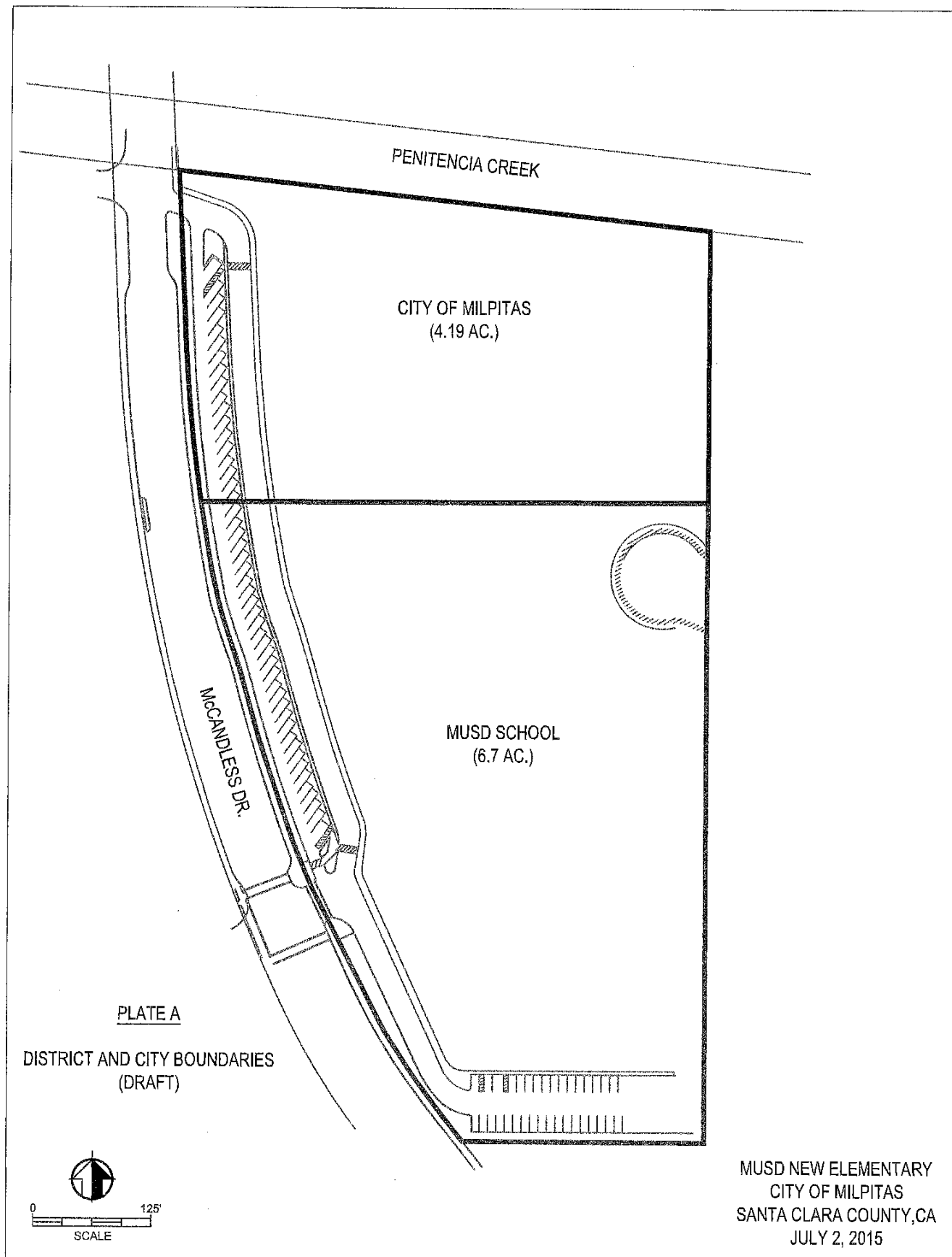
Schedule

According to the District's CEQA consultant, bioremediation activities may begin in February 2016. Padre will be responsible for tilling of soil, irrigation, soil sampling and reporting. Please contact me if you need additional information and/or clarification.

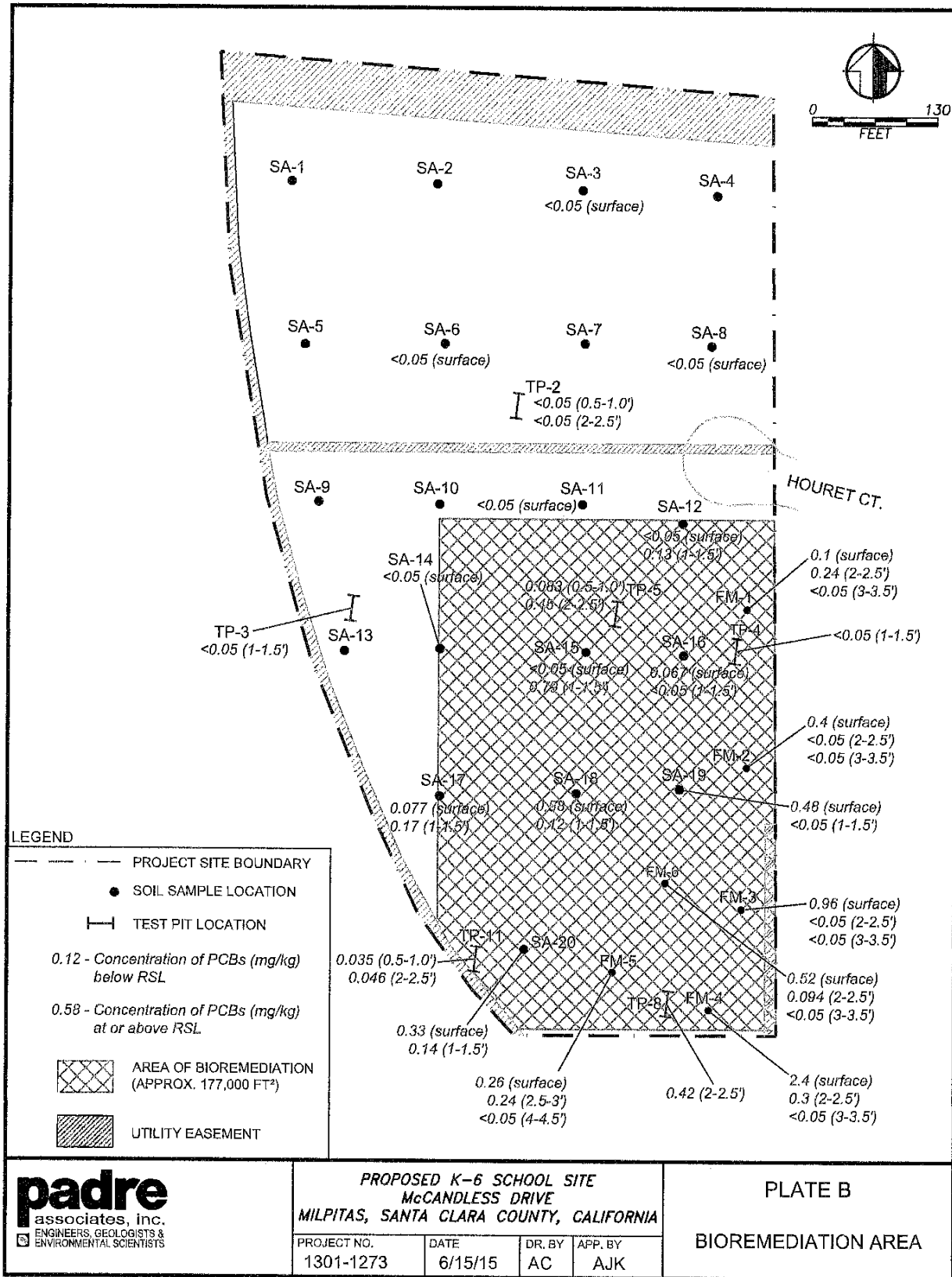
Attached: Plate A – Site Plan
Plate B - Bioremediation Area
Table 1 – Soil Parameters

555 University Ave, Suite 110 ■ Sacramento, California 95825 ■ 916-333-5920 ■ Fax 916-333-5921

BR_000870



BR_000871



BR_000872

Milpitas USD – McCandless Property
Project No. 1301-1273

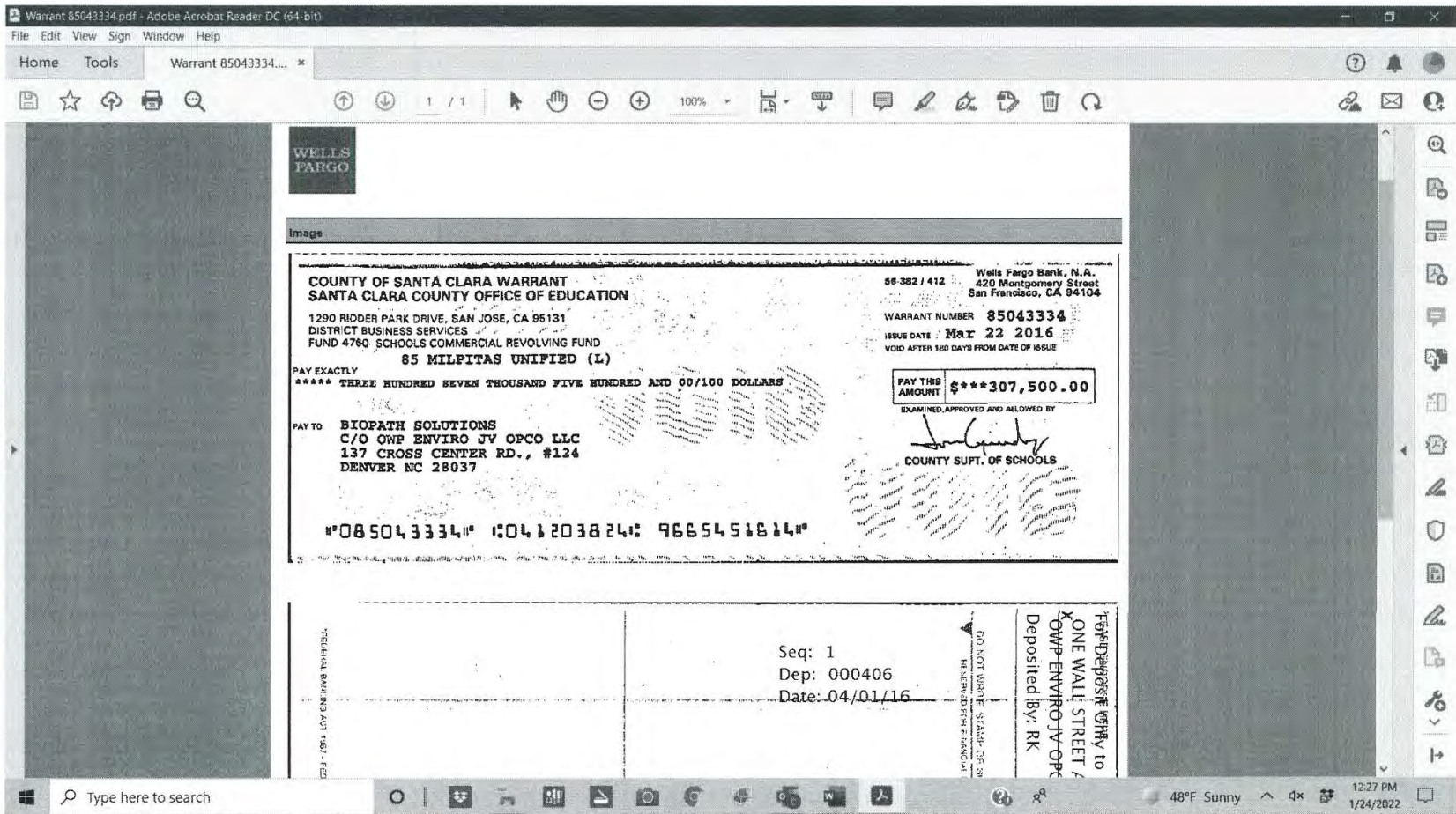


BR_000873

**Soil Parameters for Bioremediation
(results in mg/kg)**

Sample Identification	Nitrate as N	Nitrate as NO ₃	Nitrite as N	Nitrite as NO ₂	TKN as N	TOC	pH (pH units)	HPC (MPN/10g)	Total Iron	Total Phosphorous
TP-4 (1-1.5')	<10	<45	<10	<33	400	8,100	8.15	25,00	23,00	370
TP-5 (0.5-1')	<10	<45	<10	<33	470	7,500	8.32	32,00	36,00	420
SC-1 (TP-5, 7, 10) (0.5')	<10	<45	<10	<33	720	11,000	7.91	44,000	41,000	NA
SC-2 (TP-5, 7, 10) (1.5')	<10	<45	<10	<33	780	10,000	8.18	8,600	30,000	NA

Notes:
mg/kg – milligrams per kilogram
TKN – Total Kjeldahl Nitrogen
NA – Not Analyzed



CONFIDENTIAL

DEFENDANT'S
EXHIBIT
Handed 7/1

Warrant 85041704.pdf - Adobe Acrobat Reader DC (24-bit)

File Edit View Sign Window Help

Home Tools Warrant 85041704

Image

COUNTY OF SANTA CLARA WARRANT
SANTA CLARA COUNTY OFFICE OF EDUCATION
1280 RIDDER PARK DRIVE, SAN JOSE, CA 95131
DISTRICT BUSINESS SERVICES
FUND 4760- SCHOOLS COMMERCIAL REVOLVING FUND
85 MILPITAS UNIFIED (L)

Wells Fargo Bank, N.A.
420 Montgomery Street
San Francisco, CA 94104
56-362 / 412

WARRANT NUMBER **85041704**
ISSUE DATE **Dec 17 2015**
VOID AFTER 180 DAYS FROM DATE OF ISSUE

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PAY TO **BIOPATH SOLUTIONS**
C/O OWP ENVIRO JV OFCO LLC
137 CROSS CENTER RD., #124
DENVER NC 28037

PAY THIS AMOUNT **\$\$\$307,500.00**
EXAMINED, APPROVED AND ALLOWED BY
[Signature]
COUNTY Supt. OF SCHOOLS

⑈085041704⑈ ⑆041203824⑆ 9665451614⑈

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CONFIDENTIAL

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Operating Agreement

of

PAYNTER CONSULTING, LLC

This Operating Agreement of PAYNTER CONSULTING, LLC, (the "Company") dated as of the 2nd February, 2006, is (a) adopted by the Members (as defined below) and (b) executed and agreed to, for good and valuable consideration, by the Members.

DEFINITIONS

As used in this Operating Agreement, the following terms have the following meanings:

A. "Act" means the Uniform Limited Liability Company Act of 1996 and any successor statute as amended from time to time.

B. "Articles" means the Articles of Organization filed with the Secretary of State of South Carolina by which PAYNTER CONSULTING, LLC, was organized as a South Carolina Limited Liability Company under and pursuant to the Act.

C. "Bankrupt Member" means a Member who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application or a comparable order under federal, state, or foreign law governing insolvency and has the same meaning as the term "Debtor in Bankruptcy" defined in §33-44-101(4) of the Act.

D. "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.

E. "Capital Contribution" means any contribution by a Member to the capital of the Company.

F. "Code" means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

G. "Company" means PAYNTER CONSULTING, LLC, a South Carolina Limited Liability Company.

H. "Company Liability" means any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.

I. "Company Minimum Gain" means an amount determined by first computing for each Company Non-recourse 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 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 Non-recourse 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 non-recourse 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 Non-recourse Liabilities.

J. **"Company Non-recourse 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.

K. **"Default Interest Rate"** means a rate per annum equal to the lesser of (a) five percent (5.0%) 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.

L. **"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.

M. **"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.

N. **"Distributional Interest"** means all of a Member's interest in distributions by the Company.

O. **"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.

P. **"Lending Member"** means those Members, whether one or more, who advance the portion of the Delinquent Member's Capital Contribution that is in default.

Q. **"Majority in Interest"** means the majority vote of both those Members owning a majority of the capital and those Members owning a majority of the Net Profits and Net Losses of the Company.

R. **"Member"** means any Person executing 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.

S. **"Member Minimum Gain"** means an amount determined by first computing for each Member Non-recourse 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.

T. **"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.

U. **"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.

V. **"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.

W. **"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.

X. **"Non-recourse Liabilities"** means Company Non-recourse Liabilities and Member Non-recourse Liabilities.

Y. **"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).

Z. **"Operating Agreement"** has the meaning given that term in the introductory paragraph.

AA. **"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.

BB. **"Proceeding"** means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative.

CC. **"Property"** means any asset, real or personal, acquired by the Company.

DD. **"Required Interest"** means one hundred (100%) percent of all Members.

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 PAYNTER CONSULTING, LLC, 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. The Company may have such other offices as the Members, may designate from time to time.

2.6 Purposes.

The purpose of the Company is to provide environmental decontamination services through bio-remediation.

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 Mergers.

The Company may merge with another business entity subject to the requirements of Sections 33-44-904 through 33-44-907 of the Act.

2.9 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.

A. 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 both (i) the unanimous consent of all Members at the time of the assignment to permit the admission of a substituted member pursuant to §33-44-503 of the Act, and (ii) the consent of all of the non-assigning Members to continue the business of the LLC once the assignor withdraws as provided in §33-44-801.

B. Any person may be a Member unless the person lacks capacity.

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.

A. 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 all Members at the time of transfer. An unauthorized transfer of a Membership could create a substantial hardship to the Company and jeopardize its capital base. 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 all Members at the time of Disposition and the consent of all of the non-Disposing Members to continue the business. 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.

B. Subject to the provisions of the following section, (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 Section 3.1 A(2).

C. 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 Members, have 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 a Member and its agreement to be bound by this Operating Agreement in respect of the Membership being obtained, (iii) setting forth the percentage interest in Net Profits, Net Losses and capital after the Disposition by the Member effecting the Disposition and the Person to which the Membership is Disposed (which together must total the percentage 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.

D. 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 1933, 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 a Required Interest of its Members, 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 a Required Interest of its Members, 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 Members, however, may waive the requirements of this subpart of this section.

E. 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 a 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 a Required Interest of Members, on such terms and conditions as the Required Interest may determine at the time of admission. The terms of admission or issuance must specify the percentage of Net Profit, 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. A Required Interest shall reflect the creation of any new class or group in an amendment to this Operating Agreement indicating the different rights, powers, and duties. 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 Company, 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 representation and warranties required of new Members are true and correct with respect to the new Member. 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 to 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 §708 of the Code or (b) without the consent of 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.

A. 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 a Required Interest 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.

B. 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, except for disclosures (i) compelled by law (but the Member must notify a Required Interest, as appropriate, 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 Members 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.

A Member may withdraw from the Company as a Member at any time.

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. The Articles or any amendments thereof or by a unanimous vote of the Members of this Company at a duly authorized annual or special meeting may elect to establish two or more classes or groups of one or more Members. In the event of the establishment of two or more classes or groups of one or more Members, then the following provisions shall apply:

A. 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.

B. 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.

C. Prompt notice of the taking of an action under this Operating Agreement that requires 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.

D. 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.

3.11 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 Member (or representative thereof) designated by a Required Interest. 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.

3.13 Annual meeting.

The annual meeting of the Members for the transaction of all business which may come before the meeting shall be held on the second Tuesday in February 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 Members 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 holders of at least one hundred percent (100%) of the Members entitled to vote 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 Other meetings.

Such other meetings may be routinely held as deemed necessary by unanimous vote of the Members to conduct the business of the Company. A pre-designated time and day/date for such meetings shall be determined by the Members, and as such notice for each of such meetings shall be effectively waived upon the establishing of such time and day/date. Such other meetings shall continue until a unanimous vote of the Members elects to discontinue said meetings.

3.16 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 nor more than sixty 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 Operation 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 no 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.

3.17 Quorum of Members.

Unless otherwise provided in the Articles, the holders of one hundred percent (100%) of the Memberships entitled to vote, represented in person or proxy, shall constitute a quorum at a meeting of Members. The vote of the holders of one hundred percent (100%) of the 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 the Articles or this Operating Agreement.

3.13 Majority vote; withdrawal of quorum.

With respect to any matter when a quorum is present at any meeting, the vote of the holders of one hundred percent (100%) of the Memberships, 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, 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.

3.14 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 the 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.

3.20 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 to the Company offices or the other Members. 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.

3.21 Assignment of distributional interest.

Unless otherwise provided by this Operating Agreement:

- A. Distributional Interest is assignable in whole or in part;
- B. an assignment of a Distributional Interest does not entitle the assignee to become, or to exercise rights or powers of, a Member;
- C. 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 assignors allocable share of Net Profit and Net Loss; and
- D. 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.

3.22 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 a distribution from this Company in any form other than cash.

3.23 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.

3.24 Limitation on distribution.

No distribution may be made if, after giving effect to the distribution:

- A. the Company would not be able to pay its debts as they become due in the usual course of business; or
- B. the Company's assets would be less than the sum of its liabilities plus, 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 Members whose preferential rights are superior to those 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.

3.25 Buyout of disassociating Member.

If, following the withdrawal, 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 withdrawal, 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. The Member shall additionally receive the fair market value of the Member's Membership in the Company as of the date of the withdrawal, 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. Due to the nature of the Company's business, the date of payment shall be made within twelve (12) months of the date of withdrawal, 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, and upon such terms that will not result in any undue hardship which may jeopardize the continued existence of the Company.

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 Operation 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. A Required Interest, shall determine and 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.

A. 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 loaned 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
 - (4) exercising any other rights and remedies available at law or in equity.

B. 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 Lending Member may request to effectuate and carry out the preceding provisions of this section. At the option of a Required Interest or a Lending Member, this Operating Agreement or a carbon, photographic, or other 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 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 allocations 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 Operation 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 Sections 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 apportioned among the Members as follows:

Valerie A. Paynter

100%

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 a 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 Managing Members 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 Members may make distributions to the Members in the same proportions as Net Profits and Net Losses are allocated to Members or in such other manner as a Required Interest of the Members may determine. Such distributions shall be in cash or property (which need not be distributed proportionately) or partly in both, as determined by the Members.

Article VI MANAGEMENT BY MEMBERS

6.1 Management by Members.

Subject to the provisions of Sections 6.2 and 6.3, (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 Members; and (ii) the Members may make all decisions and take all actions for the Company not otherwise provided for in this Operating Agreement, including, without limitation, the following:

A. entering into, making, and performing contracts, agreements, 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;

B. 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;

C. maintaining the assets of the Company in good order;

D. collecting sums due the Company;

E. to the extent that funds of the Company are available therefor, paying debts and obligations of the Company;

F. acquiring, utilizing for Company purposes, and disposing of any asset of the Company;

G. borrowing money or otherwise committing the credit of the Company for Company activities and voluntary prepayments or extensions of debt;

H. selecting, removing, and changing the authority and responsibility of lawyers, accountants, and other advisers and consultants;

I. obtaining insurance for the Company;

J. determining distributions of Company cash and other property as provided in Section 5.5.

6.2 Actions by Members; committees; delegation of authority and duties.

A. In managing the business and affairs of the Company and exercising its powers, the Members shall act (i) collectively through meetings and written consents as may be provided or limited in other provisions of this Operating Agreement; (ii) through committees pursuant to Section 6.2 B; and (iii) through Members to whom authority and duties have been delegated pursuant to Section 6.2 C.

B. The Members may, from time to time, designate one or more committees, each of which shall be comprised of one or more Members. Any such committee, to the extent provided in such resolution or in the Articles or this Operating Agreement, shall have and may exercise all of the authority of the Members, subject to the limitations set forth in the Act. 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 adopting of any resolution. The Members may dissolve any committee at any time, unless otherwise provided in the Articles or this Operating Agreement.

C. The Members may, from time to time, delegate to one or more Members such authority and duties as the Members may deem advisable. In addition, the Members may assign titles (including, without limitation, president, vice president, secretary, assistant secretary, treasurer and assistant treasurer) to any such Member. Unless the Members decide 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 Member of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made pursuant to the first sentence of this Section 6.2 C. Any number of titles may be held by the same Member. Any delegation pursuant to this Section 6.2 C may be revoked at any time by the Members.

D. Any Person dealing with the Company, other than a Member, may rely on the authority of any Member 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 Members.

Except as otherwise provided in this Section 6.3, the Articles of Organization, or this Operating Agreement, every Member is an agent of the Company for the purpose of its business or affairs, and the act of any Member 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 businesses of the kind carried on by the Company binds the Company, unless the Member so acting has, in fact, no authority to act for the Company in the particular matter, and, except as provided for in Section 33-44-301(c) of the Act, the person with whom the Member is dealing has knowledge of the fact that the Member has no such authority.

The following actions undertaken on behalf of the Company require the consent of all Members (as evidenced by said Members' signatures on any required documents):

A. NONE;

Article VII INDEMNIFICATION

7.1 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 TAXES

8.1 Tax Matters Partner.

The Members shall designate one of their number, as the tax matters partner of the Company 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

9.1 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 of the Company to which directed, or (b) when posted in the United States mails 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 Members.

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:

- A. the written consent of all Members;

B. upon the withdrawal, 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 within ninety (90) days of an event described herein a Required Interest of the remaining Members agree in writing to continue the business of the Company;

C. 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 Section 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

D. 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.

10.2 Winding up and termination.

On dissolution of the Company, a Required Interest of the Members will appoint one or more Members as liquidator. 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:

A. 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.

B. 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;

C. 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

D. all remaining assets of the Company shall be distributed to Members as follows:

(1) 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;

(2) 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

(3) 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 termination.

After the dissolution of the limited liability company pursuant to Section 33-44-801 of the Act, the authorized Member shall file Articles of Termination 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 it may deem necessary or desirable. All books and records shall be open to inspection of the Members from time to time. The Members may examine all such books and records at all reasonable times. The Company shall keep and maintain such records as the Members deem appropriate.

The Company shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

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 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 a Required Interest of the Members. The designated person may be an officer(s), Member(s), or other person(s) as may from time to time be designated.

11.4 Management by Members.

The Articles reserve management of the Company to its Members.

11.5 Headings.

The headings used in this Operating Agreement have been inserted for convenience only and do not constitute matter to be construed in interpretation.

11.6 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:

- A. The remainder of this Operating Agreement shall be considered valid and operative; and
- B. Effect shall be given to the intent manifested by the portion held invalid or inoperative.

11.7 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.

11.8 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.

11.9 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.

11.10 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 rule 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 provision of the Articles, or (b) any mandatory provision of the Act, the applicable provision of the Operating Agreement 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.

11.11 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.

11.12 Notice to members of provisions of this agreement.

By executing this Operating Agreement, each Member acknowledges that it 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.

11.13 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.

11.14 Conflicting 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.

The undersigned, being all the initial Members, hereby certify that the foregoing Operating Agreement was unanimously adopted by the Members, effective the 2nd day of February, 2006. TO WITNESS WHICH we have hereunto affixed our signatures.

WITNESS:



 (SEAL)
NAME

STATE OF SOUTH CAROLINA
CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER: 139-17-032624

DECEDENT'S NAME: *VALERIE ANNE PAYNTER*

AKA: NA

ARMED FORCES: NO

DATE OF BIRTH: **DOB** 1939

TYPE OF PLACE OF DEATH: DECEDENT'S HOME

NAME AND ADDRESS OF PLACE OF DEATH: 200 VALLEY VIEW DRIVE, CLEMSON, SC 29631

PLACE OF DISPOSITION: ROBINSON CREMATORY

DISPOSITION LOCATION: EASLEY, SOUTH CAROLINA

METHOD OF DISPOSITION: CREMATION

DECEDENT'S RESIDENCE: 200 VALLEY VIEW DRIVE, CLEMSON, PICKENS COUNTY, SC, 29631

PLACE OF BIRTH: ENGLAND

SEX: FEMALE

SOCIAL SECURITY NUMBER: **REDACTED**-9647

AGE: 78 YEARS

COUNTY OF DEATH: PICKENS

MARITAL STATUS: WIDOWED (AND NOT REMARRIED)

SURVIVING SPOUSE'S NAME: NA

FATHER'S NAME: FRANK GRIFFITHS

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: ANNIE COLEY

INFORMANT'S NAME: JOANNA PAYNTER

MAILING ADDRESS: 200 VALLEY VIEW DRIVE, CLEMSON, SC, 29631

FUNERAL HOME: DUCKETT-ROBINSON FUNERAL HOME, 108 CROSS CREEK RD. CENTRAL, SC, 29630

FUNERAL DIRECTOR: ALTON B CUMBIE III

EMBALMER'S NAME: NOT EMBALMED

ACTUAL OR PRESUMED DATE OF DEATH: SEPTEMBER 04, 2017

ACTUAL OR PRESUMED TIME OF DEATH: 1143

CAUSE OF DEATH - PART I

METASTATIC COLON CANCER WITH BOWEL OBSTRUCTION
COLON CANCER

RELATIONSHIP: DAUGHTER

LICENSE NUMBER: 1353

LICENSE NUMBER: NA

MANNER OF DEATH: NATURAL

OTHER SIGNIFICANT CONDITIONS - PART II:

NA

CORONER CONTACTED? NO

DATE OF INJURY: NA

PLACE OF INJURY: NA

LOCATION OF INJURY: NA

HOW THE INJURY OCCURRED?

NA

AUTOPSY PERFORMED? NO

TIME OF INJURY: NA

AUTOPSY AVAILABLE? NA

INJURY AT WORK? NA

CERTIFIER NAME AND TITLE: DR. MARK WALSH

LICENSE NUMBER: 20774

CERTIFIER'S ADDRESS: NA

DATE FILED: SEPTEMBER 07, 2017

DATE OF ISSUANCE: SEPTEMBER 07, 2017

SPECIAL INSTRUCTIONS:

NA

SC06283772

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine E. Heigel
Catherine E. Heigel
Director and State Registrar

Shae R. Sutton
Shae R. Sutton
Assistant State Registrar

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Revision Date: 07/31/2015

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF PICKENS

STATEMENT OF CREDITOR'S CLAIM

IN THE MATTER OF:
VALERIE ANNE PAYNTER
(Decedent)

CASE NUMBER: 2017ES3900607



Decedent's Date of Death (if known): SEPTEMBER 4, 2017

Decedent's Last Mailing Address: 200 VALLEYVIEW DRIVE, CLEMSON, SOUTH CAROLINA 29631

Creditor:	CHRISTOPHER YOUNG
Address:	137 CROSS CENTER ROAD, # 143, DENVER, NORTH CAROLINA 28037
Telephone:	704 489 6538
Email:	chrisyoung@biotechrestorations.com
Original Creditor:	CHRISTOPHER YOUNG
Address (if different from above)	3913 LAKE SPRING COVE CT., DENVER, NORTH CAROLINA 28037
Claim Amount Due:	\$1,000,000
Account Number:	
Other Reference Number:	PROPERTY OF THE PARTNERSHIP IN POSSESSION OF THE DECEDENTS HEIRS
Basis of claim (Ex: Contract, Services Rendered for decedent, etc):	AS STIPULATED IN THE SURVIVING PARTNERSHIP AGREEMENT (EXHIBIT 1) BETWEEN THE DECEDENT AND YOUNG, THE SURVIVING PARTNER WAS ENTITLED TO CONTINUE THE BUSINESS. THE DECEDENTS LABORATORY AND PRODUCT FORMULATION RECORDS, PRODUCT COMPONENT SUPPLIER INFORMATION AND OTHER TECHICAL NOTES DIRECTLY RELATING TO THE BUSINESS AND THAT ARE PROPERTY OF THE PARTNERSHIP ARE HELD BY THE DECEDENT'S DAUGHTERS WHO HAVE REFUSED REPEATED REQUESTS FOR THE RETURN OF THE PROPERTY OF THE PARTNERSHIP AND HAVE ATTEMPTED TO SELL THE THE CONFIDENTIAL AND PROPRIETARY PROPERTY ABSENT THE LEGAL RIGHT TO DO SO.
Date claim will become due (if not already due)	CLAIM BECAME DUE UPON THE PARTNER'S DEATH, SEPTEMBER 4, 2017
Nature of uncertainty as to the claim, if any (i.e. contingent claim, amount of claim, due date):	NO UNCERTAINTY AS THE SURVIVING PARTNERSHIP AGREEMENT AND INTELLECTUAL PROPERTY AGREEMENT STIPULATE THE SURVIVING PARTNER'S RIGHTS TO CONTINUE THE BUSINESS AND SOLE OWNERSHIP OF THE INTELLECTUAL PROPERTY DEVELOPED DURING THE TERM OF THE PARTNERSHIP BETWEEN THE DECEDENT AND YOUNG.
Description of security as to the claim, if any (Ex: Collateral for the debt)	COPIES OF THE SIGNED PARTNERSHIP AGREEMENT AND INTELLECTUAL PROPERTY AGREEMENT ATTACHED

Signature: 

Printed Name: CHRISTOPHER W. YOUNG
Title: DECEDENT'S BUSINESS PARTNER
Date: FEBRUARY 27, 2018

INSTRUCTIONS: Claims **MUST** be filed with the Probate Court of the county in which the Decedent's Estate is under administration and may be delivered or mailed to the fiduciary appointed to administer the Estate (see SCPC 62-3-803, 62-3-804, and 62-3-806).

No claim against a Decedent's estate may be presented or legal action commenced against a Decedent's Estate prior to the appointment of a Personal Representative to administer the Decedent's Estate (except see SCPC 62-3-804(1)(b)).

Satisfaction or withdrawal of claim (FORM 325) **MUST** be filed once claim is resolved.

GENERAL PARTNERSHIP AGREEMENT

THIS PARTNERSHIP AGREEMENT is entered into on January 1, 2006 between the following parties:

Biotech Restorations, LLC owned and operated solely by
Christopher W. Young
3913 Lake Spring Cove
Denver, North Carolina 28037

&

Paynter Consulting, LLC owned and operated solely by
Valerie A. Paynter
200 Valley View Drive
Clemson, South Carolina 29631

The above-named parties agree that upon the commencement date of this Partnership they shall be deemed to have become partners in business. The purposes, terms and conditions of this Partnership are as follows:

1. Name - Each partner will operate and own 100% of an independent business for the purpose of supporting the Partnership.
 - 1.a Christopher W. Young has incorporated Biotech Restorations, LLC to support the Partnership.
 - 2.a Valerie A. Paynter has incorporated Paynter Consulting, LLC to support the Partnership.
2. Principal place of business - The principal places of business of the Partnership shall be Denver, NC and Clemson, SC.
3. Purpose - The business of the partnership is set forth below and relates to the treatment of contaminated soil, marine sediments and other media as applicable to the Factor biotechnology. To the extent necessary for the remediation of soil and marine sediments, the Partnership will utilize proprietary products and services under an exclusive use permit which restricts the use of the Factor Biotechnology to this Partnership for all environmental business applications.
 - 3.a Christopher W. Young (representing Biotech Restorations, LLC) and Valerie A. Paynter (representing Paynter Consulting, LLC) jointly agree to work exclusively in support of the Partnership in matters relating to the development of and commercial use of Factor based products in the environmental remediation marketplace.
 - 3.b Paynter Consulting, LLC, having sole knowledge of the proprietary Factor formulation, agrees to provide the Partnership with exclusive use of Factor formulated products during the term of the Partnership, ongoing technical and scientific assistance in support of the Partnership and the first option to incorporate new technologies into the Partnership.
 - 3.c Biotech Restorations, LLC, having developed existing markets and business opportunities, agrees to provide ongoing business development and management of remediation projects in which Factor Products are in use and exclusive ongoing support of the Partnership.
4. Term - The Partnership shall commence on and continue until dissolved by mutual agreement of the partners. **The Partnership will terminate upon the death or incapacity of a partner.** Any outstanding revenues or revenues anticipated from projects under contract at the time of a death or incapacity will be paid to the partner's designated beneficiary. In the event of a death of a partner, the remaining partner has the right to continue the business of the Partnership by themselves or in conjunction with any other persons they may select. The continuing partner will pay 10% of net profits annually to the heirs / estate of the deceased partner on any contract involving the use of the Factor, and 10% gross from the sale of the Factor Technology.
4. Distribution of profits - The partners agree that net profits (after disbursement of expenses) arising from the Partnership will be distributed equally (50/50). A division of profits shall be made at such time as may be agreed upon by the partners and at the close of each fiscal year.
6. Control - The partners shall have exclusive control over the Factor Based Environmental Remediation Business and each partner shall have equal rights in the management and conduct of the Partnership business. Any difference arising as to the ordinary matters connected with the Partnership business shall be decided by a third party arbitrator chosen and agreed upon by the partners. Any act beyond the scope of this Partnership agreement or any contract that may subject this Partnership to liability shall be subject to the prior written consent of the partners.

7. Disputes - Disputes that would jeopardize new business, contracts, or existing clients and cannot be resolved by the partners within thirty days will be submitted to a mutually agreed upon arbitrator whose decision will be final. Any disagreements or differences that affect the management of the Partnership business and would jeopardize new business, contracts, or existing clients and cannot be resolved by the partners within thirty days will be submitted to an arbitration process designed to repair the partnership relationship and solve said differences or disputes.

8. Selling out - If a partner decides to sell their interests in the Partnership business to the remaining partner the interests will be valued at two and one half the current business equity (as determined by customary accounting principles). Payment for the interests sold shall be made over a time period acceptable to both partners. No partner may sell his or her interests in the Partnership business to a third party unless mutually agreed to by the other partner. Thirty days written notice of proposed sell out to the partner by the selling partner is required.

8.a Should the partners opt to sell all or any portion of the business, profits from the sale will be distributed on the same 50/50 basis.

9. Signatures of the Partners

Valerie A. Paynter
Valerie A. Paynter for Paynter Consulting, LLC

Christopher W. Young
Christopher W. Young for Biotech Restorations, LLC

Rose Dalton
Notary

5/30/2006
Date Notarized

My Commission Expires January 15, 2014

Rose Dalton
Notary

5/30/2006
Date Notarized

My Commission Expires January 15, 2014



Biotech Restorations, LLC

Factor Remediation Biotechnology Statement of Ownership

Bioremediation of soil borne organic pollutants is the most effective and least expensive remedial treatment available when compared to landfill, incineration, soil vapor extraction and a variety of other highly engineered treatment systems. The capacity of natural soil microorganisms to eliminate simple chemical pollutants has long been established however; the capacity of indigenous microorganisms to eliminate complex persistent organic pollutants has been less reliable - until now.

Natural attenuation and bioremediation are synonymous in that remediation occurs through a biological process wherein the indigenous microbial population consumes the organic pollutants. In both natural attenuation and bioremediation, the microorganisms express enzymes that break down pollutants into less complex organic constituents that are then consumed by the bacteria for growth and reproduction. The elegant simplicity of this natural remediation process is remarkable however the process has been limited in its application. Certain classes of chemical pollutants and organic chemical compounds are highly persistent and effectively immune to biological activity. Sites contaminated by these persistent organic pollutants (POPs) represent both the greatest remediation challenge as well as the greatest threat to the environment and human health.

The team of Dr. Valerie Paynter and Christopher Young has dedicated years of research and their personal fortunes to the development of a novel biological treatment for eliminating persistent organic pollutants such as PCBs, pesticides, and dioxins.

The team's development of restorative treatments (*aka Factors*) represents one of the most important developments in the field of environmental remediation in the past 40 years. Factors are non-hazardous and non-toxic compounds that reverse the chemically induced impairment of enzyme production. Factor treatments allow the indigenous microbial population to secrete reductive enzymes that de-chlorinate the chemical pollutants then promote rapid degradation of the resulting constituent compounds without producing toxic metabolites. Factor treatments restore the innate natural reductive capabilities that are repressed by exposure to man-made chemical pollutants.

Valerie Paynter and Christopher Young entered into a Partnership Agreement on January 1, 2006 and the partnership agreement remains in full effect. Valerie Paynter and Christopher Young are jointly responsible for the development of and share equal ownership of the Factor biotechnology and the biotechnology's commercial applications including any and all derivative products or applications that have or may be developed from this proprietary biotechnology. The partners attest through their respective signatures and notarization to the accuracy of this statement of joint ownership of the proprietary Factor biotechnology.

Valerie A. Paynter 09/20/13
Valerie A. Paynter

Christopher W. Young 09/20/13
Christopher W. Young

1

p. 1

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STATE OF SOUTH CAROLINA

COUNTY OF: PICKENS

IN THE MATTER OF:
VALERIE ANNE PAYNTER
(Decedent)

IN THE PROBATE COURT

PROOF OF DELIVERY

CASE NUMBER: 2017ES3900607



On the 27th day of February, 2018, I mailed or delivered the following document(s):

Form #371ES Statement of Creditor's Claim

- ☒ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the Court.

Delivery was accomplished by the following method (check appropriate box):

☐ personal delivery	☐ ordinary first-class mail
☒ certified mail	☐ registered mail
☐ commercial delivery	☐ electronic message (Article 7, Trust matters only)

to each of the following persons at the address shown:

NAME	ADDRESS
JOEY AND/OR SAM PAYNTER	200 VALLEYVIEW DRIVE, CLEMSON, SC 29631
PROBATE COURT, PICKEN COUNTY	222 MCDANIEL AVENUE, B-16, PICKENS, SC 29671
ADMINISTRATIVE FACILITY	

SWORN to before me this 27th day of
February, 2018

Daniella Dickson
Notary Public for South Carolina NORTH CAROLINA
My Commission Expires: July 20, 2019



Relationship to
Decedent/Estate:

Signature: [Signature]
Print Name: CHRISTOPHER W. YOUNG
Address: 137 CROSS CENTER RD. # 143
DENVER, NORTH CAROLINA . 28037
Telephone (Work): 704 489 6588
(Home): 704 489 1825
(Cell): 704 519 6905
E-mail: CHRISYOUNG@BIOTECHRESTORATIONS.COM
BUSINESS PARTNER OF 12 YEARS

STATE OF SOUTH CAROLINA

COUNTY OF: PICKENS

IN THE MATTER OF:

VALERIE ANNE PAYNTER
(Decedent)

IN THE PROBATE COURT

PROOF OF DELIVERY

CASE NUMBER: 2017ES3900607

On the 24 day of APRIL, 2018, I mailed or delivered the following document(s):

FORM 372ES NOTICE OF ALLOWANCE/DISALLOWANCE OF CLAIM

- ☒ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the Court.



Delivery was accomplished by the following method (check appropriate box):

- ☐ personal delivery ☒ ordinary first-class mail
☐ certified mail ☐ registered mail
☐ commercial delivery ☐ electronic message (Article 7, Trust matters only)

to each of the following persons at the address shown:

NAME	ADDRESS
PROBATE COURT, PICKENS COUNTY	220 MCDANIEL AVENUE, B-16, PICKENS, SC 29671
ADMINISTRATIVE FACILITY - ORIGINAL	
CHRISTOPHER YOUNG - COPY	137 CROSS CENTER ROAD, #143 DENVER, NC 28037

SWORN to before me this 24 day of
APRIL, 2018

Jill Helen Durbin
Notary Public for South Carolina
My Commission Expires:

Jill Helen Durbin
Notary Public
State of South Carolina
February 18, 2025

Relationship to
Decedent/Estate:

Signature: Joanna Paynter
Print Name: JOANNA PAYNTER
Address: 200 VALLEY VIEW DRIVE
CLEMSON, SC 29631
Telephone (Work): _____
(Home): _____
(Cell): 949-293-7455
E-mail: JOEY.PAYNTER@GMAIL.COM
PERSONAL REPRESENTATIVE AND
DAUGHTER



FORM #120PC (1/2014)
62-1-401, 62-3-706, 62-3-1001, SCRPC 4(d)(9)



ELECTRONICALLY FILED - 2020 May 20 1:09 PM - PICKENS - COMMON PLEAS - CASE#2019CP3901224

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF: PICKENS

NOTICE OF ALLOWANCE/DISALLOWANCE OF CLAIMIN THE MATTER OF:
VALERIE ANNE PAYNTER
(Decedent)

CASE NUMBER: 2017ES3900607

TO:	Creditor:	CHRISTOPHER YOUNG
	Address:	137 CROSS CENTER ROAD, #143, DENVER, NORTH CAROLINA 28037
	Telephone:	704-489-6538
	Email:	CHRISYOUNG@BIOTECHRESTORATIONS
	Original Creditor:	CHRISTOPHER YOUNG
	Address (if different from above):	3913 LAKE SPRING COVE CT., DENVER, NORTH CAROLINA 28037
	Filed Date of Claim:	FEBRUARY 27, 2018
	Claim Amount:	1,000,000
	Account Number:	
	Other Reference Number:	

Allowance of a claim is evidence the Personal Representative accepts the claim as a valid debt of the Decedent's estate. Allowance of a claim may not be construed to imply the estate will have sufficient assets with which to pay the claim.

☐ the claim is allowed.

☐ the claim is partially allowed in the amount of \$ _____; the balance is disallowed. Explanation (optional):

☒ the claim is disallowed in full. Explanation (optional): WITH ALL DUE RESPECT, THE CLAIM FROM CHRISTOPHER YOUNG IS OF A PERSONAL NATURE AND BEARS NO VALIDITY OR TRUTH. **NOR WOULD THIS CLAIM HAVE ANY CONNECTION TO HER PERSONAL ESTATE SINCE VALERIE PAYNTER OWNED PAYNTER CONSULTING, LLC AND THAT ENDED UPON HER DEATH.**

The disallowed claim or the disallowed portion of your claim will be forever barred unless you commence a legal proceeding requiring a Summons, a Petition and a filing fee of \$150.00 for allowance of the claim in accordance with SCPC 62-3-804(2), within thirty (30) days after the mailing or other service of this Notice of Allowance/Disallowance of Claim.

Executed this 24 day of APRIL, 2018.

Signature: Joanna Paynter
 Print Name: JOANNA PAYNTER
 Address: 200 VALLEY VIEW DRIVE
CLEMSON, SOUTH CAROLINA 29631
 Telephone (Work): _____
 (Home): _____
 (Cell): 9492937455
 Email: JOEY.PAYNTER@GMAIL.COM

Attorney: _____
 Address: _____
 Telephone: _____
 Email: _____



**STATE OF SOUTH CAROLINA
SECRETARY OF STATE**

**ARTICLES OF TERMINATION
LIMITED LIABILITY COMPANY - DOMESTIC**

The following limited liability company, having dissolved and completed its winding up, terminates its existence by filing these articles of termination in accordance with the 1976 S.C. Code of Laws, as amended, Section 33-44-805:

1. The name of the limited liability company is:

PAYNTER CONSULTING, LLC

2. The date the articles of organization were filed is 01/27/2006.
3. The date of the dissolution of this limited liability company was 09/04/2017.
4. Has the company wound up its business and terminated its legal existence? Yes
5. Unless otherwise specified, these articles are effective when endorsed for filing by the Secretary of State. Specify the date of any delayed effective date: _____
(Date)

Signed as Authorized Signature: Joanna Paynter

(Signature)

Joanna Paynter

(Print Name)

01/21/2020

(Date)

Capacity/Position of Person Signing (**You must check one box.**)

☐ Manager ☐ Member ☐ Organizer

☒ Fiduciary ☐ Attorney-in-Fact

STATE OF SOUTH CAROLINA

PICKENS COUNTY

Christopher Young and Biotech Restorations,
LLC

Plaintiffs, v.

Joanna Marie Paynter, a/k/a Joey Painter,
Samantha P. Nelson, and Paynter Consulting,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2019-CP-39-01224

**PLAINTIFFS' RESPONSES TO
DEFENDANTS PAYNTER AND
NELSON'S FIRST SET OF REQUESTS
FOR ADMISSION TO PLAINTIFFS**

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Plaintiffs hereby respond to the Defendants Paynter and Nelson's First Requests for Admission.

OBJECTIONS

1. Plaintiffs object to any discovery request served from a party in default, or acting in concert with any party in default.
2. Plaintiffs object to any discovery request to the extent that it seeks information that constitutes or discloses confidential communications between Plaintiffs and any of their counsel or that constitutes or discloses work product or trial preparation materials of the Plaintiffs or their counsel.
3. Plaintiffs object to any discovery request that exceeds the scope of discovery allowed pursuant to South Carolina Rules of Civil Procedure, including as specifically set forth in Rule 26.
4. Plaintiffs object to any discovery request that purports to require Plaintiffs to have knowledge of documents or information not within Plaintiffs' possession.

5. Plaintiffs have made a reasonable and good faith effort to comply with these discovery requests of the Defendants (in default) and have searched for requested documentation or information in the places where the documentation was most likely to be found. In the event additional information is discovered that is responsive to these requests, Plaintiffs will supplement their responses to the discovery requests of the Defendants.

6. All of the responses provided below are subject to these objections.

RESPONSES AND OBJECTIONS TO REQUEST FOR ADMISSION

1. Admit or deny that the General Partnership Agreement attached as **Exhibit 1** is a true and accurate copy of the partnership agreement identified in paragraph 17 of the Complaint.

RESPONSE: Plaintiffs would crave reference to that certain General Partnership Agreement referenced in Paragraph 6 of Complaint filed by [Defendant] Paynter Consulting, LLC's in 2015 in this County, Case No. 2015-CP-39-01006, a copy of which is included in the federal court's docket as ECFN-010-1 in the removed 2015 lawsuit, Case No.: 8:15-cv-03778-TMC, and deny any allegations inconsistent with said attached General Partnership Agreement. The remaining allegations of this Request are denied.

2. Admit or deny that the General Partnership Agreement attached as **Exhibit 1** states that Paynter Consulting, LLC has sole knowledge of the technology referred to in the Complaint as the "Factor."

RESPONSE: Plaintiffs would crave reference to that certain General Partnership Agreement referenced in Paragraph 6 of Complaint filed by [Defendant] Paynter Consulting, LLC's in 2015 in this County, Case No. 2015-CP-39-01006, a copy of which is included in the federal court's docket as ECFN-010-1 in the removed 2015 lawsuit, Case No.: 8:15-cv-03778-

TMC, and deny any allegations inconsistent with said attached General Partnership Agreement.

The remaining allegations of this Request are denied.

3. Admit or deny that the General Partnership Agreement attached as **Exhibit 1** states that the partnership will terminate upon the death of a partner.

RESPONSE: Plaintiffs would crave reference to that certain General Partnership Agreement referenced in Paragraph 6 of Complaint filed by [Defendant] Paynter Consulting, LLC's in 2015 in this County, Case No. 2015-CP-39-01006, a copy of which is attached here (identified and taken from ECFN-010-1 in the removed action, 8:15-cv-03778-TMC), and deny any allegations inconsistent with said attached General Partnership Agreement. The remaining allegations of this Request are denied.

4. Admit or deny that Plaintiffs asserted a claim against Dr. Paynter's Estate for ownership of the technology referred to in the Complaint as the "Factor."

RESPONSE: Plaintiffs would crave reference to the estate records of Valerie Anne Paynter, Case No. 2017-ES-39-00607, a copy of which is in the possession of counsel for the Defendants (65 pages), and is hereby incorporated by reference, and deny any allegations inconsistent with said estate records. The remaining allegations of this Request are denied.

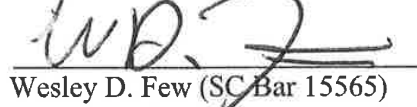
5. Admit or deny that the Pickens County Probate Court denied all claims asserted by Plaintiffs during the probate of Dr. Paynter's Estate.

RESPONSE: Plaintiffs would crave reference to the estate records of Valerie Anne Paynter, Case No. 2017-ES-39-00607, a copy of which is in the possession of counsel for the Defendants (65 pages), and is hereby incorporated by reference, and deny any allegations inconsistent with said estate records. The remaining allegations of this Request are denied.

6. Admit or deny that no facsimile was sent from the telephone number 864-654-5953 on September 20, 2013, at approximately 9:37 p.m.

RESPONSE: Objection. Plaintiffs object to this request to the extent it purports to require Plaintiffs to respond to alleged information for which Plaintiffs do not have sufficient information to admit or deny. Subject to these objections, the allegations of this Request are denied.

WESLEY D. FEW, LLC

A handwritten signature in black ink, appearing to read 'W.D. Few', is written over a horizontal line.

Wesley D. Few (SC Bar 15565)

P.O. Box 9398

Greenville, S.C. 29604

Tel: (864) 527-5906

wes@wesleyfew.com

**ATTORNEYS FOR PLAINTIFFS
CHRISTOPHER YOUNG AND BIOTECH
RESTORATIONS, LLC**

Greenville, South Carolina

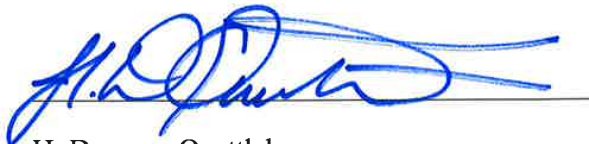
March 27, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Christopher Young and Biotech Restorations, LLC,	)	Case No: 2019-CP-39-01224
	)	
Plaintiffs,	)	
	)	CERTIFICATE OF SERVICE
vs.	)	
	)	
Joanna Marie Paynter, a/k/a Joey Painter, Samantha	)	
P. Nelson, and Paynter Consulting LLC,	)	
	)	
Defendants.	)	

I, Drennan Quattlebaum, on behalf of the law office of Wesley D. Few, LLC, attorneys for the Defendant in this action, do hereby certify that I have served the below parties by U.S. Mail, Hand Delivery, and / or E-Mail as set forth below on March 27, 2020, in this action with a copy of the document(s) listed below.

1) Plaintiff's Responses to Defendants Paynter and Nelson's First Set of Requests for Admission

Steven R. LeBlanc, Esq.
416 E. North St.
Greenville, SC 29601



H. Drennan Quattlebaum

March 27, 2020
Greenville, South Carolina

**STATE OF SOUTH CAROLINA
PICKENS COUNTY**

**IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT**

Christopher Young and Biotech Restorations,
LLC

Plaintiffs,

v.

Joanna Marie Paynter, a/k/a Joey Painter,
Samantha P. Nelson, and Paynter Consulting,
LLC,

Defendants.

CIVIL ACTION NO. 2019-CP-3901224

DECLARATION OF ERIC K. ENGLEBARDT

I, Eric K. Englehardt, make the following declaration based on my personal knowledge of the facts described herein:

1. Several years ago, I represented Dr. Valerie Paynter and her company, Paynter Consulting, LLC, in federal litigation against Plaintiffs. That litigation concluded after we received an order from US District Court sending the case to arbitration. Shortly thereafter Dr. Paynter became ill, and nothing further happened on that litigation. I had no more contact with Dr. Paynter or her daughters and no longer served as their counsel or as counsel for the corporate entity.
2. I understand that Dr. Paynter passed away on September 4, 2017, and that Defendants Nelson and Paynter are Dr. Paynter's surviving daughters.
3. On or about October 10, 3, 2019, Defendants Paynter and Nelson contacted me about the present litigation. I informed them from the start that I could not represent them in this action because I no longer had the staffing or time to adequately handle the matter. However, I let them know that I knew Plaintiff's new counsel, Mr. Few, and would be happy to contact him to discuss

the matter, make sure it did not go into default, and potentially try to find a resolution short of litigation (which started with me suggesting to him that he ought to dismiss the case). Defendants Paynter and Nelson each agreed to my limited scope of representation for each of them individually. I did not represent the corporate entity, which I presumed had ceased to exist.

4. It was made clear to me from the start that Defendant Nelson contested that she was properly served with the complaint as the return receipt at her address had been signed by her father-in-law, Tommy Nelson, and that Defendant Paynter had not been served at all.

5. After several emails and missed phone calls between Mr. Few and me, we finally spoke on or about October 17. I notified him during that call both that service on Defendant Nelson was defective and that Defendant Paynter had not been served. He assured me that he would review the service on Defendant Nelson and get back to me.

6. Over the next two weeks there were some limited settlement discussions. On October 29, Mr. Few emailed me the “green card”, and I pointed out that it was not Defendant Paynter’s signature on it.

7. On October 30, 2019, Mr. Few and I had another conversation regarding settlement in which Mr. Few made a proposal that I informed him I would take to the individual defendants. It was my understanding from the conversation that if they were not willing to come to terms with the proposal, Mr. Few would allow me to accept service on their behalf and “start the clock” on time for responding to the complaint with an answer or motion. I also let Mr. Few know that I was headed out of town and wouldn’t be back until the next week.

8. On November 7, 2019, Mr. Few contacted me about the status of his proposal and/or accepting service and sent me an Acceptance of Service for all Defendants. I let Mr. Few know during that conversation that Defendant Paynter was not willing to agree to waive any argument

she might have about jurisdiction over her in this case, which was included in his Acceptance of Service.

9. We never resolved the issue regarding the jurisdictional waiver, and there was still an offer on the table for the Defendants to consider. I did nothing more with either, nor did I ask for or file anything regarding an extension of time with the court, as it was my belief that Mr. Few understood that service had not been perfected.

10. I did not hear anything further from Mr. Few.

11. I never received a courtesy copy of the Certificate of Service I later learned was filed on November 13, 2019, nor did I get a call or an email from Mr. Few telling me he was filing same before it was filed. In fact, I was not aware that Plaintiffs' counsel was pursuing default against Defendant Nelson until I ran into him at the Greenville County Bar CLE in February 2020.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 24, 2020.


Eric K. Englehardt

**STATE OF SOUTH CAROLINA
PICKENS COUNTY**

**IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2019-CP-3901224**

Christopher Young and Biotech Restorations,
LLC

Plaintiffs,

v.

Joanna Marie Paynter, a/k/a Joey Painter,
Samantha P. Nelson, and Paynter Consulting,
LLC,

Defendants.

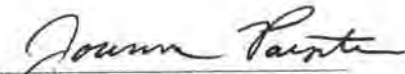
DECLARATION OF JOANNA MARIE PAYNTER

I, Joanna Marie Paynter, make the following declaration based on my personal knowledge of the facts described herein:

1. I am a named Defendant in the above-captioned matter.
2. My mother is Dr. Valerie Paynter. My mother received a degree in Chemistry from London University, a PhD in Plant Physiology with an emphasis in Biochemistry from Clemson University, and taught at Clemson University for 25 years. As far back as I can recall, my mother has been doing research, experiments, and studies within her field.
3. Around 2004, I learned that my mother had developed a bioremediation technology that was effective at cleaning contaminated soil.
4. My father is Dr. Malcolm Paynter, and my father died August 20, 2009.
5. Within a week of my father's death, my mother met with my sister and me to share with us the bioremediation technology that she had developed.
6. During this meeting in August 2009, my mother explained that many pesticides and other contaminants include chlorinated hydrocarbons having a Carbon-Chloride bond that allows the chemicals to last a long time and not breakdown, and the bioremediation technology that she developed breaks down the Carbon-Chloride bonds present in many sources of contamination.

7. During this meeting in August 2009, my mother also explained that the particular formulation for the bioremediation technology varies for each contaminated site, depending on the physical characteristics of the soil and contaminants at the site, and my mother generally referred to the formulations as "the Factor."
8. During this meeting in August 2009, my mother said that she wanted to give my sister and me her bioremediation technology before she died, and she told my sister and me the ingredients in the Factor.
9. My mother was very protective of the ingredients included in the Factor, and I am not aware of anyone who has ever known the ingredients included in the Factor, except for my mother, my father, my sister, and me.
10. Attached as Exhibit A to this Declaration is an October 18, 2013, email from Chris Young to my mother in which Chris Young claimed that an entity was offering more than \$56,000,000 to purchase my mother's bioremediation technology.
11. I lived with my mother from August 2015 until May 2016, and during this time, my mother and I discussed in great lengths the Factor and how to use it.
12. In 2015 and 2016, I participated in discussions between my mother and various entities that offered more than \$10,000,000 to purchase my mother's bioremediation technology.
13. Between February and April 2016, my mother packed into boxes all of her laboratory notebooks, research notes, sampling and analysis procedures, and other documentation of her bioremediation technology and gave the boxes to my sister and me to have and own.
14. It is my understanding that the materials that my mother gave to my sister and me include documentation that demonstrates that her bioremediation technology is effective at removing Toxaphene, DDT, DDD, DDE, Dieldrin, PCBs, and several other contaminants from soil.
15. My sister and I have maintained continuous and exclusive control over the laboratory notebooks, research notes, sampling and analysis procedures, and other documentation of my mother's bioremediation technology, and we have never shared any of this information with anyone, except for our current attorney Steven LeBlanc.
16. I understand that Chris Young's attorney in the present litigation has indicated that Chris Young remains willing to pay \$1,000,000 to purchase my mother's bioremediation technology.

I declare under penalty of perjury that the foregoing is true and correct. Executed on
May 19, 2020.


Joanna Marie Paynter

**STATE OF SOUTH CAROLINA
PICKENS COUNTY**

**IN THE PICKENS COUNTY PROBATE
COURT
CASE NO. 2017-ES-00607**

In the Matter of: Valerie Anne Paynter
Decedent

Christopher Young and Biotech Restorations,
LLC,
Petitioners

v.

Joanna Marie Paynter,
Personal Representative to Decedent's
Estate

DECLARATION OF JOANNA MARIE PAYNTER

I, Joanna Marie Paynter, make the following declaration in response to the Amended Verified Petition for Subsequent Administration, Removal of Personal Representative, and to Appoint Special Administrator based on my personal knowledge of the facts described herein:

1. I was the Personal Representative for the Estate of Dr. Valerie Paynter, my mother.
2. Until a few weeks ago, I was not aware that my mother had a Wells Fargo checking account '7740 as described in paragraph 18 of the Amended Petition. The records provided by Wells Fargo in response to a subpoena issued by Petitioners indicate to me that my mother was the sole owner of that account and closed the account by withdrawing the entire balance of \$479.64 on September 14, 2015.
3. My mother was diagnosed with colon cancer in April 2013 and learned that it had metastasized in April 2017. In May 2017, I stopped working and moved from California to live with my mother at 200 Valley View Drive, Clemson, S.C., to assist in her care.
4. In June and July of 2017, my mother cleaned out a laboratory that she had been using for her business Paynter Consulting, LLC, and gave away or discarded any equipment remaining in the laboratory.
5. On February 14, 2018, as the Personal Representative of my mother's estate, I paid the property taxes for Paynter Consulting, LLC described in paragraph 27.b. of the Amended Petition. I understand that these property taxes reflect my mother's estimate of the value of property owned by Paynter Consulting, LLC in 2017 before my mother gave away or discarded any equipment remaining in the laboratory, as described above.

6. It is my understanding that Paynter Consulting, LLC had no assets and ceased to exist when my mother died on September 4, 2017.
7. In January 2020, I learned that Petitioners were arguing that Paynter Consulting, LLC still existed based on records maintained by the S.C. Secretary of State. My sister Samantha Nelson called the S.C. Secretary of State to find out what, if anything, should be done to reflect that Paynter Consulting, LLC had wound up its business and ceased to exist when my mother died. My sister was told to file the Articles of Termination which I then filed.
8. I opened the Wells Fargo checking account ending in '6177 described in paragraph 27.c of the Amended Petition on December 27, 2011, and I have always been the sole owner of this checking account.
9. In October 2017, shortly after my mother's death, I linked my Wells Fargo personal checking account '6177 to my mother's equity line account '1842 (having a balance owed of approximately \$190,000) and my mother's installment loan account '4582 (having a balance owed of approximately \$14,000) to avoid monthly fees assessed by Wells Fargo against my mother's accounts.
10. The deposit described in paragraph 27.c of the Amended Petition of \$28,759.63 into my Wells Fargo personal checking account '6177 on June 17, 2019, reflects my share of the proceeds from the sale of my mother's house.
11. In 2003, my mother gave the 2000 Toyota described in paragraph 27.d of the Amended Petition to my sister Samantha Nelson as a high school graduation gift. After my father's death in 2009, my sister had the title to the 2000 Toyota reissued in her and my mother's name, as shown in Exhibit 1 to this declaration.
12. On August 25, 2017, my mother transferred title to the 2010 Toyota described in paragraph 27.e of the Amended Petition to my sister Samantha Nelson, as shown in tax receipt included as Exhibit 2 to this declaration.
13. My mother distributed whatever jewelry, household goods, or other personal property she owned that had any value prior to her death. My sister and I conducted yard sales and either donated or discarded any remaining personal property. Proceeds from the yard sales were used to pay expenses associated with my mother's house.
14. My mother gave the sailboat and motor described in paragraph 27.g of the Amended Petition to Tom Rudisill in August 2017, and I understand that Tom Rudisill took the sailboat and motor to the dump before my mother's death.
15. I believe that the Inventory and Appraisement that I filed on October 16, 2017, accurately lists my mother's residence and a life insurance policy as the only assets of my mother's estate.

16. I believe that I accurately investigated, paid, denied, or settled all claims asserted against my mother's estate.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 26, 2020.


Joanna Marie Paynter



STATE OF SOUTH CAROLINA
CERTIFICATE OF TITLE
OF A VEHICLE



VEHICLE ID NUMBER
JT3HN87R1Y0263847

YEAR MAKE
2000 TOYT

MODEL
4RUNNE

NEW/USED
USED

BODY STYLE DATE ISSUED
SU 02-01-2010

ODOMETER
174,355

WEIGHT
3975

TITLE NUMBER
770370214611136

VEHICLE BRAND(S)
ACTUAL MILEAGE

FULL NAME OF OWNER(S)
**PAYNTER, VALERIE G OR
PAYNTER, SAMANTHA DAWN
200 VALLEY VIEW DR
CLEMSON SC 296312326**

CUSTOMER NUMBER: **025000836**

THE SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES HEREBY CERTIFIES THAT THE PERSON HEREIN IS REGISTERED BY THIS DEPARTMENT AS THE LAWFUL OWNER OF THE VEHICLE DESCRIBED SUBJECT TO THE LIENS, IF ANY, HEREIN SET FORTH.

**MARCIA S. ADAMS
EXECUTIVE DIRECTOR**

**MARK SANFORD
GOVERNOR**

KEEP IN A SAFE PLACE. ANY ALTERATION OR ERASURE VOIDS THIS TITLE.

Greenville County Paid Receipt

Bat: 184457 Date Paid: 08/25/2017

Cashier:

Tran#: 66759

Acct #: 201700444201601001

Cashier 0031

Value: 280 Dist: 897

Vin: 4T1BF3EK8AU078194 Tag:

Year: 2010 Make: TOYT Body: 4S

2010 TOYT 4S

Tax Amount Paid: 96.34

Tax Amt Paid: 96.34

DMV Fee Paid: .00

DMV Fee Paid: .00

Total Paid: 96.34

Total Paid 96.34

201700444201601001

You must present this receipt to DMV to get your sticker

NELSON SAMANTHA DAWN

38 STAFFORDSHIRE WAY

SIMPSONVILLE SC 296814617

*** Duplicate Receipt ***Print Dte- 5/05/2020 JCT

Greenville County Paid Receipt

Bat: 184457 Date Paid: 08/25/2017

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Tran#: 66759

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NELSON SAMANTHA DAWN

38 STAFFORDSHIRE WAY

SIMPSONVILLE SC 296814617

*** Duplicate Receipt ***Print Dte- 5/05/2020 JCT

*** Highway Copy ***

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Christopher Young and Biotech Restorations, LLC,	)	
	)	Case No: 2019-CP-39-01224
Plaintiff,	)	
v.	)	
	)	PLAINTIFFS' RESPONSES TO
Joanna Marie Paynter, a/k/a Joey Paynter, Samantha P.	)	DEFENDANTS PAYNTER AND
Nelson, and Paynter Consulting, LLC	)	NELSON'S 3rd REQUESTS FOR
	)	PRODUCTION
Defendants.	)	
	)	

TO: STEVEN R. LEBLANC, ESQUIRE, COUNSEL TO DEFENDANTS JOANNA MARIE PAYNTER, a/k/a JOEY PAYNTER AND SAMANTHA P. NELSON:

Pursuant to the South Carolina Rules of Civil Procedure ("SCRCP") Rule 34, Plaintiffs Christopher Young and Biotech Restorations, LLC ("Plaintiffs") respond to the Requests for Production of Defendants Joanna Marie Paynter, a/k/a Joey Painter and Samantha P. Nelson ("Defendants"), as follows:

GENERAL OBJECTIONS AND QUALIFICATIONS

1. Plaintiffs object to any Interrogatory or Request for Production to the extent that it seeks information that constitutes or discloses confidential communications between Plaintiffs and any of their counsel or that constitutes or discloses work product or trial preparation materials of the Plaintiffs or their counsel.

2. Plaintiffs object to any discovery request that exceeds the scope of discovery allowed pursuant to South Carolina Rules of Civil Procedure, including as specifically set forth in Rule 26.

3. Plaintiffs object to the production of any documents not within Plaintiffs' possession, custody, or control and to the production of documents equally accessible to the Defendants.

4. Plaintiffs have made a reasonable and good faith effort to comply with the Requests for Production of the Defendants and have searched for requested documentation or information in the places where the documentation was most likely to be found. In the event additional information is discovered that is responsive to these Requests for Production, Plaintiffs will supplement their responses to the discovery requests of the Defendants.

RESPONSES TO REQUESTS FOR PRODUCTION

23. Produce a copy of the native file for the May 23, 2006 email from vapaynter@hotmail.com to CYoung2281@aol.com previously filed as ECF 14-1 in 8:15-cv-03778-TMC and handed to the Court during the hearing on June 3, 2020.

RESPONSE: After a diligent search, the Plaintiffs have not yet been able to locate the original or native / electronic copy of this email. The Plaintiffs' search revealed that he had saved a hard copy version of this 2006 email, which is being produced as BR_0272 to 0274, and sent a scan of that to his counsel in the 2015-Lawsuit, Sam Outten, Esquire, on or about November 1, 2015. The undersigned counsel to the Plaintiffs, on information and belief, is in possession of the original of this May 23, 2006 email, as it was printed, annotated and saved by the Plaintiff on or about May 25, 2006, as well as an original notarized May 30, 2006 General Partnership Agreement, which will be made available to counsel for the Defendants to review upon request, and is being produced with these responses. Discovery is ongoing, and if the Plaintiff is able to locate other versions of this email or its attachments, they will also be produced.

24. Produce a copy of the test results for any property that was treated with the Factor technology described in the Complaint.

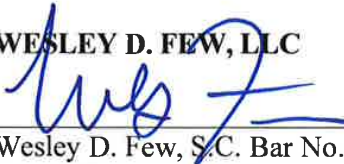
RESPONSE: Objection. Plaintiffs object on grounds that this request seeks information that is confidential. Plaintiffs additionally object on grounds that this request, as worded, is

unduly burdensome in that it is requesting data going back as far as the year 2004. Plaintiffs additionally object on grounds that information related to “testing” as that term would relate to the Factor and the business of the partnership was generally directed and controlled initially by Valerie Paynter and then later by Paynter Consulting, LLC. Accordingly, such testing documents would be as readily available to the Defendant as to Plaintiffs. As best as Plaintiffs can recall, Plaintiffs might be in possession of test results for some of the final testing conducted on the remediated properties. Subject to these objections, documents and information that Plaintiffs have in their possession that Plaintiffs believe could be construed to be responsive to this request are being produced in this case, subject to the Confidentiality Order. Discovery is ongoing. Plaintiffs reserve the right to supplement this response.

25. Produce a copy of any agreement signed by Plaintiff Young that involves the Factor technology described in the Complaint.

RESPONSE: Objection. Plaintiffs object on grounds that this request seeks information that is confidential. Plaintiffs additionally object on grounds that this request, as worded, is unduly burdensome in that it is requesting documents and information going back as far as the year 2004, for example, to include any non-disclosure or similar agreement(s) Plaintiffs reviewed, agreed to or signed since that time. Plaintiffs additionally object on grounds that “any agreement” as that term would relate to the Factor and the business of the partnership could be interpreted in different ways. Plaintiffs additionally object on grounds that the term “signed” can have various meanings as well, for example with the advent of electronic signatures and various state laws authorizing the use of electronic signatures. Plaintiffs further object on grounds that any such agreement as Plaintiff interprets this request would already have been made available to Paynter Consulting, Valerie Paynter and / or her daughters once they became actively involved

in the partnership affairs starting at least as early as 2014, and in the course of the 2015-Litigation filed by Paynter Consulting, LLC, and would, therefore, be as readily available to the Defendants as it would be to Plaintiffs. See e.g., PAYN-07990 to 08010, produced by Defendants on August 19, 2020, as part of their supplemental production of approximately 10,482 pages of documents. Subject to these objections, Plaintiffs would respond and identify the following documents that have already been produced: (i) 2004 handwritten agreement with Valerie Paynter; (ii) Jan. 10, 2006 General Partnership Agreement; (iii) May 30, 2006 General Partnership Agreement; (iv) Sept. 20, 2013 Joint Statement of Ownership, and (v) other documents as shown in the Defendants' and the Plaintiffs' productions in this case, including but not limited to agreements with One Wall Partners, Rob Campbell, and others as set forth in the document production, for example at BR_0099 identifying potential Joint Venture opportunities with Viridian Partners, VTech Systems and Great Lakes Dredging & Dock. Discovery is ongoing. Plaintiffs reserve the right to supplement this response.

WESLEY D. FEW, LLC

Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
864-527-5906 | wes@wesleyfew.com

ATTORNEY FOR PLAINTIFFS
CHRISTOPHER YOUNG AND
BIOTECH RESTORATIONS, LLC

Greenville, South Carolina
Sept. 6, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	
	)	PROOF OF ADR OR EXEMPTION
Christopher Young, et al	)	
	)	
Plaintiff,	)	
	)	
vs.	)	FILE NO.: 2019-CP-39-01224
	)	
Joanna Paynter, et al	)	
Defendant.	)	
	)	

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

PURSUANT to the South Carolina Alternative Dispute Resolution Rules (SCADR):

- A. _____ I certify that this case is exempt from ADR for the following reason and the parties wish to exercise that exemption:

Plaintiff/Attorney for Plaintiff

Defendant/Attorney for Defendant

Print Name

Print Name

Phone/Fax
Date: _____

Phone/Fax

- B. X 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

Thomas L. Stephenson

3. The ADR was conducted on June 29 , 20 21

4. As a result of ADR, this case should be considered (please check one);
- () Fully Settled.
- () by Consent Judgment, to be filed by _____
- or () Voluntary Dismissal to be filed by _____
- () Partially Settled.
- (X) At an Impasse.
- () In need of further ADR I ☐ am ☐ am not willing to continue as a neutral. I recommend that ADR resume as of _____.
5. Plaintiff ☒ was present ☐ was not present
 Defendant ☒ was present ☐ was not present
6. Other participants were:
- ☒ Lawyer for Defendant Steven R. LeBlanc
- ☒ Lawyer for Plaintiff Wesley D. Few
- ____ Representative for Insurance Carrier _____
- ____ Guardian *ad Litem* _____
- ____ Experts _____
- ____ Others _____
7. Choice of the neutral was by:
- ☒ Stipulation
- ____ Court Order
8. The total number of hours spent in ADR was: 3 hours.
9. Further comments of the neutral:
- _____



 Neutral's Signature

Date: June 29, 2021

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

IN THE COURT OF
COMMON PLEAS
Thirteenth Judicial Circuit

Letitia H. Verdin, Circuit Court Judge

CASE NO.: 2019-CP-39-01224

Christopher Young and Biotech Restorations, LLC,

Appellants,

v.

Joanna Marie Paynter, a/k/a Joey Paynter,
Samantha P. Nelson, and Paynter Consulting, LLC,

Respondents.

NOTICE OF APPEAL

Appellants Christopher Young and Biotech Restorations, LLC, hereby give notice of appeal of the orders and judgments entered by this Court, identified as follows:

- (1) Amended¹ Order Construing the General Partnership Agreement, filed Nov. 17, 2022;
- (2) Form 4 Order, filed Dec. 12, 2022, at 9:11 A.M.; and
- (3) Judgment entered Dec. 13, 2022, at 12:51 P.M.

The undersigned counsel certifies that this appeal is timely filed within 30 days of receipt of notice of the order(s) and judgement identified above.

¹ This order amended the order issued on Nov. 10, 2022.

WESLEY D. FEW, LLC

s/Wesley D. Few

Wesley D. Few, S.C. Bar No. 15565

Post Office Box 9398

Greenville, South Carolina 29604

(864) 527-5906 | wes@wesleyfew.com

ATTORNEYS FOR APPELLANTS

Greenville, South Carolina
December 14, 2022

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2019-CP-3901224
Appellate Case No. 2022-001777

Christopher Young and Biotech Restorations, LLC

Appellants,

v.

Joanna Marie Paynter, a/k/a Joey Painter, Samantha P. Nelson, and Paynter Consulting, LLC,

Respondents.

NOTICE OF CROSS-APPEAL

Respondents Joanna Marie Paynter, a/k/a Joey Painter, and Samantha P. Nelson

(Respondents/Cross-Appellants) respectfully appeal the following orders and decisions of the

Honorable Letitia H. Verdin:

1. the denial of Respondents/Cross-Appellants' motion for a directed verdict based on *res judicata*;
2. the denial of Respondents/Cross-Appellants' motion for a directed verdict based on the statute of limitations; and
3. the decision to admit into evidence over Respondents/Cross-Appellants' objection the General Partnership Agreement shown in Plaintiffs' Exhibit 3.

Respondents/Cross-Appellants received notice of the final Judgment that forms the basis of this Cross-Appeal on December 13, 2022.

Respectfully submitted,

s/Steven R. LeBlanc
Steven R. LeBlanc (SC Bar 14221)
Steve LeBlanc, LLC
P.O. Box 9198
Greenville, S.C. 29604
Tel: (864) 902-4411
Steve@LeBlancLLC.com

Attorneys for Respondents/Cross-Appellants



Steve LeBlanc, LLC

January 13, 2023

RECEIVED

Jan 13 2023

SC Court of Appeals

Via Email – ctappfilings@sccourts.org

Via U.S. Mail

The Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Christopher Young and Biotech Restorations, LLC v. Joanna Marie Paynter, a/k/a
Joey Painter, Samantha P. Nelson, and Paynter Consulting, LLC
Case No. 2019-CP-3901224
Appellate Case No. 2022-001777

Dear Ms. Kitchings,

Please allow this letter to address the following deficiencies in Respondents/Appellants' Notice of Cross-Appeal described in your letter dated January 13, 2023.

The notice of appeal is not accompanied by the order(s) and/or judgment(s) challenged on appeal.

Respondents Joanna Marie Paynter, a/k/a Joey Painter, and Samantha P. Nelson (Respondents/Cross-Appellants) respectfully appeal the following orders and decisions of the Honorable Letitia H. Verdin:

1. the denial of Respondents/Cross-Appellants' motion for a directed verdict based on *res judicata* – During trial on April 20, 2022, the Honorable Letitia H. Verdin denied Respondents/Appellants' oral motion for directed verdict based on *res judicata*. Trial Tr., p. 243.
2. the denial of Respondents/Cross-Appellants' motion for a directed verdict based on the statute of limitations – During trial on April 20, 2022, the Honorable Letitia H. Verdin denied Respondents/Appellants' oral motion for directed verdict based on the statute of limitations. Trial Tr., p. 243.
3. the decision to admit into evidence over Respondents/Cross-Appellants' objection the General Partnership Agreement shown in Plaintiffs' Exhibit 3 - During trial on April 20, 2022, the Honorable Letitia H. Verdin overruled Respondents/Appellants' objection to the admissibility of Plaintiffs' Exhibit 3. Trial Tr., p. 93. By Order filed November 17, 2022, the Honorable Letitia H. Verdin denied Respondents/Appellants' motion to reconsider the decision to admit Plaintiffs' Exhibit 3.

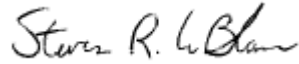
The undersigned spoke with the clerk's office on January 13, 2023, and were advised that it was not necessary to include with this letter a copy of the Trial Transcript or Order filed November 17, 2022.

The required filing fee has not been submitted.

Respondents/Appellants include with this letter a check for \$250.00 for the filing fee.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink that reads "Steven R. LeBlanc". The signature is written in a cursive, flowing style.

Steven R. LeBlanc

SRL/kp

RECEIVED

Jul 14 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas, 13th Circuit

Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2022-001777

Christopher Young and Biotech Restorations, LLC,..... Appellants/Respondents,

v.

Joanna Marie Paynter, a/k/a Joey Paynter, Samantha P. Nelson, and
Paynter Consulting, LLC,..... Respondents/Appellants.

CERTIFICATE OF COUNSEL

The undersigned counsels, filing this Record on Appeal jointly, hereby certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

July 7, 2023
Greenville, SC

s/ Steven R. LeBlanc
Steven R. LeBlanc (S.C. Bar # 14221)
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P.O. Box 9198
Greenville, S.C. 29604
Tel: (864) 902-4411
Steve@LeBlancLLC.com

Attorneys for Respondents/Appellants

s/ Wesley D. Few
Wesley D. Few (S.C. Bar # 15565)
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wes@wesleyfew.com

Attorney for Appellants/Respondents