

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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S.C. SUPREME COURT

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

Case No. 2015-CP-10-05463

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

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

and

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

of whom

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

RECORD ON APPEAL - VOLUME II

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PROCEEDINGS

[Whereupon, Mr. Kefalos provides documents to the Court]

[Whereupon, the Court reviews documents]

THE COURT: All right. Mr. Barr? Yes sir?

MR. BARR: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. BARR: My name is Capers Barr and I represent the defendant Richard Stoney in the captioned case. I think we're, I think there were originally three motions before Your Honor today; one of which as I understand it has been withdrawn.

And that was a motion for interim relief that was filed, if you remember we filed an appeal, there was a motion for interim relief filed. That was I think set for today but the appeal was dismissed so I think counsel and I agree that that is moot.

Thereafter the plaintiff filed a motion to compel responses to their discovery on behalf of the plaintiffs. And then we filed on behalf of the defendant a motion to dissociate the defendant Laurence Stoney from the LLC.

So the two issues before you this afternoon are the motion to dissociate and the motion to compel. You called on me first. My motion is to dissociate and I'll be glad to go forward with it unless the Court would

1 prefer to hear the motion to compel before that.

2 THE COURT: All right. Let's hear the motion to
3 compel first.

4 MR. BARR: And I might say we've met and boiled it
5 down as best we could.

6 THE COURT: All right. Mr. McQuillin?

7 MR. MCQUILLIN: Thank you, Judge. Mac McQuillin
8 here on behalf of the plaintiff with the Haynsworth
9 Sinkler Boyd firm. May it please the Court? Yes, Your
10 Honor, we served 26 discovery requests in October of last
11 year. And several days before the mediation we received
12 responses. I believe all but four of the discovery
13 requests were initially objected to.

14 We have received responses to five of the like
15 responsive documents in response to five of the requests.
16 We worked with Capers and have actually agreed in the
17 spirit of compromise to withdraw ten of the requests.
18 So, in dispute today Judge are eleven requests for
19 production but of those eleven we've grouped them down
20 into seven categories. And so I hope this does not take
21 too terribly long.

22 Group one of the request deals with requests for
23 production numbers seven and eight. And what we've asked
24 for in those requests are the income statements and
25 balance sheets from 1241 Harborview, LLC, ECFC LLC, ECFC

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1 Management, LLC and EC Spartan, LLC. So we've asked for
2 the income and balance sheets and then this next request
3 is for the tax returns for those same entities. And Your
4 Honor the reason we believe that those requests for this
5 information is discoverable is in Mr. Hollerbach's
6 affidavit which was previously filed with the Court on
7 January 25, 2017.

8 One of the items he notes in journal ledger, general
9 ledger entry 3617, and this is just one example, but
10 there was a 14,000 dollar transfer from the Boathouse at
11 Breach Inlet to Ellis Creek, which is a separate business
12 that Richard Stoney owns. These entities that we have
13 asked for the income statements and balance sheets on are
14 the management companies or entities associated with
15 Ellis Creek Fish Camp. You see the ECFC; that's what
16 that stands for.

17 And Your Honor the reason that this is not only
18 discoverable but relevant to this case is Richard has
19 admitted before this Court that he was robbing Peter to
20 pay Paul and fund these other separate business entities.
21 And that's bad in its own right.

22 But if Mr. Stoney was taking money from the
23 Boathouse putting it in Ellis Creek and then moving it to
24 a management company so that he could pocket those funds
25 that's an additional breach of fiduciary duty because it

1 goes to Mr. Stoney's ability to pay back the monies that
2 he was booking as a loan. And so if he received these
3 funds and elected not to repay then again that's an
4 additional breach.

5 Additionally, Your Honor, as Your Honor is well
6 aware under the Gamble factors of punitive damages the
7 defendant's ability to pay is also a relevant factor.
8 And we believe that the general ledger shows significant
9 funds and money leaving the Boathouse and going to this
10 other entity and this is these are the management
11 companies for that entity.

12 So that's why we believe requests number seven and
13 eight are relevant. And I don't know how you want to do
14 this Judge. It may make more sense to let Capers respond
15 as we go into each grouping or I can go through all the
16 different requests. How would Your Honor prefer?

17 THE COURT: For you to proceed.

18 MR. MCQUILLIN: Okay. All right. The next group
19 is any sworn financial statements signed by or to
20 defendants, meaning Crew Carolina and Richard Stoney from
21 January 1st, 2015 to the present.

22 MR. BARR: What's the number?

23 MR. MCQUILLIN: This is request for production
24 number nine. Again, Your Honor, this goes to number one,
25 the source of funds. So we've alleged that Richard

1 breached his fiduciary duties and he's admitted that he
2 robbed Peter to pay Paul. But if Richard Stoney had a
3 source of funds by which he could repay the monies he
4 took from the Boathouse that is an additional fiduciary
5 breach. And so his financial information, the financial
6 picture is relevant as to that.

7 It also is, this is a mechanism for us to cross-
8 check some of the other financial information that we
9 have. Just like in a personal injury case where you
10 obtain the medical records from the plaintiff or the
11 defendant and then you subpoena the hospital. This is
12 the same thing. We're cross-checking to see if what
13 we've received and what we've been previously told is
14 accurate. And finally again Your Honor this goes to the
15 punitive damages Gamble factor of ability to pay.

16 The next group is group three which deal with
17 requests for production numbers 11 and 12. Those
18 requests all deferred compensation, deferred payment, or
19 deferred award agreements or arrangements from January
20 1st, 2015 to present including any agreements with Martin
21 Sprock, all formation documents and governing documents,
22 i.e. operating agreements related to any interest in any
23 limited liability company limited general partnership or
24 trust. Again, Your Honor, this goes to defendant Richard
25 Stoney's ability whether he had funds on hand or whether

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1 he's deferred payments and his ability to pay it. If
2 Richard has set it up to where he gets deferred payments
3 in various entities, which we believe he has to try to,
4 so he doesn't get paid until after the trial that
5 obviously is relevant to this case.

6 And the reason we suspect that Judge is we've taken
7 several depositions in this case. And Richard's own
8 bookkeeper has testified that there are these S-square
9 entities for Stoney and Sprock that exist for various
10 restaurants in Mount Pleasant. And those do not show up
11 on Richard's personal tax return.

12 And so we have questions as to if there is a
13 deferred payment of money to avoid us finding about it.
14 Did Richard, and then again, did Richard actually have
15 money when he was robbing Peter to pay Paul to pay back
16 the money.

17 We also know that Richard's wholly owned company and
18 the defendant in this case Crew Carolina had wages of
19 400,000 dollars this year. And as far as we know that
20 company has two employees which is Mr. Stoney and Ms.
21 Stabler.

22 And so we're concerned that he may have used funds
23 there to support these other businesses. But again, the
24 primary thing is his tax return does not list those
25 entities to which folks have testified he is involved in.

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1 And so we believe that information is relevant as well.
2 Group number four is number 15 of the requests for
3 production. That request concerns all life insurance
4 policies under which the defendant is a beneficiary or
5 the insured.

6 Your Honor, this is in paragraph I believe four of
7 Don Hollerbach's affidavit. Yes, you can see there is a
8 blown up image on a check, of a check in the filed
9 affidavit. And it says North American Life Insurance
10 Company 18,095 dollars; Richard Stoney annual premium.

11 And that's a Boathouse check 18,000 dollars from the
12 restaurant to pay for Mr. Stoney's life insurance
13 premium. And we believe that is relevant. Ultimately at
14 the trial of this matter we would request that the
15 Boathouse at Breach Inlet be listed as a beneficiary on
16 that policy since its funds were used to procure the
17 policy.

18 Group number five is all mortgages, deeds and
19 appraisals for real estate owned directly or indirectly
20 either in whole or in part including but not limited to
21 101 Palm Boulevard, Isle of Palms, South Carolina,
22 documents evidencing the current amount of the mortgage
23 at 101 Palm Boulevard and any records of any property
24 owned by the defendant individually or single limited
25 liability company from January 1st, 2015 and provide any

1 documents that show whether the property has been sold,
2 transferred, listed for sale along with the listing price
3 of each property. And so that's request for production
4 number sixteen and request for production number eighteen
5 and number nineteen. 101 Palm Boulevard is the purported
6 owner of the property on which the Boathouse sits. And
7 the Boathouse pays 101 Palm Boulevard rent.

8 One of the things we've discovered in this case is
9 that when we began meeting with Mr. Barr around the time
10 we filed this lawsuit Mr. Stoney had conveyed his
11 personal individual interest in 101 Palm Boulevard to an
12 LLC after he knew the lawsuit was coming. And what's more
13 egregious Your Honor is on top of that he unilaterally
14 changed the Boathouse at Breach Inlet lease at 101 Palm
15 Boulevard.

16 He reduced it from a 20 year lease that existed
17 before this lawsuit and then the year we filed this
18 lawsuit he reduced it to approximately three years. And
19 in several months Your Honor that lease runs out which
20 was done for we suspect for leverage purposes. And so
21 any documents or information associated with 101 Palm
22 Boulevard is obviously relevant to this case.

23 Again, his other property and holdings we believe
24 that's relevant because it goes to the source of funds
25 that Richard had; property that wasn't mortgaged or the

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1 ability to pay back the money that he's classified as a
2 loan if he had the ability to pay and opted not to that's
3 another breach of fiduciary duty. And again, it goes to
4 the punitive damages, ability to pay factor in the Gamble
5 case.

6 Group number six is request for production number
7 22; all contracts entitling the defendants to payment of
8 money. Again, Your Honor, this is the same argument. It
9 goes to the source of funds. Did Richard have money and
10 simply elect not to pay the money back to the Boathouse
11 at Breach Inlet. If he did that is yet again another
12 breach of fiduciary duty.

13 Group number seven, which is the final grouping and
14 the final request, is request for production number 24.
15 In that request we're asking for documents demonstrating
16 the source of any payments made to law firms representing
17 defendants in regards to this case and appeals including
18 but not limited to Robinson Gray Stepp & Laffitte, LLC
19 Barr Unger McIntosh, LLC and/or Barnwell Whaley Patterson
20 and Helms, LLC including monthly bank statements from the
21 account on which the funds were drawn for a period of six
22 months preceding the payment.

23 The tax returns appear to show that the Boathouse
24 has been paying Richard Stoney's legal fees, Your Honor.
25 And additionally we just got with these production

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1 requests the general ledger for the Boathouse. And on
2 May 31st, 2019 general ledger entry 17940 there is a
3 payment Richard S. W. Stoney legal fees 1,800 dollars.
4 So the Boathouse in their own general ledger has been
5 paying Richard's personal legal fees.

6 And so Your Honor we believe that that information
7 is relevant as well to our breach of fiduciary duty case.
8 Thank you, Judge.

9 THE COURT: All right. Mr. Barr?

10 MR. BARR: Thank you, Your Honor. The basis of our
11 objection to these requests Judge is that its no -- it
12 comprises no more than a fishing expedition to identify
13 assets that would admittedly be relevant were this Court
14 to grant judgment in this case.

15 But, it's putting the cart before the horse to say
16 that the plaintiffs are entitled to obtain all of this
17 information before the Court has decided issues of
18 liability and damages. Would you permit me to ask
19 counsel one question?

20 THE COURT: Sure.

21 MR. BARR [to Mr. McQuillin]: What was the date of
22 the Hollerbach ---

23 MR. MCQUILLIN: --- January 20 ---

24 MR. BARR: --- that 14,000 dollars to what?

25 MR. MCQUILLIN: That particular transaction was

1 January 20 -- his affidavit was -- you want to know the
2 date of the transaction?

3 MR. BARR: Yes. That 14,000 dollars that you said
4 went from Boathouse to Ellis Creek. That was your first
5 that was under your first point; item seven.

6 MR. MCQUILLIN: He does not have the dates of when
7 that occurred in his affidavit. He just has it listed.
8 It was -- and I don't have the general ledger with me.

9 MR. BARR: And what is the date of the affidavit?

10 MR. MCQUILLIN: The affidavit was during the
11 pendency of this case; January 25th, 2017.

12 MR. BARR: 2017. So here's my point, Judge.
13 Several hearings ago my friend stood before Your Honor,
14 and I can't recall the context, but I remember him
15 distinctly saying Your Honor we don't need any more
16 discovery. We're ready to go to trial. We're ready to
17 go to trial.

18 After the appeal was dismissed we then get hit with
19 requests to produce documents in 26 categories. I don't
20 know if you have a copy of them in front of you.

21 THE COURT: I do.

22 MR. BARR: But for them to say that they've given
23 up on 10 or 11 of them is because so many of them were so
24 obviously just junk. I mean just so obviously it was
25 work being generated to this file. But so untimely with

1 respect to the status of the case and so inconsistent
2 with counsel's position that he doesn't need any more
3 discovery and he's ready to go to trial.

4 I've pondered whether to say this to Your Honor but
5 one of the things he's asking is how is Richard paying
6 his mortgage; and perhaps that a good question. And I
7 don't want to embarrass my client but the answer to that
8 is he's not paying it. I haven't been paid in years in
9 this case. And I'm not complaining nor am I bragging.
10 But I'm here to represent my client to the best of my
11 ability and my friend to the best of my ability.

12 And unlike the firm of Haynsworth Sinkler Boyd my
13 law firm consists of me and one legal assistant. Crew
14 Carolina, the company that manages all of this, consists
15 of Richard Stoney and one individual; a young lady whose
16 name is Jamie Stabler. And her job is to keep the books
17 for four restaurants that Richard is managing, plus
18 another restaurant that he's no longer related with,
19 related to.

20 So every time a request for production is put out by
21 this mega firm Haynsworth Sinkler Boyd and I get it and I
22 go through it with my assistant and Richard and Jamie
23 have to go through it and then we have to respond to it
24 that generates tons of hours that I suggest are
25 unnecessary. We just heard for example that Mr.

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1 Hollerbach's affidavit is dated 2017 therefore that
2 transaction involving the transfer, the supposed transfer
3 of funds from Crew Carolina to Ellis Creek; another
4 entity that Richard has started up over on Johns Island
5 [sic] obviously occurred before 2017.

6 Why are we waiting until 2019 after counsel says I'm
7 ready to go for trial to dump this on us? And the
8 operative word there is dump. The operative word is
9 dump. I have very rarely in my practice experienced the
10 phenomenon of practicing with lawyers who will dump
11 discovery on us until I got to this case.

12 And when I first sent a request for production to
13 Haynsworth Sinkler Boyd in this case I want to say that I
14 got 19,000 pages of documents; 19,000. I had set up my
15 request in articulated form. They just said here they
16 are; find them if you can.

17 And so I suggest respectfully and with respect to my
18 friend and to the Court that that's what we're faced with
19 right here. Haynsworth Sinkler Boyd and their client are
20 simply trying to overwhelm us with the strength of their
21 resources.

22 So, what does all this have to do with the question
23 of whether or not Richard Stoney is liable to the
24 corporate entity Boathouse at Breach Inlet? Mr.
25 Hollerbach's affidavit that has already been filed with

1 the Court puts out a lot of stuff. What more could
2 possibly be added to it? Now, I can go through all of
3 these things one by one.

4 The first category, which was item seven and eight,
5 involved the Ellis Creek Fish Camp. That is a restaurant
6 that Richard started up over on James Island across the
7 Ashley River. And I think there was a time when Crew may
8 have provided some management services to it but it was
9 way, way back.

10 And anything that they want to know about those
11 transactions they could have found in the books that
12 they've already gotten from Crew and that they have
13 already gotten from the Boathouse at Breach Inlet.
14 There's really nothing more there to discover.

15 Request number nine, which is category number two
16 for sworn financial statements from the defendants from
17 January the 1st, 2015. This case was filed in 2015,
18 Judge. And so for the first time ever we're arguing
19 about producing that five years later. If that's not, if
20 that's not a discovery abuse and a dump I don't know what
21 is.

22 The next one is, the next category they've put out
23 dealt with request number 11 and 12 deferred
24 compensation, deferred payment or deferred award
25 agreements from January 1, 2015 including any agreements

1 with Martin Sprock. And I might digress; Mr. Sprock is
2 one of Mr. Stoney's current partners in starting up new
3 restaurants. That's who he is. But once again they want
4 it from five years ago. Formation documents and
5 governing instruments relating to any interest any
6 limited liability company, etcetera, etcetera in which he
7 has a present or future interest. They wait for five
8 years, five years before bringing this to Your Honor's
9 attention. So that dealt with category three.

10 Category four; all life insurance policies under
11 which the defendant is the beneficiary. Once again,
12 we've been waiting for them to do something on this case
13 for five years and so the first time they lay that on us
14 is now five years later.

15 The next category, which was category five which
16 would deal with request numbers 16, 18, and 19, well
17 first of all mortgages and deeds are documents of public
18 record so they can get those off the public record just
19 as well as we could, and appraisals for the real estate
20 at 101 Palm Boulevard.

21 Well, what -- I can see where in a punitive damages
22 case that the value of that underlying property might be
23 germane, Judge. But my experience with most courts is
24 they defer issues of punitive damages until after
25 liability has been decided or at least they seal the

1 documents until some determination is made in that
2 respect. I don't mean to presume though, Your Honor in
3 that category. Eighteen is asking for documents
4 evidencing the current amount of mortgages. Once again
5 that's been around here a long time.

6 Nineteen, for each property owned by the defendant
7 individually or by a single member limited liability
8 company from January 1st, 2015 to date. Provide any
9 documents that show whether the property has been sold,
10 transferred, or listed for sale.

11 Once again, it's just me and my assistant and it's
12 Richard and his assistant who is split between a number
13 of entities, Judge and this is just dumping abuse on us
14 not quite on the eve of trial; we're got a trial date on
15 I think March 9th; it's not that far away. But that's I
16 think part of the underlying strategy that we're having
17 to deal with here. That was 16, 18, and 19.

18 And the next category was that dealt with request
19 number 22, all contracts entitling the defendants in the
20 payment of money. Come on. That's just; it's nothing
21 short of abuse.

22 And then finally documents demonstrating the sources
23 of any payments made to law firms. Well, I've already
24 answered one of those. And Gray Stepp, who is the lawyer
25 listed, lawyers who handled the appeal that was

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1 dismissed. I don't know where Barnwell Whaley Patterson
2 and Helms fits in. I'm not aware of what they've done in
3 the case.

4 So, as counsel said we responded to, I didn't count
5 them; he said five and I'll take his word for it, five of
6 them. We've settled some of them, he's withdrawn some of
7 them and we just think we need to be protected from the
8 abuse that's being thrown at us here at only two months
9 before trial. So thank you very much, Judge.

10 THE COURT: All right. Mr. Kefalos?

11 MR. KEFALOS: Your Honor, if I may observe that it
12 seems to me that these requests are more appropriate at
13 the subject of supplemental proceedings after a verdict.
14 And it's premature to go into that at this time
15 particularly with the amount of work that it requires.

16 THE COURT: All right.

17 MR. MCQUILLIN: Just briefly, Your Honor.

18 THE COURT: Yes, sir.

19 MR. MCQUILLIN: It's unfortunate that Mr. Barr
20 isn't being paid and I hear in there. But that doesn't
21 mean we shouldn't do a thorough job on discovery. This
22 is one of the most egregious breach of fiduciary duty
23 cases we've seen. And we believe based on our
24 accountant's affidavit Mr. Stoney converted more than
25 four and a half million dollars from the company. And so

1 if he thinks our discovery is thorough this is a big
2 case.

3 We have questions too about what has been produced.
4 Mr. Barr just got up here and said that Crew Carolina
5 only has two employees. Poor pitiful Crew Carolina.
6 Well, it's paying 400,000 dollars in wages and that's one
7 of our requests is to figure out where that information
8 is going.

9 Another request dealt with the tax return not
10 listing all of these entities that the bookkeeper said
11 Richard is a member of. His personal tax I think we're
12 entitled to discovery on those entities. The lease
13 agreement 101 Palm Boulevard we talked about that.
14 Richard reduced the lease term from 30 years to three
15 years the year we filed this case.

16 That being said Your Honor in the case of Samples v
17 Mitchell 329 S.C. 105 the Court of Appeals said that the
18 entire thrust of the discovery rules involves full and
19 fair disclosure. In South Carolina the scope of
20 discovery is very broad and an objection on relevance
21 grounds is likely to limit only the most excessive
22 discovery requests. Rule 26 SCRPC allows for broad
23 pretrial discovery.

24 Your Honor, we believe that this information is
25 directly relevant and will be, will lead to the

1 likelihood of admissible evidence. We believe based on
2 our claims and the information in our expert's affidavit
3 that this information is relevant.

4 And for example some of the requests like fees if
5 Richard hasn't paid Capers fees he can say Richard hasn't
6 paid my fees. But what we've got now is an objection and
7 we have no idea on that specific request. And so Your
8 Honor the discovery rules are very broad. We went
9 through the relevance of each of these requests, tied
10 them to specific pieces of information in Mr.
11 Hollerbach's affidavit and we would ask that the Court
12 order that they be produced before Mr. Stoney's
13 deposition. Thank you, Judge.

14 THE COURT: Before Mr. Stoney's deposition which is
15 set for when?

16 MR. MCQUILLIN: Mr. Stoney's deposition is set
17 for...

18 [Whereupon, Mr. McQuillin reviews documents]

19 MR. BARR: In February. Notwithstanding the
20 scheduling order we've agreed to do some discovery after
21 January 31st. And its February the 20...

22 MR. MCQUILLIN: 18th, 19th, and a half day on the
23 20th. And then our expert Don Hollerbach is getting
24 deposed on the 11th.

25 THE COURT: All right. Any response Mr. Barr?

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1 MR. BARR: A response Your Honor?

2 THE COURT: To Mr. McQuillin's last statements.

3 MR. BARR: Well, counsel is certainly correct that
4 relevance is not a proper objection to discovery. But
5 our position is this wouldn't even lead to relevant
6 evidence because he's looking -- he's trying to discover
7 assets.

8 As Mr. Kefalos said if we were in supplemental
9 proceedings that's fair game. But he's putting the cart
10 before the horse by trying to find the existence of
11 assets. It's just not relevant to the question of
12 liability and damages.

13 I did, and I used the word relevant but my point is
14 my point is that the existence of assets don't relate to
15 the question of whether or not Richard should be liable
16 to the corporation and for what sum.

17 THE COURT: Mr. Kefalos, any additional comments?

18 MR. KEFALOS: No, nothing Your Honor.

19 [Whereupon, the Court reviews documents]

20 THE COURT: We're going to take a break for a
21 couple of minutes.

22 [Whereupon, Court is in recess from 4:15 p.m. until
23 4:20 p.m.]

24 THE COURT: Please be seated. With regard to the
25 motion to compel I'm going to read the submissions, and

1 I'd like to have another copy -- the affidavit of the
2 expert is a matter of record, isn't it?

3 MR. MCQUILLIN: It is, Your Honor. But I have an
4 extra. I can leave you with a copy if you'd like me to.

5 THE COURT: I'd like to have a copy of that. I
6 will review everything and I will be in touch with one
7 side concerning drafting an order or I'll issue an order.

8 MR. MCQUILLIN: Thank you, Judge.

9 THE COURT: All right. And we'll move to the other
10 motion by Mr. Barr.

11 MR. BARR: Thank you very much, Judge. The second
12 issue Judge is a motion that we filed to dissociate
13 Laurence Stoney from the Boathouse and buy out his
14 membership interest at fair value of it.

15 A stockholder's derivative action is an equitable
16 action in its nature. Another form of equitable remedy
17 is afforded under the LLC statute itself, which provides
18 and this is cited in the motion, and I don't know if
19 you've got a copy of the motion.

20 THE COURT: Yes, I have it.

21 MR. BARR: But the code sections are cited on page
22 five of the motion itself. Section 33-44-601 parenthesis
23 6, small parenthesis III provides that a member is
24 dissociated from a limited liability company upon the
25 occurrence of the following: on application by the

1 company or another member the member's expulsion by
2 judicial determination because the member engaged in
3 conduct relating to the company's business which makes it
4 not reasonably practicable to carry on the business with
5 the member.

6 I don't view this as a fault finding ground, Judge.
7 It's sort of a broad incompatibility ground where a
8 member is disruptive to the operation of the LLC on
9 application the Court can order dissociation. And then
10 Code section 33-44-702, which is discussed right below
11 that on page five provides the methodology for that.

12 That would be after a hearing by the Court 702
13 provides that in an action brought to determine the fair
14 value of a distribution interest in a limited liability
15 company the Court shall determine the fair value of the
16 interest considered among other relevant evidence and so
17 forth and so forth.

18 So, the nature of this motion is such that for
19 example if the Court were to grant it today or within the
20 next few days the hearing on March the 9th could be a
21 hearing to determine the distributional interest and the
22 matter would be resolved in that fashion.

23 I don't presume Judge but I'm just suggesting that
24 that provides an avenue for a resolution of this case.
25 Now, I think it's quite important that what we ask Your

1 Honor is supported by 90 percent of the ownership
2 interests of this company. We've got Richard who owns 60
3 percent who is present; his brother Ted who owns 10
4 percent who is present. Also present the young man with
5 the beard is Richard Stoney, III who holds a five percent
6 interest in Trust held by Ted.

7 And the lovely young lady to his right is Croft
8 Stoney, Richard and Lori Stoney's daughter. Now, her
9 interest is a Trust interest and so in fairness I don't
10 believe her mother as trustee would consent to this. But
11 Croft is behind Richard in this case. She would, they
12 would all like to see it ended.

13 Ninety percent of the members would like to see this
14 lawsuit, this derivative lawsuit ended and the matter
15 resolved. It is literally, this is literally, Your
16 Honor, a case of the tail wagging the dog where we have a
17 five percent member, Laurence Stoney, purporting to upset
18 this company over his five percent distributional
19 interest.

20 And I might say I believe young Richard had to leave
21 if you will allow him to do so.

22 THE COURT: Yes, sir.

23 [Whereupon, Mr. Richard Stoney, III exits the
24 courtroom]

25 MR. BARR: And you might remember Judge that the

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1 only asset the LLC owns is this restaurant. It opened in
2 1997. Richard Stoney and the plaintiff Laurence Stoney
3 are first cousins. You might remember I think it was Ted
4 Stoney who testified at the hearing we had on the
5 standing issue that Richard and Ted, I mean Richard and
6 Laurence never really got along.

7 There was a lot of jealousy from Laurence to
8 Richard. I think the testimony as I recall was Laurence
9 had lived out of the State for a while and he ran into
10 some hard times. He came back into town. Things were
11 homogenous there for a while between the cousins. And it
12 was during that period that Laurence invested in these
13 companies.

14 And I use the plural because you might remember
15 Laurence invested in not only this business on Breach
16 Inlet but to the extent that my friend likes to beat this
17 drum you know about robbing Peter to pay Paul, Paul being
18 these other restaurants.

19 Well, Laurence also was the investor in one of those
20 who supposedly benefitted from Peter's money. But we're
21 not here for Laurence to talk about that. All we hear
22 Laurence talk about is the distributions he's missing.
23 So, they have a history of discord and jealousy.

24 Now, in the early years of this LLC there were
25 distributions made. It was formed, the restaurant

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1 started in '97. It's located in a beautiful spot right
2 on Breach Inlet on Isle of Palms so it's not surprising
3 that a seafood restaurant would do well there.

4 And it did very well until, and still is doing very
5 well, but Richard opened up these other Boathouse
6 restaurants including the Boathouse at East Bay which
7 failed but of which Laurence was also a member who
8 benefitted. He was one of the Peter's who benefited from
9 the Paul's that Mr. McQuillin likes to beat the drum
10 about.

11 And I think -- my memory is around about 2010 the
12 regular distributions tapered down. And Laurence started
13 complaining. And the testimony as I remember it from the
14 hearing before you is Laurence that his concept or frame
15 was where's the money? Where's my money? Where's my
16 money?

17 This suit was filed over four years ago in October
18 of 2015. Now when Laurence filed this lawsuit he didn't
19 call Ted and say Ted I'm about to sue the Boathouse to
20 get us our distributions. He didn't even call Lori,
21 well, I don't know if he called Lori or not.

22 I think he probably did call Lori, the ex-wife. She
23 denies that and he denies it but we'll have to see what
24 happens if we have to go to trial on that issue. He
25 didn't call Greg Holmes the non-Stoney member. He filed

1 a lawsuit alleging that he was representing all the
2 members in this derivative case.

3 Well, Ted said I don't agree with that and filed a
4 motion to intervene. And Greg Holmes, the non-Stoney
5 member, filed a motion to intervene. So Laurence amended
6 his complaint. He said oh, I'm only representing members
7 similarly situated and you're not similarly situated.
8 And for the longest time that included Lori Stoney.

9 And then suddenly Ted decides, I mean Laurence
10 decides well Lori and I are not similarly situated and
11 the reason is because to the extent that Richard was
12 living, that his income was from the Boathouse at Breach
13 Inlet for the longest time he was married to Lori. So to
14 the extent that Laurence is accusing Richard of being
15 paid from Breach Inlet Lori benefited from that as well.

16 So, finally he boils himself down to a class of one.
17 And he testified before Your Honor, if you'll forgive me
18 for turning my back, he testified before Your Honor at
19 the bifurcated hearing as to why he is a class of one.

20 And I said to him, this is on page 104 beginning at
21 line 13 of the transcript of that hearing, I asked him:
22 Now is it correct that what makes you a class of one is
23 that everybody got distributions when you did not. His
24 answer was: They enjoyed distributions in one form or
25 another and I did not. Question: And you did not. So

1 the distinction in the classes has to do with
2 distributions, isn't that correct. Mr. McQuillen tried
3 to intervene and Your Honor said: All right. You may
4 proceed.

5 So next question at the top of page 105: So the
6 factual distinction between you and the rest of them is
7 they got distributions and you didn't, isn't that right.
8 Answer: That is my stance, yes. This case is now and
9 has always been about Laurence Stoney's distributions.
10 Period. That's all it's about.

11 So, notwithstanding this drum beat about robbing
12 Peter to pay Paul and the allegation that four million
13 dollars is missing or owed back; not missing but owed
14 back to the Boathouse 90 percent of the members
15 acquiesced to that and condoned it.

16 Ninety percent of the members don't want this
17 derivative case to proceed in the current stance. So the
18 only complaints that we hear come from Richard's
19 disgruntled cousin and from his former wife. This cries
20 out for an equitable solution other than a nuclear
21 option, Judge Newman.

22 THE COURT: What would be the nuclear option?

23 MR. BARR: The nuclear option would be in the event
24 that Your Honor were to find that Richard Stoney is
25 liable to this company for four million dollars that is a

1 nuclear option. Theoretically, if Richard had four
2 million dollars I suppose he would write a check to the
3 Boathouse for four million dollars.

4 Ninety percent of them would say Richard, we agree
5 with what you were doing; they would rebate 90 percent of
6 it to him. There would be some attorney's fees paid,
7 which is why it is a derivative case I think is because
8 Laurence get's his attorney fees paid which are maybe
9 half million dollars by now.

10 And Laurence would if there were a distribution from
11 it he would end up with five percent of it. And so the
12 nuclear option is to hit Richard while he's down because
13 everybody knows he doesn't have four million dollars.

14 And so the ultimate result of this nuclear option
15 would probably be the abject failure of this restaurant
16 simply because if for example they were to try to take
17 his 60 percent ownership and the land under it and
18 Richard goes away the secret to the success of this
19 restaurant, Judge, in addition to its location is Richard
20 Stoney because even Laurence Stoney begrudgingly admitted
21 that Richard's artistic talents are great.

22 And I don't know if you remember but at the trial we
23 had some photographs of the interior because Laurence had
24 said it was a run-down place. It is a beautiful place.
25 It is very well-appointed. It is wide and it continues

1 to be successful. So that would be the nuclear option.
2 There is a middle ground option that we are now
3 presenting in the form of this motion.

4 Laurence if you might recall Judge testified against
5 Richard and in favor of his ex-wife Lori at their divorce
6 hearing. You might recall that Laurence who was a member
7 of the Boathouse at East Bay when they were really in
8 trouble and in jeopardy of losing the property Richard
9 and Teddy were negotiating, because it was leased, were
10 negotiating with the owner to buy it.

11 And Laurence without telling them goes around their
12 backs and tries to buy it out from under him. Now, even
13 if there were, even if Richard had four million dollars
14 and this case were resolved by putting it back in the
15 coffers and we go back to business can we honestly
16 believe that this LLC could continue to rock along in the
17 future with that further polluted relationship between
18 Laurence Stoney and the LLC and its members.

19 The statute, the statute says a member is maybe
20 disassociated from an LLC by court order where the Court
21 finds that he is engaged in conduct relating to the
22 company's business which make it not reasonably
23 practicable to carry on the business with the other
24 member. And so that's where we sit. That's exactly
25 where we sit. And it's a prospective standard which make

1 it not reasonably practicable to carry on the business.
2 So the question is is it practicable to think that the
3 business can carry on; meaning in the future with that
4 relationship. We're not asking to cut him out because
5 the statute gives an equitable remedy, which in under 702
6 which is the formula for the buy-out.

7 This case, the existence of this case has stressed
8 management, caused expense to the members. I have some
9 exhibits here if I may hand them up, Judge. This is a
10 set for you and I'll ask the court reporter to mark them.
11 These are all, these are all -- I'm going to stop talking
12 while the court reporter marks it.

13 [Whereupon, Defendant's exhibit number 1 is marked
14 by the court reporter]

15 MR. BARR: These are documents that are already in
16 the record in this case. The first one is Croft's
17 affidavit, which would simply confirm what I've
18 represented and that is Croft does not support this
19 lawsuit.

20 And what I've done Judge you'll see that first page
21 is not stamped but the last page shows the pleading to
22 which it was appended. I think they're all stapled
23 separately. So Croft's affidavit simply reflects that.
24 Behind Croft's affidavit is Ted's affidavit. And also
25 the last page of that shows the pleading to which it was

1 appended as a part of the record in this case. But if
2 you'll flip behind Ted's affidavit there there is a
3 newspaper article that is appended to his affidavit.

4 When this lawsuit was filed there was a prominent
5 story in the business section of the Post Courier,
6 lawsuit alleges Charleston County restaurant owner
7 diverted at least 3.8 million dollars. Judge, that's not
8 good for this business. That's not good for the
9 relationship between the members.

10 That's not good, that does not support the
11 contention that to paraphrase section 33-44-601 it cannot
12 be expected that this business can reasonably be carried
13 on practicably in light of the disharmony that is created
14 by Laurence's dislike for his cousin. And then the final
15 affidavit is the affidavit of Greg Holmes which also
16 appends that same newspaper article.

17 So, this presents us with a formula. Laurence
18 Stoney can be made whole with a buy-out. The statute
19 requires the buy-out to be at fair value. It involves,
20 it would involve appraisals. Somewhere in there would
21 have to be factored the attorney fees that he has
22 incurred in this case I'm sure.

23 But it charts a middle course that could allow the
24 restaurant to continue to succeed. It could allow
25 Laurence Stoney to be made whole and could end the

1 disharmony because with all respect to who caused it,
2 without respect to who shot John; so we got a John and
3 Peter and Paul now.

4 So without respect to who shot John whether its
5 Richard's fault or whether it's Laurence's fault Laurence
6 is the five percent member and we have a mechanism under
7 the statute to dissociate him. And I think its manifest
8 that it is not reasonably practicable to conclude that
9 this business can be carried on in the future.

10 That's what the statute is talking about, carried on
11 in the future given that disharmony, given those acts of
12 Laurence to testify at Richard's divorce hearing against
13 him. Of going behind his back on East Bay, and I suppose
14 filing this lawsuit but that's just a part of it. He's
15 just a thorn in the side of the business and we have an
16 authority to make him whole and make them go their
17 separate ways.

18 So, that's the relief we seek. If Your Honor were
19 to grant it March 9th could be a hearing to determine the
20 fair value of Laurence's ---

21 THE COURT: --- do you have precedent for the
22 granting of such a motion to dissociate a member of an
23 LLC? Any place in the country?

24 MR. BARR: Yes sir, I do. I do. There are no
25 South Carolina cases. There are cases in New Jersey,

1 there are cases in New Jersey and cases in -- I can make
2 copies of these and I can give you the cite. There is a
3 case of IE Test, LLC v Carroll, and that is C-A-R-R-O-L-
4 L, which is 226 New Jersey 166, 140 Atlantic 3d 1268 a
5 2016 decision of the Supreme Court of New Jersey.

6 And it's a fairly complex case but they dealt with
7 what they refer to as subsection 3(c) of their LLC code
8 which is -- ours is a model code and the language is
9 identical. The language that we cite in our motion,
10 Judge from section 601 there that you and I were reading
11 is identical to the language that they cite in this New
12 Jersey case.

13 And they say we construe subsection 3(c), their act
14 which authorized the expulsion of an LLC member by
15 judicial determination based on the member's quote
16 conduct relating to the LLC which makes it not reasonably
17 practicable to carry on the business with the member as a
18 member of the LLC close quotes. And that's the same
19 verbiage as our statute uses ---

20 THE COURT: --- what did the member do in that
21 case?

22 [Whereupon, Mr. Barr reviews documents]

23 MR. BARR: The member in that case was another LLC.
24 And they had -- let me make sure I don't get my cases, my
25 facts confused; it's not coming readily to my mind.

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1 [Whereupon, Mr. Barr reviews documents]

2 THE COURT: And how egregious the conduct was that
3 would cause that.

4 MR. BARR: Well again, I don't think the conduct
5 has to be egregious in the sense of misconduct; that's my
6 point. This is a no-fault circumstance you see. If the
7 parties just don't get along and therefore the management
8 of the LLC in the future -- what is the word -- so that
9 if the business cannot reasonably and it is not
10 reasonably practicable for it to be carried on with the
11 other member then dissociation is the solution. It's
12 almost like I would say a no-fault divorce.

13 Now, I'm sure Judge that the conduct must be more
14 than slight. The friction between the member and the LLC
15 other members must be more than slight. I'm sure it has
16 to be significant but if you'd like I'll do some more
17 briefing on that and ---

18 THE COURT: --- if you would ---

19 MR. BARR: --- and supplement these arguments with
20 that.

21 THE COURT: If you can scan and email me those
22 cases ---

23 MR. BARR: --- right. The second case is cited in
24 the New Jersey case; it's a Colorado case. But I will
25 send those to you and I'll send them to counsel as well.

1 THE COURT: Okay. All right. Mr. Kefalos?

2 MR. KEFALOS: Thank you, Your Honor. I represent
3 the interveners in the case and the interveners join in
4 the motion to dissociate. This is a court of equity.
5 And the Court will look to fashion an equitable solution.
6 When the Court considers the plaintiff's conduct
7 historically the best solution is a disassociation.

8 You asked Mr. Barr what's the nuclear option. From
9 the interveners standpoint the nuclear option is that the
10 restaurant would go out of business. Without Richard
11 Stoney, if a judgment is given against Richard Stoney his
12 interest in the restaurant would be foreclosed, the
13 restaurant will go under, the lease will be lost.

14 The way to avoid that is the dissociation. Remember
15 that when one considers the equities Laurence Stoney is a
16 man who was benefitting from the scheme that he now
17 complains of for years because he was a member of one of
18 the other LLCs that was getting money from Crew Carolina
19 that was attributable perhaps to Breach Inlet but didn't
20 do anything about it and waited almost seven years to
21 bring an action.

22 In other words he got his money knowing about what
23 had happened and then brings an action. He has a five
24 percent interest in what Mr. Barr talked about the dog --
25 the tail wagging the dog. He's got a five percent

1 interest and he claims that there is four million dollars
2 that has been diverted. The most, the most he can claim
3 in that four million dollars is five percent or 200,000.
4 I am advised that he has spent over 600,000 dollars in
5 attorney fees just pursuing the case to this point. And
6 it doesn't make sense to allow that kind of economic
7 injustice to take place.

8 The best, the most reasonable, the equitable
9 solution is to say let's dissociate these people, let's
10 pay Mr. Laurence Stoney his fair value, the fair value of
11 his interest, and let the business with the 90 percent of
12 the other stockholders who are comfortable with the way
13 it has been handled move forward.

14 THE COURT: All right. Mr. McQuillin?

15 MR. MCQUILLIN: Thank you, Judge. While Mr. Barr
16 was discussing that case we were actually able to pull it
17 up. So while it is fresh in everyone's mind this idea of
18 not reasonably practicable to carry on business is
19 pretty, it means what it says. In the case of the New
20 Jersey case IE Test, LLC v Carroll ---

21 THE COURT: --- can you just email those to me?

22 MR. MCQUILLIN: Sure. That the members could not
23 agree on an operating agreement and because they couldn't
24 agree on an operating agreement they couldn't get a line
25 of credit and could not operate the business. That's

1 what not reasonably practicable to carry on the business
2 means ---

3 THE COURT: --- that was by necessity pretty much.

4 MR. MCQUILLIN: It was by necessity. And what Mr.
5 Barr said in his arguments to Your Honor is the Boathouse
6 is quote still doing very well. It continues to be
7 successful. It continues to succeed. The Boathouse --
8 they talked about the pictures they showed. The
9 Boathouse looks great. And so the Boathouse can continue
10 doing business.

11 Now, Your Honor, this feels like déjà vu from when
12 we were back here in December. We spent a lot of time
13 briefing the issue. We filed a brief that addresses the
14 vast majority if not all of the issues raised on December
15 12th, 2018 which we respectfully incorporate here by
16 reference. That was the memorandum in support of
17 plaintiff's motion for a hearing on Laurence Stoney's
18 standing.

19 These are the exact arguments that were raised and
20 this Court issued a preliminary ruling on in December.
21 We've also filed a brief memorandum for Your Honor to
22 consider and so I'm going to make my comments today
23 brief.

24 Your Honor, opposing counsel is correct. We did
25 amend our pleadings in this case as facts came out in

1 discovery. Laurence Stoney is a minority member of this
2 company. As you know he owns a five percent interest.
3 And yes he is on behalf of the company maintaining this
4 derivative lawsuit.

5 And we know that Richard finds this lawsuit
6 inconvenient. And to use Caper's word disruptive. There
7 is no question about that. But, Your Honor, the
8 legislator created the statutory right to maintain
9 derivative actions precisely for situations like this
10 where minority members of the company recognize that
11 controlling majorities are engaging in corporate looting.

12 And that statutory authority is 33-44-1101. A
13 member of a limited liability company may maintain an
14 action in the right of the company if the members or
15 managers, in this case Mr. Stoney, having authority to do
16 so have refused to commence the action or an effort to
17 cause those members or managers to commence the action is
18 not likely to succeed.

19 And we did. We met with Mr. Barr and Mr. Stoney
20 several times prior to this lawsuit, for four or five
21 meetings to see if we could resolve the issue. We even
22 did a pre-suit mediation.

23 Your Honor, all Laurence Stoney is doing in this
24 case is exercising his statutory right to see that the
25 company is not being defrauded and that the money taken

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1 from the company is repaid to the company. Mr. Barr, and
2 we've argued this plenty before Your Honor, Mr. Barr says
3 this case is all about distributions. We don't seek any
4 distributions in our complaint. The primary and ultimate
5 object of our complaint is that Richard Stoney return the
6 money that he took from the company. Period. We're not
7 seeking to have him removed as a manager and we're not
8 seeking distributions.

9 There is no way -- and Your Honor you asked about
10 authority to Mr. Barr. I would point you to our brief
11 that we filed. The United States Supreme Court in 500
12 U.S. 90 -- yeah, 500 U.S. 90 the case of Kamen v Kemper
13 said that if a member, a minority member can't bring a
14 derivative action it would render use the notion of a --
15 render useless the notion of a derivative action which
16 exists specifically to quote permit individual
17 shareholders a means to protect the interest of the
18 company from misfeasance or malfeasance of faithless
19 directors and managers. That's the United States Supreme
20 Court.

21 We've also got several other cases cited in our
22 brief that say to prohibit a minority member from
23 bringing a derivative action the Court would be condoning
24 corporate looting and malfeasance. That's a Utah Supreme
25 Court case. I've also got a Texas Supreme Court case

1 that says we question the wisdom of preventing a
2 shareholder in closed corporations from enforcing his
3 rights. Such an interpretation could deprive the
4 corporation of any remedy it might have against the
5 wrongs done by the major shareholders.

6 Your Honor, there is no way the defendants in good
7 conscience can ask this Court to expel Laurence Stoney in
8 equity when their client Richard Stoney has admitted to
9 robbing Peter to pay Paul and Laurence Stoney is merely
10 exercising his statutory right to protect the company.

11 In other words ensuring that Paul, or in this case
12 the Boathouse, is repaid. And as you're aware Judge the
13 defendants have attempted previously to classify your
14 orders as final orders in this case or a final order on
15 the merits so that they might appeal the ruling.

16 So we would respectfully request that to the extent
17 Your Honor is inclined to deny the motion that you
18 preliminarily deny the motion or reserve the right to
19 render a final decision in the trial on the merits in
20 March. Thank you, Judge.

21 THE COURT: Mr. Barr?

22 MR. BARR: Hopefully my response will be very brief
23 because nothing that counsel can say and no facts can
24 dispute the fact that the tail is wagging the dog in this
25 case. Ninety percent of the members do not support this

1 action. And there is a mechanism that we've now laid out
2 that would allow Laurence Stoney to be fairly compensated
3 for his interest. And, and I think the operative
4 language of the statute addresses this friction going
5 forward as I said. \

6 Is it reasonably practicable for this business to
7 continue with Laurence as a five percent member and
8 Richard as a 60 percent member going forward? It simply
9 cannot be done. The tail should not wag the dog. The
10 equitable remedy should prevail because as everybody
11 agrees we are seeking equity.

12 And to the extent that counsel says that my client
13 comes into the Court with unclean hands what about
14 Laurence's actions of going behind Richard's back trying
15 to buy out East Bay from him? That's certainly unclean
16 hands on behalf of Laurence Stoney. I don't know that I
17 could characterize his testifying in the divorce case
18 against Richard as necessarily unclean hands but it
19 surely lacks good faith and fair dealing.

20 I don't disagree that there is no fiduciary duty
21 owed by Laurence to the LLC or its members. But it
22 certainly ought to be fair. It certainly ought to be
23 fair. Thank you, Judge. We hope you'll grant this ---

24 THE COURT: --- yes sir ---

25 MR. BARR: --- and let us handle the price of it in

1 March.

2 THE COURT: Mr. Kefalos, anything else?

3 MR. KEFALOS: Nothing, Your Honor.

4 THE COURT: Anything else?

5 MR. MCQUILLIN: No, Your Honor.

6 THE COURT: Mr. Barr, do you believe the arguments
7 that you've made and the few references you've made as
8 provided to the Court is sufficient basis to grant your
9 relief? Or is that one of the things that should be
10 considered at a final hearing?

11 MR. BARR: I can answer that two ways. Yes, I
12 think we've given you an adequate record and a basis to
13 grant the relief today, which is to say the language of
14 the statute and the case that I cited and the facts that
15 I presented from the record that already exist.

16 So I think yes, I think I've given the Court enough
17 today. The second answer though as to looking forward I
18 think that whether we brought it up today or not I think
19 that dissociation is an equitable remedy that the Court
20 would have available to it at a trial on the merits.

21 I'd like to avoid that time and expense by having it
22 acted on here and now but I hope I answered Your Honor's
23 question.

24 THE COURT: The only reason I asked the question is
25 in the pursuit of discovery Mr. McQuillin says he's

1 trying to ascertain assets whether proper accounting of
2 assets, whether assets from here is being diverted there
3 etcetera.

4 Then in your argument and well to a lesser degree
5 Mr. Kefalas but in your argument you said that Mr. Stoney
6 doesn't have the financial resources to -- that you said
7 if he took four million dollars he doesn't have the
8 resources to put it back in and other similar comments
9 that I am supposed to take as being a fact or must the
10 facts be developed?

11 MR. BARR: I think those were, I don't know how --
12 I don't know that that representation I made about Mr.
13 Stoney's financial abilities I did not intend for that to
14 constitute hard evidence, Judge. I think it's probably
15 true but I know I can't make anything true that Your
16 Honor has to have evidence of that.

17 So if Your Honor thinks that's an important issue
18 then there probably should be evidence of it I guess. I
19 would question how that might be relevant to the issues
20 in the pleadings.

21 THE COURT: Well, a lot of things are intertwined
22 and ---

23 MR. BARR: --- yes ---

24 THE COURT: --- I don't know ---

25 MR. BARR: --- yes sir ---

1 THE COURT: --- I'm just listening to your
2 arguments and giving you my reactions.

3 MR. BARR: Right. And I -- the -- that was in the
4 context of the nuclear option question, Judge; I remember
5 that now. And so that's -- in the form of a nuclear
6 option that would be the nuclear option, a nuclear option
7 but that would be a nuclear option.

8 So that was my context of responding to how it's a
9 nuclear option. Whether it's relevant to the ultimate
10 issues that Your Honor has to decide I'm not sure. And I
11 don't know that it being nuclear or non-nuclear is maybe
12 that important.

13 But my point is that we're here involved in a case
14 where we know there are two extremes, at least two
15 extremes; one is what I refer to as the nuclear option, a
16 slam bam judgment against Richard Stoney and the
17 bankruptcy and causes all of this disaster.

18 Or, I'm sorry, on the other end of the book end or
19 the bookcase is well Mr. Laurence Stoney you didn't prove
20 your case and I'm not going to grant the relief you seek
21 in this derivative case assuming the nuclear option did
22 not result in the dissolution of this company.

23 And certainly if you denied the plaintiff's relief
24 that would not result in the dissolution of this company.
25 Either option leaves Laurence Stoney as a five percent

1 member and the rest of the membership as 90 percent
2 members. And once again I think it's clear, it is so
3 clear that the language of the statute is prospective.

4 I'm pretty sure that that New Jersey case even
5 pointed that out that what the Courts look to is the
6 prospective relationship between the parties because the
7 language statute talks in terms of going forward. It
8 uses those words. I'm sorry I can't find my copy of it;
9 I'm terribly disarrayed here.

10 [Whereupon, Mr. Barr reviews documents]

11 MR. BARR: And what I'm talking about is the
12 resuscitation, the language of the statute. Oh, I did
13 find it. So yeah, so engaged in conduct relating to the
14 company's business which make it not reasonably
15 practicable to carry on the business.

16 So, it's not relating to what happened in the past.
17 Now what happened in the past informs the Court's
18 determination of whether they can carry on the business
19 practicably.

20 So, that's what I'm saying. Whether you invoke the
21 nuclear option and lay a huge judgment on Richard or
22 whether you deny relief to Laurence I suggest it is not
23 reasonably practicable to carry on the business with
24 Laurence Stoney based on what we've put up; based on what
25 you heard in the other hearings. And the beauty of it is

1 there is an equitable remedy that makes Laurence Stoney
2 whole and it's in the statute itself. It sounds sinister
3 when you say disassociate, dissociate, but it doesn't
4 require any finding of misconduct you see.

5 It's purely factual based on what I've heard. Is
6 this company going to be able to go forward with this guy
7 as a member? And I think the answer to that is no.
8 Something has to happen with him.

9 THE COURT: You mention the word remedy so are you
10 in effect asking the Court to fashion a remedy without
11 establishing a right?

12 MR. BARR: No, not at all. The ---

13 THE COURT: --- typically you have to ---

14 MR. BARR: --- the right is statutory.

15 THE COURT: The right is ---

16 MR. BARR: --- the right is statutory.

17 Dissociation may be judicially ordered if the Court finds
18 that it's not reasonably practicable to carry on the
19 business with this member. That's the remedy.

20 THE COURT: It's a right and a remedy.

21 MR. BARR: That's the right, well that's the right.
22 The remedy is in 702 which is the buy-out. That's the
23 remedy. So it doesn't just kick him out. It's very,
24 very equitably constructed.

25 THE COURT: All right. What do you say about it

1 Mr. McQuillin?

2 MR. MCQUILLIN: A couple of questions, Your Honor.
3 We're talking about equity. The first question is is it
4 equitable for a manager who is accused of looting the
5 company to be able to kick out a minority member as soon
6 as he brings a lawsuit against him.

7 The answer to that is no. And the cases we've cited
8 in our brief suggest just that. To permit a manager or a
9 majority of the members to expel a minority member for
10 bringing a lawsuit for wrongs committed against the
11 company would defeat the entire purpose of the derivative
12 action, which the legislature allows.

13 The second question Your Honor is how is someone
14 paying four and a half million dollars back to the
15 company a nuclear option? That sounds like a great thing
16 to Laurence Stoney and it should sound like a great thing
17 to the rest of the members.

18 The third question is I think and based on what I
19 heard the third point I'd like to make is that I think
20 Mr. Barr gave us some pretty good arguments in support of
21 our motion to compel that deal with Mr. Stoney's assets.

22 He said when talking about the so-called nuclear
23 option where we asked Richard to pay back four and a half
24 million to the company he said quote everybody knows
25 Richard does not have four and a half million dollars.

1 Well, we don't know that because they objected to 22
2 of our 26 requests. He also referenced the fact that
3 Richard would have to file bankruptcy if we got a
4 judgment. Well, we don't know that because he refuses to
5 provide us with any information as to Mr. Stoney's
6 assets.

7 And so, Your Honor, to tie this all up we think it
8 would be entirely inequitable and would defeat the
9 purpose of a derivative action to expel Mr. Stoney. And
10 we believe that Mr. Barr's statements would compel the
11 discovery of the information that we've sought in this
12 case.

13 THE COURT: All right. I'll take this one under
14 advisement as well.

15 MR. BARR: Thank you, Judge. I'll send you those
16 cases.

17 THE COURT: Yes, sir. Any other submissions you
18 want to make in writing based on what was argued today
19 I'd be happy to review it.

20 MR. BARR: Thank you.

21 THE COURT: All right. Thank you all.

22 MR. BARR: Thank you, Your Honor.

23 MR. KEFALOS: Have a good one.

24 THE COURT: Okay.

25 MR. MCQUILLIN: Here's our paper copy of that

The Boathouse at Breach Inlet, LLC v Richard S. W. Stoney, et al
Plaintiff's Motion to Compel & Defendant's Motion to Dissociate
January 16, 2020

1 affidavit and these are the leases dealing with 101 Palm
2 Boulevard that we asked a lot of questions about.

3 [Whereupon, Mr. McQuillin provides documents to the
4 Court]

5 MR. MCQUILLIN: Thank you.

6 *****END OF TRANSCRIPT OF RECORD*****
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth 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 Charleston County, South
Carolina on the 16th day of January, 2020.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

November 27, 2020

Joyce C. Rueger, CVR-M
Court Reporter



Deposition of:
Trial Testimony

March 9, 2020

In the Matter of:
**The Boathouse At Breach Inlet, LLC
Vs. Stoney, Richard S.W., et al.**

A. William Roberts, Jr & Assoc.
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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

THE BOATHOUSE AT BREACH INLET, LLC, by and
through its Member, LAURANCE O. STONEY, JR.,

Plaintiff,

vs. CASE NO. 2015-CP-10-5463

RICHARD S.W. STONEY, Individually and as
Member-Manager of THE BOATHOUSE AT BREACH
INLET, LLC and CREW CAROLINA, LLC,

Defendant.

THEODORE STONEY, JR., Individually and as Trustee
for Richard Stoney, Jr., and Gregory G. Holmes,
Third-Party Intervenors.

DATE: March 9, 2020
TIME: 12:40 p.m.
LOCATION: 100 Broad Street
Charleston, SC 29401

REPORTED BY: Roxanne Easterwood, RPR
A. WILLIAM ROBERTS, JR., & ASSOCIATES
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19 Honorable Judge Clifton Newman
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P R O C E E D I N G S

* * * * *

THE COURT: We have made it up to 1:04,
and we have the court reporter in place. Both the
parties have agreed to share the costs of a
private court reporter today. We've got the
documents completed except for the portion that is
required for the court reporter to indicate the
page rate that she is to charge. I think we
passed up the court reporter manual, which you
have seen; is that right?

COURT REPORTER: Yes, sir.

THE COURT: So we're now at lunchtime,
1:00 o'clock, and we need to get the page rate.
So my suggestion is we take 45 minutes for lunch,
and then be ready to go at 1:45. Does that suit
y'all's schedule?

MR. BARR: Yes, sir.

MR. GILLIAM: Yes, sir.

THE COURT: Unfortunately, half a day
is wasted, but at least we can get going. We'll
stay as late as we need to to accommodate for
witnesses who may be unavailable after today.

We'll be in break. I need the
information from the court reporter to send to

1 court administration. If there is no indication,
2 then whatever the normal page rate that you all
3 are accustomed to paying for transcripts is what
4 we will put on here, and if there is some premium
5 rate for last-minute services, then that can be
6 addressed separately, but I think the parties need
7 to know what the costs are going to be in
8 retaining a court reporter.

9 We'll be at ease until 1:45, and
10 we'll, hopefully -- we'll have her call in, rather
11 than waiting on emails, and we'll stay here and
12 deal with that and scan and email for court
13 approval. We'll stand in recess.

14 (A recess was taken.)

15 THE COURT: Parties ready?

16 MR. BARR: Yes, Your Honor.

17 MR. MCQUILLIN: Yes, Your Honor. We
18 have filed a motion in limine, and there were two
19 preliminary matters raised by the parties. One
20 was your motion in limine and supplemental motion
21 in limine. Defendants in their pretrial briefs
22 said there were no evidentiary issues at the time,
23 and we dealt with the issue of Ms. Stabler. We're
24 going to get through her today. We have reached
25 agreement on that. I don't know if Your Honor

1 wants to hear.

2 MR. BARR: Can we consult just a
3 minute?

4 THE COURT: Yes.

5 MR. BARR: We are discussing the
6 timing.

7 THE COURT: All right.

8 MR. MCQUILLIN: Your Honor, I think
9 Mr. Barr suggested that we deal with the motion in
10 limine tomorrow as it primarily relates to the
11 witness that will go tomorrow. As long as you're
12 telling me that's what your cross is going to
13 be -- your cross is going to be limited to.

14 MR. BARR: The motion in limine
15 relates, Your Honor, if you have had a chance to
16 read it, to limiting the examination on this side
17 of the case from bringing -- from going back over
18 the matters in the first -- in the standing
19 hearing that we had. None of the witnesses set up
20 today testified in the standing hearing.

21 THE COURT: That's correct.

22 MR. BARR: So that was my logic. But
23 I'm not going to agree to limit anything in terms
24 of examination of them, but I don't have anything
25 in mind.

1 MR. MCQUILLIN: That's fine. If Your
2 Honor prefers, we can deal with the motion in
3 limine tomorrow or we can deal with it now.

4 MR. BARR: We're limited in time today.

5 THE COURT: Of course the motion in
6 limine presupposes that I remember everything that
7 I have heard in this case over the past couple of
8 years.

9 MR. MCQUILLIN: I understand. I guess
10 our -- we would be willing to stipulate the prior
11 records and exhibits come in, but if Your Honor
12 wants to hear it, that's fine. We can address it
13 tomorrow morning if you would like.

14 THE COURT: That would be fine.

15 MR. MCQUILLIN: Your Honor, may it
16 please the Court?

17 THE COURT: Yes, sir.

18 MR. MCQUILLIN: My name is Mac
19 McQuillin, and along with Tyler Gilliam we
20 represent The Boathouse At Breach Inlet through
21 its member Laurance Stoney, who is a minority
22 member of The Boathouse. This case is primarily
23 about Richard Stoney, the manager of The
24 Boathouse, siphoning in excess of \$4 million to
25 himself and a company known as Crew Carolina.

1 Richard Stoney is the -- Crew Carolina
2 is a single member LLC that is owned by -- wholly
3 owned by defendant Richard Stoney. The
4 \$4 million that was taken from the company, it's
5 undisputed that it was used by Mr. Stoney for
6 personal matters and unrelated entities owned by
7 him. Mr. Stoney and his bookkeepers all have
8 referred to this practice as robbing Peter to pay
9 Paul.

10 Some examples that you will hear about
11 today include Mr. Stoney using company funds to
12 travel to Belgium, the Bahamas, and Key West on
13 personal travel unrelated to the company. You
14 will hear that Mr. Stoney used company funds to
15 support his expensive polo horse hobby, and you
16 will hear that he used funds to work on his
17 plantation. Mr. Stoney --

18 THE COURT: To work on his what?

19 MR. MCQUILLIN: His plantation,
20 Kensington. Richard Stoney's steps to benefit
21 himself at the expense of The Boathouse have and
22 continues to cause the company harm. You will
23 hear as a direct result of Richard Stoney's
24 actions The Boathouse's had cash flow issues and
25 it was not able -- as a result it had to pay fines

1 and penalties, overdraft charges. It was not able
2 to pay its taxes. It was not able to make
3 payroll. It was not able to pay vendors.

4 Richard Stoney's practice of robbing
5 Peter to pay Paul has continued through this
6 litigation. You'll hear testimony as recent as
7 May 2019 Mr. Stoney used The Boathouse funds for
8 personal matters.

9 In addition, to Richard Stoney's
10 practice of robbing Peter to pay Paul, he also
11 took other steps to benefit himself at the expense
12 of The Boathouse. For instance, Your Honor, you
13 will hear that Richard Stoney, who owns the land
14 where The Boathouse sits, unilaterally and
15 secretly terminated a beneficial lease that gave
16 The Boathouse six five-year options to renew the
17 lease. So the original lease went from -- went
18 until December 31st, 2035. In 2015, when Mr.
19 Stoney became aware of threats of this litigation,
20 he replaced the beneficial lease with a lease that
21 ends in April of 2020, next month, which allows
22 Mr. Stoney to terminate the lease for The
23 Boathouse.

24 Because this is a clear breach of
25 fiduciary duty, one of the requests that we'll be

1 making to Your Honor is that you declare an equity
2 that the current lease is void. Further, Your
3 Honor, Mr. Stoney caused The Boathouse to guaranty
4 personal loans, one of which was in excess of
5 \$1.7 million. Richard Stoney also caused The
6 Boathouse to sign a confession of judgment in the
7 amount of \$1.8 million with regard to his personal
8 loan.

9 The facts that I've just gone through,
10 Your Honor, are primarily undisputed, and you'll
11 see that. You will see that in the defendant's
12 pretrial brief. The facts in this case are really
13 not in dispute. The one person that disputes the
14 facts in this case is defendant Richard Stoney.
15 And he testified, and he said that his practice of
16 taking funds from The Boathouse for personal use
17 is permitted under a purported operating agreement
18 for the company, because, to use his words, the
19 operating agreement gives him great latitude.

20 Mr. Stoney is wrong for several
21 reasons. First, as the manager of The Boathouse
22 and in a manager-managed LLC, Mr. Stoney owes to
23 the company and its members the fiduciary duty of
24 loyalty and the obligation of good faith and fair
25 dealing. Secondly, Your Honor, the operating

1 agreement that Mr. Stoney relies on is an
2 operating agreement that is not signed by all of
3 the members of the company. It's not agreed to by
4 all of the members of the company. Thus there is
5 no operating agreement. So the default rules of
6 the LLC statute would govern. However, even
7 assuming that there was an operating agreement,
8 the LLC statute specifically says: "An operating
9 agreement may not." One of those things is:
10 "Eliminate the duty of loyalty for the obligation
11 of good faith and fair dealing." And we've
12 included that law and briefed those items in our
13 pretrial brief.

14 What is the duty of loyalty? How has
15 it been defined by courts? We have cited some
16 courses of authority in our pretrial brief, but
17 I'll quote one here. Quote: The duty of loyalty
18 includes the duty to avoid self-dealing in which a
19 manager obtains personal profit through an LLC
20 transaction or appropriates LLC property for his
21 or her learn personal use, the duty not to usurp
22 LLC opportunities for his or her benefit and to
23 hold as trustee the profit and property of the
24 company. Richard's undisputed actions clearly
25 breached the duty of loyalty and the obligation of

1 good faith and fair dealing.

2 Realizing that this is an issue for
3 him, his fallback argument is that -- or the claim
4 that this court rejected at the first phase of the
5 trial, he claims that he does not owe the funds
6 back to the company because the company is time
7 barred under the statute of limitations. Your
8 Honor, as set forth in our supplemental motion in
9 limine, the McDuffie case, 324 S.C. 297, held that
10 the statute of limitations does not apply to a
11 derivative action. A derivative action is one
12 exclusively in equity regardless of whether there
13 are claims that are of a legal nature.

14 And so, number one, the statute of
15 limitations doesn't apply. Therefore, the only
16 thing that would apply is the issue of laches.
17 And we've already litigated that at the first
18 phase of this trial, but I will make two points on
19 laches. Number one, he who seeks equity must do
20 it, and Richard Stoney has unclean hands. Thus he
21 cannot rely on this equitable defense. And
22 particularly, Judge, you'll hear evidence that
23 Mr. Stoney said, trust me, I'm family, why would I
24 do this to you, and that my client, Mr. Laurance
25 Stoney, reasonably relied on the assurances of the

1 manager as a fiduciary.

2 Secondly, laches requires proof of
3 material prejudice. And Richard Stoney's argument
4 on material prejudice is interesting. He
5 basically says had you sued me earlier, I may be
6 able to stop stealing sooner. But Your Honor, the
7 evidence will show in this case that Mr. Stoney
8 continued to take money from The Boathouse during
9 this litigation, as recently as May of 2019.

10 Because the Court has already ruled on
11 this preliminary issue and the hurdles on laches
12 and statute of limitation, Mr. Stoney's next
13 fallback is the business judgment rule. He says I
14 was allowed to take money from the company and use
15 it personally because of the business judgment
16 rule. This also fails as a matter of law. I draw
17 Your Honor's attention to Kuznik versus Bees
18 Ferry, 342 S.C. 578. The court states that: The
19 well-established law that the business judgment
20 rule does not apply to self-dealing, fraud, or
21 other unconscionable conduct. It is undisputed
22 that Richard Stoney took steps to benefit himself
23 at the expense of The Boathouse. That is per se
24 self-dealing, and therefore the business judgment
25 rule does not apply.

1 One of the other claims we're seeking,
2 Your Honor, is for disproportionate distributions.
3 Richard Stoney would make distributions to the
4 chosen members, his good friend Gregory Homes and
5 another new member named Michael Cox. And these
6 -- the LLC statute says that a manager of an LLC
7 that makes disproportionate distributions is
8 personally liable for those. What I mean by
9 disproportionate distribution is one member gets a
10 distribution and when there are other members that
11 have ownership interest, they didn't get anything
12 those years. For example, Laurance Stoney and all
13 of the other members, to my knowledge, received a
14 K1 that showed that they got a distribution and
15 they paid taxes on it, phantom income, but they
16 never got a distribution, when Richard's good
17 friend Gregory Homes was continuing to get
18 distributions.

19 In the pretrial brief of defendants
20 they argued that there is a statutory bar on
21 disproportionate distributions of two years.
22 However, they're wrong on the law there. In the
23 JK Harris & Company, LLC case 512 B.R. 562, the
24 court in that case allowed recovery of
25 disproportionate distributions from 2004 to 2012.

1 Meaning that under their interpretation of
2 disproportionate distributions, after two years
3 nobody could recover, but the discovery rule
4 applies. It's when you find out about those
5 distributions you have two years to bring a claim.
6 It's not just a two-year absolute bar.

7 Our next claim, Your Honor, is
8 piercing the corporate veil of Crew Carolina, LLC.
9 And as Your Honor is well aware, there are eight
10 factors that the Court considers, as well as the
11 fundamental fairness under the Sturkey test. You
12 will hear evidence that Crew Carolina is a single
13 member LLC solely owned by Richard Stoney. That
14 LLC has no corporate documents. It has no meeting
15 minutes and no operating agreement. Crew
16 Carolina, LLC is insolvent. It has no real assets
17 and owes The Boathouse in excess of \$4 million.
18 In fact, Your Honor, it has not had a bank account
19 for years. Funds were commingled when it did have
20 a bank account.

21 As you will see, Your Honor, Richard
22 Stoney siphoned funds from Crew Carolina like it
23 was an incorporated ATM machine. Crew Carolina
24 was merely a facade for the operations of Richard
25 Stoney. And the most important factor on the Crew

1 Carolina and whether we should pierce the
2 corporate veil, Judge, is Richard Stoney admitted
3 in his family court litigation, he said: Crew
4 Carolina, as you know is basically my alter ego.
5 Those are his words. So, Your Honor, it is
6 fundamentally unfair and the corporate veil in
7 this case is not pierced, but an individual should
8 not be able to hide behind the normal consequences
9 of his actions doing so through a corporate shell.

10 Finally, Your Honor, one of the things
11 that we're seeking in this case is punitive
12 damages. This is -- I handle LLC businesses,
13 divorce cases, and this is one of the most
14 egregious breaches of fiduciary communications I
15 have ever seen. Punitive damages are supported --
16 and this is a quote from the Jordan versus Holt
17 case, 362 S.C. 201. The court in that case
18 allowed punitive damages when a manager, quote,
19 used LLC monies for payment of personal debt and
20 obligations, self-dealing, and selling and
21 transferring LLC property without the knowledge
22 and consent of the LLC and then pocketing the
23 monies. We have those facts here in this case.

24 Finally, Your Honor, the derivative
25 action statute. All of this money, by the way,

1 Judge, we are seeking not to have repaid to
2 Laurance Stoney. All of this money and the
3 judgment we would ask you to enter is a judgment
4 against Richard Stoney on behalf of the company so
5 that these funds can be returned to the company.

6 The LLC statute on derivative actions,
7 though, does provide for recovery of reasonable
8 attorneys' fees, including attorneys' fees and
9 costs. I mentioned that in my pretrial brief,
10 Your Honor. I didn't know when you wanted to deal
11 with that in the event that we are successful,
12 whether by after the trial, second trial, by
13 motion. I guess we could wait to see how this
14 thing shakes out and deal with that issue, unless
15 Your Honor would prefer that we present that
16 evidence at this hearing.

17 As you will hear today, the amount of
18 money that we're seeking to recover in this case
19 is approximately \$4.9 million. That does not
20 include attorneys' fees and costs, and that does
21 not include any punitive damages. This case is a
22 five-year-old case, and Your Honor has lived with
23 it with us, and we are glad to finally be here
24 today and this week to have some justice rendered.
25 Thank you, Judge.

1 THE COURT: Okay. Mr. Barr.

2 MR. BARR: Thank you, Your Honor. May
3 it please the Court?

4 THE COURT: Yes, sir.

5 MR. BARR: It is, indeed, a great
6 relief to everybody, I think, to be here after
7 five years and see some light at the end of the
8 tunnel that we have been driving through here for
9 this many -- this length of time. You might
10 recall, Judge, early on I suggested to you that
11 this is essentially a family dispute. The
12 protagonists are Laurance Stoney and his first
13 cousin Richard.

14 Apropos of nothing, I have known the
15 Stoney family for maybe 50 years, at least the
16 ones that have been practicing law here in
17 Charleston. By coincidence, our grandfathers on
18 both sides, both Richard's grandfather and
19 Laurance's grandfather and my grandfather, were
20 lawyers who graduated from the University of South
21 Carolina School of Law together in 1911. That's
22 apropos of nothing, except that I have come to
23 know the Stoneys as an old -- and you might
24 remember in a conference call one time, Your Honor
25 mentioned that you had been in a museum or

1 something and ran across a reference to Stoney
2 Landing, which I think is on the east fork or it's
3 on the Cooper River.

4 THE COURT: It's in Berkeley County.

5 MR. BARR: Berkeley County, correct.
6 Correct. That's where their roots are. In fact,
7 I remember their grandfathers in the yearbook that
8 I still have from my grandfather. His home was
9 Pinopolis, which is outside of Moncks Corner.

10 THE COURT: Wampee Plantation.

11 MR. BARR: Correct. I think that's
12 right, where the Santee Cooper place is, exactly.
13 And having known them in this way, I know that
14 they are a proud family. Some perhaps would
15 characterize pride as being the equivalent of
16 stubborn, but they're a proud family. But as we
17 know in life, sometimes pride can lead to
18 irrationality, such as in this case where -- when
19 he gets on the stand we'll develop it completely,
20 I suppose.

21 Laurance Stoney has paid, I will
22 wager, over \$500,000 to prosecute his cousin
23 Richard, whom you might recall he professed love
24 to I think in this very courtroom on the trial --
25 on the stand -- to vindicate his 5 percent

1 membership interest.

2 We're hoping, Your Honor, at the end
3 of the evidence you will find that the most
4 equitable resolution of this dilemma will be to
5 order a buyout of Laurance Stoney's interest plus
6 fees at a reasonable rate, not what he actually
7 paid, but at a reasonable rate, because no other
8 member of this LLC supports this case. Laurance,
9 as you may recall, is a class of one. He stands
10 as one. There are -- I don't have the count right
11 in my head right now. I have to write their names
12 down, but there may be six or seven members. The
13 only member bringing this case is Laurance as a
14 class of one. He has support from no one.

15 I will caveat that maybe he might have
16 the support from Richard's ex-wife Lori, and I
17 don't mean to diminish that, but Richard and Lori
18 are engaged in some bitter, unfortunately,
19 domestic litigation. I wouldn't expect her to
20 support this, but nobody supports it. Also
21 because -- again, the because is relating to why
22 the equitable solution of an equitable buyout
23 makes sense. In his own words, Laurance testified
24 when he testified against Richard in their divorce
25 hearing that he was made to feel like the

1 redheaded stepchild. And at every turn in this
2 case, as you will hear, Laurance has discarded any
3 sense of loyalty to the LLC or to his cousins.

4 You will hear testimony that in a
5 related company when the company of which he was a
6 member was trying to buy the land that it was
7 leasing in jeopardy of being -- the lease being
8 terminated, Laurance went privately behind the
9 back of the manager, Richard, and tried to buy the
10 land out from under him. You'll hear testimony
11 that Laurance poor-mouthed food vendors --
12 bad-mouthed, I'm sorry, bad-mouthed The Boathouse
13 At Breach Inlet, criticizing their credit
14 reputation while he was a member of the LLC.

15 I've often been struck by the fact
16 that courthouse cases are heard in the sterile
17 light of a courtroom sort of like a surgical
18 suite, when really they unfold out there on the
19 ground somewhere in far different circumstances.
20 This case probably began -- it began earlier than
21 this, but Richard Stoney, as you may remember, is
22 a lawyer, and he was practicing law. I think he
23 started practicing in about 1979, and had while he
24 -- was in college, he had run a small restaurant
25 and bar and was attracted to the hospitality

1 profession. In 1997, after practicing since '79,
2 Richard became inspired to perhaps change his
3 career field and get into the hospitality
4 industry, which had always interested him, and
5 after consultation, research, he took the leap and
6 at considerable personal risk, Richard Stoney
7 signed a lease on the land where this restaurant
8 is on Isle of Palms in 1976, and he borrowed about
9 a half a million dollars secured by second
10 mortgages and lines of credit on his home -- he
11 was then living on Sullivan's Island -- to
12 jump-start it.

13 Even Laurance Stoney, as embittered as
14 they are now, even Laurance compliments Richard on
15 his creative and artistic talents, and they are
16 significant. If you have never been to The
17 Boathouse At Breach Inlet, perhaps after this case
18 you ought to call on it. It's really a neat
19 place. It's well done. Laurance even admits
20 that. But Richard had done his due diligence, as
21 he will tell you, and he had formulated a plan.
22 It wasn't just to open The Boathouse at Breach
23 Inlet; his plan, his concept after consultations
24 and after study and research and inspired, as he
25 will tell you, by another chain of restaurants

1 that he had seen on the West Coast, he conceived
2 of a business plan that would create a style of
3 restaurants that were somewhat unique, a brand as
4 it were, and that brand became The Boathouse
5 Restaurant, and the first one, at great financial
6 risk to Richard, was The Boathouse at Breach
7 Inlet. And it was very successful, almost
8 immediately was very successful for two reasons, I
9 would suggest. One is where it is. It is
10 literally at the inlet. You sit in this
11 restaurant, and you're looking at the Intracoastal
12 Waterway on one side and Breach Inlet on the
13 other. It's a gorgeous spot. But the other thing
14 that made it an instant success was the creative
15 work that Richard put into the design of the
16 place. It attracts people. It also presented a
17 unique menu, offering -- and I won't dive into the
18 details of that.

19 But the business plan that Richard
20 formulated of creating different branded
21 restaurants, different boathouse restaurants, also
22 included the creation of a management entity, and
23 that is to say a central management point, at
24 which all of the accounting, all of the
25 bookkeeping, all of the personnel stuff, all of

1 the payroll, all of that would be consolidated in
2 one place, and this management company would have
3 the ability to shift managers from restaurant to
4 restaurant, shift servers from restaurant to
5 restaurant, cooks, chefs, wait persons, as were
6 needed depending upon other locations, and the
7 singular advantage of this, of this centralized
8 management, is it created potential for saving
9 huge costs to every restaurant, because their
10 overhead would be substantially diminished.

11 Richard didn't invent this. He did
12 not invent this as a business plan. But it was
13 one that he developed after study and
14 consultation. That's what kicked off The
15 Boathouse at Breach Inlet.

16 So he created the management company,
17 which my friend refers to rather cynically as
18 Richard's personal ATM. Well, the name of the
19 management company is the defendant, Crew
20 Carolina, LLC, who is also one of my clients, one
21 of the parties defending this case. But he also
22 developed numerous other restaurants. There was a
23 The Boathouse created here in the city of
24 Charleston, The Boathouse on East Bay. Laurance
25 Stoney himself is a member -- was a member of The

1 Boathouse at East Bay. He created The Boathouse
2 Restaurant on Ellis Creek, which is over on James
3 Island. He created a Boathouse Restaurant in Lake
4 Julian, North Carolina outside of Asheville. He
5 created a The Boathouse -- he also took over an
6 existing restaurant under the same management
7 concept called Carolinas, which was at the foot of
8 Broad Street on Exchange Street, and he created
9 another restaurant in Knoxville, Tennessee. He
10 formed a catering company called Bluewater
11 Management and had a catering kitchen so that the
12 ability of this organization could prepare and
13 sell food that was facilitated through the
14 catering company. They had prepackaged foodstuffs
15 that were put on the shelves of local grocery
16 stores.

17 And another advantage I didn't mention
18 about the centralized management is the huge
19 savings in food costs, because if you take six
20 restaurants purchasing through one entity, a
21 quantity of food, a substantially greater quantity
22 of food than one restaurant purchasing for itself,
23 you're going to get better deals on food prices.
24 So that's a part of the whole concept of saving
25 substantial -- substantially to every restaurant.

1 And counsel and his client cynically
2 argue, well, how did this benefit us. That's how
3 it benefits us. Had it succeeded -- it didn't
4 succeed. That's why we're here. Had it succeeded
5 we wouldn't be here, but it didn't. Like many
6 business ventures, well intentioned, carefully
7 planned, it simply didn't succeed. And we'll talk
8 about it in a little bit.

9 So this consolidation of management
10 and accounting included a concept that was also an
11 accepted concept where all of the deposits from
12 these various banks were put into one central
13 account. It was managed by the management
14 company, and the management company accounted for
15 the business of each different entity and paid
16 expenses. So if there were -- you know, if there
17 was 600 pounds of shrimp bought but they were
18 distributed among three restaurants, that cost
19 would be divided among those three at that
20 particular -- that's a simplistic explanation, but
21 the -- so that the revenues were put into this one
22 account at Crew Carolina, and the expenses were
23 paid and were carefully accounted for.

24 Even the expert accounting witness for
25 Laurance Stoney will tell you that the \$4 million

1 that they are claiming from Richard, that's pulled
2 right off of the books kept by Richard's company
3 itself. That wasn't anything that they had to go
4 digging into and to discover and hide. Now,
5 Mr. Hollerbach, the accountant, may point out some
6 discrepancies, but he will tell you that it --
7 that nothing was concealed. Everything on the
8 books of The Boathouse at Breach Inlet was open
9 and obvious. It was right there for them simply
10 to read.

11 The advantage of this consolidation
12 was significant. This was Richard's business
13 plan. And counsel argues cynically about the
14 business judgment rule, but that's what it's all
15 about, the business judgment rule. Everybody,
16 most importantly, Your Honor, everybody,
17 including, particularly including Laurance Stoney,
18 knew about this plan. They knew about it from the
19 very, very beginning in 19 -- well, I think,
20 actually, chronologically The Boathouse at East
21 Bay -- I mean at Breach Inlet was opened in '97,
22 and Crew Carolina and the second Boathouse on East
23 Bay Street were opened around the early part of
24 1999, a year or so after The Boathouse at Breach
25 Inlet. But from '99 on everybody, including

1 Laurance Stoney, knew about this plan by his own
2 admission. He knew about it since 1999.

3 Laurance Stoney is going to tell us
4 that he suspected, suspected Richard was robbing
5 Peter to pay Paul as early as 1999, and he's going
6 to tell you -- he's going to admit to Your Honor
7 that he sat on his hands. He said: I was just
8 being a good guy because this was my cousin; it's
9 all family; I had better things to do; I was going
10 through a divorce. He knew about it since 1999.

11 Now, whether we're talking about the statute of
12 limitations or whether we're talking about laches,
13 that is a long, long period of time to sit on your
14 hands. And the only time that Laurance started
15 complaining was when his distributions stopped or
16 slacked off.

17 I won't go into the great details of
18 why, but the various entities failed for reasons
19 that I would characterize as, quite frankly,
20 catastrophic, not the least of which was the
21 economic recession in 2007, '8, '9, whenever it
22 was. But there was some other tragedies,
23 including the murder of a manager in the
24 restaurant by an armed robber and others that
25 we'll describe. So at the end of the day the

1 other entities did fail. So at the end of the
2 day, to the extent that under this management
3 scheme the more successful restaurants were
4 carrying the lesser successful ones, then a
5 liability would remain owing to Breach Inlet,
6 which was the most successful one.

7 Under the business plan, though, I
8 don't think anyone can argue that, if, in fact,
9 equilibrium had been reached -- and I use the term
10 equilibrium to describe that state where all of
11 the entities had been self-sustaining and
12 profitable, which happens -- with equilibrium
13 reach, that would be the perfect state of affairs,
14 but not all occurs perfectly in business. Not all
15 occurs perfectly in life.

16 We're here because the result was that
17 Laurance Stoney's share of the distributions were
18 disproportionate from the others, which by his own
19 testimony puts him in a class of his own.
20 Admittedly, Your Honor, there is evidence that
21 Richard Stoney drew monies for his personal use.
22 You will hear testimony about that, but you will
23 also hear testimony that that singular liability
24 has been substantially reduced today. The vast
25 sum of the \$4 million that counsel is talking

1 about and that showed up on the books of Breach
2 Inlet, the vast amount was apportioned out among
3 these other various related entities, which,
4 sadly, all failed, but it was a business plan
5 implemented with full knowledge of everybody in
6 absolute good faith. It was a sustainable one.
7 However, it simply did not succeed.

8 I'm not going to argue the statute of
9 limitations at this stage because I think it's
10 premature. I think that comes at the end of the
11 case after the evidence has been heard. I think
12 there are valuable arguments in support of the
13 applicability of the statute of limitations at
14 least to some of the causes of action in this
15 case.

16 Nor will I argue laches yet, because
17 that argument can better be presented, Your Honor,
18 after the testimony is in and after it is in
19 contextually so that counsel on both sides and The
20 Court can process those arguments in the light of
21 what has just been presented.

22 I sit down, however, somewhat as I
23 began by suggesting that at the end of the day the
24 equitable resolution of this case is to pay
25 Laurance Stoney the fair value of his interest and

1 let him go on about his life and let the company
2 go on its life, because by any measure it is not
3 reasonably practicable that this business can
4 continue as long as Laurance Stoney is a member.
5 Thank you very much, Your Honor.

6 THE COURT: All right. Thank you.
7 Just one question to you, Mr. Barr.

8 MR. BARR: Yes, sir.

9 THE COURT: What is the value of
10 Mr. Stoney's interest.

11 MR. BARR: His voting interest is
12 60 percent. His distributive interest is
13 55 percent.

14 THE COURT: You don't have a dollar
15 figure on him?

16 MR. MCQUILLIN: Yes. I think he's
17 confused. He's asking you what the value --
18 you're asking The Court to order a buyout of
19 Laurance. He's asking what the value of Laurance
20 Stoney is.

21 MR. BARR: You mean the dollar value?

22 THE COURT: Yes.

23 MR. BARR: I don't think we can say
24 that now. I can't tell you that now, Your Honor.
25 Under the disassociation statute, if a court

1 orders disassociation, then there is a separate
2 process for determining what the fair value is
3 under the LLC Act.

4 That's a great question. I'm sorry I
5 misunderstood. So an order of dissociation would
6 then entail the engagement of accountants. We
7 could probably agree on a neutral accountant. The
8 Court could appoint one, or we could have a panel
9 of accounting arbitrators to decide what is fair
10 value. The statute provides a procedure for it.

11 MR. MCQUILLIN: This is just a
12 reminder, Your Honor. This is the issue that we
13 raised and had a hearing on that you recently
14 denied two, three weeks ago.

15 MR. BARR: Preliminarily.

16 THE COURT: Let's take a few minutes,
17 and then we'll start with witnesses. The first
18 witness will be?

19 MR. MCQUILLIN: Don Hollerbach, our
20 forensic accountant.

21 THE COURT: We'll take about five
22 minutes and then we'll start back.

23 (A recess was taken.)

24 THE COURT: All right.

25 MR. MCQUILLIN: Your Honor, at this

1 time we call Don Hollerbach to the stand.

2 THE COURT: All right, Mr. Hollerbach.

3 DON HOLLERBACH, CPA

4 being first duly sworn, testified as follows:

5 CLERK: For the record, state your
6 full name and spell your last name.

7 THE WITNESS: My name is Don M.
8 Michael, H-O-L-L-E-R-B-A-C-H.

9 DIRECT EXAMINATION

10 BY MR. MCQUILLIN:

11 Q. Mr. Hollerbach, please tell the judge
12 what you do for a living.

13 A. Currently I am a member at the firm of
14 Baldwin & Associates.

15 Q. Is that here in Mount Pleasant?

16 A. Yes, it is. It's a public accounting
17 firm. We deal normally with taxes, accounting.
18 We do forensic and litigation work as well.

19 Q. Mr. Hollerbach, let's walk The Court
20 through your CPA. First, why don't you tell us
21 about all of the acronyms you have at the end of
22 your name?

23 A. Well, CPA stands for Certified Public
24 Accountant. I think that's pretty
25 self-explanatory. You have to go to a certain

1 amount of schooling to do that. You have to sit
2 for a pretty extensive CPA exam. When I took it
3 you couldn't use a calculator; all you had was a
4 pad of paper and a pencil, and it was a
5 two-and-a-half-day exam. And it was at the
6 Carolina Fairgrounds, and it was hot and dusty,
7 and it was a long two and a half days.

8 CFF is a certification by the AICPA,
9 which is the professional organization that I
10 belong to. It stands for Certified in Financial
11 Forensics.

12 Q. What are the requirements to be
13 certified in financial forensics or CFF?

14 A. The CFF requires, number one, that you
15 be a CPA. The second thing that it requires is
16 that you have a certain amount of knowledge and
17 education and in the area of financial statements
18 and forensics. There is an exam involved. Has to
19 be 1000 hours of forensic experience within the
20 previous five years, and then you have to maintain
21 your membership to maintain that particular
22 designation.

23 Q. All right. What are some of the other
24 acronyms behind your name besides CPA and CFF?

25 A. CFE stands for Certified Fraud

1 Examiner. I belong to the Association of
2 Certified Fraud Examiners. That requires not
3 necessarily to be a CPA, but that you pass certain
4 educational requirements plus a four-part exam
5 that deals with certain rules of law, accounting,
6 fraud-type topics, to include investigation
7 techniques, as well as certain types of fraud that
8 you might need to be aware of while you're doing
9 any kind of examination.

10 FCPA is about the same as the CFE.
11 It's the same type of requirements.

12 CVA is a Certified Valuation Analyst.
13 I'm allowed under that designation to perform
14 business evaluations for a variety of purposes:
15 buy/sell agreements, matrimonial litigation to
16 determine basically the value of businesses,
17 business interest and that type of thing.

18 And the CGMA is a Global Management
19 Accountant designation that has to do with having
20 experience in providing management accounting
21 expertise for companies, individuals, entities.
22 It's more or less along the lines of management-
23 and financial-type operations so that you can help
24 them streamline and also report correctly.

25 Q. Thank you. You've had an interesting

1 career as both a pilot and as a CPA. Can you tell
2 the judge a little bit about your experience and
3 background, please?

4 A. Well, I started out, I graduated --
5 I'm not from here. I grew up out west. When I
6 say out west, it's where the cowboys actually
7 still ride the range. I grew up in Montana and
8 Utah and Colorado, South Dakota. I eventually
9 went to school at the Air Force Academy. I
10 majored -- they did not have business there. They
11 did have some management courses, but it was
12 primarily engineering math, and I was also in a
13 track called Life and Behavioral Sciences, which
14 was a premed track.

15 I got my first flying experience
16 there. I like to tell people I started out with
17 no engines. They didn't think I needed an engine,
18 so I started out on sail planes and gliders. Then
19 they gave me one engine, and I got to fly that and
20 get qualified in that. I went to pilot training
21 in Del Rio, Texas. Got my wings. Went to further
22 training in Altus, Oklahoma, where I flew C-141s.
23 Came to Charleston. Stayed in Charleston.

24 I did seven and a half years active
25 duty, two and a half years in the reserves and

1 separated from the reserves. In the meantime, I
2 was hired by Piedmont Airlines, whereupon I became
3 a commercial airline pilot as well. I upgraded to
4 captain at my first opportunity after two years,
5 and through a series of mergers and acquisition
6 and everything else -- I started out with Piedmont
7 and ended with U.S. Air. Ended up with the
8 mergers U.S. Air and America West, and ended up
9 with a merger of U.S. Air and America Airlines,
10 whereupon I retired after about 35 years with the
11 airlines.

12 Q. Tell us about when you were doing your
13 pilot training, what were you doing on the CPA
14 side of things?

15 A. Well, partway through the pilot thing
16 I said I need to challenge myself. So I went back
17 to school. I took the nontraditional route. Went
18 back to College of Charleston. Did all of the
19 undergraduate courses and all of the courses that
20 are required to sit for the CPA exam. Sat for the
21 CPA exam. I was fortunate enough, one of the few
22 that actually passed it on the first attempt, and
23 after that went to work at Hyland, Ruddy &
24 Garbett, which is -- which still is a CPA firm in
25 Mount Pleasant, South Carolina.

1 Q. How long ago did you pass the CPA
2 exam?

3 A. I'm sorry?

4 Q. How long ago did you pass the CPA?

5 A. How long ago?

6 Q. Yes. How many years?

7 A. I passed it in 1992, became a CPA in
8 September of 1996 after I completed four years of
9 my experience requirements plus 400 hours of
10 auditing experience. I worked at Hyland, Ruddy &
11 Garbett, primarily in tax. I also managed audits
12 of companies, one of the biggest ones back then
13 was Banks Construction Company, which is a paving
14 company. I also managed audits for the City of
15 Charleston; Town of Mount Pleasant, which was my
16 primary focus; Isle of Palms Water Company; City
17 of North Charleston; certain nonprofits; and
18 obviously, other commercial enterprises that
19 require audits, which is an assurance service.

20 Q. Anything else from the experience
21 section of your CV that you would like to discuss
22 with The Court?

23 A. Well, along the way here I studied and
24 received the certifications that I went through,
25 and with my audit background and also my

1 background in aviation, I have a pretty
2 disciplined approach to things. So I was
3 contacted on a lot of occasions to go into
4 companies and look at books, look at transactions,
5 look at behaviors of the employees just in case if
6 somebody had some concern. Like, for example,
7 some assets went missing that the cash didn't
8 balance, the financial statements didn't match
9 what was actually happening in the bank. And I
10 have been retained on a number of engagements,
11 many of them are not litigation engagements. Many
12 of them are we think something is wrong, can you
13 tell us, do you see anything.

14 And so my job is to go in and test and
15 investigate and in certain circumstances actually
16 interview people to determine the depth, breadth
17 of any particular problems, then I report back to
18 the people that have engaged me. A lot of times
19 it's management. I have done it for governments.
20 I did a forensic engagement for The Attorney
21 General's Office on a securities fraud case.

22 I think people are probably aware of
23 the Capital Investment Fund case -- it was in the
24 upper part of the state -- that resulted in
25 prosecutions there. I've done investigative

1 forensic work, much of which was used in the
2 prosecution of the St. Paul's Fire District case
3 that resulted in prosecution. So I have done a
4 lot of different cases for a lot of different
5 reasons and not all of them are litigation.

6 Q. All right. Sir, tell us again what
7 your professional qualifications are.

8 A. I'm a certified public accountant.
9 I'm certified as a forensic financial forensics
10 specialist under the ASCPA, a certified fraud
11 examiner, a forensic certified public accountant,
12 certified valuation analyst, and also certified in
13 global management accounting.

14 Q. All right, sir. What organizations
15 are you a member of?

16 A. If you're talking professional
17 organizations, I'm a member of the AICPA. I'm a
18 member of the ACFE, which is the fraud examiners
19 group. The CFF is an arm of the AICPA, but I'm a
20 member of that practice group. I'm a member of
21 the National Association of Certified Valuators
22 and Analysts, and in that particular organization
23 I was actually on the national grading team that
24 helped grade the national case studies for people
25 seeking the designation to also include the IRS.

1 So I actually graded their final projects to
2 determine if they met the standards. And the CGMA
3 is an arm of AICPA as well. So that falls within
4 that umbrella.

5 Q. What sort of additional training and
6 experience do you have in terms of seminars you
7 have attended, classes?

8 A. I have -- my firm will tell you that
9 I'm a certified professional education junky. I
10 attend anything I can attend to learn something.
11 That includes online seminars in fraud. I have to
12 do -- I have to do 40 hours through the AICPA for
13 the CPA license in the State of South Carolina. I
14 do that every year. I have to do 20 hours of
15 fraud training every year for the CFE. I have to
16 do 20 hours of fraud training for the FCPA. I
17 have to do 60 hours every three years for the CVA,
18 and I also spend a great deal of time -- I'm into
19 data because data is getting bigger. So I spend a
20 lot of personal time on my own in determining the
21 best ways to wrangle large amounts of data.

22 Q. What types of cases have you handled
23 in the past?

24 A. Well, a lot of the cases -- they're
25 actually listed on my CV. But a lot of the cases,

1 these are cases that I was either deposed in,
2 wrote a Rule 26 Report for, or testified in.
3 There are numerous other cases that I was involved
4 in that actually either went through the mediation
5 process and actually came to a conclusion or, you
6 know, the case went away or whatever.

7 But the latest cases were -- the
8 maintain services case was a construction case
9 which was one party accusing the other party of
10 misappropriating assets. The Matt Jording
11 Thomasville Jack case happened to be a restaurant
12 case, not dissimilar from this case, where there
13 was allegations of misappropriation of assets,
14 misuses of funds, lack of loyalty and that kind of
15 thing, and I also helped with the determination of
16 the disassociation of that particular member, and
17 he was disassociated. And the Brown versus Brown
18 case, it's a divorce case, but it's also currently
19 -- it was a deposition. It's currently pending.

20 Q. Have you been qualified by a court to
21 testify in financial forensics and forensic
22 accounting before?

23 A. Yes.

24 Q. All right. Tell the judge what
25 forensic accounting is.

1 A. Forensic accounting is a specialty in
2 accounting that a lot of people may or may not
3 even realize, you know, what it is, because the
4 idea of forensic accounting is to assemble and
5 investigate and coordinate mass amounts of data to
6 determine what it actually means. I think that
7 the most important part to realize about it is the
8 fact that it's taking a lot of data that maybe
9 somebody does not understand and to interpret that
10 data and what it actually means so that people can
11 make meaningful decisions.

12 It does not necessarily mean in the
13 forensics case of litigation all the time, because
14 a forensic accountant can actually go into a
15 company, look at the way they do things, look at
16 transactions that have occurred, look at
17 activities that have occurred and basically report
18 findings or determinations to a body so that they
19 can make a meaningful decision as to how they want
20 to proceed with that particular information.

21 Q. What types of knowledge, techniques,
22 software, and processes do you use as a forensic
23 accountant when analyzing financial data?

24 A. A lot of the processes and knowledge
25 that we use in this type of work stems initially

1 from auditing, but it goes much deeper than
2 auditing in the fact that with auditing you're
3 trying to come to a conclusion as to the voracity
4 of the set of financial statements. In forensic
5 accounting what you're looking is much deeper into
6 the actual details of what is going on to
7 determine patterns of behavior, to determine
8 transactions that may need further scrutiny, to
9 determine if there are certain items that need to
10 be addressed, and to assimilate all of that
11 information, consolidate that information and put
12 it before whoever it is that you're going to put
13 it before so they can make a meaningful decision
14 about vast amounts of information for which they
15 may not necessarily have the expertise and
16 accounting, big data and analytical tools that are
17 available to do that.

18 We use a lot of analytical tools and
19 software that are analysis driven and transaction
20 driven. Like, we use different add-ons to Excel,
21 different investigative tools where we run certain
22 fraud tools, like Benford's law that looks at
23 occurrence of numbers and whether it's outside the
24 norm of how often that number should occur or not
25 occur. So it takes a greater depth of

1 transactional and big data analysis to get to the
2 actual root of the issue so you can report so that
3 things can happen one way or the other.

4 Q. What were you retained to do in this
5 case?

6 A. In this particular case I was retained
7 by Haynsworth Sinkler Boyd to do just exactly
8 that, to go to the massive amounts of data that
9 were presented to them -- it was financial in
10 nature, transaction based in nature -- and various
11 entities to determine what exactly was going on
12 within that particular entity and to report those
13 findings.

14 Q. What information, records, and data
15 did you review in forming your opinions in this
16 case?

17 A. Well, the first thing, the first thing
18 we did is we, obviously, requested through
19 discovery to get detailed general ledgers. And
20 what I'm talking about detailed general ledgers,
21 we're talking about -- and the controllers in the
22 room can validate this massive amount of
23 transactions that would occur within a period of
24 time. In one particular case I -- if I looked at
25 the detailed general ledger of, for example, The

1 Boathouse in one particular year, it was actually
2 20,000 lines of transaction data. There was 11
3 columns of, actually, bit data. If you do the
4 math, you come up with about 245,000 different
5 data points for one year for one company, and if
6 you multiply that times the number of years for
7 that particular company, it comes out to about
8 3 million, 3 million bits of data. So it's a lot
9 of data to look at, and you have to have specific
10 tools to actually do that.

11 So we asked for the general --
12 obviously, the detailed general ledgers of the
13 entities at hand, which happened to be -- the
14 primary entities were Crew Carolina and The
15 Boathouse. That was the first thing we asked for,
16 and we got that through discovery.

17 Q. Let me stop you there. So we heard
18 about how much data are in these detailed general
19 ledgers. Can you explain to the judge and jury
20 what a detailed general ledger is?

21 A. Yes. A detailed general ledger is
22 basically all of the accounting transactions at
23 the account level over a period of time that once
24 consolidated would give you a set of financial
25 statements that one could read in order to

1 determine the financial position of a company.
2 It's the actual day-to-day data, every sale, every
3 cash transaction, every credit card transaction,
4 every bank transaction, every vendor invoice that
5 was paid. The detailed general ledger has all of
6 that.

7 Q. What other information other than the
8 detailed general ledger did you review?

9 A. We also asked for the income tax
10 filings for the entities. We actually got those
11 from 2008 to 2018. 2019 was not available
12 because, obviously, we are in the middle of tax
13 season right now, and so it has not been prepared.
14 And therefore, that was not particularly
15 available.

16 We looked at the payroll tax filings
17 and the payroll information for Breach Inlet and
18 Crew. We looked at the compiled financial
19 statements that were produced by Dixon Hughes, the
20 former accountant, during a period of the time
21 while they were there, and they're a national
22 accounting firm.

23 When we got the actual tax returns,
24 they were kind enough to provide the actual tax
25 work papers that associated how the tax returns

1 were prepared and how the books were meshed into
2 the tax returns so that we could see the
3 transactions or the translation of actual book or
4 financial statements to attach the return so we
5 could figure that out.

6 We also looked at bank accounts for
7 all of the entities. We looked at the bank
8 accounts that came through discovery, and that
9 also included the bank accounts that had check
10 images. And so to the extent that they had check
11 images, we reviewed not only the transactions on
12 the bank accounts themselves, which is numerical
13 format, but we also looked at the actual faces of
14 the checks that were actually issued to look for
15 different anomalies there as well.

16 In addition, we have account
17 statements of merchant statements. I looked at
18 the depositions of Chip Robinson and Jamie
19 Stabler, both of those individuals. Chip Robinson
20 was the former controller, and Jamie Stabler is
21 the current controller of Breach Inlet -- The
22 Boathouse at Breach Inlet.

23 Q. When you say controller, is that a
24 bookkeeper?

25 A. Absolutely not.

1 Q. What is a controller?

2 A. A controller is the nerve center of
3 the financial transactions and financial heartbeat
4 of whatever the entity is that they are
5 controlling. In certain circumstances controllers
6 of larger companies have whole accounting staffs
7 that work for them. Basically they are the person
8 where the buck stops. They're the person that
9 understands the overall picture of the financial
10 health of the company. They are the ones that
11 compile all of this mass data into something
12 that's usable by management so that they can make
13 decisions.

14 Q. What other depositions other than Chip
15 Robinson and Jamie Stabler did you review in
16 forming your opinions?

17 A. I looked at Richard Stoney and Jamie
18 Stabler's depositions, and it was -- their
19 depositions is they're representing the company,
20 which is The Boathouse.

21 Q. As corporate designee?

22 A. Corporate designee of the company.
23 That's correct.

24 Q. What other information, evidence did
25 you examine in forming your opinions in this case?

1 A. I also looked at the affidavit of
2 Dennis Jarvis. That was a sworn affidavit. It's
3 always good to look at anything that the CPA who
4 is in charge of the entity has to say about the
5 entity. So I looked at that as well. And I also
6 looked at anything that was listed in my affidavit
7 that was filed with the court, and there were
8 numerous exhibits in there that are numbered
9 Exhibits 1 through -- and I forget the number.
10 There was a series.

11 Q. Is the type of information that you
12 just walked us through, all of those financial
13 information, the depositions, the affidavit of the
14 CPA, is that information reasonably relied on in
15 the field of forensic accounting in forming your
16 opinions?

17 A. A forensic accountant would not take
18 an engagement unless that data was available or
19 able to be obtained. I have also gone so far as
20 to ask to interview certain individuals. I did
21 not do so in this case. But every bit of that is
22 valuable information so that you can determine the
23 environment in which the company is operated from
24 all facets: from the tax facet, from the CPA
25 facet, from the legal facet of legal counsel of

1 the company, the controller facet, and in the
2 banking relationships that the company has. So,
3 yes, it's all required.

4 Q. All right. What is it about the
5 financial data and records in this case that a
6 layperson with no forensic accounting background
7 might not understand or might have trouble with?

8 A. Accounting has its own language. I
9 can recall vividly the number of discussions that
10 I know you and I had about the definition of a due
11 to/due from, the way the -- I remember one of my
12 staff drawing a picture for you to explain how
13 debits and credits worked, you know, within an
14 accounting system versus how the debits and
15 credits work within a banking system, because
16 they're completely opposite.

17 You would be surprised the number of
18 people who get it backwards, because -- and I'm
19 talking very educated people who run companies
20 that say, but my bank account says I have a credit
21 to this. Well, a credit in a bank account is a
22 good thing. A credit in a financial statement may
23 or may not be a good thing.

24 So it 's that type of thing that --
25 people need to understand the flow of

1 transactions. They need to understand what does a
2 transaction actually mean, how do you account for
3 the transaction. If I pay for something with
4 cash, is that an expense, is that buying a capital
5 asset, is that a deposit on something else. It's
6 those types of things that the average layperson
7 does not normally have in their memory bank or
8 their skill set.

9 Q. You talked about the size of the
10 detailed general ledgers, and those were
11 voluminous. Can you give me an estimate of how
12 many hours you and your staff have spent analyzing
13 the financial records in this case?

14 A. Yes. Close to 500.

15 Q. Okay. Do you believe that your
16 knowledge and opinions will aid the judge in
17 understanding and determining the facts of this
18 case?

19 A. I would hope that what I can add to
20 the -- to the exercise here will help the judge
21 understand the complexities of this case so that
22 he can have a full understanding of what went on
23 and where everybody is.

24 MR. MCQUILLIN: Your Honor, at this
25 time I move that Mr. Hollerbach be qualified as an

1 expert in the field of forensic accounting, fraud
2 analysis, financial forensics, and certified
3 global management accounting.

4 THE COURT: Mr. Barr?

5 MR. BARR: Your Honor, I have no
6 objection within those parameters. I happen to
7 know that Mr. Hollerbach purports to have some
8 opinions that I don't think fall within the ambit
9 of that field, but we can address those questions
10 if and when they're proposed.

11 THE COURT: All right. So qualified.

12 BY MR. MCQUILLIN:

13 Q. Mr. Hollerbach, please tell
14 Judge Newman what your first opinion in this case
15 is.

16 A. My first opinion is that Richard
17 Stoney used \$4,237,099.85 of The Boathouse funds
18 for personal use and to provide cash flows for
19 entities wholly owned or in part by him. This
20 amount reflects no interest calculated for the
21 period the funds were used personally.

22 Mr. Stoney also commingled funds using
23 those funds for personal use and effectively
24 turning a commercial enterprise that is a
25 restaurant enterprise into a banking enterprise

1 from which he either took loans or took money
2 personally to use for whatever he deemed
3 appropriate at that particular point in time.

4 He paid personal expenses himself. He
5 asked others within the entity to provide him
6 funds so that he could make personal expenses --
7 he could make personal purchases or make personal
8 investments. And that is my first opinion.

9 Q. Sir, is that opinion to a reasonable
10 degree of certainty as a forensic accountant?

11 A. Yes, it is.

12 Q. What facts did you rely on in forming
13 that opinion?

14 A. Well, once again, we looked at the
15 general ledgers and the financial books of both
16 entities. That includes The Boathouse at Breach
17 Inlet plus the management company, which is Crew
18 Carolina. We looked at the bank records and the
19 images from the bank records, as I stated earlier,
20 to those entities. I looked at the testimony of
21 Jamie Stabler in the 30(b)(6) deposition that she
22 participated in. And in particular, we can
23 address what part of that I relied on at this
24 point.

25 Q. Yes. What facts or information or

1 data did you find important from Ms. Stabler's
2 deposition in forming your first opinion?

3 A. Well the -- if you refer to the
4 deposition that she did, it had to do with the
5 fact that she had confirmed the total amount due
6 to/due from from The Boathouse within a reasonable
7 amount of certainty given that the -- that the --
8 that the entity was closed and she expected no
9 other further transactions. So therefore, I
10 relied on that amount when we -- when we went
11 forward.

12 Q. Okay. The amount you have determined
13 by going through the journal ledger financial
14 records matches with the amount Jamie testified
15 to, correct?

16 A. Within a reasonable amount of error
17 that would not be pertinent at this particular
18 point in time.

19 Q. Who provided the general ledger that
20 you reviewed?

21 A. The general ledger that we were
22 provided actually came through discovery, and it
23 came from Mr. Barr, for the most part. That
24 particular balance that was provided actually came
25 from Ms. Stabler.

1 Q. All right. And you have addressed
2 this previously, but can you again tell The Court
3 the sheer size of the general ledger and how many
4 cells we're talking about on these spreadsheets?

5 A. If you look at one entity, for
6 13 years it's over 3- -- and I'm counting the
7 actual raw data, not the analysis we did on it.
8 The raw data was about 3 million. It was over
9 3 million bits of data for 2007 through 2019.

10 Q. All right. Can that -- can those
11 voluminous spreadsheets be conveniently examined
12 in court?

13 A. I would not think so, no.

14 Q. All right. Have you prepared a
15 summary of data showing how Richard Stoney used
16 The Boathouse and Crew Carolina funds?

17 A. Yes.

18 Q. All right. Do you have a copy of this
19 with you?

20 A. I do. I thought you were going to put
21 it on the screen, but that's fine.

22 (Plaintiff Exhibit 1, Cross-Entity
23 Transaction Compilation of Certain Transactions,
24 2007 through 2019, by Payor Entity Spreadsheet,
25 marked for identification.)

1 BY MR. MCQUILLIN:

2 Q. Mr. Hollerbach, I'm handing you what
3 has been marked as Plaintiff's Exhibit Number 1.
4 Can you please identify that document, sir?

5 A. Yes. It is a cross-entity transaction
6 compilation of certain transactions over the
7 period of time over the examination, 2007 through
8 2019, by payor entity.

9 Q. Where does the information contained
10 in this chart come from?

11 A. As you can notice by the general
12 control number, the general control number
13 actually ties that to a particular transaction
14 within the detailed general ledger.

15 Q. All right. Does it accurately reflect
16 the notes that were contained in the general
17 ledger?

18 A. It is a direct copy of the notes in
19 the detailed general ledger.

20 MR. MCQUILLIN: Your Honor, at this
21 time we move to have Plaintiff's Exhibit Number 1
22 moved into evidence.

23 THE COURT: Mr. Barr.

24 MR. BARR: Your Honor, I object only
25 because I don't think the proper foundation has

1 yet been laid for this. Just the fact that -- and
2 this comes from -- I think he said comes from the
3 general ledger. Is that what I understood the
4 witness to say?

5 THE WITNESS: Could you repeat the
6 question?

7 MR. BARR: These entries come from the
8 general ledger?

9 THE WITNESS: The detailed general
10 ledger, and the payor account description would
11 tell you which. The payor entity was The
12 Boathouse at Breach Inlet, and the payor account
13 was 2600-900.

14 MR. BARR: If I may, Mr. McQuillin, and
15 Your Honor, one question?

16 THE COURT: Yes, sir.

17 MR. BARR: Is it your testimony that
18 these are the precise entries that were made in
19 the general ledger itself?

20 THE WITNESS: In the general ledger --
21 in the detailed general ledger itself, except for
22 anything that was in parenthesis, it was my staff
23 researching the actual dollar amount because it
24 was not in the note. So if there was not a note,
25 it says none.

1 MR. MCQUILLIN: See on Page 2, Capers.

2 MR. BARR: I see the parenthetical
3 ones.

4 MR. MCQUILLIN: That's what he's
5 saying. The only thing he added to this was the
6 parenthetical. Where it says Richard Stoney
7 France vacation, he added the parenthetical that
8 it was \$750 that went towards that vacation.

9 MR. BARR: Yes, I understand the
10 information. So you're saying that there were
11 entries in the general ledger that don't reflect
12 the amount?

13 THE WITNESS: They were in there, but
14 they were spread throughout the general ledger.
15 This -- I actually went to the general ledger,
16 pulled the amount because it wasn't in the
17 reference, and so I went to the general ledger --
18 not me. My staff went to the general ledger,
19 pulled the actual amount because it wasn't in the
20 reference, so that we could have some flavor of
21 what that actually was versus just putting none,
22 because at that point --

23 MR. BARR: Of necessity, wouldn't the
24 general ledger entry have an amount on the general
25 ledger?

1 THE WITNESS: It does have an amount.
2 A lot of the general journal entry amounts are
3 combined amounts, and this breaks them out.

4 MR. MCQUILLIN: Your Honor, he's
5 testified he pulled this information from the
6 general ledger and that it accurately reflects the
7 information pulled from the general ledger. It is
8 voluminous. This is a chart allowed under Rules
9 of Evidence 1006.

10 MR. BARR: It is offered for what
11 purpose?

12 MR. MCQUILLIN: To show the nature of
13 the transactions that Richard Stoney engaged in.

14 MR. BARR: But not the detail, correct?

15 MR. MCQUILLIN: Say what, now?

16 MR. BARR: But not their detail?

17 MR. MCQUILLIN: I don't know what you
18 mean their detail.

19 MR. BARR: The first page, the bottom
20 entry: Due to/from Crew Carolina, RS cash, vet
21 hospital bills for Sophie snakebites.

22 MR. MCQUILLIN: Correct.

23 MR. BARR: There's no amount.

24 MR. MCQUILLIN: This is to show the
25 nature of the use of the funds, Judge.

1 MR. BARR: But it doesn't show the
2 amount.

3 MR. MCQUILLIN: Your Honor, he's
4 already testified to the amount.

5 MR. BARR: He hasn't testified to the
6 amount, not for that particular entry.

7 THE COURT: Well, the document is
8 offered as a summary based on --

9 MR. BARR: But it's not a very clear
10 summary, if I understand the general ledger, now.
11 Maybe I don't understand a general ledger. I hope
12 my comments here are not inappropriate.

13 THE COURT: What is before me with the
14 document is admissible.

15 MR. BARR: I agree.

16 THE COURT: You either object to it or
17 not object to it. You can certainly cross-examine
18 him on cross-examination.

19 MR. BARR: I'll get to it when I
20 cross-examine him later.

21 THE COURT: I'll admit it for allowing
22 voluminous records to be condensed into a summary.

23 MR. MCQUILLIN: Thank you.

24 BY MR. MCQUILLIN:

25 Q. Mr. Hollerbach, can you please walk us

1 through what Page 1 of the cross entity -- let me
2 ask you this first: What is the date range of the
3 transactions depicted on Plaintiff's Exhibit
4 Number 1, this spreadsheet?

5 A. 2007 to 2019.

6 Q. Okay. Did Richard Stoney continue to
7 use The Boathouse funds for personal matters
8 during this litigation?

9 A. Yes.

10 Q. Okay. Explain to me what is depicted
11 on Page 1 of Plaintiff's Exhibit 1, this chart.
12 What is depicted in this chart here?

13 A. If you start across the top, it's the
14 payor account description. The payor entity is
15 actually The Boathouse at Breach Inlet, LLC. The
16 payor account is -- is that particular account
17 that the account description applies to.

18 The journal control number is actually
19 the journal control number for the actual entry or
20 multiple entries that that note applies to. The
21 reference was any reference notes that were in
22 there as well, and the note is actually pulled
23 from the detailed general ledger. So, like, for
24 example, the one that Mr. Barr was referring to
25 was RS cash is a reference and then the controller

1 went into detail as to what that cash was spent
2 on. It was spent on vet hospital bills for
3 Sophie, snakebites. RS referring, I believe, to
4 Richard Stoney, as it was consistently used, and
5 weekend cash.

6 And these are not all of the entries
7 from 13 years of data but rep- -- represent
8 samples of transactions that occurred over that
9 period of time. There are others in here: \$400
10 cash for Chris. That's on the third line from the
11 bottom; \$4,550 cash for RS for Chris weekend
12 fashion show; \$2000 cash for RS Christmas and
13 Jamie out of town for two weeks. And the
14 controller made copious notes in the early years
15 to try to define what that particular amount was
16 being used for and breaking -- breaking those
17 amounts out.

18 You go to the second line down from
19 the top, it's RSO Tempo to work 120, Tempo work
20 270.25, personal money \$400. And from what I
21 understand from the various transactions, Tempo
22 refers to a person, and I believe that person
23 worked on the plantation doing things or did
24 things for Mr. Richard Stoney.

25 Q. The next line you see refers to Tempo

1 worked at farm?

2 A. Correct.

3 Q. On Page 1 of your spreadsheet, The
4 Boathouse at Breach Inlet is where these funds are
5 coming from, and we see that Richard got cash
6 personally. How were these booked?

7 A. They were booked due to/due from Crew
8 Carolina.

9 Q. Okay. What does that tell you about
10 the accounting and cash flow relationship between
11 Crew Carolina and Richard Stoney?

12 A. Well, there was a direct cash flow
13 relationship between The Boathouse at Breach Inlet
14 and Mr. Richard Stoney directly, because it was
15 paid directly to him for personal items or
16 personal use, and it was booked that Crew Carolina
17 would pay it, who is Richard Stoney, because he is
18 the disregarded entity within the meaning of
19 accounting and cash flow.

20 Q. So is what you're saying The Boathouse
21 gave cash to Richard Stoney, but it was booked as
22 being due from Crew Carolina meaning Richard and
23 Crew are the same thing?

24 MR. BARR: Excuse me, Your Honor. I
25 object. This is his witness. He's leading.

1 THE COURT: Don't lead your witness.
2 Close it up.

3 BY MR. MCQUILLIN:

4 Q. What does this tell you about the
5 nature of the relationship when Richard was
6 receiving cash personally and it was being booked
7 at due to/due from Crew Carolina?

8 A. What this tells me is they're saying
9 that Crew Carolina owes the money. Richard Stoney
10 actually received the money; therefore, Richard
11 Stoney and Crew are one and the same.

12 Q. Is that opinion to a reasonable degree
13 of certainty?

14 A. Yes.

15 Q. Okay. Let's go to Page 2, and tell us
16 what is different about Page 1 and Page 2 in terms
17 of how those items were booked.

18 A. If everybody understands the headings,
19 the payor is The Boathouse at Breach Inlet.

20 Q. So these are funds coming from The
21 Boathouse?

22 A. Funds coming from The Boathouse at
23 Breach Inlet.

24 Q. How were they booked?

25 A. These particular funds were booked due

1 to/from Richard Stoney directly.

2 Q. Tell us, give us an idea of some of
3 the notes and what Richard used The Boathouse
4 funds for on this chart, Page 2 of Exhibit 1.

5 A. Well, I mean, if you start at the --
6 if you start at the top, it's due to/due from
7 Richard Stoney. The general journal entry that
8 ties the general ledger. The reference says RS WS
9 cash for France vacation. There was no note.
10 When we looked at the amount that was actually
11 written it was \$750.

12 There was a wire to Richard Stoney's
13 personal account. That's a reference from the
14 controller, which was \$5,000. Another wire to his
15 personal account for \$5,000. And they go down
16 from there.

17 If you go down to the reference
18 Kathy/per RS, that's referring to Richard Stoney.
19 Richard Stoney texted Kathy asking her for \$400
20 for the weekend. I gave \$350 cash yesterday as
21 well. Richard Stoney has friends in town from
22 Italy. Croft Broker.

23 And the reason you can -- you can tell
24 this is the actual language from the -- the
25 detailed general ledger is because I didn't

1 correct the spelling. She "bork" her arm. She
2 didn't broke her arm. So that was just a mistype
3 within the general ledger, and I don't think this
4 particular general ledger has spellcheck on it.
5 Riding today, so he needs additional. Yesterday
6 the \$100 is for Kathy to go to Trader Joe's and
7 get groceries per Richard Stoney.

8 Q. What about the next line? What's the
9 note from the next line down?

10 A. The next line down is as needed --
11 it's as needed to cover mortgage for Kensington,
12 IRS payment, and Lori support.

13 Q. What is your understanding of what
14 Kensington is?

15 A. From what I understand, it is a
16 family-owned planation by multiple family members.
17 Other than that I don't know who owns what, what
18 proportion of what, but it's a family property.

19 Q. All right. What about, do you see the
20 line that begins with the note 400 for Jessie?
21 What does that line describe there?

22 A. 400 for Jessie and rest for Richard
23 Stoney. Shipping polo horses for a match. Horse
24 feed, polo feeds, and weekend money.

25 Q. Okay. And then how about the next

1 line down?

2 A. \$300 cash for Richard Stoney. \$150
3 cash for farm help. \$160 cash Richard Stoney.
4 173.38 for blinds. 61.83 Richard car repair.
5 \$691.90 for a Bahamas flight.

6 Q. Okay. Tell us about the last entry on
7 this on Page 2 of your chart here.

8 A. This is actually in May of 2019 where
9 there was -- the memo line here, if you notice, is
10 different. This line is different than the -- all
11 of the other lines, and the reason this line is
12 different is because we got this from a check
13 image. This was not in the general ledger with a
14 note or any kind of reference, and it's -- and the
15 note and the memo on that particular check from
16 May is RS WS/legal fees. And I wrote Check Number
17 52405 memo line. And this is the actual quote:
18 Per stash legal fees, amount \$1,800.

19 Q. Sir, did you notice any sort of
20 patterns with the way the general ledger was kept
21 before this litigation and how it was kept after
22 the this litigation in your review of the records?

23 A. It was dramatic. Before this
24 litigation you will see all of these notes where
25 the controller or whoever booked the actual

1 entries going to great lengths to define what the
2 cash is being used for or the funds are being used
3 for. After this litigation started, pretty much
4 except for this memo line on a check that we found
5 by looking at the bank records, all of these notes
6 are not there, and I'm assuming were not made, but
7 that's an assumption on my part.

8 Q. Let's go to Page 3 of your chart. All
9 right. Tell us what is different on Page 3 from
10 the prior two pages we looked at on Exhibit 1.

11 A. Well, this is actually a payor entity,
12 which is Crew Carolina, which is actually the
13 management company. And the payor account number
14 is the account number, and they actually had a due
15 to/due from Richard W. Stoney where he took
16 personal funds or personal funds left Crew
17 Carolina for Richard Stoney's purpose.

18 Q. And so these funds are coming from
19 Crew and going to Richard, correct?

20 A. Correct.

21 Q. As opposed to coming from The
22 Boathouse?

23 A. As opposed to coming from The
24 Boathouse, this came from Crew Carolina to Richard
25 Stoney.

1 Q. When Crew Carolina had a bank account?

2 A. When Crew Carolina had a bank account.

3 Q. All right. Tell us some of the things
4 that you noted from the general ledger that were
5 paid from Crew Carolina to Richard Stoney.

6 A. This was -- what was interesting was
7 \$50, Richard Stoney asked me for money, paying
8 myself back. \$250 Richard Stoney personal money.
9 Richard Stoney owes \$300. He needs cash. I could
10 not access the bank account by the time he needed
11 it. This is due to me, Megan. Which I don't know
12 who Megan is. I'm assuming it's an employee
13 because it says this is due to me, Megan. So I'm
14 assuming Megan made the entry.

15 The other ones are -- the last one,
16 \$650 Richard Stoney used, dollar sign, for lunch,
17 tip, paid Kensington people, Croft riding pants.
18 \$500 owed Jamie Boles this for Thursday and Friday
19 cash. I fronted him. Not sure what the funds
20 were used for.

21 Q. Sir, what is the next opinion that you
22 have formed in this case?

23 A. Because the due to/due from Crew
24 Carolina constitutes a loan, interest should be
25 added to the due to/due from Crew Carolina

1 account.

2 Q. But before we go into interest, let me
3 ask you this: When you add the total due to/due
4 from Richard Stoney and the due to/due from Crew
5 Carolina numbers, what is that total number?

6 A. The due to/due from Crew Carolina was
7 \$4,194,264.66. The due to/due from Richard Stoney
8 without imputed interest, no interest charged, was
9 42 -- this was as of the balance sheet that was
10 provided by Ms. Stabler as a 12/31/2019 balance
11 sheet with minimal adjustments to be made,
12 \$42,835.19, for a total of \$4,237,099.85.

13 Q. You just testified that your second
14 opinion is that interest should be added to the
15 due to/due from Crew Carolina because it
16 constitutes a loan?

17 A. Yes, sir.

18 Q. Is that opinion to a reasonable degree
19 of certainty as a forensic accountant?

20 A. Yes.

21 Q. What facts and data did you rely on in
22 forming that opinion?

23 A. It was similar facts and circumstances
24 as the previous. It was -- the corporate
25 designee, Richard Stoney, testified in his

1 30(b)(6) hearing on Page 44 --

2 Q. What facts were important from your
3 review of Mr. Stoney's deposition in forming your
4 opinions?

5 A. That -- two things. One is that he
6 saw it as a loan, and the other thing is that it
7 was accounted for as a loan.

8 Q. What other information did you review
9 in determining that interest should be calculated
10 and calculating interest?

11 A. Well, the general ledger, Jamie --
12 Jamie Stabler in her 30(b)(6) confirmed the
13 amount. So we knew what the amount was, and
14 therefore it -- it's -- if it's deemed by Mr.
15 Richard Stoney as a loan and the accountants were
16 directed to treat it as a loan, then we all know
17 that money is not free, and therefore you need to
18 pay rent on money that is loaned.

19 Q. What information did you rely on in
20 forming your opinions from the Internal Revenue
21 Service?

22 A. The Internal Revenue Service is very
23 clear. The Internal Revenue Service says that if
24 there is intercompany or interrelated loans, that
25 you must -- and they're deemed to meet all of the

1 requirements of a loan, that you need to have
2 interest charged on that loan.

3 The Internal Revenue Service gives you
4 a methodology to do that, and there's basically
5 two methodologies. The first methodology is to
6 take the published AFR, or annual federal rate, on
7 a monthly basis and charge it as a monthly charge
8 or to take the beginning and ending balances of
9 the year, the beginning balance at the beginning
10 of the year, the ending balance at the end of the
11 year, disregard the ins and outs in between, take
12 an average of those two amounts and apply the
13 published applicable federal rate that they
14 publish every July on an annual basis.

15 Q. So you have reviewed Mr. Stoney's
16 deposition, Richard Stoney, the general ledgers,
17 Ms. Stabler's deposition, as well as rates and
18 rules published by the Internal Revenue Service in
19 forming your opinions, correct?

20 A. Yes.

21 Q. On the general ledgers, again, how
22 many entries make up the due to/due from Crew
23 receivable to The Boathouse?

24 A. Thousands, tens of thousands, hundreds
25 of thousands, more stars than there are in the

1 sky. I mean, there is a lot.

2 Q. Can those voluminous entries and
3 spreadsheets be conveniently examined in court?

4 A. No.

5 Q. Have you prepared a summary of data
6 showing the total of the Crew Carolina due to/due
7 from and calculated interest?

8 A. Yes.

9 (Plaintiff Exhibit 2, Calculation of
10 Imputed Interest on the Due To/Due From Carolina
11 Crew Carolina Spreadsheet, marked for
12 identification.)

13 BY MR. MCQUILLIN:

14 Q. Sir, I'm handing you what's been
15 marked as Plaintiff's Exhibit Number 2. Can you
16 please identify that document?

17 A. Yes. This is a document of the actual
18 calculation of the imputed interest on the due
19 to/due from Crew Carolina.

20 MR. BARR: Could we have a minute,
21 Judge? I need to get a copy from counsel.

22 MR. MCQUILLIN: I'm sorry, Capers.
23 This is one you have not objected to. I'm sorry.

24 BY MR. MCQUILLIN:

25 Q. All right, sir, can you, please --

1 where does the information contained in this chart
2 come from?

3 A. It comes from the general ledgers for
4 the applicable years.

5 Q. Does it accurately reflect the general
6 ledger entries and interest figures?

7 A. Could you restate the question?

8 Q. Does it accurately reflect the general
9 ledger entries as well as the IRS interest
10 figures?

11 A. Yes.

12 MR. MCQUILLIN: Your Honor, at this
13 time we move to have Plaintiff's Exhibit Number 2
14 entered into evidence.

15 THE COURT: Any objection?

16 MR. BARR: Negative.

17 THE COURT: So admitted.

18 BY MR. MCQUILLIN:

19 Q. Mr. Hollerbach, please, explain --
20 before we start talking about your chart, explain
21 -- what does the IRS require when there are
22 intercompany due to/due from, what is the
23 requirement?

24 A. If it is truly deemed a loan, interest
25 must be charged.

1 Q. And tell us about your chart and how
2 you calculated interest.

3 A. We used a second method, which is the
4 average balance method, and the actual balances
5 are as depicted in the years on the left. If you
6 go past the break to where it says imputed
7 interest table, that is the actual calculation
8 where we did not know what the beginning balance
9 was at the beginning of 2007. So we took the
10 ending balance, took the average. The applied --
11 the applicable federal rate was 4.92 percent. We
12 calculated the interest using multiplication. The
13 ending balance would have been the beginning
14 balance plus the interest, to come to the ending
15 balance.

16 That ending balance then, just like a
17 typewriter -- and there's a lot of people who
18 probably don't know what a typewriter is. But you
19 go back and go back to the beginning of the
20 beginning balance for 2008, which is the ending
21 balance for 2007, and you do the same calculation.
22 You do this iteratively until you accumulate the
23 interest that is due, and you come to a final
24 balance of what is due and what part of that is
25 interest.

1 Q. What is the total amount of interest
2 that you calculated on the Crew Carolina due
3 to/due from?

4 A. \$428,107.23.

5 Q. Is that to a reasonable degree of
6 certainty as a forensic account?

7 A. That's to a reasonable degree of
8 certainty as a forensic accountant based on the
9 ending balance of the due to/due from as provided.

10 Q. Tell me what the difference is -- if I
11 would have gone out over the year and borrowed
12 money from a bank, what is the difference between
13 the AFR rates published by the IRS and then the
14 LIBOR rate or typical interest rate that you get
15 from a bank?

16 A. I actually researched that, because
17 interest rates, everybody is -- obviously,
18 everybody is interested in interest rates because
19 that's what we have to pay to use money. I wanted
20 to see just for my own edification what the
21 difference would be from LIBOR -- and LIBOR is a
22 financial interest rate that stands for London
23 Inter-Bank Lending Rate (sic) -- and the AFR rate.

24 LIBOR is what banks loan banks money
25 for, and it's usually very, very low. In this

1 particular case, except for 2019, the LIBOR rate
2 was actually higher than the interest rate that
3 the IRS was charging, which means if you could
4 talk a London bank into loaning you money at the
5 rate that they would loan another bank you could
6 get the loan. Normal commercial lending
7 operations, we know, take a LIBOR rate, and they
8 add a premium to it that's based on a risk
9 premium, and they come up with an interest rate
10 that's much higher than that.

11 In this particular case, given the
12 fact that it was an intercompany, interrelated
13 loan, you're allowed to use applicable federal
14 rate.

15 Q. The applicable federal rate, except
16 for 2019, was lower than a traditional lending
17 rate, correct?

18 A. This is -- yes. Yes.

19 Q. Okay. All right. When you talk about
20 the numbers that we've -- and when you're -- you
21 did some math and added up to the due to/due from
22 from Richard and due to/due from Crew Carolina,
23 you added that number, and then tell me what the
24 total due to/due from from Crew Carolina plus
25 interest is on your chart.

1 A. Okay. The due to/due from Carolina
2 was 4,194,264.66.

3 MR. BARR: Would you say that again
4 more slowly?

5 THE WITNESS: Yes. It's \$4,194,264.66,
6 and the accumulated imputed interest is
7 \$428,107.23. And if you add that together, you
8 come to \$4,622,371.89.

9 MR. BARR: Are you just reading it off
10 of the exhibit? I'm sorry, I didn't mean that.
11 Forgive me, Your Honor. I didn't mean to
12 interrupt.

13 THE WITNESS: Yes.

14 BY MR. MCQUILLIN:

15 Q. That's the number that's depicted on
16 your exhibit, right?

17 A. Yes.

18 Q. Now, when you add in the Richard --
19 have you done a chart to show what the math is on
20 the two opinions you have given thus far today?

21 A. Yes.

22 Q. Is this the number we're talking about
23 here, just so we can all understand what the total
24 number is?

25 A. Yes. That bottom number was to give

1 me clarity as to if you take the due to/due from
2 Crew Carolina, add the imputed interest, and then
3 add the due to/from Richard Stoney without imputed
4 interest, it equals \$4,665,207.88 -- and 08 cents.
5 I'm sorry. That is correct.

6 Q. Thank you. Sir, what is your next
7 opinion in this case?

8 A. Richard Stoney made disproportionate
9 distributions to Gregory Homes as a member of
10 Homes Capital and to a gentleman by the name of
11 Michael Cox.

12 Q. All right. Is that opinion to a
13 reasonable degree of certainty as a forensic
14 accountant?

15 A. Yes.

16 Q. What facts and data did you rely on in
17 forming that opinion?

18 A. Well, it was confirmed that there were
19 disproportionate distributions made in the Jamie
20 Stabler deposition at Page 104, and we --

21 Q. Let me ask you this: What testimony
22 did you find important from Page 104 and 105 from
23 Ms. Stabler's deposition?

24 A. Well, in that particular testimony,
25 there was a question that said: Okay. Do you

1 recall Greg Homes, a member of The Boathouse at
2 Breach Inlet, receiving distributions when other
3 members of the company did not receive
4 distributions? To which her answer was yes.
5 Okay. And who ultimately permitted that to occur?
6 Richard.

7 And down at line 23 it says: Okay.
8 You acknowledge that Richard Stoney did permit
9 disproportionate distributions to Gregory Homes,
10 though, correct? The answer to that was yes. Can
11 I go back on that and say just when you say
12 disproportionate, do you mean someone got one when
13 someone didn't, not that there was an
14 inappropriate amount? Yes. I mean, if everybody
15 had a 10 percent interest, everybody that had a
16 10 percent interest should get 10 percent.

17 Q. Okay. What other information other
18 than Ms. Stabler's deposition did you rely on in
19 determining disproportionate distributions?

20 A. Well, the data from the general
21 ledger, the detailed general ledger provided, you
22 know, notations for Greg Homes plus checks
23 associated with it through the bank statements
24 that said he actually received distributions.

25 Q. All right. On the general ledgers how

1 many entries made up the payments to Greg Homes?

2 A. More than 50 and less -- somewhere
3 between 50 and 60.

4 Q. Okay. Can the general ledger
5 spreadsheets be conveniently examined in court?

6 A. The general ledger -- the detailed
7 general ledger itself, which contains all of that
8 information, cannot be conveniently...

9 Q. All right. Have you prepared a
10 summary of data showing the total amount of
11 disproportionate distributions that Mr. Stoney
12 made to Gregory Homes and Michael Cox?

13 A. Yes.

14 (Plaintiff Exhibit 3, Payments made to
15 Homes and Cox Spreadsheet, marked for
16 identification.)

17 BY MR. MCQUILLIN:

18 Q. Sir, I'm handing you what's been
19 marked as Plaintiff's Exhibit Number 3. Can you
20 please identify this document?

21 A. This is a summation of the multiple
22 payments that were made to Mr. Homes and the one
23 payment that was made to Mr. Cox.

24 Q. And you said there were somewhere
25 between 50 and 60 different entries on the

1 detailed general ledger that make up this chart,
2 right?

3 A. That make up the Homes part of the
4 chart. There was one entry on the Cox payment.

5 Q. All right. Does the information
6 contained in this chart accurately reflect the
7 information from the general ledger?

8 A. Yes.

9 MR. MCQUILLIN: Your Honor, at this
10 time we move to have Plaintiff's Exhibit Number 3
11 into evidence.

12 MR. BARR: I think we had already
13 admitted this.

14 MR. MCQUILLIN: This is one you
15 objected to.

16 MR. BARR: Okay. I stand corrected.
17 No objection.

18 THE COURT: Admitted.

19 BY MR. MCQUILLIN:

20 Q. Please explain, sir, what is depicted
21 on your chart here?

22 A. In the detailed general ledger account
23 there is an account there called Distributions.
24 This -- there were multiple entries, somewhere
25 between 50 and 60. This particular chart

1 summarized those entries by year and then
2 summarized the amount -- the amount at the bottom
3 for both Mr. Homes and Mr. Cox by year.

4 Q. Sir, is it your opinion to a
5 reasonable degree of certainty that Richard Stoney
6 made disproportionate distributions to Gregory
7 Homes in the amount of \$227,503?

8 A. Yes.

9 Q. And \$7,354 made in disproportionate
10 distributions to Michael Cox, correct?

11 A. Yes.

12 Q. Is that opinion to a reasonable degree
13 of forensic accounting certainty?

14 A. Yes.

15 Q. When you add the total amount of all
16 of the opinions you have given thus far, taking
17 into account the due to/due from with interest,
18 the due to/due from Richard Stoney without
19 interest, and the disproportionate distributions
20 to Homes and Cox, what number do you come up with?

21 If this helps, sir, I can put your --
22 see if I can get it focused. There we go. It's
23 here on the bottom of your Opinion Number 4.

24 A. Correct. That takes the original
25 \$4,194,264.66, adds the imputed interest as

1 indicated, adds the due to/due from Richard
2 Stoney, and also adds the disproportionate
3 distribution to Homes and Cox for \$4,900,064.08.

4 Q. Sir, do you have an opinion as to how
5 management fees were calculated at Crew Carolina?

6 A. I have an opinion as to how they were
7 calculated, yes.

8 Q. What is that opinion?

9 A. The opinion is is that they were not
10 calculated in any other method other than taking
11 the amounts that The Boathouse paid on Crew's
12 behalf for various services of Mr. Stoney and
13 other salaried employees, plus expenses paid on
14 behalf of Crew Carolina by The Boathouse; whatever
15 that number came up to be is what the management
16 fee was.

17 So basically they -- basically what
18 happened was that there was a -- they -- a
19 consolidation of various expenses on The Boathouse
20 into a management fee into an expense called
21 management fees, and the offsetting amount was
22 management fees on Crew Carolina's books.

23 Q. So The Boathouse would pay Crew
24 Carolina throughout the year; is that right?

25 A. Correct.

1 Q. And then ultimately a management fee
2 that matched that amount would zero that number
3 out?

4 A. Correct.

5 Q. Is that typically how management fees
6 are calculated, arbitrary and after the fact?

7 A. No.

8 MR. BARR: Objection, Your Honor.

9 MR. MCQUILLIN: That was a leading
10 question. I'm sorry.

11 BY MR. MCQUILLIN:

12 Q. Is that the typical manner that
13 management fees are calculated?

14 MR. BARR: I object. There's no
15 foundation laid for that question.

16 THE COURT: Sustain the objection.

17 BY MR. MCQUILLIN:

18 Q. What did you observe about the
19 management fees, and how does that differ from
20 other management fees you have seen charged?

21 MR. BARR: Objection. That's
22 irrelevant, Your Honor. The other management fees
23 have nothing to do with this witness, unless
24 there's a better foundation than we have heard.
25 What other entities charge for management fees

1 opens up the universe. It has nothing to do with
2 the scope of this issue.

3 THE COURT: I'll sustain the objection.
4 BY MR. MCQUILLIN:

5 Q. What did you observe -- how did you
6 observe management fees were charged by Crew
7 Carolina to The Boathouse?

8 A. I just described --

9 MR. BARR: Objection. That's been
10 asked and answered.

11 THE COURT: Overrule the objection.

12 MR. MCQUILLIN: Thank you.

13 THE WITNESS: Could you restate the
14 question?

15 BY MR. MCQUILLIN:

16 Q. Yes. How did you observe how
17 management fees were charged by Crew Carolina to
18 The Boathouse?

19 A. We looked at the expenses that were
20 actually being paid, and then we determined what
21 the management fees were being charged that were
22 recast as management fees within The Boathouse and
23 recorded as management fees on Crew Carolina, and
24 it was -- it was one journal entry at the end of
25 the year. It was an accumulation of expense that

1 zeroed the expense on the -- on the -- or
2 recharacterized the expense on The Boathouse to
3 management fees and characterized the revenue on
4 the Crew Carolina side.

5 Q. Okay. Did Crew Carolina, LLC continue
6 to receive funds from The Boathouse despite the
7 fact that it owed The Boathouse over \$4 million?

8 A. In the way of management fees, that is
9 correct.

10 Q. All right. And did that occur as
11 recently as 2019?

12 A. 2019's journal entry reflects that
13 according to the balance sheet that we received,
14 we did not see the actual journal entry, but it
15 was stated that that particular journal entry had
16 been made at that particular point in time.

17 Q. So to a reasonable degree of forensic
18 accounting certainty, can you say that Crew
19 Carolina continued to receive funds from The
20 Boathouse despite the fact that it owed The
21 Boathouse over \$4 million?

22 A. Yes.

23 Q. All right. Sir, what is your next
24 opinion in this case?

25 A. Richard Stoney's diversion of funds

1 from The Boathouse for personal matters and to
2 provide cash flows to unrelated entities harmed
3 The Boathouse from an accounting perspective, and
4 this is improper.

5 Q. All right. Is that opinion to a
6 reasonable degree of forensic accounting
7 certainty?

8 A. Yes.

9 Q. In your opinion, how would you
10 describe the management relationship between
11 Richard Stoney and The Boathouse or Crew Carolina
12 and The Boathouse?

13 A. I would first like to answer this with
14 describing what a normal management company
15 relationship would be in this particular instance,
16 because I have direct knowledge on that piece.
17 Normally, my experience has been that there is a
18 contract of some description or some understanding
19 of some description as to the services that the
20 management company is going to provide and what
21 those services are going to cost, and then there
22 is some kind of calculation as to what that will
23 be. It is much like a homeowners' association
24 that wants to contract a third-party vendor to
25 actually be their management company to get

1 repairmen, to make sure that the grounds are --
2 the common area grounds are kept up and that kind
3 of thing, and normally the homeowners have a fee
4 that they pay the management company based on some
5 formulary to determine what that management fee is
6 going to be.

7 I saw no such agreement of that kind
8 whatsoever. In this particular case cash was
9 going directly to Crew Carolina, which was wholly
10 owned by Mr. Stoney, and he used that cash for
11 certain things that he was doing at that
12 particular time that could be deemed personal in
13 nature, and so, therefore, it was not a normal
14 relationship between a management company and a
15 client, let's say.

16 So The Boathouse in this case would be
17 the client. Crew Carolina would be the management
18 company or the vendor. And there was nothing that
19 basically stipulated, that I saw, how that was
20 going to be calculated up. In restaurants I have
21 seen it done based on sales with certain
22 carve-outs. Usually there is some way to sit
23 there and calculate what the management fees are
24 going to be based on a performance of an entity.
25 That did not occur here.

1 In this particular case this was funds
2 moving haphazardly across the lines and eventually
3 in the control of Mr. Stoney to do with as he saw
4 fit, and so basically what it set up, instead of a
5 symbiotic relationship between an entity that's
6 seeking services where you're providing services
7 to me and I'm paying you a fee, it became more of
8 a cash drain than a symbiotic relationship and
9 very closely almost to a parasitic relationship
10 where the cash is moving one direction and it's
11 going to one person eventually, and that was
12 Mr. Stoney.

13 Q. So you described the management as
14 parasitic as opposed to symbiotic?

15 A. Correct.

16 Q. Is that opinion to a reasonable degree
17 of certainty --

18 MR. BARR: Objection.

19 BY MR. MCQUILLIN:

20 Q. -- as a --

21 MR. MCQUILLIN: Can I finish my
22 question?

23 MR. BARR: Sure. I'm sorry.

24 BY MR. MCQUILLIN:

25 Q. Is that opinion to a reasonable degree

1 of certainty as a certified global management
2 accountant?

3 A. Yes.

4 MR. BARR: My objection is to the terms
5 parasitic and symbiotic. I would respectfully
6 suggest neither are forensic nor accounting terms.
7 That's a characterization that is beyond the pale
8 of the expertise that this witness is being
9 offered to cover.

10 THE COURT: All right, sir.

11 MR. MCQUILLIN: Your Honor, he has been
12 qualified to testify in the field of certified
13 global management accounting, and he is providing
14 an opinion as to the nature of the management
15 relationship between Crew Carolina and The
16 Boathouse, and he is describing that relationship
17 as a parasitic relationship as opposed to
18 symbiotic relationship because of the cash drain
19 it puts on the company. I think it's within his
20 expertise as a certified global management
21 accountant.

22 MR. BARR: My objection is, Your Honor,
23 that those are conclusions that Your Honor could
24 reach, or not, based upon evidence that's offered
25 in this trial and arrangements of counsel. But

1 this witness is no more capable of concluding that
2 it is or is not symbiotic than would a court, or
3 in the case of jury, then it would be a jury
4 concern, matters within the common realm, and
5 therefore beyond the scope of the expert.

6 THE COURT: I'll sustain the objection.

7 MR. BARR: Thank you.

8 BY MR. MCQUILLIN:

9 Q. Sir, what facts, data, and opinions
10 did you rely on in forming your opinion that
11 Richard Stoney's actions harmed the company?

12 A. Well, there were numerous indicators
13 that it occurred. The first one that really stood
14 out to me was upon review of the tax returns that
15 there were an inordinate amount, a huge amount of
16 penalties that the company sustained for actions
17 that they were penalized for. There was a drain
18 -- additional drain on the cash flow of the
19 company that, quite frankly, shouldn't have been
20 incurred.

21 Q. You're saying that that's shown on the
22 tax returns for the company?

23 A. Yes.

24 Q. What other information did you review
25 in forming your opinion that Richard Stoney's

1 actions harmed the company?

2 A. We spent a lot of time in the bank
3 statements. One of the things that -- and the tax
4 returns and the financial statements -- that were
5 concerning, and the thing that was concerning was
6 the level of cash that was available for operating
7 the actual entity. The cash balances on the
8 financial statements, the tax returns were
9 unusually low.

10 The other thing that came to mind when
11 looking at the bank statements was the fact that
12 on a lot of days in any given month there were
13 overdraft charges, which meant that the cash
14 balances fell below the level that it would have
15 to be at in order to not incur those fees. And
16 they were not small amounts, and they were
17 numerous in number.

18 So what that would indicate is that
19 the company was suffering a working capital
20 shortage, primarily cash, because it's primarily a
21 cash business, and put undue stress on the company
22 to the point where they had to choose which bills
23 to pay, which bills not to pay, and that including
24 -- and that included paying their taxes.

25 Q. What other information other than the

1 tax returns and bank statements did you review in
2 forming your opinion that Richard Stoney's actions
3 harmed the company?

4 A. I looked at Ms. Stabler's deposition
5 of June 25th, 2019.

6 Q. What facts and information were
7 important to you in forming your opinion that
8 Richard Stoney's actions harmed the company from
9 Ms. Stabler's deposition?

10 A. Well, in that particular deposition on
11 Page 62, it says --

12 MR. BARR: Page 62?

13 THE WITNESS: Yes, sir.

14 MR. BARR: Thank you.

15 THE WITNESS: If I can read it. It
16 says: You also mentioned in your affidavit in the
17 family court case that one of your job titles was
18 crisis manager. The answer: Uh-huh.

19 What was -- what was that? What was
20 that? What were your job responsibilities there?
21 Under crisis manager that was just the day-to-day
22 operations of moving money back, like, and forth,
23 robbing Peter to pay Paul. All right. It wasn't
24 easy, and it put you in a bad spot, didn't it?
25 The answer: I think I even said that in my

1 affidavit, yes.

2 She goes on to say -- the question:
3 You said that robbing Peter to pay Paul put you in
4 a difficult position as well as anyone else that
5 worked at the restaurant? I said that anyone else
6 that would have been in my position, was her
7 answer.

8 Question: And yet money was taken
9 from The Boathouse to fund all of these unrelated
10 entities, correct? Some of them. I couldn't say
11 all. I don't know your parameters there, but.

12 Question: But that caused the funding
13 of these other entities -- that caused a cash flow
14 problem -- caused cash flow problems for The
15 Boathouse at Breach Inlet, correct? Yes, sir. In
16 fact there were times you weren't able to make
17 payroll at The Boathouse at Breach Inlet, correct?
18 There were times we were not allowed, we were not
19 able to make payroll, yes, sir. And you weren't
20 able to pay taxes in a timely manner? Yes.

21 Question: All right. So this
22 practice of robbing Peter to pay Paul had a
23 detrimental effect on The Boathouse, correct? It
24 had an effect, yes, sir, a detrimental effect. If
25 that was my wording in my affidavit, I would agree

1 to it. She goes on to say --

2 MR. BARR: Excuse me, Your Honor. I
3 think this is going beyond the pale of whatever
4 the question was.

5 MR. MCQUILLIN: Your Honor, the
6 question again --

7 MR. BARR: He's publishing another
8 witness's deposition.

9 MR. MCQUILLIN: The question was what
10 facts from Ms. Stabler's deposition were important
11 to him in forming his opinion that Richard
12 Stoney's actions harmed the company, and there is
13 a specific case actually on point on this, Judge,
14 under Rule 703 that says: The rule -- Rule 32
15 governs the use of depositions as evidence at
16 trial or hearings. The rule does not, however,
17 prohibit an expert from relying on the deposition
18 to form the basis of an opinion.

19 So I'm asking him what portions of the
20 depositions he found important in forming his
21 opinion.

22 MR. BARR: I agree with the principle,
23 Your Honor, but I don't think that justifies
24 simply republication of a deposition. Ms. Stabler
25 is going to be a witness here.

1 THE COURT: I'll sustain the objection.
2 It's not appropriate to republish the deposition.

3 MR. MCQUILLIN: Okay.

4 BY MR. MCQUILLIN:

5 Q. Tell us, but don't read word for word
6 from her deposition, is there any other facts or
7 testimony from her deposition that you found
8 important in forming your opinions?

9 A. Yes. Her deposition was clear. She
10 was -- she was the controller. She was the go-to
11 person. She was the person that had to deal with
12 the day-to-day operations to figure out how this
13 whole thing was going to work from a financial
14 standpoint. She was the person that everybody
15 looked to to figure out how are we going to pay
16 the bills, what are we going to pay it with, which
17 ones are we going to pay, which ones are we not
18 going to pay, and what are our priorities in order
19 to help the company survive.

20 Now, in this particular case it,
21 obviously, gave her great concern, and it gave her
22 great concern because she even got a title, which
23 was crisis manager. Unfortunately, in this
24 particular case a lot of the crises that occurred
25 here was self-inflicted crisis because of cash

1 going other places. The cash was not available.
2 The cash was being wasted on things it shouldn't
3 have been wasted on, such as fines, penalties, and
4 bank charges. If you don't have the cash to pay
5 your bills, you don't have the cash to incur all
6 of these things that provide no benefit.

7 Q. Other than the tax returns of the
8 company that show fines and penalties, the bank
9 statements that show overdraft charges, and
10 Ms. Stabler's testimony that we just talked about,
11 what other facts and data did you rely on in
12 forming your opinion that Richard Stoney's actions
13 harmed the company?

14 A. Well, there was a memo on April 15th
15 from Chip Robinson.

16 MR. BARR: What year?

17 THE WITNESS: I'm sorry?

18 MR. BARR: What year?

19 THE WITNESS: That was April 15, 2010.

20 BY MR. MCQUILLIN:

21 Q. In April 15, 2010 memo from Chip
22 Robinson -- I don't want you to read word for
23 words to me what was in there or the entire thing,
24 but I do want you to tell me what facts and data
25 were important to you in forming your opinion from

1 this April 15, 2010 memo that Richard Stoney's
2 actions harmed the company.

3 A. Well, in his particular memo he states
4 or echoes --

5 Q. Let me back up. Tell us a little bit
6 of background and foundation on the memo. What is
7 the date of the memo? Who is it from? Who is it
8 to?

9 A. It's a memo on Crew Carolina
10 letterhead or memo head, confidential interoffice
11 memoranda to Richard from Chip, subject:
12 Finances, date 4/15/2010.

13 Q. What facts and data were important
14 from that memo in forming your opinion that
15 Richard Stoney's actions harmed the company?

16 A. Well, the first thing is is he states
17 that the group -- the financial group within this
18 particular entity were completely consumed with
19 cash-flow-related issues. In other words, they
20 spent an inordinate amount of their time trying to
21 figure out the very thing that I just discussed:
22 how to pay, when to pay, who to pay and that sort
23 of thing, which pretty much would detract anybody
24 from the day-to-day operations if you always have
25 to worry about cash flow, where am I going to get

1 the next dollar to pay the next bill.

2 He goes on to say that removing Breach
3 Inlet -- and I won't use the term symbiotic or
4 parasitic, but I will say sources and uses of
5 funds to remove The Boathouse at Breach Inlet from
6 being the source of the funds that were being
7 consumed by Crew Carolina would remedy the
8 problem.

9 Q. We'll talk to Mr. Robinson about how
10 he described that during his testimony. Sir, you
11 prepared a chart showing the fines and penalties
12 that The Boathouse incurred?

13 A. Yes.

14 Q. All right. Who provided the tax
15 returns and bank statements that you reviewed in
16 terms of forming the information from that chart?

17 A. It came through discovery.

18 Q. On the tax returns and bank
19 statements, how many pages are we talking about in
20 terms of all of the tax returns and bank
21 statements you reviewed?

22 A. It's not quite the same level as the
23 detailed general ledger for 13 years, but it would
24 rival it.

25 Q. Can those voluminous documents be

1 conveniently examined in court?

2 A. No.

3 Q. All right. Have you prepared a
4 summary of data showing the penalties and fines
5 and overdraft charges incurred by The Boathouse at
6 Breach Inlet?

7 A. Yes.

8 (Plaintiff Exhibit 4, Penalties and
9 Fines and Overdraft Charges Spreadsheet, marked
10 for identification.)

11 THE COURT: Mr. McQuillin and Mr. Barr,
12 the witnesses y'all wanted to do today include
13 this witness and someone else or just this
14 witness?

15 MR. MCQUILLIN: Two other witnesses,
16 but we will get through them quickly. His is
17 taking a lot longer.

18 MR. BARR: May I confer with counsel,
19 Your Honor?

20 THE COURT: Yes. Why don't y'all
21 confer while we take a break for a few minutes.
22 We'll take five minutes.

23 (A recess was taken.)

24 THE COURT: Mr. McQuillin.

25 MR. MCQUILLIN: We are almost finished

1 with Mr. Hollerbach. Then we're going to knock
2 out Ms. Stabler today, if that's okay with Your
3 Honor. She is an adverse witness. So it will be
4 akin to cross. Then I believe Mr. Robinson is
5 going to return first thing in the morning. He
6 has somewhere to be at 10:30 tomorrow.

7 MR. BARR: What did you say about
8 adverse witness?

9 MR. MCQUILLIN: I said it will go
10 quicker with Ms. Stabler.

11 MR. BARR: You're releasing Chip
12 Robinson.

13 MR. MCQUILLIN: You are released today,
14 sir.

15 MR. BARR: When do you want him back?

16 MR. MCQUILLIN: 9:00 o'clock in the
17 morning.

18 MR. BARR: You couldn't accommodate
19 1:00?

20 THE COURT: I'll be here at 9:30.

21 BY MR. MCQUILLIN:

22 Q. Without objection, I'd like to hand
23 you what's been marked as Plaintiff's Exhibit
24 Number 4.

25 MR. MCQUILLIN: Your Honor, at this

1 time I move this be entered into evidence without
2 objection.

3 THE COURT: 4. Mr. Barr, any
4 objection?

5 MR. BARR: No objection, Your Honor.
6 Thank you.

7 THE COURT. Okay. Noted.

8 BY MR. MCQUILLIN:

9 Q. Mr. Hollerbach, we are getting late in
10 the day. So your charts sort of speak for
11 themselves here, but tell me what is depicted on
12 the first page of Exhibit 4 of your chart.

13 A. This chart, the source of this is a
14 federal tax returns for The Boathouse at Breach
15 Inlet by year. This is actually pulled from
16 Page 5 of the tax return, which encompasses the
17 balance sheet of the company plus certain
18 adjustments that are made to adjust the income
19 from the book income or financial income to tax
20 income. And therefore, in this particular case
21 this shows penalties and fines that are not
22 deductible for tax purposes, but it encompasses
23 penalties and fines?

24 So in this particular case, in 2015
25 they had \$41,867 of penalties and fines. '16 was

1 2008.54. '17 was 6168. 2018 was \$43,840. And so
2 over the four-year period they incurred almost
3 \$100,000 of penalties and fines that provided no
4 benefit to the company.

5 Q. Sir, as a certified forensic
6 accountant, can you say to a reasonable degree of
7 certainty that Richard's actions caused these cash
8 flow issues and penalties and fines.

9 MR. BARR: Objection. That's beyond
10 the pale of this witness to say that Richard
11 Stoney's actions did that. He can certainly
12 testify that if a company had \$4 million this
13 probably would not have occurred, but I don't
14 think he can -- this witness as an accountant can
15 attribute to an individual.

16 THE COURT: Go ahead.

17 MR. MCQUILLIN: Your Honor, he's a
18 forensic accountant. We've talked about how
19 Richard used funds from The Boathouse and there
20 were \$4 million transferred to Crew Carolina. I'm
21 asking him in his opinion as an accountant whether
22 or not Richard Stoney's actions caused cash flow
23 issues, which in turn caused the fines and
24 penalties.

25 THE COURT: That's a new question.

1 THE WITNESS: I'm sorry, it's -- could
2 you restate the question you want me to answer?

3 BY MR. MCQUILLIN:

4 Q. Sure. You have testified, sir, that
5 Richard Stoney's actions caused cash flow issues
6 at The Boathouse?

7 A. Correct.

8 Q. I'm asking you as a result of those
9 cash flow issues, was The Boathouse at Breach
10 Inlet also harmed by incurring fines and
11 penalties?

12 A. Yes.

13 Q. Those are accurately reflected on the
14 tax returns, correct?

15 A. Yes.

16 Q. Let's look at the second page of your
17 chart, Page 2 of 2. Sir, what is depicted on
18 Page 2 of your chart?

19 A. That is my chart. The 18 number is
20 not mine.

21 MR. MCQUILLIN: That's mine on there,
22 sorry.

23 BY MR. MCQUILLIN:

24 Q. Let me ask you this. I went through
25 and counted this up. But if you could count up

1 the total petty cash overdraft charges for the
2 month of December of 2017?

3 A. 18.

4 Q. Okay. So is it your opinion as a
5 forensic accountant to a reasonable degree of
6 certainty that the cash flow problems caused by
7 Richard's actions caused overdraft fees and other
8 penalties associated with the company?

9 A. Yes.

10 Q. Sir, the second part of your fourth
11 opinion involved that Richard Stoney's actions
12 were improper from an accounting perspective.
13 Tell me what facts and data you relied on in
14 forming your opinion that this is improper from an
15 accounting perspective.

16 MR. BARR: I don't know if this is an
17 objection, but you -- it sounds like you caught me
18 in the middle of something. You said the second
19 part of what?

20 MR. MCQUILLIN: The second part of his
21 fourth -- his fourth opinion is, as I understand
22 it --

23 MR. BARR: Would you ask him to restate
24 his fourth opinion and maybe start from there, if
25 you don't mind.

1 BY MR. MCQUILLIN:

2 Q. I think this may be helpful.
3 Mr. Hollerbach, can you restate and summarize your
4 four opinions you have given in this case,
5 starting at the first one. Just give us a quick
6 summary.

7 A. The first summary is he owes the
8 money.

9 MR. BARR: The what?

10 THE WITNESS: The first opinion was
11 that he owes over \$4 million.

12 BY MR. MCQUILLIN:

13 Q. When you say he, Richard Stoney?

14 A. Correct.

15 Q. What is your second opinion?

16 A. The second opinion has to do with the
17 fact that if it is deemed a loan, that interest
18 has to be charged.

19 Q. What is your third opinion?

20 A. The third opinion is that there were
21 disproportionate distributions.

22 Q. What is your fourth opinion that we're
23 currently discussing right now?

24 A. That the diversion of funds from The
25 Boathouse for personal matters to provide cash

1 flows to unrelated entities harmed The Boathouse
2 from an accounting perspective, and this was
3 improper.

4 MR. BARR: And what?

5 THE WITNESS: Improper.

6 BY MR. MCQUILLIN:

7 Q. From an accounting perspective this
8 was improper, correct?

9 A. Correct.

10 Q. Sir, what I'm asking you, in forming
11 your -- what facts and data did you rely on in
12 forming your opinion that from an accounting
13 perspective this was improper?

14 A. Well, the first thing is we already
15 went through the fines and penalties, and we went
16 through the fact that The Boathouse was in crisis,
17 cash flow crisis, and that they were aware of the
18 crisis and they were focused on the crisis, where
19 they could have been focused elsewhere.

20 And the improper part of this is the
21 fact that from an accounting perspective you do
22 things within accounting and cash management to do
23 no harm. What that means is that you see that you
24 have sufficient resources to meet the needs of the
25 company so it is sustainable. So from an

1 accounting perspective, if you drain the working
2 capital out of the company, it creates the crisis,
3 where I came to the con- -- the statement that it
4 was a self-inflicted crisis, and you put not only
5 the company at risk, but you put the individuals
6 who are employees of the company at risk; you put
7 the members who are investors in the company at
8 risk, and that is improper.

9 Q. What other information, facts, and
10 data did you rely on in forming your opinion that
11 Richard Stoney's actions were improper from an
12 accounting perspective?

13 A. Well, from an accounting perspective
14 there was -- there was a memo -- confidential memo
15 from Crew Carolina, LLC letterhead from Chip,
16 commingling finances, 11/26/07.

17 Q. What information from that memo did
18 you find is important in forming your opinion that
19 Richard Stoney's actions were improper from an
20 accounting perspective?

21 A. Well, the first part is -- from an
22 accounting perspective, is you are not allowed,
23 not only is it bad practice, but it is a death
24 sentence to commingle funds. You do not commingle
25 personal funds with company funds.

1 Q. Sir, to a reasonable degree of
2 forensic accounting certainty, did Richard Stoney
3 commingle funds?

4 A. Absolutely.

5 Q. What other facts and information are
6 important from the November 26, 2007 memo from
7 Chip Robinson to Richard Stoney?

8 A. The fact that he was advised by
9 counsel to stop it.

10 Q. When you say he was advised by counsel
11 to stop it, who advised, and what was he advised
12 to stop?

13 A. He was advised that any commingling of
14 funds between business entities without identical
15 ownership is not permitted without written
16 permission from the various members.
17 Specifically: He looked at me and stated that I
18 need to stop doing that.

19 MR. BARR: Objection. Objection, Your
20 Honor.

21 BY MR. MCQUILLIN:

22 Q. Sorry. I don't need you to read the
23 thing. I'm asking you what you learned from it,
24 was important in forming your opinion?

25 A. Well, number one, it was not a

1 mistake, and he was doing it because he was told
2 to cease and he did not, and he continued on, and
3 it made the matters worse.

4 Q. Who was telling Richard Stoney to stop
5 doing his practice?

6 MR. BARR: Objection. Objection.
7 That calls for hearsay conclusion, Your Honor.
8 The witness happens to be reading, I know, a
9 memorandum from Chip Robinson, who he's purporting
10 to quote a lawyer from a meeting. So, if
11 anything, it's double down or triple hearsay. The
12 witness has stated a conclusion, but he can't
13 proffer the evidence.

14 Mr. Robinson, I mean, Mr. Robinson is
15 testifying tomorrow. Counsel, if you intend to
16 bring this out, you may be able to get it through
17 him, but not through this witness.

18 MR. MCQUILLIN: Your Honor, all I'm
19 asking him is, number one, what facts and
20 information he found important from this memo in
21 forming his opinion; and then number two, I'm not
22 asking what the lawyer said for the truth of the
23 matter asserted. I'm merely asking it to show
24 that Mr. Stoney was put on notice.

25 MR. BARR: What else could that be

1 other than for the truth.

2 MR. MCQUILLIN: I'm not asking whether
3 or not Bobby Pearlman's legal advice to Richard
4 Stoney to stop doing this was correct or proper or
5 whether he needed it. I'm trying to establish
6 simply that the witness was put on notice, not for
7 the truth of the matter asserted.

8 THE COURT: I'll sustain the objection.

9 MR. BARR: Thank you, Your Honor.

10 BY MR. MCQUILLIN:

11 Q. All right. Mr. Hollerbach, anything
12 else important -- that you found important from
13 the memo with -- well, let me ask you this: Can
14 you say to a reasonable degree of certainty that
15 Richard Stoney did not follow the advice in that
16 memo and continued to divert funds?

17 A. I can tell you that the behavior -- I
18 can --

19 MR. BARR: I object, Your Honor. The
20 question is couched in terms of diverting funds.
21 I don't know that the testimony was any -- had
22 anything to do with this witness yet saying that
23 anything was diverted.

24 MR. MCQUILLIN: Your Honor, I believe
25 his opinion is Richard Stoney's diversion of funds

1 from The Boathouse for personal matters and to
2 provide cash flows to unrelated entities harmed
3 The Boathouse and from an accounting perspective
4 was improper. He specifically used the word
5 divert in his opinion. It's already in evidence.

6 THE COURT: The gist of the question
7 seems to be toward some degree of willfulness, I
8 believe, and I believe you can ask that question
9 in that frame.

10 BY MR. MCQUILLIN:

11 Q. Mr. Hollerbach, my question to you is
12 can you say to a reasonable degree of certainty
13 Richard Stoney did not follow the advice to stop
14 this practice and continued to divert funds from
15 The Boathouse?

16 A. I can tell you that Richard Stoney's
17 behavior did not change during the period of time
18 that he had the ability to move funds at his
19 discretion.

20 Q. And one of the examples from your
21 chart showed entry as recent as May of 2019; is
22 that right?

23 A. I'm sorry?

24 Q. One of the examples in your chart that
25 we went through showed an entry as recent as

1 May 2019; is that correct?

2 A. That's one example. There were other
3 examples, but yes.

4 Q. And again, the memo where Mr. Stoney
5 was asked to stop this practice, that was dated
6 November 26, 2007, correct?

7 A. Correct.

8 Q. What other facts and data did you rely
9 on in forming your opinion that this was improper
10 from an accounting perspective?

11 A. It's always good practice to have some
12 indication of what the firm's CPA has to say about
13 things, and there was -- I think it was an
14 affidavit from Mr. Jarvis.

15 Q. Who is Dennis Jarvis?

16 A. Dennis Jarvis is a certified public
17 accountant. I'm sorry, I didn't research his
18 license number and his date when he became a
19 certified public accountant. But he practiced
20 primarily in accounting and tax, and he had
21 prepared several of the tax returns for the
22 entities and was familiar with the books and
23 records.

24 Q. What facts and data were important to
25 you in forming your opinion that this was improper

1 from an accounting perspective in reviewing
2 Mr. Jarvis's, the CPA for the company, affidavit?

3 MR. BARR: Objection. Your Honor, this
4 is an affidavit from a witness who I believe we
5 have lined up to testify tomorrow that -- I don't
6 recall whether it's been offered in any of the
7 motion practice in this case, but I don't know
8 that it qualifies as a document upon which this
9 witness can rely in forming whatever opinion he's
10 about to offer.

11 THE COURT: I overrule the objection.
12 BY MR. MCQUILLIN:

13 Q. Sir, what information and data did you
14 rely on and find important in forming your opinion
15 that Richard's actions were improper from an
16 accounting perspective in Mr. Jarvis's affidavit?

17 A. There were several. There were two
18 that -- or three that really, really concerned me
19 as a certified public accountant.

20 Q. What were those items?

21 A. The first one was I was informed by
22 Richard Stoney, Chip Robinson, a former controller
23 and consultant to The Boathouse, and Jamie
24 Stabler, the current controller of The Boathouse
25 and Crew, on numerous occasions that Richard

1 Stoney would not repay the several million dollars
2 receivable owed to The Boathouse for the Crew. I
3 learned that Crew was a conduit through which
4 Stoney would siphon money out of The Boathouse to
5 pay himself for his personal expenses, unrelated
6 entities that were owned wholly or in part by
7 Richard Stoney.

8 Q. Mr. Jarvis, the CPA, is saying that
9 about his own client?

10 A. He is saying that about his own
11 client. The second thing that really concerned me
12 was that Richard Stoney proposed closing down Crew
13 and writing off the \$4,041,603.03 receivable that
14 Crew owed The Boathouse.

15 Q. Why does that concern you that that --
16 and show that this is improper from an accounting
17 perspective?

18 A. Because the --

19 MR. BARR: Excuse me. Your Honor, the
20 witness is now delving into the details of
21 out-of-court statement that relates to a proposal
22 that the -- the statement is not that anything was
23 done, but there was a conversation about something
24 that was being proposed. So I don't think it's
25 proper that this particular statement that counsel

1 is eliciting is focusing this witness on from the
2 Jarvis affidavit -- I don't think it's a reliable
3 foundation for allowing him to publish it.

4 Again, I understand Mr. Jarvis has
5 been subpoenaed and will appear tomorrow. He can
6 certainly address it and be cross-examined about
7 it as well.

8 MR. MCQUILLIN: And he certainly can.
9 Your Honor, all I'm asking is why is that
10 statement important to you in forming your opinion
11 that this was improper from an accounting
12 perspective. And this is the statement of the
13 company's CPA that Mr. Hollerbach has said he
14 reasonably relies on in forming his opinions.

15 THE COURT: I overrule the objection.
16 You have asked the question. What is the answer?

17 THE WITNESS: Can you restate the
18 question?

19 THE COURT: Well, the objection is
20 sustained if you can't remember the question.

21 THE WITNESS: The question, as I
22 remember the question, the question is did I
23 reliably use this information in coming to an
24 opinion, and the answer is yes, in the total body
25 of the information I looked at, that is correct.

1 BY MR. MCQUILLIN:

2 Q. You said that there were three things
3 that you found important in forming your opinion
4 that Richard Stoney's actions were improper from
5 an accounting perspective. You have gone through
6 two of those now. What was the third piece of
7 information from Mr. Jarvis's affidavit that you
8 found important, and tell us why?

9 A. This one is the scariest one. When
10 asked, Richard Stoney instructed me not to discuss
11 the due to/due from with other members of The
12 Boathouse and did not permit me to share the
13 company's tax returns with certain members,
14 including Laurance Stoney.

15 Q. Why did you say that one is the
16 scariest? Why do you believe that that's improper
17 from an accounting perspective?

18 A. It's not only improper from an
19 accounting perspective; I can tell you that if
20 somebody had made a statement like that to me or
21 my firm they would no longer be a client because
22 that approaches our standards --

23 MR. BARR: Objection. Objection.

24 THE WITNESS: -- our standards.

25 THE COURT: Yes, sir.

1 MR. BARR: The witness has said not --
2 he's obviously purporting to express an opinion
3 beyond accounting. He just said that: It's not
4 just inappropriate from an accounting perspective,
5 but he's about to offer some testimony about why
6 else it's inappropriate.

7 THE COURT: Restrict the response to
8 the question, not to personal issues.

9 THE WITNESS: I can tell you that to
10 direct a certified public accountant not to
11 discuss financial information with members of the
12 entity for which you're doing the tax work or
13 share the tax returns is improper from an
14 accounting perspective.

15 MR. MCQUILLIN: Thank you, sir.
16 Please answer any questions that Mr. Barr may
17 have.

18 THE COURT: Mr. Barr.

19 MR. BARR: Thank you. May it please
20 The Court.

21 CROSS-EXAMINATION

22 BY MR. BARR:

23 Q. Mr. Hollerbach, let me ask you a
24 question about your calculation. Is that exhibit
25 that showed his calculation -- was that offered?

1 Do you have it?

2 A. I don't think I so.

3 MR. MCQUILLIN: I don't think I do.

4 BY MR. BARR:

5 Q. Mr. Hollerbach, I'm showing you a
6 document that appears was not put into evidence,
7 but you were examined about it. At the top it
8 says Opinion 1.

9 MR. BARR: Can you see this, Your
10 Honor?

11 THE COURT: Yes, sir.

12 BY MR. BARR:

13 Q. It's got due to/from. It's actually
14 due from Crew Carolina to Breach Inlet, right?

15 A. Correct.

16 Q. \$4,194,264.66, right?

17 A. Yes.

18 Q. Where did you get that from?

19 A. The balance sheet, 2019.

20 Q. So that was from the balance sheet
21 that was prepared by my client?

22 A. Correct.

23 Q. Correct. And that's the beginning
24 basis for your calculation of the damages in this
25 case, right?

1 A. I'm just -- I'm just -- I'm just --
2 nobody asked me about damages. What they asked me
3 to do was to do a math calculation --

4 Q. Correct.

5 A. -- of what is the total of due to/due
6 from Crew Carolina and what was the total due
7 to/from Richard Stoney and what does that sum
8 leave.

9 Q. Correct.

10 A. Which I did.

11 Q. Once you calculated what we're looking
12 at here, then you added to that the other exhibits
13 that we have seen about the tax penalties, and you
14 have added the bank penalties, right, and you came
15 up with that total number which was almost
16 \$5 million, right?

17 A. No, sir.

18 Q. Was that it, the 5 million?

19 MR. MCQUILLIN: It's on the chart
20 there.

21 BY MR. BARR:

22 Q. The 4,900,000. All right. So is it
23 your conclusion that the grand total is the
24 \$4,900,000?

25 A. That is a math problem.

1 Q. That's what?

2 A. That is a math problem.

3 Q. I'm not understanding your last word.
4 That's the math what?

5 A. That is a math problem. I was asked
6 to sum those amounts. That's all I was asked to
7 do.

8 Q. Excuse me for turning my back on you.
9 Let me get my pad here. Is that -- but is that
10 your bottom-line number as to what you say Richard
11 Stoney owes to Breach Inlet?

12 A. That's the number that -- Crew
13 Carolina owes 4,194,26- -- the top number, yes.
14 The accumulated imputed interest hadn't been done.
15 That's correct. The due to/from Richard Stoney,
16 that is correct. The disproportionate
17 distributions from Homes and Cox, all I said from
18 that standpoint is they were disproportionate
19 distributions.

20 Q. What I'm asking you is it your
21 testimony that Richard Stoney should be liable to
22 The Boathouse at Breach Inlet for \$4,900,064.08?

23 A. I'm telling you that those individual
24 amounts add up to that number.

25 Q. That's your final conclusion, right?

1 A. The final conclusion is the summation
2 of that number is \$4,900,064 whatever. If he is
3 found to owe that money, then he would -- that's
4 what he would pay.

5 Q. That's what I thought you were saying.
6 As you were calculating these numbers, if you can
7 see my pen here, the top number due from Crew
8 Carolina is 4,194,264.66, right?

9 A. Correct.

10 Q. Now, you pulled that number right off
11 The Boathouse at Breach Inlet's balance sheet,
12 didn't you?

13 A. Absolutely.

14 Q. All right. In other words, that was
15 on their books, right?

16 A. Absolutely.

17 Q. It was not hidden? You didn't have to
18 look for it; they reported it to you, right?

19 A. The books of Breach Inlet shows that
20 number on their books.

21 Q. Correct. But that's not a number you
22 or I have got; that was the number that they
23 calculated and reported and you're accepting it
24 here, right?

25 A. That's a number that they reported

1 that is on this document that is the basis for
2 that number. That is correct.

3 Q. Then the number here due from -- and I
4 realize you have calculated the interest. I'll
5 skip that. We saw that as an exhibit that's in.
6 Then there's a separate amount on the balance
7 sheet that was due from Richard Stoney, which was
8 \$42,835.19, right?

9 A. That is correct.

10 Q. You pulled that right off of the
11 balance sheet?

12 A. That is correct.

13 Q. And then you did search the records to
14 come up with the disproportionate distributions,
15 right?

16 A. Yes.

17 Q. Now, you say you've spent, did you say
18 500 hours?

19 A. The firm, yes.

20 Q. The firm spent -- right. The firm
21 spent 500 hours to come to this conclusion, right,
22 about the damages?

23 A. To various conclusions, but that is
24 one.

25 Q. And how much have you been paid?

1 A. I'd have to ask my billing clerk. I
2 ask -- the only thing I was asked to bring to
3 court was the number of hours. I think -- I think
4 the billing records that you had was like
5 38,000-whatever.

6 Q. As of January 2017 and your
7 deposition, you said you have been paid at least
8 that much more, correct?

9 A. Correct.

10 Q. So you have probably been paid \$80,000
11 or so; is that right?

12 A. That would -- yes.

13 Q. And at the end of the day, at the end
14 of the day in terms of finding out what was due
15 from Crew Carolina to Breach, you took the same
16 number that they had reported openly on their
17 balance sheet, right? Isn't that right?

18 A. Yes. Yes.

19 Q. Okay. And you took the same number
20 that was reported as due from Richard Stoney right
21 off of their balance sheet, right, what they
22 reported?

23 A. Yes.

24 Q. You didn't have to interpret anything?
25 It was there in black and white, right?

1 A. That number is off their balance
2 sheet.

3 Q. Correct. And then the accumulated and
4 imputed interest, that's just a mathematical
5 calculation, isn't it?

6 A. With some research, yes, that's
7 correct.

8 Q. Sure. Then you did have to search the
9 books to get I think you said 13 checks to Homes
10 and then there was only one to Cox, right, to come
11 up with that number?

12 A. Yes.

13 Q. Once again, there was no effort to
14 conceal this on the books of Breach Inlet, right?

15 A. The amount was recorded correctly on
16 the books of Breach Inlet.

17 Q. Okay. Now, you're attributing this to
18 Richard Stoney personally, correct?

19 A. I'm telling you that that due to/due
20 from Carolina and the rest of it went through Crew
21 Carolina and Richard Stoney.

22 Q. Okay. And you're attributing that to
23 Richard Stoney because Crew Carolina is a single
24 member LLC of which Richard Stoney is the single
25 member, correct?

1 A. Correct.

2 Q. But you know, do you not,
3 Mr. Hollerbach -- were you here during the opening
4 statements?

5 A. Yes.

6 Q. And you heard my summary, did you not,
7 in my opening statement of the number of various
8 entities that were, in fact, set up and operated:
9 The Boathouse at Breach Inlet, The Boathouse East
10 Bay, The Boathouse Lake Julian, The Boathouse at
11 Ellis Creek, Carolinas, The Boathouse at
12 Knoxville, Bluewater Management, which was the
13 catering? You heard me say that, didn't you?

14 A. Yes.

15 Q. And you had been informed that there
16 were numerous entities that were within the
17 umbrella of this operation, weren't you?

18 A. If you're talking about the umbrella
19 of the operation of Crew Carolina --

20 Q. Correct.

21 A. -- that is correct.

22 Q. And you may recall in your deposition
23 you and I discussed the model that was set up here
24 where numerous restaurants were in existence, they
25 were managed -- they were centrally managed, and

1 for economy of scale they have a common accounting
2 source and they have common payroll --

3 MR. MCQUILLIN: Objection, Your Honor.

4 BY MR. BARR:

5 Q. -- common booking.

6 MR. BARR: I'm sorry.

7 MR. MCQUILLIN: Mr. Barr is testifying.

8 MR. BARR: I'm also cross-examining.

9 MR. MCQUILLIN: He's restating his
10 opening statement.

11 MR. BARR: I'm also cross-examining,
12 correct. I'm leading, Your Honor. I think I'm
13 permitted to do that.

14 THE COURT: You may proceed.

15 MR. BARR: Thank you. And now you
16 interrupted me, Mac. Notice that I smiled.

17 BY MR. BARR:

18 Q. So I know I was talking about the
19 model that you and I were talking about in your
20 deposition?

21 A. Sure.

22 Q. So the model of various restaurants
23 managed centrally and using common management,
24 centralized bookkeeping, centralized accounting,
25 leveraging the purchasing of food for multiple

1 restaurants rather than just single restaurants at
2 a time and the cross assignment of employees, both
3 management employees, server personnel, cooks,
4 chefs and the like, that is a legitimate manner of
5 approaching the business, isn't it?

6 A. If it is run properly, that is
7 correct.

8 Q. That's what you said, if it's run
9 properly?

10 A. Correct.

11 Q. But the concept is valid, isn't it?

12 A. The concept is not foreign, no.

13 Q. Well, not only is it not foreign, but
14 it's valid, isn't it?

15 A. I'm not going to say it's valid. I'm
16 saying it's not foreign, and there's multiple
17 different models, but it is a concept that is not
18 foreign to the industry or other industry.

19 Q. Correct. And it's -- one of the
20 singular benefits of it is to create a cost
21 savings for each of the related entities; isn't
22 that right?

23 A. Correct.

24 Q. And often those cost savings can be
25 significant, can't they?

1 A. If it's done appropriately, yes.

2 Q. I understand that. I understand. But
3 sometimes things aren't -- sometimes things don't
4 work; isn't that right?

5 A. Some things -- sometimes things don't
6 work.

7 Q. Now, so this -- isn't it correct that
8 this 4,194,000 due from Crew Carolina, isn't it
9 correct that that most probably is represented by
10 funds that were used by Crew to support the other
11 entities, which is to say The Boathouse at East
12 Bay, The Boathouse at Lake Julian, The Boathouse
13 at Ellis Creek, Carolinas, The Boathouse at
14 Knoxville, and Bluewater? Isn't it most probable?

15 A. It is probable that those monies went
16 in those directions as well as other directions.

17 Q. Correct?

18 A. Correct.

19 Q. But so you're not saying that your
20 conclusion is that Richard Stoney put 4,194,000 in
21 his pocket, is it?

22 A. I would have to not answer that as a
23 yes or no.

24 Q. You're agreeing that it probably went
25 to these entities, correct?

1 A. It probably went to those entities
2 without common ties to the members of The
3 Boathouse.

4 Q. Okay. You and I had an interesting
5 conversation in your deposition about whether you
6 are a neutral expert or an advocate. Do you
7 remember that?

8 A. Absolutely.

9 Q. And I think you just crossed the line
10 there, correct?

11 A. Absolutely not.

12 Q. You didn't? By volunteering -- you
13 just volunteered that where the other entities
14 don't have common members, then it's not right,
15 didn't you?

16 A. By that statement what I'm saying is
17 that The Boathouse at Breach Inlet is not an
18 investment company. It is not a bank where you go
19 make loans at below-market interest to benefit
20 somebody that is not a common ownership of all of
21 the members of The Boathouse to all of the other
22 members.

23 Q. What would be wrong, Mr. Hollerbach,
24 with a group of restaurants not owned in common
25 utilizing the service of centralized management

1 for the same purposes for economy of scale? They
2 would all benefit, wouldn't they?

3 A. If, in fact, you're talking from an
4 operational level -- if, in fact, you are talking
5 from an operational level where all you're dealing
6 with is the operations of the entities, that would
7 be true.

8 Q. And in which case they could save on
9 the cost of food; they could save on the cost of
10 personnel; they could save on the cost of
11 insurance, correct? Isn't that right?

12 A. That is correct.

13 Q. Regardless of who owned the various
14 entities, right?

15 A. That is correct.

16 Q. So with that in mind and accepting
17 your testimony that this 4,194,000 probably was
18 paid out to help those other entities, did you
19 undertake to find out -- well, let me state the
20 question differently.

21 If that 4 million 194 was paid out to
22 other entities, then it's likely that those would
23 be obligations owed from those entities back to
24 Crew Carolina, correct?

25 A. If, in fact, Crew Carolina funded

1 those entities, those entities owe Crew Carolina
2 that money.

3 Q. Correct. And so at least
4 theoretically if we were to agree that that entire
5 4 million 194 went to those entities and became a
6 due from Crew to Breach, then there should be a
7 total of due froms from those entities to Crew
8 which would be the same amount, correct?

9 A. In theory in accounting terms, yes.

10 Q. Correct. So with that in mind, did
11 you undertake to investigate that? Did you
12 undertake to investigate where that 4 million 194
13 went, to what entities, and what those entities
14 owe back to Crew?

15 A. That was not part of our engagement.

16 Q. That was not what?

17 A. That was not part of our engagement.

18 Q. You weren't engaged to do that?

19 A. I was not asked to do that, no.

20 Q. Well, equitably, don't you think that
21 that would be helpful information to you?

22 A. In this particular case Crew Carolina
23 owes \$4,194,264.66 to The Boathouse. Now, where
24 Crew Carolina chooses to get that from is
25 absolutely up to them.

1 Q. Mr. Hollerbach, I don't know if you
2 answered my question. I think you -- I submit you
3 just crossed the line again to that of an
4 advocate.

5 What my question was, wouldn't it be
6 helpful to know from an equitable standpoint where
7 that 4 million 194 was spread? For example, did
8 you know that your client Laurance Stoney was a
9 member of one of the other entities that failed,
10 The Boathouse at East Bay, which probably owes
11 money, The Boathouse at East Bay, the LLC of which
12 your client is a member, owes money back up to
13 Crew? Do you realize that? Wouldn't it be
14 helpful to know equitably how Mr. Laurance Stoney,
15 your client, might have benefitted from this?

16 A. So Mr. Laurance Stoney's entity is --
17 what is your statement?

18 Q. No. I'm just asking. My question is
19 don't you think it would be helpful to understand
20 from an equitable standpoint how that 4 million
21 194 was spread among the different entities?

22 A. At this particular point in time Crew
23 Carolina had the cash, and as far as equitably
24 finding out what they did with it from
25 investigating in other entities other than the

1 fact that they failed doesn't really play to the
2 \$4,194,264.

3 Q. That's your answer?

4 A. That's a number. That's my number.

5 Q. That's your answer to my question
6 about equity, right? That's your answer?

7 A. I'm not talking about equity.

8 Q. I am. That was what my question was.

9 A. I can't define what is equitable.

10 Q. Okay.

11 MR. BARR: If you give me a minute,
12 Your Honor. I'm going through my margin notes.

13 BY MR. BARR:

14 Q. You testified about the management
15 fees. Do you remember that?

16 A. Yes.

17 Q. Did you see where Breach Inlet paid a
18 salary to either Richard Stoney or Jamie Stabler?

19 A. Yes.

20 Q. They paid salaries to Jamie and
21 Richard?

22 A. Yes.

23 Q. Isn't it correct that their salaries
24 were paid by Crew?

25 A. No.

1 Q. Okay. Weren't they W-2 employees of
2 Crew?

3 A. First of all, it's illegal for them to
4 be W-2 employees.

5 Q. Okay. Maybe I'm -- that shows my
6 accounting knowledge or lack thereof. By whom
7 were they employed then?

8 A. Well, the paychecks -- the paychecks
9 came from The Boathouse.

10 Q. Okay. Do you know whether or not
11 their paychecks were part of the management fee?

12 A. Yes.

13 Q. They were part?

14 A. Yes.

15 Q. Okay. Then you testified that Mr. --
16 I think the question was did you find from your
17 analysis -- and I can't remember which one it was
18 -- that Mr. Stoney was continuing to draw funds
19 personally as recently as May of 2019, and there
20 was a legal fee for, which I'll represent wasn't
21 me, for \$1,800. Do you remember that testimony?

22 A. Yes.

23 Q. When was the last one before that?

24 A. We cannot tell. We traced a number of
25 payments to Richard Stoney.

1 Q. Is your question you don't know -- I
2 mean, is your answer you don't know?

3 A. The question is I don't remember the
4 dates, but it was in 2019 and 1,817.

5 Q. Are you talking about the \$1,800 one?

6 A. No.

7 Q. You're talking about another one?

8 A. Other cash checks written to Richard
9 Stoney, yes.

10 Q. Why wasn't it on your spreadsheet?

11 A. Because we couldn't prove what it was
12 for.

13 Q. Therefore -- okay. Well, then you
14 believe you can prove that one \$1,800 was because
15 it noted it was for a legal fee? That's what it
16 said. So my question is when was the next --

17 MR. MCQUILLIN: Objection, Your Honor.

18 BY MR. BARR:

19 Q. -- one before that?

20 MR. MCQUILLIN: The witness wasn't
21 finished answering the question.

22 BY MR. BARR:

23 Q. I'm sorry. Go ahead.

24 A. That particular notation was on the
25 check.

1 Q. I remember you said that.

2 A. There were no annotations in the
3 books. We know from looking at check copies that
4 were not payroll check copies that there were
5 numerous payments made to Mr. Stoney, and the
6 thing that really draw or drew our attention to it
7 is the fact that there were multiple checks
8 written on the same day for differing amounts for
9 even amounts.

10 Q. Haven't you been told that Ms. Stabler
11 has testified that those were reimbursements?
12 Haven't you been told that?

13 A. Can I finish my first answer?

14 Q. Yes, you certainly can.

15 A. The first answer was we knew that they
16 were multiple checks written to Mr. Stoney,
17 multiple checks over long periods of time. They
18 were in even amounts, and the thing that really
19 drew our attention was they were multiple checks
20 written for even amounts on the same day to
21 Mr. Stoney. We further investigated the general
22 ledger, the detailed general ledger, combing --
23 combing forward --

24 Q. Excuse me. Excuse me, Mr. Hollerbach.

25 MR. BARR: If I may, Your Honor.

1 THE COURT: Well, who has a conflict
2 for tomorrow? We're about to exit this place for
3 this day.

4 MR. BARR: I think I'll stand down,
5 Your Honor, so we can get this next witness.

6 THE COURT: Are you all through with
7 this witness? Do you want him to leave now and
8 come back later?

9 MR. MCQUILLIN: I have two brief
10 questions, Your Honor.

11 THE COURT: All right.

12 REDIRECT EXAMINATION

13 BY MR. MCQUILLIN:

14 Q. Mr. Hollerbach, we went through an
15 example on your Exhibit 1 document. I'm talking
16 about this due to/due from Crew Carolina figure
17 where Richard Stoney got weekend cash, and that
18 was booked as due to/due from, correct?

19 A. Correct.

20 Q. So all of the money that makes up that
21 due to/due from figure did not go to other
22 companies; some of it went to Richard personally,
23 correct?

24 A. Correct.

25 Q. Absent an agreement, Mr. Hollerbach,

1 is it proper from an accounting perspective to use
2 funds from one company to fund others if they do
3 not have the same ownership?

4 A. No.

5 MR. MCQUILLIN: Thank you, sir.

6 THE COURT: Any final questions,
7 Mr. Barr?

8 MR. BARR: Just briefly.

9 RECROSS-EXAMINATION

10 BY MR. BARR:

11 Q. When you said that there were some
12 that were payable to -- out of Crew that went --
13 I'm sorry -- out of The Boathouse that went to
14 Richard that were included in that 4 million 194,
15 do you remember that?

16 A. Personal -- personal amounts. It was
17 in that --

18 Q. That's this Exhibit 1, isn't it?

19 A. Yes.

20 Q. That's it?

21 A. I can't see it.

22 Q. That's 1, 2, 3, 4, 5, 6 entries you
23 found, right? That's this exhibit, correct?

24 A. That is The Boathouse payable due
25 to/from Crew. That's correct. That's a sample

1 of. And I don't know what the total number is.

2 Q. That's what you were talking about?

3 A. Yeah. It was demonstrative as to what
4 they were and what they entail. I'm sure we may
5 have a number of the total over that period of
6 time. I don't know what that number is.

7 MR. BARR: Thank you, Mr. Hollerbach.

8 THE COURT: Thank you, sir. You may
9 step down.

10 MR. MCQUILLIN: Your Honor, at this
11 time we call Jamie Stabler to the stand.

12 CLERK: For the record, please state
13 your full name, spelling your last

14 THE WITNESS: Jamie Stabler,
15 S-T-A-B-L-E-R.

16 JAMIE STABLER
17 being first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. MCQUILLIN:

20 Q. Ms. Stabler, you are currently the
21 controller and bookkeeper for The Boathouse at
22 Breach Inlet and Crew Carolina; is that right?

23 A. Yes, sir.

24 Q. And you have served in this role since
25 late 2012 or early 2012 (sic), correct?

1 A. Yes, sir.

2 Q. And another job title you have had
3 while working for Richard Stoney is, quote, crisis
4 manager, correct?

5 A. If that's what's in my affidavit, yes,
6 sir.

7 Q. And using your words as crisis
8 manager, your responsibilities under crisis
9 manager, and I quote, were that: That was just
10 the day-to-day operations of moving money back and
11 forth and robbing Peter to pay Paul, right?

12 A. I believe that was in my affidavit,
13 yes, sir.

14 Q. And it's in your deposition, correct?

15 A. If you say so, yes, sir.

16 Q. All right. And this act of robbing
17 Peter to pay Paul, it caused a cash flow crisis at
18 The Boathouse at Breach Inlet; did it not?

19 A. I believe that what -- yes, sir.

20 Q. Because Richard Stoney robbed Peter to
21 pay Paul, The Boathouse at Breach Inlet could not
22 pay its taxes in a timely manner, correct?

23 A. That is correct.

24 Q. And because Richard Stoney robbed
25 Peter to pay Paul, The Boathouse at Breach Inlet

1 incurred penalties and fines for back taxes,
2 correct?

3 A. I believe that's what I said. Yes,
4 sir.

5 Q. In 2018 The Boathouse at Breach Inlet
6 paid \$43,840 in fines and penalties to the IRS;
7 did it not?

8 A. I don't have that in front of me, but
9 if that's on the balance sheet that I provided the
10 lawyers on both sides, then that would be, yes,
11 sir.

12 Q. You testified -- I'll represent that
13 you testified to that in a 30(b)(6) deposition
14 with the company.

15 A. I would agree with that then, yes,
16 sir.

17 Q. Richard's actions were harmful to The
18 Boathouse at Breach Inlet, correct?

19 A. By not having the cash requirement,
20 yes.

21 Q. Because Richard robbed Peter to pay
22 Paul, The Boathouse at Breach Inlet could not make
23 payroll, correct?

24 A. They could not make payroll, yes.

25 Q. And so in addition to just harming the

1 company, it harmed the employees of The Boathouse
2 at Breach Inlet, correct?

3 A. The employees received their
4 paychecks.

5 Q. But they didn't receive them in a
6 timely manner, correct, because The Boathouse was
7 not able to make payroll, correct?

8 A. There were sometimes they did not
9 receive payroll timely, yes.

10 Q. All right. And like many restaurants
11 and entities in the food and beverage industry,
12 you have employees that live paycheck to paycheck;
13 do you not, ma'am?

14 A. I don't know about their personal
15 finances, but probably.

16 Q. But you're aware that there are
17 individuals that work in the restaurant industry,
18 including your restaurant, that live paycheck to
19 paycheck, correct?

20 A. I'm aware that there are many people
21 that live paycheck to paycheck.

22 Q. While your employees were living
23 paycheck to paycheck and while The Boathouse
24 couldn't make payroll, let's talk about what
25 Richard Stoney was using Boathouse funds for. You

1 have testified that Richard Stoney used Boathouse
2 funds for travel unrelated to business to go to
3 Belgium, Chicago, Bahamas, New York, and Key West,
4 correct?

5 A. I believe we covered that in the
6 general ledger of my deposition.

7 Q. Is that correct?

8 A. Yes, sir. If that's what I said in my
9 deposition, yes, sir.

10 Q. Right. You testified that Richard
11 Stoney used approximately \$850 in operating monies
12 to go to his former girlfriend -- to give to his
13 former girlfriend Chris Brewer, correct?

14 A. I don't remember that in my
15 deposition. If that's in the general ledger,
16 then...

17 Q. Would it refresh your recollection if
18 I showed you your deposition, ma'am?

19 A. Possibly, yes. Oh, yes, it would.

20 Q. Just look at your prior -- we're
21 handing you your deposition that you gave,
22 Page 170, please read that highlighted portion.

23 A. This is what -- I was reading the
24 screen.

25 Q. I think you were looking at --

1 A. This is what I was reading on the
2 screen. I'm okay with this. I just wanted to
3 make sure I was -- I was actually looking at a
4 spreadsheet at that time.

5 Q. Ms. Stabler, my question to you is you
6 have testified, have you not, that Richard Stoney
7 used approximately \$850 of The Boathouse operating
8 money to go to his former girlfriend Chris Brewer,
9 correct?

10 A. If that's what I previously testified
11 to, yes, sir.

12 Q. Okay you testified, have you not, that
13 Richard Stoney used The Boathouse funds for a pair
14 of golf cart engines he keeps at his plantation in
15 Kensington?

16 A. That's what I testified to prior, yes,
17 sir.

18 Q. You have testified, have you not, that
19 Richard Stoney used The Boathouse funds for his
20 polo ponies at Kensington, whether that be saddles
21 or bags of feed, correct?

22 A. I believe we covered that in
23 deposition of that general ledger on the screen,
24 yes, sir.

25 Q. You have had to personally deliver

1 Boathouse cash to Richard Stoney at Kensington
2 planation; have you not?

3 A. I have done that before, yes, sir.

4 Q. Richard Stoney has used operating
5 funds from The Boathouse to pay his mortgage at
6 his Kensington Plantation; has he not?

7 A. If that was in my deposition, then,
8 yes, sir. That was the thing we looked at.

9 Q. Do you recall testifying in your
10 deposition that Richard Stoney used Boathouse
11 funds to, quote, pay Latino workers at Kensington;
12 have you not?

13 A. I remember you bringing that one up
14 twice, yes, sir.

15 Q. Then Richard Stoney used Boathouse
16 monies to repair his watch, correct?

17 A. If that was on the spreadsheet that
18 you provided that I agreed to, then, yes, sir.

19 Q. So while The Boathouse can't make
20 payroll, again Richard Stoney is travelling to
21 Belgium, Chicago; we saw France on another
22 document, the Bahamas, New York, and Key West for
23 travel unrelated to the business, correct?

24 A. Of the ones that I have seen, yes,
25 sir.

1 Q. Okay. Richard Stoney used The
2 Boathouse funds to repair his watch. Do you think
3 it's time for Richard maybe to start thinking
4 about someone other than himself?

5 MR. BARR: Objection, Your Honor.

6 THE COURT: Objection sustained.

7 BY MR. MCQUILLIN:

8 Q. Ms. Stabler, we could go through these
9 for hours, but the gist here is that while The
10 Boathouse had a cash flow crisis and couldn't make
11 payroll for its employees Richard Stoney was
12 funding his plantation lifestyle, correct?

13 A. That was the time, yes, sir, he was
14 using personal. We have gone through that.

15 Q. The Boathouse is a successful
16 restaurant that consistently produces income,
17 correct?

18 A. It has income, yes, sir, according to
19 the profit and loss statement.

20 MR. BARR: Your Honor, could we ask
21 maybe -- Jamie, could you speak up?

22 BY MR. MCQUILLIN:

23 Q. The Boathouse is a successful
24 restaurant that has consistently produced income,
25 correct?

1 A. Has income, yes.

2 Q. Is it a successful restaurant that has
3 consistently produced income?

4 A. It has consistently produced income.

5 Q. It has? Would you describe it as a
6 successful restaurant?

7 A. Depending on the level of what the
8 income would be for success, I would say it has
9 consistently produced income.

10 Q. The Boathouse has consistently
11 produced income, correct, ma'am?

12 A. Yes.

13 Q. And it's fair to say that Richard
14 Stoney has been a member in various less
15 successful restaurants, correct?

16 A. He's been in a number of unsuccessful
17 restaurants.

18 Q. Including Lake Julian and Carolinas,
19 correct?

20 A. Yes, to my knowledge. Those were a
21 little bit before me, but...

22 Q. Having knowledge that The Boathouse at
23 Breach Inlet is successful, Ms. Stabler, Richard
24 Stoney used monies from The Boathouse to fund
25 these other related entities in which he had an

1 interest, correct?

2 A. I believe so, yes, sir.

3 Q. You have testified on behalf of The
4 Boathouse and Crew Carolina at your 30(b)(6) that
5 there was money from The Boathouse that went into
6 Crew Carolina to fund other entities owned by
7 Mr. Stoney, correct?

8 A. Yes, if that's what I said.

9 Q. So the expenses we have talked about
10 today, the personal expenses and the funding of
11 these other unrelated entities, those are
12 reflected in the balance sheet in the form of a
13 receivable owed to The Boathouse at Breach Inlet
14 from Crew Carolina and Richard Stoney personally,
15 correct?

16 A. Every transaction would be in the
17 balance sheet, yes, sir.

18 Q. You have testified on behalf of The
19 Boathouse and Crew at your deposition that the
20 current amount of the due to/due from Crew
21 Carolina is \$4,194,264.66, correct?

22 A. If that's what was on the balance
23 sheet at the time, yes, sir. I don't have it in
24 front of me.

25 Q. That's your testimony from your

1 30(b)(6), correct?

2 A. If that's what it is, yes, sir.
3 That's a big number for me to memorize. I'm just
4 not sure.

5 Q. Based on the 12/31/2019 balance sheet
6 that we discussed at your 30(b)(6) deposition, the
7 amount of the due to/due from Richard Stoney from
8 The Boathouse is \$42,835.19, correct?

9 A. If that's what was there, yes.

10 Q. The receivable owed by Crew Carolina
11 to The Boathouse continued to grow during this
12 litigation, correct, Ms. Stabler?

13 A. It grew during litigation.

14 Q. And based on what you know about Crew
15 Carolina and Richard Stoney's finances, you don't
16 believe the debt owed to The Boathouse at Breach
17 Inlet is collectible, correct?

18 A. I believe I testified to that.

19 Q. Say that again.

20 A. I believe I already testified that I
21 did not believe.

22 Q. You do not believe --

23 A. I believe what you asked me was could
24 Richard Stoney write a check for \$4 million to
25 Crew Carolina, and I said no.

1 Q. You don't believe that the debt that
2 Crew Carolina owes The Boathouse is collectible,
3 correct?

4 A. Correct.

5 Q. In fact, Ms. Stabler, Richard Stoney
6 wanted you to help him write off the debt that was
7 owed from The Boathouse at Breach Inlet to Crew
8 Carolina, correct?

9 A. I don't think I was ever part of that.
10 If you can bring something that says differently,
11 but I don't recall.

12 (Plaintiff Exhibit 5, Email
13 Correspondence, marked for identification.)

14 BY MR. MCQUILLIN:

15 Q. Ms. Stabler, I'm handing you what's
16 been marked as Plaintiff's Exhibit Number 5. Can
17 you please identify this document?

18 A. Sure. This is from Jamie Stabler to
19 Chip, forward draft of a meeting with Bobby
20 Pearlman.

21 Q. So this is an email that you wrote to
22 Chip Robinson on January 16, 2015, correct?

23 A. This -- the letter came from me, yes,
24 my email.

25 MR. MCQUILLIN: Your Honor, at this

1 time we move this be entered into evidence without
2 objection.

3 MR. BARR: This was already designated?

4 MR. MCQUILLIN: Correct.

5 MR. BARR: No objection.

6 THE COURT: It's admitted.

7 BY MR. MCQUILLIN:

8 Q. Ms. Stabler, if you look down at the
9 email that you wrote to Chip Robinson and follow
10 along, please, ma'am, as I read aloud: This debt
11 is not collectible, and I would like to begin
12 writing it off; is that correct?

13 A. I'm just trying to read the whole
14 thing. May I do that just a moment?

15 Q. Yes. Take your time.

16 A. I think before that I did say I have
17 no opinion as I have zero idea, but this was a
18 letter that was being presented to him as though
19 that's what Chip's thoughts would correctly be.
20 If you look -- I mean, I haven't gotten to that
21 part yet. I see a part where it says: Bobby
22 Pearlman suggests that it's not as big deal as
23 Dennis is making it out to be. I have no opinion
24 on this as I have zero idea.

25 I'm just saying that would have been a

1 little more than my bailiwick at that time to do
2 any sort of write-off. It wouldn't have been
3 something I would have been involved with. I see
4 that there is an email, but...

5 Q. I understand, Ms. Stabler. That was
6 not my question to you. My question to you that
7 you previously answered no to was did Richard
8 Stoney want you to help him write off the debt to
9 The Boathouse at Breach Inlet -- that The
10 Boathouse Inlet was owed from Crew Carolina, and
11 based on this email, the answer to that question
12 is yes, correct? Is it not?

13 A. This is me sending an email, yes,
14 asking Chip for his help, yes, sir.

15 Q. Richard Stoney asked you to send this
16 email, correct?

17 A. Most likely. I just don't know. I
18 mean, it's probably from him just in the sense
19 that I wouldn't have had that detailed
20 information.

21 Q. But you in your proposal and in your
22 email to Chip Robinson, you are writing a draft
23 letter that says: I would like to begin writing
24 it off, correct?

25 A. The email says it, yes, sir.

1 Q. Who asked you to -- who asked you to
2 write this email to Chip Robinson?

3 A. It was probably between Richard and I.
4 I don't know. I mean, it's 2015. It was years
5 ago. I can't recall. Again, if I -- just let me
6 look at it a little bit longer.

7 Q. In this email, ma'am, you're asking
8 Mr. Robinson for advice that you draft -- on a
9 letter that you drafted for Richard Stoney,
10 correct?

11 A. That's what it appears to be, yes.

12 Q. You wanted a second opinion before
13 writing off the Crew Carolina debt, correct?

14 A. I still haven't gotten to the point
15 where it's asking that. Sorry. We keep chatting.
16 I haven't had a chance to read it.

17 Q. Take your time and read it.

18 THE COURT: So it is now 6:00 o'clock.
19 You said this witness was relative. I guess you
20 were referring relative to the previous witness.
21 Is this witness also an out-of-town witness?

22 MR. MCQUILLIN: She has to go out of
23 town for her mom. Your Honor, I have 40
24 questions, and I'm on 35. No, I take that back.
25 Yeah. The numbers are not accurate. I literally

1 have a page left of single, short cross questions,
2 and I will be done.

3 THE WITNESS: Okay. I have read them
4 now. Can you repeat -- you asked if this is
5 something that I prepared?

6 BY MR. MCQUILLIN:

7 Q. Ms. Stabler, I have shown you an email
8 from Chip Robinson. In this email you're asking
9 Mr. Robinson for advice on an email that you
10 drafted as if you were Richard Stoney that's to be
11 sent to a prospective accountant who will offer a
12 second opinion on writing off the Carolina Crew
13 debt, correct?

14 A. Yes.

15 Q. So you and Richard Stoney mentioned
16 writing off the Crew receivable to Dennis Jarvis,
17 and Mr. Jarvis was concerned that this would
18 create tax liability for Richard, correct?

19 A. According to this email, yes, sir.

20 Q. But because Richard really wanted to
21 write off this bad debt, you were seeking a second
22 opinion, correct?

23 A. I don't know why I was seeking a
24 second opinion, but here the email is.

25 Q. In this email you acknowledge that

1 Richard Stoney owes in excess of \$4.1 million,
2 correct?

3 A. That's what the email says, yes, sir.

4 Q. In this email you state that: The
5 debt owed from The Boathouse at Breach Inlet to
6 Crew Carolina -- or the debt owed from Crew to The
7 Boathouse is not collectible, correct?

8 A. The email says: This debt is not
9 collectible.

10 Q. We have established, ma'am, that
11 Richard Stoney does not intend to pay the Crew
12 receivable, correct?

13 A. I don't know his intentions.

14 Q. He doesn't have the ability to,
15 though, correct?

16 A. I don't believe that he's got
17 \$4 million.

18 Q. One reason that the receivable owed to
19 The Boathouse from Crew is not to be repaid,
20 because Crew does not have an income stream,
21 correct?

22 A. Yes. We covered that in my
23 deposition.

24 Q. All right. In fact, Crew Carolina has
25 a negative cash balance based on the balance

1 sheet, correct?

2 A. Balance sheet that needs to be
3 reconciled. We talked about that.

4 Q. Crew Carolina doesn't even have a bank
5 account, ma'am, correct?

6 A. True.

7 Q. You're a salaried employee and you get
8 paid from a company that doesn't have a bank
9 account?

10 A. We have been through that. Yes, sir.

11 Q. Is that correct?

12 A. Yes.

13 Q. How does a company that doesn't have a
14 bank account pay you a salary?

15 A. It's done by the payroll company, and
16 I receive a check. Then the check is drawn off of
17 The Boathouse at Breach Inlet.

18 Q. In fact, ma'am, you don't get a salary
19 from Crew Carolina; your salary is paid by The
20 Boathouse at Breach Inlet, correct?

21 A. Well, it says it's Crew Carolina on
22 it.

23 Q. Does Crew Carolina have a bank account
24 or the ability to write you a check?

25 A. No, sir.

1 Q. So The Boathouse at Breach Inlet, in
2 fact, pays your salary?

3 A. The Boathouse at Breach Inlet is the
4 one that cashes my check, yes, sir.

5 Q. You have testified that Crew's
6 liabilities far exceed its assets, that it doesn't
7 have any assets, correct?

8 A. If I testified to that, yes. I just
9 don't recall talking about its assets.

10 Q. Do you want me to show you your prior
11 testimony?

12 A. If you've got it, if you have it, you
13 can show it to me.

14 Q. Let me ask you. You have testified
15 that Crew Carolina's liabilities far exceed its
16 assets and that it doesn't, in fact, have any
17 assets, correct?

18 A. If that's part of my deposition, yes,
19 sir.

20 Q. Sorry.

21 A. The only reason I keep saying, you
22 keep saying I testified. So I want to make sure.
23 Yes. Okay. Okay. Yes, sir.

24 Q. My question to you is you have
25 testified previously that Crew Carolina's

1 liabilities far exceed its assets, correct?

2 A. Yes, sir, I have.

3 Q. When I asked you what the assets of
4 Crew Carolina were, your answer was, quote:
5 Nothing, close quote?

6 A. That's what you just showed me, yes,
7 sir.

8 Q. So if Crew Carolina has nothing,
9 including a bank account and a negative cash
10 balance, how was it going to pay this \$4 million
11 receivable that it owes to The Boathouse?

12 A. I'm not in a position to answer that.
13 You have to ask Richard. I don't know.

14 Q. Why does The Boathouse -- but yet,
15 ma'am, The Boathouse at Breach Inlet continues to
16 make management fee payments to Crew Carolina
17 despite the fact that it owes \$4 million.

18 MR. BARR: Objection. Objection. Your
19 Honor, counsel is confronting this witness in a
20 very hostile manner, which I suggest is not
21 necessary. I'm not objecting to leading, because,
22 among other things, she was a 30(b)(6) designee.
23 But I really don't think it's necessary for the
24 tone of voice that counsel is applying to her.

25 MR. MCQUILLIN: I'll calm down, Judge.

1 MR. BARR: Thank you. It's really more
2 of a request.

3 MR. MCQUILLIN: Thank you, Capers.

4 MR. BARR: The witness is being
5 cooperative. She's not being evasive. She's not
6 trying to avoid him. It's really not necessary.

7 BY MR. MCQUILLIN:

8 Q. Ms. Stabler, my question to you is --

9 THE COURT: Well, it is getting later
10 in the day. Tensions happen frequently. Go
11 ahead.

12 BY MR. MCQUILLIN:

13 Q. Ms. Stabler, my question to you is
14 Crew Carolina -- Richard is still charging a
15 management fee through Crew Carolina and allowing
16 The Boathouse to pay that despite the fact that
17 Crew Carolina owes it \$4 million and has no assets
18 or way to pay the receivable back, correct?

19 A. Crew Carolina gets booked every year.
20 We talked about this before. My answer to that is
21 that it covers the management that Richard and I
22 provide. So yes, there is still a management fee
23 that is booked to The Boathouse every year, yes,
24 sir.

25 Q. Crew Carolina still receives funds

1 from The Boathouse even though it owes The
2 Boathouse in excess of \$4 million, correct?

3 A. Crew Carolina receives the management
4 fee, yes, sir.

5 Q. In fact, it receives funds from The
6 Boathouse before the management fee is charged,
7 correct?

8 A. The Boathouse -- the management fee is
9 charged at the end of the year, yes, sir.

10 Q. The management fee is charged after
11 the fact, correct?

12 A. It's charged at the end of the year,
13 yes, sir.

14 Q. It's not based on some percentage of
15 revenue; you figure out what The Boathouse has
16 paid Crew that year and that's your management
17 fee, correct, ma'am?

18 A. Based on the management that we
19 provide, yes.

20 Q. It's based on the amount of money The
21 Boathouse pays to Crew's employees throughout the
22 year, and then ultimately there is a management
23 fee generated after the fact that zeros that out,
24 correct?

25 A. We have been through the part about

1 the zeroing, but yes, sir.

2 Q. Who is Gregory Homes?

3 A. He is an investor of The Boathouse at
4 Breach Inlet.

5 Q. He's a friend of Richard's, correct?

6 A. I don't know if they're still friends.
7 I don't know.

8 Q. Gregory Homes and Theodore Stoney are
9 represented by the same lawyer in this case; you
10 understand that, correct?

11 A. I don't know.

12 Q. Do you recall Greg Homes receiving
13 distributions from The Boathouse at Breach Inlet
14 when other members of the company did not receive
15 distributions?

16 A. Yes.

17 Q. Who instructed the company to make
18 those distributions?

19 A. Richard.

20 Q. Ms. Stabler, we're almost done. Do
21 you remember we talked about the cash flow crisis
22 Richard Stoney caused The Boathouse to endure?

23 A. Do I recall it?

24 Q. Yes.

25 A. I know we discussed it.

1 Q. We have highlighted tax penalties and
2 overdraft charges and payroll issues, correct?

3 A. Yes, we have. We have discussed that.

4 Q. Yet, Ms. Stabler, your testimony at
5 your deposition was that despite the penalties,
6 fees, and back taxes and overdraft charges and
7 payroll issues, et cetera, Richard Stoney has
8 continued to take money from The Boathouse for
9 personal matters during this litigation, correct?

10 A. I believe you showed me some checks.
11 Yes, sir, we have been through them ad nauseam.

12 Q. Your answer is yes to that question,
13 correct?

14 A. Yes.

15 MR. MCQUILLIN: Your Honor, without
16 objection, I move that the balance sheet be
17 entered into as an exhibit, if counsel has --

18 MR. BARR: No objection.

19 THE COURT: So admitted.

20 MR. BARR: What's the number?

21 MR. MCQUILLIN: This is Exhibit 6.

22 MR. BARR: That's the balance sheet.

23 (Plaintiff Exhibit 6, Balance Sheet,
24 marked for identification.)

25 BY MR. MCQUILLIN:

1 Q. Ms. Stabler, can you please identify
2 this document for us?

3 A. This is the balance sheet of The
4 Boathouse at Breach Inlet, dated 12/31/19.

5 Q. Is that an accurate document?

6 A. I think we covered this. It's as
7 accurate as it could be without review from a CPA.

8 Q. Does that document reflect the amounts
9 of money that Richard Stoney and Crew Carolina owe
10 back to The Boathouse at Breach Inlet?

11 A. It does, yes, sir.

12 Q. That amount exceeds \$4.1 million,
13 correct?

14 A. Yes, sir.

15 Q. You agree that Richard Stoney and Crew
16 Carolina do, in fact, owe that money back to the
17 company, correct?

18 A. I agree that it says Crew Carolina
19 owes \$4,194,264.66.

20 Q. Okay. And despite the fact, Richard
21 Stoney has continued to take money from The
22 Boathouse for personal matters during this
23 litigation, correct?

24 A. During the litigation, yes, sir.

25 MR. MCQUILLIN: Thank you. Please

1 answer any questions Mr. Barr may have.

2 MR. BARR: I'll try to be brief.

3 CROSS-EXAMINATION

4 BY MR. BARR:

5 Q. Let's talk about the management fee.
6 What services are included within the umbrella of
7 the management fee?

8 A. Richard's salary, my salary, the
9 employer portion of the healthcare, dental care --
10 I guess I said healthcare -- mobile phone and life
11 insurance policy.

12 Q. For you and Richard?

13 A. Yes, the life insurance is.

14 Q. Do you and Richard Stoney provide
15 management services to The Boathouse at Breach
16 Inlet?

17 A. Yes, sir.

18 Q. On a regular basis -- that's your job,
19 right?

20 A. Yes, sir.

21 Q. That's Richard's job, right?

22 A. Yes, sir.

23 Q. And so that was formally what you did
24 under the umbrella of Crew, correct, when Crew had
25 a bank account?

1 A. That's -- yes. My job hasn't changed.

2 Q. So is it correct that -- is it correct
3 that you remain that -- is it correct that the
4 management fee continues to be paid to Crew
5 because it was traditionally paid to Crew and that
6 you or that Richard or someone above you decided
7 it would not be a good idea to make any change to
8 the practice while this litigation was pending?

9 MR. MCQUILLIN: Objection. Your Honor,
10 he's leading the witness. This is his client's
11 witness and employee.

12 MR. BARR: It's also 10 after 6:00.
13 I'll give you the 10 after 6:00 objection to that.

14 THE COURT: I think it's fine.
15 Overruled.

16 MR. BARR: Thank you.

17 THE WITNESS: I was never -- I've never
18 been asked to change anything about the way that
19 the operations have been done.

20 BY MR. BARR:

21 Q. But the management fee that The
22 Boathouse at Breach Inlet pays to Crew is the
23 actual cost of the management services that you
24 and Richard provide to The Boathouse at Breach
25 Inlet, correct?

1 A. That would be our fees for management,
2 yes.

3 Q. There's no markup? It's the actual
4 cost?

5 A. There is no increase.

6 Q. You were asked questions in your
7 direct examination about personal withdrawal by
8 Richard for travel and golf carts and polo ponies
9 and to pay workers and all of this. Did Richard
10 ever infuse, that is to say, deposit cash into the
11 bank account at The Boathouse at Breach Inlet?

12 A. Yes.

13 Q. And does he continue to do that?

14 A. Yes.

15 Q. Regardless of the use of polo ponies
16 -- and let me get the exhibit. Where is the
17 balance sheet exhibit?

18 A. The one he just handed me? Am I
19 allowed --

20 Q. Yes.

21 A. Sorry.

22 Q. This is Plaintiff's Exhibit Number 6?

23 A. Yes.

24 Q. Do you recognize it?

25 A. That's the balance sheet.

1 Q. This is the balance sheet?

2 A. Yes, it's the balance sheet.

3 Q. As of 12/31/19, right?

4 A. Yes, sir.

5 Q. The amount that the balance sheet on
6 your books show as owed by, due from Crew Carolina
7 is 4,194,264.66, right?

8 A. Yes.

9 Q. That's the same number that
10 Mr. Hollerbach used to calculate his damages,
11 right? Were you watching him?

12 A. I was listening. But yeah, I believe
13 so.

14 Q. But notwithstanding the examination
15 about golf carts and polo ponies and what have
16 you, the amount due from Richard Stoney owed by
17 Richard Stoney to The Boathouse from the same
18 document that Mr. Hollerbach relied on is
19 \$42,835.19; isn't that right?

20 A. According to this document, yes, sir.

21 Q. In what manner did Richard or through
22 what -- if you know, where would the funds that
23 Richard -- where did the funds come from that
24 Richard would infuse back into the company?

25 A. There were a couple -- I know there

1 was a reconciliation with Amen Street where he
2 received \$100,000 and that went into the account.
3 I believe that would be on the general ledger -- I
4 mean, I know it's there. Then there would be -- I
5 know I have used numerous times Amen Street
6 distribution, a distribution every month from Amen
7 Street.

8 Q. Let me interrupt you. Is it correct
9 that Amen Street is a completely unrelated
10 restaurant in which Richard is a member?

11 A. Yes, sir.

12 Q. And which he from time to time
13 receives distributions?

14 A. Yes, sir.

15 Q. Do you remember any other sources than
16 Amen Street?

17 A. Other than Amen Street?

18 Q. Yes.

19 A. There was an insurance that I think
20 for 2 Island Marina that most of the money
21 actually went into The Boathouse.

22 Q. 2 Island Marina is another property
23 unrelated to The Boathouse?

24 A. Yes, it's a property unrelated to The
25 Boathouse.

1 Q. So these due to/due from entries on
2 the books of The Boathouse at Breach Inlet were
3 always open, obvious, and apparent to anyone who
4 wanted to look at them, correct --

5 A. That's how the --

6 Q. -- including Laurance Stoney, if he
7 came and looked at it?

8 A. I have never met Laurance Stoney. But
9 I would assume.

10 MR. BARR: Ms. Stabler, thank you very
11 much. I have no further questions.

12 REDIRECT EXAMINATION

13 BY MR. MCQUILLIN:

14 Q. Ms. Stabler, Richard has taken out
15 more money than he's put into the company,
16 correct, based on the balance sheet?

17 A. Based on the balance sheet, he's taken
18 out 4 million or whatever that was. I don't have
19 that in front of me.

20 Q. I want to talk to you about this due
21 to/due from Richard Stoney, ma'am, and how that in
22 fact was reduced.

23 (Plaintiff Exhibit 7, 2010 Tax Return,
24 marked for identification.)

25 BY MR. MCQUILLIN:

1 Q. I'll hand you what's been marked as
2 Plaintiff's Exhibit Number 7, ma'am. If you could
3 flip to the tab page of the 2010 tax return?

4 A. I'm sorry, what page?

5 Q. The tabbed page.

6 A. Oh, tabbed, okay.

7 Q. The Richard Stoney due to/due from was
8 not reduced just by payments that he made to the
9 company, correct, ma'am?

10 A. I don't think I ever said just.

11 Q. Let me ask you this, ma'am: Based on
12 the 2010 tax return, it shows a forgiveness of
13 debt on The Boathouse tax return in the amount of
14 \$361,537, correct?

15 A. There is that line on this tax return,
16 yes, sir.

17 Q. As you sit here today, ma'am, can you
18 tell me whether or not that amount that The
19 Boathouse forgave, that wrote off of its book that
20 somebody owed it, can you tell me whether or not
21 that involved the Richard Stoney due to/due from?

22 A. I cannot.

23 MR. MCQUILLIN: Thank you, ma'am. Your
24 Honor, at this time we would ask that the 2010 tax
25 return be entered into evidence.

1 MR. BARR: Without objection.

2 THE COURT: So admitted.

3 RECROSS-EXAMINATION

4 BY MR. BARR:

5 Q. Ms. Stabler, were you employed by The
6 Boathouse in 2010?

7 A. Yes, for I think most of the year.

8 Q. Is it correct that this Exhibit
9 Number 7 is The Boathouse tax return for 2010,
10 correct?

11 A. Yes.

12 Q. But did you have any involvement or
13 knowledge about it?

14 A. I have never had any. I don't do the
15 tax returns. I have never had any involvement
16 with that.

17 Q. This is the first time you have seen
18 it?

19 A. I may have seen it before, but I don't
20 look at them.

21 Q. Do you have any knowledge about that
22 forgiveness of debt entry?

23 A. No.

24 Q. What it represents?

25 A. I don't know what it represents.

1 Q. Do you know if it even relates to
2 Richard?

3 A. I have no idea looking at this, no,
4 sir.

5 MR. BARR: Thank you. Nothing further.

6 THE COURT: Thank you, ma'am. You may
7 step down.

8 THE WITNESS: Am I excused?

9 THE COURT: Yes. We will reconvene at
10 10:30 tomorrow morning.

11 MR. BARR: 10:30?

12 THE COURT: I'm sorry. 9:30.

13 (The proceedings closed at 6:19 p.m.)
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CERTIFICATE OF REPORTER

I, Roxanne M. Easterwood, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript, pages 1 through 177, is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 9th day of March 2020 at Charleston, Charleston County, South Carolina.



Roxanne M. Easterwood, RPR
My Commission expires
February 1, 2025

1 STATE OF SOUTH CAROLINA) COMMON PLEAS COURT
 2)
 3)
 4 THE BOATHOUSE AT BREACH) CASE NO.
 INLET, LLC, et al.) 2015-CP-10-5463
 5)
 6) Transcript of Record
 Plaintiffs,) Non-Jury Trial
 7)
 vs.) Date: March 10, 2020
 8)
 RICHARD S.W. STONEY, ET AL.)
 9)
 Defendants.
 10 * * * * *
 11
 12 B E F O R E:
 13 The Honorable Clifton Newman
 14
 15 * * * * *
 16
 17 Krista Nicole Carney, Stenographic
 18 Court Reporter, transcribed by a
 19 Stenographic Court Reporter
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 22
 23
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 25

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1 (The following proceedings were held
2 3/10/20, Charleston County Common Pleas, Judge Newman,
3 9:53 a.m.)

4 THE COURT: All right. What's next?

5 MR. BARR: Could we address a couple of
6 preliminary matters?

7 THE COURT: Yes, sir.

8 MR. BARR: This will be about Mr. Kefalos.
9 As you know, I neglected to put this on the record
10 yesterday, but Mr. Kefalos represents Ted Stoney and
11 Greg Holmes as interveners in this case. And as Your
12 Honor knows before the trial occurred -- or started, we
13 exchanged e-mails and he had made some plans to be out
14 of town.

15 And with the consent of Mr. McQuillin and
16 me, and Your Honor's acquiesce, Mr. Kefalos did not
17 attend the trial yesterday. He had gone to -- I think
18 he went to Key West, where he was celebrating his
19 daughter's birthday. He went by air. And he called me
20 this morning, not feeling well. And he sounds bad, as
21 well.

22 So he's concerned about that. And so he
23 has a doctors's appointment -- he called Mr. McQuillin,
24 as well. He has a doctor's appointment to, hopefully,
25 get tested cleared, screened, whatever it is they have

1 to do, in hopes to have some news about that midday.

2 THE COURT: Test for the Coronavirus?

3 MR. BARR: The coronavirus, yes, sir. So I
4 just want to make the Court aware of that. I think
5 Mr. McQuillin -- I don't know whether he's going to call
6 Ted Stoney or not. He had originally subpoenaed Ted for
7 his case. He may or may not call him, but, of course,
8 Ted Stoney will be testifying at some stage, whether
9 it's on Mr. McQuillin's subpoena or whether it's in our
10 case.

11 I just wanted to make the Court aware of
12 that. And we just have to wait and see about
13 Mr. Kefalos. He'll let us know.

14 THE COURT: All right.

15 MR. BARR: Anything to add, Mac?

16 MR. MCQUILLIN: Your Honor, this sort of
17 leads directly into plaintiff's motion in limine in this
18 case. Mr. Stoney testified in the phase one hearing on
19 the issue of latches. And I put him through a long
20 testimony of the factual background where -- George
21 admittedly was more prepared when I talked to him this
22 morning at the first phase of the trial.

23 And so I told Mr. Kefalos this morning that
24 we're willing to stipulate that that would be part of
25 his record, that his testimony would come so as not to

1 delay. I believe that Mr. Barr would like to have the
2 live testimony here today. But, again, that goes back
3 to sort of our central issue; that there is no new
4 evidence as it relates to the deal with Stoney that
5 wasn't presented at the first trial.

6 And so, you know, I hope Mr. Kefalos does
7 not test positive. But in the event that he does, I'd
8 hate to see this case delayed any more, because of
9 Mr. Theodore Stoney's testimony, which is not essential
10 in this case. He's the brother of the manager of the
11 restaurant.

12 And so we do not intend to call him in our
13 case in chief. We intend to rest today. And so that's
14 sort of where we are on the phase one issues and the
15 necessity of Theodore's testimony.

16 MR. BARR: My friend is manifestly
17 incorrect, Your Honor. I understand from Mr. Kefalos
18 that there are additional matters that he intends to
19 present through the testimony of Ted Stoney. So it will
20 be necessary to deal with that.

21 So I suggest that we just wait until we see
22 what Mr. Kefalos reports after he's gone through this
23 testing.

24 THE COURT: Y'all have sort of merged two
25 different issues; the issue of Mr. Kefalos indicating

1 that he couldn't be here yesterday; he could be here
2 today. Now he can't be here today. Along with
3 Mr. McQuillin wanting to revisit a motion in limine,
4 which is a separate issue, even though it's
5 Mr. McQuillin's claim that it should be tied into the
6 same issue.

7 MR. BARR: Well, he claims it is, but --
8 well, it could be tied in the same issue, depending on
9 Your Honor's ruling. We can deal with that here and
10 now, if you'd like. But there is a second issue that I
11 would like to just make the Court aware of.

12 One of the witnesses that Mr. McQuillin has
13 subpoenaed was a man named Chip Robinson who sat in the
14 courtroom all day yesterday.

15 THE COURT: He said that he'd be here at
16 9:30.

17 MR. BARR: He did. But last night
18 Mr. McQuillin released him. And Mr. Robinson told me
19 that, not Mr. McQuillin. And Mr. Robinson is one of our
20 witnesses. I was relying on that. I talked to
21 Mr. Robinson, though, and he's agreed to be on standby
22 and can be here within an hour when called. He's a
23 minister. His church is out on Clements Ferry Road,
24 which is the Daniel Island area.

25 So I just want to make the Court aware of

1 that logistically. I think we can work the case and
2 anticipate when he would be needed in time to call him
3 without any interruption or substantial interruption.

4 But, again, to the extent that we were
5 expected to develop his testimony today after
6 Mr. McQuillin called him, I wanted to make the Court
7 aware of that.

8 THE COURT: Well, I've been watching a lot
9 of television. And I was scheduled to be at a
10 conference in two weeks. That was cancelled. I was
11 scheduled to attend another one in Boston in two and a
12 half weeks that has been cancelled. Watching a lot of
13 TV about testing and all that, and I don't think they've
14 developed an instant test; have they?

15 MR. BARR: I don't know, Your Honor. I
16 probably know less about their ability to --

17 THE COURT: You were obviously preparing
18 for trial. I've been watching TV. You know, taking a
19 test and finding out the results and all that, I don't
20 -- just regarding Mr. Kefalos, I don't know how
21 instantly he can get this addressed.

22 MR. BARR: I agree with you. My sense is
23 that the science is far behind the disease. And they're
24 trying to catch up desperately. I know that we all hope
25 it will do that quickly. So I guess after awhile,

1 whenever Mr. Kefalos can report to use after he finds
2 out whatever he finds out.

3 MR. MCQUILLIN: He indicated like it's a
4 two-step process, apparently, when I talked to him this
5 morning. One, is where they do like an online
6 screening, where they view you and talk to you, and then
7 you go to the ER where they actually conduct the test.
8 And apparently that's when they figure out the results.
9 But I don't know the timeframe. But I think he thought
10 that he would be able to get to the second step by the
11 middle of the day today.

12 THE COURT: And then the third step is
13 whether we want to rely on step one and step two.

14 MR. MCQUILLIN: Yeah, that's right. We can
15 FaceTime him or something.

16 MR. BARR: Anecdotally when Mr. Kefalos
17 called, his legal assistant is the sister-in-law of
18 Lawyer Brad Wearing. I don't know if you know Brad.

19 THE COURT: I know Brad, yes.

20 MR. BARR: Brad and Amy have been in
21 Arizona at a conference and have been diagnosed with the
22 virus. So they're stuck out there in confinement as we
23 speak. So you're right, Your Honor, it's something we
24 need to be vigilant about.

25 MR. MCQUILLIN: Even if he does feel

1 better, maybe we could seriously -- and I'm not joking.
2 Do like a speaker phone for direct examination or
3 something if he wants to proceed.

4 THE COURT: We'll need to consider that,
5 you know. And Courts have been -- Courts in Texas have
6 been encouraging more teleconferencing and things of
7 that nature, as opposed to having too much interaction,
8 particularly with people who are possibly diagnosed.

9 MR. BARR: I don't know how much that would
10 test the capabilities of the Clerk of Court to do
11 something like.

12 THE COURT: They're pretty skilled.
13 Charleston is one of the most advanced in the state;
14 isn't that right, Mr. Payton?

15 THE CLERK: Yes, sir.

16 THE COURT: We'll figure something out.
17 We'll have the answers to see if we can address that in
18 a different way.

19 The preference would be to defer this
20 limine in motion to later?

21 MR. BARR: Yes, sir.

22 MR. MCQUILLIN: Thank you, Judge.

23 THE COURT: So, with that, Mr. McQuillin.

24 MR. MCQUILLIN: Your Honor, at this time
25 Plaintiff calls Laurence Stoney to the stand.

1 LAURENCE STONEY,
2 being first duly sworn and testified as follows:

3 THE CLERK: Just for the record, please
4 state your full name and spell your last name.

5 THE WITNESS: Laurence O. Stoney, Junior;
6 S-T-O-N-E-Y.

7 DIRECT EXAMINATION

8 BY MR. MCQUILLIN:

9 Q. Mr. Stoney, can you please tell Judge
10 Newman why you hired our law firm.

11 A. To get access to records to The Boathouse;
12 plain and simple. I couldn't get them.

13 Q. Do you recall from the first trial we had
14 in this case what Richard would say to you when you
15 asked him -- when you said, why am I not getting
16 distributions, there's something going on?

17 A. He'd say trust me. Basically, just trust
18 me, we'll get them to you.

19 Q. Do you remember specifically what he would
20 say to you, though?

21 A. Not exactly.

22 Q. Sir, does this refresh your recollection,
23 when you reached out to your cousin, Richard Stoney, the
24 Defendant in this case, what he would say to you when
25 you would asked him whether he was doing anything

1 improper?

2 MR. BARR: Objection, Your Honor. Counsel
3 is demonstrating a document for the Court that has not
4 been identified at all. As we see on the screen, for
5 the record, some type-written words that are -- some of
6 which are highlighted in yellow. The objection,
7 therefore, is no foundation has been laid for that
8 question.

9 THE COURT: All right.

10 MR. MCQUILLIN: Let me lay some foundation
11 and then I'll ask the question.

12 THE COURT: Yes, sir.

13 BY MR. MCQUILLIN:

14 Q. Sir, do you recall this exhibit? It was
15 put in as Defendant's Exhibit 1 at the first trial in
16 this case. Do you recall this?

17 A. Not specifically.

18 Q. At the trial you were asked questions about
19 this, sir. And I asked you, do you --

20 A. Yes.

21 Q. What's the date of this document?

22 A. The date of the document is August 9th,
23 2005.

24 Q. And who was it addressed to?

25 A. To me.

1 Q. And who was it written by, in terms of the
2 signature line on it?

3 A. Richard S. Stoney.

4 Q. And my question to you, sir, was: Do you
5 recall specifically how Richard would respond when you
6 asked him about whether he was doing anything wrong?
7 And you said no. And I'm showing you this document to
8 refresh this recollection?

9 A. Yes.

10 MR. BARR: Objection, Your Honor. I
11 hesitate to -- I'm not trying to interrupt my friend,
12 but there's still no foundation here. We have to get
13 this document better identified, if the witness is going
14 to be examined by it. But, I'm assuming,
15 notwithstanding the fact that we've exchanged exhibits
16 prior to trial, that Counsel agrees that we use exhibits
17 from the preliminary hearing in this case, as well.

18 Is that correct; Mr. McQuillin?

19 MR. MCQUILLIN: Your Honor, I'm simply
20 asking this witness if it refreshes his recollection as
21 to how the Defendant would respond. That's all I'm
22 asking. And I do not intend to put this into evidence.
23 This is being used solely to refresh the witness'
24 recollection.

25 THE COURT: Is it prior testimony, or a

1 summary of some sort?

2 MR. MCQUILLIN: It's probably a summary of
3 some sort of his prior testimony. But, really, I'm
4 asking does he recall what the --

5 THE COURT: I understand. In response to
6 Mr. Barr's objection is that you're seeking to publish
7 something not in evidence.

8 MR. MCQUILLIN: Well, I won't publish it.

9 MR. BARR: No, I don't object to that piece
10 of it, Your Honor, because I'll probably be doing
11 something similar myself. But, typically, we would say
12 -- I don't mean to sound like I'm coaching
13 Mr. McQuillin. But specifically what he said, Laurence,
14 can you identify what this is? Yes, this is a letter
15 from A to B, dated blah, blah, blah.

16 MR. MCQUILLIN: And this isn't that.

17 MR. BARR: And we don't have that yet.
18 That's all that's lacking here. We don't have the date.
19 We don't have the context of it.

20 THE COURT: As far as trial procedure --
21 and I know, Mr. Barr, you were the solicitor in this
22 circuit in what year?

23 MR. BARR: It was a long time ago, Judge.
24 It was 1977 to '81.

25 THE COURT: So I know you have spent many,

1 many days, a long time in the courtroom trying cases and
2 you know all of the ins and outs of rules and you are
3 very adept at it.

4 In fact, the question is, for me, when
5 there isn't a jury is whether or not -- and particularly
6 involving something that I have had hearings and
7 hearings on, whether or not all of those formalities
8 need to be adhered to in order to get testimony in this
9 case.

10 MR. BARR: And, Your Honor, I'm not doing
11 this purely from a standpoint of formality. But I'm
12 sitting over here trying myself to assess what the
13 questions and answers are, which I think I'm entitled to
14 do.

15 And I still haven't heard the simple
16 explanation of, Laurence, this is a letter of -- he may
17 have done that. I don't care, but -- maybe I missed it,
18 but I still haven't heard --

19 THE COURT: You have sent Mr. McQuillin to
20 his rule book. So he's going to try again.

21 MR. BARR: Beg your pardon?

22 THE COURT: You sent him to his rule book.

23 MR. BARR: I see, for the record, that
24 Counsel is thumbing through it.

25 THE COURT: He'll try it again.

1 BY MR. MCQUILLIN:

2 Q. Mr. Stoney, can you please identify for the
3 Court what this document is; the date of the document,
4 who it's addressed to and who sent it, sir?

5 A. The date of the document is August 9th,
6 2005, addressed to me, written by Richard.

7 MR. BARR: Thank you.

8 BY MR. MCQUILLIN:

9 Q. And, sir, I'm asking you, does this
10 document refresh your recollection as to what your
11 cousin, Richard Stoney, would tell you when you asked
12 him whether or not if there was anything going wrong at
13 The Boathouse?

14 A. It does.

15 Q. What did Mr. Stoney say to you?

16 A. Well, the whole deal here with record that
17 is the synopsis of it is -- and I can read you one
18 sentence of it. At the end of the day, you have to
19 trust me. I'm not in the business with my family and
20 dear friends in an attempt to skim profits or benefits
21 not available to them, as well. I would think the fact
22 that I haven't had a base salary in the recent history
23 of the company would be just one example of that.

24 Q. Did you trust your cousin?

25 A. I have trusted him for 20 years now on

1 this.

2 Q. When did you have actual knowledge that
3 Richard was taking money from the company for personal
4 matters and unrelated issues?

5 A. After I hired your law firm and about a
6 year into that we finally got access to some of the
7 records.

8 Q. All right.

9 A. And it's been tough pulling the records.

10 Q. Had you known about Richard's practice of
11 robbing Peter to pay Paul, would you have agreed to it?

12 MR. BARR: Objection, Your Honor. Counsel
13 is leading his witness.

14 THE COURT: All right. I'll sustain the
15 objection.

16 BY MR. MCQUILLIN:

17 Q. Would you have agreed -- would you have
18 ever agreed to Richard Stoney's practice of taking money
19 from the company?

20 MR. BARR: Objection; leading.

21 THE COURT: Overrule the objection.

22 THE WITNESS: I'd have to be a fool not to.
23 Okay. Go ahead.

24 MR. MCQUILLIN: Thank you, Your Honor. No
25 further questions.

1 THE COURT: Mr. Barr.

2 MR. BARR: Thank you.

3 CROSS-EXAMINATION

4 BY MR. BARR:

5 Q. Good morning, Laurence.

6 A. Morning.

7 MR. BARR: Your Honor, with your
8 permission, I think we have agreed to use first names in
9 this case. There are at least three Stoneys.

10 THE COURT: Yes, sir.

11 BY MR. BARR:

12 Q. Laurence, you're aware, are you not, that
13 not a single other member of The Boathouse at Boathouse
14 Breach Inlet supports your claim in this case?

15 MR. MCQUILLIN: Objection, Your Honor. The
16 parties have already stipulated that Mr. Stoney is a
17 class of one and not similarly situated to the other
18 member. And this is an issue that we -- the exact
19 question was asked at the first days of the trial.

20 THE COURT: Overrule the objection.

21 BY MR. BARR:

22 Q. Do you want me ask it again?

23 A. Yeah. Go ahead.

24 Q. Are you aware that not a single other
25 member of The Boathouse at Breach Inlet, LLC supports

1 your claim?

2 A. I am not aware totally of that, but --

3 Q. Beg your pardon?

4 A. Officially, no, nobody supports it.

5 Q. Nobody supports it; right?

6 A. Right. Except for me.

7 Q. That's you. You're the only one that

8 supports it?

9 A. Right.

10 Q. You own what percent?

11 A. Five percent.

12 Q. So you agree that 95 percent of the members

13 of this LLC oppose this lawsuit; is that correct?

14 A. Yes.

15 Q. Right. So let's say at the end of this

16 case Judge Newman grants judgment against Richard Stoney

17 for \$5 million -- the number we saw on the screen, 4.9

18 yesterday. And let's assume that Richard cannot pay it,

19 what happens next?

20 A. That will be up to my lawyers to decide how

21 we handle that.

22 Q. Your lawyers?

23 A. Yes.

24 Q. What do you mean your lawyers? This is

25 your case.

1 A. I know.

2 Q. So what is your plan -- Laurence Stoney,

3 what is your plan about what happens next?

4 A. It would be to attach income assets,

5 whatever we have to do to try to collect it.

6 Q. So what assets do you have in mind to

7 attach?

8 A. We'll have to weed all through that.

9 That's not totally clear.

10 Q. Well, wait a minute now. We're talking

11 about your first cousin, Richard Stoney; right?

12 A. Yes.

13 Q. And, remember, you testified earlier he's

14 your cousin and you love him; right?

15 A. That's correct.

16 Q. You have adjoining properties out in the

17 country; right?

18 A. That is correct.

19 Q. And you've accused him of stealing; right?

20 A. Skimming, I think is the way --

21 Q. But you've told a multitude of people that;

22 right?

23 A. I have no problem with telling the truth.

24 Q. With telling the truth.

25 So let me get back to my question. So what

1 is your next step when receiving assets? What assets?

2 A. We'll have to delve into that and find out
3 what they are.

4 Q. Well, what assets do you know that Richard
5 owns?

6 A. To my knowledge, Richard has no assets.

7 Q. The only thing Richard has is his
8 membership interest in this restaurant; right?

9 A. That is correct.

10 Q. And he has the membership interest on the
11 land on which the restaurant sits; right?

12 A. Correct. And some other things. He's got
13 interests in other restaurants.

14 Q. In other restaurants, okay. But they're
15 just starting?

16 A. I have no idea.

17 Q. So isn't it your plan to take Richard's
18 membership interest in this case? Isn't that your
19 agenda?

20 A. That would be the last thing I would like
21 to do.

22 Q. Why is that? Why do you say that that
23 would be the last thing you would like?

24 A. Because I don't want to be in the
25 restaurant business with Richard. Okay.

1 Q. You don't want to be in the -- because it's
2 not reasonably practical, is it, for you to be in the
3 restaurant business with Richard; is it?

4 MR. MCQUILLIN: Objection, Your Honor. It
5 calls for a -- it's a legal question.

6 MR. BARR: It does not. It's a factual
7 question.

8 THE WITNESS: No. I agree with Mac.

9 BY MR. BARR:

10 Q. It's not reasonably practicable for you and
11 Richard to continue together in the restaurant business,
12 is it; Laurence?

13 A. It would be difficult. Not impossible,
14 mind you, but --

15 Q. But not practical?

16 A. Not practical. That would be a good term.

17 Q. Now, you're aware, aren't you, that we're
18 asking Judge Newman to do something alternatively? Were
19 asking Judge Newman to order that you be bought out.
20 Are you aware of that?

21 A. I understand something to that effect. He
22 mentioned it --

23 Q. Well, you were in the courtroom when we
24 argued it; weren't you?

25 A. Yes.

1 Q. For fair value. Not fair market value, but
2 fair value, which is better than fair market value and
3 an award of --

4 A. Why would you say that that is better than
5 fair market value?

6 Q. Say again.

7 A. Why would you say that that is better than
8 fair market value?

9 Q. I'm not going to debate that with you,
10 Mr. Stoney. I'm asking the questions.

11 A. I'm trying to answer.

12 Q. So my question to you is: What's wrong
13 with that as a solution to this?

14 A. I think it's a viable solution. It just
15 hasn't happened.

16 Q. Now, I want you to understand -- in
17 fairness, I want you to understand why I ask the
18 question. We're asking the Judge to order that, rather
19 than order judgment. If that's inclined, so I don't
20 want --

21 A. I can't tell what you're asking the Judge
22 to do.

23 Q. So if the Judge orders a buyout at fair
24 value and reasonable fees, you say that you have no
25 problem with that; right?

1 A. If that's what the judge orders. I think
2 the best thing to do is to get the money back into --
3 the missing 5 million bucks back into the restaurant and
4 get the restaurant going.

5 Q. Even though 95 percent of the members
6 oppose that; right?

7 A. What's wrong with doing the right thing?

8 Q. And even though you know that Richard can't
9 pay it; right?

10 A. I don't know that Richard can't pay it.

11 Q. I think you just said that he didn't have
12 any assets.

13 A. Well, there's a lot of difference between
14 admitting to having assets and having the ability to
15 repay it.

16 Q. Well, if --

17 A. A lot of this --

18 Q. Let me ask the question another way then.
19 Let's suppose the Judge orders \$4 million -- well,
20 strike that.

21 Now, you've suspected since 1999, in your
22 own words, that Richard was using The Boathouse as his
23 personal ATM; isn't that correct?

24 A. The only thing I said was I noticed that
25 the distributions kept going down every year and the

1 business seemed to be going full-board great guns.
2 That's pretty much what I said. The gist of what I
3 said.

4 Q. You don't remember testifying that you
5 suspected Richard was robbing Peter to pay Paul as early
6 as 1999? You don't remember testifying to that?

7 A. I suspected stuff, but I never had any
8 proof.

9 Q. You only suspected --

10 A. The only thing I had was that every year
11 the numbers kept going down.

12 Q. Right. And, so, you now know, had you gone
13 to these lawyers in 2000, or 2001, or 2002, or 2003 that
14 they could have gotten some records and then you could
15 have acted on it; right?

16 A. Every time I breached that to Richard,
17 Richard would say, oh, you don't know what you're
18 talking about. Trust me. You know, I'm not in this
19 business to cheat my family and friends.

20 So I would go -- you know, just being a
21 good guy, a patient guy, I would let it go. I would let
22 it go. And something -- whatever else would come up and
23 I would ask him again. And I would get the same answer.

24 Q. And at some point in time if you say you
25 were getting the same answer, you knew there was

1 something wrong here; right?

2 A. Well, as I told you before, I'm a very
3 patient person and I am dealing with family. Don't
4 forget that.

5 Q. You agree that you could have acted
6 earlier; don't you?

7 A. Like I said before, if a fragfart had
8 wings, he wouldn't bump his butt every time he hit the
9 ground. I chose to trust Richard's words.

10 Q. Now, you're in the business -- your
11 business is called what again?

12 A. A ship chandler.

13 Q. What is the name of the business?

14 A. Coleman Supply Stoney International d/b/a
15 as Coleman Supply.

16 Q. And let's -- you did it before, but I
17 didn't remember until I read the record. Tell us what a
18 ships chandler does?

19 A. We supply to commercial shipping, whatever
20 the commercial ship desires and needs.

21 Q. And I think you might have described it as
22 similar to supplying the needs of a small town?

23 A. Correct.

24 Q. So that's everywhere from what to what?

25 A. Soup to nuts and bolts.

1 Q. Including food stuff?
2 A. Absolutely.
3 Q. And you deal with a number of food
4 purveyors; don't you?
5 A. Lots.
6 Q. Lots of them. You deal with Limehouse
7 Produce; right?
8 A. Correct.
9 Q. And U.S. Foods?
10 A. Yes.
11 Q. And Sysco Systems?
12 A. Yes.
13 Q. And Crosbys?
14 A. Crosbys seafood.
15 Q. Crosbys is a seafood distributor; right?
16 A. Yes.
17 Q. Isn't it correct that you told Angela
18 Limehouse, who is a principal of Limehouse Produce, that
19 Richard's credit could not be trusted, that The
20 Boathouse credit could not be trusted?
21 A. That is not true. What happened was Andrea
22 Limehouse called me and asked me if I knew anything
23 about The Boathouse not paying their bills.
24 And at that point, I did not know that.
25 And I asked Richard about it at some point. He told me

1 to stay out of it, it was his business and leave it, and
2 stay out. But, no, Andrea Limehouse called me. Okay.
3 So go from there.

4 Q. Didn't you tell her that the credit could
5 not be relied on? Is that your testimony?

6 A. That's what I assumed when she told me that
7 she was cutting off delivery to all of Richard's
8 entities at that point.

9 MR. BARR: May I have just a moment, Your
10 Honor?

11 THE COURT: Yes.

12 THE WITNESS: Or putting them on cash
13 advance.

14 BY MR. BARR:

15 Q. Do you remember testifying in the hearing
16 before Judge Newman on the question of your standing to
17 bring this case, Mr. Stoney?

18 A. Yes, I remember testifying. What --

19 Q. For the record, that was December 13th and
20 14th of 2018. Have you had a chance to review your
21 testimony from that?

22 A. I have not.

23 MR. MCQUILLIN: What page?

24 MR. BARR: Page 138.

25 BY MR. BARR:

1 Q. @I have extracted from my notebook Page
2 138. Let me hand it to you to refresh your recollection
3 before I ask you questions about it.

4 A. Okay.

5 Q. If you need the prior page, I'll give you
6 that too.

7 A. Yes, I remember this.

8 Q. Do you remember that?

9 A. You asked me the question: Now, did you
10 tell Ms. Limehouse the word on the street -- she was the
11 word on the street. Do you not understand the
12 difference between that?

13 Q. Let me put it on the screen and we'll
14 discuss what you said. So, for the record, we're
15 looking at Page 138 of your prior testimony beginning at
16 Line 9. You've got a screen there. Good.

17 And you were asked now: Did you tell
18 Ms. Limehouse that the word on the street is they're
19 having problems? And what was your answer?

20 A. She used the word on the street. She was
21 the one that called me. I just --

22 Q. I said, excuse me, Mr. Stoney that wasn't
23 my question. My question is simple: Did you tell
24 Mrs. Limehouse that the word on the street is that
25 Richard is having problems. And what was your answer?

1 A. I have no idea if I told her that or not.
2 You will have to ask Andrea.

3 Q. And then I asked you: So you're suggesting
4 that you may have?

5 A. I'm not going to say I didn't.

6 Q. You said, I could have; I'm not going to
7 say that I didn't.

8 A. Well, I will reiterate that Ms. Limehouse
9 was the one who called me and asked me about the credit
10 situation and brought it to my attention. And at that
11 point, I started asking liquor salesmen and all the same
12 people how they're doing over there. They said, well,
13 they're cash in advance or whatever.

14 Q. Laurence, do you remember Richard
15 confronting you about your communications with Limehouse
16 Produce, U.S. Food, Sysco, and Crosbys asking you, why,
17 Laurence, why are you saying bad things about Breach
18 Inlet, you're hurting us? Do you remember him
19 confronting you about that?

20 A. Yes.

21 Q. Sir?

22 A. I didn't have to say bad things about it.

23 Q. Sir.

24 A. Those people were coming to me and asking
25 me -- they would hear the name Stoney -- and, hell, I

1 walked into a purveyor one time and they heard the word
2 Stoney and they wouldn't even serve me. I had him call
3 my people back at the office to tell them I wasn't
4 Richard Stoney.

5 Q. My question of you, Laurence Stoney is: Is
6 it not correct that your cousin, Richard, whom you love,
7 approached you on numerous occasions saying, Laurence,
8 what do you mean telling Limehouse, U.S. Foods, Sysco
9 and Crosbys that we have bad credit at Breach Inlet;
10 you're killing us?

11 A. You're under the impression that Richard is
12 telling you the truth on that.

13 Q. Mr. Stoney --

14 A. Who came first?

15 Q. Mr. Stoney, you need to answer the
16 question. Isn't it correct that Richard confronted
17 you about that?

18 A. Yes, he did.

19 Q. Sir?

20 A. Yes, he did.

21 Q. Yes, he did, okay. You don't deny it?

22 Now, you're saying that you never did
23 criticize the credit of Breach Inlet to any of these
24 purveyors; is that your testimony?

25 A. I would testify that I had discussed it

1 with the salesmen when they would come into my office
2 and ask me about it and it would come up. And I would
3 always have to tell them, that's Richard Stoney. This
4 is Laurence Stoney. These are two separate industries,
5 two separate entities.

6 Q. But as for Breach Inlet, you, in fact, told
7 them that they were having problems because quote, as
8 you said earlier --

9 A. They had --

10 THE COURT REPORTER: I'm sorry. Your
11 Honor, do you mind?

12 THE COURT: Madame Court Reporter, what's
13 the problem?

14 THE COURT REPORTER: One at a time. Speak
15 one at a time, please.

16 MR. MCQUILLIN: We've addressed this -- I
17 mean, this question has been asked and answered five or
18 six times.

19 THE WITNESS: Ad nauseam.

20 MR. MCQUILLIN: I don't know that you'll
21 get a different answer, Mr. Barr.

22 MR. BARR: I'm not looking for a different
23 answer. I'm looking for an answer.

24 BY MR. BARR:

25 Q. So, Laurence, you're going to have to let

1 me finish my question --

2 A. Okay. Go ahead.

3 Q. -- and then you answer the question.

4 So, my question is simply this: Isn't it
5 correct that Richard Stoney, your cousin, confronted you
6 about saying bad things about the credit of Breach Inlet
7 to Limehouse, U.S. Foods, Sysco and Crosbys?

8 A. I've already answered that question. Yes.

9 Q. And isn't it correct that you, in fact --
10 in your words, you told Limehouse, U.S. Foods, Sysco and
11 Crosbys the truth, that is, to say that Breach Inlet was
12 having credit issues; isn't that correct?

13 A. Clearly, they were having credit issues
14 with --

15 Q. That's not the question. The question is
16 what you told him. That's why --

17 A. I didn't tell them that. They told me
18 that. Haven't you been listening to what I've been
19 trying to tell you. They would come to me and ask me
20 what do you know about Richard's operations. I would
21 say, it's separate. And when they would -- you know,
22 come to me with this stuff, I would listen. Of course.
23 Wouldn't you?

24 Q. All right. So you're saying that you did
25 not criticize Richard's credit to any of them, you

1 didn't corroborate it? You said, go talk to Richard?

2 A. Basically, that's what I said. I have no
3 intimate knowledge of the books, any of it.

4 Q. Do you agree with me that -- and you were a
5 member of Breach Inlet at the time; right?

6 A. I still am.

7 Q. And do you agree with me that whether it
8 was true or not, that Richard -- that Breach Inlet was
9 having credit problems? That you were not being loyal
10 to Breach Inlet, LLC by telling a purveyor that they had
11 bad credit, whether it was the truth or not?

12 A. Let's go back. The purveyors were
13 discussing it in front of me, Capers. The word was on
14 the street. It was widely known on the street. All of
15 these salesmen, all of the companies, whether they be
16 wine, liquor, food, or whatever, they all talk. These
17 guys meet up with each other. The word was on the
18 street.

19 And every time -- and I deal with a lot of
20 the same people. And they would come into the office
21 and they would ask me about it. What part of that don't
22 you seem to get?

23 Q. Laurence my question was, would you agree
24 with me that it would not -- it would be -- you would
25 not be loyal to Breach Inlet -- The Boathouse at Breach

1 Inlet were you to confirm to these purveyors that they
2 were having the credit problems? That was the question.

3 If one of your employees said that Coleman
4 Supply -- if one of your employees told one of your
5 purveyors, here at Coleman's we're having some credit
6 problems over here, you better not trust us. Wouldn't
7 you agree that that would be a disloyal statement to
8 Coleman Supply?

9 A. That would be an untruth statement.
10 Because I handle my affairs in a different manner than
11 The Boathouse at Breach Inlet.

12 Q. Would it be disloyal?

13 A. Okay. Maybe it would be disloyal. I'll
14 grant you that.

15 Q. So you're saying maybe it would be disloyal
16 if you had told these purveyors that Breach Inlet was
17 having some credit problems?

18 A. The question is, did they tell me about it
19 or did I tell them? I never told them anything. I
20 listened to them.

21 Q. Richard confronted --

22 A. Why would I want to do that to Breach
23 Inlet?

24 Q. Richard confronted you about this on
25 numerous occasions; didn't he?

1 A. Yes. Because he thought maybe the reason
2 that he was getting a bad rap on the street was because
3 I was badmouthing him. It wasn't me. It was the
4 purveyors.

5 Q. Now, in addition to being a member of The
6 Boathouse at Breach Inlet, Laurence, is it correct that
7 you were also a member of The Boathouse at East Bay?

8 A. That is correct.

9 Q. And the Boathouse at East Bay was somewhat
10 modeled after the design of The Boathouse at Breach
11 Inlet; is that correct?

12 A. That is correct.

13 Q. And the East Bay restaurant was located at
14 the corner of East Bay and Chapel Street here in the
15 City of Charleston?

16 A. That is correct.

17 Q. And I think your percentage interest was
18 something like four percent?

19 A. Four percent, correct.

20 Q. And so the LLC, The Boathouse at East Bay
21 owned and operated the restaurant; right?

22 A. Keep in mind, the LLC at East Bay Street as
23 opposed to the LLC at Breach Inlet. Those are two
24 separate entities. Just keep that in the back of your
25 mind.

1 Q. You were a member of both; right?

2 A. Yes.

3 Q. So The Boathouse at East Bay owned and
4 operated that restaurant; correct?

5 A. Correct.

6 Q. But the LLC -- the East Bay LLC was leasing
7 the property; correct?

8 A. At that time, yes.

9 Q. And they leased it from a family named
10 Drews; is that right? D-R-E-W-S.

11 A. Yeah. Jed Drews.

12 Q. Leased it from a family named Drews.

13 And after East Bay had been operating for a
14 couple of years, some friction developed; did it not,
15 between East Bay LLC and the landlord, Drews?

16 A. Yes, sir.

17 Q. In fact, I think you earlier testified they
18 were about to lose their lease?

19 A. Correct. That's the way I heard it, yes.

20 Q. Isn't it correct that Richard and his
21 brother, Ted, then began negotiations with the Drews to
22 buy the land, in order to protect the interest of the
23 LLC?

24 A. That is correct.

25 Q. That's correct. And isn't it correct that

1 while Richard and Ted were negotiating with Mr. Drews to
2 buy the land in order to protect the interest of the
3 LLC, you, Lawrence Stoney, approached Mr. Drew privately
4 and offered to by the same land?

5 A. That is correct.

6 Q. And you did that without first telling
7 Richard or Ted what you were doing; isn't that right?

8 A. Correct.

9 Q. And you did that without telling the
10 other --

11 A. I was dealing with the landlord, okay. I
12 decided it would be a good investment, and I would go
13 ahead and buy the thing, and then The Boathouse could
14 continue.

15 MR. MCQUILLIN: Your Honor, we object to
16 this line of questioning, as it's not relevant. This is
17 dealing with a different LLC, the parties trying to buy
18 certain properties. I don't see how that has any
19 relevance to The Boathouse at Breach Inlet, LLC.

20 THE COURT: Mr. Barr.

21 MR. BARR: It's circumstantial evidence to
22 show a pattern, Your Honor, of disruptive behavior on
23 the part of this witness, with respect to The Boathouse
24 at Breach Inlet, which relates directly to our motion of
25 disassociation and the impracticability of this business

1 going forward with Laurence Stoney as a member.

2 THE WITNESS: It's my position that if I --

3 MR. BARR: Hang on. The Judge has to rule
4 first.

5 THE COURT: I'll overrule the objection.

6 BY MR. BARR:

7 Q. Go ahead now.

8 A. It's my position that I been allowed to buy
9 the property, that The Boathouse on East Bay Street
10 would still be open and running today.

11 Q. So it's your testimony that you would have
12 been a good landlord --

13 A. A good landlord.

14 Q. Nevertheless, though --

15 A. And I would not have been negotiating to
16 lease the property to another restaurant entity and shut
17 down The Boathouse at East Bay Street.

18 Q. Nevertheless, Laurence, you tried to buy
19 the property out from under the LLC, without telling Ted
20 or Richard; right?

21 A. Why would you tell your competitor? You're
22 competing for the same property. Why would I notify
23 them of that? That would be absurd.

24 Q. Because they were the tenants? Their
25 interests were being directly affected?

1 A. I read the lease. I know who the tenants
2 were. I was a member there, remember?

3 Q. I do remember. I do remember. Which is my
4 whole point.

5 A. So what is your point?

6 Q. My whole point is you were undermining the
7 interest of the LLC?

8 A. No. No. No. I was trying to help the LLC.
9 The LLC, like I just told your, sir, it would still be
10 opened and operating today -- or it certainly would have
11 been opened and operating for a lot longer than it ended
12 up doing had I been the landlord. Do you understand
13 that?

14 Q. So you were trying to help East Bay LLC;
15 right?

16 A. Yes. And make a good property deal.

17 Q. So out of interest in helping the LLC, you
18 went to the other members and said, hey members, here's
19 what I suggest; I'm going to go buy this property and
20 I'm going to be a good landlord and I'll give you a good
21 lease? That's what you did, right? Did you do that?

22 A. I went to the landlord and said, I would
23 like to buy this property.

24 Q. Mr. Stoney --

25 A. The lease was already in place.

1 Q. Did you go to your fellow members of the
2 LCC to say, look --

3 A. Did I ask their permission to go buy a
4 piece of property? No.

5 Q. -- I've got an idea that will protect the
6 interest --

7 A. Would you have?

8 Q. -- of this LLC, I'm going to buy it and
9 I'll be a good landlord. Did you do that?

10 A. I just told you no.

11 Q. Did you do that?

12 A. Did I go to the other members of the LLC?

13 Q. Yes.

14 A. I just told you no.

15 Q. Don't you consider --

16 A. How often are you going to ask that same
17 question?

18 Q. Don't you consider that to be an act of
19 disloyalty?

20 A. No, it's not an act of disloyalty. I just
21 explained to you that The Boathouse at East Bay Street
22 would probably still be in existence today had I been
23 the landlord.

24 MR. BARR: May I have a moment, Your Honor?

25 MR. MCQUILLIN: Your Honor, while he's

1 looking, do you mind if we take a quick bathroom break?

2 THE COURT: Sure. Let's take five minutes.

3 Please don't discuss your testimony.

4 THE WITNESS: Yes, sir.

5 (A brief recess was taken.)

6 THE COURT: Mr. Barr.

7 BY MR. BARR:

8 Q. Mr. Stoney, is it correct that The
9 Boathouse at Breach Inlet was formed --- the LLC was
10 formed in 1997?

11 A. I believe that was the year.

12 Q. That was the year. And the initial members
13 were you and Richard and Ted; correct?

14 A. Correct.

15 Q. And I believe, notwithstanding the
16 allegations in this lawsuit, you acknowledge that
17 Richard has considerable creative and artistic talents?

18 A. That is correct in my opinion, yeah.

19 Q. That the Breach Inlet restaurant is well
20 appointed and designed well, attractive?

21 A. Initially, yes.

22 Q. And the one at East Bay was similarly
23 attractive?

24 A. Yes.

25 Q. And I believe The Boathouse at East Bay was

1 opened -- or at least the LLC was formed in January of
2 1999; does that sound about right?

3 A. If you say so.

4 Q. And in the month before that, December of
5 1998, Crew Carolina was formed; isn't that right?

6 A. I have no knowledge of that.

7 Q. Do you remember attending a meeting shortly
8 after The Boathouse at East Bay opened at Richard's law
9 office on Broad Street?

10 A. Yes, I do.

11 Q. And you were there, Richard was there,
12 Bobby Pearlman was there? He was a tax lawyer; right?

13 A. Uh-huh. Yes.

14 Q. And I think the accountant was there,
15 Harold Pratt-Thomas. Do you remember that?

16 A. Yes.

17 Q. And you remember, do you not, Richard
18 describing the plans or discussing the plan, and that is
19 to build additional similar restaurants with a central
20 management?

21 A. That he was going to build additional
22 restaurants? I don't remember anything about a central
23 management deal.

24 Q. You don't recall --

25 A. I don't recall anything about the central.

1 Q. You don't recall that you were told about
2 the formation of Crew Carolina and the management in
3 consolidating these services?

4 A. It could be.

5 Q. I mean, you knew about that ultimately;
6 didn't you?

7 A. Ultimately, I did know, yes.

8 Q. And in this meeting, at Richard's office,
9 do you recall being in opposition to him being paid a
10 car allowance? Do you remember that being discussed?

11 A. Possibly.

12 Q. And there was a discussion about some
13 pieces of art that were in the East Bay restaurant that
14 you didn't think ought to be his. Do you remember that?

15 A. Yes, I do. And they shouldn't have been
16 his.

17 Q. In any event, you earlier had said on
18 several occasions that you love your cousin, Richard.
19 And do you remember what you said about when that
20 relationship with Richard deteriorated?

21 A. I don't remember the exact date or if it
22 even happened.

23 Q. What were the circumstances that you can
24 put your finger on when that relationship started in --

25 A. I don't remember. Perhaps you can refresh

1 my memory.

2 Q. You don't remember what said?

3 A. I don't know what you're talking about,
4 when, where, or about what. So if you will refresh my
5 memory, I'll be glad to go with it.

6 Q. Do you remember me asking you in your
7 deposition -- I asked you: How would you describe your
8 relationship with Richard growing up? And you answered
9 very close, very close. Do you remember that?

10 A. That's exactly right.

11 Q. And I asked you: Did there come a time
12 when that changed? And you answered: When the checks
13 stopped coming in, it started deteriorating.

14 A. It started to deteriorate as the finances
15 started.

16 Q. And that would be -- that would have been
17 by what year; 2003, 2004?

18 A. I think it was long after that. I can't
19 remember.

20 Q. Well, was it not -- at least hadn't it
21 happened by the time that your lawyer asked you about in
22 August of 2005? Do you want to take a look at it again
23 to help refresh your recollection?

24 A. Whatever.

25 Q. Because in that letter, isn't it correct,

1 that Richard is talking to you about negotiating a
2 buyout of your interest at Breach Inlet?

3 A. Right.

4 Q. Because you had been complaining; right?

5 A. Yes. And then I go back to that last
6 sentence again. First of all, he wants to keep this
7 confidential. These are decisions that are regarding
8 staffing lessons. You don't know anything about this.
9 At the end of the day, you just have to trust me.

10 Q. Excuse me?

11 A. At the end of the day you just have to
12 trust me. Do you understand what that sentence means?

13 Q. Laurence, I do understand --

14 A. I've been reading that sentence to you all
15 morning long.

16 Q. I do understand that sentence, Laurence.
17 But that sentence has nothing to do, respectfully, with
18 that I asked you.

19 I was asking about the deterioration of
20 your relationship and when the checks started coming.
21 And so what I said was, at least by the date of this
22 letter you were complaining about it?

23 A. They had been reduced by that time, yes.

24 Q. And at least by the date of this letter,
25 you were suspecting Richard of financial mismanagement;

1 weren't you?

2 A. I had a suspicion.

3 Q. You had a suspicion?

4 A. Yes.

5 Q. And you didn't act on it; did you?

6 A. Didn't act on it. And then I told -- I was
7 told, hey, it's good. I know what you're thinking.
8 Don't worry about it. It's good.

9 THE COURT: What's the date of the letter?

10 MR. BARR: I'm sorry. The date of the
11 letter is August 9th of 2005.

12 BY MR. BARR:

13 Q. Now, Laurence, is it correct that in May of
14 2011, you appeared in Orangeburg for the purposes of
15 testifying against Richard in his divorce trial?

16 A. I was subpoenaed to testify in that case.

17 Q. But didn't you appear?

18 A. I did appear.

19 Q. And before appearing at that -- and you
20 never did testify; right?

21 A. I did testify.

22 Q. Oh, you did testify. I stand corrected.
23 Of course you did.

24 And before appearing at that hearing you
25 met voluntarily with Lori and her lawyer, Paul Tinkler,

1 right around the corner on King Street; didn't you?

2 A. Correct.

3 Q. You weren't subpoenaed there; were you?

4 A. They brought me in to discuss it.

5 Q. What do you mean they brought you in? They
6 asked you in to discuss --

7 A. They asked me in, yes.

8 Q. It was voluntary; wasn't it?

9 A. Well, yeah.

10 Q. And you testified at the divorce hearing in
11 Orangeburg that if Lori were awarded the Breach Inlet
12 Restaurant in the divorce, that would be okay with you?

13 A. Yes, I did.

14 Q. And you testified it would be okay to hire
15 a manager to manage it, a guy named Bill Hall who was a
16 restaurant operator here in Charleston?

17 A. That name Bill Hall -- I know Bill Hall.
18 But I said, no, I would not have any problem if Lori
19 prevails in the divorce case, which is still open, I
20 might add, 11 years later. Yeah, if Lori prevails and
21 ends up with the restaurant, I don't want her running
22 it. I don't want me to have to go in and fool with it.
23 We would hire a legitimate restaurant management
24 company. It makes sense; doesn't it?

25 Q. And you were asked in the family court

1 hearing that you had called Chip Robinson, who was the
2 controller at the time of Breach Inlet? Do you remember
3 that?

4 A. Yes, I know Chip Robinson.

5 Q. And you testified you called Chip Robinson
6 to find out where my money was, I'd like to have my
7 money; isn't that correct?

8 A. Yes.

9 Q. And you told the family court judge under
10 oath, that's the crux of the whole thing; didn't you?

11 A. Where's the money?

12 Q. Where's the money.

13 A. Yes.

14 Q. It's still the crux?

15 A. Yes.

16 Q. Right?

17 A. Yes.

18 Q. And you told the family court judge that
19 you felt like the redheaded stepchild, I haven't gotten
20 a fair share?

21 A. That is correct. And believe it or not, I
22 haven't.

23 MR. BARR: I apologize for my delay. I'm
24 screening my notes for unnecessary repetition.

25 BY MR. BARR:

1 Q. Now, you use the phrase -- I certainly
2 heard it many times, robbing Peter to pay Paul; correct?

3 A. That was somebody else's phrase, but, yes,
4 I've heard it many times.

5 Q. And picked up by everybody; right?

6 A. Yes.

7 Q. And so I asked you -- do you remember in
8 your deposition that I asked you, when did you first get
9 the idea that Richard was using Crew Carolina to rob
10 Peter and pay Paul. Do you remember that?

11 A. No.

12 Q. And you said --

13 A. Are you going to show it to me?

14 MR. MCQUILLIN: Objection, Your Honor.

15 BY MR. BARR:

16 Q. You said, I don't know, I didn't have an
17 idea. I had a suspicion. There's a difference.

18 THE COURT: Yes, sir.

19 MR. MCQUILLIN: It's improper impeachment.
20 He's just literally reading from --

21 MR. BARR: Do you want me to show it to
22 him? I'll show it to him.

23 BY MR. BARR:

24 Q. I want you to read from your deposition,
25 Page 116, beginning at Line 15, and ending on 117,

1 ending at Line 7.

2 MR. MCQUILLIN: Objection. He's just
3 having the witness read from his deposition.

4 MR. BARR: No. No. No. I'm not asking
5 him to read it out loud.

6 THE WITNESS: What number do you want to
7 start at?

8 BY MR. BARR:

9 Q. Page 116, beginning at Line 15 to Page 117,
10 beginning at Line 7. And just read to yourself. I want
11 to see if that refreshes your recollection before I ask
12 you some questions about it.

13 A. All right.

14 Q. You got it?

15 A. Yeah.

16 Q. So I'll stand over here. Do you remember
17 them testifying in your deposition when I asked you
18 about when you first got the idea that Richard was using
19 Crew Carolina to rob Peter to pay Paul that you think it
20 started with the kitchen renovations --

21 A. That's when I'm first thinking.

22 Q. And I asked you when was the kitchen
23 renovation? And you said that was early on. That was
24 in the '90s?

25 A. Yes.

1 Q. So you admit that you suspected that
2 Richard was robbing Peter to pay Paul in the 1990s?

3 A. Listen, Capers, I had suspicions and had
4 told you I've had suspicions. But I never had any
5 proof. And it took lawyers in courtrooms in order to
6 get the proof.

7 Now, can we dispense with a lot of this
8 repetition?

9 Q. Right. And had you gone to lawyers when
10 you first formulated these suspicions, you would have
11 learned whatever the answers were then; isn't that
12 correct?

13 A. Perhaps.

14 Q. And you sat on your hands; didn't you?

15 A. I didn't sit on my hands. I just left it
16 up to Richard's word and the fact he was family. And we
17 grew up almost as if we were brothers. We're only about
18 a year and a half apart. We grew up like brothers. I
19 chose to believe him.

20 Q. Well, you say that you chose to believe
21 him. You're referring to the letter that we looked at
22 earlier, the letter of 2005?

23 A. That and other things. I chose to believe
24 him. It doesn't have anything to do with the letter.

25 Q. And that letter in 2005, that was 15 years

1 ago today? That was 10 years before you filed this
2 lawsuit; right?

3 A. Yes.

4 Q. So you at least sat on your hands before
5 you filed this lawsuit; right?

6 MR. MCQUILLIN: Objection.

7 THE WITNESS: Come on, man. Bring that
8 letter out and I'll read that sentence to you again so
9 maybe you'll understand why I didn't do anything. I
10 trusted my first cousin.

11 BY MR. BARR:

12 Q. That's your testimony; right?

13 A. Yes.

14 MR. BARR: Nothing further. I don't have
15 any other questions at this time.

16 THE COURT: Yes, sir. Re-direct.

17 REDIRECT EXAMINATION

18 BY MR. MCQUILLIN:

19 Q. Mr. Stoney, you've been through these
20 questions, all of the questions that Mr. Barr asked you
21 previously; haven't you, sir?

22 MR. BARR: Objection, Your Honor, to the
23 question; leading.

24 THE COURT: You can't lead the witness.

25 BY MR. MCQUILLIN:

1 Q. Have you heard the questions that you were
2 asked before today?

3 A. Yes.

4 Q. And where did you hear them before?

5 A. In depositions, in courtrooms, everywhere.

6 Q. Did you give the same answers, sir?

7 A. Yes.

8 Q. You were asked a question about you had
9 suspicions, but you didn't act on it. Did you approach
10 Richard about your suspicions?

11 MR. BARR: Objection, Your Honor.

12 BY MR. MCQUILLIN:

13 Q. When you had suspicions, what did you do in
14 terms of talking to --

15 A. I would ask Richard about it. And he would
16 say, oh, don't worry about it, we'll get to it, trust
17 me.

18 Q. And you believed your family member and
19 your cousin; correct?

20 A. Yes.

21 Q. And at the time, what was Richard's role at
22 The Boathouse at Breach Inlet? What was his title?

23 A. I think general partner or potentate.

24 Q. He was the manager of the company; was he
25 not?

1 A. He was the manager.

2 Q. And, in addition, as the manager of the
3 company, did you trust him?

4 MR. BARR: Objection; leading.

5 THE COURT: Overruled.

6 THE WITNESS: I had to trust him. I had
7 nothing else to go on expect his word.

8 BY MR. MCQUILLIN:

9 Q. What do you seek to recover in this case?

10 A. I seek to recover a whole lot of money
11 that's missing to put it back into The Boathouse and
12 make it a showpiece.

13 Q. And are you seeking to recover that money
14 on behalf of the company?

15 A. On the behalf of the partnership, yes.

16 MR. BARR: Objection; leading.

17 THE COURT: Reask the question.

18 BY MR. MCQUILLIN:

19 Q. Who are you seeking to recover the money on
20 behalf of?

21 A. The Boathouse at Breach Inlet.

22 Q. Have you incurred fees and accounting costs
23 in an attempt to recover this money on behalf of the --

24 A. Substantial fees.

25 Q. Do you know whether or not Mr. Barr's fair

1 buyout offer has any consideration for the fees and
2 expenses you've incurred on behalf the company?

3 A. I have no idea.

4 MR. BARR: First of all, Your Honor, it was
5 leading; and, secondly, it's not an issue that was
6 developed on cross.

7 THE COURT: Overruled.

8 BY MR. MCQUILLIN:

9 Q. Do you know whether Mr. Barr's fair request
10 to buy you out includes payment of your legal fees and
11 accounting expenses that you have incurred on behalf of
12 the company?

13 A. I do not think it does.

14 Q. How long have you been a member of this
15 company?

16 A. Since almost '97.

17 Q. Are you involved in the day-to-day
18 operations of the company?

19 A. Never have been.

20 Q. Who manages the company?

21 A. I assume Richard manages it, but there
22 could be other people involved.

23 Q. And under his management, has the company
24 been able to stay open and operate for the entire period
25 you've been a member?

1 A. Yes, it has.

2 Q. And it's been able to operate and make
3 money since the '90s; is that correct?

4 MR. BARR: Objection; leading.

5 THE COURT: Overruled.

6 THE WITNESS: Yes.

7 BY MR. MCQUILLIN:

8 Q. The company's been able to operate and make
9 money --

10 A. As far as I could tell, because I never got
11 to see the books.

12 Q. And it's been able to stay open and
13 operate, despite the fact that Richard Stoney took
14 \$4.9 million from the company; correct?

15 A. It appears to be that, yes.

16 MR. MCQUILLIN: Thank you, sir.

17 THE COURT: Mr. Barr.

18 MR. BARR: Yes, sir.

19 RE CROSS-EXAMINATION

20 BY MR. BARR:

21 Q. Mr. Stoney, you said that you never got to
22 see the books. Is that what your testimony was?

23 A. Yes, sir. That is my testimony, yes.

24 Q. Laurence -- I'm calling you Laurence so the
25 record will reflect which Stoney I'm talking to.

1 Isn't it correct, Laurence, that for a good
2 period of time the offices of Crew Carolina, the
3 management company were located right around the corner
4 from your offices, Crew was on Brigade Street and you
5 were on Morrison Drive? It's just around the corner; is
6 that correct?

7 A. That is correct.

8 Q. And isn't it correct that when you demanded
9 to see the books, Richard's response was, come on to the
10 office and look at them? Isn't that correct?

11 A. Yes, that is correct.

12 Q. And you didn't bother to do that?

13 A. One time. And that was on The Boathouse on
14 East Bay Street, LLC. It was not on The Boathouse at
15 Breach Inlet. It was a one-time thing. And The
16 Boathouse on East Bay Street had already shut down. It
17 was already closed. And the stipulation was that I
18 would have to sign a non -- you know, an agreement. I
19 was not going to be able to do anything but walk in and
20 read the paperwork there. I was not to have copies. I
21 was not to be able to take anything out of the room.
22 And I just said, why bother? The restaurant is already
23 closed. We know what the numbers are. They weren't
24 good enough for Richard to keep it open when he had
25 somebody sitting in line to rent the building.

1 Q. Now, let's go back to my question. My
2 question was: Did Richard agree that you could see the
3 books, but you'd have to examine them at the office;
4 isn't that correct?

5 MR. MCQUILLIN: Objection, Your Honor.
6 This witness just answered that.

7 THE COURT: Overruled. It's
8 cross-examination.

9 BY MR. BARR:

10 Q. Is that correct, that he said, yes, come
11 see the --

12 A. Yes, that one time. One time only I was
13 invited to come into the office, along with a group of
14 other people that were also unhappy members of The
15 Boathouse at East Bay, and have a viewing, much like a
16 funeral viewing of the books after signing a
17 nondisclosure agreement and confidentiality agreements
18 and legal stuff, ad nauseam. And I just chose not to
19 go. I had people I know and trusted that were going to
20 look at them.

21 Q. Laurence, how many times did you ask --
22 that you, Laurence Stoney, how many times did you ask to
23 see the books? Was it just one time?

24 A. No. No. No. No. No.

25 Q. And isn't it correct that every time you

1 asked, Richard said come to the office so you could look
2 at it?

3 A. No, that is not correct.

4 Q. So it's your testimony that he
5 denied access to the books? Is that your testimony?

6 A. He never told me to come to the office, but
7 one time.

8 Q. No. No. Listen. Listen: How many times
9 did you ask him to see the books?

10 A. Over the years? I don't know, guessing 10
11 or 12. How many times did he show me the books? Zero.

12 Q. And on each of those 10 or 12 times didn't
13 he say to you, Laurence, you can come look --

14 A. He did not say that.

15 Q. And what did he say?

16 A. He said, we'll get to it. Trust me, we're
17 doing just fine. Or we're too busy. Or the dog ate the
18 homework, or whatever what's his name at the --

19 Q. Chip Robinson.

20 A. Whoever it was.

21 Q. So your testimony is that he put you off?
22 Is that what you're saying?

23 A. Yeah.

24 Q. Even though the office of Crew Carolina was
25 right around the corner from --

1 A. What difference does it make if it's
2 physically near me? What difference does that make,
3 Capers? Tell me about it.

4 Q. How long would it take you to walk from
5 your office to Richard's office?

6 A. It's very close, Capers. We've already
7 established that. I want you to tell me what the
8 difference is between me and the Los Angeles,
9 California --

10 Q. And you didn't bother to walk around the
11 corner and look at it; isn't that right?

12 A. Not -- the one time that I was invited to
13 come around there, I chose not to. Listen, Capers, the
14 restaurant was already shut down. All the furniture,
15 whiskey, and beer, and stuff that was savable had
16 already been moved over to Richard's on James Island.

17 Q. And you're talking about East Bay now?

18 A. I'm talking about East Bay. This is all
19 about East Bay. This was never about Breach Inlet.

20 MR. BARR: Thank you, Your Honor. Nothing
21 further.

22 MR. MCQUILLIN: I have one question, Your
23 Honor.

24 THE COURT: You've had two shots. That's
25 all you get.

1 You may step down, sir.

2 MR. MCQUILLIN: Your Honor, at this time we
3 call Richard Stoney to the stand.

4 THE COURT: Let's stand and stretch for a
5 moment or two.

6 RICHARD STONEY,
7 being first duly sworn, testified as follows:

8 THE CLERK: Just for the record, please
9 state your full name and spell your last.

10 THE WITNESS: Richard Smith Waylon Stoney.

11 DIRECT EXAMINATION

12 BY MR. MCQUILLIN:

13 Q. Good morning, Mr. Stoney.

14 A. Good morning.

15 Q. You own and operate The Boathouse at Breach
16 Inlet, correct, sir?

17 A. I operate as managing member of the
18 Boathouse. I do not own the entire boathouse. I own
19 the majority of the LLC membership.

20 Q. And you're the manager of The Boathouse at
21 Breach Inlet; correct?

22 A. Yes. I have been since the formulation of
23 the operation of the restaurant since 1997.

24 Q. And it's a seafood restaurant located
25 between Isle of Palms and Sullivans Island; correct?

1 A. That's correct.

2 Q. And it's a good restaurant; is it not, sir?

3 A. I certainly think it is. It's been there
4 for 21 plus years. And its received all sorts of
5 national recognitions, television appearances, Delta
6 magazine. It's well received.

7 Q. And it has survived for over 20 years due
8 in no small part to you, correct?

9 A. Yes, sir.

10 Q. And, in fact, I told you after I proposed
11 to my wife on Isle of Palms I went there for our
12 engagement dinner?

13 A. I remember that vividly.

14 Q. In fact, you testified, sir, at your
15 deposition that so far in 2020, The Boathouse was having
16 a better year than in 2019, so much so that you stated
17 we're in a very good position for increased sales this
18 year, and I'm hoping to increase sales by at least
19 \$250,000 to \$500,000 this year; correct?

20 A. I do remember that statement. And we
21 remain optimistic. We have a great chef now. We
22 struggled with that over the last two years. It's a
23 tough situation in Charleston finding good help, but we
24 finally have galvanized the back of the house, which is
25 the engine of any restaurant.

1 Q. And in light of that success, sir, you
2 believe that the LLC has a reasonable prospect to
3 continue carrying on that business; correct?

4 A. Well, absent this -- I think Laurence
5 stated it perhaps better than I. I don't think that
6 this relationship can endure it. I think it has an
7 adverse effect -- it had an adverse effect in excess of
8 20 years. The record is abundant that Laurence early
9 on, as early as the meeting with Hal Pratt-Thomas and
10 the others in 1990 at Crew Carolina shortly after East
11 Bay opened, Laurence was so combative. I'm pretty sure
12 that he stomped out of the restaurant. The Laurence
13 that Your Honor sees today is not the Laurence we have
14 to deal with from time to time.

15 Q. Mr. Stoney, my question for you is: Do you
16 believe that The Boathouse at Breach Inlet has a
17 reasonable prospect to carry on business; correct?

18 A. I think I just answered that. That I
19 believe that The Boathouse could have a very successful
20 year this year.

21 Q. You stated that you do not believe it is
22 reasonable and practicable to carry on the business
23 because -- with Laurence Stoney; correct? Is that your
24 answer?

25 A. That is my answer. You know, it's all

1 semantical. But that is my answer. And I think it's
2 been clear to anyone in this courtroom, particularly
3 Judge Newman spanning the five years of this litigation
4 that there's been this hostile and very contentious
5 relationship. And I can go on and on, but I think I'll
6 just do it as you ask the question.

7 MR. MCQUILLIN: Let the record reflect that
8 I'm handing Judge Newman the 30(b)(6) deposition and
9 personal individual deposition testimony of Richard
10 Stoney from day 2 of his deposition.

11 MR. BARR: When?

12 THE WITNESS: I can answer the question.

13 BY MR. MCQUILLIN:

14 Q. No, sir. There's not a question on the
15 table.

16 Sir, I'm handing you your original
17 deposition. Please flip to Page 614 of your original
18 deposition. And follow along as I read aloud.

19 I asked you, sir: Do you believe The
20 Boathouse at Breach Inlet, LLC --

21 A. Excuse me one second.

22 MR. BARR: Objection. I think the proper
23 foundation is to let the witness read it first.

24 THE WITNESS: I haven't gotten to the page.
25 I can't find the page. 614 you said?

1 MR. BARR: 614?

2 THE WITNESS: It's in front of me, yes.
3 I'm not used to the screen. This is the first time --
4 the third time I've ever been on the stand, but the
5 first time I've ever looked at the screen right in front
6 of me. So I apologize. I was looking up. I now see it
7 looking up.

8 BY MR. MCQUILLIN:

9 Q. Sir, I asked you in your deposition, do you
10 believe that The Boathouse at Breach Inlet has a
11 reasonable prospect to carry on business as The
12 Boathouse at Breach Inlet?

13 Yes.

14 Do you believe it's reasonable and
15 practicable to carry on the business of The Boathouse at
16 Breach Inlet, LLC?

17 Absolutely.

18 That was your answer under oath at your
19 deposition; correct, sir?

20 A. Let me read --

21 Q. Sir, if you would look at the top of your
22 deposition --

23 A. Would you please just calm down and let me
24 take time to read it? Please.

25 Q. Tell me when you've finished reading it and

1 I'll ask you a question.

2 A. I've read the line. The line speaks for
3 itself, but I would go down to my answer on line -- on
4 Page 614, Line 16. Absolutely. I mean, just for those
5 reasons I articulated. I mean, it's got a great
6 repetition, absent the reputation that's unfolded, you
7 know, in public. It never should have been public.

8 And that is, you know, this lawsuit. And I
9 would say the lawsuit is all encompassing. And,
10 certainly, the background of the lawsuit speaks for the
11 issues that are before this Court today.

12 Q. Mr. Stoney, you testified that we've got a
13 great front house, we've got the same managers we've had
14 for years, and we're in a very good position for
15 increased sales this years, and I'm hoping to increase
16 sales by at least 250,000 to \$500,000 this year in your
17 deposition; correct, sir?

18 A. That is correct.

19 Q. And look at the top of your deposition.
20 This is the 30(b)(6) deposition of the company that you
21 understand, as a lawyer, it's binding on the company;
22 correct, sir?

23 A. I think Judge Newman and I are both aware
24 of 30(b)(6), but this -- contextually you're trying to
25 -- but, anyway, I'm just pointing out to the Court there

1 was other language contained contemporaneous with that
2 answer. But the deposition the Judge can look at at any
3 time and, hopefully, he will.

4 Q. You went on to say, sir, in your
5 deposition, I'm very encouraged by the growth at Breach
6 Inlet over the last few years and, particularly, to see
7 last month's numbers and to see that they were up
8 \$20,000 over the last year. 20,000 up in January is
9 huge; correct, sir?

10 MR. BARR: Can Counsel cite us a page
11 number?

12 MR. MCQUILLIN: That is Page 399 of his
13 deposition.

14 MR. BARR: Can we have a line? Line 23 is
15 what you're reading from; is that correct?

16 For the record, I believe the question
17 begins on Page 398, Line 24.

18 THE WITNESS: It appears that the question
19 does begin on Page 398, Line 24. And the answer begins
20 on Line 2.

21 BY MR. MCQUILLIN:

22 Q. Mr. Stoney, you agree that the restaurant
23 was doing very well in large part due to you; correct?

24 A. That's a very general statement, but I do
25 believe in large part due to me and to others. We have

1 a very good team that has taken three to four years to
2 get where we are now. It's difficult.

3 The job market in Charleston, as far as the
4 ability to obtain competent staff and obtain competent
5 staff at every level is very difficult.

6 But in this answer I went on to say on Line
7 11, marketing five years different than it is it today.
8 Canned goods are totally different. Twenty years ago it
9 was a frontier. You could make money serving bad food.
10 Now it's more difficult everyday. I think that
11 Charleston is considered one of the top ten restaurant
12 designations in the country and sometimes one of the top
13 five. So it's highly competitive.

14 Q. Mr. Stoney, congratulations. That's great
15 news. You have ran a successful restaurant, in your
16 opinion, for 21 years; correct?

17 A. I believe, given all the factors and all
18 the catastrophes and issues that we've been confronted
19 with, I think we have done an amazing job. I don't just
20 take credit for it. Several staff members have been
21 there. I've got servers that have been there since the
22 day we opened. So we have a very loyal staff. It's very
23 close knit. There have been funerals and deaths. And
24 it's still ticking.

25 Q. It's very impressive what you've done,

1 Mr. Stoney, but how do you expect The Boathouse at
2 Breach Inlet to continue to thrive if it doesn't have a
3 space or property for which it can operate its
4 restaurant?

5 A. Well, I assume, you know, that you're
6 referring to the lease. So I'm happy to talk about
7 that.

8 Q. Mr. Stoney, how do you expect The Boathouse
9 at Breach Inlet to continue to thrive if it doesn't have
10 a property on which it can operate?

11 A. It has a property to operate. In my
12 deposition I told you, after lengthy examination, that
13 there was obviously confusion as to those documents.
14 I'm happy to explain that and answer any questions. You
15 feel free to ask.

16 Q. Mr. Stoney, I've handed you what's been
17 marked as Plaintiff's Exhibit Number 8. Can you please
18 identify that document for the Court, sir?

19 A. Give me one minute. It says memorandum
20 agreement supporting, executed, it looks like, 9/12 --
21 May 31st of 2011.

22 MR. MCQUILLIN: Your Honor, at this time
23 we'd move Plaintiff's Exhibit Number 8 into evidence.
24 This is without objection.

25 MR. BARR: Without objection.

1 (Plaintiff's Exhibit Number 8 has been
2 admitted without objection.)

3 BY MR. MCQUILLIN:

4 Q. If you'll look with me at Exhibit Number 8,
5 you are the landlord at 101 Palm Boulevard where the
6 Boathouse sits; correct?

7 A. Yes.

8 Q. And that's you individually; is it not,
9 sir?

10 A. That's correct.

11 Q. And you also signed on behalf of The
12 Boathouse at Breach Inlet as its manager; correct, sir?

13 A. I did.

14 Q. And in Exhibit Number 8 to this trial, the
15 tenant, meaning The Boathouse, had the ability to renew
16 its lease for six additional consecutive 5-year terms
17 ending on December 31, 2035; correct?

18 A. That is correct, per this document.

19 Q. What's the date of the document?

20 A. I believe I just stated that. I think it
21 is May 2011 and the day is 31st.

22 Q. You've testified previously this was a
23 beneficial lease for the restaurant; correct?

24 A. It was. I also testified previously I was
25 shocked at the number of consecutive 5-year terms,

1 extending to 2035.

2 I testified, if you recall, in the
3 deposition that John Romanofski is not only a friend, I
4 used to practice with John. We shared office space for
5 close to 30 years. And I assumed that this was put in
6 those additional terms without -- I literally did not
7 remember. I think he would tell you witnessed my shock.

8 That having been said, I also said in that
9 deposition that I would never penalize the restaurant
10 for that oversight and that I would be willing to extend
11 the lease, which I am willing to do. And I testified to
12 that. And I don't know exactly how I put it. But I
13 certainly said, I will not terminate the lease.

14 So the lease runs until 2035. If my math
15 is correct, then we're talking 15 -- excuse me, 25 more
16 years. It was signed in -- I'm sorry. It was signed in
17 2000 -- I'm backing up. It's the second lease. It was
18 signed that was signed and I -- the lease said that you
19 were going to present -- but what I'm saying is I would
20 agree to sign a lease to extend it 2035.

21 Q. Mr. Stoney, what was my question to you,
22 sir?

23 A. I think I answered it.

24 Q. What was my question to you, sir?

25 A. Mac, why don't you repeat it instead of

1 being rude.

2 Q. If you could just try to answer my question
3 so you can remember what I asked you, sir.

4 MR. BARR: May the Court Reporter read back
5 the question?

6 BY MR. MCQUILLIN:

7 Q. My question to you, sir: Was the lease
8 we've marked as Plaintiff's Exhibit Number 8 a
9 beneficial lease for the company, sir?

10 A. And I answered, just a moment ago, before I
11 started that it was a beneficial lease. And I went on
12 to explain.

13 Q. Thank you.

14 A. I did answer it and then I explained, which
15 I have a right to do, Mac. There's no question it's a
16 beneficial lease. It was an extraordinarily beneficial
17 lease.

18 Q. It was an extraordinarily beneficial lease.
19 Why was that?

20 A. It was a mistake, but I'm willing to stand
21 by it. That's what I told you in the deposition.

22 Q. Sir, I'm handing you what's been marked as
23 Exhibit Number 9. Would you please identify that
24 exhibit for the Court.

25 A. This is the second lease. This is the

1 lease that is in effect, as we sit here today, and it's
2 dated 13th day of February 2015.

3 MR. MCQUILLIN: Your Honor, at this time I
4 would move, without objection, that Plaintiff's Exhibit
5 Number 9 be admitted into evidence.

6 MR. BARR: Without objection.

7 THE COURT: So noted.

8 (Plaintiff's Exhibit No. 9 was admitted
9 without objection.)

10 THE WITNESS: Regarding this lease --

11 BY MR. MCQUILLIN:

12 Q. There's no question on the floor, sir.

13 A. I'll wait for your question and move on.

14 Q. Mr. Stoney, who is the landlord in this
15 lease?

16 A. The last page --

17 Q. Well, you can look at the first page on the
18 screen. Who it's entered between?

19 A. The landlord listed in this particular
20 document at 101 Palm Boulevard, which we formed as an
21 LLC, which is attached to the restaurant property.

22 Q. For protection from creditors; sir,
23 correct?

24 A. No, Mac. It was done in 2015. And it was
25 done because we had been planning on doing it for some

1 period of time. Any fool would have done it and that is
2 it would have held by an LLC. It raised several times
3 by John Romanofski that it needed to be put into an LLC
4 for purposes of the liability.

5 You know, I allowed it in my original name
6 because I originally leased it from John Cantrell in my
7 individual name and then I just adopted the lease from
8 John Cantrell when I bought the property many years ago.
9 And that's how it remained. So I changed it to 101 Palm
10 Boulevard.

11 Q. Sir, you testified in your deposition that
12 by February 2015 when this lease was signed Laurence had
13 already been e-mailing you and copying his lawyers,
14 including Scott Barnes from my firm; correct?

15 A. I think you asked that question.

16 Q. And you said; yes, correct?

17 A. Because that's the truth.

18 Q. Mr. Stoney, what is 101 Palm Boulevard?

19 A. It is the -- it represents the LLC that
20 holds the property.

21 Q. The only member of that LLC is you, sir?

22 A. And I also testified --

23 Q. Is that correct?

24 A. The only member of that LLC is me.

25 Q. I didn't ask you what you also testified

1 to.

2 A. I'm entitled -- Mac, please let me answer,
3 and don't cut me off, please.

4 I testified, as well, that at that point in
5 time I had been deciding for some period of time through
6 conversations with my tax attorney that I was going to
7 put part of that property in my children's name, and
8 that was one of the reasons why we needed to have an
9 LLC, independent of the legal protection that's afforded
10 to an LLC, as opposed to an individual -- in terms of
11 lawsuits.

12 I also talked about there had been a pretty
13 bad accident at the restaurant. Actually, there were
14 two accidents. One with a jet ski that pertained to the
15 leasehold through the marina operation, as well as a
16 significant injury to an employee with Reese. So there
17 were two reasons that precipitated it being formed this
18 way.

19 Q. Sir, when does the term of the lease that
20 you signed when you knew about this litigation end?
21 What is the end of that lease term?

22 A. I don't remember the day. I think that
23 when this lease was entered in 2015, and I believe the
24 last day -- it was for five years, I believe. So it's
25 about to expire. I'm not sure of the last day. It

1 should be in here.

2 Q. If you look at the screen, you'll see it.

3 A. It ends on April 30 of 2020. But I've
4 already said that I would extend the lease. And I would
5 stand by that. But more importantly as I also said in
6 the deposition contained in this document that you
7 handed me that is a memorialization of my testimony that
8 I would not do this to my family or to my children, who
9 are all part and parcel of the ownership of this
10 restaurant.

11 Q. Sir, let's compare that to the prior lease
12 term that was in place before you found out about this
13 litigation. When does that lease term end?

14 A. Your question is characterizing why this --
15 -- it precipitated in the result of this litigation. My
16 testimony, under oath, is it is not. I believe that
17 this particular document had been in the works for
18 months, if not a year, before my discussion with
19 Laurence. And I simply didn't get around to it.

20 Regardless, for the third time, if not the
21 fourth, I am saying to this Court, as well as I said
22 under oath in the deposition, that I'm willing to extend
23 the lease to 2035.

24 Q. And so, sir, you unilaterally shortened the
25 terms of The Boathouse at Breach Inlet lease to from

1 2035 to 2020; correct?

2 A. There's no question about that. That's the
3 document. But what I'm saying is it has no effect in
4 the sense that, you know, I'm willing to change it and
5 willing to change it ASAP.

6 Q. You want us to trust you, just like you
7 told your cousin, Laurence; correct?

8 A. I absolutely expect that you will trust me
9 to do that.

10 Q. And you believe it's reasonable for us to
11 rely on you at your word; correct, sir?

12 A. Absolutely.

13 Q. All right. In your deposition, you
14 testified that by February 15th, when this lease was
15 signed, Laurence had e-mailed Scott Barnes, a lawyer at
16 my firm, on an e-mail with you; correct?

17 A. What page are you on now? I mean, at least
18 give me a page number. Because I don't know what I
19 said.

20 Q. I'll refresh your memory.

21 A. Please do. If that's what I said, that's
22 what I said.

23 MR. BARR: Page what?

24 MR. MCQUILLIN: 206.

25 BY MR. MCQUILLIN:

1 Q. I asked you, on February 13th of 2015 when
2 this lease was assigned from you individually to 101
3 Palm Boulevard, LLC Laurence had already been e-mailing
4 you and copying lawyers; correct?

5 And your answer was, that's obvious from
6 the documents that you showed me that he had been
7 copying lawyers; isn't that correct, sir?

8 A. Yes. I remember -- let me read it. What
9 page is it, I'm sorry?

10 Q. 206.

11 A. I don't have two 206 in here.

12 MR. BARR: There are two volumes.

13 BY MR. MCQUILLIN:

14 Q. You don't dispute that you testified to
15 that, sir? That was your correct testimony to --

16 A. Well, I'd like -- because I know how you
17 are, Mac. I've been dealing with you for quite some
18 time. I would like from the context of what was said,
19 rather than some one-line yes-or-no-type answer.
20 Because that's how you practice.

21 Q. We'll move on, sir.

22 Mr. Stoney, you changed this lease in
23 breach of duty of loyalty to The Boathouse because you
24 knew this lawsuit was coming; isn't that true?

25 A. That's absolutely untrue. You know, you

1 find, Mac -- during the course of this cross-examination
2 I'm sure Your Honor will pick up on it -- everything is
3 nefarious. Everything is something I did to do this.
4 And what's amazing to me is this Laurence thing that he
5 put in that he wasn't allowed to look at the books. We
6 offered Laurence to look at the books on multiple
7 occasions. And it's absolutely untrue that he just
8 stated, that he was not allowed to see the books.

9 He also very carefully planned that it was
10 on the books for The Boathouse at East Bay. Why would
11 he want to just see those books? Supposedly he had a
12 suspicion in 1999 -- and often many times -- and
13 Laurence just talked all the time to everybody on the
14 street, as he says.

15 So we offered those books many times. I
16 did say it has to be confidential. And that's in the
17 operating agreement, that I have that right to have
18 confidentiality to protect the restaurant.

19 Q. Let's talk about the bulkhead at 101 Palm
20 Boulevard. It needs repairs; does it not, sir?

21 A. It does not immediately need repairs, but
22 eventually it will need repairs. Bulkheads are -- they
23 have a lifetime, like most things. They're not immortal
24 in the sense that they -- you know, if there is a point
25 where there is -- there are issues and they can be

1 compromised.

2 And that was the main reason. And that's
3 why you're asking the question, that this lease was
4 changed was the bulkhead, which I had been advised some
5 time ago and had failed to do. And it's sort of like I
6 won't wear both hats. I own the majority of the
7 restaurant and I own the property.

8 And so John Cantrell, the original owner of
9 the property I bought it from in that lease, if it meets
10 the responsibility of the bulkhead was on the landlord.

11 Q. Which was you individually; correct?

12 A. It is me individually. But what I'm trying
13 to say to you, Mac, is that it should have been changed
14 years ago. I've done work on the bulkhead, and the
15 bulkhead is part and parcel of the restaurant. If you
16 know anything about the location -- I know you said you
17 were engaged there -- it is a very high bulkhead. And
18 through the years we've had to do work on it.

19 That being said, I also went on to explain
20 that, fortunately, while it's sort of a catch-22,
21 because of the silting and the dredging of the
22 Intercoastal waterway that we had lost all sorts of dock
23 space. I asked -- you can go visit if you don't trust
24 me to go on and look at it on Google and that it is --
25 has built up. So the bulkhead right now is in pretty

1 good shape. At the same time, the marina, which is
2 nothing but a liability, most of the times. Those docks
3 are compromised. I've been meeting with Chip Campson
4 and all sorts of people involved. It's like literally
5 the equivalent of three or four large whales that go --
6 it starts, you can see it on a photo. It goes from
7 probably a quarter of a mile down from where Breach
8 Inlet is down at low tide so that the docks have a
9 humpback where this huge amount of sand goes through.
10 Fortunately, some of that sand is now against the
11 bulkhead and reduced the height of the bulkhead and make
12 the bulkhead much stronger.

13 The answer, though, very simply put is that
14 the landlord and owner of the majority interest, I --
15 wearing two hats, I elected to change it because I did
16 not think it was fair, and nor did I think it was the
17 best interest of me as landlord, candidly, to have the
18 responsibility for the bulkhead with the restaurant --
19 the bulkhead serve the restaurant and not the marina.

20 So I did not think it was unreasonable at
21 all and I hope that anyone else assessing what I did
22 think it would be unreasonable to change that.

23 Q. I just want to make sure that the Judge
24 understands this. We had a lease before that had terms
25 to 2035 and that term was reduced to next month;

1 correct?

2 A. And I told you that that would be adjusted.

3 Q. Isn't that correct, sir? Please answer the
4 question.

5 A. That is correct.

6 Q. And then we also have a lease where you
7 previously had responsibility for repairing the
8 bulkhead; correct?

9 A. Well, before it was John Cantrell had the
10 resistibility and then it was me.

11 Q. When you had the lease, sir, this original
12 lease had a term of 2035, you had responsibility for
13 repairing the bulkhead; correct, sir?

14 A. Yes, Mac. And that was a very foolish
15 acquisition on my part, which I rectified by this lease
16 in 2015. And I stand by my actions.

17 Q. And then in 2015, after you knew about this
18 case, you unilaterally changed the lease and put the
19 responsibility to repair the bulkhead on the restaurant;
20 correct?

21 A. I just said 2015. And I intended to do it
22 for years and didn't do it.

23 Q. And you acknowledge you're wearing two hats
24 in that transaction; correct?

25 A. Absolutely, Mac.

1 Q. And one of those hats is as the manger of
2 The Boathouse at Breach Inlet that has fiduciary duties;
3 correct?

4 A. Either way, Mac, I have the majority of the
5 financial responsibility. Either way. So it's a kind
6 of a catch-22.

7 Q. You moved the financial responsibility
8 individually from you onto the company; correct?

9 A. That, in essence, is correct. But my
10 answer to your question a minute ago is very germane as
11 to why I did what I did and the exposure to the
12 restaurant.

13 Q. And that was very fair to you individually;
14 was it not, sir?

15 A. I don't know that it was fair to me,
16 because as I said, either way -- I mean, I own the
17 majority. The money's got to come from somewhere.

18 Again, the bulkhead serves the restaurant.
19 It has nothing to do with the marina. It is the
20 restaurant. And I don't think that there's any landlord
21 that would not have done what I chose to do. And I
22 should have done it earlier.

23 Q. And you --

24 A. Just like -- let me finish, please.

25 It's like, you know, normally in commercial

1 leases, you know, the landlord is responsible for the
2 foundation or the roof or whatever. And that's pretty
3 standard. Well, it would be highly unlikely that the
4 bulkhead that is attached to the -- that serves the
5 restaurant, that maintains the seawall side -- or
6 actually, the creek side that the tenant would not be
7 responsible for that. Because it is something that the
8 tenant would normally be responsible for, I believe.

9 Q. Mr. Stoney, when you changed the lease
10 document, you didn't inform any members of The
11 Boathouse; correct?

12 A. Mac, the --

13 Q. It's a simple yes or no question. Did you
14 inform --

15 A. No, I did not. And I would like to --

16 Q. You did not; correct?

17 A. Mac, I did not. I want to continue to
18 answer. This is a family-owned business. There were
19 things that were going on constantly that required all
20 sorts of thing to be done including -- I mean the
21 operating agreement itself, you know, calls for all
22 sorts of things to be done and not done, whatever.

23 And, you know, if you dealt with this every
24 day on a regular basis, you know, it would be time
25 consuming. This particular lease still protects that

1 restaurant. And I'm looking out for the restaurant.
2 And that's why I'm saying I really had no idea. And I
3 know that -- Tyler, you saw my expression, I saw that.
4 I was going so hard. I had no idea in whatever the date
5 is, 2011, that I had -- I've never seen any landlord
6 give a whatever the math is, six additional five-year
7 terms. It's unheard of. In the restaurant business
8 it's normally is 20 years, if you can get that.

9 I've done two new restaurants with Mr.
10 Martin Sprock and I was involved with the lease
11 negotiations. And we had to fight to get 20 years.
12 Most landlords in Charleston now only get a 15-year
13 lease. So to get that period of time is extraordinary.
14 That's why I say it's an extraordinary lease and I do
15 not remember that, but I'm going to stand by it.

16 Q. Sir, you put a \$900,000 bulkhead repair
17 obligation on the company and shortened the lease term
18 by 15 years and you didn't think it was important to
19 inform the members of that?

20 A. Mac, you're pulling that number from
21 something that I said at one time years ago, estimate to
22 include -- you're totally fabricating something, and you
23 do it all the time.

24 I said in my deposition that one of the
25 estimates we got years ago to replace the whole bulkhead

1 was \$900,000.

2 Q. Thank you.

3 A. No, wait. Let me finish. No one supposes
4 that that bulkhead needs to be completely replaced. And
5 more importantly that was a sheet metal that was from
6 Horry Parker of -- I can't think of the name of the
7 company now -- had two estimates from Morrison --
8 Morrison Contracting out of McClellanville to get
9 estimates if at the time we wanted to replace the whole
10 bulkhead and just get it over with. That was with sheet
11 metal. At the time sheet metal had gone through the
12 roof. We're talking 10 years ago.

13 And then repairs -- we made repairs, which
14 you know about, because my brother was involved, and we
15 had engineers involved and repaired it. And so far its
16 holding. So there's no \$900,000 hold in place. Those
17 are your inflated numbers without any foundation
18 whatsoever.

19 Q. Sir, you've used funds from The Boathouse
20 for personal use; correct?

21 A. You know that. And that was attested to --

22 Q. In fact, your lawyer admitted it in his
23 opening argument; did he not? You were here.

24 A. Yeah. I think it was \$42,000 12 years ago
25 or something.

1 Q. What about the \$4 million number where Crew
2 Carolina that Mr. Hollerbach wouldn't do where there
3 were transactions that said Richard Stoney weekend cash?

4 A. I don't believe -- I think you're
5 integrating. I can be wrong. And I would defer to the
6 record with what Mr. Hollerbach says, as well as what
7 His Honor has heard with the trial at the time.

8 Q. Do you dispute, in this courtroom, that you
9 took money from Crew Carolina for personal use?

10 A. I have not dispute that -- at any time, I
11 would dispute that.

12 Q. And that was a benefit to yourself; was it
13 not, sir?

14 A. I certainly benefited. I always had
15 intention of paying it back. And it's been paid back to
16 the tune of some \$42,000. I'm also -- you know, there
17 are many things that I have done for this group that
18 I've never billed, including legal work and other stuff.
19 And so there's nothing that I can say, other than the
20 \$42,000 is the figure that Mr. Hollerbach testified to.

21 As to the \$4 million, that figure had been
22 on the books for, I believe -- I don't know how many
23 years. A considerable period of time, the balance
24 sheets. And as Mr. Hollerbach said, the numbers that he
25 used were the numbers he got from Jamie Stabler. And

1 yet he spent 500 hours and some \$80,000 -- at least he
2 didn't know the current figure -- looking into these
3 numbers. And these number that were provided were
4 always available to Laurence from right there.

5 Q. When he looked into the numbers, though,
6 sir, he saw that you took personal money from the
7 company and booked it as a due to/due from Crew
8 Carolina; correct?

9 A. What I think he saw and I don't think that
10 this was ever disputed in anyway. And it's like an open
11 book, literally. I'm not trying to be cute. Is what we
12 saw was that we meticulously booked all of it, even the
13 due tos and due froms, and accounted for every penny.

14 Q. Sir, you refer that your practice as the
15 due to/due from as robbing Peter to pay Paul; correct?

16 A. No. You've adopted that and --

17 Q. Your testimony is you have not referred to
18 that? Is that your testimony?

19 A. I'm going to answer the question. Mac, I'm
20 the one that generated that term. Yes, I have said
21 that.

22 Q. You said it six times?

23 A. I don't know how many times I said it, Mac.
24 But what I'm trying to say is, it's a generalization.
25 It's a term. It's a phrase. It's a whatever you want

1 to call it. You know, it's almost like a Biblical
2 phrase, robbing Peter to pay Paul. And what I've also
3 said is Peter, who's me.

4 Q. Peter is a company? It is not you?

5 A. Listen, we know in the real world that
6 Peter was the people who oppose this litigation, of
7 which my brother is 95 percent. So that Peter was
8 95 percent whatever Peter loaned Paul. That was --
9 95 percent of that money was Peter's money.

10 Q. Does Lori Stoney oppose this litigation?

11 A. You claim that you represent her.

12 Q. I'm asking you. You testified --

13 A. Let me finish.

14 Q. You don't get to finish questions to me.

15 A. Yes, I do get to answer.

16 Q. No, sir, you do not.

17 Mr. McQuillin: Your Honor, I would ask
18 that the witness answer my question. He's trying to ask
19 me a question.

20 THE WITNESS: No, I'm not asking a
21 question. I just was making a statement. But you
22 represented to Mr. Barr and you've also communicated.
23 And I have communications for it. And you refuse to
24 produce documents saying that Lori Stoney is your
25 client.

1 BY MR. MCQUILLIN:

2 Q. Listen, my question to you is: Do know
3 whether or not Lori Stoney is opposed to this action?
4 Yes or no?

5 A. My understanding is -- I don't have an
6 understanding, other than I know you initially -- you
7 started out this litigation saying that you represented
8 Laurence Stoney.

9 Q. But when you say 95 percent of the members
10 oppose this action, you're including Lori Stoney; are
11 you not, sir?

12 A. Please don't interrupt me.

13 THE COURT: Just a moment. Mr. Stoney can
14 answer one of the last three questions or all of the
15 last three questions. You may proceed.

16 THE WITNESS: Thank you, Your Honor. What
17 I'm trying to say is that --

18 THE COURT: You're testifying to me. He
19 might not want to hear it, but...

20 THE WITNESS: What I'm saying is that, I
21 believe, even Laurence admitted that 95 percent opposed
22 and that Lori Stoney never had said that she is in favor
23 of it. What you did as -- and I would make the analogy
24 to your first initial suit, where you cavalierly, and I
25 think improperly, and probably in violation of some

1 ethical rule, you put in the pleadings that you
2 represented, in this derivative action, which has been
3 nothing but a camouflage, you know, form of extortion,
4 in my opinion, to color this as a legitimate, derivative
5 suit.

6 And I'm saying that because, if, out of
7 that may something percent ownership, you represented
8 that all of those members, you know, were similarly
9 situated -- excuse me, represented all the members. And
10 then once it moved, I think, a year, year and a half
11 later, you amended the pleadings to say those similarly
12 situated from Lori Stoney and Laurence. And then after
13 some other testimony you amended the pleadings a third
14 time. And now it's a class of one, which I think is a
15 very novel derivative case in South Carolina. But I
16 defer to His Honor to that.

17 BY MR. MCQUILLIN:

18 Q. Mr. Stoney, Crew Carolina does not have a
19 written business plan; correct?

20 A. Excuse me?

21 Q. Crew Carolina does not have a written
22 business plan; correct?

23 A. Well, I had a business plan that I started
24 -- before I started The Boathouse restaurant. And it's
25 actually -- we did a cookbook in 2006. And it

1 references to this global umbrella that had been
2 testified to or at least Mr. Barr touched on in his
3 opening statement.

4 The plan was to develop -- and Laurence
5 knew this at the Crew Carolina meeting in 1999, I
6 described wanting to put together four similar
7 restaurants. I used the Chart House, which was a very
8 successful restaurant chain at one point, to point out
9 the commonality of menus, uniforms. So that someone in
10 one city or in one location knew that they could get the
11 same coleslaw, or the same, you know, fish, or collards,
12 and that it would be -- that The Boathouse name would be
13 a branded name. And the whole goal was to put together
14 four or five restaurants and sell the unit at some
15 point. Or I hoped. That was the plan. And that was
16 also designed to consolidate without being redundant
17 food purchasing and management, et cetera.

18 Q. Sir, my question to you was: Does Crew
19 Carolina have a written business plan? It does not;
20 correct?

21 A. Well, I can show you the cookbook in 2006.
22 So to say that it had a written business plan, it
23 settled -- I'm sure there's e-mails back and forth as to
24 what we were doing and what we were doing to try and
25 achieve, including the catering branch and the -- in

1 fact, the cookbook is right there. I can get it.

2 We also had products that were in Whole
3 Foods and Harris Teeter, Bi-Lo, if I remember correctly.
4 The goal was obviously to maximize the management and
5 the overall umbrella of the company.

6 We gave most of that information through
7 seminars I've attended, as well as talking to some local
8 restaurant groups that were three or four. In the old
9 days, twenty years ago, for a group no more than three
10 or four restaurants is unheard of. Now, there's groups
11 in Charleston that have seven, eight, nine, ten
12 restaurants.

13 Q. Sir --

14 A. Let me finish, please. My goal was to
15 simulate these restaurants with a unique brand so that
16 they did seem to be a chain, but they had a --
17 collectively, it was a packaging to be sold. That was
18 my goal. That was the plan.

19 Q. Sir, you haven't produced a written
20 business plan in discovery; have you?

21 A. There's no written formal business plan.

22 Q. Thank you, sir. Now you've answered my
23 question.

24 Other than --

25 A. I already answered your question.

1 Q. Other than you say your cookbook is a
2 written business plan -- that's your testimony today?

3 A. No. That's not what I'm saying. I'm just
4 trying to -- for the judge's edification -- he's the
5 trier of the fact here, Mac. Not you or me.

6 And what I'm trying to say is that this
7 cookbook solidifies, establishes my credibility as to
8 what we were trying to do. There are also memos. And
9 in some of these memos that you've touched on and you've
10 attempted to introduce or have introduced, there are
11 references in which Chip Robinson talked about the
12 global structure.

13 I mean, we had a deal in Greenville,
14 Greenville Boathouse on the Falls that fell through. We
15 had multiple catastrophes. One, being Cane Halton (ph),
16 the backbone of that as the financier, as well as the
17 owner of the property. And he died of cancer.

18 So the answer is, we had -- at one time we
19 were on a roll. In 2004 we were voted -- Crew Carolina
20 was voted the number one business, Best Business Award
21 for Charleston County and Best of Tri-County Area in
22 2004. And in 2004 Patrick Greenwald was shot and
23 murdered at The --

24 Q. Mr Stoney --

25 A. Let me finish. Because I've been putting

1 up with this for five years. In 2004 Patrick was shot
2 and killed taking care of that restaurant.

3 Laurence Stoney didn't even come to the
4 funeral. Laurence Stoney only wanted to know what money
5 he was going to get. We suffered beyond suffering.
6 That is a restaurant your client is a member of and has
7 never ever done anything to help, but hurt.

8 And Laurence Stoney in 2005 is writing me
9 about distributions. We were lucky to pay the bills in
10 2005, based on that death. Nobody wanted to go in that
11 restaurant. And not only did they didn't want to go in
12 the restaurant, the word on the street was it wasn't
13 safe. And so we lost not only our customers, but we
14 lost employees. Half the employees quit the next day.

15 Q. Mr. Stoney, when Crew Carolina enters into
16 a management contract with a restaurant, does it have
17 each of the members of the restaurant LCC sign a
18 document agreeing to have Crew Carolina comingle funds?

19 A. Absolutely not, Mac. And you know that.

20 Q. In fact, you never got written permission
21 from the members of The Boathouse at Breach Inlet to
22 take funds from The Boathouse to support other entities;
23 correct?

24 A. My brother and Laurence Stoney knew what
25 was going on as early as 1999.

1 Q. I didn't ask if they knew what was going
2 on. I asked you, sir, you never got written permission
3 from the members of The Boathouse at Breach Inlet to
4 take funds from The Boathouse to support other entities;
5 correct?

6 A. I didn't get written permission on many
7 things that I know the operating agreement --

8 Q. I'm not asking you about --

9 A. I'm answering the question, Mac. I've said
10 no, and I'm going to amplify. Because you want to cut
11 me off.

12 The answer is no. But there are many other
13 aspects of the operating agreement that were never
14 signed or whatever. And it was a family business. And
15 I was doing everything I could to keep it afloat.

16 Q. Who are the members of The Boathouse at
17 Breach Inlet, LLC?

18 A. The original members were -- the operating
19 agreement, I don't have it in front of me. You may have
20 it. But in the operating agreement, I think it was
21 signed latter part of 1997. At least the property in
22 '96. It took a year to build. I borrowed about a half
23 a million dollars, and built it. And then Laurence came
24 in at the 11th hour.

25 The original members were my brother, my

1 son, and my brother, as a trustee for that, myself, and
2 Laurence. There were four original members.

3 Q. What are the members now, currently?

4 A. The members are my daughter, Croft, and
5 Lori, who I gifted an interest to, Greg Holmes, who
6 bought in in 2009, and Michael Cox who bought in in
7 2014. Although, his distribution, he has no voting
8 rights. So I still obtain 60 percent of voting rights.

9 Q. So, Laurence Stoney, Richard Stoney, Teddy
10 Stoney, Lori Stoney, Michael Cox, Gregory Holmes, and
11 then yourself and your daughter in trust and your son in
12 trust. So eight members; is that correct, currently?

13 A. That's it.

14 Q. And then who are the members of Crew
15 Carolina, sir?

16 A. I'm the only member of Crew Carolina.

17 Q. All right. Who were the members of Lake
18 Julian in Asheville?

19 A. Lake Julian membership consisted of my
20 brother Ted, my friend, Tommy Westfield from New
21 Orleans, Louisiana, my sister, and myself. I believe
22 there were four.

23 Q. What was your ownership interest in Lake
24 Julian, sir?

25 A. Off the top of my head, I couldn't say.

1 But I believe it was -- I know it was majority. Some
2 part in the low 70s to mid 70s. I'm not sure. There
3 are documents that speak for themselves.

4 Q. What about the membership, the members of
5 Carolina's?

6 A. Scott Barns in the back, he knows -- very
7 well -- of your firm. That was my brother Ted, Ned
8 Payne. Ted owned 10 percent, Ned Payne owned 25
9 percent, and I owned about 75 percent -- excuse me, 65.

10 Q. My point is, the members of The Boathouse
11 at Breach Inlet differed from the members of Lake Julian
12 in the Carolina's?

13 A. There was commonality, but there was not
14 the same lineup across the board on any of those, with
15 the exception of The Boathouse at East Bay. All of the
16 members of The Boathouse at Breach Inlet were also
17 members of The Boathouse on East Bay, meaning Laurence
18 Stoney.

19 Q. The only thing that's in common amongst all
20 of these entities though is you; correct, sir? You were
21 the only one that was a member of all entities that you
22 siphoned money to; correct?

23 A. Well, those are your words siphoned money.
24 We'll leave that up to Your Honor.

25 The answer is, yes, I was the only one

1 member of all of them.

2 Q. In fact, sir, you've seen the memo from
3 Chip Robinson written to you where he refers to The
4 Boathouse at Breach Inlet as the blood donor for the
5 hemorrhages that are Lake Julian and Carolina's;
6 correct?

7 A. Yes. But that memo says a lot more than
8 what you're saying.

9 Q. Well, let's get that memo.

10 A. Please do. And I'd like a copy if you have
11 one, please.

12 Mr. Barr, do you have a copy?

13 Mac, can I have a copy, please, too?

14 MR. BARR: He's getting one.

15 THE COURT: We'll take two or three
16 minutes.

17 (A break transpired.)

18 THE COURT: Okay. Proceed.

19 BY MR. MCQUILLIN:

20 Q. Mr. Stoney, before the break I was asking
21 you about a memo that Chip Robinson wrote to you where
22 you referred to Breach Inlet as the blood donor for the
23 hemorrhages of Lake Julian and Carolina's; correct?

24 A. Yes. I'm familiar with that document. And
25 I certainly recall you asking questions about it in the

1 deposition.

2 Q. Mr. Stoney, I'm handing you what's been
3 marked as Plaintiffs' Exhibit Number 10. Can you please
4 identify that document, sir?

5 A. This is a memo to me from Chip dated
6 4/15/2010.

7 MR. MCQUILLIN: Your Honor, at this time we
8 move that this be admitted in evidence without
9 objection.

10 MR. BARR: Without objection.

11 (Plaintiffs' Exhibit No. 10 was entered
12 into evidence.)

13 BY MR. MCQUILLIN:

14 Q. So this is a confidential interoffice memo;
15 correct?

16 A. Yes.

17 Q. And this confidential communication is
18 between you and Chip Robinson, the bookkeeper, for the
19 company; correct?

20 A. Correct.

21 Q. And he writes you on the first line of this
22 memo that his little accounting world at the end of the
23 hall is totally and completely consumed with cash-flow
24 related issues; correct, sir?

25 A. It's absolutely correct.

1 Q. And he goes on to say, after talking
2 through these cash flow issues that removing Breach,
3 meaning Breach Inlet, from its role as blood donor for
4 the hemorrhages that are Lake Julian and Carolina's will
5 take care of all of the above; is that correct, sir?

6 A. That's what it says, correct.

7 Q. And, again, the only common ownership
8 between The Boathouse at Breach Inlet, Lake Julian, and
9 Carolina's is Richard Stoney; correct, sir?

10 A. Correct. Now, if you look below that,
11 there is -- you're moving it off the screen. Would you
12 please put it back up?

13 Q. You've got a copy of the document.

14 A. I would like to have the screen so His
15 Honor can see it.

16 Q. He has a copy of it.

17 A. All right. Well, he -- after he goes
18 through -- and I think the document certainly speaks for
19 itself. He talks about the sales are down. Meaning,
20 this is 2010. So, East Bay was sold shortly there
21 before. Sales are down 5.3 from 2006 and down 8.0. He
22 goes on to talk about that.

23 And the point is that Laurence of East Bay
24 and East Bay since that murder never recovered. And it
25 needed money.

1 Q. Sir, I want to talk to you a little bit
2 about Crew Carolina, LLC. Sir, you are the sole member
3 and owner of that LLC; correct?

4 A. Yes. And that LCC, as you know from the
5 deposition testimony, as well as other testimony, that
6 it was set up for one purpose, and one purpose only
7 basically. And that was to -- for the money to be put
8 in from the other restaurants. And there was only two
9 restaurants.

10 I'm not sure of the date, but I know it was
11 created in 1999. So, obviously, there was no need to
12 have multiple members. It was set up by Bobby Pearlman,
13 a tax attorney, to operate for what I described earlier.
14 You know, from a design operating standpoint to, as the
15 restaurants grew.

16 We already had the third restaurant in as
17 far in -- as far as the target on -- our eyes on Lake
18 Julian. I knew that we would open at least two to three
19 more. So that's how it was set up.

20 Q. I just asked you if you were the sole
21 member?

22 A. What I'm trying to say is it would explain
23 there was one member and so basic, in terms of its
24 formalities. In other words, you know, I didn't meet
25 with myself or any of the things that you pointed out in

1 the deposition.

2 Q. You didn't follow the corporate
3 formalities?

4 A. We didn't follow the corporate formalities
5 in any of these, basically.

6 Q. In fact, sir --

7 A. Let me finish. And don't interrupt me when
8 I'm trying to answer. It's rude.

9 What I'm trying to say to you is that I
10 doubt that in most family-owned businesses, the LLC,
11 that the formalities are -- had been adhered to 90
12 percent of the time. It's just too complicated. In
13 this particular case, I was the only one.

14 Q. You think it's common in LLCs for the
15 manager to take money and use it for themselves
16 personally?

17 A. No. Not on an ongoing basis, no, I do not.
18 I have also noted multiple times that all that money was
19 documented.

20 Q. Sir, you've referred to Crew Carolina as
21 your alter ego; correct?

22 A. No. You referred to that. You said in the
23 matter of litigation, the last time during the
24 deposition. I think that came up -- it was interjected
25 by somebody else. And at some point it was -- the alter

1 ego was used. But I never considered Crew Carolina my
2 alter ego.

3 Q. You deny that you made that statement?

4 A. Apparently, in my deposition you showed me
5 something. I asked to see the rest of what was said.
6 Because contextually, again, it's important. I was
7 asked so many questions.

8 I was also -- my own lawyer, his
9 finances -- I represented myself in that marital
10 litigation. So I don't have it in front of me. But if
11 you have it, I'd like to see it.

12 Q. You just testified earlier that you did not
13 refer to Crew Carolina as your alter ego; correct, sir?

14 A. No, I don't think that's what I said.

15 Q. Well, the record will speak for itself.

16 MR. MCQUILLIN: Can we go back and see what
17 his answer was when I first asked it?

18 (The requested portion was read back.)

19 BY MR. MCQUILLIN:

20 Q. You said, no, that I referred to that.

21 A. Well, my whole point is you're taking one
22 sentence out of an 11-day trial. And I don't how it got
23 started. But I think I was repeating what somebody else
24 had already said. And I think it might have been --

25 Q. Well, let's look at what you actually said.

1 Let's look in context. Let's pull it out and see what
2 you actually said in the family court obligation.

3 MR. BARR: Excuse, me, Your Honor. I
4 object. There's been no foundation laid to this. The
5 witness hasn't had a chance to examine it, prior to this
6 cross-examination about it. It's not proper procedure.

7 MR. MCQUILLIN: Your Honor, he has denied
8 it, that he said this.

9 THE WITNESS: I'm not denying it. I don't
10 recall the --

11 MR. BARR: He said, no, but... I don't
12 recall the rest of the characterization.

13 I realize this is cross-examination, but
14 the witness is entitled to fair notice before he can be
15 impeached about a document, which is not even his
16 document. It's apparently a transcript from family
17 court hearing. I heard the witness say he's asked for
18 it once and he hasn't gotten it.

19 MR. MCQUILLIN: I will give him the entire
20 transcript and let him look at it after I point out what
21 I'm going to ask him about.

22 MR. BARR: What the witness is saying,
23 Judge, is, let me read the context of what you,
24 Mr. McQuillin, of what you say I said. And then I'm
25 prepared to answer your question. And I think that's

1 only fair.

2 MR. MCQUILLIN: And I've got the whole page
3 on the screen. I will give him his entire testimony
4 from the family court trial.

5 THE COURT: Well, first of all, we are
6 dealing with the transcript from family court trial
7 dated when?

8 MR. MCQUILLIN: Dated March and April of
9 2011.

10 THE COURT: And who's testifying?

11 MR. MCQUILLIN: Richard Stoney is
12 testifying.

13 THE COURT: That's the foundation.

14 And what's the question?

15 BY MR. MCQUILLIN:

16 Q. The question, sir, is, you refer to Crew
17 Carolina as basically your alter ego; correct, sir?

18 A. What I'd like to do is --

19 Q. No. Sir; is that correct?

20 A. I would like to read from the document.

21 And I have every right to do that. The document -- I
22 don't have. There's no way that's my transcript in
23 front of you, as far as the complete transcript, because
24 it was an 11-day trial.

25 Q. This is the transcript of record from March

1 28th and April 1st -- through April 1st. And then we've
2 got here, sir, the table of contents that we thought
3 that you may claim this, sir, page 473 through 532 you
4 testified to. And we're on page 586. So let's talk
5 about it.

6 A. What I'm trying to say, Mac, is that there
7 multiple -- other witnesses who testified. And I
8 believe that alter ego -- and did say, since Crew
9 Carolina, as you know, is basic alter -- an ego.

10 And I'm saying that, I didn't say that.
11 I'm just saying it's basically alter ego. I have no
12 idea how to answer that question.

13 Q. You were asked the question about whether
14 it came from your personal account or Crew Carolina.
15 And you said, I'm not sure because Crew is basically my
16 alter ego. That's the context; is it not, sir?

17 A. Let me read. Again, I think the document
18 speaks for itself. It says, you were writing basically
19 a \$1,420 check out of your personal account or is it
20 being paid out of Crew Carolina reflected in the trial
21 balance. And it says, since Crew, as you know, is
22 basically an alter ego. I have no idea how to answer
23 that question. That's what you've highlighted. And
24 that's certainly there. So I'm not going to try and
25 contradict what's there. But what I'm trying to say is,

1 that this alter ego was brought up the other day. And I
2 really was blindsided. I don't know what else is in
3 that transcript. But it was 11 days. And I'm certain
4 that this alter ego did not come from me.

5 Q. Your answer, sir, is basically my alter ego
6 when you were asked whether funds came from your
7 personal account or out of Crew Carolina; correct, sir?

8 A. Again, I don't think that I'm saying
9 basically -- you're injecting a few extra words in
10 there. But you're saying that I said that it's
11 basically my alter ego. But I would not be surprised if
12 that was brought out by someone else. And I was
13 basically referring to it in that way. But, you know,
14 at this point, I would again refer to the judge for his
15 interpretation.

16 Q. That was your own testimony; correct, sir?

17 A. That's clearly my testimony in that time
18 and place on that particular day in an 11-day trial,
19 when it was six months of separated over a period of six
20 months in which I was my own attorney.

21 And I'm not trying to move away from it
22 all. But we're talking nine years ago. I do not
23 remember. And I have not been able to look at the
24 transcript. I've not had time.

25 Q. Sir, Crew Carolina has no operating

1 agreement; correct?

2 A. You've asked that question multiple times.
3 And there was no operating agreement that I could find.
4 I'm not certain if it ever had one. I'm surprised it if
5 doesn't and that Bobby Pearlman was the attorney.

6 Q. Sir, my question to you in your 30(b)6)
7 deposition, was your testimony the corporate
8 representative for Crew Carolina that you did not
9 believe an operating even exists? No, I don't think we
10 ever did one; is that correct, sir?

11 A. Well, again, I love the way that you do
12 this. Right below that bid, we did. I couldn't find
13 it, again, if my life depended on it. So there's a
14 little more to it. And this is typical how you
15 practice.

16 Q. Sir, Crew Carolina has never made a profit;
17 correct?

18 A. It was never intended to make a profit.
19 That's what was testified to numerous times. To the
20 contrary, I said it was not make profit. It was a
21 vehicle to hold money as a mental protection from, you
22 know, any lawsuits or from anything. Money was to go in
23 and money was to go out.

24 Q. Despite the fact that it had no profits,
25 Crew borrowed money from The Boathouse to fund your

1 other entities and support you personally; correct, sir?

2 A. The dues to and dues from reflect that,
3 yes. And those other entities included The Boathouse at
4 East Bay, in which Laurence was a member, and of which
5 Laurence knew money was going there. Because Laurence
6 got a K1 every year and knew the restaurant was losing
7 significant money for three or four years.

8 Q. Sir, Laurence Stoney was a passive investor
9 and member of The Boathouse at East Bay; correct?

10 A. Passive investor, those are your words.

11 Q. You were the manager and you were the sole
12 person that controlled the finances and made the
13 decisions of how you were going to commingle and slide
14 money around?

15 A. And I could have -- and I should have. And
16 hindsight is always 20/20 -- demanded that there be an
17 infusion of cash through capital contributions.

18 But I had already experienced in the past
19 how that works with Scott Barns, who's sitting in the
20 back, and the possibility of getting anyone to pay it.
21 Laurence never paid capital contribution.

22 I talked to him about the deficiencies
23 there. He refused. He refused to sign the lease of
24 Breach. He refused to sign the lease at East Bay
25 Street. He refused to sign anything. And at some point

1 we will get in more depth, if you ask, but Laurence was
2 impossible to deal with.

3 Q. Sir, Crew Carolina has no assets; correct?

4 A. Mac, you've asked that two times, if not
5 three today. And Crew Carolina has no assets and we
6 never intended to have any assets.

7 Q. And, in fact, Crew has never had any
8 assets; correct?

9 A. I just said that, Mac.

10 Q. Despite the fact the Crew has never had any
11 assets, it borrowed money from The Boathouse at Breach
12 Inlet to fund other entities and support you personally;
13 correct, sir?

14 A. You're reading off something that I've
15 already testified about. And the question was already
16 asked. So it's asked and answered. But I'm happy to
17 answer it again.

18 Q. The answer is yes; is it not?

19 A. The answer is yes.

20 Q. Crew Carolina has never paid any dividends
21 or distributions; correct, sir?

22 A. The answer's yes.

23 Q. And Crew Carolina did not file a tax
24 return; correct?

25 A. Well, you say it didn't file a tax return.

1 My understanding -- and I'm not an accountant. But we
2 have a very reputable accounting company, the same firm
3 that Laurence used. It was Brad Thompson. It's now
4 something else. Dixon Hughes, I believe.

5 But it was always on the income tax return,
6 but as a separate section or whatever you call it on the
7 income tax.

8 Q. Crew Carolina is on your personal income
9 tax return; correct?

10 A. Yes.

11 Q. The entity you refer to as your alter ego;
12 correct?

13 A. That you refer to as that, yes.

14 MR. MCQUILLIN: Your Honor, I think we're
15 probably at a good point to take a break and talk about
16 the cookbook and the business plans. We just have a lot
17 more testimony and we are approaching lunchtime. I'm
18 happy to keep plowing, if you want me to.

19 THE COURT: It's 12:44. We'll break until
20 2:00.

21 (A lunch recess transpired.)

22 THE COURT: Are we ready to proceed?

23 MR. MCQUILLIN: Yes, Your Honor. I just
24 conferred with Mr. Kefalos. And my understanding is
25 that Mr. Kefalos. And my understanding is that

1 Mr. Kefalos intends to introduce some settlement
2 negotiations that our firm was not involved with, but
3 Your Honor gave us the story of a business dispute
4 where --

5 MR. BARR: Can we wait for Mr. Kefalos?

6 MR. MCQUILLIN: Sure.

7 THE COURT: All of them should be here.

8 All right, sir.

9 (Mr. Kefalos entered the courtroom)

10 MR. MCQUILLIN: Your Honor, Mr. Kefalos is
11 back so I'll start at the beginning. But I just
12 conferred with Mr. Kefalos and he indicated to me that
13 he intended to bring up settlement negotiations that
14 occurred in this case. And our firm was not involved in
15 it. He said the grandmother came in the dispute and got
16 the parties to resolve it.

17 My understanding is that Randal Stoney, the
18 cousin of Richard and Laurence, who is a lawyer at the
19 Barnwell Whaley Firm, approached Mr. Barr and called me
20 to tell me that he was doing it, about possible ways to
21 resolve this case. And that there were settlement
22 negotiations between Mr. Barr, Mr. Stoney, Richard
23 Stoney and Randal Stoney. My client was not present at
24 that. But there were negotiations there.

25 And I believe that, number one, it's highly

1 inappropriate. And, number two, Mr. Barr and Mr. Stoney
2 signed a mediation agreement with Tom Wills that had
3 extra protection language in it that said settlement
4 negotiations shall not be used for any purpose that have
5 occurred in this case. Because we knew that there might
6 be some settlement discussions and things, particularly
7 the idea of this buyout and that that could possibly be
8 used to somehow attack our client. And so -- we believe
9 it's highly appropriate and we would object and prevent
10 those sorts of questions that come before Your Honor
11 under Rule 408.

12 THE COURT: Mr. Kefalos?

13 MR. KEFALOS: Sue the building has always
14 been at issue and sue the building turned to part of
15 whether the Plaintiff purports the represented message
16 of corporation, has an alterer motion feathers is
17 pursuing separate corporation. We've always believed
18 that's the case.

19 Last week the Plaintiff approached my
20 client, Mr. Ted Stoney, offering to drop the lawsuit in
21 exchange for Ted transferring property on this family
22 estate to the Plaintiff.

23 We think that that is relevant as to motive
24 with the exceptions -- bias of the exceptions to the
25 rule that normally prohibits the admissibility of the

1 settlement negotiations.

2 Rule 408 deals with offers of compromise
3 and settlement. And it reads that the evidence of
4 furnishing or promised furnishing, or accepting of
5 promising, et cetera. The valuable consideration of
6 compromising or attempting to compromise a claim, which
7 was disputed as to validity is not admissible to prove
8 liability or the validity of the claim or the amount.

9 MR. MCQUILLIN: That's invalidity of the
10 claim.

11 MR. KEFALOS: The rule does not require the
12 exclusion of any evidence otherwise discoverable merely
13 because it is presented in the settlement negotiations.
14 This rule does not require the exclusion when evidence,
15 such as proving prejudice as to the witness.

16 And that's precisely what we're dealing
17 with here. This evidence is not being offered to the
18 Court to show that the parties want to settle or the
19 parties want to pay a certain amount. It's been offered
20 to show that the Plaintiff is pursuing an independent
21 agenda, an agenda that is at odds at the best interest
22 of the corporation. He is seeking to benefit himself by
23 asking Ted Stoney, who owns this property, to transfer
24 large portions of the property. This property, by the
25 way, is the property known as Kinsington Plantation,

1 which is an old Stoney homestead.

2 It was divided among the three boys years
3 ago. And Mr. Laurence Stoney now seeks to craft a
4 larger piece of the plantation in settlement of this
5 claim, supposedly on behalf of the corporation. We ask
6 that we be permitted to provide that testimony to the
7 Court. It comes up squarely under the exception against
8 settlement negotiations.

9 MR. MCQUILLIN: Your Honor, if I may. The
10 rule specifically says, it's not admissible invalidity
11 of the claim. These were held in the course of
12 confidential settlement negotiations in those cases.

13 And, frankly, Your Honor, if we look at
14 what the actual facts are Richard Stoney was the one
15 that first initiated the buyout option. And so -- and,
16 for the record, we weren't involved. We have not been
17 involved in any negotiations with respect to any sort of
18 buyout or anything like that.

19 But those were initiated by Mr. Stoney and
20 we wish we could get into those, to show you what was
21 actually offered, but it's not appropriate in this case.
22 It's just like what Your Honor previously ruled the
23 first phase of this trial when Mr. Kefalos and Mr. Barr
24 tried to get into what happened when we first engaged in
25 this case. And Your Honor told them they couldn't do

1 that as to suitability and invalidity of the claim. But
2 they are not trying again.

3 MR. KEFALOS: Your Honor, Mr. McQuillin's
4 effort to distant his firm from this kind of conduct is
5 the best evidence that the Court has. But there is a
6 conflict between the personal Plaintiffs' personal
7 interest and the corporation. Mr. McQuillin recognizes
8 that, and that's why he says, we can't be part of the
9 settlement talks.

10 Because what happens is that Laurence
11 Stoney has pushed this case through the 11th hour. And
12 now says, I'll tell you what, Ted, who wasn't a
13 defendant of this case, you deem me some of the property
14 and get Richard to give me some money, and I'll drop the
15 case.

16 We think it's very important, one of the
17 elements of our defense, is standing the suitability.
18 And this goes to the elements of the suitability. This
19 man is not suitable to represent the corporation,
20 because he has own personal agenda.

21 THE COURT: Well, there's a multitude of
22 issues. We'll dealing with law, we're dealing with
23 equity, we're dealing LLC law, operating agreement,
24 default provisions, and we're dealing with a
25 circumstance where you have the judge as the trier of

1 facts. And so like the judge -- asking the judge to
2 strike that the judge has heard, because it was improper
3 testimony, it's kind of hard to -- in dealing with the
4 matter where the matter has been tried before the Court
5 versus a jury. And much what was ruled on,
6 preliminarily the standing, disassociation, all those
7 things, none of them were, for the most part, made final
8 rulings about the Court. Because, otherwise, whatever
9 the Court decides is appealable, as opposed to not being
10 appealable.

11 So, whereas, I think that getting into the
12 finer points of monetary negotiation and the mediations,
13 such as they are 100,000, 200,000, I think that would
14 likely be inappropriate. But for purposes of the Court,
15 fully understanding all matters to come to just
16 equitable decision, then it is appropriate testimony.

17 MR. KEFALOS: Thank you, sir.

18 MR. MCQUILLIN: Thank you, Judge.

19 Continue on direct?

20 THE COURT: Yes, sir.

21 BY MR. MCQUILLIN:

22 Q. Mr. Stoney, I'm handing you what's been
23 previously marked as Plaintiff's Exhibit Number 12 to
24 your deposition. You appear to have a highlighted copy
25 in front of you; do you not, sir?

1 A. I have another copy in front of me, yes.
2 But not a highlighted, per se. You're welcome to look
3 at it. I have the same document.

4 Q. Sir, you said that there were eight members
5 of The Boathouse at Breach Inlet; correct?

6 A. I believe that was my testimony. I've
7 given you the names. As far as the numbers, I believe
8 there are eight; a bunch of Stoneys and then two
9 non-Stoneys.

10 Q. On Exhibit Number 12, Lori Stoney did not
11 sign the operating agreement for the company; correct?

12 A. That's correct. Do you have that exhibit
13 for me?

14 Q. Gregory Holmes did not sign the operating
15 agreement for the company; correct?

16 A. I do not believe so. I don't have the
17 exhibit in front of me, but I don't believe so.

18 Q. You don't have Exhibit 12 in front of you?

19 A. Oh, I'm sorry.

20 Q. The operating agreement?

21 Gregory Holmes is not a signatory on the
22 operating agreement of this company; correct, sir?

23 A. I'm pointing to that page as quickly as --

24 THE COURT: Mr. McQuillin, is the
25 Plaintiff's Number 1 of the deposition?

1 MR. MCQUILLIN: Yes, sir.

2 THE COURT: And what's it here?

3 MR. MCQUILLIN: Number 12, sir.

4 THE WITNESS: Hang on one second, if you
5 would, please, sir. I just can't see the signature.

6 It appears on the signature page to be
7 three signatures; one for Richard Stoney, individually;
8 and one for Theodore Stoney, individually; and one for
9 Laurence Stoney, individually; and one for Theodore
10 Stoney, as trustee for the benefit of Richard S. Stoney.

11 BY MR. MCQUILLIN:

12 Q. Gregory Holmes is also a member of The
13 Boathouse at Breach Inlet, LLC; correct?

14 A. That's correct.

15 Q. He did not sign this agreement; correct?

16 A. That's correct.

17 Q. Michael Cox is also a member of The
18 Boathouse at Breach Inlet; correct?

19 A. He is a member in a distributional sense.

20 Q. Michael Cox also did not sign this
21 agreement; correct?

22 A. That's correct.

23 Q. And your ex-wife, Lori Stoney, is also a
24 member of The Boathouse at Breach Inlet, LLC; correct?

25 A. As is my daughter, in a trustee capacity.

1 Q. Yes. And Lori Stoney has not signed this
2 operating agreement; correct?

3 A. Mac, you've asked me that question like
4 three times. I said no.

5 Q. You don't have an operating agreement
6 that's signed by all the members of the company; do you,
7 sir?

8 A. I do not have an operating agreement that's
9 signed by every member of the LLC, that's correct.

10 Q. Flip to Page 19 of the operating agreement
11 with me, please, sir.

12 A. 19. On page 19.

13 Q. Do you see Section 5.1, entitled allocation
14 of net profits and net losses for operations?

15 A. I do.

16 Q. The operating -- the purported operating
17 agreement that you have an 83 percentage interest in the
18 company; is that correct, sir?

19 A. It does. And that's a mistake, which I
20 suffered the first time recently. Or it's the first
21 time I've caught it just recently in preparation for my
22 deposition. It should have 85. Ted should have been
23 five. Junior should have been five. And my brother 10.
24 And, of course, despite what this says, all the KIs in
25 everything since Laurence since day one has been those

1 meetings that -- that Ted would be 10, Richard would be
2 five and whether the math is on that would be -- I
3 believe 87.

4 Q. What is your current membership interest
5 percentage in the company, sir?

6 A. It is -- my voting interest is 60 percent.
7 My ownership is 65 percent.

8 Q. So you have a 60 percent voting interest
9 and a 55 ownership interest; is that correct?

10 A. That is my understanding. I mean, I would
11 defer to a tax attorney, someone other than myself.
12 That's my understanding.

13 Q. But the point is, is your interest has gone
14 down because, according to you, you've admitted new
15 members; Gregory Holmes, Michael Cox, Lori Stoney,
16 correct?

17 A. It's not according to me. Laurence is well
18 of -- well, not aware of Michael Cox. But he's
19 certainly aware, as everyone is, of Greg Holmes. Greg
20 Holmes has been a member since 2009. And Laurence is
21 well aware of it.

22 Q. My point is, these ownership percentages
23 depicted in 5.1 have been modified and amended; correct?

24 A. These ownerships should have been modified
25 on the days these were signed. I assume Bobby Pearlman

1 did this. He just put down the wrong amounts. You
2 know, we've got CPAs from Dixon & Hughes that knew what
3 they were. And those terms were shared and what the
4 ownership was.

5 Q. My question to you though, sir, is: This
6 agreement, the operating agreement that you claim is
7 binding on the company, has the ownership modified in
8 here not been -- or have been modified and amended;
9 correct?

10 A. I'm sorry. Repeat the question.

11 Q. The allocations of profits and losses, as
12 depicted in section 5.3, have been modified and amended;
13 correct, sir? You don't own 83 percent still? Other
14 people have been admitted in the company have different
15 percentages?

16 A. That's correct. And that is, again,
17 through the CPAs and tax returns. That is all on the
18 tax returns, as well as the K1.

19 Q. Flip to section 11.2, which is on the top
20 of Page 30 of the operating agreement, the very top of
21 Page 30?

22 A. 11.2?

23 Q. Yes, sir.

24 A. Under general provisions, article 11.2. Go
25 ahead.

1 Q. It says that the operating agreement may be
2 amended and modified from time to time only by a written
3 instrument adopted and executed by all members. No
4 member or manager shall have any vested rights in the
5 operating agreement. Isn't that what it says, sir?

6 A. That's what it says, sir.

7 Q. And, so, what I'm asking you is: Have you
8 admitted new members to The Boathouse and changed the
9 ownership interest?

10 A. I have changed the ownership interest and I
11 have admitted new members, with the knowledge of every
12 member, with the exception of the Michael Cox's
13 transaction. That was in 2014. So I don't know who
14 knows of that. And I don't remember notifying, to be
15 candid, that particular transaction.

16 Q. This says, in order to modify this
17 agreement has to be in writing though; correct?

18 A. Multiple times, I think, it has to be in
19 writing. So I will just defer to --

20 Q. You understand, though, you either have new
21 members in your company or you don't have a written
22 operating agreement? You can't have you it both ways;
23 correct, sir?

24 A. I do not understand that. Meaning, I would
25 defer to a tax attorney or to someone that is far more

1 experienced with operating agreements. An operating
2 agreement is nothing more than a contract. And that's
3 what it is.

4 So cutting to the chase, if everyone knows
5 and everybody -- no one opposes it at any time -- and I
6 have never -- to my knowledge there's been any
7 opposition to who's a member and not a member, you know.

8 Q. Sir, your testimony is an operating
9 agreement is a contract --

10 A. It is a contract.

11 Q. -- that in order for a contract to be
12 binding, everyone has to sign and agree to it; correct,
13 sir?

14 A. I mean, we can go back and forth on
15 contract law. You know, I think I've answered as best I
16 can. Again, the trier of fact, I would defer to Your
17 Honor as to he interprets this agreement. Not me.

18 Q. But you're claiming this agreement is
19 binding on people that have not signed it; correct?

20 A. And they've seen it. You know, I'm
21 confident that we've tried to abide by it, to the extent
22 that it's possible and reasonable. And, you know, I
23 don't know what else to say.

24 Q. Sir, flip with me, if you would, up to Page
25 21 of this agreement.

1 A. Page 21?

2 Q. Yes, sir.

3 Even assuming that this agreement is valid,
4 sir, even though it's not signed by all the members of
5 the company, you would agree with me that the articles
6 and managers recognizes the non-wavable provisions of
7 applicable law; don't you?

8 A. That's what the language says.

9 Q. And, sir, you understand that, as an
10 attorney, that under the LLC statute that the duty of
11 loyalty is a -- you cannot eliminate that obligation or
12 eliminate that fiduciary duty; correct?

13 A. That's a wonderful statement. But really I
14 sold portions of my LLC membership, so there's no harm,
15 there's no foul.

16 Q. No, I'm talking about that. I'm talking
17 about you money our of the company and putting it in
18 your pocket. That's what I'm talking about.

19 A. But you're asking about the fiduciary
20 obligation at this particular division.

21 Q. I'm asking you -- assuming that this --
22 let's set aside the fact that not all the members and
23 signors are agreed to it. Let's just assume that it's
24 valid, for purposes of these questions. This operating
25 agreement specifically recognizing that that are

1 non-wavable provisions under the LLC act; correct?

2 A. That's what it says.

3 Q. And one of those obligations is to duty and
4 loyalty; correct.

5 A. Duty and loyalty are very important.

6 Q. And the obligation of good faith and fair
7 dealing; correct, sir.

8 A. It's very important. And I try to follow
9 that.

10 Q. And you testified in your deposition that
11 this agreement, that's not signed by all the member and
12 that recognizes the non-wavable provisions in the
13 statute get you to use your words, quote, great
14 latitude; isn't that correct, sir?

15 A. I do believe the document is set up to
16 allow me great latitude and respect to what my
17 obligations are and what powers I have, and what
18 obligations I have, et cetera, et cetera.

19 I mean, just a perfect example would be the
20 confidentiality, Laurence talking about not getting
21 records, and we asked him to sign a confidentiality
22 clause. It's in here. The documents, he could be
23 required to sign a confidentiality agreement. You know,
24 again, it's great latitude.

25 Q. Sir, you testified in your individual and

1 30(b) (6) deposition that you were not aware of any
2 judgements against The Boathouse at Breach Inlet;
3 correct?

4 A. You'd have to show me that contractually.
5 Again, the judgments against The Boathouse, I don't know
6 exactly how you asked the question. I'm sure there was
7 more discussion thereafter. So if you could tell me
8 what you're referring to, I could -- I mean, are you
9 talking about the real estate or are you talking about
10 the restaurant itself?

11 Q. Well, you own the real estate and --

12 A. What I'm trying to say, Mac, is they're not
13 one in the same. I'm not trying to be rude, but I also
14 want you to be explicit, because it's an important
15 question.

16 Q. Okay. Let's be as explicit as we can, Mr.
17 Stoney.

18 A. Sure.

19 MR. BARR: What page.

20 MR. MCQUILLIN: 325.

21 BY MR. MCQUILLIN:

22 Q. Mr. Stoney, you testified that you were an
23 individual in your 30(B) (6) deposition that you are not
24 aware of any judgements against The Boathouse at Breach
25 Inlet; correct:

1 A. Well, I can't see the rest -- can I see the
2 whole page before answering the question?

3 Q. I can zoom it out for you.

4 A. I would just like to see a copy of the
5 page.

6 Q. I asked you if anything affected your
7 ability to testify? It's one of the first substance of
8 questions that we got to, sir. There's the whole page,
9 sir. How about that?

10 A. Thank you, sir.

11 Q. My question to you, sir, is when I asked
12 you at your 30(b)(6) and individual deposition whether
13 you were aware of any judgements against The Boathouse
14 at Breach Inlet. You said not that I'm aware; correct?

15 A. Well, that's not what you said a minute
16 ago. You said the answer was no, that there were no
17 judgments is how you -- in the affirmative.

18 Q. No, sir. I'm reading from my typed
19 questions.

20 A. I can tell you what my recollection was
21 from the question. We can go back to that in a minute.

22 What I said is what I said. All right.
23 You asked the question. I said judgments against it,
24 not that I'm aware. Question, at The Boathouse at
25 Breach Inlet judgements in regard to anyone. Not that

1 I'm aware of.

2 Q. And that's your sworn testimony, under
3 oath, according to your --

4 A. And can I see the next page, please, Page
5 14.

6 Q. No, sir. You can go through it on your own
7 time or your lawyer can. But there's nothing dealing
8 with this topic in there.

9 A. You're now testifying. I don't know
10 without looking at the document.

11 Q. Mr. Stoney, in fact, you call The Boathouse
12 at Breach Inlet the size in confession of judgement in
13 the amount of 1.8 million for a personal loan; correct
14 sir?

15 A. I have no idea what you're talking about.

16 Q. You have no idea --

17 A. You're talking the land, when I borrowed
18 money from Charleston Capital? Without showing me a
19 document, I'm not sure what you're talking about. I'm
20 sure there's something you have, but I would appreciate
21 you sharing it with me.

22 MR. MCQUILLIN: Your Honor, at this time we
23 move in Exhibit Number 12 to be entered into evidence,
24 the operating agreement, without objection.

25 MR. BARR: Without objection.

1 (Plaintiffs' Exhibit No. 12 was entered
2 into evidence.)

3 BY MR. MCQUILLIN:

4 Q. Sir, I've handed you what's been marked as
5 Plaintiffs' Exhibit Number 13. Can you please identify
6 this document?

7 A. This document appears to be a confession of
8 judgement at The Boathouse at Breach Inlet. And it is
9 John Romanofski's signature. It's dated the 7th day of
10 November 2012. I believe this dealt with the
11 refinancing of the Charleston Capital of the mortgage at
12 Breach Inlet.

13 MR. MCQUILLIN: Your Honor, at this time we
14 move that Exhibit Number 13 be entered into evidence
15 without objection.

16 MR. BARR: Was this in deposition?

17 MR. MCQUILLIN: It's one that I sent you
18 before.

19 MR. BARR: If you'll give me a minute,
20 Judge.

21 Your Honor, I believe we did agree pretrial
22 that we would not object to this. I just would ask
23 Counsel to acknowledge that this came from a subpoena to
24 Charleston Capital, which is a lender, A. And, B, that
25 this appears to be an unfiled professional judgment

1 inasmuch it doesn't carry a court docket number, even
2 though it's captioned as it were.

3 MR. MCQUILLIN: At this time, Your Honor,
4 we move that this Exhibit 13 be admitted into evidence.

5 MR. BARR: With those representation, no
6 objection.

7 THE COURT: It's admitted with those
8 representations.

9 (Plaintiffs' Exhibit No. 13 was entered
10 into evidence.)

11 BY MR. MCQUILLIN:

12 Q. All right. Mr. Stoney, and so when I
13 deposed you, you said you were not aware of any
14 confessions in judgement. You were not aware of this
15 one; were you, you?

16 A. I was not aware of this document at the
17 time. What I do remember now and I believe is that --
18 you know, John Romanofski, we practiced law together for
19 over 20 years. This is what Tom Irvin required in order
20 to pay off the mortgage a million 677 and change to
21 First Federal. And I believe that date was
22 December 5th. The document speaks for itself.

23 But this is what was required by Tom Irvin
24 to do the loan that ultimately became the first mortgage
25 on the property to remain in effect. But I don't know

1 that this was ever recorded, nor do I know that it ever
2 reached a judgement. I really don't know talking to
3 John or having John before the Court.

4 But I do not consider this a judgement
5 against The Boathouse, and certainly Tom Irvin might
6 have dealt with before. And actually he loaned me to
7 open up the first Boathouse, The Boathouse of Breach
8 Inlet is one of the lenders, once it exceeded the
9 initial capital that I have, which is around \$200,000 to
10 300,000.

11 I think this is a release of transaction, a
12 document way beyond me. I did not see this until the
13 other day until when I think it was produced. But as
14 you can from my answer, whenever it was, two weeks ago,
15 I said, no, not that I'm aware of. And so I was not
16 aware of this. It was in a packet of several documents
17 relating to that transaction.

18 MR. BARR: For clarification, can we agree
19 Tom Irvin is the principal of Charleston Capital?
20 Because he referred to Tom Irvin. It's going to get
21 real confusing here.

22 THE WITNESS: I apologize.

23 BY MR. MCQUILLIN:

24 Q. Let's walk through this. You borrowed
25 money -- you personally took out a loan with First

1 Federal Savings and Loan Associations; correct?

2 A. Correct.

3 Q. And that was a personal loan to you;

4 correct?

5 A. That was a personal loan, correct.

6 Q. And then ultimately, if you look at this

7 document with First Federal, you signed a note where you

8 personally and then you caused, sir, did you not The

9 Boathouse to guarantee your personal loan; correct, sir?

10 A. Now which line are you on now?

11 Q. I'm line four of your confession of

12 judgement. It says the promissory note given by

13 Mr. Stoney was guaranteed by The Boathouse.

14 A. If that's what the document says.

15 Q. So The Boathouse is guaranteeing your

16 personal loans?

17 A. If that's what the document says. I mean,

18 I really don't know. I'm not doubting there's a

19 personal guarantee. What I'm saying is, this is

20 something I had forgotten. But it was obviously

21 essentially for The Boathouse to continue, in again the

22 group that's in this room, as well as the 95 percent

23 membership. And it's, you know, never created a problem

24 with The Boathouse.

25 Q. Mr. Stoney, I've handed you what's been

1 marked Plaintiffs' Exhibit Number 14 to your deposition.
2 And what I want to ask you about this briefly, sir, is
3 this is a commercial guarantee where, sir, you are
4 listed as the borrower, The Boathouse is the guarantor
5 and lender is First Federal; correct?

6 A. That's what it appears to say. I'm trying
7 to see what the date is on this.

8 Q. It looks like on the last page, sir, it's
9 dated June 5th, 2008; correct?

10 A. It's printed so small. Yeah, I see that.

11 Q. And you signed, sir, did you not, as a
12 member of The Boathouse at Breach Inlet; correct?

13 A. That's definitely my signature.

14 Q. And, so, as the managing member of The
15 Boathouse, you had The Boathouse guarantee your personal
16 loan with First Federal Savings; correct?

17 A. It is apparent that's how this transaction
18 is affected. And, as I said, The Boathouse has never
19 been in jeopardy as a result.

20 Q. And let's look at paragraph nine, going
21 back to Exhibit Number 13. You say, the undersigned at
22 The Boathouse of Breach Inlet does hereby acknowledge
23 that upon entry of this confession of judgment and the
24 records of the Court is real and personal property will
25 subject to sale according to applicable law?

1 A. I understand that it says that.

2 Q. And you went on to say in this document
3 that The Boathouse at Breach Inlet, LLC therefore
4 confesses judgment in favor of Charleston Capital
5 Corporation judgment in the amount of \$1,812,017.69,
6 plus any collection costs, attorney's fees applicable,
7 and authorize the Clerk of Court to enter judgement in
8 that amount. And this was signed on November 7th, 2012
9 by you, as the managing member of the Boathouse;
10 correct?

11 A. Yes. And I would again say for about the
12 fourth time that this was done in order to effect the --
13 you know, the payment of that \$1.6 million that was owed
14 with First Federal. This was during the transition
15 period with First Federal and moving into the engagement
16 with Charleston Capital.

17 And, again, John Romanofski did this
18 paperwork. I totally trust John. I signed it. You
19 know, the commercial guarantee and The Boathouse of
20 Breach Inlet was the guarantor, as you said. I'm sure
21 that was pointed out to you as John. I'm not going to
22 say anything but what I think would have occurred,
23 knowing John, other than to say, you know, again, no
24 harm, no foul. It's done.

25 It was order to keep the restaurant going,

1 in order to refinance of the building. At that time, I
2 was going through a divorce, been going through a
3 divorce. And credit was not good, to say the least.
4 And I needed to do get this done to protect, not just
5 The Boathouse, but the property. Because they're really
6 one in the same.

7 I mean, that's it. 95 percent of the
8 ownership -- I was a member of that 95 percent. 100 of
9 the property.

10 Q. Mr. Stoney, you understand that this
11 confession of judgement means that if you default on
12 your personal loan, Charleston Capital Corporation has a
13 judgement against The Boathouse of Breach Inlet and can
14 foreclose on that judgement?

15 A. I understand. But that's not going to
16 happen.

17 Q. Sir, you're a lawyer; are you not?

18 A. You've asked me that about 40 times today.

19 Q. Isn't the most egregious action, as a
20 manager of a limited liability company, to confess
21 judgement? I mean, wouldn't the members ownership be
22 totally wiped out if you default on your personal loan
23 and this gets filed?

24 A. Again, I would not let it happen. It would
25 not happen.

1 Q. Again, you just want us to trust you; don't
2 you, sir?

3 A. What I am going to say is I have pledged --
4 I know the assets, meaning through the course of several
5 transactions. It's not at all uncommon to have a pledge
6 as F and E. This is slightly different. Again, you
7 have to do at times what you have to do in the business
8 judgment rule.

9 But when you were sitting in the seat that
10 I was sitting in, I needed to make sure that I got that
11 property taken care of. There was a chance of the
12 property going into foreclosure. I'm talking about
13 First Federal.

14 Q. Sir, you believe that under the business
15 judgment rule you were justified in signing this
16 confession of judgment?

17 A. Maybe business judgment rule is such a
18 broad swipe of the brush. I believe that at the time
19 this was an action that I needed to take. But the
20 business judgement rule supports that, or common sense,
21 or equity. I don't know. I'm not going to mislead this
22 Court in any way.

23 Q. Well, let's look what the Bees Ferry
24 versus --

25 MR. BARR: Objection. Counsel is trying

1 cross-examine the witness as to a matter of law. That's
2 not proper.

3 MR. MCQUILLIN: He's a lawyer. And
4 he's provided the --

5 MR. BARR: He's not a lawyer. He's called
6 as a manager of this operation.

7 THE WITNESS: Are you able to --

8 THE COURT: Who wants to go first? I think
9 y'all are driving the court reporter crazy.

10 MR. BARR: I apologize, Madam Court
11 Reporter.

12 My objection is that counsel is attempting
13 to cross-examine a witness on a question of law. Your
14 Honor is the judge of the law. Whereas, Mr. Stoney is a
15 lawyer. He is the manager of The Boathouse. He can
16 call in that capacity. I just think it's improper to
17 cross-examine him on a matter of law.

18 THE COURT: Yes, sir.

19 MR. MCQUILLIN: Your Honor, briefly.

20 Mr. Stoney responded to my question was
21 that he believed it was okay for him to sign the
22 confession of judgement under the business judgement
23 law. And I'm cite to a legal rule. And I want to ask
24 him what he knows about that rule.

25 THE COURT: I'll sustain the objection.

1 You can't cross-examine a witness.

2 MR. MCQUILLIN: Thank you, sir.

3 No further questions, Your Honor.

4 THE COURT: Mr. Barr.

5 MR. BARR: Your Honor, let me check my
6 notes. My hesitation is only that I am inclined
7 examination of the witness until our case in chief. I
8 needed to see if there's anything that might be
9 appropriate for clarification.

10 THE COURT: While he's pondering, same
11 opportunity when some of y'all gets through.

12 MR. BARR: Yes, sir. I think I will hold
13 the examination of this witness until we present our
14 case in chief.

15 THE COURT: All right. Mr. Kefalos?

16 MR. KEFALOS: No questions, Your Honor.

17 MR. MCQUILLIN: No questions, Your Honor.

18 And we move Exhibit 14 to be admitted.

19 MR. BARR: Without objection.

20 (Plaintiffs' Exhibit Number 14 was admitted
21 into evidence.)

22 MR. MCQUILLIN: Your Honor, at this time,
23 Plaintiff calls Theodore Stoney to the stand.

24 THEODORE STONEY

25 being first duly sworn, testified as follows:

1 THE CLERK: For the record, please state
2 your full name, spelling your last name.

3 THE WITNESS: My name is Theodore Dubose
4 Stoney, Junior, S-T-O-N-E-Y.

5 DIRECT EXAMINATION

6 BY MR. MCQUILLIN:

7 Q. Good afternoon, Mr. Stoney. How are you
8 this afternoon?

9 A. I'm fine. Thank you.

10 Q. Sir, you currently have litigation against
11 your brother, Richard Stoney; correct?

12 A. Yes.

13 Q. Your brother, Richard Stoney, owes you a
14 substantial sum in excess of \$3 million; correct?

15 A. Yes.

16 Q. And you're currently seeking to foreclose
17 and collect on that; are you not, sir?

18 A. Yes, sir.

19 Q. And that's one of the reasons you're
20 opposed to this case, is it not, sir?

21 A. That's one of the reasons.

22 Q. But you agree with me that if \$4 million
23 was returned to The Boathouse, that that would be a good
24 thing for the company; correct, sir?

25 A. Of course, if it was obtainable.

1 Q. Sir, you benefited from Richard's action of
2 robbing Peter to pay Paul; correct?

3 A. I would say that most of the time I was the
4 so-called blood loaner.

5 Q. When you say you were the so-called blood
6 loaner to Richard, what do you mean?

7 A. I was the only member of the LLC that
8 loaned money to the corporation.

9 Q. You didn't actually, in fact, loan it to
10 the company; you loaned it to Richard individually, sir?

11 A. I loaned the funds directly to The
12 Boathouse.

13 Q. Well, in fact, based on the 2019 tax
14 return, do you recognize that you actually owe money to
15 the company, based on the books of the company?

16 A. No, I don't.

17 Q. Sir, do you see the line under other
18 liabilities where it says due to/due from Ted Stoney?

19 A. Yes, I do.

20 Q. Do you see where it has a negative
21 liability, meaning in assets? Do you see that right
22 here on the balance sheet right above my thumb?

23 A. Yes.

24 MR. BARR: Can you identify the exhibit
25 number?

1 BY MR. MCQUILLIN:

2 Q. Just for the record, too, I'm asking you
3 about Plaintiffs' Exhibit Number 6 that's been admitted
4 into evidence. As of 12/31/2019 you owe the company
5 \$11,373.35; isn't that correct, sir?

6 A. That's what this document says. I have no
7 idea.

8 Q. Well, you are aware, are you not, sir, that
9 the company paid your health insurance in 2019; correct,
10 sir?

11 A. I was not aware of that.

12 Q. All right. Are you aware of any other
13 member, other than you and Richard, that gets your
14 health insurance paid by the company?

15 A. No. I was an employee of the LLC.

16 Q. But you retired long ago; did you not, sir?

17 A. I retired from the real estate business.

18 Q. When did you retire from the company?
19 Several years ago, correct?

20 A. I believe so.

21 Q. All right. If you were retired from the
22 company several years, why were you getting your health
23 insurance paid up through 2019?

24 A. I didn't realize it was. Because my wife
25 turned 65 in 2019. And there was no reason for them to

1 be paying for it.

2 Q. Sir, you never looked at the books of Crew
3 Carolina; have you?

4 A. I never had to, no, sir.

5 Q. In your prior testimony, you said that you
6 believe your brother, Richard Stoney, the Defendant in
7 this case is an honorable and trustworthy guy; correct?

8 A. I certainly do.

9 Q. And if he says, nothing's going on, trust
10 me, you can trust him; correct?

11 A. I believe that explicitly.

12 Q. And it is reasonable for someone to rely on
13 him if he tells you, you need to trust me; correct?

14 A. Absolutely.

15 MR. MCQUILLIN: Thank you, sir. That's all
16 the questions I have.

17 CROSS-EXAMINATION

18 BY MR. Kefalos:

19 Q. Mr. Stoney, you are a five percent owner of
20 The Boathouse at Breach Inlet?

21 A. That is correct -- oh, excuse me. I'm
22 10 percent owner.

23 Q. Do you support this suit brought by
24 Laurence Stoney?

25 A. I do not.

1 Q. Why not?

2 A. Because he is bringing this lawsuit for
3 personal benefit.

4 Q. What benefit is Laurence Stoney trying to
5 gain by bringing this lawsuit?

6 MR. MCQUILLIN: Objection, Your Honor.
7 He's asking what sort of benefit our client is
8 attempting to gain in this lawsuit. He has no idea the
9 intention our client is bringing the lawsuit. That
10 calls for speculation.

11 THE WITNESS: Well, I know of one thing
12 that he --

13 THE COURT: The objection is overruled.

14 THE WITNESS: I know of one thing he's
15 attempting to gain. And that's a portion of my
16 ownership in an inherited family property on the
17 Eastbank of the Cooper River.

18 BY MR. KEFALOS:

19 Q. That's known as Kensington?

20 A. Yes.

21 Q. He's trying to get you to deed the property
22 to him as part of this lawsuit that's supposed to be for
23 The Boathouse?

24 A. Yes, sir.

25 Q. Mr. Stoney, tell us a little bit about your

1 background. How old are you?

2 A. I'll be 70 years old in April.

3 Q. And how have you been employed during your
4 life?

5 A. Well, I worked for the State Board
6 Authority the summers I was in college. I went into
7 residential real estate after I graduated college. I
8 went back and got a master's degree. I went into the
9 shipping business. I then became the general manager of
10 the Charleston Line Handler Corporation that ties up all
11 the ships.

12 After that, I had a friend from prep school
13 and college come talk to me. He and his brother were
14 moving to Charleston and were looking for a local guy,
15 with local real estate knowledge and a real estate
16 license, which I had, to invest money for two-family
17 partnerships.

18 So we were provided money for a five-year
19 period. We invested that money. And it happened to be
20 in the ideal time to be doing that in Charleston. And
21 at one time we bought and controlled, approximately,
22 \$18 million worth of real estate.

23 Q. Did you eventually form the Stoney Company?

24 A. I did. That family partnership in 1996, I
25 believe it was, decided that they wanted to get out of

1 the real estate business. So we divested all of those
2 real estate holdings. I had been very interested in
3 renovation or historic properties all my life growing up
4 in Charleston. I'm a past president of the Preservation
5 Society in Charleston. And one of the partnerships
6 acquired seven buildings on upper King Street, which I
7 assembled for the partnership. And I told them, if they
8 were going to sell them I'd be very interested in
9 purchasing them.

10 And so it was in 1996 we did a contract. I
11 said, the fairest way is to have an MAI appraisal done.
12 I will pay you \$500 more than the appraised price. They
13 agreed to that. So we bought seven buildings and a
14 parking lot on upper King Street in December of 1996.

15 Q. Are you now retired, sir?

16 A. I am semiretired. I still have my broker's
17 license. And I do a lot of referrals.

18 Q. Are you married?

19 A. I am married.

20 Q. How long have you been married?

21 A. It will be 30 years this November.

22 Q. Do you have children?

23 A. I have one spoiled golden retriever.

24 Q. A golden retriever?

25 A. Yes.

1 Q. There was some talk during Richard Stoney's
2 testimony about stealing from Peter to pay Paul, that is
3 using income from The Boathouse to support other
4 restaurants. Approximately, how long had this been
5 going on?

6 A. Well, I started loaning the company
7 money -- actually, I have a check, a picture of a check
8 written in 2000 -- excuse me 2000 for \$50,000, where I
9 loaned money to The Boathouse at Breach Inlet.

10 Q. And The Boathouse at Breach Inlet was then
11 helping fund these other restaurants?

12 A. I don't know if it really was at that time.
13 I believe that the money was for renovations of the
14 kitchen, which my cousin in Laurence would not
15 participate in any capital goals.

16 Q. Do you know whether your cousin, Laurence,
17 who's the Plaintiff in this case, has known about
18 this system where Richard was robbing Peter to pay Paul?

19 A. Shortly after that is I think is when he
20 started accusing Richard of that type of thing.

21 Q. That's about 20 years?

22 A. Yes.

23 Q. Do you remember when The Boathouse at East
24 Bay closed in 2009?

25 A. Yes, I do.

1 Q. Had The Boathouse been making any money in
2 the last years of his operation?

3 A. No, it had not. And I think my brother
4 testified that Patrick Greenwall was murdered in 2004.
5 I think it was 2003.

6 But the reason I remember it so vividly is
7 Patrick was a neighbor of mine. I still get emotional
8 about it. Patrick was a great guy. He was a great
9 manager.

10 And he was murdered, an armed robbery late
11 one night. And my brother was out of town at the time.
12 And he called me. I was over at Lowe's in Mount
13 Pleasant.

14 Q. I don't mean to cut you off. After the
15 murder at The Boathouse --

16 A. Well, my point was after that murder is
17 when things started deteriorating drastically.

18 Q. Were you a partner in The Boathouse on East
19 Bay?

20 A. Yes, sir.

21 Q. And was Laurence Stoney a partner?

22 A. I was an eight percent shareholder and
23 Laurence was a four percent shareholder.

24 Q. And was The Boathouse on East Bay one of
25 the companies, one of the business that was benefiting

1 from the properties --

2 MR. MCQUILLIN: Your Honor, he's leading
3 the witness.

4 THE COURT: Overrule the objection.

5 THE WITNESS: Would you please ask the
6 question again?

7 BY MR. KEFALOS:

8 Q. Do you know whether The Boathouse on East
9 Bay was one of the companies that was benefiting on the
10 properties at The Boathouse on Breach Inlet?

11 A. Yes, it was. Because after Patrick died,
12 there was no business. It was so bad that Hyde
13 Holliday, very successful hotel and restaurant person,
14 even had all of his staff and people that have worked in
15 hotels and all come to eat dinner to show support for
16 The Boathouse.

17 Q. So Mr. Laurence Stoney was benefiting from
18 this scheme. Well, he was a member of The Boathouse, he
19 was benefiting from the arrangement that Richard had to
20 use The Boathouse at Breach inlet to fund The Boathouse
21 on East Bay?

22 A. Absolutely.

23 Q. Now, you and Laurence were both members of
24 The Boathouse on East Bay at that time. Did the
25 stockholders in The Boathouse on East Bay ever get

1 Capital calls for money to cover the losses at East Bay?

2 A. They never got Capital calls.

3 Q. So neither you or Laurence got Capital
4 calls?

5 A. No. There were no capital calls. I think
6 that Richard, even though he was struggling, hated to
7 call on his family to make capital calls, plus he
8 realized that Laurence wouldn't pay them anyway.
9 Because we tried to get the capital from --

10 Q. Where was the money coming from to make up
11 the capital calls to be issued on East Bay?

12 A. I was personally loaning money to Crew
13 Carolina for specific items from my home equity loan,
14 which is how I funded a lot of my -- it was just simpler
15 than going to the bank.

16 Q. Did any of the money come from The
17 Boathouse at Breach Inlet?

18 A. Some of it probably did.

19 Q. Would you tell us briefly, how would you
20 characterize the relationship between Richard and
21 Laurence, with regard to The Boathouse?

22 A. Richard and Laurence?

23 Q. Yes.

24 A. Well, like Laurence said, I think Laurence
25 and I are only like eight months apart in age. We were

1 real close when we were young. We were in the same
2 classes in school. Then I went off to school and he
3 went off to school. And we were all close, all the
4 brothers were close.

5 Q. What I'm asking about, how would you
6 characterize the relationship between Laurence and the
7 daily operations of The Boathouse?

8 A. I think Laurence was fine as long as the
9 distributions continued. But once the distributions --
10 after Patrick died started get smaller and smaller or
11 disappeared, then he became really upset.

12 Q. Has Laurence caused any problems running
13 The Boathouse?

14 A. Yes, he has.

15 Q. How long has it been like this?

16 A. It's been going on quite awhile. I
17 remember even right after The Boathouse on East Bay
18 Street opened, I remember him talking about Brett McKey
19 over on Maybank Highway. What a great restaurant that
20 was and what a great job he was doing and how Richard
21 really didn't know what the hell he was doing.

22 He constantly badmouthed Richard to friends
23 and even total strangers, who he met for the first time,
24 if Richard's or mine name was mentioned. Just as late
25 as April the 20th, in the back bar of the Carolina Yacht

1 Club, he brought up the situation with Richard and a
2 fellow partner in the restaurant on Lake Julian to a guy
3 named Bruce Bowers who went to Price School with Richard
4 and I, the same school, but not at the same time. And
5 Bruce told me that --

6 MR. MCQUILLIN: Objection, Your Honor;
7 hearsay, saying Bruce told him.

8 BY MR. KEFALOS:

9 Q. You can't say what Bruce told you.

10 What we're talking about is whether
11 Laurence caused any problems with the operation of The
12 Boathouse. And you said that he badmouthed him?

13 A. At the opening of The Boathouse on East Bay
14 he was -- became intoxicated and just had to be asked to
15 leave.

16 Q. Was there a time when Laurence ever
17 contacted the vendors for The Boathouse?

18 A. Yes. In the back bar one night he told me
19 that the word was all over the street that Richard
20 wasn't paying his bills and the restaurants were on a
21 cash basis. And he specifically named Limehouse
22 Produce.

23 Q. Do you know whether Laurence helped spread
24 those rumors?

25 A. I think he did, because I had numerous

1 friends tell me that Laurence was running his mouth.

2 Q. Did that kind of talk about the financial
3 condition of The Boathouse help The Boathouse?

4 A. No. It hurt. It hurt tremendously. It
5 hurt the relationship with the vendors, the purveyors.
6 It hurt the reputation of the restaurant.

7 Q. Do you have any idea why Laurence would
8 interfere with The Boathouse business by contacting
9 these vendors? What is motivating him? Do you have any
10 idea?

11 A. Like I said earlier, I think,
12 unfortunately, Laurence is very jealous of Richard.

13 Q. Now, in an earlier hearing, Laurence
14 testified that he brought the action solely for the
15 benefit of his corporation. Do you remember that?

16 A. Yes.

17 Q. Do you know whether that's true?

18 A. That's absolutely not true. He brought it
19 for his own benefit.

20 Q. I'm going to hand you a plat. It's the
21 only copy that I have.

22 MR. MCQUILLIN: Give me a second, Your
23 Honor. I haven't seen this document before. You
24 haven't produced it in discovery. What is it?

25 THE COURT: While y'all are figuring that

1 out, we'll take a brief break.

2 (A brief recess was taken.)

3 BY MR. KEFALOS:

4 Q. I'm going to put this up on an Elmo.

5 MR. MCQUILLIN: I think you need to
6 establish foundation before you publish it.

7 MR. KEFALOS: He can identify it up there.

8 MR. MCQUILLIN: Your Honor, we object to
9 this document being published. As soon as he starts to
10 ask questions, I'm going to object.

11 THE COURT: I think you have to have him
12 identify or something before you publish it.

13 BY MR. KEFALOS:

14 Q. Can you identify that plat?

15 A. This was a plat of the property that my
16 grandfather owned, that my father, Laurence's father,
17 and my cousin, Randall's father, inherited from my
18 grandfather. And subsequently the grandchildren are now
19 in possession.

20 Q. The grandchildren being?

21 A. Laurence has the southern most section.
22 Richard and I have the middle section, and Randall has
23 the northern most section.

24 Q. When did you perceive this version of the
25 plat?

1 A. I first saw that version of the plat --

2 MR. MCQUILLIN: Your Honor, same objection.

3 Still needs to establish foundation.

4 THE COURT: He's previously continued to
5 ruled on the issue of alter ego.

6 BY MR. KEFALOS:

7 Q. When did you first see this version on the
8 plat?

9 A. I first saw that when my cousin, Randall,
10 brought it over to Capers Barr Law Office, in saying
11 that he was representing my cousin, Laurence, in trying
12 to come up with a settlement for this trial.

13 Q. And these red lines on the plat, what do
14 they represent?

15 A. Well, the red lines are lines that Laurence
16 drew in to represent, as my understanding from Randall.

17 MR. MCQUILLIN: Objection, Your Honor.
18 He's saying it's his understanding from somebody that
19 somebody told him. Your Honor, I thought your ruling
20 was that we weren't going to get into monetary numbers
21 of specifics to settlement negotiations. But the fact
22 that those occurred here, he's trying to -- I guess this
23 is about as specific as you can get, in my opinion.

24 THE COURT: The objection is sustained as
25 to hearsay from Randall.

1 MR. KEFALOS: Your Honor, I don't think
2 that there is a dispute, but that Laurence asked Randall
3 to communicate with Richard and Ted. And we can avoid
4 the hearsay issue, if he'll just confirm that, in fact,
5 he sent Randall to make this proposal to Richard and
6 Ted.

7 MR. MCQUILLIN: That fact is disputed, as
8 to whether or not Laurence asked him as to whether or
9 not some of this family, and per this Court's
10 instruction to try to reach a good-faith settlement,
11 tried to resolve.

12 So the fact that who asked who to do what
13 is in dispute. And we think that is highly appropriate,
14 the settlement negotiations where these family members
15 tried to work something out through -- their cousin,
16 Randall, is not here today. And that's inappropriate.

17 MR. KEFALOS: Well, it's hard to get a
18 handle on what he's saying. Because is it an effort by
19 the parties, that is Laurence, to structure a settlement
20 or is it something that's not done by Laurence to
21 structure a settlement.

22 It's our contention that this is evidence
23 of inappropriate evidence. Laurence is seeking his own
24 benefit, separate and apart from the corporation.

25 THE COURT: Yes, sir.

1 MR. MCQUILLIN: Your Honor, I don't think
2 that this witness can know or can tell you who initiated
3 or whose idea it was to initiate the settlement
4 negotiations. All he knows is that Randall Stoney, the
5 cousin, who's not here, and who has not been identified
6 by a witness, met with him, Mr. Barr, and Mr. Stoney.
7 Not Laurence Stoney. Laurence Stoney was not at that
8 meeting. And so the issue of who initiated that meeting
9 of what the motives are, I don't think anyone knows
10 that, but for Randall Stoney or Laurence Stoney.

11 MR. KEFALOS: Well, Laurence can solve the
12 problem by just telling us today that he authorized
13 Randall to make this proposal.

14 MR. MCQUILLIN: He's already provided
15 testimony and he wasn't asked about it.

16 MR. KEFALOS: Are we playing games or we
17 trying to get the --

18 MR. MCQUILLIN: Well, somebody is playing
19 games.

20 THE COURT: He denies -- Mr. McQuillin
21 denies that Randall was an agent of Mr. Laurence Stoney.

22 So I sustain the objection.

23 MR. KEFALOS: Thank you, sir.

24 BY MR. KEFALOS:

25 Q. Ted, what was your response to the proposal

1 that Randall made? Without talking about the substance
2 of the proposal, what was your response?

3 A. I was highly offended. I was shocked,
4 quite frankly. I felt like it was extortion.

5 MR. KEFALOS: Your Honor, I would offer
6 this in evidence intervenors.

7 THE COURT: For identification purposes at
8 this time.

9 (Defendants' Exhibit Number 15 was marked
10 for identification only.)

11 MR. MCQUILLIN: Can we enter an objection,
12 or no?

13 MR. KEFALOS: The testimony regarding the
14 meeting of the minds was excluded. And this has been
15 identified as a plat. And this has been identified as a
16 plat of the family's property. So there shouldn't be a
17 problem with the admissibility of it.

18 THE COURT: The testimony was explained in
19 the meeting of the minds. If you had an original plat
20 without any alteration.

21 MR. KEFALOS: I do not, sir.

22 THE COURT: It's public record, as long as
23 it's relevant.

24 MR. MCQUILLIN: I guess the question,
25 though, that we have is I don't think that this witness

1 or anyone in this courtroom can identify who put the
2 lines on there and what their intentions were. I don't
3 know the proper foundation for this.

4 THE COURT: I sustain the objection, as to
5 admissibility.

6 MR. BARR: Your Honor, I have no questions
7 of this witness.

8 THE COURT: Any redirect?

9 MR. MCQUILLIN: Yes, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. MCQUILLIN:

12 Q. Your brother, the Defendant in this case,
13 Richard Stoney, was the manager of The Boathouse at
14 Breach Inlet; correct?

15 A. Yes.

16 Q. And he was also the manager of the The
17 Boathouse on East Bay?

18 A. Yes.

19 Q. And as the manager, he had sole control
20 over the finances; correct?

21 A. Yes.

22 Q. You had no say in where the money was
23 transferred back and forth between any of these; did
24 you, sir?

25 MR. KEFALOS: Objection, Your Honor. This

1 is outside the scope of what my examination.

2 MR. MCQUILLIN: He asked about whether
3 Laurence benefited from monies going to The Boathouse at
4 Breach Inlet and I'm following up on that.

5 THE COURT: Overrule the objection.

6 BY MR. MCQUILLIN:

7 Q. My question for you, sir, is: You had no
8 control over how or when or if Richard moved money back
9 and forth between the various restaurant industries;
10 correct?

11 A. Correct.

12 Q. He had sole control over that; correct?

13 A. Yes.

14 Q. And so to the extent that you or Laurence
15 benefited from it y'all had nothing to do with that;
16 correct? Richard was the one that made that decision
17 without any respect to you; correct?

18 A. I don't think that's totally true.

19 Q. Richard was the one that controlled the
20 finances?

21 A. He controlled the finances, yes.

22 Q. You were just a passive member of the LLC;
23 correct?

24 A. Correct.

25 Q. And so was my client, Laurence Stoney;

1 correct?

2 A. Correct.

3 Q. Richard made the decisions? He had the
4 sole decision-making authority there; correct?

5 A. Correct.

6 Q. Sir, this meeting that you talked about was
7 a meeting between Randall Stoney, Capers Barr, you, and
8 Richard; correct?

9 A. Yes.

10 Q. And at that meeting, was it discussed that
11 it was supposed to be a confidential meeting; is that
12 correct? That meeting would be held in confidence; was
13 it not?

14 A. Yes.

15 Q. Have you read Laurence Stoney's lawsuit in
16 this case, sir?

17 Let me ask this: Laurence Stoney was not
18 at that meeting; correct?

19 A. No.

20 Q. And none of the lawyers at this table were
21 at that meeting; correct?

22 A. Correct.

23 Q. That was a meeting Stoney family, with the
24 exception of Capers; correct?

25 A. Correct.

1 Q. Sir, I'm going to hand you a copy of the
2 complaint that we filed in this case. And I want you to
3 look through our complaint and tell us if you see
4 anything in there where Laurence requests anything of a
5 personal nature in the pleadings in this case? Take
6 your time.

7 A. No. But he did that day in Caper's office.

8 Q. As part of confidential settlement
9 agreements, do you know, sir, who initiated the first
10 overture on a buyout? Do you know whether that was your
11 brother, Richard, or my client, Laurence Stoney?

12 A. I think Richard has been trying to buy
13 Laurence out and disassociate Laurence from the company
14 for probably about 15 years.

15 Q. In fact, he's doing that in this very
16 litigation; is he not? Richard is? He's trying to
17 order a disassociation buyout of Laurence; correct?

18 A. Yeah. Because it's impossible for anybody
19 to deal with Laurence.

20 Q. Well, the company has been operating for
21 21 years and is doing pretty good; don't you think?

22 A. And Laurence has been a problem since the
23 second restaurant opened.

24 Q. Laurence isn't involved, sir, in any way
25 with the operation of The Boathouse at Breach Inlet; is

1 he, sir?

2 A. I'm sorry, what?

3 Q. Laurence Stoney is not involved in any way
4 with the operation of The Boathouse at Breach Inlet;
5 correct?

6 A. No. But he's been antagonistic towards the
7 corporation. He's harmed the corporation in numerous
8 ways.

9 Q. He's harmed the corporation, because he's
10 filed a lawsuit to recover \$4 million?

11 A. No. He was harming the corporation, like I
12 said, for at least 15 years.

13 Q. Now, sir, like I said, you're suing your
14 brother right now, seeking to foreclose on his portion
15 of the plantation; correct, sir?

16 A. That is something totally different. That
17 has nothing do with this case.

18 Q. Well, you told me, in your initial
19 testimony, that one of the primary reasons you oppose
20 this case is because your brother owes you so much
21 money; is that correct?

22 A. But that doesn't have anything to do with
23 this case. He owes me money.

24 Q. Oh, I understand what you're saying.
25 You're saying Kinsington doesn't have anything to do

1 with this case, because you don't want to be deemed a
2 fraudulent conveyance; is that what you're talking
3 about?

4 A. No. There's nothing fraudulent about
5 anything.

6 Q. You're seeking to obtain Richard's interest
7 in that property; correct?

8 A. Because I was forced to buy a mortgage from
9 Charleston Capital that started off as a \$400,000 loan
10 to Richard to run these restaurants, which Richard could
11 not pay. And that \$400,000 built up to where it was
12 almost a million dollars with interest. And Tom Irvin
13 at Charleston Capital said that he had -- it had to be
14 resolved.

15 Now, I also had to buy the same interest in
16 Kinsington back in the divorce situation, and I had to
17 pay, I think it was, \$1,150,000 or so to save Kinsington
18 at that time.

19 Q. How much money does your brother, Richard
20 Stoney, currently owe you, sir?

21 A. On Kinsington alone, it's over
22 \$3.1 million.

23 MR. MCQUILLIN: Thank you, sir. No further
24 questions.

25 THE COURT: Anything else of this witness?

1 MR. BARR: Your Honor, I reserve the right
2 to call Ted during our case.

3 THE COURT: Anything else?

4 MS. MCQUILLIN: No, sir.

5 THE COURT: Thank you, sir. Next witness?

6 We'll take five minutes before we hear from
7 Mr. Robinson.

8 (A brief recess was taken.)

9 MR. MCQUILLIN: We would call Chip Robinson
10 to the stand.

11 WILLIAM "CHIP" ROBINSON,
12 being first duly sworn, testified as follows:

13 THE CLERK: Please state your full name,
14 spelling your last.

15 THE WITNESS: William Charles Robinson,
16 Junior. R-O-B-I-N-S-O-N. But I go by Chip.

17 DIRECT EXAMINATION

18 BY MR. MCQUILLIN:

19 Q. Chip, I will call you, because we know each
20 other. Chip, you served as the former comptroller for
21 The Boathouse at Breach Inlet and Crew Carolina;
22 correct?

23 A. Correct.

24 Q. You were in that capacity generally from
25 around 2002 until May of 2010; correct?

1 A. No. It was from '03 to '09.

2 Q. '03 to '09. But you've provided consulting
3 services to Richard Stoney, Crew Carolina after 2010;
4 correct?

5 A. Correct.

6 Q. And, in fact, we discussed in your
7 deposition that you received money from The Boathouse at
8 Breach Inlet in this case for consulting services to
9 Richard Stoney personally; correct?

10 A. Repeat -- just repeat the question.

11 Q. I'll rephrase.

12 MR. BARR: Objection, please. Your Honor,
13 this is his witness. He's leading the witness. This
14 witness is not an employee of Crew Carolina or was an
15 employee of Crew and Breach Inlet, but that doesn't give
16 him the right to cross-examine his own witness.

17 MR. MCQUILLIN: Your Honor, what my
18 question is going to establish is that this particular
19 witness has been paid by The Boathouse of Breach Inlet
20 to provide consulting services in this case. That was
21 his testimony in his deposition. I've got timesheets to
22 establish that.

23 MR. BARR: But it still doesn't alleviate
24 the need to state open questions, even if that's so.

25 THE COURT: Let's see. Rule 611 Rules of

1 Evidence 69C. Leading questions. Leading questions
2 should not be used under direct examination of a witness
3 expect as may be necessary to develop the witnesses
4 testimony. Ordinarily a question should be permitted on
5 cross-examination when a party is called a hostile
6 witness, an adverse witness, or a witness identified
7 with an adverse party, interrogation may be leading by
8 leading questions.

9 So the question here is whether this
10 witness is identified with the adverse party.
11 Mr. McQuillin said he's been paid or retained. So,
12 therefore, he's identified by the adverse party.
13 Mr. Barr says he's not because he's not an employee.
14 I'll overrule the objection.

15 BY MR. MCQUILLIN:

16 Q. Mr. Robinson, as we discussed at your
17 deposition, quote, you received money from The Boathouse
18 at Breach Inlet in this case for consulting services
19 related to this litigation that you provided to Richard
20 Stoney personally; correct?

21 A. Correct.

22 Q. And now that we're getting your work for
23 Crew Carolina and The Boathouse at Breach Inlet, you
24 have described that job as about as stressful of an
25 environment as you can handle; correct?

1 A. That sounds like something I would say,
2 yes.

3 Q. And you've also stated that you were burned
4 out on working for Richard; correct?

5 A. Yes.

6 Q. And the reason you were so stressed out was
7 because of the Crew Carolina cash-flow related issues;
8 correct?

9 A. Correct.

10 Q. And we've previously marked this as an
11 exhibit, sir, but I'm going to show you what's been
12 marked as Plaintiff's Exhibit Number 10. Can you please
13 identify that document for the record, sir?

14 A. This is a memo that I sent to Richard in
15 April of 2010.

16 Q. And this memo, April 5th of 2010, was
17 written by you about a month after you stopped working
18 as comptroller for the company; correct?

19 A. So my timeline -- I just told you I thought
20 I left in '09 is the timeframe I would have pegged on
21 there. Maybe it was '10. If it was '10, then this
22 would have been right about the time I left.

23 Q. And I'll represent to you that was your
24 testimony, that you wrote this memo about a month before
25 you quit working?

1 A. Then yeah. I may be mixing the timeline,
2 but yes.

3 Q. And you labeled this memo as a confidential
4 interoffice memo, and it was sent only to Richard
5 Stoney; correct?

6 A. Correct.

7 Q. And, Mr. Robinson, in this April 15, 2010
8 memo from you to Richard Stoney, you write and say to
9 Mr. Stoney, quote, you know our little accounting world
10 at the end of the hall is totally and completely
11 consumed with cash flow issues, close quote; correct?

12 A. Yes.

13 Q. And in this memo, Mr. Robinson, the cash
14 flow issues you were talking about concerned Lake Julian
15 and Carolina's and how they could not cash flow their
16 operations; correct?

17 A. Well, it appears that I discussed a number
18 of entities. Those would be amongst them, yes.

19 Q. And Lake Julian and Carolina's were two
20 restaurants owned and operating by Richard Stoney;
21 correct?

22 A. Correct.

23 Q. And they did not have the same ownership as
24 The Boathouse at Breach Inlet; correct?

25 A. Correct, different owners.

1 Q. And so because Lake Julian and Carolina's
2 could not cash flow their operations, Richard Stoney fed
3 those entities with cash from The Boathouse at Breach
4 Inlet; correct?

5 A. Yes, correct.

6 Q. And you've described The Boathouse at
7 Breach Inlet as cash cow; correct?

8 A. In this memo?

9 Q. No. In your deposition?

10 A. That sounds like something I would have
11 said, yes, sir.

12 Q. You don't dispute that you called The
13 Boathouse at Breach Inlet as --

14 A. I don't, no.

15 Q. And you just described The Boathouse at
16 Breach Inlet, in this memo, as, quote, a blood donor for
17 the hemorrhages that are Lake Julian and Carolina's;
18 correct?

19 A. I'm sure it is. I don't see where you're
20 pointing at. Yes, correct.

21 Q. And you say that removing Breach in this
22 role as blood donor for the hemorrhages at Lake Julian
23 and Carolina's will solve the cash flow issues; correct?

24 A. I do see that, yes, sir.

25 Q. And isn't it true that the profits from The

1 Boathouse at Breach Inlet, that you described as a cash
2 cow and blood donor, kept Richard's other losses afloat?

3 A. Yes.

4 Q. In fact, Mr. Robinson, you testified that
5 Richard could not fund his personal expenses and other
6 business expenses without cash from The Boathouse at
7 Breach Inlet; correct?

8 A. Correct.

9 Q. And, Mr. Robinson, you knew that this
10 practice, we call it robbing Peter to pay Paul, was not
11 sustainable; correct?

12 A. Yes.

13 Q. In fact, being a good comptroller, you
14 warned Mr. Stoney to protect the entities that do make
15 money, you can't just go on taking out debt to fund
16 operating losses, it's just not sustainable, close
17 quote; correct?

18 A. I assume you're quoting from the memo.

19 Q. I'm quoting this from your deposition.

20 A. Oh.

21 Q. You said to protect the entities that do
22 make money you can't go on taking out debt to fund
23 operating losses, it's just not sustainable; you told
24 Mr. Stoney that, correct?

25 A. If that's what I testified to, then I'm

1 confident that I did. It sounds like something I would
2 have told him. I just don't remember the words, but it
3 sounds correct, yes.

4 Q. And just so the record is clear --

5 MR. BARR: Page please?

6 MR. MCQUILLIN: The bottom of Page 63 of
7 his deposition.

8 THE WITNESS: Yes, correct.

9 BY MR. MCQUILLIN:

10 Q. So my question is, that being a good
11 comptroller, you warned Mr. Stoney that, quote, to
12 protect the entities that do not make money, you can't
13 just go on taking out debt to fund operating losses,
14 it's just not sustainable, closed quote; correct?

15 A. Correct.

16 Q. In fact, you testified that the primary
17 problem with Breach Inlet's cash flow issues, that those
18 were a direct result of Richard's personal and other
19 business debts; correct?

20 A. Correct.

21 Q. And you've recognized that if Richard had
22 not taken funds from The Boathouse at Breach Inlet, The
23 Boathouse would have had enough money to operate and pay
24 its bills and taxes in a timely manner; correct?

25 A. Correct.

1 Q. But instead those funds were transferred
2 from The Boathouse to Crew Carolina to pay for Richard's
3 personal expenses and other business, and as a result
4 The Boathouse had issues paying its bill and taxes;
5 correct?

6 A. Correct.

7 Q. As we have discussed you warned Richard
8 Stoney that this practice of robbing Peter to pay Paul
9 is not sustainable; correct?

10 A. Yes.

11 Q. And, Mr. Robinson, I want to talk to you a
12 little bit about Crew Carolina. You testified
13 previously, sir, haven't you, that Crew Carolina's sole
14 purpose was to provide income for Richard Stoney;
15 correct?

16 A. You'd have to refresh my memory that I
17 testified previously about that. The sole purpose being
18 to provide him with income doesn't seem like something
19 that I would have represented. But if I have, I'm happy
20 to look at it.

21 MR. BARR: What number are you referring
22 to?

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

24 BY MR. MCQUILLIN:

25 Q. Sir, I've handed you what's been marked as

1 Plaintiff's Exhibit Number 16. Can you please identify
2 this document?

3 MR. BARR: I'm sorry, what's the number
4 again?

5 MR. MCQUILLIN: 16.

6 BY MR. MCQUILLIN:

7 Q. Can you please identify this document?

8 A. This is an e-mail that I sent to Jamie
9 Stabler on July 8th of 2014.

10 Q. And Ms. Stabler is the current comptroller
11 and bookkeeper for The Boathouse; correct?

12 A. Yes.

13 Q. And you were the former comptroller and
14 bookkeeper; right?

15 A. Correct.

16 Q. And here is where you're providing
17 consulting services to The Boathouse; correct?

18 A. Correct.

19 MR. MCQUILLIN: Your Honor, at this time we
20 move that Plaintiff's Exhibit Number 16 be entered into
21 evidence without objection.

22 MR. BARR: Without objection.

23 THE COURT: Be admitted.

24 (Plaintiffs' Exhibit No. 16 was entered
25 into evidence.)

1 BY MR. MCQUILLIN:

2 Q. And, sir, my question for you is that you
3 testified previously, and said in this e-mail, that
4 Crew's sole purpose was to provide income for Richard
5 Stoney; correct?

6 A. No. I think there a little more nuance
7 than that.

8 Q. Let me show you your deposition, because
9 I'm going to ask you about it.

10 Sir, I asked you, in your deposition, based
11 on what you knew at the time, it seemed to you that Crew
12 Carolina's sole purpose was to provide income for
13 Richard Stoney; correct?

14 A. So this answer is in reference to this
15 e-mail?

16 Q. Yes. I think.

17 A. Up here; is that right?

18 Q. Yes.

19 A. So, I think the discussion that we're
20 having here in my deposition is about what I'm saying in
21 this memo. So if I could nuance my answer that might be
22 helpful.

23 Q. I asked you in your deposition, so based on
24 what you knew at the time, it seemed to you that Crew
25 Carolina's sole purpose was to provide income from

1 Richard Stoney, which ultimately was an increase in
2 Breach's receivable, because the monies that were going
3 to Crew then to Richard were coming from The Boathouse.
4 And your answer was correct. Is that --

5 MR. BARR: To which there was an objection
6 at the deposition.

7 THE WITNESS: So in 2014, when I wrote this
8 e-mail to Jamie where it appears to me that she's asked
9 me to give my opinion about something that Dennis Jarvis
10 told them, I'm laying out here what my opinion is about
11 Crew Carolina at the time?

12 BY MR. MCQUILLIN:

13 Q. Yes.

14 A. So if you're asking me in 2014 did it
15 appear to be that way? Then my answer would, yes, when
16 I wrote this e-mail it did. I would object to
17 characterizing my opinion of Crew Carolina as being that
18 while I was the controller.

19 Q. Let me back up and ask you this: You also
20 would agree that Crew Carolina's sole purpose as far
21 back as 2012 was solely to provide income to Richard
22 Stoney; correct?

23 At that point in time you told Mr. Jarvis
24 the Crew receivable would not be paid? That was one of
25 the first things you told him when he took over taking

1 the books for the company; correct?

2 A. That is one of the first things I told him.
3 I'm not 100 percent sure those two things are
4 synonymous, though. But I did tell him that as to the
5 receivables, yes.

6 Q. You state in your e-mail, that we've marked
7 as Plaintiff's Exhibit Number 16, that it's time for
8 Richard to begin realizing that the money leaving Breach
9 Inlet is his, because it's being used to pay expenses in
10 Crew, a company in which he alone is the sole
11 shareholder in; correct?

12 A. Correct.

13 Q. And you say in this e-mail that you believe
14 it was a valid question to ask why are you continuing to
15 book these expenses if Crew has no prospect of paying
16 you; correct?

17 A. Correct.

18 Q. And in this e-mail you state, Crew
19 Carolina, other than paper management fees, Crew had no
20 actual income stream and had no prospect of one;
21 correct?

22 A. Correct.

23 Q. And you learned, sir, did you not that
24 Dennis Jarvis was concerned that the amount of money
25 that Crew owed The Boathouse continued to grow despite

1 the fact that it would not be repaid; correct?

2 A. Correct.

3 Q. And, Mr. Robinson, you testified previously
4 that you told the CPA for the company, Dennis Jarvis, in
5 2010 that the Crew receivables, the \$4 million owed to
6 The Boathouse would not be paid; correct?

7 A. I don't recall the exact timing of that,
8 but that's certainly a conversation I had with them,
9 whatever the right timeframe would have been.

10 Q. If you would, sir, flip with me to the
11 second page of Exhibit Number 16 where Mr. Jarvis
12 writes. Does that refresh your recollection as to what
13 you would have said to Mr. Jarvis in 2012 when he took
14 over the books for the company?

15 A. I'm sure I said that. I'm just not
16 recalling the exact timeframe.

17 Q. Do you see that there where it says, one of
18 the first things that Chip mentioned to me when I took
19 over the filing of the tax returns was that the Crew
20 receivable would not be paid?

21 A. Yes.

22 Q. And he's concerned that after posting
23 payroll that that receivable is still going up?

24 A. Yes. It must have been 2012, logically.

25 Q. So he's asking why is the due to/due from

1 The Boathouse still going up when it has no prospect to
2 being repaid? Chip told me years ago it wasn't going to
3 be paid back.

4 A. That's what he asking me, yes, sir.

5 Q. And in your e-mail you say that's a valid
6 question; correct?

7 A. Yes, sir.

8 Q. Richard Stoney would go to Crew Carolina to
9 get cash; correct?

10 A. Yes.

11 Q. And that cash would come from The Boathouse
12 at Breach Inlet; correct?

13 A. Among other sources, yes.

14 Q. And you testified that Crew Carolina did
15 not have any officers; correct?

16 A. That's correct.

17 Q. In fact, you testified in your deposition
18 that none of Richard Stoney's entities, like Crew
19 Carolina, ever had any officers, meetings, minutes, or
20 anything like that; correct?

21 A. Correct.

22 MR. MCQUILLIN: Thank you, sir. No further
23 questions.

24 CROSS-EXAMINATION

25 BY MR. BARR:

1 Q. You were asked about Crew having no
2 officers. Is it correct that Crew had only one member?

3 A. Yes.

4 Q. And so the one member was treated as the
5 officer of all; isn't that correct?

6 A. I suppose it could be. I don't know how
7 that works legally, but, sure.

8 I mean, if I can clarify, from my
9 prospective -- I'm not a lawyer -- the LLCs call for a
10 managing member. So I would characterize Richard as a
11 managing member. I don't know whether or not that's the
12 same as officer or not. Yes, sir, to that extent, I
13 would say yes.

14 Q. You're saying that a manager is equivalent
15 of the president or CEO, or whoever runs the show?

16 A. Sure. If that qualifies as an officer,
17 yes.

18 Q. Let me back up with you, Mr. Robinson. How
19 old are you?

20 A. 45.

21 Q. And where do you live?

22 A. Parkwest in Mount Pleasant.

23 Q. Tell us about your education.

24 A. I have a bachelor of business
25 administration from the College of Charleston, a

1 master's degree in accounting from the University of
2 Charleston, which is just the graduate school from the
3 College of Charleston, and a master of divinity from
4 Southeastern Baptist Theological Center in Wake Forest,
5 North Carolina.

6 Q. When was your divinity degree obtained?

7 A. I finished it in May of '16, 2016.

8 Q. What is your current profession or
9 occupation?

10 A. I'm a lead pastor at the King's Cross
11 Church on Clements Ferry Road in Charleston.

12 Q. How long have you been lead pastor?

13 A. Just under four years.

14 Q. Was that a new church when you went to it?

15 A. Correct. I planted the church.

16 Q. You formed it; you planted it?

17 A. Yes.

18 Q. And, again, the denomination is?

19 A. Southern Baptist.

20 Q. And what is the approximate population of
21 your congregation?

22 A. If you count children, about 300.

23 Q. And so is that your full-time profession
24 today?

25 A. Yes, sir.

1 Q. And then prior to becoming into the
2 full-time ministry, where were you employed right before
3 that?

4 A. So before I was lead pastor at Kings Cross
5 I was an associate pastor for First Baptist Church in
6 Mount Pleasant. Prior to that, I was a church
7 administer for First Baptist in Mount Pleasant.

8 Q. And then prior to that?

9 A. Before that, I was comptroller at Crew
10 Carolina.

11 Q. So Crew -- your position with Crew Carolina
12 was the last non-divinity work that you did; correct?

13 A. Sure. In my language, it was the last
14 market place job before --

15 Q. Thank you. I was searching for a term.
16 Generally, without necessarily any specific details,
17 what was your work history before you came to Crew?

18 A. I did management and sales for a while in
19 between undergraduate and graduate school. And then I
20 did -- once I got into graduate school I did a short
21 stint in public accounting, primarily in governmental
22 audits.

23 Q. So what qualifications do you think you had
24 to become the comptroller of Crew Carolina? What
25 education or experience had you had before you came that

1 enabled you to become their comptroller?

2 A. So I had the short stint in public
3 accounting, a small firm in Summerville, completed my
4 graduate work and then I had worked as staff accountant
5 for Crew Carolina under the prior comptroller. As you
6 can tell already in my testimony, I lose the timeframes
7 on these things. But, you know, for something like
8 maybe a year and a half, or two years, somewhere in
9 there.

10 Q. Was that before you became comptroller, you
11 mean?

12 A. Yes, sir. My original position at the
13 company was as a staff accountant.

14 Q. So would that have been before '03?

15 A. No, when I started in '03.

16 Q. As a staff accountant?

17 A. Yes, sir. Then I became the comptroller
18 sometime mostly when we moved to Romney Street. And I
19 forget when that was.

20 Q. What is your memory of your first
21 communication conversation with Laurence Stoney?

22 A. To my knowledge, I have only ever had one
23 conversation, that I can remember, with Mr. Stoney. And
24 the reason it sticks out to me is because it shocked me.

25 Q. Your conversation with Laurence Stoney

1 shocked you?

2 A. Yes, sir. Sometime shortly after I was
3 hired, I picked up the phone and got chewed up pretty
4 good by Laurence in a way that I hadn't been talked to
5 in a long, long time.

6 And what I can remember from that is two
7 things. One saying to him, I don't know who you are,
8 but don't ever call here and talk to me that way again.
9 And I remember hanging up the phone and looking at
10 Randall. Randall who was our comptroller at the time
11 and saying who is this? Because I had no idea.

12 Q. And do you recall what it was he was
13 chewing you out about?

14 A. I don't. I largely, at the time, was only
15 dealing with the prospect of us buying or Richard buying
16 Carolina's Restaurant. And I was pretty unfamiliar with
17 the rest of the stuff that was going on, so I don't.

18 Q. So when you came onboard, it was -- you
19 were a staff accountant to Crew Carolina?

20 A. Yes, sir.

21 Q. When you came on board to 2003, how many
22 different entities were being managed by Crew Carolina?
23 And if you can recall, what were their names?

24 A. Well, Crew obviously existed existed,
25 Boathouse at Breach Inlet existed, Boathouse on East

1 Bay, Boathouse at Lake Julian was open. We were -- or
2 the company was considering purchasing Carolina's at the
3 time, which is one reason they hired me. I'm certain
4 Blue Water Management would have existed at that time.
5 I'm certain that the marina, the Two Island Marina was
6 up and operating at that time. I would assume that, you
7 know, Three Stoney Atlantic existed, although I wouldn't
8 have known about that until I took over as comptroller
9 later, but that's my assumption.

10 Q. And what did you understand to be the
11 business plan, the concept of the organization that was
12 formed under the Richard Stoney leadership and the
13 management of Crew Carolina?

14 A. Sure. Crew Carolina effectively served as
15 essentialized administrative office or management office
16 for the managed entities. My understanding, when I came
17 onboard and, you know, for years after that, is that the
18 plan was expansion, specifically of The Boathouse brand.

19 So I can recall at the time probably most
20 in depth conversation I had about that was with Sam
21 Richardson who, at the time, I think was operation's
22 manager. I forget what his title was. But he ran the
23 operations from Crew. And so he and I would talk
24 about --

25 MR. MCQUILLIN: Objection, Your Honor.

1 He's about to discuss a conversation that him and Sam
2 Richardson who is not here today what they talked about.

3 MR. BARR: Well --

4 BY MR. BARR:

5 Q. Without respect to what you and
6 Mr. Richardson said, what words were exchanged, what was
7 the general topic?

8 A. What I just described, was the general
9 conversation.

10 Q. And so what were the functions of Crew
11 Carolina with respect to all of these entities that you
12 just enumerated?

13 A. Like business functions, you mean?

14 Q. Right.

15 A. Accounting, HR -- HR came later.

16 Accounting, marketing, and operation's manager.

17 Q. And you said HR came later. So let's not
18 limit it to the function of Crew at just your beginning.
19 What was the ultimate function of Crew, that included HR
20 which is human recourses; correct?

21 A. Yes, sir.

22 Q. Did you mention accounting?

23 A. Yes, sir.

24 Q. And what about with respect to personnel
25 management? Was that apart of HR?

1 A. Yes.

2 Q. So human resources included the management
3 of the personnel at all these various entities?

4 A. Right. So the way I was referring to that
5 is the operation's management. But yes, we -- Crew
6 Carolina made the hiring and firing and movement
7 decisions, et cetera, for exempt employees across all of
8 the restaurants.

9 Q. And what, if any, function did Crew
10 Carolina serve with respect to purchasing?

11 A. Shortly after I was hired, Crew began
12 negotiating purchasing contracts on behalf of all of the
13 managed entities.

14 Q. All of the various entities?

15 A. Yes, sir.

16 Q. And what kind of purchases were acquired to
17 serve the various entities?

18 A. We were largely negotiating -- of course,
19 obviously food was the big one, but other consumable
20 supplies at the restaurant level. Some things like
21 take-out boxes and plastic wear and things of that
22 nature that you would buy through a supplier that might
23 be common across the restaurants.

24 Q. Now, what, if any -- what benefit did this
25 consolidation of management, accounting, purchasing

1 services, personnel management, the ability to shift in
2 place for entities as their needed? What benefit did
3 that provide to the entities that you were managing, and
4 more specifically, what benefit did that provide to The
5 Boathouse at Breach Inlet?

6 A. Sure. So the theory behind any centralized
7 management office is an economy of scale on purchasing
8 and personnel. So rather than each unit having to have
9 a bookkeeper, for example, we had, depending on a year,
10 two or three. Instead of each entity having to have
11 someone who managed websites, who managed marketing, who
12 managed these things.

13 And the same thing with purchasing. You're
14 realizing an economy of scale -- you know, if you're
15 buying lobster tails for three Boathouse units, you're
16 going to get a better rate than if you buy one. So the
17 theory behind that is decrease cost of goods at a
18 decreased overhead cost on the personnel that are being
19 used.

20 Q. So the concept of the central management
21 purchasing, et cetera, that you just described, saved
22 costs to the individual restaurants, and most
23 specifically The Boathouse at Breach Inlet?

24 A. That's the reason that entity was
25 established, yes, sir.

1 Q. And after you arrived, was there a time
2 when that central management was actually saving those
3 costs to Breach Inlet?

4 A. I never operated in any other environment,
5 so I assume.

6 Q. But you can't compare?

7 A. I never ran a cost comparison in two
8 columns of what would we have to do. That just wasn't
9 in the paradigm in the way we operated.

10 Q. Anecdotally, could you observe, for
11 example, with respect to food prices that you were
12 getting better prices for purchasing quantity -- greater
13 quantity rather than lesser quantity?

14 A. For that specific, there's no question it
15 saved money for all the restaurants.

16 Q. And in terms of what restaurants purchased,
17 would you include food as one of those major things?

18 A. Food and personnel, and the drivers.

19 Q. The drivers is an expense?

20 A. Right. Those are the prime costs, payroll
21 and purchasing.

22 Q. How then did this central management save
23 cost to Breach Inlet, in terms of personnel?

24 A. You've got -- in two potential ways. One
25 is we've got folks in the city that we could move around

1 if we needed to. So if a candidate was better suited
2 here or there. Whether or not that's actually cost
3 savings or maybe just an efficiency at a reduced
4 turnover rate, I don't know. That's probably a
5 theoretical exercise.

6 Q. In theory, you would employ less employees
7 if you could shuffle them around and if five different
8 restaurants had a full service?

9 A. In theory, yes, sir. It's probably a
10 reduction in turnover rate, there would be a stronger
11 cost savings there. And then as I eluded to earlier,
12 the services provided by the employees at Crew would
13 have been services that would otherwise needed to be
14 handled at the restaurant?

15 Q. Is there a singular event that you can
16 recall that signaled the beginning of the end of the
17 various restaurant entities, other than Breach Inlet?

18 A. The most egregious -- that's not the right
19 word. The most impactful event in my mind was
20 construction in front of the Lake Julian restaurant in
21 North Carolina, which was pretty catastrophically
22 damaged in the sales for maybe two years.

23 Q. Now, the Lake Julian restaurant was fully
24 up and running; is that correct?

25 A. Yes, sir.

1 Q. And what happened with respect to the
2 construction?

3 A. They widened the road, which, you know, you
4 wouldn't think was a big deal. As a pastor of a church
5 on Clements Ferry, I can tell you it's a big deal. Ask
6 anybody that lives in that corridor. It shut that long
7 shoulder of road area down substantially. People just
8 avoided it.

9 And so, you know, a project like all road
10 projects, it should have been a year or whatever it was
11 doubled or tripled. I don't know how long it was. It
12 was a while ago.

13 Q. In terms of then accounting that Crew did
14 for -- well, I haven't addressed this yet. So with
15 respect to the management of accounts, how did Crew
16 account for --

17 Let me start more basically than that. Is
18 it correct that one of Crew's functions was to manage
19 all revenues for the various entities?

20 A. Yes, sir.

21 Q. How was that done?

22 A. You mean what accounting system did we use?

23 Q. Well, no. How were the revenues handled?
24 In other words, were they all deposited into a central
25 account?

1 A. Early, no. The bank accounts were always
2 handled by the same bank. Which bank varied a couple of
3 times. And so the company might make manual transfers
4 back and forth as needed. We were -- originally, when I
5 started with the company, it was at Carolina First and
6 later I think First Alliance.

7 And then because of the cumbersome nature
8 of that, at one point we had a conversation with -- I
9 don't know, somebody at Wachovia who said there's a
10 better solution to that and proposed to us a system like
11 you're describing, which is something more of a sweep
12 account.

13 Q. So how does that work?

14 A. So each -- the primary way increasingly
15 overtime, and I would assume by now most everything, the
16 way people pay is with credit cards. And so the bulk of
17 revenue back and forth is electronic. It isn't hard
18 cash.

19 So each night the point of sale system
20 would transmit back data to the processor. The
21 processor would transmit to the bank. And the bank
22 would deposit funds into each restaurant's individual
23 account. And then overnight that money, in every
24 account, would sweep up to the Crew Carolina account.

25 Q. And then what would Crew Carolina do to

1 manage that money on behalf of the entities?

2 A. To track it or how was it used?

3 Q. First of all, how was it used? And then
4 I'll ask you about tracking.

5 A. Sure. All of the expenses would be written
6 similarly in main entities. So, for example, if Breach
7 Inlet was writing a check for produce, they would write
8 the check.

9 Q. They being who?

10 A. Breach Inlet or whoever -- sometimes Crew.
11 It just depends on which vendor was being paid for what,
12 but a check would be written on the bank account of The
13 Boathouse at Breach Inlet or Lake Julian or whoever.

14 Those checks would clear the bank through
15 those sub-accounts. And then during the day, the money
16 would come back out of the sweep account down into those
17 sub-accounts to cover the costs of those checks as they
18 cleared.

19 Q. So the individual restaurants were drawing
20 against the sweep account?

21 A. Correct.

22 Q. And all of that was being accounted for at
23 the Crew level; correct?

24 A. Correct.

25 Q. What would happen then under the

1 circumstance where a particular restaurant had an
2 expense which was paid from Crew, but that the -- you're
3 going to have to give me an accounting term that's
4 appropriate for this, but the revenues associated with
5 that restaurant were not adequate to cover that expense?

6 A. Sure. So all of the back and forth in
7 either direction from a sub-account up to the Crew
8 Carolina account or vice versa was all tracked with due
9 to/due from accounts between the various entities.

10 Q. So that's the origin we've heard previously
11 in this trial references from the due to/due account?
12 But that's what we're talking about; is that correct?

13 A. Yes, sir.

14 Q. So is it correct then if there is a due
15 from Crew Carolina to Breach Inlet account, that is to
16 say Crew Carolina owes something to Breach, then that
17 would mean that the subentities in turn would owe a like
18 amount to Crew Carolina?

19 MR. MCQUILLIN: Objection, Your Honor; he's
20 leading the witness.

21 MR. BARR: It's your witness.

22 THE COURT: He can cross-examine this
23 witness.

24 MR. MCQUILLIN: We've established that he's
25 getting paid for his testimony.

1 MR. BARR: That is entirely incorrect.

2 THE COURT: Objection overruled.

3 BY MR. BARR:

4 Q. Do you remember the question?

5 A. No. Can you repeat it?

6 MR. BARR: Madame Reporter, just to make
7 sure I remember it, why don't you read it, please?

8 (The requested portion was read back.)

9

10 BY MR. BARR:

11 Q. So is that correct?

12 A. Yes, going both directions equally.

13 Should I just clarify real quick that I'm
14 not being compensated to be here.

15 Q. Right.

16 A. Today or yesterday or at the deposition.

17 Q. That's right.

18 A. Just so that's clear.

19 Q. So I'm going to put this on the screen so
20 everybody can see it. For the record, we are looking at
21 Plaintiff's Exhibit 6, which is the balance sheet as of
22 The Boathouse at Breach Inlet as of 12/31/2019. Are you
23 familiar with this form of document?

24 A. Yes.

25 Q. And we heard some testimony yesterday from

1 Mr. Hollerbach with respect to this due to/due from Crew
2 Carolina of \$4,194,264.66. Before today, have you seen
3 this particular balance sheet?

4 A. Not to my recollection.

5 Q. But you're familiar with this form?

6 A. Certainly.

7 Q. In fact, there might be an earlier one. In
8 your course of acting as comptroller for Crew Carolina,
9 did The Boathouse at Breach Inlet's balance sheet
10 regularly show a due to/due from Crew Carolina account?

11 A. Yes.

12 Q. Every time it was ever published, prepared?

13 A. Yes, sir.

14 Q. It wasn't concealed or wasn't hidden in any
15 way?

16 A. No.

17 Q. So is it correct then that this
18 \$4,194,264.66 in turn represents that same amount of
19 money that was owed by those other entities back up to
20 Crew Carolina under this management scheme?

21 A. Yes, sir. As to --

22 Q. I'm not asking precisely.

23 A. Yes. There would be a corresponding number
24 on the Crew Carolina balance sheet, along with a number
25 of other accounts on there that would paint a full

1 picture of that, yes, sir.

2 Q. So did that sum, the \$4,194,000 and change
3 amount, was owing and occurred as a result of the
4 business decision to grow the company, to grow the
5 organization, and to manage it centrally with the intent
6 that the organization would sustain itself and each
7 entity would proffer; correct?

8 A. Yes.

9 Q. That was the intent. It did not succeed,
10 did it?

11 A. It did not.

12 Q. And, as a result, this \$4,194,264.66
13 liability, which is owed by Crew Carolina to Breach
14 Inlet, is at least on paper owed by Crew by these
15 entities that no longer exist?

16 A. Presumably, yes, sir. And that Crew
17 balance sheet would tell you that.

18 Q. But it all incurred during the
19 implementation of this business plan that you first
20 described to create this multitude of entities to save
21 costs; correct?

22 A. Yes, sir, that's right.

23 Q. And then there's a due from Richard Stoney
24 entry here of \$42,835.19. Did you also see that entry
25 in previous balance sheets?

1 A. Just generally you mean?

2 Q. Yes.

3 A. Sure, that wouldn't have been unusual.

4 Q. And that just represents funds that
5 represent the excess of what Richard withdrew from the
6 company and what he earned from the company; correct?
7 Or was paid by the company?

8 A. It would not be earnings, nor would it be
9 payroll. Those would have been accounts for a
10 different --

11 Q. Correct.

12 A. Yes, sir. It would reflected a net of
13 cash --

14 Q. For lack of a better of term advances?

15 A. Sure.

16 Q. Can you say whether or not this due to/due
17 from procedure is an acceptable and is a practice in the
18 business world?

19 MR. MCQUILLIN: Objection, Your Honor.
20 He's asking for expert opinions of this witness who's
21 not been qualified as to whether or not this is an
22 acceptable practice.

23 MR. BARR: I think by training, by his own
24 testimony, by his education and experience, he can
25 answer the question.

1 THE COURT: In effect you are offering him
2 as an expert in --

3 MR. BARR: I'm really not offering him as
4 an expert. I'm just asking him whether that's -- let me
5 rephrase the question.

6 BY MR. BARR:

7 Q. Are you familiar with the due to/due from
8 process in any context, other than as it was practiced
9 at Crew Carolina?

10 A. So Crew Carolina is the only company that I
11 served as comptroller for. It was the practice when I
12 arrived at the company, you know. There wasn't anything
13 that seemed unusual about it to me. There wasn't
14 anything in my -- in the process of my education that
15 raised any red flags about it. Whether or not I can
16 remember back to sitting in class and reading about it
17 in a book or encountering it in one of my auditing
18 processes, I don't have any specific recollection.

19 Q. Okay. I think that answers it.

20 With these same books, including the
21 balance sheets including the designation due to/due
22 from, were they regularly reviewed by CPAs?

23 A. Yes, sir.

24 Q. And was there ever any criticism from any
25 certified public accountant of that manner of

1 accounting?

2 A. Not during my time with the company. The
3 first time I heard anyone raise a concern was when
4 Dennis Jarvis did.

5 Q. And that really was an issue with how to
6 report it; right?

7 A. Correct. He was concerned with the -- not
8 with the use of those accounts, but with the company's
9 ability to repay it and what implications that might
10 have with taxes, not with the form of the account.

11 Q. And that's the subject matter of your
12 examination by Mr. McQuillin?

13 A. Correct.

14 Q. So his issue was with how to since those
15 entities were now defunct, how do you deal with it? How
16 do you report it?

17 A. Yes, sir.

18 Q. You've also testified that Richard Stoney
19 was counseled with respect to continuing the practice of
20 accounting with these due tos and due from in advancing
21 funds through Crew Carolina to the restaurants that
22 needed them. Why did Richard not -- why did he continue
23 that practice?

24 A. In my opinion?

25 Q. Yes.

1 MR. MCQUILLIN: Objection, Your Honor.
2 He's giving opinion testimony. He's not been qualified
3 as an expert and he's providing his opinion as to why
4 Richard Stoney did something. He's speculating as to
5 Mr. Stoney's intentions.

6 MR. BARR: I can rephrase it, Your Honor,
7 to make it acceptable.

8 BY MR. BARR:

9 Q. You were of course the comptroller of Crew
10 Carolina; correct?

11 A. Yes, sir.

12 Q. And that would encompass controlling, as it
13 were, the books of all of the entities including, Breach
14 Inlet?

15 A. Correct.

16 Q. Did you have regular dealings with Richard
17 in the course of that work?

18 A. Yes.

19 Q. A lot of dealings; right?

20 A. Daily.

21 Q. You were in the same physical office?

22 A. Correct.

23 Q. And so working in that capacity, in that
24 close relationship, dealing with all these entities, did
25 you formulate a reason why Richard continued it? Did

1 you find out why he kept doing it, or did you conclude?

2 A. Sure.

3 Q. What was that?

4 A. I think that Richard is one of the most
5 optimistic people I've ever worked with. And
6 consistently when I would raise concerns about
7 sustainability, his opinion would be that things would
8 turn around very, very soon. We discussed a few minutes
9 ago the road construction in Ashville. That's a good
10 example. If we could just hold on until the road was
11 open, things would be okay.

12 And, so, there was a perpetual sense that
13 we were a few good breaks or a few good turns of luck
14 away from what we all thought was the potential of what
15 we were sitting on of being realized.

16 Q. Would it be fair to say that it was because
17 he's not a quitter?

18 A. Yes, sir.

19 Q. Now, at his peak -- at the peak of this
20 organization existence -- first of all, where were the
21 Crew offices at it's peak?

22 A. Romney Street.

23 Q. And how many different entities, that is
24 LLCs, restaurants, whatever were being managed out of
25 there?

1 A. It was 14 or 15. Something like that, give
2 or take a couple.

3 Q. And earlier you mentioned -- and I meant to
4 develop it then -- among the entities that you described
5 to Judge Newman Blue Water Management?

6 A. Yes.

7 Q. What was Blue Water Management?

8 A. Blue Water Management was established prior
9 to me coming onboard with the company to handle retail,
10 stand-alone retail product sales. So, for example, at
11 one point when we had a cookbook, at one point the
12 company had products being sold at Whole Foods, those
13 type of things.

14 Q. So the Blue Water Management side of it
15 prepared food that was put on grocery store shelves; is
16 that what you meant?

17 A. Yes.

18 Q. And also published a cookbook?

19 A. Yes, sir.

20 Q. And it was sold from where?

21 A. Various stores, in the restaurants, and
22 things like that.

23 Q. Was there also a catering operation?

24 A. Yes.

25 Q. Was that through Bluewater?

1 A. No. That was Carolina Catering.

2 Q. Carolina Catering is another one?

3 A. Correct.

4 Q. And all of this operated out of the Romney

5 Street location?

6 A. Yes.

7 Q. Was there a kitchen there?

8 A. Yes, sir.

9 Q. So they actually prepared food for the

10 catering services?

11 A. Correct.

12 Q. You mentioned -- when I asked you what you

13 thought was the first beginning of the end you mentioned

14 the road construction at the -- that was the Boathouse

15 Lake Julian; right, in North Carolina?

16 A. That was the first really big -- beginning

17 of the end may be a little strong. That was the first

18 really significant impact on the economies of kind of

19 what was happening at the time.

20 Q. What were other factors then?

21 A. I think the general economic downturn hurt.

22 Q. Economic recession?

23 A. Yes, sir. An entity like, for example, The

24 Boathouse at Breach Inlet which had very, very thin

25 margins, slight reductions in sales could turn small

1 profits to losses pretty quickly.

2 At loosely that same time another Boathouse
3 we had planned in Greenville, which we had architect
4 plans for and zoning issues with the city and whatnot.
5 The principal investor and partner up there died, if I
6 remember correctly, of brain cancer. And it kind of
7 shut that down.

8 Our catering chef died of cancer, and he
9 was kind of the face of the entity. It probably wasn't
10 visibly to people in town was when The Boathouse on
11 Ellis Creek burned to the ground. So there was a series
12 of -- unfortunate events doesn't cover it when people
13 die of cancer, but unforeseeable events that
14 contributed. And it all kind of came quickly.

15 Q. And I don't know whether we put Boathouse
16 at Ellis Creek on the grocery list that we talked about
17 earlier. And as I recall, that one burned down like
18 30 days after it opened; is that fair to say?

19 A. It was early, yes, sir.

20 Q. And what about the incident at The
21 Boathouse at East Bay? Or were you there then?

22 A. That was before me.

23 Q. The murder of the manager there?

24 A. Yes, sir.

25 Q. It was before you?

1 A. Yes, sir.

2 MR. BARR: Thank you very much, Mr.

3 Robinson. I have no further cross.

4 Mr. MCQUILLIN: I have just a few brief
5 questions.

6 REDIRECT EXAMINATION

7 BY MR. MCQUILLIN:

8 Q. Mr. Robinson, you testified, did you not,
9 sir, that Dixon Hughes did not raise any red flags about
10 Richard Stoney's process of robbing Peter to pay Paul;
11 correct?

12 A. Correct.

13 Q. But there were, in fact, red flags raised
14 by others; correct?

15 A. By Mr. Jarvis, yes, sir.

16 Q. And by you; correct? You told Richard
17 Stoney this process is not sustainable, it needs to
18 stop; correct?

19 A. Sure. I'm not a CPA though.

20 Q. I understand. And you said that Mr. Jarvis
21 had concerns because of the way that it was being
22 booked. But, sir, I would like to hand you -- what was
23 marked as Exhibit Number 7 to your deposition, and ask
24 that you take a look at that document for me.

25 Sir, I've handed you what's been pre-marked

1 as Plaintiff's Exhibit Number 17. Can you please
2 identify that document?

3 A. Yes, sir. This is an e-mail that I sent to
4 Jamie Stabler on May 21st, 2013.

5 MR. MCQUILLIN: Your Honor, at this time we
6 move this exhibit be entered into evidence without
7 objection.

8 MR. BARR: Was this predesignated?

9 Mr. MCQUILLIN: It was.

10 MR. BARR: No objection.

11 THE COURT: Admitted.

12 (Plaintiffs' Exhibit No. 17 was entered
13 into evidence.)

14 BY MR. MCQUILLIN:

15 Q. I want to talk about the red flags and
16 concerns raised by Mr. Jarvis. I believe your testimony
17 on cross with Mr. Barr was that it was about how it was
18 booked. But, in fact, sir, he said to you that he had a
19 real problem with, quote, what's going on down there,
20 and he was afraid that investors were going to hold him
21 accountable for it; correct?

22 A. Yes, sir.

23 Q. And if you look down below, you e-mailed
24 Jamie Stabler and you or Richard called Dennis, he's
25 freaking out; correct?

1 A. Yes.

2 Q. The CPA for the company was freaking out
3 about what was going on down there, because he was
4 scared that investors were going to hold him accountable
5 for it; correct?

6 A. Yes, sir.

7 Q. So, in addition, to your red flags that you
8 raised to Richard where you told him it wasn't
9 sustainable, Dennis Jarvis was waving red flags too;
10 correct?

11 A. Correct.

12 Q. And the most important red flag was raised
13 in 2007 when you understood, from a legal standpoint,
14 that the practice needed to stop unless you got it in
15 writing from the members; correct?

16 A. The writing from the members part, I don't
17 recall. But if you're referring to our meeting with
18 Mr. Pearlman?

19 Q. Yes, sir.

20 A. Then yes, sir.

21 Mr. MCQUILLIN: Thank you, sir. No further
22 questions.

23 THE COURT: Anything further for this
24 witness?

25 MR. BARR: No, Your Honor.

1 THE COURT: Thank you, sir.

2 MR. MCQUILLIN: Your Honor, at this time,
3 the plaintiff rests.

4 THE COURT: All right.

5 MR. BARR: Your Honor, I know we're getting
6 close to 5, but I have a witness who should be brief.
7 We would call Croft Stoney.

8 THE COURT: Brief direct, brief cross,
9 brief everything.

10 MR. BARR: Yes.

11 Mr. MCQUILLIN: I want to make a brief
12 motion for directed verdict, too, Your Honor.

13 MR. BARR: I think we just heard his brief
14 motion for directed motion.

15 THE COURT: I'll take all the matters under
16 advisement.

17 CROFT MIDDLETON STONEY,
18 being first duly sworn, testified as follows:

19 THE CLERK: Please state your full name,
20 spelling your last name.

21 THE WITNESS: Croft Middleton Stoney,
22 S-T-O-N-E-Y.

23 DIRECT EXAMINATION

24 BY MR. BARR:

25 Q. Good evening, Croft.

1 A. Good evening.

2 Q. You are Richard and Lori Stoney's daughter;

3 is that correct?

4 A. Yes, sir.

5 Q. And how old are you, Croft?

6 A. I'm 20 years old.

7 Q. 24?

8 A. 20.

9 Q. And where do you live?

10 A. I live on 65 Smith Street, downtown.

11 Q. In the city?

12 A. Yes, sir.

13 Q. And are you student?

14 A. Yes, sir.

15 Q. And where are you a student?

16 A. The College of Charleston.

17 Q. What year are you there?

18 A. I'm a junior.

19 Q. Are you generally familiar with what this

20 case is about?

21 A. Yes, sir.

22 Q. Now, Croft, do you understand that you are

23 a -- the beneficiary of a trust -- the beneficiary of a

24 trust that holds a five percent membership interest in

25 The Boathouse at Breach Inlet?

1 A. Yes, sir.

2 Q. And can you tell Judge Newman whether you
3 oppose or support this lawsuit?

4 A. I oppose it.

5 Q. So you do not support your Uncle Laurence's
6 suit against your father for \$4 million?

7 A. No, sir.

8 Q. And do you understand that Laurence is
9 saying that he's bringing the lawsuit on behalf of the
10 company?

11 A. Yes, sir.

12 Q. And you're a five percent beneficial
13 member?

14 A. Yes, sir.

15 Q. But you nevertheless oppose it; is that
16 correct?

17 A. Yes, sir.

18 MR. BARR: Thank you. You may answer
19 questions from Counsel.

20 MR. MCQUILLIN: None, Your Honor.

21 THE COURT: Thank you, you may step down.

22 We'll be in recess until tomorrow.

23 (These proceedings were recessed at 4:54
24 p.m.)

25