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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY

B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2025-002251

Timothy Wade Long and Clyde Ksier, individually and on behalf of TnW and More, LLC,..... Respondents,

v.

Timothy D. Kettner, Donald Kettner, and TNT and More, Inc., d/b/a Crab Catcher on the Waterfront, Defendants,

of which Timothy D. Kettner and TNT and More, Inc., d/b/a Crab Catchers on the Waterfront, areAppellants.

RECORD ON APPEAL
VOLUME III

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ERIC ROLF - DIRECT EXAMINATION

1 **Q** Okay.

2 **A** They blocked -- would block all of our
3 customers out of the parking lot, and there wasn't
4 much parking on the street, so that was an issue
5 also.

6 **Q** So was it difficult to operate without access
7 to the parking lot?

8 **A** Very difficult.

9 **Q** How did 2021 go for you?

10 **A** Jet skis went okay, but the main problem was
11 the fuel business. We lost a lot of money from the
12 fuel business because they would have their
13 customers go out where you pump the fuel out by the
14 water and block the fuel station so we could not
15 pump fuel for the customers. They would leave the
16 boat there for an hour or two, eat dinner at Crab
17 Catchers, and we couldn't run a business there.

18 **Q** So the boats that were there, they were
19 eating and spending money at Crab Catchers?

20 **A** Yes, sir.

21 **Q** You said you did it for 2021 and 2022?

22 **A** Yeah. 2021, we realized we could not run a
23 fuel business there because of the way they were
24 conducting themselves. 2022, we just did the jet
25 skis, and then that's when they vandalized the jet

ERIC ROLF - DIRECT EXAMINATION

1 skis, so we could not stay in business anymore.

2 Q What do you mean by that, "vandalize the jet
3 skis"?

4 A It all started in 2021 when they took down
5 the fishing tables, and they knocked down our
6 camera system. So we could have no surveillance to
7 protect our equipment. That is when it started.

8 In 2022, it got a lot worse. They ripped our
9 shed out of the ground. I didn't know anything
10 about it. They went to court without notifying me
11 and my lawyer, and I found out that morning they
12 ripped the shed out of the ground and brought it to
13 the back of the parking lot about 200 yards away.
14 We tried to bring the shed back the next day, and
15 then Mr. Rob over there took his black Ram and
16 parked it right where it should have been, so we
17 couldn't move it back there.

18 And then that night they drug it across to
19 the back of the parking lot 200 yards. They
20 chained our jet ski shed to a tractor with a chain
21 on it, and then the next day after that, that is
22 when they illegally took it off the property,
23 ransacked the shed, damaged my equipment, and that
24 was the final nail in the coffin.

25 Q Did you operate after that?

ERIC ROLF - DIRECT EXAMINATION

1 **A** We did, but we tried to put up shade, and at
2 night Rob would take a circular saw with a battery
3 on it and cut our shade down. So we were operating
4 with just one umbrella to set up during the day for
5 shade, and it was too hard. All of the staff, it
6 was so hot, they just needed 15 minutes to get out
7 of the sun and get water in the, and we didn't have
8 that. Customers would be sitting out in the sun,
9 no shade, same thing, they were complaining. It
10 really hindered our business.

11 **Q** So, at some point, the contract, Exhibit 37,
12 you were supposed to pay \$10,000 a month, did your
13 rent get reduced by Wade? Did he ever reduce your
14 rent?

15 **A** Yes. At least one or two times, because he
16 felt bad because we are running the fuel system
17 he's renting to us, and we can't sell the fuel
18 because they are blocking the trucks to refuel the
19 fuel tanks, and then they are blocking it to where
20 we pump it to the boats also.

21 **Q** And -- okay. What happened when -- I want to
22 make sure the jury understands what happened when
23 you showed up to work. Was the ski hut there?

24 **A** So that morning the ski hut was in the back
25 and chained to a trailer. I got a call that

ERIC ROLF - DIRECT EXAMINATION

1 morning that the ski shed was being stolen. So I
2 jumped in my car and rushed as quickly as I could.
3 There was two Horry County officers helping them.
4 The officers said that we already went to court. I
5 didn't get a chance to come to court or defend
6 myself or to testify. They went to court without
7 my knowledge or lawyer's knowledge at the time.
8 They were moving the ski hut. It was already on a
9 flatbed trailer, already trying to take it. And I
10 have videos of all of them, too, if you want to see
11 it.

12 Q Okay. We can't do that, and don't tell us
13 what anyone said.

14 A Okay. So they took the ski hut. Rob, over
15 there, was ordering the Horry County officers
16 around, like he was their boss. After they took
17 the ski hut --

18 MR. MONGILLO: If he could say who "they" is.

19 A Horry County police officers. His name was
20 Kenneth. I don't know the exact name. It was
21 someone out of Conway. They had a tractor trailer,
22 and there was two Horry County police officers
23 there. Rob was there, and he was ordering the
24 police officers around like he was their boss.
25 There was a guy named Kenneth. I don't remember

ERIC ROLF - DIRECT EXAMINATION

1 his name, but he was in a red truck. He is the one
2 that took the whole jet ski shed. I have it on
3 video.

4 After they took it, then Rob instructed the
5 officers to arrest me for trespassing on the land
6 that I'm pay \$10,000 a month for rent, and I didn't
7 want to get arrested, so I said, I'm out of here.
8 I'm not trespassing.

9 We were shut down for a whole week in the
10 middle of summer. We have 12 weeks to make our
11 money and a profit. They shut us down for a whole
12 week. We had to wait for a week to go back to
13 court. We went to court, and the judge said I
14 don't understand how you manipulated the court
15 system, is what they did, and didn't give me a
16 chance to have my day in court.

17 Q So how much longer did you operate after they
18 ripped the shed out of the ground?

19 A Just the end of 2022, and that was it. We
20 had enough. I didn't want to fight with people
21 anymore. We had enough. We had skis sinking with
22 customers on them, lost engines, my camera systems
23 were gone. We had enough of the nonsense.

24 Q There were pictures we introduced earlier,
25 the Crab Catchers folks on the dock with the gas

ERIC ROLF - CROSS EXAMINATION - MR. MONGILLO
1 pump. Who took that picture?

2 **A** Some of those were taken by Alyssa, who was
3 my manager at the time in 2021, with a zoom. Some
4 were taken from our camera system. The problem was
5 some of the cameras were knocked out because they
6 were meddling with them.

7 **Q** Out of the people who owned TNT and Crab
8 Catchers -- that is Casey, Donny, Rob, Justine --
9 did any of them tell you, This is my dock?

10 **A** Yes.

11 **Q** Who?

12 **A** Rob, in that video.

13 MR. PLAYER: Okay. Give me one second.

14 (A brief pause in the proceedings.)

15 MR. PLAYER: Thank you for coming up here
16 when you feel so bad. Please answer any questions
17 defense may have.

18 THE WITNESS: Thank you.

19 **CROSS EXAMINATION**

20 **BY MR. MONGILLO:**

21 **Q** I'm Scott Mongillo. I'm an attorney for
22 Mr. Tim Kettner. You have been in this courtroom a
23 lot, haven't you?

24 **A** Only a couple days.

25 **Q** You have been sick a couple of days?

ERIC ROLF - CROSS EXAMINATION - MR. MONGILLO

1 **A** Yes, sir.

2 MR. MONGILLO: Tim, can you stand up please?

3 **Q** Everything you just testified about, it had
4 nothing to do with Tim Kettner?

5 **A** Not directly.

6 **Q** Have you ever met the man before?

7 **A** No.

8 **Q** You never met the man before you came into
9 this courtroom?

10 **A** No, sir.

11 **Q** Have you ever talked to that man before?

12 **A** No, sir.

13 MR. MONGILLO: Tim sit down. Thank you.

14 **Q** **(BY MR. MONGILLO)** And you were in this
15 courtroom, and you've heard the testimony that Mr.
16 Kettner left in September of 2020 and went to
17 Wisconsin?

18 **A** I don't think I heard that, I don't think.

19 **Q** You might not have been there those couple of
20 days?

21 **A** No.

22 **Q** Now, I'm going to ask you a short series of
23 questions, and together we're going to make a list
24 for the Court. You testified that you had a
25 partner in your business, right?

ERIC ROLF - CROSS EXAMINATION - MR. MONGILLO

1 **A** Yes, sir.

2 **Q** So we'll go over it real brief. Would you
3 agree with me that if your partner was an absentee
4 owner, that would upset you, right? If your
5 partner didn't really do anything, so he was an
6 absentee owner, would that upset you?

7 **A** Hypothetical?

8 **Q** Yes. If you were in business with your
9 partner, you have a partner, and if he was
10 absentee, if he was out fishing, and you are doing
11 all of the work, would that upset you?

12 **A** Depends how the business was structured. If
13 he was silent, no, it wouldn't upset me at all.

14 **Q** Would it upset you if your partner -- silent,
15 active, however he is -- accused you of theft,
16 would that upset you, sir?

17 **A** Yeah, probably would because I don't steal.
18 I'm an honest person.

19 **Q** Sure. If your partner kicked you out of your
20 business, would that upset you?

21 **A** I don't see how that can be possible.

22 **Q** Would it upset you if someone -- say there
23 was one of you in the business. Two of them ganged
24 up on you and kicked you out, would that upset you?

25 **A** You are asking a lot of hypothetical

ERIC ROLF - CROSS EXAMINATION - MR. MONGILLO

1 questions that I honestly don't know.

2 Q Okay. That's fine. We got your answer. No
3 worries.

4 You would agree with me that if your two
5 partners ganged up on you and kicked you out and
6 then incurred a half million dollars in legal fees,
7 one third of what you had to pay to sue yourself,
8 would that upset you?

9 A Ask the question again, please.

10 Q Sure. Would it upset you that if your two
11 partners kicked you out and sued you, and then you
12 had to pay one third of a half million dollars for
13 legal fees to sue yourself, would that upset you?

14 A Can you explain? Is there a reason why they
15 kicked me out?

16 Q Yeah, because you were stealing.

17 A I wouldn't steal.

18 Q Let's assume you stole, and then they sued
19 you. Would it upset that you would be on hook for
20 a half million, a third of it?

21 A I don't understand the question. It is very
22 confusing, sir. Hypotheticals don't make any sense
23 to me.

24 Q Understand. My fault.

25 If your two partners kicked you out because

ERIC ROLF - CROSS EXAMINATION - MR. MONGILLO

1 of the theft and then sued you for it, allowed an
2 un-permitted shack on someone else's property,
3 would that upset you?

4 **A** So if I stole -- which I wouldn't do -- I
5 can't understand the question because you are
6 putting me in situations of stuff I would not do,
7 sir. Sorry.

8 **Q** You wouldn't allow an un-permitted shack on
9 someone else's property?

10 **A** I didn't say that, sir. You put words in my
11 mouth.

12 **Q** Would you allow an un-permitted shack on
13 someone else's property?

14 **A** If it is someone's else's property, I can't
15 control their property.

16 **Q** And you wouldn't want an un-permitted shack
17 on anyone's property, correct?

18 **A** I only would only worry about my own
19 property. Sorry.

20 **Q** You wouldn't operate out of an un-permitted
21 shack, would you?

22 **A** Say it again.

23 **Q** Did you operate out of an un-permitted shack
24 on TNT's property in 2021/2022 when my client was
25 in Wisconsin? Yes or no, and then explain any way

ERIC ROLF - CROSS EXAMINATION - MR. MONGILLO

1 you want.

2 **A** That is tricky, because it was permitted for
3 Wade's jet ski business, but somehow Crab Catchers
4 had a connection. You could see it through all of
5 the text logs. They had a connection with Horry
6 County Zoning, so they were flagging our permit
7 there.

8 **Q** Mr. Rolf, easy question: In 2021/2022, did
9 you operate out of an un-permitted shack on TNT's
10 property?

11 **A** It was permitted for Wade Long.

12 **Q** Was it permitted for you or your business,
13 sir?

14 **A** That, I don't know, because it kept changing.
15 I kept calling Horry County Zoning, and they had a
16 connection, and they kept giving me a hard time
17 going back and forth, so I don't know the answer.

18 **Q** So the answer is no?

19 **A** Yes, sir.

20 **Q** Now, if you were operating out of an
21 un-permitted shack, then the insurance would not
22 apply to that shack, so if someone slipped and
23 fell, fire, something like that, there would be no
24 insurance coverage. Would that upset you, sir?

25 **A** No, sir. That wasn't the case. Our

ERIC ROLF - CROSS EXAMINATION - MR. MONGILLO

1 insurance covered any liability on the land, in the
2 parking lot, and for the jet skis and the water.

3 Q How about for TNT?

4 A Same thing. Any customers going down the
5 water, coming back, it covered -- our insurance
6 covered everything.

7 Q And how about Mr. Kettner, who you have never
8 met?

9 A Well, he's part of TnW and More, a third?

10 Q Yes, sir.

11 A So it covered him, too.

12 Q So you had insurance for an un-permitted
13 shack. That is what you are telling this jury?

14 A No. You are putting words in my mouth.

15 Q That is my question. You didn't have a
16 permit for your shack. Did you have insurance for
17 it that would cover an -- you tell this jury --

18 A Sir.

19 Q Let me ask my question. Just let me ask this
20 so the jury can hear.

21 Would your insurance company have covered an
22 un-permitted shack, if you know the answer?

23 A My insurance company covered all of
24 everything that I needed for my business, for my
25 customers. I did not own the shack.

ERIC ROLF - CROSS EXAMINATION - MR. MONGILLO

1 **Q** So for the insurance question -- okay. So
2 that's the list. I told you it wouldn't take that
3 long. So while you have been in this courtroom,
4 you've been in it -- you were here I think Monday,
5 right?

6 **A** Yes, sir.

7 **Q** Were you here Tuesday?

8 **A** In the afternoon.

9 **Q** Were you here Wednesday?

10 **A** A little bit in the morning, and I left.

11 **Q** You were here three days. Are you under
12 subpoena?

13 **A** No, sir.

14 **Q** You are just here voluntarily for three days
15 in this courtroom?

16 **A** Sir, I'm coming to this courtroom because my
17 business was vandalized and ruined -- two of my
18 businesses -- by your clients over there.

19 **Q** Stop. What clients? Mr. Kettner?

20 **A** No, sir.

21 **Q** So Mr. Long asked you to come here? You
22 talked to Mr. Long before this trial?

23 **A** Yes, I talked to Mr. Long.

24 **Q** So this list, the three days you were here,
25 do you remember hearing testimony that Mr. Long was

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 an absentee owner in TnW, that Mr. Long accused Mr.
2 Kettner of theft, that Mr. Long kicked out Mr.
3 Kettner from TnW, that Mr. Long ran up \$500,000 in
4 legal fees, one third of which Mr. Kettner owes,
5 and Mr. Long permitted an un-permitted shack on the
6 property? Did you hear testimony about that, if
7 you remember?

8 **A** I heard some of that testimony, yes, not
9 everything.

10 MR. MONGILLO: Thank you. No further
11 questions.

12 **CROSS EXAMINATION**

13 **BY MR. HARRISON:**

14 **Q** Good morning. Michael Harrison. I represent
15 TNT. If you have been sitting in the courtroom,
16 you know those are my clients, right?

17 **A** Yes.

18 **Q** And they represent Mr. Tim Kettner,
19 obviously.

20 So if you would, when I ask questions and you
21 say "they" or "them," as Ms. Mongillo asked, please
22 clarify who you are talking about, and if you
23 forget, I'll try to remind you.

24 **A** Yes, sir.

25 **Q** Did your insurance name us as an additional

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 insured, TNT, my clients?

2 A I do not know. I can research and get an
3 answer.

4 Q If it didn't, do you believe that would pose
5 a risk to my clients if your customers were injured
6 on our property?

7 A They were covered all the way from when they
8 got to the business, to getting on the jet skis, to
9 going out, to back, and to their car; so, no.

10 Q So you are saying that your insurance without
11 question would cover us -- my clients, TNT -- in a
12 lawsuit where your customers were injured in our
13 parking lot. Because it's undisputed that we own
14 the parking lot? Undisputed. No question about
15 the ownership of the dirt.

16 A I would have to research that and get you
17 information.

18 Q So you weren't sure about that when you
19 brought customers onto my client's property?

20 A You're saying it's your client's property,
21 but that is --

22 Q There's no dispute that we own the land.

23 MR. PLAYER: Once again, he is interrupting
24 the witness in his answer.

25 THE COURT: Allow him to finish answering his

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 question.

2 **A** Could you ask the question again?

3 MR. MONGILLO: Madam Court Reporter.

4 (Whereupon, the court reporter read the last
5 question back.)

6 **A** Yeah, I would have to research and get that
7 information, sir.

8 **Q** (BY MR. HARRISON) But you have been in the
9 courtroom this whole time, correct?

10 **A** No, I haven't. I just testified that I was
11 not feeling well. I was only in court part of the
12 time.

13 **Q** So you didn't hear the part where it is
14 undisputed that my clients own the land that you
15 operated on?

16 **A** No, I did not, sir.

17 **Q** Okay. Wasn't it Wade that put you in the
18 position you are complaining about, all of these
19 things, these bad things you just told our jury
20 about? Wasn't that a deal you struck with
21 Mr. Long?

22 **A** No, sir. You put me in the position.

23 **Q** I did?

24 **A** Yes. You manipulated the court system.

25 **Q** I did what?

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 **A** Manipulated the court system.

2 MR. HARRISON: Objection. He's accusing a
3 lawyer of impropriety.

4 THE WITNESS: Sir, I'm terrified of this man.
5 He went in front of another judge without me
6 knowing or my lawyer knowing and had all of my
7 equipment stolen.

8 MR. HARRISON: I didn't do any of that. This
9 is inappropriate.

10 THE WITNESS: His clients did this.

11 THE COURT: I'm going to sustain your
12 objection.

13 **Q** **(BY MR. HARRISON)** No reason to be afraid of
14 me, sir. The dispute is between the clients, not
15 me.

16 Let me ask that a different way. The deal
17 that you made to use my client's property was
18 between you and Wade, wasn't it?

19 **A** No. It was between me and TnW and More.

20 **Q** But not my clients, right? Did you ever talk
21 to any of my clients about this?

22 **A** Yes, I tried to.

23 **Q** Before you came out there?

24 **A** Yes, I tried to.

25 **Q** When did you do that?

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 **A** I would say the very beginning of 2020.

2 **Q** So you contacted who?

3 **A** I didn't contact anybody. I walked up to
4 them and approached them very kindly.

5 **Q** Before you started bringing customers onto
6 the property?

7 **A** I'm not positive, because it is several years
8 ago, but roughly in the beginning of 2020.

9 **Q** And did you tell them that you would be using
10 and accessing the parking lot to get your customers
11 down to the jet skis? Did you tell them that?

12 **A** No, I didn't. I started with Donny and I
13 asked him how -- after customers jet ski, they are
14 very hungry. How can we send them to you guys, you
15 know, work together? He said we don't need any of
16 your business. We don't want any of your business.

17 **Q** So my clients told you, clearly, he did not
18 want you to use his parking lot before you came out
19 there and used his parking lot?

20 **A** No. He said, We don't need any business. He
21 didn't say anything about the parking lot. He
22 said, We don't want any of your business. You are
23 twisting my words around.

24 **Q** Did he say that you could park your cars --
25 customers' cars in their parking lot?

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 **A** Yes. At the beginning, he agreed. We were
2 all going to park in the back with Donny, Rob.
3 They wouldn't follow those directions in the
4 agreement. Every time we made an agreement with
5 your clients, they didn't keep it. They would just
6 park in the front.

7 **Q** Was any of what you are saying written down,
8 you know, what you talked to or agreed to with my
9 client? Is there a lease between you and my
10 clients?

11 **A** No, sir.

12 **Q** So my clients own the land, but there is no
13 lease with them?

14 **A** I just answered that.

15 **Q** So you used our clients' land to run your
16 business without a lease, is that right, with them
17 -- with them. I don't know, you and Wade may have
18 had a lease, but you didn't have one with my
19 clients to use their property? You just have what
20 you say Mr. Kettner said; is that right? Mr.
21 Kettner will testify, and I guarantee he won't say
22 what you are saying.

23 **A** That's fine, sir.

24 **Q** Are you aware that Mr. Long never told us
25 about the lease before you came out and started

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 talking to and using my client's property?

2 **A** I'm not aware of anything -- any
3 communication that Mr. Long knew about that.

4 **Q** If I rented rooms in your house without
5 telling you, would you be upset about that?

6 **A** Rented -- I can't answer hypothetical
7 questions.

8 **Q** You wouldn't be mad if I rented out -- you
9 are terrified of me. So if you are terrified of
10 me, and I rented your house -- or at least a couple
11 of rooms in your house out -- to somebody that you
12 did not know -- and, again, you are terrified of
13 me, I'm the Devil, I get that -- you would be okay
14 with that?

15 **A** Sir, you are making up questions that don't
16 make any sense to me.

17 **Q** Okay. So that doesn't make sense to you?
18 Okay. That's your answer.

19 Are you aware that there is nothing in the
20 court documents relating to renting to you in any
21 of these guy's corporation and corporate documents?

22 **A** I don't know. I would have to research and
23 look that up.

24 **Q** So you don't know? You would have to look at
25 that?

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 **A** Uh-huh.

2 **Q** Have you ever looked at it?

3 **A** I don't know. I would have to talk to Tucker
4 about that.

5 **Q** You don't remember? You have to ask Tucker
6 to tell you what you looked at?

7 **A** No. I would have to look at e-mails and do
8 some investigation.

9 **Q** Why didn't you do that beforehand, before you
10 got out there and got into it with my guys on their
11 property?

12 **A** Because the lease was already signed.

13 **Q** The lease with Mr. Long?

14 **A** Yes.

15 **Q** Not a lease with my clients?

16 **A** No, sir. They were attacking me after the
17 lease was signed.

18 **Q** After you signed the lease with Wade Long to
19 use their property?

20 **A** No. It was TnW and More. You keep saying
21 Wade Long.

22 **Q** But TnW and More -- this is real simple. You
23 never signed a lease with my clients, but you used
24 their land, correct?

25 **A** I don't know. I wasn't here in court that

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 day, but I signed a lease with Wade Long.

2 Q You ran the operation for two years, sir.

3 Did you not know that your customers for two years
4 were parking on my client's land?

5 A Wade showed me plots that said TNT and More
6 and TnW and More, that both people shared the land
7 together. I was told that Rob went down to the
8 courthouse and manipulated and got it back to TNT
9 and More. I don't know if that is true or not, but
10 that's what I was going on at the time, that it was
11 both of their land and changed afterwards.

12 Q Who told you that?

13 A I think it was my lawyer at the time.

14 Q Your lawyer told you that?

15 A Uh-huh.

16 Q So you had a lawyer when you entered into
17 this contract?

18 A No. It was right after.

19 Q So I was asking did you do any of this
20 before. Did you do your research about what was
21 going on before? You said you talked to my client
22 about this. Did he not tell you, We own the
23 parking lot?

24 A Your clients have told me a lot of things
25 that aren't true.

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 **Q** I'm talking about when you first talked to
2 them?

3 **A** When I first talked to them, they said they
4 owned the entire marina.

5 **Q** Our client did?

6 **A** Yes.

7 **Q** Okay. We'll hear from Mr. Kettner later.

8 So we're clear, where were you when these
9 incidents you allege that my clients committed acts
10 of impropriety against you or threatened you, where
11 were you when that happened?

12 **A** Sometimes I was on-site and witnessed it
13 personally. Sometimes it was on videos, if they
14 didn't tamper and knock our cameras out.

15 **Q** Did that happen in our packing lot?

16 **A** No. It happened on the docks most of the
17 time.

18 **Q** Are you aware that we own part of the dock
19 system?

20 **A** Some of the docks are owned by some of the
21 clients, and some of the client here (indicates).

22 **Q** Again, did the disputes you had with my
23 clients occur on their dock -- their docks? Do you
24 know where -- where did it happen?

25 **A** Everywhere. In the parking lot, on the

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 walkway of that long shot, on the side of Crab
2 Catchers, all the way down to the fishing tables to
3 the right, and on the marina.

4 Q So if we are in a joint venture, as these
5 guys allege -- the guy that is renting to you is
6 alleging that we were in a joint venture, and that
7 is why he had the ability to bring you out there
8 and rent our property out. That is what he is
9 alleging.

10 If we are in that joint venture, wouldn't we
11 have the right to talk to our tenant? Weren't you
12 our tenant? If we believe that you are in a joint
13 venture with them, wouldn't we have a right to talk
14 to you about what you are doing on our property?

15 MR. PLAYER: Calls for a legal conclusion;
16 objection.

17 THE COURT: Sustain the objection.

18 Q (BY MR. HARRISON) Now, I'll ask you this. As
19 a tenant, when something goes wrong on a property,
20 right, as a tenant, you go to the landlord, right?
21 If you have a problem on the property you are
22 renting, you talk to your landlord about it,
23 wouldn't you?

24 A Depends on the issue, but more than likely.

25 Q And your assumption when you rent a property

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 from a landlord is that he owns it, correct?

2 **A** Yes.

3 **Q** If he doesn't, can he fix those problems for
4 you?

5 **A** Are you asking me if Wade fixed issues for me
6 or helped?

7 **Q** No. What I'm asking is if you are a tenant
8 and he's the landlord, right, but he doesn't own
9 the property that he leased to you, how could he
10 solve these problems between you and the guys that
11 actually did? Because you are saying I went to
12 Wade to get your problems solved, right, because he
13 was your landlord?

14 **A** Not every time. I would go to Chris, and we
15 figured things out on our own sometimes.

16 **Q** But if he didn't have the ability to rent
17 their land, how could you go to him to solve that
18 problem?

19 **A** What problem?

20 **Q** You being on our property without a lease
21 with us.

22 **A** I look at the lease now and I'm pretty sure
23 it says that renting docks on the marina, and your
24 clients would just constantly vandalize and
25 threaten our customers.

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 **Q** Where did the -- vandalize what? What did
2 they vandalize?

3 **A** Jet skis after they knocked out the camera
4 system. They pulled plugs out of the back of the
5 jet skis.

6 THE COURT: Mr. Rolf, scoot up and put the
7 mic.

8 **Q** **(BY MR. HARRISON)** Have we seen the evidence
9 of that? Did you contact the police?

10 **A** Sir, your clients and you had the police
11 there stealing my property illegally against my --

12 **Q** I just asked you did you call the police when
13 we vandalized your property?

14 **A** So many times to the point where Wade got
15 arrested and took him half way to jail and half way
16 back.

17 **Q** So you called the police when Mr. Long got
18 arrested?

19 **A** No, I didn't. I said I called the police so
20 many times when your clients would threaten my
21 customers, vandalize property. There is so many
22 videos of police being there -- can I finish,
23 please?

24 **Q** Sure.

25 **A** So after Wade was handcuffed, taken half way

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 to the jail and released illegally, we stopped
2 calling the police because they weren't doing
3 anything at that point.

4 Q So the police were against you, too?

5 A No, I didn't say that. We stopped calling
6 the police because they weren't doing anything.
7 They said it was a civil matter.

8 Q Why do you think they wouldn't do anything
9 when you called? They vandalized your property,
10 that's what you are saying, and if they committed a
11 crime and vandalized your property, why wouldn't
12 there even be a report of that?

13 MR. PLAYER: Calls for speculation.

14 THE COURT: Speculation and legal conclusion;
15 sustain your objection.

16 Q (BY MR. HARRISON) In your opinion, if you
17 were still operating out there, and you were able
18 to bring customers out there, and there is some --
19 say that somehow the Court finds there is a joint
20 venture and you come back out there and operate out
21 there, is your expectation you would be able to
22 operate that in perpetuity on our property?

23 A To operate there in the future?

24 Q Yeah.

25 A No, sir. I had enough of your clients

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 vandalizing and threatening and attacking me. I
2 don't want to be in that situation anymore, please.

3 Q Do you have any idea why they would have done
4 that?

5 A I can assume. I can guess.

6 Q Opine for us. I'm asking your opinion why
7 they did that?

8 A They were making a lot of money the year
9 before on the jet ski business, and they didn't
10 like --

11 Q Our clients made a lot of money in the jet
12 ski business?

13 A I say "they," the people that were running
14 it, which was Kim, Donald, and then the -- it was
15 Becca Martin, and I think that's what I mean by
16 "they."

17 Q Because that is none of my clients you named.

18 A Donald was a check signer, right?

19 Q So did Donald or any of my clients get any of
20 the rent you paid to Mr. Long?

21 A Not that I know of, sir.

22 Q Did you ever pay any rent to my clients?

23 A No, sir.

24 Q And other than Donald and those other people,
25 they aren't involved in this lawsuit, are they?

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 **A** They?

2 **Q** Huh?

3 **A** You said the other people?

4 **Q** The other people you named, I believe it was

5 Ms. Martin and Mr. --

6 **A** Kettner?

7 Donald was the check signer and also he was
8 the one for risk management.

9 **Q** So Mr. Kettner signed checks on behalf of TnW
10 that you've seen?

11 **A** No, I didn't say that, sir. I didn't say
12 anything about checks.

13 **Q** You said my client made a bunch of money
14 through the jet ski operation, which we know to be
15 TnW, right? So how did my client make money off of
16 the jet ski operation that again and again and
17 again these guys have testified that he had no
18 ownership interest in?

19 **A** Because when they were done, they were going
20 to the restaurants eating food.

21 **Q** That is not what I asked. I asked about the
22 rents.

23 **A** No. No. You said how did they make money,
24 and I explained how they made money.

25 Before I was there, when everyone was done

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 jet skiing, they went to Crab Catchers eating food.
2 I wanted to do the same thing, but your clients
3 wouldn't allow me to do that.

4 Q Is it fair to say that when people went to
5 the restaurant they saw you renting jet skis over
6 there, and you benefitted by our operation?

7 A No.

8 Q No?

9 A I don't think so.

10 Q You don't think a restaurant for 30 years
11 where people sit there and look at your jet skis
12 benefitted you in any way?

13 A No. Because they put my competition's
14 advertising on the side of the building.

15 Q So if it was an unattractive area for you to
16 come and rent jet skis, why did you do it?

17 A I didn't say it was an unattractive area.

18 Q But you said there was no benefit, that you
19 are independently bringing in these clients, and
20 that none of these restaurants brought any
21 clientele to your business?

22 A I don't know that for sure.

23 Q Is it possible they did?

24 A Very small chance, because they were pushing
25 them to my competitors. They put my competitors --

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 it is called Aloha Water Sports, and they put Aloha
2 Water Sports on the side of their building.

3 Q You said that you were threatened by my
4 clients earlier?

5 A Uh-huh.

6 THE COURT: Yes or no?

7 A Yes, sir.

8 Q Did you feel that they would physically hurt
9 you?

10 A One time, yes.

11 Q Did you call the cops then?

12 A Yes.

13 Q Did they arrest any of my clients for that?

14 A No. They didn't come because they were tired
15 of coming.

16 Q So the cops didn't do their job because they
17 were tired; is that your testimony?

18 A The more we called, the less they came. We
19 called so many times, and so many times police were
20 there, they didn't want to be there.

21 Q So the cops gave up doing their job?

22 A They would delay it, come as late as
23 possible. They would say this is a civil suit, and
24 they would get out of there as quickly as possible.

25 Q Do you think that our police officers ignore

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 crimes?

2 **A** Say it again?

3 **Q** Are you saying that our police officers in
4 this county ignore crimes because they are tired of
5 going somewhere?

6 **A** No. I think they were tired of us calling
7 them because of all of the issues.

8 **Q** So what you are saying is they didn't come to
9 your aid when you were assaulted because they were
10 tired of coming out there?

11 **A** I never said I was assaulted. You are
12 putting word in my mouth.

13 **Q** You said you felt --

14 **A** I said I was threatened.

15 **Q** Right. And you said you called the cops?

16 **A** Uh-huh.

17 **Q** And they didn't come, because you say that
18 they don't care about you being physically
19 threatened because they are too tired of coming
20 back out there?

21 **A** No. I did not say that. You are
22 manipulating and putting words in my mouth. I can
23 explain the situation.

24 **Q** Please do.

25 **A** We had fuel trucks coming one morning and

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 they locked all of the gates, and we couldn't get
2 fuel. The fishermen needed fuel to run their
3 businesses. Finally, Casey was there. He came out
4 and went to the very back gate and unlocked the
5 gate. When he was coming out, he tried to fight
6 me. Luckily, the fuel truck driver stopped it and
7 interfered and stepped between us, walked Casey
8 over to the gate. I remember calling the police,
9 but by the time I left, the police were not there.

10 Q Where did that occur? What gate was that?

11 A In the parking lot.

12 Q Front or back?

13 A This one was in the back, I'm pretty sure.

14 Q So it was in the back of our parking lot
15 where this occurred?

16 A Yeah, because the front gate was locked so we
17 could not get in the front gate, so we were trying
18 to get in the back.

19 Q So you were on our client's property when
20 that occurred?

21 A I don't know, because when I saw the deeds,
22 it said that TnW and More and TNT and More were
23 both joint venture on the property, and it was
24 changed later on somehow.

25 Q Where was that? Where were they combined?

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 Because if you know, we can all go home now.

2 **A** In the giant exhibit you held in front of the
3 jury.

4 **Q** The plat that recombined the properties?

5 **A** No. No. They were -- there was two entities
6 on there, two LLCs on there.

7 **Q** Oh, so because there was two names on a plat,
8 that transferred land?

9 **A** No.

10 MR. PLAYER: Again, calling for a legal
11 conclusion.

12 THE COURT: Sustained.

13 MR. HARRISON: He's using his own legal
14 argument.

15 THE COURT: You are making that question for
16 him. You are asking him if that means it transfers
17 land. That is calling for a legal conclusion.
18 Sustained.

19 MR. HARRISON: I'll withdraw it.

20 Court's indulgence.

21 THE COURT: Yes, sir.

22 (A brief pause in the proceedings.)

23 **Q (BY MR. HARRISON)** When did you become aware
24 there was issues between my clients and Mr. Long?

25 **A** I would estimate it would be in the spring of

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 2020 roughly -- no, 2021, sorry. Spring of 2021.

2 Q So when you became -- when you became aware
3 of the problems, were you aware there was a dispute
4 between our clients and their clients about whether
5 Mr. Long could use our land or not?

6 A At first, I did not know that.

7 Q Did you eventually become aware of that?

8 A Yes.

9 Q And when you became aware of that, what did
10 you do?

11 A We went down to Pawleys Island and hired an
12 attorney to protect ourselves.

13 Q If Mr. Long did not have the right to lease
14 out my client's property, did you have any right to
15 be there?

16 MR. PLAYER: Once again, calling for a legal
17 conclusion.

18 THE COURT: Sustained.

19 Q (BY MR. HARRISON) Is it true that Mr. Long
20 used you to operate the jet ski business during
21 this lawsuit?

22 A Used me?

23 Q Yes. Did you run his operation out there,
24 the jet ski business he used to run, or running
25 your own business out there?

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 **A** We were running our own jet ski business.

2 **Q** You were running your jet ski business out
3 there?

4 **A** Yes.

5 **Q** And your clients were parking on our parking
6 lot, correct?

7 **A** Most of the time they were locked out.

8 **Q** Most of the time?

9 **A** Uh-huh.

10 **Q** Did our clients ever park there -- did any of
11 your clients park in our parking lot?

12 **A** Did your clients?

13 **Q** Your clients?

14 **A** Your questions are so confusing, I'm sorry.

15 **Q** Let me try it in a simpler way for you. Did
16 your clients -- yours, because you said you were
17 running your business out there -- did they park in
18 our parking lot?

19 **A** They parked in the parking lot, yes.

20 **Q** Did you pay for that, pay my clients anything
21 for that?

22 **A** No, sir.

23 **Q** Do you think it is fair to take up parking
24 spaces of my client's parking lot without paying
25 them anything for it?

ERIC ROLF - CROSS EXAMINATION - MR. HARRISON

1 **A** We tried to work with your clients over and
2 over about the parking. The problem is your
3 clients would not keep the verbal agreements.

4 **Q** Verbal agreement with whom?

5 **A** With Wade Long, Chris Kiser, me, Ryan.

6 **Q** So you are alleging you are not a part of the
7 joint venture of the oral agreement here?

8 **A** No. We just made a verbal agreement that all
9 of us would park in the back, handicap or older
10 park in the front. We tried to keep that
11 agreement, but your client's wouldn't. That is the
12 issue.

13 **Q** So my clients wouldn't let you use their
14 parking lot; is that correct?

15 **A** No. We made a verbal --

16 **Q** I'm asking: Did my clients ever say to you
17 that you could use our parking lot? Is that your
18 testimony? Or are you in -- were you personally --
19 not these guys -- in any kind of agreement with
20 them to use their land?

21 **A** Verbal, yes, to park in the back. All of the
22 owners would park in the back, yes. We made a
23 verbal agreement all of the owners would park in
24 the back. Older or handicapped people would park
25 in the front, and all the other customers could

ERIC ROLF - REDIRECT EXAMINATION

1 park in the middle.

2 Q So you had a verbal lease to --

3 A No. An agreement.

4 Q You had a verbal agreement to use our
5 property? Isn't that a lease?

6 A Sir, I think a lease would be on paper.

7 Q So you are saying that -- just to be clear --
8 you had an oral agreement with TNT to use their
9 parking lot? That is your testimony?

10 A Yes. We sat out there for about two hours
11 and all talked. Jose videotaped the entire
12 conversation. That is when we made the agreement.

13 MR. HARRISON: No further questions.

14 THE COURT: Redirect?

15 MR. PLAYER: Yes. Very briefly, Your Honor.

16 **REDIRECT EXAMINATION**

17 **BY MR. PLAYER:**

18 Q This is Plaintiffs' Exhibit No. 34. Look at
19 that.

20 A Yes, sir.

21 Q Big ole sign on the parking lot. What does
22 it say?

23 A It says in giant letters, in red and white,
24 "Parking." Then in black and white: "Crab
25 Catchers and Little River Water Sports only. All

ERIC ROLF - REDIRECT EXAMINATION

1 others will be towed at owner's expense."

2 Q Why in the world would you think you could
3 park there? That sign is on their land, right?

4 A Yes, sir.

5 Q Say it again. Who could use the parking lot?

6 A "Parking for Crab Catchers and Little River
7 Water Sports only, all others will be towed at
8 owner's expense."

9 Q So they put a sign out there that you could
10 use it, and you went through 20 minutes on how you
11 could use it?

12 A Yes, sir. I know.

13 Q And that sign was out there when you were
14 trying to run your business?

15 A The entire time.

16 MR. PLAYER: No further questions.

17 THE COURT: Mr. Rolf, you can step down. You
18 are excused, Mr. Rolf.

19 Mr. Player, call your next witness.

20 MR. PLAYER: Plaintiff calls Chris Kiser.

21 (CHRISTOPHER KISER, having been duly sworn,
22 testified as follows:)

23 THE WITNESS: Clyde Christopher Kiser. You
24 can call me Chris.

25 THE COURT: As you can tell, if you can talk

CLYDE "CHRIS" KISER - DIRECT EXAMINATION

1 directly into the microphone.

2 THE WITNESS: Yes, sir.

3 THE COURT: Mr. Player.

4
5 **DIRECT EXAMINATION**

6 **BY MR. PLAYER:**

7 **Q** Introduce yourself to the jury. Tell us
8 about yourself.

9 **A** I'm Clyde Kiser. I'm from Knoxville,
10 Tennessee. I graduated college in 1984, Tennessee
11 State. I majored in marketing, minored in real
12 estate. I have two of the best role models you can
13 ask for, my parents. My dad is a civil engineer.
14 My mother is from Germany. And I couldn't ask for
15 better role models. My dad worked for the same
16 company for 45 years, and my mother taught me work
17 ethic. I have an older brother in forestry, a
18 younger brother that's an engineer. So after
19 moving here in 1984 -- I'll let you ask the
20 questions.

21 **Q** Keep going.

22 **A** After moving here in 1984, I got involved in
23 a business with a business partner, Betsy Henson.
24 We have been business partners going on 35 years,
25 called Retreat Myrtle Beach. That is what I do for

CLYDE "CHRIS" KISER - DIRECT EXAMINATION

1 a living. I'm in charge of some of the marketing
2 there, but I'm mainly do a lot of the maintenance
3 for our real estate company. It is like a vacation
4 rental company here in North Myrtle Beach, Cherry
5 Grove.

6 Q Married?

7 A No.

8 Q Any kids?

9 A I have three kids, a 14-year-old daughter,
10 10-year-old daughter, and two-and-a-half-year-old
11 son. I named him Jack after my dad.

12 Q How do you know Wade Long?

13 A I met Wade in the mid-2000s. Just like
14 thousands of other people, Wade took me fishing.
15 He took my family fishing on a couple fishing
16 trips, and I was just astounded by how much fish
17 that man caught. So we started to have a pretty
18 good relationship and friendship.

19 Q Did you do anything together after you all
20 met?

21 A Well, about five years later we started a
22 television show. I'm a bow hunter and love to fish
23 as well, and Wade was introduced to a hunting show
24 and asked me to become a part of the hunting show
25 that is now called Long Shot TV.

CLYDE "CHRIS" KISER - DIRECT EXAMINATION

1 **Q** What did you do with Long Shot TV?

2 **A** What we did is we built the television show.
3 We usually get six to seven shows a year, and we
4 have sponsors that actually sponsored our show to
5 support our television show. We had hardware
6 companies like Boulineau's, Atlantic Heating and
7 Air that I have used for over 25 years, Voyager
8 Fishing Fleet, which is a fishing fleet that we
9 represent, and also Crab Catchers as well. They
10 were one of our big sponsors and, you know, we had
11 a great relationship with them. That was 2010, is
12 when we started that, and they were one of our
13 initial sponsors.

14 **Q** Okay. Did you do anything else for -- let me
15 ask you this. How did you become aware of Crab
16 Catchers and Tim Kettner?

17 **A** Basically, through the television show. We
18 -- once someone advertises with us, we try to do
19 business with that company, like the heating and
20 air company. I probably bought over a hundred HVAC
21 systems. All my insurance is with Tillman
22 Insurance. With Crab Catchers, I would go down
23 there and eat. We actually even came up with --
24 this is little card, Crab Catchers, and on the
25 back --

CLYDE "CHRIS" KISER - DIRECT EXAMINATION

1 **Q** Let's not show that -- put it back.

2 **A** Sorry about that.

3 **Q** So did you ever do anything officially for
4 Crab Catchers?

5 **A** I don't know what "officially" means, but I
6 know one thing, in my business and how I started my
7 business, I would actually go around to all of the
8 real estate companies -- all of them -- and I don't
9 know if you have heard of a marketing company or
10 marketing idea, but it's called pizza marketing. I
11 would buy pizzas for every real estate company in
12 town. So every real estate company in town, what
13 do they do for me? I specialize in renting with
14 pets. Specialize in renting to young adults at the
15 time. So they really, really gave me a lot of
16 business.

17 During that time period, from 2010 all the
18 way until 2020, I also represented Crab Catchers,
19 because every single client that comes in North
20 Myrtle Beach, the first thing these renters say,
21 Where's the best place to get fresh seafood? It
22 was no better. It was Crab Catchers.

23 **Q** Why was it --

24 **A** My partner, Wade Long, for 20 years gave all
25 of the fish to Crab Catchers. Best place in town

CLYDE "CHRIS" KISER - DIRECT EXAMINATION

1 to eat. I took my family there many, many times.
2 I knew Donny, Casey. It was just -- you know, it
3 was a great sponsor, and they sponsored us, and we
4 sponsored them.

5 Matter of fact, Long Shot TV would buy bow
6 and arrows for Mr. Tim and Mr. Donny. I don't know
7 what the rest of the people would get, but we would
8 buy them bow and arrows. When Donny would have an
9 event down there at Crab Catchers, he would come
10 back to me and say, Chris, can you put up my
11 fighters? You know what I said? Sure. So when
12 they had events there, we worked very, very closely
13 together. I put up his fighters. I asked them not
14 to tear my house down because they were MMA
15 fighters, but we had a great relationship.

16 **Q** You talked earlier about Crab Catchers was a
17 client. What were they a client for? Just
18 marketing?

19 **A** They were a sponsor of Long Shot TV. Like I
20 said, all the different real estate companies, all
21 they would do is send all of their clients down
22 there. When they come in town, first thing people
23 ask is where is the best place to eat. They were a
24 client of ours because they gave us and sponsored
25 our television show; and in return, I marketed

CLYDE "CHRIS" KISER - DIRECT EXAMINATION

1 their restaurant for ten years as hard as I could.
2 Every real estate company in North Myrtle Beach
3 knew about Crab Catchers.

4 Q What was your focus? What were you
5 marketing?

6 A My focus was getting people to go to the
7 restaurants.

8 Q I understand that, but how -- what did you
9 tell them?

10 A Freshest and the only place in town you could
11 eat seafood, because everyone wants to eat seafood.
12 Who wants to eat seafood from China?

13 Q And where that fresh seafood coming from?

14 A Wade Long's boat. My best friend.

15 Q Anyone else?

16 A Not that I know of.

17 Q Just to be clear, we're not saying that all
18 of that was some kind of joint venture. It was
19 just each other's businesses with an interest in
20 helping each other?

21 A Yeah. We weren't in business with Crab
22 Catchers, but they were a sponsor of ours, and we
23 supported them.

24 Q And if they decided not to sponsor, would
25 that have destroyed Long Shot TV?

CLYDE "CHRIS" KISER - DIRECT EXAMINATION

1 **A** No, not at all. They didn't.

2 **Q** So when did you become aware of TnW?

3 **A** TnW? Well, after sponsoring -- I guess
4 actually in about May of 2018 is when I became
5 familiar with TnW, which is Wade Long and Tim
6 Kettner.

7 **Q** And at some point did you express an
8 interest -- or did they -- about you coming aboard
9 as a member of TnW?

10 **A** Well, I thought -- I think that Tim looked at
11 me that I was just like him, a hard-working guy,
12 just like Wade, hard-working guy, that I would be
13 an asset to the marina, TnW and More. So they
14 asked me if I wanted to be a part of it, and I said
15 sure.

16 **Q** How much did you pay to get into TnW?

17 **A** Around \$88,000 of -- actually, it was in a
18 savings account. When you are self-employed, you
19 really don't have an IRA -- or I didn't. So I took
20 every bit of the money out of my savings and put it
21 towards that business.

22 **Q** Do you remember the time period?

23 **A** That was May 15th. It took me about a
24 month or so to get all of my money into TnW and
25 More.

CLYDE "CHRIS" KISER - DIRECT EXAMINATION

1 Q What year?

2 A 2018. Started May 15th, my first deposit I
3 gave them.

4 Q Now, TnW had not made any money?

5 A TnW, from what is my understanding, was --
6 this is their first year in business. Docks were
7 -- had just been put in there I guess sometime in
8 the spring. The docks were there when I got there.

9 Q But you did say earlier that you jumped on
10 this, right?

11 A Yeah. I jumped on it, yeah.

12 Q Why?

13 A Well, Crab Catchers had a big problem -- big
14 problem, a two-hour wait every single day.
15 Hundreds and hundreds of people cannot be served.
16 They were that crowded. And I thought to myself,
17 wow, if I have the ability and the opportunity to
18 be involved in a marina, be involved in a
19 restaurant that actually -- and they showed me
20 these great pictures. You didn't see them, but
21 that guy, Nick Nye, he is a phenomenal architect.
22 He designed the restaurant that -- they had two
23 different plans. The one that really I liked was
24 the restaurant that wrapped around and went into
25 Crab Catchers. I was like, man, if I can be

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1 involved in that restaurant for \$88,000, and they
2 are telling me how much money they do, sign me up.

3 Q But you understood you were not buying into
4 Crab Catchers?

5 A That is correct, I was not.

6 Q What did Tim Kettner tell you about TnW when
7 he was trying to bring you in as a partner?

8 A He told me that -- well, he actually wrote a
9 list of things down. He told me that -- well, he
10 didn't have to tell me. It was pretty obvious.
11 There was a marina there. Starting a jet ski
12 company there. All of the things that they were
13 getting ready to bring onboard, like the ship store
14 or the restaurant that they are going to be putting
15 there. We had this giant fuel tank in, and we had
16 some idea of putting a brewery there. We were
17 going to wrap that tank, and they already had some
18 logos printed out.

19 At this point in time, in 2018, Tim's
20 daughter came down, and Tim said my daughter -- you
21 think I'm smart? Oh, my God, my daughter is twice
22 as smart as me, and we're going to get her to run
23 it. I thought, Wow. If she's half as good as Tim
24 running a restaurant, sign me up.

25 Q Okay.

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1 MR. PLAYER: I'm trying to find this exhibit
2 so everyone can look at it with me. May I
3 approach?

4 THE COURT: Yes.

5 Q (BY MR. PLAYER) I showed Eric Rolf an
6 exhibit, the sign that says the parking lot -- what
7 does that say?

8 A "Parking for Crab Catchers/Little River Water
9 Sports only."

10 Q What did you understand about -- this was
11 here before you are buying in, right?

12 A Yes.

13 Q So what did you assume about the ability to
14 use the parking lot?

15 A Well, actually, just like we've all heard and
16 we've all seen, these combination plats, my
17 understanding was that we were going to build the
18 parking lot. We were going to use the marina, use
19 the fuel, and that we had the rights to, you know,
20 all of this. And I even spoke to Wade. Wade
21 brought me in a little more, and Tim did as well.
22 In order to have a marina, you have to have a
23 certain amount of upland property. You have to
24 combine these lots, and pretty much they did all of
25 that, got all of the permits.

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1 I don't know if you understand how hard it is
2 to get a marina permitted. It took Wade, I know, a
3 couple of years doing that. So they had all of the
4 permits, regulations, so I felt very comfortable
5 about buying in.

6 Q Is that the sign we were just talking about?

7 A Yes, sir.

8 Q So once you buy in, what happens?

9 A Once I buy in -- this is May of 2018 -- Tim
10 hires two people, Brett and V. You met Brett on
11 stage. The way I understand -- or what I know,
12 Brett used to run a jet ski company before he
13 started working for Crab Catchers. Brett and his
14 wife worked for Crab Catchers, I think for
15 approximately seven years. So they were very, very
16 into it with Crab Catchers and in tune with Donny
17 and Kiser and Tim as well, too.

18 So Tim thought here is two employees that are
19 great employees for me -- Crab Catchers -- bring
20 them over here and give them an opportunity to run
21 the jet ski company. I thought the guy knows how
22 to run jet skis. He's been working for Crab
23 Catchers for seven years. I'm thinking that is a
24 good choice. I would do that, too. So Brett and V
25 started running the company. In startup companies

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1 in 2018 -- in any startup -- it takes a little
2 while to make a profit. I think Mr. Richter -- is
3 it Richter?

4 MR. RICHTER: Yeah.

5 **A** Thank you. He said that we lost money in
6 2018. Yeah, every company loses money first time
7 you are in business. If you've ever been in
8 business, that is what you do.

9 And so the business started going pretty
10 good. Brett and V, you know, they did a great job
11 with the jet ski company. Wade did a phenomenal
12 job, filled up all of the docks. We were selling
13 fuel, because every fishermen in Little River looks
14 at Wade, third generation commercial fisherman, so
15 what he says is his word, is his word. So he had
16 the fuel -- I mean, he had the fuel pumped out
17 pretty good.

18 So our first year in business in 2018, we
19 were pretty excited about where the business was
20 going, what it was doing.

21 Fast forward to 2019?

22 **Q (BY MR. PLAYER)** Sure. That was my next
23 question.

24 **A** Thank you, sir. 2019 comes. Brett and V are
25 still working up there. It's come to my attention

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1 that Tim and -- I don't want to say myself, but we
2 actually came up with -- or Brett and V were going
3 to buy in, because they were doing such a good job.
4 I don't know what percentage, whether it was
5 10 percent, 15 percent. I don't know. I think it
6 was 25 percent. I don't even know.

7 So Tim actually -- he was the -- he was the
8 managing member of TnW and More, which I call it
9 "the marina." So Tim really made all of the shots.
10 He controlled everything. I trusted him, because
11 who wouldn't trust Tim Kettner if he had a 20-year
12 relationship with Wade? A man's word is his word.
13 You are going to trust that. So I trusted Tim.
14 Tim would say all the time, Chris, if you have any
15 problems, check the old file cabinet.

16 By the way, our offices for our business was
17 in Crab Catchers. We had meetings there. We had
18 them in 2018, 2019.

19 So fast forward 2019, everything was going
20 pretty good. We had a fairly good, successful
21 second season.

22 So I guess you want me to go into 2020?

23 Q Well, I'm pretty sure all of us have enough
24 mental scars about the end of 2019 and what
25 happened. What was that?

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1 **A** Well, in 2019, when they let Brett and V go?

2 **Q** No. In the world, in the November of 2019,
3 in China.

4 **A** Oh, you mean the China virus?

5 **Q** Right.

6 **A** That was this -- actually, that came in like
7 February or March of 2020.

8 **Q** Sure. The pandemic seems like something to
9 talk about. It started in December '19, correct?

10 **A** Yeah. But the world wasn't worried about it
11 in '19. It didn't start getting bad until January
12 and February.

13 By the way, I want to also state that Brett
14 and V did a great job down there. They worked
15 very, very hard. In times when Brett and V weren't
16 there, you heard the testimony that Crab
17 Catchers -- the employees of Crab Catchers, they
18 would come out and filled up our boats with fuel,
19 sold the fuel. A lot of patrons would go into Crab
20 Catchers.

21 When you are docking a boat, especially with
22 high tides and things, it is always difficult when
23 you are pulling in. So the employees with Crab
24 Catchers -- I will make this statement on record --
25 they did help out a tremendous amount with our

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1 business as well, too. Every year that I've known
2 Tim, Tim loves to hunt, I love to hunt, and
3 basically in September, Tim would actually be
4 absent from the business. He would go home. He
5 would -- he loves his parents. He is a good man,
6 so he would go home and take care of his parents.

7 So he loves to hunt, so he would stay away
8 between three to four months. During that time
9 period, Donny -- Donny back there -- he would write
10 all of the checks, make sure all of the mortgage
11 payments were paid in a timely manner.

12 So our office was in Crab Catchers, and Donny
13 was up in number Crab Catchers, too. So the
14 business was actually going pretty good, even
15 though Tim took leave of absence for three, four
16 months.

17 In the fall time, is the jet ski business
18 jumping? No. That is one of the reasons that we
19 like to hunt and fish, because in the wintertime,
20 we don't really have that much of a business.

21 So I'll let you shut up and ask a question.

22 Q You mentioned earlier Brett and V got fired.
23 Who fired them?

24 A Tim Kettner.

25 Q Did he give you a reason?

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1 **A** He did not.

2 **Q** Who did he install in place of Brett and V
3 with regards to the jet ski business?

4 **A** Tim and I actually interviewed a couple
5 different people. You know, in our next decision
6 in who is going to run the jet ski business, it was
7 a little bit difficult. But Tim actually had found
8 a couple young people. One was Rebecca Martin, and
9 her boyfriend John -- to be honest, I'm not that
10 great with names -- John someone. There was a
11 group of young adults that Tim hired. They ran
12 another jet ski company, so he said they are darn
13 qualified. So I said, Tim, if they are good enough
14 for you, they are good enough for me.

15 **Q** So how did things go in 2020?

16 **A** Well, a little bit scary. 2020, February,
17 March comes around, my business -- I'm in the
18 vacation rental business, as you know. Absolutely
19 no short-term rentals. I was scared. I don't know
20 about you guys. But in 2020, they shut the world
21 down. We were all little bit scared. Thank God
22 for Tim and Donny, they got all of the loans
23 dismissed -- I don't know if that is the proper
24 term. But they didn't make us pay our loans for
25 about three months, 90 days. So we were happy that

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1 that happened.

2 Wade, unfortunately, he had 2 engines go out
3 on his boat, so he spent \$350 (sic) putting new
4 engines in his boat.

5 Q \$350?

6 A \$350,000, I apologize. See, I say the wrong
7 thing.

8 Q Keep going.

9 A So --

10 Q What else happened to Wade in 2020?

11 A His father passed away as well.

12 Q What about the restaurants on the coast, were
13 they operating during that time period when the
14 pandemic hit?

15 A They are all closed.

16 Q Did that cause a problem for the fish selling
17 business?

18 A There was no fish selling business. Crab
19 Catchers wasn't even open. No one was opened.

20 Q I'll ask you to look at this, marked
21 Plaintiffs' 38. Do you know what that is?

22 A This was, I guess, a text out that said from
23 Tim Kettner, Casey.

24 Q Well, who all is on the text?

25 A Casey, Tim, Chris Kiser, Donny.

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1 Q And Wade at the top, correct?

2 A I got glasses, and I still can't see.

3 Q Messages exported from --

4 A Yes, sir. Oh, yeah. Yeah. That was a group
5 chat. I see it on top.

6 Q And don't think -- I think he missed an "o",
7 but: Hello Geoff, Tim from Crab Catchers, TnW and
8 More. I tried to send an e-mail to you. Are you
9 still at UCB?

10 Do you know what he is referring to when he
11 asks about UCB and the loan?

12 A I guess does he still work at UCB.

13 Q Okay. And then here -- "I just spoke with
14 him. We need to get March payment in. I can take
15 to bank. They are going to defer the loan for 90
16 days."

17 Is that what you are talking about in terms
18 of getting the loan dismissed or deferred? It
19 means you don't pay it for 90 days?

20 A Yes.

21 Q Now, this is not between -- I mean,
22 obviously, everyone from TnW is there, but the
23 partners from Crab Catchers and TNT are in on this,
24 correct?

25 A That is correct. This loan was actually for

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1 Crab Catchers and the marina.

2 Q And you weren't there when they got the loan?

3 A No, sir. They had gotten the loan and
4 everything before I got there.

5 Q Okay. So that is early 2020. Did you notice
6 anything about Tim and Wade's relationship in early
7 2020?

8 A Not really. You know, Tim knew that Wade's
9 father passed away. You know, Wade actually had to
10 start painting houses back again, because after
11 getting his boat repaired and back in the water, he
12 couldn't go fishing, because what are you going to
13 do with fish that no one is buying.

14 So he knew that times were tough for
15 everybody, tough for me, tough for Crab Catchers,
16 pretty much for the whole world. So Wade had to
17 start painting houses. I think he painted about
18 four, five houses during this time period. So our
19 business at the marina, there was no business there
20 and so -- go ahead.

21 Q You have been here the whole week and heard
22 all of these defendants talk about when you were
23 mad if your partner wasn't there. Did Tim ever
24 express anything like that about Wade?

25 A Not until the business started to do a lot

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1 better. June comes around, June 20th, 2020, the
2 business starts coming around. We have this group
3 of young adults in there. Tim is excited pretty
4 much every day. He said, Chris, the jet ski rental
5 business is really, really doing good. Because we
6 kind of -- we based our payments on the loan on how
7 -- when Wade filled up all of the docks and fuel
8 sales. At that point in time, it made our
9 payments, and any profits from the company would
10 come from the jet ski sales.

11 And so, at that point in time, the jet ski
12 sales really started ramping up. We had a meeting
13 every once in awhile, once a month or so, you know,
14 up in the Crab Catchers' office, which was our
15 office. Wade wasn't there a couple different
16 times, and I could see there was a little
17 resentment. Tim would always ask, Where's Wade? I
18 said, He's probably working trying to take care of
19 his family.

20 Q At some point, did things take a turn for the
21 worse in terms of the relationship of the partners
22 at TnW?

23 A Repeat the question.

24 Q When did things get bad between you, Tim, and
25 Wade?

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1 **A** Well, Wade actually set up a thing on an
2 iPad. It's called Simple Swipe. Wade actually set
3 that up. We were in the parking lot, probably had
4 a meeting. There was about 15 jet skiers that came
5 through to jet ski. Wade is looking at his phone.
6 Fifteen people, let's say everyone is paying a
7 hundred dollars apiece, there should be \$1,500
8 going into an account. \$800 hit the account on his
9 phone. He goes down there. I never really met
10 Rebecca. I don't know if this is his first time,
11 but he said, You guys are doing good? She said,
12 Yes, we are. He said, You just put 15 people on
13 jet skis -- or whatever the number was -- and he
14 asked -- Wade asked about the money, and Rebecca
15 said, Well, there is two sets of books, the dome
16 book. There is a cash book on one side, and
17 another account where we do all of the regular
18 credit card fees.

19 So at that point in time, we just looked at
20 each other and didn't think too much more, but we
21 thought, well, I guess there is two sets of books.

22 Go ahead.

23 **Q** So at that point is there some antagonism
24 between TnW?

25 **A** A little bit. You know, Wade had been

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1 trusting Tim for 20 years. Would we think that Tim
2 would take any money? The answers is no. There
3 was two sets of books.

4 Q What happened next?

5 A Once again, Wade -- I guess like they said,
6 we had a couple more meetings. Tim would get a
7 little more upset because Wade wasn't at the
8 meeting. So Tim would ask, Where's Wade? And I
9 said, He's probably working or doing something, I
10 don't know.

11 And so at that point in time, Tim actually
12 looked at me and said, Why don't we try to buy Wade
13 out. I was like, Tim, Wade and I are partners. I
14 wouldn't do that to Wade. You and I are partners,
15 and I wouldn't do that to you, because my word is
16 my word.

17 So I could see there was a little resentment
18 trying to get Wade out of the business. You know,
19 there was a little animosity. I could see a little
20 animosity with Donny and those guys, Casey back
21 there. They are running the business, too. They
22 are running Crab Catchers and also helping us out
23 too. They were probably wondering why are we
24 having to work so hard over here? Why do we have
25 to pump gas? So I can see there was a little

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1 animosity between the two of us, basically.

2 Q Okay. Did this eventually come to a head?

3 A Well, it did. One of my last meetings, Mr.
4 Kettner -- and last time I ever talked with Mr.
5 Kettner other than how is his mom and dad, and I've
6 done that continuously -- but I came into Tim
7 because I thought -- and Wade also thought this as
8 well, too -- Wade has a 20-year business with Crab
9 Catchers. Do you know how easy it is to come dock
10 your boat, Crab Catchers take all of your fish, you
11 don't have to sell them to nobody? You think that
12 man right there would want to ruin a 20-year
13 relationship bringing his fish in selling to Crab
14 Catchers and getting paid? No.

15 Q So what happened? What did you all do?

16 A Well, when I thought -- because it means
17 more to Wade, third generation, Little River, you
18 know. Although I've lived here for 40 years,
19 Little River is not part of me like it is those
20 guys. 28 years. Wade, his whole entire life,
21 started his business with his Dexter knife. I know
22 you remember the Dexter knife cleaning fish.

23 So I thought maybe we should sell our
24 interest. I said, Wade, in order to get out of
25 this and for you to salvage your relationship, we

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1 can sell our interest back to Tim or to someone
2 else, and we'll just go ahead and get out and be
3 done.

4 So I made that suggestion to Tim, and Tim
5 said, Chris, you made a bad investment. I'm sorry,
6 I ain't buying nothing. You tell Wade he can park
7 his boat here for the next ten years rent free,
8 because Wade kept his boat there at the marina.

9 And so after that, Tim said, well, I guess
10 we're going to have to lawyer up. His exact words
11 on that July day in that meeting.

12 Q Did he say something about a smoking gun that
13 day -- an ace up his sleeve?

14 A He did mention an ace in the hole or ace in
15 the sleeve, yeah.

16 Q What was he talking about?

17 A Well, after the fact he's actually talking
18 about Doc's property, the property that actually
19 joins our marina. As I mentioned before, when you
20 own a marina, and you are permitted to have a
21 marina, you have to have 155 feet of upland
22 property. That was Tim's ace in the hole. He
23 said, It's in my name. You heard Doc's testimony
24 the --

25 Q They'll remember.

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1 **A** Can I tell them about it?

2 **Q** If they don't object.

3 MR. RICHTER: Objection, Your Honor.

4 **A** It was already on the transcripts. Doc

5 Hardee said it --

6 **Q** **(BY MR. PLAYER)** Stop. Stop. Don't go there.

7 It is in the record.

8 **A** I was going to recite that thing. Poor Doc.

9 **Q** So you tried to make Tim buy out, and he
10 refused?

11 **A** I didn't try to make him buy us out. I just
12 said, you know, maybe we can get offers on the
13 table, and Tim said, I'm not interested.

14 **Q** And this is Plaintiffs' Exhibit 39 up on the
15 screen.

16 **A** So that actually happened about mid-July,
17 early August.

18 **Q** 8/31?

19 **A** Yeah. Okay. So we get a mass text stating
20 this: "Met with Geoff Hopkins in regards to all
21 options in regards to the joint loan on Friday.
22 Justine, Donny, and myself, based on everything he
23 told us in regards to effecting its
24 responsibilities, payback, any monies coming from
25 the sale or portion of properties, all business

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1 interests will have to go directly towards the
2 payment of the loan or it will be in default.
3 Justine, Donny, and myself, along with
4 recommendations of Geoff, determined the best part
5 to get Wade off the loan" --

6 Q Whoa. What now? Read that again.

7 A "The best way to get Wade off of the loan."

8 Q Keep going. Who is making the decision for
9 the best way to get Wade Long out of TnW?

10 MR. RICHTER: Don't misstate it. It was to
11 get Wade off the loan.

12 MR. PLAYER: Oh, it's coming.

13 THE COURT: Answer the question.

14 A What is the --

15 Q (BY MR. PLAYER) Start at Justine, Don, and
16 myself.

17 A "Justine, Don, and myself, based upon
18 everything he told us in regards to effecting its
19 responsibilities of paying back any monies coming
20 towards the sale or portions, properties, all
21 business interests will have to go directly towards
22 the payment of the loan or it will be in default.
23 Justine, Don, and myself, along with the
24 recommendations of Geoff, determined the best way
25 to get Wade off the loan, as he has stated and

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1 shown, is for us to assume his part. Wade would
2 give up his partnership, any affiliation with TnW
3 and the loan. Justine, Don, and Tim will work with
4 Geoff to make this happen."

5 Q Okay. And keep reading.

6 A "We will also include the process and monies
7 to do this. It was determined by the four of us
8 this would be the best way to go."

9 Q So those four decided that Wade had to get
10 out, and they would assume his loan?

11 A Well, I think that's when Mr. Bellamy and --
12 I don't think Tim was there. That is when they
13 spoke with -- brought the banker down in there,
14 Geoff Hopkins. That is when they ambushed him.

15 MR. BELLAMY: Object. That is not an
16 accurate representation of what happened. We met
17 with him to report that the fuel tank was not
18 properly insured.

19 MR. PLAYER: He can't testify, Your Honor.

20 MR. BELLAMY: He is misstating. He is saying
21 I was there.

22 THE COURT: Mr. Hopkins testified. We'll
23 allow Mr. Hopkins to --

24 Were you at that meeting?

25 THE WITNESS: No, sir.

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1 THE COURT: You can't testify to what
2 happened at the meeting.

3 THE WITNESS: I'm just reading the minutes.

4 Q (BY MR. PLAYER) Don't interpret. So they met
5 with Geoff, and they said a lawyer was there, but
6 you don't who was there?

7 A That is correct. Basically said -- do you
8 want to go --

9 Q No.

10 A It says Casey and Jose were present. I think
11 it sums it up. We discussed this for an hour and a
12 half. Tim Kettner -- it says: "Geoff also will
13 have to reach out to him to verify and discuss.
14 Just to clarify, I would like to reiterate that
15 we're all in agreement. This would definitely be
16 the best way to go." Get Wade out.

17 Q And Justine, Donny, and Tim Kettner are
18 making that decision?

19 A That's what it appears.

20 Q What did Wade do when the text went out?

21 A Just like the e-mail says, Geoff, the banker,
22 reaches out to Wade and asked him about this, and
23 Wade said definitely, no. Why would I want to give
24 up my portion of the loan? Why would I --

25 MR. RICHTER: Objection; hearsay. Wade Long

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1 testified what he said about this. We don't need
2 him representing on Wade Long's testimony.

3 MR. PLAYER: Don't say what Wade said.

4 **A** What happened?

5 **Q (BY MR. PLAYER)** What did you all decide to do
6 after this text came out?

7 **A** Well, we were a little bit alarmed, to say
8 the least. Tim was a managing member of our LLC,
9 and so needless to say -- this was in August. So,
10 I mean, we're a little bit worried, basically.

11 **Q** But what will you do in terms of the company,
12 TnW and More?

13 **A** What did we do? I have a good friend of
14 mine, Ken Moss, an attorney, we ran it by him. He
15 looked at our operating agreement, and he kind of
16 advised us.

17 MR. RICHTER: Objection as to what Mr. Moss
18 would say.

19 MR. PLAYER: You can't say what he said.

20 **Q (BY MR. PLAYER)** What did you do after you met
21 with Mr. Moss?

22 **A** We basically decided that it seemed to us
23 that Tim was basically in charge of the money. It
24 seemed like he was going to, you know, basically
25 try to take the company down and take all of the

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1 monies out of there. We would -- or Wade would
2 have to come up with his share of the loan. I
3 wasn't a signer on the loan, but if I go in
4 business with you, and there is a loan on the
5 property, even though I didn't sign that loan and
6 we're in business together, I'm going to stand
7 behind you.

8 So at this point in time, we were scared.
9 And so at that point in time, we decided what's our
10 best efforts or best options? We consulted a
11 couple different attorneys, and we thought the best
12 option was to release Tim of his responsibilities
13 of being the member manager of the company.

14 **Q** What did you do with the money that was in
15 the account for TnW?

16 **A** We didn't do anything. We actually took the
17 money out of the account and put it into an
18 attorney's escrow account.

19 MR. HARRISON: Could we clarify? When he
20 says "we," is that TnW, or Tim and Wade?

21 **A** What I'm saying is "we," I mean Wade Long and
22 Chris Kiser -- we actually -- anyway, we took the
23 money out. Whether it is him or I, we took the
24 money out and put it in an attorney's escrow
25 account. Last thing we want to do is, you know,

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1 mess with the money, you know.

2 Q (BY MR. PLAYER) But at this point in time,
3 how much interest do you and Wade have of TnW and
4 More?

5 A About 66 percent. We all have 33.3 percent
6 or something like that.

7 Q So you and Wade were the majority
8 shareholders?

9 A That's correct.

10 Q So once you take the money out, how does the
11 relationship get with Crab Catchers?

12 A Well, a little bit worse, to be honest with
13 you. Now, this was coming on in the fall. So the
14 jet ski business was kind of going down, you know.
15 You don't jet ski in the fall. Of course, the fuel
16 sales were still really good. The slip rentals
17 were still making our payments. So we felt that in
18 the best interest of TnW and More, that maybe we
19 should run it instead of Tim.

20 So, you know, we're still thinking about Tim,
21 because he is still part owner, still part of our
22 marina, but we thought for the best interest of all
23 of us, this is what we need to do, and that is what
24 we did.

25 Q And what happened in early 2021?

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1 **A** Well, I think you might have missed
2 something.

3 **Q** Okay. Tell me what I'm missing.

4 **A** In October -- and I think it was on record
5 yesterday.

6 **Q** I apologize.

7 **A** I'm sorry. I don't mean to do your job.

8 **Q** Did you get a letter?

9 **A** We got a letter from Donny stating, boys, you
10 need to move your gas tank off of my property.

11 **Q** There's been a lot of discussions about -- or
12 they've brought the phrase up "joint venture" a
13 bunch. I do not want you to give me a legal
14 definition. I do not want you to read what you
15 looked up on the Internet. What is your individual
16 understanding of what a joint venture is?

17 **A** In my opinion, what a joint venture basically
18 is, it's an agreement between two parties to
19 achieve a certain outcome. That certain outcome is
20 to share in profits, share in responsibilities and
21 control, is basically what I think a joint venture
22 is.

23 **Q** And there's been a lot of questions about
24 sharing profits, and I think Wade said other than
25 the one fishing opportunity, he couldn't remember

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1 where profits were shared. Do you have a different
2 take on that?

3 **A** Do I have a different take? What are you
4 talking about? When we built that marina, ten or
5 12 boats come up. They fill up at our fuel
6 station; we make profits. They eat at the
7 restaurant; they make profits. We had a joint
8 partnership or joint venture, I promise you. We
9 just --

10 **Q** Just don't make it like it is a legal
11 conclusion.

12 **A** I'm not. Okay. We just filed taxes
13 differently. Crab Catchers filed their taxes. TnW
14 filed their taxes. Did Crab Catchers profit from
15 us building the parking lot? Did Crab Catchers
16 benefit from us building that marina? Sure, they
17 did. Did we benefit from people coming off of the
18 waterway using Crab Catchers as a restaurant and us
19 filling up their boats and fuel? Yes. We both
20 profited.

21 **Q** And in terms of control, again, the signs
22 that we saw, who can control the parking lot
23 according to that sign that they put on their
24 property?

25 **A** We both shared responsibility for that

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1 parking lot, that we actually built, that Wade for
2 four or five weeks pushed in and labored and did
3 the whole entire -- if I'm not mistaken, he's
4 probably the one that got the permits to do the
5 parking lot as well. I'm not sure. The records
6 will show, but Wade is the one that built and
7 designed and did everything out there and got the
8 job done. It is very, very difficult to go to the
9 county to get a permit --

10 MR. RICHTER: Objection. He's not even there
11 when it happens. He's not a member of TnW.

12 THE WITNESS: Well, then, who did it?

13 Q (BY MR. PLAYER) But you don't have any
14 personal knowledge, so stay away from --

15 A Tim told me Wade did that, and Wade told me
16 Tim did this, so.

17 MR. BELLAMY: Hearsay.

18 THE COURT: Regardless, move on from that.
19 I'm going to sustain the original objection.

20 MR. PLAYER: Yes, Your Honor.

21 Q (BY MR. PLAYER) So could you operate the
22 marina without the parking lot?

23 A No.

24 Q Could Crab Catchers operate without the
25 parking lot?

CLYDE "CHRIS" KISER - DIRECT EXAMINATION

1 **A** No.

2 **Q** And --

3 **A** Parking lot benefited both of us. It was
4 mandatory for us to have that parking lot,
5 mandatory for Crab Catchers to have that parking
6 lot.

7 **Q** So when you get the letter from Donny saying
8 get off my land, what did that say to you?

9 **A** Not only did we get a letter, but we also had
10 to go to circuit court.

11 **Q** No, not circuit court.

12 **A** Whatever. Some kind of court down in
13 Surfside. They brought a suit against us and
14 telling us we are squatters, for us to get off
15 their property. So we had to defend ourselves at
16 that point in time.

17 **Q** And after you defended yourself for their
18 lawsuit, did you file your own?

19 **A** I believe we did, yes.

20 **Q** And when you filed your lawsuit, did you ask
21 the court to stop them from excluding you from the
22 parking lot?

23 **A** We did, multiple times.

24 **Q** What did the Court say?

25 **A** The Court said, yes, you can use their

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1 parking lot -- yes, you can use your all's parking
2 lot.

3 Q And I think the original complaint was filed
4 in 2021. And the last one was filed in 2022. In
5 that complaint, we sued for interference with your
6 business. What do you know about TNT and Tim
7 Kettner interfering with your business during the
8 time period between April of 2001 (sic) and I
9 believe it is March of 2022?

10 MR. RICHTER: Object; compound question. If
11 he wants --

12 THE COURT: Rephrase it. You said 2001 as
13 well.

14 MR. PLAYER: I apologize.

15 MR. RICHTER: Bifurcate what he knows about
16 Tim Kettner, and what does he know about TNT
17 interfering.

18 MR. PLAYER: Okay. I'll ask two questions.

19 Q (BY MR. PLAYER) What do you know about Crab
20 Catchers interfering with you in April of 2021 and
21 when you filed the second amended complaint in
22 2022? When they took the ski hut, that is the
23 marker for the second complaint. What did they do
24 to your business at Little River Water Sports?

25 A Their whole objective was to shut us down.

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1 Take over the parking lot. They knew if they shut
2 us down, they knew -- not only were these people
3 affecting Wade and myself, what about those ten, 12
4 fishermen that were trying to take charters out,
5 commercial fisherman, the people that have been
6 down there way before Tim got there? They were
7 affecting those people, too. Because people
8 couldn't even -- there was such mass confusion
9 where to park. They were doing everything possible
10 to shut us down.

11 Hauling the jet ski hut, that was only -- one
12 of the smallest things. I mean, shutting us out of
13 the parking lots? I mean, they did everything they
14 possibly could to shut us down. Why? Because they
15 didn't want us to make our share of the payment
16 that -- thanks to Donny -- he came up with was our
17 share on that loan.

18 Q The real estate involved in this case, what
19 exactly does TnW own?

20 A TnW owns actually one -- I know what they
21 own. They own from the critical line.

22 Q You say "they." Isn't it you?

23 A TnW -- Tim, Wade and Chris -- own from the
24 critical line, and I'm sure there is thousands of
25 exhibits over there -- we own from the critical

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1 line all the way down into where the deep water is.

2 I think it is .75 acres.

3 Q So that is the land and the marina docks?

4 A That is the land and the marina docks; that
5 is correct.

6 Q And how much, in your opinion, as the owner,
7 does that real estate -- how much is that real
8 estate worth if you are able to continue operating
9 as you have in the past?

10 A Well, when you put a value on a piece of
11 property, you know, as a real estate person -- and
12 I'm a broker in North Carolina and South
13 Carolina -- you know, a value is based upon a
14 couple different things. I have a beach --

15 Q We don't want to -- I want to know what you
16 think, because you are not an expert --

17 A I was going to give --

18 Q I know, but --

19 A \$3 million.

20 Q You think it is worth three million dollars?

21 A The land and the business.

22 Q Not the land and the business. The land and
23 the marina, if it is able to operate?

24 A \$3 million.

25 Q If you can't operate, how much is it worth?

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER

1 **A** Nothing.

2 MR. PLAYER: Beg the Court's indulgence -- no
3 further questions, Chris. Get ready for questions
4 from defense counsel.

5 THE COURT: Let's take a five-minute break.
6 We've been at it since 9:30. If you will, retire
7 to your jury room for a few minutes, and we'll
8 start back here shortly.

9 (The jury exits at 11:23 a.m., and the
10 following is heard out of the presence of the jury.)

11 MR. PLAYER: Your Honor, I'm not sure I can
12 rest this day.

13 MR. HARRISON: Even if he does 45 minutes,
14 that only gives me 15 minutes to clear out.

15 THE COURT: Sounds good. I'm just kidding.
16 This is off the record.

17 (A discussion was had off the record.)

18 THE COURT: Okay. Let's bring them in.

19 (The jury enters at 11:35 a.m., and the
20 following is heard in the presence of the jury.)

21 THE COURT: All right. Mr. Richter.

22 MR. RICHTER: May it please the Court?

23 **CROSS EXAMINATION**

24 **BY MR. RICHTER:**

25 **Q** Mr. Kiser, we met a couple of times. If I

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER
1 slip up and call you Chris, I mean you no
2 disrespect. You can call me Ronnie, too.

3 **A** No problem. Call me Chris.

4 **Q** Chris, you have a lot of experience in real
5 estate?

6 **A** My main forte is vacation rentals primarily
7 in North Carolina and South Carolina. But as far
8 as "a lot," not a lot, no, sir.

9 **Q** But your hold brokers licenses. I heard you
10 say that, right?

11 **A** Yes.

12 **Q** And that requires you go to classes and
13 receive certifications, and those classes would
14 talk about things like real property and real
15 property rights, things like that?

16 **A** That is correct.

17 **Q** And, in particular, if you have a forte, it
18 would be on leases and relationships of that
19 nature, right?

20 **A** Rental agreements.

21 **Q** Rental agreements. And I'm assuming that in
22 an operation of your business, your rental
23 agreements are in writing?

24 **A** That is correct.

25 **Q** Yeah. Yeah. You wouldn't want to do a

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER
1 vacation rental on an oral promise, would you?

2 **A** No.

3 **Q** Not even a relationship of that duration, you
4 wouldn't want that to be oral if someone is just
5 going to stay in a place for a weekend or a week,
6 would you?

7 **A** No, sir.

8 **Q** Then you had an opportunity to look at this
9 business. You were invited to this investment
10 opportunity by your buddy, Wade Long?

11 **A** And Tim Kettner. Remember, from 2010 to
12 2017, I served Crab Catchers as a marketing guru.

13 **Q** Right. And I'm sure they are appreciative of
14 your efforts.

15 **A** They were.

16 **Q** But I understood that -- I think you said
17 Wade was your best friend?

18 **A** Yes, sir.

19 **Q** And one or the other of them had to have the
20 idea to invite you in. Was it Wade or Tim?

21 **A** I couldn't answer that, sir. I think they
22 both chose me.

23 **Q** Okay. But when you were invited to look at
24 this opportunity, you would have engaged in
25 something we call "due diligence," right?

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER

1 **A** Yes, sir.

2 **Q** And due diligence, if I'm going to invest in
3 something, I'm going to take the time to
4 investigate and to ask questions that are important
5 to me so that I understand what it is that I'm
6 buying, right?

7 **A** That is correct.

8 **Q** And in this case, it's an investment in a
9 company that has real estate holdings, right?

10 **A** That's correct.

11 **Q** And real estate would be a matter of public
12 record, right?

13 **A** That is correct.

14 **Q** And in this case there is lots of different
15 parcels of property between Crab Catchers and TnW?

16 **A** That is correct.

17 **Q** And it is complicated how they are all
18 jumbled together. We've seen plats in the
19 courtroom, right?

20 **A** That is correct.

21 **Q** But who owns what is a matter of public
22 record, wouldn't it?

23 **A** Yes. And Tim and Wade both showed me
24 combination plats. Now, when they showed me the
25 combination plats, did I go over to the courthouse

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER
1 and see if they were deeded properly? No. Wade
2 had a 20-year-old relationship with Tim; that's
3 good enough for me. Combination plats, I'm
4 thinking Wade owns this, Tim owns this, we own
5 that.

6 Q So were you misled who owned what?

7 A I wasn't really misled. Maybe I didn't do my
8 due diligence and saw tax map numbers, but a man's
9 word is a man's word.

10 Q Yeah, but I've heard that said over and over
11 in this courtroom, and with all due respect, you
12 know what lawyers say about contracts? You know
13 what they say?

14 A Yes.

15 Q They say it only matters when it matters. Do
16 you know when it matters?

17 A It matters when it matters? It always
18 matters.

19 Q It matters when people start disagreeing on
20 what it is they said, right?

21 A That's a correct statement, yeah.

22 Q And especially as it pertains to real estate,
23 you would know the importance of having a piece of
24 paper that would explain what the relationship is
25 between the parties, right?

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER

1 **A** Yes. And that's the reason when -- I was not
2 only asked, that is the reason when we had an
3 amended operating agreement, and I'm sure you are
4 well aware of that operating agreement?

5 **Q** Yes. We'll talk about that.

6 **A** All right.

7 **Q** So you did think enough to go to a lawyer and
8 to have an operating agreement prepared for TnW,
9 right?

10 **A** Yes.

11 **Q** But there is no agreement between TnW and
12 TNT, right?

13 **A** There is not a written agreement. There is
14 an oral promise.

15 **Q** You thought it important enough, even in
16 investing with these two men, that you just said
17 that you trust, their word is their bond, that a
18 lawyer is going to prepare a piece of paper to
19 document what you all owned in that company, right?
20 Is that true or not true?

21 **A** Ask that question again.

22 **Q** Despite the trust you had in both Tim and
23 Wade, when you bought one third of TNT, their word
24 is their bond, but we want a lawyer to put in
25 writing that Chris is one third, right?

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER

1 **A** That is correct. That is the reason why we
2 had an amended operating agreement.

3 **Q** But there is no such writing to document this
4 alleged relationship between TNT and TnW, correct?

5 **A** Ask that question.

6 **Q** There is no written agreement to document the
7 relationship between TNT and TnW, correct? Yes or
8 no, sir?

9 **A** No. No.

10 **Q** And why you thought it important enough to
11 have a lawyer document what you owned in TnW, you
12 did not feel it important enough to have a lawyer
13 document what you owned, if anything, in TNT?

14 **A** I don't own anything in TNT; that is Crab
15 Catchers.

16 **Q** Right. Because TNT and TnW are separate,
17 correct?

18 **A** They file separate, yes, that is correct.
19 They borrowed \$1.1 million. Do you not think they
20 are the same? Do you not think they have a common
21 interest and common bond? \$1.1 million? If you
22 and I went into business together, I borrowed a
23 half million, you borrowed a half million, are we
24 in business together?

25 **Q** We are co-borrowers, yes, sir, we are.

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER

1 **A** Good.

2 **Q** So you would agree with me that TnW had no
3 right to exercise control over the business
4 operations of TNT, right?

5 **A** Say that again.

6 **Q** You would agree with me --

7 **A** When you say "TNT," can you say Crab Catchers
8 and TnW to make it simple. TnW is the marina.

9 **Q** I'll stay "marina" and "the restaurant."

10 **A** Yes. Thank you.

11 **Q** You would agree with me that the marina had
12 no right to control the operations of the
13 restaurant, correct?

14 **A** We had no right at all.

15 **Q** And the restaurant had no right to control
16 the operations of the marina, correct?

17 **A** No.

18 **Q** I'm confused about your testimony regarding
19 Tim Kettner. It sounds like you had a friendship
20 and affection for Tim; is that true?

21 **A** That is correct.

22 **Q** It sounds like you liked him, respected him,
23 you thought he was an honorable and honest person,
24 right?

25 **A** I don't know about the last word, but I

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER

1 thought Tim -- and my first opinion of Tim, and my
2 first recollection of Tim, Tim had the ability to
3 bring people in and take regular folks like me,
4 hard working people like Justine, 23 years, 28
5 years being a waitress, his son, Donny, who he
6 apparently came in only had \$27. He had this great
7 trait about him where he would bring people in,
8 sell them shares of his restaurant, and allow them
9 to become, basically, owners of his restaurant. I
10 thought that was admirable of Tim. That was one of
11 my first recollections, you know. Jose, Jose had
12 been working there for 20-something years.

13 Q And you also reflected on him going home and
14 taking care of his parents, which I think you
15 admired him for that as well?

16 A Well, he went home to take care of his
17 parents and go hunting. He loves to hunt.

18 Q But it was slow for everyone in the
19 off-season?

20 A That's fine. He had Donny taking care of us.

21 Q So he is a humble, hard-working man who is a
22 part-time thief on the side, is what I'm trying to
23 understand?

24 A Is he a hard-working, humble thief; is that
25 what you are asking?

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER

1 **Q** Yes. Is that your testimony, that he is a
2 hard-working, humble thief?

3 **A** I didn't say he was thief.

4 **Q** You said he was a thief for three-and-a-half
5 years in this lawsuit until three days ago. You
6 know that, don't you?

7 **A** In 2017 and '18 and '19, and not only until
8 2020, okay, that is when we had -- that's when we
9 were looking at the books. Other than that, we
10 actually trusted the man.

11 **Q** So three-and-a-half years in this lawsuit you
12 maintained that that man is a thief, until three
13 days ago when you abandoned that in its entirety?

14 **A** Didn't abandon it. Both my counsel and you
15 came up with that choice.

16 **Q** Don't say we came up with. I didn't come up
17 with anything. You abandoned that claim; is that
18 true?

19 **A** That is not true. I didn't abandon. My
20 counsel might have.

21 **Q** You bought one-third of whatever this thing
22 is for \$88,000, right?

23 **A** That is correct.

24 **Q** There was a time in 2020 where you were going
25 to sell your one-third for \$150,000; isn't that

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER
1 true? True or not true?

2 **A** That is true, yeah.

3 **Q** But, today, in front of this jury, the
4 enterprises is worth 3 million? So it went from
5 \$88,000 to 150,000 for a third of it, and today,
6 before this jury, to say a third of it is a million
7 dollars? That is what you want them to accept?

8 **A** That is correct. Remember, we still owe
9 \$800,000 on the loan, okay. Once you add that
10 in --

11 **Q** And that man right there has personally
12 guaranteed every dime of it, hasn't he?

13 **A** If that is what you say. I didn't read the
14 documents. I wasn't a part of the mortgage. I'm
15 not on the mortgage. I'm not a mortgagee.

16 **Q** I understand startup businesses start up
17 slow, and you said, Mr. Richter said we lost money
18 this year. I didn't say that, but the tax returns
19 say that TnW has lost money every single year of
20 its operation; isn't that true?

21 **A** Yes. You want me to follow through why I say
22 yes?

23 **Q** Sure, if you want to.

24 **A** Attorney's fees.

25 **Q** Yes, attorney's fees for a lawsuit that you

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER
1 all initiated?

2 **A** We didn't initiate. Remember, they are the
3 ones that tried to sue us or did, and told us to
4 get off their land.

5 **Q** Yes. TNT, the restaurant, filed a trespass
6 or rejectment action in the magistrates court?

7 **A** Yes.

8 **Q** And your response was to spend \$500,000 of
9 TnW's money -- one-third which is Tim Kettner's --
10 claiming for three-and-a-half years that he stole
11 money that you now abandon?

12 **A** Did we want to spend that money, or did we
13 just want to get what we were promised? That is
14 all we wanted. We wanted to get what we were
15 promised, and they never came through.

16 **Q** Sir, this joint venture -- whatever it is --
17 if there was a promise, it was made in 2016, two
18 years before you even showed up on the scene; is
19 that true?

20 **A** No.

21 **Q** You weren't a member of TnW or TNT or
22 anything else in 2016, were you?

23 **A** No, I was not.

24 **Q** Whatever you bought into in 2018 had already
25 been hatched. It was what it was, right?

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER

1 **A** That is correct.

2 **Q** And to be clear, you wanted out in 2020,
3 didn't you?

4 **A** The reason I wanted out in 2020 is because I
5 wanted to save Wade's grace. I've never been in a
6 lawsuit. I don't like fighting. I'm normally the
7 person that is always trying to solve a problem.
8 And so money is not -- is the root of all evil, but
9 money does not -- I mean, when we die, we ain't
10 going to take no money with us. I'm not -- I
11 didn't want to lose one iota of sleep worrying
12 about money and worrying about this, what we're
13 going through. We've been through this for four
14 years. If you guys are good attorneys, couldn't
15 you have fixed it in the first year?

16 **Q** Yes, we could have, but we are the lawyers,
17 not the participants. You were asked a question:
18 Were there attempts to save this? Were there
19 attempts to save this? Yes or no?

20 **A** Rephrase that question.

21 **Q** Were there attempts to save this?

22 **A** Save what?

23 **Q** Avoid all of this.

24 **A** Was there attempts?

25 **Q** Yes.

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER

1 **A** No. There was no attempt. When someone sues
2 you and tries to take your rights away from you,
3 destroy your business, is that an attempt to save
4 this business? For four years?

5 **Q** I wasn't there for that.

6 **A** Did you see the testimony of everybody that
7 came up here? For four years they tried to
8 sabotage our business. We had to take our LLC back
9 over again because he had -- he was the member --
10 managing member. His responsibility was to us.
11 You think of his responsibility to us when you see
12 those texts? Let's take him out? Let's get Wade
13 off the loan?

14 **Q** Let's talk about every one of those.

15 **A** Yeah, let's talk about them.

16 **Q** He was removed in September of 2020?

17 **A** That's correct.

18 **Q** You all are in charge?

19 **A** That's correct.

20 **Q** He's not calling the shots at TnW?

21 **A** He's not?

22 **Q** He has no control after September of 2020.

23 That is you and Wade.

24 **A** Did you not see all the texts that he texted
25 these guys?

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER

1 Q So what?

2 A What do you mean?

3 Q So what?

4 A He's not --

5 Q He's a one-third member of an entity that is
6 suing him. You all are the managers of that
7 entity. He is not. Is that true or not true?

8 A That is true, he is one-third of our
9 partnership. He should want the best for us. He
10 should want the best for his sons that he sold over
11 there. He wants what is best for Tim.

12 Q No. What is best for you all is if having
13 kicked him out, having sued him, having accused him
14 of theft, what would be best for you all is if he
15 would roll over and say, You are right, I'm sorry.
16 That is what you would have him do? You all are
17 entitled to fight, but he is not? Is that your
18 position?

19 A No. Tim could have easily had a conversation
20 with us. We could have solved this problem in the
21 first 10 minutes. Casey and I could have solved
22 this in 10 minutes.

23 Q How many conversations took place during the
24 conduct of this lawsuit?

25 A Thousands, I guess. I don't know. I mean,

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER
1 you all conversed thousands of times. However many
2 files you have over there, that is how much you
3 charged.

4 Q Yeah.

5 A Crab Catchers has deep pockets. That's why
6 they were charged a half million dollars and not
7 settled yet.

8 Q As you were incurring legal feels, you are
9 paying them out of TnW, as Tim is defending
10 allegations, he is paying out of his pocket; isn't
11 that true?

12 A We're defending Tim because he is part of
13 TnW, but we're also fighting Crab Catchers. Crab
14 Catchers is suing us, so Crab Catchers is basically
15 suing Tim.

16 Q The plaintiff in this lawsuit is you. TnW
17 brought this lawsuit. TnW chose to bring the
18 allegation that that man stole for three-and-a-half
19 years. As TnW incurred legal fees, it was paid for
20 by TnW and one-third of the money is his, right?

21 A That is correct. We were suing TnW -- or
22 TNT, which is Crab Catchers, because they sued us
23 first. They told us to get off of their property.
24 What are you supposed to do? You are supposed to
25 defend yourself.

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER

1 **Q** What you are supposed to do is before you
2 ever buy that, check the public record and
3 understand what is it that you're buying. You said
4 Tim Kettner had an ace up his sleeve. If so, it
5 has been a matter of public record the entire time;
6 isn't that true?

7 **A** The testimonies that Doc said is that --

8 **Q** Don't tell me what someone else said. Isn't
9 it true that whatever the alignment was of the
10 properties, that was a matter of public record the
11 entire time for the world to know, right? Right?

12 **A** Yes and no. When you see these documents
13 that have a combination plat, and you know how hard
14 it is to get a business license, you know how hard
15 it is -- I don't know if you've ever got contracts
16 or went to the county, went to the city and got
17 contracts and had to, you know -- had to get a
18 permit to do things, but when you see that and they
19 are -- that is already there, and you see the
20 combination plats -- maybe I shouldn't have
21 believed the combination plats. Is that what you
22 are saying?

23 **Q** Do you know what a deed is, sir?

24 **A** Yes, I know what a deed is, yes. Do you know
25 what a combination plat that has Wade Long and Tim

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER

1 Kettner on there? That is what I was shown. Tim
2 showed me that. Wade showed me that.

3 Q I'm assuming whatever questions you had, you
4 had the opportunity to ask --

5 A Didn't have any questions after I saw that.
6 I felt comfortable about my investment. I felt
7 comfortable about going in business with Crab
8 Catchers, especially when Tim was going to bring
9 his daughter down there, and Donny, all of them
10 helping us out. I felt great about it. I had a
11 seven-year relationship. I liked those guys.

12 Q You know what the difference is when a person
13 like you, an investor, approaches an investment, it
14 is always with a view of optimism. It is always
15 going to work. You didn't invest anticipating or
16 thinking it is going to fail, did you?

17 A I didn't anticipate that those guys would
18 turn on us. When Tim left, the light switch turned
19 off. They tried to put us under.

20 Q He?

21 A He.

22 Q He's gone to Wisconsin. He is a one-third
23 member of this entity. You all are in the
24 management. He owns zero percent of the
25 restaurant, correct? Yes or no?

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER

1 **A** I don't know that. I don't know their
2 records. All I know is -- I think on the records
3 that Mr. Benoit bought in, Mr. Benoit bought in
4 10 percent, 10 percent for a million dollars. He
5 put \$10,000 down. Does Tim not still run Crab
6 Catchers?

7 **Q** No.

8 **A** He doesn't run it? He's just owed money? He
9 doesn't care about the success of Crab Catchers; is
10 that what you are saying? He wants Crab Catchers
11 to succeed in all --

12 **Q** Crab Catchers is doing great.

13 **A** Yeah.

14 **Q** It's been doing great since he left.

15 **A** It's about to fall in the water. What are
16 you talking about? Tim Kettner for 28 years bought
17 into a fish house, and for 28 years he's been
18 building on --

19 **Q** I'm glad you are worried about his
20 investment.

21 **A** I'm not.

22 **Q** He's fine with his investment.

23 **A** You said he went home a broke man.

24 **Q** No. No.

25 **A** Yeah, you did, in your opening. You said Tim

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER
1 Kettner, the hardest, working man in this
2 courthouse --

3 MR. PLAYER: Quit arguing.

4 **A** -- he went home a broke man; is that what you
5 said?

6 MR. PLAYER: Objection -- stop.

7 THE COURT: Stop. Ask the question.

8 Mr. Kiser, quit asking the attorney
9 questions.

10 THE WITNESS: Yes, sir. I apologize.

11 **Q** (BY MR. RICHTER) Was Tim Kettner hurt by the
12 allegations he stole money? Do you think that was
13 hurtful to him?

14 **A** Probably was.

15 **Q** Yeah, probably was.

16 Do you think it broke his spirit to have
17 people say that, to be accused by a bank of
18 embezzlement?

19 **A** I didn't accuse him of embezzlement.

20 **Q** You know your partner did though, don't you?

21 **A** For 28 years, if you own a restaurant, how
22 much cash do you think he brought in?

23 **Q** So you want to make the accusation now?

24 **A** No, I don't.

25 **Q** You go ahead.

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER

1 **A** You go figure.

2 **Q** You said in your testimony that we released
3 Tim of his managerial responsibility in September
4 of 2020, right?

5 **A** That is correct. Yes, sir.

6 **Q** Is that a nice way to say that he was fired?

7 **A** No, he was -- not fired, just relieved of his
8 responsibilities. We thought that for the best
9 interest of the corporation that we should take it
10 over.

11 **Q** And we will agree, though, that when that
12 happened, he is no longer the manager of TnW,
13 right?

14 **A** That is correct.

15 **Q** When you talked in your direct testimony
16 about sharing profits, isn't it true that TNT has
17 never shared a dollar of profit with TnW?

18 **A** That is not true.

19 **Q** Not true?

20 **A** No.

21 **Q** Tell me what dollar of profits was shared.

22 **A** TNT, which is Crab Catchers, and TnW, which
23 is the marina, we filed separate returns. We built
24 a marina. We built a giant parking lot. Once
25 again, 12 boats come in, they use the marina, our

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER

1 docks, they go into Crab Catchers, spend thousands
2 of dollars, fill up at our docks. Did we share
3 profits with them, or did they make profits?
4 Remember, we file separate. This -- what we call
5 -- and Tim is the one that came up with "joint
6 venture." Is there in the IRS tax code anything
7 about joint venture? I don't know. I know there
8 is sole proprietorship. I know there is
9 partnerships. I know that there is LLCs. I know
10 there is Chapter C's, C corporations. I'm not a
11 tax attorney. You are probably more familiar with
12 that. Is there anywhere in the tax codes that says
13 under "joint venture" -- "joint venture" is just a
14 terminology that we're in business together. We
15 share profits. We make them money, they make us
16 money, but we basically filed separate.

17 **Q** Back home, when I go to Lowe's, there is a
18 Wendy's in the parking lot, and sometimes I pick
19 stuff up and get a frosty. Now, is Lowe's and
20 Wendy's in a joint venture? Are they both
21 profiting by the fact that I'm there?

22 **A** They are profiting because there is Lowe's
23 and there is Wendy's. They attract each other.
24 You wouldn't be going to Lowe's if you didn't want
25 to go to Wendy's. They share a common interest.

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER

1 They want you to come together. That is the reason
2 why restaurants are beside each other. I don't
3 know if you see beachwear stores down here, why do
4 you think the beachwear stores are right beside
5 another? They want to work together.

6 Q And that is the kind of the relationship that
7 exists between TNT and TnW?

8 A That's right. You know, it is for the good
9 of both.

10 MR. RICHTER: Beg the Court's indulgence,
11 Your Honor.

12 Q (BY MR. RICHTER) Chris, sorry for the nasty
13 exchange from time to time --

14 A No problem. You are doing your job.

15 MR. RICHTER: No more questions for you.
16 Thank you.

17 THE COURT: Mr. Harrison?

18 MR. HARRISON: I thought we were going to
19 leave my piece off -- I mean, I can, but --

20 THE COURT: You all step up here real quick.

21 (Whereupon, a bench conference was had.)

22 THE COURT: Ladies and gentlemen, as I
23 previously said before, we have to be out of here
24 by 1:00 today. I'm afraid there may be questions
25 and go over that 1 o'clock time, so I'm going to

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER
1 release you for the weekend. It is five after
2 12:00. I hope that you have a very pleasant
3 weekend.

4 As a reminder, as I told you a half dozen
5 times, if not more, do not discuss this matter with
6 anyone else. Don't do any research. Have a great
7 weekend, more importantly.

8 9 o'clock on Monday, please.

9 (The jury exits at 12:05 p.m., and the
10 following is heard out of the presence of the jury.)

11 MR. PLAYER: One thing can we discuss --
12 never mind.

13 THE COURT: All right. The only option is --
14 I prefer not to do that, but we have done DV
15 motions out of turn, where we had one witness that
16 was not necessarily a witness that had a lot of
17 factual -- like a chain, that kind of thing.

18 MR. PLAYER: Instead of us doing oral
19 arguments, if anyone wants to submit written
20 briefs, if we do them by Sunday so we have a chance
21 to review them. And I don't think you need to
22 know --

23 MR. RICHTER: I'm not writing a brief over
24 the weekend. It's Father Day weekend.

25 THE COURT: And I don't want to read a brief.

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER

1 MR. PLAYER: Sounds good.

2 MR. HARRISON: No, brief, right, Judge?

3 THE COURT: Yeah. You'll find me on a
4 tractor this weekend.

5 MR. RICHTER: First, I apologize for raising
6 my voice.

7 THE COURT: No. I understand things get
8 heated. I don't want you to think I was calming
9 you down.

10 THE WITNESS: I'm sorry. This is my life,
11 savings, investment.

12 MR. HARRISON: To be clear, I've never met
13 Mr. Rolf before he got on the stand today. I don't
14 know what he was talking about.

15 MR. RICHTER: We did have a 15(b) motion on
16 the dissolution. I don't know if we can put that
17 on the record? We move to amend our pleading to
18 conform to the evidence to ask Your Honor for
19 dissolution of TnW. I think it is abundantly
20 clear, for the record and before you, that these
21 players cannot practically carry on the business of
22 TnW together.

23 MR. PLAYER: I think the ultimate
24 determination by the jury could resolve that. All
25 of the legal issues has to be decided before you

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. RICHTER
1 reach the equitable -- I mean, I'm fine with this
2 being taken up at the end of the case.

3 THE COURT: I look at it as an equitable
4 nature, so it would be at the end of the trial
5 anyway. But it is noted for the record, but we can
6 take it up at the end of the trial.

7 MR. PLAYER: Is there any objection to 38 and
8 39?

9 MR. RICHTER: No.

10 MR. PLAYER: So they are in evidence.

11 MR. RICHTER: Yes.

12 MR. HARRISON: Yes.

13 THE COURT: Plaintiffs' 38 and 39 in. Okay.
14 See you Monday.

15 (Plaintiffs' Exhibits 38-40 marked and admitted.)

16 (WHEREUPON, THE PROCEEDINGS FOR JUNE 14,
17 2024 CONCLUDED.

18 (THE FOLLOWING WAS HAD ON JUNE 17, 2024 OUT
19 OF THE HEARING OF THE JURY.)

20 THE COURT: Keep your seats. Sorry to make
21 you wait. I had a couple of warrants to sign and
22 attorneys needed to talk about something.

23 Are we ready?

24 MR. PLAYER: Yes, Your Honor.

25 MR. HARRISON: Yes, Your Honor.

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. HARRISON

1 THE COURT: Bring in the jury.

2 I'll tell you, I have something in my eye. I
3 had a yellow fly scratch my eye, so if you see me
4 scratching my eye.

5 Mr. Kiser and Mr. Harrison, for the purposes
6 for the jury, allow a question, answer, question.
7 I want to make sure we have a good record.

8 (The jury enters at 9:45 a.m., and the
9 following is heard in the presence of the jury.)

10 THE COURT: Good morning, ladies and
11 gentlemen. We didn't lose anyone over the weekend.
12 I hope you had a good weekend and morning. I
13 understand the clerk's office had breakfast for
14 you.

15 So, again, we are continuing in the cross
16 examination of Mr. Kiser. So if you would, again,
17 I would ask you to continue to pay attention like
18 you have.

19 Counsel.

20 **CROSS EXAMINATION**

21 **BY MR. HARRISON:**

22 **Q** Good morning. I'm Michael Harrison.

23 You testified Friday that you never shared
24 profits or control of my clients. Mr. Long
25 testified to that as well. Are you still asking

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. HARRISON

1 this Court to find that a joint venture exists
2 between you and my clients?

3 **A** Yes.

4 **Q** You pled promissory estoppel in this case.
5 Does the promise that you alleged involve the use
6 or transfer of my client's property to the marina
7 permanently?

8 **A** Repeat that question.

9 **Q** You pled promissory estoppel in this case?

10 **A** What does that mean, promissory estoppel?

11 **Q** You pled it.

12 MR. HARRISON: Your Honor, do I --

13 THE COURT: Just move to the next question.

14 **Q (BY MR. HARRISON)** Let me ask you this -- let
15 me try it a different way. Promissory estoppel
16 involves a promise. Does the promise that you
17 allege involve the use or transfer of my clients'
18 property to the marina permanently?

19 **A** Yes.

20 **Q** Is there any written agreement memorializing
21 that use of transfer?

22 **A** In the operating agreement that I signed with
23 -- I signed with the marina, with Tim being part of
24 that agreement. He was also the managing member of
25 the Crab Catchers. So when I signed an agreement

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. HARRISON
1 with Mr. Kettner and Mr. Wade for the marina, I'm
2 assuming -- I'm not assuming, the document says in
3 my operating agreement exactly what I get.

4 MR. BELLAMY: Your Honor, I ask Mr. Kiser to
5 be more specific which operating agreement he is
6 referring to? The operating agreement for TnW?

7 A I'm referring to the operating agreement of
8 the marina, which is TnW. And when I signed that
9 operating agreement with TnW, with Tim Kettner as
10 the managing member, he's of course the managing
11 member of both the marina and also the managing
12 member of Crab Catchers. So, yes.

13 Q (BY MR. HARRISON) So you are relying on the
14 operating agreement solely as far as the written
15 agreements are concerned?

16 A When attorneys draw this up, you know -- I'm
17 not an attorney. You guys are the attorneys, so I
18 do rely upon their expertise when I sign something.

19 Q My question is: Is the operating agreement
20 the only written agreement that you are alleging
21 memorializes a promise of property to you guys?

22 A I mean, when I bought into the marina, we had
23 a deed, and the deed was the property that we
24 actually get. The promise was, in the operating
25 agreement, that Mr. Kettner is, once again, is the

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. HARRISON

1 managing member of both parties. That's what I
2 signed, and that is what they promised.

3 Q What deed are you referring to?

4 A What deed?

5 Q Yes, sir.

6 A The deed of the property that we actually
7 own.

8 Q Which we're not on that deed, are we?

9 A Who is "we"?

10 Q My clients, these four here. Are any of them
11 on that deed?

12 A Well, is Mr. Kettner part of --

13 Q No. No. Just my clients. Mr. Kettner is
14 not my client.

15 A Was he your --

16 Q He's never been my client.

17 A Was he part of the Crab Catchers when I
18 signed on?

19 Q When you go to law school and I'm on the
20 stand, you can ask the question.

21 A Okay. I don't know if Mr. Kettner -- well, I
22 do know that Mr. -- when I signed that agreement
23 with Mr. Kettner, he was the managing member of
24 Crab Catchers. So I'm assuming that, you know,
25 that, yes.

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. HARRISON

1 **Q** You own which property?

2 **A** Both properties.

3 **Q** So when you say "both properties," what
4 properties are you referring to?

5 **A** The upland parcel that we bought where the
6 marina is, and the promise -- and the properties
7 that we were promised, which is the upland piece of
8 -- two pieces of parcel where Doc owns -- remember
9 Doc, the guy that owned the really instrumental
10 piece of property that actually borders our marina?
11 Doc testified how Tim took that property, loaned
12 him \$10,000 --

13 MR. RICHTER: Objection as to the recount of
14 prior testimony. It is hearsay.

15 **A** That's not hearsay. That is what Doc said.

16 MR. RICHTER: He's testifying as to what Doc
17 testified to.

18 THE COURT: You can't testify to what Doc
19 said.

20 **A** Okay. I'm not testifying, but we all know
21 what happened with Doc.

22 MR. RICHTER: Objection. Move to strike.

23 THE COURT: Sustained. Jury will strike the
24 last answer.

25 **Q** **(BY MR. HARRISON)** So you mentioned your

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. HARRISON

1 operating agreement, and you mentioned the deed
2 showing the frontage property. Is there a written
3 -- is there anything in the operating agreement
4 that you can point to where there is a promise of a
5 transfer of land from my clients -- not Mr.
6 Kettner, but from my clients to you?

7 **A** Mr. Kettner was Crab Catchers, okay. And he
8 promised me -- right here it says in my operating
9 agreement, it says, Exhibit D -- I'm sure you read
10 this, right -- it says, Mr. Kiser -- waterfront --
11 it says waterfront -- let's see. Waterfront
12 property in Little River, South Carolina, defining
13 exactly where the property is, 1.5 acres adjacent
14 to 4474 Waterfront Drive.

15 So when Mr. Kettner was, once again, the
16 managing member of both parties, he signed an
17 operating agreement saying that this is what I get.
18 Don't you think that I'm assuming that I'm getting
19 this? I did not check the deeds when it came to
20 the -- when it came to the combination plats, you
21 know. Only thing I can see is what two individuals
22 are showing me. This is what you get.

23 And by the way, they -- I won't say it. Go
24 ahead.

25 **Q** Let me ask you: Where, in your operating

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. HARRISON

1 agreement, does a promise of transfer of land to
2 you? Can you read me the line in the operating
3 agreement that says Mr. Kettner is promising on
4 behalf of my clients to transfer the deed to you?

5 **A** They didn't -- it does not say that in there.

6 **Q** Thank you.

7 **A** It says the right -- it says this is what I
8 get. This is what you receive for the amount of
9 money that you are putting in.

10 **Q** But there is no promise to transfer the deed
11 to you in there?

12 **A** I didn't see one, no.

13 **Q** Fair enough. I remember when you were on the
14 stand on Friday you had a fairly loud exchange with
15 my colleague over there, Mr. Richter?

16 **A** And I do apologize for that.

17 **Q** And you said in that statement that if you
18 and Casey Kuzmik -- this is my client right over
19 here (indicates)?

20 **A** Yes.

21 **Q** If you and Casey had 10 minutes, you could
22 have solved all of this?

23 **A** Back then. Not now.

24 **Q** Because it's been three years, hasn't it?

25 **A** Yes.

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. HARRISON

1 Q And we're here, aren't we?

2 A Yes. You know why?

3 Q Let me ask you the questions. Did you, Wade,
4 or your counsel ever send notice in form of
5 correspondence to your alleged joint venturers --
6 my client's -- or Tim, for that matter, providing
7 notice of what the issues were to Mr. Kettner or my
8 clients before you filed suit?

9 A Repeat that question, sir.

10 Q Did you, Wade, or your counsel, prior to
11 filing the case, ever send notice in the form of
12 correspondence to your alleged joint venturers --
13 these guys, all of them -- outlining the issues
14 between you prior to filing?

15 A "The issues," meaning?

16 Q The issues we're talking about in court.

17 A Which means the jet ski hut?

18 Q All of those things.

19 A And the fuel tank?

20 Q Right.

21 A Well, for the first --

22 Q Yes or no question. Did you or didn't you?

23 A I can't answer yes or no. You know why?

24 Q Okay.

25 A Because when Mr. Kettner was in charge of the

CLYDE "CHRIS" KISER - CROSS EXAMINATION - MR. HARRISON
1 marina, it wasn't an issue.

2 MR. HARRISON: Your Honor, can you direct
3 him -- he can --

4 THE COURT: I'll allow him to continue
5 explaining.

6 MR. HARRISON: Can I get the yes or no?

7 THE COURT: I'm going to allow him to answer
8 the question. I think he's trying to get to the
9 yes or no.

10 **A** When Mr. Kettner was in charge, it was never
11 an issue with the hut. There was never an issue
12 with the tank, the tank that both Wade and Tim --
13 and Wade even said to the county, Listen, I made a
14 mistake. I didn't know that I couldn't put a
15 10,000-gallon tank in there. He admits that.
16 Everything Wade has done and everything that
17 they've asked him to do, he's done with passion,
18 he's done it with respect, he's --

19 MR. HARRISON: Your Honor, what does this
20 have to do with my question?

21 THE COURT: Move on. Again, did you send a
22 letter or no?

23 **A** I did not send a letter, but I was just
24 saying it was never an issue when Tim ran the
25 business.

CLYDE "CHRIS" KISER - REDIRECT EXAMINATION

1 **Q** **(BY MR. HARRISON)** Thank you. Thank you.

2 Thank you, Mr. Kiser.

3 **A** And it's not an issue today because --

4 **Q** Thank you, Mr. Kiser.

5 **A** Okay.

6 MR. HARRISON: Your Honor, I can probably ask
7 Mr. Kiser questions all day, but in the interest of
8 the jury's time and the Court's time, no further
9 questions.

10 THE COURT: Redirect?

11 MR. PLAYER: Yes, Your Honor.

12 **REDIRECT EXAMINATION**

13 **BY MR. PLAYER:**

14 **Q** Morning again, Chris.

15 **A** Good morning. I hope you are feeling better.

16 **Q** I'm not.

17 I'll show them first. Let's do it together.

18 Do you recognize that (indicates)?

19 **A** Yes, sir.

20 **Q** What is it?

21 **A** This right here is plats of all of the
22 different properties including the marina.

23 **Q** What is it called?

24 **A** This right here is recombination plat, Tract
25 1, from the surveyor. And this is actually what

CLYDE "CHRIS" KISER - REDIRECT EXAMINATION

1 Tim and Wade showed me when I was getting involved
2 in this business. Total of 3.88 acres. Was pretty
3 excited.

4 Q And this portion down here, what does that
5 say?

6 A It says TnW and More, Inc.

7 Q And above it?

8 A 3 acres.

9 Q Nope. Right above it there.

10 A The property of.

11 Q The property of who?

12 A TnW and More and TNT, which is basically the
13 marina and Crab Catchers.

14 Q Now, this is unsigned. Here is this. Do you
15 see who signed the document?

16 MR. MONGILLO: What are we looking at?

17 MR. PLAYER: Plaintiff's 3, the recombination
18 plat that is signed.

19 MR. HARRISON: That one, but just the signed
20 version?

21 MR. PLAYER: Yes.

22 A Signed by Mr. Tim Kettner and Mr. Thomas Wade
23 Long.

24 Q (BY MR. PLAYER) Okay. Go back down. Whose
25 property is it?

CLYDE "CHRIS" KISER - REDIRECT EXAMINATION

1 **A** The property is TnW and More, Inc., and TnW
2 and More, LLC?

3 **Q** No, TNT, Inc.

4 **A** TNT and More, Inc.

5 **Q** Right.

6 **A** Sometimes I say the wrong things, especially
7 when you are on the stand. But TnW and More, LLC.

8 **Q** Who signed it?

9 **A** Tim Kettner and Wade Long.

10 **Q** And Casey Kuzmik signed? There is only two
11 signatures, Chris. It was kind of rhetorical.

12 **A** Can you point those out? I can't read the
13 scribbles.

14 **Q** Well, you just said it was Tim and Wade?

15 **A** Yeah.

16 **Q** So did Casey sign?

17 **A** No.

18 **Q** Justine?

19 **A** No.

20 **Q** Donny?

21 **A** No.

22 **Q** Robert Benoit?

23 **A** No. Robert wasn't involved in that part of
24 it. Remember, that was Jose.

25 **Q** So if Tim Kettner didn't have the authority

CLYDE "CHRIS" KISER - REDIRECT EXAMINATION

1 to pledge TNT property, how is he signing a
2 recombination plat that combines TNT property with
3 TnW?

4 **A** He doesn't.

5 **Q** Mr. Harrison said that you testified there
6 was no sharing of profits. Is that how you
7 remember your testimony?

8 **A** Yes.

9 **Q** I thought you said that use of the marina
10 dock was profitable of Crab Catchers last week?

11 **A** Yes. Sorry about that. Very profitable for
12 both parties.

13 **Q** Two very quick points. We talked about the
14 day that you and Wade tried to salvage things with
15 Tim, and you wanted \$150,000 apiece. That's not
16 all you wanted, right?

17 **A** That is not, no.

18 **Q** You wanted to be released from the loan?

19 **A** Correct.

20 **Q** And how much value was there?

21 **A** Well, if you add the \$150,000 that Wade and I
22 were asking plus Tim's portion, that is 450. The
23 loan was about \$800,000, so that is how we came up
24 about 12-and-a-half, 1.3 million at that point in
25 time in 2020.

MOTIONS

1 **Q** And then one last thing that was a little
2 confusing on Friday. When you confronted Tim, did
3 he have any interest or make any effort in saving
4 the business of TnW and More, LLC?

5 **A** He had no interest. He said, Boys, I guess
6 we need to lawyer up.

7 MR. PLAYER: Thank you. No further
8 questions.

9 THE COURT: Thank you, sir. You may step
10 down.

11 MR. PLAYER: Plaintiffs rests, Your Honor.

12 THE COURT: We have matters of law that we
13 need to take up outside of your presence. If you
14 will, retire to your jury room. We'll be back with
15 you shortly.

16 (The jury exits at 10:03 a.m., and the
17 following is heard out of the presence of the jury.)

18 THE COURT: Mr. Bellamy, I have your motion
19 here. Did you e-file this as well?

20 MR. BELLAMY: Yes, sir. I think it is being
21 e-filed, Your Honor.

22 THE COURT: I didn't see a timestamp on it.
23 All right. Well, who wants to go first?

24 MR. MONGILLO: Before we get started, can I
25 ask you for scheduling -- we have Kim Bryant coming

MOTIONS

1 here at 2:00. She's going to be our first witness.
2 We had been ready for lunch at 2:00, so do you want
3 me to move her up to 1:00 or stay at 2:00?

4 So we're going to go with Kim Bryant. We
5 expect her to be a fairly short witness. Then
6 we'll go with Mr. Kettner, assuming there is time
7 left in the afternoon. We're not going to need
8 Rebecca Martin now because we dropped the --
9 plaintiffs dropped the misappropriation and breach
10 of fiduciary duty concerning the money. So we'll
11 have just the accountant, Ms. Bryant, and Mr.
12 Kettner. So when do you want her here?

13 THE COURT: Well, I would imagine that Mr.
14 Kettner is going to be very lengthy?

15 MR. PLAYER: Not likely.

16 THE COURT: I would say, if we can bring her
17 up to 1:00. Maybe we'll break for lunch and send
18 the jury to lunch before then.

19 MR. MONGILLO: I don't know that the jury has
20 to be here before 1:00. If we're -- I mean, she's
21 our first witness. So 1:00 o'clock?

22 THE COURT: I'm assuming you are going to let
23 them put up their case?

24 MR. HARRISON: Yeah. We've agreed to it,
25 Judge.

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1 THE COURT: Okay. I want to make sure.

2 MR. HARRISON: I don't have any problems with
3 it, Judge, because if they finish, then we could
4 potentially go off of ours in the morning, and if
5 they finish, we can potentially -- depending on
6 Mr. Trucker's cross -- we're probably looking at
7 maybe finishing Tuesday.

8 THE COURT: Okay.

9 MR. HARRISON: Maybe closing on Thursday if
10 we don't get to it, because I'm sure the closing
11 will be lengthy.

12 MR. MONGILLO: I expect it to take about two
13 hours, 10:00 to 12:00 we break for lunch. 12:00 to
14 1:00 -- I'll have Ms. Bryant here at 1:00, but I
15 don't think there is any reason for this jury to
16 sit back there.

17 THE COURT: All right. I think as far as
18 scheduling that will work.

19 MR. MONGILLO: I'll have her here at 1:00,
20 Your Honor, thank you.

21 MR. RICHTER: I'm happy to go first, Judge,
22 just to keep the order. I always endeavor to be
23 brief.

24 THE COURT: Word of the day, right?

25 MR. RICHTER: Endeavor or brief? I will

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1 endeavor to be brief, Your Honor.

2 First, I would like to address with the Court
3 at this time our motion under 15(b) to amend the
4 pleadings to include cause of action with
5 dissolution. I think it is important because it is
6 going to become a key piece of the solution that
7 I'm going to offer to Your Honor.

8 I think the evidence and the record makes it
9 pretty clear that the members of TnW cannot
10 reasonably carry on the business of the enterprise
11 together. I think the standard for dissolution is
12 met. My understanding of what takes place under
13 the statute if you order the dissolution, is that
14 you will affix the value to the interest of Mr.
15 Kettner. Mr. Long and Mr. Kiser will have the
16 option to purchase him out of that value. Or if
17 they don't want to, we direct the sale of those
18 assets.

19 Your Honor, what I suggest we do at that
20 point is apply those proceeds against the loan, but
21 that is kind of the downstream matter. But before
22 the Court now is our request to amend the pleading
23 to include a cause of action for the dissolution of
24 TnW.

25 THE COURT: All right.

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1 MR. RICHTER: Your Honor, we have multiple
2 grounds for which we seek a directed verdict. And
3 I don't know if you have a copy of the second
4 amended complaint?

5 THE COURT: I do. I have it right here.

6 MR. RICHTER: I think if you can make
7 reference to the second amended complaint, I would
8 like to start, first, on Page 5 with the second
9 cause of action involving Mr. Kettner individually,
10 and that is a cause of action for breach of
11 fiduciary duty.

12 The particulars -- the particular breaches
13 which are alleged in that cause of action kind of
14 fall on two tranches. The first tranche is the
15 misappropriation of money. I would hope that we
16 all agree on the record that that is no longer a
17 basis for breach of fiduciary duty, given the
18 stipulation that we are not seeking any recovery of
19 any alleged misappropriated funds.

20 Your Honor, so to the extent that I need to,
21 I don't think it is in the record anymore, I move
22 for directed verdict that -- with regard to breach
23 of fiduciary duty, the alleged taking of money is
24 not a basis for a breach of fiduciary duty.

25 THE COURT: They have terms in here in

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1 regards to preserving and protecting the assets of
2 the LLC, providing business information, business
3 records when requested, and not actively working
4 against the LLC.

5 MR. RICHTER: Your Honor, Paragraph 24 sets
6 forth the breaches that they complained of, and it
7 starts by absconding with the cash, by diverting
8 funds. These are the alleged breaches that form
9 the basis of the cause of action. The ones that I
10 believe remaining are basically -- complain of
11 interfering in the business of TnW, either alone or
12 in conspiracy with the other co-defendants. Those
13 are the matters that I would now argue to the Court
14 should be dismissed as a matter of law.

15 Your Honor, the timeline is crystal clear in
16 this regard. Tim Kettner was the managing member
17 of TnW until September of 2020. If I accept Mr.
18 Kiser's testimony, that is when he was -- air
19 quotes -- released from his obligations as manager.
20 We would contend to Your Honor that it is at that
21 point in time that whatever fiduciary duty he owed,
22 terminated.

23 If you don't accept that date, then certainly
24 in March of 2021 when he is sued, his fiduciary
25 obligation ends. And by analogy, if you imagine a

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1 lawyer being sued for malpractice, it is
2 nonsensical to contend that the fiduciary duty
3 between the attorney and the client would survive
4 even a claim of malpractice.

5 So if you look at that period, the complaint
6 is Tim Kettner, in breach of his fiduciary duties
7 of TnW, interfered in the business of TnW. That is
8 what we're talking about. There is nothing in the
9 record to support that Tim Kettner did anything in
10 that period between September and March to
11 interfere in the business with TnW.

12 Arguably, at best, there is a text or two
13 where he says to Donny or someone else, We're at
14 war, gloves are off. But, Your Honor, what we're
15 dismissing is any damage that can possibly tie to
16 that. So even if somehow that text directed
17 someone to do something, I don't think there is any
18 evidence that he blocked the parking lot or moved
19 the tank, or any of that stuff.

20 But even if you accepted that those things
21 happened, and that he was a player in those things,
22 that there is not so much as a dollar of damage
23 that they attached to it. No one has testified
24 that Robert blocked the parking lot, and on that
25 day we lost ten jet ski sales or three charter

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1 fishing ventures, or we lost a hundred dollars or a
2 thousand dollars. Not one single piece of evidence
3 in the record. It would be pure conjecture and
4 speculation to try to figure out what harm is it
5 that you are attaching to any of that.

6 Again, Your Honor, with regard to my client,
7 and with regard to this period of time, we say
8 there is no breach of fiduciary duty after
9 September of 2020 because when he is released of
10 his obligations as manager, he's released of his
11 fiduciary obligations. Certainly, that happens
12 when he gets sued in March of 2021. There is no
13 evidence in the record that anything that Tim
14 Kettner did in that period of time caused so much
15 as one dollar of harm to TnW. That is our first
16 basis for directed verdict as to that cause of
17 action.

18 Your Honor, moving forward, and looking at
19 the rest of the complaint, let me jump to the third
20 cause of action, Page 6, alleged breach of the
21 joint venturer agreement. I think it is
22 fundamental that you can't breach the joint venture
23 agreement until you, first, prove there is a joint
24 venture. There is nothing in this record upon
25 which the Court could conclude that a joint venture

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1 existed between TNT or TnW or any of the parties.

2 But the allegations of the complaint is that
3 the joint venture that existed was between these
4 two entities. Your Honor, that is replete with
5 problems for the plaintiff that begin with: There
6 is no evidence of control. There is no evidence of
7 shared profits. The two entities were described --
8 even by Mr. Long -- as being separate at all times.
9 They didn't file joint tax returns.

10 And, Your Honor, with regard to this joint
11 venture, even to go down this rabbit hole would
12 force us all to speculate as what are we going to
13 call it? What is its purpose? How do we control
14 it? How do we fund it? How do we manage it? None
15 of that is before the Court.

16 Here is good one: How do we divide it? I
17 mean, is it 50/50 between a restaurant with a
18 30-year history of success and profits with a
19 startup marina of 12 slips not even constructed?
20 It is pure conjecture as to its existence, and
21 there is nothing in the record to support it.

22 There is not a lot of case law in South
23 Carolina on what a joint venture is and what it's
24 not. The seminal case appears to be from 1948,
25 Gordon v. Rothberg, which cited loosely on a going

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1 forward basis. But in that case you had --

2 THE COURT: The case number for that?

3 MR. RICHTER: I'm sorry, Your Honor, it is 50
4 S.E.2d 202; 213 S.C 492.

5 THE COURT: Thank you.

6 MR. RICHTER: That was a case involving a
7 metal chair manufacturer who -- in what was called
8 a joint venture -- shared operations of a parking
9 lot with a fabricator of padded seats and backs.
10 They built chairs together. It went to the jury on
11 whether there was a joint venture between these two
12 entities, and the Court ultimately looked at that
13 and said, No -- I'm sorry. The judge did not
14 submit that issue to the jury, and the court of
15 appeals in looking at that said the judge properly
16 refused to submit the issue to the jury on whether
17 it was a joint venture.

18 In that case, the following language appears:
19 Practically, the only difference between a joint
20 venture and a partnership is that a partnership is
21 ordinarily for the transaction of a general
22 business of a particular kind, while a joint
23 venture relates to a single transaction. A joint
24 venture was unknown to the common law being
25 regarded as within the principles of governing

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1 partnerships. It is still governed by the same
2 rules of law.

3 Probably one of the most concise statements
4 as to what constitutes a joint venture is in Dexter
5 v. Carpenter. It reads: A special combination of
6 two or more persons where some specific venture, a
7 profit is jointly sought without any actual
8 partnership or corporate designation. Without
9 undertaking here to set forth all of the general
10 requirements necessary to create the status of
11 joint venture, we think the one very necessary
12 requirement is lacking in this case; to wit, there
13 was no joint proprietary interest and right of
14 mutual control over the enterprise or the property
15 engaged therein.

16 Your Honor, the record is replete here with
17 references by the plaintiff that it had no right to
18 control the operations of TNT; and, likewise, TNT
19 had no right to prevail over the operations of TnW.

20 Without there being a joint venture there
21 could be no violation of the joint venture
22 agreement. We would ask for a directed verdict as
23 to the third cause of action for those reasons.

24 Your Honor, moving on to the first cause of
25 action: Promissory estoppel.

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1 May I get a sip of water, Your Honor, I'm
2 sorry?

3 THE COURT: Yes.

4 MR. RICHTER: So, Your Honor, promissory
5 estoppel is really a form of a contract substitute.
6 I think it is almost a recognition. It is pleading
7 in the alternative, which is fine, but I think
8 recognizing there is probably a big weakness in
9 this idea that there is a joint venture contract,
10 the plaintiff seeks to fill in the holes by a
11 promissory estoppel, which is purely equitable
12 doctrine.

13 Your Honor, I would submit to you that there
14 is really nothing to give to the jury in this case.
15 This it is a case purely in equity, and the real
16 claim here is the promissory estoppel. So a clear
17 and unambiguous promise that the promisor -- where
18 it is reasonable that the recipient of the promise
19 would act in reliance upon it; that they do act in
20 reliance upon it; and that some benefits confer
21 upon the promisor under circumstances that makes it
22 unjust for them to retain that benefit.

23 It sounds a little bit like fraud when you
24 hear some of the elements. I said something, you
25 relied upon it. But the issue in promissory

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1 estoppel begins with the clear and unambiguous
2 promise. There is nothing clear and unambiguous in
3 this case, first and foremost. Even if you were to
4 submit that question to the jury, I don't know what
5 that question would be. Would you ask them to
6 define what the clear and unambiguous promise was?
7 You are a judge sitting in equity on this claim.
8 You are the finder of the facts in equity. You
9 don't need the jury's assistance here. I don't
10 believe that you believe that there is a clear and
11 unambiguous promise.

12 When we get to the damages portion, and you
13 read the case law on promissory estoppel in South
14 Carolina, it basically describes this fork in the
15 road where there is two different, you know,
16 avenues of damage that you can complain of. One is
17 expectation, and one is reliance.

18 Your Honor, expectation is that which I
19 thought I was going to make based on a promise. I
20 believe you already dismissed that because most of
21 what they complain of in this case is pure
22 speculation, conjecture about what I could have
23 made in the future, what profits I could have
24 realized and I never did.

25 There is no expert testimony. There is no

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1 economists. There is no reports, no projections,
2 no reliable evidence upon which anybody, yourself
3 included, could say that there was an expectation
4 of return on whatever this unambiguous promise is.
5 So I think that avenue is foreclosed.

6 So the avenue that is available on promissory
7 estoppel is the reliance damages. So you made a
8 promise -- we still say there is no promise -- but
9 you made a promise. I relied upon it. I relied on
10 a benefit that is unfair for you to keep. And so
11 what is it that Mr. Long or anyone else conferred
12 upon TnW that was unfair or unjust for them to
13 retain for TNT? We've heard over and over again,
14 We filled in the parking lot. There was a pond,
15 800 loads of dirt, we did that. You've heard that
16 over and over again.

17 What you haven't heard is anything --
18 anything upon which you could fix a value of that
19 benefit that was conferred. Your Honor, I think
20 that was intentional. I think that was
21 intentional because it would be nominal -- not to
22 dismiss what was done. I know that is a hard work.
23 My brother-in-law is a backhoe operator, right, but
24 to bring dirt onto a lot and smooth it out, I don't
25 know what that would have cost if you had a third

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1 party to do it. Ten grand? Twenty grand? Fifty
2 grand? But what you don't have is anything upon
3 which you could affix a measure of the value of the
4 benefit that was conferred, and that is what we are
5 talking about with promissory estoppel.

6 They could have had an appraiser come out and
7 say, You know what, before you fill that dirt lot
8 in, it was worth 50. After he filled it in, it was
9 worth a hundred. You have heard no such testimony.
10 They could have had a dirt works guy come in and
11 say, you know, to do that same scope of work, I
12 would charge 50 grand. There is nothing in the
13 record. So there is nothing upon which the Court
14 can determine the value of the benefit that was
15 conferred.

16 Here is some additional problems with
17 promissory estoppel. This is a slight of hand that
18 permeates the plaintiffs' case. What they really
19 want is to use promissory estoppel as a vehicle to
20 get from you permanent injunctive relief; in
21 essence, to convey through the promissory estoppel
22 and permanent injunctive relief, an estate in
23 property. That is what they would really ask you
24 to do, and that is not available, Your Honor. You
25 can't create a property right through promissory

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1 estoppel.

2 Alternatively, what they want to do through
3 promissory estoppel is ask you for specific
4 performance, ask you to make up whatever this
5 promise was, and then specifically enforce it,
6 which, Your Honor, again submit to you that that is
7 not available. I think your discretion as a judge
8 in equity is broad in fashioning a remedy, but I
9 think the case law is clear on promissory estoppel.

10 We want you to look at expectation, in this
11 case it is foreclosed because there is nothing in
12 the record and it is pure speculation. Or, they
13 want you to look at reliance. Did he change his
14 position on reliance on the promise? They can say
15 he did. How can you possibly determine a value for
16 the benefit conferred?

17 Additional problems with this theory, the
18 statute of frauds, it is at its heart this
19 promise -- if it exists -- is an oral promise to
20 convey an interest in real property, which as Your
21 Honor knows, has to be in writing to be
22 enforceable.

23 Mr. Tucker will say, No, there was part
24 performance, that takes it out. We don't think
25 that case law applies here. Even if it does, there

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1 is a secondary problem with the statute of frauds,
2 which is this promise, this contract, was a promise
3 that could not be performed within the expiration
4 of one year. Every witness that has taken the
5 stand has said the same thing, including Mr. Kiser
6 on Friday. If it is a contract that cannot be
7 performed in one year, independent of this issue
8 about conveying real property, it has to be in
9 writing to be enforceable, and there is no such
10 writing.

11 For all of those reasons, we say as a matter
12 of law, the promissory estoppel claim must fail,
13 and we ask for a directed verdict on that cause of
14 action.

15 Your Honor, there is a seventh cause of
16 action for nuisance -- sorry, before I get there, a
17 sixth cause of action for misappropriation, and I
18 believe by stipulation that that is out.

19 MR. PLAYER: That doesn't apply.

20 THE COURT: It didn't apply for Tim?

21 MR. PLAYER: Yeah, because he's not the
22 property owner.

23 THE COURT: Okay.

24 MR. RICHTER: Is that same true for nuisance?

25 MR. PLAYER: That is what I was talking

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1 about, nuisance.

2 MR. RICHTER: Okay. All right.

3 So, Your Honor, I have been impressed
4 throughout the trial of this case that -- you know,
5 I sense from you, especially as a judge sitting in
6 equity -- that you want to fix the problems. If I
7 were sitting in your seat, I would want to fix them
8 too. But I submit to you, Your Honor, that the
9 function of the Court is not to be someone's
10 parent, not to operate a time machine and go back
11 in time and redo things that should have been done
12 the first time.

13 The function of the Court is to resolve the
14 claims that are before the Court, and sometimes it
15 is just not a fix for every problem. What I would
16 suggest to you, however, Your Honor, that if you
17 grant the 15(b), if you dissolve TnW, if those
18 assets are sold, I think that gets us 90 percent
19 down the line. The rest of the claims fail as a
20 matter of law. There is nothing here to submit to
21 the jury.

22 As far as the bank loan that is out there, it
23 is coming due in November. We all know that. So
24 what? I mean, it's not before the Court. I think
25 you have to let that ball fall. If there is a

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1 claim about that, it is just inchoate coate. Let's
2 sell the assets and see what remains. Anybody
3 after the sale of that who is called on the
4 guarantee, I guess would then have the right to
5 seek contribution from the others, but that is not
6 a matter before Your Honor today.

7 For your -- the last thing I would say is we
8 heard a lot about dreams and "this was my dream."
9 Your Honor, we're not here to make dreams come
10 true. We're here to apply the facts to the law,
11 and applying the facts to the law in this case,
12 respectfully, all of these claims must be denied.

13 Thank you.

14 THE COURT: Mr. Player, do you want to
15 respond or let them go, and then you respond to
16 everything?

17 MR. PLAYER: I'll respond to everything,
18 that's fine.

19 THE COURT: All right.

20 MR. BELLAMY: Thank you, Your Honor.

21 MR. PLAYER: Your Honor, did we let the jury
22 go?

23 THE COURT: No, we have not. I was going to
24 see how long this took before I responded,
25 depending how long Mr. Bellamy takes. I may bring

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1 them in and send them home for lunch.

2 MR. PLAYER: If we're not going to have a
3 witness, we might as well. Because if Kim is
4 coming at 1:00, I know they won't want to put Tim
5 up --

6 MR. MONGILLO: And we have confirmed.

7 THE COURT: All right. I'll hear from Mr.
8 Bellamy, and then I'll send the deputy back.

9 Mr. Bellamy.

10 MR. BELLAMY: May it please the Court. We're
11 seeking a directed verdict on four specific
12 grounds. First ground is the failure of TnW, LLC,
13 to comply with the requirements of Rule 23(b)(1).

14 Your Honor, I have addressed it in my
15 memorandum. I'm not going to really go through it.
16 If you have any questions, I'll be more than happy
17 to answer it. I think it speaks for itself.

18 The second ground is that the failure of TnW
19 and/or TNT -- or TnW to present, what I would say,
20 preponderance -- let me put it this way -- by a
21 preponderance of the evidence that there was a
22 witness or oral agreement between TnW -- between
23 Crab Catchers and the marina. Where there was an
24 agreement, a meeting of the minds, only essential
25 elements of the joint venture agreement.

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1 Your Honor, you've heard testimony, there is
2 no written joint venture agreement. So the only
3 way a joint venture agreement by contract can
4 exist, it has to be oral, and it has to comply with
5 the consideration of meeting of the minds.

6 In this particular case, the two most
7 important elements of a joint venture are not here.
8 You heard testimony first from Mr. Long, who
9 indicated that the restaurant had no control --
10 that the Crab Catchers had no control over the
11 marina property as far as its operation, its
12 management, and control.

13 Mr. Long also testified from the witness
14 stand that there is no sharing of profits or losses
15 between TNT and TnW. For example, if TnW has -- I
16 think if they have all three tax returns, for all
17 of the years, from 2017 to present day, they've
18 never shared any profits, to the extent there were
19 profits, and they were never issued any K1s from
20 TnW to anybody associated with TNT.

21 So, basically, the two most important
22 elements in the case for a joint venture is the
23 right of co-joint ventures to exercise dominion and
24 control over the joint venture property, along with
25 other joint venturers, and also the sharing of

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1 profits and losses. Both -- both Mr. Kiser,
2 Mr. Long testified from that witness stand that
3 those two elements do not exist in this case.

4 Furthermore, those are the two most important
5 elements, and clearly there is not a meeting of the
6 minds between the co-joint venturers regarding what
7 the terms and conditions are. There is no written
8 agreement.

9 Usually, a joint venture agreement deals with
10 contributions from the joint venturers. There is
11 nothing talking about that. There is nothing
12 talking about termination of the joint venture
13 agreement. All of the terms that you would expect
14 to be in a joint venture agreement are not there.

15 What is more important -- and I want to add
16 emphasis -- when Mr. Kiser was testifying from this
17 witness stand -- Mr. Harrison asked him: What is
18 your written agreement, joint venture agreement?
19 And he referred to the operating agreement as far
20 as with TnW. Your Honor, TnW is supposed to be a
21 co-joint venturer. We're not supposed to be the
22 joint venturer. I think that is important to note
23 for the Court.

24 The other thing I want to -- the other ground
25 is that, by definition, a joint venture cannot be a

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1 corporation, an LLC. It is mutually exclusive.
2 That is one of the arguments I'm going to talk
3 about, and I'll come back to that argument, third
4 argument.

5 The fourth argument is, essentially, to
6 establish a joint venture by a promissory estoppel.
7 This is what is important, Your Honor. In order --
8 one of the important elements of promissory
9 estoppel is that the promise has to be unambiguous.
10 You have to prove unambiguous through clear and
11 convincing evidence.

12 The reason why the evidentiary standard is
13 heightened for promissory estoppel is because the
14 plaintiffs could not prove joint venture by written
15 contract. There was no meeting of the minds or
16 considerations.

17 So what happens is, based upon the equity,
18 the Court says, We'll give you another opportunity,
19 to the extent that there was a promise, and as a
20 result of the promise, an injustice occurred, the
21 courts allow them to prove -- they have to prove
22 promissory estoppel without having consideration or
23 meeting of the minds.

24 So what the Court focuses on is the promise
25 that was made unambiguous. And in this particular

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1 case, Your Honor, I will get to those and show why
2 it is not -- basically the promise is ambiguous.
3 It is not unambiguous. And I'll set out the
4 grounds and reasons for that, but I want to go back
5 to my third argument.

6 Before I get there, Your Honor, I've handed
7 up -- and this is -- what I'm referring to is
8 Section 5-2 Tax Aspects. It is a South Carolina
9 legal form. I've given this to opposing counsel.
10 It says: "A joint venture is treated as a
11 partnership for federal tax purposes; thus, a joint
12 venture is such that it is not a taxable entity,
13 and the persons carrying on the business as joint
14 venturers are liable for the income, tax only, and
15 their own, separate and individual capacities."

16 It footnotes the IRS Section 7-6-1,
17 Subsection A, colon, Regulation Section 1.761-1,
18 Subsection A.

19 When you flip over to the back, I've included
20 the code section, South Carolina, U.S. Code
21 annotated Section 761 -- as far as the IRCs 761.
22 It says "terms defined," and this is important. I
23 want to add emphasis to it. Subparagraph A:
24 "Partnership for purposes of this subtitle, the
25 term 'partnership' includes a syndicate, a group, a

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1 pool, joint venture, or other unincorporated
2 organization." That is important.

3 Your Honor, now what I would like to do is go
4 back to the complaint. If you look at the caption
5 of the complaint, it says, "Thomas Wade Long, Clyde
6 Kiser, individually, and on behalf of TnW and More,
7 LLC, and TnW and More, LLC." Nowhere in the
8 caption does it say -- the co-joint venturer
9 allegedly in this case is TnW and More, LLC, on
10 behalf of -- and it used the term "Little River
11 Water Sports." What it should say is: TnW and
12 More, LLC, on behalf of Little River Water Sports.
13 Association: The joint venture. That is how it
14 should have been stated in the caption, because a
15 joint venture, as Your Honor knows, is not a
16 corporation. It is not an LLC. It is mutually
17 exclusive from a corporation LLC. So it is an
18 unincorporated association.

19 So if they are filing a complaint on behalf
20 of a joint venture, it is literally missing from
21 the caption. Because the TnW and More, LLC, is a
22 co-joint venture, and they're a corporation, so
23 obviously they can't be a joint venture.

24 The other thing I want to point out, too, is
25 Little River Water Sports is also an Inc, and they

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1 are incorporated. They are also the trade name for
2 TnW and More, LLC. So they can't be the
3 corporation -- I mean, excuse me, they can't be the
4 joint venture.

5 My point being, Your Honor, is that there is
6 no allegations of the joint venture in the
7 pleadings. It only talks about -- doesn't mention
8 anything -- when you go to the heading -- it
9 doesn't say "parties" or "venue" or "jurisdiction."
10 Henri pleads a little differently. It doesn't
11 mention anywhere that the joint venture would be
12 Little River Water Sports, association, joint
13 venture, and then it would indicate who the
14 co-joint venturers are. That is not in here.

15 Your Honor, you can look -- there are other
16 cases that I could point out to the Court where
17 they have in the caption -- you know, you have
18 co-joint venture on behalf of -- let's say in this
19 particular case Little River Water Sports, the
20 association, comma, the joint venture. They didn't
21 plead it properly. I think that is defective.

22 One of the things I wanted to point out is
23 when you are pleading something -- and I'm citing
24 this case right here, Your Honor. This is Peter W.
25 Postel v. Edward C. Mann, III. It has versus Bud,

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1 Kenny, the third-party defendant. But what this
2 case is -- it's important for this proposition, and
3 I want to publish it to the Court.

4 "It is well-settled that the parties were
5 judicially bound by their pleadings unless
6 withdrawn, altered or stricken by memo or
7 otherwise. The allegations, statements, or
8 admissions contained in a pleading are conclusive
9 as against the pleader, and a party cannot
10 subsequently take a position contradictory of or
11 inconsistent with his pleadings and the facts which
12 are admitted by the pleadings or taken as true
13 against the pleader for the purpose of this
14 action."

15 So what they pled, Your Honor, is an
16 admission. In their complaint -- and this is a
17 derivative action. In no way in the caption or in
18 the body of the complaint does it identify what the
19 joint venture is. And I'll -- one thing -- if you
20 go to -- Your Honor, the memorandum that I handed
21 up, I handed up a copy of the complaint. It is
22 Exhibit A --

23 THE COURT: I have it right here.

24 MR. BELLAMY: This is important. In 2016,
25 the plaintiff, Wade, and the defendant, Tim

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1 Kettner, formed the Plaintiff LLC in order to enter
2 into a joint venture with the Defendant Inc. The
3 joint venture pried by the Plaintiff LLC and the
4 Defendant Inc. was the development and operation of
5 a business, activities to own real properties owned
6 by the corporate parties, for which the corporate
7 parties combined their respective -- yadda, yadda,
8 yadda.

9 Nowhere in the complaint does it ever
10 identify the joint venture. The Inc, my client,
11 can't be the joint venture because they are a
12 corporation, and under South Carolina law, a
13 corporation and a joint venture are mutually
14 exclusive. For the same reason, the LLC can't be
15 the joint venture because they are also
16 incorporated, so they can't be a joint venture.

17 Interestingly, if you flip back to Page 5,
18 Your Honor, and go to Line 20 -- and we're still
19 under the allegations of promissory estoppel -- in
20 Paragraph 20 it says: "In addition, the plaintiffs
21 are entitled to an award of actual and punitive
22 damages against the defendants for their
23 interference in the business operations of the
24 LLC."

25 Well, Your Honor, the point I want to make is

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1 that the LLC, which is the marina, can't be a
2 co-venturer and/or the joint venturer at the same
3 time, and that's exactly what's happened.

4 In this particular case, you go back and read
5 it backwards and forwards, you will never find the
6 name of the joint venture in this case. You'll
7 never see where it says TnW and TNT entered into a
8 joint venture. What is the joint venture?

9 You heard the testimony from both Wade Long
10 and Chris Kiser. They never testified what the
11 joint venture was. The joint venture based upon
12 IRS guidelines, 761, it has been to an
13 unincorporated association. So when -- so to
14 properly plead a derivative action for a joint
15 venture, plaintiffs' counsel would have had to say,
16 TnW and More, LLC, on behalf of -- because they are
17 suing TnW -- I mean suing TNT -- on behalf of
18 Little River Water Sports, association, the joint
19 venture.

20 Again, the problem with Little River Water
21 Sports is that it's not even mentioned in the
22 complaint. But if you look at some of the
23 corporate documents, it indicates that it is a
24 d/b/a for the LLC. And the point I want to make is
25 Little River Water Sports is also incorporated, so

MOTIONS

1 it can't be co-joint venture. More importantly,
2 there is no allegations in the complaint indicating
3 that Little River Water Sports is the joint
4 venture.

5 So as far as the third argument, it is our
6 position that we're entitled to directed verdict
7 based upon the grounds of that. The pleadings, as
8 read, don't identify the joint venture. More
9 importantly, that the LLC cannot be a co-joint
10 venture and the joint venture at the same time,
11 because the LLC cannot accept damages on behalf of
12 the joint -- on behalf of the joint venture that is
13 unidentified in the complaint.

14 One of the things I wanted to point out to
15 Your Honor, I handed this up earlier after we did
16 our motion in limine, and this is an order of the
17 Court in Horry County. The title of the case is:
18 Gloria Armond, dash, Ward, by and through her
19 guardian and conservator. Your Honor has a copy of
20 it. It deals with a case that says: "An order was
21 granted Chicago Title Insurance Company's motion in
22 limine for lack of personal jurisdiction."

23 Obviously, the order is not relevant to that
24 point, but if you flip to Page 5 -- and I did hand
25 this up earlier, and I can hand you up another

MOTIONS

1 copy. I can hand you up my copy.

2 THE COURT: I do have it right here. I know
3 you have notes on this one, Howell.

4 MR. BELLAMY: Thank you, Your Honor.

5 Your Honor, the relevant part of the order --
6 and this order was issued in Horry County, and I
7 think the date of the order was October 12 of 2022.
8 So it's a relevant order. It is not like it was
9 issued ten years ago.

10 The relevant part -- the way I did it is I
11 Shepardized it, and the case I Shepardized it from
12 was Gordon v. Rothberg. That is the case that
13 Ronnie indicated, the 1948 case.

14 THE COURT: I have it here, too.

15 MR. BELLAMY: What is important -- and I'll
16 go through this. You've already heard the
17 definition. Ronnie gave you the definition of a
18 joint venture based upon Gordon/Rothberg, but it
19 says: "by definition, a corporation cannot be a
20 joint venture if the parties to a joint venture
21 incorporate their efforts and become shareholders.
22 The effect becomes a corporation and is no longer a
23 joint venture."

24 We argue in the sense that Little River Water
25 Sports incorporated and became an Inc., and to the

MOTIONS

1 extent they were a joint venture, they are no
2 longer a joint venture. We also would add that
3 they couldn't be a joint venture because they are
4 the trade name for the LLC, the marina.

5 Then it goes on to say -- and we'll add this,
6 too -- and catch my place again.

7 THE COURT: What page?

8 MR. BELLAMY: Page 5.

9 Your Honor, you are on Page 5 yet?

10 THE COURT: Yeah.

11 MR. BELLAMY: "Parties to a joint venture
12 incorporate their efforts and become shareholders,
13 the effect becomes the corporation is no longer a
14 joint venture."

15 It's cites Future Plastics, Inc., v. Ware
16 Shoals Plastics, Inc. It is a federal case, Your
17 Honor, Fourth Circuit case. It is a federal
18 district case, a 1972 federal district court case,
19 and I think that is important -- excuse me.

20 It goes on to say, the next case -- it says
21 undisputed that -- well, anyway, the point I wanted
22 to make, Your Honor, is if you read these cites,
23 and then you go -- which is relevant as far as our
24 argument, and then what I would say is to go to
25 Page 6, and it talks about -- and I'm not going

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1 into the details about the case, but what the case
2 stands for is the proposition -- at least it deals
3 with a joint venture. It indicates that -- give me
4 one second.

5 Your Honor, what this was -- let me say it
6 refers to the term CLAS, C-L-A-S. It is Chicago
7 Land Agency Services. The case dealt with title
8 insurance. The main thing is it was dealing with
9 personal jurisdiction, but the relevant part that I
10 like about this case, it says that -- on Page 6,
11 Your Honor -- it's the second paragraph, second
12 sentence, it goes on to say: "Otherwise, CLAS
13 would be a joint venture itself, and it cannot be
14 both the joint venture and a joint venture partner
15 in its own joint venture."

16 That is exactly what you are having in this
17 particular case. You've got -- based upon the
18 allegations pled by the plaintiffs, they are the
19 co-joint venture, and based upon the way they
20 pleaded, they are also the joint venture in their
21 own joint venture. That is another reason why I
22 think that they hadn't -- they hadn't properly
23 identified the joint venture based upon the
24 definition of a joint venture in the complaint, and
25 that would be our third argument. We would ask you

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1 to grant the directed verdict on the grounds that
2 there is -- that based upon the allegations of the
3 complaint, there is no joint venture.

4 Another ground I want to talk about is
5 promissory estoppel, that the pleading to establish
6 a joint venture by promissory estoppel, and the
7 element of promissory estoppel that I want to focus
8 on is that the promise has to be unambiguous.

9 In the memorandum, if you go to the part that
10 -- I'll refer you to Page 9 of 12. The one I'm
11 going to do is dealing with -- the case I cite to
12 the Court for the Court's benefit is Rushing D.
13 McKinney, 370 S.C. 280. It says: "Holding absence
14 of a clearly articulated terms between the parties
15 precludes recovery in promissory estoppel."

16 In this particular case, Your Honor, there is
17 no written joint venture agreement. The agreement
18 that the plaintiffs rely upon as far as how they
19 divvy up the proceeds between them -- and I'm
20 talking about Mr. Kiser, Mr. Long, Mr. Kettner with
21 the LLC, the marina property -- they are relying
22 upon TnW's operating agreement. They are using it
23 as a, quote, alleged joint venture agreement, and
24 it is not. It is the operating agreement for TnW,
25 and in no way, shape, or form in any way comes

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1 close to being an operating agreement for an
2 alleged joint venture that doesn't exist.

3 I think that goes back to my argument, that
4 essentially what they are alleging in their
5 pleadings, they are alleging that they are the
6 co-joint venture, while at the same time the joint
7 venture, because the way they are citing the
8 alleged profits of what the joint venture would be,
9 as far as the marina, it's based upon the marina's
10 operating agreement. And so, Your Honor, I just
11 want to bring that to the Court's attention.

12 Then the case of -- I want to cite this case:
13 Satcher, 351 S.C., 483, dash, 487, Page 9 of the
14 motion.

15 THE COURT: I see it.

16 MR. BELLAMY: "Holding an unclear agreement
17 that lacks details was not shown by clear and
18 convincing evidence to be ambiguous."

19 Then it goes on to say -- the Satcher case
20 goes on to say: "Promissory estoppel requires a
21 promises unambiguous in its terms, and unlike a
22 contract, which requires a meeting of the minds in
23 consideration, promissory estoppel looks at the
24 promise and its subsequent effect on the promisee."

25 In this particular case, Your Honor, there

MOTIONS

1 is -- clearly, the testimony that has come from the
2 plaintiffs' case has clearly shown that there is
3 not an unambiguous promise. What the promise is,
4 is that TnW and TNT allegedly were going to put all
5 of their resources together and form a joint
6 venture, which they never identified who the joint
7 -- what the name of the joint venture was. And for
8 tax purposes, it is non-entity, but you still have
9 to identify it is an organization, unincorporated
10 association.

11 But going back to the things I would argue
12 that would show that the promise was, it was not
13 ambiguous. There is no written contract, oral
14 contract, that establishes what the terms and
15 conditions of the joint venture agreement is, that
16 would establish a meeting of the minds.

17 Crab Catchers, obviously, did not receive any
18 profits from the operation of the marina. And
19 based upon the testimony, I think that -- which
20 Your Honor heard -- clearly both Mr. Long and Mr.
21 Kiser indicated that Crab Catchers did not have any
22 control over the marina, as far as the operation,
23 as far as its construction, as far as its
24 maintenance, and also they testified unequivocally
25 and un-ambiguously they didn't receive any profits

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1 from the marina going from 2017 up to the present
2 date.

3 And, Your Honor, in Mr. Long's deposition, I
4 asked him -- and we've got his deposition excerpts
5 attached to the motion. I have a copy of the
6 complaint, and I'm referring you to Paragraph 7, on
7 Page 2. It says: "In reliance upon the above
8 representation, the plaintiffs undertook and
9 completed the following."

10 When I asked Mr. Long regarding Subparagraph
11 A-7, "Purchase 1.5 acres for \$150,000 for the use
12 of a joint venture with the defendants," Mr. Long
13 indicated that TNT made no financial contribution
14 regarding the purchase of the 1.5 acres for
15 \$150,000. That is in his excerpt.

16 When I asked him about the enlarged and
17 improved parking lot for the joint use of the LLC
18 and Inc., he indicated that TNT did not contribute
19 to that as a part of a joint venture.

20 As far as the constructed master dock office,
21 ticket building, and the retail store area for the
22 business operations of the LLC, Mr. Long's
23 deposition indicated that he did not -- TNT did not
24 make a finance or contribution regarding
25 Subparagraph C-7.

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1 Flipping over to the next page regarding
2 Subparagraph 7-C, it states: "Purchased a fuel
3 tank, fuel lines, installed fuel tank and fuel
4 lines, and obtained the permits."

5 Mr. Long testified in his deposition that TNT
6 didn't make a financial contribution regarding
7 Subparagraph C, the purchase of the tank and fuel
8 lines.

9 Then it goes on to say in Subparagraph D:
10 "Constructed the docking areas and the floating
11 docks and jet skis."

12 Mr. Long testified in his deposition that TNT
13 did not make -- or Crab Catchers -- did not make
14 financial contributions regarding the docking
15 areas, floating docks, and the jet skis. And if
16 you go through Subparagraph E, F, and G, Mr. Long
17 testified in his deposition that TNT did not make a
18 financial contributions, in any way, shape, or
19 form, that dealt with the purchase, the
20 construction, the permitting, the management and
21 operation of the marina property. That is pretty
22 big. Those are -- that's pretty big. I mean --
23 and this is in his deposition. And obviously, when
24 he testified from the stand, I don't know -- my
25 memory serves that he didn't change his testimony.

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1 The other thing that I wanted to point out,
2 which I think is important, in Paragraph A, Your
3 Honor, it states that --

4 THE COURT: What paragraph?

5 MR. BELLAMY: Paragraph A. This is part of
6 the second amended verified complaint. Paragraph A
7 says: "The order to accomplish the above
8 activities, an additional reliance on the
9 representations of the aforesaid defendants, the
10 Plaintiff Long and the LLC agreed to become
11 borrowers with the aforesaid defendants for the
12 purpose of borrowing from United Community Bank the
13 sum of \$1,100,000. Loan documents were completed
14 in November of 2017 as security for the aforesaid
15 loan of the LLC."

16 Your Honor, we took the deposition of the
17 30(b)(6) witness for United Community Bank on
18 February 27, 2024. Your Honor, his name was
19 Anthony Young.

20 MR. PLAYER: This isn't in the record, Your
21 Honor.

22 MR. BELLAMY: Your Honor, it's in evidence.
23 We agreed to put it in evidence.

24 MR. HARRISON: We have submitted the
25 excerpts.

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1 THE COURT: I thought the 30(b)(6) was for
2 Robert Smith?

3 MR. BELLAMY: No, it's....

4 MR. HARRISON: There were two, Your Honor. I
5 noticed those. The bank -- I spoke with the
6 counsel for UCBI. She produced two 30(b)(6)
7 witnesses in response to my singular request for a
8 30(b)(6). Robert Smith was one of those. He
9 handles one side of the issues. Anthony Young
10 handles the other side of the issues. So there
11 were two, Anthony Young and Robert Smith, for the
12 singular notice of the 30(b)(6) that I served on
13 the UCBI.

14 MR. BELLAMY: Your Honor, I would like to
15 refer you to Page 12 of 25.

16 THE COURT: Is this Exhibit C?

17 MR. BELLAMY: Yes, Your Honor. It is from
18 the 30(b)(6) deposition of Robert Smith and Anthony
19 Young.

20 THE COURT: You what said page?

21 MR. BELLAMY: Page 12 of 25, Your Honor.

22 THE COURT: Okay.

23 MR. BELLAMY: This is by Mr. Bellamy, Page
24 70.

25 Question: When I refer to loan documents,

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1 I'm referring to the promissory note, I'm referring
2 to the two mortgages, I'm referring to the
3 guarantees, the individual guarantees. Okay. Those
4 documents, to your knowledge, do not create a joint
5 venture relationship between the bank. Okay. Horry
6 County State Bank, subsequently the United Community
7 Bank, and the borrowers?

8 That's correct.

9 And, Your Honor, I'm not a real estate
10 attorney, but we have a lot of them in my law firm.
11 I understand you've done a lot of real estate when
12 you were in private practice. Just because a person
13 or entity allows somebody to use collateral to get a
14 loan, that does not create a joint venture
15 relationship without more. I think the cases are
16 replete out there.

17 I didn't find anything in South Carolina on
18 point, but I found cases in New York and other
19 jurisdictions that indicate that just the mere
20 loaning, letting somebody borrow or putting up your
21 property as collateral for a third party to get a
22 loan, does not in and of itself create a joint
23 venture relationship. You have to have more. Like
24 any other jurisdiction, South Carolina says you have
25 to have what the parties intend, essentially, to

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1 enter into a business relationship or business
2 venture for the purposes of sharing profits, as well
3 as being able to exercise equal control over each
4 other and the subject matter of the joint venture,
5 which in this case was the marina.

6 The other thing I want to point out -- give
7 me one second. This is the -- wait. What I'm
8 looking for is the deposition of....

9 THE COURT: One of the questions, and you are
10 giving me this tax aspect of 5.2, and I understand
11 case law says share and profits and control, but
12 it's strange to me that on the tax ramifications it
13 says it is not a taxable entity, that they are
14 taxed completely separate on their individual
15 capacities.

16 So in what way is there a flow-through of any
17 profits on any joint venture ever? I mean, you see
18 what I'm saying? How is it ever taxed on that?

19 MR. BELLAMY: Obviously, you can -- the K1s,
20 as far as partnership, you would have -- if they
21 are truly a joint venture -- I think it is Rule 65
22 partnership tax return. To the extent they can --
23 you know, if they didn't make any profits, they can
24 obviously, you know, set forth their losses and,
25 you know, write things off, and so on and so forth.

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1 THE COURT: But that would only be
2 individually, right?

3 MR. BELLAMY: Yeah. So what would happen --
4 in this particular case, the LLC and the Inc.
5 Would both have to file partnership tax returns,
6 because the un-incorporated and association of a
7 joint venture is not a legal entity, that --
8 basically, the underwriters would require -- they
9 also required that they have to -- the two co-joint
10 venturers are the ones that file these partnership
11 tax returns, so they do them individually.

12 To the extent they file K1s -- in this
13 particular case, if we are in a joint venture with
14 TNT -- I mean TnW, the marina property, the marina
15 property never issued a K1 to TNT, which is further
16 evidence of the fact we weren't in a joint venture
17 with the marina.

18 The thing I want to point out is Kim Bryant,
19 who is the accountant for the two entities -- Crab
20 Catchers, TNT, and all of the individual members,
21 plaintiff and defendants -- she, in her deposition,
22 which is attached to the memorandum, indicated that
23 TNT and TnW are not in a joint venture
24 relationship. And --

25 MR. PLAYER: We would object to that

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1 characterization, and that is certainly not in
2 evidence.

3 MR. BELLAMY: Let me read -- your Honor, this
4 is her excerpt. They are in evidence. Let's read
5 them. This is the question.

6 Question: To your knowledge, have any of
7 the members of TnW, as well as the shareholders of
8 TNT, held themselves out as TnW and TNT doing
9 business as Little River Water Sports, i.e., a joint
10 venture?

11 Little River Water Sports was part of TnW
12 only.

13 To your knowledge, had Tim Kettner ever held
14 himself out as entering into a joint venture with
15 TnW?

16 No.

17 To your knowledge, has Wade Long ever
18 indicated to you that TnW and TNT entered into a
19 joint venture doing business as Little River Water
20 Sports?

21 No. Little River Water Sports was only on
22 TnW.

23 So TNT would have had to have filed a 1065,
24 and TnW would have to file a 1065?

25 Correct. Yes.

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1 What a 1065 is, is a partnership return, Your
2 Honor, as far as the format you fill out.

3 It says: "Have either the members of TNT --
4 or, excuse me, the shareholders of TNT -- as well
5 as the members of TnW ever presented to you as a
6 written agreement indicating that it -- represented
7 you a written agreement indicating that it
8 represented -- that it represented the two in a
9 joint venture?

10 No.

11 And then I asked her: "Does TnW have any
12 right of control over the financial records of TNT
13 to your knowledge?

14 No. To my knowledge, they are not connected
15 in any way, shape, or form except the loan with
16 interest.

17 What I would like to do is -- I'm about to
18 wrap it up. I want to take a minute to read some
19 of the excerpts from Rhett Sansbury deposition.

20 MR. PLAYER: Once again, it is not in
21 evidence.

22 MR. BELLAMY: It's already in evidence. He
23 put it in evidence.

24 MR. PLAYER: You can't until they are
25 impeached on the stand.

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1 MR. BELLAMY: No. My understanding is this
2 was an exhibit, and they are in the record.

3 THE COURT: Who is Rhett Sansbury?
4 Insurance?

5 MR. PLAYER: Yes.

6 MR. BELLAMY: And what Rhett Sansbury would
7 say --

8 THE COURT: There is a form and there is a
9 place to check. I read that in your motion.

10 MR. BELLAMY: Yeah.

11 From 2017 up to the present day, regarding
12 the initial applications and the renewal policies,
13 Your Honor, that TnW has always checked that they
14 are an entity other than a joint venture. And even
15 when the lawsuit was brought, they still didn't
16 change it. To this day, when they do the tax
17 returns when it comes out with a new policy for
18 2024, they will probably check they are an entity
19 other than joint venture. There is a reason why
20 they are doing that, and it's our position it's
21 because they are not a joint venture.

22 THE COURT: That TnW itself is not a joint
23 venture? TnW, by itself, is not a joint venture?

24 MR. BELLAMY: Yeah. I think TnW is a
25 corporation; therefore, it can't be a joint

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1 venture.

2 THE COURT: That's my point. They would have
3 been correct in saying that they are not a joint
4 venture.

5 MR. RICHTER: I would actually disagree with
6 the Court a little bit on that.

7 THE COURT: Okay.

8 MR. RICHTER: The evidence in the record was
9 there was a single text from Tim Kettner, June of
10 2016, where he says to Wade, hey, we'll be a joint
11 venture.

12 THE COURT: Technically, he can be a joint
13 venture himself with TnW.

14 MR. RICHTER: Well, July 1 --

15 THE COURT: Even if he is a member of TnW.

16 MR. RICHTER: July 1 is when TnW is formed.
17 So that's the joint venture that's being
18 referenced. TnW is nothing more than TnW. It is
19 not a joint venture or with anyone else.

20 THE COURT: Okay.

21 Anything else, Mr. Bellamy?

22 MR. BELLAMY: The last thing I have is
23 excerpts from Wade Long's deposition that I think
24 is important.

25 THE COURT: I think that is Exhibit B?

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1 MR. BELLAMY: Yes, sir, Your Honor.

2 THE COURT: Court reporter, Exhibit B and
3 these exhibits that I have been saying are from
4 Defendants' motion for summary judgment.

5 MR. BELLAMY: Your Honor, this is on Page 28
6 of 29. It starts at 482. These are the
7 excerpts from Wade Long's deposition. This is the
8 question: Based upon the definition in hearing
9 your testimony today, again, what you are -- the
10 current -- you know, what's actually operating out
11 there is between TnW and TNT, it's not a joint
12 venture; would you agree with this -- with that?

13 Correct. Yes, I would agree with that.

14 Your Honor, the reason he would agree with
15 that is because when I read the definition of what
16 a joint venture was, Mr. Long's testimony was,
17 well, we're not sharing profits, one. Two, that
18 Crab Catchers does not have any right to exercise
19 any control over the marina property.

20 One second.

21 (A brief pause in the proceedings.)

22 MR. BELLAMY: I'll refer you to Page 473.
23 Basically, a joint venture is equally sharing
24 profits, equally sharing losses, equally sharing
25 control with respect to the joint venture.

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1 Because we're not splitting -- this is
2 Wade's response -- you know, we're not splitting
3 money together, I look at it as joint venture like
4 we're supporting each other's company. That is what
5 I considered was a joint venture. I didn't know a
6 joint venture was determined to be able to be
7 considered a joint venture when you had to split
8 profits or shares. We didn't have control over
9 their business. They didn't have control over our
10 business.

11 Your Honor, he's been consistent. He said
12 that in his deposition, testified on the witness
13 stand, and Chris Kiser testified to that, too.
14 Those are the two main elements. In order to have
15 a joint venture, as far as subject matter, each of
16 the co-joint venturers has to have a right of equal
17 control over the subject matter of a joint venture
18 in order to be a joint venture on the common law.

19 A joint venture is not statutory, as you
20 know. It is a common law, non-entity,
21 unincorporated association. I think -- I don't --
22 when you add into the insurance information, you
23 add in on top of that the tax records, and the fact
24 that the pleadings don't identify what the joint
25 venture is, the name of the joint venture, as far

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1 as it's unincorporated association that is
2 unidentified -- excuse me, Your Honor, I get cotton
3 mouth.

4 (A brief pause in the proceedings.)

5 MR. BELLAMY: Based on the things I read in
6 the record, the evidence I put in the record, based
7 on the trial testimony you heard this week, and all
8 of the excerpts attached to our motion for directed
9 verdict, Your Honor, we believe that these facts
10 are undisputed. There is not an issue of fact,
11 they are undisputed, and we ask the Court to find
12 there is not a joint venture relationship between
13 TNT and TnW, either by written contract or
14 promissory estoppel. We ask the Court to direct a
15 verdict on those specific grounds.

16 Your Honor, we also would ask the Court to
17 look at Rule 23(b)(1), and I won't go into it for
18 time's sake, and I think the motion speaks for
19 itself, but if Your Honor finds that they failed to
20 comply with the strict requirements of Rule 23(b),
21 it is a heightened pleading requirement, then if at
22 that point in time if they didn't comply with Rule
23 23 and Your Honor finds that, then all of their
24 causes of action against TNT are thrown out.

25 And, Your Honor, we would ask for you to look

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1 at the heightened pleading requirements in Rule 23.
2 It is our position that they didn't comply with
3 them.

4 If Your Honor has any questions about it,
5 I'll be more than happy to address it, but those
6 are the main grounds. If you feel that they -- if
7 the Court takes the position that the plaintiffs
8 didn't comply with the heightened pleading
9 requirements of Rule 23, that knocks out our causes
10 of action against TNT. Then, Your Honor, in the
11 alternative, we would ask Your Honor to hold --
12 based upon the facts and the circumstances that has
13 been presented as far as trial testimony, all of
14 the exhibits in the record, the attachments to our
15 motion for directed verdict, that the plaintiffs
16 fail to plead a joint venture relationship by
17 either written or oral contract, or in the
18 alternative, in equity by promissory estoppel.

19 And, Your Honor, we thank the Court for
20 giving us time to make the argument, and that would
21 be my showing, Your Honor.

22 THE COURT: Thank you.

23 Deputy, if you will, instruct the jury to be
24 back at 1:00.

25 MR. PLAYER: Can I have a bathroom recess?

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1 THE COURT: Oh, yes.

2 (A recess was taken.)

3 THE COURT: Mr. Player, whenever you are
4 ready.

5 MR. PLAYER: Your Honor, I thought about
6 different ways to do this. Look, you know, the
7 pink elephant is the joint venture. What we pled
8 was a violated -- a contract to participate in a
9 joint venture. That is the way it is pled. It is
10 not pled great, but that is the way it was pled. I
11 tried to be clear what we believe the joint venture
12 is. We get to use the parking lot. They get to
13 use the marina. We operated that for three years.
14 They were given slips on the dock, and they put
15 unambiguous signs up in the parking lot saying
16 there is only two parties that can use it: Us and
17 TNT.

18 In terms of the general operation of the
19 restaurant, no interest. In terms of the general
20 operation of the marina, they had no interest in
21 ours. They were separate. That is the filing
22 separately. But with regards to the land use,
23 which was we'll build your parking lot, TnW will
24 pay for it as long as we are able to use it for
25 purposes of building and operating our marina, and

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1 in exchange, you will get control over at least two
2 slips in the marina that have a value of a thousand
3 dollars a month. That is what the testimony is.
4 That is what we say is a joint venture.

5 All of this discussion about can we share in
6 TNT's profit? No, not from the operation of the
7 restaurant, and whatever increase business they get
8 from the use of the marina. They are going to
9 claim it on their taxes, but for purposes of a, you
10 know, mutual existence. The only way that
11 happens -- especially when you look at the bank
12 documents -- TNT needed the parking lot to comply
13 with the roads. It is in credit application.

14 When you get down to control -- okay, profits
15 first. Ronnie has made a big deal out of this
16 company never made any money. You can't share
17 profits if there aren't any. So you get to
18 control, and the evidence we put up to show control
19 I think is a lot. The signs, only Crab Catchers
20 and Little River Water Sports, which is TnW, can
21 use this lot. They told the world that we had
22 control over the lot. They ran our business when
23 we weren't there. They ran our credit cards in
24 their office. Their office is where our office
25 was. Their office is where our records were.

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1 Their office is where our bathrooms were, which
2 we're required to operate the marina. The Crab
3 Catchers employees not only ran the marina and jet
4 ski hut and gas pumps, they were able to use the
5 jet skis as a bonus in the off-season.

6 Then we get into the specific communications.
7 We have the texts where Tim says Justine and Donny
8 and I all agree that the best way for this to
9 happen is for Wade give up his shares. Wade wasn't
10 included. He was on the list, but the decision was
11 made by the partners of TNT.

12 Then we get down to Donny was a signatory on
13 the account. He was the risk management officer
14 for TnW. They were intertwined. But with regard
15 to the profits of the businesses, no, they didn't
16 share those, but neither business could survive
17 without the land arrangements that were made.

18 I'm glad you brought up Satcher v. Satcher,
19 because this is something that Your Honor brought
20 up at the beginning of the case. You can't sue
21 somebody that -- Satcher v. Satcher, grandson has a
22 good relationship with grandfather, and grandfather
23 says, You know what, I'm going to deed you that
24 land when I die. So the son comes down. The
25 grandson moves in with dad and takes care of him.

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1 He changes his position in reliance on the
2 grandfather's proposal that he's going to deed you
3 this land. Grandfather dies. There is no deed.
4 He filed an action for promissory estoppel, and the
5 Court said he could compel a fee simple transfer of
6 the land because the promise was made, and he
7 changed his position in reliance on it.

8 We're not asking -- I don't think we're
9 asking -- for this Court to deed land to us. What
10 we want is an easement. We want the agreement that
11 was in place that allowed us to operate, and if
12 it's taken away, eliminates our ability to operate.
13 But, again, that is a question for the Court.

14 Ronnie said it is purely equitable. The case
15 law is replete, it is not. There are legal
16 aspects, which is why the jury hears it. They make
17 a determination, but if the land is going to be
18 deeded, it is going to come from the Court in
19 equity.

20 The two choices Ronnie talked about before, I
21 agree with that. The fourth of promissory estoppel
22 is: Can you make them keep their promise? If that
23 is impossible, all you get is what damages did you
24 suffer in changing your position in reliance on the
25 promise? That is what we think we've put up.

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1 He says there is no damages. I think it's
2 pretty clear: 1.35 just on the loan. That is an
3 expense that we incurred that if we are not allowed
4 to have an easement across the upland frontage, our
5 land is worthless. That is the promise -- you
6 know, both of those things are tied. It is either
7 we have a joint venture agreement to have access to
8 each other's properties, or it was a promise that
9 they gave us that we've relied on, and we have
10 incurred substantial expenses and damages in terms
11 of the loan, and we want that back.

12 I think the jury determines what that number
13 is in terms of the value of what is lost if he
14 can't operate, and this Court exclusively holds the
15 power to equitably change it by instituting an
16 easement or some type of -- a change in the
17 ownership and the ability to use the property.

18 They have spent an awful lot of time saying
19 that the loan agreement does not form a joint
20 venture. The testimony that Howell provided to the
21 banker was, Did it form a joint venture with the
22 bank, and there is case law in South Carolina on
23 that, and that is how this kind of originated.

24 Guys would go into a bank, give them their
25 projections, get a loan, something goes wrong, and

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1 they say they can't foreclose on your property,
2 we're in a joint venture. The courts have rejected
3 that completely saying all they did was loan you
4 money. You are restricted to the terms of that
5 contract, especially when there is a savings clause
6 -- not a savings clause a -- I can't think of it,
7 but whatever that says, this is it. No further
8 agreements unless it is in writing.

9 In terms of profit, there is some evidence.
10 The fishing tournament that Wade talked about that
11 they operated with Crab Catchers, and all of the
12 profits went to Crab Catchers. And then, of
13 course, Steve Crosson testified when they pumped
14 fuel or used a credit card when operating the
15 marina, that ran it through Crab Catchers.

16 So that is why we think, you know --
17 specifically with regards to what we're claiming
18 the joint venture is, the joint venture is
19 restricted to, You let us use the parking lot, we
20 used the marina, and it is for the benefit of both
21 parties. I think that is a recognizable joint
22 venture in the State of South Carolina, under the
23 laws of the State of South Carolina.

24 The whole Rule 23, I do not understand. He
25 spent a lot of time saying that the joint venture

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1 can't be incorporated. Well, a derivative
2 action -- you are skipping a word: Shareholders
3 derivative action. If they can't be shareholders,
4 it is not a derivative action.

5 To the extent that there is some claim that
6 it is a derivative action, I just did this in two
7 appeals where I got clipped on a DV. We would make
8 a Rule 15 motion for all -- for the pleadings to
9 conform to the evidence at this point in trial, and
10 I believe what the law says is doesn't matter what
11 is in the pleadings.

12 Once I rest my case, the only thing that
13 matters is what is in front of the jury. In this
14 case, I don't think -- as Ronnie has said -- there
15 is no way these people can work together. So it
16 was obviously futile to say we're going to sue you
17 when they were trying to destroy our business.

18 The primary thrust of the initial complaint
19 was to get an injunction to stop them from kicking
20 us off their land because we lose the marina if
21 that happens.

22 You know, again, Howell says there was no
23 consideration, no meeting of the minds. The
24 consideration is that we gave them a parking lot,
25 gave them a marina, and we let them use both of

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1 them. I don't understand how that is not -- the
2 terms were clearly defined when they operated in
3 harmony for three years. During those three years,
4 we were allowed to use their parking lot, and they
5 were allowed to use our marina. That seems like a
6 contractual relationship, to me. Consideration,
7 meeting of the minds.

8 They want to tell the jury this was some
9 magnanimous consideration of theirs to help out
10 poor Wade. That is a jury issue. We believe that
11 this was a promise made to induce him to give them
12 a parking lot, give them a marina, and when they
13 got good well and ready, they said, nope, bye,
14 Sucker. That is our theory of the case.

15 No sharing of losses. All of the testimony
16 about the loan is very clear. If one of them -- if
17 anything wasn't paid, everybody lost. Anybody
18 could take a draw, so they were sharing in the
19 profits and losses with that loan is the very
20 definition of a joint venture, because if one of
21 them failed, so did the other one. If they both
22 succeeded, they both had equal access to the money,
23 and they could use it for whatever they wanted.

24 They all signed it. There was no question
25 they all agreed to it. But that joint venture was,

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1 as stated in the credit memorandum, for Crab
2 Catchers to get their parking lot and build the
3 marina and the things that never happened. But
4 that's where the terms are. It is all in the loan
5 agreement.

6 And the funny thing is all of these folks are
7 going to say, That loan was solely for TnW. My
8 question is: Why is their name not on it? I mean,
9 their name is on the promissory note, but the
10 credit memorandum when they said this is the
11 business plan that we're loaning money on, it
12 doesn't mention Wade or TnW. Only thing it
13 mentions is Crab Catchers and Tim. So they were
14 telling the banks something different than what
15 they were telling the Court.

16 THE COURT: Talk to me about breach of
17 fiduciary duty.

18 MR. PLAYER: Breach of fiduciary duty. I
19 think it is simple. We have text messages where
20 Tim is coordinating with the guys at Crab Catchers
21 to remove the hut through the use of regulatory
22 authorities. Like, that's your property, you might
23 want it later, and according to Eric Rolf, that
24 directly caused him to leave and to stop paying the
25 rent to Wade. Once the ski hut was gone, we

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1 couldn't operate. That is \$10,000 a month. That
2 is a streamline.

3 Tim, after September, those text messages
4 where he's going to say, Go to war. Gloves are
5 off. Don't buy fish from Wade. That stretches
6 into 2021. That goes against the idea that he had
7 no participation with TNT, because they are all
8 texting about how they are going to get Wade.

9 But the most important one, for the purposes
10 of conspiring to act against the interest of TnW,
11 is when says, You all can use that ski hut. Tell
12 him you are going to buy it. And then, you know,
13 Donny has to make the offer as the president, and
14 Robert is the incognito infiltrator. That is
15 acting about as directly against the interest of
16 TnW as you can get. He said, There is no damages
17 tied to it. The Eric Rolf contract is directly
18 tied to it, because he testified when the ski hut
19 was removed, that was the last straw. And that was
20 \$10,000 a month. I think it was lowered to \$7,000,
21 but that is clearly a damage to TnW because they
22 lost the lease on the docks because Tim was
23 conspiring with the other members of TNT to remove
24 the ski hut that was used for that business
25 exclusively by TnW for three years at that point.

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1 So I think those text messages clearly show
2 he was conspiring and acting against the interest
3 of TnW. When they had their shareholders --
4 member meeting when they tried to salvage things,
5 Tim said I'm not doing anything to salvage this,
6 which is his right. But the activities of
7 interfering with the business of TnW, at a very
8 minimum, the ski hut he participated in, that
9 caused direct damage.

10 Here's the other side of that. There's a
11 crossclaim. They have accused Tim of lying, that
12 he misrepresented what he represented to us and
13 what he promised to us about using the parking lot
14 and using the marina. And that's there, too,
15 because if he lied about it, he lied about it to
16 us, too. And that is a violation of the duty of
17 loyalty when he told us, We're going to build up --
18 we're going to invest all of our money in this
19 stuff, based on the ability to use the parking lot.

20 If that was not true -- if it was to get us
21 to give them the parking lot and marina with no
22 intention of allowing that permission to be
23 perpetual, we think that is a misrepresentation
24 that he made and breached fiduciary duty to our
25 clients as well.

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1 I mean, eventually, to us, especially the way
2 crossclaims are laid out, it's going to come down
3 to the jury that he made a promise to TnW. He
4 either bound TNT, or he made it on his own. If he
5 bound TNT, then they have to pay the damages. If
6 he did it on his own, then Tim Kettner has to pay
7 the damages.

8 With regard to nuisance, one of these
9 exhibits -- right here. They are all in evidence
10 when they were discussed, but the nuisance is.

11 MR. HOWELL: I apologize. Tucker, you
12 indicated -- did you ever identify what the joint
13 venture was, who it is or what it is the name of
14 the joint venture?

15 MR. PLAYER: There is plenty of cases that
16 says "unnamed joint venture." And if it's
17 unincorporated and unassociated, it doesn't have an
18 official name except for what they decided to call
19 it.

20 This is the plat they did in 2021 when they
21 basically said it's all ours. They voluntarily --
22 I think they were required by prescription to give
23 us an easement across this piece of property to get
24 to ours, because we would be landlocked without it.
25 We showed pictures where they put a chain across

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1 that and parked their trucks there to block it.
2 That it is a nuisance. They gave us an easement
3 that they said -- and I believe all of them signed
4 right here, including Jose -- we have an easement,
5 and then they block it for three years. So that is
6 nuisance.

7 Assault was voluntarily dismissed, along with
8 the misappropriation. But we clearly think there
9 is enough evidence to establish that there was an
10 agreement and a partnership with regards to docks
11 and the parking lot. It's unambiguous. They put
12 the signs up saying we can use it, and they
13 promised the world we were one of two parties that
14 can access the parking lot. And in exchange, they
15 have used the docks, and the testimony is they are
16 still using the docks. The Blue Crab Festival was
17 less than a month ago, and their people were all
18 over our marina docks, and we did nothing to stop
19 them.

20 So they are still getting the benefit without
21 giving us the benefit that it was all based on.
22 They are still using our marina docks, still
23 pulling up and going to the restaurant, but we have
24 been locked out, driven off, arrested any time we
25 get in the parking lot, which we built for them,

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1 and we think that clearly demonstrates there was an
2 unambiguous promise, that induced us to build the
3 parking lot and marina, that we would have
4 sufficient access to that parking for the upland
5 frontage so we can operate. That is why our
6 damages fluctuate.

7 If we can operate, then we can market the
8 property. We can market it as an operating marina
9 with full permissions. That makes it far more
10 valuable. If we can't use the upland parking lot,
11 that marina is worthless. I think that is the way
12 they like it because they are in the best position
13 to buy it at a cheap cost. Anybody that comes and
14 wants to buy it from us, we have to say, You have
15 to ask Mr. Crab Catchers or it's worthless. You
16 can't operate, and that is the essential problem.
17 They put us in a box and are squeezing it.

18 That is why promissory estoppel is clear --
19 it's clear -- we testified that we believed they
20 promised us access to the parking lot in exchange
21 for the marina, and without that, in reliance on
22 it -- you know, he talked about we don't know how
23 much the parking lot was. I believe the testimony
24 was that the loan was for the parking lot and for
25 the marina. That is what the money was for. Tim

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1 and Wade didn't wait. They went ahead and built
2 the docks in the parking lot and paid their own
3 money. But as soon as that money came in -- and we
4 haven't talked about it, but it is all back in
5 2017 -- there were gigantic checks written to both
6 Wade and Tim because they fronted everything. They
7 fronted doing the parking lot. They fronted
8 building the docks, and they funded the initial buy
9 of jet skis. All of that was reimbursed once the
10 loan came in, but that was the purpose of the loan,
11 to pay for everything, which goes back to another
12 step, another act of partial conformance to get it
13 out of statute of frauds. They operated three
14 years that way. They had plans from Nick Nye, who
15 called it a joint venture.

16 Sid Beam got the permitting for the marina,
17 and then they went out and got this loan, and it
18 was all for one purpose, which was for each party
19 to have their own core business, the restaurant and
20 the marina. But the joint venture was neither one
21 of us can survive without being able to use the
22 parking lot and able to use the marina; so,
23 therefore, that is where the joint venture was. It
24 was just in terms of being able to use it for the
25 benefit of each company, not necessarily to operate

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1 a single business on that property that they both
2 shared the profits from.

3 That is why we pled in the alternative --
4 and, again, we're not seeking for this Court to say
5 there is a joint venture, and you shall continue to
6 operate that way. That would be, you know, the
7 height of folly.

8 What we are saying is that we had an
9 agreement, and the contract was to do the joint
10 venture, and if they are not going to do the joint
11 venture, then we suffer damages again by building
12 this marina and incurring this debt. Because if we
13 would have known there was no way that they could
14 yank the upland frontage from us, we would have
15 never invested 1.3 million dollars in this thing,
16 because it can be taken away at my moment. That is
17 what we think both the law and equity stopped them
18 from doing in this case. We think the joint
19 venture issue -- and that is up to them.

20 Was this an agreement between all of the
21 parties? Was there an oral contract for us to use
22 the parking lot, and them to use the marina? We
23 think there was. That's the violation of the joint
24 venture agreement.

25 If that doesn't stick, then we say they gave

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1 us an unambiguous promise, because we would have
2 never have spent all of that money and incurred all
3 the debt if we thought it could be yanked away from
4 us at any time. The promissory estoppel is you
5 never should have promised us that we would be able
6 to use this land to operate our marina, and because
7 you did, our change in position is worth what we
8 have invested and what we think it is worth.

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

10 MR. PLAYER: Thank you, Your Honor.

11 MR. RICHTER: Can I offer a brief reply?

12 THE COURT: Brief.

13 MR. RICHTER: Just a few points, because I
14 think it is important. I won't waste the Court's
15 time otherwise.

16 That argument speaks to the nature of the
17 claim from its offset. First time I ever heard
18 that joint venture is we're going to use the
19 parking lot. That is not what the pleading says.
20 You can read it for yourself. Neither party can
21 survive without the other. Crab Catchers has been
22 there for 25 years. Parking was fine. I mean,
23 that was just a gross distortion of what has been
24 presented to the Court.

25 If there was a piece of paper and was a

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1 contract, I would be here saying, Your Honor, the
2 function of the Court is not to protect somebody
3 from the wisdom or folly of the deal that they
4 struck. But now they are saying we struck a bad
5 deal because we never defined the terms, and we're
6 asking the Court now to protect us from the wisdom
7 of the folly that we struck.

8 Rolf left in 2022. That is important. Tim
9 Kettner was released in September of 2020. The
10 texts he's trying to smear together happened in
11 2020/2021. Rolf leaves in 2022. We have nothing
12 to do with that. So to point to that as an, Ah-ha,
13 see, Tim did interfere, I can prove damage because
14 in 2022 the guy decided not to continue to run the
15 jet skis. That has no connection in time or space
16 to anything involving Tim. He's been since sued.
17 He got sued in March of 2021.

18 What they are asking you for -- and this is
19 my last point -- please write us the easement. All
20 right. Well, what are you going to write? For how
21 long? Under what terms and conditions? Who is
22 going to repair the place? Are you going to set up
23 hours of operation for the parties? You all can
24 use it during the day, and we'll use it at night?
25 What if they start overparking and we can't use it

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1 anymore? I'm sorry they are in the position that
2 they are in, but this is the consequence of not
3 sitting down to reduce to writing in the first
4 place whatever this arrangement was.

5 Thank you, Your Honor.

6 THE COURT: Thank you.

7 We are going to take a break. I'm going to
8 take this under advisement. I should have an
9 answer for you when we start at 1:00.

10 MR. BELLAMY: Is there anything else that you
11 are unclear that I can provide?

12 THE COURT: I don't think so. I have the
13 cases here that I'm going to go through. I'm going
14 to read all of them during the break.

15 MR. BELLAMY: One last thing. There is an
16 agreement -- TnW -- the agreement was between Tim
17 and Wade. We were not a part of that agreement,
18 and, obviously, whatever they agreed, as far as the
19 use of the property and all of that, those is for
20 those two individuals. We were not a part of it.
21 There may be acquiescence, but the fact is we
22 weren't a part of the agreement.

23 And, then, Donny, obviously, allowed the
24 property and shareholders and TNT to put up
25 collateral to help his dad fulfill his dream. I

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1 understand where Mr. Player is coming from, but his
2 remedy is not against TNT. It is against, you
3 know -- part of TnW, what they worked out when Tim
4 was a managing member.

5 I think -- Your Honor, last thing I'll say is
6 when Chris got up and testified, he refers to the
7 operating agreement of TnW as what controls this
8 alleged joint venture, which really means that it
9 boils down to when they form that entity, the
10 agreement is really between Tim and Wade. That is
11 what it is about. We're not a part of it, and
12 thank you for having me add that to the motion.

13 MR. PLAYER: My point is, Your Honor, that is
14 impossible. The joint venture specifically -- it
15 is alleged in the pleadings. It had to deal with
16 the use of property. Tim Kettner did not have the
17 ability to pledge that or make that promise as an
18 individual. He could as a controlling member,
19 majority shareholder, president of TNT. So we
20 believe he bound them because he was their binding
21 agent, the same way he bound them in a mortgage.

22 MR. BELLAMY: The reason why we're in this
23 lawsuit is because we have a deep pocket. We have
24 eight pieces of property. The bank's concern is
25 that those properties are TNT's properties.

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1 Also, the loan document was executed for the
2 recombination plat, so the loan documents would
3 control. Actually, the recombination plat would
4 violate the loan documents without getting the
5 bank's consent to do it.

6 Your Honor, you know, I think it is pretty
7 clear that they can't establish, you know, the
8 material elements of a joint venture, based on the
9 testimony presented at trial, and all of the
10 exhibits in the record.

11 Thank you.

12 THE COURT: Thank you.

13 (A lunch recess was taken.)

14 THE COURT: Thank you. Keep your seats.

15 I did have a chance to read all of the case
16 law you provided and did a little bit of research
17 on my own. In regards to the 15(b), I'm going to
18 keep that under advisement. I understand your
19 motion, but I would like to hear more testimony
20 from your clients in that regard.

21 As to the duty of the breach of fiduciary
22 duty, breach of joint venture agreement, and
23 promissory estoppel, you make some good arguments;
24 however, given the fact that I am to look at the
25 existence of evidence, not necessarily the weight,

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1 I'm going to respectively deny those motions.

2 As to Mr. Bellamy, you make some good
3 arguments as well, but I believe the argument in
4 regards to the derivative suit previously heard
5 by -- I can't remember if it was Judge Culbertson
6 or who, and also heard this morning -- or beginning
7 of the trial, so I'm going to respectively deny
8 that motion as well.

9 As to the promissory estoppel and to the
10 breach of joint venture agreement, and I don't
11 remember you making an argument on nuisance, but
12 I'm assuming you were making DV for that as well.

13 MR. BELLAMY: I didn't make that, Your Honor.

14 THE COURT: All right. Had there been an
15 argument, I respectively would deny that.

16 I do want to just kind of hear everybody as
17 to -- as far as promissory estoppel, there's been
18 arguments made by both sides that it's equitable in
19 nature, quasi equitable, but it involves a jury
20 question. I just want you all to let me know your
21 thoughts on that, because the case law is not clear
22 in that. You know, you'll read promissory estoppel
23 is equitable in nature, and then you read case law
24 and it says, well, it can go to the jury, and the
25 jury can determine facts for which it can be

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1 construed. So I'm happy to hear from you all as to
2 what parts of that need to go to a jury, and what
3 parts need to be for the Court?

4 MR. PLAYER: I think Ronnie in his pretrial
5 kind of gave up some special interrogatories for
6 the jury. I think that was more geared towards the
7 joint venture as opposed to promissory estoppel.

8 So my plan is to use Wednesday to come up
9 with a verdict form so we can -- so we can reach a
10 consensus on whatever we can on this, but my
11 thoughts are this -- and the way I read the law
12 is -- it's the fork that Ronnie talks about: Can
13 they enforce a promise. If the promise is -- if
14 the ability to enforce it is gone, I think it is
15 purely a legal question as to what was his change
16 in position and what were his damages, and I think
17 that is a determination for them.

18 THE COURT: Does the jury have to find a
19 finding of fact as to what the promise would have
20 been?

21 MR. PLAYER: I think that would help Your
22 Honor.

23 THE COURT: No, I'm just saying -- you are
24 basically asking the jury what was the promise you
25 all agreed and write it down. That's kind of an

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1 unusual -- I understand there is some aspects that
2 are unusual, but....

3 MR. PLAYER: I mean, I think the question we
4 want posed to the jury -- and, again, we can
5 discuss it -- was there a promise made between the
6 parties for the mutual benefit for use of the
7 parking lot and the marina?

8 MR. RICHTER: No, sir. Judge, I respectfully
9 disagree. We agree on almost everything here. I
10 think everything that you read is correct. I read
11 the same thing you read. I'm not aware of case law
12 that says you must submit anything to the jury.
13 So, in my view, it is equitable in nature, and like
14 any equitable claim, if you believe that there is a
15 disputed fact that would help you as the facts
16 finder in equity, then you may submit that to the
17 jury. But I'm not aware of anything that compels
18 you to do so.

19 But, yes, to answer your question, if you
20 felt like you needed help with that factual
21 dispute, was there a clear and unambiguous promise?
22 If so, what was it? In a paragraph or less, write
23 it here.

24 THE COURT: It could be that we have the jury
25 just simply make a finding of was there a clear and

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1 unambiguous promise, and at that point I've heard
2 testimony, certainly.

3 MR. PLAYER: I think the next question would
4 be: If so, what were the defendants' damages in
5 reliance on that promise?

6 MR. RICHTER: You would have to ask: Did the
7 defendants reasonably rely on that promise?

8 THE COURT: That's wording for you all to
9 figure out to get a true verdict form.

10 MR. RICHTER: Technically, the next question
11 is what is the value of the benefit that was
12 conferred upon the promisor as a result of that?

13 THE COURT: I think you can do both.

14 MR. BELLAMY: I would ask for a third.

15 MR. PLAYER: We all know that the verdict
16 form, they never screw that up.

17 MR. BELLAMY: The question is who --
18 basically, is it TnW or was it Tim and Wade?

19 MR. PLAYER: I think that will be a question.

20 THE COURT: I know you are proposed -- that
21 on the original proposed jury verdict form, I think
22 your first question was: Was there a joint
23 venture? If so, who it was with? I mean, that
24 kind of thing.

25 MR. PLAYER: Right.

MOTIONS

1 THE COURT: That still may be the proper way.
2 Was it a joint venture between TNT? Simply with
3 Timothy Kettner?

4 MR. PLAYER: I think we do have the benefit
5 of the foreman being a CPA. So at least he has his
6 wits about him. I think this jury will be able to
7 follow instructions and answer special
8 interrogatories.

9 THE COURT: I may have known that when I put
10 him as foreman.

11 MR. PLAYER: Yeah.

12 Again, we'll do it Wednesday.

13 THE COURT: These are things I think we have
14 a couple of days to iron out, but I wanted you all
15 to be heard as far as the record as to everyone's
16 thoughts on how to handle the promissory estoppel
17 side. And we can definitely discuss it later.

18 Anything else before we bring the jury in and
19 call your first witness?

20 MR. RICHTER: No, sir.

21 THE COURT: And if I'm correct, you all will
22 be calling your witnesses first, and then, Mr.
23 Bellamy and Mr. Harrison, you follow with your
24 witnesses?

25 MR. HARRISON: Yes, Your Honor.

1 KIMBERLY BRYANT - DIRECT EXAMINATION
2 THE COURT: All right. Let's bring in the
3 jury.

4 (The jury enters at 1:10 p.m., and the
5 following is heard in the presence of the jury.)

6 THE COURT: All right. Thank you. You all
7 can be seated. Hope you had a good lunch.

8 Again, like I said, we had matters of law to
9 take up that we were able to get through.

10 The defense will now begin their case.

11 All right, sir.

12 MR. RICHTER: Defendant calls Kimberly
13 Bryant.

14 (KIMBERLY BRYANT, having been duly sworn,
15 testified as follows:)

16 THE WITNESS: Kimberly Bryant.

17 **DIRECT EXAMINATION**

18 **BY MR. RICHTER:**

19 **Q** Thank you for coming.

20 We have not met before today?

21 **A** No, we have not.

22 **Q** I'm Ronnie Richter. I'm one of Tim Kettner's
23 attorneys. We're here to get testimony today
24 regarding your actions for these different
25 individuals, okay?

A Okay.

1 **Q** KIMBERLY BRYANT - DIRECT EXAMINATION
Before we jump into the work you did for
2 these folks in the courtroom, take a couple of
3 minutes and introduce yourself to the jury.

4 What is your full name?

5 **A** Kimberly Bryant.

6 **Q** Where do you live?

7 **A** North Myrtle Beach.

8 **Q** Can you give us the Reader's Digest version
9 of your education after high school?

10 **A** I worked for the Department of Revenue as an
11 auditor in North Carolina. I got my degree in
12 accounting, and worked for a private firm in
13 Fayetteville for 15 years, and then went out on my
14 own.

15 **Q** Do you hold any professional licenses?

16 **A** I'm a public account.

17 **Q** For what period of time have you been a CPA?

18 **A** 34 years.

19 **Q** And in your day-to-day activities as a CPA,
20 do you prepare tax returns?

21 **A** Yes.

22 **Q** You prepare returns for individuals,
23 companies, or all of the above?

24 **A** All of the above.

25 **Q** In the past, have you had occasions to do

1 returns KIMBERLY BRYANT - DIRECT EXAMINATION
for something called a joint venture?

2 A Never.

3 Q Never prepared a joint venture return?

4 How about partnership returns?

5 A Yes.

6 Q Is that an uncommon type of return, a
7 partnership return?

8 A Yes.

9 Q But you do that as part of your practice?

10 A Yes.

11 Q In the courtroom we have several individuals
12 and some different entities involved. Are you
13 familiar with TNT?

14 A Yes.

15 Q And have you done tax preparation services
16 for TNT?

17 A Yes, ma'am.

18 Q Have you done other work for TNT beyond tax
19 preparation?

20 A They provided me with their information with
21 a dome book, and we reconcile the bank account and
22 come up with their year-end numbers, and then
23 balance out to their dome book.

24 Q So on an annual basis, you help them
25 reconcile accounts?

1 **A** KIMBERLY BRYANT - DIRECT EXAMINATION
They bring a monthly -- or normally four or
2 five months. We get them at one time.

3 **Q** And how long have you done that work for TNT?

4 **A** I would say four, five years. Not sure
5 exactly.

6 **Q** What about TnW?

7 **A** Uh-huh.

8 **Q** You are familiar with that entity?

9 **A** Yes.

10 **Q** Have you done tax preparation services for
11 TnW?

12 **A** Yes.

13 **Q** And as best you know, who are the members of
14 TNT?

15 **A** Now?

16 **Q** Yes.

17 **A** At this time it is Justine, Donny, Casey
18 and -- I'm not sure of his name.

19 **Q** There was a time in the past where Tim
20 Kettner was a member as well?

21 **A** Yes.

22 **Q** But you are aware of a change in that
23 ownership over the passage of time?

24 **A** Yes.

25 **Q** How about TnW; who do you understand to be

1 KIMBERLY BRYANT - DIRECT EXAMINATION
the owners of TNT?

2 **A** As far as I know, it's Tim Kettner, Wade
3 Long, and Chris Kiser.

4 **Q** Was there a time when it was just Tim and
5 Wade?

6 **A** Yes.

7 **Q** And you have done tax preparation services
8 for that entity?

9 **A** Yes.

10 **Q** And in conjunction with doing their returns,
11 did you have access to the books and records of
12 that entity?

13 **A** The same way; I was given a dome book and
14 bank statements.

15 **Q** Let me show you a notebook that contains
16 exhibits. I'll ask you to turn to Tab 25.

17 MR. PLAYER: What volume?

18 MR. RICHTER: Sorry. Volume 1 of 3. This is
19 Kettner 25.

20 **Q** **(BY MR. RICHTER)** Do you see that?

21 **A** Uh-huh.

22 **Q** Tell the jury what you are looking at.

23 **A** 2016 tax return for TNT and More.

24 **Q** And TNT is Crab Catchers?

25 **A** Yes.

1 **Q** So if I say "Crab Catchers" or "the

2 restaurant," we're talking about TNT?

3 **A** Yes.

4 **Q** Did you prepare that return?

5 **A** Yes.

6 **Q** It says on the front page Bryant Accounting
7 and Tax Service. Is that you?

8 **A** Uh-huh.

9 **Q** In 2016, if you turn -- there's a Bates stamp
10 number at the bottom right, Page 48 and 49. Do you
11 see that?

12 **A** Yes.

13 **Q** And what's represented on those two pages?

14 **A** That is the invoice.

15 **Q** And on the invoice, does it indicate the
16 forms or the services or schedules you would have
17 prepared as a result of this return?

18 **A** Yes.

19 **Q** And in preparing the 2016 return for TNT, is
20 there any -- did you prepare a partnership return?

21 **A** In 2016, no.

22 **Q** And if TNT was in a joint venture in 2016,
23 would you have prepared a partnership return to
24 reflect that joint venture?

25 **A** I would have to look at 2016. I don't know

1 KIMBERLY BRYANT - DIRECT EXAMINATION
2 when TnW was established right off the top of my
3 head.

4 **Q** To your knowledge, was TNT and TnW ever in a
5 joint venture?

6 **A** For tax purposes, no.

7 **Q** And for tax purposes, had they been in a
8 joint venture, what schedule or form would you have
9 filed to reflect that relationship?

10 **A** It depends. Most of the time people do a
11 corporate return as an S Corp and their
12 shareholders. Now, the joint venture, as far as --
13 '16, I'm not sure. I'm not sure when TnW was
14 established. And I'm not sure when the restaurant
15 they were going to build and land and all of that
16 came to be.

17 **Q** But if for any year there was a joint
18 venture, is there a form or a schedule that you
19 would prepare in conjunction with the return that
20 would reflect that a joint venture exists?

21 **A** No. Because at the time, it had not come to
22 be yet. It was in the process of being -- I think
23 there were plans being drawn up by architects and
24 that kind of thing.

25 **Q** If it had come to be, is it a 1065? What is
26 the form that would accompany the return that would

1 KIMBERLY BRYANT - DIRECT EXAMINATION
2 say to the world, hey, this is something more than
3 just a corporation?

4 **A** It would have been a 1065 if they had not
5 become shareholders of both companies, but they
6 were -- like Mr. Kettner, at that time, was on both
7 of them. He was on both tax returns. Wade Long
8 was on -- just him and Tim was on it for a while.
9 And then Chris Kiser came to be. The reason I was
10 told that he became a part of the TnW is because
11 they got a loan. With Crab Catchers and TnW, there
12 was a loan, and at end of the year, I was given a
13 percentage by Mr. Kettner of how much of this loan
14 was to be expensed on this return, and how many on
15 this return, because it was a joint loan. Each one
16 had a certain percentage, and that is how it was
17 treated.

18 **Q** But for any tax year that you prepared
19 returns for TNT, did you ever file a 1065?

20 **A** No.

21 **Q** For any year that you ever filed a return for
22 TnW, did you ever prepare a 1065?

23 **A** No.

24 **Q** And do you still prepare returns today for
25 both TNT and TnW?

26 **A** Yes.

1 Q KIMBERLY BRYANT - DIRECT EXAMINATION
2 So there was a period of time when Tim
3 Kettner was, kind of, the point person for the
4 preparation of returns?

5 A Yes.

6 Q And when do you recall that changing?

7 A I think Tim stopped about -- I would say
8 November or December of around 2020, maybe '21.
9 It's been awhile.

10 Q Whether it's late '20 or '21, you don't
11 recall, but when he left -- you remember he went
12 back to Wisconsin?

13 A Yeah, I know.

14 Q And who took over as the responsible person
15 for preparing those returns, from the company's
16 point of view?

17 A For giving me the information?

18 Q Yeah.

19 A Donny Kettner.

20 Q Donny for the restaurant. How about for TnW?

21 A Wade Long.

22 Q So after Tim leaves, it's Wade Long who is
23 running point with you as far as getting TnW's
24 returns filed? Yes?

25 A Yes.

26 Q And when Wade was in charge -- '21, '22,

1 KIMBERLY BRYANT - DIRECT EXAMINATION
1 '23 -- the company still never filed a 1065?

2 **A** No.

3 **Q** Were you aware that Mr. Long started a
4 lawsuit in 2021?

5 **A** I didn't know anything about the lawsuit
6 until it was well on its way. It had been a while
7 before -- I was never told by either party, you
8 know, that a lawsuit was going on until it had been
9 going on for a while.

10 **Q** Did you learn about it in 2022, do you think?

11 **A** I would be afraid to answer that. I have no
12 idea.

13 **Q** '23?

14 **A** Oh, I am sure I knew by then.

15 **Q** Prior to the 2023 return, you would have been
16 aware of the fact that this lawsuit was going on?

17 **A** Have I filed '23?

18 **Q** I don't know. Have you?

19 **A** I don't think so.

20 **Q** You understand in the lawsuit that was filed
21 the contention is that the joint venture existed
22 between TNT and TnW started way back in '16 even?

23 **A** I didn't even -- until right now, I knew
24 nothing about why they were in a lawsuit. I never
25 asked. Because of the fact that I represented

1 KIMBERLY BRYANT - DIRECT EXAMINATION
everybody, I didn't ask. I didn't ask this one, I
2 didn't ask this one.

3 **Q** Even after the filing of a lawsuit that
4 contends there is a joint venture, have you
5 prepared a return that reflects that there is a
6 joint venture?

7 **A** No, because I have not filed the '23 returns.

8 **Q** But you filed the '22 return?

9 **A** Yes.

10 **Q** And you filed the '21 return?

11 **A** Yes.

12 **Q** Take a look at Exhibit No. 26. What is 26?

13 **A** That is TnW and More.

14 **Q** That TnW for 2016. We just looked at TNT?

15 **A** Uh-huh.

16 **Q** And on TnW for 2016, there is no 1065, right?

17 **A** They were an LLC, but taxed as an S Corp.

18 **Q** There is no form or schedule that would
19 indicate that they are in a partnership with any
20 other entity?

21 **A** No.

22 **Q** And if you look at page -- bottom of Page
23 102, do you recognize that?

24 **A** Yes.

25 **Q** What is 102?

1 **A** K1 KIMBERLY BRYANT - DIRECT EXAMINATION
 for Thomas Wade Long.

2 **Q** K1 for Mr. Long?

3 **A** Uh-huh.

4 **Q** And for the ladies and gentlemen of the jury
5 who might not be familiar with K1s, what is a K1?

6 **A** A K1 is basically issued to the individuals
7 that own a company, and it disburses the profit or
8 loss they have to each person's individual tax
9 return.

10 **Q** So for every year that the company is in
11 existence, is it required to issue K1s to its
12 owners?

13 **A** Yes.

14 **Q** And this K1 indicates that Mr. Long has a
15 reported loss of \$13,765. Do you see that?

16 **A** Yes.

17 **Q** Was there ever a year for TnW that Mr. Long
18 got a K1 indicating that he made positive money?

19 **A** We have to look at the book to tell you that.

20 **Q** Look at the ones we do have. Take a look --

21 **A** '16 is no.

22 **Q** Take a look at '17, which is No. 28. And his
23 K1 appears at Page 185 at the bottom. Do you see
24 that?

25 **A** Yes.

1 KIMBERLY BRYANT - DIRECT EXAMINATION
2 Q And what is Mr. Long's reported income or
3 loss through TnW on 2017?

4 A Negative \$70,591.

5 Q So just Mr. Long reported a loss that year of
6 \$70,591?

7 A Yes.

8 Q And that would offset income he derived from
9 other sources; would it not?

10 A Yes.

11 Q So take a look at 32, which is TnW for '19.
12 If you beat me to his K1, please holler.

13 (A brief pause in the proceedings.)

14 Q (BY MR. RICHTER) How about Page 275 at the
15 bottom?

16 A Uh-huh.

17 Q What was Mr. Long's reported income or loss?

18 A Negative 16258.

19 Q So loss through TnW \$16,258 that year?

20 A Yes.

21 Q As we -- we don't have '20 through '23 in
22 evidence in this case. Are you familiar with any
23 year during which Mr. Long ever recorded positive
24 income through TnW?

25 A I think '22.

26 Q You think '22. What do you think he earned

1 in '22? KIMBERLY BRYANT - DIRECT EXAMINATION

2 A I think it showed a positive.

3 Q But you couldn't say what that is today?

4 A No.

5 Q So from '16 until Tim left in '21 -- whatever
6 your recollection is -- he was the person providing
7 you with the information?

8 A Yes.

9 Q And from '21 forward -- or '20 forward it's
10 been Mr. Long?

11 A For TnW, yes.

12 Q And you have duties to all of the members of
13 the companies, right?

14 A Pardon?

15 Q You have responsibility to all of the members
16 of the company?

17 A Yes.

18 Q And if you ever had cause for concern about
19 what you were being provided, it's something you
20 would raise with everybody?

21 A Yeah. Like I said, I was provided a dome
22 book, which had all of the daily activities,
23 day-by-day, and all of the deposits and the bank
24 statements, and we reconciled the bank statement to
25 the dome book.

1 KIMBERLY BRYANT - DIRECT EXAMINATION
2 Q From the time Mr. Long took over until now,
3 you never had an occasion to call Mr. Kettner and
4 say, hey, I have worries about what I'm being
5 provided?

6 A No.

7 Q And, likewise, when Mr. Kettner was in
8 charge, you never had occasion to call up anyone
9 and say, look, I'm concerned here?

10 A No. I would have no way of knowing because
11 the dome books and the tax returns matched up with
12 the sales that were reported and the sales tax
13 returns.

14 Q Now, those K1s become a part of the
15 individual tax filing?

16 A Yes.

17 Q So the individual would attach that K1 and
18 sign their individual return under penalty of
19 perjury, right?

20 A Yes. And under one instance, I remember that
21 Mr. Long called me questioning a tractor that had
22 been depreciated.

23 Q And I assume you answered his question?

24 A I asked about it, and I was told that it was,
25 you know, belonged to TnW.

26 Q Is that the tractor that Mr. Long sold for

1 \$30,000?

2 **A** I have no idea.

3 **Q** Do you know if he split the money with Mr.
4 Kettner?

5 **A** I have no idea, because Mr. Long was
6 questioning why it was on the return, because he
7 said that TnW didn't own a tractor.

8 MR. RICHTER: Beg your indulgence for one
9 minute Your Honor.

10 (A brief pause in the proceedings.)

11 MR. RICHTER: Those are all my questions.
12 Thank you.

13 THE COURT: Mr. Bellamy or Mr. Harrison?

14 **CROSS EXAMINATION**

15 **BY MR. HARRISON:**

16 **Q** Good afternoon.

17 **A** Hey, honey.

18 **Q** Good to see you.

19 I only have one question, and I know you
20 haven't been sitting back here and listening to all
21 of this stuff, you have just showed up today --

22 **A** No.

23 **Q** -- but we heard this concept from the
24 plaintiffs that they see themselves as married
25 filing separately with regards to the taxes. Is

KIMBERLY BRYANT - CROSS EXAMINATION - MR. TUCKER

1 there anywhere in a corporate return where you can
2 check married filing separately?

3 **A** Yes -- no, not on a corporate return. No.

4 **Q** So that doesn't exist on a corporate return?

5 **A** No.

6 MR. HARRISON: That's all I have. Thank you,
7 Ms. Bryant.

8 THE COURT: Mr. Player?

9 **CROSS EXAMINATION**

10 **BY MR. PLAYER:**

11 **Q** Good afternoon, Ms. Bryant.

12 **A** How are you?

13 **Q** Earlier, you were talking about the dome
14 books. I want you to turn back to Exhibit 39 in
15 Ronnie's big binder.

16 MR. HARRISON: 39, Tucker?

17 MR. PLAYER: Yeah.

18 **Q (BY MR. PLAYER)** Actually, it starts with 38.
19 Can you find --

20 **A** Uh-huh.

21 **Q** Do you recognize what that is?

22 **A** A page out of the dome book.

23 **Q** And the page out of the dome book is a single
24 column where someone wrote what they paid?

25 **A** Uh-huh.

KIMBERLY BRYANT - CROSS EXAMINATION - MR. TUCKER

1 Q You have to answer verbally.

2 A Yes, sir.

3 Q Did they provide receipts for all of those?

4 A No. I did not do an audit.

5 Q So all you did was take what Tim Kettner told
6 you, and put it in the books?

7 A Yes, sir.

8 Q And back when Tim was part of both TNT and
9 TnW, he was the contact person for both set of
10 taxes?

11 A Yes, sir.

12 Q How have the businesses done since Mr.
13 Kettner turned it over to the other folks?

14 A I believe '22 had a profit. I'm not looking
15 at the return, but I'm almost positive that '22 had
16 a profit. We have not done '23.

17 Q You are talking about TnW?

18 A Yes.

19 Q And what about TNT, has it made profits?

20 A Yes.

21 Q Let me ask you another thing. Are you aware
22 of the arrangement between Mr. Kettner and the
23 partners who purchased his interest, how he's being
24 paid back?

25 A I don't know.

KIMBERLY BRYANT - CROSS EXAMINATION - MR. TUCKER

1 **Q** You don't meet at the end of the year and
2 determine --

3 **A** We haven't gotten that far yet. I just got
4 the work for '23 a few months back, and we haven't
5 gotten the work done yet.

6 **Q** Do you know at the end of the year, when you
7 did taxes for TNT, the last time you did them, did
8 you send any money to Tim?

9 **A** No.

10 MR. PLAYER: Beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 (A brief pause in the proceedings.)

13 **Q** **(BY MR. PLAYER)** You mentioned earlier that
14 you knew about the restaurant and the other stuff
15 that they were doing down there?

16 **A** Yes.

17 **Q** Did you know about that while it was going
18 on?

19 **A** Yes.

20 **Q** Did Tim ever ask you if he needed to file a
21 tax return as a joint venture for what they were
22 planning on doing?

23 **A** No.

24 MR. PLAYER: No further questions.

25 MR. RICHTER: Briefly, Your Honor.

KIMBERLY BRYANT - REDIRECT EXAMINATION

REDIRECT EXAMINATION

BY MR. RICHTER:

Q Ms. Bryant, before you get away, could you name all of the folks for whom you prepare tax returns in this courtroom?

A Yes. Tim Kettner, Justine, Casey, Chris Kiser, Wade Long, Donny Kettner. Have I left anyone off?

Q That's true even after the start of this lawsuit?

A As far as I know, until now.

Q No one has fired you?

A Not yet.

Q You appear to be one thing we all agree upon.

A Okay.

Q Have a good day.

A Thank you.

THE COURT: You may step down.

May she be excused?

MR. RICHTER: Yes, Your Honor.

MR. PLAYER: Yes, Your Honor.

MR. MONGILLO: Your Honor, our final witness will be Tim Kettner. Could I beg the Court's indulgence for about a ten-minute break to get the courtroom ready?

TIMOTHY KETTNER - DIRECT EXAMINATION

1 THE COURT: Yeah. Let's take a ten-minute
2 break. If you will, return to the jury room.
3 Don't discuss anything that you've heard. There
4 will be a time to deliberate, and the time is not
5 now.

6 (The jury exits at 1:34 p.m., and the
7 following is heard out of the presence of the jury.)

8 THE COURT: We'll come back at 1:45.

9 (A recess was taken.)

10 THE COURT: Ready to proceed?

11 MR. MONGILLO: Yes, Your Honor.

12 THE COURT: Mr. Harrison, Mr. Player,
13 anything?

14 MR. PLAYER: No, Your Honor.

15 MR. HARRISON: No, Your Honor.

16 THE COURT: Let's bring them in.

17 (The jury enters at 1:49 p.m., and the
18 following is heard in the presence of the jury.)

19 THE COURT: Yes, sir.

20 MR. MONGILLO: We call Timothy Kettner.

21 (TIMOTHY KETTNER, having been duly sworn,
22 testified as follows:)

23 **DIRECT EXAMINATION**

24 **BY MR. MONGILLO:**

25 **Q** Mr. Kettner, good afternoon.

TIMOTHY KETTNER - DIRECT EXAMINATION

1 **A** Good afternoon, Scott.

2 **Q** Please tell the jury where you were born.

3 **A** Wausau, Wisconsin.

4 **Q** How old are you now?

5 **A** 63.

6 **Q** Where did you grow up?

7 **A** In Wausau, Wisconsin.

8 **Q** Where did you graduate high school?

9 **A** Wausau East High School.

10 **Q** And after high school, please describe your
11 educational background.

12 **A** I had a little tech school, but school wasn't
13 my thing, so I got out of it.

14 **Q** After high school, until you come to South
15 Carolina permanently, briefly describe to the jury
16 your employment history.

17 **A** We grew up on a dairy farm. A lot of
18 families, farms all over the place, so we farmed.
19 We logged. We didn't machine log. We did it by
20 hand with chainsaw and work horses.

21 To compensate the income I was losing on them
22 jobs, I went to work at a gas station full time and
23 various factory jobs, anything you can make a buck
24 at or get a little education. I ended up in a
25 paper mill corporation for ten years.

TIMOTHY KETTNER - DIRECT EXAMINATION

1 **Q** And what do you correctly do for employment
2 in Wisconsin now?

3 **A** Right now I work a couple nights on a dairy
4 farm. I work a night in a restaurant. I'm opening
5 up a business. It's a mobile food trailer.

6 **Q** And before you did that in Wisconsin, after
7 you moved to South Carolina, from South Carolina up
8 to Wisconsin, what were you doing then?

9 **A** Retired -- not really retired. I guess,
10 okay, retired, but taking care of my parents.

11 **Q** Why did you have to go back to work after you
12 retired? Why did you un-retire?

13 **A** Need money. This costs a lot of money, and I
14 need to recoup what I put into it.

15 **Q** What costs you a lot of money?

16 **A** This case. This lawsuit. Everything going
17 on here that we've been involved in.

18 **Q** Okay. When did you leave South Carolina to
19 go back to Wisconsin?

20 **A** It was September of 2020.

21 **Q** When you left South Carolina in September
22 2020, who were you taking care of up in Wisconsin?

23 **A** My parents.

24 **Q** How old are they?

25 **A** My dad is 89, and my mom is 86.

TIMOTHY KETTNER - DIRECT EXAMINATION

1 Q What is their health status?

2 A We have six months with Mom. We found that
3 out lately. And my dad is doing all right. You
4 know, he's a piece of wear.

5 Q Do you still take care of your parents today?

6 A I did, but I'm not able to. I'm down here
7 now, and that is when things went downhill. You
8 know, you can't stop some things in life.

9 Q But when you left here September of 2020,
10 your parents were living with you, and you were
11 taking care of them. Do they still live with you
12 now?

13 A No, they don't.

14 Q We'll get into that in a bit.

15 A Okay. Sorry, Scott.

16 Q Why did you come to South Carolina first?

17 A Family vacation.

18 Q When did you first do that?

19 A I would have to say about 1990, '91, summer
20 vacations.

21 Q And when did you decide to move permanently
22 to South Carolina?

23 A I think it was 1996 or 1997, I believe.

24 Q Why did you decide to move there?

25 A Time to open up a business. My

TIMOTHY KETTNER - DIRECT EXAMINATION

1 brother-in-law -- it was a bad situation where he
2 was working, and I said, hey, let's go do something
3 together.

4 Q You ultimately opened what type of business?

5 A Crab Catchers Restaurant.

6 Q What was your background in operating a
7 restaurant?

8 A Zero. I didn't even know how to cook.

9 Q So now we'll talk about TNT and More, Inc.
10 So going forward, I'll say "TNT." I'll be very
11 specific. I won't use "theys." You will have no
12 doubt who I'm talking about when I question you.

13 So what is TNT?

14 A It is an S Corp in the State of South
15 Carolina.

16 Q What is it doing business as?

17 A Crab Catchers on the Waterfront.

18 Q What is Crab Catchers?

19 A It's seafood market/fish house type of setup.

20 Q Where is it located?

21 A Down on the waterfront in Little River, South
22 Carolina.

23 Q Describe to the jury what Crab Catchers
24 looked like when you first encountered it.

25 A You wanted to look and run. You didn't look

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1 that way. You looked at it and think, What can it
2 be? It was very, very rough. It was a dump.

3 Q What does TNT operate?

4 A The deck out there, seafood market, and the
5 restaurant.

6 Q Did also have docks?

7 A Yes, it does.

8 Q And go ahead in your notebook there,
9 Defendants' 9, get to it, and let me know when you
10 are there.

11 A All right.

12 Q This is Notebook 1.

13 A I got it, Scott.

14 Q All right. Let the judge catch up to you.
15 Tell the jury what they are looking at here?

16 A That's it. That's Crab Catchers on the
17 Waterfront.

18 Q Who owns that dock or scene?

19 A Crab Catchers.

20 Q Is this before or after the creation of TnW?

21 A Before.

22 Q Who first started -- we're done with that
23 exhibit.

24 Who first started TNT?

25 A My brother-in-law, Anthony Howell, and

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1 myself.

2 Q What name did Anthony go by?

3 A Tony.

4 Q So he's your brother-in-law?

5 A Yeah, he is.

6 Q What does "TNT" stand for?

7 A Tim and Tony.

8 Q And let's go ahead in your notebook and turn
9 to Exhibit 15. Let me know when you are there.

10 A I have that.

11 Q So on Exhibit 15, I've boxed in the two parts
12 we'll look at. Go ahead and please tell the jury
13 what we're looking at here. What is the title of
14 the document?

15 A Is that page -- oh, okay. I got it.
16 Articles of Amendment, State of South Carolina,
17 Secretary of State.

18 Q What entity is that for?

19 A TNT and More.

20 Q And the date of the corporation?

21 A June 20, 1997.

22 Q Now, I would like to go ahead and direct your
23 attention to Paragraph 5.

24 A I have that.

25 Q And I want you to read "after changing

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1 ownership" for the jury. Please read slowly,
2 because the court reporter is taking it down.

3 **A** "The original co-owners Anthony Frank Howell,
4 50 percent, and Timothy Kettner, 50 percent, have
5 sold their interest in TNT and More, Inc., to the
6 current owners: Donald Kettner, 37; Casey Kuzmik,
7 25; Justine Vaitis, 20 percent; and Robert Benoit,
8 18 percent.

9 **Q** I know that form was dated and filed
10 8/30/2021, but when did you actually sell those
11 share? When did you get out of TNT?

12 **A** The year of 2020. The final sale, I believe,
13 was September.

14 **Q** So for each of those people you sold to,
15 describe to the jury who Donny is.

16 **A** Can I have him stand up, or no?

17 **Q** Yeah.

18 **A** Junior, Donny. That is my son. We named him
19 after Gramps. Bouncing in the world at three
20 pounds. Went to the United States Marine Corps,
21 and he is my hero in business, in life, and what
22 he's doing down there with the waterfront and the
23 community involvement. It's a good thing. Makes
24 me proud.

25 **Q** Why did you decide to sell to your son?

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1 **A** He was ready. You know, more than ready. He
2 went through ten years of -- pardon my language --
3 hell. That's what I put him through.

4 **Q** Describe to the jury who Casey is.

5 **A** Casey, that's Donny's half-brother. I've
6 known him since he was a baby. He went through
7 hell, too. Ten years of -- he's like my son, okay.
8 He's like my son, and he earned it and deserved it,
9 and he is family.

10 **Q** When you say "went through hell," he worked
11 hard for you?

12 **A** Oh, yes. If you work for me, shut up and
13 work and be there, be there every day.

14 **Q** And tell the jury who Justine is, please.

15 **A** Justine, truthfully, I chased her around
16 forever and thwarted it, Leave it alone. But she's
17 like a sister. She's family. It took me two days
18 to realize I have something special, I have to lock
19 her in. I said, Justine, if you can make it ten
20 years with me, you are going to get a reward.

21 **Q** What did she do?

22 **A** Started out as a waitress. Replaced our
23 bartender who never showed up. I looked out there,
24 Who is that girl out there flying around crazy?
25 Never shut up. But, anyway, she quickly became a

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1 manager. And, like I said, ten years you are going
2 to get something here, you earned it.

3 Q So she became an owner also?

4 A Yes, she did, Scott.

5 Q And tell me who Robert is.

6 A Robert, he's actually also family, not
7 directly related to me, but my ex-niece. They are
8 all kind of related somehow. I met him a few years
9 before 2020 and didn't know nothing about him. He
10 would come in in the morning, loved the waterfront,
11 saw the layout of Crab Catchers and the marina and
12 asked questions about the marina and questions
13 about Crab Catchers. He said he wanted to move
14 down here. I said, Well, nothing lasts forever.
15 What are you interested in? Not that marina, I
16 know nothing about a marina. I said what about the
17 restaurant? Well, I don't really know anything
18 about the restaurant either.

19 Q So did you ultimately sell it to him?

20 A Yes. Yes. I did, Scott.

21 Q Go ahead and tell the jury kind of the story
22 of Crab Catchers, you know, just from when you
23 first see it, how many meals a day is it doing,
24 until you get out of there in September of 2020 and
25 turn it over. Briefly give them that history.

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1 **A** Okay. We started out zero experience. The
2 owners lived in a little house down the corner,
3 where Doc lived. But to get to the story, we were
4 doing about ten -- we thought if we could do 15
5 dinners -- this was in July -- we thought we were
6 doing good. There is a tiki bar and a big deck out
7 there. The promise was I can make a profit the
8 first year -- we can, Tony and I can, and we did it
9 together. We did do that. And eventually within
10 three or four years -- and this is without any type
11 of advertising at all, all word of mouth -- we were
12 bringing them in. At out five years, we were
13 probably up to a thousand meals a day in-season.
14 That wasn't every day.

15 **Q** In-season. I understand.

16 And who was the accountant for TNT?

17 **A** The lady that was just up here, Kim Bryant
18 Accounting.

19 **Q** From 2016 to 2019, were any of the TNT tax
20 forms filed as a partnership or joint venture?

21 **A** No.

22 **Q** Why not?

23 **A** We weren't a joint venture.

24 **Q** When you left TNT and South Carolina in
25 September of 2020 to take care of your parents,

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1 what control did you have over TNT back here in
2 South Carolina?

3 **A** Absolutely zero.

4 **Q** Now, we're going to go ahead and switch to
5 TnW and More, LLC. Going forward, I'll call them
6 TnW, okay?

7 **A** Okay.

8 **Q** What does TnW stand for?

9 **A** It's an LLC operating in the state of South
10 Carolina.

11 **Q** What does "TnW" stand for?

12 **A** Tim and Wade.

13 **Q** And before TnW, what was your first business
14 interaction with Wade Long?

15 **A** Well, at the time, he was operating a charter
16 boat. I bought fish, a lot of fish, from his
17 uncle, Larry. Wade was wise enough to step forward
18 and say, Larry is getting out. You need my
19 product? And I was glad to oblige, because I
20 needed his fish and paid dearly for them.

21 **Q** And tell the jury why you decided to team up
22 with him, Wade Long?

23 **A** We had a lot of likeness. You know, we
24 hunted, fished. I saw him on the docks. He worked
25 hard. Asked a few questions about him. And, you

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1 know, that is what happens when guys get together
2 and hook up.

3 Q And describe to the jury your earlier
4 relationship with Wade Long.

5 A That was pretty much it. I saw him out there
6 cleaning fish and his boat. He worked on his boat
7 hard, really did. Kept it up.

8 Q How did you view him in terms of -- was he a
9 friend?

10 A Well, over time I do take a father-liking to
11 guys. I call them my sons, and they are not. But
12 Wade was like my son, you know.

13 Q Go ahead and turn in your notebook -- turn to
14 Exhibit 16.

15 A I have it.

16 Q In Exhibit 16, we'll look at those two
17 blocks. What is the title of this document,
18 please?

19 A Articles of Organization.

20 Q For what entity? In Paragraph 1.

21 A TnW and More, LLC.

22 Q And who are the two original organizers or
23 members of TnW?

24 A Timothy D. Kettner and Thomas Wade Long.

25 Q This is the important one. When was this

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1 started? When was it organized? The date on the
2 next page.

3 **A** June 30 of 2016.

4 **Q** So TnW is started June 30 of 2016?

5 **A** That's correct.

6 **Q** So now all of these next questions I'm going
7 to ask you focus on TnW from June 30 of 2016 until
8 you leave in September of 2020. Do you understand
9 that?

10 **A** Right.

11 **Q** When you were involved with TnW, what
12 economic activities did it do?

13 **A** We did diesel and gasoline fuel sales. We
14 did the boat dock leasing, and we also did jet ski
15 tour rentals.

16 **Q** Where is TnW located?

17 **A** Also very next -- straight up to Crab
18 Catchers on the Waterfront -- TNT and More, I'm
19 sorry.

20 **Q** What does TNT own?

21 **A** The docks, a restaurant, and fish market.

22 **Q** What does TnW own?

23 **A** The decks, they own the dirt -- the marina
24 portion -- at the time it was a jet ski hut -- the
25 jet skis, fuel pump and equipment, the two tanks I

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1 mentioned, and a fueling station down there.

2 Everything that goes with it.

3 Q And describe to the jury the jet ski
4 business. Is it a hard business? Tell them about
5 it, please.

6 A Well, what makes it harder is you have a tide
7 going in and out all the time, so you have low
8 water, you have high water. It is very high risk.
9 You are sucking a lot of things up into the
10 internal areas that don't need to be there. You
11 really have to rely online booking, and of course
12 we didn't know that at the time. But you need good
13 people to manage it. The insurance is ridiculous.

14 Q Tell the jury what it costs to buy jet skis.
15 Are they expensive? Cheap?

16 A Pretty expensive. I'm going to -- you want
17 me to take a shot at the price?

18 Q No. We'll get to that.

19 Tell the jury how often these things break
20 down.

21 A Often. Very often. Like I described, you
22 put them out on a lake in non-saltwater, it is a
23 different story. You put them in salt water and
24 heavy boat traffic, and then the way the docks were
25 designed and heavy traffic, it is not a good

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1 situation.

2 Q So when you're at TnW and a jet ski breaks,
3 who fixes it?

4 A I fixed what I could.

5 Q And what else do you do with the other broke
6 skis?

7 A Tow them in, hook up the trailer, tow them in
8 the boat landing and take them in.

9 Q Who did that?

10 A I did that.

11 Q Who hired the jet ski managers and managed
12 the managers?

13 A I did.

14 Q Who ran the day-to-day operations of TnW?

15 A I did every one of them.

16 Q Describe about the selling of the fuel for
17 the fish boats. Is that a good business
18 economically?

19 A Well, I worked at a gas station before -- not
20 a marina. It's a cut-throat business. You better
21 know -- it is regulated now, but you better know
22 what the next marina is charging. So I get up and
23 check prices every day. It is different if you can
24 bring a large volume of fuel, but we had to beat
25 the other guys. We had small tanks, so we switched

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1 one out.

2 Q Who handled everything related to the
3 delivery and the sale of the fuel for TnW when you
4 were there?

5 A I did. I was there on the site.

6 Q And tell the jury who had 24/7 access to all
7 of the books, records, dome books, and tax returns
8 of TnW?

9 A Myself, Wade Long, and Chris Kiser.

10 Q Go ahead in your notebook and turn to Exhibit
11 11.

12 A Can I look at the screen or the book?

13 Q The book.

14 A Okay.

15 Q Tell the jury what they are seeing there in
16 Exhibit 11.

17 A That is the jet ski shack and large diesel
18 tank for the TnW marina portion.

19 Q Go ahead and turn to Exhibit 12, please, sir.

20 A I have that.

21 Q Tell the jury what they are looking at there.

22 A The large -- I think it is the 10,000-gallon
23 tank, and the jet ski shack.

24 Q Let's go to Exhibit 13. Tell the jury what
25 they are seeing there, the major things they see

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1 there.

2 **A** I see Crab Catchers is the furthest one out.

3 **Q** White building?

4 **A** I'm black and white, but I know that is Crab
5 Catchers. That, I do know. Up front is a jet ski
6 hut. That is the 10,000-gallon disease tank, and
7 all of the land in front of it is TNT property.

8 **Q** So all of the land, all the dirt, the real
9 property up there, all that dirt, who does that
10 belong to?

11 **A** TNT and More.

12 **Q** Let's finish up the pictures and look at
13 Defendants' Exhibit 14.

14 **A** Sometimes I can't hear you, Scott. The
15 chainsaws.

16 **Q** I'll speak up.

17 **A** Thank you.

18 That is a fueling dock for TnW and More.

19 **Q** That's where the boats get their fuel, from
20 that pump there at the end?

21 **A** That's correct.

22 **Q** So who were the two initial members of TnW
23 again?

24 **A** Tim Kettner and Wade Long.

25 **Q** And who are the current members of TnW?

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1 **A** Clyde Kiser, Wade Long, and myself.

2 **Q** Turn to Exhibit 18, please, sir.

3 **A** I have it.

4 **Q** We'll look at these sections in Defendants'

5 18. What is the title of this document?

6 **A** The Buy/Sell Agreement.

7 **Q** What is the date of this document?

8 **A** August 23, 2018.

9 **Q** And in this document, what's happening? Who
10 is coming in?

11 **A** Chris. That is a buy-in agreement for Clyde
12 Chris Kiser.

13 **Q** So what is the member shares of TnW?

14 **A** 33-and-one-third percent.

15 **Q** We're done looking at that exhibit.

16 Why did Clyde Chris Kiser join TnW?

17 **A** For the money and some marketing.

18 **Q** Who needed the money?

19 **A** We did.

20 **Q** Who is "we"?

21 **A** Wade and I.

22 **Q** How much did Mr. Kiser pay you and Mr. Long
23 to join TnW, if you remember?

24 **A** I believe it was around \$84,000, kind of
25 rings a bell.

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1 Q Whose idea was it for Mr. Kiser to join TnW?

2 A Wade's.

3 Q And after he joined TnW, did Mr. Kiser side
4 more with you or Mr. Long concerning the operation?

5 A Wade Long.

6 Q So, basically, two against one?

7 A Yeah. That is the way it was set up. It was
8 definitely two against one.

9 Q What was Mr. Kiser's role in TnW?

10 A Absentee owner.

11 Q And you are still a member of TnW now?

12 A Yes, I am.

13 Q So you have been in here the whole time, so
14 right now you are still paying one-third of a half
15 a million dollars to sue yourself?

16 A Yes. That's correct.

17 Q What was Wade Long's main profession from
18 July of 2016 until you left South Carolina in
19 September of 2020?

20 A Well, he owned the fishing boat, but had a
21 crew that operated it, so he would bring the checks
22 upstairs after the catch was delivered. I know
23 they had the TV show, Long Shot Charters.

24 Q So mainly a fish boat captain and TV star?

25 A YouTube I didn't know about, but I knew about

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1 Long Shot Charters.

2 Q And describe to the jury what Wade Long's
3 role was at TnW from when it starts in 2016 until
4 you leave in September of 2020.

5 A He was also an absentee owner.

6 Q Go ahead in your notebook there and go to
7 Exhibit 17, Bates stamp 405.

8 A Have that.

9 Q Read the title to the jury.

10 A It is a description of each members' duties
11 and responsibilities.

12 Q And read what your duties and
13 responsibilities are.

14 A Tim Kettner, slash, to manage, operate, and
15 direct the operation of the business.

16 Q Tell me what Wade Long's duties and
17 responsibilities were.

18 A Thomas Wade Long, slash, to manage, operate,
19 and direct the operation of the business.

20 Q Tell me what Mr. Kiser's are.

21 A Clyde Kiser, dash, to manage, operate, and
22 direct the operation of the business.

23 Q So all three were equal?

24 A Yes.

25 Q Who did all of the work?

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1 **A** I did.

2 **Q** That is in your written operating agreement?

3 **A** Yes.

4 **Q** And who was the accountant for TnW?

5 **A** Kim Bryant.

6 **Q** From 2016 to 2019, were any of the TnW taxes
7 filed as a joint venture or partnership?

8 **A** No.

9 **Q** Why not?

10 **A** It wasn't a joint venture.

11 **Q** Tell the jury who Roger Roy is.

12 **A** Roger Roy was our attorney -- used him quite
13 a few times -- that set up all of the legal work
14 for TnW and More.

15 **Q** You said "our attorney"?

16 **A** I'm sorry.

17 **Q** Let me finish so the court reporter can write
18 it down.

19 You said "our attorney." Tell the jury who
20 the "our" is.

21 **A** TnW and More, and the attorney was Roger Roy.

22 **Q** All right. Let's go to Exhibit 43. I think
23 that probably will be in Notebook 2.

24 **A** I'm on that.

25 **Q** Go to Page 5 in Exhibit 43, please, sir.

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1 **A** I have that.

2 **Q** In Exhibit 43, at Page 5, about half-way
3 down, can you see a text that starts 6/6/18 at
4 12:23?

5 **A** Yes.

6 **Q** Who is that from?

7 **A** Roger Roy.

8 **Q** Nope. Who is it from?

9 **A** From me, Tim Kettner. I'm sorry.

10 **Q** There you go. Read that text.

11 **A** "Roger Roy is setting up agreement via all
12 our input for our approval. He also said we may
13 end up needing separate business licenses for
14 LRWS -- Little River Water Sports -- and TnW dock,
15 slash, fuel business. Also, that we need to keep
16 separate entities for the two as well as Kim -- our
17 accountant -- Kim Bryant suggested."

18 **Q** Who does that text go to?

19 **A** Wade Long and Chris.

20 **Q** What do they say?

21 **A** A "thumbs up" and an "okay."

22 **Q** So they are telling you that -- your attorney
23 and your accountant were telling you to keep the
24 businesses separate?

25 **A** Exactly.

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1 **Q** So now go ahead in that same exhibit, go to
2 Page 30, please.

3 **A** I have it.

4 **Q** About half-way down we're at May 21 of 2019
5 at 7:49. You are sending a text. Do you see that?

6 **A** I do.

7 **Q** Go ahead and read that to the jury.

8 **A** "Good morning. Not enough to cover expenses
9 in the bank account. Letting you guys know. Had
10 to pay some big yearly bills. Can show you
11 everything if you need be. Thoughts? Options?"

12 That was a question.

13 **Q** So tell the jury why in 2019 there is not
14 enough to cover expenses of TnW.

15 **A** Well, our projected expenditures way
16 outweighed what we predicted. Also, what we
17 thought we would be pulling in at that time was
18 grossly underneath what we projected. Normal
19 business start-up headaches, stuff like that.

20 **Q** So you are not making any money?

21 **A** No, we are not making money.

22 **Q** Tell us now -- now we're shifting to the
23 spring, March of 2020, and Covid hits. Tell the
24 jury how that affected your business.

25 **A** We all know what Covid did. We were peaking

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1 out the windows wondering if we can go outside.

2 But that affected it even more. The bank account
3 was almost zero. Everybody needed money.

4 Q And how was Wade Long's charter boat business
5 and TV shows going then?

6 A I don't know -- I know he experienced a
7 nine-month downtime of boat expenditures,
8 breakdowns.

9 Q So this is important. Tell the jury, please,
10 why you get locked out in September of 2020. What
11 happened in September of 2020?

12 A I refused a buyout. We knew Wade wanted out.
13 I refused a buyout. They came upstairs, each one,
14 and wanted \$150,000. I tried to work with them.
15 The company is not making money and, fellows, I'm
16 not giving you \$150 on top of what I put into this
17 company physically and financially. I'm out of
18 here. I didn't sign up for this.

19 Q So what has your role at TnW been since
20 September of 2020?

21 A I have no role.

22 Q Who has been operating TnW since September of
23 2020?

24 A I guess Wade -- Wade Long.

25 Q Since you left in September of 2020, have you

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1 returned to South Carolina?

2 **A** Yes. A number of times.

3 **Q** Please tell the jury your firsthand personal
4 observations of the conflict between TnW and TNT
5 since 2020?

6 **A** It's a war -- it sickens my stomach -- caused
7 by Wade Long and Chris Kiser. I'm sorry, it's the
8 truth.

9 **Q** And you were sued by Mr. Long and Mr. Kiser
10 individually for doing what?

11 **A** Stealing.

12 **Q** And after you were accused of stealing, you
13 sent some mean texts?

14 **A** Yes, I did.

15 **Q** And we looked over those earlier with Jose
16 Morales. Do you remember those?

17 **A** Yes.

18 **Q** I'm in plaintiffs' Exhibit 36, what I'm
19 calling the "mean texts." We'll just look at them
20 together. So we're at Plaintiffs' 36 at 8:32, and
21 you are talking about here the hut. What is the
22 date of that text?

23 **A** 9/18/2020.

24 **Q** Had you been kicked out by then?

25 **A** Yes, I had.

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1 Q Now --

2 A Accused of stealing.

3 Q Now, Mr. Player asked Mr. Morales about
4 incognito in that mean text. What is the date of
5 that mean text?

6 A Same day, 9/18/20.

7 Q You had been kicked out by then?

8 A Yes, and accused of stealing.

9 Q Were you upset?

10 A Very. Not only accused, I was told I was
11 stealing by their first attorney.

12 Q Let's look at the other mean text where you
13 say: "Anyone buys fish from him, you know that
14 outcome." What is the date of that?

15 A That's 9/4/20.

16 Q And you were kicked out by then?

17 A Yeah. Yes, I certainly was, and told I was a
18 thief.

19 Q Let's look -- still on Plaintiffs'
20 Exhibit 36, 1/25. This is the power move text.
21 What is the date of that?

22 A 4/19/2021.

23 Q By then, had you been sued in this lawsuit?

24 A Yes, I had.

25 Q Let's look at the mean text Plaintiffs'

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1 Exhibit 36 at 64 about the hut. We heard about
2 that one a lot. That one you sent on what date?

3 A 10/3/2020.

4 Q And you were kicked out by then?

5 A Yeah, and told I was a thief.

6 Q Plaintiffs' Exhibit 36, the famous one:

7 "Time for war." When did you send that?

8 A That didn't -- 10/02 -- it's cut off.

9 Q No. See there?

10 A Oh, I'm sorry. Yeah. 2020.

11 Q Had you been kicked out by then?

12 A Yeah. Locked out, kicked out, and called a
13 thief.

14 Q Now --

15 A Scott, can I get a little sip here?

16 Q Take your time. Go ahead.

17 (A brief pause in the proceedings.)

18 A Thank you.

19 Q (BY MR. MONGILLO) Go to Plaintiffs' Exhibit
20 48. Tell the jury what this is.

21 A Breakdown of all of the money we put in, Wade
22 and I and myself.

23 Q What does it say?

24 A You want me to start with -- allocation for
25 the principle advance of \$200,000, DTD, March 14,

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1 2018.

2 Q So one of the things you were accused of
3 stealing was the loan proceeds?

4 A Yes.

5 Q And is that the \$200,000 you were accused of
6 stealing from the loan?

7 A Yes.

8 Q So what did you do to create this Exhibit 48?
9 Tell the jury what you did.

10 A We matched up every bit of information based
11 on reimbursements, invoices, bank statements,
12 credit card statements to ensure any expense over
13 \$3,000 was accounted for exactly.

14 Q And that is the claim they abandoned? They
15 accused you of stealing over \$200,000 in this,
16 correct?

17 A Yes, sir. You do need proof. I'm sorry,
18 shouldn't have said that.

19 Q Look at 49, and read to the jury what this is
20 here.

21 A "Allocation for the principle advance of
22 \$200,000, DTD, October 16, 2018."

23 Q So this is another \$200,000 you were accused
24 of stealing, correct?

25 A That's correct.

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1 **Q** What did you do here in this exhibit to prove
2 you didn't?

3 **A** Exactly the same thing. Keep in mind, those
4 are only expenses over \$3,000.

5 **Q** And they abandoned this claim calling you a
6 thief, haven't they?

7 **A** Yes, they have.

8 **Q** Look at Defendants' Exhibit 54, please. You
9 are excused of stealing cash also, right? You
10 are --

11 **A** Yes, sir. Yes, I was.

12 **Q** Tell the jury what that is.

13 **A** That was taken off of every bank statement
14 ever deposited by myself or on behalf of TnW and
15 More. Deposition questions, RE, cash and checks.

16 **Q** So this is all of the cash that you were
17 accused of stealing to prove that you didn't steal
18 any cash?

19 **A** Exactly correct.

20 **Q** And this was abandoned by Mr. Long and Mr.
21 Kiser?

22 **A** Yes, it was.

23 **Q** Just to be clear, because it keeps getting
24 brought up, even though it is abandoned, did you
25 steal one dime from TnW, Wade Long, or Chris Kiser?

TIMOTHY KETTNER - DIRECT EXAMINATION

1 **A** No, sir. I would rather be dead.

2 **Q** Tell the jury about Doc Dean Trent. Whose
3 land did he live on?

4 **A** Wayne Faircloth.

5 **Q** And who did you buy that piece of property
6 from?

7 **A** Wayne Faircloth.

8 **Q** Now, these next series of questions are going
9 to be tough.

10 **A** We got to do it.

11 **Q** I apologize in advance. Tell the jury what
12 happened to you with your mental health after you
13 were sued. Go ahead.

14 MR. MONGILLO: Your Honor, he said to me
15 before, he wants to get through this.

16 So go ahead and tell the jury what happened.

17 **A** (witness crying) When I was in Wisconsin, all
18 of these accusations, I couldn't take care of my
19 parents anymore like I wanted to. I wasn't fit.
20 Why? Because I was suffering mental depression.
21 Never before in my life. Solid as a rock up there.
22 Maybe light here and there working, but not in that
23 way. My longtime companion checked me into the
24 hospital, emergency room, and put me under suicide
25 watch. We beat that one.

TIMOTHY KETTNER - DIRECT EXAMINATION

1 **Q** **(BY MR. MONGILLO)** Did you try to commit
2 suicide?

3 **A** No, sir, I did not.

4 **Q** But you were committed to a hospital?

5 **A** It took everything out of me. The room was
6 cleared.

7 **Q** How long were you in there?

8 **A** Two days.

9 **Q** Two days under suicide watch?

10 **A** Yes, sir.

11 **Q** And after you came out of suicide watch, are
12 you allowed to take care of your parents anymore?

13 **A** No, sir. I was not. (Witness crying).

14 Excuse me.

15 **Q** After you heard the judge -- go ahead, take
16 your time.

17 **A** I'm good. I'm good.

18 **Q** After you heard the judge instruct the jury
19 that the plaintiffs' claims -- that you were a
20 thief and stole money were abandoned, how did that
21 make you feel?

22 **A** I mean, great. I knew I didn't. It was a
23 weight lifted off of my shoulders. I can prove
24 that I didn't, just ask me.

25 **Q** Let's go ahead and change topics and go to

TIMOTHY KETTNER - DIRECT EXAMINATION

1 the 1.1 million loan. Can you turn to Defendants'
2 Exhibit No. 1 in your notebook?

3 **A** Let me regroup here, Scott.

4 (A brief pause in the proceedings.)

5 **Q (BY MR. MONGILLO)** Under "borrow guarantor
6 background," read that for the jury.

7 **A** "Crab Catchers' property was originally a
8 fish market for the fishing boats to dock and sell
9 their fresh catch for the day retail to the
10 customers. Tim Kettner had moved to the area and
11 was fascinated with the area and the daily
12 operations of the market. So 20 years ago he and
13 his sister and brother-in-law purchased the
14 property. Tim moved into the small apartment
15 upstairs and continued purchasing and selling the
16 fresh fish from the fishermen, but he also started
17 cleaning some of the fish and cooking them in the
18 building and selling fresh fried fish to the
19 customers. He hired Justine Vaitis as his
20 waitress, and she has been with them for
21 approximately 20 years. In 2010, Tim bought out
22 his sister and brother-in-law and owned the
23 business 100 percent. He has since brought in his
24 son, Donald, and Justine as partners. Donald
25 owning a 30 percent interest, and Justine owning a

TIMOTHY KETTNER - DIRECT EXAMINATION

1 20 percent interest in the company. They have
2 enlarged the building to include a seating area,
3 added a large open deck outside with an upstairs,
4 open deck for eating. The business has grown from
5 just a few on Saturdays at lunch to over 1,000
6 customers being served a day on the weekends."

7 Q That's good. Thank you.

8 So that kind of tells the tale that you
9 started the business, and now you have Donald and
10 Justine with you, and eventually you sellout and
11 you sell to Casey and the rest of them?

12 A Yeah, in that order.

13 Q And is that accurate, that background
14 information correct?

15 A Pretty darn close.

16 Q And go to UCB-11 in that same exhibit.

17 A Is that the picture?

18 Q At the bottom, UCB-11, in the same exhibit.

19 A I'm sorry. Redirect me and start over.

20 Q Still in Exhibit 1.

21 A I'm not a good first-time listener. That's
22 what I tell my granddaughter.

23 Q Exhibit 1, UCB-11 at the bottom.

24 A UCB --

25 Q I'll help you.

TIMOTHY KETTNER - DIRECT EXAMINATION

(A brief pause in the proceedings.)

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Q (BY MR. MONGILLO) Right here at 11.

A Thanks, Scott.

Q Sure.

What was the purpose for this?

A The purpose? The full page?

Q The purpose right there, "the construction
line of credit" --

A We had to provided that -- "construction line
of credit to be used for land purchase."

Q Land purchase. So we're going to buy some
land with this loan, correct?

A That's correct.

Q We're done with that exhibit.

Do the words "joint venture" ever appear
anywhere in this credit memorandum?

A No, they do not.

Q Why not?

A It's not a joint venture.

Q To the best of your knowledge, did you or
anyone use the terms "joint venture" to the bank
for this loan?

A Absolutely not.

Q Why not?

A It wasn't a joint venture.

TIMOTHY KETTNER - DIRECT EXAMINATION

- 1 Q Go to Exhibit 2, please, sir.
- 2 A UCB?
- 3 Q No. Exhibit 2.
- 4 A I have that, Scott.
- 5 Q What is this?
- 6 A That's the promissory note.
- 7 Q What is the amount of the note?
- 8 A It is 1.1 million. \$1,100,000.
- 9 Q What is the date of the note?
- 10 A 11/29/17.
- 11 Q And the maturity date?
- 12 A 11/29/2024.
- 13 Q So a few months from now?
- 14 A Yeah.
- 15 Q And who are the co-borrowers on this note?
- 16 A United Community Bank -- nope.
- 17 Q Nope.
- 18 A The borrowers: TnW and More, LLC, and TNT
- 19 and More, Inc.
- 20 Q Anywhere in this note are the words "joint
- 21 venture" appearing?
- 22 A No, sir, they do not.
- 23 Q Why not?
- 24 A It wasn't a joint venture.
- 25 Q Go to Exhibit 3, please, sir. What is the

TIMOTHY KETTNER - DIRECT EXAMINATION

1 title of this document?

2 **A** The mortgage.

3 **Q** And the title?

4 **A** "Mortgage."

5 **Q** Right. Who is the mortgagor?

6 **A** TnW and More, LLC.

7 **Q** And does the word "joint venture" appear
8 anywhere in this mortgage?

9 **A** No, it does not.

10 **Q** Go to Exhibit 4, please, sir.

11 **A** I have it.

12 **Q** The second page of Exhibit 4.

13 **A** I think I have that. Oh, okay.

14 **Q** Who are the guarantors to the 1.1 million
15 dollar note that is due in November of 2024?

16 **A** You are asking for the signatures on there?

17 **Q** Yes, sir.

18 **A** Timothy D. Kettner, Justine Vaitis, Donald
19 Kettner, Thomas Wade Long, and Clyde Kiser.

20 **Q** Do the words "joint venture" appear anywhere
21 in this document?

22 **A** No.

23 **Q** Why not?

24 **A** Because it wasn't a joint venture.

25 **Q** When this loan comes due in November of

TIMOTHY KETTNER - DIRECT EXAMINATION

1 2024 -- and we heard testimony about another
2 \$700,000 -- if the co-borrowers, TnW and TNT,
3 cannot pay that loan, who is personally responsible
4 for it?

5 **A** Tim D. Kettner.

6 **Q** And it is your understanding the bank can
7 come after you for all of it?

8 **A** That's what they told me. That is correct.

9 **Q** Please look at this jury and explain to them
10 why you would want to destroy TnW so it couldn't
11 pay back this note?

12 **A** Why I would want to?

13 **Q** Yeah.

14 **A** I would have to be out of my mind to do that.
15 I'm the responsible person. The bank is knocking
16 on my door, okay.

17 **Q** So would you rather have TnW pay the back,
18 the \$700,000, or --

19 **A** I don't have it. I would rather have them.

20 **Q** Do you remember when TnW was formed? Do you
21 remember the date?

22 **A** TnW? I believe it was -- not exactly, but I
23 believe it was 2016.

24 **Q** Correct. Okay.

25 And we're going to look at Plaintiffs'

TIMOTHY KETTNER - DIRECT EXAMINATION

1 Exhibit No. 10.

2 MR. MONGILLO: Your Honor, may I publish to
3 the jury and hand out a copy of this?

4 THE COURT: Any objection?

5 MR. PLAYER: What is it?

6 MR. MONGILLO: Exhibit 10. It is the joint
7 venture --

8 MR. PLAYER: Yeah. Yeah.

9 THE COURT: Mr. Foreman, can you take one and
10 pass it to each of the jurors.

11 Q (BY MR. MONGILLO) Looking about halfway down,
12 where it says 6/2/16 at 2:08 p.m., do you see that?

13 A 12:08.

14 Q 12:08, yes. That is from you?

15 A Yeah. That's definitely me.

16 Q Go ahead and read that to the jury, please.

17 A "I called the surveyor. Filled him in that
18 we were a joint venture, slash, business. Gave him
19 your name and that you would be contacting him. I
20 told him what was needed and the situation. His
21 name is Harry Bruton. I'll send number for you."

22 Q What is the date of that again?

23 A 6/2/16.

24 Q So let's look up at the screen. Look at the
25 screen, Tim. I'll give you permission.

TIMOTHY KETTNER - DIRECT EXAMINATION

1 That is Defendants' Exhibit No. 16. What is
2 that?

3 **A** "Articles of Organization."

4 **Q** For who?

5 **A** TnW and More.

6 **Q** And when did you sign them?

7 **A** 6/30/16.

8 **Q** So when you talk about joint venture, slash,
9 businesses -- not just joint venture, but, slash,
10 business -- that is June 2, 2016, and TnW is formed
11 on June 30, 2016?

12 **A** That's correct.

13 **Q** So what is this text talking about?

14 **A** Talking about two guys getting in a joint
15 venture together, Wade and I.

16 **Q** What business?

17 **A** TnW and More.

18 **Q** Yes, sir.

19 Did you ever have a joint venture between TNT
20 and TnW?

21 **A** No.

22 **Q** Does this text talk anything about TnW and
23 TNT?

24 **A** No. We weren't even incorporated yet.

25 **Q** Go ahead and go to Exhibit 45, please, in

TIMOTHY KETTNER - DIRECT EXAMINATION

1 your notebook.

2 MR. MONGILLO: You can pass your copies back
3 to the foreman, and I'll collect them.

4 A Do you want this back (indicates)?

5 Q Yeah.

6 (A brief pause in the proceedings.)

7 Q (BY MR. MONGILLO) Are you at Exhibit 45?

8 A No, I'm not.

9 (A brief pause in the proceedings.)

10 A Okay. We're back in business here.

11 Q (BY MR. MONGILLO) So in the notebook -- let's
12 use the screen. So up at the top, what is this?

13 A Very top?

14 Q Whose deposition?

15 A Thomas Wade Long's deposition, Volume 2.

16 Q What is the date?

17 A November 29, 2022.

18 Q This is important so the jury understands
19 this. Who are the plaintiffs? Who is suing you
20 right there?

21 A Who is suing me? Thomas Wade Long, Clyde
22 Kiser, individually.

23 Q So they are suing you individually?

24 A Correct.

25 Q Those are the two people that accused you of

TIMOTHY KETTNER - DIRECT EXAMINATION

1 theft, and they have abandoned it now?

2 A Yes.

3 Q Now, go ahead and keep looking up at the
4 board. Mr. Harrison did a little bit of this. I'm
5 only going to do one. This is the testimony of
6 Thomas Wade Long, Exhibit 45, that they will have
7 in the jury room. I'm going to read the question,
8 and you are going to play the role of Mr. Wade
9 Long.

10 So this is Wade long talking.

11 MR. PLAYER: Objection; there is hearsay.

12 MR. MONGILLO: This is an exhibit, Your
13 Honor, in evidence. It is a party omission against
14 Mr. Long, so it's outside of the hearsay. He's a
15 plaintiff.

16 MR. PLAYER: Mr. Kettner reading deposition
17 testimony in an exhibit, I don't understand the
18 purpose of this?

19 MR. MONGILLO: It is an exhibit he admitted,
20 and you'll understand the purpose when you see the
21 next slide. We'll do it one time. I've been up
22 here for an hour. They had Mr. Long up here for
23 days, so I ask for a little leniency, please. This
24 is an exhibit, Your Honor.

25 THE COURT: I think it does fall outside of

TIMOTHY KETTNER - DIRECT EXAMINATION

1 the hearsay. It's strange that you don't have
2 Mr. Long read it, but....

3 MR. MONGILLO: This is just the one.

4 THE COURT: I'll allow it.

5 Q (BY MR. MONGILLO) "At what point do you
6 allege that TNT and TnW formed a joint venture?"

7 And Mr. Long's testimony was?

8 A I'm the answer?

9 Q Yes.

10 A "Well, as far as forming a joint venture,
11 that was the word that Henri liked to use -- or
12 liked using. It was me, Tim, and Chris. But we
13 got along, kind of like a friendship. They knew --
14 they had their -- their property, and they knew
15 their guidelines not to step over. I didn't go in
16 their business, but -- and they didn't get in my
17 business. We supported each other."

18 Question: But they were separate
19 businesses?

20 Answer?

21 A "They were separate businesses."

22 Q (BY MR. MONGILLO) Do you agree with Mr. Long
23 that TNT and TnW was separate businesses?

24 A One hundred percent.

25 Q Based on your own personal knowledge, did TnW

TIMOTHY KETTNER - DIRECT EXAMINATION

1 have the authority to control TNT?

2 **A** None.

3 **Q** Based on your own personal knowledge, did TNT
4 have authority to control TnW?

5 **A** None.

6 **Q** Based on your own personal knowledge, did TnW
7 have an equal right to direct and control the
8 conduct of TNT?

9 **A** No.

10 **Q** Based on your own personal knowledge, did TNT
11 have an equal right to direct and control the
12 conduct of TnW?

13 **A** No.

14 **Q** Based on your own personal knowledge, did TNT
15 and TnW ever share profits or losses?

16 **A** No.

17 **Q** Let's talk one more time about the mean
18 texts. There was a mean text where you said get
19 the jet ski hut off of TNT's property. What would
20 have happened if that un-permitted jet ski hut had
21 been fined?

22 **A** I would be responsible for it as well and
23 liable as well. I'm still a partner in TnW.

24 **Q** This is the last topic, and we'll be done
25 here in about five minutes.

TIMOTHY KETTNER - DIRECT EXAMINATION

1 What do you want from this jury?

2 **A** What's fair. I mean, we're listing a lot of
3 stuff. I would like fair judgment, justice to be
4 served. I want to get home. Compensate me for --
5 I'm not a thief, we know that. Get me back what I
6 put in the business financially. He had a buyout
7 on the table. I think that is the third buyout I
8 saw.

9 **Q** What about the joint venture, what do you
10 want the jury to do about that?

11 **A** That needs to be out of there because the war
12 will never end, and it was never a joint venture.

13 **Q** Let's go to Exhibit 46, please, sir.

14 **A** Exhibit 46.

15 **Q** Go to Bates stamp 1194.

16 **A** I got that.

17 **Q** You see the amount for \$8,000 there that is a
18 highlighted up on the screen? Do you see it up on
19 the screen?

20 **A** Yeah, I do -- sorry, yes, I do.

21 **Q** Go to the check that is --

22 **A** Can I look at the screen?

23 **Q** Yeah. Sure.

24 So tell the jury what that is for?

25 **A** That was a cash call. We were out of money I

TIMOTHY KETTNER - DIRECT EXAMINATION

1 believe that was the second cash call -- whatever.
2 It was a cash call. It was money I took from my
3 management account.

4 Q Read the "for" line.

5 A "Loan to TnW and More."

6 Q For \$8,000, correct?

7 A Yeah, \$8,000 bucks.

8 Q Who signed the check?

9 A That's mine.

10 Q And tell them what your T-KET Services, Inc.,
11 is. What is that?

12 A That was a management company Kim Bryant set
13 up for me to defer costs. I was getting killed
14 with taxes. I was making decent money at the
15 restaurant. She said, You have to do this, Tim.

16 Q So you loaned \$8,000 to TnW and More on
17 May 21, 2019. Was that ever repaid?

18 A No, it wasn't.

19 Q Do you want that \$8,000 to be repaid?

20 A I think it is fair. I mean, I put the money
21 in and the work into the company.

22 Q Go ahead and look up here. This is
23 Defendants' 1737. Do you see the Wilmington Power
24 Sports? How much was that for?

25 A \$1,000.

TIMOTHY KETTNER - DIRECT EXAMINATION

1 Q Was that amount ever paid back?

2 A No, it wasn't. It was for two jet skis to
3 get us through the remaining season. Ours was
4 junk.

5 Q Do you want that thousand dollars back?

6 A It's fair. I would give it back to someone
7 else if they invested it.

8 Q So we're still in Exhibit 46.

9 A I have to turn that -- I'm sorry, Scott.
10 I'll shut my mouth.

11 Q That is \$16,998?

12 A That was the balance for the jet skis.

13 Q So you paid the thousand for the deposit, and
14 now you're paying the rest of it?

15 A Yeah. I signed the check. John Sessions
16 wrote it out because he went to get them.

17 Q Has this ever been given back to you?

18 A Not a penny.

19 Q Do you want the \$16,998 back?

20 A I think it is realistic. It's fair.

21 Q This next one is interesting, so let the jury
22 get their eyes on this. Tell the jury about the
23 bulldozer -- I think you see it there -- that Wade
24 Long and Tim Kettner bought.

25 A Why did we buy it? Wade, if I remember

TIMOTHY KETTNER - DIRECT EXAMINATION

1 correctly, he had two of them. His wife, Lindsey,
2 said you don't need two bulldozers, so he kept on
3 and on about that. And at that time -- I don't
4 recognize the date -- but things are going good.
5 Me and Wade are doing good. I have a piece of
6 property, and we went on it and bought it together
7 for personal use.

8 Q \$30,000?

9 A \$30,000. We split it.

10 Q And you get kicked out of TnW, and what
11 happens to the bulldozer?

12 A I am going through Facebook and I know who
13 Wade Long is, and I see our bulldozer -- I assume
14 it is our bulldozer -- and it's sold by Wade --

15 MR. PLAYER: This is hearsay.

16 A He made a profit.

17 MR. PLAYER: He is testifying as to what he
18 read on Facebook; that is hearsay.

19 MR. MONGILLO: It is Defendants' Exhibit 46
20 that he admitted -- from his -- it's a Bates
21 stamped document that was exchanged in discovery.
22 It is in evidence before this jury. I don't
23 understand hearsay when we preadmitted exhibits?

24 THE COURT: I'll allow it.

25 MR. MONGILLO: Thank you.

TIMOTHY KETTNER - DIRECT EXAMINATION

1 **Q** **(BY MR. MONGILLO)** So, again, did you get any
2 of that \$34,000 from the sale of the bulldozer?

3 **A** No. And if that's not it, let's get
4 together, sell it, and split it.

5 **Q** Do you want the money from that?

6 **A** Yeah, one way or the other.

7 **Q** Now, you went ahead and you managed TnW for
8 about three years, correct?

9 **A** Yes.

10 **Q** Were you ever compensated for that?

11 **A** I never asked for any. No, I wasn't.

12 **Q** And tell the jury -- have you gotten any
13 disbursements from TnW since you left in September
14 of 2020?

15 **A** I got nothing other than late insurance
16 payments and loan payment statements, that's all.

17 MR. MONGILLO: One minute, Your Honor.

18 (A brief pause in the proceedings.)

19 MR. MONGILLO: No further questions.

20 THE COURT: Mr. Harrison?

21 MR. PLAYER: Can we approach briefly?

22 (Whereupon, a bench conference was had.)

23 THE COURT: We're going to take a brief
24 break. If you need to go to the facilities, do
25 that now. Return to your jury room, and we'll be

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON
1 right with you.

2 (The jury exits at 2:55 p.m., and the
3 following is heard out of the presence of the jury.)

4 THE COURT: All right. Start back at 3:00,
5 and we'll do this quick.

6 (A recess was taken.)

7 THE COURT: Are you okay, Mr. Player? If
8 not, just stand up and I got you.

9 MR. PLAYER: Thank you.

10 MR. HARRISON: And if he does stand up, I'm
11 more than happy to take a break.

12 MR. PLAYER: Thank you.

13 THE COURT: All right. Let's bring them in.

14 (The jury enters at 3:04 p.m., and the
15 following is heard in the presence of the jury.)

16 THE COURT: Thank you, ladies and gentlemen.
17 Have a seat.

18 Mr. Harrison, your witness.

19 MR. HARRISON: Thank you, Your Honor. May it
20 please the Court?

21 THE COURT: Yes, sir.

22 **CROSS EXAMINATION**

23 **BY MR. HARRISON:**

24 **Q** Good afternoon.

25 **A** I'm sorry?

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON

1 Q Good afternoon.

2 A We're here.

3 Q Is it okay if I call you Tim?

4 A You've earned that.

5 Q Thank you, sir.

6 Tim, I think you've already said this, but I
7 want to make sure that I understand this. Have you
8 ever shared profits or control with TNT?

9 A No. No.

10 Q Between the two of us, I think they'll hear
11 us next door.

12 So let me ask it again. Did TNT ever share
13 profits or control with TNT?

14 A No, they didn't.

15 Q And how about the other way around?

16 A No.

17 Q Why not?

18 A We're separate businesses completely.

19 Q Did you ever offer to sell a piece of the jet
20 ski business or marina operation to any of my
21 clients? Did you ever make an offer to them?

22 A They wanted nothing to do with it.

23 Q Did you make the offer?

24 A No, I did not.

25 Q How do you know they wanted nothing to do

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON
1 with it? Did you discuss it?

2 **A** From day one. Do your thing, we want nothing
3 to do with that, we're plenty business.

4 **Q** So they said unequivocally we want nothing to
5 do with --

6 **A** Not now. Not ever.

7 **Q** Did they ever express an interest into going
8 into a joint venture with Mr. Long or Mr. Kiser?

9 **A** If that is any different than what I just
10 answered, then, no.

11 **Q** There's been a lot of talk about this loan.
12 We all have seen your name on the loan. Did you
13 personally guarantee that loan?

14 **A** I did, sir.

15 **Q** And Justine's name is on that loan; is that
16 correct?

17 **A** Correct.

18 **Q** And she personally guaranteed that?

19 **A** She did.

20 **Q** And Donny's name is on the loan, and he
21 personally guaranteed that?

22 **A** Yeah, he did.

23 **Q** What about Mr. Kuzmik?

24 **A** Casey didn't.

25 **Q** Why not?

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON

1 **A** That was my decision. He was moving -- he
2 wasn't at his ten years yet.

3 **Q** Did he express he wanted to be involved in
4 that loan?

5 **A** No. He expressed he definitely didn't want
6 to be involved.

7 **Q** Is that why he didn't sign any guarantees or
8 get involved in that?

9 **A** Yeah.

10 **Q** I have a question for you, and we've talked
11 about this quite a bit. I'll ask you a couple
12 questions about this, and we'll move from it.

13 Now, Mr. Kettner, this land here --

14 **A** Yes, sir, I got it.

15 **Q** And this land here --

16 **A** Yes, sir.

17 **Q** -- and this land here --

18 **A** I got you.

19 **Q** -- this land here --

20 **A** I got you.

21 **Q** -- and this land here --

22 **A** Yes, sir.

23 **Q** -- and this land here --

24 **A** Yeah.

25 **Q** -- would you say that that is what represents

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON

1 this parking lot we keep talking about?

2 **A** Did you point to that one?

3 **Q** Uh-huh, Mr. Faircloth.

4 **A** I don't believe -- maybe it did. I'm not
5 sure.

6 **Q** Is it fair to say that these four pieces of
7 the parking lot we're talking about, and that is
8 where the cars are parked?

9 **A** Yeah. Yes, sir.

10 **Q** Who owns that?

11 **A** TNT and More, Crab Catchers.

12 **Q** Have they always owned that?

13 **A** Well, we purchased it step by step.

14 **Q** You say "we," you are not including TnW, are
15 you?

16 **A** No. They never put a dime in any of that.

17 **Q** They have acted as if they gave you this
18 parking lot. You purchased this parking lot?

19 **A** Oh, no. No. No. That's false.

20 **Q** So this has always been owned by either you
21 or TNT, correct?

22 **A** Yes. Like I said, step by step. Sometimes I
23 would buy it and deed it over to TNT and More.

24 **Q** And this down here, you recognize that?

25 **A** Yes.

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON

1 Q Is that the piece that TnW owned?

2 A TnW owned, like -- I believe we still own it.

3 Q Still own it?

4 A Yeah. Nobody told me of any sale.

5 Q Can you describe, approximately, how big that
6 is?

7 A That last part?

8 Q The one that TnW owns.

9 A Well, I think it's like -- I believe it was
10 .8 acres or something. I believe it is under an
11 acre total.

12 Q So it's a piece in the front?

13 A Yeah. It's predominantly marsh grass.

14 Q So there is water where there are docks?

15 A Yeah. Right. On the Intracoastal Waterway.

16 Q And then a smaller piece less than an acre of
17 land in the uplands?

18 A Right.

19 Q And everything behind that that you just
20 pointed to, who owns that again?

21 A TNT and More, Crab Catchers.

22 Q Isn't it true that they've owned that since
23 before the joint venture in 2015?

24 A There was no joint venture.

25 Q Okay. So before they allege the joint

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON
1 venture existed?

2 **A** Before -- what was the year?

3 **Q** Before they alleged that it existed in 2016?

4 **A** Well, actually, I deeded the final piece of
5 the project over to them upon my departure.

6 **Q** Who is "them"?

7 **A** I'm sorry. I have to define it. TNT and
8 More.

9 **Q** But the rest of it had already been
10 transferred to TNT?

11 **A** Yeah, that was all deeded and dotted Is.

12 **Q** Before any of this was even filed?

13 **A** Yes.

14 **Q** And before you incorporated TnW?

15 **A** Yes, sir. That is correct.

16 **Q** Let me ask you this question, Tim: Did the
17 members of TNT ever meet to vote on entering into
18 this alleged joint venture? Was there a vote held
19 on that?

20 **A** No. There was never -- I mean, a raise of
21 hands or document or anything like that.

22 **Q** Anything like that.

23 **A** No. We sat down -- I think there was a
24 couple of meetings to discuss what Wade and I
25 wanted to propose to them and, you know, get some

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON
1 permission to do it.

2 Q So permission?

3 A One hundred percent permission. But then
4 prove it.

5 Q Let me ask it the other way. You are a
6 member of their organization?

7 A Yes, sir.

8 Q You still are today, right?

9 A One third member.

10 Q Did you and Mr. Kiser and Mr. Long ever sit
11 down and vote to be a part of a joint venture?

12 A No. The joint -- no, there was no joint
13 venture.

14 Q Now, Tim, I have a series of documents, one
15 of which we've already talked about in that case,
16 and I'll start with that one because it's already
17 been marked. It is going to be the operating
18 agreement marked as Exhibit Plaintiff's 23. This
19 is for TnW and More and I'm going -- you can use my
20 copy. Tim, whose operating agreement is at the
21 top? Read it for me.

22 A Can I?

23 Q Yeah, go ahead.

24 A TnW and More, LLC. I didn't want to jerk it
25 out of your hand.

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON

1 Q And below that, what is this?

2 A Amended and Restated Operating Agreement.

3 Q Now, this agreement was entered by you and
4 Mr. Long; is that correct?

5 A Yeah. But -- yes, and Clyde Kiser.

6 Q So you are all on there?

7 A Yeah, all three names are on there.

8 Q Ignore all of these things here. I want you
9 to read -- start reading under 2.2.

10 A You want me to read this line?

11 Q Read the line, and then read to the end of
12 the paragraph where you see "D," and then I want
13 you to stop.

14 A This is a biggy. Let me get a little water.

15 Q Just start reading there, and when I --

16 A The Line 2.2?

17 Q Yes.

18 A "Admission of new members by vote of the
19 members. Additional members may be admitted into
20 the LLC only upon the vote of the majority of the
21 members, which admission vote shall also specify --
22 the number one is in parentheses -- the share of
23 the profits and losses, which shall be allocated to
24 the new member."

25 Then the number "2" in parentheses: "The

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON
1 capital being contributed by the member."

2 And then "3" in parentheses: "Its value.
3 The vote shall also specify in accordance with the
4 terms of this operating agreement."

5 And then the number "4: "The manner in which
6 the profits and losses will be -- lost my line --
7 shared among the members after the admission of a
8 new member."

9 Q Stop right there.

10 You said no votes were ever taken to add a
11 new member? No votes were talked about any of
12 this?

13 A No.

14 Q So to admit a member, that would require a
15 vote?

16 A Let me clarify that. Are we talking about
17 TnW?

18 Q This is TnW's.

19 A You mean like an actual vote, piece of paper?

20 Q Yeah.

21 A Chris was bringing -- excuse me, Wade was
22 bringing a friend that he had faith in and had
23 money and some marketing experience, and we were
24 hurting. We needed both of that -- needed.

25 Q But you never voted to bring TNT into this,

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON

1 did you?

2 **A** No. That wouldn't have been put on the
3 table. That was made loud and clear from day one.

4 **Q** There is a Section 2.4, and all I need you to
5 read -- and this is easy -- read the title. Then
6 read Line 1. Stop where that period is
7 (indicates).

8 **A** Follow with me, because you have to put the
9 brakes on it. I can fight through that battle.

10 "A member may not assign his, slash, her
11 financial rights without the consent of the other
12 members."

13 **Q** That's enough.

14 Did you ever get that consent? Did you ever
15 ask for that consent, I'm sorry?

16 **A** No, sir.

17 **Q** This one is going to be long. I want you to
18 start at this since here, 3.9, and read "required
19 vote and type of vote" there, and read all the way
20 down to right here. So read A, B, C.

21 **A** Bear with me, all right. You want me to
22 start at "ordinary actions"?

23 **Q** Start at the title.

24 **A** "Required vote and type of vote: Action by
25 the following required votes may be approved at

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON

1 either a duly called and constituted meeting,
2 written consent, or through informal approvals."

3 Then we go to "ordinary actions. "For any
4 ordinary actions to be taken, members holding more
5 than 50 percent -- and then 50 percent is there --
6 votes must affirmatively vote yes. Ordinary
7 actions or all actions of the LLC exemption those
8 specified as extraordinary actions or unanimous
9 actions. In this section or which other provisions
10 of this operating agreement require a greater
11 vote."

12 I got to keep going?

13 **Q** Yeah. I'll stop the torture when it's time.

14 **A** It's torture. It was more fun when I was
15 reading with my grandchildren.

16 "Extraordinary actions: For any
17 extraordinary action to be taken, members holding
18 more than 75 percent votes must affirmatively vote
19 yes. Extraordinary actions are, one, the admission
20 of an additional person as a member of this LLC,
21 including a vote to substitute and transfer of any
22 portion of members financial interest."

23 Then we go to "unanimous actions"?

24 **Q** Yes, sir.

25 **A** "The unanimous consent of all members is

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON

1 required. To amend this operating agreement of the
2 Articles of Organization, voluntarily dissolve the
3 LLC, require or permit the contribution of
4 additional capital by members, merge with another
5 LLC or entity, the sale of all or substantially all
6 of the company's property."

7 **Q** Okay. Now, I'll ask you this again: Did you
8 ever have any kind of vote where any of those
9 things happened?

10 **A** No. We didn't do a formal vote.

11 **Q** With TnW at least, right?

12 **A** No. No. We never did.

13 **Q** Now, if that wasn't enough, I've got here --

14 **A** Warming up.

15 **Q** I have a copy of the TNT and More operating
16 agreement. This is not marked, but it is in
17 evidence. We're on Defendants' 17.

18 (Defendants' Exhibit 17 marked.)

19 MR. HARRISON: Court's indulgence.

20 THE COURT: Yes.

21 **Q** **(BY MR. HARRISON)** Pick up here. This is
22 No. 12. I just want you to read No. 12, and stop.
23 I'll be back up here to get my piece of paper.

24 **A** 12, and kill it right here? Okay. This is
25 "Assignment of Interest: Except as otherwise

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON

1 provided in this agreement, no member or -- there
2 is an S -- members or other person holding interest
3 in the company may assign, pledge, hypothecate,
4 transfer, otherwise dispose of all or any part of
5 their interest in the company; including, without
6 limitation, the capital, profits, or distributions
7 of the company without the unanimous vote of the
8 members in each instance."

9 Q Thank you. And did TNT ever hold up that
10 vote?

11 A No.

12 Q So how could it be unanimous if a vote was
13 never held?

14 A It wasn't.

15 Q So reading the operating agreements on both
16 of your companies, it would seem that a vote would
17 have been required to do anything that we've been
18 talking about. Is that your understanding?

19 A Absolutely.

20 Q Has that vote ever happened?

21 A No, sir, it did not.

22 Q Fair enough. I won't make you read anymore.

23 A I'm ready.

24 Q We'll just talk for a little while. Let me
25 ask you this -- let me grab a board. No matter

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON

1 what board I grab, it always will be the same, but
2 it has different stuff on them. This is a plat
3 and, we've seen the plat that says TnW and More and
4 TNT. What does this say?

5 **A** TNT and More, Incorporated.

6 **Q** Who signed down here?

7 **A** Bring that over here. Donald A. Kettner,
8 Jose -- I can't pronounce that -- Morales, Justine
9 Vaitis, Casey Kuzmik, Robert Benoit.

10 **Q** So there is a bunch of different plats out
11 there, different peoples' names?

12 **A** A lot of hopes and dreams and activities and
13 a lot of good ideas, really good ideas.

14 **Q** And those changed over time, didn't they?

15 **A** That's what happens in life. People change,
16 ideas change, their actions change.

17 **Q** They sure do. Let me ask you a question
18 about this. When you bought this piece of
19 property, this piece of property abutting the marsh
20 owned by TnW, that was bought by you and Mr. Long?

21 **A** That's correct.

22 **Q** For TnW, right? In the name of TnW?

23 **A** Yeah, for us.

24 **Q** Has that property been transferred to anybody
25 today?

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON

1 **A** I've not seen anything.

2 **Q** And out of any of the properties that you see
3 here -- this one owned by TNT, this one owned by
4 TNT, this one owned by TNT, this one owned by TNT,
5 and this one owned by TNT, did you ever --

6 **A** Wait. Wait.

7 **Q** You can read it.

8 (A brief pause in the proceedings.)

9 **A** Okay. Is this a fence here?

10 **Q** **(BY MR. HARRISON)** It's back here.

11 **A** Oh, okay. No. No.

12 **Q** So those are all TNT properties?

13 **A** Unless they've sold them.

14 **Q** Did you transfer any of those TNT properties
15 to Mr. Long or Mr. Kiser?

16 **A** No. That wouldn't be allowed, and I couldn't
17 do it.

18 **Q** Let me ask you a different question. These
19 guys are representing that you guys are in a joint
20 venture. Did you personally, for any purpose,
21 whatsoever, ever tell a third party that you were
22 involved in a joint venture between TNT and TnW?

23 **A** Through a third party?

24 **Q** Uh-huh.

25 **A** I didn't know what a joint venture was, why

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON
1 would I tell them that I'm owning one?

2 Q Let me ask you this, because you have been
3 painted to be the man pulling the strings of my
4 clients. Did you ever call my clients and direct
5 them to interfere with your other business, TnW?

6 A What date or what time?

7 Q At any time. Did you call them up and say, I
8 want you to go out there and block the gate or
9 anything like that?

10 A Well, my final sale of stock was to Robert
11 Benoit.

12 Q After that, did you call any of these guys
13 and say, I want you to screw with my business, with
14 TnW?

15 A We talked about who is responsible for the
16 loan. It was made loud and clear by Robert Benoit,
17 You go. You are out there here. That's it.
18 That's the stipulation.

19 Q So you were done?

20 A Yeah, I was.

21 Q So you were the man, but when you left, you
22 left all of that to them, right? That wasn't your
23 problem anymore? You weren't involved in that in
24 any way?

25 A My son put it great one time when he thought

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON

1 I had lost my less of being. He said, Dad, you're
2 not the man no more. You are not the man no more.
3 It kind of hit home, but it was a realization. I
4 wasn't. And I never really was. It was "we." We.
5 We. You don't do stuff alone. There wasn't an
6 "I."

7 Q Fair enough.

8 A Sorry.

9 Q No need to apologize at all. Everybody in
10 this courtroom who has testified, and everybody in
11 this courtroom that is going to testify, as far as
12 the members of these organizations are concerned,
13 they all had their different businesses and done
14 different things in life, but you are the central
15 character for all of these guys, right?

16 A I don't know what I am, good or bad. I
17 listened to a lot.

18 Q But you brought all of these people together;
19 did you not? They wouldn't be here but for your
20 hard work and what you have done for the past 30
21 years; is that right?

22 A Well, I can't get milk out of the cows if the
23 cows aren't there. I'm being as plain as I can be.
24 You need people. I need cows. I like to see
25 people do good. Look at what the world is today.

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON

1 If you can put yourself in an opportunity to
2 advance and improve people by being on-site,
3 working hard, what is so bad about being decent and
4 maybe fulfilling my dream, others dreams, and doing
5 the same thing, not only that you did at Crab
6 Catchers, TNT and More -- these people truly
7 deserved it. And to this day, they are doing
8 better than I could. Why not transfer that same
9 concept over to a marina? It can be done very
10 easily. That is good stuff. Is there anything
11 wrong with doing good in this world today? Moving
12 people up? What do I need? I'm going home to
13 Wisconsin eventually. What do I need? How much
14 does one person need?

15 I'm sorry. I'll get back to the question.

16 **Q** No, I mean, you are a humble man.

17 **A** You asked it, and you got it. I don't like
18 to stand on any pedestal. We see TV cameras coming
19 in, get me out of here. I just want to work.

20 **Q** I'll do it for you --

21 **A** What? Stand in front of a TV?

22 **Q** Did you help Mr. Kiser get TnW started?

23 **A** Wade introduced me to him, and I relied on
24 what Wade said, what Wade promised.

25 **Q** Did you help Mr. Long start TnW? Isn't that

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON

1 what you did, help him start a business?

2 **A** Again, we did it together. I relied on -- I
3 made a promise. We all make promises. Wade made
4 promises he could be there, he could operate.

5 **Q** Did he keep those promises?

6 **A** No, he did not.

7 **Q** But he expects you to keep yours, doesn't it?

8 **A** Well, I hear promise, promise, promise. What
9 is a promise without a piece of paper? Ronnie
10 Richter put it perfectly, Tim, you screwed up. I
11 said, I will own it. That piece of paper he showed
12 the jury was Tim Kettner screwing up, and I own up
13 to that. He knows -- and Ronnie Richter -- I got
14 my butt chewed from the man. Ronnie, can you help
15 me? I didn't do anything wrong. Both of those
16 guys stood up, Oh, yes, you damn well did -- pardon
17 my language. And I did. I did not put it on
18 paper. I can't promise I'm going to wake up
19 tomorrow.

20 **Q** I know -- and all I need you to do is answer
21 the question. Isn't it true that you helped your
22 son, Mr. Kuzmik, Mr. Benoit, and Ms. Justine,
23 didn't you help them get started in this business?
24 Would they be here if it wasn't for you? You
25 helped them, gave them a shot?

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON

1 **A** I don't like to use that word. They earned
2 it. You got to earn it. You have to be -- you got
3 to be there. You have to commit. You have to
4 engage in every aspect. When I was there, I woke
5 up, and I worked. I could tell you even with my
6 son, and he had a probationary period, and I said,
7 Get in here in the office. You're showing up late.
8 Take the trash out, and then crawl in after it
9 because that is what you mean right now unless you
10 turn it around. I had to tell that to my kid. So,
11 yeah, he earned it. I did help, yeah. I started
12 the fire. The fire needs logs. What happens?
13 Fire needs commitment, dry wood, not green wood.

14 **Q** That's right. And you seasoned that wood,
15 you taught these guys how to run the business the
16 way you did, right?

17 **A** Well, yeah, that's fine. What did I know
18 about running a business? You know what they
19 called me when I went to school? Dumb farmer.

20 **Q** But you ran Crab Catchers for 20 plus years
21 successfully?

22 **A** Yeah, I did, but I didn't do it alone. Yeah,
23 I helped, but those guys earned it. They are doing
24 better than I did. And they don't need anybody. I
25 dragged them into this mess.

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON

1 **Q** I have one last question for you, because
2 that is important, because Wade Long and Chris
3 Kiser seem to say that we need them to be
4 profitable. Is that true? Does TNT need TnW to be
5 profitable? Does Crab Catchers need them to be
6 profitable?

7 **A** Absolutely not. He said we have a two-hour
8 waiting lists when we came in. That is without any
9 marina, any guru marketing, anything. We did it by
10 word of mouth and hard work, and they are doing it
11 better than me.

12 **Q** And you did that before these two stepped
13 foot on the scene, didn't you?

14 **A** They damn bit -- sorry, every bit of it,
15 because you have to look in the mirror in the
16 morning. You have to hold yourself accountable,
17 and you have to smile back as you. If you can't do
18 that, something is wrong. And that comes with
19 honest, hard work and dignity and humility and
20 humbleness and truth.

21 **Q** It's been three-and-a-half years, Mr.
22 Kettner. I appreciate you giving the compliments
23 and entertaining everybody. Mr. Player will get up
24 here in a minute. Before he does, he'll answer
25 questions that he wants to ask --

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON

1 **A** I get that.

2 **Q** I want to ask this question before I sit
3 down: Is there anything else that you want this
4 jury to know before I take my seat, because this is
5 the last question I'm going to ask you?

6 **A** What to know?

7 **Q** Anything else --

8 **A** Those people over there saved my life, not
9 once was I committed, my gal brought me down here,
10 drove straight through to South Carolina, because
11 that didn't work when I was laying in the hospital.
12 Those guys gave every bit of kindness and care to
13 make sure I was taken care of. My son called the
14 ambulance, and those people right there held me.
15 My son said, Dad, you move, I will kick your ass.
16 I never heard him say that before. I ain't
17 touching that. I had enough sense left in me.

18 The ambulance came, and I ended up at
19 Seacoast Hospital. The mind, unless you have
20 experienced it, it does happen. It tells you a lot
21 of things and can convince you to tell you a lot of
22 things that aren't true. When you get accused, and
23 not only accused by business partners and
24 attorneys, but told that you are a thief, that
25 wears on you. When you are taking care of parents,

TIMOTHY KETTNER - CROSS EXAMINATION - MR. HARRISON

1 I thought I -- my daughter said, Dad, you are the
2 hardest rock I ever met with the softest heart. My
3 son committed his father to an institution in
4 Lexington, Kentucky. Can you imagine what that did
5 that to kid?

6 Q I cannot.

7 A No, you can't. The strength, because I can
8 tell you -- I couldn't tell you what would happen
9 if that happened to my father. I would be in
10 prison for the rest of my life. You don't do that.
11 You don't accuse people of stuff. You don't point
12 a finger and say, Because they worked their butts
13 off, I want the company. You're a thief. Don't
14 give me that crap. I'm sorry, but that's what
15 happened, and that's -- I could sit here and talk
16 all day.

17 The wonderful Crab Catchers and what is going
18 on, it's a story. You would love to read it.
19 People tell me write a book. Come on. Let it
20 speak for themselves. Let those people speak for
21 themselves. Let those people speak for themselves.
22 I can't speak for anyone. I'm me, and that's it.
23 I can't breathe for you. You can't breathe for me.
24 But to put my son and those people what they are
25 going through, it's just something that shouldn't

TIMOTHY KETTNER - CROSS EXAMINATION - MR. PLAYER

1 happen in this world today. If we can't be human
2 beings and kind to each other -- that is yours,
3 that's mine. Go make some money. You have a great
4 opportunity. What cuts greed off? To do that?

5 Enjoy life. My mom, six months, you know.
6 Time is our most precious enemy. Why are we
7 wasting it sitting here? These people? You?
8 These guys? This is totally uncalled for. Those
9 guys will work with everybody. Donny is on the
10 chamber. They support the chamber, community,
11 children. You know, they are involved. They want
12 to see Little River -- they want to see that whole
13 waterfront grow. You don't point fingers. You
14 work amicably, side-by-side.

15 That's all I got.

16 Q Fair enough.

17 MR. HARRISON: No further questions, Your
18 Honor.

19 THE COURT: Mr. Player?

20 MR. PLAYER: Yes, Your Honor.

21 **CROSS EXAMINATION**

22 **BY MR. PLAYER:**

23 Q Good afternoon. Mr. Kettner, you testified
24 earlier about being committed and blamed it on the
25 lawsuits?

TIMOTHY KETTNER - CROSS EXAMINATION - MR. PLAYER

1 **A** What?

2 **Q** You said you were committed for depression?

3 **A** Yeah, severe.

4 **Q** And you blame it on this lawsuit?

5 **A** Yes.

6 **Q** What about the claims your family filed
7 against you for fraud in this lawsuit; did that
8 affect you?

9 MR. MONGILLO: Objection, Your Honor.
10 Objection, Your Honor.

11 THE COURT: Can we approach?

12 (Whereupon, a bench conference was had.)

13 **Q** **(BY MR. PLAYER)** So it did worsen your
14 depression when they sued you for fraud?

15 **A** The primary -- 99.9 percent is being called a
16 thief.

17 **Q** Okay. But when your own son sues you for
18 fraud, that is water off a duck's back?

19 **A** I'm sure he had good reason for it.

20 **Q** Had good reasons to sue you for fraud?

21 **A** I'm sure he had to protect his business and
22 ground and had to do what he had to do.

23 **Q** Okay. And then -- I don't know why this is
24 not switching.

25 Back to the handout, because you and your

TIMOTHY KETTNER - CROSS EXAMINATION - MR. PLAYER
1 lawyer focused on one part, but not on the rest of
2 it.

3 MR. MONGILLO: What are we looking at, Mr.
4 Player?

5 MR. PLAYER: Whatever you handed to the jury.

6 THE COURT: Mr. Player, you want the clerk to
7 see if we have this working?

8 MR. PLAYER: I think it's just not connecting
9 to the Internet.

10 Q (BY MR. PLAYER) What did you say you were
11 contacting the surveyor to do?

12 A You want me to read the excerpt from it?

13 Q Yes, sir.

14 A Where would you like me to start? Show me
15 the text you would like me to plead, please.

16 Q Right here, "surveyor called."

17 A "Surveyor called. Have everything ready when
18 I get back. Combining all lots. Said it probably
19 would take up to three weeks depending how busy the
20 County is."

21 Q So you are talking about the marina business,
22 correct?

23 A What I'm talking about is -- I'm not sure,
24 because the problem with text messages is they
25 don't tell the exact conversation. I hate texting,

TIMOTHY KETTNER - CROSS EXAMINATION - MR. PLAYER

1 but it is very valuable. I mean, especially in a
2 lawsuit, I'm seeing the value, because I can point
3 and say, oh, that's what he meant.

4 Anyway, to the best of my knowledge, we were
5 talking about the layout of the dock, what needed
6 to be done. I think there was two parts -- total
7 property was, what, 1.5 acres that TnW bought?

8 Q No. It was .75.

9 A Well, whatever it was, we needed -- we
10 didn't -- we weren't even registered yet. As I
11 testified earlier, I'm not a lawyer. I don't know
12 what it meant, and I knew he didn't, so I said,
13 Wade, introduce yourself. We have a joint venture
14 going together.

15 Q My question is about three words: Combining
16 all lots.

17 A Like I said, darn well could have been
18 combining all lots for future businesses down the
19 road, not to give up the property.

20 Q Okay.

21 A If that is what you are insinuating. I might
22 be misconstruing the question.

23 Q You agree that the marina cannot operate
24 unless it has access to TNT land, correct? They
25 have to have the upland frontage, correct?

TIMOTHY KETTNER - CROSS EXAMINATION - MR. PLAYER

1 **A** Yeah.

2 **Q** And that upland frontage is owned by TNT?

3 **A** Yeah.

4 **Q** Okay. So please explain to me -- never mind.

5 I want to make sure we're on the same page, because

6 I thought earlier you said that these guys had

7 nothing to do with the parking lot?

8 **A** What do you mean?

9 **Q** You and Wade filled in the pond with 800
10 loads of dirt?

11 **A** That it is incorrect, sir.

12 **Q** It is?

13 **A** It's not incorrect. Are you talking about
14 the parking lot or the pond? Please specify. Can
15 I ask you to do that?

16 **Q** Is the pond not the parking lot?

17 **A** At that time it was in a separate piece of
18 property that I had purchased.

19 **Q** And what time was that?

20 **A** Huh?

21 **Q** What time was that?

22 **A** Well before TnW was even an idea.

23 **Q** Right.

24 **A** Yeah.

25 **Q** In --

TIMOTHY KETTNER - CROSS EXAMINATION - MR. PLAYER

1 **A** 2015, I believe, or '14. They have the
2 paperwork on that.

3 **Q** If TnW had to have TNT's lots to operate a
4 marina, how is TNT not involved?

5 **A** There was no parking. That was developed --
6 we developed the pond, the parking lot, because
7 Crab Catchers did not have enough parking lot.
8 That was a busy restaurant, so I purchased
9 individual lots.

10 **Q** So your testimony --

11 **A** You couldn't park on the road -- I'm sorry.
12 You couldn't park on the road. That wasn't even a
13 parking lot.

14 **Q** Right. But TNT did not pay for it to be
15 done?

16 **A** What part?

17 **Q** The parking lot.

18 **A** What part of the parking lot? Because I've
19 heard the pond and I'm confused. Can you clarify
20 it? Because TNT -- I bought the property. TNT
21 paid for every ounce of dirt that was put into the
22 pond. The front part, TnW and TNT -- because they
23 gave us permission to use that and combine the
24 plats, yeah, we put a couple of loads of dirt
25 there. Wade tore the building down, Doc's house,

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1 and we did all of the physical labor, me and TNT.

2 The guys from TNT put the riprap and stuff in the

3 front part where the jet ski hut was. Wade did not

4 purchase any dirt that went into the pond

5 specifically. I worked with Steve Powell and

6 Premier -- Steve Powell.

7 Q Are you not aware that you reimbursed

8 yourself for building the parking lot through TNT

9 once you got the loan?

10 A That I reimbursed myself? The pond? Are we

11 talking about the pond?

12 Q Yes.

13 A The pond? TNT paid -- I was a member of TNT.

14 We bought every piece of dirt that went in there.

15 Sorry, I dumped this water out again.

16 Wade came down and jumped on the bulldozer

17 because I had a little tractor.

18 Q So what you're saying is he's just a sucker?

19 A Who?

20 Q Wade.

21 A No, not at all. He's a smart man.

22 Q So a smart man comes and fills in your pond,

23 brings in 800 loads, does all the grading for the

24 parking lot, and he's doing this because he likes

25 you?

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1 **A** You are incorrect.

2 **Q** How am I incorrect?

3 **A** TNT and More had to have a parking lot or we
4 were getting closed down. It was a big deal. We
5 had to go in front of Planning and Zoning. I got
6 Steve Powell from Venture Engineering to do all of
7 the site work for the pond, and solely the pond, a
8 huge pond that was there forever.

9 **Q** What was that for?

10 **A** The Crab Catchers parking lot, TNT and More
11 parking lot at that time.

12 **Q** And you made it very clear that Wade Long has
13 nothing to do TNT, so why is he helping you build
14 your parking lot?

15 **A** That's what buddies do. We bought fish all
16 the time when we didn't even need them. I need
17 some money, can you buy these fish? We didn't need
18 the fish, but we could store them, and we did that.
19 That's what guys do working together.

20 **Q** When it came time to get permit for the
21 marina, you had to represent -- and you did -- that
22 all of that land was joined for purposes of getting
23 the upland furnished to build the marina, correct?

24 **A** I don't know -- that, I don't remember. I
25 can't answer it. That's why we hired them.

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1 **Q** Let's look at this. This is what you read
2 earlier, and I noticed you stopped at a convenient
3 place. I'll show you where. "The business has
4 grown from just a few Saturdays at lunch to over
5 one thousand customers served on the weekends."
6 That is where you stopped.

7 **A** Okay.

8 **Q** The next sentence: "The restaurant and
9 proposed property for development is located on the
10 -- is located on the Little River at South Carolina
11 waterfront," right?

12 Here is my question, and I asked it to Geoff:
13 Where is TNT? Where is Wade Long's name -- I mean
14 TnW -- anywhere in that paragraph as the borrower
15 and guarantor --

16 **A** I see my name, Justine, and Donny.

17 **Q** And in your deposition --

18 **A** I see figures below, although you're not
19 pointing them out.

20 **Q** Yeah. We'll get to them.

21 **A** Good.

22 **Q** You said that this loan was for the sole
23 benefit of TnW. Do you remember that?

24 **A** The sole benefit? When that went in to Horry
25 County State Bank, it was said to me by Geoff that

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1 we had to put up the properties of TNT and More,
2 the personal guarantees, and that even wasn't
3 enough, guarantees of Wade, too, but we also had to
4 show that a business was existing.

5 In order to get that loan, that was a final
6 piece of the puzzle told to me by Geoff and
7 whoever -- well, to me, I know that. We had to
8 show a business that was in business and producing
9 income and showing profit. So that was required
10 per Geoff Hopkins to me. That is why we tied them
11 in. Otherwise, we had no interest in doing a loan
12 -- we wanted to keep it separate, me and Wade and
13 them guys.

14 Q And, again, with this loan -- would you agree
15 that TnW has had to pay back the lion's share of
16 the loan, right? \$5,000 versus 2200 a month,
17 right?

18 A That was done by Kim Bryant Accounting and
19 Donny, and we all agreed that was a fair surmise.
20 It was so close, it was down to a few cents.

21 Q Then why is TnW or Wade Long or the marina
22 not mentioned anywhere in that paragraph?

23 A You would have to ask the bank. I don't
24 know.

25 Q And we talked earlier, and I think I just

TIMOTHY KETTNER - CROSS EXAMINATION - MR. PLAYER
1 confirmed it right here under No. 2, it's the third
2 bullet point. I'll put the cursor over it, if I
3 can get there. Right here in this section that is
4 saying if Crab Catchers doesn't get the parking
5 lot, it can't operate, correct?

6 **A** Crab Catchers doesn't get the parking lot?
7 We already had one.

8 **Q** So what let's talk about "one parking space
9 per one hundred of indoor and outdoor, the subject
10 property would require 43 parking spaces as built."

11 The only thing built at that point was Crab
12 Catchers, correct?

13 "Subject use would be legally non-conforming
14 due to FEMA current requirements unless the land
15 area within the assignment -- which includes TNT
16 land -- is considered as one the subject restaurant
17 would be nonconforming due to parking shortage,"
18 correct?

19 **A** That's what it says.

20 **Q** Is it true?

21 **A** You know, I don't truthfully understand that,
22 but if it says that, then it's true.

23 **Q** Okay. So everything in this document that
24 the bank used to determine -- and management
25 reviewed -- does it mention Wade or Chris?

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1 **A** No, but our operating agreement spells it
2 out.

3 **Q** But that is not what the bank was told,
4 right?

5 **A** There wasn't a business created in operation
6 yet either. Crab Catchers was taking on the burden
7 in a lot of ways. We couldn't get the loan without
8 them. That is where we were at, and we knew it.

9 **Q** But the management -- and this is a dual loan
10 for TnW and TNT -- and the only people it mentions
11 is you, Donny, and Justine, correct?

12 **A** Yeah, but TnW wasn't formed yet. We had no
13 management.

14 **Q** No, I believe you all just showed taxes were
15 filed in 2017, and this is -- I mean 2016.

16 **A** What date was this submitted?

17 **Q** November of 2017.

18 **A** Yeah. I can't remember exactly when TnW was
19 incorporated.

20 **Q** They filed in '16, so I'm pretty sure they
21 formed before then, right?

22 **A** TnW did?

23 **Q** TnW did.

24 **A** Then we didn't spell out what operating
25 agreement was, unfortunately. Because we initially

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1 filed for the loan through Carolina Bank.

2 Q And we'll get back to you said the fellow you
3 were talking to -- the surveyor was Harry Bruton,
4 right? This is Plaintiffs' Exhibit 3. We'll go up
5 to the top, and I'll blow it up as big as I can.
6 The top, right-hand corner, you see? Is that Harry
7 Bruton's signature on it, November 27, 2017?

8 A Yes, it is.

9 Q Now, we're going to go to the bottom. We'll
10 look at the corner, and this says: "the property of
11 TNT and More, Inc., and TnW and More, LLC," right?

12 A Uh-huh.

13 Q A recombination plat?

14 A Yeah.

15 Q Why did you do that?

16 A For the future. We were looking at the
17 future.

18 Q Okay. But right above it --

19 A Future businesses, future -- you know, if
20 things worked out, we were moving forward.

21 Q And then we look at: "Certificate of
22 Ownership and Dedication: The undersigned hereby
23 acknowledge that I am, slash, parentheses, we are
24 the owners of the property shown and described
25 hereon, and that we hereby adopt this plan of

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1 development, slash, plat with our free consent, and
2 that we hereby dedicate all items as specifically
3 shown or indicated in said plat." Who signed for
4 TNT?

5 **A** Donald Kettner. He had power of attorney,
6 and he could sign for me. He could sign checks for
7 both companies on my behalf. Roger Roy set that
8 up.

9 **Q** And Wade signed for TnW?

10 **A** Yes, sir.

11 **Q** And that was hereby acknowledged a
12 certificate that these properties were going to be
13 combined for purposes of development?

14 **A** Future development, yes.

15 **Q** Well, in 2017 you didn't have the marina,
16 correct?

17 **A** I would have to look back at pictures and
18 records to show if the marina was actually being
19 constructed at that time, because we jumped the
20 gun. Wade and I put a lot of advance money to get
21 the project rolling. They were building the docks.
22 I would have to go see pictures and stuff that
23 showed -- like you said, we were building the docks
24 in the Crab Catchers parking lot. We were doing
25 things before the loan.

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1 **Q** The house on these plats, what is there now?
2 What did you allow TnW to put on that piece of
3 land?

4 **A** With the permission?

5 **Q** Permission?

6 **A** Permission of TNT and More.

7 **Q** Do you have a sheet of paper anywhere on the
8 face of the planet that says you gave permission --
9 that TNT gave them permission?

10 **A** Gave them permission?

11 **Q** Yeah.

12 **A** No, nor a promise.

13 **Q** An e-mail? Text?

14 **A** Nor a promise.

15 **Q** A written note?

16 **A** Nor a promise.

17 **Q** No sheet of paper? Oh, okay.

18 **A** You know, I admit we did wrong. It should
19 have been set up. Ronnie Richter -- I admit -- we
20 admit that we didn't put things in writing, and
21 that was an issue for both parties.

22 **Q** If someone said, Tim, you can put your
23 business on my property, but I can yank it away at
24 any minute, any time, for any reason, are you going
25 to build something there?

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1 **A** You can say that, but what's the reason? I
2 mean, guys do things to help each other.
3 Businesses do for each other to see each other
4 succeed. In my case -- and Chris Kiser said it
5 himself -- everything was fine until Tim was gone.
6 Why was Tim gone? Everything was fine. We never
7 had an issue. I heard him say that this morning.
8 Who caused that?

9 But, no, I would not. I would be smarter
10 than that, Especially now. I would need to put
11 that in writing.

12 **Q** Defendants' 3259, for reference. This is
13 just an example.

14 MR. MONGILLO: What exhibit number?

15 MR. PLAYER: 38 -- either 38 or 39. It is
16 TnW's dome books.

17 MR. HARRISON: So it is Kettner's 38 or 39?

18 MR. PLAYER: And this is just a page from it.

19 **Q** **(BY MR. PLAYER)** This is what you have as an
20 accounting. This is your proof that you didn't
21 steal any money, your handwritten scribbled notes?

22 **A** That is one example, yes, agreed by Wade
23 Long, and I when I started the company, that that
24 would be sufficient.

25 **Q** No receipts, huh?

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1 **A** Oh, tons of receipts. Everything was in a
2 file cabinet. Banks statement, everything. I was
3 a stickler.

4 **Q** Your lawyers have three binders. Show me a
5 receipt for dredging.

6 **A** I don't know.

7 MR. MONGILLO: Your Honor, objection. We do
8 not have the burden of proof. The plaintiff has
9 the burden of proof. They have abandoned the
10 claims that he stole any money.

11 MR. PLAYER: And they keep bringing it up.

12 THE COURT: Overruled.

13 MR. PLAYER: Overruled -- sorry, Your Honor.
14 I shouldn't have said that. That was improper.

15 **Q** **(BY MR. PLAYER)** I'm just trying to figure it
16 out, Mr. Kettner. Nobody has ever seen a receipt
17 for dredging, and you wrote a \$28,000 check to cash
18 for dredging.

19 **A** Yes, sir, I did.

20 **Q** And you think that they don't have a right to
21 question it?

22 **A** They could have any time. They had the same
23 responsibility. You saw our operating agreement.
24 I was no better than them, although they said I was
25 the big honcho. Those receipts, every bank

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1 statement, every credit card was available to them
2 from the start of that operation. Ask them if they
3 stop and look at it? Did they engage in monthly
4 meetings? When I opened the dome book, they didn't
5 care.

6 Q That's not the issue.

7 A What is the issue?

8 Q It is you haven't told us where it went.

9 A I sure have.

10 Q Where is the cash? Because you admitted in
11 your deposition you had a rough idea of the cash,
12 and you never got a single receipt when you paid
13 cash.

14 A And then we did your job and your clients'
15 job, and we got the -- we worked on it and broke it
16 down. Simply, I believe you said it was very easy
17 for you to find it. In my deposition, I read,
18 Well, it was easy for me to find. It was \$500,000
19 maybe a mill, who knows. You didn't have no idea
20 either. The burden of proof.

21 But I went and got every bank deposit -- with
22 the help of someone very professional -- and did
23 that. Every week what was deposited. Yes, sir, I
24 did do that. And bank statements and anything they
25 needed to know was available. Tim, where is the

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1 jet skis? You have to be on site. Just engage. I
2 never hid anything from anybody.

3 Q So you can steal from them if they are not
4 there looking at the books?

5 MR. HARRISON: Objection, Your Honor.

6 THE COURT: Sustained.

7 A I can tell you this, if I had \$1.1 million
8 and equal rights, I would be very engaged. And I
9 can tell you this, if I suspected that someone was
10 stealing the amount of money that they said I was,
11 I would prove it. I would prove it. I would
12 engage and ask questions, and if I was able to
13 prove it, I wouldn't be sitting in this courtroom.
14 You would be in jail. I don't wish to be out of
15 line, and I hope I'm not because I think someone
16 would tell me that.

17 Q (BY MR. PLAYER) Yeah. He probably would.

18 A This is new for me, so thank you for clearing
19 that up.

20 Q The mortgage for the loan, do you know what
21 the mortgage does?

22 A I'm not a banker, but I get the gist. I've
23 purchased houses.

24 Q It pledges the property in case the loan is
25 not paid, correct?

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1 **A** I agree with you, sir.

2 **Q** And the mortgage for all of the TNT property,
3 only one person signed that, and that was you,
4 correct?

5 **A** That was.

6 **Q** So you have the authority to bind and pledge
7 all of the property for TNT, correct?

8 **A** Yeah. If you look back at my value and who
9 they can come after if it doesn't work, I'm
10 responsible. I signed it because they -- I didn't
11 want them to take any risk. I said, okay, if you
12 are going to permit us to do this, you have -- you
13 know, I'm going to sign it. I wanted to show them
14 that they wouldn't be responsible in any way,
15 shape, or form. So I take responsibility for that
16 and agree with you.

17 **Q** And back on the credit memorandum, back here,
18 I don't remember -- I think it was Exhibit No. 1 in
19 your binders, if you want to look at it in paper.

20 **A** You said 1?

21 **Q** But you can read up here, too.

22 **A** Thank you. It's easier.

23 **Q** I'm easier than Scott -- I'm making a joke.
24 He wanted you to read the book (laughing).

25 **A** Everybody has their way (laughing).

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1 Q Yes, sir.

2 You put down guarantors, that you stated the
3 net worth was four-and-a-half million dollars?

4 A That is assets and everything combined.

5 Q You're not telling this jury that you lost
6 all of that between 2017 and now?

7 A No, but it hasn't been paid to me yet -- at
8 the time, I owned two houses. I'm definitely not
9 worth that no more because I sold the two houses.
10 You called it the farm, I believe, in my
11 deposition, and I still do retain that.

12 Q In North Carolina?

13 A Yes, sir. That is my backup.

14 Q And to be sure -- I'm sure what you are
15 saying to this jury is it is not liquid? You don't
16 have \$4 million in the bank?

17 A Oh, God, no. Combination of right down to my
18 pickup truck. What the bank told me to list is
19 what I listed.

20 Q I understand.

21 In the Morales text, 716 at the bottom, the
22 date is 9/4/2020. You said, "Anyone buys fish from
23 him" in the blue box. Can you see it?

24 A The one from me, yeah, I see that.

25 Q "Well, you know that outcome." What were you

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1 saying?

2 **A** What was I saying? Don't buy fish from the
3 man. He called me a thief. He had an attorney
4 call me a thief. Chris Kiser called me a thief.
5 Don't roll out the red carpet for someone that does
6 that. That was an anger text. I'm not going to
7 deny that.

8 **Q** Sure. And Jose said, "What do you mean?"

9 "Buy fish from Wade will not go well for
10 you." Are you aware that anyone beyond Crab
11 Catchers who bought fish from Wade?

12 **A** Anyone, or TNT members?

13 **Q** Anybody.

14 **A** No. That wasn't my business. My son, my
15 family, the people I had left. And, again, I'll
16 admit, it was an anger text. He called me a thief.
17 You kicked me out of the company.

18 **Q** Let's talk about that. All they did was take
19 you away from management, right? You still have
20 your interest, still have a right to any profits of
21 the company, correct?

22 **A** I guess so.

23 **Q** But they never said you are no longer a
24 member, right?

25 **A** What they did was took the bank account.

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1 That was emptied. Locked the fuel pump. I
2 couldn't have access to it. They changed the
3 combination on the jet ski hut, and this was right
4 after Labor Day, and then the sequence of events.
5 So I'm done. I have guy standing at the dock, Can
6 you fuel us up? Boys, I can't. I can't. Like I
7 said with cows, if they are not -- if I don't have
8 cows, I can't produce the product. They took every
9 bit of that away. They, I mean, Chris or Wade or
10 both. And they probably closed the jet ski hut and
11 fired the staff.

12 Q They replaced them with Eric Rolf, right, at
13 Atlanta --

14 A No. No. Eventually, they sold the -- fired
15 the crew, and then -- originally the jet ski hut
16 was actually tagged the previous year. Wade took
17 care of that and got the ticket from zoning that it
18 was un-permitted structure. I said, Wade, we got a
19 ticket, we can't even run this season. And then
20 Covid hit, and he said, I'll take care of it.
21 Well, the ticket disappeared, and before I left, it
22 then got ticketed again as an un-permitted
23 structure.

24 No, they shut -- our big money-maker got shut
25 down with a lot of tours left.

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1 **Q** We get to these texts, 830 at the bottom,
2 Exhibit 5. It is a text from you on 9/18/2020, "An
3 idea may be to purchase the hut since it is on your
4 land. You can have a use for it."

5 At this point, TnW is operating jet skis from
6 the hut, correct?

7 **A** No, that's not correct.

8 **Q** So Brett and V did not work the summer of
9 '18?

10 **A** No. No. We all fired them.

11 **Q** In '18?

12 **A** Oh, I'm sorry. I -- I stand corrected.

13 **Q** Oh, I'm sorry. It is 2020. I'm the one with
14 a brain cramp. I'm thinking 9/18.

15 **A** They were working then -- oh, no, we didn't
16 even have the hut by then.

17 **Q** You're right. Okay.

18 Then we go through, and you are telling them
19 -- well, September of 2020, and I believe earlier
20 you testified that's when you left and went back to
21 Wisconsin?

22 **A** Yeah. That's when I was kicked out, yeah,
23 and headed back. I don't know the exact date I
24 left.

25 **Q** You are telling the members of Crab Catchers

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1 to offer with contingency, you can obtain permit --
2 so you are still giving directions, it appears?

3 **A** No. I'm responsible for that. I'm still a
4 member of -- we're talking about an un-permitted
5 structure that we hook water and power up to. Me
6 and Jose did that. Wade called and said, I have an
7 electrician, dig the trench. So Jose and I did dig
8 the trench, and we did that. And I believe -- I'm
9 not a permit expert -- like I said, it was already
10 tagging. There is the second tag.

11 **Q** You said something in your deposition it was
12 permitted for construction, but not for use. Do
13 you remember saying that?

14 **A** I don't remember that at all. No, I would
15 have to read those exact words.

16 **Q** We may do that in a little bit.

17 And then you actually suggest "Donny is
18 president makes the offer." So you are talking
19 about TNT about TnW's hut?

20 **A** Again, I'm responsible. This stuff is
21 unticketed. I'm liable as a TnW partner for
22 anything that we do that is legal or illegal. So,
23 yeah, it is a great concern.

24 **Q** But most of this dispute is about TNT that
25 was ticketed because the hut was on their land,

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1 correct?

2 **A** Yeah. Again, I'm out of the company by then.
3 I'm not directing those guys to do anything. I
4 mean, those are angry texts, or however you want to
5 surmise them or evaluate them. I can't -- I'm not
6 in -- like I said, texting -- but it is true.

7 **Q** We get down to another text, same day. This
8 is at 2:31. "Just my thought, Donny or Justine do
9 the leg work. Code enforcement knows them for a
10 long time. Rob should stay incognito as much as
11 possible." What does that mean?

12 **A** Yeah, he didn't know what went on at the
13 marina for three years. He didn't know the
14 correlation between it. You know, stay out of it.
15 He actually considered getting in the marina and
16 came back -- because Rob did his leg work. He's a
17 stickler for permits and things. He red flagged
18 the marina. He came back to TNT and switched
19 channels and said you guys are -- I'll buy your
20 stock.

21 **Q** And one minute later, you said: "Much more
22 valuable now behind the scenes in infiltration.
23 You will have your time to shine, sir." What does
24 that mean? Infiltrate what?

25 **A** I don't know. I wasn't there. It wasn't a

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1 direction. You know, I'm a thief, but they are
2 trying -- we're -- let them -- they are letting me
3 know what is going on at TnW, because I'm a
4 responsible, liable partner of TnW. I can't answer
5 questions. I'm not in that position no more.

6 Q Okay. Well, then, four minutes later:
7 "Actually, you all are. Remember, Wade hates me
8 only. Remember that and use it."

9 How exactly were they going to use Wade's
10 hate against you?

11 A How they use it? How do you think they felt?
12 That is my son over there. He called me a thief.
13 He wants that. I won't accept his offer. I said,
14 I'm not buying you out. All right. You turn
15 around and say, okay, lock me out of the business.
16 We'll get you out of here one way and the other.

17 Q And, yet, you still own your shares?

18 A Yeah, isn't that something. We had a group
19 meeting and Chris said -- the advice was, Tim, here
20 is what is going to happen. It is recorded.
21 Probably in evidence. This is recorded. I said,
22 Guys, go to them. Go to them. Talk to my son.
23 Talk to my son. This is well after this text. I
24 tried to mediate this problem. The evidence is out
25 there. I mean, it's my voice.

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1 They called the meeting. What do you think,
2 Tim? You're great. All this stuff. I tried to
3 mediate. Just talk to them. Well, yeah, Donny is
4 a great guy, and we got a good connection. I said,
5 All you got to do is talk to them. This doesn't
6 have to go this far. You got me out of the company
7 and out of the way, go talk to my son. Did they
8 ever? No. Not one effort was made to sit down.
9 No. What they did was hired a different company,
10 pushed them, and said, This is our land, and
11 conducted himself that way.

12 **Q** Do you have a sheet of paper where my guy
13 said that was their land?

14 **A** No, I don't. But said it is their marina,
15 and they needed TNT's land to operate the marina.

16 **Q** So -- and you heard their contention that you
17 promised them that they could when you were the
18 president and majority shareholder of Crab
19 Catchers?

20 **A** Here we go with that "promise" word again.
21 The promises were made by Wade Long when we went up
22 to them -- probably the only meeting we had and
23 said can you help us, we need you. Wade promised
24 I'll be down three, four days a week. We know Tim
25 is gone. I said, I got it when you're gone, I need

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1 someone to cover. I don't have to go out on the
2 boat anymore.

3 I have a -- in fact, the captain was a good
4 friend of mine, Richard Saunders. Great guy.
5 Great fishing captain. He sat there and made the
6 promises to us three and myself, and I believed
7 him. I'll be down there three or four days a week.
8 I can't -- I'm talking about my departure, my
9 parent-taking, my enjoyment with my parents. I
10 will be on-site. I promise to be there three, four
11 days a week. How many days was he there? I can't
12 answer that, but they can. He was never there.
13 That's not engaging. That is not caring about a
14 business.

15 Q So that's a promise, but letting them build a
16 10,000-gallon fuel tank on your property is not a
17 promise that they can use the property?

18 A What good is a promise without a piece of
19 paperwork? You've asked for a piece of paperwork.
20 Ronnie told me I screwed up because I didn't have a
21 piece of paperwork. As I said, I can't promise you
22 I can show up tomorrow for you and I to have your
23 cross examination. What good is a promise if you
24 can't keep it?

25 Q Well, that's what this case is about, Mr.

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1 Kettner.

2 **A** No, it's not.

3 **Q** It's not?

4 **A** No. It's about guys joining together, a
5 marina needing a business next door adjoining to
6 them. That is what it is about. We needed them or
7 we weren't going to survive. Did they need us?
8 Absolutely not. We needed -- in order to get that
9 last piece of the green I wanted, we needed to get
10 -- we needed everything from TNT and More.

11 **Q** And you were TNT and More?

12 **A** No. Not alone I wasn't.

13 **Q** How did you sign the mortgage? How did you
14 sign the plat? I mean, how?

15 **A** Based upon his promises.

16 **Q** Based upon his promises to be there?

17 **A** Yep. They never promised that we could stay
18 there forever.

19 **Q** Did they not see the gigantic blue
20 10,000-gallon tank being built on their property?

21 **A** I've seen buildings replaced all the time due
22 to conflict. I've seen things change on a regular
23 basis.

24 **Q** That was your plan all along?

25 **A** What's that?

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1 **Q** To rip this away from Wade?

2 **A** That's why I'm the responsible party, still
3 remaining a partner in TnW and More, and they are
4 going to come after me. You think I would damage
5 something I was solely responsible for, especially
6 financially? That was my retirement. My final
7 piece. I wouldn't, no. I mind my own business,
8 and that was my business.

9 **Q** Here is a text: "Remember, be nice signs."
10 You are basically telling your son and your family
11 to -- "You guys conceal your gut-wrenching
12 experience. Think about that. It would be very
13 beneficial if you are all on the same page. You
14 guys know who the F'ing enemy is."

15 That sounds like you're trying to destroy
16 TnW, Mr. Kettner.

17 **A** It can sound like a lot of things. Depends
18 on the individual. These are guys that kicked me
19 out of a company and called me a thief. These
20 guys, who are not only my business partners, that I
21 put them in this position and children of mine and
22 family. How -- they were angry texts. I wasn't in
23 that battlefield. I didn't know what was going on
24 down there. I tried to mediate. I tried to work a
25 company hard and do it the right way.

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1 Q So you weren't in the battlefield when you
2 tell them, "You know who the F'ing enemy is"?

3 A I didn't have to tell them. They knew who it
4 was. But, yeah, I guess I stated it in anger. I
5 was out of that company.

6 Q Do you have any of these angry texts from
7 Wade?

8 A I wasn't engaged with Wade. He kicked me out
9 of the company. He got what he wanted.

10 Q Who says, "We'll be the best friends ever"?

11 A I don't know whose number that is, and I
12 don't know what it means. I'm not sure. I don't
13 see my number on there.

14 Q It is the same string you gave.

15 A Yeah. There is no name. My number is not
16 even on there.

17 Q Okay.

18 MR. PLAYER: A break?

19 THE COURT: Let's take five minutes.

20 Ladies and gentlemen, retire to your jury
21 room.

22 (The jury exits at 4:19 p.m., and the
23 following is heard out of the presence of the jury.)

24 MR. PLAYER: I think if I can go I can
25 probably finish today, but....

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1 THE COURT: Start back at 4:30.

2 (A recess was taken.)

3 THE COURT: Mr. Player, you ready?

4 MR. PLAYER: Yes, Your Honor.

5 THE COURT: Let's bring them in.

6 (The jury enters at 4:35 p.m., and the
7 following is heard in the presence of the jury.)

8 THE COURT: Mr. Player, you can continue?

9 Q (BY MR. PLAYER) I apologize, Mr. Kettner.
10 This is Defendants' Exhibit No. 10?

11 A Yes, sir.

12 Q That is the walkway that goes adjacent to
13 Crab Catchers?

14 A Part of that. It's unusual. I've been asked
15 that a lot. Can I show you?

16 Q Sure. You can step down in front of the
17 jury, if your counsel will allow?

18 A At this time?

19 Q Yes, sir, at that time.

20 A At that time, the Crab Catchers property that
21 the walkway he is referring to is -- it is a
22 boundary that divides in half, very close to a
23 half, and angles out a little bit. Part of this
24 was -- is Crab Catchers property. We're just
25 talking about that walkway there, okay. Stop me.

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1 And the other part was -- I can't remember the guy,
2 but he allowed us to use it and -- it was really
3 rough shape, and I had to go to him before I could
4 replace boards and get his permission. He allowed
5 us to do repairs. I can't remember if we had it
6 insured or not, but it is a divider right down the
7 middle. Is that good?

8 Q Yes.

9 You said that you were bought out of your
10 shares. What was the arrangement that you made
11 with all of the current shareholders of TNT?

12 A The arrangement was profits.

13 Q Profits of Crab Catchers?

14 A I'm going to give this back because I spill
15 water.

16 Q Yes.

17 A Could you repeat the question, because I
18 don't want to give you the good answer.

19 Q And it could vary. I'm just asking
20 generally. Let me -- this is my understanding.
21 You signed over your shares in exchange for a
22 self-funded loan that they would pay back from
23 their portion of the profits of Crab Catchers,
24 correct?

25 A That was the agreement, they would pay me

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1 when they could. There was no interest involved in
2 stuff. These guys were young, building families,
3 and I was doing all right. So, yeah, to answer
4 your question, yes, sir.

5 Q And what was the -- like, when Donny bought
6 in 20 percent, what did you charge him for that?
7 What was the total stock price?

8 A I don't remember, but he actually -- he
9 actually purchased the stock of my brother-in-law
10 and --

11 Q Tony?

12 A Yes, sir, Tony. Correct. I know you need
13 names.

14 Q Sure. Rob Benoit, he was the last one to buy
15 in?

16 A Yeah. I think it was 10 percent.

17 Q How much did you charge him for that
18 10 percent?

19 A Total price or down payment?

20 Q Both.

21 A I think it was -- I hate to say "I think,"
22 because I don't have the documents.

23 Q I understand.

24 A I believe the last 10 percent was \$400,000,
25 and I did ask -- requested a \$10,000 deposit, and

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1 set up the same terms as the others, stock
2 shareholders, no interest. There was so much that
3 I would like to get per year.

4 Q And none of them have paid you off
5 completely, have they?

6 A Oh, no. No. No. In fact, if they're
7 lacking. The lawsuit is expensive to them, so,
8 yeah.

9 Q But, yearly, you are still getting income
10 from the profits of Crab Catchers?

11 A I don't know about this here, but that is how
12 I'm paid.

13 Q You are paid out of the profits from Crab
14 Catchers?

15 A Yes.

16 Q So you have a financial interest in how well
17 Crab Catchers does because if it doesn't do well,
18 you don't get paid?

19 A Sure. Not only financial, I'm the biggest
20 fan. That's my baby -- or was my baby. It's their
21 baby.

22 Q Let's go through a few things from your
23 deposition, and hopefully we don't have to take a
24 break in between. I don't think there is much.

25 Again, in your loan, when we talked about the

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1 business plan for the bank --

2 **A** You are referring to the bank loan for the
3 marina?

4 **Q** Yes, sir. You say that the business plan
5 that was submitted to TnW, and TnW only?

6 **A** The business plan was. The marina portion,
7 yes, sir.

8 **Q** And my question is: If that is what you
9 submitted to the bank, why don't they mention TnW?
10 If it was solely in operation for TnW, why was it
11 not mentioned?

12 **A** Well, I don't know what you're saying. Wade
13 provided a projection plan on what we could make,
14 based on his projection on a three-year plan. I
15 did see that in there, so I'm sure that was
16 considered. I mean, the bank has to have some idea
17 what is going on here.

18 **Q** The dome books I showed the jury earlier,
19 when I asked you questions about what we thought
20 was the missing money, you always said it is in the
21 dome book?

22 **A** No. No. No. Not just in the dome book.
23 There was a filing cabinet with every document. I
24 did have two sets of dome books when I was forced
25 out of the business. Those two sets of dome books

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1 was taken from me and never seen them again. That
2 was before I was even locked out of the building.
3 The ledger detailing what every sale was for, and I
4 always paid for it.

5 Q And this is what I asked you about earlier.
6 This is where you are talking about the permit for
7 the hut where you said that it was permitted for
8 stock construction, but not for use. The
9 highlighted portion, do you see that?

10 MR. MONGILLO: Can we get a page and line
11 number to follow along?

12 MR. PLAYER: I apologize.

13 A Is my -- I don't know what year it refers to,
14 Mr. Player. I mean, I see the statement, and that
15 is my answer.

16 MR. PLAYER: Page 46.

17 A It was ticketed twice.

18 Q Are you aware of any history of violations of
19 any ordinance, regulations for TNT -- on TnW
20 property? Am I aware of any? Other than the
21 e-mail transfers. Okay. Legal -- also the jet ski
22 hut was permitted as a stock construction, not use.
23 What does that mean?

24 A I don't know. I have to look at the permit.
25 It is tough when you don't have actual facts in

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1 front of you. You are presenting a piece of paper.
2 I think we all have that problem, and in the wonder
3 of advancing into maturity, it hits you heavier.

4 Q And then this is Page 49. I'll ask you -- I
5 asked you in your deposition: "Did you ever sign
6 any permits in your capacity as a member of Crab
7 Catchers for TnW's business operation?"

8 A I very well could have. You know, you
9 probably can provide where -- on the dredging and
10 the dock building, I know I worked with -- you
11 know, sometimes it's required.

12 Q And you said because I needed to get their
13 permits, I was the acting manager?

14 A Of TNT or TnW?

15 Q I asked you did you get a TnW permit using
16 your position as Crab Catchers, so you may be
17 referring to both of them.

18 A No. If I had to get a permit for TnW, I had
19 to get a permit for TnW. If I had to get one for
20 TNT, I had to get one for TNT. Wade handled most
21 of the permits. He knew the guys at county and he
22 had a little better -- he was just better at it
23 than I was.

24 Q And back to the buyout we talked about where
25 Chris came and said we want \$150,000 each; that

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1 included getting them off the loan?

2 **A** No.

3 **Q** They would stay on the loan?

4 **A** We didn't even get to that part of the
5 discussion. I tried to negotiate. Can we do
6 payment plans? I mean, I can't come up with
7 \$300,000. Maybe we can work something out, and
8 they both shook their heads No, we want out now,
9 and we want \$150,000 each. I can't do that. The
10 business was, you know, losing business.

11 **Q** Page 64 of your deposition, I want you to
12 read this silently so you know what we're talking
13 about. Start at No. 24.

14 **A** Silently?

15 **Q** Yes.

16 **A** With the question?

17 **Q** Yes.

18 **A** Okay. (Witness examines document.) Okay.

19 **Q** And your answer -- you were asked did you
20 agree with Wade Long's valuation of the business of
21 the property?

22 **A** I'm sorry, I can talk out loud now? You
23 don't want me to read this?

24 **Q** You can read the portion now.

25 **A** Not the question?

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1 **Q** It was the number I'm a little squeamish
2 about. I was told we can't say that, and then they
3 put it in evidence, so.

4 **A** You think you're squeamish.

5 **Q** What did you say about the property?

6 **A** Based on what Wade said?

7 **Q** Yes.

8 **A** I don't know.

9 **Q** You said it was valuable?

10 **A** Well, yeah.

11 **Q** So you agree that the piece of property that
12 is currently owned by TnW is a valuable piece of
13 property, correct?

14 **A** Well, it's got a heavy mortgage. I'm sure it
15 could be valuable to somebody. But, yeah, there is
16 a value. I'm still a third partner. I want to
17 sell -- well....

18 MR. MONGILLO: I hate to do this. Could we
19 have him read the full answer starting at Line 3 to
20 Line 6?

21 MR. PLAYER: Okay.

22 **A** That would help.

23 **Q** Okay.

24 **A** I'm a little slow, Mr. Player. Where do you
25 want me to start?

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1 **Q** The first six lines.

2 **A** "In his opinion, do you agree with that
3 valuation?"

4 And I'm assuming you are referring to the \$10
5 million dollars, right?

6 **Q** Yes, sir.

7 **A** My answer was: "I don't know. I know it's
8 very valuable. It's a waterfront. I would have to
9 have a survey -- would be needed in order for me to
10 come up with a fair market value."

11 And that is where I stopped.

12 **Q** Okay. And my question to you is: If they
13 can't operate as a marina because they don't have
14 access to the upland frontage, is it still
15 valuable?

16 **A** They are still operating. They've been
17 operating for three-and-a-half years.

18 **Q** Because this Court told them they can't
19 interfere with us or this case.

20 **A** I have no idea. I know there was an
21 easement. I heard talk about an easement. The
22 parking lot is no longer needed. As I stated
23 earlier, you can park anywhere. The County came in
24 shortly after Crab Catchers put their parking lot
25 in and put a big parking lot in for all the

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1 businesses, so technically they don't even need the
2 parking lot to operate; TnW and More when I say
3 "we."

4 Q Okay. This one I want to look at on the
5 screen.

6 A Myself as well on this, Mr. Player?

7 Q Yeah, if you don't mind.

8 A I don't mind at all.

9 Q We had Brett up here. What is this?

10 A This is an example on how I required them to
11 log the jet ski tours, any sale. This was a good
12 example because we paid cash labor. It was agreed
13 to pay cash labor. So this is not a good one. I
14 also like to know where are we getting these from.
15 There was a lot of information up there, if you
16 knew it. If you knew it. And that was between V
17 and I. She wasn't here, but that was Brett's wife.
18 She knew. She had to explain this to me. It was
19 her and I -- I wanted her to know exactly what it
20 was.

21 Q Okay. And what exactly -- why did you
22 delineate between cash receipts and credit card
23 receipts?

24 A They are always kept separate. Credit card,
25 they have separate statements, separate entities.

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1 Cash, we had -- the cash bag is common in every
2 business. You want me to tell you that?

3 Q Sure.

4 A Where we put the cash, I would give them a
5 hundred dollars, better be a hundred dollars unless
6 it was supplemented on credit card tips. There is
7 a lot of reason you have to pull cash.

8 Q And you can see where there is stuff written
9 in blue, and then there is black ink that comes --
10 especially on jet ski cash -- crossed out the "80"
11 and put "24"?

12 A Sure.

13 Q Who did that?

14 A Well, V would tell -- she would hand me a
15 slip -- and this happens in a restaurant business,
16 too. I pay you -- the tour is paid by credit card,
17 and they have the option to write a tip in there.
18 If they paid in credit card, you have to reimburse
19 the employees in cash, and the employee has to file
20 taxes on it, on tips on credit card. Cash, I don't
21 believe they have to file.

22 And then sometimes it was cash labor. These
23 people had to be paid. We had kids going in and
24 out of there. We all said -- Chris and I put ice
25 cream, throw some cash at them, and that's what we

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1 did.

2 Q Whoever was running the jet ski hut, were
3 they told to give out receipts for cash so they had
4 a paper record or is this it?

5 A That was it. That was our paper record.

6 Q Okay. And you would agree with me there are
7 no hut sheets or any kind of receipt for cash in
8 the year of 2020 when Rebecca Martin took over,
9 correct?

10 A Well, now, we go to the Covid year where
11 Chris and I -- Wade was no longer engaged. Chris
12 and I hired the new company, Rebecca Martin and
13 John. What she did -- in fact, she's taking her --
14 might be taking her bar now -- she transferred a
15 lot of things. I was a neanderthal when it came to
16 booking. We used an Intercoastal Net Design. That
17 was all of our online booking, which was the
18 majority of jet skis. Am I getting carried away?

19 Q No. It's your day in court.

20 A If so, just tell me to shut up.

21 Q I don't do that.

22 A Kill the deer.

23 But, anyway, Becca Martin and I came in and
24 we didn't even know we would open with Covid. I
25 will try to keep brief and stick to the point, but

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1 she was phenomenal and very wise. She said, Why
2 are you using Intercoastal Net Design? It is
3 costing you a fortune. I can do it for you and
4 it won't cost our company. We did this Simple
5 Swipe thing and eliminated that, because they were
6 charging the credit card extraordinary fees. We
7 did keep it for fuel sales, however.

8 So she started a Fair Harbor Company and did
9 the online booking and everything, and it
10 accumulated. Also, every dime that was booked
11 online went right into the bank account and saved
12 us a lot of money.

13 Q Okay. And I asked you --

14 A Am I too loud?

15 Q No. No. They don't have to do this
16 (indicates).

17 A Okay.

18 Q Trust me, last jury trial I had with Judge
19 Seals he said that I was the loudest lawyer he ever
20 heard in his life. I calmed down since then.

21 A I try to.

22 Q On Page 37 of your deposition, I asked you:
23 "How do you track the use of cash?"

24 You said -- I'll give it to you to read.

25 A I can do that. Just tell me where to read.

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1 Q Start on 16, Line 16.

2 A This is my deposition. "Through the jet ski
3 logs, I have a pretty rough idea.

4 "Okay. Do you have records of all cash
5 transactions?

6 No."

7 Q Here is my question: If you had a partner
8 and he couldn't account for all of the cash, and he
9 was in charge of all the cash, would that give you
10 reason to be concerned?

11 A Well, if I had a partner and business
12 together, I would monitor that. We would have
13 meetings. I would engage. I have a lot at stake.
14 I want to see this stuff. I want to look at it. I
15 want to look at dome books, receipts, like Crab
16 Catchers. I want to see everything, because I have
17 a huge stake in this. Yeah.

18 Q Okay. Thank you. When you talked about a
19 few minutes ago that you agreed to pay salaries --
20 cash salaries?

21 A Cash salaries? No. No -- well, cash, yes, I
22 did.

23 Q Did you --

24 A We all agreed to that.

25 Q Sure. It's not to cast dispersions.

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1 **A** I'm not the big general up there. I don't
2 want that impression of me.

3 **Q** Sure. But did you ever file any 941 tax
4 returns where you paid employees insurance and FICA
5 and all of that?

6 **A** On a salaried employee? What are we talking
7 about? Because we paid a lot of kids in cash that
8 simply wouldn't work for us if we had to file --

9 **Q** That is all temporary labor, but --

10 **A** Brett and V?

11 **Q** Did you file 941s on them?

12 **A** They filed their own taxes, because we paid
13 their management company.

14 **Q** Did anyone at TnW file a 941 tax returns for
15 the employees of TnW?

16 **A** I don't know if Kim Bryant did or not.
17 Actually, you brought up Becca Martin. She handled
18 the payroll that got turned over.

19 **Q** And, in the deposition, I asked you about
20 loan. I asked could either TNT or TnW make a draw
21 off the loan. Do you remember what you said?

22 **A** I believe I said, yes.

23 **Q** You did.

24 **A** Yes, I did.

25 **Q** I'm trying to get through it. Oh, my

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1 goodness.

2 You would agree Crab Catchers' employees ran
3 the dock sometimes?

4 **A** Only because Wade and Chris weren't there. I
5 mean, I go away for four months, sitting in a deer
6 stand, getting phone calls, We need fuel on one of
7 our biggest accounts.

8 **Q** Brett was here, and he testified that they
9 wanted to go home at 5:00, and you wanted to have
10 the jet ski hut run later in the day. Were you
11 expecting Wade and Chris to stay after hours for
12 the jet ski hut?

13 **A** They were leaving. I would do it. The jet
14 ski business would stop if I had nothing to do with
15 jet skis. But I was available 24 hours. They
16 don't go on a time clock, commercial fish boats or
17 charger boats. Brett and V only would work -- and
18 that is one of the reasons for their dismissal.
19 You don't leave them people sitting at the dock
20 without fuel, because they can't make a living,
21 too. So I would do it. You know, I would do it,
22 and I did it gladly.

23 **Q** I'll ask you one more thing in your
24 deposition, and I believe this was a typo or you
25 misspoke. Reading on Page 125, Line 22.

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1 **A** Under question?

2 **Q** Yes. Read that all the way to the highlight.

3 **A** "Okay. Why would Becca Martin -- let me ask
4 you this: Do you think Becca Martin told Wade
5 there were two sets of books?"

6 "We always knew there was two sets of books.
7 That is how it was set up from day one.

8 "What were the two sets of books?"

9 "The master was TnW."

10 It was a dome book.

11 **Q** Okay.

12 **A** We set up Little River Water Sports
13 separately because the agreement to pay Brett and V
14 was from Little River Water Sports. What they
15 could do with the performance of the jet ski -- not
16 only did we say, okay, we'll set this salary, but
17 if you can show a profit -- we had to keep it
18 separate -- 25 percent of that profit on jet ski
19 tours only, that would be rewarded at the end of
20 the year.

21 **Q** Were there two sets of books for TnW?

22 **A** I'm not sure what you are talking about.

23 **Q** That is what you just said. Read it again.

24 **A** I just explained it. There was a TnW dome
25 book, and a Little River Water Sports dome book.

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1 Q So they were separate entities?

2 A I don't know if you call them separate
3 entities. They were entities joined by Wade and I
4 and the d/b/a. TnW showed the total income of
5 everything. The Little River Water Sports, we kept
6 it separate only for the purpose of the 25 percent
7 bonus of the profits, if they were joined.

8 Q So is it your testimony that the Little River
9 Water Sports was part of the TnW books?

10 A All of it.

11 Q All of it? What do you mean?

12 A As I explained, we set it up. Wade didn't
13 like it. Wade thought it was paying them too much.
14 We need people running jet skis. Wade and I
15 agreed, and he said, Still a little strong. I
16 said, What other chances of showing a major profit
17 in a year or two? Let's put this out there,
18 because we didn't have no one to do this. We had a
19 great plan, but you have to have soldiers, you
20 know. So how about if we throw this? They came
21 in, and they wanted a lot more than what they ended
22 up getting from the start. That is how we cracked
23 it. There's two dome books. Not two sets of
24 books, but two dome books.

25 Q Who did those dome books belong to?

TIMOTHY KETTNER - CROSS EXAMINATION - MR. PLAYER

1 **A** TnW and More.

2 **Q** Okay.

3 MR. PLAYER: If I could have a minute, Your
4 Honor? I think I finished just in time.

5 MR. KETTNER: Mr. Player, can I get a badge?

6 MR. MONGILLO: No questions.

7 MR. PLAYER: I think that means, no.

8 (laughing)

9 MR. KETTNER: I hope you well for your health
10 and well-being. I realize you have a job to do,
11 and if we can't be human beings, we can't be
12 anything.

13 MR. PLAYER: I appreciate it, Mr. Kettner.
14 And same for your mother.

15 THE COURT: You can step down.

16 It is 5 o'clock. Be back tomorrow at 9
17 o'clock. I'm sure our clerk's office will have
18 breakfast.

19 Don't do any of your own research. Don't
20 look up anything on Google or anything like that,
21 or speak about anything you have heard with anyone
22 else. There will be a time to deliberate, and I'll
23 let you know when it is. Thank you.

24 (The jury exits at 5:00 p.m., and the
25 following is heard out of the presence of the jury.)

RHETT SANBURY, JR. - DIRECT EXAMINATION

1 THE COURT: All right. We'll be at ease
2 until 9:00 in the morning.

3 (WHEREUPON, THE PROCEEDINGS FOR JUNE 17, 2024
4 CONCLUDED.

5 (THE FOLLOWING WAS HAD ON JUNE 18, 2024 OUT
6 OF THE HEARING OF THE JURY.)

7 THE COURT: Are we ready to proceed?

8 MR. PLAYER: Yes, Your Honor.

9 MR. HARRISON: Yes, Your Honor.

10 THE COURT: Let's bring in the jury.

11 (The jury enters at 9:55 a.m., and the
12 following is heard in the presence of the jury.)

13 THE COURT: Thank you. You may be seated,
14 and we'll continue.

15 MR. BELLAMY: We call Rhett Sansbury.

16 (ROBERT RHETT SANBURY, having been duly
17 sworn, testified as follows:)

18 THE WITNESS: Robert Rhett Sansbury, Junior.

19 **DIRECT EXAMINATION**

20 **BY MR. BELLAMY:**

21 **Q** Can I call you Rhett?

22 **A** Yes, sir.

23 **Q** Could you give us the benefit of your
24 education?

25 **A** Yes, sir. Myrtle Beach High School in '74,

RHETT SANBURY, JR. - DIRECT EXAMINATION

1 went off to Wofford College in '78, graduation,
2 worked for a bank in Greenville, South Carolina for
3 about five years as a branch manager, moved back to
4 Myrtle Beach about '83, ran a family hotel for
5 about five years, and then sold that property and
6 took over -- we have a miniature golf course that
7 we had for about 40 years in Myrtle Beach. In
8 2004, I joined -- or became an insurance agent and
9 worked for Associated Insurers at that time, and
10 have been with them ever since. But they have
11 merged with -- or been acquired by a couple
12 different entities, one was First Federal, the
13 bank, and then the second one was Hub
14 International. That is who I work for now.

15 Q And Hub International is one of the biggest
16 brokerage firms in the world?

17 A Yes, sir.

18 Q And back in 2016 and '17, you were working
19 for Hub International?

20 A Yes, sir.

21 Q And what capacity -- what were your duties
22 and responsibilities at that time?

23 A I was an insurance agent for them.
24 Commercial is what I did, commercial insurance.
25 The -- also helped with the office operations as

RHETT SANBURY, JR. - DIRECT EXAMINATION

1 well.

2 Q Were you also an insurance producer?

3 A Yes, sir. Yes, sir.

4 Q Now, back in 2017, did you have an occasion
5 to issue insurance policies to both -- before I
6 stop, when I refer to -- you've got -- there is a
7 lawsuit, and TNT and TnW are the main entities
8 involved in the lawsuit. That is confusing. When
9 I refer to "the restaurant," I'm going to say --
10 TNT is the restaurant, so I will say "the
11 restaurant." When I'm referring to TnW, which is
12 the marina, I'll just say "the marina." So the
13 terminology going forward is "restaurant" and
14 "marina."

15 A Yes, sir.

16 Q Back in 2017, did you have an occasion to
17 issue insurance policies to the restaurant?

18 A Yes, sir.

19 Q And can you briefly describe what type of
20 policies you issued?

21 A There were several policies they had.

22 Q Go ahead.

23 A One was a general liability policy. One was
24 a property policy. And then they had -- they had a
25 dock that they insured for property as well that

RHETT SANBURY, JR. - DIRECT EXAMINATION

1 they had -- it was an extension of the restaurant
2 that was included as well, yes, sir.

3 Q Okay. And in each policy, the insured has to
4 fill out an application?

5 A Yes, sir.

6 Q And on the application, the initial -- for
7 example, let me -- this is already -- Rhett, the
8 insurance policies are already in evidence as
9 Exhibit No. 12. But these are policies that I
10 think that -- this was No. 1, part of your
11 deposition. Your deposition had been taken in this
12 case, correct?

13 A Yes, sir.

14 Q And pursuant to your deposition, myself and
15 my co-counsel, Michael Harrison, along with Mr.
16 Player were involved in your deposition, correct?

17 A Correct.

18 MR. PLAYER: Is this your 12 or Kettner's 12?
19 Oh, thank you.

20 MR. BELLAMY: It's in evidence.

21 MR. PLAYER: Yeah.

22 Q One of the things I want to show you, this is
23 a policy that -- an employment policy that pertains
24 to TNT, concerning TNT?

25 A Yes, sir.

RHETT SANBURY, JR. - DIRECT EXAMINATION

1 **Q** And if you look down at the policy, every --
2 apologize. There is standard language. This is
3 Page 5 of 16, and then one of the questions is on
4 the first part: "Does the applicant participate in
5 any of the following activities." For the record,
6 would you indicate what the activities were?

7 **A** Franchisee and joint venture. Both are
8 checked "no."

9 **Q** Checked "no"?

10 **A** Yes, sir.

11 **Q** I think this was a renewal policy that was
12 done in 2018?

13 **A** Yes, sir.

14 **Q** And at that time did the insurer, the
15 restaurant, check "no"? I don't think they signed
16 that.

17 **A** Yeah, they did not on this one.

18 **Q** Yeah. It may not have been executed. Did
19 anyone sign the last page? And this is part of
20 discovery that I sent some time --

21 **A** This hadn't been signed, no, sir.

22 **Q** This one right here, this one had been
23 signed, correct?

24 **A** Yes, sir.

25 **Q** And the signator was Tim Kettner?

RHETT SANBURY, JR. - DIRECT EXAMINATION

1 **A** I guess Donny.

2 **Q** Oh, Donny. Okay. All right.

3 Now, Rhett, all of the policies, to your
4 knowledge, that Hub International issued to the
5 restaurant property from 2007 (*sic*) up to the
6 present day, on each of those policies, there was
7 an application filled out that indicated whether
8 the restaurant was either an LLC or joint venture.
9 Do you know which one was checked on those
10 policies?

11 **A** The restaurant was a corporation.

12 **Q** Right. Inc., yeah.

13 **A** Yes.

14 **Q** And in all of the policies, when it asks the
15 applicants -- and subsequently -- at least on the
16 applications, to your knowledge, the restaurant
17 indicated that they were an Inc. instead of a joint
18 venture?

19 **A** Correct.

20 **Q** And that was from 2017 up to the present day?

21 **A** Yes, sir.

22 **Q** And now what I want to do is talk about -- in
23 2017, did you also have an occasion to issue
24 insurance policies to the marina?

25 **A** Yes, sir.

RHETT SANBURY, JR. - DIRECT EXAMINATION

1 **Q** And can you briefly describe what type of
2 policies you issued to the marina?

3 **A** It was a marina liability policy and property
4 policy, and they did have, I think, 12 docks or 12
5 slips. They had charter boats that would anchor or
6 tie up there, and they had a fueling station and
7 all of that for the boats.

8 **Q** Okay. Rhett, I'll try to move quickly,
9 because this is the second week the jury has been
10 here. I know their time is important, so I'm
11 trying to move quickly.

12 **A** Sure. Okay.

13 **Q** So what I'm holding -- all of the stuff I'm
14 holding right here is part of Exhibit 12, which is
15 now in evidence. These were exhibits that were a
16 part of your deposition. This is the rental
17 policy. For the record, can you issue who it was
18 issued to?

19 **A** I think it was TnW and More.

20 **Q** The application, I'm sorry.

21 **A** TnW and More, LLC, doing business as Little
22 River Water Sports.

23 **Q** When you flip it over, when it says right
24 here "applicant is," and then there is a first box,
25 "individual"; second box, "corporation"; third box,

RHETT SANBURY, JR. - DIRECT EXAMINATION

1 "partnership"; fourth box is "joint venture," and
2 then the fifth box is "other." Which one did the
3 -- as far as the marina, which one did they sign?

4 **A** It is checked "LLC."

5 **Q** They didn't check "joint venture," did they?

6 **A** No, sir.

7 **Q** And is that your signature right there?

8 **A** Yes, sir.

9 **Q** And that is the signature of Tim Kettner?

10 **A** Yes.

11 **Q** What is the date on those?

12 **A** April 30 of 2018.

13 **Q** The other thing I'm going to show you is this
14 is part of Exhibit 12, which is now in evidence.
15 This is a commercial insurance application. Take a
16 minute to look at it. It is regarding the marina
17 property, correct?

18 **A** Yes, sir.

19 **Q** Does it have where it's -- it has a place on
20 there where the applicant checks if they are a
21 corporation, joint venture, or some other
22 organization?

23 **A** Yes. And "LLC" is checked.

24 **Q** And they didn't check "joint venture," did
25 they?

RHETT SANBURY, JR. - DIRECT EXAMINATION

1 **A** No, sir.

2 **Q** And there is a place that they could have
3 checked that, if they wanted to, correct?

4 **A** Right above it, yes, sir.

5 **Q** And for clarification, this is dealing with
6 the jet ski rentals (indicates)? No, I'm wrong.
7 I'm sorry. This is the one for the jet skis?

8 **A** Yes. That one is the jet ski. That probably
9 is for the marina operation.

10 **Q** Right. And this one -- this is part of
11 Exhibit 12. It is in evidence. Your signature is
12 there?

13 **A** Correct.

14 **Q** And I think that is Tim Kettner's signature?

15 **A** Yes, sir.

16 **Q** They are both dated April 30, 2018?

17 **A** Yes, sir.

18 **Q** Now, I've got four individual policies that
19 run from 2018 up until 2022. The first one was
20 Exhibit 5 to your deposition. Take a minute to
21 look at it. What is the -- as far as the term of
22 the policy, it runs from -- if you can?

23 **A** This one is showing 2018 -- or, sorry,
24 February 27 of 2018 through 2019. It has the
25 marina operator's liability, and then it includes

RHETT SANBURY, JR. - DIRECT EXAMINATION

1 docks as well.

2 Q This is the marina liability policy on the
3 marina docks?

4 A Correct. Yes, sir.

5 Q And right here, for the record, it's
6 Plaintiff Long 00634, and it says "business
7 description." It says, "Form of business"?

8 A Yes, sir.

9 Q And it indicates: Individual, joint venture,
10 partnership, organization other than a partnership
11 or joint venture. For the record, which one was
12 checked?

13 A Organization other than a partnership or
14 joint venture.

15 Q So they did not check "joint venture"?

16 A Correct.

17 Q What is clear about this is the underlining?

18 A Yes, sir.

19 Q And the underwriter checked "organization
20 other than a joint venture" because when the
21 application was filled out, either Tim or Wade had
22 previously checked an "LLC," correct?

23 A Yes.

24 Q And underwriters are not going to check
25 "organization other than a joint venture" unless

RHETT SANBURY, JR. - DIRECT EXAMINATION

1 the outfit checks that it is an "organization other
2 than a joint venture"?

3 **A** Correct.

4 **Q** All right. This is Plaintiffs' Exhibit No. 6
5 to your deposition. Take a minute and look at it.
6 Is it the same type of policy, Rhett?

7 **A** Yes, sir.

8 **Q** What is --

9 MR. PLAYER: Howell, what is the exhibit in
10 the --

11 MR. BELLAMY: It is Exhibit 4.

12 MR. PLAYER: To his depo?

13 MR. BELLAMY: Yeah, in his depo. It is in
14 evidence.

15 MR. PLAYER: I know, but what exhibit in this
16 case?

17 MR. BELLAMY: 12.

18 **Q** So the marina policy is from February 27,
19 2019 to February 27 of 2020. Did I read that
20 correctly?

21 **A** Yes, sir. Yes, sir.

22 **Q** Go to Plaintiff Long Bates stamp 00720.
23 Again, it asks the same question. Does this
24 description form a business? Which one was
25 checked?

RHETT SANBURY, JR. - DIRECT EXAMINATION

1 **A** "Organization other than partnership or joint
2 venture."

3 **Q** Again, they didn't check "joint venture"?

4 **A** Correct.

5 **Q** This is the same type of policy that was
6 issued to the marina, correct?

7 **A** Yes, sir.

8 **Q** And the policy period on this one is
9 February 27 of 2020 to February 27 of 2021? Did I
10 read that correctly?

11 **A** Yes, sir.

12 **Q** Also, it indicates -- on the business
13 description, it indicates "form of business," which
14 box is checked by the underwriter?

15 **A** "Organization other than partnership or joint
16 venture."

17 **Q** This is another marina insurance policy,
18 which is Exhibit 8 to your deposition. The policy
19 period on this policy is February 27, 2021 to
20 February 27 of 2022. Did I read that correctly?

21 **A** Yes, sir.

22 **Q** And looking at this particular Bates stamp,
23 Plaintiff Long Bates stamp 00903. It says, "Form
24 of business," which one did they check, Rhett?

25 **A** "Organization other than partnership or joint

RHETT SANBURY, JR. - DIRECT EXAMINATION

1 venture."

2 Q And we don't have to -- the subsequent
3 renewal policies for '23 and '24 also indicates
4 it's an organization other than a joint venture?

5 A Yes, sir.

6 Q Rhett, on all of the commercial insurance
7 policies that were issued to the marina, was TNT
8 listed as an additional insured on those policies
9 going from 2017 to present day?

10 A No, sir.

11 Q Let me -- what I want you to do is put this
12 sticky TNT.

13 A (Witness complied.)

14 MR. PLAYER: Which exhibit is that?

15 MR. HARRISON: All plats are 3.

16 MR. PLAYER: Thank you.

17 Q (BY MR. BELLAMY) This is Exhibit 3, and what
18 I'm looking at right here is the walkway right
19 here?

20 A Yes, sir.

21 Q To your knowledge, that is part of TNT's
22 property?

23 A Correct.

24 Q And TNT -- sorry, the restaurant has a policy
25 on this dock?

RHETT SANBURY, JR. - DIRECT EXAMINATION

1 **A** Correct. Yes, sir.

2 **Q** Can you stick that tab right there?

3 MR. PLAYER: Excuse me, you all.

4 MR. BELLAMY: Right there.

5 MR. PLAYER: Okay.

6 **Q** **(BY MR. BELLAMY)** Now, on the parking lot,
7 does TNT have a premises liability on the parking
8 lot?

9 **A** Yes, sir.

10 **Q** And you can just stick it back there.

11 Does the marina have any insurance on the
12 parking lot, to your knowledge?

13 **A** No, sir.

14 **Q** Is TnW listed as or is the marina listed as
15 an additional insured on the restaurant's insurance
16 policies?

17 **A** No, sir.

18 **Q** Rhett, back in the 2017 time period, did you
19 have an occasion to have a conversation with Tim
20 Kettner?

21 **A** Yes, sir.

22 **Q** And it was regarding this process of building
23 a marina?

24 **A** Yes, sir.

25 **Q** Can you explain what was your understanding

RHETT SANBURY, JR. - DIRECT EXAMINATION

1 of what was going to happen as far as who the
2 parties were and who was involved, based upon your
3 conversation with Tim?

4 **A** My understanding, at that point, was Tim was
5 going into partnership with a different individual,
6 none of the restaurant owners at that time. It was
7 someone separate, so that is why he was setting up
8 a separate entity to cover that portion of the new
9 dock they were building.

10 **Q** So if I understand your testimony, Tim was
11 going into a new venture with another partner?

12 **A** Correct.

13 **Q** And that other partner is sitting behind the
14 table, Wade Long?

15 **A** Yes, sir.

16 **Q** If I understand your testimony, TNT was not
17 part of the new venture?

18 **A** Correct. Yes, sir.

19 **Q** Rhett, at some point in time Tim was no
20 longer signing the applications for the insurance
21 on the marina, correct?

22 **A** That's correct.

23 **Q** Wade took over sometime after 2021?

24 **A** Yes, sir.

25 **Q** So all of these applications, Wade was

RHETT SANBURY, JR. - CROSS EXAMINATION - MR. RICHTER
1 signing and going forward from 2021, '22, '23, '24,
2 he was signing that the marina was an LLC, not a
3 joint venture, correct?

4 **A** Yes, sir. Yes, sir.

5 **Q** And prior to 2020, did either Wade or Tim
6 ever, to your knowledge, indicate that they were
7 ever in a joint venture together as far as -- did
8 Wade ever indicate -- let me back up.

9 Did Wade ever indicate to you -- this is
10 before 2020 -- that he was in a joint venture with
11 the restaurant?

12 **A** No, sir.

13 MR. BELLAMY: Give me one second.

14 (A brief pause in the proceedings.)

15 MR. BELLAMY: No further questions at this
16 time. Answer any questions that Mr. Player may
17 have for you.

18 THE COURT: Mr. Richter, anything?

19 MR. RICHTER: Very briefly, Your Honor.

20 **CROSS EXAMINATION**

21 **BY MR. RICHTER:**

22 **Q** Very briefly. Mr. Sansbury, I'm Ronnie
23 Richter. I'm an attorney for Tim Kettner. I want
24 to make one point clear. Are you aware that in
25 March of 2021 Mr. Long filed a lawsuit in which he

RHETT SANBURY, JR. - CROSS EXAMINATION - MR. RICHTER
1 was claiming there was a joint venture between TNT
2 and TnW?

3 A I didn't -- I did know there was a lawsuit,
4 but I didn't understand that part.

5 Q But it is true that for every year
6 thereafter, although he's maintaining a lawsuit
7 claiming there is a joint venture, he's filling out
8 applications with you indicating that there is not?

9 A Got you. Yes, sir.

10 Q Yes? And these applications for insurance
11 matter, don't they?

12 A Yes, sir.

13 Q And I like to say, It only matters when it
14 matters, and it matters when there is a claim,
15 right?

16 A Yes, sir.

17 Q And it matters because if you make a
18 misrepresentation on an application for insurance,
19 it can be a basis for denial of the claim, right?

20 A Correct.

21 Q For example, if I took out health insurance
22 and said I have no history of heart trouble, and
23 then I died of a heart attack, and they looked into
24 it, and it turns out I had lots of trouble, that is
25 a reason for the insurance company to say I'm not

RHETT SANBURY, JR. - CROSS EXAMINATION - MR. PLAYER
1 paying that. It is not that you missed a box on
2 the form. It has real consequences.

3 **A** Yes, sir.

4 MR. RICHTER: Thank you.

5 THE COURT: Mr. Player?

6 MR. PLAYER: Yes, Your Honor.

7 **CROSS EXAMINATION**

8 **BY MR. PLAYER:**

9 **Q** Mr. Sansbury, do you have any knowledge of
10 who owns all of the properties involved in this
11 lawsuit?

12 **A** A little bit, yes, sir, as far as I know,
13 just from what I understand and what they told me.

14 **Q** Are you aware that the fuel pump or big fuel
15 tank is built on TNT's land?

16 **A** Yes, sir.

17 **Q** And are you aware that the parties took out a
18 \$1.1 million loan together for the marina and the
19 parking lot?

20 **A** I didn't know how much. I know they took a
21 loan out, yes, sir.

22 **Q** Now, all of the way through 2020, you dealt
23 with Tim Kettner pretty much exclusively on the
24 insurance policy?

25 **A** Yes, sir.

RHETT SANSBURY, JR. - REDIRECT EXAMINATION

1 **Q** He was the one that procured them and filled
2 out the paperwork?

3 **A** Correct.

4 **Q** And once Wade took over in 2020, he changed
5 agents from you, correct?

6 **A** I wasn't sure of the year, but, yes.

7 **Q** So you are no longer the insurance agent for
8 TnW, but still for TNT?

9 **A** No, sir. They moved theirs as well.

10 **Q** You got the raw end of the deal?

11 **A** They just got a better deal. I don't blame
12 them. That's business.

13 MR. PLAYER: Thank you for coming. No
14 further questions.

15 MR. BELLAMY: One final question.

16 **REDIRECT EXAMINATION**

17 **BY MR. BELLAMY:**

18 **Q** Rhett, did you -- through Hub was a policy
19 issued to Mr. Long for liability insurance on the
20 above fuel tank?

21 **A** I believe we did towards the end. I think
22 one of the last policies we did.

23 **Q** But the policies for the marina in '17, '18,
24 '19, '20 and '21, they didn't -- there was nothing
25 regarding pollution liability on the fuel tank?

ANTHONY YOUNG - DIRECT EXAMINATION

1 **A** No, sir.

2 **Q** But at some point, it became an issue, and
3 Mr. Long got pollution liability through your
4 company?

5 **A** Yes, sir. Correct. Yes, sir.

6 MR. BELLAMY: Thank you.

7 THE COURT: You may step down.

8 Call your next witness.

9 MR. BELLAMY: We call Tony Young to the
10 stand.

11 (ANTHONY "TONY" YOUNG, having been duly
12 sworn, testified as follows:)

13 THE WITNESS: Anthony young.

14 **DIRECT EXAMINATION**

15 **BY MR. BELLAMY:**

16 **Q** Is it all right to call you Tony?

17 **A** Yes.

18 **Q** Tony, can you give the jury the benefit of
19 your educational background and employment history?

20 **A** Graduated high school at Irmo High School in
21 Columbia, two years college at University of South
22 Carolina. I started working in 1978 with First
23 Palmetto Bank, and then onto Southtrust Bank,
24 Regions Bank, Tideland Bank, which was merged with
25 United Community Bank, which is who I'm employed

ANTHONY YOUNG - DIRECT EXAMINATION

1 with today.

2 Q And, for the record, what is your current
3 title or duties and responsibilities with United
4 Community Bank?

5 A Senior vice president and special assets
6 officer for the bank.

7 Q And can you explain what the special asset
8 officer with the bank does, basically?

9 A We basically -- if a client has defaulted in
10 any manner, whatsoever, then special assets gets
11 involved to help mitigate or litigate the matter.

12 Q And your deposition was taken in this case,
13 correct?

14 A Yes, it was.

15 Q And you were designated by the bank as the
16 30(b)(6) witness; is that correct?

17 A That is correct.

18 Q And a 30(b)(6) witness is the person that the
19 bank destinatees to be the most -- have the ability
20 to address the issues, the most knowledgeable to
21 address the issues set forth in the subpoena?

22 A Thank you. Yes.

23 Q Tony, you are familiar with the loan
24 documents in this case, the -- as far as the
25 promissory note -- there are two mortgages. The

ANTHONY YOUNG - DIRECT EXAMINATION

1 first mortgage is with the restaurant and includes
2 seven properties owned by TNT, correct?

3 A That is correct.

4 Q And then the second mortgage is with TnW,
5 which is the marina, and it owns one piece of
6 property?

7 A That is correct.

8 Q And then you have guarantors that sign
9 documents, and that is -- but, basically, the loan
10 documents are, essentially, the promissory note,
11 two mortgages, and where the borrowers or
12 guarantors signed their names in this case? And
13 the guarantors are Donny, Tim, Wade, Casey, and
14 Justine; is that your recollection? The loan
15 documents are in the record.

16 A I think I attest to that in the deposition,
17 but that's correct.

18 Q That's correct.

19 Now, the bank prepared the loan documents,
20 correct?

21 A That is correct.

22 Q And the bank did not intend to enter into a
23 joint venture relationship with the two
24 borrowers --

25 MR. PLAYER: Objection.

ANTHONY YOUNG - DIRECT EXAMINATION

1 MR. BELLAMY: Can I?

2 THE COURT: I have to hear the objection.

3 MR. PLAYER: It's leading and speculation.

4 THE COURT: I'll sustain as to leading. I
5 didn't hear the full question, but he has been
6 leading, so rephrase.

7 MR. BELLAMY: Your Honor, it is already in
8 the record -- his deposition excerpt -- where he
9 indicated that the bank did not intend to enter
10 into a joint venture relationship with the
11 borrowers or the grantors.

12 THE COURT: I thought we already discussed
13 that.

14 MR. BELLAMY: It's in evidence. Mr. Player
15 knows it is already in evidence.

16 THE COURT: So is the question that the bank
17 -- are you asking if the bank intended to enter a
18 joint venture --

19 MR. BELLAMY: Because the bank is on the loan
20 document. It is part of -- it's a party to the
21 documents.

22 THE COURT: I'll overrule as to that
23 objection. Sustained on the leading, though.

24 Q (BY MR. BELLAMY) To your knowledge, did the
25 bank intend to enter into a joint venture with the

ANTHONY YOUNG - DIRECT EXAMINATION

1 borrowers and/or -- the borrowers would be the
2 marina, as well as the restaurant, and the
3 guarantors? You can answer.

4 **A** No.

5 **Q** Tony, with respect to the loan documents, did
6 they ever use the word or refer to the word "joint
7 venture"?

8 **A** None that I've seen.

9 **Q** And prior to your deposition, did you get a
10 chance to review documentation that was being
11 provided to the parties in this case pursuant to
12 the subpoena?

13 **A** I have.

14 **Q** And to the extent you know, did you come
15 across anything in the documentation or information
16 that was being provided to the lawyers and the
17 parties in this case that indicated that or mention
18 anything about a joint venture between the marina
19 or the restaurant?

20 **A** No. I saw none.

21 **Q** I'll hand you what is previously marked as
22 Plaintiffs' Exhibit 14, which is in evidence.
23 Could you flip to Exhibit 8. For the jury
24 edification, Exhibit 8 lists the collateral?

25 **A** The legal description for each parcel being

ANTHONY YOUNG - DIRECT EXAMINATION

1 used under this mortgage.

2 Q And my understanding is there are seven
3 parcels?

4 A That is correct.

5 Q And what I would like you to do is take the
6 tax map number where it has TNT over here, and
7 stick it on which parcel it goes to.

8 A (Witness complied.)

9 Q The loan documents were executed I think on
10 November of 27, 2017 or sometime in that period of
11 time?

12 A That's correct.

13 Q And at that point in time, these properties
14 were owned by the restaurant, correct?

15 A Yes.

16 Q Now, there was some testimony earlier in the
17 trial that an architect indicated that Mr. Long
18 owned some of these properties in 2017. Based upon
19 the title examination that the bank performed, to
20 your knowledge, is there anything to indicate that?

21 A If that were the case, he would have had to
22 have endorsed the mortgage as well, which was not
23 the case.

24 Q Okay. Thank you. That clarifies that
25 answer.

ANTHONY YOUNG - DIRECT EXAMINATION

1 Tony, pursuant to the loan documents, both
2 borrowers have an obligation to report any defects
3 or deficiencies or violations with respect to the
4 collateral that is part of the mortgage, correct?

5 A If it had an impact on the collateral or the
6 value of the collateral, yes.

7 Q So if the governmental agency, whether it is
8 on the uplands or over the critical area, indicated
9 there was an alleged violation of the state statute
10 or ordinance, both of the borrowers had an
11 obligation and responsibility to notify the bank,
12 correct?

13 A That would be correct.

14 Q Now, I've got these -- these are -- I'll show
15 you what is -- these are basically Defense No. 7,
16 which is both in evidence. These are two letters
17 from OCRM, and one is dated June 6, 2021. Did I
18 state that correct? And the other one is September
19 26, 2021?

20 A Correct.

21 Q And they concern violations of the
22 collateral, correct?

23 A Yes.

24 Q And the bank never received notice regarding
25 these letters?

ANTHONY YOUNG - CROSS EXAMINATION - MR. PLAYER

1 **A** No, not that I'm aware of.

2 **Q** And based upon the promissory note and the
3 mortgage -- for the record, these letters are
4 addressed to Mr. Long?

5 **A** Both of them, yes, registered agent.

6 **Q** Okay. And, to your knowledge, the bank
7 didn't receive notification from Mr. Long
8 regarding these two letters?

9 **A** Not to my knowledge.

10 **Q** Okay.

11 MR. BELLAMY: One second.

12 (A brief pause in the proceedings.)

13 MR. BELLAMY: Thank you for your time. I
14 realize you are on vacation. I'm sorry we had to
15 pull you from vacation, but I appreciate your time.
16 Answer any questions that Mr. Player has.

17 THE WITNESS: Sure.

18 MR. MONGILLO: No questions.

19 THE COURT: Mr. Player?

20 MR. PLAYER: Yes, sir.

21 **CROSS EXAMINATION**

22 **BY MR. PLAYER:**

23 **Q** Mr. Young, did you handle this loan
24 personally when you were at the bank?

25 **A** Are you speaking to the inception of the

ANTHONY YOUNG - CROSS EXAMINATION - MR. PLAYER

1 loan?

2 Q Yes.

3 A No, I did not.

4 Q Was that Geoff Hopkins?

5 A By all accounts, it was a Michelle Brown.

6 Q And does she work with Geoff?

7 A I don't know if she works with him today.

8 She was a commercial lender, and I believe he was a
9 commercial lender as well. I don't know if they
10 worked together on it, but everything that I saw
11 was under Michelle Brown.

12 Q And, I'm sorry, I'm having such a difficult
13 time, but I think it was 14, the credit memorandum;
14 is that what Howell was asking you about? It's 15.
15 He was asking about the mortgage, okay.

16 Who signed the mortgage for TNT; do you
17 recall?

18 A TNT would have been signed by Mr. Kettner.

19 Q Alone, correct?

20 A I believe so, yes. I would need to see the
21 document to confirm that.

22 Q Okay. I'll hand it to you real quick.

23 MR. HARRISON: Which exhibit, Mr. Player?

24 MR. PLAYER: Plaintiffs' 14.

25 Q (BY MR. PLAYER) I'm handing you 14, which is

ANTHONY YOUNG - CROSS EXAMINATION - MR. PLAYER
1 the mortgage, and then we'll talk about this one in
2 a second.

3 **A** Okay. Thank you.

4 To answer your question, that is correct.

5 **Q** Would the bank have allowed only his
6 signature if he didn't have the power to bind TNT
7 on that mortgage?

8 **A** Please rephrase.

9 **Q** Would the bank have accepted that as a valid
10 mortgage if Tim Kettner did not have the authority
11 to pledge all of TNT's collateral for the mortgage?

12 **A** No.

13 **Q** Now, we're going to go to the next one. Did
14 you participate in any way in drafting that?

15 **A** No, I did not.

16 **Q** Who would have?

17 **A** If this is the memorandum that I have seen,
18 it was Michelle Brown.

19 **Q** Okay. And the information about what the
20 loan is for, who the parties are, where would they
21 have gotten that information?

22 **A** From the borrowers, the requester of the
23 loan.

24 **Q** I won't waste time, but I've asked at least
25 two people in this borrower/guarantor background,

ANTHONY YOUNG - CROSS EXAMINATION - MR. PLAYER

1 it doesn't mention TnW or Wade Long. It just
2 mentions Mr. Kettner, Justine, Donald, and Crab
3 Catchers. Do you have any idea why it would not
4 mention TnW, the co-borrower?

5 **A** That would be speculation, no, sir.

6 **Q** And then we go down to the projections below.
7 What are these projections and why are they
8 important to the bank?

9 **A** The way I understand the loan memo, there was
10 a component of the loan that funds were going to be
11 used for further development of jet ski docks and
12 so forth.

13 **Q** Is there any mention in these projections
14 about sales from the restaurant?

15 **A** Not in those projections, no.

16 **Q** Now, on the second page or third page, we get
17 to loan requests. I'm going to read out loud what
18 is under Roman Numeral 1: "The request is proposed
19 to use the existing restaurant, known as Crab
20 Catchers, and the previously purchased adjacent lot
21 for 3.56 acres. Our collateral is located at 4474
22 Waterfront Drive. The adjacent land was purchased
23 from Sour Dough (phonetic) for \$200,000. This is
24 being used for parking for customers of Crab
25 Catchers" -- correct -- "to park to choose to eat

ANTHONY YOUNG - CROSS EXAMINATION - MR. PLAYER

1 at other restaurants in the nearby facility," and
2 then you have the appraisal.

3 The part I'm interested in is where it says,
4 "Subject property description project highlights,"
5 and that's the third bullet that starts with
6 "zoning." Can you read that for me?

7 **A** "Zoning requires one parking space per 100
8 square foot of indoor space, and 150 square foot of
9 outdoor space for restaurants. The subject
10 property would require 43 parking spaces.
11 As-built, the subject's use would be legally
12 non-conforming due to FEMA current requirements,
13 unless the land area within the assignment is
14 considered as one, the subject restaurant would be
15 non-conforming due to parking shortage."

16 **Q** Now, when it says "the land area within the
17 assignment," is that all of the land that was
18 subject to the mortgages on both parties?

19 **A** The question again, please?

20 **Q** When you talk about "unless the land area
21 within the assignment is considered as one," that
22 was including the properties of both TnW and TNT?

23 **A** Yes, sir.

24 **Q** And then I asked Geoff this question, and I
25 asked you this in your deposition: What is PSOR?

ANTHONY YOUNG - REDIRECT EXAMINATION

1 **A** Prime Source of Repayment.

2 **Q** What was the bank relying on in underwriting
3 to justify loaning \$1.1 million? Where would they
4 get their money back from?

5 **A** The increase in revenue from the jet ski and
6 ice cream stand.

7 **Q** Doesn't say anything about the restaurant,
8 does it?

9 **A** No. The increase of revenue refers to over
10 and above what is currently there.

11 MR. PLAYER: Beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 (A brief pause in the proceedings.)

14 MR. PLAYER: Thank you. I don't have any
15 further questions.

16 MR. BELLAMY: One question.

17 **REDIRECT EXAMINATION**

18 **BY MR. BELLAMY:**

19 **Q** Tony, to your knowledge, would the bank have
20 loaned the \$1.1 million to the restaurant and the
21 marina without the restaurant putting up the seven
22 lots as collateral?

23 **A** That would be dictated by the appraisals,
24 which I don't have here, but if the appraisal for
25 just the marina would not support the loan, no.

ANTHONY YOUNG - REDIRECT EXAMINATION

1 **Q** Okay. And the marina only had one piece of
2 property, 1.5 acres, right?

3 **A** Yes.

4 **Q** And the restaurant property was part of the
5 loan, correct?

6 **A** That's correct.

7 **Q** And really what Mr. Tucker is talking about
8 is this credit memorandum, an analysis of the
9 profitability of the restaurant, and as far as the
10 borrowers' ability to respond to a foreclosure,
11 correct?

12 MR. PLAYER: Objection; leading and misstates
13 the evidence.

14 MR. BELLAMY: You can answer.

15 THE COURT: Overruled.

16 **A** I would say that is correct.

17 MR. BELLAMY: Thank you.

18 THE COURT: All right. You may step down.

19 MR. HARRISON: We call Mr. David Jordan to
20 the stand.

21 (DAVID JORDAN, having been duly sworn,
22 testified as follows:)

23 THE WITNESS: David Jordan.

24 **DIRECT EXAMINATION**

25

DAVID JORDAN - DIRECT EXAMINATION

1 **BY MR. HARRISON:**

2 **Q** Good morning, how are you?

3 **A** Good morning.

4 **Q** In the interest of everyone's time, I won't
5 be long you, but if you could, would you please
6 tell the Court where you graduated from high
7 school?

8 **A** Conway High School.

9 **Q** And if you could give me the elevator
10 version -- which I know your resume is quite long,
11 but give them a brief history from high school to
12 present.

13 **A** After graduating from Conway High, I went to
14 Wofford College. From there, I went to the
15 University of South Carolina for law school, and
16 after that I went to New York University for a
17 master's in tax law. After that, I returned home
18 and practiced law at Thompson and Henry, at the
19 beach office, and then I went to Smith Sapp, and
20 then the family business is Chandler Construction,
21 and I went there and worked in the back office for
22 several years. A brief stint at the Hyman Law
23 Firm, and I've been with Horry County since 2017.

24 **Q** Tell the Court what you do for Horry County
25 currently, and what have you done for Horry County?

DAVID JORDAN - DIRECT EXAMINATION

1 **A** When I came to the County, I was the deputy
2 county attorney working with the planning
3 department and tax department, the building
4 department. In 2021, I went downstairs to take
5 over the planning and code enforcement department.
6 In 2023, I went back up to be the county attorney,
7 which is where I am now.

8 **Q** Okay. Mr. Jordan, I want to show you what is
9 entered into evidence as Defense 10. I'm sure you
10 are familiar with it. Do you recognize this
11 document, sir?

12 **A** These are uniform ordinance summons issued to
13 TNT and More.

14 **Q** And which office issued those?

15 **A** I believe all of these are code enforcement.

16 **Q** Okay. And were you involved with code
17 enforcement at the time the tickets were written?

18 **A** Yes, sir.

19 **Q** And what was your role at the time those
20 tickets were written?

21 **A** I would have been the administrator for the
22 code enforcement office. I was not a building
23 official. The chief building official was my
24 direct report.

25 **Q** Who were these violations written to on this

DAVID JORDAN - DIRECT EXAMINATION

1 first page?

2 **A** TNT and More, slash, Donald Kettner.

3 **Q** And why were the tickets written to TNT and
4 Donald Kettner?

5 **A** We issued the tickets to the real property
6 owner.

7 **Q** Is that typically the policy where there is
8 an issue?

9 **A** Yes, sir.

10 **Q** So the ticket -- so are you saying the
11 tickets get issued to whoever owns the land?

12 **A** Correct.

13 **Q** Okay. So does the -- did the County, at the
14 time when you were working there, because I know
15 you are not in charge of that anymore, but did the
16 County at the time hold the landowners responsible
17 for all structures built on their property?

18 **A** Yes.

19 **Q** Regardless who built them?

20 **A** Yes.

21 **Q** And I'm sure you recall, but I'll ask. Do
22 you recall if any clients were ordered to remove
23 those violations after being issued those tickets
24 and paid the fines?

25 **A** I don't know if we gave an official order.

DAVID JORDAN - CROSS EXAMINATION - MR. PLAYER

1 Q I have the order.

2 A Okay. We must have then.

3 Q Do I need to grab it for you?

4 A That would be great, yes, sir.

5 MR. HARRISON: Court's indulgence.

6 (A brief pause in the proceedings.)

7 Q (BY MR. HARRISON) This is Defense 11 entered
8 into evidence. You want to take a look to refresh
9 your recollection and then give me the answer to
10 the question, please?

11 A Yes. Judge Mayers issued an order to remove
12 it.

13 Q Okay. Let me ask you this: Had those
14 violations not been removed from the property, did
15 the County have the discretion to issue additional
16 fines and tickets?

17 A Yes, sir.

18 MR. HARRISON: No further questions,
19 Mr. Jordan.

20 THE COURT: Counsel?

21 MR. MONGILLO: No questions, Your Honor.

22 THE COURT: Mr. Player?

23 CROSS EXAMINATION

24 BY MR. PLAYER:

25 Q Good morning, Mr. Jordan.

DAVID JORDAN - CROSS EXAMINATION - MR. PLAYER

1 **A** Good morning.

2 **Q** Do you recall a time when the County ordered
3 Wade Long to shut down his fuel tank operation
4 because you said the County had not issued the
5 proper permit?

6 **A** I remember the fuel tank being ordered to be
7 shut down, yes, sir.

8 **Q** And the basis for that is the County never
9 said it was okay to operate, right?

10 **A** I think that was a permit had been issued for
11 a certain size tank, and the tank had exceeded that
12 size.

13 **Q** No. This is later than that. I believe this
14 was in 2023 when there was a meeting with you and
15 Tommy Smith and Wade Long. Do you remember that?

16 **A** I know we had at least a couple of meetings
17 with Mr. Long and Tommy.

18 **Q** Do you remember a meeting where you called
19 him in there and said that you all never gave the
20 permit, you shut him down for a week, Wade shows up
21 and showed you the permit that had been issued?

22 It's not on the screen.

23 **A** No, sir.

24 **Q** You don't recall that?

25 **A** Not offhand, no, sir.

DAVID JORDAN - CROSS EXAMINATION - MR. PLAYER

1 **Q** Do you recall making the marina tear down a
2 shade sail because it was not permitted?

3 **A** No, sir.

4 **Q** What are those yellow things on that picture?

5 **A** I assume those are sail shades.

6 **Q** Yep.

7 Have you ever gone after Crab Catchers for
8 those sails?

9 **A** I don't believe so.

10 **Q** Are you -- were you involved at all with the
11 removal of the ski hut that was there, the order?

12 **A** Oh, the Leonard toolshed? No, sir, I was
13 not.

14 **Q** Are you aware that there is a ski hut of the
15 same essential size and make that was sitting there
16 for two years, and nobody seemed to have a problem
17 with it?

18 **A** No, sir.

19 **Q** You didn't know that?

20 **A** No, sir.

21 **Q** You didn't know that?

22 **A** No, sir.

23 **Q** Did you know that right next door there is
24 three, and the County never tried to stop them from
25 using them?

DAVID JORDAN - CROSS EXAMINATION - MR. PLAYER

1 **A** No, sir.

2 **Q** This is Defendant Donald Kettner's Exhibit
3 23. I don't have it on my computer. I want to see
4 if you know what that is?

5 **A** Looks like a building permit application from
6 2017.

7 **Q** Is that something that would have been in
8 your purview during that time period when you were
9 the --

10 **A** No, sir. I was the deputy county attorney in
11 2017.

12 **Q** Okay. But do you recognize what it is?

13 **A** Yes, sir. It looks like a standard permit
14 application.

15 **Q** I think it's the third page -- fourth page.
16 Right there. It says, "To Horry County Permit
17 Office." Can you read the paragraph when it says
18 what the permit was for?

19 **A** "To modify the existing dock, install a
20 4-foot-by-20-foot ramp to access a
21 15-foot-by-15-foot floating dock, a
22 5-foot-by-183-foot access floating dock, five
23 5-foot-by-30-foot floating finger piers, and a
24 5-foot-by-20-foot floating finger pier. The
25 purpose is to provide Crab Catchers restaurant to

DAVID JORDAN - REDIRECT EXAMINATION

1 allow the dockage of recreational charters to
2 embark and disembark at this location."

3 Q That doesn't say "TnW," does it?

4 A I don't see that anywhere.

5 Q Or "Wade Long," or even "TNT"? It is
6 specific to the restaurant, Crab Catchers?

7 A That is what it says.

8 Q So when they asked the County for a permit,
9 they said it was theirs then, didn't they?

10 A They came in -- well, it was to provide Crab
11 Catchers dockage.

12 Q But for Crab Catchers, right?

13 A To provide dockage, yes, sir.

14 MR. PLAYER: One minute, Your Honor.

15 THE COURT: Yes, sir.

16 MR. PLAYER: No further questions,
17 Mr. Jordan.

18 THE COURT: Any redirect?

19 MR. HARRISON: Just a couple.

20 REDIRECT EXAMINATION

21 BY MR. HARRISON:

22 Q Those sails you see up there, they appear to
23 be over water?

24 A Yes, sir.

25 Q Who has jurisdiction over the water and the

DAVID JORDAN - REDIRECT EXAMINATION

1 waterway?

2 **A** Not the County.

3 **Q** Not the County, okay.

4 Let me ask another question, and I'll leave
5 you alone and let you get back to work since our
6 taxpayers are paying your salary. Can you get a
7 permit to do anything on any land if you don't own
8 the land?

9 **A** With owner's authorization you can.

10 **Q** So it would have to have the owner's
11 authorization?

12 **A** Correct.

13 THE COURT: May he be excused from his
14 subpoena?

15 MR. HARRISON: Absolutely.

16 MR. RICHTER: No objection.

17 MR. PLAYER: No, Your Honor, no objection.

18 THE COURT: Thank you.

19 All right. Let's take a ten-minute break.
20 Retire to your jury room, and we'll be back to you
21 in about ten minutes.

22 (The jury exits at 10:55 a.m., and the
23 following was had out of the presence of the jury.)

24 THE COURT: All right. We'll be at ease for
25 about ten minutes. For scheduling purposes, how

DAVID JORDAN - REDIRECT EXAMINATION

1 many more witnesses?

2 MR. HARRISON: Two.

3 THE COURT: Is there any -- you think they
4 will be lengthy?

5 MR. HARRISON: It's my clients. I don't
6 anticipate -- I can't speak for Mr. Player or these
7 gentlemen, but given the benefit of the doubt,
8 possibly get both up and down I think maybe in
9 three hours.

10 THE COURT: I'm wondering about calling one
11 at 11:00, or calling them at 1:00? Regardless if
12 we get them down, we can't close. I don't know if
13 you have any rebuttal?

14 MR. PLAYER: I'll have Wade for brief
15 rebuttal.

16 THE COURT: My point is we can't finish it
17 today. I don't think we'll have time to charge,
18 close. I mean, I would imagine that we would do
19 that Thursday.

20 MR. HARRISON: That is what we were thinking.
21 Mr. Player and I talked about that.

22 THE COURT: Okay.

23 MR. PLAYER: We may be able to fit in the
24 rebuttal this afternoon.

25 MR. BELLAMY: We probably need a meeting

DAVID JORDAN - REDIRECT EXAMINATION

1 about the charge.

2 THE COURT: I would say we can have a charge
3 conference this afternoon. Even if we are not
4 done, I would like to have that, if we can.

5 MR. HARRISON: I'll roll through, Judge, as
6 quick as I can, so it is really on these gentlemen
7 on cross.

8 THE COURT: On Mr. Player.

9 MR. HARRISON: The plan is to be done by
10 3:30, which will give us time.

11 THE COURT: If we can do that. I mean, if we
12 can send them -- well, again, if you are going to
13 recall Wade, I don't know how lengthy that will be.

14 MR. PLAYER: Thirty minutes for me, and I
15 don't cross folks long, so.

16 THE COURT: So we'll go ahead and call your
17 next witness at five after 11:00 or shortly
18 thereafter, get started, and if we can get him done
19 by 12:15 or 12:30, we'll bring the jury back.

20 MR. PLAYER: Or even just get direct, and
21 I'll cross when we get back.

22 MR. HARRISON: We might be able to get direct
23 and cross.

24 THE COURT: We can take them out about 12:15
25 or so and have them come back at 1:45, and then we

DAVID JORDAN - REDIRECT EXAMINATION

1 can get right back to it.

2 MR. PLAYER: Finish the last witness and have
3 a charge conference.

4 MR. MONGILLO: We e-mailed everyone --
5 including you and opposing counsel -- our proposed
6 verdict form. In our pretrial brief, we already
7 have done our proposed charges, but we may add some
8 and e-mail them.

9 THE COURT: Do you know when you sent the
10 verdict form?

11 MR. MONGILLO: This morning at 9 o'clock.

12 THE COURT: I don't have it.

13 MR. PLAYER: Actually, you sent it Monday.

14 MR. MONGILLO: Well, we updated it.

15 THE COURT: I don't have an admin or law
16 clerk this week, so send it to me.

17 Thanks, guys.

18 (A recess was taken.)

19 THE COURT: I did get it, Mr. Mongillo.

20 MR. MONGILLO: We're working on our charges,
21 and we'll email them.

22 MR. HARRISON: Judge, I owe you that e-mail
23 regarding the bifurcated and dismissals. It has
24 been a long couple of weeks, my apologies.

25 THE COURT: No, I understand.

JUSTINE VAITIS - DIRECT EXAMINATION

1 Are we ready to proceed?

2 MR. HARRISON: Yes, Your Honor.

3 THE COURT: Do we need to wait on him?

4 MR. RICHTER: No, sir.

5 THE COURT: Let's bring them in.

6 (The jury enters at 11:13 a.m., and the
7 following is heard in the presence of the jury.)

8 THE COURT: Thank you. Ladies and gentlemen,
9 you can have a seat.

10 All right, Counsel, call your next witness.

11 MR. HARRISON: Thank you, Your Honor.

12 Defense calls Justine Vaitis.

13 (JUSTINE VAITIS, having been duly sworn,
14 testified as follows:)

15 THE WITNESS: Justine Vaitis.

16 **DIRECT EXAMINATION**

17 **BY MR. HARRISON:**

18 **Q** Thank you. Can I call you Justine?

19 **A** Absolutely.

20 **Q** Ms. Vaitis, could you tell the Court and this
21 jury what you did before you came to be a member of
22 Crab Catchers?

23 **A** Well, I came to Myrtle Beach -- or my parents
24 came to Myrtle Beach in 1973 in the summer. I
25 finished high school in North Myrtle Beach, worked

JUSTINE VAITIS - DIRECT EXAMINATION

1 in retail for a while. I got married in 1984, and
2 had my daughter in 1987. Then within a couple of
3 months, I wound up being a single parent. So I
4 went to school and became a paramedic, but being
5 that I work one day, 24 hours, and two days off, I
6 needed to supplement my income so I waitressed like
7 I waitressed in high school. I did that at a local
8 area, club, and things got a little bad, business
9 got bad, so I went to look for another job, and
10 that's how I wound up at Crab Catchers.

11 Q So when you started at Crab Catchers, what
12 was the first position you had?

13 A I was a server, slash, bartender.

14 Q And at some point you became a member?

15 A Yes.

16 Q When was that?

17 A 2009.

18 Q Did you know Tim Kettner before you became a
19 member?

20 A I had met him one time at their Christmas
21 party. A friend took me to their Christmas party.
22 I met his partner, Tony, brother-in-law, and his
23 sister. They were great people. A lot of fun.

24 Q Do you recall -- did you eventually buy into
25 the company?

JUSTINE VAITIS - DIRECT EXAMINATION

1 **A** That, I did.

2 **Q** Do you remember when.

3 **A** That would be 2009. Sorry. I came to Crab
4 Catchers in 1999.

5 **Q** So you started in 1999?

6 **A** Yes.

7 **Q** And you bought in when?

8 **A** 2009.

9 **Q** Okay. And who offered you that piece of the
10 business at that time?

11 **A** Tim Kettner.

12 **Q** Did anyone else buy around the same time?

13 **A** His son, Donny.

14 **Q** What was your share when you originally
15 bought in?

16 **A** Twenty percent.

17 **Q** What is your share now?

18 **A** Twenty percent.

19 **Q** Do you remember what that cost you?

20 **A** \$200,000.

21 **Q** So were Casey Kuzmik and Robert Benoit added
22 later?

23 **A** Later, yes.

24 **Q** Do you remember when?

25 **A** Not exactly. Rob, most recently, three years

JUSTINE VAITIS - DIRECT EXAMINATION

1 ago. Casey, several years before then.

2 Q Have you ever been in business with Wade or
3 Chris?

4 A No.

5 Q Did you ever have an opportunity to be a part
6 of Wade or Chris' businesses?

7 A When things started to go south -- and a
8 little bit before, Tim had a couple of times would
9 you like to get in the jet ski business, would you
10 like to you out here and do jet skis, and my
11 response was, I have too much to do here, and I
12 really don't know anything about that business at
13 all.

14 Q So did you ever take an opportunity to be a
15 part of their business?

16 A No.

17 Q Okay. When that was going on, did that
18 discussion take place before or after the lawsuit
19 got filed?

20 A Oh, before.

21 Q And why didn't you want to get involved in
22 that?

23 A It was probably a couple of years into it,
24 like maybe 2019, Tim had to work day and night by
25 himself. The restaurant is very busy. We've been

JUSTINE VAITIS - DIRECT EXAMINATION

1 successful for 20 years, so we have a lot on our
2 hands anyway. Because the lack of seeing Wade or
3 Chris on the docks or helping Tim, you know, Tim
4 working day and night, that is what he does. He is
5 a hard worker, but I didn't feel like we had the
6 time or the inclination to get into another
7 business with someone who wasn't there.

8 Q Got you. And while you were working for Crab
9 Catchers as a member, did problems develop with
10 what was going on next door?

11 A Yes.

12 Q Those are the things we all have been talking
13 about?

14 A Yes.

15 Q Tell us how those problems first started with
16 Wade.

17 A With me, it began -- it must have been August
18 of 2020. Wade would come upstairs and get the
19 check from the fish we purchased from him. At that
20 time, there was trouble between Tim and Wade, and I
21 wasn't sure what it was, but they had done the
22 buyout for the \$150,000 apiece, and Wade asked me
23 nicely, Could you please talk to Tim about buying
24 us out. To which I answered, I don't have any
25 control over; that is between you guys.

JUSTINE VAITIS - DIRECT EXAMINATION

1 At that time, he picks up his phone and said,
2 Tim's taking money, he did this and this. I said,
3 We're stopping here. I don't believe it. This man
4 has helped me in tremendous ways, taught me the
5 business, enabled me to make money to take care of
6 my parents when I could have never done it on my
7 own. I said that is the end of our conversation,
8 and that was the last time I talked to him.

9 Q How did you feel about Mr. Long accusing Tim
10 of stealing?

11 A One, I thought it was ridiculous, and I was
12 angry and upset.

13 Q Did you have any reason to believe that what
14 Mr. Long said was true?

15 A No.

16 Q Was that the last problem you had with Wade?

17 A Personally, problems with myself. There were
18 problems, yes.

19 Q You said there were problems. Tell me about
20 the problems that happened after that.

21 A Well, it started with them trying to put the
22 sign up on our property, the Water Sports sign,
23 when the Rolf people showed up. We had no idea who
24 they were. There was the un-permitted structures,
25 the fines we were getting.

JUSTINE VAITIS - DIRECT EXAMINATION

1 **Q** Did you or any of the members of Crab
2 Catchers reach out to Wade or Chris to address the
3 property before anyone filed these lawsuits?

4 **A** Donny did.

5 **Q** What was the result of that?

6 **A** Nothing.

7 **Q** Did they do anything about it at all?

8 **A** No.

9 **Q** Did they respond to you?

10 **A** No.

11 **Q** Was there more than one problem?

12 **A** There was quite a few problems.

13 **Q** As a result of those problems, did you
14 withdraw the permission to use TNT land from them?

15 **A** We did.

16 **Q** And why did you do that?

17 **A** That put us in jeopardy and liability. The
18 restaurant is our bread and butter. If something
19 happened, we were liable.

20 **Q** If they had fixed those problems when Mr.
21 Donny Kettner originally contacted them, do you
22 think we would be here right now?

23 **A** No.

24 **Q** Would you have allowed the permission to keep
25 using the property?

JUSTINE VAITIS - DIRECT EXAMINATION

1 **A** We probably would have.

2 **Q** Before the plaintiffs filed this lawsuit, did
3 you file a trespass case with the magistrate court?

4 **A** Yes.

5 **Q** Why?

6 **A** Same things we were just talking about. We
7 had to take care of these violations, make things
8 were right, keep our restaurant protected and our
9 property protected.

10 **Q** And before you filed that trespass case with
11 the magistrate court, did you propose anything to
12 them?

13 **A** We did, a lease agreement where things were
14 spelled out and everybody knew what they were
15 doing.

16 **Q** Well, what happened with that?

17 **A** They rejected it.

18 **Q** What were you hoping to achieve by proposing
19 the lease?

20 **A** To bring everything into compliance, to make
21 everybody safe, to be very clear about what we were
22 doing.

23 **Q** Do you believe that a lease would have
24 provided clear guidelines?

25 **A** Absolutely.

JUSTINE VAITIS - DIRECT EXAMINATION

1 **Q** Did they ever propose a counteroffer to the
2 lease or the terms of that lease?

3 **A** No.

4 **Q** Did they file this lawsuit without making any
5 offer?

6 **A** Yes.

7 **Q** After the lawsuit got filed, were there
8 incidents with Wade or Chris?

9 **A** Not with me personally.

10 **Q** With the businesses?

11 **A** With the businesses, yes.

12 **Q** Can you tell us a little bit about those?

13 **A** Well, when they leased our property to Eric
14 Rolf, there were quite a few instances of --
15 because our docks and their docks are side-by-side,
16 the jet ski people, you know, went down our
17 boardwalk half and half. There were some issues
18 with people parking in their marina. My question
19 to them is -- which I didn't speak to them -- but
20 if you are so worried, why is there not someone
21 down here on this dock policing it? We have no
22 control what goes on over there.

23 So what they were claiming is boats were
24 parking there and coming to the restaurant. We are
25 a family restaurant. We are small -- well, we're a

JUSTINE VAITIS - DIRECT EXAMINATION

1 little bit bigger now, but we have families with
2 kids, and it's a fun atmosphere. Mr. Rolf came
3 over on our property, screamed at the top of his
4 lungs, there were children there, Whose F'ing boat
5 is this? You know, you can't control them. He was
6 mad. Come to find out, the boat wasn't even for
7 Crab Catchers. They had gone down the road.

8 So there was a lot of that kind of thing
9 going on, threatening people not to go to the
10 restaurant, our fish was frozen. It got nonsense.

11 Q And you mentioned Mr. Rolf. Did Mr. Rolf
12 ever contact you before he showed up out on your
13 property?

14 A No.

15 Q Not once?

16 A Not once.

17 Q When these issues were going on, did you ever
18 call Tim to see if he could deal with these issues
19 for you?

20 A No.

21 Q Why not?

22 A You know, Tim was like our mentor, my mentor,
23 Donny's dad, and he taught us a lot. Towards the
24 end, when Donny and I were really running things
25 for him because Tim was very busy with the marina,

JUSTINE VAITIS - DIRECT EXAMINATION

1 so when he was out, we are like, If you are out,
2 you're out. He's very opinionated, and he's a
3 strong guy, but we were running that business by
4 ourselves.

5 Q And was that in September of 2020 that he
6 left?

7 A Yes, it was.

8 Q Now, in all of these incidents you are
9 talking about with Mr. Rolf and Mr. Kiser and
10 Mr. Long, did all of those take place on Crab
11 Catchers' property, to your recollection?

12 A They did. They did.

13 Q Let me ask you this question: Did you ever
14 promise Wade or Chris that you would transfer part
15 of Crab Catchers' parking lot to them?

16 A Absolutely not.

17 Q Were you aware of any of your partners,
18 including Mr. Kettner at that time, any of them
19 making that promise?

20 A No.

21 Q Did you ever promise Wade or Chris they could
22 use the parking lot forever without conditions?

23 A No.

24 Q Did any of your partners or Mr. Kettner?

25 A No.

JUSTINE VAITIS - DIRECT EXAMINATION

1 **Q** Did you think that it was understood that
2 they would operate within the law?

3 **A** Of course.

4 **Q** Did they?

5 **A** No.

6 **Q** Did they get the permits that they needed?

7 **A** No.

8 **Q** Did they fix the problems when they were
9 discovered?

10 **A** No.

11 **Q** Did you contact them to get those things
12 done?

13 **A** We sure did.

14 **Q** Was their failure to run the business proper
15 the reasons the members of Crab Catchers decided to
16 withdraw the permission to use its land?

17 **A** Yes.

18 **Q** Did any member of the marina ever share
19 profits with you?

20 **A** No.

21 **Q** Did any member of the marina ever allow you
22 to control their business operations?

23 **A** No.

24 **Q** How about your partners?

25 **A** No.

JUSTINE VAITIS - DIRECT EXAMINATION

1 **Q** How about Mr. Kettner?

2 **A** No.

3 **Q** Other than this his --

4 **A** Other than that he's a part of it.

5 **Q** Fair enough.

6 Did you expect any profits from the marina?

7 **A** No.

8 **Q** Why not?

9 **A** We were totally separate. Two separate
10 businesses. They had their thing; we had our
11 thing.

12 **Q** Did you expect to have any control over their
13 business?

14 **A** No.

15 **Q** Let me ask you this: In all of your time,
16 from, say, 2015, right, before this all began, all
17 the way to this current moment as we sit here in
18 court, did you ever receive a K1 from the marina
19 operation?

20 **A** No.

21 **Q** Did you ever receive a K1 from anybody other
22 than Crab Catchers?

23 **A** No.

24 **Q** Why not?

25 **A** Because Crab Catchers is where I do business,

JUSTINE VAITIS - DIRECT EXAMINATION

1 and that's my work. I didn't expect anything from
2 them, and they didn't expect anything from us at
3 that time.

4 **Q** Did you ever receive correspondence prior to
5 filing this lawsuit regarding Crab Catchers failure
6 to adhere to the terms of the alleged joint
7 venture?

8 **A** No.

9 **Q** Did the marina folks ever make any serious
10 offers to settle this case, in your opinion?

11 **MR. PLAYER:** Objection; settlement
12 discussions are absolutely not admissible.

13 **THE COURT:** Sustained.

14 **Q (BY MR. HARRISON)** Did you ever make any
15 promises to Wade or Chris?

16 **A** No.

17 **Q** Did you promise -- did you make a promise to
18 Tim about the marina business?

19 **A** No.

20 **Q** Did you ever agree to let Wade, Tim and/or
21 Chris to use your property without any conditions
22 at all?

23 **A** No.

24 **Q** Did you want them to follow the law?

25 **A** Absolutely.

JUSTINE VAITIS - DIRECT EXAMINATION

1 Q Did you want them to do things the right way?

2 A Yes.

3 Q And did they?

4 A No.

5 Q Justine, how has all of this impacted your
6 business?

7 A Me, personally, it's impacted us quite a bit.
8 It's -- we're working owners. We don't go in and
9 sit at a desk. We work shifts. Casey is in the
10 kitchen. Donny is in the kitchen. I'm on the
11 floor, sometimes doing dishes, hauling trash, you
12 know, when your staff doesn't show up. It was
13 extremely stressful because, not only did we have
14 to work our shifts and take care of our employees,
15 we would have to then pull documents. A lot of
16 time was invested in this to defend ourselves. It
17 was personally stressful.

18 I can't even say -- I know Mr. Long lost his
19 parents, and I'm sorry for that, but I lost both of
20 mine, too. My dad died at the beginning. I had to
21 move in with my mom, so I was taking care of my mom
22 and trying to deal with this and running a
23 restaurant working seven days a week. So it was
24 extremely stressful financially and physically.

25 Q How much money have you spent on these

JUSTINE VAITIS - DIRECT EXAMINATION

1 problems?

2 **A** \$680,000.

3 **Q** Those are your attorney's fees, roughly, give
4 or take?

5 **A** Yes.

6 **Q** Let me ask this question: If something was
7 to shut down Crab Catchers, would you be out of a
8 job?

9 **A** Absolutely.

10 **Q** Would you be the only one?

11 **A** No.

12 **Q** How many people would be out?

13 **A** Forty people, people who have worked for us
14 some over 15 years. We now employ their children
15 they've been there so long. This is a family, and
16 I'm the only one that is not family in this whole
17 deal, but Tim gave me this huge opportunity. I
18 mean, I earned it; however, no one does that for
19 you. You can work hard and he says, Here, have a
20 piece.

21 **Q** Justine, is what Wade and Chris do with this
22 marina affect you guys?

23 **A** If they do it illegally, yes.

24 **Q** Are you worried about liability issues if
25 someone gets hurt?

JUSTINE VAITIS - DIRECT EXAMINATION

1 **A** Absolutely.

2 **Q** Ms. Vaitis, is there anything else you want
3 the jury to know about situation?

4 **A** Yes, please. If I may?

5 **Q** Sure.

6 **A** I have 25 years in this restaurant, and we
7 have physically worked it up until two years ago.
8 I work six days a week, most side-by-side with Tim
9 Kettner. He's given me an opportunity to take care
10 of my parents where I never would have had that.
11 I'm lucky I had them as long as I had. This
12 restaurant is pretty much everything to me. I'm 65
13 years old, you know. It's not time to start over.

14 One thing I would like to clarify is we have
15 this deal with the parking lot. The parking lot
16 they are talking about that they built was
17 purchased before TnW was ever thought about. It
18 was either '14 or '15. We paid to fill it in.
19 Yes, Wade helped to bulldoze it, but it had nothing
20 to do with TnW or Wade owning that property. It
21 never did. We had that for our restaurant.

22 It's ridiculous that someone can claim
23 property that we worked so hard for. We would
24 never ever give up property. I think that because
25 of these two guys, I'm terrified. They talk about

JUSTINE VAITIS - CROSS EXAMINATION - MR. PLAYER
1 terrified, I could lose everything I have and all
2 of our employees. It's a really sad state of
3 affairs that we got here.

4 Q Anything further?

5 A No, sir.

6 MR. HARRISON: Nothing further for me.
7 Answer any questions you're asked.

8 THE WITNESS: Yes, sir.

9 MR. RICHTER: No questions of this witness.

10 THE COURT: Mr. Player?

11 MR. PLAYER: Yes, Your Honor.

12 **CROSS EXAMINATION**

13 **BY MR. PLAYER:**

14 Q Good afternoon -- good morning.

15 A Good morning.

16 Q You talk about all of these regulatory
17 violations that terrifies you about your business?

18 A Yes.

19 Q Who made the complaints to the regulatory
20 authorities about all of these problems? It was
21 Rob Benoit, right?

22 A Yes.

23 Q So you are terrified about the regulatory
24 agency shutting down your business, but you are
25 making the complaints that bring them out there in

JUSTINE VAITIS - CROSS EXAMINATION - MR. PLAYER
1 the first place?

2 **A** We expected them to rectify them.

3 **Q** What wasn't rectified?

4 **A** The tank was finally rectified. The hut, we
5 had to do most of it.

6 **Q** Oh. And I want to ask you about that,
7 because you said you got an order from a judge.
8 Have you seen these? This is a consent order where
9 you agreed not to interfere with our business while
10 the lawsuit was pending. Don't touch anything.
11 Leave it the way it was supposed to be. Were you
12 aware of that?

13 **A** Yeah, I know we had a consent order.

14 **Q** So you agreed not to mess with them, and then
15 you tore the shack out?

16 **A** The judge ordered the shack to be gone, and
17 we were fined constantly for it.

18 **Q** Is it your understanding that the magistrate
19 court judge, who doesn't even have to be a lawyer,
20 can overrule what Judge Hyman says?

21 **A** I'm not aware of that. I don't know the law.

22 **Q** Did you ever give these folks plenty of time
23 and plenty of warning once you got that order
24 saying, You all better do something?

25 **A** Yes, we did.

JUSTINE VAITIS - CROSS EXAMINATION - MR. PLAYER

1 Q Really? How many days?

2 A I don't know exactly.

3 Q How about two?

4 A It was more than that.

5 Q Okay. Then why did Wade show up wondering
6 why his shack was gone? And Eric Rolf showed up
7 and said, Where did the shack go?

8 A Probably have to ask them.

9 Q We did, and they didn't get notice, Justine.

10 A I can't speak to that.

11 Q It is your testimony you all have done
12 anything to interfere with their business since the
13 case started?

14 A Not in my opinion.

15 Q Let me ask you: Did you see what was on your
16 property for the three years that they operated,
17 the gas tanks and the jet skis?

18 A Yes.

19 Q So what did you think? They are building a
20 permanent -- a concrete permanent structure and a
21 10,000-gallon fuel tank on your property.

22 A For one, we assumed -- and probably we should
23 have checked that everything was legal -- we had no
24 idea it wasn't.

25 Q And what is illegal about this tank?

JUSTINE VAITIS - CROSS EXAMINATION - MR. PLAYER

1 **A** That tank was not permitted for the structure
2 it was in. That 10,000-gallon tank, the container
3 area was way too small.

4 **Q** Okay. Who put it there?

5 **A** Honestly, I don't know.

6 **Q** You think Tim Kettner was involved?

7 **A** I'm sure.

8 **Q** So this wasn't Wade and Chris' thing, right?

9 **A** I have no idea.

10 **Q** How long was that tank there?

11 **A** The big one? Couple of years, I guess.

12 **Q** Two or three years. No problem until you
13 decide to complain because you want to run Wade
14 off, right?

15 **A** No. Absolutely not.

16 **Q** The parking lot that you all now say we had
17 nothing to do with, this was your parking lot; why
18 is TnW paying an architect to design the
19 renovations of your parking lot?

20 **A** You would have to ask them that. And if you
21 look at the parking lot today, it looks exactly
22 like it did in 2015. Nothing has been done. So
23 you have to ask them why they did that.

24 **Q** But you agree that Tim Kettner could bind the
25 company?

JUSTINE VAITIS - CROSS EXAMINATION - MR. PLAYER

1 **A** No.

2 **Q** He couldn't? How did the mortgage get done?

3 He's the only one that signed, Justine. How did he
4 do that?

5 **A** May I answer?

6 **Q** Sure.

7 **A** According to our operating agreement, as I
8 understand it, he couldn't have.

9 **Q** So he committed loan fraud?

10 **A** I don't know if that's what you call it.

11 **Q** How about this: Did you ever see that
12 (indicates)?

13 **A** Sure.

14 **Q** What does it say?

15 **A** Crab Catchers and Little River Water Sports.

16 **Q** You think that is not a promise?

17 **A** No, I don't.

18 **Q** You told the whole world there were two
19 groups that could have --

20 **A** Absolutely. However, whenever Eric Rolf came
21 in, he was not Little River Water Sports. He was
22 East Coast Jet Skis, so there is a problem right
23 there.

24 **Q** And you didn't think that if -- who owns the
25 marina?

JUSTINE VAITIS - CROSS EXAMINATION - MR. PLAYER

1 **A** TnW.

2 **Q** So TnW could put anyone out there that they
3 wanted to, right?

4 **A** I suppose -- wait a minute. You mean they
5 can lease our property to someone else? Because
6 that is what happened.

7 **Q** No. You just said that the docks belong
8 to --

9 **A** Docks belong to them, yes.

10 **Q** And, again, we can go back to the picture.
11 How long was that hut there?

12 **A** The sign?

13 **Q** The ski hut, how many years was that on your
14 property without any problem?

15 **A** Probably two, until we got fined for it.

16 **Q** Okay. And there is one back out there now,
17 right?

18 **A** The hut? No.

19 **Q** There is no huts out there?

20 **A** No.

21 **Q** How is Steve Wiggle operating his jet ski
22 business?

23 **A** He has one of those pop-up tents.

24 **Q** So he doesn't have a hut? He has a tent?

25 **A** That's right, because that is legal.

JUSTINE VAITIS - CROSS EXAMINATION - MR. PLAYER

1 **Q** Does he have three of those huts over on his
2 land?

3 **A** I don't know.

4 **Q** Have you ever complained about Steven Wiggle
5 operating off of your property?

6 **A** No.

7 **Q** That is because he's one of Donny's friends,
8 right?

9 **A** No.

10 **Q** He is not?

11 **A** He might be. I don't know his relationship,
12 but he did come and ask us.

13 **Q** Do you recognize this text message? Is it
14 better on a paper copy?

15 **A** Yeah, because I can't see that, sorry.

16 MR. MONGILLO: What Exhibit?

17 MR. PLAYER: 39, Geoff Hopkins text.

18 **A** Oh, yeah. Yes, sir.

19 **Q** **(BY MR. PLAYER)** What is that text talking
20 about?

21 **A** Meeting with Geoff Hopkins, the best way to
22 get Wade off of the loan.

23 **Q** Now, who made that decision?

24 **A** What decision?

25 **Q** Well, about midway, top text with Tim, it

JUSTINE VAITIS - CROSS EXAMINATION - MR. PLAYER
1 says, "Justine, Don, and myself, along with
2 recommendation from Geoff, determined the best way
3 to get Wade off of the loan," right? So you three
4 are deciding how to get Wade and TnW off the loan?

5 **A** No. We were worried about what would happen
6 if we defaulted. We were -- he wanted out anyway
7 at this time, so we were trying to protect
8 ourselves at this point.

9 **Q** But it doesn't say that Wade is involved in
10 that decision. It says Tim, Donny, Justine, and
11 myself figured out the best way to get Wade off the
12 loan?

13 **A** Yeah, that's what it says.

14 **Q** But you had no power over his business?

15 **A** Obviously not.

16 **Q** Okay.

17 **A** Again, trying to protect Crab Catchers. That
18 was our only focus.

19 **Q** And that's important to you?

20 **A** Crab Catchers? Absolutely.

21 **Q** Because it is your source of income, your
22 business?

23 **A** That's right.

24 **Q** And you know if you are able to stop TnW from
25 accessing the parking lot, they lose their

JUSTINE VAITIS - CROSS EXAMINATION - MR. PLAYER

1 business, right?

2 **A** Wade owns the lot that abuts our lot. It
3 wouldn't stop their business. That's silly. It is
4 Long Shot TV's plot.

5 **Q** And that is all marsh?

6 **A** No. No. I'm talking about upland from the
7 top of our parking lot. They purchased the lot
8 that abuts our lot up the road, not on the marsh.

9 **Q** But they can't use it for the marina. It has
10 to be adjacent to.

11 **A** They have to have parking adjacent to the
12 marina?

13 **Q** They have to have upland frontage.

14 **A** Right. But you are asking me about parking,
15 so they really don't need our lot, no, not to
16 operate. They don't need our parking lot to
17 operate.

18 **Q** What is adjacent to the piece of land owned
19 by TnW?

20 **A** Our parking lot -- well, a piece of land, and
21 then the parking lot.

22 **Q** Is there any land that is not owned by TNT
23 that is adjacent to the land that it is directly
24 adjacent --

25 **A** Can you say that again?

JUSTINE VAITIS - CROSS EXAMINATION - MR. PLAYER

1 **Q** Yeah. Trying to do two things. That is not
2 good for a lawyer.

3 That is May of 2021. Who signed it?

4 **A** Donald, Jose, Justine, Casey and Robert.

5 **Q** You see, this is the land owned by TnW,
6 right?

7 **A** Yes, sir.

8 **Q** It is only .75 acres?

9 **A** Right.

10 **Q** This land adjacent to it is owned by?

11 **A** TNT, yes.

12 **Q** And this piece of property?

13 **A** TNT.

14 **Q** So everything -- and this?

15 **A** TNT.

16 **Q** In order for this to have an adjacent upland
17 frontage, the only thing it can use is Crab
18 Catchers' property, right?

19 **A** I don't know the law book. I'm guessing.
20 That's what you guys are saying.

21 **Q** And one last thing -- oh, another thing is
22 you see this here, the shaded corner?

23 **A** Sure.

24 **Q** What is that?

25 **A** An easement.

JUSTINE VAITIS - CROSS EXAMINATION - MR. PLAYER

1 **Q** Why did you give them an easement there?

2 **A** To get to their docks.

3 **Q** Have there been trucks parked there
4 consistently for the last few years? Is there now
5 a little wooden fence in that area blocking the way
6 to get in there, where the easement is?

7 **A** There is nothing blocking the way of the
8 easement.

9 **Q** Has there been in the past?

10 **A** There might have been a chain once.

11 **Q** If you give someone an easement, can you put
12 a chain across it?

13 **A** I don't know.

14 **Q** You see the walkway?

15 **A** Sure.

16 **Q** What is that a picture of?

17 **A** Crab Catchers' walkway and the marsh.

18 **Q** Who owns the land under that walkway now?

19 **A** Both of us.

20 **Q** Both of you?

21 **A** TNT and TnW.

22 **Q** Do you have a deed that says that?

23 **A** For this part?

24 **Q** For the walkway.

25 **A** I'm sure we do.

JUSTINE VAITIS - CROSS EXAMINATION - MR. PLAYER

1 **Q** I'm pretty sure you don't.

2 I believe that is owned by Long Shot TV at
3 this point.

4 **A** They own a strip down the middle that comes
5 to the end.

6 **Q** You have to walk on their land to walk down
7 to Crab Catchers, right?

8 **A** Well, yeah, but you also can use the front
9 door and not use that. More customers come in the
10 front door. It is not a necessary thing for us.
11 In fact, we offered to take the boardwalk down if
12 they didn't like that.

13 **Q** When?

14 **A** I don't remember. When they bought the
15 piece?

16 **Q** Have they ever tried to block you from using
17 it?

18 **A** No.

19 **Q** You have been here the entire
20 week-and-a-half, right?

21 **A** Yes, sir.

22 **Q** And you heard Brett come up here and testify
23 that he ran the jet ski hut, he ran the fuel pumps
24 when Tim hired him to do it?

25 **A** Yes.

JUSTINE VAITIS - CROSS EXAMINATION - MR. PLAYER

1 Q That was '18 and '19?

2 A Yes.

3 Q And in 2020, Tim said he hired Rebecca Martin
4 and Steve Sessions to run it?

5 A We didn't discuss that. That had nothing to
6 do with Crab Catchers.

7 Q But my question is: You just said that Tim
8 was down there 24/7 working his butt off on the
9 marina. Why did he hire the other people to run
10 the marina, and what he's doing when they are
11 working?

12 A You have to ask him that.

13 Q Okay. What was he doing when you saw him
14 down there working his butt off?

15 A For the first two years?

16 Q Yeah. While Brett and V were running the ski
17 hut.

18 A Pumping gas, fixing things, helping with the
19 ski hut.

20 Q But Brett and V were doing that, right? They
21 were hired to do that?

22 A Yeah. But both of them took out jet skis.
23 Jet ski tours were gone for a couple of hours.
24 Someone had to be down there to man that dock.
25 That's important.

JUSTINE VAITIS - CROSS EXAMINATION - MR. PLAYER

1 **Q** How do you know if you had nothing to do with
2 it?

3 **A** Because I can look out the window and see it.

4 **Q** Now, do you recall what terms were offered
5 when you all tried to -- when Donny reached out to
6 try to settle this with Wade and Chris?

7 **A** What do you mean "terms"?

8 **Q** You said that he --

9 MR. HARRISON: Objection. If I can't talk
10 about it, neither should counsel.

11 MR. PLAYER: What now?

12 MR. HARRISON: He's talking about settlement
13 terms.

14 THE COURT: I don't know. Are you talking
15 settlement or?

16 MR. PLAYER: There was an arrangement for a
17 lease. I'm asking her about the lease that they
18 proposed, a lease before the lawsuit started.

19 MR. HARRISON: Approach?

20 (Whereupon, a bench conference was had.)

21 **Q** **(BY MR. PLAYER)** Did you ever see Crab
22 Catchers employees running the marina, pumping gas?

23 **A** Yeah. We helped Tim out.

24 **Q** And did you -- did they run the credit cards
25 upstairs at Crab Catchers when they got credit

JUSTINE VAITIS - REDIRECT EXAMINATION

1 cards?

2 **A** For gas, yeah.

3 **Q** What fines have you actually paid?

4 **A** The jet ski hut fine.

5 **Q** The \$500?

6 **A** Yeah.

7 **Q** That's it?

8 **A** Yes.

9 **Q** Anyone ever been hurt down there? Has there
10 ever been a claim?

11 **A** Where?

12 **Q** Has anybody made a claim against either TNT
13 or TnW for being hurt on the marina?

14 **A** No.

15 MR. PLAYER: I think that's it. They are not
16 responding to me, so thank you.

17 THE COURT: Redirect?

18 **REDIRECT EXAMINATION**

19 **BY MR. HARRISON:**

20 **Q** Just a couple of things, Justine. Did you
21 know there were issues with the hut and the tank
22 when they first put them out there?

23 **A** No.

24 **Q** When did you find out?

25 **A** When we got fined.

JUSTINE VAITIS - REDIRECT EXAMINATION

1 **Q** Was that years after they had been --

2 **A** Years after they had been there, yes.

3 **Q** Did you act on the problem as soon as you
4 knew it was a problem?

5 **A** Yes.

6 **Q** And the chain picture that everyone is
7 talking about, you know where that is, that
8 easement?

9 **A** Yes, I know what you're talking about.

10 **Q** Did you ever have anyone drive through that
11 area?

12 **A** Yes. Many times.

13 **Q** Is it safe for cars to drive through that
14 area?

15 **A** No, because it is an easement. It is where
16 people walk, so it's dangerous.

17 **Q** Is that why you guys put the railings and
18 chains?

19 **A** I'm sure. I don't honestly remember, but we
20 didn't do it to block anybody.

21 **Q** So you weren't trying to block TnW or its
22 customers?

23 **A** No.

24 **Q** So it was a safety concern?

25 **A** Definitely.

JUSTINE VAITIS - REDIRECT EXAMINATION

1 MR. HARRISON: Nothing further, Your Honor.

2 THE COURT: All right. You may step down.

3 It is ten till 12:00. I think it is a good time to
4 stop for lunch. If you can, be back in your jury
5 room by 1:30.

6 As a reminder, do not discuss this with your
7 fellow jurors or anyone until you begin
8 deliberations. Thank you.

9 (The jury exits at 11:51 a.m., and the
10 following is heard out of the presence of the jury.)

11 THE COURT: Anything before we break?

12 MR. HARRISON: No, Your Honor.

13 THE COURT: Mr. Player?

14 MR. PLAYER: No, Your Honor.

15 THE COURT: All right.

16 (A lunch recess was taken.)

17 THE COURT: All right. Anything else before
18 we call the next witness?

19 Bring them in.

20 (The jury enters at 1:48 p.m., and the
21 following is heard in the presence of the jury.)

22 THE COURT: Thank you. You can be seated.

23 Go ahead and proceed, Counsel.

24 MR. HARRISON: We have at least 17 witnesses
25 that we haven't called in this case. We've been at

REBUTTAL - WADE LONG - DIRECT EXAMINATION

1 this now for almost a week-and-a-half. We believe
2 the jury has heard what they need to hear, and
3 we're going to rest our case at this time and not
4 call any further witnesses.

5 THE COURT: Do we need motions now or?

6 MR. PLAYER: Quick rebuttal.

7 THE COURT: Okay. You may have motions at
8 the end. Let's do rebuttal first.

9 MR. PLAYER: We recall Wade Long to the
10 stand. I promise, it will be very brief.

11 (WADE LONG, having been duly sworn,
12 testified as follows:)

13 REBUTTAL DIRECT EXAMINATION

14 BY MR. PLAYER:

15 Q Good afternoon.

16 A Good evening.

17 Q We'll talk about a couple of things that was
18 brought up by the witnesses, and we want to be
19 brief.

20 A Thank you.

21 Q Mr. Kettner called you an absentee owner. Do
22 you agree with that description?

23 A Maybe to a certain extent, but when we
24 started this joint venture, from the beginning, it
25 was my job to get all of the contractors lined up,

REBUTTAL - WADE LONG - DIRECT EXAMINATION

1 build the place, to lay it out, design it, get
2 everybody onboard. Tim's job was to run the office
3 and books and day-to-day business.

4 However, when I was there, once it got built,
5 ready to operate, I was the one that personally
6 went out and seeked the people to rent the dock
7 slips. That was all me. I'm responsible for those
8 yearly contracts. Like I said, still to this day
9 with all of the litigation. I'm managing to keep
10 those people happy. It's been really hard. And
11 I've lost a few with the litigation going on where
12 they couldn't get to the parking lot, but for the
13 most part, the fishing community that knew me has
14 stayed with us. I got all of the gas accounts when
15 we started.

16 Yes, this is not Tim's fault. My career, I
17 make for a living is commercial fishing. I'm gone
18 several days at a time, three to four days at a
19 time at sea. That's not Tim's fault I'm gone, but
20 I still have to make a living, too.

21 I would let him know that even though I was
22 supplying the fish for his restaurant that he was
23 benefiting from, I had to make a living to put
24 money in my bank account as well. He would stay
25 there, run it, pump fuel, or someone in the

REBUTTAL - WADE LONG - DIRECT EXAMINATION

1 restaurant would, but he also had hired staff --
2 Brett and V -- when we first got started that ran
3 the business.

4 So, yes, I agree a little bit that I was gone
5 a lot, but I pulled my weight getting the people
6 there to rent, and he occasionally would have to
7 pump fuel. But I did work on the dock as well. I
8 didn't say I'm a business owner and never showed up
9 or do anything. When something needed to be done,
10 I was called upon, I did it.

11 Q And how was -- how did Tim, Brett, and V --
12 what were they doing if they were running the
13 docks?

14 A My understanding with Brett and V -- I didn't
15 know them well at the time -- but they had past
16 experience in the jet ski business. The gentleman
17 I lease to this day right now, at this present
18 time, for the past two years -- he took Eric Rolf's
19 position -- his name is Steve Wiggles. Very nice
20 guy. He don't bother no one.

21 I got sidetracked. Brett and V, I did not
22 know. Brett and V prior worked for Steve Wiggles
23 for about ten years when he moved here from West
24 Virginia. They learned the jet ski business --

25 Q My question is: Why were they paid by TnW?

REBUTTAL - WADE LONG - DIRECT EXAMINATION

1 **A** They were running -- the managers, kind of
2 running the company for Tim. Tim was overseeing
3 them, but they were running the day-to-day
4 operation, the jet ski and fuel business.

5 **Q** In terms of the receipts from the jet skis
6 during that time, who provided those receipts?

7 **A** I think Brett and V supplied Tim with those
8 sheets.

9 **Q** There was a discussion of a bulldozer?

10 **A** Yes.

11 **Q** Can you explain what that bulldozer was for,
12 how it was purchased?

13 **A** Yes. That was mine. I do have a bunch of
14 crazy hobbies. I like to hunt and fish. I do have
15 tractors and equipment, and I'm actually pretty
16 good at running equipment. So I always had land
17 and small farm, so I purchased a bulldozer years
18 ago. I used it to build my house, the road into my
19 house. It is about 1200 feet off of the main
20 highway. I bulldozed that. I have built food
21 plots for my deer.

22 I had two pieces of equipment not getting
23 used, and my wife is like, Wade, you need to sell
24 one of these pieces of equipment. So Tim was kind
25 of a lot like myself with the hunting and fishing,

REBUTTAL - WADE LONG - DIRECT EXAMINATION

1 and he bought a farm, and he's like, Well, I'll buy
2 the dozer. I asked him about it, and he split the
3 dozer. I don't remember the exact price. I think
4 it was about \$15,000 apiece. Tim paid me for half
5 the dozer, and that was mine and Tim's dozer.

6 Q Did it have anything to do with TnW?

7 A Nothing. Because we didn't have a big enough
8 truck and trailer to transport it, so I got my
9 buddy with Thompson Roofing to take it out to Tim's
10 farm at no charge to use, to deliver it. We're all
11 buddies. I went back and messed with Tim for about
12 a day on it to show him how to operate and run it.
13 He got really good with it and did a lot of work on
14 his farm. But it was no part of TnW and More. It
15 is strictly between Tim and myself.

16 Q Did you eventually sell it?

17 A I did.

18 Q Where did the money go?

19 A The money went back to the account.

20 Q What account?

21 A TnW and More.

22 Q Why?

23 A I wasn't aware Tim wrote it off on our taxes
24 with Kim Bryant, and that is what she was touching
25 on the other day. My first attorney I had

REBUTTAL - WADE LONG - DIRECT EXAMINATION

1 recommended me amend my taxes because Tim wrote
2 \$45,000 on taxes for that dozer, and it was never
3 paid for with company money. It was paid for by my
4 personal money and Tim's personal money.

5 Q So when you sold it, you put the money where?

6 A Into the account. She said, Sell it because
7 it's already been wrote off.

8 Q Okay. Did you ever take a salary from TnW?

9 A I never took a salary.

10 Q Did you ever ask?

11 A Never asked for one.

12 Q One last thing. We spoke earlier with David
13 Jordan about the meeting where you were shut down
14 and he didn't remember. Was he present at that
15 meeting?

16 A He most definitely was present. I remember
17 like it was yesterday.

18 Q When was it?

19 A I don't remember the exact date.

20 Q Last year?

21 A '23. I got a call. I don't know --

22 Q Don't say what people told you.

23 A I don't remember exactly. I got a piece of
24 paper or e-mail. My fuel sales was shut down. I
25 could not operate. I received an e-mail from Tommy

REBUTTAL - WADE LONG - DIRECT EXAMINATION

1 Smith, David Jordan, and Thomas Keller that there
2 was a meeting scheduled for me to show a couple
3 days later, like Friday with them. When I showed
4 up to the meeting, Thomas Keller was sitting there
5 (indicates), Nick Baxtrum, David Jordan -- I'm
6 sitting here and Mr. Jordan is sitting right here
7 in front of me at a table, and the guy that was
8 leading with a TV at one end was Tommy Smith. He
9 said --

10 MR. HARRISON: Objection, Your Honor.

11 THE COURT: Sustained.

12 Q (BY MR. PLAYER) Don't say what Tommy said.
13 What did you show them in that meeting?

14 A I brought all my paperwork with me. I was
15 told I didn't have a permit, so I showed him the
16 permit. He pulled it up and was like, Guys --

17 Q Don't say what he said.

18 Were you allowed to turn the pumps back on
19 after that meeting?

20 A Yes. The permit was found, and I received an
21 e-mail from the County for me to go back to work.
22 They made a mistake. Open back up, after I was
23 shut down for a full week.

24 And I would like to say something about being
25 an absentee owner. Like I told you, that was true

REBUTTAL - WADE LONG - CROSS EXAMINATION - MR. RICHTER
1 for the first part, but prior to 2020 when I took
2 over, October 12 of 2020, not Chris, not Tim, no
3 one else is responsible for a dime going into the
4 account. I would not be sitting here today if I
5 didn't dig my heels in, make the money to pay my
6 mortgage payment and all the attorney's fees. I
7 worked the docks, fuel pumps, everything with no
8 help for the past four years, and no one has helped
9 me.

10 MR. PLAYER: No further questions, Wade.

11 MR. RICHTER: May it please the Court?

12 THE COURT: Yes.

13 **CROSS EXAMINATION**

14 **BY MR. RICHTER:**

15 **Q** Mr. Long, we agreed there was never a point
16 in time before Mr. Kettner was released that he was
17 an absentee owner?

18 **A** I never said he was.

19 **Q** I said you and I would agree?

20 **A** Oh, I didn't -- yes, sir.

21 **Q** We would agree he worked hard?

22 **A** Sure did.

23 **Q** And you learned how hard he worked after you
24 took over in 2020 because you started doing what he
25 did?

REBUTTAL - WADE LONG - CROSS EXAMINATION - MR. RICHTER

1 **A** I sure did. Even with this litigation, can
2 you imagine how hard it is to conduct business at
3 your marina, at your location, but you can't be
4 present without something happening, getting
5 arrested, locked out of your gate? I have had like
6 a pack of wolves against me trying to operate for
7 the past four years.

8 **Q** Tim never took a salary, did he?

9 **A** Not that I'm aware of.

10 **Q** And whatever money that got put back in the
11 account for the tractor, I assume that was some of
12 the money that went into TnW's account, that TnW
13 then used to sue Tim?

14 **A** That money is way before them, but it did go
15 back into the TnW account, because Kim told me it
16 was written off, so sell it and put it back in the
17 account.

18 **Q** One last question -- maybe two, I'm sorry.
19 Do you accept any responsibility for the mess that
20 brings us here today, or is this all someone else's
21 fault?

22 **A** I mean, you are saying that I started it, but
23 you guys keep bringing it up, Ronnie. You say how
24 nice a place we had. I saw you and Tim walking on
25 the dock last night.

REBUTTAL - WADE LONG - CROSS EXAMINATION - MR. RICHTER

1 **Q** Were you surveying me?

2 **A** I was passing on my boat. Beautiful place.

3 You can see the business.

4 **Q** I love Crab Catchers, it was great.

5 **A** It was.

6 **Q** So let me ask the question again. Did you do
7 anything to cause or contribute to this whole thing
8 that brings us today, or is it all someone else's
9 fault?

10 MR. PLAYER: That is beyond the scope of
11 rebuttal.

12 **A** I don't blame this on no one.

13 THE COURT: Hold on.

14 THE WITNESS: Sorry.

15 THE COURT: I'm sorry.

16 MR. PLAYER: This is beyond the scope of
17 rebuttal. I didn't ask whose fault it was in my
18 rebuttal questioning, so I'm not sure how Ronnie
19 can get there.

20 MR. RICHTER: He was asking about the permits
21 and whether it was issued.

22 THE COURT: I'll allow it. Thank you.

23 **Q** **(BY MR. RICHTER)** Did you do anything to cause
24 or contribute to this whole thing that bring us
25 today, or is it all someone else's fault?

REBUTTAL - WADE LONG - CROSS EXAMINATION - MR. RICHTER

1 **A** I'm not blaming it on no one. If you want to
2 look at it as if this is my fault, if I feel like I
3 don't have a trusted partner in the company that is
4 taking advantage of me and everyone else, not
5 including me and Chris, but of their own people as
6 well -- I had to step forward or I was -- Tim
7 started with that message that he was going take my
8 shares and me walk away with nothing, when I'm on a
9 \$1.1 million mortgage, and that's what started it.
10 I'm not going to roll over and lose what I've
11 worked my whole life to get here, and I got to
12 fight what I believe in.

13 **Q** Is there a question that I can ask you that
14 will change your mind?

15 **A** No, sir.

16 MR. RICHTER: Thank you.

17 MR. HARRISON: No questions, Your Honor.

18 THE COURT: All right. You may step down.

19 MR. LONG: Thank you.

20 MR. PLAYER: Nothing further from the
21 plaintiff.

22 THE COURT: Ladies and gentlemen, it is 2
23 o'clock. This are matters of law we need to take
24 up, as well as other matters we need to take up.
25 I'm going to excuse you. There is no court

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1 tomorrow. I will be happy to keep you here if I
2 thought we could finish tonight, but with my jury
3 charges, as well as closing arguments from all of
4 the attorneys, I think we would be here until 7
5 o'clock, and I don't want that.

6 So what we're going to do is I'm going to
7 excuse you. Be back here Thursday morning at 9:00
8 a.m. Remember, do not discuss anything that you
9 have heard. Don't do any of your own research.
10 Thursday, when I advise you, you will be able to
11 begin to deliberate. That is after I charge you on
12 the law and you have heard closing arguments. I'll
13 advise you at that point. Thank you.

14 (The jury exits at 2:03 p.m., and the
15 following is heard out of the presence of the jury.)

16 THE COURT: I'm assuming you want to renew
17 your motions?

18 MR. BELLAMY: That's correct.

19 MR. RICHTER: Yes, sir.

20 THE COURT: Anything in addition you need to
21 add, or you all just letting your previous
22 arguments in record reflect your --

23 MR. RICHTER: Just a little bit.

24 May it please the Court?

25 THE COURT: Yes.

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1 MR. RICHTER: Your Honor, first and foremost,
2 I want to make sure that I have joined in the
3 directed verdict motions made by the other
4 defendants in this case.

5 THE COURT: Record will reflect that.

6 MR. RICHTER: I know one was on 23(b), and I
7 know you heard lengthy argument about it. In
8 revisiting that argument, I want to make this point
9 with the Court. There is no question that we filed
10 a motion to dismiss on 23(b) as it related to TnW
11 and its attempt to plead a derivative action.

12 Your Honor has reflected on that. Judge
13 Culbertson heard that. The nuance and the
14 difference that Mr. Bellamy has advanced -- and I'm
15 joining in -- is that our efforts was on behalf of
16 TnW attacking the pleading that TnW brought
17 claiming that it was not styled or pled properly as
18 a derivative action.

19 The motion that is separate and distinct from
20 that that no judge has heard is that if the
21 Plaintiffs' case is correct, there is a joint
22 venture out there, and what they are claiming is
23 damages flowed through that joint venture into TnW
24 making that derivative, and that action has not
25 been brought ever. The proper party, the real

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1 party in standing, is this unincorporated
2 association, and the way that the case should have
3 been styled -- call it whatever you want to call
4 it -- but TnW derivatively on behalf of -- whatever
5 you want to call it, Little River Water Sports,
6 call it something else -- and unincorporated
7 association. That is the real party in interest.
8 That is the derivative suit that has never been
9 brought, and on that basis we ask independently for
10 a directed verdict.

11 THE COURT: Let me ask one question about
12 that, and I'll hear from Mr. Player. In regards to
13 your motion under 15(b) asking for dissolution,
14 wouldn't that be similar to a derivative action as
15 well?

16 MR. RICHTER: No, sir. We're not asking for
17 a dissolution of a joint venture that we contend
18 does not exist.

19 THE COURT: You're asking for dissolution of
20 TnW, but wouldn't that still be a derivative
21 action?

22 MR. RICHTER: No, sir. It's an action that
23 is brought directly by a member of TnW. Any member
24 has the right to seek a dissolution of the entity
25 if they can demonstrate to the Court that it's not

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1 reasonably practical to carry on the business of
2 the company, which I think the evidence in this
3 case is open and obvious in this case that these
4 folks cannot stay in the sandbox together, so the
5 statute creates a mechanism to get us out of the
6 sandbox to a dissolution.

7 But, no, sir, we're not claiming that damage
8 is flowing through TnW to Tim Kettner. We are
9 claiming that he has a right as a member to seek a
10 dissolution on the grounds --

11 THE COURT: But you have to argue that he's
12 been damaged by TnW and the amount of money that he
13 didn't receive back.

14 MR. RICHTER: True. True. So in winding up
15 the final accounting of TnW, we would contend that
16 those are monies that we owe to our side of the
17 ledger. But in the dissolution, what we would ask
18 the Court is to order the dissolution, order the
19 winding up of the affairs of that business, order
20 the sale of those assets, and then your gravity
21 will just take over. The money would go where it
22 is supposed to go.

23 But, yes, we would be claiming some priority
24 against that money to the extent that he made
25 advances for which he was not been repaid.

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1 THE COURT: Which would be, I guess your
2 pleadings for accounting; is that right?

3 MR. RICHTER: Yes, Your Honor.

4 MR. PLAYER: Yeah, I don't disagree with
5 Ronnie about whether or not the dissolution is
6 derivative if there is a statutory mechanism that
7 they are following.

8 With regards to whether or not TnW or whether
9 or not Wade and Chris had to bring a derivative
10 action for TnW, that is not the case. They are
11 majority shareholders. They can bring a
12 derivative -- derivative shareholder suits are for
13 a minority shareholder who cannot control the
14 corporation and says it should do this, and we're
15 bringing an action to force them to do that.

16 Again, that falls back to, you know, we sued
17 for breach of contract to enter into a joint
18 venture. That is what the complaint says. It is
19 not that we're in a joint venture, and we're trying
20 to, you know -- I guess the thing we're trying to
21 get in terms of compelling some type of property
22 rights, that is under promissory estoppel. We are
23 saying you made a promise we could use it. They
24 shouldn't be able to break the promise.

25 The joint venture is basically we entered

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1 into an agreement to allow each other the use of
2 the property, as they have stated under -- you
3 know, in their testimony that they didn't need us,
4 but we needed them. That's what we're trying to,
5 you know -- that's the breach of contract. If they
6 are going to take our business away for it, then
7 they have to pay for it. But I don't think that
8 has to be a derivative.

9 MR. RICHTER: If I may reply, You Honor?
10 That is not what the pleading says. The cause of
11 action on the joint venture is for breach of the
12 joint venture agreement. It is not for the failure
13 to enter into the joint venture. They are
14 contending, really, by promissory estoppel. You
15 promised we were going to be a joint venture, but
16 we're not, so we are kind of using it as a
17 mechanism to ask the Court to say that we are.
18 Independently, the cause of action -- third cause
19 of action is for breach of the joint venture
20 agreement.

21 MR. PLAYER: Agreement, right. That's a
22 contract.

23 MR. RICHTER: Right. So the contract is not
24 a promise to create a joint venture. The predicate
25 to this cause of action would have to be defining

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1 that there is actually a joint venture. You can't
2 breach a joint venture agreement without there
3 being a joint venture, and we made that argument
4 separately that -- I mean, the evidence is replete
5 that there is no mechanism of control, no sharing
6 of profits, none of these hallmark, threshold
7 things that must exist for there to be a joint
8 venture. So you cannot have the breach of a joint
9 venture agreement for a joint venture that is
10 nonexistent.

11 THE COURT: It brings me to one of the
12 questions -- you know, I went back and read Gordon
13 case, read some out-of-state cases trying to
14 determine the best -- you know, obviously, there is
15 not a jury charge in the proposals for joint
16 ventures, so I'm somewhat trying to look at those.

17 I guess the question -- and this may be for
18 everybody -- is the joint venture TnW? Is it TNT?
19 Or is it something between the parties? Because if
20 it is something between the parties, the law -- I
21 think these arguments about whether TNT had control
22 over TnW, or TnW had control over TNT, if we're
23 talking about the venture, those questions don't
24 matter. It is whether they had control over the
25 venture and there was profits and losses to be

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1 shared in the venture. I say that because the
2 special interrogatories you requested specifically
3 say TNT, TnW.

4 MR. RICHTER: That is true. I think Your
5 Honor is correct. What the pleading contends is
6 that a joint venture was created by and between the
7 plaintiff LLC and the defendant Inc. So we're
8 talking about a joint venture between TNT and TnW.
9 If there is to be a joint venture between the two
10 entities, I do think it is a hallmark of that joint
11 venture that those two entities have the right to
12 control one another's business activities.

13 THE COURT: Well, if you go and look at the
14 Gordon case and some of the others, they actually
15 single it out, like a singular incident. Like I
16 think a good way to put it is like a Starbucks and
17 a McDonald's that want to build on an out parcel,
18 but they don't have access. So they go in together
19 and say we're going to buy access on 501, and
20 that's our joint venture. That doesn't mean
21 McDonald's has control over the assets of
22 Starbucks, and Starbucks doesn't control the books
23 of McDonald's. They simply control the singular
24 joint venture and what that joint venture was.

25 The question in this case is: What was the

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1 joint venture? I think that is the question all
2 along.

3 MR. RICHTER: That is the problem -- a
4 problem in the case. So to your analogy, you know,
5 if these two entities said, you know, that Blue
6 Crab Festival is coming up, let's go together and
7 pool resources and throw that festival, and
8 whatever we get, we'll whack it fifty-fifty. That
9 is a joint enterprise for that specific purpose,
10 and the cases speak to that, too. What is the
11 specific purpose for which we are doing this joint
12 enterprise, and general business is not a specific
13 purpose. All you heard is, well, we're just going
14 to generally get together with no structure, no
15 purpose, no design, and so that is not a joint
16 venture.

17 THE COURT: There has been evidence that
18 there was a joint purpose or development. Again,
19 it never -- well, part of that quasi, and some of
20 it happened, and I know the term is thrown out
21 there "a dream," but it looked like there was a
22 purpose. Again, if it is believed, and I'm not
23 talking about where I stand on any of these. I'm
24 just simply throwing it out there, that the joint
25 venture appears to have been a dream, slash,

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1 development plan. Now, whether or not that can be
2 construed as a single incident or not, I don't
3 know.

4 MR. RICHTER: Whether you take that in
5 equity, whether you rule that as a matter of law,
6 or whether we revisit you as the 13th juror if
7 and when these folks get it wrong, I think it
8 ultimately comes back to you at some point in time.
9 That's why in our special interrogatories, we
10 didn't ask the question, Is there a joint venture,
11 because that appeared to be more of an application
12 of law, where we were asking the jury for the
13 factual components of that if Your Honor felt those
14 facts would be beneficial to hear. But whether it
15 exists or not, it doesn't strike me that that is a
16 matter we'll submit to a lay jury. That seems to
17 be a matter of law for Your Honor to determine.

18 THE COURT: If we are going to charge them
19 about the law and what a joint venture is, I think
20 it is a factual question. If the jury can find
21 whether or not a joint venture existed, I think
22 that is a jury question.

23 Now, as to equity, again, we'll cross that
24 bridge when we get there.

25 MR. PLAYER: I agree with Your Honor. Our

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1 argument to the jury in closing is going to be the
2 joint venture was we get to use the parking lot,
3 they get to use the dock. That is what they were
4 jointly doing together. That was the singularity,
5 and neither one could control the separate
6 businesses of TnW doing jet skis. It was the use.
7 They got two dock slips. We got to use the parking
8 lot. You know, at least for us the use of the
9 parking lot was an existential necessity because we
10 can't operate without it.

11 They are right, it is on that line of was
12 this promissory estoppel or a joint venture. I
13 think that is for the jury to determine. But all
14 of the arguments about TnW controlling TNT, and TNT
15 controlling TnW, that is not what we're arguing.
16 We are arguing they said we could use the parking
17 lot to do business, and in exchange we're allowing
18 them to use the docks that we built. That is what
19 we claim the joint venture is.

20 MR. BELLAMY: Your Honor, this is
21 frustrating, because ever since -- I think the
22 testimony is pretty clear from Wade and Chris and
23 also from Justine that we've never used the docks,
24 and they've never wanted us to use the docks, I
25 mean....

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1 MR. PLAYER: I mean that is not true. Wade
2 said it. Steven Crossen said it.

3 MR. BELLAMY: No. No. What I'm saying is
4 when I went down there --

5 THE COURT: There is a nice picture of you in
6 shorts I think (laughing).

7 MR. BELLAMY: That is a little too personal
8 (laughing).

9 MR. PLAYER: We got it on video, too
10 (laughing).

11 MR. BELLAMY: What it was is my clients
12 called me and said -- because I'm part of the --

13 THE COURT: I'm messing you.

14 MR. BELLAMY: I know. They said the fuel
15 line was leaking and someone tampered with the fuel
16 line and poked holes on it. So I go down there. I
17 walked down to Robert and I said, Well, I don't see
18 where it's leaking, and all the sudden who know who
19 comes there yelling and screaming saying we're
20 trespassing. I think it is funny for Tucker to say
21 they had complete use of the property. No, we
22 didn't.

23 I mean, maybe when Tim was there, my clients
24 would show up, and they would basically do things
25 likes pump gas, assist him. But as you hear from

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1 Justine, they didn't want anything to do with the
2 marina.

3 You know, I think that the issue is what is a
4 joint venture, okay. I think Ronnie is a hundred
5 percent right that they pled breach of a joint
6 venture agreement, and they pled promissory
7 estoppel establishing a joint venture. They
8 borrowed money from the bank, bought the property,
9 built the fuel lines. I mean, that is where the
10 joint venture is combining their efforts and
11 talents to build something, and they say, No, no,
12 that is not all. It is just a parking lot now. It
13 is a game of bait and switch.

14 The two main elements in South Carolina law
15 is if you have a joint venture, you have to show,
16 number one, that the two co-joint venturers had
17 equal control over the subject matter joint
18 venture, which is the marina. That's it. It's not
19 the parking lot; it's the marina.

20 Tucker keeps moving the ball, and I admire
21 him he tries to figure how to stay alive, and he's
22 running out of lives. I mean, Your Honor may feel
23 differently, but it's that simple.

24 The fact is Henri alleged breach of joint
25 venture agreement, and the reason why she didn't

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1 plead promissory estoppel is she knew she couldn't
2 prove a -- there is no written contract. There was
3 no meeting of the minds. When we took Wade's
4 deposition, he couldn't articulate what the
5 elements of the joint venture agreement were, and
6 he said, Well, you know, the operating agreement
7 with TnW, yeah, that was our joint agreement. That
8 goes to the ambiguity of the promise or whatever
9 was there.

10 And, Your Honor, I asked him -- and Wade is
11 sitting right there. I said, Wade, let me read to
12 you the definition of joint venture, and I read it
13 to him. Tucker didn't object. He said, Howell, I
14 don't think we are in a joint venture, essentially.
15 He didn't say it like that, but if you read the
16 testimony, there wasn't any splitting of profits,
17 and they didn't have the right to exercise any
18 control over the marina. He said, I don't want to
19 exercise any control of the restaurant.

20 So this takes us -- this case is screwed up;
21 we know it. We were trying to work it out, and I
22 was hoping that it would be like that famous judge
23 you worked for would say, Let me tell you
24 something, lawyers, you need to work this out
25 because I might not be happy with what I have to

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1 say. This is something that begs resolution of a
2 settlement.

3 THE COURT: It's funny you say that, because
4 I actually talked to David about that. I was going
5 to wait until we were done, but I do want to talk
6 to all of the parties and simply put it this way:
7 Thursday, the jury is hearing this. I worked a lot
8 as a mediator before I took the bench. I was a
9 very firm believer of mediation, and one of the
10 things I always told the parties at mediation is
11 you control outcome at mediation. You don't
12 control it any other time. Now is the time that
13 you have the ability to control the outcome and
14 have a say-so of what the outcome is.

15 Right now, you have heard the arguments that
16 everyone is making, and the arguments that the
17 lawyers have made. Now is the last point you will
18 get to have a say-so in what happens. I can't tell
19 you what that needs to be. I can tell you that
20 there has to be a common ground; otherwise, I mean
21 if nothing else, the common ground is that you both
22 love Little River -- or all of you love Little
23 River and love the water, and I'm right with you on
24 all of that.

25 You've got until Thursday to determine

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1 whether or not there is some kind of agreement that
2 can be reached. Because after that, just like what
3 Howell said, you may not like what I do or the jury
4 does. And the jury may end up ruling in a way that
5 puts you right back where you are right this
6 second, which is confused and wondering what to do
7 next. They can do that. It can be a situation
8 that kicks the can down the road and costs way more
9 money.

10 Again, I'm not telling you what to do. I'm
11 simply saying this is the last chance that you all
12 have to settle on your own terms. After that, it
13 will be up to the jury and me.

14 Any other arguments that need to be made in
15 regards to the DV?

16 MR. BELLAMY: One last thing and I'll shut
17 up. When Rhett Sansbury got up there, Your
18 Honor -- and he's one of the witnesses -- he
19 basically issued policies for both the restaurant
20 and also the marina. He got up there and basically
21 said -- first time I heard him say it -- he talked
22 to Tim and said -- Tim basically said there was a
23 partnership between Tim and Wade regarding the
24 marina, and he said -- this is what he told
25 Rhett -- TNT didn't have anything to do with it.

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1 The restaurant didn't have anything to do with it,
2 and I think that is what it is all about.

3 Justine gets up there and says, basically, we
4 didn't want any part of the marina because we don't
5 want to jet skis. We had enough hard time running
6 a restaurant. I think, ultimately, when you kind
7 of separate the wheat from the chaff, Tim and Wade
8 stands for Tim and Wade. Those guys had a dream,
9 not TNT. I think that Rhett Sansbury said it.
10 When he came in there and told me that Tim told
11 him, it was like, Really? First time I heard it.
12 But maybe he feels freer to talk since Wade fired
13 him.

14 So my point is that there was an agreement
15 with Tim and Wade, but it had nothing to do with
16 TNT. There is no joint venture between TNT and the
17 restaurant and the marina. It was between Tim and
18 Wade because those guys had a special bond. They
19 did, and that's what's sad to say. You could tell
20 when Wade testified and Tim testified, those guys
21 loved each other and enjoyed each other's company.
22 They loved fishing and hunting. So Wade didn't
23 care about being in a joint venture with the
24 restaurant. He didn't want nothing to do with the
25 restaurant. He just wanted to be with Tim. And

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1 that is what the tragedy is. It got messed up so
2 bad.

3 All the lawyers have worked really hard to
4 try to figure some way to bring clarity to this
5 situation that is fair and equitable to everybody,
6 not just our client. That is what we're trying to
7 do. I'm looking at Wade and Chris over there and
8 looking at my clients, and we have to figure this
9 out. Maybe the court system and jury system can't
10 fix it, but if we all put our heads together, I
11 think we can.

12 That is the last thing.

13 MR. HARRISON: This was not brought up at
14 directed verdict when we first introduced it, but
15 if I don't introduce this, I'll feel like I would
16 be remiss. But, Your Honor, everybody is talking
17 about looking for this contract that tells us what
18 the terms are between these two, and everybody kind
19 of said, We don't have one. Well, Judge, I'm sure
20 everybody has been paying attention to the
21 questions here, and we actually do. We have not
22 one contract, but two.

23 We have two operating agreements, and the
24 operating agreements in this case would have
25 required both parties to have a vote. It is clear

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1 from the record and the testimony that in order to
2 even do any of this -- transfer property, allow the
3 use of property -- any of those things, those
4 sections -- and they are in both operating
5 agreements -- precludes them from doing everything
6 that the plaintiff says that these guys did. Those
7 are contracts that were entered into by these guys
8 (indicates) and those guys independently, and I
9 think they are estopped from bringing this, because
10 in order to do what they say they have done, they
11 would have had to have a vote, and that never
12 happened.

13 It is not like we don't have contracts. We
14 just don't have a joint venture agreement. But we
15 have two contracts that prevent this from ever
16 happening, Judge, and I think it should be
17 dismissed on those grounds and not go to the jury.

18 THE COURT: It sounds like on both of those,
19 TNT and TnW would both have -- as corporations
20 would -- have actions against their entities. I
21 assume both have corporate resolutions to engage in
22 the loan they got. They would have had to;
23 otherwise, the bank wouldn't have accepted it. I
24 haven't seen the corporate resolutions, but all the
25 lawyers -- I'm assuming you all understand that,

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1 that the bank wouldn't have accepted it unless
2 there was.

3 MR. PLAYER: And we'll request a charge on
4 apparent authority and actual authority, Your
5 Honor.

6 THE COURT: Yeah. I understand your
7 argument. Again, I'll deny your motions as to
8 directed verified, as to your previous argument as
9 well, Mr. Richter. I think there is evidence that
10 can go to the jury on this. Whatever the joint
11 venture may have been, there's been evidence that
12 it may have been this, may have been this, may have
13 been this. But as I previously stated, I do think
14 this is an opportunity that the parties may have an
15 ability to come to some resolution. If not, hey,
16 I'm here. I appreciate that all of you have been
17 obviously very passionate about what you have done.

18 The plaintiffs, I get it. Mr. Kettner, I
19 understand. You put a lot of time in, too. And to
20 the parties, I get it. I'm passionate about
21 things, too. I don't ever hold anyone's passion
22 against them, not ever. I can be assured I've been
23 called down in this court I don't know how many
24 times, but....

25 MR. PLAYER: Probably by that fellow on the

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1 back wall. You are pointing to Judge John
2 (laughing.)

3 THE COURT: Still being called down by my dad
4 constantly (laughing).

5 Anyway, I do have proposed jury charges. I
6 do want -- I know, Mr. Player, you haven't had a
7 chance to look at the jury charges. I think what I
8 would like to do is Thursday meet here at 9:00 and
9 get started at 9:00. We will have the jury, and
10 we'll have 30, 45 minutes prior. I'll have a law
11 clerk -- I think -- assuming customs doesn't get
12 him coming back in. But in the process, I'll start
13 working on a proposed charge too with what you have
14 sent. I'll take that -- most of the stuff you sent
15 is from Judge Anderson's book anyway.

16 MR. RICHTER: There is one little phrase --

17 THE COURT: I saw that.

18 MR. RICHTER: -- highlighted. That language
19 doesn't appear in the case that I cited, and I
20 wanted that clear to the Court. I found that
21 language in another case, and I kind of smeared it
22 in there.

23 THE COURT: Clear and convincing, that is not
24 something that would ever need to be removed. I
25 mean, clear and convincing is standard. So I know

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1 it is not in that charge, but I don't think that it
2 is bad --

3 MR. RICHTER: I just like to remind myself to
4 tell you it is not in the case, that I borrowed it
5 from another case.

6 And, Your Honor, on 15(b), I would like a
7 ruling or if the Court wants to hold that and we
8 wait --

9 THE COURT: I think it is probably better to
10 hold it, and depending on what happens, at that
11 point we can deal with it.

12 MR. BELLAMY: For clarification, I guess I
13 want to make sure we're in agreement that on the
14 promissory estoppel they have the elements by clear
15 and convincing?

16 THE COURT: Yeah, that's correct.

17 MR. BELLAMY: Thank you.

18 THE COURT: I did have somewhat of a joint
19 venture charge that I put together. It encompasses
20 Gordon v. Rothberg and some out-of-state cases that
21 I also think, really and truly -- I got it from
22 Andrew for the most part. But it simply says that
23 a joint venture has been defined as an association
24 of persons with the intent by way of expressed or
25 implied contract to engage in, carry out, a

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1 business venture for joint profit for which purpose
2 they combine their efforts, property, money, skills
3 and knowledge without creating partnership or
4 corporation. Pursuant to an agreement, there will
5 be a community of interest among them as to the
6 purpose of the undertaking, and that each
7 participant will stand in the relationship of
8 principal, as well as agent to each of the others,
9 with an equal right to control the means employed
10 to effect the common purpose of the venture.

11 That is pulling language from the Gordon and
12 also from Andrew. But you hit the nail on the head
13 when you said there is not a lot of case law on
14 joint ventures.

15 MR. PLAYER: At least not for this situation.

16 MR. HARRISON: Where did you cite that out
17 of, Judge?

18 THE COURT: It was....

19 MR. HARRISON: It might help me in this case
20 or another case.

21 THE COURT: 12 Anger POF second 295,
22 existence of joint venture.

23 MR. HARRISON: Second you said?

24 THE COURT: Yes.

25 MR. HARRISON: Thank you, Your Honor.

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1 THE COURT: Anything else we need to take up?

2 MR. PLAYER: No, Your Honor.

3 THE COURT: Motions by the plaintiff?

4 MR. PLAYER: No, Your Honor.

5 MR. HARRISON: No, Your Honor.

6 MR. RICHTER: No, sir.

7 THE COURT: One of the things that didn't get
8 sent on the verdict was nuisance.

9 MR. RICHTER: I figured they --

10 MR. PLAYER: That's a typo.

11 THE COURT: Yeah, I don't know how you want
12 to do that. But, again, on Thursday we'll have a
13 conference on verdict form and trying to figure
14 that out as well.

15 Anything else?

16 MR. RICHTER: So.

17 THE COURT: Thanks, guys. See you on
18 Thursday.

19 (WHEREUPON, THE PROCEEDINGS FOR JUNE 18, 2024
20 CONCLUDED. JUNE 19, 2024 WAS A HOLIDAY.

21 (THE FOLLOWING WAS HAD ON JUNE 20, 2024 OUT
22 OF THE HEARING OF THE JURY.)

23 THE COURT. Thank you. Be seated.

24 Sorry, I was wrong. My law clerk doesn't get
25 back until tomorrow. But I had mentioned that we

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1 were going to go back over some of the charges to
2 make sure everyone was on the same page. I
3 received charges, Howell, from you. I previously
4 received some instructions from you, and then I got
5 some from Mr. Player. It's a lot.

6 I -- did you all receive the ones from Mr.
7 Player? Any objections to anything he's
8 requesting?

9 MR. RICHTER: Most of it.

10 You want to take it?

11 MR. MONGILLO: Yes.

12 THE COURT: Happy to hear from you.

13 MR. MONGILLO: We're starting with the jury
14 charges?

15 THE COURT: Start with the jury charges, and
16 then we'll go to the verdict form.

17 MR. MONGILLO: Yes, Your Honor. I don't know
18 if one of the things that might involve -- I don't
19 know if you saw our second Rule 15(b) motion we
20 filed on Wednesday with the Court?

21 THE COURT: I have not.

22 MR. MONGILLO: So could I put that on the
23 record, because I think that would affect the
24 charge.

25 So Wednesday morning, at about 10:00, we

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1 filed a second Rule 15(b) motion to add a cause of
2 action for defamation per se. Mr. Long testified,
3 for the first time that we heard, he had published
4 to a third party outside the four corners of court
5 documents that Mr. Kettner was an embezzler to the
6 bank, if you remember that testimony.

7 So we're asking the Court to allow us to
8 amend and add the 15(b) defamation per se. There
9 is no prejudice to the plaintiff because he
10 presented significant evidence about this. If you
11 remember, both Mr. Kiser and Mr. Long said he stole
12 TnW funds. They brought in Brett Todd, who managed
13 the ski hut, to say funds were missing.

14 Plaintiffs' Exhibit 24 is 180 pages of ski hut
15 sheets, presumably to show, again, that he stole
16 money, embezzled funds.

17 Exhibit 25 is 16 checks. That's Plaintiffs'
18 Exhibit 25. It's 16 checks, again, to show the
19 theft, that he was an embezzler.

20 There is testimony that there was two sets of
21 books repeatedly. And in my direct of Mr. Kettner,
22 we presented to the jury Exhibits 48, 49 and 54 --
23 and all of these went in without objection under
24 the Rule 15(b) standard -- to show that Mr. Kettner
25 did not embezzle or steal funds.

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1 So I don't think there is any prejudice to
2 the plaintiff. This issue was explicitly tried,
3 the issue of him stealing. What is new -- and this
4 has been going on since March 21 -- that we heard
5 that he actually said this to a bank official.

6 THE COURT: You all said that prior to trial,
7 that he had done that.

8 MR. MONGILLO: In the four corners of the
9 documents. We didn't know that it had been
10 published to a third party. So that's where -- you
11 know, there is no, obviously, defamation in a court
12 document saying he misappropriated funds, or
13 whatnot. What was news to us was that.

14 Now, we were present for the depositions of
15 the bankers. We were present for Mr. Long's
16 deposition. But, you know, that's now been brought
17 in front of the jury repeatedly, even though
18 they've abandoned those claims. But we think that
19 for judicial economy, because if it doesn't happen
20 now, there is just going to be round three of this
21 litigation, and this motion can be granted at any
22 time.

23 The cases are clear; they are liberally
24 allowed. There was no objections to the evidence
25 brought in. So this is clearly before the jury:

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1 Did Mr. Kettner steal money or did he not? Calling
2 him an embezzler is defamation per se, so the
3 damages are presumed. So we would like to add that
4 as counterclaim, and that would, of course, affect
5 the charge conference.

6 THE COURT: I mean, there is still a breach
7 of fiduciary duty that is still pending. They put
8 up evidence of that, but I understand you're trying
9 to take it a step further and say that it's
10 defamation of character, but you knew that prior to
11 this.

12 Mr. Player, I don't need to hear from you.

13 I'm going to deny your motion.

14 MR. HARRISON: Your Honor, I would like to
15 move on behalf of my clients under 15(b). We pled
16 in our answer to the second amended complaint
17 additional defenses. Based on the evidence and the
18 testimony and sort of the way this trial has gone,
19 we ask that the Court allow us to discuss and get
20 some sort of instruction on mutual mistake or
21 mistake, however you would like to do it. Some
22 people say mutual mistake. It is a separate
23 defense than mistake. But however Your Honor would
24 like to put it in, we would like that instruction
25 as part of it.

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1 THE COURT: You don't have a proposed
2 instruction I can look at?

3 MR. HARRISON: We can provide that to you,
4 yes, sir.

5 THE COURT: All right.

6 MR. PLAYER: I don't care.

7 THE COURT: Okay. Let's go to plaintiffs'
8 request of charge then. Some of these were
9 actually some of Mr. Bellamy's as well, as far as
10 the proposals. But go to what you all object to in
11 regards to the plaintiffs' request to charge.

12 MR. RICHTER: Your Honor, we object to the
13 charge on contract. The case has been tried as a
14 promissory estoppel, and as a substitute for a
15 contract, I think it is confusing.

16 MR. PLAYER: It is alternative pleading. We
17 pled breach of an agreement. It was a breach of a
18 joint venture agreement, but that is a breach of
19 contract. I mean, we think we have -- and they
20 have tried to bring in statute of frauds. I think
21 there is more than sufficient evidence of partial
22 performance taken out of statute of frauds, but
23 it's promissory estoppel if there is not a
24 contract. My first argument is that there is a
25 contract, and they breached it by not allowing us

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1 to use the parking lot in exchange for using the
2 marina. But that is a breach of contract, so I
3 don't understand -- it is one of my causes of
4 action. It says "agreement," and an agreement is a
5 contract, so I don't know why that wouldn't come
6 in.

7 THE COURT: I mean, as to your argument, I
8 mean, joint venture, my charge on that, it
9 specifically says, "By way of expressed or implied
10 contract." I understand your argument that it is
11 an alternative. I mean, I'll be honest with you,
12 charging joint venture, and then going through each
13 part of contract is a bit wordy. I'm looking at it
14 right now, and I'm about at 25 pages of jury
15 charges from what you all requested. So, if we
16 can, whittle some of this stuff down.

17 MR. BELLAMY: I'm fine with whittling stuff
18 down with respect to the contract, the tortious
19 interference, and nuisance issues.

20 THE COURT: Mr. Player, as to the tortious
21 interference, you put 33.1 and 33.2, which deals
22 with existing contract and prospective contract.

23 MR. PLAYER: Yes, Your Honor.

24 THE COURT: What is the prospective contract?
25 I think I missed that.

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1 MR. PLAYER: The evidence of them going down
2 and threatening the people with the docks with,
3 We're going to tow your car. It is a little
4 loosey-goosey.

5 But the one that is clearly there is the Eric
6 Rolf contract because he said they harassed me to
7 the point where I had to leave, and that was a
8 contract for \$10,000 a month. So I think that
9 is -- the economic interference, I couldn't find
10 that cause of action. I think what she stated,
11 maybe in-artfully, is you interfered with our
12 contract, the interference with prospective would
13 be, if there were people coming to use the marina,
14 and their actions drive them away, that is
15 interference with prospective contract.

16 In terms of putting a value on that, I admit,
17 we're a little lacking in that department, so.

18 MR. MONGILLO: On that one, I believe the
19 testimony from Mr. Rolf was that he signed a
20 one-year contract. So he signed in 2022, and then
21 in 2023, he decided not to come back. So this
22 issue of if we would have come back or not, I think
23 that is speculation. I mean, if it was a
24 multi-year contract....

25 THE COURT: I'm pretty sure he said why he

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1 didn't come back.

2 MR. MONGILLO: Well, why he didn't sign a new
3 contract. He would have to re-up the terms.

4 MR. PLAYER: And that is prospective, because
5 he would have renewed, but didn't. So it is not a
6 breach of a sitting contract, but the one that he
7 would have done if he hadn't been harassed by the
8 defendants.

9 MR. RICHTER: Your Honor, I accept that. You
10 know, the problem is -- I think the Court has
11 always ruled this out -- is the idea of we would
12 have made lots of money is pure speculation.

13 THE COURT: And the jury can apply the
14 evidence to the law as they see fit. I mean, there
15 hasn't been testimony as to what this prospective
16 money would be.

17 MR. PLAYER: I think there was: \$10,000 a
18 month.

19 THE COURT: On that.

20 MR. PLAYER: The other stuff, you're correct,
21 we didn't have a way to quantify it, but I put it
22 in there because it was either a contract he had,
23 that he did fulfill, but then instead of renewing
24 that -- that was the prospective contract, and he
25 couldn't do it because they harassed him. So I put

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1 it in there to see what one applies. But the only
2 thing I'm arguing to the jury is the Rolf contract
3 with regards to the interference.

4 THE COURT: All right. I'll charge it, then.

5 MR. RICHTER: We object also to a punitive
6 charge. I agree that breach of fiduciary duty
7 entitles you to a punitive charge, but the problem
8 is there nothing in the record upon which a
9 punitive award can be based. The only evidence of
10 net worth or value was in the bank's memorandum in
11 2016. There is one statement as to Mr. Kettner's
12 net worth. We can't look at 2016 representation of
13 a bank application in 2024. And his testimony was
14 he was un-retired and working a food truck now in
15 Wisconsin. So how are we going to charge punitive
16 damages when there is something in the record?

17 MR. PLAYER: I believe all of the tax returns
18 are in the record. I specifically questioned him
19 about his net worth on the stand, and he is said it
20 is not that much now, but, you know.

21 MR. RICHTER: That's what he said. There is
22 no evidence. It is TNT and TnW's tax returns.
23 There is nothing no Tim Kettner's tax returns.
24 There is noting in the record upon which to
25 ascertain a punitive award against Defendant Tim

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1 Kettner.

2 MR. PLAYER: I think the punitives are based
3 on his actions, not his self-worth. They can
4 consider his worth in determining what they are.
5 But, you know, I don't think we're required to put
6 up his net worth to get punitive. It is based on
7 what his actions are and whether we're entitled to
8 it, and then the jury will be given the factors
9 that they can consider.

10 If there is no -- beyond his own testimony --
11 that I'm not worth \$4 million anymore, you know,
12 that will obviously be a factor that will be
13 unavailable to him, to a large extent, but that
14 doesn't mean they can't formulate a punitive damage
15 award.

16 MR. RICHTER: To pay is a key factor in the
17 award of punitive damages.

18 THE COURT: And that depends on what type of
19 reward they would give. If it was \$10,000 to pay,
20 I think the jury can confer, based on what he's
21 testified to, that he can pay that.

22 MR. PLAYER: Yes.

23 THE COURT: I'm going to charge it.

24 What else in regards to plaintiffs' requests?

25 MR. RICHTER: Just to be cut by 75 percent.

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1 We're going to be reading until Monday.

2 MR. PLAYER: Let me see if I can pull it up,
3 Your Honor.

4 THE COURT: It's not my longest one. I think
5 I had a 30-pager. That was a multi-county criminal
6 case, but....

7 MR. PLAYER: Take nuisance out. I'm going
8 through my closing. It doesn't make sense, so.

9 THE COURT: Okay. So that would be:
10 Elements, reasonableness, standard nuisance, all of
11 that?

12 MR. PLAYER: Yes, sir.

13 MR. BELLAMY: Your Honor, we would object --
14 I'm kidding.

15 THE COURT: Speaking of objecting, you had
16 sent me about -- I don't know -- five-page --

17 MR. BELLAMY: On elements of a joint venture
18 relationship?

19 THE COURT: I'll start with promissory
20 estoppel first. There is a promissory estoppel
21 that is in our Bates book that is much shorter, and
22 it still contains the elements, what they are, what
23 they must be.

24 MR. BELLAMY: Your Honor, if you would look
25 at Page 205 where it talks about unambiguous

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1 promise, that is what we're looking for, that part
2 right there. Because we think it clearly
3 defines -- because the jury will try to say what is
4 an unambiguous promise, and I think that
5 explanation is pretty good. I took it out of a
6 couple of cases, but without any objection, if you
7 just charge that part, I'll be happy, Your Honor.
8 It's on Page 205.

9 THE COURT: Yeah. I was looking to see if
10 that was in --

11 MR. BELLAMY: I don't think it is in the
12 Anderson's charge book.

13 THE COURT: Any objection, Mr. Player, with
14 that?

15 MR. PLAYER: No, Your Honor.

16 THE COURT: All right.

17 MR. BELLAMY: Do you have any issue with the
18 joint venture charge and intent to form a joint
19 venture?

20 THE COURT: Let me get back to it.

21 One of the problems -- I don't like to read
22 cases into the record.

23 MR. BELLAMY: I cited them for your benefit,
24 not to read it. It has burden of proof.

25 THE COURT: Same charge about stuff about

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1 joint control and passengers of an automobile, and
2 that kind of stuff. I feel that is just --

3 MR. BELLAMY: I don't have a problem with
4 that. You can strike that.

5 The one we would like is where it says;
6 "Generally, the fiduciary relationship between
7 co-venturers ordinarily precludes one of them from
8 purchasing or leasing property related to the
9 enterprise, either for himself or another, in the
10 absence of full disclosure to his associate."

11 In this particular case, there was testimony,
12 Your Honor, that --

13 THE COURT: Where is that? What page?

14 MR. BELLAMY: That's Page 2 of 2 on the
15 elements of a joint venture relationship and the
16 requirements. There is testimony in the record to
17 support that charge.

18 MR. PLAYER: Which one?

19 MR. BELLAMY: Regarding the leasing. It
20 says: "The co-venturer ordinarily precludes one of
21 them from purchasing or releasing property related
22 to the enterprise, either from himself or another,
23 in the absence of full disclosure to his
24 associates," which would be us if we're in a joint
25 venture.

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1 THE COURT: I mean, we have already -- we're
2 already charging agent, apparent authority. I
3 mean, what you are talking about -- I understand
4 since everyone used the term "co-venturers," and it
5 uses the term "ordinarily." That is a pretty gray
6 area.

7 MR. BELLAMY: The way we're looking at it in
8 the context is that if we are a joint venture,
9 before Mr. Long leased the property out to East
10 Coast Jet Skis, we should have been consulted.

11 THE COURT: Is that a joint venture case?

12 MR. BELLAMY: Yes, sir.

13 THE COURT: I didn't see --

14 MR. BELLAMY: I have a copy of it.

15 THE COURT: Print it up, and let's take a
16 look at it.

17 MR. BELLAMY: I have the relevant part
18 highlighted. It is a joint venture case.

19 THE COURT: Mr. Player, any objection to
20 that? It does appear to be -- I don't know if
21 there is any negative information, but I didn't see
22 it when I was looking at anything.

23 MR. PLAYER: That's fine.

24 MR. BELLAMY: Your Honor, I Shepardized it.
25 It is good law.

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1 Also, the other thing I would want, where it
2 says -- this part of the charge that I did. It
3 says: "However, the mere sharing of an economic
4 interest is not sufficient to form a joint venture
5 since there must be some evidence that the parties
6 participated and had control over the enterprise;
7 similarly, the assertion of a mutually beneficial
8 relationship without more is insufficient to
9 establish an equal right and control of a venture."

10 And another one I want to add, it says: "In
11 addition, a profit for the purposes of the sharing
12 of the profits as a requirement for a joint venture
13 means a net financial gain or return of the joint
14 venture, not merely for the parties individually."

15 I think those charges are relative in this
16 case because there seems to be some conflation
17 between benefit and profit, and like Your Honor
18 indicated, Ralph King Anderson doesn't have a
19 charge on joint venture.

20 The other thing I would add, too, is that the
21 burden of proof to establish the relationship of
22 joint venturers is on the party who alleges the
23 existence of a relationship, and I cite the
24 relevant case law and South Carolina juris
25 prudence.

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1 And the defendant would want to add this, and
2 this is an important charge for us: "In order to
3 establish the existence of a joint venture, it is
4 essential to establish that each party enjoys an
5 equal right to control the conduct of the other
6 regarding the common purpose."

7 And this is a Peoples Federal case, a
8 foreclosure case. That goes with lender liability,
9 and Mike Battle handled that.

10 But those are the charges that are important
11 to us, as far as our defense of the case.

12 And then -- I'm sorry, one other thing I
13 would like to add regarding joint ventures is the
14 charge that I have to form a joint venture. I
15 think that is important, because there seems to be
16 a lot of contradictory evidence where, you know,
17 witnesses are testifying that there is allegedly --
18 there is a joint venture, and then other people are
19 indicating that based upon insurance documents,
20 financial records, tax returns, which indicate
21 there is evidence that there is not a joint venture
22 relationship. So I think the jury needs to
23 understand did they really intend to enter into a
24 joint venture relationship.

25 I took these charges from Am Jur. I kind of

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1 cleaned it up a little bit, but it is an Am Jur
2 charge.

3 Then the charge specifically from Am Jur is
4 Am Jur 2d, Section 12.

5 THE COURT: All right.

6 MR. BELLAMY: Last, but not least, is the
7 Rule 23(b) charge.

8 THE COURT: You want me to charge that to the
9 jury?

10 MR. BELLAMY: Your Honor, it is part of our
11 theory of the case. It is a factual issue at this
12 point.

13 THE COURT: That's been ruled on by Judge
14 Culbertson, and me twice, so I'm not going to
15 charge it.

16 MR. PLAYER: I'm fine getting rid of 19-3.
17 I'll fine getting rid of 19-8, but I think that is
18 basically what Michael asked to be pled. 19-15, I
19 can get rid of. 19-29, lost profit.

20 THE COURT: So 19-3, and what now?

21 MR. PLAYER: I said eight, but I think
22 Michael is asking for that charge, because it deals
23 with -- they both have to mutually intend to join.

24 MR. HARRISON: That's what we're saying,
25 Judge.

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1 MR. PLAYER: And 19-29 for lost profits can
2 be taken out.

3 THE COURT: Lost profits, okay. Okay.

4 MR. BELLAMY: Your Honor, may I approach?

5 THE COURT: Yeah.

6 MR. BELLAMY: It's that highlighted part I
7 wanted to charge --

8 THE COURT: Yeah, I have it. I highlighted
9 it.

10 MR. BELLAMY: Okay. Thank you.

11 THE COURT: Mr. Richter, I'm trying to find
12 your jury charges up here. I know you gave me
13 some.

14 MR. RICHTER: Your Honor, I believe anything
15 we gave you would be -- I can't think of anything
16 we need that is not already included.

17 THE COURT: All right. Let's move then to
18 the verdict form.

19 MR. RICHTER: Which one do you want to look
20 at? I have several objections. We submitted one
21 yesterday, and I know you have two before you.

22 THE COURT: Let me see if I can pull up the
23 one about....

24 MR. BELLAMY: For the record, we're joining
25 in the form presented by co-counsel.

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1 (A brief pause in the proceedings.)

2 THE COURT: Sorry, Mr. Richter. There it is.

3 (A brief pause in the proceedings.)

4 THE COURT: All right. Let's go through
5 yours first, Mr. Richter. I see yours first, so
6 we'll do it that way.

7 All right. Mr. Player, do you have a copy of
8 that?

9 MR. PLAYER: Give me a second, Your Honor.

10 MR. MONGILLO: It is the updated one we
11 e-mailed you Tuesday, not the one from pretrial.

12 THE COURT: Let me see when I received this.
13 I received this on Tuesday at 11:01 a.m.

14 MR. MONGILLO: Yes, Your Honor.

15 MR. PLAYER: Yes, Your Honor, I have it.

16 THE COURT: All right. There are some --
17 start with the special interrogatories. Do you
18 have any objections to his special interrogatories?

19 MR. PLAYER: Yes, Your Honor. That is not
20 what we're arguing. I mean, we've never argued
21 that we had a right to control the business
22 activities; that they had the business activities
23 of TnW and More. Our claim with the joint venture
24 is that they allowed us to use the parking lot, and
25 we allowed them to use the dock. So I think

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1 that -- obviously, my client says they didn't have
2 the ability to control their individual businesses,
3 either one of them. The joint venture was just
4 land usage.

5 THE COURT: The theory of your case has been
6 an unnamed joint venture between these parties, but
7 that the joint venture was a separate whatever you
8 want to call it --

9 MR. PLAYER: Mess, yeah.

10 THE COURT: Mess might be the best way.

11 Mr. Richter, what is your response?

12 MR. RICHTER: I have to start with the
13 complaint, Paragraph 5, the document that brings us
14 here. "Joint venture agreement by the plaintiff --
15 business activities on the real properties owned by
16 the corporate parties for the purpose -- for which
17 the parties combined their respective real
18 properties -- for the operation of Water Sports
19 rentals, ice cream shop, fishing charters, and
20 other related business activities."

21 The new theory of the joint venture is we got
22 together to share a parking lot. So I don't know
23 -- I don't know what we do with these things that
24 never happened. Obviously, we never developed the
25 properties. We never ran ice cream shops or

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1 fishing charters, or any of this stuff together.

2 So the issue of the control is central to the
3 existence of the joint venture. We talked before
4 about the fact that this case is a mix of legal and
5 equitable, and what role does the jury play here.
6 So in our questions we tried to it keep it strictly
7 factual to hit the elements that would have to be
8 met in order to make these causes of action. I
9 mean, control is central --

10 THE COURT: Control of TNT or TnW and More, I
11 mean --

12 MR. RICHTER: As opposed to control of what?
13 What do we even say to the jury? Did they have the
14 right to control the
15 unnamed-to-be-created-combination that never
16 happened?

17 MR. PLAYER: Your Honor, that's not the
18 evidence in this case.

19 MR. RICHTER: Yes, it is.

20 MR. PLAYER: No, it's not. TNT basically
21 didn't deny anything, okay. You heard Justine.
22 None of the other ones testified. Our testimony
23 was very clear. We get to use the parking lot for
24 our customers, and they use two of our slips. They
25 had control over the two slips -- there is signs

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1 that we had control over the parking lot. Our
2 testimony, which is not disputed, was that we gave
3 them two slips on the dock. They controlled those
4 two spaces, and we controlled the portion of the
5 parking lot that was necessary to get our permit
6 and to operate our business. That's the control.
7 That's the joint venture. That is where the
8 control is.

9 THE COURT: Wouldn't have there also been
10 control over the assets that were obtained from the
11 bank, joint control, whether that is Kettner or
12 whether that is TNT, or Wade, or whether that is
13 TnW? I mean, that is joint money.

14 MR. PLAYER: I agree. That's the other
15 thing. I don't know if they are trying to argue
16 around the loan, but those loan proceeds was
17 available to everyone. Anyone could take a --

18 THE COURT: I don't know why it wasn't talked
19 about, but am I right that there were two notes
20 that were paid off?

21 MR. PLAYER: Yes, for the parking lot.

22 MR. BELLAMY: They were refinanced, Your
23 Honor. They were existing mortgages on TNT's
24 parking lot, real estate. In order to get the
25 loan, they had to refinance and pay off these

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1 mortgages.

2 MR. PLAYER: So now we became responsible for
3 their purchase money mortgage on the parking lot
4 that they say we have nothing to do with?

5 THE COURT: Were they refinanced, or
6 refinanced and satisfied through that?

7 MR. BELLAMY: They were not satisfied. We're
8 still paying on it.

9 MR. PLAYER: On the \$1.1 million loan.

10 MR. BELLAMY: \$280,000 plus the interest on
11 the loan documents.

12 THE COURT: I thought in the credit memo it
13 said two notes were being satisfied?

14 MR. PLAYER: They were.

15 THE COURT: What were those?

16 MR. BELLAMY: Well, there is some
17 clarification whether they were -- seems like they
18 were satisfied and then -- anyway....

19 MR. HARRISON: They just rolled those loans
20 over.

21 MR. PLAYER: And we became responsible for
22 them.

23 MR. BELLAMY: They were paid off
24 automatically. It took \$280,000. November 27 of
25 2017, the 280 went to the two banks directly. My

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1 clients didn't touch that. It went to satisfy
2 those existing mortgages of the property.

3 THE COURT: But that is a part of the
4 \$1.1 million loan?

5 MR. PLAYER: Right. We are required to pay
6 it back.

7 MR. BELLAMY: This is more of a -- we put the
8 property so they could get the loan, Your Honor.

9 THE COURT: I understand that, but I'm saying
10 that it appears that the previous notes that were
11 on those properties were satisfied with the
12 proceeds of this loan.

13 MR. PLAYER: Yes.

14 MR. RICHTER: Your Honor, maybe I can suggest
15 a question of -- what if the first question is: Do
16 you find that a joint venture was entered into
17 between TNT and TnW? That is yes or no.

18 THE COURT: Okay.

19 MR. RICHTER: And separately, with regard to
20 the joint venture, do you find that both parties
21 had the equal right to control the business
22 activities? Yes or no.

23 THE COURT: Is it business activities? I
24 guess that is the question: What was the joint
25 venture? Was it a business activity? Was it a

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1 development plan? Simply money that was obtained
2 through --

3 MR. HARRISON: I think that is what we're
4 asking the jury is what is it, and whatever it was,
5 was there control or share of profits? But we're
6 starting with asking the jury, Judge, what is it?
7 I mean, they've alleged something, and we alleged
8 that it is not it. We're asking the jury to tell
9 us what the terms of this joint venture agreement
10 are. I think that is a central problem in this
11 case.

12 We're looking to 12 jurors to tell us what
13 all of these lawyers and all of these clients
14 haven't been able to figure out since 2016, and
15 we're asking them to say what the joint venture
16 was, and then to say, okay, well, this is what it
17 was, now was there control, and were there profits
18 that went back and forth? I think that is the
19 problematic issue that we're facing with this jury
20 charge, and I think everybody feels the same way,
21 in a different way.

22 THE COURT: I'm sure you've seen that the
23 case law throughout the country on joint ventures
24 is all over the place in regards to does there need
25 to be a bank account to be established? In my

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1 opinion of that, how do you establish a bank
2 account on something that is not a corporate
3 entity? You don't have a federal number, I mean.

4 MR. PLAYER: I don't know, Your Honor.

5 THE COURT: It makes -- well, getting off
6 topic, but....

7 MR. RICHTER: If we start with that question:
8 Do you find it was a joint venture? Yes or no. If
9 you answer "no," skip the next one. If you find
10 "yes," --

11 THE COURT: This is for special
12 interrogatories?

13 MR. RICHTER: Yes. If you find "yes," did
14 both entities have control of the activities of the
15 joint venturer?

16 MR. PLAYER: That is redundant. If they find
17 there is a joint venture, they have found that they
18 have a right to control. If you are asking if they
19 answer "yes" to the first one and "no" to the
20 second one, your verdict form is worthless, because
21 they just contradicted themselves.

22 THE COURT: I am going to charge them that in
23 order to find a joint venture, they have to find
24 mutual control.

25 MR. RICHTER: I see that. I think the point

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1 is well taken.

2 THE COURT: We're agreeing on something?

3 MR. HARRISON: It just took two weeks, Judge.

4 THE COURT: Yesterday wasn't a waste.

5 All right. What else as far as special
6 interrogatories?

7 MR. PLAYER: I think that takes out two
8 through four, because that is what you are going to
9 charge. So if you change one to: Is there a joint
10 venture -- and that is why in mine I just put it in
11 the verdict -- is there a joint venture? If so,
12 what are the damages?

13 MR. BELLAMY: Your Honor, I would ask --
14 there is testimony that there was an agreement
15 between Tim and Wade that didn't include TNT. I
16 would ask as a special interrogatory that we
17 include: In the alternative -- or is there
18 evidence -- I guess did they find that there was a
19 separate agreement between Tim and Wade that did
20 not include TNT?

21 THE COURT: Was there a joint venture, and
22 who was it between?

23 MR. HARRISON: Yeah, who were they?

24 MR. PLAYER: Who are the parties to the joint
25 venture.

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1 THE COURT: First question is: Do you find
2 that there was a joint venture?

3 Second question: Who are the participants in
4 that joint venture?

5 MR. RICHTER: I think that's....

6 MR. HARRISON: Yeah, that covers it.

7 MR. RICHTER: Yes, sir.

8 MR. PLAYER: Yeah. And then we get to five,
9 which I'm fine with. I kept that in my form,
10 except for the second part. I think asking 12
11 people to come up with language, you are asking for
12 a disaster, and probably a hung jury or a mistrial.

13 THE COURT: You are talking about: Do you
14 find by a clear and convincing evidence that a
15 clear and unambiguous promise was made between
16 TNT --

17 MR. PLAYER: Yes.

18 MR. RICHTER: Your Honor, I think the next
19 question is necessary -- it could be a thousand
20 different -- we don't know what it is. And, I
21 mean, all due respect to Mr. Player, and tip my hat
22 to you, but I've never seen a leading question in a
23 special interrogatory before, but the language
24 built in kind of suggests to the jury what the
25 answer is. I think that is improper, especially

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1 given the conflicting testimony that has been
2 offered. I think that is a question before the
3 jury. If there was a promise, tell us what it was.
4 I don't see anything wrong with that.

5 I do see something wrong with leading them
6 with: Do you find the promise was that we could
7 all use the parking lot together and you could use
8 the boat slip -- I mean, that is directing the jury
9 to an answer that is the theory of the case, and
10 that's changed nine times that I know of.

11 MR. PLAYER: I mean, Your Honor, my question
12 is: Did you find that the promise dealt with, you
13 know, land rights? That is specifically for you.
14 If they think -- if they come back and say "no,"
15 then it makes your issue on the injunction and what
16 you do with the property rights of the parties in
17 this case pretty simple.

18 If they say "yes," then, you know, I think
19 that becomes an issue for the Court as to how --
20 how to structure that relief. If they think there
21 should be some change in property rights with
22 regards to -- I mean, our entire case is if they
23 take our ability away to use the upland, we lose
24 our business. It is the core of the case. It's
25 what we've argued over and over again.

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1 MR. RICHTER: The, quote on quote, loss of
2 the business is pure speculation. There is nothing
3 in the record what that would represent. To look
4 at his question, if there was an unambiguous
5 promise, will allowing the defendants to break that
6 promise result in the loss of the marina business?

7 MR. PLAYER: Okay. We can take that one out.
8 That was a stretch.

9 THE COURT: So we'll keep it in as: Do you
10 find by a clear and convincing evidence that a
11 clear and unambiguous promise was made between TNT
12 and More, Inc., and TnW and More, LLC? We're
13 keeping that?

14 MR. PLAYER: Yes.

15 THE COURT: All right.

16 MR. RICHTER: Are we asking them to
17 articulate what that promise is? Because that is
18 at the heart of the case. That could be anything.
19 Based upon the evidence, it could have been
20 anything.

21 MR. HARRISON: We have to know how the
22 promise was broken. If they are going to allege a
23 promise, they have to tell us how it was broken to
24 get to the damages. We can't get there if we don't
25 know how it got broken.

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1 MR. PLAYER: It was broken when they kicked
2 us off the land.

3 MR. HARRISON: So says he. We say no.

4 MR. BELLAMY: Your Honor, I want to
5 address -- the jury comes back, hypothetically, and
6 says there is a joint venture relationship between
7 the restaurant and the marina, at least I would
8 assume we would agree we would be entitled to -- on
9 appeal we would be entitled to profits from
10 operation of the marina, as well as the ability to
11 jointly control the operation of the marina.

12 MR. PLAYER: That is not what we said.

13 THE COURT: I don't know if that is what is
14 in the facts. I look at the marina as TnW, and the
15 restaurant is TNT.

16 MR. BELLAMY: Right.

17 THE COURT: This building of what was
18 supposed to be was the joint venture. If profits
19 flowed from that, which it doesn't sound like it
20 did --

21 MR. BELLAMY: To the extent that the profits
22 did flow from it, if we're part of this joint
23 venture -- and the way Henri pled it, Your Honor,
24 it is acquiring the money and building the marina,
25 and once you build it, the operation and management

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1 is thereafter. So if we're stuck in a joint
2 venture, then we would argue that we're entitled to
3 profit from the marina, as well as the ability to
4 control the operation of the marina.

5 THE COURT: There is no law that says that
6 anyone is stuck in a joint venture. The law is
7 clear. It can be a simple thing. It could be the
8 borrowing of the money to do this. But I think
9 there has been facts that it is just not from the
10 marina, that it was also for the parking lot.
11 There has been facts of that.

12 MR. BELLAMY: I'm not -- they want to limit
13 it to the parking lot, and I'm not trying to -- I'm
14 just saying include the whole marina business.

15 MR. HARRISON: It's pled. In their second
16 amended pleadings, they give a whole list. It is
17 their pleading of what it was, which includes
18 building docks, borrowing money. Their whole
19 operation, Judge -- and, quite frankly, there is
20 testimony on the record where they have said that
21 the joint venture, in their depositions, that the
22 joint venture was TnW. The joint venture was
23 Little River Water Sports. They tried that route
24 and didn't get anywhere, so now they are trying to
25 back up and say it is an unnamed entity.

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1 No matter what you call it, Judge, it has
2 what it -- I mean, there are things that it did,
3 and we have to know what those things are in order
4 to understand what the jury is going to give back.
5 The jury has to understand what it was.

6 THE COURT: All right. Let's do this, guys.
7 It is 10:30. I would expect that each of you will
8 probably talk 20 to 30 minutes. Is that a kind of
9 your thought?

10 MR. RICHTER: I think I need 37, Your Honor,
11 but I'm trying to get to 30 (laughing).

12 THE COURT: My reason for saying that is that
13 would put us at noon. We can let the jury have
14 lunch, and then we'll come back and talk about the
15 verdict forms and see what has been put up in
16 closing and see if -- I don't want this to be a
17 situation where we're starting closing at 11:00,
18 and it is 12:30, and then we have not charged them
19 yet. I don't mind charging after lunch. I think
20 it would be nice to give them a little bit of a
21 break before hearing all of your closings.

22 So let's do that. Are you prepared to get
23 closings going?

24 MR. PLAYER: Yes, Your Honor.

25 MR. HARRISON: Sure, Your Honor.

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1 MR. RICHTER: Yes.

2 THE COURT: That gives me an opportunity
3 during your all's closings, too, to clean up what I
4 had started. All right.

5 MR. RICHTER: One parting shot, just for the
6 Court's consideration, I hear you in equity trying
7 to figure this out. These are the claims that were
8 chosen to be brought. All right. So it's
9 difficult. It is what it is. It is not just
10 unjust enrichment that we improve the value of the
11 land or this or that. So we're stuck with what has
12 been brought, and I offer that to you in equity
13 while you think about it.

14 THE COURT: I completely agree. Thank you.
15 Let's go ahead and bring them in.

16 Anybody need a break before we bring them in?

17 MR. HARRISON: No, Your Honor.

18 THE COURT: All right. Let's bring them in.

19 (The jury enters at 10:33 a.m., and the
20 following is heard in the presence of the jury.)

21 THE COURT: You can have a seat.

22 Ladies and gentlemen, we've reached the point
23 of the trial where you'll hear closing arguments
24 from the attorneys. I'm going to let you in a
25 little of our scheduling. We'll have closing

CLOSING ARGUMENT - MR. PLAYER

1 arguments from the lawyers, break for lunch, and
2 then come back and charge you on the law. The
3 reason we're doing that is there is a lot of law I
4 have to charge and, quite frankly, I don't want to
5 put you to sleep. So we'll give you a break for
6 lunch before I charge you on the law.

7 I want to remind you, again, that you are
8 about to hear the attorneys' presentations in
9 closing arguments. As I previously stated, what
10 the attorneys say is not the law. I'll charge you
11 what the law is. It is also not the facts. The
12 facts comes from the evidence that is on the stand,
13 and also the evidence put in the record, and you'll
14 have a chance to review that.

15 The attorneys are going to try to make
16 arguments, and basically try to show you their
17 perspective on how the facts apply to the law.
18 Again, if that differs from any law that I tell
19 you, or differs from the facts as you have heard
20 them, disregard them. Again, what the attorneys
21 say, that is not facts. Facts comes from the
22 witness stand and the evidence.

23 I ask you to pay close attention to all
24 parties during this.

25 Mr. Player.

CLOSING ARGUMENT - MR. PLAYER

1 MR. PLAYER: Thank you, Your Honor. Good
2 morning, everybody.

3 As the judge just told you, he'll charge you
4 on the law. What I like to do is I get to come up
5 here first, give my argument, and then the
6 defendants will present their closing arguments,
7 and then I get the last word at the end.

8 So in the first part, I want to talk about
9 what he'll tell you about the law and how we
10 believe the facts fit into that law that allows us
11 to recover in this case.

12 One of the important things that he's going
13 to charge you on is something called "agency."
14 When there is a corporation or partnership or a
15 group, they have to act through agents. A
16 corporation is a collection of humans, and humans
17 go out and do the business for the corporation.
18 They have to have authority to bind the
19 corporation, and in this case, we believe the
20 evidence clearly shows that Tim Kettner had the
21 ability to bind TNT with regards to the use of the
22 land back in 2016 and 2017.

23 The judge is going to instruct you on "actual
24 authority" and "apparent authority." Okay. Actual
25 authority is there is no question he legally had

CLOSING ARGUMENT - MR. PLAYER

1 the question to bind TNT. Apparent authority is,
2 well, the people he dealt with had enough of an
3 indication that he was the man, and he could do it,
4 that there was an apparent authority, and he can
5 bind the corporation that way, especially if they
6 later ratified his decision. That's called
7 "ratification." All right.

8 The evidence in this case is clear. This is
9 Exhibit 13. It is the promissory note where TNT
10 and TnW agreed to get \$1.1 million together.
11 You'll notice two people signed for TnW -- Wade and
12 Tim -- because they were 50 percent owners. No one
13 had a majority. Only one person signed for TNT:
14 Tim Kettner. That means he had the actual
15 authority to bind TNT to pay back \$1.1 million.

16 That's the note where he said I promise to
17 pay it back. This is the mortgage. This said if
18 the loan is not paid back, you can take every piece
19 of TNT property. Three people signed it, but only
20 two of them are witnesses verifying that Tim signed
21 it. Tim had the authority to bind TNT, and that is
22 what he did when he came up with the deal to build
23 the parking lot and build the marina and combine
24 all of the lots so they could operate. He had that
25 power. I don't care what those people thought. I

CLOSING ARGUMENT - MR. PLAYER

1 don't care what those people agreed to. They
2 didn't have to agree. Tim Kettner was the only
3 person that had to agree.

4 Let's talk about that agreement. You heard
5 Tim Kettner and you heard Justine Vaitis tell you,
6 Wade had nothing to do with the parking lot. Well,
7 these are the texts from March of 2016, and we'll
8 read them again: "Wade, I gave Warren Bellamy the
9 okay to go ahead and start digging" -- and text are
10 terrible -- "so as of them they are going to start
11 digging" -- and I believe "bawling" should have
12 been "hauling" -- "to start hauling dirt and getting
13 ready to fill the pond."

14 Tim says: "Roger."

15 Then we get to the bottom, and see what Tim
16 says. "Jason White just dropped off quote to do
17 entire job filling, leveling, grading, \$71,000
18 total cost."

19 Do you see Case on this? Do you see Donny?
20 Do you see Justine? Do you see anyone else from
21 TNT on that text message? There is only one
22 person. It's Wade.

23 "You coming down this morning?" Why is Wade
24 coming down to work on someone else's property for
25 free? That's Exhibit 4.

CLOSING ARGUMENT - MR. PLAYER

1 Exhibit 5, again, Wade is in the green. "He
2 is starting first thing Monday morning bringing
3 dirt and dozer." Okay. That's Wade and Tim. That
4 is TnW. \$71,000 they are putting up of their own
5 money to benefit TNT. Tim Kettner promised that we
6 could use that land or we wouldn't have done what
7 we did.

8 Another thing I mentioned a second ago, it is
9 called "ratification." Let's say they are right.
10 Say Justine is right, and they committed mortgage
11 fraud when Tim signed the mortgage when he didn't
12 have the authority. Still doesn't matter, because
13 if you ratify what he does, if you accept it, you
14 accept the benefits and you operate in a certain
15 manner, you have ratified his decision that wasn't
16 initially authorized.

17 What happened after they did the pond? They
18 went out and got a \$1.1 million loan. Every single
19 one of them signed it -- every single one of them.
20 That's not out of affection. What they do for the
21 next three years? They operated it exactly how we
22 say we should be operating now. You get two slips,
23 we get to use the parking lot. For three years
24 they saw us operating the fuel tank on their
25 property. That is ratification. If Tim didn't

CLOSING ARGUMENT - MR. PLAYER

1 have the authority to start with, he certainly got
2 it while they sat there and watched him do it for
3 three years. Ratification.

4 The fact that they keep saying Tim didn't
5 have the authority to do that, it doesn't matter
6 because they ratified it. They took in the
7 benefits. The loan with the bank paid off the
8 mortgages that were still on the parking lot, and
9 we agreed to pay that back.

10 The way this stuff works, we bring a
11 complaint, and in the complaint we have causes of
12 action. It's basically what we think they owe us
13 because of this, and then we also think they owe us
14 this because of this. So I'll go through our
15 causes of action, because that is what he is going
16 to charge you on the law.

17 You heard the word a lot: "Joint venture."
18 That is our first claim. The first claim is based
19 on these texts, this is when we start. We're going
20 to give you a parking lot, build a dock connected
21 to your restaurant with ten slips, and we're going
22 to pay, and that is what TnW did.

23 To the extent -- this goes back to
24 ratification. We're going through the texts, and
25 we're going through the context. The recombination

CLOSING ARGUMENT - MR. PLAYER

1 plat. Again, the language is important. I'll blow
2 it up. Certificate of Ownership and Dedication:
3 We hereby acknowledge that we are the owners of the
4 property shown, described herein, and we adopt this
5 plan of development with our free consent, that we
6 will dedicate all items specifically shown or
7 indicated on the plat.

8 It combined TNT's property and TnW and More's
9 property. Who signed it for TNT? Donny. That is
10 not Tim. Donald A. Kettner. He is now accepting
11 the combination of these lots for the use of two
12 companies. It is on paper. That is his signature.
13 They can't blame Tim for that. That is about as
14 sure a ratification as you get.

15 Here is the plat, the one that Tim mentioned
16 in the text, which I'll show you in a second.
17 We're going to combine lots. There it is. This
18 wasn't Tim acting rogue. This wasn't Tim doing
19 something behind their back. This wasn't Tim doing
20 something they didn't know about it. Donny signed
21 it. And, of course, he came before you and
22 explained that, didn't he? Where is Donny? Where
23 is Rob? Keep that in your head.

24 Wade and Chris testified that the deal was
25 you get the benefit of the marina, we get the

CLOSING ARGUMENT - MR. PLAYER

1 benefit of the parking lot, and we will both share
2 in the benefits. They gave them two slips. We got
3 to use the parking lot. We both had control.

4 Defendants want you to believe -- here are
5 the signs. The signs on the parking lot that said
6 exclusively to be used by customers of Crab
7 Catchers and TnW. They told the world we had
8 control of the parking lot. The people that ate at
9 their restaurant pulled up to our docks, ate
10 dinner, and left. We both had control over the
11 instruments that were part of the joint venture.
12 We didn't control how they sold food. We didn't
13 get any profits from them selling food. They
14 didn't control how we ran the jet ski business or
15 the fuel pump, and they didn't share in the
16 profits, but they had two slips worth a thousand
17 dollars a month, that they had the full time that
18 we operated according to the agreement.

19 I mean, we all did this for three years.
20 It's not like -- they are going to say it is
21 ambiguous, didn't know what the promise was. You
22 didn't have a problem with it for three years. It
23 was only when Tim decided to go to war that the
24 problems arose. That is a breach of a promise.
25 That is why -- sorry -- our claim on a joint

CLOSING ARGUMENT - MR. PLAYER

1 venture is essentially a claim for breach of
2 contract.

3 When we went out there -- and the judge is
4 going to instruct you what you have to show for a
5 contract. You have to show consideration. Both
6 sides have to give something. It seems like they
7 have been saying that we didn't give them anything.
8 But, again, this is an important document. This is
9 No. 15. It has everything that you will need to
10 see. And as we went through with the banker
11 yesterday, this portion of it -- zoning requires
12 one parking space. The last line is the most
13 important: "Unless the land area within the
14 assignment" -- and that included our land -- "is
15 considered as one, the restaurant cannot operate."

16 They needed this, and we gave it to them, and
17 they don't want to live up to their obligations.
18 All we're asking is that you give us what we lost
19 since they are now kicking us off their land.

20 Brett Crosson got up here and told you Crab
21 Catchers had employee meetings where they said,
22 We're in business. We're partners with Wade. You
23 do whatever the marina needs. We let them control
24 our business when we weren't there. They ran our
25 credit cards through their machines. Our office

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1 was in their building. Our bathrooms were in their
2 building. Our records were in their building, but
3 we're not a joint venture?

4 Geoff Hopkins told you or said in response to
5 a question, you know, was there any evidence of a
6 joint venture? Well, they certainly acted like it.

7 Nick Nye called it a joint venture. And, of
8 course, I like to -- this is the text: "Surveyor
9 called. He'll have everything ready when I get
10 back. Combining all lots." It's talking about
11 Harry Bruton. Go back to No. 3. He is the one
12 that did the plat. Tim is referring to the
13 recombination plat where all of the lots were
14 combined so we can get the marina permit.

15 Tim called a surveyor, filled him in on that
16 we're a joint venture business. He called it a
17 joint venture. You see he gives you the name:
18 Harry Bruton. He is the one on Exhibit 3, the one
19 that did the plat. So it's amazing how they deny
20 there was ever a joint venture. That is what Tim
21 called it from the get-go. Joint venture.

22 Now, the other way that they try to muddy the
23 water? Well, it was a joint venture between Tim
24 and Wade. The joint venture required the use of
25 the parking lot. Tim didn't own the parking lot.

CLOSING ARGUMENT - MR. PLAYER

1 He had to be representing TNT or he couldn't make a
2 promise. Recombining all of the lots together at a
3 plat, which Donny ratified. There is no question
4 TNT knew what we were doing. There is a gigantic
5 10,000-gallon gas tank sitting on their land with a
6 concrete barrier around it. That is a permanent
7 structure, and they want you to believe that this
8 was some magnanimous act of charity. Come on.

9 For three years they did this without a
10 problem, and when they decided it was time for us
11 to go, they tried to evict us. So that's why we
12 think there was a contract, and the contract was
13 clear on its terms. Unambiguous. We get to use
14 the parking lot, because if we can't, we don't
15 exist. In exchange, we'll give you two slips.
16 Your customers can park and right straight up to
17 the restaurant. That was the joint venture. That
18 is all we're claiming. We are not claiming we get
19 a piece of Crab Catchers, or they get a piece of
20 us. It was the mutual beneficial use of the land,
21 and our consideration was we paid for the parking
22 lot, we paid for the docks, so we put money in.
23 They didn't. When they say, Well, what about us
24 getting paid for them using our lot? They wouldn't
25 have a lot if it wasn't for us. We are the ones

CLOSING ARGUMENT - MR. PLAYER

1 that turned it from a couple trailers around a pond
2 into a parking lot that they had to have to
3 survive.

4 The next -- well, let me see. Okay. The
5 next one that we have is economic interference in
6 the complaint. That is basically tortious
7 interference with the contract. The judge will
8 charge you on one or two. I think it is
9 prospective, but our claim is solely based on Eric
10 Rolf. He was renting our docks for \$10,000 a month
11 in '21 and '22. His testimony is clear and
12 undisputed, that the folks at TNT drove him off
13 those docks, threatened the ski patrons, said it
14 was their dock -- that was Rob -- and he didn't
15 deny it. We lost \$10,000 a month, 2023 and 2024,
16 because of their actions interfering with our
17 lessee, our base of customers. If Eric couldn't
18 make money, he did what he did, he didn't renew.
19 He didn't come back. Nobody can work down there
20 under these conditions. That is a loss for us.
21 I'll come back at the end and tell you how much we
22 think it is worth and what we want you to give us
23 for that.

24 It applies to the folks at TNT and to Tim
25 Kettner. Ronnie has said a lot. Tim left

CLOSING ARGUMENT - MR. PLAYER

1 September 2020. Well, this is September of 2020
2 (indicates). He's supposedly gone, and this is
3 what they say. He's already talking about getting
4 the hut. "It's on your land." The hut was for
5 TnW, ladies and gentlemen. He is actively
6 participating adverse to the interest of TnW. TnW
7 needs that hut to run the jet skis. He knows it.
8 He's the one that has been running it because no
9 one is there, right? He knows how important the
10 hut is.

11 In September of 2020, he is telling the TNT
12 boys how to take it from us. He's already talking
13 to them about how to shut us down. That goes to
14 the next cause of action, which is breach of
15 fiduciary duty. It only applies to Mr. Kettner,
16 because he was the only one that was a partner with
17 us. But you cannot take a position adverse to the
18 company when you are a member of the company. That
19 is what the judge will instruct you. That is
20 exactly what these text messages are.

21 He talks about getting a hut. Remember, he
22 has no power. He's out of it completely. "Offer
23 with contingency that you can obtain a permit."
24 They are talking about stealing the hut, taking the
25 hut from his company. That is what he is advising

CLOSING ARGUMENT - MR. PLAYER

1 them on. And they keep going: "Donny as president
2 makes the offer." He is directing the president of
3 TNT what to do, but he has nothing to do with it,
4 right? And, of course, Donny, his hero: "Got it."

5 Tim is still telling them what to do. "State
6 your case to Code Enforcement." Use the County
7 against Wade, just like they used EPA, OCRM, Horry
8 County officials, whatever they could do to destroy
9 Wade. "Just my thought, Donny or Justine do the
10 leg work. Code Enforcement has known them for a
11 while. Rob should stay incognito as much as
12 possible." Why does he have to remain hidden?
13 Because he is the one that called everybody. He is
14 the one that complained about the permits. He's
15 the one that complained to the EPA. He's the one
16 that cut the signs down. And he didn't deny a
17 single allegation we made against him. Not one,
18 because he didn't testify.

19 So he wants him to stay incognito. Why? He
20 answered that question about four minutes later:
21 "Much more valuable now behind the scenes and
22 infiltration." He wants to infiltrate TnW to
23 destroy it. That is a breach of fiduciary duty.
24 He's actively working against his company and his
25 partners. Infiltration is not a legitimate